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CHAPTER 1—THE PUBLIC HEALTH SERVICE

SUBCHAPTER I—GENERALLY

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SUBCHAPTER I—GENERALLY

§§ 1 to 1j. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 1, acts July 1, 1902, ch. 1370, §1, 32 Stat. 712; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, provided that Public Health and Marine Hospital Service should be known as the Public Health Service. See section 202 of this title.

Section 1a, act Nov. 11, 1943, ch. 298, §1, 57 Stat. 587, provided for organization and function of Public Health Service. See section 203 of this title.

Section 1b, act Nov. 11, 1943, ch. 298, §2, 57 Stat. 587, provided for appointment of Assistant Surgeons General, their grade, pay, and allowances. See sections 206, 207, and 210 of this title.

Section 1c, act Nov. 11, 1943, ch. 298, §3, 57 Stat. 587, provided for chiefs of divisions, their grade, pay and allowances, and creation of a Dental Division and a Sanitary Engineering Division. See sections 206, 207, and 210 of this title.

Section 1d, act Nov. 11, 1943, ch. 298, §4, 57 Stat. 587, provided for temporary promotions in regular corps in time of war. See section 211 of this title.

Section 1e, act Nov. 11, 1943, ch. 298, §5, 58 Stat. 588, provided for review of record of officers above grade of assistant surgeon and their separation from service. See section 211 of this title.

Section 1f, act Nov. 11, 1943, ch. 298, §6, 58 Stat. 588, provided for an acting Surgeon General during absence of Surgeon General and Assistant to Surgeon General. See section 206 of this title.

Section 1g, act Nov. 11, 1943, ch. 298, §7, 57 Stat. 588, provided for death and disability benefits of commissioned officers during war and for transfer of Service to military forces. See sections 213 and 217 of this title.

Section 1h, act Nov. 11, 1943, ch. 298, §8, 57 Stat. 589, provided for commissioned officers' benefits as civil officers and employees of United States and election of benefits. See Title 5, Government Organization and Employees.

Section 1i, act Nov. 11, 1943, ch. 298, §9, 57 Stat. 589, provided for beneficiaries' benefits where commissioned officer lost his life on active duty between Dec. 7, 1941, and Nov. 11, 1943.

Section 1j, act Nov. 11, 1943, ch. 298, §11, 57 Stat. 589, provided for transfer of appropriations to continue transferred functions. See note set out under section 201 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611, of act July 1, 1944, which repealed these sections, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294. §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

§ 2. Omitted

CODIFICATION

Section, acts Feb. 3, 1905, ch. 297, 33 Stat. 650; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309; 1939 Reorg. Plan No. I, eff. July 1, 1939, §201, 4 F.R. 2728, 53 Stat. 1424, which provided for jurisdiction of Federal Security Agency over the Service, was superseded by section 202 of this title.

REPEALS

Act Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, which changed name of Public Health and Marine Hospital Service of the United States to Public Health Service was repealed by act July 1, 1944, ch. 373, title XIII, §1313, 58 Stat. 714, renumbered by acts Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; July 30, 1956, ch. 779, §3(b), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, §4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, §3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, §6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, §3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, §2(b)(2); 87 Stat. 604, and repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973,

87 Stat. 936. Act July 1, 1944, retained the name Public Health Service.

§§ 3, 4. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 3, acts July 1, 1902, ch. 1370, § 9, 32 Stat. 714; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for rules and regulations of service by the President. See section 216 of this title.

Section 4, R.S. § 4802; acts July 1, 1902, ch. 1370, § 9, 32 Stat. 714; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for an annual report by Surgeon General to Federal Security Administrator. See section 229 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b). Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2). Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§ 5. Omitted

CODIFICATION

Section, act Mar. 4, 1915, ch. 167, § 4, 38 Stat. 1191, provided for appointment to higher grade of officers of Public Health Service detailed with the former Isthmian Canal Commission.

§§ 6 to 15a. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 6, acts July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for care of sick and disabled seamen. See section 249 of this title.

Section 6a, act Mar. 31, 1936, ch. 161, 49 Stat. 1185, provided for care of seamen on Government vessels not in Military or Naval Establishments and of cadets on State school ships. See section 249 of this title.

Section 7, act Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for investigations by Service into diseases, etc., and publications relating thereto. See section 241 of this title.

Section 8, acts July 1, 1902, ch. 1370, § 4, 32 Stat. 713; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for use of Service in time of war. See section 217 of this title.

Section 8a, act Apr. 9, 1930, ch. 125, § 2(a), 46 Stat. 150, provided for extension of facilities of Service to health officials and scientists. See section 241 of this title.

Section 9, act Oct. 1, 1918, ch. 179, § 2, 40 Stat. 1008, provided for suppression of Spanish influenza and other communicable diseases. See section 264 of this title.

Section 9a, act Apr. 9, 1930, ch. 125, § 3, 46 Stat. 150, provided that administrative office and bureau divisions in District of Columbia be a part of departmental organization and scientific offices and research laboratories as part of field services. See section 203 of this title.

Section 10, acts Mar. 3, 1875, ch. 130, 18 Stat. 377; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for appointment of Surgeon General. See section 205 of this title.

Section 11, R.S. § 4802; acts July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for supervisory powers of Surgeon General. See section 203 of this title.

Section 11a, act Apr. 9, 1930, ch. 125, § 10(b), 46 Stat. 152, provided for pay and allowances of Surgeon General and for reversion in grade on expiration of term. See sections 205 and 207 of this title.

Section 11b, act Aug. 9, 1939, ch. 606, 53 Stat. 1266, provided for rank and pay of Assistant to Surgeon General. See sections 206 and 207 of this title.

Section 12, acts Jan. 4, 1889, ch. 19, § 1, 25 Stat. 639; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for appointment of medical officers after examination. See section 209 of this title.

Section 13, act Jan. 4, 1889, ch. 19, § 2, 25 Stat. 639, provided for original appointments as assistant surgeons and promotion of passed assistant surgeon. See sections 209 and 211 of this title.

Section 14, act Aug. 14, 1912, ch. 288, § 2, 37 Stat. 309, provided for help as provided by Congress. See section 209 of this title.

Section 15, acts Mar. 3, 1891, ch. 541, 26 Stat. 923; July 31, 1894, ch. 174, 28 Stat. 179; July 1, 1902, ch. 1370, § 1, 32 Stat. 712, provided for details for duty in bureau. See section 215 of this title.

Section 15a, acts Mar. 2, 1895, ch. 177, § 1, 28 Stat. 780; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for detail of two hospital attendants for duty in laboratory. See section 215 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b). Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2). Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§ 16. Omitted

CODIFICATION

Section, which was from the Interior Department Appropriation Act, 1950, act Oct. 12, 1949, ch. 680, title I, 63 Stat. 791, was not repeated in the General Appropriation Act, 1951, act Sept. 6, 1950, ch. 896, 64 Stat. 595. It related to detail of Public Health medical officers to the Bureau of Mines. For provisions for details to executive departments, see section 215 of this title.

Similar provisions were contained in the following prior acts:

June 29, 1948, ch. 754, 62 Stat. 1139.
July 25, 1947, ch. 337, 61 Stat. 483.
July 1, 1946, ch. 529, 60 Stat. 375.
July 3, 1945, ch. 262, 59 Stat. 351.
June 28, 1944, ch. 298, 58 Stat. 499.
July 12, 1943, ch. 219, 57 Stat. 485.
July 2, 1942, ch. 473, 56 Stat. 548.
June 28, 1941, ch. 259, 55 Stat. 345.
June 18, 1940, ch. 395, 54 Stat. 444.
May 10, 1939, ch. 119, 53 Stat. 725.
May 9, 1938, ch. 187, 52 Stat. 330.
Aug. 9, 1937, ch. 570, 50 Stat. 602.
June 22, 1936, ch. 691, 49 Stat. 1791.
May 9, 1935, ch. 101, 49 Stat. 205.
Apr. 7, 1934, ch. 104, title III, 48 Stat. 564.
Mar. 1, 1933, ch. 144, title III, 47 Stat. 1406.
July 1, 1932, ch. 361, title III, 47 Stat. 516.
Feb. 23, 1931, ch. 280, title III, 46 Stat. 1349.
Apr. 18, 1930, ch. 184, title III, 46 Stat. 212.
Jan. 25, 1929, ch. 102, title III, 45 Stat. 1133.
Feb. 15, 1928, ch. 57, title III, 45 Stat. 103.
Feb. 24, 1927, ch. 189, title III, 44 Stat. 1219.
Apr. 29, 1926, ch. 195, title III, 44 Stat. 368.
Jan. 24, 1923, ch. 42, 42 Stat. 1210.
Mar. 4, 1921, ch. 161, 41 Stat. 1401.
June 5, 1920, ch. 235, 41 Stat. 911.
July 19, 1919, ch. 24, 41 Stat. 199.
July 1, 1918, ch. 113, 40 Stat. 671.

REPEALS

Act July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat.

1049; Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; July 30, 1956, ch. 779, §3(b), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, §4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, §3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, §6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, §3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, §2(b)(2), 87 Stat. 604, and repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936, repealed portions of Appropriations Acts June 12, 1917, ch. 27, §1, 40 Stat. 146; May 24, 1922, ch. 199, 42 Stat. 588; Jan. 24, 1923, ch. 42, 42 Stat. 1210; June 5, 1924, ch. 264, 43 Stat. 422; Mar. 3, 1925, ch. 462, 43 Stat. 1175, which contained similar provisions to those of this section, but later appropriation acts containing such provisions were not repealed.

§§17 to 25e. Repealed. July 1, 1944, ch. 373, title XIII, §1313, 58 Stat. 714

Section 17, act Oct. 1, 1918, ch. 178, 40 Stat. 992, provided for a detail for duty with Department of Agriculture. See section 215 of this title.

Section 17a, act Apr. 9, 1930, ch. 125, §1, 46 Stat. 150, provided for a detail for duty with executive and independent departments carrying on public health activities. See section 215 of this title.

Section 17b, act Apr. 9, 1930, ch. 125, §2(a), 46 Stat. 150, provided for a detail for duty with educational and research institutions. See section 215 of this title.

Section 17c, act Apr. 26, 1939, ch. 92, §1, 53 Stat. 620, provided for a detail for duty on vessels of Coast and Geodetic Survey. See section 215 of this title.

Section 18, act Oct. 27, 1918, ch. 196, 40 Stat. 1017, provided for a Reserve of the Public Health Service. See sections 204, 207, 209, and 210 of this title.

Section 18a, act Apr. 9, 1930, ch. 125, §6, 46 Stat. 151, provided for assignment of Reserve officers to active duty and for such service counting for promotion credits. See section 204 of this title.

Section 18b, act Mar. 18, 1943, ch. 17, title I, 57 Stat. 24, provided for distribution of Reserve officers among the several grades. See section 209 of this title.

Section 19, acts Feb. 19, 1897, ch. 265, 29 Stat. 554; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, provided for leaves of absence for medical officers. See section 210–1 of this title.

Section 20, act July 9, 1917, ch. 37, 40 Stat. 242, provided for pensions to officers detailed for service with Coast Guard, Army, or Navy. See section 213 of this title.

Section 21, acts July 1, 1902, ch. 1370, §5, 32 Stat. 713; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309; Apr. 9, 1930, ch. 125, §13, 46 Stat. 152; May 26, 1930, ch. 320, §1, 46 Stat. 379, provided for establishment of National Advisory Health Council as an advisory board for National Institute of Health. See section 218 of this title.

Section 21a, act Aug. 10, 1939, ch. 636, 53 Stat. 1338, provided for compensation of National Advisory Health Council. See section 210 of this title.

Section 22, acts July 1, 1902, ch. 1370, §6, 32 Stat. 713; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309; May 26, 1930, ch. 320, §1, 46 Stat. 379, provided for appointment of chiefs of divisions and director of institute, and their pay and allowances. See sections 206 and 210 of this title.

Section 23, act Mar. 4, 1913, ch. 149, 37 Stat. 915, provided for pay of director of Hygienic Laboratory which is now known as the National Institute of Health. See section 210 of this title.

Section 23a, act May 26, 1930, ch. 320, §1, 46 Stat. 379, provided that Hygienic Laboratory should be succeeded by the National Institute of Health and that all laws, authorizations, and appropriations of Hygienic Laboratory should become applicable to its successor.

Section 23b, act May 26, 1930, ch. 320, §2, 46 Stat. 379, provided for acceptance of gifts by Federal Security Administrator. See section 219 of this title.

Section 23c, act May 26, 1930, ch. 320, §3, 46 Stat. 380, provided for detailing to duty of scientists receiving fellowships. See sections 209 and 241 of this title.

Section 23d, act May 26, 1930, ch. 320, §4, 46 Stat. 380, provided for appointment and compensation of personnel of the National Institute of Health. See section 209 of this title.

Section 23e, act May 26, 1930, ch. 320, §5, 46 Stat. 380, provided that facilities of the National Institute of Health be available to States, counties, and municipalities. See section 241 of this title.

Section 23f, act May 26, 1930, ch. 320, §6, 46 Stat. 380, provided for rank, pay, and allowances of Director of the Institute. See sections 206, 207, and 210 of this title.

Section 23g, acts Apr. 9, 1930, ch. 125, §2(b), 46 Stat. 150; May 26, 1930, ch. 320, §1, 46 Stat. 379, provided for additional divisions in Institute as authorized by Administrator. See section 203 of this title.

Section 24, act July 9, 1918, ch. 143, ch. XV, §3, 40 Stat. 886, provided for establishment of a Division of Venereal Diseases.

Section 25, act July 9, 1918, ch. 143, ch. XV, §4, 40 Stat. 886, provided for duties of Division of Venereal Diseases.

Section 25a, act July 9, 1918, ch. 143, ch. XV, §4a, as added May 24, 1938, ch. 267, 52 Stat. 439, provided for appropriations to assist political subdivisions in venereal disease work. See sections 241 and 246 of this title.

Section 25b, act July 9, 1918, ch. 143, ch. XV, §4b, as added May 24, 1938, ch. 267, 52 Stat. 439, provided for allotments to political subdivisions for venereal disease work. See section 246 of this title.

Section 25c, act July 9, 1918, ch. 143, ch. XV, §4c, as added May 24, 1938, ch. 267, 52 Stat. 439, provided for payments from allotments to political subdivisions. See section 246 of this title.

Section 25d, act July 9, 1918, ch. 143, ch. XV, §4d, as added May 24, 1938, ch. 267, 52 Stat. 439, provided for rules and regulations governing the Division of Venereal Diseases, is covered by section 216 of this title.

Section 25e, act July 9, 1918, ch. 143, ch. XV, §4e, as added May 24, 1938, ch. 267, 52 Stat. 439, provided for construction of sections 25a to 25e of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611 of act July 1, 1944, which repealed these sections, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2). Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

§26. Isolation of civilians for protection of military, air and naval forces

The Secretary of the Army, the Secretary of the Air Force and the Secretary of the Navy are authorized and directed to adopt measures for the purpose of assisting the various States in caring for civilian persons whose detention, isolation, quarantine, or commitment to institutions may be found necessary for the protection of the military, air and naval forces of the United States against venereal diseases.

(July 9, 1918, ch. 143, ch. XV, §2, 40 Stat. 886.)

CODIFICATION

The Secretary of the Air Force was inserted in text under the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, and Secretary of Defense Transfer Order No. 40 [App. A(73)], July 22, 1949. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947. Sections 205(a) and 207 (a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sec-

tions 3010 to 3013 and 8010 to 8013 continued the Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

TRANSFER OF FUNCTIONS

For transfer of certain functions insofar as they pertain to the Air Force, and to the extent that they were not previously transferred to the Secretary of the Air Force from the Secretary of the Army, see Secretary of Defense Transfer Order No. 40 [App. A(73)], July 22, 1949.

§ 27. Definitions

The terms ''State'' and ''States,'' as used in this chapter, shall be held to include the District of Columbia.

(July 9, 1918, ch. 143, ch. XV, § 8, 40 Stat. 887.)

REFERENCES IN TEXT

This chapter, referred to in text, means chapter XV of act July 9, 1918, ch. 143, 40 Stat. 887, which, insofar as classified to the Code, enacted sections 24 to 27 of this title and amended section 28 of this title. For complete classification of this Act to the Code, see Tables.

§§ 28 to 43. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 28, acts July 1, 1902, ch. 1370, § 3, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; July 9, 1918, ch. 143, ch. XV, § 3, 40 Stat. 886, provided divisions under Assistant Surgeons General and the rank, pay, and allowances of said Assistants. See sections 206, 207, and 210 of this title.

Section 28a, act Apr. 9, 1930, ch. 125, § 10(c), 46 Stat. 152, provided for a chief of the narcotics division. See section 206 of this title.

Section 29, acts July 1, 1902, ch. 1370, § 7, 32 Stat. 713; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for conferences with State and Territorial boards of health. See section 242n of this title.

Section 30, acts July 1, 1902, ch. 1370, § 8, 32 Stat. 714; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for compilation of mortality, morbidity, and vital statistics. See section 242k(g) of this title.

Section 31, act June 5, 1920, ch. 235, § 1, 41 Stat. 883, provided that officers of Service could make allotments of their pay. See section 704 of Title 37, Pay and Allowances of the Uniformed Services.

Section 32, act Mar. 6, 1920, ch. 94, § 1, 41 Stat. 507, provided for purchase of quartermaster supplies by officers of Service. See section 210 of this title.

Section 33, act Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1378, provided for limitations on expenditure of appropriations. See section 227 of this title.

Section 33a, act May 14, 1935, ch. 110, 49 Stat. 229, provided for covering into Treasury moneys collected for treatment of foreign seamen and other pay patients. See section 221 of this title.

Section 34, acts July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 2, 37 Stat. 309; Apr. 9, 1930, ch. 125, § 10(a), 46 Stat. 152, provided for titles for officers of the Service. See section 207 of this title.

Section 35, act Apr. 9, 1930, ch. 125, § 10(a), 46 Stat. 152, provided titles for officers other than medical officers of Service. See section 207 of this title.

Section 36, act Apr. 9, 1930, ch. 125, § 10(a), 46 Stat. 152, provided titles for officers in grade of Assistant Surgeons General. See section 206 of this title.

Section 37, acts Apr. 9, 1930, ch. 125, § 9, 46 Stat. 151; Nov. 11, 1943, ch. 298, § 7, 57 Stat. 588, provided for promotions, pay and allowances, and severance from Service of commissioned officers. See sections 209 et seq. of this title.

Section 38, act Apr. 9, 1930, ch. 125, § 4, 46 Stat. 150, provided for appointment and grades of medical, dental, sanitary engineer, and pharmacist officers. See section 209 of this title.

Section 39, Apr. 9, 1930, ch. 125, § 5, 46 Stat. 150, provided for number, pay and allowances, and service credits for pay purposes of medical, dental, sanitary engineer, and pharmacist officers. See sections 209 et seq. of this title.

Section 40, act Apr. 9, 1930, ch. 125, § 11, 46 Stat. 152, provided for appointment and qualifications of employees other than commissioned officers. See section 209 of this title.

Section 41, act Apr. 9, 1930, ch. 125, § 7, 46 Stat. 151, provided for appointment of persons other than commissioned officers for scientific research. See section 209 of this title.

Section 42, act Apr. 9, 1930, ch. 125, § 12, 46 Stat. 152, provided for medical and hospital services to officers disabled by sickness or injury. See sections 213 and 248 of this title.

Section 43, act Mar. 3, 1919, ch. 98, § 3, 40 Stat. 1303, related to transfer of property and equipment to Service. Act Mar. 4, 1921, ch. 156, 41 Stat. 1365, formerly cited to section 43, was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2). Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§§ 44, 45. Repealed. Oct. 31, 1951, ch. 654, § 1(45), 65 Stat. 703

Section 44, act Mar. 15, 1920, ch. 100, § 1, 41 Stat. 530; 1939 Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, related to transfer of surplus motor-propelled vehicles in War Department (now Department of the Army) to Federal Security Agency for use of Public Health Service.

Section 45, act Mar. 15, 1920, ch. 100, § 4, 41 Stat. 531; 1939 Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, related to freight charges for transfer of motor-propelled vehicles in War Department (now Department of the Army) to Federal Security Agency for use of Public Health Service.

§ 46. Omitted

CODIFICATION

Section, which related to relocation of physicians and dentists, was from the First Supplemental National Defense Appropriation Act, 1944, act Dec. 23, 1943, ch. 380, title I, § 101, 57 Stat. 617, and was not repeated in subsequent appropriation acts.

SUBCHAPTER II—PAY

§ 61. Omitted

CODIFICATION

Section, acts Jan. 22, 1925, ch. 87, title I, 43 Stat. 774; Mar. 2, 1926, ch. 43, title I, § 1, 44 Stat. 147, related to travel expenses for travel on Government owned vessels and was superseded by section 404 et seq. of Title 37, Pay and Allowances of the Uniformed Services.

§ 62. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section, act May 18, 1920, ch. 190, § 11 (proviso), 41 Stat. 604, related to longevity pay and credit for service in other branches. See section 517 of Title 10, Armed Forces, and sections 201, and 203 to 205 of Title 37, Pay and Allowances of the Uniformed Services.

§ 63. Omitted

CODIFICATION

Section, acts May 28, 1924, ch. 203, 43 Stat. 194; Feb. 11, 1925, ch. 209, 43 Stat. 872; May 21, 1926, ch. 355, 44 Stat. 604, which related to time spent at the Military and Naval Academies, expired with the appropriation acts of which it was a part.

§ 64. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section, act May 18, 1920, ch. 190, § 12, 41 Stat. 604, related to transportation of dependents. See sections 404 to 407 and 409 to 411 of Title 37, Pay and Allowances of the Uniformed Services.

§§ 64a to 64c. Omitted

CODIFICATION

Section 64a, act Feb. 21, 1929, ch. 288, 45 Stat. 1254, defined child and children as used in section 64 of this title, and was superseded by section 401 of Title 37, Pay and Allowances of the Uniformed Services.

Section 64b, act June 24, 1935, ch. 291, § 3, 49 Stat. 421, defined permanent change in station as used in section 64 of this title and was superseded by section 411 of Title 37.

Provisions of section 64c, which related to use of government automobiles to transport school children at isolated stations, were enacted as permanent legislation by the 1948 amendment to section 227 of this title. Section 64c was based upon the following prior appropriation acts:

June 14, 1948, ch. 465, title II, 62 Stat. 400.
July 8, 1947, ch. 210, title II, 61 Stat. 267.
July 26, 1946, ch. 672, title II, 60 Stat. 690.
July 3, 1945, ch. 263, title II, 59 Stat. 368.
June 28, 1944, ch. 302, title II, 58 Stat. 559.
July 12, 1943, ch. 221, title II, 57 Stat. 507.
July 2, 1942, ch. 475, title II, 56 Stat. 582.
July 1, 1941, ch. 269, title II, 55 Stat. 483.
June 26, 1940, ch. 428, title II, 54 Stat. 587.

§ 65. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section, acts Mar. 2, 1923, ch. 178, title I, 42 Stat. 1385; Aug. 4, 1949, ch. 393, § 11, 63 Stat. 559, prohibited issuance of heat or light in kind to any person in Public Health Service while such person is receiving an allowance for rental of quarters.

§§ 66 to 69. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 66, act Apr. 9, 1930, ch. 125, § 8, 46 Stat. 151, provided for disability pay for commissioned officers. See section 212 of this title.

Section 67, act May 14, 1937, ch. 180, title I, 50 Stat. 148, provided for compensation of field employees rendering part-time and call services. See section 210 of this title.

Section 68, acts June 26, 1940, ch. 428, title II, 54 Stat. 584; July 1, 1941, ch. 269, title II, 55 Stat. 480, provided transportation funds for shipment of deceased officers. See section 224 of this title.

Section 69, acts May 27, 1908, ch. 200, 35 Stat. 373; May 13, 1938, ch. 213, 52 Stat. 352; Oct. 28, 1943, ch. 289, 57 Stat. 583, provided for settlement of accounts of deceased officers and men. See section 2771 of Title 10, Armed Forces.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b). Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294. § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2). Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§ 70. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 655

Section, act June 30, 1949, ch. 286, title I, 63 Stat. 365, provided for a per diem allowance of officers detailed to the Coast Guard.

Acts June 26, 1943, ch. 147, title I, 57 Stat. 210; Mar. 31, 1943, ch. 30, § 1, 57 Stat. 55; June 22, 1944, ch. 269, title I, 58 Stat. 315; May 29, 1945, ch. 130, 59 Stat. 216; July 12, 1946, ch. 569, § 1, 60 Stat. 530; July 1, 1947, ch. 186, title I, 61 Stat. 225; June 19, 1948, ch. 558, title I, 62 Stat. 562, which contained provisions similar to section 70 of this title, were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 651–654.

§ 70a. Repealed. Dec. 28, 1945, ch. 597, § 4, 59 Stat. 662

Section, act Oct. 27, 1943, ch. 287, § 6, 57 Stat. 583, provided for reimbursement for property lost or destroyed in service while serving with the Navy.

CHAPTER 1A—THE PUBLIC HEALTH SERVICE; SUPPLEMENTAL PROVISIONS

§§ 71 to 71*l*. Transferred

CODIFICATION

Section 71, act Apr. 9, 1930, ch. 125, § 1, 46 Stat. 150, which provided for a detail for duty with executive and independent departments carrying on public health activities, was transferred to section 17a of this title.

Section 71a, act Apr. 9, 1930, ch. 125, § 2(a), 46 Stat. 150, which provided for a detail for duty with educational and research institutions, was transferred to section 17b of this title.

Section 71b, act Apr. 9, 1930, ch. 125, § 2(a), 46 Stat. 150, which provided for extension of facilities of Service to health officials and scientist, was transferred to section 8a of this title.

Section 71c, acts Apr. 9, 1930, ch. 125, § 2(b), 46 Stat. 150; May 26, 1930, ch. 320, § 1, 46 Stat. 379, which provided for additional divisions in Institute as authorized by Federal Security Administrator, was transferred to section 23g of this title.

Section 71d, act Apr. 9, 1930, ch. 125, § 3, 46 Stat. 150, which provided that administrative office and bureau divisions in District of Columbia be a part of departmental organization and scientific offices and research laboratories be a part of the field service, was transferred to section 9a of this title.

Section 71e, act Apr. 9, 1930, ch. 125, § 4, 46 Stat. 150, which provided for appointment and grades of medical, dental, sanitary, engineer, and pharmacist officers, was transferred to section 38 of this title.

Section 71f, act Apr. 9, 1930, ch. 125, § 5, 46 Stat. 150, which provided for number, pay and allowances, and service credits for pay purposes of medical, dental, sanitary, engineer, and pharmacist officers, was transferred to section 39 of this title.

Section 71g, act Apr. 9, 1930, ch. 125, § 6, 46 Stat. 151, which provided for assignment of Reserve officers to active duty and for such service counting for promotion credits, was transferred to section 18a of this title.

Section 71h, act Apr. 9, 1930, ch. 125, § 7, 46 Stat. 151, which provided for appointment of persons other than commissioned officers for scientific research, was transferred to section 41 of this title.

Section 71i, act Apr. 9, 1930, ch. 125, § 8, 46 Stat. 151, which provided for disability pay for commissioned officers, was transferred to section 66 of this title.

Section 71j, act Apr. 9, 1930, ch. 125, § 9, 46 Stat. 151, which provided for promotions and pay and allowances

of commissioned officers, was transferred to section 37 of this title.

Section 71k, act Apr. 9, 1930, ch. 125, § 10(a), 46 Stat. 152, which provided titles for officers other than medical officers of Service, was transferred to section 35 of this title.

Section 71*l*, act Apr. 9, 1930, ch. 125, § 10(a), 46 Stat. 152, which provided titles for officers in grade of Assistant Surgeon General, was transferred to section 36 of this title.

§ 71m. Omitted

CODIFICATION

Section, act Apr. 9, 1930, ch. 125, § 10(a), 46 Stat. 152, which provided for repeal of limitation upon number of senior surgeons and Assistant Surgeons General at large of Public Health Service on active duty, was executed to section 34 of this title.

§§ 71n to 71q. Transferred

CODIFICATION

Section 71n, act Apr. 9, 1930, ch. 125, § 10(b), 46 Stat. 152, which provided for pay and allowances of Surgeon General and for reversion in grade on expiration of term, was transferred to section 11a of this title.

Section 71*o*, act Apr. 9, 1930, ch. 125, § 10(c), 46 Stat. 152, which provided for a Chief of the Narcotics Division, was transferred to section 28a of this title.

Section 71p, act Aug. 9, 1930, ch. 125, § 11, 46 Stat. 152, which provided for appointment and qualifications of employees other than commissioned officers, was transferred to section 40 of this title.

Section 71q, act Apr. 9, 1930, ch. 125, § 12, 46 Stat. 152, which provided for medical and hospital services to officers disabled by sickness or injury, was transferred to section 42 of this title.

§ 71r. Omitted

CODIFICATION

Section, acts Apr. 9, 1930, ch. 125, § 13, 46 Stat. 152; May 26, 1930, ch. 320, § 1, 46 Stat. 379, which changed the name of the Advisory board for National Institute of Health to the National Advisory Health Council and provided for appointment of additional members and the terms of service, compensation, and allowances for such additional members and an additional function for the Council, was executed to section 21 of this title.

CHAPTER 2—SANITATION AND QUARANTINE

Sec.
81 to 87. Repealed.
88. Discharge of cargo of vessel in quarantine.
89. Quarantine warehouses; erection.
90. Deposit of goods in warehouses.
91. Extending time for entry of vessels subject to quarantine.
92 to 96. Repealed.
97. State health laws observed by United States officers.
98. Vessels for quarantine officers.
99 to 111. Repealed.
112. Removal of revenue officers from port during epidemic.
113, 114. Repealed.

§§ 81 to 87. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 81, act Feb. 15, 1893, ch. 114, § 1, 27 Stat. 449, provided penalties for entry of vessels in violation of quarantine laws. See section 271 of this title.

Section 82, acts Feb. 15, 1893, ch. 114, § 2, 27 Stat. 450; Aug. 18, 1894, ch. 300, 28 Stat. 372; Feb. 27, 1921, ch. 80, 41 Stat. 1149; Feb. 7, 1925, ch. 146, 43 Stat. 809; July 10, 1940, ch. 566, 54 Stat. 747, provided for bills of health. See section 269 of this title.

Section 82a, act Feb. 15, 1893, ch. 114, § 13, as added Mar. 3, 1931, ch. 409, § 1, 46 Stat. 1491, provided for duplicate bills of health. See section 269 of this title.

Section 83, act Feb. 15, 1893, ch. 114, § 11, as added Mar. 3, 1901, ch. 836, 31 Stat. 1087, provided that vessels from foreign ports without bill of health not entering the United States were subject to quarantine regulations.

Section 84, act Feb. 15, 1893, ch. 114, § 6, 27 Stat. 452, provided for disposition of infected vessels.

Section 85, act June 19, 1906, ch. 3433, § 4, 34 Stat. 300, provided penalties for infractions of quarantine. See section 271 of this title.

Section 86, act Apr. 29, 1878, ch. 66, § 1, 20 Stat. 37, prohibited entry of vessels and vehicles contrary to State quarantine laws. See sections 264 to 272 of this title. Compliance with State laws, see section 97 of this title.

Section 87, act Apr. 17, 1917, ch. 3, 40 Stat. 6, provided for payment of cost of fumigation and disinfection of foreign vessels.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611 of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§ 88. Discharge of cargo of vessel in quarantine

Whenever, by the health laws of any State, or by the regulations made pursuant thereto, any vessel arriving within a collection district of such State is prohibited from coming to the port of entry by law established for such district, and such health laws require or permit the cargo of the vessel to be unladen at some other place within or near to such district, the collector, after due report to him of the whole of such cargo, may grant his warrant or permit for the unlading and discharge thereof, under the care of the surveyor, or of one or more inspectors, at some other place where such health laws permit, and upon the conditions and restrictions which shall be directed by the Secretary of Health and Human Services, or which such collector may, for the time, deem expedient for the security of the public revenue.

(R.S. § 4793; 1939 Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Words ''or delivery'' after ''port of entry'' which were included in this section as originally enacted were omitted as ports of delivery were abolished pursuant to the President's Message to Congress on Mar. 3, 1913, set out in Codification note under section 1 of Title 19, Customs Duties.

R.S. § 4793 derived from act Feb. 23, 1799, ch. 12, § 2, 1 Stat. 619.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agen-

cy and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Department of the Treasury relating to public health transferred to Federal Security Agency pursuant to Reorg. Plan No. I of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

§89. Quarantine warehouses; erection

There shall be purchased or erected, under the orders of the President, suitable warehouses, with wharves and inclosures, where merchandise may be unladen and deposited, from any vessel which shall be subject to a quarantine, or other restraint, pursuant to the health laws of any State, at such convenient places therein as the safety of the public revenue and the observance of such health laws may require.

(R.S. §4794.)

CODIFICATION

R.S. §4794 derived from act Feb. 23, 1799, ch. 12, §3, 1 Stat. 620.

§90. Deposit of goods in warehouses

Whenever the cargo of a vessel is unladen at some other place than the port of entry under sections 88 and 89 of this title, all the articles of such cargo shall be deposited, at the risk of the parties concerned therein, in such public or other warehouses or inclosures as the collector shall designate, there to remain under the joint custody of such collector and of the owner, or master, or other person having charge of such vessel, until the same are entirely unladen or discharged, and until the articles so deposited may be safely removed without contravening such health laws. And when such removal is allowed, the collector having charge of such articles may grant permits to the respective owners or consignees, their factors or agents, to receive all merchandise which has been entered, and the duties accruing upon which have been paid, upon the payment by them of a reasonable rate of storage; which shall be fixed by the Secretary of Health and Human Services for all public warehouses and inclosures.

(R.S. §4795; 1939 Reorg. Plan No. I, §201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1953 Reorg. Plan No. 1, §§5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

R.S. §4795 derived from act Feb. 23, 1799, ch. 12, §2, 1 Stat. 619.

Omission of words ''or delivery'' after ''port of entry'', see Codification note set out under section 88 of this title.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Department of the Treasury relating to public health transferred to Federal Security Agency pursuant to Reorg. Plan No. I of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

§91. Extending time for entry of vessels subject to quarantine

The Secretary of Health and Human Services is authorized, whenever a conformity to such quarantines and health laws requires it, and in respect to vessels subject thereto, to prolong the terms limited for the entry of the same, and the report or entry of their cargoes, and to vary or dispense with any other regulations applicable to such reports or entries. No part of the cargo of any vessel shall, however, in any case, be taken out or unladen therefrom, otherwise than is allowed by law, or according to the regulations established by sections 88 and 90 of this title.

(R.S. §4796; 1939 Reorg. Plan No. I, §201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

R.S. §4796 derived from act Feb. 23, 1799, ch. 12, §1, 1 Stat. 619.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education and Welfare by section 5 of 1953 Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Department of the Treasury relating to public health transferred to Federal Security Agency pursuant to Reorg. Plan No. I of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

§§92 to 96. Repealed. July 1, 1944, ch. 373, title XIII, §1313, 58 Stat. 714

Section 92, acts Feb. 15, 1893, ch. 114, §3, 27 Stat. 450; July 1, 1902, ch. 1370, §1, 32 Stat. 712; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, provided for enforcement of quarantine regulations. See sections 264 to 267 of this title.

Section 92a, acts Apr. 29, 1878, ch. 66, §5, 20 Stat. 38; July 1, 1902, ch. 1370, §1, 32 Stat. 712; Aug. 14, 1912, §1, 37 Stat. 309, provided for a national quarantine system. See sections 264 to 267 of this title.

Section 93, acts Feb. 15, 1893, ch. 114, §4, 27 Stat. 451; July 1, 1902, ch. 1370, §1, 32 Stat. 712; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, provided for duties of Surgeon General relating to quarantine. See sections 264 to 270 of this title.

Section 94, act Feb. 15, 1893, ch. 114, §5, 27 Stat. 451, provided for regulations to secure sanitary conditions of vessels. See section 269 of this title.

Section 94a, act Feb. 15, 1893, ch. 114, §14, as added Mar. 3, 1931, ch. 409, §1, 46 Stat. 1492, provided for hours

of inspection at quarantine stations. See section 267 of this title.

Section 94b, act Feb. 15, 1893, ch. 114, § 16, as added Mar. 3, 1931, ch. 409, § 1, 46 Stat. 1492, provided for schedule of charges and payment of them. See section 269 of this title.

Section 94c, act Feb. 15, 1893, ch. 114, § 15, as added Mar. 3, 1931, ch. 409, § 1, 46 Stat. 1492, provided for procurement of health certificates. See section 269 of this title.

Section 94d, act Feb. 15, 1893, ch. 114, § 17, as added Mar. 3, 1931, ch. 409, § 1, 46 Stat. 1492, provided medical and hospital benefits to officers and employees of national quarantine service. See section 253 of this title.

Section 94e, act Mar. 3, 1931, ch. 409, § 3, 46 Stat. 1492, provided for extended quarantine service. See section 267 of this title.

Section 95, acts Mar. 27, 1890, ch. 51, § 1, 26 Stat. 31; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, related to regulations to prevent spread of communicable diseases. See section 264 of this title.

Section 96, act June 19, 1906, ch. 3433, § 6, 34 Stat. 301, provided that jurisdiction over established station acquired by the United States be ceded before payment of compensation.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§ 97. State health laws observed by United States officers

The quarantines and other restraints established by the health laws of any State, respecting any vessels arriving in, or bound to, any port or district thereof, shall be duly observed by the officers of the customs revenue of the United States, by the masters and crews of the several Coast Guard vessels, and by the military officers commanding in any fort or station upon the seacoast; and all such officers of the United States shall faithfully aid in the execution of such quarantines and health laws, according to their respective powers and within their respective precincts, and as they shall be directed, from time to time, by the Secretary of Health and Human Services. But nothing in title 58 of the Revised Statutes shall enable any State to collect a duty of tonnage or impost without the consent of Congress.

(R.S. § 4792; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800; 1939 Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; Aug. 4, 1949, ch. 393, §§ 1, 20, 63 Stat. 496, 561; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Title 58 of the Revised Statutes, referred to in text, was in the original "this Title" meaning title 58 of the Revised Statutes, consisting of R.S. §§ 4792 to 4800, which were classified to sections 88 to 91, 97, and 112 to 114 of this title and section 8 of former Title 4, Flag and Seal, Seat of Government, and the States. Such section 8 of former Title 4 was repealed by act July 30, 1947, ch. 389, § 2, 61 Stat. 645, and reenacted by the first section thereof as section 73 of Title 4. For complete classification of R.S. §§ 4792 to 4800 to the Code, see Tables.

CODIFICATION

R.S. § 4792 derived from act Feb. 23, 1799, ch. 12, § 1, 1 Stat. 619.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Department of the Treasury relating to public health transferred to Federal Security Agency pursuant to Reorg. Plan No. I of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

"Coast Guard vessels" substituted in text for "revenue-cutters", Revenue Cutter Service and Life-Saving Service having been combined to form Coast Guard by section 1 of act Jan. 28, 1915. That act was repealed by section 20 of act Aug. 4, 1949, section 1 of which reestablished the Coast Guard by enacting Title 14, Coast Guard.

§ 98. Vessels for quarantine officers

The Secretary of the Navy is authorized, in his discretion, at the request of the Secretary of Health and Human Services, to place gratuitously, at the disposal of the proper quarantine authorities, at any of the ports of the United States, to be used temporarily for quarantine purposes, such vessels or hulks belonging to the United States as are not required for other uses of the national government, subject to such restrictions and regulations as the Secretary of the Navy may deem necessary to impose for the preservation thereof.

(June 14, 1879, No. 6, 21 Stat. 50; Feb. 15, 1893, ch. 114, 27 Stat. 449; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; 1939 Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REPEALS

Act Feb. 15, 1893, ch. 114, 27 Stat. 449, cited as a credit to this section and which abolished the National Board of Health and placed all duties relating to quarantines and quarantine regulations with the Marine Hospital Service, was repealed by act July 1, 1944, ch. 373, title XIII, § 1313, formerly § 611, 58 Stat. 714, renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July

30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Public Health Service and its functions and personnel transferred from Department of the Treasury to Federal Security Agency pursuant to Reorg. Plan No. I of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

Marine Hospital Service was redesignated Public Health and Marine Hospital Service by act July 1, 1902, ch. 1370, §1, 32 Stat. 712, which in turn was redesignated Public Health Service by act Aug. 14, 1912, ch. 288, §1, 37 Stat. 309.

National Board of Health was abolished and all duties relating to quarantines and quarantine regulations were placed in Marine Hospital Service by act Feb. 15, 1893, ch. 114, 27 Stat. 449.

§§99 to 108. Repealed. July 1, 1944, ch. 373, title XIII, §1313, 58 Stat. 714

Section 99, act Feb. 15, 1893, ch. 114, §12, as added Mar. 3, 1901, ch. 836, 31 Stat. 1087, authorized medical officers performing duties as quarantine officers to administer oaths. See section 272 of this title.

Section 100, act Feb. 15, 1893, ch. 114, §8, 27 Stat. 452, provided compensation for use of State buildings for quarantine purposes.

Section 101, act June 19, 1906, ch. 3433, §5, 34 Stat. 301, provided for acquisition of quarantine stations. See section 267 of this title.

Section 102, act Feb. 15, 1893, ch. 114, §10, as added Mar. 3, 1901, ch. 836, 31 Stat. 1086; amended July 1, 1902, ch. 1370, §1, 32 Stat. 712, provided for establishment of quarantine grounds. See sections 267 and 271 of this title.

Section 103, act June 19, 1906, ch. 3433, §1, 34 Stat. 299, provided for control and management of quarantine grounds. See section 267 of this title.

Section 104, acts June 19, 1906, ch. 3433, §2, 34 Stat. 299; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, provided for transferal of title of land and water from other departments to Service for its use.

Section 105, act June 19, 1906, ch. 3433, §3, 34 Stat. 300, provided for notice of selection of places for quarantine stations and anchorages.

Section 106, acts Aug. 1, 1888, ch. 727, 25 Stat. 355; July 1, 1902, ch. 1370, §1, 32 Stat. 712; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, provided penalties for trespass on quarantine stations. See section 271 of this title.

Section 107, act Mar. 27, 1890, ch. 51, §2, 26 Stat. 31, provided penalties for the violation of quarantine laws by officers of Service. See section 271 of this title.

Section 108, act Mar. 27, 1890, ch. 51, §3, 26 Stat. 32, provided penalties for the violation of quarantine laws by common carriers. See section 271 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611, of act July 1, 1944, which repealed these sections, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

§109. Repealed. May 29, 1928, ch. 901, §1(24), 45 Stat. 986, 988

Section, acts June 12, 1917, ch. 27, 40 Stat. 121; June 5, 1920, ch. 235, 41 Stat. 885; Feb. 17, 1922, ch. 55, 42 Stat. 380; Jan. 3, 1923, ch. 22, 42 Stat. 1102; Apr. 4, 1924, ch. 84, title I, 43 Stat. 76; Jan. 20, 1925, ch. 85, 43 Stat. 757; Jan. 22, 1925, ch. 87, title I, 43 Stat. 775, required a detailed report to be made to Congress of expenditures to prevent epidemics.

§§110, 111. Repealed. July 1, 1944, ch. 373, title XIII, §1313, 58 Stat. 714

Section 110, acts June 5, 1920, ch. 235, 41 Stat. 875; June 16, 1921, ch. 23, 42 Stat. 38, provided for a schedule of charges for vessels at New York quarantine station. See section 269 of this title.

Section 111, act Feb. 15, 1893, ch. 114, §7, 27 Stat. 452, provided for suspension of immigration. See section 265 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611 of act July 1, 1944, which repealed these sections, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1958, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

§112. Removal of revenue officers from port during epidemic

Whenever, by the prevalence of any contagious or epidemic disease in or near the place by law established as the port of entry for any collection district, it becomes dangerous or inconvenient for the officers of the revenue employed therein to continue the discharge of their respective offices at such port, the Secretary of the Treasury, or, in his absence, the Undersecretary of the Treasury, may direct the removal of the officers of the revenue from such port to any other more convenient place, within, or as near as may be to, such collection district. And at such place such officers may exercise the same powers, and shall be liable to the same duties, according to existing circumstances, as in the port or district established by law. Public notice of any such removal shall be given as soon as may be.

(R.S. §4797; July 31, 1894, ch. 174, §4, 28 Stat. 205; June 10, 1921, ch. 18, §301, 42 Stat. 23; Feb. 17, 1922, ch. 55, 42 Stat. 366.)

CODIFICATION

R.S. 4797 derived from act Feb. 23, 1799, ch. 12, §4, 1 Stat. 620.

Acts July 31, 1894, and June 10, 1921, abolished offices of First Comptroller and Comptroller of the Treasury.

"Undersecretary of the Treasury" was substituted in text for "the First Comptroller" on authority of act Feb. 17, 1922.

§ 113. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, R.S. § 4799, act Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, related to adjournment of courts during an epidemic.

§ 114. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, R.S. § 4800, related to removal of prisoners during an epidemic.

CHAPTER 3—LEPROSY

§§ 121 to 125. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 121, acts Mar. 3, 1905, ch. 1443, § 1, 33 Stat. 1009; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for establishment in perpetuity of a hospital station and laboratory at Molokai, Hawaii.

Section 122, act Mar. 3, 1905, ch. 1443, § 3, 33 Stat. 1009, provided for admission and treatment of leper patients. See section 255 of this title.

Section 123, acts Mar. 3, 1905, ch. 1443, § 4, 33 Stat. 1009; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for detail of officers and employees for leprosy work. See section 215 of this title.

Section 124, acts Mar. 3, 1905, ch. 1443, § 6, 33 Stat. 1010; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided regulations for administration of hospital station and laboratory.

Section 125, acts Mar. 3, 1905, ch. 1443, § 7, 33 Stat. 1010; Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1394; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for additional pay and allowances to officers detailed on leprosy duty. See section 210 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–134, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§§ 131 to 135. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 131, act Feb. 3, 1917, ch. 26, § 1, 39 Stat. 872, provided for establishment of a leprosy home in the United States.

Section 132, act Feb. 3, 1917, ch. 26, § 4, 39 Stat. 873, provided for erection of buildings for the home.

Section 133, act Feb. 3, 1917, ch. 26, § 2, 39 Stat. 873, provided for receipt of lepers into the home. See section 255 of this title.

Section 134, act Feb. 3, 1917, ch. 26, § 3, 39 Stat. 873, provided for regulations governing the home. See section 255 of this title.

Section 135, act Feb. 3, 1917, ch. 26, § 5, 39 Stat. 873, provided for additional pay of officers detailed to duty at said home. See section 210 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–204, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

CHAPTER 3A—CANCER

§§ 137 to 137g. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 137, act Aug. 5, 1937, ch. 565, § 1, 50 Stat. 559, provided for establishment of National Cancer Institute. See section 281 of this title.

Section 137a, act Aug. 5, 1937, ch. 565, § 2, 50 Stat. 559, provided for powers and duties of Surgeon General. See section 282 of this title.

Section 137b, act Aug. 5, 1937, ch. 565, § 3, 50 Stat. 560, provided for establishment of National Advisory Cancer Council. See section 218 of this title.

Section 137c, act Aug. 5, 1937, ch. 565, § 4, 50 Stat. 560, provided for powers and functions of Council. See section 284 of this title.

Section 137d, act Aug. 5, 1937, ch. 565, § 5, 50 Stat. 561, provided for administration of powers by Surgeon General. See section 283 of this title.

Section 137e, act Aug. 5, 1937, ch. 565, § 6, 50 Stat. 561, provided for acceptance of gifts. See section 283 of this title.

Section 137f, act Aug. 5, 1937, ch. 565, § 7, 50 Stat. 561, provided for appropriations. See section 285 of this title.

Section 137g, act Aug. 5, 1937, ch. 565, § 8, 50 Stat. 562, related to appointment of officers, functions under other provisions, regulations, reports, effective date, and citation. See sections 209, 216, 229, and 286 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

CHAPTER 4—VIRUSES, SERUMS, TOXINS, ANTITOXINS, ETC.

§§ 141 to 148. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 141, act July 1, 1902, ch. 1378, § 1, 32 Stat. 728, provided for regulation of sale of and interstate traffic of viruses, serums, toxins, antitoxins, etc. See section 262 of this title.

Section 142, act July 1, 1902, ch. 1378, § 2, 32 Stat. 729, related to falsely labeling or marking container or package. See section 262 of this title.

Section 143, act July 1, 1902, ch. 1378, § 3, 32 Stat. 729, provided for inspection of manufacturing establishments. See section 262 of this title.

Section 144, act July 1, 1902, ch. 1378, § 4, 32 Stat. 729, provided for inspection of foreign manufacturing establishments. See section 262 of this title.

Section 145, acts July 1, 1902, ch. 1370, § 1, 32 Stat. 712; July 1, 1902, ch. 1378, § 4, 32 Stat. 729; Aug. 14, 1912, ch. 288, 37 Stat. 309, provided for issuing of licenses to manufacturing establishments. See section 262 of this title.

Section 146, act July 1, 1902, ch. 1378, § 5, 32 Stat. 729, provided for enforcement of regulations. See section 262 of this title.

Section 147, act July 1, 1902, ch. 1378, § 6, 32 Stat. 729, provided against interfering with officers. See section 262 of this title.

Section 148, act July 1, 1902, ch. 1378, § 7, 32 Stat. 729, related to penalties for offenses. See section 262 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

CHAPTER 5—MATERNITY AND INFANCY WELFARE AND HYGIENE

§§ 161 to 175. Repealed. Jan. 22, 1927, ch. 53, § 2, 44 Stat. 1024, eff. June 30, 1929

Section 161, act Nov. 23, 1921, ch. 135, § 3, 42 Stat. 224, related to creation of Board of Maternity and Infant Hygiene and administration of this chapter by Children's Bureau.

Section 162, act Nov. 23, 1921, ch. 135, § 1, 42 Stat. 224, related to authorization of appropriations.

Section 163, acts Nov. 23, 1921, ch. 135, § 2, 42 Stat. 224; Jan. 22, 1927, ch. 53, § 1, 44 Stat. 1024, related to amount and apportionment of appropriations.

Section 164, act Nov. 23, 1921, ch. 135, § 4, 42 Stat. 225, related to acceptance of provisions of this chapter by the States.

Section 165, act Nov. 23, 1921, ch. 135, § 5, 42 Stat. 225, related to deduction of administrative expenses from appropriation.

Section 166, act Nov. 23, 1921, ch. 135, § 6, 42 Stat. 225, related to clerical assistants for Children's Bureau.

Section 167, act Nov. 23, 1921, ch. 135, § 7, 42 Stat. 225, related to apportionment of appropriation to States.

Section 168, act Nov. 23, 1921, ch. 135, § 8, 42 Stat. 225, related to submission and approval of plans by States.

Section 169, act Nov. 23, 1921, ch. 135, § 9, 42 Stat. 225, related to power of representatives of Children's Bureau to enter homes and to take charge of children.

Section 170, act Nov. 23, 1921, ch. 135, § 10, 42 Stat. 225, related to certification of amounts apportioned to States.

Section 171, act Nov. 23, 1921, ch. 135, § 11, 42 Stat. 226, related to reports by States.

Section 172, act Nov. 23, 1921, ch. 135, § 12, 42 Stat. 226, related to limitation on expenditure of amounts apportioned to States.

Section 173, act Nov. 23, 1921, ch. 135, § 13, 42 Stat. 226, related to requirement that Children's Bureau perform duties assigned to it by this chapter.

Section 174, act Nov. 23, 1921, ch. 135, § 14, 42 Stat. 226, related to construction of this chapter.

Section 175, act Mar. 10, 1924, ch. 46, § 3, 43 Stat. 17, related to extension of this chapter to Hawaii.

CHAPTER 6—THE CHILDREN'S BUREAU

Sec.
191. Bureau established.
192. Chief of bureau; investigations and reports.
193. Assistant chief.
194. Quarters for bureau.

§ 191. Bureau established

There shall be established in the Department of Health and Human Services a bureau to be known as the Children's Bureau.

(Apr. 9, 1912, ch. 73, § 1, 37 Stat. 79; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was formerly classified to section 18 of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Agency'' substituted for ''Department of Labor'' pursuant to Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5, Government Organization and Employees, which transferred Children's Bureau, exclusive of its Industrial Division, from Department of Labor to Federal Security Agency. Functions of Bureau, its Chief, and of Secretary of Labor relating to such functions transferred to Federal Security Administrator.

Functions authorized by section 192 of this title and such other functions of Federal Security Agency as Administrator might designate were to be administered through Children's Bureau under his direction and control.

Functions of Children's Bureau under sections 201 to 216, 217 to 219 of Title 29, Labor, transferred to Secretary of Labor.

For transfer of personnel, property, records and funds, see section 12 of Reorg. Plan No. 2 of 1946.

Act Apr. 9, 1912, established Children's Bureau in Department of Commerce and Labor. Act Mar. 4, 1913, transferred Children's Bureau to Department of Labor, which was created by that act, and was authority for substitution of ''Department of Labor'' for ''Department of Commerce and Labor''.

§ 192. Chief of bureau; investigations and reports

The Children's Bureau shall be under the direction of a chief, to be appointed by the President, by and with the advice and consent of the Senate. The said bureau shall investigate and report to the Secretary of Health and Human Services, upon all matters pertaining to the welfare of children and child life among all classes of our people, and shall especially investigate the questions of infant mortality, the birth rate, orphanage, juvenile courts, desertion, dangerous occupations, accidents and diseases of children, employment, legislation affecting children in the several States and Territories. But no official, or agent, or representative of said bureau shall, over the objection of the head of the family, enter any house used exclusively as a family residence. The chief of said bureau may from time to time publish the results of these investigations in such manner and to such extent as may be prescribed by the Secretary.

(Apr. 9, 1912, ch. 73, § 2, 37 Stat. 79; Mar. 4, 1913, ch. 141, §§ 3, 6, 37 Stat. 737, 738; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

In the first sentence of this section, provisions which specified an annual compensation of $5,000 for the chief

of the Childrens Bureau have been omitted superseded. Following enactment of the Classification Act of 1923, the compensation was fixed in accordance with that Act. See act Feb. 27, 1925, title IV, 43 Stat. 1050. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, § 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

Section was formerly classified to section 18a of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Administrator'' substituted for ''said department'' and for ''Secretary of Labor'' pursuant to Reorg. Plan No. 2 of 1946. See note set out under section 191 of this title.

''Secretary of Labor'' substituted for ''Secretary of Commerce and Labor'' pursuant to act Mar. 4, 1913. See note set out under section 191 of this title.

§ 193. Assistant chief

There shall be in the Children's Bureau, until otherwise provided for by law, an assistant chief, to be appointed by the Secretary of Health and Human Services.

(Apr. 9, 1912, ch. 73, § 3, 37 Stat. 80; Mar. 4, 1913, ch. 141, §§ 3, 6, 37 Stat. 737, 738; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section 3 of act Apr. 9, 1912, also provided for compensation of assistant chief and for appointment and compensation of other employees of the bureau.

Section was formerly classified to section 18b of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out in as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Administrator'' substituted for ''Secretary of Labor'' pursuant to Reorg. Plan No. 2 of 1946. See note set out under section 191 of this title.

''Secretary of Labor'' substituted for ''Secretary of Commerce and Labor'' pursuant to act Mar. 4, 1913. See note set out under section 191 of this title.

§ 194. Quarters for bureau

The Secretary of Health and Human Services is directed to furnish sufficient quarters for the work of this bureau at an annual rental not to exceed $2,000.

(Apr. 9, 1912, ch. 73, § 4, 37 Stat. 80; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was formerly classified to section 18c of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Administrator'' substituted for ''Secretary of Labor'' pursuant to Reorg. Plan No. 2 of 1946. See note set out under section 191 of this title.

''Secretary of Labor'' substituted for ''Secretary of Commerce and Labor'' pursuant to act Mar. 4, 1913. See note set out under section 191 of this title.

CHAPTER 6A—PUBLIC HEALTH SERVICE

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201.	Definitions.
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202.	Administration and supervision of Service.
203.	Organization of Service.
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204a.	Deployment readiness.
205.	Appointment and tenure of office of Surgeon General; reversion in rank.
206.	Assignment of officers.
207.	Grades, ranks, and titles of commissioned corps.
208.	Repealed.
209.	Appointment of personnel.
209a to 209c.	Omitted or Repealed.
209d.	Appointment of osteopaths as commissioned officers.
210.	Pay and allowances.
210–1.	Annual and sick leave.
210a.	Repealed.
210b.	Professional categories.
211.	Promotion of commissioned officers.
211a, 211b.	Repealed.
211c.	Promotion credit for medical officers in assistant grade.
212.	Retirement of commissioned officers.
212a, 212b.	Repealed.
213.	Military benefits.
213a.	Rights, benefits, privileges, and immunities for commissioned officers or beneficiaries; exercise of authority by Secretary or designee.

Sec.
214. Presentation of United States flag upon retirement.
214a. Repealed.
215. Detail of Service personnel.
216. Regulations.
217. Use of Service in time of war or emergency.
217a. Advisory councils or committees.
217a–1. Advisory committees; prohibition of consideration of political affiliations.
217b. Volunteer services.
218. National Advisory Councils on Migrant Health.
218a. Training of officers.
219 to 230. Transferred, Repealed, or Omitted.
231. Service and supply fund; uses; reimbursement.
232. National Institute of Mental Health; authorization of appropriation; construction; location.
233. Civil actions or proceedings against commissioned officers or employees.
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235. Administration of grants in multigrant projects; promulgation of regulations.
236. Orphan Products Board.
237. Silvio O. Conte Senior Biomedical Research Service.

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238. Gifts for benefit of Service.
238a. Use of immigration station hospitals.
238b. Disposition of money collected for care of patients.
238c. Transportation of remains of officers.
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238f. Availability of appropriations.
238g. Wearing of uniforms.
238h. Biennial report.
238i. Memorials and other acknowledgments for contributions to health of Nation.
238j. Evaluation of programs.
238k. Contract authority.
238*l*. Recovery.
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238n. Abortion-related discrimination in governmental activities regarding training and licensing of physicians.
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239. General provisions.
239a. Determination of eligibility and benefits.
239b. Smallpox vaccine injury table.
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239e. Payment for death.
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242. Studies and investigations on use and misuse of narcotic drugs and other drugs; annual report to Attorney General; cooperation with States.

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242a. Repealed.
242b. General authority respecting research, evaluations, and demonstrations in health statistics, health services, and health care technology.
242c to 242j. Repealed or Transferred.
242k. National Center for Health Statistics.
242*l*. International cooperation.
242m. General provisions respecting effectiveness, efficiency, and quality of health services.
242n. Repealed.
242*o*. Health conferences; publication of health educational information.
242p. National disease prevention data profile.
242q. Task Force on Aging Research; establishment and duties.
242q–1. Membership.
242q–2. Administrative staff and support.
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242r. Improvement and publication of data on food-related allergic responses.

PART B—FEDERAL-STATE COOPERATION

243. General grant of authority for cooperation.
244. Public access defibrillation programs.
244–1, 244a. Repealed.
245. Public access defibrillation demonstration projects.
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246a. Bureau of State Services management fund; establishment; advancements; availability.
247. Omitted.
247a. Family support groups for Alzheimer's disease patients.
247b. Project grants for preventive health services.
247b–1. Screenings, referrals, and education regarding lead poisoning.
247b–2. Repealed.
247b–3. Education, technology assessment, and epidemiology regarding lead poisoning.
247b–3a. Training and reports by the Health Resources and Services Administration.
247b–4. National Center on Birth Defects and Developmental Disabilities.
247b–4a. Early detection, diagnosis, and interventions for newborns and infants with hearing loss.
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247b–4f. Research relating to preterm labor and delivery and the care, treatment, and outcomes of preterm and low birthweight infants.
247b–4g. Interagency Coordinating Council on Prematurity and Low Birthweight.
247b–5. Preventive health measures with respect to prostate cancer.
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247b–7. Loan repayment program.
247b–8. Fellowship and training programs.
247b–9. Diabetes in children and youth.
247b–10. Compilation of data on asthma.
247b–11. Effects of folic acid in prevention of birth defects.
247b–12. Safe motherhood.
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247b–14. Oral health promotion and disease prevention.
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247b–15. Surveillance and education regarding hepatitis C virus.
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247c. Sexually transmitted diseases; prevention and control projects and programs.
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247c–2. Data collection regarding programs under subchapter XXIV.
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247d–3b. Partnerships for State and regional hospital preparedness to improve surge capacity.
247d–4. Revitalizing the Centers for Disease Control and Prevention.
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247d–6. Public health countermeasures to a bioterrorist attack.
247d–6a. Authority for use of certain procedures regarding qualified countermeasure research and development activities.
247d–6b. Strategic National Stockpile and security countermeasure procurements.
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247d–7a. Grants regarding training and education of certain health professionals.
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247d–7e. Biomedical Advanced Research and Development Authority.
247d–7f. National Biodefense Science Board and working groups.
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247e. National Hansen's Disease Programs Center.
248. Control and management of hospitals; furnishing prosthetic and orthopedic devices; transfer of patients; disposal of articles produced by patients; disposal of money and effects of deceased patients; payment of burial expenses.
248a. Closing or transfer of hospitals; reduction of services; Congressional authorization required.
248b. Transfer or financial self-sufficiency of public health service hospitals and clinics.
248c, 248d. Repealed.
249. Medical care and treatment of quarantined and detained persons.

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250. Medical care and treatment of Federal prisoners.
250a. Transfer of appropriations.
251. Medical examination and treatment of Federal employees; medical care at remote stations.
252. Medical examination of aliens.
253. Medical services to Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.
253a. Medical services to retired personnel of National Oceanic and Atmospheric Administration.
253b. Former Lighthouse Service employees; medical service eligibility.
254. Interdepartmental work.
254a. Sharing of medical care facilities and resources.

PART D—PRIMARY HEALTH CARE

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254c–2. Special diabetes programs for type I diabetes.
254c–3. Special diabetes programs for Indians.
254c–4. Centers for strategies on facilitating utilization of preventive health services among various populations.
254c–5. Epilepsy; seizure disorder.
254c–6. Certain services for pregnant women.
254c–7. Special needs adoption programs; public awareness campaign and other activities.
254c–8. Healthy start for infants.
254c–9. Establishment of program of grants.
254c–10. Certain requirements.
254c–11. Technical assistance.
254c–12. Definitions.
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254c–14. Telehealth network and telehealth resource centers grant programs.
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254e. Health professional shortage areas.
254f. Corps personnel.
254f–1. Priorities in assignment of Corps personnel.
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254h. Provision of health services by Corps members.
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254j. National Advisory Council on National Health Service Corps.
254k. Authorization of appropriations.

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254*l*. National Health Service Corps Scholarship Program.

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254*l*–1. National Health Service Corps Loan Repayment Program.
254m. Obligated service under contract.
254n. Private practice.
254*o*. Breach of scholarship contract or loan repayment contract.
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254s. Native Hawaiian Health Scholarships.
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256c. Bulk purchases of vaccines for certain programs.
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263. Preparation of biological products by Service.

SUBPART 2—CLINICAL LABORATORIES

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263a–1. Assisted reproductive technology programs.
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263a–3. Accreditation organizations.
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263a–5. Publication.
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263b. Certification of mammography facilities.

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264. Regulations to control communicable diseases.
265. Suspension of entries and imports from designated places to prevent spread of communicable diseases.
266. Special quarantine powers in time of war.
267. Quarantine stations, grounds, and anchorages.
268. Quarantine duties of consular and other officers.
269. Bills of health.
270. Quarantine regulations governing civil air navigation and civil aircraft.
271. Penalties for violation of quarantine laws.
272. Administration of oaths by quarantine officers.

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273a. National living donor mechanisms.
274. Organ procurement and transplantation network.
274a. Scientific registry.
274b. General provisions respecting grants and contracts.
274c. Administration.
274d. Report.
274e. Prohibition of organ purchases.
274f. Reimbursement of travel and subsistence expenses incurred toward living organ donation.
274f–1. Public awareness; studies and demonstrations.
274f–2. Grants regarding hospital organ donation coordinators.
274f–3. Studies relating to organ donation and the recovery, preservation, and transportation of organs.
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PART I—C.W. BILL YOUNG CELL TRANSPLANTATION PROGRAM

274k. National Program.
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274*l*–1. Definitions.
274m. Authorization of appropriations.
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280b–1. Prevention and control activities.
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280b–1c. Use of allotments for rape prevention education.
280b–1d. National program for traumatic brain injury registries.
280b–2. General provisions.
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280c. Establishment of program.
280c–1. Limitation on duration of grant and requirement of matching funds.
280c–2. General provisions.

SUBPART II—GRANTS FOR DEMONSTRATION PROJECTS WITH RESPECT TO ALZHEIMER'S DISEASE

280c–3. Establishment of program.

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280c–4. Requirement of matching funds.
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SUBPART III—GRANTS FOR HOME VISITING SERVICES FOR AT-RISK FAMILIES

280c–6. Projects to improve maternal, infant, and child health.

PART L—[REPEALED]

280d. Transferred.
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PART M—NATIONAL PROGRAM OF CANCER REGISTRIES

280e. National program of cancer registries.
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280e–3. Study in certain States to determine factors contributing to elevated breast cancer mortality rates.
280e–4. Authorization of appropriations.

PART N—NATIONAL FOUNDATION FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION

280e–11. Establishment and duties of Foundation.

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280f–1. Eligibility.
280f–2. Authorization of appropriations.
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280g–1. Early detection, diagnosis, and treatment regarding hearing loss in infants.
280g–2. Childhood malignancies.
280g–3. .Controlled substance monitoring program.
280g–4. Grants to foster public health responses to domestic violence, dating violence, sexual assault, and stalking.
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280h–2. Education campaign.
280h–3. Health professional education and training.

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280i–1. Autism education, early detection, and intervention.
280i–2. Interagency Autism Coordinating Committee.
280i–3. Report to Congress.
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281. Organization of National Institutes of Health.
282. Director of National Institutes of Health.
282a. Authorization of appropriations.

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282b. Electronic coding of grants and activities.
283. Biennial reports of Director of NIH.
283a. Annual reporting to increase interagency collaboration and coordination.
283a–1. Annual reporting to prevent fraud and abuse.
283a–2. Annual reporting regarding training of graduate students for doctoral degrees.
283a–3. Establishment of program regarding DES.
283b. Repealed.
283c. Office of Behavioral and Social Sciences Research.
283d. Children's Vaccine Initiative.
283e. Plan for use of animals in research.
283f. Requirements regarding surveys of sexual behavior.
283g. Muscular dystrophy; initiative through Director of National Institutes of Health.
283h. Office of Rare Diseases.
283i. Rare disease regional centers of excellence.
283j. Review of centers of excellence.

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284. Directors of national research institutes.
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284c. Certain uses of funds.
284d. Definitions.
284e. Research on osteoporosis, Paget's disease, and related bone disorders.
284f. Parkinson's disease.
284g. Expansion, intensification, and coordination of activities of National Institutes of Health with respect to research on autism spectrum disorder.
284h. Pediatric Research Initiative.
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284j. Muscular dystrophy research.
284k. Clinical research.
284*l*. Enhancement awards.
284m. Program for pediatric studies of drugs.
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PART C—SPECIFIC PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

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285. Purpose of Institute.
285a. National Cancer Program.
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285a–2. Special authorities of Director.
285a–3. National cancer research and demonstration centers.
285a–4. President's Cancer Panel; establishment, membership, etc., functions.
285a–5. Associate Director for Prevention; appointment; function.
285a–6. Breast and gynecological cancers.
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285a–8. Repealed.
285a–9. Grants for education, prevention, and early detection of radiogenic cancers and diseases.
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SUBPART 2—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

285b. Purpose of Institute.
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285b–2. Information and education.
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285b–4. National research and demonstration centers.
285b–5. Repealed.
285b–6. Associate Director for Prevention; appointment; function.
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285b–7a. Heart attack, stroke, and other cardiovascular diseases in women.
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285c. Purpose of Institute.
285c–1. Data systems and information clearinghouses.
285c–2. Division Directors for Diabetes, Endocrinology, and Metabolic Diseases, Digestive Diseases and Nutrition, and Kidney, Urologic, and Hematologic Diseases; functions.
285c–3. Interagency coordinating committees.
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285d. Purpose of Institute.
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285d–2. Research and training.
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285e. Purpose of Institute.
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285g. Purpose of Institute.
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285h. Purpose of Institute.

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285i. Purpose of Institute.
285i–1. Clinical research on eye care and diabetes.

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285m. Purpose of Institute.
285m–1. National Deafness and Other Communication Disorders Program.
285m–2. Data System and Information Clearinghouse.
285m–3. Multipurpose deafness and other communication disorders center.
285m–4. National Institute on Deafness and Other Communication Disorders Advisory Board.
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285n–2. National Alcohol Research Centers; mandatory grant for research of effects of alcohol on elderly.

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285*o*–2. Drug Abuse Research Centers.
285*o*–3. Office on AIDS.
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SUBCHAPTER I—ADMINISTRATION AND MISCELLANEOUS PROVISIONS

§ 201. Definitions

When used in this chapter—

(a) The term ''Service'' means the Public Health Service;

(b) The term ''Surgeon General'' means the Surgeon General of the Public Health Service;

(c) Unless the context otherwise requires, the term ''Secretary'' means the Secretary of Health and Human Services.

(d) The term ''regulations'', except when otherwise specified, means rules and regulations made by the Surgeon General with the approval of the Secretary;

(e) The term ''executive department'' means any executive department, agency, or independent establishment of the United States or any corporation wholly owned by the United States;

(f) Except as provided in sections 246(g)(4)(B),[1] 247c(c)(1),[1] 254d(h)(3),[1] 263c(5),[1] 264(d), 292a(9),[1] 300a(c), 300f(13), and 300n(1)[1] of this title, the term ''State'' includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(g) The term ''possession'' includes, among other possessions, Puerto Rico and the Virgin Islands;

(h) Repealed. Pub. L. 97–35, title IX, § 986(a), Aug. 13, 1981, 95 Stat. 603.

(i) The term ''vessel'' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, exclusive of aircraft and amphibious contrivances;

(j) The term ''habit-forming narcotic drug'' or ''narcotic'' means opium and coca leaves and the several alkaloids derived therefrom, the best known of these alkaloids being morphia, heroin, and codeine, obtained from opium, and cocaine derived from the coca plant; all compounds, salts, preparations, or other derivatives obtained either from the raw material or from the various alkaloids; Indian hemp and its various derivatives, compounds, and preparations, and peyote in its various forms; isonipecaine and its derivatives, compounds, salts, and preparations; opiates (as defined in section 4731(g)[1] of title 26);

(k) The term ''addict'' means any person who habitually uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction;

[1] See References in Text note below.

(*l*) The term ''psychiatric disorders'' includes diseases of the nervous system which affect mental health;

(m) The term ''State mental health authority'' means the State health authority, except that, in the case of any State in which there is a single State agency, other than the State health authority, charged with responsibility for administering the mental health program of the State, it means such other State agency;

(n) The term ''heart diseases'' means diseases of the heart and circulation;

(*o*) The term ''dental diseases and conditions'' means diseases and conditions affecting teeth and their supporting structures, and other related diseases of the mouth; and

(p) The term ''uniformed service'' means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, or National Oceanic and Atmospheric Administration.

(q) The term ''drug dependent person'' means a person who is using a controlled substance (as defined in section 802 of title 21) and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence.

(July 1, 1944, ch. 373, title I, § 2, 58 Stat. 682; July 3, 1946, ch. 538, § 3, 60 Stat. 421; Feb. 28, 1948, ch. 83, § 1, 62 Stat. 38; June 16, 1948, ch. 481, § 6(a), 62 Stat. 469; June 24, 1948, ch. 621, § 6(a), 62 Stat. 601; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 86–70, § 31(a), June 25, 1959, 73 Stat. 148; Pub. L. 86–415, § 5(a), Apr. 8, 1960, 74 Stat. 34; Pub. L. 86–624, § 29(a), July 12, 1960, 74 Stat. 419; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Pub. L. 91–212, § 11, Mar. 13, 1970, 84 Stat. 67; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Pub. L. 91–513, title I, § 2(b), Oct. 27, 1970, 84 Stat. 1240; Pub. L. 93–523, § 2(b), Dec. 16, 1974, 88 Stat. 1693; Pub. L. 94–317, title III, § 301(a), June 23, 1976, 90 Stat. 707; Pub. L. 94–484, title IX, § 905(a), Oct. 12, 1976, 90 Stat. 2325; Pub. L. 95–83, title I, § 107, Aug. 1, 1977, 91 Stat. 386; Pub. L. 96–79, title II, § 203(e)(2), Oct. 4, 1979, 93 Stat. 635; Pub. L. 97–35, title IX, §§ 902(d)(5), 986(a), Aug. 13, 1981, 95 Stat. 560, 603; Pub. L. 103–43, title XX, § 2008(e), June 10, 1993, 107 Stat. 212.)

REFERENCES IN TEXT

Section 246(g) of this title, referred to in subsec. (f), was repealed by Pub. L. 96–398, title I, § 107(d), Oct. 7, 1980, 94 Stat. 1571.

Section 247c(c)(1) of this title, referred to in subsec. (f), was repealed by Pub. L. 94–317, title II, § 203(f)(1), June 23, 1976, 90 Stat. 704.

Section 254d(h)(3) of this title, referred to in subsec. (f), was redesignated section 254d(i)(4) of this title by Pub. L. 100–177, title II, § 202(b)(5), title III, § 301(1), Dec. 1, 1987, 101 Stat. 996, 1003, and was subsequently redesignated section 254d(j)(4) of this title by Pub. L. 107–251, title III, § 301(b)(1), Oct. 26, 2002, 116 Stat. 1643.

Section 263c(5) of this title, referred to in subsec. (f), was in the original a reference to section 355(5) of the Public Health Service Act which was redesignated section 531(5) of the Federal Food, Drug, and Cosmetic Act by Pub. L. 101–629, § 19(a)(3), Nov. 28, 1990, 104 Stat. 4530, and is now classified to section 360hh(5) of Title 21, Food and Drugs.

Section 292a of this title, referred to in subsec. (f), contained definitions for purposes of subchapter V of this chapter prior to the general revision of subchapter V by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. See sections 292*o* and 295p of this title.

Section 300n of this title, referred to in subsec. (f), was repealed by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 4731(g) of title 26, referred to in subsec. (j), was repealed by Pub. L. 91–513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292. A definition of ''opiate'' is contained in section 102 of Pub. L. 91–513, which is classified to section 802 of Title 21, Food and Drugs. Reference to section 4731(g) of title 26 was substituted for ''section 3228(f) of title 26'' on authority of section 7852(b) of Title 26, Internal Revenue Code, which provides that a reference in other laws to the Internal Revenue Code of 1939 is deemed a reference to the corresponding provision of the Internal Revenue Code of 1986.

CODIFICATION

Section was enacted as part of title I of act July 1, 1944, ch. 373, 58 Stat. 682, and not as part of title II of such Act which comprises this subchapter.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1981—Subsec. (f). Pub. L. 97–35, § 902(d)(5), struck out reference to section 300d(2) of this title.

Subsec. (h). Pub. L. 97–35, § 986(a), struck out subsec. (h) which defined ''seamen''.

1979—Subsec. (f). Pub. L. 96–79 struck out from enumeration of excepted sections reference to section 300s–3(1) of this title.

1977—Subsec. (f). Pub. L. 95–83 expanded definition of ''State'' to include American Samoa and the Trust Territory of the Pacific Islands.

1976—Subsec. (f). Pub. L. 94–484 amended subsec. (f) generally.

Pub. L. 94–317 substituted provisions defining, with certain specific exceptions, ''State'' to include the several States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands for provisions defining ''State'' to include a State or the District of Columbia, Puerto Rico, or the Virgin Islands, except in section 264(d) of this title such term means a State or the District of Columbia, and in subchapter XII of this chapter such term includes Guam, American Samoa, and the Trust Territory of the Pacific Islands.

1974—Subsec. (f). Pub. L. 93–523 designated existing provisions as cl. (1) and added cl. (2).

1970—Subsec. (c). Pub. L. 91–212 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The term 'Administrator' means the Federal Security Administrator;''.

Subsec. (q). Pub. L. 91–513 added subsec. (q).

1960—Subsec. (f). Pub. L. 86–624 struck out ''Hawaii,'' before ''Puerto Rico''.

Subsec. (p). Pub. L. 86–415 added subsec. (p).

1959—Subsec. (f). Pub. L. 86–70 struck out ''Alaska,'' after ''Hawaii,'' and substituted ''or the District of Columbia'' for '', the District of Columbia, or Alaska''.

1948—Subsec. (j). Act Feb. 28, 1948, inserted ''isonipecaine and its derivatives, compounds, salts, and preparations; opiates (as defined in section 4731(g) of title 26)''.

Subsec. (n). Act June 16, 1948, added subsec. (n).

Subsec. (*o*). Act June 24, 1948, added subsec. (*o*).

1946—Subsecs. (*l*), (m). Act July 3, 1946, added subsecs. (*l*) and (m).

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Com-

merce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–310, div. A, title XXIX, §2901, Oct. 17, 2000, 114 Stat. 1168, provided that: ''This division [see Tables for classification] and the amendments made by this division take effect October 1, 2000, or upon the date of the enactment of this Act [Oct. 17, 2000], whichever occurs later.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 2101 of Pub. L. 103–43 provided that: ''Subject to section 203(c) [enacting provisions set out as a note under section 283c of this title], this Act [see Short Title of 1993 Amendment note below] and the amendments made by this Act take effect upon the date of the enactment of this Act [June 10, 1993].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 902(d)(5) of Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

Amendment by section 986(a) of Pub. L. 97–35 effective Oct. 1, 1981, see section 986(c) of Pub. L. 97–35, set out as a note under section 249 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 12(b) of Pub. L. 91–212 provided that: ''The amendments made by sections 10(d) and 11 [amending this section and sections 276, 277, 278, 280, 280a–1, 280b–2 to 280b–9, and 280b–11 of this title] shall take effect on the date of enactment of this Act [Mar. 13, 1970].''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 47(f) of Pub. L. 86–624 provided that: ''The amendments made by subsection (c), paragraphs (3) and (4) of subsection (b), and paragraph (4) of subsection (d) of section 14 [amending sections 15i, 15jj, 15ggg, 244, and 645 of Title 20, Education], by section 20(a) [amending section 41 of Title 29, Labor], by section 23(b) [amending section 466j of Title 33, Navigation and Navigable Waters], by subsections (a), (b), and (c), and paragraph (4) of subsection (d), of section 29 [amending this section and sections 255, 264, and 291i of this title], and by subsection (d), and paragraph (2) of subsection (c), of section 30 [amending sections 410 and 1301 of this title] shall become effective on August 21, 1959.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 47(d) of Pub. L. 86–70.

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 109–482, §1, Jan. 15, 2007, 120 Stat. 3675, provided that: ''This Act [see Tables for classification] may be cited as the 'National Institutes of Health Reform Act of 2006'.''

Pub. L. 109–475, §1, Jan. 12, 2007, 120 Stat. 3565, provided that: ''This Act [amending section 247b–17 of this title] may be cited as the 'Gynecologic Cancer Education and Awareness Act of 2005' or 'Johanna's Law'.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–450, §1, Dec. 22, 2006, 120 Stat. 3341, provided that: ''This Act [enacting sections 247b–4f, 247b–4g, and 280g–5 of this title, amending sections 241 and 280g–4 of this title, and enacting provisions set out as a note under section 247b–4f of this title] may be cited as the 'Prematurity Research Expansion and Education for Mothers who deliver Infants Early Act' or the 'PREEMIE Act'.''

Pub. L. 109–442, §1, Dec. 21, 2006, 120 Stat. 3291, provided that: ''This Act [enacting sections 300ii to 300ii–4 of this title] may be cited as the 'Lifespan Respite Care Act of 2006'.''

Pub. L. 109–422, §1, Dec. 20, 2006, 120 Stat. 2890, provided that: ''This Act [amending section 290bb–25b of this title] may be cited as the 'Sober Truth on Preventing Underage Drinking Act' or the 'STOP Act'.''

Pub. L. 109–417, §1(a), Dec. 19, 2006, 120 Stat. 2831, provided that: ''This Act [enacting sections 204a, 247d–7e, 247d–7f, 254u, 300hh–1, 300hh–2, 300hh–10, 300hh–15, and 300hh–16 of this title and section 360bbb–4 of Title 21, Food and Drugs, amending sections 215, 247d–1, 247d–3a, 247d–3b, 247d–4, 247d–6, 247d–6a, 247d–6b, 247d–7b, 254d, 254q–1, 300hh, 300hh–11, and 1320b–5 of this title, sections 313, 314, and 321j of Title 6, Domestic Security, and section 8117 of Title 38, Veterans' Benefits, repealing sections 247d–2 and 247d–3 of this title, and enacting provisions set out as notes under sections 204a, 247d–6a, 262a, 300hh–10, 300hh–11, and 1320b–5 of this title and section 313 of Title 6] may be cited as the 'Pandemic and All-Hazards Preparedness Act'.''

Pub. L. 109–416, §1, Dec. 19, 2006, 120 Stat. 2821, provided that: ''This Act [enacting sections 280i to 280i–4 and 283j of this title, amending section 284g of this title, and repealing sections 247b–4b to 247b–4e of this title] may be cited as the 'Combating Autism Act of 2006'.''

Pub. L. 109–415, §1(a), Dec. 19, 2006, 120 Stat. 2767, provided that: ''This Act [enacting sections 300ff–19, 300ff–20, 300ff–29a, 300ff–31a, 300ff–31b, and 300ff–121 of this title, amending sections 300ff–11 to 300ff–17, 300ff–19 to 300ff–27, 300ff–28, 300ff–29, 300ff–29a, 300ff–30, 300ff–31a, 300ff–31b, 300ff–33, 300ff–34, 300ff–37, 300ff–37a, 300ff–38, 300ff–51 to 300ff–55, 300ff–61 to 300ff–67, 300ff–71, 300ff–81 to 300ff–88, 300ff–101, 300ff–111, and 300ff–121 of this title, and enacting provisions set out as a note under section 300ff–11 of this title] may be cited as the 'Ryan White HIV/AIDS Treatment Modernization Act of 2006'.''

Pub. L. 109–307, §1, Oct. 6, 2006, 120 Stat. 1721, provided that: ''This Act [amending section 256e of this title] may be cited as the 'Children's Hospital GME Support Reauthorization Act of 2006'.''

Pub. L. 109–242, §1, July 19, 2006, 120 Stat. 570, provided that: ''This Act [amending section 289g–2 of this title] may be cited as the 'Fetus Farming Prohibition Act of 2006'.''

Pub. L. 109–172, §1, Feb. 10, 2006, 120 Stat. 185, provided that: ''This Act [amending section 300gg–45 of this title] may be cited as the 'State High Risk Pool Funding Extension Act of 2006'.''

SHORT TITLE OF 2005 AMENDMENTS

Pub. L. 109–148, div. C, §1, Dec. 30, 2005, 119 Stat. 2818, provided that: ''This division [enacting sections 247d–6d and 247d–6e of this title] may be cited as the 'Public Readiness and Emergency Preparedness Act'.''

Pub. L. 109–129, §1, Dec. 20, 2005, 119 Stat. 2550, provided that: ''This Act [enacting section 274*l*–1 of this title, amending sections 274k, 274*l*, and 274m of this title, and enacting provisions set out as a note under section 274k of this title] may be cited as the 'Stem Cell Therapeutic and Research Act of 2005'.''

Pub. L. 109–60, §1, Aug. 11, 2005, 119 Stat. 1979, provided that: ''This Act [enacting section 280g–3 of this title and provisions set out as a note under section 280g–3 of this title] may be cited as the 'National All Schedules Prescription Electronic Reporting Act of 2005'.''

Pub. L. 109–41, §1(a), July 29, 2005, 119 Stat. 424, provided that: ''This Act [enacting part C (§299b–21 et seq.)

of subchapter VII of this chapter, redesignating former part C (§ 299c et seq.) as part D of subchapter VII of this chapter, and amending sections 299c–6 and 299c–7 of this title] may be cited as the 'Patient Safety and Quality Improvement Act of 2005'.''

Pub. L. 109–18, § 1, June 29, 2005, 119 Stat. 340, provided that: ''This Act [enacting section 256a of this title] may be cited as the 'Patient Navigator Outreach and Chronic Disease Prevention Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENTS

Pub. L. 108–377, § 1, Oct. 30, 2004, 118 Stat. 2202, provided that: ''This Act [amending section 280g of this title and enacting provisions set out as notes under section 280g of this title] may be cited as the 'Asthmatic Schoolchildren's Treatment and Health Management Act of 2004'.''

Pub. L. 108–365, § 1, Oct. 25, 2004, 118 Stat. 1738, provided that: ''This Act [amending section 263b of this title] may be cited as the 'Mammography Quality Standards Reauthorization Act of 2004'.''

Pub. L. 108–362, § 1, Oct. 25, 2004, 118 Stat. 1703, provided that: ''This Act [amending sections 273 and 285c–3 of this title] may be cited as the 'Pancreatic Islet Cell Transplantation Act of 2004'.''

Pub. L. 108–355, § 1, Oct. 21, 2004, 118 Stat. 1404, provided that: ''This Act [enacting sections 290bb–36 and 290bb–36b of this title, amending sections 290bb–34 and 290bb–36 of this title, renumbering former section 290bb–36 of this title as section 290bb–36a of this title, and enacting provisions set out as a note under section 290bb–36 of this title] may be cited as the 'Garrett Lee Smith Memorial Act'.''

Pub. L. 108–276, § 1, July 21, 2004, 118 Stat. 835, provided that: ''This Act [enacting sections 247d–6a and 247d–6c of this title and section 320 of Title 6, Domestic Security, amending sections 247d–6, 247d–6b, 287a–2, 300aa–6, and 1320b–5 of this title, sections 312 and 313 of Title 6, and section 360bbb–3 of Title 21, Food and Drugs, renumbering section 300hh–12 of this title as section 247d–6b of this title, enacting provisions set out as notes under sections 247d–6a and 247d–6b of this title, and repealing provisions set out as a note under section 1107a of Title 10, Armed Forces] may be cited as the 'Project BioShield Act of 2004'.''

Pub. L. 108–216, § 1, Apr. 5, 2004, 118 Stat. 584, provided that: ''This Act [enacting sections 273a and 274f–1 to 274f–4 of this title and amending sections 273 and 274f of this title] may be cited as the 'Organ Donation and Recovery Improvement Act'.''

SHORT TITLE OF 2003 AMENDMENTS

Pub. L. 108–197, § 1, Dec. 19, 2003, 117 Stat. 2898, provided that: ''This Act [amending section 300gg–5 of this title and section 1185a of Title 29, Labor] may be cited as the 'Mental Health Parity Reauthorization Act of 2003'.''

Pub. L. 108–194, § 1, Dec. 19, 2003, 117 Stat. 2888, provided that: ''This Act [enacting part G (§ 300d–71 et seq.) of subchapter X of this chapter, repealing chapter 142 of this title, enacting provisions set out as a note under section 300d–71 of this title, and repealing provisions set out as a note under section 14801 of this title] may be cited as the 'Poison Control Center Enhancement and Awareness Act Amendments of 2003'.''

Pub. L. 108–163, § 1, Dec. 6, 2003, 117 Stat. 2020, provided that: ''This Act [enacting section 254c–18 of this title, amending sections 233, 247b–1, 247b–6, 247c–1, 254b, 254c, 254c–14, 254c–16, 254e to 254g, 254*l*, 254*l*–1, 254*o*, 300e–12, and 300ff–52 of this title, repealing section 254c–17 of this title, enacting provisions set out as a note under section 233 of this title, amending provisions set out as notes under sections 254b and 1396a of this title, and repealing provisions set out as notes under sections 254e and 254*o* of this title] may be cited as the 'Health Care Safety Net Amendments Technical Corrections Act of 2003'.''

Pub. L. 108–154, § 1, Dec. 3, 2003, 117 Stat. 1933, provided that: ''This Act [amending sections 247b–4 and 15022 of this title and enacting provisions set out as notes under sections 247b–4b and 15022 of this title] may be cited as the 'Birth Defects and Developmental Disabilities Prevention Act of 2003'.''

Pub. L. 108–75, § 1, Aug. 15, 2003, 117 Stat. 898, provided that: ''This Act [enacting sections 247b–21 and 285*l*–6 of this title and amending section 247b–20 of this title] may be cited as the 'Mosquito Abatement for Safety and Health Act'.''

Pub. L. 108–41, § 1, July 1, 2003, 117 Stat. 839, provided that: ''This Act [amending section 244 of this title] may be cited as the 'Automatic Defibrillation in Adam's Memory Act'.''

Pub. L. 108–20, § 1, Apr. 30, 2003, 117 Stat. 638, provided that: ''This Act [enacting part C (§ 239 et seq.) of subchapter I of this chapter, amending section 233 of this title, and enacting provisions set out as a note under section 233 of this title] may be cited as the 'Smallpox Emergency Personnel Protection Act of 2003'.''

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107–313, § 1, Dec. 2, 2002, 116 Stat. 2457, provided that: ''This Act [amending section 300gg–5 of this title and section 1185a of Title 29, Labor] may be cited as the 'Mental Health Parity Reauthorization Act of 2002'.''

Pub. L. 107–280, § 1, Nov. 6, 2002, 116 Stat. 1988, provided that: ''This Act [enacting sections 283h and 283i of this title and provisions set out as a note under section 283h of this title] may be cited as the 'Rare Diseases Act of 2002'.''

Pub. L. 107–260, § 1, Oct. 29, 2002, 116 Stat. 1743, provided that: ''This Act [amending section 280e of this title and enacting provisions set out as a note under section 280e of this title] may be cited as the 'Benign Brain Tumor Cancer Registries Amendment Act'.''

Pub. L. 107–251, § 1(a), Oct. 26, 2002, 116 Stat. 1621, provided that: ''This Act [enacting subparts V (§ 256) and X (§ 256f et seq.) of part D of subchapter II of this chapter and sections 254c–14 to 254c–17, 254g, and 254t of this title, amending sections 233, 247b–1, 247b–6, 247c–1, 254b, 254c, 254d to 254f–1, 254h to 254i, 254k to 254*o*, 254q, 254q–1, 256d, 290cc–34, 294*o*, 295p, 300e–12, and 300ff–52 of this title, repealing sections 254g and 254t of this title, and enacting provisions set out as notes under this section and sections 254b, 254e, 254*l*, 254*o*, 256, and 1396a of this title] may be cited as the 'Health Care Safety Net Amendments of 2002'.''

Pub. L. 107–251, title II, § 211, Oct. 26, 2002, 116 Stat. 1632, provided that: ''This subtitle [subtitle B (§§ 211, 212) of title II of Pub. L. 107–251, enacting section 254c–14 of this title] may be cited as the 'Telehealth Grant Consolidation Act of 2002'.''

Pub. L. 107–205, § 1, Aug. 1, 2002, 116 Stat. 811, provided that: ''This Act [enacting sections 297n–1, 297w, 297x, and 298 of this title, amending sections 294c, 296, 296p, and 297n of this title, and enacting provisions set out as a note under section 296 of this title] may be cited as the 'Nurse Reinvestment Act'.''

Pub. L. 107–188, § 1(a), June 12, 2002, 116 Stat. 594, provided that: ''This Act [see Tables for classification] may be cited as the 'Public Health Security and Bioterrorism Preparedness and Response Act of 2002'.''

Pub. L. 107–188, title I, § 159(a), June 12, 2002, 116 Stat. 634, provided that: ''This section [enacting sections 244 and 245 of this title and provisions set out as a note under section 244 of this title] may be cited as the 'Community Access to Emergency Defibrillation Act of 2002'.''

Pub. L. 107–172, § 1, May 14, 2002, 116 Stat. 541, provided that: ''This Act [enacting section 285a–10 of this title and provisions set out as a note under section 285a–10 of this title] may be cited as the 'Hematological Cancer Research Investment and Education Act of 2002'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–84, § 1, Dec. 18, 2001, 115 Stat. 823, provided that: ''This Act [enacting sections 247b–18, 247b–19, and 283g of this title and enacting provisions set out as notes under sections 247b–18 and 281 of this title] may

be cited as the 'Muscular Dystrophy Community Assistance, Research and Education Amendments of 2001', or the 'MD–CARE Act'.''

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–580, §1, Dec. 29, 2000, 114 Stat. 3088, provided that: ''This Act [enacting section 285r of this title, amending section 281 of this title, and enacting provisions set out as notes under section 285r of this title] may be cited as the 'National Institute of Biomedical Imaging and Bioengineering Establishment Act'.''

Pub. L. 106–551, §1, Dec. 20, 2000, 114 Stat. 2752, provided that: ''This Act [enacting section 287a–3a of this title and provisions set out as a note under section 287a–3a of this title] may be cited as the 'Chimpanzee Health Improvement, Maintenance, and Protection Act'.''

Pub. L. 106–545, §1, Dec. 19, 2000, 114 Stat. 2721, provided that: ''This Act [enacting sections 285*l*–2 to 285*l*–5 of this title] may be cited as the 'ICCVAM Authorization Act of 2000'.''

Pub. L. 106–525, §1(a), Nov. 22, 2000, 114 Stat. 2495, provided that: ''This Act [enacting sections 287c–31 to 287c–34, 293e, 296e–1, and 299a–1 of this title, amending sections 281, 296f, 299a, 299c–6, and 300u–6 of this title, repealing section 283b of this title, and enacting provisions set out as notes under sections 281, 287c–31, 293e, and 3501 of this title] may be cited as the 'Minority Health and Health Disparities Research and Education Act of 2000'.''

Pub. L. 106–505, §1(a), Nov. 13, 2000, 114 Stat. 2314, provided that: ''This Act [enacting sections 238p, 238q, 247d to 247d–7, 254c–9 to 254c–13, 284k, 284*l*, 285d–6a, 285e–10a, 285f–3, 287a–4 and 288–5a of this title, amending sections 273, 274b–5, 284d, 285a–8, 285e–11, 285f–3, 287a–2 and 287a–3 of this title, repealing former section 247d of this title, enacting provisions set out as notes under this section and sections 238p, 254c, 273, 284k, 285d–6a, 287, 287a–2 and 289 of this title, and amending provisions set out as a note under section 289 of this title] may be cited as the 'Public Health Improvement Act'.''

Pub. L. 106–505, title I, §101, Nov. 13, 2000, 114 Stat. 2315, provided that: ''This title [enacting sections 247d to 247d–7 of this title and repealing former section 247d of this title] may be cited as the 'Public Health Threats and Emergencies Act'.''

Pub. L. 106–505, title II, §201, Nov. 13, 2000, 114 Stat. 2325, provided that: ''This title [enacting sections 284k, 284*l*, 287a–4 and 288a–5 of this title, amending section 284d of this title, and enacting provisions set out as notes under section 284k of this title] may be cited as the 'Clinical Research Enhancement Act of 2000'.''

Pub. L. 106–505, title III, §301, Nov. 13, 2000, 114 Stat. 2330, provided that: ''This title [enacting section 287a–2 of this title, amending section 287a–3 of this title, and enacting provisions set out as notes under sections 287 and 287a–2 of this title] may be cited as the 'Twenty-First Century Research Laboratories Act'.''

Pub. L. 106–505, title IV, §401, Nov. 13, 2000, 114 Stat. 2336, provided that: ''This subtitle [subtitle A (§§401–404) of title IV of Pub. L. 106–505, enacting sections 238p and 238q of this title and provisions set out as a note under section 238p of this title] may be cited as the 'Cardiac Arrest Survival Act of 2000'.''

Pub. L. 106–505, title V, §501, Nov. 13, 2000, 114 Stat. 2342, provided that: ''This title [enacting sections 254c–9 to 254c–13 and 285d–6a of this title and provisions set out as a note under section 285d–6a of this title] may be cited as the 'Lupus Research and Care Amendments of 2000'.''

Pub. L. 106–505, title VI, §601, Nov. 13, 2000, 114 Stat. 2345, provided that: ''This title [amending sections 247b–5 and 285a–8 of this title] may be cited as the 'Prostate Cancer Research and Prevention Act'.''

Pub. L. 106–505, title VII, §701(a), Nov. 13, 2000, 114 Stat. 2346, provided that: ''This section [amending section 273 of this title and enacting provisions set out as a note under section 273 of this title] may be cited as the 'Organ Procurement Organization Certification Act of 2000'.''

Pub. L. 106–345, §1, Oct. 20, 2000, 114 Stat. 1319, provided that: ''This Act [enacting subpart III (§300ff–38) of part B of subchapter XXIV of this chapter and sections 247c–2, 300ff–30, 300ff–37a, 300ff–75a, and 300ff–75b of this title, redesignating subparts II (§300ff–51 et seq.) and III (§300ff–61 et seq.) of part C of subchapter XXIV of this chapter as subparts I and II, respectively, of part C of subchapter XXIV of this chapter, amending sections 300ff–12 to 300ff–15, 300ff–21 to 300ff–23, 300ff–26 to 300ff–28, 300ff–33, 300ff–34, 300ff–37, 300ff–53 to 300ff–55, 300ff–61, 300ff–62, 300ff–64, 300ff–71, 300ff–73 to 300ff–75, 300ff–77, and 300ff–111 of this title, repealing former subpart I (§300ff–41 et seq.) of part C of subchapter XXIV of this chapter and sections 300ff–31, 300ff–35, and 300ff–36 of this title, and enacting provisions set out as notes under sections 300cc, 300ff–11, 300ff–12, and 300ff–111 of this title] may be cited as the 'Ryan White CARE Act Amendments of 2000'.''

Pub. L. 106–310, §1, Oct. 17, 2000, 114 Stat. 1101, provided that: ''This Act [see Tables for classification] may be cited as the 'Children's Health Act of 2000'.''

Pub. L. 106–310, div. B, §3001, Oct. 17, 2000, 114 Stat. 1168, provided that: ''This division [see Tables for classification] may be cited as the 'Youth Drug and Mental Health Services Act'.''

Pub. L. 106–310, div. B, title XXXVI, §3661, Oct. 17, 2000, 114 Stat. 1241, provided that: ''This subtitle [subtitle C (§§3661–3665) of title XXXVI of Pub. L. 106–310, enacting section 290aa–5b of this title and provisions set out as notes under section 290aa–5b of this title and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Ecstasy Anti-Proliferation Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–129, §1, Dec. 6, 1999, 113 Stat. 1653, provided that: ''This Act [enacting subchapter VII of this chapter and sections 254c–4 and 256e of this title, amending sections 203, 242b, 242q–1, 286d, 288, 289c–1, 290aa, 300cc–18, 300ff–73, 1320b–12, 11221, and 11261 of this title, enacting provisions set out as notes under sections 241, 254c, 295k, and 299 of this title, and amending provisions set out as a note under section 299a of this title] may be cited as the 'Healthcare Research and Quality Act of 1999'.''

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105–392, §1(a), Nov. 13, 1998, 112 Stat. 3524, provided that: ''This Act [see Tables for classification] may be cited as the 'Health Professions Education Partnerships Act of 1998'.''

Pub. L. 105–392, title I, §121, Nov. 13, 1998, 112 Stat. 3562, provided that: ''This subtitle [subtitle B (§§121–124) of title I of Pub. L. 105–392, enacting sections 296, 296a to 296f, 296j, 296m, 296p, 297q, and 297t of this title, transferring section 298b–2 of this title to section 296g of this title, repealing sections 296k to 296m, 296r, 297, 297–1, 297c, 298, 298a, 298b, 298b–1, 298b–3 to 298b–5, and 298b–7 of this title, and enacting provisions set out as notes under section 296 of this title] may be cited as the 'Nursing Education and Practice Improvement Act of 1998'.''

Pub. L. 105–392, title IV, §419(a), Nov. 13, 1998, 112 Stat. 3591, provided that: ''This section [enacting sections 280f to 280f–3 of this title and provisions set out as a note under section 280f of this title] may be cited as the 'Fetal Alcohol Syndrome and Fetal Alcohol Effect Prevention and Services Act'.''

Pub. L. 105–340, §1, Oct. 31, 1998, 112 Stat. 3191, provided that: ''This Act [enacting sections 285b–7a and 300u–9 of this title and amending sections 242k, 280e–4, 283a, 284e, 285a–8, 285e–10, 287d, 300k, 300n–4a, 300n–5, and 300u–5 of this title] may be cited as the 'Women's Health Research and Prevention Amendments of 1998'.''

Pub. L. 105–277, div. A, §101(f) [title IX, §901], Oct. 21, 1998, 112 Stat. 2681–337, 2681–436, provided that: ''This title [enacting sections 300gg–6 and 300gg–52 of this title and section 1185b of Title 29, Labor, and provisions set out as notes under sections 300gg–6 and 300gg–52 of this

title and section 1185b of Title 29] may be cited as the 'Women's Health and Cancer Rights Act of 1998'.''

Pub. L. 105–248, § 1, Oct. 9, 1998, 112 Stat. 1864, provided that: ''This Act [amending section 263b of this title] may be cited as the 'Mammography Quality Standards Reauthorization Act of 1998'.''

Pub. L. 105–196, § 1, July 16, 1998, 112 Stat. 631, provided that: ''This Act [enacting sections 274*l* and 274m of this title, amending sections 274g and 274k of this title, repealing former section 274*l* of this title, and enacting provisions set out as notes under section 274k of this title] may be cited as the 'National Bone Marrow Registry Reauthorization Act of 1998'.''

Pub. L. 105–168, § 1(a), Apr. 21, 1998, 112 Stat. 43, provided that: ''This Act [amending section 247b–4 of this title and enacting provisions set out as a note under section 247b–4 of this title] may be cited as the 'Birth Defects Prevention Act of 1998'.''

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–78, title VI, § 603(a), Nov. 13, 1997, 111 Stat. 1519, provided that: ''This section [enacting section 284f of this title and provisions set out as a note under section 284f of this title] may be cited as the 'Morris K. Udall Parkinson's Disease Research Act of 1997'.''

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104–299, § 1, Oct. 11, 1996, 110 Stat. 3626, provided that: ''This Act [enacting sections 254b and 254c of this title, amending sections 233, 256c, 1395x, and 1396d of this title, repealing sections 256 and 256a of this title, and enacting provisions set out as notes under sections 233 and 254b of this title] may be cited as the 'Health Centers Consolidation Act of 1996'.''

Pub. L. 104–204, title VI, § 601, Sept. 26, 1996, 110 Stat. 2935, provided that: ''This title [enacting sections 300gg–4 and 300gg–51 of this title and section 1185 of Title 29, Labor, amending sections 300gg–21, 300gg–23, 300gg–44, 300gg–61, and 300gg–62 of this title and sections 1003, 1021, 1022, 1024, 1132, 1136, 1144, 1181, 1191, and 1191a of Title 29, and enacting provisions set out as notes under section 300gg–4 and 300gg–44 of this title and section 1003 of Title 29] may be cited as the 'Newborns' and Mothers' Health Protection Act of 1996'.''

Pub. L. 104–204, title VII, § 701, Sept. 26, 1996, 110 Stat. 2944, provided that: ''This title [enacting section 300gg–5 of this title and section 1185a of Title 29, Labor, and enacting provisions set out as notes under section 300gg–5 of this title and section 1185a of Title 29] may be cited as the 'Mental Health Parity Act of 1996'.''

Pub. L. 104–191, § 1(a), Aug. 21, 1996, 110 Stat. 1936, provided that: ''This Act [see Tables for classification] may be cited as the 'Health Insurance Portability and Accountability Act of 1996'.''

Pub. L. 104–182, § 1(a), Aug. 6, 1996, 110 Stat. 1613, provided that: ''This Act [enacting sections 300g–7 to 300g–9, 300h–8, 300j–3c, and 300j–12 to 300j–18 of this title and section 1263a of Title 33, Navigation and Navigable Waters, amending sections 300f, 300g–1 to 300g–6, 300h, 300h–5 to 300h–7, 300i, 300i–1, 300j to 300j–2, 300j–4 to 300j–8, 300j–11, and 300j–21 to 300j–25 of this title, sections 4701 and 4721 of Title 16, Conservation, and section 349 of Title 21, Food and Drugs, repealing section 13551 of this title, enacting provisions set out as notes under this section, sections 300f, 300g–1, 300j–1, and 300j–12 of this title, section 1281 of Title 33, and section 45 of former Title 40, Public Buildings, Property, and Works, and amending provisions set out as a note under this section] may be cited as the 'Safe Drinking Water Act Amendments of 1996'.''

Pub. L. 104–146, § 1, May 20, 1996, 110 Stat. 1346, provided that: ''This Act [enacting sections 300ff–27a, 300ff–31, 300ff–33 to 300ff–37, 300ff–77, 300ff–78, 300ff–101, and 300ff–111 of this title, amending sections 294n, 300d, 300ff–11 to 300ff–17, 300ff–21 to 300ff–23, 300ff–26 to 300ff–29, 300ff–47 to 300ff–49, 300ff–51, 300ff–52, 300ff–54, 300ff–55, 300ff–64, 300ff–71, 300ff–74, 300ff–76, and 300ff–84 of this title, transferring section 294n of this title to section 300ff–111 of this title, repealing sections 300ff–18 and 300ff–30 of this title, and enacting provisions set out as notes under sections 300cc, 300ff–11, and 300ff–33 of this title and section 4103 of Title 5, Government Organization and Employees] may be cited as the 'Ryan White CARE Act Amendments of 1996'.''

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–73, § 1(a), Dec. 26, 1995, 109 Stat. 777, provided that: ''This Act [amending section 233 of this title and enacting provisions set out as a note under section 233 of this title] may be cited as the 'Federally Supported Health Centers Assistance Act of 1995'.''

SHORT TITLE OF 1993 AMENDMENTS

Pub. L. 103–183, § 1(a), Dec. 14, 1993, 107 Stat. 2226, provided that: ''This Act [enacting sections 247b–6, 247b–7, 256d, 280b–1a, 285f–2, 300n–4a, and 300u–8 of this title, amending sections 233, 238j, 242b, 242k, 242*l*, 242m, 247b, 247b–1, 247b–5, 247c, 247c–1, 254j, 280b, 280b–1, 280b–2, 280b–3, 280e–4, 300d, 300d–2, 300d–3, 300d–12, 300d–13, 300d–16, 300d–22, 300d–31, 300d–32, 300k, 300m, 300n, 300n–1, 300n–4, 300n–5, 300u–5, 300w, and 300aa–26 of this title, repealing sections 300d–1 and 300d–33 of this title, and enacting provisions set out as notes under sections 238j, 263b, 285f–2, and 300m of this title] may be cited as the 'Preventive Health Amendments of 1993'.''

Section 1(a) of Pub. L. 103–43 provided that: ''This Act [see Tables for classification] may be cited as the 'National Institutes of Health Revitalization Act of 1993'.''

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–539, § 1, Oct. 27, 1992, 106 Stat. 3547, provided that: ''This Act [enacting section 263b of this title and provisions set out as a note under section 263b of this title] may be cited as the 'Mammography Quality Standards Act of 1992'.''

Pub. L. 102–531, § 1(a), Oct. 27, 1992, 106 Stat. 3469, provided that: ''This Act [enacting sections 247b–3 to 247b–5, 247c–1, 256c, 280d–11, 300*l*–1, and 300u–7 of this title, amending sections 236, 242*l*, 247b–1, 247d, 254b, 254c, 256, 256a, 280b to 280b–2, 285c–4, 285d–7, 285m–4, 289c, 290aa–9, 290bb–1, 292y, 293j, 293*l*, 294n, 295j, 295*l*, 295n, 295*o*, 296k, 298b–7, 300u, 300u–1, 300u–5, 300w, 300w–3 to 300w–5, 300aa–2, 300aa–15, 300aa–19, 300aa–26, 300cc, 300cc–2, 300cc–15, 300cc–17, 300cc–20, 300cc–31, 300ee–1, 300ee–2, 300ee–31, 300ee–32, 300ee–34, 300ff–11 to 300ff–13, 300ff–17, 300ff–27, 300ff–28, 300ff–41, 300ff–43, 300ff–49, 300ff–75, 4841, and 9604 of this title, section 1341 of Title 15, Trade and Commerce, and section 2001 of Title 25, Indians, repealing section 297j of this title, enacting provisions set out as notes under sections 236, 292y, 300e, and 300w–4 of this title, amending provisions set out as notes under sections 241, 281, and 295k of this title and section 303 of Title 38, Veterans' Benefits, and repealing provisions set out as notes under section 246 and 300e of this title] may be cited as the 'Preventive Health Amendments of 1992'.''

Pub. L. 102–515, § 1, Oct. 24, 1992, 106 Stat. 3372, provided that: ''This Act [enacting sections 280e to 280e–4 of this title and provisions set out as a note under section 280e of this title] may be cited as the 'Cancer Registries Amendment Act'.''

Pub. L. 102–501, § 1, Oct. 24, 1992, 106 Stat. 3268, provided that: ''This Act [amending section 233 of this title and enacting provisions set out as notes under section 233 of this title] may be cited as the 'Federally Supported Health Centers Assistance Act of 1992'.''

Pub. L. 102–493, § 1, Oct. 24, 1992, 106 Stat. 3146, provided that: ''This Act [enacting sections 263a–1 to 263a–7 of this title and provisions set out as a note under section 263a–1 of this title] may be cited as the 'Fertility Clinic Success Rate and Certification Act of 1992'.''

Pub. L. 102–410, § 1(a), Oct. 13, 1992, 106 Stat. 2094, provided that: ''This Act [amending sections 299 to 299a–2, 299b to 299b–3, 299c to 299c–3, 299c–5, and 300w–9 of this title and enacting provisions set out as notes under sections 299a–2, 299b–1, and 299b–2 of this title] may be cited as the 'Agency for Health Care Policy and Research Reauthorization Act of 1992'.''

Pub. L. 102–409, §1, Oct. 13, 1992, 106 Stat. 2092, provided that: ''This Act [enacting section 283a of this title] may be cited as the 'DES Education and Research Amendments of 1992'.''

Pub. L. 102–408, §1(a), Oct. 13, 1992, 106 Stat. 1992, provided that: ''This Act [enacting subchapter V of this chapter and sections 297n, 298b–7, and 300d–51 of this title, amending sections 242a, 296k to 296m, 296r, 297, 297–1, 297b, 297d, 297e, 298, 298b, and 298b–6 of this title and section 1078–3 of Title 20, Education, repealing sections 295g–10a, 297c–1, and 297n of this title, enacting provisions set out as notes under this section, sections 292, 295j, 295k, 296k, and 297b of this title, section 1078–3 of Title 20, and section 343–1 of Title 21, Food and Drugs, and amending provisions set out as a note under section 300x of this title] may be cited as the 'Health Professions Education Extension Amendments of 1992'.''

Pub. L. 102–408, title II, §201, Oct. 13, 1992, 106 Stat. 2069, provided that: ''This title [enacting sections 297n and 298b–7 of this title, amending sections 296k to 296m, 296r, 297, 297–1, 297b, 297d, 297e, 298, 298b, and 298b–6 of this title, repealing sections 297c–1 and 297n of this title, and enacting provisions set out as notes under sections 296k and 297b of this title] may be referred to as the Nurse Education and Practice Improvement Amendments of 1992.''

Pub. L. 102–352, §1, Aug. 26, 1992, 106 Stat. 938, provided that: ''This Act [amending sections 285n, 285n–2, 285*o*, 285*o*–2, 285p, 290aa–1, 290aa–3, 290cc–21, 290cc–28, 290cc–30, 300x–7, 300x–27, 300x–33, 300x–53, and 300y of this title, enacting provisions set out as a note under section 285n of this title, and amending provisions set out as notes under sections 290aa and 300x of this title] may be cited as the 'Public Health Service Act Technical Amendments Act'.''

Pub. L. 102–321, §1(a), July 10, 1992, 106 Stat. 323, provided that: ''This Act [see Tables for classification] may be cited as the 'ADAMHA Reorganization Act'.''

SHORT TITLE OF 1991 AMENDMENTS

Pub. L. 102–168, §1, Nov. 26, 1991, 105 Stat. 1102, provided that: ''This Act [amending sections 300u, 300u–5, 300aa–11, 300aa–12, 300aa–15, 300aa–16, 300aa–19, and 300aa–21 of this title, enacting provisions set out as a note under section 300aa–11 of this title, and amending provisions set out as a note under section 300aa–1 of this title] may be cited as the 'Health Information, Health Promotion, and Vaccine Injury Compensation Amendments of 1991'.''

Pub. L. 102–96, §1, Aug. 14, 1991, 105 Stat. 481, provided that: ''This Act [amending section 300cc–13 of this title and enacting provisions set out as a note under section 300cc–13 of this title] may be cited as the 'Terry Beirn Community Based AIDS Research Initiative Act of 1991'.''

SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101–639, §1, Nov. 28, 1990, 104 Stat. 4600, provided that: ''This Act [amending sections 290cc–13, 299a, 300x–3, and 300x–10 to 300x–12 of this title] may be cited as the 'Mental Health Amendments of 1990'.''

Pub. L. 101–616, §1, Nov. 16, 1990, 104 Stat. 3279, provided that: ''This Act [enacting sections 274f, 274g, 274k, and 274*l* of this title, amending sections 273 to 274d of this title, enacting provisions set out as notes under sections 273, 274, and 274k of this title, and repealing provisions set out as a note under section 273 of this title] may be cited as the 'Transplant Amendments Act of 1990'.''

Pub. L. 101–613, §1, Nov. 16, 1990, 104 Stat. 3224, provided that: ''This Act [enacting sections 285g–4 and 290b of this title and provisions set out as a note under section 285g–4 of this title] may be cited as the 'National Institutes of Health Amendments of 1990'.''

Pub. L. 101–597, §1, Nov. 16, 1990, 104 Stat. 3013, provided that: ''This Act [enacting sections 254f–1, 254*o*–1, and 254r of this title, amending sections 242a, 254d to 254i, 254k, 254*l* to 254q–1, 254s, 294h, 294n, 294aa, 295g–1, 296m, 1320c–5, 1395*l*, 1395u, 1395x, 3505d, and 9840 of this title and section 2123 of Title 10, Armed Forces, and enacting provisions set out as notes under sections 242a, 254*l*–1, and 254*o* of this title] may be cited as the 'National Health Service Corps Revitalization Amendments of 1990'.''

Pub. L. 101–590, §1, Nov. 16, 1990, 104 Stat. 2915, provided that: ''This Act [enacting subchapter X of this chapter, amending sections 300w–4 and 300w–9 of this title, and enacting provisions set out as a note under section 300d of this title] may be cited as the 'Trauma Care Systems Planning and Development Act of 1990'.''

Pub. L. 101–558, §1, Nov. 15, 1990, 104 Stat. 2772, provided that: ''This Act [amending sections 280b to 280b–3 of this title] may be cited as the 'Injury Control Act of 1990'.''

Pub. L. 101–557, §1, Nov. 15, 1990, 104 Stat. 2766, provided that: ''This Act [enacting sections 242q to 242q–5 of this title, amending sections 280c, 280c–2, 280c–3, 280c–5, 285e–2, 285e–3, 300u–6, 300ff–17, 300ff–51, and 300ff–52 of this title and section 4512 of Title 20, Education, and enacting provisions set out as a note under section 300u–6 of this title] may be cited as the 'Home Health Care and Alzheimer's Disease Amendments of 1990'.''

Pub. L. 101–527, §1(a), Nov. 6, 1990, 104 Stat. 2311, provided that: ''This Act [enacting sections 254c–1, 254t, 256a, 294bb, 294cc, and 300u–6 of this title, amending sections 242k, 242m, 254b, 254c, 294m, 294*o*, and 295g–2 of this title, enacting provisions set out as notes under sections 242k and 300u–6 of this title, and repealing provisions set out as a note under section 292h of this title] may be cited as the 'Disadvantaged Minority Health Improvement Act of 1990'.''

Pub. L. 101–502, §1, Nov. 3, 1990, 104 Stat. 1285, provided that: ''This Act [amending sections 207, 247b, 300aa–6, 300aa–11 to 300aa–13, 300aa–15, 300aa–16, 300aa–21, 300ff–13, 300ff–47, and 300ff–49 of this title, section 331 of Title 21, Food and Drugs, and section 201 of Title 37, Pay and Allowances of the Uniformed Services, enacting provisions set out as notes under sections 300aa–2, 300aa–11, and 300aa–12 of this title and section 201 of Title 37, and amending provisions set out as a note under section 300aa–1 of this title] may be cited as the 'Vaccine and Immunization Amendments of 1990'.''

Pub. L. 101–381, §1, Aug. 18, 1990, 104 Stat. 576, provided that: ''This Act [enacting subchapter XXIV of this chapter, transferring section 300ee–6 of this title to section 300ff–48 of this title, amending sections 284a, 286, 287a, 287c–2, 289f, 290aa–3a, 299c–5, 300ff–48, and 300aaa to 300aaa–13 of this title, and enacting provisions set out as notes under sections 300x–4, 300ff–11, 300ff–46, and 300ff–80 of this title] may be cited as the 'Ryan White Comprehensive AIDS Resources Emergency Act of 1990'.''

Pub. L. 101–374, §1, Aug. 15, 1990, 104 Stat. 456, provided that: ''This Act [amending sections 290aa–12, 290cc–2, and 300x–4 of this title, enacting provisions set out as notes under sections 289e, 290aa–12, 290cc–2, and 300x–4 of this title, and amending provisions set out as a note under section 289e of this title] may be cited as the 'Drug Abuse Treatment Waiting Period Reduction Amendments of 1990'.''

Pub. L. 101–368, §1, Aug. 15, 1990, 104 Stat. 446, provided that: ''This Act [amending section 247b of this title] may be cited as the 'Tuberculosis Prevention Amendments of 1990'.''

Pub. L. 101–354, §1, Aug. 10, 1990, 104 Stat. 409, provided that: ''This Act [enacting subchapter XIII of this chapter] may be cited as the 'Breast and Cervical Cancer Mortality Prevention Act of 1990'.''

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–93, §1, Aug. 16, 1989, 103 Stat. 603, provided that: ''This Act [see Tables for classification] may be cited as the 'Drug Abuse Treatment Technical Corrections Act of 1989'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–690, §2011, Nov. 18, 1988, 102 Stat. 4193, provided that: ''This subtitle [subtitle A (§§2011–2081) of

title II of Pub. L. 100–690, enacting sections 290aa–11 to 290aa–14, 290cc–11 to 290cc–13, 290ff, 300x–1a, 300x–4a, 300x–9a, and 300x–9b of this title, amending sections 242a, 290aa, 290aa–3, 290aa–6, 290aa–8, 290bb–2, 290cc to 290cc–2, 300x, 300x–1a to 300x–4, 300x–5, 300x–9, and 300x–10 to 300x–12 of this title and section 484 of former Title 40, Public Buildings, Property, and Works, repealing sections 300y to 300y–2 of this title, enacting provisions set out as notes under this section and sections 290aa, 290cc–11, 300x–9a, and 300x–11 of this title, and amending provisions set out as a note under section 801 of Title 21, Food and Drugs] may be cited as the 'Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988'.''

Pub. L. 100–607, § 1(a), Nov. 4, 1988, 102 Stat. 3048, provided that: ''This Act [see Tables for classification] may be cited as the 'Health Omnibus Programs Extension of 1988'.''

Pub. L. 100–607, title I, § 100(a), Nov. 4, 1988, 102 Stat. 3048, provided that: ''This title [see Tables for classification] may be cited as the 'National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988'.''

Pub. L. 100–607, title II, § 200, Nov. 4, 1988, 102 Stat. 3062, provided that: ''This title [see Tables for classification] may be cited as the 'AIDS Amendments of 1988'.''

Pub. L. 100–607, title IV, § 401(a), Nov. 4, 1988, 102 Stat. 3114, provided that: ''This title [enacting sections 300y–21 to 300y–27 of this title, amending sections 273 to 274e of this title, and enacting provisions set out as notes under sections 273 and 300y–21 of this title] may be cited as the 'Organ Transplant Amendments Act of 1988'.''

Pub. L. 100–607, title VI, § 601(a), Nov. 4, 1988, 102 Stat. 3122, as amended by Pub. L. 100–690, title II, § 2603(a)(1), Nov. 18, 1988, 102 Stat. 4234, provided that: ''This title [see Tables for classification] may be cited as the 'Health Professions Reauthorization Act of 1988'.''

Pub. L. 100–607, title VII, § 700(a), Nov. 4, 1988, 102 Stat. 3153, provided that: ''This title [enacting sections 296r, 297c–1, 297j, 297n, and 298b–6 of this title, amending sections 210, 294a, 296k, 296*l*, 296m, 297, 297–1, 297a, 297b, 297d, 297e, 298, and 298b–3 of this title, and enacting provisions set out as a note under section 297d of this title] may be cited as the 'Nursing Shortage Reduction and Education Extension Act of 1988'.''

Pub. L. 100–607, title IX, § 901, Nov. 4, 1988, 102 Stat. 3171, provided that: ''This title [enacting section 300ee–6 of this title and provisions set out as notes under such section] may be cited as the 'Prison Testing Act of 1988'.''

Pub. L. 100–578, § 1, Oct. 31, 1988, 102 Stat. 2903, provided that: ''This Act [amending section 263a of this title and enacting provisions set out as notes under section 263a of this title] may be cited as the 'Clinical Laboratory Improvement Amendments of 1988'.''

Pub. L. 100–572, § 1, Oct. 31, 1988, 102 Stat. 2884, provided that: ''This Act [enacting sections 247b–1 and 300j–21 to 300j–26 of this title, and amending section 300j–4 of this title] may be cited as the 'Lead Contamination Control Act of 1988'.''

Pub. L. 100–553, § 1, Oct. 28, 1988, 102 Stat. 2769, provided that: ''This Act [enacting sections 285m to 285m–6 of this title, amending sections 281 and 285j of this title, and enacting provisions set out as a note under section 285m of this title] shall be cited as the 'National Deafness and Other Communication Disorders Act of 1988'.''

Pub. L. 100–517, § 1(a), Oct. 24, 1988, 102 Stat. 2578, provided that: ''This Act [amending sections 300e, 300e–1, 300e–9, and 300e–10 of this title, enacting provisions set out as notes under sections 300e, 300e–9, and 1302 of this title, and repealing provisions set out as notes under section 300e–1 of this title] may be cited as the 'Health Maintenance Organization Amendments of 1988'.''

Pub. L. 100–386, § 1(a), Aug. 10, 1988, 102 Stat. 919, provided that: ''This Act [amending sections 254b and 254c of this title and enacting provisions set out as a note under section 254b of this title] may be cited as the 'Community and Migrant Health Centers Amendments of 1988'.''

SHORT TITLE OF 1987 AMENDMENTS

Pub. L. 100–203, title IV, § 4301(a), Dec. 22, 1987, 101 Stat. 1330–221, provided that: ''This subtitle [subtitle D (§§ 4301–4307) of title IV of Pub. L. 100–203, enacting section 300aa–34 of this title, amending sections 300aa–11 to 300aa–13, 300aa–15 to 300aa–17, 300aa–19, 300aa–21 to 300aa–23, 300aa–25 to 300aa–28, and 300aa–31 of this title, repealing section 300aa–18 of this title, and amending provisions set out as a note under section 300aa–1 of this title] may be cited as the 'Vaccine Compensation Amendments of 1987'.''

Pub. L. 100–177, § 1(a), Dec. 1, 1987, 101 Stat. 986, provided that: ''This Act [enacting sections 254*l*–1, 254q, and 254q–1 of this title, amending sections 242a, 242c, 242k, 242m, 242n, 242p, 247b, 254d to 254g, 254h–1, 254k, 254m to 254q, 254r, 295g–8, and 11137 of this title, repealing former section 254q of this title, and enacting provisions set out as notes under sections 242c, 242k, 242m, 254*l*–1, 254*o*, 300aa–2, and 11137 of this title] may be cited as the 'Public Health Service Amendments of 1987'.''

Pub. L. 100–175, title VI, § 601, Nov. 29, 1987, 101 Stat. 979, provided that: ''This title [enacting part K (§ 280c et seq.) of subchapter II of this chapter] may be cited as the 'Health Care Services in the Home Act of 1987'.''

Pub. L. 100–97, § 1, Aug. 18, 1987, 101 Stat. 713, provided: ''That this Act [enacting section 295g–8a of this title and provisions set out as a note under section 295g–8a of this title] may be cited as the 'Excellence in Minority Health Education and Care Act'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–660, title III, § 301, Nov. 14, 1986, 100 Stat. 3755, provided that: ''This title [enacting sections 300aa–1 to 300aa–33 of this title, amending sections 218, 242c, 262, 286, and 289f of this title, redesignating former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title, and enacting provisions set out as notes under sections 300aa–1 and 300aa–4 of this title] may be cited as the 'National Childhood Vaccine Injury Act of 1986'.''

Pub. L. 99–660, title V, § 501, Nov. 14, 1986, 100 Stat. 3794, provided that: ''This title [enacting sections 300x–10 to 300x–13 of this title and amending sections 290aa–3 and 300x–4 of this title] may be cited as the 'State Comprehensive Mental Health Services Plan Act of 1986'.''

Pub. L. 99–660, title VIII, § 801, Nov. 14, 1986, 100 Stat. 3799, provided that: ''This title [amending sections 300e–1, 300e–4, 300e–5 to 300e–10, 300e–16, and 300e–17 of this title, repealing sections 300e–2, 300e–3, and 300e–4a of this title, and enacting provisions set out as notes under sections 300e, 300e–1, 300e–4, and 300e–5 of this title] may be cited as the 'Health Maintenance Organization Amendments of 1986'.''

Pub. L. 99–649, § 1, Nov. 10, 1986, 100 Stat. 3633, provided: ''That this Act [enacting sections 280b to 280b–3 of this title and provisions set out as a note under section 280b of this title] may be cited as the 'Injury Prevention Act of 1986'.''

Pub. L. 99–570, title IV, § 4001(a), Oct. 27, 1986, 100 Stat. 3207–103, provided that: ''This subtitle [subtitle A (§§ 4001–4022) of title IV of Pub. L. 99–570, enacting sections 290aa–3a, 290aa–6 to 290aa–10, and 300y to 300y–2 of this title, amending sections 218, 241, 290aa to 290aa–3, 290aa–4, 290aa–5, 290bb–1, 290bb–2, 290cc, and 290cc–2 of this title and sections 331 and 350a of Title 21, Food and Drugs, and enacting provisions set out as notes under sections 290aa–3, 290aa–3a, and 290bb of this title] may be cited as the 'Alcohol and Drug Abuse Amendments of 1986'.''

Pub. L. 99–339, § 1, June 19, 1986, 100 Stat. 642, provided that: ''This Act [enacting sections 300g–6, 300h–5 to 300h–7, 300i–1, and 300j–11 of this title, amending sections 300f, 300g–1 to 300g–5, 300h to 300h–2, 300h–4, 300h–6, 300h–7, 300i, 300j to 300j–4, 300j–7, and 6979a of this title and sections 1261 and 1263 of Title 15, Commerce and Trade, transferring section 6939b to 6979a of this title, and enacting provisions set out as notes under sections 300g–6 and 300j–1 of this title and section 1261 of Title

15] may be cited as the 'Safe Drinking Water Act Amendments of 1986'.''

Pub. L. 99–280, §1(a), Apr. 24, 1986, 100 Stat. 399, provided that: ''This Act [amending sections 254b and 254c of this title and repealing sections 300y to 300y–11 of this title] may be cited as the 'Health Services Amendments Act of 1986'.''

SHORT TITLE OF 1985 AMENDMENTS

Pub. L. 99–158, §1(a), Nov. 20, 1985, 99 Stat. 820, provided that: ''This Act [enacting sections 275, 281 to 283, 284 to 284c, 285 to 285a–5, 285b to 285b–6, 285c to 285c–7, 285d to 285d–7, 285e to 285e–2, 285f, 285g to 285g–3, 285h, 285i, 285j to 285j–2, 285k, 285*l*, 286 to 286a–1, 286b to 286b–8, 287 to 287a–1, 287b, 287c to 287c–3, 288 to 288b, and 289 to 289h of this title, amending sections 217a, 218, 241, 290aa–5, and 300c–12 of this title, repealing sections 275 to 280a–1, 280b to 280b–2, 280b–4, 280b–5, and 280b–7 to 280b–11 of this title, omitting sections 286c to 286e, 287d to 287i, 288c, 289, 289c–1 to 289c–3, 289c–4 to 289c–7, 289i to 289k, 289k–2 to 289k–5, and 289*l* to 289*l*–8 of this title, enacting provisions set out as notes under sections 218, 281, 285c, 285e, 285e–2, 285j–1 and 289d of this title, and repealing provisions set out as a note under section 287i of this title] may be cited as the 'Health Research Extension Act of 1985'.''

Pub. L. 99–129, §1, Oct. 22, 1985, 99 Stat. 523, provided: ''That this Act [enacting sections 294q–1 to 294q–3 of this title, amending sections 254*l*, 292a, 292b, 292h, 292j, 293c, 294a, 294b, 294d, 294e, 294g, 294j, 294m to 294p, 294z, 295f to 295f–2, 295g, 295g–1, 295g–3, 295g–4, 295g–6 to 295g–8, 295g–8b, 295h, 295h–1a to 295h–1c, 296k, 296*l*, 296m, 297a, 298b–5, and 300aa–14 of this title, repealing sections 292c, 295 to 295e–5, 295g–2, 295g–5, 295g–8a, and 295g–9 of this title, enacting provisions set out as notes under sections 254*l*, 292h, 293c, 294d, 294n, and 300aa–14 of this title and section 462 of the Appendix to Title 50, War and National Defense, and amending provisions set out as a note under section 298b–5 of this title] may be cited as the 'Health Professions Training Assistance Act of 1985'.''

Pub. L. 99–117, §1(a), Oct. 7, 1985, 99 Stat. 491, provided that: ''this Act [amending sections 207, 210, 213a, 242c, 242n, 243, 246, 247b, 247e, 253, 290aa–3, 300x–4, 300x–5, and 300x–9 of this title and section 1333 of Title 15, Commerce and Trade, repealing sections 247, 254a–1, 299 to 299j, 300d–4, 300d–6, and 300aa–4 of this title, and enacting provisions set out as notes under sections 210, 241, and 242n of this title] may be cited as the 'Health Services Amendments of 1985'.''

Pub. L. 99–92, §1, Aug. 16, 1985, 99 Stat. 393, provided: ''That this Act [enacting section 297i of this title, transferring section 296c to section 298b–5 of this title, amending sections 296k to 296m, 297, 297–1, 297a, 297b, 297d, 297e, 298, 298b, and 298b–5 of this title, sections 1332, 1333, 1336, and 1341 of Title 15, Commerce and Trade, and section 6103 of Title 26, Internal Revenue Code, repealing sections 296 to 296b, 296d to 296f, 296j, 297h, and 297j of this title, and enacting provisions set out as notes under sections 296k and 298b–5 of this title and section 1333 of Title 15] may be cited as the 'Nurse Education Amendments of 1985'.''

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98–555, §1(a), Oct. 30, 1984, 98 Stat. 2854, provided that: ''this Act [enacting sections 300w–9 and 300w–10 of this title and amending sections 247b, 247c, 255, 300, 300w, 300w–4, and 300w–5 of this title] may be cited as the 'Preventive Health Amendments of 1984'.''

Pub. L. 98–551, §1, Oct. 30, 1984, 98 Stat. 2815, provided: ''That this Act [enacting section 300u–5 of this title, amending sections 242b, 242c, 242m, 242n, 254r, 300u, and 300u–3 of this title and sections 360bb and 360ee of Title 21, Food and Drugs, and repealing sections 300u–5 to 300u–9 of this title] may be cited as the 'Health Promotion and Disease Prevention Amendments of 1984'.''

Pub. L. 98–509, §1(a), Oct. 19, 1984, 98 Stat. 2353, provided that: ''this Act [enacting sections 290bb–1a, 290cc–1, 290cc–2, and 300x–1a of this title, amending sections 218, 290aa, 290aa–1 to 290aa–3, 290bb, 290bb–2, 290cc, 290dd, 290dd–1, 300x, 300x–1, and 300x–2 to 300x–9 of this title and section 802 of Title 21, Food and Drugs, repealing sections 1161 to 1165 of Title 21, and enacting provisions set out as notes under sections 300x and 300x–1a of this title and section 802 of Title 21] may be cited as the 'Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984'.''

Pub. L. 98–507, §1, Oct. 19, 1984, 98 Stat. 2339, provided: ''That this Act [enacting sections 273 to 274e of this title and provisions set out as notes under section 273 of this title] may be cited as the 'National Organ Transplant Act'.''

SHORT TITLE OF 1983 AMENDMENTS

Pub. L. 98–194, §1, Dec. 1, 1983, 97 Stat. 1345, provided: ''That this Act [amending section 254g of this title and enacting provisions set out as notes under section 254g of this title] may be cited as the 'Rural Health Clinics Act of 1983'.''

Pub. L. 98–24, §1(a), Apr. 26, 1983, 97 Stat. 175, provided that: ''This Act [enacting sections 290aa–4 and 290aa–5 of this title, transferring sections 219 to 224, 225a to 227, 228 to 229d, 289k–1, 3511, 4551, 4585, 4587, 4588, 4571, 4561, 4581, and 4582 of this title to sections 300aa to 300aa–5, 300aa–6 to 300aa–8, 300aa–9 to 300aa–14, 290aa–3, 290aa, 290aa–1, 290bb, 290bb–1, 290bb–2, 290dd, 290dd–1, 290dd–2, and 290dd–3 of this title, respectively, and sections 1173(a), 1174, 1175, 1180, 1191, 1192, and 1193 of Title 21, Food and Drugs, to sections 290aa–2(e), 290ee–2, 290ee–3, 290ee–1, 290aa–2, 290ee, and 290cc of this title, respectively, amending sections 218, 278, 289*l*–4, 290aa to 290aa–2, 290bb to 290bb–2, 290cc, 290dd to 290dd–2, 290ee to 290ee–3, and 4577 of this title and sections 1165, 1173, and 1177 of Title 21, repealing sections 4552, 4553, and 4586 of this title and sections 1117, 1172, and 1194 of Title 21, enacting provisions set out as a note under section 290aa of this title, amending provisions set out as a note under section 4541 of this title, and repealing provisions set out as a note under section 242 of this title] may be cited as the 'Alcohol and Drug Abuse Amendments of 1983'.''

SHORT TITLE OF 1981 AMENDMENT

Section 940(a) of Pub. L. 97–35 provided that: ''This subtitle [subtitle F (§§940–949) of title IX of Pub. L. 97–35, amending sections 300e to 300e–4a, 300e–6 to 300e–9, 300e–11, 300e–17, and 300m–6 of this title, repealing sections 300e–13 and 300e–15 of this title, and enacting provisions set out as notes under sections 300e–9 and 300m–6 of this title] may be cited as the 'Health Maintenance Organization Amendments of 1981'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–538, §1(a), Dec. 17, 1980, 94 Stat. 3183, provided that: ''this Act [enacting sections 289c–3, 289c–4, 289c–7 of this title, amending sections 286e, 287c, 287i, 289a, 289c–1, 289c–2, 289c–5, 289c–6, 294a, 294d, 294v, 300k–1, 300*l*–5, 300m, 300m–3, 300m–6, 300n, and 300n–1 of this title and section 1182 of Title 8, Aliens and Nationality, repealing sections 289c–3a and 289c–8 and former sections 289c–3, 289c–4, and 289c–7 of this title, and enacting provisions set out as notes under sections 289, 300*l*–5, and 300m–6 of this title] may be cited as the 'Health Programs Extension Act of 1980'.''

SHORT TITLE OF 1979 AMENDMENTS

Pub. L. 96–142, title I, §101, Dec. 12, 1979, 93 Stat. 1067, provided that: ''This title [amending sections 295g–9, 300d–1, 300d–3, 300d–5, 300d–6, 300d–8, and 300d–21 of this title and enacting provisions set out as a note under section 295g–9 of this title] may be cited as the 'Emergency Medical Services Systems Amendments of 1979'.''

Pub. L. 96–142, title II, §201, Dec. 12, 1979, 93 Stat. 1070, provided that: ''This title [enacting section 300c–12 and amending section 300c–11 of this title] may be cited as the 'Sudden Infant Death Syndrome Amendments of 1979'.''

Section 1(a) of Pub. L. 96–79 provided that: ''This Act [enacting sections 300m–6, 300s, 300s–1, 300s–6, and

300t–11 to 300t–14 of this title, amending this section and sections 246, 300k–1 to 300k–3, 300*l* to 300*l*–5, 300m to 300m–5, 300n, 300n–1, 300n–3, 300n–5, 300q, 300q–2, 300r, 300s–3, 300s–5, 300t, 1396b, 2689t, and 4573 of this title and section 1176 of Title 21, Food and Drugs, repealing sections 300*o* to 300*o*–3, 300p to 300p–3, 300q–1, and former section 300s of this title, redesignating former section 300s–1 as 300s–1a of this title, and enacting provisions set out as notes under sections 300k–1, 300*l*, 300*l*–1, 300*l*–4, 300*l*–5, 300m, 300m–6, 300n, 300q, and 300t–11 of this title] may be cited as the 'Health Planning and Resources Development Amendments of 1979'.''

Pub. L. 96–76, title I, § 101(a), Sept. 29, 1979, 93 Stat. 579, provided that: ''This title [enacting section 297–1 of this title, amending sections 296, 296d, 296e, 296k to 296m, 297 to 297c, 297e, and 297j of this title, and enacting provisions set out as notes under sections 296 and 297j of this title] may be cited as the 'Nurse Training Amendments of 1979'.''

Pub. L. 96–76, title III, § 301, Sept. 29, 1979, 93 Stat. 584, provided that: ''This title [amending sections 204, 206, 207, 209, 210–1, 210b, 211, 212, 213a, 215, and 218a of this title and sections 201, 415, and 1006 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as a note under section 206 of this title] may be cited as the 'Public Health Service Administrative Amendments of 1979'.''

SHORT TITLE OF 1978 AMENDMENTS

Pub. L. 95–626, § 1(a), Nov. 10, 1978, 92 Stat. 3551, provided that: ''This Act [enacting sections 242p, 247, 247a, 247b–1, 254a–1, 255, 256, 256a, 300a–21 to 300a–29, 300a–41, 300b–6, and 300u–6 to 300u–9 of this title, amending sections 218, 246, 247b, 247c, 247e, 254a, 254b, 254c, 254k, 294t, 294u, 295h–1, 300b, 300b–3, 300c–21, 300c–22, 300d–2, 300d–3, 300d–5, 300d–6, 300e–12, 300e–14a, 300u–5, 1396b, and 4846 of this title, repealing sections 256, 4801, 4811, 4844, and 4845 of this title, enacting provisions set out as notes under this section and sections 246, 247a, 247c, 254a–1, 254b to 254d, 256, 256a, 289b, 289d, 300a–21, 300d–2, and 300d–3 of this title, and amending provisions set out as notes under sections 300b and 1395x of this title] may be cited as the 'Health Services and Centers Amendments of 1978'.''

Pub. L. 95–626, title I, § 101, Nov. 10, 1978, 92 Stat. 3551, provided that: ''This part [part A (§§ 101–107) of title I of Pub. L. 95–626, enacting section 256a of this title, amending sections 218, 247e, 254b, 254c, 255, 300e–12, 300e–14a, and 1396b of this title, repealing section 256 of this title, and enacting provisions set out as notes under sections 254b, 254c, and 256a of this title] may be cited as the 'Migrant and Community Health Centers Amendments of 1978'.''

Pub. L. 95–626, title I, § 111, Nov. 10, 1978, 92 Stat. 3562, provided that: ''This part [part B (§§ 111–116) of title I of Pub. L. 95–626, enacting sections 254a–1 and 256 of this title, amending sections 294t and 294u of this title, and enacting provisions set out as notes under sections 254a–1, 254d, and 256 of this title] may be cited as the 'Primary Health Care Act of 1978'.''

Pub. L. 95–626, title II, § 200, Nov. 10, 1978, 92 Stat. 3570, provided that: ''This title [enacting sections 247, 247a, 255, and 300b–6 of this title, amending sections 246, 247b, 247c, 300b, 300b–3, 300c–21, 300c–22, 300d–2, 300d–3, 300d–5, 300d–6, and 4846 of this title, repealing sections 4801, 4811, 4844, and 4845 of this title, enacting provisions set out as notes under sections 246, 247a, 247c, 289d, 300d–2, and 300d–3 of this title, and amending provisions set out as notes under sections 300b and 1395x of this title] may be cited as the 'Health Services Extension Act of 1978'.''

Pub. L. 95–623, § 1(a), Nov. 9, 1978, 92 Stat. 3443, provided that: ''This Act [enacting sections 229c, 242n, and 4362a of this title, amending sections 210, 242b, 242c, 242k, 242m, 242*o*, 289k, 289*l*–1, 292e, 292h, 292i, 294t, 295f–1, 295f–2, 295g–2, 295g–8, 295h–2, 7411, 7412, 7417, and 7617 of this title, repealing section 280c of this title, enacting provisions set out as a note under section 242m of this title, and amending provisions set out as notes under sections 292h, 295h–4, and 296 of this title] may be cited as the 'Health Services Research, Health Statistics, and Health Care Technology Act of 1978'.''

Pub. L. 95–622, title II, § 201(a), Nov. 9, 1978, 92 Stat. 3420, provided that: ''This title [enacting sections 289*l*–6 to 289*l*–8 of this title, amending sections, 241, 248, 277, 280b, 281 to 286g, 287a to 287d, 287*g*, 287i, 289c–6, 289*l* to 289*l*–2, 289*l*–4, 4541, 4573, and 4585 of this title, and enacting provisions set out as notes under sections 241, 286b, 286f, 289a, and 289*l*–1 of this title] may be cited as the 'Biomedical Research and Research Training Amendments of 1978'.''

Pub. L. 95–559, § 1(a), Nov. 1, 1978, 92 Stat. 2131, provided that: ''This Act [enacting sections 300e–4a, 300e–16, and 300e–17 of this title, amending sections 300e, 300e–1, 300e–3, 300e–4, 300e–5, 300e–7, 300e–8, 300e–9, 300e–11 to 300e–13, 1320a–1, 1396a, and 1396b of this title, and enacting provisions set out as notes under sections 300e–3, 300e–4, 300e–16, and 1396a of this title] may be cited as the 'Health Maintenance Organization Amendments of 1978'.''

SHORT TITLE OF 1977 AMENDMENTS

Pub. L. 95–190, § 1, Nov. 16, 1977, 91 Stat. 1393, provided that: ''This Act [enacting sections 300j–10 and 7625a of this title, amending sections 300f, 300g–1, 300g–3, 300g–5, 300h, 300h–1, 300j to 300j–2, 300j–4, 300j–6, 300j–8, 7410, 7411, 7413, 7414, 7416, 7419, 7420, 7426, 7472 to 7475, 7478, 7479, 7502, 7503, 7506, 7521, 7522, 7525, 7541, 7545, 7549, 7602, 7604, 7607, 7623, and 7626 of this title, enacting provisions set out as notes under section 300f of this title, and section 5108 of Title 5, Government Organization and Employees, and amending provisions set out as notes under sections 300f, 7401, and 7502 of this title] may be cited as the 'Safe Drinking Water Amendments of 1977'.''

Section 101 of title I of Pub. L. 95–83 provided that: ''This title [amending this section and sections 242m, 300e–8, 300k–3, 300*l* to 300*l*–5, 300m, 300m–2, 300m–4, 300m–5, 300n–3, 300n–5, 300*o*–1 to 300*o*–3, 300p, 300p–3, 300q, 300q–2, 300r, 300s–3, 300t, and 1396b of this title, and enacting provisions set out as a note under section 1396b of this title] may be cited as the 'Health Planning and Health Services Research and Statistics Extension Act of 1977'.''

Section 201 of title II of Pub. L. 95–83 provided that: ''This title [amending sections 280b, 286b, 286c, 286d, 286f, 286g, 287c, 287d, 287f, 287h, 287i, and 289*l*–1 of this title] may be cited as the 'Biomedical Research Extension Act of 1977'.''

Section 301 of title III of Pub. L. 95–83 provided that: ''This title [enacting section 294y–1 of this title, amending sections 210, 246, 247d, 254c, 292g, 292h, 293a, 294d, 294e, 294h, 294i, 294j, 294n, 294r, 294s, 294w, 294z, 295f–1, 295g–1, 295g–9, 295h–5, 295h–5c, 296e, 296m, 297, 300, 300a–1, 300a–2, 300a–3, 300c–11, 300c–21, 300c–22, 701, 2689a to 2689e, 2689h, 2689p, 2689q, 4572, 4573, and 4577 of this title, sections 1101 and 1182 of Title 8, Aliens and Nationality, sections 1112 and 1176 of Title 21, Food and Drugs, and section 1614 of Title 25, Indians, enacting provisions set out as notes under sections 242b, 242*l*, 294d, 294i, 294n, 294r, 294t, 294y–1, 294z, 295f–1, 295g–1, 295h–5, and 296m of this title and sections 1101 and 1182 of Title 8, and amending provisions set out as notes under sections 289k–2, 1395x, and 1396b of this title] may be cited as the 'Health Services Extension Act of 1977'.''

SHORT TITLE OF 1976 AMENDMENTS

Pub. L. 94–573, § 1(a), Oct. 21, 1976, 90 Stat. 2709, provided that: ''This Act [enacting section 300d–21 of this title, amending sections 295f–6 and 300d to 300d–9 of this title, enacting provisions set out as notes under sections 242b, 300d, 300d–7, and 300d–9 of this title, and amending provisions set out as notes under sections 218, 289c–1, and 289*l*–1 of this title] may be cited as the 'Emergency Medical Services Amendments of 1976'.''

Pub. L. 94–562, § 1(a), Oct. 19, 1976, 90 Stat. 2645, provided that: ''This Act [enacting sections 289c–3a, 289c–7, and 289c–8 of this title, amending sections 289c–2, 289c–5, and 289c–6 of this title, and enacting provisions set out as notes under sections 289a, 289c–3a, and 289c–7 of this title] may be cited as the 'Arthritis, Diabetes, and Digestive Disease Amendments of 1976'.''

Section 1(a) of Pub. L. 94–484 provided that: ''This Act [enacting sections 254 to 254k, 292, 292e to 292k, 294 to 294*l*, 294r to 294z, 294aa, 295f–1, 295g to 295g–8, 295g–10, 295h to 295h–2, and 295h–4 to 295h–7 of this title; renumbering sections 293d as 292a, 293e as 292b, 295h–8 as 292c, 295h–9 as 292d, 293g to 293i as 293d to 293f, 294 to 294c as 294m to 294p, 294e as 294q, 295f–5 as 295f–2, and 295f–6 as 295g–9 of this title; amending this section and sections 234, 244–1, 245a, 246, 247c, 254b, 263c, 292a to 292c, 293 to 293d, 293f, 294g, 294m to 294p, 295e–1 to 295e–4, 295f to 295f–4, 295g, 295g–11, 295g–23, 295h–1 to 295h–3, 297, 300a, 300d, 300d–7, 300f, 300*l*–1, 300n, and 300s–3 of this title and sections 1101 and 1182 of Title 8, Aliens and Nationality; repealing sections 234, 244–1, 245a, 254b, 292 to 292j, 293f, 294d, 294f, 294g, 295f–1, to 295f–4, 295g, 295g–1, 295g–11, and 295g–21 to 295g–23 of this title; omitting sections 295h to 295h–2, 295h–3a to 295h–3d, 295h–4, 295h–5, and 295h–7 of this title; and enacting provisions set out as notes under sections 254d, 292, 292b, 292h, 293, 293f, 294, 294n, 294*o*, 294q, 294r, 294t, 294z, 295g, 295g–1, 295g–9, 295g–10, 295h, 295h–4, and 300*l*–1 of this title and section 1182 of Title 8] may be cited as the 'Health Professions Educational Assistance Act of 1976'.''

Pub. L. 94–460, §1(a), Oct. 8, 1976, 90 Stat. 1945, provided that: ''This Act [enacting section 300e–15 of this title, amending sections 242c, 289k–2, 300e, 300e–1 to 300e–11, 300e–13, 300n–1, 1395x note, 1395mm, and 1396b of this title, section 8902 of Title 5, Government Organization and Employees, and section 360d of Title 21, Food and Drugs, and enacting provisions set out as notes under sections 300e and 1396b of this title] may be cited as the 'Health Maintenance Organization Amendments of 1976'.''

Pub. L. 94–380, §1, Aug. 12, 1976, 90 Stat. 1113, provided: ''That this Act [amending section 247b of this title and enacting provisions set out as a note under section 247b of this title] may be cited as the 'National Swine Flu Immunization Program of 1976'.''

Section 101 of title I of Pub. L. 94–317 provided that: ''This title [enacting subchapter XV of this chapter] may be cited as the 'National Consumer Health Information and Health Promotion Act of 1976'.''

Section 201 of title II of Pub. L. 94–317 provided that: ''This title [amending sections 243, 247b, 247c, 4801, 4831, and 4841 to 4843 of this title and enacting provisions set out as notes under sections 247b and 247c of this title] may be cited as the 'Disease Control Amendments of 1976'.''

Pub. L. 94–278, §1(a), Apr. 22, 1976, 90 Stat. 401, provided that: ''This Act [enacting sections 217a–1, 289*l*–5, 300b, 300b–1 to 300b–5 of this title and sections 350 and 378 of Title 21, Food and Drugs, and amending sections 213e, 225a, 234, 241, 247d, 254c, 287, 287a to 287d, 287f to 287i, 289a, 289c–1, 289c–5, 289c–6, 289*l*–1, 289*l*–2, 294b, 295g–23, 300c–11, 300*l*, 300p–3, 300s–1, 6062 and 6064 of this title and sections 321, 333, 334 and 343 of Title 21, and enacting provisions set out as notes under sections 218, 287, 289c–1, 289c–2, 289*l*–1, 300b and 6001 of this title and sections 334 and 350 of Title 21] may be cited as the 'Health Research and Health Services Amendment of 1976'.''

Pub. L. 94–278, title IV, §401, Apr. 22, 1976, 90 Stat. 407, provided that: ''This title [enacting part A of subchapter IX of this chapter, omitting former Part B of of subchapter IX of this chapter relating to Cooley's Anemia Programs, redesignating former Parts C and D of subchapter IX of this chapter as Parts B and C of subchapter IX of this chapter, respectively, and amending section 300c–11 of this title] may be cited as the 'National Sickle Cell Anemia, Cooley's Anemia, Tay-Sachs, and Genetic Diseases Act'.''

Pub. L. 94–278, title VI, §601, Apr. 22, 1976, 90 Stat. 413, provided that: ''This title [amending sections 289a, 289c–1, 289c–5, and 289c–6 of this title and amending provisions set out as notes under section 289c–1 of this title] may be cited as the 'National Arthritis Act Technical Amendments of 1976'.''

SHORT TITLE OF 1975 AMENDMENTS

Pub. L. 94–63, title I, §101, July 29, 1975, 89 Stat. 304, provided that: ''This title [amending section 246 of this title and enacting provisions set out as a note under section 246 of this title] may be cited as the 'Special Health Revenue Sharing Act of 1975'.''

Pub. L. 94–63, title II, §201, July 29, 1975, 89 Stat. 306, provided that: ''This title [enacting sections 300a–6a and 300a–8 of this title, amending sections 300, 300a–1 to 300a–4 of this title, and repealing section 3505c of this title] may be cited as the 'Family Planning and Population Research Act of 1975'.''

Pub. L. 94–63, title IX, §901(a), July 29, 1975, 89 Stat. 354, provided that: ''This title [enacting sections 296j to 296m and 298b–3 of this title, amending sections 296 to 296i, 297 to 297e, 297g to 297h, 298 to 298b–2, 298c, 298c–1 and 298c–7 of this title, repealing sections 296g, 296i, 297f, 298c–7, and 298c–8 of this title, and enacting provisions set out as notes under sections 296, 296a, 296d, 296e, 296m, 297, and 297b of this title and former section 297f of this title] may be cited as the 'Nurse Training Act of 1975'.''

Pub. L. 93–641, §1, Jan. 4, 1975, 88 Stat. 2225, provided that: ''This Act [enacting subchapter XIII of this chapter amending section 300e–4 of this title, repealing section 247a of this title, and enacting provisions set out as notes under sections 217a, 229, 291b, 300*l*–4, and 300m of this title] may be cited as the 'National Health Planning and Resources Development Act of 1974'.''

SHORT TITLE OF 1974 AMENDMENTS

Pub. L. 93–640, §1, Jan. 4, 1975, 88 Stat. 2217, provided that: ''This Act [enacting sections 289c–4, 289c–5, and 289c–6 of this title, amending sections 289a and 289c–1 of this title, and enacting provisions set out as notes under section 289c–1 of this title] may be cited as the 'National Arthritis Act of 1974'.''

Pub. L. 93–523, §1, Dec. 16, 1974, 88 Stat. 1660, as amended by Pub. L. 104–182, title V, §501(e), Aug. 6, 1996, 110 Stat. 1691, provided that: ''This Act [enacting subchapter XII of this chapter and section 349 of Title 21, Food and Drugs, amending this section, and enacting provisions set out as a note under section 300f of this title] may be cited as the 'Safe Drinking Water Act of 1974'.''

Pub. L. 93–354, §1, July 23, 1974, 88 Stat. 373, provided that: ''This Act [enacting sections 289c–1a, 289c–2, and 289c–3 of this title, amending sections 247b and 289c–1 of this title, and enacting provisions set out as notes under section 289c–2 of this title] may be cited as the 'National Diabetes Mellitus Research and Education Act'.''

Pub. L. 93–353, §1(a), July 23, 1974, 88 Stat. 362, provided that: ''This Act [enacting sections 242k, 242m to 242*o*, and 253b of this title, renumbering former sections 242i, 242j, 242f, 242d, 242g, and 242h as sections 235, 236, 242*l*, 244–1, 245a, and 247d of this title, amending sections 236, 242b, 242c, 242*l*, 244–1, 245a, 280b, 280b–1, 280b–2, 280b–4, 280b–5, and 280b–7 to 280b–9, and repealing sections 242e, 244, 244a, 245, 247, 280b–3, and 280b–12 of this title, and enacting provisions set out as notes under sections 242m, 253b, and 280b of this title] may be cited as the 'Health Services Research, Health Statistics, and Medical Libraries Act of 1974'.''

Pub. L. 93–353, title I, §101, July 23, 1974, 88 Stat. 362, provided that: ''This title [enacting sections 242k, 242m to 242*o*, and 253b, renumbering former sections 242i, 242j, 242f, 242d, 242g, and 242h as sections 235, 236, 242*l*, 244–1, 245a, and 247d of this title, amending sections 236, 242b, 242c, 242*l*, 244–1, and 245a, repealing sections 242e, 244, 244a, 245, and 247 of this title, and enacting provisions set out as notes under sections 242m and 253b of this title] may be cited as the 'Health Services Research and Evaluation and Health Statistics Act of 1974'.''

Pub. L. 93–352, title I, §101, July 23, 1974, 88 Stat. 358, provided that: ''This title [enacting section 289*l*–4 of this title, amending sections 241, 282, 286a, 286b, 286c, 286d, 286g, and 289*l* of this title, enacting provisions set out as notes under sections 289*l* and 289*l*–1 of this title, and amending provisions set out as a note under this section] may be cited as the 'National Cancer Act Amendments of 1974'.''

Pub. L. 93–348, title I, § 1, July 12, 1974, 88 Stat. 342, provided that: ''This Act [enacting sections 289*l*–1 to 289*l*–3 of this title, amending sections 218, 241, 242a, 282, 286a, 286b, 287a, 287b, 287d, 288a, 289c, 289c–1, 289g, 289k, and 300a–7 of this title, and enacting provisions set out as notes under sections 218, 241, 289*l*–1, and 289*l*–3 of this title] may be cited as the 'National Research Act'.''

Pub. L. 93–348, title I, § 101, July 12, 1974, 88 Stat. 342, provided that: ''This title [enacting sections 289*l*–1 and 289*l*–2 and amending sections 241, 242a, 282, 286a, 286b, 287a, 287b, 287d, 288a, 289c, 289c–1, 289g, 289k, 295f–3, and 295h–9 of this title] may be cited as the 'National Research Service Award Act of 1974'.''

Pub. L. 93–296, § 1, May 31, 1974, 88 Stat. 184, provided that: ''This Act [enacting Part H of subchapter III of this chapter and provisions set out as notes under section 289k–2 of this title] may be cited as the 'Research on Aging Act of 1974'.''

Pub. L. 93–270, § 1, Apr. 22, 1974, 88 Stat. 90, provided that: ''This Act [enacting part B of subchapter IX of this chapter, amending sections 289d and 289g of this title, and enacting provisions set out as a note under section 289g of this title] may be cited as the 'Sudden Infant Death Syndrome Act of 1974'.''

SHORT TITLE OF 1973 AMENDMENTS

Pub. L. 93–222, § 1, Dec. 29, 1973, 87 Stat. 914, provided in part that Pub. L. 93–222 [enacting subchapter XI of this chapter and section 280c of this title, amending section 2001 of this title and section 172 of Title 12, Bank and Banking, repealing section 763c of Title 33, Navigation and Navigable Waters, enacting provisions set out as notes under sections 300e and 300e–1 of this title, amending provisions set out as notes under this section, and repealing provisions set out as notes under this section and sections 211a, 212a, and 222 of this title] shall be cited as the ''Health Maintenance Organization Act of 1973.''

Pub. L. 93–154, § 1, Nov. 16, 1973, 87 Stat. 594, provided that: ''This Act [enacting subchapter X of this chapter and section 295f–6 of this title, amending sections 295f–2 and 295f–4 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Emergency Medical Services Systems Act of 1973'.''

Pub. L. 93–45, § 1, June 18, 1973, 87 Stat. 91, provided that: ''This Act [enacting section 300a–7 of this title, amending sections 242b, 242c, 244–1, 245a, 246, 280b–4, 280b–5 280b–7, 280b–8, 280b–9, 291a, 291j–1, 291j–5, 295h–1, 295h–2, 295h–3a, 299a, 300, 300a–1, 300a–2, 300a–3, 2661, 2671, 2677, 2681, 2687, 2688a, 2688d, 2688j–1, 2688j–2, 2688*l*, 2688*l*–1, 2688n–1, 2688*o*, and 2688u of this title, and enacting provisions set out as amendment to note provisions under this section] may be cited as the 'Health Programs Extension Act of 1973'.''

SHORT TITLE OF 1972 AMENDMENTS

Pub. L. 92–585, § 1, Oct. 27, 1972, 86 Stat. 1290, provided that: ''This Act [enacting section 234 of this title, amending sections 254b and 294a of this title, and enacting provisions set out as a note under section 246 of this title] may be cited as the 'Emergency Health Personnel Act Amendments of 1972'.''

Pub. L. 92–449, § 1, Sept. 30, 1972, 86 Stat. 748, provided that: ''This Act [enacting section 247c of this title, amending sections 247b and 300 of this title, and enacting provisions set out as notes under section 247c of this title] may be cited as the 'Communicable Disease Control Amendments Act of 1972'.''

Pub. L. 92–449, title II, § 201, Sept. 30, 1972, 86 Stat. 750, provided that: ''This title [enacting section 247c of this title and provisions set out as notes under section 247c of this title] may be cited as the 'National Venereal Disease Prevention and Control Act'.''

Pub. L. 92–423, § 1, Sept. 19, 1972, 86 Stat. 679, provided that: ''This Act [enacting sections 287b to 287f and 287i of this title, amending sections 218, 241, 287, 287a, 287g, and 287h of this title, and enacting provisions set out as notes under section 287 of this title] may be cited as the 'National Heart, Blood Vessel, Lung, and Blood Act of 1972'.''

SHORT TITLE OF 1971 AMENDMENTS

Pub. L. 92–218, § 1, Dec. 23, 1971, 85 Stat. 778, provided that: ''This Act [enacting sections 286a to 286g and 289*l* of this title, amending sections 218, 241, 282, 283, and 284 of this title, and enacting provisions set out as notes under sections 281, 286, and 289*l* of this title] may be cited as 'The National Cancer Act of 1971'.''

Pub. L. 92–158, § 1(a), Nov. 18, 1971, 85 Stat. 465, provided that: ''This Act [enacting sections 296h, 296i, 297i, 298b–1, and 298b–2 of this title, amending sections 296, 296a, 296b, 296c, 296d, 296e, 296f, 296g, 297, 297a, 297b, 297c, 297e, 297f, 298, 298b, 298c, and 298c–7 of this title and enacting provisions set out as notes under sections 296, 296a, 296d, 296e, 297b, and 298c of this title] may be cited as the 'Nurse Training Act of 1971'.''

Pub. L. 92–157, title I, § 101(a), Nov. 18, 1971, 85 Stat. 431, provided that: ''This title [enacting sections 293i, 294g, 295e–1 to 295e–5, 295f–5, 295g–11, 295g–21 to 295g–23, and 3505d of this title, amending sections 210 to 218, 242i, 254, 276, 277, 280, 280a–1, 292b, 292d to 292f, 292h to 292j, 293 to 293e, 293g, 293h, 294 to 294f, 295f to 295f–4, 295g, 295g–1, 295h–3d, 295h–4, 295h–8, 295h–9, 1857c–6, 1857c–8, 1857f–6c, 1857h–5, and 2676 of this title and section 346a of Title 21, Food and Drugs, and enacting provisions set out as notes under section 295h–8 of this title] may be cited as the 'Comprehensive Health Manpower Training Act of 1971'.''

SHORT TITLE OF 1970 AMENDMENTS

Pub. L. 91–623, § 1, Dec. 31, 1970, 84 Stat. 1868, provided: ''That this Act [enacting sections 233 and 254b of this title] may be cited as the 'Emergency Health Personnel Act of 1970'.''

Pub. L. 91–572, § 1, Dec. 24. 1970, 84 Stat. 1504, provided that: ''This Act [enacting sections 300 to 300a–6 and 3505a to 3505c of this title, amending sections 211a, 212a of this title and section 763c of Title 33, Navigation and Navigable Waters, and enacting provisions set out as notes under sections 201, 222, and 300 of this title] may be cited as the 'Family Planning Services and Population Research Act of 1970'.''

Pub. L. 91–519, § 1, Nov. 2, 1970, 84 Stat. 1342, provided that: ''This Act [enacting sections 295h–3a to 295h–3d, 295h–8, and 296h–9 of this title, amending sections 295f–1, 295f–2, 295h to 295h–2, 295h–4, and 295h–7 of this title, repealing section 295h–3 of this title, and enacting provisions set out as notes under sections 295f–1, 295–f2, and 295h–4 of this title] may be cited as the 'Health Training Improvement Act of 1970'.''

Pub. L. 91–515, title I, § 101, Oct. 30, 1970, 84 Stat. 1297, provided that: ''This title [amending sections 299 to 299g, 299i, and 299j of this title] may be cited as the 'Heart Disease, Cancer, Stroke, and Kidney Disease Amendments of 1970'.''

Pub. L. 91–464, § 1, Oct. 16, 1970, 84 Stat. 988, provided: ''That this Act [amending section 247b of this title] may be cited as the 'Communicable Disease Control Amendments of 1970'.''

Pub. L. 91–296, § 1(a), June 30, 1970, 84 Stat. 336, provided that: ''This Act [enacting sections 229b, 291j–1 to 291j–10, and 291*o*–1 of this title, amending sections 291a, 242b, 245a, 246, 291 note, 291b, 291c, 291d, 291e, 291f, 291i, 291k to 291m–1, 291*o*, and 299a of this title and section 1717 of Title 12, Banks and Banking, enacting provisions set out as notes under this section and sections 242, 245a, 246, 291a, 291b, 291c, 291e, 291f, 291*o*, 295h–6, and 2688p of this title, and repealing sections 295h–6 and 2688p of this title] may be cited as the 'Medical Facilities Construction and Modernization Amendments of 1970'.''

Section 1 of Pub. L. 91–212 provided that: ''This Act [enacting section 280b–12 of this title and amending this section and sections 276 to 278, 280, 280a–1, 280b, 280b–2 to 280b–9, and 280b–11 of this title] may be cited as the 'Medical Library Assistance Extension Act of 1970'.''

SHORT TITLE OF 1968 AMENDMENTS

Pub. L. 90–574, title IV, § 401, Oct. 15, 1968, 82 Stat. 1011, provided that: ''This title [amending sections 291a

and 291b of this title] may be cited as the 'Hospital and Medical Facilities Construction and Modernization Assistance Amendments of 1968'.''

Pub. L. 90–490, §1, Aug. 16, 1968, 82 Stat. 773, provided: ''That this Act [enacting sections 294f, 295g–1, 295h–6, 295h–7, 296f, 296g, and 297h of this title, amending sections 242d, 242g, 292b to 292e, 293 to 293d, 294 to 294d, 295f to 295f–4, 295g, 295h to 295h–3, 296 to 296b, 296d, 296e, 297 to 297f, 298b, 298c, and 298c–1 of this title, omitting sections 298c–2 to 298c–6 of this title, and enacting provisions set out as notes under sections 292b, 292e, 293 to 293c, 294f, 295f, 295f–2, 295g, 296, 296d, 296f, and 297a of this title] may be cited as the 'Health Manpower Act of 1968'.''

SHORT TITLE OF 1967 AMENDMENTS

Pub. L. 90–174, §1, Dec. 5, 1967, 81 Stat. 533, provided: ''That this Act [enacting sections 217b, 254a, 263a, and 291m–1 of this title, amending sections 241, 242, 242b, 243, 244, 246, 249, 251, 293e, 295h–4, and 296e of this title, repealing section 291n of this title, and enacting provisions set out as notes under this section and sections 242b, 242c, 246, 263a, and 296e of this title] may be cited as the 'Partnership for Health Amendments of 1967'.''

Pub. L. 90–174, §5(c), Dec. 5, 1967, 81 Stat. 539, provided that: ''This section [enacting section 263a of this title and provisions set out as notes under section 263a of this title] may be cited as the 'Clinical Laboratories Improvement Act of 1967'.''

Pub. L. 90–31, §1, June 24, 1967, 81 Stat. 79, provided: ''That this Act [enacting section 225a of this title and amending sections 2681, 2684, 2687, 2688a, 2688d, and 2691 of this title] may be cited as the 'Mental Health Amendments of 1967'.''

SHORT TITLE OF 1966 AMENDMENTS

Pub. L. 89–751, §1, Nov. 3, 1966, 80 Stat. 1222, provided: ''That this Act [enacting sections 295h to 295h–5 and 298c to 298c–8 of this title, amending sections 292b, 294d, 294n to 294p, 296, 297c to 297f, and 298 of this title and section 1717 of Title 12, Banks and Banking, and enacting provisions set out as notes under sections 294, 294d, 297c, and 297f of this title] may be cited as the 'Allied Health Professions Personnel Training Act of 1966'.''

Pub. L. 89–749, §1, Nov. 3, 1966, 80 Stat. 1180, provided: ''That this Act [amending 243, 245a, and 246 of this title, repealing sections 247a and 247c of this title, and enacting provisions set out as notes under this section and sections 243 and 245a of this title] may be cited as the 'Comprehensive Health Planning and Public Health Services Amendments of 1966'.''

Pub. L. 89–709, §1, Nov. 2, 1966, 80 Stat. 1103, provided: ''That this Act [amending sections 293, 293a, 293d, 293e, 294, 294a, and 294b of this title] may be cited as the 'Veterinary Medical Education Act of 1966'.''

SHORT TITLE OF 1965 AMENDMENTS

Section 1 of Pub. L. 89–291, Oct. 22, 1965, 79 Stat. 1059, provided that: ''This Act [enacting section 280a–1 of this title and Part J of subchapter II of this chapter and amending section 277 of this title] may be cited as the 'Medical Library Assistance Act of 1965'.''

Pub. L. 89–290, §1, Oct. 22, 1965, 79 Stat. 1052, provided that: ''This Act [enacting sections 295f to 295f–4 and 295g of this title and amending sections 293, 293a, 293d, 294 to 294d, 297b, and 298b of this title] may be cited as the 'Health Professions Educational Assistance Amendments of 1965'.''

Pub. L. 89–239, §1, Oct. 6, 1965, 79 Stat. 926, provided: ''That this Act [enacting sections 299 to 299i of this title, amending sections 211a and 212a of this title, sections 757, 790, 800 of former Title 5, Executive Departments and Government Officers and Employees, and section 763c of Title 33, Navigation and Navigable Waters, and enacting provisions set out as notes under sections 201, 214, 222, and 249 of this title] may be cited as the 'Heart Disease, Cancer, and Stroke Amendments of 1965'.''

Pub. L. 89–115, §1, Aug. 9, 1965, 79 Stat. 448, provided: ''That this Act [amending sections 241, 292c, and 292d of this title and section 2211 of former Title 5, Executive Departments and Government Officers and Employees, and enacting section 623h of former Title 5 and provisions set out as a note thereunder] may be cited as the 'Health Research Facilities Amendments of 1965'.''

Pub. L. 89–109, §1, Aug. 5, 1965, 79 Stat. 435, provided: ''That this Act [amending sections 246, 247a, 247b, and 247d of this title] may be cited as the 'Community Health Services Extension Amendments of 1965'.''

SHORT TITLE OF 1964 AMENDMENTS

Pub. L. 88–581, §1, Sept. 4, 1964, 78 Stat. 908, provided: ''That this Act [enacting subchapter VI of this chapter, amending sections 291c, 291*o*, 293, 293a, 293e, and 293h of this title, and enacting provisions set out as notes under sections 201, 211a, 212a, 222, 291c, 293, 293e, and 293h of this title, sections 757, 790, and 800 of former Title 5, Executive Departments and Government Officers and Employees, and section 763c of Title 33, Navigation and Navigable Waters] may be cited as the 'Nurse Training Act of 1964'.''

Pub. L. 88–497, §1, Aug. 27, 1964, 78 Stat. 613, provided that: ''This Act [amending sections 244–1 and 245a of this title] may be cited as the 'Graduate Public Health Training Amendments of 1964'.''

Pub. L. 88–443, §1, Aug. 18, 1964, 78 Stat. 447, provided that: ''This Act [enacting sections 247c, 291 to 291j, 291k to 291m, 291n, and 291*o* of this title and enacting provisions set out as notes under section 291 of this title] may be cited as the 'Hospital and Medical Facilities Amendments of 1964'.''

SHORT TITLE OF 1963 AMENDMENT

Pub. L. 88–129, §1, Sept. 24, 1963, 77 Stat. 164, provided: ''That this Act [enacting sections 292j, 293 to 293h, and 294 to 294e and amending sections 292 to 292b and 292d to 292i of this title] may be cited as the 'Health Professions Educational Assistance Act of 1963'.''

SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87–868, §1, Oct. 23, 1962, 76 Stat. 1155, provided that this Act [enacting section 247b of this title] may be cited as the ''Vaccination Assistance Act of 1962.''

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–395, §1, Oct. 5, 1961, 75 Stat. 824, provided: ''That this Act [enacting section 247a of this title, amending sections 246, 289c, 291i, 291n, 291s, 291t, 291w, and 292c to 292g of this title, and enacting provisions set out as a note under section 291s of this title] may be cited as the 'Community Health Services and Facilities Act of 1961'.''

SHORT TITLE OF 1960 AMENDMENT

Section 1 of Pub. L. 86–415, Apr. 8, 1960, 74 Stat. 32, provided: ''That this Act [amending this section and sections 209, 210, 211, 212, 253, and 415 of this title and section 2251 of former Title 5, Executive Departments and Government Officers and Employees, and enacting provisions set out as notes under sections 209 and 212 of this title and section 2253 of former Title 5] may be cited as the 'Public Health Service Commissioned Corps Personnel Act of 1960'.''

SHORT TITLE OF 1956 AMENDMENTS

Section 2 of act Aug. 3, 1956, ch. 907, 70 Stat. 962, provided that: ''This Act [enacting part I of subchapter II of this chapter] may be cited as the 'National Library of Medicine Act'.''

Act July 3, 1956, ch. 510, §1, 70 Stat. 489, provided that: ''This Act [enacting section 246 of this title, amended section 241 of this title, and enacting provisions set out as a note under section 246 of this title] may be cited as the 'National Health Survey Act'.''

SHORT TITLE OF 1955 AMENDMENT

Joint Res. July 28, 1955, ch. 417, §1, 69 Stat. 382, provided that: ''This joint resolution [enacting section

242b of this title and provisions set out as a note under section 242b of this title] may be cited as the 'Mental Health Study Act of 1955'.''

SHORT TITLE OF 1948 AMENDMENTS

Section 1 of act June 24, 1948, provided that: ''This Act [enacting part C of subchapter III of this chapter and amending this section and sections 210, 218, and 241 of this title] may be cited as the 'National Dental Research Act'.''

Section 1 of act June 16, 1948, provided that: ''This Act [enacting sections 287 to 287c of this title and amending this section and sections 203, 206, 210, 218, 219, 241, 246, 281, 283, and 286 of this title] may be cited as the 'National Heart Act'.''

SHORT TITLE OF 1946 AMENDMENT

Section 1 of act July 3, 1946, provided: ''That this Act [enacting sections 232 and 242a of this title, amending this section and sections 209, 210, 215, 218, 219, 241, 244, and 246 of this title, and enacting provisions set out as a note under this section] may be cited as the 'National Mental Health Act'.''

SHORT TITLE

Section 1 of act July 1, 1944, as amended by acts Aug. 13, 1946, ch. 958, § 4, 60 Stat. 1049; July 30, 1956, ch. 779, § 3(a), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, § 4(a), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, § 3(a), 79 Stat. 930; Dec. 24, 1970, Pub. L. 91–572, § 6(a), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, § 3(a), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, § 2(b)(1), 87 Stat. 604; Dec. 29, 1973, Pub. L. 93–222, § 7(a), 87 Stat. 936, provided that: ''This Act [enacting this chapter] may be cited as the 'Public Health Service Act'.''

Section 329 of act July 1, 1944, formerly § 310, as added by Pub. L. 87–692, Sept. 25, 1962, 76 Stat. 592, amended and renumbered, formerly classified to section 254b of this title, was popularly known as the ''Migrant Health Act''.

Section 1400 of title XIV of act July 1, 1944, as added Aug. 6, 1996, Pub. L. 104–182, title V, § 501(e), 110 Stat. 1691, provided that: ''This title [enacting subchapter XII of this chapter] may be cited as the 'Safe Drinking Water Act'.''

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506, § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, repealed and amended sections in this title and in Title 8, Aliens and Nationality, Title 14, Coast Guard, Title 21, Food and Drugs, Title 24, Hospitals and Asylums, former Title 31, Money and Finance, Title 33, Navigation and Navigable Waters, former Title 34, Navy, Title 44, Public Printing and Documents, former Title 46, Shipping, Title 48, Territories and Insular Possessions, and former Title 49, Transportation, and was itself repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

SAVINGS PROVISION

Section 1314, formerly § 612, of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, provided that the repeal of statutes and parts of statutes by sections 1313, formerly § 611, of act July 1, 1944, not affect any act done, right accruing or accrued, or suit or proceeding had or commenced in any civil cause before such repeal, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3, of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CONGRESSIONAL DECLARATION OF PURPOSE FOR COMPREHENSIVE ALCOHOL ABUSE, DRUG ABUSE, AND MENTAL HEALTH AMENDMENTS ACT OF 1988

Pub. L. 100–690, title II, § 2012, Nov. 18, 1988, 102 Stat. 4193, provided that: ''The purposes of this subtitle [subtitle A (§§ 2011–2081) of title II of Pub. L. 100–690, see Tables for classification] with respect to substance abuse are—

''(1) to prevent the transmission of the etiologic agent for acquired immune deficiency syndrome by ensuring that treatment services for intravenous drug abuse are available to intravenous drug abusers;

''(2) to continue the Federal Government's partnership with the States in the development, maintenance, and improvement of community-based alcohol and drug abuse programs;

''(3) to provide financial and technical assistance to the States and communities in their efforts to develop and maintain a core of prevention services for the purpose of reducing the incidence of substance abuse and the demand for alcohol and drug abuse treatment;

''(4) to assist and encourage States in the initiation and expansion of prevention and treatment services to underserved populations;

''(5) to increase, to the greatest extent possible, the availability and quality of treatment services so that treatment on request may be provided to all individuals desiring to rid themselves of their substance abuse problem; and

''(6) to increase understanding about the extent of alcohol abuse and other forms of drug abuse by expanding data collection activities and supporting research on the comparative cost and efficacy of substance abuse prevention and treatment services.''

PURPOSE OF ACT JULY 3, 1946

Section 2 of act July 3, 1946, provided: ''The purpose of this Act [see Short Title of 1946 Amendment note above] is the improvement of the mental health of the people of the United States through the conducting of researches, investigations, experiments, and demonstrations relating to the cause, diagnosis, and treatment of psychiatric disorders; assisting and fostering such research activities by public and private agencies, and promoting the coordination of all such researches and activities and the useful application of their results; training personnel in matters relating to mental health; and developing, and assisting States in the use of, the most effective methods of prevention, diagnosis, and treatment of psychiatric disorders.''

EXISTING POSITIONS, PROCEDURES, REGULATIONS, FUNDS, APPROPRIATIONS, AND PROPERTY

Sections 1301 to 1303, formerly §§ 601 to 603, of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; Sept. 3, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, related to the effect of this chapter on existing positions, procedures, regulations, funds, appropriations, and property, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

APPROPRIATIONS FOR EMERGENCY HEALTH AND SANITATION ACTIVITIES

Section 1304, formerly § 604, of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, authorized annual appropriations during World War II and during period of demobilization to conduct health and sanitation activities in military, naval, or industrial areas, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936. Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of section 1004 of act July 1, 1944, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on September 8, 1939, and May 27, 1941.

AVAILABILITY OF APPROPRIATIONS

Pub. L. 91–296, title VI, § 601, June 30, 1970, 84 Stat. 353, as amended Pub. L. 93–45, title IV, § 401(a), June 18, 1973, 87 Stat. 95; Pub. L. 93–352, title I, § 113, July 23, 1974, 88 Stat. 360, provided that: ''Notwithstanding any other provision of law, unless enacted after the enactment of this Act [June 30, 1970] expressly in limitation of the provisions of this section, funds appropriated for any fiscal year to carry out any program for which appropriations are authorized by the Public Health Service Act (Public Law 410, Seventy-eighth Congress, as amended) [this chapter] or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (Public Law 88–164, as amended) [sections 2689 et seq. and 6001 et seq. of this title] shall remain available for obligation and expenditure until the end of such fiscal year.''

FEDERAL ACCOUNTABILITY

Pub. L. 102–321, title II, § 203(b), July 10, 1992, 106 Stat. 410, provided that: ''Any rule or regulation of the Department of Health and Human Services that is inconsistent with the amendments made by this Act [see Tables for classification] shall not have any legal effect, including section 50(e) of part 96 of title 45, Code of Federal Regulations (45 CFR 96.50(e)).''

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this chapter, see Pub. L. 86–613, § 18, July 12, 1960, 74 Stat. 380, set out as a note under section 1261 of Title 15, Commerce and Trade.

DEFINITION OF ''SECRETARY''

Pub. L. 90–574, title V, § 507, Oct. 15, 1968, 82 Stat. 1013, as amended by Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided that: ''As used in the amendments made by this Act [enacting sections 229a, 299j, 2688e to 2688q, and 2697a of this title, amending sections 210g, 242h, 291a, 291b, 299a to 299e, 2693, and 3259 of this title, repealing section 3442 of this title, and enacting provisions set out as notes under sections 291a, 2688e, 3442 of this title, section 278 of Title 22, Foreign Relations and Intercourse, and section 3681 of Title 38, Veterans' Benefits], the term 'Secretary' means the Secretary of Health and Human Services.''

Pub. L. 90–174, § 15, Dec. 5, 1967, 81 Stat. 542, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the amendments made by this Act [enacting sections 217b, 243(c), 251(b), 254a, 263a, and 291m–1 and amending sections 242b, 242g(c), 246(d)(1), (e), and 296e(c)(1) of this title] the term 'Secretary' means the Secretary of Health and Human Services.''

PART A—ADMINISTRATION

§ 202. Administration and supervision of Service

The Public Health Service in the Department of Health and Human Services shall be administered by the Assistant Secretary for Health under the supervision and direction of the Secretary.

(July 1, 1944, ch. 373, title II, § 201, 58 Stat. 683; 1953 Reorg. Plan No. 1, §§ 5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 103–43, title XX, § 2008(f), June 10, 1993, 107 Stat. 212.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' and ''Assistant Secretary for Health'' for ''Surgeon General''.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

INTERNATIONAL HEALTH ADMINISTRATION

Ex. Ord. No. 10399, Sept. 27, 1952, 17 F.R. 8648, designated Surgeon General to perform certain duties under International Sanitary Regulations of World Health Organization.

REORGANIZATION PLAN NO. 3 OF 1966

Eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 25, 1966, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

PUBLIC HEALTH SERVICE

SECTION 1. TRANSFER OF FUNCTIONS

(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Secretary of Health, Education, and Welfare (hereinafter referred to as the Secretary) all functions of the Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service.

(b) This section shall not apply to the functions vested by law in any advisory council, board, or committee of or in the Public Health Service which is established by law or is required by law to be established.

SEC. 2. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Secretary may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any officer, employee, or agency of the Public Health Service or of the Department of Health, Education, and Welfare.

SEC. 3. ABOLITIONS

(a) The following agencies of the Public Health Service are hereby abolished:

(1) The Bureau of Medical Services, including the office of Chief of the Bureau of Medical Services.

(2) The Bureau of State Services, including the office of Chief of the Bureau of State Services.

(3) The agency designated as the National Institutes of Health (42 U.S.C. 203), including the office of Director of the National Institutes of Health (42 U.S.C. 206(b)) but excluding the several research Institutes in the agency designated as the National Institutes of Health.

(4) The agency designated as the Office of the Surgeon General (42 U.S.C. 203(1)), together with the office held by the Deputy Surgeon General (42 U.S.C. 206(a)).

(b) The Secretary shall make such provisions as he shall deem necessary respecting the winding up of any outstanding affairs of the agencies abolished by the provisions of this section.

SEC. 4. INCIDENTAL TRANSFERS

As he may deem necessary in order to carry out the provisions of this reorganization plan, the Secretary may from time to time effect transfers within the Department of Health, Education, and Welfare of any of the records, property, personnel and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of the Department which relate to functions affected by this reorganization plan.

[The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services, respectively, by 20 U.S.C. 3508.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1966, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization of health functions of the Department of Health, Education, and Welfare.

I

Today we face new challenges and unparalleled opportunities in the field of health. Building on the progress of the past several years, we have truly begun to match the achievements of our medicine to the needs of our people.

The task ahead is immense. As a nation, we will unceasingly pursue our research and learning, our training and building, our testing and treatment. But now our concern must also turn to the organization of our Federal health programs.

As citizens we are entitled to the very best health services our resources can provide.

As taxpayers, we demand the most efficient and economic health organizations that can be devised.

I ask the Congress to approve a reorganization plan to bring new strength to the administration of Federal health programs.

I propose a series of changes in the organization of the Public Health Service that will bring to all Americans a structure modern in design, more efficient in operation and better prepared to meet the great and growing needs of the future. Through such improvements we can achieve the full promise of the landmark health legislation enacted by the 89th Congress.

I do not propose these changes lightly. They follow a period of careful deliberation. For many months the Secretary of Health, Education, and Welfare, and the Surgeon General have consulted leading experts in the Nation—physicians, administrators, scientists, and public health specialists. They have confirmed my belief that modernization and reorganization of the Public Health Service are urgently required and long overdue.

II

The Public Health Service is an operating agency of the Department of Health, Education, and Welfare. It is the principal arm of the Federal Government in the field of health. Its programs are among those most vital to our well-being.

Since 1953 more than 50 new programs have been placed in the Public Health Service. Its budget over the past 12 years has increased tenfold—from $250 million to $2.4 billion.

Today the organization of the Public Health Service is clearly obsolete. The requirement that new and expanding programs be administered through an organizational structure established by law more than two decades ago stands as a major obstacle to the fulfillment of our Nation's health goals.

As presently constituted, the Public Health Service is composed of four major components:

National Institutes of Health.
Bureau of State Services.
Bureau of Medical Services.
Office of the Surgeon General.

Under present law, Public Health Service functions must be assigned only to these four components.

This structure was designed to provide separate administrative arrangements for health research, programs of State and local aid, health services, and executive staff resources. At a time when these functions could be neatly compartmentalized, the structure was adequate. But today the situation is different.

Under recent legislation many new programs provide for an integrated attack on specific disease problems or health hazards in the environment by combining health services, State and local aid, and research. Each new program of this type necessarily is assigned to one of the three operating components of the Public Health Service. Yet none of these components is intended to administer programs involving such a variety of approaches.

Our health problems are difficult enough without having them complicated by outmoded organizational arrangements.

But if we merely take the step of integrating the four agencies within the Public Health Service we will not go far enough. More is required.

III

The Department of Health, Education, and Welfare performs major health or health-related functions which are not carried out through the Public Health Service, although they are closely related to its functions. Among these are:

Health insurance for the aged, administered through the Social Security Administration;

Medical assistance for the needy, administered through the Welfare Administration;

Regulation of the manufacture, labeling, and distribution of drugs, carried out through the Food and Drug Administration; and

Grants-in-aid to States for vocational rehabilitation of the handicapped, administered by the Vocational Rehabilitation Administration.

Expenditures for health and health-related programs of the Department administered outside the Public Health Service have increased from $44 million in 1953 to an estimated $5.4 billion in 1967.

As the head of the Department, the Secretary of Health, Education, and Welfare is responsible for the Administration and coordination of all the Department's health functions. He has clear authority over the programs I have just mentioned.

But today he lacks this essential authority over the Public Health Service. The functions of that agency are vested in the Surgeon General and not in the Secretary.

This diffusion of responsibility is unsound and unwise.

To secure the highest possible level of health services for the American people the Secretary of Health, Education, and Welfare must be given the authority to establish—and modify as necessary—the organizational structure for Public Health Service programs.

He must also have the authority to coordinate health functions throughout the Department. The reorganization plan I propose will accomplish these purposes. It will provide the Secretary with the flexibility to create new and responsive organizational arrangements to keep pace with the changing and dynamic nature of our health programs.

My views in this respect follow a basic principle of good government set by the Hoover Commission in 1949 when it recommended that ''the Department head should be given authority to determine the organization within his Department.''

IV

In summary, the reorganization plan would:

Transfer to the Secretary of Health, Education, and Welfare the functions now vested in the Surgeon General of the Public Health Service and in its various subordinate units (this transfer will not affect certain statutory advisory bodies such as the National Advisory Cancer and Heart Councils);

Abolish the four principal statutory components of the Public Health Service, including the offices held by their heads (the Bureau of Medical Services, the Bureau of State Services, the National Institutes of Health exclusive of its several research institutes such as the National Cancer and Heart Institutes, and the Office of the Surgeon General); and

Authorize the Secretary to assign the functions transferred to him by the plan to officials and entities of the Public Health Service and to other agencies of the Department as he deems appropriate.

Thus, the Secretary would be—

Enabled to assure that all health functions of the Department are carried out as effectively and economically as possible;

Given authority commensurate with his responsibility; and

Made responsible in fact for matters for which he is now, in any case, held accountable by the President, the Congress, and the people.

V

I have found, after investigation, that each reorganization included in the accompanying reorganization plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

Should the reorganizations in the accompanying reorganization plan take effect, they will make possible more effective and efficient administration of the affected health programs. It is, however, not practicable at this time to itemize the reductions in expenditures which may result.

I strongly recommend that the Congress allow the reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, April 25, 1966.

EXECUTIVE ORDER NO. 10506

Ex. Ord. No. 10506, Dec. 10, 1953, 18 F.R. 8219, which delegated certain functions of the President relating to the Public Health Service, was superseded by Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, set out below.

EX. ORD. NO. 11140. DELEGATION OF FUNCTIONS

Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by Section 301 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Secretary of Health and Human Services is hereby authorized and empowered, without the approval, ratification, or other action of the President, to perform the following-described functions vested in the President under the Public Health Service Act (58 Stat. 682), as amended [this chapter]:

(a) The authority under Section 203 (42 U.S.C. 204): to appoint commissioned officers of the Reserve Corps.

(b) The authority under Section 206(b) (42 U.S.C. 207(b)) to prescribe titles, appropriate to the several grades, for commissioned officers of the Public Health Service other than medical officers.

(c) The authority under Section 207(a)(2) (42 U.S.C. 209(a)(2)) to terminate commissions of officers of the Reserve Corps without the consent of the officers concerned.

(d) The authority under Section 210(a), (k), and (*l*) (42 U.S.C. 211(a), (k), and (*l*)) to make or terminate temporary promotions of commissioned officers of the Regular Corps and Reserve Corps.

(e) The authority under Section 211(a)(5) (42 U.S.C. 212(a)(5)) to approve voluntary retirements under that section.

(f) The authority to prescribe regulations under the following-designated Sections: 207(a), 207(b), 208(e), 210(a), 210(b), 210(d)(1), 210(h), 210(i), 210(j)(1), 210(k), 215(a), 218(a), 219(a), and 510 (42 U.S.C. 209(a), 209(b), 210(e), 211(a), 211(b), 211(d)(1), 211(h), 211(i), 211(j)(1), 211(k), 216(a), 218a(a), 210–1(a), and 228).

(g) The authority under Sections 321(a) and 364(a) (42 U.S.C. 248(a) and 267(a)) to approve the selection of suitable sites for and the establishment of additional institutions, hospitals, stations, grounds, and anchorages; subject, however, to the approval of the Director of the Office of Management and Budget, except as he may otherwise provide.

SEC. 2. The Surgeon General is hereby authorized and empowered, without the approval, ratification, or other action of the President, to perform the function vested in the President by Sections 203 and 207(a)(2) of the Public Health Service Act (58 Stat. 683, 685), as amended (42 U.S.C. 204 and 209(a)(2)), or otherwise, of accepting voluntary resignations of commissioned officers of the Regular Corps or the Reserve Corps.

SEC. 3. The Secretary of Health and Human Services is hereby authorized and empowered, without the approval, ratification, or other action of the President, to exercise the authority vested in the President by Section 704 of Title 37 of the United States Code to prescribe regulations.

SEC. 4. The Secretary of Health and Human Services is hereby authorized to redelegate all or any part of the functions set forth under (a), (b), (c), and (d) of Section 1 hereof to the Surgeon General of the Public Health Service or other official of that Service who is required to be appointed by and with the advice and consent of the Senate.

SEC. 5. All actions heretofore taken by appropriate authority with respect to the matters affected by this order and in force at the time of the issuance of this order, including any regulations prescribed or approved

with respect to such matters, shall, except as they may be inconsistent with the provisions of this order, remain in effect until amended, modified, or revoked pursuant to the authority conferred by this order.

SEC. 6. As used in this order, the term ''functions'' embraces duties, powers, responsibilities, authority, or discretion, and the term ''perform'' may be construed to mean ''exercise''.

SEC. 7. (a) Executive Order No. 10506 of December 10, 1953, entitled ''Delegating Certain Functions of the President under the Public Health Service Act,'' is hereby superseded.

(b) Executive Orders Nos. 9993 of August 31, 1948, 10031 of January 26, 1949, 10280 of August 16, 1951, 10354 of May 26, 1952, and 10497 of October 27, 1953, which prescribed regulations relating to commissioned officers and employees of the Public Health Service, are hereby revoked. Nothing in this subsection shall be deemed to alter or otherwise affect the regulations prescribed by the Surgeon General (42 CFR Parts 21 and 22) to replace the regulations prescribed by the orders described in the preceding sentence.

§ 203. Organization of Service

The Service shall consist of (1) the Office of the Surgeon General, (2) the National Institutes of Health, (3) the Bureau of Medical Services, and[1] (4) the Bureau of State Services, and[2] the Agency for Healthcare Research and Quality. The Secretary is authorized and directed to assign to the Office of the Surgeon General,[3] to the National Institutes of Health, to the Bureau of Medical Services, and to the Bureau of State Services, respectively, the several functions of the Service, and to establish within them such divisions, sections, and other units as he may find necessary; and from time to time abolish, transfer, and consolidate divisions, sections, and other units and assign their functions and personnel in such manner as he may find necessary for efficient operation of the Service. No division shall be established, abolished, or transferred, and no divisions shall be consolidated, except with the approval of the Secretary. The National Institutes of Health shall be administered as a part of the field service. The Secretary may delegate to any officer or employee of the Service such of his powers and duties under this chapter, except the making of regulations, as he may deem necessary or expedient.

(July 1, 1944, ch. 373, title II, § 202, 58 Stat. 683; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 103–43, title XX, § 2008(g), June 10, 1993, 107 Stat. 212; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

AMENDMENTS

1999—Pub. L. 106–129 substituted ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research''.

1993—Pub. L. 103–43, § 2008(g)(2), inserted '', and the Agency for Health Care Policy and Research'' in first sentence.

Pub. L. 103–43, § 2008(g)(1), which directed the amendment of this section by striking ''Surgeon General'' the second and subsequent times that such term appears and inserting ''Secretary'', was executed by making the substitution before ''is authorized and directed'' and before ''may delegate to any officer'' and by leaving unchanged ''Surgeon General'' in the phrase ''assign to the Office of the Surgeon General'' in second sentence, to reflect the probable intent of Congress.

1948—Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health'' in cl. (2).

TRANSFER OF FUNCTIONS

Bureau of Medical Services, Bureau of State Services, National Institutes of Health, excluding several research Institutes in agency, and Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and all functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare, and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 204. Commissioned corps; composition; appointment of Regular and Reserve officers; appointment and status of warrant officers

There shall be in the Service a commissioned Regular Corps and, for the purpose of securing a reserve for duty in the Service in time of national emergency, a Reserve Corps. All commissioned officers shall be citizens and shall be appointed without regard to the civil-service laws and compensated without regard to chapter 51 and subchapter III of chapter 53 of title 5. Commissioned officers of the Reserve Corps shall be appointed by the President and commissioned officers of the Regular Corps shall be appointed by him by and with the advice and consent of the Senate. Commissioned officers of the Reserve Corps shall at all times be subject to call to active duty by the Surgeon General, including active duty for the purpose of training and active duty for the purpose of determining their fitness for appointment in the Regular Corps. Warrant officers may be appointed to the Service for the purpose of providing support to the health and delivery systems maintained by the Service and any warrant officer appointed to the Service shall be considered for purposes of this chapter and title 37 to be a commissioned officer within the commissioned corps of the Service.

(July 1, 1944, ch. 373, title II, § 203, 58 Stat. 683; Feb. 28, 1948, ch. 83, § 2, 62 Stat. 39; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Pub. L. 96–76, title III, § 302(a), Sept. 29, 1979, 93 Stat. 584.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

''Chapter 51 and subchapter III of chapter 53 of title 5'' substituted in text for ''the Classification Act of

[1] So in original. The ''and'' probably should not appear.

[2] So in original. Probably should be followed by ''(5)''.

[3] See 1993 Amendment note below.

1949, as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1979—Pub. L. 96–76 inserted provisions relating to appointment and status of warrant officers.

1949—Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

1948—Act Feb. 28, 1948, struck out provision that all active service in Reserve Corps, as well as service in Regular Corps, shall be credited for purpose of promotion in Regular Corps.

REPEALS

Act Oct. 28, 1949, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services and Surgeon General, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

OSTEOPATHS AS RESERVE OFFICERS

Section 709 of act July 1, 1944, formerly § 609, renumbered § 709 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, which provided for appointment of osteopaths as reserve officers until six months after World War II, was repealed by Joint Res. July 25, 1947, ch. 327, § 1, 61 Stat. 449.

§ 204a. Deployment readiness

(a) Readiness requirements for Commissioned Corps officers

(1) In general

The Secretary, with respect to members of the following Corps components, shall establish requirements, including training and medical examinations, to ensure the readiness of such components to respond to urgent or emergency public health care needs that cannot otherwise be met at the Federal, State, and local levels:

(A) Active duty Regular Corps.

(B) Active Reserves.

(2) Annual assessment of members

The Secretary shall annually determine whether each member of the Corps meets the applicable readiness requirements established under paragraph (1).

(3) Failure to meet requirements

A member of the Corps who fails to meet or maintain the readiness requirements established under paragraph (1) or who fails to comply with orders to respond to an urgent or emergency public health care need shall, except as provided in paragraph (4), in accordance with procedures established by the Secretary, be subject to disciplinary action as prescribed by the Secretary.

(4) Waiver of requirements

(A) In general

The Secretary may waive one or more of the requirements established under paragraph (1) for an individual who is not able to meet such requirements because of—

(i) a disability;

(ii) a temporary medical condition; or

(iii) any other extraordinary limitation

as determined by the Secretary.

(B) Regulations

The Secretary shall promulgate regulations under which a waiver described in subparagraph (A) may be granted.

(5) Urgent or emergency public health care need

For purposes of this section and section 215 of this title, the term ''urgent or emergency public health care need'' means a health care need, as determined by the Secretary, arising as the result of—

(A) a national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.);

(B) an emergency or major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

(C) a public health emergency declared by the Secretary under section 247d of this title; or

(D) any emergency that, in the judgment of the Secretary, is appropriate for the deployment of members of the Corps.

(b) Corps management for deployment

The Secretary shall—

(1) organize members of the Corps into units for rapid deployment by the Secretary to respond to urgent or emergency public health care needs;

(2) establish appropriate procedures for the command and control of units or individual members of the Corps that are deployed at the direction of the President or the Secretary in response to an urgent or emergency public health care need of national, State or local significance;

(3) ensure that members of the Corps are trained, equipped and otherwise prepared to fulfill their public health and emergency response roles; and

(4) ensure that deployment planning takes into account—

(A) any deployment exemptions that may be granted by the Secretary based on the unique requirements of an agency and an individual's functional role in such agency; and

(B) the nature of the urgent or emergency public health care need.

(c) Deployment of detailed or assigned officers

For purposes of pay, allowances, and benefits of a Commissioned Corps officer who is detailed or assigned to a Federal entity, the deployment

of such officer by the Secretary in response to an urgent or emergency public health care need shall be deemed to be an authorized activity of the Federal entity to which the officer is detailed or assigned.

(July 1, 1944, ch. 373, title II, § 203A, as added Pub. L. 109–417, title II, § 206(b), Dec. 19, 2006, 120 Stat. 2851.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (a)(5)(A), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(5)(B), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

PURPOSE

Pub. L. 109–417, title II, § 206(a), Dec. 19, 2006, 120 Stat. 2851, provided that: "It is the purpose of this section [enacting this section and amending sections 215 and 254d of this title] to improve the force management and readiness of the Commissioned Corps to accomplish the following objectives:

"(1) To ensure the Corps is ready to respond rapidly to urgent or emergency public health care needs and challenges.

"(2) To ensure the availability of the Corps for assignments that address clinical and public health needs in isolated, hardship, and hazardous duty positions, and, when required, to address needs related to the well-being, security, and defense of the United States.

"(3) To establish the Corps as a resource available to Federal and State Government agencies for assistance in meeting public health leadership and service roles."

§ 205. Appointment and tenure of office of Surgeon General; reversion in rank

The Surgeon General shall be appointed from the Regular Corps for a four-year term by the President by and with the advice and consent of the Senate. The Surgeon General shall be appointed from individuals who (1) are members of the Regular Corps, and (2) have specialized training or significant experience in public health programs. Upon the expiration of such term the Surgeon General, unless reappointed, shall revert to the grade and number in the Regular or Reserve Corps that he would have occupied had he not served as Surgeon General.

(July 1, 1944, ch. 373, title II, § 204, 58 Stat. 684; Pub. L. 97–25, title III, § 303(a), July 27, 1981, 95 Stat. 145; Pub. L. 97–35, title XXVII, § 2765(b), Aug. 13, 1981, 95 Stat. 932.)

AMENDMENTS

1981—Pub. L. 97–35 inserted reference to Reserve Corps and substituted provisions relating to appointment of an individual from the Regular Corps and with specialized training and significant experience, for provisions relating to appointment of an individual sixty-four years of age or older.

Pub. L. 97–25 inserted provision that the President may appoint to office of Surgeon General an individual who is sixty-four years of age or older.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 206. Assignment of officers

(a) Deputy Surgeon General

The Surgeon General shall assign one commissioned officer from the Regular Corps to administer the Office of the Surgeon General, to act as Surgeon General during the absence or disability of the Surgeon General or in the event of a vacancy in that office, and to perform such other duties as the Surgeon General may prescribe, and while so assigned he shall have the title of Deputy Surgeon General.

(b) Assistant Surgeons General

The Surgeon General shall assign eight commissioned officers from the Regular Corps to be, respectively, the Director of the National Institutes of Health, the Chief of the Bureau of State Services, the Chief of the Bureau of Medical Services, the Chief Medical Officer of the United States Coast Guard, the Chief Dental Officer of the Service, the Chief Nurse Officer of the Service, the Chief Pharmacist Officer of the Service, and the Chief Sanitary Engineering Officer of the Service, and while so serving they shall each have the title of Assistant Surgeon General.

(c) Creation of temporary positions as Assistant Surgeons General

(1) The Surgeon General, with the approval of the Secretary, is authorized to create special temporary positions in the grade of Assistant Surgeons General when necessary for the proper staffing of the Service. The Surgeon General may assign officers of either the Regular Corps or the Reserve Corps to any such temporary position, and while so serving they shall each have the title of Assistant Surgeon General.

(2) Except as provided in this paragraph, the number of special temporary positions created by the Surgeon General under paragraph (1) shall not on any day exceed 1 per centum of the highest number, during the ninety days preceding such day, of officers of the Regular Corps on active duty and officers of the Reserve Corps on active duty for more than thirty days. If on any day the number of such special temporary positions exceeds such 1 per centum limitation, for a period of not more than one year after such day, the number of such special temporary positions shall be reduced for purposes of complying with such 1 per centum limitation only by the resignation, retirement, death, or transfer to a position of a lower grade, of any officer holding any such temporary position.

(d) Designation of Assistant Surgeon General with respect to absence, disability, or vacancy in offices of Surgeon General and Deputy Surgeon General

The Surgeon General shall designate the Assistant Surgeon General who shall serve as Sur-

geon General in case of absence or disability, or vacancy in the offices, of both the Surgeon General and the Deputy Surgeon General.

(July 1, 1944, ch. 373, title II, §205, 58 Stat. 684; Feb. 28, 1948, ch. 83, §3, 62 Stat. 39; June 16, 1948, ch. 481, §6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–76, title III, §§302(b), 303, Sept. 29, 1979, 93 Stat. 584.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–76, §302(b), inserted provisions relating to assignment of Chief Nurse Officer and Chief Pharmacist Officer, and substituted ''eight'' for ''six''.

Subsec. (c). Pub. L. 96–76, §303, designated existing provisions as par. (1), struck out provisions relating to maximum number of special temporary positions, and added par. (2).

1948—Subsec. (b). Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health''.

Subsecs. (c), (d). Act Feb. 28, 1948, added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1979 AMENDMENT

Section 314 of Pub. L. 96–76 provided that: ''The amendments made by sections 303, 304, 305, 306, 307, and 313 [amending this section, sections 207, 209, 210b, and 211 of this title, and sections 201, 415, and 1006 of Title 37, Pay and Allowances of the Uniformed Services] shall take effect on October 1, 1979.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Office of Surgeon General, together with office held by Deputy Surgeon General, Bureau of Medical Services, including office of Chief of Bureau of Medical Services, Bureau of State Services, including office of Chief of Bureau of State Services, and National Institutes of Health, including office of Director of National Institutes of Health, abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare, by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§207. Grades, ranks, and titles of commissioned corps

(a) Grades of commissioned officers

The Surgeon General, during the period of his appointment as such, shall be of the same grade as the Surgeon General of the Army; the Deputy Surgeon General and the Chief Medical Officer of the United States Coast Guard, while assigned as such, shall have the grade corresponding with the grade of major general; and the Chief Dental Officer, while assigned as such, shall have the grade as is prescribed by law for the officer of the Dental Corps selected and appointed as Assistant Surgeon General of the Army. During the period of appointment to the position of Assistant Secretary for Health, a commissioned officer of the Public Health Service shall have the grade corresponding to the grade of General of the Army. Assistant Surgeons General, while assigned as such, shall have the grade corresponding with either the grade of brigadier general or the grade of major general, as may be determined by the Secretary after considering the importance of the duties to be performed: *Provided*, That the number of Assistant Surgeons General having a grade higher than that corresponding to the grade of brigadier general shall at no time exceed one-half of the number of positions created by subsection (b) of section 206 of this title or pursuant to subsection (c) of section 206 of this title. The grades of commissioned officers of the Service shall correspond with grades of officers of the Army as follows:

(1) Officers of the director grade—colonel;

(2) Officers of the senior grade—lieutenant colonel;

(3) Officers of the full grade—major;

(4) Officers of the senior assistant grade—captain;

(5) Officers of the assistant grade—first lieutenant;

(6) Officers of the junior assistant grade—second lieutenant;

(7) Chief warrant officers of (W–4) grade—chief warrant officer (W–4);

(8) Chief warrant officers of (W–3) grade—chief warrant officer (W–3);

(9) Chief warrant officers of (W–2) grade—chief warrant officer (W–2); and

(10) Warrant officers of (W–1) grade—warrant officer (W–1).

(b) Titles of medical officers

The titles of medical officers of the foregoing grades shall be respectively (1) medical director, (2) senior surgeon, (3) surgeon, (4) senior assistant surgeon, (5) assistant surgeon, and (6) junior assistant surgeon. The President is authorized to prescribe titles, appropriate to the several grades, for commissioned officers of the Service other than medical officers. All titles of the officers of the Reserve Corps shall have the suffix ''Reserve''.

(c) Repealed. Pub. L. 96–76, title III, §304(b), Sept. 29, 1979, 93 Stat. 584

(d) Maximum number in grade for each fiscal year

Within the total number of officers of the Regular Corps authorized by the appropriation Act or Acts for each fiscal year to be on active duty, the Secretary shall by regulation prescribe the maximum number of officers authorized to be in each of the grades from the warrant officer (W–1) grade to the director grade, inclusive. Such numbers shall be determined after consid-

ering the anticipated needs of the Service during the fiscal year, the funds available, the number of officers in each grade at the beginning of the fiscal year, and the anticipated appointments, the anticipated promotions based on years of service, and the anticipated retirements during the fiscal year. The number so determined for any grade for a fiscal year may not exceed the number limitation (if any) contained in the appropriation Act or Acts for such year. Such regulations for each fiscal year shall be prescribed as promptly as possible after the appropriation Act fixing the authorized strength of the corps for that year, and shall be subject to amendment only if such authorized strength or such number limitation is thereafter changed. The maxima established by such regulations shall not require (apart from action pursuant to other provisions of this chapter) any officer to be separated from the Service or reduced in grade.

(e) Exception to grade limitations for officers assigned to Department of Defense

In computing the maximum number of commissioned officers of the Public Health Service authorized by law to hold a grade which corresponds to the grade of brigadier general or major general, there may be excluded from such computation not more than three officers who hold such a grade so long as such officers are assigned to duty and are serving in a policy-making position in the Department of Defense.

(f) Exception to maximum number limitations for officers assigned to Department of Defense

In computing the maximum number of commissioned officers of the Public Health Service authorized by law or administrative determination to serve on active duty, there may be excluded from such computation officers who are assigned to duty in the Department of Defense.

(July 1, 1944, ch. 373, title II, § 206, 58 Stat. 684; Feb. 28, 1948, ch. 83, § 4, 62 Stat. 39; Oct. 31, 1951, ch. 653, 65 Stat. 700; July 17, 1952, ch. 931, 66 Stat. 758; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 87–649, § 11(1), Sept. 7, 1962, 76 Stat. 497; Pub. L. 95–215, § 8(b), Dec. 19, 1977, 91 Stat. 1507; Pub. L. 96–76, title III, § 304, Sept. 29, 1979, 93 Stat. 584; Pub. L. 99–117, § 9, Oct. 7, 1985, 99 Stat. 494; Pub. L. 101–93, § 5(p), Aug. 16, 1989, 103 Stat. 614; Pub. L. 101–502, § 5(k)(1), Nov. 3, 1990, 104 Stat. 1289; Pub. L. 104–201, div. A, title V, § 582, Sept. 23, 1996, 110 Stat. 2538.)

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–201 added subsec. (f).

1990—Subsec. (a). Pub. L. 101–502 inserted after first sentence "During the period of appointment to the position of Assistant Secretary for Health, a commissioned officer of the Public Health Service shall have the grade corresponding to the grade of General of the Army."

1989—Subsec. (e). Pub. L. 101–93, which directed the substitution of "the Department of Defense" for "the office of Assistant Secretary of Defense for Health Affairs", was executed by making the substitution for "the office of the Assistant Secretary of Defense for Health Affairs" as the probable intent of Congress.

1985—Subsec. (e). Pub. L. 99–117 added subsec. (e).

1979—Subsec. (a). Pub. L. 96–76, § 304(a), added pars. (7) to (10).

Subsec. (c). Pub. L. 96–76, § 304(b), struck out subsec. (c) setting forth the grade and pay and allowances as director for a commissioned officer below the grade of director assigned to serve as chief of a division.

Subsec. (d). Pub. L. 96–76, § 304(c), substituted "warrant officer (W–1)" for "junior assistant".

1977—Subsec. (b)(6). Pub. L. 95–215 substituted "junior assistant" for "senior assistant".

1962—Subsec. (a). Pub. L. 87–649 struck out provisions which related to pay and allowances.

1952—Subsec. (a). Act July 17, 1952, provided that the Chief Medical Officer of the Coast Guard should have the grade, pay, and allowances of a major general.

1951—Subsec. (a). Act Oct. 31, 1951, provided equality of grade, pay, and allowances between the Chief Dental Officer and the comparable officer in the Army.

1948—Subsec. (a). Act Feb. 28, 1948, increased grade of Deputy Surgeon General from brigadier general to major general and increased grade of certain Assistant Surgeons General from brigadier general to major general as the Federal Security Administrator might determine.

Subsecs. (c), (d). Act Feb. 28, 1948, added subsecs. (c) and (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Dec. 1, 1990, see section 5(k)(3) of Pub. L. 101–502, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Office of Surgeon General, together with office held by Deputy Surgeon General, abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 208. Repealed. Feb. 28, 1948, ch. 83, § 5(a), 62 Stat. 40

Section, act July 1, 1944, ch. 373, title II, § 207, 58 Stat. 685, related to establishment of special temporary provisions. See sections 206(c) and 207(c) of this title.

§ 209. Appointment of personnel

(a) Original appointments to Regular and Reserve Corps; limitation on appointment and call to active duty

(1) Except as provided in subsections (b) and (e) of this section, original appointments to the Regular Corps may be made only in the warrant officer (W–1), chief warrant officer (W–2), chief warrant officer (W–3), chief warrant officer (W–4), junior assistant, assistant, and senior assistant grades and original appointments to a grade above junior assistant shall be made only after passage of an examination, given in accordance with regulations of the President, in one or more of the several branches of medicine, dentistry, hygiene, sanitary engineering, pharmacy, psychology, nursing, or related scientific specialties in the field of public health.

(2) Original appointments to the Reserve Corps may be made to any grade up to and including the director grade but only after passage of an examination given in accordance with regulations of the President. Reserve commissions shall be for an indefinite period and may be terminated at any time, as the President may direct.

(3) No individual who has attained the age of forty-four shall be appointed to the Regular Corps, or called to active duty in the Reserve Corps for a period in excess of one year, unless (A) he has had a number of years of active service (as defined in section 212(d) of this title) equal to the number of years by which his age exceeds forty-four, or (B) the Surgeon General determines that he possesses exceptional qualifications, not readily available elsewhere in the Commissioned Corps of the Public Health Service, for the performance of special duties with the Service, or (C) in the case of an officer of the Reserve Corps, the Commissioned Corps of the Service has been declared by the President to be a military service.

(b) Grade and number of original appointments

(1) Not more than 10 per centum of the original appointments to the Regular Corps authorized to be made during any fiscal year may be made to grades above that of senior assistant, but no such appointment (other than an appointment under section 205 of this title) may be made to a grade above that of director. For the purpose of this subsection the number of original appointments authorized to be made during a fiscal year shall be (1) the excess of the number of officers of the Regular Corps authorized by the appropriation Act or Acts for such year over the number of officers on active duty in the Regular Corps on the first day of such year, plus (2) the number of such officers of the Regular Corps who, during such fiscal year, have been or will be retired upon attainment of age sixty-four or have for any other reason ceased to be on active duty. In determining the number of appointments authorized by this subsection an appointment shall be deemed to be made in the fiscal year in which the nomination is transmitted by the President to the Senate.

(2) In addition to the number of original appointments to the Regular Corps authorized by paragraph (1) to be made to grades above that of senior assistant, original appointments authorized to be made to the Regular Corps in any year may be made to grades above that of senior assistant, but not above that of director, in the case of any individual who—

(A)(i) was on active duty in the Reserve Corps on July 1, 1960, (ii) was on such active duty continuously for not less than one year immediately prior to such date, and (iii) applies for appointment to the Regular Corps prior to July 1, 1962; or

(B) does not come within clause (A)(i) and (ii) but was on active duty in the Reserve Corps continuously for not less than one year immediately prior to his appointment to the Regular Corps and has not served on active duty continuously for a period, occurring after June 30, 1960, of more than three and one-half years prior to applying for such appointment.

(3) No person shall be appointed pursuant to this subsection unless he meets standards established in accordance with regulations of the President.

(c) Issuance of commissions

Commissions evidencing the appointment by the President of officers of the Regular or Reserve Corps shall be issued by the Secretary under the seal of the Department of Health and Human Services.

(d) Date of appointment; credit for service

(1) For purposes of basic pay and for purposes of promotion, any person appointed under subsection (a) of this section to the grade of senior assistant in the Regular Corps, and any person appointed under subsection (b) of this section, shall, except as provided in paragraphs (2) and (3) of this subsection, be considered as having had on the date of appointment the following length of service: Three years if appointed to the senior assistant grade, ten years if appointed to the full grade, seventeen years if appointed to the senior grade, and eighteen years if appointed to the director grade.

(2) For purposes of basic pay, any person appointed under subsection (a) of this section to the grade of senior assistant in the Regular Corps, and any person appointed under subsection (b) of this section, shall, in lieu of the credit provided in paragraph (1) of this subsection, be credited with the service for which he is entitled to credit under any other provision of law if such service exceeds that to which he would be entitled under such paragraph.

(3) For purposes of promotion, any person originally appointed in the Regular Corps to the senior assistant grade or above who has had active service in the Reserve Corps shall be considered as having had on the date of appointment the length of service provided for in paragraph (1) of this subsection, plus whichever of the following is greater: (A) The excess of his total active service in the Reserve Corps (above the grade of junior assistant) over the length of

service provided in such paragraph, to the extent that such excess is on account of service in the Reserve Corps in or above the grade to which he is appointed in the Regular Corps or (B) his active service in the same or any higher grade in the Reserve Corps after the first day on which, under regulations in effect on the date of his appointment to the Regular Corps, he would have had the training and experience necessary for such appointment.

(4) For purposes of promotion, any person whose original appointment is to the assistant grade in the Regular Corps shall be considered as having had on the date of appointment service equal to his total active service in the Reserve Corps in and above the assistant grade.

(e) Reappointment; credit for service

(1) A former officer of the Regular Corps may, if application for appointment is made within two years after the date of the termination of his prior commission in the Regular Corps, be reappointed to the Regular Corps without examination, except as the Surgeon General may otherwise prescribe, and without regard to the numerical limitations of subsection (b) of this section.

(2) Reappointments pursuant to this subsection may be made to the permanent grade held by the former officer at the time of the termination of his prior commission, or to the next higher grade if such officer meets the eligibility requirements prescribed by regulation for original appointment to such higher grade. For purposes of pay, promotion, and seniority in grade, such reappointed officer shall receive the credits for service to which he would be entitled if such appointment were an original appointment, but in no event less than the credits he held at the time his prior commission was terminated, except that if such officer is reappointed to the next higher grade he shall receive no credit for seniority in grade.

(3) No former officer shall be reappointed pursuant to this subsection unless he shall meet such standards as the Secretary may prescribe.

(f) Special consultants

In accordance with regulations, special consultants may be employed to assist and advise in the operations of the Service. Such consultants may be appointed without regard to the civil-service laws.

(g) Designation for fellowships; duties; pay

In accordance with regulations, individual scientists, other than commissioned officers of the Service, may be designated by the Surgeon General to receive fellowships, appointed for duty with the Service without regard to the civil-service laws, may hold their fellowships under conditions prescribed therein, and may be assigned for studies or investigations either in this country or abroad during the terms of their fellowships.

(h) Aliens

Persons who are not citizens may be employed as consultants pursuant to subsection (f) of this section and may be appointed to fellowships pursuant to subsection (g) of this section. Unless otherwise specifically provided, any prohibition in any other Act against the employment of aliens, or against the payment of compensation to them, shall not be applicable in the case of persons employed or appointed pursuant to such subsections.

(i) Civil service appointments by Secretary

The appointment of any officer or employee of the Service made in accordance with the civil-service laws shall be made by the Secretary, and may be made effective as of the date on which such officer or employee enters upon duty.

(July 1, 1944, ch. 373, title II, § 207, formerly § 208, 58 Stat. 685; July 3, 1946, ch. 538, § 4, 60 Stat. 421; Aug. 13, 1946, ch. 958, § 3, 60 Stat. 1049; renumbered § 207 and amended Feb. 28, 1948, ch. 83, § 5(a)–(d), 62 Stat. 40; Oct. 12, 1949, ch. 681, title V, § 521(a), 63 Stat. 834; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Apr. 27, 1956, ch. 211, § 3(a)–(c)(1), 70 Stat. 116; Pub. L. 86–415, §§ 2, 3, Apr. 8, 1960, 74 Stat. 32; Pub. L. 96–76, title III, § 305, Sept. 29, 1979, 93 Stat. 585; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXVII, § 2765(c), Aug. 13, 1981, 95 Stat. 933; Pub. L. 97–414, § 8(a), Jan. 4, 1983, 96 Stat. 2060.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsecs. (f), (g), and (i), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (f), the words ''and their compensation may be fixed without regard to the Classification Act of 1923, as amended'', and in subsec. (g), the words ''and compensated without regard to the Classification Act of 1923, as amended'' were omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While section 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exceptions contained in subsecs. (f) and (g) because of section 1106(b) which provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by section 1106(a). The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, § 8(a), 80 Stat. 632 (of which section 1 revised and enacted Title 5, Government Organization and Employees, into law). Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

In subsec. (h), the references to subsections (f) and (g) of this section were, in the original, references to subsections (e) and (f) and were changed to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 207 of act July 1, 1944, was classified to section 208 of this title, prior to repeal by act Feb. 28, 1948, ch. 83, § 5(a), 62 Stat. 40.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 97–414 inserted ''psychology,'' after ''pharmacy,''.

1981—Subsec. (b)(1). Pub. L. 97–35 inserted provisions relating to exception for an appointment under section 205 of this title.

1979—Subsec. (a)(1). Pub. L. 96–76 inserted applicability to warrant officers and chief warrant officers.

1960—Subsec. (a)(3). Pub. L. 86–415, § 2, added par. (3).

Subsec. (b). Pub. L. 86–415, § 3, designated first, second and third sentences as par. (1), fourth sentence as par. (3), and added par. (2).

1956—Subsec. (a)(1). Act Apr. 27, 1956, § 3(a), inserted reference to subsection (e) of this section.

Subsec. (a)(2). Act Apr. 27, 1956, § 3(c)(1), substituted ''an indefinite period'' for ''a period of not more than five years''.

Subsecs. (e) to (i). Act Apr. 27, 1956, § 3(b), added subsec. (e) and redesignated former subsecs. (e) to (h) as (f) to (i), respectively.

1949—Subsec. (d). Act Oct. 12, 1949, substituted ''base pay'' for ''pay and pay period'' wherever appearing.

1948—Subsec. (a)(1). Act Feb. 28, 1948, struck out ''surgery'' after ''several branches of medicine''.

Subsec. (a)(2). Act Feb. 28, 1948, struck out ''any such commission'' before ''may be terminated'', and ''in his discretion'' after ''at any time''.

Subsec. (b). Act Feb. 28, 1948, provided for grade and number of original appointments.

Subsecs. (c) to (f). Act Feb. 28, 1948, added subsecs. (c) and (d) and redesignated former subsecs. (c) and (d) as (e) and (f), respectively. Former subsecs. (e) and (f) redesignated (g) and (h).

Subsec. (g). Act Feb. 28, 1948, redesignated former subsec. (e) as (g) and changed reference in text from ''subsection (c) of this section'' to ''subsection (e) of this section'', and ''subsection (d) of this section'' to ''subsection (g) of this section''.

Subsec. (h). Act Feb. 28, 1948, redesignated former subsec. (f) as (h).

1946—Subsec. (b). Act July 3, 1946, authorized appointment of additional officers to grades above that of senior assistant but not above that of director, and limits the number so appointed to 20.

Subsec. (b)(2). Act Aug. 13, 1946, inserted ''(A)'' before ''to assist'', substituted ''clause'' for ''paragraphs'', and inserted cl. (B).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 8(a) of Pub. L. 86–415 provided that: ''The amendments made by sections 2 and 5(b) [amending this section and section 210 of this title] shall become effective July 1, 1960.''

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services and Surgeon General, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

PERSONAL SERVICES CONTRACTING

Pub. L. 109–149, title II, § 216, Dec. 30, 2005, 119 Stat. 2861, provided that: ''The Division of Federal Occupational Health hereafter may utilize personal services contracting to employ professional management/administrative and occupational health professionals.''

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. F, title II, § 216, Dec. 8, 2004, 118 Stat. 3141.

Pub. L. 108–199, div. E, title II, § 216, Jan. 23, 2004, 118 Stat. 255.

Pub. L. 108–7, div. G, title II, § 216, Feb. 20, 2003, 117 Stat. 325.

Pub. L. 107–116, title II, § 216, Jan. 10, 2002, 115 Stat. 2201.

Pub. L. 106–554, § 1(a)(1) [title II], Dec. 21, 2000, 114 Stat. 2763, 2763A–13.

Pub. L. 106–113, div. B, § 1000(a)(4) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A–225.

Pub. L. 105–277, div. A, § 101(f) [title II], Oct. 21, 1998, 112 Stat. 2681–337, 2681–347.

Pub. L. 105–78, title II, Nov. 13, 1997, 111 Stat. 1477.

Pub. L. 104–208, div. A, title I, § 101(e) [title II], Sept. 30, 1996, 110 Stat. 3009–233, 3009–242.

Pub. L. 104–134, title I, § 101(d) [title II], Apr. 26, 1996, 110 Stat. 1321–211, 1321–221; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

TERM OF RESERVE COMMISSIONS IN EFFECT ON APRIL 27, 1956

Section 3(c)(2) of act Apr. 27, 1956, provided that: ''The enactment of paragraph (1) of this subsection [amending subsec. (a)(2) of this section] shall not affect the term of the commission of any officer in the Reserve Corps in effect on the date of such enactment [Apr. 27, 1956] unless such officer consents in writing to the extension of his commission for an indefinite period, in which event his commission shall be so extended without the necessity of a new appointment.''

§§ 209a, 209b. Omitted

CODIFICATION

Section 209a, act Dec. 22, 1944, ch. 660, title I, 58 Stat. 856, which related to number of regular commissioned nurses to be appointed, their grades, and their length of service for purposes of pay and pay periods, was not repeated in subsequent appropriation acts.

Section 209b, act Dec. 22, 1944, ch. 660, title I, 58 Stat. 857, which authorized appointment of fifty additional regular commissioned officers of which twenty-four were to be in grades above that of senior assistant, was not repeated in subsequent appropriation acts.

§ 209c. Repealed. Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499

Section, act July 3, 1945, ch. 263, title II, 59 Stat. 370, provided that for purposes of pay and pay period officers appointed to grades above that of senior assistant pursuant to section 209b of this title shall be considered as having had on date of appointment service equal to that of junior officer of grade to which appointed.

§ 209d. Appointment of osteopaths as commissioned officers

Graduates of colleges of osteopathy whose graduates are eligible for licensure to practice

medicine or osteopathy in a majority of the States of the United States, or approved by a body or bodies acceptable to the Secretary, shall be eligible, subject to the other provisions of this Act, for appointment as commissioned medical officers in the Public Health Service.

(Feb. 28, 1948, ch. 83, § 5(b), 62 Stat. 40; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

REFERENCES IN TEXT

This Act, referred to in text, is act Feb. 28, 1948, ch. 83, 62 Stat. 38. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as a part of the Public Health Service Act which comprises this chapter.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 210. Pay and allowances

(a) Commissioned officers of Regular and Reserve Corps; special pay for active duty; incentive special pay for Public Health Service nurses

(1) Commissioned officers of the Regular and Reserve Corps shall be entitled to receive such pay and allowances as are now or may hereafter be authorized by law.

(2) For provisions relating to the receipt of special pay by commissioned officers of the Regular and Reserve Corps while on active duty, see section 303a(b) of title 37.

(b) Purchase of supplies

Commissioned officers on active duty and retired officers entitled to retired pay pursuant to section 211(g)(3), 212, or 213a(a) of this title, shall be permitted to purchase supplies from the Army, Navy, Air Force, and Marine Corps at the same price as is charged officers thereof.

(c) Members of national advisory or review councils or committees

Members of the National Advisory Health Council and members of other national advisory or review councils or committees established under this chapter, including members of the Technical Electronic Product Radiation Safety Standards Committee and the Board of Regents of the National Library of Medicine, but excluding ex officio members, while attending conferences or meetings of their respective councils or committees or while otherwise serving at the request of the Secretary, shall be entitled to receive compensation at rates to be fixed by the Secretary, but at rates not exceeding the daily equivalent of the rate specified at the time of such service for grade GS–18 of the General Schedule, including traveltime; and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(d) Field employees

Field employees of the Service, except those employed on a per diem or fee basis, who render part-time duty and are also subject to call at any time for services not contemplated in their regular part-time employment, may be paid annual compensation for such part-time duty and, in addition, such fees for such other services as the Surgeon General may determine; but in no case shall the total paid to any such employee for any fiscal year exceed the amount of the minimum annual salary rate of the classification grade of the employee.

(e) Additional pay for service at Gillis W. Long Hansen's Disease Center

Any civilian employee of the Service who is employed at the Gillis W. Long Hansen's Disease Center on April 7, 1986, shall be entitled to receive, in addition to any compensation to which the employee may otherwise be entitled and for so long as the employee remains employed at the Center, an amount equal to one-fourth of such compensation.

(f) Allowances included in fellowships

Individuals appointed under section 209(g) of this title shall have included in their fellowships such stipends or allowances, including travel and subsistence expenses, as the Surgeon General may deem necessary to procure qualified fellows.

(g) Positions in professional, scientific and executive service; compensation; appointment

The Secretary is authorized to establish and fix the compensation for, within the Public Health Service, not more than one hundred and seventy-nine positions, of which not less than one hundred and fifteen shall be for the National Institutes of Health, not less than five shall be for the National Institute on Alcohol Abuse and Alcoholism for individuals engaged in research on alcohol abuse and alcoholism, not less than ten shall be for the National Center for Health Services Research, not less than twelve shall be for the National Center for Health Statistics, and not less than seven shall be for the National Center for Health Care Technology, in the professional, scientific, and executive service, each position being established to effectuate those research and development activities of the Public Health Service which require the services of specially qualified scientific, professional and administrative personnel: *Provided*, That the rates of compensation for positions established pursu-

ant to the provisions of this subsection shall not be less than the minimum rate of grade 16 of the General Schedule nor more than (1) the highest rate of grade 18 of the General Schedule, or (2) in the case of two such positions, the rate specified, at the time the service in the position is performed, for level II of the Executive Schedule (5 U.S.C. 5313); and such rates of compensation for all positions included in this proviso shall be subject to the approval of the Director of the Office of Personnel Management. Positions created pursuant to this subsection shall be included in the classified civil service of the United States, but appointments to such positions shall be made without competitive examination upon approval of the proposed appointee's qualifications by the Director of the Office of Personnel Management or such officers or agents as it may designate for this purpose.

(July 1, 1944, ch. 373, title II, §208, formerly §209, 58 Stat. 686; July 3, 1946, ch. 538, §5(a), 60 Stat. 422; renumbered §208 and amended Feb. 28, 1948, ch. 83, §5(a), (g), (h), 62 Stat. 40; June 16, 1948, ch. 481, §4(d), 62 Stat. 467; June 24, 1948, ch. 621, §4(d), 62 Stat. 601; Oct. 12, 1949, ch. 681, title V, §521(b), 63 Stat. 834; Aug. 9, 1950, ch. 654, §1, 64 Stat. 426; Aug. 15, 1950, ch. 714, §§3(e), 4(b), 64 Stat. 447; 1953 Reorg. Plan No. 1, §§5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1955, ch. 437, title II, §201, 69 Stat. 407; June 29, 1956, ch. 477, title II, §201, 70 Stat. 430; July 31, 1956, ch. 804, title I, §117(b), 70 Stat. 741; Pub. L. 85–462, §12(e), June 20, 1958, 72 Stat. 214; Pub. L. 85–929, §9, Sept. 6, 1958, 72 Stat. 1789; Pub. L. 86–415, §5(b), Apr. 8, 1960, 74 Stat. 34; Pub. L. 86–703, title II, §201, Sept. 2, 1960, 74 Stat. 764; Pub. L. 87–649, §§11(3), 14b, Sept. 7, 1962, 76 Stat. 497, 499; Pub. L. 87–793, §1001(d), Oct. 11, 1962, 76 Stat. 864; Pub. L. 88–426, title III, §305(1), Aug. 14, 1964, 78 Stat. 422; Pub. L. 90–574, title V, §501, Oct. 15, 1968, 82 Stat. 1012; Pub. L. 91–515, title VI, §601(b)(1), Oct. 30, 1970, 84 Stat. 1310; Pub. L. 92–157, title III, §301(a), Nov. 18, 1971, 85 Stat. 463; Pub. L. 95–83, title III, §312, Aug. 1, 1977, 91 Stat. 398; Pub. L. 95–623, §11(a), Nov. 9, 1978, 92 Stat. 3455; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 96–32, §7(g), July 10, 1979, 93 Stat. 84; Pub. L. 96–398, title VIII, §805, Oct. 7, 1980, 94 Stat. 1608; Pub. L. 99–117, §3(a), Oct. 7, 1985, 99 Stat. 491; Pub. L. 99–272, title XVII, §17002(a)(1), (b), Apr. 7, 1986, 100 Stat. 359; Pub. L. 100–607, title VII, §706, Nov. 4, 1988, 102 Stat. 3159; Pub. L. 106–398, §1 [[div. A], title VI, §634(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–159.)

REFERENCES IN TEXT

Classified civil service, referred to in subsec. (g), as meaning ''competitive service'', see section 2102(c) of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 208 of act July 1, 1944, was renumbered section 207 and is classified to section 209 of this title.

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–398 added par. (2) and struck out former par. (2) which read as follows:

''(2)(A) Except as provided in subparagraph (B), commissioned medical and dental officers in the Regular and Reserve Corps shall while on active duty be paid special pay in the same amounts as, and under the same terms and conditions which apply to, the special pay now or hereafter paid to commissioned medical and dental officers of the Armed Forces under chapter 5 of title 37.

''(B) A commissioned medical officer in the Regular or Reserve Corps (other than an officer serving in the Indian Health Service) may not receive additional special pay under section 302(a)(4) of title 37 for any period during which the officer is providing obligated service under (i) section 254m of this title, (ii) section 234(e) of this title (as such section was in effect prior to October 1, 1977), or (iii) section 294u of this title (as such section was in effect between October 1, 1977, and August 13, 1981).''

Subsec. (a)(3). Pub. L. 106–398, §1 [[div. A], title VI, §634(b)(1)], struck out par. (3) which read as follows: ''Commissioned nurse officers in the Regular and Reserve Corps shall, while in active duty, be paid incentive special pay in the same amounts as, and under the same terms and conditions which apply to, the incentive special pay now or hereafter paid to commissioned nurse officers of the Armed Forces under chapter 5 of title 37.''

1988—Subsec. (a)(3). Pub. L. 100–607 added par. (3).

1986—Subsec. (a)(2)(B). Pub. L. 99–272, §17002(a)(1), inserted ''(other than an officer serving in the Indian Health Service)''.

Subsec. (e). Pub. L. 99–272, §17002(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Whenever any noncommissioned officer or other employee of the Service is assigned for duty which the Surgeon General finds requires intimate contact with persons afflicted with leprosy, he may be entitled to receive, as provided by regulations of the President, in addition to any pay or compensation to which he may otherwise be entitled, not more than one-half of such pay or compensation.''

1985—Subsec. (a)(2). Pub. L. 99–117 substituted ''(A) Except as provided in subparagraph (B), commissioned'' for ''Commissioned'', and added subpar. (B).

1980—Subsec. (a). Pub. L. 96–398 redesignated existing provisions as par. (1) and added par. (2).

1979—Subsec. (c). Pub. L. 96–32 substituted ''section 5703 of title 5'' for ''section 5703(b) of title 5''.

1978—Subsec. (g). Pub. L. 95–623 increased limitation on establishment of positions to one hundred and seventy-nine from one hundred and fifty-five and required minimum number of positions for certain National Centers: ten, National Center for Health Services Research; twelve, National Center for Health Statistics; and seven, National Center for Health Care Technology.

1977—Subsec. (g). Pub. L. 95–83 increased limitation on establishment of positions to one hundred and fifty-five from one hundred and fifty and required not less than five for the National Institute on Alcohol Abuse and Alcoholism for individuals engaged in research on alcohol abuse and alcoholism.

1971—Subsec. (f). Pub. L. 92–157, which directed that ''subsection (g)'' be substituted for ''section 209(f)'', was executed by substituting ''section 209(g) of this title'' for ''section 209(f) of this title'', to reflect the probable intent of Congress.

1970—Subsec. (c). Pub. L. 91–515 extended coverage to encompass members of other national review councils or national advisory or review committees established under this chapter, including members of the Technical Electronic Product Radiation Safety Standards Committee and the Board of Regents of the National Library of Medicine, authorized service to be at the request of the Secretary in place of the Surgeon General, and revised rates of compensation and travel allowances.

1968—Subsec. (g). Pub. L. 90–574 inserted ''(1)'' after ''nor more than'' and added cl. (2).

1962—Subsec. (b). Pub. L. 87–649 struck out sentence which permitted commissioned officers on active duty to make allotments from their pay, and substituted ''Commissioned officers on active duty and retired officers'' for ''Such officers, and retired officers.'' See section 704 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (g). Pub. L. 87–793 substituted provisions requiring the rates of compensation to be not less than the minimum rate of grade 16 nor more than the highest rate of grade 18 of the General Schedule, for provisions which prescribed annual rates of compensation of not less than $12,500 nor more than $19,000.

1960—Subsec. (b). Pub. L. 86–415 authorized retired officers entitled to retired pay pursuant to section 211(g)(3), 212, or 213a(a) of this title, to purchase supplies, and included the purchase of supplies from the Air Force.

Subsec. (g). Pub. L. 86–703 substituted ''one hundred and fifty'' for ''eighty-five'' and ''one hundred and fifteen'' for ''seventy-three''.

1958—Subsec. (g). Pub. L. 85–929 substituted ''in the professional, scientific, and executive service'' for ''in the professional and scientific service'', and substituted ''of specially qualified scientific, professional, and administrative personnel'' for ''of specially qualified scientific or professional personnel''.

Pub. L. 85–462, substituted ''eighty-five positions, of which not less than seventy-three shall be for the National Institutes of Health'' for ''sixty positions''.

1956—Subsec. (g). Act June 29, 1956, substituted ''$20,000'' for ''$15,000''.

1955—Subsec. (g). Act Aug. 1, 1955, increased from thirty to sixty the number of positions which the Administrator may establish in the professional and scientific service.

1950—Subsec. (b). Act Aug. 9, 1950, struck out ''and may be granted leaves of absence without any deduction from their pay'' after ''allotments from their pay'' in first sentence.

Subsec. (c). Act Aug. 15, 1950, § 3(e), made provisions applicable to members of all national advisory councils.

Subsec. (g). Act Aug. 15, 1950, § 4(b), added subsec. (g).

1949—Subsec. (a). Act Oct. 12, 1949, made section applicable to Reserve officers.

Subsec. (b). Act Oct. 12, 1949, redesignated subsec. (c) as (b) and repealed former subsec. (b) relating to Reserve officers.

Subsec. (c). Act Oct. 12, 1949, redesignated subsec. (e) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Act Oct. 12, 1949, redesignated subsec. (f) as (d) and repealed former subsec. (d) relating to female commissioned officers and defining ''dependent''.

Subsec. (e). Act Oct. 12, 1949, redesignated subsec. (g) as (e) and struck out references to allowances. Former subsec. (e) redesignated (c).

Subsec. (f). Act Oct. 12, 1949, redesignated subsec. (h) as (f). Former subsec. (f) redesignated (d).

Subsecs. (g), (h). Act Oct. 12, 1949, redesignated subsecs. (g) and (h) as (e) and (f), respectively.

1948—Subsec. (b). Act Feb. 28, 1948, inserted ''except as otherwise provided by law''.

Subsec. (e). Acts June 16, 1948, § 4(d), and June 24, 1948, § 4(d), made section applicable to the National Advisory Heart Council and increased the per diem of all members from $25 to $50, and made section applicable to the National Advisory Dental Research Council, respectively.

Subsec. (h). Act Feb. 28, 1948, substituted ''section 209(f) of this title'' for ''section 209(d) of this title''.

1946—Subsec. (e). Act July 3, 1946, inserted ''members of the National Advisory Mental Health Council''.

CHANGE OF NAME

Reference to the Gillis W. Long Hansen's Disease Center deemed to refer to the National Hansen's Disease Programs Center, pursuant to section 2 of Pub. L. 107–220, set out as a note under section 247e of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 17002(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as of October 7, 1985.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 3(b) of Pub. L. 99–117 provided that: ''The amendment made by subsection (a) [amending this section] shall not diminish any benefits under an agreement entered into before the date of enactment of this Act [Oct. 7, 1985] by a commissioned medical officer in the Regular Corps or the Reserve Corps of the Public Health Service.''

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–793 effective first day of first pay period which begins on or after Oct. 11, 1962, see section 1008 of Pub. L. 87–793.

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–415 effective July 1, 1960, see section 8(a) of Pub. L. 86–415, set out as a note under section 209 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by Pub. L. 85–929 effective Sept. 6, 1958, see section 6(a) of Pub. L. 85–929, set out as a note under section 342 of Title 21, Food and Drugs.

Amendment by Pub. L. 85–462 effective June 20, 1958, see section 17(b) of Pub. L. 85–462.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 31, 1956, effective at beginning of first pay period commencing after June 30, 1956, see section 120 of act July 31, 1956.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 3(a) of act Aug. 9, 1950, provided that: ''Sections 1 and 2 of this Act [amending this section and enacting section 210–1 of this title] shall become effective on July 1, 1950.''

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

REPEALS

Act July 31, 1956, ch. 804, title I, § 117(b), 70 Stat. 741, cited as a credit to this section, which amended subsec. (g) of this section to increase the salary rates, was repealed by Pub. L. 88–426, title III, § 305(1), Aug. 14, 1964, 78 Stat. 422.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (g) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by

section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, eff. Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

MAXIMUM PAY AND ALLOWANCES FOR SPECIFIC FISCAL YEARS

Pub. L. 100–436, title II, §208, Sept. 20, 1988, 102 Stat. 1699, provided in part that: ''No funds appropriated for the fiscal year ending September 30, 1989, by this or any other Act, may be used to pay basic pay, special pays, basic allowances for subsistence and basic allowances for quarters of the commissioned corps of the Public Health Service described in section 204 of title 42, United States Code, at a level that exceeds 110 percent of the Executive Level I [5 U.S.C. 5312] annual rate of basic pay''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100–202, §101(h) [title II, §208], Dec. 22, 1987, 101 Stat. 1329–256, 1329–274.

Pub. L. 99–500, §101(i) [H.R. 5233, title II, §208], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, §101(i) [H.R. 5233, title II, §208], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, §208, Dec. 12, 1985, 99 Stat. 1119.

Pub. L. 98–619, title II, §208, Nov. 8, 1984, 98 Stat. 3321.

Pub. L. 98–139, title II, §208, Oct. 31, 1983, 97 Stat. 888.

NURSES AND ALLIED HEALTH PROFESSIONALS

Pub. L. 100–436, title II, §214, Sept. 20, 1988, 102 Stat. 1700, provided that: ''Funds made available for fiscal year 1989 and hereafter to the National Institutes of Health shall be available for payment of nurses and allied health professionals using pay, schedule options, benefits, and other authorities as provided for the nurses of the Veterans' Administration under 38 U.S.C. chapter 73.''

§210–1. Annual and sick leave

(a) Regulations

In accordance with regulations of the President, commissioned officers of the Regular Corps and officers of the Reserve Corps on active duty may be granted annual leave and sick leave without any deductions from their pay and allowances: *Provided*, That such regulations shall not authorize annual leave to be accumulated in excess of sixty days.

(b) Repealed. Pub. L. 87–649, §14b, Sept. 7, 1962, 76 Stat. 499

(c) Repealed. Pub. L. 96–76, title III, §311, Sept. 29, 1979, 93 Stat. 586

(d) Definitions

For purposes of this section the term ''accumulated annual leave'' means unused accrued annual leave carried forward from one leave year into a succeeding leave year, and the term ''accrued annual leave'' means the annual leave accruing to an officer during one leave year.

(July 1, 1944, ch. 373, title II, §219, as added Aug. 9, 1950, ch. 654, §2, 64 Stat. 426; amended Pub. L. 87–649, §14b, Sept. 7, 1962, 76 Stat. 499; Pub. L. 96–76, title III, §311, Sept. 29, 1979, 93 Stat. 586.)

PARTIAL REPEAL OF SUBSECTION (d)

Subsection (d) of this section was repealed by Pub. L. 87–649, §14b, Sept. 7, 1962, 76 Stat. 499, insofar as it was applicable to the last sentence of subsection (c) of this section which authorized a lump-sum payment to an officer credited with unused accumulated and accrued annual leave. See section 501 of Title 37, Pay and Allowances of the Uniformed Services.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–76, repealed subsec. (c) which set forth limitations on granting of annual leave under subsec. (a) of this section.

1962—Subsec. (b). Pub. L. 87–649 repealed subsec. (b) which required forfeiture of all pay and allowances of an officer absent without leave. See section 503 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (c). Pub. L. 87–649 repealed last sentence which authorized a lump-sum payment for unused accumulated and accrued annual leave on date of separation, retirement, or release from active duty. See section 501 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective July 1, 1950, see section 3(a) of act Aug. 9, 1950, set out as an Effective Date of 1950 Amendment note under section 210 of this title.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, of Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

COMPENSATION FOR PRIOR ACCUMULATED AND ACCRUED LEAVE; LIMITATION; INAPPLICABLE TO OFFICERS ON TERMINAL LEAVE PRIOR TO JULY 1, 1950

Section 3(b), (c) of act Aug. 9, 1950, provided that any officer credited with more than sixty days of accumu-

lated and accrued leave on June 30, 1949, be compensated for so much of such leave as exceeds sixty days, that such compensation be due and payable on July 1, 1950, and that the provisions of this Act not apply to any officer on terminal leave preceding separation, retirement, or release from active duty.

AVAILABILITY OF FUNDS

Section 4 of act Aug. 9, 1950, provided for the availability of funds for payment of compensation for prior accumulated and accrued leave for any officer under section 3 of this Act.

LEAVE REGULATIONS

Section 5 of act Aug. 9, 1950, provided that: ''Except insofar as the provisions of this Act [enacting this section, amending section 210 of this title, and enacting provisions set out as notes under this section and section 210 of this title] are inconsistent therewith, leave regulations adopted prior to the enactment of this Act [Aug. 9, 1950], pursuant to the Public Health Service Act [this chapter], shall remain in effect until repealed, amended, or superseded.''

§ 210a. Repealed. Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499

Section, act Feb. 28, 1948, ch. 83, § 5(e), (f), 62 Stat. 41, related to service credit for commissioned officers on active duty Feb. 28, 1948, and to service credit for pay and promotion purposes of certain appointees during period Feb. 28, 1948, to July 1, 1948.

§ 210b. Professional categories

(a) Division of corps; basis of categories

For the purpose of establishing eligibility of officers of the Regular Corps for promotions, the Surgeon General shall by regulation divide the corps into professional categories. Each category shall, as far as practicable, be based upon one of the subjects of examination set forth in section 209(a)(1) of this title or upon a subdivision of such subject, and the categories shall be designed to group officers by fields of training in such manner that officers in any one grade in any one category will be available for similar duty in the discharge of the several functions of the Service.

(b) Assignment of officers

Each officer of the Regular Corps on active duty shall, on the basis of his training and experience, be assigned by the Surgeon General to one of the categories established by regulations under subsection (a) of this section. Except upon amendment of such regulations, no assignment so made shall be changed unless the Surgeon General finds (1) that the original assignment was erroneous, or (2) that the officer is equally well qualified to serve in another category to which he has requested to be transferred, and that such transfer is in the interests of the Service.

(c) Maximum number of officers in each category

Within the limits fixed by the Secretary in regulations under section 207(d) of this title for any fiscal year, the Surgeon General shall determine for each category in the Regular Corps the maximum number of officers authorized to be in each of the grades from the warrant officer (W–1) grade to the director grade, inclusive.

(d) Vacancies in grade for purposes of promotion

The excess of the number so fixed for any grade in any category over the number of officers of the Regular Corps on active duty in such grade in such category (including in the case of the director grade, officers holding such grade in accordance with section 207(c) of this title) shall for the purpose of promotions constitute vacancies in such grade in such category. For purposes of this subsection, an officer who has been temporarily promoted or who is temporarily holding the grade of director in accordance with section 207(c) of this title shall be deemed to hold the grade to which so promoted or which he is temporarily holding; but while he holds such promotion or grade, and while any officer is temporarily assigned to a position pursuant to section 206(c) of this title, the number fixed under subsection (c) of this section for the grade of his permanent rank shall be reduced by one.

(e) Absence of vacancy in grade as affecting promotion

The absence of a vacancy in a grade in a category shall not prevent an appointment to such grade pursuant to section 209 of this title, a permanent length of service promotion, or the recall of a retired officer to active duty; but the making of such an appointment, promotion, or recall shall be deemed to fill a vacancy if one exists.

(f) Vacancy in grade as affecting maximum number for each category

Whenever a vacancy exists in any grade in a category the Surgeon General may increase by one the number fixed by him under subsection (c) of this section for the next lower grade in the same category, without regard to the numbers fixed in regulations under section 207(d) of this title; and in that event the vacancy in the higher grade shall not be filled except by a permanent promotion, and upon the making of such promotion the number for the next lower grade shall be reduced by one.

(July 1, 1944, ch. 373, title II, § 209, as added Feb. 28, 1948, ch. 83, § 5(i), 62 Stat. 41; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–76, title III, § 306, Sept. 29, 1979, 93 Stat. 585.)

PRIOR PROVISIONS

A prior section 209 of act July 1, 1944, was renumbered section 208 and is classified to section 210 of this title.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–76 substituted ''warrant officer (W–1)'' for ''assistant''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare

and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§211. Promotion of commissioned officers

(a) Permanent or temporary promotions; examination

Promotions of officers of the Regular Corps to any grade up to and including the director grade shall be either permanent promotions based on length of service, other permanent promotions to fill vacancies, or temporary promotions. Permanent promotions shall be made by the President, by and with the advice and consent of the Senate, and temporary promotions shall be made by the President. Each permanent promotion shall be to the next higher grade, and shall be made only after examination given in accordance with regulations of the President.

(b) Promotion to certain grades only to fill vacancies; regulations; "restricted grade" defined

The President may by regulation provide that in a specified professional category permanent promotions to the senior grade, or to both the full grade and the senior grade, shall be made only if there are vacancies in such grade. A grade in any category with respect to which such regulations have been issued is referred to in this section as a ''restricted grade''.

(c) Examinations

Examinations to determine qualification for permanent promotions may be either noncompetitive or competitive, as the Surgeon General shall in each case determine; except that examinations for promotions to the assistant or senior assistant grade shall in all cases be noncompetitive. The officers to be examined shall be selected by the Surgeon General from the professional category, and in the order of seniority in the grade, from which promotion is to be recommended. In the case of a competitive examination the Surgeon General shall determine in advance of the examination the number (which may be one or more) of officers who, after passing the examination, will be recommended to the President for promotion; but if the examination is one for promotions based on length of service, or is one for promotions to fill vacancies other than vacancies in the director grade or in a restricted grade, such number shall not be less than 80 per centum of the number of officers to be examined.

(d) Permanent promotions to qualified officers on length of service

Officers of the Regular Corps, found pursuant to subsection (c) of this section to be qualified, shall be given permanent promotions based on length of service, as follows:

(1) Officers in the warrant officer (W–1) grade, chief warrant officer (W–2) grade, chief warrant officer (W–3) grade, chief warrant officer (W–4) grade, and junior assistant grade shall be promoted at such times as may be prescribed in regulations of the President.

(2) Officers with permanent rank in the assistant grade, the senior assistant grade, and the full grade shall (except as provided in regulations under subsection (b) of this section) be promoted after completion of three, ten, and seventeen years, respectively, of service in grades above the junior assistant grade; and such promotions, when made, shall be effective, for purposes of pay and seniority in grade, as of the day following the completion of such years of service. An officer with permanent rank in the assistant, senior assistant, or full grade who has not completed such years of service shall be promoted at the same time, and his promotion shall be effective as of the same day, as any officer junior to him in the same grade in the same professional category who is promoted under this paragraph.

(e) Promotion of professional category officers to fill certain vacancies

Officers in a professional category of the Regular Corps, found pursuant to subsection (c) of this section to be qualified, may be given permanent promotions to fill any or all vacancies in such category in the senior assistant grade, the full grade, the senior grade, or the director grade; but no officer who has not had one year of service with permanent or temporary rank in the next lower grade shall be promoted to any restricted grade or to the director grade.

(f) Reexamination upon failure of promotion; effective date of promotion

If an officer who has completed the years of service required for promotion to a grade under paragraph (2) of subsection (d) of this section fails to receive such promotion, he shall (unless he has already been twice examined for promotion to such grade) be once reexamined for promotion to such grade. If he is thereupon promoted (otherwise than under subsection (e) of this section), the effective date of such promotion shall be one year later than it would have been but for such failure. Upon the effective date of any permanent promotion of such officer to such grade, he shall be considered as having had only the length of service required for such promotion which he previously failed to receive.

(g) Separation from service upon failure of promotion

If, for reasons other than physical disability, an officer of the Regular Corps in the warrant officer (W–1) grade or junior assistant grade is found pursuant to subsection (c) of this section not to be qualified for promotion he shall be separated from the Service. If, for reasons other than physical disability, an officer of the Regular Corps in the chief warrant officer (W–2), chief warrant officer (W–3), assistant, senior assistant, or full grade, after having been twice examined for promotion (other than promotion to a restricted grade), fails to be promoted—

(1) if in the chief warrant officer (W–2) or assistant grade he shall be separated from the Service and paid six months' basic pay and allowances;

(2) if in the chief warrant officer (W–3) or senior assistant grade he shall be separated from the Service and paid one year's basic pay and allowances;

(3) if in the full grade he shall be considered as not in line for promotion and shall, at such time thereafter as the Surgeon General may determine, be retired from the Service with retired pay (unless he is entitled to a greater amount by reason of another provision of law)—

(A) in the case of an officer who first became a member of a uniformed service before September 8, 1980, at the rate of 2½ percent of the retired pay base determined under section 1406(h) of title 10 for each year, not in excess of 30, of his active commissioned service in the Service; or

(B) in the case of an officer who first became a member of a uniformed service on or after September 8, 1980, at the rate determined by multiplying—

(i) the retired pay base determined under section 1407 of title 10; by

(ii) the retired pay multiplier determined under section 1409 of such title for the number of years of his active commissioned service in the Service.

(h) Separation from service upon refusal to stand examination

If an officer of the Regular Corps, eligible to take an examination for promotion, refuses to take such examination, he may be separated from the Service in accordance with regulations of the President.

(i) Review of record; separation from service

At the end of his first three years of service, the record of each officer of the Regular Corps originally appointed to the senior assistant grade or above, shall be reviewed in accordance with regulations of the President and, if found not qualified for further service, he shall be separated from the Service and paid six months' pay and allowances.

(j) Determination of order of seniority

(1) The order of seniority of officers in a grade in the Regular Corps shall be determined, subject to the provisions of paragraph (2) of this subsection, by the relative length of time spent in active service after the effective date of each such officer's original appointment or permanent promotion to that grade. When permanent promotions of two or more officers to the same grade are effective on the same day, their relative seniority shall be the same as it was in the grade from which promoted. In all other cases of original appointments or permanent promotions (or both) to the same grade effective on the same day, relative seniority shall be determined in accordance with regulations of the President.

(2) In the case of an officer originally appointed in the Regular Corps to the grade of assistant or above, his seniority in the grade to which appointed shall be determined after inclusion, as service in such grade, of any active service in such grade or in any higher grade in the Reserve Corps, but (if the appointment is to the grade of senior assistant or above) only to the extent of whichever of the following is greater: (A) His active service in such grade or any higher grade in the Reserve Corps after the first day on which, under regulations in effect on the date of his appointment to the Regular Corps, he had the training and experience necessary for such appointment, or (B) the excess of his total active service in the Reserve Corps (above the grade of junior assistant) over three years if his appointment in the Regular Corps is to the senior assistant grade, over ten years if the appointment is to the full grade, or over seventeen years if the appointment is to the senior grade.

(k) Temporary promotions; fill vacancy in higher grade; war or national emergency; selection of officers; termination of appointment

Any commissioned officer of the Regular Corps in any grade in any professional category may be recommended to the President for temporary promotion to fill a vacancy in any higher grade in such category, up to and including the director grade. In time of war, or of national emergency proclaimed by the President, any commissioned officer of the Regular Corps in any grade in any professional category may be recommended to the President for promotion to any higher grade in such category, up to and including the director grade, whether or not a vacancy exists in such grade. The selection of officers to be recommended for temporary promotions shall be made in accordance with regulations of the President. Promotion of an officer recommended pursuant to this subsection may be made without regard to length of service, without examination, and without vacating his permanent appointment, and shall carry with it the pay and allowances of the grade to which promoted. Such promotions may be terminated at any time, as may be directed by the President.

***(l)* Determination of requirements of Service by Secretary; assignment of Reserve Officers to professional categories; temporary promotions; termination of temporary promotions**

Whenever the number of officers of the Regular Corps on active duty, plus the number of officers of the Reserve Corps who have been on active duty for thirty days or more, exceeds the authorized strength of the Regular Corps, the Secretary shall determine the requirements of the Service in each grade in each category, based upon the total number of officers so serving on active duty and the tasks being performed by the Service; and the Surgeon General shall thereupon assign each officer of the Reserve Corps on active duty to a professional category. If the Secretary finds that the number of officers fixed under section 210b(c) of this title for any grade and category (or the number of officers, including officers of the Reserve Corps, on active duty in such grade in such category, if such number is greater than the number fixed under section 210b(c) of this title) is insufficient to meet such requirements of the Service, officers of either the Regular Corps or the Reserve Corps may be recommended for temporary promotion to such grade in such category. Any such promotion may be terminated at any time, as may be directed by the President.

(m) Acceptance of promotion; oath and affidavit

Any officer of the Regular Corps, or any officer of the Reserve Corps on active duty, who is promoted to a higher grade shall, unless he expressly declines such promotion, be deemed for all purposes to have accepted such promotion; and shall not be required to renew his oath of office, or to execute a new affidavit as required by section 3332 of title 5.

(July 1, 1944, ch. 373, title II, § 210, 58 Stat. 687; Feb. 28, 1948, ch. 83, § 6(a), 62 Stat. 42; Oct. 12, 1949, ch. 681, title V, § 521(c), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Apr. 27, 1956, ch. 211, § 4(a), 70 Stat. 117; Pub. L. 86–415, § 5(c), Apr. 8, 1960, 74 Stat. 34; Pub. L. 87–649, § 11(2), Sept. 7, 1962, 76 Stat. 497; Pub. L. 96–76, title III, § 307, Sept. 29, 1979, 93 Stat. 585; Pub. L. 96–342, title VIII, § 813(h)(1), Sept. 8, 1980, 94 Stat. 1110; Pub. L. 99–348, title II, § 207(a), July 1, 1986, 100 Stat. 701.)

CODIFICATION

In subsec. (m), ''section 3332 of title 5'' substituted for ''the Act of December 11, 1926, as amended (5 U.S.C. 21a)'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1986—Subsec. (g)(3). Pub. L. 99–348 added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) in the case of an officer who first became a member of a uniformed service before September 8, 1980, at the rate of 2½ per centum of basic pay of the permanent grade held by him at the time of retirement for each year, not in excess of thirty, of his active commissioned service in the Service; or

''(B) in the case of an officer who first became a member of a uniformed service on or after September 8, 1980, 2½ per centum of the monthly retired pay base computed under section 1407(h) of title 10, for each year, not in excess of thirty, of his active commissioned service in the Service.''

1980—Subsec. (g)(3). Pub. L. 96–342 revised provisions into subpars. (A) and (B) and substituted provisions respecting computation of retired pay for officers who became members of the uniformed service before Sept. 8, 1980, and for officers who became members of the uniformed service on or after Sept. 8, 1980, for provisions respecting computation of retired pay for officers.

1979—Subsec. (d)(1). Pub. L. 96–76, § 307(a), inserted applicability to warrant officers and chief warrant officers.

Subsec. (g). Pub. L. 96–76, § 307(b), in provision before par. (1), inserted applicability to separation from Service of warrant officers and chief warrant officers subsequent to one examination or two examinations, respectively, in par. (1), inserted applicability to a chief warrant officer (W–2), and in par. (2), inserted applicability to a chief warrant officer (W–3).

1962—Subsec. (g). Pub. L. 87–649 substituted ''basic pay'' for ''pay'' in cls. (1) and (2).

1960—Subsec. (g). Pub. L. 86–415 substituted ''of the basic pay of the permanent grade held by him at the time of retirement for each year'' for ''of his active duty pay at the time of retirement for each complete year'' in cl. (3).

1956—Subsec. (d)(2). Act Apr. 27, 1956, struck out ''pay period and for purposes of'' before ''seniority in grade''.

1949—Subsec. (g). Act Oct. 12, 1949, struck out ''incurred in line of duty'' wherever appearing.

1948—Act Feb. 28, 1948, amended subsecs. (a) to (c) generally and added subsecs. (d) to (m).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 211a. Repealed. Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936

Section, act July 1, 1944, ch. 373, title XIII, § 1311, formerly title VII, § 711, as added Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; renumbered title VIII, § 811, July 30, 1956, ch. 779, § 3(b), 70 Stat. 721; renumbered title IX, § 911, Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; renumbered title X, § 1011, Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; renumbered title XI, § 1111, Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; renumbered title XII, § 1211, May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; renumbered title XIII, § 1311, Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, provided for appointment to higher grades of Public Health Service officers for mental health and hospital construction activities.

§ 211b. Repealed. Pub. L. 94–412, title V, § 501(f), Sept. 14, 1976, 90 Stat. 1258

Section, act Feb. 28, 1948, ch. 83, § 6(b)–(f), 62 Stat. 45, dealt with promotion of Public Health Service officers.

SAVINGS PROVISION

Repeal not to affect any action taken or proceeding pending at the time of repeal, see section 501(h) of Pub. L. 94–412, set out as a note under section 1601 of Title 50, War and National Defense.

§ 211c. Promotion credit for medical officers in assistant grade

Any medical officer of the Regular Corps of the Public Health Service who—

(1)(A) was appointed to the assistant grade in the Regular Corps and whose service in such Corps has been continuous from the date of appointment or (B) may hereafter be appointed to the assistant grade in the Regular Corps, and

(2) had or will have completed a medical internship on the date of such appointment,

shall be credited with one year for purposes of promotion and seniority in grade, except that no such credit shall be authorized if the officer has received or will receive similar credit for his internship under other provisions of law. In the case of an officer on active duty on the effective date of this section who is entitled to the credit authorized herein, the one year shall be added to the promotion and seniority-in-grade credits with which he is credited on such date.

(July 1, 1944, ch. 373, title II, § 220, as added Apr. 30, 1956, ch. 223, § 3, 70 Stat. 121.)

REFERENCES IN TEXT

For ''the effective date of this section'', referred to in text, see section 7 of act Apr. 30, 1956, which provided in part that this section shall become effective the first day of the month following the day of enactment, Apr. 30, 1956.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 212. Retirement of commissioned officers

(a) Age; voluntariness; length of service; computation of retired pay

(1) A commissioned officer of the Service shall, if he applies for retirement, be retired on or after the first day of the month following the month in which he attains the age of sixty-four years. This paragraph does not permit or require the involuntary retirement of any individual because of the age of the individual.

(2) A commissioned officer of the Service may be retired by the Secretary, and shall be retired if he applies for retirement, on the first day of any month after completion of thirty years of active service.

(3) Any commissioned officer of the Service who has had less than thirty years of active service may be retired by the Secretary, with or without application by the officer, on the first day of any month after completion of twenty or more years of active service of which not less than ten are years of active commissioned service in any of the uniformed services.

(4) Except as provided in paragraph (6), a commissioned officer retired pursuant to paragraph (1), (2), or (3) who was (in the case of an officer in the Reserve Corps) on active duty with the Service on the day preceding such retirement shall be entitled to receive retired pay at the rate of 2½ per centum of the basic pay of the highest grade held by him as such officer and in which, in the case of a temporary promotion to such grade, he has performed active duty for not less than six months, (A) for each year of active service, or (B) if it results in higher retired pay, for each of the following years:

(i) his years of active service (determined without regard to subsection (d) of this section) as a member of a uniformed service; plus

(ii) in the case of a medical or dental officer, four years and, in the case of a medical officer, who has completed one year of medical internship or the equivalent thereof, one additional year, the four years and the one year to be reduced by the period of active service performed during such officer's attendance at medical school or dental school or during his medical internship; plus

(iii) the number of years of service with which he was entitled to be credited for purposes of basic pay on May 31, 1958, or (if higher) on any date prior thereto, reduced by any such year included under clause (i) and further reduced by any such year with which he was entitled to be credited under paragraphs (7) and (8) of section 205(a) of title 37 on any date before June 1, 1958;

except that (C) in the case of any officer whose retired pay, so computed, is less than 50 per centum of such basic pay, who retires pursuant to paragraph (1) of this subsection, who has not less than twelve whole years of active service (computed without the application of subsection (e) of this section), and who does not use, for purposes of a retirement annuity under subchapter III of chapter 83 of title 5, any service which is also creditable in computing his retired pay from the Service, it shall, instead, be 50 per centum of such pay, and (D) the retired pay of an officer shall in no case be more than 75 per centum of such basic pay.

(5) With the approval of the President, a commissioned officer whose service as Surgeon General, Deputy Surgeon General, or Assistant Surgeon General has totaled four years or more and who has had not less than twenty-five years of active service in the Service may retire voluntarily at any time; and except as provided in paragraph (6), his retired pay shall be at the rate of 75 per centum of the basic pay of the highest grade held by him as such officer.

(6) The retired pay of a commissioned officer retired under this subsection who first became a member of a uniformed service after September 7, 1980, is determined by multiplying—

(A) the retired pay base determined under section 1407 of title 10; by

(B) the retired pay multiplier determined under section 1409 of such title for the number of years of service credited to the officer under paragraph (4).

(7) Retired pay computed under section 211(g)(3) of this title or under paragraph (4) or (5) of this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(b) Basic pay of highest temporary grade

For purposes of subsection (a) of this section, the basic pay of the highest grade to which a commissioned officer has received a temporary promotion means the basic pay to which he would be entitled if serving on active duty in such grade on the date of his retirement.

(c) Recall to active duty

A commissioned officer, retired for reasons other than for failure of promotion to the senior grade, may (1) if an officer of the Regular Corps or an officer of the Reserve Corps entitled to retired pay under subsection (a) of this section, be involuntarily recalled to active duty during such times as the Commissioned Corps constitutes a branch of the land or naval forces of the United States, and (2) if an officer of either the Regular or Reserve Corps, be recalled to active duty at any time with his consent.

(d) "Active service" defined

The term ''active service'', as used in subsection (a) of this section, includes:

(1) all active service in any of the uniformed services;

(2) active service with the Public Health Service, other than as a commissioned officer, which the Surgeon General determines is comparable to service performed by commissioned officers of the Service, except that, if there are more than five years of such service only the last five years thereof may be included;

(3) all active service (other than service included under the preceding provisions of this subsection) which is creditable for retirement purposes under laws governing the retirement of members of any of the uniformed services; and

(4) service performed as a member of the Senior Biomedical Research Service established by section 237 of this title, except that, if there are more than 5 years of such service, only the last 5 years thereof may be included.

(e) Crediting of part of year

For the purpose of determining the number of years by which a percentage of the basic pay of an officer is to be multiplied in computing the amount of his retired pay pursuant to section 211(g)(3) of this title or paragraph (4) of subsection (a) of this section, each full month of service that is in addition to the number of full years of service credited to an officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(f) Retirement or separation for physical disability

For purposes of retirement or separation for physical disability under chapter 61 of title 10, a commissioned officer of the Service shall be credited, in addition to the service described in section 1208(a)(2) of that title, with active service with the Public Health Service, other than as a commissioned officer, which the Surgeon General determines is comparable to service performed by commissioned officers of the Service, except that, if there are more than five years of such service, only the last five years thereof may be so credited. For such purposes, such section 1208(a)(2) shall be applicable to officers of the Regular or Reserve Corps of the Service.

(July 1, 1944, ch. 373, title II, §211, 58 Stat. 688; Feb. 28, 1948, ch. 83, §7, 62 Stat. 46; Oct. 12, 1949, ch. 681, title V, §521(d), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Apr. 27, 1956, ch. 211, §5(a)–(c), 70 Stat. 117; Aug. 10, 1956, ch. 1041, §5, 70A Stat. 620; Pub. L. 86–415, §4, Apr. 8, 1960, 74 Stat. 33; Pub. L. 91–253, §1, May 14, 1970, 84 Stat. 216; Pub. L. 96–76, title III, §308, Sept. 29, 1979, 93 Stat. 585; Pub. L. 96–342, title VIII, §813(h)(2), Sept. 8, 1980, 94 Stat. 1110; Pub. L. 97–25, title III, §303(b), July 27, 1981, 95 Stat. 145; Pub. L. 97–35, title XXVII, §2765(a), Aug. 13, 1981, 95 Stat. 932; Pub. L. 98–94, title IX, §§922(d), 923(f), Sept. 24, 1983, 97 Stat. 642, 643; Pub. L. 99–348, title II, §207(b), July 1, 1986, 100 Stat. 702; Pub. L. 101–509, title V, §529 [title III, §304(b)], Nov. 5, 1990, 104 Stat. 1427, 1464.)

CODIFICATION

In subsec. (a)(4), ''subchapter III of chapter 83 of title 5'' substituted for ''the Civil Service Retirement Act'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1990—Subsec. (d)(4). Pub. L. 101–509 added par. (4).

1986—Subsec. (a)(6). Pub. L. 99–348 amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''In computing retired pay under paragraph (4) or (5) in the case of any commissioned officer who first became a member of a uniformed service on or after September 8, 1980, the monthly retired pay base computed under section 1407(h) of title 10 shall be used in lieu of using the basic pay of the highest grade held by him as such officer.''

1983—Subsec. (a)(7). Pub. L. 98–94, §922(d), added par. (7).

Subsec. (e). Pub. L. 98–94, §923(f), substituted ''each full month of service that is in addition to the number of full years of service credited to an officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded'' for ''a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded''.

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''shall, if he applies for retirement, be retired on or after'' for ''shall be retired on'', and substituted provisions relating to involuntary retirement as a result of age, for provisions relating to inapplicability to the Surgeon General.

Pub. L. 97–25 inserted provision that this paragraph does not apply to Surgeon General.

1980—Subsec. (a)(4). Pub. L. 96–342, §813(h)(2)(A), substituted ''Except as provided in paragraph (6), a'' for ''A''.

Subsec. (a)(5). Pub. L. 96–342, §813(h)(2)(B), substituted ''except as provided in paragraph (6), his'' for ''his''.

Subsec. (a)(6). Pub. L. 96–342, §813(h)(2)(C), added par. (6).

1979—Subsec. (e). Pub. L. 96–76 struck out requirement respecting active service for purposes of credit.

1970—Subsec. (a)(4). Pub. L. 91–253 inserted ''plus'' after the semicolon at end of cl. (ii) and added cl. (iii).

1960—Pub. L. 86–415 amended section generally, and among other changes, authorized retirement of commissioned officers who have had less than 30 years of active service any time after the completion of 20 years of active service, permitted persons who have served as Deputy Surgeons General or Assistant Surgeons General for four or more years and who have had at least

25 years of active service to retire voluntarily at any time, provided for the recall to active duty of officers of the Reserve Corps entitled to retired pay under subsection (a) of this section during such times as the Corps constitutes a branch of the land or naval forces of the United States, authorized credit, for retirement purposes, of active service in the uniformed services and limited to five years the crediting of active service with the Public Health Service other than as a commissioned officer, and established the methods for computation of retired pay for active duty officers retiring for age or length of service.

1956—Subsec. (a). Act Apr. 27, 1956, § 5(a), authorized crediting of noncommissioned service for purposes of retirement.

Subsec. (b)(1). Act Apr. 27, 1956, § 5(b), authorized crediting of noncommissioned service in the Service for purposes of retirement.

Subsec. (c). Act Apr. 27, 1956, § 5(c), permitted recall of retired officers of the Regular Corps without their consent whenever the Regular Corps has military status, and authorized recall of retired officers of the Regular or Reserve Corps with their consent at any time.

Subsec. (g). Act Aug. 10, 1956, provided for crediting of service for purposes of retirement or separation for physical disability under chapter 61 of title 10.

1949—Subsec. (a). Act Oct. 12, 1949, redesignated subsec. (b) as (a), substituted ''subsection (b)'' for ''subsection (c)'' and repealed former subsec. (a) relating to retirement for disability or disease.

Subsec. (b). Act Oct. 12, 1949, redesignated subsec. (c) as (b) and struck out reference to retirement for disability or disease. Former subsec. (b) redesignated (a).

Subsec. (c). Act Oct. 12, 1949, redesignated subsec. (d) as (c) and struck out reference to recovery from a disability. Former subsec. (c) redesignated (b).

Subsecs. (d) to (f). Act Oct. 12, 1949, redesignated subsecs. (e) to (g) as (d) to (f), respectively. Former subsec. (d) redesignated (c).

Subsecs. (g), (h). Act Oct. 12, 1949, redesignated subsec. (h) as (g) and amended subsection generally to relate to retirement or separation for physical disability. Former subsec. (g) redesignated (f).

1948—Subsec. (b). Act Feb. 28, 1948, inserted length of service for retirement purposes.

Subsec. (c)(2). Act Feb. 28, 1948, made subdivision applicable to grade of Assistant Surgeon General.

Subsec. (d). Act Feb. 28, 1948, substituted ''under the provisions of subsection (b) of this section'' for ''for age''.

Subsecs. (g), (h). Act Feb. 28, 1948, added subsecs. (g) and (h).

Change of Name

Senior Biomedical Research Service changed to Silvio O. Conte Senior Biomedical Research Service by Pub. L. 103–43, title XX, § 2001, June 10, 1993, 107 Stat. 208. See section 237 of this title.

Effective Date of 1990 Amendment

Section 529 [title III, § 304(c)] of Pub. L. 101–509 provided that: ''Except as otherwise provided, the provisions of this section [enacting section 237 of this title and amending this section] shall be effective on the 90th day following the date of the enactment of this Act [Nov. 5, 1990].''

Effective Date of 1983 Amendment

Amendment by section 922(d) of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of Title 10, Armed Forces.

Amendment by section 923(f) of Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of Title 10.

Effective Date of 1970 Amendment

Section 2 of Pub. L. 91–253 provided that: ''The amendments made by this Act [amending this section] shall apply in the case of retired pay for any period after the month in which this Act is enacted [May 1970].''

Effective Date of 1960 Amendment

Section 8(b) of Pub. L. 86–415 provided that: ''The amendment made by section 4 [amending this section] shall become effective on the date of enactment of this Act [Apr. 8, 1960] in the case of commissioned officers of the Regular Corps of the Public Health Service, and on July 1, 1960, in the case of commissioned officers of the Reserve Corps of the Public Health Service.''

Effective Date of 1949 Amendment

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

Savings Provision

Section 8(c), (d) of Pub. L. 86–415 provided that:

''(c) An officer in the Regular Corps on active duty on the date of enactment of this Act [Apr. 8, 1960] may be retired and have his retired pay computed under section 211 of the Public Health Service Act, as amended by this Act [this section], or, if he so elects, under such section as in effect prior to the date of enactment of this Act [Apr. 8, 1960].

''(d) The limitation under subsection (f) of section 211 of the Public Health Service Act, as amended by this Act [subsec. (f) of this section], on the amount of active service with the Public Health Service, other than as a commissioned officer, which may be counted for purposes of retirement or separation for physical disability, shall not apply in the case of any officer of the Reserve Corps of the Public Health Service on active duty on June 30, 1960.''

Transfer of Functions

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

Delegation of Functions

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, eff. Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

Coverage Under Civil Service Retirement Act

Creditable service for purposes of the Civil Service Retirement Act for certain commissioned officers of the Regular or Reserve Corps of the Public Health Service, see section 6(a), (b) of Pub. L. 86–415, set out as a note under section 8332 of Title 5, Government Organization and Employees.

§212a. Repealed. Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936

Section, act July 1, 1944, ch. 373, title XIII, §1312, formerly title VII, §712, as added Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; renumbered title VIII, §812, July 30, 1956, ch. 779, §3(b), 70 Stat. 721; renumbered title IX, §912, Sept. 4, 1964, Pub. L. 88–581, §4(b), 78 Stat. 919; renumbered title X, §1012, Oct. 6, 1965, Pub. L. 89–239, §3(b), 79 Stat. 931; renumbered title XI, §1112, Dec. 24, 1970, Pub. L. 91–572, §6(b), 84 Stat. 1506; renumbered title XII, §1212, May 16, 1972, Pub. L. 92–294, §3(b), 86 Stat. 137; renumbered title XIII, §1312, Nov. 16, 1973, Pub. L. 93–154, §2(b)(2), 87 Stat. 604, provided for retirement of certain officers of Reserve Corps of the Public Health Service for disability.

§212b. Repealed. Apr. 27, 1956, ch. 211, §5(d), 70 Stat. 117

Section, act July 31, 1953, ch. 296, title II, §201, 67 Stat. 254, authorized recall of retired officers of the Service. See section 212(c) of this title.

§213. Military benefits

(a) Rights, privileges, immunities, and benefits accorded to commissioned officers or their survivors

Except as provided in subsection (b) of this section, commissioned officers of the Service and their surviving beneficiaries shall, with respect to active service performed by such officers—

(1) in time of war;

(2) on detail for duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard; or

(3) while the Service is part of the military forces of the United States pursuant to Executive order of the President;

be entitled to all rights, privileges, immunities, and benefits now or hereafter provided under any law of the United States in the case of commissioned officers of the Army or their surviving beneficiaries on account of active military service, except retired pay and uniform allowances.

(b) Award of decorations

The President may prescribe the conditions under which commissioned officers of the Service may be awarded military ribbons, medals, and decorations.

(c) Authority of Surgeon General

The authority vested by law in the Department of the Army, the Secretary of the Army, or other officers of the Department of the Army with respect to rights, privileges, immunities, and benefits referred to in subsection (a) of this section shall be exercised, with respect to commissioned officers of the Service, by the Surgeon General.

(d) Active service deemed active military service with respect to laws administered by Secretary of Veterans Affairs

Active service of commissioned officers of the Service shall be deemed to be active military service in the Armed Forces of the United States for the purposes of all laws administered by the Secretary of Veterans Affairs (except the Servicemen's Indemnity Act of 1951) and section 417 of this title.

(e) Active service deemed active military service with respect to Servicemembers Civil Relief Act

Active service of commissioned officers of the Service shall be deemed to be active military service in the Armed Forces of the United States for the purposes of all rights, privileges, immunities, and benefits now or hereafter provided under the Servicemembers Civil Relief Act (50 App. U.S.C. 501 et seq.).

(f) Active service deemed active military service with respect to anti-discrimination laws

Active service of commissioned officers of the Service shall be deemed to be active military service in the Armed Forces of the United States for purposes of all laws related to discrimination on the basis of race, color, sex, ethnicity, age, religion, and disability.

(July 1, 1944, ch. 373, title II, §212, 58 Stat. 689; July 15, 1954, ch. 507, §14(a), 68 Stat. 481; Aug. 1, 1956, ch. 837, title V, §501(b)(1), 70 Stat. 881; Pub. L. 94–278, title XI, §1101, Apr. 22, 1976, 90 Stat. 415; Pub. L. 102–54, §13(q)(1)(C), June 13, 1991, 105 Stat. 278; Pub. L. 105–392, title IV, §402(a), Nov. 13, 1998, 112 Stat. 3587; Pub. L. 108–189, §2(e), Dec. 19, 2003, 117 Stat. 2866.)

REFERENCES IN TEXT

The Servicemen's Indemnity Act of 1951, referred to in subsec. (d), is act Apr. 25, 1951, ch. 39, pt. I, 65 Stat. 33, which was classified generally to subchapter II (§851 et seq.) of chapter 13 of former Title 38, Pensions, Bonuses, and Veterans' Relief, and was repealed by act Aug. 1, 1956, ch. 837, title V, §502(9), 70 Stat. 886.

The Servicemembers Civil Relief Act, referred to in subsec. (e), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix, and Tables.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–189 substituted ''Servicemembers Civil Relief Act'' for ''Soldiers' and Sailors' Civil Relief Act of 1940''.

1998—Subsec. (f). Pub. L. 105–392 added subsec. (f).

1991—Subsec. (d). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

1976—Subsec. (e). Pub. L. 94–278 added subsec. (e).

1956—Act Aug. 1, 1956, amended section generally to extend all rights, privileges, immunities, and benefits provided for commissioned officers of the Army or their surviving beneficiaries to commissioned officers of the Service, with the exception of retired pay and uniform allowances, when performing duty under certain circumstances, and to provide that active service of commissioned officers shall be deemed to be active military service in the Armed Forces for the purposes of all laws administered by the Veterans' Administration (except the Servicemen's Indemnity Act of 1951) and section 417 of this title.

1954—Subsec. (a)(1). Act July 15, 1954, struck out ''burial payments in the event of death,'' after ''limited to,''.

EFFECTIVE DATE OF 1956 AMENDMENT; APPLICABILITY

Section 501(b)(2) of act Aug. 1, 1956, provided that: ''The amendment made by this subsection [amending this section] (A) shall apply only with respect to service performed on or after July 4, 1952, (B) shall not be construed to affect the entitlement of any person to benefits under the Veterans' Readjustment Assistance Act of 1952 [act July 16, 1952, ch. 875, 66 Stat. 633], (C)

shall not be construed to authorize any payment under section 202(i) of the Social Security Act [section 402(i) of this title], or under Veterans Regulation Numbered 9(a), for any death occurring prior to January 1, 1957, and (D) shall not be construed to authorize payment of any benefits for any period prior to January 1, 1957.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

RECOMPUTATION OF SOCIAL SECURITY BENEFITS FOR OFFICERS ENTITLED TO OLD-AGE INSURANCE BENEFITS PRIOR TO JANUARY 1, 1957, OR FOR SURVIVORS OF OFFICERS WHO DIED PRIOR TO JANUARY 1, 1957

Section 501(b)(3) of act Aug. 1, 1956, provided that: ''In the case of any individual—

''(A) who performed active service (i) as a commissioned officer of the Public Health Service at any time during the period beginning July 4, 1952, and ending December 31, 1956, or (ii) as a commissioned officer of the Coast and Geodetic Survey at any time during the period beginning July 29, 1945, and ending December 31, 1956; and

''(B)(i) who became entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] prior to January 1, 1957, or

''(ii) who died prior to January 1, 1957, and whose widow, child, or parent is entitled for the month of January 1957, on the basis of his wages and self-employment income, to a monthly survivor's benefit under section 202 of such act [section 402 of this title]; and

''(C) any part of whose service described in subparagraph (A) was not included in the computation of his primary insurance amount under section 215 of such act [section 415 of this title] but would have been included in such computation if the amendment made by paragraph (1) of this subsection or paragraph (1) of subsection (d) had been effective prior to the date of such computation,

the Secretary of Health, Education, and Welfare [now Health and Human Services] shall, notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title], recompute the primary insurance amount of such individual upon the filing of an application, after December 1956, by him or (if he dies without filing such an application) by any person entitled to monthly survivor's benefits under section 202 of such act [section 402 of this title] on the basis of his wages and self-employment income. Such recomputation shall be made only in the manner, provided in title II of the Social Security Act [sections 401 to 425 of this title] as in effect at the time of the last previous computation or recomputation of such individual's primary insurance amount, and as though application therefor was filed in the month in which application for such last previous computation or recomputation was filed. No recomputation made under this paragraph shall be regarded as a recomputation under section 215(f) of the Social Security Act [section 415(f) of this title]. Any such recomputation shall be effective for and after the twelfth month before the month in which the application was filed, but in no case for any month before January 1957.''

DISPOSITION OF REMAINS OF DECEASED PERSONNEL

Recovery, care, and disposition of the remains of deceased members of the uniformed services and other deceased personnel, see section 1481 et seq. of Title 10, Armed Forces.

BURIAL OF CERTAIN COMMISSIONED OFFICERS

Act Apr. 30, 1956, ch. 227, 70 Stat. 124, provided: ''That burial in national cemeteries of the remains of commissioned officers of the United States Public Health Service who were detailed for duty with the Army or Navy during World War I pursuant to the act of July 1, 1902 (32 Stat. 712, 713), as amended, and Executive Order Numbered 2571 dated April 3, 1917, and of the wife, widow, minor child and, in the discretion of the Secretary of the Army, unmarried adult child of these officers is authorized: *Provided*, That the remains of the wife, widow, and children may, in the discretion of the Secretary of the Army, be removed from a national cemetery proper and interred in the post section of a national cemetery if, upon death, the related officer is not buried in the same or an adjoining gravesite.''

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Dec. 30, 1992, 58 F.R. 3485, provided:

Memorandum for the Secretary of Defense, the Secretary of Health and Human Services

The authority of the President under section 212(b) of the Public Health Service Act (42 U.S.C. 213(b)) is hereby delegated to the Secretary of Defense. In the exercise of that authority, the Secretary of Defense shall ensure that no military ribbon, medal, or decoration is awarded to an officer of the Public Health Service without the approval of the Secretary of Health and Human Services.

The Secretary of Defense shall ensure the publication of this memorandum in the Federal Register.

GEORGE BUSH.

§ 213a. Rights, benefits, privileges, and immunities for commissioned officers or beneficiaries; exercise of authority by Secretary or designee

(a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all the rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of title 10:

(1) Section 1036, Escorts for dependents of members: transportation and travel allowances.

(2) Chapter 61, Retirement or Separation for Physical Disability, except that sections 1201, 1202, and 1203 do not apply to commissioned officers of the Public Health Service who have been ordered to active duty for training for a period of more than 30 days.

(3) Chapter 69, Retired Grade, except sections 1370, 1374,[1] 1375 and 1376(a).[1]

(4) Chapter 71, Computation of Retired Pay, except formula No. 3 of section 1401.[1]

(5) Chapter 73, Retired Serviceman's Family Protection Plan; Survivor Benefit Plan.

(6) Chapter 75, Death Benefits.

(7) Section 2771, Final settlement of accounts: deceased members.

[1] See References in Text note below.

(8) Chapter 163, Military Claims, but only when commissioned officers of the Service are entitled to military benefits under section 213 of this title.

(9) Section 2603, Acceptance of fellowships, scholarships, or grants.

(10) Section 2634, Motor vehicles: for members on permanent change of station.

(11) Section 1035, Deposits of Savings.

(12) Section 1552, Correction of military records: claims incident thereto.

(13) Section 1553, Review of discharge or dismissal.

(14) Section 1554, Review of retirement or separation without pay for physical disability.

(15) Section 1124, Cash awards for suggestions, inventions, or scientific achievements.

(16) Section 1052, Reimbursement for adoption expenses.

(17) Section 1059, Transitional compensation and commissary and exchange benefits for dependents of members separated for dependent abuse.

(b) The authority vested by title 10 in the ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' with respect to the rights, privileges, immunities, and benefits referred to in subsection (a) of this section shall be exercised, with respect to commissioned officers of the Service, by the Secretary of Health and Human Services or his designee.

(July 1, 1944, ch. 373, title II, § 221, as added Aug. 10, 1956, ch. 1041, § 4, 70A Stat. 619; amended Pub. L. 85–861, § 4, Sept. 2, 1958, 72 Stat. 1547; Pub. L. 86–160, § 3, Aug. 14, 1959, 73 Stat. 359; Pub. L. 87–555, § 2, July 27, 1962, 76 Stat. 244; Pub. L. 88–132, § 5(k), Oct. 2, 1963, 77 Stat. 214; Pub. L. 88–431, § 1(d), Aug. 14, 1964, 78 Stat. 440; Pub. L. 89–538, § 3(b), Aug. 14, 1966, 80 Stat. 348; Pub. L. 92–425, § 5, Sept. 21, 1972, 86 Stat. 713; Pub. L. 96–76, title III, § 312, Sept. 29, 1979, 93 Stat. 586; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96–513, title V, § 507(f)(2), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 99–117, § 4, Oct. 7, 1985, 99 Stat. 492; Pub. L. 105–85, div. A, title VI, § 653(a), Nov. 18, 1997, 111 Stat. 1804; Pub. L. 107–107, div. A, title VI, § 653(a), Dec. 28, 2001, 115 Stat. 1153.)

REFERENCES IN TEXT

Sections 1374 and 1376(a) of title 10, referred to in subsec. (a)(3), were repealed by Pub. L. 103–337, div. A, title XVI, § 1662(k)(2), (3)(A)(i), Oct. 5, 1994, 108 Stat. 3006. See sections 12771 to 12774 of Title 10, Armed Forces.

Formula No. 3 of section 1401 of title 10, referred to in subsec. (a)(4), was struck from the table set forth in section 1401(a) of title 10 by Pub. L. 103–337, div. A, title XVI, § 1662(j)(2), Oct. 5, 1994, 108 Stat. 3004.

CODIFICATION

Section was formerly classified to section 316 of title 37 prior to the general revision and enactment of Title 37, Pay and Allowances of the Uniformed Services, by Pub. L. 87–649, § 1, Sept. 7, 1962, 76 Stat. 451.

AMENDMENTS

2001—Subsec. (a)(17). Pub. L. 107–107 added cl. (17).

1997—Subsec. (a)(16). Pub. L. 105–85 added cl. (16).

1985—Subsec. (a)(15). Pub. L. 99–117 added cl. (15).

1980—Subsec. (a)(3). Pub. L. 96–513 inserted reference to section 1370 of title 10.

1979—Subsec. (a)(12) to (14). Pub. L. 96–76 added cls. (12) to (14).

1972—Subsec. (a)(5). Pub. L. 92–425 substituted ''Retired Serviceman's Family Protection Plan; Survivor Benefit Plan'' for ''Annuities Based on Retired or Retainer Pay''.

1966—Subsec. (a)(11). Pub. L. 89–538 added cl. (11).

1964—Subsec. (a)(10). Pub. L. 88–431 added cl. (10).

1963—Subsec. (b). Pub. L. 88–132 inserted reference to Secretary of Defense.

1962—Subsec. (a). Pub. L. 87–555 added cl. (9). Notwithstanding directory language that section be amended by ''adding the following new clause at the end thereof'', the amendment was executed to subsec. (a) to reflect the probable intent of Congress since the ''new'' clause was numbered ''(9)'' and subsec. (a) contained cls. (1) to (8).

1959—Subsec. (a). Pub. L. 86–160 added cl. (1) and renumbered former cls. (1) to (7) as (2) to (8).

1958—Subsec. (a). Pub. L. 85–861 substituted ''provisions'' for ''chapters'' in opening clause, struck out former cl. (1) which related to chapter 55 of title 10, renumbered former cls. (2) to (6) as (1) to (5), amended cl. (1), as renumbered, to make sections 1201 to 1203 of title 10, inapplicable to commissioned officers of the Public Health Service who have been ordered to active duty for training for a period of more than 30 days, inserted a reference to section 1374 of title 10 in cl. (2), as renumbered, struck out ''Care of the Dead'' after ''Benefits'' in cl. (5), as renumbered, and added cl. (6).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 653(c) of Pub. L. 105–85 provided that: ''The amendments made by this section [amending this section and former section 857a of Title 33, Navigation and Navigable Waters] shall apply only to adoptions that are completed on or after the date of the enactment of this Act [Nov. 18, 1997].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as an Effective Date note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

RULES AND REGULATIONS; SAVINGS DEPOSIT BENEFITS

Regulations prescribed by the Secretary of Health, Education, and Welfare [now Health and Human Services] concerning savings deposit benefits for Public Health Service personnel to be prescribed jointly with regulations prescribed by the Secretaries concerned under section 1035 of Title 10, Armed Forces, see section 3(c) of Pub. L. 89–538, set out as a note under section 1035 of Title 10.

BACK PAYMENTS: VALIDATION; APPLICATION; LIMITATIONS; ACCOUNTABILITY OF DISBURSING OFFICERS; REGULATIONS

Transportation and travel allowances to escorts for dependents of members, see sections 4 to 7 of Pub. L. 86–160, set out as a note under section 1036 of Title 10, Armed Forces.

DESIGNATION OF BENEFICIARY MADE BEFORE JANUARY 1, 1956

Designation of beneficiary made before Jan. 1, 1956, considered as the designation of a beneficiary for the purposes of section 4 of Pub. L. 85–861, which amended this section, see section 31 of Pub. L. 85–861, set out as a note under section 2771 of Title 10, Armed Forces.

§ 214. Presentation of United States flag upon retirement

(a) Presentation of flag

Upon the release of an officer of the commissioned corps of the Service from active commissioned service for retirement, the Secretary of Health and Human Services shall present a United States flag to the officer.

(b) Multiple presentations not authorized

An officer is not eligible for presentation of a flag under subsection (a) of this section if the officer has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) No cost to recipient

The presentation of a flag under this section shall be at no cost to the recipient.

(July 1, 1944, ch. 373, title II, § 213, as added Pub. L. 106–65, div. A, title VI, § 652(b), Oct. 5, 1999, 113 Stat. 665.)

PRIOR PROVISIONS

A prior section 214, acts July 1, 1944, ch. 373, title II, § 213, 58 Stat. 689; Apr. 27, 1956, ch. 211, § 2(a), 70 Stat. 116, authorized allowances for uniforms, prior to repeal by Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499. See section 415 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section applicable with respect to releases from service described in section on or after Oct. 1, 1999, see section 652(d) of Pub. L. 106–65, set out as a note under section 12605 of Title 10, Armed Forces.

§ 214a. Repealed. Sept. 1, 1954, ch. 1211, § 5, 68 Stat. 1130

Section, act July 31, 1953, ch. 296, title II, § 204, 67 Stat. 257, related to allowances for use of taxicabs, etc., around duty posts. See section 408 of Title 37, Pay and Allowances of the Uniformed Services.

§ 215. Detail of Service personnel

(a) Other Government departments

The Secretary is authorized, upon the request of the head of an executive department, to detail officers or employees of the Service to such department for duty as agreed upon by the Secretary and the head of such department in order to cooperate in, or conduct work related to, the functions of such department or of the Service. When officers or employees are so detailed their salaries and allowances may be paid from working funds established as provided by law or may be paid by the Service from applicable appropriations and reimbursement may be made as agreed upon by the Secretary and the head of the executive department concerned. Officers detailed for duty with the Army, Air Force, Navy, or Coast Guard shall be subject to the laws for the government of the service to which detailed.

(b) State health or mental health authorities

Upon the request of any State health authority or, in the case of work relating to mental health, any State mental health authority, personnel of the Service may be detailed by the Surgeon General for the purpose of assisting such State or a political subdivision thereof in work related to the functions of the Service.

(c) Congressional committees and nonprofit educational, research, or other institutions engaged in health activities for special studies and dissemination of information

The Surgeon General may detail personnel of the Service to any appropriate committee of the Congress or to nonprofit educational, research[1] or other institutions engaged in health activities for special studies of scientific problems and for the dissemination of information relating to public health.

(d) Availability of funds; reimbursement by State; detailed services deemed service for computation of pay, promotion, etc.

Personnel detailed under subsections (b) and (c) of this section shall be paid from applicable appropriations of the Service, except that, in accordance with regulations such personnel may be placed on leave without pay and paid by the State, subdivision, or institution to which they are detailed. In the case of detail of personnel under subsections (b) or (c) of this section to be paid from applicable Service appropriations, the Secretary may condition such detail on an agreement by the State, subdivision, or institution concerned that such State, subdivision, or institution concerned shall reimburse the United States for the amount of such payments made by the Service. The services of personnel while detailed pursuant to this section shall be considered as having been performed in the Service for purposes of the computation of basic pay, promotion, retirement, compensation for injury or death, and the benefits provided by section 213 of this title.

(e) Commissioned Corps officers; urgent or emergency public health care needs

Except with respect to the United States Coast Guard and the Department of Defense, and except as provided in agreements negotiated with officials at agencies where officers of the Commissioned Corps may be assigned, the Secretary shall have the sole authority to deploy any Commissioned Corps officer assigned under this section to an entity outside of the Department of Health and Human Services for service under the Secretary's direction in response to an urgent or emergency public health care need (as defined in section 204a(a)(5) of this title).

(July 1, 1944, ch. 373, title II, § 214, 58 Stat. 690; July 3, 1946, ch. 538, § 6, 60 Stat. 423; Oct. 12, 1949, ch. 681, title V, § 521(e), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–76, title III, § 309, Sept. 29, 1979, 93 Stat. 585; Pub. L. 109–417, title II, § 206(c)(1), Dec. 19, 2006, 120 Stat. 2853.)

[1] So in original. Probably should be followed by a comma.

CODIFICATION

In subsec. (a), Air Force was inserted on the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 502, which established a separate Department of the Air Force, and Secretary of Defense Transfer Order No. 40 [App. A(74)], July 22, 1949, which transferred certain functions, insofar as they pertain to the Air Force, which were not previously transferred to the Department of the Air Force and Secretary of the Air Force. Section 207(a), (f) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 8010 to 8013 continued the Department of the Air Force under the administrative supervision of a Secretary of the Air Force.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–417 added subsec. (e).

1979—Subsec. (c). Pub. L. 96–76, §309(a), inserted provisions authorizing detail of personnel to appropriate committees of Congress.

Subsec. (d). Pub. L. 96–76, §309(b), inserted provisions relating to agreements by States, etc., for reimbursement upon detail of personnel.

1949—Subsec. (d). Act Oct. 12, 1949, substituted ''the computation of basic pay'' for ''longevity pay''.

1946—Subsec. (b). Act July 3, 1946, provided for detail of personnel on request from a State mental health authority.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

TRANSFERS OF PERSONNEL OCCASIONED BY CREATION OF THE ENVIRONMENTAL PROTECTION AGENCY

Pub. L. 91–604, §15(b)(1)–(8)(A), Dec. 31, 1970, 84 Stat. 1710–1712, provided that:

''(1) Subject to such requirements as the Civil Service Commission may prescribe, any commissioned officer of the Public Health Service (other than an officer who retires under section 211 of the Public Health Service Act [section 212 of this title] after his election but prior to his transfer pursuant to this paragraph and paragraph (2)) who, upon the day before the effective date of Reorganization Plan Numbered 3 of 1970 (hereinafter in this subsection referred to as the 'plan'), is serving as such officer (A) primarily in the performance of functions transferred by such plan to the Environmental Protection Agency or its Administrator (hereinafter in this subsection referred to as the 'Agency' and the 'Administrator,' respectively), may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Agency; or (B) primarily in the performance of functions determined by the Secretary of Health, Education, and Welfare (hereinafter in this subsection referred to as the 'Secretary') to be materially related to the functions so transferred, may, if authorized by agreement between the Secretary and the Administrator, and if such officer so elects, acquire such status and be so transferred.

''(2) An election pursuant to paragraph (1) shall be effective only if made in accordance with such procedures as may be prescribed by the Civil Service Commission (A) before the close of the 24th month after the effective date of the plan [Dec. 2, 1970], or (B) in the case of a commissioned officer who would be liable for training and service under the Military Selective Service Act of 1967 [section 451 et seq. of Title 50, App., War and National Defense] but for the operation of section 6(b)(3) thereof (50 U.S.C. App. 456(b)(3)), before (if it occurs later than the close of such 24th month) the close of the 90th day after the day upon which he has completed his 24th month of service as such officer.

''(3)(A) Except as provided in subparagraph (B), any commissioned officer of the Public Health Service who, pursuant to paragraphs (1) and (2), elects to transfer to a position in the Agency which is subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code (hereinafter in this subsection referred to as the 'transferring officer'), shall receive a pay rate of the General Schedule grade of such position which is not less than the sum of the following amounts computed as of the day preceding the date of such election:

''(i) the basic pay, the special pay, the continuation pay, and the subsistence and quarters allowances, to which he is annually entitled as a commissioned officer of the Public Health Service pursuant to title 37, United States Code;

''(ii) the amount of Federal income tax, as determined by estimate of the Secretary, which the transferring officer, had he remained a commissioned officer, would have been required to pay on his subsistence and quarters allowances for the taxable year then current if they had not been tax free;

''(iii) an amount equal to the biweekly average cost of the coverages designated 'high option, self and family' under the Government-wide Federal employee health benefits programs plans, multiplied by twenty-six; and

''(iv) an amount equal to 7 per centum of the sum of the amounts determined under clauses (i) through (iii), inclusive.

''(B) A transferring officer shall in no event receive, pursuant to subparagraph (A), a pay rate in excess of the maximum rate applicable under the General Schedule to the class of position, as established under chapter 51 of title 5, United States Code, to which such officer is transferred pursuant to paragraphs (1) and (2).

''(4)(A) A transferring officer shall be credited, on the day of his transfer pursuant to his election under paragraphs (1) and (2), with one hour of sick leave for each week of active service, as defined by section 211(d) of the Public Health Service Act [section 212(d) of this title].

''(B) The annual leave to the credit of a transferring officer on the day before the day of his transfer, shall, on such day of transfer, be transferred to his credit in the Agency on an adjusted basis under regulations prescribed by the Civil Service Commission. The portion of such leave, if any, that is in excess of the sum of (i) 240

hours, and (ii) the number of hours that have accrued to the credit of the transferring officer during the calendar year then current and which remain unused, shall thereafter remain to his credit until used, and shall be reduced in the manner described by subsection (c) of section 6304 of title 5, United States Code.

''(5) A transferring officer who is required to change his official station as a result of his transfer under this subsection shall be paid such travel, transportation, and related expenses and allowances, as would be provided pursuant to subchapter II of chapter 57 of title 5, United States Code, in the case of a civilian employee so transferred in the interest of the Government. Such officer shall not (either at the time of such transfer or upon a subsequent separation from the competitive service) be deemed to have separated from, or changed permanent station within, a uniformed service for purposes of section 404 of title 37, United States Code.

''(6) Each transferring officer who prior to January 1, 1958, was insured pursuant to the Federal Employees' Group Life Insurance Act of 1954, and who subsequently waived such insurance, shall be entitled to become insured under chapter 87 of title 5, United States Code, upon his transfer to the Agency regardless of age and insurability.

''(7)(A) Effective as of the date a transferring officer acquires competitive status as an employee of the Agency, there shall be considered as the civilian service of such officer for all purposes of chapter 83, title 5, United States Code, (i) his active service as defined by section 211(d) of the Public Health Service Act [section 212(d) of this title], or (ii) any period for which he would have been entitled, upon his retirement as a commissioned officer of the Public Health Service, to receive retired pay pursuant to section 211(a)(4)(B) of such Act [section 212(a)(4)(B) of this title]; however, no transferring officer may become entitled to benefits under both subchapter III of such chapter and title II of the Social Security Act [section 401 et seq. of this title] based on service as such a commissioned officer performed after 1956, but the individual (or his survivors) may irrevocably elect to waive benefit credit for the service under one such law to secure credit under the other.

''(B) A transferring officer on whose behalf a deposit is required to be made by subparagraph (C) and who, after transfer to a competitive position in the Agency under paragraphs (1) and (2), is separated from Federal service or transfers to a position not covered by subchapter III of chapter 83 of title 5, United States Code, shall not be entitled, nor shall his survivors be entitled, to a refund of any amount deposited on his behalf in accordance with this section. In the event he transfers, after transfer under paragraphs (1) and (2), to a position covered by another Government staff requirement system under which credit is allowable for service with respect to which a deposit is required under subparagraph (C), no credit shall be allowed under such subchapter III with respect to such service.

''(C) The Secretary shall deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund, on behalf of and to the credit of such transferring officer, an amount equal to that which such individual would be required to deposit in such fund to cover the years of service credited to him for purposes of his retirement under subparagraph (A), had such service been service as an employee as defined in section 8331(1) of title 5, United States Code. The amount so required to be deposited with respect to any transferring officer shall be computed on the basis of the sum of each of the amounts described in paragraph (3)(A) which were received by, or accrued to the benefit of, such officer during the years so credited. The deposits which the Secretary is required to make under this subparagraph with respect to any transferring officer shall be made within two years after the date of his transfer as provided in paragraphs (1) and (2), and the amounts due under this subparagraph shall include interest computed from the period of service credited to the date of payment in accordance with section 8334(e) of title 5, United States Code.

''(8)(A) A commissioned officer of the Public Health Service, who, upon the day before the effective date of the plan, is on active service therewith primarily assigned to the performance of functions described in paragraph (1)(A), shall, while he remains in active service, as defined by section 211(d) of the Public Health Service Act [section 212(d) of this title], be assigned to the performance of duties with the Agency, except as the Secretary and the Administrator may jointly otherwise provide.''

§ 216. Regulations

(a) Prescription by President: appointments, retirement, etc.

The President shall from time to time prescribe regulations with respect to the appointment, promotion, retirement, termination of commission, titles, pay, uniforms, allowances (including increased allowances for foreign service), and discipline of the commissioned corps of the Service.

(b) Promulgation by Surgeon General; administration of Service

The Surgeon General, with the approval of the Secretary, unless specifically otherwise provided, shall promulgate all other regulations necessary to the administration of the Service, including regulations with respect to uniforms for employees, and regulations with respect to the custody, use, and preservation of the records, papers, and property of the Service.

(c) Preference to school of medicine

No regulation relating to qualifications for appointment of medical officers or employees shall give preference to any school of medicine.

(July 1, 1944, ch. 373, title II, § 215, 58 Stat. 690; Oct. 12, 1949, ch. 681, title V, § 521(f), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

AMENDMENTS

1949—Subsec. (b). Act Oct. 12, 1949, struck out references to travel and transportation of household goods and effects.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by sec-

tion 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, January 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 217. Use of Service in time of war or emergency

In time of war, or of emergency proclaimed by the President, he may utilize the Service to such extent and in such manner as shall in his judgment promote the public interest. In time of war, or of emergency involving the national defense proclaimed by the President, he may by Executive order declare the commissioned corps of the Service to be a military service. Upon such declaration, and during the period of such war or such emergency or such part thereof as the President shall prescribe, the commissioned corps (a) shall constitute a branch of the land and naval forces of the United States, (b) shall, to the extent prescribed by regulations of the President, be subject to the Uniform Code of Military Justice [10 U.S.C. 801 et seq.], and (c) shall continue to operate as part of the Service except to the extent that the President may direct as Commander in Chief.

(July 1, 1944, ch. 373, title II, § 216, 58 Stat. 690; Apr. 27, 1956, ch. 211, § 1, 70 Stat. 116.)

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in text, is classified to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

AMENDMENTS

1956—Act Apr. 27, 1956, empowered President to declare commissioned corps of the Service to be a military service in time of emergency involving national defense, and substituted ''the Uniform Code of Military Justice'' for ''the Articles of War and to the Articles for the Government of the Navy''.

REPEAL OF PRIOR ACTS CONTINUING SECTION

Section 6 of Joint Res. July 3, 1952, ch. 570, 66 Stat. 334, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of said Joint Res. July 3, 1952.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EXECUTIVE ORDER NO. 9575

Ex. Ord. No. 9575, eff. June 28, 1945, 10 F.R. 7895, which declared the Commissioned Corps of the Public Health Service to be a military service subject to the Articles for the Government of the Navy as therein prescribed, was superseded by Ex. Ord. No. 10349, eff. Apr. 28, 1952, 17 F.R. 3769.

EXECUTIVE ORDER NO. 10349

Ex. Ord. No. 10349, eff. Apr. 28, 1952, 17 F.R. 3769, superseded Ex. Ord. No. 9575, and subjected the Commissioned Corps of the Public Health Service to the provisions of the Uniform Code of Military Justice until June 1, 1952.

EXECUTIVE ORDER NO. 10356

Ex. Ord. No. 10356, eff. June 2, 1952, 17 F.R. 4967, amended Ex. Ord. No. 10349, and extended from June 1, 1952, to June 15, 1952, the period during which the Commissioned Corps of the Public Health Service was subject to the provisions of the Uniform Code of Military justice.

EXECUTIVE ORDER NO. 10362

Ex. Ord. No. 10362, eff. June 14, 1952, 17 F.R. 5413, amended Ex. Ord. No. 10356, and extended from June 15, 1952, to June 30, 1952, the period during which the Commissioned Corps of the Public Health Service was subject to the Uniform Code of Military Justice.

EXECUTIVE ORDER NO. 10367

Ex. Ord. No. 10367, eff. June 30, 1952, 17 F.R. 5929, amended Ex. Ord. No. 10362, and extended from June 30, 1952, to July 3, 1952, the period during which the Commissioned Corps of the Public Health Service was subject to the Uniform Code of Military Justice.

§ 217a. Advisory councils or committees

(a) Appointment; purpose

The Secretary may, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, from time to time, appoint such advisory councils or committees (in addition to those authorized to be established under other provisions of law), for such periods of time, as he deems desirable with such period commencing on a date specified by the Secretary for the purpose of advising him in connection with any of his functions.

(b) Compensation and allowances of members not full-time employees of United States

Members of any advisory council or committee appointed under this section who are not regular full-time employees of the United States shall, while attending meetings or conferences of such council or committee or otherwise engaged on business of such council or committee receive compensation and allowances as provided in section 210(c) of this title for members of national advisory councils established under this chapter.

(c) Delegation of functions

Upon appointment of any such council or committee, the Secretary may delegate to such council or committee such advisory functions relating to grants-in-aid for research or training projects or programs, in the areas or fields with which such council or committee is concerned, as the Secretary determines to be appropriate.

(July 1, 1944, ch. 373, title II, § 222, as added Pub. L. 87–838, § 3, Oct. 17, 1962, 76 Stat. 1073; amended Pub. L. 91–515, title VI, § 601(a)(3), (c), Oct. 30, 1970, 84 Stat. 1310, 1311; Pub. L. 99–158, § 3(a)(4), Nov. 20, 1985, 99 Stat. 879.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are

classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5.

AMENDMENTS

1985—Subsec. (c). Pub. L. 99–158 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Upon appointment of any such council or committee, the Surgeon General, with the approval of the Secretary, may transfer such of the functions of the National Advisory Health Council relating to grants-in-aid for research or training projects or programs in the areas or fields with which such council or committee is concerned as he determines to be appropriate.''

1970—Subsec. (a). Pub. L. 91–515, § 601(c)(1), substituted provisions authorizing the Secretary to appoint advisory councils or committees without regard to specified provisions governing appointments in the competitive service and relating to classification and General Schedule pay rates, for provisions authorizing the Surgeon General to appoint advisory committees without regard to the civil service laws and subject to the Secretary's approval in such cases as he prescribed.

Subsec. (b). Pub. L. 91–515, § 601(a)(3), inserted ''council or'' before ''committee'' wherever appearing.

Subsec. (c). Pub. L. 91–515, § 601(a)(3), (c)(2), inserted ''council or'' before ''committee'' wherever appearing, and ''or programs'' after ''projects''.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF ADVISORY COMMITTEES; REPORT BY SECRETARY TO CONGRESSIONAL COMMITTEES RELATING TO TERMINATION

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, provided that:

''(a) An advisory committee established by or pursuant to the Public Health Service Act [section 201 et seq. of this title], the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 [sections 2689 et seq. and 6001 et seq. of this title], or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [section 4541 et seq. of this title] shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after the date of the enactment of this Act [Jan. 4, 1975].

''(b) The Secretary of Health, Education, and Welfare shall report, within one year after the date of the enactment of the Act [Jan. 4, 1975], to the Committee on Labor and Public Welfare of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives (1) the purpose and use of each advisory committee established by or pursuant to the Public Health Service Act, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 and (2) his recommendations respecting the termination of each such advisory committee.''

§ 217a–1. Advisory committees; prohibition of consideration of political affiliations

All appointments to advisory committees established to assist in implementing the Public Health Service Act [42 U.S.C. 201 et seq.], the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 [42 U.S.C. 2689 et seq., 6000 et seq.], and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4541 et seq.], shall be made without regard to political affiliation.

(Pub. L. 94–278, title X, § 1001, Apr. 22, 1976, 90 Stat. 415.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter (§ 201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, referred to in text, is Pub. L. 88–164, Oct. 31, 1963, 77 Stat. 282, as amended. Title I of the Act, known as the Developmental Disabilities Assistance and Bill of Rights Act, was classified principally to chapter 75 (§ 6000 et seq.) of this title, prior to repeal by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. Title II of the Act, known as the Community Mental Health Centers Act, was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title, prior to repeal by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560. Title IV of the Act was classified generally to subchapter IV (§ 2691 et seq.) of chapter 33 of this title, prior to repeal by Pub. L. 94–103, title III, § 302(c), Oct. 4, 1975, 89 Stat. 507. Title III of the Act which amended provisions in Title 20, Education, and Title V of the Act which was classified generally to subchapter V (§ 2698 et seq.) of chapter 33 of this title, were repealed by Pub. L. 91–230, title VI, § 662(4), Apr. 13, 1970, 84 Stat. 188. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, referred to in text, is Pub. L. 91–616, Dec. 31, 1970, 84 Stat. 1848, as amended, which is classified principally to chapter 60 (§ 4541 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4541 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Public Health Service Act which comprises this chapter.

§ 217b. Volunteer services

Subject to regulations, volunteer and uncompensated services may be accepted by the Secretary, or by any other officer or employee of the Department of Health and Human Services designated by him, for use in the operation of any health care facility or in the provision of health care.

(July 1, 1944, ch. 373, title II, § 223, as added Pub. L. 90–174, § 6, Dec. 5, 1967, 81 Stat. 539; amended Pub. L. 103–43, title XX, § 2008(h), June 10, 1993, 107 Stat. 212.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

§ 218. National Advisory Councils on Migrant Health

(a) Appointment; duties

Within 120 days of July 29, 1975, the Secretary shall appoint and organize a National Advisory Council on Migrant Health (hereinafter in this

subsection referred to as the ''Council'') which shall advise, consult with, and make recommendations to, the Secretary on matters concerning the organization, operation, selection, and funding of migrant health centers and other entities under grants and contracts under section 254b[1] of this title.

(b) Membership

The Council shall consist of fifteen members, at least twelve of whom shall be members of the governing boards of migrant health centers or other entities assisted under section 254b[1] of this title. Of such twelve members who are members of such governing boards, at least nine shall be chosen from among those members of such governing boards who are being served by such centers or grantees and who are familiar with the delivery of health care to migratory agricultural workers and seasonal agricultural workers. The remaining three Council members shall be individuals qualified by training and experience in the medical sciences or in the administration of health programs.

(c) Terms of office

Each member of the Council shall hold office for a term of four years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of the members first taking office after July 29, 1975, shall expire as follows: four shall expire four years after such date, four shall expire three years after such date, four shall expire two years after such date, and three shall expire one year after such date, as designated by the Secretary at the time of appointment.

(d) Applicability of section 14(a) of Federal Advisory Committee Act

Section 14(a) of the Federal Advisory Committee Act shall not apply to the Council.

(July 1, 1944, ch. 373, title II, §217, 58 Stat. 691; July 3, 1946, ch. 538, §5(b)–(d), 60 Stat. 422; June 16, 1948, ch. 481, §§4(a)–(c), 6(b), 62 Stat. 467, 469; June 24, 1948, ch. 621, §4(a)–(c), 62 Stat. 600; Aug. 15, 1950, ch. 714, §3(a)–(d), 64 Stat. 446; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 91–515, title VI, §601(a)(1), Oct. 30, 1970, 84 Stat. 1310; Pub. L. 91–616, title IV, §401, Dec. 31, 1970, 84 Stat. 1853; Pub. L. 92–157, title III, §301(b), Nov. 18, 1971, 85 Stat. 463; Pub. L. 92–218, §6(a)(1), Dec. 23, 1971, 85 Stat. 785; Pub. L. 92–255, title V, §502(a), Mar. 21, 1972, 86 Stat. 85; Pub. L. 92–423, §7(a), Sept. 19, 1972, 86 Stat. 687; Pub. L. 93–348, title II, §211(a), July 12, 1974, 88 Stat. 351; Pub. L. 94–63, title IV, §401(b), July 29, 1975, 89 Stat. 341; Pub. L. 94–371, §9, July 26, 1976, 90 Stat. 1040; Pub. L. 95–622, title III, §302(b), Nov. 9, 1978, 92 Stat. 3442; Pub. L. 95–626, title I, §102(b)(1), Nov. 10, 1978, 92 Stat. 3551; Pub. L. 96–180, §13, Jan. 2, 1980, 93 Stat. 1304; Pub. L. 96–181, §14, Jan. 2, 1980, 93 Stat. 1315; Pub. L. 98–24, §2(a)(2), Apr. 26, 1983, 97 Stat. 176; Pub. L. 98–509, title III, §302, Oct. 19, 1984, 98 Stat. 2364; Pub. L. 99–158, §3(a)(2), (3), Nov. 20, 1985, 99 Stat. 878, 879; Pub. L. 99–570, title IV, §4004(c), Oct. 27, 1986, 100 Stat. 3207–111; Pub. L. 99–660, title III, §311(b)(1), Nov. 14, 1986, 100 Stat. 3779.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 254b of this title, referred to in subsecs. (a) and (b), was in the original a reference to section 329, meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, §2, Oct. 11, 1996, 110 Stat. 3626. Section 2 of Pub. L. 104–299 enacted a new section 330 of act July 1, 1944, which is classified to section 254b of this title.

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14(a) of Pub. L. 92–463, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1986—Pub. L. 99–570 redesignated former subsec. (e)(1) to (4) as subsecs. (a) to (d), respectively, in subsec. (c), further redesignated former cls. (A) and (B) as (1) and (2), respectively, and struck out former subsecs. (a) to (d), which related, respectively, to composition, qualifications, appointment and tenure of the National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism; duties of the National Advisory Mental Health Council; duties of the National Advisory Council on Alcohol Abuse and Alcoholism; and the composition, qualifications, and duties of the National Advisory Council on Drug Abuse.

Subsec. (c). Pub. L. 99–660 which directed that ''section 300cc of this title'' be substituted for ''section 300aa of this title'' could not be executed because the reference in question appeared in former subsec. (c) which was repealed by Pub. L. 99–570.

1985—Subsec. (a). Pub. L. 99–158, §3(a)(2)(A), in first sentence substituted ''National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism'' for ''National Advisory Health Council, the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council'', and substituted ''by the Secretary'' for ''by the Surgeon General with the approval of the Secretary of Health, Education, and Welfare''.

Pub. L. 99–158, §3(a)(2)(B)(i), in second sentence struck out ''in the case of the National Advisory Health Council, are skilled in the sciences related to health, and'' after ''scientific authorities who,''.

Pub. L. 99–158, §3(a)(2)(B)(ii), which directed the substitution in second sentence of ''the National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism'' for ''the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, the National Advisory Heart Council, and the National Advisory Dental Research Council'' was executed by making the substitution for ''the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council'' as the probable intent of Congress in view of the prior deletion of ''the National Advisory Heart Council,'' by Pub. L. 92–423. See 1972 Amendment note below.

Pub. L. 99–158, §3(a)(2)(B)(iii), in second sentence substituted ''and alcohol abuse and alcoholism'' for '', alcohol abuse and alcoholism, and dental diseases and conditions''.

Pub. L. 99–158, §3(a)(2)(C), struck out third sentence which provided that in the case of the National Advisory Dental Research Council, four of the six members selected from among the leading medical or scientific authorities be dentists.

Subsec. (b). Pub. L. 99–158, §3(a)(3), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to the duties of the National Advisory Health Council.

Subsecs. (c) to (e), (g). Pub. L. 99–158, §3(a)(3), redesignated subsecs. (d), (e), and (g) as (c), (d), and (e), respectively.

1984—Subsec. (a). Pub. L. 98–509 inserted provision requiring the Secretary to assure that the membership of the National Advisory Council on Alcohol Abuse and Alcoholism is broadly representative of experts in the fields of prevention, research, and treatment of alcohol abuse, alcoholism, and rehabilitation of alcohol abusers.

1983—Subsecs. (c), (d). Pub. L. 98–24 substituted ''section 300aa of this title'' for ''section 219 of this title''.

1980—Subsec. (a). Pub. L. 96–180 authorized appointees to serve after the expiration of their terms until their successors have taken office.

Subsec. (e)(1). Pub. L. 96–181, in provisions relating to the eligibility for selection of members, inserted officers or employees of State and local drug abuse agencies, and inserted provision that appointed members may serve after the expiration of their terms until their successors have taken office.

1978—Subsec. (f). Pub. L. 95–622 struck out subsec. (f) which related to the establishment of a National Advisory Council for the Protection of Subjects of Biomedical and Behavioral Research.

Subsec. (g)(1), (2). Pub. L. 95–626 substituted ''section 254b'' for ''section 247d''.

1976—Subsec. (d). Pub. L. 94–371 inserted provision that the Council advise the Secretary regarding policies and priorities with respect to grants and contracts in the field of alcohol abuse and alcoholism.

1975—Subsec. (g). Pub. L. 94–63 added subsec. (g).

1974—Subsec. (f). Pub. L. 93–348 added subsec. (f).

1972—Subsec. (a). Pub. L. 92–423, § 7(a)(1), (2), struck out ''the National Advisory Heart Council,'' after ''the National Advisory Council on Alcohol Abuse and Alcoholism'' in two places and ''heart diseases,'' after ''alcohol abuse and alcoholism,'', respectively.

Subsec. (b). Pub. L. 92–423, § 7(a)(2), struck out ''heart,'' after ''alcohol abuse and alcoholism,''.

Subsec. (e). Pub. L. 92–255 added subsec. (e).

1971—Subsec. (a). Pub. L. 92–218, § 6(a)(1)(A), (B), struck out reference to National Advisory Cancer Council before National Advisory Mental Health Council in two places and struck out ''cancer,'' before ''psychiatric disorders''.

Pub. L. 92–157 substituted ''National Advisory Council on Alcohol Abuse and Alcoholism'' for ''National Advisory Council on Alcoholic Abuse and Alcoholism'' in second sentence.

Subsec. (b). Pub. L. 92–218, § 6(a)(1)(B), struck out ''cancer,'' before ''mental health'' in listing of various diseases.

1970—Subsec. (a). Pub. L. 91–616, § 401(a), made subsection applicable to National Advisory Council on Alcohol Abuse and Alcoholism, and inserted alcohol abuse and alcoholism to enumeration of diseases concerning which members of such Council must be skilled, and prescribed manner in which terms of members of Council would expire.

Subsec. (b). Pub. L. 91–616, § 401(b), inserted reference to National Advisory Council on Alcohol Abuse and Alcoholism authorizing the Surgeon General to utilize the services of members of such Council for additional periods.

Pub. L. 91–515 inserted ''or committees'' after ''councils''.

Subsec. (d). Pub. L. 91–616, § 401(c), added subsec. (d).

1950—Act Aug. 15, 1950, § 3(d), amended section catchline to reflect addition of new advisory councils.

Subsec. (a). Act Aug. 15, 1950, § 3(a), applied provisions to all of the advisory councils with regard to composition, qualifications, and appointment and tenure of members.

Subsec. (b). Act Aug. 15, 1950, § 3(b), made subsection also applicable to new advisory councils.

Subsec. (c). Act Aug. 15, 1950, § 3(c), redesignated subsec. (e) as (c) and repealed former subsec. (c).

Subsecs. (d), (f), (g). Act. Aug. 15, 1950, § 3(c), repealed subsecs. (d), (f), and (g).

1948—Acts June 16, 1948, § 4(c), and June 24, 1948, § 4(c), included in section catchline the National Advisory Heart and Dental Research Councils, respectively.

Subsec. (a). Act June 16, 1948, § 6(b), substituted ''National Institutes of Health'' for ''National Institute of Health'' in second sentence.

Subsec. (b). Acts June 16, 1948, § 4(b), and June 24, 1948, § 4(b), made subsection applicable to the National Advisory Heart Council and the National Advisory Dental Research Council, respectively.

Subsec. (f). Act June 16, 1948, § 4(a), added subsec. (f) which established the National Advisory Heart Council.

Subsec. (g). Act June 24, 1948, § 4(a), added subsec. (g) which established the National Advisory Dental Research Council.

1946—Act July 3, 1946, inserted ''Mental Health'' in section catchline.

Subsec. (b). Act July 3, 1946, inserted ''or of the National Advisory Mental Health Council''.

Subsecs. (d), (e). Act July 3, 1946, added subsecs. (d) and (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 302(b) of Pub. L. 95–622 provided that the amendment made by that section is effective Nov. 1, 1978.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 211(b) of Pub. L. 93–348, as amended by Pub. L. 94–278, title III, § 301(b), Apr. 22, 1976, 90 Stat. 407; Pub. L. 94–573, § 18(b), Oct. 21, 1976, 90 Stat. 2720; Pub. L. 95–203, § 5(b), Nov. 23, 1977, 91 Stat. 1454, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect November 1, 1978.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 9 of Pub. L. 92–423 provided that: ''This Act and the amendments made by this Act [see Short Title of 1972 Amendment note under section 201 of this title] shall take effect sixty days after the date of enactment of this Act [Sept. 19, 1972] or on such prior date after the date of enactment of this Act as the President shall prescribe and publish in the Federal Register.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 7 of Pub. L. 92–218 provided that:

''(a) This Act and the amendments made by this Act [enacting sections 286a to 286*g* and 289*l* of this title, amending this section and sections 241, 282, 283, and 284 of this title, and enacting provisions set out as notes under sections 281 and 286 of this title] shall take effect sixty days after the date of enactment of this Act [Dec. 23, 1971] or on such prior date after the date of enactment of this Act as the President shall prescribe and publish in the Federal Register.

''(b) The first sentence of section 454 of the Public Health Service Act [section 289*l* of this title] (added by section 5 of this Act) shall apply only with respect to appointments made after the effective date of this Act (as prescribed by subsection (a)).

''(c) Notwithstanding the provisions of subsection (a), members of the National Cancer Advisory Board (authorized under section 410B of the Public Health Service Act, as added by this Act) [section 286f of this title] may be appointed, in the manner provided for in such section, at any time after the date of enactment of this Act [Dec. 23, 1971]. Such officers shall be compensated from the date they first take office, at the rates provided for in such section 410B [section 286f of this title].''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 3(a), (c) of act Aug. 15, 1950, provided that the amendments and repeals made by that section are effective Oct. 1, 1950.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and em-

ployees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

For transfer of certain membership functions, insofar as they pertain to the Air Force, which functions were not previously transferred from Secretary of the Army to Secretary of the Air Force and from Department of the Army to Department of the Air Force, see Secretary of Defense Transfer Order No. 40 [App. C(7)], July 22, 1949.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

EXPIRATION OF TERMS OF OFFICE ON SEPTEMBER 30, 1950

Section 3(c) of act Aug. 15, 1950, provided in part that terms of office as members of national advisory councils pursuant to this section subsisting on Sept. 30, 1950, shall expire at the close of business on such day.

TERMINATION OF NATIONAL ADVISORY HEALTH COUNCIL

Section 3(a)(1) of Pub. L. 99–158 provided that: ''The National Advisory Health Council established under section 217 [this section] is terminated.''

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 218a. Training of officers

(a) In general

Appropriations available for the pay and allowances of commissioned officers of the Service shall also be available for the pay and allowances of any such officer on active duty while attending any Federal or non-Federal educational institution or training program and, subject to regulations of the President and to the limitation prescribed in such appropriations, for payment of his tuition, fees, and other necessary expenses incident to such attendance.

(b) Voluntary separation within period subsequent to attendance

Any officer whose tuition, fees, and other necessary expenses are paid pursuant to subsection (a) of this section while attending an educational institution or training program for a period in excess of thirty days shall be obligated to pay to the Service an amount equal to two times the total amount of such tuition, fees, and other necessary expenses received by such officer during such period, and two times the total amount of any compensation received by, and any allowance paid to, such officer during such period, if after return to active service such officer voluntarily leaves the Service within (1) six months, or (2) twice the period of such attendance, whichever is greater. Such subsequent period of service shall commence upon the cessation of such attendance and of any further continuous period of training duty for which no tuition and fees are paid by the Service and which is part of the officer's prescribed formal training program, whether such further training is at a Service facility or otherwise. The Surgeon General may waive, in whole or in part, any payment which may be required by this subsection upon a determination that such payment would be inequitable or would not be in the public interest.

(c) Training in leave without pay status

A commissioned officer may be placed in leave without pay status while attending an educational institution or training program whenever the Secretary determines that such status is in the best interest of the Service. For purposes of computation of basic pay, promotion, retirement, compensation for injury or death, and the benefits provided by sections 213 and 233 of this title, an officer in such status pursuant to the preceding sentence shall be considered as performing service in the Service and shall have an active service obligation as set forth in subsection (b) of this section.

(July 1, 1944, ch. 373, title II, § 218, as added Feb. 28, 1948, ch. 83, § 8, 62 Stat. 47; amended Apr. 27, 1956, ch. 211, § 6, 70 Stat. 117; Pub. L. 96–76, title III, § 310, Sept. 29, 1979, 93 Stat. 585; Pub. L. 105–392, title IV, § 402(b), Nov. 13, 1998, 112 Stat. 3588.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–392 added subsec. (c).

1979—Subsec. (b). Pub. L. 96–76 substituted provisions relating to payment by an officer to the Service upon voluntary separation of two times the total amount of tuition, fees, and other necessary expenses received by such officer and two times the total amount of any compensation received by, and any allowance paid to, such officer, for provisions relating to reimbursement by the officer to the Service upon voluntary separation of tuition and fees and in last sentence substituted ''payment'' for ''reimbursement'' wherever appearing.

1956—Subsec. (a). Act Apr. 27, 1956, § 6(a), authorized training of all officers of the Service, and substituted ''any Federal or non-Federal educational institution or training program'' for ''any educational institution''.

Subsec. (b). Act Apr. 27, 1956, § 6(b), required reimbursement of tuition and fees by officers who receive training in excess of 30 days and who voluntarily leave the Service within a period of time which is equal to twice the period of such training, with a minimum period of six months of service, and a maximum period of two years, and permitted the Surgeon General to waive any reimbursement.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and em-

ployees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§§ 219 to 224. Transferred

CODIFICATION

Section 219, acts July 1, 1944, ch. 373, title V, § 501, 58 Stat. 709; July 3, 1946, ch. 538, § 10, 60 Stat. 425; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 15, 1968, Pub. L. 90–574, title V, § 503(b), 82 Stat. 1012; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, which related to gifts for the benefit of the Service, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

Section 220, act July 1, 1944, ch. 373, title V, § 502, 58 Stat. 710, which related to use of immigration station hospitals, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

Section 221, act July 1, 1944, ch. 373, title V, § 503, 58 Stat. 710, which related to disposition of money collected for care of patients, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

Section 222, acts July 1, 1944, ch. 373, title V, § 504, 58 Stat. 710, June 25, 1948, ch. 654, § 6, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to care of Service patients at Saint Elizabeths Hospital, was renumbered section 2104 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–3 of this title, renumbered section 2304 of act July 1, 1944, by Pub. L. 99–660 and transferred to section 300cc–3 of this title, and was repealed by Pub. L. 98–621, § 10(s), Nov. 8, 1984, 98 Stat. 3381.

Section 223, act July 1, 1944, ch. 373, title V, § 505, 58 Stat. 710; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to settlement of claims, was renumbered section 2105 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–4 of this title, and was repealed by Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495. See section 300cc–4 of this title.

Section 224, acts July 1, 1944, ch. 373, title V, § 506, 58 Stat. 710; July 15, 1954, ch. 507, § 14(b), 68 Stat. 481, which related to transportation of remains of officers, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

A new title V (§ 501 et seq.) of the Public Health Service Act was added by Pub. L. 98–24, § 2(b), Apr. 26, 1983, 97 Stat. 177, and is classified to subchapter III–A (§ 290aa et seq. of this title).

§ 225. Repealed. July 12, 1955, ch. 328, § 5(4), 69 Stat. 296

Section, acts July 1, 1944, ch. 373, title V, § 507, 58 Stat. 711; Feb. 25, 1946, ch. 35, § 2, 60 Stat. 30, provided for settlement of accounts of deceased officers. See section 2771 of Title 10, Armed Forces, and section 714 of Title 32, National Guard.

EFFECTIVE DATE OF REPEAL

Repeal effective as of effective date of payment provisions of sections 361 to 365 of former Title 37, Pay and Allowances, except with respect to the deaths of members, see section 5 of act July 12, 1955.

§§ 225a to 227. Transferred

CODIFICATION

Section 225a, act July 1, 1944, ch. 373, title V, § 507, as added June 24, 1967, Pub. L. 90–31, § 5, 81 Stat. 79; amended Oct. 27, 1970, Pub. L. 91–513, title I, § 3(c), 84 Stat. 1241; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1102(b), 90 Stat. 415; Oct. 7, 1980, Pub. L. 96–398, title VIII, § 804(b), 94 Stat. 1603; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(2), 95 Stat. 560, which related to availability of appropriations for grants to Federal institutions, was successively renumbered by subsequent acts and transferred, see section 238d of this title.

A prior section 507 of act July 1, 1944, ch. 373, title V, providing for settlement of accounts of deceased officers, was classified to section 225 of this title and subsequently repealed.

Section 226, act July 1, 1944, ch. 373, title V, § 508, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, which related to transfer of funds between appropriations, was successively renumbered by subsequent acts and transferred, see section 238e of this title.

Section 227, acts July 1, 1944, ch. 373, title V, § 509 58 Stat. 711; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; June 25, 1948, ch. 654, § 7, 62 Stat. 1018; Reorg. Plan No. 1 of 1953 §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to availability of appropriations for carrying out purposes of this chapter, was successively renumbered by subsequent acts and transferred, see section 238f of this title.

§ 227a. Omitted

CODIFICATION

Section, Pub. L. 90–132, title II, § 204, Nov. 8, 1967, 81 Stat. 407, which provided that appropriations to the Public Health Service be available for research grants to hospitals of the Service, the Bureau of Prisons, Department of Justice, and to Saint Elizabeths Hospital, on the same terms and conditions as grants to non-Federal institutions, was enacted as part of the Department of Health, Education, and Welfare Appropriation Act, 1968, and not as part of the Public Health Service Act which comprises this chapter, and was not repeated in subsequent appropriation acts. See section 300cc–6 of this title. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 89–787, title II, § 204, Nov. 7, 1966, 80 Stat. 1400.
Pub. L. 89–156, title II, § 204, Aug. 31, 1965, 79 Stat. 609.
Pub. L. 88–605, title II, § 204, Sept. 19, 1964, 78 Stat. 979.
Pub. L. 88–136, title II, § 204, Oct. 11, 1963, 77 Stat. 244.
Pub. L. 87–582, title II, § 204, Aug. 14, 1962, 76 Stat. 379.
Pub. L. 87–290, title II, § 206, Sept. 22, 1961, 75 Stat. 608.
Pub. L. 86–703, title II, § 207, Sept. 2, 1960, 74 Stat. 773.
Pub. L. 86–158, title II, § 210, Aug. 14, 1959, 73 Stat. 355.

§§ 228 to 229d. Transferred

CODIFICATION

Section 228, acts July 1, 1944, ch. 373, title V, § 510, 58 Stat. 711; June 25, 1948, ch. 645, § 5, 62 Stat. 859, which related to wearing of uniforms, was successively renumbered by subsequent acts and transferred, see section 238g of this title.

Section 229, act July 1, 1944, ch. 373, title V, § 511, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to an annual report by Surgeon General, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

Section 229a, act July 1, 1944, ch. 373, title V, § 512, as added Oct. 15, 1968, Pub. L. 90–574, title V, § 503(a), 82 Stat. 1012, which related to memorials and other acknowledgments for contributions to health of the Nation, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

Section 229b, act July 1, 1944, ch. 373, title V, § 513, as added June 30, 1970, Pub. L. 91–296, title IV, § 401(a), 84

Stat. 351; amended Oct. 7, 1980, Pub. L. 96–398, title VIII, § 804(c), 94 Stat. 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(3), 95 Stat. 560, which related to evaluation of programs, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

Section 229c, act July 1, 1944, ch. 373, title V, § 514, as added Nov. 9, 1978, Pub. L. 95–623, § 11(e), 92 Stat. 3456, which related to contract authority of Secretary, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

Section 229d, act July 1, 1944, ch. 373, title V, § 515, formerly Pub. L. 88–164, title II, § 225, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 326; amended Pub. L. 95–622, title I, § 110(c), Nov. 9, 1978, 92 Stat. 3420; renumbered and amended Pub. L. 97–35, title IX, § 902(e)(2)(A), Aug. 13, 1981, 95 Stat. 560, which related to recovery of payments, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

§ 230. Repealed. Apr. 27, 1956, ch. 211, § 5(e), 70 Stat. 117

Section, act July 1, 1944, ch. 373, title VII, § 706, formerly title VI, § 606, 58 Stat. 713; renumbered title VII, § 706, Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; amended Feb. 28, 1948, ch. 83, § 9(a), 62 Stat. 47; Oct. 12, 1949, ch. 681, title V, § 521(g), 63 Stat. 835, provided for computation of retired pay. See section 212 of this title.

§ 231. Service and supply fund; uses; reimbursement

A service and supply fund of $250,000 is established, without fiscal year limitation, for the payment of salaries, travel, and other expenses necessary to the maintenance and operation of (1) a supply service for the purchase, storage, handling, issuance, packing, or shipping of stationery, supplies, materials, equipment, and blank forms, for which stocks may be maintained to meet, in whole or in part, requirements of the Public Health Service and requisitions of other Government Offices, and (2) such other services as the Surgeon General, with the approval of the Secretary of Health and Human Services, determines may be performed more advantageously as central services; said fund to be reimbursed from applicable appropriations or funds available when services are performed or stock furnished, or in advance, on a basis of rates which shall include estimated or actual charges for personal services, materials, equipment (including maintenance, repairs, and depreciation), and other expenses.

(July 3, 1945, ch. 263, title II, 59 Stat. 370; 1953 Reorg. Plan No. 1, §§ 5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–414, § 9(i), Jan. 4, 1983, 96 Stat. 2064.)

CODIFICATION

Section is from the Federal Security Appropriation Act, 1946, act July 3, 1945, and was not enacted as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1983—Pub. L. 97–414 inserted ", or in advance," after "stock furnished".

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 232. National Institute of Mental Health; authorization of appropriation; construction; location

There is authorized to be appropriated a sum not to exceed $7,500,000 for the erection and equipment, for the use of the Public Health Service in carrying out the provisions of this Act, of suitable and adequate hospital buildings and facilities, including necessary living quarters for personnel, and of suitable and adequate laboratory buildings and facilities, and such buildings and facilities shall be known as the National Institute of Mental Health. The Administrator of General Services is authorized to acquire, by purchase, condemnation, donation, or otherwise, a suitable and adequate site or sites, selected on the advice of the Surgeon General of the Public Health Service, in or near the District of Columbia for such buildings and facilities, and to erect thereon, furnish, and equip such buildings and facilities. The amount authorized to be appropriated in this section shall include the cost of preparation of drawings and specifications, supervision of construction, and other administrative expenses incident to the work: *Provided*, That the Administrator of General Services shall prepare the plans and specifications, make all necessary contracts, and supervise construction.

(July 3, 1946, ch. 538, § 11, 60 Stat. 425; June 30, 1949, ch. 288, title I, § 103(a), 63 Stat. 380.)

REFERENCES IN TEXT

This Act, referred to in text, is act July 3, 1946, ch. 538, 60 Stat. 421, as amended, known as the National Mental Health Act, which enacted sections 232 and 242a of this title, amended sections 201, 209, 210, 215, 218, 219, 241, 244, and 246 of this title, and enacted provisions set out as notes under section 201 of this title. For complete classification of this Act to the Code, see Short Title of 1946 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as a part of the National Mental Health Act, and not as a part of the Public Health Service Act which comprises this chapter.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg.

Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Works Agency and of all agencies thereof, together with functions of Federal Works Administrator transferred to Administrator of General Services by section 103(a) of act June 30, 1949. Both Federal Works Agency and office of Federal Works Administrator abolished by section 103(b) of that act. See Historical and Revision Notes under section 303(b) of Title 40, Public Buildings, Property, and Works. Section 303(b) of Title 40 was amended generally by Pub. L. 109–313, §2(a)(1), Oct. 6, 2006, 120 Stat. 1734, and, as so amended, no longer relates to the Federal Works Agency and Commissioner of Public Buildings. See 2006 Amendment note under section 303 of Title 40.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605, formerly section 505, of act June 30, 1949, ch. 288, 63 Stat. 403; renumbered by act Sept. 5, 1950, ch. 849, §6(a), (b), 64 Stat. 583.

§ 233. Civil actions or proceedings against commissioned officers or employees

(a) Exclusiveness of remedy

The remedy against the United States provided by sections 1346(b) and 2672 of title 28, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of title 28, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigation, by any commissioned officer or employee of the Public Health Service while acting within the scope of his office or employment, shall be exclusive of any other civil action or proceeding by reason of the same subject-matter against the officer or employee (or his estate) whose act or omission gave rise to the claim.

(b) Attorney General to defend action or proceeding; delivery of process to designated official; furnishing of copies of pleading and process to United States attorney, Attorney General, and Secretary

The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Removal to United States district court; procedure; proceeding upon removal deemed a tort action against United States; hearing on motion to remand to determine availability of remedy against United States; remand to State court or dismissal

Upon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merit that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State Court: *Provided*, That where such a remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in the event the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

(d) Compromise or settlement of claim by Attorney General

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 and with the same effect.

(e) Assault or battery

For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to assault or battery arising out of negligence in the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations.

(f) Authority of Secretary or designee to hold harmless or provide liability insurance for assigned or detailed employees

The Secretary or his designee may, to the extent that he deems appropriate, hold harmless or provide liability insurance for any officer or employee of the Public Health Service for damage for personal injury, including death, negligently caused by such officer or employee while acting within the scope of his office or employment and as a result of the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, if such employee is assigned to a foreign country or detailed to a State or political subdivision thereof or to a non-profit institution, and if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of title 28, for such damage or injury.

(g) Exclusivity of remedy against United States for entities deemed Public Health Service employees; coverage for services furnished to individuals other than center patients; application process; subrogation of medical malpractice claims; applicable period; entity and contractor defined

(1)(A) For purposes of this section and subject to the approval by the Secretary of an application under subparagraph (D), an entity described in paragraph (4), and any officer, governing board member, or employee of such an entity, and any contractor of such an entity who is a physician or other licensed or certified health care practitioner (subject to paragraph (5)), shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under subsection (k)(3) of this section (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, governing board member, employee, or contractor (subject to paragraph (5)) of such an entity who is deemed to be an employee of the Public Health Service pursuant to this paragraph shall be exclusive of any other civil action or proceeding to the same extent as the remedy against the United States is exclusive pursuant to subsection (a) of this section.

(B) The deeming of any entity or officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section shall apply with respect to services provided—

(i) to all patients of the entity, and

(ii) subject to subparagraph (C), to individuals who are not patients of the entity.

(C) Subparagraph (B)(ii) applies to services provided to individuals who are not patients of an entity if the Secretary determines, after reviewing an application submitted under subparagraph (D), that the provision of the services to such individuals—

(i) benefits patients of the entity and general populations that could be served by the entity through community-wide intervention efforts within the communities served by such entity;

(ii) facilitates the provision of services to patients of the entity; or

(iii) are otherwise required under an employment contract (or similar arrangement) between the entity and an officer, governing board member, employee, or contractor of the entity.

(D) The Secretary may not under subparagraph (A) deem an entity or an officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section, and may not apply such deeming to services described in subparagraph (B)(ii), unless the entity has submitted an application for such deeming to the Secretary in such form and such manner as the Secretary shall prescribe. The application shall contain detailed information, along with supporting documentation, to verify that the entity, and the officer, governing board member, employee, or contractor of the entity, as the case may be, meets the requirements of subparagraphs (B) and (C) of this paragraph and that the entity meets the requirements of paragraphs (1) through (4) of subsection (h) of this section.

(E) The Secretary shall make a determination of whether an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section within 30 days after the receipt of an application under subparagraph (D). The determination of the Secretary that an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section shall apply for the period specified by the Secretary under subparagraph (A).

(F) Once the Secretary makes a determination that an entity or an officer, governing board member, employee, or contractor of an entity is deemed to be an employee of the Public Health Service for purposes of this section, the determination shall be final and binding upon the Secretary and the Attorney General and other parties to any civil action or proceeding. Except as provided in subsection (i) of this section, the Secretary and the Attorney General may not determine that the provision of services which are the subject of such a determination are not covered under this section.

(G) In the case of an entity described in paragraph (4) that has not submitted an application under subparagraph (D):

(i) The Secretary may not consider the entity in making estimates under subsection (k)(1) of this section.

(ii) This section does not affect any authority of the entity to purchase medical malpractice liability insurance coverage with Federal funds provided to the entity under section 254b, 254b, or 256a of this title.[1]

(H) In the case of an entity described in paragraph (4) for which an application under subparagraph (D) is in effect, the entity may, through notifying the Secretary in writing, elect to terminate the applicability of this subsection to the entity. With respect to such election by the entity:

(i) The election is effective upon the expiration of the 30-day period beginning on the date on which the entity submits such notification.

(ii) Upon taking effect, the election terminates the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity.

(iii) Upon the effective date for the election, clauses (i) and (ii) of subparagraph (G) apply to the entity to the same extent and in the same manner as such clauses apply to an entity that has not submitted an application under subparagraph (D).

(iv) If after making the election the entity submits an application under subparagraph (D), the election does not preclude the Secretary from approving the application ([2]and thereby restoring the applicability of this subsection to the entity and each officer, govern-

[1] See References in Text notes below.

[2] So in original. There is no closing parenthesis.

ing board member, employee, and contractor of the entity, subject to the provisions of this subsection and the subsequent provisions of this section.

(2) If, with respect to an entity or person deemed to be an employee for purposes of paragraph (1), a cause of action is instituted against the United States pursuant to this section, any claim of the entity or person for benefits under an insurance policy with respect to medical malpractice relating to such cause of action shall be subrogated to the United States.

(3) This subsection shall apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1993.

(4) An entity described in this paragraph is a public or non-profit private entity receiving Federal funds under section 254b of this title.

(5) For purposes of paragraph (1), an individual may be considered a contractor of an entity described in paragraph (4) only if—

(A) the individual normally performs on average at least 32½ hours of service per week for the entity for the period of the contract; or

(B) in the case of an individual who normally performs an average of less than 32½ hours of services per week for the entity for the period of the contract, the individual is a licensed or certified provider of services in the fields of family practice, general internal medicine, general pediatrics, or obstetrics and gynecology.

(h) Qualifications for designation as Public Health Service employee

The Secretary may not approve an application under subsection (g)(1)(D) of this section unless the Secretary determines that the entity—

(1) has implemented appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity;

(2) has reviewed and verified the professional credentials, references, claims history, fitness, professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has obtained the permission from these individuals to gain access to this information;

(3) has no history of claims having been filed against the United States as a result of the application of this section to the entity or its officers, employees, or contractors as provided for under this section, or, if such a history exists, has fully cooperated with the Attorney General in defending against any such claims and either has taken, or will take, any necessary corrective steps to assure against such claims in the future; and

(4) will fully cooperate with the Attorney General in providing information relating to an estimate described under subsection (k) of this section.

(i) Authority of Attorney General to exclude health care professionals from coverage

(1) Notwithstanding subsection (g)(1) of this section, the Attorney General, in consultation with the Secretary, may on the record determine, after notice and opportunity for a full and fair hearing, that an individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of an entity described in subsection (g)(4) of this section shall not be deemed to be an employee of the Public Health Service for purposes of this section, if treating such individual as such an employee would expose the Government to an unreasonably high degree of risk of loss because such individual—

(A) does not comply with the policies and procedures that the entity has implemented pursuant to subsection (h)(1) of this section;

(B) has a history of claims filed against him or her as provided for under this section that is outside the norm for licensed or certified health care practitioners within the same specialty;

(C) refused to reasonably cooperate with the Attorney General in defending against any such claim;

(D) provided false information relevant to the individual's performance of his or her duties to the Secretary, the Attorney General, or an applicant for or recipient of funds under this chapter; or

(E) was the subject of disciplinary action taken by a State medical licensing authority or a State or national professional society.

(2) A final determination by the Attorney General under this subsection that an individual physician or other licensed or certified health care professional shall not be deemed to be an employee of the Public Health Service shall be effective upon receipt by the entity employing such individual of notice of such determination, and shall apply only to acts or omissions occurring after the date such notice is received.

(j) Remedy for denial of hospital admitting privileges to certain health care providers

In the case of a health care provider who is an officer, employee, or contractor of an entity described in subsection (g)(4) of this section, section 254h(e) of this title shall apply with respect to the provider to the same extent and in the same manner as such section applies to any member of the National Health Service Corps.

(k) Estimate of annual claims by Attorney General; criteria; establishment of fund; transfer of funds to Treasury accounts

(1)(A) For each fiscal year, the Attorney General, in consultation with the Secretary, shall estimate by the beginning of the year the amount of all claims which are expected to arise under this section (together with related fees and expenses of witnesses) for which payment is expected to be made in accordance with section 1346 and chapter 171 of title 28 from the acts or omissions, during the calendar year that begins during that fiscal year, of entities described in subsection (g)(4) of this section and of officers, employees, or contractors (subject to subsection (g)(5) of this section) of such entities.

(B) The estimate under subparagraph (A) shall take into account—

(i) the value and frequency of all claims for damage for personal injury, including death, resulting from the performance of medical,

surgical, dental, or related functions by entities described in subsection (g)(4) of this section or by officers, employees, or contractors (subject to subsection (g)(5) of this section) of such entities who are deemed to be employees of the Public Health Service under subsection (g)(1) of this section that, during the preceding 5-year period, are filed under this section or, with respect to years occurring before this subsection takes effect, are filed against persons other than the United States,

(ii) the amounts paid during that 5-year period on all claims described in clause (i), regardless of when such claims were filed, adjusted to reflect payments which would not be permitted under section 1346 and chapter 171 of title 28, and

(iii) amounts in the fund established under paragraph (2) but unspent from prior fiscal years.

(2) Subject to appropriations, for each fiscal year, the Secretary shall establish a fund of an amount equal to the amount estimated under paragraph (1) that is attributable to entities receiving funds under each of the grant programs described in paragraph (4) of subsection (g) of this section, but not to exceed a total of $10,000,000 for each such fiscal year. Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of sections 254b, 254b and 256a of this title.[1]

(3) In order for payments to be made for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of entities described in subsection (g)(4) of this section and of officers, governing board member,[3] employees, or contractors (subject to subsection (g)(5) of this section) of such entities, the total amount contained within the fund established by the Secretary under paragraph (2) for a fiscal year shall be transferred not later than the December 31 that occurs during the fiscal year to the appropriate accounts in the Treasury.

(*l*) Timely response to filing of action or proceeding

(1) If a civil action or proceeding is filed in a State court against any entity described in subsection (g)(4) of this section or any officer, governing board member, employee, or any contractor of such an entity for damages described in subsection (a) of this section, the Attorney General, within 15 days after being notified of such filing, shall make an appearance in such court and advise such court as to whether the Secretary has determined under subsections (g) and (h) of this section, that such entity, officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section with respect to the actions or omissions that are the subject of such civil action or proceeding. Such advice shall be deemed to satisfy the provisions of subsection (c) of this section that the Attorney General certify that an entity, officer, governing board member, employee, or contractor of the entity was acting within the scope of their employment or responsibility.

(2) If the Attorney General fails to appear in State court within the time period prescribed under paragraph (1), upon petition of any entity or officer, governing board member, employee, or contractor of the entity named, the civil action or proceeding shall be removed to the appropriate United States district court. The civil action or proceeding shall be stayed in such court until such court conducts a hearing, and makes a determination, as to the appropriate forum or procedure for the assertion of the claim for damages described in subsection (a) of this section and issues an order consistent with such determination.

(m) Application of coverage to managed care plans

(1) An entity or officer, governing board member, employee, or contractor of an entity described in subsection (g)(1) of this section shall, for purposes of this section, be deemed to be an employee of the Public Health Service with respect to services provided to individuals who are enrollees of a managed care plan if the entity contracts with such managed care plan for the provision of services.

(2) Each managed care plan which enters into a contract with an entity described in subsection (g)(4) of this section shall deem the entity and any officer, governing board member, employee, or contractor of the entity as meeting whatever malpractice coverage requirements such plan may require of contracting providers for a calendar year if such entity or officer, governing board member, employee, or contractor of the entity has been deemed to be an employee of the Public Health Service for purposes of this section for such calendar year. Any plan which is found by the Secretary on the record, after notice and an opportunity for a full and fair hearing, to have violated this subsection shall upon such finding cease, for a period to be determined by the Secretary, to receive and to be eligible to receive any Federal funds under titles XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.].

(3) For purposes of this subsection, the term ''managed care plan'' shall mean health maintenance organizations and similar entities that contract at-risk with payors for the provision of health services or plan enrollees and which contract with providers (such as entities described in subsection (g)(4) of this section) for the delivery of such services to plan enrollees.

(n) Report on risk exposure of covered entities

(1) Not later than one year after December 26, 1995, the Comptroller General of the United States shall submit to the Congress a report on the following:

(A) The medical malpractice liability claims experience of entities that have been deemed to be employees for purposes of this section.

(B) The risk exposure of such entities.

(C) The value of private sector risk-management services, and the value of risk-management services and procedures required as a

[3] So in original. Probably should be ''members,''.

condition of receiving a grant under section 254b, 254b, or 256a of this title.[4]

(D) A comparison of the costs and the benefits to taxpayers of maintaining medical malpractice liability coverage for such entities pursuant to this section, taking into account—

(i) a comparison of the costs of premiums paid by such entities for private medical malpractice liability insurance with the cost of coverage pursuant to this section; and

(ii) an analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of such entities.

(2) The report under paragraph (1) shall include the following:

(A) A comparison of—

(i) an estimate of the aggregate amounts that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) would have directly or indirectly paid in premiums to obtain medical malpractice liability insurance coverage if this section were not in effect; with

(ii) the aggregate amounts by which the grants received by such entities under this chapter were reduced pursuant to subsection (k)(2) of this section.

(B) A comparison of—

(i) an estimate of the amount of privately offered such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) purchased during the three-year period beginning on January 1, 1993; with

(ii) an estimate of the amount of such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) will purchase after December 26, 1995.

(C) An estimate of the medical malpractice liability loss history of such entities for the 10-year period preceding October 1, 1996, including but not limited to the following:

(i) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by the Federal Government pursuant to deeming entities as employees for purposes of this section.

(ii) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by private medical malpractice liability insurance.

(D) An analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of entities that have been deemed as employees for purposes of this section.

(3) In preparing the report under paragraph (1), the Comptroller General of the United States shall consult with public and private entities with expertise on the matters with which the report is concerned.

(*o*) Volunteer services provided by health professionals at free clinics

(1) For purposes of this section, a free clinic health professional shall in providing a qualifying health service to an individual be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under paragraph (6)(D). The preceding sentence is subject to the provisions of this subsection.

(2) In providing a health service to an individual, a health care practitioner shall for purposes of this subsection be considered to be a free clinic health professional if the following conditions are met:

(A) The service is provided to the individual at a free clinic, or through offsite programs or events carried out by the free clinic.

(B) The free clinic is sponsoring the health care practitioner pursuant to paragraph (5)(C).

(C) The service is a qualifying health service (as defined in paragraph (4)).

(D) Neither the health care practitioner nor the free clinic receives any compensation for the service from the individual or from any third-party payor (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program). With respect to compliance with such condition:

(i) The health care practitioner may receive repayment from the free clinic for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual.

(ii) The free clinic may accept voluntary donations for the provision of the service by the health care practitioner to the individual.

(E) Before the service is provided, the health care practitioner or the free clinic provides written notice to the individual of the extent to which the legal liability of the health care practitioner is limited pursuant to this subsection (or in the case of an emergency, the written notice is provided to the individual as soon after the emergency as is practicable). If the individual is a minor or is otherwise legally incompetent, the condition under this subparagraph is that the written notice be provided to a legal guardian or other person with legal responsibility for the care of the individual.

(F) At the time the service is provided, the health care practitioner is licensed or certified in accordance with applicable law regarding the provision of the service.

(3)(A) For purposes of this subsection, the term ''free clinic'' means a health care facility operated by a nonprofit private entity meeting the following requirements:

(i) The entity does not, in providing health services through the facility, accept reim-

[4] See References in Text notes below.

bursement from any third-party payor (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program).

(ii) The entity, in providing health services through the facility, either does not impose charges on the individuals to whom the services are provided, or imposes a charge according to the ability of the individual involved to pay the charge.

(iii) The entity is licensed or certified in accordance with applicable law regarding the provision of health services.

(B) With respect to compliance with the conditions under subparagraph (A), the entity involved may accept voluntary donations for the provision of services.

(4) For purposes of this subsection, the term ''qualifying health service'' means any medical assistance required or authorized to be provided in the program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], without regard to whether the medical assistance is included in the plan submitted under such program by the State in which the health care practitioner involved provides the medical assistance. References in the preceding sentence to such program shall as applicable be considered to be references to any successor to such program.

(5) Subsection (g) of this section (other than paragraphs (3) through (5)) and subsections (h), (i), and (*l*) of this section apply to a health care practitioner for purposes of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4) of this section, subject to paragraph (6) and subject to the following:

(A) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A) of this section.

(B) This subsection may not be construed as deeming any free clinic to be an employee of the Public Health Service for purposes of this section.

(C) With respect to a free clinic, a health care practitioner is not a free clinic health professional unless the free clinic sponsors the health care practitioner. For purposes of this subsection, the free clinic shall be considered to be sponsoring the health care practitioner if—

(i) with respect to the health care practitioner, the free clinic submits to the Secretary an application meeting the requirements of subsection (g)(1)(D) of this section; and

(ii) the Secretary, pursuant to subsection (g)(1)(E) of this section, determines that the health care practitioner is deemed to be an employee of the Public Health Service.

(D) In the case of a health care practitioner who is determined by the Secretary pursuant to subsection (g)(1)(E) of this section to be a free clinic health professional, this subsection applies to the health care practitioner (with respect to the free clinic sponsoring the health care practitioner pursuant to subparagraph (C)) for any cause of action arising from an act or omission of the health care practitioner occurring on or after the date on which the Secretary makes such determination.

(E) Subsection (g)(1)(F) of this section applies to a health care practitioner for purposes of this subsection only to the extent that, in providing health services to an individual, each of the conditions specified in paragraph (2) is met.

(6)(A) For purposes of making payments for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of free clinic health professionals, there is authorized to be appropriated $10,000,000 for each fiscal year.

(B) The Secretary shall establish a fund for purposes of this subsection. Each fiscal year amounts appropriated under subparagraph (A) shall be deposited in such fund.

(C) Not later than May 1 of each fiscal year, the Attorney General, in consultation with the Secretary, shall submit to the Congress a report providing an estimate of the amount of claims (together with related fees and expenses of witnesses) that, by reason of the acts or omissions of free clinic health professionals, will be paid pursuant to this section during the calendar year that begins in the following fiscal year. Subsection (k)(1)(B) of this section applies to the estimate under the preceding sentence regarding free clinic health professionals to the same extent and in the same manner as such subsection applies to the estimate under such subsection regarding officers, governing board members, employees, and contractors of entities described in subsection (g)(4) of this section.

(D) Not later than December 31 of each fiscal year, the Secretary shall transfer from the fund under subparagraph (B) to the appropriate accounts in the Treasury an amount equal to the estimate made under subparagraph (C) for the calendar year beginning in such fiscal year, subject to the extent of amounts in the fund.

(7)(A) This subsection takes effect on the date of the enactment of the first appropriations Act that makes an appropriation under paragraph (6)(A), except as provided in subparagraph (B)(i).

(B)(i) Effective on August 21, 1996—

(I) the Secretary may issue regulations for carrying out this subsection, and the Secretary may accept and consider applications submitted pursuant to paragraph (5)(C); and

(II) reports under paragraph (6)(C) may be submitted to the Congress.

(ii) For the first fiscal year for which an appropriation is made under subparagraph (A) of paragraph (6), if an estimate under subparagraph (C) of such paragraph has not been made for the calendar year beginning in such fiscal year, the transfer under subparagraph (D) of such paragraph shall be made notwithstanding the lack of the estimate, and the transfer shall be made in an amount equal to the amount of such appropriation.

(p) Administration of smallpox countermeasures by health professionals

(1) In general

For purposes of this section, and subject to other provisions of this subsection, a covered

person shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a covered countermeasure against smallpox to an individual during the effective period of a declaration by the Secretary under paragraph (2)(A).

(2) Declaration by Secretary concerning countermeasure against smallpox

(A) Authority to issue declaration

(i) In general

The Secretary may issue a declaration, pursuant to this paragraph, concluding that an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.

(ii) Covered countermeasure

The Secretary shall specify in such declaration the substance or substances that shall be considered covered countermeasures (as defined in paragraph (7)(A)) for purposes of administration to individuals during the effective period of the declaration.

(iii) Effective period

The Secretary shall specify in such declaration the beginning and ending dates of the effective period of the declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the date when the declaration is amended.

(iv) Publication

The Secretary shall promptly publish each such declaration and amendment in the Federal Register.

(B) Liability of United States only for administrations within scope of declaration

Except as provided in paragraph (5)(B)(ii), the United States shall be liable under this subsection with respect to a claim arising out of the administration of a covered countermeasure to an individual only if—

(i) the countermeasure was administered by a qualified person, for a purpose stated in paragraph (7)(A)(i), and during the effective period of a declaration by the Secretary under subparagraph (A) with respect to such countermeasure; and

(ii)(I) the individual was within a category of individuals covered by the declaration; or

(II) the qualified person administering the countermeasure had reasonable grounds to believe that such individual was within such category.

(C) Presumption of administration within scope of declaration in case of accidental vaccinia inoculation

(i) In general

If vaccinia vaccine is a covered countermeasure specified in a declaration under subparagraph (A), and an individual to whom the vaccinia vaccine is not administered contracts vaccinia, then, under the circumstances specified in clause (ii), the individual—

(I) shall be rebuttably presumed to have contracted vaccinia from an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B); and

(II) shall (unless such presumption is rebutted) be deemed for purposes of this subsection to be an individual to whom a covered countermeasure was administered by a qualified person in accordance with the terms of such declaration and as described by subparagraph (B).

(ii) Circumstances in which presumption applies

The presumption and deeming stated in clause (i) shall apply if—

(I) the individual contracts vaccinia during the effective period of a declaration under subparagraph (A) or by the date 30 days after the close of such period; or

(II) the individual has resided with, or has had contact with, an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B) and contracts vaccinia after such date.

(D) Acts and omissions deemed to be within scope of employment

(i) In general

In the case of a claim arising out of alleged transmission of vaccinia from an individual described in clause (ii), acts or omissions by such individual shall be deemed to have been taken within the scope of such individual's office or employment for purposes of—

(I) subsection (a) of this section; and

(II) section 1346(b) and chapter 171 of title 28.

(ii) Individuals to whom deeming applies

An individual is described by this clause if—

(I) vaccinia vaccine was administered to such individual as provided by subparagraph (B); and

(II) such individual was within a category of individuals covered by a declaration under subparagraph (A)(i).

(3) Exhaustion; exclusivity; offset

(A) Exhaustion

(i) In general

A person may not bring a claim under this subsection unless such person has exhausted such remedies as are available under part C of this subchapter, except that if the Secretary fails to make a final determination on a request for benefits or compensation filed in accordance with the requirements of such part within 240 days after such request was filed, the individual may seek any remedy that may be available under this section.

(ii) Tolling of statute of limitations

The time limit for filing a claim under this subsection, or for filing an action

based on such claim, shall be tolled during the pendency of a request for benefits or compensation under part C of this subchapter.

(iii) Construction

This subsection shall not be construed as superseding or otherwise affecting the application of a requirement, under chapter 171 of title 28, to exhaust administrative remedies.

(B) Exclusivity

The remedy provided by subsection (a) of this section shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses, except for a proceeding under part C of this subchapter.

(C) Offset

The value of all compensation and benefits provided under part C of this subchapter for an incident or series of incidents shall be offset against the amount of an award, compromise, or settlement of money damages in a claim or suit under this subsection based on the same incident or series of incidents.

(4) Certification of action by Attorney General

Subsection (c) of this section applies to actions under this subsection, subject to the following provisions:

(A) Nature of certification

The certification by the Attorney General that is the basis for deeming an action or proceeding to be against the United States, and for removing an action or proceeding from a State court, is a certification that the action or proceeding is against a covered person and is based upon a claim alleging personal injury or death arising out of the administration of a covered countermeasure.

(B) Certification of Attorney General conclusive

The certification of the Attorney General of the facts specified in subparagraph (A) shall conclusively establish such facts for purposes of jurisdiction pursuant to this subsection.

(5) Covered person to cooperate with United States

(A) In general

A covered person shall cooperate with the United States in the processing and defense of a claim or action under this subsection based upon alleged acts or omissions of such person.

(B) Consequences of failure to cooperate

Upon the motion of the United States or any other party and upon finding that such person has failed to so cooperate—

(i) the court shall substitute such person as the party defendant in place of the United States and, upon motion, shall remand any such suit to the court in which it was instituted if it appears that the court lacks subject matter jurisdiction;

(ii) the United States shall not be liable based on the acts or omissions of such person; and

(iii) the Attorney General shall not be obligated to defend such action.

(6) Recourse against covered person in case of gross misconduct or contract violation

(A) In general

Should payment be made by the United States to any claimant bringing a claim under this subsection, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any covered person to carry out any obligation or responsibility assumed by such person under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person.

(B) Venue

The United States may maintain an action under this paragraph against such person in the district court of the United States in which such person resides or has its principal place of business.

(7) Definitions

As used in this subsection, terms have the following meanings:

(A) Covered countermeasure

The term ''covered countermeasure'' or ''covered countermeasure against smallpox'', means a substance that is—

(i)(I) used to prevent or treat smallpox (including the vaccinia or another vaccine); or

(II) used to control or treat the adverse effects of vaccinia inoculation or of administration of another covered countermeasure; and

(ii) specified in a declaration under paragraph (2).

(B) Covered person

The term ''covered person'', when used with respect to the administration of a covered countermeasure, means a person who is—

(i) a manufacturer or distributor of such countermeasure;

(ii) a health care entity under whose auspices—

(I) such countermeasure was administered;

(II) a determination was made as to whether, or under what circumstances, an individual should receive a covered countermeasure;

(III) the immediate site of administration on the body of a covered countermeasure was monitored, managed, or cared for; or

(IV) an evaluation was made of whether the administration of a countermeasure was effective;

(iii) a qualified person who administered such countermeasure;

(iv) a State, a political subdivision of a State, or an agency or official of a State or of such a political subdivision, if such State, subdivision, agency, or official has established requirements, provided policy guidance, supplied technical or scientific advice or assistance, or otherwise supervised or administered a program with respect to administration of such countermeasures;

(v) in the case of a claim arising out of alleged transmission of vaccinia from an individual—

(I) the individual who allegedly transmitted the vaccinia, if vaccinia vaccine was administered to such individual as provided by paragraph (2)(B) and such individual was within a category of individuals covered by a declaration under paragraph (2)(A)(i); or

(II) an entity that employs an individual described by clause (I)[5] or where such individual has privileges or is otherwise authorized to provide health care;

(vi) an official, agent, or employee of a person described in clause (i), (ii), (iii), or (iv);

(vii) a contractor of, or a volunteer working for, a person described in clause (i), (ii), or (iv), if the contractor or volunteer performs a function for which a person described in clause (i), (ii), or (iv) is a covered person; or

(viii) an individual who has privileges or is otherwise authorized to provide health care under the auspices of an entity described in clause (ii) or (v)(II).

(C) Qualified person

The term ''qualified person'', when used with respect to the administration of a covered countermeasure, means a licensed health professional or other individual who—

(i) is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered; or

(ii) is otherwise authorized by the Secretary to administer such countermeasure.

(D) Arising out of administration of a covered countermeasure

The term ''arising out of administration of a covered countermeasure'', when used with respect to a claim or liability, includes a claim or liability arising out of—

(i) determining whether, or under what conditions, an individual should receive a covered countermeasure;

(ii) obtaining informed consent of an individual to the administration of a covered countermeasure;

(iii) monitoring, management, or care of an immediate site of administration on the body of a covered countermeasure, or evaluation of whether the administration of the countermeasure has been effective; or

(iv) transmission of vaccinia virus by an individual to whom vaccinia vaccine was administered as provided by paragraph (2)(B).

(July 1, 1944, ch. 373, title II, § 224, formerly § 223, as added Pub. L. 91–623, § 4, Dec. 31, 1970, 84 Stat. 1870; renumbered § 224, Pub. L. 92–157, title III, § 301(c), Nov. 18, 1971, 85 Stat. 463; amended Pub. L. 102–501, §§ 2–4, Oct. 24, 1992, 106 Stat. 3268–3270; Pub. L. 103–183, title VII, § 706(a), Dec. 14, 1993, 107 Stat. 2241; Pub. L. 104–73, §§ 2–5(b), 6–11, Dec. 26, 1995, 109 Stat. 777–781; Pub. L. 104–191, title I, § 194, Aug. 21, 1996, 110 Stat. 1988; Pub. L. 104–299, § 4(a)(1), Oct. 11, 1996, 110 Stat. 3644; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 107–296, title III, § 304(c), Nov. 25, 2002, 116 Stat. 2165; Pub. L. 108–20, § 3(a)–(i), Apr. 30, 2003, 117 Stat. 646–648; Pub. L. 108–163, § 2(m)(1), Dec. 6, 2003, 117 Stat. 2023.)

REFERENCES IN TEXT

The references to section 254b of this title the first place appearing in subsecs. (g)(1)(G)(ii), (k)(2), and (n)(1)(C), were in the original references to section 329, meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626.

Section 256a of this title, referred to in subsecs. (g)(1)(G)(ii), (k)(2), and (n)(1)(C), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

The Social Security Act, referred to in subsecs. (m)(2) and (*o*)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2003—Subsec. (g)(1)(G)(ii). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before '', or''.

Subsec. (k)(2). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before ''and''.

Subsec. (n)(1)(C). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before '', or''.

Subsec. (p)(2)(A)(ii). Pub. L. 108–20, § 3(i), substituted ''paragraph (7)(A)'' for ''paragraph(8)(A)''.

Subsec. (p)(2)(C)(ii)(II). Pub. L. 108–20, § 3(a), substituted ''has resided with, or has had contact with,'' for ''resides or has resided with''.

Subsec. (p)(2)(D). Pub. L. 108–20, § 3(b), added subpar. (D).

Subsec. (p)(3). Pub. L. 108–20, § 3(c), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The remedy provided by subsection (a) of this section shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses.''

Subsec. (p)(5). Pub. L. 108–20, § 3(d), substituted ''Covered person'' for ''Defendant'' in heading.

Subsec. (p)(7)(A)(i)(II). Pub. L. 108–20, § 3(e), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''vaccinia immune globulin used to control or treat the adverse effects of vaccinia inoculation; and''.

Subsec. (p)(7)(B). Pub. L. 108–20, § 3(f)(1), substituted ''means a person'' for ''includes any person'' in introductory provisions.

Subsec. (p)(7)(B)(ii). Pub. L. 108–20, § 3(f)(2), substituted ''auspices—'' for ''auspices'', designated ''such countermeasure was administered;'' as subcl. (I), and added subcls. (II) to (IV).

Subsec. (p)(7)(B)(iv) to (viii). Pub. L. 108–20, § 3(f)(3), (4), added cls. (iv) to (viii) and struck out former cl. (iv) which read as follows: ''an official, agent, or employee of a person described in clause (i), (ii), or (iii).''

[5] So in original. Probably should be ''subclause''.

Subsec. (p)(7)(C). Pub. L. 108–20, §3(g), substituted ''individual who—'' for ''individual who'', designated ''is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered.'' as cl. (i), substituted ''; or'' for period at end of cl. (i), and added cl. (ii).

Subsec. (p)(7)(D). Pub. L. 108–20, §3(h), added subpar. (D).

2002—Subsecs. (g)(1)(G)(ii), (k)(2), (n)(1)(C). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

Subsec. (p). Pub. L. 107–296 added subsec. (p).

1996—Subsec. (g)(4). Pub. L. 104–299 substituted ''under section 254b of this title.'' for ''under any of the following grant programs:'' and struck out subpars. (A) to (D) which read as follows:

''(A) Section 254b of this title (relating to grants for migrant health centers).

''(B) Section 254c of this title (relating to grants for community health centers).

''(C) Section 256 of this title (relating to grants for health services for the homeless).

''(D) Section 256a of this title (relating to grants for health services for residents of public housing).''

Subsec. (*o*). Pub. L. 104–191 added subsec. (*o*).

1995—Subsec. (g)(1). Pub. L. 104–73, §§3(1), 4, 5(a), designated existing provisions as subpar. (A), inserted ''and subject to the approval by the Secretary of an application under subparagraph (D)'' after ''For purposes of this section'', substituted ''an entity described in paragraph (4), and any officer, governing board member, or employee of such an entity, and any contractor of such an entity who is a physician or other licensed or certified health care practitioner (subject to paragraph (5)), shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under subsection (k)(3) of this section (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, governing board member, employee, or contractor'' for '', an entity described in paragraph (4) and any officer, employee, or contractor (subject to paragraph (5)) of such an entity who is a physician or other licensed or certified health care practitioner shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer of the full amount estimated under subsection (k)(1)(A) of this section was made under subsection (k)(3) of this section (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, employee, or contractor'', and added subpars. (B) to (H).

Subsec. (g)(3). Pub. L. 104–73, §2(a), struck out at end ''This subsection shall not apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1996.''

Subsec. (g)(5)(B). Pub. L. 104–73, §8, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in the case of an individual who normally performs on average less than 32½ hours of services per week for the entity for the period of the contract and is a licensed or certified provider of obstetrical services—

''(i) the individual's medical malpractice liability insurance coverage does not extend to services performed by the individual for the entity under the contract, or

''(ii) the Secretary finds that patients to whom the entity furnishes services will be deprived of obstetrical services if such individual is not considered a contractor of the entity for purposes of paragraph (1).''

Subsec. (h). Pub. L. 104–73, §5(b)(1), in introductory provisions substituted ''The Secretary may not approve an application under subsection (g)(1)(D) of this section unless the Secretary determines that the entity—'' for ''Notwithstanding subsection (g)(1) of this section, the Secretary, in consultation with the Attorney General, may not deem an entity described in subsection (g)(4) of this section to be an employee of the Public Health Service Act for purposes of this section unless the entity—''.

Subsec. (h)(4). Pub. L. 104–73, §5(b)(2), substituted ''will fully cooperate'' for ''has fully cooperated''.

Subsec. (i)(1). Pub. L. 104–73, §9, substituted ''may on the record determine, after notice and opportunity for a full and fair hearing'' for ''may determine, after notice and opportunity for a hearing''.

Subsec. (k)(1)(A). Pub. L. 104–73, §2(b)(1), substituted ''For each fiscal year'' for ''For each of the fiscal years 1993, 1994, and 1995'' and struck out ''(except that an estimate shall be made for fiscal year 1993 by December 31, 1992, subject to an adjustment within 90 days thereafter)'' after ''beginning of the year''.

Subsec. (k)(2). Pub. L. 104–73, §§2(b)(2), 10, substituted ''for each fiscal year'' for ''for each of the fiscal years 1993, 1994, and 1995'' and ''$10,000,000'' for ''$30,000,000''.

Subsec. (k)(3). Pub. L. 104–73, §3(2), which directed amendment of subsec. (k)(3) by inserting ''governing board member,'' after ''officer,'', was executed by inserting such language after ''officers,'' to reflect the probable intent of Congress.

Subsec. (*l*). Pub. L. 104–73, §6, added subsec. (*l*).

Subsec. (m). Pub. L. 104–73, §7, added subsec. (m).

Subsec. (n). Pub. L. 104–73, §11, added subsec. (n).

1993—Subsec. (k)(2). Pub. L. 103–183 inserted at end ''Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of sections 254b, 254c, 256 and 256a of this title.''

1992—Subsecs. (g) to (k). Pub. L. 102–501 added subsecs. (g) to (k).

EFFECTIVE DATE OF 2003 AMENDMENTS

Pub. L. 108–163, §3, Dec. 6, 2003, 117 Stat. 2023, provided that: ''This Act [see Short Title of 2003 Amendments note set out under section 201 of this title] is deemed to have taken effect immediately after the enactment of Public Law 107–251 [Oct. 26, 2002].''

Pub. L. 108–20, §3(j), Apr. 30, 2003, 117 Stat. 649, provided that: ''This section [amending this section] shall take effect as of November 25, 2002.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 5 of Pub. L. 104–299, as amended by Pub. L. 104–208, div. A, title I, §101(e) [title V, §521], Sept. 30, 1996, 110 Stat. 3009–233, 3009–275, provided that: ''This Act [enacting sections 254b and 254c of this title, amending this section and sections 256c, 1395x, and 1396d of this title, repealing sections 256 and 256a of this title, and enacting provisions set out as notes under sections 201 and 254b of this title] and the amendments made by this Act shall become effective on October 1, 1996.''

[Section 101(e) [title V, §521] of Pub. L. 104–208 provided that the amendment made by that section is effective on the day after Oct. 11, 1996.]

EFFECTIVE DATE OF 1995 AMENDMENT

Section 5(c) of Pub. L. 104–73 provided that: ''If, on the day before the date of the enactment of this Act [Dec. 26, 1995], an entity was deemed to be an employee of the Public Health Service for purposes of section 224(g) of the Public Health Service Act [subsec. (g) of this section], the condition under paragraph (1)(D) of such section (as added by subsection (a) of this section) that an application be approved with respect to the entity does not apply until the expiration of the 180-day period beginning on such date.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 6 of Pub. L. 102–501 provided that: ''The amendments made by this Act [amending this section] shall take effect on the date of the enactment of this Act [Oct. 24, 1992].''

REPORT ON RISK EXPOSURE OF COVERED ENTITIES

Section 5 of Pub. L. 102–501 provided that:

''(a) IN GENERAL.—Not later than April 1, 1995, the Attorney General, in consultation with the Secretary of Health and Human Services (hereafter referred to as the 'Secretary'), shall submit a report to Congress on the medical malpractice liability claims experience of entities subject to section 224(g) of the Public Health Service Act [42 U.S.C. 233(g)] (as added by section 2(a)) and the risk exposure associated with such entities.

''(b) EFFECT OF LIABILITY PROTECTIONS ON COSTS INCURRED BY COVERED ENTITIES.—The Attorney General's report under subsection (a) shall include an analysis by the Secretary comparing—

''(1) the Secretary's estimate of the aggregate amounts that such entities (together with the officers, employees, and contractors of such entities who are subject to section 224(g) of such Act) would have directly or indirectly paid to obtain medical malpractice liability insurance coverage had section 224(g) of the Public Health Service Act not been enacted into law, with

''(2) the aggregate amounts by which the grants received by such entities under the Public Health Service Act [this chapter] were reduced as a result of the enactment of section 224(k)(2) of such Act [42 U.S.C. 233(k)(2)].''

§ 234. Repealed. Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281, eff. Oct. 1, 1977

Section, act July 1, 1944, ch. 373, title II, § 225, as added Oct. 27, 1972, Pub. L. 92–585, § 5, 86 Stat. 1293; amended Aug. 23, 1974, Pub. L. 93–385, § 1, 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title IX, § 901, 90 Stat. 415; Sept. 30, 1976, Pub. L. 94–437, title I, § 104, 90 Stat. 1403; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(t), 90 Stat. 2246, related to Public Health and National Health Service Corps Scholarship Training program.

§ 235. Administration of grants in multigrant projects; promulgation of regulations

For the purpose of facilitating the administration of, and expediting the carrying out of the purposes of, the programs established by subchapters V, VI, and VII[1] of this chapter, and sections 242b, 246(a), 246(b), 246(c), 246(d),[1] and 246(e)[1] of this title in situations in which grants are sought or made under two or more of such programs with respect to a single project, the Secretary is authorized to promulgate regulations—

(1) under which the administrative functions under such programs with respect to such project will be performed by a single administrative unit which is the administrative unit charged with the administration of any of such programs or is the administrative unit charged with the supervision of two or more of such programs;

(2) designed to reduce the number of applications, reports, and other materials required under such programs to be submitted with respect to such project, and otherwise to simplify, consolidate, and make uniform (to the extent feasible), the data and information required to be contained in such applications, reports, and other materials; and

(3) under which inconsistent or duplicative requirements imposed by such programs will be revised and made uniform with respect to such project;

except that nothing in this section shall be construed to authorize the Secretary to waive or suspend, with respect to any such project, any requirement with respect to any of such programs if such requirement is imposed by law or by any regulation required by law.

(July 1, 1944, ch. 373, title II, § 226, formerly title III, § 310A, as added Pub. L. 91–515, title II, § 270, Oct. 30, 1970, 84 Stat. 1306; amended Pub. L. 92–157, title II, § 201, Nov. 18, 1971, 85 Stat. 461; renumbered § 226, Pub. L. 93–353, title I, § 102(e), July 23, 1974, 88 Stat. 362.)

REFERENCES IN TEXT

Subchapters V and VI of this chapter, referred to in text, are classified to sections 292 et seq. and 296 et seq., respectively, of this title.

Subchapter VII of this chapter, referred to in text, which was classified to section 299 et seq. of this title, was repealed by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

Section 246(d) of this title, referred to in text, was repealed by Pub. L. 97–35, title IX, § 902(b), Aug. 13, 1981, 95 Stat. 559.

Section 246(e) of this title, referred to in text, was repealed by Pub. L. 94–63, title V, § 501(b), July 29, 1975, 89 Stat. 346.

CODIFICATION

Section was formerly classified to section 242i of this title.

AMENDMENTS

1971—Pub. L. 92–157 provided for administration of programs established under subchapters V and VI of this chapter.

§ 236. Orphan Products Board

(a) Establishment; composition; chairman

There is established in the Department of Health and Human Services a board for the development of drugs (including biologics) and devices (including diagnostic products) for rare diseases or conditions to be known as the Orphan Products Board. The Board shall be comprised of the Assistant Secretary for Health of the Department of Health and Human Services and representatives, selected by the Secretary, of the Food and Drug Administration, the National Institutes of Health, the Centers for Disease Control and Prevention, and any other Federal department or agency which the Secretary determines has activities relating to drugs and devices for rare diseases or conditions. The Assistant Secretary for Health shall chair the Board.

(b) Function

The function of the Board shall be to promote the development of drugs and devices for rare diseases or conditions and the coordination among Federal, other public, and private agencies in carrying out their respective functions relating to the development of such articles for such diseases or conditions.

(c) Duties with respect to drugs for rare diseases or conditions

In the case of drugs for rare diseases or conditions the Board shall—

(1) evaluate—

(A) the effect of subchapter B of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360aa et seq.] on the development of such drugs, and

[1] See References in Text note below.

(B) the implementation of such subchapter;[1]

(2) evaluate the activities of the National Institutes of Health for the development of drugs for such diseases or conditions,

(3) assure appropriate coordination among the Food and Drug Administration, the National Institutes of Health and the Centers for Disease Control and Prevention in the carrying out of their respective functions relating to the development of drugs for such diseases or conditions to assure that the activities of each agency are complementary,

(4) assure appropriate coordination among all interested Federal agencies, manufacturers, and organizations representing patients, in their activities relating to such drugs,

(5) with the consent of the sponsor of a drug for a rare disease or condition exempt under section 505(i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i)] or regulations issued under such section, inform physicians and the public respecting the availability of such drug for such disease or condition and inform physicians and the public respecting the availability of drugs approved under section 505(c) of such Act [21 U.S.C. 355(c)] or licensed under section 262 of this title for rare diseases or conditions,

(6) seek business entities and others to undertake the sponsorship of drugs for rare diseases or conditions, seek investigators to facilitate the development of such drugs, and seek business entities to participate in the distribution of such drugs, and

(7) recognize the efforts of public and private entities and individuals in seeking the development of drugs for rare diseases or conditions and in developing such drugs.

(d) Consultation

The Board shall consult with interested persons respecting the activities of the Board under this section and as part of such consultation shall provide the opportunity for the submission of oral views.

(e) Annual report; contents

The Board shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives an annual report—

(1) identifying the drugs which have been designated under section 526 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360bb] for a rare disease or condition,

(2) describing the activities of the Board, and

(3) containing the results of the evaluations carried out by the Board.

The Director of the National Institutes of Health shall submit to the Board for inclusion in the annual report a report on the rare disease and condition research activities of the Institutes of the National Institutes of Health; the Secretary of the Treasury shall submit to the Board for inclusion in the annual report a report on the use of the credit against tax provided by section 44H[2] of title 26; and the Secretary of Health and Human Services shall submit to the Board for inclusion in the annual report a report on the program of assistance under section 360ee of title 21 for the development of drugs for rare diseases and conditions. Each annual report shall be submitted by June 1 of each year for the preceding calendar year.

(July 1, 1944, ch. 373, title II, §227, as added Pub. L. 97–414, §3, Jan. 4, 1983, 96 Stat. 2051; amended Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–321, title I, §163(b)(1), July 10, 1992, 106 Stat. 375; Pub. L. 102–531, title III, §312(d)(1), Oct. 27, 1992, 106 Stat. 3504.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(1)(A), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended. Subchapter B of the Federal Food, Drug, and Cosmetic Act probably means subchapter B of chapter V of the Federal Food, Drug, and Cosmetic Act which is classified generally to part B (section 360aa et seq.) of subchapter V of chapter 9 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Section 44H of title 26, referred to in subsec. (e), was renumbered section 28 of title 26, by Pub. L. 98–369, div. A, title IV, §471(c)(1), July 18, 1984, 98 Stat. 826, and subsequently renumbered section 45C of title 26 by Pub. L. 104–188, title I, §1205(a)(1), Aug. 20, 1996, 110 Stat. 1775.

PRIOR PROVISIONS

A prior section 236, act July 1, 1944, ch. 373, title II, §227, formerly title III, §310B, as added Oct. 30, 1970, Pub. L. 91–515, title II, §280, 84 Stat. 1307; renumbered §227 and amended July 23, 1974, Pub. L. 93–353, title I, §102(f), 88 Stat. 362, related to an annual report by Secretary on activities related to health facilities and services and expenditure of funds, prior to repeal by Pub. L. 97–35, title XXI, §2193(b)(4), Aug. 13, 1981, 95 Stat. 827.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Subsec. (c)(2). Pub. L. 102–321, §163(b)(1)(A), which directed the striking out of '', and the Alcohol, Drug Abuse, and Mental Health Administration'', was executed by striking ''and the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health'' to reflect the probable intent of Congress.

Subsec. (c)(3). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, §163(b)(1)(B), struck out '', the Alcohol, Drug Abuse, and Mental Health Administration,'' after ''National Institutes of Health''.

Subsec. (e). Pub. L. 102–321, §163(b)(1)(C), (D), in concluding provisions, struck out ''and the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health'' the first place appearing and ''and the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health'' the second place appearing.

1986—Subsec. (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on

[1] So in original. The semicolon probably should be a comma.

[2] See References in Text note below.

Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 801 of Pub. L. 102–321 provided that:

''(a) IN GENERAL.—This Act [See Tables for classification] takes effect on the date of the enactment of this Act [July 10, 1992], subject to subsections (b) through (d).

''(b) AMENDMENTS.—The amendments described in this Act are made on the date of the enactment of this Act and take effect on such date, except as provided in subsections (c) and (d).

''(c) REORGANIZATION UNDER TITLE I.—Title I [§§ 101–171] takes effect on October 1, 1992. The amendments described in such title are made on such date and take effect on such date.

''(d) PROGRAMS PROVIDING FINANCIAL ASSISTANCE.—

''(1) FISCAL YEAR 1993 AND SUBSEQUENT YEARS.—In the case of any program making awards of grants, cooperative agreements, or contracts, the amendments made by this Act are effective for awards made on or after October 1, 1992.

''(2) PRIOR FISCAL YEARS.—

''(A) Except as provided in subparagraph (B), in the case of any program making awards of grants, cooperative agreements, or contracts, if the program began operation prior to the date of the enactment of this Act [July 10, 1992] and the program is amended by this Act, awards made prior to October 1, 1992, shall continue to be subject to the terms and conditions upon which such awards were made, notwithstanding the amendments made by this Act.

''(B) Subparagraph (A) does not apply with respect to the amendments made by this Act to part B of title XIX of the Public Health Service Act [section 300x et seq. of this title]. Section 205(a) [set out as a note under section 300x of this title] applies with respect to the program established in such part.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e) of this section relating to the requirement to submit an annual report to certain committees of Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 101 of House Document No. 103–7.

USE OF ''CDC'' AS ACRONYM FOR CENTERS FOR DISEASE CONTROL AND PREVENTION

Section 312(i) of Pub. L. 102–531 provided that: ''The amendments made by this section [amending this section, sections 247d, 280b to 280b–2, 285c–4, 285d–7, 285m–4, 289c, 290aa–9, 290bb–1, 300u–5, 300aa–2, 300aa–19, 300aa–26, 300cc, 300cc–2, 300cc–15, 300cc–17, 300cc–20, 300cc–31, 300ee–1, 300ee–2, 300ee–31, 300ee–32, 300ee–34, 300ff–11 to 300ff–13, 300ff–17, 300ff–27, 300ff–28, 300ff–41, 300ff–43, 300ff–49, 300ff–75, 4841, and 9604 of this title, section 1341 of Title 15, Commerce and Trade, section 2001 of Title 25, Indians, and provisions set out as notes under sections 241 and 281 of this title and section 303 of Title 38, Veterans' Benefits] may not be construed as prohibiting the Director of the Centers for Disease Control and Prevention from utilizing for official purposes the term 'CDC' as an acronym for such Centers.''

NATIONAL COMMISSION ON ORPHAN DISEASES

Pub. L. 99–91, § 4, Aug. 15, 1985, 99 Stat. 388, as amended by Pub. L. 100–290, § 4, Apr. 18, 1988, 102 Stat. 92; Pub. L. 102–321, title I, § 163(c)(1), July 10, 1992, 106 Stat. 376, provided that:

''(a) ESTABLISHMENT.—There is established the National Commission on Orphan Diseases (hereinafter referred to as the 'Commission').

''(b) DUTY.—The Commission shall assess the activities of the National Institutes of Health, the Food and Drug Administration, other public agencies, and private entities in connection with—

''(1) basic research conducted on rare diseases;

''(2) the use in research on rare diseases of knowledge developed in other research;

''(3) applied and clinical research on the prevention, diagnosis, and treatment of rare diseases; and

''(4) the dissemination to the public, health care professionals, researchers, and drug and medical device manufacturers of knowledge developed in research on rare diseases and other diseases which can be used in the prevention, diagnosis, and treatment of rare diseases.

''(c) REVIEW REQUIREMENTS.—In assessing the activities of the National Institutes of Health, and the Food and Drug Administration in connection with research on rare diseases, the Commission shall review—

''(1) the appropriateness of the priorities currently placed on research on rare diseases;

''(2) the relative effectiveness of grants and contracts when used to fund research on rare diseases;

''(3) the appropriateness of specific requirements applicable to applications for funds for research on rare diseases taking into consideration the reasonable capacity of applicants to meet such requirements;

''(4) the adequacy of the scientific basis for such research, including the adequacy of the research facilities and research resources used in such research and the appropriateness of the scientific training of the personnel engaged in such research;

''(5) the effectiveness of activities undertaken to encourage such research;

''(6) the organization of the peer review process applicable to applications for funds for such research to determine if the organization of the peer review process could be revised to improve the effectiveness of the review provided to proposals for research on rare diseases;

''(7) the effectiveness of the coordination between the national research institutes of the National Institutes of Health, the Food and Drug Administration, and private entities in supporting such research; and

''(8) the effectiveness of activities undertaken to assure that knowledge developed in research on nonrare diseases is, when appropriate, used in research on rare diseases.

''(d) COMPOSITION.—The Commission shall be composed of twenty members appointed by the Secretary of Health and Human Services as follows:

''(1) Ten members shall be appointed from individuals who are not officers or employees of the Government and who by virtue of their training or experience in research on rare diseases or in the treatment of rare diseases are qualified to serve on the Commission.

''(2) Five members shall be appointed from individuals who are not officers or employees of the Government and who have a rare disease or are employed to represent or are members of an organization concerned about rare disease.

''(3) Four nonvoting members shall be appointed for the directors of the national research institutes of the National Institutes of Health which the Secretary determines are involved with rare diseases.

''(4) One nonvoting member shall be appointed from officers or employees of the Food and Drug Administration who the Secretary determines are involved with rare diseases.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made. If any member of the Commission who was appointed to the Commission as a director of a national research in-

stitute or as an officer or employee of the Food and Drug Administration leaves that office or position, or if any member of the Commission who was appointed from persons who are not officers or employees of the Government becomes an officer or employee of the Government, such member may continue as a member of the Commission for not longer than the ninety-day period beginning on the date such member leaves that office or position or becomes such an officer or employee, as the case may be.

''(e) TERM.—Members shall be appointed for the life of the Commission.

''(f) COMPENSATION.—

''(1) Except as provided in paragraph (2), members of the Commission shall each be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties as members of the Commission.

''(2) Members of the Commission who are full-time officers or employees of the Government shall receive no additional pay by reason of their service on the Commission.

''(g) CHAIRMAN.—The Chairman of the Commission shall be designated by the members of the Commission.

''(h) STAFF.—Subject to such rules as may be prescribed by the Commission, the Commission may appoint and fix the pay of such personnel as it determines are necessary to enable the Commission to carry out its functions. Personnel shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

''(i) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Commission may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the basic pay payable for grade GS–15 of the General Schedule.

''(j) DETAIL OF PERSONNEL.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its functions.

''(k) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

''(*l*) GENERAL AUTHORITY.—The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

''(m) INFORMATION.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

''(n) REPORT.—The Commission shall transmit to the Secretary and to each House of the Congress a report not later than February 1, 1989, on the activities of the Commission. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for—

''(1) a long range plan for the use of public and private resources to improve research into rare diseases and to assist in the prevention, diagnosis, and treatment of rare diseases; and

''(2) such legislation or administrative actions as it considers appropriate.

''(*o*) TERMINATION.—The Commission shall terminate 90 days after the date of the submittal of its report under subsection (n).

''(p) FUNDS.—The Director of the National Institutes of Health shall make available $1,000,000 to the Commission from appropriations for fiscal year 1986 for the National Institutes of Health.''

§ 237. Silvio O. Conte Senior Biomedical Research Service

(a) Creation; number of members

(1) There shall be in the Public Health Service a Silvio O. Conte Senior Biomedical Research Service, not to exceed 500 members.

(2) The authority established in paragraph (1) regarding the number of members in the Silvio O. Conte Senior Biomedical Research Service is in addition to any authority established regarding the number of members in the commissioned Regular Corps, in the Reserve Corps, and in the Senior Executive Service. Such paragraph may not be construed to require that the number of members in the commissioned Regular Corps, in the Reserve Corps, or in the Senior Executive Service be reduced to offset the number of members serving in the Silvio O. Conte Senior Biomedical Research Service (in this section referred to as the ''Service'').

(b) Appointments; qualifications; provisions inapplicable to members

The Service shall be appointed by the Secretary without regard to the provisions of title 5 regarding appointment, and shall consist of individuals outstanding in the field of biomedical research or clinical research evaluation. No individual may be appointed to the Service unless such individual (1) has earned a doctoral level degree in biomedicine or a related field, and (2) meets the qualification standards prescribed by the Office of Personnel Management for appointment to a position at GS–15 of the General Schedule. Notwithstanding any previous applicability to an individual who is a member of the Service, the provisions of subchapter I of chapter 35 (relating to retention preference), chapter 43 (relating to performance appraisal and performance actions), chapter 51 (relating to classification), subchapter III of chapter 53 (relating to General Schedule pay rates), and chapter 75 (relating to adverse actions) of title 5 shall not apply to any member of the Service.

(c) Performance appraisal system

The Secretary shall develop a performance appraisal system designed to—

(1) provide for the systematic appraisal of the performance of members, and

(2) encourage excellence in performance by members.

(d) Pay of members

(1) The Secretary shall determine, subject to the provisions of this subsection, the pay of members of the Service.

(2) The pay of a member of the Service shall not be less than the minimum rate payable for GS–15 of the General Schedule and shall not exceed the rate payable for level I of the Executive Schedule unless approved by the President under section 5377(d)(2) of title 5.

(e) Contribution to retirement system of institutions of higher education

The Secretary may, upon the request of a member who—

(1) performed service in the employ of an institution of higher education immediately

prior to his appointment as a member of the Service, and

(2) retains the right to continue to make contributions to the retirement system of such institution,

contribute an amount not to exceed 10 percent per annum of the member's basic pay to such institution's retirement system on behalf of such member. A member who requests that such contribution be made shall not be covered by, or earn service credit under, any retirement system established for employees of the United States under title 5, but such service shall be creditable for determining years of service under section 6303(a) of such title.

(f) Career and noncareer appointment of certain individuals

Subject to the following sentence, the Secretary may, notwithstanding the provisions of title 5 regarding appointment, appoint an individual who is separated from the Service involuntarily and without cause to a position in the competitive civil service at GS–15 of the General Schedule, and such appointment shall be a career appointment. In the case of such an individual who immediately prior to his appointment to the Service was not a career appointee in the civil service or the Senior Executive Service, such appointment shall be in the excepted civil service and may not exceed a period of 2 years.

(g) Rules and regulations

The Secretary shall promulgate such rules and regulations, not inconsistent with this section, as may be necessary for the efficient administration of the Service.

(July 1, 1944, ch. 373, title II, § 228, as added Pub. L. 101–509, title V, § 529 [title III, § 304(a)], Nov. 5, 1990, 104 Stat. 1427, 1463; amended Pub. L. 103–43, title XX, § 2001, June 10, 1993, 107 Stat. 208.)

REFERENCES IN TEXT

The General Schedule, referred to in subsecs. (b), (d)(2), and (f), is set out under section 5332 of Title 5, Government Organization and Employees.

The provisions of title 5 regarding appointments, referred to in subsecs. (b) and (f), are classified to section 3301 et seq. of Title 5.

Level I of the Executive Schedule, referred to in subsec. (d)(2), is set out in section 5312 of Title 5.

AMENDMENTS

1993—Pub. L. 103–43, § 2001(b), substituted ''Silvio O. Conte Senior Biomedical Research Service'' for ''Senior Biomedical Research Service'' in section catchline.

Subsec. (a). Pub. L. 103–43, § 2001(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There shall be in the Public Health Service a Senior Biomedical Research Service (hereinafter in this section referred to as the 'Service'), not to exceed 350 members at any time.''

EFFECTIVE DATE

Section effective on the 90th day following Nov. 5, 1990, see section 529 [title III, § 304(c)] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 212 of this title.

PART B—MISCELLANEOUS PROVISIONS

CODIFICATION

This part was classified to subchapter XXV (§ 300aaa et seq.) of this chapter prior to its renumbering by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.

§ 238. Gifts for benefit of Service

(a) Acceptance by Secretary

The Secretary of Health and Human Services is authorized to accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Service or for the carrying out of any of its functions. Conditional gifts may be so accepted if recommended by the Surgeon General, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress.

(b) Depository of funds; availability for expenditure

Any unconditional gift of money accepted pursuant to the authority granted in subsection (a) of this section, the net proceeds from the liquidation (pursuant to subsection (c) or subsection (d) of this section) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Service, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such gifts and the income from such investments shall be available for expenditure in the operation of the Service and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Service by Congress.

(c) Evidences of unconditional gifts of intangible property

The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in subsection (a) of this section shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them, or liquidate them except that they shall be liquidated upon the request of the Secretary of Health and Human Services whenever necessary to meet payments required in the operation of the Service or the performance of its functions. The proceeds and income from any such property held by the Secretary of the Treasury shall be available for expenditure as is provided in subsection (b) of this section.

(d) Real property or tangible personal property

The Secretary of Health and Human Services, shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in subsection (a) of this section and he shall permit such property to be used for the operation of the Service and the performance of its functions or he may lease or hire such property, and may insure such property, and deposit the income thereof with the

Secretary of the Treasury to be available for expenditure as provided in subsection (b) of this section: *Provided*, That the income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Secretary of Health and Human Services, for the maintenance, preservation, or repair and insurance of such property and that any proceeds from insurance may be used to restore the property insured. Any such property when not required for the operation of the Service or the performance of its functions may be liquidated by the Secretary of Health and Human Services, and the proceeds thereof deposited with the Secretary of the Treasury, whenever in his judgment the purposes of the gifts will be served thereby.

(July 1, 1944, ch. 373, title II, § 231, formerly title V, § 501, 58 Stat. 709; July 3, 1946, ch. 538, § 10, 60 Stat. 425; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 90–574, title V, § 503(b), Oct. 15, 1968, 82 Stat. 1012; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title XXI, § 2101, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2301, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2501, Pub. L. 100–607, title II, § 201(1), (2), Nov. 4, 1988, 102 Stat. 3062; renumbered title XXVI, § 2601, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2701, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 231, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa of this title prior to renumbering by Pub. L. 103–43, to section 300cc of this title prior to renumbering by Pub. L. 100–607, to section 300aa of this title prior to renumbering by Pub. L. 99–660, and to section 219 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1968—Subsec. (e). Pub. L. 90–574 struck out subsec. (e) which provided for acknowledgment of donations of $50,000 or more in aid of research by the establishment of suitable memorials within the National Institutes of Health and the National Institute of Mental Health.

1948—Subsec. (e). Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health''.

1946—Subsec. (e). Act July 3, 1946, inserted reference to National Institute of Mental Health.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 238a. Use of immigration station hospitals

The Immigration and Naturalization Service may, by agreement of the heads of the departments concerned, permit the Public Health Service to use hospitals at immigration stations for the care of Public Health Service patients. The Surgeon General shall reimburse the Immigration and Naturalization Service for the actual cost of furnishing fuel, light, water, telephone, and similar supplies and services, which reimbursement shall be covered into the proper Immigration and Naturalization Service appropriation, or such costs may be paid from working funds established as provided by law, but no charge shall be made for the expense of physical upkeep of the hospitals. The Immigration and Naturalization Service shall reimburse the Surgeon General for the care and treatment of persons detained in hospitals of the Public Health Service at the request of the Immigration and Naturalization Service unless such persons are entitled to care and treatment under section 249(a)[1] of this title.

(July 1, 1944, ch. 373, title II, § 232, formerly title V, § 502, 58 Stat. 710, renumbered title XXI, § 2102, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2302, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2502, Pub. L. 100–607, title II, § 201(1), (2), Nov. 4, 1988, 102 Stat. 3062; renumbered title XXVI, § 2602, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2702, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 232, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

REFERENCES IN TEXT

Subsec. (a) of section 249 of this title, referred to in text, which related to persons entitled to care and treatment without charge, was repealed, and subsec. (c) of section 249 of this title was redesignated as subsec. (a), by Pub. L. 97–35, title IX, § 986(a), (b)(2), Aug. 13, 1981, 95 Stat. 603.

CODIFICATION

Section was formerly classified to section 300aaa–1 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–1 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–1 of this title prior to renumbering by Pub. L. 99–660, and to section 220 of this title prior to renumbering by Pub. L. 98–24.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by sec-

[1] See References in Text note below.

tion 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by sections 1 and 2 of Reorg. Plan No. 2 of 1950, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, which were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 662. Immigration and Naturalization Service, referred to in this section, was a bureau in Department of Justice.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 238b. Disposition of money collected for care of patients

Money collected as provided by law for expenses incurred in the care and treatment of foreign seamen, and money received for the care and treatment of pay patients, including any amounts received from any executive department on account of care and treatment of pay patients, shall be covered into the appropriation from which the expenses of such care and treatment were paid.

(July 1, 1944, ch. 373, title II, § 233, formerly title V, § 503, 58 Stat. 710, renumbered title XXI, § 2103, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2303, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2503, Pub. L. 100–607, title II, § 201(1), (2), Nov. 4, 1988, 102 Stat. 3062; renumbered title XXVI, § 2603, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2703, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 233, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–2 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–2 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–2 of this title prior to renumbering by Pub. L. 99–660, and to section 221 of this title prior to renumbering by Pub. L. 98–24.

§ 238c. Transportation of remains of officers

Appropriations available for traveling expenses of the Service shall be available for meeting the cost of preparation for burial and of transportation to the place of burial of remains of commissioned officers, and of personnel specified in regulations, who die in line of duty. Appropriations available for carrying out the provisions of this chapter shall also be available for the payment of such expenses relating to the recovery, care and disposition of the remains of personnel or their dependents as may be authorized under other provisions of law.

(July 1, 1944, ch. 373, title II, § 234, formerly title V, § 506, 58 Stat. 710; July 15, 1954, ch. 507, § 14(b), 68 Stat. 481; renumbered title XXI, § 2106, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2306, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2504, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2604, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2704, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 234, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–3 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–5 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–5 of this title prior to renumbering by Pub. L. 99–660, and to section 224 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1954—Act July 15, 1954, inserted sentence at end relating to availability of appropriations for paying expenses relating to recovery, care, and disposition of the remains of personnel or their dependents.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DISPOSITION OF REMAINS OF DECEASED PERSONNEL

Recovery, care and disposition of the remains of deceased members of the uniformed services and other deceased personnel, see section 1481 et seq. of Title 10, Armed Forces.

§ 238d. Availability of appropriations for grants to Federal institutions

Appropriations to the Public Health Service available under this chapter for research, training, or demonstration project grants or for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence and appropriations under title VI of the Mental Health Systems Act [42 U.S.C. 9511 et seq.] shall also be available on the same terms and conditions as apply to non-Federal institutions, for grants for the same purpose to Federal institutions, except that grants to Federal institutions may be funded at 100 per centum of the costs.

(July 1, 1944, ch. 373, title II, § 235, formerly title V, § 507, as added Pub. L. 90–31, § 5, June 24, 1967, 81 Stat. 79; amended Pub. L. 91–513, title I, § 3(c), Oct. 27, 1970, 84 Stat. 1241; Pub. L. 94–278, title XI, § 1102(b), Apr. 22, 1976, 90 Stat. 415; Pub. L. 96–398, title VIII, § 804(b), Oct. 7, 1980, 94 Stat. 1608; Pub. L. 97–35, title IX, § 902(g)(2), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, § 2107, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2307, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2505, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2605, Pub. L. 100–690, title

II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2705, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 235, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

REFERENCES IN TEXT

The Mental Health Systems Act, referred to in text, is Pub. L. 96–398, Oct. 7, 1980, 94 Stat. 1564, as amended. Title VI of the Mental Health Systems Act is classified generally to subchapter V (§ 9511 et seq.) of chapter 102 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

CODIFICATION

Section was formerly classified to section 300aaa–4 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–6 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–6 of this title prior to renumbering by Pub. L. 99–660, and to section 225a of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1981—Pub. L. 97–35 struck out provisions relating to appropriations available under Community Mental Health Centers Act for construction, etc.

1980—Pub. L. 96–398 struck out ''and'' after ''drug dependence,'' and inserted reference to title VI of the Mental Health Systems Act.

1976—Pub. L. 94–278 substituted ''Federal institutions, except that grants to'' for ''hospitals of the Service, of the Veterans' Administration, or of the Bureau of Prisons of the Department of Justice, and to Saint Elizabeths Hospital, except grants to such''.

1970—Pub. L. 91–513 inserted references to appropriations available for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence, and appropriations available under Community Mental Health Centers Act for construction and staffing of community mental health centers and alcoholism and narcotic addiction, drug abuse, and drug dependence facilities, and inserted provision that grants to specified Federal institutions may be funded at 100 per centum of the costs.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

EFFECTIVE DATE

Section 5 of Pub. L. 90–31 provided that this section is effective July 1, 1968.

§ 238e. Transfer of funds

For the purpose of any reorganization under section 203 of this title, the Secretary, with the approval of the Director of the Office of Management and Budget, is authorized to make such transfers of funds between appropriations as may be necessary for the continuance of transferred functions.

(July 1, 1944, ch. 373, title II, § 236, formerly title V, § 508, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; renumbered title XXI, § 2108, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2308, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2506, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2606, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2706, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 236, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–5 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–7 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–7 of this title prior to renumbering by Pub. L. 99–660, and to section 226 of this title prior to renumbering by Pub. L. 98–24.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 238f. Availability of appropriations

Appropriations for carrying out the purposes of this chapter shall be available for expenditure for personal services and rent at the seat of Government; books of reference, periodicals, and exhibits; printing and binding; transporting in Government-owned automotive equipment, to and from school, children of personnel who have quarters for themselves and their families at stations determined by the Surgeon General to be isolated stations; expenses incurred in pursuing, identifying, and returning prisoners who escape from any hospital, institution, or station of the Service or from the custody of any officer or employee of the Service, including rewards for the capture of such prisoners; furnishing, repairing, and cleaning such wearing apparel as may be prescribed by the Surgeon General for use by employees in the performance of their official duties; reimbursing officers and employees, subject to regulations of the Secretary, for the cost of repairing or replacing their personal belongings damaged or destroyed by patients while such officers or employees are engaged in the performance of their official duties; and maintenance of buildings of the National Institutes of Health.

(July 1, 1944, ch. 373, title II, § 237, formerly title V, § 509, 58 Stat. 711; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; June 25, 1948, ch. 654, § 7, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, § 2109, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2309, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2507, Pub. L.

100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2607, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2707, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 237, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–6 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–8 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–8 of this title prior to renumbering by Pub. L. 99–660, and to section 227 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1948—Act June 25, 1948, amended section generally to make it apply to all appropriations to carry out the purposes of the Service instead of merely to appropriations to carry out the research functions of the Service.

Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health''.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

BUY AMERICAN PROVISIONS

Section 2004 of Pub. L. 103–43, as amended by Pub. L. 105–392, title IV, § 416(a), (b), Nov. 13, 1998, 112 Stat. 3590, provided that:

''(a) SENSE OF CONGRESS REGARDING PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or product that may be authorized to be purchased with financial assistance provided pursuant to this Act for any of the fiscal years 1994 through 1996, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

''(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance pursuant to this Act, the Secretary of Health and Human Services shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress.''

[Pub. L. 105–392, title IV, § 416(c), Nov. 13, 1998, 112 Stat. 3591, provided that: ''This section [amending section 2004 of Pub. L. 103–43, set out above] is deemed to have taken effect immediately after the enactment of Public Law 103–43 [June 10, 1993].'']

AVAILABILITY OF APPROPRIATIONS FOR ACTIVE COMMISSIONED OFFICERS AND OTHER EXPENSES

Pub. L. 102–394, title II, § 202, Oct. 6, 1992, 106 Stat. 1810, provided that: ''Appropriations in this or any other Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be available for expenses for active commissioned officers in the Public Health Service Reserve Corps and for not to exceed 2,800 commissioned officers in the Regular Corps; expenses incident to the dissemination of health information in foreign countries through exhibits and other appropriate means; advances of funds for compensation, travel, and subsistence expenses (or per diem in lieu thereof) for persons coming from abroad to participate in health or scientific activities of the Department pursuant to law; expenses of primary and secondary schooling of dependents in foreign countries, of Public Health Service commissioned officers stationed in foreign countries, at costs for any given area not in excess of those of the Department of Defense for the same area, when it is determined by the Secretary that the schools available in the locality are unable to provide adequately for the education of such dependents, and for the transportation of such dependents, between such schools and their places of residence when the schools are not accessible to such dependents by regular means of transportation; expenses for medical care for civilian and commissioned employees of the Public Health Service and their dependents assigned abroad on a permanent basis in accordance with such regulations as the Secretary may provide; rental or lease of living quarters (for periods not exceeding five years), and provision of heat, fuel, and light and maintenance, improvement, and repair of such quarters, and advance payments therefor, for civilian officers and employees of the Public Health Service who are United States citizens and who have a permanent station in a foreign country; purchase, erection, and maintenance of temporary or portable structures; and for the payment of compensation to consultants or individual scientists appointed for limited periods of time pursuant to section 207(f) or section 207(g) of the Public Health Service Act [42 U.S.C. 209(f), (g)], at rates established by the Assistant Secretary for Health, or the Secretary where such action is required by statute, not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5376.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 202, Nov. 26, 1991, 105 Stat. 1126.

Pub. L. 101–517, title II, § 202, Nov. 5, 1990, 104 Stat. 2208.

Pub. L. 101–166, title II, § 203, Nov. 21, 1989, 103 Stat. 1176.

Pub. L. 100–202, § 101(h) [title II, § 203], Dec. 22, 1987, 101 Stat. 1329–256, 1329–273.

Pub. L. 99–500, § 101(i) [H.R. 5233, title II, § 203], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title II, § 203], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, § 203, Dec. 12, 1985, 99 Stat. 1118.

Pub. L. 98–619, title II, § 203, Nov. 8, 1984, 98 Stat. 3320.

Pub. L. 98–139, title II, § 203, Oct. 31, 1983, 97 Stat. 887.

Pub. L. 97–377, title I, § 101(e)(1) [title II, § 203], Dec. 21, 1982, 96 Stat. 1878, 1893.

CREDITING OF PAYMENTS FOR ROOM AND BOARD TO APPROPRIATION ACCOUNTS

Pub. L. 102–394, title II, § 206, Oct. 6, 1992, 106 Stat. 1811, provided that: ''Hereafter amounts received from employees of the Department in payment for room and board may be credited to the appropriation accounts which finance the activities of the Public Health Service.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 206, Nov. 26, 1991, 105 Stat. 1126.

Pub. L. 101–517, title II, § 206, Nov. 5, 1990, 104 Stat. 2209.

Pub. L. 101–166, title II, § 207, Nov. 21, 1989, 103 Stat. 1177.

§ 238g. Wearing of uniforms

Except as may be authorized by regulations of the President, the insignia and uniform of commissioned officers of the Service, or any distinctive part of such insignia or uniform, or any insignia or uniform any part of which is similar to a distinctive part thereof, shall not be worn, after the promulgation of such regulations, by any person other than a commissioned officer of the Service.

(July 1, 1944, ch. 373, title II, § 238, formerly title V, § 510, 58 Stat. 711; June 25, 1948, ch. 645, § 5, 62 Stat. 859; renumbered title XXI, § 2110, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2310, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2508, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2608, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2708, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 238, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–7 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–9 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–9 of this title prior to renumbering by Pub. L. 99–660, and to section 228 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1948—Act June 25, 1948, struck out penal provisions. See section 702 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment effective Sept. 1, 1948, see section 20 of act June 25, 1948.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 238h. Biennial report

The Surgeon General shall transmit to the Secretary, for submission to the Congress, on January 1, 1995, and on January 1, every 2 years thereafter, a full report of the administration of the functions of the Service under this chapter, including a detailed statement of receipts and disbursements.

(July 1, 1944, ch. 373, title II, § 239, formerly title V, § 511, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, § 2111, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2311, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2509, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2609, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2709, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 239, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213; Pub. L. 104–66, title I, § 1062(a), Dec. 21, 1995, 109 Stat. 720.)

CODIFICATION

Section was formerly classified to section 300aaa–8 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–10 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–10 of this title prior to renumbering by Pub. L. 99–660, and to section 229 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1995—Pub. L. 104–66 amended section catchline and text generally. Prior to amendment, text read as follows: "The Surgeon General shall transmit to the Secretary, for submission to the Congress at the beginning of each regular session, a full report of the administration of the functions of the Service under this chapter, including a detailed statement of receipts and disbursements."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 3 on page 101 identifies a reporting provision which, as subsequently amended, is contained in this section), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, § 1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 202 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

AGENCY REPORTING REQUIREMENTS; REPORT BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE TO CONGRESSIONAL COMMITTEES RELATING TO REQUIREMENTS, TERMINATION, ETC.

Pub. L. 93–641, § 7, Jan. 4, 1975, 88 Stat. 2275, provided that by Jan. 4, 1976, the Secretary of Health, Education, and Welfare report to specific committees of the Senate and the House of Representatives on the identity, due date, etc., of certain reports required under the Public Health Service Act, the Mental Retardation Facilities and Community Mental Health Centers Construction

Act of 1963, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970.

§ 238i. Memorials and other acknowledgments for contributions to health of Nation

The Secretary may provide for suitably acknowledging, within the Department (whether by memorials, designations, or other suitable acknowledgments), (1) efforts of persons who have contributed substantially to the health of the Nation and (2) gifts for use in activities of the Department related to health.

(July 1, 1944, ch. 373, title II, § 240, formerly title V, § 512, as added Pub. L. 90–574, title V, § 503(a), Oct. 15, 1968, 82 Stat. 1012; renumbered title XXI, § 2112, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2312, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2510, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2610, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2710, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 240, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–9 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–11 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–11 of this title prior to renumbering by Pub. L. 99–660, and to section 229a of this title prior to renumbering by Pub. L. 98–24.

§ 238j. Evaluation of programs

(a) In general

Such portion as the Secretary shall determine, but not less than 0.2 percent nor more than 1 percent, of any amounts appropriated for programs authorized under this chapter shall be made available for the evaluation (directly, or by grants of contracts) of the implementation and effectiveness of such programs.

(b) Report on evaluations

Not later than February 1 of each year, the Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report summarizing the findings of the evaluations conducted under subsection (a) of this section.

(July 1, 1944, ch. 373, title II, § 241, formerly title V, § 513, as added Pub. L. 91–296, title IV, § 401(a), June 30, 1970, 84 Stat. 351; amended Pub. L. 96–398, title VIII, § 804(c), Oct. 7, 1980, 94 Stat. 1608; Pub. L. 97–35, title IX, § 902(g)(3), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, § 2113, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2313, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2511, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2611, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2711, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 241, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213; Pub. L. 103–183, title VII, § 701, Dec. 14, 1993, 107 Stat. 2239.)

CODIFICATION

Section was formerly classified to section 300aaa–10 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–12 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–12 of this title prior to renumbering by Pub. L. 99–660, and to section 229b of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1993—Pub. L. 103–183 amended section generally. Prior to amendment, section read as follows: ''Such portion as the Secretary may determine, but not more than 1 per centum, of any appropriation for grants, contracts, or other payments under any provision of this chapter, the Mental Health Systems Act, the Act of August 5, 1954 (Public Law 568, Eighty–third Congress), or the Act of August 16, 1957 (Public Law 85–151), for any fiscal year beginning after June 30, 1970, shall be available for evaluation (directly, or by grants or contracts) of any program authorized by this chapter or any of such other Acts, and, in the case of allotments from any such appropriation, the amount available for allotment shall be reduced accordingly.''

1981—Pub. L. 97–35 struck out references to Mental Retardation Facilities Construction Act and Community Mental Health Centers Act.

1980—Pub. L. 96–398 inserted reference to Mental Health Systems Act.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 701 of Pub. L. 103–183 provided that the amendment made by that section is effective Oct. 1, 1994.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

§ 238k. Contract authority

The authority of the Secretary to enter into contracts under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(July 1, 1944, ch. 373, title II, § 242, formerly title V, § 514, as added Pub. L. 95–623, § 11(e), Nov. 9, 1978, 92 Stat. 3456; renumbered title XXI, § 2114, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2314, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2512, Pub. L. 100–607, title

II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2612, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2712, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 242, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–11 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–13 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–13 of this title prior to renumbering by Pub. L. 99–660, and to section 229c of this title prior to renumbering by Pub. L. 98–24.

OBLIGATIONS RELATED TO AGREEMENT WITH PRIVATE ENTITIES

Pub. L. 105–277, div. A, § 101(f) [title II], Oct. 21, 1998, 112 Stat. 2681–337, 2681–349, provided in part: ''That hereinafter obligations may be incurred related to agreement with private entities without receipt of advance payment.''

§ 238*l*. Recovery

(a) Right of United States to recover base amount plus interest

If any facility with respect to which funds have been paid under the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.] (as such Act was in effect prior to October 1, 1981) is, at any time within twenty years after the completion of remodeling, construction, or expansion or after the date of its acquisition—

(1) sold or transferred to any entity (A) which would not have been qualified to file an application under section 222 of such Act [42 U.S.C. 2689j] (as such section was in effect prior to October 1, 1981) or (B) which is disapproved as a transferee by the State mental health agency or by another entity designated by the chief executive officer of the State, or

(2) ceases to be used by a community mental health center in the provision of comprehensive mental health services,

the United States shall be entitled to recover from the transferor, transferee, or owner of the facility, the base amount prescribed by subsection (c)(1) of this section plus the interest (if any) prescribed by subsection (c)(2) of this section.

(b) Notice of sale, transfer, or change

The transferor and transferee of a facility that is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which changes as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change within 10 days after the date on which such sale, transfer, or cessation of use occurs or within 30 days after October 22, 1985, whichever is later.

(c) Base amount; interest

(1) The base amount that the United States is entitled to recover under subsection (a) of this section is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the remodeling, construction, expansion, or acquisition of the project or projects.

(2)(A) The interest that the United States is entitled to recover under subsection (a) of this section is the interest for the period (if any) described in subparagraph (B) at a rate (determined by the Secretary) based on the average of the bond equivalent rates of ninety-one-day Treasury bills auctioned during that period.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) if notice is provided as prescribed by subsection (b) of this section, 191 days after the date on which such sale, transfer, or cessation of use occurs, or

(ii) if notice is not provided as prescribed by subsection (b) of this section, 11 days after such sale, transfer, or cessation of use occurs,

and ending on the date the amount the United States is entitled to recover is collected.

(d) Waiver of recovery rights

The Secretary may waive the recovery rights of the United States under subsection (a) of this section with respect to a facility (under such conditions as the Secretary may establish by regulation) if the Secretary determines that there is good cause for waiving such rights.

(e) Pre-judgment lien

The right of recovery of the United States under subsection (a) of this section shall not, prior to judgment, constitute a lien on any facility.

(July 1, 1944, ch. 373, title II, § 243, formerly title V, § 515, formerly Pub. L. 88–164, title II, § 225, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 326; amended Pub. L. 95–622, title I, § 110(c), Nov. 9, 1978, 92 Stat. 3420; renumbered title V, § 515, and amended Pub. L. 97–35, title IX, § 902(e)(2)(A), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, § 2115, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; Pub. L. 99–129, title II, § 226(a), Oct. 22, 1985, 99 Stat. 546; renumbered title XXIII, § 2315, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2513, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2613, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2713, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; Pub. L. 102–229, title II, § 208, Dec. 12, 1991, 105 Stat. 1716; Pub. L. 102–239, § 1, Dec. 17, 1991, 105 Stat. 1912; renumbered title II, § 243, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

REFERENCES IN TEXT

The Community Mental Health Centers Act, referred to in subsec. (a), is title II of Pub. L. 88–164, as added by Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560. Section 222 of the Community Mental Health Centers Act was classified to section 2689j of this title prior to its repeal.

CODIFICATION

Section was classified to section 300aaa–12 of this title prior to renumbering by Pub. L. 103–43, to section

300cc–14 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–14 of this title prior to renumbering by Pub. L. 99–660, to section 229d of this title prior to renumbering by Pub. L. 98–24, and to section 2689m of this title prior to renumbering by Pub. L. 97–35.

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–229 and Pub. L. 102–239 amended subsec. (d) identically, substituting ''subsection (a)'' for ''subsection (a)(2)''.

1985—Pub. L. 99–129 amended section generally. Prior to amendment, section read as follows: ''If any facility of a community mental health center acquired, remodeled, constructed, or expanded with funds provided under the Community Mental Health Centers Act is, at any time within twenty years after the completion of such remodeling, construction, or expansion or after the date of its acquisition with such funds—

''(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 222 of the Community Mental Health Centers Act, or (B) which is not approved as a transferee by the State agency of the State in which such facility is located, or its successor; or

''(2) not used by a community mental health center in the provision of comprehensive mental health services, and the Secretary has not determined that there is good cause for termination of such use,

the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the United States district court for the district in which the center is situated) of so much of such facility or center as constituted an approved project or projects, as the amount of the Federal participation bore to the acquisition, remodeling, construction, or expansion cost of such project or projects. Such right of recovery shall not constitute a lien upon such facility or center prior to judgment.''

1981—Pub. L. 97–35 substituted ''the Community Mental Health Centers Act'' for ''this subchapter'' and ''section 222 of the Community Mental Health Centers Act'' for ''section 2689j of this title''.

1978—Pub. L. 95–622 substituted ''this subchapter'' for ''this part''.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 226(b) of Pub. L. 99–129 provided that: ''In the case of any facility that was or is constructed, remodeled, expanded, or acquired on or before the date of enactment of this Act [Oct. 22, 1985] or within 180 days after the date of enactment of this Act, the period described in clause (i) or (ii), as the case may be, of section 2115(c)(2)(B) [now 243(c)(2)(B)] of the Public Health Service Act [subsec. (c)(2)(B)(i), (ii) of this section] (as amended by subsection (a) of this section) shall begin no earlier than 181 days after the date of enactment of this Act.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 902(h) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 201, 225a [now 238d], 229b [now 238j], 243, 246, 289k–1, 300d–4, 300d–6, 300*l*–2, 300m, 300m–3, 9412, and 9511 of this title, repealing sections 247b–1, 247b–2, 255, 300d to 300d–3, 300d–5, 300d–7 to 300d–9, 300d–21, 2689 to 2689*l*, 2689n to 2689p, 2689r to 2689aa, 9411, 9421 to 9423, 9431 to 9438, 9451, 9452, 9461 to 9465, 9471 to 9473, 9481, 9491 to 9493, 9502, 9512, 9521, and 9523 of this title, repealing provisions set out as notes under sections 246 and 2689 of this title, and transferring section 2689m to section 229d [now 238*l*] of this title] shall take effect October 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 110(c) of Pub. L. 95–622 provided that the amendment made by that section is effective July 29, 1975.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

OTHER LEGAL RIGHTS OF UNITED STATES NOT ADVERSELY AFFECTED BY 1985 AMENDMENT

Section 226(c) of Pub. L. 99–129 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall not adversely affect other legal rights of the United States.''

§ 238m. Use of fiscal agents

(a) Contracting authority

The Secretary may enter into contracts with fiscal agents—

(1)(A) to determine the amounts payable to persons who, on behalf of the Indian Health Service, furnish health services to eligible Indians,

(B) to determine the amounts payable to persons who, on behalf of the Public Health Service, furnish health services to individuals pursuant to section 247d or 249 of this title,

(2) to receive, disburse, and account for funds in making payments described in paragraph (1),

(3) to make such audits of records as may be necessary to assure that these payments are proper, and

(4) to perform such additional functions as may be necessary to carry out the functions described in paragraphs (1) through (3).

(b) Contracting prerequisites

(1) Contracts under subsection (a) of this section may be entered into without regard to section 5 of title 41 or any other provision of law requiring competition.

(2) No such contract shall be entered into with an entity unless the Secretary finds that the entity will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(c) Advances under contracts

A contract under subsection (a) of this section may provide for advances of funds to enable entities to make payments under the contract.

(d) Applicable statutory provisions

Subsections (d) and (e)[1] of section 1395u of this title shall apply to contracts with entities under subsection (a) of this section in the same manner as they apply to contracts with carriers under that section.

(e) "Fiscal agent" defined

In this section, the term ''fiscal agent'' means a carrier described in section 1395u(f)(1)[1] of this title and includes, with respect to contracts under subsection (a)(1)(A) of this section, an Indian tribe or tribal organization acting under contract with the Secretary under the Indian Self-Determination Act (Public Law 93–638) [25 U.S.C. 450f et seq.].

(July 1, 1944, ch. 373, title II, § 244, formerly title XXI, § 2116, as added Pub. L. 99–272, title XVII,

[1] See References in Text note below.

§ 17003, Apr. 7, 1986, 100 Stat. 359; renumbered title XXIII, § 2316, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2514, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2614, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2714, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 244, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

REFERENCES IN TEXT

Subsections (d), (e), and (f) of section 1395u of this title, referred to in subsecs. (d) and (e), were repealed by Pub. L. 108–173, title IX, § 911(c)(5), Dec. 8, 2003, 117 Stat. 2384.

The Indian Self-Determination Act, referred to in subsec. (e), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

CODIFICATION

Section was classified to section 300aaa–13 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–15 of this title prior to renumbering by Pub. L. 100–607, and to section 300aa–15 of this title prior to renumbering by Pub. L. 99–660.

§ 238n. Abortion-related discrimination in governmental activities regarding training and licensing of physicians

(a) In general

The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that—

(1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;

(2) the entity refuses to make arrangements for any of the activities specified in paragraph (1); or

(3) the entity attends (or attended) a postgraduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.

(b) Accreditation of postgraduate physician training programs

(1) In general

In determining whether to grant a legal status to a health care entity (including a license or certificate), or to provide such entity with financial assistance, services or other benefits, the Federal Government, or any State or local government that receives Federal financial assistance, shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon an accreditation standards[1] that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such standard provides exceptions or exemptions. The government involved shall formulate such regulations or other mechanisms, or enter into such agreements with accrediting agencies, as are necessary to comply with this subsection.

(2) Rules of construction

(A) In general

With respect to subclauses (I) and (II) of section 292d(a)(2)(B)(i) of this title (relating to a program of insured loans for training in the health professions), the requirements in such subclauses regarding accredited internship or residency programs are subject to paragraph (1) of this subsection.

(B) Exceptions

This section shall not—

(i) prevent any health care entity from voluntarily electing to be trained, to train, or to arrange for training in the performance of, to perform, or to make referrals for induced abortions; or

(ii) prevent an accrediting agency or a Federal, State or local government from establishing standards of medical competency applicable only to those individuals who have voluntarily elected to perform abortions.

(c) Definitions

For purposes of this section:

(1) The term ''financial assistance'', with respect to a government program, includes governmental payments provided as reimbursement for carrying out health-related activities.

(2) The term ''health care entity'' includes an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions.

(3) The term ''postgraduate physician training program'' includes a residency training program.

(July 1, 1944, ch. 373, title II, § 245, as added Pub. L. 104–134, title I, § 101(d) [title V, § 515], Apr. 26, 1996, 110 Stat. 1321–211, 1321–245; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

§ 238o. Restriction on use of funds for assisted suicide, euthanasia, and mercy killing

Appropriations for carrying out the purposes of this chapter shall not be used in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(July 1, 1944, ch. 373, title II, § 246, as added Pub. L. 105–12, § 9(e), Apr. 30, 1997, 111 Stat. 27.)

REFERENCES IN TEXT

The Assisted Suicide Funding Restriction Act of 1997, referred to in text, is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

[1] So in original. Probably should be ''standard''.

EFFECTIVE DATE

Section effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as a note under section 14401 of this title.

§ 238p. Recommendations and guidelines regarding automated external defibrillators for Federal buildings

(a) Guidelines on placement

The Secretary shall establish guidelines with respect to placing automated external defibrillator devices in Federal buildings. Such guidelines shall take into account the extent to which such devices may be used by lay persons, the typical number of employees and visitors in the buildings, the extent of the need for security measures regarding the buildings, buildings or portions of buildings in which there are special circumstances such as high electrical voltage or extreme heat or cold, and such other factors as the Secretary determines to be appropriate.

(b) Related recommendations

The Secretary shall publish in the Federal Register the recommendations of the Secretary on the appropriate implementation of the placement of automated external defibrillator devices under subsection (a) of this section, including procedures for the following:

(1) Implementing appropriate training courses in the use of such devices, including the role of cardiopulmonary resuscitation.

(2) Proper maintenance and testing of the devices.

(3) Ensuring coordination with appropriate licensed professionals in the oversight of training of the devices.

(4) Ensuring coordination with local emergency medical systems regarding the placement and incidents of use of the devices.

(c) Consultations; consideration of certain recommendations

In carrying out this section, the Secretary shall—

(1) consult with appropriate public and private entities;

(2) consider the recommendations of national and local public-health organizations for improving the survival rates of individuals who experience cardiac arrest in nonhospital settings by minimizing the time elapsing between the onset of cardiac arrest and the initial medical response, including defibrillation as necessary; and

(3) consult with and counsel other Federal agencies where such devices are to be used.

(d) Date certain for establishing guidelines and recommendations

The Secretary shall comply with this section not later than 180 days after November 13, 2000.

(e) Definitions

For purposes of this section:

(1) The term ''automated external defibrillator device'' has the meaning given such term in section 238q of this title.

(2) The term ''Federal building'' includes a building or portion of a building leased or rented by a Federal agency, and includes buildings on military installations of the United States.

(July 1, 1944, ch. 373, title II, § 247, as added Pub. L. 106–505, title IV, § 403, Nov. 13, 2000, 114 Stat. 2337.)

FINDINGS

Pub. L. 106–505, title IV, § 402, Nov. 13, 2000, 114 Stat. 2336, provided that: ''Congress makes the following findings:

''(1) Over 700 lives are lost every day to sudden cardiac arrest in the United States alone.

''(2) Two out of every three sudden cardiac deaths occur before a victim can reach a hospital.

''(3) More than 95 percent of these cardiac arrest victims will die, many because of lack of readily available life saving medical equipment.

''(4) With current medical technology, up to 30 percent of cardiac arrest victims could be saved if victims had access to immediate medical response, including defibrillation and cardiopulmonary resuscitation.

''(5) Once a victim has suffered a cardiac arrest, every minute that passes before returning the heart to a normal rhythm decreases the chance of survival by 10 percent.

''(6) Most cardiac arrests are caused by abnormal heart rhythms called ventricular fibrillation. Ventricular fibrillation occurs when the heart's electrical system malfunctions, causing a chaotic rhythm that prevents the heart from pumping oxygen to the victim's brain and body.

''(7) Communities that have implemented programs ensuring widespread public access to defibrillators, combined with appropriate training, maintenance, and coordination with local emergency medical systems, have dramatically improved the survival rates from cardiac arrest.

''(8) Automated external defibrillator devices have been demonstrated to be safe and effective, even when used by lay people, since the devices are designed not to allow a user to administer a shock until after the device has analyzed a victim's heart rhythm and determined that an electric shock is required.

''(9) Increasing public awareness regarding automated external defibrillator devices and encouraging their use in Federal buildings will greatly facilitate their adoption.

''(10) Limiting the liability of Good Samaritans and acquirers of automated external defibrillator devices in emergency situations may encourage the use of automated external defibrillator devices, and result in saved lives.''

CERTAIN TECHNOLOGIES AND PRACTICES REGARDING SURVIVAL RATES FOR CARDIAC ARREST

Pub. L. 106–129, § 7, Dec. 6, 1999, 113 Stat. 1676, provided that: ''The Secretary of Health and Human Services shall, in consultation with the Administrator of the General Services Administration and other appropriate public and private entities, develop recommendations regarding the placement of automatic external defibrillators in Federal buildings as a means of improving the survival rates of individuals who experience cardiac arrest in such buildings, including recommendations on training, maintenance, and medical oversight, and on coordinating with the system for emergency medical services.''

§ 238q. Liability regarding emergency use of automated external defibrillators

(a) Good Samaritan protections regarding AEDs

Except as provided in subsection (b) of this section, any person who uses or attempts to use

an automated external defibrillator device on a victim of a perceived medical emergency is immune from civil liability for any harm resulting from the use or attempted use of such device; and in addition, any person who acquired the device is immune from such liability, if the harm was not due to the failure of such acquirer of the device—

(1) to notify local emergency response personnel or other appropriate entities of the most recent placement of the device within a reasonable period of time after the device was placed;

(2) to properly maintain and test the device; or

(3) to provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if—

(A) the employee or agent was not an employee or agent who would have been reasonably expected to use the device; or

(B) the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm (or between the acquisition of the device and the occurrence of the harm, in any case in which the device was acquired after such engagement of the person) was not a reasonably sufficient period in which to provide the training.

(b) Inapplicability of immunity

Immunity under subsection (a) of this section does not apply to a person if—

(1) the harm involved was caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;

(2) the person is a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional;

(3) the person is a hospital, clinic, or other entity whose purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent; or

(4) the person is an acquirer of the device who leased the device to a health care entity (or who otherwise provided the device to such entity for compensation without selling the device to the entity), and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent.

(c) Rules of construction

(1) In general

The following applies with respect to this section:

(A) This section does not establish any cause of action, or require that an automated external defibrillator device be placed at any building or other location.

(B) With respect to a class of persons for which this section provides immunity from civil liability, this section supersedes the law of a State only to the extent that the State has no statute or regulations that provide persons in such class with immunity for civil liability arising from the use by such persons of automated external defibrillator devices in emergency situations (within the meaning of the State law or regulation involved).

(C) This section does not waive any protection from liability for Federal officers or employees under—

(i) section 233 of this title; or

(ii) sections 1346(b), 2672, and 2679 of title 28 or under alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of title 28.

(2) Civil actions under Federal law

(A) In general

The applicability of subsections (a) and (b) of this section includes applicability to any action for civil liability described in subsection (a) of this section that arises under Federal law.

(B) Federal areas adopting State law

If a geographic area is under Federal jurisdiction and is located within a State but out of the jurisdiction of the State, and if, pursuant to Federal law, the law of the State applies in such area regarding matters for which there is no applicable Federal law, then an action for civil liability described in subsection (a) of this section that in such area arises under the law of the State is subject to subsections (a) through (c) of this section in lieu of any related State law that would apply in such area in the absence of this subparagraph.

(d) Federal jurisdiction

In any civil action arising under State law, the courts of the State involved have jurisdiction to apply the provisions of this section exclusive of the jurisdiction of the courts of the United States.

(e) Definitions

(1) Perceived medical emergency

For purposes of this section, the term ''perceived medical emergency'' means circumstances in which the behavior of an individual leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response regarding the heart or other cardiopulmonary functioning of the individual.

(2) Other definitions

For purposes of this section:

(A) The term ''automated external defibrillator device'' means a defibrillator device that—

(i) is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];

(ii) is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed;

(iii) upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual; and

(iv) in the case of a defibrillator device that may be operated in either an automated or a manual mode, is set to operate in the automated mode.

(B)(i) The term ''harm'' includes physical, nonphysical, economic, and noneconomic losses.

(ii) The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(iii) The term ''noneconomic losses'' means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(July 1, 1944, ch. 373, title II, § 248, as added Pub. L. 106–505, title IV, § 404, Nov. 13, 2000, 114 Stat. 2338.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (e)(2)(A)(i), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

PART C—SMALLPOX EMERGENCY PERSONNEL PROTECTION

§ 239. General provisions

(a) Definitions

For purposes of this part:

(1) Covered countermeasure

The term ''covered countermeasure'' means a covered countermeasure as specified in a Declaration made pursuant to section 233(p) of this title.

(2) Covered individual

The term ''covered individual'' means an individual—

(A) who is a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialities [1];

(B) who is or will be functioning in a role identified in a State, local, or Department of Health and Human Services smallpox emergency response plan (as defined in paragraph (7)) approved by the Secretary;

(C) who has volunteered and been selected to be a member of a smallpox emergency response plan described in subparagraph (B) prior to the time at which the Secretary publicly announces that an active case of smallpox has been identified either within or outside of the United States; and

(D) to whom a smallpox vaccine is administered pursuant to such approved plan during the effective period of the Declaration (including the portion of such period before April 30, 2003).

(3) Covered injury

The term ''covered injury'' means an injury, disability, illness, condition, or death (other than a minor injury such as minor scarring or minor local reaction) determined, pursuant to the procedures established under section 239a of this title, to have been sustained by an individual as the direct result of—

(A) administration to the individual of a covered countermeasure during the effective period of the Declaration; or

(B) accidental vaccinia inoculation of the individual in circumstances in which—

(i) the vaccinia is contracted during the effective period of the Declaration or within 30 days after the end of such period;

(ii) smallpox vaccine has not been administered to the individual; and

(iii) the individual has been in contact with an individual who is (or who was accidentally inoculated by) a covered individual.

(4) Declaration

The term ''Declaration'' means the Declaration Regarding Administration of Smallpox Countermeasures issued by the Secretary on January 24, 2003, and published in the Federal Register on January 28, 2003.

(5) Effective period of the Declaration

The term ''effective period of the Declaration'' means the effective period specified in the Declaration, unless extended by the Secretary.

(6) Eligible individual

The term ''eligible individual'' means an individual who is (as determined in accordance with section 239a of this title)—

(A) a covered individual who sustains a covered injury in the manner described in paragraph (3)(A); or

(B) an individual who sustains a covered injury in the manner described in paragraph (3)(B).

(7) Smallpox emergency response plan

The term ''smallpox emergency response plan'' or ''plan'' means a response plan detailing actions to be taken in preparation for a possible smallpox-related emergency during the period prior to the identification of an active case of smallpox either within or outside the United States.

(b) Voluntary program

The Secretary shall ensure that a State, local, or Department of Health and Human Services

[1] So in original. Probably should be ''specialties''.

plan to vaccinate individuals that is approved by the Secretary establishes procedures to ensure, consistent with the Declaration and any applicable guidelines of the Centers for Disease Control and Prevention, that—

(1) potential participants are educated with respect to contraindications, the voluntary nature of the program, and the availability of potential benefits and compensation under this part;

(2) there is voluntary screening provided to potential participants that can identify health conditions relevant to contraindications; and

(3) there is appropriate post-inoculation medical surveillance that includes an evaluation of adverse health effects that may reasonably appear to be due to such vaccine and prompt referral of, or the provision of appropriate information to, any individual requiring health care as a result of such adverse health event.

(July 1, 1944, ch. 373, title II, § 261, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 638.)

§ 239a. Determination of eligibility and benefits

(a) In general

The Secretary shall establish procedures for determining, as applicable with respect to an individual—

(1) whether the individual is an eligible individual;

(2) whether an eligible individual has sustained a covered injury or injuries for which medical benefits or compensation may be available under sections 239c and 239d of this title, and the amount of such benefits or compensation; and

(3) whether the covered injury or injuries of an eligible individual caused the individual's death for purposes of benefits under section 239e of this title.

(b) Covered individuals

The Secretary may accept a certification, by a Federal, State, or local government entity or private health care entity participating in the administration of covered countermeasures under the Declaration, that an individual is a covered individual.

(c) Criteria for reimbursement

(1) Injuries specified in injury table

In any case where an injury or other adverse effect specified in the injury table established under section 239b of this title as a known effect of a vaccine manifests in an individual within the time period specified in such table, such injury or other effect shall be presumed to have resulted from administration of such vaccine.

(2) Other determinations

In making determinations other than those described in paragraph (1) as to the causation or severity of an injury, the Secretary shall employ a preponderance of the evidence standard and take into consideration all relevant medical and scientific evidence presented for consideration, and may obtain and consider the views of qualified medical experts.

(d) Deadline for filing request

The Secretary shall not consider any request for a benefit under this part with respect to an individual, unless—

(1) in the case of a request based on the administration of the vaccine to the individual, the individual files with the Secretary an initial request for benefits or compensation under this part not later than one year after the date of administration of the vaccine; or

(2) in the case of a request based on accidental vaccinia inoculation, the individual files with the Secretary an initial request for benefits or compensation under this part not later than two years after the date of the first symptom or manifestation of onset of the adverse effect.

(e) Structured settlements at Secretary's option

In any case in which there is a reasonable likelihood that compensation or payment under section 239c, 239d, or 239e(b) of this title will be required for a period in excess of one year from the date an individual is determined eligible for such compensation or payment, the Secretary shall have the discretion to make a lump-sum payment, purchase an annuity or medical insurance policy, or execute an appropriate structured settlement agreement, provided that such payment, annuity, policy, or agreement is actuarially determined to have a value equal to the present value of the projected total amount of benefits or compensation that the individual is eligible to receive under such section or sections.

(f) Review of determination

(1) Secretary's review authority

The Secretary may review a determination under this section at any time on the Secretary's own motion or on application, and may affirm, vacate, or modify such determination in any manner the Secretary deems appropriate. The Secretary shall develop a process by which an individual may file a request for reconsideration of any determination made by the Secretary under this section.

(2) Judicial and administrative review

No court of the United States, or of any State, District, territory or possession thereof, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this section. No officer or employee of the United States shall review any action by the Secretary under this section (unless the President specifically directs otherwise).

(July 1, 1944, ch. 373, title II, § 262, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 640.)

§ 239b. Smallpox vaccine injury table

(a)[1] Smallpox vaccine injury table

(1) Establishment required

The Secretary shall establish by interim final regulation a table identifying adverse effects (including injuries, disabilities, illnesses, conditions, and deaths) that shall be presumed

[1] So in original. No subsec. (b) has been enacted.

to result from the administration of (or exposure to) a smallpox vaccine, and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply.

(2) Amendments

The Secretary may by regulation amend the table established under paragraph (1). An amendment to the table takes effect on the date of the promulgation of the final rule that makes the amendment, and applies to all requests for benefits or compensation under this part that are filed on or after such date or are pending as of such date. In addition, the amendment applies retroactively to an individual who was not with respect to the injury involved an eligible individual under the table as in effect before the amendment but who with respect to such injury is an eligible individual under the table as amended. With respect to a request for benefits or compensation under this part by an individual who becomes an eligible individual as described in the preceding sentence, the Secretary may not provide such benefits or compensation unless the request (or amendment to a request, as applicable) is filed before the expiration of one year after the effective date of the amendment to the table in the case of an individual to whom the vaccine was administered and before the expiration of two years after such effective date in the case of a request based on accidental vaccinia inoculation.

(July 1, 1944, ch. 373, title II, § 263, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 641.)

§ 239c. Medical benefits

(a) In general

Subject to the succeeding provisions of this section, the Secretary shall make payment or reimbursement for medical items and services as reasonable and necessary to treat a covered injury of an eligible individual, including the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.

(b) Benefits secondary to other coverage

Payment or reimbursement for services or benefits under subsection (a) of this section shall be secondary to any obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer) under any other provision of law or contractual agreement, to pay for or provide such services or benefits.

(July 1, 1944, ch. 373, title II, § 264, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 641.)

§ 239d. Compensation for lost employment income

(a) In general

Subject to the succeeding provisions of this section, the Secretary shall provide compensation to an eligible individual for loss of employment income (based on such income at the time of injury) incurred as a result of a covered injury, at the rate specified in subsection (b) of this section.

(b) Amount of compensation

(1) In general

Compensation under subsection (a) of this section shall be at the rate of 66⅔ percent of the relevant pay period (weekly, monthly, or otherwise), except as provided in paragraph (2).

(2) Augmented compensation for dependents

If an eligible individual has one or more dependents, the basic compensation for loss of employment income as described in paragraph (1) shall be augmented at the rate of 8⅓ percent.

(3) Consideration of other programs

(A) In general

The Secretary may consider the provisions of sections 8114, 8115, and 8146a of title 5, and any implementing regulations, in determining the amount of payment under subsection (a) of this section and the circumstances under which such payments are reasonable and necessary.

(B) Minors

With respect to an eligible individual who is a minor, the Secretary may consider the provisions of section 8113 of title 5, and any implementing regulations, in determining the amount of payment under subsection (a) of this section and the circumstances under which such payments are reasonable and necessary.

(4) Treatment of self-employment income

For purposes of this section, the term ''employment income'' includes income from self-employment.

(c) Limitations

(1) Benefits secondary to other coverage

(A) In general

Any compensation under subsection (a) of this section shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay compensation for loss of employment income or to provide disability or retirement benefits.

(B) Relation to other obligations

Compensation under subsection (a) of this section shall not be made to an eligible individual to the extent that the total of amounts paid to the individual under such subsection and under the other obligations referred to in subparagraph (A) is an amount that exceeds the rate specified in subsection (b)(1) of this section. If under any such other obligation a lump-sum payment is made, such payment shall, for purposes of this paragraph, be deemed to be received over multiple years rather than received in a sin-

gle year. The Secretary may, in the discretion of the Secretary, determine how to apportion such payment over multiple years.

(2) No benefits in case of death

No payment shall be made under subsection (a) of this section in compensation for loss of employment income subsequent to the receipt, by the survivor or survivors of an eligible individual, of benefits under section 239e of this title for death.

(3) Limit on total benefits

(A) In general

Except as provided in subparagraph (B)—

(i) total compensation paid to an individual under subsection (a) of this section shall not exceed $50,000 for any year; and

(ii) the lifetime total of such compensation for the individual may not exceed an amount equal to the amount authorized to be paid under section 239e of this title.

(B) Permanent and total disability

The limitation under subparagraph (A)(ii) does not apply in the case of an eligible individual who is determined to have a covered injury or injuries meeting the definition of disability in section 416(i) of this title.

(4) Waiting period

(A) In general

Except as provided in subparagraph (B), an eligible individual shall not be provided compensation under this section for the first 5 work days of loss of employment income.

(B) Exception

Subparagraph (A) does not apply if the period of loss of employment income of an eligible individual is 10 or more work days.

(5) Termination of benefits

No payment shall be made under subsection (a) of this section in compensation for loss of employment income once the eligible individual involves[1] reaches the age of 65.

(d) Benefit in addition to medical benefits

A benefit under subsection (a) of this section shall be in addition to any amounts received by an eligible individual under section 239c of this title.

(July 1, 1944, ch. 373, title II, § 265, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 642.)

§ 239e. Payment for death

(a) Death benefit

(1) In general

The Secretary shall pay, in the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, a death benefit in the amount determined under paragraph (2) to the survivor or survivors in the same manner as death benefits are paid pursuant to the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) with respect to an eligible deceased (except that in the case of an eligible individual who is a minor with no living parent, the legal guardian shall be considered the survivor in the place of the parent).

(2) Benefit amount

(A) In general

The amount of the death benefit under paragraph (1) in a fiscal year shall equal the amount of the comparable benefit calculated under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) in such fiscal year, without regard to any reduction attributable to a limitation on appropriations, but subject to subparagraph (B).

(B) Reduction for payments for lost employment income

The amount of the benefit as determined under subparagraph (A) shall be reduced by the total amount of any benefits paid under section 239d of this title with respect to lost employment income.

(3) Limitations

(A) In general

No benefit is payable under paragraph (1) with respect to the death of an eligible individual if—

(i) a disability benefit is paid with respect to such individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.); or

(ii) a death benefit is paid or payable with respect to such individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.).

(B) Exception in the case of a limitation on appropriations for disability benefits under PSOB

In the event that disability benefits available to an eligible individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) are reduced because of a limitation on appropriations, and such reduction would affect the amount that would be payable under subparagraph (A) without regard to this subparagraph, benefits shall be available under paragraph (1) to the extent necessary to ensure that the survivor or survivors of such individual receives a total amount equal to the amount described in paragraph (2).

(b) Election in case of dependents

(1) In general

In the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, if the individual had one or more dependents under the age of 18, the legal guardian of the dependents may,

[1] So in original. Probably should be "involved".

in lieu of the death benefit under subsection (a) of this section, elect to receive on behalf of the aggregate of such dependents payments in accordance with this subsection. An election under the preceding sentence is effective in lieu of a request under subsection (a) of this section by an individual who is not the legal guardian of such dependents.

(2) Amount of payments

Payments under paragraph (1) with respect to an eligible individual described in such paragraph shall be made as if such individual were an eligible individual to whom compensation would be paid under subsection (a) of section 239d of this title, with the rate augmented in accordance with subsection (b)(2) of such section and with such individual considered to be an eligible individual described in subsection (c)(3)(B) of such section.

(3) Limitations

(A) Age of dependents

No payments may be made under paragraph (1) once the youngest of the dependents involved reaches the age of 18.

(B) Benefits secondary to other coverage

(i) In general

Any payment under paragraph (1) shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay compensation for loss of employment income or to provide disability benefits, retirement benefits, life insurance benefits on behalf of dependents under the age of 18, or death benefits.

(ii) Relation to other obligations

Payments under paragraph (1) shall not be made to with respect to[1] an eligible individual to the extent that the total of amounts paid with respect to the individual under such paragraph and under the other obligations referred to in clause (i) is an amount that exceeds the rate of payment that applies under paragraph (2). If under any such other obligation a lump-sum payment is made, such payment shall, for purposes of this subparagraph, be deemed to be received over multiple years rather than received in a single year. The Secretary may, in the discretion of the Secretary, determine how to apportion such payment over multiple years.

(c) Benefit in addition to medical benefits

A benefit under subsection (a) or (b) of this section shall be in addition to any amounts received by an eligible individual under section 239c of this title.

(July 1, 1944, ch. 373, title II, § 266, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 643.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (a)(1), (2)(A), (3), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. Subpart 1 of part L of title I of the Act is classified generally to part A (§ 3796 et seq.) of subchapter XII of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

§ 239f. Administration

(a) Administration by agreement with other agency or agencies

The Secretary may administer any or all of the provisions of this part through Memorandum of Agreement with the head of any appropriate Federal agency.

(b) Regulations

The head of the agency administering this part or provisions thereof (including any agency head administering such Act[1] or provisions through a Memorandum of Agreement under subsection (a) of this section) may promulgate such implementing regulations as may be found necessary and appropriate. Initial implementing regulations may be interim final regulations.

(July 1, 1944, ch. 373, title II, § 267, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 645.)

§ 239g. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2007, to remain available until expended, including administrative costs and costs of provision and payment of benefits. The Secretary's payment of any benefit under section 239c, 239d, or 239e of this title shall be subject to the availability of appropriations under this section.

(July 1, 1944, ch. 373, title II, § 268, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 645.)

§ 239h. Relationship to other laws

Except as explicitly provided herein, nothing in this part shall be construed to override or limit any rights an individual may have to seek compensation, benefits, or redress under any other provision of Federal or State law.

(July 1, 1944, ch. 373, title II, § 269, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 645.)

SUBCHAPTER II—GENERAL POWERS AND DUTIES

PART A—RESEARCH AND INVESTIGATIONS

§ 241. Research and investigations generally

(a) Authority of Secretary

The Secretary shall conduct in the Service, and encourage, cooperate with, and render assistance to other appropriate public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, including water purification, sewage

[1] So in original.

[1] So in original. Probably should be "part".

treatment, and pollution of lakes and streams. In carrying out the foregoing the Secretary is authorized to—

(1) collect and make available through publications and other appropriate means, information as to, and the practical application of, such research and other activities;

(2) make available research facilities of the Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(3) make grants-in-aid to universities, hospitals, laboratories, and other public or private institutions, and to individuals for such research projects as are recommended by the advisory council to the entity of the Department supporting such projects and make, upon recommendation of the advisory council to the appropriate entity of the Department, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research;

(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(5) for purposes of study, admit and treat at institutions, hospitals, and stations of the Service, persons not otherwise eligible for such treatment;

(6) make available, to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical methods to experiments, studies, and surveys in health and medical fields;

(7) enter into contracts, including contracts for research in accordance with and subject to the provisions of law applicable to contracts entered into by the military departments under sections 2353 and 2354 of title 10, except that determination, approval, and certification required thereby shall be by the Secretary of Health and Human Services; and

(8) adopt, upon recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers necessary or appropriate to carry out the purposes of this section.

The Secretary may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

(b) Testing for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects; consultation

(1) The Secretary shall conduct and may support through grants and contracts studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects. In carrying out this paragraph, the Secretary shall consult with entities of the Federal Government, outside of the Department of Health and Human Services, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct for such entity studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects.

(2)(A) The Secretary shall establish a comprehensive program of research into the biological effects of low-level ionizing radiation under which program the Secretary shall conduct such research and may support such research by others through grants and contracts.

(B) The Secretary shall conduct a comprehensive review of Federal programs of research on the biological effects of ionizing radiation.

(3) The Secretary shall conduct and may support through grants and contracts research and studies on human nutrition, with particular emphasis on the role of nutrition in the prevention and treatment of disease and on the maintenance and promotion of health, and programs for the dissemination of information respecting human nutrition to health professionals and the public. In carrying out activities under this paragraph, the Secretary shall provide for the coordination of such of these activities as are performed by the different divisions within the Department of Health and Human Services and shall consult with entities of the Federal Government, outside of the Department of Health and Human Services, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct and support such activities for such entity.

(4) The Secretary shall publish a biennial report which contains—

(A) a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed;

(B) information concerning the nature of such exposure and the estimated number of persons exposed to such substances;

(C) a statement identifying (i) each substance contained in the list under subparagraph (A) for which no effluent, ambient, or exposure standard has been established by a Federal agency, and (ii) for each effluent, ambient, or exposure standard established by a Federal agency with respect to a substance contained in the list under subparagraph (A), the extent to which, on the basis of available medical, scientific, or other data, such standard, and the implementation of such standard by the agency, decreases the risk to public health from exposure to the substance; and

(D) a description of (i) each request received during the year involved—

(I) from a Federal agency outside the Department of Health and Human Services for the Secretary, or

(II) from an entity within the Department of Health and Human Services to any other entity within the Department,

to conduct research into, or testing for, the carcinogenicity of substances or to provide information described in clause (ii) of subparagraph (C), and (ii) how the Secretary and each such other entity, respectively, have responded to each such request.

(5) The authority of the Secretary to enter into any contract for the conduct of any study, testing, program, research, or review, or assessment under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Diseases not significantly occurring in United States

The Secretary may conduct biomedical research, directly or through grants or contracts, for the identification, control, treatment, and prevention of diseases (including tropical diseases) which do not occur to a significant extent in the United States.

(d) Protection of privacy of individuals who are research subjects

The Secretary may authorize persons engaged in biomedical, behavioral, clinical, or other research (including research on mental health, including research on the use and effect of alcohol and other psychoactive drugs) to protect the privacy of individuals who are the subject of such research by withholding from all persons not connected with the conduct of such research the names or other identifying characteristics of such individuals. Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.

(e) Preterm labor and delivery and infant mortality

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall expand, intensify, and coordinate the activities of the Centers for Disease Control and Prevention with respect to preterm labor and delivery and infant mortality.

(July 1, 1944, ch. 373, title III, § 301, 58 Stat. 691; July 3, 1946, ch. 538, § 7(a), (b), 60 Stat. 423; June 16, 1948, ch. 481, § 4(e), (f), 62 Stat. 467; June 24, 1948, ch. 621, § 4(e), (f), 62 Stat. 601; June 25, 1948, ch. 654, § 1, 62 Stat. 1017; July 3, 1956, ch. 510, § 4, 70 Stat. 490; Pub. L. 86–798, Sept. 15, 1960, 74 Stat. 1053; Pub. L. 87–838, § 2, Oct. 17, 1962, 76 Stat. 1073; Pub. L. 89–115, § 3, Aug. 9, 1965, 79 Stat. 448; Pub. L. 90–174, § 9, Dec. 5, 1967, 81 Stat. 540; Pub. L. 91–513, title I, § 3(a), Oct. 27, 1970, 84 Stat. 1241; Pub. L. 91–515, title II, § 292, Oct. 30, 1970, 84 Stat. 1308; Pub. L. 92–218, § 6(a)(2), Dec. 23, 1971, 85 Stat. 785; Pub. L. 92–423, § 7(b), Sept. 19, 1972, 86 Stat. 687; Pub. L. 93–282, title I, § 122(b), May 14, 1974, 88 Stat. 132; Pub. L. 93–348, title I, § 104(a)(1), July 12, 1974, 88 Stat. 346; Pub. L. 93–352, title I, § 111, July 23, 1974, 88 Stat. 360; Pub. L. 94–278, title I, § 111, Apr. 22, 1976, 90 Stat. 405; Pub. L. 95–622, title II, §§ 261, 262, Nov. 9, 1978, 92 Stat. 3434; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 99–158, § 3(a)(5), Nov. 20, 1985, 99 Stat. 879; Pub. L. 99–570, title IV, § 4021(b)(2), Oct. 27, 1986, 100 Stat. 3207–124; Pub. L. 99–660, title I, § 104, Nov. 14, 1986, 100 Stat. 3751; Pub. L. 100–607, title I, § 163(1), (2), Nov. 4, 1988, 102 Stat. 3062; Pub. L. 103–43, title XX, § 2009, June 10, 1993, 107 Stat. 213; Pub. L. 109–450, § 3(a), Dec. 22, 2006, 120 Stat. 3341.)

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–450 added subsec. (e).

1993—Subsec. (b)(4). Pub. L. 103–43 substituted ''a biennial report'' for ''an annual report'' in introductory provisions.

1988—Subsec. (d). Pub. L. 100–607 redesignated concluding provisions of subsec. (a) of section 242a of this title as subsec. (d) of this section, substituted ''biomedical, behavioral, clinical, or other research (including research on mental health, including'' for ''research on mental health, including'', and substituted ''drugs)'' for ''drugs,''.

1986—Subsec. (a)(3). Pub. L. 99–570 struck out ''or, in the case of mental health projects, by the National Advisory Mental Health Council;'' after ''Department supporting such projects'' and struck out ''or the National Advisory Mental Health Council'' after ''appropriate entity of the Department''.

Subsec. (c). Pub. L. 99–660 added subsec. (c).

1985—Subsec. (a)(3). Pub. L. 99–158, § 3(a)(5)(A), substituted ''as are recommended by the advisory council to the entity of the Department supporting such projects or, in the case of mental health projects, by the National Advisory Mental Health Council; and make, upon recommendation of the advisory council to the appropriate entity of the Department or the National Advisory Mental Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research'' for ''as are recommended by the National Advisory Health Council, or, with respect to cancer, recommended by the National Cancer Advisory Board, or, with respect to mental health, recommended by the National Advisory Mental Health Council, or with respect to heart, blood vessel, lung, and blood diseases and blood resources, recommended by the National Heart, Lung, and Blood Advisory Council, or, with respect to dental diseases and conditions, recommended by the National Advisory Dental Research Council; and include in the grants for any such project grants of penicillin and other antibiotic compounds for use in such project; and make, upon recommendation of the National Advisory Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research: *Provided*, That such uniform percentage, not to exceed 15 per centum, as the Secretary may determine, of the amounts provided for grants for research projects for any fiscal year through the appropriations for the National Institutes of Health may be transferred from such appropriations to a separate account to be available for such research grants-in-aid for such fiscal year''.

Subsec. (a)(8). Pub. L. 99–158, § 3(a)(5)(B), substituted ''recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers'' for ''recommendation of the National Advisory Health Council, or, with respect to cancer, upon recommendation of the National Cancer Advisory Board, or, with respect to mental health, upon recommendation of the National Advisory Mental Health Council, or, with respect to heart, blood vessel, lung, and blood diseases and blood resources, upon recommendation of the National Heart, Lung and Blood Advisory Council, or, with respect to dental diseases and conditions, upon recommendations of the National Advisory Dental Research Council, such additional means as he deems''.

1978—Pub. L. 95–622 designated existing provisions as subsec. (a), redesignated former pars. (a) to (h) as (1) to (8), respectively, substituted ''Secretary'' for ''Surgeon General'' wherever appearing, and inserted following par. (8) provisions relating to authority of Secretary to make available to individuals and entities substances and living organisms, and added subsec. (b).

1976—Subsecs. (c), (h). Pub. L. 94–278 substituted ''heart, blood vessel, lung, and blood diseases and blood resources'' for ''heart diseases'' and ''National Heart, Lung and Blood Advisory Council'' for ''National Heart and Lung Advisory Council''.

1974—Subsec. (c). Pub. L. 93–348, § 104(a)(1), redesignated subsec. (d) as (c) and substituted ''research

projects'' for ''research or research training projects'' in two places, ''general support of their research'' for ''general support of their research and research training programs'' and ''research grants-in-aid'' for ''research and research training program grants-in-aid''. Former subsec. (c), authorizing Surgeon General to establish and maintain research fellowships in the Public Health Service with such stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the assistance of the most brilliant and promising research fellows from the United States and abroad, was struck out.

Subsec. (d). Pub. L. 93–348, §104(a)(1)(C), redesignated subsec. (e) as (d).

Pub. L. 93–282 substituted ''mental health, including research on the use and effect of alcohol and other psychoactive drugs'' for ''the use and effect of drugs'' in former concluding provisions of section 242a(a) of this title. See 1988 Amendment note above.

Subsecs. (e), (f). Pub. L. 93–348, §104(a)(1)(C), redesignated subsecs. (f) and (g) as (e) and (f), respectively. Former subsec. (e) redesignated (d).

Subsec. (g). Pub. L. 93–352 struck out ''during the fiscal year ending June 30, 1966, and each of the eight succeeding fiscal years'' after ''Enter into contracts''. Notwithstanding directory language that amendment be made to subsec. (h), the amendment was executed to subsec. (g) to reflect the probable intent of Congress and the intervening redesignation of subsec. (h) as (g) by Pub. L. 93–348.

Pub. L. 93–348, §104(a)(1)(C), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 93–348, §104(a)(1)(C), redesignated subsecs. (h) and (i) as (g) and (h), respectively.

1972—Subsecs. (d), (i). Pub. L. 92–423 substituted ''National Heart and Lung Advisory Council'' for ''National Advisory Heart Council''.

1971—Subsecs. (d), (i). Pub. L. 92–218 substituted ''National Cancer Advisory Board'' for ''National Advisory Cancer Council''.

1970—Subsec. (d). Pub. L. 91–513 added subsec. (d). See 1988 Amendment note above.

Subsec. (h). Pub. L. 91–515 substituted ''eight'' for ''five'' succeeding fiscal years.

1967—Subsec. (h). Pub. L. 90–174 substituted ''five'' for ''two'' succeeding fiscal years.

1965—Subsecs. (h), (i). Pub. L. 89–115 added subsec. (h) and redesignated former subsec. (h) as (i).

1962—Subsec. (d). Pub. L. 87–838 inserted ''or research training'' in two places.

1960—Subsec. (d). Pub. L. 86–798 authorized the Surgeon General, upon recommendation of the National Advisory Health Council, to make grants to public or non-profit universities, hospitals, laboratories, and other institutions to support research and research training programs, and to make available for such research and research training programs, up to 15 per centum of amounts provided for research grants through the appropriations for the National Institutes of Health.

1956—Subsecs. (g), (h). Act July 3, 1956, added subsec. (g) and redesignated former subsec. (g) as (h).

1948—Subsec. (d). Acts June 16, 1948, §4(e), and June 24, 1948, §4(e), made provisions applicable to the National Advisory Heart Council and the National Advisory Dental Research Council, respectively.

Subsec. (d). Act June 25, 1948, continued in basic legislation the authority to purchase penicillin and other antibiotic compounds for use in research projects.

Subsec. (g). Acts June 16, 1948, §4(f), and June 24, 1948, §4(f), made provisions applicable to the National Advisory Heart Council and the National Advisory Dental Research Council, respectively.

1946—Subsec. (d). Act July 3, 1946, made the National Advisory Mental Health Council the body to make recommendations to the Surgeon General on awarding of grants-in-aid for research projects with respect to mental health.

Subsec. (g). Act July 3, 1946, gave National Advisory Health Council the right to make recommendations to carry out purposes of this section.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(7), and ''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (b)(1), (3), and (4)(D)(I), (II), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Sections 261 and 262 of Pub. L. 95–622 provided that the amendments made by those sections are effective Oct. 1, 1978.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 104(b) of Pub. L. 93–348 provided that: ''The amendments made by subsection (a) [amending this section and sections 242a, 282, 286a, 286b, 287a, 287b, 287d, 288a, 289c, 289c–1, 289g, 289k, and heading preceding section 289*l* of this title] shall not apply with respect to commitments made before the date of the enactment of this Act [July 12, 1974] by the Secretary of Health, Education, and Welfare for research training under the provisions of the Public Health Service Act amended or repealed by subsection (a).''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–423 effective 60 days after Sept. 19, 1972, or on such prior date after Sept. 19, 1972, as the President shall prescribe and publish in the Federal Register, see section 9 of Pub. L. 92–423, set out as a note under section 218 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–218 effective 60 days after Dec. 23, 1971, or on such prior date after Dec. 23, 1971, as the President shall prescribe and publish in the Federal Register, see section 7 of Pub. L. 92–218, set out as a note under section 218 of this title.

COORDINATION OF DATA SURVEYS AND REPORTS

Pub. L. 106–113, div. B, §1000(a)(6) [title VII, §703(e)], Nov. 29, 1999, 113 Stat. 1536, 1501A–402, provided that: ''The Secretary of Health and Human Services, through the Assistant Secretary for Planning and Evaluation, shall establish a clearinghouse for the consolidation and coordination of all Federal databases and reports regarding children's health.''

FEMALE GENITAL MUTILATION

Pub. L. 104–134, title I, §101(d) [title V, §520], Apr. 26, 1996, 110 Stat. 1321–211, 1321–250; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided that:

''(a) Congress finds that—

''(1) the practice of female genital mutilation is carried out by members of certain cultural and religious groups within the United States; and

''(2) the practice of female genital mutilation often results in the occurrence of physical and psychological health effects that harm the women involved.

''(b) The Secretary of Health and Human Services shall do the following:

''(1) Compile data on the number of females living in the United States who have been subjected to female genital mutilation (whether in the United States or in their countries of origin), including a specification of the number of girls under the age of 18 who have been subjected to such mutilation.

''(2) Identify communities in the United States that practice female genital mutilation, and design and carry out outreach activities to educate individuals in the communities on the physical and psychological health effects of such practice. Such outreach activities shall be designed and implemented in collaboration with representatives of the ethnic groups practicing such mutilation and with representatives of or-

ganizations with expertise in preventing such practice.

''(3) Develop recommendations for the education of students of schools of medicine and osteopathic medicine regarding female genital mutilation and complications arising from such mutilation. Such recommendations shall be disseminated to such schools.

''(c) For purposes of this section the term 'female genital mutilation' means the removal or infibulation (or both) of the whole or part of the clitoris, the labia minor, or the labia major.

''(d) The Secretary of Health and Human Services shall commence carrying out this section not later than 90 days after the date of enactment of this Act [Apr. 26, 1996].''

SENTINEL DISEASE CONCEPT STUDY

Section 1910 of Pub. L. 103–43 directed Secretary of Health and Human Services, in cooperation with Agency for Toxic Substances and Disease Registry and Centers for Disease Control and Prevention, to design and implement a pilot sentinel disease surveillance system for identifying relationship between occupation of household members and incidence of subsequent conditions or diseases in other members of household, and required Director of the National Institutes of Health to prepare and submit to Congress, not later than 4 years after June 10, 1993, a report concerning this project.

STUDY OF THYROID MORBIDITY FOR HANFORD, WASHINGTON

Section 161 of Pub. L. 100–607, as amended by Pub. L. 102–531, title III, § 312(e)(1), Oct. 27, 1992, 106 Stat. 3506, directed Secretary of Health and Human Services, acting through Director of Centers for Disease Control and Prevention, to conduct a study of thyroid morbidity of the population, including Indian tribes and tribal organizations, in vicinity of Hanford, in State of Washington, authorized Director to contract out portions of study, and required Director, not later than 42 months after Nov. 4, 1988, to transmit a report, including such study, to Congress, chief executive officers of States of Oregon and Washington, and governing officials of Indian tribes in vicinity of Hanford, Washington.

NATIONAL COMMISSION ON SLEEP DISORDERS RESEARCH

Section 162 of Pub. L. 100–607 directed Secretary of Health and Human Services, after consultation with Director of National Institutes of Health, to establish a National Commission on Sleep Disorders Research to conduct a comprehensive study of present state of knowledge of incidence, prevalence, morbidity, and mortality resulting from sleep disorders, and of social and economic impact of such disorders, evaluate public and private facilities and resources (including trained personnel and research activities) available for diagnosis, prevention, and treatment of, and research into, such disorders, and identify programs (including biological, physiological, behavioral, environmental, and social programs) by which improvement in management and research into sleep disorders could be accomplished and, not later than 18 months after initial meeting of Commission, to submit to appropriate Committees of Congress a final report, and provided for termination of the Commission 30 days after submission of final report.

RESEARCH WITH RESPECT TO HEALTH RESOURCES AND SERVICES ADMINISTRATION

Section 632 of Pub. L. 100–607 provided that with respect to any program of research pursuant to this chapter, any such program carried out in fiscal year 1987 by an agency other than Health Resources and Services Administration (or appropriate to be carried out by such an agency) could not, for each of fiscal years 1989 through 1991, be carried out by such Administration.

CONTINUING CARE FOR PSYCHIATRIC PATIENTS IN FORMER CLINICAL RESEARCH CENTER AT NATIONAL INSTITUTE ON DRUG ABUSE

Pub. L. 99–117, § 10, Oct. 7, 1985, 99 Stat. 494, provided that: ''In any fiscal year beginning after September 30, 1981, from funds appropriated for carrying out section 301 of the Public Health Service Act [this section] with respect to mental health, the Secretary of Health and Human Services may provide, by contract or otherwise, for the continuing care of psychiatric patients who were under active and continuous treatment at the National Institute on Drug Abuse Clinical Research Center on the date such Clinical Research Center ceased operations.''

ANALYSIS OF THYROID CANCER; CREATION AND PUBLICATION OF RADIOEPIDEMIOLOGICAL TABLES

Pub. L. 97–414, § 7, Jan. 4, 1983, 96 Stat. 2059, as amended by Pub. L. 109–482, title I, § 104(b)(3)(A), Jan. 15, 2007, 120 Stat. 3694, provided that:

''(a) In carrying out section 301 of the Public Health Service Act [this section], the Secretary of Health and Human Services shall—

''(1) conduct scientific research and prepare analyses necessary to develop valid and credible assessments of the risks of thyroid cancer that are associated with thyroid doses of Iodine 131;

''(2) conduct scientific research and prepare analyses necessary to develop valid and credible methods to estimate the thyroid doses of Iodine 131 that are received by individuals from nuclear bomb fallout; and

''(3) conduct scientific research and prepare analyses necessary to develop valid and credible assessments of the exposure to Iodine 131 that the American people received from the Nevada atmospheric nuclear bomb tests.

''(b)(1) Within one year after the date of enactment of this Act [Jan. 4, 1983], the Secretary of Health and Human Services shall devise and publish radioepidemiological tables that estimate the likelihood that persons who have or have had any of the radiation related cancers and who have received specific doses prior to the onset of such disease developed cancer as a result of these doses. These tables shall show a probability of causation of developing each radiation related cancer associated with receipt of doses ranging from 1 millirad to 1,000 rads in terms of sex, age at time of exposure, time from exposure to the onset of the cancer in question, and such other categories as the Secretary, after consulting with appropriate scientific experts, determines to be relevant. Each probability of causation shall be calculated and displayed as a single percentage figure.

''(2) At the time the Secretary of Health and Human Services publishes the tables pursuant to paragraph (1), such Secretary shall also publish—

''(A) for the tables of each radiation related cancer, an evaluation which will assess the credibility, validity, and degree of certainty associated with such tables; and

''(B) a compilation of the formulas that yielded the probabilities of causation listed in such tables. Such formulas shall be published in such a manner and together with information necessary to determine the probability of causation of any individual who has or has had a radiation related cancer and has received any given dose.

''(3) The tables specified in paragraph (1) and the formulas specified in paragraph (2) shall be devised from the best available data that are most applicable to the United States, and shall be devised in accordance with the best available scientific procedures and expertise.''

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an

advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 242. Studies and investigations on use and misuse of narcotic drugs and other drugs; annual report to Attorney General; cooperation with States

(a) In carrying out the purposes of section 241 of this title with respect to drugs the use or misuse of which might result in drug abuse or dependency, the studies and investigations authorized therein shall include the use and misuse of narcotic drugs and other drugs. Such studies and investigations shall further include the quantities of crude opium, coca leaves, and their salts, derivatives, and preparations, and other drugs subject to control under the Controlled Substances Act [21 U.S.C. 801 et seq.] and Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.], together with reserves thereof, necessary to supply the normal and emergency medicinal and scientific requirements of the United States. The results of studies and investigations of the quantities of narcotic drugs or other drugs subject to control under such Acts, together with reserves of such drugs, that are necessary to supply the normal and emergency medicinal and scientific requirements of the United States, shall be reported not later than the first day of April of each year to the Attorney General, to be used at his discretion in determining manufacturing quotas or importation requirements under such Acts.

(b) The Surgeon General shall cooperate with States for the purpose of aiding them to solve their narcotic drug problems and shall give authorized representatives of the States the benefit of his experience in the care, treatment, and rehabilitation of narcotic addicts to the end that each State may be encouraged to provide adequate facilities and methods for the care and treatment of its narcotic addicts.

(July 1, 1944, ch. 373, title III, § 302, 58 Stat. 692; Pub. L. 91–513, title II, § 701(j), Oct. 27, 1970, 84 Stat. 1282.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (a), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (a), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–513 inserted references to drug dependency, drugs other than narcotic drugs, and substances subject to control under the Controlled Substances Act and the Controlled Substances Import and Export Act, substituted the first day of April of each year for the first day of September of each year as the date by which the study results must be submitted, substituted the Attorney General for the Secretary of the Treasury as the officer to whom the report is to be submitted, and struck out references to the Narcotic Drugs Import and Export Act.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91–513, set out as an Effective Date note under section 801 of Title 21, Food and Drugs.

SAVINGS PROVISION

Amendment by Pub. L. 91–513 not to affect or abate any prosecutions for violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs on Oct. 27, 1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91–513, set out as a note under section 321 of Title 21, Food and Drugs.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

MARIHUANA AND HEALTH REPORTING

Pub. L. 91–296, title V, June 30, 1970, 84 Stat. 352, as amended by Pub. L. 95–461, § 3(a), Oct. 14, 1978, 92 Stat. 1268; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, known as the Marihuana and Health Reporting Act, which required the Secretary of Health and Human Services, after consultation with the Surgeon General and other appropriate individuals, to transmit a report to the Congress on or before January 31, 1971, and biennially thereafter (1) containing current information on the health consequences of using marihuana, and (2) containing such recommendations for legislative and administrative action as he may deem appropriate, was repealed by Pub. L. 98–24, § 2(d), Apr. 26, 1983, 97 Stat. 182.

§ 242a. Repealed. Pub. L. 106–310, div. B, title XXXII, § 3201(b)(1), Oct. 17, 2000, 114 Stat. 1190

Section, act July 1, 1944, ch. 373, title III, § 303, as added July 3, 1946, ch. 538, § 7(c), 60 Stat. 423; amended Aug. 2, 1956, ch. 871, title V, § 501, 70 Stat. 929; Pub. L. 91–513, title I, § 3(a), Oct. 27, 1970, 84 Stat. 1241; Pub. L. 93–282, title I, § 122(b), May 14, 1974, 88 Stat. 132; Pub. L. 93–348, title I, § 104(a)(2), July 12, 1974, 88 Stat. 346; Pub. L. 95–633, title I, § 108(b), Nov. 10, 1978, 92 Stat. 3773; Pub. L. 96–398, title VIII, § 803(a), Oct. 7, 1980, 94 Stat. 1607; Pub. L. 100–177, title II, § 202(a), Dec. 1, 1987, 101 Stat. 996; Pub. L. 100–607, title I, § 163(1)(A), Nov. 4, 1988, 102 Stat. 3062; Pub. L. 100–690, title II, § 2058(b), Nov. 18, 1988, 102 Stat. 4214; Pub. L. 101–597, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3035; Pub. L. 102–321, title I, § 115(b), July 10, 1992, 106 Stat. 348; Pub. L. 102–408, title III, § 305, Oct. 13, 1992, 106 Stat. 2084; Pub. L. 105–392, title IV, § 403, Nov. 13, 1998, 112 Stat. 3588, related to mental health.

§ 242b. General authority respecting research, evaluations, and demonstrations in health statistics, health services, and health care technology

(a) Scope of activities

The Secretary may, through the Agency for Healthcare Research and Quality or the Na-

tional Center for Health Statistics, or using Ruth L. Kirschstein National Research Service Awards or other appropriate authorities, undertake and support training programs to provide for an expanded and continuing supply of individuals qualified to perform the research, evaluation, and demonstration projects set forth in section 242k of this title and in subchapter VII of this chapter.

(b) Additional authority; scope of activities

To implement subsection (a) of this section and section 242k of this title, the Secretary may, in addition to any other authority which under other provisions of this chapter or any other law may be used by him to implement such subsection, do the following:

(1) Utilize personnel and equipment, facilities, and other physical resources of the Department of Health and Human Services, permit appropriate (as determined by the Secretary) entities and individuals to utilize the physical resources of such Department, provide technical assistance and advice, make grants to public and nonprofit private entities and individuals, and, when appropriate, enter into contracts with public and private entities and individuals.

(2) Admit and treat at hospitals and other facilities of the Service persons not otherwise eligible for admission and treatment at such facilities.

(3) Secure, from time to time and for such periods as the Secretary deems advisable but in accordance with section 3109 of title 5, the assistance and advice of consultants from the United States or abroad. The Secretary may for the purpose of carrying out the functions set forth in sections 242c,[1] 242k, and 242n[1] of this title, obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the number of days or the period of service) for each of the centers the services of not more than fifteen experts who have appropriate scientific or professional qualifications.

(4) Acquire, construct, improve, repair, operate, and maintain laboratory, research, and other necessary facilities and equipment, and such other real or personal property (including patents) as the Secretary deems necessary; and acquire, without regard to section 8141 of title 40, by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia.

(c) Coordination of activities through units of Department

(1) The Secretary shall coordinate all health services research, evaluations, and demonstrations, all health statistical and epidemiological activities, and all research, evaluations, and demonstrations respecting the assessment of health care technology undertaken and supported through units of the Department of Health and Human Services. To the maximum extent feasible such coordination shall be carried out through the Agency for Healthcare Research and Quality and the National Center for Health Statistics.

(2) The Secretary shall coordinate the health services research, evaluations, and demonstrations, the health statistical and (where appropriate) epidemiological activities, and the research, evaluations, and demonstrations respecting the assessment of health care technology authorized by this chapter through the Agency for Healthcare Research and Quality and the National Center for Health Statistics.

(July 1, 1944, ch. 373, title III, § 304, as added July 28, 1955, ch. 417, § 3, 69 Stat. 382; amended Aug. 2, 1956, ch. 871, title V, § 502, 70 Stat. 930; Pub. L. 90–174, § 3(a), Dec. 5, 1967, 81 Stat. 534; Pub. L. 91–296, title IV, § 401(b)(1)(A), June 30, 1970, 84 Stat. 352; Pub. L. 91–515, title II, §§ 201(a)–(c), 202, 203, Oct. 30, 1970, 84 Stat. 1301–1303; Pub. L. 93–45, title I, § 102, June 18, 1973, 87 Stat. 91; Pub. L. 93–353, title I, § 103, July 23, 1974, 88 Stat. 362; Pub. L. 95–623, §§ 3, 7, Nov. 9, 1978, 92 Stat. 3443, 3451; Pub. L. 96–32, § 5(a)–(c), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, § 918, Aug. 13, 1981, 95 Stat. 565; Pub. L. 98–551, § 5(c), Oct. 30, 1984, 98 Stat. 2819; Pub. L. 101–239, title VI, § 6103(e)(1), Dec. 19, 1989, 103 Stat. 2205; Pub. L. 103–183, title V, § 501(b), Dec. 14, 1993, 107 Stat. 2237; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

REFERENCES IN TEXT

Sections 242c and 242n of this title, referred to in subsec. (b)(3), were repealed by Pub. L. 101–239, title VI, § 6103(d)(1), Dec. 19, 1989, 103 Stat. 2205.

CODIFICATION

In subsec. (b)(4), ''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards''.

1999—Subsecs. (a), (c). Pub. L. 106–129 substituted ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research'' wherever appearing.

1993—Subsec. (d). Pub. L. 103–183 struck out subsec. (d) which directed Secretary to conduct an ongoing study of present and projected future health costs of pollution and other environmental conditions resulting from human activity and to submit to Congress reports on the study.

1989—Subsec. (a). Pub. L. 101–239, § 6103(e)(1)(B), substituted ''the Agency for Health Care Policy and Research'' for ''the National Center for Health Services Research and Health Care Technology Assessment'' and ''in section 242k of this title and in subchapter VII of this chapter'' for ''in sections 242c, 242k, and 242n of this title''.

Pub. L. 101–239, § 6103(e)(1)(A), redesignated par. (3) as entire subsec. (a) and struck out pars. (1) and (2) which required Secretary to conduct and support research, demonstrations, evaluations, and statistical and epidemiological activities for purpose of improving health services in the United States, and which specified types of activities Secretary was to emphasize in carrying out par. (1).

Subsec. (b). Pub. L. 101–239, § 6103(e)(1)(C), substituted ''subsection (a) of this section and section 242k of this title'' for ''subsection (a) of this section''.

[1] See References in Text note below.

Subsec. (c)(1), (2). Pub. L. 101–239, § 6103(e)(1)(D), substituted ''the Agency for Health Care Policy and Research'' for ''the National Center for Health Services Research and Health Care Technology Assessment''.

1984—Subsec. (a)(1). Pub. L. 98–551, § 5(c)(1), (2), substituted ''the National Center for Health Services Research and Health Care Technology Assessment and the National Center for Health Statistics'' for ''the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology''.

Subsec. (a)(3). Pub. L. 98–551, § 5(c)(1), (3), substituted ''the National Center for Health Services Research and Health Care Technology Assessment or the National Center for Health Statistics'' for ''the National Center for Health Services Research, the National Center for Health Statistics, or the National Center for Health Care Technology''.

Subsec. (c)(1), (2). Pub. L. 98–551, § 5(c)(1), (2), substituted ''the National Center for Health Services Research and Health Care Technology Assessment and the National Center for Health Statistics'' for ''the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology''.

1981—Subsec. (a)(3). Pub. L. 97–35, § 918(a), substituted ''may'' for ''shall'', ''or the'' for ''and the'', ''or using'' for ''and using'', and ''or other'' for ''and other''.

Subsecs. (b)(1), (c)(1). Pub. L. 97–35, § 918(d)(1), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(1). Pub. L. 97–35, § 918(b)(1), (2), substituted provisions relating to advice and assistance of the National Academy of Sciences, for provisions relating to joint authority of the National Academy of Sciences, and struck out definition of ''Academy'' as meaning the National Academy of Sciences.

Subsec. (d)(3). Pub. L. 97–35, § 918(b)(3), (c), (d)(2), substituted ''every three years'' for ''every two years'', and ''Energy and'' for ''Interstate and Foreign'', and struck out references to the Academy.

1979—Subsec. (b)(1), (3). Pub. L. 96–32, § 5(a), (b), amended directory language of Pub. L. 95–623, § 3(b), (d), and required no change in text. See 1978 Amendment note below.

Subsec. (d). Pub. L. 96–32, § 5(c), substituted ''(d)'' for ''(e)'' as designation of subsection added by Pub. L. 95–623, § 7, thereby correcting the subsection designation.

1978—Subsec. (a)(1). Pub. L. 95–623, § 3(a), substituted provision for the Secretary acting through the National Center for Health Care Technology for such action through other units of the Department of Health, Education, and Welfare and ''conduct'' for ''undertake'', included epidemiological activities, and declared as an objective the improvement of the effectiveness, efficiency, and quality of Federal health services.

Subsec. (a)(2). Pub. L. 95–623, § 3(a), provided for emphasis to demonstrations, evaluations, and epidemiological activities; redesignated as subpar. (A) former subpar. (C); struck out ''technology'' and ''quality'' after ''organization,'' and ''utilization,'', respectively, and end clause ''including systems for the delivery of preventive, personal, and mental health care'' and former subpar. (A) activities respecting ''the determination of an individual's health''; added subpars. (B) through (D); struck out former subpar. (D) activities respecting ''individual and community knowledge of individual health and the systems for the delivery of health care''; added subpars. (E) through (I); and redesignated as subpar. (J) former subpar. (B).

Subsec. (a)(3). Pub. L. 95–623, § 3(a), added par. (3).

Subsec. (b)(1). Pub. L. 95–623, § 3(b), as amended by Pub. L. 96–32, § 5(a), substituted '', when appropriate, enter into contracts with public and private entities and individuals'' for ''enter into contracts with public and private entities and individuals, for (A) health services research, evaluation, and demonstrations, and (B) health services research and health statistics training, and (C) health statistical activities''.

Subsec. (b)(3). Pub. L. 95–623, § 3(d), as amended by Pub. L. 96–32, § 5(b), substituted ''advisable but in accordance with section 3109 of title 5'' for ''advisable'', struck out ''experts and'' before ''consultants'', and authorized the Secretary to obtain for the centers the services of experts with appropriate scientific or professional qualifications.

Subsec. (c). Pub. L. 95–623, § 3(c), designated existing text as par. (1), substituted ''evaluations, and demonstrations, all health statistical and epidemiological activities, and all research, evaluations, and demonstrations respecting the assessment of health care technology'' for ''evaluation, demonstration, and health statistical activities'' before ''undertaken and supported'', required coordination of activities to also be carried out through the National Center for Health Care Technology, and added par. (2).

Subsec. (d). Pub. L. 95–623, § 7, as amended by Pub. L. 96–32, § 5(c), added subsec. (d).

1974—Pub. L. 93–353, in revising generally provisions of subsecs. (a) to (c), provided for general authority respecting health statistics and health services research, evaluation, and demonstrations, subsec. (a) relating to scope of activities, subsec. (b) relating to additional authority and scope of activities, and subsec. (c) relating to coordination of activities through units of the Department. Former provisions related to research and demonstrations relating to health facilities and services, subsec. (a) relating to grants and contracts for projects for research, experiments, or demonstrations and related training, cost limitation, wage rates, labor standards, and other conditions, and payments (former subsec. (a)(2) and (3) now being covered by section 242m(h) and (e), respectively), subsec. (b) relating to systems analysis of national health care plans, and cost and coverage report on existing legislative proposals, and subsec. (c) relating to authorization of appropriations.

1973—Subsec. (c)(1). Pub. L. 93–45 authorized appropriations of $42,617,000 for fiscal year ending June 30, 1974.

1970—Subsec. (a)(1). Pub. L. 91–515, §§ 201(a)(1), 203, redesignated subsec. (a) as (a)(1), substituted ''(A)'' and ''(B)'' for ''(1)'' and ''(2)'', and ''(i) to (iii)'' for ''(A) to (C)'', and added cls. (iv) and (v).

Subsec. (a)(2). Pub. L. 91–515, § 201(a)(2), redesignated subsec. (b) as (a)(2), and substituted ''subsection'' for ''section'' wherever appearing.

Subsec. (a)(3). Pub. L. 91–515, §§ 201(a)(3), 202, redesignated subsec. (c) as (a)(3)(A), substituted ''subsection'' for ''section'' wherever appearing, and added subsec. (a)(3)(B).

Subsec. (b). Pub. L. 91–515, § 201(a)(2)(A), (b), added subsec. (b). Former subsec. (b) redesignated (a)(2).

Subsecs. (c), (d). Pub. L. 91–515, §§ 201(a)(3)(A), (c), 202(1), redesignated subsec. (d) as (c), and substituted provisions authorizing appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973, and authorizing to be appropriated such additional sums for each fiscal year as may be necessary to carry out the provisions of subsec. (b), for provisions authorizing appropriations of $20,000,000 for the fiscal year ending June 30, 1968, $40,000,000 for the fiscal year ending June 30, 1969, and $60,000,000 for the fiscal year ending June 30, 1970. Former subsec. (c) redesignated (a)(3)(A).

Pub. L. 91–296 struck out provisions authorizing use of appropriated funds for evaluation of program authorized by this section. See section 229b of this title.

1967—Pub. L. 90–174 substituted provisions of subsecs. (a) to (d) for research and demonstrations relating to health facilities (incorporated from former section 291n of this title) for provisions of former subsecs. (a) to (d) for mental health study including grants for special projects, conditions thereof, and definition of ''organization'', authorization of appropriations, terms of grant, availability of amounts otherwise appropriated and noninterference with research and study programs of the National Institute of Mental Health, and acceptance of additional financial support.

1956—Act Aug. 2, 1956, changed heading of section 304 of act July 1, 1944 from ''Grants for special projects in mental health'' to ''Mental health study grants''. Section heading has been changed for purposes of codification.

EFFECTIVE DATE OF 1970 AMENDMENTS

Section 201(d) of Pub. L. 91–515 provided that: ''The amendments made by subsection (c) of this section [amending this section] shall be effective only with respect to fiscal years ending after June 30, 1970.''

Section 401(b)(1) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations for fiscal years beginning after June 30, 1970.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Aug. 2, 1956, effective July 1, 1956, see section 503 of act Aug. 2, 1956.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

COMMISSION ON SYSTEMIC INTEROPERABILITY

Pub. L. 108–173, title X, § 1012, Dec. 8, 2003, 117 Stat. 2435, directed the Secretary of Health and Human Services to establish a commission to be known as the ''Commission on Systemic Interoperability'', which would develop a comprehensive strategy for the adoption and implementation of health care information technology standards, and which would terminate 30 days after submitting a report, not later than Oct. 31, 2005, to the Secretary and to Congress, describing the strategy developed.

MODEL STANDARDS WITH RESPECT TO PREVENTIVE HEALTH SERVICES IN COMMUNITIES

Pub. L. 95–83, title III, § 314, Aug. 1, 1977, 91 Stat. 398, required the Secretary of Health, Education, and Welfare, within two years of Aug. 1, 1977, to establish model standards with respect to preventive health services in communities and report such standards to Congress.

TRANSFER OF EQUIPMENT

Pub. L. 94–573, § 15, Oct. 21, 1976, 90 Stat. 2719, provided that notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare could vest title to equipment purchased with funds under the seven contracts for emergency medical services demonstration projects entered into in 1972 and 1973 under this section (as in effect at the time the contracts were entered into), and by contractors with the United States under such contracts or subcontractors under such contracts, in such contractors or subcontractors without further obligation to the Government or on such terms as the Secretary considered appropriate.

CONGRESSIONAL DECLARATION OF PURPOSE

Section 2 of Joint Res. July 28, 1955, provides a Congressional statement of the critical need for an analysis and reevaluation of the human and economic problems of mental illness and of the resources, methods, and practices utilized in diagnosing, treating, caring for, and rehabilitating the mentally ill, both within and outside of institutions, as might lead to the development of recommendations for such better utilization of those resources or such improvements on and new developments in methods of diagnosis, treatment, care, and rehabilitation as give promise of resulting in a marked reduction in the incidence or duration of mental illness and, in consequence, a lessening of the appalling emotional and financial drain on the families of those afflicted or on the economic resources of the States and of the Nation and a declaration of the policy to promote mental health and to help solve the complex and the interrelated problems posed by mental illness by encouraging the undertaking of nongovernmental, multidisciplinary research into and reevaluation of all aspects of our resources, methods, and practices for diagnosing, treating, caring for, and rehabilitating the mentally ill, including research aimed at the prevention of mental illness.

CHILDREN'S EMOTIONAL ILLNESS STUDY; PROGRAM GRANTS; CONDITIONS; DEFINITIONS; APPROPRIATIONS; TERMS OF GRANT

Pub. L. 89–97, title II, § 231, July 30, 1965, 79 Stat. 360, as amended by Pub. L. 90–248, title III, § 305, Jan. 2, 1968, 81 Stat. 929, authorized the Secretary of Health, Education, and Welfare upon the recommendation of the National Advisory Mental Health Council and after securing the advice of experts in pediatrics and child welfare, to make grants to organizations on certain conditions for carrying out a program of research into and study of resources, methods, and practices for diagnosing or preventing emotional illness in children and of treating, caring for, and rehabilitating children with emotional illnesses, defined ''organization'', and authorized appropriations for the making of such grants for fiscal years ending June 30, 1966, and June 30, 1967, with such research and study to be completed not later than three years from the date it was inaugurated.

§ 242c. Repealed. Pub. L. 101–239, title VI, § 6103(d)(1)(A), Dec. 19, 1989, 103 Stat. 2205

Section, act July 1, 1944, ch. 373, title III, § 305, as added July 3, 1956, ch. 510, § 3, 70 Stat. 490; amended Oct. 30, 1970, Pub. L. 91–515, title II, § 210, 84 Stat. 1303; June 18, 1973, Pub. L. 93–45, title I, § 103, 87 Stat. 91; July 23, 1974, Pub. L. 93–353, title I, § 104, 88 Stat. 363; Oct. 8, 1976, Pub. L. 94–460, title III, § 301, 90 Stat. 1960; Nov. 9, 1978, Pub. L. 95–623, § 4, 92 Stat. 3445; Aug. 13, 1981, Pub. L. 97–35, title IX, § 919(a)(1), (2)(A), (3), (b)(1), (c), (d), 95 Stat. 565, 566; Oct. 30, 1984, Pub. L. 98–551, §§ 5(a), (b), 6, 98 Stat. 2817, 2819, 2820; Oct. 7, 1985, Pub. L. 99–117, § 6, 99 Stat. 492; Nov. 14, 1986, Pub. L. 99–660, title III, § 311(b)(2), 100 Stat. 3779; Dec. 1, 1987, Pub. L. 100–177, title I, §§ 101, 102, 101 Stat. 987; Nov. 4, 1988, Pub. L. 100–607, title II, § 204(1), 102 Stat. 3079; Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(b)(3), 102 Stat. 4244; Aug. 16, 1989, Pub. L. 101–93, § 5(e)(3), 103 Stat. 612, related to National Center for Health Services Research and Health Care Technology Assessment.

TERMINATION OF NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT

Section 6103(d)(1)(A) of Pub. L. 101–239 provided in part that the National Center for Health Services Research and Health Care Technology Assessment is terminated.

TRANSITIONAL AND SAVINGS PROVISIONS FOR PUB. L. 101–239

For provision transferring personnel of Department of Health and Human Services employed on Dec. 19, 1989, in connection with functions vested in Administrator for Health Care Policy and Research pursuant to amendments made by section 6103 of Pub. L. 101–239, and assets, liabilities, etc., of Department arising from or employed, held, used, or available on that date, or to be made available after that date, in connection with those functions, to Administrator for appropriate allocation, and for provisions for continued effectiveness of actions, orders, rules, official documents, etc., of Department that have been issued, made, granted, or allowed to become effective in performance of those func-

tions, and that were effective on Dec. 19, 1989, see section 6103(f) of Pub. L. 101–239, set out as a note under section 299 of this title.

§ 242d. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title III, § 306, as added Aug. 2, 1956, ch. 871, title I, § 101, 70 Stat. 923; amended July 23, 1959, Pub. L. 86–105, § 1, 73 Stat. 239; Sept. 8, 1960, Pub. L. 88–497, § 2, 78 Stat. 613; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(b), 82 Stat. 789; Mar. 12, 1970, Pub. L. 91–208, § 3, 84 Stat. 52; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; June 18, 1973, Pub. L. 93–45, title I, § 104(a), 87 Stat. 91, which related to graduate or specialized training for physicians, engineers, nurses, and other professional personnel, was renumbered section 312 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 244–1 of this title, and was subsequently repealed.

§ 242e. Repealed. Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362

Section, act July 1, 1944, ch. 373, title III, § 307, as added Aug. 2, 1956, ch. 871, title II, § 201, 70 Stat. 924; amended July 23, 1959, Pub. L. 86–105, § 2, 73 Stat. 239; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311, provided for a professional nurse traineeship program for which authorization of appropriations were made through fiscal year ending June 30, 1964. Provision for the continuation of the program was made by the Nurse Training Act of 1964, which enacted section 297 et seq. of this title.

§§ 242f to 242j. Transferred

CODIFICATION

Section 242f, act July 1, 1944, ch. 373, title III, § 308, as added July 12, 1960, Pub. L. 86–610, § 3, 74 Stat. 364, which related to international cooperation with respect to biomedical research and health services research and statistical activities, was renumbered section 307 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 242*l* of this title.

Section 242g, act July 1, 1944, ch. 373, title III, § 309, as added Sept. 8, 1960, Pub. L. 86–720, § 1(a), 74 Stat. 819; amended Aug. 27, 1964, Pub. L. 88–497, § 3, 78 Stat. 613; Nov. 3, 1966, Pub. L. 89–749, § 4, 80 Stat. 1190; Dec. 5, 1967, Pub. L. 90–147, §§ 2(g), 8(c), 81 Stat. 534, 540; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(a), 82 Stat. 788; Mar. 12, 1970, Pub. L. 91–208, §§ 1, 2, 84 Stat. 52; June 30, 1970, Pub. L. 91–296, title IV, § 401(b)(1)(B), 84 Stat. 352; June 18, 1973, Pub. L. 93–45, title I, § 104(b), (c), 87 Stat. 91, which related to graduate public health training grants, was renumbered section 313 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 245a of this title, and was subsequently repealed.

Section 242h, act July 1, 1944, ch. 373, title III, § 310, as added Sept. 25, 1962, Pub. L. 87–692, 76 Stat. 592, and amended and renumbered, which related to health services for domestic agricultural migrants, was renumbered section 319 of act July 1, 1944, by Pub. L. 93–353, title I, § 102(d), July 23, 1974, 88 Stat. 362, transferred to section 247d of this title, and subsequently renumbered and transferred to section 254b of this title, prior to being omitted in the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299, § 2.

Section 242i, act July 1, 1944, ch. 373, title III, § 310A, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 270, 84 Stat. 1306; amended Nov. 18, 1971, Pub. L. 92–157, title II, § 201, 85 Stat. 461, which related to administration of grants in multigrant projects, was renumbered section 226 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 235 of this title.

Section 242j, act July 1, 1944, ch. 373, title III, § 310B, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 280, 84 Stat. 1307, which provided for and annual report by Secretary on activities related to health facilities and services and expenditure of funds, was renumbered section 227 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 236 of this title, and was subsequently repealed.

§ 242k. National Center for Health Statistics

(a) Establishment; appointment of Director; statistical and epidemiological activities

There is established in the Department of Health and Human Services the National Center for Health Statistics (hereinafter in this section referred to as the ''Center'') which shall be under the direction of a Director who shall be appointed by the Secretary. The Secretary, acting through the Center, shall conduct and support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

(b) Duties

In carrying out subsection (a) of this section, the Secretary, acting through the Center,

(1) shall collect statistics on—

(A) the extent and nature of illness and disability of the population of the United States (or of any groupings of the people included in the population), including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality,

(B) the impact of illness and disability of the population on the economy of the United States and on other aspects of the well-being of its population (or of such groupings),

(C) environmental, social, and other health hazards,

(D) determinants of health,

(E) health resources, including physicians, dentists, nurses, and other health professionals by specialty and type of practice and the supply of services by hospitals, extended care facilities, home health agencies, and other health institutions,

(F) utilization of health care, including utilization of (i) ambulatory health services by specialties and types of practice of the health professionals providing such services, and (ii) services of hospitals, extended care facilities, home health agencies, and other institutions,

(G) health care costs and financing, including the trends in health care prices and cost, the sources of payments for health care services, and Federal, State, and local governmental expenditures for health care services, and

(H) family formation, growth, and dissolution;

(2) shall undertake and support (by grant or contract) research, demonstrations, and evaluations respecting new or improved methods for obtaining current data on the matters referred to in paragraph (1);

(3) may undertake and support (by grant or contract) epidemiological research, demonstrations, and evaluations on the matters referred to in paragraph (1); and

(4) may collect, furnish, tabulate, and analyze statistics, and prepare studies, on matters

referred to in paragraph (1) upon request of public and nonprofit private entities under arrangements under which the entities will pay the cost of the service provided.

Amounts appropriated to the Secretary from payments made under arrangements made under paragraph (4) shall be available to the Secretary for obligation until expended.

(c) Statistical and epidemiological compilations and surveys

The Center shall furnish such special statistical and epidemiological compilations and surveys as the Committee on Labor and Human Resources and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives may request. Such statistical and epidemiological compilations and surveys shall not be made subject to the payment of the actual or estimated cost of the preparation of such compilations and surveys.

(d) Technical aid to States and localities

To insure comparability and reliability of health statistics, the Secretary shall, through the Center, provide adequate technical assistance to assist State and local jurisdictions in the development of model laws dealing with issues of confidentiality and comparability of data.

(e) Cooperative Health Statistics System

For the purpose of producing comparable and uniform health information and statistics, there is established the Cooperative Health Statistics System. The Secretary, acting through the Center, shall—

(1) coordinate the activities of Federal agencies involved in the design and implementation of the System;

(2) undertake and support (by grant or contract) research, development, demonstrations, and evaluations respecting the System;

(3) make grants to and enter into contracts with State and local health agencies to assist them in meeting the costs of data collection and other activities carried out under the System; and

(4) review the statistical activities of the Department of Health and Human Services to assure that they are consistent with the System.

States participating in the System shall designate a State agency to administer or be responsible for the administration of the statistical activities within the State under the System. The Secretary, acting through the Center, shall prescribe guidelines to assure that statistical activities within States participating in the system[1] produce uniform and timely data and assure appropriate access to such data.

(f) Federal-State cooperation

To assist in carrying out this section, the Secretary, acting through the Center, shall cooperate and consult with the Departments of Commerce and Labor and any other interested Federal departments or agencies and with State and local health departments and agencies. For such purpose he shall utilize insofar as possible the services or facilities of any agency of the Federal Government and, without regard to section 5 of title 41, of any appropriate State or other public agency, and may, without regard to such section, utilize the services or facilities of any private agency, organization, group, or individual, in accordance with written agreements between the head of such agency, organization, or group and the Secretary or between such individual and the Secretary. Payment, if any, for such services or facilities shall be made in such amounts as may be provided in such agreement.

(g) Collection of health data; data collection forms

To secure uniformity in the registration and collection of mortality, morbidity, and other health data, the Secretary shall prepare and distribute suitable and necessary forms for the collection and compilation of such data.

(h) Registration area records

(1) There shall be an annual collection of data from the records of births, deaths, marriages, and divorces in registration areas. The data shall be obtained only from and restricted to such records of the States and municipalities which the Secretary, in his discretion, determines possess records affording satisfactory data in necessary detail and form. The Secretary shall encourage States and registration areas to obtain detailed data on ethnic and racial populations, including subpopulations of Hispanics, Asian Americans, and Pacific Islanders with significant representation in the State or registration area. Each State or registration area shall be paid by the Secretary the Federal share of its reasonable costs (as determined by the Secretary) for collecting and transcribing (at the request of the Secretary and by whatever method authorized by him) its records for such data.

(2) There shall be an annual collection of data from a statistically valid sample concerning the general health, illness, and disability status of the civilian noninstitutionalized population. Specific topics to be addressed under this paragraph, on an annual or periodic basis, shall include the incidence of illness and accidental injuries, prevalence of chronic diseases and impairments, disability, physician visits, hospitalizations, and the relationship between demographic and socioeconomic characteristics and health characteristics.

(i) Technical assistance in effective use of statistics

The Center may provide to public and nonprofit private entities technical assistance in the effective use in such activities of statistics collected or compiled by the Center.

(j) Coordination of health statistical and epidemiological activities

In carrying out the requirements of section 242b(c) of this title and paragraph (1) of subsection (e) of this section, the Secretary shall coordinate health statistical and epidemiological activities of the Department of Health and Human Services by—

[1] So in original. Probably should be capitalized.

(1) establishing standardized means for the collection of health information and statistics under laws administered by the Secretary;

(2) developing, in consultation with the National Committee on Vital and Health Statistics, and maintaining the minimum sets of data needed on a continuing basis to fulfill the collection requirements of subsection (b)(1) of this section;

(3) after consultation with the National Committee on Vital and Health Statistics, establishing standards to assure the quality of health statistical and epidemiological data collection, processing, and analysis;

(4) in the case of proposed health data collections of the Department which are required to be reviewed by the Director of the Office of Management and Budget under section 3509[2] of title 44, reviewing such proposed collections to determine whether they conform with the minimum sets of data and the standards promulgated pursuant to paragraphs (2) and (3), and if any such proposed collection is found not to be in conformance, by taking such action as may be necessary to assure that it will conform to such sets of data and standards, and

(5) periodically reviewing ongoing health data collections of the Department, subject to review under such section 3509,[2] to determine if the collections are being conducted in accordance with the minimum sets of data and the standards promulgated pursuant to paragraphs (2) and (3) and, if any such collection is found not to be in conformance, by taking such action as may be necessary to assure that the collection will conform to such sets of data and standards not later than the ninetieth day after the date of the completion of the review of the collection.

(k) National Committee on Vital and Health Statistics; establishment; membership; term of office; compensation; functions; consultations of Secretary with Committee and professional advisory groups

(1) There is established in the Office of the Secretary a committee to be known as the National Committee on Vital and Health Statistics (hereinafter in this subsection referred to as the ''Committee'') which shall consist of 18 members.

(2) The members of the Committee shall be appointed from among persons who have distinguished themselves in the fields of health statistics, electronic interchange of health care information, privacy and security of electronic information, population-based public health, purchasing or financing health care services, integrated computerized health information systems, health services research, consumer interests in health information, health data standards, epidemiology, and the provision of health services. Members of the Committee shall be appointed for terms of 4 years.

(3) Of the members of the Committee—

(A) 1 shall be appointed, not later than 60 days after August 21, 1996, by the Speaker of the House of Representatives after consultation with the Minority Leader of the House of Representatives;

(B) 1 shall be appointed, not later than 60 days after August 21, 1996, by the President pro tempore of the Senate after consultation with the Minority Leader of the Senate; and

(C) 16 shall be appointed by the Secretary.

(4) Members of the Committee shall be compensated in accordance with section 210(c) of this title.

(5) The Committee—

(A) shall assist and advise the Secretary—

(i) to delineate statistical problems bearing on health and health services which are of national or international interest;

(ii) to stimulate studies of such problems by other organizations and agencies whenever possible or to make investigations of such problems through subcommittees;

(iii) to determine, approve, and revise the terms, definitions, classifications, and guidelines for assessing health status and health services, their distribution and costs, for use (I) within the Department of Health and Human Services, (II) by all programs administered or funded by the Secretary, including the Federal-State-local cooperative health statistics system referred to in subsection (e) of this section, and (III) to the extent possible as determined by the head of the agency involved, by the Department of Veterans Affairs, the Department of Defense, and other Federal agencies concerned with health and health services;

(iv) with respect to the design of and approval of health statistical and health information systems concerned with the collection, processing, and tabulation of health statistics within the Department of Health and Human Services, with respect to the Cooperative Health Statistics System established under subsection (e) of this section, and with respect to the standardized means for the collection of health information and statistics to be established by the Secretary under subsection (j)(1) of this section;

(v) to review and comment on findings and proposals developed by other organizations and agencies and to make recommendations for their adoption or implementation by local, State, national, or international agencies;

(vi) to cooperate with national committees of other countries and with the World Health Organization and other national agencies in the studies of problems of mutual interest;

(vii) to issue an annual report on the state of the Nation's health, its health services, their costs and distributions, and to make proposals for improvement of the Nation's health statistics and health information systems; and

(viii) in complying with the requirements imposed on the Secretary under part C of title XI of the Social Security Act [42 U.S.C. 1320d et seq.];

(B) shall study the issues related to the adoption of uniform data standards for patient medical record information and the electronic exchange of such information;

[2] See References in Text note below.

(C) shall report to the Secretary not later than 4 years after August 21, 1996, recommendations and legislative proposals for such standards and electronic exchange; and

(D) shall be responsible generally for advising the Secretary and the Congress on the status of the implementation of part C of title XI of the Social Security Act [42 U.S.C. 1320d et seq.].

(6) In carrying out health statistical activities under this part, the Secretary shall consult with, and seek the advice of, the Committee and other appropriate professional advisory groups.

(7) Not later than 1 year after August 21, 1996, and annually thereafter, the Committee shall submit to the Congress, and make public, a report regarding the implementation of part C of title XI of the Social Security Act [42 U.S.C. 1320d et seq.]. Such report shall address the following subjects, to the extent that the Committee determines appropriate:

(A) The extent to which persons required to comply with part C of title XI of the Social Security Act are cooperating in implementing the standards adopted under such part.

(B) The extent to which such entities are meeting the security standards adopted under such part and the types of penalties assessed for noncompliance with such standards.

(C) Whether the Federal and State Governments are receiving information of sufficient quality to meet their responsibilities under such part.

(D) Any problems that exist with respect to implementation of such part.

(E) The extent to which timetables under such part are being met.

(*l*) Data specific to particular ethnic and racial populations

In carrying out this section, the Secretary, acting through the Center, shall collect and analyze adequate health data that is specific to particular ethnic and racial populations, including data collected under national health surveys. Activities carried out under this subsection shall be in addition to any activities carried out under subsection (m) of this section.

(m) Grants for assembly and analysis of data on ethnic and racial populations

(1) The Secretary, acting through the Center, may make grants to public and nonprofit private entities for—

(A) the conduct of special surveys or studies on the health of ethnic and racial populations or subpopulations;

(B) analysis of data on ethnic and racial populations and subpopulations; and

(C) research on improving methods for developing statistics on ethnic and racial populations and subpopulations.

(2) The Secretary, acting through the Center, may provide technical assistance, standards, and methodologies to grantees supported by this subsection in order to maximize the data quality and comparability with other studies.

(3) Provisions of section 242m(d) of this title do not apply to surveys or studies conducted by grantees under this subsection unless the Secretary, in accordance with regulations the Secretary may issue, determines that such provisions are necessary for the conduct of the survey or study and receives adequate assurance that the grantee will enforce such provisions.

(4)(A) Subject to subparagraph (B), the Secretary, acting through the Center, shall collect data on Hispanics and major Hispanic subpopulation groups and American Indians, and for developing special area population studies on major Asian American and Pacific Islander populations.

(B) The provisions of subparagraph (A) shall be effective with respect to a fiscal year only to the extent that funds are appropriated pursuant to paragraph (3) of subsection (n) of this section, and only if the amounts appropriated for such fiscal year pursuant to each of paragraphs (1) and (2) of subsection (n) of this section equal or exceed the amounts so appropriated for fiscal year 1997.

(n) Authorization of appropriations

(1) For health statistical and epidemiological activities undertaken or supported under subsections (a) through (*l*) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 2003.

(2) For activities authorized in paragraphs (1) through (3) of subsection (m) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1999 through 2003. Of such amounts, the Secretary shall use not more than 10 percent for administration and for activities described in subsection (m)(2) of this section.

(3) For activities authorized in subsection (m)(4) of this section, there are authorized to be appropriated $1,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(July 1, 1944, ch. 373, title III, § 306, as added Pub. L. 93–353, title I, § 105, July 23, 1974, 88 Stat. 365; amended Pub. L. 95–623, §§ 5, 8(a), Nov. 9, 1978, 92 Stat. 3445, 3453; Pub. L. 97–35, title IX, § 920, Aug. 13, 1981, 95 Stat. 566; Pub. L. 97–414, § 8(b), Jan. 4, 1983, 96 Stat. 2060; Pub. L. 100–177, title I, §§ 104, 105(a), Dec. 1, 1987, 101 Stat. 988; Pub. L. 101–239, title VI, § 6103(e)(2), Dec. 19, 1989, 103 Stat. 2206; Pub. L. 101–527, § 7(a), (b)(1), (c), Nov. 6, 1990, 104 Stat. 2327, 2328; Pub. L. 102–54, § 13(q)(1)(A)(i), June 13, 1991, 105 Stat. 278; Pub. L. 103–183, title V, § 501(a), (d), Dec. 14, 1993, 107 Stat. 2237, 2238; Pub. L. 104–191, title II, § 263, Aug. 21, 1996, 110 Stat. 2031; Pub. L. 105–340, title II, § 201, Oct. 31, 1998, 112 Stat. 3193; Pub. L. 105–392, title II, § 201(b), Nov. 13, 1998, 112 Stat. 3585.)

REFERENCES IN TEXT

Section 3509 of title 44, referred to in subsec. (j)(4), (5), which required submission of certain plans and forms for collection of information to the Director of the Office of Management and Budget for approval, was omitted in the general amendment of chapter 35 of Title 44, Public Printing and Documents, by Pub. L. 96–511, § 2(a), Dec. 11, 1980, 94 Stat. 2812. Pub. L. 104–13 subsequently enacted a new section 3509 of Title 44 relating to designation of a central collection agency. Provisions appearing in former section 3509 are contained in section 3507 of Title 44.

The Social Security Act, referred to in subsec. (k)(5)(A)(viii), (D), (7), is act Aug. 14, 1935, ch. 531, 49

Stat. 620, as amended. Part C of title XI of the Act is classified generally to part C (§1320d et seq.) of subchapter XI of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (g) of this section were contained in section 313 of act July 1, 1944, ch. 373, title III, 58 Stat. 693; Oct. 30, 1970, Pub. L. 91–516, title II, §282, 84 Stat. 1308 (formerly classified to section 245 of this title), prior to repeal by Pub. L. 93–353, §102(a).

Provisions similar to those comprising subsec. (h) of this section were contained in section 312a of act July 1, 1944, ch. 373, title III, as added Aug. 31, 1954, ch. 1158, §2, 68 Stat. 1025 (formerly classified to section 244a of this title), prior to repeal by Pub. L. 93–353, §102(a).

AMENDMENTS

1998—Subsec. (m)(4). Pub. L. 105–392, §201(b)(1), added par. (4).

Subsec. (n)(1). Pub. L. 105–340, §201(1), and Pub. L. 105–392, §201(b)(2), amended par. (1) identically, substituting ''2003'' for ''1998''.

Subsec. (n)(2). Pub. L. 105–392, §201(b)(3)(A), in first sentence, substituted ''paragraphs (1) through (3) of subsection (m)'' for ''subsection (m)'' and substituted ''such sums as may be necessary for each of the fiscal years 1999 through 2003.'' for ''$5,000,000 for fiscal year 1991, $7,500,000 for fiscal year 1992, $10,000,000 for fiscal year 1993, and $10,000,000 for each of the fiscal years 1994 through 2003.''

Pub. L. 105–340, §201(2), substituted ''2003'' for ''1998''.

Subsec. (n)(3). Pub. L. 105–392, §201(b)(3)(B), added par. (3).

1996—Subsec. (k)(1). Pub. L. 104–191, §263(1), substituted ''18'' for ''16''.

Subsec. (k)(2). Pub. L. 104–191, §263(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The members of the Committee shall be appointed by the Secretary from among persons who have distinguished themselves in the fields of health statistics, health planning, epidemiology, and the provision of health services. Members of the Committee shall be appointed for terms of 4 years.''

Subsec. (k)(3), (4). Pub. L. 104–191, §263(3), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (k)(5). Pub. L. 104–191, §263(4), amended par. (5) generally. Prior to amendment, par. (5) consisted of subpars. (A) to (G) relating to Committee functions in assisting and advising the Secretary.

Pub. L. 104–191, §263(3), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (k)(6). Pub. L. 104–191, §263(3), redesignated par. (5) as (6).

Subsec. (k)(7). Pub. L. 104–191, §263(5), added par. (7).

1993—Subsec. (c). Pub. L. 103–183, §501(a)(1), substituted ''Committee on Labor and Human Resources'' for ''Committee on Human Resources''.

Subsec. (g). Pub. L. 103–183, §501(a)(2), substituted ''data'' for ''data which shall be published as a part of the health reports published by the Secretary''.

Subsec. (i). Pub. L. 103–183, §501(a)(3), struck out ''engaged in health planning activities'' after ''entities''.

Subsec. (k)(2). Pub. L. 103–183, §501(a)(4), struck out subpar. (A) designation, substituted ''Members'' for ''Except as provided in subparagraph (B), members'', and struck out subpar. (B) which related to extensions of membership terms of members of National Committee on Vital and Health Statistics whose terms were to expire in calendar years 1988, 1989, and 1990.

Subsec. (*l*). Pub. L. 103–183, §501(a)(5)(A)–(C), redesignated subsec. (m) as (*l*), substituted ''subsection (m)'' for ''subsection (n)'', and struck out former subsec. (*l*) which related to development of plan for collection and coordination of statistical and epidemiological data on effects of environment on health and establishment of guidelines for compilation, analysis, and distribution of statistics and information necessary for coordinated determination of effects of conditions of employment and indoor and outdoor environmental conditions on public health.

Subsec. (m). Pub. L. 103–183, §501(a)(5)(B), redesignated subsec. (n) as (m). Former subsec. (m) redesignated (*l*).

Subsecs. (n), (*o*). Pub. L. 103–183, §501(a)(5)(B), (D), (d), redesignated subsec. (*o*) as (n), in par. (1) substituted ''(*l*)'' for ''(m)'' and ''1998'' for ''1993'', and in par. (2) substituted ''(m)'' for ''(n)'', struck out ''and'' after ''1992,'', inserted '', and $10,000,000 for each of the fiscal years 1994 through 1998'', and substituted ''(m)(2)'' for ''(n)(2)''. Former subsec. (n) redesignated (m).

1991—Subsec. (k)(4)(C). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (h). Pub. L. 101–527, §7(a), designated existing text as par. (1), inserted after second sentence ''The Secretary shall encourage States and registration areas to obtain detailed data on ethnic and racial populations, including subpopulations of Hispanics, Asian Americans, and Pacific Islanders with significant representation in the State or registration area.'', and added par. (2).

Subsecs. (m) to (*o*). Pub. L. 101–527, §7(b)(1), (c), added subsecs. (m) and (n) and redesignated former subsec. (m) as (*o*) and amended it generally. Prior to amendment, subsec. (*o*) read as follows: ''For health statistical and epidemiological activities undertaken or supported under this section, there are authorized to be appropriated $55,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989 and 1990.''

1989—Subsec. (a). Pub. L. 101–239, §6103(e)(2)(A), inserted at end ''The Secretary, acting through the Center, shall conduct and support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.''

Subsec. (b). Pub. L. 101–239, §6103(e)(2)(B), substituted ''subsection (a) of this section'' for ''section 242b(a) of this title''.

Subsec. (m). Pub. L. 101–239, §6103(e)(2)(C), added subsec. (m).

1987—Subsec. (a). Pub. L. 100–177, §104, struck out ''and supervised by the Assistant Secretary for Health (or such other officer of the Department as may be designated by the Secretary as the principal adviser to him for health programs)''.

Subsec. (k)(1). Pub. L. 100–177, §105(a)(1), substituted ''16 members'' for ''fifteen members''.

Subsec. (k)(2)(A). Pub. L. 100–177, §105(a)(2), substituted ''terms of 4 years'' for ''terms of three years''.

Subsec. (k)(2)(B). Pub. L. 100–177, §105(a)(3), added subpar. (B) and struck out former subpar. (B) which read as follows: ''Of the members first appointed—

''(i) five shall be appointed for terms of one year,

''(ii) five shall be appointed for terms of two years, and

''(iii) five shall be appointed for terms of three years,

as designated by the Secretary at the time of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.''

1983—Subsec. (*l*)(2)(D). Pub. L. 97–414 redesignated subpar. (E) as (D) and struck out former subpar. (D) which provided that the Center would serve as a clearinghouse for statistics and information with respect to which guidelines had been established under subpar. (A).

Subsec. (*l*)(2)(E) to (G). Pub. L. 97–414 redesignated subpars. (F) and (G) as (E) and (F), respectively. Former subpar. (E) redesignated (D).

1981—Subsec. (a). Pub. L. 97–35, §920(d)(1), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (c). Pub. L. 97–35, § 920(d)(2), substituted ''Energy and'' for ''Interstate and Foreign''.

Subsec. (e). Pub. L. 97–35, § 920(a), (d)(1), in par. (3) inserted applicability to other activities, and in par. (4) substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsecs. (j), (k)(4)(C), (D). Pub. L. 97–35, § 920(d)(1), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (*l*)(2). Pub. L. 97–35, § 920(b), (c), (d)(1), in subpar. (A) inserted reference to Office of Federal Statistical Policy and Standards, in subpar. (B)(v) substituted ''Health and Human Services'' for ''Health, Education, and Welfare'', and in subpar. (D) struck out provisions relating to assistance to executive departments.

1978—Subsec. (b). Pub. L. 95–623, § 5(a), struck out ''may'' after ''through the Center,'', substituted in pars. (1) and (2) ''shall collect'' and ''shall undertake'' for ''collect'' and ''undertake'', respectively, and added pars. (3) and (4) and provision for availability of certain appropriated funds from par. (4) payments until expended.

Subsec. (c). Pub. L. 95–623, § 5(b), substituted ''statistical and epidemiological compilations'' for ''statistical compilations'' in two places and ''Committee on Human Resources'' for ''Committee on Labor and Public Welfare'' of the Senate.

Subsec. (e). Pub. L. 95–623, § 5(c)(1), incorporated in introductory text prior cl. (1) provision requiring the Secretary to assist State and local health agencies and Federal agencies involved in health matters in the design and implementation of a cooperative system for producing comparable and uniform health information and statistics at the Federal, State, and local levels; enacted in pars. (1) and (2) provisions almost identical to prior cls. (2) and (3); enacted par. (3); struck out former cl. (4) provision for the Federal share of the data collection costs under the system; enacted in par. (4) provisions almost identical to former cl. (5); and required State designation of a State administrative agency to be responsible for the statistical activities within the State under the System and Federal guidelines for production of uniform and timely data and appropriate access to the data.

Subsec. (f). Pub. L. 95–623, § 5(d), substituted ''the Secretary, acting through the Center, shall cooperate and consult'' for ''the Secretary shall cooperate and consult''.

Subsecs. (i), (j). Pub. L. 95–623, § 5(f), added subsecs. (i) and (j). Former subsec. (i) redesignated (k).

Subsec. (k). Pub. L. 95–623, § 5(c)(2), (e), (f), struck from par. (1) ''United States'' before ''National Committee on Vital and Health Statistics''; authorized in par. (2)(A) the appointment of Committee members from distinguished persons in field of health planning; required the Committee to assist and advise the Secretary with respect to the Cooperative Health Statistics System and the standardized means for the collection of health information and statistics to be established by the Secretary; and redesignated such amended subsec. (i) as (k).

Subsec. (*l*). Pub. L. 95–623, § 8(a), added subsec. (*l*).

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 12 of Pub. L. 101–527 provided that: ''This Act and the amendments made by this Act [enacting sections 254c–1, 254t, 256a, 294bb, 294cc, and 300u–6 of this title, amending this section and sections 242m, 254b, 254c, 294m, 294*o*, and 295g–2 of this title, enacting provisions set out as notes under sections 201 and 300u–6 of this title, and repealing provisions set out as a note under section 292h of this title] shall take effect October 1, 1990, or upon the date of the enactment of this Act [Nov. 6, 1990], whichever occurs later.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 105(b) of Pub. L. 100–177 provided that: ''The amendments made by this section [amending this section] shall become effective on January 1, 1988.''

MONEY RECEIVED BY CENTER FROM REIMBURSEMENTS, INTERAGENCY AGREEMENTS, AND SALE OF DATA TAPES TO REMAIN AVAILABLE UNTIL EXPENDED

Pub. L. 103–333, title II, Sept. 30, 1994, 108 Stat. 2550, provided in part: ''That for fiscal year 1995 and subsequent fiscal years amounts received by the National Center for Health Statistics from reimbursements and interagency agreements and the sale of data tapes may be credited to this appropriation and shall remain available until expended''.

§ 242*l*. International cooperation

(a) Cooperative endeavors; statement of purpose

For the purpose of advancing the status of the health sciences in the United States (and thereby the health of the American people), the Secretary may participate with other countries in cooperative endeavors in biomedical research, health care technology, and the health services research and statistical activities authorized by section 242k of this title and by subchapter VII of this chapter.

(b) Authority of Secretary; building construction prohibition

In connection with the cooperative endeavors authorized by subsection (a) of this section, the Secretary may—

(1) make such use of resources offered by participating foreign countries as he may find necessary and appropriate;

(2) establish and maintain fellowships in the United States and in participating foreign countries;

(3) make grants to public institutions or agencies and to nonprofit private institutions or agencies in the United States and in participating foreign countries for the purpose of establishing and maintaining the fellowships authorized by paragraph (2);

(4) make grants or loans of equipment and materials, for use by public or nonprofit institutions or agencies, or by individuals, in participating foreign countries;

(5) participate and otherwise cooperate in any international meetings, conferences, or other activities concerned with biomedical research, health services research, health statistics, or health care technology;

(6) facilitate the interchange between the United States and participating foreign countries, and among participating foreign countries, of research scientists and experts who are engaged in experiments or programs of biomedical research, health services research, health statistical activities, or health care

technology activities, and in carrying out such purpose may pay per diem compensation, subsistence, and travel for such scientists and experts when away from their places of residence at rates not to exceed those provided in section 5703(b)[1] of title 5 for persons in the Government service employed intermittently;

(7) procure, in accordance with section 3109 of title 5, the temporary or intermittent services of experts or consultants; and

(8) enter into contracts with individuals for the provision of services (as defined in section 104 of part 37 of title 48, Code of Federal Regulations (48 CFR 37.104)) in participating foreign countries, which individuals may not be deemed employees of the United States for any purpose.

The Secretary may not, in the exercise of his authority under this section, provide financial assistance for the construction of any facility in any foreign country.

(c) Benefits for overseas assignees

The Secretary may provide to personnel appointed or assigned by the Secretary to serve abroad, allowances and benefits similar to those provided under chapter 9 of title I of the Foreign Service Act of 1990 (22 U.S.C. 4081 et seq.). Leaves of absence for personnel under this subsection shall be on the same basis as that provided under subchapter I of chapter 63 of title 5 to individuals serving in the Foreign Service.

(d) Strategies to improve injection safety

In carrying out immunization programs and other programs in developing countries for the prevention, treatment, and control of infectious diseases, including HIV/AIDS, tuberculosis, and malaria, the Director of the Centers for Disease Control and Prevention, in coordination with the Coordinator of United States Government Activities to Combat HIV/AIDS Globally, the National Institutes of Health, national and local government, and other organizations, such as the World Health Organization and the United Nations Children's Fund, shall develop and implement effective strategies to improve injection safety, including eliminating unnecessary injections, promoting sterile injection practices and technologies, strengthening the procedures for proper needle and syringe disposal, and improving the education and information provided to the public and to health professionals.

(July 1, 1944, ch. 373, title III, § 307, formerly § 308, as added Pub. L. 86–610, § 3, July 12, 1960, 74 Stat. 364; renumbered § 307 and amended Pub. L. 93–353, title I, § 106, July 23, 1974, 88 Stat. 367; Pub. L. 97–35, title IX, § 921, Aug. 13, 1981, 95 Stat. 566; Pub. L. 101–239, title VI, § 6103(e)(3), Dec. 19, 1989, 103 Stat. 2206; Pub. L. 102–531, title III, § 310, Oct. 27, 1992, 106 Stat. 3503; Pub. L. 103–183, title VII, § 702, Dec. 14, 1993, 107 Stat. 2239; Pub. L. 108–25, title III, § 306, May 27, 2003, 117 Stat. 739.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (b)(6), was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

[1] See References in Text note below.

The Foreign Service Act of 1990, referred to in subsec. (c), probably means the Foreign Service Act of 1980, which is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071. Chapter 9 of title I of the Act is classified generally to subchapter IX (§ 4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

CODIFICATION

Section was formerly classified to section 242f of this title.

PRIOR PROVISIONS

A prior section 307 of act July 1, 1944, was classified to section 242e of this title, prior to repeal by Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–25 added subsec. (d).

1993—Subsec. (c). Pub. L. 103–183 added subsec. (c).

1992—Subsec. (b)(8). Pub. L. 102–531, which directed amendment of subsec. (b) by adding par. (8) at the end thereof, was executed by adding par. (8) after par. (7) to reflect the probable intent of Congress.

1989—Subsec. (a). Pub. L. 101–239 substituted "section 242k of this title and by subchapter VII of this chapter" for "sections 242b, 242c, 242k, and 242n of this title".

1981—Subsec. (a). Pub. L. 97–35, § 921(a), inserted reference to health care technology and section 242n of this title.

Subsec. (b). Pub. L. 97–35, § 921(b), in par. (5) inserted reference to health care technology, and in par. (6) inserted reference to health care technology activities.

1974—Pub. L. 93–353 amended section generally.

INTERNATIONAL HEALTH STUDY

Pub. L. 95–83, title III, § 315, Aug. 1, 1977, 91 Stat. 398, provided that the Secretary of Health, Education, and Welfare arrange through the National Academy of Sciences or other nonprofit private groups or associations, for a study to determine opportunities for broadened Federal program activities in areas of international health, which study was to consider biomedical and behavioral research, health services research, health professions education, immunization and public health activities, and other areas that might improve our and other nations' capacities to prevent, diagnose, control, or cure disease, and to organize and deliver effective and efficient health services, with an interim report on such study completed no later than Oct. 1, 1977 and a final report completed no later than Jan. 1, 1978 and both reports submitted to the Secretary, the Committee on Human Resources of the Senate, and the Committee on Interstate and Foreign Commerce of the House of Representatives.

§ 242m. General provisions respecting effectiveness, efficiency, and quality of health services

(a) Reports to Congress and President; preparation; review by Office of Management and Budget

(1) Not later than March 15 of each year, the Secretary shall submit to the President and Congress the following reports:

(A) A report on health care costs and financing. Such report shall include a description and analysis of the statistics collected under section 242k(b)(1)(G) of this title.

(B) A report on health resources. Such report shall include a description and analysis, by geographical area, of the statistics collected under section 242k(b)(1)(E) of this title.

(C) A report on the utilization of health resources. Such report shall include a descrip-

tion and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(F) of this title.

(D) A report on the health of the Nation's people. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(A) of this title.

(2) The reports required in paragraph (1) shall be prepared through the National Center for Health Statistics.

(3) The Office of Management and Budget may review any report required by paragraph (1) of this subsection before its submission to Congress, but the Office may not revise any such report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting any such report.

(b) Grants or contracts; applications, submittal; application peer review group, findings and recommendations; necessity of favorable recommendation; appointments

(1) No grant or contract may be made under section 242b, 242k, or 242*l* of this title unless an application therefor has been submitted to the Secretary in such form and manner, and containing such information, as the Secretary may by regulation prescribe and unless a peer review group referred to in paragraph (2) has recommended the application for approval.

(2)(A) Each application submitted for a grant or contract under section 242k of this title in an amount exceeding $50,000 of direct costs and for a health services research, evaluation, or demonstration project, or for a grant under section 242k(m) of this title, shall be submitted to a peer review group for an evaluation of the technical and scientific merits of the proposals made in each such application. The Director of the National Center for Health Statistics shall establish such peer review groups as may be necessary to provide for such an evaluation of each such application.

(B) A peer review group to which an application is submitted pursuant to subparagraph (A) shall report its finding and recommendations respecting the application to the Secretary, acting through the Director of the National Center for Health Statistics, in such form and manner as the Secretary shall by regulation prescribe. The Secretary may not approve an application described in such subparagraph unless a peer review group has recommended the application for approval.

(C) The Secretary, acting through the Director of the National Center for Health Statistics, shall make appointments to the peer review groups required in subparagraph (A) from among persons who are not officers or employees of the United States and who possess appropriate technical and scientific qualifications, except that peer review groups regarding grants under section 242k(m) of this title may include appropriately qualified such officers and employees.

(c) Development and dissemination of statistics

The Secretary shall take such action as may be necessary to assure that statistics developed under sections 242b and 242k of this title are of high quality, timely, comprehensive as well as specific, standardized, and adequately analyzed and indexed, and shall publish, make available, and disseminate such statistics on as wide a basis as is practicable.

(d) Information; publication restrictions

No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under section 242b, 242k, or 242*l* of this title may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose; and in the case of information obtained in the course of health statistical or epidemiological activities under section 242b or 242k of this title, such information may not be published or released in other form if the particular establishment or person supplying the information or described in it is identifiable unless such establishment or person has consented (as determined under regulations of the Secretary) to its publication or release in other form.

(e) Payment procedures; advances or reimbursement; installments; conditions; reductions

(1) Payments of any grant or under any contract under section 242b, 242k, or 242*l* of this title may be made in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary deems necessary to carry out the purposes of such section.

(2) The amounts otherwise payable to any person under a grant or contract made under section 242b, 242k, or 242*l* of this title shall be reduced by—

(A) amounts equal to the fair market value of any equipment or supplies furnished to such person by the Secretary for the purpose of carrying out the project with respect to which such grant or contract is made, and

(B) amounts equal to the pay, allowances, traveling expenses, and related personnel expenses attributable to the performance of services by an officer or employee of the Government in connection with such project, if such officer or employee was assigned or detailed by the Secretary to perform such services,

but only if such person requested the Secretary to furnish such equipment or supplies, or such services, as the case may be.

(f) Contracts without regard to section 3324 of title 31 and section 5 of title 41

Contracts may be entered into under section 242b or 242k of this title without regard to section 3324 of title 31 and section 5 of title 41.

(July 1, 1944, ch. 373, title III, § 308, as added Pub. L. 93–353, title I, § 107(a), July 23, 1974, 88 Stat. 368; amended Pub. L. 94–273, § 7(2), Apr. 21, 1976, 90 Stat. 378; Pub. L. 95–83, title I, § 104, Aug. 1, 1977, 91 Stat. 384; Pub. L. 95–623, §§ 2, 6(d), 8(b), Nov. 9, 1978, 92 Stat. 3443, 3451, 3455; Pub. L. 97–35, title IX, §§ 917(a), (b), 919(a)(2)(B), 922, Aug. 13, 1981, 95 Stat. 564, 565, 567; Pub. L. 97–414, § 8(c), Jan. 4, 1983, 96 Stat. 2060; Pub. L. 98–551, § 7, Oct. 30, 1984, 98 Stat. 2820; Pub. L. 100–177, title I,

§§106(a), 107, 108, Dec. 1, 1987, 101 Stat. 988–990; Pub. L. 100–690, title II, §2612, Nov. 18, 1988, 102 Stat. 4235; Pub. L. 101–239, title VI, §6103(e)(4), Dec. 19, 1989, 103 Stat. 2206; Pub. L. 101–527, §7(b)(2), (d), Nov. 6, 1990, 104 Stat. 2328; Pub. L. 103–183, title V, §501(c), Dec. 14, 1993, 107 Stat. 2237; Pub. L. 105–392, title IV, §401(d), Nov. 13, 1998, 112 Stat. 3587.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (e) of this section were contained in subsec. (a)(3) of section 304 of act July 1, 1944, ch. 373, title III, as added July 28, 1955, ch. 417, §3, 69 Stat. 382, and amended (formerly classified to section 242b(a)(3) of this title), prior to general amendment of section 304 by Pub. L. 93–353, §103.

AMENDMENTS

1998—Subsec. (b)(2)(A), (C). Pub. L. 105–392 substituted ''242k(m)'' for ''242k(n)''.

1993—Subsec. (a)(1). Pub. L. 103–183, §501(c)(1)(A), redesignated subpars. (B) to (E) as (A) to (D), respectively, and struck out former subpar. (A) which read as follows: ''A report on—

''(i) the administration of sections 242b, 242k, and 242*l* of this title and subchapter VII of this chapter during the preceding fiscal year; and

''(ii) the current state and progress of health services research, health statistics, and health care technology.''

Subsec. (a)(2). Pub. L. 103–183, §501(c)(1)(B), substituted ''reports required in paragraph (1) shall be prepared through the National Center'' for ''reports required by subparagraphs (B) through (E) of paragraph (2) shall be prepared through the Agency for Health Care Policy and Research and the National Center''.

Subsec. (c). Pub. L. 103–183, §501(c)(2)(A)–(D), (3), redesignated subsec. (g)(2) as subsec. (c), substituted ''shall take'' for ''shall (A) take'' and ''and shall publish'' for ''and (B) publish'', and struck out former subsec. (c) which read as follows: ''The aggregate number of grants and contracts made or entered into under sections 242b and 242c of this title for any fiscal year respecting a particular means of delivery of health services or another particular aspect of health services may not exceed twenty; and the aggregate amount of funds obligated under grants and contracts under such sections for any fiscal year respecting a particular means of delivery of health services or another particular aspect of health services may not exceed $5,000,000.''

Subsec. (f). Pub. L. 103–183, §501(c)(4), substituted ''section 3324 of title 31 and section 5 of title 41'' for ''sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5)''.

Subsec. (g). Pub. L. 103–183, §501(c)(2)(B), (C), (E), redesignated par. (2) as subsec. (c) and struck out par. (1) which read as follows: ''The Secretary shall—

''(A) publish, make available and disseminate, promptly in understandable form and on as broad a basis as practicable, the results of health services research, demonstrations, and evaluations undertaken and supported under sections 242b and 242c of this title;

''(B) make available to the public data developed in such research, demonstrations, and evaluations; and

''(C) provide indexing, abstracting, translating, publishing, and other services leading to a more effective and timely dissemination of information on health services research, demonstrations, and evaluations in health care delivery to public and private entities and individuals engaged in the improvement of health care delivery and the general public; and undertake programs to develop new or improved methods for making such information available.''

Subsec. (h). Pub. L. 103–183, §501(c)(5), struck out subsec. (h) which read as follows:

''(1) Except where the Secretary determines that unusual circumstances make a larger percentage necessary in order to effectuate the purposes of section 242k of this title, a grant or contract under any of such sections of this title with respect to any project for construction of a facility or for acquisition of equipment may not provide for payment of more than 50 per centum of so much of the cost of the facility or equipment as the Secretary determines is reasonably attributable to research, evaluation, or demonstration purposes.

''(2) Laborers and mechanics employed by contractors and subcontractors in the construction of such a facility shall be paid wages at rates not less than those prevailing on similar work in the locality, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 267a—267a–5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to any labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. Appendix) and section 276c of title 40.

''(3) Such grants and contracts shall be subject to such additional requirements as the Secretary may by regulation prescribe.''

1990—Subsec. (b)(2)(A). Pub. L. 101–527, §7(b)(2)(A), inserted ''or for a grant under section 242k(n) of this title,'' after ''demonstration project,''.

Subsec. (b)(2)(C). Pub. L. 101–527, §7(b)(2)(B), inserted before period at end '', except that peer review groups regarding grants under section 242k(n) of this title may include appropriately qualified such officers and employees''.

Subsec. (b)(3). Pub. L. 101–527, §7(d), struck out par. (3) which related to applications submitted under section 242k of this title for which a grant or contract may be made under another provision of this chapter.

1989—Pub. L. 101–239, §6103(e)(4)(A), amended section catchline.

Subsec. (a)(1)(A)(i). Pub. L. 101–239, §6103(e)(4)(B)(i), substituted ''sections 242b, 242k, and 242*l* of this title and subchapter VII of this chapter'' for ''sections 242b, 242c, 242k, and 242*l* of this title and section 242n of this title''.

Subsec. (a)(2). Pub. L. 101–239, §6103(e)(4)(B)(ii), substituted ''the Agency for Health Care Policy and Research'' for ''the National Center for Health Services Research and Health Care Technology Assessment''.

Subsec. (b)(1). Pub. L. 101–239, §6103(e)(4)(C)(i), which directed amendment of par. (1) by substituting ''section 242b, 242k, or 242*l* of this title'' for ''sections 242b, 242c, 242k, 242*l*, and 242n of this title'', was executed by making the substitution for ''section 242b, 242c, 242k, 242*l*, or 242n of this title'' as the probable intent of Congress.

Subsec. (b)(2)(A). Pub. L. 101–239, §6103(e)(4)(C)(ii), substituted ''under section 242k of this title'' for ''under section 242b or 242c of this title,'' in first sentence, struck out second sentence which read as follows: ''Each application for a grant, contract, or cooperative agreement in an amount exceeding $50,000 of direct costs for the dissemination of research findings or the development of research agendas (including conferences, workshops, and meetings) shall be submitted to a standing peer review group with persons with appropriate expertise and shall not be submitted to any peer review group established to review applications for research, evaluation, or demonstration projects.'', and amended last sentence generally. Prior to amendment, last sentence read as follows: ''The Secretary, acting through the Director of the National Center for Health Services Research and Health Care Technology Assessment (or, as appropriate, through the Director of the National Center for Health Statistics), shall establish such peer review groups as may be necessary to provide for such an evaluation of an application described in the first two sentences of this subparagraph.''

Subsec. (b)(2)(B). Pub. L. 101–239, §6103(e)(4)(C)(iii), substituted ''the Director of the National Center for Health Statistics'' for ''the Director involved''.

Subsec. (b)(2)(C). Pub. L. 101–239, §6103(e)(4)(C)(iv), substituted ''the Director of the National Center for Health Statistics'' for ''the Directors''.

Subsec. (b)(3). Pub. L. 101–239, § 6103(e)(4)(C)(v), substituted ''submitted under section 242k of this title'' for ''submitted under section 242b, 242c, or 242k of this title'' and ''approved under any of such sections'' for ''approved under section 242b, 242c, or 242k of this title''.

Subsec. (d). Pub. L. 101–239, § 6103(e)(4)(D), substituted ''section 242b, 242k, or 242*l* of this title'' for ''section 242b, 242c, 242k, 242*l*, or 242n of this title'', struck out ''(1)'' after ''for such other purpose; and'', and substituted ''publication or release in other form.'' for ''publication or release in other form, and (2) in the case of information obtained in the course of health services research, evaluations, or demonstrations under section 242b or 242c of this title or in the course of health care technology activities under section 242n of this title, such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Secretary) to its publication or release in other form.''

Subsec. (e)(1), (2). Pub. L. 101–239, § 6103(e)(4)(E), substituted ''section 242b, 242k, or 242*l* of this title'' for ''section 242b, 242c, 242k, 242*l*, or 242n of this title''.

Subsec. (f). Pub. L. 101–239, § 6103(e)(4)(F), substituted ''section 242b or 242k of this title'' for ''section 242b, 242c, 242k, or 242n of this title''.

Subsec. (g)(1). Pub. L. 101–239, § 6103(e)(4)(G)(i), struck out at end ''Except as provided in subsection (d) of this section, the Secretary may not restrict the publication and dissemination of data from, and results of projects undertaken by, centers supported under section 242c(d) of this title.''

Subsec. (g)(2). Pub. L. 101–239, § 6103(e)(4)(G)(ii), substituted ''sections 242b and 242k of this title'' for ''sections 242b, 242c, 242k, and 242n of this title''.

Subsec. (h)(1). Pub. L. 101–239, § 6103(e)(4)(H), substituted ''effectuate the purposes of section 242k of this title'' for ''effectuate the purposes of section 242b, 242c, 242k, or 242n of this title'' and ''contract under any of such sections'' for ''contract under section 242b, 242c, 242k, or 242n of this title''.

Subsec. (i). Pub. L. 101–239, § 6103(e)(4)(I), struck out subsec. (i) which authorized appropriations for carrying out certain programs under sections 242b, 242c, 242k, and 242n of this title during fiscal years 1988 to 1990.

1988—Subsec. (b)(2)(A). Pub. L. 100–690 inserted after first sentence ''Each application for a grant, contract, or cooperative agreement in an amount exceeding $50,000 of direct costs for the dissemination of research findings or the development of research agendas (including conferences, workshops, and meetings) shall be submitted to a standing peer review group with persons with appropriate expertise and shall not be submitted to any peer review group established to review applications for research, evaluation, or demonstration projects.'' and substituted ''an application described in the first two sentences of this subparagraph'' for ''each such application'' in last sentence.

1987—Subsec. (a)(1), (2). Pub. L. 100–177, § 106(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) Not later than December 1 of each year, the Secretary shall make a report to Congress respecting (A) the administration of sections 242b, 242c, 242k, and 242*l* and section 242n of this title during the preceding fiscal year, and (B) the current state and progress of health services research and, health statistics, and health care technology.

''(2) The Secretary, acting through the National Center for Health Services Research and the National Center for Health Statistics, shall assemble and submit to the President and the Congress not later than December 1 of each year the following reports:

''(A) A report on health care costs and financing. Such report shall include a description and analysis of the statistics collected under section 242k(b)(1)(G) of this title.

''(B) A report on health resources. Such report shall include a description and analysis, by geographic area, of the statistics collected under section 242k(b)(1)(E) of this title.

''(C) A report on the utilization of health resources. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(F) of this title.

''(D) A report on the health of the Nation's people. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(A) of this title.''

Subsec. (a)(3). Pub. L. 100–177, § 106(a)(2), struck out ''or (2)'' after ''paragraph (1)''.

Subsec. (b)(1). Pub. L. 100–177, § 107(1), inserted ''and unless a peer review group referred to in paragraph (2) has recommended the application for approval'' before period at end.

Subsec. (b)(2). Pub. L. 100–177, § 107(2), added par. (2) and struck out former par. (2) which read as follows: ''Each application submitted for a grant or contract under section 242b or 242c of this title, in an amount exceeding $50,000 of direct costs and for a health services research, evaluation, or demonstration project, shall be submitted by the Secretary for review for scientific merit to a panel of experts appointed by him from persons who are not officers or employees of the United States and who possess qualifications relevant to the project for which the application was made. A panel to which an application is submitted under this paragraph shall report its findings and recommendations respecting the application to the Secretary in such form and manner as the Secretary shall by regulation prescribe.''

Subsec. (i). Pub. L. 100–177, § 108, amended subsec. (i) generally, substituting provisions authorizing appropriations for fiscal years 1988 to 1990 for carrying out activities under sections 242b, 242c, 242k, and 242n of this title for former provisions authorizing appropriations for fiscal years 1975 to 1987 for carrying out activities under those sections.

1984—Subsec. (i)(1). Pub. L. 98–551, § 7(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987, inserted ''and Health Care Technology Assessment'' after ''Research'', substituted ''and at least 10 per centum of such amount or $1,500,000, whichever is less, shall be available only for the user liaison program and the technical assistance program referred to in section 242c(c)(2) of this title and for dissemination activities directly undertaken through such Center'' for ''and at least 5 per centum of such amount or $1,000,000, whichever is less, shall be available only for dissemination activities directly undertaken through such Center'', inserted ''For health care technology assessment activities undertaken under subsections (b)(5), (e), (f), and (g) of section 242c of this title the Secretary shall obligate from funds appropriated under this paragraph not less than $3,000,000 for the fiscal year ending September 30, 1985, $3,500,000 for the fiscal year ending September 30, 1986, and $4,000,000 for the fiscal year ending September 30, 1987. For grants under section 242n of this title the Secretary shall obligate from funds appropriated under this paragraph not less than $500,000 for the fiscal year ending September 30, 1985, $750,000 for the fiscal year ending September 30, 1986, and $750,000 for the fiscal year ending September 30, 1987.'', and in last sentence substituted ''for any fiscal year'' for ''for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984,''.

Subsec. (i)(2). Pub. L. 98–551, § 7(b), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

1983—Subsec. (d). Pub. L. 97–414 inserted '', if an establishment or person supplying the information or described in it is identifiable,'' after ''No information'', and substituted ''such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose'' for ''authorized by guidelines in effect under section 242k(*l*)(2) of this title or under regulations of the Secretary''.

1981—Subsec. (a)(2). Pub. L. 97–35, § 922(a), substituted ''December'' for ''September'', which change had already been made by Pub. L. 94–273.

Subsec. (b)(2). Pub. L. 97–35, § 922(b), substituted ''$50,000'' for ''$35,000''.

Subsec. (d)(2). Pub. L. 97–35, § 922(c), inserted applicability to health care technology activities under section 242n of this title.

Subsec. (i)(1). Pub. L. 97–35, §§ 917(a), 919(a)(2)(B), inserted provisions respecting amounts of and limitations on uses for appropriations for the fiscal years ending Sept. 30, 1982, 1983, and 1984.

Subsec. (i)(2). Pub. L. 97–35, § 917(b), inserted provisions respecting appropriations for the fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (a)(1). Pub. L. 95–623, § 6(d)(1), required the report to cover the administration of section 242n of this title and the current state and progress of health care technology.

Subsec. (b)(1). Pub. L. 95–623, § 6(d)(2), inserted reference to grant or contract under section 242n of this title.

Subsec. (d). Pub. L. 95–623, §§ 6(d)(3), 8(b), inserted reference to section 242n of this title and substituted in cl. (1) ''statistical or epidemiological activities'' for ''statistical activities''; and authorized use of information for purposes other than for which supplied when authorized by guidelines in effect under section 242k(*l*)(2) of this title.

Subsecs. (e), (f), (g)(2), (h)(1). Pub. L. 95–623, § 6(d)(4)–(7), inserted references to section 242n of this title.

Subsec. (i)(1). Pub. L. 95–623, § 2(a), authorized appropriation of $35,000,000; $40,000,000; and $45,000,000 for fiscal years ending Sept. 30, 1979, through 1981, and substituted minimum amounts of the lesser of 20 per centum of appropriated funds or $6,000,000 for health services research, evaluation and demonstration activities of the National Center for Health Services Research and 5 per centum of such funds or $1,000,000 for dissemination activities of such Center for prior similar requirement of 25 per centum of appropriated funds for the applicable fiscal years for health services research, evaluation, and demonstration activities of the Secretary.

Subsec. (i)(2). Pub. L. 95–623, § 2(b), authorized appropriation of $50,000,000; $65,000,000; and $70,000,000 for fiscal years ending Sept. 30, 1979, through 1981.

1977—Subsec. (i)(1). Pub. L. 95–83, § 104(a), authorized appropriation of $28,600,000 for fiscal year ending Sept. 30, 1978.

Subsec. (i)(2). Pub. L. 95–83, § 104(b), authorized appropriation of $33,600,000 for fiscal year ending Sept. 30, 1978.

1976—Subsec. (a). Pub. L. 94–273 substituted ''December'' for ''September'' wherever appearing.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–392, title IV, § 401(e), Nov. 13, 1998, 112 Stat. 3587, provided that: ''This section [amending this section and sections 247b–5, 247b–6, 247c, 285f–2, 300d–1 to 300d–3, 300d–13, 300d–32, 300k, and 300n–1 of this title] is deemed to have taken effect immediately after the enactment of Public Law 103–183 [Dec. 14, 1993].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2600 of Pub. L. 100–690 provided that: ''Except as provided in section 2613(b)(1) [42 U.S.C. 285m note], the amendments made by this subtitle [subtitle G (§§ 2600–2641) of title II of Pub. L. 100–690, enacting sections 285m–4 to 285m–6 of this title, amending this section, sections 242c, 281, 284, 284c, 285j, 285m, 285m–1 to 285m–6, 286, 289f, 290cc–28, 290cc–36, 292h, 294a, 295g–4, 295g–7, 295g–8b, 295h, 295h–5, 295j, 297j, 297n, 300cc–3, 300cc–13, 300cc–17, 300cc–20, 300cc–31, 300dd–1, 300dd–3, 300dd–8, 300dd–10, 300dd–12 to 300dd–14, 300dd–21, 300dd–32, 300ee, 300ee–2, 300ee–5, 300ee–12, 300ee–13, 300ee–15 to 300ee–18, 300ee–20, 300ee–22, 300ee–34, 300ff–48, and 300aaa to 300aaa–13 of this title, and section 393 of Title 21, Food and Drugs, enacting provisions set out as notes under section 285m of this title, amending provisions set out as notes under sections 201, 292h, 300cc, 300ee–1, and 300ff–48 of this title, and repealing provisions set out as a note under section 285m of this title] shall take effect immediately after the enactment of the Health Omnibus Programs Extension of 1988 [Nov. 4, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 106(c) of Pub. L. 100–177 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 242p of this title] shall apply to reports and profiles required to be submitted after November 1, 1987.''

MINE WORKERS STUDY; REPORT COMPLETED AND SUBMITTED NO LATER THAN 30 MONTHS AFTER NOVEMBER 9, 1978

Section 10 of Pub. L. 95–623, as amended by S. Res. 30, Mar. 7, 1979; H. Res. 549, Mar. 25, 1980, required the Secretary, acting through the National Center for Health Services Research, to arrange for the conduct of a study to evaluate the impact upon the utilization of health services by and the health status of members of the United Mine Workers and their dependents as a result of changes in the United Mine Workers' collective-bargaining agreements of Mar. 1978 with a report to be submitted to the Secretary and specific committees of the Senate and House of Representatives within 30 months after Nov. 9, 1978.

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR ENDING JUNE 30, 1977

Section 107(b) of Pub. L. 93–353 provided that: ''The authorizations of appropriations provided by section 308(i) of the Public Health Service Act [subsec. (i) of this section] is extended for the fiscal year ending June 30, 1977, in the amounts authorized for the preceding fiscal year unless before June 30, 1976, Congress has passed legislation repealing this subsection.''

§ 242n. Repealed. Pub. L. 101–239, title VI, § 6103(d)(1)(B), Dec. 19, 1989, 103 Stat. 2205

Section, act July 1, 1944, ch. 373, title III, § 309, as added Nov. 9, 1978, Pub. L. 95–623, § 6(c), 92 Stat. 3447; amended July 10, 1979, Pub. L. 96–32, § 5(d), 93 Stat. 83; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 917(c), 923, 95 Stat. 565, 567; Oct. 30, 1984, Pub. L. 98–551, § 8, 98 Stat. 2820; Oct. 7, 1985, Pub. L. 99–117, § 8(a), 99 Stat. 493; Dec. 1, 1987, Pub. L. 100–177, title I, § 109, 101 Stat. 990, related to grants for a council on health care technology.

TERMINATION OF COUNCIL ON HEALTH CARE TECHNOLOGY

Section 6103(d)(1)(B) of Pub. L. 101–239 provided in part that the council on health care technology established under this section is terminated.

TRANSITIONAL AND SAVINGS PROVISIONS FOR PUB. L. 101–239

For provision transferring personnel of Department of Health and Human Services employed on Dec. 19, 1989, in connection with functions vested in Administrator for Health Care Policy and Research pursuant to amendments made by section 6103 of Pub. L. 101–239, and assets, liabilities, etc., of Department arising from or employed, held, used, or available on that date, or to be made available after that date, in connection with those functions, to Administrator for appropriate allocation, and for provisions for continued effectiveness of actions, orders, rules, official documents, etc., of Department that have been issued, made, granted, or allowed to become effective in performance of those functions, and that were effective on Dec. 19, 1989, see section 6103(f) of Pub. L. 101–239, set out as a note under section 299 of this title.

§ 242*o*. Health conferences; publication of health educational information

(a) A conference of the health authorities in and among the several States shall be called annually by the Secretary. Whenever in his opinion the interests of the public health would be promoted by a conference, the Secretary may invite as many of such health authorities and officials of other State or local public or private agencies, institutions, or organizations to confer as he deems necessary or proper. Upon the application of health authorities of five or more States it shall be the duty of the Secretary to call a conference of all State health authorities joining in the request. Each State represented at any conference shall be entitled to a single vote. Whenever at any such conference matters relating to mental health are to be discussed, the mental health authorities of the respective States shall be invited to attend.

(b) From time to time the Secretary shall issue information related to public health, in the form of publications or otherwise, for the use of the public, and shall publish weekly reports of health conditions in the United States and other countries and other pertinent health information for the use of persons and institutions concerned with health services.

(July 1, 1944, ch. 373, title III, § 310, formerly §§ 309, 310, as added Pub. L. 93–353, title I, § 107(a), July 23, 1974, 88 Stat. 371; renumbered § 310, Pub. L. 95–623, § 6(a), (b), Nov. 9, 1978, 92 Stat. 3447.)

CODIFICATION

Subsec. (a) of this section consists of former section 309 of act July 1, 1944, prior to the renumbering of that section as section 310(a) by Pub. L. 95–623. Subsec. (b) of this section consists of former section 310 of act July 1, 1944, prior to the renumbering of that section as section 310(b) by Pub. L. 95–623.

PRIOR PROVISIONS

A prior section 310 of act July 1, 1944, was renumbered section 329, and was classified to section 254b of this title prior to the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299.

Provisions similar to those comprising subsec. (a) of this section were contained in section 312 of act July 1, 1944, ch. 373, title III, 58 Stat. 693, as amended (formerly classified to section 244 of this title), prior to repeal by Pub. L. 93–353, § 102(a).

Provisions similar to those comprising subsec. (b) of this section were contained in section 315 of act July 1, 1944, ch. 373, title III, 58 Stat. 695; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308 (formerly classified to section 247 of this title), prior to repeal by Pub. L. 93–353, § 102(a).

§ 242p. National disease prevention data profile

(a) The Secretary, acting through the National Center for Health Statistics, shall submit to Congress on March 15, 1990, and on March 15 of every third year thereafter, a national disease prevention data profile in order to provide a data base for the effective implementation of this Act and to increase public awareness of the prevalence, incidence, and any trends in the preventable causes of death and disability in the United States. Such profile shall include at a minimum—

(1) mortality rates for preventable diseases;

(2) morbidity rates associated with preventable diseases;

(3) the physical determinants of health of the population of the United States and the relationship between these determinants of health and the incidence and prevalence of preventable causes of death and disability; and

(4) the behavioral determinants of health of the population of the United States including, but not limited to, smoking, nutritional and dietary habits, exercise, and alcohol consumption, and the relationship between these determinants of health and the incidence and prevalence of preventable causes of death and disability.

(b) In preparing the profile required by subsection (a) of this section, the Secretary, acting through the National Center for Health Statistics, shall comply with all relevant provisions of sections 242k and 242m of this title.

(Pub. L. 95–626, title IV, § 404, Nov. 10, 1978, 92 Stat. 3591; Pub. L. 100–177, title I, § 106(b), Dec. 1, 1987, 101 Stat. 989.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 95–626, Nov. 10, 1978, 92 Stat. 3551, known as the Health Services and Centers Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendments note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–177 substituted ''on March 15, 1990, and on March 15 of every third year thereafter'' for ''on December 1, 1980, and on December 1 of every third year thereafter'' in first sentence.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–177 applicable to reports and profiles required to be submitted after Nov. 1, 1987, see section 106(c) of Pub. L. 100–177, set out as a note under section 242m of this title.

§ 242q. Task Force on Aging Research; establishment and duties

(a) Establishment

The Secretary of Health and Human Services shall establish a Task Force on Aging Research.

(b) Duties

With respect to aging research (as defined in section 242q–4[1] of this title), the Task Force each fiscal year shall—

(1) make recommendations to the Secretary specifying the particular projects of research, or the particular categories of research, that should be conducted or supported by the Secretary;

(2) of the projects specified under paragraph (1), make recommendations to the Secretary of the projects that should be given priority in the provision of funds; and

(3) make recommendations to the Secretary of the amount of funds that should be appropriated for such research.

[1] See References in Text note below.

(c) Provision of information to public

The Task Force may make available to health professionals, and to other members of the public, information regarding the research described in subsection (b) of this section.

(Pub. L. 101–557, title III, § 301, Nov. 15, 1990, 104 Stat. 2768.)

REFERENCES IN TEXT

Section 242q–4 of this title, referred to in subsec. (b), was in the original ''section 305'', meaning section 305 of Pub. L. 101–557. Section 305 was renumbered section 304 by Pub. L. 109–482, title I, § 104(b)(3)(B), Jan. 15, 2007, 120 Stat. 3694.

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

§ 242q–1. Membership

(a) Composition

The Task Force shall be composed of—

(1) the Assistant Secretary for Health;

(2) the Surgeon General of the Public Health Service;

(3) the Assistant Secretary for Planning and Evaluation;

(4) the Director of the National Institute on Aging, and the Directors of such other agencies of the National Institutes of Health as the Secretary determines to be appropriate;

(5) the Commissioner of the Administration on Aging;

(6) the Commissioner of Food and Drugs;

(7) the Under Secretary for Health of the Department of Veterans Affairs;

(8) the Administrator of the the[1] Substance Abuse and Mental Health Services Administration;

(9) the Administrator of the Centers for Medicare & Medicaid Services;

(10) the Commissioner of Social Security;

(11) the Director of the Agency for Healthcare Research and Quality;

(12) two Members of the House of Representatives appointed by the Speaker of the House in consultation with the Minority Leader, and two members of the Senate appointed by the Majority Leader in consultation with the Minority Leader, not more than one of whom from each body shall be members of the same political party; and

(13) three members of the general public, to be appointed by the Secretary, that shall include one representative each from—

(A) a nonprofit group representing older Americans;

(B) a private voluntary health organization concerned with the health problems affecting older Americans; and

(C) a nonprofit organization concerned with research related to the health and independence of older Americans.

(b) Chair

The Secretary, acting through either the Assistant Secretary for Health or the Director of the National Institute on Aging, shall serve as the Chair of the Task Force.

(c) Quorum

A majority of the members of the Task Force shall constitute a quorum, and a lesser number may hold hearings.

(d) Meetings

The Task Force shall meet periodically at the call of the Chair, but in no event less than twice each year.

(e) Compensation and expenses

(1) Compensation

Members of the Task Force who are not regular full-time employees of the United States Government shall, while attending meetings and conferences of the Task Force or otherwise engaged in the business of the Task Force (including traveltime), be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service under GS–18 of the General Schedules established under section 5332 of title 5.

(2) Expenses

While away from their homes or regular places of business on the business of the Task Force, members of such Task Force may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5 for persons employed intermittently in the Government service.

(Pub. L. 101–557, title III, § 302, Nov. 15, 1990, 104 Stat. 2769; Pub. L. 102–321, title I, § 161, July 10, 1992, 106 Stat. 375; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 108–173, title IX, § 900(e)(6)(D), Dec. 8, 2003, 117 Stat. 2373.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

2003—Subsec. (a)(9). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

1999—Subsec. (a)(11). Pub. L. 106–129 substituted ''Director of the Agency for Healthcare Research and Quality'' for ''Administrator for Health Care Policy and Research''.

1992—Subsec. (a)(7). Pub. L. 102–405 substituted ''Under Secretary for Health of the Department of Veterans Affairs'' for ''Chief Medical Director of the Department of Veterans Affairs''.

Subsec. (a)(8). Pub. L. 102–321 substituted ''Substance Abuse and Mental Health Services Administration'' for ''Alcohol, Drug Abuse and Mental Health Administration''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General

[1] So in original.

Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 242q–2. Administrative staff and support

The Secretary, acting through either the Assistant Secretary for Health or the Director of the National Institute on Aging, shall appoint an Executive Secretary for the Task Force and shall provide the Task Force with such administrative staff and support as may be necessary to enable the Task Force to carry out subsections (b) and (c) of section 242q of this title.

(Pub. L. 101–557, title III, § 303, Nov. 15, 1990, 104 Stat. 2770.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

§ 242q–3. Repealed. Pub. L. 109–482, title I, § 104(b)(3)(B), Jan. 15, 2007, 120 Stat. 3694

Section, Pub. L. 101–557, title III, § 304, Nov. 15, 1990, 104 Stat. 2770, related to reports that provided recommendations required in section 242q(b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

§ 242q–4. Definitions

For purposes of sections 242q to 242q–5 of this title:

(1) Aging research

(A) The term ''aging research'' means research on the aging process and on the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause. Such research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals.

(B) For purposes of subparagraph (A), the term ''independence'', with respect to diseases, disorders, and complications of aging, means the functional ability of individuals to perform activities of daily living or instrumental activities of daily living without assistance or supervision.

(2) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(3) Task Force

The term ''Task Force'' means the Task Force on Aging Research established under section 242q(a) of this title.

(Pub. L. 101–557, title III, § 304, formerly § 305, Nov. 15, 1990, 104 Stat. 2770; renumbered § 304, Pub. L. 109–482, title I, § 104(b)(3)(B), Jan. 15, 2007, 120 Stat. 3694.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 304 of Pub. L. 101–557 was classified to section 242q–3 of this title, prior to repeal by Pub. L. 109–482.

§ 242q–5. Authorization of appropriations

For the purpose of carrying out sections 242q to 242q–5 of this title, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1993.

(Pub. L. 101–557, title III, § 305, formerly § 306, Nov. 15, 1990, 104 Stat. 2770; renumbered § 305, Pub. L. 109–482, title I, § 104(b)(3)(B), Jan. 15, 2007, 120 Stat. 3694.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 305 of Pub. L. 101–557 was renumbered section 304 and is classified to section 242q–4 of this title.

§ 242r. Improvement and publication of data on food-related allergic responses

(a) In general

The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Commissioner of Food and Drugs, shall improve (including by educating physicians and other health care providers) the collection of, and publish as it becomes available, national data on—

(1) the prevalence of food allergies;

(2) the incidence of clinically significant or serious adverse events related to food allergies; and

(3) the use of different modes of treatment for and prevention of allergic responses to foods.

(b) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(Pub. L. 108–282, title II, § 207, Aug. 2, 2004, 118 Stat. 910.)

CODIFICATION

Section was enacted as part of the Food Allergen Labeling and Consumer Protection Act of 2004, and not as part of the Public Health Service Act which comprises this chapter.

PART B—FEDERAL-STATE COOPERATION

§ 243. General grant of authority for cooperation

(a) Enforcement of quarantine regulations; prevention of communicable diseases

The Secretary is authorized to accept from State and local authorities any assistance in the

enforcement of quarantine regulations made pursuant to this chapter which such authorities may be able and willing to provide. The Secretary shall also assist States and their political subdivisions in the prevention and suppression of communicable diseases and with respect to other public health matters, shall cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations, and shall advise the several States on matters relating to the preservation and improvement of the public health.

(b) Comprehensive and continuing planning; training of personnel for State and local health work; fees

The Secretary shall encourage cooperative activities between the States with respect to comprehensive and continuing planning as to their current and future health needs, the establishment and maintenance of adequate public health services, and otherwise carrying out public health activities. The Secretary is also authorized to train personnel for State and local health work. The Secretary may charge only private entities reasonable fees for the training of their personnel under the preceding sentence.

(c) Development of plan to control epidemics and meet emergencies or problems resulting from disasters; cooperative planning; temporary assistance; reimbursement of United States

(1) The Secretary is authorized to develop (and may take such action as may be necessary to implement) a plan under which personnel, equipment, medical supplies, and other resources of the Service and other agencies under the jurisdiction of the Secretary may be effectively used to control epidemics of any disease or condition and to meet other health emergencies or problems. The Secretary may enter into agreements providing for the cooperative planning between the Service and public and private community health programs and agencies to cope with health problems (including epidemics and health emergencies).

(2) The Secretary may, at the request of the appropriate State or local authority, extend temporary (not in excess of six months) assistance to States or localities in meeting health emergencies of such a nature as to warrant Federal assistance. The Secretary may require such reimbursement of the United States for assistance provided under this paragraph as he may determine to be reasonable under the circumstances. Any reimbursement so paid shall be credited to the applicable appropriation for the Service for the year in which such reimbursement is received.

(July 1, 1944, ch. 373, title III, §311, 58 Stat. 693; Pub. L. 89–749, §5, Nov. 3, 1966, 80 Stat. 1190; Pub. L. 90–174, §4, Dec. 5, 1967, 81 Stat. 536; Pub. L. 91–515, title II, §282, Oct. 30, 1970, 84 Stat. 1308; Pub. L. 94–317, title II, §202(b), (c), June 23, 1976, 90 Stat. 703; Pub. L. 97–35, title IX, §902(c), Aug. 13, 1981, 95 Stat. 559; Pub. L. 97–414, §8(d), Jan. 4, 1983, 96 Stat. 2060; Pub. L. 99–117, §11(a), Oct. 7, 1985, 99 Stat. 494.)

AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99–117 struck out ''referred to in section 247b(f) of this title'' after ''epidemics of any disease or condition'', ''involving or resulting from disasters or any such disease'' after ''health emergencies or problems'' in first sentence, and struck out ''resulting from disasters or any disease or condition referred to in section 247b(f) of this title'' after ''(including epidemics and health emergencies)'' in second sentence.

1983—Subsec. (c)(2). Pub. L. 97–414 substituted ''six months'' for ''forty-five days'' after ''not in excess of''.

1981—Subsec. (a). Pub. L. 97–35, §902(c)(1), inserted applicability to other public health matters, and struck out reference to section 246 of this title.

Subsec. (b). Pub. L. 97–35, §902(c)(2), substituted ''public health activities'' for ''the purposes of section 246 of this title''.

1976—Subsec. (b). Pub. L. 94–317, §202(c), inserted provision authorizing Secretary to charge only private entities reasonable fees for training of their personnel.

Subsec. (c). Pub. L. 94–317, §202(b), made changes in phraseology and restructured provisions into pars. (1) and (2) and, in par. (1), as so restructured, inserted provisions authorizing Secretary to develop a plan utilizing Public Health Service personnel, equipment, medical supplies and other resources to control epidemics of any disease referred to in section 247b of this title.

1970—Subsecs. (a), (b). Pub. L. 91–515 substituted ''Secretary'' for ''Surgeon General'' wherever appearing.

1967—Subsec. (c). Pub. L. 90–174 added subsec. (c).

1966—Pub. L. 89–749 designated existing provisions as subsec. (a), added subsec. (b), and amended subsec. (b) to permit Surgeon General to train personnel for State and local health work.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 5(a) of Pub. L. 89–749 provided that subsec. (b) of this section is effective July 1, 1966.

Section 5(b) of Pub. L. 89–749 provided that the amendment of subsec. (b) of this section, permitting the Surgeon General to train personnel for State and local health work, is effective July 1, 1967.

FOOD ALLERGENS IN THE FOOD CODE

Pub. L. 108–282, title II, §209, Aug. 2, 2004, 118 Stat. 910, provided that: ''The Secretary of Health and Human Services shall, in the Conference for Food Protection, as part of its efforts to encourage cooperative activities between the States under section 311 of the Public Health Service Act (42 U.S.C. 243), pursue revision of the Food Code to provide guidelines for preparing allergen-free foods in food establishments, including in restaurants, grocery store delicatessens and bakeries, and elementary and secondary school cafeterias. The Secretary shall consider guidelines and recommendations developed by public and private entities for public and private food establishments for preparing allergen-free foods in pursuing this revision.''

TRAINING OF PRIVATE PERSONS SUBJECT TO REIMBURSEMENT OR ADVANCES TO APPROPRIATIONS

Pub. L. 103–333, title II, Sept. 30, 1994, 108 Stat. 2550, provided in part: ''That for fiscal year 1995 and subsequent fiscal years training of private persons shall be made subject to reimbursement or advances to this appropriation for not in excess of the full cost of such training''.

§244. Public access defibrillation programs

(a) In general

The Secretary shall award grants to States, political subdivisions of States, Indian tribes, and tribal organizations to develop and implement public access defibrillation programs—

(1) by training and equipping local emergency medical services personnel, including firefighters, police officers, paramedics, emergency medical technicians, and other first responders, to administer immediate care, including cardiopulmonary resuscitation and automated external defibrillation, to cardiac arrest victims;

(2) by purchasing automated external defibrillators, placing the defibrillators in public places where cardiac arrests are likely to occur, and training personnel in such places to administer cardiopulmonary resuscitation and automated external defibrillation to cardiac arrest victims;

(3) by setting procedures for proper maintenance and testing of such devices, according to the guidelines of the manufacturers of the devices;

(4) by providing training to members of the public in cardiopulmonary resuscitation and automated external defibrillation;

(5) by integrating the emergency medical services system with the public access defibrillation programs so that emergency medical services personnel, including dispatchers, are informed about the location of automated external defibrillators in their community; and

(6) by encouraging private companies, including small businesses, to purchase automated external defibrillators and provide training for their employees to administer cardiopulmonary resuscitation and external automated defibrillation to cardiac arrest victims in their community.

(b) Preference

In awarding grants under subsection (a) of this section, the Secretary shall give a preference to a State, political subdivision of a State, Indian tribe, or tribal organization that—

(1) has a particularly low local survival rate for cardiac arrests, or a particularly low local response rate for cardiac arrest victims; or

(2) demonstrates in its application the greatest commitment to establishing and maintaining a public access defibrillation program.

(c) Use of funds

A State, political subdivision of a State, Indian tribe, or tribal organization that receives a grant under subsection (a) of this section may use funds received through such grant to—

(1) purchase automated external defibrillators that have been approved, or cleared for marketing, by the Food and Drug Administration;

(2) provide automated external defibrillation and basic life support training in automated external defibrillator usage through nationally recognized courses;

(3) provide information to community members about the public access defibrillation program to be funded with the grant;

(4) provide information to the local emergency medical services system regarding the placement of automated external defibrillators in public places;

(5) produce materials to encourage private companies, including small businesses, to purchase automated external defibrillators;

(6) establish an information clearinghouse that provides information to increase public access to defibrillation in schools; and

(7) further develop strategies to improve access to automated external defibrillators in public places.

(d) Application

(1) In general

To be eligible to receive a grant under subsection (a) of this section, a State, political subdivision of a State, Indian tribe, or tribal organization shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(2) Contents

An application submitted under paragraph (1) shall—

(A) describe the comprehensive public access defibrillation program to be funded with the grant and demonstrate how such program would make automated external defibrillation accessible and available to cardiac arrest victims in the community;

(B) contain procedures for implementing appropriate nationally recognized training courses in performing cardiopulmonary resuscitation and the use of automated external defibrillators;

(C) contain procedures for ensuring direct involvement of a licensed medical professional and coordination with the local emergency medical services system in the oversight of training and notification of incidents of the use of the automated external defibrillators;

(D) contain procedures for proper maintenance and testing of the automated external defibrillators, according to the labeling of the manufacturer;

(E) contain procedures for ensuring notification of local emergency medical services system personnel, including dispatchers, of the location and type of devices used in the public access defibrillation program; and

(F) provide for the collection of data regarding the effectiveness of the public access defibrillation program to be funded with the grant in affecting the out-of-hospital cardiac arrest survival rate.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $25,000,000 for fiscal year 2003, and such sums as may be necessary for each of the fiscal years 2004 through 2006. Not more than 10 percent of amounts received under a grant awarded under this section may be used for administrative expenses.

(July 1, 1944, ch. 373, title III, § 312, as added Pub. L. 107–188, title I, § 159(c), June 12, 2002, 116 Stat. 634; amended Pub. L. 108–41, § 2, July 1, 2003, 117 Stat. 839.)

PRIOR PROVISIONS

A prior section 244, acts July 1, 1944, ch. 373, title III, § 312, 58 Stat. 693; July 3, 1946, ch. 538, § 8, 60 Stat. 424; Dec. 5, 1967, Pub. L. 90–174, § 12(b), 81 Stat. 541; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308, provided

for health conferences, prior to repeal by Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362. See section 242*o*(a) of this title.

A prior section 312 of act July 1, 1944, was classified to section 244–1 of this title prior to repeal by Pub. L. 94–484.

AMENDMENTS

2003—Subsec. (c)(6), (7). Pub. L. 108–41 added par. (6) and redesignated former par. (6) as (7).

FINDINGS

Pub. L. 107–188, title I, § 159(b), June 12, 2002, 116 Stat. 634, provided that: ''Congress makes the following findings:

''(1) Over 220,000 Americans die each year from cardiac arrest. Every 2 minutes, an individual goes into cardiac arrest in the United States.

''(2) The chance of successfully returning to a normal heart rhythm diminishes by 10 percent each minute following sudden cardiac arrest.

''(3) Eighty percent of cardiac arrests are caused by ventricular fibrillation, for which defibrillation is the only effective treatment.

''(4) Sixty percent of all cardiac arrests occur outside the hospital. The average national survival rate for out-of-hospital cardiac arrest is only 5 percent.

''(5) Communities that have established and implemented public access defibrillation programs have achieved average survival rates for out-of-hospital cardiac arrest as high as 50 percent.

''(6) According to the American Heart Association, wide use of defibrillators could save as many as 50,000 lives nationally each year.

''(7) Successful public access defibrillation programs ensure that cardiac arrest victims have access to early 911 notification, early cardiopulmonary resuscitation, early defibrillation, and early advanced care.''

§ 244–1. Repealed. Pub. L. 94–484, title V, § 503(b), Oct. 12, 1976, 90 Stat. 2300

Section, act July 1, 1944, ch. 373, title III, § 312, formerly § 306, as added Aug. 2, 1956, ch. 871, title I, § 101, 70 Stat. 923; amended July 23, 1959, Pub. L. 86–105, § 1, 73 Stat. 239; Sept 8, 1960, Pub. L. 86–720, § 1(b), 74 Stat. 820; Aug. 27, 1964, Pub. L. 88–497, § 2, 78 Stat. 613; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(b), 82 Stat. 789; Mar. 12, 1970, Pub. L. 91–208, § 3, 84 Stat. 52; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; June 18, 1973, Pub. L. 93–45, title I, § 104(a), 87 Stat. 91; renumbered § 312 and amended July 23, 1974, Pub. L. 93–353, title I, § 102(b), 88 Stat. 362; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(a)(1), 90 Stat. 2244, related to graduate or specialized training for physicians, engineers, nurses, and other professional personnel.

EFFECTIVE DATE OF REPEAL

Section 503(c) of Pub. L. 94–484 provided that: ''The amendments made by this section [amending former section 295f–2 of this title and repealing this section and section 245a of this title] shall take effect October 1, 1977.''

§ 244a. Repealed. Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362

Section, act July 1, 1944, ch. 373, title III, § 312a, as added Aug. 31, 1954, ch. 1158, § 2, 68 Stat. 1025, related to birth and death statistics, annual collection, and compensation for transcription. See section 242k(h) of this title.

§ 245. Public access defibrillation demonstration projects

(a) In general

The Secretary shall award grants to political subdivisions of States, Indian tribes, and tribal organizations to develop and implement innovative, comprehensive, community-based public access defibrillation demonstration projects that—

(1) provide cardiopulmonary resuscitation and automated external defibrillation to cardiac arrest victims in unique settings;

(2) provide training to community members in cardiopulmonary resuscitation and automated external defibrillation; and

(3) maximize community access to automated external defibrillators.

(b) Use of funds

A recipient of a grant under subsection (a) of this section shall use the funds provided through the grant to—

(1) purchase automated external defibrillators that have been approved, or cleared for marketing, by the Food and Drug Administration;

(2) provide basic life training in automated external defibrillator usage through nationally recognized courses;

(3) provide information to community members about the public access defibrillation demonstration project to be funded with the grant;

(4) provide information to the local emergency medical services system regarding the placement of automated external defibrillators in the unique settings; and

(5) further develop strategies to improve access to automated external defibrillators in public places.

(c) Application

(1) In general

To be eligible to receive a grant under subsection (a) of this section, a political subdivision of a State, Indian tribe, or tribal organization shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(2) Contents

An application submitted under paragraph (1) may—

(A) describe the innovative, comprehensive, community-based public access defibrillation demonstration project to be funded with the grant;

(B) explain how such public access defibrillation demonstration project represents innovation in providing public access to automated external defibrillation; and

(C) provide for the collection of data regarding the effectiveness of the demonstration project to be funded with the grant in—

(i) providing emergency cardiopulmonary resuscitation and automated external defibrillation to cardiac arrest victims in the setting served by the demonstration project; and

(ii) affecting the cardiac arrest survival rate in the setting served by the demonstration project.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section $5,000,000 for each of fiscal

years 2002 through 2006. Not more than 10 percent of amounts received under a grant awarded under this section may be used for administrative expenses.

(July 1, 1944, ch. 373, title III, § 313, as added Pub. L. 107–188, title I, § 159(c), June 12, 2002, 116 Stat. 636.)

PRIOR PROVISIONS

A prior section 245, acts July 1, 1944, ch. 373, title III, § 313, 58 Stat. 693; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308, provided for collection of vital statistics, prior to repeal by Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362. See section 242k(g) of this title.

A prior section 313 of act July 1, 1944, was classified to section 245a of this title prior to repeal by Pub. L. 94–484.

§ 245a. Repealed. Pub. L. 94–484, title V, § 503(b), Oct. 12, 1976, 90 Stat. 2300

Section, act July 1, 1944, ch. 373, title III, § 313, formerly § 309, as added Sept. 8, 1960, Pub. L. 86–720, § 1(a), 74 Stat. 819; amended Aug. 27, 1964, Pub. L. 88–497, § 3, 78 Stat. 613; Nov. 3, 1966, Pub. L. 89–749, § 4, 80 Stat. 1190; Dec. 5, 1967, Pub. L. 90–174, §§ 2(g), 8(c), 81 Stat. 534, 540; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(a), 82 Stat. 788; Mar. 12, 1970, Pub. L. 91–208, §§ 1, 2, 84 Stat. 52; June 30, 1970, Pub. L. 91–296, title IV, § 401(b)(1)(B), 84 Stat. 352; June 18, 1973, Pub. L. 93–45, title I, § 104(b), (c), 87 Stat. 91; renumbered § 313 and amended July 23, 1974, Pub. L. 93–353, title I, § 102(c), 88 Stat. 362; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(a)(2), (3), 90 Stat. 2244, related to graduate public health training grants.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1977, see section 503(c) of Pub. L. 94–484, set out as a note under section 244–1 of this title.

§ 246. Grants and services to States

(a) Comprehensive health planning and services

(1) In order to assist the States in comprehensive and continuing planning for their current and future health needs, the Secretary is authorized during the period beginning July 1, 1966, and ending June 30, 1973, to make grants to States which have submitted, and had approved by the Secretary, State plans for comprehensive State health planning. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $2,500,000 for the fiscal year ending June 30, 1967, $7,000,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $15,000,000 for the fiscal year ending June 30, 1971, $17,000,000 for the fiscal year ending June 30, 1972, $20,000,000 for the fiscal year ending June 30, 1973, and $10,000,000 for the fiscal year ending June 30, 1974.

(2) In order to be approved for purposes of this subsection, a State plan for comprehensive State health planning must—

(A) designate, or provide for the establishment of, a single State agency, which may be an interdepartmental agency, as the sole agency for administering or supervising the administration of the State's health planning functions under the plan;

(B) provide for the establishment of a State health planning council, which shall include representatives of Federal, State, and local agencies (including as an ex officio member, if there is located in such State one or more hospitals or other health care facilities of the Department of Veterans Affairs, the individual whom the Secretary of Veterans Affairs shall have designated to serve on such council as the representative of the hospitals or other health care facilities of such Department which are located in such State) and nongovernmental organizations and groups concerned with health (including representation of the regional medical program or programs included in whole or in part within the State), and of consumers of health services, to advise such State agency in carrying out its functions under the plan, and a majority of the membership of such council shall consist of representatives of consumers of health services;

(C) set forth policies and procedures for the expenditure of funds under the plan, which, in the judgment of the Secretary, are designed to provide for comprehensive State planning for health services (both public and private and including home health care), including the facilities and persons required for the provision of such services, to meet the health needs of the people of the State and including environmental considerations as they relate to public health;

(D) provide for encouraging cooperative efforts among governmental or nongovernmental agencies, organizations and groups concerned with health services, facilities, or manpower, and for cooperative efforts between such agencies, organizations, and groups and similar agencies, organizations, and groups in the fields of education, welfare, and rehabilitation;

(E) contain or be supported by assurances satisfactory to the Secretary that the funds paid under this subsection will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available by the State for the purpose of comprehensive health planning and not to supplant such non-Federal funds;

(F) provide such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(G) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

(H) provide that the State agency will from time to time, but not less often than annually, review its State plan approved under this subsection and submit to the Secretary appropriate modifications thereof;

(I) effective July 1, 1968, (i) provide for assisting each health care facility in the State

to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan developed in accordance with criteria established by the Secretary after consultation with the State which will meet the needs of the State for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner, and (ii) provide that the State agency furnishing such assistance will periodically review the program (developed pursuant to clause (i)) of each health care facility in the State and recommend appropriate modification thereof;

(J) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subsection; and

(K) contain such additional information and assurances as the Secretary may find necessary to carry out the purposes of this subsection.

(3)(A) From the sums appropriated for such purpose for each fiscal year, the several States shall be entitled to allotments determined, in accordance with regulations, on the basis of the population and the per capita income of the respective States; except that no such allotment to any State for any fiscal year shall be less than 1 per centum of the sum appropriated for such fiscal year pursuant to paragraph (1). Any such allotment to a State for a fiscal year shall remain available for obligation by the State, in accordance with the provisions of this subsection and the State's plan approved thereunder, until the close of the succeeding fiscal year.

(B) The amount of any allotment to a State under subparagraph (A) for any fiscal year which the Secretary determines will not be required by the State, during the period for which it is available, for the purposes for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as he may fix, to other States with respect to which such a determination has not been made, in proportion to the original allotments to such States under subparagraph (A) for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State from funds appropriated pursuant to this subsection for a fiscal year shall be deemed part of its allotment under subparagraph (A) for such fiscal year.

(4) From each State's allotment for a fiscal year under this subsection, the State shall from time to time be paid the Federal share of the expenditures incurred during that year or the succeeding year pursuant to its State plan approved under this subsection. Such payments shall be made on the basis of estimates by the Secretary of the sums the State will need in order to perform the planning under its approved State plan under this subsection, but with such adjustments as may be necessary to take account of previously made underpayments or overpayments. The ''Federal share'' for any State for purposes of this subsection shall be all, or such part as the Secretary may determine, of the cost of such planning, except that in the case of the allotments for the fiscal year ending June 30, 1970, it shall not exceed 75 per centum of such cost.

(b) Project grants for areawide health planning; authorization of appropriations; prerequisites for grants; application; contents

(1)(A) The Secretary is authorized, during the period beginning July 1, 1966, and ending June 30, 1974, to make, with the approval of the State agency administering or supervising the administration of the State plan approved under subsection (a) of this section, project grants to any other public or nonprofit private agency or organization (but with appropriate representation of the interests of local government where the recipient of the grant is not a local government or combination thereof or an agency of such government or combination) to cover not to exceed 75 per centum of the costs of projects for developing (and from time to time revising) comprehensive regional, metropolitan area, or other local area plans for coordination of existing and planned health services, including the facilities and persons required for provision of such services; and including the provision of such services through home health care; except that in the case of project grants made in any State prior to July 1, 1968, approval of such State agency shall be required only if such State has such a State plan in effect at the time of such grants. No grant may be made under this subsection after June 30, 1970, to any agency or organization to develop or revise health plans for an area unless the Secretary determines that such agency or organization provides means for appropriate representation of the interests of the hospitals, other health care facilities, and practicing physicians serving such area, and the general public. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1967, $7,500,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $20,000,000 for the fiscal year ending June 30, 1971, $30,000,000 for the fiscal year ending June 30, 1972, $40,000,000 for the fiscal year ending June 30, 1973, and $25,100,000 for the fiscal year ending June 30, 1974.

(B) Project grants may be made by the Secretary under subparagraph (A) to the State agency administering or supervising the administration of the State plan approved under subsection (a) of this section with respect to a particular region or area, but only if (i) no application for such a grant with respect to such region or area has been filed by any other agency or organization qualified to receive such a grant, and (ii) such State agency certifies, and the Secretary finds, that ample opportunity has been afforded to qualified agencies and organizations to file application for such a grant with respect to such region or area and that it is improbable

that, in the foreseeable future, any agency or organization which is qualified for such a grant will file application therefor.

(2)(A) In order to be approved under this subsection, an application for a grant under this subsection must contain or be supported by reasonable assurances that there has been or will be established, in or for the area with respect to which such grant is sought, an areawide health planning council. The membership of such council shall include representatives of public, voluntary, and nonprofit private agencies, institutions, and organizations concerned with health (including representatives of the interests of local government of the regional medical program for such area, and of consumers of health services). A majority of the members of such council shall consist of representatives of consumers of health services.

(B) In addition, an application for a grant under this subsection must contain or be supported by reasonable assurances that the areawide health planning agency has made provision for assisting health care facilities in its area to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan which will meet the needs of the State and the area for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner.

(c) Project grants for training, studies, and demonstrations; authorization of appropriations

The Secretary is also authorized, during the period beginning July 1, 1966, and ending June 30, 1974, to make grants to any public or nonprofit private agency, institution, or other organization to cover all or any part of the cost of projects for training, studies, or demonstrations looking toward the development of improved or more effective comprehensive health planning throughout the Nation. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $1,500,000 for the fiscal year ending June 30, 1967, $2,500,000 for the fiscal year ending June 30, 1968, $5,000,000 for the fiscal year ending June 30, 1969, $7,500,000 for the fiscal year ending June 30, 1970, $8,000,000 for the fiscal year ending June 30, 1971, $10,000,000 for the fiscal year ending June 30, 1972, $12,000,000 for the fiscal year ending June 30, 1973, and $4,700,000 for the fiscal year ending June 30, 1974.

(July 1, 1944, ch. 373, title III, § 314, 58 Stat. 693; July 3, 1946, ch. 538, § 9, 60 Stat. 424; June 16, 1948, ch. 481, § 5, 62 Stat. 468; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 852, § 18, 70 Stat. 910; Pub. L. 85–544, § 1, July 22, 1958, 72 Stat. 400; Pub. L. 87–395, § 2(a)–(d), Oct. 5, 1961, 75 Stat. 824; Pub. L. 87–688, § 4(a)(1), Sept. 25, 1962, 76 Stat. 587; Pub. L. 89–109, § 4, Aug. 5, 1965, 79 Stat. 436; Pub. L. 89–749, § 3, Nov. 3, 1966, 80 Stat. 1181; Pub. L. 90–174, §§ 2(a)–(f), 3(b)(2), 8(a), (b), 12(d), Dec. 5, 1967, 81 Stat. 533–535, 540, 541; Pub. L. 91–296, title I, § 111(b), title IV, § 401(b)(1)(C), (D), June 30, 1970, 84 Stat. 340, 352; Pub. L. 91–513, title I, § 3(b), Oct. 27, 1970, 84 Stat. 1241; Pub. L. 91–515, title II, §§ 220, 230, 240, 250, 260(a)–(c)(1), 282, Oct. 30, 1970, 84 Stat. 1304–1306, 1308; Pub. L. 91–616, title III, § 331, Dec. 31, 1970, 84 Stat. 1853; Pub. L. 91–648, title IV, § 403, Jan. 5, 1971, 84 Stat. 1925, as amended Pub. L. 95–454, title VI, § 602(c), Oct. 13, 1978, 92 Stat. 1189; Pub. L. 92–255, title IV, § 403(a), Mar. 21, 1972, 86 Stat. 77; Pub. L. 93–45, title I, § 106, June 18, 1973, 87 Stat. 92; Pub. L. 93–151, § 8, Nov. 9, 1973, 87 Stat. 568; Pub. L. 94–63, title I, § 102, title V, § 501(b), title VII, § 701(a), (b), July 29, 1975, 89 Stat. 304, 346, 352; Pub. L. 94–484, title IX, § 905(b)(1), Oct. 12, 1976, 90 Stat. 2325; Pub. L. 95–83, title III, § 302, Aug. 1, 1977, 91 Stat. 387; Pub. L. 95–454, title VI, § 602(c), Oct. 13, 1978, 92 Stat. 1189; Pub. L. 95–622, title I, § 109, Nov. 9, 1978, 92 Stat. 3417; Pub. L. 95–626, title II, § 201(a), (b)(2), Nov. 10, 1978, 92 Stat. 3570; Pub. L. 96–32, § 6(e), (f), July 10, 1979, 93 Stat. 83; Pub. L. 96–79, title I, § 115(k)(2), Oct. 4, 1979, 93 Stat. 610; Pub. L. 96–398, title I, § 107(d), Oct. 7, 1980, 94 Stat. 1571; Pub. L. 97–35, title IX, § 902(b), Aug. 13, 1981, 95 Stat. 559; Pub. L. 99–117, § 12(a), Oct. 7, 1985, 99 Stat. 495; Pub. L. 102–54, § 13(q)(1)(D), June 13, 1991, 105 Stat. 279.)

AMENDMENTS

1991—Subsec. (a)(2)(B). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'', ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' and ''such Department'' for ''such Administration''.

1985—Subsec. (g). Pub. L. 99–117 directed that subsec. (g) be repealed. Previously, subsec. (g) was repealed by Pub. L. 96–398. See 1980 Amendment note below.

1981—Subsec. (d). Pub. L. 97–35 struck out subsec. (d) which related to grants for services, form, manner, etc., of application, review of activities undertaken, allotments, and authorization of appropriations.

1980—Subsec. (g). Pub. L. 96–398 struck out subsec. (g) which related to application, procedures applicable, amount, etc., for State mental health program grants.

1979—Subsec. (d)(2)(C)(ii). Pub. L. 96–32, § 6(e), substituted ''uniform national health program reporting system'' for ''uniform national reporting system''.

Subsec. (d)(4)(A). Pub. L. 96–32, § 6(f), in provision following subd. (II) of cl. (ii), substituted ''the preceding provisions of this subparagraph'' for ''clauses (i) and (ii)'' and ''amount'' for ''amounts'' and inserted provision that if the amount appropriated for a fiscal year is equal to or less than the amount appropriated for fiscal year ending Sept. 30, 1979, the total amount of grants for a State health authority shall be an amount which bears the same ratio to the amount appropriated as the total amount of grants received by such authority from appropriations for fiscal year ending Sept. 30, 1979, bears to the amount appropriated for that fiscal year.

Subsec. (g)(2)(D)(iv). Pub. L. 96–79 substituted ''a plan which is consistent with the State health plan in effect for the State under section 300m–3(c) of this title and'' for ''a plan''.

1978—Subsec. (d). Pub. L. 95–626, § 201(b)(2), completely revised subsec. (d) under which the Secretary is authorized to make grants to State health authorities to assist in meeting the costs of providing comprehensive public health services by including requirements that the States submit an application outlining how funds will be used to supplement non-Federal support for the provision of public health services in the State, by setting out formulae under which funds will be made available to States including definitions of ''applicable grant computation percentage'' and ''State and local expenditures for comprehensive public health services'', by requiring implementation of a national health program reporting system to assure accountability for expenditure of funds, and by authorizing appropriations of $150,000,000 for fiscal year ending Sept. 30, 1980, and $170,000,000 for fiscal year ending Sept. 30, 1981.

Subsec. (d)(7)(A). Pub. L. 95–626, § 201(a)(1), inserted provision authorizing an appropriation of $103,000,000 for fiscal year ending Sept. 30, 1979.

Subsec. (d)(7)(B). Pub. L. 95–626, §201(a)(2), inserted provision authorizing an appropriation of $20,000,000 for fiscal year ending Sept. 30, 1979.

Subsec. (f). Pub. L. 95–454 designated existing provisions of section 403 of Pub. L. 91–648 (see 1971 Amendment note below) as subsec. (a) thereof and added subsec. (b) thereto repealing subsec. (f) of this section as subsec. (f) of this section had applied to commissioned officers of the Public Health Service.

Subsec. (g). Pub. L. 95–622 substituted provisions relating to grants for State mental health programs for provisions relating to regulations and amendments with respect to grants to States under subsecs. (a) and (d) and reduction and suspension of subsec. (a) and (d) grant payments.

1977—Subsec. (d)(7)(A). Pub. L. 95–83, §302(a), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $106,750,000 for fiscal year ending Sept. 30, 1978.

Subsec. (d)(7)(B). Pub. L. 95–83, §302(b), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $12,680,000 for fiscal year ending Sept. 30, 1978.

1976—Subsec. (g)(4)(B). Pub. L. 94–484 defined ''State'' to include the Northern Mariana Islands.

1975—Subsec. (d). Pub. L. 94–63, §§102, 701(a), substituted provisions relating to grants made pursuant to allotments to State health and mental health authorities for meeting the costs of providing comprehensive public health services, for provisions relating to grants made pursuant to appropriations for fiscal year ending June 30, 1968 to fiscal year ending June 30, 1975, to State health or mental health authorities to aid in the establishment and maintenance of adequate public health services, including the training of personnel for State and local health work.

Subsec. (e). Pub. L. 94–63, §§501(b), 701(b), struck out subsec. (e) which authorized appropriations from fiscal year ending June 30, 1968 through fiscal year ending June 30, 1975 for project grants for health services and related training, set forth procedures for making such grants, and prohibited grants after the fiscal year ending June 30, 1975, for provisions of this chapter amended by title VII of the Health Revenue Sharing and Health Services Act of 1975.

1973—Subsec. (a)(1). Pub. L. 93–45, §106(a)(1), authorized appropriations of $10,000,000 for fiscal year ending June 30, 1974.

Subsec. (b)(1)(A). Pub. L. 93–45, §106(a)(2), (b), authorized appropriations of $25,100,000 for fiscal year ending June 30, 1974, and extended period for making project grants from June 30, 1973, to June 30, 1974.

Subsec. (c). Pub. L. 93–45, §106(a)(3), (b), authorized appropriations of $4,700,000 for fiscal year ending June 30, 1974, and extended period for grants from June 30, 1973, to June 30, 1974.

Subsec. (d)(1). Pub. L. 93–45, §106(a)(4), authorized appropriations of $90,000,000 for fiscal year ending June 30, 1974.

Subsec. (e). Pub. L. 93–151 prohibited use of appropriated funds for lead based paint poisoning control.

Pub. L. 93–45, §106(a)(5), authorized appropriations of $230,700,000 for fiscal year ending June 30, 1974, and prohibited any grant for such fiscal year to cover cost of services described in cl. (1) or (2) of the first sentence if a grant or contract to cover cost of such services may be made or entered into from funds authorized to be appropriated for such fiscal year under an appropriations authorization in any provision of this chapter (other than this subsection) amended by title I of the Health Programs Extension Act of 1973.

1972—Subsec. (d)(2)(K). Pub. L. 92–255 required State plans to provide for licensing of facilities for treatment and rehabilitation of persons with drug abuse and other drug dependence problems and for expansion of State mental health programs and other prevention and treatment programs in the field of drug abuse and drug dependence.

1971—Subsec. (f). Pub. L. 91–648, §403(a), as amended by Pub. L. 94–454, §602(c), repealed subsec. (f) which authorized the Secretary to arrange the interchange of personnel with States to aid in discharge of responsibilities in field of health care, except as subsec. (b) applied to commissioned officers of the Public Health Service. See 1978 Amendment note above.

1970—Pub. L. 91–515, §282, substituted ''Secretary'' for ''Surgeon General'' in subsecs. (a)(1), (a)(2)(C), (E) to (H), (K), (a)(3)(B), (a)(4), (b)(1)(A), (c), (d)(1), (d)(2)(C), (F) to (H), (J), (d)(4)(A), (d)(6), and (g)(1) to (3).

Subsec. (a)(1). Pub. L. 91–515, §220(a), extended period for making grants to States from June 30, 1970 to June 30, 1973, and authorized appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

Subsec. (a)(2)(B). Pub. L. 91–515, §220(b), (c), inserted provisions authorizing appointment of an exofficio member from representatives of Federal, State, and local agencies involved, and requiring representation of the regional medical program or programs included in whole or in part within the State.

Subsec. (a)(2)(C). Pub. L. 91–515, §220(d), inserted ''and including home health care'' after ''private'' and ''and including environmental considerations as they relate to public health'' after ''people of the State''.

Subsec. (b). Pub. L. 91–515, §230, redesignated existing provisions as subsec. (b)(1)(A), and, as so redesignated, extended period for making project grants from June 30, 1970 to June 30, 1973, inserted ''and including the provision of such services through home health care'' after ''such services'', and authorized appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973, and added subsec. (b)(1)(B) and (b)(2).

Pub. L. 91–296, §111(b), inserted provisions requiring that before grants be made to agencies or organizations to develop or revise health plans for an area the Secretary determine that the agency or organization provides means for appropriate representation of the interests of the hospitals, practicing physicians, and the general public.

Subsec. (c). Pub. L. 91–515, §240, extended period for making grants from June 30, 1970, to June 30, 1973, and authorized appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

Subsec. (d)(1). Pub. L. 91–515, §250(a), authorized appropriations for fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

Pub. L. 91–296, §401(b)(1)(C), struck out except which provided for use of up to 1 per centum by Secretary for evaluation.

Subsec. (d)(2)(C). Pub. L. 91–515, §250(b), inserted provisions requiring State plan to contain assurances that the plan is compatible with total health program of the State.

Subsec. (d)(2)(K). Pub. L. 91–513 added subpar. (K).

Subsec. (d)(2)(L). Pub. L. 91–616 added subpar. (L).

Subsec. (e). Pub. L. 91–515, §260(a), (b), (c)(1), inserted provisions authorizing appropriations for fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973, provisions authorizing grants to cover part of cost of equity requirements and amortization of loans on facilities acquired from the Office of Economic Opportunity or construction in connection with any program or project transferred from the Office of Economic Opportunity, and provisions requiring the application for any grant made under this subsection to be referred for review and comment to the appropriate areawide health planning agency, or, if no such agency is in the area, then to such other public or nonprofit private agency or organization (if any) which performs similar functions.

Pub. L. 91–296, §401(b)(1)(D), struck out provision for use of up to 1 per centum of appropriation for grants under subsec. (e) by the Secretary for evaluation.

1967—Subsec. (a)(1). Pub. L. 90–174, §2(a)(1), extended period for making grants to States from June 30, 1968, to June 30, 1970, increased appropriations authorization for fiscal year ending June 30, 1968, from $5,000,000 to $7,000,000, and authorized appropriations of $10,000,000

and $15,000,000 for fiscal years ending June 30, 1969, and 1970, respectively.

Subsec. (a)(2)(I) to (K). Pub. L. 90–174, § 2(a)(2), added subpar. (I) and redesignated former subpars. (I) and (J) as (J) and (K), respectively.

Subsec. (a)(4). Pub. L. 90–174, § 2(a)(3), limited Federal share of expenditures, in case of allotments for fiscal year ending June 30, 1968, to 75 per centum of cost of planning.

Subsec. (b). Pub. L. 90–174, § 2(b)(1), (2), extended period for making grants to public or nonprofit private organizations from June 30, 1968, to June 30, 1970, and authorized appropriations of $10,000,000 and $15,000,000 for fiscal years ending June 30, 1969, and 1970, respectively, and provided for appropriate representation of interests of local government where recipient of grant is not a local government or combination thereof or an agency of such government or combination, respectively.

Subsec. (c). Pub. L. 90–174, § 2(c), extended period for making grants to public or nonprofit private organizations from June 30, 1968, to June 30, 1970, and authorized appropriations of $5,000,000 and $7,500,000 for fiscal years ending June 30, 1969, and 1970, respectively.

Subsec. (d)(1). Pub. L. 90–174, §§ 2(d)(1), 8(a), increased appropriations authorization for fiscal year ending June 30, 1968, from $62,500,000 to $70,000,000, and authorized appropriations of $90,000,000 and $100,000,000 for fiscal years ending June 30, 1969, and 1970, respectively, and made program evaluation funds available for any fiscal year ending after June 30, 1968, respectively.

Subsec. (d)(5). Pub. L. 90–174, § 2(d)(2), made Federal share of 66⅔ per centum applicable to the Trust Territory of the Pacific Islands.

Subsec. (d)(7). Pub. L. 90–174, § 2(d)(3), provided for an allocation of 70 per centum of funds for provision under the State plan of services in communities of the State.

Subsec. (e). Pub. L. 90–174, §§ 2(e), 3(b)(2), 8(b), increased appropriations authorization for fiscal year ending June 30, 1968, from $62,500,000 to $90,000,000, authorized appropriations of $95,000,000 and $80,000,000 for fiscal years ending June 30, 1969, and 1970, respectively, inserted ''(including related training)'' after ''providing services'' in cl. (1), substituted ''developing'' for ''stimulating'' and inserted ''(including related training)'' after ''health services'' in cl. (2), struck out cl. (3) which authorized grants to cover part of cost of undertaking studies, demonstrations, or training designed to develop new methods or improve existing methods of providing health services, and made program evaluation funds available for any fiscal year ending after June 30, 1968.

Subsec. (f)(5). Pub. L. 90–174, § 12(d)(1), inserted ''for'' before ''the expenses of travel''.

Subsec. (f)(6), (8). Pub. L. 90–174, § 12(d)(2), substituted ''Department'' for ''Service''.

Subsec. (g)(4)(B). Pub. L. 90–174, § 2(f), defined ''State'' to include the Trust Territory of the Pacific Islands.

1966—Subsec. (a). Pub. L. 89–749 substituted provisions authorizing the Surgeon General to make grants to States to assist in comprehensive and continuing planning for their current and future health needs, authorizing appropriations therefor, setting out the requirements for an acceptable State plan for comprehensive State health planning, covering the allotting of the appropriated sums to the States, and the payment of the allotted funds, for provisions authorizing the Surgeon General, through the use of grants and other assistance, to help local programs of prevention, treatment, and control of venereal diseases, covering the payment of the costs of assistance by personnel of the Public Health Service to assist in carrying out the purposes of the section with respect to venereal disease, and authorizing the appropriation of funds.

Subsec. (b). Pub. L. 89–749 substituted provisions for project grants by the Surgeon General covering the development of comprehensive regional, metropolitan, or local coordination of existing and planned health facilities and persons required for providing services and the authorization of appropriations of $5,000,000 for fiscal 1967 and $7,500,000 for fiscal 1968 for provisions authorizing the appropriation of funds to enable the Surgeon General to aid in the development of measures for the local prevention, treatment, and control of tuberculosis.

Subsec. (c). Pub. L. 89–749 substituted provisions for project grants for the development of improved or more effective comprehensive health planning throughout the United States and the authorization of appropriations of $1,500,000 for fiscal 1967 and $2,500,000 for fiscal 1968 for provisions authorizing the Surgeon General to assist, through grants and otherwise, in the establishment and maintenance of adequate public health services by States, counties, health districts, and other political subdivisions, authorizing appropriations therefor, and covering the allotment, payment, and allocation of appropriated funds.

Subsec. (d). Pub. L. 89–749 substituted provisions authorizing grants by the Surgeon General to State health or mental health authorities to assist in establishing and maintaining adequate public health services, setting out the requirements for an acceptable State plan for the supplying of public health services, authorizing an appropriation of $62,500,000 for fiscal 1968, the allotment of appropriated funds, payments to States, and the determination of the Federal share for provisions covering the allotment of appropriated funds among the several States on the basis of population, incidence of venereal disease, tuberculosis, mental health problems, and the financial needs of the various States.

Subsec. (e). Pub. L. 89–749 substituted provisions for project grants for health services development to public or private nonprofit agencies and for the authorization of an appropriation of $62,500,000 for fiscal 1968 for provisions covering the establishment and maintenance of community programs of heart disease control and the allotments and appropriations therefor.

Subsec. (f). Pub. L. 89–749 substituted provisions covering the interchange of personnel with States, the application of statutes covering Federal employees to interchanged personnel, and the coverage of State officers and employees, for provisions for the determination and certification of amounts paid to each State from allotments thereto.

Subsec. (g). Pub. L. 89–749 substituted provisions for consultation with State health planning agencies concerning regulations and amendments with respect to grants to States, the reduction of payments, cessation of payments for non-compliance, and definitions, for provisions limiting the expending of grant funds for purposes specified by statute and by the agency, organization, or institution to which payment was made.

Subsecs. (h) to (m). Pub. L. 89–749 struck out subsecs. (h) to (m) which dealt, respectively, with requirement that State funds be provided for same purpose as that for which allotted funds are spent, cessation of Federal aid and procedures in connection therewith, promulgation of rules and regulations and consultation with State health authorities precedent thereto, availability of appropriated funds for administrative expenses including printing and travel expenses, applicability of section to Guam and Samoa, and reduction of payments commensurate to expense of detailing of Public Health Service personnel to States.

1965—Subsec. (c). Pub. L. 89–109 substituted ''first six fiscal years ending after June 30, 1961'' for ''first five fiscal years ending after June 30, 1961'' and ''$5,000,000'' for ''$2,500,000''.

1962—Subsec. (*l*). Pub. L. 87–688 inserted ''and American Samoa'', ''or American Samoa'', and ''or American Samoa, respectively'' after ''Guam''.

1961—Subsec. (c). Pub. L. 87–395, § 2(a)–(c), substituted ''of the first five fiscal years ending after June 30, 1961, the sum of $50,000,000'' for ''fiscal year a sum not to exceed $30,000,000'', ''such amount as may be necessary'' for ''an amount, not to exceed $3,000,000'', ''$2,500,000'' for ''$1,000,000'', and provided that when an appropriating act provides that the amounts it specifies are available only for allotments and payments for such services and activities under this subsection as specified in such

act, the requirements of subsec. (h) shall apply to such allotments and payments.

Subsec. (m). Pub. L. 87–395, §2(d), added subsec. (m).

1958—Subsec. (c). Pub. L. 85–544 designated existing provisions of second sentence as cl. (1) and added cl. (2).

1956—Subsec. (*l*). Act Aug. 1, 1956, added subsec. (*l*).

1948—Subsec. (e). Act June 16, 1948, §5(a), added subsec. (e) to provide for community programs of heart disease control. Former subsec. (e) redesignated (f).

Subsec. (f). Act June 16, 1948, §5(a), (b), redesignated former subsec. (e) as (f) and inserted proviso relating to determination and certification of amounts to be paid under subsec. (e). Former subsec. (f) redesignated (g).

Subsec. (g). Act June 16, 1948, §5(a), (c), redesignated former subsec. (f) as (g) and brought subsecs. (e) and (f)(1) within the provisions of this subsection. Former subsec. (g) redesignated (h).

Subsec. (h). Act June 16, 1948, §5(a), (d), redesignated former subsec. (g) as (h) and made subsection applicable to agencies, institutions or other organizations specified in subsec. (f)(1). Former subsec. (h) redesignated (i).

Subsec. (i). Act June 16, 1948, §5(a), (e), redesignated former subsec. (h) as (i), made subsection applicable to subsec. (e), and made technical changes as a result of the renumbering of subsections. Former subsec. (i) redesignated (j).

Subsecs. (j), (k). Act June 16, 1948, §5(a), redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1946—Subsec. (c). Act July 3, 1946, increased annual appropriation from $20,000,000 to $30,000,000, and increased annual amount available to provide demonstrations and to train personnel for State and local health work from $2,000,000 to $3,000,000.

Subsec. (d). Act July 3, 1946, provided that Surgeon General shall give special consideration to the extent of the mental health problem as well as other special problems.

Subsecs. (f), (h), (i). Act July 3, 1946, provided that in matters relating to work in field of mental health Surgeon General shall deal with State mental health authorities where they differ from general health authorities.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 107(d) of Pub. L. 96–398 provided that the amendment made by that section is effective Sept. 30, 1981. See Repeals note below.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective one year after Oct. 4, 1979, see section 129(a) of Pub. L. 96–79.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 201(b)(2) of Pub. L. 95–626 provided that the amendment made by section is effective Oct. 1, 1979.

Section 403(b) of Pub. L. 91–648, as added by section 602(c) of Pub. L. 95–454, provided that the repeal of subsec. (f) of this section (as applicable to commissioned officers of the Public Health Service) is effective beginning on the effective date of the Civil Service Reform Act of 1978, i.e., 90 days after Oct. 13, 1978.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 102 of Pub. L. 94–63 provided that the amendment made by that section is effective with respect to grants made under subsec. (d) of this section from appropriations under such subsection for fiscal years beginning after June 30, 1975.

Amendment by section 501(b) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Repeal of subsec. (f) of this section (less applicability to commissioned officers of the Public Health Service) by section 403(a) of Pub. L. 91–648, as amended by Pub. L. 94–454, §602(c), effective sixty days after Jan. 5, 1971, see section 404 of Pub. L. 91–648, set out as an Effective Date note under section 3371 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1970 AMENDMENTS

Section 260(c)(2) of Pub. L. 91–515 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to grants under section 314(c) of the Public Health Service Act [subsec. (e) of this section] which are made after the date of enactment of this Act [Oct. 30, 1970.]''

Section 401(b)(1) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations for fiscal years beginning after June 30, 1970.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2(d)(2), (f) of Pub. L. 90–174 provided that the amendments made by that section are effective July 1, 1968.

Section 3(b) of Pub. L. 90–174 provided that the amendment of this section, the repeal of section 291n of this title, and the enactment of provisions set out as a note under section 242b of this title by such section 3(b) is effective with respect to appropriations for fiscal years ending after June 30, 1967.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 6 of Pub. L. 89–749 provided in part that: ''The amendments made by section 3 [amending this section] shall become effective as of July 1, 1966, except that the provisions of section 314 of the Public Health Service Act [this section] as in effect prior to the enactment of this Act shall be effective until July 1, 1967, in lieu of the provisions of subsections (d) and (e), and the provisions of subsections (g) insofar as they relate to such subsections (d) and (e), of section 314 of the Public Health Service Act [this section] as amended by this Act.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 4(b) of Pub. L. 87–688 provided that: ''The amendments made by this section [amending this section and sections 291g, 291i, and 291t of this title] shall become effective July 1, 1962.''

EFFECTIVE AND TERMINATION DATE OF 1958 AMENDMENT

Section 2 of Pub. L. 85–544 provided that: ''The amendment made by the first section of this Act [amending this section] shall be applicable only to the fiscal years beginning July 1, 1958, and July 1, 1959.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 18 of act Aug. 1, 1956, provided that the amendment made by that section is effective July 1, 1956.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 96–398, title I, §107(d), cited as a credit to this section and set out as an Effective Date of 1980 Amendment note above, which provided for repeal of subsec. (g) of this section, effective Sept. 30, 1981, was repealed by section 902(e)(1) of Pub. L. 97–35, title IX, Aug. 13, 1981, 95 Stat. 560, effective Oct. 1, 1981.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Health and Human Services under subsecs. (a)(2)(F) and (d)(2)(F) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(C) of this title.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare

and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

YEAR 2000 HEALTH OBJECTIVES PLANNING

Pub. L. 101–582, Nov. 15, 1990, 104 Stat. 2867, provided for grants for State plans regarding health objectives for year 2000, prior to repeal by Pub. L. 102–531, title I, § 105, Oct. 27, 1992, 106 Stat. 3474.

CONGRESSIONAL FINDINGS AND DECLARATION

Section 201(b)(1) of Pub. L. 95–626 provided that: ''The Congress finds and declares that—

''(A) individual health status can be effectively and economically improved through an adequate investment in community public health programs and services;

''(B) the Federal Government and the States and their communities share in the financial responsibility for funding public health programs;

''(C) the Federal contribution to funds for public health programs should serve as an incentive to an additional investment by State and local governments;

''(D) existing categorical programs of Federal financial assistance to combat specific public health problems should be supplemented by a national program of stable generic support for such public health activities as the prevention and control of environmental health hazards, prevention and control of diseases, prevention and control of health problems of particularly vulnerable population groups, and development and regulation of health care facilities and health services delivery systems; and

''(E) the States and their communities, not the Federal Government, should have primary responsibility for identifying and measuring the impact of public health problems and the allocation of resources for their amelioration.''

Section 2 of Pub. L. 89–749 provided that:

''(a) The Congress declares that fulfillment of our national purpose depends on promoting and assuring the highest level of health attainable for every person, in an environment which contributes positively to healthful individual and family living; that attainment of this goal depends on an effective partnership, involving close intergovernmental collaboration, official and voluntary efforts, and participation of individuals and organizations; that Federal financial assistance must be directed to support the marshaling of all health resources—national, State, and local—to assure comprehensive health services of high quality for every person, but without interference with existing patterns of private professional practice of medicine, dentistry, and related healing arts.

''(b) To carry out such purpose, and recognizing the changing character of health problems, the Congress finds that comprehensive planning for health services, health manpower, and health facilities is essential at every level of government; that desirable administration requires strengthening the leadership and capacities of State health agencies; and that support of health services provided people in their communities should be broadened and made more flexible.''

Section 2 of act July 3, 1956, provided that:

''(a) The Congress hereby finds and declares—

''(1) that the latest information on the number and relevant characteristics of persons in the country suffering from heart disease, cancer, diabetes, arthritis and rheumatism, and other diseases, injuries, and handicapping conditions is now seriously out of date; and

''(2) that periodic inventories providing reasonably current information on these matters are urgently needed for purposes such as (A) appraisal of the true state of health of our population (including both adults and children), (B) adequate planning of any programs to improve their health, (C) research in the field of chronic diseases, and (D) measurement of the numbers of persons in the working ages so disabled as to be unable to perform gainful work.

''(b) It is, therefore, the purpose of this Act [see Short Title of 1956 Amendment note set out under section 201 of this title] to provide (1) for a continuing survey and special studies to secure on a non-compulsory basis accurate and current statistical information on the amount, distribution, and effects of illness and disability in the United States and the services received for or because of such conditions; and (2) for studying methods and survey techniques for securing such statistical information, with a view toward their continuing improvement.''

LIMITATION ON GRANTS-IN-AID TO SCHOOLS OF PUBLIC HEALTH

Section 2 of Pub. L. 85–544, which had limited the authority of the Surgeon General to make grants-in-aid totaling not to exceed $1,000,000 annually to schools of public health for fiscal year beginning July 1, 1958, and July 1, 1959, was repealed by section 2 of Pub. L. 86–720, Sept. 8, 1960, 74 Stat. 820.

GRANTS TO STATES TO PROVIDE FOR VACCINATION AGAINST POLIOMYELITIS

The Poliomyelitis Vaccination Assistance Act of 1955, act Aug. 12, 1955, ch. 863, 69 Stat. 704, as amended Feb. 15, 1956, ch. 39, 70 Stat. 18, authorized appropriations to remain available until close of June 30, 1957 and provided for allotments to States, State application for funds, payments to States, use of funds paid to States, furnishing of vaccine by Surgeon General, diversion of Federal funds, supervision over exercise of functions, and definitions.

APPLICABILITY OF REORGANIZATION PLAN NO. 3 OF 1966

Section 7 of Pub. L. 89–749 provided that: ''The provisions enacted by this Act [amending this section and sections 242g and 243 of this title] shall be subject to the provisions of Reorganization Plan No. 3 of 1966 [set out as a note under section 202 of this title].''

§ 246a. Bureau of State Services management fund; establishment; advancements; availability

For the purpose of facilitating the economical and efficient conduct of operations in the Bureau of State Services which are financed by two or more appropriations where the costs of operation are not readily susceptible of distribution as charges to such appropriations, there is established the Bureau of State Services management fund. Such amounts as the Secretary may determine to represent a reasonable distribution of estimated costs among the various appropriations involved may be advanced each year to this fund and shall be available for expenditure for such costs under such regulations as may be prescribed by the Secretary: *Provided*, That funds advanced to this fund shall be available only in the fiscal year in which they are advanced: *Provided further*, That final adjustments of advances in accordance with actual costs shall be effected wherever practicable with the appropriations from which such funds are advanced.

(Pub. L. 86–703, title II, § 201, Sept. 2, 1960, 74 Stat. 765; Pub. L. 91–515, title II, § 282, Oct. 30, 1970, 84 Stat. 1308.)

CODIFICATION

Section was not enacted as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1970—Pub. L. 91–515 substituted ''Secretary'' for ''Surgeon General'' wherever appearing.

§ 247. Omitted

Section, act July 1, 1944, ch. 373, title III, § 315, as added Oct. 4, 1988, Pub. L. 100–471, § 1, 102 Stat. 2284, which related to grants for treatment drugs for acquired immune deficiency syndrome, ceased to exist Mar. 31, 1989, pursuant to subsec. (d) thereof.

PRIOR PROVISIONS

A prior section 247, act July 1, 1944, ch. 373, title III, § 315, as added Nov. 10, 1978, Pub. L. 95–626, title II, § 203, 92 Stat. 3578; amended July 10, 1979, Pub. L. 96–32, § 6(h), 93 Stat. 83, related to formula grants to States for preventive health service programs, prior to repeal by Pub. L. 99–117, § 12(b), Oct. 7, 1985, 99 Stat. 495.

Another prior section 247, acts July 1, 1944, ch. 373, title III, § 315, 58 Stat. 695; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308, provided for publication of health educational information, prior to repeal by Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362. See section 242*o*(b) of this title.

§ 247a. Family support groups for Alzheimer's disease patients

(a) Establishment; priorities

Subject to available appropriations, the Secretary, acting through the National Institute of Mental Health, the National Institutes of Health, and the Administration on Aging, shall promote the establishment of family support groups to provide, without charge, educational, emotional, and practical support to assist individuals with Alzheimer's disease or a related memory disorder and members of the families of such individuals. In promoting the establishment of such groups, the Secretary shall give priority to—

(1) university medical centers and other appropriate health care facilities which receive Federal funds from the Secretary and which conduct research on Alzheimer's disease or provide services to individuals with such disease; and

(2) community-based programs which receive funds from the Secretary, acting through the Administration on Aging.

(b) National network to coordinate groups

The Secretary shall promote the establishment of a national network to coordinate the family support groups described in subsection (a) of this section.

(July 1, 1944, ch. 373, title III, § 316, as added Pub. L. 99–319, title IV, § 401, May 23, 1986, 100 Stat. 489; amended Pub. L. 103–43, title XX, § 2008(a), June 10, 1993, 107 Stat. 210.)

PRIOR PROVISIONS

A prior section 247a, act July 1, 1944, ch. 373, title III, § 316, as added Nov. 10, 1978, Pub. L. 95–626, title II, § 208(a), 92 Stat. 3586; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(A), 95 Stat. 826, related to lead-based paint poisoning prevention programs, prior to repeal by Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827.

Another prior section 247a, act July 1, 1944, ch. 373, title III, § 316, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 281, 84 Stat. 1307, provided for establishment, composition, qualifications of members, terms of office, vacancies, reappointment, compensation, travel expenses, and functions of National Advisory Council on Comprehensive Health Planning Programs, prior to repeal by Pub. L. 93–641, § 5(d), Jan. 4, 1975, 88 Stat. 2275.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 struck out subsec. (c) which read as follows: ''The Secretary shall report to Congress, not later than one year after May 23, 1986, on family support groups and the network of such groups established pursuant to this section.''

§ 247b. Project grants for preventive health services

(a) Grant authority

The Secretary may make grants to States, and in consultation with State health authorities, to political subdivisions of States and to other public entities to assist them in meeting the costs of establishing and maintaining preventive health service programs.

(b) Application

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and be submitted in such manner as the Secretary shall by regulation prescribe and shall provide—

(1) a complete description of the type and extent of the program for which the applicant is seeking a grant under subsection (a) of this section;

(2) with respect to each such program (A) the amount of Federal, State, and other funds obligated by the applicant in its latest annual accounting period for the provision of such program, (B) a description of the services provided by the applicant in such program in such period, (C) the amount of Federal funds needed by the applicant to continue providing such services in such program, and (D) if the applicant proposes changes in the provision of the services in such program, the priorities of such proposed changes, reasons for such changes, and the amount of Federal funds needed by the applicant to make such changes;

(3) assurances satisfactory to the Secretary that the program which will be provided with funds under a grant under subsection (a) of this section will be provided in a manner consistent with the State health plan in effect under section 300m–3(c)[1] of this title and in those cases where the applicant is a State, that such program will be provided, where appropriate, in a manner consistent with any plans in effect under an application approved under section 247[1] of this title;

(4) assurances satisfactory to the Secretary that the applicant will provide for such fiscal control and fund accounting procedures as the Secretary by regulation prescribes to assure the proper disbursement of and accounting for funds received under grants under subsection (a) of this section;

(5) assurances satisfactory to the Secretary that the applicant will provide for periodic evaluation of its program or programs;

[1] See References in Text note below.

(6) assurances satisfactory to the Secretary that the applicant will make such reports (in such form and containing such information as the Secretary may by regulation prescribe) as the Secretary may reasonably require and keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness of, and to verify, such reports;

(7) assurances satisfactory to the Secretary that the applicant will comply with any other conditions imposed by this section with respect to grants; and

(8) such other information as the Secretary may by regulation prescribe.

(c) Approval; annual project review

(1) The Secretary shall not approve an application submitted under subsection (b) of this section for a grant for a program for which a grant was previously made under subsection (a) of this section unless the Secretary determines—

(A) the program for which the application was submitted is operating effectively to achieve its stated purpose,

(B) the applicant complied with the assurances provided the Secretary when applying for such previous grant, and

(C) the applicant will comply with the assurances provided with the application.

(2) The Secretary shall review annually the activities undertaken by each recipient of a grant under subsection (a) of this section to determine if the program assisted by such grant is operating effectively to achieve its stated purposes and if the recipient is in compliance with the assurances provided the Secretary when applying for such grant.

(d) Amount of grant; payment

The amount of a grant under subsection (a) of this section shall be determined by the Secretary. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

(e) Reduction

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by—

(1) the fair market value of any supplies (including vaccines and other preventive agents) or equipment furnished the grant recipient, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(f) Recordkeeping; audit authority

(1) Each recipient of a grant under subsection (a) of this section shall keep such records as the Secretary shall by regulation prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of grants under subsection (a) of this section that are pertinent to such grants.

(g) Use of grant funds; mandatory treatment prohibited

(1) Nothing in this section shall limit or otherwise restrict the use of funds which are granted to a State or to an agency or a political subdivision of a State under provisions of Federal law (other than this section) and which are available for the conduct of preventive health service programs from being used in connection with programs assisted through grants under subsection (a) of this section.

(2) Nothing in this section shall be construed to require any State or any agency or political subdivision of a State to have a preventive health service program which would require any person, who objects to any treatment provided under such a program, to be treated or to have any child or ward treated under such program.

(h) Reports

The Secretary shall include, as part of the report required by section 300u–4 of this title, a report on the extent of the problems presented by the diseases and conditions referred to in subsection (j) of this section; on the amount of funds obligated under grants under subsection (a) of this section in the preceding fiscal year for each of the programs listed in subsection (j) of this section; and on the effectiveness of the activities assisted under grants under subsection (a) of this section in controlling such diseases and conditions.

(i) Technical assistance

The Secretary may provide technical assistance to States, State health authorities, and other public entities in connection with the operation of their preventive health service programs.

(j) Authorization of appropriations

(1) Except for grants for immunization programs the authorization of appropriations for which are established in paragraph (2), for grants under subsections (a) and (k)(1) of this

section for preventive health service programs to immunize without charge children, adolescents, and adults against vaccine-preventable diseases, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1998 through 2005. Not more than 10 percent of the total amount appropriated under the preceding sentence for any fiscal year shall be available for grants under subsection (k)(1) of this section for such fiscal year.

(2) For grants under subsection (a) of this section for preventive health service programs for the provision without charge of immunizations with vaccines approved for use, and recommended for routine use, after October 1, 1997, there are authorized to be appropriated such sums as may be necessary.

(k) Additional grants to States, political subdivisions, and other public and nonprofit private entities

(1) The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

(A) research into the prevention and control of diseases that may be prevented through vaccination;

(B) demonstration projects for the prevention and control of such diseases;

(C) public information and education programs for the prevention and control of such diseases; and

(D) education, training, and clinical skills improvement activities in the prevention and control of such diseases for health professionals (including allied health personnel).

(2) The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

(A) research into the prevention and control of diseases and conditions;

(B) demonstration projects for the prevention and control of such diseases and conditions;

(C) public information and education programs for the prevention and control of such diseases and conditions; and

(D) education, training, and clinical skills improvement activities in the prevention and control of such diseases and conditions for health professionals (including allied health personnel).

(3) No grant may be made under this subsection unless an application therefor is submitted to the Secretary in such form, at such time, and containing such information as the Secretary may by regulation prescribe.

(4) Subsections (d), (e), and (f) of this section shall apply to grants under this subsection in the same manner as such subsections apply to grants under subsection (a) of this section.

(July 1, 1944, ch. 373, title III, § 317, as added Pub. L. 87–868, § 2, Oct. 23, 1962, 76 Stat. 1155; amended Pub. L. 89–109, § 2, Aug. 5, 1965, 79 Stat. 435; Pub. L. 91–464, § 2, Oct. 16, 1970, 84 Stat. 988; Pub. L. 92–449, title I, § 101, Sept. 30, 1972, 86 Stat. 748; Pub. L. 93–354, § 4, July 23, 1974, 88 Stat. 376; Pub. L. 94–63, title VI, § 601, July 29, 1975, 89 Stat. 346; Pub. L. 94–317, title II, § 202(a), June 23, 1976, 90 Stat. 700; Pub. L. 94–380, § 2, Aug. 12, 1976, 90 Stat. 1113; Pub. L. 95–626, title II, §§ 202, 204(b)(2), Nov. 10, 1978, 92 Stat. 3574, 3583; Pub. L. 96–32, § 6(i), July 10, 1979, 93 Stat. 83; Pub. L. 97–35, title IX, § 928, Aug. 13, 1981, 95 Stat. 569; Pub. L. 98–555, § 2, Oct. 30, 1984, 98 Stat. 2854; Pub. L. 99–117, § 11(c), Oct. 7, 1985, 99 Stat. 495; Pub. L. 100–177, title I, §§ 110(a), 111, Dec. 1, 1987, 101 Stat. 990, 991; Pub. L. 101–368, § 2, Aug. 15, 1990, 104 Stat. 446; Pub. L. 101–502, § 2(a), Nov. 3, 1990, 104 Stat. 1285; Pub. L. 103–183, title III, § 301(b), Dec. 14, 1993, 107 Stat. 2235; Pub. L. 105–392, title III, § 303, Nov. 13, 1998, 112 Stat. 3586; Pub. L. 106–310, div. A, title XVII, § 1711, Oct. 17, 2000, 114 Stat. 1152.)

REFERENCES IN TEXT

Section 300m–3 of this title, referred to in subsec. (b)(3), was repealed by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 247 of this title, referred to in subsec. (b)(3), was repealed by Pub. L. 99–117, § 12(b), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

2000—Subsec. (j)(1). Pub. L. 106–310 substituted ''1998 through 2005'' for ''1998 through 2002'' in first sentence.

1998—Subsec. (j)(1). Pub. L. 105–392, § 303(1), substituted ''children, adolescents, and adults against vaccine-preventable diseases, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1998 through 2002.'' for ''individuals against vaccine-preventable diseases, there are authorized to be appropriated $205,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.''

Subsec. (j)(2). Pub. L. 105–392, § 303(2), substituted ''1997'' for ''1990''.

1993—Subsec. (j). Pub. L. 103–183, § 301(b)(1), redesignated subpars. (A) and (B) of par. (1) as pars. (1) and (2), respectively, substituted ''established in paragraph (2)'' for ''established in subparagraph (B)'' in par. (1), and struck out former par. (2), which read as follows: ''For grants under subsection (a) of this section for preventive health service programs for the prevention, control, and elimination of tuberculosis, and for grants under subsection (k)(2) of this section, there are authorized to be appropriated $24,000,000 for fiscal year 1988, $31,000,000 for fiscal year 1989, $36,000,000 for fiscal year 1990, $36,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995. Not more than 10 percent of the total amount appropriated under the preceding sentence for any fiscal year shall be available for grants under subsection (k)(2) of this section for such fiscal year.''

Subsec. (k)(2). Pub. L. 103–183, § 301(b)(2)(A), (B), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

''(A) research into the prevention, control, and elimination of tuberculosis, especially research concerning strains of tuberculosis resistant to drugs and research concerning cases of tuberculosis that affect certain populations;

''(B) demonstration projects for the prevention, control, and elimination of tuberculosis;

''(C) public information and education programs for prevention, control, and elimination of tuberculosis; and

''(D) education, training, and clinical skills improvement activities in the prevention, control, and elimination of tuberculosis for health professionals, including allied health personnel.''

Subsec. (k)(3). Pub. L. 103–183, § 301(b)(2)(B), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (k)(4), (5). Pub. L. 103–183, § 301(b)(2)(B), (C), redesignated par. (5) as (4) and made technical amendments to references to subsections (d), (e), and (f) of this section and subsection (a) of this section, to reflect

change in references to corresponding provisions of original act. Former par. (4) redesignated (3).

Subsec. (*l*). Pub. L. 103–183, § 301(b)(3), struck out subsec. (*l*) which related to establishment and function of Advisory Council for the Elimination of Tuberculosis.

1990—Subsec. (j)(1)(A). Pub. L. 101–502, § 2(a)(1), substituted provisions authorizing appropriations for fiscal years 1991 through 1995 for provisions authorizing appropriations for fiscal years 1988 through 1990.

Subsec. (j)(1)(B). Pub. L. 101–502, § 2(a)(2), substituted Oct. 1, 1990, for Dec. 1, 1987, and provisions authorizing appropriations as may be necessary for provisions authorizing appropriations for fiscal years 1988 to 1990.

Subsec. (j)(1)(C). Pub. L. 101–502, § 2(a)(3), struck out subpar. (C) which, on the implementation of part 2 of subchapter XIX of this chapter, authorized appropriations for grants under subsec. (a) of this section for fiscal years 1988 to 1990.

Subsec. (j)(2). Pub. L. 101–368, § 2(c), inserted provisions authorizing appropriations of $36,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992 through 1995.

Pub. L. 101–368, § 2(a)(1), substituted ''preventive health service programs for the prevention, control, and elimination of tuberculosis'' for ''preventive health service programs for tuberculosis''.

Subsec. (k)(2)(A) to (D). Pub. L. 101–368, § 2(a)(2), substituted ''prevention, control, and elimination'' for ''prevention and control''.

Subsec. (*l*). Pub. L. 101–368, § 2(b), added subsec. (*l*).

1987—Subsec. (j). Pub. L. 100–177, §§ 110(a), 111(a), amended subsec. (j) generally, substituting provisions authorizing appropriations for fiscal years 1988 to 1990 for grants under subsecs. (a) and (k) of this section for former provisions authorizing appropriations for fiscal years 1982 to 1987 for grants under subsec. (a) of this section.

Subsec. (k). Pub. L. 100–177, § 111(b), added subsec. (k).

1985—Subsec. (j). Pub. L. 99–117 amended directory language of Pub. L. 97–35, § 928(b), to correct a technical error. See 1981 Amendment note below.

1984—Subsec. (j)(1). Pub. L. 98–555, § 2(a), substituted ''immunize individuals against vaccine-preventable diseases'' for ''immunize children against immunizable diseases'' and inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

Subsec. (j)(2). Pub. L. 98–555, § 2(b), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

1981—Subsec. (a). Pub. L. 97–35, § 928(a), struck out par. (1) which related to grants to State health authorities, and redesignated par. (2) as entire section and, as so redesignated, struck out reference to former par. (1).

Subsec. (j). Pub. L. 97–35, § 928(b), as amended by Pub. L. 99–117, substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984, for provisions setting forth appropriations through fiscal year ending Sept. 30, 1981, and provisions setting forth limitations, conditions, etc., for appropriations.

1979—Subsec. (j)(4), (5). Pub. L. 96–32 added par. (4), redesignated former par. (4) as (5) and, in par. (5) as so redesignated, substituted ''paragraph (1), (2), (3), or (4)'' for ''paragraph (1), (2), or (3)''.

1978—Pub. L. 95–626, § 202, amended section generally, substituting provisions relating to project grants for preventive health services for provisions relating to grants for disease control programs.

Subsec. (g)(2). Pub. L. 95–626, § 204(b)(2), struck out ''Except as provided in section 247c of this title,'' before ''No funds appropriated under any provision of this chapter''.

1976—Pub. L. 94–317 amended section generally to include many non-communicable diseases as well as expanding coverage of communicable diseases, increased appropriations for grants, widened scope of Secretary's authority to make grants and enter into contracts to include nonprofit private entities, and required a report from the Secretary on the effectiveness of all Federal and other public and private activities in controlling the diseases covered under this section.

Subsecs. (j) to (*l*). Pub. L. 94–380 added subsecs. (j) to (*l*).

1975—Subsec. (d)(3). Pub. L. 94–63, § 601(b), inserted authorization of appropriation for fiscal year 1976.

Subsec. (h)(1). Pub. L. 94–63, § 601(a), inserted reference to diseases borne by rodents.

1974—Subsec. (a). Pub. L. 93–354, § 4(1)–(3), substituted ''communicable and other disease control'' for ''communicable disease control'', ''communicable and other diseases'' for ''communicable diseases'', and ''communicable and other disease control program'' for ''communicable disease program''.

Subsec. (b)(2)(C). Pub. L. 93–354, § 4(1), (4), substituted ''communicable or other disease'' for ''communicable disease'' in cl. (i) and ''communicable and other disease control'' for ''communicable disease control'' in cl. (ii).

Subsecs. (b)(3), (d)(1), (2), (3), (f)(1). Pub. L. 93–354, § 4(1), substituted ''communicable and other disease control'' for ''communicable disease control''.

Subsec. (h)(1). Pub. L. 93–354, § 4(1), (5), substituted ''communicable and other disease control'' for ''communicable disease control'' in two places and inserted reference to diabetes mellitus.

Subsec. (i). Pub. L. 93–354, § 4(1), substituted ''communicable and other disease control'' for ''communicable disease control''.

1972—Subsec. (a). Pub. L. 92–449 substituted provision for grants by the Secretary in consultation with the State health authority to agencies and political subdivisions of States, for former provision for grants by the Secretary with the approval of the State health authority to political subdivisions or instrumentalities of States, incorporated existing provisions in provision designated as cl. (1), inserting '', in the area served by the applicant for the grant,'', substituted a cl. (2) reading ''design of the applicant's communicable disease program to determine its effectiveness'', for former provision reading ''levels of performance in preventing and controlling such diseases'', struck out appropriations authorization of $75,000,000 and $90,000,000 for fiscal years ending June 30, 1971, and 1972, now covered for subsequent years in subsec. (d), and struck out provision for use of grants to meet cost of studies to determine the control needs of communities and the means of best meeting such needs, now covered in subsec. (h)(1) of this section.

Subsec. (b). Pub. L. 92–449 substituted provisions of par. (1) respecting applications for grants, submission, approval, form, and content of applications; par. (2) respecting application requirements; and par. (3) incorporating former subsec. (g) provisions respecting consent of individuals for former definitions provision now incorporated in subsec. (h) of this section.

Subsec. (c). Pub. L. 92–449 designated existing provisions as par. (1) and among minor punctuation changes inserted ''under grants'' after ''Payments''; and redesignated former subsec. (d) as par. (2), inserted ''of the Government'' after ''officer or employee'', substituted ''in detailing the personnel'' for ''personal services'', and struck out provision that reduced amount shall, for purposes of subsec. (c), be deemed to have been paid to the agency.

Subsec. (d). Pub. L. 92–449 substituted provisions respecting authorization of appropriations and limitation on use of funds for provisions respecting grant reduction.

Subsec. (e). Pub. L. 92–449 substituted provisions for emergency plan development and authorization of appropriations for provisions relating to use of funds.

Subsec. (f). Pub. L. 92–449 substituted provisions respecting conditional limitation on use of funds for provisions for an annual report.

Subsec. (g). Pub. L. 92–449 incorporated former subsec. (f) provisions in introductory text and cl. (3), prescribed a January 1 submission date, and inserted provisions of cls. (1), (2), and (4). Former subsec. (g) consent of individuals provision respecting communicable disease control and vaccination assistance were cov-

ered in subsec. (b)(3) of this section and section 247c(h) of this title.

Subsec. (h). Pub. L. 92–449 redesignated former subsec. (b) as (h), substituted in introductory text ''this section'' for ''this subsection'', and in par. (1) struck out ''venereal disease'' after ''tuberculosis,'', inserted ''(other than venereal disease)'' after ''other communicable diseases'', and included in definition of ''communicable disease control program'' vaccination programs, laboratory services, and control studies.

Subsec. (i). Pub. L. 92–449 redesignated former subsec. (e) as (i), inserted reference to agency of a State, and substituted ''under provisions of Federal law (other than this chapter)'' for ''under other provisions of this chapter or other Federal law''.

1970—Subsec. (a). Pub. L. 91–464 authorized appropriation of $75,000,000 for fiscal year ending June 30, 1971, and $90,000,000 for fiscal year ending June 30, 1972, and made award of grants dependent upon extent of communicable disease and success of programs and permitted use of grants for meeting cost of programs and studies to control communicable diseases and struck out reference to purchase of vaccines and use of grants for salaries and expenses of personnel and to authority of the Surgeon General.

Subsec. (b). Pub. L. 91–464 substituted definitions of ''communicable disease control program'' and ''State'' for definition of ''immunization program''.

Subsec. (c). Pub. L. 91–464 substituted reference to Secretary for reference to Surgeon General and struck out provisions relating to purchasing and furnishing of vaccines and requirement of obtaining assurances from recipients of grants.

Subsec. (d). Pub. L. 91–464 substituted reference to Secretary for reference to Surgeon General and struck out reference to Public Health Service.

Subsec. (e). Pub. L. 91–464 struck out reference to title V of the Social Security Act and substituted provisions for the use of funds for the conduct of communicable disease control programs for provisions for the purchase of vaccine or for organizing, promoting, conducting, or participating in immunization programs.

Subsecs. (f), (g). Pub. L. 91–464 added subsecs. (f) and (g).

1965—Subsec. (a). Pub. L. 89–109, § 2(a), (b), (d)(1), inserted ''and each of the next three fiscal years'', substituted ''any fiscal year ending prior to July 1, 1968'' for ''the fiscal years ending June 30, 1963, and June 30, 1964'', ''tetanus, and measles'' for ''and tetanus'', ''of preschool age'' for ''under the age of five years'', and ''immunization'' for ''intensive community vaccination'', and permitted grants to be used to pay costs in connection with immunization of other infectious diseases.

Subsec. (b). Pub. L. 89–109, § 2(c), (d)(1), substituted ''against the diseases referred to in subsection (a) of this section'' for ''against poliomyelitis, diphtheria, whooping cough, and tetanus'', ''of preschool age'' for ''who are under the age of five years'' and ''immunization'' for ''intensive community vaccination'' in two places.

Subsec. (c). Pub. L. 89–109, § 2(d)(1), (e), inserted ''on the basis of estimates'' and ''(with necessary adjustments on account of underpayments or overpayments)'' in par. (1), and substituted ''immunization'' for ''intensive community vaccination'' in pars. (2) and (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 202 of Pub. L. 95–626, as amended by Pub. L. 96–32, § 6(g), July 10, 1979, 93 Stat. 83, provided that the amendment made by that section is effective Oct. 1, 1978.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 202(a) of Pub. L. 94–317 provided that the amendment made by that section is effective with respect to grants under this section for fiscal years beginning after June 30, 1975.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 608 of title VI of Pub. L. 94–63 provided that: ''Except as may otherwise be specifically provided, the amendments made by this title [enacting sections 300c–21 and 300c–22 of this title, amending this section, and enacting provisions set out as notes under sections 289, 289k–2, and 1395x of this title] and by titles I [amending section 246 of this title and enacting provisions set out as notes under section 246 of this title], II [enacting sections 300a–6a and 300a–8 of this title, amending sections 300 and 300a–1 to 300a–4 of this title, repealing section 3505c of this title, and enacting provision set out as a note under section 300 of this title], III [enacting sections 2689 to 2689aa of this title, amending sections 2691 and 2693 to 2696 of this title, and enacting provisions set out as notes under section 2689 of this title], IV [amending sections 218 and 254b of this title and enacting provision set out as a note under section 254b of this title], and V [enacting section 254c of this title and amending section 246 of this title] of this Act shall take effect July 1, 1975. The amendments made by this title and by such titles to the provisions of law amended by this title and by such titles are made to such provisions as amended by title VII of this Act [amending sections 246, 254b, 300, 300a–1 to 300a–3 of this title and sections 2681, 2687, 2688a, 2688d, 2688j–1, 2688j–2, 2688*l*, 2688*l*–1, 2688n–1, 2688*o*, and 2688u of this title].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 102 of Pub. L. 92–449 provided that: ''The amendment made by section 101 of this title [amending this section] shall apply to grants made under section 317 of the Public Health Service Act [this section] after June 30, 1972, except that subsection (d) of such section as amended by section 101 [subsec. (d) of this section] shall take effect on the date of enactment of this Act [Sept. 30, 1972].''

ASSISTANCE OF ADMINISTRATOR OF VETERANS' AFFAIRS IN ADMINISTRATION OF NATIONAL SWINE FLU IMMUNIZATION PROGRAM OF 1976; CLAIMS FOR DAMAGES

Pub. L. 94–420, § 3, Sept. 23, 1976, 90 Stat. 1301, provided that, in order to assist Secretary of Health, Education, and Welfare in carrying out National Swine Flu Immunization Program of 1976 pursuant to 42 U.S.C. 247b(j), as added by Pub. L. 94–380, Administrator of Veterans' Affairs, in accordance with 42 U.S.C. 2476(j), could authorize administration of vaccine, procured under such program and provided by Secretary at no cost to Veterans' Administration, to eligible veterans (voluntarily requesting such vaccine) in connection with provision of care for a disability under chapter 17 of title 38, in any health care facility under jurisdiction of Administrator, and provided for consideration and processing of claims and suits for damages for personal injury or death, in connection with administration of vaccine.

STUDY BY SECRETARY OF SCOPE AND EXTENT OF LIABILITY ARISING OUT OF IMMUNIZATION PROGRAM; ALTERNATIVE PROTECTIVE APPROACHES; REPORT TO CONGRESS

Section 3 of Pub. L. 94–380 directed Secretary to conduct a study of liability for personal injuries or death arising out of immunization programs and of alternative approaches to provide protection against such liability and report to Congress on findings of such study by Aug. 12, 1977.

§ 247b–1. Screenings, referrals, and education regarding lead poisoning

(a) Authority for grants

(1) In general

Subject to paragraph (2), the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States and political subdivisions of States for the initiation and expansion of community programs designed—

(A) to provide, for infants and children—

(i) screening for elevated blood lead levels;

(ii) referral for treatment of such levels; and

(iii) referral for environmental intervention associated with such levels; and

(B) to provide education about childhood lead poisoning.

(2) Authority regarding certain entities

With respect to a geographic area with a need for activities authorized in paragraph (1), in any case in which neither the State nor the political subdivision in which such area is located has applied for a grant under paragraph (1), the Secretary may make a grant under such paragraph to any grantee under section 254b, 254b, or 256a of this title[1] for carrying out such activities in the area.

(3) Provision of all services and activities through each grantee

In making grants under paragraph (1), the Secretary shall ensure that each of the activities described in such paragraph is provided through each grantee under such paragraph. The Secretary may authorize such a grantee to provide the services and activities directly, or through arrangements with other providers.

(b) Status as medicaid provider

(1) In general

Subject to paragraph (2), the Secretary may not make a grant under subsection (a) of this section unless, in the case of any service described in such subsection that is made available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(A) the applicant for the grant will provide the service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(B) the applicant will enter into an agreement with a provider under which the provider will provide the service, and the provider has entered into such a participation agreement and is qualified to receive such payments.

(2) Waiver regarding certain secondary agreements

(A) In the case of a provider making an agreement pursuant to paragraph (1)(B) regarding the provision of services, the requirement established in such paragraph regarding a participation agreement shall be waived by the Secretary if the provider does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits plan.

(B) A determination by the Secretary of whether a provider referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the provider accepts voluntary donations regarding the provision of services to the public.

(c) Priority in making grants

In making grants under subsection (a) of this section, the Secretary shall give priority to applications for programs that will serve areas with a high incidence of elevated blood lead levels in infants and children.

(d) Grant application

No grant may be made under subsection (a) of this section, unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall prescribe and shall include each of the following:

(1) A complete description of the program which is to be provided by or through the applicant.

(2) Assurances satisfactory to the Secretary that the program to be provided under the grant applied for will include educational programs designed to—

(A) communicate to parents, educators, and local health officials the significance and prevalence of lead poisoning in infants and children (including the sources of lead exposure, the importance of screening young children for lead, and the preventive steps that parents can take in reducing the risk of lead poisoning) which the program is designed to detect and prevent; and

(B) communicate to health professionals and paraprofessionals updated knowledge concerning lead poisoning and research (including the health consequences, if any, of low-level lead burden; the prevalence of lead poisoning among all socioeconomic groupings; the benefits of expanded lead screening; and the therapeutic and other interventions available to prevent and combat lead poisoning in affected children and families).

(3) Assurances satisfactory to the Secretary that the applicant will report on a quarterly basis the number of infants and children screened for elevated blood lead levels, the number of infants and children who were found to have elevated blood lead levels, the number and type of medical referrals made for such infants and children, the outcome of such referrals, and other information to measure program effectiveness.

(4) Assurances satisfactory to the Secretary that the applicant will make such reports respecting the program involved as the Secretary may require.

(5) Assurances satisfactory to the Secretary that the applicant will coordinate the activities carried out pursuant to subsection (a) of this section with related activities and services carried out in the State by grantees under title V or XIX of the Social Security Act [42 U.S.C. 701 et seq., 1396 et seq.].

(6) Assurances satisfactory to the Secretary that Federal funds made available under such a grant for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of

[1] See References in Text notes below.

such Federal funds, be made available for the program for which the grant is to be made and will in no event supplant such State, local, and other non-Federal funds.

(7) Assurances satisfactory to the Secretary that the applicant will ensure complete and consistent reporting of all blood lead test results from laboratories and health care providers to State and local health departments in accordance with guidelines of the Centers for Disease Control and Prevention for standardized reporting as described in subsection (m) of this section.

(8) Such other information as the Secretary may prescribe.

(e) Relationship to services and activities under other programs

(1) In general

A recipient of a grant under subsection (a) of this section may not make payments from the grant for any service or activity to the extent that payment has been made, or can reasonably be expected to be made, with respect to such service or activity—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis.

(2) Applicability to certain secondary agreements for provision of services

Paragraph (1) shall not apply in the case of a provider through which a grantee under subsection (a) of this section provides services under such subsection if the Secretary has provided a waiver under subsection (b)(2) of this section regarding the provider.

(f) Method and amount of payment

The Secretary shall determine the amount of a grant made under subsection (a) of this section. Payments under such grants may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants. Not more than 10 percent of any grant may be obligated for administrative costs.

(g) Supplies, equipment, and employee detail

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by—

(1) the fair market value of any supplies or equipment furnished the grant recipient; and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(h) Records

Each recipient of a grant under subsection (a) of this section shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(i) Audit and examination of records

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under subsection (a) of this section, that are pertinent to such grant.

(j) Annual report

(1) In general

Not later than May 1 of each year, the Secretary shall submit to the Congress a report on the effectiveness during the preceding fiscal year of programs carried out with grants under subsection (a) of this section and of any programs that are carried out by the Secretary pursuant to subsection (*l*)(2) of this section.

(2) Certain requirements

Each report under paragraph (1) shall include, in addition to any other information that the Secretary may require, the following information:

(A) The number of infants and children screened.

(B) Demographic information on the population of infants and children screened, including the age and racial or ethnic status of such population.

(C) The number of screening sites.

(D) A description of the severity of the extent of the blood lead levels of the infants and children screened, expressed in categories of severity.

(E) The sources of payment for the screenings.

(F) The number of grantees that have established systems to ensure mandatory reporting of all blood lead tests from laboratories and health care providers to State and local health departments.

(G) A comparison of the data provided pursuant to subparagraphs (A) through (F) with the equivalent data, if any, provided in the report under paragraph (1) preceding the report involved.

(k) Indian tribes

For purposes of this section, the term ''political subdivision'' includes Indian tribes.

(*l*) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 2005.

(2) Allocation for other programs

Of the amounts appropriated under paragraph (1) for any fiscal year, the Secretary may reserve not more than 20 percent for carrying out programs regarding the activities described in subsection (a) of this section in addition to the program of grants established in such subsection.

(m) Guidelines for standardized reporting

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop national guidelines for the uniform reporting of all blood lead test results to State and local health departments.

(July 1, 1944, ch. 373, title III, § 317A, as added Pub. L. 100–572, § 3, Oct. 31, 1988, 102 Stat. 2887; amended Pub. L. 102–531, title III, § 303(a), Oct. 27, 1992, 106 Stat. 3484; Pub. L. 103–183, title VII, § 705(a), Dec. 14, 1993, 107 Stat. 2241; Pub. L. 105–392, title IV, § 404, Nov. 13, 1998, 112 Stat. 3588; Pub. L. 106–310, div. A, title XXV, §§ 2501(a), (b), 2504, Oct. 17, 2000, 114 Stat. 1161, 1164; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 108–163, § 2(m)(1), Dec. 6, 2003, 117 Stat. 2023.)

REFERENCES IN TEXT

The reference to section 254b of this title the first place appearing, referred to in subsec. (a)(2), was in the original a reference to section 329, meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626.

Section 256a of this title, referred to in subsec. (a)(2), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

The Social Security Act, referred to in subsecs. (b)(1) and (d)(5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V and XIX of the Act are classified generally to subchapters V (§ 701 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 247b–1, Pub. L. 95–626, title IV, § 401, Nov. 10, 1978, 92 Stat. 3590; S. Res. 30, Mar. 7, 1979; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; H. Res. 549, Mar. 25, 1980, related to demonstration and evaluation of optimal methods for organizing and delivering comprehensive preventive health services to defined populations, prior to repeal by Pub. L. 97–35, title IX, § 902(a), (h), Aug. 13, 1981, 95 Stat. 559, 561, eff. Oct. 1, 1981.

AMENDMENTS

2003—Subsec. (a)(2). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before '', or''.

2002—Subsec. (a)(2). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

2000—Subsec. (d)(7), (8). Pub. L. 106–310, § 2501(a)(1), added par. (7) and redesignated former par. (7) as (8).

Subsec. (j)(2)(F), (G). Pub. L. 106–310, § 2501(a)(2), added subpar. (F), redesignated former subpar. (F) as (G), and substituted ''(F)'' for ''(E)''.

Subsec. (*l*)(1). Pub. L. 106–310, § 2504, substituted ''1994 through 2005'' for ''1994 through 2002''.

Subsec. (m). Pub. L. 106–310, § 2501(b), added subsec. (m).

1998—Subsec. (*l*)(1). Pub. L. 105–392 substituted ''2002'' for ''1998''.

1993—Subsec. (*l*)(1). Pub. L. 103–183 substituted ''through 1998'' for ''through 1997''.

1992—Pub. L. 102–531 amended section generally, substituting present provisions for provisions relating to grants to States for lead poisoning prevention, grant applications, conditions for approval, method and amount of payment, reduction of amount, recordkeeping and audits, inclusion of Indian tribes as grant recipients, and authorization of appropriations.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

DEVELOPMENT AND IMPLEMENTATION OF EFFECTIVE DATA MANAGEMENT BY THE CENTERS FOR DISEASE CONTROL AND PREVENTION

Pub. L. 106–310, div. A, title XXV, § 2501(c), Oct. 17, 2000, 114 Stat. 1161, provided that:

''(1) IN GENERAL.—The Director of the Centers for Disease Control and Prevention shall—

''(A) assist with the improvement of data linkages between State and local health departments and between State health departments and the Centers for Disease Control and Prevention;

''(B) assist States with the development of flexible, comprehensive State-based data management systems for the surveillance of children with lead poisoning that have the capacity to contribute to a national data set;

''(C) assist with the improvement of the ability of State-based data management systems and federally-funded means-tested public benefit programs (including the special supplemental food program for women, infants and children (WIC) under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) and the early head start program under section 645A of the Head Start Act (42 U.S.C. 9840a(h)) to respond to ad hoc inquiries and generate progress reports regarding the lead blood level screening of children enrolled in those programs;

''(D) assist States with the establishment of a capacity for assessing how many children enrolled in the Medicaid, WIC, early head start, and other federally-funded means-tested public benefit programs are being screened for lead poisoning at age-appropriate intervals;

''(E) use data obtained as result of activities under this section to formulate or revise existing lead blood screening and case management policies; and

''(F) establish performance measures for evaluating State and local implementation of the requirements and improvements described in subparagraphs (A) through (E).

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for each [sic] the fiscal years 2001 through 2005.

''(3) EFFECTIVE DATE.—This subsection takes effect on the date of the enactment of this Act [Oct. 17, 2000].''

§ 247b–2. Repealed. Pub. L. 97–35, title IX, § 902(a), Aug. 13, 1981, 95 Stat. 559

Section, Pub. L. 95–626, title IV, § 402, Nov. 10, 1978, 92 Stat. 3591; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to deterrence of smoking and alcoholic beverage use among children and adolescents.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 300aaa–12 of this title.

§ 247b–3. Education, technology assessment, and epidemiology regarding lead poisoning

(a) Prevention

(1) Public education

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall carry out a program to educate health professionals and paraprofessionals and the general public on the prevention of lead poisoning in infants and children. In carrying out the program, the Secretary shall make available information concerning the health effects of low-level lead toxicity, the causes of lead poisoning, and the primary and secondary preventive measures that may be taken to prevent such poisoning.

(2) Interagency Task Force

(A) Not later than 6 months after October 27, 1992, the Secretary shall establish a council to be known as the Interagency Task Force on the Prevention of Lead Poisoning (in this paragraph referred to as the ''Task Force''). The Task Force shall coordinate the efforts of Federal agencies to prevent lead poisoning.

(B) The Task Force shall be composed of—

(i) the Secretary, who shall serve as the chair of the Task Force;

(ii) the Secretary of Housing and Urban Development;

(iii) the Administrator of the Environmental Protection Agency; and

(iv) senior staff of each of the officials specified in clauses (i) through (iii), as selected by the officials respectively.

(C) The Task Force shall—

(i) review, evaluate, and coordinate current strategies and plans formulated by the officials serving as members of the Task Force, including—

(I) the plan of the Secretary of Health and Human Services entitled ''Strategic Plan for the Elimination of Lead Poisoning'', dated February 21, 1991;

(II) the plan of the Secretary of Housing and Urban Development entitled ''Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing'', dated December 7, 1990; and

(III) the strategy of the Administrator of the Environmental Protection Agency entitled ''Strategy for Reducing Lead Exposures'', dated February 21, 1991;

(ii) develop a unified implementation plan for programs that receive Federal financial assistance for activities related to the prevention of lead poisoning;

(iii) establish a mechanism for sharing and disseminating information among the agencies represented on the Task Force;

(iv) identify the most promising areas of research and education concerning lead poisoning;

(v) identify the practical and technological constraints to expanding lead poisoning prevention;

(vi) annually carry out a comprehensive review of Federal programs providing assistance to prevent lead poisoning, and not later than May 1 of each year, submit to the Committee on Labor and Human Resources of the Senate and the Committee on the Environment and Public Works of the Senate, and to the Committee on Energy and Commerce of the House of Representatives, a report that summarizes the findings made as a result of such review and that contains the recommendations of the Task Force on the programs and policies with respect to which the Task Force is established, including related budgetary recommendations; and

(vii) annually review and coordinate departmental and agency budgetary requests with respect to all lead poisoning prevention activities of the Federal Government.

(b) Technology assessment and epidemiology

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, directly or through grants or contracts—

(1) provide for the development of improved, more cost-effective testing measures for detecting lead toxicity in children;

(2) provide for the development of improved methods of assessing the prevalence of lead poisoning, including such methods as may be necessary to conduct individual assessments for each State;

(3) provide for the collection of data on the incidence and prevalence of lead poisoning of infants and children, on the demographic characteristics of infants and children with such poisoning (including racial and ethnic status), and on the source of payment for treatment for such poisoning (including the extent to which insurance has paid for such treatment); and

(4) provide for any applied research necessary to improve the effectiveness of programs for the prevention of lead poisoning in infants and children.

(July 1, 1944, ch. 373, title III, § 317B, as added Pub. L. 102–531, title III, § 303(b), Oct. 27, 1992, 106 Stat. 3488; amended Pub. L. 103–43, title XX, § 2008(i)(1)(B)(i), June 10, 1993, 107 Stat. 212.)

AMENDMENTS

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–531, § 303(b), which enacted this section.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 247b–3a. Training and reports by the Health Resources and Services Administration

(a) Training

The Secretary of Health and Human Services, acting through the Administrator of the Health Resources and Services Administration and in collaboration with the Administrator of the Centers for Medicare & Medicaid Services and the Director of the Centers for Disease Control and Prevention, shall conduct education and training programs for physicians and other health care providers regarding childhood lead poisoning, current screening and treatment recommendations and requirements, and the scientific, medical, and public health basis for those policies.

(b) Report

The Secretary of Health and Human Services, acting through the Administrator of the Health Resources and Services Administration, annually shall report to Congress on the number of children who received services through health centers established under section 254b of this title and received a blood lead screening test during the prior fiscal year, noting the percentage that such children represent as compared to all children who received services through such health centers.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each[1] the fiscal years 2001 through 2005.

(Pub. L. 106–310, div. A, title XXV, § 2503, Oct. 17, 2000, 114 Stat. 1163; Pub. L. 108–173, title IX, § 900(e)(6)(E), Dec. 8, 2003, 117 Stat. 2374.)

CODIFICATION

Section was enacted as part of the Children's Health Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

§ 247b–4. National Center on Birth Defects and Developmental Disabilities

(a) In general

(1) National Center

There is established within the Centers for Disease Control and Prevention a center to be known as the National Center on Birth Defects and Developmental Disabilities (referred to in this section as the ''Center''), which shall be headed by a director appointed by the Director of the Centers for Disease Control and Prevention.

(2) General duties

The Secretary shall carry out programs—

(A) to collect, analyze, and make available data on birth defects, developmental disabilities, and disabilities and health (in a manner that facilitates compliance with subsection (c)(2) of this section), including data on the causes of such defects and disabilities and on the incidence and prevalence of such defects and disabilities;

(B) to operate regional centers for the conduct of applied epidemiological research on the prevention of such defects and disabilities;

(C) to provide information and education to the public on the prevention of such defects and disabilities;

(D) to conduct research on and to promote the prevention of such defects and disabilities, and secondary health conditions among individuals with disabilities; and

(E) to support a National Spina Bifida Program to prevent and reduce suffering from the Nation's most common permanently disabling birth defect.

(3) Folic acid

The Secretary shall carry out section 247b–11 of this title through the Center.

(4) Certain programs

(A) Transfers

All programs and functions described in subparagraph (B) are transferred to the Center, effective upon the expiration of the 180-day period beginning on October 17, 2000.

(B) Relevant programs

The programs and functions described in this subparagraph are all programs and functions that—

(i) relate to birth defects; folic acid; cerebral palsy; mental retardation; child development; newborn screening; autism; fragile X syndrome; fetal alcohol syndrome; pediatric genetic disorders; disability prevention; or other relevant diseases, disorders, or conditions as determined[1] the Secretary; and

(ii) were carried out through the National Center for Environmental Health as of the day before October 17, 2000.

(C) Related transfers

Personnel employed in connection with the programs and functions specified in subparagraph (B), and amounts available for carrying out the programs and functions, are transferred to the Center, effective upon the expiration of the 180-day period beginning on October 17, 2000. Such transfer of amounts does not affect the period of availability of the amounts, or the availability of the amounts with respect to the purposes for which the amounts may be expended.

(b) Grants and contracts

(1) In general

In carrying out subsection (a) of this section, the Secretary may make grants to and enter into contracts with public and nonprofit private entities.

(2) Supplies and services in lieu of award funds

(A) Upon the request of a recipient of an award of a grant or contract under paragraph

[1] So in original. Probably should be followed by ''of''.

[1] So in original. Probably should be followed by the word ''by''.

(1), the Secretary may, subject to subparagraph (B), provide supplies, equipment, and services for the purpose of aiding the recipient in carrying out the purposes for which the award is made and, for such purposes, may detail to the recipient any officer or employee of the Department of Health and Human Services.

(B) With respect to a request described in subparagraph (A), the Secretary shall reduce the amount of payments under the award involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(3) Application for award

The Secretary may make an award of a grant or contract under paragraph (1) only if an application for the award is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out the purposes for which the award is to be made.

(c) Biennial report

Not later than February 1 of fiscal year 1999 and of every second such year thereafter, the Secretary shall submit to the Committee on Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a report that, with respect to the preceding 2 fiscal years—

(1) contains information regarding the incidence and prevalence of birth defects, developmental disabilities, and the health status of individuals with disabilities and the extent to which these conditions have contributed to the incidence and prevalence of infant mortality and affected quality of life;

(2) contains information under paragraph (1) that is specific to various racial and ethnic groups (including Hispanics, non-Hispanic whites, Blacks, Native Americans, and Asian Americans);

(3) contains an assessment of the extent to which various approaches of preventing birth defects, developmental disabilities, and secondary health conditions among individuals with disabilities have been effective;

(4) describes the activities carried out under this section;

(5) contains information on the incidence and prevalence of individuals living with birth defects and disabilities or developmental disabilities, information on the health status of individuals with disabilities, information on any health disparities experienced by such individuals, and recommendations for improving the health and wellness and quality of life of such individuals;

(6) contains a summary of recommendations from all birth defects research conferences sponsored by the Centers for Disease Control and Prevention, including conferences related to spina bifida; and

(7) contains any recommendations of the Secretary regarding this section.

(d) Applicability of privacy laws

The provisions of this section shall be subject to the requirements of section 552a of title 5. All Federal laws relating to the privacy of information shall apply to the data and information that is collected under this section.

(e) Advisory committee

Notwithstanding any other provision of law, the members of the advisory committee appointed by the Director of the National Center for Environmental Health that have expertise in birth defects, developmental disabilities, and disabilities and health shall be transferred to and shall advise the National Center on Birth Defects and Developmental Disabilities effective on December 3, 2003.

(f) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title III, § 317C, as added Pub. L. 102–531, title III, § 306(a), Oct. 27, 1992, 106 Stat. 3494; amended Pub. L. 103–43, title XX, § 2008(i)(1)(B)(iii), June 10, 1993, 107 Stat. 213; Pub. L. 105–168, § 2, Apr. 21, 1998, 112 Stat. 43; Pub. L. 106–310, div. A, title VI, § 611, Oct. 17, 2000, 114 Stat. 1119; Pub. L. 108–154, § 2, Dec. 3, 2003, 117 Stat. 1933.)

AMENDMENTS

2003—Subsec. (a)(2)(A). Pub. L. 108–154, § 2(1)(A), substituted ‘‘, developmental disabilities, and disabilities and health’’ for ‘‘and developmental disabilities’’ and ‘‘subsection (c)(2)’’ for ‘‘subsection (d)(2)’’.

Subsec. (a)(2)(D), (E). Pub. L. 108–154, § 2(1)(B)–(D), added subpars. (D) and (E).

Subsecs. (b), (c). Pub. L. 108–154, § 2(2),(4), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which related to additional provisions regarding collection of data.

Subsec. (d). Pub. L. 108–154, § 2(4), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 108–154, § 2(3)(A), added par. (1) and struck out former par. (1) which read as follows: ‘‘contains information regarding the incidence and prevalence of birth defects and the extent to which birth defects have contributed to the incidence and prevalence of infant mortality;’’.

Subsec. (d)(3). Pub. L. 108–154, § 2(3)(B), inserted ‘‘, developmental disabilities, and secondary health conditions among individuals with disabilities’’ after ‘‘defects’’.

Subsec. (d)(5) to (7). Pub. L. 108–154, § 2(3)(C)–(E), added pars. (5) and (6) and redesignated former par. (5) as (7).

Subsec. (e). Pub. L. 108–154, § 2(5), added subsec. (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 108–154, § 2(6) substituted ‘‘such sums as may be necessary for each of fiscal years 2003 through 2007.’’ for ‘‘$30,000,000 for fiscal year 1999, $40,000,000 for fiscal year 2000, and such sums as may be necessary for each of the fiscal years 2001 and 2002.’’

2000—Pub. L. 106–310, § 611(1), substituted ‘‘National Center on Birth Defects and Developmental Disabilities’’ for ‘‘Programs regarding birth defects’’ in section catchline.

Subsec. (a). Pub. L. 106–310, § 611(2), added subsec. (a) and struck out heading and text of former subsec. (a) relating to Secretary’s responsibility, acting through the Centers for Disease Control and Prevention, to carry out programs regarding birth defects.

Subsec. (b)(1). Pub. L. 106–310, § 611(3), substituted ‘‘subsection (a)(2)(A) of this section’’ for ‘‘subsection (a)(1) of this section’’ in introductory provisions.

1998—Pub. L. 105–168 amended section generally, substituting present provisions for provisions which directed Secretary to encourage and assist States in collection and analysis of epidemiological data on birth defects and to establish and maintain National Information Clearinghouse on Birth Defects, required report not later than July 1, 1993, and biennially thereafter, and authorized appropriations for fiscal years 1993, 1994, and 1995.

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–531, § 306(a), which enacted this section.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

CONGRESSIONAL FINDINGS

Pub. L. 105–168, § 1(b), Apr. 21, 1998, 112 Stat. 43, provided that: ''Congress makes the following findings:

''(1) Birth defects are the leading cause of infant mortality, directly responsible for one out of every five infant deaths.

''(2) Thousands of the 150,000 infants born with a serious birth defect annually face a lifetime of chronic disability and illness.

''(3) Birth defects threaten the lives of infants of all racial and ethnic backgrounds. However, some conditions pose excess risks for certain populations. For example, compared to all infants born in the United States, Hispanic-American infants are more likely to be born with anencephaly spina bifida and other neural tube defects and African-American infants are more likely to be born with sickle-cell anemia.

''(4) Birth defects can be caused by exposure to environmental hazards, adverse health conditions during pregnancy, or genetic mutations. Prevention efforts are slowed by lack of information about the number and causes of birth defects. Outbreaks of birth defects may go undetected because surveillance and research efforts are underdeveloped and poorly coordinated.

''(5) Public awareness strategies, such as programs using folic acid vitamin supplements to prevent spina bifida and alcohol avoidance programs to prevent Fetal Alcohol Syndrome, are essential to prevent the heartache and costs associated with birth defects.''

§ 247b–4a. Early detection, diagnosis, and interventions for newborns and infants with hearing loss

(a) Definitions

For the purposes of this section only, the following terms in this section are defined as follows:

(1) Hearing screening

Newborn and infant hearing screening consists of objective physiologic procedures to detect possible hearing loss and to identify newborns and infants who, after rescreening, require further audiologic and medical evaluations.

(2) Audiologic evaluation

Audiologic evaluation consists of procedures to assess the status of the auditory system; to establish the site of the auditory disorder; the type and degree of hearing loss, and the potential effects of hearing loss on communication; and to identify appropriate treatment and referral options. Referral options should include linkage to State IDEA part C coordinating agencies or other appropriate agencies, medical evaluation, hearing aid/sensory aid assessment, audiologic rehabilitation treatment, national and local consumer, self-help, parent, and education organizations, and other family-centered services.

(3) Medical evaluation

Medical evaluation by a physician consists of key components including history, examination, and medical decision making focused on symptomatic and related body systems for the purpose of diagnosing the etiology of hearing loss and related physical conditions, and for identifying appropriate treatment and referral options.

(4) Medical intervention

Medical intervention is the process by which a physician provides medical diagnosis and direction for medical and/or surgical treatment options of hearing loss and/or related medical disorder associated with hearing loss.

(5) Audiologic rehabilitation

Audiologic rehabilitation (intervention) consists of procedures, techniques, and technologies to facilitate the receptive and expressive communication abilities of a child with hearing loss.

(6) Early intervention

Early intervention (e.g., nonmedical) means providing appropriate services for the child with hearing loss and ensuring that families of the child are provided comprehensive, consumer-oriented information about the full range of family support, training, information services, communication options and are given the opportunity to consider the full range of educational and program placements and options for their child.

(b) Purposes

The purposes of this section are to clarify the authority within the Public Health Service Act [42 U.S.C. 201 et seq.] to authorize statewide newborn and infant hearing screening, evaluation and intervention programs and systems, technical assistance, a national applied research program, and interagency and private sector collaboration for policy development, in order to assist the States in making progress toward the following goals:

(1) All babies born in hospitals in the United States and its territories should have a hearing screening before leaving the birthing facility. Babies born in other countries and residing in the United States via immigration or adoption should have a hearing screening as early as possible.

(2) All babies who are not born in hospitals in the United States and its territories should have a hearing screening within the first 3 months of life.

(3) Appropriate audiologic and medical evaluations should be conducted by 3 months for all newborns and infants suspected of having

hearing loss to allow appropriate referral and provisions for audiologic rehabilitation, medical and early intervention before the age of 6 months.

(4) All newborn and infant hearing screening programs and systems should include a component for audiologic rehabilitation, medical and early intervention options that ensures linkage to any new and existing statewide systems of intervention and rehabilitative services for newborns and infants with hearing loss.

(5) Public policy in regard to newborn and infant hearing screening and intervention should be based on applied research and the recognition that newborns, infants, toddlers, and children who are deaf or hard-of-hearing have unique language, learning, and communication needs, and should be the result of consultation with pertinent public and private sectors.

(c) Statewide newborn and infant hearing screening, evaluation and intervention programs and systems

Under the existing authority of the Public Health Service Act [42 U.S.C. 201 et seq.], the Secretary of Health and Human Services (in this section referred to as the ''Secretary''), acting through the Administrator of the Health Resources and Services Administration, shall make awards of grants or cooperative agreements to develop statewide newborn and infant hearing screening, evaluation and intervention programs and systems for the following purposes:

(1) To develop and monitor the efficacy of statewide newborn and infant hearing screening, evaluation and intervention programs and systems. Early intervention includes referral to schools and agencies, including community, consumer, and parent-based agencies and organizations and other programs mandated by part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.], which offer programs specifically designed to meet the unique language and communication needs of deaf and hard-of-hearing newborns, infants, toddlers, and children.

(2) To collect data on statewide newborn and infant hearing screening, evaluation and intervention programs and systems that can be used for applied research, program evaluation and policy development.

(d) Technical assistance, data management, and applied research

(1) Centers for Disease Control and Prevention

Under the existing authority of the Public Health Service Act [42 U.S.C. 201 et seq.], the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall make awards of grants or cooperative agreements to provide technical assistance to State agencies to complement an intramural program and to conduct applied research related to newborn and infant hearing screening, evaluation and intervention programs and systems. The program shall develop standardized procedures for data management and program effectiveness and costs, such as—

(A) to ensure quality monitoring of newborn and infant hearing loss screening, evaluation, and intervention programs and systems;

(B) to provide technical assistance on data collection and management;

(C) to study the costs and effectiveness of newborn and infant hearing screening, evaluation and intervention programs and systems conducted by State-based programs in order to answer issues of importance to State and national policymakers;

(D) to identify the causes and risk factors for congenital hearing loss;

(E) to study the effectiveness of newborn and infant hearing screening, audiologic and medical evaluations and intervention programs and systems by assessing the health, intellectual and social developmental, cognitive, and language status of these children at school age; and

(F) to promote the sharing of data regarding early hearing loss with State-based birth defects and developmental disabilities monitoring programs for the purpose of identifying previously unknown causes of hearing loss.

(2) National Institutes of Health

Under the existing authority of the Public Health Service Act, the Director of the National Institutes of Health, acting through the Director of the National Institute on Deafness and Other Communication Disorders, shall for purposes of this section, continue a program of research and development on the efficacy of new screening techniques and technology, including clinical studies of screening methods, studies on efficacy of intervention, and related research.

(e) Coordination and collaboration

(1) In general

Under the existing authority of the Public Health Service Act [42 U.S.C. 201 et seq.], in carrying out programs under this section, the Administrator of the Health Resources and Services Administration, the Director of the Centers for Disease Control and Prevention, and the Director of the National Institutes of Health shall collaborate and consult with other Federal agencies; State and local agencies, including those responsible for early intervention services pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (Medicaid Early and Periodic Screening, Diagnosis and Treatment Program); title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.], (State Children's Health Insurance Program); title V of the Social Security Act [42 U.S.C. 701 et seq.] (Maternal and Child Health Block Grant Program); and part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.]; consumer groups of and that serve individuals who are deaf and hard-of-hearing and their families; appropriate national medical and other health and education specialty organizations; persons who are deaf and hard-of-hearing and their families; other qualified professional personnel who are proficient in deaf or hard-of-hearing children's language and who possess the specialized knowledge, skills, and attributes needed to

serve deaf and hard-of-hearing newborns, infants, toddlers, children, and their families; third-party payers and managed care organizations; and related commercial industries.

(2) Policy development

Under the existing authority of the Public Health Service Act, the Administrator of the Health Resources and Services Administration, the Director of the Centers for Disease Control and Prevention, and the Director of the National Institutes of Health shall coordinate and collaborate on recommendations for policy development at the Federal and State levels and with the private sector, including consumer, medical and other health and education professional-based organizations, with respect to newborn and infant hearing screening, evaluation and intervention programs and systems.

(3) State early detection, diagnosis, and intervention programs and systems; data collection

Under the existing authority of the Public Health Service Act, the Administrator of the Health Resources and Services Administration and the Director of the Centers for Disease Control and Prevention shall coordinate and collaborate in assisting States to establish newborn and infant hearing screening, evaluation and intervention programs and systems under subsection (c) of this section and to develop a data collection system under subsection (d) of this section.

(f) Rule of construction

Nothing in this section shall be construed to preempt any State law.

(g) Authorization of appropriations

(1) Statewide newborn and infant hearing screening, evaluation and intervention programs and systems

For the purpose of carrying out subsection (c) of this section under the existing authority of the Public Health Service Act [42 U.S.C. 201 et seq.], there are authorized to the Health Resources and Services Administration appropriations in the amount of $5,000,000 for fiscal year 2000, $8,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal year 2002.

(2) Technical assistance, data management, and applied research; Centers for Disease Control and Prevention

For the purpose of carrying out subsection (d)(1) of this section under the existing authority of the Public Health Service Act, there are authorized to the Centers for Disease Control and Prevention, appropriations in the amount of $5,000,000 for fiscal year 2000, $7,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal year 2002.

(3) Technical assistance, data management, and applied research; National Institute on Deafness and Other Communication Disorders

For the purpose of carrying out subsection (d)(2) of this section under the existing authority of the Public Health Service Act, there are authorized to the National Institute on Deafness and Other Communication Disorders appropriations for such sums as may be necessary for each of the fiscal years 2000 through 2002.

(Pub. L. 106–113, div. B, §1000(a)(4) [title VI, §601], Nov. 29, 1999, 113 Stat. 1535, 1501A–276.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsecs. (b) to (e) and (g), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter (§201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (c)(1) and (e)(1), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Social Security Act, referred to in subsec. (e)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XIX, and XXI of the Act are classified generally to subchapters V (§701 et seq.), XIX (§1396 et seq.), and XXI (§1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was enacted as part of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2000, and not as part of the Public Health Service Act which comprises this chapter.

§§ 247b–4b to 247b–4d. Repealed. Pub. L. 109–416, §3(b)(1)–(3), Dec. 19, 2006, 120 Stat. 2829

Section 247b–4b, Pub. L. 106–310, div. A, title I, §102, Oct. 17, 2000, 114 Stat. 1107, related to developmental disabilities surveillance and research programs.

Section 247b–4c, Pub. L. 106–310, div. A, title I, §103, Oct. 17, 2000, 114 Stat. 1108, related to information and education.

Section 247b–4d, Pub. L. 106–310, div. A, title I, §104, Oct. 17, 2000, 114 Stat. 1109, related to Inter-agency Autism Coordinating Committee.

§247b–4e. Repealed. Pub. L. 109–416, §3(b)(4), Dec. 19, 2006, 120 Stat. 2829; Pub. L. 109–482, title I, §104(b)(3)(D), Jan. 15, 2007, 120 Stat. 3694

Section, Pub. L. 106–310, div. A, title I, §105, Oct. 17, 2000, 114 Stat. 1109, related to annual report to Congress concerning the implementation of this section and sections 247b–4b to 247b–4d and 284g of this title.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

§247b–4f. Research relating to preterm labor and delivery and the care, treatment, and outcomes of preterm and low birthweight infants

(a) Omitted

(b) Studies on relationship between prematurity and birth defects

(1) In general

The Secretary of Health and Human Services, acting through the Director of the Cen-

ters for Disease Control and Prevention, shall, subject to the availability of appropriations, conduct ongoing epidemiological studies on the relationship between prematurity, birth defects, and developmental disabilities.

(2) Report

Not later than 2 years after December 22, 2006, and every 2 years thereafter, the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, shall submit to the appropriate committees of Congress reports concerning the progress and any results of studies conducted under paragraph (1).

(c) Pregnancy risk assessment monitoring survey

(1) In general

The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, shall establish systems for the collection of maternal-infant clinical and biomedical information, including electronic health records, electronic databases, and biobanks, to link with the Pregnancy Risk Assessment Monitoring System (PRAMS) and other epidemiological studies of prematurity in order to track pregnancy outcomes and prevent preterm birth.

(2) Authorization of appropriations

There is authorized to be appropriated to carry out paragraph (1) $3,000,000 for each of fiscal years 2007 through 2011.

(d) Evaluation of existing tools and measures

The Secretary of Health and Human Services shall review existing tools and measures to ensure that such tools and measures include information related to the known risk factors of low birth weight and preterm birth.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section, except for subsection (c), $5,000,000 for each of fiscal years 2007 through 2011.

(Pub. L. 109–450, § 3, Dec. 22, 2006, 120 Stat. 3341.)

CODIFICATION

Section is comprised of section 3 of Pub. L. 109–450. Subsec. (a) of section 3 of Pub. L. 109–450 amended section 241 of this title.

Section was enacted as part of the Prematurity Research Expansion and Education for Mothers who deliver Infants Early Act or the PREEMIE Act, and not as part of the Public Health Service Act which comprises this chapter.

PURPOSE

Pub. L. 109–450, § 2, Dec. 22, 2006, 120 Stat. 3341, provided that: ''It is the purpose of this Act [enacting this section and sections 247b–4g and 280g–5 of this title and amending sections 241 and 280g–4 of this title] to—

''(1) reduce rates of preterm labor and delivery;

''(2) work toward an evidence-based standard of care for pregnant women at risk of preterm labor or other serious complications, and for infants born preterm and at a low birthweight; and

''(3) reduce infant mortality and disabilities caused by prematurity.''

§ 247b–4g. Interagency Coordinating Council on Prematurity and Low Birthweight

(a) Purpose

It is the purpose of this section to stimulate multidisciplinary research, scientific exchange, and collaboration among the agencies of the Department of Health and Human Services and to assist the Department in targeting efforts to achieve the greatest advances toward the goal of reducing prematurity and low birthweight.

(b) Establishment

The Secretary of Health and Human Services shall establish an Interagency Coordinating Council on Prematurity and Low Birthweight (referred to in this section as the Council) to carry out the purpose of this section.

(c) Composition

The Council shall be composed of members to be appointed by the Secretary, including representatives of the agencies of the Department of Health and Human Services.

(d) Activities

The Council shall—

(1) annually report to the Secretary of Health and Human Services and Congress on current Departmental activities relating to prematurity and low birthweight;

(2) carry out other activities determined appropriate by the Secretary of Health and Human Services; and

(3) oversee the coordination of the implementation of this Act.

(Pub. L. 109–450, § 5, Dec. 22, 2006, 120 Stat. 3343.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(3), is Pub. L. 109–450, Dec. 22, 2006, 120 Stat. 3341, known as the Prematurity Research Expansion and Education for Mothers who deliver Infants Early Act and also as the PREEMIE Act. For complete classification of this Act to the Code, see Short Title of 2006 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Prematurity Research Expansion and Education for Mothers who deliver Infants Early Act or the PREEMIE Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 247b–5. Preventive health measures with respect to prostate cancer

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States and local health departments for the purpose of enabling such States and departments to carry out programs that may include the following:

(1) To identify factors that influence the attitudes or levels of awareness of men and health care practitioners regarding screening for prostate cancer.

(2) To evaluate, in consultation with the Agency for Health Care Policy and Research and the National Institutes of Health, the effectiveness of screening strategies for prostate cancer.

(3) To identify, in consultation with the Agency for Health Care Policy and Research, issues related to the quality of life for men after prostrate[1] cancer screening and follow-up.

(4) To develop and disseminate public information and education programs for prostate cancer, including appropriate messages about the risks and benefits of prostate cancer screening for the general public, health care providers, policy makers and other appropriate individuals.

(5) To improve surveillance for prostate cancer.

(6) To address the needs of underserved and minority populations regarding prostate cancer.

(7) Upon a determination by the Secretary, who shall take into consideration recommendations by the United States Preventive Services Task Force and shall seek input, where appropriate, from professional societies and other private and public entities, that there is sufficient consensus on the effectiveness of prostate cancer screening—

(A) to screen men for prostate cancer as a preventive health measure;

(B) to provide appropriate referrals for the medical treatment of men who have been screened under subparagraph (A) and to ensure, to the extent practicable, the provision of appropriate followup services and support services such as case management;

(C) to establish mechanisms through which State and local health departments can monitor the quality of screening procedures for prostate cancer, including the interpretation of such procedures; and

(D) to improve, in consultation with the Health Resources and Services Administration, the education, training, and skills of health practitioners (including appropriate allied health professionals) in the detection and control of prostate cancer.

(8) To evaluate activities conducted under paragraphs (1) through (7) through appropriate surveillance or program monitoring activities.

(b) Requirement of matching funds

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such section, to make available non-Federal contributions (in cash or in kind under paragraph (2)) toward such costs in an amount equal to not less than $1 for each $3 of Federal funds provided in the grant. Such contributions may be made directly or through donations from public or private entities.

(2) Determination of amount of non-Federal contribution

(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including equipment or services (and excluding indirect or overhead costs). Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) In making a determination of the amount of non-Federal contributions for purposes of paragraph (1), the Secretary may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the applicant involved toward the purpose described in subsection (a) of this section for the 2-year period preceding the fiscal year for which the applicant involved is applying to receive a grant under such subsection.

(C) In making a determination of the amount of non-Federal contributions for purposes of paragraph (1), the Secretary shall, subject to subparagraphs (A) and (B) of this paragraph, include any non-Federal amounts expended pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] by the applicant involved toward the purpose described in paragraphs (1) and (2) of subsection (a) of this section.

(c) Education on significance of early detection

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that, in carrying out subsection (a)(3) of this section, the applicant will carry out education programs to communicate to men, and to local health officials, the significance of the early detection of prostate cancer.

(d) Requirement of provision of all services by date certain

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees—

(1) to ensure that, initially and throughout the period during which amounts are received pursuant to the grant, not less than 60 percent of the grant is expended to provide each of the services or activities described in paragraphs (1) and (2) of such subsection;

(2) to ensure that, by the end of any second fiscal year of payments pursuant to the grant, each of the services or activities described in such subsection is provided; and

(3) to ensure that not more than 40 percent of the grant is expended to provide the services or activities described in paragraphs (3) through (6) of such section.[2]

(e) Additional required agreements

(1) Priority for low-income men

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that low-income men, and men at risk of prostate cancer, will be given priority in the provision of services and activities pursuant to paragraphs (1) and (2) of such subsection.

(2) Limitation on imposition of fees for services

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that, if a charge is im-

[1] So in original. Probably should be ''prostate''.

[2] So in original. Probably should be ''subsection.''

posed for the provision of services or activities under the grant, such charge—

(A) will be made according to a schedule of charges that is made available to the public;

(B) will be adjusted to reflect the income of the man involved; and

(C) will not be imposed on any man with an income of less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(3) Relationship to items and services under other programs

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that the grant will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis.

(4) Coordination with other prostate cancer programs

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that the services and activities funded through the grant will be coordinated with other Federal, State, and local prostate cancer programs.

(5) Limitation on administrative expenses

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(6) Restrictions on use of grant

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that the grant will not be expended to provide inpatient hospital services for any individual.

(7) Records and audits

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that—

(A) the applicant will establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the applicant under such section;[3] and

(B) upon request, the applicant will provide records maintained pursuant to paragraph (1) to the Secretary or the Comptroller of the United States for purposes of auditing the expenditures by the applicant of the grant.

(f) Reports to Secretary

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees to submit to the Secretary such reports as the Secretary may require with respect to the grant.

(g) Description of intended uses of grant

The Secretary may not make a grant under subsection (a) of this section unless—

(1) the applicant involved submits to the Secretary a description of the purposes for which the applicant intends to expend the grant;

(2) the description identifies the populations, areas, and localities in the applicant[4] with a need for the services or activities described in subsection (a) of this section;

(3) the description provides information relating to the services and activities to be provided, including a description of the manner in which the services and activities will be coordinated with any similar services or activities of public or nonprivate entities; and

(4) the description provides assurances that the grant funds will be used in the most cost-effective manner.

(h) Requirement of submission of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary, the application contains the description of intended uses required in subsection (g) of this section, and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(i) Method and amount of payment

The Secretary shall determine the amount of a grant made under subsection (a) of this section. Payments under such grants may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of the underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

(j) Technical assistance and provision of supplies and services in lieu of grant funds

(1) Technical assistance

The Secretary may provide training and technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to subsection (a) of this section. The Secretary may provide such technical assistance directly or through grants to, or contracts with, public and private entities.

(2) Provision of supplies and services in lieu of grant funds

(A) Upon the request of an applicant receiving a grant under subsection (a) of this section, the Secretary may, subject to subparagraph (B), provide supplies, equipment, and services for the purpose of aiding the applicant in carrying out such section and, for such purpose, may detail to the applicant any officer or employee of the Department of Health and Human Services.

[3] So in original. Probably should be ''subsection;''.

[4] So in original. Probably should be ''application''.

(B) With respect to a request described in subparagraph (A), the Secretary shall reduce the amount of payments under the grant under subsection (a) of this section to the applicant involved by an amount equal to the costs of detailing personnel (including pay, allowances, and travel expenses) and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(k) "Units of local government" defined

For purposes of this section, the term ''units of local government'' includes Indian tribes.

(*l*) Authorization of appropriations

(1) In general

For the purpose of carrying out this section, there are authorized to be appropriated $20,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 2004.

(2) Allocation for technical assistance

Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall reserve not more than 20 percent for carrying out subsection (j)(1) of this section.

(July 1, 1944, ch. 373, title III, § 317D, as added Pub. L. 102–531, title III, § 308, Oct. 27, 1992, 106 Stat. 3495; amended Pub. L. 103–43, title XX, § 2010(i)(1)(B)(iv), June 10, 1993, 107 Stat. 213; Pub. L. 103–183, title VII, § 705(b), Dec. 14, 1993, 107 Stat. 2241; Pub. L. 105–392, title IV, § 401(a)(3), Nov. 13, 1998, 112 Stat. 3587; Pub. L. 106–505, title VI, § 602(a), Nov. 13, 2000, 114 Stat. 2345.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–505, § 602(a)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States and local health departments for the purpose of enabling such States and departments to carry out programs—

''(1) to screen men for prostate cancer as a preventive health measure;

''(2) to provide appropriate referrals for medical treatment of men screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services;

''(3) to develop and disseminate public information and education programs for the detection and control of prostate cancer;

''(4) to improve the education, training, and skills of health professionals (including appropriate allied health professionals) in the detection and control of prostate cancer;

''(5) to establish mechanisms through which the States and such departments can monitor the quality of screening procedures for prostate cancer, including the interpretation of such procedures; and

''(6) to evaluate activities conducted under paragraphs (1) through (5) through appropriate surveillance or program monitoring activities.''

Subsec. (*l*)(1). Pub. L. 106–505, § 602(a)(2), substituted ''2004'' for ''1998''.

1998—Subsec. (*l*)(1). Pub. L. 105–392 made technical amendment to directory language of Pub. L. 103–183. See 1993 Amendment note below.

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–531, § 308, which enacted this section.

Subsec. (*l*)(1). Pub. L. 103–183, as amended by Pub. L. 105–392, substituted ''through 1998'' for ''through 1996''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

§ 247b–6. Preventive health services regarding tuberculosis

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States, political subdivisions, and other public entities for preventive health service programs for the prevention, control, and elimination of tuberculosis.

(b) Research, demonstration projects, education, and training

With respect to the prevention, control, and elimination of tuberculosis, the Secretary may, directly or through grants to public or nonprofit private entities, carry out the following:

(1) Research, with priority given to research concerning strains of tuberculosis resistant to drugs and research concerning cases of tuberculosis that affect certain populations.

(2) Demonstration projects.

(3) Public information and education programs.

(4) Education, training, and clinical skills improvement activities for health professionals, including allied health personnel and emergency response employees.

(5) Support of centers to carry out activities under paragraphs (1) through (4).

(6) Collaboration with international organizations and foreign countries in carrying out such activities.

(c) Cooperation with providers of primary health services

The Secretary may make a grant under subsection (a) or (b) of this section only if the applicant for the grant agrees that, in carrying out activities under the grant, the applicant will cooperate with public and nonprofit private providers of primary health services or substance abuse services, including entities receiving assistance under section 254b, 254b, or 256a of this title[1] or under subchapter III–A or XVII of this chapter.

(d) Application for grant

(1) In general

The Secretary may make a grant under subsection (a) or (b) of this section only if an application for the grant is submitted to the Secretary and the application, subject to paragraph (2), is in such form, is made in such

[1] See References in Text notes below.

manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out the subsection involved.

(2) Plan for prevention, control, and elimination

The Secretary may make a grant under subsection (a) of this section only if the application under paragraph (1) contains a plan regarding the prevention, control, and elimination of tuberculosis in the geographic area with respect to which the grant is sought.

(e) Supplies and services in lieu of grant funds

(1) In general

Upon the request of a grantee under subsection (a) or (b) of this section, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the grantee in carrying out the subsection involved and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the grant involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(f) Advisory Council

(1) In general

The Secretary shall establish an advisory council to be known as the Advisory Council for the Elimination of Tuberculosis (in this subsection referred to as the ''Council'').

(2) General duties

The Council shall provide advice and recommendations regarding the elimination of tuberculosis to the Secretary, the Assistant Secretary for Health, and the Director of the Centers for Disease Control and Prevention.

(3) Certain activities

With respect to the elimination of tuberculosis, the Council shall—

(A) in making recommendations under paragraph (2), make recommendations regarding policies, strategies, objectives, and priorities;

(B) address the development and application of new technologies; and

(C) review the extent to which progress has been made toward eliminating tuberculosis.

(4) Composition

The Secretary shall determine the size and composition of the Council, and the frequency and scope of official meetings of the Council.

(5) Staff, information, and other assistance

The Secretary shall provide to the Council such staff, information, and other assistance as may be necessary to carry out the duties of the Council.

(g) Funding

(1) In general; allocation for emergency grants

(A) For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $200,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2002.

(B) Of the amounts appropriated under subparagraph (A) for a fiscal year, the Secretary may reserve not more than 25 percent for emergency grants under subsection (a) of this section for any geographic area in which there is, relative to other areas, a substantial number of cases of tuberculosis or a substantial rate of increase in such cases.

(2) Research, demonstration projects, education, and training

For the purpose of carrying out subsection (b) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 2002.

(July 1, 1944, ch. 373, title III, § 317E, as added Pub. L. 103–183, title III, § 301(a), Dec. 14, 1993, 107 Stat. 2233; amended Pub. L. 105–392, title IV, §§ 401(b)(1), 405, Nov. 13, 1998, 112 Stat. 3587, 3588; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 108–163, § 2(m)(1), Dec. 6, 2003, 117 Stat. 2023.)

REFERENCES IN TEXT

The reference to section 254b of this title the first place appearing, referred to in subsec. (c), was in the original a reference to section 329, meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626.

Section 256a of this title, referred to in subsec. (c), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before '', or''.

2002—Subsec. (c). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

1998—Subsec. (g)(1)(A). Pub. L. 105–392, § 405(1)(A), substituted ''2002'' for ''1998''.

Subsec. (g)(1)(B). Pub. L. 105–392, § 405(1)(B), substituted ''25 percent'' for ''$50,000,000''.

Subsec. (g)(2). Pub. L. 105–392, § 405(2), substituted ''2002'' for ''1998''.

Pub. L. 105–392, § 401(b)(1), substituted ''carrying out subsection (b)'' for ''making grants under subsection (b)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 401(b)(1) of Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year

period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 247b–7. Loan repayment program

(a) In general

(1) Authority

Subject to paragraph (2), the Secretary may carry out a program of entering into contracts with appropriately qualified health professionals under which such health professionals agree to conduct prevention activities, as employees of the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(2) Limitation

The Secretary may not enter into an agreement with a health professional pursuant to paragraph (1) unless such professional—

(A) has a substantial amount of educational loans relative to income; and

(B) agrees to serve as an employee of the Centers for Disease Control and Prevention or the Agency for Toxic Substances and Disease Registry for purposes of paragraph (1) for a period of not less than 3 years.

(b) Applicability of certain provisions

With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of this subchapter, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $500,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2002.

(d) Availability of appropriations

Amounts appropriated for a fiscal year for contracts under subsection (a) of this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were appropriated.

(July 1, 1944, ch. 373, title III, § 317F, as added Pub. L. 103–183, title VII, § 703, Dec. 14, 1993, 107 Stat. 2240; amended Pub. L. 105–392, title IV, § 406, Nov. 13, 1998, 112 Stat. 3588.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–392, § 406(1), substituted ''$35,000'' for ''$20,000''.

Subsec. (c). Pub. L. 105–392, § 406(2), substituted ''2002'' for ''1998''.

Subsec. (d). Pub. L. 105–392, § 406(3), added subsec. (d).

§ 247b–8. Fellowship and training programs

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish fellowship and training programs to be conducted by such Centers to train individuals to develop skills in epidemiology, surveillance, laboratory analysis, and other disease detection and prevention methods. Such programs shall be designed to enable health professionals and health personnel trained under such programs to work, after receiving such training, in local, State, national, and international efforts toward the prevention and control of diseases, injuries, and disabilities. Such fellowships and training may be administered through the use of either appointment or nonappointment procedures.

(July 1, 1944, ch. 373, title III, § 317G, as added Pub. L. 105–115, title IV, § 408(b)(1), Nov. 21, 1997, 111 Stat. 2371.)

EFFECTIVE DATE

Section 408(b)(2) of Pub. L. 105–115 provided that: ''The amendment made by this subsection [enacting this section] is deemed to have taken effect July 1, 1995.''

§ 247b–9. Diabetes in children and youth

(a) Surveillance on juvenile diabetes

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop a sentinel system to collect data on juvenile diabetes, including with respect to incidence and prevalence, and shall establish a national database for such data.

(b) Type 2 diabetes in youth

The Secretary shall implement a national public health effort to address type 2 diabetes in youth, including—

(1) enhancing surveillance systems and expanding research to better assess the prevalence and incidence of type 2 diabetes in youth and determine the extent to which type 2 diabetes is incorrectly diagnosed as type 1 diabetes among children; and

(2) developing and improving laboratory methods to assist in diagnosis, treatment, and prevention of diabetes including, but not limited to, developing noninvasive ways to monitor blood glucose to prevent hypoglycemia and improving existing glucometers that measure blood glucose.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317H, as added Pub. L. 106–310, div. A, title IV, § 401, Oct. 17, 2000, 114 Stat. 1112.)

§ 247b–10. Compilation of data on asthma

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall—

(1) conduct local asthma surveillance activities to collect data on the prevalence and severity of asthma and the quality of asthma management;

(2) compile and annually publish data on the prevalence of children suffering from asthma in each State; and

(3) to the extent practicable, compile and publish data on the childhood mortality rate associated with asthma nationally.

(b) Surveillance activities

The Director of the Centers for Disease Control and Prevention, acting through the representative of the Director on the National Asthma Education Prevention Program Coordinating Committee, shall, in carrying out subsection (a) of this section, provide an update on surveillance activities at each Committee meeting.

(c) Collaborative efforts

The activities described in subsection (a)(1) of this section may be conducted in collaboration with eligible entities awarded a grant under section 280g of this title.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317I, as added Pub. L. 106–310, div. A, title V, § 531, Oct. 17, 2000, 114 Stat. 1117.)

§ 247b–11. Effects of folic acid in prevention of birth defects

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall expand and intensify programs (directly or through grants or contracts) for the following purposes:

(1) To provide education and training for health professionals and the general public for purposes of explaining the effects of folic acid in preventing birth defects and for purposes of encouraging each woman of reproductive capacity (whether or not planning a pregnancy) to consume on a daily basis a dietary supplement that provides an appropriate level of folic acid.

(2) To conduct research with respect to such education and training, including identifying effective strategies for increasing the rate of consumption of folic acid by women of reproductive capacity.

(3) To conduct research to increase the understanding of the effects of folic acid in preventing birth defects, including understanding with respect to cleft lip, cleft palate, and heart defects.

(4) To provide for appropriate epidemiological activities regarding folic acid and birth defects, including epidemiological activities regarding neural tube defects.

(b) Consultations with States and private entities

In carrying out subsection (a) of this section, the Secretary shall consult with the States and with other appropriate public or private entities, including national nonprofit private organizations, health professionals, and providers of health insurance and health plans.

(c) Technical assistance

The Secretary may (directly or through grants or contracts) provide technical assistance to public and nonprofit private entities in carrying out the activities described in subsection (a) of this section.

(d) Evaluations

The Secretary shall (directly or through grants or contracts) provide for the evaluation of activities under subsection (a) of this section in order to determine the extent to which such activities have been effective in carrying out the purposes of the program under such subsection, including the effects on various demographic populations. Methods of evaluation under the preceding sentence may include surveys of knowledge and attitudes on the consumption of folic acid and on blood folate levels. Such methods may include complete and timely monitoring of infants who are born with neural tube defects.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317J, as added Pub. L. 106–310, div. A, title VI, § 601, Oct. 17, 2000, 114 Stat. 1118.)

§ 247b–12. Safe motherhood

(a) Surveillance

(1) Purpose

The purpose of this subsection is to develop surveillance systems at the local, State, and national level to better understand the burden of maternal complications and mortality and to decrease the disparities among population at risk of death and complications from pregnancy.

(2) Activities

For the purpose described in paragraph (1), the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may carry out the following activities:

(A) The Secretary may establish and implement a national surveillance program to identify and promote the investigation of deaths and severe complications that occur during pregnancy.

(B) The Secretary may expand the Pregnancy Risk Assessment Monitoring System to provide surveillance and collect data in each State.

(C) The Secretary may expand the Maternal and Child Health Epidemiology Program

to provide technical support, financial assistance, or the time-limited assignment of senior epidemiologists to maternal and child health programs in each State.

(b) Prevention research

(1) Purpose

The purpose of this subsection is to provide the Secretary with the authority to further expand research concerning risk factors, prevention strategies, and the roles of the family, health care providers and the community in safe motherhood.

(2) Research

The Secretary may carry out activities to expand research relating to—

(A) encouraging preconception counseling, especially for at risk populations such as diabetics;

(B) the identification of critical components of prenatal delivery and postpartum care;

(C) the identification of outreach and support services, such as folic acid education, that are available for pregnant women;

(D) the identification of women who are at high risk for complications;

(E) preventing preterm delivery;

(F) preventing urinary tract infections;

(G) preventing unnecessary caesarean sections;

(H) an examination of the higher rates of maternal mortality among African American women;

(I) an examination of the relationship between domestic violence and maternal complications and mortality;

(J) preventing and reducing adverse health consequences that may result from smoking, alcohol and illegal drug use before, during and after pregnancy;

(K) preventing infections that cause maternal and infant complications; and

(L) other areas determined appropriate by the Secretary.

(c) Prevention programs

(1) In general

The Secretary may carry out activities to promote safe motherhood, including—

(A) public education campaigns on healthy pregnancies and the building of partnerships with outside organizations concerned about safe motherhood;

(B) education programs for physicians, nurses and other health care providers; and

(C) activities to promote community support services for pregnant women.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317K, as added Pub. L. 106–310, div. A, title IX, § 901, Oct. 17, 2000, 114 Stat. 1125.)

§ 247b–13. Prenatal and postnatal health

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall carry out programs—

(1) to collect, analyze, and make available data on prenatal smoking, alcohol and illegal drug use, including data on the implications of such activities and on the incidence and prevalence of such activities and their implications;

(2) to conduct applied epidemiological research on the prevention of prenatal and postnatal smoking, alcohol and illegal drug use;

(3) to support, conduct, and evaluate the effectiveness of educational and cessation programs; and

(4) to provide information and education to the public on the prevention and implications of prenatal and postnatal smoking, alcohol and illegal drug use.

(b) Grants

In carrying out subsection (a) of this section, the Secretary may award grants to and enter into contracts with States, local governments, scientific and academic institutions, federally qualified health centers, and other public and nonprofit entities, and may provide technical and consultative assistance to such entities.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317L, as added Pub. L. 106–310, div. A, title IX, § 911, Oct. 17, 2000, 114 Stat. 1127.)

§ 247b–14. Oral health promotion and disease prevention

(a) Grants to increase resources for community water fluoridation

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States and Indian tribes for the purpose of increasing the resources available for community water fluoridation.

(2) Use of funds

A State shall use amounts provided under a grant under paragraph (1)—

(A) to purchase fluoridation equipment;

(B) to train fluoridation engineers;

(C) to develop educational materials on the benefits of fluoridation; or

(D) to support the infrastructure necessary to monitor and maintain the quality of water fluoridation.

(b) Community water fluoridation

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in collaboration with the Director of the Indian Health Service, shall establish a demonstration project that is designed to assist rural water systems in successfully implementing the water fluoridation guidelines of the Centers for Disease Control and Prevention that are entitled ''Engineering and Administrative Recommendations for Water Fluoridation, 1995'' (referred to in this subsection as the ''EARWF'').

(2) Requirements

(A) Collaboration

In collaborating under paragraph (1), the Directors referred to in such paragraph shall ensure that technical assistance and training are provided to tribal programs located in each of the 12 areas of the Indian Health Service. The Director of the Indian Health Service shall provide coordination and administrative support to tribes under this section.

(B) General use of funds

Amounts made available under paragraph (1) shall be used to assist small water systems in improving the effectiveness of water fluoridation and to meet the recommendations of the EARWF.

(C) Fluoridation specialists

(i) In general

In carrying out this subsection, the Secretary shall provide for the establishment of fluoridation specialist engineering positions in each of the Dental Clinical and Preventive Support Centers through which technical assistance and training will be provided to tribal water operators, tribal utility operators and other Indian Health Service personnel working directly with fluoridation projects.

(ii) Liaison

A fluoridation specialist shall serve as the principal technical liaison between the Indian Health Service and the Centers for Disease Control and Prevention with respect to engineering and fluoridation issues.

(iii) CDC

The Director of the Centers for Disease Control and Prevention shall appoint individuals to serve as the fluoridation specialists.

(D) Implementation

The project established under this subsection shall be planned, implemented and evaluated over the 5-year period beginning on the date on which funds are appropriated under this section and shall be designed to serve as a model for improving the effectiveness of water fluoridation systems of small rural communities.

(3) Evaluation

In conducting the ongoing evaluation as provided for in paragraph (2)(D), the Secretary shall ensure that such evaluation includes—

(A) the measurement of changes in water fluoridation compliance levels resulting from assistance provided under this section;

(B) the identification of the administrative, technical and operational challenges that are unique to the fluoridation of small water systems;

(C) the development of a practical model that may be easily utilized by other tribal, State, county or local governments in improving the quality of water fluoridation with emphasis on small water systems; and

(D) the measurement of any increased percentage of Native Americans or Alaskan Natives who receive the benefits of optimally fluoridated water.

(c) School-based dental sealant program

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in collaboration with the Administrator of the Health Resources and Services Administration, may award grants to States and Indian tribes to provide for the development of school-based dental sealant programs to improve the access of children to sealants.

(2) Use of funds

A State shall use amounts received under a grant under paragraph (1) to provide funds to eligible school-based entities or to public elementary or secondary schools to enable such entities or schools to provide children with access to dental care and dental sealant services. Such services shall be provided by licensed dental health professionals in accordance with State practice licensing laws.

(3) Eligibility

To be eligible to receive funds under paragraph (1), an entity shall—

(A) prepare and submit to the State an application at such time, in such manner and containing such information as the State may require; and

(B) be a public elementary or secondary school—

(i) that is located in an urban area in which and[1] more than 50 percent of the student population is participating in Federal or State free or reduced meal programs; or

(ii) that is located in a rural area and, with respect to the school district in which the school is located, the district involved has a median income that is at or below 235 percent of the poverty line, as defined in section 9902(2) of this title.

(d) Definitions

For purposes of this section, the term ''Indian tribe'' means an Indian tribe or tribal organization as defined in section 450b(b) and section 450b(c)[2] of title 25.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, §317M, as added Pub. L. 106–310, div. A, title XVI, §1602, Oct. 17, 2000, 114 Stat. 1148.)

REFERENCES IN TEXT

Section 450b of title 25, referred to in subsec. (d), has been amended, and subsecs. (b) and (c) of section 450b no longer define the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in that section.

[1] So in original. The word ''and'' probably should not appear.

[2] See References in Text note below.

§ 247b–14a. Identification of interventions that reduce the burden and transmission of oral, dental, and craniofacial diseases in high risk populations; development of approaches for pediatric oral and craniofacial assessment

(a) In general

The Secretary of Health and Human Services, through the Maternal and Child Health Bureau, the Indian Health Service, and in consultation with the National Institutes of Health and the Centers for Disease Control and Prevention, shall—

(1) support community-based research that is designed to improve understanding of the etiology, pathogenesis, diagnosis, prevention, and treatment of pediatric oral, dental, craniofacial diseases and conditions and their sequelae in high risk populations;

(2) support demonstrations of preventive interventions in high risk populations including nutrition, parenting, and feeding techniques; and

(3) develop clinical approaches to assess individual patients for the risk of pediatric dental disease.

(b) Compliance with State practice laws

Treatment and other services shall be provided pursuant to this section by licensed dental health professionals in accordance with State practice and licensing laws.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section for each[1] the fiscal years 2001 through 2005.

(Pub. L. 106–310, div. A, title XVI, § 1601, Oct. 17, 2000, 114 Stat. 1148.)

CODIFICATION

Section was enacted as part of the Children's Health Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 247b–15. Surveillance and education regarding hepatitis C virus

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may (directly and through grants to public and nonprofit private entities) provide for programs to carry out the following:

(1) To cooperate with the States in implementing a national system to determine the incidence of hepatitis C virus infection (in this section referred to as ''HCV infection'') and to assist the States in determining the prevalence of such infection, including the reporting of chronic HCV cases.

(2) To identify, counsel, and offer testing to individuals who are at risk of HCV infection as a result of receiving blood transfusions prior to July 1992, or as a result of other risk factors.

(3) To provide appropriate referrals for counseling, testing, and medical treatment of individuals identified under paragraph (2) and to ensure, to the extent practicable, the provision of appropriate follow-up services.

(4) To develop and disseminate public information and education programs for the detection and control of HCV infection, with priority given to high risk populations as determined by the Secretary.

(5) To improve the education, training, and skills of health professionals in the detection and control of HCV infection, with priority given to pediatricians and other primary care physicians, and obstetricians and gynecologists.

(b) Laboratory procedures

The Secretary may (directly and through grants to public and nonprofit private entities) carry out programs to provide for improvements in the quality of clinical-laboratory procedures regarding hepatitis C, including reducing variability in laboratory results on hepatitis C antibody and PCR testing.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317N, as added Pub. L. 106–310, div. A, title XVIII, § 1801, Oct. 17, 2000, 114 Stat. 1152.)

STUDY AND DEMONSTRATION PROJECTS REGARDING CASES OF HEPATITIS C AMONG CERTAIN EMERGENCY RESPONSE EMPLOYEES

Pub. L. 106–398, § 1 [[div. A], title XVII, § 1704], Oct. 30, 2000, 114 Stat. 1654, 1654A–365, provided that:

''(a) STUDY REGARDING PREVALENCE AMONG CERTAIN EMERGENCY RESPONSE EMPLOYEES.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the 'Secretary'), in consultation with the Secretary of Labor, shall conduct a study to determine—

''(A) an estimate of the prevalence of hepatitis C among designated emergency response employees in the United States; and

''(B) the likely means through which such employees become infected with such disease in the course of performing their duties as such employees.

''(2) DESIGNATED EMERGENCY RESPONSE EMPLOYEES.—For purposes of this section, the term 'designated emergency response employees' means firefighters, paramedics, and emergency medical technicians who are employees or volunteers of units of local government.

''(3) DATE CERTAIN FOR COMPLETION; REPORT TO CONGRESS.—The Secretary shall commence the study under paragraph (1) not later than 90 days after the date of the enactment of this Act [Oct. 30, 2000]. Not later than one year after such date, the Secretary shall complete the study and submit to the Congress a report describing the findings of the study.

''(b) DEMONSTRATION PROJECTS REGARDING TRAINING AND TREATMENT.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Labor, shall make grants to qualifying local governments for the purpose of carrying out demonstration projects that (directly or through arrangements with nonprofit private entities) carry out each of the following activities:

''(A) Training designated emergency response employees in minimizing the risk of infection with hepatitis C in performing their duties as such employees.

''(B) Testing such employees for infection with the disease.

''(C) Treating the employees for the disease.

[1] So in original. Probably should be followed by ''of''.

''(2) QUALIFYING LOCAL GOVERNMENTS.—For purposes of this section, the term 'qualifying local government' means a unit of local government whose population of designated emergency response employees has a prevalence of hepatitis C that is not less than 200 percent of the national average for the prevalence of such disease in such populations.

''(3) CONFIDENTIALITY.—A grant may be made under paragraph (1) only if the qualifying local government involved agrees to ensure that information regarding the testing or treatment of designated emergency response employees pursuant to the grant is maintained confidentially in a manner not inconsistent with applicable law.

''(4) EVALUATIONS.—The Secretary shall provide for an evaluation of each demonstration project under paragraph (1) in order to determine the extent to which the project has been effective in carry [sic] out the activities described in such paragraph.

''(5) REPORT TO CONGRESS.—Not later than 180 days after the date on which all grants under paragraph (1) have been expended, the Secretary shall submit to Congress a report providing—

''(A) a summary of evaluations under paragraph (4); and

''(B) the recommendations of the Secretary for administrative or legislative initiatives regarding the activities described in paragraph (1).

''(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated to the Department of Health and Human Services and the Department of Labor $10,000,000 for fiscal year 2001.''

§ 247b–16. Grants for lead poisoning related activities

(a) Authority to make grants

(1) In general

The Secretary shall make grants to States to support public health activities in States and localities where data suggests that at least 5 percent of preschool-age children have an elevated blood lead level through—

(A) effective, ongoing outreach and community education targeted to families most likely to be at risk for lead poisoning;

(B) individual family education activities that are designed to reduce ongoing exposures to lead for children with elevated blood lead levels, including through home visits and coordination with other programs designed to identify and treat children at risk for lead poisoning; and

(C) the development, coordination and implementation of community-based approaches for comprehensive lead poisoning prevention from surveillance to lead hazard control.

(2) State match

A State is not eligible for a grant under this section unless the State agrees to expend (through State or local funds) $1 for every $2 provided under the grant to carry out the activities described in paragraph (1).

(3) Application

To be eligible to receive a grant under this section, a State shall submit an application to the Secretary in such form and manner and containing such information as the Secretary may require.

(b) Coordination with other children's programs

A State shall identify in the application for a grant under this section how the State will coordinate operations and activities under the grant with—

(1) other programs operated in the State that serve children with elevated blood lead levels, including any such programs operated under title V, XIX, or XXI of the Social Security Act [42 U.S.C. 701 et seq., 1396 et seq., 1397aa et seq.]; and

(2) one or more of the following—

(A) the child welfare and foster care and adoption assistance programs under parts B and E of title IV of such Act [42 U.S.C. 620 et seq., 670 et seq.];

(B) the head start program established under the Head Start Act (42 U.S.C. 9831 et seq.);

(C) the program of assistance under the special supplemental nutrition program for women, infants and children (WIC) under section 1786 of this title;

(D) local public and private elementary or secondary schools; or

(E) public housing agencies, as defined in section 1437a of this title.

(c) Performance measures

The Secretary shall establish needs indicators and performance measures to evaluate the activities carried out under grants awarded under this section. Such indicators shall be commensurate with national measures of maternal and child health programs and shall be developed in consultation with the Director of the Centers for Disease Control and Prevention.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317O, as added Pub. L. 106–310, div. A, title XXV, § 2502(a), Oct. 17, 2000, 114 Stat. 1162.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1), (2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts B and E of title IV of the Act are classified generally to parts B (§ 620 et seq.) and E (§ 670 et seq.), respectively, of subchapter IV of chapter 7 of this title. Titles V, XIX, and XXI of the Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Head Start Act, referred to in subsec. (b)(2)(B), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

§ 247b–17. Human papillomavirus (Johanna's Law)

(a) Surveillance

(1) In general

The Secretary, acting through the Centers for Disease Control and Prevention, shall—

(A) enter into cooperative agreements with States and other entities to conduct sentinel surveillance or other special studies

that would determine the prevalence in various age groups and populations of specific types of human papillomavirus (referred to in this section as ''HPV'') in different sites in various regions of the United States, through collection of special specimens for HPV using a variety of laboratory-based testing and diagnostic tools; and

(B) develop and analyze data from the HPV sentinel surveillance system described in subparagraph (A).

(2) Report

The Secretary shall make a progress report to the Congress with respect to paragraph (1) no later than 1 year after the effective date of this section.

(b) Prevention activities; education program

(1) In general

The Secretary, acting through the Centers for Disease Control and Prevention, shall conduct prevention research on HPV, including—

(A) behavioral and other research on the impact of HPV-related diagnosis on individuals;

(B) formative research to assist with the development of educational messages and information for the public, for patients, and for their partners about HPV;

(C) surveys of physician and public knowledge, attitudes, and practices about genital HPV infection; and

(D) upon the completion of and based on the findings under subparagraphs (A) through (C), develop and disseminate educational materials for the public and health care providers regarding HPV and its impact and prevention.

(2) Report; final proposal

The Secretary shall make a progress report to the Congress with respect to paragraph (1) not later than 1 year after the effective date of this section, and shall develop a final report not later than 3 years after such effective date, including a detailed summary of the significant findings and problems and the best strategies to prevent future infections, based on available science.

(c) HPV education and prevention

(1) In general

The Secretary shall prepare and distribute educational materials for health care providers and the public that include information on HPV. Such materials shall address—

(A) modes of transmission;

(B) consequences of infection, including the link between HPV and cervical cancer;

(C) the available scientific evidence on the effectiveness or lack of effectiveness of condoms in preventing infection with HPV; and

(D) the importance of regular Pap smears, and other diagnostics for early intervention and prevention of cervical cancer purposes in preventing cervical cancer.

(2) Medically accurate information

Educational material under paragraph (1), and all other relevant educational and prevention materials prepared and printed from this date forward for the public and health care providers by the Secretary (including materials prepared through the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Health Resources and Services Administration), or by contractors, grantees, or subgrantees thereof, that are specifically designed to address STDs including HPV shall contain medically accurate information regarding the effectiveness or lack of effectiveness of condoms in preventing the STD the materials are designed to address. Such requirement only applies to materials mass produced for the public and health care providers, and not to routine communications.

(d) Johanna's Law

(1) National public awareness campaign

(A) In general

The Secretary shall carry out a national campaign to increase the awareness and knowledge of health care providers and women with respect to gynecologic cancers.

(B) Written materials

Activities under the national campaign under subparagraph (A) shall include—

(i) maintaining a supply of written materials that provide information to the public on gynecologic cancers; and

(ii) distributing the materials to members of the public upon request.

(C) Public service announcements

Activities under the national campaign under subparagraph (A) shall, in accordance with applicable law and regulations, include developing and placing, in telecommunications media, public service announcements intended to encourage women to discuss with their physicians their risks of gynecologic cancers. Such announcements shall inform the public on the manner in which the written materials referred to in subparagraph (B) can be obtained upon request, and shall call attention to early warning signs and risk factors based on the best available medical information.

(2) Report and strategy

(A) Report

Not later than 6 months after January 12, 2007, the Secretary shall submit to the Congress a report including the following:

(i) A description of the past and present activities of the Department of Health and Human Services to increase awareness and knowledge of the public with respect to different types of cancer, including gynecologic cancers.

(ii) A description of the past and present activities of the Department of Health and Human Services to increase awareness and knowledge of health care providers with respect to different types of cancer, including gynecologic cancers.

(iii) For each activity described pursuant to clause (i) or (ii), a description of the following:

(I) The funding for such activity for fiscal year 2006 and the cumulative fund-

ing for such activity for previous fiscal years.

(II) The background and history of such activity, including—

(aa) the goals of such activity;

(bb) the communications objectives of such activity;

(cc) the identity of each agency within the Department of Health and Human Services responsible for any aspect of the activity; and

(dd) how such activity is or was expected to result in change.

(III) How long the activity lasted or is expected to last.

(IV) The outcomes observed and the evaluation methods, if any, that have been, are being, or will be used with respect to such activity.

(V) For each such outcome or evaluation method, a description of the associated results, analyses, and conclusions.

(B) Strategy

(i) Development; submission to Congress

Not later than 3 months after submitting the report required by subparagraph (A), the Secretary shall develop and submit to the Congress a strategy for improving efforts to increase awareness and knowledge of the public and health care providers with respect to different types of cancer, including gynecological cancers.

(ii) Consultation

In developing the strategy under clause (i), the Secretary should consult with qualified private sector groups, including nonprofit organizations.

(3) Full compliance

(A) IN GENERAL.—Not later than March 1, 2008, the Secretary shall ensure that all provisions of this section, including activities directed to be carried out by the Centers for Disease Control and Prevention and the Food and Drug Administration, are fully implemented and being complied with. Not later than April 30, 2008, the Secretary shall submit to Congress a report that certifies compliance with the preceding sentence and that contains a description of all activities undertaken to achieve such compliance.

(B) If the Secretary fails to submit the certification as provided for under subparagraph (A), the Secretary shall, not later than 3 months after the date on which the report is to be submitted under subparagraph (A), and every 3 months thereafter, submit to Congress an explanation as to why the Secretary has not yet complied with the first sentence of subparagraph (A), a detailed description of all actions undertaken within the month for which the report is being submitted to bring the Secretary into compliance with such sentence, and the anticipated date the Secretary expects to be in full compliance with such sentence.

(4) Authorization of appropriations

For the purpose of carrying out this subsection, there is authorized to be appropriated $16,500,000 for the period of fiscal years 2007 through 2009.

(July 1, 1944, ch. 373, title III, § 317P, as added Pub. L. 106–554, § 1(a)(1) [title V, § 516(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–72; amended Pub. L. 109–475, § 2, Jan. 12, 2007, 120 Stat. 3565.)

REFERENCES IN TEXT

Johanna's Law, referred to in section catchline and subsec. (d), is Pub. L. 109–475, Jan. 12, 2007, 120 Stat. 3565, also known as the Gynecologic Cancer Education and Awareness Act of 2005, which amended this section. For complete classification of this Act to the Code, see Short Title of 2007 Amendment note set out under section 201 of this title and Tables.

The effective date of this section, referred to in subsecs. (a)(2) and (b)(2), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

AMENDMENTS

2007—Pub. L. 109–475, § 2(1), inserted ''(Johanna's Law)'' after ''papillomavirus'' in section catchline.

Subsec. (d). Pub. L. 109–475, § 2(2), added subsec. (d).

§ 247b–18. Surveillance and research regarding muscular dystrophy

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may award grants and cooperative agreements to public or nonprofit private entities (including health departments of States and political subdivisions of States, and including universities and other educational entities) for the collection, analysis, and reporting of data on Duchenne and other forms of muscular dystrophy. In making such awards, the Secretary may provide direct technical assistance in lieu of cash.

(b) National muscular dystrophy epidemiology program

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may award grants to public or nonprofit private entities (including health departments of States and political subdivisions of States, and including universities and other educational entities) for the purpose of carrying out epidemiological activities regarding Duchenne and other forms of muscular dystrophies, including collecting and analyzing information on the number, incidence, correlates, and symptoms of cases. In carrying out the preceding sentence, the Secretary shall provide for a national surveillance program. In making awards under this subsection, the Secretary may provide direct technical assistance in lieu of cash.

(c) Coordination with centers of excellence

The Secretary shall ensure that epidemiological information under subsections (a) and (b) of this section is made available to centers of excellence supported under section 283g(b) of this title by the Director of the National Institutes of Health.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(July 1, 1944, ch. 373, title III, § 317Q, as added Pub. L. 107–84, § 4, Dec. 18, 2001, 115 Stat. 828.)

FINDINGS

Pub. L. 107–84, § 2, Dec. 18, 2001, 115 Stat. 823, provided that: ''Congress makes the following findings:

''(1) Of the childhood muscular dystrophies, Duchenne Muscular Dystrophy (DMD) is the world's most common and catastrophic form of genetic childhood disease, and is characterized by a rapidly progressive muscle weakness that almost always results in death, usually by 20 years of age.

''(2) Duchenne muscular dystrophy is genetically inherited, and mothers are the carriers in approximately 70 percent of all cases.

''(3) If a female is a carrier of the dystrophin gene, there is a 50 percent chance per birth that her male offspring will have Duchenne muscular dystrophy, and a 50 percent chance per birth that her female offspring will be carriers.

''(4) Duchenne is the most common lethal genetic disorder of childhood worldwide, affecting approximately 1 in every 3,500 boys worldwide.

''(5) Children with muscular dystrophy exhibit extreme symptoms of weakness, delay in walking, waddling gait, difficulty in climbing stairs, and progressive mobility problems often in combination with muscle hypertrophy.

''(6) Other forms of muscular dystrophy affecting children and adults include Becker, limb girdle, congenital, facioscapulohumeral, myotonic, oculopharyngeal, distal, and Emery-Dreifuss muscular dystrophies.

''(7) Myotonic muscular dystrophy (also known as Steinert's disease and dystrophia myotonica) is the second most prominent form of muscular dystrophy and the type most commonly found in adults. Unlike any of the other muscular dystrophies, the muscle weakness is accompanied by myotonia (delayed relaxation of muscles after contraction) and by a variety of abnormalities in addition to those of muscle.

''(8) Facioscapulohumeral muscular dystrophy (referred to in this section as 'FSHD') is a neuromuscular disorder that is inherited genetically and has an estimated frequency of 1 in 20,000. FSHD, affecting between 15,000 to 40,000 persons, causes a progressive and sever [sic] loss of skeletal muscle gradually bringing weakness and reduced mobility. Many persons with FSHD become severely physically disabled and spend many decades in a wheelchair.

''(9) FSHD is regarded as a novel genetic phenomenon resulting from a crossover of subtelomeric DNA and may be the only human disease caused by a deletion-mutation.

''(10) Each of the muscular dystrophies, though distinct in progressivity and severity of symptoms, have a devastating impact on tens of thousands of children and adults throughout the United States and worldwide and impose severe physical and economic burdens on those affected.

''(11) Muscular dystrophies have a significant impact on quality of life—not only for the individual who experiences its painful symptoms and resulting disability, but also for family members and caregivers.

''(12) Development of therapies for these disorders, while realistic with recent advances in research, is likely to require costly investments and infrastructure to support gene and other therapies.

''(13) There is a shortage of qualified researchers in the field of neuromuscular research.

''(14) Many family physicians and health care professionals lack the knowledge and resources to detect and properly diagnose the disease as early as possible, thus exacerbating the progressiveness of symptoms in cases that go undetected or misdiagnosed.

''(15) There is a need for efficient mechanisms to translate clinically relevant findings in muscular dystrophy research from basic science to applied work.

''(16) Educating the public and health care community throughout the country about this devastating disease is of paramount importance and is in every respect in the public interest and to the benefit of all communities.''

REPORT TO CONGRESS

Pub. L. 107–84, § 6, Dec. 18, 2001, 115 Stat. 829, which directed the Secretary of Health and Human Services to prepare and submit to appropriate committees of Congress a report concerning the implementation of Pub. L. 107–84 not later than Jan. 1, 2003, and each Jan. 1 thereafter, was repealed by Pub. L. 109–482, title I, § 104(b)(3)(H), Jan. 15, 2007, 120 Stat. 3694.

§ 247b–19. Information and education

(a) In general

The Secretary of Health and Human Services (referred to in this Act as the ''Secretary'') shall establish and implement a program to provide information and education on muscular dystrophy to health professionals and the general public, including information and education on advances in the diagnosis and treatment of muscular dystrophy and training and continuing education through programs for scientists, physicians, medical students, and other health professionals who provide care for patients with muscular dystrophy.

(b) Stipends

The Secretary may use amounts made available under this section provides[1] stipends for health professionals who are enrolled in training programs under this section.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 107–84, § 5, Dec. 18, 2001, 115 Stat. 828.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 107–84, Dec. 18, 2001, 115 Stat. 823, known as the Muscular Dystrophy Community Assistance, Research and Education Amendments of 2001 and also as the MD–CARE Act. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Muscular Dystrophy Community Assistance, Research and Education Amendments of 2001, also known as the MD–CARE Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 247b–20. Food safety grants

(a) In general

The Secretary may award grants to States and Indian tribes (as defined in section 450b(e) of title 25) to expand participation in networks to enhance Federal, State, and local food safety efforts, including meeting the costs of establishing and maintaining the food safety surveillance, technical, and laboratory capacity needed for such participation.

(b) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $19,500,000 for fiscal year 2002, and such sums as

[1] So in original. Probably should be ''to provide''.

may be necessary for each of the fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title III, § 317R, as added Pub. L. 107–188, title III, § 312, June 12, 2002, 116 Stat. 674; amended Pub. L. 108–75, § 2(1), Aug. 15, 2003, 117 Stat. 898.)

AMENDMENTS

2003—Pub. L. 108–75 made technical amendment relating to placement of section within original act.

§ 247b–21. Mosquito-borne diseases; coordination grants to States; assessment and control grants to political subdivisions

(a) Coordination grants to States; assessment grants to political subdivisions

(1) In general

With respect to mosquito control programs to prevent and control mosquito-borne diseases (referred to in this section as ''control programs''), the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States for the purpose of—

(A) coordinating control programs in the State involved; and

(B) assisting such State in making grants to political subdivisions of the State to conduct assessments to determine the immediate needs in such subdivisions for control programs, and to develop, on the basis of such assessments, plans for carrying out control programs in the subdivisions.

(2) Preference in making grants

In making grants under paragraph (1), the Secretary shall give preference to States that have one or more political subdivisions with an incidence, prevalence, or high risk of mosquito-borne disease, or a population of infected mosquitoes, that is substantial relative to political subdivisions in other States.

(3) Certain requirements

A grant may be made under paragraph (1) only if—

(A) the State involved has developed, or agrees to develop, a plan for coordinating control programs in the State, and the plan takes into account any assessments or plans described in subsection (b)(3) of this section that have been conducted or developed, respectively, by political subdivisions in the State;

(B) in developing such plan, the State consulted or will consult (as the case may be under subparagraph (A)) with political subdivisions in the State that are carrying out or planning to carry out control programs;

(C) the State agrees to monitor control programs in the State in order to ensure that the programs are carried out in accordance with such plan, with priority given to coordination of control programs in political subdivisions described in paragraph (2) that are contiguous;

(D) the State agrees that the State will make grants to political subdivisions as described in paragraph (1)(B), and that such a grant will not exceed $10,000; and

(E) the State agrees that the grant will be used to supplement, and not supplant, State and local funds available for the purpose described in paragraph (1).

(4) Reports to Secretary

A grant may be made under paragraph (1) only if the State involved agrees that, promptly after the end of the fiscal year for which the grant is made, the State will submit to the Secretary a report that—

(A) describes the activities of the State under the grant; and

(B) contains an evaluation of whether the control programs of political subdivisions in the State were effectively coordinated with each other, which evaluation takes into account any reports that the State received under subsection (b)(5) of this section from such subdivisions.

(5) Number of grants

A State may not receive more than one grant under paragraph (1).

(b) Prevention and control grants to political subdivisions

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to political subdivisions of States or consortia of political subdivisions of States, for the operation of control programs.

(2) Preference in making grants

In making grants under paragraph (1), the Secretary shall give preference to a political subdivision or consortium of political subdivisions that—

(A) has—

(i) a history of elevated incidence or prevalence of mosquito-borne disease;

(ii) a population of infected mosquitoes; or

(iii) met criteria determined by the Secretary to suggest an increased risk of elevated incidence or prevalence of mosquito-borne disease in the pending fiscal year;

(B) demonstrates to the Secretary that such political subdivision or consortium of political subdivisions will, if appropriate to the mosquito circumstances involved, effectively coordinate the activities of the control programs with contiguous political subdivisions;

(C) demonstrates to the Secretary (directly or through State officials) that the State in which such a political subdivision or consortium of political subdivisions is located has identified or will identify geographic areas in such State that have a significant need for control programs and will effectively coordinate such programs in such areas; and

(D) is located in a State that has received a grant under subsection (a) of this section.

(3) Requirement of assessment and plan

A grant may be made under paragraph (1) only if the political subdivision or consortium of political subdivisions involved—

(A) has conducted an assessment to determine the immediate needs in such subdivision or consortium for a control program, including an entomological survey of potential mosquito breeding areas; and

(B) has, on the basis of such assessment, developed a plan for carrying out such a program.

(4) Requirement of matching funds

(A) In general

With respect to the costs of a control program to be carried out under paragraph (1) by a political subdivision or consortium of political subdivisions, a grant under such paragraph may be made only if the subdivision or consortium agrees to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than ⅓ of such costs ($1 for each $2 of Federal funds provided in the grant).

(B) Determination of amount contributed

Non-Federal contributions required in subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(C) Waiver

The Secretary may waive the requirement established in subparagraph (A) if the Secretary determines that extraordinary economic conditions in the political subdivision or consortium of political subdivisions involved justify the waiver.

(5) Reports to Secretary

A grant may be made under paragraph (1) only if the political subdivision or consortium of political subdivisions involved agrees that, promptly after the end of the fiscal year for which the grant is made, the subdivision or consortium will submit to the Secretary, and to the State within which the subdivision or consortium is located, a report that describes the control program and contains an evaluation of whether the program was effective.

(6) Amount of grant; number of grants

(A) Amount of grant

(i) Single political subdivision

A grant under paragraph (1) awarded to a political subdivision for a fiscal year may not exceed $100,000.

(ii) Consortium

A grant under paragraph (1) awarded to a consortium of 2 or more political subdivisions may not exceed $110,000 for each political subdivision. A consortium is not required to provide matching funds under paragraph (4) for any amounts received by such consortium in excess of amounts each political subdivision would have received separately.

(iii) Waiver of requirement

A grant may exceed the maximum amount in clause (i) or (ii) if the Secretary determines that the geographical area covered by a political subdivision or consortium awarded a grant under paragraph (1) has an extreme need due to the size or density of—

(I) the human population in such geographical area; or

(II) the mosquito population in such geographical area.

(B) Number of grants

A political subdivision or a consortium of political subdivisions may not receive more than one grant under paragraph (1).

(c) Applications for grants

A grant may be made under subsection (a) or (b) of this section only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(d) Technical assistance

Amounts appropriated under subsection (f) of this section may be used by the Secretary to provide training and technical assistance with respect to the planning, development, and operation of assessments and plans under subsection (a) of this section and control programs under subsection (b) of this section. The Secretary may provide such technical assistance directly or through awards of grants or contracts to public and private entities.

(e) Definition of political subdivision

In this section, the term ''political subdivision'' means the local political jurisdiction immediately below the level of State government, including counties, parishes, and boroughs. If State law recognizes an entity of general government that functions in lieu of, and is not within, a county, parish, or borough, the Secretary may recognize an area under the jurisdiction of such other entities of general government as a political subdivision for purposes of this section.

(f) Authorization of appropriations

(1) In general

For the purpose of carrying out this section, there are authorized to be appropriated $100,000,000 for fiscal year 2003, and such sums as may be necessary for each of fiscal years 2004 through 2007.

(2) Public health emergencies

In the case of control programs carried out in response to a mosquito-borne disease that constitutes a public health emergency, the authorization of appropriations under paragraph (1) is in addition to applicable authorizations of appropriations under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.

(3) Fiscal year 2004 appropriations

For fiscal year 2004, 50 percent or more of the funds appropriated under paragraph (1) shall be used to award grants to political subdivisions or consortia of political subdivisions under subsection (b) of this section.

(July 1, 1944, ch. 373, title III, § 317S, as added Pub. L. 108–75, § 2(2), Aug. 15, 2003, 117 Stat. 898.)

REFERENCES IN TEXT

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, referred to in subsec. (f)(2), is Pub. L. 107–188, June 12, 2002, 116 Stat. 594, as amended. For complete classification of this Act to the Code, see Short Title of 2002 Amendments note set out under section 201 of this title and Tables.

§ 247c. Sexually transmitted diseases; prevention and control projects and programs

(a) Technical assistance to public and nonprofit private entities and scientific institutions

The Secretary may provide technical assistance to appropriate public and nonprofit private entities and to scientific institutions for their research in, and training and public health programs for, the prevention and control of sexually transmitted diseases.

(b) Research, demonstration, and public information and education projects

The Secretary may make grants to States, political subdivisions of States, and any other public and nonprofit private entity for—

(1) research into the prevention and control of sexually transmitted diseases;

(2) demonstration projects for the prevention and control of sexually transmitted diseases;

(3) public information and education programs for the prevention and control of such diseases; and

(4) education, training, and clinical skills improvement activities in the prevention and control of such diseases for health professionals (including allied health personnel).

(c) Project grants to States

The Secretary is also authorized to make project grants to States and, in consultation with the State health authority, to political subdivisions of States, for—

(1) sexually transmitted diseases surveillance activities, including the reporting, screening, and followup of diagnostic tests for, and diagnosed cases of, sexually transmitted diseases;

(2) casefinding and case followup activities respecting sexually transmitted diseases, including contact tracing of infectious cases of sexually transmitted diseases and routine testing, including laboratory tests and followup systems;

(3) interstate epidemiologic referral and followup activities respecting sexually transmitted diseases; and

(4) such special studies or demonstrations to evaluate or test sexually transmitted diseases prevention and control strategies and activities as may be prescribed by the Secretary.

(d) Grants for innovative, interdisciplinary approaches

The Secretary may make grants to States and political subdivisions of States for the development, implementation, and evaluation of innovative, interdisciplinary approaches to the prevention and control of sexually transmitted diseases.

(e) Authorization of appropriations; terms and conditions; payments; recordkeeping; audit; grant reduction; information disclosure

(1) For the purpose of making grants under subsections (b) through (d) of this section, there are authorized to be appropriated $85,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998.

(2) Each recipient of a grant under this section shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant was given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(3) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of grants under this section that are pertinent to such grants.

(4) The Secretary, at the request of a recipient of a grant under this section, may reduce such grant by the fair market value of any supplies or equipment furnished to such recipient and by the amount of pay, allowances, travel expenses, and any other costs in connection with the detail of an officer or employee of the United States to the recipient when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such recipient and for the purpose of carrying out the program with respect to which the grant under this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies, equipment, or personal services on which the reduction of such grant is based.

(5) All information obtained in connection with the examination, care, or treatment of any individual under any program which is being carried out with a grant made under this section shall not, without such individual's consent, be disclosed except as may be necessary to provide service to him or as may be required by a law of a state or political subdivision of a State. Information derived from any such program may be disclosed—

(A) in summary, statistical, or other form; or

(B) for clinical or research purposes;

but only if the identity of the individuals diagnosed or provided care or treatment under such program is not disclosed.

(f) Consent of individuals

Nothing in this section shall be construed to require any State or any political subdivision of a State to have a sexually transmitted diseases program which would require any person, who objects to any treatment provided under such a program, to be treated under such a program.

(July 1, 1944, ch. 373, title III, § 318, as added Pub. L. 92–449, title II, § 203, Sept. 30, 1972, 86 Stat. 751;

amended Pub. L. 94–317, title II, § 203(b)–(i), June 23, 1976, 90 Stat. 704, 705; Pub. L. 94–484, title IX, § 905(b)(2), Oct. 12, 1976, 90 Stat. 2325; Pub. L. 95–626, title II, § 204(b)(1), (c), (d), Nov. 10, 1978, 92 Stat. 3583; Pub. L. 96–32, § 6(j), July 10, 1979, 93 Stat. 84; Pub. L. 97–35, title IX, § 929, Aug. 13, 1981, 95 Stat. 569; Pub. L. 98–555, § 3, Oct. 30, 1984, 98 Stat. 2854; Pub. L. 100–607, title III, § 311, Nov. 4, 1988, 102 Stat. 3112; Pub. L. 103–183, title IV, § 401, Dec. 14, 1993, 107 Stat. 2236; Pub. L. 105–392, title IV, § 401(b)(2), (c), Nov. 13, 1998, 112 Stat. 3587.)

PRIOR PROVISIONS

A prior section 247c, act July 1, 1944, ch. 373 title III, § 318, as added Aug. 18, 1964, Pub. L. 88–443, § 2, 78 Stat. 447, related to grants for assisting in the areawide planning of health and related facilities, prior to repeal by Pub. L. 89–749, § 6, Nov. 3, 1966, 80 Stat. 1190 eff. July 1, 1967.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–392, § 401(b)(2), redesignated subsec. (e), relating to consent of individuals, as (f).

Subsec. (e)(5). Pub. L. 105–392, § 401(c), made technical amendment to directory language of Pub. L. 103–183, § 401(c)(3). See 1993 Amendment note below.

Subsec. (f). Pub. L. 105–392, § 401(b)(2), redesignated subsec. (e), relating to consent of individuals, as (f).

1993—Subsec. (b)(3). Pub. L. 103–183, § 401(c)(1), substituted ''; and'' for '', and''.

Subsec. (c)(3). Pub. L. 103–183, § 401(c)(2), which directed the substitution of ''; and'' for '', and'', could not be executed because '', and'' did not appear.

Subsec. (d). Pub. L. 103–183, § 401(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 103–183, § 401(a)(1), redesignated subsec. (d), relating to authorization of appropriations, etc., as (e).

Subsec. (e)(1). Pub. L. 103–183, § 401(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purpose of making grants under subsections (b) and (c) of this section there are authorized to be appropriated $45,000,000 for the fiscal year ending September 30, 1979, $51,500,000 for the fiscal year ending September 30, 1980, $59,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for the fiscal year ending September 30, 1982, $46,500,000 for the fiscal year ending September 30, 1983, $50,000,000 for the fiscal year ending September 30, 1984, $57,000,000 for the fiscal year ending September 30, 1985, $62,500,000 for the fiscal year ending September 30, 1986, $68,000,000 for the fiscal year ending September 30, 1987, $78,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991. For grants under subsection (b) of this section in any fiscal year, the Secretary shall obligate not less than 10 per centum of the amount appropriated for such fiscal year under the preceding sentence. Grants made under subsection (b) or (c) of this section shall be made on such terms and conditions as the Secretary finds necessary to carry out the purposes of such subsection, and payments under any such grants shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary.''

Subsec. (e)(5). Pub. L. 103–183, § 401(c)(3), as amended by Pub. L. 105–392, § 401(c), substituted ''form; or'' for ''form, or'' in subpar. (A) and ''purposes;'' for ''purposes,'' in subpar. (B).

1988—Pub. L. 100–607, § 311(1), amended section catchline.

Subsec. (d). Pub. L. 100–607, § 311(2), (3), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to acquired immune deficiency syndrome.

Subsec. (d)(1). Pub. L. 100–607, § 311(4), substituted ''(b) and (c)'' for ''(b), (c), and (d)'', struck out ''and'' after ''1986,'', and inserted '', $78,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991'' before period at end of first sentence; substituted ''(b) or (c)'' for ''(b), (c), or (d)'' in third sentence; and struck out at end ''If the appropriations under the first sentence for fiscal year 1985 exceed $50,000,000, one-half of the amount in excess of $50,000,000 shall be made available for grants under subsection (d) of this section; if the appropriations under the first sentence for fiscal year 1986 exceed $52,500,000, one-half of the amount in excess of $52,500,000 shall be made available for such grants; and if the appropriations under the first sentence for fiscal year 1987 exceed $55,000,000, one-half of the amount in excess of $55,000,000 shall be made available for such grants.''

Subsecs. (e) to (g). Pub. L. 100–607, § 311(2), (3), struck out subsec. (f) which related to conditional limitation on use of funds and redesignated subsecs. (e) and (g) as (d) and (e), respectively.

1984—Subsec. (a). Pub. L. 98–555, § 3(b)(1), substituted ''research in, and training and public health programs for, the prevention and control of sexually transmitted diseases'' for ''research, training, and public health programs for the prevention and control of venereal disease''.

Subsec. (b). Pub. L. 98–555, § 3(b)(2), in amending subsec. (b) generally, designated existing provisions as pars. (1) to (3), added par. (4), and substituted references to sexually transmitted diseases for reference to venereal disease.

Subsec. (c). Pub. L. 98–555, § 3(b)(3), (6)(A), substituted ''sexually transmitted diseases'' for ''venereal disease'' wherever appearing, struck out par. (4) relating to professional venereal disease education, training and clinical skills improvement activities, and redesignated par. (5) as (4).

Subsec. (d). Pub. L. 98–555, § 3(b)(5)(A), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98–555, § 3(a), (b)(4), (5), redesignated subsec. (d) as (e), and in par. (1) of subsec. (e) as so redesignated, substituted ''(b), (c), and (d)'' for ''(b) and (c)'', inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987, substituted ''10 per centum'' for ''5 per centum'', and inserted provisions directing that one-half the excess of appropriations in fiscal years 1985, 1986, and 1987 over certain amounts be made available for grants under subsec. (d). Notwithstanding language of section 3(b)(5)(B)(ii) directing the substitution of ''(b), (c), or (d)'' for ''(b) or (c)'' in second sentence of subsec. (e)(1), the amendment was executed by making the substitution in third sentence of subsec. (e)(1) to reflect the probable intent of Congress because ''(b) or (c)'' did not appear in second sentence. Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 98–555, § 3(b)(5)(A), (6)(A), (C), redesignated subsecs. (e) and (f) as (f) and (g), respectively, in subsecs. (f) and (g) as so redesignated, substituted ''sexually transmitted diseases'' for ''venereal disease'', and struck out former subsec. (g) which defined venereal disease.

1981—Subsec. (d)(1). Pub. L. 97–35 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1979—Subsec. (b). Pub. L. 96–32 amended directory language of Pub. L. 95–626, § 204(c)(2), and required no change in text. See 1978 Amendment note below.

1978—Subsec. (b). Pub. L. 95–626, § 204(c)(2), as amended by Pub. L. 96–32, substituted ''research, demonstrations, and public information and education for the prevention and control of venereal disease'' for ''research, demonstrations, education, and training for the prevention and control of venereal disease'', struck out ''(1)'' preceding provisions thus amended, and struck out par. (2) which authorized appropriation of $5,000,000 for fiscal year 1976, $6,600,000 for fiscal year 1977, and $7,600,000 for fiscal year 1978 for purpose of carrying out this subsection.

Subsec. (c). Pub. L. 95–626, § 204(d), struck out ''(1)'' after ''(c)'' at beginning of existing provisions, changed

designations at beginning of each of the five clauses from ''(A)'', ''(B)'', ''(C)'', ''(D)'', and ''(E)'' to ''(1)'', ''(2)'', ''(3)'', ''(4)'', and ''(5)'', respectively, substituted ''The Secretary is also authorized'' for ''The Secretary is authorized'' in provisions preceding cl. (1) as redesignated, substituted ''professional (including appropriate allied health personnel) venereal disease education, training and clinical skills improvement activities'' for ''professional and public venereal disease education activities'' in cl. (4) as redesignated, and struck out former par. (2) which had authorized appropriations of $32,000,000 for fiscal year 1976, $41,500,000 for fiscal year 1977, and $43,500,000 for fiscal year 1978.

Subsec. (d)(1). Pub. L. 95–626, § 204(c)(1), inserted provisions authorizing appropriations of $45,000,000 for fiscal year ending Sept. 30, 1979, $51,500,000 for fiscal year ending Sept. 30, 1980, and $59,000,000 for fiscal year ending Sept. 30, 1981, for purpose of making grants under subsecs. (b) and (c) of this section, and inserted provisions directing Secretary to obligate not less than 5 per centum of amount appropriated for any fiscal year.

Subsec. (f). Pub. L. 95–626, § 204(b)(1), redesignated subsec. (g) as (f). Former subsec. (f), requiring that not to exceed 50 per centum of amounts appropriated for any fiscal year under subsecs. (b) and (c) of this section could be used by Secretary for grants for such fiscal year under section 247b of this title, was struck out.

Subsec. (g). Pub. L. 95–626, § 204(b)(1), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

1976—Subsec. (a). Pub. L. 94–317, § 203(c), substituted ''public and nonprofit private entities and to'' for ''public authorities and''.

Subsec. (b)(1). Pub. L. 94–317, § 203(i), inserted ''education,'' before ''and training''.

Subsec. (b)(2). Pub. L. 94–317, § 203(b)(1), substituted provisions authorizing appropriations of $5,000,000 for fiscal year 1976, $6,600,000 for fiscal year 1977, and $7,600,000 for fiscal year 1978, for provisions authorizing appropriations of $7,500,000 for fiscal year ending June 30, 1973, and for each of the next two fiscal years.

Subsec. (c). Pub. L. 94–484, purported to amend former subsec. (c)(1) by defining ''State'' to include the Northern Mariana Islands. Former subsec. (c) of this section had been previously repealed by section 203(f)(1) of Pub. L. 94–317. See par. below.

Pub. L. 94–317, § 203(b)(2), (d), (e), (f)(1), (3), (8), redesignated subsec. (d) as (c), inserted, in par. (1)(B), reference to routine testing, including laboratory tests and followup systems and substituted in par. (1)(E). ''prevention and control strategies and activities'' for ''control'' and, in par. (2), provisions authorizing appropriations of $32,000,000 for fiscal year 1976, $41,500,000 for fiscal year 1977, and $43,500,000 for fiscal year 1978, for provisions authorizing appropriations of $30,000,000 for the fiscal year ending June 30, 1973, and for each of the next two succeeding fiscal years. Former subsec. (c), which provided for authorization of appropriations to enable the Secretary to make grants to state health authorities to establish and maintain programs for diagnosis and treatment of venereal disease was amended by striking out reference to dark-field microscope techniques for diagnosis of both gonorrhea an syphilis, and as so amended, was repealed.

Subsec. (d). Pub. L. 94–317, § 203(f)(2), (4), (5), (8), redesignated subsec. (e) as (d), substituted in par. (1) ''or (c)'' for ''or (d)'', struck out in par. (4) provisions relating to the amount of reduction of a grant under former subsec. (c) whereby such amount shall be deemed a part of the grant to the recipient of the grant and shall be deemed to have been paid to such recipient, and inserted in par. (5) reference to requirement by law of a State or political subdivision of a state. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94–317, § 203(f)(8), (g), redesignated subsec. (f) as (e) and substituted ''247b(g)(2) of this title'' for ''247b(d)(4) of this title''. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94–317, § 203(f)(6), (8), redesignated subsec. (g) as (f) and substituted ''and (c)'' for '', (c), and (d)''. Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 94–317, § 203(f)(7), (8), redesignated subsec. (h) as (g) and struck out ''treated or to have any child or ward of his'' after ''a program, to be''. Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 94–317, § 203(h), added subsec. (h). Former subsec. (h) redesignated (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

DISTRIBUTION OF INFORMATION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME BY DIRECTOR OF CENTERS FOR DISEASE CONTROL TO EVERY AMERICAN HOUSEHOLD

Pub. L. 100–202, § 101(h) [title II], Dec. 22, 1987, 101 Stat. 1329–256, 1329–365, provided: ''That the Director shall cause to be distributed without necessary clearance of the content by any official, organization or office, an AIDS mailer to every American household by June 30, 1988, as approved and funded by the Congress in Public Law 100–71 [July 11, 1987, 101 Stat. 391].''

CONGRESSIONAL FINDINGS AND DECLARATIONS

Section 204(a) of Pub. L. 95–626 provided that: ''The Congress finds and declares that—

''(1) the number of reported cases of venereal disease persists in epidemic proportions in the United States;

''(2) the number of persons affected by venereal disease and reported to public health authorities is only a fraction of those actually affected;

''(3) the incidence of venereal disease continues to be particularly high among American youth, ages fifteen to twenty-nine, and among populations in metropolitan areas;

''(4) venereal disease accounts for severe permanent disabilities and sometimes death in newborns and causes reproductive dysfunction in women of childbearing age;

''(5) it is conservatively estimated that the public cost of health care for persons suffering from complications of venereal disease exceeds one-half billion dollars annually;

''(6) the number of trained Federal venereal disease prevention and control personnel has fallen to a dangerously inadequate level;

''(7) no vaccine for syphilis, gonorrhea, or any other venereal disease has yet been developed, nor does a blood test for the detection of asymptomatic gonorrhea in women exist, nor are safe and effective therapeutic agents available for some other venereal diseases;

''(8) school health education programs, public information and awareness campaigns, mass diagnostic screening and case followup have all been found to be effective venereal disease prevention and control methodologies;

''(9) skilled and knowledgeable health care providers, informed and concerned individuals and active, well-coordinated voluntary groups are fundamental to venereal disease prevention and control;

''(10) biomedical research toward improved diagnostic and therapeutic tools is of singular importance to the elimination of venereal disease; and

''(11) an increasing number of sexually transmissible diseases besides syphilis and gonorrhea have become a public health hazard.''

Section 203(a) of Pub. L. 94–317 provided that: ''The Congress finds and declares that—

''(1) the number of reported cases of venereal disease continues in epidemic proportions in the United States;

''(2) the number of patients with venereal disease reported to public health authorities is only a fraction of those actually infected;

''(3) the incidence of venereal disease is particularly high in the 15–29-year age group, and in metropolitan areas;

''(4) venereal disease accounts for needless deaths and leads to such severe disabilities as sterility, insanity, blindness, and crippling conditions;

''(5) the number of cases of congenital syphilis, a preventable disease, tends to parallel the incidence of syphilis in adults;

''(6) it is conservatively estimated that the public cost of care for persons suffering the complications of venereal disease exceed $80,000,000 annually;

''(7) medical researchers have no successful vaccine for syphilis or gonorrhea, and have no blood test for the detection of gonorrhea among the large reservoir of asymptomatic females;

''(8) school health education programs, public information and awareness campaigns, mass diagnostic screening and case followup activities have all been found to be effective disease intervention methodologies;

''(9) knowledgeable health providers and concerned individuals and groups are fundamental to venereal disease prevention and control;

''(10) biomedical research leading to the development of vaccines for syphilis and gonorrhea is of singular importance for the eventual eradication of these dreaded diseases; and

''(11) a variety of other sexually transmitted diseases, in addition to syphilis and gonorrhea, have become of public health significance.''

Section 202 of Pub. L. 92–449 provided that:

''(a) The Congress finds and declares that—

''(1) the number or reported cases of venereal disease has reached epidemic proportions in the United States;

''(2) the number of patients with venereal disease reported to public health authorities is only a fraction of those treated by physicians;

''(3) the incidence of venereal disease is particularly high among individuals in the 20–24 age group, and in metropolitan areas;

''(4) venereal disease accounts for needless deaths and leads to such severe disabilities as sterility, insanity, blindness, and crippling conditions;

''(5) the number of cases of congenital syphilis, a preventable disease, in infants under one year of age increased by 33⅓ per centum between 1970 and 1971;

''(6) health education programs in schools and through the mass media may prevent a substantial portion of the venereal disease problem; and

''(7) medical authorities have no successful vaccine for syphilis or gonorrhea and no blood test for the detection of gonorrhea among the large reservoir of asymptomatic females.

''(b) In order to preserve and protect the health and welfare of all citizens, it is the purpose of this Act [this chapter] to establish a national program for the prevention and control of venereal disease.''

§ 247c–1. Infertility and sexually transmitted diseases

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States, political subdivisions of States, and other public or nonprofit private entities for the purpose of carrying out the activities described in subsection (c) of this section regarding any treatable sexually transmitted disease that can cause infertility in women if treatment is not received for the disease.

(b) Authority regarding individual diseases

With respect to diseases described in subsection (a) of this section, the Secretary shall, in making a grant under such subsection, specify the particular disease or diseases with respect to which the grant is to be made. The Secretary may not make the grant unless the applicant involved agrees to carry out this section only with respect to the disease or diseases so specified.

(c) Authorized activities

With respect to any sexually transmitted disease described in subsection (a) of this section, the activities referred to in such subsection are—

(1) screening women for the disease and for secondary conditions resulting from the disease, subject to compliance with criteria issued under subsection (f) of this section;

(2) providing treatment to women for the disease;

(3) providing counseling to women on the prevention and control of the disease (including, in the case of a woman with the disease, counseling on the benefits of locating and providing such counseling to any individual from whom the woman may have contracted the disease and any individual whom the woman may have exposed to the disease);

(4) providing follow-up services;

(5) referrals for necessary medical services for women screened pursuant to paragraph (1), including referrals for evaluation and treatment with respect to acquired immune deficiency syndrome and other sexually transmitted diseases;

(6) in the case of any woman receiving services pursuant to any of paragraphs (1) through (5), providing to the partner of the woman the services described in such paragraphs, as appropriate;

(7) providing outreach services to inform women of the availability of the services described in paragraphs (1) through (6);

(8) providing to the public information and education on the prevention and control of the disease, including disseminating such information; and

(9) providing training to health care providers in carrying out the screenings and counseling described in paragraphs (1) and (3).

(d) Requirement of availability of all services through each grantee

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that each activity authorized in subsection (c) of this section will be available through the applicant. With respect to compliance with such agreement, the applicant may expend the grant to carry out any of the activities directly, and may expend the grant to enter into agreements with other public or nonprofit private entities under which the entities carry out the activities.

(e) Required providers regarding certain services

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that, in expending the grant to carry out activities authorized in subsection (c) of this section, the services described in paragraphs (1) through (7) of such subsection will be provided only through entities that are State or local health departments, grantees under section 254b, 254b, 256a, or 300 of this title,[1] or are

[1] See References in Text notes below.

other public or nonprofit private entities that provide health services to a significant number of low-income women.

(f) Quality assurance regarding screening for diseases

For purposes of this section, the Secretary shall establish criteria for ensuring the quality of screening procedures for diseases described in subsection (a) of this section.

(g) Confidentiality

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees, subject to applicable law, to maintain the confidentiality of information on individuals with respect to activities carried out under subsection (c) of this section.

(h) Limitation on imposition of fees for services

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that, if a charge is imposed for the provision of services or activities under the grant, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the individual involved; and

(3) will not be imposed on any individual with an income of less than 150 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(i) Limitations on certain expenditures

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that not less than 80 percent of the grant will be expended for the purpose of carrying out paragraphs (1) through (7) of subsection (c) of this section.

(j) Reports to Secretary

(1) Collection of data

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees, with respect to any disease selected under subsection (b) of this section for the applicant, to submit to the Secretary, for each fiscal year for which the applicant receives such a grant, a report providing—

(A) the incidence of the disease among the population of individuals served by the applicant;

(B) the number and demographic characteristics of individuals in such population;

(C) the types of interventions and treatments provided by the applicant, and the health conditions with respect to which referrals have been made pursuant to subsection (c)(5) of this section;

(D) an assessment of the extent to which the activities carried pursuant to subsection (a) of this section have reduced the incidence of infertility in the geographic area involved; and

(E) such other information as the Secretary may require with respect to the project carried out with the grant.

(2) Utility and comparability of data

The Secretary shall carry out activities for the purpose of ensuring the utility and comparability of data collected pursuant to paragraph (1).

(k) Maintenance of effort

With respect to activities for which a grant under subsection (a) of this section is authorized to be expended, the Secretary may make such a grant only if the applicant involved agrees to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the average level of such expenditures maintained by the applicant for the 2-year period preceding the fiscal year for which the applicant is applying to receive such a grant.

(*l*) Requirement of application

(1) In general

The Secretary may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Secretary, the application contains the plan required in paragraph (2), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(2) Submission of plan for program of grantee

(A) In general

The Secretary may make a grant under subsection (a) of this section only if the applicant involved submits to the Secretary a plan describing the manner in which the applicant will comply with the agreements required as a condition of receiving such a grant, including a specification of the entities through which activities authorized in subsection (c) of this section will be provided.

(B) Participation of certain entities

The Secretary may make a grant under subsection (a) of this section only if the applicant provides assurances satisfactory to the Secretary that the plan submitted under subparagraph (A) has been prepared in consultation with an appropriate number and variety of—

(i) representatives of entities in the geographic area involved that provide services for the prevention and control of sexually transmitted diseases, including programs to provide to the public information and education regarding such diseases; and

(ii) representatives of entities in such area that provide family planning services.

(m) Duration of grant

The period during which payments are made to an entity from a grant under subsection (a) of this section may not exceed 3 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments in such year. The preceding sentence may not be construed to establish a limitation on the number of grants under such subsection that may be made to an entity.

(n) Technical assistance, and supplies and services in lieu of grant funds

(1) Technical assistance

The Secretary may provide training and technical assistance to grantees under sub-

section (a) of this section with respect to the planning, development, and operation of any program or service carried out under such subsection. The Secretary may provide such technical assistance directly or through grants or contracts.

(2) Supplies, equipment, and employee detail

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by—

(A) the fair market value of any supplies or equipment furnished the grant recipient; and

(B) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(*o*) Evaluations and reports by Secretary

(1) Evaluations

The Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out pursuant to subsection (a) of this section in order to determine the quality and effectiveness of the programs.

(2) Report to Congress

Not later than 1 year after the date on which amounts are first appropriated pursuant to subsection (q) of this section, and biennially thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report—

(A) summarizing the information provided to the Secretary in reports made pursuant to subsection (j)(1) of this section, including information on the incidence of sexually transmitted diseases described in subsection (a) of this section; and

(B) summarizing evaluations carried out pursuant to paragraph (1) during the preceding fiscal year.

(p) Coordination of Federal programs

The Secretary shall coordinate the program carried out under this section with any similar programs administered by the Secretary (including coordination between the Director of the Centers for Disease Control and Prevention and the Director of the National Institutes of Health).

(q) Authorization of appropriations

For the purpose of carrying out this section, other than subsections (*o*) and (r) of this section, there are authorized to be appropriated $25,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1998.

(r) Separate grants for research on delivery of services

(1) In general

The Secretary may make grants for the purpose of conducting research on the manner in which the delivery of services under subsection (a) of this section may be improved. The Secretary may make such grants only to grantees under such subsection and to public and nonprofit private entities that are carrying out programs substantially similar to programs carried out under such subsection.

(2) Authorization of appropriations

For the purpose of carrying out paragraph (1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 through 1998.

(July 1, 1944, ch. 373, title III, § 318A, as added Pub. L. 102–531, title III, § 304, Oct. 27, 1992, 106 Stat. 3490; amended Pub. L. 103–43, title XX, § 2008(i)(1)(B)(ii), June 10, 1993, 107 Stat. 212; Pub. L. 103–183, title IV, § 402, Dec. 14, 1993, 107 Stat. 2236; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 108–163, § 2(m)(1), Dec. 6, 2003, 117 Stat. 2023.)

REFERENCES IN TEXT

The reference to section 254b of this title the first place appearing, referred to in subsec. (e), was in the original a reference to section 329, meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626.

Section 256a of this title, referred to in subsec. (e), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before '', 256a''.

2002—Subsec. (e). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–531, § 304, which enacted this section.

Subsec. (*o*)(2). Pub. L. 103–183, § 402(a), substituted ''subsection (q)'' for ''subsection (s)''.

Subsec. (q). Pub. L. 103–183, § 402(b)(1), substituted ''through 1998'' for ''and 1995''.

Subsec. (r)(2). Pub. L. 103–183, § 402(b)(2), substituted ''1998'' for ''1995''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and

jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§247c–2. Data collection regarding programs under subchapter XXIV

For the purpose of collecting and providing data for program planning and evaluation activities under subchapter XXIV of this chapter, there are authorized to be appropriated to the Secretary (acting through the Director of the Centers for Disease Control and Prevention) such sums as may be necessary for each of the fiscal years 2001 through 2005. Such authorization of appropriations is in addition to other authorizations of appropriations that are available for such purpose.

(July 1, 1944, ch. 373, title III, §318B, as added Pub. L. 106–345, title IV, §412, Oct. 20, 2000, 114 Stat. 1350.)

§247d. Public health emergencies

(a) Emergencies

If the Secretary determines, after consultation with such public health officials as may be necessary, that—

(1) a disease or disorder presents a public health emergency; or

(2) a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists,

the Secretary may take such action as may be appropriate to respond to the public health emergency, including making grants, providing awards for expenses, and entering into contracts and conducting and supporting investigations into the cause, treatment, or prevention of a disease or disorder as described in paragraphs (1) and (2). Any such determination of a public health emergency terminates upon the Secretary declaring that the emergency no longer exists, or upon the expiration of the 90-day period beginning on the date on which the determination is made by the Secretary, whichever occurs first. Determinations that terminate under the preceding sentence may be renewed by the Secretary (on the basis of the same or additional facts), and the preceding sentence applies to each such renewal. Not later than 48 hours after making a determination under this subsection of a public health emergency (including a renewal), the Secretary shall submit to the Congress written notification of the determination.

(b) Public Health Emergency Fund

(1) In general

There is established in the Treasury a fund to be designated as the ''Public Health Emergency Fund'' to be made available to the Secretary without fiscal year limitation to carry out subsection (a) of this section only if a public health emergency has been declared by the Secretary under such subsection. There is authorized to be appropriated to the Fund such sums as may be necessary.

(2) Report

Not later than 90 days after the end of each fiscal year, the Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Commerce and the Committee on Appropriations of the House of Representatives a report describing—

(A) the expenditures made from the Public Health Emergency Fund in such fiscal year; and

(B) each public health emergency for which the expenditures were made and the activities undertaken with respect to each emergency which was conducted or supported by expenditures from the Fund.

(c) Supplement not supplant

Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities under this section.

(d) Data submittal and reporting deadlines

In any case in which the Secretary determines that, wholly or partially as a result of a public health emergency that has been determined pursuant to subsection (a) of this section, individuals or public or private entities are unable to comply with deadlines for the submission to the Secretary of data or reports required under any law administered by the Secretary, the Secretary may, notwithstanding any other provision of law, grant such extensions of such deadlines as the circumstances reasonably require, and may waive, wholly or partially, any sanctions otherwise applicable to such failure to comply. Before or promptly after granting such an extension or waiver, the Secretary shall notify the Congress of such action and publish in the Federal Register a notice of the extension or waiver.

(July 1, 1944, ch. 373, title III, §319, as added Pub. L. 106–505, title I, §102, Nov. 13, 2000, 114 Stat. 2315; amended Pub. L. 107–188, title I, §§141, 144(a), 158, June 12, 2002, 116 Stat. 626, 630, 633.)

PRIOR PROVISIONS

A prior section 247d, act July 1, 1944, ch. 373, title III, §319, as added Pub. L. 98–49, July 13, 1983, 97 Stat. 245; amended Pub. L. 100–607, title II, §256(a), Nov. 4, 1988, 102 Stat. 3110; Pub. L. 102–321, title I, §163(b)(2), July 10, 1992, 106 Stat. 376; Pub. L. 102–531, title III, §312(d)(2), Oct. 27, 1992, 106 Stat. 3504, authorized the Secretary to take appropriate action relating to public health emergencies, prior to repeal by Pub. L. 106–505, title I, §102, Nov. 13, 2000, 114 Stat. 2315.

Another prior section 247d, act July 1, 1944, ch. 373, title III, §319, formerly §310, as added Sept. 25, 1962, Pub. L. 87–692, 76 Stat. 592, and amended and renumbered, which related to migrant health centers, was renumbered section 329 of act July 1, 1944, by Pub. L. 95–626, title I, §102(a), Nov. 10, 1978, 92 Stat. 3551, and transferred to section 254b of this title, prior to being omitted in the general amendment of subpart I (§254b et seq.) of part D of this subchapter by Pub. L. 104–299, §2.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–188, § 158, substituted ''grants, providing awards for expenses, and'' for ''grants and'' in concluding provisions.

Pub. L. 107–188, § 144(a), inserted at end of concluding provisions ''Any such determination of a public health emergency terminates upon the Secretary declaring that the emergency no longer exists, or upon the expiration of the 90-day period beginning on the date on which the determination is made by the Secretary, whichever occurs first. Determinations that terminate under the preceding sentence may be renewed by the Secretary (on the basis of the same or additional facts), and the preceding sentence applies to each such renewal. Not later than 48 hours after making a determination under this subsection of a public health emergency (including a renewal), the Secretary shall submit to the Congress written notification of the determination.''

Subsec. (d). Pub. L. 107–188, § 141, added subsec. (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–188, title I, § 144(b), June 12, 2002, 116 Stat. 630, provided that: ''The amendment made by subsection (a) [amending this section] applies to any public health emergency under section 319(a) of the Public Health Service Act [subsec. (a) of this section], including any such emergency that was in effect as of the day before the date of the enactment of this Act [June 12, 2002]. In the case of such an emergency that was in effect as of such day, the 90-day period described in such section with respect to the termination of the emergency is deemed to begin on such date of enactment.''

§ 247d–1. Vaccine tracking and distribution

(a) Tracking

The Secretary, together with relevant manufacturers, wholesalers, and distributors as may agree to cooperate, may track the initial distribution of federally purchased influenza vaccine in an influenza pandemic. Such tracking information shall be used to inform Federal, State, local, and tribal decision makers during an influenza pandemic.

(b) Distribution

The Secretary shall promote communication between State, local, and tribal public health officials and such manufacturers, wholesalers, and distributors as agree to participate, regarding the effective distribution of seasonal influenza vaccine. Such communication shall include estimates of high priority populations, as determined by the Secretary, in State, local, and tribal jurisdictions in order to inform Federal, State, local, and tribal decision makers during vaccine shortages and supply disruptions.

(c) Confidentiality

The information submitted to the Secretary or its contractors, if any, under this section or under any other section of this chapter related to vaccine distribution information shall remain confidential in accordance with the exception from the public disclosure of trade secrets, commercial or financial information, and information obtained from an individual that is privileged and confidential, as provided for in section 552(b)(4) of title 5, and subject to the penalties and exceptions under sections 1832 and 1833 of title 18 relating to the protection and theft of trade secrets, and subject to privacy protections that are consistent with the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996. None of such information provided by a manufacturer, wholesaler, or distributor shall be disclosed without its consent to another manufacturer, wholesaler, or distributor, or shall be used in any manner to give a manufacturer, wholesaler, or distributor a proprietary advantage.

(d) Guidelines

The Secretary, in order to maintain the confidentiality of relevant information and ensure that none of the information contained in the systems involved may be used to provide proprietary advantage within the vaccine market, while allowing State, local, and tribal health officials access to such information to maximize the delivery and availability of vaccines to high priority populations, during times of influenza pandemics, vaccine shortages, and supply disruptions, in consultation with manufacturers, distributors, wholesalers and State, local, and tribal health departments, shall develop guidelines for subsections (a) and (b).

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section, such sums for each of fiscal years 2007 through 2011.

(f) Report to Congress

As part of the National Health Security Strategy described in section 300hh–1 of this title, the Secretary shall provide an update on the implementation of subsections (a) through (d).

(July 1, 1944, ch. 373, title III, § 319A, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2316; amended Pub. L. 107–188, title I, § 111(1), June 12, 2002, 116 Stat. 611; Pub. L. 109–417, title II, § 204(a), Dec. 19, 2006, 120 Stat. 2850.)

REFERENCES IN TEXT

Section 264 of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (c), is section 264 of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

AMENDMENTS

2006—Pub. L. 109–417 amended section catchline and text generally, substituting provisions relating to vaccine tracking and distribution for provisions relating to establishment of capacities to combat threats to public health.

2002—Subsec. (a)(1). Pub. L. 107–188 substituted ''five years'' for ''10 years''.

§§ 247d–2, 247d–3. Repealed. Pub. L. 109–417, title II, § 204(b)(1), Dec. 19, 2006, 120 Stat. 2851

Section 247d–2, act July 1, 1944, ch. 373, title III, § 319B, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2317; amended Pub. L. 107–188, title I, § 111(2), June 12, 2002, 116 Stat. 611, related to grants to States to assess public health needs.

Section 247d–3, act July 1, 1944, ch. 373, title III, § 319C, as added Pub. L. 106–505, title I, § 102, Nov. 13,

2000, 114 Stat. 2317; amended Pub. L. 107–188, title I, § 131(b), June 12, 2002, 116 Stat. 626, related to grants to improve State and local public health agencies.

§ 247d–3a. Improving State and local public health security

(a) In general

To enhance the security of the United States with respect to public health emergencies, the Secretary shall award cooperative agreements to eligible entities to enable such entities to conduct the activities described in subsection (d).

(b) Eligible entities

To be eligible to receive an award under subsection (a), an entity shall—

(1)(A) be a State;

(B) be a political subdivision determined by the Secretary to be eligible for an award under this section (based on criteria described in subsection (i)(4)); or

(C) be a consortium of entities described in subparagraph (A); and

(2) prepare and submit to the Secretary an application at such time, and in such manner, and containing such information as the Secretary may require, including—

(A) an All-Hazards Public Health Emergency Preparedness and Response Plan which shall include—

(i) a description of the activities such entity will carry out under the agreement to meet the goals identified under section 300hh–1 of this title;

(ii) a pandemic influenza plan consistent with the requirements of paragraphs (2) and (5) of subsection (g);

(iii) preparedness and response strategies and capabilities that take into account the medical and public health needs of at-risk individuals in the event of a public health emergency;

(iv) a description of the mechanism the entity will implement to utilize the Emergency Management Assistance Compact or other mutual aid agreements for medical and public health mutual aid; and

(v) a description of how the entity will include the State Unit on Aging in public health emergency preparedness;

(B) an assurance that the entity will report to the Secretary on an annual basis (or more frequently as determined by the Secretary) on the evidence-based benchmarks and objective standards established by the Secretary to evaluate the preparedness and response capabilities of such entity under subsection (g);

(C) an assurance that the entity will conduct, on at least an annual basis, an exercise or drill that meets any criteria established by the Secretary to test the preparedness and response capabilities of such entity, and that the entity will report back to the Secretary within the application of the following year on the strengths and weaknesses identified through such exercise or drill, and corrective actions taken to address material weaknesses;

(D) an assurance that the entity will provide to the Secretary the data described under section 247d–4(d)(3) of this title as determined feasible by the Secretary;

(E) an assurance that the entity will conduct activities to inform and educate the hospitals within the jurisdiction of such entity on the role of such hospitals in the plan required under subparagraph (A);

(F) an assurance that the entity, with respect to the plan described under subparagraph (A), has developed and will implement an accountability system to ensure that such entity make[1] satisfactory annual improvement and describe[2] such system in the plan under subparagraph (A);

(G) a description of the means by which to obtain public comment and input on the plan described in subparagraph (A) and on the implementation of such plan, that shall include an advisory committee or other similar mechanism for obtaining comment from the public and from other State, local, and tribal stakeholders; and

(H) as relevant, a description of the process used by the entity to consult with local departments of public health to reach consensus, approval, or concurrence on the relative distribution of amounts received under this section.

(c) Limitation

Beginning in fiscal year 2009, the Secretary may not award a cooperative agreement to a State unless such State is a participant in the Emergency System for Advance Registration of Volunteer Health Professionals described in section 247d–7b of this title.

(d) Use of funds

(1) In general

An award under subsection (a) shall be expended for activities to achieve the preparedness goals described under paragraphs (1), (2), (4), (5), and (6) of section 300hh–1(b) of this title.

(2) Effect of section

Nothing in this subsection may be construed as establishing new regulatory authority or as modifying any existing regulatory authority.

(e) Coordination with local response capabilities

An entity shall, to the extent practicable, ensure that activities carried out under an award under subsection (a) are coordinated with activities of relevant Metropolitan Medical Response Systems, local public health departments, the Cities Readiness Initiative, and local emergency plans.

(f) Consultation with Homeland Security

In making awards under subsection (a), the Secretary shall consult with the Secretary of Homeland Security to—

(1) ensure maximum coordination of public health and medical preparedness and response activities with the Metropolitan Medical Response System, and other relevant activities;

(2) minimize duplicative funding of programs and activities;

[1] So in original. Probably should be ''makes''.

[2] So in original. Probably should be ''describes''.

(3) analyze activities, including exercises and drills, conducted under this section to develop recommendations and guidance on best practices for such activities; and

(4) disseminate such recommendations and guidance, including through expanding existing lessons learned information systems to create a single Internet-based point of access for sharing and distributing medical and public health best practices and lessons learned from drills, exercises, disasters, and other emergencies.

(g) Achievement of measurable evidence-based benchmarks and objective standards

(1) In general

Not later than 180 days after December 19, 2006, the Secretary shall develop or where appropriate adopt, and require the application of, measurable evidence-based benchmarks and objective standards that measure levels of preparedness with respect to the activities described in this section and with respect to activities described in section 247d–3b of this title. In developing such benchmarks and standards, the Secretary shall consult with and seek comments from State, local, and tribal officials and private entities, as appropriate. Where appropriate, the Secretary shall incorporate existing objective standards. Such benchmarks and standards shall—

(A) include outcome goals representing operational achievement of the National Preparedness Goals developed under section 300hh–1(b) of this title; and

(B) at a minimum, require entities to—

(i) measure progress toward achieving the outcome goals; and

(ii) at least annually, test, exercise, and rigorously evaluate the public health and medical emergency preparedness and response capabilities of the entity, and report to the Secretary on such measured and tested capabilities and measured and tested progress toward achieving outcome goals, based on criteria established by the Secretary.

(2) Criteria for pandemic influenza plans

(A) In general

Not later than 180 days after December 19, 2006, the Secretary shall develop and disseminate to the chief executive officer of each State criteria for an effective State plan for responding to pandemic influenza.

(B) Rule of construction

Nothing in this section shall be construed to require the duplication of Federal efforts with respect to the development of criteria or standards, without regard to whether such efforts were carried out prior to or after December 19, 2006.[3]

(3) Technical assistance

The Secretary shall, as determined appropriate by the Secretary, provide to a State, upon request, technical assistance in meeting the requirements of this section, including the provision of advice by experts in the development of high-quality assessments, the setting of State objectives and assessment methods, the development of measures of satisfactory annual improvement that are valid and reliable, and other relevant areas.

(4) Notification of failures

The Secretary shall develop and implement a process to notify entities that are determined by the Secretary to have failed to meet the requirements of paragraph (1) or (2). Such process shall provide such entities with the opportunity to correct such noncompliance. An entity that fails to correct such noncompliance shall be subject to paragraph (5).

(5) Withholding of amounts from entities that fail to achieve benchmarks or submit influenza plan

Beginning with fiscal year 2009, and in each succeeding fiscal year, the Secretary shall—

(A) withhold from each entity that has failed substantially to meet the benchmarks and performance measures described in paragraph (1) for the immediately preceding fiscal year (beginning with fiscal year 2008), pursuant to the process developed under paragraph (4), the amount described in paragraph (6); and

(B) withhold from each entity that has failed to submit to the Secretary a plan for responding to pandemic influenza that meets the criteria developed under paragraph (2), the amount described in paragraph (6).

(6) Amounts described

(A) In general

The amounts described in this paragraph are the following amounts that are payable to an entity for activities described in this section or section 247d–3b of this title:

(i) For the fiscal year immediately following a fiscal year in which an entity experienced a failure described in subparagraph (A) or (B) of paragraph (5) by the entity, an amount equal to 10 percent of the amount the entity was eligible to receive for such fiscal year.

(ii) For the fiscal year immediately following two consecutive fiscal years in which an entity experienced such a failure, an amount equal to 15 percent of the amount the entity was eligible to receive for such fiscal year, taking into account the withholding of funds for the immediately preceding fiscal year under clause (i).

(iii) For the fiscal year immediately following three consecutive fiscal years in which an entity experienced such a failure, an amount equal to 20 percent of the amount the entity was eligible to receive for such fiscal year, taking into account the withholding of funds for the immediately preceding fiscal years under clauses (i) and (ii).

(iv) For the fiscal year immediately following four consecutive fiscal years in which an entity experienced such a failure, an amount equal to 25 percent of the amount the entity was eligible to receive for such a fiscal year, taking into account

[3] See Codification note below.

the withholding of funds for the immediately preceding fiscal years under clauses (i), (ii), and (iii).

(B) Separate accounting

Each failure described in subparagraph (A) or (B) of paragraph (5) shall be treated as a separate failure for purposes of calculating amounts withheld under subparagraph (A).

(7) Reallocation of amounts withheld

(A) In general

The Secretary shall make amounts withheld under paragraph (6) available for making awards under section 247d–3b of this title to entities described in subsection (b)(1) of such section.

(B) Preference in reallocation

In making awards under section 247d–3b of this title with amounts described in subparagraph (A), the Secretary shall give preference to eligible entities (as described in section 247d–3b(b)(1) of this title) that are located in whole or in part in States from which amounts have been withheld under paragraph (6).

(8) Waive or reduce withholding

The Secretary may waive or reduce the withholding described in paragraph (6), for a single entity or for all entities in a fiscal year, if the Secretary determines that mitigating conditions exist that justify the waiver or reduction.

(h) Grants for real-time disease detection improvement

(1) In general

The Secretary may award grants to eligible entities to carry out projects described under paragraph (4).

(2) Eligible entity

For purposes of this section, the term ''eligible entity'' means an entity that is—

(A)(i) a hospital, clinical laboratory, university; or

(ii) a poison control center or professional organization in the field of poison control; and

(B) a participant in the network established under subsection[4] 247d–4(d) of this title.

(3) Application

Each eligible entity desiring a grant under this subsection shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(4) Use of funds

(A) In general

An eligible entity described in paragraph (2)(A)(i) that receives a grant under this subsection shall use the funds awarded pursuant to such grant to carry out a pilot demonstration project to purchase and implement the use of advanced diagnostic medical equipment to analyze real-time clinical specimens for pathogens of public health or bioterrorism significance and report any results from such project to State, local, and tribal public health entities and the network established under section 247d–4(d) of this title.

(B) Other entities

An eligible entity described in paragraph (2)(A)(ii) that receives a grant under this section shall use the funds awarded pursuant to such grant to—

(i) improve the early detection, surveillance, and investigative capabilities of poison control centers for chemical, biological, radiological, and nuclear events by training poison information personnel to improve the accuracy of surveillance data, improving the definitions used by the poison control centers for surveillance, and enhancing timely and efficient investigation of data anomalies;

(ii) improve the capabilities of poison control centers to provide information to health care providers and the public with regard to chemical, biological, radiological, or nuclear threats or exposures, in consultation with the appropriate State, local, and tribal public health entities; or

(iii) provide surge capacity in the event of a chemical, biological, radiological, or nuclear event through the establishment of alternative poison control center worksites and the training of nontraditional personnel.

(i) Funding

(1) Authorization of appropriations

(A) In general

For the purpose of carrying out this section, there is authorized to be appropriated $824,000,000 for fiscal year 2007, of which $35,000,000 shall be used to carry out subsection (h), for awards pursuant to paragraph (3) (subject to the authority of the Secretary to make awards pursuant to paragraphs (4) and (5)), and such sums as may be necessary for each of fiscal years 2008 through 2011.

(B) Coordination

There are authorized to be appropriated, $10,000,000 for fiscal year 2007 to carry out subsection (f)(4) of this section and section 300hh–16 of this title.

(C) Requirement for State matching funds

Beginning in fiscal year 2009, in the case of any State or consortium of two or more States, the Secretary may not award a cooperative agreement under this section unless the State or consortium of States agree that, with respect to the amount of the cooperative agreement awarded by the Secretary, the State or consortium of States will make available (directly or through donations from public or private entities) non-Federal contributions in an amount equal to—

(i) for the first fiscal year of the cooperative agreement, not less than 5 percent of such costs ($1 for each $20 of Federal funds

[4] So in original. Probably should be ''section''.

provided in the cooperative agreement); and

(ii) for any second fiscal year of the cooperative agreement, and for any subsequent fiscal year of such cooperative agreement, not less than 10 percent of such costs ($1 for each $10 of Federal funds provided in the cooperative agreement).

(D) Determination of amount of non-Federal contributions

As determined by the Secretary, non-Federal contributions required in subparagraph (C) may be provided directly or through donations from public or private entities and may be in cash or in kind, fairly evaluated, including plant, equipment or services. Amounts provided by the Federal government, or services assisted or subsidized to any significant extent by the Federal government, may not be included in determining the amount of such non-Federal contributions.

(2) Maintaining State funding

(A) In general

An entity that receives an award under this section shall maintain expenditures for public health security at a level that is not less than the average level of such expenditures maintained by the entity for the preceding 2 year period.

(B) Rule of construction

Nothing in this section shall be construed to prohibit the use of awards under this section to pay salary and related expenses of public health and other professionals employed by State, local, or tribal public health agencies who are carrying out activities supported by such awards (regardless of whether the primary assignment of such personnel is to carry out such activities).

(3) Determination of amount

(A) In general

The Secretary shall award cooperative agreements under subsection (a) to each State or consortium of 2 or more States that submits to the Secretary an application that meets the criteria of the Secretary for the receipt of such an award and that meets other implementation conditions established by the Secretary for such awards.

(B) Base amount

In determining the amount of an award pursuant to subparagraph (A) for a State, the Secretary shall first determine an amount the Secretary considers appropriate for the State (referred to in this paragraph as the ''base amount''), except that such amount may not be greater than the minimum amount determined under subparagraph (D).

(C) Increase on basis of population

After determining the base amount for a State under subparagraph (B), the Secretary shall increase the base amount by an amount equal to the product of—

(i) the amount appropriated under paragraph (1)(A)(i)(I)[5] for the fiscal year, less an amount equal to the sum of all base amounts determined for the States under subparagraph (B), and less the amount, if any, reserved by the Secretary under paragraphs (4) and (5); and

(ii) subject to paragraph (4)(C), the percentage constituted by the ratio of an amount equal to the population of the State over an amount equal to the total population of the States (as indicated by the most recent data collected by the Bureau of the Census).

(D) Minimum amount

Subject to the amount appropriated under paragraph (1)(A)(i)(I),[5] an award pursuant to subparagraph (A) for a State shall be the greater of the base amount as increased under subparagraph (C), or the minimum amount under this subparagraph. The minimum amount under this subparagraph is—

(i) in the case of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, an amount equal to the lesser of—

(I) $5,000,000; or

(II) if the amount appropriated under paragraph (1)(A)(i)(I)[5] is less than $667,000,000, an amount equal to 0.75 percent of the amount appropriated under such paragraph, less the amount, if any, reserved by the Secretary under paragraphs (4) and (5); or

(ii) in the case of each of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, an amount determined by the Secretary to be appropriate, except that such amount may not exceed the amount determined under clause (i).

(4) Certain political subdivisions

(A) In general

For fiscal year 2007, the Secretary may, before making awards pursuant to paragraph (3) for such year, reserve from the amount appropriated under paragraph (1) for the year an amount determined necessary by the Secretary to make awards under subsection (a) of this section to political subdivisions that have a substantial number of residents, have a substantial local infrastructure for responding to public health emergencies, and face a high degree of risk from bioterrorist attacks or other public health emergencies. Not more than three political subdivisions may receive awards pursuant to this subparagraph.

(B) Coordination with Statewide plans

An award pursuant to subparagraph (A) may not be made unless the application of the political subdivision involved is in coordination with, and consistent with, applicable Statewide plans described in subsection (c) of this section.

(C) Relationship to formula grants

In the case of a State that will receive an award pursuant to paragraph (3), and in which there is located a political subdivision that will receive an award pursuant to sub-

[5] See References in Text note below.

paragraph (A), the Secretary shall, in determining the amount under paragraph (3)(C) for the State, subtract from the population of the State an amount equal to the population of such political subdivision.

(D) Continuity of funding

In determining whether to make an award pursuant to subparagraph (A) to a political subdivision, the Secretary may consider, as a factor indicating that the award should be made, that the political subdivision received public health funding from the Secretary for fiscal year 2006.

(5) Significant unmet needs; degree of risk

(A) In general

For fiscal year 2007, the Secretary may, before making awards pursuant to paragraph (3) for such year, reserve from the amount appropriated under paragraph (1) for the year an amount determined necessary by the Secretary to make awards under subsection (a) of this section to eligible entities that—

(i) have a significant need for funds to build capacity to identify, detect, monitor, and respond to a bioterrorist or other threat to the public health, which need will not be met by awards pursuant to paragraph (3); and

(ii) face a particularly high degree of risk of such a threat.

(B) Recipients of grants

Awards pursuant to subparagraph (A) may be supplemental awards to States that receive awards pursuant to paragraph (3), or may be awards to eligible entities described in subsection (b)(1)(B) of this section within such States.

(C) Finding with respect to District of Columbia

The Secretary shall consider the District of Columbia to have a significant unmet need for purposes of subparagraph (A), and to face a particularly high degree of risk for such purposes, on the basis of the concentration of entities of national significance located within the District.

(6) Funding of local entities

The Secretary shall, in making awards under this section, ensure that with respect to the cooperative agreement awarded, the entity make available appropriate portions of such award to political subdivisions and local departments of public health through a process involving the consensus, approval or concurrence with such local entities.

(j) Administrative and fiscal responsibility

(1) Annual reporting requirements

Each entity shall prepare and submit to the Secretary annual reports on its activities under this section and section 247d–3b of this title. Each such report shall be prepared by, or in consultation with, the health department. In order to properly evaluate and compare the performance of different entities assisted under this section and section 247d–3b of this title and to assure the proper expenditure of funds under this section and section 247d–3b of this title, such reports shall be in such standardized form and contain such information as the Secretary determines and describes within 180 days of December 19, 2006 (after consultation with the States) to be necessary to—

(A) secure an accurate description of those activities;

(B) secure a complete record of the purposes for which funds were spent, and of the recipients of such funds;

(C) describe the extent to which the entity has met the goals and objectives it set forth under this section or section 247d–3b of this title;

(D) determine the extent to which funds were expended consistent with the entity's application transmitted under this section or section 247d–3b of this title; and

(E) publish such information on a Federal Internet website consistent with subsection (k).

(2) Audits; implementation

(A) In general

Each entity receiving funds under this section or section 247d–3b of this title shall, not less often than once every 2 years, audit its expenditures from amounts received under this section or section 247d–3b of this title. Such audits shall be conducted by an entity independent of the agency administering a program funded under this section or section 247d–3b of this title in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions and generally accepted auditing standards. Within 30 days following the completion of each audit report, the entity shall submit a copy of that audit report to the Secretary.

(B) Repayment

Each entity shall repay to the United States amounts found by the Secretary, after notice and opportunity for a hearing to the entity, not to have been expended in accordance with this section or section 247d–3b of this title and, if such repayment is not made, the Secretary may offset such amounts against the amount of any allotment to which the entity is or may become entitled under this section or section 247d–3b of this title or may otherwise recover such amounts.

(C) Withholding of payment

The Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any entity which is not using its allotment under this section or section 247d–3b of this title in accordance with such section. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(3) Maximum carryover amount

(A) In general

For each fiscal year, the Secretary, in consultation with the States and political sub-

divisions, shall determine the maximum percentage amount of an award under this section that an entity may carryover to the succeeding fiscal year.

(B) Amount exceeded

For each fiscal year, if the percentage amount of an award under this section unexpended by an entity exceeds the maximum percentage permitted by the Secretary under subparagraph (A), the entity shall return to the Secretary the portion of the unexpended amount that exceeds the maximum amount permitted to be carried over by the Secretary.

(C) Action by Secretary

The Secretary shall make amounts returned to the Secretary under subparagraph (B) available for awards under section 247d–3b(b)(1) of this title. In making awards under section 247d–3b(b)(1) of this title with amounts collected under this paragraph the Secretary shall give preference to entities that are located in whole or in part in States from which amounts have been returned under subparagraph (B).

(D) Waiver

An entity may apply to the Secretary for a waiver of the maximum percentage amount under subparagraph (A). Such an application for a waiver shall include an explanation why such requirement should not apply to the entity and the steps taken by such entity to ensure that all funds under an award under this section will be expended appropriately.

(E) Waive or reduce withholding

The Secretary may waive the application of subparagraph (B), or reduce the amount determined under such subparagraph, for a single entity pursuant to subparagraph (D) or for all entities in a fiscal year, if the Secretary determines that mitigating conditions exist that justify the waiver or reduction.

(k) Compilation and availability of data

The Secretary shall compile the data submitted under this section and make such data available in a timely manner on an appropriate Internet website in a format that is useful to the public and to other entities and that provides information on what activities are best contributing to the achievement of the outcome goals described in subsection (g).

(July 1, 1944, ch. 373, title III, § 319C–1, as added Pub. L. 107–188, title I, § 131(a), June 12, 2002, 116 Stat. 617; amended Pub. L. 109–417, title II, § 201, Dec. 19, 2006, 120 Stat. 2837.)

REFERENCES IN TEXT

Paragraph (1)(A) of subsec. (i), referred to in subsec. (i)(3)(C), (D), was struck out and a new paragraph (1)(A) added by Pub. L. 109–417, title II, § 201(4)(A), Dec. 19, 2006, 120 Stat. 2837. The new paragraph (1)(A) does not contain a clause (i).

CODIFICATION

December 19, 2006, referred to in subsec. (g)(2)(B), was in the original ''the date of enactment of this section'', which was translated as meaning the date of enactment of Pub. L. 109–417, which enacted subsec. (g) of this section, to reflect the probable intent of Congress.

AMENDMENTS

2006—Pub. L. 109–417, § 201(1), substituted ''Improving State and local public health security'' for ''Grants to improve State, local, and hospital preparedness for and response to bioterrorism and other public health emergencies'' in section catchline.

Subsecs. (a) to (h). Pub. L. 109–417, § 201(2), added subsecs. (a) to (h) and struck out former subsecs. (a) to (h) which related to grants to improve State, local, and hospital preparedness for and response to bioterrorism and other public health emergencies.

Subsec. (i). Pub. L. 109–417, § 201(3), redesignated subsec. (j) as (i).

Pub. L. 109–417, § 201(2), struck out subsec. (i) which defined ''eligible entity''.

Subsec. (i)(1) to (3)(A). Pub. L. 109–417, § 201(4)(A), added pars. (1) to (3)(A) and struck out former pars. (1) to (3)(A) which related to appropriations for fiscal years 2003 through 2006, use of amounts to supplement and not supplant other funds, and conditions for receipt of award in fiscal year 2003.

Subsec. (i)(4)(A). Pub. L. 109–417, § 201(4)(B), substituted ''fiscal year 2007'' for ''fiscal year 2003'' and struck out ''(A)(i)(I)'' after ''paragraph (1)''.

Subsec. (i)(4)(D). Pub. L. 109–417, § 201(4)(C), substituted ''fiscal year 2006'' for ''fiscal year 2002''.

Subsec. (i)(5)(A). Pub. L. 109–417, § 201(4)(D), in introductory provisions, substituted ''fiscal year 2007'' for ''fiscal year 2003'' and struck out ''(A)(i)(I)'' after ''paragraph (1)''.

Subsec. (i)(6). Pub. L. 109–417, § 201(4)(E), added par. (6) and struck out heading and text of former par. (6). Text read as follows: ''For fiscal year 2003, the Secretary shall in making awards under this section ensure that appropriate portions of such awards are made available to political subdivisions, local departments of public health, hospitals (including children's hospitals), clinics, health centers, or primary care facilities, or consortia of such entities.''

Subsec. (j). Pub. L. 109–417, § 201(5), added subsec. (j).

Pub. L. 109–417, § 201(3), redesignated subsec. (j) as (i).

Subsec. (k). Pub. L. 109–417, § 201(5), added subsec. (k).

§ 247d–3b. Partnerships for State and regional hospital preparedness to improve surge capacity

(a) In general

The Secretary shall award competitive grants or cooperative agreements to eligible entities to enable such entities to improve surge capacity and enhance community and hospital preparedness for public health emergencies.

(b) Eligibility

To be eligible for an award under subsection (a), an entity shall—

(1)(A) be a partnership consisting of—

(i) one or more hospitals, at least one of which shall be a designated trauma center, consistent with section 300d–13(c) of this title;

(ii) one or more other local health care facilities, including clinics, health centers, primary care facilities, mental health centers, mobile medical assets, or nursing homes; and

(iii)(I) one or more political subdivisions;

(II) one or more States; or

(III) one or more States and one or more political subdivisions; and

(B) prepare, in consultation with the Chief Executive Officer and the lead health officials

of the State, District, or territory in which the hospital and health care facilities described in subparagraph (A) are located, and submit to the Secretary, an application at such time, in such manner, and containing such information as the Secretary may require; or

(2)(A) be an entity described in section 247d–3a(b)(1) of this title; and

(B) submit an application at such time, in such manner, and containing such information as the Secretary may require, including the information or assurances required under section 247d–3a(b)(2) of this title and an assurance that the State will adhere to any applicable guidelines established by the Secretary.

(c) Use of funds

An award under subsection (a) shall be expended for activities to achieve the preparedness goals described under paragraphs (1), (3), (4), (5), and (6) of section 300hh–1(b) of this title.

(d) Preferences

(1) Regional coordination

In making awards under subsection (a), the Secretary shall give preference to eligible entities that submit applications that, in the determination of the Secretary—

(A) will enhance coordination—

(i) among the entities described in subsection (b)(1)(A)(i); and

(ii) between such entities and the entities described in subsection (b)(1)(A)(ii); and

(B) include, in the partnership described in subsection (b)(1)(A), a significant percentage of the hospitals and health care facilities within the geographic area served by such partnership.

(2) Other preferences

In making awards under subsection (a), the Secretary shall give preference to eligible entities that, in the determination of the Secretary—

(A) include one or more hospitals that are participants in the National Disaster Medical System;

(B) are located in a geographic area that faces a high degree of risk, as determined by the Secretary in consultation with the Secretary of Homeland Security; or

(C) have a significant need for funds to achieve the medical preparedness goals described in section 300hh–1(b)(3) of this title.

(e) Consistency of planned activities

The Secretary may not award a cooperative agreement to an eligible entity described in subsection (b)(1) unless the application submitted by the entity is coordinated and consistent with an applicable State All-Hazards Public Health Emergency Preparedness and Response Plan and relevant local plans, as determined by the Secretary in consultation with relevant State health officials.

(f) Limitation on awards

A political subdivision shall not participate in more than one partnership described in subsection (b)(1).

(g) Coordination with local response capabilities

An eligible entity shall, to the extent practicable, ensure that activities carried out under an award under subsection (a) are coordinated with activities of relevant local Metropolitan Medical Response Systems, local Medical Reserve Corps, the Cities Readiness Initiative, and local emergency plans.

(h) Maintenance of funding

(1) In general

An entity that receives an award under this section shall maintain expenditures for health care preparedness at a level that is not less than the average level of such expenditures maintained by the entity for the preceding 2 year period.

(2) Rule of construction

Nothing in this section shall be construed to prohibit the use of awards under this section to pay salary and related expenses of public health and other professionals employed by State, local, or tribal agencies who are carrying out activities supported by such awards (regardless of whether the primary assignment of such personnel is to carry out such activities).

(i) Performance and accountability

The requirements of section 247d–3a(g), (j), and (k) of this title shall apply to entities receiving awards under this section (regardless of whether such entities are described under subsection (b)(1)(A) or (b)(2)(A)) in the same manner as such requirements apply to entities under section 247d–3a of this title. An entity described in subsection (b)(1)(A) shall make such reports available to the lead health official of the State in which such partnership is located.

(j) Authorization of appropriations

(1) In general

For the purpose of carrying out this section, there is authorized to be appropriated $474,000,000 for fiscal year 2007, and such sums as may be necessary for each of fiscal years 2008 through 2011.

(2) Reservation of amounts for partnerships

Prior to making awards described in paragraph (3), the Secretary may reserve from the amount appropriated under paragraph (1) for a fiscal year, an amount determined appropriate by the Secretary for making awards to entities described in subsection (b)(1)(A).

(3) Awards to States and political subdivisions

(A) In general

From amounts appropriated for a fiscal year under paragraph (1) and not reserved under paragraph (2), the Secretary shall make awards to entities described in subsection (b)(2)(A) that have completed an application as described in subsection (b)(2)(B).

(B) Amount

The Secretary shall determine the amount of an award to each entity described in subparagraph (A) in the same manner as such amounts are determined under section 247d–3a(h) of this title.

(July 1, 1944, ch. 373, title III, § 319C–2, as added Pub. L. 107–188, title I, § 131(a), June 12, 2002, 116 Stat. 624; amended Pub. L. 109–417, title III, § 305, Dec. 19, 2006, 120 Stat. 2861.)

AMENDMENTS

2006—Pub. L. 109–417 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (i) relating to partnerships for community and hospital preparedness.

§ 247d–4. Revitalizing the Centers for Disease Control and Prevention

(a) Facilities; capacities

(1) Findings

Congress finds that the Centers for Disease Control and Prevention has an essential role in defending against and combatting public health threats domestically and abroad and requires secure and modern facilities, and expanded and improved capabilities related to bioterrorism and other public health emergencies, sufficient to enable such Centers to conduct this important mission.

(2) Facilities

(A) In general

The Director of the Centers for Disease Control and Prevention may design, construct, and equip new facilities, renovate existing facilities (including laboratories, laboratory support buildings, scientific communication facilities, transshipment complexes, secured and isolated parking structures, office buildings, and other facilities and infrastructure), and upgrade security of such facilities, in order to better conduct the capacities described in section 247d–1 of this title, and for supporting public health activities.

(B) Multiyear contracting authority

For any project of designing, constructing, equipping, or renovating any facility under subparagraph (A), the Director of the Centers for Disease Control and Prevention may enter into a single contract or related contracts that collectively include the full scope of the project, and the solicitation and contract shall contain the clause ''availability of funds'' found at section 52.232–18 of title 48, Code of Federal Regulations.

(3) Improving the capacities of the Centers for Disease Control and Prevention

The Secretary shall expand, enhance, and improve the capabilities of the Centers for Disease Control and Prevention relating to preparedness for and responding effectively to bioterrorism and other public health emergencies. Activities that may be carried out under the preceding sentence include—

(A) expanding or enhancing the training of personnel;

(B) improving communications facilities and networks, including delivery of necessary information to rural areas;

(C) improving capabilities for public health surveillance and reporting activities, taking into account the integrated system or systems of public health alert communications and surveillance networks under subsection (b) of this section; and

(D) improving laboratory facilities related to bioterrorism and other public health emergencies, including increasing the security of such facilities.

(b) National communications and surveillance networks

(1) In general

The Secretary, directly or through awards of grants, contracts, or cooperative agreements, shall provide for the establishment of an integrated system or systems of public health alert communications and surveillance networks between and among—

(A) Federal, State, and local public health officials;

(B) public and private health-related laboratories, hospitals, and other health care facilities; and

(C) any other entities determined appropriate by the Secretary.

(2) Requirements

The Secretary shall ensure that networks under paragraph (1) allow for the timely sharing and discussion, in a secure manner, of essential information concerning bioterrorism or another public health emergency, or recommended methods for responding to such an attack or emergency.

(3) Standards

Not later than one year after June 12, 2002, the Secretary, in cooperation with health care providers and State and local public health officials, shall establish any additional technical and reporting standards (including standards for interoperability) for networks under paragraph (1).

(c) Authorization of appropriations

(1) Facilities; capacities

(A) Facilities

For the purpose of carrying out subsection (a)(2) of this section, there are authorized to be appropriated $300,000,000 for each of the fiscal years 2002 and 2003, and such sums as may be necessary for each of the fiscal years 2004 through 2006.

(B) Mission; improving capacities

For the purposes of achieving the mission of the Centers for Disease Control and Prevention described in subsection (a)(1) of this section, for carrying out subsection (a)(3) of this section, for better conducting the capacities described in section 247d–1 of this title, and for supporting public health activities, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2006.

(2) National communications and surveillance networks

For the purpose of carrying out subsection (b) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2006.

(d) Public health situational awareness

(1) In general

Not later than 2 years after December 19, 2006, the Secretary, in collaboration with

State, local, and tribal public health officials, shall establish a near real-time electronic nationwide public health situational awareness capability through an interoperable network of systems to share data and information to enhance early detection of rapid response to, and management of, potentially catastrophic infectious disease outbreaks and other public health emergencies that originate domestically or abroad. Such network shall be built on existing State situational awareness systems or enhanced systems that enable such connectivity.

(2) Strategic plan

Not later than 180 days after December 19, 2006, the Secretary shall submit to the appropriate committees of Congress, a strategic plan that demonstrates the steps the Secretary will undertake to develop, implement, and evaluate the network described in paragraph (1), utilizing the elements described in paragraph (3).

(3) Elements

The network described in paragraph (1) shall include data and information transmitted in a standardized format from—

(A) State, local, and tribal public health entities, including public health laboratories;

(B) Federal health agencies;

(C) zoonotic disease monitoring systems;

(D) public and private sector health care entities, hospitals, pharmacies, poison control centers or professional organizations in the field of poison control, and clinical laboratories, to the extent practicable and provided that such data are voluntarily provided simultaneously to the Secretary and appropriate State, local, and tribal public health agencies; and

(E) such other sources as the Secretary may deem appropriate.

(4) Rule of construction

Paragraph (3) shall not be construed as requiring separate reporting of data and information from each source listed.

(5) Required activities

In establishing and operating the network described in paragraph (1), the Secretary shall—

(A) utilize applicable interoperability standards as determined by the Secretary through a joint public and private sector process;

(B) define minimal data elements for such network;

(C) in collaboration with State, local, and tribal public health officials, integrate and build upon existing State, local, and tribal capabilities, ensuring simultaneous sharing of data, information, and analyses from the network described in paragraph (1) with State, local, and tribal public health agencies; and

(D) in collaboration with State, local, and tribal public health officials, develop procedures and standards for the collection, analysis, and interpretation of data that States, regions, or other entities collect and report to the network described in paragraph (1).

(e) State and regional systems to enhance situational awareness in public health emergencies

(1) In general

To implement the network described in subsection (d), the Secretary may award grants to States or consortia of States to enhance the ability of such States or consortia of States to establish or operate a coordinated public health situational awareness system for regional or Statewide early detection of, rapid response to, and management of potentially catastrophic infectious disease outbreaks and public health emergencies, in collaboration with appropriate public health agencies, sentinel hospitals, clinical laboratories, pharmacies, poison control centers, other health care organizations, and animal health organizations within such States.

(2) Eligibility

To be eligible to receive a grant under paragraph (1), the State or consortium of States shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including an assurance that the State or consortium of States will submit to the Secretary—

(A) reports of such data, information, and metrics as the Secretary may require;

(B) a report on the effectiveness of the systems funded under the grant; and

(C) a description of the manner in which grant funds will be used to enhance the timelines and comprehensiveness of efforts to detect, respond to, and manage potentially catastrophic infectious disease outbreaks and public health emergencies.

(3) Use of funds

A State or consortium of States that receives an award under this subsection—

(A) shall establish, enhance, or operate a coordinated public health situational awareness system for regional or Statewide early detection of, rapid response to, and management of potentially catastrophic infectious disease outbreaks and public health emergencies;

(B) may award grants or contracts to entities described in paragraph (1) within or serving such State to assist such entities in improving the operation of information technology systems, facilitating the secure exchange of data and information, and training personnel to enhance the operation of the system described in subparagraph (A); and

(C) may conduct a pilot program for the development of multi-State telehealth network test beds that build on, enhance, and securely link existing State and local telehealth programs to prepare for, monitor, respond to, and manage the events of public health emergencies, facilitate coordination and communication among medical, public health, and emergency response agencies,

and provide medical services through telehealth initiatives within the States that are involved in such a multi-State telehealth network test bed.

(4) Limitation

Information technology systems acquired or implemented using grants awarded under this section must be compliant with—

(A) interoperability and other technological standards, as determined by the Secretary; and

(B) data collection and reporting requirements for the network described in subsection (d).

(5) Independent evaluation

Not later than 4 years after December 19, 2006, the Government Accountability Office shall conduct an independent evaluation, and submit to the Secretary and the appropriate committees of Congress a report concerning the activities conducted under this subsection and subsection (d).

(f) Telehealth enhancements for emergency response

(1) Evaluation

The Secretary, in consultation with the Federal Communications Commission and other relevant Federal agencies, shall—

(A) conduct an inventory of telehealth initiatives in existence on December 19, 2006, including—

(i) the specific location of network components;

(ii) the medical, technological, and communications capabilities of such components;

(iii) the functionality of such components; and

(iv) the capacity and ability of such components to handle increased volume during the response to a public health emergency;

(B) identify methods to expand and interconnect the regional health information networks funded by the Secretary, the State and regional broadband networks funded through the rural health care support mechanism pilot program funded by the Federal Communications Commission, and other telehealth networks;

(C) evaluate ways to prepare for, monitor, respond rapidly to, or manage the events of, a public health emergency through the enhanced use of telehealth technologies, including mechanisms for payment or reimbursement for use of such technologies and personnel during public health emergencies;

(D) identify methods for reducing legal barriers that deter health care professionals from providing telemedicine services, such as by utilizing State emergency health care professional credentialing verification systems, encouraging States to establish and implement mechanisms to improve interstate medical licensure cooperation, facilitating the exchange of information among States regarding investigations and adverse actions, and encouraging States to waive the application of licensing requirements during a public health emergency;

(E) evaluate ways to integrate the practice of telemedicine within the National Disaster Medical System; and

(F) promote greater coordination among existing Federal interagency telemedicine and health information technology initiatives.

(2) Report

Not later than 12 months after December 19, 2006, the Secretary shall prepare and submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives regarding the findings and recommendations pursuant to subparagraphs (A) through (F) of paragraph (1).

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section, such sums as may be necessary in each of fiscal years 2007 through 2011.

(July 1, 1944, ch. 373, title III, § 319D, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2318; amended Pub. L. 107–188, title I, § 103, June 12, 2002, 116 Stat. 603; Pub. L. 109–417, title II, §§ 202, 204(b)(2), Dec. 19, 2006, 120 Stat. 2845, 2851.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–417, § 202(1), inserted ''domestically and abroad'' after ''public health threats''.

Subsec. (a)(3). Pub. L. 109–417, § 204(b)(2), struck out '', taking into account evaluations under section 247d–2(a) of this title,'' after ''The Secretary'' in introductory provisions.

Subsecs. (d) to (g). Pub. L. 109–417, § 202(2), added subsecs. (d) to (g).

2002—Pub. L. 107–188 reenacted section catchline without change and amended text generally, substituting detailed provisions relating to facilities, capacities, and national communications and surveillance networks for provisions relating to findings of need for secure and modern facilities.

§ 247d–5. Combating antimicrobial resistance

(a) Task force

(1) In general

The Secretary shall establish an Antimicrobial Resistance Task Force to provide advice and recommendations to the Secretary and coordinate Federal programs relating to antimicrobial resistance. The Secretary may appoint or select a committee, or other organization in existence as of November 13, 2000, to serve as such a task force, if such committee, or other organization meets the requirements of this section.

(2) Members of task force

The task force described in paragraph (1) shall be composed of representatives from such Federal agencies, and shall seek input from public health constituencies, manufacturers, veterinary and medical professional societies and others, as determined to be necessary by the Secretary, to develop and implement a comprehensive plan to address the public health threat of antimicrobial resistance.

(3) Agenda

(A) In general

The task force described in paragraph (1) shall consider factors the Secretary considers appropriate, including—

(i) public health factors contributing to increasing antimicrobial resistance;

(ii) public health needs to detect and monitor antimicrobial resistance;

(iii) detection, prevention, and control strategies for resistant pathogens;

(iv) the need for improved information and data collection;

(v) the assessment of the risk imposed by pathogens presenting a threat to the public health; and

(vi) any other issues which the Secretary determines are relevant to antimicrobial resistance.

(B) Detection and control

The Secretary, in consultation with the task force described in paragraph (1) and State and local public health officials, shall—

(i) develop, improve, coordinate or enhance participation in a surveillance plan to detect and monitor emerging antimicrobial resistance; and

(ii) develop, improve, coordinate or enhance participation in an integrated information system to assimilate, analyze, and exchange antimicrobial resistance data between public health departments.

(4) Meetings

The task force described under paragraph (1) shall convene not less than twice a year, or more frequently as the Secretary determines to be appropriate.

(b) Research and development of new antimicrobial drugs and diagnostics

The Secretary and the Director of Agricultural Research Services, consistent with the recommendations of the task force established under subsection (a) of this section, shall directly or through awards of grants or cooperative agreements to public or private entities provide for the conduct of research, investigations, experiments, demonstrations, and studies in the health sciences that are related to—

(1) the development of new therapeutics, including vaccines and antimicrobials, against resistant pathogens;

(2) the development or testing of medical diagnostics to detect pathogens resistant to antimicrobials;

(3) the epidemiology, mechanisms, and pathogenesis of antimicrobial resistance;

(4) the sequencing of the genomes, or other DNA analysis, or other comparative analysis, of priority pathogens (as determined by the Director of the National Institutes of Health in consultation with the task force established under subsection (a) of this section), in collaboration and coordination with the activities of the Department of Defense and the Joint Genome Institute of the Department of Energy; and

(5) other relevant research areas.

(c) Education of medical and public health personnel

The Secretary, after consultation with the Assistant Secretary for Health, the Surgeon General, the Director of the Centers for Disease Control and Prevention, the Administrator of the Health Resources and Services Administration, the Director of the Agency for Healthcare Research and Quality, members of the task force described in subsection (a) of this section, professional organizations and societies, and such other public health officials as may be necessary, shall—

(1) develop and implement educational programs to increase the awareness of the general public with respect to the public health threat of antimicrobial resistance and the appropriate use of antibiotics;

(2) develop and implement educational programs to instruct health care professionals in the prudent use of antibiotics; and

(3) develop and implement programs to train laboratory personnel in the recognition or identification of resistance in pathogens.

(d) Grants

(1) In general

The Secretary shall award competitive grants to eligible entities to enable such entities to increase the capacity to detect, monitor, and combat antimicrobial resistance.

(2) Eligible entities

Eligible entities for grants under paragraph (1) shall be State or local public health agencies, Indian tribes or tribal organizations, or other public or private nonprofit entities.

(3) Use of funds

An eligible entity receiving a grant under paragraph (1) shall use funds from such grant for activities that are consistent with the factors identified by the task force under subsection (a)(3) of this section, which may include activities that—

(A) provide training to enable such entity to identify patterns of resistance rapidly and accurately;

(B) develop, improve, coordinate or enhance participation in information systems by which data on resistant infections can be shared rapidly among relevant national, State, and local health agencies and health care providers; and

(C) develop and implement policies to control the spread of antimicrobial resistance.

(e) Grants for demonstration programs

(1) In general

The Secretary shall award competitive grants to eligible entities to establish demonstration programs to promote judicious use of antimicrobial drugs or control the spread of antimicrobial-resistant pathogens.

(2) Eligible entities

Eligible entities for grants under paragraph (1) may include hospitals, clinics, institutions of long-term care, professional medical societies, schools or programs that train medical laboratory personnel, or other public or private nonprofit entities.

(3) Technical assistance

The Secretary shall provide appropriate technical assistance to eligible entities that receive grants under paragraph (1).

(f) Supplement not supplant

Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities under this section.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $40,000,000 for fiscal year 2001, $25,000,000 for each of the fiscal years 2002 and 2003, and such sums as may be necessary for each of the fiscal years 2004 through 2006.

(July 1, 1944, ch. 373, title III, § 319E, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2318; amended Pub. L. 107–188, title I, § 109, June 12, 2002, 116 Stat. 610.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–188, § 109(1)(A), in introductory provisions, substituted ''shall directly or through awards of grants or cooperative agreements to public or private entities provide for the conduct of'' for ''shall conduct and support''.

Subsec. (b)(4). Pub. L. 107–188, § 109(1)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the sequencing of the genomes of priority pathogens as determined by the Director of the National Institutes of Health in consultation with the task force established under subsection (a) of this section; and''.

Subsec. (e)(2). Pub. L. 107–188, § 109(2), inserted ''schools or programs that train medical laboratory personnel,'' after ''professional medical societies,''.

Subsec. (g). Pub. L. 107–188, § 109(3), substituted ''$25,000,000 for each of the fiscal years 2002 and 2003, and such sums as may be necessary for each of the fiscal years 2004 through 2006'' for ''and such sums as may be necessary for each subsequent fiscal year through 2006''.

§ 247d–6. Public health countermeasures to a bioterrorist attack

(a) All-hazards public health and medical response curricula and training

(1) In general

The Secretary, in collaboration with the Secretary of Defense, and in consultation with relevant public and private entities, shall develop core health and medical response curricula and trainings by adapting applicable existing curricula and training programs to improve responses to public health emergencies.

(2) Curriculum

The public health and medical response training program may include course work related to—

(A) medical management of casualties, taking into account the needs of at-risk individuals;

(B) public health aspects of public health emergencies;

(C) mental health aspects of public health emergencies;

(D) national incident management, including coordination among Federal, State, local, tribal, international agencies, and other entities; and

(E) protecting health care workers and health care first responders from workplace exposures during a public health emergency.

(3) Peer review

On a periodic basis, products prepared as part of the program shall be rigorously tested and peer-reviewed by experts in the relevant fields.

(4) Credit

The Secretary and the Secretary of Defense shall—

(A) take into account continuing professional education requirements of public health and healthcare professions; and

(B) cooperate with State, local, and tribal accrediting agencies and with professional associations in arranging for students enrolled in the program to obtain continuing professional education credit for program courses.

(5) Dissemination and training

(A) In general

The Secretary may provide for the dissemination and teaching of the materials described in paragraphs (1) and (2) by appropriate means, as determined by the Secretary.

(B) Certain entities

The education and training activities described in subparagraph (A) may be carried out by Federal public health or medical entities, appropriate educational entities, professional organizations and societies, private accrediting organizations, and other nonprofit institutions or entities meeting criteria established by the Secretary.

(C) Grants and contracts

In carrying out this subsection, the Secretary may carry out activities directly or through the award of grants and contracts, and may enter into interagency agreements with other Federal agencies.

(b) Advice to the Federal Government

(1) Required advisory committees

In coordination with the working group under subsection (a) of this section, the Secretary shall establish advisory committees in accordance with paragraphs (2) and (3) to provide expert recommendations to assist such working groups in carrying out their respective responsibilities under subsections (a) and (b) of this section.

(2) National Advisory Committee on At-Risk Individuals and Public Health Emergencies

(A) In general

For purposes of paragraph (1), the Secretary shall establish an advisory committee to be known as the National Advisory Committee on At-Risk Individuals and Public Health Emergencies (referred to in this paragraph as the ''Advisory Committee'').

(B) Duties

The Advisory Committee shall provide recommendations regarding—

(i) the preparedness of the health care (including mental health care) system to

respond to public health emergencies as they relate to at-risk individuals;

(ii) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of at-risk individuals; and

(iii) changes, if necessary, to the national stockpile under section 300hh–12 of this title to meet the emergency health security of at-risk individuals.

(C) Composition

The Advisory Committee shall be composed of such Federal officials as may be appropriate to address the special needs of the diverse population groups of at-risk populations.

(D) Termination

The Advisory Committee terminates six years after June 12, 2002.

(3) Emergency Public Information and Communications Advisory Committee

(A) In general

For purposes of paragraph (1), the Secretary shall establish an advisory committee to be known as the Emergency Public Information and Communications Advisory Committee (referred to in this paragraph as the ''EPIC Advisory Committee'').

(B) Duties

The EPIC Advisory Committee shall make recommendations to the Secretary and report on appropriate ways to communicate public health information regarding bioterrorism and other public health emergencies to the public.

(C) Composition

The EPIC Advisory Committee shall be composed of individuals representing a diverse group of experts in public health, medicine, communications, behavioral psychology, and other areas determined appropriate by the Secretary.

(D) Dissemination

The Secretary shall review the recommendations of the EPIC Advisory Committee and ensure that appropriate information is disseminated to the public.

(E) Termination

The EPIC Advisory Committee terminates one year after June 12, 2002.

(c) Expansion of Epidemic Intelligence Service Program

The Secretary may establish 20 officer positions in the Epidemic Intelligence Service Program, in addition to the number of the officer positions offered under such Program in 2006, for individuals who agree to participate, for a period of not less than 2 years, in the Career Epidemiology Field Officer program in a State, local, or tribal health department that serves a health professional shortage area (as defined under section 254e(a) of this title), a medically underserved population (as defined under section 254b(b)(3) of this title), or a medically underserved area or area at high risk of a public health emergency as designated by the Secretary.

(d) Centers for Public Health Preparedness; core curricula and training

(1) In general

The Secretary may establish at accredited schools of public health, Centers for Public Health Preparedness (hereafter referred to in this section as the ''Centers'').

(2) Eligibility

To be eligible to receive an award under this subsection to establish a Center, an accredited school of public health shall agree to conduct activities consistent with the requirements of this subsection.

(3) Core curricula

The Secretary, in collaboration with the Centers and other public or private entities shall establish core curricula based on established competencies leading to a 4-year bachelor's degree, a graduate degree, a combined bachelor and master's degree, or a certificate program, for use by each Center. The Secretary shall disseminate such curricula to other accredited schools of public health and other health professions schools determined appropriate by the Secretary, for voluntary use by such schools.

(4) Core competency-based training program

The Secretary, in collaboration with the Centers and other public or private entities shall facilitate the development of a competency-based training program to train public health practitioners. The Centers shall use such training program to train public health practitioners. The Secretary shall disseminate such training program to other accredited schools of public health, health professions schools, and other public or private entities as determined by the Secretary, for voluntary use by such entities.

(5) Content of core curricula and training program

The Secretary shall ensure that the core curricula and training program established pursuant to this subsection respond to the needs of State, local, and tribal public health authorities and integrate and emphasize essential public health security capabilities consistent with section 300hh–1(b)(2) of this title.

(6) Academic-workforce communication

As a condition of receiving funding from the Secretary under this subsection, a Center shall collaborate with a State, local, or tribal public health department to—

(A) define the public health preparedness and response needs of the community involved;

(B) assess the extent to which such needs are fulfilled by existing preparedness and response activities of such school or health department, and how such activities may be improved;

(C) prior to developing new materials or trainings, evaluate and utilize relevant materials and trainings developed by others Centers; and

(D) evaluate community impact and the effectiveness of any newly developed materials or trainings.

(7) Public health systems research

In consultation with relevant public and private entities, the Secretary shall define the existing knowledge base for public health preparedness and response systems, and establish a research agenda based on Federal, State, local, and tribal public health preparedness priorities. As a condition of receiving funding from the Secretary under this subsection, a Center shall conduct public health systems research that is consistent with the agenda described under this paragraph.

(e) Accelerated research and development on priority pathogens and countermeasures

(1) In general

With respect to pathogens of potential use in a bioterrorist attack, and other agents that may cause a public health emergency, the Secretary, taking into consideration any recommendations of the working group under subsection (a) of this section, shall conduct, and award grants, contracts, or cooperative agreements for, research, investigations, experiments, demonstrations, and studies in the health sciences relating to—

(A) the epidemiology and pathogenesis of such pathogens;

(B) the sequencing of the genomes, or other DNA analysis, or other comparative analysis, of priority pathogens (as determined by the Director of the National Institutes of Health in consultation with the working group established in subsection (a) of this section), in collaboration and coordination with the activities of the Department of Defense and the Joint Genome Institute of the Department of Energy;

(C) the development of priority countermeasures; and

(D) other relevant areas of research;

with consideration given to the needs of children and other vulnerable populations.

(2) Priority

The Secretary shall give priority under this section to the funding of research and other studies related to priority countermeasures.

(3) Role of Department of Veterans Affairs

In carrying out paragraph (1), the Secretary shall consider using the biomedical research and development capabilities of the Department of Veterans Affairs, in conjunction with that Department's affiliations with health-professions universities. When advantageous to the Government in furtherance of the purposes of such paragraph, the Secretary may enter into cooperative agreements with the Secretary of Veterans Affairs to achieve such purposes.

(4) Priority countermeasures

For purposes of this section, the term ''priority countermeasure'' means a drug, biological product, device, vaccine, vaccine adjuvant, antiviral, or diagnostic test that the Secretary determines to be—

(A) a priority to treat, identify, or prevent infection by a biological agent or toxin listed pursuant to section 262a(a)(1) of this title, or harm from any other agent that may cause a public health emergency; or

(B) a priority to treat, identify, or prevent conditions that may result in adverse health consequences or death and may be caused by the administering of a drug, biological product, device, vaccine, vaccine adjuvant, antiviral, or diagnostic test that is a priority under subparagraph (A).

(f) Authorization of appropriations

(1) Fiscal year 2007

There are authorized to be appropriated to carry out this section for fiscal year 2007—

(A) to carry out subsection (a)—

(i) $5,000,000 to carry out paragraphs (1) through (4); and

(ii) $7,000,000 to carry out paragraph (5);

(B) to carry out subsection (c), $3,000,000; and

(C) to carry out subsection (d), $31,000,000, of which $5,000,000 shall be used to carry out paragraphs (3) through (5) of such subsection.

(2) Subsequent fiscal years

There are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal year 2008 and each subsequent fiscal year.

(July 1, 1944, ch. 373, title III, § 319F, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2321; amended Pub. L. 107–188, title I, §§ 104(a) 105, 108, 111(3), 125, June 12, 2002, 116 Stat. 605, 606, 609, 611, 614; Pub. L. 108–276, § 2(d), July 21, 2004, 118 Stat. 842; Pub. L. 109–417, title III, §§ 301(d), (e), 304, Dec. 19, 2006, 120 Stat. 2854, 2855, 2859.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–417, § 304(1), added subsec. (a) and struck out heading and text of former subsec. (a) which established a working group on bioterrorism and other public health emergencies.

Subsec. (b)(2). Pub. L. 109–417, § 301(d)(1), substituted ''At-Risk Individuals and Public Health Emergencies'' for ''Children and Terrorism'' in heading.

Subsec. (b)(2)(A). Pub. L. 109–417, § 301(d)(2), substituted ''At-Risk Individuals and Public Health Emergencies'' for ''Children and Terrorism''.

Subsec. (b)(2)(B)(i). Pub. L. 109–417, § 301(d)(3)(A), substituted ''public health emergencies as they relate to at-risk individuals'' for ''bioterrorism as it relates to children''.

Subsec. (b)(2)(B)(ii), (iii). Pub. L. 109–417, § 301(d)(3)(B), (C), substituted ''at-risk individuals'' for ''children''.

Subsec. (b)(2)(C). Pub. L. 109–417, § 301(d)(4), substituted ''at-risk populations'' for ''children, and child health experts on infectious disease, environmental health, toxicology, and other relevant professional disciplines''.

Subsec. (b)(2)(D). Pub. L. 109–417, § 301(d)(5), substituted ''six years'' for ''one year''.

Subsec. (b)(3)(B). Pub. L. 109–417, § 301(e), struck out ''and the working group under subsection (a) of this section'' after ''Secretary''.

Subsecs. (c) to (h). Pub. L. 109–417, § 304(2)–(4), added subsecs. (c), (d), and (f), redesignated subsec. (h) as (e), and struck out former subsecs. (c) to (g), which related to: in subsec. (c), development of communication strategy; in subsec. (d), Federal Internet site on bioterror-

ism; in subsec. (e), grants to increase capacity to detect, diagnose, and respond to acts of bioterrorism; in subsec. (f), assistance to State and local health agencies to enable effective response to attacks; and, in subsec. (g), education and training activities.

Subsecs. (i), (j). Pub. L. 109–417, § 304(5), struck out subsecs. (i) and (j) which related to report to congressional committees on public health and medical consequences of a bioterrorist attack and the supplementary nature of funds appropriated under this section, respectively.

2004—Subsec. (a)(1). Pub. L. 108–276, § 2(d)(1), inserted ''the Secretary of Homeland Security,'' after ''Management Agency,'' in introductory provisions.

Subsec. (h)(4)(B). Pub. L. 108–276, § 2(d)(2), substituted ''to treat, identify, or prevent conditions'' for ''to diagnose conditions''.

2002—Subsec. (a). Pub. L. 107–188, § 108, added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''The Secretary, in coordination with the Secretary of Defense, shall establish a joint interdepartmental working group on preparedness and readiness for the medical and public health effects of a bioterrorist attack on the civilian population. Such joint working group shall—

''(1) coordinate research on pathogens likely to be used in a bioterrorist attack on the civilian population as well as therapies to treat such pathogens;

''(2) coordinate research and development into equipment to detect pathogens likely to be used in a bioterrorist attack on the civilian population and protect against infection from such pathogens;

''(3) develop shared standards for equipment to detect and to protect against infection from pathogens likely to be used in a bioterrorist attack on the civilian population; and

''(4) coordinate the development, maintenance, and procedures for the release of, strategic reserves of vaccines, drugs, and medical supplies which may be needed rapidly after a bioterrorist attack upon the civilian population.''

Subsec. (b). Pub. L. 107–188, § 104(a)(1), (3), added subsec. (b) and struck out former subsec. (b) which related to establishment, functions, membership, and coordination of a working group on the public health and medical consequences of bioterrorism.

Subsecs. (c), (d). Pub. L. 107–188, § 104(a)(3), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 107–188, § 104(a)(2), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (e)(2). Pub. L. 107–188, § 111(3), which directed the amendment of section 391F(e)(2) of the Public Health Service Act by striking out ''or'' after ''clinic,'' and inserting before period '', professional organization or society, school or program that trains medical laboratory personnel, private accrediting organization, or other nonprofit private institution or entity meeting criteria established by the Secretary'', was executed to subsec. (e)(2) of this section, which is section 319F(e)(2) of the Act, to reflect the probable intent of Congress.

Subsec. (f). Pub. L. 107–188, § 104(a)(2), redesignated subsec. (d) as (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 107–188, § 105, amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: ''The Secretary, in collaboration with members of the working group described in subsection (b) of this section, and professional organizations and societies, shall—

''(1) develop and implement educational programs to instruct public health officials, medical professionals, and other personnel working in health care facilities in the recognition and care of victims of a bioterrorist attack; and

''(2) develop and implement programs to train laboratory personnel in the recognition and identification of a potential bioweapon.''

Pub. L. 107–188, § 104(a)(2), redesignated subsec. (e) as (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 107–188, § 125, amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: ''The Secretary shall consult with the working group described in subsection (a) of this section, to develop priorities for and conduct research, investigations, experiments, demonstrations, and studies in the health sciences related to—

''(1) the epidemiology and pathogenesis of potential bioweapons;

''(2) the development of new vaccines or other therapeutics against pathogens likely to be used in a bioterrorist attack;

''(3) the development of medical diagnostics to detect potential bioweapons; and

''(4) other relevant research areas.''

Pub. L. 107–188, § 104(a)(2), redesignated subsec. (f) as (h). Former subsec. (h) redesignated (j).

Subsec. (i). Pub. L. 107–188, § 104(a)(1), (2), redesignated subsec. (g) as (i) and struck out heading and text of former subsec. (i). Text read as follows: ''There are authorized to be appropriated to carry out this section $215,000,000 for fiscal year 2001, and such sums as may be necessary for each subsequent fiscal year through 2006.''

Subsec. (j). Pub. L. 107–188, § 104(a)(2), redesignated subsec. (h) as (j).

OTHER REPORTS

Pub. L. 107–188, title I, § 101(b)(1), June 12, 2002, 116 Stat. 598, provided that:

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [June 12, 2002], the Secretary of Health and Human Services (referred to in this subsection as the 'Secretary') shall submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report concerning—

''(A) the recommendations and findings of the National Advisory Committee on Children and Terrorism under section 319F(c)(2) of the Public Health Service Act [probably means subsec. (b)(2) of this section];

''(B) the recommendations and findings of the EPIC Advisory Committee under section 319F(c)(3) of such Act [probably means subsec. (b)(3) of this section];

''(C) the characteristics that may render a rural community uniquely vulnerable to a biological attack, including distance, lack of emergency transport, hospital or laboratory capacity, lack of integration of Federal or State public health networks, workforce deficits, or other relevant characteristics;

''(D) the characteristics that may render areas or populations designated as medically underserved populations (as defined in section 330 of such Act [section 254b of this title]) uniquely vulnerable to a biological attack, including significant numbers of low-income or uninsured individuals, lack of affordable and accessible health care services, insufficient public and primary health care resources, lack of integration of Federal or State public health networks, workforce deficits, or other relevant characteristics;

''(E) the recommendations of the Secretary with respect to additional legislative authority that the Secretary determines is necessary to effectively strengthen rural communities, or medically underserved populations (as defined in section 330 of such Act); and

''(F) the need for and benefits of a National Disaster Response Medical Volunteer Service that would be a private-sector, community-based rapid response corps of medical volunteers.''

STUDY REGARDING COMMUNICATIONS ABILITIES OF PUBLIC HEALTH AGENCIES

Pub. L. 107–188, title I, § 104(b), June 12, 2002, 116 Stat. 606, provided that: ''The Secretary of Health and Human Services, in consultation with the Federal Communications Commission, the National Telecommunications and Information Administration, and other appropriate Federal agencies, shall conduct a study to de-

termine whether local public health entities have the ability to maintain communications in the event of a bioterrorist attack or other public health emergency. The study shall examine whether redundancies are required in the telecommunications system, particularly with respect to mobile communications, for public health entities to maintain systems operability and connectivity during such emergencies. The study shall also include recommendations to industry and public health entities about how to implement such redundancies if necessary.''

§ 247d–6a. Authority for use of certain procedures regarding qualified countermeasure research and development activities

(a) In general

(1) Authority

In conducting and supporting research and development activities regarding countermeasures under section 247d–6(h) of this title, the Secretary may conduct and support such activities in accordance with this section and, in consultation with the Director of the National Institutes of Health, as part of the program under section 285f of this title, if the activities concern qualified countermeasures.

(2) Definitions

In this section:

(A) Qualified countermeasure

The term ''qualified countermeasure'' means a drug (as that term is defined by section 321(g)(1) of title 21), biological product (as that term is defined by section 262(i) of this title), or device (as that term is defined by section 321(h) of title 21), that the Secretary determines to be a priority (consistent with sections 182(2) and 184(a) of title 6) to—

(i) diagnose, mitigate, prevent, or treat harm from any biological agent (including organisms that cause an infectious disease) or toxin, chemical, radiological, or nuclear agent that may cause a public health emergency affecting national security; or

(ii) diagnose, mitigate, prevent, or treat harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device that is used as described in this subparagraph.

(B) Infectious disease

The term ''infectious disease'' means a disease potentially caused by a pathogenic organism (including a bacteria, virus, fungus, or parasite) that is acquired by a person and that reproduces in that person.

(3) Interagency cooperation

(A) In general

In carrying out activities under this section, the Secretary is authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government.

(B) Limitation

An agreement or undertaking under this paragraph shall not authorize another agency to exercise the authorities provided by this section.

(4) Availability of facilities to the Secretary

In any grant, contract, or cooperative agreement entered into under the authority provided in this section with respect to a biocontainment laboratory or other related or ancillary specialized research facility that the Secretary determines necessary for the purpose of performing, administering, or supporting qualified countermeasure research and development, the Secretary may provide that the facility that is the object of such grant, contract, or cooperative agreement shall be available as needed to the Secretary to respond to public health emergencies affecting national security.

(5) Transfers of qualified countermeasures

Each agreement for an award of a grant, contract, or cooperative agreement under section 247d–6(h) of this title for the development of a qualified countermeasure shall provide that the recipient of the award will comply with all applicable export-related controls with respect to such countermeasure.

(b) Expedited procurement authority

(1) Increased simplified acquisition threshold for qualified countermeasure procurements

(A) In general

For any procurement by the Secretary of property or services for use (as determined by the Secretary) in performing, administering, or supporting qualified countermeasure research or development activities under this section that the Secretary determines necessary to respond to pressing research and development needs under this section, the amount specified in section 403(11) of title 41, as applicable pursuant to section 252a(a) of title 41, shall be deemed to be $25,000,000 in the administration, with respect to such procurement, of—

(i) section 253(g)(1)(A) of title 41 and its implementing regulations; and

(ii) section 252a(b) of title 41 and its implementing regulations.

(B) Application of certain provisions

Notwithstanding subparagraph (A) and the provision of law and regulations referred to in such subparagraph, each of the following provisions shall apply to procurements described in this paragraph to the same extent that such provisions would apply to such procurements in the absence of subparagraph (A):

(i) Chapter 37 of title 40 (relating to contract work hours and safety standards).

(ii) Subsections (a) and (b) of section 57 of title 41.

(iii) Section 254d of title 41 (relating to the examination of contractor records).

(iv) Section 3131 of title 40 (relating to bonds of contractors of public buildings or works).

(v) Subsection (a) of section 254 of title 41 (relating to contingent fees to middlemen).

(vi) Section 6962 of this title.

(vii) Section 1354 of title 31 (relating to the limitation on the use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

(C) Internal controls to be instituted

The Secretary shall institute appropriate internal controls for procurements that are under this paragraph, including requirements with regard to documenting the justification for use of the authority in this paragraph with respect to the procurement involved.

(D) Authority to limit competition

In conducting a procurement under this paragraph, the Secretary may not use the authority provided for under subparagraph (A) to conduct a procurement on a basis other than full and open competition unless the Secretary determines that the mission of the BioShield Program under the Project BioShield Act of 2004 would be seriously impaired without such a limitation.

(2) Procedures other than full and open competition

(A) In general

In using the authority provided in section 253(c)(1) of title 41 to use procedures other than competitive procedures in the case of a procurement described in paragraph (1) of this subsection, the phrase ''available from only one responsible source'' in such section 253(c)(1) shall be deemed to mean ''available from only one responsible source or only from a limited number of responsible sources''.

(B) Relation to other authorities

The authority under subparagraph (A) is in addition to any other authority to use procedures other than competitive procedures.

(C) Applicable government-wide regulations

The Secretary shall implement this paragraph in accordance with government-wide regulations implementing such section 253(c)(1) (including requirements that offers be solicited from as many potential sources as is practicable under the circumstances, that required notices be published, and that submitted offers be considered), as such regulations apply to procurements for which an agency has authority to use procedures other than competitive procedures when the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency.

(3) Increased micropurchase threshold

(A) In general

For a procurement described by paragraph (1), the amount specified in subsections (c), (d), and (f) of section 428 of title 41 shall be deemed to be $15,000 in the administration of that section with respect to such procurement.

(B) Internal controls to be instituted

The Secretary shall institute appropriate internal controls for purchases that are under this paragraph and that are greater than $2,500.

(C) Exception to preference for purchase card mechanism

No provision of law establishing a preference for using a Government purchase card method for purchases shall apply to purchases that are under this paragraph and that are greater than $2,500.

(4) Review

(A) Review allowed

Notwithstanding subsection (f) of this section, section 1491 of title 28, and section 3556 of title 31, review of a contracting agency decision relating to a procurement described in paragraph (1) may be had only by filing a protest—

(i) with a contracting agency; or

(ii) with the Comptroller General under subchapter V of chapter 35 of title 31.

(B) Override of stay of contract award or performance committed to agency discretion

Notwithstanding section 1491 of title 28 and section 3553 of title 31, the following authorizations by the head of a procuring activity are committed to agency discretion:

(i) An authorization under section 3553(c)(2) of title 31 to award a contract for a procurement described in paragraph (1) of this subsection.

(ii) An authorization under section 3553(d)(3)(C) of such title to perform a contract for a procurement described in paragraph (1) of this subsection.

(c) Authority to expedite peer review

(1) In general

The Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, employ such expedited peer review procedures (including consultation with appropriate scientific experts) as the Secretary, in consultation with the Director of NIH, deems appropriate to obtain assessment of scientific and technical merit and likely contribution to the field of qualified countermeasure research, in place of the peer review and advisory council review procedures that would be required under sections 241(a)(3), 284(b)(1)(B), 284(b)(2), 284a(a)(3)(A), 289a, and 289c of this title, as applicable to a grant, contract, or cooperative agreement—

(A) that is for performing, administering, or supporting qualified countermeasure research and development activities; and

(B) the amount of which is not greater than $1,500,000.

(2) Subsequent phases of research

The Secretary's determination of whether to employ expedited peer review with respect to any subsequent phases of a research grant, contract, or cooperative agreement under this section shall be determined without regard to

the peer review procedures used for any prior peer review of that same grant, contract, or cooperative agreement. Nothing in the preceding sentence may be construed to impose any requirement with respect to peer review not otherwise required under any other law or regulation.

(d) Authority for personal services contracts

(1) In general

For the purpose of performing, administering, or supporting qualified countermeasure research and development activities, the Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, obtain by contract (in accordance with section 3109 of title 5, but without regard to the limitations in such section on the period of service and on pay) the personal services of experts or consultants who have scientific or other professional qualifications, except that in no case shall the compensation provided to any such expert or consultant exceed the daily equivalent of the annual rate of compensation for the President.

(2) Federal Tort Claims Act coverage

(A) In general

A person carrying out a contract under paragraph (1), and an officer, employee, or governing board member of such person, shall, subject to a determination by the Secretary, be deemed to be an employee of the Department of Health and Human Services for purposes of claims under sections 1346(b) and 2672 of title 28 for money damages for personal injury, including death, resulting from performance of functions under such contract.

(B) Exclusivity of remedy

The remedy provided by subparagraph (A) shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the entity involved (person, officer, employee, or governing board member) for any act or omission within the scope of the Federal Tort Claims Act.

(C) Recourse in case of gross misconduct or contract violation

(i) In general

Should payment be made by the United States to any claimant bringing a claim under this paragraph, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover against any entity identified in subparagraph (B) for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any such entity to carry out any obligation or responsibility assumed by such entity under a contract with the United States or from any grossly negligent or reckless conduct or intentional or willful misconduct on the part of such entity.

(ii) Venue

The United States may maintain an action under this subparagraph against such entity in the district court of the United States in which such entity resides or has its principal place of business.

(3) Internal controls to be instituted

(A) In general

The Secretary shall institute appropriate internal controls for contracts under this subsection, including procedures for the Secretary to make a determination of whether a person, or an officer, employee, or governing board member of a person, is deemed to be an employee of the Department of Health and Human Services pursuant to paragraph (2).

(B) Determination of employee status to be final

A determination by the Secretary under subparagraph (A) that a person, or an officer, employee, or governing board member of a person, is or is not deemed to be an employee of the Department of Health and Human Services shall be final and binding on the Secretary and the Attorney General and other parties to any civil action or proceeding.

(4) Number of personal services contracts limited

The number of experts and consultants whose personal services are obtained under paragraph (1) shall not exceed 30 at any time.

(e) Streamlined personnel authority

(1) In general

In addition to any other personnel authorities, the Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, without regard to those provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, appoint professional and technical employees, not to exceed 30 such employees at any time, to positions in the National Institutes of Health to perform, administer, or support qualified countermeasure research and development activities in carrying out this section.

(2) Limitations

The authority provided for under paragraph (1) shall be exercised in a manner that—

(A) recruits and appoints individuals based solely on their abilities, knowledge, and skills;

(B) does not discriminate for or against any applicant for employment on any basis described in section 2302(b)(1) of title 5;

(C) does not allow an official to appoint an individual who is a relative (as defined in section 3110(a)(3) of such title) of such official;

(D) does not discriminate for or against an individual because of the exercise of any activity described in paragraph (9) or (10) of section 2302(b) of such title; and

(E) accords a preference, among equally qualified persons, to persons who are pref-

erence eligibles (as defined in section 2108(3) of such title).

(3) Internal controls to be instituted

The Secretary shall institute appropriate internal controls for appointments under this subsection.

(f) Actions committed to agency discretion

Actions by the Secretary under the authority of this section are committed to agency discretion.

(July 1, 1944, ch. 373, title III, § 319F–1, as added Pub. L. 108–276, § 2(a), July 21, 2004, 118 Stat. 835; amended Pub. L. 109–417, title IV, § 403(a), Dec. 19, 2006, 120 Stat. 2874.)

REFERENCES IN TEXT

The Project BioShield Act of 2004, referred to in subsec. (b)(1)(D), is Pub. L. 108–276, July 21, 2004, 118 Stat. 835. For complete classification of this Act to the Code, see Short Title of 2004 Amendments note set out under section 201 of this title and Tables.

The Federal Tort Claims Act, referred to in subsec. (d)(2), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (e)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–417 added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''For purposes of this section, the term 'qualified countermeasure' means a drug (as that term is defined by section 321(g)(1) of title 21), biological product (as that term is defined by section 262(i) of this title), or device (as that term is defined by section 321(h) of title 21) that the Secretary determines to be a priority (consistent with sections 182(2) and 184(a) of title 6) to—

''(A) treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a public health emergency affecting national security; or

''(B) treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device that is used as described in subparagraph (A).''

RULE OF CONSTRUCTION

Pub. L. 108–276, § 2(e), July 21, 2004, 118 Stat. 842, provided that: ''Nothing in this section [enacting this section and amending sections 247d–6, 287a–2, and 300aa–6 of this title] has any legal effect on sections 302(2), 302(4), 304(a), or 304(b) of the Homeland Security Act of 2002 [6 U.S.C. 182(2), (4), 184(a), (b)].''

COLLABORATION AND COORDINATION

Pub. L. 109–417, title IV, § 405, Dec. 19, 2006, 120 Stat. 2875, provided that:

''(a) LIMITED ANTITRUST EXEMPTION.—

''(1) MEETINGS AND CONSULTATIONS TO DISCUSS SECURITY COUNTERMEASURES, QUALIFIED COUNTERMEASURES, OR QUALIFIED PANDEMIC OR EPIDEMIC PRODUCT DEVELOPMENT.—

''(A) AUTHORITY TO CONDUCT MEETINGS AND CONSULTATIONS.—The Secretary of Health and Human Services (referred to in this subsection as the 'Secretary'), in coordination with the Attorney General and the Secretary of Homeland Security, may conduct meetings and consultations with persons engaged in the development of a security countermeasure (as defined in section 319F–2 of the Public Health Service Act (42 U.S.C. 247d–6b)) (as amended by this Act), a qualified countermeasure (as defined in section 319F–1 of the Public Health Service Act (42 U.S.C. 247d–6a)) (as amended by this Act), or a qualified pandemic or epidemic product (as defined in section 319F–3 of the Public Health Service Act (42 U.S.C. 247d–6d)) for the purpose of the development, manufacture, distribution, purchase, or storage of a countermeasure or product. The Secretary may convene such meeting or consultation at the request of the Secretary of Homeland Security, the Attorney General, the Chairman of the Federal Trade Commission (referred to in this section as the 'Chairman'), or any interested person, or upon initiation by the Secretary. The Secretary shall give prior notice of any such meeting or consultation, and the topics to be discussed, to the Attorney General, the Chairman, and the Secretary of Homeland Security.

''(B) MEETING AND CONSULTATION CONDITIONS.—A meeting or consultation conducted under subparagraph (A) shall—

''(i) be chaired or, in the case of a consultation, facilitated by the Secretary;

''(ii) be open to persons involved in the development, manufacture, distribution, purchase, or storage of a countermeasure or product, as determined by the Secretary;

''(iii) be open to the Attorney General, the Secretary of Homeland Security, and the Chairman;

''(iv) be limited to discussions involving covered activities; and

''(v) be conducted in such manner as to ensure that no national security, confidential commercial, or proprietary information is disclosed outside the meeting or consultation.

''(C) LIMITATION.—The Secretary may not require participants to disclose confidential commercial or proprietary information.

''(D) TRANSCRIPT.—The Secretary shall maintain a complete verbatim transcript of each meeting or consultation conducted under this subsection. Such transcript (or a portion thereof) shall not be disclosed under section 552 of title 5, United States Code, to the extent that the Secretary, in consultation with the Attorney General and the Secretary of Homeland Security, determines that disclosure of such transcript (or portion thereof) would pose a threat to national security. The transcript (or portion thereof) with respect to which the Secretary has made such a determination shall be deemed to be information described in subsection (b)(3) of such section 552.

''(E) EXEMPTION.—

''(i) IN GENERAL.—Subject to clause (ii), it shall not be a violation of the antitrust laws for any person to participate in a meeting or consultation conducted in accordance with this paragraph.

''(ii) LIMITATION.—Clause (i) shall not apply to any agreement or conduct that results from a meeting or consultation and that is not covered by an exemption granted under paragraph (4).

''(2) SUBMISSION OF WRITTEN AGREEMENTS.—The Secretary shall submit each written agreement regarding covered activities that is made pursuant to meetings or consultations conducted under paragraph (1) to the Attorney General and the Chairman for consideration. In addition to the proposed agreement itself, any submission shall include—

''(A) an explanation of the intended purpose of the agreement;

''(B) a specific statement of the substance of the agreement;

''(C) a description of the methods that will be utilized to achieve the objectives of the agreement;

''(D) an explanation of the necessity for a cooperative effort among the particular participating persons to achieve the objectives of the agreement; and

''(E) any other relevant information determined necessary by the Attorney General, in consultation with the Chairman and the Secretary.

''(3) EXEMPTION FOR CONDUCT UNDER APPROVED AGREEMENT.—It shall not be a violation of the antitrust laws for a person to engage in conduct in accordance with a written agreement to the extent that such agreement has been granted an exemption under paragraph (4), during the period for which the exemption is in effect.

''(4) ACTION ON WRITTEN AGREEMENTS.—

''(A) IN GENERAL.—The Attorney General, in consultation with the Chairman, shall grant, deny, grant in part and deny in part, or propose modifications to an exemption request regarding a written agreement submitted under paragraph (2), in a written statement to the Secretary, within 15 business days of the receipt of such request. An exemption granted under this paragraph shall take effect immediately.

''(B) EXTENSION.—The Attorney General may extend the 15-day period referred to in subparagraph (A) for an additional period of not to exceed 10 business days.

''(C) DETERMINATION.—An exemption shall be granted regarding a written agreement submitted in accordance with paragraph (2) only to the extent that the Attorney General, in consultation with the Chairman and the Secretary, finds that the conduct that will be exempted will not have any substantial anticompetitive effect that is not reasonably necessary for ensuring the availability of the countermeasure or product involved.

''(5) LIMITATION ON AND RENEWAL OF EXEMPTIONS.—An exemption granted under paragraph (4) shall be limited to covered activities, and such exemption shall be renewed (with modifications, as appropriate, consistent with the finding described in paragraph (4)(C)), on the date that is 3 years after the date on which the exemption is granted unless the Attorney General in consultation with the Chairman determines that the exemption should not be renewed (with modifications, as appropriate) considering the factors described in paragraph (4).

''(6) AUTHORITY TO OBTAIN INFORMATION.—Consideration by the Attorney General for granting or renewing an exemption submitted under this section shall be considered an antitrust investigation for purposes of the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.).

''(7) LIMITATION ON PARTIES.—The use of any information acquired under an agreement for which an exemption has been granted under paragraph (4), for any purpose other than specified in the exemption, shall be subject to the antitrust laws and any other applicable laws.

''(8) REPORT.—Not later than one year after the date of enactment of this Act [Dec. 19, 2006] and biannually thereafter, the Attorney General and the Chairman shall report to Congress on the use of the exemption from the antitrust laws provided by this subsection.

''(b) SUNSET.—The applicability of this section shall expire at the end of the 6-year period that begins on the date of enactment of this Act [Dec. 19, 2006].

''(c) DEFINITIONS.—In this section:

''(1) ANTITRUST LAWS.—The term 'antitrust laws'—

''(A) has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

''(B) includes any State law similar to the laws referred to in subparagraph (A).

''(2) COUNTERMEASURE OR PRODUCT.—The term 'countermeasure or product' refers to a security countermeasure, qualified countermeasure, or qualified pandemic or epidemic product (as those terms are defined in subsection (a)(1)).

''(3) COVERED ACTIVITIES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'covered activities' includes any activity relating to the development, manufacture, distribution, purchase, or storage of a countermeasure or product.

''(B) EXCEPTION.—The term 'covered activities' shall not include, with respect to a meeting or consultation conducted under subsection (a)(1) or an agreement for which an exemption has been granted under subsection (a)(4), the following activities involving 2 or more persons:

''(i) Exchanging information among competitors relating to costs, profitability, or distribution of any product, process, or service if such information is not reasonably necessary to carry out covered activities—

''(I) with respect to a countermeasure or product regarding which such meeting or consultation is being conducted; or

''(II) that are described in the agreement as exempted.

''(ii) Entering into any agreement or engaging in any other conduct—

''(I) to restrict or require the sale, licensing, or sharing of inventions, developments, products, processes, or services not developed through, produced by, or distributed or sold through such covered activities; or

''(II) to restrict or require participation, by any person participating in such covered activities, in other research and development activities, except as reasonably necessary to prevent the misappropriation of proprietary information contributed by any person participating in such covered activities or of the results of such covered activities.

''(iii) Entering into any agreement or engaging in any other conduct allocating a market with a competitor that is not expressly exempted from the antitrust laws under subsection (a)(4).

''(iv) Exchanging information among competitors relating to production (other than production by such covered activities) of a product, process, or service if such information is not reasonably necessary to carry out such covered activities.

''(v) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production of a product, process, or service that is not expressly exempted from the antitrust laws under subsection (a)(4).

''(vi) Except as otherwise provided in this subsection, entering into any agreement or engaging in any other conduct to restrict or require participation by any person participating in such covered activities, in any unilateral or joint activity that is not reasonably necessary to carry out such covered activities.

''(vii) Entering into any agreement or engaging in any other conduct restricting or setting the price at which a countermeasure or product is offered for sale, whether by bid or otherwise.''

OUTREACH

Pub. L. 108–276, §6, July 21, 2004, 118 Stat. 862, provided that: ''The Secretary of Health and Human Services shall develop outreach measures to ensure to the extent practicable that diverse institutions, including Historically Black Colleges and Universities and those serving large proportions of Black or African Americans, American Indians, Appalachian Americans, Alaska Natives, Asians, Native Hawaiians, other Pacific Is-

landers, Hispanics or Latinos, or other underrepresented populations, are meaningfully aware of available research and development grants, contracts, cooperative agreements, and procurements conducted under sections 2 and 3 of this Act [enacting this section and section 320 of Title 6, Domestic Security, amending sections 247d–6, 247d–6b, 287a–2, and 300aa–6 of this title and sections 312 and 313 of Title 6, renumbering section 300hh–12 of this title as section 247d–6b of this title, and enacting provisions set out as notes under this section and section 247d–6b of this title].''

RECOMMENDATION FOR EXPORT CONTROLS ON CERTAIN BIOMEDICAL COUNTERMEASURES

Pub. L. 108–276, § 7, July 21, 2004, 118 Stat. 863, provided that: ''Upon the award of any grant, contract, or cooperative agreement under section 2 or 3 of this Act [enacting this section and section 320 of Title 6, Domestic Security, amending sections 247d–6, 247d–6b, 287a–2, and 300aa–6 of this title and sections 312 and 313 of Title 6, renumbering section 300hh–12 of this title as section 247d–6b of this title, and enacting provisions set out as notes under this section and section 247d–6b of this title] for the research, development, or procurement of a qualified countermeasure or a security countermeasure (as those terms are defined in this Act [see Short Title of 2004 Amendments note set out under section 201 of this title]), the Secretary of Health and Human Services shall, in consultation with the heads of other appropriate Federal agencies, determine whether the countermeasure involved in such grant, contract, or cooperative agreement is subject to existing export-related controls and, if not, may make a recommendation to the appropriate Federal agency or agencies that such countermeasure should be included on the list of controlled items subject to such controls.''

ENSURING COORDINATION, COOPERATION AND THE ELIMINATION OF UNNECESSARY DUPLICATION IN PROGRAMS DESIGNED TO PROTECT THE HOMELAND FROM BIOLOGICAL, CHEMICAL, RADIOLOGICAL, AND NUCLEAR AGENTS

Pub. L. 108–276, § 8, July 21, 2004, 118 Stat. 863, provided that:

''(a) ENSURING COORDINATION OF PROGRAMS.—The Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Defense shall ensure that the activities of their respective Departments coordinate, complement, and do not unnecessarily duplicate programs to identify potential domestic threats from biological, chemical, radiological or nuclear agents, detect domestic incidents involving such agents, analyze such incidents, and develop necessary countermeasures. The aforementioned Secretaries shall further ensure that information and technology possessed by the Departments relevant to these activities are shared with the other Departments.

''(b) DESIGNATION OF AGENCY COORDINATION OFFICER.—The Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Defense shall each designate an officer or employee of their respective Departments who shall coordinate, through regular meetings and communications, with the other aforementioned Departments such programs and activities carried out by their Departments.''

§ 247d–6b. Strategic National Stockpile and security countermeasure procurements

(a) Strategic National Stockpile

(1) In general

The Secretary, in collaboration with the Director of the Centers for Disease Control and Prevention, and in coordination with the Secretary of Homeland Security (referred to in this section as the ''Homeland Security Secretary''), shall maintain a stockpile or stockpiles of drugs, vaccines and other biological products, medical devices, and other supplies in such numbers, types, and amounts as are determined by the Secretary to be appropriate and practicable, taking into account other available sources, to provide for the emergency health security of the United States, including the emergency health security of children and other vulnerable populations, in the event of a bioterrorist attack or other public health emergency. The Secretary shall conduct an annual review (taking into account at-risk individuals) of the contents of the stockpile, including non-pharmaceutical supplies, and make necessary additions or modifications to the contents based on such review.

(2) Procedures

The Secretary, in managing the stockpile under paragraph (1), shall—

(A) consult with the working group under section 247d–6(a) of this title;

(B) ensure that adequate procedures are followed with respect to such stockpile for inventory management and accounting, and for the physical security of the stockpile;

(C) in consultation with Federal, State, and local officials, take into consideration the timing and location of special events;

(D) review and revise, as appropriate, the contents of the stockpile on a regular basis to ensure that emerging threats, advanced technologies, and new countermeasures are adequately considered;

(E) devise plans for the effective and timely supply-chain management of the stockpile, in consultation with appropriate Federal, State and local agencies, and the public and private health care infrastructure;

(F) deploy the stockpile as required by the Secretary of Homeland Security to respond to an actual or potential emergency;

(G) deploy the stockpile at the discretion of the Secretary to respond to an actual or potential public health emergency or other situation in which deployment is necessary to protect the public health or safety; and

(H) ensure the adequate physical security of the stockpile.

(b) Smallpox vaccine development

(1) In general

The Secretary shall award contracts, enter into cooperative agreements, or carry out such other activities as may reasonably be required in order to ensure that the stockpile under subsection (a) of this section includes an amount of vaccine against smallpox as determined by such Secretary to be sufficient to meet the health security needs of the United States.

(2) Rule of construction

Nothing in this section shall be construed to limit the private distribution, purchase, or sale of vaccines from sources other than the stockpile described in subsection (a) of this section.

(c) Additional authority regarding procurement of certain countermeasures; availability of special reserve fund

(1) In general

(A) Use of fund

A security countermeasure may, in accordance with this subsection, be procured with amounts in the special reserve fund under paragraph (10).

(B) Security countermeasure

For purposes of this subsection, the term ''security countermeasure'' means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), biological product (as that term is defined by section 262(i) of this title), or device (as that term is defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))) that—

(i)(I) the Secretary determines to be a priority (consistent with sections 182(2) and 184(a) of title 6) to diagnose, mitigate, prevent, or treat harm from any biological, chemical, radiological, or nuclear agent identified as a material threat under paragraph (2)(A)(ii), or to diagnose, mitigate, prevent, or treat harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent;

(II) the Secretary determines under paragraph (2)(B)(ii) to be a necessary countermeasure; and

(III)(aa) is approved or cleared under chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 351 et seq.] or licensed under section 262 of this title; or

(bb) is a countermeasure for which the Secretary determines that sufficient and satisfactory clinical experience or research data (including data, if available, from pre-clinical and clinical trials) support a reasonable conclusion that the countermeasure will qualify for approval or licensing within eight years after the date of a determination under paragraph (5); or

(ii) is authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360bbb–3].

(2) Determination of material threats

(A) Material threat

The Homeland Security Secretary, in consultation with the Secretary and the heads of other agencies as appropriate, shall on an ongoing basis—

(i) assess current and emerging threats of chemical, biological, radiological, and nuclear agents; and

(ii) determine which of such agents present a material threat against the United States population sufficient to affect national security.

(B) Public health impact; necessary countermeasures

The Secretary shall on an ongoing basis—

(i) assess the potential public health consequences for the United States population of exposure to agents identified under subparagraph (A)(ii); and

(ii) determine, on the basis of such assessment, the agents identified under subparagraph (A)(ii) for which countermeasures are necessary to protect the public health.

(C) Notice to Congress

The Secretary and the Homeland Security Secretary shall promptly notify the designated congressional committees (as defined in paragraph (10)) that a determination has been made pursuant to subparagraph (A) or (B).

(D) Assuring access to threat information

In making the assessment and determination required under subparagraph (A), the Homeland Security Secretary shall use all relevant information to which such Secretary is entitled under section 122 of title 6, including but not limited to information, regardless of its level of classification, relating to current and emerging threats of chemical, biological, radiological, and nuclear agents.

(3) Assessment of availability and appropriateness of countermeasures

(A) In general

The Secretary, in consultation with the Homeland Security Secretary, shall assess on an ongoing basis the availability and appropriateness of specific countermeasures to address specific threats identified under paragraph (2).

(B) Information

The Secretary shall institute a process for making publicly available the results of assessments under subparagraph (A) while withholding such information as—

(i) would, in the judgment of the Secretary, tend to reveal public health vulnerabilities; or

(ii) would otherwise be exempt from disclosure under section 552 of title 5.

(4) Call for development of countermeasures; commitment for recommendation for procurement

(A) Proposal to the President

If, pursuant to an assessment under paragraph (3), the Homeland Security Secretary and the Secretary make a determination that a countermeasure would be appropriate but is either currently not developed or unavailable for procurement as a security countermeasure or is approved, licensed, or cleared only for alternative uses, such Secretaries may jointly submit to the President a proposal to—

(i) issue a call for the development of such countermeasure; and

(ii) make a commitment that, upon the first development of such countermeasure that meets the conditions for procurement under paragraph (5), the Secretaries will, based in part on information obtained pursuant to such call, make a recommendation under paragraph (6) that the special

reserve fund under paragraph (10) be made available for the procurement of such countermeasure.

(B) Countermeasure specifications

The Homeland Security Secretary and the Secretary shall, to the extent practicable, include in the proposal under subparagraph (A)—

(i) estimated quantity of purchase (in the form of number of doses or number of effective courses of treatments regardless of dosage form);

(ii) necessary measures of minimum safety and effectiveness;

(iii) estimated price for each dose or effective course of treatment regardless of dosage form; and

(iv) other information that may be necessary to encourage and facilitate research, development, and manufacture of the countermeasure or to provide specifications for the countermeasure.

(C) Presidential approval

If the President approves a proposal under subparagraph (A), the Homeland Security Secretary and the Secretary shall make known to persons who may respond to a call for the countermeasure involved—

(i) the call for the countermeasure;

(ii) specifications for the countermeasure under subparagraph (B); and

(iii) the commitment described in subparagraph (A)(ii).

(5) Secretary's determination of countermeasures appropriate for funding from special reserve fund

(A) In general

The Secretary, in accordance with the provisions of this paragraph, shall identify specific security countermeasures that the Secretary determines, in consultation with the Homeland Security Secretary, to be appropriate for inclusion in the stockpile under subsection (a) of this section pursuant to procurements made with amounts in the special reserve fund under paragraph (10) (referred to in this subsection individually as a ''procurement under this subsection'').

(B) Requirements

In making a determination under subparagraph (A) with respect to a security countermeasure, the Secretary shall determine and consider the following:

(i) The quantities of the product that will be needed to meet the stockpile needs.

(ii) The feasibility of production and delivery within eight years of sufficient quantities of the product.

(iii) Whether there is a lack of a significant commercial market for the product at the time of procurement, other than as a security countermeasure.

(6) Recommendation for President's approval

(A) Recommendation for procurement

In the case of a security countermeasure that the Secretary has, in accordance with paragraphs (3) and (5), determined to be appropriate for procurement under this subsection, the Homeland Security Secretary and the Secretary shall jointly submit to the President, in coordination with the Director of the Office of Management and Budget, a recommendation that the special reserve fund under paragraph (10) be made available for the procurement of such countermeasure.

(B) Presidential approval

The special reserve fund under paragraph (10) is available for a procurement of a security countermeasure only if the President has approved a recommendation under subparagraph (A) regarding the countermeasure.

(C) Notice to designated congressional committees

The Secretary and the Homeland Security Secretary shall notify the designated congressional committees of each decision of the President to approve a recommendation under subparagraph (A). Such notice shall include an explanation of the decision to make available the special reserve fund under paragraph (10) for procurement of such a countermeasure, including, where available, the number of, nature of, and other information concerning potential suppliers of such countermeasure, and whether other potential suppliers of the same or similar countermeasures were considered and rejected for procurement under this section and the reasons therefor.

(D) Subsequent specific countermeasures

Procurement under this subsection of a security countermeasure for a particular purpose does not preclude the subsequent procurement under this subsection of any other security countermeasure for such purpose if the Secretary has determined under paragraph (5)(A) that such countermeasure is appropriate for inclusion in the stockpile and if, as determined by the Secretary, such countermeasure provides improved safety or effectiveness, or for other reasons enhances preparedness to respond to threats of use of a biological, chemical, radiological, or nuclear agent. Such a determination by the Secretary is committed to agency discretion.

(E) Rule of construction

Recommendations and approvals under this paragraph apply solely to determinations that the special reserve fund under paragraph (10) will be made available for a procurement of a security countermeasure, and not to the substance of contracts for such procurement or other matters relating to awards of such contracts.

(7) Procurement

(A) In general

For purposes of a procurement under this subsection that is approved by the President under paragraph (6), the Homeland Security Secretary and the Secretary shall have responsibilities in accordance with subparagraphs (B) and (C).

(B) Interagency agreement; cost

The Homeland Security Secretary shall enter into an agreement with the Secretary for procurement of a security countermeasure in accordance with the provisions of this paragraph. The special reserve fund under paragraph (10) shall be available for payments made by the Secretary to a vendor for such procurement.

(C) Procurement

(i) In general

The Secretary shall be responsible for—

(I) arranging for procurement of a security countermeasure, including negotiating terms (including quantity, production schedule, and price) of, and entering into, contracts and cooperative agreements, and for carrying out such other activities as may reasonably be required, in accordance with the provisions of this subparagraph; and

(II) promulgating such regulations as the Secretary determines necessary to implement the provisions of this subsection.

(ii) Contract terms

A contract for procurements under this subsection shall (or, as specified below, may) include the following terms:

(I) Payment conditioned on delivery

The contract shall provide that no payment may be made until delivery of a portion, acceptable to the Secretary, of the total number of units contracted for, except that, notwithstanding any other provision of law, the contract may provide that, if the Secretary determines (in the Secretary's discretion) that an advance payment, partial payment for significant milestones, or payment to increase manufacturing capacity is necessary to ensure success of a project, the Secretary shall pay an amount, not to exceed 10 percent of the contract amount, in advance of delivery. The Secretary shall, to the extent practicable, make the determination of advance payment at the same time as the issuance of a solicitation. The contract shall provide that such advance payment is required to be repaid if there is a failure to perform by the vendor under the contract. The contract may also provide for additional advance payments of 5 percent each for meeting the milestones specified in such contract, except that such payments shall not exceed 50 percent of the total contract amount. If the specified milestones are reached, the advanced payments of 5 percent shall not be required to be repaid. Nothing in this subclause shall be construed as affecting the rights of vendors under provisions of law or regulation (including the Federal Acquisition Regulation) relating to the termination of contracts for the convenience of the Government.

(II) Discounted payment

The contract may provide for a discounted price per unit of a product that is not licensed, cleared, or approved as described in paragraph (1)(B)(i)(III)(aa) at the time of delivery, and may provide for payment of an additional amount per unit if the product becomes so licensed, cleared, or approved before the expiration date of the contract (including an additional amount per unit of product delivered before the effective date of such licensing, clearance, or approval).

(III) Contract duration

The contract shall be for a period not to exceed five years, except that, in first awarding the contract, the Secretary may provide for a longer duration, not exceeding eight years, if the Secretary determines that complexities or other difficulties in performance under the contract justify such a period. The contract shall be renewable for additional periods, none of which shall exceed five years.

(IV) Storage by vendor

The contract may provide that the vendor will provide storage for stocks of a product delivered to the ownership of the Federal Government under the contract, for such period and under such terms and conditions as the Secretary may specify, and in such case amounts from the special reserve fund under paragraph (10) shall be available for costs of shipping, handling, storage, and related costs for such product.

(V) Product approval

The contract shall provide that the vendor seek approval, clearance, or licensing of the product from the Secretary; for a timetable for the development of data and other information to support such approval, clearance, or licensing; and that the Secretary may waive part or all of this contract term on request of the vendor or on the initiative of the Secretary.

(VI) Non-stockpile transfers of security countermeasures

The contract shall provide that the vendor will comply with all applicable export-related controls with respect to such countermeasure.

(VII) Sales exclusivity

The contract may provide that the vendor is the exclusive supplier of the product to the Federal Government for a specified period of time, not to exceed the term of the contract, on the condition that the vendor is able to satisfy the needs of the Government. During the agreed period of sales exclusivity, the vendor shall not assign its rights of sales exclusivity to another entity or entities without approval by the Secretary. Such a sales exclusivity provision in such a contract shall constitute a valid basis for a sole source procurement under section 253(c)(1) of title 41.

(VIII) Warm based surge capacity

The contract may provide that the vendor establish domestic manufacturing capacity of the product to ensure that additional production of the product is available in the event that the Secretary determines that there is a need to quickly purchase additional quantities of the product. Such contract may provide a fee to the vendor for establishing and maintaining such capacity in excess of the initial requirement for the purchase of the product. Additionally, the cost of maintaining the domestic manufacturing capacity shall be an allowable and allocable direct cost of the contract.

(IX) Contract terms

The Secretary, in any contract for procurement under this section, may specify—

(aa) the dosing and administration requirements for countermeasures to be developed and procured;

(bb) the amount of funding that will be dedicated by the Secretary for development and acquisition of the countermeasure; and

(cc) the specifications the countermeasure must meet to qualify for procurement under a contract under this section.

(iii) Availability of simplified acquisition procedures

(I) In general

If the Secretary determines that there is a pressing need for a procurement of a specific countermeasure, the amount of the procurement under this subsection shall be deemed to be below the threshold amount specified in section 403(11) of title 41, for purposes of application to such procurement, pursuant to section 252a(a) of title 41, of—

(aa) section 253(g)(1)(A) of title 41 and its implementing regulations; and

(bb) section 252a(b) of title 41 and its implementing regulations.

(II) Application of certain provisions

Notwithstanding subclause (I) and the provision of law and regulations referred to in such clause, each of the following provisions shall apply to procurements described in this clause to the same extent that such provisions would apply to such procurements in the absence of subclause (I):

(aa) Chapter 37 of title 40 (relating to contract work hours and safety standards).

(bb) Subsections (a) and (b) of section 57 of title 41.

(cc) Section 254d of title 41 (relating to the examination of contractor records).

(dd) Section 3131 of title 40 (relating to bonds of contractors of public buildings or works).

(ee) Subsection (a) of section 254 of title 41 (relating to contingent fees to middlemen).

(ff) Section 6962 of this title.

(gg) Section 1354 of title 31 (relating to the limitation on the use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

(III) Internal controls to be established

The Secretary shall establish appropriate internal controls for procurements made under this clause, including requirements with respect to documentation of the justification for the use of the authority provided under this paragraph with respect to the procurement involved.

(IV) Authority to limit competition

In conducting a procurement under this subparagraph, the Secretary may not use the authority provided for under subclause (I) to conduct a procurement on a basis other than full and open competition unless the Secretary determines that the mission of the BioShield Program under the Project BioShield Act of 2004 would be seriously impaired without such a limitation.

(iv) Procedures other than full and open competition

(I) In general

In using the authority provided in section 253(c)(1) of title 41 to use procedures other than competitive procedures in the case of a procurement under this subsection, the phrase ''available from only one responsible source'' in such section 253(c)(1) shall be deemed to mean ''available from only one responsible source or only from a limited number of responsible sources''.

(II) Relation to other authorities

The authority under subclause (I) is in addition to any other authority to use procedures other than competitive procedures.

(III) Applicable government-wide regulations

The Secretary shall implement this clause in accordance with government-wide regulations implementing such section 253(c)(1) (including requirements that offers be solicited from as many potential sources as is practicable under the circumstances, that required notices be published, and that submitted offers be considered), as such regulations apply to procurements for which an agency has authority to use procedures other than competitive procedures when the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency.

(v) Premium provision in multiple award contracts

(I) In general

If, under this subsection, the Secretary enters into contracts with more than one vendor to procure a security countermeasure, such Secretary may, notwithstanding any other provision of law, include in each of such contracts a provision that—

(aa) identifies an increment of the total quantity of security countermeasure required, whether by percentage or by numbers of units; and

(bb) promises to pay one or more specified premiums based on the priority of such vendors' production and delivery of the increment identified under item (aa), in accordance with the terms and conditions of the contract.

(II) Determination of Government's requirement not reviewable

If the Secretary includes in each of a set of contracts a provision as described in subclause (I), such Secretary's determination of the total quantity of security countermeasure required, and any amendment of such determination, is committed to agency discretion.

(vi) Extension of closing date for receipt of proposals not reviewable

A decision by the Secretary to extend the closing date for receipt of proposals for a procurement under this subsection is committed to agency discretion.

(vii) Limiting competition to sources responding to request for information

In conducting a procurement under this subsection, the Secretary may exclude a source that has not responded to a request for information under section 253a(a)(1)(B) of title 41 if such request has given notice that the Secretary may so exclude such a source.

(8) Interagency cooperation

(A) In general

In carrying out activities under this section, the Homeland Security Secretary and the Secretary are authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government. Such agreements may allow other executive agencies to order qualified and security countermeasures under procurement contracts or other agreements established by the Secretary. Such ordering process (including transfers of appropriated funds between an agency and the Department of Health and Human Services as reimbursements for such orders for countermeasures) may be conducted under the authority of section 1535 of title 31, except that all such orders shall be processed under the terms established under this subsection for the procurement of countermeasures.

(B) Limitation

An agreement or undertaking under this paragraph shall not authorize another agency to exercise the authorities provided by this section to the Homeland Security Secretary or to the Secretary.

(9) Restrictions on use of funds

Amounts in the special reserve fund under paragraph (10) shall not be used to pay—

(A) costs for the purchase of vaccines under procurement contracts entered into before July 21, 2004; or

(B) costs other than payments made by the Secretary to a vendor for a procurement of a security countermeasure under paragraph (7).

(10) Definitions

(A) Special reserve fund

For purposes of this subsection, the term ''special reserve fund'' has the meaning given such term in section 510[1] of the Homeland Security Act of 2002.

(B) Designated congressional committees

For purposes of this section, the term ''designated congressional committees'' means the following committees of the Congress:

(i) In the House of Representatives: the Committee on Energy and Commerce, the Committee on Appropriations, the Committee on Government Reform, and the Select Committee on Homeland Security (or any successor to the Select Committee).

(ii) In the Senate: the appropriate committees.

(d) Disclosures

No Federal agency shall disclose under section 552 of title 5 any information identifying the location at which materials in the stockpile under subsection (a) of this section are stored.

(e) Definition

For purposes of subsection (a) of this section, the term ''stockpile'' includes—

(1) a physical accumulation (at one or more locations) of the supplies described in subsection (a) of this section; or

(2) a contractual agreement between the Secretary and a vendor or vendors under which such vendor or vendors agree to provide to such Secretary supplies described in subsection (a) of this section.

(f) Authorization of appropriations

(1) Strategic National Stockpile

For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated $640,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006. Such authorization is in addition to amounts in the special reserve fund referred to in subsection (c)(10)(A) of this section.

(2) Smallpox vaccine development

For the purpose of carrying out subsection (b) of this section, there are authorized to be

[1] See References in Text note below.

appropriated $509,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title III, §319F–2, formerly Pub. L. 107–188, title I, §121, June 12, 2002, 116 Stat. 611; Pub. L. 107–296, title XVII, §1705(a), Nov. 25, 2002, 116 Stat. 2316; renumbered §319F–2 of act July 1, 1944, and amended Pub. L. 108–276, §3(a), July 21, 2004, 118 Stat. 842; Pub. L. 109–417, title I, §102(c), title IV, §§403(b), 406, Dec. 19, 2006, 120 Stat. 2834, 2874, 2879.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(1)(B)(i)(III)(aa), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended. Chapter V of the Act is classified generally to subchapter V (§351 et seq.) of chapter 9 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Project BioShield Act of 2004, referred to in subsec. (c)(7)(C)(iii)(IV), is Pub. L. 108–276, July 21, 2004, 118 Stat. 835. For complete classification of this Act to the Code, see Short Title of 2004 Amendments note set out under section 201 of this title and Tables.

Section 510 of the Homeland Security Act of 2002, referred to in subsec. (c)(10)(A), probably means section 510 of Pub. L. 107–296 as added by Pub. L. 108–276, which defines ''special reserve fund'', and which was renumbered section 521 of that Act by Pub. L. 109–295, title VI, §611(7), Oct. 4, 2006, 120 Stat. 1395, and is classified to section 321j of Title 6, Domestic Security. Another section 510 of Pub. L. 107–296, relating to urban and other high risk area communications capabilities, was classified to section 321 of Title 6, prior to repeal by Pub. L. 109–295, title VI, §611(5), Oct. 4, 2006, 120 Stat. 1395. Another section 510 of Pub. L. 107–296, relating to credentialing and typing, is classified to section 320 of Title 6.

CODIFICATION

Section was formerly classified to section 300hh–12 of this title prior to renumbering by Pub. L. 108–276.

AMENDMENTS

2006—Pub. L. 109–417, §406(1), inserted ''and security countermeasure procurements'' after ''Stockpile'' in section catchline.

Subsec. (a)(1). Pub. L. 109–417, §102(c), inserted ''in collaboration with the Director of the Centers for Disease Control and Prevention, and'' after ''The Secretary,'' and inserted at end ''The Secretary shall conduct an annual review (taking into account at-risk individuals) of the contents of the stockpile, including non-pharmaceutical supplies, and make necessary additions or modifications to the contents based on such review.''

Subsec. (c). Pub. L. 109–417, §406(2)(A), struck out ''biomedical'' before ''countermeasures'' in heading.

Subsec. (c)(1)(B)(i)(I). Pub. L. 109–417, §403(b), which directed amendment of section 319F–2(c)(1)(B) by substituting ''diagnose, mitigate, prevent, or treat'' for ''treat, identify, or prevent'' wherever appearing, was executed by making the substitution in two places in subsec. (c)(1)(B)(i)(I) of this section, which is section 319F–2 of the Public Health Service Act, to reflect the probable intent of Congress.

Subsec. (c)(3). Pub. L. 109–417, §406(2)(B), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(4)(A). Pub. L. 109–417, §406(2)(C), inserted ''not developed or'' after ''currently'' in introductory provisions.

Subsec. (c)(5)(B)(i). Pub. L. 109–417, §406(2)(D), substituted ''to meet the stockpile needs'' for ''to meet the needs of the stockpile''.

Subsec. (c)(7)(B). Pub. L. 109–417, §406(2)(E), substituted ''cost'' for ''costs'' in subpar. heading, struck out cl. (i) designation and heading before ''The Homeland'', and struck out heading and text of cl. (ii). Text read as follows: ''The actual costs to the Secretary under this section, other than the costs described in clause (i), shall be paid from the appropriation provided for under subsection (f)(1) of this section.''

Subsec. (c)(7)(C)(ii)(I). Pub. L. 109–417, §406(2)(F)(i), amended heading and text of subcl. (I) generally. Prior to amendment, text read as follows: ''The contract shall provide that no payment may be made until delivery has been made of a portion, acceptable to the Secretary, of the total number of units contracted for, except that, notwithstanding any other provision of law, the contract may provide that, if the Secretary determines (in the Secretary's discretion) that an advance payment is necessary to ensure success of a project, the Secretary may pay an amount, not to exceed 10 percent of the contract amount, in advance of delivery. The contract shall provide that such advance payment is required to be repaid if there is a failure to perform by the vendor under the contract. Nothing in this subclause may be construed as affecting rights of vendors under provisions of law or regulation (including the Federal Acquisition Regulation) relating to termination of contracts for the convenience of the Government.''

Subsec. (c)(7)(C)(ii)(VII) to (IX). Pub. L. 109–417, §406(2)(F)(ii), added subcls. (VII) to (IX).

Subsec. (c)(8)(A). Pub. L. 109–417, §406(2)(G), inserted at end ''Such agreements may allow other executive agencies to order qualified and security countermeasures under procurement contracts or other agreements established by the Secretary. Such ordering process (including transfers of appropriated funds between an agency and the Department of Health and Human Services as reimbursements for such orders for countermeasures) may be conducted under the authority of section 1535 of title 31, except that all such orders shall be processed under the terms established under this subsection for the procurement of countermeasures.''

2004—Pub. L. 108–276, §3(a)(2), amended section generally. Prior to amendment, text related in subsec. (a) to Strategic National Stockpile, in subsec. (b) to smallpox vaccine development, in subsec. (c) to disclosures, in subsec. (d) to definition of ''stockpile'', and in subsec. (e) to authorization of appropriations.

2002—Subsec. (a)(1). Pub. L. 107–296, §1705(a)(1), substituted ''The Secretary of Homeland Security'' for ''The Secretary of Health and Human Services'' and inserted ''the Secretary of Health and Human Services and'' after ''in coordination with'' and ''of Health and Human Services'' after ''as are determined by the Secretary''.

Subsecs. (a)(2), (b)(1). Pub. L. 107–296, §1705(a)(2), inserted ''of Health and Human Services'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–296, title XVII, §1705(b), Nov. 25, 2002, 116 Stat. 2316, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department [of Homeland Security].''

STOCKPILE FUNCTIONS TRANSFERRED

Pub. L. 108–276, §3(c)(1),(2), July 21, 2004, 118 Stat. 853, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), there shall be transferred to the Secretary of Health and Human Services the functions, personnel, assets, unexpended balances, and liabilities of the Strategic National Stockpile, including the functions of the Secretary of Homeland Security relating thereto.

''(2) EXCEPTIONS.—

''(A) FUNCTIONS.—The transfer of functions pursuant to paragraph (1) shall not include such functions as are explicitly assigned to the Secretary of Home-

land Security by this Act [see Short Title of 2004 Amendments note set out under section 201 of this title] (including the amendments made by this Act).

''(B) ASSETS AND UNEXPENDED BALANCES.—The transfer of assets and unexpended balances pursuant to paragraph (1) shall not include the funds appropriated under the heading 'BIODEFENSE COUNTERMEASURES' in the Department of Homeland Security Appropriations Act, 2004 (Public Law 108–90 [117 Stat. 1148]).''

POTASSIUM IODIDE

Pub. L. 107–188, title I, § 127, June 12, 2002, 116 Stat. 615, provided that:

''(a) IN GENERAL.—Through the national stockpile under section 121 [now section 319F–2 of act July 1, 1944, this section], the President, subject to subsections (b) and (c), shall make available to State and local governments potassium iodide tablets for stockpiling and for distribution as appropriate to public facilities, such as schools and hospitals, in quantities sufficient to provide adequate protection for the population within 20 miles of a nuclear power plant.

''(b) STATE AND LOCAL PLANS.—

''(1) IN GENERAL.—Subsection (a) applies with respect to a State or local government, subject to paragraph (2), if the government involved meets the following conditions:

''(A) Such government submits to the President a plan for the stockpiling of potassium iodide tablets, and for the distribution and utilization of potassium iodide tablets in the event of a nuclear incident.

''(B) The plan is accompanied by certifications by such government that the government has not already received sufficient quantities of potassium iodide tablets from the Federal Government.

''(2) LOCAL GOVERNMENTS.—Subsection (a) applies with respect to a local government only if, in addition to the conditions described in paragraph (1), the following conditions are met:

''(A) The State in which the locality involved is located—

''(i) does not have a plan described in paragraph (1)(A); or

''(ii) has a plan described in such paragraph, but the plan does not address populations at a distance greater than 10 miles from the nuclear power plant involved.

''(B) The local government has petitioned the State to modify the State plan to address such populations, not exceeding 20 miles from such plant, and 60 days have elapsed without the State modifying the State plan to address populations at the full distance sought by the local government through the petition.

''(C) The local government has submitted its local plan under paragraph (1)(A) to the State, and the State has approved the plan and certified that the plan is not inconsistent with the State emergency plan.

''(c) GUIDELINES.—Not later than one year after the date of the enactment of this Act [June 12, 2002], the President, in consultation with individuals representing appropriate Federal, State, and local agencies, shall establish guidelines for the stockpiling of potassium iodide tablets, and for the distribution and utilization of potassium iodide tablets in the event of a nuclear incident. Such tablets may not be made available under subsection (a) until such guidelines have been established.

''(d) INFORMATION.—The President shall carry out activities to inform State and local governments of the program under this section.

''(e) REPORTS.—

''(1) PRESIDENT.—Not later than six months after the date on which the guidelines under subsection (c) are issued, the President shall submit to the Congress a report—

''(A) on whether potassium iodide tablets have been made available under subsection (a) or other Federal, State, or local programs, and the extent to which State and local governments have established stockpiles of such tablets; and

''(B) the measures taken by the President to implement this section.

''(2) NATIONAL ACADEMY OF SCIENCES.—

''(A) IN GENERAL.—The President shall request the National Academy of Sciences to enter into an agreement with the President under which the Academy conducts a study to determine what is the most effective and safe way to distribute and administer potassium iodide tablets on a mass scale. If the Academy declines to conduct the study, the President shall enter into an agreement with another appropriate public or nonprofit private entity to conduct the study.

''(B) REPORT.—The President shall ensure that, not later than six months after the date of the enactment of this Act [June 12, 2002], the study required in subparagraph (A) is completed and a report describing the findings made in the study is submitted to the Congress.

''(f) APPLICABILITY.—Subsections (a) and (d) cease to apply as requirements if the President determines that there is an alternative and more effective prophylaxis or preventive measures for adverse thyroid conditions that may result from the release of radionuclides from nuclear power plants.''

DESIGNATION AND AUTHORIZATION TO PERFORM FUNCTIONS UNDER SECTION 319F–2 OF THE PUBLIC HEALTH SERVICE ACT

Memorandum of President of the United States, Oct. 21, 2004, 69 F.R. 70349, provided:

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby direct you to perform the functions vested in the President under section 319F–2(c)(6) of the Public Health Service Act, 42 U.S.C. 247d–6b(c)(6).

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 247d–6c. Reports regarding authorities under this Act

(a) Secretary of Health and Human Services

(1) Annual reports on particular exercises of authority

(A) Relevant authorities

The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall submit reports in accordance with subparagraph (B) regarding the exercise of authority under the following provisions of law:

(i) With respect to section 247d–6a of this title:

(I) Subsection (b)(1) (relating to increased simplified acquisition threshold).

(II) Subsection (b)(2) (relating to procedures other than full and open competition).

(III) Subsection (c) (relating to expedited peer review procedures).

(ii) With respect to section 247d–6b of this title:

(I) Subsection (c)(7)(C)(iii) (relating to simplified acquisition procedures).

(II) Subsection (c)(7)(C)(iv) (relating to procedures other than full and open competition).

(III) Subsection (c)(7)(C)(v) (relating to premium provision in multiple-award contracts).

(iii) With respect to section 360bbb–3 of title 21:

(I) Subsection (a)(1) (relating to emergency uses of certain drugs and devices).

(II) Subsection (b)(1) (relating to a declaration of an emergency).

(III) Subsection (e) (relating to conditions on authorization).

(B) Contents of reports

The Secretary shall annually submit to the designated congressional committees a report that summarizes—

(i) the particular actions that were taken under the authorities specified in subparagraph (A), including, as applicable, the identification of the threat agent, emergency, or the biomedical countermeasure with respect to which the authority was used;

(ii) the reasons underlying the decision to use such authorities, including, as applicable, the options that were considered and rejected with respect to the use of such authorities;

(iii) the number of, nature of, and other information concerning the persons and entities that received a grant, cooperative agreement, or contract pursuant to the use of such authorities, and the persons and entities that were considered and rejected for such a grant, cooperative agreement, or contract, except that the report need not disclose the identity of any such person or entity; and

(iv) whether, with respect to each procurement that is approved by the President under section 247d–6b(c)(6) of this title, a contract was entered into within one year after such approval by the President.

(2) Annual summaries regarding certain activity

The Secretary shall annually submit to the designated congressional committees a report that summarizes the activity undertaken pursuant to the following authorities under section 247d–6a of this title:

(A) Subsection (b)(3) (relating to increased micropurchase threshold).

(B) Subsection (d) (relating to authority for personal services contracts).

(C) Subsection (e) (relating to streamlined personnel authority).

With respect to subparagraph (B), the report shall include a provision specifying, for the one-year period for which the report is submitted, the number of persons who were paid amounts greater than $100,000 and the number of persons who were paid amounts between $50,000 and $100,000.

(3) Report on additional barriers to procurement of security countermeasures

Not later than one year after July 21, 2004, the Secretary, in consultation with the Secretary of Homeland Security, shall report to the designated congressional committees any potential barriers to the procurement of security countermeasures that have not been addressed by this Act.

(b) Government Accountability Office review

(1) In general

Four years after July 21, 2004, the Comptroller General of the United States shall initiate a study—

(A)(i) to review the Secretary of Health and Human Services' utilization of the authorities granted under this Act with respect to simplified acquisition procedures, procedures other than full and open competition, increased micropurchase thresholds, personal services contracts, streamlined personnel authority, and the purchase of security countermeasures under the special reserve fund; and

(ii) to make recommendations to improve the utilization or effectiveness of such authorities in the future;

(B)(i) to review and assess the adequacy of the internal controls instituted by such Secretary with respect to such authorities, where required by this Act; and

(ii) to make recommendations to improve the effectiveness of such controls;

(C)(i) to review such Secretary's utilization of the authority granted under this Act to authorize an emergency use of a biomedical countermeasure, including the means by which the Secretary determines whether and under what conditions any such authorizations should be granted and the benefits and adverse impacts, if any, resulting from the use of such authority; and

(ii) to make recommendations to improve the utilization or effectiveness of such authority and to enhance protection of the public health;

(D) to identify any purchases or procurements that would not have been made or would have been significantly delayed except for the authorities described in subparagraph (A)(i); and

(E)(i) to determine whether and to what extent activities undertaken pursuant to the biomedical countermeasure research and development authorities established in this Act have enhanced the development of biomedical countermeasures affecting national security; and

(ii) to make recommendations to improve the ability of the Secretary to carry out these activities in the future.

(2) Additional provisions regarding determination on development of biomedical countermeasures affecting national security

In the report under paragraph (1), the determination under subparagraph (E) of such paragraph shall include—

(A) the Comptroller General's assessment of the current availability of countermeasures to address threats identified by the Secretary of Homeland Security;

(B) the Comptroller General's assessment of the extent to which programs and activi-

ties under this Act will reduce any gap between the threat and the availability of countermeasures to an acceptable level of risk; and

(C)(i) the Comptroller General's assessment of threats to national security that are posed by technology that will enable, during the 10-year period beginning on July 21, 2004, the development of antibiotic resistant, mutated, or bioengineered strains of biological agents; and

(ii) recommendations on short-term and long-term governmental strategies for addressing such threats, including recommendations for Federal policies regarding research priorities, the development of countermeasures, and investments in technology.

(3) Report

A report providing the results of the study under paragraph (1) shall be submitted to the designated congressional committees not later than five years after July 21, 2004.

(c) Report regarding biocontainment facilities

Not later than 120 days after July 21, 2004, the Secretary of Homeland Security and the Secretary of Health and Human Services shall jointly report to the designated congressional committees whether there is a lack of adequate large-scale biocontainment facilities necessary for the testing of security countermeasures in accordance with Food and Drug Administration requirements.

(d) Designated congressional committees

For purposes of this section, the term ''designated congressional committees'' means the following committees of the Congress:

(1) In the House of Representatives: the Committee on Energy and Commerce, the Committee on Appropriations, the Committee on Government Reform, and the Select Committee on Homeland Security (or any successor to the Select Committee).

(2) In the Senate: the appropriate committees.

(Pub. L. 108–276, § 5, July 21, 2004, 118 Stat. 860.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(3) and (b)(1), (2)(B), is Pub. L. 108–276, July 21, 2004, 118 Stat. 835, known as the Project BioShield Act of 2004. For complete classification of this Act to the Code, see Short Title of 2004 Amendments note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Project BioShield Act of 2004, and not as part of the Public Health Service Act which comprises this chapter.

§ 247d–6d. Targeted liability protections for pandemic and epidemic products and security countermeasures

(a) Liability protections

(1) In general

Subject to the other provisions of this section, a covered person shall be immune from suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure if a declaration under subsection (b) of this section has been issued with respect to such countermeasure.

(2) Scope of claims for loss

(A) Loss

For purposes of this section, the term ''loss'' means any type of loss, including—

(i) death;

(ii) physical, mental, or emotional injury, illness, disability, or condition;

(iii) fear of physical, mental, or emotional injury, illness, disability, or condition, including any need for medical monitoring; and

(iv) loss of or damage to property, including business interruption loss.

Each of clauses (i) through (iv) applies without regard to the date of the occurrence, presentation, or discovery of the loss described in the clause.

(B) Scope

The immunity under paragraph (1) applies to any claim for loss that has a causal relationship with the administration to or use by an individual of a covered countermeasure, including a causal relationship with the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, or use of such countermeasure.

(3) Certain conditions

Subject to the other provisions of this section, immunity under paragraph (1) with respect to a covered countermeasure applies only if—

(A) the countermeasure was administered or used during the effective period of the declaration that was issued under subsection (b) of this section with respect to the countermeasure;

(B) the countermeasure was administered or used for the category or categories of diseases, health conditions, or threats to health specified in the declaration; and

(C) in addition, in the case of a covered person who is a program planner or qualified person with respect to the administration or use of the countermeasure, the countermeasure was administered to or used by an individual who—

(i) was in a population specified by the declaration; and

(ii) was at the time of administration physically present in a geographic area specified by the declaration or had a connection to such area specified in the declaration.

(4) Applicability of certain conditions

With respect to immunity under paragraph (1) and subject to the other provisions of this section:

(A) In the case of a covered person who is a manufacturer or distributor of the covered countermeasure involved, the immunity ap-

plies without regard to whether such countermeasure was administered to or used by an individual in accordance with the conditions described in paragraph (3)(C).

(B) In the case of a covered person who is a program planner or qualified person with respect to the administration or use of the covered countermeasure, the scope of immunity includes circumstances in which the countermeasure was administered to or used by an individual in circumstances in which the covered person reasonably could have believed that the countermeasure was administered or used in accordance with the conditions described in paragraph (3)(C).

(5) Effect of distribution method

The provisions of this section apply to a covered countermeasure regardless of whether such countermeasure is obtained by donation, commercial sale, or any other means of distribution, except to the extent that, under paragraph (2)(E) of subsection (b) of this section, the declaration under such subsection provides that subsection (a) of this section applies only to covered countermeasures obtained through a particular means of distribution.

(6) Rebuttable presumption

For purposes of paragraph (1), there shall be a rebuttable presumption that any administration or use, during the effective period of the emergency declaration by the Secretary under subsection (b) of this section, of a covered countermeasure shall have been for the category or categories of diseases, health conditions, or threats to health with respect to which such declaration was issued.

(b) Declaration by Secretary

(1) Authority to issue declaration

Subject to paragraph (2), if the Secretary makes a determination that a disease or other health condition or other threat to health constitutes a public health emergency, or that there is a credible risk that the disease, condition, or threat may in the future constitute such an emergency, the Secretary may make a declaration, through publication in the Federal Register, recommending, under conditions as the Secretary may specify, the manufacture, testing, development, distribution, administration, or use of one or more covered countermeasures, and stating that subsection (a) of this section is in effect with respect to the activities so recommended.

(2) Contents

In issuing a declaration under paragraph (1), the Secretary shall identify, for each covered countermeasure specified in the declaration—

(A) the category or categories of diseases, health conditions, or threats to health for which the Secretary recommends the administration or use of the countermeasure;

(B) the period or periods during which, including as modified by paragraph (3), subsection (a) of this section is in effect, which period or periods may be designated by dates, or by milestones or other description of events, including factors specified in paragraph (6);

(C) the population or populations of individuals for which subsection (a) of this section is in effect with respect to the administration or use of the countermeasure (which may be a specification that such subsection applies without geographic limitation to all individuals);

(D) the geographic area or areas for which subsection (a) of this section is in effect with respect to the administration or use of the countermeasure (which may be a specification that such subsection applies without geographic limitation), including, with respect to individuals in the populations identified under subparagraph (C), a specification, as determined appropriate by the Secretary, of whether the declaration applies only to individuals physically present in such areas or whether in addition the declaration applies to individuals who have a connection to such areas, which connection is described in the declaration; and

(E) whether subsection (a) of this section is effective only to a particular means of distribution as provided in subsection (a)(5) of this section for obtaining the countermeasure, and if so, the particular means to which such subsection is effective.

(3) Effective period of declaration

(A) Flexibility of period

The Secretary may, in describing periods under paragraph (2)(B), have different periods for different covered persons to address different logistical, practical or other differences in responsibilities.

(B) Additional time to be specified

In each declaration under paragraph (1), the Secretary, after consulting, to the extent the Secretary deems appropriate, with the manufacturer of the covered countermeasure, shall also specify a date that is after the ending date specified under paragraph (2)(B) and that allows what the Secretary determines is—

(i) a reasonable period for the manufacturer to arrange for disposition of the covered countermeasure, including the return of such product to the manufacturer; and

(ii) a reasonable period for covered persons to take such other actions as may be appropriate to limit administration or use of the covered countermeasure.

(C) Additional period for certain strategic national stockpile countermeasures

With respect to a covered countermeasure that is in the stockpile under section 247d–6b of this title, if such countermeasure was the subject of a declaration under paragraph (1) at the time that it was obtained for the stockpile, the effective period of such declaration shall include a period when the countermeasure is administered or used pursuant to a distribution or release from the stockpile.

(4) Amendments to declaration

The Secretary may through publication in the Federal Register amend any portion of a declaration under paragraph (1). Such an

amendment shall not retroactively limit the applicability of subsection (a) of this section with respect to the administration or use of the covered countermeasure involved.

(5) Certain disclosures

In publishing a declaration under paragraph (1) in the Federal Register, the Secretary is not required to disclose any matter described in section 552(b) of title 5.

(6) Factors to be considered

In deciding whether and under what circumstances or conditions to issue a declaration under paragraph (1) with respect to a covered countermeasure, the Secretary shall consider the desirability of encouraging the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of such countermeasure.

(7) Judicial review

No court of the United States, or of any State, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this subsection.

(8) Preemption of State law

During the effective period of a declaration under subsection (b) of this section, or at any time with respect to conduct undertaken in accordance with such declaration, no State or political subdivision of a State may establish, enforce, or continue in effect with respect to a covered countermeasure any provision of law or legal requirement that—

(A) is different from, or is in conflict with, any requirement applicable under this section; and

(B) relates to the design, development, clinical testing or investigation, formulation, manufacture, distribution, sale, donation, purchase, marketing, promotion, packaging, labeling, licensing, use, any other aspect of safety or efficacy, or the prescribing, dispensing, or administration by qualified persons of the covered countermeasure, or to any matter included in a requirement applicable to the covered countermeasure under this section or any other provision of this chapter, or under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(9) Report to Congress

Within 30 days after making a declaration under paragraph (1), the Secretary shall submit to the appropriate committees of the Congress a report that provides an explanation of the reasons for issuing the declaration and the reasons underlying the determinations of the Secretary with respect to paragraph (2). Within 30 days after making an amendment under paragraph (4), the Secretary shall submit to such committees a report that provides the reasons underlying the determination of the Secretary to make the amendment.

(c) Definition of willful misconduct

(1) Definition

(A) In general

Except as the meaning of such term is further restricted pursuant to paragraph (2), the term ''willful misconduct'' shall, for purposes of subsection (d) of this section, denote an act or omission that is taken—

(i) intentionally to achieve a wrongful purpose;

(ii) knowingly without legal or factual justification; and

(iii) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

(B) Rule of construction

The criterion stated in subparagraph (A) shall be construed as establishing a standard for liability that is more stringent than a standard of negligence in any form or recklessness.

(2) Authority to promulgate regulatory definition

(A) In general

The Secretary, in consultation with the Attorney General, shall promulgate regulations, which may be promulgated through interim final rules, that further restrict the scope of actions or omissions by a covered person that may qualify as ''willful misconduct'' for purposes of subsection (d) of this section.

(B) Factors to be considered

In promulgating the regulations under this paragraph, the Secretary, in consultation with the Attorney General, shall consider the need to define the scope of permissible civil actions under subsection (d) of this section in a way that will not adversely affect the public health.

(C) Temporal scope of regulations

The regulations under this paragraph may specify the temporal effect that they shall be given for purposes of subsection (d) of this section.

(D) Initial rulemaking

Within 180 days after December 30, 2005, the Secretary, in consultation with the Attorney General, shall commence and complete an initial rulemaking process under this paragraph.

(3) Proof of willful misconduct

In an action under subsection (d) of this section, the plaintiff shall have the burden of proving by clear and convincing evidence willful misconduct by each covered person sued and that such willful misconduct caused death or serious physical injury.

(4) Defense for acts or omissions taken pursuant to Secretary's declaration

Notwithstanding any other provision of law, a program planner or qualified person shall not have engaged in ''willful misconduct'' as a matter of law where such program planner or

qualified person acted consistent with applicable directions, guidelines, or recommendations by the Secretary regarding the administration or use of a covered countermeasure that is specified in the declaration under subsection (b) of this section, provided either the Secretary, or a State or local health authority, was provided with notice of information regarding serious physical injury or death from the administration or use of a covered countermeasure that is material to the plaintiff's alleged loss within 7 days of the actual discovery of such information by such program planner or qualified person.

(5) Exclusion for regulated activity of manufacturer or distributor

(A) In general

If an act or omission by a manufacturer or distributor with respect to a covered countermeasure, which act or omission is alleged under subsection (e)(3)(A) of this section to constitute willful misconduct, is subject to regulation by this chapter or by the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], such act or omission shall not constitute ''willful misconduct'' for purposes of subsection (d) of this section if—

(i) neither the Secretary nor the Attorney General has initiated an enforcement action with respect to such act or omission; or

(ii) such an enforcement action has been initiated and the action has been terminated or finally resolved without a covered remedy.

Any action or proceeding under subsection (d) of this section shall be stayed during the pendency of such an enforcement action.

(B) Definitions

For purposes of this paragraph, the following terms have the following meanings:

(i) Enforcement action

The term ''enforcement action'' means a criminal prosecution, an action seeking an injunction, a seizure action, a civil monetary proceeding based on willful misconduct, a mandatory recall of a product because voluntary recall was refused, a proceeding to compel repair or replacement of a product, a termination of an exemption under section 505(i) or 520(g) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i), 360j(g)], a debarment proceeding, an investigator disqualification proceeding where an investigator is an employee or agent of the manufacturer, a revocation, based on willful misconduct, of an authorization under section 564 of such Act [21 U.S.C. 360bbb–3], or a suspension or withdrawal, based on willful misconduct, of an approval or clearance under chapter V of such Act [21 U.S.C. 351 et seq.] or of a licensure under section 262 of this title.

(ii) Covered remedy

The term ''covered remedy'' means an outcome—

(I) that is a criminal conviction, an injunction, or a condemnation, a civil monetary payment, a product recall, a repair or replacement of a product, a termination of an exemption under section 505(i) or 520(g) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i), 360j(g)], a debarment, an investigator disqualification, a revocation of an authorization under section 564 of such Act [21 U.S.C. 360bbb–3], or a suspension or withdrawal of an approval or clearance under chapter 5[1] of such Act or of a licensure under section 262 of this title; and

(II) that results from a final determination by a court or from a final agency action.

(iii) Final

The terms ''final'' and ''finally''—

(I) with respect to a court determination, or to a final resolution of an enforcement action that is a court determination, mean a judgment from which an appeal of right cannot be taken or a voluntary or stipulated dismissal; and

(II) with respect to an agency action, or to a final resolution of an enforcement action that is an agency action, mean an order that is not subject to further review within the agency and that has not been reversed, vacated, enjoined, or otherwise nullified by a final court determination or a voluntary or stipulated dismissal.

(C) Rules of construction

(i) In general

Nothing in this paragraph shall be construed—

(I) to affect the interpretation of any provision of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], of this chapter, or of any other applicable statute or regulation; or

(II) to impair, delay, alter, or affect the authority, including the enforcement discretion, of the United States, of the Secretary, of the Attorney General, or of any other official with respect to any administrative or court proceeding under this chapter, under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], under title 18, or under any other applicable statute or regulation.

(ii) Mandatory recalls

A mandatory recall called for in the declaration is not a Food and Drug Administration enforcement action.

(d) Exception to immunity of covered persons

(1) In general

Subject to subsection (f) of this section, the sole exception to the immunity from suit and liability of covered persons set forth in subsection (a) of this section shall be for an exclusive Federal cause of action against a covered person for death or serious physical injury proximately caused by willful misconduct, as defined pursuant to subsection (c) of this sec-

[1] So in original. Probably should be chapter ''V''.

tion, by such covered person. For purposes of section 2679(b)(2)(B) of title 28, such a cause of action is not an action brought for violation of a statute of the United States under which an action against an individual is otherwise authorized.

(2) Persons who can sue

An action under this subsection may be brought for wrongful death or serious physical injury by any person who suffers such injury or by any representative of such a person.

(e) Procedures for suit

(1) Exclusive Federal jurisdiction

Any action under subsection (d) of this section shall be filed and maintained only in the United States District Court for the District of Columbia.

(2) Governing law

The substantive law for decision in an action under subsection (d) of this section shall be derived from the law, including choice of law principles, of the State in which the alleged willful misconduct occurred, unless such law is inconsistent with or preempted by Federal law, including provisions of this section.

(3) Pleading with particularity

In an action under subsection (d) of this section, the complaint shall plead with particularity each element of the plaintiff's claim, including—

(A) each act or omission, by each covered person sued, that is alleged to constitute willful misconduct relating to the covered countermeasure administered to or used by the person on whose behalf the complaint was filed;

(B) facts supporting the allegation that such alleged willful misconduct proximately caused the injury claimed; and

(C) facts supporting the allegation that the person on whose behalf the complaint was filed suffered death or serious physical injury.

(4) Verification, certification, and medical records

(A) In general

In an action under subsection (d) of this section, the plaintiff shall verify the complaint in the manner stated in subparagraph (B) and shall file with the complaint the materials described in subparagraph (C). A complaint that does not substantially comply with subparagraphs (B) and (C) shall not be accepted for filing and shall not stop the running of the statute of limitations.

(B) Verification requirement

(i) In general

The complaint shall include a verification, made by affidavit of the plaintiff under oath, stating that the pleading is true to the knowledge of the deponent, except as to matters specifically identified as being alleged on information and belief, and that as to those matters the plaintiff believes it to be true.

(ii) Identification of matters alleged upon information and belief

Any matter that is not specifically identified as being alleged upon the information and belief of the plaintiff, shall be regarded for all purposes, including a criminal prosecution, as having been made upon the knowledge of the plaintiff.

(C) Materials required

In an action under subsection (d) of this section, the plaintiff shall file with the complaint—

(i) an affidavit, by a physician who did not treat the person on whose behalf the complaint was filed, certifying, and explaining the basis for such physician's belief, that such person suffered the serious physical injury or death alleged in the complaint and that such injury or death was proximately caused by the administration or use of a covered countermeasure; and

(ii) certified medical records documenting such injury or death and such proximate causal connection.

(5) Three-judge court

Any action under subsection (d) of this section shall be assigned initially to a panel of three judges. Such panel shall have jurisdiction over such action for purposes of considering motions to dismiss, motions for summary judgment, and matters related thereto. If such panel has denied such motions, or if the time for filing such motions has expired, such panel shall refer the action to the chief judge for assignment for further proceedings, including any trial. Section 1253 of title 28 and paragraph (3) of subsection (b) of section 2284 of title 28 shall not apply to actions under subsection (d) of this section.

(6) Civil discovery

(A) Timing

In an action under subsection (d) of this section, no discovery shall be allowed—

(i) before each covered person sued has had a reasonable opportunity to file a motion to dismiss;

(ii) in the event such a motion is filed, before the court has ruled on such motion; and

(iii) in the event a covered person files an interlocutory appeal from the denial of such a motion, before the court of appeals has ruled on such appeal.

(B) Standard

Notwithstanding any other provision of law, the court in an action under subsection (d) of this section shall permit discovery only with respect to matters directly related to material issues contested in such action, and the court shall compel a response to a discovery request (including a request for admission, an interrogatory, a request for production of documents, or any other form of discovery request) under Rule 37, Federal Rules of Civil Procedure, only if the court finds that the requesting party needs the information sought to prove or defend as to a

material issue contested in such action and that the likely benefits of a response to such request equal or exceed the burden or cost for the responding party of providing such response.

(7) Reduction in award of damages for collateral source benefits

(A) In general

In an action under subsection (d) of this section, the amount of an award of damages that would otherwise be made to a plaintiff shall be reduced by the amount of collateral source benefits to such plaintiff.

(B) Provider of collateral source benefits not to have lien or subrogation

No provider of collateral source benefits shall recover any amount against the plaintiff or receive any lien or credit against the plaintiff's recovery or be equitably or legally subrogated to the right of the plaintiff in an action under subsection (d) of this section.

(C) Collateral source benefit defined

For purposes of this paragraph, the term ''collateral source benefit'' means any amount paid or to be paid in the future to or on behalf of the plaintiff, or any service, product, or other benefit provided or to be provided in the future to or on behalf of the plaintiff, as a result of the injury or wrongful death, pursuant to—

(i) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(ii) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(iii) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; or

(iv) any other publicly or privately funded program.

(8) Noneconomic damages

In an action under subsection (d) of this section, any noneconomic damages may be awarded only in an amount directly proportional to the percentage of responsibility of a defendant for the harm to the plaintiff. For purposes of this paragraph, the term ''noneconomic damages'' means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(9) Rule 11 sanctions

Whenever a district court of the United States determines that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure in an action under subsection (d) of this section, the court shall impose upon the attorney, law firm, or parties that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which may include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney's fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

(10) Interlocutory appeal

The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction of an interlocutory appeal by a covered person taken within 30 days of an order denying a motion to dismiss or a motion for summary judgment based on an assertion of the immunity from suit conferred by subsection (a) of this section or based on an assertion of the exclusion under subsection (c)(5) of this section.

(f) Actions by and against the United States

Nothing in this section shall be construed to abrogate or limit any right, remedy, or authority that the United States or any agency thereof may possess under any other provision of law or to waive sovereign immunity or to abrogate or limit any defense or protection available to the United States or its agencies, instrumentalities, officers, or employees under any other law, including any provision of chapter 171 of title 28 (relating to tort claims procedure).

(g) Severability

If any provision of this section, or the application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this section and the application of such remainder to any person or circumstance shall not be affected thereby.

(h) Rule of construction concerning National Vaccine Injury Compensation Program

Nothing in this section, or any amendment made by the Public Readiness and Emergency Preparedness Act, shall be construed to affect the National Vaccine Injury Compensation Program under subchapter XIX of this chapter.

(i) Definitions

In this section:

(1) Covered countermeasure

The term ''covered countermeasure'' means—

(A) a qualified pandemic or epidemic product (as defined in paragraph (7));

(B) a security countermeasure (as defined in section 247d–6b(c)(1)(B) of this title); or

(C) a drug (as such term is defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)), biological product (as such term is defined by section 262(i) of this title), or device (as such term is defined by section 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(h)) that is authorized for emergency use in accordance with section 564 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360bbb–3].

(2) Covered person

The term ''covered person'', when used with respect to the administration or use of a covered countermeasure, means—

(A) the United States; or

(B) a person or entity that is—

(i) a manufacturer of such countermeasure;

(ii) a distributor of such countermeasure;

(iii) a program planner of such countermeasure;

(iv) a qualified person who prescribed, administered, or dispensed such countermeasure; or

(v) an official, agent, or employee of a person or entity described in clause (i), (ii), (iii), or (iv).

(3) Distributor

The term ''distributor'' means a person or entity engaged in the distribution of drugs, biologics, or devices, including but not limited to manufacturers; repackers; common carriers; contract carriers; air carriers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies.

(4) Manufacturer

The term ''manufacturer'' includes—

(A) a contractor or subcontractor of a manufacturer;

(B) a supplier or licenser of any product, intellectual property, service, research tool, or component or other article used in the design, development, clinical testing, investigation, or manufacturing of a covered countermeasure; and

(C) any or all of the parents, subsidiaries, affiliates, successors, and assigns of a manufacturer.

(5) Person

The term ''person'' includes an individual, partnership, corporation, association, entity, or public or private corporation, including a Federal, State, or local government agency or department.

(6) Program planner

The term ''program planner'' means a State or local government, including an Indian tribe, a person employed by the State or local government, or other person who supervised or administered a program with respect to the administration, dispensing, distribution, provision, or use of a security countermeasure or a qualified pandemic or epidemic product, including a person who has established requirements, provided policy guidance, or supplied technical or scientific advice or assistance or provides a facility to administer or use a covered countermeasure in accordance with a declaration under subsection (b) of this section.

(7) Qualified pandemic or epidemic product

The term ''qualified pandemic or epidemic product'' means a drug (as such term is defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)),[2] biological product (as such term is defined by section 262(i) of this title), or device (as such term is defined by section 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(h))[2] that is—

(A)(i) a product manufactured, used, designed, developed, modified, licensed, or procured—

(I) to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic; or

(II) to limit the harm such pandemic or epidemic might otherwise cause; or

(ii) a product manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a serious or life-threatening disease or condition caused by a product described in clause (i); and

(B)(i) approved or cleared under chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 351 et seq.] or licensed under section 262 of this title;

(ii) the object of research for possible use as described by subparagraph (A) and is the subject of an exemption under section 505(i) or 520(g) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i), 360j(g)]; or

(iii) authorized for emergency use in accordance with section 564 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360bbb–3].

(8) Qualified person

The term ''qualified person'', when used with respect to the administration or use of a covered countermeasure, means—

(A) a licensed health professional or other individual who is authorized to prescribe, administer, or dispense such countermeasures under the law of the State in which the countermeasure was prescribed, administered, or dispensed; or

(B) a person within a category of persons so identified in a declaration by the Secretary under subsection (b) of this section.

(9) Security countermeasure

The term ''security countermeasure'' has the meaning given such term in section 247d–6b(c)(1)(B) of this title.

(10) Serious physical injury

The term ''serious physical injury'' means an injury that—

(A) is life threatening;

(B) results in permanent impairment of a body function or permanent damage to a body structure; or

(C) necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

(July 1, 1944, ch. 373, title III, § 319F–3, as added Pub. L. 109–148, div. C, § 2, Dec. 30, 2005, 119 Stat. 2818.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b)(8)(B), (c)(5)(A), (B)(i), (ii)(I), (C)(i), and (i)(7)(B)(i), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. Chapter V of

[2] So in original. A third closing parenthesis probably should appear.

the Act is classified generally to subchapter V (§ 351 et seq.) of chapter 9 of Title 21. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (e)(6)(B), (9), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Public Readiness and Emergency Preparedness Act, referred to in subsec. (h), is div. C of Pub. L. 109–148, Dec. 30, 2005, 119 Stat. 2818, which enacted this section, section 247d–6e of this title, and provisions set out as a note under section 201 of this title. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 201 of this title and Tables.

§ 247d–6e. Covered countermeasure process

(a) Establishment of Fund

Upon the issuance by the Secretary of a declaration under section 247d–6d(b) of this title, there is hereby established in the Treasury an emergency fund designated as the ''Covered Countermeasure Process Fund'' for purposes of providing timely, uniform, and adequate compensation to eligible individuals for covered injuries directly caused by the administration or use of a covered countermeasure pursuant to such declaration, which Fund shall consist of such amounts designated as emergency appropriations under section 402 of H. Con. Res. 95 of the 109th Congress, this emergency designation shall remain in effect through October 1, 2006.

(b) Payment of compensation

(1) In general

If the Secretary issues a declaration under 247d–6d(b) of this title, the Secretary shall, after amounts have by law been provided for the Fund under subsection (a) of this section, provide compensation to an eligible individual for a covered injury directly caused by the administration or use of a covered countermeasure pursuant to such declaration.

(2) Elements of compensation

The compensation that shall be provided pursuant to paragraph (1) shall have the same elements, and be in the same amount, as is prescribed by sections 239c, 239d, and 239e of this title in the case of certain individuals injured as a result of administration of certain countermeasures against smallpox, except that section 239e(a)(2)(B) of this title shall not apply.

(3) Rule of construction

Neither reasonable and necessary medical benefits nor lifetime total benefits for lost employment income due to permanent and total disability shall be limited by section 239e of this title.

(4) Determination of eligibility and compensation

Except as provided in this section, the procedures for determining, and for reviewing a determination of, whether an individual is an eligible individual, whether such individual has sustained a covered injury, whether compensation may be available under this section, and the amount of such compensation shall be those stated in section 239a of this title (other than in subsection (d)(2) of such section), in regulations issued pursuant to that section, and in such additional or alternate regulations as the Secretary may promulgate for purposes of this section. In making determinations under this section, other than those described in paragraph (5)(A) as to the direct causation of a covered injury, the Secretary may only make such determination based on compelling, reliable, valid, medical and scientific evidence.

(5) Covered countermeasure injury table

(A) In general

The Secretary shall by regulation establish a table identifying covered injuries that shall be presumed to be directly caused by the administration or use of a covered countermeasure and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply. The Secretary may only identify such covered injuries, for purpose of inclusion on the table, where the Secretary determines, based on compelling, reliable, valid, medical and scientific evidence that administration or use of the covered countermeasure directly caused such covered injury.

(B) Amendments

The provisions of section 239b of this title (other than a provision of subsection (a)(2) of such section that relates to accidental vaccinia inoculation) shall apply to the table established under this section.

(C) Judicial review

No court of the United States, or of any State, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this paragraph.

(6) Meanings of terms

In applying sections 239a, 239b, 239c, 239d, and 239e of this title for purposes of this section—

(A) the terms ''vaccine'' and ''smallpox vaccine'' shall be deemed to mean a covered countermeasure;

(B) the terms ''smallpox vaccine injury table'' and ''table established under section 239b of this title'' shall be deemed to refer to the table established under paragraph (4); and

(C) other terms used in those sections shall have the meanings given to such terms by this section.

(c) Voluntary program

The Secretary shall ensure that a State, local, or Department of Health and Human Services plan to administer or use a covered countermeasure is consistent with any declaration under 247d–6d of this title and any applicable guidelines of the Centers for Disease Control and Prevention and that potential participants are educated with respect to contraindications, the voluntary nature of the program, and the availability of potential benefits and compensation under this part.

(d) Exhaustion; exclusivity; election

(1) Exhaustion

Subject to paragraph (5), a covered individual may not bring a civil action under section 247d–6d(d) of this title against a covered person (as such term is defined in section 247d–6d(i)(2) of this title) unless such individual has exhausted such remedies as are available under subsection (a) of this section, except that if amounts have not by law been provided for the Fund under subsection (a) of this section, or if the Secretary fails to make a final determination on a request for benefits or compensation filed in accordance with the requirements of this section within 240 days after such request was filed, the individual may seek any remedy that may be available under section 247d–6d(d) of this title.

(2) Tolling of statute of limitations

The time limit for filing a civil action under section 247d–6d(d) of this title for an injury or death shall be tolled during the pendency of a claim for compensation under subsection (a) of this section.

(3) Rule of construction

This section shall not be construed as superseding or otherwise affecting the application of a requirement, under chapter 171 of title 28, to exhaust administrative remedies.

(4) Exclusivity

The remedy provided by subsection (a) of this section shall be exclusive of any other civil action or proceeding for any claim or suit this section encompasses, except for a proceeding under section 247d–6d of this title.

(5) Election

If under subsection (a) of this section the Secretary determines that a covered individual qualifies for compensation, the individual has an election to accept the compensation or to bring an action under section 247d–6d(d) of this title. If such individual elects to accept the compensation, the individual may not bring such an action.

(e) Definitions

For purposes of this section, the following terms shall have the following meanings:

(1) Covered countermeasure

The term ''covered countermeasure'' has the meaning given such term in section 247d–6d of this title.

(2) Covered individual

The term ''covered individual'', with respect to administration or use of a covered countermeasure pursuant to a declaration, means an individual—

(A) who is in a population specified in such declaration, and with respect to whom the administration or use of the covered countermeasure satisfies the other specifications of such declaration; or

(B) who uses the covered countermeasure, or to whom the covered countermeasure is administered, in a good faith belief that the individual is in the category described by subparagraph (A).

(3) Covered injury

The term ''covered injury'' means serious physical injury or death.

(4) Declaration

The term ''declaration'' means a declaration under section 247d–6d(b) of this title.

(5) Eligible individual

The term ''eligible individual'' means an individual who is determined, in accordance with subsection (b) of this section, to be a covered individual who sustains a covered injury.

(July 1, 1944, ch. 373, title III, § 319F–4, as added Pub. L. 109–148, div. C, § 3, Dec. 30, 2005, 119 Stat. 2829.)

REFERENCES IN TEXT

H. Con. Res. 95 of the 109th Congress, referred to in subsec. (a), is H. Con. Res. 95, Apr. 28, 2005, 119 Stat. 3633, which is not classified to the Code.

§ 247d–7. Demonstration program to enhance bioterrorism training, coordination, and readiness

(a) In general

The Secretary shall make grants to not more than three eligible entities to carry out demonstration programs to improve the detection of pathogens likely to be used in a bioterrorist attack, the development of plans and measures to respond to bioterrorist attacks, and the training of personnel involved with the various responsibilities and capabilities needed to respond to acts of bioterrorism upon the civilian population. Such awards shall be made on a competitive basis and pursuant to scientific and technical review.

(b) Eligible entities

Eligible entities for grants under subsection (a) of this section are States, political subdivisions of States, and public or private non-profit organizations.

(c) Specific criteria

In making grants under subsection (a) of this section, the Secretary shall take into account the following factors:

(1) Whether the eligible entity involved is proximate to, and collaborates with, a major research university with expertise in scientific training, identification of biological agents, medicine, and life sciences.

(2) Whether the entity is proximate to, and collaborates with, a laboratory that has expertise in the identification of biological agents.

(3) Whether the entity demonstrates, in the application for the program, support and participation of State and local governments and research institutions in the conduct of the program.

(4) Whether the entity is proximate to, and collaborates with, or is, an academic medical center that has the capacity to serve an uninsured or underserved population, and is equipped to educate medical personnel.

(5) Such other factors as the Secretary determines to be appropriate.

(d) Duration of award

The period during which payments are made under a grant under subsection (a) of this sec-

tion may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments.

(e) Supplement not supplant

Grants under subsection (a) of this section shall be used to supplement, and not supplant, other Federal, State, or local public funds provided for the activities described in such subsection.

(f) Government Accountability Office report

Not later than 180 days after the conclusion of the demonstration programs carried out under subsection (a) of this section, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate, and the Committee on Commerce and the Committee on Appropriations of the House of Representatives, a report that describes the ability of grantees under such subsection to detect pathogens likely to be used in a bioterrorist attack, develop plans and measures for dealing with such threats, and train personnel involved with the various responsibilities and capabilities needed to deal with bioterrorist threats.

(g) Authorization of appropriations

There is authorized to be appropriated to carry out this section $6,000,000 for fiscal year 2001, and such sums as may be necessary through fiscal year 2006.

(July 1, 1944, ch. 373, title III, § 319G, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2323; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in heading.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 247d–7a. Grants regarding training and education of certain health professionals

(a) In general

The Secretary may make awards of grants and cooperative agreements to appropriate public and nonprofit private health or educational entities, including health professions schools and programs as defined in section 295p of this title, for the purpose of providing low-interest loans, partial scholarships, partial fellowships, revolving loan funds, or other cost-sharing forms of assistance for the education and training of individuals in any category of health professions for which there is a shortage that the Secretary determines should be alleviated in order to prepare for or respond effectively to bioterrorism and other public health emergencies.

(b) Authority regarding non-Federal contributions

The Secretary may require as a condition of an award under subsection (a) of this section that a grantee under such subsection provide non-Federal contributions toward the purpose described in such subsection.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2006.

(July 1, 1944, ch. 373, title III, § 319H, as added Pub. L. 107–188, title I, § 106, June 12, 2002, 116 Stat. 607.)

§ 247d–7b. Emergency system for advance registration of health professions volunteers

(a) In general

Not later than 12 months after December 19, 2006, the Secretary shall link existing State verification systems to maintain a single national interoperable network of systems, each system being maintained by a State or group of States, for the purpose of verifying the credentials and licenses of health care professionals who volunteer to provide health services during a public health emergency.

(b) Requirements

The interoperable network of systems established under subsection (a) (referred to in this section as the ''verification network'') shall include—

(1) with respect to each volunteer health professional included in the verification network—

(A) information necessary for the rapid identification of, and communication with, such professionals; and

(B) the credentials, certifications, licenses, and relevant training of such individuals; and

(2) the name of each member of the Medical Reserve Corps, the National Disaster Medical System, and any other relevant federally-sponsored or administered programs determined necessary by the Secretary.

(c) Other assistance

The Secretary may make grants and provide technical assistance to States and other public or nonprofit private entities for activities relating to the verification network developed under subsection (a) of this section.

(d) Accessibility

The Secretary shall ensure that the verification network is electronically accessible by State, local, and tribal health departments and can be linked with the identification cards under section 300hh–15 of this title.

(e) Confidentiality

The Secretary shall establish and require the application of and compliance with measures to ensure the effective security of, integrity of, and access to the data included in the verification network.

(f) Coordination

The Secretary shall coordinate with the Secretary of Veterans Affairs and the Secretary of

Homeland Security to assess the feasibility of integrating the verification network under this section with the VetPro system of the Department of Veterans Affairs and the National Emergency Responder Credentialing System of the Department of Homeland Security. The Secretary shall, if feasible, integrate the verification network under this section with such VetPro system and the National Emergency Responder Credentialing System.

(g) Updating of information

The States that are participants in the verification network shall, on at least a quarterly basis, work with the Director to provide for the updating of the information contained in the verification network.

(h) Clarification

Inclusion of a health professional in the verification network shall not constitute appointment of such individual as a Federal employee for any purpose, either under section 300hh–11(c) of this title or otherwise. Such appointment may only be made under section 300hh–11 or 300hh–15 of this title.

(i) Health care provider licenses

The Secretary shall encourage States to establish and implement mechanisms to waive the application of licensing requirements applicable to health professionals, who are seeking to provide medical services (within their scope of practice), during a national, State, local, or tribal public health emergency upon verification that such health professionals are licensed and in good standing in another State and have not been disciplined by any State health licensing or disciplinary board.

(j) Rule of construction

This section may not be construed as authorizing the Secretary to issue requirements regarding the provision by the States of credentials, licenses, accreditations, or hospital privileges.

(k) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $2,000,000 for fiscal year 2002, and such sums as may be necessary for each of the fiscal years 2003 through 2011.

(July 1, 1944, ch. 373, title III, § 319I, as added Pub. L. 107–188, title I, § 107, June 12, 2002, 116 Stat. 608; amended Pub. L. 109–417, title III, § 303(b), Dec. 19, 2006, 120 Stat. 2857.)

AMENDMENTS

2006—Subsecs. (a), (b). Pub. L. 109–417, § 303(b)(2), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to establishment of a verification system and provisions regarding its promptness and efficiency.

Subsec. (c). Pub. L. 109–417, § 303(b)(3), substituted ''network'' for ''system''.

Subsecs. (d) to (k). Pub. L. 109–417, § 303(b)(1), (4), (5), added subsecs. (d) to (i), redesignated former subsecs. (e) and (f) as (j) and (k), respectively, substituted ''2011'' for ''2006'' in subsec. (k), and struck out heading and text of former subsec. (d). Text read as follows: ''The Secretary may encourage each State to provide legal authority during a public health emergency for health professionals authorized in another State to provide certain health services to provide such health services in the State.''

§ 247d–7c. Supplies and services in lieu of award funds

(a) In general

Upon the request of a recipient of an award under any of sections 247d through 247d–7b of this title or section 247d–7d of this title, the Secretary may, subject to subsection (b) of this section, provide supplies, equipment, and services for the purpose of aiding the recipient in carrying out the purposes for which the award is made and, for such purposes, may detail to the recipient any officer or employee of the Department of Health and Human Services.

(b) Corresponding reduction in payments

With respect to a request described in subsection (a) of this section, the Secretary shall reduce the amount of payments under the award involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title III, § 319J, as added Pub. L. 107–188, title I, § 110, June 12, 2002, 116 Stat. 611.)

§ 247d–7d. Security for countermeasure development and production

(a) In general

The Secretary, in consultation with the Attorney General and the Secretary of Defense, may provide technical or other assistance to provide security to persons or facilities that conduct development, production, distribution, or storage of priority countermeasures (as defined in section 247d–6(h)(4) of this title).

(b) Guidelines

The Secretary may develop guidelines to enable entities eligible to receive assistance under subsection (a) of this section to secure their facilities against potential terrorist attack.

(July 1, 1944, ch. 373, title III, § 319K, as added Pub. L. 107–188, title I, § 124, June 12, 2002, 116 Stat. 614.)

§ 247d–7e. Biomedical Advanced Research and Development Authority

(a) Definitions

In this section:

(1) BARDA

The term ''BARDA'' means the Biomedical Advanced Research and Development Authority.

(2) Fund

The term ''Fund'' means the Biodefense Medical Countermeasure Development Fund established under subsection (d).

(3) Other transactions

The term ''other transactions'' means transactions, other than procurement contracts, grants, and cooperative agreements, such as the Secretary of Defense may enter into under section 2371 of title 10.

(4) Qualified countermeasure

The term ''qualified countermeasure'' has the meaning given such term in section 247d–6a of this title.

(5) Qualified pandemic or epidemic product

The term ''qualified pandemic or epidemic product'' has the meaning given the term in section 247d–6d of this title.

(6) Advanced research and development

(A) In general

The term ''advanced research and development'' means, with respect to a product that is or may become a qualified countermeasure or a qualified pandemic or epidemic product, activities that predominantly—

(i) are conducted after basic research and preclinical development of the product; and

(ii) are related to manufacturing the product on a commercial scale and in a form that satisfies the regulatory requirements under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] or under section 262 of this title.

(B) Activities included

The term under subparagraph (A) includes—

(i) testing of the product to determine whether the product may be approved, cleared, or licensed under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] or under section 262 of this title for a use that is or may be the basis for such product becoming a qualified countermeasure or qualified pandemic or epidemic product, or to help obtain such approval, clearance, or license;

(ii) design and development of tests or models, including animal models, for such testing;

(iii) activities to facilitate manufacture of the product on a commercial scale with consistently high quality, as well as to improve and make available new technologies to increase manufacturing surge capacity;

(iv) activities to improve the shelf-life of the product or technologies for administering the product; and

(v) such other activities as are part of the advanced stages of testing, refinement, improvement, or preparation of the product for such use and as are specified by the Secretary.

(7) Security countermeasure

The term ''security countermeasure'' has the meaning given such term in section 247d–6b of this title.

(8) Research tool

The term ''research tool'' means a device, technology, biological material (including a cell line or an antibody), reagent, animal model, computer system, computer software, or analytical technique that is developed to assist in the discovery, development, or manufacture of qualified countermeasures or qualified pandemic or epidemic products.

(9) Program manager

The term ''program manager'' means an individual appointed to carry out functions under this section and authorized to provide project oversight and management of strategic initiatives.

(10) Person

The term ''person'' includes an individual, partnership, corporation, association, entity, or public or private corporation, and a Federal, State, or local government agency or department.

(b) Strategic plan for countermeasure research, development, and procurement

(1) In general

Not later than 6 months after December 19, 2006, the Secretary shall develop and make public a strategic plan to integrate biodefense and emerging infectious disease requirements with the advanced research and development, strategic initiatives for innovation, and the procurement of qualified countermeasures and qualified pandemic or epidemic products. The Secretary shall carry out such activities as may be practicable to disseminate the information contained in such plan to persons who may have the capacity to substantially contribute to the activities described in such strategic plan. The Secretary shall update and incorporate such plan as part of the National Health Security Strategy described in section 300hh–1 of this title.

(2) Content

The strategic plan under paragraph (1) shall guide—

(A) research and development, conducted or supported by the Department of Health and Human Services, of qualified countermeasures and qualified pandemic or epidemic products against possible biological, chemical, radiological, and nuclear agents and to emerging infectious diseases;

(B) innovation in technologies that may assist advanced research and development of qualified countermeasures and qualified pandemic or epidemic products (such research and development referred to in this section as ''countermeasure and product advanced research and development''); and

(C) procurement of such qualified countermeasures and qualified pandemic or epidemic products by such Department.

(c) Biomedical Advanced Research and Development Authority

(1) Establishment

There is established within the Department of Health and Human Services the Biomedical Advanced Research and Development Authority.

(2) In general

Based upon the strategic plan described in subsection (b), the Secretary shall coordinate the acceleration of countermeasure and product advanced research and development by—

(A) facilitating collaboration between the Department of Health and Human Services and other Federal agencies, relevant indus-

tries, academia, and other persons, with respect to such advanced research and development;

(B) promoting countermeasure and product advanced research and development;

(C) facilitating contacts between interested persons and the offices or employees authorized by the Secretary to advise such persons regarding requirements under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] and under section 262 of this title; and

(D) promoting innovation to reduce the time and cost of countermeasure and product advanced research and development.

(3) Director

The BARDA shall be headed by a Director (referred to in this section as the ''Director'') who shall be appointed by the Secretary and to whom the Secretary shall delegate such functions and authorities as necessary to implement this section.

(4) Duties

(A) Collaboration

To carry out the purpose described in paragraph (2)(A), the Secretary shall—

(i) facilitate and increase the expeditious and direct communication between the Department of Health and Human Services and relevant persons with respect to countermeasure and product advanced research and development, including by—

(I) facilitating such communication regarding the processes for procuring such advanced research and development with respect to qualified countermeasures and qualified pandemic or epidemic products of interest; and

(II) soliciting information about and data from research on potential qualified countermeasures and qualified pandemic or epidemic products and related technologies;

(ii) at least annually—

(I) convene meetings with representatives from relevant industries, academia, other Federal agencies, international agencies as appropriate, and other interested persons;

(II) sponsor opportunities to demonstrate the operation and effectiveness of relevant biodefense countermeasure technologies; and

(III) convene such working groups on countermeasure and product advanced research and development as the Secretary may determine are necessary to carry out this section; and

(iii) carry out the activities described in section 405 of the Pandemic and All-Hazards Preparedness Act.

(B) Support advanced research and development

To carry out the purpose described in paragraph (2)(B), the Secretary shall—

(i) conduct ongoing searches for, and support calls for, potential qualified countermeasures and qualified pandemic or epidemic products;

(ii) direct and coordinate the countermeasure and product advanced research and development activities of the Department of Health and Human Services;

(iii) establish strategic initiatives to accelerate countermeasure and product advanced research and development and innovation in such areas as the Secretary may identify as priority unmet need areas; and

(iv) award contracts, grants, cooperative agreements, and enter into other transactions, for countermeasure and product advanced research and development.

(C) Facilitating advice

To carry out the purpose described in paragraph (2)(C) the Secretary shall—

(i) connect interested persons with the offices or employees authorized by the Secretary to advise such persons regarding the regulatory requirements under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] and under section 262 of this title related to the approval, clearance, or licensure of qualified countermeasures or qualified pandemic or epidemic products; and

(ii) with respect to persons performing countermeasure and product advanced research and development funded under this section, enable such offices or employees to provide to the extent practicable such advice in a manner that is ongoing and that is otherwise designed to facilitate expeditious development of qualified countermeasures and qualified pandemic or epidemic products that may achieve such approval, clearance, or licensure.

(D) Supporting innovation

To carry out the purpose described in paragraph (2)(D), the Secretary may award contracts, grants, and cooperative agreements, or enter into other transactions, such as prize payments, to promote—

(i) innovation in technologies that may assist countermeasure and product advanced research and development;

(ii) research on and development of research tools and other devices and technologies; and

(iii) research to promote strategic initiatives, such as rapid diagnostics, broad spectrum antimicrobials, and vaccine manufacturing technologies.

(5) Transaction authorities

(A) Other transactions

(i) In general

The Secretary shall have the authority to enter into other transactions under this subsection in the same manner as the Secretary of Defense enters into such transactions under section 2371 of title 10.

(ii) Limitations on authority

(I) In general

Subsections (b), (c), and (h) of section 845 of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C.

2371 note) shall apply to other transactions under this subparagraph as if such transactions were for prototype projects described by subsection (a) of such section 845.

(II) Written determinations required

The authority of this subparagraph may be exercised for a project that is expected to cost the Department of Health and Human Services in excess of $20,000,000 only upon a written determination by the senior procurement executive for the Department (as designated for purpose of section 414(c) of title 41), that the use of such authority is essential to promoting the success of the project. The authority of the senior procurement executive under this subclause may not be delegated.

(iii) Guidelines

The Secretary shall establish guidelines regarding the use of the authority under clause (i). Such guidelines shall include auditing requirements.

(B) Expedited authorities

(i) In general

In awarding contracts, grants, and cooperative agreements, and in entering into other transactions under subparagraph (B) or (D) of paragraph (4), the Secretary shall have the expedited procurement authorities, the authority to expedite peer review, and the authority for personal services contracts, supplied by subsections (b), (c), and (d) of section 247d–6a of this title.

(ii) Application of provisions

Provisions in such section 247d–6a of this title that apply to such authorities and that require institution of internal controls, limit review, provide for Federal Tort Claims Act coverage of personal services contractors, and commit decisions to the discretion of the Secretary shall apply to the authorities as exercised pursuant to this paragraph.

(iii) Authority to limit competition

For purposes of applying section 247d–6a(b)(1)(D) of this title to this paragraph, the phrase ''BioShield Program under the Project BioShield Act of 2004'' shall be deemed to mean the countermeasure and product advanced research and development program under this section.

(iv) Availability of data

The Secretary shall require that, as a condition of being awarded a contract, grant, cooperative agreement, or other transaction under subparagraph (B) or (D) of paragraph (4), a person make available to the Secretary on an ongoing basis, and submit upon request to the Secretary, all data related to or resulting from countermeasure and product advanced research and development carried out pursuant to this section.

(C) Advance payments; advertising

The Secretary may waive the requirements of section 3324(a) of title 31 or section 5 of title 41 upon the determination by the Secretary that such waiver is necessary to obtain countermeasures or products under this section.

(D) Milestone-based payments allowed

In awarding contracts, grants, and cooperative agreements, and in entering into other transactions, under this section, the Secretary may use milestone-based awards and payments.

(E) Foreign nationals eligible

The Secretary may under this section award contracts, grants, and cooperative agreements to, and may enter into other transactions with, highly qualified foreign national persons outside the United States, alone or in collaboration with American participants, when such transactions may inure to the benefit of the American people.

(F) Establishment of research centers

The Secretary may assess the feasibility and appropriateness of establishing, through contract, grant, cooperative agreement, or other transaction, an arrangement with an existing research center in order to achieve the goals of this section. If such an agreement is not feasible and appropriate, the Secretary may establish one or more federally-funded research and development centers, or university-affiliated research centers, in accordance with section 253(c)(3) of title 41.

(6) At-risk individuals

In carrying out the functions under this section, the Secretary may give priority to the advanced research and development of qualified countermeasures and qualified pandemic or epidemic products that are likely to be safe and effective with respect to children, pregnant women, elderly, and other at-risk individuals.

(7) Personnel authorities

(A) Specially qualified scientific and professional personnel

(i) In general

In addition to any other personnel authorities, the Secretary may—

(I) without regard to those provisions of title 5 governing appointments in the competitive service, appoint highly qualified individuals to scientific or professional positions in BARDA, such as program managers, to carry out this section; and

(II) compensate them in the same manner and subject to the same terms and conditions in which individuals appointed under section 9903 of such title are compensated, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(ii) Manner of exercise of authority

The authority provided for in this subparagraph shall be exercised subject to the same limitations described in section 247d–6a(e)(2) of this title.

(iii) Term of appointment

The term limitations described in section 9903(c) of title 5 shall apply to appointments under this subparagraph, except that the references to the ''Secretary'' and to the ''Department of Defense's national security missions'' shall be deemed to be to the Secretary of Health and Human Services and to the mission of the Department of Health and Human Services under this section.

(B) Special consultants

In carrying out this section, the Secretary may appoint special consultants pursuant to section 209(f) of this title.

(C) Limitation

(i) In general

The Secretary may hire up to 100 highly qualified individuals, or up to 50 percent of the total number of employees, whichever is less, under the authorities provided for in subparagraphs (A) and (B).

(ii) Report

The Secretary shall report to Congress on a biennial basis on the implementation of this subparagraph.

(d) Fund

(1) Establishment

There is established the Biodefense Medical Countermeasure Development Fund, which shall be available to carry out this section in addition to such amounts as are otherwise available for this purpose.

(2) Funding

To carry out the purposes of this section, there are authorized to be appropriated to the Fund—

(A) $1,070,000,000 for fiscal years 2006 through 2008, the amounts to remain available until expended; and

(B) such sums as may be necessary for subsequent fiscal years, the amounts to remain available until expended.

(e) Inapplicability of certain provisions

(1) Disclosure

(A) In general

The Secretary shall withhold from disclosure under section 552 of title 5 specific technical data or scientific information that is created or obtained during the countermeasure and product advanced research and development carried out under subsection (c) that reveals significant and not otherwise publicly known vulnerabilities of existing medical or public health defenses against biological, chemical, nuclear, or radiological threats. Such information shall be deemed to be information described in section 552(b)(3) of title 5.

(B) Review

Information subject to nondisclosure under subparagraph (A) shall be reviewed by the Secretary every 5 years, or more frequently as determined necessary by the Secretary, to determine the relevance or necessity of continued nondisclosure.

(C) Sunset

This paragraph shall cease to have force or effect on the date that is 7 years after December 19, 2006.

(2) Review

Notwithstanding section 14 of the Federal Advisory Committee Act, a working group of BARDA under this section and the National Biodefense Science Board under section 247d–7f of this title shall each terminate on the date that is 5 years after the date on which each such group or Board, as applicable, was established. Such 5-year period may be extended by the Secretary for one or more additional 5-year periods if the Secretary determines that any such extension is appropriate.

(July 1, 1944, ch. 373, title III, § 319L, as added Pub. L. 109–417, title IV, § 401, Dec. 19, 2006, 120 Stat. 2865.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (a)(6)(A)(ii), (B)(i) and (c)(2)(C), (4)(C)(i), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Section 405 of the Pandemic and All-Hazards Preparedness Act, referred to in subsec. (c)(4)(A)(iii), is section 405 of Pub. L. 109–417, which is set out as a note under section 247d–6a of this title.

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, referred to in subsec. (c)(5)(A)(ii)(I), is section 845 of Pub. L. 103–160, which is set out as a note under section 2371 of Title 10, Armed Forces.

The Federal Tort Claims Act, referred to in subsec. (c)(5)(B)(ii), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (e)(2), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 247d–7f. National Biodefense Science Board and working groups

(a) In general

(1) Establishment and function

The Secretary shall establish the National Biodefense Science Board (referred to in this section as the ''Board'') to provide expert advice and guidance to the Secretary on scientific, technical and other matters of special interest to the Department of Health and Human Services regarding current and future

chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate.

(2) Membership

The membership of the Board shall be comprised of individuals who represent the Nation's preeminent scientific, public health, and medical experts, as follows—

(A) such Federal officials as the Secretary may determine are necessary to support the functions of the Board;

(B) four individuals representing the pharmaceutical, biotechnology, and device industries;

(C) four individuals representing academia; and

(D) five other members as determined appropriate by the Secretary, of whom—

(i) one such member shall be a practicing healthcare professional; and

(ii) one such member shall be an individual from an organization representing healthcare consumers.

(3) Term of appointment

A member of the Board described in subparagraph (B), (C), or (D) of paragraph (2) shall serve for a term of 3 years, except that the Secretary may adjust the terms of the initial Board appointees in order to provide for a staggered term of appointment for all members.

(4) Consecutive appointments; maximum terms

A member may be appointed to serve not more than 3 terms on the Board and may serve not more than 2 consecutive terms.

(5) Duties

The Board shall—

(A) advise the Secretary on current and future trends, challenges, and opportunities presented by advances in biological and life sciences, biotechnology, and genetic engineering with respect to threats posed by naturally occurring infectious diseases and chemical, biological, radiological, and nuclear agents;

(B) at the request of the Secretary, review and consider any information and findings received from the working groups established under subsection (b); and

(C) at the request of the Secretary, provide recommendations and findings for expanded, intensified, and coordinated biodefense research and development activities.

(6) Meetings

(A) Initial meeting

Not later than one year after December 19, 2006, the Secretary shall hold the first meeting of the Board.

(B) Subsequent meetings

The Board shall meet at the call of the Secretary, but in no case less than twice annually.

(7) Vacancies

Any vacancy in the Board shall not affect its powers, but shall be filled in the same manner as the original appointment.

(8) Chairperson

The Secretary shall appoint a chairperson from among the members of the Board.

(9) Powers

(A) Hearings

The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out this subsection.

(B) Postal services

The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(10) Personnel

(A) Employees of the Federal Government

A member of the Board that is an employee of the Federal Government may not receive additional pay, allowances, or benefits by reason of the member's service on the Board.

(B) Other members

A member of the Board that is not an employee of the Federal Government may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which the member is engaged in the actual performance of duties as a member of the Board.

(C) Travel expenses

Each member of the Board shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5.

(D) Detail of Government employees

Any Federal Government employee may be detailed to the Board with the approval for the contributing agency without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(b) Other working groups

The Secretary may establish a working group of experts, or may use an existing working group or advisory committee, to—

(1) identify innovative research with the potential to be developed as a qualified countermeasure or a qualified pandemic or epidemic product;

(2) identify accepted animal models for particular diseases and conditions associated with any biological, chemical, radiological, or nuclear agent, any toxin, or any potential pandemic infectious disease, and identify strategies to accelerate animal model and research tool development and validation; and

(3) obtain advice regarding supporting and facilitating advanced research and development related to qualified countermeasures and qualified pandemic or epidemic products that

are likely to be safe and effective with respect to children, pregnant women, and other vulnerable populations, and other issues regarding activities under this section that affect such populations.

(c) Definitions

Any term that is defined in section 247d–7e of this title and that is used in this section shall have the same meaning in this section as such term is given in section 247d–7e of this title.

(d) Authorization of appropriations

There are authorized to be appropriated $1,000,000 to carry out this section for fiscal year 2007 and each fiscal year thereafter.

(July 1, 1944, ch. 373, title III, § 319M, as added Pub. L. 109–417, title IV, § 402, Dec. 19, 2006, 120 Stat. 2872.)

§ 247d–8. Coordinated program to improve pediatric oral health

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall establish a program to fund innovative oral health activities that improve the oral health of children under 6 years of age who are eligible for services provided under a Federal health program, to increase the utilization of dental services by such children, and to decrease the incidence of early childhood and baby bottle tooth decay.

(b) Grants

The Secretary shall award grants to or enter into contracts with public or private nonprofit schools of dentistry or accredited dental training institutions or programs, community dental programs, and programs operated by the Indian Health Service (including federally recognized Indian tribes that receive medical services from the Indian Health Service, urban Indian health programs funded under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.], and tribes that contract with the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]) to enable such schools, institutions, and programs to develop programs of oral health promotion, to increase training of oral health services providers in accordance with State practice laws, or to increase the utilization of dental services by eligible children.

(c) Distribution

In awarding grants under this section, the Secretary shall, to the extent practicable, ensure an equitable national geographic distribution of the grants, including areas of the United States where the incidence of early childhood caries is highest.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section $10,000,000 for each[1] the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 320A, as added Pub. L. 106–310, div. A, title XVI, § 1603, Oct. 17, 2000, 114 Stat. 1151.)

[1] So in original. Probably should be followed by ''of''.

REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in subsec. (b), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (b), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

CODIFICATION

Section 1603 of Pub. L. 106–310, which directed that section 320A (this section) be added at the end of part B of the Public Health Service Act, was executed by adding section 320A at the end of part B of title III of the Public Health Service Act, to reflect the probable intent of Congress, notwithstanding that section 320 of the Public Health Service Act (section 247e of this title) appears in part C of title III of the Public Health Service Act.

PART C—HOSPITALS, MEDICAL EXAMINATIONS, AND MEDICAL CARE

AMENDMENTS

1978—Pub. L. 95–626, title I, § 113(a)(1), Nov. 10, 1978, 92 Stat. 3562, struck out heading ''Subpart I—General Provisions''.

1976—Pub. L. 94–484, title IV, § 407(a), Oct. 12, 1976, 90 Stat. 2268, added heading ''Subpart I—General Provisions''.

§ 247e. National Hansen's Disease Programs Center

(a) Care and treatment

(1) At or through the National Hansen's Disease Programs Center (located in the State of Louisiana), the Secretary shall without charge provide short-term care and treatment, including outpatient care, for Hansen's disease and related complications to any person determined by the Secretary to be in need of such care and treatment. The Secretary may not at or through such Center provide long-term care for any such disease or complication.

(2) The Center referred to in paragraph (1) shall conduct training in the diagnosis and management of Hansen's disease and related complications, and shall conduct and promote the coordination of research (including clinical research), investigations, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of Hansen's disease and other mycobacterial diseases and complications related to such diseases.

(3) Paragraph (1) is subject to section 211 of the Department of Health and Human Services Appropriations Act, 1998.

(b) Additional sites authorized

In addition to the Center referred to in subsection (a) of this section, the Secretary may establish sites regarding persons with Hansen's disease. Each such site shall provide for the outpatient care and treatment for Hansen's disease and related complications to any person determined by the Secretary to be in need of such care and treatment.

(c) Agency designated by Secretary

The Secretary shall carry out subsections (a) and (b) of this section acting through an agency of the Service. For purposes of the preceding sentence, the agency designated by the Secretary shall carry out both activities relating to the provision of health services and activities relating to the conduct of research.

(d) Payments to Board of Health of Hawaii

The Secretary shall make payments to the Board of Health of the State of Hawaii for the care and treatment (including outpatient care) in its facilities of persons suffering from Hansen's disease at a rate determined by the Secretary. The rate shall be approximately equal to the operating cost per patient of such facilities, except that the rate may not exceed the comparable costs per patient with Hansen's disease for care and treatment provided by the Center referred to in subsection (a) of this section. Payments under this subsection are subject to the availability of appropriations for such purpose.

(July 1, 1944, ch. 373, title III, § 320, formerly § 331, 58 Stat. 698; June 25, 1948, ch. 654, § 4, 62 Stat. 1018; June 25, 1952, ch. 460, 66 Stat. 157; Pub. L. 86–624, § 29(b), July 12, 1960, 74 Stat. 419; renumbered § 339, Pub. L. 94–484, title IV, § 407(b)(2), Oct. 12, 1976, 90 Stat. 2268; renumbered § 320, and amended Pub. L. 95–626, title I, § 105(a), Nov. 10, 1978, 92 Stat. 3560; Pub. L. 96–32, § 7(b), July 10, 1979, 93 Stat. 84; Pub. L. 99–117, § 2(a), Oct. 7, 1985, 99 Stat. 491; Pub. L. 105–78, title II, § 211(h), Nov. 13, 1997, 111 Stat. 1494; Pub. L. 107–220, § 1(a), Aug. 21, 2002, 116 Stat. 1332.)

REFERENCES IN TEXT

Section 211 of the Department of Health and Human Services Appropriations Act, 1998, referred to in subsec. (a)(3), is section 211 of Pub. L. 105–78, which enacted this section and provisions set out as notes below.

CODIFICATION

Section was classified to section 255 of this title prior to its renumbering by Pub. L. 95–626.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–220 substituted ''National Hansen's Disease Programs Center'' for ''Gillis W. Long Hansen's Disease Center''.

1997—Pub. L. 105–78 amended section catchline and text generally, substituting present provisions for former provisions which related to: in subsec. (a), care and treatment; and in subsec. (b), payments to Board of Health of Hawaii.

1985—Pub. L. 99–117 substituted ''Hansen's disease program'' for ''Receipt, apprehension, detention, treatment, and release of lepers'' in section catchline.

Subsec. (a). Pub. L. 99–117 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Service shall, in accordance with regulations, receive into any hospital of the Service suitable for his accommodation any person afflicted with leprosy who presents himself for care, detention, or treatment, or who may be apprehended under subsection (b) of this section or section 264 of this title, and any person afflicted with leprosy duly consigned to the care of the Service by the proper health authority of any State. The Surgeon General is authorized, upon the request of any health authority, to send for any person within the jurisdiction of such authority who is afflicted with leprosy and to convey such person to the appropriate hospital for detention and treatment. When the transportation of any such person is undertaken for the protection of the public health the expense of such removal shall be met from funds available for the maintenance of hospitals of the Service. Such funds shall also be available, subject to regulations, for transportation of recovered indigent leper patients to their homes, including subsistence allowance while traveling. When so provided in appropriations available for any fiscal year for the maintenance of hospitals of the Service, the Surgeon General is authorized and directed to make payments to the Board of Health of Hawaii for the care and treatment in its facilities of persons afflicted with leprosy at a per diem rate, determined from time to time by the Surgeon General, which shall, subject to the availability of appropriations, be approximately equal to the per diem operating cost per patient of such facilities, except that such per diem rate shall not be greater than the comparable per diem operating cost per patient at the National Leprosarium, Carville, Louisiana.''

Subsec. (b). Pub. L. 99–117 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Surgeon General may provide by regulation for the apprehension, detention, treatment, and release of persons being treated by the Service for leprosy.''

1979—Subsec. (a). Pub. L. 96–32 substituted ''apprehended under subsection (b) of this section or section 264 of this title'' for ''apprehended under section 256 or 264 of this title''.

1978—Pub. L. 95–626 designated existing provisions as subsec. (a) and added subsec. (b).

1960—Pub. L. 86–624 struck out '', Territory, or the District of Columbia'' after ''proper health authority of any State'', and substituted ''Board of Health of Hawaii'' for ''Board of Health of the Territory of Hawaii''.

1952—Act June 25, 1952, provided for payments to Hawaiian Board of Health for expenditures made by them in care and treatment of patients.

1948—Act June 25, 1948, authorized payment of travel expenses of indigent leper patients.

CHANGE OF NAME

Pub. L. 107–220, §§ 1(b), 2, Aug. 21, 2002, 116 Stat. 1332, provided that:

''(b) PUBLIC LAW 105–78.—References in section 211 of Public Law 105–78 [amending this section and enacting provisions set out as a note under this section], and in deeds, agreements, or other documents under such section, to the Gillis W. Long Hansen's Disease Center shall be deemed to be references to the National Hansen's Disease Programs Center.

''SEC. 2. OTHER REFERENCES.

''Any reference in a law, map, regulation, document, paper, or other record of the United States to the Gillis W. Long Hansen's Disease Center shall be deemed to be a reference to the 'National Hansen's Disease Programs Center' ''.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

RELOCATION OF NATIONAL HANSEN'S DISEASE PROGRAMS CENTER

Pub. L. 105–78, title II, § 211(a)–(g), Nov. 13, 1997, 111 Stat. 1489, as amended by Pub. L. 107–220, § 1(b), Aug. 21, 2002, 116 Stat. 1332, provided that:

''(a) The Secretary of Health and Human Services may in accordance with this section provide for the relocation of the Federal facility known as the National Hansen's Disease Programs Center (located in the vicinity of Carville, in the State of Louisiana), including the relocation of the patients of the Center.

''(b)(1) Subject to paragraph (2), in relocating the Center the Secretary may on behalf of the United States transfer to the State of Louisiana, without charge, title to the real property and improvements that as of the date of the enactment of this Act [Nov.

13, 1997] constitute the Center. Such real property is a parcel consisting of approximately 330 acres. The exact acreage and legal description used for purposes of the transfer shall be in accordance with a survey satisfactory to the Secretary.

''(2) Any conveyance under paragraph (1) is not effective unless the deed or other instrument of conveyance contains the conditions specified in subsection (d); the instrument specifies that the United States and the State of Louisiana agree to such conditions; and the instrument specifies that, if the State engages in a material breach of the conditions, title to the real property and improvements involved reverts to the United States at the election of the Secretary.

''(c)(1) With respect to Federal equipment and other items of Federal personal property that are in use at the Center as of the date of the enactment of this Act [Nov. 13, 1997], the Secretary may, subject to paragraph (2), transfer to the State such items as the Secretary determines to be appropriate, if the Secretary makes the transfer under subsection (b).

''(2) A transfer of equipment or other items may be made under paragraph (1) only if the State agrees that, during the 30-year period beginning on the date on which the transfer under subsection (b) is made, the items will be used exclusively for purposes that promote the health or education of the public, except that the Secretary may authorize such exceptions as the Secretary determines to be appropriate.

''(d) For purposes of subsection (b)(2), the conditions specified in this subsection with respect to a transfer of title are the following:

''(1) During the 30-year period beginning on the date on which the transfer is made, the real property and improvements referred to in subsection (b)(1) (referred to in this subsection as the 'transferred property') will be used exclusively for purposes that promote the health or education of the public, with such incidental exceptions as the Secretary may approve.

''(2) For purposes of monitoring the extent to which the transferred property is being used in accordance with paragraph (1), the Secretary will have access to such documents as the Secretary determines to be necessary, and the Secretary may require the advance approval of the Secretary for such contracts, conveyances of real or personal property, or other transactions as the Secretary determines to be necessary.

''(3) The relocation of patients from the transferred property will be completed not later than 3 years after the date on which the transfer is made, except to the extent the Secretary determines that relocating particular patients is not feasible. During the period of relocation, the Secretary will have unrestricted access to the transferred property, and after such period will have such access as may be necessary with respect to the patients who pursuant to the preceding sentence are not relocated.

''(4)(A) With respect to projects to make repairs and energy-related improvements at the transferred property, the Secretary will provide for the completion of all such projects for which contracts have been awarded and appropriations have been made as of the date on which the transfer is made.

''(B) If upon completion of the projects referred to in subparagraph (A) there are any unobligated balances of amounts appropriated for the projects, and the sum of such balances is in excess of $100,000—

''(i) the Secretary will transfer the amount of such excess to the State; and

''(ii) the State will expend such amount for the purposes referred to in paragraph (1), which may include the renovation of facilities at the transferred property.

''(5)(A) The State will maintain the cemetery located on the transferred property, will permit individuals who were long-term-care patients of the Center to be buried at the cemetery, and will permit members of the public to visit the cemetery.

''(B) The State will permit the Center to maintain a museum on the transferred property, and will permit members of the public to visit the museum.

''(C) In the case of any waste products stored at the transferred property as of the date of the transfer, the Federal Government will after the transfer retain title to and responsibility for the products, and the State will not require that the Federal Government remove the products from the transferred property.

''(6) In the case of each individual who as of the date of the enactment of this Act [Nov. 13, 1997] is a Federal employee at the transferred property with facilities management or dietary duties:

''(A) The State will offer the individual an employment position with the State, the position with the State will have duties similar to the duties the individual performed in his or her most recent position at the transferred property, and the position with the State will provide compensation and benefits that are similar to the compensation and benefits provided for such most recent position, subject to the concurrence of the Governor of the State.

''(B) If the individual becomes an employee of the State pursuant to subparagraph (A), the State will make payments in accordance with subsection (e)(2)(B) (relating to disability), as applicable with respect to the individual.

''(7) The Federal Government may, consistent with the intended uses by the State of the transferred property, carry out at such property activities regarding at-risk youth.

''(8) Such additional conditions as the Secretary determines to be necessary to protect the interests of the United States.

''(e)(1) This subsection applies if the transfer under subsection (b) is made.

''(2) In the case of each individual who as of the date of the enactment of this Act [Nov. 13, 1997] is a Federal employee at the Center with facilities management or dietary duties, and who becomes an employee of the State pursuant to subsection (d)(6)(A):

''(A) The provisions of subchapter III of chapter 83 of title 5, United States Code, or of chapter 84 of such title, whichever are applicable, that relate to disability shall be considered to remain in effect with respect to the individual (subject to subparagraph (C)) until the earlier of—

''(i) the expiration of the 2-year period beginning on the date on which the transfer under subsection (b) is made; or

''(ii) the date on which the individual first meets all conditions for coverage under a State program for payments during retirement by reason of disability.

''(B) The payments to be made by the State pursuant to subsection (d)(6)(B) with respect to the individual are payments to the Civil Service Retirement and Disability Fund, if the individual is receiving Federal disability coverage pursuant to subparagraph (A). Such payments are to be made in a total amount equal to that portion of the normal-cost percentage (determined through the use of dynamic assumptions) of the basic pay of the individual that is allocable to such coverage and is paid for service performed during the period for which such coverage is in effect. Such amount is to be determined in accordance with chapter 84 of such title 5, is to be paid at such time and in such manner as mutually agreed by the State and the Office of Personnel Management, and is in lieu of individual or agency contributions otherwise required.

''(C) In the determination pursuant to subparagraph (A) of whether the individual is eligible for Federal disability coverage (during the applicable period of time under such subparagraph), service as an employee of the State after the date of the transfer under subsection (b) shall be counted toward the service requirement specified in the first sentence of section 8337(a) or 8451(a)(1)(A) of such title 5 (whichever is applicable).

''(3) In the case of each individual who as of the date of the enactment of this Act is a Federal employee with a position at the Center and is, for duty at the Center,

receiving the pay differential under section 208(e) of the Public Health Service Act [section 210(e) of this title] or under section 5545(d) of title 5, United States Code:

''(A) If as of the date of the transfer under subsection (b) the individual is eligible for an annuity under section 8336 or 8412 of title 5, United States Code, then once the individual separates from the service and thereby becomes entitled to receive the annuity, the pay differential shall be included in the computation of the annuity if the individual separated from the service not later than the expiration of the 90-day period beginning on the date of the transfer.

''(B) If the individual is not eligible for such an annuity as of the date of the transfer under subsection (b) but subsequently does become eligible, then once the individual separates from the service and thereby becomes entitled to receive the annuity, the pay differential shall be included in the computation of the annuity if the individual separated from the service not later than the expiration of the 90-day period beginning on the date on which the individual first became eligible for the annuity.

''(C) For purposes of this paragraph, the individual is eligible for the annuity if the individual meets all conditions under such section 8336 or 8412 to be entitled to the annuity, except the condition that the individual be separated from the service.

''(4) With respect to individuals who as of the date of the enactment of this Act are Federal employees with positions at the Center and are not, for duty at the center, receiving the pay differential under section 208(e) of the Public Health Service Act [section 210(e) of this title] or under section 5545(d) of title 5, United States Code:

''(A) During the calendar years 1997 and 1998, the Secretary may in accordance with this paragraph provide to any such individual a voluntary separation incentive payment. The purpose of such payments is to avoid or minimize the need for involuntary separations under a reduction in force with respect to the Center.

''(B) During calendar year 1997, any payment under subparagraph (A) shall be made under section 663 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (as contained in section 101(f) of division A of Public Law 104–208) [5 U.S.C. 5597 note], except that, for purposes of this subparagraph, subsection (b) of such section 663 does not apply.

''(C) During calendar year 1998, such section 663 applies with respect to payments under subparagraph (A) to the same extent and in the same manner as such section applied with respect to the payments during fiscal year 1997, and for purposes of this subparagraph, the reference in subsection (c)(2)(D) of such section 663 to December 31, 1997, is deemed to be a reference to December 31, 1998.

''(f) The following provisions apply if under subsection (a) the Secretary makes the decision to relocate the Center:

''(1) The site to which the Center is relocated shall be in the vicinity of Baton Rouge, in the State of Louisiana.

''(2) The facility involved shall continue to be designated as the National Hansen's Disease Programs Center.

''(3) The Secretary shall make reasonable efforts to inform the patients of the Center with respect to the planning and carrying out of the relocation.

''(4) In the case of each individual who as of October 1, 1996, was a patient of the Center and is considered by the Director of the Center to be a long-term-care patient (referred to in this subsection as an 'eligible patient'), the Secretary shall continue to provide for the long-term care of the eligible patient, without charge, for the remainder of the life of the patient.

''(5)(A) For purposes of paragraph (4), an eligible patient who is legally competent has the following options with respect to support and maintenance and other nonmedical expenses:

''(i) For the remainder of his or her life, the patient may reside at the Center.

''(ii) For the remainder of his or her life, the patient may receive payments each year at an annual rate of $33,000 (adjusted in accordance with subparagraphs (C) and (D)), and may not reside at the Center. Payments under this clause are in complete discharge of the obligation of the Federal Government under paragraph (4) for support and maintenance and other nonmedical expenses of the patient.

''(B) The choice by an eligible patient of the option under clause (i) of subparagraph (A) may at any time be revoked by the patient, and the patient may instead choose the option under clause (ii) of such subparagraph. The choice by an eligible patient of the option under such clause (ii) is irrevocable.

''(C) Payments under subparagraph (A)(ii) shall be made on a monthly basis, and shall be pro rated as applicable. In 1999 and each subsequent year, the monthly amount of such payments shall be increased by a percentage equal to any percentage increase taking effect under section 215(i) of the Social Security Act [section 415(i) of this title] (relating to a cost-of-living increase) for benefits under title II of such Act [section 401 et seq. of this title] (relating to Federal old-age, survivors, and disability insurance benefits). Any such percentage increase in monthly payments under subparagraph (A)(ii) shall take effect in the same month as the percentage increase under such section 215(i) takes effect.

''(D) With respect to the provision of outpatient and inpatient medical care for Hansen's disease and related complications to an eligible patient:

''(i) The choice the patient makes under subparagraph (A) does not affect the responsibility of the Secretary for providing to the patient such care at or through the Center.

''(ii) If the patient chooses the option under subparagraph (A)(ii) and receives inpatient care at or through the Center, the Secretary may reduce the amount of payments under such subparagraph, except to the extent that reimbursement for the expenses of such care is available to the provider of the care through the program under title XVIII of the Social Security Act [section 1395 et seq. of this title] or the program under title XIX of such Act [section 1396 et seq. of this title]. Any such reduction shall be made on the basis of the number of days for which the patient received the inpatient care.

''(6) The Secretary shall provide to each eligible patient such information and time as may be necessary for the patient to make an informed decision regarding the options under paragraph (5)(A).

''(7) After the date of the enactment of this Act [Nov. 13, 1997], the Center may not provide long-term care for any individual who as of such date was not receiving such care as a patient of the Center.

''(8) If upon completion of the projects referred to in subsection (d)(4)(A) there are unobligated balances of amounts appropriated for the projects, such balances are available to the Secretary for expenses relating to the relocation of the Center, except that, if the sum of such balances is in excess of $100,000, such excess is available to the State in accordance with subsection (d)(4)(B). The amounts available to the Secretary pursuant to the preceding sentence are available until expended.

''(g) For purposes of this section:

''(1) The term 'Center' means the National Hansen's Disease Programs Center.

''(2) The term 'Secretary' means the Secretary of Health and Human Services.

''(3) The term 'State' means the State of Louisiana.''

§ 248. Control and management of hospitals; furnishing prosthetic and orthopedic devices; transfer of patients; disposal of articles produced by patients; disposal of money and effects of deceased patients; payment of burial expenses

The Surgeon General, pursuant to regulations, shall—

(a) Control, manage, and operate all institutions, hospitals, and stations of the Service, including minor repairs and maintenance, and provide for the care, treatment, and hospitalization of patients, including the furnishing of prosthetic and orthopedic devices; and from time to time, with the approval of the President, select suitable sites for and establish such additional institutions, hospitals, and stations in the States and possessions of the United States as in his judgment are necessary to enable the Service to discharge its functions and duties;

(b) Provide for the transfer of Public Health Service patients, in the care of attendants where necessary, between hospitals and stations operated by the Service or between such hospitals and stations and other hospitals and stations in which Public Health Service patients may be received, and the payment of expenses of such transfer;

(c) Provide for the disposal of articles produced by patients in the course of their curative treatment, either by allowing the patient to retain such articles or by selling them and depositing the money received therefor to the credit of the appropriation from which the materials for making the articles were purchased;

(d) Provide for the disposal of money and effects, in the custody of the hospitals or stations, of deceased patients; and

(e) Provide, to the extent the Surgeon General determines that other public or private funds are not available therefor, for the payment of expenses of preparing and transporting the remains of, or the payment of reasonable burial expenses for, any patient dying in a hospital or station.

(July 1, 1944, ch. 373, title III, § 321, 58 Stat. 695; June 25, 1948, ch. 654, § 2, 62 Stat. 1017; Pub. L. 95–622, title II, § 266, Nov. 9, 1978, 92 Stat. 3437.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–622 struck out ‘‘, and tobacco’’ after ‘‘orthopedic devices’’.

1948—Subsec. (a). Act June 25, 1948, § 2(a), amended subsec. (a) generally, continuing authority of Service to furnish tobacco to patients being treated by it.

Subsec. (e). Act June 25, 1948, § 2(b), added subsec. (e).

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 248a. Closing or transfer of hospitals; reduction of services; Congressional authorization required

(a) Except as provided in subsection (b) of this section, the Secretary of Health and Human Services shall take such action as may be necessary to assure that the hospitals of the Public Health Service, located in Seattle, Washington, Boston, Massachusetts, San Francisco, California, Galveston, Texas, New Orleans, Louisiana, Baltimore, Maryland, Staten Island, New York, and Norfolk, Virginia, shall continue—

(1) in operation as hospitals of the Public Health Service,

(2) to provide for all categories of individuals entitled or authorized to receive care and treatment at hospitals or other stations of the Public Health Service inpatient, outpatient, and other health care services in like manner as such services were provided on January 1, 1973, to such categories of individuals at the hospitals of the Public Health Service referred to in the matter preceding paragraph (1) and at a level and range at least as great as the level and range of such services which were provided (or authorized to be provided) by such hospitals on such date, and

(3) to conduct at such hospitals a level and range of other health-related activities (including training and research activities) which is not less than the level and range of such activities which were being conducted on January 1, 1973, at such hospitals.

(b)(1) The Secretary may—

(A) close or transfer control of a hospital of the Public Health Service to which subsection (a) of this section applies,

(B) reduce the level and range of health care services provided at such a hospital from the level and range required by subsection (a)(2) of this section or change the manner in which such services are provided at such a hospital from the manner required by such subsection, or

(C) reduce the level and range of the other health-related activities conducted at such hospital from the level and range required by subsection (a)(3) of this section,

if Congress by law (enacted after November 16, 1973) specifically authorizes such action.

(2) Any recommendation submitted to the Congress for legislation to authorize an action described in paragraph (1) with respect to a hospital of the Public Health Service shall be accompanied by a copy of the written, unqualified approval of the proposed action submitted to the Secretary by each (A) section 314(a) State health planning agency whose section 314(a) plan covers (in whole or in part) the area in which such hospital is located or which is served by such hospital, and (B) section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) such area.

(3) For purposes of this subsection, the term ‘‘section 314(a) State health planning agency’’ means the agency of a State which administers or supervises the administration of a State’s

health planning functions under a State plan approved under section 314(a) of the Public Health Service Act (referred to in paragraph (2) as a ''section 314(a) plan''); and the term ''section 314(b) areawide health planning agency'' means a public or nonprofit private agency or organization which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b) of that Act (referred to in paragraph (2) as a ''section 314(b) plan'').

(Pub. L. 93–155, title VIII, § 818(a), (b), Nov. 16, 1973, 87 Stat. 622; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Section 314 of the Public Health Service Act, referred to in subsec. (b)(2), (3), is classified to section 246 of this title.

CODIFICATION

Section was enacted as part of the Department of Defense Appropriation Authorization Act, 1974, and not as part of the Public Health Service Act which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 92–585, § 3, Oct. 27, 1972, 86 Stat. 1292, setting out procedure to be followed in closing or transferring control of hospitals or other health care delivery facilities of Public Health Service, prior to repeal by Pub. L. 93–155, § 818(c).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 248b. Transfer or financial self-sufficiency of public health service hospitals and clinics

(a) Deadline for closure, transfer, or financial self-sufficiency

The Secretary of Health and Human Services (hereinafter in this subtitle referred to as the ''Secretary'') shall, in accordance with this section and notwithstanding section 248a of this title, provide for the closure, transfer, or financial self-sufficiency of all hospitals and other stations of the Public Health Service (hereinafter in this subtitle referred to as the ''Service'') not later than September 30, 1982.

(b) Proposals for transfer or financial self-sufficiency

Not later than July 1, 1981, the Secretary shall notify each Service hospital and other station, and the chief executive officer of each State and of each locality in which such a hospital or other station is located, that the Secretary will accept proposals for the transfer of each such hospital and station from the Service to a public (including Federal) or nonprofit private entity or for the achievement of financial self-sufficiency of each such hospital and station not later than September 30, 1982. No such proposal shall be considered by the Secretary if it is submitted later than September 1, 1981.

(c) Evaluation of proposals

The Secretary shall evaluate promptly each proposal submitted under subsection (b) of this section with respect to a hospital or other station and determine, not later than September 30, 1981, whether or not under such proposal the hospital or station—

(1) will be maintained as a general health care facility providing a range of services to the population within its service area,

(2) will continue to make services available to existing patient populations, and

(3) has a reasonable expectation of financial viability and, in the case of a hospital or station that is not proposed to be transferred, of financial self-sufficiency.

Paragraph (1) shall not apply in the case of a proposal for the transfer of a discrete, minor, freestanding part of a hospital or station to a local public entity for the purpose of continuing the provision of services to refugees.

(d) Rejection or approval of proposal

(1) If the Secretary determines that a proposal for a hospital or other station does not meet the standards of subsection (c) of this section or if there is no proposal submitted under subsection (b) of this section with respect to a hospital or other station, the Secretary shall provide for the closure of the hospital or station by not later than October 31, 1981.

(2) If the Secretary determines that a proposal for a hospital or other station meets the standards of subsection (c) of this section, the Secretary shall take such steps, within the amounts available through appropriations, as may be necessary and proper—

(A) to operate (or participate or assist in the operation of) the hospital or station by the Service until the transfer is accomplished or financial self-sufficiency is achieved,

(B) to bring the hospital or station into compliance with applicable licensure, accreditation, and local medical practice standards, and

(C) to provide for such other legal, administrative, personnel, and financial arrangements (including allowing payments made with respect to services provided by the hospital or station to be made directly to that hospital or station) as may be necessary to effect a timely and orderly transfer of such hospital or station (including the land, building, and equipment thereof) from the Service, or for the financial self-sufficiency of the hospital or station, not later than September 30, 1982.

(e) Establishment of identifiable administrative unit

There is established, within the Office of the Assistant Secretary for Health of the Department of Health and Human Services, an identifiable administrative unit which shall have direct responsibility and authority for overseeing the activities under this section.

(f) Finding of financial self-sufficiency

For purposes of this section, a hospital or station cannot be found to be financially self-sufficient if the hospital or station is relying, in whole or in part, on direct appropriated funds for its continued operations.

(Pub. L. 97–35, title IX, § 987, Aug. 13, 1981, 95 Stat. 603.)

REFERENCES IN TEXT

This subtitle, referred to in subsec. (a), is subtitle J of title IX of Pub. L. 97–35, §§985 to 988, Aug. 13, 1981, 95 Stat. 602, which enacted this section, amended sections 201, 249, and 254e of this title, and enacted provisions set out as notes under this section and section 249 of this title. For complete classification of this subtitle to the Code, see Tables.

Section 248a of this title, referred to in subsec. (a), was in the original ''section 818 of Public Law 93–155'', meaning section 818 of Pub. L. 93–155, title VIII, Nov. 16, 1973, 87 Stat. 622, which enacted section 248a of this title and repealed section 3 of Pub. L. 92–585, Oct. 27, 1972, 86 Stat. 1292.

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1981, and not as part of the Public Health Service Act which comprises this chapter.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 985 of Pub. L. 97–35 provided that:

''(a) Congress finds that—

''(1) because of national budgetary considerations, it has become necessary to terminate Federal appropriations for Public Health Service hospitals and clinics,

''(2) with proper planning and coordination, some of these hospitals and clinics could be transferred to State, local, or private control or become financially self-sufficient and continue to provide effective and efficient health care to individuals in the areas in which they are located,

''(3) a precipitous closure of these hospitals and clinics will preclude the possibility of such orderly transfer to entities which are willing and able to take over operations at such facilities and will cause unnecessary and costly hardships on the patients and staffs at such facilities and on the communities in which the facilities are located, and

''(4) it is in the national interest, consistent with sound budgetary considerations, to assist in the orderly and prompt transfer of such operations to State, local, or private operation or in the achievement of financial self-sufficiency where feasible.

''(b) The purposes of this subtitle [enacting this section, amending sections 201, 249, and 254e of this title, and enacting provisions set out as notes under section 249 of this title] are—

''(1) to provide for the prompt and orderly closure by October 31, 1981, of Public Health Service hospitals and clinics which cannot reasonably be transferred to State, local, or private operation or become financially self-sufficient and for the transfer or achievement of financial self-sufficiency by September 30, 1982, of those hospitals and clinics which can be so transferred or which can achieve such financial self-sufficiency, and

''(2) to provide for transitional assistance for merchant seamen whose entitlement to receive free care through Public Health Service hospitals and clinics is repealed and who are hospitalized at the end of fiscal year 1981 and require continuing hospitalization.''

§§ 248c, 248d. Repealed. Pub. L. 104–201, div. A, title VII, § 727(a)(1), (2), Sept. 23, 1996, 110 Stat. 2596

Section 248c, Pub. L. 97–99, title IX, §911, Dec. 23, 1981, 95 Stat. 1386; Pub. L. 98–94, title XII, §1252(g), formerly §1252(f), Sept. 24, 1983, 97 Stat. 699, renumbered §1252(g), Pub. L. 101–510, div. A, title VII, §718(b)(1), Nov. 5, 1990, 104 Stat. 1586; Pub. L. 98–557, §17(f)(1), Oct. 30, 1984, 98 Stat. 2868, related to continued use of former Public Health Service facilities.

Section 248d, Pub. L. 98–94, title XII, §1252, Sept. 24, 1983, 97 Stat. 698; Pub. L. 98–557, §17(f)(2), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 99–661, div. A, title VII, §706, Nov. 14, 1986, 100 Stat. 3905; Pub. L. 100–456, div. A, title VI, §645, Sept. 29, 1988, 102 Stat. 1988; Pub. L. 101–510, div. A, title VII, §718(a), (b), Nov. 5, 1990, 104 Stat. 1586, 1587; Pub. L. 102–25, title VII, §705(h), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103–160, div. A, title VII, §717(a), Nov. 30, 1993, 107 Stat. 1693; Pub. L. 104–106, div. A, title VII, §§721, 722, 727, title XV, §1502(c)(8), Feb. 10, 1996, 110 Stat. 377, 380, 508, related to Public Health Service facilities providing medical care for dependents, members, and former members of uniformed services.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1997, see section 727(b) of Pub. L. 104–201, set out in an Inclusion of Certain Designated Providers in Uniformed Services Health Care Delivery System note under section 1073 of Title 10, Armed Forces.

EQUITABLE IMPLEMENTATION OF UNIFORM COST SHARING REQUIREMENTS FOR UNIFORMED SERVICES TREATMENT FACILITIES

Pub. L. 104–106, div. A, title VII, §726, Feb. 10, 1996, 110 Stat. 379, provided that the uniform managed care benefit fee and copayment schedule developed by Secretary of Defense for use in all managed care initiatives of military health service system be extended to managed care program of Uniformed Services Treatment Facility only after the later of the implementation of the TRICARE regional program covering service area of Facility or Oct. 1, 1996, and provided for evaluation of such extension by Comptroller General, prior to repeal by Pub. L. 104–201, div. A, title VII, §727(a)(4), Sept. 23, 1996, 110 Stat. 2596.

MANAGED-CARE DELIVERY AND REIMBURSEMENT MODEL FOR THE UNIFORMED SERVICES TREATMENT FACILITIES

Section 718(c) of Pub. L. 101–510, as amended by Pub. L. 102–484, div. A, title VII, §716, Oct. 23, 1992, 106 Stat. 2438; Pub. L. 103–160, div. A, title VII, §718, Nov. 30, 1993, 107 Stat. 1694; Pub. L. 104–106, div. A, title VII, §§724(a), 725, Feb. 10, 1996, 110 Stat. 378, provided that not later than Nov. 5, 1990, the Secretary of Defense was to begin operation of a managed-care delivery and reimbursement model to continue to use Uniformed Services Treatment Facilities in the military health services system, prior to repeal by Pub. L. 104–201, div. A, title VII, §727(a)(3), Sept. 23, 1996, 110 Stat. 2596.

§ 249. Medical care and treatment of quarantined and detained persons

(a) Persons entitled to treatment

Any person when detained in accordance with quarantine laws, or, at the request of the Immigration and Naturalization Service, any person detained by that Service, may be treated and cared for by the Public Health Service.

(b) Temporary treatment in emergency cases

Persons not entitled to treatment and care at institutions, hospitals, and stations of the Service may, in accordance with regulations of the Surgeon General, be admitted thereto for temporary treatment and care in case of emergency.

(c) Authorization for outside treatment

Persons whose care and treatment is authorized by subsection (a) of this section may, in accordance with regulations, receive such care and treatment at the expense of the Service from public or private medical or hospital facilities other than those of the Service, when authorized by the officer in charge of the station at which the application is made.

(July 1, 1944, ch. 373, title III, §322, 58 Stat. 696; June 25, 1948, ch. 654, §3, 62 Stat. 1018; Aug. 8,

1956, ch. 1036, § 3, 70 Stat. 1120; Pub. L. 88–424, Aug. 13, 1964, 78 Stat. 398; Pub. L. 90–174, § 10(c), Dec. 5, 1967, 81 Stat. 541; Pub. L. 97–35, title IX, § 986(a), (b)(1), (2), Aug. 13, 1981, 95 Stat. 603.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35, § 986(a), (b)(2), redesignated subsec. (c) as (a). Former subsec. (a), which related to persons entitled to medical, etc., treatment and hospitalization, was struck out.

Subsec. (b). Pub. L. 97–35, § 986(a), (b)(2), redesignated subsec. (d) as (b). Former subsec. (b), which related to treatment for seamen on foreign-flag vessels, was struck out.

Subsec. (c). Pub. L. 97–35, § 986(b)(1), (2), redesignated subsec. (e) as (c), substituted ''subsection (a)'' for ''subsection (c)'', and struck out ''entitled to care and treatment under subsection (a) of this section and persons'' after ''Persons''. Former subsec. (c) redesignated (a).

Subsecs. (d), (e). Pub. L. 97–35, § 986(b)(2), redesignated subsecs. (d) and (e) as (b) and (c), respectively.

1967—Subsec. (a)(7). Pub. L. 90–174 substituted provision for entitlement to treatment and hospitalization of seamen-trainees, while participating in maritime training programs to develop or enhance their employability in maritime industry, for provision for such entitlement of employees and noncommissioned officers in field service of Public Health Service when injured or taken sick in line of duty.

1964—Subsec. (a)(8). Pub. L. 88–424 added par. (8).

1948—Subsec. (e). Act June 25, 1948, permitted Service to provide for care and treatment of individuals detained in accordance with our quarantine laws.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 986(c) of Pub. L. 97–35 provided that: ''The amendments and repeals made by this section [amending this section and sections 201 and 254e of this title] shall take effect on October 1, 1981.''

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department transferred, with a few exceptions, to Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by sections 1 and 2 of Reorg. Plan No. 2 of 1950, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, which were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 662. Immigration and Naturalization Service, referred to in this section, was a bureau in Department of Justice.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

CONTINUED CARE FOR MERCHANT SEAMEN HOSPITALIZED IN PUBLIC HEALTH SERVICE HOSPITALS

Section 988 of Pub. L. 97–35 provided that:

''(a) The Secretary shall provide, by contract or other arrangement with a Federal entity and without charge but subject to subsection (b), for the continuation of inpatient hospital services (and outpatient services related to the condition of hospitalization) to any individual who—

''(1) on September 30, 1981, is receiving inpatient hospital services at a Public Health Service hospital on the basis of the entitlement contained in section 322(a) of the Public Health Service Act (42 U.S.C. 249(a)), as such section was in effect on such date, for treatment of a condition,

''(2) requires continued hospitalization after such date for treatment of that condition (or requires outpatient services related to such condition), and

''(3) the Secretary determines has no other source of inpatient hospital services available for continued treatment of that condition.

''(b) Services may not be provided under subsection (a) to an individual after the earlier of—

''(1) September 30, 1982,

''(2) the end of the first 60-day consecutive period (beginning after September 30, 1981) during the entire period of which the individual is not an inpatient of a hospital.

''(c) Notwithstanding any other provision of law, the head of any Federal department or agency which provides, under other authority of law and through federal facilities, inpatient hospital services or outpatient services, or both, is authorized to provide inpatient hospital services (and related outpatient services) to individuals under contract or other arrangement with the Secretary pursuant to this section.''

FOREIGN SEAMEN

Section 810(c), formerly § 710(c), of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720, which gave foreign seamen the same benefits as accorded seamen employed on United States vessels under subsec. (a)(1) of this section, was repealed effective Jan. 25, 1948, by Joint Res. July 25, 1947, ch. 327, § 2(b), 61 Stat. 451.

§ 250. Medical care and treatment of Federal prisoners

The Service shall supervise and furnish medical treatment and other necessary medical, psychiatric, and related technical and scientific services, authorized by section 4005 of title 18, in penal and correctional institutions of the United States.

(July 1, 1944, ch. 373, title III, § 323, 58 Stat. 697.)

CODIFICATION

''Section 4005 of title 18'' substituted in text for ''the Act of May 13, 1930, as amended (U.S.C., 1940 edition, title 18, secs. 751, 752)'' on authority of act June 25, 1948, ch. 645, 62 Stat. 684, the first section of which enacted Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 250a. Transfer of appropriations

The Attorney General may transfer to the Health Resources and Services Administration such amounts as may be necessary for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions.

(Pub. L. 109–108, title I, Nov. 22, 2005, 119 Stat. 2297.)

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of the Public Health Service Act which comprises this chapter.

Section was formerly classified to section 341h of title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 108–447, div. B, title I, Dec. 8, 2004, 118 Stat. 2860.

Pub. L. 108–199, div. B, title I, Jan. 23, 2004, 118 Stat. 53.

Pub. L. 108–7, div. B, title I, Feb. 20, 2003, 117 Stat. 58.

Pub. L. 107–77, title I, Nov. 28, 2001, 115 Stat. 757.

Pub. L. 106–553, § 1(a)(2) [title I], Dec. 21, 2000, 114 Stat. 2762, 2762A–60.

Pub. L. 106–113, div. B, § 1000(a)(1) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A–13.

Pub. L. 105–277, div. A, § 101(b) [title I], Oct. 21, 1998, 112 Stat. 2681–50, 2681–60.

Pub. L. 105–119, title I, Nov. 26, 1997, 111 Stat. 2449.

Pub. L. 104–208, div. A, title I, § 101(a) [title I], Sept. 30, 1996, 110 Stat. 3009, 3009–11.

Pub. L. 104–134, title I, § 101[(a)] [title I], Apr. 26, 1996, 110 Stat. 1321, 1321–9; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–317, title I, Aug. 26, 1994, 108 Stat. 1732.

Pub. L. 103–121, title I, Oct. 27, 1993, 107 Stat. 1161.

Pub. L. 102–395, title I, Oct. 6, 1992, 106 Stat. 1836.

Pub. L. 102–140, title I, Oct. 28, 1991, 105 Stat. 790.

Pub. L. 101–515, title II, Nov. 5, 1990, 104 Stat. 2114.

Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 1000.

Pub. L. 100–459, title II, Oct. 1, 1988, 102 Stat. 2196.

Pub. L. 100–202, § 101(a) [title II], Dec. 22, 1987, 101 Stat. 1329, 1329–13.

Pub. L. 99–500, § 101(b) [title II], Oct. 18, 1986, 100 Stat. 1783–39, 1783–49, and Pub. L. 99–591, § 101(b) [title II], Oct. 30, 1986, 100 Stat. 3341–39, 3341–49.

Pub. L. 99–180, title II, Dec. 13, 1985, 99 Stat. 1144.

Pub. L. 98–411, title II, Aug. 30, 1984, 98 Stat. 1556.

Pub. L. 98–166, title II, Nov. 28, 1983, 97 Stat. 1084.

Pub. L. 97–377, § 101(d) [S. 2956, title II], Dec. 21, 1982, 96 Stat. 1866.

Pub. L. 97–92, § 101(h) [incorporating Pub. L. 96–536, § 101*o*; H.R. 7584, title II], Dec. 15, 1981, 95 Stat. 1190.

Pub. L. 96–536, § 101*o* [H.R. 7584, title II], Dec. 16, 1980, 94 Stat. 3169.

Pub. L. 96–68, title II, Sept. 24, 1979, 93 Stat. 421.

Pub. L. 95–431, title II, Oct. 10, 1978, 92 Stat. 1028.

Pub. L. 95–86, title II, Aug. 2, 1977, 91 Stat. 427.

Pub. L. 94–362, title II, July 14, 1976, 90 Stat. 945.

Pub. L. 94–121, title II, Oct. 21, 1975, 89 Stat. 620.

Pub. L. 93–433, title II, Oct. 5, 1974, 88 Stat. 1194.

Pub. L. 93–162, title II, Nov. 27, 1973, 87 Stat. 643.

Pub. L. 92–544, title II, Oct. 25, 1972, 86 Stat. 1116.

Pub. L. 92–77, title II, Aug. 10, 1971, 85 Stat. 253.

Pub. L. 91–472, title II, Oct. 21, 1970, 84 Stat. 1047.

Pub. L. 91–153, title II, Dec. 24, 1969, 83 Stat. 410.

Pub. L. 90–470, title II, Aug. 9, 1968, 82 Stat. 675.

Pub. L. 90–133, title II, Nov. 8, 1967, 81 Stat. 418.

Pub. L. 89–797, title II, Nov. 8, 1966, 80 Stat. 1487.

Pub. L. 89–164, title II, Sept. 2, 1965, 79 Stat. 628.

Pub. L. 88–527, title II, Aug. 31, 1964, 78 Stat. 719.

Pub. L. 88–245, title II, Dec. 30, 1963, 77 Stat. 783.

Pub. L. 87–843, title II, Oct. 18, 1962, 76 Stat. 1088.

Pub. L. 87–264, title II, Sept. 21, 1961, 75 Stat. 553.

Pub. L. 86–678, title II, Aug. 31, 1960, 74 Stat. 563.

Pub. L. 86–84, title II, July 13, 1959, 73 Stat. 189.

Pub. L. 85–474, title II, June 30, 1958, 72 Stat. 252.

Pub. L. 85–49, title II, June 11, 1957, 71 Stat. 62.

June 20, 1956, ch. 414, title II, 70 Stat. 307.

July 7, 1955, ch. 279, title II, 69 Stat. 273.

§ 251. Medical examination and treatment of Federal employees; medical care at remote stations

(a) The Surgeon General is authorized to provide at institutions, hospitals, and station of the Service medical, surgical, and hospital services and supplies for persons entitled to treatment under subchapter I of Chapter 81 of title 5 and extensions thereof. The Surgeon General may also provide for making medical examinations of—

(1) employees of the Federal Government for retirement purposes;

(2) employees in the Federal classified service, and applicants for appointment, as requested by the Director of the Office of Personnel Management for the purpose of promoting health and efficiency;

(3) seamen for purposes of qualifying for certificates of service; and

(4) employees eligible for benefits under the Longshore and Harbor Workers' Compensation Act, as amended [33 U.S.C. 901 et seq.], as requested by any deputy commissioner thereunder.

(b) The Secretary is authorized to provide medical, surgical, and dental treatment and hospitalization and optometric care for Federal employees (as defined in section 8901(1) of title 5) and their dependents at remote medical facilities of the Public Health Service where such care and treatment are not otherwise available. Such employees and their dependents who are not entitled to this care and treatment under any other provision of law shall be charged for it at rates established by the Secretary to reflect the reasonable cost of providing the care and treatment. Any payments pursuant to the preceding sentence shall be credited to the applicable appropriation to the Public Health Service for the year in which such payments are received.

(July 1, 1944, ch. 373, title III, § 324, 58 Stat. 697; Pub. L. 90–174, § 10(a), (b), Dec. 5, 1967, 81 Stat. 540; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 97–468, title VI, § 615(b)(4), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98–426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, as amended, referred to in subsec. (a)(4), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

CODIFICATION

In subsec. (a), ''subchapter I of chapter 81 of title 5'' substituted for ''United States Employees' Compensation Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98–426 substituted ''Longshore and Harbor Workers' Compensation Act'' for ''Longshoremen's and Harbor Workers' Compensation Act''.

1983—Subsec. (a)(1). Pub. L. 97–468 struck out ''employees of the Alaska Railroad and'' before ''employees of the Federal Government''.

1967—Subsec. (a). Pub. L. 90–174, § 10(a), designated existing provisions as subsec. (a) and redesignated cls. (a) to (d) as cls. (1) to (4), respectively.

Subsec. (b). Pub. L. 90–174, § 10(b), added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97–468.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (a)(2), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 252. Medical examination of aliens

The Surgeon General shall provide for making, at places within the United States or in other countries, such physical and mental examinations of aliens as are required by the immigration laws, subject to administrative regulations prescribed by the Attorney General and medical regulations prescribed by the Surgeon General with the approval of the Secretary.

(July 1, 1944, ch. 373, title III, § 325, 58 Stat. 697; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

REFERENCES IN TEXT

The immigration laws, referred to in text, are classified generally to Title 8, Aliens and Nationality. See, also, section 1101(a)(17) of Title 8.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 253. Medical services to Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service

(a) Persons entitled to medical services

Subject to regulations of the President—

(1) commissioned officers, chief warrant officers, warrant officers, cadets, and enlisted personnel of the Regular Coast Guard on active duty, including those on shore duty and those on detached duty; and Regular, and temporary members of the United States Coast Guard Reserve when on active duty;

(2) commissioned officers, ships' officers, and members of the crews of vessels of the National Oceanic and Atmospheric Administration on active duty, including those on shore duty and those on detached duty; and

(3) commissioned officers of the Regular or Reserve Corps of the Public Health Service on active duty;

shall be entitled to medical, surgical, and dental treatment and hospitalization by the Service. The Surgeon General may detail commissioned officers for duty aboard vessels of the Coast Guard or the National Oceanic and Atmospheric Administration.

(b) Health care for involuntarily separated officers and dependents

(1) The Secretary may provide health care for an officer of the Regular or Reserve Corps involuntarily separated from the Service, and for any dependent of such officer, if—

(A) the officer or dependent was receiving health care at the expense of the Service at the time of separation; and

(B) the Secretary finds that the officer or dependent is unable to obtain appropriate insurance for the conditions for which the officer or dependent was receiving health care.

(2) Health care may be provided under paragraph (1) for a period of not more than one year from the date of separation of the officer from the Service.

(c) Examination of personnel of Service assigned to Coast Guard or National Oceanic and Atmospheric Administration

The Service shall provide all services referred to in subsection (a) of this section required by the Coast Guard or National Oceanic and Atmospheric Administration and shall perform all duties prescribed by statute in connection with the examinations to determine physical or mental condition for purposes of appointment, enlistment, and reenlistment, promotion and retire-

ment, and officers of the Service assigned to duty on Coast Guard or National Oceanic and Atmospheric Administration vessels may extend aid to the crews of American vessels engaged in deep-sea fishing.

(July 1, 1944, ch. 373, title III, § 326, 58 Stat. 697; June 7, 1956, ch. 374, § 306(3), 70 Stat. 254; Pub. L. 86–415, § 5(d), Apr. 8, 1960, 74 Stat. 34; Pub. L. 88–71, § 2, July 19, 1963, 77 Stat. 83; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Pub. L. 99–117, § 5, Oct. 7, 1985, 99 Stat. 492.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99–117 added subsec. (b).

1963—Subsec. (b). Pub. L. 88–71, § 2(a), repealed subsec. (b) which provided for treatment of dependents of personnel. See section 253a(b) of this title.

Subsec. (c). Pub. L. 88–71, § 2(b), inserted ''or Coast and Geodetic Survey'' after ''Coast Guard'' in two places.

1960—Subsec. (a). Pub. L. 86–415 struck out provisions which authorized medical, surgical, and dental care and hospitalization for retired personnel of Coast Guard, Coast and Geodetic Survey, and Public Health Service.

1956—Subsec. (b). Act June 7, 1956, repealed subsec. (b) except insofar as it related to dependent members of families of ships' officers and members of crews of vessels of Coast and Geodetic Survey.

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Commerce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 7, 1956, effective six months after June 7, 1956, see section 307 of act June 7, 1956.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 253a. Medical services to retired personnel of National Oceanic and Atmospheric Administration

(a) Eligibility

Subject to regulations of the President, retired ships' officers and retired members of the crews of vessels of the National Oceanic and Atmospheric Administration shall be entitled to medical, surgical, and dental treatment and hospitalization by the Public Health Service if the ships' officer or crew member, (1) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee was continuous from that date until retirement, or (2) was retired as a vessel employee of the National Oceanic and Atmospheric Administration on or before July 1, 1963, or on July 19, 1963, whichever is later.

(b) Treatment of dependents of personnel

Subject to regulations of the President, dependent members of families (as defined in such regulations) of ships' officers and members of crews of vessels of the National Oceanic and Atmospheric Administration, whether such, ships' officers and members of crew are on active duty or retired, shall be furnished medical advice and outpatient treatment by the Public Health Service and, if suitable accommodations are available, they shall also be furnished hospitalization by the Public Health Service if the ships' officer or crew member (1) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee has been continuous from that time, or (2) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee was continuous from that time until retirement, or (3) was retired as a vessel employee of the National Oceanic and Atmospheric Administration on or before July 1, 1963, or on July 19, 1963, whichever is later. When dependent members of families are hospitalized, a per diem charge, at such uniform rate as may be prescribed from time to time for the hospitalization of dependents of members of the uniformed services at hospitals of the uniformed services pursuant to section 1078(a) of title 10 shall be made.

(c) Identification

The National Oceanic and Atmospheric Administration shall furnish proper identification to those persons entitled to medical treatment under the provisions of this section.

(Pub. L. 88–71, § 1, July 19, 1963, 77 Stat. 83; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Pub. L. 98–498, title III, § 310(b), (c), Oct. 19, 1984, 98 Stat. 2306, 2307.)

CODIFICATION

Section was not enacted as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–498, § 310(b), substituted ''by the Public Health Service if'' for ''at facilities of the Public Health Service: *Provided*, That''.

Subsec. (b). Pub. L. 98–498, § 310(c), struck out ''at its hospitals and relief stations'' before ''and, if suitable accommodations'' and substituted ''by the Public Health Service if'' for ''at hospitals of the Public Health Service: *Provided*, That''.

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Commerce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EX. ORD. NO. 11160. REGULATIONS RELATING TO MEDICAL CARE FOR RETIRED PERSONNEL OF COAST AND GEODETIC SURVEY [NOW NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION] AND THEIR DEPENDENTS

Ex. Ord. No. 11160, July 6, 1964, 29 F.R. 9315, provided:

By virtue of the authority vested in me by the first section of the Act of July 19, 1963 (Public Law 88–71, 77 Stat. 83, 42 U.S.C. 253a) [this section], and as President of the United States, I hereby prescribe the following regulations relating to the medical care of certain retired personnel of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] and dependents of Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] ships' officers and crew members, both active and retired.

SECTION 1. *Definitions*. As used in these regulations, the term:

(1) ''Retired ships' officer and retired crew member'' means a noncommissioned ships' officer or crew member of a vessel of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] who either was on active duty as a vessel employee on July 19, 1963, and whose employment as such vessel employee was continuous from that date until the date of his retirement, or who had retired as a vessel employee on or before July 19, 1963.

(2) ''Active duty ships' officer and active duty crew member'' means a noncommissioned ships' officer or crew member on active duty as a vessel employee of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] on July 19, 1963, and whose employment as such vessel employee has been continuous from that time.

(3) ''Dependent members of families'', with respect to active duty or retired ships' officers or crew members, means:

(A) the lawful wife;

(B) the unmarried legitimate child, including an adopted child or stepchild, who has not passed his twenty-first birthday; and

(C) the father or mother, if in fact dependent upon such active duty or retired ships' officer or crew member for over one-half of his or her support.

(4) ''Relief stations'' means Public Health Service outpatient clinics and outpatient offices.

(5) ''Outpatient clinic'' means a full-time outpatient medical facility, operated in Federally owned or leased space under the supervision of a commissioned medical officer or a full-time civil service medical officer (formerly known as a Second-Class Relief Station).

(6) ''Outpatient office'' means a part-time outpatient facility serving all classes of legal beneficiaries, located in other than Federal space, and in the charge of a local private physician under contract to the Service to provide medical care on an annual or fee basis (formerly known as a Third-Class Relief Station).

SEC. 2. *Persons entitled to treatment*. The following persons shall be entitled to medical care under these regulations:

(1) Retired ships' officers and retired crew members of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration];

(2) Dependent members of families of persons described in paragraph (1) of this section;

(3) Dependent members of families of active duty ships' officers and crew members of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration].

SEC. 3. *Application for treatment; evidence of eligibility*. Persons entitled to medical care under Section 2 of these regulations, when applying to Public Health Service medical care facilities for medical care, shall produce proper identification, as issued to them by the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration], and such identification shall be accepted as evidence of eligibility for such medical care by the Service.

SEC. 4. *Extent of treatment; retired ships' officers and crew members*. Subject to the limitation imposed by paragraph (2) of this section, retired ships' officers and crew members entitled to medical care under these regulations shall be furnished:

(1) Medical, surgical, and dental treatment at hospitals, outpatient clinics, and outpatient offices of the Service, and hospitalization at hospitals of the Service. The Service will not be responsible for defraying the cost of hospitalization, medical services, and supplies procured elsewhere.

(2) Dental treatment shall be furnished to the extent that facilities and services at hospitals and outpatient clinics of the Service having full-time dental officers on duty are available to provide such treatment. At other Service facilities, dental treatment shall be limited to emergency measures necessary to relieve pain.

SEC. 5. *Extent of treatment; dependent members of families; charges*. (a) Dependent members of families shall be furnished medical advice and outpatient treatment at hospitals, outpatient clinics, and outpatient offices of the Service and, if suitable accommodations are available, shall be furnished hospitalization at hospitals of the Service. The Service will not be responsible for defraying the cost of hospitalization, medical services, and supplies procured elsewhere.

(b) For the purpose of this section—

(1) Medical advice and outpatient treatment may include such services and supplies as the Medical Officer in Charge may deem to be necessary for reasonable and adequate treatment.

(2) Hospitalization shall be furnished when, in the opinion of the Medical Officer in Charge, suitable accommodations are available and the condition of the patient is such as to require hospitalization. When hospitalization is authorized, it may include such services and supplies as the Medical Officer in Charge may deem to be necessary for reasonable and adequate treatment.

(c) Charges shall be made for hospitalization of dependent members of families at the same per diem rate as is prescribed for dependents of members of the uniformed services pursuant to section 1078(a) of Title 10 of the United States Code.

(d) Dental treatment may be furnished to the extent that facilities and services at hospitals and outpatient clinics of the Service having full-time dental officers are available to provide such treatment. Dental care will not be furnished under any circumstances in private facilities at the expense of the Service.

SEC. 6. *Prior orders*. Executive Order No. 9703 of March 12, 1946, prescribing regulations relating to medical care of certain personnel of the Coast Guard, Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration], Public Health Service, and former Lighthouse Service, is hereby amended to the extent necessary to conform it to the provisions of this order.

LYNDON B. JOHNSON.

§ 253b. Former Lighthouse Service employees; medical service eligibility

Subject to regulations of the President, lightkeepers, assistant lightkeepers, and officers and crews of vessels of the former Lighthouse Service, including any such persons who subsequent to June 30, 1939, were involuntarily assigned to other civilian duty in the Coast Guard, who were entitled to medical relief at hospitals and other stations of the Public Health Service prior to July 1, 1944, and who retired under the provisions of section 763 of title 33, shall be entitled to medical, surgical, and dental treatment and hospitalization at hospitals and other stations of the Public Health Service.

(Pub. L. 93–353, title I, § 108(a), July 23, 1974, 88 Stat. 371.)

CODIFICATION

Section was enacted as a part of Health Services Research, Health Statistics, and Medical Libraries Act of 1974, and also as a part of Health Services Research and Evaluation and Health Statistics Act of 1974, and not as a part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section 108(b) of Pub. L. 93–353 provided that: ''Subsection (a) [enacting this section] shall be effective from December 28, 1973.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 254. Interdepartmental work

Nothing contained in this part shall affect the authority of the Service to furnish any materials, supplies, or equipment, or perform any work of services, requested in accordance with sections 1535 and 1536 of title 31, or the authority of any other executive department to furnish any materials, supplies, or equipment, or perform any work or services, requested by the Department of Health and Human Services for the Service in accordance with that section.

(July 1, 1944, ch. 373, title III, § 327, 58 Stat. 697; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

''Sections 1535 and 1536 of title 31'' substituted in text for ''section 7 of the Act of May 21, 1920, as amended (U.S.C., 1940 edition, title 31, sec. 686)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 254a. Sharing of medical care facilities and resources

(a) Definitions

For purposes of this section—

(1) the term ''specialized health resources'' means health care resources (whether equipment, space, or personnel) which, because of cost, limited availability, or unusual nature, are either unique in the health care community or are subject to maximum utilization only through mutual use;

(2) the term ''hospital'', unless otherwise specified, includes (in addition to other hospitals) any Federal hospital.

(b) Statement of purpose; agreements or arrangements; reciprocity; reimbursement; credits

For the purpose of maintaining or improving the quality of care in Public Health Service facilities and to provide a professional environment therein which will help to attract and retain highly qualified and talented health personnel, to encourage mutually beneficial relationships between Public Health Service facilities and hospitals and other health facilities in the health care community, and to promote the full utilization of hospitals and other health facilities and resources, the Secretary may—

(1) enter into agreements or arrangements with schools of medicine, schools of osteopathic medicine, and with other health professions schools, agencies, or institutions, for such interchange or cooperative use of facilities and services on a reciprocal or reimbursable basis, as will be of benefit to the training or research programs of the participating agencies; and

(2) enter into agreements or arrangements with hospitals and other health care facilities for the mutual use or the exchange of use of

specialized health resources, and providing for reciprocal reimbursement.

Any reimbursement pursuant to any such agreement or arrangement shall be based on charges covering the reasonable cost of such utilization, including normal depreciation and amortization costs of equipment. Any proceeds to the Government under this subsection shall be credited to the applicable appropriation of the Public Health Service for the year in which such proceeds are received.

(July 1, 1944, ch. 373, title III, § 327A, formerly § 328, as added Pub. L. 90–174, § 7, Dec. 5, 1967, 81 Stat. 539; renumbered § 327A, Pub. L. 95–626, title I, § 113(a)(2), Nov. 10, 1978, 92 Stat. 3562; amended Pub. L. 100–607, title VI, § 629(a)(1), Nov. 4, 1988, 102 Stat. 3146.)

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–607 inserted ''schools of osteopathic medicine,'' after ''schools of medicine,'' and ''professions'' after ''health''.

AVAILABILITY OF APPROPRIATIONS FOR EXPENSES OF SHARING MEDICAL CARE FACILITIES AND RESOURCES

Pub. L. 102–394, title II, § 204, Oct. 6, 1992, 106 Stat. 1811, provided that: ''Funds advanced to the National Institutes of Health Management Fund from appropriations in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be available for the expenses of sharing medical care facilities and resources pursuant to section 327A of the Public Health Service Act [42 U.S.C. 254a].''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 204, Nov. 26, 1991, 105 Stat. 1126.

Pub. L. 101–517, title II, § 204, Nov. 5, 1990, 104 Stat. 2208.

Pub. L. 101–166, title II, § 205, Nov. 21, 1989, 103 Stat. 1177.

Pub. L. 100–202, § 101(h) [title II, § 205], Dec. 22, 1987, 101 Stat. 1329–256, 1329–274.

Pub. L. 99–500, § 101(i) [H.R. 5233, title II, § 205], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title II, § 205], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, § 205, Dec. 12, 1985, 99 Stat. 1119.

Pub. L. 98–619, title II, § 205, Nov. 8, 1984, 98 Stat. 3321.

Pub. L. 98–139, title II, § 205, Oct. 31, 1983, 97 Stat. 887.

Pub. L. 97–377, title I, § 101(e)(1) [title II, § 205], Dec. 21, 1982, 96 Stat. 1878, 1894.

PART D—PRIMARY HEALTH CARE

SUBPART I—HEALTH CENTERS

AMENDMENTS

1996—Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626, substituted ''Health Centers'' for ''Primary Health Centers'' in subpart heading.

1978—Pub. L. 95–626, title I, § 113(a)(3), Nov. 10, 1978, 92 Stat. 3562, added heading ''Part D—Primary Health Care'' and, immediately under it, heading ''Subpart I—Primary Health Centers''.

§ 254b. Health centers

(a) "Health center" defined

(1) In general

For purposes of this section, the term ''health center'' means an entity that serves a population that is medically underserved, or a special medically underserved population comprised of migratory and seasonal agricultural workers, the homeless, and residents of public housing, by providing, either through the staff and supporting resources of the center or through contracts or cooperative arrangements—

(A) required primary health services (as defined in subsection (b)(1) of this section); and

(B) as may be appropriate for particular centers, additional health services (as defined in subsection (b)(2) of this section) necessary for the adequate support of the primary health services required under subparagraph (A);

for all residents of the area served by the center (hereafter referred to in this section as the ''catchment area'').

(2) Limitation

The requirement in paragraph (1) to provide services for all residents within a catchment area shall not apply in the case of a health center receiving a grant only under subsection (g), (h), or (i) of this section.

(b) Definitions

For purposes of this section:

(1) Required primary health services

(A) In general

The term ''required primary health services'' means—

(i) basic health services which, for purposes of this section, shall consist of—

(I) health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians and where appropriate, physician assistants, nurse practitioners, and nurse midwives;

(II) diagnostic laboratory and radiologic services;

(III) preventive health services, including—

(aa) prenatal and perinatal services;

(bb) appropriate cancer screening;

(cc) well-child services;

(dd) immunizations against vaccine-preventable diseases;

(ee) screenings for elevated blood lead levels, communicable diseases, and cholesterol;

(ff) pediatric eye, ear, and dental screenings to determine the need for vision and hearing correction and dental care;

(gg) voluntary family planning services; and

(hh) preventive dental services;

(IV) emergency medical services; and

(V) pharmaceutical services as may be appropriate for particular centers;

(ii) referrals to providers of medical services (including specialty referral when medically indicated) and other health-related services (including substance abuse and mental health services);

(iii) patient case management services (including counseling, referral, and follow-up services) and other services designed to

assist health center patients in establishing eligibility for and gaining access to Federal, State, and local programs that provide or financially support the provision of medical, social, housing, educational, or other related services;

(iv) services that enable individuals to use the services of the health center (including outreach and transportation services and, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals); and

(v) education of patients and the general population served by the health center regarding the availability and proper use of health services.

(B) Exception

With respect to a health center that receives a grant only under subsection (g) of this section, the Secretary, upon a showing of good cause, shall—

(i) waive the requirement that the center provide all required primary health services under this paragraph; and

(ii) approve, as appropriate, the provision of certain required primary health services only during certain periods of the year.

(2) Additional health services

The term ''additional health services'' means services that are not included as required primary health services and that are appropriate to meet the health needs of the population served by the health center involved. Such term may include—

(A) behavioral and mental health and substance abuse services;

(B) recuperative care services;

(C) environmental health services, including—

(i) the detection and alleviation of unhealthful conditions associated with—

(I) water supply;

(II) chemical and pesticide exposures;

(III) air quality; or

(IV) exposure to lead;

(ii) sewage treatment;

(iii) solid waste disposal;

(iv) rodent and parasitic infestation;

(v) field sanitation;

(vi) housing; and

(vii) other environmental factors related to health; and

(D) in the case of health centers receiving grants under subsection (g) of this section, special occupation-related health services for migratory and seasonal agricultural workers, including—

(i) screening for and control of infectious diseases, including parasitic diseases; and

(ii) injury prevention programs, including prevention of exposure to unsafe levels of agricultural chemicals including pesticides.

(3) Medically underserved populations

(A) In general

The term ''medically underserved population'' means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services.

(B) Criteria

In carrying out subparagraph (A), the Secretary shall prescribe criteria for determining the specific shortages of personal health services of an area or population group. Such criteria shall—

(i) take into account comments received by the Secretary from the chief executive officer of a State and local officials in a State; and

(ii) include factors indicative of the health status of a population group or residents of an area, the ability of the residents of an area or of a population group to pay for health services and their accessibility to them, and the availability of health professionals to residents of an area or to a population group.

(C) Limitation

The Secretary may not designate a medically underserved population in a State or terminate the designation of such a population unless, prior to such designation or termination, the Secretary provides reasonable notice and opportunity for comment and consults with—

(i) the chief executive officer of such State;

(ii) local officials in such State; and

(iii) the organization, if any, which represents a majority of health centers in such State.

(D) Permissible designation

The Secretary may designate a medically underserved population that does not meet the criteria established under subparagraph (B) if the chief executive officer of the State in which such population is located and local officials of such State recommend the designation of such population based on unusual local conditions which are a barrier to access to or the availability of personal health services.

(c) Planning grants

(1) In general

(A) Centers

The Secretary may make grants to public and nonprofit private entities for projects to plan and develop health centers which will serve medically underserved populations. A project for which a grant may be made under this subsection may include the cost of the acquisition and lease of buildings and equipment (including the costs of amortizing the principal of, and paying the interest on, loans) and shall include—

(i) an assessment of the need that the population proposed to be served by the health center for which the project is undertaken has for required primary health services and additional health services;

(ii) the design of a health center program for such population based on such assessment;

(iii) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project;

(iv) initiation and encouragement of continuing community involvement in the development and operation of the project; and

(v) proposed linkages between the center and other appropriate provider entities, such as health departments, local hospitals, and rural health clinics, to provide better coordinated, higher quality, and more cost-effective health care services.

(B) Managed care networks and plans

The Secretary may make grants to health centers that receive assistance under this section to enable the centers to plan and develop a managed care network or plan. Such a grant may only be made for such a center if—

(i) the center has received grants under subsection (e)(1)(A) of this section for at least 2 consecutive years preceding the year of the grant under this subparagraph or has otherwise demonstrated, as required by the Secretary, that such center has been providing primary care services for at least the 2 consecutive years immediately preceding such year; and

(ii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis, or under another managed care arrangement, will not result in the diminution of the level or quality of health services provided to the medically underserved population served prior to the grant under this subparagraph.

(C) Practice management networks

The Secretary may make grants to health centers that receive assistance under this section to enable the centers to plan and develop practice management networks that will enable the centers to—

(i) reduce costs associated with the provision of health care services;

(ii) improve access to, and availability of, health care services provided to individuals served by the centers;

(iii) enhance the quality and coordination of health care services; or

(iv) improve the health status of communities.

(D) Use of funds

The activities for which a grant may be made under subparagraph (B) or (C) may include the purchase or lease of equipment, which may include data and information systems (including paying for the costs of amortizing the principal of, and paying the interest on, loans for equipment), the provision of training and technical assistance related to the provision of health care services on a prepaid basis or under another managed care arrangement, and other activities that promote the development of practice management or managed care networks and plans.

(2) Limitation

Not more than two grants may be made under this subsection for the same project, except that upon a showing of good cause, the Secretary may make additional grant awards.

(d) Loan guarantee program

(1) Establishment

(A) In general

The Secretary shall establish a program under which the Secretary may, in accordance with this subsection and to the extent that appropriations are provided in advance for such program, guarantee up to 90 percent of the principal and interest on loans made by non-Federal lenders to health centers, funded under this section, for the costs of developing and operating managed care networks or plans described in subsection (c)(1)(B) of this section, or practice management networks described in subsection (c)(1)(C) of this section.

(B) Use of funds

Loan funds guaranteed under this subsection may be used—

(i) to establish reserves for the furnishing of services on a pre-paid basis;

(ii) for costs incurred by the center or centers, otherwise permitted under this section, as the Secretary determines are necessary to enable a center or centers to develop, operate, and own the network or plan; or

(iii) to refinance an existing loan (as of the date of refinancing) to the center or centers, if the Secretary determines—

(I) that such refinancing will be beneficial to the health center and the Federal Government; or

(II) that the center (or centers) can demonstrate an ability to repay the refinanced loan equal to or greater than the ability of the center (or centers) to repay the original loan on the date the original loan was made.

(C) Publication of guidance

Prior to considering an application submitted under this subsection, the Secretary shall publish guidelines to provide guidance on the implementation of this section. The Secretary shall make such guidelines available to the universe of parties affected under this subsection, distribute such guidelines to such parties upon the request of such parties, and provide a copy of such guidelines to the appropriate committees of Congress.

(D) Provision directly to networks or plans

At the request of health centers receiving assistance under this section, loan guarantees provided under this paragraph may be made directly to networks or plans that are at least majority controlled and, as applicable, at least majority owned by those health centers.

(E) Federal credit reform

The requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) shall apply with respect to loans refinanced under subparagraph (B)(iii).

(2) Protection of financial interests

(A) In general

The Secretary may not approve a loan guarantee for a project under this subsection unless the Secretary determines that—

(i) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such percent per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States, except that the Secretary may not require as security any center asset that is, or may be, needed by the center or centers involved to provide health services;

(ii) the loan would not be available on reasonable terms and conditions without the guarantee under this subsection; and

(iii) amounts appropriated for the program under this subsection are sufficient to provide loan guarantees under this subsection.

(B) Recovery of payments

(i) In general

The United States shall be entitled to recover from the applicant for a loan guarantee under this subsection the amount of any payment made pursuant to such guarantee, unless the Secretary for good cause waives such right of recovery (subject to appropriations remaining available to permit such a waiver) and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made. Amounts recovered under this clause shall be credited as reimbursements to the financing account of the program.

(ii) Modification of terms and conditions

To the extent permitted by clause (iii) and subject to the requirements of section 504(e) of the Credit Reform Act of 1990 (2 U.S.C. 661c(e)), any terms and conditions applicable to a loan guarantee under this subsection (including terms and conditions imposed under clause (iv)) may be modified or waived by the Secretary to the extent the Secretary determines it to be consistent with the financial interest of the United States.

(iii) Incontestability

Any loan guarantee made by the Secretary under this subsection shall be incontestable—

(I) in the hands of an applicant on whose behalf such guarantee is made unless the applicant engaged in fraud or misrepresentation in securing such guarantee; and

(II) as to any person (or successor in interest) who makes or contracts to make a loan to such applicant in reliance thereon unless such person (or successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(iv) Further terms and conditions

Guarantees of loans under this subsection shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this section will be achieved.

(3) Loan origination fees

(A) In general

The Secretary shall collect a loan origination fee with respect to loans to be guaranteed under this subsection, except as provided in subparagraph (C).

(B) Amount

The amount of a loan origination fee collected by the Secretary under subparagraph (A) shall be equal to the estimated long term cost of the loan guarantees involved to the Federal Government (excluding administrative costs), calculated on a net present value basis, after taking into account any appropriations that may be made for the purpose of offsetting such costs, and in accordance with the criteria used to award loan guarantees under this subsection.

(C) Waiver

The Secretary may waive the loan origination fee for a health center applicant who demonstrates to the Secretary that the applicant will be unable to meet the conditions of the loan if the applicant incurs the additional cost of the fee.

(4) Defaults

(A) In general

Subject to the requirements of the Credit Reform Act of 1990[1] (2 U.S.C. 661 et seq.), the Secretary may take such action as may be necessary to prevent a default on a loan guaranteed under this subsection, including the waiver of regulatory conditions, deferral of loan payments, renegotiation of loans, and the expenditure of funds for technical and consultative assistance, for the temporary payment of the interest and principal on such a loan, and for other purposes. Any such expenditure made under the preceding sentence on behalf of a health center or centers shall be made under such terms and conditions as the Secretary shall prescribe, including the implementation of such organizational, operational, and financial reforms as the Secretary determines are appropriate and the disclosure of such financial or other information as the Secretary may require to determine the extent of the implementation of such reforms.

(B) Foreclosure

The Secretary may take such action, consistent with State law respecting foreclosure

[1] See References in Text note below.

procedures and, with respect to reserves required for furnishing services on a prepaid basis, subject to the consent of the affected States, as the Secretary determines appropriate to protect the interest of the United States in the event of a default on a loan guaranteed under this subsection, except that the Secretary may only foreclose on assets offered as security (if any) in accordance with paragraph (2)(A)(i).

(5) Limitation

Not more than one loan guarantee may be made under this subsection for the same network or plan, except that upon a showing of good cause the Secretary may make additional loan guarantees.

(6) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection such sums as may be necessary.

(e) Operating grants

(1) Authority

(A) In general

The Secretary may make grants for the costs of the operation of public and nonprofit private health centers that provide health services to medically underserved populations.

(B) Entities that fail to meet certain requirements

The Secretary may make grants, for a period of not to exceed 2 years, for the costs of the operation of public and nonprofit private entities which provide health services to medically underserved populations but with respect to which the Secretary is unable to make each of the determinations required by subsection (k)(3) of this section.

(C) Operation of networks and plans

The Secretary may make grants to health centers that receive assistance under this section, or at the request of the health centers, directly to a network or plan (as described in subparagraphs (B) and (C) of subsection (c)(1) of this section) that is at least majority controlled and, as applicable, at least majority owned by such health centers receiving assistance under this section, for the costs associated with the operation of such network or plan, including the purchase or lease of equipment (including the costs of amortizing the principal of, and paying the interest on, loans for equipment).

(2) Use of funds

The costs for which a grant may be made under subparagraph (A) or (B) of paragraph (1) may include the costs of acquiring and leasing buildings and equipment (including the costs of amortizing the principal of, and paying interest on, loans), and the costs of providing training related to the provision of required primary health services and additional health services and to the management of health center programs.

(3) Construction

The Secretary may award grants which may be used to pay the costs associated with expanding and modernizing existing buildings or constructing new buildings (including the costs of amortizing the principal of, and paying the interest on, loans) for projects approved prior to October 1, 1996.

(4) Limitation

Not more than two grants may be made under subparagraph (B) of paragraph (1) for the same entity.

(5) Amount

(A) In general

The amount of any grant made in any fiscal year under subparagraphs (A) and (B) of paragraph (1) to a health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

(i) State, local, and other operational funding provided to the center; and

(ii) the fees, premiums, and third-party reimbursements, which the center may reasonably be expected to receive for its operations in such fiscal year.

(B) Networks and plans

The total amount of grant funds made available for any fiscal year under paragraph (1)(C) and subparagraphs (B) and (C) of subsection (c)(1) of this section to a health center or to a network or plan shall be determined by the Secretary, but may not exceed 2 percent of the total amount appropriated under this section for such fiscal year.

(C) Payments

Payments under grants under subparagraph (A) or (B) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments.

(D) Use of nongrant funds

Nongrant funds described in clauses (i) and (ii) of subparagraph (A), including any such funds in excess of those originally expected, shall be used as permitted under this section, and may be used for such other purposes as are not specifically prohibited under this section if such use furthers the objectives of the project.

(f) Infant mortality grants

(1) In general

The Secretary may make grants to health centers for the purpose of assisting such centers in—

(A) providing comprehensive health care and support services for the reduction of—

(i) the incidence of infant mortality; and

(ii) morbidity among children who are less than 3 years of age; and

(B) developing and coordinating service and referral arrangements between health centers and other entities for the health management of pregnant women and children described in subparagraph (A).

(2) Priority

In making grants under this subsection the Secretary shall give priority to health centers

providing services to any medically underserved population among which there is a substantial incidence of infant mortality or among which there is a significant increase in the incidence of infant mortality.

(3) Requirements

The Secretary may make a grant under this subsection only if the health center involved agrees that—

(A) the center will coordinate the provision of services under the grant to each of the recipients of the services;

(B) such services will be continuous for each such recipient;

(C) the center will provide follow-up services for individuals who are referred by the center for services described in paragraph (1);

(D) the grant will be expended to supplement, and not supplant, the expenditures of the center for primary health services (including prenatal care) with respect to the purpose described in this subsection; and

(E) the center will coordinate the provision of services with other maternal and child health providers operating in the catchment area.

(g) Migratory and seasonal agricultural workers

(1) In general

The Secretary may award grants for the purposes described in subsections (c), (e), and (f) of this section for the planning and delivery of services to a special medically underserved population comprised of—

(A) migratory agricultural workers, seasonal agricultural workers, and members of the families of such migratory and seasonal agricultural workers who are within a designated catchment area; and

(B) individuals who have previously been migratory agricultural workers but who no longer meet the requirements of subparagraph (A) of paragraph (3) because of age or disability and members of the families of such individuals who are within such catchment area.

(2) Environmental concerns

The Secretary may enter into grants or contracts under this subsection with public and private entities to—

(A) assist the States in the implementation and enforcement of acceptable environmental health standards, including enforcement of standards for sanitation in migratory agricultural worker and seasonal agricultural worker labor camps, and applicable Federal and State pesticide control standards; and

(B) conduct projects and studies to assist the several States and entities which have received grants or contracts under this section in the assessment of problems related to camp and field sanitation, exposure to unsafe levels of agricultural chemicals including pesticides, and other environmental health hazards to which migratory agricultural workers and seasonal agricultural workers, and members of their families, are exposed.

(3) Definitions

For purposes of this subsection:

(A) Migratory agricultural worker

The term ''migratory agricultural worker'' means an individual whose principal employment is in agriculture, who has been so employed within the last 24 months, and who establishes for the purposes of such employment a temporary abode.

(B) Seasonal agricultural worker

The term ''seasonal agricultural worker'' means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

(C) Agriculture

The term ''agriculture'' means farming in all its branches, including—

(i) cultivation and tillage of the soil;

(ii) the production, cultivation, growing, and harvesting of any commodity grown on, in, or as an adjunct to or part of a commodity grown in or on, the land; and

(iii) any practice (including preparation and processing for market and delivery to storage or to market or to carriers for transportation to market) performed by a farmer or on a farm incident to or in conjunction with an activity described in clause (ii).

(h) Homeless population

(1) In general

The Secretary may award grants for the purposes described in subsections (c), (e), and (f) of this section for the planning and delivery of services to a special medically underserved population comprised of homeless individuals, including grants for innovative programs that provide outreach and comprehensive primary health services to homeless children and youth and children and youth at risk of homelessness.

(2) Required services

In addition to required primary health services (as defined in subsection (b)(1) of this section), an entity that receives a grant under this subsection shall be required to provide substance abuse services as a condition of such grant.

(3) Supplement not supplant requirement

A grant awarded under this subsection shall be expended to supplement, and not supplant, the expenditures of the health center and the value of in kind contributions for the delivery of services to the population described in paragraph (1).

(4) Temporary continued provision of services to certain former homeless individuals

If any grantee under this subsection has provided services described in this section under the grant to a homeless individual, such grantee may, notwithstanding that the individual is no longer homeless as a result of becoming a resident in permanent housing, expend the grant to continue to provide such services to the individual for not more than 12 months.

(5) Definitions

For purposes of this section:

(A) Homeless individual

The term ''homeless individual'' means an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations and an individual who is a resident in transitional housing.

(B) Substance abuse

The term ''substance abuse'' has the same meaning given such term in section 290cc–34(4) of this title.

(C) Substance abuse services

The term ''substance abuse services'' includes detoxification, risk reduction, outpatient treatment, residential treatment, and rehabilitation for substance abuse provided in settings other than hospitals.

(i) Residents of public housing

(1) In general

The Secretary may award grants for the purposes described in subsections (c), (e), and (f) of this section for the planning and delivery of services to a special medically underserved population comprised of residents of public housing (such term, for purposes of this subsection, shall have the same meaning given such term in section 1437a(b)(1) of this title) and individuals living in areas immediately accessible to such public housing.

(2) Supplement not supplant

A grant awarded under this subsection shall be expended to supplement, and not supplant, the expenditures of the health center and the value of in kind contributions for the delivery of services to the population described in paragraph (1).

(3) Consultation with residents

The Secretary may not make a grant under paragraph (1) unless, with respect to the residents of the public housing involved, the applicant for the grant—

(A) has consulted with the residents in the preparation of the application for the grant; and

(B) agrees to provide for ongoing consultation with the residents regarding the planning and administration of the program carried out with the grant.

(j) Access grants

(1) In general

The Secretary may award grants to eligible health centers with a substantial number of clients with limited English speaking proficiency to provide translation, interpretation, and other such services for such clients with limited English speaking proficiency.

(2) Eligible health center

In this subsection, the term ''eligible health center'' means an entity that—

(A) is a health center as defined under subsection (a) of this section;

(B) provides health care services for clients for whom English is a second language; and

(C) has exceptional needs with respect to linguistic access or faces exceptional challenges with respect to linguistic access.

(3) Grant amount

The amount of a grant awarded to a center under this subsection shall be determined by the Administrator. Such determination of such amount shall be based on the number of clients for whom English is a second language that is served by such center, and larger grant amounts shall be awarded to centers serving larger numbers of such clients.

(4) Use of funds

An eligible health center that receives a grant under this subsection may use funds received through such grant to—

(A) provide translation, interpretation, and other such services for clients for whom English is a second language, including hiring professional translation and interpretation services; and

(B) compensate bilingual or multilingual staff for language assistance services provided by the staff for such clients.

(5) Application

An eligible health center desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, including—

(A) an estimate of the number of clients that the center serves for whom English is a second language;

(B) the ratio of the number of clients for whom English is a second language to the total number of clients served by the center;

(C) a description of any language assistance services that the center proposes to provide to aid clients for whom English is a second language; and

(D) a description of the exceptional needs of such center with respect to linguistic access or a description of the exceptional challenges faced by such center with respect to linguistic access.

(6) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection, in addition to any funds authorized to be appropriated or appropriated for health centers under any other subsection of this section, such sums as may be necessary for each of fiscal years 2002 through 2006.

(k) Applications

(1) Submission

No grant may be made under this section unless an application therefore is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe.

(2) Description of need

An application for a grant under subparagraph (A) or (B) of subsection (e)(1) of this section for a health center shall include—

(A) a description of the need for health services in the catchment area of the center;

(B) a demonstration by the applicant that the area or the population group to be served by the applicant has a shortage of personal health services; and

(C) a demonstration that the center will be located so that it will provide services to the greatest number of individuals residing in the catchment area or included in such population group.

Such a demonstration shall be made on the basis of the criteria prescribed by the Secretary under subsection (b)(3) of this section or on any other criteria which the Secretary may prescribe to determine if the area or population group to be served by the applicant has a shortage of personal health services. In considering an application for a grant under subparagraph (A) or (B) of subsection (e)(1) of this section, the Secretary may require as a condition to the approval of such application an assurance that the applicant will provide any health service defined under paragraphs (1) and (2) of subsection (b) of this section that the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided to the applicant.

(3) Requirements

Except as provided in subsection (e)(1)(B) of this section, the Secretary may not approve an application for a grant under subparagraph (A) or (B) of subsection (e)(1) of this section unless the Secretary determines that the entity for which the application is submitted is a health center (within the meaning of subsection (a) of this section) and that—

(A) the required primary health services of the center will be available and accessible in the catchment area of the center promptly, as appropriate, and in a manner which assures continuity;

(B) the center has made and will continue to make every reasonable effort to establish and maintain collaborative relationships with other health care providers in the catchment area of the center;

(C) the center will have an ongoing quality improvement system that includes clinical services and management, and that maintains the confidentiality of patient records;

(D) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(E) the center—

(i)(I) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan; and

(II) has or will have a contractual or other arrangement with the State agency administering the program under title XXI of such Act (42 U.S.C. 1397aa et seq.) with respect to individuals who are State children's health insurance program beneficiaries; or

(ii) has made or will make every reasonable effort to enter into arrangements described in subclauses (I) and (II) of clause (i);

(F) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.], or to assistance for medical expenses under any other public assistance program or private health insurance program;

(G) the center—

(i) has prepared a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and designed to cover its reasonable costs of operation and has prepared a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay;

(ii) has made and will continue to make every reasonable effort—

(I) to secure from patients payment for services in accordance with such schedules; and

(II) to collect reimbursement for health services to persons described in subparagraph (F) on the basis of the full amount of fees and payments for such services without application of any discount;

(iii)(I) will assure that no patient will be denied health care services due to an individual's inability to pay for such services; and

(II) will assure that any fees or payments required by the center for such services will be reduced or waived to enable the center to fulfill the assurance described in subclause (I); and

(iv) has submitted to the Secretary such reports as the Secretary may require to determine compliance with this subparagraph;

(H) the center has established a governing board which except in the case of an entity operated by an Indian tribe or tribal or Indian organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or an urban Indian organization under the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.)—

(i) is composed of individuals, a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center;

(ii) meets at least once a month, selects the services to be provided by the center, schedules the hours during which such

services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a governing board of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and

(iii) in the case of an application for a second or subsequent grant for a public center, has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

except that, upon a showing of good cause the Secretary shall waive, for the length of the project period, all or part of the requirements of this subparagraph in the case of a health center that receives a grant pursuant to subsection (g), (h), (i), or (p) of this section;

(I) the center has developed—

(i) an overall plan and budget that meets the requirements of the Secretary; and

(ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to—

(I) the costs of its operations;

(II) the patterns of use of its services;

(III) the availability, accessibility, and acceptability of its services; and

(IV) such other matters relating to operations of the applicant as the Secretary may require;

(J) the center will review periodically its catchment area to—

(i) ensure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the residents of the area promptly and as appropriate;

(ii) ensure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs; and

(iii) ensure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social grouping, and available transportation;

(K) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has—

(i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals; and

(ii) identified an individual on its staff who is fluent in both that language and in English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences;

(L) the center, has developed an ongoing referral relationship with one or more hospitals; and

(M) the center encourages persons receiving or seeking health services from the center to participate in any public or private (including employer-offered) health programs or plans for which the persons are eligible, so long as the center, in complying with this subparagraph, does not violate the requirements of subparagraph (G)(iii)(I).

For purposes of subparagraph (H), the term ''public center'' means a health center funded (or to be funded) through a grant under this section to a public agency.

(4) Approval of new or expanded service applications

The Secretary shall approve applications for grants under subparagraph (A) or (B) of subsection (e)(1) of this section for health centers which—

(A) have not received a previous grant under such subsection; or

(B) have applied for such a grant to expand their services;

in such a manner that the ratio of the medically underserved populations in rural areas which may be expected to use the services provided by such centers to the medically underserved populations in urban areas which may be expected to use the services provided by such centers is not less than two to three or greater than three to two.

***(l)* Technical assistance**

The Secretary shall establish a program through which the Secretary shall provide (either through the Department of Health and Human Services or by grant or contract) technical and other assistance to eligible entities to assist such entities to meet the requirements of subsection (k)(3) of this section. Services provided through the program may include necessary technical and nonfinancial assistance, including fiscal and program management assistance, training in fiscal and program management, operational and administrative support, and the provision of information to the entities of the variety of resources available under this subchapter and how those resources can be best used to meet the health needs of the communities served by the entities.

(m) Memorandum of agreement

In carrying out this section, the Secretary may enter into a memorandum of agreement with a State. Such memorandum may include, where appropriate, provisions permitting such State to—

(1) analyze the need for primary health services for medically underserved populations within such State;

(2) assist in the planning and development of new health centers;

(3) review and comment upon annual program plans and budgets of health centers, including comments upon allocations of health care resources in the State;

(4) assist health centers in the development of clinical practices and fiscal and administrative systems through a technical assistance plan which is responsive to the requests of health centers; and

(5) share information and data relevant to the operation of new and existing health centers.

(n) Records

(1) In general

Each entity which receives a grant under subsection (e) of this section shall establish and maintain such records as the Secretary shall require.

(2) Availability

Each entity which is required to establish and maintain records under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying or mechanical reproduction on or off the premises of such entity upon a reasonable request therefore. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to conduct such examination, copying, and reproduction.

(*o*) Delegation of authority

The Secretary may delegate the authority to administer the programs authorized by this section to any office, except that the authority to enter into, modify, or issue approvals with respect to grants or contracts may be delegated only within the central office of the Health Resources and Services Administration.

(p) Special consideration

In making grants under this section, the Secretary shall give special consideration to the unique needs of sparsely populated rural areas, including giving priority in the awarding of grants for new health centers under subsections (c) and (e) of this section, and the granting of waivers as appropriate and permitted under subsections (b)(1)(B)(i) and (k)(3)(G) of this section.

(q) Audits

(1) In general

Each entity which receives a grant under this section shall provide for an independent annual financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant and such other funds received by or allocated to the project for which such grant was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with generally accepted accounting principles. Each audit shall evaluate—

(A) the entity's implementation of the guidelines established by the Secretary respecting cost accounting,

(B) the processes used by the entity to meet the financial and program reporting requirements of the Secretary, and

(C) the billing and collection procedures of the entity and the relation of the procedures to its fee schedule and schedule of discounts and to the availability of health insurance and public programs to pay for the health services it provides.

A report of each such audit shall be filed with the Secretary at such time and in such manner as the Secretary may require.

(2) Records

Each entity which receives a grant under this section shall establish and maintain such records as the Secretary shall by regulation require to facilitate the audit required by paragraph (1). The Secretary may specify by regulation the form and manner in which such records shall be established and maintained.

(3) Availability of records

Each entity which is required to establish and maintain records or to provide for and[2] audit under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying or mechanical reproduction on or off the premises of such entity upon a reasonable request therefore. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to conduct such examination, copying, and reproduction.

(4) Waiver

The Secretary may, under appropriate circumstances, waive the application of all or part of the requirements of this subsection with respect to an entity.

(r) Authorization of appropriations

(1) In general

For the purpose of carrying out this section, in addition to the amounts authorized to be appropriated under subsection (d) of this section, there are authorized to be appropriated $1,340,000,000 for fiscal year 2002 and such sums as may be necessary for each of the fiscal years 2003 through 2006.

(2) Special provisions

(A) Public centers

The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (k)(3) of this section) the governing boards of which (as described in subsection (k)(3)(H) of this section) do not establish general policies for such centers, an amount which exceeds 5 percent of the amounts appropriated under this section for that fiscal year. For purposes of applying the preceding sentence, the term ''public centers'' shall not include health centers that receive grants pursuant to subsection (h) or (i) of this section.

(B) Distribution of grants

For fiscal year 2002 and each of the following fiscal years, the Secretary, in awarding

[2] So in original. Probably should be ''an''.

grants under this section, shall ensure that the proportion of the amount made available under each of subsections (g), (h), and (i) of this section, relative to the total amount appropriated to carry out this section for that fiscal year, is equal to the proportion of the amount made available under that subsection for fiscal year 2001, relative to the total amount appropriated to carry out this section for fiscal year 2001.

(3) Funding report

The Secretary shall annually prepare and submit to the appropriate committees of Congress a report concerning the distribution of funds under this section that are provided to meet the health care needs of medically underserved populations, including the homeless, residents of public housing, and migratory and seasonal agricultural workers, and the appropriateness of the delivery systems involved in responding to the needs of the particular populations. Such report shall include an assessment of the relative health care access needs of the targeted populations and the rationale for any substantial changes in the distribution of funds.

(July 1, 1944, ch. 373, title III, § 330, as added Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626; amended Pub. L. 107–251, title I, § 101, Oct. 26, 2002, 116 Stat. 1622; Pub. L. 108–163, § 2(a), Dec. 6, 2003, 117 Stat. 2020.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (d)(1)(E), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. The Credit Reform Act of 1990, referred to in subsec. (d)(4)(A), probably means the Federal Credit Reform Act of 1990. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

The Social Security Act, referred to in subsec. (k)(3)(E)(i), (F), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Indian Self-Determination Act, referred to in subsec. (k)(3)(H), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (k)(3)(H), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§ 1601 et seq.) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 254a–1, act July 1, 1944, ch. 373, title III, § 328, as added Nov. 10, 1978, Pub. L. 95–626, title I, § 114, 92 Stat. 3563; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to hospital-affiliated primary care centers, prior to repeal by Pub. L. 99–117, § 12(c), Oct. 7, 1985, 99 Stat. 495.

A prior section 254b, act July 1, 1944, ch. 373, title III, § 329, formerly § 310, as added Sept. 25, 1962, Pub. L. 87–692, 76 Stat. 592; amended Aug. 5, 1965, Pub. L. 89–109, § 3, 79 Stat. 436; Oct. 15, 1968, Pub. L. 90–574, title II, § 201, 82 Stat. 1006; Mar. 12, 1970, Pub. L. 91–209, 84 Stat. 52; June 18, 1973, Pub. L. 93–45, title I, § 105, 87 Stat. 91; renumbered § 319, July 23, 1974, Pub. L. 93–353, title I, § 102(d), 88 Stat. 362; amended July 29, 1975, Pub. L. 94–63, title IV, § 401(a), title VII, § 701(c), 89 Stat. 334, 352; Apr. 22, 1976, Pub. L. 94–278, title VIII, § 801(a), 90 Stat. 414; Aug. 1, 1977, Pub. L. 95–83, title III, § 303, 91 Stat. 388; renumbered § 329 and amended Nov. 10, 1978, Pub. L. 95–626, title I, §§ 102(a), 103(a)–(g)(1)(B), (2), (h), (i), 92 Stat. 3551–3555; July 10, 1979, Pub. L. 96–32, § 6(a), 93 Stat. 83; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title IX, § 930, 95 Stat. 569; Dec. 21, 1982, Pub. L. 97–375, title I, § 107(b), 96 Stat. 1820; Apr. 24, 1986, Pub. L. 99–280, §§ 6, 7, 100 Stat. 400, 401; Aug. 10, 1988, Pub. L. 100–386, § 2, 102 Stat. 919; Nov. 6, 1990, Pub. L. 101–527, § 9(b), 104 Stat. 2333; Oct. 27, 1992, Pub. L. 102–531, title III, § 309(a), 106 Stat. 3499, related to migrant health centers, prior to the general amendment of this subpart by Pub. L. 104–299, § 2.

Another prior section 254b, act July 1, 1944, ch. 373, title III, § 329, as added Dec. 31, 1970, Pub. L. 91–623, § 2, 84 Stat. 1868; amended Nov. 18, 1971, Pub. L. 92–157, title II, § 203, 85 Stat. 462; Oct. 27, 1972, Pub. L. 92–585, § 2, 86 Stat. 1290; July 29, 1975, Pub. L. 94–63, title VIII, §§ 801–803, 89 Stat. 353, 354; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(b), 90 Stat. 2244, related to establishment of National Health Service Corps, assignment of personnel and statement of purpose, prior to repeal by Pub. L. 94–484, title IV, § 407(b)(1), Oct. 12, 1976, 90 Stat. 2268. See section 254d et seq. of this title.

A prior section 330 of act July 1, 1944, was classified to section 254c of this title prior to the general amendment of this subpart by Pub. L. 104–299.

AMENDMENTS

2003—Subsec. (c)(1)(B). Pub. L. 108–163, § 2(a)(2)(A), substituted ''plan.'' for ''plan..'' in introductory provisions.

Subsec. (d)(1)(B)(iii)(I). Pub. L. 108–163, § 2(a)(2)(B), inserted ''or'' at end.

Subsec. (e)(3) to (5). Pub. L. 108–163, § 2(a)(1)(A), amended pars. (3) to (5) to read as if subpar. (C) of the second par. (4) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment notes below.

Subsec. (j). Pub. L. 108–163, § 2(a)(2)(E), added subsec. (j) identical to the subsec. (j) appearing in the amendment by section 101(8)(C) of Pub. L. 107–251. See 2002 Amendment notes below. Former subsec. (j) redesignated (k).

Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (j) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment notes below.

Subsec. (j)(3)(H). Pub. L. 108–163, § 2(a)(1)(B), amended subpar. (H) to read as if subpar. (C) of par. (7) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment note below.

Subsec. (k). Pub. L. 108–163, § 2(a)(2)(C), (D), redesignated subsec. (j) as (k) and struck out heading and text of former subsec. (k). Text read as follows: ''The Secretary may provide (either through the Department of Health and Human Services or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any public or private nonprofit entity to assist entities in developing plans for, or operating as, health centers, and in meeting the requirements of subsection (j)(2) of this section.''

Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (k) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment notes below.

Subsec. (*l*). Pub. L. 108–163, § 2(a)(2)(H), inserted ''(either through the Department of Health and Human Services or by grant or contract)'' after ''shall provide'' and substituted ''(k)(3)'' for ''(*l*)(3)''.

Pub. L. 108–163, § 2(a)(2)(G), added subsec. (*l*) identical to the subsec. (m) appearing in the amendment by sec-

tion 101(9) of Pub. L. 107–251. See 2002 Amendment notes below. Former subsec. (*l*) redesignated (r).

Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (*l*) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment note below.

Subsecs. (m) to (*o*). Pub. L. 108–163, § 2(a)(1)(C), amended subsecs. (m) to (*o*) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment notes below.

Subsec. (p). Pub. L. 108–163, § 2(a)(2)(I), substituted ''(k)(3)(G)'' for ''(j)(3)(G)''.

Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (p) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment note below.

Subsec. (q). Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (q) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment note below.

Subsec. (r). Pub. L. 108–163, § 2(a)(2)(F), redesignated subsec. (*l*) as (r).

Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (r) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment note below.

Subsec. (r)(1). Pub. L. 108–163, § 2(a)(2)(J)(i), substituted ''$1,340,000,000 for fiscal year 2002 and such sums as may be necessary for each of the fiscal years 2003 through 2006'' for ''$802,124,000 for fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2001''.

Subsec. (r)(2)(A). Pub. L. 108–163, § 2(a)(2)(J)(ii), substituted ''(k)(3)'' for ''(j)(3)'' and ''(k)(3)(H)'' for ''(j)(3)(G)(ii)''.

Subsec. (r)(2)(B). Pub. L. 108–163, § 2(a)(2)(J)(iii), added subpar. (B) identical to the subpar. (B) appearing in the amendment by section 101(11)(B)(ii) of Pub. L. 107–251 and struck out heading and text of former subpar. (B) relating to distribution of grants for fiscal years 1997 through 1999. See 2002 Amendment note below.

Subsec. (s). Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (s) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment notes below.

2002—Subsec. (b)(1)(A)(i)(III)(bb). Pub. L. 107–251, § 101(1)(A), substituted ''appropriate cancer screening'' for ''screening for breast and cervical cancer''.

Subsec. (b)(1)(A)(ii). Pub. L. 107–251, § 101(1)(B), inserted ''(including specialty referral when medically indicated)'' after ''medical services''.

Subsec. (b)(1)(A)(iii). Pub. L. 107–251, § 101(1)(C), inserted ''housing,'' after ''social,''.

Subsec. (b)(2)(A). Pub. L. 107–251, § 101(2)(C), added subpar. (A). Former subpar. (A) redesignated (C).

Subsec. (b)(2)(A)(i). Pub. L. 107–251, § 101(2)(A), substituted ''associated with—'' and subcls. (I) to (IV) for ''associated with water supply;''.

Subsec. (b)(2)(B) to (D). Pub. L. 107–251, § 101(2)(B), (C), added subpar. (B) and redesignated former subpars. (A) and (B) as (C) and (D), respectively.

Subsec. (c)(1)(B). Pub. L. 107–251, § 101(3)(A)(iii), struck out concluding provisions which read as follows: ''Any such grant may include the acquisition and lease of buildings and equipment which may include data and information systems (including the costs of amortizing the principal of, and paying the interest on, loans), and providing training and technical assistance related to the provision of health services on a prepaid basis or under another managed care arrangement, and for other purposes that promote the development of managed care networks and plans.''

Pub. L. 107–251, § 101(3)(A)(ii), in introductory provisions, substituted ''managed care network or plan.'' for ''network or plan for the provision of health services, which may include the provision of health services on a prepaid basis or through another managed care arrangement, to some or to all of the individuals which the centers serve''.

Pub. L. 107–251, § 101(3)(A)(i), substituted ''Managed care'' for ''Comprehensive service delivery'' in heading.

Subsec. (c)(1)(C), (D). Pub. L. 107–251, § 101(3)(B), added subpars. (C) and (D).

Subsec. (d). Pub. L. 107–251, § 101(4)(A), substituted ''Loan guarantee program'' for ''Managed care loan guarantee program'' in heading.

Subsec. (d)(1)(A). Pub. L. 107–251, § 101(4)(B)(i), substituted ''up to 90 percent of the principal and interest on loans made by non-Federal lenders to health centers, funded under this section, for the costs of developing and operating managed care networks or plans described in subsection (c)(1)(B) of this section, or practice management networks described in subsection (c)(1)(C) of this section'' for ''the principal and interest on loans made by non-Federal lenders to health centers funded under this section for the costs of developing and operating managed care networks or plans''.

Subsec. (d)(1)(B)(iii). Pub. L. 107–251, § 101(4)(B)(ii), added cl. (iii).

Subsec. (d)(1)(D), (E). Pub. L. 107–251, § 101(4)(B)(iii), added subpars. (D) and (E).

Subsec. (d)(6) to (8). Pub. L. 107–251, § 101(4)(C), redesignated par. (8) as (6) and struck out headings and text of former pars. (6) and (7) which related to annual reports and program evaluation, respectively.

Subsec. (e)(1)(B). Pub. L. 107–251, § 101(4)(A)(i), substituted ''subsection (k)(3)'' for ''subsection (j)(3)''.

Subsec. (e)(1)(C). Pub. L. 107–251, § 101(4)(A)(ii), added subpar. (C).

Subsec. (e)(3). Pub. L. 107–251, § 101(4)(C), redesignated par. (4), relating to limitation, as (3).

Subsec. (e)(4). Pub. L. 107–251, § 101(4)(C), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(5). Pub. L. 107–251, § 101(4)(B), (C), redesignated par. (5) as (4), inserted ''subparagraphs (A) and (B) of'' after ''any fiscal year under'' in subpar. (A), added subpar. (B), and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (g)(2)(A). Pub. L. 107–251, § 101(5)(A)(i), inserted ''and seasonal agricultural worker'' after ''migratory agricultural worker''.

Subsec. (g)(2)(B). Pub. L. 107–251, § 101(5)(A)(ii), substituted ''and seasonal agricultural workers, and members of their families,'' for ''and members of their families''.

Subsec. (g)(3)(A). Pub. L. 107–251, § 101(5)(B), struck out ''on a seasonal basis'' after ''in agriculture''.

Subsec. (h)(1). Pub. L. 107–251, § 101(6)(A), substituted ''homeless children and youth and children and youth at risk of homelessness'' for ''homeless children and children at risk of homelessness''.

Subsec. (h)(4). Pub. L. 107–251, § 101(6)(B)(ii), added par. (4). Former par. (4) redesignated (5).

Subsec. (h)(5). Pub. L. 107–251, § 101(6)(B)(i), (C), redesignated par. (4) as (5) and substituted '', risk reduction, outpatient treatment, residential treatment, and rehabilitation'' for ''and residential treatment'' in subpar. (C).

Subsec. (j). Pub. L. 107–251, § 101(8)(C), added subsec. (j) relating to access grants.

Pub. L. 107–251, § 101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (j)(3)(E)(i). Pub. L. 107–251, § 101(7)(A)(i), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (j)(3)(E)(ii). Pub. L. 107–251, § 101(7)(A)(ii), substituted ''arrangements described in subclauses (I) and (II) of clause (i)'' for ''such an arrangement''.

Subsec. (j)(3)(G)(iii), (iv). Pub. L. 107–251, § 101(7)(B), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (j)(3)(H). Pub. L. 107–251, § 101(7)(C), substituted ''or (q)'' for ''or (p)'' in concluding provisions.

Subsec. (j)(3)(M). Pub. L. 107–251, § 101(7)(D)–(F), added subpar. (M).

Subsec. (k). Pub. L. 107–251, § 101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (*l*). Pub. L. 107–251, § 101(8)(A), redesignated subsec. (*l*) as (s).

Subsec. (m). Pub. L. 107–251, § 101(9), which directed striking subsec. (m) (as redesignated by paragraph (9)(B)) and adding a new subsec. (m), could not be executed. The new subsec. (m) to be added read as follows: ''(m) TECHNICAL ASSISTANCE.—The Secretary shall establish a program through which the Secretary shall provide technical and other assistance to eligible entities to assist such entities to meet the requirements of subsection (*l*)(3) of this section. Services provided through the program may include necessary technical and nonfinancial assistance, including fiscal and program management assistance, training in fiscal and program management, operational and administrative support, and the provision of information to the entities of the variety of resources available under this subchapter and how those resources can be best used to meet the health needs of the communities served by the entities.''

Pub. L. 107–251, § 101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsecs. (n) to (p). Pub. L. 107–251, § 101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (q). Pub. L. 107–251, § 101(10), which directed the substitution of ''(*l*)(3)(G)'' for ''(j)(3)(G)'' in subsec. (q) ''(as redesignated by paragraph (9)(B))'', could not be executed.

Pub. L. 107–251, § 101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (r). Pub. L. 107–251, § 101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (s). Pub. L. 107–251, § 101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (s)(1). Pub. L. 107–251, § 101(11)(A), substituted ''$1,340,000,000 for fiscal year 2002 and such sums as may be necessary for each of the fiscal years 2003 through 2006'' for ''$802,124,000 for fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2001''.

Subsec. (s)(2)(A). Pub. L. 107–251, § 101(11)(B)(i), substituted ''(*l*)(3)'' for ''(j)(3)'' and ''(*l*)(3)(H)'' for ''(j)(3)(G)(ii)''.

Subsec. (s)(2)(B). Pub. L. 107–251, § 101(11)(B)(ii), added subpar. (B) and struck out heading and text of former subpar. (B) relating to distribution of grants for fiscal years 1997 through 1999.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendments by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 5 of Pub. L. 104–299, as amended, set out as an Effective Date of 1996 Amendment note under section 233 of this title.

SAVINGS PROVISION FOR CURRENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

Section 3(b) of Pub. L. 104–299 provided that: ''The Secretary of Health and Human Services shall ensure the continued funding of grants made, or contracts or cooperative agreements entered into, under subpart I of part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) (as such subpart existed on the day prior to the date of enactment of this Act [Oct. 11, 1996]), until the expiration of the grant period or the term of the contract or cooperative agreement. Such funding shall be continued under the same terms and conditions as were in effect on the date on which the grant, contract or cooperative agreement was awarded, subject to the availability of appropriations.''

GUARANTEE STUDY

Pub. L. 107–251, title V, § 501, Oct. 26, 2002, 116 Stat. 1664, as amended by Pub. L. 108–163, § 2(n)(2), Dec. 6, 2003, 117 Stat. 2023, provided that: ''The Secretary of Health and Human Services shall conduct a study regarding the ability of the Department of Health and Human Services to provide for guarantees of solvency for managed care networks or plans involving health centers receiving funding under section 330 of the Public Health Service Act [this section]. The Secretary shall prepare and submit a report to the appropriate Committees of Congress regarding such ability not later than 2 years after the date of enactment of the Health Care Safety Net Amendments of 2002 [Oct. 26, 2002].''

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Section 4(c) of Pub. L. 104–299 provided that: ''Whenever any reference is made in any provision of law, regulation, rule, record, or document to a community health center, migrant health center, public housing health center, or homeless health center, such reference shall be considered a reference to a health center.''

LEGISLATIVE PROPOSAL FOR CHANGES CONFORMING TO PUB. L. 104–299

Section 4(e) of Pub. L. 104–299 provided that: ''After consultation with the appropriate committees of the Congress, the Secretary of Health and Human Services shall prepare and submit to the Congress a legislative proposal in the form of an implementing bill containing technical and conforming amendments to reflect the changes made by this Act [see Short Title of 1996 Amendments note set out under section 201 of this title].''

§ 254c. Rural health care services outreach, rural health network development, and small health care provider quality improvement grant programs

(a) Purpose

The purpose of this section is to provide grants for expanded delivery of health care services in rural areas, for the planning and implementation of integrated health care networks in rural areas, and for the planning and implementation of small health care provider quality improvement activities.

(b) Definitions

(1) Director

The term ''Director'' means the Director specified in subsection (d) of this section.

(2) Federally qualified health center; rural health clinic

The terms ''Federally qualified health center'' and ''rural health clinic'' have the meanings given the terms in section 1395x(aa) of this title.

(3) Health professional shortage area

The term ''health professional shortage area'' means a health professional shortage area designated under section 254e of this title.

(4) Medically underserved community

The term ''medically underserved community'' has the meaning given the term in section 295p(6) of this title.

(5) Medically underserved population

The term ''medically underserved population'' has the meaning given the term in section 254b(b)(3) of this title.

(c) Program

The Secretary shall establish, under section 241 of this title, a small health care provider quality improvement grant program.

(d) Administration

(1) Programs

The rural health care services outreach, rural health network development, and small health care provider quality improvement grant programs established under section 241 of this title shall be administered by the Director of the Office of Rural Health Policy of the Health Resources and Services Administration, in consultation with State offices of rural health or other appropriate State government entities.

(2) Grants

(A) In general

In carrying out the programs described in paragraph (1), the Director may award grants under subsections (e), (f), and (g) of this section to expand access to, coordinate, and improve the quality of essential health care services, and enhance the delivery of health care, in rural areas.

(B) Types of grants

The Director may award the grants—

(i) to promote expanded delivery of health care services in rural areas under subsection (e) of this section;

(ii) to provide for the planning and implementation of integrated health care networks in rural areas under subsection (f) of this section; and

(iii) to provide for the planning and implementation of small health care provider quality improvement activities under subsection (g) of this section.

(e) Rural health care services outreach grants

(1) Grants

The Director may award grants to eligible entities to promote rural health care services outreach by expanding the delivery of health care services to include new and enhanced services in rural areas. The Director may award the grants for periods of not more than 3 years.

(2) Eligibility

To be eligible to receive a grant under this subsection for a project, an entity—

(A) shall be a rural public or rural nonprofit private entity;

(B) shall represent a consortium composed of members—

(i) that include 3 or more health care providers; and

(ii) that may be nonprofit or for-profit entities; and

(C) shall not previously have received a grant under this subsection for the same or a similar project, unless the entity is proposing to expand the scope of the project or the area that will be served through the project.

(3) Applications

To be eligible to receive a grant under this subsection, an eligible entity, in consultation with the appropriate State office of rural health or another appropriate State entity, shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—

(A) a description of the project that the eligible entity will carry out using the funds provided under the grant;

(B) a description of the manner in which the project funded under the grant will meet the health care needs of rural underserved populations in the local community or region to be served;

(C) a description of how the local community or region to be served will be involved in the development and ongoing operations of the project;

(D) a plan for sustaining the project after Federal support for the project has ended;

(E) a description of how the project will be evaluated; and

(F) other such information as the Secretary determines to be appropriate.

(f) Rural health network development grants

(1) Grants

(A) In general

The Director may award rural health network development grants to eligible entities to promote, through planning and implementation, the development of integrated health care networks that have combined the functions of the entities participating in the networks in order to—

(i) achieve efficiencies;

(ii) expand access to, coordinate, and improve the quality of essential health care services; and

(iii) strengthen the rural health care system as a whole.

(B) Grant periods

The Director may award such a rural health network development grant for implementation activities for a period of 3 years. The Director may also award such a rural health network development grant for planning activities for a period of 1 year, to assist in the development of an integrated health care network, if the proposed participants in the network do not have a history of collaborative efforts and a 3-year grant would be inappropriate.

(2) Eligibility

To be eligible to receive a grant under this subsection, an entity—

(A) shall be a rural public or rural nonprofit private entity;

(B) shall represent a network composed of participants—

(i) that include 3 or more health care providers; and

(ii) that may be nonprofit or for-profit entities; and

(C) shall not previously have received a grant under this subsection (other than a grant for planning activities) for the same or a similar project.

(3) Applications

To be eligible to receive a grant under this subsection, an eligible entity, in consultation with the appropriate State office of rural health or another appropriate State entity, shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—

(A) a description of the project that the eligible entity will carry out using the funds provided under the grant;

(B) an explanation of the reasons why Federal assistance is required to carry out the project;

(C) a description of—

(i) the history of collaborative activities carried out by the participants in the network;

(ii) the degree to which the participants are ready to integrate their functions; and

(iii) how the local community or region to be served will benefit from and be involved in the activities carried out by the network;

(D) a description of how the local community or region to be served will experience increased access to quality health care services across the continuum of care as a result of the integration activities carried out by the network;

(E) a plan for sustaining the project after Federal support for the project has ended;

(F) a description of how the project will be evaluated; and

(G) other such information as the Secretary determines to be appropriate.

(g) Small health care provider quality improvement grants

(1) Grants

The Director may award grants to provide for the planning and implementation of small health care provider quality improvement activities. The Director may award the grants for periods of 1 to 3 years.

(2) Eligibility

To be eligible for a grant under this subsection, an entity—

(A)(i) shall be a rural public or rural nonprofit private health care provider or provider of health care services, such as a critical access hospital or a rural health clinic; or

(ii) shall be another rural provider or network of small rural providers identified by the Secretary as a key source of local care; and

(B) shall not previously have received a grant under this subsection for the same or a similar project.

(3) Applications

To be eligible to receive a grant under this subsection, an eligible entity, in consultation with the appropriate State office of rural health or another appropriate State entity shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—

(A) a description of the project that the eligible entity will carry out using the funds provided under the grant;

(B) an explanation of the reasons why Federal assistance is required to carry out the project;

(C) a description of the manner in which the project funded under the grant will assure continuous quality improvement in the provision of services by the entity;

(D) a description of how the local community or region to be served will experience increased access to quality health care services across the continuum of care as a result of the activities carried out by the entity;

(E) a plan for sustaining the project after Federal support for the project has ended;

(F) a description of how the project will be evaluated; and

(G) other such information as the Secretary determines to be appropriate.

(4) Expenditures for small health care provider quality improvement grants

In awarding a grant under this subsection, the Director shall ensure that the funds made available through the grant will be used to provide services to residents of rural areas. The Director shall award not less than 50 percent of the funds made available under this subsection to providers located in and serving rural areas.

(h) General requirements

(1) Prohibited uses of funds

An entity that receives a grant under this section may not use funds provided through the grant—

(A) to build or acquire real property; or

(B) for construction.

(2) Coordination with other agencies

The Secretary shall coordinate activities carried out under grant programs described in this section, to the extent practicable, with Federal and State agencies and nonprofit organizations that are operating similar grant programs, to maximize the effect of public dollars in funding meritorious proposals.

(3) Preference

In awarding grants under this section, the Secretary shall give preference to entities that—

(A) are located in health professional shortage areas or medically underserved communities, or serve medically underserved populations; or

(B) propose to develop projects with a focus on primary care, and wellness and prevention strategies.

(i) Report

Not later than September 30, 2005, the Secretary shall prepare and submit to the appropriate committees of Congress a report on the progress and accomplishments of the grant pro-

grams described in subsections (e), (f), and (g) of this section.

(j) Authorization of appropriations

There are authorized to be appropriated to carry out this section $40,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title III, § 330A, as added Pub. L. 104–299, § 3(a), Oct. 11, 1996, 110 Stat. 3642; amended Pub. L. 107–251, title II, § 201, Oct. 26, 2002, 116 Stat. 1628; Pub. L. 108–163, § 2(b), Dec. 6, 2003, 117 Stat. 2021.)

PRIOR PROVISIONS

A prior section 254c, act July 1, 1944, ch. 373, title III, § 330, as added July 29, 1975, Pub. L. 94–63, title V, § 501(a), 89 Stat. 342; amended Apr. 22, 1976, Pub. L. 94–278, title VIII, § 801(b), 90 Stat. 415; Aug. 1, 1977, Pub. L. 95–83, title III, § 304, 91 Stat. 388; Nov. 10, 1978, Pub. L. 95–626, title I, § 104(a)–(d)(3)(B), (4), (5), (e), (f), 92 Stat. 3556–3559; July 10, 1979, Pub. L. 96–32, §§ 6(b)–(d), 7(c), 93 Stat. 83, 84; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Oct. 19, 1980, Pub. L. 96–470, title I, § 106(e), 94 Stat. 2238; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 903(a), 905, 906, 95 Stat. 561, 562; Jan. 4, 1983, Pub. L. 97–414, § 8(e), 96 Stat. 2060; Apr. 24, 1986, Pub. L. 99–280, §§ 2–4, 100 Stat. 399, 400; Aug. 10, 1988, Pub. L. 100–386, §§ 3, 4, 102 Stat. 921, 923; Nov. 4, 1988, Pub. L. 100–607, title I, § 163(3), 102 Stat. 3062; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(e)(5), 103 Stat. 2207; Nov. 6, 1990, Pub. L. 101–527, § 9(a), 104 Stat. 2332; Oct. 27, 1992, Pub. L. 102–531, title III, § 309(b), 106 Stat. 3500, related to community health centers, prior to the general amendment of this subpart by Pub. L. 104–299, § 2.

AMENDMENTS

2003—Subsec. (b)(4). Pub. L. 108–163 substituted ''section 295p(6)'' for ''section 295p''.

2002—Pub. L. 107–251 amended section generally. Prior to amendment, section related to a rural health outreach, network development, and telemedicine grant program, and in subsec. (a), provided for administration by the Office of Rural Health Policy; in subsec. (b), set out the objectives of grants; in subsec. (c), set out eligibility requirements; in subsec. (d), described preferred characteristics of applicant networks; in subsec. (e), specified permitted uses of grant funds; in subsec. (f), limited the duration of grants; and in subsec. (g), authorized appropriations.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 5 of Pub. L. 104–299, as amended, set out as an Effective Date of 1996 Amendment note under section 233 of this title.

RURAL ACCESS TO EMERGENCY DEVICES

Pub. L. 106–505, title IV, subtitle B, Nov. 13, 2000, 114 Stat. 2340, provided that:

''SEC. 411. SHORT TITLE.

''This subtitle may be cited as the 'Rural Access to Emergency Devices Act' or the 'Rural AED Act'.

''SEC. 412. FINDINGS.

''Congress makes the following findings:

''(1) Heart disease is the leading cause of death in the United States.

''(2) The American Heart Association estimates that 250,000 Americans die from sudden cardiac arrest each year.

''(3) A cardiac arrest victim's chance of survival drops 10 percent for every minute that passes before his or her heart is returned to normal rhythm.

''(4) Because most cardiac arrest victims are initially in ventricular fibrillation, and the only treatment for ventricular fibrillation is defibrillation, prompt access to defibrillation to return the heart to normal rhythm is essential.

''(5) Lifesaving technology, the automated external defibrillator, has been developed to allow trained lay rescuers to respond to cardiac arrest by using this simple device to shock the heart into normal rhythm.

''(6) Those people who are likely to be first on the scene of a cardiac arrest situation in many communities, particularly smaller and rural communities, lack sufficient numbers of automated external defibrillators to respond to cardiac arrest in a timely manner.

''(7) The American Heart Association estimates that more than 50,000 deaths could be prevented each year if defibrillators were more widely available to designated responders.

''(8) Legislation should be enacted to encourage greater public access to automated external defibrillators in communities across the United States.

''SEC. 413. GRANTS.

''(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Rural Health Outreach Office of the Health Resources and Services Administration, shall award grants to community partnerships that meet the requirements of subsection (b) to enable such partnerships to purchase equipment and provide training as provided for in subsection (c).

''(b) COMMUNITY PARTNERSHIPS.—A community partnership meets the requirements of this subsection if such partnership—

''(1) is composed of local emergency response entities such as community training facilities, local emergency responders, fire and rescue departments, police, community hospitals, and local non-profit entities and for-profit entities concerned about cardiac arrest survival rates;

''(2) evaluates the local community emergency response times to assess whether they meet the standards established by national public health organizations such as the American Heart Association and the American Red Cross; and

''(3) submits to the Secretary of Health and Human Services an application at such time, in such manner, and containing such information as the Secretary may require.

''(c) USE OF FUNDS.—Amounts provided under a grant under this section shall be used—

''(1) to purchase automated external defibrillators that have been approved, or cleared for marketing, by the Food and Drug Administration; and

''(2) to provide defibrillator and basic life support training in automated external defibrillator usage through the American Heart Association, the American Red Cross, or other nationally recognized training courses.

''(d) REPORT.—Not later than 4 years after the date of the enactment of this Act [Nov. 13, 2000], the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress a report containing data relating to whether the increased availability of defibrillators has affected survival rates in the communities in which grantees under this section operated. The procedures under which the Secretary obtains data and prepares the report under this subsection shall not impose an undue burden on program participants under this section.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $25,000,000 for fiscal years 2001 through 2003 to carry out this section.''

REPORT ON TELEMEDICINE

Pub. L. 106–129, § 6, Dec. 6, 1999, 113 Stat. 1675, provided that: ''Not later than January 10, 2001, the Secretary of Health and Human Services shall submit to the Congress a report that—

''(1) identifies any factors that inhibit the expansion and accessibility of telemedicine services, including factors relating to telemedicine networks;

''(2) identifies any factors that, in addition to geographical isolation, should be used to determine which patients need or require access to telemedicine care;

''(3) determines the extent to which—

''(A) patients receiving telemedicine service have benefited from the services, and are satisfied with the treatment received pursuant to the services; and

''(B) the medical outcomes for such patients would have differed if telemedicine services had not been available to the patients;

''(4) determines the extent to which physicians involved with telemedicine services have been satisfied with the medical aspects of the services;

''(5) determines the extent to which primary care physicians are enhancing their medical knowledge and experience through the interaction with specialists provided by telemedicine consultations; and

''(6) identifies legal and medical issues relating to State licensing of health professionals that are presented by telemedicine services, and provides any recommendations of the Secretary for responding to such issues.''

§ 254c–1. Grants for health services for Pacific Islanders

(a) Grants

The Secretary of Health and Human Services (hereafter in this section referred to as the ''Secretary'') shall provide grants to, or enter into contracts with, public or private nonprofit agencies that have demonstrated experience in serving the health needs of Pacific Islanders living in the Territory of American Samoa, the Commonwealth of Northern Mariana Islands, the Territory of Guam, the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

(b) Use of grants or contracts

Grants or contracts made or entered into under subsection (a) of this section shall be used, among other items—

(1) to continue, as a priority, the medical officer training program in Pohnpei, Federated States of Micronesia;

(2) to improve the quality and availability of health and mental health services and systems, with an emphasis therein on preventive health services and health promotion programs and projects, including improved health data systems;

(3) to improve the quality and availability of health manpower, including programs and projects to train new and upgrade the skills of existing health professionals by—

(A) establishing dental officer, dental assistant, nurse practitioner, or nurse clinical specialist training programs;

(B) providing technical training of new auxiliary health workers;

(C) upgrading the training of currently employed health personnel in special areas of need;

(D) developing long-term plans for meeting health profession needs;

(E) developing or improving programs for faculty enhancement or post-doctoral training; and

(F) providing innovative health professions training initiatives (including scholarships) targeted toward ensuring that residents of the Pacific Basin attend and graduate from recognized health professional programs;

(4) to improve the quality of health services, including laboratory, x-ray, and pharmacy, provided in ambulatory and inpatient settings through quality assurance, standard setting, and other culturally appropriate means;

(5) to improve facility and equipment repair and maintenance systems;

(6) to improve alcohol, drug abuse, and mental health prevention and treatment services and systems;

(7) to improve local and regional health planning systems; and

(8) to improve basic local public health systems, with particular attention to primary care and services to those most in need.

No funds under subsection (b) of this section shall be used for capital construction.

(c) Advisory Council

The Secretary of Health and Human Services shall establish a ''Pacific Health Advisory Council'' which shall consist of 12 members and shall include—

(1) the Directors of the Health Departments for the entities identified in subsection (a) of this section; and

(2) 6 members, including a representative of the Rehabilitation Hospital of the Pacific, representing organizations in the State of Hawaii actively involved in the provision of health services or technical assistance to the entities identified in subsection (a) of this section. The Secretary shall solicit the advice of the Governor of the State of Hawaii in appointing the 5 Council members in addition to the representative of the Rehabilitation Hospital of the Pacific from the State of Hawaii.

The Secretary shall be responsible for providing sufficient staff support to the Council.

(d) Advisory Council functions

The Council shall meet at least annually to—

(1) recommend priority areas of need for funding by the Public Health Service under this section; and

(2) review progress in addressing priority areas and make recommendations to the Secretary for needed program modifications.

(e) Omitted

(f) Authorization of appropriation

There is authorized to be appropriated to carry out this section $10,000,000 for each of the fiscal years 1991 through 1993.

(Pub. L. 101–527, § 10, Nov. 6, 1990, 104 Stat. 2333.)

CODIFICATION

Section was enacted as part of the Disadvantaged Minority Health Improvement Act of 1990, and not as part of the Public Health Service Act which comprises this chapter.

Subsec. (e) of this section, which required the Secretary, in consultation with the Council, to annually prepare and submit to appropriate committees of Congress a report describing the expenditure of funds authorized to be appropriated under this section, with any recommendations of the Secretary, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113

of Title 31, Money and Finance. See, also, page 95 of House Document No. 103–7.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 254c–2. Special diabetes programs for type I diabetes

(a) In general

The Secretary, directly or through grants, shall provide for research into the prevention and cure of Type[1] I diabetes.

(b) Funding

(1) Transferred funds

Notwithstanding section 1397dd(a) of this title, from the amounts appropriated in such section for each of fiscal years 1998 through 2002, $30,000,000 is hereby transferred and made available in such fiscal year for grants under this section.

(2) Appropriations

For the purpose of making grants under this section, there is appropriated, out of any funds in the Treasury not otherwise appropriated—

(A) $70,000,000 for each of fiscal years 2001 and 2002 (which shall be combined with amounts transferred under paragraph (1) for each such fiscal years);

(B) $100,000,000 for fiscal year 2003; and

(C) $150,000,000 for each of fiscal years 2004 through 2008.

(July 1, 1944, ch. 373, title III, § 330B, as added Pub. L. 105–33, title IV, § 4921, Aug. 5, 1997, 111 Stat. 574; amended Pub. L. 105–34, title XVI, § 1604(f)(1)(B), (C), Aug. 5, 1997, 111 Stat. 1098; Pub. L. 106–554, § 1(a)(6) [title IX, § 931(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–585; Pub. L. 107–360, § 1(a), Dec. 17, 2002, 116 Stat. 3019.)

AMENDMENTS

2002—Subsec. (b)(2)(C). Pub. L. 107–360 added subpar. (C).

2000—Subsec. (b). Pub. L. 106–554 designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1997—Pub. L. 105–34, § 1604(f)(1)(B), amended directory language of Pub. L. 105–33, § 4921, which enacted this section.

Pub. L. 105–34, § 1604(f)(1)(C)(i), struck out ''children with'' before ''type I diabetes'' in section catchline.

Subsec. (a). Pub. L. 105–34, § 1604(f)(1)(C)(ii), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary shall make grants for services for the prevention and treatment of type I diabetes in children, and for research in innovative approaches to such services. Such grants may be made to children's hospitals; grantees under section 254b of this title and other federally qualified health centers; State and local health departments; and other appropriate public or nonprofit private entities.''

[1] So in original. Probably should not be capitalized.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1604(f)(4) of Pub. L. 105–34 provided that: ''The provisions of, and amendments made by, this subsection [amending this section and provisions set out as a note under section 5701 of Title 26, Internal Revenue Code] shall take effect immediately after the sections referred to in this subsection [sections 4921, 9302, 11104, and 11201 of Pub. L. 105–33] take effect.''

REPORT ON DIABETES GRANT PROGRAMS

Pub. L. 105–33, title IV, § 4923, Aug. 5, 1997, 111 Stat. 574, as amended by Pub. L. 106–554, § 1(a)(6) [title IX, § 931(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–585; Pub. L. 107–360, § 1(c), Dec. 17, 2002, 116 Stat. 3019; Pub. L. 109–482, title I, § 104(b)(3)(C), Jan. 15, 2007, 120 Stat. 3694, provided that:

''(a) EVALUATION.—The Secretary of Health and Human Services shall conduct an evaluation of the diabetes grant programs established under the amendments made by this chapter [chapter 3 (§§ 4921–4923) of subtitle J of title IV of Pub. L. 105–33, enacting this section and section 254c–3 of this title].

''[(b) Repealed. Pub. L. 109–482, title I, § 104(b)(3)(C), Jan. 15, 2007, 120 Stat. 3694.]''

§ 254c–3. Special diabetes programs for Indians

(a) In general

The Secretary shall make grants for providing services for the prevention and treatment of diabetes in accordance with subsection (b) of this section.

(b) Services through Indian health facilities

For purposes of subsection (a) of this section, services under such subsection are provided in accordance with this subsection if the services are provided through any of the following entities:

(1) The Indian Health Service.

(2) An Indian health program operated by an Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement, or compact with the Indian Health Service pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(3) An urban Indian health program operated by an urban Indian organization pursuant to a grant or contract with the Indian Health Service pursuant to title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(c) Funding

(1) Transferred funds

Notwithstanding section 1397dd(a) of this title, from the amounts appropriated in such section for each of fiscal years 1998 through 2002, $30,000,000, to remain available until expended, is hereby transferred and made available in such fiscal year for grants under this section.

(2) Appropriations

For the purpose of making grants under this section, there is appropriated, out of any money in the Treasury not otherwise appropriated—

(A) $70,000,000 for each of fiscal years 2001 and 2002 (which shall be combined with amounts transferred under paragraph (1) for each such fiscal years);

(B) $100,000,000 for fiscal year 2003; and

(C) $150,000,000 for each of fiscal years 2004 through 2008.

(July 1, 1944, ch. 373, title III, § 330C, as added Pub. L. 105–33, title IV, § 4922, Aug. 5, 1997, 111 Stat. 574; amended Pub. L. 105–174, title III, § 3001, May 1, 1998, 112 Stat. 82; Pub. L. 106–554, § 1(a)(6) [title IX, § 931(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–585; Pub. L. 107–360, § 1(b), Dec. 17, 2002, 116 Stat. 3019.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (b)(2), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (b)(3), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

AMENDMENTS

2002—Subsec. (c)(2)(C). Pub. L. 107–360 added subpar. (C).

2000—Subsec. (c). Pub. L. 106–554 designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1998—Subsec. (c). Pub. L. 105–174 inserted ‘‘, to remain available until expended,’’ after ‘‘fiscal years 1998 through 2002, $30,000,000’’.

FUNDS AVAILABLE UNTIL EXPENDED

Pub. L. 108–7, div. F, title II, Feb. 20, 2003, 117 Stat. 261, provided in part ‘‘That funds appropriated under the Special Diabetes Program for Indians (42 U.S.C. 254c–3(c)) for fiscal year 2003 and thereafter for the purpose of making grants shall remain available until expended’’.

§ 254c–4. Centers for strategies on facilitating utilization of preventive health services among various populations

(a) In general

The Secretary, acting through the appropriate agencies of the Public Health Service, shall make grants to public or nonprofit private entities for the establishment and operation of regional centers whose purpose is to develop, evaluate, and disseminate effective strategies, which utilize quality management measures, to assist public and private health care programs and providers in the appropriate utilization of preventive health care services by specific populations.

(b) Research and training

The activities carried out by a center under subsection (a) of this section may include establishing programs of research and training with respect to the purpose described in such subsection, including the development of curricula for training individuals in implementing the strategies developed under such subsection.

(c) Priority regarding infants and children

In carrying out the purpose described in subsection (a) of this section, the Secretary shall give priority to various populations of infants, young children, and their mothers.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2000 through 2004.

(July 1, 1944, ch. 373, title III, § 330D, as added Pub. L. 106–129, § 3, Dec. 6, 1999, 113 Stat. 1670.)

§ 254c–5. Epilepsy; seizure disorder

(a) National public health campaign

(1) In general

The Secretary shall develop and implement public health surveillance, education, research, and intervention strategies to improve the lives of persons with epilepsy, with a particular emphasis on children. Such projects may be carried out by the Secretary directly and through awards of grants or contracts to public or nonprofit private entities. The Secretary may directly or through such awards provide technical assistance with respect to the planning, development, and operation of such projects.

(2) Certain activities

Activities under paragraph (1) shall include—

(A) expanding current surveillance activities through existing monitoring systems and improving registries that maintain data on individuals with epilepsy, including children;

(B) enhancing research activities on the diagnosis, treatment, and management of epilepsy;

(C) implementing public and professional information and education programs regarding epilepsy, including initiatives which promote effective management of the disease through children's programs which are targeted to parents, schools, daycare providers, patients;

(D) undertaking educational efforts with the media, providers of health care, schools and others regarding stigmas and secondary disabilities related to epilepsy and seizures, and its effects on youth;

(E) utilizing and expanding partnerships with organizations with experience addressing the health and related needs of people with disabilities; and

(F) other activities the Secretary deems appropriate.

(3) Coordination of activities

The Secretary shall ensure that activities under this subsection are coordinated as appropriate with other agencies of the Public Health Service that carry out activities regarding epilepsy and seizure.

(b) Seizure disorder; demonstration projects in medically underserved areas

(1) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants for the purpose of carrying out demonstration projects to improve access to health and other services regarding seizures to encourage early detection and treatment in children and others residing in medically underserved areas.

(2) Application for grant

A grant may not be awarded under paragraph (1) unless an application therefore is

submitted to the Secretary and the Secretary approves such application. Such application shall be submitted in such form and manner and shall contain such information as the Secretary may prescribe.

(c) Definitions

For purposes of this section:

(1) The term ''epilepsy'' refers to a chronic and serious neurological condition characterized by excessive electrical discharges in the brain causing recurring seizures affecting all life activities. The Secretary may revise the definition of such term to the extent the Secretary determines necessary.

(2) The term ''medically underserved'' has the meaning applicable under section 295p(6) of this title.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 330E, as added Pub. L. 106–310, div. A, title VIII, § 801, Oct. 17, 2000, 114 Stat. 1124.)

§ 254c–6. Certain services for pregnant women

(a) Infant adoption awareness

(1) In general

The Secretary shall make grants to national, regional, or local adoption organizations for the purpose of developing and implementing programs to train the designated staff of eligible health centers in providing adoption information and referrals to pregnant women on an equal basis with all other courses of action included in nondirective counseling to pregnant women.

(2) Best-practices guidelines

(A) In general

A condition for the receipt of a grant under paragraph (1) is that the adoption organization involved agree that, in providing training under such paragraph, the organization will follow the guidelines developed under subparagraph (B).

(B) Process for development of guidelines

(i) In general

The Secretary shall establish and supervise a process described in clause (ii) in which the participants are—

(I) an appropriate number and variety of adoption organizations that, as a group, have expertise in all models of adoption practice and that represent all members of the adoption triad (birth mother, infant, and adoptive parent); and

(II) affected public health entities.

(ii) Description of process

The process referred to in clause (i) is a process in which the participants described in such clause collaborate to develop best-practices guidelines on the provision of adoption information and referrals to pregnant women on an equal basis with all other courses of action included in nondirective counseling to pregnant women.

(iii) Date certain for development

The Secretary shall ensure that the guidelines described in clause (ii) are developed not later than 180 days after October 17, 2000.

(C) Relation to authority for grants

The Secretary may not make any grant under paragraph (1) before the date on which the guidelines under subparagraph (B) are developed.

(3) Use of grant

(A) In general

With respect to a grant under paragraph (1)—

(i) an adoption organization may expend the grant to carry out the programs directly or through grants to or contracts with other adoption organizations;

(ii) the purposes for which the adoption organization expends the grant may include the development of a training curriculum, consistent with the guidelines developed under paragraph (2)(B); and

(iii) a condition for the receipt of the grant is that the adoption organization agree that, in providing training for the designated staff of eligible health centers, such organization will make reasonable efforts to ensure that the individuals who provide the training are individuals who are knowledgeable in all elements of the adoption process and are experienced in providing adoption information and referrals in the geographic areas in which the eligible health centers are located, and that the designated staff receive the training in such areas.

(B) Rule of construction regarding training of trainers

With respect to individuals who under a grant under paragraph (1) provide training for the designated staff of eligible health centers (referred to in this subparagraph as ''trainers''), subparagraph (A)(iii) may not be construed as establishing any limitation regarding the geographic area in which the trainers receive instruction in being such trainers. A trainer may receive such instruction in a different geographic area than the area in which the trainer trains (or will train) the designated staff of eligible health centers.

(4) Adoption organizations; eligible health centers; other definitions

For purposes of this section:

(A) The term ''adoption organization'' means a national, regional, or local organization—

(i) among whose primary purposes are adoption;

(ii) that is knowledgeable in all elements of the adoption process and on providing adoption information and referrals to pregnant women; and

(iii) that is a nonprofit private entity.

(B) The term ''designated staff'', with respect to an eligible health center, means staff of the center who provide pregnancy or adoption information and referrals (or will provide such information and referrals after receiving training under a grant under paragraph (1)).

(C) The term ''eligible health centers'' means public and nonprofit private entities that provide health services to pregnant women.

(5) Training for certain eligible health centers

A condition for the receipt of a grant under paragraph (1) is that the adoption organization involved agree to make reasonable efforts to ensure that the eligible health centers with respect to which training under the grant is provided include—

(A) eligible health centers that receive grants under section 300 of this title (relating to voluntary family planning projects);

(B) eligible health centers that receive grants under section 254b of this title (relating to community health centers, migrant health centers, and centers regarding homeless individuals and residents of public housing); and

(C) eligible health centers that receive grants under this chapter for the provision of services in schools.

(6) Participation of certain eligible health clinics

In the case of eligible health centers that receive grants under section 254b or 300 of this title:

(A) Within a reasonable period after the Secretary begins making grants under paragraph (1), the Secretary shall provide eligible health centers with complete information about the training available from organizations receiving grants under such paragraph. The Secretary shall make reasonable efforts to encourage eligible health centers to arrange for designated staff to participate in such training. Such efforts shall affirm Federal requirements, if any, that the eligible health center provide nondirective counseling to pregnant women.

(B) All costs of such centers in obtaining the training shall be reimbursed by the organization that provides the training, using grants under paragraph (1).

(C) Not later than 1 year after October 17, 2000, the Secretary shall submit to the appropriate committees of the Congress a report evaluating the extent to which adoption information and referral, upon request, are provided by eligible health centers. Within a reasonable time after training under this section is initiated, the Secretary shall submit to the appropriate committees of the Congress a report evaluating the extent to which adoption information and referral, upon request, are provided by eligible health centers in order to determine the effectiveness of such training and the extent to which such training complies with subsection (a)(1) of this section. In preparing the reports required by this subparagraph, the Secretary shall in no respect interpret the provisions of this section to allow any interference in the provider-patient relationship, any breach of patient confidentiality, or any monitoring or auditing of the counseling process or patient records which breaches patient confidentiality or reveals patient identity. The reports required by this subparagraph shall be conducted by the Secretary acting through the Administrator of the Health Resources and Services Administration and in collaboration with the Director of the Agency for Healthcare Research and Quality.

(b) Application for grant

The Secretary may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 330F, as added Pub. L. 106–310, div. A, title XII, § 1201, Oct. 17, 2000, 114 Stat. 1132.)

§ 254c–7. Special needs adoption programs; public awareness campaign and other activities

(a) Special needs adoption awareness campaign

(1) In general

The Secretary shall, through making grants to nonprofit private entities, provide for the planning, development, and carrying out of a national campaign to provide information to the public regarding the adoption of children with special needs.

(2) Input on planning and development

In providing for the planning and development of the national campaign under paragraph (1), the Secretary shall provide for input from a number and variety of adoption organizations throughout the States in order that the full national diversity of interests among adoption organizations is represented in the planning and development of the campaign.

(3) Certain features

With respect to the national campaign under paragraph (1):

(A) The campaign shall be directed at various populations, taking into account as appropriate differences among geographic regions, and shall be carried out in the language and cultural context that is most appropriate to the population involved.

(B) The means through which the campaign may be carried out include—

(i) placing public service announcements on television, radio, and billboards; and

(ii) providing information through means that the Secretary determines will reach individuals who are most likely to adopt children with special needs.

(C) The campaign shall provide information on the subsidies and supports that are

available to individuals regarding the adoption of children with special needs.

(D) The Secretary may provide that the placement of public service announcements, and the dissemination of brochures and other materials, is subject to review by the Secretary.

(4) Matching requirement

(A) In general

With respect to the costs of the activities to be carried out by an entity pursuant to paragraph (1), a condition for the receipt of a grant under such paragraph is that the entity agree to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such costs.

(B) Determination of amount contributed

Non-Federal contributions under subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

(b) National resources program

The Secretary shall (directly or through grant or contract) carry out a program that, through toll-free telecommunications, makes available to the public information regarding the adoption of children with special needs. Such information shall include the following:

(1) A list of national, State, and regional organizations that provide services regarding such adoptions, including exchanges and other information on communicating with the organizations. The list shall represent the full national diversity of adoption organizations.

(2) Information beneficial to individuals who adopt such children, including lists of support groups for adoptive parents and other postadoptive services.

(c) Other programs

With respect to the adoption of children with special needs, the Secretary shall make grants—

(1) to provide assistance to support groups for adoptive parents, adopted children, and siblings of adopted children; and

(2) to carry out studies to identify—

(A) the barriers to completion of the adoption process; and

(B) those components that lead to favorable long-term outcomes for families that adopt children with special needs.

(d) Application for grant

The Secretary may make an award of a grant or contract under this section only if an application for the award is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Funding

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 330G, as added Pub. L. 106–310, div. A, title XII, § 1211, Oct. 17, 2000, 114 Stat. 1135.)

§ 254c–8. Healthy start for infants

(a) In general

(1) Continuation and expansion of program

The Secretary, acting through the Administrator of the Health Resources and Services Administration, Maternal and Child Health Bureau, shall under authority of this section continue in effect the Healthy Start Initiative and may, during fiscal year 2001 and subsequent years, carry out such program on a national basis.

(2) Definition

For purposes of paragraph (1), the term ''Healthy Start Initiative'' is a reference to the program that, as an initiative to reduce the rate of infant mortality and improve perinatal outcomes, makes grants for project areas with high annual rates of infant mortality and that, prior to the effective date of this section, was a demonstration program carried out under section 241 of this title.

(3) Additional grants

Effective upon increased funding beyond fiscal year 1999 for such Initiative, additional grants may be made to States to assist communities with technical assistance, replication of successful projects, and State policy formation to reduce infant and maternal mortality and morbidity.

(b) Requirements for making grants

In making grants under subsection (a) of this section, the Secretary shall require that applicants (in addition to meeting all eligibility criteria established by the Secretary) establish, for project areas under such subsection, community-based consortia of individuals and organizations (including agencies responsible for administering block grant programs under title V of the Social Security Act [42 U.S.C. 701 et seq.], consumers of project services, public health departments, hospitals, health centers under section 254b of this title, and other significant sources of health care services) that are appropriate for participation in projects under subsection (a) of this section.

(c) Coordination

Recipients of grants under subsection (a) of this section shall coordinate their services and activities with the State agency or agencies that administer block grant programs under title V of the Social Security Act [42 U.S.C. 701 et seq.] in order to promote cooperation, integration, and dissemination of information with Statewide systems and with other community services funded under the Maternal and Child Health Block Grant.

(d) Rule of construction

Except to the extent inconsistent with this section, this section may not be construed as affecting the authority of the Secretary to make

modifications in the program carried out under subsection (a) of this section.

(e) Additional services for at-risk pregnant women and infants

(1) In general

The Secretary may make grants to conduct and support research and to provide additional health care services for pregnant women and infants, including grants to increase access to prenatal care, genetic counseling, ultrasound services, and fetal or other surgery.

(2) Eligible project area

The Secretary may make a grant under paragraph (1) only if the geographic area in which services under the grant will be provided is a geographic area in which a project under subsection (a) of this section is being carried out, and if the Secretary determines that the grant will add to or expand the level of health services available in such area to pregnant women and infants.

(3) Evaluation by Government Accountability Office

(A) In general

During fiscal year 2004, the Comptroller General of the United States shall conduct an evaluation of activities under grants under paragraph (1) in order to determine whether the activities have been effective in serving the needs of pregnant women with respect to services described in such paragraph. The evaluation shall include an analysis of whether such activities have been effective in reducing the disparity in health status between the general population and individuals who are members of racial or ethnic minority groups. Not later than January 10, 2004, the Comptroller General shall submit to the Committee on Commerce in the House of Representatives, and to the Committee on Health, Education, Labor, and Pensions in the Senate, a report describing the findings of the evaluation.

(B) Relation to grants regarding additional services for at-risk pregnant women and infants

Before the date on which the evaluation under subparagraph (A) is submitted in accordance with such subparagraph—

(i) the Secretary shall ensure that there are not more than five grantees under paragraph (1); and

(ii) an entity is not eligible to receive grants under such paragraph unless the entity has substantial experience in providing the health services described in such paragraph.

(f) Funding

(1) General program

(A) Authorization of appropriations

For the purpose of carrying out this section (other than subsection (e) of this section), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(B) Allocations

(i) Program administration

Of the amounts appropriated under subparagraph (A) for a fiscal year, the Secretary may reserve up to 5 percent for coordination, dissemination, technical assistance, and data activities that are determined by the Secretary to be appropriate for carrying out the program under this section.

(ii) Evaluation

Of the amounts appropriated under subparagraph (A) for a fiscal year, the Secretary may reserve up to 1 percent for evaluations of projects carried out under subsection (a) of this section. Each such evaluation shall include a determination of whether such projects have been effective in reducing the disparity in health status between the general population and individuals who are members of racial or ethnic minority groups.

(2) Additional services for at-risk pregnant women and infants

(A) Authorization of appropriations

For the purpose of carrying out subsection (e) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(B) Allocation for community-based mobile health units

Of the amounts appropriated under subparagraph (A) for a fiscal year, the Secretary shall make available not less than 10 percent for providing services under subsection (e) of this section (including ultrasound services) through visits by mobile units to communities that are eligible for services under subsection (a) of this section.

(July 1, 1944, ch. 373, title III, § 330H, as added Pub. L. 106–310, div. A, title XV, § 1501, Oct. 17, 2000, 114 Stat. 1146; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 106–310, which was approved Oct. 17, 2000.

The Social Security Act, referred to in subsecs. (b) and (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title V of the Act is classified generally to subchapter V (§ 701 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2004—Subsec. (e)(3). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in heading.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 254c–9. Establishment of program of grants

(a) In general

The Secretary of Health and Human Services shall in accordance with sections 254c–9 to 254c–13 of this title make grants to provide for projects for the establishment, operation, and coordination of effective and cost-efficient systems for the delivery of essential services to individuals with lupus and their families.

(b) Recipients of grants

A grant under subsection (a) of this section may be made to an entity only if the entity is a public or nonprofit private entity, which may include a State or local government; a public or nonprofit private hospital, community-based organization, hospice, ambulatory care facility, community health center, migrant health center, or homeless health center; or other appropriate public or nonprofit private entity.

(c) Certain activities

To the extent practicable and appropriate, the Secretary shall ensure that projects under subsection (a) of this section provide services for the diagnosis and disease management of lupus. Activities that the Secretary may authorize for such projects may also include the following:

(1) Delivering or enhancing outpatient, ambulatory, and home-based health and support services, including case management and comprehensive treatment services, for individuals with lupus; and delivering or enhancing support services for their families.

(2) Delivering or enhancing inpatient care management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities of individuals with lupus.

(3) Improving the quality, availability, and organization of health care and support services (including transportation services, attendant care, homemaker services, day or respite care, and providing counseling on financial assistance and insurance) for individuals with lupus and support services for their families.

(d) Integration with other programs

To the extent practicable and appropriate, the Secretary shall integrate the program under sections 254c–9 to 254c–13 of this title with other grant programs carried out by the Secretary, including the program under section 254b of this title.

(Pub. L. 106–505, title V, § 521, Nov. 13, 2000, 114 Stat. 2343.)

CODIFICATION

Section was enacted as part of the Lupus Research and Care Amendments of 2000, and also as part of the Public Health Improvement Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 254c–10. Certain requirements

A grant may be made under section 254c–9 of this title only if the applicant involved makes the following agreements:

(1) Not more than 5 percent of the grant will be used for administration, accounting, reporting, and program oversight functions.

(2) The grant will be used to supplement and not supplant funds from other sources related to the treatment of lupus.

(3) The applicant will abide by any limitations deemed appropriate by the Secretary on any charges to individuals receiving services pursuant to the grant. As deemed appropriate by the Secretary, such limitations on charges may vary based on the financial circumstances of the individual receiving services.

(4) The grant will not be expended to make payment for services authorized under section 254c–9(a) of this title to the extent that payment has been made, or can reasonably be expected to be made, with respect to such services—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis.

(5) The applicant will, at each site at which the applicant provides services under section 254c–9(a) of this title, post a conspicuous notice informing individuals who receive the services of any Federal policies that apply to the applicant with respect to the imposition of charges on such individuals.

(Pub. L. 106–505, title V, § 522, Nov. 13, 2000, 114 Stat. 2344.)

CODIFICATION

Section was enacted as part of the Lupus Research and Care Amendments of 2000, and also as part of the Public Health Improvement Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 254c–11. Technical assistance

The Secretary may provide technical assistance to assist entities in complying with the requirements of sections 254c–9 to 254c–13 of this title in order to make such entities eligible to receive grants under section 254c–9 of this title.

(Pub. L. 106–505, title V, § 523, Nov. 13, 2000, 114 Stat. 2344.)

CODIFICATION

Section was enacted as part of the Lupus Research and Care Amendments of 2000, and also as part of the Public Health Improvement Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 254c–12. Definitions

For purposes of sections 254c–9 to 254c–13 of this title:

(1) Official poverty line

The term ''official poverty line'' means the poverty line established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(2) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(Pub. L. 106–505, title V, § 524, Nov. 13, 2000, 114 Stat. 2344.)

CODIFICATION

Section was enacted as part of the Lupus Research and Care Amendments of 2000, and also as part of the Public Health Improvement Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 254c–13. Authorization of appropriations

For the purpose of carrying out sections 254c–9 to 254c–13 of this title, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2003.

(Pub. L. 106–505, title V, § 525, Nov. 13, 2000, 114 Stat. 2345.)

CODIFICATION

Section was enacted as part of the Lupus Research and Care Amendments of 2000, and also as part of the Public Health Improvement Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 254c–14. Telehealth network and telehealth resource centers grant programs

(a) Definitions

In this section:

(1) Director; Office

The terms ''Director'' and ''Office'' mean the Director and Office specified in subsection (c) of this section.

(2) Federally qualified health center and rural health clinic

The term ''Federally qualified health center'' and ''rural health clinic'' have the meanings given the terms in section 1395x(aa) of this title.

(3) Frontier community

The term ''frontier community'' shall have the meaning given the term in regulations issued under subsection (r) of this section.

(4) Medically underserved area

The term ''medically underserved area'' has the meaning given the term ''medically underserved community'' in section 295p(6) of this title.

(5) Medically underserved population

The term ''medically underserved population'' has the meaning given the term in section 254b(b)(3) of this title.

(6) Telehealth services

The term ''telehealth services'' means services provided through telehealth technologies.

(7) Telehealth technologies

The term ''telehealth technologies'' means technologies relating to the use of electronic information, and telecommunications technologies, to support and promote, at a distance, health care, patient and professional health-related education, health administration, and public health.

(b) Programs

The Secretary shall establish, under section 241 of this title, telehealth network and telehealth resource centers grant programs.

(c) Administration

(1) Establishment

There is established in the Health Resources and Services Administration an Office for the Advancement of Telehealth. The Office shall be headed by a Director.

(2) Duties

The telehealth network and telehealth resource centers grant programs established under section 241 of this title shall be administered by the Director, in consultation with the State offices of rural health, State offices concerning primary care, or other appropriate State government entities.

(d) Grants

(1) Telehealth network grants

The Director may, in carrying out the telehealth network grant program referred to in subsection (b) of this section, award grants to eligible entities for projects to demonstrate how telehealth technologies can be used through telehealth networks in rural areas, frontier communities, and medically underserved areas, and for medically underserved populations, to—

(A) expand access to, coordinate, and improve the quality of health care services;

(B) improve and expand the training of health care providers; and

(C) expand and improve the quality of health information available to health care providers, and patients and their families, for decisionmaking.

(2) Telehealth resource centers grants

The Director may, in carrying out the telehealth resource centers grant program referred to in subsection (b) of this section, award grants to eligible entities for projects to demonstrate how telehealth technologies can be used in the areas and communities, and for the populations, described in paragraph (1), to establish telehealth resource centers.

(e) Grant periods

The Director may award grants under this section for periods of not more than 4 years.

(f) Eligible entities

(1) Telehealth network grants

(A) Grant recipient

To be eligible to receive a grant under subsection (d)(1) of this section, an entity shall be a nonprofit entity.

(B) Telehealth networks

(i) In general

To be eligible to receive a grant under subsection (d)(1) of this section, an entity shall demonstrate that the entity will provide services through a telehealth network.

(ii) Nature of entities

Each entity participating in the telehealth network may be a nonprofit or for-profit entity.

(iii) Composition of network

The telehealth network shall include at least 2 of the following entities (at least 1 of which shall be a community-based health care provider):

(I) Community or migrant health centers or other Federally qualified health centers.

(II) Health care providers, including pharmacists, in private practice.

(III) Entities operating clinics, including rural health clinics.

(IV) Local health departments.

(V) Nonprofit hospitals, including community access hospitals.

(VI) Other publicly funded health or social service agencies.

(VII) Long-term care providers.

(VIII) Providers of health care services in the home.

(IX) Providers of outpatient mental health services and entities operating outpatient mental health facilities.

(X) Local or regional emergency health care providers.

(XI) Institutions of higher education.

(XII) Entities operating dental clinics.

(2) Telehealth resource centers grants

To be eligible to receive a grant under subsection (d)(2) of this section, an entity shall be a nonprofit entity.

(g) Applications

To be eligible to receive a grant under subsection (d) of this section, an eligible entity, in consultation with the appropriate State office of rural health or another appropriate State entity, shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the project that the eligible entity will carry out using the funds provided under the grant;

(2) a description of the manner in which the project funded under the grant will meet the health care needs of rural or other populations to be served through the project, or improve the access to services of, and the quality of the services received by, those populations;

(3) evidence of local support for the project, and a description of how the areas, communities, or populations to be served will be involved in the development and ongoing operations of the project;

(4) a plan for sustaining the project after Federal support for the project has ended;

(5) information on the source and amount of non-Federal funds that the entity will provide for the project;

(6) information demonstrating the long-term viability of the project, and other evidence of institutional commitment of the entity to the project;

(7) in the case of an application for a project involving a telehealth network, information demonstrating how the project will promote the integration of telehealth technologies into the operations of health care providers, to avoid redundancy, and improve access to and the quality of care; and

(8) other such information as the Secretary determines to be appropriate.

(h) Terms; conditions; maximum amount of assistance

The Secretary shall establish the terms and conditions of each grant program described in subsection (b) of this section and the maximum amount of a grant to be awarded to an individual recipient for each fiscal year under this section. The Secretary shall publish, in a publication of the Health Resources and Services Administration, notice of the application requirements for each grant program described in subsection (b) of this section for each fiscal year.

(i) Preferences

(1) Telehealth networks

In awarding grants under subsection (d)(1) of this section for projects involving telehealth networks, the Secretary shall give preference to an eligible entity that meets at least 1 of the following requirements:

(A) Organization

The eligible entity is a rural community-based organization or another community-based organization.

(B) Services

The eligible entity proposes to use Federal funds made available through such a grant to develop plans for, or to establish, telehealth networks that provide mental health, public health, long-term care, home care, preventive, or case management services.

(C) Coordination

The eligible entity demonstrates how the project to be carried out under the grant will be coordinated with other relevant federally funded projects in the areas, communities, and populations to be served through the grant.

(D) Network

The eligible entity demonstrates that the project involves a telehealth network that includes an entity that—

(i) provides clinical health care services, or educational services for health care providers and for patients or their families; and

(ii) is—

(I) a public library;

(II) an institution of higher education; or

(III) a local government entity.

(E) Connectivity

The eligible entity proposes a project that promotes local connectivity within areas, communities, or populations to be served through the project.

(F) Integration

The eligible entity demonstrates that health care information has been integrated into the project.

(2) Telehealth resource centers

In awarding grants under subsection (d)(2) of this section for projects involving telehealth resource centers, the Secretary shall give preference to an eligible entity that meets at least 1 of the following requirements:

(A) Provision of services

The eligible entity has a record of success in the provision of telehealth services to medically underserved areas or medically underserved populations.

(B) Collaboration and sharing of expertise

The eligible entity has a demonstrated record of collaborating and sharing expertise with providers of telehealth services at the national, regional, State, and local levels.

(C) Broad range of telehealth services

The eligible entity has a record of providing a broad range of telehealth services, which may include—

(i) a variety of clinical specialty services;

(ii) patient or family education;

(iii) health care professional education; and

(iv) rural residency support programs.

(j) Distribution of funds

(1) In general

In awarding grants under this section, the Director shall ensure, to the greatest extent possible, that such grants are equitably distributed among the geographical regions of the United States.

(2) Telehealth networks

In awarding grants under subsection (d)(1) of this section for a fiscal year, the Director shall ensure that—

(A) not less than 50 percent of the funds awarded shall be awarded for projects in rural areas; and

(B) the total amount of funds awarded for such projects for that fiscal year shall be not less than the total amount of funds awarded for such projects for fiscal year 2001 under section 254c of this title (as in effect on the day before October 26, 2002).

(k) Use of funds

(1) Telehealth network program

The recipient of a grant under subsection (d)(1) of this section may use funds received through such grant for salaries, equipment, and operating or other costs, including the cost of—

(A) developing and delivering clinical telehealth services that enhance access to community-based health care services in rural areas, frontier communities, or medically underserved areas, or for medically underserved populations;

(B) developing and acquiring, through lease or purchase, computer hardware and software, audio and video equipment, computer network equipment, interactive equipment, data terminal equipment, and other equipment that furthers the objectives of the telehealth network grant program;

(C)(i) developing and providing distance education, in a manner that enhances access to care in rural areas, frontier communities, or medically underserved areas, or for medically underserved populations; or

(ii) mentoring, precepting, or supervising health care providers and students seeking to become health care providers, in a manner that enhances access to care in the areas and communities, or for the populations, described in clause (i);

(D) developing and acquiring instructional programming;

(E)(i) providing for transmission of medical data, and maintenance of equipment; and

(ii) providing for compensation (including travel expenses) of specialists, and referring health care providers, who are providing telehealth services through the telehealth network, if no third party payment is available for the telehealth services delivered through the telehealth network;

(F) developing projects to use telehealth technology to facilitate collaboration between health care providers;

(G) collecting and analyzing usage statistics and data to document the cost-effectiveness of the telehealth services; and

(H) carrying out such other activities as are consistent with achieving the objectives of this section, as determined by the Secretary.

(2) Telehealth resource centers

The recipient of a grant under subsection (d)(2) of this section may use funds received through such grant for salaries, equipment, and operating or other costs for—

(A) providing technical assistance, training, and support, and providing for travel expenses, for health care providers and a range of health care entities that provide or will provide telehealth services;

(B) disseminating information and research findings related to telehealth services;

(C) promoting effective collaboration among telehealth resource centers and the Office;

(D) conducting evaluations to determine the best utilization of telehealth technologies to meet health care needs;

(E) promoting the integration of the technologies used in clinical information systems with other telehealth technologies;

(F) fostering the use of telehealth technologies to provide health care information and education for health care providers and consumers in a more effective manner; and

(G) implementing special projects or studies under the direction of the Office.

***(l)* Prohibited uses of funds**

An entity that receives a grant under this section may not use funds made available through the grant—

(1) to acquire real property;

(2) for expenditures to purchase or lease equipment, to the extent that the expenditures would exceed 40 percent of the total grant funds;

(3) in the case of a project involving a telehealth network, to purchase or install transmission equipment (such as laying cable or telephone lines, or purchasing or installing microwave towers, satellite dishes, amplifiers, or digital switching equipment);

(4) to pay for any equipment or transmission costs not directly related to the purposes for which the grant is awarded;

(5) to purchase or install general purpose voice telephone systems;

(6) for construction; or

(7) for expenditures for indirect costs (as determined by the Secretary), to the extent that

the expenditures would exceed 15 percent of the total grant funds.

(m) Collaboration

In providing services under this section, an eligible entity shall collaborate, if feasible, with entities that—

(1)(A) are private or public organizations, that receive Federal or State assistance; or

(B) are public or private entities that operate centers, or carry out programs, that receive Federal or State assistance; and

(2) provide telehealth services or related activities.

(n) Coordination with other agencies

The Secretary shall coordinate activities carried out under grant programs described in subsection (b) of this section, to the extent practicable, with Federal and State agencies and nonprofit organizations that are operating similar programs, to maximize the effect of public dollars in funding meritorious proposals.

(*o*) Outreach activities

The Secretary shall establish and implement procedures to carry out outreach activities to advise potential end users of telehealth services in rural areas, frontier communities, medically underserved areas, and medically underserved populations in each State about the grant programs described in subsection (b) of this section.

(p) Telehealth

It is the sense of Congress that, for purposes of this section, States should develop reciprocity agreements so that a provider of services under this section who is a licensed or otherwise authorized health care provider under the law of 1 or more States, and who, through telehealth technology, consults with a licensed or otherwise authorized health care provider in another State, is exempt, with respect to such consultation, from any State law of the other State that prohibits such consultation on the basis that the first health care provider is not a licensed or authorized health care provider under the law of that State.

(q) Report

Not later than September 30, 2005, the Secretary shall prepare and submit to the appropriate committees of Congress a report on the progress and accomplishments of the grant programs described in subsection (b) of this section.

(r) Regulations

The Secretary shall issue regulations specifying, for purposes of this section, a definition of the term ''frontier area''. The definition shall be based on factors that include population density, travel distance in miles to the nearest medical facility, travel time in minutes to the nearest medical facility, and such other factors as the Secretary determines to be appropriate. The Secretary shall develop the definition in consultation with the Director of the Bureau of the Census and the Administrator of the Economic Research Service of the Department of Agriculture.

(s) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) for grants under subsection (d)(1) of this section, $40,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006; and

(2) for grants under subsection (d)(2) of this section, $20,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title III, § 330I, as added Pub. L. 107–251, title II, § 212, Oct. 26, 2002, 116 Stat. 1632; amended Pub. L. 108–163, § 2(c), Dec. 6, 2003, 117 Stat. 2021.)

AMENDMENTS

2003—Subsec. (a)(4). Pub. L. 108–163, § 2(c)(1), substituted ''section 295p(6)'' for ''section 295p''.

Subsec. (c)(1). Pub. L. 108–163, § 2(c)(2), substituted ''Health Resources and Services Administration'' for ''Health and Resources and Services Administration''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendments by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§ 254c–15. Rural emergency medical service training and equipment assistance program

(a) Grants

The Secretary, acting through the Administrator of the Health Resources and Services Administration (referred to in this section as the ''Secretary'') shall award grants to eligible entities to enable such entities to provide for improved emergency medical services in rural areas.

(b) Eligibility

To be eligible to receive a grant under this section, an entity shall—

(1) be—

(A) a State emergency medical services office;

(B) a State emergency medical services association;

(C) a State office of rural health;

(D) a local government entity;

(E) a State or local ambulance provider; or

(F) any other entity determined appropriate by the Secretary; and

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, that includes—

(A) a description of the activities to be carried out under the grant; and

(B) an assurance that the eligible entity will comply with the matching requirement of subsection (e) of this section.

(c) Use of funds

An entity shall use amounts received under a grant made under subsection (a) of this section, either directly or through grants to emergency medical service squads that are located in, or that serve residents of, a nonmetropolitan statistical area, an area designated as a rural area by any law or regulation of a State, or a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification, originally published in a notice of

availability of funds in the Federal Register on February 27, 1992, 57 Fed. Reg. 6725), to—

(1) recruit emergency medical service personnel;

(2) recruit volunteer emergency medical service personnel;

(3) train emergency medical service personnel in emergency response, injury prevention, safety awareness, and other topics relevant to the delivery of emergency medical services;

(4) fund specific training to meet Federal or State certification requirements;

(5) develop new ways to educate emergency health care providers through the use of technology-enhanced educational methods (such as distance learning);

(6) acquire emergency medical services equipment, including cardiac defibrillators;

(7) acquire personal protective equipment for emergency medical services personnel as required by the Occupational Safety and Health Administration; and

(8) educate the public concerning cardiopulmonary resuscitation, first aid, injury prevention, safety awareness, illness prevention, and other related emergency preparedness topics.

(d) Preference

In awarding grants under this section the Secretary shall give preference to—

(1) applications that reflect a collaborative effort by 2 or more of the entities described in subparagraphs (A) through (F) of subsection (b)(1) of this section; and

(2) applications submitted by entities that intend to use amounts provided under the grant to fund activities described in any of paragraphs (1) through (5) of subsection (c) of this section.

(e) Matching requirement

The Secretary may not award a grant under this section to an entity unless the entity agrees that the entity will make available (directly or through contributions from other public or private entities) non-Federal contributions toward the activities to be carried out under the grant in an amount equal to 25 percent of the amount received under the grant.

(f) Emergency medical services

In this section, the term ''emergency medical services''—

(1) means resources used by a qualified public or private nonprofit entity, or by any other entity recognized as qualified by the State involved, to deliver medical care outside of a medical facility under emergency conditions that occur—

(A) as a result of the condition of the patient; or

(B) as a result of a natural disaster or similar situation; and

(2) includes services delivered by an emergency medical services provider (either compensated or volunteer) or other provider recognized by the State involved that is licensed or certified by the State as an emergency medical technician or its equivalent (as determined by the State), a registered nurse, a physician assistant, or a physician that provides services similar to services provided by such an emergency medical services provider.

(g) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2002 through 2006.

(2) Administrative costs

The Secretary may use not more than 10 percent of the amount appropriated under paragraph (1) for a fiscal year for the administrative expenses of carrying out this section.

(July 1, 1944, ch. 373, title III, § 330J, as added Pub. L. 107–251, title II, § 221, Oct. 26, 2002, 116 Stat. 1638.)

§ 254c–16. Mental health services delivered via telehealth

(a) Definitions

In this section:

(1) Eligible entity

The term ''eligible entity'' means a public or nonprofit private telehealth provider network that offers services that include mental health services provided by qualified mental health providers.

(2) Qualified mental health professionals

The term ''qualified mental health professionals'' refers to providers of mental health services reimbursed under the medicare program carried out under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) who have additional training in the treatment of mental illness in children and adolescents or who have additional training in the treatment of mental illness in the elderly.

(3) Special populations

The term ''special populations'' refers to the following 2 distinct groups:

(A) Children and adolescents in mental health underserved rural areas or in mental health underserved urban areas.

(B) Elderly individuals located in long-term care facilities in mental health underserved rural or urban areas.

(4) Telehealth

The term ''telehealth'' means the use of electronic information and telecommunications technologies to support long distance clinical health care, patient and professional health-related education, public health, and health administration.

(b) Program authorized

(1) In general

The Secretary, acting through the Director of the Office for the Advancement of Telehealth of the Health Resources and Services Administration, shall award grants to eligible entities to establish demonstration projects for the provision of mental health services to special populations as delivered remotely by qualified mental health professionals using telehealth and for the provision of education regarding mental illness as delivered remotely

by qualified mental health professionals using telehealth.

(2) Populations served

The Secretary shall award the grants under paragraph (1) in a manner that distributes the grants so as to serve equitably the populations described in subparagraphs (A) and (B) of subsection (a)(3) of this section.

(c) Use of funds

(1) In general

An eligible entity that receives a grant under this section shall use the grant funds—

(A) for the populations described in subsection (a)(3)(A) of this section—

(i) to provide mental health services, including diagnosis and treatment of mental illness, as delivered remotely by qualified mental health professionals using telehealth; and

(ii) to collaborate with local public health entities to provide the mental health services; and

(B) for the populations described in subsection (a)(3)(B) of this section—

(i) to provide mental health services, including diagnosis and treatment of mental illness, in long-term care facilities as delivered remotely by qualified mental health professionals using telehealth; and

(ii) to collaborate with local public health entities to provide the mental health services.

(2) Other uses

An eligible entity that receives a grant under this section may also use the grant funds to—

(A) pay telecommunications costs; and

(B) pay qualified mental health professionals on a reasonable cost basis as determined by the Secretary for services rendered.

(3) Prohibited uses

An eligible entity that receives a grant under this section shall not use the grant funds to—

(A) purchase or install transmission equipment (other than such equipment used by qualified mental health professionals to deliver mental health services using telehealth under the project involved); or

(B) build upon or acquire real property.

(d) Equitable distribution

In awarding grants under this section, the Secretary shall ensure, to the greatest extent possible, that such grants are equitably distributed among geographical regions of the United States.

(e) Application

An entity that desires a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary determines to be reasonable.

(f) Report

Not later than 4 years after October 26, 2002, the Secretary shall prepare and submit to the appropriate committees of Congress a report that shall evaluate activities funded with grants under this section.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $20,000,000 for fiscal year 2002 and such sums as may be necessary for fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title III, § 330K, as added Pub. L. 107–251, title II, § 221, Oct. 26, 2002, 116 Stat. 1640; amended Pub. L. 108–163, § 2(d), Dec. 6, 2003, 117 Stat. 2021.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108–163, § 2(d)(1), substituted ''subsection (a)(3)'' for ''subsection (a)(4)''.

Subsec. (c)(1)(A). Pub. L. 108–163, § 2(d)(2)(A), substituted ''subsection (a)(3)(A)'' for ''subsection (a)(4)(A)''.

Subsec. (c)(1)(B). Pub. L. 108–163, § 2(d)(2)(B), substituted ''subsection (a)(3)(B)'' for ''subsection (a)(4)(B)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendments by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§ 254c–17. Repealed. Pub. L. 108–163, § 2(e)(2), Dec. 6, 2003, 117 Stat. 2021

Section, Pub. L. 107–251, title I, § 102, Oct. 26, 2002, 116 Stat. 1627, provided for grants to State professional licensing boards to develop and implement State policies to promote telemedicine.

EFFECTIVE DATE OF REPEAL

Repeal deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as an Effective Date of 2003 Amendments note under section 233 of this title.

§ 254c–18. Telemedicine; incentive grants regarding coordination among States

(a) In general

The Secretary may make grants to State professional licensing boards to carry out programs under which such licensing boards of various States cooperate to develop and implement State policies that will reduce statutory and regulatory barriers to telemedicine.

(b) Authorization of appropriations

For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2006.

(July 1, 1944, ch. 373, title III, § 330L, as added Pub. L. 108–163, § 2(e)(1), Dec. 6, 2003, 117 Stat. 2021.)

EFFECTIVE DATE

Section deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of

Pub. L. 108–163, set out as an Effective Date of 2003 Amendments note under section 233 of this title.

SUBPART II—NATIONAL HEALTH SERVICE CORPS PROGRAM

AMENDMENTS

1976—Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2268, added heading ''Subpart II—National Health Service Corps Program''.

§ 254d. National Health Service Corps

(a) Establishment; composition; purpose; definitions

(1) For the purpose of eliminating health manpower shortages in health professional shortage areas, there is established, within the Service, the National Health Service Corps, which shall consist of—

(A) such officers of the Regular and Reserve Corps of the Service as the Secretary may designate,

(B) such civilian employees of the United States as the Secretary may appoint, and

(C) such other individuals who are not employees of the United States.

(2) The Corps shall be utilized by the Secretary to provide primary health services in health professional shortage areas.

(3) For purposes of this subpart and subpart III:

(A) The term ''Corps'' means the National Health Service Corps.

(B) The term ''Corps member'' means each of the officers, employees, and individuals of which the Corps consists pursuant to paragraph (1).

(C) The term ''health professional shortage area'' has the meaning given such term in section 254e(a) of this title.

(D) The term ''primary health services'' means health services regarding family medicine, internal medicine, pediatrics, obstetrics and gynecology, dentistry, or mental health, that are provided by physicians or other health professionals.

(E)(i) The term ''behavioral and mental health professionals'' means health service psychologists, licensed clinical social workers, licensed professional counselors, marriage and family therapists, psychiatric nurse specialists, and psychiatrists.

(ii) The term ''graduate program of behavioral and mental health'' means a program that trains behavioral and mental health professionals.

(b) Recruitment and fellowship programs

(1) The Secretary may conduct at schools of medicine, osteopathic medicine, dentistry, and, as appropriate, nursing and other schools of the health professions, including schools at which graduate programs of behavioral and mental health are offered, and at entities which train allied health personnel, recruiting programs for the Corps, the Scholarship Program, and the Loan Repayment Program. Such recruiting programs shall include efforts to recruit individuals who will serve in the Corps other than pursuant to obligated service under the Scholarship or Loan Repayment Program.

(2) In the case of physicians, dentists, behavioral and mental health professionals, certified nurse midwives, certified nurse practitioners, and physician assistants who have an interest and a commitment to providing primary health care, the Secretary may establish fellowship programs to enable such health professionals to gain exposure to and expertise in the delivery of primary health services in health professional shortage areas. To the maximum extent practicable, the Secretary shall ensure that any such programs are established in conjunction with accredited residency programs, and other training programs, regarding such health professions.

(c) Travel and moving expenses; persons entitled; reimbursement; limitation

(1) The Secretary may reimburse an applicant for a position in the Corps (including an individual considering entering into a written agreement pursuant to section 254n of this title) for the actual and reasonable expenses incurred in traveling to and from the applicant's place of residence to an eligible site to which the applicant may be assigned under section 254f of this title for the purpose of evaluating such site with regard to being assigned at such site. The Secretary may establish a maximum total amount that may be paid to an individual as reimbursement for such expenses.

(2) The Secretary may also reimburse the applicant for the actual and reasonable expenses incurred for the travel of 1 family member to accompany the applicant to such site. The Secretary may establish a maximum total amount that may be paid to an individual as reimbursement for such expenses.

(3) In the case of an individual who has entered into a contract for obligated service under the Scholarship Program or under the Loan Repayment Program, the Secretary may reimburse such individual for all or part of the actual and reasonable expenses incurred in transporting the individual, the individual's family, and the family's possessions to the site of the individual's assignment under section 254f of this title. The Secretary may establish a maximum total amount that may be paid to an individual as reimbursement for such expenses.

(d) Monthly pay adjustments of members directly engaged in delivery of health services in health professional shortage area; "monthly pay" defined; monthly pay adjustment of member with service obligation incurred under Scholarship Program or Loan Repayment Program; personnel system applicable

(1) The Secretary may, under regulations promulgated by the Secretary, adjust the monthly pay of each member of the Corps (other than a member described in subsection (a)(1)(C) of this section) who is directly engaged in the delivery of health services in a health professional shortage area as follows:

(A) During the first 36 months in which such a member is so engaged in the delivery of health services, his monthly pay may be increased by an amount which when added to the member's monthly pay and allowances will provide a monthly income competitive with the average monthly income from a practice of an individual who is a member of the

profession of the Corps member, who has equivalent training, and who has been in practice for a period equivalent to the period during which the Corps member has been in practice.

(B) During the period beginning upon the expiration of the 36 months referred to in subparagraph (A) and ending with the month in which the member's monthly pay and allowances are equal to or exceed the monthly income he received for the last of such 36 months, the member may receive in addition to his monthly pay and allowances an amount which when added to such monthly pay and allowances equals the monthly income he received for such last month.

(C) For each month in which a member is directly engaged in the delivery of health services in a health professional shortage area in accordance with an agreement with the Secretary entered into under section 294n(f)(1)(C)[1] of this title, under which the Secretary is obligated to make payments in accordance with section 294n(f)(2)[1] of this title, the amount of any monthly increase under subparagraph (A) or (B) with respect to such member shall be decreased by an amount equal to one-twelfth of the amount which the Secretary is obligated to pay upon the completion of the year of practice in which such month occurs.

For purposes of subparagraphs (A) and (B), the term ''monthly pay'' includes special pay received under chapter 5 of title 37.

(2) In the case of a member of the Corps who is directly engaged in the delivery of health services in a health professional shortage area in accordance with a service obligation incurred under the Scholarship Program or the Loan Repayment Program, the adjustment in pay authorized by paragraph (1) may be made for such a member only upon satisfactory completion of such service obligation, and the first 36 months of such member's being so engaged in the delivery of health services shall, for purposes of paragraph (1)(A), be deemed to begin upon such satisfactory completion.

(3) A member of the Corps described in subparagraph (C) of subsection (a)(1) of this section shall when assigned to an entity under section 254f of this title be subject to the personnel system of such entity, except that such member shall receive during the period of assignment the income that the member would receive if the member was a member of the Corps described in subparagraph (B) of such subsection.

(e) Employment ceiling of Department not affected by Corps members

Corps members assigned under section 254f of this title to provide health services in health professional shortage areas shall not be counted against any employment ceiling affecting the Department.

(f) Assignment of personnel provisions inapplicable to members whose service obligation incurred under Scholarship Program or Loan Repayment Program

Sections 215 and 217 of this title shall not apply to members of the National Health Service Corps during their period of obligated service under the Scholarship Program or the Loan Repayment Program, except when such members are Commissioned Corps officers who entered into a contract with[2] Secretary under section 254*l* or 254*l*–1 of this title after December 31, 2006 and when the Secretary determines that exercising the authority provided under section 215 or 217 of this title with respect to any such officer to[3] would not cause unreasonable disruption to health care services provided in the community in which such officer is providing health care services.

(g) Conversion from Corps member to commissioned officer; retirement credits

(1) The Secretary shall, by rule, prescribe conversion provisions applicable to any individual who, within a year after completion of service as a member of the Corps described in subsection (a)(1)(C) of this section, becomes a commissioned officer in the Regular or Reserve Corps of the Service.

(2) The rules prescribed under paragraph (1) shall provide that in applying the appropriate provisions of this chapter which relate to retirement, any individual who becomes such an officer shall be entitled to have credit for any period of service as a member of the Corps described in subsection (a)(1)(C) of this section.

(h) Effective administration of program

The Secretary shall ensure that adequate staff is provided to the Service with respect to effectively administering the program for the Corps.

(i) Demonstration projects; waivers

(1) In carrying out subpart III, the Secretary may, in accordance with this subsection, carry out demonstration projects in which individuals who have entered into a contract for obligated service under the Loan Repayment Program receive waivers under which the individuals are authorized to satisfy the requirement of obligated service through providing clinical service that is not full-time.

(2) A waiver described in paragraph (1) may be provided by the Secretary only if—

(A) the entity for which the service is to be performed—

(i) has been approved under section 254f–1 of this title for assignment of a Corps member; and

(ii) has requested in writing assignment of a health professional who would serve less than full time;

(B) the Secretary has determined that assignment of a health professional who would serve less than full time would be appropriate for the area where the entity is located;

(C) a Corps member who is required to perform obligated service has agreed in writing to be assigned for less than full-time service to an entity described in subparagraph (A);

(D) the entity and the Corps member agree in writing that the less than full-time service provided by the Corps member will not be less than 16 hours of clinical service per week;

(E) the Corps member agrees in writing that the period of obligated service pursuant to sec-

[1] See References in Text note below.

[2] So in original. The word ''the'' probably should appear.

[3] So in original.

tion 254*l*–1 of this title will be extended so that the aggregate amount of less than full-time service performed will equal the amount of service that would be performed through full-time service under section 254m of this title; and

(F) the Corps member agrees in writing that if the Corps member begins providing less than full-time service but fails to begin or complete the period of obligated service, the method stated in 254*o*(c) of this title for determining the damages for breach of the individual's written contract will be used after converting periods of obligated service or of service performed into their full-time equivalents.

(3) In evaluating a demonstration project described in paragraph (1), the Secretary shall examine the effect of multidisciplinary teams.

(j) Definitions

For the purposes of this subpart and subpart III:

(1) The term ''Department'' means the Department of Health and Human Services.

(2) The term ''Loan Repayment Program'' means the National Health Service Corps Loan Repayment Program established under section 254*l*–1 of this title.

(3) The term ''Scholarship Program'' means the National Health Service Corps Scholarship Program established under section 254*l* of this title.

(4) The term ''State'' includes, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(July 1, 1944, ch. 373, title III, § 331, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2268; amended Pub. L. 97–35, title XXVII, § 2701, Aug. 13, 1981, 95 Stat. 902; Pub. L. 100–177, title II, § 202(b), title III, § 301, Dec. 1, 1987, 101 Stat. 996, 1003; Pub. L. 100–607, title VI, § 629(a)(2), Nov. 4, 1988, 102 Stat. 3146; Pub. L. 101–597, title I, § 101, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3013, 3035; Pub. L. 107–251, title III, § 301, Oct. 26, 2002, 116 Stat. 1642; Pub. L. 109–417, title II, § 206(c)(2), Dec. 19, 2006, 120 Stat. 2853.)

REFERENCES IN TEXT

Section 294n of this title, referred to in subsec. (d)(1)(C), was in the original a reference to section 741 of act July 1, 1944. Section 741 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 776 of act July 1, 1944, relating to acquired immune deficiency syndrome, which was classified to section 294n of this title, and subsequently renumbered section 2692 and transferred to section 300ff–111 of this title.

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–417 inserted before period at end '', except when such members are Commissioned Corps officers who entered into a contract with Secretary under section 254*l* or 254*l*–1 of this title after December 31, 2006 and when the Secretary determines that exercising the authority provided under section 215 or 217 of this title with respect to any such officer to would not cause unreasonable disruption to health care services provided in the community in which such officer is providing health care services''.

2002—Subsec. (a)(3)(E). Pub. L. 107–251, § 301(a)(1), added subpar. (E).

Subsec. (b)(1). Pub. L. 107–251, § 301(a)(2)(A), substituted ''health professions, including schools at which graduate programs of behavioral and mental health are offered,'' for ''health professions''.

Subsec. (b)(2). Pub. L. 107–251, § 301(a)(2)(B), inserted ''behavioral and mental health professionals,'' after ''dentists,''.

Subsec. (c). Pub. L. 107–251, § 301(a)(3), added subsec. (c) and struck out former subsec. (c) which read as follows: ''The Secretary may reimburse applicants for positions in the Corps (including individuals considering entering into a written agreement pursuant to section 254n of this title) for actual and reasonable expenses incurred in traveling to and from their places of residence to a health professional shortage area (designated under section 254e of this title) in which they may be assigned for the purpose of evaluating such area with regard to being assigned in such area. The Secretary shall not reimburse an applicant for more than one such trip.''

Subsecs. (i), (j). Pub. L. 107–251, § 301(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1990—Subsec. (a). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in pars. (1), (2), and (3)(C).

Pub. L. 101–597, § 101(a), designated existing provisions as par. (1), substituted ''For the purpose of eliminating health manpower shortages in health manpower shortage areas, there is established, within the Service, the National Health Service Corps, which shall consist of—'' for ''There is established, within the Service, the National Health Service Corps (hereinafter in this subpart referred to as the 'Corps') which (1) shall consist of—'', substituted ''States.'' for ''States,'' at end of subpar. (C), struck out closing provisions which read ''(such officers, employees, and individuals hereinafter in this subpart referred to as 'Corps members'), and (2) shall be utilized by the Secretary to improve the delivery of health services in health manpower shortage areas as defined in section 254e(a) of this title.'', and added pars. (2) and (3).

Subsec. (b). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (2).

Pub. L. 101–597, § 101(b), designated existing provision as par. (1), inserted at end ''Such recruiting programs shall include efforts to recruit individuals who will serve in the Corps other than pursuant to obligated service under the Scholarship or Loan Repayment Program.'', and added par. (2).

Subsec. (c). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Subsec. (d)(1). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in introductory provisions and in subpar. (C).

Subsec. (d)(1)(A). Pub. L. 101–597, § 101(c), struck out ''(not to exceed $1,000)'' after ''by an amount''.

Subsecs. (d)(2), (e). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Subsec. (h). Pub. L. 101–597, § 101(d), added subsec. (h) and struck out former subsec. (h) which read as follows: ''In assigning members of the Corps to health manpower shortage areas, to the extent practicable, the Secretary shall—

''(1) give priority to meeting the needs of the Indian Health Service and the needs of health programs or facilities operated by tribes or tribal organizations under the Indian Self-Determination Act (25 U.S.C. 450f et seq.); and

''(2) provide special consideration to the homeless populations who do not have access to primary health care services.''

Subsec. (i). Pub. L. 101–597, § 101(e), substituted ''of this subpart and subpart III'' for ''of this subpart''.

1988—Subsec. (b). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy''.

1987—Subsec. (b). Pub. L. 100–177, § 202(b)(1), inserted reference to Loan Repayment Program.

Subsec. (c). Pub. L. 100–177, § 202(b)(2), made technical amendment to reference to section 254n of this title to reflect renumbering of corresponding section of original act.

Subsecs. (d)(2), (f). Pub. L. 100–177, § 202(b)(3), (4), inserted reference to Loan Repayment Program.

Subsec. (h). Pub. L. 100–177, § 301(2), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 100–177, §§ 202(b)(5), 301(1), redesignated subsec. (h) as (i), added par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2701(a), revised provisions and, as so revised, set out existing provisions in cls. (A) and (B), and added cl. (C).

Subsec. (b). Pub. L. 97–35, § 2701(b), substituted ''may'' for ''shall''.

Subsec. (c). Pub. L. 97–35, § 2701(c), inserted provisions respecting a written agreement under section 254n of this title.

Subsec. (d). Pub. L. 97–35, § 2701(d), in par. (1) inserted reference to member described in subsec. (a)(1)(C) of this section, in subpars. (1)(A) and (B) substituted ''may'' for ''shall'', and added par. (3).

Subsec. (g). Pub. L. 97–35, § 2701(e), substituted provisions relating to conversion from Corps member to commissioned officer and retirement credits, for provisions relating to school participation in development of administrative guidelines.

Subsec. (h). Pub. L. 97–35, § 2701(f), in par. (1) substituted ''Health and Human Services'' for ''Health, Education, and Welfare'', in par. (2) substituted ''254*l*'' for ''294t'', and in par. (3) inserted reference to Commonwealth with respect to the Northern Mariana Islands.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 501 of Pub. L. 101–597 provided that: ''This Act and the amendments made by this Act [enacting sections 254f–1, 254*o*–1, and 254r of this title, amending this section, sections 242a, 254e to 254i, 254k, 254*l* to 254q–1, 254s, 294h, 294n, 294aa, 295g–1, 296m, 1320c–5, 1395*l*, 1395u, 1395x, 3505d, and 9840 of this title, and section 2123 of Title 10, Armed Forces, and enacting provisions set out as notes under sections 201, 254*l*–1, and 254*o* of this title] shall take effect October 1, 1990, or upon the date of the enactment of this Act [Nov. 16, 1990], whichever occurs later.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SPECIAL REPORT ON PRESENT AND FUTURE DIRECTION OF NATIONAL HEALTH SERVICE CORPS; SUBMISSION TO CONGRESS NOT LATER THAN FEBRUARY 1, 1979

Pub. L. 95–626, title I, § 116(c), Nov. 10, 1978, 92 Stat. 3569, directed Secretary, not later than Feb. 1, 1979, in consultation with National Advisory Council of National Health Service Corps and National Advisory Council on Health Professions Education, to submit to Congress a report on the direction of the National Health Service Corps, particularly its role as a health manpower program and as a health services delivery program, the use of members of the Corps in health manpower shortage areas to meet urban and rural health needs, the types of health professions needed to meet urban and rural health needs, and the projected size, composition, and use of the Corps through 1985.

EFFECTIVE DATE; OTHER PROVISIONS: HEALTH MANPOWER SHORTAGE AREA; APPROVAL OF APPLICATIONS FOR ASSIGNMENT OF CORPS PERSONNEL; ASSIGNMENT PERIOD, COMMENCEMENT; CREDIT FOR MONTHS OF PRIOR HEALTH CARE AND SERVICES FOR ADDITIONAL PAY BENEFIT; NATIONAL ADVISORY COUNCIL ON THE NATIONAL HEALTH SERVICE CORPS, CONTINUATION OF COUNCIL AND APPOINTMENT OF MEMBERS

Section 407(c) of Pub. L. 94–484 provided that:

''(1) The amendment made by subsections (a) and (b) [enacting this subpart and repealing section 254b of this title] shall apply only with respect to fiscal years beginning after September 30, 1977, except that the Secretary of Health, Education, and Welfare [now Health and Human Services] shall carry out the activities described in section 332 of the Public Health Service Act (as added by such amendment) [section 254e of this title] after the date of enactment of this Act [Oct. 12, 1976].

''(2)(A) Any area for which a designation under section 329(b) of the Public Health Service Act (as in effect on September 30, 1977) [former section 254b(b) of this title] was in effect on such date and in which National Health Service Corps personnel were, on such date, providing, under an assignment made under such section (as so in effect), health care and services for persons residing in such area shall, effective October 1, 1977, be considered under subpart II of part C of title III of such Act (as added by subsection (b) of this section) [this subpart] to (i) be designated a health manpower shortage area (as defined by section 332 of such Act (as so added)) [section 254e of this title], and (ii) have had an application approved under section 333 of such Act (as so added)) [section 254f of this title] for the assignment of Corps personnel unless, as determined under subparagraph (B) of this paragraph, the assignment period applicable to such area (within the meaning of section 334 (as so added)) [former section 254g of this title] has expired.

''(B) The assignment period (within the meaning of such section 334) [former section 254g of this title] applicable to an area described in subparagraph (A) of this paragraph shall be considered to have begun on the date Corps personnel were first assigned to such area under section 329 of such Act (as in effect on September 30, 1977) [former section 254b of this title].

''(C) In the case of any physician or dentist member of the Corps who was providing health care and services on September 30, 1977, under an assignment made under section 329(b) of such Act (as in effect on September 30, 1977) [former section 254b(b) of this title], the number of the months during which such member provided such care and services before October 1, 1977, shall be counted in determining the application of the additional pay provisions of section 331(d) of such Act (as added by subsection (b) of this section) [subsec. (d) of this section] to such number.

''(3) The amendment made by subsection (b) which established an Advisory Council previously established under section 329 of the Public Health Service Act [former section 254b of this title] shall not be construed as requiring the establishment of a new Advisory Council under such section 337 [section 254j of this title], and the amendment made by such subsection with respect to the composition of such Advisory Council shall apply with respect to appointments made to the Advisory Council after October 1, 1977, and the Secretary of Health, Education, and Welfare [now Health and Human Services] shall make appointments to the Advisory Council after such date in a manner which will bring about, at the earliest feasible time, the Advisory Council composition prescribed by the amendment.''

§ 254e. Health professional shortage areas

(a) Designation by Secretary; removal from areas designated; "medical facility" defined

(1) For purposes of this subpart the term ''health professional shortage area'' means (A) an area in an urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary determines has a health manpower shortage and which is not reasonably accessible to an adequately served area, (B) a population group which the Secretary determines has such a shortage, or (C) a public or nonprofit private medical facility or other public facility which the Secretary determines has such a shortage. All Federally qualified health centers and rural health clinics, as defined in section 1861(aa) of the Social Security Act (42 U.S.C. 1395x(aa)), that meet the requirements of section 254g of this title shall be automatically designated as having such a shortage. Not earlier than 6 years after such date of designation, and every 6 years thereafter, each such center or clinic shall demonstrate that the center or clinic meets the applicable requirements of the Federal regulations regarding the definition of a health professional shortage area for purposes of this section. The Secretary shall not remove an area from the areas determined to be health professional shortage areas under subparagraph (A) of the preceding sentence until the Secretary has afforded interested persons and groups in such area an opportunity to provide data and information in support of the designation as a health professional shortage area or a population group described in subparagraph (B) of such sentence or a facility described in subparagraph (C) of such sentence, and has made a determination on the basis of the data and information submitted by such persons and groups and other data and information available to the Secretary.

(2) For purposes of this subsection, the term ''medical facility'' means a facility for the delivery of health services and includes—

(A) a hospital, State mental hospital, public health center, outpatient medical facility, rehabilitation facility, facility for long-term care, community mental health center, migrant health center, facility operated by a city or county health department, and community health center;

(B) such a facility of a State correctional institution or of the Indian Health Service, and a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.];

(C) such a facility used in connection with the delivery of health services under section 248 of this title (relating to hospitals), 249 of this title (relating to care and treatment of persons under quarantine and others), 250 of this title (relating to care and treatment of Federal prisoners), 251 of this title (relating to examination and treatment of certain Federal employees), 252 of this title (relating to examination of aliens), 253 of this title (relating to services to certain Federal employees), 247e of this title (relating to services for persons with Hansen's disease), or 254b(h) of this title (relating to the provision of health services to homeless individuals); and

(D) a Federal medical facility.

(3) Homeless individuals (as defined in section 254b(h)(5) of this title), seasonal agricultural workers (as defined in section 254b(g)(3) of this title) and migratory agricultural workers (as so defined)), and residents of public housing (as defined in section 1437a(b)(1) of this title) may be population groups under paragraph (1).

(b) Criteria for designation of health professional shortage areas; promulgation of regulations

The Secretary shall establish by regulation criteria for the designation of areas, population groups, medical facilities, and other public facilities, in the States, as health professional shortage areas. In establishing such criteria, the Secretary shall take into consideration the following:

(1) The ratio of available health manpower to the number of individuals in an area or population group, or served by a medical facility or other public facility under consideration for designation.

(2) Indicators of a need, notwithstanding the supply of health manpower, for health services for the individuals in an area or population group or served by a medical facility or other public facility under consideration for designation.

(3) The percentage of physicians serving an area, population group, medical facility, or other public facility under consideration for designation who are employed by hospitals and who are graduates of foreign medical schools.

(c) Considerations in determination of designation

In determining whether to make a designation, the Secretary shall take into consideration the following:

(1) The recommendations of the Governor of each State in which the area, population group, medical facility, or other public facility under consideration for designation is in whole or part located.

(2) The extent to which individuals who are (A) residents of the area, members of the population group, or patients in the medical facility or other public facility under consideration for designation, and (B) entitled to have payment made for medical services under title XVIII, XIX, or XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], cannot obtain such services because of suspension of physicians from the programs under such titles.

(d) Designation; publication of descriptive lists

(1) In accordance with the criteria established under subsection (b) of this section and the considerations listed in subsection (c) of this section the Secretary shall designate health professional shortage areas in the States, publish a descriptive list of the areas, population groups, medical facilities, and other public facilities so designated, and at least annually review and, as necessary, revise such designations.

(2) For purposes of paragraph (1), a complete descriptive list shall be published in the Federal Register not later than July 1 of 1991 and each subsequent year.

(e) Notice of proposed designation of areas and facilities; time for comment

(1) Prior to the designation of a public facility, including a Federal medical facility, as a health professional shortage area, the Secretary shall give written notice of such proposed designation to the chief administrative officer of such facility and request comments within 30 days with respect to such designation.

(2) Prior to the designation of a health professional shortage area under this section, the Secretary shall, to the extent practicable, give written notice of the proposed designation of such area to appropriate public or private nonprofit entities which are located or have a demonstrated interest in such area and request comments from such entities with respect to the proposed designation of such area.

(f) Notice of designation

The Secretary shall give written notice of the designation of a health professional shortage area, not later than 60 days from the date of such designation, to—

(1) the Governor of each State in which the area, population group, medical facility, or other public facility so designated is in whole or part located; and

(2) appropriate public or nonprofit private entities which are located or which have a demonstrated interest in the area so designated.

(g) Recommendations to Secretary

Any person may recommend to the Secretary the designation of an area, population group, medical facility, or other public facility as a health professional shortage area.

(h) Public information programs in designated areas

The Secretary may conduct such information programs in areas, among population groups, and in medical facilities and other public facilities designated under this section as health professional shortage areas as may be necessary to inform public and nonprofit private entities which are located or have a demonstrated interest in such areas of the assistance available under this subchapter by virtue of the designation of such areas.

(i) Dissemination

The Administrator of the Health Resources and Services Administration shall disseminate information concerning the designation criteria described in subsection (b) of this section to—

(1) the Governor of each State;

(2) the representative of any area, population group, or facility selected by any such Governor to receive such information;

(3) the representative of any area, population group, or facility that requests such information; and

(4) the representative of any area, population group, or facility determined by the Administrator to be likely to meet the criteria described in subsection (b) of this section.

(j) Regulations and report

(1) The Secretary shall submit the report described in paragraph (2) if the Secretary, acting through the Administrator of the Health Resources and Services Administration, issues—

(A) a regulation that revises the definition of a health professional shortage area for purposes of this section; or

(B) a regulation that revises the standards concerning priority of such an area under section 254f–1 of this title.

(2) On issuing a regulation described in paragraph (1), the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report that describes the regulation.

(3) Each regulation described in paragraph (1) shall take effect 180 days after the committees described in paragraph (2) receive a report referred to in such paragraph describing the regulation.

(July 1, 1944, ch. 373, title III, § 332, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2270; amended Pub. L. 95–142, § 7(d), Oct. 25, 1977, 91 Stat. 1193; Pub. L. 96–32, § 7(d), July 10, 1979, 93 Stat. 84; Pub. L. 97–35, title IX, § 986(b)(4), title XXVII, § 2702(a), (b), (c), Aug. 13, 1981, 95 Stat. 603, 903, 904; Pub. L. 100–77, title VI, § 602, July 22, 1987, 101 Stat. 515; Pub. L. 100–177, title III, § 302, Dec. 1, 1987, 101 Stat. 1003; Pub. L. 100–607, title VIII, § 802(b)(2), Nov. 4, 1988, 102 Stat. 3169; Pub. L. 100–628, title VI, § 602(b)(2), Nov. 7, 1988, 102 Stat. 3242; Pub. L. 101–597, title I, § 102, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3014, 3035; Pub. L. 107–251, title III, § 302(a), (d)(2), title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1643, 1645, 1664; Pub. L. 108–163, § 2(f)(1), Dec. 6, 2003, 117 Stat. 2021.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a)(2)(B), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Social Security Act, referred to in subsec. (c)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 332 of act July 1, 1944, was renumbered section 340, and was classified to section 256 of this title prior to repeal by Pub. L. 95–626.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–163, § 2(f)(1)(A), substituted "such date of designation" for "such date of enactment" and "regarding" for ", issued after the date of enactment of this Act, that revise".

Subsec. (a)(3). Pub. L. 108–163, § 2(f)(1)(B), substituted "254b(h)(5)" for "254b(h)(4)".

Subsec. (b)(2). Pub. L. 108–163, § 2(f)(1)(C), struck out comma before period at end.

Subsec. (j). Pub. L. 108–163, § 2(f)(1)(D), added subsec. (j).

2002—Subsec. (a)(1). Pub. L. 107–251, § 302(a)(1)(A), inserted after first sentence ''All Federally qualified health centers and rural health clinics, as defined in section 1861(aa) of the Social Security Act (42 U.S.C. 1395x(aa)), that meet the requirements of section 254g of this title shall be automatically designated as having such a shortage. Not earlier than 6 years after such date of enactment, and every 6 years thereafter, each such center or clinic shall demonstrate that the center or clinic meets the applicable requirements of the Federal regulations, issued after the date of enactment of this Act, that revise the definition of a health professional shortage area for purposes of this section.''

Subsec. (a)(2)(C). Pub. L. 107–251, § 601(a), substituted ''254b(h)'' for ''256''.

Subsec. (a)(3). Pub. L. 107–251, § 302(a)(1)(B), substituted ''254b(h)(4) of this title), seasonal agricultural workers (as defined in section 254b(g)(3) of this title) and migratory agricultural workers (as so defined)), and residents of public housing (as defined in section 1437a(b)(1) of this title) may be population groups'' for ''256(r) of this title) may be a population group''.

Subsec. (b)(2). Pub. L. 107–251, § 302(a)(2), struck out after ''designation,'' the following: ''with special consideration to indicators of—

''(A) infant mortality,

''(B) access to health services,

''(C) health status, and

''(D) ability to pay for health services''.

Subsec. (c)(2)(B). Pub. L. 107–251, § 302(a)(3), substituted ''XVIII, XIX, or XXI of the Social Security Act'' for ''XVIII or XIX of the Social Security Act''.

Subsec. (i). Pub. L. 107–251, § 302(d)(2), added subsec. (i).

1990—Subsec. (a)(1). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

Subsec. (a)(2)(A). Pub. L. 101–597, § 102(b)(1), inserted ''facility operated by a city or county health department,'' before ''and community health center''.

Subsec. (a)(2)(B). Pub. L. 101–597, § 102(b)(2), inserted before semicolon '', and a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act''.

Subsec. (a)(2)(C). Pub. L. 101–597, § 102(b)(3), substituted ''section'' for ''sections'' before ''248'', struck out ''or'' before ''253'' and ''or section'' before ''247e'', and inserted before semicolon '', or 256 of this title (relating to the provision of health services to homeless individuals)''.

Subsec. (b). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 102(c)(1), struck out '', promulgated not later than May 1, 1977,'' after ''establish by regulation''.

Subsec. (c). Pub. L. 101–597, § 102(c)(2), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows:

''(A) The recommendations of each health systems agency (designated under section 300*l*–4 of this title) for a health service area which includes all or any part of the area, population group, medical facility, or other public facility under consideration for designation.

''(B) The recommendations of the State health planning and development agency (designated under section 300m of this title) if such area, population group, medical facility, or other public facility is within a health service area for which no health systems agency has been designated.''

Subsec. (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (1).

Pub. L. 101–597, § 102(a), (c)(3), designated existing provision as par. (1), struck out '', not later than November 1, 1977,'' after ''Secretary shall designate'', and added par. (2).

Subsec. (e). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

Subsec. (f). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 102(c)(4), redesignated par. (3) as (2) and struck out former par. (2) which read as follows:

''(A) each health systems agency (designated under section 300*l*–4 of this title) for a health service area which includes all or any part of the area, population group, medical facility, or other public facility so designated; or

''(B) the State health planning and development agency of the State (designated under section 300m of this title) if there is a part of such area, population group, medical facility, or other public facility within a health service area for which no health systems agency has been designated; and''.

Subsecs. (g), (h). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

1988—Subsec. (a)(3). Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, substituting ''section 256(r)'' for ''section 256(q)(2)''.

1987—Subsec. (a)(1). Pub. L. 100–177, § 302(1), inserted sentence at end relating to removal of an area from areas determined to be health manpower shortage areas.

Subsec. (a)(3). Pub. L. 100–77 added par. (3).

Subsec. (b)(2)(D). Pub. L. 100–177, § 302(2), added subpar. (D).

1981—Subsec. (a)(1)(A). Pub. L. 97–35, § 2702(a), inserted provisions respecting reasonable accessibility to adequately served area.

Subsec. (a)(2)(C). Pub. L. 97–35, § 986(b)(4), substituted ''persons under quarantine'' for ''seamen''.

Subsec. (e). Pub. L. 97–35, § 2702(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 97–35, § 2702(b), substituted ''may'' for ''shall''.

1979—Subsec. (a)(2)(C). Pub. L. 96–32 substituted ''section 247e of this title'' for ''part D of subchapter II of this chapter''.

1977—Subsec. (c)(3). Pub. L. 95–142 added par. (3).

Effective Date of 2003 Amendment

Amendments by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

Effective Date of 1988 Amendments

Section 631 of title VI of Pub. L. 100–628 provided that: ''The amendments made by subsection (a) of section 601 [amending section 256 of this title] shall take effect in accordance with subsection (b) of such section [formerly set out as a note under section 256 of this title]. The amendments otherwise made by this title [amending this section and sections 256, 290bb–2, 290cc–21, 290cc–28, 290cc–29, 290cc–35, 290cc–36, 290dd, 290ee, and 290ee–1 of this title and amending provisions set out as a note under section 290aa–3 of this title] shall take effect October 1, 1988, or upon the date of the enactment of this Act [Nov. 7, 1988], whichever occurs later.''

Section 831 of title VIII of Pub. L. 100–607 provided that: ''The amendments made by subsection (a) of section 801 [amending section 256 of this title] shall take effect in accordance with subsection (b) of such section [formerly set out as a note under section 256 of this title]. The amendments otherwise made by this title [amending this section and sections 256, 290bb–2, 290cc–21, 290cc–28, 290cc–29, 290cc–35, 290cc–36, 290dd, 290ee, and 290ee–1 of this title and amending provisions set out as a note under section 290aa–3 of this title] shall take effect October 1, 1988, or upon the date of the enactment of this Act [Nov. 4, 1988], whichever occurs later.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 986(b)(4) of Pub. L. 97–35 effective Oct. 1, 1981, see section 986(c) of Pub. L. 97–35, set out as a note under section 249 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 7(e)(1) of Pub. L. 95–142 provided that: ''The amendment made by subsection (d) [amending this section] shall apply with respect to determinations and designations made on and after the date of the enactment of this Act [Oct. 25, 1977].''

REGULATIONS

Pub. L. 107–251, title III, § 302(b), Oct. 26, 2002, 116 Stat. 1644, which required the Secretary to submit a report to Congress, if the Secretary issued regulations revising the definition of a health professional shortage area under this section and standards concerning priority of such an area under section 254f–1 of this title, was repealed by Pub. L. 108–163, § 2(f)(2), Dec. 6, 2003, 117 Stat. 2022.

IMPROVEMENT OF SITE DESIGNATION PROCESS

Pub. L. 107–251, title III, § 302(d)(1), Oct. 26, 2002, 116 Stat. 1644, provided that: ''The Administrator of the Health Resources and Services Administration, in consultation with the Association of State and Territorial Dental Directors, dental societies, and other interested parties, shall revise the criteria on which the designations of dental health professional shortage areas are based so that such criteria provide a more accurate reflection of oral health care need, particularly in rural areas.''

GAO STUDY

Pub. L. 107–251, title III, § 302(e), Oct. 26, 2002, 116 Stat. 1645, provided that: ''Not later than February 1, 2005, the Comptroller General of the United States shall submit to the Congress a report on the appropriateness of the criteria, including but not limited to infant mortality rates, access to health services taking into account the distance to primary health services, the rate of poverty and ability to pay for health services, and low birth rates, established by the Secretary of Health and Human Services for the designation of health professional shortage areas and whether the deeming of federally qualified health centers and rural health clinics as such areas is appropriate and necessary.''

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center, considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

EVALUATION OF CRITERIA USED TO DESIGNATE HEALTH MANPOWER SHORTAGE AREAS; REPORT TO CONGRESS

Section 2702(c) of Pub. L. 97–35 directed the Secretary of Health and Human Services, effective Oct. 1, 1981, to evaluate the criteria used under section 254e(b) of this title to determine if the use of the criteria resulted in areas which did not have a shortage of health professions personnel being designated as health manpower shortage areas, and to consider different criteria (including the actual use of health professions personnel in an area by the residents, taking into account their health status and indicators of unmet demand and likelihood that such demand would not be met in two years) which might be used to designate health manpower shortage areas. The Secretary was to report the results of his activities to Congress not later than Nov. 30, 1982.

§ 254f. Corps personnel

(a) Conditions necessary for assignment of Corps personnel to area; contents of application for assignment; assignment to particular facility; approval of applications

(1) The Secretary may assign members of the Corps to provide, under regulations promulgated by the Secretary, health services in or to a health professional shortage area during the assignment period only if—

(A) a public or private entity, which is located or has a demonstrated interest in such area makes application to the Secretary for such assignment;

(B) such application has been approved by the Secretary;

(C) the entity agrees to comply with the requirements of section 254g of this title; and

(D) the Secretary has (i) conducted an evaluation of the need and demand for health manpower for the area, the intended use of Corps members to be assigned to the area, community support for the assignment of Corps members to the area, the area's efforts to secure health manpower for the area, and the fiscal management capability of the entity to which Corps members would be assigned and (ii) on the basis of such evaluation has determined that—

(I) there is a need and demand for health manpower for the area;

(II) there has been appropriate and efficient use of any Corps members assigned to the entity for the area;

(III) there is general community support for the assignment of Corps members to the entity;

(IV) the area has made unsuccessful efforts to secure health manpower for the area; and

(V) there is a reasonable prospect of sound fiscal management, including efficient collection of fee-for-service, third-party, and other appropriate funds, by the entity with respect to Corps members assigned to such entity.

An application for assignment of a Corps member to a health professional shortage area shall include a demonstration by the applicant that the area or population group to be served by the applicant has a shortage of personal health services and that the Corps member will be located so that the member will provide services to the greatest number of persons residing in such area or included in such population group. Such a demonstration shall be made on the basis of the criteria prescribed by the Secretary under section 254e(b) of this title and on additional criteria which the Secretary shall prescribe to determine if the area or population group to be served by the applicant has a shortage of personal health services.

(2) Corps members may be assigned to a Federal health care facility, but only upon the request of the head of the department or agency of which such facility is a part.

(3) In approving applications for assignment of members of the Corps the Secretary shall not discriminate against applications from entities which are not receiving Federal financial assistance under this chapter. In approving such ap-

plications, the Secretary shall give preference to applications in which a nonprofit entity or public entity shall provide a site to which Corps members may be assigned.

(b) Corps member income assurances; grants respecting sufficiency of financial resources

(1) The Secretary may not approve an application for the assignment of a member of the Corps described in subparagraph (C) of section 254d(a)(1) of this title to an entity unless the application of the entity contains assurances satisfactory to the Secretary that the entity (A) has sufficient financial resources to provide the member of the Corps with an income of not less than the income to which the member would be entitled if the member was a member described in subparagraph (B) of section 254d(a)(1) of this title, or (B) would have such financial resources if a grant was made to the entity under paragraph (2).

(2)(A) If in approving an application of an entity for the assignment of a member of the Corps described in subparagraph (C) of section 254d(a)(1) of this title the Secretary determines that the entity does not have sufficient financial resources to provide the member of the Corps with an income of not less than the income to which the member would be entitled if the member was a member described in subparagraph (B) of section 254d(a)(1) of this title, the Secretary may make a grant to the entity to assure that the member of the Corps assigned to it will receive during the period of assignment to the entity such an income.

(B) The amount of any grant under subparagraph (A) shall be determined by the Secretary. Payments under such a grant may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. No grant may be made unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

(c) Assignment of members without regard to ability of area to pay for services

The Secretary shall assign Corps members to entities in health professional shortage areas without regard to the ability of the individuals in such areas, population groups, medical facilities, or other public facilities to pay for such services.

(d) Entities entitled to aid; forms of assistance; coordination of efforts; agreements for assignment of Corps members; qualified entity

(1) The Secretary may provide technical assistance to a public or private entity which is located in a health professional shortage area and which desires to make an application under this section for assignment of a Corps member to such area. Assistance provided under this paragraph may include assistance to an entity in (A) analyzing the potential use of health professions personnel in defined health services delivery areas by the residents of such areas, (B) determining the need for such personnel in such areas, (C) determining the extent to which such areas will have a financial base to support the practice of such personnel and the extent to which additional financial resources are needed to adequately support the practice, (D) determining the types of inpatient and other health services that should be provided by such personnel in such areas, and (E) developing long-term plans for addressing health professional shortages and improving access to health care. The Secretary shall encourage entities that receive technical assistance under this paragraph to communicate with other communities, State Offices of Rural Health, State Primary Care Associations and Offices, and other entities concerned with site development and community needs assessment.

(2) The Secretary may provide, to public and private entities which are located in a health professional shortage area to which area a Corps member has been assigned, technical assistance to assist in the retention of such member in such area after the completion of such member's assignment to the area.

(3) The Secretary may provide, to health professional shortage areas to which no Corps member has been assigned, (A) technical assistance to assist in the recruitment of health manpower for such areas, and (B) current information on public and private programs which provide assistance in the securing of health manpower.

(4)(A) The Secretary shall undertake to demonstrate the improvements that can be made in the assignment of members of the Corps to health professional shortage areas and in the delivery of health care by Corps members in such areas through coordination with States, political subdivisions of States, agencies of States and political subdivisions, and other public and private entities which have expertise in the planning, development, and operation of centers for the delivery of primary health care. In carrying out this subparagraph, the Secretary shall enter into agreements with qualified entities which provide that if—

(i) the entity places in effect a program for the planning, development, and operation of centers for the delivery of primary health care in health professional shortage areas which reasonably addresses the need for such care in such areas, and

(ii) under the program the entity will perform the functions described in subparagraph (B),

the Secretary will assign under this section members of the Corps in accordance with the program.

(B) For purposes of subparagraph (A), the term ''qualified entity'' means a State, political subdivision of a State, an agency of a State or political subdivision, or other public or private entity operating solely within one State, which the Secretary determines is able—

(i) to analyze the potential use of health professions personnel in defined health services delivery areas by the residents of such areas;

(ii) to determine the need for such personnel in such areas and to recruit, select, and retain health professions personnel (including members of the National Health Service Corps) to meet such need;

(iii) to determine the extent to which such areas will have a financial base to support the

practice of such personnel and the extent to which additional financial resources are needed to adequately support the practice;

(iv) to determine the types of inpatient and other health services that should be provided by such personnel in such areas;

(v) to assist such personnel in the development of their clinical practice and fee schedules and in the management of their practice;

(vi) to assist in the planning and development of facilities for the delivery of primary health care; and

(vii) to assist in establishing the governing bodies of centers for the delivery of such care and to assist such bodies in defining and carrying out their responsibilities.

(e) Practice within State by Corps member

Notwithstanding any other law, any member of the Corps licensed to practice medicine, osteopathic medicine, dentistry, or any other health profession in any State shall, while serving in the Corps, be allowed to practice such profession in any State.

(July 1, 1944, ch. 373, title III, § 333, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2272; amended Pub. L. 97–35, title XXVII, § 2703, Aug. 13, 1981, 95 Stat. 904; Pub. L. 100–177, title III, §§ 303, 304, Dec. 1, 1987, 101 Stat. 1004; Pub. L. 100–607, title VI, § 629(a)(2), Nov. 4, 1988, 102 Stat. 3146; Pub. L. 101–597, title I, § 103, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3015, 3035; Pub. L. 107–251, title III, § 303, Oct. 26, 2002, 116 Stat. 1645; Pub. L. 108–163, § 2(g), Dec. 6, 2003, 117 Stat. 2022.)

AMENDMENTS

2003—Subsec. (a)(1)(C). Pub. L. 108–163 realigned margin.

2002—Subsec. (a)(1). Pub. L. 107–251, § 303(1)(A)(i), struck out ''(specified in the agreement described in section 254g of this title)'' after ''assignment period'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 107–251, § 303(1)(A)(ii), struck out ''nonprofit'' before ''private entity''.

Subsec. (a)(1)(C). Pub. L. 107–251, § 303(1)(A)(iii), added subpar. (C) and struck out former subpar. (C) which read as follows: ''an agreement has been entered into between the entity which has applied and the Secretary, in accordance with section 254g of this title; and''.

Subsec. (a)(3). Pub. L. 107–251, § 303(1)(B), inserted at end ''In approving such applications, the Secretary shall give preference to applications in which a nonprofit entity or public entity shall provide a site to which Corps members may be assigned.''

Subsec. (d)(1). Pub. L. 107–251, § 303(2), struck out ''nonprofit'' before ''private entity'' in first sentence, added cl. (E), and inserted at end ''The Secretary shall encourage entities that receive technical assistance under this paragraph to communicate with other communities, State Offices of Rural Health, State Primary Care Associations and Offices, and other entities concerned with site development and community needs assessment.''

Subsec. (d)(2). Pub. L. 107–251, § 303(2)(A), struck out ''nonprofit'' before ''private entities''.

Subsec. (d)(4). Pub. L. 107–251, § 303(2)(A), struck out ''nonprofit'' before ''private entities'' in introductory provisions of subpar. (A) and before ''private entity'' in introductory provisions of subpar. (B).

1990—Subsec. (a)(1). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in introductory and closing provisions.

Subsec. (a)(1)(D)(ii)(II). Pub. L. 101–597, § 103(a), substituted ''has been'' and ''any Corps'' for ''will be'' and ''Corps'', respectively.

Subsec. (b). Pub. L. 101–597, § 103(b), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to approval of application for assignment of Corps personnel subject to review and comment on application by health service agencies in designated area.

Subsec. (c). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 103(b), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to applications, consideration and approval by Secretary, priorities, cooperation with Corps members, and comments by health professionals and societies in designated areas.

Subsec. (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing in pars. (1) to (4)(A)(i).

Pub. L. 101–597, § 103(b)(2), redesignated subsec. (g) as (d). Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 101–597, § 103(b)(2), redesignated subsec. (i) as (e). Former subsec. (e) redesignated (c).

Subsec. (f). Pub. L. 101–597, § 103(b)(1), struck out subsec. (f) which provided for selection of Corps members for assignment upon basis of characteristics.

Subsec. (g). Pub. L. 101–597, § 103(b)(2), redesignated subsec. (g) as (d).

Subsec. (h). Pub. L. 101–597, § 103(b)(1), struck out subsec. (h) which related to study and contracts for study of methods of assignments of Corps members.

Subsec. (i). Pub. L. 101–597, § 103(b)(2), redesignated subsec. (i) as (e).

Subsecs. (j), (k). Pub. L. 101–597, § 103(b)(1), struck out subsecs. (j) and (k) which provided for placement of physicians in medically underserved areas and assignment of family physicians, respectively.

1988—Subsec. (i). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy''.

1987—Subsec. (j). Pub. L. 100–177, § 303, added subsec. (j).

Subsec. (k). Pub. L. 100–177, § 304, added subsec. (k).

1981—Subsec. (a). Pub. L. 97–35, § 2703(a), (b), amended par. (1)(D) generally and, among changes, made numerous changes in nomenclature, inserted at end of par. (1) provisions respecting application, and added par. (3).

Subsec. (c). Pub. L. 97–35, § 2703(c), struck out par. (2) which related to special considerations, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsecs. (d) to (f). Pub. L. 97–35, § 2703(d), added subsec. (d) and redesignated former subsecs. (d), (e), and (f) as (e), (f), and (g), respectively.

Subsec. (g). Pub. L. 97–35, § 2703(d), (e), redesignated former subsec. (f) as (g) and substituted ''may'' for ''shall'' in pars. (1) to (3), inserted provisions respecting health professions personnel in par. (1), added par. (4), and struck out requirement respecting demonstrated interest in pars. (1) and (2). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 97–35, § 2703(d), (f), redesignated former subsec. (g) as (h) and directed that ''may'' be substituted for ''shall'' which was executed by substituting ''may'' for ''shall'' in two places preceding par. (1). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 97–35, § 2703(d), (g), redesignated former subsec. (h) as (i) and inserted reference to other health profession.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2703(d) of Pub. L. 97–35 provided that the amendment made by that section is effective Oct. 1, 1981.

§ 254f–1. Priorities in assignment of Corps personnel

(a) In general

In approving applications made under section 254f of this title for the assignment of Corps members, the Secretary shall—

(1) give priority to any such application that—

(A) is made regarding the provision of primary health services to a health professional shortage area with the greatest such shortage; and

(B) is made by an entity that—

(i) serves a health professional shortage area described in subparagraph (A);

(ii) coordinates the delivery of primary health services with related health and social services;

(iii) has a documented record of sound fiscal management; and

(iv) will experience a negative impact on its capacity to provide primary health services if a Corps member is not assigned to the entity;

(2) with respect to the geographic area in which the health professional shortage area is located, take into consideration the willingness of individuals in the geographic area, and of the appropriate governmental agencies or health entities in the area, to assist and cooperate with the Corps in providing effective primary health services; and

(3) take into consideration comments of medical, osteopathic, dental, or other health professional societies whose members deliver services to the health professional shortage area, or if no such societies exist, comments of physicians, dentists, or other health professionals delivering services to the area.

(b) Establishment of criteria for determining priorities

(1) In general

The Secretary shall establish criteria specifying the manner in which the Secretary makes a determination under subsection (a)(1)(A) of this section of the health professional shortage areas with the greatest such shortages.

(2) Publication of criteria

The criteria required in paragraph (1) shall be published in the Federal Register not later than July 1, 1991. Any revisions made in the criteria by the Secretary shall be effective upon publication in the Federal Register.

(c) Notifications regarding priorities

(1) Proposed list

The Secretary shall prepare and publish a proposed list of health professional shortage areas and entities that would receive priority under subsection (a)(1) of this section in the assignment of Corps members. The list shall contain the information described in paragraph (2), and the relative scores and relative priorities of the entities submitting applications under section 254f of this title, in a proposed format. All such entities shall have 30 days after the date of publication of the list to provide additional data and information in support of inclusion on the list or in support of a higher priority determination and the Secretary shall reasonably consider such data and information in preparing the final list under paragraph (2).

(2) Preparation of list for applicable period

For the purpose of carrying out paragraph (3), the Secretary shall prepare and, as appropriate, update a list of health professional shortage areas and entities that are receiving priority under subsection (a)(1) of this section in the assignment of Corps members. Such list—

(A) shall include a specification, for each such health professional shortage area, of the entities for which the Secretary has provided an authorization to receive assignments of Corps members in the event that Corps members are available for the assignments; and

(B) shall, of the entities for which an authorization described in subparagraph (A) has been provided, specify—

(i) the entities provided such an authorization for the assignment of Corps members who are participating in the Scholarship Program;

(ii) the entities provided such an authorization for the assignment of Corps members who are participating in the Loan Repayment Program; and

(iii) the entities provided such an authorization for the assignment of Corps members who have become Corps members other than pursuant to contractual obligations under the Scholarship or Loan Repayment Programs.

The Secretary may set forth such specifications by medical specialty.

(3) Notification of affected parties

(A) Entities

Not later than 30 days after the Secretary has added to a list under paragraph (2) an entity specified as described in subparagraph (A) of such paragraph, the Secretary shall notify such entity that the entity has been provided an authorization to receive assignments of Corps members in the event that Corps members are available for the assignments.

(B) Individuals

In the case of an individual obligated to provide service under the Scholarship Program, not later than 3 months before the date described in section 254m(b)(5) of this title, the Secretary shall provide to such individual the names of each of the entities specified as described in paragraph (2)(B)(i) that is appropriate for the individual's medical specialty and discipline.

(4) Revisions

If the Secretary proposes to make a revision in the list under paragraph (2), and the revision would adversely alter the status of an entity with respect to the list, the Secretary shall notify the entity of the revision. Any entity adversely affected by such a revision shall

be notified in writing by the Secretary of the reasons for the revision and shall have 30 days from such notification to file a written appeal of the determination involved which shall be reasonably considered by the Secretary before the revision to the list becomes final. The revision to the list shall be effective with respect to assignment of Corps members beginning on the date that the revision becomes final.

(d) Limitation on number of entities offered as assignment choices in Scholarship Program

(1) Determination of available Corps members

By April 1 of each calendar year, the Secretary shall determine the number of participants in the Scholarship Program who will be available for assignments under section 254f of this title during the program year beginning on July 1 of that calendar year.

(2) Determination of number of entities

At all times during a program year, the number of entities specified under subsection (c)(2)(B)(i) of this section shall be—

(A) not less than the number of participants determined with respect to that program year under paragraph (1); and

(B) not greater than twice the number of participants determined with respect to that program year under paragraph (1).

(July 1, 1944, ch. 373, title III, § 333A, as added and amended Pub. L. 101–597, title I, § 104, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3015, 3035; Pub. L. 107–251, title III, § 304, Oct. 26, 2002, 116 Stat. 1646; Pub. L. 108–163, § 2(h), Dec. 6, 2003, 117 Stat. 2022.)

AMENDMENTS

2003—Subsec. (c)(4). Pub. L. 108–163 substituted ''30 days from such notification'' for ''30 days''.

2002—Subsec. (a)(1)(A). Pub. L. 107–251, § 304(1), struck out '', as determined in accordance with subsection (b) of this section'' after ''such shortage''.

Subsec. (b). Pub. L. 107–251, § 304(2), (7), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: ''In making a determination under subsection (a)(1)(A) of this section of the health professional shortage areas with the greatest such shortages, the Secretary may consider only the following factors:

''(1) The ratio of available health manpower to the number of individuals in the area or population group involved, or served by the medical facility or other public facility involved.

''(2) Indicators of need as follows:

''(A) The rate of low birthweight births.

''(B) The rate of infant mortality.

''(C) The rate of poverty.

''(D) Access to primary health services, taking into account the distance to such services.''

Subsec. (c). Pub. L. 107–251, § 304(7), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 107–251, § 304(3), struck out second sentence, which read as follows: ''Such criteria shall specify the manner in which the factors described in subsection (b) of this section are implemented regarding such a determination.''

Subsec. (d). Pub. L. 107–251, § 304(7), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 107–251, § 304(4)(B), added par. (1). Former par. (1) redesignated (2).

Subsec. (d)(2). Pub. L. 107–251, § 304(4)(C), in introductory provisions, substituted ''paragraph (3)'' for ''paragraph (2)'' and ''prepare and, as appropriate, update a list of health professional shortage areas and entities'' for ''prepare a list of health professional shortage areas'' and struck out ''for the period applicable under subsection (f) of this section'' after ''Corps members''.

Pub. L. 107–251, § 304(4)(A), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 107–251, § 304(4)(D), added par. (3) and struck out heading and text of former par. (3). Text read as follows:

''(A) Not later than 30 days after the preparation of each list under paragraph (1), the Secretary shall notify entities specified for purposes of subparagraph (A) of such paragraph of the fact that the entities have been provided an authorization to receive assignments of Corps members in the event that Corps members are available for the assignments.

''(B) In the case of individuals with respect to whom a period of obligated service under the Scholarship Program will begin during the period under subsection (f) of this section for which a list under paragraph (1) is prepared, the Secretary shall, not later than 30 days after the preparation of each such list, provide to such individuals the names of each of the entities specified for purposes of paragraph (1)(B)(i) that is appropriate to the medical specialty of the individuals.''

Pub. L. 107–251, § 304(4)(A), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 107–251, § 304(4)(E), added par. (4) and struck out heading and text of former par. (4). Text read as follows: ''If the Secretary makes a revision in a list under paragraph (1) during the period under subsection (f) of this section to which the list is applicable, and the revision alters the status of an entity with respect to the list, the Secretary shall notify the entity of the effect on the entity of the revision. Such notification shall be provided not later than 30 days after the date on which the revision is made.''

Pub. L. 107–251, § 304(4)(A), redesignated par. (3) as (4).

Subsec. (e). Pub. L. 107–251, § 304(7), redesignated subsec. (e) as (d).

Pub. L. 107–251, § 304(5), added subsec. (e) and struck out heading and text of former subsec. (e). Text related to limitation on the number of entities offered as assignment choices in the Scholarship Program based on the number of participants available for assignments.

Subsec. (f). Pub. L. 107–251, § 304(6), struck out heading and text of subsec. (f), which related to applicable period regarding priorities in assignment of Corps members.

1990—Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing in subsecs. (a) to (c)(1), (d)(1), and (e)(3).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§ 254g. Charges for services by entities using Corps members

(a) Availability of services regardless of ability to pay or payment source

An entity to which a Corps member is assigned shall not deny requested health care services, and shall not discriminate in the provision of services to an individual—

(1) because the individual is unable to pay for the services; or

(2) because payment for the services would be made under—

(A) the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(B) the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.); or

(C) the State children's health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.).

(b) Charges for services

The following rules shall apply to charges for health care services provided by an entity to which a Corps member is assigned:

(1) In general

(A) Schedule of fees or payments

Except as provided in paragraph (2), the entity shall prepare a schedule of fees or payments for the entity's services, consistent with locally prevailing rates or charges and designed to cover the entity's reasonable cost of operation.

(B) Schedule of discounts

Except as provided in paragraph (2), the entity shall prepare a corresponding schedule of discounts (including, in appropriate cases, waivers) to be applied to the payment of such fees or payments. In preparing the schedule, the entity shall adjust the discounts on the basis of a patient's ability to pay.

(C) Use of schedules

The entity shall make every reasonable effort to secure from patients fees and payments for services in accordance with such schedules, and fees or payments shall be sufficiently discounted in accordance with the schedule described in subparagraph (B).

(2) Services to beneficiaries of Federal and federally assisted programs

In the case of health care services furnished to an individual who is a beneficiary of a program listed in subsection (a)(2) of this section, the entity—

(A) shall accept an assignment pursuant to section 1842(b)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395u(b)(3)(B)(ii)) with respect to an individual who is a beneficiary under the medicare program; and

(B) shall enter into an appropriate agreement with—

(i) the State agency administering the program under title XIX of such Act [42 U.S.C. 1396 et seq.] with respect to an individual who is a beneficiary under the medicaid program; and

(ii) the State agency administering the program under title XXI of such Act [42 U.S.C. 1397aa et seq.] with respect to an individual who is a beneficiary under the State children's health insurance program.

(3) Collection of payments

The entity shall take reasonable and appropriate steps to collect all payments due for health care services provided by the entity, including payments from any third party (including a Federal, State, or local government agency and any other third party) that is responsible for part or all of the charge for such services.

(July 1, 1944, ch. 373, title III, § 334, as added Pub. L. 107–251, title III, § 305, Oct. 26, 2002, 116 Stat. 1647; amended Pub. L. 108–163, § 2(i), Dec. 6, 2003, 117 Stat. 2022.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(2) and (b)(2)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 254g, act July 1, 1944, ch. 373, title III, § 334, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2274; amended Pub. L. 97–35, title XXVII, § 2704, Aug. 13, 1981, 95 Stat. 906; Pub. L. 98–194, § 3, Dec. 1, 1983, 97 Stat. 1345; Pub. L. 100–177, title II, § 202(c), Dec. 1, 1987, 101 Stat. 996; Pub. L. 101–597, title I, § 105, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3018, 3035, related to shared responsibility for costs of Corps personnel providing health services in or to a health professional shortage area during the assignment period, prior to repeal by Pub. L. 107–251, title III, § 305, Oct. 26, 2002, 116 Stat. 1647.

AMENDMENTS

2003—Subsec. (b)(1)(B). Pub. L. 108–163 inserted "the payment of" after "applied to".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§ 254h. Provision of health services by Corps members

(a) Means of delivery of services; cooperation with other health care providers

In providing health services in a health professional shortage area, Corps members shall utilize the techniques, facilities, and organizational forms most appropriate for the area, population group, medical facility, or other public facility, and shall, to the maximum extent feasible, provide such services (1) to all individuals in, or served by, such health professional shortage area regardless of their ability to pay for the services, and (2) in a manner which is cooperative with other health care providers serving such health professional shortage area.

(b) Utilization of existing health facilities; lease, acquisition, and use of equipment and supplies; permanent and temporary professional services

(1) Notwithstanding any other provision of law, the Secretary may (A) to the maximum extent feasible make such arrangements as he determines necessary to enable Corps members to utilize the health facilities in or serving the health professional shortage area in providing health services; (B) make such arrangements as he determines are necessary for the use of equipment and supplies of the Service and for the lease or acquisition of other equipment and supplies; and (C) secure the permanent or temporary services of physicians, dentists, nurses, administrators, and other health personnel. If there are no health facilities in or serving such area, the Secretary may arrange to have Corps members provide health services in the nearest health facilities of the Service or may lease or otherwise provide facilities in or serving such area for the provision of health services.

(2) If the individuals in or served by a health professional shortage area are being served (as determined under regulations of the Secretary) by a hospital or other health care delivery facility of the Service, the Secretary may, in addition to such other arrangements as he may make under paragraph (1), arrange for the utilization of such hospital or facility by Corps members in providing health services, but only to the extent that such utilization will not impair the delivery of health services and treatment through such hospital or facility to individuals who are entitled to health services and treatment through such hospital or facility.

(c) Loan; purposes; limitations

The Secretary may make one loan to any entity with an approved application under section 254f of this title to assist such entity in meeting the costs of (1) establishing medical, dental, or other health profession practices, including the development of medical practice management systems; (2) acquiring equipment for use in providing health services; and (3) renovating buildings to establish health facilities. No loan may be made under this subsection unless an application therefor is submitted to, and approved by, the Secretary. The amount of any such loan shall be determined by the Secretary, except that no such loan may exceed $50,000.

(d) Property and equipment disposal; fair market value; sale at less than full market value

Upon the expiration of the assignment of all Corps members to a health professional shortage area, the Secretary may (notwithstanding any other provision of law) sell, to any appropriate local entity, equipment and other property of the United States utilized by such members in providing health services. Sales made under this subsection shall be made at the fair market value (as determined by the Secretary) of the equipment or such other property; except that the Secretary may make such sales for a lesser value to an appropriate local entity, if he determines that the entity is financially unable to pay the full market value.

(e) Admitting privileges denied to Corps member by hospital; notice and hearing; denial of Federal funds for violation; "hospital" defined

(1)(A) It shall be unlawful for any hospital to deny an authorized Corps member admitting privileges when such Corps member otherwise meets the professional qualifications established by the hospital for granting such privileges and agrees to abide by the published bylaws of the hospital and the published bylaws, rules, and regulations of its medical staff.

(B) Any hospital which is found by the Secretary, after notice and an opportunity for a hearing on the record, to have violated this subsection shall upon such finding cease, for a period to be determined by the Secretary, to receive and to be eligible to receive any Federal funds under this chapter or under titles XVIII, XIX, or XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.].

(2) For purposes of this subsection, the term ''hospital'' includes a State or local public hospital, a private profit hospital, a private nonprofit hospital, a general or special hospital, and any other type of hospital (excluding a hospital owned or operated by an agency of the Federal Government), and any related facilities.

(July 1, 1944, ch. 373, title III, § 335, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2275; amended Pub. L. 97–35, title XXVII, § 2705, Aug. 13, 1981, 95 Stat. 907; Pub. L. 101–597, title I, § 106, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3018, 3035; Pub. L. 107–251, title III, § 306, Oct. 26, 2002, 116 Stat. 1648.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(1)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2002—Subsec. (e)(1)(B). Pub. L. 107–251 substituted ''titles XVIII, XIX, or XXI of the Social Security Act'' for ''titles XVIII or XIX of the Social Security Act''.

1990—Subsecs. (a), (b)(1)(A), (2), (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

Subsec. (e)(1)(A). Pub. L. 101–597, § 106, substituted ''authorized Corps member admitting privileges'' for ''authorized physician or dentist member of the Corps admitting privileges''.

1981—Subsec. (a)(2). Pub. L. 97–35, § 2705(a), substituted provisions respecting cooperation with other health care providers, for provisions respecting direct health services programs.

Subsec. (c)(4). Pub. L. 97–35, § 2705(b), struck out cl. (4) relating to appropriate continuing education programs.

§ 254h–1. Facilitation of effective provision of Corps services

(a) Consideration of individual characteristics of members in making assignments

In making an assignment of a Corps member to an entity that has had an application approved under section 254f of this title, the Secretary shall, subject to making the assignment in accordance with section 254f–1 of this title, seek to assign to the entity a Corps member who has (and whose spouse, if any, has) characteristics that increase the probability that the member will remain in the health professional shortage area involved after the completion of the period of service in the Corps.

(b) Counseling on service in Corps

(1) In general

The Secretary shall, subject to paragraph (3), offer appropriate counseling on service in the Corps to individuals during the period of membership in the Corps, particularly during the initial period of each assignment.

(2) Career advisor regarding obligated service

(A) In the case of individuals who have entered into contracts for obligated service under the Scholarship or Loan Repayment Program, counseling under paragraph (1) shall include appropriate counseling on matters particular to such obligated service. The Secretary shall ensure that career advisors for

providing such counseling are available to such individuals throughout the period of participation in the Scholarship or Loan Repayment Program.

(B) With respect to the Scholarship Program, counseling under paragraph (1) shall include counseling individuals during the period in which the individuals are pursuing an educational degree in the health profession involved, including counseling to prepare the individual for service in the Corps.

(3) Extent of counseling services

With respect to individuals who have entered into contracts for obligated service under the Scholarship or Loan Repayment Program, this subsection shall be carried out regarding such individuals throughout the period of obligated service (and, additionally, throughout the period specified in paragraph (2)(B), in the case of the Scholarship Program). With respect to Corps members generally, this subsection shall be carried out to the extent practicable.

(c) Grants regarding preparation of students for practice

With respect to individuals who have entered into contracts for obligated service under the Scholarship or Loan Repayment Program, the Secretary may make grants to, and enter into contracts with, public and nonprofit private entities (including health professions schools) for the conduct of programs designed to prepare such individuals for the effective provision of primary health services in the health professional shortage areas to which the individuals are assigned.

(d) Assistance in establishing local professional relationships

The Secretary shall assist Corps members in establishing appropriate professional relationships between the Corps member involved and the health professions community of the geographic area with respect to which the member is assigned, including such relationships with hospitals, with health professions schools, with area health education centers under section 295g–1[1] of this title, with health education and training centers under such section, and with border health education and training centers under such section. Such assistance shall include assistance in obtaining faculty appointments at health professions schools.

(e) Temporary relief from Corps duties

(1) In general

The Secretary shall, subject to paragraph (4), provide assistance to Corps members in establishing arrangements through which Corps members may, as appropriate, be provided temporary relief from duties in the Corps in order to pursue continuing education in the health professions, to participate in exchange programs with teaching centers, to attend professional conferences, or to pursue other interests, including vacations.

(2) Assumption of duties of member

(A) Temporary relief under paragraph (1) may be provided only if the duties of the Corps member involved are assumed by another health professional. With respect to such temporary relief, the duties may be assumed by Corps members or by health professionals who are not Corps members, if the Secretary approves the professionals for such purpose. Any health professional so approved by the Secretary shall, during the period of providing such temporary relief, be deemed to be a Corps member for purposes of section 233 of this title (including for purposes of the remedy described in such section), section 254f(f) of this title, and section 254h(e) of this title.

(B) In carrying out paragraph (1), the Secretary shall provide for the formation and continued existence of a group of health professionals to provide temporary relief under such paragraph.

(3) Recruitment from general health professions community

In carrying out paragraph (1), the Secretary shall—

(A) encourage health professionals who are not Corps members to enter into arrangements under which the health professionals temporarily assume the duties of Corps members for purposes of paragraph (1); and

(B) with respect to the entities to which Corps members have been assigned under section 254f of this title, encourage the entities to facilitate the development of arrangements described in subparagraph (A).

(4) Limitation

In carrying out paragraph (1), the Secretary may not, except as provided in paragraph (5), obligate any amounts (other than for incidental expenses) for the purpose of—

(A) compensating a health professional who is not a Corps member for assuming the duties of a Corps member; or

(B) paying the costs of a vacation, or other interests that a Corps member may pursue during the period of temporary relief under such paragraph.

(5) Sole providers of health services

In the case of any Corps member who is the sole provider of health services in the geographic area involved, the Secretary may, from amounts appropriated under section 254k of this title, obligate on behalf of the member such sums as the Secretary determines to be necessary for purposes of providing temporary relief under paragraph (1).

(f) Determinations regarding effective service

In carrying out subsection (a) of this section and sections 254*l*(d) and 254*l*–1(d) of this title, the Secretary shall carry out activities to determine—

(1) the characteristics of physicians, dentists, and other health professionals who are more likely to remain in practice in health professional shortage areas after the completion of the period of service in the Corps;

(2) the characteristics of health manpower shortage areas, and of entities seeking assignments of Corps members, that are more likely to retain Corps members after the members have completed the period of service in the Corps; and

[1] See References in Text note below.

(3) the appropriate conditions for the assignment and utilization in health manpower shortage areas of certified nurse practitioners, certified nurse midwives, and physician assistants.

(July 1, 1944, ch. 373, title III, § 336, as added Pub. L. 97–35, title XXVII, § 2706(b), Aug. 13, 1981, 95 Stat. 907; amended Pub. L. 100–177, title II, § 202(d), Dec. 1, 1987, 101 Stat. 997; Pub. L. 101–597, title I, § 107, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3018, 3035; Pub. L. 107–251, title III, § 307(a), Oct. 26, 2002, 116 Stat. 1649.)

REFERENCES IN TEXT

Section 295g–1 of this title, referred to in subsec. (d), was in the original a reference to section 781 of act July 1, 1944. Section 781 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

PRIOR PROVISIONS

A prior section 336 of act July 1, 1944, was renumbered section 336A by Pub. L. 97–35, § 2706(a), and is classified to section 254i of this title.

AMENDMENTS

2002—Subsecs. (c), (f)(1). Pub. L. 107–251 substituted ''health professional shortage areas'' for ''health manpower shortage areas''.

1990—Pub. L. 101–597, § 107, amended section generally. Prior to amendment, section read as follows:

''(a) The Secretary may make grants to and enter into contracts with public and private nonprofit entities for the conduct of programs which are designed to prepare individuals subject to a service obligation under the National Health Service Corps Scholarship Program or Loan Repayment Program to effectively provide health services in the health manpower shortage area to which they are assigned.

''(b) No grant may be made or contract entered into under subsection (a) of this section unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.''

Subsec. (a). Pub. L. 101–597, § 401(b)[(a)], substituted ''health professional shortage area'' for ''health manpower shortage area''.

1987—Subsec. (a). Pub. L. 100–177 substituted ''Scholarship Program or Loan Repayment Program'' for ''scholarship program''.

§ 254i. Annual report to Congress; contents

The Secretary shall submit an annual report to Congress, and shall include in such report with respect to the previous calendar year—

(1) the number, identity, and priority of all health professional shortage areas designated in such year and the number of health professional shortage areas which the Secretary estimates will be designated in the subsequent year;

(2) the number of applications filed under section 254f of this title in such year for assignment of Corps members and the action taken on each such application;

(3) the number and types of Corps members assigned in such year to health professional shortage areas, the number and types of additional Corps members which the Secretary estimates will be assigned to such areas in the subsequent year, and the need for additional members for the Corps;

(4) the recruitment efforts engaged in for the Corps in such year and the number of qualified individuals who applied for service in the Corps in such year;

(5) the number of patients seen and the number of patient visits recorded during such year with respect to each health professional shortage area to which a Corps member was assigned during such year;

(6) the number of Corps members who elected, and the number of Corps members who did not elect, to continue to provide health services in health professional shortage areas after termination of their service in the Corps and the reasons (as reported to the Secretary) of members who did not elect for not making such election;

(7) the results of evaluations and determinations made under section 254f(a)(1)(D) of this title during such year; and

(8) the amount charged during such year for health services provided by Corps members, the amount which was collected in such year by entities in accordance with section 254g of this title, and the amount which was paid to the Secretary in such year under such agreements.

(July 1, 1944, ch. 373, title III, § 336A, formerly § 336, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2277, renumbered § 336A, Pub. L. 97–35, title XXVII, § 2706(a), Aug. 13, 1981, 95 Stat. 907; amended Pub. L. 97–375, title II, § 206(a), Dec. 21, 1982, 96 Stat. 1823; Pub. L. 101–597, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3035; Pub. L. 107–251, title III, § 307(b), Oct. 26, 2002, 116 Stat. 1649.)

AMENDMENTS

2002—Par. (8). Pub. L. 107–251 struck out ''agreements under'' after ''in accordance with''.

1990—Pars. (1), (3), (5), (6). Pub. L. 101–597 substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

1982—Pub. L. 97–375 struck out ''on May 1 of each year'' after ''report to Congress''.

§ 254j. National Advisory Council on National Health Service Corps

(a) Establishment; appointment of members

There is established a council to be known as the National Advisory Council on the National Health Service Corps (hereinafter in this section referred to as the ''Council''). The Council shall be composed of not more than 15 members appointed by the Secretary. The Council shall consult with, advise, and make recommendations to, the Secretary with respect to his responsibilities in carrying out this subpart (other than section 254r[1] of this title), and shall review and comment upon regulations promulgated by the Secretary under this subpart.

(b) Term of members; compensation; expenses

(1) Members of the Council shall be appointed for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term. No member shall be removed, except for cause. Members may not be reappointed to the Council.

[1] See References in Text note below.

(2) Members of the Council (other than members who are officers or employees of the United States), while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be entitled to receive for each day (including traveltime) in which they are so serving compensation at a rate fixed by the Secretary (but not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule); and while so serving away from their homes or regular places of business all members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government Service employed intermittently.

(c) Termination

Section 14 of the Federal Advisory Committee Act shall not apply with respect to the Council.

(July 1, 1944, ch. 373, title III, § 337, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2277; amended Pub. L. 96–32, § 7(g), July 10, 1979, 93 Stat. 84; Pub. L. 97–35, title XXVII, § 2707, Aug. 13, 1981, 95 Stat. 907; Pub. L. 97–414, § 8(f), Jan. 4, 1983, 96 Stat. 2061; Pub. L. 103–183, title VII, § 706(b), Dec. 14, 1993, 107 Stat. 2241.)

REFERENCES IN TEXT

Section 254r of this title, referred to in subsec. (a), was in the original a reference to section 338G of act July 1, 1944, which was renumbered section 338I by Pub. L. 100–177, title II, § 201(1), Dec. 1, 1987, 101 Stat. 992, and repealed by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (c), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (b)(2). Pub. L. 103–183 inserted ''compensation at a rate fixed by the Secretary (but not to exceed'' before ''the daily equivalent'' and substituted ''Schedule);'' for ''Schedule;''.

1983—Subsec. (a). Pub. L. 97–414 inserted ''(other than section 254r of this title)'' after ''carrying out this subpart''.

1981—Subsec. (a). Pub. L. 97–35, § 2707(a), amended subsec. (a) generally, striking out pars. (1) to (5) respecting required status and background of members appointed by the Secretary.

Subsec. (b)(1). Pub. L. 97–35, § 2707(b), inserted ''not'' before ''be reappointed''.

1979—Subsec. (b)(2). Pub. L. 96–32 substituted ''section 5703 of title 5'' for ''section 5703(b) of title 5''.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 254k. Authorization of appropriations

(a) For the purpose of carrying out this subpart, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2006.

(b) An appropriation under an authorization under subsection (a) of this section for any fiscal year may be made at any time before that fiscal year and may be included in an Act making an appropriation under an authorization under subsection (a) of this section for another fiscal year; but no funds may be made available from any appropriation under such authorization for obligation under sections 254d through 254h, section 254i, and section 254j of this title before the fiscal year for which such appropriation is authorized.

(July 1, 1944, ch. 373, title III, § 338, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2278; amended Pub. L. 95–626, title I, § 122, Nov. 10, 1978, 92 Stat. 3570; Pub. L. 96–76, title II, § 202(c), Sept. 29, 1979, 93 Stat. 582; Pub. L. 97–35, title XXVII, § 2708, Aug. 13, 1981, 95 Stat. 908; Pub. L. 100–177, title III, § 305, Dec. 1, 1987, 101 Stat. 1004; Pub. L. 101–597, title I, § 108, Nov. 16, 1990, 104 Stat. 3021; Pub. L. 107–251, title III, § 308, Oct. 26, 2002, 116 Stat. 1649.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–251 struck out par. (1) designation before ''For the purpose'', substituted ''2002 through 2006'' for ''1991 through 2000'', and struck out par. (2) which read as follows: ''In the case of individuals who serve in the Corps other than pursuant to obligated service under the Scholarship or Loan Repayment Program, the Secretary each fiscal year shall, to the extent practicable, make assignments under section 254f of this title of such individuals who are certified nurse midwives, certified nurse practitioners, or physician assistants.''

1990—Subsec. (a). Pub. L. 101–597 added subsec. (a) and struck out former subsec. (a) which read as follows: ''To carry out this subpart, there are authorized to be appropriated $65,000,000 for fiscal year 1988, $65,000,000 for fiscal year 1989, and $65,000,000 for fiscal year 1990.''

1987—Subsec. (a). Pub. L. 100–177 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''To carry out the purposes of this subpart, there are authorized to be appropriated $47,000,000 for the fiscal year ending September 30, 1978; $64,000,000 for the fiscal year ending September 30, 1979; $82,000,000 for the fiscal year ending September 30, 1980; $110,000,000 for the fiscal year ending September 30, 1982; $120,000,000 for the fiscal year ending September 30, 1983; and $130,000,000 for the fiscal year ending September 30, 1984.''

1981—Subsec. (a). Pub. L. 97–35, § 2708(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

Subsec. (b). Pub. L. 97–35, § 2708(b), substituted reference to sections 254d to 254h, 254i, and 254j of this title for reference to this subpart.

1979—Subsec. (a). Pub. L. 96–76 substituted ''$82,000,000'' for ''$70,000,000''.

1978—Subsec. (a). Pub. L. 95–626 substituted ''$64,000,000'' for ''$57,000,000'' as amount authorized to be appropriated for fiscal year ending Sept. 30, 1979.

SUBPART III—SCHOLARSHIP PROGRAM AND LOAN REPAYMENT PROGRAM

AMENDMENTS

1987—Pub. L. 100–177, title II, § 202(f), Dec. 1, 1987, 101 Stat. 999, inserted subpart III heading and redesignated former subpart III as IV.

§ 254*l*. National Health Service Corps Scholarship Program

(a) Establishment

The Secretary shall establish the National Health Service Corps Scholarship Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—

(1) an adequate supply of physicians, dentists, behavioral and mental health professionals, certified nurse midwives, certified nurse practitioners, and physician assistants; and

(2) if needed by the Corps, an adequate supply of other health professionals.

(b) Eligibility; application; written contract

To be eligible to participate in the Scholarship Program, an individual must—

(1) be accepted for enrollment, or be enrolled, as a full-time student (A) in an accredited (as determined by the Secretary) educational institution in a State and (B) in a course of study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession, or an appropriate degree from a graduate program of behavioral and mental health;

(2) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Service or be eligible for selection for civilian service in the Corps;

(3) submit an application to participate in the Scholarship Program; and

(4) sign and submit to the Secretary, at the time of submittal of such application, a written contract (described in subsection (f) of this section) to accept payment of a scholarship and to serve (in accordance with this subpart) for the applicable period of obligated service in a health professional shortage area.

(c) Review and evaluation of information and forms by prospective applicant

(1) In disseminating application forms and contract forms to individuals desiring to participate in the Scholarship Program, the Secretary shall include with such forms—

(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under section 254*o* of this title in the case of the individual's breach of the contract; and

(B) information respecting meeting a service obligation through private practice under an agreement under section 254n of this title and such other information as may be necessary for the individual to understand the individual's prospective participation in the Scholarship Program and service in the Corps, including a statement of all factors considered in approving applications for participation in the Program and in making assignments for participants in the Program.

(2) The application form, contract form, and all other information furnished by the Secretary under this subpart shall be written in a manner calculated to be understood by the average individual applying to participate in the Scholarship Program. The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Scholarship Program on a date sufficiently early to insure that such individuals have adequate time to carefully review and evaluate such forms and information.

(3)(A) The Secretary shall distribute to health professions schools materials providing information on the Scholarship Program and shall encourage the schools to disseminate the materials to the students of the schools.

(B)(i) In the case of any health professional whose period of obligated service under the Scholarship Program is nearing completion, the Secretary shall encourage the individual to remain in a health professional shortage area and to continue providing primary health services.

(ii) During the period in which a health professional is planning and making the transition to private practice from obligated service under the Scholarship Program, the Secretary may provide assistance to the professional regarding such transition if the professional is remaining in a health professional shortage area and is continuing to provide primary health services.

(C) In the case of entities to which participants in the Scholarship Program are assigned under section 254f of this title, the Secretary shall encourage the entities to provide options with respect to assisting the participants in remaining in the health professional shortage areas involved, and in continuing to provide primary health services, after the period of obligated service under the Scholarship Program is completed. The options with respect to which the Secretary provides such encouragement may include options regarding the sharing of a single employment position in the health professions by 2 or more health professionals, and options regarding the recruitment of couples where both of the individuals are health professionals.

(d) Factors considered in providing contracts; priorities

(1) Subject to section 254f–1 of this title, in providing contracts under the Scholarship Program—

(A) the Secretary shall consider the extent of the demonstrated interest of the applicants for the contracts in providing primary health services;

(B) the Secretary, in considering applications from individuals accepted for enrollment or enrolled in dental school, shall consider applications from all individuals accepted for enrollment or enrolled in any accredited dental school in a State; and

(C) may[1] consider such other factors regarding the applicants as the Secretary determines to be relevant to selecting qualified individuals to participate in such Program.

(2) In providing contracts under the Scholarship Program, the Secretary shall give priority—

(A) first, to any application for such a contract submitted by an individual who has pre-

[1] So in original.

viously received a scholarship under this section or under section 294z[1] of this title;

(B) second, to any application for such a contract submitted by an individual who has characteristics that increase the probability that the individual will continue to serve in a health professional shortage area after the period of obligated service pursuant to subsection (f) of this section is completed; and

(C) third, subject to subparagraph (B), to any application for such a contract submitted by an individual who is from a disadvantaged background.

(e) Commencement of participation in Scholarship Program; notice

(1) An individual becomes a participant in the Scholarship Program only upon the Secretary's approval of the individual's application submitted under subsection (b)(3) of this section and the Secretary's acceptance of the contract submitted by the individual under subsection (b)(4) of this section.

(2) The Secretary shall provide written notice to an individual promptly upon the Secretary's approving, under paragraph (1), of the individual's participation in the Scholarship Program.

(f) Written contract; contents

The written contract (referred to in this subpart) between the Secretary and an individual shall contain—

(1) an agreement that—

(A) subject to paragraph (2), the Secretary agrees (i) to provide the individual with a scholarship (described in subsection (g) of this section) in each such school year or years for a period of years (not to exceed four school years) determined by the individual, during which period the individual is pursuing a course of study described in subsection (b)(1)(B) of this section, and (ii) to accept (subject to the availability of appropriated funds for carrying out sections 254d through 254h and section 254j of this title) the individual into the Corps (or for equivalent service as otherwise provided in this subpart); and

(B) subject to paragraph (2), the individual agrees—

(i) to accept provision of such a scholarship to the individual;

(ii) to maintain enrollment in a course of study described in subsection (b)(1)(B) of this section until the individual completes the course of study;

(iii) while enrolled in such course of study, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study);

(iv) if pursuing a degree from a school of medicine or osteopathic medicine, to complete a residency in a specialty that the Secretary determines is consistent with the needs of the Corps; and

(v) to serve for a time period (hereinafter in the subpart referred to as the ''period of obligated service'') equal to—

(I) one year for each school year for which the individual was provided a scholarship under the Scholarship Program, or

(II) two years,

whichever is greater, as a provider of primary health services in a health professional shortage area (designated under section 254e of this title) to which he is assigned by the Secretary as a member of the Corps, or as otherwise provided in this subpart;

(2) a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the individual which is conditioned thereon, is contingent upon funds being appropriated for scholarships under this subpart and to carry out the purposes of sections 254d through 254h and sections 254j and 254k of this title;

(3) a statement of the damages to which the United States is entitled, under section 254*o* of this title, for the individual's breach of the contract; and

(4) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with the provisions of this subpart.

(g) Scholarship provisions; contract with educational institution; increase in monthly stipend

(1) A scholarship provided to a student for a school year under a written contract under the Scholarship Program shall consist of—

(A) payment to, or (in accordance with paragraph (2)) on behalf of, the student of the amount (except as provided in section 292k[2] of this title) of—

(i) the tuition of the student in such school year; and

(ii) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the student in such school year; and

(B) payment to the student of a stipend of $400 per month (adjusted in accordance with paragraph (3)) for each of the 12 consecutive months beginning with the first month of such school year.

(2) The Secretary may contract with an educational institution, in which a participant in the Scholarship Program is enrolled, for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (1)(A). Payment to such an educational institution may be made without regard to section 3324(a) and (b) of title 31.

(3) The amount of the monthly stipend, specified in paragraph (1)(B) and as previously adjusted (if at all) in accordance with this paragraph, shall be increased by the Secretary for each school year ending in a fiscal year beginning after September 30, 1978, by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (under section 5303 of

[2] See References in Text note below.

title 5) of the adjustment (if such adjustment is an increase) in the rates of pay under the General Schedule made effective in the fiscal year in which such school year ends.

(h) Employment ceiling of Department unaffected

Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic training, shall not be counted against any employment ceiling affecting the Department.

(July 1, 1944, ch. 373, title III, § 338A, formerly title VII, § 751, as added Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281; amended Pub. L. 95–215, § 5, Dec. 19, 1977, 91 Stat. 1506; Pub. L. 95–623, § 12(c), Nov. 9, 1978, 92 Stat. 3457; Pub. L. 95–626, title I, § 113(b), Nov. 10, 1978, 92 Stat. 3563; Pub. L. 96–32, § 7(i), July 10, 1979, 93 Stat. 84; renumbered § 338A and amended Pub. L. 97–35, title XXVII, § 2709(a), (b), Aug. 13, 1981, 95 Stat. 908; Pub. L. 99–129, title II, § 210(b), Oct. 22, 1985, 99 Stat. 537; Pub. L. 100–607, title VI, § 629(a)(2), Nov. 4, 1988, 102 Stat. 3146; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(4)(K)], Nov. 5, 1990, 104 Stat. 1427, 1440; Pub. L. 101–597, title II, § 201, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3021, 3035; Pub. L. 107–251, title III, § 309, Oct. 26, 2002, 116 Stat. 1649; Pub. L. 108–163, § 2(j), Dec. 6, 2003, 117 Stat. 2022.)

REFERENCES IN TEXT

Section 294z of this title, referred to in subsec. (d)(2)(A), was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

Section 292k of this title, referred to in subsec. (g)(1)(A), was in the original a reference to section 711 of act July 1, 1944. Section 711 of that Act was renumbered as section 710 by Pub. L. 97–35, title XXVII, § 2720(b), Aug. 13, 1981, 95 Stat. 915, and subsequently omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 710 of act July 1, 1944, relating to insurance accounts, a new section 711, relating to powers and responsibilities of the Secretary, and a new section 712, relating to participation by Federal credit unions, which are classified to sections 292i, 292j, and 292k, respectively, of this title.

CODIFICATION

In subsec. (g)(2), ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes (31 U.S.C. 529)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 294t of this title prior to its renumbering by Pub. L. 97–35.

AMENDMENTS

2003—Subsec. (d)(1)(B). Pub. L. 108–163 realigned margin.

2002—Subsec. (a)(1). Pub. L. 107–251, § 309(1), inserted ''behavioral and mental health professionals,'' after ''dentists,''.

Subsec. (b)(1)(B). Pub. L. 107–251, § 309(2), inserted '', or an appropriate degree from a graduate program of behavioral and mental health'' after ''other health profession''.

Subsec. (c)(1). Pub. L. 107–251, § 309(3), made technical amendment to references in original act which appear in subpar. (A) as reference to section 254*o* of this title and in subpar. (B) as reference to section 254n of this title.

Subsec. (d)(1)(B), (C). Pub. L. 107–251, § 309(4), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(1)(B)(iv), (v). Pub. L. 107–251, § 309(5)(A), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (f)(3). Pub. L. 107–251, § 309(5)(B), made technical amendment to reference in original act which appears in text as reference to section 254*o* of this title.

Subsec. (i). Pub. L. 107–251, § 309(6), struck out subsec. (i), which required an annual report to Congress on the Scholarship Program.

1990—Subsec. (a). Pub. L. 101–597, § 201(a)(1), substituted ''Corps Scholarship Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—'' and pars. (1) and (2) for ''Corps Scholarship Program (hereinafter in this subpart referred to as the 'Scholarship Program') to assure an adequate supply of trained physicians, dentists, and nurses for the National Health Service Corps (hereinafter in this subpart referred to as the 'Corps') and, if needed by the Corps, podiatrists, optometrists, pharmacists, clinical psychologists, graduates of schools of veterinary medicine, graduates of schools of public health, graduates of programs in health administration, graduates of programs for the training of physician assistants, expanded function dental auxiliaries, and nurse practitioners (as defined in section 296m of this title), and other health professionals.''

Subsec. (b)(4). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Subsec. (c). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (3)(B), (C).

Pub. L. 101–597, § 201(b), inserted par. (1) designation, redesignated former pars. (1) and (2) as subpars. (A) and (B), inserted before period at end of subpar. (B) '', including a statement of all factors considered in approving applications for participation in the Program and in making assignments for participants in the Program'', inserted par. (2) designation, and added par. (3).

Subsec. (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (2)(B).

Pub. L. 101–597, § 201(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In determining which applications under the Scholarship Program to approve (and which contracts to accept), the Secretary shall give priority—

''(1) first, to applications made (and contracts submitted) by individuals who have previously received scholarships under the Scholarship Program or under section 294z of this title; and

''(2) second, to applications made (and contracts submitted)—

''(A) for the school year beginning in calendar year 1978, by individuals who are entering their first, second, or third year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year;

''(B) for the school year beginning in calendar year 1979, by individuals who are entering their first or second year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year; and

''(C) for each school year thereafter, by individuals who are entering their first year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year.''

Subsec. (f)(1)(B)(iv). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in closing provisions.

Pub. L. 101–597, § 201(a)(2), substituted ''as a provider of primary health services'' after ''whichever is greater,''.

Subsec. (g)(3). Pub. L. 101–509 substituted ''(under section 5303 of title 5)'' for ''(as set forth in the report transmitted to the Congress under section 5305 of title 5)''.

Subsec. (i). Pub. L. 101–597, §201(d)(1), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The Secretary shall report to Congress on March 1 of each year—''.

Subsec. (i)(4), (5). Pub. L. 101–597, §201(d)(2), added pars. (4) and (5) and struck out former par. (4) which read as follows: ''the amount of tuition paid in the aggregate and at each educational institution for the school year beginning in such year and for prior school years.''

Subsec. (i)(6). Pub. L. 101–597, §401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, §201(d)(2)(C), added par. (6).

1988—Subsec. (b)(1). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy''.

1985—Subsec. (g)(1). Pub. L. 99–129 struck out ''or under section 294z of this title (relating to scholarships for first-year students of exceptional financial need),'' after ''Scholarship Program''.

1981—Subsec. (a). Pub. L. 97–35, §2709(b)(1), inserted reference to clinical psychologists.

Subsec. (c). Pub. L. 97–35, §2709(b)(2), (3), substituted ''254*o*'' for ''294w'' in par. (1), and inserted provisions relating to information concerning meeting the service obligation in par. (2).

Subsec. (f). Pub. L. 97–35, §2709(b)(4)–(6), in par. (1) substituted reference to sections 254d to 254h and 254j of this title, for reference to subpart II of part D of subchapter II of this chapter, in par. (2) substituted reference to sections 254d to 254h, 254j and 254k of this title, for reference to subpart II of part D of subchapter II of this chapter, and in par. (3) substituted ''254*o*'' for ''294w''.

Subsec. (j). Pub. L. 97–35, §2709(b)(7), struck out subsec. (j) which related to consultation and participation of schools.

1979—Subsec. (g)(3). Pub. L. 96–32 substituted ''section 5305 of title 5'' for ''section 5303 of title 5''.

1978—Subsec. (f). Pub. L. 95–626 substituted ''subpart II of part D'' for ''subpart II of part C'' in pars. (1)(A) and (2).

Subsec. (i). Pub. L. 95–623 substituted March 1 for December 1 as the date for Secretary's annual report to Congress.

1977—Subsec. (d)(2). Pub. L. 95–215 substituted provisions relating to the school years beginning in calendar years 1978 and 1979 for provisions relating to the school year ending in the fiscal year beginning Oct. 1, 1977.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 228 of Pub. L. 99–129 provided that:

''(a) Except as provided in subsection (b), this Act and the amendments and repeals made by this Act [enacting sections 294q–1 to 294q–3 of this title, amending this section and sections 292a, 292b, 292h, 292j, 293c, 294a, 294b, 294d, 294e, 294g, 294j, 294m to 294p, 294z, 295f to 295f–2, 295g, 295g–1, 295g–3, 295g–4, 295g–6 to 295g–8, 295g–8b, 295h, 295h–1a to 295h–1c, 296k, 296*l*, 296m, 297a, 298b–5, and 300aa–14 of this title, repealing sections 292c, 295 to 295e–5, 295g–2, 295g–5, 295g–8a, and 295g–9 of this title, enacting provisions set out as notes under sections 201, 292h, 293c, 294d, 294n, and 300aa–14 of this title and section 462 of the Appendix to Title 50, War and National Defense, and amending provisions set out as a note under section 298b–5 of this title] shall take effect on the date of enactment of this Act [Oct. 22, 1985].

''(b)(1) The amendments made by section 101(a) of this Act [amending section 294a of this title] shall take effect as of October 1, 1985.

''(2) The amendments made by section 208(e) of this Act [amending section 294e of this title] shall take effect nine months after the date of enactment of this Act [Oct. 22, 1985].

''(3) The amendment made by section 208(h) of this Act [amending section 294a of this title] shall take effect as of October 1, 1983.

''(4) The provisions of section 746 of the Public Health Service Act (as added by the amendment made by section 209(h)(2) of this Act) [section 294g–2 of this title] shall take effect as of June 30, 1984.

''(5) The amendments made by section 209(j) of this Act [amending sections 294m and 297a of this title] shall take effect as of June 30, 1984.

''(6) The amendments made by section 213(a) of this Act [amending section 295g–1 of this title] shall take effect as of October 1, 1985.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 5 of Pub. L. 95–215 provided that the amendment made by that section is effective Oct. 1, 1977.

EFFECTIVE DATE

Section 408(b)(1) of Pub. L. 94–484 provided that the enactment of sections 254*l* to 254r of this title and repeal of section 234 of this title by Pub. L. 94–484 is effective Oct. 1, 1977.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

Section 408(b)(2) of Pub. L. 94–484, as amended, eff. Oct. 12, 1976, by Pub. L. 95–83, title III, §307(p), Aug. 1, 1977, 91 Stat. 394, provided that:

''(A) Except as provided in subparagraphs (B) and (C), the amendment made by paragraph (1) of this subsection [enacting this section and sections 254*l*–1 to 254r of this title and repealing section 234 of this title] shall apply with respect to scholarships awarded under the National Health Service Corps Scholarship Program from appropriations for such Program for fiscal years beginning after September 30, 1977.

''(B) The provisions of section 225(f)(1) of the Public Health Service Act (as in effect on September 30, 1977) [former section 234(f)(1) of this title] prescribing the financial obligation of a participant in the Public Health and National Health Service Corps Scholarship Program who fails to complete an active duty service obligation incurred under that Program shall apply to any individual who received a scholarship under such Program from appropriations for such Program for any fiscal year ending before October 1, 1977.

''(C) If an individual received a scholarship under the Public Health and National Health Service Corps Scholarship Program for any school year beginning before the date of the enactment of this Act [Oct. 12, 1976], periods of internship or residency served by such individual in a facility of the National Health Service Corps or other facility of the Public Health Service shall be creditable in satisfying such individual's service obligation incurred under that Program for such scholarship or for any scholarship received under the National Health Service Corps Scholarship Program for any subsequent school year. If an individual received a scholarship under the Public Health and National Health Service Corps Program for the first time from appropriations for such Program for the fiscal year ending September 30, 1977, periods of internship or residency served by such individual in such a facility shall be creditable in satisfying such individual's service obligation incurred under that Program for such scholarship.''

SCHOLARSHIP AND LOAN REPAYMENT PROGRAMS

Pub. L. 107–251, title III, § 302(c), Oct. 26, 2002, 116 Stat. 1644, provided that: ''The Secretary of Health and Human Services, in consultation with organizations representing individuals in the dental field and organizations representing publicly funded health care providers, shall develop and implement a plan for increasing the participation of dentists and dental hygienists in the National Health Service Corps Scholarship Program under section 338A of the Public Health Service Act (42 U.S.C. 254*l*) and the Loan Repayment Program under section 338B of such Act (42 U.S.C. 254*l*–1).''

§ 254*l*–1. National Health Service Corps Loan Repayment Program

(a) Establishment

The Secretary shall establish a program to be known as the National Health Service Corps Loan Repayment Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—

(1) an adequate supply of physicians, dentists, behavioral and mental health professionals, certified nurse midwives, certified nurse practitioners, and physician assistants; and

(2) if needed by the Corps, an adequate supply of other health professionals.

(b) Eligibility

To be eligible to participate in the Loan Repayment Program, an individual must—

(1)(A) have a degree in medicine, osteopathic medicine, dentistry, or another health profession, or an appropriate degree from a graduate program of behavioral and mental health, or be certified as a nurse midwife, nurse practitioner, or physician assistant;

(B) be enrolled in an approved graduate training program in medicine, osteopathic medicine, dentistry, behavioral and mental health, or other health profession; or

(C) be enrolled as a full-time student—

(i) in an accredited (as determined by the Secretary) educational institution in a State; and

(ii) in the final year of a course of a study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession;

(2) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Service or be eligible for selection for civilian service in the Corps; and

(3) submit to the Secretary an application for a contract described in subsection (f) of this section (relating to the payment by the Secretary of the educational loans of the individual in consideration of the individual serving for a period of obligated service).

(c) Information to be included with application and contract forms; understandability; availability

(1) Summary and information

In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms—

(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under section 254*o* of this title in the case of the individual's breach of the contract; and

(B) information respecting meeting a service obligation through private practice under an agreement under section 254n of this title and such other information as may be necessary for the individual to understand the individual's prospective participation in the Loan Repayment Program and service in the Corps.

(2) Understandability

The application form, contract form, and all other information furnished by the Secretary under this subpart shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

(3) Availability

The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

(4) Recruitment and retention

(A) The Secretary shall distribute to health professions schools materials providing information on the Loan Repayment Program and shall encourage the schools to disseminate the materials to the students of the schools.

(B)(i) In the case of any health professional whose period of obligated service under the Loan Repayment Program is nearing completion, the Secretary shall encourage the individual to remain in a health professional shortage area and to continue providing primary health services.

(ii) During the period in which a health professional is planning and making the transition to private practice from obligated service under the Loan Repayment Program, the Secretary may provide assistance to the professional regarding such transition if the professional is remaining in a health professional shortage area and is continuing to provide primary health services.

(C) In the case of entities to which participants in the Loan Repayment Program are assigned under section 254f of this title, the Secretary shall encourage the entities to provide options with respect to assisting the participants in remaining in the health professional shortage areas involved, and in continuing to provide primary health services, after the period of obligated service under the Loan Repayment Program is completed. The options with respect to which the Secretary provides such encouragement may include options regarding the sharing of a single employment position in the health professions by 2 or more health professionals, and options regarding the recruitment of couples where both of the individuals are health professionals.

(d) Factors considered in providing contracts; priorities

(1) Subject to section 254f–1 of this title, in providing contracts under the Loan Repayment Program—

(A) the Secretary shall consider the extent of the demonstrated interest of the applicants for the contracts in providing primary health services; and

(B) may consider such other factors regarding the applicants as the Secretary determines to be relevant to selecting qualified individuals to participate in such Program.

(2) In providing contracts under the Loan Repayment Program, the Secretary shall give priority—

(A) to any application for such a contract submitted by an individual whose training is in a health profession or specialty determined by the Secretary to be needed by the Corps;

(B) to any application for such a contract submitted by an individual who has (and whose spouse, if any, has) characteristics that increase the probability that the individual will continue to serve in a health professional shortage area after the period of obligated service pursuant to subsection (f) of this section is completed; and

(C) subject to subparagraph (B), to any application for such a contract submitted by an individual who is from a disadvantaged background.

(e) Approval required for participation

An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in subsection (f) of this section.

(f) Contents of contracts

The written contract (referred to in this subpart) between the Secretary and an individual shall contain—

(1) an agreement that—

(A) subject to paragraph (3), the Secretary agrees—

(i) to pay on behalf of the individual loans in accordance with subsection (g) of this section; and

(ii) to accept (subject to the availability of appropriated funds for carrying out sections 254d through 254h of this title and section 254j of this title) the individual into the Corps (or for equivalent service as otherwise provided in this subpart); and

(B) subject to paragraph (3), the individual agrees—

(i) to accept loan payments on behalf of the individual;

(ii) in the case of an individual described in subsection (b)(1)(C) of this section, to maintain enrollment in a course of study or training described in such subsection until the individual completes the course of study or training;

(iii) in the case of an individual described in subsection (b)(1)(C) of this section, while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training); and

(iv) to serve for a time period (hereinafter in this subpart referred to as the ''period of obligated service'') equal to 2 years or such longer period as the individual may agree to, as a provider of primary health services in a health professional shortage area (designated under section 254e of this title) to which such individual is assigned by the Secretary as a member of the Corps or released under section 254n of this title;

(2) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under paragraph (1)(B)(iv), including extensions resulting in an aggregate period of obligated service in excess of 4 years;

(3) a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the individual that is conditioned thereon, is contingent on funds being appropriated for loan repayments under this subpart and to carry out the purposes of sections 254d through 254h of this title and sections 254j and 254k of this title;

(4) a statement of the damages to which the United States is entitled, under section 254*o* of this title for the individual's breach of the contract; and

(5) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this subpart.

(g) Payments

(1) In general

A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—

(A) tuition expenses;

(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; or

(C) reasonable living expenses as determined by the Secretary.

(2) Payments for years served

(A) In general

For each year of obligated service that an individual contracts to serve under subsection (f) of this section the Secretary may pay up to $35,000 on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

(i) affects the ability of the Secretary to maximize the number of contracts that

can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

(ii) provides an incentive to serve in health professional shortage areas with the greatest such shortages; and

(iii) provides an incentive with respect to the health professional involved remaining in a health professional shortage area, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.

(B) Repayment schedule

Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made no later than the end of the fiscal year in which the individual completes such year of service.

(3) Tax liability

For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual—

(A) the Secretary shall, in addition to such payments, make payments to the individual in an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved; and

(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.

(4) Payment schedule

The Secretary may enter into an agreement with the holder of any loan for which payments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

(h) Employment ceiling

Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic or other training, shall not be counted against any employment ceiling affecting the Department.

(July 1, 1944, ch. 373, title III, § 338B, as added Pub. L. 100–177, title II, § 201(3), Dec. 1, 1987, 101 Stat. 992; amended Pub. L. 100–607, title VI, § 629(a)(2), Nov. 4, 1988, 102 Stat. 3146; Pub. L. 101–597, title II, § 202(a)–(g)(1), (h), title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3023–3026, 3035; Pub. L. 105–392, title I, § 109, Nov. 13, 1998, 112 Stat. 3562; Pub. L. 107–251, title III, § 310, Oct. 26, 2002, 116 Stat. 1650; Pub. L. 108–163, § 2(k), Dec. 6, 2003, 117 Stat. 2022.)

PRIOR PROVISIONS

A prior section 338B of act July 1, 1944, was renumbered section 338C by section 201(2) of Pub. L. 100–177 and is classified to section 254m of this title.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–163 made technical amendment.

2002—Subsec. (a)(1). Pub. L. 107–251, § 310(1)(A), inserted ''behavioral and mental health professionals,'' after ''dentists,''.

Subsec. (a)(2). Pub. L. 107–251, § 310(1)(B), struck out ''(including mental health professionals)'' before period at end.

Subsec. (b)(1)(A). Pub. L. 107–251, § 310(2), added subpar. (A) and struck out former subpar. (A) which read as follows: ''must have a degree in medicine, osteopathic medicine, dentistry, or other health profession, or be certified as a nurse midwife, nurse practioner, or physician assistant;''.

Subsec. (e)(1). Pub. L. 107–251, § 310(3), struck out par. (1) designation and heading.

Subsec. (i). Pub. L. 107–251, § 310(4), struck out subsec. (i), which required an annual report to Congress about the Loan Repayment Program.

1998—Subsec. (b)(1)(B). Pub. L. 105–392 substituted ''behavioral and mental health, or other health profession'' for ''or other health profession''.

1990—Subsec. (a). Pub. L. 101–597, § 202(a)(1), substituted ''Corps Loan Repayment Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—'' and pars. (1) and (2) for ''Corps Loan Repayment Program (hereinafter in this subpart referred to as the 'Loan Repayment Program') in order to assure—

''(1) an adequate supply of trained physicians, dentists, and nurses for the Corps; and

''(2) if needed by the Corps, an adequate supply of podiatrists, optometrists, pharmacists, clinical psychologists, graduates of schools of veterinary medicine, graduates of schools of public health, graduates of programs in health administration, graduates of programs for the training of physician assistants, expanded function dental auxiliaries, and nurse practitioners (as defined in section 296m of this title), and other health professionals.''

Subsec. (b)(1). Pub. L. 101–597, § 202(b)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(A) be enrolled—

''(i) as a full-time student—

''(I) in an accredited (as determined by the Secretary) educational institution in a State; and

''(II) in the final year of a course of study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession; or

''(ii) in an approved graduate training program in medicine, osteopathic medicine, dentistry, or other health profession; or

''(B) have—

''(i) a degree in medicine, osteopathic medicine, dentistry, or other health profession;

''(ii) completed an approved graduate training program in medicine, osteopathic medicine, dentistry, or other health profession in a State, except that the Secretary may waive the completion requirement of this clause for good cause; and

''(iii) a license to practice medicine, osteopathic medicine, dentistry, or other health profession in a State;''.

Subsec. (b)(2) to (4). Pub. L. 101–597, § 202(b)(2)(A), inserted ''and'' at end of par. (2), added par. (3), and struck out former pars. (3) and (4) which read as follows:

''(3) submit an application to participate in the Loan Repayment Program; and

''(4) sign and submit to the Secretary, at the time of the submission of such application, a written contract (described in subsection (f) of this section) to accept repayment of educational loans and to serve (in accordance with this subpart) for the applicable period of obligated service in a health manpower shortage area.''

Subsec. (c)(4). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in subpars. (B) and (C).

Pub. L. 101–597, § 202(c), added par. (4).

Subsec. (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (2)(B).

Pub. L. 101–597, § 202(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In determining which applications under the Loan Repayment Program to approve (and which contracts to accept), the Secretary shall give priority to applications made by—

''(1) individuals whose training is in a health profession or specialty determined by the Secretary to be needed by the Corps; and

''(2) individuals who are committed to service in medically underserved areas.''

Subsec. (e). Pub. L. 101–597, § 202(b)(2)(B), substituted ''only upon the Secretary and the individual entering into a written contract described in subsection (f) of this section.'' for ''only on the Secretary's approval of the individual's application submitted under subsection (b)(3) of this section and the Secretary's acceptance of the contract submitted by the individual under subsection (b)(4) of this section.'' in par. (1) and struck out par. (2) which read as follows: ''The Secretary shall provide written notice to an individual promptly on—

''(A) the Secretary's approving, under paragraph (1), of the individual's participation in the Loan Repayment Program; or

''(B) the Secretary's disapproving an individual's participation in such Program.''

Subsec. (f)(1)(B)(ii), (iii). Pub. L. 101–597, § 202(b)(1)(B), substituted ''subsection (b)(1)(C)'' for ''subsection (b)(1)(A)''.

Subsec. (f)(1)(B)(iv). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 202(a)(2), inserted ''as a provider of primary health services'' before ''in a health''.

Subsec. (f)(2). Pub. L. 101–597, § 202(e), inserted before semicolon at end '', including extensions resulting in an aggregate period of obligated service in excess of 4 years''.

Subsec. (g)(1). Pub. L. 101–597, § 202(f)(1), inserted ''regarding the undergraduate or graduate education of the individual (or both), which loans were made'' after ''loans received by the individual''.

Subsec. (g)(2)(A). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in cls. (ii) and (iii).

Pub. L. 101–597, § 202(f)(2)(A), substituted ''For each year'' for ''Except as provided in subparagraph (B) and paragraph (3), for each year'' and ''$35,000'' for ''$20,000'', inserted at end ''In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—'', and added immediately thereafter cls. (i) to (iii).

Subsec. (g)(2)(B), (C). Pub. L. 101–597, § 202(f)(2)(B), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''For each year of obligated service that an individual contracts under subsection (f) of this section to serve in the Indian Health Service, or to serve in a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (25 U.S.C. 450f et seq.), the Secretary may pay up to $25,000 on behalf of the individual for loans described in paragraph (1).''

Subsec. (g)(3). Pub. L. 101–597, § 202(g)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In addition to payments made under paragraph (2), in any case in which payments on behalf of an individual under the Loan Repayment Program result in an increase in Federal, State, or local income tax liability for such individual, the Secretary may, on the request of such individual, make payments to such individual in a reasonable amount, as determined by the Secretary, to reimburse such individual for all or part of the increased tax liability of the individual.''

Subsec. (i). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (8).

Pub. L. 101–597, § 202(h), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The Secretary shall, not later than March 1 of each year, submit to the Congress a report specifying—

''(1) the number, and type of health profession training, of individuals receiving loan payments under the Loan Repayment Program;

''(2) the educational institution at which such individuals are receiving their training;

''(3) the number of applications filed under this section in the school year beginning in such year and in prior school years; and

''(4) the amount of loan payments made in the year reported on.''

1988—Subsec. (b)(1). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy'' wherever appearing.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 202(g)(2) of Pub. L. 101–597 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to contracts under section 338B of the Public Health Service Act [this section] (relating to service in the National Health Service Corps) that are entered into on or after the effective date of this Act [Nov. 16, 1990].''

REGULATIONS

Section 205 of title II of Pub. L. 100–177 provided that: ''Not later than 180 days after the effective date of the amendments made by this title [Dec. 21, 1987], the Secretary of Health and Human Services shall issue regulations for the loan repayment programs established by the amendments [enacting this section and sections 254q and 254q–1 of this title, amending sections 242a, 254d, 254g, 254h–1, and 254*o* of this title, and repealing former section 254q of this title].''

§ 254m. Obligated service under contract

(a) Service in full-time clinical practice

Except as provided in section 254n of this title, each individual who has entered into a written contract with the Secretary under section 254*l* or 254*l*–1 of this title shall provide service in the full-time clinical practice of such individual's profession as a member of the Corps for the period of obligated service provided in such contract.

(b) Notice to individual; information for informed decision; eligibility; notice to Secretary; qualification and appointment as commissioned officer; appointment as civilian member; designation of non-United States employee as member; deferment of obligated service

(1) If an individual is required under subsection (a) of this section to provide service as specified in section 254*l*(f)(1)(B)(v) or 254*l*–1(f)(1)(B)(iv) of this title (hereinafter in this subsection referred to as ''obligated service''), the Secretary shall, not later than ninety days before the date described in paragraph (5), determine if the individual shall provide such service—

(A) as a member of the Corps who is a commissioned officer in the Regular or Reserve Corps of the Service or who is a civilian employee of the United States, or

(B) as a member of the Corps who is not such an officer or employee,

and shall notify such individual of such determination.

(2) If the Secretary determines that an individual shall provide obligated service as a member of the Corps who is a commissioned officer in the Service or a civilian employee of the United States, the Secretary shall, not later than sixty days before the date described in paragraph (5), provide such individual with sufficient information regarding the advantages and disadvantages of service as such a commissioned officer or civilian employee to enable the individual to make a decision on an informed basis. To be eligible to provide obligated service as a commissioned officer in the Service, an individual shall notify the Secretary, not later than thirty days before the date described in paragraph (5), of the individual's desire to provide such service as such an officer. If an individual qualifies for an appointment as such an officer, the Secretary shall, as soon as possible after the date described in paragraph (5), appoint the individual as a commissioned officer of the Regular or Reserve Corps of the Service and shall designate the individual as a member of the Corps.

(3) If an individual provided notice by the Secretary under paragraph (2) does not qualify for appointment as a commissioned officer in the Service, the Secretary shall, as soon as possible after the date described in paragraph (5), appoint such individual as a civilian employee of the United States and designate the individual as a member of the Corps.

(4) If the Secretary determines that an individual shall provide obligated service as a member of the Corps who is not an employee of the United States, the Secretary shall, as soon as possible after the date described in paragraph (5), designate such individual as a member of the Corps to provide such service.

(5)(A) In the case of the Scholarship Program, the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the training required for the degree for which the individual receives the scholarship, except that—

(i) for an individual receiving such a degree after September 30, 2000, from a school of medicine or osteopathic medicine, such date shall be the date the individual completes a residency in a specialty that the Secretary determines is consistent with the needs of the Corps; and

(ii) at the request of an individual, the Secretary may, consistent with the needs of the Corps, defer such date until the end of a period of time required for the individual to complete advanced training (including an internship or residency).

(B) No period of internship, residency, or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subpart.

(C) In the case of the Loan Repayment Program, if an individual is required to provide obligated service under such Program, the date referred to in paragraphs (1) through (4)—

(i) shall be the date determined under subparagraph (A) in the case of an individual who is enrolled in the final year of a course of study;

(ii) shall, in the case of an individual who is enrolled in an approved graduate training program in medicine, osteopathic medicine, dentistry, or other health profession, be the date the individual completes such training program; and

(iii) shall, in the case of an individual who has a degree in medicine, osteopathic medicine, dentistry, or other health profession and who has completed graduate training, be the date the individual enters into an agreement with the Secretary under section 254*l*–1 of this title.

(c) Obligated service period; commencement

An individual shall be considered to have begun serving a period of obligated service—

(1) on the date such individual is appointed as an officer in a Regular or Reserve Corps of the Service or is designated as a member of the Corps under subsection (b)(3) or (b)(4) of this section, or

(2) in the case of an individual who has entered into an agreement with the Secretary under section 254n of this title, on the date specified in such agreement,

whichever is earlier.

(d) Assignment of personnel

The Secretary shall assign individuals performing obligated service in accordance with a written contract under the Scholarship Program to health professional shortage areas in accordance with sections 254d through 254h and sections 254j and 254k of this title. If the Secretary determines that there is no need in a health professional shortage area (designated under section 254e of this title) for a member of the profession in which an individual is obligated to provide service under a written contract and if such individual is an officer in the Service or a civilian employee of the United States, the Secretary may detail such individual to serve his period of obligated service as a full-time member of such profession in such unit of the Department as the Secretary may determine.

(July 1, 1944, ch. 373, title III, § 338C, formerly title VII, § 752, as added Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2284; amended Pub. L. 95–626, title I, § 113(b), Nov. 10, 1978, 92 Stat. 3563; Pub. L. 96–76, title II, § 202(a), (b), Sept. 29, 1979, 93 Stat. 582; renumbered § 338B and amended Pub. L. 97–35, title XXVII, § 2709(a), (c), Aug. 13, 1981, 95 Stat. 908, 909; Pub. L. 97–414, § 8(g)(1), Jan. 4, 1983, 96 Stat. 2061; renumbered § 338C and amended Pub. L. 100–177, title II, § 201(2), title III, § 306, Dec. 1, 1987, 101 Stat. 992, 1004; Pub. L. 100–607, title VI, § 629(a)(2), Nov. 4, 1988, 102 Stat. 3146; Pub. L. 101–597, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3035; Pub. L. 107–251, title III, § 311, Oct. 26, 2002, 116 Stat. 1650.)

CODIFICATION

Section was formerly classified to section 294u of this title prior to its renumbering by Pub. L. 97–35.

PRIOR PROVISIONS

A prior section 338C of act July 1, 1944, was renumbered section 338D by section 201(2) of Pub. L. 100–177 and is classified to section 254n of this title.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–251, §311(1)(A), substituted ''section 254*l*(f)(1)(B)(v)'' for ''254*l*(f)(1)(B)(iv)'' in introductory provisions.

Subsec. (b)(5)(A). Pub. L. 107–251, §311(1)(B)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: ''In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, or pharmacy, the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the training required for such degree, except that—

''(i) at the request of such an individual with whom the Secretary has entered into a contract under section 254*l* of this title prior to October 1, 1985, the Secretary shall defer such date until the end of the period of time (not to exceed the number of years specified in subparagraph (B) or such greater period as the Secretary, consistent with the needs of the Corps, may authorize) required for the individual to complete an internship, residency, or other advanced clinical training; and

''(ii) at the request of such an individual with whom the Secretary has entered into a contract under section 254*l* of this title on or after October 1, 1985, the Secretary may defer such date in accordance with clause (i).''

Subsec. (b)(5)(B). Pub. L. 107–251, §311(1)(B)(i), (iii), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows:

''(B)(i) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathic medicine, or dentistry, the number of years referred to in subparagraph (A)(i) shall be 3 years.

''(ii) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of veterinary medicine, optometry, podiatry, or pharmacy, the number of years referred to in subparagraph (A)(i) shall be 1 year.''

Subsec. (b)(5)(C). Pub. L. 107–251, §311(1)(B)(iii), redesignated subpar. (E) as (C). Former subpar. (C) redesignated (B).

Subsec. (b)(5)(C)(i). Pub. L. 107–251, §311(1)(B)(iv), substituted ''subparagraph (A)'' for ''subparagraph (A), (B), or (D)''.

Subsec. (b)(5)(D). Pub. L. 107–251, §311(1)(B)(ii), struck out subpar. (D) which read as follows: ''In the case of the Scholarship Program, with respect to an individual receiving a degree from an institution other than a school referred to in subparagraph (A), the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the academic training of the individual leading to such degree.''

Subsec. (b)(5)(E). Pub. L. 107–251, §311(1)(B)(iii), redesignated subpar. (E) as (C).

Subsec. (e). Pub. L. 107–251, §311(2), struck out subsec. (e) which related to service under National Research Service Award program as credit against obligated service time.

1990—Subsec. (d). Pub. L. 101–597 substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

1988—Subsec. (b)(5). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy'' wherever appearing.

1987—Subsec. (a). Pub. L. 100–177, §306(1), inserted ''or 254*l*–1'', and made technical amendment to reference to section 254n of this title to reflect renumbering of corresponding section of original act.

Subsec. (b)(1). Pub. L. 100–177, §306(2), inserted reference to section 254*l*–l(f)(1)(B)(iv).

Subsec. (b)(5). Pub. L. 100–177, §306(3), substituted par. (5) consisting of subpars. (A) to (E) for former par. (5) consisting of subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 100–177, §306(4), made technical amendment to reference to section 254n of this title to reflect renumbering of corresponding section of original act.

1983—Subsec. (e). Pub. L. 97–414 inserted ''or under section 234 of this title as in effect on September 30, 1977'' after ''Scholarship Program''.

1981—Subsec. (a). Pub. L. 97–35, §2709(c)(1), substituted ''254n'' for ''294v'' and ''254*l*'' for ''294t''.

Subsec. (b). Pub. L. 97–35, §2709(c)(2), substituted provisions relating to notice, information, etc., for individuals required to give obligated service, for provisions relating to notice, information, etc., for individuals required to provide service under the Scholarship Program.

Subsec. (c). Pub. L. 97–35, §2709(c)(3), (4), in par. (1) inserted reference to designation under subsec. (b)(3) or (4) of this section, and in par. (2) substituted ''254n'' for ''294v''.

Subsec. (d). Pub. L. 97–35, §2709(c)(5), inserted provision relating to individuals who are officers in the Service or civilian employees of the United States, and substituted reference to sections 254d to 254h, 254j, and 254k of this title, for reference to subpart II of part D of subchapter II of this chapter.

Subsec. (e). Pub. L. 97–35, §2709(c)(6), substituted provisions respecting mandatory determination of service requirement, for provisions respecting discretionary determination of service requirement.

1979—Subsec. (b)(5)(A). Pub. L. 96–76, §202(a), (b)(1), (2), inserted provisions authorizing a greater period than three years for individuals receiving degrees from schools of medicine, osteopathy, and dentistry, and provisions respecting individuals receiving degrees from schools of veterinary medicine, optometry, podiatry, and pharmacy, and substituted ''No period'' for ''No such period''.

Subsec. (b)(5)(B). Pub. L. 96–76, §202(b)(3), substituted ''referred to in subparagraph (A)'' for ''of medicine, osteopathy, or dentistry''.

1978—Subsec. (d). Pub. L. 95–626 substituted ''subpart II of part D'' for ''subpart II of part C''.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2709(h) of Pub. L. 97–35 provided that: ''The amendments made by paragraphs (2), (3), and (5)(B) of subsection (c) [amending this section] shall apply with respect to contracts entered into under the National Health Service Corps scholarship program under subpart III of part C of title VII of the Public Health Service Act [section 294r et seq. of this title] after the date of the enactment of this Act [Aug. 13, 1981]. An individual who before such date has entered into such a contract and who has not begun the period of obligated service required under such contract shall be given the opportunity to revise such contract to permit the individual to serve such period as a member of the National Health Service Corps who is not an employee of the United States.''

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

SPECIAL RETENTION PAY FOR REGULAR OR RESERVE OFFICERS FOR PERIOD OFFICER IS OBLIGATED UNDER THIS SECTION

Pub. L. 100–446, title II, Sept. 27, 1988, 102 Stat. 1816, provided that: ''the Secretary of Health and Human Services may authorize special retention pay under paragraph (4) of 37 U.S.C. 302(a) to any regular or reserve officer for the period during which the officer is obligated under section 338B [now 338C] of the Public Health Service Act [this section] and assigned and pro-

viding direct health services or serving the officer's obligation as a specialist''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100–202, § 101(g) [title II], Dec. 22, 1987, 101 Stat. 1329–213, 1329–246.

Pub. L. 99–500, § 101(h) [title II], Oct. 18, 1986, 100 Stat. 1783–242, 1783–277, and Pub. L. 99–591, § 101(h) [title II], Oct. 30, 1986, 100 Stat. 3341–242, 3341–277.

§ 254n. Private practice

(a) Application for release of obligations; conditions

The Secretary shall, to the extent permitted by, and consistent with, the requirements of applicable State law, release an individual from all or part of his service obligation under section 254m(a) of this title or under section 234[1] of this title (as in effect on September 30, 1977) if the individual applies for such a release under this section and enters into a written agreement with the Secretary under which the individual agrees to engage for a period equal to the remaining period of his service obligation in the full-time private clinical practice (including service as a salaried employee in an entity directly providing health services) of his health profession—

(1) in the case of an individual who received a scholarship under the Scholarship Program or a loan repayment under the Loan Repayment Program and who is performing obligated service as a member of the Corps in a health professional shortage area on the date of his application for such a release, in the health professional shortage area in which such individual is serving on such date or in the case of an individual for whom a loan payment was made under the Loan Repayment Program and who is performing obligated service as a member of the Corps in a health professional shortage area on the date of the application of the individual for such a release, in the health professional shortage area selected by the Secretary; or

(2) in the case of any other individual, in a health professional shortage area (designated under section 254e of this title) selected by the Secretary.

(b) Written agreement; actions to ensure compliance

(1) The written agreement described in subsection (a) of this section shall—

(A) provide that, during the period of private practice by an individual pursuant to the agreement, the individual shall comply with the requirements of section 254g of this title that apply to entities; and

(B) contain such additional provisions as the Secretary may require to carry out the objectives of this section.

(2) The Secretary shall take such action as may be appropriate to ensure that the conditions of the written agreement prescribed by this subsection are adhered to.

(c) Breach of service contract

If an individual breaches the contract entered into under section 254*l* or 254*l*–1 of this title by failing (for any reason) to begin his service obligation in accordance with an agreement entered into under subsection (a) of this section or to complete such service obligation, the Secretary may permit such individual to perform such service obligation as a member of the Corps.

(d) Travel expenses

The Secretary may pay an individual who has entered into an agreement with the Secretary under subsection (a) of this section an amount to cover all or part of the individual's expenses reasonably incurred in transporting himself, his family, and his possessions to the location of his private clinical practice.

(e) Sale of equipment and supplies

Upon the expiration of the written agreement under subsection (a) of this section, the Secretary may (notwithstanding any other provision of law) sell to the individual who has entered into an agreement with the Secretary under subsection (a) of this section, equipment and other property of the United States utilized by such individual in providing health services. Sales made under this subsection shall be made at the fair market value (as determined by the Secretary) of the equipment or such other property, except that the Secretary may make such sales for a lesser value to the individual if he determines that the individual is financially unable to pay the full market value.

(f) Malpractice insurance

The Secretary may, out of appropriations authorized under section 254k of this title, pay to individuals participating in private practice under this section the cost of such individual's malpractice insurance and the lesser of—

(1)(A) $10,000 in the first year of obligated service;

(B) $7,500 in the second year of obligated service;

(C) $5,000 in the third year of obligated service; and

(D) $2,500 in the fourth year of obligated service; or

(2) an amount determined by subtracting such individual's net income before taxes from the income the individual would have received as a member of the Corps for each such year of obligated service.

(g) Technical assistance

The Secretary shall, upon request, provide to each individual released from service obligation under this section technical assistance to assist such individual in fulfilling his or her agreement under this section.

(July 1, 1944, ch. 373, title III, § 338D, formerly title VII, § 753, as added Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2285; amended Pub. L. 96–538, title IV, § 403, Dec. 17, 1980, 94 Stat. 3192; renumbered § 338C and amended Pub. L. 97–35, title XXVII, § 2709(a), (d), Aug. 13, 1981, 95 Stat. 908, 910; renumbered § 338D and amended Pub. L. 100–177, title II, § 201(2), title III, § 307, Dec. 1, 1987, 101 Stat. 992, 1005; Pub. L. 101–597, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3035; Pub. L. 107–251, title III, § 312, Oct. 26, 2002, 116 Stat. 1650.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 234 of this title, referred to in subsec. (a), was repealed by Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281, effective Oct. 1, 1977.

CODIFICATION

Section was formerly classified to section 294v of this title prior to its renumbering by Pub. L. 97–35.

PRIOR PROVISIONS

A prior section 338D of act July 1, 1944, was renumbered section 338E by section 201(2) of Pub. L. 100–177 and is classified to section 254*o* of this title.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–251 added subsec. (b) and struck out former subsec. (b) which related to written agreements, regulations, and actions to ensure compliance.

1990—Subsec. (a)(1), (2). Pub. L. 101–597 substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

1987—Subsec. (a). Pub. L. 100–177, § 307(1)–(3), made technical amendment to reference to section 254m of this title to reflect renumbering of corresponding section of original act, in introductory provisions, in par. (1) inserted ''who received a scholarship under the Scholarship Program or a loan repayment under the Loan Repayment Program and'' after ''individual'' the first time it appeared as the probable intent of Congress, and inserted ''or in the case of an individual for whom a loan payment was made under the Loan Repayment Program and who is performing obligated service as a member of the Corps in a health manpower shortage area on the date of the application of the individual for such a release, in the health manpower shortage area selected by the Secretary'', and in par. (2) inserted ''selected by the Secretary''.

Subsec. (b). Pub. L. 100–177, § 307(4), inserted at end ''The Secretary shall take such action as may be appropriate to ensure that the conditions of the written agreement prescribed by this subsection are adhered to.''

Subsec. (c). Pub. L. 100–177, § 307(5), inserted reference to section 254*l*–1.

Subsec. (e). Pub. L. 100–177, § 307(b), designated par. (2) as entire subsection and struck out par. (1) which read as follows: ''The Secretary may make such arrangements as he determines are necessary for the individual for the use of equipment and supplies and for the lease or acquisition of other equipment and supplies.''

1981—Subsec. (a). Pub. L. 97–35, § 2709(d)(1), inserted provision respecting requirements of applicable State law, substituted references to sections 254m(a) and 234 of this title, for reference to section 294u(a) of this title, and in cl. (2) struck out priority requirement under section 254f(c) of this title.

Subsec. (b)(1)(B). Pub. L. 97–35, § 2709(d)(2), inserted ''(i)'' before ''shall not'' and added cl. (ii).

Subsecs. (c) to (g). Pub. L. 97–35, § 2709(d)(3), added subsecs. (c) to (g).

1980—Subsec. (a). Pub. L. 96–538 substituted in par. (2) ''which has'' for ''which (A) has'' and struck out subpar. (B) which referred to a health manpower shortage area which has a sufficient financial base to substain private practice and provide the individual with income of not less than the income of members of the Corps, and struck out provision following par. (2) which provided that in the case of an individual described in par. (1), the Secretary release the individual from his service obligation under this subsection only if the Secretary determines that the area in which the individual is serving met the requirements of cl. (B) of par. (2).

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

§ 254*o*. Breach of scholarship contract or loan repayment contract

(a) Failure to maintain academic standing; dismissal from institution; voluntary termination; liability; failure to accept payment

(1) An individual who has entered into a written contract with the Secretary under section 254*l* of this title and who—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

(B) is dismissed from such educational institution for disciplinary reasons; or

(C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

(2) An individual who has entered into a written contract with the Secretary under section 254*l*–1 of this title and who—

(A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

(B) in the case of an individual who is enrolled in a graduate training program, fails to complete such training program and does not receive a waiver from the Secretary under section 254*l*–1(b)(1)(B)(ii) of this title,

in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.

(b) Failure to commence or complete service obligations; formula to determine liability; payment to United States; recovery of delinquent damages; disclosure to credit reporting agencies

(1)(A) Except as provided in paragraph (2), if an individual breaches his written contract by failing (for any reason not specified in subsection (a) of this section or section 254p(d) of this title) to begin such individual's service obligation under section 254*l* of this title in accordance with section 254m or 254n of this title, to complete such service obligation, or to complete

a required residency as specified in section 254*l*(f)(1)(B)(iv) of this title, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A=3\phi\left(\frac{t-s}{t}\right)$$

in which ''A'' is the amount the United States is entitled to recover, ''ϕ'' is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; ''t'' is the total number of months in the individual's period of obligated service; and ''s'' is the number of months of such period served by him in accordance with section 254m of this title or a written agreement under section 254n of this title.

(B)(i) Any amount of damages that the United States is entitled to recover under this subsection or under subsection (c) of this section shall, within the 1-year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary), be paid to the United States. Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1395ccc of this title.

(ii) If damages described in clause (i) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

(I) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(II) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

(iii) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31 shall apply to any such contract to the extent not inconsistent with this subsection.

(iv) To the extent not otherwise prohibited by law, the Secretary shall disclose to all appropriate credit reporting agencies information relating to damages of more than $100 that are entitled to be recovered by the United States under this subsection and that are delinquent by more than 60 days or such longer period as is determined by the Secretary.

(2) If an individual is released under section 254n[1] of this title from a service obligation under section 234[1] of this title (as in effect on September 30, 1977) and if the individual does not meet the service obligation incurred under section 254n[1] of this title, subsection (f) of such section 234[1] of this title shall apply to such individual in lieu of paragraph (1) of this subsection.

(3) The Secretary may terminate a contract with an individual under section 254*l* of this title if, not later than 30 days before the end of the school year to which the contract pertains, the individual—

(A) submits a written request for such termination; and

(B) repays all amounts paid to, or on behalf of, the individual under section 254*l*(g) of this title.

(c) Failure to commence or complete service obligations for other reasons; determination of liability; payment to United States; waiver of recovery for extreme hardship or good cause shown

(1) If (for any reason not specified in subsection (a) of this section or section 254p(d) of this title) an individual breaches the written contract of the individual under section 254*l*–1 of this title by failing either to begin such individual's service obligation in accordance with section 254m or 254n of this title or to complete such service obligation, the United States shall be entitled to recover from the individual an amount equal to the sum of—

(A) the total of the amounts paid by the United States under section 254*l*–1(g) of this title on behalf of the individual for any period of obligated service not served;

(B) an amount equal to the product of the number of months of obligated service that were not completed by the individual, multiplied by $7,500; and

(C) the interest on the amounts described in subparagraphs (A) and (B), at the maximum legal prevailing rate, as determined by the Treasurer of the United States, from the date of the breach;

except that the amount the United States is entitled to recover under this paragraph shall not be less than $31,000.

(2) The Secretary may terminate a contract with an individual under section 254*l*–1 of this title if, not later than 45 days before the end of the fiscal year in which the contract was entered into, the individual—

(A) submits a written request for such termination; and

(B) repays all amounts paid on behalf of the individual under section 254*l*–1(g) of this title.

(3) Damages that the United States is entitled to recover shall be paid in accordance with subsection (b)(1)(B) of this section.

(d) Cancellation of obligation upon death of individual; waiver or suspension of obligation for impossibility, hardship, or unconscionability; release of debt by discharge in bankruptcy, time limitations

(1) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) whenever compliance by the individual is impossible or would

[1] See References in Text note below.

involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3)(A) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for payment of damages may be released by a discharge in bankruptcy under title 11 only if such discharge is granted after the expiration of the 7-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

(B)(i) Subparagraph (A) shall apply to any financial obligation of an individual under the provision of law specified in clause (ii) to the same extent and in the same manner as such subparagraph applies to any obligation of an individual under the Scholarship or Loan Repayment Program (or contract thereunder) for payment of damages.

(ii) The provision of law referred to in clause (i) is subsection (f) of section 234[2] of this title, as in effect prior to the repeal of such section by section 408(b)(1) of Public Law 94–484.

(e) Inapplicability of Federal and State statute of limitations on actions for collection

Notwithstanding any other provision of Federal or State law, there shall be no limitation on the period within which suit may be filed, a judgment may be enforced, or an action relating to an offset or garnishment, or other action, may be initiated or taken by the Secretary, the Attorney General, or the head of another Federal agency, as the case may be, for the repayment of the amount due from an individual under this section.

(f) Effective date

The amendment made by section 313(a)(4) of the Health Care Safety Net Amendments of 2002 (Public Law 107–251) shall apply to any obligation for which a discharge in bankruptcy has not been granted before the date that is 31 days after October 26, 2002.

(July 1, 1944, ch. 373, title III, § 338E, formerly title VII, § 754, as added Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2286; amended Pub. L. 95–83, title III, § 307(g), Aug. 1, 1977, 91 Stat. 391; renumbered § 338D and amended Pub. L. 97–35, title XXVII, § 2709(a), (e)(1)–(4)(A), Aug. 13, 1981, 95 Stat. 908, 911; Pub. L. 97–414, § 8(g)(2), Jan. 4, 1983, 96 Stat. 2061; renumbered § 338E and amended Pub. L. 100–177, title II, §§ 201(2), 202(e), title III, § 308(a), Dec. 1, 1987, 101 Stat. 992, 997, 1006; Pub. L. 100–203, title IV, § 4052(b), Dec. 22, 1987, 101 Stat. 1330–97; Pub. L. 100–360, title IV, § 411(f)(10)(B), July 1, 1988, 102 Stat. 780; Pub. L. 101–597, title II, § 203(a), Nov. 16, 1990, 104 Stat. 3027; Pub. L. 107–251, title III, § 313(a), Oct. 26, 2002, 116 Stat. 1651; Pub. L. 108–163, § 2(*l*)(1), Dec. 6, 2003, 117 Stat. 2022.)

REFERENCES IN TEXT

Section 234 of this title, referred to in subsecs. (b)(2) and (d)(3)(B)(ii), was repealed by Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281, effective Oct. 1, 1977.

[2] See References in Text note below.

Section 254n of this title, referred to in subsec. (b)(2), in the original referred to section 753, meaning section 753 of the Public Health Service Act, which was classified to section 294v of this title. Section 753 was redesignated section 338C of the Public Health Service Act by Pub. L. 97–35, title XXVII, § 2709(a), Aug. 13, 1981, 95 Stat. 908, and was transferred to section 254n of this title. Section 338C of the Public Health Service Act was renumbered section 338D by Pub. L. 100–177, title II, § 201(2), Dec. 1, 1987, 101 Stat. 992.

Section 313(a)(4) of the Health Care Safety Net Amendments of 2002, referred to in subsec. (f), is section 313(a)(4) of Pub. L. 107–251, which amended subsec. (d)(3)(A) of this section. See 2002 Amendment note below.

CODIFICATION

Section was formerly classified to section 294w of this title prior to its renumbering by Pub. L. 97–35.

PRIOR PROVISIONS

A prior section 338E of act July 1, 1944, was renumbered section 338F by Pub. L. 100–177 and classified to section 254p of this title, and subsequently renumbered 338G by Pub. L. 101–597.

AMENDMENTS

2003—Subsec. (c)(1). Pub. L. 108–163, § 2(*l*)(1)(A), realigned margins.

Subsec. (f). Pub. L. 108–163, § 2(*l*)(1)(B), added subsec. (f).

2002—Subsec. (a)(1). Pub. L. 107–251, § 313(a)(1), substituted semicolon for comma at end of subpar. (A) and ''; or'' for comma at end of subpar. (B), struck out ''or'' at end of subpar. (C), and struck out subpar. (D) which read as follows: ''fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,''.

Subsec. (b)(1)(A). Pub. L. 107–251, § 313(a)(2)(A)(ii)–(iv), struck out ''either'' before ''to begin'', substituted ''254n of this title,'' for ''254n of this title or'', and inserted ''or to complete a required residency as specified in section 254*l*(f)(1)(B)(iv) of this title,'' before ''the United States'' the first time appearing.

Pub. L. 107–251, § 313(a)(2)(A)(i), made technical amendment to reference in original act which appears in text as reference to section 254p of this title.

Subsec. (b)(3). Pub. L. 107–251, § 313(a)(2)(B), added par. (3).

Subsec. (c)(1). Pub. L. 107–251, § 313(a)(3)(A)(ii), added subpars. (A) to (C) and concluding provisions and struck out former subpars. (A) to (C) which related, respectively, to amounts to be recovered in the case of a contract for a 2-year period of obligated service, in the case of a contract for a period of obligated service of greater than 2 years where the breach occurred before the end of the first 2 years of such period, and in the case of a contract for a period of obligated service of greater than 2 years, where the breach occurred after the first 2 years of such period.

Pub. L. 107–251, § 313(a)(3)(A)(i), in introductory provisions, made technical amendment to reference in original act which appears in text as reference to section 254p(d) of this title.

Subsec. (c)(2). Pub. L. 107–251, § 313(a)(3)(B), added par. (2) and struck out former par. (2) which read as follows: ''For purposes of paragraph (1), the term 'unserved obligation penalty' means the amount equal to the product of the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000.''

Subsec. (c)(3), (4). Pub. L. 107–251, § 313(a)(3)(B), (C), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The Secretary may waive, in whole or in part, the rights of the United States to re-

cover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.''

Subsec. (d)(3)(A). Pub. L. 107–251, § 313(a)(4), substituted ''7-year period'' for ''five-year period''.

Subsec. (e). Pub. L. 107–251, § 313(a)(5), added subsec. (e).

1990—Subsec. (d)(3). Pub. L. 101–597 designated existing provision as subpar. (A) and added subpar. (B).

1988—Subsec. (b)(1)(B)(i). Pub. L. 100–360 made technical amendment to directory language of Pub. L. 100–203, see 1987 Amendment note below.

1987—Pub. L. 100–177, § 202(e)(6), inserted ''or loan repayment contract'' in section catchline.

Subsec. (a). Pub. L. 100–177, § 202(e)(1), designated existing provisions as par. (1), and former pars. (1) to (4) as subpars. (A) to (D), respectively, and added par. (2).

Subsec. (b)(1). Pub. L. 100–177, § 202(e)(2), designated existing provisions as subpar. (A), made technical amendments to references to sections 254m, 254n, and 254p of this title wherever appearing to reflect renumbering of corresponding sections of original act, inserted ''under section 254*l* of this title'' after first reference to ''service obligation'' as the probable intent of Congress, struck out at end ''Any amount of damages which the United States is entitled to recover under this subsection shall, within the one year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary for good cause shown), be paid to the United States.'', and added subpar. (B).

Subsec. (b)(1)(B)(i). Pub. L. 100–203, as amended by Pub. L. 100–360, inserted at end ''Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1395ccc of this title.''

Subsec. (c). Pub. L. 100–177, § 202(e)(4), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–177, §§ 202(e)(3), (5), 308(a), redesignated subsec. (c) as (d), in pars. (1), (2), and (3), inserted ''or the Loan Repayment Program (or a contract thereunder'', and in par. (3) inserted '', and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable''.

1983—Subsec. (b)(1). Pub. L. 97–414 substituted ''section 254p(d)'' for ''section 254q(b)''.

1981—Subsec. (a). Pub. L. 97–35, § 2709(e)(1), (2), redesignated subsec. (b) as (a) and, as so redesignated, in introductory text substituted ''254*l*'' for ''294t'' and added par. (4). Former subsec. (a), which related to liability of individual upon failure to accept payment, was struck out.

Subsec. (b). Pub. L. 97–35, § 2709(e)(1), (3), redesignated subsec. (c) as (b) and, as so redesignated, designated existing provisions as par. (1) and made numerous changes to reflect renumbering of subpart sections, and added par. (2). Former subsec. (b) redesignated (a).

Subsecs. (c), (d). Pub. L. 97–35, § 2709(e)(1), (4)(A), redesignated subsec. (d) as (c) and, as so redesignated, in par. (2) inserted reference to partial or total waiver. Former subsec. (c) redesignated (b).

1977—Subsec. (c). Pub. L. 95–83 substituted '' 'ϕ' is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans'' for '' 'ϕ' is the sum of the amount paid under this subpart to or on behalf of the individual and the interest on such amount which would be payable if at the time it was paid it was a loan''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendments by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–251, title III, § 313(b), Oct. 26, 2002, 116 Stat. 1652, which provided that the amendment to this section made by section 313(a)(4) of Pub. L. 107–251 was applicable to any obligation for which a discharge in bankruptcy had not been granted before the date that was 31 days after Oct. 26, 2002, was repealed by Pub. L. 108–163, §§ 2(*l*)(2), 3, Dec. 6, 2003, 117 Stat. 2023, effective immediately after enactment of Pub. L. 107–251.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 203(b) of Pub. L. 101–597 provided that: ''With respect to any financial obligation of an individual under subsection (f) of section 225 of the Public Health Service Act [former section 234 of this title], as in effect prior to the repeal of such section by section 408(b)(1) of Public Law 94–484, the amendment made by subsection (a) of this section [amending this section] applies to any backruptcy [sic] proceeding in which discharge of such an obligation has not been granted before the date that is 31 days after the date of the enactment of this Act [Nov. 16, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

SPECIAL REPAYMENT PROVISIONS

Section 204 of Pub. L. 100–177 provided that an individual who breached a written contract entered into under section 254*l* of this title by failing either to begin such individual's service obligation in accordance with section 254m of this title or to complete such service obligation; or otherwise breached such a contract; and, as of Nov. 1, 1987, was liable to United States under subsec. (b) of this section was to be relieved of liability to United States under such section if the individual provided notice to Secretary and service in accordance with a written contract with the Secretary that obligated the individual to provide service in accordance with section and authorized Secretary to exclude an individual from relief from liability under this section for reasons related to the individual's professional competence or conduct.

EXISTING PROCEEDINGS

Section 308(b) of Pub. L. 100–177 provided that: ''The amendment made by subsection (a) [amending this section] applies to any bankruptcy proceeding in which discharge of an obligation under section 338E(d)(3) of the Public Health Service Act [subsec. (d)(3) of this section] (as redesignated by sections 201(2) and 202(e)(3) of this Act) has not been granted before the date that is 31 days after the date of enactment of this Act [Dec. 1, 1987].''

§ 254*o*–1. Fund regarding use of amounts recovered for contract breach to replace services lost as result of breach

(a) Establishment of Fund

There is established in the Treasury of the United States a fund to be known as the National Health Service Corps Member Replace-

ment Fund (hereafter in this section referred to as the ''Fund''). The Fund shall consist of such amounts as may be appropriated under subsection (b) of this section to the Fund. Amounts appropriated for the Fund shall remain available until expended.

(b) Authorization of appropriations to Fund

For each fiscal year, there is authorized to be appropriated to the Fund an amount equal to the sum of—

(1) the amount collected during the preceding fiscal year by the Federal Government pursuant to the liability of individuals under section 254*o* of this title for the breach of contracts entered into under section 254*l* or 254*l*–1 of this title;

(2) the amount by which grants under section 254q–1 of this title have, for such preceding fiscal year, been reduced under subsection (g)(2)(B) of such section; and

(3) the aggregate of the amount of interest accruing during the preceding fiscal year on obligations held in the Fund pursuant to subsection (d) of this section and the amount of proceeds from the sale or redemption of such obligations during such fiscal year.

(c) Use of Fund

(1) Payments to certain health facilities

Amounts in the Fund and available pursuant to appropriations Act may, subject to paragraph (2), be expended by the Secretary to make payments to any entity—

(A) to which a Corps member has been assigned under section 254f of this title; and

(B) that has a need for a health professional to provide primary health services as a result of the Corps member having breached the contract entered into under section 254*l* or 254*l*–1 of this title by the individual.

(2) Purpose of payments

An entity receiving payments pursuant to paragraph (1) may expend the payments to recruit and employ a health professional to provide primary health services to patients of the entity, or to enter into a contract with such a professional to provide the services to the patients.

(d) Investment

(1) In general

The Secretary of the Treasury shall invest such amounts of the Fund as such Secretary determines are not required to meet current withdrawals from the Fund. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

(2) Sale of obligations

Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(July 1, 1944, ch. 373, title III, § 338F, as added Pub. L. 101–597, title II, § 204, Nov. 16, 1990, 104 Stat. 3027.)

PRIOR PROVISIONS

A prior section 338F of act July 1, 1944, was renumbered section 338G by Pub. L. 101–597 and is classified to section 254p of this title.

Another prior section 338F of act July 1, 1944, was renumbered section 338G by section 201(2) of Pub. L. 100–177 and classified to section 254q of this title, prior to repeal by Pub. L. 100–177, title II, § 203, Dec. 1, 1987, 101 Stat. 999.

§ 254p. Special loans for former Corps members to enter private practice

(a) Persons entitled; conditions

The Secretary may, out of appropriations authorized under section 254k of this title, make one loan to a Corps member who has agreed in writing—

(1) to engage in the private full-time clinical practice of the profession of the member in a health professional shortage area (designated under section 254e of this title) for a period of not less than 2 years which—

(A) in the case of a Corps member who is required to complete a period of obligated service under this subpart, begins not later than 1 year after the date on which such individual completes such period of obligated service; and

(B) in the case of an individual who is not required to complete a period of obligated service under this subpart, begins at such time as the Secretary considers appropriate;

(2) to conduct such practice in accordance with section 254n(b)(1) of this title; and

(3) to such additional conditions as the Secretary may require to carry out this section.

Such a loan shall be used to assist such individual in meeting the costs of beginning the practice of such individual's profession in accordance with such agreement, including the costs of acquiring equipment and renovating facilities for use in providing health services, and of hiring nurses and other personnel to assist in providing health services. Such loan may not be used for the purchase or construction of any building.

(b) Amount of loan; maximum interest rate

(1) The amount of a loan under subsection (a) of this section to an individual shall not exceed $25,000.

(2) The interest rate for any such loan shall not exceed an annual rate of 5 percent.

(c) Application for loan; submission and approval; interest rates and repayment terms

The Secretary may not make a loan under this section unless an application therefor has been submitted to, and approved by, the Secretary. The Secretary shall, by regulation, set interest rates and repayment terms for loans under this section.

(d) Breach of agreement; notice; determination of liability

If the Secretary determines that an individual has breached a written agreement entered into under subsection (a) of this section, he shall, as soon as practicable after making such determination, notify the individual of such determination. If within 60 days after the date of giv-

ing such notice, such individual is not practicing his profession in accordance with the agreement under such subsection and has not provided assurances satisfactory to the Secretary that he will not knowingly violate such agreement again, the United States shall be entitled to recover from such individual—

(1) in the case of an individual who has received a grant under this section (as in effect prior to October 1, 1984), an amount determined under section 254*o*(b) of this title, except that in applying the formula contained in such section ''ϕ'' shall be the sum of the amount of the grant made under subsection (a) of this section to such individual and the interest on such amount which would be payable if at the time it was paid it was a loan bearing interest at the maximum legal prevailing rate, ''t'' shall be the number of months that such individual agreed to practice his profession under such agreement, and ''s'' shall be the number of months that such individual practices his profession in accordance with such agreement; and

(2) in the case of an individual who has received a loan under this section, the full amount of the principal and interest owed by such individual under this section.

(July 1, 1944, ch. 373, title III, § 338G, formerly title VII, § 755, as added Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2287; renumbered § 338E and amended Pub. L. 97–35, title XXVII, § 2709(a), (f), Aug. 13, 1981, 95 Stat. 908, 911; Pub. L. 97–414, § 8(g)(3), Jan. 4, 1983, 96 Stat. 2061; renumbered § 338F and amended Pub. L. 100–177, title II, § 201(2), title III, § 309, Dec. 1, 1987, 101 Stat. 992, 1006; renumbered § 338G and amended Pub. L. 101–597, title II, § 204, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3027, 3035.)

CODIFICATION

Section was formerly classified to section 294x of this title prior to renumbering by Pub. L. 97–35.

PRIOR PROVISIONS

A prior section 338G of act July 1, 1944, was renumbered section 338H by Pub. L. 101–597 and is classified to section 254q of this title.

Another prior section 338G of act July 1, 1944, was renumbered section 338I by section 201(1) of Pub. L. 100–177 and classified to section 254r of this title, prior to repeal by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

Another prior section 338G of act July 1, 1944, was classified to section 254q of this title prior to repeal by Pub. L. 100–177, title II, § 203, Dec. 1, 1987, 101 Stat. 999.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

1987—Subsec. (a). Pub. L. 100–177, § 309(1), substituted subsec. (a) consisting of pars. (1) to (3) for former subsec. (a) consisting of pars. (1) and (2).

Subsec. (b). Pub. L. 100–177, § 309(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The amount of the grant or loan under subsection (a) of this section to an individual shall be—

''(1) $12,500 if the individual agrees to practice his profession in accordance with the agreement for a period of at least one year, but less than two years; or

''(2) $25,000 if the individual agrees to practice his profession in accordance with the agreement for a period of at least two years.''

Subsec. (c). Pub. L. 100–177, § 309(2), struck out ''grant or'' before ''loan'' in first sentence.

Subsec. (d)(1). Pub. L. 100–177, § 309(3), substituted ''under this section (as in effect prior to October 1, 1984)'' for ''under this section'', and made technical amendment to reference to section 254*o*(b) of this title to reflect renumbering of corresponding section of original act.

1983—Subsec. (d)(1). Pub. L. 97–414 substituted ''section 254*o*(b)'' for ''section 254*o*(c)''.

1981—Subsec. (a). Pub. L. 97–35, § 2709(f)(2)–(4), made numerous changes to reflect renumbering of subpart sections, among them inserting references to section 254k of this title and striking out references to section 294v of this title, and added applicability to loans.

Subsec. (b). Pub. L. 97–35, § 2709(f)(5), inserted applicability to loans.

Subsec. (c). Pub. L. 97–35, § 2709(f)(6), inserted provisions relating to loans and interest rates, etc.

Subsec. (d). Pub. L. 97–35, § 2709(f)(7), restructured and revised criteria determining amount of liability of individual within 60 days after the date of notice instead of within 120 days after the date of notice.

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

§ 254q. Authorization of appropriations

(a) Authorization of appropriations

For the purposes of carrying out this subpart, there are authorized to be appropriated $146,250,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

(b) Scholarships for new participants

Of the amounts appropriated under subsection (a) of this section for a fiscal year, the Secretary shall obligate not less than 10 percent for the purpose of providing contracts for—

(1) scholarships under this subpart to individuals who have not previously received such scholarships; or

(2) scholarships or loan repayments under the Loan Repayment Program under section 254*l*–1 of this title to individuals from disadvantaged backgrounds.

(c) Scholarships and loan repayments

With respect to certification as a nurse practitioner, nurse midwife, or physician assistant, the Secretary shall, from amounts appropriated under subsection (a) of this section for a fiscal year, obligate not less than a total of 10 percent for contracts for both scholarships under the Scholarship Program under section 254*l* of this title and loan repayments under the Loan Repayment Program under section 254*l*–1 of this title to individuals who are entering the first year of a course of study or program described in section 254*l*(b)(1)(B) of this title that leads to such a certification or individuals who are eligible for the loan repayment program as specified in section 254*l*–1(b) of this title for a loan related to such certification.

(July 1, 1944, ch. 373, title III, § 338H, formerly § 338G, as added Pub. L. 100–177, title II, § 203,

Dec. 1, 1987, 101 Stat. 999; renumbered § 338H and amended Pub. L. 101–597, title II, §§ 204, 205, Nov. 16, 1990, 104 Stat. 3027, 3028; Pub. L. 107–251, title III, § 314, Oct. 26, 2002, 116 Stat. 1652.)

PRIOR PROVISIONS

A prior section 254q, act July 1, 1944, ch. 373, title III, § 338G, formerly title VII, § 756, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2288; renumbered § 338F and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2709(a), (g), 95 Stat. 908, 912; renumbered § 338G, Dec. 1, 1987, Pub. L. 100–177, title II, § 201(2), 101 Stat. 992, authorized appropriations for fiscal years 1978 to 1987, prior to repeal by Pub. L. 100–177, § 203.

A prior section 338H of act July 1, 1944, was renumbered section 338I by Pub. L. 101–597 and is classified to section 254q–1 of this title.

AMENDMENTS

2002—Pub. L. 107–251 amended section generally. Prior to amendment, section related to annual report to Congress, authorization of appropriations for fiscal years 1991 through 2000, and reservation of percentage of appropriated amounts for scholarships for new participants and for first-year study in certain fields.

1990—Subsec. (a). Pub. L. 101–597, § 205(a), substituted ''March 1'' for ''January 20'' and ''5 fiscal years'' for ''3 fiscal years'' wherever appearing.

Subsec. (b). Pub. L. 101–597, § 205(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''There are authorized to be appropriated such sums as may be necessary for scholarships and loan repayments under this subpart.''

§ 254q–1. Grants to States for loan repayment programs

(a) In general

(1) Authority for grants

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to States for the purpose of assisting the States in operating programs described in paragraph (2) in order to provide for the increased availability of primary health care services in health professional shortage areas. The National Advisory Council established under section 254j of this title shall advise the Administrator regarding the program under this section.

(2) Loan repayment programs

The programs referred to in paragraph (1) are, subject to subsection (c) of this section, programs of entering into contracts under which the State involved agrees to pay all or part of the principal, interest, and related expenses of the educational loans of health professionals in consideration of the professionals agreeing to provide primary health services in health professional shortage areas.

(3) Direct administration by State agency

The Secretary may not make a grant under paragraph (1) unless the State involved agrees that the program operated with the grant will be administered directly by a State agency.

(b) Requirement of matching funds

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the State agrees that, with respect to the costs of making payments on behalf of individuals under contracts made pursuant to paragraph (2) of such subsection, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $1 of Federal funds provided in the grant.

(2) Determination of amount of non-Federal contribution

In determining the amount of non-Federal contributions in cash that a State has provided pursuant to paragraph (1), the Secretary may not include any amounts provided to the State by the Federal Government.

(c) Coordination with Federal program

(1) Assignments for health professional shortage areas under Federal program

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that, in carrying out the program operated with the grant, the State will assign health professionals participating in the program only to public and nonprofit private entities located in and providing health services in health professional shortage areas.

(2) Remedies for breach of contracts

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the contracts provided by the State pursuant to paragraph (2) of such subsection will provide remedies for any breach of the contracts by the health professionals involved.

(3) Limitation regarding contract inducements

(A) Except as provided in subparagraph (B), the Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the contracts provided by the State pursuant to paragraph (2) of such subsection will not be provided on terms that are more favorable to health professionals than the most favorable terms that the Secretary is authorized to provide for contracts under the Loan Repayment Program under section 254*l*–1 of this title, including terms regarding—

(i) the annual amount of payments provided on behalf of the professionals regarding educational loans; and

(ii) the availability of remedies for any breach of the contracts by the health professionals involved.

(B) With respect to the limitation established in subparagraph (A) regarding the annual amount of payments that may be provided to a health professional under a contract provided by a State pursuant to subsection (a)(2) of this section, such limitation shall not apply with respect to a contract if—

(i) the excess of such annual payments above the maximum amount authorized in section 254*l*–1(g)(2)(A) of this title for annual payments regarding contracts is paid solely from non-Federal contributions under subsection (b) of this section; and

(ii) the contract provides that the health professional involved will satisfy the requirement of obligated service under the

contract solely through the provision of primary health services in a health professional shortage area that is receiving priority for purposes of section 254f–1(a)(1) of this title and that is authorized to receive assignments under section 254f of this title of individuals who are participating in the Scholarship Program under section 254*l* of this title.

(d) Restrictions on use of funds

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the grant will not be expended—

(1) to conduct activities for which Federal funds are expended—

(A) within the State to provide technical or other nonfinancial assistance under subsection (f) of section 254c[1] of this title;

(B) under a memorandum of agreement entered into with the State under subsection (h) of such section; or

(C) under a grant under section 254r of this title; or

(2) for any purpose other than making payments on behalf of health professionals under contracts entered into pursuant to subsection (a)(2) of this section.

(e) Reports

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees—

(1) to submit to the Secretary such reports regarding the States loan repayment program, as are determined to be appropriate by the Secretary; and

(2) to submit such a report not later than January 10 of each fiscal year immediately following any fiscal year for which the State has received such a grant.

(f) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out such subsection.

(g) Noncompliance

(1) In general

The Secretary may not make payments under subsection (a) of this section to a State for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the State has complied with each of the agreements made by the State under this section.

(2) Reduction in grant relative to number of breached contracts

(A) Before making a grant under subsection (a) of this section to a State for a fiscal year, the Secretary shall determine the number of contracts provided by the State under paragraph (2) of such subsection with respect to which there has been an initial breach by the health professionals involved during the fiscal year preceding the fiscal year for which the State is applying to receive the grant.

(B) Subject to paragraph (3), in the case of a State with 1 or more initial breaches for purposes of subparagraph (A), the Secretary shall reduce the amount of a grant under subsection (a) of this section to the State for the fiscal year involved by an amount equal to the sum of the expenditures of Federal funds made regarding the contracts involved and an amount representing interest on the amount of such expenditures, determined with respect to each contract on the basis of the maximum legal rate prevailing for loans made during the time amounts were paid under the contract, as determined by the Treasurer of the United States.

(3) Waiver regarding reduction in grant

The Secretary may waive the requirement established in paragraph (2)(B) with respect to the initial breach of a contract if the Secretary determines that such breach by the health professional involved was attributable solely to the professional having a serious illness.

(h) "State" defined

For purposes of this section, the term ''State'' means each of the several States.

(i) Authorization of appropriations

(1) In general

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $12,000,000 for fiscal year 2002 and such sums as may be necessary for each of fiscal years 2003 through 2006.

(2) Availability

Amounts appropriated under paragraph (1) shall remain available until expended.

(j) Public health loan repayment

(1) In general

The Secretary may award grants to States for the purpose of assisting such States in operating loan repayment programs under which such States enter into contracts to repay all or part of the eligible loans borrowed by, or on behalf of, individuals who agree to serve in State, local, or tribal health departments that serve health professional shortage areas or other areas at risk of a public health emergency, as designated by the Secretary.

(2) Loans eligible for repayment

To be eligible for repayment under this subsection, a loan shall be a loan made, insured, or guaranteed by the Federal Government that is borrowed by, or on behalf of, an individual to pay the cost of attendance for a program of education leading to a degree appropriate for serving in a State, local, or tribal health department as determined by the Secretary and the chief executive officer of the State in which the grant is administered, at an institution of higher education (as defined in section 1002 of title 20), including principal, interest, and related expenses on such loan.

[1] See References in Text note below.

(3) Applicability of existing requirements

With respect to awards made under paragraph (1)—

(A) the requirements of subsections (b), (f), and (g) shall apply to such awards; and

(B) the requirements of subsection (c) shall apply to such awards except that with respect to paragraph (1) of such subsection, the State involved may assign an individual only to public and nonprofit private entities that serve health professional shortage areas or areas at risk of a public health emergency, as determined by the Secretary.

(4) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection, such sums as may be necessary for each of fiscal years 2007 through 2010.

(July 1, 1944, ch. 373, title III, § 338I, formerly § 338H, as added Pub. L. 100–177, title II, § 203, Dec. 1, 1987, 101 Stat. 999; renumbered § 338I and amended Pub. L. 101–597, title II, § 204, title III, § 301, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3027, 3029, 3035; Pub. L. 105–392, title IV, § 408, Nov. 13, 1998, 112 Stat. 3589; Pub. L. 107–251, title III, § 315, Oct. 26, 2002, 116 Stat. 1653; Pub. L. 109–417, title II, § 203(b), Dec. 19, 2006, 120 Stat. 2849.)

REFERENCES IN TEXT

Section 254c of this title, referred to in subsec. (d)(1)(A), was in the original a reference to section 330, meaning section 330 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of this part by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

PRIOR PROVISIONS

A prior section 338I of act July 1, 1944, was classified to section 254r of this title prior to repeal by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

AMENDMENTS

2006—Subsec. (j). Pub. L. 109–417 added subsec. (j).

2002—Subsec. (a)(1). Pub. L. 107–251, § 315(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to States for the purpose of assisting the States in operating programs described in paragraph (2) in order to provide for the increased availability of primary health services in health professional shortage areas.''

Subsec. (e)(1). Pub. L. 107–251, § 315(2), added par. (1) and struck out former par. (1) which read as follows: ''to submit to the Secretary reports providing the same types of information regarding the program operated pursuant to such subsection as reports submitted pursuant to subsection (i) of section 254*l*–1 of this title provide regarding the Loan Repayment Program under such section; and''.

Subsec. (i)(1). Pub. L. 107–251, § 315(3), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''For the purpose of making grants under subsection (a) of this section, there is authorized to be appropriated $10,000,000 for each of the fiscal years 1991 through 1995, and such sums as may be necessary for each of the fiscal years 1998 through 2002.''

1998—Subsec. (i)(1). Pub. L. 105–392 inserted '', and such sums as may be necessary for each of the fiscal years 1998 through 2002'' before period at end.

1990—Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing in subsecs. (a)(1), (2) and (c)(1), (3)(B)(ii).

Pub. L. 101–597, § 301, amended section generally, substituting present provisions for provisions which related to: in subsec. (a), grants; in subsec. (b), applications; in subsec. (c), Federal share; and in subsec. (d), authorization of appropriations.

§ 254r. Grants to States for operation of offices of rural health

(a) In general

The Secretary, acting through the Director of the Office of Rural Health Policy (established in section 912 of this title), may make grants to States for the purpose of improving health care in rural areas through the operation of State offices of rural health.

(b) Requirement of matching funds

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees, with respect to the costs to be incurred by the State in carrying out the purpose described in such subsection, to provide non-Federal contributions toward such costs in an amount equal to—

(A) for the first fiscal year of payments under the grant, not less than $1 for each $3 of Federal funds provided in the grant;

(B) for any second fiscal year of such payments, not less than $1 for each $1 of Federal funds provided in the grant; and

(C) for any third fiscal year of such payments, not less than $3 for each $1 of Federal funds provided in the grant.

(2) Determination of amount of non-Federal contribution

(A) Subject to subparagraph (B), non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that—

(i) for the first fiscal year of payments under the grant, 100 percent or less of the non-Federal contributions required in paragraph (1) will be provided in the form of in-kind contributions;

(ii) for any second fiscal year of such payments, not more than 50 percent of such non-Federal contributions will be provided in the form of in-kind contributions; and

(iii) for any third fiscal year of such payments, such non-Federal contributions will be provided solely in the form of cash.

(c) Certain required activities

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that activities carried out by an office operated pursuant to such subsection will include—

(1) establishing and maintaining within the State a clearinghouse for collecting and disseminating information on—

(A) rural health care issues;

(B) research findings relating to rural health care; and

(C) innovative approaches to the delivery of health care in rural areas;

(2) coordinating the activities carried out in the State that relate to rural health care, including providing coordination for the purpose of avoiding redundancy in such activities; and

(3) identifying Federal and State programs regarding rural health, and providing technical assistance to public and nonprofit private entities regarding participation in such programs.

(d) Requirement regarding annual budget for office

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that, for any fiscal year for which the State receives such a grant, the office operated pursuant to subsection (a) of this section will be provided with an annual budget of not less than $50,000.

(e) Certain uses of funds

(1) Restrictions

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that—

(A) if research with respect to rural health is conducted pursuant to the grant, not more than 10 percent of the grant will be expended for such research; and

(B) the grant will not be expended—

(i) to provide health care (including providing cash payments regarding such care);

(ii) to conduct activities for which Federal funds are expended—

(I) within the State to provide technical and other nonfinancial assistance under subsection (f) of section 254c[1] of this title;

(II) under a memorandum of agreement entered into with the State under subsection (h) of such section; or

(III) under a grant under section 254q–1 of this title;

(iii) to purchase medical equipment, to purchase ambulances, aircraft, or other vehicles, or to purchase major communications equipment;

(iv) to purchase or improve real property; or

(v) to carry out any activity regarding a certificate of need.

(2) Authorities

Activities for which a State may expend a grant under subsection (a) of this section include—

(A) paying the costs of establishing an office of rural health for purposes of subsection (a) of this section;

(B) subject to paragraph (1)(B)(ii)(III), paying the costs of any activity carried out with respect to recruiting and retaining health professionals to serve in rural areas of the State; and

(C) providing grants and contracts to public and nonprofit private entities to carry out activities authorized in this section.

(f) Reports

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees—

(1) to submit to the Secretary reports containing such information as the Secretary may require regarding activities carried out under this section by the State; and

(2) to submit such a report not later than January 10 of each fiscal year immediately following any fiscal year for which the State has received such a grant.

(g) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out such subsection.

(h) Noncompliance

The Secretary may not make payments under subsection (a) of this section to a State for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the State has complied with each of the agreements made by the State under this section.

(i) "State" defined

For purposes of this section, the term ''State'' means each of the several States.

(j) Authorization of appropriations

(1) In general

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $3,000,000 for fiscal year 1991, $4,000,000 for fiscal year 1992, $3,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1998 through 2002.

(2) Availability

Amounts appropriated under paragraph (1) shall remain available until expended.

(k) Termination of program

No grant may be made under this section after the aggregate amounts appropriated under subsection (j)(1) of this section are equal to $36,000,000.

(July 1, 1944, ch. 373, title III, § 338J, as added Pub. L. 101–597, title III, § 302, Nov. 16, 1990, 104 Stat. 3032; amended Pub. L. 105–392, title III, § 301, Nov. 13, 1998, 112 Stat. 3585.)

REFERENCES IN TEXT

Section 254c of this title, referred to in subsec. (e)(1)(B)(ii)(I), was in the original a reference to section 330, meaning section 330 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of this part by Pub. L. 104–299, § 2, Oct. 11, 1996,

[1] See References in Text note below.

110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

PRIOR PROVISIONS

A prior section 254r, act July 1, 1944, ch. 373, title III, § 338I, formerly title VII, § 757, as added Aug. 1, 1977, Pub. L. 95–83, title III, § 307(n)(1), 91 Stat. 392; amended Dec. 17, 1980, Pub. L. 96–537, § 3(d), 94 Stat. 3174; renumbered § 338G, Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2709(a), 95 Stat. 908; Oct. 30, 1984, Pub. L. 98–551, § 3, 98 Stat. 2817; renumbered § 338I, Dec. 1, 1987, Pub. L. 100–177, title II, § 201(1), 101 Stat. 992; Nov. 4, 1988, Pub. L. 100–607, title VI, § 629(a)(3), 102 Stat. 3146, which related to Indian Health Scholarships and was classified to section 294y–1 of this title prior to renumbering by Pub. L. 97–35, was repealed by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787. For provisions continuing scholarships provided on or before Nov. 23, 1988, see section 104(b)(2) of Pub. L. 100–713.

A prior section 338J of act July 1, 1944, was renumbered section 338K by Pub. L. 101–597 and is classified to section 254s of this title.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–392, § 301(1), struck out ''in cash'' after ''contributions'' in introductory provisions.

Subsec. (j)(1). Pub. L. 105–392, § 301(2), struck out ''and'' after ''1992,'' and inserted before period at end '', and such sums as may be necessary for each of the fiscal years 1998 through 2002''.

Subsec. (k). Pub. L. 105–392, § 301(3), substituted ''$36,000,000'' for ''$10,000,000''.

COMMUNICATIONS FOR RURAL HEALTH PROVIDERS

Pub. L. 102–538, title I, § 154, formerly § 134, Oct. 27, 1992, 106 Stat. 3541, renumbered § 154 by Pub. L. 103–66, title VI, § 6001(a)(2), Aug. 10, 1993, 107 Stat. 379, directed Secretary of Commerce, in conjunction with Secretary of Health and Human Services, to establish an advisory panel to develop recommendations for the improvement of rural health care through the collection of information needed by providers and the improvement in the use of communications to disseminate such information and, not later than 1 year after establishment of Panel to prepare and submit to Congress a report summarizing the recommendations made by the Panel.

Similar provisions were contained in Pub. L. 101–555, § 3, Nov. 15, 1990, 104 Stat. 2760.

§ 254s. Native Hawaiian Health Scholarships

(a) Eligibility

Subject to the availability of funds appropriated under the authority of subsection (d) of this section, the Secretary shall provide funds to Papa Ola Lokahi for the purpose of providing scholarship assistance to students who—

(1) meet the requirements of section 254*l*(b) of this title, and

(2) are Native Hawaiians.

(b) Terms and conditions

(1) The scholarship assistance provided under subsection (a) of this section shall be provided under the same terms and subject to the same conditions, regulations, and rules that apply to scholarship assistance provided under section 254*l* of this title.

(2) The Native Hawaiian Health Scholarship program shall not be administered by or through the Indian Health Service.

(c) "Native Hawaiian" defined

For purposes of this section, the term ''Native Hawaiian'' means any individual who is—

(1) a citizen of the United States,

(2) a resident of the State of Hawaii, and

(3) a descendant of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—

(A) genealogical records,

(B) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

(C) birth records of the State of Hawaii.

(d) Authorization of appropriations

There are authorized to be appropriated $1,800,000 for each of the fiscal years 1990, 1991, and 1992 for the purpose of funding the scholarship assistance provided under subsection (a) of this section.

(July 1, 1944, ch. 373, title III, § 338K, formerly § 338J, as added Pub. L. 100–713, title I, § 106, Nov. 23, 1988, 102 Stat. 4787; renumbered § 338K, Pub. L. 101–597, title III, § 302, Nov. 16, 1990, 104 Stat. 3032; amended Pub. L. 101–644, title IV, § 401, Nov. 29, 1990, 104 Stat. 4668; Pub. L. 107–116, title V, § 514(b), Jan. 10, 2002, 115 Stat. 2220.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–116, which directed the amendment of subsec. (a) by substituting ''Papa Ola Lokahi'' for ''Kamehameha School/Bishop Estate'', was executed by making the substitution for ''Kamehameha Schools/Bishop Estate'' to reflect the probable intent of Congress.

1990—Subsec. (a). Pub. L. 101–644, which directed the general amendment of subsec. (a) of section 338J of the Public Health Service Act, was executed to subsec. (a) of this section, to reflect the probable intent of Congress and the intervening renumbering of section 338J as 338K by Pub. L. 101–597. Prior to amendment, subsec. (a) read as follows: ''Subject to the availability of funds appropriated under the authority of subsection (d) of this section, the Secretary shall provide scholarship assistance, pursuant to a contract with the Kamehameha Schools/Bishop Estate, to students who—

''(1) meet the requirements of section 254*l*(b) of this title, and

''(2) are Native Hawaiians.''

§ 254t. Demonstration project

(a) Program authorized

The Secretary shall establish a demonstration project to provide for the participation of individuals who are chiropractic doctors or pharmacists in the Loan Repayment Program described in section 254*l*–1 of this title.

(b) Procedure

An individual that receives assistance under this section with regard to the program described in section 254*l*–1 of this title shall comply with all rules and requirements described in such section (other than subparagraphs (A) and (B) of section 254*l*–1(b)(1) of this title) in order to receive assistance under this section.

(c) Limitations

(1) In general

The demonstration project described in this section shall provide for the participation of individuals who shall provide services in rural and urban areas.

(2) Availability of other health professionals

The Secretary may not assign an individual receiving assistance under this section to provide obligated service at a site unless—

(A) the Secretary has assigned a physician (as defined in section 1395x(r) of this title) or other health professional licensed to prescribe drugs to provide obligated service at such site under section 254m or 254n of this title; and

(B) such physician or other health professional will provide obligated service at such site concurrently with the individual receiving assistance under this section.

(3) Rules of construction

(A) Supervision of individuals

Nothing in this section shall be construed to require or imply that a physician or other health professional licensed to prescribe drugs must supervise an individual receiving assistance under the demonstration project under this section, with respect to such project.

(B) Licensure of health professionals

Nothing in this section shall be construed to supersede State law regarding licensure of health professionals.

(d) Designations

The demonstration project described in this section, and any providers who are selected to participate in such project, shall not be considered by the Secretary in the designation of a health professional shortage area under section 254e of this title during fiscal years 2002 through 2004.

(e) Rule of construction

This section shall not be construed to require any State to participate in the project described in this section.

(f) Report

(1) In general

The Secretary shall evaluate the participation of individuals in the demonstration projects under this section and prepare and submit a report containing the information described in paragraph (2) to—

(A) the Committee on Health, Education, Labor, and Pensions of the Senate;

(B) the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;

(C) the Committee on Energy and Commerce of the House of Representatives; and

(D) the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives.

(2) Content

The report described in paragraph (1) shall detail—

(A) the manner in which the demonstration project described in this section has affected access to primary care services, patient satisfaction, quality of care, and health care services provided for traditionally underserved populations;

(B) how the participation of chiropractic doctors and pharmacists in the Loan Repayment Program might affect the designation of health professional shortage areas; and

(C) whether adding chiropractic doctors and pharmacists as permanent members of the National Health Service Corps would be feasible and would enhance the effectiveness of the National Health Service Corps.

(g) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section, such sums as may be necessary for fiscal years 2002 through 2004.

(2) Fiscal year 2005

If the Secretary determines and certifies to Congress by not later than September 30, 2004, that the number of individuals participating in the demonstration project established under this section is insufficient for purposes of performing the evaluation described in subsection (f)(1) of this section, the authorization of appropriations under paragraph (1) shall be extended to include fiscal year 2005.

(July 1, 1944, ch. 373, title III, § 338L, as added Pub. L. 107–251, title III, § 317, Oct. 26, 2002, 116 Stat. 1653.)

PRIOR PROVISIONS

A prior section 254t, act July 1, 1944, ch. 373, title III, § 338L, as added Pub. L. 101–527, § 8, Nov. 6, 1990, 104 Stat. 2328, related to demonstration grants to States for community scholarship programs, prior to repeal by Pub. L. 107–251, title III, § 316, Oct. 26, 2002, 116 Stat. 1653.

§ 254u. Public health departments

(a) In general

To the extent that funds are appropriated under subsection (e), the Secretary shall establish a demonstration project to provide for the participation of individuals who are eligible for the Loan Repayment Program described in section 254*l*–1 of this title and who agree to complete their service obligation in a State health department that provides a significant amount of service to health professional shortage areas or areas at risk of a public health emergency, as determined by the Secretary, or in a local or tribal health department that serves a health professional shortage area or an area at risk of a public health emergency.

(b) Procedure

To be eligible to receive assistance under subsection (a), with respect to the program described in section 254*l*–1 of this title, an individual shall—

(1) comply with all rules and requirements described in such section (other than section 254*l*–1(f)(1)(B)(iv) of this title); and

(2) agree to serve for a time period equal to 2 years, or such longer period as the individual may agree to, in a State, local, or tribal health department, described in subsection (a).

(c) Designations

The demonstration project described in subsection (a), and any healthcare providers who are selected to participate in such project, shall not be considered by the Secretary in the designation of health professional shortage areas under section 254e of this title during fiscal years 2007 through 2010.

(d) Report

Not later than 3 years after December 19, 2006, the Secretary shall submit a report to the relevant committees of Congress that evaluates the participation of individuals in the demonstration project under subsection (a), the impact of such participation on State, local, and tribal health departments, and the benefit and feasibility of permanently allowing such placements in the Loan Repayment Program.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2007 through 2010.

(July 1, 1944, ch. 373, title III, §338M, as added Pub. L. 109–417, title II, §203(a), Dec. 19, 2006, 120 Stat. 2848.)

SUBPART IV—HOME HEALTH SERVICES

AMENDMENTS

1987—Pub. L. 100–177, title II, §202(f)(1), Dec. 1, 1987, 101 Stat. 999, substituted ''IV'' for ''III'' as subpart designation.

1983—Pub. L. 97–414, §6(a), Jan. 4, 1983, 96 Stat. 2057, added heading ''Subpart III—Home Health Services''.

1978—Pub. L. 95–626, title I, §105(b), title II, §207(a), Nov. 10, 1978, 92 Stat. 3560, 3585, struck out heading ''Part D—Lepers'' and added heading ''Subpart III—Home Health Services''.

§255. Home health services

(a) Purpose; authorization of grants and loans; considerations; conditions on loans; appropriations

(1) For the purpose of encouraging the establishment and initial operation of home health programs to provide home health services in areas in which such services are inadequate or not readily accessible, the Secretary may, in accordance with the provisions of this section, make grants to public and nonprofit private entities and loans to proprietary entities to meet the initial costs of establishing and operating such home health programs. Such grants and loans may include funds to provide training for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) In making grants and loans under this subsection, the Secretary shall—

(A) consider the relative needs of the several States for home health services;

(B) give preference to areas in which a high percentage of the population proposed to be served is composed of individuals who are elderly, medically indigent, or disabled; and

(C) give special consideration to areas with inadequate means of transportation to obtain necessary health services.

(3)(A) No loan may be made to a proprietary entity under this section unless the application of such entity for such loan contains assurances satisfactory to the Secretary that—

(i) at the time the application is made the entity is fiscally sound;

(ii) the entity is unable to secure a loan for the project for which the application is submitted from non-Federal lenders at the rate of interest prevailing in the area in which the entity is located; and

(iii) during the period of the loan, such entity will remain fiscally sound.

(B) Loans under this section shall be made at an interest rate comparable to the rate of interest prevailing on the date the loan is made with respect to the marketable obligations of the United States of comparable maturities, adjusted to provide for administrative costs.

(4) Applications for grants and loans under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and loans under this subsection $5,000,000 for each of the fiscal years ending on September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

(b) Grants and contracts for training programs for paraprofessionals; considerations; applications; appropriations

(1) The Secretary may make grants to and enter into contracts with public and private entities to assist them in developing appropriate training programs for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) Any program established with a grant or contract under this subsection to train homemaker home health aides shall—

(A) extend for at least forty hours, and consist of classroom instruction and at least twenty hours (in the aggregate) of supervised clinical instruction directed toward preparing students to deliver home health services;

(B) be carried out under appropriate professional supervision and be designed to train students to maintain or enhance the personal care of an individual in his home in a manner which promotes the functional independence of the individual; and

(C) include training in—

(i) personal care services designed to assist an individual in the activities of daily living such as bathing, exercising, personal grooming, and getting in and out of bed; and

(ii) household care services such as maintaining a safe living environment, light housekeeping, and assisting in providing good nutrition (by the purchasing and preparation of food).

(3) In making grants and entering into contracts under this subsection, special consideration shall be given to entities which establish or will establish programs to provide training for persons fifty years of age and older who wish to become paraprofessionals (including homemaker home health aides) to provide home health services.

(4) Applications for grants and contracts under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and contracts under this subsection $2,000,000 for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

(c) Report to Congress with respect to grants and loans and training of personnel

The Secretary shall report to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives on or before January 1, 1984, with respect to—

(1) the impact of grants made and contracts entered into under subsections (a) and (b) of this section (as such subsections were in effect prior to October 1, 1981);

(2) the need to continue grants and loans under subsections (a) and (b) of this section (as such subsections are in effect on the day after January 4, 1983); and

(3) the extent to which standards have been applied to the training of personnel who provide home health services.

(d) "Home health services" defined

For purposes of this section, the term ''home health services'' has the meaning prescribed for the term by section 1395x(m) of this title.

(July 1, 1944, ch. 373, title III, § 339, as added Pub. L. 97–414, § 6(a), Jan. 4, 1983, 96 Stat. 2057; amended Pub. L. 98–555, § 6, Oct. 30, 1984, 98 Stat. 2856.)

REFERENCES IN TEXT

Subsections (a) and (b) of this section (as such subsections were in effect prior to October 1, 1981), referred to in subsec. (c)(1), mean subsections (a) and (b) of section 255 of this title prior to repeal of section 255 by Pub. L. 97–35, title IX, § 902(b), Aug. 13, 1981, 95 Stat. 559, effective Oct. 1, 1981.

PRIOR PROVISIONS

A prior section 255, act July 1, 1944, ch. 373, title III, § 339, as added Nov. 10, 1978, Pub. L. 95–626, title II, § 207(a), 92 Stat. 3585, related to grant authority, etc., for home health services, prior to repeal by Pub. L. 97–35, title IX, § 902(b), (h), Aug. 13, 1981, 95 Stat. 559, 561, eff. Oct. 1, 1981.

Another prior section 339 of act July 1, 1944, ch. 373, title III, formerly § 331, 58 Stat. 698; June 25, 1948, ch. 654, § 4, 62 Stat. 1018; June 25, 1952, ch. 460, 66 Stat. 157; July 12, 1960, Pub. L. 86–624, § 29(b), 74 Stat. 419; renumbered § 339, Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(2), 90 Stat. 2268, which related to reception of persons suffering from leprosy in any hospital, was renumbered section 320 of act July 1, 1944, and transferred to section 247e of this title.

AMENDMENTS

1984—Subsecs. (a)(5), (b)(5). Pub. L. 98–555 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

REPORT TO CONGRESS CONCERNING RESULTS OF STUDIES EVALUATING HOME AND COMMUNITY BASED HEALTH SERVICES; STUDIES OF REIMBURSEMENT METHODOLOGIES; INVESTIGATION OF FRAUD; DEMONSTRATION PROJECTS; HOME HEALTH SERVICES, DEFINED

Section 6(b)–(f) of Pub. L. 97–414 directed Secretary of Health and Human Services to report results of studies evaluating home and community based health services, and any recommendations for legislative action which might improve the provision of such services, to Congress prior to Jan. 1, 1985, to compile and analyze results of significant public or private studies relating to reimbursement methodologies for home health services and to report recommendations to Congress within 180 days after Jan. 4, 1983, to investigate methods available to stem medicare and medicaid fraud and abuse and extent to which such methods are applied and to report results to Congress within 18 months of Jan. 4, 1983, and to develop and carry out demonstration projects commencing no later than Jan. 1, 1984, to test methods for identifying patients at risk of institutionalization who could be treated more cost-effectively with home health services, and to test alternative reimbursement methodologies for home health agencies in order to determine most cost-effective way of providing home health services, and to report to Congress with regard to the demonstrations no later than Jan. 1, 1985; and defined ''home health services'' for purposes of this section.

SUBPART V—HEALTHY COMMUNITIES ACCESS PROGRAM

PRIOR PROVISIONS

A prior subpart VI, consisting of section 256a, related to health services for residents of public housing, prior to repeal by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

§ 256. Grants to strengthen the effectiveness, efficiency, and coordination of services for the uninsured and underinsured

(a) In general

The Secretary may award grants to eligible entities to assist in the development of integrated health care delivery systems to serve communities of individuals who are uninsured and individuals who are underinsured—

(1) to improve the efficiency of, and coordination among, the providers providing services through such systems;

(2) to assist communities in developing programs targeted toward preventing and managing chronic diseases; and

(3) to expand and enhance the services provided through such systems.

(b) Eligible entities

To be eligible to receive a grant under this section, an entity shall be an entity that—

(1) represents a consortium—

(A) whose principal purpose is to provide a broad range of coordinated health care services for a community defined in the entity's grant application as described in paragraph (2); and

(B) that includes at least one of each of the following providers that serve the community (unless such provider does not exist within the community, declines or refuses to participate, or places unreasonable conditions on their participation)—

(i) a Federally qualified health center (as defined in section 1395x(aa) of this title);

(ii) a hospital with a low-income utilization rate (as defined in section 1396r–4(b)(3) of this title), that is greater than 25 percent;

(iii) a public health department; and

(iv) an interested public or private sector health care provider or an organization that has traditionally served the medically uninsured and underserved; and

(2) submits to the Secretary an application, in such form and manner as the Secretary shall prescribe, that—

(A) defines a community or geographic area of uninsured and underinsured individuals;

(B) identifies the providers who will participate in the consortium's program under the grant, and specifies each provider's contribution to the care of uninsured and underinsured individuals in the community, including the volume of care the provider provides to beneficiaries under the medicare, medicaid, and State child health insurance programs and to patients who pay privately for services;

(C) describes the activities that the applicant and the consortium propose to perform under the grant to further the objectives of this section;

(D) demonstrates the consortium's ability to build on the current system (as of the date of submission of the application) for serving a community or geographic area of uninsured and underinsured individuals by involving providers who have traditionally provided a significant volume of care for that community;

(E) demonstrates the consortium's ability to develop coordinated systems of care that either directly provide or ensure the prompt provision of a broad range of high-quality, accessible services, including, as appropriate, primary, secondary, and tertiary services, as well as substance abuse treatment and mental health services in a manner that assures continuity of care in the community or geographic area;

(F) provides evidence of community involvement in the development, implementation, and direction of the program that the entity proposes to operate;

(G) demonstrates the consortium's ability to ensure that individuals participating in the program are enrolled in public insurance programs for which the individuals are eligible or know of private insurance programs where available;

(H) presents a plan for leveraging other sources of revenue, which may include State and local sources and private grant funds, and integrating current and proposed new funding sources in a way to assure long-term sustainability of the program;

(I) describes a plan for evaluation of the activities carried out under the grant, including measurement of progress toward the goals and objectives of the program and the use of evaluation findings to improve program performance;

(J) demonstrates fiscal responsibility through the use of appropriate accounting procedures and appropriate management systems;

(K) demonstrates the consortium's commitment to serve the community without regard to the ability of an individual or family to pay by arranging for or providing free or reduced charge care for the poor; and

(L) includes such other information as the Secretary may prescribe.

(c) Limitations

(1) Number of awards

(A) In general

For each of fiscal years 2003, 2004, 2005, and 2006, the Secretary may not make more than 35 new awards under subsection (a) of this section (excluding renewals of such awards).

(B) Rule of construction

This paragraph shall not be construed to affect awards made before fiscal year 2003.

(2) In general

An eligible entity may not receive a grant under this section (including with respect to any such grant made before fiscal year 2003) for more than 3 consecutive fiscal years, except that such entity may receive such a grant award for not more than 1 additional fiscal year if—

(A) the eligible entity submits to the Secretary a request for a grant for such an additional fiscal year;

(B) the Secretary determines that extraordinary circumstances (as defined in paragraph (3)) justify the granting of such request; and

(C) the Secretary determines that granting such request is necessary to further the objectives described in subsection (a) of this section.

(3) Extraordinary circumstances

(A) In general

In paragraph (2), the term ''extraordinary circumstances'' means an event (or events) that is outside of the control of the eligible entity that has prevented the eligible entity from fulfilling the objectives described by such entity in the application submitted under subsection (b)(2) of this section.

(B) Examples

Extraordinary circumstances include—

(i) natural disasters or other major disruptions to the security or health of the community or geographic area served by the eligible entity; or

(ii) a significant economic deterioration in the community or geographic area served by such eligible entity, that directly and adversely affects the entity receiving an award under subsection (a) of this section.

(d) Priorities

In awarding grants under this section, the Secretary—

(1) shall accord priority to applicants that demonstrate the extent of unmet need in the

community involved for a more coordinated system of care; and

(2) may accord priority to applicants that best promote the objectives of this section, taking into consideration the extent to which the application involved—

(A) identifies a community whose geographical area has a high or increasing percentage of individuals who are uninsured;

(B) demonstrates that the applicant has included in its consortium providers, support systems, and programs that have a tradition of serving uninsured individuals and underinsured individuals in the community;

(C) shows evidence that the program would expand utilization of preventive and primary care services for uninsured and underinsured individuals and families in the community, including behavioral and mental health services, oral health services, or substance abuse services;

(D) proposes a program that would improve coordination between health care providers and appropriate social service providers;

(E) demonstrates collaboration with State and local governments;

(F) demonstrates that the applicant makes use of non-Federal contributions to the greatest extent possible; or

(G) demonstrates a likelihood that the proposed program will continue after support under this section ceases.

(e) Use of funds

(1) Use by grantees

(A) In general

Except as provided in paragraphs (2) and (3), a grantee may use amounts provided under this section only for—

(i) direct expenses associated with achieving the greater integration of a health care delivery system so that the system either directly provides or ensures the provision of a broad range of culturally competent services, as appropriate, including primary, secondary, and tertiary services, as well as substance abuse treatment and mental health services; and

(ii) direct patient care and service expansions to fill identified or documented gaps within an integrated delivery system.

(B) Specific uses

The following are examples of purposes for which a grantee may use grant funds under this section, when such use meets the conditions stated in subparagraph (A):

(i) Increases in outreach activities and closing gaps in health care service.

(ii) Improvements to case management.

(iii) Improvements to coordination of transportation to health care facilities.

(iv) Development of provider networks and other innovative models to engage physicians in voluntary efforts to serve the medically underserved within a community.

(v) Recruitment, training, and compensation of necessary personnel.

(vi) Acquisition of technology for the purpose of coordinating care.

(vii) Improvements to provider communication, including implementation of shared information systems or shared clinical systems.

(viii) Development of common processes for determining eligibility for the programs provided through the system, including creating common identification cards and single sliding scale discounts.

(ix) Development of specific prevention and disease management tools and processes.

(x) Translation services.

(xi) Carrying out other activities that may be appropriate to a community and that would increase access by the uninsured to health care, such as access initiatives for which private entities provide non-Federal contributions to supplement the Federal funds provided through the grants for the initiatives.

(2) Direct patient care limitation

Not more than 15 percent of the funds provided under a grant awarded under this section may be used for providing direct patient care and services.

(3) Reservation of funds for national program purposes

The Secretary may use not more than 3 percent of funds appropriated to carry out this section for providing technical assistance to grantees, obtaining assistance of experts and consultants, holding meetings, developing of tools, disseminating of information, evaluation, and carrying out activities that will extend the benefits of programs funded under this section to communities other than the community served by the program funded.

(f) Grantee requirements

(1) Evaluation of effectiveness

A grantee under this section shall—

(A) report to the Secretary annually regarding—

(i) progress in meeting the goals and measurable objectives set forth in the grant application submitted by the grantee under subsection (b) of this section; and

(ii) the extent to which activities conducted by such grantee have—

(I) improved the effectiveness, efficiency, and coordination of services for uninsured and underinsured individuals in the communities or geographic areas served by such grantee;

(II) resulted in the provision of better quality health care for such individuals; and

(III) resulted in the provision of health care to such individuals at lower cost than would have been possible in the absence of the activities conducted by such grantee; and

(B) provide for an independent annual financial audit of all records that relate to the disposition of funds received through the grant.

(2) Progress

The Secretary may not renew an annual grant under this section for an entity for a fis-

cal year unless the Secretary is satisfied that the consortium represented by the entity has made reasonable and demonstrable progress in meeting the goals and measurable objectives set forth in the entity's grant application for the preceding fiscal year.

(g) Maintenance of effort

With respect to activities for which a grant under this section is authorized, the Secretary may award such a grant only if the applicant for the grant, and each of the participating providers, agree that the grantee and each such provider will maintain its expenditures of non-Federal funds for such activities at a level that is not less than the level of such expenditures during the fiscal year immediately preceding the fiscal year for which the applicant is applying to receive such grant.

(h) Technical assistance

The Secretary may, either directly or by grant or contract, provide any entity that receives a grant under this section with technical and other nonfinancial assistance necessary to meet the requirements of this section.

(i) Evaluation of program

Not later than September 30, 2005, the Secretary shall prepare and submit to the appropriate committees of Congress a report that describes the extent to which projects funded under this section have been successful in improving the effectiveness, efficiency, and coordination of services for uninsured and underinsured individuals in the communities or geographic areas served by such projects, including whether the projects resulted in the provision of better quality health care for such individuals, and whether such care was provided at lower costs, than would have been provided in the absence of such projects.

(j) Demonstration authority

The Secretary may make demonstration awards under this section to historically black health professions schools for the purposes of—

(1) developing patient-based research infrastructure at historically black health professions schools, which have an affiliation, or affiliations, with any of the providers identified in subsection (b)(1)(B) of this section;

(2) establishment of joint and collaborative programs of medical research and data collection between historically black health professions schools and such providers, whose goal is to improve the health status of medically underserved populations; or

(3) supporting the research-related costs of patient care, data collection, and academic training resulting from such affiliations.

(k) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2002 through 2006.

(*l*) Date certain for termination of program

Funds may not be appropriated to carry out this section after September 30, 2006.

(July 1, 1944, ch. 373, title III, § 340, as added Pub. L. 107–251, title IV, § 402, Oct. 26, 2002, 116 Stat. 1655.)

PRIOR PROVISIONS

A prior section 256, act July 1, 1944, ch. 373, title III, § 340, as added July 22, 1987, Pub. L. 100–77, title VI, § 601, 101 Stat. 511; amended Nov. 4, 1988, Pub. L. 100–607, title VIII, §§ 801(a), (c), 802(a), (b)(1), 803, 804, 102 Stat. 3168, 3169; Nov. 7, 1988, Pub. L. 100–628, title VI, §§ 601(a), (c), 602(a), (b)(1), 603, 604, 102 Stat. 3241, 3242; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), (3), 103 Stat. 615; Nov. 29, 1990, Pub. L. 101–645, title V, §§ 501–503, 104 Stat. 4724; Oct. 27, 1992, Pub. L. 102–531, title III, § 309(c), 106 Stat. 3501, related to grant program for certain health services for the homeless, prior to repeal by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645, eff. Oct. 1, 1996.

Another prior section 256, act July 1, 1944, ch. 373, title III, § 340, as added Nov. 10, 1978, Pub. L. 95–626, title I, § 115(2), 92 Stat. 3567; amended Dec. 12, 1979, Pub. L. 96–142, title III, § 301(a), 93 Stat. 1073; Aug. 13, 1981, Pub. L. 97–35, title IX, § 903(b)(1), 95 Stat. 561; Jan. 4, 1983, Pub. L. 97–414, § 8(h), 96 Stat. 2061, related to primary care research and demonstration projects to serve medically underserved population, prior to repeal by Pub. L. 97–35, title IX, § 903(c), Aug. 13, 1981, 95 Stat. 561, eff. Oct. 1, 1982.

Another prior section 256, act July 1, 1944, ch. 373, title III, § 340, formerly § 332, 58 Stat. 698; renumbered § 340, Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(2), 90 Stat. 2268, related to apprehension, detention, treatment, and release of persons being treated for leprosy, prior to repeal by Pub. L. 95–626, title I, § 105(b), Nov. 10, 1978, 92 Stat. 3560.

PURPOSE

Pub. L. 107–251, title IV, § 401, Oct. 26, 2002, 116 Stat. 1655, provided that: "The purpose of this title [enacting this subpart and subpart X (§ 256f et seq.) of this part and provisions set out as a note under section 1396a of this title] is to provide assistance to communities and consortia of health care providers and others, to develop or strengthen integrated community health care delivery systems that coordinate health care services for individuals who are uninsured or underinsured and to develop or strengthen activities related to providing coordinated care for individuals with chronic conditions who are uninsured or underinsured, through the—

"(1) coordination of services to allow individuals to receive efficient and higher quality care and to gain entry into and receive services from a comprehensive system of care;

"(2) development of the infrastructure for a health care delivery system characterized by effective collaboration, information sharing, and clinical and financial coordination among all providers of care in the community; and

"(3) provision of new Federal resources that do not supplant funding for existing Federal categorical programs that support entities providing services to low-income populations."

§ 256a. Patient navigator grants

(a) Grants

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to eligible entities for the development and operation of demonstration programs to provide patient navigator services to improve health care outcomes. The Secretary shall coordinate with, and ensure the participation of, the Indian Health Service, the National Cancer Institute, the Office of Rural Health Policy, and such other offices and agencies as deemed appropriate by the Secretary, regarding the design and evaluation of the demonstration programs.

(b) Use of funds

The Secretary shall require each recipient of a grant under this section to use the grant to re-

cruit, assign, train, and employ patient navigators who have direct knowledge of the communities they serve to facilitate the care of individuals, including by performing each of the following duties:

(1) Acting as contacts, including by assisting in the coordination of health care services and provider referrals, for individuals who are seeking prevention or early detection services for, or who following a screening or early detection service are found to have a symptom, abnormal finding, or diagnosis of, cancer or other chronic disease.

(2) Facilitating the involvement of community organizations in assisting individuals who are at risk for or who have cancer or other chronic diseases to receive better access to high-quality health care services (such as by creating partnerships with patient advocacy groups, charities, health care centers, community hospice centers, other health care providers, or other organizations in the targeted community).

(3) Notifying individuals of clinical trials and, on request, facilitating enrollment of eligible individuals in these trials.

(4) Anticipating, identifying, and helping patients to overcome barriers within the health care system to ensure prompt diagnostic and treatment resolution of an abnormal finding of cancer or other chronic disease.

(5) Coordinating with the relevant health insurance ombudsman programs to provide information to individuals who are at risk for or who have cancer or other chronic diseases about health coverage, including private insurance, health care savings accounts, and other publicly funded programs (such as Medicare, Medicaid, health programs operated by the Department of Veterans Affairs or the Department of Defense, the State children's health insurance program, and any private or governmental prescription assistance programs).

(6) Conducting ongoing outreach to health disparity populations, including the uninsured, rural populations, and other medically underserved populations, in addition to assisting other individuals who are at risk for or who have cancer or other chronic diseases to seek preventative care.

(c) Prohibitions

(1) Referral fees

The Secretary shall require each recipient of a grant under this section to prohibit any patient navigator providing services under the grant from accepting any referral fee, kickback, or other thing of value in return for referring an individual to a particular health care provider.

(2) Legal fees and costs

The Secretary shall prohibit the use of any grant funds received under this section to pay any fees or costs resulting from any litigation, arbitration, mediation, or other proceeding to resolve a legal dispute.

(d) Grant period

(1) In general

Subject to paragraphs (2) and (3), the Secretary may award grants under this section for periods of not more than 3 years.

(2) Extensions

Subject to paragraph (3), the Secretary may extend the period of a grant under this section. Each such extension shall be for a period of not more than 1 year.

(3) Limitations on grant period

In carrying out this section, the Secretary—

(A) shall ensure that the total period of a grant does not exceed 4 years; and

(B) may not authorize any grant period ending after September 30, 2010.

(e) Application

(1) In general

To seek a grant under this section, an eligible entity shall submit an application to the Secretary in such form, in such manner, and containing such information as the Secretary may require.

(2) Contents

At a minimum, the Secretary shall require each such application to outline how the eligible entity will establish baseline measures and benchmarks that meet the Secretary's requirements to evaluate program outcomes.

(f) Uniform baseline measures

The Secretary shall establish uniform baseline measures in order to properly evaluate the impact of the demonstration projects under this section.

(g) Preference

In making grants under this section, the Secretary shall give preference to eligible entities that demonstrate in their applications plans to utilize patient navigator services to overcome significant barriers in order to improve health care outcomes in their respective communities.

(h) Duplication of services

An eligible entity that is receiving Federal funds for activities described in subsection (b) of this section on the date on which the entity submits an application under subsection (e) of this section may not receive a grant under this section unless the entity can demonstrate that amounts received under the grant will be utilized to expand services or provide new services to individuals who would not otherwise be served.

(i) Coordination with other programs

The Secretary shall ensure coordination of the demonstration grant program under this section with existing authorized programs in order to facilitate access to high-quality health care services.

(j) Study; reports

(1) Final report by Secretary

Not later than 6 months after the completion of the demonstration grant program under this section, the Secretary shall conduct a study of the results of the program and

submit to the Congress a report on such results that includes the following:

(A) An evaluation of the program outcomes, including—

(i) quantitative analysis of baseline and benchmark measures; and

(ii) aggregate information about the patients served and program activities.

(B) Recommendations on whether patient navigator programs could be used to improve patient outcomes in other public health areas.

(2) Interim reports by Secretary

The Secretary may provide interim reports to the Congress on the demonstration grant program under this section at such intervals as the Secretary determines to be appropriate.

(3) Reports by grantees

The Secretary may require grant recipients under this section to submit interim and final reports on grant program outcomes.

(k) Rule of construction

This section shall not be construed to authorize funding for the delivery of health care services (other than the patient navigator duties listed in subsection (b) of this section).

(*l*) Definitions

In this section:

(1) The term ''eligible entity'' means a public or nonprofit private health center (including a Federally qualified health center (as that term is defined in section 1395x(aa)(4) of this title)), a health facility operated by or pursuant to a contract with the Indian Health Service, a hospital, a cancer center, a rural health clinic, an academic health center, or a nonprofit entity that enters into a partnership or coordinates referrals with such a center, clinic, facility, or hospital to provide patient navigator services.

(2) The term ''health disparity population'' means a population that, as determined by the Secretary, has a significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates as compared to the health status of the general population.

(3) The term ''patient navigator'' means an individual who has completed a training program approved by the Secretary to perform the duties listed in subsection (b) of this section.

(m) Authorization of appropriations

(1) In general

To carry out this section, there are authorized to be appropriated $2,000,000 for fiscal year 2006, $5,000,000 for fiscal year 2007, $8,000,000 for fiscal year 2008, $6,500,000 for fiscal year 2009, and $3,500,000 for fiscal year 2010.

(2) Availability

The amounts appropriated pursuant to paragraph (1) shall remain available for obligation through the end of fiscal year 2010.

(July 1, 1944, ch. 373, title III, § 340A, as added Pub. L. 109–18, § 2, June 29, 2005, 119 Stat. 340.)

PRIOR PROVISIONS

A prior section 256a, act July 1, 1944, ch. 373, title III, § 340A, as added Nov. 6, 1990, Pub. L. 101–527, § 3, 104 Stat. 2314; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 309(d), 106 Stat. 3502, related to health services for residents of public housing, prior to repeal by Pub. L. 104–299, §§ 4(a)(3), 5, Oct. 11, 1996, 110 Stat. 3645, effective Oct. 1, 1996.

Another prior section 256a, act July 1, 1944, ch. 373, title III, § 340A, as added Nov. 10, 1978, Pub. L. 95–626, title I, § 106(a), 92 Stat. 3560, related to technical assistance demonstration grants and contracts, prior to repeal by Pub. L. 100–77, title VI, § 601, July 22, 1987, 101 Stat. 511.

SUBPART VII—DRUG PRICING AGREEMENTS

§ 256b. Limitation on prices of drugs purchased by covered entities

(a) Requirements for agreement with Secretary

(1) In general

The Secretary shall enter into an agreement with each manufacturer of covered drugs under which the amount required to be paid (taking into account any rebate or discount, as provided by the Secretary) to the manufacturer for covered drugs (other than drugs described in paragraph (3)) purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992, does not exceed an amount equal to the average manufacturer price for the drug under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] in the preceding calendar quarter, reduced by the rebate percentage described in paragraph (2).

(2) "Rebate percentage" defined

(A) In general

For a covered outpatient drug purchased in a calendar quarter, the ''rebate percentage'' is the amount (expressed as a percentage) equal to—

(i) the average total rebate required under section 1927(c) of the Social Security Act [42 U.S.C. 1396r–8(c)] with respect to the drug (for a unit of the dosage form and strength involved) during the preceding calendar quarter; divided by

(ii) the average manufacturer price for such a unit of the drug during such quarter.

(B) Over the counter drugs

(i) In general

For purposes of subparagraph (A), in the case of over the counter drugs, the ''rebate percentage'' shall be determined as if the rebate required under section 1927(c) of the Social Security Act [42 U.S.C. 1396r–8(c)] is based on the applicable percentage provided under section 1927(c)(4) of such Act.

(ii) "Over the counter drug" defined

The term ''over the counter drug'' means a drug that may be sold without a prescription and which is prescribed by a physician (or other persons authorized to prescribe such drug under State law).

(3) Drugs provided under State medicaid plans

Drugs described in this paragraph are drugs purchased by the entity for which payment is made by the State under the State plan for medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(4) "Covered entity" defined

In this section, the term ''covered entity'' means an entity that meets the requirements described in paragraph (5) and is one of the following:

(A) A Federally-qualified health center (as defined in section 1905(*l*)(2)(B) of the Social Security Act [42 U.S.C. 1396d(*l*)(2)(B)]).

(B) An entity receiving a grant under section 256a[1] of this title.

(C) A family planning project receiving a grant or contract under section 300 of this title.

(D) An entity receiving a grant under subpart II[1] of part C of subchapter XXIV of this chapter (relating to categorical grants for outpatient early intervention services for HIV disease).

(E) A State-operated AIDS drug purchasing assistance program receiving financial assistance under subchapter XXIV of this chapter.

(F) A black lung clinic receiving funds under section 937(a) of title 30.

(G) A comprehensive hemophilia diagnostic treatment center receiving a grant under section 501(a)(2) of the Social Security Act [42 U.S.C. 701(a)(2)].

(H) A Native Hawaiian Health Center receiving funds under the Native Hawaiian Health Care Act of 1988.

(I) An urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(J) Any entity receiving assistance under subchapter XXIV of this chapter (other than a State or unit of local government or an entity described in subparagraph (D)), but only if the entity is certified by the Secretary pursuant to paragraph (7).

(K) An entity receiving funds under section 247c of this title (relating to treatment of sexually transmitted diseases) or section 247b(j)(2)[1] of this title (relating to treatment of tuberculosis) through a State or unit of local government, but only if the entity is certified by the Secretary pursuant to paragraph (7).

(L) A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act [42 U.S.C. 1395ww(d)(1)(B)]) that—

(i) is owned or operated by a unit of State or local government, is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or is a private non-profit hospital which has a contract with a State or local government to provide health care services to low income individuals who are not entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] or eligible for assistance under the State plan under this subchapter;

(ii) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act [42 U.S.C. 1395ww(d)(5)(F)]) greater than 11.75 percent or was described in section 1886(d)(5)(F)(i)(II) of such Act [42 U.S.C. 1395ww(d)(5)(F)(i)(II)]; and

(iii) does not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement.

(5) Requirements for covered entities

(A) Prohibiting duplicate discounts or rebates

(i) In general

A covered entity shall not request payment under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for medical assistance described in section 1905(a)(12) of such Act [42 U.S.C. 1396d(a)(12)] with respect to a drug that is subject to an agreement under this section if the drug is subject to the payment of a rebate to the State under section 1927 of such Act [42 U.S.C. 1396r–8].

(ii) Establishment of mechanism

The Secretary shall establish a mechanism to ensure that covered entities comply with clause (i). If the Secretary does not establish a mechanism within 12 months under the previous sentence, the requirements of section 1927(a)(5)(C) of the Social Security Act [42 U.S.C. 1396r–8(a)(5)(C)] shall apply.

(B) Prohibiting resale of drugs

With respect to any covered outpatient drug that is subject to an agreement under this subsection, a covered entity shall not resell or otherwise transfer the drug to a person who is not a patient of the entity.

(C) Auditing

A covered entity shall permit the Secretary and the manufacturer of a covered outpatient drug that is subject to an agreement under this subsection with the entity (acting in accordance with procedures established by the Secretary relating to the number, duration, and scope of audits) to audit at the Secretary's or the manufacturer's expense the records of the entity that directly pertain to the entity's compliance with the requirements described in subparagraphs[2] (A) or (B) with respect to drugs of the manufacturer.

(D) Additional sanction for noncompliance

If the Secretary finds, after notice and hearing, that a covered entity is in violation of a requirement described in subparagraphs[2] (A) or (B), the covered entity shall be liable to the manufacturer of the covered outpatient drug that is the subject of the violation in an amount equal to the reduction in the price of the drug (as described in subparagraph (A)) provided under the agreement between the entity and the manufacturer under this paragraph.

(6) Treatment of distinct units of hospitals

In the case of a covered entity that is a distinct part of a hospital, the hospital shall not

[1] See References in Text note below.

[2] So in original. Probably should be ''subparagraph''.

be considered a covered entity under this paragraph unless the hospital is otherwise a covered entity under this subsection.

(7) Certification of certain covered entities

(A) Development of process

Not later than 60 days after November 4, 1992, the Secretary shall develop and implement a process for the certification of entities described in subparagraphs (J) and (K) of paragraph (4).

(B) Inclusion of purchase information

The process developed under subparagraph (A) shall include a requirement that an entity applying for certification under this paragraph submit information to the Secretary concerning the amount such entity expended for covered outpatient drugs in the preceding year so as to assist the Secretary in evaluating the validity of the entity's subsequent purchases of covered outpatient drugs at discounted prices.

(C) Criteria

The Secretary shall make available to all manufacturers of covered outpatient drugs a description of the criteria for certification under this paragraph.

(D) List of purchasers and dispensers

The certification process developed by the Secretary under subparagraph (A) shall include procedures under which each State shall, not later than 30 days after the submission of the descriptions under subparagraph (C), prepare and submit a report to the Secretary that contains a list of entities described in subparagraphs (J) and (K) of paragraph (4) that are located in the State.

(E) Recertification

The Secretary shall require the recertification of entities certified pursuant to this paragraph on a not more frequent than annual basis, and shall require that such entities submit information to the Secretary to permit the Secretary to evaluate the validity of subsequent purchases by such entities in the same manner as that required under subparagraph (B).

(8) Development of prime vendor program

The Secretary shall establish a prime vendor program under which covered entities may enter into contracts with prime vendors for the distribution of covered outpatient drugs. If a covered entity obtains drugs directly from a manufacturer, the manufacturer shall be responsible for the costs of distribution.

(9) Notice to manufacturers

The Secretary shall notify manufacturers of covered outpatient drugs and single State agencies under section 1902(a)(5) of the Social Security Act [42 U.S.C. 1396a(a)(5)] of the identities of covered entities under this paragraph, and of entities that no longer meet the requirements of paragraph (5) or that are no longer certified pursuant to paragraph (7).

(10) No prohibition on larger discount

Nothing in this subsection shall prohibit a manufacturer from charging a price for a drug that is lower than the maximum price that may be charged under paragraph (1).

(b) Other definitions

In this section, the terms ''average manufacturer price'', ''covered outpatient drug'', and ''manufacturer'' have the meaning given such terms in section 1927(k) of the Social Security Act [42 U.S.C. 1396r–8(k)].

(c) References to Social Security Act

Any reference in this section to a provision of the Social Security Act [42 U.S.C. 301 et seq.] shall be deemed to be a reference to the provision as in effect on November 4, 1992.

(d) Compliance with requirements

A manufacturer is deemed to meet the requirements of subsection (a) of this section if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of this section (as in effect immediately after November 4, 1992), as applied by the Secretary, and would have entered into an agreement under this section (as such section was in effect at such time), but for a legislative change in this section (or the application of this section) after November 4, 1992.

(July 1, 1944, ch. 373, title III, § 340B, as added Pub. L. 102–585, title VI, § 602(a), Nov. 4, 1992, 106 Stat. 4967; amended Pub. L. 103–43, title XX, § 2008(i)(1)(A), June 10, 1993, 107 Stat. 212.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (3), (4)(L)(i), (5)(A)(i), and (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 256a of this title, referred to in subsec. (a)(4)(B), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

Subpart II of part C of subchapter XXIV of this chapter, referred to in subsec. (a)(4)(D), was redesignated subpart I of part C of subchapter XXIV of this chapter by Pub. L. 106–345, title III, § 301(b)(1), Oct. 20, 2000, 114 Stat. 1345, and is classified to section 300ff–51 et seq. of this title.

The Native Hawaiian Health Care Act of 1988, referred to in subsec. (a)(4)(H), was Pub. L. 100–579, Oct. 31, 1988, 102 Stat. 2916, and subtitle D of title II of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4222, which were classified generally to chapter 122 (§ 11701 et seq.) of this title prior to being amended generally and renamed the Native Hawaiian Health Care Improvement Act by Pub. L. 102–396. For complete classification of this Act to the Code, see Tables.

The Indian Health Care Improvement Act, referred to in subsec. (a)(4)(I), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Section 247b(j)(2) of this title, referred to in subsec. (a)(4)(K), was repealed and section 247b(j)(1)(B) was redesignated section 247b(j)(2) by Pub. L. 103–183, title III, § 301(b)(1)(A), (C), Dec. 14, 1993, 107 Stat. 2235.

CODIFICATION

Another section 340B of act July 1, 1944, was renumbered section 340C and is classified to section 256c of this title.

AMENDMENTS

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–585, § 602(a), which enacted this section.

STUDY OF TREATMENT OF CERTAIN CLINICS AS COVERED ENTITIES ELIGIBLE FOR PRESCRIPTION DRUG DISCOUNTS

Section 602(b) of Pub. L. 102–585 directed Secretary of Health and Human Services to conduct a study of feasibility and desirability of including specified entities receiving funds from a State as covered entities eligible for limitations on prices of covered outpatient drugs under 42 U.S.C. 256b(a) and, not later than 1 year after Nov. 4, 1992, to submit a report to Congress on the study, including in the report a description of the entities that were the subject of the study, an analysis of the extent to which such entities procured prescription drugs, and an analysis of the impact of the inclusion of such entities as covered entities on the quality of care provided to and the health status of the patients of such entities.

SUBPART VIII—BULK PURCHASES OF VACCINES FOR CERTAIN PROGRAMS

AMENDMENTS

1993—Pub. L. 103–43, title XX, § 2008(i)(2)(A)(i), June 10, 1993, 107 Stat. 213, made technical amendment relating to placement of subpart VIII within part D of this subchapter.

§ 256c. Bulk purchases of vaccines for certain programs

(a) Agreements for purchases

(1) In general

Not later than 180 days after October 27, 1992, the Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Administrator of the Health Resources and Services Administration, shall enter into negotiations with manufacturers of vaccines for the purpose of establishing and maintaining agreements under which entities described in paragraph (2) may purchase vaccines from the manufacturers at the prices specified in the agreements.

(2) Relevant entities

The entities referred to in paragraph (1) are entities that provide immunizations against vaccine-preventable diseases with assistance provided under section 254b of this title.

(b) Negotiation of prices

In carrying out subsection (a) of this section, the Secretary shall, to the extent practicable, ensure that the prices provided for in agreements under such subsection are comparable to the prices provided for in agreements negotiated by the Secretary on behalf of grantees under section 247b(j)(1) of this title.

(c) Authority of Secretary

In carrying out subsection (a) of this section, the Secretary, in the discretion of the Secretary, may enter into the agreements described in such subsection (and may decline to enter into such agreements), may modify such agreements, may extend such agreements, and may terminate such agreements.

(d) Rule of construction

This section may not be construed as requiring any State to reduce or terminate the supply of vaccines provided by the State to any of the entities described in subsection (a)(2) of this section.

(July 1, 1944, ch. 373, title III, § 340C, formerly § 340B, as added Pub. L. 102–531, title III, § 305, Oct. 27, 1992, 106 Stat. 3494; renumbered § 340C, Pub. L. 103–43, title XX, § 2008(i)(2)(A)(ii), June 10, 1993, 107 Stat. 213; amended Pub. L. 104–299, § 4(a)(2), Oct. 11, 1996, 110 Stat. 3645.)

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–299 substituted "with assistance provided under section 254b of this title" for "under the programs established in sections 254b, 254c, 256, and 256a of this title."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–299 effective Oct. 1, 1996, see section 5 of Pub. L. 104–299, as amended, set out as a note under section 233 of this title.

§ 256d. Breast and cervical cancer information

(a) In general

As a condition of receiving grants, cooperative agreements, or contracts under this chapter, each of the entities specified in subsection (c) of this section shall, to the extent determined to be appropriate by the Secretary, make available information concerning breast and cervical cancer.

(b) Certain authorities

In carrying out subsection (a) of this section, an entity specified in subsection (c) of this section—

(1) may make the information involved available to such individuals as the entity determines appropriate;

(2) may, as appropriate, provide information under subsection (a) of this section on the need for self-examination of the breasts and on the skills for such self-examinations;

(3) shall provide information under subsection (a) of this section in the language and cultural context most appropriate to the individuals to whom the information is provided; and

(4) shall refer such clients as the entities determine appropriate for breast and cervical cancer screening, treatment, or other appropriate services.

(c) Relevant entities

The entities specified in this subsection are the following:

(1) Entities receiving assistance under section 247b–7[1] of this title (relating to tuberculosis).

(2) Entities receiving assistance under section 247c of this title (relating to sexually transmitted diseases).

(3) Migrant health centers receiving assistance under section 254b[1] of this title.

(4) Community health centers receiving assistance under section 254c[1] of this title.

(5) Entities receiving assistance under section 254b(h) of this title (relating to homeless individuals).

(6) Entities receiving assistance under section 256a[1] of this title (relating to health services for residents of public housing).

[1] See References in Text note below.

(7) Entities providing services with assistance under subchapter III–A of this chapter or subchapter XVII of this chapter.

(8) Entities receiving assistance under section 300 of this title (relating to family planning).

(9) Entities receiving assistance under subchapter XXIV of this chapter (relating to services with respect to acquired immune deficiency syndrome).

(10) Non-Federal entities authorized under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(July 1, 1944, ch. 373, title III, § 340D, as added Pub. L. 103–183, title I, § 104, Dec. 14, 1993, 107 Stat. 2230; amended Pub. L. 106–310, div. A, title XXV, § 2502(b), Oct. 17, 2000, 114 Stat. 1163; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664.)

REFERENCES IN TEXT

Section 247b–7 of this title, referred to in subsec. (c)(1), relates to loan repayment program and not to assistance relating to tuberculosis.

Sections 254b and 254c of this title, referred to in subsec. (c)(3), (4), were in the original references to sections 329 and 330, meaning sections 329 and 330 of act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of this part by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

Section 256a of this title, referred to in subsec. (c)(6), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

The Indian Self-Determination Act, referred to in subsec. (c)(10), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

AMENDMENTS

2002—Subsec. (c)(5). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

2000—Subsec. (c)(1). Pub. L. 106–310 substituted ''section 247b–7 of this title'' for ''section 247b–6 of this title''.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center, considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

SUBPART IX—SUPPORT OF GRADUATE MEDICAL EDUCATION PROGRAMS IN CHILDREN'S HOSPITALS

§ 256e. Program of payments to children's hospitals that operate graduate medical education programs

(a) Payments

The Secretary shall make two payments under this section to each children's hospital for each of fiscal years 2000 through 2005 and each of fiscal years 2007 through 2011, one for the direct expenses and the other for indirect expenses associated with operating approved graduate medical residency training programs. The Secretary shall promulgate regulations pursuant to the rulemaking requirements of title 5 which shall govern payments made under this subpart.

(b) Amount of payments

(1) In general

Subject to paragraphs (2) and (3), the amounts payable under this section to a children's hospital for an approved graduate medical residency training program for a fiscal year are each of the following amounts:

(A) Direct expense amount

The amount determined under subsection (c) of this section for direct expenses associated with operating approved graduate medical residency training programs.

(B) Indirect expense amount

The amount determined under subsection (d) of this section for indirect expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

(2) Capped amount

(A) In general

The total of the payments made to children's hospitals under paragraph (1)(A) or paragraph (1)(B) in a fiscal year shall not exceed the funds appropriated under paragraph (1) or (2), respectively, of subsection (f) of this section for such payments for that fiscal year.

(B) Pro rata reductions of payments for direct expenses

If the Secretary determines that the amount of funds appropriated under subsection (f)(1) of this section for a fiscal year is insufficient to provide the total amount of payments otherwise due for such periods under paragraph (1)(A), the Secretary shall reduce the amounts so payable on a pro rata basis to reflect such shortfall.

(3) Annual reporting required

(A) Reduction in payment for failure to report

(i) In general

The amount payable under this section to a children's hospital for a fiscal year (beginning with fiscal year 2008 and after taking into account paragraph (2)) shall be reduced by 25 percent if the Secretary determines that—

(I) the hospital has failed to provide the Secretary, as an addendum to the hospital's application under this section for such fiscal year, the report required under subparagraph (B) for the previous fiscal year; or

(II) such report fails to provide the information required under any clause of such subparagraph.

(ii) Notice and opportunity to provide missing information

Before imposing a reduction under clause (i) on the basis of a hospital's failure to provide information described in clause (i)(II), the Secretary shall provide

notice to the hospital of such failure and the Secretary's intention to impose such reduction and shall provide the hospital with the opportunity to provide the required information within a period of 30 days beginning on the date of such notice. If the hospital provides such information within such period, no reduction shall be made under clause (i) on the basis of the previous failure to provide such information.

(B) Annual report

The report required under this subparagraph for a children's hospital for a fiscal year is a report that includes (in a form and manner specified by the Secretary) the following information for the residency academic year completed immediately prior to such fiscal year:

(i) The types of resident training programs that the hospital provided for residents described in subparagraph (C), such as general pediatrics, internal medicine/pediatrics, and pediatric subspecialties, including both medical subspecialties certified by the American Board of Pediatrics (such as pediatric gastroenterology) and non-medical subspecialties approved by other medical certification boards (such as pediatric surgery).

(ii) The number of training positions for residents described in subparagraph (C), the number of such positions recruited to fill, and the number of such positions filled.

(iii) The types of training that the hospital provided for residents described in subparagraph (C) related to the health care needs of different populations, such as children who are underserved for reasons of family income or geographic location, including rural and urban areas.

(iv) The changes in residency training for residents described in subparagraph (C) which the hospital has made during such residency academic year (except that the first report submitted by the hospital under this subparagraph shall be for such changes since the first year in which the hospital received payment under this section), including—

(I) changes in curricula, training experiences, and types of training programs, and benefits that have resulted from such changes; and

(II) changes for purposes of training the residents in the measurement and improvement of the quality and safety of patient care.

(v) The numbers of residents described in subparagraph (C) who completed their residency training at the end of such residency academic year and care for children within the borders of the service area of the hospital or within the borders of the State in which the hospital is located. Such numbers shall be disaggregated with respect to residents who completed residencies in general pediatrics or internal medicine/pediatrics, subspecialty residencies, and dental residencies.

(C) Residents

The residents described in this subparagraph are those who—

(i) are in full-time equivalent resident training positions in any training program sponsored by the hospital; or

(ii) are in a training program sponsored by an entity other than the hospital, but who spend more than 75 percent of their training time at the hospital.

(D) Report to Congress

Not later than the end of fiscal year 2011, the Secretary, acting through the Administrator of the Health Resources and Services Administration, shall submit a report to the Congress—

(i) summarizing the information submitted in reports to the Secretary under subparagraph (B);

(ii) describing the results of the program carried out under this section; and

(iii) making recommendations for improvements to the program.

(c) Amount of payment for direct graduate medical education

(1) In general

The amount determined under this subsection for payments to a children's hospital for direct graduate expenses relating to approved graduate medical residency training programs for a fiscal year is equal to the product of—

(A) the updated per resident amount for direct graduate medical education, as determined under paragraph (2); and

(B) the average number of full-time equivalent residents in the hospital's graduate approved medical residency training programs (as determined under section 1395ww(h)(4) of this title during the fiscal year.

(2) Updated per resident amount for direct graduate medical education

The updated per resident amount for direct graduate medical education for a hospital for a fiscal year is an amount determined as follows:

(A) Determination of hospital single per resident amount

The Secretary shall compute for each hospital operating an approved graduate medical education program (regardless of whether or not it is a children's hospital) a single per resident amount equal to the average (weighted by number of full-time equivalent residents) of the primary care per resident amount and the non-primary care per resident amount computed under section 1395ww(h)(2) of this title for cost reporting periods ending during fiscal year 1997.

(B) Determination of wage and non-wage-related proportion of the single per resident amount

The Secretary shall estimate the average proportion of the single per resident amounts computed under subparagraph (A) that is attributable to wages and wage-related costs.

(C) Standardizing per resident amounts

The Secretary shall establish a standardized per resident amount for each such hospital—

(i) by dividing the single per resident amount computed under subparagraph (A) into a wage-related portion and a non-wage-related portion by applying the proportion determined under subparagraph (B);

(ii) by dividing the wage-related portion by the factor applied under section 1395ww(d)(3)(E) of this title for discharges occurring during fiscal year 1999 for the hospital's area; and

(iii) by adding the non-wage-related portion to the amount computed under clause (ii).

(D) Determination of national average

The Secretary shall compute a national average per resident amount equal to the average of the standardized per resident amounts computed under subparagraph (C) for such hospitals, with the amount for each hospital weighted by the average number of full-time equivalent residents at such hospital.

(E) Application to individual hospitals

The Secretary shall compute for each such hospital that is a children's hospital a per resident amount—

(i) by dividing the national average per resident amount computed under subparagraph (D) into a wage-related portion and a non-wage-related portion by applying the proportion determined under subparagraph (B);

(ii) by multiplying the wage-related portion by the factor applied under section 1395ww(d)(3)(E) of this title for discharges occurring during the preceding fiscal year for the hospital's area; and

(iii) by adding the non-wage-related portion to the amount computed under clause (ii).

(F) Updating rate

The Secretary shall update such per resident amount for each such children's hospital by the estimated percentage increase in the consumer price index for all urban consumers during the period beginning October 1997 and ending with the midpoint of the Federal fiscal year for which payments are made.

(d) Amount of payment for indirect medical education

(1) In general

The amount determined under this subsection for payments to a children's hospital for indirect expenses associated with the treatment of more severely ill patients and the additional costs associated with the teaching of residents for a fiscal year is equal to an amount determined appropriate by the Secretary.

(2) Factors

In determining the amount under paragraph (1), the Secretary shall—

(A) take into account variations in case mix among children's hospitals and the ratio of the number of full-time equivalent residents in the hospitals' approved graduate medical residency training programs to beds (but excluding beds or bassinets assigned to healthy newborn infants); and

(B) assure that the aggregate of the payments for indirect expenses associated with the treatment of more severely ill patients and the additional costs related to the teaching of residents under this section in a fiscal year are equal to the amount appropriated for such expenses for the fiscal year involved under subsection (f)(2) of this section.

(e) Making of payments

(1) Interim payments

The Secretary shall determine, before the beginning of each fiscal year involved for which payments may be made for a hospital under this section, the amounts of the payments for direct graduate medical education and indirect medical education for such fiscal year and shall (subject to paragraph (2)) make the payments of such amounts in 12 equal interim installments during such period. Such interim payments to each individual hospital shall be based on the number of residents reported in the hospital's most recently filed Medicare cost report prior to the application date for the Federal fiscal year for which the interim payment amounts are established. In the case of a hospital that does not report residents on a Medicare cost report, such interim payments shall be based on the number of residents trained during the hospital's most recently completed Medicare cost report filing period.

(2) Withholding

The Secretary shall withhold up to 25 percent from each interim installment for direct and indirect graduate medical education paid under paragraph (1) as necessary to ensure a hospital will not be overpaid on an interim basis.

(3) Reconciliation

Prior to the end of each fiscal year, the Secretary shall determine any changes to the number of residents reported by a hospital in the application of the hospital for the current fiscal year to determine the final amount payable to the hospital for the current fiscal year for both direct expense and indirect expense amounts. Based on such determination, the Secretary shall recoup any overpayments made and pay any balance due to the extent possible. The final amount so determined shall be considered a final intermediary determination for the purposes of section 1395*oo* of this title and shall be subject to administrative and judicial review under that section in the same manner as the amount of payment under section 1395ww(d)[1] of this title is subject to review under such section.

[1] See References in Text note below.

(f) Authorization of appropriations

(1) Direct graduate medical education

(A) In general

There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, for payments under subsection (b)(1)(A) of this section—

(i) for fiscal year 2000, $90,000,000;

(ii) for fiscal year 2001, $95,000,000;

(iii) for each of the fiscal years 2002 through 2005, such sums as may be necessary; and

(iv) for each of fiscal years 2007 through 2011, $110,000,000.

(B) Carryover of excess

The amounts appropriated under subparagraph (A) for fiscal year 2000 shall remain available for obligation through the end of fiscal year 2001.

(2) Indirect medical education

There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, for payments under subsection (b)(1)(B) of this section—

(A) for fiscal year 2000, $190,000,000;

(B) for fiscal year 2001, $190,000,000;

(C) for each of the fiscal years 2002 through 2005, such sums as may be necessary; and

(D) for each of fiscal years 2007 through 2011, $220,000,000.

(g) Definitions

In this section:

(1) Approved graduate medical residency training program

The term ''approved graduate medical residency training program'' has the meaning given the term ''approved medical residency training program'' in section 1395ww(h)(5)(A) of this title.

(2) Children's hospital

The term ''children's hospital'' means a hospital with a Medicare payment agreement and which is excluded from the Medicare inpatient prospective payment system pursuant to section 1395ww(d)(1)(B)(iii) of this title and its accompanying regulations.

(3) Direct graduate medical education costs

The term ''direct graduate medical education costs'' has the meaning given such term in section 1395ww(h)(5)(C) of this title.

(July 1, 1944, ch. 373, title III, § 340E, as added Pub. L. 106–129, § 4, Dec. 6, 1999, 113 Stat. 1671; amended Pub. L. 106–310, div. A, title XX, § 2001, Oct. 17, 2000, 114 Stat. 1155; Pub. L. 108–490, § 1(a), Dec. 23, 2004, 118 Stat. 3972; Pub. L. 109–307, § 2, Oct. 6, 2006, 120 Stat. 1721.)

REFERENCES IN TEXT

Section 1395ww(d) of this title, referred to in subsec. (e)(3), was in the original ''section 1186(d) of such Act'' and was translated as reading ''section 1886(d) of such Act'', meaning section 1886(d) of the Social Security Act, to reflect the probable intent of Congress, because the Social Security Act does not contain a section 1186 and section 1395ww(d) of this title relates to review of inpatient hospital service payments.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–307, § 2(a)(1), inserted ''and each of fiscal years 2007 through 2011'' after ''for each of fiscal years 2000 through 2005''.

Subsec. (b)(1). Pub. L. 109–307, § 2(b)(1), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)'' in introductory provisions.

Subsec. (b)(3). Pub. L. 109–307, § 2(b)(2), added par. (3).

Subsec. (c)(2)(E)(ii). Pub. L. 109–307, § 2(c)(1), substituted ''applied under section 1395ww(d)(3)(E) of this title for discharges occurring during the preceding fiscal year'' for ''described in subparagraph (C)(ii)''.

Subsec. (e)(1). Pub. L. 109–307, § 2(a)(2), substituted ''12'' for ''26''.

Subsec. (e)(2). Pub. L. 109–307, § 2(c)(2), struck out first sentence which read as follows: ''The Secretary shall withhold up to 25 percent from each interim installment for direct and indirect graduate medical education paid under paragraph (1).''

Subsec. (e)(3). Pub. L. 109–307, § 2(c)(3), substituted ''made and pay'' for ''made to pay''.

Subsec. (f)(1)(A)(iv). Pub. L. 109–307, § 2(a)(3), added cl. (iv).

Subsec. (f)(2). Pub. L. 109–307, § 2(a)(4)(A), substituted ''subsection (b)(1)(B)'' for ''subsection (b)(1)(A)'' in introductory provisions.

Subsec. (f)(2)(D). Pub. L. 109–307, § 2(a)(4)(B)–(D), added subpar. (D).

2004—Subsec. (d)(1). Pub. L. 108–490, § 1(a)(1), substituted ''costs associated with'' for ''costs related to''.

Subsec. (d)(2)(A). Pub. L. 108–490, § 1(a)(2), inserted ''ratio of the'' after ''hospitals and the'' and ''to beds (but excluding beds or bassinets assigned to healthy newborn infants)'' before semicolon.

2000—Subsec. (a). Pub. L. 106–310, § 2001(a), substituted ''2000 through 2005'' for ''2000 and 2001'' and inserted at end ''The Secretary shall promulgate regulations pursuant to the rulemaking requirements of title 5 which shall govern payments made under this subpart.''.

Subsec. (c)(2)(F). Pub. L. 106–310, § 2001(b), substituted ''Federal fiscal year for which payments are made'' for ''hospital's cost reporting period that begins during fiscal year 2000''.

Subsec. (e)(1). Pub. L. 106–310, § 2001(c), inserted at end ''Such interim payments to each individual hospital shall be based on the number of residents reported in the hospital's most recently filed Medicare cost report prior to the application date for the Federal fiscal year for which the interim payment amounts are established. In the case of a hospital that does not report residents on a Medicare cost report, such interim payments shall be based on the number of residents trained during the hospital's most recently completed Medicare cost report filing period.''

Subsec. (e)(2). Pub. L. 106–310, § 2001(d), inserted ''and indirect'' after ''interim installment for direct'' and inserted at end ''The Secretary shall withhold up to 25 percent from each interim installment for direct and indirect graduate medical education paid under paragraph (1) as necessary to ensure a hospital will not be overpaid on an interim basis.''

Subsec. (e)(3). Pub. L. 106–310, § 2001(e), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''At the end of each fiscal year for which payments may be made under this section, the hospital shall submit to the Secretary such information as the Secretary determines to be necessary to determine the percent (if any) of the total amount withheld under paragraph (2) that is due under this section for the hospital for the fiscal year. Based on such determination, the Secretary shall recoup any overpayments made, or pay any balance due. The amount so determined shall be considered a final intermediary determination for purposes of applying section 1395*oo* of this title and shall be subject to review under that section in the same manner as the amount of payment under section 1395ww(d) of this title is subject to review under such section.''

Subsec. (f)(1)(A)(iii). Pub. L. 106–310, § 2001(f)(1), added cl. (iii).

Subsec. (f)(2)(C). Pub. L. 106–310, § 2001(f)(2), added subpar. (C).

Subsec. (g)(2). Pub. L. 106–310, § 2001(g), substituted ''with a Medicare payment agreement and which is excluded from the Medicare inpatient prospective payment system pursuant to section 1395ww(d)(1)(B)(iii) of this title and its accompanying regulations'' for ''described in section 1395ww(d)(1)(B)(iii) of this title''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–490, § 1(b), Dec. 23, 2004, 118 Stat. 3972, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments for periods beginning with fiscal year 2005.''

SUBPART X—PRIMARY DENTAL PROGRAMS

§ 256f. Designated dental health professional shortage area

In this subpart, the term ''designated dental health professional shortage area'' means an area, population group, or facility that is designated by the Secretary as a dental health professional shortage area under section 254e of this title or designated by the applicable State as having a dental health professional shortage.

(July 1, 1944, ch. 373, title III, § 340F, as added Pub. L. 107–251, title IV, § 403, Oct. 26, 2002, 116 Stat. 1660.)

§ 256g. Grants for innovative programs

(a) Grant program authorized

The Secretary, acting through the Administrator of the Health Resources and Services Administration, is authorized to award grants to States for the purpose of helping States develop and implement innovative programs to address the dental workforce needs of designated dental health professional shortage areas in a manner that is appropriate to the States' individual needs.

(b) State activities

A State receiving a grant under subsection (a) of this section may use funds received under the grant for—

(1) loan forgiveness and repayment programs for dentists who—

(A) agree to practice in designated dental health professional shortage areas;

(B) are dental school graduates who agree to serve as public health dentists for the Federal, State, or local government; and

(C) agree to—

(i) provide services to patients regardless of such patients' ability to pay; and

(ii) use a sliding payment scale for patients who are unable to pay the total cost of services;

(2) dental recruitment and retention efforts;

(3) grants and low-interest or no-interest loans to help dentists who participate in the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to establish or expand practices in designated dental health professional shortage areas by equipping dental offices or sharing in the overhead costs of such practices;

(4) the establishment or expansion of dental residency programs in coordination with accredited dental training institutions in States without dental schools;

(5) programs developed in consultation with State and local dental societies to expand or establish oral health services and facilities in designated dental health professional shortage areas, including services and facilities for children with special needs, such as—

(A) the expansion or establishment of a community-based dental facility, free-standing dental clinic, consolidated health center dental facility, school-linked dental facility, or United States dental school-based facility;

(B) the establishment of a mobile or portable dental clinic; and

(C) the establishment or expansion of private dental services to enhance capacity through additional equipment or additional hours of operation;

(6) placement and support of dental students, dental residents, and advanced dentistry trainees;

(7) continuing dental education, including distance-based education;

(8) practice support through teledentistry conducted in accordance with State laws;

(9) community-based prevention services such as water fluoridation and dental sealant programs;

(10) coordination with local educational agencies within the State to foster programs that promote children going into oral health or science professions;

(11) the establishment of faculty recruitment programs at accredited dental training institutions whose mission includes community outreach and service and that have a demonstrated record of serving underserved States;

(12) the development of a State dental officer position or the augmentation of a State dental office to coordinate oral health and access issues in the State; and

(13) any other activities determined to be appropriate by the Secretary.

(c) Application

(1) In general

Each State desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(2) Assurances

The application shall include assurances that the State will meet the requirements of subsection (d) of this section and that the State possesses sufficient infrastructure to manage the activities to be funded through the grant and to evaluate and report on the outcomes resulting from such activities.

(d) Matching requirement

The Secretary may not make a grant to a State under this section unless that State agrees that, with respect to the costs to be incurred by the State in carrying out the activities for which the grant was awarded, the State will provide non-Federal contributions in an amount equal to not less than 40 percent of Federal funds provided under the grant. The State

may provide the contributions in cash or in kind, fairly evaluated, including plant, equipment, and services and may provide the contributions from State, local, or private sources.

(e) Report

Not later than 5 years after October 26, 2002, the Secretary shall prepare and submit to the appropriate committees of Congress a report containing data relating to whether grants provided under this section have increased access to dental services in designated dental health professional shortage areas.

(f) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $50,000,000 for the 5-fiscal year period beginning with fiscal year 2002.

(July 1, 1944, ch. 373, title III, § 340G, as added Pub. L. 107–251, title IV, § 403, Oct. 26, 2002, 116 Stat. 1661.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PART E—NARCOTIC ADDICTS AND OTHER DRUG ABUSERS

§ 257. Repealed. Pub. L. 106–310, div. B, title XXXIV, § 3405(a), Oct. 17, 2000, 114 Stat. 1221

Section, acts July 1, 1944, ch. 373, title III, § 341, 58 Stat. 698; May 8, 1954, ch. 195, § 3, 68 Stat. 80; July 24, 1956, ch. 676, title III, § 302(a), 70 Stat. 622; Pub. L. 89–793, title VI, § 601, Nov. 8, 1966, 80 Stat. 1449; 1967 Reorg. Plan No. 3, § 401, eff. Nov. 3, 1967 (in part), 32 F.R. 11669, 81 Stat. 951; Pub. L. 91–513, title I, § 2(a)(1), Oct. 27, 1970, 84 Stat. 1240; Pub. L. 92–255, title IV, § 402, Mar. 21, 1972, 86 Stat. 77; Pub. L. 93–198, title IV, § 421, Dec. 24, 1973, 87 Stat. 789; Pub. L. 98–473, title II, § 232(a), Oct. 12, 1984, 98 Stat. 2031; Pub. L. 99–646, § 22(a), Nov. 10, 1986, 100 Stat. 3597; Pub. L. 102–54, § 13(q)(1)(B)(i), June 13, 1991, 105 Stat. 278, related to care and treatment of narcotic addicts.

§ 257a. Transferred

CODIFICATION

Section, Pub. L. 91–513, title I, § 4, Oct. 27, 1970, 84 Stat. 1241; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which related to medical treatment of narcotics addiction, was transferred to section 290bb–2a of this title.

§ 258. Repealed. Pub. L. 106–310, div. B, title XXXIV, § 3405(a), Oct. 17, 2000, 114 Stat. 1221

Section, acts July 1, 1944, ch. 373, title III, § 342, 58 Stat. 699; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 91–513, title I, § 2(a)(2)(A), Oct. 27, 1970, 84 Stat. 1240; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to employment, establishment of industries, plants, etc., sale of commodities, and disposition of proceeds.

§ 258a. Transferred

CODIFICATION

Section, act July 8, 1947, ch. 210, title II, § 201, 61 Stat. 269, which related to transfer of balances in working capital fund, narcotic hospitals, to surplus fund, was transferred and is set out as a note under section 290aa of this title.

§§ 259 to 261a. Repealed. Pub. L. 106–310, div. B, title XXXIV, § 3405(a), Oct. 17, 2000, 114 Stat. 1221

Section 259, acts July 1, 1944, ch. 373, title III, § 343, 58 Stat. 699; Pub. L. 91–513, title I, § 2(a)(2)(A), (3), (4), Oct. 27, 1970, 84 Stat. 1240; Pub. L. 92–293, § 3, May 11, 1972, 86 Stat. 136; Pub. L. 98–473, title II, § 232(b), Oct. 12, 1984, 98 Stat. 2031, related to convict addicts or other persons with drug abuse or drug dependence problems.

Section 260, acts July 1, 1944, ch. 373, title III, § 344, 58 Stat. 701; June 25, 1948, ch. 654, § 5, 62 Stat. 1018; July 24, 1956, ch. 676, title III, § 302(b), 70 Stat. 622; Pub. L. 91–513, title I, § 2(a)(2)(A), (3), (4), Oct. 27, 1970, 84 Stat. 1240, related to addicts and persons with drug abuse or drug dependence problems.

Section 260a, act July 1, 1944, ch. 373, title III, § 345, as added May 8, 1954, ch. 195, § 2, 68 Stat. 79; amended July 24, 1956, ch. 676, title III, § 302(c), 70 Stat. 622; Pub. L. 91–358, title I, § 155(c)(32), July 29, 1970, 84 Stat. 572, related to admission of addicts committed from District of Columbia.

Section 261, acts July 1, 1944, ch. 373, title III, § 346, formerly § 345, 58 Stat. 701; renumbered § 346, May 8, 1954, ch. 195, § 2, 68 Stat. 79; amended Pub. L. 91–513, title I, § 2(a)(2)(A), (5), Oct. 27, 1970, 84 Stat. 1240, related to penalties for introducing prohibited articles and substances into hospitals and escaping from, or aiding and abetting escape from hospitals.

Section 261a, act July 1, 1944, ch. 373, title III, § 347, as added May 8, 1954, ch. 195, § 4, 68 Stat. 80; amended Pub. L. 91–513, title I, § 2(a)(4), Oct. 27, 1970, 84 Stat. 1240, related to release of patients and determination by Surgeon General.

PART F—LICENSING OF BIOLOGICAL PRODUCTS AND CLINICAL LABORATORIES

SUBPART 1—BIOLOGICAL PRODUCTS

§ 262. Regulation of biological products

(a) Biologics license

(1) No person shall introduce or deliver for introduction into interstate commerce any biological product unless—

(A) a biologics license is in effect for the biological product; and

(B) each package of the biological product is plainly marked with—

(i) the proper name of the biological product contained in the package;

(ii) the name, address, and applicable license number of the manufacturer of the biological product; and

(iii) the expiration date of the biological product.

(2)(A) The Secretary shall establish, by regulation, requirements for the approval, suspension, and revocation of biologics licenses.

(B) PEDIATRIC STUDIES.—A person that submits an application for a license under this paragraph shall submit to the Secretary as part of the application any assessments required under section 505B of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355c].

(C) The Secretary shall approve a biologics license application—

(i) on the basis of a demonstration that—

(I) the biological product that is the subject of the application is safe, pure, and potent; and

(II) the facility in which the biological product is manufactured, processed, packed, or held meets standards designed to assure

that the biological product continues to be safe, pure, and potent; and

(ii) if the applicant (or other appropriate person) consents to the inspection of the facility that is the subject of the application, in accordance with subsection (c) of this section.

(3) The Secretary shall prescribe requirements under which a biological product undergoing investigation shall be exempt from the requirements of paragraph (1).

(b) Falsely labeling or marking package or container; altering label or mark

No person shall falsely label or mark any package or container of any biological product or alter any label or mark on the package or container of the biological product so as to falsify the label or mark.

(c) Inspection of establishment for propagation and preparation

Any officer, agent, or employee of the Department of Health and Human Services, authorized by the Secretary for the purpose, may during all reasonable hours enter and inspect any establishment for the propagation or manufacture and preparation of any biological product.

(d) Recall of product presenting imminent hazard; violations

(1) Upon a determination that a batch, lot, or other quantity of a product licensed under this section presents an imminent or substantial hazard to the public health, the Secretary shall issue an order immediately ordering the recall of such batch, lot, or other quantity of such product. An order under this paragraph shall be issued in accordance with section 554 of title 5.

(2) Any violation of paragraph (1) shall subject the violator to a civil penalty of up to $100,000 per day of violation. The amount of a civil penalty under this paragraph shall, effective December 1 of each year beginning 1 year after the effective date of this paragraph, be increased by the percent change in the Consumer Price Index for the base quarter of such year over the Consumer Price Index for the base quarter of the preceding year, adjusted to the nearest 1/10 of 1 percent. For purposes of this paragraph, the term ''base quarter'', as used with respect to a year, means the calendar quarter ending on September 30 of such year and the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.

(e) Interference with officers

No person shall interfere with any officer, agent, or employee of the Service in the performance of any duty imposed upon him by this section or by regulations made by authority thereof.

(f) Penalties for offenses

Any person who shall violate, or aid or abet in violating, any of the provisions of this section shall be punished upon conviction by a fine not exceeding $500 or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

(g) Construction with other laws

Nothing contained in this chapter shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(h) Exportation of partially processed biological products

A partially processed biological product which—

(1) is not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man;

(2) is not intended for sale in the United States; and

(3) is intended for further manufacture into final dosage form outside the United States,

shall be subject to no restriction on the export of the product under this chapter or the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et. seq.] if the product is manufactured, processed, packaged, and held in conformity with current good manufacturing practice requirements or meets international manufacturing standards as certified by an international standards organization recognized by the Secretary and meets the requirements of section 801(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(e)).

(i) "Biological product" defined

In this section, the term ''biological product'' means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition of human beings.

(j) Application of Federal Food, Drug, and Cosmetic Act

The Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] applies to a biological product subject to regulation under this section, except that a product for which a license has been approved under subsection (a) shall not be required to have an approved application under section 505 of such Act [21 U.S.C. 355].

(July 1, 1944, ch. 373, title III, §351, 58 Stat. 702; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 85–881, §2, Sept. 2, 1958, 72 Stat. 1704; Pub. L. 91–515, title II, §291, Oct. 30, 1970, 84 Stat. 1308; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 99–660, title I, §105(a), title III, §315, Nov. 14, 1986, 100 Stat. 3751, 3783; Pub. L. 102–300, §6(b)(1), June 16, 1992, 106 Stat. 240; Pub. L. 104–134, title II, §§2102(d)(2), 2104, Apr. 26, 1996, 110 Stat. 1321–319, 1321–320; Pub. L. 105–115, title I, §123(a)–(d), (g), Nov. 21, 1997, 111 Stat. 2323, 2324; Pub. L. 108–155, §2(b)(3), Dec. 3, 2003, 117 Stat. 1941.)

REFERENCES IN TEXT

The effective date of this paragraph, referred to in subsec. (d)(2), is the effective date of section 315 of Pub. L. 99–660 which added subsec. (d)(2). See Effective Date of 1986 Amendment note set out below.

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (g), (h), and (j), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

2003—Subsec. (a)(2)(B), (C). Pub. L. 108–155 added subpar. (B) and redesignated former subpar. (B) as (C).

1997—Subsec. (a). Pub. L. 105–115, § 123(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to intrastate and interstate traffic in biological products and suspension or revocation of licenses as affecting prior sales.

Subsec. (b). Pub. L. 105–115, § 123(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''No person shall falsely label or mark any package or container of any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid; nor alter any label or mark on any package or container of any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid so as to falsify such label or mark.''

Subsec. (c). Pub. L. 105–115, § 123(c), substituted ''biological product.'' for ''virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid for sale, barter, or exchange in the District of Columbia, or to be sent, carried, or brought from any State or possession into any other State or possession or into any foreign country, or from any foreign country into any State or possession.''

Subsec. (d). Pub. L. 105–115, § 123(a)(2), designated par. (2) as subsec. (d), redesignated subpars. (A) and (B) of par. (2) as pars. (1) and (2), respectively, in par. (2), substituted ''Any violation of paragraph (1)'' for ''Any violation of subparagraph (A)'' and substituted ''this paragraph'' for ''this subparagraph'' wherever appearing, and struck out former par. (1) which read as follows: ''Licenses for the maintenance of establishments for the propagation or manufacture and preparation of products described in subsection (a) of this section may be issued only upon a showing that the establishment and the products for which a license is desired meet standards, designed to insure the continued safety, purity, and potency of such products, prescribed in regulations, and licenses for new products may be issued only upon a showing that they meet such standards. All such licenses shall be issued, suspended, and revoked as prescribed by regulations and all licenses issued for the maintenance of establishments for the propagation or manufacture and preparation, in any foreign country, of any such products for sale, barter, or exchange in any State or possession shall be issued upon condition that the licensees will permit the inspection of their establishments in accordance with subsection (c) of this section.''

Subsec. (i). Pub. L. 105–115, § 123(d), added subsec. (i).

Subsec. (j). Pub. L. 105–115, § 123(g), added subsec. (j).

1996—Subsec. (h). Pub. L. 104–134, § 2104, amended subsec. (h) generally, revising and restating former provisions, which also related to exportation of partially processed biological products.

Subsec. (h)(1)(A). Pub. L. 104–134, § 2102(d)(2), substituted ''in a country listed under section 802(b)(1)'' for ''in a country listed under section 802(b)(A)'' and ''to a country listed under section 802(b)(1)'' for ''to a country listed under section 802(b)(4)''.

1992—Subsec. (c). Pub. L. 102–300, which directed substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'', could not be executed because the words ''Health, Education, and Welfare'' did not appear in original statutory text. Previously, references to Department and Secretary of Health and Human Services were substituted for references to Federal Security Agency and its Administrator pursuant to provisions cited in Transfer of Functions note below.

1986—Subsec. (d). Pub. L. 99–660, § 315, designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 99–660, § 105(a), added subsec. (h).

1970—Subsecs. (a) to (c). Pub. L. 91–515 inserted ''vaccine, blood, blood component or derivative, allergenic product,'' after ''antitoxin'' wherever appearing.

1958—Subsec. (d). Pub. L. 85–881 struck out ''made jointly by the Surgeon General, the Surgeon General of the Army, and the Surgeon General of the Navy, and approved by the Secretary'' after ''regulations'' in first sentence.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–155 effective Dec. 3, 2003, except as otherwise provided, see section 4 of Pub. L. 108–155, set out as an Effective Date note under section 355c of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–115 effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105–115, set out as a note under section 321 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 105(b) of Pub. L. 99–660 provided that: ''Paragraph (1) of section 351(h) of the Public Health Service Act [former subsec. (h)(1) of this section] as added by subsection (a) shall take effect upon the expiration of 90 days after the date of the enactment of this Act [Nov. 14, 1986].''

Amendment by section 315 of Pub. L. 99–660 effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

References to Secretary and Department of Health, Education, and Welfare substituted for references to Federal Security Administrator and Federal Security Agency, respectively, pursuant to Reorg. Plan No. 1 of 1953, § 5, set out as a note under section 3501 of this title, which transferred all functions of Federal Security Administrator to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency to Department of Health, Education, and Welfare. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

ENHANCED PENALTIES AND CONTROL OF BIOLOGICAL AGENTS

Pub. L. 104–132, title V, § 511, Apr. 24, 1996, 110 Stat. 1284, as amended by Pub. L. 107–188, title II, § 204, June 12, 2002, 116 Stat. 647, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) certain biological agents have the potential to pose a severe threat to public health and safety;

''(2) such biological agents can be used as weapons by individuals or organizations for the purpose of domestic or international terrorism or for other criminal purposes;

''(3) the transfer and possession of potentially hazardous biological agents should be regulated to protect public health and safety; and

''(4) efforts to protect the public from exposure to such agents should ensure that individuals and groups with legitimate objectives continue to have access to such agents for clinical and research purposes.

''(b) CRIMINAL ENFORCEMENT.—[Amended sections 175, 177, and 178 of Title 18, Crimes and Criminal Procedure.]

''(c) TERRORISM.—[Amended section 2332a of Title 18.]''

§ 262a. Enhanced control of dangerous biological agents and toxins

(a) Regulatory control of certain biological agents and toxins

(1) List of biological agents and toxins

(A) In general

The Secretary shall by regulation establish and maintain a list of each biological agent and each toxin that has the potential to pose a severe threat to public health and safety.

(B) Criteria

In determining whether to include an agent or toxin on the list under subparagraph (A), the Secretary shall—

(i) consider—

(I) the effect on human health of exposure to the agent or toxin;

(II) the degree of contagiousness of the agent or toxin and the methods by which the agent or toxin is transferred to humans;

(III) the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent any illness resulting from infection by the agent or toxin; and

(IV) any other criteria, including the needs of children and other vulnerable populations, that the Secretary considers appropriate; and

(ii) consult with appropriate Federal departments and agencies and with scientific experts representing appropriate professional groups, including groups with pediatric expertise.

(2) Biennial review

The Secretary shall review and republish the list under paragraph (1) biennially, or more often as needed, and shall by regulation revise the list as necessary in accordance with such paragraph.

(b) Regulation of transfers of listed agents and toxins

The Secretary shall by regulation provide for—

(1) the establishment and enforcement of safety procedures for the transfer of listed agents and toxins, including measures to ensure—

(A) proper training and appropriate skills to handle such agents and toxins; and

(B) proper laboratory facilities to contain and dispose of such agents and toxins;

(2) the establishment and enforcement of safeguard and security measures to prevent access to such agents and toxins for use in domestic or international terrorism or for any other criminal purpose;

(3) the establishment of procedures to protect the public safety in the event of a transfer or potential transfer of such an agent or toxin in violation of the safety procedures established under paragraph (1) or the safeguard and security measures established under paragraph (2); and

(4) appropriate availability of biological agents and toxins for research, education, and other legitimate purposes.

(c) Possession and use of listed agents and toxins

The Secretary shall by regulation provide for the establishment and enforcement of standards and procedures governing the possession and use of listed agents and toxins, including the provisions described in paragraphs (1) through (4) of subsection (b) of this section, in order to protect the public health and safety.

(d) Registration; identification; database

(1) Registration

Regulations under subsections (b) and (c) of this section shall require registration with the Secretary of the possession, use, and transfer of listed agents and toxins, and shall include provisions to ensure that persons seeking to register under such regulations have a lawful purpose to possess, use, or transfer such agents and toxins, including provisions in accordance with subsection (e)(6) of this section.

(2) Identification; database

Regulations under subsections (b) and (c) of this section shall require that registration include (if available to the person registering) information regarding the characterization of listed agents and toxins to facilitate their identification, including their source. The Secretary shall maintain a national database that includes the names and locations of registered persons, the listed agents and toxins such persons are possessing, using, or transferring, and information regarding the characterization of such agents and toxins.

(e) Safeguard and security requirements for registered persons

(1) In general

Regulations under subsections (b) and (c) of this section shall include appropriate safeguard and security requirements for persons possessing, using, or transferring a listed agent or toxin commensurate with the risk such agent or toxin poses to public health and safety (including the risk of use in domestic or international terrorism). The Secretary shall establish such requirements in collaboration with the Secretary of Homeland Security and the Attorney General, and shall ensure compliance with such requirements as part of the registration system under such regulations.

(2) Limiting access to listed agents and toxins

Requirements under paragraph (1) shall include provisions to ensure that registered persons—

(A) provide access to listed agents and toxins to only those individuals whom the registered person involved determines have a legitimate need to handle or use such agents and toxins;

(B) submit the names and other identifying information for such individuals to the Secretary and the Attorney General, promptly after first determining that the individuals need access under subparagraph (A), and periodically thereafter while the individuals have such access, not less frequently than once every five years;

(C) deny access to such agents and toxins by individuals whom the Attorney General has identified as restricted persons; and

(D) limit or deny access to such agents and toxins by individuals whom the Attorney General has identified as within any category under paragraph (3)(B)(ii), if limiting or denying such access by the individuals involved is determined appropriate by the Secretary, in consultation with the Attorney General.

(3) Submitted names; use of databases by attorney general

(A) In general

Upon the receipt of names and other identifying information under paragraph (2)(B), the Attorney General shall, for the sole purpose of identifying whether the individuals involved are within any of the categories specified in subparagraph (B), promptly use criminal, immigration, national security, and other electronic databases that are available to the Federal Government and are appropriate for such purpose.

(B) Certain individuals

For purposes of subparagraph (A), the categories specified in this subparagraph regarding an individual are that—

(i) the individual is a restricted person; or

(ii) the individual is reasonably suspected by any Federal law enforcement or intelligence agency of—

(I) committing a crime set forth in section 2332b(g)(5) of title 18;

(II) knowing involvement with an organization that engages in domestic or international terrorism (as defined in section 2331 of such title 18) or with any other organization that engages in intentional crimes of violence; or

(III) being an agent of a foreign power (as defined in section 1801 of title 50).

(C) Notification by Attorney General regarding submitted names

After the receipt of a name and other identifying information under paragraph (2)(B), the Attorney General shall promptly notify the Secretary whether the individual is within any of the categories specified in subparagraph (B).

(4) Notifications by Secretary

The Secretary, after receiving notice under paragraph (3) regarding an individual, shall promptly notify the registered person involved of whether the individual is granted or denied access under paragraph (2). If the individual is denied such access, the Secretary shall promptly notify the individual of the denial.

(5) Expedited review

Regulations under subsections (b) and (c) of this section shall provide for a procedure through which, upon request to the Secretary by a registered person who submits names and other identifying information under paragraph (2)(B) and who demonstrates good cause, the Secretary may, as determined appropriate by the Secretary—

(A) request the Attorney General to expedite the process of identification under paragraph (3)(A) and notification of the Secretary under paragraph (3)(C); and

(B) expedite the notification of the registered person by the Secretary under paragraph (4).

(6) Process regarding persons seeking to register

(A) Individuals

Regulations under subsections (b) and (c) of this section shall provide that an individual who seeks to register under either of such subsections is subject to the same processes described in paragraphs (2) through (4) as apply to names and other identifying information submitted to the Attorney General under paragraph (2)(B). Paragraph (5) does not apply for purposes of this subparagraph.

(B) Other persons

Regulations under subsections (b) and (c) of this section shall provide that, in determining whether to deny or revoke registration by a person other than an individual, the Secretary shall submit the name of such person to the Attorney General, who shall use criminal, immigration, national security, and other electronic databases available to the Federal Government, as appropriate for the purpose of promptly notifying the Secretary whether the person, or, where relevant, the individual who owns or controls such person, is a restricted person or is reasonably suspected by any Federal law enforcement or intelligence agency of being within any category specified in paragraph (3)(B)(ii) (as applied to persons, including individuals). Such regulations shall provide that a person who seeks to register under either of such subsections is subject to the same processes described in paragraphs (2) and (4) as apply to names and other identifying information submitted to the Attorney General under paragraph (2)(B). Paragraph (5) does not apply for purposes of this subparagraph. The Secretary may exempt Federal, State, or local governmental agencies from the requirements of this subparagraph.

(7) Review

(A) Administrative review

(i) In general

Regulations under subsections (b) and (c) of this section shall provide for an opportunity for a review by the Secretary—

(I) when requested by the individual involved, of a determination under paragraph (2) to deny the individual access to listed agents and toxins; and

(II) when requested by the person involved, of a determination under paragraph (6) to deny or revoke registration for such person.

(ii) Ex parte review

During a review under clause (i), the Secretary may consider information relevant to the review ex parte to the extent that disclosure of the information could compromise national security or an investigation by any law enforcement agency.

(iii) Final agency action

The decision of the Secretary in a review under clause (i) constitutes final agency action for purposes of section 702 of title 5.

(B) Certain procedures

(i) Submission of ex parte materials in judicial proceedings

When reviewing a decision of the Secretary under subparagraph (A), and upon request made ex parte and in writing by the United States, a court, upon a sufficient showing, may review and consider ex parte documents containing information the disclosure of which could compromise national security or an investigation by any law enforcement agency. If the court determines that portions of the documents considered ex parte should be disclosed to the person involved to allow a response, the court shall authorize the United States to delete from such documents specified items of information the disclosure of which could compromise national security or an investigation by any law enforcement agency, or to substitute a summary of the information to which the person may respond. Any order by the court authorizing the disclosure of information that the United States believes could compromise national security or an investigation by any law enforcement agency shall be subject to the processes set forth in subparagraphs (A) and (B)(i) of section 2339B(f)(5) of title 18 (relating to interlocutory appeal and expedited consideration).

(ii) Disclosure of information

In a review under subparagraph (A), and in any judical[1] proceeding conducted pursuant to such review, neither the Secretary nor the Attorney General may be required to disclose to the public any information that under subsection (h) of this section shall not be disclosed under section 552 of title 5.

(8) Notifications regarding theft or loss of agents

Requirements under paragraph (1) shall include the prompt notification of the Secretary, and appropriate Federal, State, and local law enforcement agencies, of the theft or loss of listed agents and toxins.

(9) Technical assistance for registered persons

The Secretary, in consultation with the Attorney General, may provide technical assistance to registered persons to improve security of the facilities of such persons.

(f) Inspections

The Secretary shall have the authority to inspect persons subject to regulations under subsection (b) or (c) of this section to ensure their compliance with such regulations, including prohibitions on restricted persons and other provisions of subsection (e) of this section.

[1] So in original. Probably should be ''judicial''.

(g) Exemptions

(1) Clinical or diagnostic laboratories

Regulations under subsections (b) and (c) of this section shall exempt clinical or diagnostic laboratories and other persons who possess, use, or transfer listed agents or toxins that are contained in specimens presented for diagnosis, verification, or proficiency testing, provided that—

(A) the identification of such agents or toxins is reported to the Secretary, and when required under Federal, State, or local law, to other appropriate authorities; and

(B) such agents or toxins are transferred or destroyed in a manner set forth by the Secretary by regulation.

(2) Products

(A) In general

Regulations under subsections (b) and (c) of this section shall exempt products that are, bear, or contain listed agents or toxins and are cleared, approved, licensed, or registered under any of the Acts specified in subparagraph (B), unless the Secretary by order determines that applying additional regulation under subsection (b) or (c) of this section to a specific product is necessary to protect public health and safety.

(B) Relevant laws

For purposes of subparagraph (A), the Acts specified in this subparagraph are the following:

(i) The Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(ii) Section 262 of this title.

(iii) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading ''Bureau of Animal Industry'' in the Act of March 4, 1913; 21 U.S.C. 151–159).

(iv) The Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

(C) Investigational use

(i) In general

The Secretary may exempt an investigational product that is, bears, or contains a listed agent or toxin from the applicability of provisions of regulations under subsection (b) or (c) of this section when such product is being used in an investigation authorized under any Federal Act and the Secretary determines that applying additional regulation under subsection (b) or (c) of this section to such product is not necessary to protect public health and safety.

(ii) Certain processes

Regulations under subsections (b) and (c) of this section shall set forth the procedures for applying for an exemption under clause (i). In the case of investigational products authorized under any of the Acts specified in subparagraph (B), the Secretary shall make a determination regarding a request for an exemption not later than 14 days after the first date on which both of the following conditions have been

met by the person requesting the exemption:

(I) The person has submitted to the Secretary an application for the exemption meeting the requirements established by the Secretary.

(II) The person has notified the Secretary that the investigation has been authorized under such an Act.

(3) Public health emergencies

The Secretary may temporarily exempt a person from the applicability of the requirements of this section, in whole or in part, if the Secretary determines that such exemption is necessary to provide for the timely participation of the person in a response to a domestic or foreign public health emergency (whether determined under section 247d(a) of this title or otherwise) that involves a listed agent or toxin. With respect to the emergency involved, such exemption for a person may not exceed 30 days, except that the Secretary, after review of whether such exemption remains necessary, may provide one extension of an additional 30 days.

(4) Agricultural emergencies

Upon request of the Secretary of Agriculture, after the granting by such Secretary of an exemption under section 8401(g)(1)(D) of title 7 pursuant to a finding that there is an agricultural emergency, the Secretary of Health and Human Services may temporarily exempt a person from the applicability of the requirements of this section, in whole or in part, to provide for the timely participation of the person in a response to the agricultural emergency. With respect to the emergency involved, the exemption under this paragraph for a person may not exceed 30 days, except that upon request of the Secretary of Agriculture, the Secretary of Health and Human Services may, after review of whether such exemption remains necessary, provide one extension of an additional 30 days.

(h) Disclosure of information

(1) Nondisclosure of certain information

No Federal agency specified in paragraph (2) shall disclose under section 552 of title 5 any of the following:

(A) Any registration or transfer documentation submitted under subsections (b) and (c) of this section for the possession, use, or transfer of a listed agent or toxin; or information derived therefrom to the extent that it identifies the listed agent or toxin possessed, used, or transferred by a specific registered person or discloses the identity or location of a specific registered person.

(B) The national database developed pursuant to subsection (d) of this section, or any other compilation of the registration or transfer information submitted under subsections (b) and (c) of this section to the extent that such compilation discloses site-specific registration or transfer information.

(C) Any portion of a record that discloses the site-specific or transfer-specific safeguard and security measures used by a registered person to prevent unauthorized access to listed agents and toxins.

(D) Any notification of a release of a listed agent or toxin submitted under subsections (b) and (c) of this section, or any notification of theft or loss submitted under such subsections.

(E) Any portion of an evaluation or report of an inspection of a specific registered person conducted under subsection (f) of this section that identifies the listed agent or toxin possessed by a specific registered person or that discloses the identity or location of a specific registered person if the agency determines that public disclosure of the information would endanger public health or safety.

(2) Covered agencies

For purposes of paragraph (1) only, the Federal agencies specified in this paragraph are the following:

(A) The Department of Health and Human Services, the Department of Justice, the Department of Agriculture, and the Department of Transportation.

(B) Any Federal agency to which information specified in paragraph (1) is transferred by any agency specified in subparagraph (A) of this paragraph.

(C) Any Federal agency that is a registered person, or has a sub-agency component that is a registered person.

(D) Any Federal agency that awards grants or enters into contracts or cooperative agreements involving listed agents and toxins to or with a registered person, and to which information specified in paragraph (1) is transferred by any such registered person.

(3) Other exemptions

This subsection may not be construed as altering the application of any exemptions to public disclosure under section 552 of title 5, except as to subsection[2] 552(b)(3) of such title, to any of the information specified in paragraph (1).

(4) Rule of construction

Except as specifically provided in paragraph (1), this subsection may not be construed as altering the authority of any Federal agency to withhold under section 552 of title 5, or the obligation of any Federal agency to disclose under section 552 of title 5, any information, including information relating to—

(A) listed agents and toxins, or individuals seeking access to such agents and toxins;

(B) registered persons, or persons seeking to register their possession, use, or transfer of such agents and toxins;

(C) general safeguard and security policies and requirements under regulations under subsections (b) and (c) of this section; or

(D) summary or statistical information concerning registrations, registrants, denials or revocations of registrations, listed agents and toxins, inspection evaluations and reports, or individuals seeking access to such agents and toxins.

(5) Disclosures to Congress; other disclosures

This subsection may not be construed as providing any authority—

[2] So in original. Probably should be ''section''.

(A) to withhold information from the Congress or any committee or subcommittee thereof; or

(B) to withhold information from any person under any other Federal law or treaty.

(i) Civil money penalty

(1) In general

In addition to any other penalties that may apply under law, any person who violates any provision of regulations under subsection (b) or (c) of this section shall be subject to the United States for a civil money penalty in an amount not exceeding $250,000 in the case of an individual and $500,000 in the case of any other person.

(2) Applicability of certain provisions

The provisions of section 1320a–7a of this title (other than subsections (a), (b), (h), and (i), the first sentence of subsection (c), and paragraphs (1) and (2) of subsection (f)) shall apply to a civil money penalty under paragraph (1) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary may delegate authority under this subsection in the same manner as provided in section 1320a–7a(j)(2) of this title, and such authority shall include all powers as contained in section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

(j) Notification in event of release

Regulations under subsections (b) and (c) of this section shall require the prompt notification of the Secretary by a registered person whenever a release, meeting criteria established by the Secretary, of a listed agent or toxin has occurred outside of the biocontainment area of a facility of the registered person. Upon receipt of such notification and a finding by the Secretary that the release poses a threat to public health or safety, the Secretary shall take appropriate action to notify relevant State and local public health authorities, other relevant Federal authorities, and, if necessary, other appropriate persons (including the public). If the released listed agent or toxin is an overlap agent or toxin (as defined in subsection (*l*) of this section), the Secretary shall promptly notify the Secretary of Agriculture upon notification by the registered person.

(k) Reports

The Secretary shall report to the Congress annually on the number and nature of notifications received under subsection (e)(8) of this section (relating to theft or loss) and subsection (j) of this section (relating to releases).

(*l*) Definitions

For purposes of this section:

(1) The terms ''biological agent'' and ''toxin'' have the meanings given such terms in section 178 of title 18.

(2) The term ''listed agents and toxins'' means biological agents and toxins listed pursuant to subsection (a)(1) of this section.

(3) The term ''listed agents or toxins'' means biological agents or toxins listed pursuant to subsection (a)(1) of this section.

(4) The term ''overlap agents and toxins'' means biological agents and toxins that—

(A) are listed pursuant to subsection (a)(1) of this section; and

(B) are listed pursuant to section 8401(a)(1) of title 7.

(5) The term ''overlap agent or toxin'' means a biological agent or toxin that—

(A) is listed pursuant to subsection (a)(1) of this section; and

(B) is listed pursuant to section 8401(a)(1) of title 7.

(6) The term ''person'' includes Federal, State, and local governmental entities.

(7) The term ''registered person'' means a person registered under regulations under subsection (b) or (c) of this section.

(8) The term ''restricted person'' has the meaning given such term in section 175b of title 18.

(m) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2007.

(July 1, 1944, ch. 373, title III, § 351A, as added Pub. L. 107–188, title II, § 201(a), June 12, 2002, 116 Stat. 637; amended Pub. L. 107–296, title XVII, § 1709(a), Nov. 25, 2002, 116 Stat. 2318.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec.(g)(2)(B)(i), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Act commonly known as the Virus-Serum-Toxin Act, referred to in subsec. (g)(2)(B)(iii), is the eighth paragraph under the heading ''Bureau of Animal Industry'' of act Mar. 4, 1913, ch. 145, 37 Stat. 832, as amended, which is classified generally to chapter 5 (§ 151 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 151 of Title 21 and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (g)(2)(B)(iv), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

Section 6 of the Inspector General Act of 1978, referred to in subsec. (i)(2), is section 6 of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107–296 substituted ''collaboration with the Secretary of Homeland Security and'' for ''consultation with''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Pub. L. 107–188, title II, § 203(b), June 12, 2002, 116 Stat. 647, provided that: ''Subsection (h) of section 351A of the Public Health Service Act [subsec. (h) of this sec-

tion], as added by section 201 of this Act, is deemed to have taken effect on the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 [Pub. L. 104–132, Apr. 24, 1996, 110 Stat. 1214].''

REGULATIONS

Pub. L. 107–188, title II, § 203(a), June 12, 2002, 116 Stat. 647, provided that: ''Regulations promulgated by the Secretary of Health and Human Services under section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 [Pub. L. 104–132, set out as a note under section 262 of this title] are deemed to have been promulgated under section 351A of the Public Health Service Act [this section], as added by section 201 of this Act. Such regulations, including the list under [former] subsection (d)(1) of such section 511, that were in effect on the day before the date of the enactment of this Act [June 12, 2002] remain in effect until modified by the Secretary in accordance with such section 351A and with section 202 of this Act [set out as a note below].''

NATIONAL SCIENCE ADVISORY BOARD FOR BIOSECURITY

Pub. L. 109–417, title II, § 205, Dec. 19, 2006, 120 Stat. 2851, provided that: ''The National Science Advisory Board for Biosecurity shall, when requested by the Secretary of Health and Human Services, provide to relevant Federal departments and agencies, advice, guidance, or recommendations concerning—

''(1) a core curriculum and training requirements for workers in maximum containment biological laboratories; and

''(2) periodic evaluations of maximum containment biological laboratory capacity nationwide and assessments of the future need for increased laboratory capacity.''

REPORT TO CONGRESS

Pub. L. 107–188, title II, § 201(b), June 12, 2002, 116 Stat. 646, required the Secretary of Health and Human Services to report to Congress not later than one year after June 12, 2002, on the implementation, compliance, and future plans under this section.

IMPLEMENTATION BY DEPARTMENT OF HEALTH AND HUMAN SERVICES

Pub. L. 107–188, title II, § 202, June 12, 2002, 116 Stat. 646, provided that:

''(a) DATE CERTAIN FOR NOTICE OF POSSESSION.—Not later than 90 days after the date of the enactment of this Act [June 12, 2002], all persons (unless exempt under subsection (g) of section 351A of the Public Health Service Act [subsec. (g) of this section], as added by section 201 of this Act) in possession of biological agents or toxins listed under such section 351A of the Public Health Service Act [this section] shall notify the Secretary of Health and Human Services of such possession. Not later than 30 days after such date of enactment, the Secretary shall provide written guidance on how such notice is to be provided to the Secretary.

''(b) DATE CERTAIN FOR PROMULGATION; EFFECTIVE DATE REGARDING CRIMINAL AND CIVIL PENALTIES.—Not later than 180 days after the date of the enactment of this Act [June 12, 2002], the Secretary of Health and Human Services shall promulgate an interim final rule for carrying out section 351A of the Public Health Service Act [this section], subject to subsection (c). Such interim final rule shall take effect 60 days after the date on which such rule is promulgated, including for purposes of—

''(1) section 175b(c) of title 18, United States Code (relating to criminal penalties), as added by section 231(a)(5) of this Act; and

''(2) section 351A(i) of the Public Health Service Act [subsec. (i) of this section] (relating to civil penalties).

''(c) TRANSITIONAL PROVISION REGARDING CURRENT RESEARCH AND EDUCATION.—The interim final rule under subsection (b) shall include time frames for the applicability of the rule that minimize disruption of research or educational projects that involve biological agents and toxins listed pursuant to section 351A(a)(1) of the Public Health Service Act [subsec. (a)(1) of this section] and that were underway as of the effective date of such rule.''

§ 263. Preparation of biological products by Service

(a) The Service may prepare for its own use any product described in section 262 of this title and any product necessary to carrying out any of the purposes of section 241 of this title.

(b) The Service may prepare any product described in section 262 of this title for the use of other Federal departments or agencies, and public or private agencies and individuals engaged in work in the field of medicine when such product is not available from establishments licensed under such section.

(July 1, 1944, ch. 373, title III, § 352, 58 Stat. 703.)

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SUBPART 2—CLINICAL LABORATORIES

§ 263a. Certification of laboratories

(a) "Laboratory" or "clinical laboratory" defined

As used in this section, the term ''laboratory'' or ''clinical laboratory'' means a facility for the biological, microbiological, serological, chemical, immuno-hematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(b) Certificate requirement

No person may solicit or accept materials derived from the human body for laboratory examination or other procedure unless there is in effect for the laboratory a certificate issued by the Secretary under this section applicable to the category of examinations or procedures which includes such examination or procedure.

(c) Issuance and renewal of certificates

(1) In general

The Secretary may issue or renew a certificate for a laboratory only if the laboratory meets the requirements of subsection (d) of this section.

(2) Term

A certificate issued under this section shall be valid for a period of 2 years or such shorter period as the Secretary may establish.

(d) Requirements for certificates

(1) In general

A laboratory may be issued a certificate or have its certificate renewed if—

(A) the laboratory submits (or if the laboratory is accredited under subsection (e) of this section, the accreditation body which accredited the laboratory submits), an application—

(i) in such form and manner as the Secretary shall prescribe,

(ii) that describes the characteristics of the laboratory examinations and other procedures performed by the laboratory including—

(I) the number and types of laboratory examinations and other procedures performed,

(II) the methodologies for laboratory examinations and other procedures employed, and

(III) the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory examinations and other procedures, and

(iii) that contains such other information as the Secretary may require to determine compliance with this section, and

the laboratory agrees to provide to the Secretary (or if the laboratory is accredited, to the accreditation body which accredited it) a description of any change in the information submitted under clause (ii) not later than 6 months after the change was put into effect,

(B) the laboratory provides the Secretary—

(i) with satisfactory assurances that the laboratory will be operated in accordance with standards issued by the Secretary under subsection (f) of this section, or

(ii) with proof of accreditation under subsection (e) of this section,

(C) the laboratory agrees to permit inspections by the Secretary under subsection (g) of this section,

(D) the laboratory agrees to make records available and submit reports to the Secretary as the Secretary may reasonably require, and

(E) the laboratory agrees to treat proficiency testing samples in the same manner as it treats materials derived from the human body referred to it for laboratory examinations or other procedures in the ordinary course of business.

(2) Requirements for certificates of waiver

(A) In general

A laboratory which only performs laboratory examinations and procedures described in paragraph (3) shall be issued a certificate of waiver or have its certificate of waiver renewed if—

(i) the laboratory submits an application—

(I) in such form and manner as the Secretary shall prescribe,

(II) that describes the characteristics of the laboratory examinations and other procedures performed by the laboratory, including the number and types of laboratory examinations and other procedures performed, the methodologies for laboratory examinations and other procedures employed, and the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory examinations and other procedures, and

(III) that contains such other information as the Secretary may reasonably require to determine compliance with this section, and

(ii) the laboratory agrees to make records available and submit reports to the Secretary as the Secretary may require.

(B) Changes

If a laboratory makes changes in the examinations and other procedures performed by it only with respect to examinations and procedures which are described in paragraph (3), the laboratory shall report such changes to the Secretary not later than 6 months after the change has been put into effect. If a laboratory proposes to make changes in the examinations and procedures performed by it such that the laboratory will perform an examination or procedure not described in paragraph (3), the laboratory shall report such change to the Secretary before the change takes effect.

(C) Effect

Subsections (f) and (g) of this section shall not apply to a laboratory to which has been issued a certificate of waiver.

(3) Examinations and procedures

The examinations and procedures identified in paragraph (2) are laboratory examinations and procedures that have been approved by the Food and Drug Administration for home use or that, as determined by the Secretary, are simple laboratory examinations and procedures that have an insignificant risk of an erroneous result, including those that—

(A) employ methodologies that are so simple and accurate as to render the likelihood of erroneous results by the user negligible, or

(B) the Secretary has determined pose no unreasonable risk of harm to the patient if performed incorrectly.

(4) "Certificate" defined

As used in this section, the term ''certificate'' includes a certificate of waiver issued under paragraph (2).

(e) Accreditation

(1) In general

A laboratory may be accredited for purposes of obtaining a certificate if the laboratory—

(A) meets the standards of an approved accreditation body, and

(B) authorizes the accreditation body to submit to the Secretary (or such State agency as the Secretary may designate) such records or other information as the Secretary may require.

(2) Approval of accreditation bodies

(A) In general

The Secretary may approve a private nonprofit organization to be an accreditation body for the accreditation of laboratories if—

(i) using inspectors qualified to evaluate the methodologies used by the laboratories in performing laboratory examinations and other procedures, the accreditation body agrees to inspect a laboratory for purposes of accreditation with such frequency as determined by[1] Secretary,

(ii) the standards applied by the body in determining whether or not to accredit a laboratory are equal to or more stringent than the standards issued by the Secretary under subsection (f) of this section,

(iii) there is adequate provision for assuring that the standards of the accreditation body continue to be met by the laboratory,

(iv) in the case of any laboratory accredited by the body which has had its accreditation denied, suspended, withdrawn, or revoked or which has had any other action taken against it by the accrediting body, the accrediting body agrees to submit to the Secretary the name of such laboratory within 30 days of the action taken,

(v) the accreditation body agrees to notify the Secretary at least 30 days before it changes its standards, and

(vi) if the accreditation body has its approval withdrawn by the Secretary, the body agrees to notify each laboratory accredited by the body of the withdrawal within 10 days of the withdrawal.

(B) Criteria and procedures

The Secretary shall promulgate criteria and procedures for approving an accreditation body and for withdrawing such approval if the Secretary determines that the accreditation body does not meet the requirements of subparagraph (A).

(C) Effect of withdrawal of approval

If the Secretary withdraws the approval of an accreditation body under subparagraph (B), the certificate of any laboratory accredited by the body shall continue in effect for 60 days after the laboratory receives notification of the withdrawal of the approval, except that the Secretary may extend such period for a laboratory if it determines that the laboratory submitted an application for accreditation or a certificate in a timely manner after receipt of the notification of the withdrawal of approval. If an accreditation body withdraws or revokes the accreditation of a laboratory, the certificate of the laboratory shall continue in effect—

(i) for 45 days after the laboratory receives notice of the withdrawal or revocation of the accreditation, or

(ii) until the effective date of any action taken by the Secretary under subsection (i) of this section.

(D) Evaluations

The Secretary shall evaluate annually the performance of each approved accreditation body by—

(i) inspecting under subsection (g) of this section a sufficient number of the laboratories accredited by such body to allow a reasonable estimate of the performance of such body, and

(ii) such other means as the Secretary determines appropriate.

(3) Omitted

(f) Standards

(1) In general

The Secretary shall issue standards to assure consistent performance by laboratories issued a certificate under this section of valid and reliable laboratory examinations and other procedures. Such standards shall require each laboratory issued a certificate under this section—

(A) to maintain a quality assurance and quality control program adequate and appropriate for the validity and reliability of the laboratory examinations and other procedures of the laboratory and to meet requirements relating to the proper collection, transportation, and storage of specimens and the reporting of results,

(B) to maintain records, equipment, and facilities necessary for the proper and effective operation of the laboratory,

(C) in performing and carrying out its laboratory examinations and other procedures, to use only personnel meeting such qualifications as the Secretary may establish for the direction, supervision, and performance of examinations and procedures within the laboratory, which qualifications shall take into consideration competency, training, experience, job performance, and education and which qualifications shall, as appropriate, be different on the basis of the type of examinations and procedures being performed by the laboratory and the risks and consequences of erroneous results associated with such examinations and procedures,

(D) to qualify under a proficiency testing program meeting the standards established by the Secretary under paragraph (3), and

(E) to meet such other requirements as the Secretary determines necessary to assure consistent performance by such laboratories of accurate and reliable laboratory examinations and procedures.

(2) Considerations

In developing the standards to be issued under paragraph (1), the Secretary shall, within the flexibility provided under subparagraphs (A) through (E) of paragraph (1), take into consideration—

(A) the examinations and procedures performed and the methodologies employed,

(B) the degree of independent judgment involved,

(C) the amount of interpretation involved,

(D) the difficulty of the calculations involved,

(E) the calibration and quality control requirements of the instruments used,

[1] So in original. Probably should be ''by the''.

(F) the type of training required to operate the instruments used in the methodology, and

(G) such other factors as the Secretary considers relevant.

(3) Proficiency testing program

(A) In general

The Secretary shall establish standards for the proficiency testing programs for laboratories issued a certificate under this section which are conducted by the Secretary, conducted by an organization approved under subparagraph (C), or conducted by an approved accrediting body. The standards shall require that a laboratory issued a certificate under this section be tested for each examination and procedure conducted within a category of examinations or procedures for which it has received a certificate, except for examinations and procedures for which the Secretary has determined that a proficiency test cannot reasonably be developed. The testing shall be conducted on a quarterly basis, except where the Secretary determines for technical and scientific reasons that a particular examination or procedure may be tested less frequently (but not less often than twice per year).

(B) Criteria

The standards established under subparagraph (A) shall include uniform criteria for acceptable performance under a proficiency testing program, based on the available technology and the clinical relevance of the laboratory examination or other procedure subject to such program. The criteria shall be established for all examinations and procedures and shall be uniform for each examination and procedure. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory has performed acceptably for a particular quarter and acceptably for a particular examination or procedure or category of examination or procedure over a period of successive quarters.

(C) Approved proficiency testing programs

For the purpose of administering proficiency testing programs which meet the standards established under subparagraph (A), the Secretary shall approve a proficiency testing program offered by a private nonprofit organization or a State if the program meets the standards established under subparagraph (A) and the organization or State provides technical assistance to laboratories seeking to qualify under the program. The Secretary shall evaluate each program approved under this subparagraph annually to determine if the program continues to meet the standards established under subparagraph (A) and shall withdraw the approval of any program that no longer meets such standards.

(D) Onsite testing

The Secretary shall perform, or shall direct a program approved under subparagraph (C) to perform, onsite proficiency testing to assure compliance with the requirements of subsection (d)(5) of this section. The Secretary shall perform, on an onsite or other basis, proficiency testing to evaluate the performance of a proficiency testing program approved under subparagraph (C) and to assure quality performance by a laboratory.

(E) Training, technical assistance, and enhanced proficiency testing

The Secretary may, in lieu of or in addition to actions authorized under subsection (h), (i), or (j) of this section, require any laboratory which fails to perform acceptably on an individual examination and procedure or a category of examination and procedures—

(i) to undertake training and to obtain the necessary technical assistance to meet the requirements of the proficency[2] testing program,

(ii) to enroll in a program of enhanced proficiency testing, or

(iii) to undertake any combination of the training, technical assistance, or testing described in clauses (i) and (ii).

(F) Testing results

The Secretary shall establish a system to make the results of the proficiency testing programs subject to the standards established by the Secretary under subparagraph (A) available, on a reasonable basis, upon request of any person. The Secretary shall include with results made available under this subparagraph such explanatory information as may be appropriate to assist in the interpretation of such results.

(4) National standards for quality assurance in cytology services

(A) Establishment

The Secretary shall establish national standards for quality assurance in cytology services designed to assure consistent performance by laboratories of valid and reliable cytological services.

(B) Standards

The standards established under subparagraph (A) shall include—

(i) the maximum number of cytology slides that any individual may screen in a 24-hour period,

(ii) requirements that a clinical laboratory maintain a record of (I) the number of cytology slides screened during each 24-hour period by each individual who examines cytology slides for the laboratory, and (II) the number of hours devoted during each 24-hour period to screening cytology slides by such individual,

(iii) criteria for requiring rescreening of cytological preparations, such as (I) random rescreening of cytology specimens determined to be in the benign category, (II) focused rescreening of such preparations in high risk groups, and (III) for each abnormal cytological result, rescreening of all prior cytological specimens for the patient, if available,

[2] So in original. Probably should be ''proficiency''.

(iv) periodic confirmation and evaluation of the proficiency of individuals involved in screening or interpreting cytological preparations, including announced and unannounced on-site proficiency testing of such individuals, with such testing to take place, to the extent practicable, under normal working conditions,

(v) procedures for detecting inadequately prepared slides, for assuring that no cytological diagnosis is rendered on such slides, and for notifying referring physicians of such slides,

(vi) requirements that all cytological screening be done on the premises of a laboratory that is certified under this section,

(vii) requirements for the retention of cytology slides by laboratories for such periods of time as the Secretary considers appropriate, and

(viii) standards requiring periodic inspection of cytology services by persons capable of evaluating the quality of cytology services.

(g) Inspections

(1) In general

The Secretary may, on an announced or unannounced basis, enter and inspect, during regular hours of operation, laboratories which have been issued a certificate under this section. In conducting such inspections the Secretary shall have access to all facilities, equipment, materials, records, and information that the Secretary determines have a bearing on whether the laboratory is being operated in accordance with this section. As part of such an inspection the Secretary may copy any such material or require to it[3] be submitted to the Secretary. An inspection under this paragraph may be made only upon presenting identification to the owner, operator, or agent in charge of the laboratory being inspected.

(2) Compliance with requirements and standards

The Secretary shall conduct inspections of laboratories under paragraph (1) to determine their compliance with the requirements of subsection (d) of this section and the standards issued under subsection (f) of this section. Inspections of laboratories not accredited under subsection (e) of this section shall be conducted on a biennial basis or with such other frequency as the Secretary determines to be necessary to assure compliance with such requirements and standards. Inspections of laboratories accredited under subsection (e) of this section shall be conducted on such basis as the Secretary determines is necessary to assure compliance with such requirements and standards.

(h) Intermediate sanctions

(1) In general

If the Secretary determines that a laboratory which has been issued a certificate under this section no longer substantially meets the requirements for the issuance of a certificate, the Secretary may impose intermediate sanctions in lieu of the actions authorized by subsection (i) of this section.

(2) Types of sanctions

The intermediate sanctions which may be imposed under paragraph (1) shall consist of—

(A) directed plans of correction,

(B) civil money penalties in an amount not to exceed $10,000 for each violation listed in subsection (i)(1) of this section or for each day of substantial noncompliance with the requirements of this section,

(C) payment for the costs of onsite monitoring, or

(D) any combination of the actions described in subparagraphs (A), (B), and (C).

(3) Procedures

The Secretary shall develop and implement procedures with respect to when and how each of the intermediate sanctions is to be imposed under paragraph (1). Such procedures shall provide for notice to the laboratory and a reasonable opportunity to respond to the proposed sanction and appropriate procedures for appealing determinations relating to the imposition of intermediate sanctions[4]

(i) Suspension, revocation, and limitation

(1) In general

Except as provided in paragraph (2), the certificate of a laboratory issued under this section may be suspended, revoked, or limited if the Secretary finds, after reasonable notice and opportunity for hearing to the owner or operator of the laboratory, that such owner or operator or any employee of the laboratory—

(A) has been guilty of misrepresentation in obtaining the certificate,

(B) has performed or represented the laboratory as entitled to perform a laboratory examination or other procedure which is not within a category of laboratory examinations or other procedures authorized in the certificate,

(C) has failed to comply with the requirements of subsection (d) of this section or the standards prescribed by the Secretary under subsection (f) of this section,

(D) has failed to comply with reasonable requests of the Secretary for—

(i) any information or materials, or

(ii) work on materials,

that the Secretary concludes is necessary to determine the laboratory's continued eligibility for its certificate or continued compliance with the Secretary's standards under subsection (f) of this section,

(E) has refused a reasonable request of the Secretary, or any Federal officer or employee duly designated by the Secretary, for permission to inspect the laboratory and its operations and pertinent records during the hours the laboratory is in operation,

(F) has violated or aided and abetted in the violation of any provisions of this section or of any regulation promulgated thereunder, or

[3] So in original. Probably should be ''require it to''.

[4] So in original. Probably should be followed by a period.

(G) has not complied with an intermediate sanction imposed under subsection (h) of this section.

(2) Action before a hearing

If the Secretary determines that—

(A) the failure of a laboratory to comply with the standards of the Secretary under subsection (f) of this section presents an imminent and serious risk to human health, or

(B) a laboratory has engaged in an action described in subparagraph (D) or (E) of paragraph (1),

the Secretary may suspend or limit the certificate of the laboratory before holding a hearing under paragraph (1) regarding such failure or refusal. The opportunity for a hearing shall be provided no later than 60 days from the effective date of the suspension or limitation. A suspension or limitation under this paragraph shall stay in effect until the decision of the Secretary made after the hearing under paragraph (1).

(3) Ineligibility to own or operate laboratories after revocation

No person who has owned or operated a laboratory which has had its certificate revoked may, within 2 years of the revocation of the certificate, own or operate a laboratory for which a certificate has been issued under this section. The certificate of a laboratory which has been excluded from participation under the medicare program under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] because of actions relating to the quality of the laboratory shall be suspended for the period the laboratory is so excluded.

(4) Improper referrals

Any laboratory that the Secretary determines intentionally refers its proficiency testing samples to another laboratory for analysis shall have its certificate revoked for at least one year and shall be subject to appropriate fines and penalties as provided for in subsection (h) of this section.

(j) Injunctions

Whenever the Secretary has reason to believe that continuation of any activity by a laboratory would constitute a significant hazard to the public health the Secretary may bring suit in the district court of the United States for the district in which such laboratory is situated to enjoin continuation of such activity. Upon proper showing, a temporary injunction or restraining order against continuation of such activity pending issuance of a final order under this subsection shall be granted without bond by such court.

(k) Judicial review

(1) Petition

Any laboratory which has had an intermediate sanction imposed under subsection (h) of this section or has had its certificate suspended, revoked, or limited under subsection (i) of this section may, at any time within 60 days after the date the action of the Secretary under subsection (i) or (h) of this section becomes final, file a petition with the United States court of appeals for the circuit wherein the laboratory has its principal place of business for judicial review of such action. As soon as practicable after receipt of the petition, the clerk of the court shall transmit a copy of the petition to the Secretary or other officer designated by the Secretary for that purpose. As soon as practicable after receipt of the copy, the Secretary shall file in the court the record on which the action of the Secretary is based, as provided in section 2112 of title 28.

(2) Additional evidence

If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal of such additional evidence) to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, by reason of the additional evidence so taken, and the Secretary shall file such modified or new findings, and the recommendations of the Secretary, if any, for the modification or setting aside of his original action, with the return of such additional evidence.

(3) Judgment of court

Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to affirm the action, or to set it aside in whole or in part, temporarily or permanently. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) Finality of judgment

The judgment of the court affirming or setting aside, in whole or in part, any such action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(*l*) Sanctions

Any person who intentionally violates any requirement of this section or any regulation promulgated thereunder shall be imprisoned for not more than one year or fined under title 18, or both, except that if the conviction is for a second or subsequent violation of such a requirement such person shall be imprisoned for not more than 3 years or fined in accordance with title 18, or both.

(m) Fees

(1) Certificate fees

The Secretary shall require payment of fees for the issuance and renewal of certificates, except that the Secretary shall only require a nominal fee for the issuance and renewal of certificates of waiver.

(2) Additional fees

The Secretary shall require the payment of fees for inspections of laboratories which are

not accredited and for the cost of performing proficiency testing on laboratories which do not participate in proficiency testing programs approved under subsection (f)(3)(C) of this section.

(3) Criteria

(A) Fees under paragraph (1)

Fees imposed under paragraph (1) shall be sufficient to cover the general costs of administering this section, including evaluating and monitoring proficiency testing programs approved under subsection (f) of this section and accrediting bodies and implementing and monitoring compliance with the requirements of this section.

(B) Fees under paragraph (2)

Fees imposed under paragraph (2) shall be sufficient to cover the cost of the Secretary in carrying out the inspections and proficiency testing described in paragraph (2).

(C) Fees imposed under paragraphs (1) and (2)

Fees imposed under paragraphs (1) and (2) shall vary by group or classification of laboratory, based on such considerations as the Secretary determines are relevant, which may include the dollar volume and scope of the testing being performed by the laboratories.

(n) Information

On April 1, 1990 and annually thereafter, the Secretary shall compile and make available to physicians and the general public information, based on the previous calendar year, which the Secretary determines is useful in evaluating the performance of a laboratory, including—

(1) a list of laboratories which have been convicted under Federal or State laws relating to fraud and abuse, false billings, or kickbacks,

(2) a list of laboratories—

(A) which have had their certificates revoked, suspended, or limited under subsection (i) of this section, or

(B) which have been the subject of a sanction under subsection (*l*) of this section,

together with a statement of the reasons for the revocation, suspension, limitation, or sanction,

(3) a list of laboratories subject to intermediate sanctions under subsection (h) of this section together with a statement of the reasons for the sanctions,

(4) a list of laboratories whose accreditation has been withdrawn or revoked together with a statement of the reasons for the withdrawal or revocation,

(5) a list of laboratories against which the Secretary has taken action under subsection (j) of this section together with a statement of the reasons for such action, and

(6) a list of laboratories which have been excluded from participation under title XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.].

The information to be compiled under paragraphs (1) through (6) shall be information for the calendar year preceding the date the information is to be made available to the public and shall be accompanied by such explanatory information as may be appropriate to assist in the interpretation of the information compiled under such paragraphs.

(*o*) Delegation

In carrying out this section, the Secretary may, pursuant to agreement, use the services or facilities of any Federal or State or local public agency or nonprofit private organization, and may pay therefor in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(p) State laws

(1) Except as provided in paragraph (2), nothing in this section shall be construed as affecting the power of any State to enact and enforce laws relating to the matters covered by this section to the extent that such laws are not inconsistent with this section or with the regulations issued under this section.

(2) If a State enacts laws relating to matters covered by this section which provide for requirements equal to or more stringent than the requirements of this section or than the regulations issued under this section, the Secretary may exempt clinical laboratories in that State from compliance with this section.

(q) Consultations

In carrying out this section, the Secretary shall consult with appropriate private organizations and public agencies.

(July 1, 1944, ch. 373, title III, § 353, as added Pub. L. 90–174, § 5(a), Dec. 5, 1967, 81 Stat. 536; amended Pub. L. 100–578, § 2, Oct. 31, 1988, 102 Stat. 2903; Pub. L. 105–115, title I, § 123(h), Nov. 21, 1997, 111 Stat. 2324.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (i)(3) and (n)(6), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Subsec. (e)(3) of this section, which required the Secretary to annually prepare and submit to certain committees of Congress a report describing the results of the evaluation conducted under subsec. (e)(2)(D) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 96 of House Document No. 103–7.

AMENDMENTS

1997—Subsec. (d)(3). Pub. L. 105–115 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The examinations and procedures identified in paragraph (2) are simple laboratory examinations and procedures which, as determined by the Secretary, have an insignificant risk of an erroneous result, including those which—

''(A) have been approved by the Food and Drug Administration for home use,

''(B) employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible, or

''(C) the Secretary has determined pose no reasonable risk of harm to the patient if performed incorrectly.''

1988—Pub. L. 100–578 substituted ''Certification of laboratories'' for ''Licensing of laboratories'' in section catchline, and amended text generally, revising and restating as subsecs. (a) to (q) provisions of former subsecs. (a) to (*l*).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–115 effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105–115, set out as a note under section 321 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1988 AMENDMENT; EXCEPTIONS; CONTINUING APPLICABILITY

Section 3 of Pub. L. 100–578 provided that: ''Subsections (g)(1), (h), (i), (j), (k), (*l*), and (m) of section 353 of the Public Health Service Act [this section], as amended by section 101 [probably means section 2 of Pub. L. 100–578], shall take effect January 1, 1989, except that any reference in such subsections to the standards established under subsection (f) shall be considered a reference to the standards established under subsection (d) of such section 353, as in effect on December 31, 1988. During the period beginning January 1, 1989, and ending December 31, 1989, subsections (a) through (d) and subsection (i) through (*l*) of such section 353 as in effect on December 31, 1988, shall continue to apply to clinical laboratories. The remaining subsections of such section 353, as so amended, shall take effect January 1, 1990, except that subsections (f)(1)(C) and (g)(2) shall take effect July 1, 1991, with respect to laboratories which were not subject to the requirements of such section 353 as in effect on December 31, 1988.''

EFFECTIVE DATE

Section 5(b) of Pub. L. 90–174 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective on the first day of the thirteenth month after the month [December 1967] in which it is enacted, except that the Secretary of Health, Education, and Welfare may postpone such effective date for such additional period as he finds necessary, but not beyond the first day of the 19th month after such month [December 1967] in which the amendment is enacted.''

STUDIES

Section 4 of Pub. L. 100–578 directed Secretary to conduct studies and submit report to Congress, not later than May 1, 1990, relating to the reliability and quality control procedures of clinical laboratory testing programs and the effect of errors in the testing procedures and results on the diagnosis and treatment of patients.

§ 263a–1. Assisted reproductive technology programs

(a) In general

Effective 2 years after October 24, 1992, each assisted reproductive technology (as defined in section 263a–7[1] of this title) program shall annually report to the Secretary through the Centers for Disease Control—

(1) pregnancy success rates achieved by such program through each assisted reproductive technology, and

(2) the identity of each embryo laboratory (as defined in section 263a–7[1] of this title) used by such program and whether the laboratory is certified under section 263a–2 of this title or has applied for such certification.

(b) Pregnancy success rates

(1) In general

For purposes of subsection (a)(1) of this section, the Secretary shall, in consultation with the organizations referenced in subsection (c) of this section, define pregnancy success rates and shall make public any proposed definition in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development.

(2) Definition

In developing the definition of pregnancy success rates, the Secretary shall take into account the effect on success rates of age, diagnosis, and other significant factors and shall include in such rates—

(A) the basic live birth rate calculated for each assisted reproductive technology performed by an assisted reproductive technology program by dividing the number of pregnancies which result in live births by the number of ovarian stimulation procedures attempted by such program, and

(B) the live birth rate per successful oocyte retrieval procedure calculated for each assisted reproductive technology performed by an assisted reproductive technology program by dividing the number of pregnancies which result in live births by the number of successful oocyte retrieval procedures performed by such program.

(c) Consultation

In developing the definition under subsection (b) of this section, the Secretary shall consult with appropriate consumer and professional organizations with expertise in using, providing, and evaluating professional services and embryo laboratories associated with assisted reproductive technologies.

(Pub. L. 102–493, § 2, Oct. 24, 1992, 106 Stat. 3146.)

REFERENCES IN TEXT

Section 263a–7 of this title, referred to in subsec. (a), was in the original ''section 7'' meaning section 7 of Pub. L. 102–493, which was translated as reading section 8 to reflect the probable intent of Congress, because definitions are contained in section 8 instead of section 7.

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section 9 of Pub. L. 102–493 provided that: ''This Act [enacting this section, sections 263a–2 to 263a–7 of this title, and provisions set out as a note under section 201 of this title] shall take effect upon the expiration of 2 years after the date of the enactment of this Act [Oct. 24, 1992].''

§ 263a–2. Certification of embryo laboratories

(a) In general

(1) Development

Not later than 2 years after October 24, 1992, the Secretary, through the Centers for Disease Control, shall develop a model program for the

[1] See References in Text note below.

certification of embryo laboratories (referred to in this section as a ''certification program'') to be carried out by the States.

(2) Consultation

In developing the certification program under paragraph (1), the Secretary shall consult with appropriate consumer and professional organizations with expertise in using, providing, and evaluating professional services and embryo laboratories associated with the assisted reproductive technology programs.

(b) Distribution

The Secretary shall distribute a description of the certification program to—

(1) the Governor of each State,

(2) the presiding officers of each State legislature,

(3) the public health official of each State, and

(4) the official responsible in each State for the operation of the State's contract with the Secretary under section 1395aa of this title,

and shall encourage such officials to assist in the State adopting such program.

(c) Requirements

The certification program shall include the following requirements:

(1) Administration

The certification program shall be administered by the State and shall provide for the inspection and certification of embryo laboratories in the State by the State or by approved accreditation organizations.

(2) Application requirements

The certification program shall provide for the submission of an application to a State by an embryo laboratory for certification, in such form as may be specified by the State. Such an application shall include—

(A) assurances satisfactory to the State that the embryo laboratory will be operated in accordance with the standards under subsection (d) of this section,

(B) a report to the State identifying the assisted reproductive technology programs with which the laboratory is associated, and

(C) such other information as the State finds necessary.

An embryo laboratory which meets the requirements of section 263a of this title shall, for the purposes of subparagraph (A) be considered in compliance with the standards referred to in such subparagraph which are the same as the standards in effect under section 263a of this title.

(d) Standards

The certification program shall include the following standards developed by the Secretary:

(1) A standard to assure consistent performance of procedures by each embryo laboratory certified under the certification program or by an approved accreditation organization in a State which has not adopted the certification program.

(2) A standard for a quality assurance and a quality control program to assure valid, reliable, and reproduceable[1] procedures in the laboratory.

(3) A standard for the maintenance of records (on a program by program basis) on laboratory tests and procedures performed, including the scientific basis of, and the methodology used for, the tests, procedures, and preparation of any standards or controls, criteria for acceptable and unacceptable outcomes, criteria for sample rejection, and procedures for safe sample disposal.

(4) A standard for the maintenance of written records on personnel and facilities necessary for proper and effective operation of the laboratory, schedules of preventive maintenance, function verification for equipment, and the release of such records to the State upon demand.

(5) A standard for the use of such personnel who meet such qualifications as the Secretary may develop.

(e) Certification under State programs

A State may qualify to adopt the certification program if the State has submitted an application to the Secretary to adopt such program and the Secretary has approved the application. Such an application shall include—

(1) assurances by the State satisfactory to the Secretary that the certification program within the State meets the requirements of this section,

(2) an agreement to make such reports as the Secretary may require, and

(3) information about any proposed use of accreditation organizations under subsection (g)[2] of this section.

(f) Use of accreditation organizations

A State which has adopted the certification program may use accreditation organizations approved under section 263a–3 of this title to inspect and certify embryo laboratories.

(g) Inspections

(1) In general

A State which qualifies to adopt the certification program within the State shall conduct inspections in accordance with paragraph (2) to determine if laboratories in the State meet the requirements of such program. Such inspections shall be carried out by the State or by accreditation organizations used by the State under subsection (g)[2] of this section.

(2) Requirements

Inspections carried out under paragraph (1) shall—

(A) be periodic and unannounced, or

(B) be announced in such circumstances as the Secretary determines will not diminish the likelihood of discovering deficiencies in the operations of a laboratory.

Before making a determination under subparagraph (B), the Secretary shall make public, in such manner as to facilitate comment from any person (including any Federal or other public agency), a proposal indicating the circumstances under which announced inspections would be permitted.

[1] So in original. Probably should be ''reproducible''.

[2] So in original. Probably should be subsection ''(f)''.

(3) Results

The specific findings, including deficiencies, identified in an inspection carried out under paragraph (1) and any subsequent corrections to those deficiencies shall be announced and made available to the public upon request beginning no later than 60 days after the date of the inspection.

(h) Validation inspections

(1) In general

The Secretary may enter and inspect, during regular hours of operation, embryo laboratories—

(A) which have been certified by a State under the certification program, or

(B) which have been certified by an accreditation organization approved by the Secretary under section 263a–3 of this title,

for the purpose of determining whether the laboratory is being operated in accordance with the standards in subsection (d) of this section.

(2) Access to facilities and records

In conducting an inspection of an embryo laboratory under paragraph (1), the Secretary shall have access to all facilities, equipment, materials, records, and information which the Secretary determines is necessary to determine if such laboratory is being operated in accordance with the standards in subsection (d) of this section. As part of such an inspection, the Secretary may copy any material, record, or information inspected or require it to be submitted to the Secretary. Such an inspection may be made only upon the presentation of identification to the owner, operator, or agent in charge of the laboratory being inspected.

(3) Failure to comply

If the Secretary determines as a result of an inspection under paragraph (1) that the embryo laboratory is not in compliance with the standards in subsection (d) of this section, the Secretary shall—

(A) notify the State in which the laboratory is located and, if appropriate, the accreditation organization which certified the laboratory,

(B) make available to the public the results of the inspection,

(C) conduct additional inspections of other embryo laboratories under paragraph (1) to determine if—

(i) such State in carrying out the certification program is reliably identifying the deficiencies of such laboratory, or

(ii) the accreditation organization which certified such laboratories is reliably identifying such deficencies,[3] and

(D) if the Secretary determines—

(i) that such State in carrying out the certification program has not met the requirements applicable to such program, or

(ii) the accreditation organization which certified such laboratory has not met the requirements of section 263a–3 of this title,

the Secretary may revoke the approval of the State certification program or revoke the approval of such accreditation organization.

(i) Limitation

(1) Secretary

In developing the certification program, the Secretary may not establish any regulation, standard, or requirement which has the effect of exercising supervision or control over the practice of medicine in assisted reproductive technology programs.

(2) State

In adopting the certification program, a State may not establish any regulation, standard, or requirement which has the effect of exercising supervision or control over the practice of medicine in assisted reproductive technology programs.

(j) Term

The term of a certification issued by a State or an accreditation organization in a State shall be prescribed by the Secretary in the certification program and shall be valid for a period of time to be defined by the Secretary through the public comment process described in subsection (h)(2)[4] of this section. The Secretary shall provide an application for recertification to be submitted at the time of changes in the ownership of a certified laboratory or changes in the administration of such a laboratory.

(Pub. L. 102–493, § 3, Oct. 24, 1992, 106 Stat. 3146.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

§ 263a–3. Accreditation organizations

(a) Approval of accreditation organizations

Not later than 2 years after October 24, 1992, the Secretary, through the Centers for Disease Control, shall promulgate criteria and procedures for the approval of accreditation organizations to inspect and certify embryo laboratories. The procedures shall require an application to the Secretary by an accreditation organization for approval. An accreditation organization which has received such an approval—

(1) may be used by States in the certification program under section 263a–2 of this title to inspect and certify embryo laboratories, or

(2) may certify embryo laboratories in States which have not adopted such a certification program.

[3] So in original. Probably should be ''deficiencies,''.

[4] So in original. Probably should be subsection ''(g)(2)''.

(b) Criteria and procedures

The criteria and procedures promulgated under subsection (a) of this section shall include—

(1) requirements for submission of such reports and the maintenance of such records as the Secretary or a State may require, and

(2) requirements for the conduct of inspections under section 263a–2(h)[1] of this title.

(c) Evaluations

The Secretary shall evaluate annually the performance of each accreditation organization approved by the Secretary by—

(1) inspecting under section 263a–2(i)[2] of this title a sufficient number of embryo laboratories accredited by such an organization to allow a reasonable estimate of the performance of such organization, and

(2) such other means as the Secretary determines to be appropriate.

(d) Transition

If the Secretary revokes approval under section 263a–2(i)(3)(D)[3] of this title of an accreditation organization after an evaluation under subsection (c) of this section, the certification of any embryo laboratory accredited by the organization shall continue in effect for 60 days after the laboratory is notified by the Secretary of the withdrawal of approval, except that the Secretary may extend the period during which the certification shall remain in effect if the Secretary determines that the laboratory submitted an application to another approved accreditation organization for certification after receipt of such notice in a timely manner.

(Pub. L. 102–493, § 4, Oct. 24, 1992, 106 Stat. 3150.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

§ 263a–4. Certification revocation and suspension

(a) In general

A certification issued by a State or an accreditation organization for an embryo laboratory shall be revoked or suspended if the State or organization finds, on the basis of inspections and after reasonable notice and opportunity for hearing to the owner or operator of the laboratory, that the owner or operator or any employee of the laboratory—

(1) has been guilty of misrepresentation in obtaining the certification,

(2) has failed to comply with any standards under section 263a–2 of this title applicable to the certification, or

(3) has refused a request of the State or accreditation organization for permission to inspect the laboratory, its operations, and records.

(b) Effect

If the certification of an embryo laboratory is revoked or suspended, the certification of the laboratory shall continue in effect for 60 days after the laboratory receives notice of the revocation or suspension. If the certification of an embryo laboratory is revoked or suspended, the laboratory may apply for recertification after one year after the date of the revocation or suspension.

(Pub. L. 102–493, § 5, Oct. 24, 1992, 106 Stat. 3150.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

§ 263a–5. Publication

The Secretary, through the Centers for Disease Control, shall not later than 3 years after October 24, 1992, and annually thereafter publish and distribute to the States and the public—

(1)(A)[1] pregnancy success rates reported to the Secretary under section 263a–1(a)(1) of this title and, in the case of an assisted reproductive technology program which failed to report one or more success rates as required under such section, the name of each such program and each pregnancy success rate which the program failed to report, and

(B) from information reported under section 263a–1(a)(2) of this title—

(i) the identity of each embryo laboratory in a State which has adopted the certification program under such program and whether such laboratory is certified under section 263a–2 of this title,

(ii) the identity of each embryo laboratory in a State which has not adopted such certification program and which has been certified by an accreditation organization approved by the Secretary under section 263a–3 of this title, and

(iii) in the case of an embryo laboratory which is not certified under section 263a–2 of this title or certified by an accreditation organization approved by the Secretary under section 263a–3 of this title, whether the laboratory applied for certification.

(Pub. L. 102–493, § 6, Oct. 24, 1992, 106 Stat. 3151.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

[1] So in original. Probably should be section "263a–2(g)".

[2] So in original. Probably should be section "263a–2(h)".

[3] So in original. Probably should be section "263a–2(h)(3)(D)".

[1] So in original. No par. (2) has been enacted.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

§ 263a–6. Fees

The Secretary may require the payment of fees for the purpose of, and in an amount sufficient to cover the cost of, administering sections 263a–1 to 263a–7 of this title. A State operating a program under section 263a–2 of this title may require the payment of fees for the purpose of, and in an amount sufficient to cover the costs of, administering its program.

(Pub. L. 102–493, § 7, Oct. 24, 1992, 106 Stat. 3151.)

REFERENCES IN TEXT

Sections 263a–1 to 263a–7 of this title, referred to in text, was in the original ''this Act'', meaning Pub. L. 102–493, Oct. 24, 1992, 106 Stat. 3146, known as the Fertility Clinic Success Rate and Certification Act of 1992, which enacted sections 263a–1 to 263a–7 of this title and provisions set out as notes under sections 201 and 263a–1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

§ 263a–7. Definitions

For purposes of sections 263a–1 to 263a–7 of this title:

(1) Assisted reproductive technology

The term ''assisted reproductive technology'' means all treatments or procedures which include the handling of human oocytes or embryos, including in vitro fertilization, gamete intrafallopian transfer, zygote intrafallopian transfer, and such other specific technologies as the Secretary may include in this definition, after making public any proposed definition in such manner as to facilitate comment from any person (including any Federal or other public agency).

(2) Embryo laboratory

The term ''embryo laboratory'' means a facility in which human oocytes are subject to assisted reproductive technology treatment or procedures based on manipulation of oocytes or embryos which are subject to implantation.

(3) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(Pub. L. 102–493, § 8, Oct. 24, 1992, 106 Stat. 3151.)

REFERENCES IN TEXT

Sections 263a–1 to 263a–7 of this title, referred to in text, was in the original ''this Act'', meaning Pub. L. 102–493, Oct. 24, 1992, 106 Stat. 3146, known as the Fertility Clinic Success Rate and Certification Act of 1992, which enacted sections 263a–1 to 263a–7 of this title and provisions set out as notes under sections 201 and 263a–1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

SUBPART 3—MAMMOGRAPHY FACILITIES

PRIOR PROVISIONS

A prior subpart 3 of part F of title III of the Public Health Service Act, comprising this subpart, was renumbered subchapter C of chapter V of the Federal Food, Drug, and Cosmetic Act, by Pub. L. 101–629, § 19(a)(4), Nov. 28, 1990, 104 Stat. 4530, as amended by Pub. L. 103–80, § 4(a)(2), Aug. 13, 1993, 107 Stat. 779, and is classified to part C (§ 360hh et seq.) of subchapter V of chapter 9 of Title 21, Food and Drugs.

§ 263b. Certification of mammography facilities

(a) Definitions

As used in this section:

(1) Accreditation body

The term ''accreditation body'' means a body that has been approved by the Secretary under subsection (e)(1)(A) of this section to accredit mammography facilities.

(2) Certificate

The term ''certificate'' means the certificate described in subsection (b)(1) of this section.

(3) Facility

(A) In general

The term ''facility'' means a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility as determined by the Secretary, that conducts breast cancer screening or diagnosis through mammography activities. Such term does not include a facility of the Department of Veterans Affairs.

(B) Activities

For the purposes of this section, the activities of a facility include the operation of equipment to produce the mammogram, the processing of the film, the initial interpretation of the mammogram and the viewing conditions for that interpretation. Where procedures such as the film processing, or the interpretation of the mammogram are performed in a location different from where the mammogram is performed, the facility performing the mammogram shall be responsible for meeting the quality standards described in subsection (f) of this section.

(4) Inspection

The term ''inspection'' means an onsite evaluation of the facility by the Secretary, or

State or local agency on behalf of the Secretary.

(5) Mammogram

The term ''mammogram'' means a radiographic image produced through mammography.

(6) Mammography

The term ''mammography'' means radiography of the breast.

(7) Survey

The term ''survey'' means an onsite physics consultation and evaluation performed by a medical physicist as described in subsection (f)(1)(E) of this section.

(8) Review physician

The term ''review physician'' means a physician as prescribed by the Secretary under subsection (f)(1)(D) of this section who meets such additional requirements as may be established by an accreditation body under subsection (e) of this section and approved by the Secretary to review clinical images under subsection (e)(1)(B)(i) of this section on behalf of the accreditation body.

(b) Certificate requirement

(1) Certificate

No facility may conduct an examination or procedure described in paragraph (2) involving mammography after October 1, 1994, unless the facility obtains—

(A) a certificate or a temporary renewal certificate—

(i) that is issued, and, if applicable, renewed, by the Secretary in accordance with paragraphs[1] (1) or (2) of subsection (c) of this section;

(ii) that is applicable to the examination or procedure to be conducted; and

(iii) that is displayed prominently in such facility; or

(B) a provisional certificate or a limited provisional certificate—

(i) that is issued by the Secretary in accordance with paragraphs (3) and (4) of subsection (c) of this section;

(ii) that is applicable to the examination or procedure to be conducted; and

(iii) that is displayed prominently in such facility.

The reference to a certificate in this section includes a temporary renewal certificate, provisional certificate, or a limited provisional certificate.

(2) Examination or procedure

A facility shall obtain a certificate in order to—

(A) operate radiological equipment that is used to image the breast;

(B) provide for the interpretation of a mammogram produced by such equipment at the facility or under arrangements with a qualified individual at a facility different from where the mammography examination is performed; and

(C) provide for the processing of film produced by such equipment at the facility or under arrangements with a qualified individual at a facility different from where the mammography examination is performed.

(c) Issuance and renewal of certificates

(1) In general

The Secretary may issue or renew a certificate for a facility if the person or agent described in subsection (d)(1)(A) of this section meets the applicable requirements of subsection (d)(1) of this section with respect to the facility. The Secretary may issue or renew a certificate under this paragraph for not more than 3 years.

(2) Temporary renewal certificate

The Secretary may issue a temporary renewal certificate, for a period of not to exceed 45 days, to a facility seeking reaccreditation if the accreditation body has issued an accreditation extension, for a period of not to exceed 45 days, for any of the following:

(A) The facility has submitted the required materials to the accreditation body within the established time frames for the submission of such materials but the accreditation body is unable to complete the reaccreditation process before the certification expires.

(B) The facility has acquired additional or replacement equipment, or has had significant personnel changes or other unforeseen situations that have caused the facility to be unable to meet reaccreditation timeframes, but in the opinion of the accreditation body have not compromised the quality of mammography.

(3) Limited provisional certificate

The Secretary may, upon the request of an accreditation body, issue a limited provisional certificate to an entity to enable the entity to conduct examinations for educational purposes while an onsite visit from an accreditation body is in progress. Such certificate shall be valid only during the time the site visit team from the accreditation body is physically in the facility, and in no case shall be valid for longer than 72 hours. The issuance of a certificate under this paragraph, shall not preclude the entity from qualifying for a provisional certificate under paragraph (4).

(4) Provisional certificate

The Secretary may issue a provisional certificate for an entity to enable the entity to qualify as a facility. The applicant for a provisional certificate shall meet the requirements of subsection (d)(1) of this section, except providing information required by clauses (iii) and (iv) of subsection (d)(1)(A) of this section. A provisional certificate may be in effect no longer than 6 months from the date it is issued, except that it may be extended once for a period of not more than 90 days if the owner, lessor, or agent of the facility demonstrates to the Secretary that without such extension access to mammography in the geographic area served by the facility would be significantly reduced and if the owner, lessor, or agent of the facility will describe in a report to the

[1] So in original. Probably should be ''paragraph''.

Secretary steps that will be taken to qualify the facility for certification under subsection (b)(1) of this section.

(d) Application for certificate

(1) Submission

The Secretary may issue or renew a certificate for a facility if—

(A) the person who owns or leases the facility or an authorized agent of the person, submits to the Secretary, in such form and manner as the Secretary shall prescribe, an application that contains at a minimum—

(i) a description of the manufacturer, model, and type of each x-ray machine, image receptor, and processor operated in the performance of mammography by the facility;

(ii) a description of the procedures currently used to provide mammography at the facility, including—

(I) the types of procedures performed and the number of such procedures performed in the prior 12 months;

(II) the methodologies for mammography; and

(III) the names and qualifications (educational background, training, and experience) of the personnel performing mammography and the physicians reading and interpreting the results from the procedures;

(iii) proof of on-site survey by a qualified medical physicist as described in subsection (f)(1)(E) of this section; and

(iv) proof of accreditation in such manner as the Secretary shall prescribe; and

(B) the person or agent submits to the Secretary—

(i) a satisfactory assurance that the facility will be operated in accordance with standards established by the Secretary under subsection (f) of this section to assure the safety and accuracy of mammography;

(ii) a satisfactory assurance that the facility will—

(I) permit inspections under subsection (g) of this section;

(II) make such records and information available, and submit such reports, to the Secretary as the Secretary may require; and

(III) update the information submitted under subparagraph (A) or assurances submitted under this subparagraph on a timely basis as required by the Secretary; and

(iii) such other information as the Secretary may require.

An applicant shall not be required to provide in an application under subparagraph (A) any information which the applicant has supplied to the accreditation body which accredited the applicant, except as required by the Secretary.

(2) Appeal

If the Secretary denies an application for the certification of a facility submitted under paragraph (1)(A), the Secretary shall provide the owner or lessor of the facility or the agent of the owner or lessor who submitted such application—

(A) a statement of the grounds on which the denial is based, and

(B) an opportunity for an appeal in accordance with the procedures set forth in regulations of the Secretary published at part 498 of title 42, Code of Federal Regulations.

(3) Effect of denial

If the application for the certification of a facility is denied, the facility may not operate unless the denial of the application is overturned at the conclusion of the administrative appeals process provided in the regulations referred to in paragraph (2)(B).

(e) Accreditation

(1) Approval of accreditation bodies

(A) In general

The Secretary may approve a private nonprofit organization or State agency to accredit facilities for purposes of subsection (d)(1)(A)(iv) of this section if the accreditation body meets the standards for accreditation established by the Secretary as described in subparagraph (B) and provides the assurances required by subparagraph (C).

(B) Standards

The Secretary shall establish standards for accreditation bodies, including—

(i) standards that require an accreditation body to perform—

(I) a review of clinical images from each facility accredited by such body not less often than every 3 years which review will be made by qualified review physicians; and

(II) a review of a random sample of clinical images from such facilities in each 3-year period beginning October 1, 1994, which review will be made by qualified review physicians;

(ii) standards that prohibit individuals conducting the reviews described in clause (i) from maintaining any relationship to the facility undergoing review which would constitute a conflict of interest;

(iii) standards that limit the imposition of fees for accreditation to reasonable amounts;

(iv) standards that require as a condition of accreditation that each facility undergo a survey at least annually by a medical physicist as described in subsection (f)(1)(E) of this section to ensure that the facility meets the standards described in subparagraphs (A) and (B) of subsection (f)(1) of this section;

(v) standards that require monitoring and evaluation of such survey, as prescribed by the Secretary;

(vi) standards that are equal to standards established under subsection (f) of this section which are relevant to accreditation as determined by the Secretary; and

(vii) such additional standards as the Secretary may require.

(C) Assurances

The accrediting body shall provide the Secretary satisfactory assurances that the body will—

(i) comply with the standards as described in subparagraph (B);

(ii) comply with the requirements described in paragraph (4);

(iii) submit to the Secretary the name of any facility for which the accreditation body denies, suspends, or revokes accreditation;

(iv) notify the Secretary in a timely manner before the accreditation body changes the standards of the body;

(v) notify each facility accredited by the accreditation body if the Secretary withdraws approval of the accreditation body under paragraph (2) in a timely manner; and

(vi) provide such other additional information as the Secretary may require.

(D) Regulations

Not later than 9 months after October 27, 1992, the Secretary shall promulgate regulations under which the Secretary may approve an accreditation body.

(2) Withdrawal of approval

(A) In general

The Secretary shall promulgate regulations under which the Secretary may withdraw the approval of an accreditation body if the Secretary determines that the accreditation body does not meet the standards under subparagraph (B) of paragraph (1), the requirements of clauses (i) through (vi) of subparagraph (C) of paragraph (1), or the requirements of paragraph (4).

(B) Effect of withdrawal

If the Secretary withdraws the approval of an accreditation body under subparagraph (A), the certificate of any facility accredited by the body shall continue in effect until the expiration of a reasonable period, as determined by the Secretary, for such facility to obtain another accreditation.

(3) Accreditation

To be accredited by an approved accreditation body a facility shall meet—

(A) the standards described in paragraph (1)(B) which the Secretary determines are applicable to the facility, and

(B) such other standards which the accreditation body may require.

(4) Compliance

To ensure that facilities accredited by an accreditation body will continue to meet the standards of the accreditation body, the accreditation body shall—

(A) make onsite visits on an annual basis of a sufficient number of the facilities accredited by the body to allow a reasonable estimate of the performance of the body; and

(B) take such additional measures as the Secretary determines to be appropriate.

Visits made under subparagraph (A) shall be made after providing such notice as the Secretary may require.

(5) Revocation of accreditation

If an accreditation body revokes the accreditation of a facility, the certificate of the facility shall continue in effect until such time as may be determined by the Secretary.

(6) Evaluation and report

(A) Evaluation

The Secretary shall evaluate annually the performance of each approved accreditation body by—

(i) inspecting under subsection (g)(2) of this section a sufficient number of the facilities accredited by the body to allow a reasonable estimate of the performance of the body; and

(ii) such additional means as the Secretary determines to be appropriate.

(B) Report

The Secretary shall annually prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes the results of the evaluation conducted in accordance with subparagraph (A).

(f) Quality standards

(1) In general

The standards referred to in subsection (d)(1)(B)(i) of this section are standards established by the Secretary which include—

(A) standards that require establishment and maintenance of a quality assurance and quality control program at each facility that is adequate and appropriate to ensure the reliability, clarity, and accuracy of interpretation of mammograms and standards for appropriate radiation dose;

(B) standards that require use of radiological equipment specifically designed for mammography, including radiologic standards and standards for other equipment and materials used in conjunction with such equipment;

(C) a requirement that personnel who perform mammography—

(i)(I) be licensed by a State to perform radiological procedures; or

(II) be certified as qualified to perform radiological procedures by an organization described in paragraph (2)(A); and

(ii) during the 2-year period beginning October 1, 1994, meet training standards for personnel who perform mammography or meet experience requirements which shall at a minimum include 1 year of experience in the performance of mammography; and

(iii) upon the expiration of such 2-year period meet minimum training standards for personnel who perform mammograms;

(D) a requirement that mammograms be interpreted by a physician who is certified as qualified to interpret radiological procedures, including mammography—

(i)(I) by a board described in paragraph (2)(B); or

(II) by a program that complies with the standards described in paragraph (2)(C); and

(ii) who meets training and continuing medical education requirements as established by the Secretary;

(E) a requirement that individuals who survey mammography facilities be medical physicists—

(i) licensed or approved by a State to perform such surveys, reviews, or inspections for mammography facilities;

(ii) certified in diagnostic radiological physics or certified as qualified to perform such surveys by a board as described in paragraph (2)(D); or

(iii) in the first 5 years after October 27, 1992, who meet other criteria established by the Secretary which are comparable to the criteria described in clause (i) or (ii);

(F) a requirement that a medical physicist who is qualified in mammography as described in subparagraph (E) survey mammography equipment and oversee quality assurance practices at each facility;

(G) a requirement that—

(i) a facility that performs any mammogram—

(I) except as provided in subclause (II), maintain the mammogram in the permanent medical records of the patient for a period of not less than 5 years, or not less than 10 years if no subsequent mammograms of such patient are performed at the facility, or longer if mandated by State law; and

(II) upon the request of or on behalf of the patient, transfer the mammogram to a medical institution, to a physician of the patient, or to the patient directly; and

(ii)(I) a facility must assure the preparation of a written report of the results of any mammography examination signed by the interpreting physician;

(II) such written report shall be provided to the patient's physicians (if any);

(III) if such a physician is not available or if there is no such physician, the written report shall be sent directly to the patient; and

(IV) whether or not such a physician is available or there is no such physician, a summary of the written report shall be sent directly to the patient in terms easily understood by a lay person; and

(H) standards relating to special techniques for mammography of patients with breast implants.

Subparagraph (G) shall not be construed to limit a patient's access to the patient's medical records.

(2) Certification of personnel

The Secretary shall by regulation—

(A) specify organizations eligible to certify individuals to perform radiological procedures as required by paragraph (1)(C);

(B) specify boards eligible to certify physicians to interpret radiological procedures, including mammography, as required by paragraph (1)(D);

(C) establish standards for a program to certify physicians described in paragraph (1)(D); and

(D) specify boards eligible to certify medical physicists who are qualified to survey mammography equipment and to oversee quality assurance practices at mammography facilities.

(g) Inspections

(1) Annual inspections

(A) In general

The Secretary may enter and inspect facilities to determine compliance with the certification requirements under subsection (b) of this section and the standards established under subsection (f) of this section. The Secretary shall, if feasible, delegate to a State or local agency the authority to make such inspections.

(B) Identification

The Secretary, or State or local agency acting on behalf of the Secretary, may conduct inspections only on presenting identification to the owner, operator, or agent in charge of the facility to be inspected.

(C) Scope of inspection

In conducting inspections, the Secretary or State or local agency acting on behalf of the Secretary—

(i) shall have access to all equipment, materials, records, and information that the Secretary or State or local agency considers necessary to determine whether the facility is being operated in accordance with this section; and

(ii) may copy, or require the facility to submit to the Secretary or the State or local agency, any of the materials, records, or information.

(D) Qualifications of inspectors

Qualified individuals, as determined by the Secretary, shall conduct all inspections. The Secretary may request that a State or local agency acting on behalf of the Secretary designate a qualified officer or employee to conduct the inspections, or designate a qualified Federal officer or employee to conduct inspections. The Secretary shall establish minimum qualifications and appropriate training for inspectors and criteria for certification of inspectors in order to inspect facilities for compliance with subsection (f) of this section.

(E) Frequency

The Secretary or State or local agency acting on behalf of the Secretary shall conduct inspections under this paragraph of each facility not less often than annually, subject to paragraph (6).

(F) Records and annual reports

The Secretary or a State or local agency acting on behalf of the Secretary which is responsible for inspecting mammography facilities shall maintain records of annual inspections required under this paragraph for a period as prescribed by the Secretary. Such

a State or local agency shall annually prepare and submit to the Secretary a report concerning the inspections carried out under this paragraph. Such reports shall include a description of the facilities inspected and the results of such inspections.

(2) Inspection of accredited facilities

The Secretary shall inspect annually a sufficient number of the facilities accredited by an accreditation body to provide the Secretary with a reasonable estimate of the performance of such body.

(3) Inspection of facilities inspected by State or local agencies

The Secretary shall inspect annually facilities inspected by State or local agencies acting on behalf of the Secretary to assure a reasonable performance by such State or local agencies.

(4) Timing

The Secretary, or State or local agency, may conduct inspections under paragraphs (1), (2), and (3), during regular business hours or at a mutually agreeable time and after providing such notice as the Secretary may prescribe, except that the Secretary may waive such requirements if the continued performance of mammography at such facility threatens the public health.

(5) Limited reinspection

Nothing in this section limits the authority of the Secretary to conduct limited reinspections of facilities found not to be in compliance with this section.

(6) Demonstration program

(A) In general

The Secretary may establish a demonstration program under which inspections under paragraph (1) of selected facilities are conducted less frequently by the Secretary (or as applicable, by State or local agencies acting on behalf of the Secretary) than the interval specified in subparagraph (E) of such paragraph.

(B) Requirements

Any demonstration program under subparagraph (A) shall be carried out in accordance with the following:

(i) The program may not be implemented before April 1, 2001. Preparations for the program may be carried out prior to such date.

(ii) In carrying out the program, the Secretary may not select a facility for inclusion in the program unless the facility is substantially free of incidents of noncompliance with the standards under subsection (f) of this section. The Secretary may at any time provide that a facility will no longer be included in the program.

(iii) The number of facilities selected for inclusion in the program shall be sufficient to provide a statistically significant sample, subject to compliance with clause (ii).

(iv) Facilities that are selected for inclusion in the program shall be inspected at such intervals as the Secretary determines will reasonably ensure that the facilities are maintaining compliance with such standards.

(h) Sanctions

(1) In general

In order to promote voluntary compliance with this section, the Secretary may, in lieu of taking the actions authorized by subsection (i) of this section, impose one or more of the following sanctions:

(A) Directed plans of correction which afford a facility an opportunity to correct violations in a timely manner.

(B) Payment for the cost of onsite monitoring.

(2) Patient information

If the Secretary determines that the quality of mammography performed by a facility (whether or not certified pursuant to subsection (c) of this section) was so inconsistent with the quality standards established pursuant to subsection (f) of this section as to present a significant risk to individual or public health, the Secretary may require such facility to notify patients who received mammograms at such facility, and their referring physicians, of the deficiencies presenting such risk, the potential harm resulting, appropriate remedial measures, and such other relevant information as the Secretary may require.

(3) Civil money penalties

The Secretary may assess civil money penalties in an amount not to exceed $10,000 for—

(A) failure to obtain a certificate as required by subsection (b) of this section,

(B) each failure by a facility to substantially comply with, or each day on which a facility fails to substantially comply with, the standards established under subsection (f) of this section or the requirements described in subclauses (I) through (III) of subsection (d)(1)(B)(ii) of this section,

(C) each failure to notify a patient of risk as required by the Secretary pursuant to paragraph (2), and

(D) each violation, or for each aiding and abetting in a violation of, any provision of, or regulation promulgated under, this section by an owner, operator, or any employee of a facility required to have a certificate.

(4) Procedures

The Secretary shall develop and implement procedures with respect to when and how each of the sanctions is to be imposed under paragraphs (1) through (3). Such procedures shall provide for notice to the owner or operator of the facility and a reasonable opportunity for the owner or operator to respond to the proposed sanctions and appropriate procedures for appealing determinations relating to the imposition of sanctions.

(i) Suspension and revocation

(1) In general

The certificate of a facility issued under subsection (c) of this section may be suspended or revoked if the Secretary finds, after providing,

except as provided in paragraph (2), reasonable notice and an opportunity for a hearing to the owner or operator of the facility, that the owner, operator, or any employee of the facility—

(A) has been guilty of misrepresentation in obtaining the certificate;

(B) has failed to comply with the requirements of subsection (d)(1)(B)(ii)(III) of this section or the standards established by the Secretary under subsection (f) of this section;

(C) has failed to comply with reasonable requests of the Secretary (or of an accreditation body approved pursuant to subsection (e) of this section) for any record, information, report, or material that the Secretary (or such accreditation body or State carrying out certification program requirements pursuant to subsection (q) of this section) concludes is necessary to determine the continued eligibility of the facility for a certificate or continued compliance with the standards established under subsection (f) of this section;

(D) has refused a reasonable request of the Secretary, any Federal officer or employee duly designated by the Secretary, or any State or local officer or employee duly designated by the State or local agency, for permission to inspect the facility or the operations and pertinent records of the facility in accordance with subsection (g) of this section;

(E) has violated or aided and abetted in the violation of any provision of, or regulation promulgated under, this section; or

(F) has failed to comply with a sanction imposed under subsection (h) of this section.

(2) Action before a hearing

(A) In general

The Secretary may suspend the certificate of the facility before holding a hearing required by paragraph (1) if the Secretary has reason to believe that the circumstance of the case will support one or more of the findings described in paragraph (1) and that—

(i) the failure or violation was intentional; or

(ii) the failure or violation presents a serious risk to human health.

(B) Hearing

If the Secretary suspends a certificate under subparagraph (A), the Secretary shall provide an opportunity for a hearing to the owner or operator of the facility not later than 60 days from the effective date of the suspension. The suspension shall remain in effect until the decision of the Secretary made after the hearing.

(3) Ineligibility to own or operate facilities after revocation

If the Secretary revokes the certificate of a facility on the basis of an act described in paragraph (1), no person who owned or operated the facility at the time of the act may, within 2 years of the revocation of the certificate, own or operate a facility that requires a certificate under this section.

(j) Injunctions

If the Secretary determines that—

(1) continuation of any activity related to the provision of mammography by a facility would constitute a serious risk to human health, the Secretary may bring suit in the district court of the United States for the district in which the facility is situated to enjoin continuation of the activity; and

(2) a facility is operating without a certificate as required by subsection (b) of this section, the Secretary may bring suit in the district court of the United States for the district in which the facility is situated to enjoin the operation of the facility.

Upon a proper showing, the district court shall grant a temporary injunction or restraining order against continuation of the activity or against operation of a facility, as the case may be, without requiring the Secretary to post a bond, pending issuance of a final order under this subsection.

(k) Judicial review

(1) Petition

If the Secretary imposes a sanction on a facility under subsection (h) of this section or suspends or revokes the certificate of a facility under subsection (i) of this section, the owner or operator of the facility may, not later than 60 days after the date the action of the Secretary becomes final, file a petition with the United States court of appeals for the circuit in which the facility is situated for judicial review of the action. As soon as practicable after receipt of the petition, the clerk of the court shall transmit a copy of the petition to the Secretary or other officer designated by the Secretary. As soon as practicable after receipt of the copy, the Secretary shall file in the court the record on which the action of the Secretary is based, as provided in section 2112 of title 28.

(2) Additional evidence

If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order the additional evidence (and evidence in rebuttal of the additional evidence) to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may determine to be proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, by reason of the additional evidence so taken, and the Secretary shall file the modified or new findings, and the recommendations of the Secretary, if any, for the modification or setting aside of the original action of the Secretary with the return of the additional evidence.

(3) Judgment of court

Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to affirm the action, or to set the action aside

in whole or in part, temporarily or permanently. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) Finality of judgment

The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(*l*) Information

(1) In general

Not later than October 1, 1996, and annually thereafter, the Secretary shall compile and make available to physicians and the general public information that the Secretary determines is useful in evaluating the performance of facilities, including a list of facilities—

(A) that have been convicted under Federal or State laws relating to fraud and abuse, false billings, or kickbacks;

(B) that have been subject to sanctions under subsection (h) of this section, together with a statement of the reasons for the sanctions;

(C) that have had certificates revoked or suspended under subsection (i) of this section, together with a statement of the reasons for the revocation or suspension;

(D) against which the Secretary has taken action under subsection (j) of this section, together with a statement of the reasons for the action;

(E) whose accreditation has been revoked, together with a statement of the reasons of the revocation;

(F) against which a State has taken adverse action; and

(G) that meets such other measures of performance as the Secretary may develop.

(2) Date

The information to be compiled under paragraph (1) shall be information for the calendar year preceding the date the information is to be made available to the public.

(3) Explanatory information

The information to be compiled under paragraph (1) shall be accompanied by such explanatory information as may be appropriate to assist in the interpretation of the information compiled under such paragraph.

(m) State laws

Nothing in this section shall be construed to limit the authority of any State to enact and enforce laws relating to the matters covered by this section that are at least as stringent as this section or the regulations issued under this section.

(n) National Advisory Committee

(1) Establishment

In carrying out this section, the Secretary shall establish an advisory committee to be known as the National Mammography Quality Assurance Advisory Committee (hereafter in this subsection referred to as the ''Advisory Committee'').

(2) Composition

The Advisory Committee shall be composed of not fewer than 13, nor more than 19 individuals, who are not officers or employees of the Federal Government. The Secretary shall make appointments to the Advisory Committee from among—

(A) physicians,

(B) practitioners, and

(C) other health professionals,

whose clinical practice, research specialization, or professional expertise include a significant focus on mammography. The Secretary shall appoint at least 4 individuals from among national breast cancer or consumer health organizations with expertise in mammography, at least 2 industry representatives with expertise in mammography equipment, and at least 2 practicing physicians who provide mammography services.

(3) Functions and duties

The Advisory Committee shall—

(A) advise the Secretary on appropriate quality standards and regulations for mammography facilities;

(B) advise the Secretary on appropriate standards and regulations for accreditation bodies;

(C) advise the Secretary in the development of regulations with respect to sanctions;

(D) assist in developing procedures for monitoring compliance with standards under subsection (f) of this section;

(E) make recommendations and assist in the establishment of a mechanism to investigate consumer complaints;

(F) report on new developments concerning breast imaging that should be considered in the oversight of mammography facilities;

(G) determine whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determine the effects of personnel or other requirements of subsection (f) of this section on access to the services of such facilities in such areas;

(H) determine whether there will exist a sufficient number of medical physicists after October 1, 1999, to assure compliance with the requirements of subsection (f)(1)(E) of this section;

(I) determine the costs and benefits of compliance with the requirements of this section (including the requirements of regulations promulgated under this section); and

(J) perform other activities that the Secretary may require.

The Advisory Committee shall report the findings made under subparagraphs (G) and (I) to the Secretary and the Congress no later than October 1, 1993.

(4) Meetings

The Advisory Committee shall meet not less than quarterly for the first 3 years of the program and thereafter, at least annually.

(5) Chairperson

The Secretary shall appoint a chairperson of the Advisory Committee.

(*o*) Consultations

In carrying out this section, the Secretary shall consult with appropriate Federal agencies within the Department of Health and Human Services for the purposes of developing standards, regulations, evaluations, and procedures for compliance and oversight.

(p) Breast cancer screening surveillance research grants

(1) Research

(A) Grants

The Secretary shall award grants to such entities as the Secretary may determine to be appropriate to establish surveillance systems in selected geographic areas to provide data to evaluate the functioning and effectiveness of breast cancer screening programs in the United States, including assessments of participation rates in screening mammography, diagnostic procedures, incidence of breast cancer, mode of detection (mammography screening or other methods), outcome and follow up information, and such related epidemiologic analyses that may improve early cancer detection and contribute to reduction in breast cancer mortality. Grants may be awarded for further research on breast cancer surveillance systems upon the Secretary's review of the evaluation of the program.

(B) Use of funds

Grants awarded under subparagraph (A) may be used—

(i) to study—

(I) methods to link mammography and clinical breast examination records with population-based cancer registry data;

(II) methods to provide diagnostic outcome data, or facilitate the communication of diagnostic outcome data, to radiology facilities for purposes of evaluating patterns of mammography interpretation; and

(III) mechanisms for limiting access and maintaining confidentiality of all stored data; and

(ii) to conduct pilot testing of the methods and mechanisms described in subclauses (I), (II), and (III) of clause (i) on a limited basis.

(C) Grant application

To be eligible to receive funds under this paragraph, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(D) Report

A recipient of a grant under this paragraph shall submit a report to the Secretary containing the results of the study and testing conducted under clauses (i) and (ii) of subparagraph (B), along with recommendations for methods of establishing a breast cancer screening surveillance system.

(2) Establishment

The Secretary shall establish a breast cancer screening surveillance system based on the recommendations contained in the report described in paragraph (1)(D).

(3) Standards and procedures

The Secretary shall establish standards and procedures for the operation of the breast cancer screening surveillance system, including procedures to maintain confidentiality of patient records.

(4) Information

The Secretary shall recruit facilities to provide to the breast cancer screening surveillance system relevant data that could help in the research of the causes, characteristics, and prevalence of, and potential treatments for, breast cancer and benign breast conditions, if the information may be disclosed under section 552 of title 5.

(q) State program

(1) In general

The Secretary may, upon application, authorize a State—

(A) to carry out, subject to paragraph (2), the certification program requirements under subsections (b), (c), (d), (g)(1), (h), (i), and (j) of this section (including the requirements under regulations promulgated pursuant to such subsections), and

(B) to implement the standards established by the Secretary under subsection (f) of this section,

with respect to mammography facilities operating within the State.

(2) Approval

The Secretary may approve an application under paragraph (1) if the Secretary determines that—

(A) the State has enacted laws and issued regulations relating to mammography facilities which are the requirements of this section (including the requirements under regulations promulgated pursuant to such subsections), and

(B) the State has provided satisfactory assurances that the State—

(i) has the legal authority and qualified personnel necessary to enforce the requirements of and the regulations promulgated pursuant to this section (including the requirements under regulations promulgated pursuant to such subsections),

(ii) will devote adequate funds to the administration and enforcement of such requirements, and

(iii) will provide the Secretary with such information and reports as the Secretary may require.

(3) Authority of Secretary

In a State with an approved application—

(A) the Secretary shall carry out the Secretary's functions under subsections (e) and (f) of this section;

(B) the Secretary may take action under subsections (h), (i), and (j) of this section; and

(C) the Secretary shall conduct oversight functions under subsections (g)(2) and (g)(3) of this section.

(4) Withdrawal of approval

(A) In general

The Secretary may, after providing notice and opportunity for corrective action, withdraw the approval of a State's authority under paragraph (1) if the Secretary determines that the State does not meet the requirements of such paragraph. The Secretary shall promulgate regulations for the implementation of this subparagraph.

(B) Effect of withdrawal

If the Secretary withdraws the approval of a State under subparagraph (A), the certificate of any facility certified by the State shall continue in effect until the expiration of a reasonable period, as determined by the Secretary, for such facility to obtain certification by the Secretary.

(r) Funding

(1) Fees

(A) In general

The Secretary shall, in accordance with this paragraph assess and collect fees from persons described in subsection (d)(1)(A) of this section (other than persons who are governmental entities, as determined by the Secretary) to cover the costs of inspections conducted under subsection (g)(1) of this section by the Secretary or a State acting under a delegation under subparagraph (A) of such subsection. Fees may be assessed and collected under this paragraph only in such manner as would result in an aggregate amount of fees collected during any fiscal year which equals the aggregate amount of costs for such fiscal year for inspections of facilities of such persons under subsection (g)(1) of this section. A person's liability for fees shall be reasonably based on the proportion of the inspection costs which relate to such person.

(B) Deposit and appropriations

(i) Deposit and availability

Fees collected under subparagraph (A) shall be deposited as an offsetting collection to the appropriations for the Department of Health and Human Services as provided in appropriation Acts and shall remain available without fiscal year limitation.

(ii) Appropriations

Fees collected under subparagraph (A) shall be collected and available only to the extent provided in advance in appropriation Acts.

(2) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(A) to award research grants under subsection (p) of this section, such sums as may be necessary for each of the fiscal years 1993 through 2007; and

(B) for the Secretary to carry out other activities which are not supported by fees authorized and collected under paragraph (1), such sums as may be necessary for fiscal years 1993 through 2007.

(July 1, 1944, ch. 373, title III, § 354, as added Pub. L. 102–539, § 2, Oct. 27, 1992, 106 Stat. 3547; amended Pub. L. 105–248, §§ 2–13, Oct. 9, 1998, 112 Stat. 1864–1867; Pub. L. 108–365, §§ 2–4, Oct. 25, 2004, 118 Stat. 1738–1740.)

PRIOR PROVISIONS

A prior section 263b, act July 1, 1944, ch. 373, title III, § 354, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1173; amended Nov. 28, 1990, Pub. L. 101–629, § 19(a)(1)(B), 104 Stat. 4529; Aug. 13, 1993, Pub. L. 103–80, § 4(a)(2), 107 Stat. 779, set forth Congressional declaration of purpose, prior to repeal by Pub. L. 101–629, § 19(a)(3), Nov. 28, 1990, 104 Stat. 4530.

Sections 263c to 263n, act July 1, 1944, ch. 373, title III, §§ 355–360F, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1174, and amended, which related to electronic product radiation control, were renumbered sections 531 to 542, respectively, of the Federal Food, Drug, and Cosmetic Act by Pub. L. 101–629, § 19(a)(4), Nov. 28, 1990, 104 Stat. 4530, and are classified to sections 360hh to 360ss, respectively, of Title 21, Food and Drugs.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–365, § 2(1)(C), substituted "temporary renewal certificate, provisional certificate, or a limited provisional certificate" for "provisional certificate" in concluding provisions.

Subsec. (b)(1)(A). Pub. L. 108–365, § 2(1)(A), inserted "or a temporary renewal certificate" after "certificate" in introductory provisions and substituted "paragraphs (1) or (2) of subsection (c)" for "subsection (c)(1)" in cl. (i).

Subsec. (b)(1)(B). Pub. L. 108–365, § 2(1)(B), inserted "or a limited provisional certificate" after "certificate" in introductory provisions and substituted "paragraphs (3) and (4) of subsection (c)" for "subsection (c)(2)" in cl. (i).

Subsec. (c)(2) to (4). Pub. L. 108–365, § 2(2), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (n)(2). Pub. L. 108–365, § 3(1), reenacted subpar. (C) without change, added concluding provisions, and struck out former concluding provisions which read as follows: "whose clinical practice, research specialization, or professional expertise include a significant focus on mammography. The Secretary shall appoint at least 4 individuals from among national breast cancer or consumer health organizations with expertise in mammography and at least 2 practicing physicians who provide mammography services."

Subsec. (n)(4). Pub. L. 108–365, § 3(2), substituted "annually" for "biannually".

Subsec. (r)(2). Pub. L. 108–365, § 4, substituted "2007" for "2002" in subpars. (A) and (B).

1998—Subsec. (a)(4). Pub. L. 105–248, § 9(1), inserted "or local" after "State".

Subsec. (a)(8). Pub. L. 105–248, § 4(b), added par. (8).

Subsec. (d)(2)(B). Pub. L. 105–248, § 3, substituted "part 498 of title 42, Code of Federal Regulations" for "42 C.F.R. 498 and in effect on October 27, 1992".

Subsec. (e)(1)(B)(i)(I), (II). Pub. L. 105–248, § 4(a)(1), substituted "review physicians" for "practicing physicians".

Subsec. (e)(1)(B)(ii). Pub. L. 105–248, § 4(a)(2), substituted "relationship" for "financial relationship".

Subsec. (f)(1)(G)(i). Pub. L. 105–248, § 5, added cl. (i) and struck out former cl. (i) which read as follows: "a facility that performs any mammogram maintain the mammogram in the permanent medical records of the patient—

"(I) for a period of not less than 5 years, or not less than 10 years if no additional mammograms of such patient are performed at the facility, or longer if mandated by State law; or

"(II) until such time as the patient should request that the patient's medical records be forwarded to a medical institution or a physician of the patient;

whichever is longer; and".

Subsec. (f)(1)(G)(ii)(IV). Pub. L. 105–248, § 6, added subcl. (IV) and struck out former subcl. (IV) which read

as follows: ''if such report is sent to the patient, the report shall include a summary written in terms easily understood by a lay person; and''.

Subsec. (g)(1). Pub. L. 105–248, §9(1), inserted ''or local'' after ''State'' wherever appearing.

Subsec. (g)(1)(A). Pub. L. 105–248, §7, in first sentence, struck out ''certified'' before ''facilities'' and inserted ''the certification requirements under subsection (b) of this section and'' after ''compliance with''.

Subsec. (g)(1)(E). Pub. L. 105–248, §8(1), inserted '', subject to paragraph (6)'' before period at end.

Subsec. (g)(3). Pub. L. 105–248, §9(1), (2), inserted ''or local'' after ''State'' in heading and in two places in text.

Subsec. (g)(4). Pub. L. 105–248, §9(1), inserted ''or local'' after ''State''.

Subsec. (g)(6). Pub. L. 105–248, §8(2), added par. (6).

Subsec. (h)(2). Pub. L. 105–248, §10(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (h)(3). Pub. L. 105–248, §10(a)(1), (b), redesignated par. (2) as (3), added subpar. (C), and redesignated former subpar. (C) as (D). Former par. (3) redesignated (4).

Subsec. (h)(4). Pub. L. 105–248, §10(a)(1), (c), redesignated par. (3) as (4) and substituted ''paragraphs (1) through (3)'' for ''paragraphs (1) and (2)''.

Subsec. (i)(1)(C). Pub. L. 105–248, §11, inserted ''(or of an accreditation body approved pursuant to subsection (e) of this section)'' after ''of the Secretary'' and inserted ''(or such accreditation body or State carrying out certification program requirements pursuant to subsection (q) of this section)'' after ''that the Secretary''.

Subsec. (i)(1)(D). Pub. L. 105–248, §9(3), inserted ''or local'' after ''any State'' and ''or local agency'' after ''by the State''.

Subsec. (i)(2)(A). Pub. L. 105–248, §12, substituted ''has reason to believe that the circumstance of the case will support one or more of the findings described in paragraph (1) and that—'' and cls. (i) and (ii) for ''makes the finding described in paragraph (1) and determines that—

''(i) the failure of a facility to comply with the standards established by the Secretary under subsection (f) of this section presents a serious risk to human health; or

''(ii) a facility has engaged in an action described in subparagraph (D) or (E) of paragraph (1).''

Subsec. (q)(4)(B). Pub. L. 105–248, §13, substituted ''certified'' for ''accredited''.

Subsec. (r)(2)(A). Pub. L. 105–248, §2, substituted ''subsection (p)'' for ''subsection (q)'' and ''2002'' for ''1997''.

Subsec. (r)(2)(B). Pub. L. 105–248, §2, substituted ''fiscal years'' for ''fiscal year'' and ''2002'' for ''1997''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REGULATIONS

Pub. L. 103–183, title VII, §707, Dec. 14, 1993, 107 Stat. 2241, provided that: ''The Secretary of Health and Human Services is authorized to issue interim final regulations—

''(1) under which the Secretary may approve accreditation bodies under section 354(e) of the Public Health Service Act (42 U.S.C. 263b(e)); and

''(2) establishing quality standards under section 354(f) of the Public Health Service Act (42 U.S.C. 263b(f)).''

STUDY

Section 3 of Pub. L. 102–539 directed Comptroller General of United States to conduct a study of the certification program authorized by this section to determine if the program has resulted in improvement of quality and accessibility of mammography services, and if the program has reduced the frequency of poor quality mammography and improved early detection of breast cancer, with Comptroller General, not later than 3 years from Oct. 27, 1992, submit to Congress an interim report of results of study and, not later than 5 years from such date to submit a final report.

PART G—QUARANTINE AND INSPECTION

§264. Regulations to control communicable diseases

(a) Promulgation and enforcement by Surgeon General

The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

(b) Apprehension, detention, or conditional release of individuals

Regulations prescribed under this section shall not provide for the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General,[1].

[1] So in original. Comma probably should not appear.

(c) Application of regulations to persons entering from foreign countries

Except as provided in subsection (d) of this section, regulations prescribed under this section, insofar as they provide for the apprehension, detention, examination, or conditional release of individuals, shall be applicable only to individuals coming into a State or possession from a foreign country or a possession.

(d) Apprehension and examination of persons reasonably believed to be infected

(1) Regulations prescribed under this section may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a qualifying stage and (A) to be moving or about to move from a State to another State; or (B) to be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a State to another State. Such regulations may provide that if upon examination any such individual is found to be infected, he may be detained for such time and in such manner as may be reasonably necessary. For purposes of this subsection, the term ''State'' includes, in addition to the several States, only the District of Columbia.

(2) For purposes of this subsection, the term ''qualifying stage'', with respect to a communicable disease, means that such disease—

(A) is in a communicable stage; or

(B) is in a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals.

(e) Preemption

Nothing in this section or section 266 of this title, or the regulations promulgated under such sections, may be construed as superseding any provision under State law (including regulations and including provisions established by political subdivisions of States), except to the extent that such a provision conflicts with an exercise of Federal authority under this section or section 266 of this title.

(July 1, 1944, ch. 373, title III, § 361, 58 Stat. 703; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 86–624, § 29(c), July 12, 1960, 74 Stat. 419; Pub. L. 94–317, title III, § 301(b)(1), June 23, 1976, 90 Stat. 707; Pub. L. 107–188, title I, § 142(a)(1), (2), (b)(1), (c), June 12, 2002, 116 Stat. 626, 627.)

AMENDMENTS

2002—Pub. L. 107–188, § 142(a)(1), (2), (b)(1), and (c), which directed certain amendments to section 361 of the Public Health Act, was executed by making the amendments to this section, which is section 361 of the Public Health Service Act, to reflect the probable intent of Congress. See below.

Subsec. (b). Pub. L. 107–188, § 142(a)(1), substituted ''Executive orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General,'' for ''Executive orders of the President upon the recommendation of the National Advisory Health Council and the Surgeon General''.

Subsec. (d). Pub. L. 107–188, § 142(a)(2), (b)(1), substituted in first sentence ''Regulations'' for ''On recommendation of the National Advisory Health Council, regulations'', ''in a qualifying stage'' for ''in a communicable stage'' in two places, designated existing text as par. (1) and substituted ''(A)'' and ''(B)'' for ''(1)'' and ''(2)'', respectively, and added par. (2).

Subsec. (e). Pub. L. 107–188, § 142(c), added subsec. (e).

1976—Subsec. (d). Pub. L. 94–317 inserted provision defining ''State'' to include, in addition to the several States, only the District of Columbia.

1960—Subsec. (c). Pub. L. 86–624 struck out reference to Territory of Hawaii.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

EXECUTIVE ORDER NO. 12452

Ex. Ord. No. 12452, Dec. 22, 1983, 48 F.R. 56927, which specified certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of such diseases, was revoked by Ex. Ord. No. 13295, § 5, Apr. 4, 2003, 68 F.R. 17255, set out below.

EX. ORD. NO. 13295. REVISED LIST OF QUARANTINABLE COMMUNICABLE DISEASES

Ex. Ord. No. 13295, Apr. 4, 2003, 68 F.R. 17255, as amended by Ex. Ord. No. 13375, § 1, Apr. 1, 2005, 70 F.R. 17299, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 361(b) of the Public Health Service Act (42 U.S.C. 264(b)), it is hereby ordered as follows:

SECTION 1. Based upon the recommendation of the Secretary of Health and Human Services (the ''Secretary''), in consultation with the Surgeon General, and for the purpose of specifying certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of suspected communicable diseases, the following communicable diseases are hereby specified pursuant to section 361(b) of the Public Health Service Act:

(a) Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow Fever; and Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named).

(b) Severe Acute Respiratory Syndrome (SARS), which is a disease associated with fever and signs and symptoms of pneumonia or other respiratory illness, is transmitted from person to person predominantly by the aerosolized or droplet route, and, if spread in the population, would have severe public health consequences.

(c) Influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic.

SEC. 2. The Secretary, in the Secretary's discretion, shall determine whether a particular condition con-

stitutes a communicable disease of the type specified in section 1 of this order.

SEC. 3. The functions of the President under sections 362 and 364(a) of the Public Health Service Act (42 U.S.C. 265 and 267(a)) are assigned to the Secretary.

SEC. 4. This order is not intended to, and does not, create any right or benefit enforceable at law or equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

SEC. 5. Executive Order 12452 of December 22, 1983, is hereby revoked.

GEORGE W. BUSH.

§ 265. Suspension of entries and imports from designated places to prevent spread of communicable diseases

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.

(July 1, 1944, ch. 373, title III, § 362, 58 Stat. 704.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

For assignment of functions of President under this section, see section 3 of Ex. Ord. No. 13295, Apr. 4, 2003, 68 F.R. 17255, set out as a note under section 264 of this title.

§ 266. Special quarantine powers in time of war

To protect the military and naval forces and war workers of the United States, in time of war, against any communicable disease specified in Executive orders as provided in subsection (b) of section 264 of this title, the Secretary, in consultation with the Surgeon General, is authorized to provide by regulations for the apprehension and examination, in time of war, of any individual reasonably believed (1) to be infected with such disease and (2) to be a probable source of infection to members of the armed forces of the United States or to individuals engaged in the production or transportation of arms, munitions, ships, food, clothing, or other supplies for the armed forces. Such regulations may provide that if upon examination any such individual is found to be so infected, he may be detained for such time and in such manner as may be reasonably necessary.

(July 1, 1944, ch. 373, title III, § 363, 58 Stat. 704; Pub. L. 107–188, title I, § 142(a)(3), (b)(2), June 12, 2002, 116 Stat. 626, 627.)

AMENDMENTS

2002—Pub. L. 107–188, which directed substitution of ''the Secretary, in consultation with the Surgeon General,'' for ''the Surgeon General, on recommendation of the National Advisory Health Council,'' and striking out of ''in a communicable stage'' after ''(1) to be infected with such disease'', in section 363 of the Public Health Act, was executed to this section, which is section 363 of the Public Health Service Act, to reflect the probable intent of Congress.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 267. Quarantine stations, grounds, and anchorages

(a) Control and management

Except as provided in title II of the Act of June 15, 1917, as amended [50 U.S.C. 191 et seq.], the Surgeon General shall control, direct, and manage all United States quarantine stations, grounds, and anchorages, designate their boundaries, and designate the quarantine officers to be in charge thereof. With the approval of the President he shall from time to time select suitable sites for and establish such additional stations, grounds, and anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States.

(b) Hours of inspection

The Surgeon General shall establish the hours during which quarantine service shall be performed at each quarantine station, and, upon application by any interested party, may establish quarantine inspection during the twenty-four hours of the day, or any fraction thereof, at such quarantine stations as, in his opinion, require such extended service. He may restrict the performance of quarantine inspection to hours of daylight for such arriving vessels as cannot, in his opinion, be satisfactorily inspected during hours of darkness. No vessel shall be required to undergo quarantine inspection during the hours of darkness, unless the quarantine officer at such quarantine station shall deem an immediate inspection necessary to protect the public health. Uniformity shall not be required in the hours during which quarantine inspection may be obtained at the various ports of the United States.

(c) Overtime pay for employees of Service

The Surgeon General shall fix a reasonable rate of extra compensation for overtime services of employees of the United States Public Health Service, Foreign Quarantine Division, performing overtime duties including the operation of vessels, in connection with the inspection or quarantine treatment of persons (passengers and crews), conveyances, or goods arriving by land, water, or air in the United States or any place subject to the jurisdiction thereof, hereinafter referred to as ''employees of the Public Health Service'', when required to be on duty between the hours of 6 o'clock postmeridian and 6 o'clock antemeridian (or between the hours of 7 o'clock postmeridian and 7 o'clock antemeridian at stations which have a declared workday of from 7 o'clock antemeridian to 7 o'clock postmeridian), or on Sundays or holidays, such rate, in lieu of compensation under any other provision of law, to be fixed at two times the basic hourly rate for each hour that the overtime extends beyond 6 o'clock (or 7 o'clock as the case may be) postmeridian, and two times the basic hourly rate for each overtime hour worked on Sundays or holidays. As used in this subsection, the term ''basic hourly rate'' shall mean the regular basic rate of pay which is applicable to such employees for work performed within their regular scheduled tour of duty.

(d) Payment of extra compensation to United States; bond or deposit to assure payment; deposit of moneys to credit of appropriation

(1) The said extra compensation shall be paid to the United States by the owner, agent, consignee, operator, or master or other person in charge of any conveyance, for whom, at his request, services as described in this subsection (hereinafter referred to as overtime service) are performed. If such employees have been ordered to report for duty and have so reported, and the requested services are not performed by reason of circumstances beyond the control of the employees concerned, such extra compensation shall be paid on the same basis as though the overtime services had actually been performed during the period between the time the employees were ordered to report for duty and did so report, and the time they were notified that their services would not be required, and in any case as though their services had continued for not less than one hour. The Surgeon General with the approval of the Secretary of Health and Human Services may prescribe regulations requiring the owner, agent, consignee, operator, or master or other person for whom the overtime services are performed to file a bond in such amounts and containing such conditions and with such sureties, or in lieu of a bond, to deposit money or obligations of the United States in such amount, as will assure the payment of charges under this subsection, which bond or deposit may cover one or more transactions or all transactions during a specified period: *Provided*, That no charges shall be made for services performed in connection with the inspection of (1) persons arriving by international highways, ferries, bridges, or tunnels, or the conveyances in which they arrive, or (2) persons arriving by aircraft or railroad trains, the operations of which are covered by published schedules, or the aircraft or trains in which they arrive, or (3) persons arriving by vessels operated between Canadian ports and ports on Puget Sound or operated on the Great Lakes and connecting waterways, the operations of which are covered by published schedules, or the vessels in which they arrive.

(2) Moneys collected under this subsection shall be deposited in the Treasury of the United States to the credit of the appropriation charged with the expense of the services, and the appropriations so credited shall be available for the payment of such compensation to the said employees for services so rendered.

(July 1, 1944, ch. 373, title III, § 364, 58 Stat. 704; Pub. L. 85–58, ch. VII, § 701, June 21, 1957, 71 Stat. 181; Pub. L. 85–580, title II, § 201, Aug. 1, 1958, 72 Stat. 467; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–580 increased rate of pay for each hour that overtime extends beyond 6 o'clock (or 7 o'clock as the case may be) postmeridian from one and one-half times the basic hourly rate to two times the basic hourly rate.

1957—Subsecs. (c), (d). Pub. L. 85–58 added subsecs. (c) and (d).

TRANSFER OF FUNCTIONS

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (d) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

For assignment of functions of President under subsec. (a) of this section, see section 3 of Ex. Ord. No. 13295, Apr. 4, 2003, 68 F.R. 17255, set out as a note under section 264 of this title.

§ 268. Quarantine duties of consular and other officers

(a) Any consular or medical officer of the United States, designated for such purpose by the Secretary, shall make reports to the Surgeon General, on such forms and at such intervals as the Surgeon General may prescribe, of the health conditions at the port or place at which such officer is stationed.

(b) It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations; but no additional compensation, except actual and necessary traveling expenses, shall be allowed any such officer by reason of such services.

(July 1, 1944, ch. 373, title III, § 365, 58 Stat. 705; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Reference to Secretary of Health, Education, and Welfare substituted for reference to Federal Security Administrator pursuant to section 5 of Reorg. Plan No. 1, of 1953, set out as a note under section 3501 of this title, which transferred functions of Federal Security Administrator to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency to Department of Health, Education, and Welfare. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 269. Bills of health

(a) Detail of medical officer; conditions precedent to issuance; consular officer to receive fees

Except as otherwise prescribed in regulations, any vessel at any foreign port or place clearing or departing for any port or place in a State or possession shall be required to obtain from the consular officer of the United States or from the Public Health Service officer, or other medical officer of the United States designated by the Surgeon General, at the port or place of departure, a bill of health in duplicate, in the form prescribed by the Surgeon General. The President, from time to time, shall specify the ports at which a medical officer shall be stationed for this purpose. Such bill of health shall set forth the sanitary history and condition of said vessel, and shall state that it has in all respects complied with the regulations prescribed pursuant to subsection (c) of this section. Before granting such duplicate bill of health, such consular or medical officer shall be satisfied that the matters and things therein stated are true. The consular officer shall be entitled to demand and receive the fees for bills of health and such fees shall be established by regulation.

(b) Collectors of customs to receive originals; duplicate copies as part of ship's papers

Original bills of health shall be delivered to the collectors of customs at the port of entry. Duplicate copies of such bills of health shall be delivered at the time of inspection to quarantine officers at such port. The bills of health herein prescribed shall be considered as part of the ship's papers, and when duly certified to by the proper consular or other officer of the United States, over his official signature and seal, shall be accepted as evidence of the statements therein contained in any court of the United States.

(c) Regulations to secure sanitary conditions of vessels

The Surgeon General shall from time to time prescribe regulations, applicable to vessels referred to in subsection (a) of this section for the purpose of preventing the introduction into the States or possessions of the United States of any communicable disease by securing the best sanitary condition of such vessels, their cargoes, passengers, and crews. Such regulations shall be observed by such vessels prior to departure, during the course of the voyage, and also during inspection, disinfection, or other quarantine procedure upon arrival at any United States quarantine station.

(d) Vessels from ports near frontier

The provisions of subsections (a) and (b) of this section shall not apply to vessels plying between such foreign ports on or near the frontiers of the United States and ports of the United States as are designated by treaty.

(e) Compliance with regulations

It shall be unlawful for any vessel to enter any port in any State or possession of the United States to discharge its cargo, or land its passengers, except upon a certificate of the quarantine officer that regulations prescribed under subsection (c) of this section have in all respects been complied with by such officer, the vessel, and its master. The master of every such vessel shall deliver such certificate to the collector of customs at the port of entry, together with the original bill of health and other papers of the vessel. The certificate required by this subsection shall be procurable from the quarantine officer, upon arrival of the vessel at the quarantine station and satisfactory inspection thereof, at any time within which quarantine services are performed at such station.

(July 1, 1944, ch. 373, title III, § 366, 58 Stat. 705.)

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1, of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 270. Quarantine regulations governing civil air navigation and civil aircraft

The Surgeon General is authorized to provide by regulations for the application to air naviga-

tion and aircraft of any of the provisions of sections 267 to 269 of this title and regulations prescribed thereunder (including penalties and forfeitures for violations of such sections and regulations), to such extent and upon such conditions as he deems necessary for the safeguarding of the public health.

(July 1, 1944, ch. 373, title III, § 367, 58 Stat. 706.)

ABOLITION OF OFFICE OF SURGEON GENERAL

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 271. Penalties for violation of quarantine laws

(a) Penalties for persons violating quarantine laws

Any person who violates any regulation prescribed under sections 264 to 266 of this title, or any provision of section 269 of this title or any regulation prescribed thereunder, or who enters or departs from the limits of any quarantine station, ground, or anchorage in disregard of quarantine rules and regulations or without permission of the quarantine officer in charge, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

(b) Penalties for vessels violating quarantine laws

Any vessel which violates section 269 of this title, or any regulations thereunder or under section 267 of this title, or which enters within or departs from the limits of any quarantine station, ground, or anchorage in disregard of the quarantine rules and regulations or without permission of the officer in charge, shall forfeit to the United States not more than $5,000, the amount to be determined by the court, which shall be a lien on such vessel, to be recovered by proceedings in the proper district court of the United States. In all such proceedings the United States attorney shall appear on behalf of the United States; and all such proceedings shall be conducted in accordance with the rules and laws governing cases of seizure of vessels for violation of the revenue laws of the United States.

(c) Remittance or mitigation of forfeitures

With the approval of the Secretary, the Surgeon General may, upon application therefor, remit or mitigate any forfeiture provided for under subsection (b) of this section, and he shall have authority to ascertain the facts upon all such applications.

(July 1, 1944, ch. 373, title III, § 368, 58 Stat. 706; June 25, 1948, ch. 646, § 1, 62 Stat. 909; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorney'' for ''United States district attorney''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision note thereunder.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 272. Administration of oaths by quarantine officers

Medical officers of the United States, when performing duties as quarantine officers at any port or place within the United States, are authorized to take declarations and administer oaths in matters pertaining to the administration of the quarantine laws and regulations of the United States.

(July 1, 1944, ch. 373, title III, § 369, 58 Stat. 706.)

PART H—ORGAN TRANSPLANTS

PRIOR PROVISIONS

A prior part H related to grants to Alaska for mental health, prior to the general revision of part H by Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2342.

Another prior part H, entitled ''National Library of Medicine'', as added by act Aug. 3, 1956, ch. 907, 70 Stat. 960, was redesignated part I and classified to section 275 et seq. of this title, prior to repeal by Pub. L. 99–158.

§ 273. Organ procurement organizations

(a) Grant authority of Secretary

(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b) of this section.

(2) The Secretary may make grants for the establishment, initial operation, consolidation, and expansion of qualified organ procurement organizations described in subsection (b) of this section.

(b) Qualified organizations

(1) A qualified organ procurement organization for which grants may be made under subsection (a) of this section is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2)[1] and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

[1] See References in Text note below.

(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for the procurement of kidneys,

(D) notwithstanding any other provision of law, has met the other requirements of this section and has been certified or recertified by the Secretary within the previous 4-year period as meeting the performance standards to be a qualified organ procurement organization through a process that either—

(i) granted certification or recertification within such 4-year period with such certification or recertification in effect as of January 1, 2000, and remaining in effect through the earlier of—

(I) January 1, 2002; or

(II) the completion of recertification under the requirements of clause (ii); or

(ii) is defined through regulations that are promulgated by the Secretary by not later than January 1, 2002, that—

(I) require recertifications of qualified organ procurement organizations not more frequently than once every 4 years;

(II) rely on outcome and process performance measures that are based on empirical evidence, obtained through reasonable efforts, of organ donor potential and other related factors in each service area of qualified organ procurement organizations;

(III) use multiple outcome measures as part of the certification process; and

(IV) provide for a qualified organ procurement organization to appeal a decertification to the Secretary on substantive and procedural grounds;[2]

(E) has procedures to obtain payment for non-renal organs provided to transplant centers,

(F) has a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of the area,

(G) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(H) has a board of directors or an advisory board which—

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) members who represent the public residing in such area,

(III) a physician with knowledge, experience, or skill in the field of histocompatability[3] or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility,

(IV) a physician with knowledge or skill in the field of neurology, and

(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G)[1] with the organization, a member who is a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2),[1] and

(iii) has no authority over any other activity of the organization.

(2)(A) Not later than 90 days after November 16, 1990, the Secretary shall publish in the Federal Register a notice of proposed rulemaking to establish criteria for determining whether an entity meets the requirement established in paragraph (1)(E).[1]

(B) Not later than 1 year after November 16, 1990, the Secretary shall publish in the Federal Register a final rule to establish the criteria described in subparagraph (A).

(3) An organ procurement organization shall—

(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

(B) conduct and participate in systematic efforts, including professional education, to acquire all useable organs from potential donors,

(C) arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network under section 274(b)(2)(E) of this title, including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,

(D) arrange for the appropriate tissue typing of donated organs,

(E) have a system to allocate donated organs equitably among transplant patients according to established medical criteria,

(F) provide or arrange for the transportation of donated organs to transplant centers,

(G) have arrangements to coordinate its activities with transplant centers in its service area,

(H) participate in the Organ Procurement Transplantation Network established under section 274 of this title,

(I) have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all useable tissues are obtained from potential donors,

(J) evaluate annually the effectiveness of the organization in acquiring potentially available organs, and

(K) assist hospitals in establishing and implementing protocols for making routine in-

[2] So in original. The semicolon probably should be a comma.

[3] So in original. Probably should be ''histocompatibility''.

quiries about organ donations by potential donors.

(c) Pancreata islet cell transplantation or research

Pancreata procured by an organ procurement organization and used for islet cell transplantation or research shall be counted for purposes of certification or recertification under subsection (b) of this section.

(July 1, 1944, ch. 373, title III, § 371, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2342; amended Pub. L. 100–607, title IV, § 402(a), (c)(1), (2), (d), Nov. 4, 1988, 102 Stat. 3114, 3115; Pub. L. 101–616, title II, §§ 201(a)–(c)(1), (d), (e), 206(b), Nov. 16, 1990, 104 Stat. 3283, 3285; Pub. L. 106–505, title VII, § 701(c), Nov. 13, 2000, 114 Stat. 2347; Pub. L. 106–554, § 1(a)(1) [title II, § 219(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–29; Pub. L. 108–216, § 9, Apr. 5, 2004, 118 Stat. 590; Pub. L. 108–362, § 2, Oct. 25, 2004, 118 Stat. 1703.)

REFERENCES IN TEXT

Paragraph (2), referred to in subsec. (b)(1), meaning paragraph (2) of subsec. (b) of this section, was redesignated paragraph (3) by section 201(d)(1) of Pub. L. 101–616. See 1990 Amendment note below.

The Social Security Act, referred to in subsec. (b)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Paragraph (1)(E), referred to in subsec. (b)(2)(A), meaning paragraph (1)(E) of subsec. (b) of this section, was redesignated paragraph (1)(F) by section 701(c)(1) of Pub. L. 106–505 and section 1(a)(1) [title II, § 219(b)(1)] of Pub. L. 106–554. See 2000 Amendment note below.

PRIOR PROVISIONS

A prior section 273, act July 1, 1944, ch. 373, title III, § 371, as added July 28, 1956, ch. 772, title II, § 201, 70 Stat. 709, authorized grants to the Territory of Alaska for an integrated mental health program, prior to repeal by Pub. L. 86–70, § 31(b)(1), June 25, 1959, 73 Stat. 148, effective July 1, 1959.

A prior section 371 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960, was renumbered section 381 and classified to section 275 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

2004—Subsec. (a)(3). Pub. L. 108–216 struck out par. (3) which read as follows: ''The Secretary may make grants to, and enter into contracts with, qualified organ procurement organizations described in subsection (b) of this section and other nonprofit private entities for the purpose of carrying out special projects designed to increase the number of organ donors.''

Subsec. (c). Pub. L. 108–362 added subsec. (c).

2000—Subsec. (b)(1)(D) to (H). Pub. L. 106–505 and Pub. L. 106–554 amended par. (1) identically, adding subpar. (D), redesignating former subpars. (D) to (G) as (E) to (H), respectively, and realigning margins of subpar. (F).

1990—Pub. L. 101–616, § 201(a), substituted ''Organ procurement organizations'' for ''Assistance for organ procurement organizations'' in section catchline.

Subsec. (a)(3). Pub. L. 101–616, § 201(b)(1), substituted ''may make grants to, and enter into contracts with, qualified organ procurement organizations described in subsection (b) of this section and other nonprofit private entities for the purpose of carrying out special projects'' for ''may make grants for special projects''.

Subsec. (a)(4). Pub. L. 101–616, § 201(b)(2), struck out par. (4) which set forth factors to consider in making grants.

Subsec. (b)(1)(E). Pub. L. 101–616, § 201(c)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''has a defined service area which is a geographical area of sufficient size such that (unless the service area comprises an entire State) the organization can reasonably expect to procure organs from not less than 50 donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,''.

Subsec. (b)(1)(G)(i)(III). Pub. L. 101–616, § 201(e), made technical correction to Pub. L. 100–607, § 402(c)(2). See 1988 Amendment note below.

Subsec. (b)(2), (3). Pub. L. 101–616, § 201(d), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c). Pub. L. 101–616, § 206(b), struck out subsec. (c) which authorized appropriations for subsec. (a) grants for fiscal years 1988 through 1990.

1988—Subsec. (a)(2). Pub. L. 100–607, § 402(a)(1), inserted ''consolidation,'' after ''initial operation,''.

Subsec. (a)(3). Pub. L. 100–607, § 402(a)(2), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 100–607, § 402(a)(2), redesignated former par. (3) as (4).

Subsec. (a)(4)(C). Pub. L. 100–607, § 402(a)(3), added subpar. (C).

Subsec. (b)(1)(E). Pub. L. 100–607, § 402(c)(1)(A), substituted ''size such that'' for ''size which'', and ''the organization can reasonably expect to procure organs from not less than 50 donors each year'' for ''will include at least fifty potential organ donors each year''.

Subsec. (b)(1)(G)(i)(III). Pub. L. 100–607, § 402(c)(2), as amended by Pub. L. 101–616, § 201(e), inserted ''or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility'' before comma at end.

Subsec. (b)(2)(C). Pub. L. 100–607, § 402(c)(1)(B), substituted ''274(b)(2)(E) of this title, including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,'' for ''274(b)(2)(D) of this title,''.

Subsec. (b)(2)(E). Pub. L. 100–607, § 402(c)(1)(C), substituted ''organs equitably among transplant patients'' for ''organs among transplant centers and patients''.

Subsec. (b)(2)(K). Pub. L. 100–607, § 402(c)(1)(D), added subpar. (K).

Subsec. (c). Pub. L. 100–607, § 402(d), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For grants under subsection (a) of this section there are authorized to be appropriated $5,000,000 for fiscal year 1985, $8,000,000 for fiscal year 1986, and $12,000,000 for fiscal year 1987.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 207 of title II of Pub. L. 101–616 provided that: ''Except as otherwise provided in this title, the amendments made by this title [enacting sections 274f and 274g of this title, amending this section and sections 274 and 274b to 274d of this title, and repealing provisions set out as a note below] shall become effective on October 1, 1990, or on the date of the enactment of this Act [Nov. 16, 1990], whichever occurs later.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 402(c)(3) of Pub. L. 100–607, as amended by Pub. L. 101–274, Apr. 23, 1990, 104 Stat. 139, which provided that the amendment made by section 402(c)(1)(A) of Pub. L. 100–607, amending this section, was not to apply to an organ procurement organization designated under section 1320b–8(b) of this title until Jan. 1, 1992, was repealed by Pub. L. 101–616, title II, § 201(c)(2), Nov. 16, 1990, 104 Stat. 3283.

SHORT TITLE

For short title of Pub. L. 98–507, which enacted this part as the ''National Organ Transplant Act'', see section 1 of Pub. L. 98–507, set out as a Short Title of 1984 Amendments note under section 201 of this title.

SEVERABILITY

Section 301 of Pub. L. 101–616 provided that: ''If any provision of this Act [enacting sections 274f, 274g, 274k, and 274*l* of this title, amending this section and sections 274 to 274d of this title, enacting provisions set out as notes under this section and sections 274 and 274k of this title, and repealing provisions set out as a note above], amendment made by this Act, or application of the provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions or amendments to any person or circumstance shall not be affected.''

CERTIFICATION OF ORGAN PROCUREMENT ORGANIZATIONS

Pub. L. 106–505, title VII, § 701(b), Nov. 13, 2000, 114 Stat. 2346, and Pub. L. 106–554, § 1(a)(1) [title II, § 219(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–28, provided that: ''Congress makes the following findings:

''(1) Organ procurement organizations play an important role in the effort to increase organ donation in the United States.

''(2) The current process for the certification and recertification of organ procurement organizations conducted by the Department of Health and Human Services has created a level of uncertainty that is interfering with the effectiveness of organ procurement organizations in raising the level of organ donation.

''(3) The General Accounting Office [now Government Accountability Office], the Institute of Medicine, and the Harvard School of Public Health have identified substantial limitations in the organ procurement organization certification and recertification process and have recommended changes in that process.

''(4) The limitations in the recertification process include:

''(A) An exclusive reliance on population-based measures of performance that do not account for the potential in the population for organ donation and do not permit consideration of other outcome and process standards that would more accurately reflect the relative capability and performance of each organ procurement organization.

''(B) A lack of due process to appeal to the Secretary of Health and Human Services for recertification on either substantive or procedural grounds.

''(5) The Secretary of Health and Human Services has the authority under section 1138(b)(1)(A)(i) of the Social Security Act (42 U.S.C. 1320b–8(b)(1)(A)(i)) to extend the period for recertification of an organ procurement organization from 2 to 4 years on the basis of its past practices in order to avoid the inappropriate disruption of the nation's organ system.

''(6) The Secretary of Health and Human Services can use the extended period described in paragraph (5) for recertification of all organ procurement organizations to—

''(A) develop improved performance measures that would reflect organ donor potential and interim outcomes, and to test these measures to ensure that they accurately measure performance differences among the organ procurement organizations; and

''(B) improve the overall certification process by incorporating process as well as outcome performance measures, and developing equitable processes for appeals.''

STUDY REGARDING IMMUNOSUPPRESSIVE DRUGS

Pub. L. 106–310, div. A, title XXI, § 2101(b), Oct. 17, 2000, 114 Stat. 1156, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the 'Secretary') shall provide for a study to determine the costs of immunosuppressive drugs that are provided to children pursuant to organ transplants and to determine the extent to which health plans and health insurance cover such costs. The Secretary may carry out the study directly or through a grant to the Institute of Medicine (or other public or nonprofit private entity).

''(2) RECOMMENDATIONS REGARDING CERTAIN ISSUES.—The Secretary shall ensure that, in addition to making determinations under paragraph (1), the study under such paragraph makes recommendations regarding the following issues:

''(A) The costs of immunosuppressive drugs that are provided to children pursuant to organ transplants and to determine the extent to which health plans, health insurance and government programs cover such costs.

''(B) The extent of denial of organs to be released for transplant by coroners and medical examiners.

''(C) The special growth and developmental issues that children have pre- and post-organ transplantation.

''(D) Other issues that are particular to the special health and transplantation needs of children.

''(3) REPORT.—The Secretary shall ensure that, not later than December 31, 2001, the study under paragraph (1) is completed and a report describing the findings of the study is submitted to the Congress.''

STUDY ON HOSPITAL AGREEMENTS WITH ORGAN PROCUREMENT AGENCIES

Pub. L. 103–432, title I, § 155(b), Oct. 31, 1994, 108 Stat. 4439, directed Office of Technology Assessment to conduct study to determine efficacy and fairness of requiring a hospital to enter into agreement under subsec. (b)(3)(A) of this section with organ procurement agency for service area in which such hospital is located and impact of such requirement on efficacy and fairness of organ procurement and distribution, and to submit to Congress, not later than 2 years after Oct. 31, 1994, report containing findings of such study and implications of such findings with respect to policies affecting organ procurement and distribution.

TASK FORCE ON ORGAN PROCUREMENT AND TRANSPLANTATION

Pub. L. 98–507, title I, §§ 101–105, Oct. 19, 1984, 98 Stat. 2339–2342, directed Secretary of Health and Human Services, not later than 90 days after Oct. 19, 1984, to establish a Task Force on Organ Transplantation to conduct comprehensive examinations, prepare an assessment and report, and submit advice as to regulation of the medical, legal, ethical, economic, and social issues presented by human organ procurement and transplantation, with the final report due not later than 12 months after the Task Force is established and the Task Force to terminate 3 months thereafter.

BONE MARROW REGISTRY DEMONSTRATION AND STUDY

Section 401 of Pub. L. 98–507 directed Secretary of Health and Human Services to hold a conference on the feasibility of establishing and the effectiveness of a national registry of voluntary bone marrow donors not later than 9 months after Oct. 19, 1984, and if the conference found that it was feasible to establish a national registry of voluntary donors of bone marrow and that such a registry was likely to be effective in matching donors with recipients, the Secretary was to establish a registry of voluntary donors of bone marrow not later than six months after the completion of the conference, and further directed the Secretary, acting through the Assistant Secretary for Health, to study the establishment and implementation of the registry to identify the issues presented by the establishment of such a registry, to evaluate participation of bone marrow donors, to assess the implementation of the informed consent and confidentiality requirements, and to determine if the establishment of a permanent bone marrow registry was needed and appropriate, and to report the results of the study to Congress not later than two years after the date the registry was established.

§ 273a. National living donor mechanisms

The Secretary may establish and maintain mechanisms to evaluate the long-term effects associated with living organ donations by individuals who have served as living donors.

(July 1, 1944, ch. 373, title III, § 371A, as added Pub. L. 108–216, § 7, Apr. 5, 2004, 118 Stat. 589.)

§ 274. Organ procurement and transplantation network

(a) Contract authority of Secretary; limitation; available appropriations

The Secretary shall by contract provide for the establishment and operation of an Organ Procurement and Transplantation Network which meets the requirements of subsection (b) of this section. The amount provided under such contract in any fiscal year may not exceed $2,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after fiscal year 1984.

(b) Functions

(1) The Organ Procurement and Transplantation Network shall carry out the functions described in paragraph (2) and shall—

(A) be a private nonprofit entity that has an expertise in organ procurement and transplantation, and

(B) have a board of directors—

(i) that includes representatives of organ procurement organizations (including organizations that have received grants under section 273 of this title), transplant centers, voluntary health associations, and the general public; and

(ii) that shall establish an executive committee and other committees, whose chairpersons shall be selected to ensure continuity of leadership for the board.

(2) The Organ Procurement and Transplantation Network shall—

(A) establish in one location or through regional centers—

(i) a national list of individuals who need organs, and

(ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included in the list, especially individuals whose immune system makes it difficult for them to receive organs,

(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,

(C) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

(D) assist organ procurement organizations in the nationwide distribution of organs equitably among transplant patients,

(E) adopt and use standards of quality for the acquisition and transportation of donated organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,

(F) prepare and distribute, on a regionalized basis (and, to the extent practicable, among regions or on a national basis), samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatibility of such individuals with organ donors,

(G) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

(H) provide information to physicians and other health professionals regarding organ donation,

(I) collect, analyze, and publish data concerning organ donation and transplants,

(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation,

(K) work actively to increase the supply of donated organs,

(L) submit to the Secretary an annual report containing information on the comparative costs and patient outcomes at each transplant center affiliated with the organ procurement and transplantation network,

(M) recognize the differences in health and in organ transplantation issues between children and adults throughout the system and adopt criteria, polices, and procedures that address the unique health care needs of children,

(N) carry out studies and demonstration projects for the purpose of improving procedures for organ donation procurement and allocation, including but not limited to projects to examine and attempt to increase transplantation among populations with special needs, including children and individuals who are members of racial or ethnic minority groups, and among populations with limited access to transportation, and

(O) provide that for purposes of this paragraph, the term ''children'' refers to individuals who are under the age of 18.

(c) Consideration of critical comments

The Secretary shall establish procedures for—

(1) receiving from interested persons critical comments relating to the manner in which the Organ Procurement and Transplantation Network is carrying out the duties of the Network under subsection (b) of this section; and

(2) the consideration by the Secretary of such critical comments.

(July 1, 1944, ch. 373, title III, § 372, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2344; amended Pub. L. 100–607, title IV, § 403, Nov. 4, 1988, 102 Stat. 3115; Pub. L. 101–616, title II, § 202(a)–(c), Nov. 16, 1990, 104 Stat. 3283, 3284; Pub. L. 106–310, div. A, title XXI, § 2101(a), Oct. 17, 2000, 114 Stat. 1156.)

PRIOR PROVISIONS

A prior section 274, act July 1, 1944, ch. 373, title III, § 372, as added July 28, 1956, ch. 772, title II, § 201, 70 Stat. 710; amended June 25, 1959, Pub. L. 86–70, § 31(b)(2)–(4), 73 Stat. 148, related to grants to Alaska for a mental health program and payment for construction of hospital facilities, prior to the general revision of this part by section 201 of Pub. L. 98–507.

Another section 372 of act July 1, 1944, added by act Aug. 3, 1956, ch. 941, § 1, 70 Stat. 960, which related to

functions of National Library of Medicine, was renumbered section 382 and classified to section 276 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

2000—Subsec. (b)(2)(M) to(O). Pub. L. 106–310 added subpars. (M) to (O).

1990—Subsec. (b)(1)(A). Pub. L. 101–616, § 202(a)(1), substituted ''that has an expertise in organ procurement and transplantation'' for ''which is not engaged in any activity unrelated to organ procurement''.

Subsec. (b)(1)(B). Pub. L. 101–616, § 202(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''have a board of directors which includes representatives of organ procurement organizations (including organizations which have received grants under section 273 of this title), transplant centers, voluntary health associations, and the general public.''

Subsec. (b)(2)(D). Pub. L. 101–616, § 202(b)(1), inserted ''nationwide'' after ''organizations in the'' and ''equitably among transplant patients'' after ''organs''.

Subsec. (b)(2)(F). Pub. L. 101–616, § 202(c), substituted ''compatibility'' for ''compatability''.

Subsec. (b)(2)(K), (L). Pub. L. 101–616, § 202(b)(2)–(4), added subpars. (K) and (L).

1988—Subsec. (b)(2)(B), (C). Pub. L. 100–607, § 403(a)(1), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (b)(2)(D). Pub. L. 100–607, § 403(a)(1), (2), redesignated former subpar. (C) as (D) and substituted ''organs'' for ''organs which cannot be placed within the service areas of the organizations''. Former subpar. (D) redesignated (E).

Subsec. (b)(2)(E). Pub. L. 100–607, § 403(a)(1), (3), redesignated former subpar. (D) as (E) and inserted ''including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,'' after ''organs,''. Former subpar. (E) redesignated (F).

Subsec. (b)(2)(F). Pub. L. 100–607, § 403(a)(1), (4), redesignated former subpar. (E) as (F) and inserted ''(and, to the extent practicable, among regions or on a national basis)'' after ''basis''. Former subpar. (F) redesignated (G).

Subsec. (b)(2)(G) to (I). Pub. L. 100–607, § 403(a)(1), redesignated former subpars. (F) to (H) as (G) to (I), respectively.

Subsec. (b)(2)(J). Pub. L. 100–607, § 403(a)(5), added subpar. (J).

Subsec. (c). Pub. L. 100–607, § 403(b), added subsec. (c).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 202(d) of Pub. L. 101–616 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on December 31, 1990.''

§ 274a. Scientific registry

The Secretary shall, by grant or contract, develop and maintain a scientific registry of the recipients of organ transplants. The registry shall include such information respecting patients and transplant procedures as the Secretary deems necessary to an ongoing evaluation of the scientific and clinical status of organ transplantation. The Secretary shall prepare for inclusion in the report under section 274d of this title an analysis of information derived from the registry.

(July 1, 1944, ch. 373, title III, § 373, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2345; amended Pub. L. 100–607, title IV, § 404, Nov. 4, 1988, 102 Stat. 3116; Pub. L. 101–616, title I, § 101(b), Nov. 16, 1990, 104 Stat. 3282.)

PRIOR PROVISIONS

A prior section 373 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960, which related to a Board of Regents of National Library of Medicine, was renumbered section 383 and classified to section 277 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Pub. L. 101–616 struck out ''and bone marrow registry'' after ''Scientific registry'' in section catchline and struck out subsec. (a) designation and subsec. (b) which directed establishment of bone marrow registry and authorized appropriations for fiscal years 1989 and 1990 for such purpose.

1988—Pub. L. 100–607 inserted ''and bone marrow registry'' in section catchline, designated existing text as subsec. (a), and added subsec. (b).

§ 274b. General provisions respecting grants and contracts

(a) Application requirement

No grant may be made under this part or contract entered into under section 274 or 274a of this title unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall by regulation prescribe.

(b) Special considerations and priority; planning and establishment grants

(1) A grant for planning under section 273(a)(1) of this title may be made for one year with respect to any organ procurement organization and may not exceed $100,000.

(2) Grants under section 273(a)(2) of this title may be made for two years. No such grant may exceed $500,000 for any year and no organ procurement organization may receive more than $800,000 for initial operation or expansion.

(3) Grants or contracts under section 273(a)(3) of this title may be made for not more than 3 years.

(c) Determination of grant amount; terms of payment; recordkeeping; access for purposes of audits and examination of records

(1) The Secretary shall determine the amount of a grant or contract made under section 273 or 274a of this title. Payments under such grants and contracts may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants and contracts.

(2)(A) Each recipient of a grant or contract under section 273 or 274a of this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant or contract, the total cost of the undertaking in connection with which such grant or contract was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(B) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant or contract under section 273

or 274a of this title that are pertinent to such grant or contract.

(d) "Transplant center" and "organ" defined

For purposes of this part:

(1) The term ''transplant center'' means a health care facility in which transplants of organs are performed.

(2) The term ''organ'' means the human kidney, liver, heart, lung, pancreas, and any other human organ (other than corneas and eyes) specified by the Secretary by regulation and for purposes of section 274a of this title, such term includes bone marrow.

(July 1, 1944, ch. 373, title III, § 374, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2345; amended Pub. L. 100–607, title IV, § 402(b), Nov. 4, 1988, 102 Stat. 3114; Pub. L. 101–616, title II, § 203, Nov. 16, 1990, 104 Stat. 3284.)

PRIOR PROVISIONS

A prior section 374 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 961, which related to acceptance and administration of gifts to National Library of Medicine and to establishment of memorials to donors, was renumbered section 384 and classified to section 278 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–616, § 203(1), substituted ''No grant may be made under this part'' for ''No grant may be made under section 273 or 274a of this title''.

Subsec. (b). Pub. L. 101–616, § 203(2), redesignated par. (2) as (1) and substituted ''section 273(a)(1)'' for ''section 273'', struck out former par. (1) which set forth factors in considering applications for section 273 grants, redesignated par. (3) as (2) and substituted ''section 273(a)(2)'' for ''paragraphs (2) and (3) of section 273(a)'', and added par. (3).

Subsec. (c). Pub. L. 101–616, § 203(3), inserted ''or contract'' after ''grant'' wherever appearing and ''and contracts'' after ''grants'' wherever appearing.

1988—Subsec. (b)(3). Pub. L. 100–607 substituted ''paragraphs (2) and (3) of section 273(a) of this title'' for ''section 273 of this title for the establishment, initial operation, or expansion of organ procurement organizations''.

§ 274c. Administration

The Secretary shall designate and maintain an identifiable administrative unit in the Public Health Service to—

(1) administer this part and coordinate with the organ procurement activities under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.],

(2) conduct a program of public information to inform the public of the need for organ donations,

(3) provide technical assistance to organ procurement organizations, the Organ Procurement and Transplantation Network established under section 274 of this title, and other entities in the health care system involved in organ donations, procurement, and transplants, and

(4) provide information—

(i) to patients, their families, and their physicians about transplantation; and

(ii) to patients and their families about the resources available nationally and in each State, and the comparative costs and patient outcomes at each transplant center affiliated with the organ procurement and transplantation network, in order to assist the patients and families with the costs associated with transplantation.

(July 1, 1944, ch. 373, title III, § 375, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2346; amended Pub. L. 100–607, title IV, § 405, Nov. 4, 1988, 102 Stat. 3116; Pub. L. 101–616, title II, § 204, Nov. 16, 1990, 104 Stat. 3285.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 375 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962, which related to definitions, was renumbered section 385 and classified to section 279 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Pub. L. 101–616, § 204(a), struck out '', during fiscal years 1985 through 1990,'' after ''The Secretary shall''.

Par. (3). Pub. L. 101–616, § 204(b)(1), struck out ''receiving funds under section 273 of this title'' after ''organ procurement organizations''.

Par. (4). Pub. L. 101–616, § 204(b)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''not later than April 1 of each of the years 1989 and 1990, submit to the Congress a report on the status of organ donation and coordination services and include in the report an analysis of the efficiency and effectiveness of the procurement and allocation of organs and a description of problems encountered in the procurement and allocation of organs.''

1988—Pub. L. 100–607, in introductory provisions, substituted ''1985 through 1990'' for ''1985, 1986, 1987, and 1988'' and, in par. (4), substituted ''not later than April 1 of each of the years 1989 and 1990, submit to the Congress a report'' for ''one year after the date on which the Task Force on Organ Transplantation transmits its final report under section 104(c) of the National Organ Transplant Act, and annually thereafter through fiscal year 1988, submit to Congress an annual report''.

§ 274d. Report

Not later than February 10 of 1991 and of each second year thereafter, the Secretary shall publish, and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.[1] a report on the scientific and clinical status of organ transplantation. The Secretary shall consult with the Director of the National Institutes of Health and the Commissioner of the Food and Drug Administration in the preparation of the report.

(July 1, 1944, ch. 373, title III, § 376, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2346; amended Pub. L. 100–607, title IV, § 406, Nov. 4, 1988, 102 Stat. 3116; Pub. L. 101–616, title II, § 205, Nov. 16, 1990, 104 Stat. 3285.)

PRIOR PROVISIONS

A prior section 376 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962, which related to Li-

[1] So in original. The period probably should be a comma.

brary facilities, was renumbered section 386 and classified to section 280 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Pub. L. 101–616 substituted ''Not later than February 10 of 1991 and of each second year thereafter, the Secretary shall publish, and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.'' for ''The Secretary shall, not later than October 1 of each year, publish''.

1988—Pub. L. 100–607 substituted ''shall, not later than October 1 of each year,'' for ''shall annually''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 274e. Prohibition of organ purchases

(a) Prohibition

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.

(b) Penalties

Any person who violates subsection (a) of this section shall be fined not more than $50,000 or imprisoned not more than five years, or both.

(c) Definitions

For purposes of subsection (a) of this section:

(1) The term ''human organ'' means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.

(2) The term ''valuable consideration'' does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(3) The term ''interstate commerce'' has the meaning prescribed for it by section 321(b) of title 21.

(Pub. L. 98–507, title III, § 301, Oct. 19, 1984, 98 Stat. 2346; Pub. L. 100–607, title IV, § 407, Nov. 4, 1988, 102 Stat. 3116.)

CODIFICATION

Section was enacted as part of the National Organ Transplant Act, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100–607 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'human organ' means the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin, and any other human organ specified by the Secretary of Health and Human Services by regulation.''

§ 274f. Reimbursement of travel and subsistence expenses incurred toward living organ donation

(a) In general

The Secretary may award grants to States, transplant centers, qualified organ procurement organizations under section 273 of this title, or other public or private entities for the purpose of—

(1) providing for the reimbursement of travel and subsistence expenses incurred by individuals toward making living donations of their organs (in this section referred to as ''donating individuals''); and

(2) providing for the reimbursement of such incidental nonmedical expenses that are so incurred as the Secretary determines by regulation to be appropriate.

(b) Preference

The Secretary shall, in carrying out subsection (a) of this section, give preference to those individuals that the Secretary determines are more likely to be otherwise unable to meet such expenses.

(c) Certain circumstances

The Secretary may, in carrying out subsection (a) of this section, consider—

(1) the term ''donating individuals'' as including individuals who in good faith incur qualifying expenses toward the intended donation of an organ but with respect to whom, for such reasons as the Secretary determines to be appropriate, no donation of the organ occurs; and

(2) the term ''qualifying expenses'' as including the expenses of having relatives or other individuals, not to exceed 2, accompany or assist the donating individual for purposes of subsection (a) of this section (subject to making payment for only those types of expenses that are paid for a donating individual).

(d) Relationship to payments under other programs

An award may be made under subsection (a) of this section only if the applicant involved agrees that the award will not be expended to pay the qualifying expenses of a donating individual to the extent that payment has been made, or can reasonably be expected to be made, with respect to such expenses—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program;

(2) by an entity that provides health services on a prepaid basis; or

(3) by the recipient of the organ.

(e) Definitions

For purposes of this section:

(1) The term ''donating individuals'' has the meaning indicated for such term in subsection

(a)(1) of this section, subject to subsection (c)(1) of this section.

(2) The term ''qualifying expenses'' means the expenses authorized for purposes of subsection (a) of this section, subject to subsection (c)(2) of this section.

(f) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 2005 through 2009.

(July 1, 1944, ch. 373, title III, § 377, as added Pub. L. 101–616, title II, § 206(a), Nov. 16, 1990, 104 Stat. 3285; amended Pub. L. 108–216, § 3, Apr. 5, 2004, 118 Stat. 584.)

AMENDMENTS

2004—Pub. L. 108–216 amended section catchline and text generally, substituting provisions relating to reimbursement of travel and subsistence expenses incurred toward living organ donation for provisions requiring the Comptroller General to study and report on organ procurement and allocation.

§ 274f–1. Public awareness; studies and demonstrations

(a) Organ donation public awareness program

The Secretary shall, directly or through grants or contracts, establish a public education program in cooperation with existing national public awareness campaigns to increase awareness about organ donation and the need to provide for an adequate rate of such donations.

(b) Studies and demonstrations

The Secretary may make peer-reviewed grants to, or enter into peer-reviewed contracts with, public and nonprofit private entities for the purpose of carrying out studies and demonstration projects to increase organ donation and recovery rates, including living donation.

(c) Grants to States

(1) In general

The Secretary may make grants to States for the purpose of assisting States in carrying out organ donor awareness, public education, and outreach activities and programs designed to increase the number of organ donors within the State, including living donors.

(2) Eligibility

To be eligible to receive a grant under this subsection, a State shall—

(A) submit an application to the Department in the form prescribed;

(B) establish yearly benchmarks for improvement in organ donation rates in the State; and

(C) report to the Secretary on an annual basis a description and assessment of the State's use of funds received under this subsection, accompanied by an assessment of initiatives for potential replication in other States.

(3) Use of funds

Funds received under this subsection may be used by the State, or in partnership with other public agencies or private sector institutions, for education and awareness efforts, information dissemination, activities pertaining to the State donor registry, and other innovative donation specific initiatives, including living donation.

(d) Educational activities

The Secretary, in coordination with the Organ Procurement and Transplantation Network and other appropriate organizations, shall support the development and dissemination of educational materials to inform health care professionals and other appropriate professionals in issues surrounding organ, tissue, and eye donation including evidence-based proven methods to approach patients and their families, cultural sensitivities, and other relevant issues.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $15,000,000 for fiscal year 2005, and such sums as may be necessary for each of the fiscal years 2006 through 2009. Such authorization of appropriations is in addition to any other authorizations of appropriations that are available for such purpose.

(July 1, 1944, ch. 373, title III, § 377A, as added Pub. L. 108–216, § 4, Apr. 5, 2004, 118 Stat. 585.)

§ 274f–2. Grants regarding hospital organ donation coordinators

(a) Authority

(1) In general

The Secretary may award grants to qualified organ procurement organizations and hospitals under section 273 of this title to establish programs coordinating organ donation activities of eligible hospitals and qualified organ procurement organizations under section 273 of this title. Such activities shall be coordinated to increase the rate of organ donations for such hospitals.

(2) Eligible hospital

For purposes of this section, the term ''eligible hospital'' means a hospital that performs significant trauma care, or a hospital or consortium of hospitals that serves a population base of not fewer than 200,000 individuals.

(b) Administration of coordination program

A condition for the receipt of a grant under subsection (a) of this section is that the applicant involved agree that the program under such subsection will be carried out jointly—

(1) by representatives from the eligible hospital and the qualified organ procurement organization with respect to which the grant is made; and

(2) by such other entities as the representatives referred to in paragraph (1) may designate.

(c) Requirements

Each entity receiving a grant under subsection (a) of this section shall—

(1) establish joint organ procurement organization and hospital designated leadership responsibility and accountability for the project;

(2) develop mutually agreed upon overall project performance goals and outcome measures, including interim outcome targets; and

(3) collaboratively design and implement an appropriate data collection process to provide ongoing feedback to hospital and organ procurement organization leadership on project progress and results.

(d) Rule of construction

Nothing in this section shall be construed to interfere with regulations in force on April 5, 2004.

(e) Evaluations

Within 3 years after the award of grants under this section, the Secretary shall ensure an evaluation of programs carried out pursuant to subsection (a) of this section in order to determine the extent to which the programs have increased the rate of organ donation for the eligible hospitals involved.

(f) Matching requirement

The Secretary may not award a grant to a qualifying organ donation entity under this section unless such entity agrees that, with respect to costs to be incurred by the entity in carrying out activities for which the grant was awarded, the entity shall contribute (directly or through donations from public or private entities) non-Federal contributions in cash or in kind, in an amount equal to not less than 30 percent of the amount of the grant awarded to such entity.

(g) Funding

For the purpose of carrying out this section, there are authorized to be appropriated $3,000,000 for fiscal year 2005, and such sums as may be necessary for each of fiscal years 2006 through 2009.

(July 1, 1944, ch. 373, title III, § 377B, as added Pub. L. 108–216, § 4, Apr. 5, 2004, 118 Stat. 586.)

§ 274f–3. Studies relating to organ donation and the recovery, preservation, and transportation of organs

(a) Development of supportive information

The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall develop scientific evidence in support of efforts to increase organ donation and improve the recovery, preservation, and transportation of organs.

(b) Activities

In carrying out subsection (a) of this section, the Secretary shall—

(1) conduct or support evaluation research to determine whether interventions, technologies, or other activities improve the effectiveness, efficiency, or quality of existing organ donation practice;

(2) undertake or support periodic reviews of the scientific literature to assist efforts of professional societies to ensure that the clinical practice guidelines that they develop reflect the latest scientific findings;

(3) ensure that scientific evidence of the research and other activities undertaken under this section is readily accessible by the organ procurement workforce; and

(4) work in coordination with the appropriate professional societies as well as the Organ Procurement and Transplantation Network and other organ procurement and transplantation organizations to develop evidence and promote the adoption of such proven practices.

(c) Research and dissemination

The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, as appropriate, shall provide support for research and dissemination of findings, to—

(1) develop a uniform clinical vocabulary for organ recovery;

(2) apply information technology and telecommunications to support the clinical operations of organ procurement organizations;

(3) enhance the skill levels of the organ procurement workforce in undertaking quality improvement activities; and

(4) assess specific organ recovery, preservation, and transportation technologies.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $2,000,000 for fiscal year 2005, and such sums as may be necessary for each of fiscal years 2006 through 2009.

(July 1, 1944, ch. 373, title III, § 377C, as added Pub. L. 108–216, § 5, Apr. 5, 2004, 118 Stat. 587.)

§ 274f–4. Report relating to organ donation and the recovery, preservation, and transportation of organs

(a) In general

Not later than December 31, 2005, and every 2 years thereafter, the Secretary shall report to the appropriate committees of Congress on the activities of the Department carried out pursuant to this part, including an evaluation describing the extent to which the activities have affected the rate of organ donation and recovery.

(b) Requirements

To the extent practicable, each report submitted under subsection (a) of this section shall—

(1) evaluate the effectiveness of activities, identify effective activities, and disseminate such findings with respect to organ donation and recovery;

(2) assess organ donation and recovery activities that are recently completed, ongoing, or planned; and

(3) evaluate progress on the implementation of the plan required under subsection (c)(5) of this section.

(c) Initial report requirements

The initial report under subsection (a) of this section shall include the following:

(1) An evaluation of the organ donation practices of organ procurement organizations, States, other countries, and other appropriate organizations including an examination across all populations, including those with low organ donation rates, of—

(A) existing barriers to organ donation; and

(B) the most effective donation and recovery practices.

(2) An evaluation of living donation practices and procedures. Such evaluation shall in-

clude an assessment of issues relating to informed consent and the health risks associated with living donation (including possible reduction of long-term effects).

(3) An evaluation of—

(A) federally supported or conducted organ donation efforts and policies, as well as federally supported or conducted basic, clinical, and health services research (including research on preservation techniques and organ rejection and compatibility); and

(B) the coordination of such efforts across relevant agencies within the Department and throughout the Federal Government.

(4) An evaluation of the costs and benefits of State donor registries, including the status of existing State donor registries, the effect of State donor registries on organ donation rates, issues relating to consent, and recommendations regarding improving the effectiveness of State donor registries in increasing overall organ donation rates.

(5) A plan to improve federally supported or conducted organ donation and recovery activities, including, when appropriate, the establishment of baselines and benchmarks to measure overall outcomes of these programs. Such plan shall provide for the ongoing coordination of federally supported or conducted organ donation and research activities.

(July 1, 1944, ch. 373, title III, § 377D, as added Pub. L. 108–216, § 6, Apr. 5, 2004, 118 Stat. 588.)

§ 274g. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $8,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

(July 1, 1944, ch. 373, title III, § 378, as added Pub. L. 101–616, title II, § 206(a), Nov. 16, 1990, 104 Stat. 3285; amended Pub. L. 105–196, § 4(1), July 16, 1998, 112 Stat. 636.)

AMENDMENTS

1998—Pub. L. 105–196 made technical amendment relating to placement of section within part H of this subchapter.

PART I—C.W. BILL YOUNG CELL TRANSPLANTATION PROGRAM

AMENDMENTS

2005—Pub. L. 109–129, § 3(e), Dec. 20, 2005, 119 Stat. 2562, substituted ''C.W. Bill Young Cell Transplantation Program'' for ''National Bone Marrow Donor Registry'' in part heading.

1990—Pub. L. 101–616, title I, § 101(a)(2), Nov. 16, 1990, 104 Stat. 3279, added part I ''National Bone Marrow Donor Registry'' and redesignated former part I ''Biomedical Ethics'' as J.

1985—Pub. L. 99–158, §§ 3(b), 11, Nov. 20, 1985, 99 Stat. 879, 883, added part I ''Biomedical Ethics'', and repealed former part I ''National Library of Medicine''.

1970—Pub. L. 91–212, § 10(a)(2), Mar. 13, 1970, 84 Stat. 66, redesignated part H ''National Library of Medicine'', as part I ''National Library of Medicine''.

§ 274k. National Program

(a) Establishment

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall by one or more contracts establish and maintain a C.W. Bill Young Cell Transplantation Program (referred to in this section as the ''Program''), successor to the National Bone Marrow Donor Registry, that has the purpose of increasing the number of transplants for recipients suitably matched to biologically unrelated donors of bone marrow and cord blood, and that meets the requirements of this section. The Secretary may award a separate contract to perform each of the major functions of the Program described in paragraphs (1) and (2) of subsection (d) of this section if deemed necessary by the Secretary to operate an effective and efficient system that is in the best interest of patients. The Secretary shall conduct a separate competition for the initial establishment of the cord blood functions of the Program. The Program shall be under the general supervision of the Secretary. The Secretary shall establish an Advisory Council to advise, assist, consult with, and make recommendations to the Secretary on matters related to the activities carried out by the Program. The members of the Advisory Council shall be appointed in accordance with the following:

(1) Each member of the Advisory Council shall serve for a term of 2 years, and each such member may serve as many as 3 consecutive 2-year terms, except that—

(A) such limitations shall not apply to the Chair of the Advisory Council (or the Chair-elect) or to the member of the Advisory Council who most recently served as the Chair; and

(B) one additional consecutive 2-year term may be served by any member of the Advisory Council who has no employment, governance, or financial affiliation with any donor center, recruitment organization, transplant center, or cord blood bank.

(2) A member of the Advisory Council may continue to serve after the expiration of the term of such member until a successor is appointed.

(3) In order to ensure the continuity of the Advisory Council, the Advisory Council shall be appointed so that each year the terms of approximately one-third of the members of the Advisory Council expire.

(4) The membership of the Advisory Council—

(A) shall include as voting members a balanced number of representatives including representatives of marrow donor centers and marrow transplant centers, representatives of cord blood banks and participating birthing hospitals, recipients of a bone marrow transplant, recipients of a cord blood transplant, persons who require such transplants, family members of such a recipient or family members of a patient who has requested the assistance of the Program in searching for an unrelated donor of bone marrow or cord blood, persons with expertise in bone marrow and cord blood transplantation, persons with expertise in typing, matching, and transplant outcome data analysis, persons with expertise in the social sciences, basic scientists with expertise in the biology of adult stem cells, and members of the general public; and

(B) shall include as nonvoting members representatives from the Department of Defense Marrow Donor Recruitment and Research Program operated by the Department of the Navy, the Division of Transplantation of the Health Resources and Services Administration, the Food and Drug Administration, and the National Institutes of Health.

(5) Members of the Advisory Council shall be chosen so as to ensure objectivity and balance and reduce the potential for conflicts of interest. The Secretary shall establish bylaws and procedures—

(A) to prohibit any member of the Advisory Council who has an employment, governance, or financial affiliation with a donor center, recruitment organization, transplant center, or cord blood bank from participating in any decision that materially affects the center, recruitment organization, transplant center, or cord blood bank; and

(B) to limit the number of members of the Advisory Council with any such affiliation.

(6) The Secretary, acting through the Advisory Council, shall submit to the Congress—

(A) an annual report on the activities carried out under this section; and

(B) not later than 6 months after December 20, 2005, a report of recommendations on the scientific factors necessary to define a cord blood unit as a high-quality unit.

(b) Accreditation

The Secretary shall, through a public process, recognize one or more accreditation entities for the accreditation of cord blood banks.

(c) Informed consent

The Secretary shall, through a public process, examine issues of informed consent, including—

(1) the appropriate timing of such consent; and

(2) the information provided to the maternal donor regarding all of her medically appropriate cord blood options.

Based on such examination, the Secretary shall require that the standards used by the accreditation entities recognized under subsection (b) of this section ensure that a cord blood unit is acquired with the informed consent of the maternal donor.

(d) Functions

(1) Bone marrow functions

With respect to bone marrow, the Program shall—

(A) operate a system for identifying, matching, and facilitating the distribution of bone marrow that is suitably matched to candidate patients;

(B) consistent with paragraph (3), permit transplant physicians, other appropriate health care professionals, and patients to search by means of electronic access all available bone marrow donors listed in the Program;

(C) carry out a program for the recruitment of bone marrow donors in accordance with subsection (e) of this section, including with respect to increasing the representation of racial and ethnic minority groups (including persons of mixed ancestry) in the enrollment of the Program;

(D) maintain and expand medical contingency response capabilities, in coordination with Federal programs, to prepare for and respond effectively to biological, chemical, or radiological attacks, and other public health emergencies that can damage marrow, so that the capability of supporting patients with marrow damage from disease can be used to support casualties with marrow damage;

(E) carry out informational and educational activities in accordance with subsection (e) of this section;

(F) at least annually update information to account for changes in the status of individuals as potential donors of bone marrow;

(G) provide for a system of patient advocacy through the office established under subsection (h) of this section;

(H) provide case management services for any potential donor of bone marrow to whom the Program has provided a notice that the potential donor may be suitably matched to a particular patient through the office established under subsection (h) of this section;

(I) with respect to searches for unrelated donors of bone marrow that are conducted through the system under subparagraph (A), collect, analyze, and publish data in a standardized electronic format on the number and percentage of patients at each of the various stages of the search process, including data regarding the furthest stage reached, the number and percentage of patients who are unable to complete the search process, and the reasons underlying such circumstances;

(J) support studies and demonstration and outreach projects for the purpose of increasing the number of individuals who are willing to be marrow donors to ensure a genetically diverse donor pool; and

(K) facilitate research with the appropriate Federal agencies to improve the availability, efficiency, safety, and cost of transplants from unrelated donors and the effectiveness of Program operations.

(2) Cord blood functions

With respect to cord blood, the Program shall—

(A) operate a system for identifying, matching, and facilitating the distribution of donated cord blood units that are suitably matched to candidate patients and meet all applicable Federal and State regulations (including informed consent and Food and Drug Administration regulations) from a qualified cord blood bank;

(B) consistent with paragraph (3), allow transplant physicians, other appropriate health care professionals, and patients to search by means of electronic access all available cord blood units made available through the Program;

(C) allow transplant physicians and other appropriate health care professionals to reserve, as defined by the Secretary, a cord blood unit for transplantation;

(D) support studies and demonstration and outreach projects for the purpose of increasing cord blood donation to ensure a genetically diverse collection of cord blood units;

(E) provide for a system of patient advocacy through the office established under subsection (h) of this section;

(F) coordinate with the qualified cord blood banks to support informational and educational activities in accordance with subsection (g) of this section;

(G) maintain and expand medical contingency response capabilities, in coordination with Federal programs, to prepare for and respond effectively to biological, chemical, or radiological attacks, and other public health emergencies that can damage marrow, so that the capability of supporting patients with marrow damage from disease can be used to support casualties with marrow damage; and

(H) with respect to the system under subparagraph (A), collect, analyze, and publish data in a standardized electronic format, as required by the Secretary, on the number and percentage of patients at each of the various stages of the search process, including data regarding the furthest stage reached, the number and percentage of patients who are unable to complete the search process, and the reasons underlying such circumstances.

(3) Single point of access; standard data

(A) Single point of access

The Secretary shall ensure that health care professionals and patients are able to search electronically for and facilitate access to, in the manner and to the extent defined by the Secretary and consistent with the functions described in paragraphs (1)(A) and (2)(A), cells from bone marrow donors and cord blood units through a single point of access.

(B) Standard data

The Secretary shall require all recipients of contracts under this section to make available a standard dataset for purposes of subparagraph (A) in a standardized electronic format that enables transplant physicians to compare among and between bone marrow donors and cord blood units to ensure the best possible match for the patient.

(4) Definition

The term ''qualified cord blood bank'' means a cord blood bank that—

(A) has obtained all applicable Federal and State licenses, certifications, registrations (including pursuant to the regulations of the Food and Drug Administration), and other authorizations required to operate and maintain a cord blood bank;

(B) has implemented donor screening, cord blood collection practices, and processing methods intended to protect the health and safety of donors and transplant recipients to improve transplant outcomes, including with respect to the transmission of potentially harmful infections and other diseases;

(C) is accredited by an accreditation entity recognized by the Secretary under subsection (b) of this section;

(D) has established a system of strict confidentiality to protect the identity and privacy of patients and donors in accordance with existing Federal and State law;

(E) has established a system for encouraging donation by a genetically diverse group of donors; and

(F) has established a system to confidentially maintain linkage between a cord blood unit and a maternal donor.

(e) Bone marrow recruitment; priorities; information and education

(1) Recruitment; priorities

The Program shall carry out activities for the recruitment of bone marrow donors. Such recruitment program shall identify populations that are underrepresented among potential donors enrolled with the Program. In the case of populations that are identified under the preceding sentence:

(A) The Program shall give priority to carrying out activities under this part to increase representation for such populations in order to enable a member of such a population, to the extent practicable, to have a probability of finding a suitable unrelated donor that is comparable to the probability that an individual who is not a member of an underrepresented population would have.

(B) The Program shall consider racial and ethnic minority groups (including persons of mixed ancestry) to be populations that have been identified for purposes of this paragraph, and shall carry out subparagraph (A) with respect to such populations.

(2) Information and education regarding recruitment; testing and enrollment

(A) In general

The Program shall carry out informational and educational activities, in coordination with organ donation public awareness campaigns operated through the Department of Health and Human Services, for purposes of recruiting individuals to serve as donors of bone marrow, and shall test and enroll with the Program potential bone marrow donors. Such information and educational activities shall include the following:

(i) Making information available to the general public, including information describing the needs of patients with respect to donors of bone marrow.

(ii) Educating and providing information to individuals who are willing to serve as potential bone marrow donors.

(iii) Training individuals in requesting individuals to serve as potential bone marrow donors.

(B) Priorities

In carrying out informational and educational activities under subparagraph (A), the Program shall give priority to recruiting individuals to serve as donors of bone marrow for populations that are identified under paragraph (1).

(3) Transplantation as treatment option

In addition to activities regarding recruitment, the recruitment program under para-

graph (1) shall provide information to physicians, other health care professionals, and the public regarding bone marrow transplants from unrelated donors as a treatment option.

(4) Implementation of subsection

The requirements of this subsection shall be carried out by the entity that has been awarded a contract by the Secretary under subsection (a) of this section to carry out the functions described in subsection (d)(1) of this section.

(f) Bone marrow criteria, standards, and procedures

The Secretary shall enforce, for participating entities, including the Program, individual marrow donor centers, marrow donor registries, marrow collection centers, and marrow transplant centers—

(1) quality standards and standards for tissue typing, obtaining the informed consent of donors, and providing patient advocacy;

(2) donor selection criteria, based on established medical criteria, to protect both the donor and the recipient and to prevent the transmission of potentially harmful infectious diseases such as the viruses that cause hepatitis and the etiologic agent for Acquired Immune Deficiency Syndrome;

(3) procedures to ensure the proper collection and transportation of the marrow;

(4) standards for the system for patient advocacy operated under subsection (h) of this section, including standards requiring the provision of appropriate information (at the start of the search process and throughout the process) to patients and their families and physicians;

(5) standards that—

(A) require the establishment of a system of strict confidentiality of records relating to the identity, address, HLA type, and managing marrow donor center for marrow donors and potential marrow donors; and

(B) prescribe the purposes for which the records described in subparagraph (A) may be disclosed, and the circumstances and extent of the disclosure; and

(6) in the case of a marrow donor center or marrow donor registry participating in the program, procedures to ensure the establishment of a method for integrating donor files, searches, and general procedures of the center or registry with the Program.

(g) Cord blood recruitment; priorities; information and education

(1) Recruitment; priorities

The Program shall support activities, in cooperation with qualified cord blood banks, for the recruitment of cord blood donors. Such recruitment program shall identify populations that are underrepresented among cord blood donors. In the case of populations that are identified under the preceding sentence:

(A) The Program shall give priority to supporting activities under this part to increase representation for such populations in order to enable a member of such a population, to the extent practicable, to have a probability of finding a suitable cord blood unit that is comparable to the probability that an individual who is not a member of an underrepresented population would have.

(B) The Program shall consider racial and ethnic minority groups (including persons of mixed ancestry) to be populations that have been identified for purposes of this paragraph, and shall support activities under subparagraph (A) with respect to such populations.

(2) Information and education regarding recruitment; testing and donation

(A) In general

In carrying out the recruitment program under paragraph (1), the Program shall support informational and educational activities in coordination with qualified cord blood banks and organ donation public awareness campaigns operated through the Department of Health and Human Services, for purposes of recruiting pregnant women to serve as donors of cord blood. Such information and educational activities shall include the following:

(i) Making information available to the general public, including information describing the needs of patients with respect to cord blood units.

(ii) Educating and providing information to pregnant women who are willing to donate cord blood units.

(iii) Training individuals in requesting pregnant women to serve as cord blood donors.

(B) Priorities

In carrying out informational and educational activities under subparagraph (A), the Program shall give priority to supporting the recruitment of pregnant women to serve as donors of cord blood for populations that are identified under paragraph (1).

(3) Transplantation as treatment option

In addition to activities regarding recruitment, the recruitment program under paragraph (1) shall provide information to physicians, other health care professionals, and the public regarding cord blood transplants from donors as a treatment option.

(4) Implementation of subsection

The requirements of this subsection shall be carried out by the entity that has been awarded a contract by the Secretary under subsection (a) of this section to carry out the functions described in subsection (d)(2) of this section.

(h) Patient advocacy and case management for bone marrow and cord blood

(1) In general

The Secretary shall establish and maintain, through a contract or other means determined appropriate by the Secretary, an office of patient advocacy (in this subsection referred to as the ''Office'').

(2) General functions

The Office shall meet the following requirements:

(A) The Office shall be headed by a director.

(B) The Office shall be staffed by individuals with expertise in bone marrow and cord blood therapy covered under the Program.

(C) The Office shall operate a system for patient advocacy, which shall be separate from mechanisms for donor advocacy, and which shall serve patients for whom the Program is conducting, or has been requested to conduct, a search for a bone marrow donor or cord blood unit.

(D) In the case of such a patient, the Office shall serve as an advocate for the patient by directly providing to the patient (or family members, physicians, or other individuals acting on behalf of the patient) individualized services with respect to efficiently utilizing the system under paragraphs (1) and (2) of subsection (d) of this section to conduct an ongoing search for a bone marrow donor or cord blood unit and assist with information regarding third party payor matters.

(E) In carrying out subparagraph (D), the Office shall monitor the system under paragraphs (1) and (2) of subsection (d) of this section to determine whether the search needs of the patient involved are being met, including with respect to the following:

(i) Periodically providing to the patient (or an individual acting on behalf of the patient) information regarding bone marrow donors or cord blood units that are suitably matched to the patient, and other information regarding the progress being made in the search.

(ii) Informing the patient (or such other individual) if the search has been interrupted or discontinued.

(iii) Identifying and resolving problems in the search, to the extent practicable.

(F) The Office shall ensure that the following data are made available to patients:

(i) The resources available through the Program.

(ii) A comparison of transplant centers regarding search and other costs that prior to transplantation are charged to patients by transplant centers.

(iii) The post-transplant outcomes for individual transplant centers.

(iv) Information concerning issues that patients may face after a transplant.

(v) Such other information as the Program determines to be appropriate.

(G) The Office shall conduct surveys of patients (or family members, physicians, or other individuals acting on behalf of patients) to determine the extent of satisfaction with the system for patient advocacy under this subsection, and to identify ways in which the system can be improved to best meet the needs of patients.

(3) Case management

(A) In general

In serving as an advocate for a patient under paragraph (2), the Office shall provide individualized case management services directly to the patient (or family members, physicians, or other individuals acting on behalf of the patient), including—

(i) individualized case assessment; and

(ii) the functions described in paragraph (2)(D) (relating to progress in the search process).

(B) Postsearch functions

In addition to the case management services described in paragraph (1) for patients, the Office shall, on behalf of patients who have completed the search for a bone marrow donor or cord blood unit, provide information and education on the process of receiving a transplant, including the post-transplant process.

(i) Comment procedures

The Secretary shall establish and provide information to the public on procedures under which the Secretary shall receive and consider comments from interested persons relating to the manner in which the Program is carrying out the duties of the Program. The Secretary may promulgate regulations under this section.

(j) Consultation

In developing policies affecting the Program, the Secretary shall consult with the Advisory Council, the Department of Defense Marrow Donor Recruitment and Research Program operated by the Department of the Navy, and the board of directors of each entity awarded a contract under this section.

(k) Contracts

(1) Application

To be eligible to enter into a contract under this section, an entity shall submit to the Secretary and obtain approval of an application at such time, in such manner, and containing such information as the Secretary shall by regulation prescribe.

(2) Considerations

In awarding contracts under this section, the Secretary shall give consideration to the continued safety of donors and patients and other factors deemed appropriate by the Secretary.

***(l)* Eligibility**

Entities eligible to receive a contract under this section shall include private nonprofit entities.

(m) Records

(1) Recordkeeping

Each recipient of a contract or subcontract under subsection (a) of this section shall keep such records as the Secretary shall prescribe, including records that fully disclose the amount and disposition by the recipient of the proceeds of the contract, the total cost of the undertaking in connection with which the contract was made, and the amount of the portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) Examination of records

The Secretary and the Comptroller General of the United States shall have access to any

books, documents, papers, and records of the recipient of a contract or subcontract entered into under this section that are pertinent to the contract, for the purpose of conducting audits and examinations.

(n) Penalties for disclosure

Any person who discloses the content of any record referred to in subsection (d)(4)(D) or (f)(5)(A) of this section without the prior written consent of the donor or potential donor with respect to whom the record is maintained, or in violation of the standards described in subsection (f)(5)(B) of this section, shall be imprisoned for not more than 2 years or fined in accordance with title 18, or both.

(July 1, 1944, ch. 373, title III, §379, as added Pub. L. 101–616, title I, §101(a)(2), Nov. 16, 1990, 104 Stat. 3279; amended Pub. L. 105–196, §2(a), (b)(1), (c)–(g), July 16, 1998, 112 Stat. 631–635; Pub. L. 109–129, §3(a), Dec. 20, 2005, 119 Stat. 2553.)

AMENDMENTS

2005—Pub. L. 109–129 amended section generally, substituting provisions relating to the C.W. Bill Young Cell Transplantation Program for provisions relating to the National Bone Marrow Donor Registry.

1998—Subsec. (a). Pub. L. 105–196, §2(a), substituted ''(referred to in this part as the 'Registry') that has the purpose of increasing the number of transplants for recipients suitably matched to biologically unrelated donors of bone marrow, and that meets'' for ''(referred to in this part as the 'Registry') that meets'' and substituted ''under the direction of a board of directors meeting the following requirements:'' and pars. (1) to (4) for ''under the direction of a board of directors that shall include representatives of marrow donor centers, marrow transplant centers, persons with expertise in the social science, and the general public.''

Subsec. (b)(2) to (8). Pub. L. 105–196, §2(b)(1), added pars. (2) to (7), redesignated former par. (7) as (8), and struck out former pars. (2) to (6) which read as follows:

''(2) establish a system for patient advocacy, separate from mechanisms for donor advocacy, that directly assists patients, their families, and their physicians in the search for an unrelated marrow donor;

''(3) increase the representation of individuals from racial and ethnic minority groups in the pool of potential donors for the Registry in order to enable an individual in a minority group, to the extent practicable, to have a comparable chance of finding a suitable unrelated donor as would an individual not in a minority group;

''(4) provide information to physicians, other health care professionals, and the public regarding bone marrow transplantation;

''(5) recruit potential bone marrow donors;

''(6) collect, analyze, and publish data concerning bone marrow donation and transplantation; and''.

Subsecs. (c), (d). Pub. L. 105–196, §2(c), (d), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 105–196, §2(c), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (e)(4). Pub. L. 105–196, §2(e), added par. (4) and struck out former par. (4) which read as follows: ''standards that require the provision of information to patients, their families, and their physicians at the start of the search process concerning—

''(A) the resources available through the Registry;

''(B) all other marrow donor registries meeting the standards described in this paragraph; and

''(C) in the case of the Registry—

''(i) the comparative costs of all charges by marrow transplant centers incurred by patients prior to transplantation; and

''(ii) the success rates of individual marrow transplant centers;''.

Subsec. (f). Pub. L. 105–196, §2(c), (g)(1), redesignated subsec. (d) as (f) and substituted ''subsection (e)'' for ''subsection (c)''. Former subsec. (f) redesignated (h).

Subsecs. (g) to (i). Pub. L. 105–196, §2(c), redesignated subsecs. (e) to (g) as (g) to (i), respectively. Former subsecs. (h) and (i) redesignated (j) and (k), respectively.

Subsec. (j). Pub. L. 105–196, §2(c), redesignated subsec. (h) as (j) and struck out heading and text of former subsec. (j). Text read as follows: ''There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year 1991 and such sums as may be necessary for each of fiscal years 1992 and 1993.''

Subsec. (k). Pub. L. 105–196, §2(c), (g)(2), redesignated subsec. (i) as (k) and substituted ''subsection (e)(5)(A)'' for ''subsection (c)(5)(A)'' and ''subsection (e)(5)(B)'' for ''subsection (c)(5)(B)''.

Subsec. (*l*). Pub. L. 105–196, §2(f), added subsec. (*l*).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–196, §7, July 16, 1998, 112 Stat. 637, provided that: ''This Act [see Short Title of 1998 Amendment note set out under section 201 of this title] takes effect October 1, 1998, or upon the date of the enactment of this Act [July 16, 1998], whichever occurs later.''

SAVINGS PROVISION

Section 102 of title I of Pub. L. 101–616 provided that:

''(a) IN GENERAL.—This title [enacting this section and section 274*l* of this title and amending section 274a of this title], and the amendments made by this title, shall not affect any legal document, including any order, regulation, grant, or contract, in effect on the date of enactment of this Act [Nov. 16, 1990], or any administrative proceeding or lawsuit pending on the date, that relates to the bone marrow registry established under section 373(b) of the Public Health Service Act [section 274a(b) of this title] (as it existed before the amendment made by section 101(b) of this Act).

''(b) CONTINUED EFFECT.—A legal document described in subsection (a) or an order issued in a lawsuit described in subsection (a) shall continue in effect until modified, terminated, or revoked.

''(c) PROCEEDINGS.—In any administrative proceeding or lawsuit described in subsection (a), parties shall take appeals, and officials shall hold proceedings and render judgments, in the same manner and with the same effect as if this title had not been enacted.''

CORD BLOOD INVENTORY

Pub. L. 109–129, §2, Dec. 20, 2005, 119 Stat. 2550, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall enter into one-time contracts with qualified cord blood banks to assist in the collection and maintenance of 150,000 new units of high-quality cord blood to be made available for transplantation through the C.W. Bill Young Cell Transplantation Program and to carry out the requirements of subsection (b).

''(b) REQUIREMENTS.—The Secretary shall require each recipient of a contract under this section—

''(1) to acquire, tissue-type, test, cryopreserve, and store donated units of cord blood acquired with the informed consent of the donor, as determined by the Secretary pursuant to section 379(c) of the Public Health Service Act [subsec. (c) of this section], in a manner that complies with applicable Federal and State regulations;

''(2) to encourage donation from a genetically diverse population;

''(3) to make cord blood units that are collected pursuant to this section or otherwise and meet all applicable Federal standards available to transplant centers for transplantation;

''(4) to make cord blood units that are collected, but not appropriate for clinical use, available for peer-reviewed research;

''(5) to make data available, as required by the Secretary and consistent with section 379(d)(3) of the

Public Health Service Act (42 U.S.C. 274k(d)(3)), as amended by this Act, in a standardized electronic format, as determined by the Secretary, for the C.W. Bill Young Cell Transplantation Program; and

''(6) to submit data in a standardized electronic format for inclusion in the stem cell therapeutic outcomes database maintained under section 379A of the Public Health Service Act [section 274*l* of this title], as amended by this Act.

''(c) RELATED CORD BLOOD DONORS.—

''(1) IN GENERAL.—The Secretary shall establish a 3-year demonstration project under which qualified cord blood banks receiving a contract under this section may use a portion of the funding under such contract for the collection and storage of cord blood units for a family where a first-degree relative has been diagnosed with a condition that will benefit from transplantation (including selected blood disorders, malignancies, metabolic storage disorders, hemoglobinopathies, and congenital immunodeficiencies) at no cost to such family. Qualified cord blood banks collecting cord blood units under this paragraph shall comply with the requirements of paragraphs (1), (2), (3), and (5) of subsection (b).

''(2) AVAILABILITY.—Qualified cord blood banks that are operating a program under paragraph (1) shall provide assurances that the cord blood units in such banks will be available for directed transplantation until such time that the cord blood unit is released for transplantation or is transferred by the family to the C.W. Bill Young Cell Transplantation Program in accordance with guidance or regulations promulgated by the Secretary.

''(3) INVENTORY.—Cord blood units collected through the program under this section shall not be counted toward the 150,000 inventory goal under the C.W. Bill Young Cell Transplantation Program.

''(4) REPORT.—Not later than 90 days after the date on which the project under paragraph (1) is terminated by the Secretary, the Secretary shall submit to Congress a report on the outcomes of the project that shall include the recommendations of the Secretary with respect to the continuation of such project.

''(d) APPLICATION.—To seek to enter into a contract under this section, a qualified cord blood bank shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. At a minimum, an application for a contract under this section shall include a requirement that the applicant—

''(1) will participate in the C.W. Bill Young Cell Transplantation Program for a period of at least 10 years;

''(2) will make cord blood units collected pursuant to this section available through the C.W. Bill Young Cell Transplantation Program in perpetuity or for such time as determined viable by the Secretary; and

''(3) if the Secretary determines through an assessment, or through petition by the applicant, that a cord blood bank is no longer operational or does not meet the requirements of section 379(d)(4) of the Public Health Service Act [subsec. (d)(4) of this section] (as added by this Act) and as a result may not distribute the units, transfer the units collected pursuant to this section to another qualified cord blood bank approved by the Secretary to ensure continued availability of cord blood units.

''(e) DURATION OF CONTRACTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term of each contract entered into by the Secretary under this section shall be for 10 years. The Secretary shall ensure that no Federal funds shall be obligated under any such contract after the earlier of—

''(A) the date that is 3 years after the date on which the contract is entered into; or

''(B) September 30, 2010.

''(2) EXTENSIONS.—Subject to paragraph (1)(B), the Secretary may extend the period of funding under a contract under this section to exceed a period of 3 years if—

''(A) the Secretary finds that 150,000 new units of high-quality cord blood have not yet been collected pursuant to this section; and

''(B) the Secretary does not receive an application for a contract under this section from any qualified cord blood bank that has not previously entered into a contract under this section or the Secretary determines that the outstanding inventory need cannot be met by the one or more qualified cord blood banks that have submitted an application for a contract under this section.

''(3) PREFERENCE.—In considering contract extensions under paragraph (2), the Secretary shall give preference to qualified cord blood banks that the Secretary determines have demonstrated a superior ability to satisfy the requirements described in subsection (b) and to achieve the overall goals for which the contract was awarded.

''(f) REGULATIONS.—The Secretary may promulgate regulations to carry out this section.

''(g) DEFINITIONS.—In this section:

''(1) The term 'C.W. Bill Young Cell Transplantation Program' means the C.W. Bill Young Cell Transplantation Program under section 379 of the Public Health Service Act [this section], as amended by this Act.

''(2) The term 'cord blood donor' means a mother who has delivered a baby and consents to donate the neonatal blood remaining in the placenta and umbilical cord after separation from the newborn baby.

''(3) The term 'cord blood unit' means the neonatal blood collected from the placenta and umbilical cord of a single newborn baby.

''(4) The term 'first-degree relative' means a sibling or parent who is one meiosis away from a particular individual in a family.

''(5) The term 'qualified cord blood bank' has the meaning given to that term in section 379(d)(4) of the Public Health Service Act [subsec. (d)(4) of this section], as amended by this Act.

''(6) The term 'Secretary' means the Secretary of Health and Human Services.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) EXISTING FUNDS.—Any amounts appropriated to the Secretary for fiscal year 2004 or 2005 for the purpose of assisting in the collection or maintenance of cord blood shall remain available to the Secretary until the end of fiscal year 2007.

''(2) SUBSEQUENT FISCAL YEARS.—There are authorized to be appropriated to the Secretary $15,000,000 for each of fiscal years 2007, 2008, 2009, and 2010 to carry out this section.

''(3) LIMITATION.—Not to exceed 5 percent of the amount appropriated under this section in each of fiscal years 2007 through 2009 may be used to carry out the demonstration project under subsection (c).''

REPORT OF INSPECTOR GENERAL; PLAN REGARDING RELATIONSHIP BETWEEN REGISTRY AND DONOR CENTERS

Pub. L. 105–196, § 2(b)(2), July 16, 1998, 112 Stat. 632, directed the Secretary of Health and Human Services to ensure that, not later than 1 year after July 16, 1998, the National Bone Marrow Donor Registry (under this section) developed, evaluated, and implemented a plan to effectuate efficiencies in the relationship between such Registry and donor centers.

STUDY BY GAO

Pub. L. 105–196, § 5, July 16, 1998, 112 Stat. 636, provided that the Comptroller General was to conduct a study of the National Bone Marrow Donor Registry under this section to determine the extent to which the Registry had increased the representation of racial and ethnic minority groups among potential donors enrolled with the Registry and whether the extent of increase resulted in a level of representation that met the standard established in subsec. (c)(1)(A) of this sec-

tion, the extent to which patients in need of a transplant of bone marrow from a biologically unrelated donor, and the physicians of such patients, had been utilizing the Registry, the number of patients for whom the Registry began a preliminary but not complete search process and the reasons underlying such circumstances, the extent to which the plan required in section 2(b)(2) of Pub. L. 105–196 (42 U.S.C. 274k note) had been implemented, and the extent to which the Registry, donor centers, donor registries, collection centers, transplant centers, and other appropriate entities had been complying with subsec. (e) of this section; and provided that a report describing the findings of this study was to be submitted to Congress not later than Oct. 1, 2001, and not before Jan. 1, 2001.

COMPLIANCE WITH NEW REQUIREMENTS FOR OFFICE OF PATIENT ADVOCACY

Pub. L. 105–196, § 6, July 16, 1998, 112 Stat. 636, provided that with respect to requirements for the office of patient advocacy under subsec. (d) of this section, the Secretary of Health and Human Services was to ensure that, not later than 180 days after Oct. 1, 1998, such office was in compliance with all requirements that were additional to the requirements under this section in effect with respect to patient advocacy on the day before July 16, 1998.

§ 274*l*. Stem cell therapeutic outcomes database

(a) Establishment

The Secretary shall by contract establish and maintain a scientific database of information relating to patients who have been recipients of a stem cell therapeutics product (including bone marrow, cord blood, or other such product) from a donor.

(b) Information

The outcomes database shall include information in a standardized electronic format with respect to patients described in subsection (a) of this section, diagnosis, transplant procedures, results, long-term follow-up, and such other information as the Secretary determines to be appropriate, to conduct an ongoing evaluation of the scientific and clinical status of transplantation involving recipients of a stem cell therapeutics product from a donor.

(c) Annual report on patient outcomes

The Secretary shall require the entity awarded a contract under this section to submit to the Secretary an annual report concerning patient outcomes with respect to each transplant center, based on data collected and maintained by the entity pursuant to this section.

(d) Publicly available data

The outcomes database shall make relevant scientific information not containing individually identifiable information available to the public in the form of summaries and data sets to encourage medical research and to provide information to transplant programs, physicians, patients, entities awarded a contract under section 274k of this title[1] donor registries, and cord blood banks.

(July 1, 1944, ch. 373, title III, § 379A, as added Pub. L. 105–196, § 3, July 16, 1998, 112 Stat. 635; amended Pub. L. 109–129, § 3(b), Dec. 20, 2005, 119 Stat. 2561.)

[1] So in original. Probably should be followed by a comma.

PRIOR PROVISIONS

A prior section 274*l*, act July 1, 1944, ch. 373, title III, § 379A, as added Pub. L. 101–616, title I, § 101(a)(2), Nov. 16, 1990, 104 Stat. 3282, related to study by General Accounting Office, prior to repeal by Pub. L. 105–196, §§ 3, 7, July 16, 1998, 112 Stat. 635, 637, effective Oct. 1, 1998.

AMENDMENTS

2005—Pub. L. 109–129, amended section generally, substituting provisions relating to the stem cell therapeutic outcomes database for provisions relating to the bone marrow scientific registry.

EFFECTIVE DATE

Section effective Oct. 1, 1998, see section 7 of Pub. L. 105–196, set out as an Effective Date of 1998 Amendment note under section 274k of this title.

§ 274*l*–1. Definitions

In this part:

(1) The term ''Advisory Council'' means the advisory council established by the Secretary under section 274k(a)(1) of this title.

(2) The term ''bone marrow'' means the cells found in adult bone marrow and peripheral blood.

(3) The term ''outcomes database'' means the database established by the Secretary under section 274*l* of this title.

(4) The term ''Program'' means the C.W. Bill Young Cell Transplantation Program established under section 274k of this title.

(July 1, 1944, ch. 373, title III, § 379A–1, as added Pub. L. 109–129, § 3(c), Dec. 20, 2005, 119 Stat. 2562.)

§ 274m. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $34,000,000 for fiscal year 2006 and $38,000,000 for each of fiscal years 2007 through 2010.

(July 1, 1944, ch. 373, title III, § 379B, as added Pub. L. 105–196, § 4(2), July 16, 1998, 112 Stat. 636; amended Pub. L. 109–129, § 3(d), Dec. 20, 2005, 119 Stat. 2562.)

AMENDMENTS

2005—Pub. L. 109–129 amended section generally. Prior to amendment, section read as follows: ''For the purpose of carrying out this part, there are authorized to be appropriated $18,000,000 for fiscal year 1999, and such sums as may be necessary for each of the fiscal years 2000 through 2003.''

EFFECTIVE DATE

Section effective Oct. 1, 1998, see section 7 of Pub. L. 105–196, set out as an Effective Date of 1998 Amendment note under section 274k of this title.

§ 275. Repealed. Pub. L. 103–43, title I, § 121(a), June 10, 1993, 107 Stat. 133

Section, act July 1, 1944, ch. 373, title III, § 381, as added Nov. 20, 1985, Pub. L. 99–158, § 11, 99 Stat. 883; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 157(a), 102 Stat. 3059, established the Biomedical Ethics Board and provided for its membership, functions, reports to Congress, etc., and provided for appointment of a Biomedical Ethics Advisory Committee to assist the Biomedical Ethics Board.

A prior section 275, act July 1, 1944, ch. 373, title III, § 381, formerly § 371, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960; renumbered § 381, Mar. 13, 1970, Pub. L. 91–212,

§ 10(a)(3), 84 Stat. 66, established a National Library of Medicine in the Public Health Service and stated the congressional purposes for such establishment, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

§§ 276 to 280a–1. Repealed. Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879

Section 276, act July 1, 1944, ch. 373, title III, § 382, formerly § 372, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960; renumbered § 382 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (b)(1), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(d)(1), 85 Stat. 463, related to functions of Secretary with regard to acquisition, etc., of materials and rules for public access to materials.

Section 277, act July 1, 1944, ch. 373, title III, § 383, formerly § 373, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960; amended Oct. 22, 1965, Pub. L. 89–291, § 4, 79 Stat. 1067; renumbered § 383 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(d)(2), 85 Stat. 464; Nov. 9, 1978, Pub. L. 95–622, title II, § 212, 92 Stat. 3421, related to establishment, etc., of Board of Regents.

Section 278, act July 1, 1944, ch. 373, title III, § 384, formerly § 374, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 961; renumbered § 384 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Apr. 26, 1983, Pub. L. 98–24, § 2(a)(2), 97 Stat. 176, related to acceptance and administration of gifts and establishment of memorials to donors.

Section 279, act July 1, 1944, ch. 373, title III, § 385, formerly § 375, as added Aug. 3, 1956, ch. 907 § 1, 70 Stat. 962; renumbered § 385 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (b)(2), 84 Stat. 66, defined ''medicine'' and ''medical''.

Section 280, act July 1, 1944, ch. 373, title III, § 386, formerly § 376, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962; renumbered § 386 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(d)(3), 85 Stat. 464, authorized appropriations for erection and equipment of Library.

Section 280a, act July 1, 1944, ch. 373, title III, § 387, formerly § 377, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962; amended 1970 Reorg. Plan No. 2 § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; renumbered § 387, Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), 84 Stat. 66, related to transfer of Armed Forces Medical Library to Public Health Service for use in administration of part I.

Section 280a–1, act July 1, 1944, ch. 373, title III, § 388, formerly § 378, as added Oct. 22, 1965, Pub. L. 89–291, § 3, 79 Stat. 1067; renumbered § 388 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(d)(4), 85 Stat. 464, related to establishment of regional branches.

PART J—PREVENTION AND CONTROL OF INJURIES

AMENDMENTS

1993—Pub. L. 103–183, title II, § 203(a)(1), Dec. 14, 1993, 107 Stat. 2232, substituted ''Prevention and Control of Injuries'' for ''Injury Control'' in part heading.

Pub. L. 103–43, title XX, § 2008(i)(2)(B)(i), June 10, 1993, 107 Stat. 213, redesignated part K ''Injury Control'' as J. Former part J ''Biomedical Ethics'', consisting of section 275, was repealed by Pub. L. 103–43, title I, § 121(a), June 10, 1993, 107 Stat. 133.

1990—Pub. L. 101–616, title I, § 101(a)(1), Nov. 16, 1990, 104 Stat. 3279, redesignated part I ''Biomedical Ethics'' as J. Former part J ''Injury Control'' redesignated K.

§ 280b. Research

(a) The Secretary, through the Director of the Centers for Disease Control and Prevention, shall—

(1) conduct, and give assistance to public and nonprofit private entities, scientific institutions, and individuals engaged in the conduct of, research relating to the causes, mechanisms, prevention, diagnosis, treatment of injuries, and rehabilitation from injuries;

(2) make grants to, or enter into cooperative agreements or contracts with, public and nonprofit private entities (including academic institutions, hospitals, and laboratories) and individuals for the conduct of such research; and

(3) make grants to, or enter into cooperative agreements or contracts with, academic institutions for the purpose of providing training on the causes, mechanisms, prevention, diagnosis, treatment of injuries, and rehabilitation from injuries.

(b) The Secretary, through the Director of the Centers for Disease Control and Prevention, shall collect and disseminate, through publications and other appropriate means, information concerning the practical applications of research conducted or assisted under subsection (a) of this section. In carrying out the preceding sentence, the Secretary shall disseminate such information to the public, including through elementary and secondary schools.

(July 1, 1944, ch. 373, title III, § 391, as added Pub. L. 99–649, § 3, Nov. 10, 1986, 100 Stat. 3633; amended Pub. L. 101–558, § 2(a), Nov. 15, 1990, 104 Stat. 2772; Pub. L. 102–531, title III, § 312(d)(3), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 103–183, title II, § 203(b)(2), Dec. 14, 1993, 107 Stat. 2232.)

PRIOR PROVISIONS

A prior section 280b, act July 1, 1944, ch. 373, title III, § 390, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1059; amended Mar. 13, 1970, Pub. L. 91–212, §§ 4(b), 5(b), 6(b), 84 Stat. 64, 65; July 23, 1974, Pub. L. 93–353, title II, §§ 201(a), (b), 202(a), 88 Stat. 371, 372; Aug. 1, 1977, Pub. L. 95–83, title II, § 202, 91 Stat. 386; Nov. 9, 1978, Pub. L. 95–622, title II, § 211, 92 Stat. 3420; Aug. 13, 1981, Pub. L. 97–35, title IX, § 925(a), 95 Stat. 569, set forth findings and declaration of policy and authorized appropriations with regard to assistance to medical libraries, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

A prior section 391 of act July 1, 1944, ch. 373, title III, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1059; amended Mar. 13, 1970, Pub. L. 91–212, § 10(b)(3), 84 Stat. 66; July 23, 1974, Pub. L. 93–353, title II, § 202(b), 88 Stat. 372, which defined ''sciences related to health'', ''National Medical Libraries Assistance Advisory Board'', ''Board'', and ''medical library'', was classified to section 280b–1 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–183 inserted at end ''In carrying out the preceding sentence, the Secretary shall disseminate such information to the public, including through elementary and secondary schools.''

1992—Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in subsecs. (a) and (b).

1990—Subsec. (a)(2). Pub. L. 101–558, § 2(a)(1), inserted '', or enter into cooperative agreements or contracts with,'' after ''grants to''.

Subsec. (a)(3). Pub. L. 101–558, § 2(a)(2), added par. (3).

FINDINGS AND PURPOSES

Section 2 of Pub. L. 99–649 provided that:

''(a) The Congress finds and declares that:

''(1) Injury is one of the principal public health problems in America, and causes over 140,000 deaths per year.

''(2) Injury rates are particularly high for children and the elderly.

''(3) Injury causes 50 percent of all deaths for children over the age of one year and two-thirds of all deaths for children over the age of 15 years, and is the leading cause of death for individuals under the age of 44 years. Individuals over the age of 65 years have the highest fatality rates for many injuries.

''(4) Injury control has not been given high priority in the United States, and the research being conducted on injury control and the number of personnel involved in injury control activities are not adequate.

''(b) The purposes of this Act [enacting this part] are—

''(1) to promote research into the causes, diagnosis, treatment, prevention, and control of injuries and rehabilitation from injuries;

''(2) to promote cooperation between specialists in fields involved in injury research; and

''(3) to promote coordination between Federal, State, and local governments and public and private entities in order to achieve a reduction in deaths from injuries.''

§ 280b–1. Prevention and control activities

(a) The Secretary, through the Director of the Centers for Disease Control and Prevention, shall—

(1) assist States and political subdivisions of States in activities for the prevention and control of injuries; and

(2) encourage regional activities between States designed to reduce injury rates.

(b) The Secretary, through the Director of the Centers for Disease Control and Prevention, may—

(1) enter into agreements between the Service and public and private community health agencies which provide for cooperative planning of activities to deal with problems relating to the prevention and control of injuries;

(2) work in cooperation with other Federal agencies, and with public and nonprofit private entities, to promote activities regarding the prevention and control of injuries; and

(3) make grants to States and, after consultation with State health agencies, to other public or nonprofit private entities for the purpose of carrying out demonstration projects for the prevention and control of injuries at sites that are not subject to the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], including homes, elementary and secondary schools, and public buildings.

(July 1, 1944, ch. 373, title III, § 392, as added Pub. L. 99–649, § 3, Nov. 10, 1986, 100 Stat. 3634; amended Pub. L. 101–558, § 2(b), Nov. 15, 1990, 104 Stat. 2772; Pub. L. 102–531, title III, §§ 301, 312(d)(4), Oct. 27, 1992, 106 Stat. 3482, 3504; Pub. L. 103–183, title II, § 203(a)(2), (b)(1), Dec. 14, 1993, 107 Stat. 2232.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (b)(3), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 280b–1, act July 1, 1944, ch. 373, title III, § 391, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1059; amended Mar. 13, 1970, Pub. L. 91–212, § 10(b)(3), 84 Stat. 66; July 23, 1974, Pub. L. 93–353, title II, § 202(b), 88 Stat. 372, defined ''sciences related to health'', ''National Medical Libraries Assistance Advisory Board'', ''Board'', and ''medical library'', prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

A prior section 392 of act July 1, 1944, ch. 373, title III, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1060; amended Mar. 13, 1970, Pub. L. 91–212, § 10(b)(4), (d)(2)(A), 84 Stat. 66, 67; July 23, 1974, Pub. L. 93–353, title II, § 202(c), 88 Stat. 372, which related to composition, functions, etc., of the National Medical Libraries Assistance Advisory Board, was classified to section 280b–2 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1993—Pub. L. 103–183, § 203(a)(2)(A), substituted ''Prevention and control activities'' for ''Control activities'' in section catchline.

Subsec. (a)(1). Pub. L. 103–183, § 203(a)(2)(B), inserted ''and control'' after ''prevention''.

Subsec. (b)(1). Pub. L. 103–183, § 203(a)(2)(C), substituted ''the prevention and control of injuries'' for ''injuries and injury control''.

Subsec. (b)(2). Pub. L. 103–183, § 203(b)(1), substituted ''to promote activities regarding the prevention and control of injuries; and'' for ''to promote injury control. In carrying out the preceding sentence, the Secretary shall disseminate such information to the public, including through elementary and secondary schools; and''.

1992—Pub. L. 102–531, § 312(d)(4), substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in introductory provisions of subsecs. (a) and (b).

Subsec. (b)(1). Pub. L. 102–531, § 301(1), struck out ''and'' after semicolon at end.

Subsec. (b)(2). Pub. L. 102–531, § 301(2), inserted sentence requiring Secretary to disseminate information on injury control to the public, including through elementary and secondary schools and substituted ''; and'' for period at end.

Subsec. (b)(3). Pub. L. 102–531, § 301(3), added par. (3).

1990—Subsec. (b)(2). Pub. L. 101–558 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''work in cooperation with Federal, State, and local agencies to promote injury control.''

§ 280b–1a. Interpersonal violence within families and among acquaintances

(a) With respect to activities that are authorized in sections 280b and 280b–1 of this title, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall carry out such activities with respect to interpersonal violence within families and among acquaintances. Activities authorized in the preceding sentence include the following:

(1) Collecting data relating to the incidence of such violence.

(2) Making grants to public and nonprofit private entities for the evaluation of programs whose purpose is to prevent such violence, including the evaluation of demonstration projects under paragraph (6).

(3) Making grants to public and nonprofit private entities for the conduct of research on identifying effective strategies for preventing such violence.

(4) Providing to the public information and education on such violence, including information and education to increase awareness of the public health consequences of such violence.

(5) Training health care providers as follows:

(A) To identify individuals whose medical conditions or statements indicate that the individuals are victims of such violence.

(B) To routinely determine, in examining patients, whether the medical conditions or statements of the patients so indicate.

(C) To refer individuals so identified to entities that provide services regarding such violence, including referrals for counseling, housing, legal services, and services of community organizations.

(6) Making grants to public and nonprofit private entities for demonstration projects with respect to such violence, including with respect to prevention.

(b) For purposes of this part, the term ''interpersonal violence within families and among acquaintances'' includes behavior commonly referred to as domestic violence, sexual assault, spousal abuse, woman battering, partner abuse, elder abuse, and acquaintance rape.

(July 1, 1944, ch. 373, title III, § 393, as added Pub. L. 103–183, title II, § 201(2), Dec. 14, 1993, 107 Stat. 2231.)

PRIOR PROVISIONS

A prior section 393 of act July 1, 1944, was renumbered section 394 and is classified to section 280b–2 of this title.

Another prior section 393 of act July 1, 1944, was renumbered section 394 and was classified to section 280b–4 of this title.

§ 280b–1b. Prevention of traumatic brain injury

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may carry out projects to reduce the incidence of traumatic brain injury. Such projects may be carried out by the Secretary directly or through awards of grants or contracts to public or nonprofit private entities. The Secretary may directly or through such awards provide technical assistance with respect to the planning, development, and operation of such projects.

(b) Certain activities

Activities under subsection (a) of this section may include—

(1) the conduct of research into identifying effective strategies for the prevention of traumatic brain injury;

(2) the implementation of public information and education programs for the prevention of such injury and for broadening the awareness of the public concerning the public health consequences of such injury; and

(3) the implementation of a national education and awareness campaign regarding such injury (in conjunction with the program of the Secretary regarding health-status goals for 2010, commonly referred to as Healthy People 2010), including—

(A) the national dissemination of information on—

(i) incidence and prevalence; and

(ii) information relating to traumatic brain injury and the sequelae of secondary conditions arising from traumatic brain injury upon discharge from hospitals and trauma centers; and

(B) the provision of information in primary care settings, including emergency rooms and trauma centers, concerning the availability of State level services and resources.

(c) Coordination of activities

The Secretary shall ensure that activities under this section are coordinated as appropriate with other agencies of the Public Health Service that carry out activities regarding traumatic brain injury.

(d) "Traumatic brain injury" defined

For purposes of this section, the term ''traumatic brain injury'' means an acquired injury to the brain. Such term does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to trauma. The Secretary may revise the definition of such term as the Secretary determines necessary, after consultation with States and other appropriate public or nonprofit private entities.

(July 1, 1944, ch. 373, title III, § 393A, as added Pub. L. 104–166, § 1, July 29, 1996, 110 Stat. 1445; amended Pub. L. 106–310, div. A, title XIII, § 1301(a), Oct. 17, 2000, 114 Stat. 1137.)

AMENDMENTS

2000—Subsec. (b)(3). Pub. L. 106–310, § 1301(a)(1), added par. (3).

Subsec. (d). Pub. L. 106–310, § 1301(a)(2), substituted ''anoxia due to trauma'' for ''anoxia due to near drowning'' and inserted '', after consultation with States and other appropriate public or nonprofit private entities'' after ''Secretary determines necessary''.

§ 280b–1c. Use of allotments for rape prevention education

(a) Permitted use

The Secretary, acting through the National Center for Injury Prevention and Control at the Centers for Disease Control and Prevention, shall award targeted grants to States to be used for rape prevention and education programs conducted by rape crisis centers, State sexual assault coalitions, and other public and private nonprofit entities for—

(1) educational seminars;

(2) the operation of hotlines;

(3) training programs for professionals;

(4) the preparation of informational material;

(5) education and training programs for students and campus personnel designed to reduce the incidence of sexual assault at colleges and universities;

(6) education to increase awareness about drugs used to facilitate rapes or sexual assaults; and

(7) other efforts to increase awareness of the facts about, or to help prevent, sexual assault, including efforts to increase awareness in underserved communities and awareness among individuals with disabilities (as defined in section 12102 of this title).

(b) Collection and dissemination of information on sexual assault

The Secretary shall, through the National Resource Center on Sexual Assault established

under the National Center for Injury Prevention and Control at the Centers for Disease Control and Prevention, provide resource information, policy, training, and technical assistance to Federal, State, local, and Indian tribal agencies, as well as to State sexual assault coalitions and local sexual assault programs and to other professionals and interested parties on issues relating to sexual assault, including maintenance of a central resource library in order to collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of sexual assault.

(c) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section $80,000,000 for each of fiscal years 2007 through 2011.

(2) National sexual violence resource center allotment

Of the total amount made available under this subsection in each fiscal year, not less than $1,500,000 shall be available for allotment under subsection (b) of this section.

(d) Limitations

(1) Supplement not supplant

Amounts provided to States under this section shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide services of the type described in subsection (a) of this section.

(2) Studies

A State may not use more than 2 percent of the amount received by the State under this section for each fiscal year for surveillance studies or prevalence studies.

(3) Administration

A State may not use more than 5 percent of the amount received by the State under this section for each fiscal year for administrative expenses.

(July 1, 1944, ch. 373, title III, § 393B, as added Pub. L. 106–386, div. B, title IV, § 1401(a), Oct. 28, 2000, 114 Stat. 1512; amended Pub. L. 109–162, title III, § 302, Jan. 5, 2006, 119 Stat. 3004.)

CODIFICATION

Another section 393B of act July 1, 1944, is classified to section 280b–1d of this title.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–162 reenacted heading without change and amended text generally. Prior to amendment, text contained provisions in par. (1) authorizing appropriations for fiscal years 2001 through 2005 and in par. (2) directing an allotment under subsec. (b) of this section.

§ 280b–1d. National program for traumatic brain injury registries

(a)[1] In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States or their designees to operate the State's traumatic brain injury registry, and to academic institutions to conduct applied research that will support the development of such registries, to collect data concerning—

(1) demographic information about each traumatic brain injury;

(2) information about the circumstances surrounding the injury event associated with each traumatic brain injury;

(3) administrative information about the source of the collected information, dates of hospitalization and treatment, and the date of injury; and

(4) information characterizing the clinical aspects of the traumatic brain injury, including the severity of the injury, outcomes of the injury, the types of treatments received, and the types of services utilized.

(July 1, 1944, ch. 373, title III, § 393B, as added Pub. L. 106–310, div. A, title XIII, § 1301(b), Oct. 17, 2000, 114 Stat. 1137.)

CODIFICATION

Another section 393B of act July 1, 1944, is classified to section 280b–1c of this title.

§ 280b–2. General provisions

(a) Advisory committee

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish an advisory committee to advise the Secretary and such Director with respect to the prevention and control of injuries.

(b) Technical assistance

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may provide technical assistance to public and nonprofit private entities with respect to the planning, development, and operation of any program or service carried out pursuant to this part. The Secretary may provide such technical assistance directly or through grants or contracts.

(c) Biennial report

Not later than February 1 of 1995 and of every second year thereafter, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities carried out under this part during the preceding 2 fiscal years. Such report shall include a description of such activities that were carried out with respect to interpersonal violence within families and among acquaintances and with respect to rural areas.

(July 1, 1944, ch. 373, title III, § 394, formerly § 393, as added Pub. L. 99–649, § 3, Nov. 10, 1986, 100 Stat. 3634; amended Pub. L. 101–558, § 2(c), Nov. 15, 1990, 104 Stat. 2772; Pub. L. 102–531, title III, § 312(d)(5), Oct. 27, 1992, 106 Stat. 3504; renumbered § 394 and amended Pub. L. 103–183, title II, §§ 201(1), 202, Dec. 14, 1993, 107 Stat. 2231, 2232.)

PRIOR PROVISIONS

A prior section 280b–2, act July 1, 1944, ch. 373, title III, § 392, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79

[1] So in original. No subsec. (b) has been enacted.

Stat. 1060; amended Mar. 13, 1970, Pub. L. 91–212, § 10(b)(4), (d)(2)(A), 84 Stat. 66, 67; July 23, 1974, Pub. L. 93–353, title II, § 202(c), 88 Stat. 372, related to composition, functions, etc., of National Medical Libraries Assistance Advisory Board, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

A prior section 394 of act July 1, 1944, was renumbered section 394A and is classified to section 280b–3 of this title.

AMENDMENTS

1993—Pub. L. 103–183, § 202, amended section generally. Prior to amendment, section read as follows: ''By not later than September 30, 1992, the Secretary, through the Director of the Centers for Disease Control and Prevention, shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities conducted or supported under this part. The report shall include—

''(1) information regarding the practical applications of research conducted pursuant to subsection (a) of section 280b of this title, including information that has not been disseminated under subsection (b) of such section; and

''(2) information on such activities regarding the prevention and control of injuries in rural areas, including information regarding injuries that are particular to rural areas.''

1992—Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in introductory provisions.

1990—Pub. L. 101–558 amended section generally. Prior to amendment, section read as follows: ''By January 1, 1989, the Secretary, through the Director of the Centers for Disease Control, shall prepare and transmit to the Congress a report analyzing the incidence and causes of childhood injuries in the United States and containing recommendations for such legislation with respect to injury control as the Secretary considers appropriate.''

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 280b–3. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $50,000,000 for fiscal year 1994, such sums as may be necessary for each of the fiscal years 1995 through 1998, and such sums as may be necessary for each of the fiscal years 2001 through 2005..[1]

(July 1, 1944, ch. 373, title III, § 394A, formerly § 394, as added Pub. L. 99–649, § 3, Nov. 10, 1986, 100 Stat. 3634; amended Pub. L. 101–558, § 2(d), Nov. 15, 1990, 104 Stat. 2773; renumbered § 394A and amended Pub. L. 103–183, title II, §§ 201(1), 204, Dec. 14, 1993, 107 Stat. 2231, 2233; Pub. L. 106–310, div. A, title XIII, § 1306, Oct. 17, 2000, 114 Stat. 1143.)

PRIOR PROVISIONS

A prior section 280b–3, act July 1, 1944, ch. 373, title III, § 393, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1060; amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(a), 3, 10(d)(2), 84 Stat. 63, 64, 67, related to grants for construction of medical library facilities, prior to repeal by Pub. L. 93–353, title II, § 202(d), July 23, 1974, 88 Stat. 372.

AMENDMENTS

2000—Pub. L. 106–310, which directed the amendment of this section by striking out ''and'' after ''1994'', was executed by striking ''and'' after ''1994,'' to reflect the probable intent of Congress.

Pub. L. 106–310 inserted before period at end '', and such sums as may be necessary for each of the fiscal years 2001 through 2005.''

1993—Pub. L. 103–183, § 204, amended section generally. Prior to amendment, section read as follows: ''To carry out sections 280b and 280b–1 of this title, there are authorized to be appropriated $10,000,000 for each of the fiscal years 1988, 1989, and 1990, $30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.''

1990—Pub. L. 101–558 struck out subsec. (a) designation, inserted before period at end of first sentence '', $30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993'', and struck out at end ''Of the amounts appropriated under this section for any fiscal year, not more than 20 percent may be used for Federal administrative expenses to carry out such section for such fiscal year.''

§ 280b–4. Study conducted by the Centers for Disease Control and Prevention

(a) Purposes

The Secretary of Health and Human Services acting through the National Center for Injury Prevention and Control at the Centers for Disease Control[1] Prevention shall make grants to entities, including domestic and sexual assault coalitions and programs, research organizations, tribal organizations, and academic institutions to support research to examine prevention and intervention programs to further the understanding of sexual and domestic violence by and against adults, youth, and children.

(b) Use of funds

The research conducted under this section shall include evaluation and study of best practices for reducing and preventing violence against women and children addressed by the

[1] So in original.

[1] So in original. Probably should be followed by ''and''.

strategies included in Department of Health and Human Services-related provisions[2] this title,[3] including strategies addressing underserved communities.

(c) Authorization of appropriations

There shall be authorized to be appropriated to carry out this title $2,000,000 for each of the fiscal years 2007 through 2011.

(Pub. L. 109–162, title IV, § 402, Jan. 5, 2006, 119 Stat. 3023.)

REFERENCES IN TEXT

This title, referred to in subsecs. (b) and (c), is title IV of Pub. L. 109–162, Jan. 5, 2006, 119 Stat. 3017, which enacted this section and part L (§ 14043d et seq.) of subchapter III of chapter 136 and section 14045c of this title. For complete classification of title IV to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Public Health Service Act which comprises this chapter.

PRIOR PROVISIONS

Prior sections 280b–4 to 280b–11 were repealed by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

Section 280b–4, act July 1, 1944, ch. 373, title III, § 393, formerly § 394, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1062; amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(b), 10(d)(2)(A), 84 Stat. 63, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(a), 87 Stat. 92; renumbered § 393 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(a), 204, 88 Stat. 372, 373, related to grants for training in medical library sciences.

Section 280b–5, act July 1, 1944, ch. 373, title III, § 394, formerly § 395, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1062; amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(c), (d), 4(a), 5(a), 10(c)(1)(A), (B), (2)(A)–(C), (d)(2)(A), 84 Stat. 63, 64, 66, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(b), (c), 87 Stat. 92; renumbered § 394 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(b), 204, 88 Stat. 372, 373, related to assistance for special scientific projects; research and development in medical library science and related fields.

Section 280b–6, act July 1, 1944, ch. 373, title III, § 396, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1063, was redesignated as subsecs. (b) and (c) of section 280b–5 of this title by Pub. L. 91–212, § 10(c)(2), Mar. 13, 1970, 84 Stat. 66.

Section 280b–7, act July 1, 1944, ch. 373, title III, § 395, formerly § 397, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1063; renumbered § 396 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(e), 6(a)(1), (2), 10(c)(3), (d)(2)(A), 84 Stat. 63, 64, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(d), 87 Stat. 92; renumbered § 395 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(c), 204, 88 Stat. 372, 373, related to grants for establishing, expanding, and improving basic medical library or related resources.

Section 280b–8, act July 1, 1944, ch. 373, title III, § 396, formerly § 398, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1065; renumbered § 397 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(f), 7, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(e), 87 Stat. 92; renumbered § 396 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 202(e), (f), 203(d), 204, 88 Stat. 372, 373, related to grants for establishment of regional medical libraries.

Section 280b–9, act July 1, 1944, ch. 373, title III, § 397, formerly § 399, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 398 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(g), 8, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(f), 87 Stat. 92; renumbered § 397 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(e), 204, 88 Stat. 372, 373, related to grants to provide support for biomedical scientific publications.

Section 280b–10, act July 1, 1944, ch. 373, title III, § 398, formerly § 399a, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399, Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), 84 Stat. 67; renumbered § 398, July 23, 1974, Pub. L. 93–353, title II, § 204, 88 Stat. 373, related to the continuing availability of appropriated funds.

Section 280b–11, act July 1, 1944, ch. 373, title III, § 399, formerly § 399b, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399a and amended Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), (d)(2)(A), 84 Stat. 67; renumbered § 399, July 23, 1974, Pub. L. 93–353, title II, § 204, 88 Stat. 373; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, related to the maintenance of records by recipients of grants and audits thereof by the Secretary of Health and Human Services and the Comptroller General of the United States.

A prior section 280b–12, act July 1, 1944, ch. 373, title III, § 399b, as added Mar. 13, 1970, Pub. L. 91–212, § 9, 84 Stat. 65, related to transfer of funds, prior to repeal by Pub. L. 93–353, title II, § 204, July 23, 1974, 88 Stat. 373, applicable with respect to fiscal years beginning after June 30, 1974.

PART K—HEALTH CARE SERVICES IN THE HOME

AMENDMENTS

1993—Pub. L. 103–43, title XX, § 2008(i)(2)(B)(i), June 10, 1993, 107 Stat. 213, redesignated part L ''Health Care Services in the Home'' as K. Former part K ''Injury Control'' redesignated J.

1990—Pub. L. 101–616, title I, § 101(a)(1), Nov. 16, 1990, 104 Stat. 3279, redesignated part J ''Injury Control'' as K. Former part K ''Health Care Services in the Home'' redesignated L.

PRIOR PROVISIONS

A prior part K, added Pub. L. 93–222, § 3, Dec. 29, 1973, 87 Stat. 934, related to quality assurance, prior to repeal by Pub. L. 95–623, § 11(b), Nov. 9, 1978, 92 Stat. 3455.

SUBPART I—GRANTS FOR DEMONSTRATION PROJECTS

§ 280c. Establishment of program

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make not less than 5, and not more than 20, grants to States for the purpose of assisting grantees in carrying out demonstration projects—

(1) to identify low-income individuals who can avoid institutionalization or prolonged hospitalization if skilled medical services, skilled nursing care services, homemaker or home health aide services, or personal care services are provided in the homes of the individuals;

(2) to pay the costs of the provision of such services in the homes of such individuals; and

(3) to coordinate the provision by public and private entities of such services, and other long-term care services, in the homes of such individuals.

(b) Requirement with respect to age of recipients of services

The Secretary may not make a grant under subsection (a) of this section to a State unless the State agrees to ensure that—

[2] So in original. Probably should be followed by ''of''.

[3] See References in Text note below.

(1) not less than 25 percent of the grant is expended to provide services under such subsection to individuals who are not less than 65 years of age; and

(2) of the portion of the grant reserved by the State for purposes of complying with paragraph (1), not less than 10 percent is expended to provide such services to individuals who are not less than 85 years of age.

(c) Relationship to items and services under other programs

A State may not make payments from a grant under subsection (a) of this section for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(July 1, 1944, ch. 373, title III, § 395, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat. 979; amended Pub. L. 101–557, title I, § 101(a)–(c), Nov. 15, 1990, 104 Stat. 2766; Pub. L. 102–108, § 2(f), Aug. 17, 1991, 105 Stat. 550.)

PRIOR PROVISIONS

A prior section 280C, act July 1, 1944, ch. 373, title III, § 399A, formerly § 399c, as added Dec. 29, 1973, Pub. L. 93–222, § 3, 87 Stat. 934; renumbered § 399A, July 29, 1975, Pub. L. 94–63, title VI, § 607(a), (c), 89 Stat. 351, provided for programs designed to assure the quality of health care, prior to repeal by Pub. L. 95–623, § 11(b), Nov. 9, 1978, 92 Stat. 3455.

A prior section 395 of act July 1, 1944, ch. 373, title III, formerly § 397, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1063; renumbered § 396 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(e), 6(a)(1), (2), 10(c)(3), (d)(2)(A), 84 Stat. 63, 64, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(d), 87 Stat. 92; renumbered § 395 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(c), 204, 88 Stat. 372, 373, which related to grants for establishing, expanding, and improving basic medical library or related resources, was classified to section 280b–7 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–108 inserted ''skilled medical services,'' after ''if''.

1990—Subsec. (a). Pub. L. 101–557, § 101(a), substituted ''shall make not less than 5, and not more than 20, grants'' for ''shall make not less than 3, and not more than 5, grants''.

Subsec. (a)(1). Pub. L. 101–557, § 101(b), substituted ''skilled nursing care services, homemaker or home health aide services, or personal care services are provided in the homes of the individuals'' for ''skilled medical services or related health services (or both) are provided in the homes of the individuals''.

Subsec. (b). Pub. L. 101–557, § 101(c), substituted ''to ensure that—'' and pars. (1) and (2) for ''to ensure that not less than 25 percent of individuals receiving services pursuant to subsection (a) of this section are individuals who are not less than 65 years of age''.

EFFECTIVE DATE

Part effective Oct. 1, 1987, see section 701(a) of Pub. L. 100–175, set out as an Effective Date of 1987 Amendment note under section 3001 of this title.

SHORT TITLE

For short title of title VI of Pub. L. 100–175, which enacted this part as the ''Health Care Services in the Home Act of 1987'', see section 601 of Pub. L. 100–175, set out as a Short Title of 1987 Amendments note under section 201 of this title.

§ 280c–1. Limitation on duration of grant and requirement of matching funds

(a) Limitation on duration of grant

The period during which payments are made to a State from a grant under section 280c(a) of this title may not exceed 3 years. Such payments shall be subject to annual evaluation by the Secretary.

(b) Requirement of matching funds

(1)(A) For the first year of payments to a State from a grant under section 280c(a) of this title, the Secretary may not make such payments in an amount exceeding 75 percent of the costs of services to be provided by the State pursuant to such section.

(B) For the second year of such payments to a State, the Secretary may not make such payments in an amount exceeding 65 percent of the costs of such services.

(C) For the third year of such payments to a State, the Secretary may not make such payments in an amount exceeding 55 percent of the costs of such services.

(2) The Secretary may not make a grant under section 280c(a) of this title to a State unless the State agrees to make available, directly or through donations from public or private entities, non-Federal contributions toward the costs of services to be provided pursuant to such section in an amount equal to—

(A) for the first year of payments to the State from the grant, not less than $25 (in cash or in kind under subsection (c) of this section) for each $75 of Federal funds provided in the grant;

(B) for the second year of such payments to the State, not less than $35 (in cash or in kind under subsection (c) of this section) for each $65 of such Federal funds; and

(C) for the third year of such payments to the State, not less than $45 (in cash or in kind under subsection (c) of this section) for each $55 of such Federal funds.

(c) Determination of amount of non-Federal contribution

Non-Federal contributions required in subsection (b) of this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(July 1, 1944, ch. 373, title III, § 396, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat. 979.)

PRIOR PROVISIONS

A prior section 396 of act July 1, 1944, ch. 373, title III, formerly § 398, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1065; renumbered § 397 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(f), 7, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(e), 87 Stat. 92; renumbered § 396 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 202(e), (f), 203(d), 204, 88 Stat.

372, 373, which related to grants for establishment of regional medical libraries, was classified to section 280b–8 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

§ 280c–2. General provisions

(a) Limitation on administrative expenses

The Secretary may not make a grant under section 280c(a) of this title to a State unless the State agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(b) Description of intended use of grant

The Secretary may not make a grant under section 280c(a) of this title to a State unless—

(1) the State submits to the Secretary a description of the purposes for which the State intends to expend the grant; and

(2) such description provides information relating to the programs and activities to be supported and services to be provided, including—

(A) the number of individuals who will receive services pursuant to section 280c(a) of this title and the average costs of providing such services to each such individual; and

(B) a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities.

(c) Requirement of application

The Secretary may not make a grant under section 280c(a) of this title to a State unless the State has submitted to the Secretary an application for the grant. The application shall—

(1) contain the description of intended expenditures required in subsection (b) of this section;

(2) with respect to carrying out the purpose for which the grant is to be made, provide assurances of compliance satisfactory to the Secretary; and

(3) otherwise be in such form, be made in such manner, and contain such information and agreements as the Secretary determines to be necessary to carry out this subpart.

(d) Evaluations and report by Secretary

The Secretary shall—

(1) provide for an evaluation of each demonstration project for which a grant is made under section 280c(a) of this title; and

(2) not later than 6 months after the completion of such evaluations, submit to the Congress a report describing the findings made as a result of the evaluations.

(e) Authorizations of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990, $7,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

(July 1, 1944, ch. 373, title III, § 397, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat. 980; amended Pub. L. 101–557, title I, § 101(d), Nov. 15, 1990, 104 Stat. 2766.)

PRIOR PROVISIONS

A prior section 397 of act July 1, 1944, ch. 373, title III, formerly § 399, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 398 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(g), 8, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(f), 87 Stat. 92; renumbered § 397 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(e), 204, 88 Stat. 372, 373, which related to grants to provide support for biomedical scientific publications, was classified to section 280b–9 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–557 substituted ''there are'' for ''there is'' and inserted before period at end '', $7,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993''.

SUBPART II—GRANTS FOR DEMONSTRATION PROJECTS WITH RESPECT TO ALZHEIMER'S DISEASE

§ 280c–3. Establishment of program

(a) In general

The Secretary shall make grants to States for the purpose of assisting grantees in carrying out demonstration projects for planning, establishing, and operating programs—

(1) to coordinate the development and operation with public and private organizations of diagnostic, treatment, care management, respite care, legal counseling, and education services provided within the State to individuals with Alzheimer's disease or related disorders and to the families and care providers of such individuals;

(2) to provide home health care, personal care, day care, companion services, short-term care in health facilities, and other respite care to individuals with Alzheimer's disease or related disorders who are living in single family homes or in congregate settings;

(3) to improve the access of such individuals to home-based or community-based long-term care services (subject to the services being provided by entities that were providing such services in the State involved as of October 1, 1995), particularly such individuals who are members of racial or ethnic minority groups, who have limited proficiency in speaking the English language, or who live in rural areas; and

(4) to provide to health care providers, to individuals with Alzheimer's disease or related disorders, to the families of such individuals, to organizations established for such individuals and such families, and to the general public, information with respect to—

(A) diagnostic services, treatment services, and related services available to such individuals and to the families of such individuals;

(B) sources of assistance in obtaining such services, including assistance under entitlement programs; and

(C) the legal rights of such individuals and such families.

(b) Requirement with respect to certain expenditures

The Secretary may not make a grant under subsection (a) of this section to a State unless the State agrees to expend not less than 50 percent of the grant for the provision of services described in subsection (a)(2) of this section.

(c) Relationship to items and services under other programs

A State may not make payments from a grant under subsection (a) of this section for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(July 1, 1944, ch. 373, title III, § 398, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat. 981; amended Pub. L. 101–557, title I, § 102(a), (b), Nov. 15, 1990, 104 Stat. 2767; Pub. L. 105–392, title III, § 302(a), Nov. 13, 1998, 112 Stat. 3586.)

PRIOR PROVISIONS

A prior section 398 of act July 1, 1944, ch. 373, title III, formerly § 399a, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399, Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), 84 Stat. 67; renumbered § 398, July 23, 1974, Pub. L. 93–353, title II, § 204, 88 Stat. 373, which related to the continuing availability of appropriated funds, was classified to section 280b–10 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392, § 302(a)(1), struck out ''not less than 5, and not more than 15,'' after ''shall make'' in introductory provisions.

Subsec. (a)(2). Pub. L. 105–392, § 302(a)(2), inserted ''who are living in single family homes or in congregate settings'' after ''disorders'' and struck out ''and'' at end.

Subsec. (a)(3), (4). Pub. L. 105–392, § 302(a)(3), (4), added par. (3) and redesignated former par. (3) as (4).

1990—Subsec. (a). Pub. L. 101–557, § 102(a), substituted ''shall make not less than 5, and not more than 15, grants'' for ''shall make not less than 3, and not more than 5, grants''.

Subsec. (a)(1). Pub. L. 101–557, § 102(b), substituted ''with public and private organizations'' for ''by public and private organizations''.

§ 280c–4. Requirement of matching funds

(a) Requirement of matching funds

(1)(A) For the first year of payments to a State from a grant under section 280c–3(a) of this title, the Secretary may not make such payments in an amount exceeding 75 percent of the costs of services to be provided by the State pursuant to such section.

(B) For the second year of such payments to a State, the Secretary may not make such payments in an amount exceeding 65 percent of the costs of such services.

(C) For the third or subsequent year of such payments to a State, the Secretary may not make such payments in an amount exceeding 55 percent of the costs of such services.

(2) The Secretary may not make a grant under section 280c–3(a) of this title to a State unless the State agrees to make available, directly or through donations from public or private entities, non-Federal contributions toward the costs of services to be provided pursuant to such section in an amount equal to—

(A) for the first year of payments to the State from the grant, not less than $25 (in cash or in kind under subsection (c) of this section) for each $75 of Federal funds provided in the grant;

(B) for the second year of such payments to the State, not less than $35 (in cash or in kind under subsection (c) of this section) for each $65 of such Federal funds; and

(C) for the third or subsequent year of such payments to the State, not less than $45 (in cash or in kind under subsection (c) of this section) for each $55 of such Federal funds.

(b) Determination of amount of non-Federal contribution

Non-Federal contributions required in subsection (b) of this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(July 1, 1944, ch. 373, title III, § 398A, formerly § 399, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat. 982; renumbered § 398A, Pub. L. 102–321, title V, § 502(1), July 10, 1992, 106 Stat. 427; amended Pub. L. 105–392, title III, § 302(b), Nov. 13, 1998, 112 Stat. 3586.)

AMENDMENTS

1998—Pub. L. 105–392, § 302(b)(1), substituted ''Requirement of matching funds'' for ''Limitation on duration of grant and requirement of matching funds'' in section catchline.

Subsec. (a). Pub. L. 105–392, § 302(b)(2)–(4), redesignated subsec. (b) as (a), substituted ''third or subsequent year'' for ''third year'' in pars. (1)(C) and (2)(C), and struck out heading and text of former subsec. (a). Text read as follows: ''The period during which payments are made to a State from a grant under section 280c–3(a) of this title may not exceed 3 years. Such payments shall be subject to annual evaluation by the Secretary.''

Subsecs. (b), (c). Pub. L. 105–392, § 302(b)(3), redesignated subsecs. (b) and (c) as (a) and (b), respectively.

§ 280c–5. General provisions

(a) Limitation on administrative expenses

The Secretary may not make a grant under section 280c–3(a) of this title to a State unless the State agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(b) Description of intended use of grant

The Secretary may not make a grant under section 280c–3(a) of this title to a State unless—

(1) the State submits to the Secretary a description of the purposes for which the State intends to expend the grant; and

(2) such description provides information relating to the programs and activities to be supported and services to be provided, including—

(A) the number of individuals who will receive services pursuant to section 280c–3(a) of this title and the average costs of providing such services to each such individual; and

(B) a description of the manner in which such programs and activities will be coordi-

nated with any similar programs and activities of public and private entities.

(c) Requirement of application

The Secretary may not make a grant under section 280c–3(a) of this title to a State unless the State has submitted to the Secretary an application for the grant. The application shall—

(1) contain the description of intended expenditures required in subsection (b) of this section;

(2) with respect to carrying out the purpose for which the grant is to be made, provide assurances of compliance satisfactory to the Secretary; and

(3) otherwise be in such form, be made in such manner, and contain such information and agreements as the Secretary determines to be necessary to carry out this subpart.

(d) Evaluations and report by Secretary

The Secretary shall—

(1) provide for an evaluation of each demonstration project for which a grant is made under section 280c–3(a) of this title; and

(2) not later than 6 months after the completion of such evaluations, submit to the Congress a report describing the findings made as a result of the evaluations.

(e) Authorizations of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990, $7,500,000 for fiscal year 1991, such sums as may be necessary for each of the fiscal years 1992 and 1993, $8,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(July 1, 1944, ch. 373, title III, § 398B, formerly § 399A, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat. 982; amended Pub. L. 101–557, title I, § 102(c), Nov. 15, 1990, 104 Stat. 2767; renumbered § 398B, Pub. L. 102–321, title V, § 502(1), July 10, 1992, 106 Stat. 427; Pub. L. 105–392, title III, § 302(c), Nov. 13, 1998, 112 Stat. 3586.)

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–392 substituted ''1991, such sums'' for ''1991, and such sums'' and inserted before period at end '', $8,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002''.

1990—Subsec. (e). Pub. L. 101–557 substituted ''there are'' for ''there is'' and inserted before period at end '', $7,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993''.

SUBPART III—GRANTS FOR HOME VISITING SERVICES FOR AT-RISK FAMILIES

§ 280c–6. Projects to improve maternal, infant, and child health

(a) In general

(1) Establishment of program

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make grants to eligible entities to pay the Federal share of the cost of providing the services specified in subsection (b) of this section to families in which a member is—

(A) a pregnant woman at risk of delivering an infant with a health or developmental complication; or

(B) a child less than 3 years of age—

(i) who is experiencing or is at risk of a health or developmental complication, or of child abuse or neglect; or

(ii) who has been prenatally exposed to maternal substance abuse.

(2) Minimum period of awards; administrative consultations

(A) The Secretary shall award grants under paragraph (1) for periods of at least three years.

(B) The Administrator of the Administration for Children, Youth, and Families and the Director of the National Commission to Prevent Infant Mortality shall be consulted regarding the promulgation of program guidelines and funding priorities under this section.

(3) Requirement of status as medicaid provider

(A) Subject to subparagraph (B), the Secretary may make a grant under paragraph (1) only if, in the case of any service under such paragraph that is covered in the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i) the entity involved will provide the service directly, and the entity has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the entity will enter into an agreement with an organization under which the organization will provide the service, and the organization has entered into such a participation agreement and is qualified to receive such payments.

(B)(i) In the case of an organization making an agreement under subparagraph (A)(ii) regarding the provision of services under paragraph (1), the requirement established in such subparagraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health or mental health services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(ii) A determination by the Secretary of whether an organization referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.

(b) Home visiting services for eligible families

With respect to an eligible family, each of the following services shall, directly or through arrangement with other public or nonprofit private entities, be available (as applicable to the family member involved) in each project operated with a grant under subsection (a) of this section:

(1) Prenatal and postnatal health care.

(2) Primary health care for the children, including developmental assessments.

(3) Education for the parents concerning infant care and child development, including the development and utilization of parent and teacher resource networks and other family resource and support networks where such networks are available.

(4) Upon the request of a parent, providing the education described in paragraph (3) to other individuals who have responsibility for caring for the children.

(5) Education for the parents concerning behaviors that adversely affect health.

(6) Assistance in obtaining necessary health, mental health, developmental, social, housing, and nutrition services and other assistance, including services and other assistance under maternal and child health programs; the special supplemental nutrition program for women, infants, and children; section 1786 of this title; title V of the Social Security Act [42 U.S.C. 701 et seq.]; title XIX of such Act [42 U.S.C. 1396 et seq.] (including the program for early and periodic screening, diagnostic, and treatment services described in section 1905(r) of such Act [42 U.S.C. 1396d(r)]); titles IV and XIX of the Social Security Act [42 U.S.C. 601 et seq., 1396 et seq.]; housing programs; other food assistance programs; and appropriate alcohol and drug dependency treatment programs, according to need.

(c) Considerations in making grants

In awarding grants under subsection (a) of this section, the Secretary shall take into consideration—

(1) the ability of the entity involved to provide, either directly or through linkages, a broad range of preventive and primary health care services and related social, family support, and developmental services;

(2) different combinations of professional and lay home visitors utilized within programs that are reflective of the identified service needs and characteristics of target populations;

(3) the extent to which the population to be targeted has limited access to health care, and related social, family support, and developmental services; and

(4) whether such grants are equitably distributed among urban and rural settings and whether entities serving Native American communities are represented among the grantees.

(d) Federal share

With respect to the costs of carrying out a project under subsection (a) of this section, a grant under such subsection for the project may not exceed 90 percent of such costs. To be eligible to receive such a grant, an applicant must provide assurances that the applicant will obtain at least 10 percent of such costs from non-Federal funds (and such contributions to such costs may be in cash or in-kind, including facilities and personnel).

(e) Rule of construction regarding at-risk births

For purposes of subsection (a)(1) of this section, a pregnant woman shall be considered to be at risk of delivering an infant with a health or developmental complication if during the pregnancy the woman—

(1) lacks appropriate access to, or information concerning, early and routine prenatal care;

(2) lacks the transportation necessary to gain access to the services described in subsection (b) of this section;

(3) lacks appropriate child care assistance, which results in impeding the ability of such woman to utilize health and related social services;

(4) is fearful of accessing substance abuse services or child and family support services; or

(5) is a minor with a low income.

(f) Delivery of services and case management

(1) Case management model

Home visiting services provided under this section shall be delivered according to a case management model, and a registered nurse, licensed social worker, or other licensed health care professional with experience and expertise in providing health and related social services in home and community settings shall be assigned as the case manager for individual cases under such model.

(2) Case manager

A case manager assigned under paragraph (1) shall have primary responsibility for coordinating and overseeing the development of a plan for each family that is to receive home visiting services under this section, and for coordinating the delivery of such services provided through appropriate personnel.

(3) Appropriate personnel

In determining which personnel shall be utilized in the delivery of services, the case manager shall consider—

(A) the stated objective of the project to be operated with the grant, as determined after considering identified gaps in the current service delivery system; and

(B) the nature of the needs of the family to be served, as determined at the initial assessment of the family that is conducted by the case manager, and through follow-up contacts by other providers of home visiting services.

(4) Family service plan

A case manager, in consultation with a team established in accordance with paragraph (5) for the family involved, shall develop a plan for the family following the initial visit to the home of the family. Such plan shall reflect—

(A) an assessment of the health and related social service needs of the family;

(B) a structured plan for the delivery of home visiting services to meet the identified needs of the family;

(C) the frequency with which such services are to be provided to the family;

(D) ongoing revisions made as the needs of family members change; and

(E) the continuing voluntary participation of the family in the plan.

(5) Home visiting services team

The team to be consulted under paragraph (4) on behalf of a family shall include, as ap-

propriate, other nursing professionals, physician assistants, social workers, child welfare professionals, infant and early childhood specialists, nutritionists, and laypersons trained as home visitors. The case manager shall ensure that the plan is coordinated with those physician services that may be required by the mother or child.

(g) Outreach

Each grantee under subsection (a) of this section shall provide outreach and casefinding services to inform eligible families of the availability of home visiting services from the project.

(h) Confidentiality

In accordance with applicable State law, an entity receiving a grant under subsection (a) of this section shall maintain confidentiality with respect to services provided to families under this section.

(i) Certain assurances

The Secretary may award a grant under subsection (a) of this section only if the entity involved provides assurances satisfactory to the Secretary that—

(1) the entity will provide home visiting services with reasonable frequency—

(A) to families with pregnant women, as early in the pregnancy as is practicable, and until the infant reaches at least 2 years of age; and

(B) to other eligible families, for at least 2 years; and

(2) the entity will coordinate with public health and related social service agencies to prevent duplication of effort and improve the delivery of comprehensive health and related social services.

(j) Submission to Secretary of certain information

The Secretary may award a grant under subsection (a) of this section only if the entity involved submits to the Secretary—

(1) a description of the population to be targeted for home visiting services and methods of outreach and casefinding for identifying eligible families, including the use of lay home visitors where appropriate;

(2) a description of the types and qualifications of home visitors used by the entity and the process by which the entity will provide continuing training and sufficient support to the home visitors; and

(3) such other information as the Secretary determines to be appropriate.

(k) Limitation regarding administrative expenses

Not more than 10 percent of a grant under subsection (a) of this section may be expended for administrative expenses with respect to the grant. The costs of training individuals to serve in the project involved are not subject to the preceding sentence.

(*l*) Restrictions on use of grant

To be eligible to receive a grant under this section, an entity must agree that the grant will not be expended—

(1) to provide inpatient hospital services;

(2) to make cash payments to intended recipients of services;

(3) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(m) Reports to Secretary

To be eligible to receive a grant under this section, an entity must agree to submit an annual report on the services provided under this section to the Secretary in such manner and containing such information as the Secretary by regulation requires. At a minimum, the entity shall report information concerning eligible families, including—

(1) the characteristics of the families and children receiving services under this section;

(2) the usage, nature, and location of the provider, of preventive health services, including prenatal, primary infant, and child health care;

(3) the incidence of low birthweight and premature infants;

(4) the length of hospital stays for pre- and post-partum women and their children;

(5) the incidence of substantiated child abuse and neglect for all children within participating families;

(6) the number of emergency room visits for routine health care;

(7) the source of payment for health care services and the extent to which the utilization of health care services, other than routine screening and medical care, available to the individuals under the program established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], and under other Federal, State, and local programs, is reduced;

(8) the number and type of referrals made for health and related social services, including alcohol and drug treatment services, and the utilization of such services provided by the grantee; and

(9) the incidence of developmental disabilities.

(n) Requirement of application

The Secretary may make a grant under subsection (a) of this section only if—

(1) an application for the grant is submitted to the Secretary;

(2) the application contains the agreements and assurances required in this section, and the information required in subsection (j) of this section;

(3) the application contains evidence that the preparation of the application has been coordinated with the State agencies responsible for maternal and child health and child welfare, and coordinated with services provided under part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.]; and

(4) the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the

Secretary determines to be necessary to carry out this section.

(*o*) Peer review

(1) Requirement

In making determinations for awarding grants under subsection (a) of this section, the Secretary shall rely on the recommendations of the peer review panel established under paragraph (2).

(2) Composition

The Secretary shall establish a review panel to make recommendations under paragraph (1) that shall be composed of—

(A) national experts in the fields of maternal and child health, child abuse and neglect, and the provision of community-based primary health services; and

(B) representatives of relevant Federal agencies, including the Health Resources and Services Administration, the Substance Abuse and Mental Health Services Administration, the Administration for Children, Youth, and Families, the U.S. Advisory Board on Child Abuse and Neglect, and the National Commission to Prevent Infant Mortality.

(p) Evaluations

(1) In general

The Secretary shall, directly or through contracts with public or private entities—

(A) conduct evaluations to determine the effectiveness of projects under subsection (a) of this section in reducing the incidence of children born with health or developmental complications, the incidence among children less than 3 years of age of such complications, and the incidence of child abuse and neglect; and

(B) not less than once during each 3-year period, prepare and submit to the appropriate committees of Congress a report concerning the results of such evaluations.

(2) Contents

The evaluations conducted under paragraph (1) shall—

(A) include a summary of the data contained in the annual reports submitted under subsection (m) of this section;

(B) assess the relative effectiveness of projects under subsection (a) of this section in urban and rural areas, and among programs utilizing differing combinations of professionals and trained home visitors recruited from the community to meet the needs of defined target service populations; and

(C) make further recommendations necessary or desirable to increase the effectiveness of such projects.

(q) Definitions

For purposes of this section:

(1) The term ''eligible entity'' includes public and nonprofit private entities that provide health or related social services, including community-based organizations, visiting nurse organizations, hospitals, local health departments, community health centers, Native Hawaiian health centers, nurse managed clinics, family service agencies, child welfare agencies, developmental service providers, family resource and support programs, and resource mothers projects.

(2) The term ''eligible family'' means a family described in subsection (a) of this section.

(3) The term ''health or developmental complication'', with respect to a child, means—

(A) being born in an unhealthy or potentially unhealthy condition, including premature birth, low birthweight, and prenatal exposure to maternal substance abuse;

(B) a condition arising from a condition described in subparagraph (A);

(C) a physical disability or delay; and

(D) a developmental disability or delay.

(4) The term ''home visiting services'' means the services specified in subsection (b) of this section, provided at the residence of the eligible family involved or provided pursuant to arrangements made for the family (including arrangements for services in community settings).

(5) The term ''home visitors'' means providers of home visiting services.

(r) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $30,000,000 for each of the fiscal years 1993 and 1994.

(July 1, 1944, ch. 373, title III, § 399, as added Pub. L. 102–321, title V, § 502(2), July 10, 1992, 106 Stat. 427; amended Pub. L. 103–448, title II, § 204(w)(2)(D), Nov. 2, 1994, 108 Stat. 4746; Pub. L. 108–446, title III, § 305(i)(2), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(3)(A), (b)(6), and (m)(7), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles IV, V, and XIX of the Act are classified generally to subchapters IV (§ 601 et seq.), V (§ 701 et seq.), and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (n)(3), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 399 of act July 1, 1944, was renumbered section 398A by section 502(1) of Pub. L. 102–321 and is classified to section 280c–4 of this title.

Another prior section 399 of act July 1, 1944, ch. 373, title III, formerly § 399b, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399a and amended Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), (d)(2)(A), 84 Stat. 67; renumbered § 399, July 23, 1974, Pub. L. 93–353, title II, § 204, 88 Stat. 373; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, which related to the maintenance of records by recipients of grants and audits thereof by the Secretary of Health and Human Services and the Comptroller General of the United States, was classified to section 280b–11 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

2004—Subsec. (n)(3). Pub. L. 108–446 substituted ''part C'' for ''part H''.

1994—Subsec. (b)(6). Pub. L. 103–448 substituted ''special supplemental nutrition program'' for ''special supplemental food program''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE

Section effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

PURPOSE

Section 501 of title V of Pub. L. 102–321 provided that: ''The purpose of this title [enacting this section] is—

''(1) to increase the use of, and to provide information on the availability of early, continuous and comprehensive prenatal care;

''(2) to reduce the incidence of infant mortality and of infants born prematurely, with low birthweight, or with other impairments including those associated with maternal substance abuse;

''(3) for pregnant women and mothers of children below the age of 3 whose children have experienced or are at risk of experiencing a health or developmental complication, to provide assistance in obtaining health and related social services necessary to meet the special needs of the women and their children;

''(4) to assist, when requested, women who are pregnant and at-risk for poor birth outcomes, or who have young children and are abusing alcohol or other drugs, in obtaining appropriate treatment; and

''(5) to reduce the incidence of child abuse and neglect.''

PART L—[REPEALED]

AMENDMENTS

2000—Pub. L. 106–310, div. B, title XXXI, § 3106(n), Oct. 17, 2000, 114 Stat. 1179, struck out heading for part L ''Services for Children of Substance Abusers''.

1993—Pub. L. 103–43, title XX, § 2008(i)(2)(B)(ii), June 10, 1993, 107 Stat. 213, redesignated part M ''Services for Children of Substance Abusers'' as L. Former part L ''Health Care Services in the Home'' redesignated K.

1990—Pub. L. 101–616, title I, § 101(a)(1), Nov. 16, 1990, 104 Stat. 3279, redesignated part K ''Health Care Services in the Home'' as L.

§ 280d. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title III, § 399D, as added Pub. L. 102–321, title IV, § 401(a), July 10, 1992, 106 Stat. 419, and amended, which related to grants for services for children of substance abusers, was renumbered section 399A of title III of act July 1, 1944 by Pub. L. 106–310, div. A, title V, § 502(1), Oct. 17, 2000, 114 Stat. 1115. Subsequently, section 399D was renumbered section 519 of title V of act July 1, 1944, without reference to its prior renumbering as 399A, by Pub. L. 106–310, div. B, title XXXI, § 3106(m), Oct. 17, 2000, 114 Stat. 1179. Section was transferred to section 290bb–25 of this title.

§ 280d–11. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title III, § 399F, as added Pub. L. 102–531, title II, § 201, Oct. 27, 1992, 106 Stat. 3474, which comprised part N in its entirety and which related to establishment and duties of National Foundation for the Centers for Disease Control and Prevention, was renumbered section 399G of act July 1, 1944, by Pub. L. 106–310, div. A, title V, § 502(3), Oct. 17, 2000, 114 Stat. 1115, and transferred to section 280e–11 of this title.

PART M—NATIONAL PROGRAM OF CANCER REGISTRIES

§ 280e. National program of cancer registries

(a) In general

(1) Statewide cancer registries

The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States, or may make grants or enter into contracts with academic or nonprofit organizations designated by the State to operate the State's cancer registry in lieu of making a grant directly to the State, to support the operation of population-based, statewide registries to collect, for each condition specified in paragraph (2)(A), data concerning—

(A) demographic information about each case of cancer;

(B) information on the industrial or occupational history of the individuals with the cancers, to the extent such information is available from the same record;

(C) administrative information, including date of diagnosis and source of information;

(D) pathological data characterizing the cancer, including the cancer site, stage of disease (pursuant to Staging Guide), incidence, and type of treatment; and

(E) other elements determined appropriate by the Secretary.

(2) Cancer; benign brain-related tumors

(A) In general

For purposes of paragraph (1), the conditions referred to in this paragraph are the following:

(i) Each form of in-situ and invasive cancer (with the exception of basal cell and squamous cell carcinoma of the skin), including malignant brain-related tumors.

(ii) Benign brain-related tumors.

(B) Brain-related tumor

For purposes of subparagraph (A):

(i) The term ''brain-related tumor'' means a listed primary tumor (whether malignant or benign) occurring in any of the following sites:

(I) The brain, meninges, spinal cord, cauda equina, a cranial nerve or nerves, or any other part of the central nervous system.

(II) The pituitary gland, pineal gland, or craniopharyngeal duct.

(ii) The term ''listed'', with respect to a primary tumor, means a primary tumor that is listed in the International Classification of Diseases for Oncology (commonly referred to as the ICD–O).

(iii) The term ''International Classification of Diseases for Oncology'' means a classification system that includes topography (site) information and histology (cell type information) developed by the World Health Organization, in collaboration with international centers, to promote international comparability in the collection, classification, processing, and presentation of cancer statistics. The ICD–O system is a supplement to the International Statistical Classification of Diseases and Related Health Problems (commonly known as the ICD) and is the standard coding system used by cancer registries worldwide. Such term includes any modification made to such system for purposes of the United States. Such term further includes any published classification system that is internationally recognized as a successor to the classification system referred to in the first sentence of this clause.

(C) Statewide cancer registry

References in this section to cancer registries shall be considered to be references to registries described in this subsection.

(b) Matching funds

(1) In general

The Secretary may make a grant under subsection (a) of this section only if the State, or the academic or nonprofit private organization designated by the State to operate the cancer registry of the State, involved agrees, with respect to the costs of the program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such costs or $1 for every $3 of Federal funds provided in the grant.

(2) Determination of amount of non-Federal contribution; maintenance of effort

(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) With respect to a State in which the purpose described in subsection (a) of this section is to be carried out, the Secretary, in making a determination of the amount of non-Federal contributions provided under paragraph (1), may include only such contributions as are in excess of the amount of such contributions made by the State toward the collection of data on cancer for the fiscal year preceding the first year for which a grant under subsection (a) of this section is made with respect to the State. The Secretary may decrease the amount of non-Federal contributions that otherwise would have been required by this subsection in those cases in which the State can demonstrate that decreasing such amount is appropriate because of financial hardship.

(c) Eligibility for grants

(1) In general

No grant shall be made by the Secretary under subsection (a) of this section unless an application has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such a manner, and be accompanied by such information, as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and in accordance with the requirements of this section, that the application will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under subsection (a) of this section, and that the applicant will comply with the peer review requirements under sections 289 and 289a of this title.

(2) Assurances

Each applicant, prior to receiving Federal funds under subsection (a) of this section, shall provide assurances satisfactory to the Secretary that the applicant will—

(A) provide for the establishment of a registry in accordance with subsection (a) of this section;

(B) comply with appropriate standards of completeness, timeliness, and quality of population-based cancer registry data;

(C) provide for the annual publication of reports of cancer data under subsection (a) of this section; and

(D) provide for the authorization under State law of the statewide cancer registry, including promulgation of regulations providing—

(i) a means to assure complete reporting of cancer cases (as described in subsection (a) of this section) to the statewide cancer registry by hospitals or other facilities providing screening, diagnostic or therapeutic services to patients with respect to cancer;

(ii) a means to assure the complete reporting of cancer cases (as defined in subsection (a) of this section) to the statewide cancer registry by physicians, surgeons, and all other health care practitioners diagnosing or providing treatment for cancer patients, except for cases directly referred to or previously admitted to a hospital or other facility providing screening, diagnostic or therapeutic services to patients in that State and reported by those facilities;

(iii) a means for the statewide cancer registry to access all records of physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals, or agencies providing such services to patients which would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified patient;

(iv) for the reporting of cancer case data to the statewide cancer registry in such a

format, with such data elements, and in accordance with such standards of quality timeliness and completeness, as may be established by the Secretary;

(v) for the protection of the confidentiality of all cancer case data reported to the statewide cancer registry, including a prohibition on disclosure to any person of information reported to the statewide cancer registry that identifies, or could lead to the identification of, an individual cancer patient, except for disclosure to other State cancer registries and local and State health officers;

(vi) for a means by which confidential case data may in accordance with State law be disclosed to cancer researchers for the purposes of cancer prevention, control and research;

(vii) for the authorization or the conduct, by the statewide cancer registry or other persons and organizations, of studies utilizing statewide cancer registry data, including studies of the sources and causes of cancer, evaluations of the cost, quality, efficacy, and appropriateness of diagnostic, therapeutic, rehabilitative, and preventative services and programs relating to cancer, and any other clinical, epidemiological, or other cancer research; and

(viii) for protection for individuals complying with the law, including provisions specifying that no person shall be held liable in any civil action with respect to a cancer case report provided to the statewide cancer registry, or with respect to access to cancer case information provided to the statewide cancer registry.

(d) Relationship to certain programs

(1) In general

This section may not be construed to act as a replacement for or diminishment of the program carried out by the Director of the National Cancer Institute and designated by such Director as the Surveillance, Epidemiology, and End Results Program (SEER).

(2) Supplanting of activities

In areas where both such programs exist, the Secretary shall ensure that SEER support is not supplanted and that any additional activities are consistent with the guidelines provided for in subsection (c)(2)(C) and (D) of this section and are appropriately coordinated with the existing SEER program.

(3) Transfer of responsibility

The Secretary may not transfer administration responsibility for such SEER program from such Director.

(4) Coordination

To encourage the greatest possible efficiency and effectiveness of Federally supported efforts with respect to the activities described in this subsection, the Secretary shall take steps to assure the appropriate coordination of programs supported under this part with existing Federally supported cancer registry programs.

(e) Requirement regarding certain study on breast cancer

In the case of a grant under subsection (a) of this section to any State specified in subsection (b) of section 280e–3 of this title, the Secretary may establish such conditions regarding the receipt of the grant as the Secretary determines are necessary to facilitate the collection of data for the study carried out under such section.

(July 1, 1944, ch. 373, title III, § 399B, formerly § 399H, as added Pub. L. 102–515, § 3, Oct. 24, 1992, 106 Stat. 3372; renumbered § 399B and amended Pub. L. 106–310, div. A, title V, § 502(2)(A), (B), Oct. 17, 2000, 114 Stat. 1115; Pub. L. 107–260, § 2(a), Oct. 29, 2002, 116 Stat. 1743.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–260 designated existing provisions as par. (1), inserted par. (1) heading, substituted ''population-based, statewide registries to collect, for each condition specified in paragraph (2)(A), data'' for ''population-based, statewide cancer registries in order to collect, for each form of in-situ and invasive cancer (with the exception of basal cell and squamous cell carcinoma of the skin), data'', redesignated former pars. (1) to (5) as subpars. (A) to (E) of par. (1), respectively, and added par. (2).

2000—Subsec. (e). Pub. L. 106–310, § 502(2)(B), substituted ''subsection (b) of section 280e–3 of this title'' for ''section 280e–3(b) of this title'' and ''such section'' for ''section 399C''.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–260, § 2(b), Oct. 29, 2002, 116 Stat. 1744, provided that: ''The amendments made by subsection (a) [amending this section] apply to grants under section 399B of the Public Health Service Act [this section] for fiscal year 2002 and subsequent fiscal years, except that, in the case of a State that received such a grant for fiscal year 2000, the Secretary of Health and Human Services may delay the applicability of such amendments to the State for not more than 12 months if the Secretary determines that compliance with such amendments requires the enactment of a statute by the State or the issuance of State regulations.''

CONGRESSIONAL FINDINGS AND PURPOSE

Section 2 of Pub. L. 102–515 provided that:

''(a) FINDINGS.—Congress finds that—

''(1) cancer control efforts, including prevention and early detection, are best addressed locally by State health departments that can identify unique needs;

''(2) cancer control programs and existing statewide population-based cancer registries have identified cancer incidence and cancer mortality rates that indicate the burden of cancer for Americans is substantial and varies widely by geographic location and by ethnicity;

''(3) statewide cancer incidence and cancer mortality data, can be used to identify cancer trends, patterns, and variation for directing cancer control intervention;

''(4) the American Association of Central Cancer Registries (AACCR) cites that of the 50 States, approximately 38 have established cancer registries, many are not statewide and 10 have no cancer registry; and

''(5) AACCR also cites that of the 50 States, 39 collect data on less than 100 percent of their population, and less than half have adequate resources for insur-

ing minimum standards for quality and for completeness of case information.

''(b) PURPOSE.—It is the purpose of this Act [enacting this part and provisions set out as a note under section 201 of this title] to establish a national program of cancer registries.''

§ 280e–1. Planning grants regarding registries

(a) In general

(1) States

The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States for the purpose of developing plans that meet the assurances required by the Secretary under section 280e(c)(2) of this title.

(2) Other entities

For the purpose described in paragraph (1), the Secretary may make grants to public entities other than States and to nonprofit private entities. Such a grant may be made to an entity only if the State in which the purpose is to be carried out has certified that the State approves the entity as qualified to carry out the purpose.

(b) Application

The Secretary may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Secretary, the application contains the certification required in subsection (a)(2) of this section (if the application is for a grant under such subsection), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title III, § 399C, formerly § 399I, as added Pub. L. 102–515, § 3, Oct. 24, 1992, 106 Stat. 3375; renumbered § 399C, Pub. L. 106–310, div. A, title V, § 502(2)(A), Oct. 17, 2000, 114 Stat. 1115.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 280e–2. Technical assistance in operations of statewide cancer registries

The Secretary, acting through the Director of the Centers for Disease Control, may, directly or through grants and contracts, or both, provide technical assistance to the States in the establishment and operation of statewide registries, including assistance in the development of model legislation for statewide cancer registries and assistance in establishing a computerized reporting and data processing system.

(July 1, 1944, ch. 373, title III, § 399D, formerly § 399J, as added Pub. L. 102–515, § 3, Oct. 24, 1992, 106 Stat. 3376; renumbered § 399D, Pub. L. 106–310, div. A, title V, § 502(2)(A), Oct. 17, 2000, 114 Stat. 1115.)

PRIOR PROVISIONS

A prior section 399D of act July 1, 1944, was renumbered section 519, and is classified to section 290bb–25 of this title.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 280e–3. Study in certain States to determine factors contributing to elevated breast cancer mortality rates

(a) In general

Subject to subsections (c) and (d) of this section, the Secretary, acting through the Director of the National Cancer Institute, shall conduct a study for the purpose of determining the factors contributing to the fact that breast cancer mortality rates in the States specified in subsection (b) of this section are elevated compared to rates in other States.

(b) Relevant States

The States referred to in subsection (a) of this section are Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and the District of Columbia.

(c) Cooperation of State

The Secretary may conduct the study required in subsection (a) of this section in a State only if the State agrees to cooperate with the Secretary in the conduct of the study, including providing information from any registry operated by the State pursuant to section 280e(a) of this title.

(d) Planning, commencement, and duration

The Secretary shall, during each of the fiscal years 1993 and 1994, develop a plan for conducting the study required in subsection (a) of this section. The study shall be initiated by the Secretary not later than fiscal year 1994, and the collection of data under the study may continue through fiscal year 1998.

(July 1, 1944, ch. 373, title III, § 399E, formerly § 399K, as added Pub. L. 102–515, § 3, Oct. 24, 1992, 106 Stat. 3376; renumbered § 399E and amended Pub. L. 106–310, div. A, title V, § 502(2)(A), (C), Oct. 17, 2000, 114 Stat. 1115; Pub. L. 109–482, title I, § 104(b)(2)(A), Jan. 15, 2007, 120 Stat. 3693.)

AMENDMENTS

2007—Subsec. (e). Pub. L. 109–482 struck out heading and text of subsec. (e). Text read as follows: ''Not later than September 30, 1999, the Secretary shall complete the study required in subsection (a) of this section and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings and recommendations made as a result of the study.''

2000—Subsec. (c). Pub. L. 106–310, § 502(2)(C), made technical amendment to reference in original act which appears in text as reference to section 280e(a) of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

POTENTIAL ENVIRONMENTAL AND OTHER RISKS CONTRIBUTING TO INCIDENCE OF BREAST CANCER

Pub. L. 103–43, title XIX, § 1911, June 10, 1993, 107 Stat. 205, provided that Director of the National Cancer Institute, in collaboration with Director of the National Institute of Environmental Health Sciences, was to conduct case-control study to assess biological markers of environmental and other potential risk factors con-

tributing to incidence of breast cancer in specified counties in State of New York and northeastern United States that had highest age-adjusted mortality rate of such cancer, and to report results of such study to Congress not later than 30 months after June 10, 1993.

§ 280e–4. Authorization of appropriations

(a) Registries

For the purpose of carrying out this part, there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2003. Of the amounts appropriated under the preceding sentence for any such fiscal year, the Secretary may obligate not more than 25 percent for carrying out section 280e–1 of this title, and not more than 10 percent may be expended for assessing the accuracy, completeness and quality of data collected, and not more than 10 percent of which is to be expended under section 280e–2 of this title.

(b) Breast cancer study

Of the amounts appropriated for the National Cancer Institute under subpart 1 of part C of subchapter III of this chapter for any fiscal year in which the study required in section 280e–3 of this title is being carried out, the Secretary shall expend not less than $1,000,000 for the study.

(July 1, 1944, ch. 373, title III, § 399F, formerly § 399L, as added Pub. L. 102–515, § 3, Oct. 24, 1992, 106 Stat. 3376; amended Pub. L. 103–43, title XX, § 2003, June 10, 1993, 107 Stat. 208; Pub. L. 103–183, title VII, § 705(c), Dec. 14, 1993, 107 Stat. 2241; Pub. L. 105–340, title II, § 202, Oct. 31, 1998, 112 Stat. 3194; renumbered § 399F and amended Pub. L. 106–310, div. A, title V, § 502(2)(A), (D), Oct. 17, 2000, 114 Stat. 1115.)

PRIOR PROVISIONS

A prior section 399F of act July 1, 1944, was renumbered section 399G and is classified to section 280e–11 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, § 502(2)(D)(ii), substituted ''section 280e–2 of this title'' for ''subsection 280e–2 of this title''.

Pub. L. 106–310, § 502(2)(D)(i), made technical amendment to reference in original act which appears in text as reference to section 280e–1 of this title.

Subsec. (b). Pub. L. 106–310, § 502(2)(D)(iii), made technical amendment to reference in original act which appears in text as reference to section 280e–3 of this title.

1998—Subsec. (a). Pub. L. 105–340 substituted ''2003'' for ''1998''.

1993—Subsec. (a). Pub. L. 103–183 substituted ''through 1998'' for ''through 1996''.

Pub. L. 103–43 substituted ''there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1996'' for ''the Secretary may use $30,000,000 for each of the fiscal years 1993 through 1997'' in first sentence and ''Of the amounts appropriated under the preceding sentence'' for ''Out of any amounts used'' in second sentence.

PART N—NATIONAL FOUNDATION FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION

CODIFICATION

This part was formerly set out preceding part M of this subchapter.

§ 280e–11. Establishment and duties of Foundation

(a) In general

There shall be established in accordance with this section a nonprofit private corporation to be known as the National Foundation for the Centers for Disease Control and Prevention (in this part referred to as the ''Foundation''). The Foundation shall not be an agency or instrumentality of the Federal Government, and officers, employees, and members of the board of the Foundation shall not be officers or employees of the Federal Government.

(b) Purpose of Foundation

The purpose of the Foundation shall be to support and carry out activities for the prevention and control of diseases, disorders, injuries, and disabilities, and for promotion of public health.

(c) Endowment fund

(1) In general

In carrying out subsection (b) of this section, the Foundation shall establish a fund for providing endowments for positions that are associated with the Centers for Disease Control and Prevention and dedicated to the purpose described in such subsection. Subject to subsection (f)(1)(B) of this section, the fund shall consist of such donations as may be provided by non-Federal entities and such non-Federal assets of the Foundation (including earnings of the Foundation and the fund) as the Foundation may elect to transfer to the fund.

(2) Authorized expenditures of fund

The provision of endowments under paragraph (1) shall be the exclusive function of the fund established under such paragraph. Such endowments may be expended only for the compensation of individuals holding the positions, for staff, equipment, quarters, travel, and other expenditures that are appropriate in supporting the positions, and for recruiting individuals to hold the positions endowed by the fund.

(d) Certain activities of Foundation

In carrying out subsection (b) of this section, the Foundation may provide for the following with respect to the purpose described in such subsection:

(1) Programs of fellowships for State and local public health officials to work and study in association with the Centers for Disease Control and Prevention.

(2) Programs of international arrangements to provide opportunities for public health officials of other countries to serve in public health capacities in the United States in association with the Centers for Disease Control and Prevention or elsewhere, or opportunities for employees of such Centers (or other public health officials in the United States) to serve in such capacities in other countries, or both.

(3) Studies, projects, and research (which may include applied research on the effectiveness of prevention activities, demonstration projects, and programs and projects involving international, Federal, State, and local governments).

(4) Forums for government officials and appropriate private entities to exchange information. Participants in such forums may include institutions of higher education and appropriate international organizations.

(5) Meetings, conferences, courses, and training workshops.

(6) Programs to improve the collection and analysis of data on the health status of various populations.

(7) Programs for writing, editing, printing, and publishing of books and other materials.

(8) Other activities to carry out the purpose described in subsection (b) of this section.

(e) General structure of Foundation; nonprofit status

(1) Board of directors

The Foundation shall have a board of directors (in this part referred to as the ''Board''), which shall be established and conducted in accordance with subsection (f) of this section. The Board shall establish the general policies of the Foundation for carrying out subsection (b) of this section, including the establishment of the bylaws of the Foundation.

(2) Executive director

The Foundation shall have an executive director (in this part referred to as the ''Director''), who shall be appointed by the Board, who shall serve at the pleasure of the Board, and for whom the Board shall establish the rate of compensation. Subject to compliance with the policies and bylaws established by the Board pursuant to paragraph (1), the Director shall be responsible for the daily operations of the Foundation in carrying out subsection (b) of this section.

(3) Nonprofit status

In carrying out subsection (b) of this section, the Board shall establish such policies and bylaws under paragraph (1), and the Director shall carry out such activities under paragraph (2), as may be necessary to ensure that the Foundation maintains status as an organization that—

(A) is described in subsection (c)(3) of section 501 of title 26; and

(B) is, under subsection (a) of such section, exempt from taxation.

(f) Board of directors

(1) Certain bylaws

(A) In establishing bylaws under subsection (e)(1) of this section, the Board shall ensure that the bylaws of the Foundation include bylaws for the following:

(i) Policies for the selection of the officers, employees, agents, and contractors of the Foundation.

(ii) Policies, including ethical standards, for the acceptance and disposition of donations to the Foundation and for the disposition of the assets of the Foundation.

(iii) Policies for the conduct of the general operations of the Foundation.

(iv) Policies for writing, editing, printing, and publishing of books and other materials, and the acquisition of patents and licenses for devices and procedures developed by the Foundation.

(B) In establishing bylaws under subsection (e)(1) of this section, the Board shall ensure that the bylaws of the Foundation (and activities carried out under the bylaws) do not—

(i) reflect unfavorably upon the ability of the Foundation, or the Centers for Disease Control and Prevention, to carry out its responsibilities or official duties in a fair and objective manner; or

(ii) compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in such program.

(2) Composition

(A) Subject to subparagraph (B), the Board shall be composed of 7 individuals, appointed in accordance with paragraph (4), who collectively possess education or experience appropriate for representing the general field of public health, the general field of international health, and the general public. Each such individual shall be a voting member of the Board.

(B) The Board may, through amendments to the bylaws of the Foundation, provide that the number of members of the Board shall be a greater number than the number specified in subparagraph (A).

(3) Chair

The Board shall, from among the members of the Board, designate an individual to serve as the chair of the Board (in this subsection referred to as the ''Chair'').

(4) Appointments, vacancies, and terms

Subject to subsection (j) of this section (regarding the initial membership of the Board), the following shall apply to the Board:

(A) Any vacancy in the membership of the Board shall be filled by appointment by the Board, after consideration of suggestions made by the Chair and the Director regarding the appointments. Any such vacancy shall be filled not later than the expiration of the 180-day period beginning on the date on which the vacancy occurs.

(B) The term of office of each member of the Board appointed under subparagraph (A) shall be 5 years. A member of the Board may continue to serve after the expiration of the term of the member until the expiration of the 180-day period beginning on the date on which the term of the member expires.

(C) A vacancy in the membership of the Board shall not affect the power of the Board to carry out the duties of the Board. If a member of the Board does not serve the full term applicable under subparagraph (B), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(5) Compensation

Members of the Board may not receive compensation for service on the Board. The members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Board.

(g) Certain responsibilities of executive director

In carrying out subsection (e)(2) of this section, the Director shall carry out the following functions:

(1) Hire, promote, compensate, and discharge officers and employees of the Foundation, and define the duties of the officers and employees.

(2) Accept and administer donations to the Foundation, and administer the assets of the Foundation.

(3) Establish a process for the selection of candidates for holding endowed positions under subsection (c) of this section.

(4) Enter into such financial agreements as are appropriate in carrying out the activities of the Foundation.

(5) Take such action as may be necessary to acquire patents and licenses for devices and procedures developed by the Foundation and the employees of the Foundation.

(6) Adopt, alter, and use a corporate seal, which shall be judicially noticed.

(7) Commence and respond to judicial proceedings in the name of the Foundation.

(8) Other functions that are appropriate in the determination of the Director.

(h) General provisions

(1) Authority for accepting funds

The Director of the Centers for Disease Control and Prevention may accept and utilize, on behalf of the Federal Government, any gift, donation, bequest, or devise of real or personal property from the Foundation for the purpose of aiding or facilitating the work of such Centers. Funds may be accepted and utilized by such Director under the preceding sentence without regard to whether the funds are designated as general-purpose funds or special-purpose funds.

(2) Authority for acceptance of voluntary services

(A) The Director of the Centers for Disease Control and Prevention may accept, on behalf of the Federal Government, any voluntary services provided to such Centers by the Foundation for the purpose of aiding or facilitating the work of such Centers. In the case of an individual, such Director may accept the services provided under the preceding sentence by the individual until such time as the private funding for such individual ends.

(B) The limitation established in subparagraph (A) regarding the period of time in which services may be accepted applies to each individual who is not an employee of the Federal Government and who serves in association with the Centers for Disease Control and Prevention pursuant to financial support from the Foundation.

(3) Administrative control

No officer, employee, or member of the Board of the Foundation may exercise any administrative or managerial control over any Federal employee.

(4) Applicability of certain standards to non-Federal employees

In the case of any individual who is not an employee of the Federal Government and who serves in association with the Centers for Disease Control and Prevention pursuant to financial support from the Foundation, the Foundation shall negotiate a memorandum of understanding with the individual and the Director of the Centers for Disease Control and Prevention specifying that the individual—

(A) shall be subject to the ethical and procedural standards regulating Federal employment, scientific investigation, and research findings (including publications and patents) that are required of individuals employed by the Centers for Disease Control and Prevention, including standards under this chapter, the Ethics in Government Act, and the Technology Transfer Act;[1] and

(B) shall be subject to such ethical and procedural standards under chapter 11 of title 18 (relating to conflicts of interest), as the Director of such Centers determines is appropriate, except such memorandum may not provide that the individual shall be subject to the standards of section 209 of title 18.

(5) Financial conflicts of interest

Any individual who is an officer, employee, or member of the Board of the Foundation may not directly or indirectly participate in the consideration or determination by the Foundation of any question affecting—

(A) any direct or indirect financial interest of the individual; or

(B) any direct or indirect financial interest of any business organization or other entity of which the individual is an officer or employee or in which the individual has a direct or indirect financial interest.

(6) Audits; availability of records

The Foundation shall—

(A) provide for biennial audits of the financial condition of the Foundation; and

(B) make such audits, and all other records, documents, and other papers of the Foundation, available to the Secretary and the Comptroller General of the United States for examination or audit.

(7) Reports

(A) Not later than February 1 of each fiscal year, the Foundation shall publish a report describing the activities of the Foundation during the preceding fiscal year. Each such report shall include for the fiscal year involved a comprehensive statement of the operations, activities, financial condition, and accomplishments of the Foundation, including an accounting of the use of amounts provided for under subsection (i).

(B) With respect to the financial condition of the Foundation, each report under subparagraph (A) shall include the source, and a description of, all gifts to the Foundation of real or personal property, and the source and amount of all gifts to the Foundation of money. Each such report shall include a specification of any restrictions on the purposes for which gifts to the Foundation may be used.

(C) The Foundation shall make copies of each report submitted under subparagraph (A) available—

[1] See References in Text note below.

(i) for public inspection, and shall upon request provide a copy of the report to any individual for a charge not to exceed the cost of providing the copy; and

(ii) to the appropriate committees of Congress.

(8) Liaison from Centers for Disease Control and Prevention

The Director of the Centers for Disease Control and Prevention shall serve as the liaison representative of such Centers to the Board and the Foundation.

(i) Federal funding

(1) Authority for annual grants

(A) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall—

(i) for fiscal year 1993, make a grant to an entity described in subsection (j)(9) of this section (relating to the establishment of a committee to establish the Foundation);

(ii) for fiscal year 1994, make a grant to the committee established under such subsection, or if the Foundation has been established, to the Foundation; and

(iii) for fiscal year 1995 and each subsequent fiscal year, make a grant to the Foundation.

(B) A grant under subparagraph (A) may be expended—

(i) in the case of an entity receiving the grant under subparagraph (A)(i), only for the purpose of carrying out the duties established in subsection (j)(9) of this section for the entity;

(ii) in the case of the committee established under such subsection, only for the purpose of carrying out the duties established in subsection (j) of this section for the committee; and

(iii) in the case of the Foundation, only for the purpose of the administrative expenses of the Foundation.

(C) A grant under subparagraph (A) may not be expended to provide amounts for the fund established under subsection (c) of this section.

(D) For the purposes described in subparagraph (B)—

(i) any portion of the grant made under subparagraph (A)(i) for fiscal year 1993 that remains unobligated after the entity receiving the grant completes the duties established in subsection (j)(9) of this section for the entity shall be available to the committee established under such subsection; and

(ii) any portion of a grant under subparagraph (A) made for fiscal year 1993 or 1994 that remains unobligated after such committee completes the duties established in such subsection for the committee shall be available to the Foundation.

(2) Funding for grants

(A) For the purpose of grants under paragraph (1), there is authorized to be appropriated $1,250,000 for each fiscal year.

(B) For the purpose of grants under paragraph (1), the Secretary may for each fiscal year make available not less than $500,000, and not more than $1,250,000 from the amounts appropriated for the fiscal year for the programs of the Department of Health and Human Services. Such amounts may be made available without regard to whether amounts have been appropriated under subparagraph (A).

(3) Certain restriction

If the Foundation receives Federal funds for the purpose of serving as a fiscal intermediary between Federal agencies, the Foundation may not receive such funds for the indirect costs of carrying out such purpose in an amount exceeding 10 percent of the direct costs of carrying out such purpose. The preceding sentence may not be construed as authorizing the expenditure of any grant under paragraph (1) for such purpose.

(4) Support services

The Director of the Centers for Disease Control and Prevention may provide facilities, utilities, and support services to the Foundation if it is determined by the Director to be advantageous to the programs of such Centers.

(j) Committee for establishment of Foundation

(1) In general

There shall be established in accordance with this subsection a committee to carry out the functions described in paragraph (2) (which committee is referred to in this subsection as the ''Committee'').

(2) Functions

The functions referred to in paragraph (1) for the Committee are as follows:

(A) To carry out such activities as may be necessary to incorporate the Foundation under the laws of the State involved, including serving as incorporators for the Foundation. Such activities shall include ensuring that the articles of incorporation for the Foundation require that the Foundation be established and operated in accordance with the applicable provisions of this part (or any successor to this part), including such provisions as may be in effect pursuant to amendments enacted after October 27, 1992.

(B) To ensure that the Foundation qualifies for and maintains the status described in subsection (e)(3) of this section (regarding taxation).

(C) To establish the general policies and initial bylaws of the Foundation, which bylaws shall include the bylaws described in subsections (e)(3) and (f)(1) of this section.

(D) To provide for the initial operation of the Foundation, including providing for quarters, equipment, and staff.

(E) To appoint the initial members of the Board in accordance with the requirements established in subsection (f)(2)(A) of this section for the composition of the Board, and in accordance with such other qualifications as the Committee may determine to be appropriate regarding such composition. Of the members so appointed—

(i) 2 shall be appointed to serve for a term of 3 years;

(ii) 2 shall be appointed to serve for a term of 4 years; and

(iii) 3 shall be appointed to serve for a term of 5 years.

(3) Completion of functions of Committee; initial meeting of Board

(A) The Committee shall complete the functions required in paragraph (1) not later than September 30, 1994. The Committee shall terminate upon the expiration of the 30-day period beginning on the date on which the Secretary determines that the functions have been completed.

(B) The initial meeting of the Board shall be held not later than November 1, 1994.

(4) Composition

The Committee shall be composed of 5 members, each of whom shall be a voting member. Of the members of the Committee—

(A) no fewer than 2 shall have broad, general experience in public health; and

(B) no fewer than 2 shall have broad, general experience in nonprofit private organizations (without regard to whether the individuals have experience in public health).

(5) Chair

The Committee shall, from among the members of the Committee, designate an individual to serve as the chair of the Committee.

(6) Terms; vacancies

The term of members of the Committee shall be for the duration of the Committee. A vacancy in the membership of the Committee shall not affect the power of the Committee to carry out the duties of the Committee. If a member of the Committee does not serve the full term, the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(7) Compensation

Members of the Committee may not receive compensation for service on the Committee. Members of the Committee may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Committee.

(8) Committee support

The Director of the Centers for Disease Control and Prevention may, from amounts available to the Director for the general administration of such Centers, provide staff and financial support to assist the Committee with carrying out the functions described in paragraph (2). In providing such staff and support, the Director may both detail employees and contract for assistance.

(9) Grant for establishment of Committee

(A) With respect to a grant under paragraph (1)(A)(i) of subsection (i) of this section for fiscal year 1993, an entity described in this paragraph is a private nonprofit entity with significant experience in domestic and international issues of public health. Not later than 180 days after October 27, 1992, the Secretary shall make the grant to such an entity (subject to the availability of funds under paragraph (2) of such subsection).

(B) The grant referred to in subparagraph (A) may be made to an entity only if the entity agrees that—

(i) the entity will establish a committee that is composed in accordance with paragraph (4); and

(ii) the entity will not select an individual for membership on the Committee unless the individual agrees that the Committee will operate in accordance with each of the provisions of this subsection that relate to the operation of the Committee.

(C) The Secretary may make a grant referred to in subparagraph (A) only if the applicant for the grant makes an agreement that the grant will not be expended for any purpose other than carrying out subparagraph (B). Such a grant may be made only if an application for the grant is submitted to the Secretary containing such agreement, and the application is in such form, is made in such manner, and contains such other agreements and such assurances and information as the Secretary determines to be necessary to carry out this paragraph.

(July 1, 1944, ch. 373, title III, § 399G, formerly § 399F, as added Pub. L. 102–531, title II, § 201, Oct. 27, 1992, 106 Stat. 3474; renumbered § 399G, Pub. L. 106–310, div. A, title V, § 502(3), Oct. 17, 2000, 114 Stat. 1115; amended Pub. L. 109–245, § 1, July 26, 2006, 120 Stat. 575.)

REFERENCES IN TEXT

The Ethics in Government Act, referred to in subsec. (h)(4)(A), probably means the Ethics in Government Act of 1978, Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

The Technology Transfer Act, referred to in subsec. (h)(4)(A), may mean the Federal Technology Transfer Act of 1986, Pub. L. 99–502, Oct. 20, 1986, 100 Stat. 1785, as amended, or the National Competitiveness Technology Transfer Act of 1989, part C (§§ 3131–3133) of title XXXI of div. C of Pub. L. 101–189, Nov. 29, 1989, 103 Stat. 1674. For complete classification of these Acts to the Code, see Short Title of 1986 Amendment note and Short Title of 1989 Amendment note both set out under section 3701 of Title 15, Commerce and Trade, and Tables.

CODIFICATION

Section was formerly classified to section 280d–11 of this title prior to renumbering by Pub. L. 106–310.

PRIOR PROVISIONS

A prior section 399G of act July 1, 1944, was renumbered section 399H and is classified to section 280f of this title.

AMENDMENTS

2006—Subsec. (h)(2)(A). Pub. L. 109–245, § 1(a), substituted ''In the case of an individual, such Director may accept the services provided under the preceding sentence by the individual until such time as the private funding for such individual ends.'' for ''In the case of an individual, such Director may accept the services provided under the preceding sentence by the individual for not more than 2 years.''

Subsec. (h)(7)(A). Pub. L. 109–245, § 1(b)(1), inserted '', including an accounting of the use of amounts provided for under subsection (i)'' before period at end of second sentence.

Subsec. (h)(7)(C). Pub. L. 109–245, § 1(b)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''The Foundation shall make copies of each report submitted under subparagraph (A) available for public inspection, and shall upon request provide a copy of the report to any individual for a charge not exceeding the cost of providing the copy.''

Subsec. (i)(2)(A). Pub. L. 109–245, § 1(c)(1)(A), substituted ''$1,250,000'' for ''$500,000''.

Subsec. (i)(2)(B). Pub. L. 109–245, § 1(c)(1)(B), substituted ''not less than $500,000, and not more than $1,250,000'' for ''not more than $500,000''.

Subsec. (i)(4). Pub. L. 109–245, § 1(c)(2), added par. (4).

PART O—FETAL ALCOHOL SYNDROME PREVENTION AND SERVICES PROGRAM

§ 280f. Establishment of Fetal Alcohol Syndrome prevention and services program

(a) Fetal Alcohol Syndrome prevention, intervention and services delivery program

The Secretary shall establish a comprehensive Fetal Alcohol Syndrome and Fetal Alcohol Effect prevention, intervention and services delivery program that shall include—

(1) an education and public awareness program to support, conduct, and evaluate the effectiveness of—

(A) educational programs targeting medical schools, social and other supportive services, educators and counselors and other service providers in all phases of childhood development, and other relevant service providers, concerning the prevention, identification, and provision of services for children, adolescents and adults with Fetal Alcohol Syndrome and Fetal Alcohol Effect;

(B) strategies to educate school-age children, including pregnant and high risk youth, concerning Fetal Alcohol Syndrome and Fetal Alcohol Effect;

(C) public and community awareness programs concerning Fetal Alcohol Syndrome and Fetal Alcohol Effect; and

(D) strategies to coordinate information and services across affected community agencies, including agencies providing social services such as foster care, adoption, and social work, medical and mental health services, and agencies involved in education, vocational training and civil and criminal justice;

(2) a prevention and diagnosis program to support clinical studies, demonstrations and other research as appropriate to—

(A) develop appropriate medical diagnostic methods for identifying Fetal Alcohol Syndrome and Fetal Alcohol Effect; and

(B) develop effective prevention services and interventions for pregnant, alcohol-dependent women; and

(3) an applied research program concerning intervention and prevention to support and conduct service demonstration projects, clinical studies and other research models providing advocacy, educational and vocational training, counseling, medical and mental health, and other supportive services, as well as models that integrate and coordinate such services, that are aimed at the unique challenges facing individuals with Fetal Alcohol Syndrome or Fetal Alcohol Effect and their families.

(b) Grants and technical assistance

The Secretary may award grants, cooperative agreements and contracts and provide technical assistance to eligible entities described in section 280f–1 of this title to carry out subsection (a) of this section.

(c) Dissemination of criteria

In carrying out this section, the Secretary shall develop a procedure for disseminating the Fetal Alcohol Syndrome and Fetal Alcohol Effect diagnostic criteria developed pursuant to section 705 of the ADAMHA Reorganization Act to health care providers, educators, social workers, child welfare workers, and other individuals.

(d) National Task Force

(1) In general

The Secretary shall establish a task force to be known as the National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (referred to in this subsection as the ''Task Force'') to foster coordination among all governmental agencies, academic bodies and community groups that conduct or support Fetal Alcohol Syndrome and Fetal Alcohol Effect research, programs, and surveillance, and otherwise meet the general needs of populations actually or potentially impacted by Fetal Alcohol Syndrome and Fetal Alcohol Effect.

(2) Membership

The Task Force established pursuant to paragraph (1) shall—

(A) be chaired by an individual to be appointed by the Secretary and staffed by the Administration; and

(B) include the Chairperson of the Interagency Coordinating Committee on Fetal Alcohol Syndrome of the Department of Health and Human Services, individuals with Fetal Alcohol Syndrome and Fetal Alcohol Effect, and representatives from advocacy and research organizations such as the Research Society on Alcoholism, the FAS Family Resource Institute, the National Organization of Fetal Alcohol Syndrome, the Arc, the academic community, and Federal, State and local government agencies and offices.

(3) Functions

The Task Force shall—

(A) advise Federal, State and local programs and research concerning Fetal Alcohol Syndrome and Fetal Alcohol Effect, including programs and research concerning education and public awareness for relevant service providers, school-age children, women at-risk, and the general public, medical diagnosis, interventions for women at-risk of giving birth to children with Fetal Alcohol Syndrome and Fetal Alcohol Effect, and beneficial services for individuals with Fetal Alcohol Syndrome and Fetal Alcohol Effect and their families;

(B) coordinate its efforts with the Interagency Coordinating Committee on Fetal

Alcohol Syndrome of the Department of Health and Human Services; and

(C) report on a biennial basis to the Secretary and relevant committees of Congress on the current and planned activities of the participating agencies.

(4) Time for appointment

The members of the Task Force shall be appointed by the Secretary not later than 6 months after November 13, 1998.

(July 1, 1944, ch. 373, title III, § 399H, formerly § 399G, as added Pub. L. 105–392, title IV, § 419(d), Nov. 13, 1998, 112 Stat. 3593; renumbered § 399H and amended Pub. L. 106–310, div. A, title V, § 502(4)(A), (B), Oct. 17, 2000, 114 Stat. 1115.)

REFERENCES IN TEXT

Section 705 of the ADAMHA Reorganization Act, referred to in subsec. (c), is section 705 of Pub. L. 102–321, title VII, July 10, 1992, 106 Stat. 438, which was formerly set out as a note under section 285n of this title.

PRIOR PROVISIONS

A prior section 399H of act July 1, 1944, was renumbered section 399B and is classified to section 280e of this title.

Another prior section 399H of act July 1, 1944, was renumbered section 399I and is classified to section 280f–1 of this title.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310, § 502(4)(B), made technical amendment to reference in original act which appears in text as reference to section 280f–1 of this title.

CONGRESSIONAL FINDINGS AND PURPOSE

Pub. L. 105–392, title IV, § 419(b), (c), Nov. 13, 1998, 112 Stat. 3591, 3592, provided that:

''(b) FINDINGS.—Congress finds that—

''(1) Fetal Alcohol Syndrome is the leading preventable cause of mental retardation, and it is 100 percent preventable;

''(2) estimates on the number of children each year vary, but according to some researchers, up to 12,000 infants are born in the United States with Fetal Alcohol Syndrome, suffering irreversible physical and mental damage;

''(3) thousands more infants are born each year with Fetal Alcohol Effect, also known as Alcohol Related Neurobehavioral Disorder (ARND), a related and equally tragic syndrome;

''(4) children of women who use alcohol while pregnant have a significantly higher infant mortality rate (13.3 per 1,000) than children of those women who do not use alcohol (8.6 per 1,000);

''(5) Fetal Alcohol Syndrome and Fetal Alcohol Effect are national problems which can impact any child, family, or community, but their threat to American Indians and Alaska Natives is especially alarming;

''(6) in some American Indian communities, where alcohol dependency rates reach 50 percent and above, the chances of a newborn suffering Fetal Alcohol Syndrome or Fetal Alcohol Effect are up to 30 times greater than national averages;

''(7) in addition to the immeasurable toll on children and their families, Fetal Alcohol Syndrome and Fetal Alcohol Effect pose extraordinary financial costs to the Nation, including the costs of health care, education, foster care, job training, and general support services for affected individuals;

''(8) the total cost to the economy of Fetal Alcohol Syndrome was approximately $2,500,000,000 in 1995, and over a lifetime, health care costs for one Fetal Alcohol Syndrome child are estimated to be at least $1,400,000;

''(9) researchers have determined that the possibility of giving birth to a baby with Fetal Alcohol Syndrome or Fetal Alcohol Effect increases in proportion to the amount and frequency of alcohol consumed by a pregnant woman, and that stopping alcohol consumption at any point in the pregnancy reduces the emotional, physical, and mental consequences of alcohol exposure to the baby; and

''(10) though approximately 1 out of every 5 pregnant women drink alcohol during their pregnancy, we know of no safe dose of alcohol during pregnancy, or of any safe time to drink during pregnancy, thus, it is in the best interest of the Nation for the Federal Government to take an active role in encouraging all women to abstain from alcohol consumption during pregnancy.

''(c) PURPOSE.—It is the purpose of this section [enacting this part and provisions set out as a note under section 201 of this title] to establish, within the Department of Health and Human Services, a comprehensive program to help prevent Fetal Alcohol Syndrome and Fetal Alcohol Effect nationwide and to provide effective intervention programs and services for children, adolescents and adults already affected by these conditions. Such program shall—

''(1) coordinate, support, and conduct national, State, and community-based public awareness, prevention, and education programs on Fetal Alcohol Syndrome and Fetal Alcohol Effect;

''(2) coordinate, support, and conduct prevention and intervention studies as well as epidemiologic research concerning Fetal Alcohol Syndrome and Fetal Alcohol Effect;

''(3) coordinate, support and conduct research and demonstration projects to develop effective developmental and behavioral interventions and programs that foster effective advocacy, educational and vocational training, appropriate therapies, counseling, medical and mental health, and other supportive services, as well as models that integrate or coordinate such services, aimed at the unique challenges facing individuals with Fetal Alcohol Syndrome or Fetal Alcohol Effect and their families; and

''(4) foster coordination among all Federal, State and local agencies, and promote partnerships between research institutions and communities that conduct or support Fetal Alcohol Syndrome and Fetal Alcohol Effect research, programs, surveillance, prevention, and interventions and otherwise meet the general needs of populations already affected or at risk of being impacted by Fetal Alcohol Syndrome and Fetal Alcohol Effect.''

§ 280f–1. Eligibility

To be eligible to receive a grant, or enter into a cooperative agreement or contract under this part, an entity shall—

(1) be a State, Indian tribal government, local government, scientific or academic institution, or nonprofit organization; and

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may prescribe, including a description of the activities that the entity intends to carry out using amounts received under this part.

(July 1, 1944, ch. 373, title III, § 399I, formerly § 399H, as added Pub. L. 105–392, title IV, § 419(d), Nov. 13, 1998, 112 Stat. 3594; renumbered § 399I, Pub. L. 106–310, div. A, title V, § 502(4)(A), Oct. 17, 2000, 114 Stat. 1115.)

PRIOR PROVISIONS

A prior section 399I of act July 1, 1944, was renumbered section 399C and is classified to section 280e–1 of this title.

Another prior section 399I of act July 1, 1944, was renumbered section 399J and is classified to section 280f–2 of this title.

§ 280f–2. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this part, $27,000,000 for each of the fiscal years 1999 through 2003.

(b) Task Force

From amounts appropriated for a fiscal year under subsection (a) of this section, the Secretary may use not to exceed $2,000,000 of such amounts for the operations of the National Task Force under section 280f(d) of this title.

(July 1, 1944, ch. 373, title III, § 399J, formerly § 399I, as added Pub. L. 105–392, title IV, § 419(d), Nov. 13, 1998, 112 Stat. 3595; renumbered § 399J and amended Pub. L. 106–310, div. A, title V, § 502(4)(A), (C), Oct. 17, 2000, 114 Stat. 1115.)

PRIOR PROVISIONS

A prior section 399J of act July 1, 1944, was renumbered section 399D and is classified to section 280e–2 of this title.

Another prior section 399J of act July 1, 1944, was renumbered section 399K and is classified to section 280f–3 of this title.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310, § 502(4)(C), made technical amendment to reference in original act which appears in text as reference to section 280f(d) of this title.

§ 280f–3. Sunset provision

This part shall not apply on the date that is 7 years after the date on which all members of the National Task Force have been appointed under section 280f(d)(1) of this title.

(July 1, 1944, ch. 373, title III, § 399K, formerly § 399J, as added Pub. L. 105–392, title IV, § 419(d), Nov. 13, 1998, 112 Stat. 3595; renumbered § 399K and amended Pub. L. 106–310, div. A, title V, § 502(4)(A), (D), Oct. 17, 2000, 114 Stat. 1115.)

PRIOR PROVISIONS

A prior section 399K of act July 1, 1944, was renumbered section 399E and is classified to section 280e–3 of this title.

AMENDMENTS

2000—Pub. L. 106–310, § 502(4)(D), made technical amendment to reference in original act which appears in text as reference to section 280f(d)(1) of this title.

PART P—ADDITIONAL PROGRAMS

§ 280g. Children's asthma treatment grants program

(a) Authority to make grants

(1) In general

In addition to any other payments made under this chapter or title V of the Social Security Act [42 U.S.C. 701 et seq.], the Secretary shall award grants to eligible entities to carry out the following purposes:

(A) To provide access to quality medical care for children who live in areas that have a high prevalence of asthma and who lack access to medical care.

(B) To provide on-site education to parents, children, health care providers, and medical teams to recognize the signs and symptoms of asthma, and to train them in the use of medications to treat asthma and prevent its exacerbations.

(C) To decrease preventable trips to the emergency room by making medication available to individuals who have not previously had access to treatment or education in the management of asthma.

(D) To provide other services, such as smoking cessation programs, home modification, and other direct and support services that ameliorate conditions that exacerbate or induce asthma.

(2)[1] Certain projects

In making grants under paragraph (1), the Secretary may make grants designed to develop and expand the following projects:

(A) Projects to provide comprehensive asthma services to children in accordance with the guidelines of the National Asthma Education and Prevention Program (through the National Heart, Lung and Blood Institute), including access to care and treatment for asthma in a community-based setting.

(B) Projects to fully equip mobile health care clinics that provide preventive asthma care including diagnosis, physical examinations, pharmacological therapy, skin testing, peak flow meter testing, and other asthma-related health care services.

(C) Projects to conduct validated asthma management education programs for patients with asthma and their families, including patient education regarding asthma management, family education on asthma management, and the distribution of materials, including displays and videos, to reinforce concepts presented by medical teams.

(2)[1] Award of grants

(A) Application

(i) In general

An eligible entity shall submit an application to the Secretary for a grant under this section in such form and manner as the Secretary may require.

(ii) Required information

An application submitted under this subparagraph shall include a plan for the use of funds awarded under the grant and such other information as the Secretary may require.

(B) Requirement

In awarding grants under this section, the Secretary shall give preference to eligible entities that demonstrate that the activities to be carried out under this section shall be in localities within areas of known or suspected high prevalence of childhood asthma or high asthma-related mortality or high rate of hospitalization or emergency room visits for asthma (relative to the average asthma prevalence rates and associated mor-

[1] So in original. Two pars. (2) have been enacted.

tality rates in the United States). Acceptable data sets to demonstrate a high prevalence of childhood asthma or high asthma-related mortality may include data from Federal, State, or local vital statistics, claims data under title XIX or XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.], other public health statistics or surveys, or other data that the Secretary, in consultation with the Director of the Centers for Disease Control and Prevention, deems appropriate.

(3) Definition of eligible entity

For purposes of this section, the term ''eligible entity'' means a public or nonprofit private entity (including a State or political subdivision of a State), or a consortium of any of such entities.

(b) Coordination with other children's programs

An eligible entity shall identify in the plan submitted as part of an application for a grant under this section how the entity will coordinate operations and activities under the grant with—

(1) other programs operated in the State that serve children with asthma, including any such programs operated under title V, XIX, or XXI of the Social Security Act [42 U.S.C. 701 et seq., 1396 et seq., 1397aa et seq.]; and

(2) one or more of the following—

(A) the child welfare and foster care and adoption assistance programs under parts B and E of title IV of such Act [42 U.S.C. 620 et seq., 670 et seq.];

(B) the head start program established under the Head Start Act (42 U.S.C. 9831 et seq.);

(C) the program of assistance under the special supplemental nutrition program for women, infants and children (WIC) under section 1786 of this title;

(D) local public and private elementary or secondary schools; or

(E) public housing agencies, as defined in section 1437a of this title.

(c) Evaluation

An eligible entity that receives a grant under this section shall submit to the Secretary an evaluation of the operations and activities carried out under the grant that includes—

(1) a description of the health status outcomes of children assisted under the grant;

(2) an assessment of the utilization of asthma-related health care services as a result of activities carried out under the grant;

(3) the collection, analysis, and reporting of asthma data according to guidelines prescribed by the Director of the Centers for Disease Control and Prevention; and

(4) such other information as the Secretary may require.

(d) Preference for States that allow students to self-administer medication to treat asthma and anaphylaxis

(1) Preference

The Secretary, in making any grant under this section or any other grant that is asthma-related (as determined by the Secretary) to a State, shall give preference to any State that satisfies the following:

(A) In general

The State must require that each public elementary school and secondary school in that State will grant to any student in the school an authorization for the self-administration of medication to treat that student's asthma or anaphylaxis, if—

(i) a health care practitioner prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication;

(ii) the student has demonstrated to the health care practitioner (or such practitioner's designee) and the school nurse (if available) the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed;

(iii) the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

(iv) the student's parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan formulated under clause (iii) and other documents related to liability.

(B) Scope

An authorization granted under subparagraph (A) must allow the student involved to possess and use his or her medication—

(i) while in school;

(ii) while at a school-sponsored activity, such as a sporting event; and

(iii) in transit to or from school or school-sponsored activities.

(C) Duration of authorization

An authorization granted under subparagraph (A)—

(i) must be effective only for the same school and school year for which it is granted; and

(ii) must be renewed by the parent or guardian each subsequent school year in accordance with this subsection.

(D) Backup medication

The State must require that backup medication, if provided by a student's parent or guardian, be kept at a student's school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

(E) Maintenance of information

The State must require that information described in subparagraphs (A)(iii) and (A)(iv) be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

(2) Rule of construction

Nothing in this subsection creates a cause of action or in any other way increases or dimin-

ishes the liability of any person under any other law.

(3) Definitions

For purposes of this subsection:

(A) The terms ''elementary school'' and ''secondary school'' have the meaning given to those terms in section 7801 of title 20.

(B) The term ''health care practitioner'' means a person authorized under law to prescribe drugs subject to section 353(b) of title 21.

(C) The term ''medication'' means a drug as that term is defined in section 321 of title 21 and includes inhaled bronchodilators and auto-injectable epinephrine.

(D) The term ''self-administration'' means a student's discretionary use of his or her prescribed asthma or anaphylaxis medication, pursuant to a prescription or written direction from a health care practitioner.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399L, as added Pub. L. 106–310, div. A, title V, § 501, Oct. 17, 2000, 114 Stat. 1113; amended Pub. L. 108–377, § 3(a), Oct. 30, 2004, 118 Stat. 2203.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (2)(B) and (b)(1), (2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts B and E of title IV of the Act are classified generally to parts B (§ 620 et seq.) and E (§ 670 et seq.), respectively, of subchapter IV of chapter 7 of this title. Titles V, XIX, and XXI of the Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Head Start Act, referred to in subsec. (b)(2)(B), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

PRIOR PROVISIONS

A prior section 399L of act July 1, 1944, was renumbered section 399F and is classified to section 280e–4 of this title.

AMENDMENTS

2004—Subsecs. (d), (e). Pub. L. 108–377 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–377, § 3(b), Oct. 30, 2004, 118 Stat. 2204, provided that: ''The amendments made by this section [amending this section] shall apply only with respect to grants made on or after the date that is 9 months after the date of the enactment of this Act [Oct. 30, 2004].''

FINDINGS OF 2004 AMENDMENT

Pub. L. 108–377, § 2, Oct. 30, 2004, 118 Stat. 2202, provided that: ''The Congress finds the following:

''(1) Asthma is a chronic condition requiring lifetime, ongoing medical intervention.

''(2) In 1980, 6,700,000 Americans had asthma.

''(3) In 2001, 20,300,000 Americans had asthma; 6,300,000 children under age 18 had asthma.

''(4) The prevalence of asthma among African-American children was 40 percent greater than among Caucasian children, and more than 26 percent of all asthma deaths are in the African-American population.

''(5) In 2000, there were 1,800,000 asthma-related visits to emergency departments (more than 728,000 of these involved children under 18 years of age).

''(6) In 2000, there were 465,000 asthma-related hospitalizations (214,000 of these involved children under 18 years of age).

''(7) In 2000, 4,487 people died from asthma, and of these 223 were children.

''(8) According to the Centers for Disease Control and Prevention, asthma is a common cause of missed school days, accounting for approximately 14,000,000 missed school days annually.

''(9) According to the New England Journal of Medicine, working parents of children with asthma lose an estimated $1,000,000,000 a year in productivity.

''(10) At least 30 States have legislation protecting the rights of children to carry and self-administer asthma metered-dose inhalers, and at least 18 States expand this protection to epinephrine auto-injectors.

''(11) Tragic refusals of schools to permit students to carry their inhalers and auto-injectable epinephrine have occurred, some resulting in death and spawning litigation.

''(12) School district medication policies must be developed with the safety of all students in mind. The immediate and correct use of asthma inhalers and auto-injectable epinephrine are necessary to avoid serious respiratory complications and improve health care outcomes.

''(13) No school should interfere with the patient-physician relationship.

''(14) Anaphylaxis, or anaphylactic shock, is a systemic allergic reaction that can kill within minutes. Anaphylaxis occurs in some asthma patients. According to the American Academy of Allergy, Asthma, and Immunology, people who have experienced symptoms of anaphylaxis previously are at risk for subsequent reactions and should carry an epinephrine auto-injector with them at all times, if prescribed.

''(15) An increasing number of students and school staff have life-threatening allergies. Exposure to the affecting allergen can trigger anaphylaxis. Anaphylaxis requires prompt medical intervention with an injection of epinephrine.''

§ 280g–1. Early detection, diagnosis, and treatment regarding hearing loss in infants

(a) Statewide newborn and infant hearing screening, evaluation and intervention programs and systems

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make awards of grants or cooperative agreements to develop statewide newborn and infant hearing screening, evaluation and intervention programs and systems for the following purposes:

(1) To develop and monitor the efficacy of state-wide newborn and infant hearing screening, evaluation and intervention programs and systems. Early intervention includes referral to schools and agencies, including community, consumer, and parent-based agencies and organizations and other programs mandated by part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.], which offer programs specifically designed to meet the unique language and communication needs of deaf and hard of hearing newborns, infants, toddlers, and children.

(2) To collect data on statewide newborn and infant hearing screening, evaluation and inter-

vention programs and systems that can be used for applied research, program evaluation and policy development.

(b) Technical assistance, data management, and applied research

(1) Centers for Disease Control and Prevention

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall make awards of grants or cooperative agreements to provide technical assistance to State agencies to complement an intramural program and to conduct applied research related to newborn and infant hearing screening, evaluation and intervention programs and systems. The program shall develop standardized procedures for data management and program effectiveness and costs, such as—

(A) to ensure quality monitoring of newborn and infant hearing loss screening, evaluation, and intervention programs and systems;

(B) to provide technical assistance on data collection and management;

(C) to study the costs and effectiveness of newborn and infant hearing screening, evaluation and intervention programs and systems conducted by State-based programs in order to answer issues of importance to State and national policymakers;

(D) to identify the causes and risk factors for congenital hearing loss;

(E) to study the effectiveness of newborn and infant hearing screening, audiologic and medical evaluations and intervention programs and systems by assessing the health, intellectual and social developmental, cognitive, and language status of these children at school age; and

(F) to promote the sharing of data regarding early hearing loss with State-based birth defects and developmental disabilities monitoring programs for the purpose of identifying previously unknown causes of hearing loss.

(2) National Institutes of Health

The Director of the National Institutes of Health, acting through the Director of the National Institute on Deafness and Other Communication Disorders, shall for purposes of this section, continue a program of research and development on the efficacy of new screening techniques and technology, including clinical studies of screening methods, studies on efficacy of intervention, and related research.

(c) Coordination and collaboration

(1) In general

In carrying out programs under this section, the Administrator of the Health Resources and Services Administration, the Director of the Centers for Disease Control and Prevention, and the Director of the National Institutes of Health shall collaborate and consult with other Federal agencies; State and local agencies, including those responsible for early intervention services pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (Medicaid Early and Periodic Screening, Diagnosis and Treatment Program); title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.] (State Children's Health Insurance Program); title V of the Social Security Act [42 U.S.C. 701 et seq.] (Maternal and Child Health Block Grant Program); and part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.]; consumer groups of and that serve individuals who are deaf and hard-of-hearing and their families; appropriate national medical and other health and education specialty organizations; persons who are deaf and hard-of-hearing and their families; other qualified professional personnel who are proficient in deaf or hard-of-hearing children's language and who possess the specialized knowledge, skills, and attributes needed to serve deaf and hard-of-hearing newborns, infants, toddlers, children, and their families; third-party payers and managed care organizations; and related commercial industries.

(2) Policy development

The Administrator of the Health Resources and Services Administration, the Director of the Centers for Disease Control and Prevention, and the Director of the National Institutes of Health shall coordinate and collaborate on recommendations for policy development at the Federal and State levels and with the private sector, including consumer, medical and other health and education professional-based organizations, with respect to newborn and infant hearing screening, evaluation and intervention programs and systems.

(3) State early detection, diagnosis, and intervention programs and systems; data collection

The Administrator of the Health Resources and Services Administration and the Director of the Centers for Disease Control and Prevention shall coordinate and collaborate in assisting States to establish newborn and infant hearing screening, evaluation and intervention programs and systems under subsection (a) of this section and to develop a data collection system under subsection (b) of this section.

(d) Rule of construction; religious accommodation

Nothing in this section shall be construed to preempt or prohibit any State law, including State laws which do not require the screening for hearing loss of newborn infants or young children of parents who object to the screening on the grounds that such screening conflicts with the parents' religious beliefs.

(e) Definitions

For purposes of this section:

(1) The term ''audiologic evaluation'' refers to procedures to assess the status of the auditory system; to establish the site of the auditory disorder; the type and degree of hearing loss, and the potential effects of hearing loss on communication; and to identify appropriate treatment and referral options. Referral options should include linkage to State coordinating agencies under part C of the Individuals with Disabilities Education Act [20

U.S.C. 1431 et seq.] or other appropriate agencies, medical evaluation, hearing aid/sensory aid assessment, audiologic rehabilitation treatment, national and local consumer, self-help, parent, and education organizations, and other family-centered services.

(2) The terms ''audiologic rehabilitation'' and ''audiologic intervention'' refer to procedures, techniques, and technologies to facilitate the receptive and expressive communication abilities of a child with hearing loss.

(3) The term ''early intervention'' refers to providing appropriate services for the child with hearing loss, including nonmedical services, and ensuring that families of the child are provided comprehensive, consumer-oriented information about the full range of family support, training, information services, communication options and are given the opportunity to consider the full range of educational and program placements and options for their child.

(4) The term ''medical evaluation by a physician'' refers to key components including history, examination, and medical decision making focused on symptomatic and related body systems for the purpose of diagnosing the etiology of hearing loss and related physical conditions, and for identifying appropriate treatment and referral options.

(5) The term ''medical intervention'' refers to the process by which a physician provides medical diagnosis and direction for medical and/or surgical treatment options of hearing loss and/or related medical disorder associated with hearing loss.

(6) The term ''newborn and infant hearing screening'' refers to objective physiologic procedures to detect possible hearing loss and to identify newborns and infants who, after re-screening, require further audiologic and medical evaluations.

(f) Authorization of appropriations

(1) Statewide newborn and infant hearing screening, evaluation and intervention programs and systems

For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated to the Health Resources and Services Administration such sums as may be necessary for fiscal year 2002.

(2) Technical assistance, data management, and applied research; Centers for Disease Control and Prevention

For the purpose of carrying out subsection (b)(1) of this section, there are authorized to be appropriated to the Centers for Disease Control and Prevention such sums as may be necessary for fiscal year 2002.

(3) Technical assistance, data management, and applied research; national institute on deafness and other communication disorders

For the purpose of carrying out subsection (b)(2) of this section, there are authorized to be appropriated to the National Institute on Deafness and Other Communication Disorders such sums as may be necessary for fiscal year 2002.

(July 1, 1944, ch. 373, title III, § 399M, as added Pub. L. 106–310, div. A, title VII, § 702, Oct. 17, 2000, 114 Stat. 1121.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsecs. (a)(1), (c)(1), and (e)(1), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Social Security Act, referred to in subsec. (c)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XIX, and XXI of the Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PURPOSES

Pub. L. 106–310, div. A, title VII, § 701, Oct. 17, 2000, 114 Stat. 1120, provided that: ''The purposes of this title [enacting this section] are to clarify the authority within the Public Health Service Act [this chapter] to authorize statewide newborn and infant hearing screening, evaluation and intervention programs and systems, technical assistance, a national applied research program, and interagency and private sector collaboration for policy development, in order to assist the States in making progress toward the following goals:

''(1) All babies born in hospitals in the United States and its territories should have a hearing screening before leaving the birthing facility. Babies born in other countries and residing in the United States via immigration or adoption should have a hearing screening as early as possible.

''(2) All babies who are not born in hospitals in the United States and its territories should have a hearing screening within the first 3 months of life.

''(3) Appropriate audiologic and medical evaluations should be conducted by 3 months for all newborns and infants suspected of having hearing loss to allow appropriate referral and provisions for audiologic rehabilitation, medical and early intervention before the age of 6 months.

''(4) All newborn and infant hearing screening programs and systems should include a component for audiologic rehabilitation, medical and early intervention options that ensures linkage to any new and existing state-wide systems of intervention and rehabilitative services for newborns and infants with hearing loss.

''(5) Public policy in regard to newborn and infant hearing screening and intervention should be based on applied research and the recognition that newborns, infants, toddlers, and children who are deaf or hard-of-hearing have unique language, learning, and communication needs, and should be the result of consultation with pertinent public and private sectors.''

§ 280g–2. Childhood malignancies

(a) In general

The Secretary, acting as appropriate through the Director of the Centers for Disease Control and Prevention and the Director of the National Institutes of Health, shall study environmental and other risk factors for childhood cancers (including skeletal malignancies, leukemias, malignant tumors of the central nervous system, lymphomas, soft tissue sarcomas, and other malignant neoplasms) and carry out projects to improve outcomes among children with childhood cancers and resultant secondary conditions, including limb loss, anemia, rehabilitation, and

palliative care. Such projects shall be carried out by the Secretary directly and through awards of grants or contracts.

(b) Certain activities

Activities under subsection (a) of this section include—

(1) the expansion of current demographic data collection and population surveillance efforts to include childhood cancers nationally;

(2) the development of a uniform reporting system under which treating physicians, hospitals, clinics, and States report the diagnosis of childhood cancers, including relevant associated epidemiological data; and

(3) support for the National Limb Loss Information Center to address, in part, the primary and secondary needs of persons who experience childhood cancers in order to prevent or minimize the disabling nature of these cancers.

(c) Coordination of activities

The Secretary shall assure that activities under this section are coordinated as appropriate with other agencies of the Public Health Service that carry out activities focused on childhood cancers and limb loss.

(d) Definition

For purposes of this section, the term ''childhood cancer'' refers to a spectrum of different malignancies that vary by histology, site of disease, origin, race, sex, and age. The Secretary may for purposes of this section revise the definition of such term to the extent determined by the Secretary to be appropriate.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399N, as added Pub. L. 106–310, div. A, title XI, § 1101, Oct. 17, 2000, 114 Stat. 1131.)

§ 280g–3. Controlled substance monitoring program

(a) Grants

(1) In general

Each fiscal year, the Secretary shall award a grant to each State with an application approved under this section to enable the State—

(A) to establish and implement a State controlled substance monitoring program; or

(B) to make improvements to an existing State controlled substance monitoring program.

(2) Determination of amount

(A) Minimum amount

In making payments under a grant under paragraph (1) for a fiscal year, the Secretary shall allocate to each State with an application approved under this section an amount that equals 1.0 percent of the amount appropriated to carry out this section for that fiscal year.

(B) Additional amounts

In making payments under a grant under paragraph (1) for a fiscal year, the Secretary shall allocate to each State with an application approved under this section an additional amount which bears the same ratio to the amount appropriated to carry out this section for that fiscal year and remaining after amounts are made available under subparagraph (A) as the number of pharmacies of the State bears to the number of pharmacies of all States with applications approved under this section (as determined by the Secretary), except that the Secretary may adjust the amount allocated to a State under this subparagraph after taking into consideration the budget cost estimate for the State's controlled substance monitoring program.

(3) Term of grants

Grants awarded under this section shall be obligated in the year in which funds are allotted.

(b) Development of minimum requirements

Prior to awarding a grant under this section, and not later than 6 months after the date on which funds are first appropriated to carry out this section, after seeking consultation with States and other interested parties, the Secretary shall, after publishing in the Federal Register proposed minimum requirements and receiving public comments, establish minimum requirements for criteria to be used by States for purposes of clauses (ii), (v), (vi), and (vii) of subsection (c)(1)(A) of this section.

(c) Application approval process

(1) In general

To be eligible to receive a grant under this section, a State shall submit an application to the Secretary at such time, in such manner, and containing such assurances and information as the Secretary may reasonably require. Each such application shall include—

(A) with respect to a State that intends to use funds under the grant as provided for in subsection (a)(1)(A) of this section—

(i) a budget cost estimate for the controlled substance monitoring program to be implemented under the grant;

(ii) criteria for security for information handling and for the database maintained by the State under subsection (e) of this section generally including efforts to use appropriate encryption technology or other appropriate technology to protect the security of such information;

(iii) an agreement to adopt health information interoperability standards, including health vocabulary and messaging standards, that are consistent with any such standards generated or identified by the Secretary or his or her designee;

(iv) criteria for meeting the uniform electronic format requirement of subsection (h) of this section;

(v) criteria for availability of information and limitation on access to program personnel;

(vi) criteria for access to the database, and procedures to ensure that information in the database is accurate;

(vii) criteria for the use and disclosure of information, including a description of the

certification process to be applied to requests for information under subsection (f) of this section;

(viii) penalties for the unauthorized use and disclosure of information maintained in the State controlled substance monitoring program in violation of applicable State law or regulation;

(ix) information on the relevant State laws, policies, and procedures, if any, regarding purging of information from the database; and

(x) assurances of compliance with all other requirements of this section; or

(B) with respect to a State that intends to use funds under the grant as provided for in subsection (a)(1)(B) of this section—

(i) a budget cost estimate for the controlled substance monitoring program to be improved under the grant;

(ii) a plan for ensuring that the State controlled substance monitoring program is in compliance with the criteria and penalty requirements described in clauses (ii) through (viii) of subparagraph (A);

(iii) a plan to enable the State controlled substance monitoring program to achieve interoperability with at least one other State controlled substance monitoring program; and

(iv) assurances of compliance with all other requirements of this section or a statement describing why such compliance is not feasible or is contrary to the best interests of public health in such State.

(2) State legislation

As part of an application under paragraph (1), the Secretary shall require a State to demonstrate that the State has enacted legislation or regulations to permit the implementation of the State controlled substance monitoring program and the imposition of appropriate penalties for the unauthorized use and disclosure of information maintained in such program.

(3) Interoperability

If a State that submits an application under this subsection geographically borders another State that is operating a controlled substance monitoring program under subsection (a)(1) of this section on the date of submission of such application, and such applicant State has not achieved interoperability for purposes of information sharing between its monitoring program and the monitoring program of such border State, such applicant State shall, as part of the plan under paragraph (1)(B)(iii), describe the manner in which the applicant State will achieve interoperability between the monitoring programs of such States.

(4) Approval

If a State submits an application in accordance with this subsection, the Secretary shall approve such application.

(5) Return of funds

If the Secretary withdraws approval of a State's application under this section, or the State chooses to cease to implement or improve a controlled substance monitoring program under this section, a funding agreement for the receipt of a grant under this section is that the State will return to the Secretary an amount which bears the same ratio to the overall grant as the remaining time period for expending the grant funds bears to the overall time period for expending the grant (as specified by the Secretary at the time of the grant).

(d) Reporting requirements

In implementing or improving a controlled substance monitoring program under this section, a State shall comply, or with respect to a State that applies for a grant under subsection (a)(1)(B) of this section submit to the Secretary for approval a statement of why such compliance is not feasible or is contrary to the best interests of public health in such State, with the following:

(1) The State shall require dispensers to report to such State each dispensing in the State of a controlled substance to an ultimate user not later than 1 week after the date of such dispensing.

(2) The State may exclude from the reporting requirement of this subsection—

(A) the direct administration of a controlled substance to the body of an ultimate user;

(B) the dispensing of a controlled substance in a quantity limited to an amount adequate to treat the ultimate user involved for 48 hours or less; or

(C) the administration or dispensing of a controlled substance in accordance with any other exclusion identified by the Secretary for purposes of this paragraph.

(3) The information to be reported under this subsection with respect to the dispensing of a controlled substance shall include the following:

(A) Drug Enforcement Administration Registration Number (or other identifying number used in lieu of such Registration Number) of the dispenser.

(B) Drug Enforcement Administration Registration Number (or other identifying number used in lieu of such Registration Number) and name of the practitioner who prescribed the drug.

(C) Name, address, and telephone number of the ultimate user or such contact information of the ultimate user as the Secretary determines appropriate.

(D) Identification of the drug by a national drug code number.

(E) Quantity dispensed.

(F) Number of refills ordered.

(G) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(H) Date of the dispensing.

(I) Date of origin of the prescription.

(J) Such other information as may be required by State law to be reported under this subsection.

(4) The State shall require dispensers to report information under this section in accordance with the electronic format specified by

the Secretary under subsection (h) of this section, except that the State may waive the requirement of such format with respect to an individual dispenser that is unable to submit such information by electronic means.

(e) Database

In implementing or improving a controlled substance monitoring program under this section, a State shall comply with the following:

(1) The State shall establish and maintain an electronic database containing the information reported to the State under subsection (d) of this section.

(2) The database must be searchable by any field or combination of fields.

(3) The State shall include reported information in the database in a manner consistent with criteria established by the Secretary, with appropriate safeguards for ensuring the accuracy and completeness of the database.

(4) The State shall take appropriate security measures to protect the integrity of, and access to, the database.

(f) Use and disclosure of information

(1) In general

Subject to subsection (g) of this section, in implementing or improving a controlled substance monitoring program under this section, a State may disclose information from the database established under subsection (e) of this section and, in the case of a request under subparagraph (D), summary statistics of such information, only in response to a request by—

(A) a practitioner (or the agent thereof) who certifies, under the procedures determined by the State, that the requested information is for the purpose of providing medical or pharmaceutical treatment or evaluating the need for such treatment to a bona fide current patient;

(B) any local, State, or Federal law enforcement, narcotics control, licensure, disciplinary, or program authority, who certifies, under the procedures determined by the State, that the requested information is related to an individual investigation or proceeding involving the unlawful diversion or misuse of a schedule II, III, or IV substance, and such information will further the purpose of the investigation or assist in the proceeding;

(C) the controlled substance monitoring program of another State or group of States with whom the State has established an interoperability agreement;

(D) any agent of the Department of Health and Human Services, a State medicaid program, a State health department, or the Drug Enforcement Administration who certifies that the requested information is necessary for research to be conducted by such department, program, or administration, respectively, and the intended purpose of the research is related to a function committed to such department, program, or administration by law that is not investigative in nature; or

(E) an agent of the State agency or entity of another State that is responsible for the establishment and maintenance of that State's controlled substance monitoring program, who certifies that—

(i) the State has an application approved under this section; and

(ii) the requested information is for the purpose of implementing the State's controlled substance monitoring program under this section.

(2) Drug diversion

In consultation with practitioners, dispensers, and other relevant and interested stakeholders, a State receiving a grant under subsection (a) of this section—

(A) shall establish a program to notify practitioners and dispensers of information that will help identify and prevent the unlawful diversion or misuse of controlled substances; and

(B) may, to the extent permitted under State law, notify the appropriate authorities responsible for carrying out drug diversion investigations if the State determines that information in the database maintained by the State under subsection (e) of this section indicates an unlawful diversion or abuse of a controlled substance.

(g) Limitations

In implementing or improving a controlled substance monitoring program under this section, a State—

(1) shall limit the information provided pursuant to a valid request under subsection (f)(1) of this section to the minimum necessary to accomplish the intended purpose of the request; and

(2) shall limit information provided in response to a request under subsection (f)(1)(D) of this section to nonidentifiable information.

(h) Electronic format

The Secretary shall specify a uniform electronic format for the reporting, sharing, and disclosure of information under this section.

(i) Rules of construction

(1) Functions otherwise authorized by law

Nothing in this section shall be construed to restrict the ability of any authority, including any local, State, or Federal law enforcement, narcotics control, licensure, disciplinary, or program authority, to perform functions otherwise authorized by law.

(2) No preemption

Nothing in this section shall be construed as preempting any State law, except that no such law may relieve any person of a requirement otherwise applicable under this chapter.

(3) Additional privacy protections

Nothing in this section shall be construed as preempting any State from imposing any additional privacy protections.

(4) Federal privacy requirements

Nothing in this section shall be construed to supersede any Federal privacy or confidentiality requirement, including the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act

of 1996 (Public Law 104–191; 110 Stat. 2033) and section 290dd–2 of this title.

(5) No Federal private cause of action

Nothing in this section shall be construed to create a Federal private cause of action.

(j) Studies and reports

(1) Implementation report

(A) In general

Not later than 180 days after August 11, 2005, the Secretary, based on a review of existing State controlled substance monitoring programs and other relevant information, shall determine whether the implementation of such programs has had a substantial negative impact on—

(i) patient access to treatment, including therapy for pain or controlled substance abuse;

(ii) pediatric patient access to treatment; or

(iii) patient enrollment in research or clinical trials in which, following the protocol that has been approved by the relevant institutional review board for the research or clinical trial, the patient has obtained a controlled substance from either the scientific investigator conducting such research or clinical trial or the agent thereof.

(B) Additional categories of exclusion

If the Secretary determines under subparagraph (A) that a substantial negative impact has been demonstrated with regard to one or more of the categories of patients described in such subparagraph, the Secretary shall identify additional appropriate categories of exclusion from reporting as authorized under subsection (d)(2)(C) of this section.

(2) Progress report

Not later than 3 years after the date on which funds are first appropriated under this section, the Secretary shall—

(A) complete a study that—

(i) determines the progress of States in establishing and implementing controlled substance monitoring programs under this section;

(ii) provides an analysis of the extent to which the operation of controlled substance monitoring programs have reduced inappropriate use, abuse, or diversion of controlled substances or affected patient access to appropriate pain care in States operating such programs;

(iii) determines the progress of States in achieving interoperability between controlled substance monitoring programs, including an assessment of technical and legal barriers to such activities and recommendations for addressing these barriers;

(iv) determines the feasibility of implementing a real-time electronic controlled substance monitoring program, including the costs associated with establishing such a program;

(v) provides an analysis of the privacy protections in place for the information reported to the controlled substance monitoring program in each State receiving a grant for the establishment or operation of such program, and any recommendations for additional requirements for protection of this information;

(vi) determines the feasibility of implementing technological alternatives to centralized data storage, such as peer-to-peer file sharing or data pointer systems, in controlled substance monitoring programs and the potential for such alternatives to enhance the privacy and security of individually identifiable data; and

(vii) evaluates the penalties that States have enacted for the unauthorized use and disclosure of information maintained in the controlled substance monitoring program, and reports on the criteria used by the Secretary to determine whether such penalties qualify as appropriate pursuant to this section; and

(B) submit a report to the Congress on the results of the study.

(k) Preference

Beginning 3 years after the date on which funds are first appropriated to carry out this section, the Secretary, in awarding any competitive grant that is related to drug abuse (as determined by the Secretary) and for which only States are eligible to apply, shall give preference to any State with an application approved under this section. The Secretary shall have the discretion to apply such preference to States with existing controlled substance monitoring programs that meet minimum requirements under this section or to States that put forth a good faith effort to meet those requirements (as determined by the Secretary).

(*l*) Advisory council

(1) Establishment

A State may establish an advisory council to assist in the establishment, implementation, or improvement of a controlled substance monitoring program under this section.

(2) Limitation

A State may not use amounts received under a grant under this section for the operations of an advisory council established under paragraph (1).

(3) Sense of Congress

It is the sense of the Congress that, in establishing an advisory council under this subsection, a State should consult with appropriate professional boards and other interested parties.

(m) Definitions

For purposes of this section:

(1) The term ''bona fide patient'' means an individual who is a patient of the practitioner involved.

(2) The term ''controlled substance'' means a drug that is included in schedule II, III, or IV of section 812(c) of title 21.

(3) The term ''dispense'' means to deliver a controlled substance to an ultimate user by, or pursuant to the lawful order of, a practitioner, irrespective of whether the dispenser

uses the Internet or other means to effect such delivery.

(4) The term ''dispenser'' means a physician, pharmacist, or other person that dispenses a controlled substance to an ultimate user.

(5) The term ''interoperability'' with respect to a State controlled substance monitoring program means the ability of the program to electronically share reported information, including each of the required report components described in subsection (d) of this section, with another State if the information concerns either the dispensing of a controlled substance to an ultimate user who resides in such other State, or the dispensing of a controlled substance prescribed by a practitioner whose principal place of business is located in such other State.

(6) The term ''nonidentifiable information'' means information that does not identify a practitioner, dispenser, or an ultimate user and with respect to which there is no reasonable basis to believe that the information can be used to identify a practitioner, dispenser, or an ultimate user.

(7) The term ''practitioner'' means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he or she practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(8) The term ''State'' means each of the 50 States and the District of Columbia.

(9) The term ''ultimate user'' means a person who has obtained from a dispenser, and who possesses, a controlled substance for his or her own use, for the use of a member of his or her household, or for the use of an animal owned by him or her or by a member of his or her household.

(n) Authorization of appropriations

To carry out this section, there are authorized to be appropriated—

(1) $15,000,000 for each of fiscal years 2006 and 2007; and

(2) $10,000,000 for each of fiscal years 2008, 2009, and 2010.

(July 1, 1944, ch. 373, title III, § 399O, as added Pub. L. 109–60, § 3, Aug. 11, 2005, 119 Stat. 1979.)

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (i)(4), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

PRIOR PROVISIONS

Another section 399O of act July 1, 1944, was renumbered section 399P and is classified to section 280g–4 of this title.

PURPOSE

Pub. L. 109–60, § 2, Aug. 11, 2005, 119 Stat. 1979, provided that: ''It is the purpose of this Act [enacting this section and provisions set out as a note under section 201 of this title] to—

''(1) foster the establishment of State-administered controlled substance monitoring systems in order to ensure that health care providers have access to the accurate, timely prescription history information that they may use as a tool for the early identification of patients at risk for addiction in order to initiate appropriate medical interventions and avert the tragic personal, family, and community consequences of untreated addiction; and

''(2) establish, based on the experiences of existing State controlled substance monitoring programs, a set of best practices to guide the establishment of new State programs and the improvement of existing programs.''

§ 280g–4. Grants to foster public health responses to domestic violence, dating violence, sexual assault, and stalking

(a) Authority to award grants

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall award grants to eligible State, tribal, territorial, or local entities to strengthen the response of State, tribal, territorial, or local health care systems to domestic violence, dating violence, sexual assault, and stalking.

(2) Eligible entities

To be eligible to receive a grant under this section, an entity shall—

(A) be—

(i) a State department (or other division) of health, a State domestic or sexual assault coalition or service-based program, State law enforcement task force, or any other nonprofit, nongovernmental, tribal, territorial, or State entity with a history of effective work in the fields of domestic violence, dating violence, sexual assault or stalking, and health care; or

(ii) a local, nonprofit domestic violence, dating violence, sexual assault, or stalking service-based program, a local department (or other division) of health, a local health clinic, hospital, or health system, or any other nonprofit, tribal, or local entity with a history of effective work in the field of domestic or sexual violence and health;

(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such agreements, assurances, and information as the Secretary determines to be necessary to carry out the purposes for which the grant is to be made; and

(C) demonstrate that the entity is representing a team of organizations and agencies working collaboratively to strengthen the response of the health care system involved to domestic violence, dating violence, sexual assault, or stalking and that such team includes domestic violence, dating violence, sexual assault or stalking and health care organizations.

(3) Duration

A program conducted under a grant awarded under this section shall not exceed 2 years.

(b) Use of funds

(1) In general

An entity shall use amounts received under a grant under this section to design and imple-

ment comprehensive strategies to improve the response of the health care system involved to domestic or sexual violence in clinical and public health settings, hospitals, clinics, managed care settings (including behavioral and mental health), and other health settings.

(2) Mandatory strategies

Strategies implemented under paragraph (1) shall include the following:

(A) The implementation, dissemination, and evaluation of policies and procedures to guide health care professionals and behavioral and public health staff in responding to domestic violence, dating violence, sexual assault, and stalking, including strategies to ensure that health information is maintained in a manner that protects the patient's privacy and safety and prohibits insurance discrimination.

(B) The development of on-site access to services to address the safety, medical, mental health, and economic needs of patients either by increasing the capacity of existing health care professionals and behavioral and public health staff to address domestic violence, dating violence, sexual assault, and stalking, by contracting with or hiring domestic or sexual assault advocates to provide the services, or to model other services appropriate to the geographic and cultural needs of a site.

(C) The evaluation of practice and the institutionalization of identification, intervention, and documentation including quality improvement measurements.

(D) The provision of training and followup technical assistance to health care professionals, behavioral and public health staff, and allied health professionals to identify, assess, treat, and refer clients who are victims of domestic violence, dating violence, sexual violence, or stalking.

(3) Permissive strategies

Strategies implemented under paragraph (1) may include the following:

(A) Where appropriate, the development of training modules and policies that address the overlap of child abuse, domestic violence, dating violence, sexual assault, and stalking and elder abuse as well as childhood exposure to domestic violence.

(B) The creation, adaptation, and implementation of public education campaigns for patients concerning domestic violence, dating violence, sexual assault, and stalking prevention.

(C) The development, adaptation, and dissemination of domestic violence, dating violence, sexual assault, and stalking education materials to patients and health care professionals and behavioral and public health staff.

(D) The promotion of the inclusion of domestic violence, dating violence, sexual assault, and stalking into health professional training schools, including medical, dental, nursing school, social work, and mental health curriculum.

(E) The integration of domestic violence, dating violence, sexual assault, and stalking into health care accreditation and professional licensing examinations, such as medical, dental, social work, and nursing boards.

(c) Allocation of funds

Funds appropriated under this section shall be distributed equally between State and local programs.

(d) Authorization of appropriations

There is authorized to be appropriated to award grants under this section, $5,000,000 for each of fiscal years 2007 through 2011.

(July 1, 1944, ch. 373, title III, § 399P, formerly § 399O, as added Pub. L. 109–162, title V, § 504, Jan. 5, 2006, 119 Stat. 3026; renumbered § 399P, Pub. L. 109–450, § 4(1), Dec. 22, 2006, 120 Stat. 3342.)

FINDINGS

Pub. L. 109–162, title V, § 501, Jan. 5, 2006, 119 Stat. 3023, provided that: ''Congress makes the following findings:

''(1) The health-related costs of intimate partner violence in the United States exceed $5,800,000,000 annually.

''(2) Thirty-seven percent of all women who sought care in hospital emergency rooms for violence-related injuries were injured by a current or former spouse, boyfriend, or girlfriend.

''(3) In addition to injuries sustained during violent episodes, physical and psychological abuse is linked to a number of adverse physical and mental health effects. Women who have been abused are much more likely to suffer from chronic pain, diabetes, depression, unintended pregnancies, substance abuse and sexually transmitted infections, including HIV/AIDS.

''(4) Health plans spend an average of $1,775 more a year on abused women than on general enrollees.

''(5) Each year about 324,000 pregnant women in the United States are battered by the men in their lives. This battering leads to complications of pregnancy, including low weight gain, anemia, infections, and first and second trimester bleeding.

''(6) Pregnant and recently pregnant women are more likely to be victims of homicide than to die of any other pregnancy-related cause, and evidence exists that a significant proportion of all female homicide victims are killed by their intimate partners.

''(7) Children who witness domestic violence are more likely to exhibit behavioral and physical health problems including depression, anxiety, and violence towards peers. They are also more likely to attempt suicide, abuse drugs and alcohol, run away from home, engage in teenage prostitution, and commit sexual assault crimes.

''(8) Recent research suggests that women experiencing domestic violence significantly increase their safety-promoting behaviors over the short- and long-term when health care providers screen for, identify, and provide followup care and information to address the violence.

''(9) Currently, only about 10 percent of primary care physicians routinely screen for intimate partner abuse during new patient visits and 9 percent routinely screen for intimate partner abuse during periodic checkups.

''(10) Recent clinical studies have proven the effectiveness of a 2-minute screening for early detection of abuse of pregnant women. Additional longitudinal studies have tested a 10-minute intervention that was proven highly effective in increasing the safety of pregnant abused women. Comparable research does not yet exist to support the effectiveness of screening men.

''(11) Seventy to 81 percent of the patients studied reported that they would like their healthcare providers to ask them privately about intimate partner violence.''

PURPOSE

Pub. L. 109–162, title V, § 502, Jan. 5, 2006, 119 Stat. 3024, provided that: ''It is the purpose of this title [enacting this section, sections 294h and 13973 of this title, and provisions set out as a note above] to improve the health care system's response to domestic violence, dating violence, sexual assault, and stalking through the training and education of health care providers, developing comprehensive public health responses to violence against women and children, increasing the number of women properly screened, identified, and treated for lifetime exposure to violence, and expanding research on effective interventions in the health care setting.''

§ 280g–5. Public and health care provider education and support services

(a) In general

The Secretary, directly or through the awarding of grants to public or private nonprofit entities, may conduct demonstration projects for the purpose of improving the provision of information on prematurity to health professionals and other health care providers and the public and improving the treatment and outcomes for babies born preterm.

(b) Activities

Activities to be carried out under the demonstration project under subsection (a) may include the establishment of—

(1) programs to test and evaluate various strategies to provide information and education to health professionals, other health care providers, and the public concerning—

(A) the signs of preterm labor, updated as new research results become available;

(B) the screening for and the treating of infections;

(c)[1] counseling on optimal weight and good nutrition, including folic acid;

(D) smoking cessation education and counseling;

(E) stress management; and

(F) appropriate prenatal care;

(2) programs to improve the treatment and outcomes for babies born premature, including the use of evidence-based standards of care by health care professionals for pregnant women at risk of preterm labor or other serious complications and for infants born preterm and at a low birthweight;

(3) programs to respond to the informational needs of families during the stay of an infant in a neonatal intensive care unit, during the transition of the infant to the home, and in the event of a newborn death; and

(4) such other programs as the Secretary determines appropriate to achieve the purpose specified in subsection (a).

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2007 through 2011.

(July 1, 1944, ch. 373, title III, § 399Q, as added Pub. L. 109–450, § 4(2), Dec. 22, 2006, 120 Stat. 3342.)

[1] So in original. Probably should be ''(C)''.

PART Q—PROGRAMS TO IMPROVE THE HEALTH OF CHILDREN

§ 280h. Grants to promote childhood nutrition and physical activity

(a) In general

The Secretary, acting though the Director of the Centers for Disease Control and Prevention, shall award competitive grants to States and political subdivisions of States for the development and implementation of State and community-based intervention programs to promote good nutrition and physical activity in children and adolescents.

(b) Eligibility

To be eligible to receive a grant under this section a State or political subdivision of a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a plan that describes—

(1) how the applicant proposes to develop a comprehensive program of school- and community-based approaches to encourage and promote good nutrition and appropriate levels of physical activity with respect to children or adolescents in local communities;

(2) the manner in which the applicant shall coordinate with appropriate State and local authorities, such as State and local school departments, State departments of health, chronic disease directors, State directors of programs under section 1786 of this title, 5-a-day coordinators, governors councils for physical activity and good nutrition, and State and local parks and recreation departments; and

(3) the manner in which the applicant will evaluate the effectiveness of the program carried out under this section.

(c) Use of funds

A State or political subdivision of a State shall use amount received under a grant under this section to—

(1) develop, implement, disseminate, and evaluate school- and community-based strategies in States to reduce inactivity and improve dietary choices among children and adolescents;

(2) expand opportunities for physical activity programs in school- and community-based settings; and

(3) develop, implement, and evaluate programs that promote good eating habits and physical activity including opportunities for children with cognitive and physical disabilities.

(d) Technical assistance

The Secretary may set-aside an amount not to exceed 10 percent of the amount appropriated for a fiscal year under subsection (h) of this section to permit the Director of the Centers for Disease Control and Prevention to—

(1) provide States and political subdivisions of States with technical support in the development and implementation of programs under this section; and

(2) disseminate information about effective strategies and interventions in preventing and

treating obesity through the promotion of good nutrition and physical activity.

(e) Limitation on administrative costs

Not to exceed 10 percent of the amount of a grant awarded to the State or political subdivision under subsection (a) of this section for a fiscal year may be used by the State or political subdivision for administrative expenses.

(f) Term

A grant awarded under subsection (a) of this section shall be for a term of 3 years.

(g) Definition

In this section, the term ''children and adolescents'' means individuals who do not exceed 18 years of age.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399W, as added Pub. L. 106–310, div. A, title XXIV, § 2401, Oct. 17, 2000, 114 Stat. 1158.)

§ 280h–1. Applied research program

(a) In general

The Secretary, acting through the Centers for Disease Control and Prevention and in consultation with the Director of the National Institutes of Health, shall—

(1) conduct research to better understand the relationship between physical activity, diet, and health and factors that influence health-related behaviors;

(2) develop and evaluate strategies for the prevention and treatment of obesity to be used in community-based interventions and by health professionals;

(3) develop and evaluate strategies for the prevention and treatment of eating disorders, such as anorexia and bulimia;

(4) conduct research to establish the prevalence, consequences, and costs of childhood obesity and its effects in adulthood;

(5) identify behaviors and risk factors that contribute to obesity;

(6) evaluate materials and programs to provide nutrition education to parents and teachers of children in child care or pre-school and the food service staff of such child care and pre-school entities; and

(7) evaluate materials and programs that are designed to educate and encourage physical activity in child care and pre-school facilities.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399X, as added Pub. L. 106–310, div. A, title XXIV, § 2401, Oct. 17, 2000, 114 Stat. 1159.)

§ 280h–2. Education campaign

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, and in collaboration with national, State, and local partners, physical activity organizations, nutrition experts, and health professional organizations, shall develop a national public campaign to promote and educate children and their parents concerning—

(1) the health risks associated with obesity, inactivity, and poor nutrition;

(2) ways in which to incorporate physical activity into daily living; and

(3) the benefits of good nutrition and strategies to improve eating habits.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399Y, as added Pub. L. 106–310, div. A, title XXIV, § 2401, Oct. 17, 2000, 114 Stat. 1160.)

§ 280h–3. Health professional education and training

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, in collaboration with the Administrator of the Health Resources and Services Administration and the heads of other agencies, and in consultation with appropriate health professional associations, shall develop and carry out a program to educate and train health professionals in effective strategies to—

(1) better identify and assess patients with obesity or an eating disorder or patients at-risk of becoming obese or developing an eating disorder;

(2) counsel, refer, or treat patients with obesity or an eating disorder; and

(3) educate patients and their families about effective strategies to improve dietary habits and establish appropriate levels of physical activity.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399Z, as added Pub. L. 106–310, div. A, title XXIV, § 2401, Oct. 17, 2000, 114 Stat. 1160.)

PART R—PROGRAMS RELATING TO AUTISM

§ 280i. Developmental disabilities surveillance and research program

(a) Autism spectrum disorder and other developmental disabilities

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may award grants or cooperative agreements to eligible entities for the collection, analysis, and reporting of State epidemiological data on autism spectrum disorder and other developmental disabilities. An eligible entity shall assist with the development and

coordination of State autism spectrum disorder and other developmental disability surveillance efforts within a region. In making such awards, the Secretary may provide direct technical assistance in lieu of cash.

(2) Data standards

In submitting epidemiological data to the Secretary pursuant to paragraph (1), an eligible entity shall report data according to guidelines prescribed by the Director of the Centers for Disease Control and Prevention, after consultation with relevant State and local public health officials, private sector developmental disability researchers, and advocates for individuals with autism spectrum disorder or other developmental disabilities.

(3) Eligibility

To be eligible to receive an award under paragraph (1), an entity shall be a public or nonprofit private entity (including a health department of a State or a political subdivision of a State, a university, or any other educational institution), and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(b) Centers of excellence in autism spectrum disorder epidemiology

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, subject to the availability of appropriations, award grants or cooperative agreements for the establishment of regional centers of excellence in autism spectrum disorder and other developmental disabilities epidemiology for the purpose of collecting and analyzing information on the number, incidence, correlates, and causes of autism spectrum disorder and other developmental disabilities.

(2) Requirements

To be eligible to receive a grant or cooperative agreement under paragraph (1), an entity shall submit to the Secretary an application containing such agreements and information as the Secretary may require, including an agreement that the center to be established under the grant or cooperative agreement shall operate in accordance with the following:

(A) The center will collect, analyze, and report autism spectrum disorder and other developmental disability data according to guidelines prescribed by the Director of the Centers for Disease Control and Prevention, after consultation with relevant State and local public health officials, private sector developmental disability researchers, and advocates for individuals with developmental disabilities.

(B) The center will develop or extend an area of special research expertise (including genetics, epigenetics, and epidemiological research related to environmental exposures), immunology, and other relevant research specialty areas.

(C) The center will identify eligible cases and controls through its surveillance system and conduct research into factors which may cause or increase the risk of autism spectrum disorder and other developmental disabilities.

(c) Federal response

The Secretary shall coordinate the Federal response to requests for assistance from State health, mental health, and education department officials regarding potential or alleged autism spectrum disorder or developmental disability clusters.

(d) Definitions

In this part:

(1) Other developmental disabilities

The term ''other developmental disabilities'' has the meaning given the term ''developmental disability'' in section 15002(8) of this title.

(2) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(e) Sunset

This section shall not apply after September 30, 2011.

(July 1, 1944, ch. 373, title III, § 399AA, as added Pub. L. 109–416, § 3(a), Dec. 19, 2006, 120 Stat. 2822.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 280i–1. Autism education, early detection, and intervention

(a) Purpose

It is the purpose of this section—

(1) to increase awareness, reduce barriers to screening and diagnosis, promote evidence-based interventions for individuals with autism spectrum disorder or other developmental disabilities, and train professionals to utilize valid and reliable screening tools to diagnose or rule out and provide evidence-based interventions for children with autism spectrum disorder and other developmental disabilities; and

(2) to conduct activities under this section with a focus on an interdisciplinary approach (as defined in programs developed under section 501(a)(2) of the Social Security Act [42 U.S.C. 701(a)(2)]) that will also focus on specific issues for children who are not receiving an early diagnosis and subsequent interventions.

(b) In general

The Secretary shall, subject to the availability of appropriations, establish and evaluate activities to—

(1) provide information and education on autism spectrum disorder and other develop-

mental disabilities to increase public awareness of developmental milestones;

(2) promote research into the development and validation of reliable screening tools for autism spectrum disorder and other developmental disabilities and disseminate information regarding those screening tools;

(3) promote early screening of individuals at higher risk for autism spectrum disorder and other developmental disabilities as early as practicable, given evidence-based screening techniques and interventions;

(4) increase the number of individuals who are able to confirm or rule out a diagnosis of autism spectrum disorder and other developmental disabilities;

(5) increase the number of individuals able to provide evidence-based interventions for individuals diagnosed with autism spectrum disorder or other developmental disabilities; and

(6) promote the use of evidence-based interventions for individuals at higher risk for autism spectrum disorder and other developmental disabilities as early as practicable.

(c) Information and education

(1) In general

In carrying out subsection (b)(1), the Secretary, in collaboration with the Secretary of Education and the Secretary of Agriculture, shall, subject to the availability of appropriations, provide culturally competent information regarding autism spectrum disorder and other developmental disabilities, risk factors, characteristics, identification, diagnosis or rule out, and evidence-based interventions to meet the needs of individuals with autism spectrum disorder or other developmental disabilities and their families through—

(A) Federal programs, including—

(i) the Head Start program;

(ii) the Early Start program;

(iii) the Healthy Start program;

(iv) programs under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858 et seq.];

(v) programs under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (particularly the Medicaid Early and Periodic Screening, Diagnosis and Treatment Program);

(vi) the program under title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.] (the State Children's Health Insurance Program);

(vii) the program under title V of the Social Security Act [42 U.S.C. 701 et seq.] (the Maternal and Child Health Block Grant Program);

(viii) the program under parts B and C of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq., 1431 et seq.];

(ix) the special supplemental nutrition program for women, infants, and children established under section 1786 of this title; and

(x) the State grant program under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.].

(B) State licensed child care facilities; and

(C) other community-based organizations or points of entry for individuals with autism spectrum disorder and other developmental disabilities to receive services.

(2) Lead agency

(A) Designation

As a condition on the provision of assistance or the conduct of activities under this section with respect to a State, the Secretary may require the Governor of the State—

(i) to designate a public agency as a lead agency to coordinate the activities provided for under paragraph (1) in the State at the State level; and

(ii) acting through such lead agency, to make available to individuals and their family members, guardians, advocates, or authorized representatives; providers; and other appropriate individuals in the State, comprehensive culturally competent information about State and local resources regarding autism spectrum disorder and other developmental disabilities, risk factors, characteristics, identification, diagnosis or rule out, available services and supports, and evidence-based interventions.

(B) Requirements of agency

In designating the lead agency under subparagraph (A)(i), the Governor shall—

(i) select an agency that has demonstrated experience and expertise in—

(I) autism spectrum disorder and other developmental disability issues; and

(II) developing, implementing, conducting, and administering programs and delivering education, information, and referral services (including technology-based curriculum-development services) to individuals with developmental disabilities and their family members, guardians, advocates or authorized representatives, providers, and other appropriate individuals locally and across the State; and

(ii) consider input from individuals with developmental disabilities and their family members, guardians, advocates or authorized representatives, providers, and other appropriate individuals.

(C) Information

Information under subparagraph (A)(ii) shall be provided through—

(i) toll-free telephone numbers;

(ii) Internet websites;

(iii) mailings; or

(iv) such other means as the Governor may require.

(d) Tools

(1) In general

To promote the use of valid and reliable screening tools for autism spectrum disorder and other developmental disabilities, the Secretary shall develop a curriculum for continuing education to assist individuals in recognizing the need for valid and reliable screening tools and the use of such tools.

(2) Collection, storage, coordination, and availability

The Secretary, in collaboration with the Secretary of Education, shall provide for the collection, storage, coordination, and public availability of tools described in paragraph (1), educational materials and other products that are used by the Federal programs referred to in subsection (c)(1)(A), as well as—

(A) programs authorized under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15001 et seq.];

(B) early intervention programs or interagency coordinating councils authorized under part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.]; and

(C) children with special health care needs programs authorized under title V of the Social Security Act [42 U.S.C. 701 et seq.].

(3) Required sharing

In establishing mechanisms and entities under this subsection, the Secretary, and the Secretary of Education, shall ensure the sharing of tools, materials, and products developed under this subsection among entities receiving funding under this section.

(e) Diagnosis

(1) Training

The Secretary, in coordination with activities conducted under title V of the Social Security Act [42 U.S.C. 701 et seq.], shall, subject to the availability of appropriations, expand existing interdisciplinary training opportunities or opportunities to increase the number of sites able to diagnose or rule out individuals with autism spectrum disorder or other developmental disabilities and ensure that—

(A) competitive grants or cooperative agreements are awarded to public or nonprofit agencies, including institutions of higher education, to expand existing or develop new maternal and child health interdisciplinary leadership education in neurodevelopmental and related disabilities programs (similar to the programs developed under section 501(a)(2) of the Social Security Act [42 U.S.C. 701(a)(2)]) in States that do not have such a program;

(B) trainees under such training programs—

(i) receive an appropriate balance of academic, clinical, and community opportunities;

(ii) are culturally competent;

(iii) are ethnically diverse;

(iv) demonstrate a capacity to evaluate, diagnose or rule out, develop, and provide evidence-based interventions to individuals with autism spectrum disorder and other developmental disabilities; and

(v) demonstrate an ability to use a family-centered approach; and

(C) program sites provide culturally competent services.

(2) Technical assistance

The Secretary may award one or more grants under this section to provide technical assistance to the network of interdisciplinary training programs.

(3) Best practices

The Secretary shall promote research into additional valid and reliable tools for shortening the time required to confirm or rule out a diagnosis of autism spectrum disorder or other developmental disabilities and detecting individuals with autism spectrum disorder or other developmental disabilities at an earlier age.

(f) Intervention

The Secretary shall promote research, through grants or contracts, to determine the evidence-based practices for interventions for individuals with autism spectrum disorder or other developmental disabilities, develop guidelines for those interventions, and disseminate information related to such research and guidelines.

(g) Sunset

This section shall not apply after September 30, 2011.

(July 1, 1944, ch. 373, title III, § 399BB, as added Pub. L. 109–416, § 3(a), Dec. 19, 2006, 120 Stat. 2823.)

REFERENCES IN TEXT

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (c)(1)(A)(iv), is subchapter C (§ 658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–236, as amended, which is classified generally to subchapter II–B (§ 9858 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Social Security Act, referred to in subsecs. (c)(1)(A)(v)–(vii), (d)(2)(C), and (e)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XIX, and XXI of the Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (c)(1)(A)(viii) and (d)(2)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Parts B and C of the Act are classified generally to subchapters II (§ 1411 et seq.) and III (§ 1431 et seq.), respectively, of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (c)(1)(A)(x), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (d)(2)(A), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677, which is classified principally to chapter 144 (§ 15001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

§ 280i–2. Interagency Autism Coordinating Committee

(a) Establishment

The Secretary shall establish a committee, to be known as the ''Interagency Autism Coordi-

nating Committee'' (in this section referred to as the ''Committee''), to coordinate all efforts within the Department of Health and Human Services concerning autism spectrum disorder.

(b) Responsibilities

In carrying out its duties under this section, the Committee shall—

(1) develop and annually update a summary of advances in autism spectrum disorder research related to causes, prevention, treatment, early screening, diagnosis or rule out, intervention, and access to services and supports for individuals with autism spectrum disorder;

(2) monitor Federal activities with respect to autism spectrum disorder;

(3) make recommendations to the Secretary regarding any appropriate changes to such activities, including recommendations to the Director of NIH with respect to the strategic plan developed under paragraph (5);

(4) make recommendations to the Secretary regarding public participation in decisions relating to autism spectrum disorder;

(5) develop and annually update a strategic plan for the conduct of, and support for, autism spectrum disorder research, including proposed budgetary requirements; and

(6) submit to the Congress such strategic plan and any updates to such plan.

(c) Membership

(1) In general

The Committee shall be composed of—

(A) the Director of the Centers for Disease Control and Prevention;

(B) the Director of the National Institutes of Health, and the Directors of such national research institutes of the National Institutes of Health as the Secretary determines appropriate;

(C) the heads of such other agencies as the Secretary determines appropriate;

(D) representatives of other Federal Governmental agencies that serve individuals with autism spectrum disorder such as the Department of Education; and

(E) the additional members appointed under paragraph (2).

(2) Additional members

Not fewer than 6 members of the Committee, or 1/3 of the total membership of the Committee, whichever is greater, shall be composed of non-Federal public members to be appointed by the Secretary, of which—

(A) at least one such member shall be an individual with a diagnosis of autism spectrum disorder;

(B) at least one such member shall be a parent or legal guardian of an individual with an autism spectrum disorder; and

(C) at least one such member shall be a representative of leading research, advocacy, and service organizations for individuals with autism spectrum disorder.

(d) Administrative support; terms of service; other provisions

The following provisions shall apply with respect to the Committee:

(1) The Committee shall receive necessary and appropriate administrative support from the Secretary.

(2) Members of the Committee appointed under subsection (c)(2) shall serve for a term of 4 years, and may be reappointed for one or more additional 4 year term. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office.

(3) The Committee shall meet at the call of the chairperson or upon the request of the Secretary. The Committee shall meet not fewer than 2 times each year.

(4) All meetings of the Committee shall be public and shall include appropriate time periods for questions and presentations by the public.

(e) Subcommittees; establishment and membership

In carrying out its functions, the Committee may establish subcommittees and convene workshops and conferences. Such subcommittees shall be composed of Committee members and may hold such meetings as are necessary to enable the subcommittees to carry out their duties.

(f) Sunset

This section shall not apply after September 30, 2011, and the Committee shall be terminated on such date.

(July 1, 1944, ch. 373, title III, § 399CC, as added Pub. L. 109–416, § 3(a), Dec. 19, 2006, 120 Stat. 2827.)

§ 280i–3. Report to Congress

(a) In general

Not later than 4 years after December 19, 2006, the Secretary, in coordination with the Secretary of Education, shall prepare and submit to the Health, Education, Labor, and Pensions Committee of the Senate and the Energy and Commerce Committee of the House of Representatives a progress report on activities related to autism spectrum disorder and other developmental disabilities.

(b) Contents

The report submitted under subsection (a) shall contain—

(1) a description of the progress made in implementing the provisions of the Combating Autism Act of 2006;

(2) a description of the amounts expended on the implementation of the particular provisions of Combating[1] Autism Act of 2006;

(3) information on the incidence of autism spectrum disorder and trend data of such incidence since December 19, 2006;

(4) information on the average age of diagnosis for children with autism spectrum disorder and other disabilities, including how that age may have changed over the 4-year period beginning on December 19, 2006;

(5) information on the average age for intervention for individuals diagnosed with autism

[1] So in original. Probably should be preceded by ''the''.

spectrum disorder and other developmental disabilities, including how that age may have changed over the 4-year period beginning on December 19, 2006;

(6) information on the average time between initial screening and then diagnosis or rule out for individuals with autism spectrum disorder or other developmental disabilities, as well as information on the average time between diagnosis and evidence-based intervention for individuals with autism spectrum disorder or other developmental disabilities;

(7) information on the effectiveness and outcomes of interventions for individuals diagnosed with autism spectrum disorder, including by various subtypes, and other developmental disabilities and how the age of the child may affect such effectiveness;

(8) information on the effectiveness and outcomes of innovative and newly developed intervention strategies for individuals with autism spectrum disorder or other developmental disabilities; and

(9) information on services and supports provided to individuals with autism spectrum disorder and other developmental disabilities who have reached the age of majority (as defined for purposes of section 1415(m) of title 20).

(July 1, 1944, ch. 373, title III, § 399DD, as added Pub. L. 109–416, § 3(a), Dec. 19, 2006, 120 Stat. 2828.)

REFERENCES IN TEXT

The Combating Autism Act of 2006, referred to in subsec. (b)(1), (2), is Pub. L. 109–416, Dec. 19, 2006, 120 Stat. 2821. For complete classification of this Act to the Code, see Short Title of 2006 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

December 19, 2006, referred to in subsec. (b)(4), (5), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 109–416, which enacted this section, to reflect the probable intent of Congress.

§ 280i–4. Authorization of appropriations

(a) Developmental disabilities surveillance and research program

To carry out section 280i of this title, there are authorized to be appropriated the following:

(1) For fiscal year 2007, $15,000,000.
(2) For fiscal year 2008, $16,500,000.
(3) For fiscal year 2009, $18,000,000.
(4) For fiscal year 2010, $19,500,000.
(5) For fiscal year 2011, $21,000,000.

(b) Autism education, early detection, and intervention

To carry out section 280i–1 of this title, there are authorized to be appropriated the following:

(1) For fiscal year 2007, $32,000,000.
(2) For fiscal year 2008, $37,000,000.
(3) For fiscal year 2009, $42,000,000.
(4) For fiscal year 2010, $47,000,000.
(5) For fiscal year 2011, $52,000,000.

(c) Interagency Autism Coordinating Committee; certain other programs

To carry out section[1] 280i–2, 284g, and section[2] 283j of this title, there are authorized to be appropriated the following:

(1) For fiscal year 2007, $100,000,000.
(2) For fiscal year 2008, $114,500,000.
(3) For fiscal year 2009, $129,000,000.
(4) For fiscal year 2010, $143,500,000.
(5) For fiscal year 2011, $158,000,000.

(July 1, 1944, ch. 373, title III, § 399EE, as added Pub. L. 109–416, § 4(a), Dec. 19, 2006, 120 Stat. 2829.)

SUBCHAPTER III—NATIONAL RESEARCH INSTITUTES

CODIFICATION

Title IV of the Public Health Service Act, comprising this subchapter, was originally enacted by act July 1, 1944, ch. 373, 58 Stat. 707, at which time title IV related solely to the National Cancer Institute. Because of the extensive amendments, reorganization of the subject matter, and expansion of title IV by the acts listed below, title IV is shown herein as having been added by Pub. L. 99–158, without reference to intervening amendments.

The provisions of title IV as originally enacted were subsequently redesignated as part A of title IV and amended, and parts B to I of title IV were added and amended by the following acts: June 16, 1948, ch. 481, 62 Stat. 464; June 24, 1948, ch. 621, 62 Stat. 598; Aug. 15, 1950, ch. 714, 64 Stat. 443; Oct. 5, 1961, Pub. L. 87–395, 75 Stat. 824; Oct. 17, 1962, Pub. L. 87–838, 76 Stat. 1072; Aug. 16, 1968, Pub. L. 90–489, 82 Stat. 771; Oct. 30, 1970, Pub. L. 91–515, 84 Stat. 1297; Dec. 23, 1971, Pub. L. 92–218, 85 Stat. 778; May 19, 1972, Pub. L. 92–305, 86 Stat. 162; Sept. 19, 1972, Pub. L. 92–423, 86 Stat. 679; Apr. 22, 1974, Pub. L. 93–270, 88 Stat. 90; May 14, 1974, Pub. L. 93–282, 88 Stat. 126; May 31, 1974, Pub. L. 93–296, 88 Stat. 184; July 12, 1974, Pub. L. 93–348, 88 Stat. 342; July 23, 1974, Pub. L. 93–352, 88 Stat. 358; July 23, 1974, Pub. L. 93–354, 88 Stat. 373; Jan. 4, 1975, Pub. L. 93–640, 88 Stat. 2217; July 29, 1975, Pub. L. 94–63, 89 Stat. 304; Nov. 28, 1975, Pub. L. 94–135, 89 Stat. 713; Apr. 21, 1976, Pub. L. 94–273, 90 Stat. 375; Apr. 22, 1976, Pub. L. 94–278, 90 Stat. 401; Oct. 19, 1976, Pub. L. 94–562, 90 Stat. 2645; Aug. 1, 1977, Pub. L. 95–83, 91 Stat. 383; Nov. 9, 1978, Pub. L. 95–622, 92 Stat. 3412; Nov. 9, 1978, Pub. L. 95–623, 92 Stat. 3443; July 10, 1979, Pub. L. 96–32, 93 Stat. 82; Oct. 7, 1980, Pub. L. 96–398, 94 Stat. 1564; Dec. 17, 1980, Pub. L. 96–538, 94 Stat. 3183; Aug. 13, 1981, Pub. L. 97–35, 95 Stat. 358; Apr. 26, 1984, Pub. L. 98–24, 97 Stat. 175.

Title IV was subsequently amended generally and completely reorganized by Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 822.

PART A—NATIONAL INSTITUTES OF HEALTH

§ 281. Organization of National Institutes of Health

(a) Relation to Public Health Service

The National Institutes of Health is an agency of the Service.

(b) National research institutes and national centers

The following agencies of the National Institutes of Health are national research institutes or national centers:

(1) The National Cancer Institute.

[1] So in original. Probably should be "sections".

[2] So in original. The word "section" probably should not appear.

(2) The National Heart, Lung, and Blood Institute.

(3) The National Institute of Diabetes and Digestive and Kidney Diseases.

(4) The National Institute of Arthritis and Musculoskeletal and Skin Diseases.

(5) The National Institute on Aging.

(6) The National Institute of Allergy and Infectious Diseases.

(7) The National Institute of Child Health and Human Development.

(8) The National Institute of Dental and Craniofacial Research.

(9) The National Eye Institute.

(10) The National Institute of Neurological Disorders and Stroke.

(11) The National Institute on Deafness and Other Communication Disorders.

(12) The National Institute on Alcohol Abuse and Alcoholism.

(13) The National Institute on Drug Abuse.

(14) The National Institute of Mental Health.

(15) The National Institute of General Medical Sciences.

(16) The National Institute of Environmental Health Sciences.

(17) The National Institute of Nursing Research.

(18) The National Institute of Biomedical Imaging and Bioengineering.

(19) The National Human Genome Research Institute.

(20) The National Library of Medicine.

(21) The National Center for Research Resources.

(22) The John E. Fogarty International Center for Advanced Study in the Health Sciences.

(23) The National Center for Complementary and Alternative Medicine.

(24) The National Center on Minority Health and Health Disparities.

(25) Any other national center that, as an agency separate from any national research institute, was established within the National Institutes of Health as of the day before January 15, 2007.

(c) Division of Program Coordination, Planning, and Strategic Initiatives

(1) In general

Within the Office of the Director of the National Institutes of Health, there shall be a Division of Program Coordination, Planning, and Strategic Initiatives (referred to in this subsection as the ''Division'').

(2) Offices within Division

(A) Offices

The following offices are within the Division: The Office of AIDS Research, the Office of Research on Women's Health, the Office of Behavioral and Social Sciences Research, the Office of Disease Prevention, the Office of Dietary Supplements, the Office of Rare Diseases, and any other office located within the Office of the Director of NIH as of the day before January 15, 2007. In addition to such offices, the Director of NIH may establish within the Division such additional offices or other administrative units as the Director determines to be appropriate.

(B) Authorities

Each office in the Division—

(i) shall continue to carry out the authorities that were in effect for the office before January 15, 2007; and

(ii) shall, as determined appropriate by the Director of NIH, support the Division with respect to the authorities described in section 282(b)(7) of this title.

(d) Organization

(1) Number of institutes and centers

In the National Institutes of Health, the number of national research institutes and national centers may not exceed a total of 27, including any such institutes or centers established under authority of paragraph (2) or under authority of this subchapter as in effect on the day before January 15, 2007.

(2) Reorganization of institutes

(A) In general

The Secretary may establish in the National Institutes of Health one or more additional national research institutes to conduct and support research, training, health information, and other programs with respect to any particular disease or groups of diseases or any other aspect of human health if—

(i) the Secretary determines that an additional institute is necessary to carry out such activities; and

(ii) the additional institute is not established before the expiration of 180 days after the Secretary has provided the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate written notice of the determination made under clause (i) with respect to the institute.

(B) Additional authority

The Secretary may reorganize the functions of any national research institute and may abolish any national research institute if the Secretary determines that the institute is no longer required. A reorganization or abolition may not take effect under this paragraph before the expiration of 180 days after the Secretary has provided the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate written notice of the reorganization or abolition.

(3) Reorganization of Office of Director

Notwithstanding subsection (c), the Director of NIH may, after a series of public hearings, and with the approval of the Secretary, reorganize the offices within the Office of the Director, including the addition, removal, or transfer of functions of such offices, and the establishment or termination of such offices, if the Director determines that the overall management and operation of programs and activities conducted or supported by such offices would be more efficiently carried out under such a reorganization.

(4) Internal reorganization of institutes and centers

Notwithstanding any conflicting provisions of this subchapter, the director of a national research institute or a national center may, after a series of public hearings and with the approval of the Director of NIH, reorganize the divisions, centers, or other administrative units within such institute or center, including the addition, removal, or transfer of functions of such units, and the establishment or termination of such units, if the director of such institute or center determines that the overall management and operation of programs and activities conducted or supported by such divisions, centers, or other units would be more efficiently carried out under such a reorganization.

(e) Scientific Management Review Board for periodic organizational reviews

(1) In general

Not later than 60 days after January 15, 2007, the Secretary shall establish an advisory council within the National Institutes of Health to be known as the Scientific Management Review Board (referred to in this subsection as the ''Board'').

(2) Duties

(A) Reports on organizational issues

The Board shall provide advice to the appropriate officials under subsection (d) regarding the use of the authorities established in paragraphs (2), (3), and (4) of such subsection to reorganize the National Institutes of Health (referred to in this subsection as ''organizational authorities''). Not less frequently than once each 7 years, the Board shall—

(i) determine whether and to what extent the organizational authorities should be used; and

(ii) issue a report providing the recommendations of the Board regarding the use of the authorities and the reasons underlying the recommendations.

(B) Certain responsibilities regarding reports

The activities of the Board with respect to a report under subparagraph (A) shall include the following:

(i) Reviewing the research portfolio of the National Institutes of Health (referred to in this subsection as ''NIH'') in order to determine the progress and effectiveness and value of the portfolio and the allocation among the portfolio activities of the resources of NIH.

(ii) Determining pending scientific opportunities, and public health needs, with respect to research within the jurisdiction of NIH.

(iii) For any proposal for organizational changes to which the Board gives significant consideration as a possible recommendation in such report—

(I) analyzing the budgetary and operational consequences of the proposed changes;

(II) taking into account historical funding and support for research activities at national research institutes and centers that have been established recently relative to national research institutes and centers that have been in existence for more than two decades;

(III) estimating the level of resources needed to implement the proposed changes;

(IV) assuming the proposed changes will be made and making a recommendation for the allocation of the resources of NIH among the national research institutes and national centers; and

(V) analyzing the consequences for the progress of research in the areas affected by the proposed changes.

(C) Consultation

In carrying out subparagraph (A), the Board shall consult with—

(i) the heads of national research institutes and national centers whose directors are not members of the Board;

(ii) other scientific leaders who are officers or employees of NIH and are not members of the Board;

(iii) advisory councils of the national research institutes and national centers;

(iv) organizations representing the scientific community; and

(v) organizations representing patients.

(3) Composition of Board

The Board shall consist of the Director of NIH, who shall be a permanent nonvoting member on an ex officio basis, and an odd number of additional members, not to exceed 21, all of whom shall be voting members. The voting members of the Board shall be the following:

(A) Not fewer than 9 officials who are directors of national research institutes or national centers. The Secretary shall designate such officials for membership and shall ensure that the group of officials so designated includes directors of—

(i) national research institutes whose budgets are substantial relative to a majority of the other institutes;

(ii) national research institutes whose budgets are small relative to a majority of the other institutes;

(iii) national research institutes that have been in existence for a substantial period of time without significant organizational change under subsection (d);

(iv) as applicable, national research institutes that have undergone significant organization changes under such subsection, or that have been established under such subsection, other than national research institutes for which such changes have been in place for a substantial period of time; and

(v) national centers.

(B) Members appointed by the Secretary from among individuals who are not officers or employees of the United States. Such members shall include—

(i) individuals representing the interests of public or private institutions of higher

education that have historically received funds from NIH to conduct research; and

(ii) individuals representing the interests of private entities that have received funds from NIH to conduct research or that have broad expertise regarding how the National Institutes of Health functions, exclusive of private entities to which clause (i) applies.

(4) Chair

The Chair of the Board shall be selected by the Secretary from among the members of the Board appointed under paragraph (3)(B). The term of office of the Chair shall be 2 years.

(5) Meetings

(A) In general

The Board shall meet at the call of the Chair or upon the request of the Director of NIH, but not fewer than 5 times with respect to issuing any particular report under paragraph (2)(A). The location of the meetings of the Board is subject to the approval of the Director of NIH.

(B) Particular forums

Of the meetings held under subparagraph (A) with respect to a report under paragraph (2)(A)—

(i) one or more shall be directed toward the scientific community to address scientific needs and opportunities related to proposals for organizational changes under subsection (d), or as the case may be, related to a proposal that no such changes be made; and

(ii) one or more shall be directed toward consumer organizations to address the needs and opportunities of patients and their families with respect to proposals referred to in clause (i).

(C) Availability of information from forums

For each meeting under subparagraph (B), the Director of NIH shall post on the Internet site of the National Institutes of Health a summary of the proceedings.

(6) Compensation; term of office

The provisions of subsections (b)(4) and (c) of section 284a of this title apply with respect to the Board to the same extent and in the same manner as such provisions apply with respect to an advisory council referred to in such subsections, except that the reference in such subsection (c) to 4 years regarding the term of an appointed member is deemed to be a reference to 5 years.

(7) Reports

(A) Recommendations for changes

Each report under paragraph (2)(A) shall be submitted to—

(i) the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives;

(ii) the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate;

(iii) the Secretary; and

(iv) officials with organizational authorities, other than any such official who served as a member of the Board with respect to the report involved.

(B) Availability to public

The Director of NIH shall post each report under paragraph (2) on the Internet site of the National Institutes of Health.

(C) Report on Board activities

Not later than 18 months after January 15, 2007, the Board shall submit to the committees specified in subparagraph (A) a report describing the activities of the Board.

(f) Organizational changes per recommendation of Scientific Management Review Board

(1) In general

With respect to an official who has organizational authorities within the meaning of subsection (e)(2)(A), if a recommendation to the official for an organizational change is made in a report under such subsection, the official shall, except as provided in paragraphs (2), (3), and (4) of this subsection, make the change in accordance with the following:

(A) Not later than 100 days after the report is submitted under subsection (e)(7)(A), the official shall initiate the applicable public process required in subsection (d) toward making the change.

(B) The change shall be fully implemented not later than the expiration of the 3-year period beginning on the date on which such process is initiated.

(2) Inapplicability to certain reorganizations

Paragraph (1) does not apply to a recommendation made in a report under subsection (e)(2)(A) if the recommendation is for—

(A) an organizational change under subsection (d)(2) that constitutes the establishment, termination, or consolidation of one or more national research institutes or national centers; or

(B) an organizational change under subsection (d)(3).

(3) Objection by Director of NIH

(A) In general

Paragraph (1) does not apply to a recommendation for an organizational change made in a report under subsection (e)(2)(A) if, not later than 90 days after the report is submitted under subsection (e)(7)(A), the Director of NIH submits to the committees specified in such subsection a report providing that the Director objects to the change, which report includes the reasons underlying the objection.

(B) Scope of objection

For purposes of subparagraph (A), an objection by the Director of NIH may be made to the entirety of a recommended organizational change or to 1 or more aspects of the change. Any aspect of a change not objected to by the Director in a report under subparagraph (A) shall be implemented in accordance with paragraph (1).

(4) Congressional review

An organizational change under subsection (d)(2) that is initiated pursuant to paragraph

(1) shall be carried out by regulation in accordance with the procedures for substantive rules under section 553 of title 5. A rule under the preceding sentence shall be considered a major rule for purposes of chapter 8 of such title (relating to congressional review of agency rulemaking).

(g) Definitions

For purposes of this subchapter:

(1) The term ''Director of NIH'' means the Director of the National Institutes of Health.

(2) The terms ''national research institute'' and ''national center'' mean an agency of the National Institutes of Health that is—

(A) listed in subsection (b) and not terminated under subsection (d)(2)(A); or

(B) established by the Director of NIH under such subsection.

(h) References to NIH

For purposes of this subchapter, a reference to the National Institutes of Health includes its agencies.

(July 1, 1944, ch. 373, title IV, §401, as added Pub. L. 99–158, §2, Nov. 20, 1985, 99 Stat. 822; amended Pub. L. 100–553, §2(1), Oct. 28, 1988, 102 Stat. 2769; Pub. L. 100–607, title I, §101(1), Nov. 4, 1988, 102 Stat. 3048; Pub. L. 100–690, title II, §2613(b)(2), Nov. 18, 1988, 102 Stat. 4238; Pub. L. 102–321, title I, §121(a), July 10, 1992, 106 Stat. 358; Pub. L. 103–43, title XV, §§1501(1), 1511(b)(1), 1521(1), June 10, 1993, 107 Stat. 172, 179, 180; Pub. L. 103–417, §13(b), Oct. 25, 1994, 108 Stat. 4335; Pub. L. 105–277, div. A, §101(f) [title II, §212, title VI, §601(k)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–359, 2681–388; Pub. L. 106–525, title I, §101(b)(1), Nov. 22, 2000, 114 Stat. 2501; Pub. L. 106–580, §3(e), Dec. 29, 2000, 114 Stat. 3091; Pub. L. 109–482, title I, §§101(a), (b), 108(a), Jan. 15, 2007, 120 Stat. 3675, 3676, 3697.)

AMENDMENTS

2007—Pub. L. 109–482, §101(a), reenacted section catchline without change and amended text generally, substituting provisions consisting of subsecs. (a) to (d)(1) for former subsecs. (a) to (d) which related to: in subsec. (a), relationship to Public Health Service; in subsec. (b), list of national research institutes that were agencies; in subsec. (c), establishment of additional institutes and reorganization or abolition of institutes; and, in subsec. (d), definition of ''national research institute''. See below.

Subsec. (d)(2). Pub. L. 109–482, §108(a), added after subsec. (d)(1) provisions identical to text of subsec. (c) prior to amendment by Pub. L. 109–482, §101(a), redesignated such provisions as par. (2), added par. heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, added subpar. headings, in subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, in cl. (ii), substituted ''Health, Education, Labor, and Pensions'' for ''Labor and Human Resources'' and ''clause (i)'' for ''subparagraph (A)'', and, in subpar. (B), substituted ''Health, Education, Labor, and Pensions'' for ''Labor and Human Resources''.

Subsec. (d)(3), (4). Pub. L. 109–482, §101(b)(1), added pars. (3) and (4).

Subsecs. (e) to (h). Pub. L. 109–482, §101(b)(2), added subsecs. (e) to (h).

2000—Subsec. (b)(1)(R). Pub. L. 106–580 added subpar. (R).

Subsec. (b)(2)(F). Pub. L. 106–525, §101(b)(1)(A), realigned margins.

Subsec. (b)(2)(G). Pub. L. 106–525, §101(b)(1)(B), added subpar. (G).

1998—Subsec. (b)(1)(H). Pub. L. 105–277, §101(f) [title II, §212], substituted ''National Institute of Dental and Craniofacial Research'' for ''National Institute of Dental Research''.

Subsec. (b)(2)(F). Pub. L. 105–277, §101(f) [title VI, §601(k)], added subpar. (F).

1994—Subsec. (b)(2)(E). Pub. L. 103–417 added subpar. (E).

1993—Subsec. (b)(1)(Q). Pub. L. 103–43, §1511(b)(1)(A), added subpar. (Q).

Subsec. (b)(2)(B). Pub. L. 103–43, §1501(1), amended subpar. (B) generally, substituting ''National Center for Research Resources'' for ''Division of Research Resources''.

Subsec. (b)(2)(D). Pub. L. 103–43, §§1511(b)(1)(B), 1521(1), added subpar. (D) and struck out former subpar. (D) which read as follows: ''The National Center for Nursing Research.''

1992—Subsec. (b)(1)(N) to (P). Pub. L. 102–321 added subpars. (N) to (P).

1988—Subsec. (b)(1)(J), (M). Pub. L. 100–553 and Pub. L. 100–607 made identical amendments, striking out ''and Communicative'' after ''Neurological'' in subpar. (J), and adding subpar. (M). Pub. L. 100–690 amended subsec. (b)(1) to read as if the amendments by Pub. L. 100–607 had not been enacted.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 109–482, title I, §109, Jan. 15, 2007, 120 Stat. 3697, provided that: ''This title [see Tables for classification] and the amendments made by this title apply only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–525, title VI, §603, Nov. 22, 2000, 114 Stat. 2511, provided that: ''This Act [enacting subpart 6 (§287c–31 et seq.) of part E of this subchapter and sections 293e, 296e–1, and 299a–1 of this title, amending sections 281, 296f, 299a, 299c–6, and 300u–6 of this title, repealing section 283b of this title, and enacting provisions set out as notes under sections 201, 287c–31, 293e, and 3501 of this title] and the amendments made by this Act take effect October 1, 2000, or upon the date of the enactment of this Act [Nov. 22, 2000], whichever occurs later.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

CONSTRUCTION OF 2007 AMENDMENT

Pub. L. 109–482, title I, §102(g), Jan. 15, 2007, 120 Stat. 3685, provided that: ''This Act [see Tables for classification] and the amendments made by this Act may not be construed as affecting the authorities of the national research institutes and national centers that were in effect under the Public Health Service Act [this chapter] on the day before the date of the enactment of this Act [Jan. 15, 2007], subject to the authorities of the Secretary of Health and Human Services and the Director of NIH under section 401 of the Public Health Service Act [this section] (as amended by section 101 of this Act). For purposes of the preceding sentence, the terms 'national research institute', 'national center', and 'Director of NIH' have the meanings given such terms in such section 401.''

STUDY OF THE USE OF CENTERS OF EXCELLENCE AT THE NATIONAL INSTITUTES OF HEALTH

Pub. L. 107–84, §7, Dec. 18, 2001, 115 Stat. 829, required the Secretary of Health and Human Services to con-

tract, not later than 60 days after Dec. 18, 2001, with the Institute of Medicine to conduct a study on the impact of, need for, and other issues associated with Centers of Excellence at the National Institutes of Health and complete the study and submit a report not later than one year after the date of the contract.

REPORT ON MEDICAL USES OF BIOLOGICAL AGENTS IN DEVELOPMENT OF DEFENSES AGAINST BIOLOGICAL WARFARE

Section 1904 of Pub. L. 103–43 directed Secretary of Health and Human Services, in consultation with Secretary of Defense and with heads of other appropriate executive agencies, to report to Congress, not later than 12 months after June 10, 1993, on the appropriateness and impact of the National Institutes of Health assuming responsibility for the conduct of all Federal research, development, testing, and evaluation functions relating to medical countermeasures against biowarfare threat agents.

RESEARCH ON LUPUS ERYTHEMATOSUS

Section 5 of Pub. L. 99–158, as amended by Pub. L. 102–531, title III, § 312(f), Oct. 27, 1992, 106 Stat. 3506, directed Secretary of Health and Human Resources to establish a Lupus Erythematosus Coordinating Committee to plan, develop, coordinate, and implement comprehensive Federal initiatives in research on Lupus Erythematosus, provided for composition of committee and meetings, and directed Committee to prepare a report for Congress on its activities, to be submitted not later than 18 months after Nov. 20, 1985, with Committee to terminate one month after the report was submitted.

INTERAGENCY COMMITTEE ON LEARNING DISABILITIES

Section 9 of Pub. L. 99–158 directed Director of the National Institutes of Health, not later than 90 days after Nov. 20, 1985, to establish an Interagency Committee on Learning Disabilities to review and assess Federal research priorities, activities, and findings regarding learning disabilities (including central nervous system dysfunction in children), provided for composition of the Committee, directed Committee to report to Congress on its activities not later than 18 months after Nov. 20, 1985, and provided that the Committee terminate 90 days after submission of the report.

§ 282. Director of National Institutes of Health

(a) Appointment

The National Institutes of Health shall be headed by the Director of NIH who shall be appointed by the President by and with the advice and consent of the Senate. The Director of NIH shall perform functions as provided under subsection (b) of this section and as the Secretary may otherwise prescribe.

(b) Duties and authority

In carrying out the purposes of section 241 of this title, the Secretary, acting through the Director of NIH—

(1) shall carry out this subchapter, including being responsible for the overall direction of the National Institutes of Health and for the establishment and implementation of general policies respecting the management and operation of programs and activities within the National Institutes of Health;

(2) shall coordinate and oversee the operation of the national research institutes, national centers, and administrative entities within the National Institutes of Health;

(3) shall, in consultation with the heads of the national research institutes and national centers, be responsible for program coordination across the national research institutes and national centers, including conducting priority-setting reviews, to ensure that the research portfolio of the National Institutes of Health is balanced and free of unnecessary duplication, and takes advantage of collaborative, cross-cutting research;

(4) shall assemble accurate data to be used to assess research priorities, including information to better evaluate scientific opportunity, public health burdens, and progress in reducing health disparities;

(5) shall ensure that scientifically based strategic planning is implemented in support of research priorities as determined by the agencies of the National Institutes of Health;

(6) shall ensure that the resources of the National Institutes of Health are sufficiently allocated for research projects identified in strategic plans;

(7)(A) shall, through the Division of Program Coordination, Planning, and Strategic Initiatives—

(i) identify research that represents important areas of emerging scientific opportunities, rising public health challenges, or knowledge gaps that deserve special emphasis and would benefit from conducting or supporting additional research that involves collaboration between 2 or more national research institutes or national centers, or would otherwise benefit from strategic coordination and planning;

(ii) include information on such research in reports under section 283 of this title; and

(iii) in the case of such research supported with funds referred to in subparagraph (B)—

(I) require as appropriate that proposals include milestones and goals for the research;

(II) require that the proposals include timeframes for funding of the research; and

(III) ensure appropriate consideration of proposals for which the principal investigator is an individual who has not previously served as the principal investigator of research conducted or supported by the National Institutes of Health;

(B) may, with respect to funds reserved under section 282a(c)(1) of this title for the Common Fund, allocate such funds to the national research institutes and national centers for conducting and supporting research that is identified under subparagraph (A); and

(C) may assign additional functions to the Division in support of responsibilities identified in subparagraph (A), as determined appropriate by the Director;

(8) shall, in coordination with the heads of the national research institutes and national centers, ensure that such institutes and centers—

(A) preserve an emphasis on investigator-initiated research project grants, including with respect to research involving collaboration between 2 or more such institutes or centers; and

(B) when appropriate, maximize investigator-initiated research project grants in their annual research portfolios;

(9) shall ensure that research conducted or supported by the National Institutes of Health is subject to review in accordance with section 289a of this title and that, after such review, the research is reviewed in accordance with section 289a–1(a)(2) of this title by the appropriate advisory council under section 284a of this title before the research proposals are approved for funding;

(10) shall have authority to review and approve the establishment of all centers of excellence recommended by the national research institutes;

(11)(A) shall oversee research training for all of the national research institutes and National Research Service Awards in accordance with section 288 of this title; and

(B) may conduct and support research training—

(i) for which fellowship support is not provided under section 288 of this title; and

(ii) that does not consist of residency training of physicians or other health professionals;

(12) may, from funds appropriated under section 282a(b) of this title, reserve funds to provide for research on matters that have not received significant funding relative to other matters, to respond to new issues and scientific emergencies, and to act on research opportunities of high priority;

(13) may, subject to appropriations Acts, collect and retain registration fees obtained from third parties to defray expenses for scientific, educational, and research-related conferences;

(14) for the national research institutes and administrative entities within the National Institutes of Health—

(A) may acquire, construct, improve, repair, operate, and maintain, at the site of such institutes and entities, laboratories, and other research facilities, other facilities, equipment, and other real or personal property, and

(B) may acquire, without regard to section 8141 of title 40, by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for use for a period not to exceed ten years;

(15) may secure resources for research conducted by or through the National Institutes of Health;

(16) may, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific peer review groups and scientific program advisory committees as are needed to carry out the requirements of this subchapter and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups;

(17) may secure for the National Institutes of Health consultation services and advice of persons from the United States or abroad;

(18) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

(19) may, for purposes of study, admit and treat at facilities of the National Institutes of Health individuals not otherwise eligible for such treatment;

(20) may accept voluntary and uncompensated services;

(21) may perform such other administrative functions as the Secretary determines are needed to effectively carry out this subchapter; and

(22) may appoint physicians, dentists, and other health care professionals, subject to the provisions of title 5 relating to appointments and classifications in the competitive service, and may compensate such professionals subject to the provisions of chapter 74 of title 38.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under paragraph (16). The members of such a group shall be individuals who by virtue of their training or experience are eminently qualified to perform the review functions of such group. Not more than one-fourth of the members of any such group shall be officers or employees of the United States.

(c) Availability of substances and organisms for research

The Director of NIH may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

(d) Services of experts or consultants; number; payment of expenses, conditions, recovery

(1) The Director of NIH may obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of service) the services of not more than 220 experts or consultants, with scientific or other professional qualifications, for the National Institutes of Health.

(2)(A) Except as provided in subparagraph (B), experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment.

(B) Expenses specified in subparagraph (A) shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United

States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

(e) Dissemination of research information

The Director of NIH shall—

(1) advise the agencies of the National Institutes of Health on medical applications of research;

(2) coordinate, review, and facilitate the systematic identification and evaluation of, clinically relevant information from research conducted by or through the national research institutes;

(3) promote the effective transfer of the information described in paragraph (2) to the health care community and to entities that require such information;

(4) monitor the effectiveness of the activities described in paragraph (3); and

(5) ensure that, after January 1, 1994, all new or revised health education and promotion materials developed or funded by the National Institutes of Health and intended for the general public are in a form that does not exceed a level of functional literacy, as defined in the National Literacy Act of 1991 (Public Law 102–73).

(f) Associate Director for Prevention; functions

There shall be in the National Institutes of Health an Associate Director for Prevention. The Director of NIH shall delegate to the Associate Director for Prevention the functions of the Director relating to the promotion of the disease prevention research programs of the national research institutes and the coordination of such programs among the national research institutes and between the national research institutes and other public and private entities, including elementary, secondary, and post-secondary schools. The Associate Director shall—

(1) annually review the efficacy of existing policies and techniques used by the national research institutes to disseminate the results of disease prevention and behavioral research programs; and

(2) recommend, coordinate, and oversee the modification or reconstruction of such policies and techniques to ensure maximum dissemination, using advanced technologies to the maximum extent practicable, of research results to such entities.

(g) Enhancing competitiveness of certain entities in obtaining research funds

(1)(A) In the case of entities described in subparagraph (B), the Director of NIH, acting through the Director of the National Center for Research Resources, shall establish a program to enhance the competitiveness of such entities in obtaining funds from the national research institutes for conducting biomedical and behavioral research.

(B) The entities referred to in subparagraph (A) are entities that conduct biomedical and behavioral research and are located in a State in which the aggregate success rate for applications to the national research institutes for assistance for such research by the entities in the State has historically constituted a low success rate of obtaining such funds, relative to such aggregate rate for such entities in other States.

(C) With respect to enhancing competitiveness for purposes of subparagraph (A), the Director of NIH, in carrying out the program established under such subparagraph, may—

(i) provide technical assistance to the entities involved, including technical assistance in the preparation of applications for obtaining funds from the national research institutes;

(ii) assist the entities in developing a plan for biomedical or behavioral research proposals; and

(iii) assist the entities in implementing such plan.

(2) The Director of NIH shall establish a program of supporting projects of biomedical or behavioral research whose principal researchers are individuals who have not previously served as the principal researchers of such projects supported by the Director.

(h) Increased participation of women and disadvantaged individuals in biomedical and behavioral research

The Secretary, acting through the Director of NIH and the Directors of the agencies of the National Institutes of Health, shall, in conducting and supporting programs for research, research training, recruitment, and other activities, provide for an increase in the number of women and individuals from disadvantaged backgrounds (including racial and ethnic minorities) in the fields of biomedical and behavioral research.

(i) Data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions

(1)(A) The Secretary, acting through the Director of NIH, shall establish, maintain, and operate a data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions (in this subsection referred to as the ''data bank''). The activities of the data bank shall be integrated and coordinated with related activities of other agencies of the Department of Health and Human Services, and to the extent practicable, coordinated with other data banks containing similar information.

(B) The Secretary shall establish the data bank after consultation with the Commissioner of Food and Drugs, the directors of the appropriate agencies of the National Institutes of Health (including the National Library of Medicine), and the Director of the Centers for Disease Control and Prevention.

(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. The Secretary shall disseminate such information through information systems, which shall include toll-free telephone communications, available to individuals with serious or life-threatening diseases and conditions, to other members of the public, to health care providers, and to researchers.

(3) The data bank shall include the following:

(A) A registry of clinical trials (whether federally or privately funded) of experimental treatments for serious or life-threatening diseases and conditions under regulations promulgated pursuant to section 355(i) of title 21,

which provides a description of the purpose of each experimental drug, either with the consent of the protocol sponsor, or when a trial to test effectiveness begins. Information provided shall consist of eligibility criteria for participation in the clinical trials, a description of the location of trial sites, a point of contact for those wanting to enroll in the trial, and a description of whether, and through what procedure, the manufacturer or sponsor of the investigation of a new drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularly in children, and shall be in a form that can be readily understood by members of the public. Such information shall be forwarded to the data bank by the sponsor of the trial not later than 21 days after the approval of the protocol.

(B) Information pertaining to experimental treatments for serious or life-threatening diseases and conditions that may be available—

(i) under a treatment investigational new drug application that has been submitted to the Secretary under section 360bbb(c) of title 21; or

(ii) as a Group C cancer drug (as defined by the National Cancer Institute).

The data bank may also include information pertaining to the results of clinical trials of such treatments, with the consent of the sponsor, including information concerning potential toxicities or adverse effects associated with the use or administration of such experimental treatments.

(4) The data bank shall not include information relating to an investigation if the sponsor has provided a detailed certification to the Secretary that disclosure of such information would substantially interfere with the timely enrollment of subjects in the investigation, unless the Secretary, after the receipt of the certification, provides the sponsor with a detailed written determination that such disclosure would not substantially interfere with such enrollment.

(5) Fees collected under section 379h of title 21 shall not be used in carrying out this subsection.

(j) Day care for children of employees

(1) The Director of NIH may establish a program to provide day care services for the employees of the National Institutes of Health similar to those services provided by other Federal agencies (including the availability of day care service on a 24-hour-a-day basis).

(2) Any day care provider at the National Institutes of Health shall establish a sliding scale of fees that takes into consideration the income and needs of the employee.

(3) For purposes regarding the provision of day care services, the Director of NIH may enter into rental or lease purchase agreements.

(k) Council of Councils

(1) Establishment

Not later than 90 days after January 15, 2007, the Director of NIH shall establish within the Office of the Director an advisory council to be known as the ''Council of Councils'' (referred to in this subsection as the ''Council'') for the purpose of advising the Director on matters related to the policies and activities of the Division of Program Coordination, Planning, and Strategic Initiatives, including making recommendations with respect to the conduct and support of research described in subsection (b)(7).

(2) Membership

(A) In general

The Council shall be composed of 27 members selected by the Director of NIH with approval from the Secretary from among the list of nominees under subparagraph (C).

(B) Certain requirements

In selecting the members of the Council, the Director of NIH shall ensure—

(i) the representation of a broad range of disciplines and perspectives; and

(ii) the ongoing inclusion of at least 1 representative from each national research institute whose budget is substantial relative to a majority of the other institutes.

(C) Nomination

The Director of NIH shall maintain an updated list of individuals who have been nominated to serve on the Council, which list shall consist of the following:

(i) For each national research institute and national center, 3 individuals nominated by the head of such institute or center from among the members of the advisory council of the institute or center, of which—

(I) two shall be scientists; and

(II) one shall be from the general public or shall be a leader in the field of public policy, law, health policy, economics, or management.

(ii) For each office within the Division of Program Coordination, Planning, and Strategic Initiatives, 1 individual nominated by the head of such office.

(iii) Members of the Council of Public Representatives.

(3) Terms

(A) In general

The term of service for a member of the Council shall be 6 years, except as provided in subparagraphs (B) and (C).

(B) Terms of initial appointees

Of the initial members selected for the Council, the Director of NIH shall designate—

(i) nine for a term of 6 years;

(ii) nine for a term of 4 years; and

(iii) nine for a term of 2 years.

(C) Vacancies

Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office.

(July 1, 1944, ch. 373, title IV, § 402, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 823; amended

Pub. L. 100–607, title I, § 111, Nov. 4, 1988, 102 Stat. 3052; Pub. L. 102–321, title I, § 163(b)(3), July 10, 1992, 106 Stat. 376; Pub. L. 103–43, title I, § 141(b), title II, §§ 201, 202, 206, 208, 210(b), (c), title III, § 303(b), June 10, 1993, 107 Stat. 139, 144, 148–150, 153; Pub. L. 105–115, title I, § 113(a), Nov. 21, 1997, 111 Stat. 2310; Pub. L. 105–362, title VI, § 601(a)(1)(A), Nov. 10, 1998, 112 Stat. 3285; Pub. L. 105–392, title IV, § 409, Nov. 13, 1998, 112 Stat. 3589; Pub. L. 107–109, § 15(c)(2), Jan. 4, 2002, 115 Stat. 1420; Pub. L. 109–482, title I, §§ 102(a)–(d), (f)(1)(A), 103(b)(1), Jan. 15, 2007, 120 Stat. 3681, 3683, 3684, 3687.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b)(16), (22), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (b)(16), is set out under section 5332 of Title 5, Government Organization and Employees.

The provisions of title 5 relating to classifications, referred to in subsec. (b)(22), are classified generally to chapter 51 (§ 5101 et seq.) and to subchapter III (§ 5331 et seq.) of chapter 53 of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (d)(2)(A), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

The National Literacy Act of 1991, referred to in subsec. (e)(5), is Pub. L. 102–73, July 25, 1991, 105 Stat. 333, as amended, which was repealed by Pub. L. 105–220, title II, § 251(a)(2), Aug. 7, 1998, 112 Stat. 1079. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (b)(14)(B), ''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2007—Subsec. (a). Pub. L. 109–482, § 102(f)(1)(A), substituted ''Director of NIH who shall'' for ''Director of the National Institutes of Health (hereafter in this subchapter referred to as the 'Director of NIH') who shall''.

Subsec. (b). Pub. L. 109–482, § 102(a)(5), substituted ''paragraph (16)'' for ''paragraph (6)'' in concluding provisions.

Subsec. (b)(1). Pub. L. 109–482, § 102(a)(6), added par. (1) and struck out former par. (1) which read as follows: ''shall be responsible for the overall direction of the National Institutes of Health and for the establishment and implementation of general policies respecting the management and operation of programs and activities within the National Institutes of Health;''.

Subsec. (b)(2), (3). Pub. L. 109–482, § 102(b), added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

''(2) shall coordinate and oversee the operation of the national research institutes and administrative entities within the National Institutes of Health;

''(3) shall assure that research at or supported by the National Institutes of Health is subject to review in accordance with section 289a of this title;''.

Subsec. (b)(4) to (22). Pub. L. 109–482, § 102(a)(1)–(4), (b), added pars. (4) to (13), redesignated former pars. (4) to (11) and (14) as (14) to (22), respectively, in par. (21), inserted ''and'' at end, and struck out former pars. (12) and (13) which read as follows:

''(12) after consultation with the Director of the Office of Research on Women's Health, shall ensure that resources of the National Institutes of Health are sufficiently allocated for projects of research on women's health that are identified under section 287d(b) of this title;

''(13) may conduct and support research training—

''(A) for which fellowship support is not provided under section 288 of this title; and

''(B) which does not consist of residency training of physicians or other health professionals; and''.

Subsec. (i). Pub. L. 109–482, § 102(c), redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to discretionary fund for use by the Director of NIH to carry out activities authorized in this chapter.

Subsec. (i)(5). Pub. L. 109–482, § 103(b)(1), struck out first sentence which read as follows: ''For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary.''

Subsecs. (j), (k). Pub. L. 109–482, § 102(c)(2), (d), added subsec. (k) and redesignated former subsec. (k) as (j).

Subsec. (*l*). Pub. L. 109–482, § 102(c)(1), struck out subsec. (*l*) which read as follows: ''The Director of NIH shall carry out the program established in part F of subchapter X of this chapter (relating to interagency research on trauma).''

2002—Subsec. (j)(3)(A). Pub. L. 107–109, which directed the amendment of the first sentence of subsec. (j)(3)(A) by substituting ''trial sites,'' for ''trial sites, and'' and ''in the trial, and a description of whether, and through what procedure, the manufacturer or sponsor of the investigation of a new drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularly in children,'' for ''in the trial,'', was executed by making the substitutions in the second sentence, to reflect the probable intent of Congress.

1998—Subsec. (b)(13), (14). Pub. L. 105–392 added pars. (13) and (14).

Subsec. (f). Pub. L. 105–362 inserted ''and'' at end of par. (1), substituted a period for ''; and'' at end of par. (2), and struck out par. (3) which read as follows: ''annually prepare and submit to the Director of NIH a report concerning the prevention and dissemination activities undertaken by the Associate Director, including—

''(A) a summary of the Associate Director's review of existing dissemination policies and techniques together with a detailed statement concerning any modification or restructuring, or recommendations for modification or restructuring, of such policies and techniques; and

''(B) a detailed statement of the expenditures made for the prevention and dissemination activities reported on and the personnel used in connection with such activities.''

1997—Subsecs. (j) to (*l*). Pub. L. 105–115 added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (*l*), respectively.

1993—Subsec. (b)(12). Pub. L. 103–43, § 141(b), added par. (12).

Subsec. (e)(5). Pub. L. 103–43, § 210(b), added par. (5).

Subsec. (f). Pub. L. 103–43, § 201, substituted ''other public and private entities, including elementary, secondary, and post-secondary schools. The Associate Director shall—'' and pars. (1) to (3) for ''other public and private entities. The Associate Director shall annually report to the Director of NIH on the prevention activities undertaken by the Associate Director. The report shall include a detailed statement of the expenditures made for the activities reported on and the personnel used in connection with such activities''.

Subsec. (g). Pub. L. 103–43, § 202, added subsec. (g).

Subsec. (h). Pub. L. 103–43, § 206, added subsec. (h).

Subsec. (i). Pub. L. 103–43, § 208, added subsec. (i).

Subsec. (j). Pub. L. 103–43, § 210(c), added subsec. (j).

Subsec. (k). Pub. L. 103–43, § 303(b), added subsec. (k).

1992—Subsec. (d)(1). Pub. L. 102–321 substituted ''220'' for ''two hundred''.

1988—Subsec. (b)(6). Pub. L. 100–607 inserted ''and scientific program advisory committees'' after ''peer review groups''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–115 effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105–115, set out as a note under section 321 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

RULE OF CONSTRUCTION REGARDING CONTINUATION OF PROGRAMS

Pub. L. 109–482, title I, § 103(c), Jan. 15, 2007, 120 Stat. 3689, provided that: ''The amendment of a program by a provision of subsection (b) [amending this section and sections 283a, 283d, 283g to 283i, 284e to 284j, 284*l*, 284m, 285a–9, 285a–10, 285b–7a, 285b–7b, 285c–9, 285d–6a, 285d–8, 285e–10, 285e–10a, 285f–2, 285f–3, 285g–5, 285g–9, 285g–10, 285n, 285*o*, 285*o*–2, 285*o*–4, 285p, 285r, 286a–1, 287a–2, 287a–3, 287a–4, 287c–11, 287c–31 to 287c–33, 288, 288–1, and 288–5a of this title and repealing sections 285a–8, 285b–8, 285e–11, and 286a–2 of this title] may not be construed as terminating the authority of the Federal agency involved to carry out the program.''

COLLABORATION AND REPORT

Pub. L. 105–115, title I, § 113(b), Nov. 21, 1997, 111 Stat. 2312, directed the Secretary of Health and Human Services, the Director of the National Institutes of Health, and the Commissioner of Food and Drugs to collaborate to determine the feasibility of including device investigations within the scope of the data bank under subsec. (j) of this section, with the Secretary to report to Congress, not later than two years after Nov. 21, 1997, on the public health need, if any, for inclusion of device investigations within the scope of the data bank under subsec. (j), and on the adverse impact, if any, on device innovation and research in the United States if information relating to such device investigations was required to be publicly disclosed.

CHRONIC FATIGUE SYNDROME; EXPERTS AND RESEARCH REPRESENTATIVES ON ADVISORY COMMITTEES AND BOARDS

Section 902(c) of Pub. L. 103–43 provided that: ''The Secretary of Health and Human Services, acting through the Director of the National Institutes of Health, shall ensure that appropriate individuals with expertise in chronic fatigue syndrome or neuromuscular diseases and representative of a variety of disciplines and fields within the research community are appointed to appropriate National Institutes of Health advisory committees and boards.''

THIRD-PARTY PAYMENTS REGARDING CERTAIN CLINICAL TRIALS AND CERTAIN LIFE-THREATENING ILLNESSES

Section 1901(a) of Pub. L. 103–43 provided that: ''The Secretary of Health and Human Services, acting through the Director of the National Institutes of Health, shall conduct a study for the purpose of—

''(1) determining the policies of third-party payors regarding the payment of the costs of appropriate health services that are provided incident to the participation of individuals as subjects in clinical trials conducted in the development of drugs with respect to acquired immune deficiency syndrome, cancer, and other life-threatening illnesses; and

''(2) developing recommendations regarding such policies.''

PERSONNEL STUDY OF RECRUITMENT, RETENTION AND TURNOVER

Section 1905 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of National Institutes of Health, to conduct a study to review the retention, recruitment, vacancy and turnover rates of support staff, including firefighters, law enforcement, procurement officers, technicians, nurses and clerical employees, to ensure that National Institutes of Health is adequately supporting conduct of efficient, effective and high quality research for the American public, and to submit a report to Congress on results of such study not later than 1 year after June 10, 1993.

CHRONIC PAIN CONDITIONS

Section 1907 of Pub. L. 103–43 directed Director of the National Institutes of Health to submit to Congress, not later than 2 years after June 10, 1993, a report and study on the incidence in the United States of cases of chronic pain, including chronic pain resulting from back injuries, reflex sympathetic dystrophy syndrome, temporomandibular joint disorder, post-herpetic neuropathy, painful diabetic neuropathy, phantom pain, and post-stroke pain, and the effect of such cases on the costs of health care in the United States.

SUPPORT FOR BIOENGINEERING RESEARCH

Section 1912 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of the National Institutes of Health, to conduct a study for the purpose of determining the sources and amounts of public and private funding devoted to basic research in bioengineering, including biomaterials sciences, cellular bioprocessing, tissue and rehabilitation engineering, evaluating whether that commitment is sufficient to maintain the innovative edge that the United States has in these technologies, evaluating the role of the National Institutes of Health or any other Federal agency to achieve a greater commitment to innovation in bioengineering, and evaluating the need for better coordination and collaboration among Federal agencies and between the public and private sectors, and, not later than 1 year after June 10, 1993, to prepare and submit to Committee on Labor and Human Resources of Senate, and Committee on Energy and Commerce of House of Representatives, a report containing the findings of the study together with recommendations concerning the enactment of legislation to implement the results of such study.

MASTER PLAN FOR PHYSICAL INFRASTRUCTURE FOR RESEARCH

Section 2002 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of the National Institutes of Health, not later than June 1, 1994, to present to Congress a master plan to provide for replacement or refurbishment of less than adequate buildings, utility equipment and distribution systems (including the resources that provide electrical and other utilities, chilled water, air handling, and other services that the Secretary, acting through the Director, deemed necessary), roads, walkways, parking areas, and grounds that underpin the laboratory and clinical facilities of the National Institutes of Health, and provided that the plan could make recommendations for the undertaking of new projects that are consistent with the objectives of this section, such as encircling the National Institutes of Health Federal enclave with an adequate chilled water conduit.

§ 282a. Authorization of appropriations

(a) In general

For the purpose of carrying out this subchapter, there are authorized to be appropriated—

(1) $30,331,309,000 for fiscal year 2007;

(2) $32,831,309,000 for fiscal year 2008; and

(3) such sums as may be necessary for fiscal year 2009.

(b) Office of the Director

Of the amount authorized to be appropriated under subsection (a) for a fiscal year, there are authorized to be appropriated for programs and activities under this subchapter carried out through the Office of the Director of NIH such sums as may be necessary for each of the fiscal years 2007 through 2009.

(c) Trans-NIH research

(1) Common Fund

(A) Account

For the purpose of allocations under section 282(b)(7)(B) of this title (relating to research identified by the Division of Program Coordination, Planning, and Strategic Initiatives), there is established an account to be known as the Common Fund.

(B) Reservation

(i) In general

Of the total amount appropriated under subsection (a) for fiscal year 2007 or any subsequent fiscal year, the Director of NIH shall reserve an amount for the Common Fund, subject to any applicable provisions in appropriations Acts.

(ii) Minimum amount

For each fiscal year, the percentage constituted by the amount reserved under clause (i) relative to the total amount appropriated under subsection (a) for such year may not be less than the percentage constituted by the amount so reserved for the preceding fiscal year relative to the total amount appropriated under subsection (a) for such preceding fiscal year, subject to any applicable provisions in appropriations Acts.

(C) Common Fund strategic planning report

Not later than June 1, 2007, and every 2 years thereafter, the Secretary, acting through the Director of NIH, shall submit a report to the Congress containing a strategic plan for funding research described in section 282(b)(7)(A)(i) of this title (including personnel needs) through the Common Fund. Each such plan shall include the following:

(i) An estimate of the amounts determined by the Director of NIH to be appropriate for maximizing the potential of such research.

(ii) An estimate of the amounts determined by the Director of NIH to be sufficient only for continuing to fund research activities previously identified by the Division of Program Coordination, Planning, and Strategic Initiatives.

(iii) An estimate of the amounts determined by the Director of NIH to be necessary to fund research described in section 282(b)(7)(A)(i) of this title—

(I) that is in addition to the research activities described in clause (ii); and

(II) for which there is the most substantial need.

(D) Evaluation

During the 6-month period following the end of the first fiscal year for which the total amount reserved under subparagraph (B) is equal to 5 percent of the total amount appropriated under subsection (a) for such fiscal year, the Secretary, acting through the Director of NIH, in consultation with the advisory council established under section 282(k) of this title, shall submit recommendations to the Congress for changes regarding amounts for the Common Fund.

(2) Trans-NIH research reporting

(A) Limitation

With respect to the total amount appropriated under subsection (a) for fiscal year 2008 or any subsequent fiscal year, if the head of a national research institute or national center fails to submit the report required by subparagraph (B) for the preceding fiscal year, the amount made available for the institute or center for the fiscal year involved may not exceed the amount made available for the institute or center for fiscal year 2006.

(B) Reporting

Not later than January 1, 2008, and each January 1st thereafter—

(i) the head of each national research institute or national center shall submit to the Director of NIH a report on the amount made available by the institute or center for conducting or supporting research that involves collaboration between the institute or center and 1 or more other national research institutes or national centers; and

(ii) the Secretary shall submit a report to the Congress identifying the percentage of funds made available by each national research institute and national center with respect to such fiscal year for conducting or supporting research described in clause (i).

(C) Determination

For purposes of determining the amount or percentage of funds to be reported under subparagraph (B), any amounts made available to an institute or center under section 282(b)(7)(B) of this title shall be included.

(D) Verification of amounts

Upon receipt of each report submitted under subparagraph (B)(i), the Director of NIH shall review and, in cases of discrepancy, verify the accuracy of the amounts specified in the report.

(E) Waiver

At the request of any national research institute or national center, the Director of NIH may waive the application of this paragraph to such institute or center if the Director finds that the conduct or support of research described in subparagraph (B)(i) is inconsistent with the mission of such institute or center.

(d) Transfer authority

Of the total amount appropriated under subsection (a) for a fiscal year, the Director of NIH

may (in addition to the reservation under subsection (c)(1) for such year) transfer not more than 1 percent for programs or activities that are authorized in this subchapter and identified by the Director to receive funds pursuant to this subsection. In making such transfers, the Director may not decrease any appropriation account under subsection (a) by more than 1 percent.

(e) Rule of construction

This section may not be construed as affecting the authorities of the Director of NIH under section 281 of this title.

(July 1, 1944, ch. 373, title IV, § 402A, as added Pub. L. 109–482, title I, § 103(a), Jan. 15, 2007, 120 Stat. 3685.)

EFFECTIVE DATE

Section applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

§ 282b. Electronic coding of grants and activities

The Secretary, acting through the Director of NIH, shall establish an electronic system to uniformly code research grants and activities of the Office of the Director and of all the national research institutes and national centers. The electronic system shall be searchable by a variety of codes, such as the type of research grant, the research entity managing the grant, and the public health area of interest. When permissible, the Secretary, acting through the Director of NIH, shall provide information on relevant literature and patents that are associated with research activities of the National Institutes of Health.

(July 1, 1944, ch. 373, title IV, § 402B, as added Pub. L. 109–482, title I, § 104(a)(3), Jan. 15, 2007, 120 Stat. 3689.)

EFFECTIVE DATE

Section applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

§ 283. Biennial reports of Director of NIH

(a) In general

The Director of NIH shall submit to the Congress on a biennial basis a report in accordance with this section. The first report shall be submitted not later than 1 year after January 15, 2007. Each such report shall include the following information:

(1) An assessment of the state of biomedical and behavioral research.

(2) A description of the activities conducted or supported by the agencies of the National Institutes of Health and policies respecting the programs of such agencies.

(3) Classification and justification for the priorities established by the agencies, including a strategic plan and recommendations for future research initiatives to be carried out under section 282(b)(7) of this title through the Division of Program Coordination, Planning, and Strategic Initiatives.

(4) A catalog of all the research activities of the agencies, prepared in accordance with the following:

(A) The catalog shall, for each such activity—

(i) identify the agency or agencies involved;

(ii) state whether the activity was carried out directly by the agencies or was supported by the agencies and describe to what extent the agency was involved; and

(iii) identify whether the activity was carried out through a center of excellence.

(B) In the case of clinical research, the catalog shall, as appropriate, identify study populations by demographic variables and other variables that contribute to research on minority health and health disparities.

(C) Research activities listed in the catalog shall include, where applicable, the following:

(i) Epidemiological studies and longitudinal studies.

(ii) Disease registries, information clearinghouses, and other data systems.

(iii) Public education and information campaigns.

(iv) Training activities, including—

(I) National Research Service Awards and Clinical Transformation Science Awards;

(II) graduate medical education programs, including information on the number and type of graduate degrees awarded during the period in which the programs received funding under this subchapter;

(III) investigator-initiated awards for postdoctoral training;

(IV) a breakdown by demographic variables and other appropriate categories; and

(V) an evaluation and comparison of outcomes and effectiveness of various training programs.

(v) Clinical trials, including a breakdown of participation by study populations and demographic variables and such other information as may be necessary to demonstrate compliance with section 289a–2 of this title (regarding inclusion of women and minorities in clinical research).

(vi) Translational research activities with other agencies of the Public Health Service.

(5) A summary of the research activities throughout the agencies, which summary shall be organized by the following categories, where applicable:

(A) Cancer.

(B) Neurosciences.

(C) Life stages, human development, and rehabilitation.

(D) Organ systems.

(E) Autoimmune diseases.

(F) Genomics.

(G) Molecular biology and basic science.

(H) Technology development.

(I) Chronic diseases, including pain and palliative care.

(J) Infectious diseases and bioterrorism.

(K) Minority health and health disparities.

(L) Such additional categories as the Director determines to be appropriate.

(6) A review of each entity receiving funding under this subchapter in its capacity as a center of excellence (in this paragraph referred to as a ''center of excellence''), including the following:

(A) An evaluation of the performance and research outcomes of each center of excellence.

(B) Recommendations for promoting coordination of information among the centers of excellence.

(C) Recommendations for improving the effectiveness, efficiency, and outcomes of the centers of excellence.

(D) If no additional centers of excellence have been funded under this subchapter since the previous report under this section, an explanation of the reasons for not funding any additional centers.

(b) Requirement regarding disease-specific research activities

In a report under subsection (a), the Director of NIH, when reporting on research activities relating to a specific disease, disorder, or other adverse health condition, shall—

(1) present information in a standardized format;

(2) identify the actual dollar amounts obligated for such activities; and

(3) include a plan for research on the specific disease, disorder, or other adverse health condition, including a statement of objectives regarding the research, the means for achieving the objectives, a date by which the objectives are expected to be achieved, and justifications for revisions to the plan.

(c) Additional reports

In addition to reports required by subsections (a) and (b), the Director of NIH or the head of a national research institute or national center may submit to the Congress such additional reports as the Director or the head of such institute or center determines to be appropriate.

(July 1, 1944, ch. 373, title IV, § 403, as added Pub. L. 109–482, title I, § 104(a)(3), Jan. 15, 2007, 120 Stat. 3689.)

PRIOR PROVISIONS

A prior section 283, act July 1, 1944, ch. 373, title IV, § 403, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 826; amended Pub. L. 100–607, title I, § 112, Nov. 4, 1988, 102 Stat. 3052, required a biennial report by the Director to the President and Congress, prior to repeal by Pub. L. 109–482, title I, § 104(a)(3), Jan. 15, 2007, 120 Stat. 3689.

EFFECTIVE DATE

Section applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

§ 283a. Annual reporting to increase interagency collaboration and coordination

(a) Collaboration with other HHS agencies

On an annual basis, the Director of NIH shall submit to the Secretary a report on the activities of the National Institutes of Health involving collaboration with other agencies of the Department of Health and Human Services.

(b) Clinical trials

Each calendar year, the Director of NIH shall submit to the Commissioner of Food and Drugs a report that identifies each clinical trial that is registered during such calendar year in the databank of information established under section 282(i) of this title.

(c) Human tissue samples

On an annual basis, the Director of NIH shall submit to the Congress a report that describes how the National Institutes of Health and its agencies store and track human tissue samples.

(d) First report

The first report under subsections (a), (b), and (c) shall be submitted not later than 1 year after January 15, 2007.

(July 1, 1944, ch. 373, title IV, § 403A, as added Pub. L. 109–482, title I, § 104(a)(3), Jan. 15, 2007, 120 Stat. 3691.)

PRIOR PROVISIONS

A prior section 403A of act July 1, 1944, was renumbered section 403C and is classified to section 283a–3 of this title.

EFFECTIVE DATE

Section applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

§ 283a–1. Annual reporting to prevent fraud and abuse

(a) Whistleblower complaints

(1) In general

On an annual basis, the Director of NIH shall submit to the Inspector General of the Department of Health and Human Services, the Secretary, the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate a report summarizing the activities of the National Institutes of Health relating to whistleblower complaints.

(2) Contents

For each whistleblower complaint pending during the year for which a report is submitted under this subsection, the report shall identify the following:

(A) Each agency of the National Institutes of Health involved.

(B) The status of the complaint.

(C) The resolution of the complaint to date.

(b) Experts and consultants

On an annual basis, the Director of NIH shall submit to the Inspector General of the Department of Health and Human Services, the Secretary, the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives, and the Committee on

Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate a report that—

(1) identifies the number of experts and consultants, including any special consultants, whose services are obtained by the National Institutes of Health or its agencies;

(2) specifies whether such services were obtained under section 209(f) of this title, section 282(d) of this title, or other authority;

(3) describes the qualifications of such experts and consultants;

(4) describes the need for hiring such experts and consultants; and

(5) if such experts and consultants make financial disclosures to the National Institutes of Health or any of its agencies, specifies the income, gifts, assets, and liabilities so disclosed.

(c) First report

The first report under subsections (a) and (b) shall be submitted not later than 1 year after January 15, 2007.

(July 1, 1944, ch. 373, title IV, § 403B, as added Pub. L. 109–482, title I, § 104(a)(3), Jan. 15, 2007, 120 Stat. 3691.)

EFFECTIVE DATE

Section applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

§ 283a–2. Annual reporting regarding training of graduate students for doctoral degrees

(a) In general

Each institution receiving an award under this subchapter for the training of graduate students for doctoral degrees shall annually report to the Director of NIH, with respect to each degree-granting program at such institution—

(1) the percentage of students admitted for study who successfully attain a doctoral degree; and

(2) for students described in paragraph (1), the average time between the beginning of graduate study and the receipt of a doctoral degree.

(3)[1] Provision of information to applicants

Each institution described in subsection (a) shall provide to each student submitting an application for a program of graduate study at such institution the information described in paragraphs (1) and (2) of such subsection with respect to the program or programs to which such student has applied.

(July 1, 1944, ch. 373, title IV, § 403C, as added Pub. L. 109–482, title I, § 104(a)(3), Jan. 15, 2007, 120 Stat. 3692.)

CODIFICATION

Another section 403C of act July 1, 1944, is classified to section 283a–3 of this title.

EFFECTIVE DATE

Section applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

[1] So in original. Probably should be ''(b)''.

§ 283a–3. Establishment of program regarding DES

(a) In general

The Director of NIH shall establish a program for the conduct and support of research and training, the dissemination of health information, and other programs with respect to the diagnosis and treatment of conditions associated with exposure to the drug diethylstilbestrol (in this section referred to as ''DES'').

(b) Education programs

In carrying out subsection (a), the Director of NIH, after consultation with nonprofit private entities representing individuals who have been exposed to DES, shall conduct or support programs to educate health professionals and the public on the drug, including the importance of identifying and treating individuals who have been exposed to the drug.

(c) Longitudinal studies

After consultation with the Office of Research on Women's Health, the Director of NIH, acting through the appropriate national research institutes, shall in carrying out subsection (a) conduct or support one or more longitudinal studies to determine the incidence of the following diseases or disorders in the indicated populations and the relationship of DES to the diseases or disorders:

(1) In the case of women to whom (on or after January 1, 1938) DES was administered while the women were pregnant, the incidence of all diseases and disorders (including breast cancer, gynecological cancers, and impairments of the immune system, including autoimmune disease).

(2) In the case of women exposed to DES in utero, the incidence of clear cell cancer (including recurrences), the long-term health effects of such cancer, and the effects of treatments for such cancer.

(3) In the case of men and women exposed to DES in utero, the incidence of all diseases and disorders (including impairments of the reproductive and autoimmune systems).

(4) In the case of children of men or women exposed to DES in utero, the incidence of all diseases and disorders.

(d) Exposure to DES in utero

For purposes of this section, an individual shall be considered to have been exposed to DES in utero if, during the pregnancy that resulted in the birth of such individual, DES was (on or after January 1, 1938) administered to the biological mother of the individual.

(July 1, 1944, ch. 373, title IV, § 403C, formerly § 403A, as added Pub. L. 102–409, § 2, Oct. 13, 1992, 106 Stat. 2092; amended Pub. L. 105–340, title I, § 101(a), Oct. 31, 1998, 112 Stat. 3191; renumbered § 403C and amended Pub. L. 109–482, title I, §§ 103(b)(2), 104(a)(1), Jan. 15, 2007, 120 Stat. 3687, 3689.)

CODIFICATION

Section was formerly classified to section 283a of this title prior to renumbering by Pub. L. 109–482.

Another section 403C of act July 1, 1944, is classified to section 283a–2 of this title.

AMENDMENTS

2007—Subsec. (e). Pub. L. 109–482, § 103(b)(2), struck out subsec. (e) which read as follows: ''In addition to any other authorization of appropriations available for the purpose of carrying out this section, there are authorized to be appropriated for such purpose such sums as may be necessary for each of the fiscal years 1993 through 2003.''

1998—Subsec. (e). Pub. L. 105–340 substituted ''2003'' for ''1996''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 283b. Repealed. Pub. L. 106–525, title I, § 101(b)(2), Nov. 22, 2000, 114 Stat. 2501

Section, act July 1, 1944, ch. 373, title IV, § 404, as added Pub. L. 103–43, title I, § 151, June 10, 1993, 107 Stat. 139, related to the establishment and purpose of the Office of Research on Minority Health.

§ 283c. Office of Behavioral and Social Sciences Research

(a) There is established within the Office of the Director of NIH an office to be known as the Office of Behavioral and Social Sciences Research (in this section referred to as the ''Office''). The Office shall be headed by a director, who shall be appointed by the Director of NIH.

(b)(1) With respect to research on the relationship between human behavior and the development, treatment, and prevention of medical conditions, the Director of the Office shall—

(A) coordinate research conducted or supported by the agencies of the National Institutes of Health; and

(B) identify projects of behavioral and social sciences research that should be conducted or supported by the national research institutes, and develop such projects in cooperation with such institutes.

(2) Research authorized under paragraph (1) includes research on teen pregnancy, infant mortality, violent behavior, suicide, and homelessness. Such research does not include neurobiological research, or research in which the behavior of an organism is observed for the purpose of determining activity at the cellular or molecular level.

(July 1, 1944, ch. 373, title IV, § 404A, as added Pub. L. 103–43, title II, § 203(a), June 10, 1993, 107 Stat. 145.)

EFFECTIVE DATE

Section 203(c) of Pub. L. 103–43 provided that: ''The amendment described in subsection (a) [enacting this section] is made upon the date of the enactment of this Act [June 10, 1993] and takes effect July 1, 1993. Subsection (b) [107 Stat. 145] takes effect on such date.''

§ 283d. Children's Vaccine Initiative

(a) Development of new vaccines

The Secretary, in consultation with the Director of the National Vaccine Program under subchapter XIX of this chapter and acting through the Directors of the National Institute for Allergy and Infectious Diseases, the National Institute for Child Health and Human Development, the National Institute for Aging, and other public and private programs, shall carry out activities, which shall be consistent with the global Children's Vaccine Initiative, to develop affordable new and improved vaccines to be used in the United States and in the developing world that will increase the efficacy and efficiency of the prevention of infectious diseases. In carrying out such activities, the Secretary shall, to the extent practicable, develop and make available vaccines that require fewer contacts to deliver, that can be given early in life, that provide long lasting protection, that obviate refrigeration, needles and syringes, and that protect against a larger number of diseases.

(b) Report

In the report required in section 300aa–4[1] of this title, the Secretary, acting through the Director of the National Vaccine Program under subchapter XIX of this chapter, shall include information with respect to activities and the progress made in implementing the provisions of this section and achieving its goals.

(July 1, 1944, ch. 373, title IV, § 404B, as added Pub. L. 103–43, title II, § 204, June 10, 1993, 107 Stat. 146; amended Pub. L. 109–482, title I, § 103(b)(3), Jan. 15, 2007, 120 Stat. 3687.)

REFERENCES IN TEXT

Section 300aa–4 of this title, referred to in subsec. (b), was repealed by Pub. L. 105–362, title VI, § 601(a)(1)(H), Nov. 10, 1998, 112 Stat. 3285.

AMENDMENTS

2007—Subsec. (c). Pub. L. 109–482 struck out heading and text of subsec. (c). Text read as follows: ''In addition to any other amounts authorized to be appropriated for activities of the type described in this section, there are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 283e. Plan for use of animals in research

(a) Preparation

The Director of NIH, after consultation with the committee established under subsection (e) of this section, shall prepare a plan—

(1) for the National Institutes of Health to conduct or support research into—

(A) methods of biomedical research and experimentation that do not require the use of animals;

(B) methods of such research and experimentation that reduce the number of animals used in such research;

(C) methods of such research and experimentation that produce less pain and distress in such animals; and

(D) methods of such research and experimentation that involve the use of marine life (other than marine mammals);

[1] See References in Text note below.

(2) for establishing the validity and reliability of the methods described in paragraph (1);

(3) for encouraging the acceptance by the scientific community of such methods that have been found to be valid and reliable; and

(4) for training scientists in the use of such methods that have been found to be valid and reliable.

(b) Submission to Congressional committees

Not later than October 1, 1993, the Director of NIH shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, the plan required in subsection (a) of this section and shall begin implementation of the plan.

(c) Periodic review and revision

The Director of NIH shall periodically review, and as appropriate, make revisions in the plan required under subsection (a) of this section. A description of any revision made in the plan shall be included in the first biennial report under section 283 of this title that is submitted after the revision is made.

(d) Dissemination of information

The Director of NIH shall take such actions as may be appropriate to convey to scientists and others who use animals in biomedical or behavioral research or experimentation information respecting the methods found to be valid and reliable under subsection (a)(2) of this section.

(e) Interagency Coordinating Committee on the Use of Animals in Research

(1) The Director of NIH shall establish within the National Institutes of Health a committee to be known as the Interagency Coordinating Committee on the Use of Animals in Research (in this subsection referred to as the ''Committee'').

(2) The Committee shall provide advice to the Director of NIH on the preparation of the plan required in subsection (a) of this section.

(3) The Committee shall be composed of—

(A) the Directors of each of the national research institutes and the Director of the Center for Research Resources (or the designees of such Directors); and

(B) representatives of the Environmental Protection Agency, the Food and Drug Administration, the Consumer Product Safety Commission, the National Science Foundation, and such additional agencies as the Director of NIH determines to be appropriate, which representatives shall include not less than one veterinarian with expertise in laboratory-animal medicine.

(July 1, 1944, ch. 373, title IV, § 404C, as added Pub. L. 103–43, title II, § 205(a), June 10, 1993, 107 Stat. 146.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 283f. Requirements regarding surveys of sexual behavior

With respect to any survey of human sexual behavior proposed to be conducted or supported through the National Institutes of Health, the survey may not be carried out unless—

(1) the proposal has undergone review in accordance with any applicable requirements of sections 289 and 289a of this title; and

(2) the Secretary, in accordance with section 289a–1 of this title, makes a determination that the information expected to be obtained through the survey will assist—

(A) in reducing the incidence of sexually transmitted diseases, the incidence of infection with the human immunodeficiency virus, or the incidence of any other infectious disease; or

(B) in improving reproductive health or other conditions of health.

(July 1, 1944, ch. 373, title IV, § 404D, as added Pub. L. 103–43, title II, § 207, June 10, 1993, 107 Stat. 148.)

PROHIBITION AGAINST SHARP ADULT SEX SURVEY AND AMERICAN TEENAGE SEX SURVEY

Section 2015 of Pub. L. 103–43 provided that: ''The Secretary of Health and Human Services may not during fiscal year 1993 or any subsequent fiscal year conduct or support the SHARP survey of adult sexual behavior or the American Teenage Study of adolescent sexual behavior. This section becomes effective on the date of the enactment of this Act [June 10, 1993].''

§ 283g. Muscular dystrophy; initiative through Director of National Institutes of Health

(a) Expansion, intensification, and coordination of activities

(1) In general

The Director of NIH, in coordination with the Directors of the National Institute of Neurological Disorders and Stroke, the National Institute of Arthritis and Muscoskeletal and Skin Diseases, the National Institute of Child Health and Human Development, and the other national research institutes as appropriate, shall expand and intensify programs of such Institutes with respect to research and related activities concerning various forms of muscular dystrophy, including Duchenne, myotonic, facioscapulohumeral muscular dystrophy (referred to in this section as ''FSHD'') and other forms of muscular dystrophy.

(2) Coordination

The Directors referred to in paragraph (1) shall jointly coordinate the programs referred to in such paragraph and consult with the Muscular Dystrophy Interagency Coordinating Committee established under section 6 of the MD–CARE Act.[1]

[1] See References in Text note below.

(3) Allocations by Director of NIH

The Director of NIH shall allocate the amounts appropriated to carry out this section for each fiscal year among the national research institutes referred to in paragraph (1).

(b) Centers of excellence

(1) In general

The Director of NIH shall award grants and contracts under subsection (a)(1) of this section to public or nonprofit private entities to pay all or part of the cost of planning, establishing, improving, and providing basic operating support for centers of excellence regarding research on various forms of muscular dystrophy.

(2) Research

Each center under paragraph (1) shall supplement but not replace the establishment of a comprehensive research portfolio in all the muscular dystrophies. As a whole, the centers shall conduct basic and clinical research in all forms of muscular dystrophy including early detection, diagnosis, prevention, and treatment, including the fields of muscle biology, genetics, noninvasive imaging, genetics, pharmacological and other therapies.

(3) Coordination of centers

The Director of NIH shall, as appropriate, provide for the coordination of information among centers under paragraph (1) and ensure regular communication between such centers.

(4) Organization of centers

Each center under paragraph (1) shall use the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director of NIH.

(5) Duration of support

Support for a center established under paragraph (1) may be provided under this section for a period of not to exceed 5 years. Such period may be extended for 1 or more additional periods not exceeding 5 years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director of NIH and if such group has recommended to the Director that such period should be extended.

(c) Facilitation of research

The Director of NIH shall provide for a program under subsection (a)(1) of this section under which samples of tissues and genetic materials that are of use in research on muscular dystrophy are donated, collected, preserved, and made available for such research. The program shall be carried out in accordance with accepted scientific and medical standards for the donation, collection, and preservation of such samples.

(d) Coordinating Committee

(1) In general

The Secretary shall establish the Muscular Dystrophy Coordinating Committee (referred to in this section as the ''Coordinating Committee'') to coordinate activities across the National Institutes and with other Federal health programs and activities relating to the various forms of muscular dystrophy.

(2) Composition

The Coordinating Committee shall consist of not more than 15 members to be appointed by the Secretary, of which—

(A) ⅔ of such members shall represent governmental agencies, including the directors or their designees of each of the national research institutes involved in research with respect to muscular dystrophy and representatives of all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to such diseases, including the Centers for Disease Control and Prevention, the Health Resources and Services Administration and the Food and Drug Administration and representatives of other governmental agencies that serve children with muscular dystrophy, such as the Department of Education; and

(B) ⅓ of such members shall be public members, including a broad cross section of persons affected with muscular dystrophies including parents or legal guardians, affected individuals, researchers, and clinicians.

Members appointed under subparagraph (B) shall serve for a term of 3 years, and may serve for an unlimited number of terms if reappointed.

(3) Chair

(A) In general

With respect to muscular dystrophy, the Chair of the Coordinating Committee shall serve as the principal advisor to the Secretary, the Assistant Secretary for Health, and the Director of NIH, and shall provide advice to the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, and to the heads of other relevant agencies. The Coordinating Committee shall select the Chair for a term not to exceed 2 years.

(B) Appointment

The Chair of the Committee shall be appointed by and be directly responsible to the Secretary.

(4) Administrative support; terms of service; other provisions

The following shall apply with respect to the Coordinating Committee:

(A) The Coordinating Committee shall receive necessary and appropriate administrative support from the Department of Health and Human Services.

(B) The Coordinating Committee shall meet as appropriate as determined by the Secretary, in consultation with the chair.[2]

(e) Plan for HHS activities

(1) In general

Not later than 1 year after December 18, 2001, the Coordinating Committee shall de-

[2] So in original. Probably should be capitalized.

velop a plan for conducting and supporting research and education on muscular dystrophy through the national research institutes and shall periodically review and revise the plan. The plan shall—

(A) provide for a broad range of research and education activities relating to biomedical, epidemiological, psychosocial, and rehabilitative issues, including studies of the impact of such diseases in rural and underserved communities;

(B) identify priorities among the programs and activities of the National Institutes of Health regarding such diseases; and

(C) reflect input from a broad range of scientists, patients, and advocacy groups.

(2) Certain elements of plan

The plan under paragraph (1) shall, with respect to each form of muscular dystrophy, provide for the following as appropriate:

(A) Research to determine the reasons underlying the incidence and prevalence of various forms of muscular dystrophy.

(B) Basic research concerning the etiology and genetic links of the disease and potential causes of mutations.

(C) The development of improved screening techniques.

(D) Basic and clinical research for the development and evaluation of new treatments, including new biological agents.

(E) Information and education programs for health care professionals and the public.

(f) Public input

The Secretary shall, under subsection (a)(1) of this section, provide for a means through which the public can obtain information on the existing and planned programs and activities of the Department of Health and Human Services with respect to various forms of muscular dystrophy and through which the Secretary can receive comments from the public regarding such programs and activities.

(July 1, 1944, ch. 373, title IV, § 404E, as added Pub. L. 107–84, § 3, Dec. 18, 2001, 115 Stat. 824; amended Pub. L. 109–482, title I, §§ 103(b)(4), 104(b)(1)(A), Jan. 15, 2007, 120 Stat. 3687, 3692.)

REFERENCES IN TEXT

Section 6 of the MD–CARE Act, referred to in subsec. (a)(2), is section 6 of Pub. L. 107–84, which was formerly set out as a note under section 247b–18 of this title and does not relate to establishment of a coordinating committee. However, subsec. (d) of this section contains provisions relating to the establishment of the Muscular Dystrophy Coordinating Committee.

PRIOR PROVISIONS

A prior section 283g, act July 1, 1944, ch. 373, title IV, § 404E, as added Pub. L. 103–43, title II, § 209, June 10, 1993, 107 Stat. 149, related to Office of Alternative Medicine, prior to repeal by Pub. L. 105–277, div. A, § 101(f) [title VI, § 601(1)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–387.

AMENDMENTS

2007—Subsec. (b)(3). Pub. L. 109–482, § 104(b)(1)(A)(i), amended heading and text of par. (3) generally. Text read as follows: ''The Director of NIH—

''(A) shall, as appropriate, provide for the coordination of information among centers under paragraph (1) and ensure regular communication between such centers; and

''(B) shall require the periodic preparation of reports on the activities of the centers and the submission of the reports to the Director.''

Subsecs. (f), (g). Pub. L. 109–482, § 104(b)(1)(A)(ii), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to reports to Congress.

Subsec. (h). Pub. L. 109–482, § 103(b)(4), struck out heading and text of subsec. (h). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2002 through 2006. The authorization of appropriations established in the preceding sentence is in addition to any other authorization of appropriations that is available for conducting or supporting through the National Institutes of Health research and other activities with respect to muscular dystrophy.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 283h. Office of Rare Diseases

(a) Establishment

There is established within the Office of the Director of NIH an office to be known as the Office of Rare Diseases (in this section referred to as the ''Office''), which shall be headed by a Director (in this section referred to as the ''Director''), appointed by the Director of NIH.

(b) Duties

(1) In general

The Director of the Office shall carry out the following:

(A) The Director shall recommend an agenda for conducting and supporting research on rare diseases through the national research institutes and centers. The agenda shall provide for a broad range of research and education activities, including scientific workshops and symposia to identify research opportunities for rare diseases.

(B) The Director shall, with respect to rare diseases, promote coordination and cooperation among the national research institutes and centers and entities whose research is supported by such institutes.

(C) The Director, in collaboration with the directors of the other relevant institutes and centers of the National Institutes of Health, may enter into cooperative agreements with and make grants for regional centers of excellence on rare diseases in accordance with section 283i of this title.

(D) The Director shall promote the sufficient allocation of the resources of the National Institutes of Health for conducting and supporting research on rare diseases.

(E) The Director shall promote and encourage the establishment of a centralized clearinghouse for rare and genetic disease information that will provide understandable information about these diseases to the public, medical professionals, patients and families.

(2) Principal advisor regarding orphan diseases

With respect to rare diseases, the Director shall serve as the principal advisor to the Di-

rector of NIH and shall provide advice to other relevant agencies. The Director shall provide liaison with national and international patient, health and scientific organizations concerned with rare diseases.

(c) Definition

For purposes of this section, the term ''rare disease'' means any disease or condition that affects less than 200,000 persons in the United States.

(July 1, 1944, ch. 373, title IV, § 404F, as added Pub. L. 107–280, § 3, Nov. 6, 2002, 116 Stat. 1989; amended Pub. L. 109–482, title I, §§ 103(b)(5), 104(b)(1)(B), Jan. 15, 2007, 120 Stat. 3687, 3693.)

AMENDMENTS

2007—Subsec. (b)(1)(F), (G). Pub. L. 109–482, § 104(b)(1)(B), struck out subpars. (F) and (G) which read as follows:

''(F) The Director shall biennially prepare a report that describes the research and education activities on rare diseases being conducted or supported through the national research institutes and centers, and that identifies particular projects or types of projects that should in the future be conducted or supported by the national research institutes and centers or other entities in the field of research on rare diseases.

''(G) The Director shall prepare the NIH Director's annual report to Congress on rare disease research conducted by or supported through the national research institutes and centers.''

Subsec. (d). Pub. L. 109–482, § 103(b)(5), struck out heading and text of subsec. (d). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as already have been appropriated for fiscal year 2002, and $4,000,000 for each of the fiscal years 2003 through 2006.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

FINDINGS AND PURPOSES

Pub. L. 107–280, § 2, Nov. 6, 2002, 116 Stat. 1988, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Rare diseases and disorders are those which affect small patient populations, typically populations smaller than 200,000 individuals in the United States. Such diseases and conditions include Huntington's disease, amyotrophic lateral sclerosis (Lou Gehrig's disease), Tourette syndrome, Crohn's disease, cystic fibrosis, cystinosis, and Duchenne muscular dystrophy.

''(2) For many years, the 25,000,000 Americans suffering from the over 6,000 rare diseases and disorders were denied access to effective medicines because prescription drug manufacturers could rarely make a profit from marketing drugs for such small groups of patients. The prescription drug industry did not adequately fund research into such treatments. Despite the urgent health need for these medicines, they came to be known as 'orphan drugs' because no companies would commercialize them.

''(3) During the 1970s, an organization called the National Organization for Rare Disorders (NORD) was founded to provide services and to lobby on behalf of patients with rare diseases and disorders. NORD was instrumental in pressing Congress for legislation to encourage the development of orphan drugs.

''(4) The Orphan Drug Act [Pub. L. 97–414, see Short Title of 1983 Amendments note set out under section 301 of Title 21, Food and Drugs] created financial incentives for the research and production of such orphan drugs. New Federal programs at the National Institutes of Health and the Food and Drug Administration encouraged clinical research and commercial product development for products that target rare diseases. An Orphan Products Board was established to promote the development of drugs and devices for rare diseases or disorders.

''(5) Before 1983, some 38 orphan drugs had been developed. Since the enactment of the Orphan Drug Act [Jan. 4, 1983], more than 220 new orphan drugs have been approved and marketed in the United States and more than 800 additional drugs are in the research pipeline.

''(6) Despite the tremendous success of the Orphan Drug Act, rare diseases and disorders deserve greater emphasis in the national biomedical research enterprise. The Office of Rare Diseases at the National Institutes of Health was created in 1993, but lacks a statutory authorization.

''(7) The National Institutes of Health has received a substantial increase in research funding from Congress for the purpose of expanding the national investment of the United States in behavioral and biomedical research.

''(8) Notwithstanding such increases, funding for rare diseases and disorders at the National Institutes of Health has not increased appreciably.

''(9) To redress this oversight, the Department of Health and Human Services has proposed the establishment of a network of regional centers of excellence for research on rare diseases.

''(b) PURPOSES.—The purposes of this Act [see Short Title of 2002 Amendments note set out under section 201 of this title] are to—

''(1) amend the Public Health Service Act [this chapter] to establish an Office of Rare Diseases at the National Institutes of Health; and

''(2) increase the national investment in the development of diagnostics and treatments for patients with rare diseases and disorders.''

§ 283i. Rare disease regional centers of excellence

(a) Cooperative agreements and grants

(1) In general

The Director of the Office of Rare Diseases (in this section referred to as the ''Director''), in collaboration with the directors of the other relevant institutes and centers of the National Institutes of Health, may enter into cooperative agreements with and make grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for regional centers of excellence for clinical research into, training in, and demonstration of diagnostic, prevention, control, and treatment methods for rare diseases.

(2) Policies

A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH.

(b) Coordination with other institutes

The Director shall coordinate the activities under this section with similar activities conducted by other national research institutes, centers and agencies of the National Institutes of Health and by the Food and Drug Administration to the extent that such institutes, centers and agencies have responsibilities that are related to rare diseases.

(c) Uses for Federal payments under cooperative agreements or grants

Federal payments made under a cooperative agreement or grant under subsection (a) of this section may be used for—

(1) staffing, administrative, and other basic operating costs, including such patient care costs as are required for research;

(2) clinical training, including training for allied health professionals, continuing education for health professionals and allied health professions personnel, and information programs for the public with respect to rare diseases; and

(3) clinical research and demonstration programs.

(d) Period of support; additional periods

Support of a center under subsection (a) of this section may be for a period of not to exceed 5 years. Such period may be extended by the Director for additional periods of not more than 5 years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 404G, as added Pub. L. 107–280, § 4, Nov. 6, 2002, 116 Stat. 1990; amended Pub. L. 109–482, title I, § 103(b)(6), Jan. 15, 2007, 120 Stat. 3687.)

AMENDMENTS

2007—Subsec. (e). Pub. L. 109–482 struck out heading and text of subsec. (e). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as already have been appropriated for fiscal year 2002, and $20,000,000 for each of the fiscal years 2003 through 2006.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 283j. Review of centers of excellence

(a) In general

Not later than April 1, 2008, and periodically thereafter, the Secretary, acting through the Director of NIH, shall conduct a review and submit a report to the appropriate committees of the Congress on the centers of excellence.

(b) Report contents

Each report under subsection (a) shall include the following:

(1) Evaluation of the performance and research outcomes of each center of excellence.

(2) Recommendations for promoting coordination of information among centers of excellence.

(3) Recommendations for improving the effectiveness, efficiency, and outcomes of the centers of excellence.

(c) Definition

In this section, the term ''center of excellence'' means an entity receiving funding under this subchapter in its capacity as a center of excellence.

(July 1, 1944, ch. 373, title IV, § 404H, as added Pub. L. 109–416, § 2(b), Dec. 19, 2006, 120 Stat. 2821.)

PART B—GENERAL PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

§ 284. Directors of national research institutes

(a) Appointment

The Director of the National Cancer Institute shall be appointed by the President and the Directors of the other national research institutes shall be appointed by the Secretary. Each Director of a national research institute shall report directly to the Director of NIH.

(b) Duties and authority; grants, contracts, and cooperative agreements

(1) In carrying out the purposes of section 241 of this title with respect to human diseases or disorders or other aspects of human health for which the national research institutes were established, the Secretary, acting through the Director of each national research institute—

(A) shall encourage and support research, investigations, experiments, demonstrations, and studies in the health sciences related to—

(i) the maintenance of health,

(ii) the detection, diagnosis, treatment, and prevention of human diseases and disorders,

(iii) the rehabilitation of individuals with human diseases, disorders, and disabilities, and

(iv) the expansion of knowledge of the processes underlying human diseases, disorders, and disabilities, the processes underlying the normal and pathological functioning of the body and its organ systems, and the processes underlying the interactions between the human organism and the environment;

(B) may, subject to the peer review prescribed under section 289a(b) of this title and any advisory council review under section 284a(a)(3)(A)(i) of this title, conduct the research, investigations, experiments, demonstrations, and studies referred to in subparagraph (A);

(C) may conduct and support research training (i) for which fellowship support is not provided under section 288 of this title, and (ii) which is not residency training of physicians or other health professionals;

(D) may develop, implement, and support demonstrations and programs for the application of the results of the activities of the institute to clinical practice and disease prevention activities;

(E) may develop, conduct, and support public and professional education and information programs;

(F) may secure, develop and maintain, distribute, and support the development and maintenance of resources needed for research;

(G) may make available the facilities of the institute to appropriate entities and individuals engaged in research activities and cooperate with and assist Federal and State agencies charged with protecting the public health;

(H) may accept unconditional gifts made to the institute for its activities, and, in the case of gifts of a value in excess of $50,000, establish suitable memorials to the donor;

(I) may secure for the institute consultation services and advice of persons from the United States or abroad;

(J) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

(K) may accept voluntary and uncompensated services; and

(L) may perform such other functions as the Secretary determines are needed to carry out effectively the purposes of the institute.

The indemnification provisions of section 2354 of title 10 shall apply with respect to contracts entered into under this subsection and section 282(b) of this title.

(2) Support for an activity or program under this subsection may be provided through grants, contracts, and cooperative agreements. The Secretary, acting through the Director of each national research institute—

(A) may enter into a contract for research, training, or demonstrations only if the contract has been recommended after technical and scientific peer review required by regulations under section 289a of this title;

(B) may make grants and cooperative agreements under paragraph (1) for research, training, or demonstrations, except that—

(i) if the direct cost of the grant or cooperative agreement to be made does not exceed $50,000, such grant or cooperative agreement may be made only if such grant or cooperative agreement has been recommended after technical and scientific peer review required by regulations under section 289a of this title, and

(ii) if the direct cost of the grant or cooperative agreement to be made exceeds $50,000, such grant or cooperative agreement may be made only if such grant or cooperative agreement has been recommended after technical and scientific peer review required by regulations under section 289a of this title and is recommended under section 284a(a)(3)(A)(ii) of this title by the advisory council for the national research institute involved; and

(C) shall, subject to section 300cc–40b(d)(2) of this title, receive from the President and the Office of Management and Budget directly all funds appropriated by the Congress for obligation and expenditure by the Institute.

(c) Coordination with other public and private entities; cooperation with other national research institutes; appointment of additional peer review groups

In carrying out subsection (b) of this section, each Director of a national research institute—

(1) shall coordinate, as appropriate, the activities of the institute with similar programs of other public and private entities;

(2) shall cooperate with the Directors of the other national research institutes in the development and support of multidisciplinary research and research that involves more than one institute;

(3) may, in consultation with the advisory council for the Institute and with the approval of the Director of NIH—

(A) establish technical and scientific peer review groups in addition to those appointed under section 282(b)(16) of this title; and

(B) appoint the members of peer review groups established under subparagraph (A); and

(4) may publish, or arrange for the publication of, information with respect to the purpose of the Institute without regard to section 501 of title 44.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under paragraph (3).

(July 1, 1944, ch. 373, title IV, § 405, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 826; amended Pub. L. 100–607, title I, § 116, Nov. 4, 1988, 102 Stat. 3053; Pub. L. 100–690, title II, § 2613(c), Nov. 18, 1988, 102 Stat. 4239; Pub. L. 103–43, title III, § 301(a)(1), (b), June 10, 1993, 107 Stat. 150; Pub. L. 109–482, title I, § 102(f)(1)(B), Jan. 15, 2007, 120 Stat. 3685.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2007—Subsec. (c)(3)(A). Pub. L. 109–482 substituted ''section 282(b)(16)'' for ''section 282(b)(6)''.

1993—Subsec. (b)(2)(C). Pub. L. 103–43, § 301(a)(1), added subpar. (C).

Subsec. (c). Pub. L. 103–43, § 301(b)(2), inserted concluding provisions relating to Federal Advisory Committee Act.

Subsec. (c)(3). Pub. L. 103–43, § 301(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''may, in consultation with the advisory council for the Institute and the approval of the Director of NIH, establish and appoint technical and scientific peer review groups in addition to those established and appointed under section 282(b)(6) of this title; and''.

1988—Subsec. (b)(1). Pub. L. 100–607, § 116(1), struck out ''the'' after ''with respect to'' in introductory provisions.

Subsec. (c)(3). Pub. L. 100–690 substituted ''establish and appoint'' and ''established and appointed'' for ''establish'' and ''established'', respectively.

Pub. L. 100–607, § 116(2)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''may, with the approval of the advisory council for the institute and the Director of NIH, appoint technical and scientific peer review groups in addition to those appointed under section 282(b)(6) of this title.''

Subsec. (c)(4). Pub. L. 100–607, § 116(2)(C), added par. (4).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

ENHANCING THE CLINICAL AND TRANSLATIONAL SCIENCE AWARD

Pub. L. 109–482, title I, §106, Jan. 15, 2007, 120 Stat. 3696, provided that:

''(a) IN GENERAL.—In administering the Clinical and Translational Science Award, the Director of NIH shall establish a mechanism to preserve independent funding and infrastructure for pediatric clinical research centers by—

''(1) allowing the appointment of a secondary principal investigator under a single Clinical and Translational Science Award, such that a pediatric principal investigator may be appointed with direct authority over a separate budget and infrastructure for pediatric clinical research; or

''(2) otherwise securing institutional independence of pediatric clinical research centers with respect to finances, infrastructure, resources, and research agenda.

''(b) REPORT.—As part of the biennial report under section 403 of the Public Health Service Act [section 283 of this title], the Director of NIH shall provide an evaluation and comparison of outcomes and effectiveness of training programs under subsection (a).

''(c) DEFINITION.—For purposes of this section, the term 'Director of NIH' has the meaning given such term in section 401 of the Public Health Service Act [section 281 of this title].''

§ 284a. Advisory councils

(a) Establishment; acceptance of conditional gifts; functions

(1) Except as provided in subsection (h) of this section, the Secretary shall appoint an advisory council for each national research institute which (A) shall advise, assist, consult with, and make recommendations to the Secretary and the Director of such institute on matters related to the activities carried out by and through the institute and the policies respecting such activities, and (B) shall carry out the special functions prescribed by part C of this subchapter.

(2) Each advisory council for a national research institute may recommend to the Secretary acceptance, in accordance with section 238 of this title, of conditional gifts for study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the institute was established, for the acquisition of grounds, or for the construction, equipping, or maintenance of facilities for the institute.

(3) Each advisory council for a national research institute—

(A)(i) may on the basis of the materials provided under section 289a(b)(2) of this title respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research,

(ii) may review applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 284(b)(2) of this title and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the institute;

(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the institute was established and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; compensation

(1) Each advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary. The ex officio members shall be nonvoting members.

(2) The ex officio members of an advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the national research institute for which the council is established, the Under Secretary for Health of the Department of Veterans Affairs or the Chief Dental Director of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of an advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including not less than two individuals who are leaders in the fields of public health and the behavioral or social sciences) relevant to the activities of the national research institute for which the advisory council is established.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule.

(c) Term of office; reappointment; vacancy

The term of office of an appointed member of an advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term for 180 days after the date of such expiration. A member who has been ap-

pointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; term of office

The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the national research institute for which the advisory council is established to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least three times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the national research institute for which the advisory council was established.

(f) Appointment of executive secretary; training and orientation for new members

The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Comments and recommendations for inclusion in biennial report; additional reports

Each advisory council may prepare, for inclusion in the biennial report made under section 284b[1] of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the national research institute for which it was established in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the institute. Each advisory council may prepare such additional reports as it may determine appropriate.

(h) Advisory councils in existence; application of section to National Cancer Advisory Board and advisory council to National Heart, Lung, and Blood Institute

(1) Except as provided in paragraph (2), this section does not terminate the membership of any advisory council for a national research institute which was in existence on November 20, 1985. After November 20, 1985—

(A) the Secretary shall make appointments to each such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by this section;

(B) each advisory council shall organize itself in accordance with this section and exercise the functions prescribed by this section; and

(C) the Director of each national research institute shall perform for such advisory council the functions prescribed by this section.

(2)(A) The National Cancer Advisory Board shall be the advisory council for the National Cancer Institute. This section applies to the National Cancer Advisory Board, except that—

(i) appointments to such Board shall be made by the President;

(ii) the term of office of an appointed member shall be 6 years;

(iii) of the members appointed to the Board not less than five members shall be individuals knowledgeable in environmental carcinogenesis (including carcinogenesis involving occupational and dietary factors);

(iv) the chairman of the Board shall be selected by the President from the appointed members and shall serve as chairman for a term of two years;

(v) the ex officio members of the Board shall be nonvoting members and shall be the Secretary, the Director of the Office of Science and Technology Policy, the Director of NIH, the Under Secretary for Health of the Department of Veterans Affairs, the Director of the National Institute for Occupational Safety and Health, the Director of the National Institute of Environmental Health Sciences, the Secretary of Labor, the Commissioner of the Food and Drug Administration, the Administrator of the Environmental Protection Agency, the Chairman of the Consumer Product Safety Commission, the Assistant Secretary of Defense for Health Affairs, and the Director of the Office of Science of the Department of Energy (or the designees of such officers); and

(vi) the Board shall meet at least four times each fiscal year.

(B) This section applies to the advisory council to the National Heart, Lung, and Blood Institute, except that the advisory council shall meet at least four times each fiscal year.

(July 1, 1944, ch. 373, title IV, § 406, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 828; amended Pub. L. 100–607, title I, § 117, Nov. 4, 1988, 102 Stat. 3053; Pub. L. 101–381, title I, § 102(1), Aug. 18, 1990, 104 Stat. 585; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103–43, title II, § 210(a), title XX, §§ 2008(b)(1), 2010(b)(2), June 10, 1993, 107 Stat. 149, 210, 214; Pub. L. 105–245, title III, § 309(b)(2)(C), Oct. 7, 1998, 112 Stat. 1853.)

REFERENCES IN TEXT

Section 284b of this title, referred to in subsec. (g), was repealed by Pub. L. 109–482, title I, § 104(b)(1)(C), Jan. 15, 2007, 120 Stat. 3693.

AMENDMENTS

1998—Subsec. (h)(2)(A)(v). Pub. L. 105–245 substituted "Science of the Department of Energy" for "Energy Research of the Department of Energy".

[1] See References in Text note below.

1993—Subsec. (a)(2). Pub. L. 103–43, § 2010(b)(2), substituted ''section 238'' for ''section 300aaa''.

Subsec. (b)(2)(A). Pub. L. 103–43, § 2008(b)(1)(A), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

Subsec. (c). Pub. L. 103–43, § 210(a), substituted ''for 180 days after the date of such expiration'' for ''until a successor has taken office''.

Subsec. (h)(2)(A)(v). Pub. L. 103–43, § 2008(b)(1)(B), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsecs. (b)(2)(A), (h)(2)(A)(v). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (b)(1). Pub. L. 100–607, § 117(a), inserted at end ''The ex officio members shall be nonvoting members.''

Subsec. (b)(3)(A). Pub. L. 100–607, § 117(b), inserted ''not less than two individuals who are leaders in the fields of'' after ''(including''.

Subsec. (h)(2)(A)(v). Pub. L. 100–607, § 117(c), inserted ''shall be nonvoting members and'' after ''Board'' and substituted ''the Assistant Secretary of Defense for Health Affairs, and the Director of the Office of Energy Research of the Department of Energy'' for ''and the Assistant Secretary of Defense for Health Affairs''.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 284b. Repealed. Pub. L. 109–482, title I, § 104(b)(1)(C), Jan. 15, 2007, 120 Stat. 3693

Section, act July 1, 1944, ch. 373, title IV, § 407, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 831, related to biennial report and its contents.

EFFECTIVE DATE OF REPEAL

Repeal applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

§ 284c. Certain uses of funds

(a)(1) Except as provided in paragraph (2), the sum of the amounts obligated in any fiscal year for administrative expenses of the National Institutes of Health may not exceed an amount which is 5.5 percent of the total amount appropriated for such fiscal year for the National Institutes of Health.

(2) Paragraph (1) does not apply to the National Library of Medicine, the National Center for Nursing Research, the John E. Fogarty International Center for Advanced Study in the Health Sciences, the Warren G. Magnuson Clinical Center, and the Office of Medical Applications of Research.

(3) For purposes of paragraph (1), the term ''administrative expenses'' means expenses incurred for the support of activities relevant to the award of grants, contracts, and cooperative agreements and expenses incurred for general administration of the scientific programs and activities of the National Institutes of Health.

(b) For fiscal year 1989 and subsequent fiscal years, amounts made available to the National Institutes of Health shall be available for payment of nurses and allied health professionals in accordance with payment authorities, scheduling options, benefits, and other authorities provided under chapter 73 of title 38 for nurses of the Department of Veterans Affairs.

(July 1, 1944, ch. 373, title IV, § 408, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 831; amended Pub. L. 100–607, title I, § 118, Nov. 4, 1988, 102 Stat. 3053; Pub. L. 100–690, title II, § 2613(d), Nov. 18, 1988, 102 Stat. 4239; Pub. L. 103–43, title IV, § 403(b)(1), title XX, § 2008(b)(2), June 10, 1993, 107 Stat. 158, 211; Pub. L. 104–316, title I, § 122(a), Oct. 19, 1996, 110 Stat. 3836; Pub. L. 105–362, title VI, § 601(a)(1)(B), Nov. 10, 1998, 112 Stat. 3285.)

AMENDMENTS

1998—Subsec. (a)(4). Pub. L. 105–362 struck out par. (4) which read as follows: ''Not later than December 31, 1987, and December 31 of each succeeding year, the Secretary shall report to the Congress the amount obligated in the fiscal year preceding such date for administrative expenses of the National Institutes of Health and the total amount appropriated for the National Institutes of Health for such fiscal year. The Secretary shall consult with the Comptroller General of the United States in preparing each report.''

1996—Subsec. (a)(3). Pub. L. 104–316 struck out at end ''In identifying expenses incurred for such support and administration the Secretary shall consult with the Comptroller General of the United States.''

1993—Pub. L. 103–43 amended section catchline generally, redesignated subsec. (b) as (a) and par. (5) of subsec. (a) as (b), struck out former subsec. (a) which authorized appropriations in addition to amounts otherwise appropriated under this subchapter for the National Cancer Institute for programs other than under section 285a–1 of this title and for its program under section 285a–1 of this title and for the National Heart, Lung, and Blood Institute for programs other than under section 285b–1 of this title and for its program under section 285b–1 of this title, and substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in subsec. (b).

1988—Subsec. (a)(1), (2). Pub. L. 100–607, § 118(a), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1)(A) For the National Cancer Institute (other than its programs under section 285a–1 of this title), there are authorized to be appropriated $1,194,000,000 for fiscal year 1986, $1,270,000,000 for fiscal year 1987, and $1,344,000,000 for fiscal year 1988.

''(B) For the programs under section 285a–1 of this title, there are authorized to be appropriated $68,000,000

for fiscal year 1986, $74,000,000 for fiscal year 1987, and $80,000,000 for fiscal year 1988.

''(2)(A) For the National Heart, Lung, and Blood Institute (other than its programs under section 285b–1 of this title), there are authorized to be appropriated $809,000,000 for fiscal year 1986, $871,000,000 for fiscal year 1987, and $927,000,000 for fiscal year 1988. Of the amount appropriated under this subsection for such fiscal year, not less than 15 percent of such amount shall be reserved for programs respecting diseases of the lung and not less than 15 percent of such amount shall be reserved for programs respecting blood diseases and blood resources.

''(B) For the programs under section 285b–1 of this title, there are authorized to be appropriated $82,000,000 for fiscal year 1986, $90,000,000 for fiscal year 1987, and $98,000,000 for fiscal year 1988.''

Subsec. (a)(2)(B). Pub. L. 100–690 inserted a comma after ''section 285b–1 of this title''.

Subsec. (b)(5). Pub. L. 100–607, § 118(b), added par. (5).

CHANGE OF NAME

National Center for Nursing Research changed to National Institute of Nursing Research by Pub. L. 103–43, title XV, § 1511, June 10, 1993, 107 Stat. 178.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

WARREN G. MAGNUSON CLINICAL CENTER; AVAILABILITY OF FUNDS FOR PAYMENT OF NURSES; RATE OF PAY AND OPTIONS AND BENEFITS

Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 738, provided that: ''Funds made available for fiscal year 1986 and hereafter to the Warren G. Magnuson Clinical Center of the National Institutes of Health shall be available for payment of nurses at the rates of pay and with schedule options and benefits authorized for the Veterans Administration pursuant to 38 U.S.C. 4107.''

§ 284d. Definitions

(a) Health service research

For purposes of this subchapter, the term ''health services research'' means research endeavors that study the impact of the organization, financing and management of health services on the quality, cost, access to and outcomes of care. Such term does not include research on the efficacy of services to prevent, diagnose, or treat medical conditions.

(b) Clinical research

As used in this subchapter, the term ''clinical research'' means patient oriented clinical research conducted with human subjects, or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials.

(July 1, 1944, ch. 373, title IV, § 409, as added Pub. L. 102–321, title I, § 121(b), July 10, 1992, 106 Stat. 358; amended Pub. L. 103–43, title XX, § 2016(a), June 10, 1993, 107 Stat. 218; Pub. L. 106–505, title II, § 206, Nov. 13, 2000, 114 Stat. 2329.)

AMENDMENTS

2000—Pub. L. 106–505 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1993—Pub. L. 103–43 inserted at end ''Such term does not include research on the efficacy of services to prevent, diagnose, or treat medical conditions.''

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 284e. Research on osteoporosis, Paget's disease, and related bone disorders

(a) Establishment

The Directors of the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Institute on Aging, the National Institute of Dental Research, and the National Institute of Diabetes and Digestive and Kidney Diseases, shall expand and intensify the programs of such Institutes with respect to research and related activities concerning osteoporosis, Paget's disease, and related bone disorders.

(b) Coordination

The Directors referred to in subsection (a) of this section shall jointly coordinate the programs referred to in such subsection and consult with the Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee and the Interagency Task Force on Aging Research.

(c) Information clearinghouse

(1) In general

In order to assist in carrying out the purpose described in subsection (a) of this section, the Director of NIH shall provide for the establishment of an information clearinghouse on osteoporosis and related bone disorders to facilitate and enhance knowledge and understanding on the part of health professionals, patients, and the public through the effective dissemination of information.

(2) Establishment through grant or contract

For the purpose of carrying out paragraph (1), the Director of NIH shall enter into a grant, cooperative agreement, or contract with a nonprofit private entity involved in activities regarding the prevention and control of osteoporosis and related bone disorders.

(July 1, 1944, ch. 373, title IV, § 409A, as added Pub. L. 103–43, title III, § 302, June 10, 1993, 107 Stat. 151; amended Pub. L. 105–340, title I, § 102, Oct. 31, 1998, 112 Stat. 3192; Pub. L. 109–482, title I, § 103(b)(7), Jan. 15, 2007, 120 Stat. 3687.)

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 struck out heading and text of subsec. (d). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2003.''

1998—Subsec. (d). Pub. L. 105–340 substituted ''through 2003'' for ''and 1996''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or

subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 284f. Parkinson's disease

(a) In general

The Director of NIH shall establish a program for the conduct and support of research and training with respect to Parkinson's disease (subject to the extent of amounts appropriated to carry out this section).

(b) Inter-institute coordination

(1) In general

The Director of NIH shall provide for the coordination of the program established under subsection (a) of this section among all of the national research institutes conducting Parkinson's disease research.

(2) Conference

Coordination under paragraph (1) shall include the convening of a research planning conference not less frequently than once every 2 years. Each such conference shall prepare and submit to the Committee on Appropriations and the Committee on Labor and Human Resources of the Senate and the Committee on Appropriations and the Committee on Commerce of the House of Representatives a report concerning the conference.

(c) Morris K. Udall research centers

(1) In general

The Director of NIH is authorized to award Core Center Grants to encourage the development of innovative multidisciplinary research and provide training concerning Parkinson's disease. The Director is authorized to award not more than 10 Core Center Grants and designate each center funded under such grants as a Morris K. Udall Center for Research on Parkinson's Disease.

(2) Requirements

(A) In general

With respect to Parkinson's disease, each center assisted under this subsection shall—

(i) use the facilities of a single institution or a consortium of cooperating institutions, and meet such qualifications as may be prescribed by the Director of the NIH; and

(ii) conduct basic and clinical research.

(B) Discretionary requirements

With respect to Parkinson's disease, each center assisted under this subsection may—

(i) conduct training programs for scientists and health professionals;

(ii) conduct programs to provide information and continuing education to health professionals;

(iii) conduct programs for the dissemination of information to the public;

(iv) separately or in collaboration with other centers, establish a nationwide data system derived from patient populations with Parkinson's disease, and where possible, comparing relevant data involving general populations;

(v) separately or in collaboration with other centers, establish a Parkinson's Disease Information Clearinghouse to facilitate and enhance knowledge and understanding of Parkinson's disease; and

(vi) separately or in collaboration with other centers, establish a national education program that fosters a national focus on Parkinson's disease and the care of those with Parkinson's disease.

(3) Stipends regarding training programs

A center may use funds provided under paragraph (1) to provide stipends for scientists and health professionals enrolled in training programs under paragraph (2)(B).

(4) Duration of support

Support of a center under this subsection may be for a period not exceeding five years. Such period may be extended by the Director of NIH for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(d) Morris K. Udall Awards for Excellence in Parkinson's Disease Research

The Director of NIH is authorized to establish a grant program to support investigators with a proven record of excellence and innovation in Parkinson's disease research and who demonstrate potential for significant future breakthroughs in the understanding of the pathogensis,[1] diagnosis, and treatment of Parkinson's disease. Grants under this subsection shall be available for a period of not to exceed 5 years.

(July 1, 1944, ch. 373, title IV, § 409B, as added Pub. L. 105–78, title VI, § 603(c), Nov. 13, 1997, 111 Stat. 1520; amended Pub. L. 109–482, title I, § 103(b)(8), Jan. 15, 2007, 120 Stat. 3687.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 109–482, § 103(b)(8)(A), substituted ''to carry out this section'' for ''under subsection (e) of this section''.

Subsec. (e). Pub. L. 109–482, § 103(b)(8)(B), struck out heading and text of subsec. (e). Text read as follows: ''For the purpose of carrying out this section and section 241 of this title and this subchapter with respect to research focused on Parkinson's disease, there are authorized to be appropriated up to $100,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 and 2000.''

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or

[1] So in original. Probably should be ''pathogenesis,''.

subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

ADDITIONAL GRANTS

Pub. L. 108–199, div. E, title II, § 217, Jan. 23, 2004, 118 Stat. 255, provided that: ''Notwithstanding section 409B(c) of the Public Health Service Act [subsec. (c) of this section] regarding a limitation on the number of such grants, funds appropriated in this Act [div. E of Pub. L. 108–199, see Tables for classification] and Acts in fiscal years thereafter may be expended by the Director of the National Institutes of Health to award Core Center Grants to encourage the development of innovative multidisciplinary research and provide training concerning Parkinson's disease. Each center funded under such grants shall be designated as a Morris K. Udall Center for Research on Parkinson's Disease.''

Similar provisions were contained in Pub. L. 108–7, div. G, title II, § 218, Feb. 20, 2003, 117 Stat. 326.

FINDING AND PURPOSE

Section 603(b) of Pub. L. 105–78 provided that:

''(1) FINDING.—Congress finds that to take full advantage of the tremendous potential for finding a cure or effective treatment, the Federal investment in Parkinson's disease must be expanded, as well as the coordination strengthened among the National Institutes of Health research institutes.

''(2) PURPOSE.—It is the purpose of this section [enacting this section] to provide for the expansion and coordination of research regarding Parkinson's disease, and to improve care and assistance for afflicted individuals and their family caregivers.''

§ 284g. Expansion, intensification, and coordination of activities of National Institutes of Health with respect to research on autism spectrum disorder

(a) In general

(1) Expansion of activities

The Director of NIH (in this section referred to as the ''Director'') shall, subject to the availability of appropriations, expand, intensify, and coordinate the activities of the National Institutes of Health with respect to research on autism spectrum disorder, including basic and clinical research in fields including pathology, developmental neurobiology, genetics, epigenetics, pharmacology, nutrition, immunology, neuroimmunology, neurobehavioral development, endocrinology, gastroenterology, and toxicology. Such research shall investigate the cause (including possible environmental causes), diagnosis or rule out, early detection, prevention, services, supports, intervention, and treatment of autism spectrum disorder.

(2) Consolidation

The Director may consolidate program activities under this section if such consolidation would improve program efficiencies and outcomes.

(3) Administration of program; collaboration among agencies

The Director shall carry out this section acting through the Director of the National Institute of Mental Health and in collaboration with any other agencies that the Director determines appropriate.

(b) Centers of excellence

(1) In general

The Director shall under subsection (a)(1) of this section make awards of grants and contracts to public or nonprofit private entities to pay all or part of the cost of planning, establishing, improving, and providing basic operating support for centers of excellence regarding research on autism spectrum disorder.

(2) Research

Each center under paragraph (1) shall conduct basic and clinical research into autism spectrum disorder. Such research should include investigations into the cause, diagnosis, early detection, prevention, control, and treatment of autism spectrum disorder. The centers, as a group, shall conduct research including the fields of developmental neurobiology, genetics, and psychopharmacology.

(3) Services for patients

(A) In general

A center under paragraph (1) may expend amounts provided under such paragraph to carry out a program to make individuals aware of opportunities to participate as subjects in research conducted by the centers.

(B) Referrals and costs

A program under subparagraph (A) may, in accordance with such criteria as the Director may establish, provide to the subjects described in such subparagraph, referrals for health and other services, and such patient care costs as are required for research.

(C) Availability and access

The extent to which a center can demonstrate availability and access to clinical services shall be considered by the Director in decisions about awarding grants to applicants which meet the scientific criteria for funding under this section.

(4) Organization of centers

Each center under paragraph (1) shall use the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director.

(5) Number of centers; duration of support

(A) In general

The Director shall provide for the establishment of not less than five centers under paragraph (1).

(B) Duration

Support for a center established under paragraph (1) may be provided under this section for a period of not to exceed 5 years. Such period may be extended for one or more additional periods not exceeding 5 years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(c) Facilitation of research

The Director shall under subsection (a)(1) of this section provide for a program under which samples of tissues and genetic materials that are of use in research on autism spectrum dis-

order are donated, collected, preserved, and made available for such research. The program shall be carried out in accordance with accepted scientific and medical standards for the donation, collection, and preservation of such samples.

(d) Public input

The Director shall under subsection (a)(1) of this section provide for means through which the public can obtain information on the existing and planned programs and activities of the National Institutes of Health with respect to autism spectrum disorder and through which the Director can receive comments from the public regarding such programs and activities.

(July 1, 1944, ch. 373, title IV, § 409C, as added Pub. L. 106–310, div. A, title I, § 101, Oct. 17, 2000, 114 Stat. 1105; amended Pub. L. 109–416, §§ 2(a), 4(b), Dec. 19, 2006, 120 Stat. 2821, 2830; Pub. L. 109–482, title I, §§ 103(b)(9), 104(b)(1)(D), Jan. 15, 2007, 120 Stat. 3687, 3693.)

PRIOR PROVISIONS

Another section 409C of act July 1, 1944, was renumbered section 409G and is classified to section 284k of this title.

AMENDMENTS

2007—Subsec. (b)(4) to (6). Pub. L. 109–482, § 104(b)(1)(D), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out heading and text of former par. (4). Text read as follows: ''The Director shall, as appropriate, provide for the coordination of information among centers under paragraph (1) and ensure regular communication between such centers, and may require the periodic preparation of reports on the activities of the centers and the submission of the reports to the Director.''

Subsec. (e). Pub. L. 109–482, § 103(b)(9), which directed the striking of subsec. (e), could not be executed because of prior amendment by Pub. L. 109–416. See 2006 Amendment note below.

2006—Pub. L. 109–416, § 2(a)(1), substituted ''autism spectrum disorder'' for ''autism'' in section catchline.

Subsec. (a). Pub. L. 109–416, § 2(a)(3), added pars. (1) and (2), redesignated former par. (2) as (3), and struck out heading and text of former par. (1). Text read as follows: ''The Director of NIH (in this section referred to as the 'Director') shall expand, intensify, and coordinate the activities of the National Institutes of Health with respect to research on autism.''

Subsec. (b)(1), (2). Pub. L. 109–416, § 2(a)(2), substituted ''autism spectrum disorder'' for ''autism'' in par. (1) and in two places in par. (2).

Subsecs. (c), (d). Pub. L. 109–416, § 2(a)(2), substituted ''autism spectrum disorder'' for ''autism''.

Subsec. (e). Pub. L. 109–416, § 4(b), struck out heading and text of subsec. (e). Text read as follows: ''There are authorized to be appropriated such sums as may be necessary to carry out this section. Amounts appropriated under this subsection are in addition to any other amounts appropriated for such purpose.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 284h. Pediatric Research Initiative

(a) Establishment

The Secretary shall establish within the Office of the Director of NIH a Pediatric Research Initiative (referred to in this section as the ''Initiative'') to conduct and support research that is directly related to diseases, disorders, and other conditions in children. The Initiative shall be headed by the Director of NIH.

(b) Purpose

The purpose of the Initiative is to provide funds to enable the Director of NIH—

(1) to increase support for pediatric biomedical research within the National Institutes of Health to realize the expanding opportunities for advancement in scientific investigations and care for children;

(2) to enhance collaborative efforts among the Institutes to conduct and support multidisciplinary research in the areas that the Director deems most promising; and

(3) in coordination with the Food and Drug Administration, to increase the development of adequate pediatric clinical trials and pediatric use information to promote the safer and more effective use of prescription drugs in the pediatric population.

(c) Duties

In carrying out subsection (b) of this section, the Director of NIH shall—

(1) consult with the Director of the National Institute of Child Health and Human Development and the other national research institutes, in considering their requests for new or expanded pediatric research efforts, and consult with the Administrator of the Health Resources and Services Administration and other advisors as the Director determines to be appropriate;

(2) have broad discretion in the allocation of any Initiative assistance among the Institutes, among types of grants, and between basic and clinical research so long as the assistance is directly related to the illnesses and conditions of children; and

(3) be responsible for the oversight of any newly appropriated Initiative funds and annually report to Congress and the public on the extent of the total funds obligated to conduct or support pediatric research across the National Institutes of Health, including the specific support and research awards allocated through the Initiative.

(d) Transfer of funds

The Director of NIH may transfer amounts appropriated under this section to any of the Institutes for a fiscal year to carry out the purposes of the Initiative under this section.

(July 1, 1944, ch. 373, title IV, § 409D, as added Pub. L. 106–310, div. A, title X, § 1001, Oct. 17, 2000, 114 Stat. 1127; amended Pub. L. 109–482, title I, § 103(b)(10), Jan. 15, 2007, 120 Stat. 3687.)

CODIFICATION

Another section 409D of act July 1, 1944, was renumbered section 409H and is classified to section 284*l* of this title.

AMENDMENTS

2007—Subsecs. (d), (e). Pub. L. 109–482 redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated $50,000,000 for fiscal year 2001, and

such sums as may be necessary for each of the fiscal years 2002 through 2005.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 284i. Autoimmune diseases

(a) Expansion, intensification, and coordination of activities

(1) In general

The Director of NIH shall expand, intensify, and coordinate research and other activities of the National Institutes of Health with respect to autoimmune diseases.

(2) Allocations by Director of NIH

With respect to amounts appropriated to carry out this section for a fiscal year, the Director of NIH shall allocate the amounts among the national research institutes that are carrying out paragraph (1).

(3) Definition

The term ''autoimmune disease'' includes, for purposes of this section such diseases or disorders with evidence of autoimmune pathogensis[1] as the Secretary determines to be appropriate.

(b) Coordinating Committee

(1) In general

The Secretary shall ensure that the Autoimmune Diseases Coordinating Committee (referred to in this section as the ''Coordinating Committee'') coordinates activities across the National Institutes and with other Federal health programs and activities relating to such diseases.

(2) Composition

The Coordinating Committee shall be composed of the directors or their designees of each of the national research institutes involved in research with respect to autoimmune diseases and representatives of all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to such diseases, including the Centers for Disease Control and Prevention and the Food and Drug Administration.

(3) Chair

(A) In general

With respect to autoimmune diseases, the Chair of the Committee shall serve as the principal advisor to the Secretary, the Assistant Secretary for Health, and the Director of NIH, and shall provide advice to the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, and other relevant agencies.

(B) Director of NIH

The Chair of the Committee shall be directly responsible to the Director of NIH.

(c) Plan for NIH activities

(1) In general

Not later than 1 year after October 17, 2000, the Coordinating Committee shall develop a plan for conducting and supporting research and education on autoimmune diseases through the national research institutes and shall periodically review and revise the plan. The plan shall—

(A) provide for a broad range of research and education activities relating to biomedical, psychosocial, and rehabilitative issues, including studies of the disproportionate impact of such diseases on women;

(B) identify priorities among the programs and activities of the National Institutes of Health regarding such diseases; and

(C) reflect input from a broad range of scientists, patients, and advocacy groups.

(2) Certain elements of plan

The plan under paragraph (1) shall, with respect to autoimmune diseases, provide for the following as appropriate:

(A) Research to determine the reasons underlying the incidence and prevalence of the diseases.

(B) Basic research concerning the etiology and causes of the diseases.

(C) Epidemiological studies to address the frequency and natural history of the diseases, including any differences among the sexes and among racial and ethnic groups.

(D) The development of improved screening techniques.

(E) Clinical research for the development and evaluation of new treatments, including new biological agents.

(F) Information and education programs for health care professionals and the public.

(3) Implementation of plan

The Director of NIH shall ensure that programs and activities of the National Institutes of Health regarding autoimmune diseases are implemented in accordance with the plan under paragraph (1).

(July 1, 1944, ch. 373, title IV, § 409E, as added Pub. L. 106–310, div. A, title XIX, § 1901, Oct. 17, 2000, 114 Stat. 1153; amended Pub. L. 109–482, title I, §§ 103(b)(11), 104(b)(1)(E), Jan. 15, 2007, 120 Stat. 3687, 3693.)

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482, § 104(b)(1)(E), struck out heading and text of subsec. (d). Text read as follows: ''The Coordinating Committee under subsection (b)(1) of this section shall biennially submit to the Committee on Commerce of the House of Representatives, and the Committee on Health, Education, Labor and Pensions of the Senate, a report that describes the research, education, and other activities on autoimmune diseases being conducted or supported through the national research institutes, and that in addition includes the following:

''(1) The plan under subsection (c)(1) of this section (or revisions to the plan, as the case may be).

''(2) Provisions specifying the amounts expended by the National Institutes of Health with respect to each of the autoimmune diseases included in the plan.

''(3) Provisions identifying particular projects or types of projects that should in the future be considered by the national research institutes or other entities in the field of research on autoimmune diseases.''

Subsec. (e). Pub. L. 109–482, § 103(b)(11), struck out heading and text of subsec. (e). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be nec-

[1] So in original. Probably should be ''pathogenesis''.

essary for each of the fiscal years 2001 through 2005. The authorization of appropriations established in the preceding sentence is in addition to any other authorization of appropriations that is available for conducting or supporting through the National Institutes of Health research and other activities with respect to autoimmune diseases.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 284j. Muscular dystrophy research

(a) Coordination of activities

The Director of NIH shall expand and increase coordination in the activities of the National Institutes of Health with respect to research on muscular dystrophies, including Duchenne muscular dystrophy.

(b) Administration of program; collaboration among agencies

The Director of NIH shall carry out this section through the appropriate institutes, including the National Institute of Neurological Disorders and Stroke and in collaboration with any other agencies that the Director determines appropriate.

(July 1, 1944, ch. 373, title IV, § 409F, as added Pub. L. 106–310, div. A, title XXII, § 2201, Oct. 17, 2000, 114 Stat. 1157; amended Pub. L. 109–482, title I, § 103(b)(12), Jan. 15, 2007, 120 Stat. 3687.)

AMENDMENTS

2007—Subsec. (c). Pub. L. 109–482 struck out heading and text of subsec. (c). Text read as follows: ''There are authorized to be appropriated such sums as may be necessary to carry out this section for each of the fiscal years 2001 through 2005. Amounts appropriated under this subsection shall be in addition to any other amounts appropriated for such purpose.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 284k. Clinical research

(a) In general

The Director of National Institutes of Health shall undertake activities to support and expand the involvement of the National Institutes of Health in clinical research.

(b) Requirements

In carrying out subsection (a) of this section, the Director of National Institutes of Health shall—

(1) consider the recommendations of the Division of Research Grants Clinical Research Study Group and other recommendations for enhancing clinical research; and

(2) establish intramural and extramural clinical research fellowship programs directed specifically at medical and dental students and a continuing education clinical research training program at the National Institutes of Health.

(c) Support for the diverse needs of clinical research

The Director of National Institutes of Health, in cooperation with the Directors of the Institutes, Centers, and Divisions of the National Institutes of Health, shall support and expand the resources available for the diverse needs of the clinical research community, including inpatient, outpatient, and critical care clinical research.

(d) Peer review

The Director of National Institutes of Health shall establish peer review mechanisms to evaluate applications for the awards and fellowships provided for in subsection (b)(2) of this section and section 284*l* of this title. Such review mechanisms shall include individuals who are exceptionally qualified to appraise the merits of potential clinical research training and research grant proposals.

(July 1, 1944, ch. 373, title IV, § 409G, formerly § 409C, as added Pub. L. 106–505, title II, § 203, Nov. 13, 2000, 114 Stat. 2326; renumbered § 409G, Pub. L. 107–109, § 3(1), Jan. 4, 2002, 115 Stat. 1408.)

REFERENCES IN TEXT

Section 284*l* of this title, referred to in subsec. (d), was in the original ''section 409D'', and was translated as meaning section 409D of act July 1, 1944, ch. 373, as added by section 204(b) of Pub. L. 106–505. Such section 409D was renumbered section 409H of act July 1, 1944, ch. 373, by Pub. L. 107–109, § 3(2), Jan. 4, 2002, 115 Stat. 1408. Another section 409D of act July 1, 1944, ch. 373, as added by section 1001 of Pub. L. 106–310, is classified to section 284h of this title.

FINDINGS AND PURPOSE

Pub. L. 106–505, title II, § 202, Nov. 13, 2000, 114 Stat. 2325, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Clinical research is critical to the advancement of scientific knowledge and to the development of cures and improved treatment for disease.

''(2) Tremendous advances in biology are opening doors to new insights into human physiology, pathophysiology and disease, creating extraordinary opportunities for clinical research.

''(3) Clinical research includes translational research which is an integral part of the research process leading to general human applications. It is the bridge between the laboratory and new methods of diagnosis, treatment, and prevention and is thus essential to progress against cancer and other diseases.

''(4) The United States will spend more than $1,200,000,000,000 on health care in 1999, but the Federal budget for health research at the National Institutes of Health was $15,600,000,000 only 1 percent of that total.

''(5) Studies at the Institute of Medicine, the National Research Council, and the National Academy of Sciences have all addressed the current problems in clinical research.

''(6) The Director of the National Institutes of Health has recognized the current problems in clinical research and appointed a special panel, which recommended expanded support for existing National Institutes of Health clinical research programs and the creation of new initiatives to recruit and retain clinical investigators.

''(7) The current level of training and support for health professionals in clinical research is fragmented, undervalued, and underfunded.

''(8) Young investigators are not only apprentices for future positions but a crucial source of energy, enthusiasm, and ideas in the day-to-day research that constitutes the scientific enterprise. Serious questions about the future of life-science research are raised by the following:

''(A) The number of young investigators applying for grants dropped by 54 percent between 1985 and 1993.

''(B) The number of physicians applying for first-time National Institutes of Health research project grants fell from 1226 in 1994 to 963 in 1998, a 21 percent reduction.

''(C) Newly independent life-scientists are expected to raise funds to support their new research programs and a substantial proportion of their own salaries.

''(9) The following have been cited as reasons for the decline in the number of active clinical researchers, and those choosing this career path:

''(A) A medical school graduate incurs an average debt of $85,619, as reported in the Medical School Graduation Questionnaire by the Association of American Medical Colleges (AAMC).

''(B) The prolonged period of clinical training required increases the accumulated debt burden.

''(C) The decreasing number of mentors and role models.

''(D) The perceived instability of funding from the National Institutes of Health and other Federal agencies.

''(E) The almost complete absence of clinical research training in the curriculum of training grant awardees.

''(F) Academic Medical Centers are experiencing difficulties in maintaining a proper environment for research in a highly competitive health care marketplace, which are compounded by the decreased willingness of third party payers to cover health care costs for patients engaged in research studies and research procedures.

''(10) In 1960, general clinical research centers were established under the Office of the Director of the National Institutes of Health with an initial appropriation of $3,000,000.

''(11) Appropriations for general clinical research centers in fiscal year 1999 equaled $200,500,000.

''(12) Since the late 1960s, spending for general clinical research centers has declined from approximately 3 percent to 1 percent of the National Institutes of Health budget.

''(13) In fiscal year 1999, there were 77 general clinical research centers in operation, supplying patients in the areas in which such centers operate with access to the most modern clinical research and clinical research facilities and technologies.

''(b) PURPOSE.—It is the purpose of this title [see Short Title of 2000 Amendments note set out under section 201 of this title] to provide additional support for and to expand clinical research programs.''

OVERSIGHT BY GAO

Pub. L. 106–505, title II, § 207, Nov. 13, 2000, 114 Stat. 2330, provided that, not later than 18 months after Nov. 13, 2000, the Comptroller General was to submit to Congress a report describing the extent to which the National Institutes of Health had complied with the amendments made by title II of Pub. L. 106–505.

§ 284*l*. Enhancement awards

(a) Mentored Patient-Oriented Research Career Development Awards

(1) Grants

(A) In general

The Director of the National Institutes of Health shall make grants (to be referred to as ''Mentored Patient-Oriented Research Career Development Awards'') to support individual careers in clinical research at general clinical research centers or at other institutions that have the infrastructure and resources deemed appropriate for conducting patient-oriented clinical research.

(B) Use

Grants under subparagraph (A) shall be used to support clinical investigators in the early phases of their independent careers by providing salary and such other support for a period of supervised study.

(2) Applications

An application for a grant under this subsection shall be submitted by an individual scientist at such time as the Director may require.

(b) Mid-Career Investigator Awards in Patient-Oriented Research

(1) Grants

(A) In general

The Director of the National Institutes of Health shall make grants (to be referred to as ''Mid-Career Investigator Awards in Patient-Oriented Research'') to support individual clinical research projects at general clinical research centers or at other institutions that have the infrastructure and resources deemed appropriate for conducting patient-oriented clinical research.

(B) Use

Grants under subparagraph (A) shall be used to provide support for mid-career level clinicians to allow such clinicians to devote time to clinical research and to act as mentors for beginning clinical investigators.

(2) Applications

An application for a grant under this subsection shall be submitted by an individual scientist at such time as the Director requires.

(c) Graduate Training in Clinical Investigation Award

(1) In general

The Director of the National Institutes of Health shall make grants (to be referred to as ''Graduate Training in Clinical Investigation Awards'') to support individuals pursuing master's or doctoral degrees in clinical investigation.

(2) Applications

An application for a grant under this subsection shall be submitted by an individual scientist at such time as the Director may require.

(3) Limitations

Grants under this subsection shall be for terms of 2 years or more and shall provide stipend, tuition, and institutional support for individual advanced degree programs in clinical investigation.

(4) Definition

As used in this subsection, the term ''advanced degree programs in clinical investigation'' means programs that award a master's or Ph.D. degree in clinical investigation after 2 or more years of training in areas such as the following:

(A) Analytical methods, biostatistics, and study design.

(B) Principles of clinical pharmacology and pharmacokinetics.

(C) Clinical epidemiology.

(D) Computer data management and medical informatics.

(E) Ethical and regulatory issues.
(F) Biomedical writing.

(d) Clinical Research Curriculum Awards

(1) In general

The Director of the National Institutes of Health shall make grants (to be referred to as ''Clinical Research Curriculum Awards'') to institutions for the development and support of programs of core curricula for training clinical investigators, including medical students. Such core curricula may include training in areas such as the following:

(A) Analytical methods, biostatistics, and study design.
(B) Principles of clinical pharmacology and pharmacokinetics.
(C) Clinical epidemiology.
(D) Computer data management and medical informatics.
(E) Ethical and regulatory issues.
(F) Biomedical writing.

(2) Applications

An application for a grant under this subsection shall be submitted by an individual institution or a consortium of institutions at such time as the Director may require. An institution may submit only one such application.

(3) Limitations

Grants under this subsection shall be for terms of up to 5 years and may be renewable.

(July 1, 1944, ch. 373, title IV, § 409H, formerly § 409D, as added Pub. L. 106–505, title II, § 204(b), Nov. 13, 2000, 114 Stat. 2327; renumbered § 409H, Pub. L. 107–109, § 3(2), Jan. 4, 2002, 115 Stat. 1408; Pub. L. 109–482, title I, § 103(b)(13), Jan. 15, 2007, 120 Stat. 3687.)

AMENDMENTS

2007—Subsec. (a)(3). Pub. L. 109–482, § 103(b)(13)(A), struck out heading and text of par. (3). Text read as follows: ''For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each fiscal year.''

Subsec. (b)(3). Pub. L. 109–482, § 103(b)(13)(B), struck out heading and text of par. (3). Text read as follows: ''For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each fiscal year.''

Subsec. (c)(5). Pub. L. 109–482, § 103(b)(13)(C), struck out heading and text of par. (5). Text read as follows: ''For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each fiscal year.''

Subsec. (d)(4). Pub. L. 109–482, § 103(b)(13)(D), struck out heading and text of par. (4). Text read as follows: ''For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each fiscal year.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 284m. Program for pediatric studies of drugs

(a) List of drugs for which pediatric studies are needed

(1) In general

Not later than one year after January 4, 2002, the Secretary, acting through the Director of the National Institutes of Health and in consultation with the Commissioner of Food and Drugs and experts in pediatric research, shall develop, prioritize, and publish an annual list of approved drugs for which—

(A)(i) there is an approved application under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j));

(ii) there is a submitted application that could be approved under the criteria of section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j));

(iii) there is no patent protection or market exclusivity protection under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

(iv) there is a referral for inclusion on the list under section 505A(d)(4)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(d)(4)(C)); and

(B) in the case of a drug referred to in clause (i), (ii), or (iii) of subparagraph (A), additional studies are needed to assess the safety and effectiveness of the use of the drug in the pediatric population.

(2) Consideration of available information

In developing and prioritizing the list under paragraph (1), the Secretary shall consider, for each drug on the list—

(A) the availability of information concerning the safe and effective use of the drug in the pediatric population;

(B) whether additional information is needed;

(C) whether new pediatric studies concerning the drug may produce health benefits in the pediatric population; and

(D) whether reformulation of the drug is necessary.

(b) Contracts for pediatric studies

The Secretary shall award contracts to entities that have the expertise to conduct pediatric clinical trials (including qualified universities, hospitals, laboratories, contract research organizations, federally funded programs such as pediatric pharmacology research units, other public or private institutions, or individuals) to enable the entities to conduct pediatric studies concerning one or more drugs identified in the list described in subsection (a) of this section.

(c) Process for contracts and labeling changes

(1) Written request to holders of approved applications for drugs lacking exclusivity

The Commissioner of Food and Drugs, in consultation with the Director of the National Institutes of Health, may issue a written request (which shall include a timeframe for negotiations for an agreement) for pediatric studies concerning a drug identified in the list described in subsection (a)(1)(A) of this section (except clause (iv)) to all holders of an approved application for the drug under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355]. Such a written request shall be made in a manner equivalent to the manner in which a written request is made under subsection (a) or (b) of section 505A of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355a], including with respect to infor-

mation provided on the pediatric studies to be conducted pursuant to the request.

(2) Requests for contract proposals

If the Commissioner of Food and Drugs does not receive a response to a written request issued under paragraph (1) within 30 days of the date on which a request was issued, or if a referral described in subsection (a)(1)(A)(iv) of this section is made, the Secretary, acting through the Director of the National Institutes of Health and in consultation with the Commissioner of Food and Drugs, shall publish a request for contract proposals to conduct the pediatric studies described in the written request.

(3) Disqualification

A holder that receives a first right of refusal shall not be entitled to respond to a request for contract proposals under paragraph (2).

(4) Guidance

Not later than 270 days after January 4, 2002, the Commissioner of Food and Drugs shall promulgate guidance to establish the process for the submission of responses to written requests under paragraph (1).

(5) Contracts

A contract under this section may be awarded only if a proposal for the contract is submitted to the Secretary in such form and manner, and containing such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(6) Reporting of studies

(A) In general

On completion of a pediatric study in accordance with a contract awarded under this section, a report concerning the study shall be submitted to the Director of the National Institutes of Health and the Commissioner of Food and Drugs. The report shall include all data generated in connection with the study.

(B) Availability of reports

Each report submitted under subparagraph (A) shall be considered to be in the public domain (subject to section 505A(d)(4)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(d)(4)(D))[1] and shall be assigned a docket number by the Commissioner of Food and Drugs. An interested person may submit written comments concerning such pediatric studies to the Commissioner of Food and Drugs, and the written comments shall become part of the docket file with respect to each of the drugs.

(C) Action by Commissioner

The Commissioner of Food and Drugs shall take appropriate action in response to the reports submitted under subparagraph (A) in accordance with paragraph (7).

(7) Requests for labeling change

During the 180-day period after the date on which a report is submitted under paragraph (6)(A), the Commissioner of Food and Drugs shall—

(A) review the report and such other data as are available concerning the safe and effective use in the pediatric population of the drug studied;

(B) negotiate with the holders of approved applications for the drug studied for any labeling changes that the Commissioner of Food and Drugs determines to be appropriate and requests the holders to make; and

(C)(i) place in the public docket file a copy of the report and of any requested labeling changes; and

(ii) publish in the Federal Register a summary of the report and a copy of any requested labeling changes.

(8) Dispute resolution

(A) Referral to Pediatric Advisory Committee

If, not later than the end of the 180-day period specified in paragraph (7), the holder of an approved application for the drug involved does not agree to any labeling change requested by the Commissioner of Food and Drugs under that paragraph, the Commissioner of Food and Drugs shall refer the request to the Pediatric Advisory Committee.

(B) Action by the Pediatric Advisory Committee

Not later than 90 days after receiving a referral under subparagraph (A), the Pediatric Advisory Committee shall—

(i) review the available information on the safe and effective use of the drug in the pediatric population, including study reports submitted under this section; and

(ii) make a recommendation to the Commissioner of Food and Drugs as to appropriate labeling changes, if any.

(9) FDA determination

Not later than 30 days after receiving a recommendation from the Pediatric Advisory Committee under paragraph (8)(B)(ii) with respect to a drug, the Commissioner of Food and Drugs shall consider the recommendation and, if appropriate, make a request to the holders of approved applications for the drug to make any labeling change that the Commissioner of Food and Drugs determines to be appropriate.

(10) Failure to agree

If a holder of an approved application for a drug, within 30 days after receiving a request to make a labeling change under paragraph (9), does not agree to make a requested labeling change, the Commissioner may deem the drug to be misbranded under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(11) No effect on authority

Nothing in this subsection limits the authority of the United States to bring an enforcement action under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] when a drug lacks appropriate pediatric labeling. Neither course of action (the Pediatric Advisory Committee process or an enforcement action referred to in the preceding sentence) shall preclude, delay, or serve as the basis to stay the other course of action.

[1] So in original. There probably should be an additional closing parenthesis.

(12) Recommendation for formulation changes

If a pediatric study completed under public contract indicates that a formulation change is necessary and the Secretary agrees, the Secretary shall send a nonbinding letter of recommendation regarding that change to each holder of an approved application.

(July 1, 1944, ch. 373, title IV, § 409I, as added Pub. L. 107–109, § 3(3), Jan. 4, 2002, 115 Stat. 1408; amended Pub. L. 108–155, § 3(b)(6), Dec. 3, 2003, 117 Stat. 1942; Pub. L. 109–482, title I, § 103(b)(14), Jan. 15, 2007, 120 Stat. 3687.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (a)(1)(A)(iii) and (c)(10), (11), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 struck out subsec. (d) which related to authorization and availability of appropriations.

2003—Subsec. (c)(8), (9), (11). Pub. L. 108–155 struck out ''Advisory Subcommittee of the Anti-Infective Drugs'' before ''Advisory Committee'' wherever appearing.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–155 effective Dec. 3, 2003, except as otherwise provided, see section 4 of Pub. L. 108–155, set out as an Effective Date note under section 355c of Title 21, Food and Drugs.

PEDIATRIC ADVISORY COMMITTEE

Pub. L. 107–109, § 14, Jan. 4, 2002, 115 Stat. 1419, as amended by Pub. L. 108–155, § 3(b)(2), Dec. 3, 2003, 117 Stat. 1941, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall, under section 222 of the Public Health Service Act (42 U.S.C. 217a) or other appropriate authority, convene and consult an advisory committee on pediatric therapeutics (referred to in this section as the 'advisory committee').

''(b) PURPOSE.—

''(1) IN GENERAL.—The advisory committee shall advise and make recommendations to the Secretary, through the Commissioner of Food and Drugs, on matters relating to pediatric therapeutics.

''(2) MATTERS INCLUDED.—The matters referred to in paragraph (1) include—

''(A) pediatric research conducted under sections 351, 409I, and 499 of the Public Health Service Act [sections 262, 284m, and 290b of this title] and sections 501, 502, 505, 505A, and 505B of the Federal Food, Drug, and Cosmetic Act [sections 351, 352, 355, 355a, and 355c of Title 21, Food and Drugs];

''(B) identification of research priorities related to pediatric therapeutics and the need for additional treatments of specific pediatric diseases or conditions; and

''(C) the ethics, design, and analysis of clinical trials related to pediatric therapeutics.

''(c) COMPOSITION.—The advisory committee shall include representatives of pediatric health organizations, pediatric researchers, relevant patient and patient-family organizations, and other experts selected by the Secretary.''

§ 284n. Certain demonstration projects

(a) Bridging the sciences

(1) In general

From amounts to be appropriated under section 282a(b) of this title, the Secretary of Health and Human Services, acting through the Director of NIH, (in this subsection referred to as the ''Secretary'') in consultation with the Director of the National Science Foundation, the Secretary of Energy, and other agency heads when necessary, may allocate funds for the national research institutes and national centers to make grants for the purpose of improving the public health through demonstration projects for biomedical research at the interface between the biological, behavioral, and social sciences and the physical, chemical, mathematical, and computational sciences.

(2) Goals, priorities, and methods; interagency collaboration

The Secretary shall establish goals, priorities, and methods of evaluation for research under paragraph (1), and shall provide for interagency collaboration with respect to such research. In developing such goals, priorities, and methods, the Secretary shall ensure that—

(A) the research reflects the vision of innovation and higher risk with long-term payoffs; and

(B) the research includes a wide spectrum of projects, funded at various levels, with varying timeframes.

(3) Peer review

A grant may be made under paragraph (1) only if the application for the grant has undergone technical and scientific peer review under section 289a of this title and has been reviewed by the advisory council under section 282(k) of this title or has been reviewed by an advisory council composed of representatives from appropriate scientific disciplines who can fully evaluate the applicant.

(b) High-risk, high-reward research

(1) In general

From amounts to be appropriated under section 282a(b) of this title, the Secretary, acting through the Director of NIH, may allocate funds for the national research institutes and national centers to make awards of grants or contracts or to engage in other transactions for demonstration projects for high-impact, cutting-edge research that fosters scientific creativity and increases fundamental biological understanding leading to the prevention, diagnosis, and treatment of diseases and disorders. The head of a national research institute or national center may conduct or support such high-impact, cutting-edge research (with funds allocated under the preceding sentence or otherwise available for such purpose) if the institute or center gives notice to the Director of NIH beforehand and submits a report to the Director of NIH on an annual basis on the activities of the institute or center relating to such research.

(2) Special consideration

In carrying out the program under paragraph (1), the Director of NIH shall give special consideration to coordinating activities with national research institutes whose budgets are substantial relative to a majority of the other institutes.

(3) Administration of program

Activities relating to research described in paragraph (1) shall be designed by the Director of NIH or the head of a national research institute or national center, as applicable, to enable such research to be carried out with maximum flexibility and speed.

(4) Public-private partnerships

In providing for research described in paragraph (1), the Director of NIH or the head of a national research institute or national center, as applicable, shall seek to facilitate partnerships between public and private entities and shall coordinate when appropriate with the Foundation for the National Institutes of Health.

(5) Peer review

A grant for research described in paragraph (1) may be made only if the application for the grant has undergone technical and scientific peer review under section 289a of this title and has been reviewed by the advisory council under section 282(k) of this title.

(c) Report to Congress

Not later than the end of fiscal year 2009, the Secretary, acting through the Director of NIH, shall conduct an evaluation of the activities under this section and submit a report to the Congress on the results of such evaluation.

(d) Definitions

For purposes of this section, the terms ''Director of NIH'', ''national research institute'', and ''national center'' have the meanings given such terms in section 281 of this title.

(Pub. L. 109–482, title I, § 105, Jan. 15, 2007, 120 Stat. 3694.)

CODIFICATION

Section was enacted as part of the National Institutes of Health Reform Act of 2006, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

PART C—SPECIFIC PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

SUBPART 1—NATIONAL CANCER INSTITUTE

§ 285. Purpose of Institute

The general purpose of the National Cancer Institute (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to the cause, diagnosis, prevention, and treatment of cancer, rehabilitation from cancer, and the continuing care of cancer patients and the families of cancer patients.

(July 1, 1944, ch. 373, title IV, § 410, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 832; amended Pub. L. 100–607, title I, § 121, Nov. 4, 1988, 102 Stat. 3054.)

AMENDMENTS

1988—Pub. L. 100–607 inserted '', rehabilitation from cancer,'' after ''treatment of cancer''.

§ 285a. National Cancer Program

The National Cancer Program shall consist of (1) an expanded, intensified, and coordinated cancer research program encompassing the research programs conducted and supported by the Institute and the related research programs of the other national research institutes, including an expanded and intensified research program for the prevention of cancer caused by occupational or environmental exposure to carcinogens, and (2) the other programs and activities of the Institute.

(July 1, 1944, ch. 373, title IV, § 411, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 832.)

§ 285a–1. Cancer control programs

The Director of the Institute shall establish and support demonstration, education, and other programs for the detection, diagnosis, prevention, and treatment of cancer and for rehabilitation and counseling respecting cancer. Programs established and supported under this section shall include—

(1) locally initiated education and demonstration programs (and regional networks of such programs) to transmit research results and to disseminate information respecting—

(A) the detection, diagnosis, prevention, and treatment of cancer,

(B) the continuing care of cancer patients and the families of cancer patients, and

(C) rehabilitation and counseling respecting cancer,

to physicians and other health professionals who provide care to individuals who have cancer;

(2) the demonstration of and the education of students of the health professions and health professionals in—

(A) effective methods for the prevention and early detection of cancer and the identification of individuals with a high risk of developing cancer, and

(B) improved methods of patient referral to appropriate centers for early diagnosis and treatment of cancer; and

(3) the demonstration of new methods for the dissemination of information to the general public concerning the prevention, early detection, diagnosis, and treatment and control of cancer and information concerning unapproved and ineffective methods, drugs, and devices for the diagnosis, prevention, treatment, and control of cancer.

(July 1, 1944, ch. 373, title IV, § 412, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 832.)

§ 285a–2. Special authorities of Director

(a) Information and education program

(1) The Director of the Institute shall establish an information and education program to collect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to cancer patients and their families, physicians and other health professionals, and the general public, information on cancer research, diagnosis, prevention, and treatment (including information respecting nutrition programs for cancer patients and the relationship between nutrition and cancer). The Director of the Institute may take such action as may be necessary to insure that all channels for the dissemination and exchange of scientific knowledge and information are maintained between the Institute and the public and between the Institute and other scientific, medical, and biomedical disciplines and organizations nationally and internationally.

(2) In carrying out paragraph (1), the Director of the Institute shall—

(A) provide public and patient information and education programs, providing information that will help individuals take personal steps to reduce their risk of cancer, to make them aware of early detection techniques and to motivate appropriate utilization of those techniques, to help individuals deal with cancer if it strikes, and to provide information to improve long-term survival;

(B) continue and expand programs to provide physicians and the public with state-of-the-art information on the treatment of particular forms of cancers, and to identify those clinical trials that might benefit patients while advancing knowledge of cancer treatment;

(C) assess the incorporation of state-of-the-art cancer treatments into clinical practice and the extent to which cancer patients receive such treatments and include the results of such assessments in the biennial reports required under section 284b[1] of this title;

(D) maintain and operate the International Cancer Research Data Bank, which shall collect, catalog, store, and disseminate insofar as feasible the results of cancer research and treatment undertaken in any country for the use of any person involved in cancer research and treatment in any country; and

(E) to the extent practicable, in disseminating the results of such cancer research and treatment, utilize information systems available to the public.

(b) National Cancer Program

The Director of the Institute in carrying out the National Cancer Program—

(1) shall establish or support the large-scale production or distribution of specialized biological materials and other therapeutic substances for cancer research and set standards of safety and care for persons using such materials;

(2) shall, in consultation with the advisory council for the Institute, support (A) research in the cancer field outside the United States by highly qualified foreign nationals which can be expected to benefit the American people, (B) collaborative research involving American and foreign participants, and (C) the training of American scientists abroad and foreign scientists in the United States;

(3) shall, in consultation with the advisory council for the Institute, support appropriate programs of education and training (including continuing education and laboratory and clinical research training);

(4) shall encourage and coordinate cancer research by industrial concerns where such concerns evidence a particular capability for such research;

(5) may obtain (after consultation with the advisory council for the Institute and in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of service) the services of not more than one hundred and fifty-one experts or consultants who have scientific or professional qualifications;

(6)(A) may, in consultation with the advisory council for the Institute, acquire, construct, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director determines necessary;

(B) may, in consultation with the advisory council for the Institute, make grants for construction or renovation of facilities; and

(C) may, in consultation with the advisory council for the Institute, acquire, without regard to section 8141 of title 40, by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

(7) may, in consultation with the advisory council for the Institute, appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments to advise the Director with respect to the Director's functions;

(8) may, subject to section 284(b)(2) of this title and without regard to section 3324 of title 31 and section 5 of title 41, enter into such contracts, leases, cooperative agreements, as may be necessary in the conduct of functions of the Director, with any public agency, or with any person, firm, association, corporation, or educational institution; and

(9) shall, notwithstanding section 284(a) of this title, prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate (including an estimate of the number and type of personnel needs for the Institute) for the National Cancer Program, after reasonable opportunity for comment (but without change) by the Secretary, the Director of NIH, and the Institute's advisory council.

Except as otherwise provided, experts and consultants whose services are obtained under paragraph (5) shall be paid or reimbursed, in accordance with title 5 for their travel to and from their place of service and for other expenses associated with their assignment. Such expenses

[1] See References in Text note below.

shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (5) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Director of the Institute. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under the preceding sentence.

(c) Pre-clinical models to evaluate promising pediatric cancer therapies

(1) Expansion and coordination of activities

The Director of the National Cancer Institute shall expand, intensify, and coordinate the activities of the Institute with respect to research on the development of preclinical models to evaluate which therapies are likely to be effective for treating pediatric cancer.

(2) Coordination with other institutes

The Director of the Institute shall coordinate the activities under paragraph (1) with similar activities conducted by other national research institutes and agencies of the National Institutes of Health to the extent that those Institutes and agencies have responsibilities that are related to pediatric cancer.

(July 1, 1944, ch. 373, title IV, § 413, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 833; amended Pub. L. 100–607, title I, § 122, Nov. 4, 1988, 102 Stat. 3054; Pub. L. 101–93, § 5(c), Aug. 16, 1989, 103 Stat. 611; Pub. L. 103–43, title III, § 301(a)(2), June 10, 1993, 107 Stat. 150; Pub. L. 107–109, § 15(b), Jan. 4, 2002, 115 Stat. 1420.)

REFERENCES IN TEXT

Section 284b of this title, referred to in subsec. (a)(2)(C), was repealed by Pub. L. 109–482, title I, § 104(b)(1)(C), Jan. 15, 2007, 120 Stat. 3693.

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (b), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (b)(6)(C), ''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–109 added subsec. (c).

1993—Subsec. (b)(9). Pub. L. 103–43 struck out subpar. (A) designation and subpar. (B) which permitted Director to receive from President and Office of Management and Budget directly all funds appropriated by Congress for obligation and expenditure by Institute.

1989—Subsec. (a)(1). Pub. L. 101–93 substituted ''Institute and'' for ''Institute and and''.

1988—Subsec. (a). Pub. L. 100–607, § 122(1), designated existing provisions as par. (1), substituted ''education program'' for ''education center'', inserted ''and the public and between the Institute and'' after ''between the Institute'', and added par. (2).

Subsec. (b)(5). Pub. L. 100–607, § 122(2)(A), substituted ''after consultation with'' for ''with the approval of''.

Subsec. (b)(8) to (10). Pub. L. 100–607, § 122(2)(B), inserted ''and'' after ''or educational institution;'' in par. (8), redesignated par. (10) as (9), and struck out former par. (9) which related to International Cancer Research Data Bank.

§ 285a–3. National cancer research and demonstration centers

(a) Cooperative agreements and grants for establishing and supporting

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for centers for basic and clinical research into, training in, and demonstration of advanced diagnostic, prevention, control, and treatment methods for cancer.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(b) Uses for Federal payments under cooperative agreements or grants

Federal payments made under a cooperative agreement or grant under subsection (a) of this section may be used for—

(1) construction (notwithstanding any limitation under section 289e of this title);

(2) staffing and other basic operating costs, including such patient care costs as are required for research;

(3) clinical training, including training for allied health professionals, continuing education for health professionals and allied health professions personnel, and information programs for the public respecting cancer; and

(4) demonstration purposes.

As used in this paragraph, the term ''construction'' does not include the acquisition of land, and the term ''training'' does not include research training for which Ruth L. Kirschstein National Research Service Awards may be provided under section 288 of this title.

(c) Period of support; additional periods

Support of a center under subsection (a) of this section may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(d) Construction

Research centers under this section may not be considered centers of excellence for purposes of section 282(b)(10) of this title.

(July 1, 1944, ch. 373, title IV, § 414, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 835; amended Pub. L. 100–607, title I, § 123, Nov. 4, 1988, 102 Stat. 3055; Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874; Pub. L. 109–482, title I, § 108(b), Jan. 15, 2007, 120 Stat. 3697.)

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 added subsec. (d).

2002—Subsec. (b). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards'' in concluding provisions.

1988—Subsec. (a)(1). Pub. L. 100–607 inserted ''control,'' after ''prevention,''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 285a–4. President's Cancer Panel; establishment, membership, etc., functions

(a)(1) The President's Cancer Panel (hereafter in this section referred to as the ''Panel'') shall be composed of three persons appointed by the President who by virtue of their training, experience, and background are exceptionally qualified to appraise the National Cancer Program. At least two members of the Panel shall be distinguished scientists or physicians.

(2)(A) Members of the Panel shall be appointed for three-year terms, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term, and (ii) a member may serve until the member's successor has taken office. If a vacancy occurs in the Panel, the President shall make an appointment to fill the vacancy not later than 90 days after the date the vacancy occurred.

(B) The President shall designate one of the members to serve as the chairman of the Panel for a term of one year.

(C) Members of the Panel shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties as members of the Panel and shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment.

(3) The Panel shall meet at the call of the chairman, but not less often than four times a year. A transcript shall be kept of the proceedings of each meeting of the Panel, and the chairman shall make such transcript available to the public.

(b) The Panel shall monitor the development and execution of the activities of the National Cancer Program, and shall report directly to the President. Any delays or blockages in rapid execution of the Program shall immediately be brought to the attention of the President. The Panel shall submit to the President periodic progress reports on the National Cancer Program and shall submit to the President, the Secretary, and the Congress an annual evaluation of the efficacy of the Program and suggestions for improvements, and shall submit such other reports as the President shall direct.

(July 1, 1944, ch. 373, title IV, § 415, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 835.)

REFERENCES IN TEXT

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (a)(2)(C), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the requirement that the Panel submit to Congress an annual evaluation of the efficacy of the Program and suggestions for improvements, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 189 of House Document No. 103–7.

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285a–5. Associate Director for Prevention; appointment; function

(a) There shall be in the Institute an Associate Director for Prevention to coordinate and promote the programs in the Institute concerning the prevention of cancer. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(b) The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b[1] of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 416, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 836.)

REFERENCES IN TEXT

Section 284b of this title, referred to in subsec. (b), was repealed by Pub. L. 109–482, title I, § 104(b)(1)(C), Jan. 15, 2007, 120 Stat. 3693.

§ 285a–6. Breast and gynecological cancers

(a) Expansion and coordination of activities

The Director of the Institute, in consultation with the National Cancer Advisory Board, shall expand, intensify, and coordinate the activities of the Institute with respect to research on

[1] See References in Text note below.

breast cancer, ovarian cancer, and other cancers of the reproductive system of women.

(b) Coordination with other institutes

The Director of the Institute shall coordinate the activities of the Director under subsection (a) of this section with similar activities conducted by other national research institutes and agencies of the National Institutes of Health to the extent that such Institutes[1] and agencies have responsibilities that are related to breast cancer and other cancers of the reproductive system of women.

(c) Programs for breast cancer

(1) In general

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research to expand the understanding of the cause of, and to find a cure for, breast cancer. Activities under such subsection shall provide for an expansion and intensification of the conduct and support of—

(A) basic research concerning the etiology and causes of breast cancer;

(B) clinical research and related activities concerning the causes, prevention, detection and treatment of breast cancer;

(C) control programs with respect to breast cancer in accordance with section 285a–1 of this title, including community-based programs designed to assist women who are members of medically underserved populations, low-income populations, or minority groups;

(D) information and education programs with respect to breast cancer in accordance with section 285a–2 of this title; and

(E) research and demonstration centers with respect to breast cancer in accordance with section 285a–3 of this title, including the development and operation of centers for breast cancer research to bring together basic and clinical, biomedical and behavioral scientists to conduct basic, clinical, epidemiological, psychosocial, prevention and treatment research and related activities on breast cancer.

Not less than six centers shall be operated under subparagraph (E). Activities of such centers should include supporting new and innovative research and training programs for new researchers. Such centers shall give priority to expediting the transfer of research advances to clinical applications.

(2) Implementation of plan for programs

(A) The Director of the Institute shall ensure that the research programs described in paragraph (1) are implemented in accordance with a plan for the programs. Such plan shall include comments and recommendations that the Director of the Institute considers appropriate, with due consideration provided to the professional judgment needs of the Institute as expressed in the annual budget estimate prepared in accordance with section 285a–2(9)[2] of this title. The Director of the Institute, in consultation with the National Cancer Advisory Board, shall periodically review and revise such plan.

(B) Not later than October 1, 1993, the Director of the Institute shall submit a copy of the plan to the President's Cancer Panel, the Secretary and the Director of NIH.

(C) The Director of the Institute shall submit any revisions of the plan to the President's Cancer Panel, the Secretary, and the Director of NIH.

(D) The Secretary shall provide a copy of the plan submitted under subparagraph (A), and any revisions submitted under subparagraph (C), to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(d) Other cancers

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research on ovarian cancer and other cancers of the reproductive system of women. Activities under such subsection shall provide for the conduct and support of—

(1) basic research concerning the etiology and causes of ovarian cancer and other cancers of the reproductive system of women;

(2) clinical research and related activities into the causes, prevention, detection and treatment of ovarian cancer and other cancers of the reproductive system of women;

(3) control programs with respect to ovarian cancer and other cancers of the reproductive system of women in accordance with section 285a–1 of this title;

(4) information and education programs with respect to ovarian cancer and other cancers of the reproductive system of women in accordance with section 285a–2 of this title; and

(5) research and demonstration centers with respect to ovarian cancer and cancers of the reproductive system in accordance with section 285a–3 of this title.

(e) Report

The Director of the Institute shall prepare, for inclusion in the biennial report submitted under section 284b[3] of this title, a report that describes the activities of the National Cancer Institute under the research programs referred to in subsection (a) of this section, that shall include—

(1) a description of the research plan with respect to breast cancer prepared under subsection (c) of this section;

(2) an assessment of the development, revision, and implementation of such plan;

(3) a description and evaluation of the progress made, during the period for which such report is prepared, in the research programs on breast cancer and cancers of the reproductive system of women;

(4) a summary and analysis of expenditures made, during the period for which such report is made, for activities with respect to breast cancer and cancers of the reproductive system of women conducted and supported by the National Institutes of Health; and

(5) such comments and recommendations as the Director considers appropriate.

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should be section ''285a–2(b)(9)''.

[3] See References in Text note below.

(July 1, 1944, ch. 373, title IV, § 417, as added Pub. L. 103–43, title IV, § 401, June 10, 1993, 107 Stat. 153.)

REFERENCES IN TEXT

Section 284b of this title, referred to in subsec. (e), was repealed by Pub. L. 109–482, title I, § 104(b)(1)(C), Jan. 15, 2007, 120 Stat. 3693.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 285a–7. Prostate cancer

(a) Expansion and coordination of activities

The Director of the Institute, in consultation with the National Cancer Advisory Board, shall expand, intensify, and coordinate the activities of the Institute with respect to research on prostate cancer.

(b) Coordination with other institutes

The Director of the Institute shall coordinate the activities of the Director under subsection (a) of this section with similar activities conducted by other national research institutes and agencies of the National Institutes of Health to the extent that such Institutes[1] and agencies have responsibilities that are related to prostate cancer.

(c) Programs

(1) In general

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research to expand the understanding of the cause of, and to find a cure for, prostate cancer. Activities under such subsection shall provide for an expansion and intensification of the conduct and support of—

(A) basic research concerning the etiology and causes of prostate cancer;

(B) clinical research and related activities concerning the causes, prevention, detection and treatment of prostate cancer;

(C) prevention and control and early detection programs with respect to prostate cancer in accordance with section 285a–1 of this title, particularly as it relates to intensifying research on the role of prostate specific antigen for the screening and early detection of prostate cancer;

(D) an Inter-Institute Task Force, under the direction of the Director of the Institute, to provide coordination between relevant National Institutes of Health components of research efforts on prostate cancer;

(E) control programs with respect to prostate cancer in accordance with section 285a–1 of this title;

(F) information and education programs with respect to prostate cancer in accordance with section 285a–2 of this title; and

(G) research and demonstration centers with respect to prostate cancer in accordance with section 285a–3 of this title, including the development and operation of centers for prostate cancer research to bring together basic and clinical, biomedical and behavioral scientists to conduct basic, clinical, epidemiological, psychosocial, prevention and control, treatment, research, and related activities on prostate cancer.

Not less than six centers shall be operated under subparagraph (G). Activities of such centers should include supporting new and innovative research and training programs for new researchers. Such centers shall give priority to expediting the transfer of research advances to clinical applications.

(2) Implementation of plan for programs

(A) The Director of the Institute shall ensure that the research programs described in paragraph (1) are implemented in accordance with a plan for the programs. Such plan shall include comments and recommendations that the Director of the Institute considers appropriate, with due consideration provided to the professional judgment needs of the Institute as expressed in the annual budget estimate prepared in accordance with section 285a–2(9)[2] of this title. The Director of the Institute, in consultation with the National Cancer Advisory Board, shall periodically review and revise such plan.

(B) Not later than October 1, 1993, the Director of the Institute shall submit a copy of the plan to the President's Cancer Panel, the Secretary, and the Director of NIH.

(C) The Director of the Institute shall submit any revisions of the plan to the President's Cancer Panel, the Secretary, and the Director of NIH.

(D) The Secretary shall provide a copy of the plan submitted under subparagraph (A), and any revisions submitted under subparagraph (C), to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(July 1, 1944, ch. 373, title IV, § 417A, as added Pub. L. 103–43, title IV, § 402, June 10, 1993, 107 Stat. 155.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on En-

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should be section "285a–2(b)(9)".

ergy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 285a–8. Repealed. Pub. L. 109–482, title I, § 103(b)(15), Jan. 15, 2007, 120 Stat. 3687

Section, act July 1, 1944, ch. 373, title IV, § 417B, as added Pub. L. 103–43, title IV, § 403(a), June 10, 1993, 107 Stat. 157; amended Pub. L. 105–340, title I, § 103, Oct. 31, 1998, 112 Stat. 3192; Pub. L. 106–505, title VI, § 602(b), Nov. 13, 2000, 114 Stat. 2346, related to authorization of appropriations.

EFFECTIVE DATE OF REPEAL

Repeal applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

§ 285a–9. Grants for education, prevention, and early detection of radiogenic cancers and diseases

(a) Definition

In this section the term ''entity'' means any—

(1) National Cancer Institute-designated cancer center;

(2) Department of Veterans Affairs hospital or medical center;

(3) Federally Qualified Health Center, community health center, or hospital;

(4) agency of any State or local government, including any State department of health; or

(5) nonprofit organization.

(b) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration in consultation with the Director of the National Institutes of Health and the Director of the Indian Health Service, may make competitive grants to any entity for the purpose of carrying out programs to—

(1) screen individuals described under section 4(a)(1)(A)(i) or 5(a)(1)(A) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for cancer as a preventative health measure;

(2) provide appropriate referrals for medical treatment of individuals screened under paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services;

(3) develop and disseminate public information and education programs for the detection, prevention, and treatment of radiogenic cancers and diseases; and

(4) facilitate putative applicants in the documentation of claims as described in section 5(a) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).

(c) Indian Health Service

The programs under subsection (a) of this section shall include programs provided through the Indian Health Service or through tribal contracts, compacts, grants, or cooperative agreements with the Indian Health Service and which are determined appropriate to raising the health status of Indians.

(d) Grant and contract authority

Entities receiving a grant under subsection (b) of this section may expend the grant to carry out the purpose described in such subsection.

(e) Health coverage unaffected

Nothing in this section shall be construed to affect any coverage obligation of a governmental or private health plan or program relating to an individual referred to under subsection (b)(1) of this section.

(July 1, 1944, ch. 373, title IV, § 417C, as added Pub. L. 106–245, § 4, July 10, 2000, 114 Stat. 508; amended Pub. L. 109–482, title I, §§ 103(b)(16), 104(b)(1)(F), Jan. 15, 2007, 120 Stat. 3687, 3693.)

REFERENCES IN TEXT

Sections 4 and 5 of the Radiation Exposure Compensation Act, referred to in subsec. (b)(1) and (4), are sections 4 and 5 of Pub. L. 101–426, which are set out as a note under section 2210 of this title.

AMENDMENTS

2007—Subsec. (f). Pub. L. 109–482, § 104(b)(1)(F), struck out heading and text of subsec. (f). Text read as follows: ''Beginning on October 1 of the year following the date on which amounts are first appropriated to carry out this section and annually on each October 1 thereafter, the Secretary shall submit a report to the Committee on the Judiciary and the Committee on Health, Education, Labor, and Pensions of the Senate and to the Committee on the Judiciary and the Committee on Commerce of the House of Representatives. Each report shall summarize the expenditures and programs funded under this section as the Secretary determines to be appropriate.''

Subsec. (g). Pub. L. 109–482, § 103(b)(16), struck out heading and text of subsec. (g). Text read as follows: ''There are authorized to be appropriated for the purpose of carrying out this section $20,000,000 for fiscal year 1999 and such sums as may be necessary for each of the fiscal years 2000 through 2009.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 285a–10. Research, information, and education with respect to blood cancer

(a) Joe Moakley Research Excellence Program

(1) In general

The Director of NIH shall expand, intensify, and coordinate programs for the conduct and support of research with respect to blood cancer, and particularly with respect to leukemia, lymphoma, and multiple myeloma.

(2) Administration

The Director of NIH shall carry out this subsection through the Director of the National Cancer Institute and in collaboration with any other agencies that the Director determines to be appropriate.

(b) Geraldine Ferraro Cancer Education Program

(1) In general

The Secretary shall direct the appropriate agency within the Department of Health and Human Services, in collaboration with the Director of NIH, to establish and carry out a pro-

gram to provide information and education for patients and the general public with respect to blood cancer, and particularly with respect to the treatment of leukemia, lymphoma, and multiple myeloma.

(2) Administration

The Agency determined by the Secretary under paragraph (1) shall carry out this subsection in collaboration with private health organizations that have national education and patient assistance programs on blood-related cancers.

(July 1, 1944, ch. 373, title IV, § 417D, as added Pub. L. 107–172, § 3, May 14, 2002, 116 Stat. 541; amended Pub. L. 109–482, title I, § 103(b)(17), Jan. 15, 2007, 120 Stat. 3688.)

CODIFICATION

Section 3 of Pub. L. 107–172, which directed that section 417D (this section) be inserted after section 419C of part C of title IV of the Public Health Service Act, was executed by adding section 417D to part C of title IV of the Public Health Service Act, to reflect the probable intent of Congress, notwithstanding that part C does not contain a section 419C.

AMENDMENTS

2007—Subsec. (a)(3). Pub. L. 109–482, § 103(b)(17)(A), struck out heading and text of par. (3). Text read as follows: ''For the purpose of carrying out this subsection, there is authorized to be appropriated such sums as may be necessary for fiscal year 2002 and each subsequent fiscal year. Such authorizations of appropriations are in addition to other authorizations of appropriations that are available for such purpose.''

Subsec. (b)(3). Pub. L. 109–482, § 103(b)(17)(B), struck out heading and text of par. (3). Text read as follows: ''For the purpose of carrying out this subsection, there is authorized to be appropriated such sums as may be necessary for fiscal year 2002 and each subsequent fiscal year. Such authorizations of appropriations are in addition to other authorizations of appropriations that are available for such purpose.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

CONGRESSIONAL FINDINGS

Pub. L. 107–172, § 2, May 14, 2002, 116 Stat. 541, provided that: ''Congress finds that:

''(1) An estimated 109,500 people in the United States will be diagnosed with leukemia, lymphoma, and multiple myeloma in 2001.

''(2) New cases of the blood cancers described in paragraph (1) account for 8.6 percent of new cancer cases.

''(3) Those devastating blood cancers will cause the deaths of an estimated 60,300 persons in the United States in 2001. Every 9 minutes, a person in the United States dies from leukemia, lymphoma, or multiple myeloma.

''(4) While less than 5 percent of Federal funds for cancer research are spent on those blood cancers, those blood cancers cause 11 percent of all cancer deaths in the United States.

''(5) Increased Federal support of research into leukemia, lymphoma, and multiple myeloma has resulted and will continue to result in significant advances in the treatment, and ultimately the cure, of those blood cancers as well as other cancers.''

SUBPART 2—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

§ 285b. Purpose of Institute

The general purpose of the National Heart, Lung, and Blood Institute (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to heart, blood vessel, lung, and blood diseases and with respect to the use of blood and blood products and the management of blood resources.

(July 1, 1944, ch. 373, title IV, § 418, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 836.)

§ 285b–1. Heart, blood vessel, lung, and blood disease prevention and control programs

(a) The Director of the Institute shall conduct and support programs for the prevention and control of heart, blood vessel, lung, and blood diseases. Such programs shall include community-based and population-based programs carried out in cooperation with other Federal agencies, with public health agencies of State or local governments, with nonprofit private entities that are community-based health agencies, or with other appropriate public or nonprofit private entities.

(b) In carrying out programs under subsection (a) of this section, the Director of the Institute shall give special consideration to the prevention and control of heart, blood vessel, lung, and blood diseases in children, and in populations that are at increased risk with respect to such diseases.

(July 1, 1944, ch. 373, title IV, § 419, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 836; amended Pub. L. 103–43, title V, § 505, June 10, 1993, 107 Stat. 160.)

AMENDMENTS

1993—Pub. L. 103–43 substituted subsecs. (a) and (b) for former section which read as follows: ''The Director of the Institute, under policies established by the Director of NIH and after consultation with the advisory council for the Institute, shall establish programs as necessary for cooperation with other Federal health agencies, State, local, and regional public health agencies, and nonprofit private health agencies in the diagnosis, prevention, and treatment (including the provision of emergency medical services) of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis, and treatment of such diseases of children.''

§ 285b–2. Information and education

The Director of the Institute shall collect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to patients, families of patients, physicians and other health professionals, and the general public, information on research, prevention, diagnosis, and treatment of heart, blood vessel, lung, and blood diseases, the maintenance of health to reduce the incidence of such diseases, and on the use of blood and blood products and the management of blood resources. In carrying out this section, the Director of the Institute shall place special emphasis upon the utilization of collaborative efforts with both the public and private sectors to—

(1) increase the awareness and knowledge of health care professionals and the public regarding the prevention of heart and blood vessel, lung, and blood diseases and the utilization of blood resources; and

(2) develop and disseminate to health professionals, patients and patient families, and the public information designed to encourage adults and children to adopt healthful practices concerning the prevention of such diseases.

(July 1, 1944, ch. 373, title IV, § 420, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 837; amended Pub. L. 100–607, title I, § 126, Nov. 4, 1988, 102 Stat. 3055.)

AMENDMENTS

1988—Pub. L. 100–607 amended second sentence generally. Prior to amendment, second sentence read as follows: ''In carrying out this section the Director of the Institute shall place special emphasis upon—

''(1) the dissemination of information regarding diet and nutrition, environmental pollutants, exercise, stress, hypertension, cigarette smoking, weight control, and other factors affecting the prevention of arteriosclerosis and other cardiovascular diseases and of pulmonary and blood diseases; and

''(2) the dissemination of information designed to encourage children to adopt healthful habits respecting the risk factors related to the prevention of such diseases.''

§ 285b–3. National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program; administrative provisions

(a)(1) The National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program (hereafter in this subpart referred to as the ''Program'') may provide for—

(A) investigation into the epidemiology, etiology, and prevention of all forms and aspects of heart, blood vessel, lung, and blood diseases, including investigations into the social, environmental, behavioral, nutritional, biological, and genetic determinants and influences involved in the epidemiology, etiology, and prevention of such diseases;

(B) studies and research into the basic biological processes and mechanisms involved in the underlying normal and abnormal heart, blood vessel, lung, and blood phenomena;

(C) research into the development, trial, and evaluation of techniques, drugs, and devices (including computers) used in, and approaches to, the diagnosis, treatment (including the provision of emergency medical services), and prevention of heart, blood vessel, lung, and blood diseases and the rehabilitation of patients suffering from such diseases;

(D) establishment of programs that will focus and apply scientific and technological efforts involving the biological, physical, and engineering sciences to all facets of heart, blood vessel, lung, and blood diseases with emphasis on the refinement, development, and evaluation of technological devices that will assist, replace, or monitor vital organs and improve instrumentation for detection, diagnosis, and treatment of and rehabilitation from such diseases;

(E) establishment of programs for the conduct and direction of field studies, large-scale testing and evaluation, and demonstration of preventive, diagnostic, therapeutic, and rehabilitative approaches to, and emergency medical services for, such diseases;

(F) studies and research into blood diseases and blood, and into the use of blood for clinical purposes and all aspects of the management of blood resources in the United States, including the collection, preservation, fractionation, and distribution of blood and blood products;

(G) the education (including continuing education) and training of scientists, clinical investigators, and educators, in fields and specialties (including computer sciences) requisite to the conduct of clinical programs respecting heart, blood vessel, lung, and blood diseases and blood resources;

(H) public and professional education relating to all aspects of such diseases, including the prevention of such diseases, and the use of blood and blood products and the management of blood resources;

(I) establishment of programs for study and research into heart, blood vessel, lung, and blood diseases of children (including cystic fibrosis, hyaline membrane, hemolytic diseases such as sickle cell anemia and Cooley's anemia, and hemophilic diseases) and for the development and demonstration of diagnostic, treatment, and preventive approaches to such diseases; and

(J) establishment of programs for study, research, development, demonstrations and evaluation of emergency medical services for people who become critically ill in connection with heart, blood vessel, lung, or blood diseases.

(2) The Program shall be coordinated with other national research institutes to the extent that they have responsibilities respecting such diseases and shall give special emphasis to the continued development in the Institute of programs related to the causes of stroke and to effective coordination of such programs with related stroke programs in the National Institute of Neurological and Communicative Disorders and Stroke. The Director of the Institute, with the advice of the advisory council for the Institute, shall revise annually the plan for the Program and shall carry out the Program in accordance with such plan.

(b) In carrying out the Program, the Director of the Institute, under policies established by the Director of NIH—

(1) may, after consultation with the advisory council for the Institute, obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of such service) the services of not more than one hundred experts or consultants who have scientific or professional qualifications;

(2)(A) may, in consultation with the advisory council for the Institute, acquire and construct, improve, repair, operate, alter, renovate, and maintain, heart, blood vessel, lung, and blood disease and blood resource laboratories, research, training, and other facilities, equipment, and such other real or personal property as the Director determines necessary;

(B) may, in consultation with the advisory council for the Institute, make grants for construction or renovation of facilities; and

(C) may, in consultation with the advisory council for the Institute, acquire, without regard to section 8141 of title 40, by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

(3) subject to section 284(b)(2) of this title and without regard to section 3324 of title 31 and section 5 of title 41, may enter into such contracts, leases, cooperative agreements, or other transactions, as may be necessary in the conduct of the Director's functions, with any public agency, or with any person, firm, association, corporation, or educational institutions;

(4) may make grants to public and nonprofit private entities to assist in meeting the cost of the care of patients in hospitals, clinics, and related facilities who are participating in research projects; and

(5) shall, in consultation with the advisory council for the Institute, conduct appropriate intramural training and education programs, including continuing education and laboratory and clinical research training programs.

Except as otherwise provided, experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment. Such expenses shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Director of the Institute. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under the preceding sentence.

(July 1, 1944, ch. 373, title IV, § 421, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 837; amended Pub. L. 100–607, title I, § 127, Nov. 4, 1988, 102 Stat. 3055; Pub. L. 103–43, title V, § 501, title XX, § 2008(b)(3), June 10, 1993, 107 Stat. 158, 211.)

REFERENCES IN TEXT

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (b), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (b)(2)(C), ''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–43, § 2008(b)(3), inserted comma after ''may''.

Subsec. (b)(5). Pub. L. 103–43, § 501, added par. (5).

1988—Subsec. (a)(1)(D). Pub. L. 100–607, § 127(1), inserted ''and rehabilitation from'' after ''and treatment of''.

Subsec. (b)(1). Pub. L. 100–607, § 127(2), substituted ''after consultation with'' for '', after approval of''.

§ 285b–4. National research and demonstration centers

(a) Heart, blood vessel, lung, blood diseases, and blood resources; utilization of centers for prevention programs

(1) The Director of the Institute may provide, in accordance with subsection (c) of this section, for the development of—

(A) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment and rehabilitation methods (including methods of providing emergency medical services) for heart and blood vessel diseases;

(B) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment and rehabilitation methods (including methods of providing emergency medical services) for lung diseases (including bronchitis, emphysema, asthma, cystic fibrosis, and other lung diseases of children);

(C) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for blood diseases and research into blood, in the use of blood products and in the management of blood resources; and

(D) three centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment (including genetic studies, intrauterine environment studies, postnatal studies, heart arrhythmias, and acquired heart disease and preventive cardiology) for cardiovascular diseases in children.

(2) The centers developed under paragraph (1) shall, in addition to being utilized for research, training, and demonstrations, be utilized for the following prevention programs for cardiovascular, pulmonary, and blood diseases:

(A) Programs to develop improved methods of detecting individuals with a high risk of developing cardiovascular, pulmonary, and blood diseases.

(B) Programs to develop improved methods of intervention against those factors which cause individuals to have a high risk of developing such diseases.

(C) Programs to develop health professions and allied health professions personnel highly skilled in the prevention of such diseases.

(D) Programs to develop improved methods of providing emergency medical services for persons with such diseases.

(E) Programs of continuing education for health and allied health professionals in the diagnosis, prevention, and treatment of such

diseases and the maintenance of health to reduce the incidence of such diseases and information programs for the public respecting the prevention and early diagnosis and treatment of such diseases and the maintenance of health.

(3) The research, training, and demonstration activities carried out through any such center may relate to any one or more of the diseases referred to in paragraph (1) of this subsection.

(b) Sickle cell anemia

The Director of the Institute shall provide, in accordance with subsection (c) of this section, for the development of ten centers for basic and clinical research into the diagnosis, treatment, and control of sickle cell anemia.

(c) Cooperative agreements and grants for establishing and supporting; uses for Federal payments; period of support, additional periods

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for centers for basic and clinical research into, training in, and demonstration of the management of blood resources and advanced diagnostic, prevention, and treatment methods for heart, blood vessel, lung, or blood diseases.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(3) Federal payments made under a cooperative agreement or grant under paragraph (1) may be used for—

(A) construction (notwithstanding any limitation under section 289e of this title);

(B) staffing and other basic operating costs, including such patient care costs as are required for research;

(C) training, including training for allied health professionals; and

(D) demonstration purposes.

As used in this subsection, the term ''construction'' does not include the acquisition of land, and the term ''training'' does not include research training for which Ruth L. Kirschstein National Research Service Awards may be provided under section 288 of this title.

(4) Support of a center under paragraph (1) may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 422, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 839; amended Pub. L. 100–607, title I, § 128, Nov. 4, 1988, 102 Stat. 3055; Pub. L. 103–43, title V, § 502, June 10, 1993, 107 Stat. 158; Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

AMENDMENTS

2002—Subsec. (c)(3). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards'' in concluding provisions.

1993—Subsec. (a)(1)(D). Pub. L. 103–43 added subpar. (D).

1988—Subsec. (a)(1)(A), (B). Pub. L. 100–607 inserted ''and rehabilitation'' after ''prevention, and treatment''.

§ 285b–5. Repealed. Pub. L. 100–607, title I, § 129, Nov. 4, 1988, 102 Stat. 3055

Section, act July 1, 1944, ch. 373, title IV, § 423, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 841, directed Secretary to establish an Interagency Technical Committee on Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources.

§ 285b–6. Associate Director for Prevention; appointment; function

(a) There shall be in the Institute an Associate Director for Prevention to coordinate and promote the programs in the Institute concerning the prevention of heart, blood vessel, lung, and blood diseases. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(b) The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b[1] of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 423, formerly § 424, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 841; renumbered § 423, Pub. L. 100–607, title I, § 129, Nov. 4, 1988, 102 Stat. 3055.)

REFERENCES IN TEXT

Section 284b of this title, referred to in subsec. (b), was repealed by Pub. L. 109–482, title I, § 104(b)(1)(C), Jan. 15, 2007, 120 Stat. 3693.

PRIOR PROVISIONS

A prior section 423 of act July 1, 1944, was classified to section 285b–5 of this title prior to repeal by Pub. L. 100–607.

§ 285b–7. National Center on Sleep Disorders Research

(a) Establishment

Not later than 1 year after June 10, 1993, the Director of the Institute shall establish the National Center on Sleep Disorders Research (in this section referred to as the ''Center''). The Center shall be headed by a director, who shall be appointed by the Director of the Institute.

(b) Purpose

The general purpose of the Center is—

(1) the conduct and support of research, training, health information dissemination, and other activities with respect to sleep disorders, including biological and circadian rhythm research, basic understanding of sleep, chronobiological and other sleep related research; and

[1] See References in Text note below.

(2) to coordinate the activities of the Center with similar activities of other Federal agencies, including the other agencies of the National Institutes of Health, and similar activities of other public entities and nonprofit entities.

(c) Sleep Disorders Research Advisory Board

(1) The Director of the National Institutes of Health shall establish a board to be known as the Sleep Disorders Research Advisory Board (in this section referred to as the ''Advisory Board'').

(2) The Advisory Board shall advise, assist, consult with, and make recommendations to the Director of the National Institutes of Health, through the Director of the Institute, and the Director of the Center concerning matters relating to the scientific activities carried out by and through the Center and the policies respecting such activities, including recommendations with respect to the plan required in subsection (c)[1] of this section.

(3)(A) The Director of the National Institutes of Health shall appoint to the Advisory Board 12 appropriately qualified representatives of the public who are not officers or employees of the Federal Government. Of such members, eight shall be representatives of health and scientific disciplines with respect to sleep disorders and four shall be individuals representing the interests of individuals with or undergoing treatment for sleep disorders.

(B) The following officials shall serve as ex officio members of the Advisory Board:

(i) The Director of the National Institutes of Health.

(ii) The Director of the Center.

(iii) The Director of the National Heart, Lung and Blood Institute.

(iv) The Director of the National Institute of Mental Health.

(v) The Director of the National Institute on Aging.

(vi) The Director of the National Institute of Child Health and Human Development.

(vii) The Director of the National Institute of Neurological Disorders and Stroke.

(viii) The Assistant Secretary for Health.

(ix) The Assistant Secretary of Defense (Health Affairs).

(x) The Chief Medical Director of the Veterans' Administration.

(4) The members of the Advisory Board shall, from among the members of the Advisory Board, designate an individual to serve as the chair of the Advisory Board.

(5) Except as inconsistent with, or inapplicable to, this section, the provisions of section 284a of this title shall apply to the advisory board[2] established under this section in the same manner as such provisions apply to any advisory council established under such section.

(d) Development of comprehensive research plan; revision

(1) After consultation with the Director of the Center and the advisory board[2] established under subsection (c) of this section, the Director of the National Institutes of Health shall develop a comprehensive plan for the conduct and support of sleep disorders research.

(2) The plan developed under paragraph (1) shall identify priorities with respect to such research and shall provide for the coordination of such research conducted or supported by the agencies of the National Institutes of Health.

(3) The Director of the National Institutes of Health (after consultation with the Director of the Center and the advisory board[2] established under subsection (c) of this section) shall revise the plan developed under paragraph (1) as appropriate.

(e) Collection and dissemination of information

The Director of the Center, in cooperation with the Centers for Disease Control and Prevention, is authorized to coordinate activities with the Department of Transportation, the Department of Defense, the Department of Education, the Department of Labor, and the Department of Commerce to collect data, conduct studies, and disseminate public information concerning the impact of sleep disorders and sleep deprivation.

(July 1, 1944, ch. 373, title IV, § 424, as added Pub. L. 103–43, title V, § 503, June 10, 1993, 107 Stat. 159.)

CHANGE OF NAME

Reference to Chief Medical Director of Department of Veterans Affairs deemed to refer to Under Secretary for Health of Department of Veterans Affairs pursuant to section 302(e) of Pub. L. 102–405, set out as a note under section 305 of Title 38, Veterans' Benefits.

Reference to Chief Medical Director of Veterans' Administration deemed to refer to Chief Medical Director of Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 201 of Title 38.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 285b–7a. Heart attack, stroke, and other cardiovascular diseases in women

(a) In general

The Director of the Institute shall expand, intensify, and coordinate research and related activities of the Institute with respect to heart attack, stroke, and other cardiovascular diseases in women.

(b) Coordination with other institutes

The Director of the Institute shall coordinate activities under subsection (a) of this section

[1] So in original. Probably should be subsection ''(d)''.

[2] So in original. Probably should be capitalized.

with similar activities conducted by the other national research institutes and agencies of the National Institutes of Health to the extent that such Institutes and agencies have responsibilities that are related to heart attack, stroke, and other cardiovascular diseases in women.

(c) Certain programs

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research to expand the understanding of the causes of, and to develop methods for preventing, cardiovascular diseases in women. Activities under such subsection shall include conducting and supporting the following:

(1) Research to determine the reasons underlying the prevalence of heart attack, stroke, and other cardiovascular diseases in women, including African-American women and other women who are members of racial or ethnic minority groups.

(2) Basic research concerning the etiology and causes of cardiovascular diseases in women.

(3) Epidemiological studies to address the frequency and natural history of such diseases and the differences among men and women, and among racial and ethnic groups, with respect to such diseases.

(4) The development of safe, efficient, and cost-effective diagnostic approaches to evaluating women with suspected ischemic heart disease.

(5) Clinical research for the development and evaluation of new treatments for women, including rehabilitation.

(6) Studies to gain a better understanding of methods of preventing cardiovascular diseases in women, including applications of effective methods for the control of blood pressure, lipids, and obesity.

(7) Information and education programs for patients and health care providers on risk factors associated with heart attack, stroke, and other cardiovascular diseases in women, and on the importance of the prevention or control of such risk factors and timely referral with appropriate diagnosis and treatment. Such programs shall include information and education on health-related behaviors that can improve such important risk factors as smoking, obesity, high blood cholesterol, and lack of exercise.

(July 1, 1944, ch. 373, title IV, § 424A, as added Pub. L. 105–340, title I, § 104, Oct. 31, 1998, 112 Stat. 3192; amended Pub. L. 109–482, title I, § 103(b)(18), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 struck out heading and text of subsec. (d). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1999 through 2003. The authorization of appropriations established in the preceding sentence is in addition to any other authorization of appropriation that is available for such purpose.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 285b–7b. Coordination of Federal asthma activities

(a) In general

The Director of[1] Institute shall, through the National Asthma Education Prevention Program Coordinating Committee—

(1) identify all Federal programs that carry out asthma-related activities; and

(2) develop, in consultation with appropriate Federal agencies and professional and voluntary health organizations, a Federal plan for responding to asthma.

(b) Representation of the Department of Housing and Urban Development

A representative of the Department of Housing and Urban Development shall be included on the National Asthma Education Prevention Program Coordinating Committee for the purpose of performing the tasks described in subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 424B, as added Pub. L. 106–310, div. A, title V, § 521, Oct. 17, 2000, 114 Stat. 1116; amended Pub. L. 109–482, title I, §§ 103(b)(19), 104(b)(1)(G), Jan. 15, 2007, 120 Stat. 3688, 3693.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 109–482, § 104(b)(1)(G), inserted ''and'' at end of par. (1), substituted a period for ''; and'' at end of par. (2), and struck out par. (3) which read as follows: ''not later than 12 months after October 17, 2000, submit recommendations to the appropriate committees of the Congress on ways to strengthen and improve the coordination of asthma-related activities of the Federal Government.''

Subsec. (c). Pub. L. 109–482, § 103(b)(19), struck out heading and text of subsec. (c). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 285b–8. Repealed. Pub. L. 109–482, title I, § 103(b)(20), Jan. 15, 2007, 120 Stat. 3688

Section, act July 1, 1944, ch. 373, title IV, § 425, as added Pub. L. 103–43, title V, § 504, June 10, 1993, 107 Stat. 160, authorized appropriations to carry out this subpart.

EFFECTIVE DATE OF REPEAL

Repeal applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

SUBPART 3—NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

§ 285c. Purpose of Institute

The general purpose of the National Institute of Diabetes and Digestive and Kidney Diseases (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research,

[1] So in original. Probably should be followed by ''the''.

training, health information dissemination, and other programs with respect to diabetes mellitus and endocrine and metabolic diseases, digestive diseases and nutritional disorders, and kidney, urologic, and hematologic diseases.

(July 1, 1944, ch. 373, title IV, § 426, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 841.)

STUDY ON METABOLIC DISORDERS

Pub. L. 106–310, div. A, title XXVIII, § 2802, Oct. 17, 2000, 114 Stat. 1167, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall, in consultation with relevant experts or through the Institute of Medicine, study issues related to treatment of PKU and other metabolic disorders for children, adolescents, and adults, and mechanisms to assure access to effective treatment, including special diets, for children and others with PKU and other metabolic disorders. Such mechanisms shall be evidence-based and reflect the best scientific knowledge regarding effective treatment and prevention of disease progression.

''(b) DISSEMINATION OF RESULTS.—Upon completion of the study referred to in subsection (a), the Secretary shall disseminate and otherwise make available the results of the study to interested groups and organizations, including insurance commissioners, employers, private insurers, health care professionals, State and local public health agencies, and State agencies that carry out the Medicaid program under title XIX of the Social Security Act [section 1396 et seq. of this title] or the State children's health insurance program under title XXI of such Act [section 1397aa et seq. of this title].

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2003.''

REVIEW OF DISEASE RESEARCH PROGRAMS OF THE NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

Section 10 of Pub. L. 99–158 provided that: ''The Secretary of Health and Human Services shall conduct an administrative review of the disease research programs of the National Institute of Diabetes and Digestive and Kidney Diseases to determine if any of such programs could be more effectively and efficiently managed by other national research institutes. The Secretary shall complete such review within the one-year period beginning on the date of enactment of this Act [Nov. 20, 1985].''

§ 285c–1. Data systems and information clearinghouses

(a) National Diabetes Data System and National Diabetes Clearinghouse

The Director of the Institute shall (1) establish the National Diabetes Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with diabetes, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing diabetes, and (2) establish the National Diabetes Information Clearinghouse to facilitate and enhance knowledge and understanding of diabetes on the part of health professionals, patients, and the public through the effective dissemination of information.

(b) National Digestive Diseases Data System and National Digestive Diseases Information Clearinghouse

The Director of the Institute shall (1) establish the National Digestive Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with digestive diseases, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing digestive diseases, and (2) establish the National Digestive Diseases Information Clearinghouse to facilitate and enhance knowledge and understanding of digestive diseases on the part of health professionals, patients, and the public through the effective dissemination of information.

(c) National Kidney and Urologic Diseases Data System and National Kidney and Urologic Diseases Information Clearinghouse

The Director of the Institute shall (1) establish the National Kidney and Urologic Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with kidney and urologic diseases, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing kidney and urologic diseases, and (2) establish the National Kidney and Urologic Diseases Information Clearinghouse to facilitate and enhance knowledge and understanding of kidney and urologic diseases on the part of health professionals, patients, and the public through the effective dissemination of information.

(July 1, 1944, ch. 373, title IV, § 427, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 841.)

§ 285c–2. Division Directors for Diabetes, Endocrinology, and Metabolic Diseases, Digestive Diseases and Nutrition, and Kidney, Urologic, and Hematologic Diseases; functions

(a)(1) In the Institute there shall be a Division Director for Diabetes, Endocrinology, and Metabolic Diseases, a Division Director for Digestive Diseases and Nutrition, and a Division Director for Kidney, Urologic, and Hematologic Diseases. Such Division Directors, under the supervision of the Director of the Institute, shall be responsible for—

(A) developing a coordinated plan (including recommendations for expenditures) for each of the national research institutes within the National Institutes of Health with respect to research and training concerning diabetes, endocrine and metabolic diseases, digestive diseases and nutrition, and kidney, urologic, and hematologic diseases;

(B) assessing the adequacy of management approaches for the activities within such institutes concerning such diseases and nutrition and developing improved approaches if needed;

(C) monitoring and reviewing expenditures by such institutes concerning such diseases and nutrition; and

(D) identifying research opportunities concerning such diseases and nutrition and recommending ways to utilize such opportunities.

(2) The Director of the Institute shall transmit to the Director of NIH the plans, recommendations, and reviews of the Division Directors under subparagraphs (A) through (D) of paragraph (1) together with such comments and recommendations as the Director of the Institute determines appropriate.

(b) The Director of the Institute, acting through the Division Director for Diabetes, Endocrinology, and Metabolic Diseases, the Division Director for Digestive Diseases and Nutrition, and the Division Director for Kidney, Urologic, and Hematologic Diseases, shall—

(1) carry out programs of support for research and training (other than training for which Ruth L. Kirschstein National Research Service Awards may be made under section 288 of this title) in the diagnosis, prevention, and treatment of diabetes mellitus and endocrine and metabolic diseases, digestive diseases and nutritional disorders, and kidney, urologic, and hematologic diseases, including support for training in medical schools, graduate clinical training, graduate training in epidemiology, epidemiology studies, clinical trials, and interdisciplinary research programs; and

(2) establish programs of evaluation, planning, and dissemination of knowledge related to such research and training.

(July 1, 1944, ch. 373, title IV, § 428, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 842; amended Pub. L. 103–43, title XX, § 2008(b)(4), June 10, 1993, 107 Stat. 211; Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards''.

1993—Subsec. (b). Pub. L. 103–43 substituted ''the'' for ''the the'' before ''Division Director for Diabetes'' in introductory provisions.

§ 285c–3. Interagency coordinating committees

(a) Establishment and purpose

For the purpose of—

(1) better coordination of the research activities of all the national research institutes relating to diabetes mellitus, digestive diseases, and kidney, urologic, and hematologic diseases; and

(2) coordinating those aspects of all Federal health programs and activities relating to such diseases to assure the adequacy and technical soundness of such programs and activities and to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities;

the Secretary shall establish a Diabetes Mellitus Interagency Coordinating Committee, a Digestive Diseases Interagency Coordinating Committee, and a Kidney, Urologic, and Hematologic Diseases Coordinating Committee (hereafter in this section individually referred to as a ''Committee'').

(b) Membership; chairman; meetings

Each Committee shall be composed of the Directors of each of the national research institutes and divisions involved in research with respect to the diseases for which the Committee is established, the Division Director of the Institute for the diseases for which the Committee is established, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers) and shall include representation from all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to such diseases, as determined by the Secretary. Each Committee shall be chaired by the Director of NIH (or the designee of the Director). Each Committee shall meet at the call of the chairman, but not less often than four times a year.

(July 1, 1944, ch. 373, title IV, § 429, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 843; amended Pub. L. 100–527, § 10(4), Oct. 25, 1988, 102 Stat. 2641; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 108–362, § 3, Oct. 25, 2004, 118 Stat. 1703; Pub. L. 109–482, title I, § 104(b)(1)(H), Jan. 15, 2007, 120 Stat. 3693.)

AMENDMENTS

2007—Subsecs. (c), (d). Pub. L. 109–482 struck out subsecs. (c) and (d) which required an annual report detailing the work of the Committee in carrying out subsec. (a) and an annual assessment on Federal pancreatic islet cell transplantation, respectively.

2004—Subsec. (d). Pub. L. 108–362 added subsec. (d).

1992—Subsec. (b). Pub. L. 102–405 substituted ''Under Secretary for Health of the Department of Veterans Affairs'' for ''Chief Medical Director of the Department of Veterans Affairs''.

1988—Subsec. (b). Pub. L. 100–527 substituted ''Chief Medical Director of the Department of Veterans Affairs'' for ''Chief Medical Director of the Veterans' Administration''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

§ 285c–4. Advisory boards

(a) Establishment

The Secretary shall establish in the Institute the National Diabetes Advisory Board, the National Digestive Diseases Advisory Board, and the National Kidney and Urologic Diseases Advisory Board (hereafter in this section individually referred to as an ''Advisory Board'').

(b) Membership; ex officio members

Each Advisory Board shall be composed of eighteen appointed members and nonvoting ex officio members as follows:

(1) The Secretary shall appoint—

(A) twelve members from individuals who are scientists, physicians, and other health professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to the diseases with respect to which the Advisory Board is established; and

(B) six members from the general public who are knowledgeable with respect to such diseases, including at least one member who is a person who has such a disease and one member who is a parent of a person who has such a disease.

Of the appointed members at least five shall by virtue of training or experience be knowledgeable in the fields of health education, nursing, data systems, public information, and community program development.

(2)(A) The following shall be ex officio members of each Advisory Board:

(i) The Assistant Secretary for Health, the Director of NIH, the Director of the National Institute of Diabetes and Digestive and Kidney Diseases, the Director of the Centers for Disease Control and Prevention, the Under Secretary for Health of the Department of Veterans Affairs, the Assistant Secretary of Defense for Health Affairs, and the Division Director of the National Institute of Diabetes and Digestive and Kidney Diseases for the diseases for which the Board is established (or the designees of such officers).

(ii) Such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

(B) In the case of the National Diabetes Advisory Board, the following shall also be ex officio members: The Director of the National Heart, Lung, and Blood Institute, the Director of the National Eye Institute, the Director of the National Institute of Child Health and Human Development, and the Administrator of the Health Resources and Services Administration (or the designees of such officers).

(c) Compensation

Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Board.

(d) Term of office; vacancy

The term of office of an appointed member of an Advisory Board is four years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in an Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days from the date the vacancy occurred.

(e) Chairman

The members of each Advisory Board shall select a chairman from among the appointed members.

(f) Executive director; professional and clerical staff; administrative support services and facilities

The Secretary shall, after consultation with and consideration of the recommendations of an Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, such services of consultants, such information, and (through contracts or other arrangements) such administrative support services and facilities, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

(g) Meetings

Each Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

(h) Functions of National Diabetes Advisory Board and National Digestive Diseases Advisory Board

The National Diabetes Advisory Board and the National Digestive Diseases Advisory Board shall—

(1) review and evaluate the implementation of the plan (referred to in section 285c–7 of this title) respecting the diseases with respect to which the Advisory Board was established and periodically update the plan to ensure its continuing relevance;

(2) for the purpose of assuring the most effective use and organization of resources respecting such diseases, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan, the coordinating committee for such diseases, and with key non-Federal entities involved in activities affecting the control of such diseases.

(i) Subcommittees; establishment and membership

In carrying out its functions, each Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

(j) Termination of predecessor boards; time within which to appoint members

The National Diabetes Advisory Board and the National Digestive Diseases Advisory Board in existence on November 20, 1985, shall terminate upon the appointment of a successor Board under subsection (a) of this section. The Secretary shall make appointments to the Advisory Boards established under subsection (a) of this section before the expiration of 90 days after November 20, 1985. The members of the Boards in existence on November 20, 1985, may be appointed, in accordance with subsections (b) and (d) of this section, to the Boards established under subsection (a) of this section for diabetes

and digestive diseases, except that at least one-half of the members of the National Diabetes Advisory Board in existence on November 20, 1985, shall be appointed to the National Diabetes Advisory Board first established under subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 430, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 844; amended Pub. L. 100–607, title I, § 131, Nov. 4, 1988, 102 Stat. 3056; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 102–531, title III, § 312(d)(6), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 103–43, title XX, § 2008(b)(5), June 10, 1993, 107 Stat. 211; Pub. L. 105–362, title VI, § 601(a)(1)(C), Nov. 10, 1998, 112 Stat. 3285.)

AMENDMENTS

1998—Subsecs. (j), (k). Pub. L. 105–362 redesignated subsec. (k) as (j) and struck out former subsec. (j) which read as follows: ''Each Advisory Board shall prepare an annual report for the Secretary which—

''(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

''(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to the diseases with respect to which the Advisory Board was established;

''(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such diseases in such fiscal year; and

''(4) contains the Advisory Board's recommendations (if any) for changes in the plan referred to in section 285c–7 of this title.''

1993—Subsec. (b)(2)(A)(i). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (b)(2)(A)(i). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1988—Subsecs. (k), (*l*). Pub. L. 100–607 redesignated subsec. (*l*) as (k) and struck out former subsec. (k) which read as follows: ''Each Advisory Board shall expire on September 30, 1988.''

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285c–5. Research and training centers; development or expansion

(a) Diabetes mellitus and related endocrine and metabolic diseases

(1) Consistent with applicable recommendations of the National Commission on Diabetes, the Director of the Institute shall provide for the development or substantial expansion of centers for research and training in diabetes mellitus and related endocrine and metabolic diseases. Each center developed or expanded under this subsection shall—

(A) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Secretary; and

(B) conduct—

(i) research in the diagnosis and treatment of diabetes mellitus and related endocrine and metabolic diseases and the complications resulting from such diseases;

(ii) training programs for physicians and allied health personnel in current methods of diagnosis and treatment of such diseases and complications, and in research in diabetes; and

(iii) information programs for physicians and allied health personnel who provide primary care for patients with such diseases or complications.

(2) A center may use funds provided under paragraph (1) to provide stipends for nurses and allied health professionals enrolled in research training programs described in paragraph (1)(B)(ii).

(b) Digestive diseases and related functional, congenital, metabolic disorders, and normal development of digestive tract

Consistent with applicable recommendations of the National Digestive Diseases Advisory Board, the Director shall provide for the development or substantial expansion of centers for research in digestive diseases and related functional, congenital, metabolic disorders, and normal development of the digestive tract. Each center developed or expanded under this subsection—

(1) shall utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research qualifications as may be prescribed by the Secretary;

(2) shall develop and conduct basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of digestive diseases and nutritional disorders and related functional, congenital, or metabolic complications resulting from such diseases or disorders;

(3) shall encourage research into and programs for—

(A) providing information for patients with such diseases and the families of such patients, physicians and others who care for such patients, and the general public;

(B) model programs for cost effective and preventive patient care; and

(C) training physicians and scientists in research on such diseases, disorders, and complications; and

(4) may perform research and participate in epidemiological studies and data collection relevant to digestive diseases and disorders and disseminate such research, studies, and data to the health care profession and to the public.

(c) Kidney and urologic diseases

The Director shall provide for the development or substantial expansion of centers for research in kidney and urologic diseases. Each center developed or expanded under this subsection—

(1) shall utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research qualifications as may be prescribed by the Secretary;

(2) shall develop and conduct basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of kidney and urologic diseases;

(3) shall encourage research into and programs for—

(A) providing information for patients with such diseases, disorders, and complications and the families of such patients, physicians and others who care for such patients, and the general public;

(B) model programs for cost effective and preventive patient care; and

(C) training physicians and scientists in research on such diseases; and

(4) may perform research and participate in epidemiological studies and data collection relevant to kidney and urologic diseases in order to disseminate such research, studies, and data to the health care profession and to the public.

(d) Nutritional disorders

(1) The Director of the Institute shall, subject to the extent of amounts made available in appropriations Acts, provide for the development or substantial expansion of centers for research and training regarding nutritional disorders, including obesity.

(2) The Director of the Institute shall carry out paragraph (1) in collaboration with the Director of the National Cancer Institute and with the Directors of such other agencies of the National Institutes of Health as the Director of NIH determines to be appropriate.

(3) Each center developed or expanded under paragraph (1) shall—

(A) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Director;

(B) conduct basic and clinical research into the cause, diagnosis, early detection, prevention, control and treatment of nutritional disorders, including obesity and the impact of nutrition and diet on child development;

(C) conduct training programs for physicians and allied health professionals in current methods of diagnosis and treatment of such diseases and complications, and in research in such disorders; and

(D) conduct information programs for physicians and allied health professionals who provide primary care for patients with such disorders or complications.

(e) Geographic distribution; period of support, additional periods

Insofar as practicable, centers developed or expanded under this section should be geographically dispersed throughout the United States and in environments with proven research capabilities. Support of a center under this section may be for a period of not to exceed five years and such period may be extended by the Director of the Institute for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 431, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 846; amended Pub. L. 103–43, title VI, § 601(b), June 10, 1993, 107 Stat. 161.)

AMENDMENTS

1993—Subsecs. (d), (e). Pub. L. 103–43 added subsec. (d) and redesignated former subsec. (d) as (e).

§ 285c–6. Advisory council subcommittees

There are established within the advisory council for the Institute appointed under section 284a of this title a subcommittee on diabetes and endocrine and metabolic diseases, a subcommittee on digestive diseases and nutrition, and a subcommittee on kidney, urologic, and hematologic diseases. The subcommittees shall be composed of members of the advisory council who are outstanding in the diagnosis, prevention, and treatment of the diseases for which the subcommittees are established and members of the advisory council who are leaders in the fields of education and public affairs. The subcommittees are authorized to review applications made to the Director of the Institute for grants for research and training projects relating to the diagnosis, prevention, and treatment of the diseases for which the subcommittees are established and shall recommend to the advisory council those applications and contracts that the subcommittees determine will best carry out the purposes of the Institute. The subcommittees shall also review and evaluate the diabetes and endocrine and metabolic diseases, digestive diseases and nutrition, and kidney, urologic, and hematologic diseases programs of the Institute and recommend to the advisory council such changes in the administration of such programs as the subcommittees determine are necessary.

(July 1, 1944, ch. 373, title IV, § 432, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 847.)

§ 285c–7. Biennial report

The Director of the Institute shall prepare for inclusion in the biennial report made under section 284b[1] of this title a description of the Institute's activities—

(1) under the current diabetes plan under the National Diabetes Mellitus Research and Education Act; and

[1] See References in Text note below.

(2) under the current digestive diseases plan formulated under the Arthritis, Diabetes, and Digestive Diseases Amendments of 1976.

The description submitted by the Director shall include an evaluation of the activities of the centers supported under section 285c–5 of this title.

(July 1, 1944, ch. 373, title IV, § 433, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 848.)

REFERENCES IN TEXT

Section 284b of this title, referred to in text, was repealed by Pub. L. 109–482, title I, § 104(b)(1)(C), Jan. 15, 2007, 120 Stat. 3693.

The National Diabetes Mellitus Research and Education Act, referred to in par. (1), is Pub. L. 93–354, July 23, 1974, 88 Stat. 373, as amended, which enacted former sections 289c–1a, 289c–2, and 289c–3 of this title, amended section 247b and former section 289c–1 of this title, and enacted provisions formerly set out as notes under section 289c–2 of this title. For complete classification of this Act to the Code, see Short Title of 1974 Amendments note set out under section 201 of this title and Tables.

The Arthritis, Diabetes, and Digestive Diseases Amendments of 1976, referred to in par. (2), is Pub. L. 94–562, Oct. 19, 1976, 90 Stat. 2645, as amended, which enacted former sections 289c–3a, 289c–7, and 289c–8 of this title, amended former sections 289c–2, 289c–5, and 289c–6 of this title, and enacted provisions formerly set out as notes under sections 289a, 289c–3a, and 289c–7 of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendments note set out under section 201 of this title and Tables.

§ 285c–8. Nutritional disorders program

(a) Establishment

The Director of the Institute, in consultation with the Director of NIH, shall establish a program of conducting and supporting research, training, health information dissemination, and other activities with respect to nutritional disorders, including obesity.

(b) Support of activities

In carrying out the program established under subsection (a) of this section, the Director of the Institute shall conduct and support each of the activities described in such subsection.

(c) Dissemination of information

In carrying out the program established under subsection (a) of this section, the Director of the Institute shall carry out activities to facilitate and enhance knowledge and understanding of nutritional disorders, including obesity, on the part of health professionals, patients, and the public through the effective dissemination of information.

(July 1, 1944, ch. 373, title IV, § 434, as added Pub. L. 103–43, title VI, § 601[(a)], June 10, 1993, 107 Stat. 161.)

§ 285c–9. Juvenile diabetes

(a) Long-term epidemiology studies

The Director of the Institute shall conduct or support long-term epidemiology studies in which individuals with or at risk for type 1, or juvenile, diabetes are followed for 10 years or more. Such studies shall investigate the causes and characteristics of the disease and its complications.

(b) Clinical trial infrastructure/innovative treatments for juvenile diabetes

The Secretary, acting through the Director of the National Institutes of Health, shall support regional clinical research centers for the prevention, detection, treatment, and cure of juvenile diabetes.

(c) Prevention of type 1 diabetes

The Secretary, acting through the appropriate agencies, shall provide for a national effort to prevent type 1 diabetes. Such effort shall provide for a combination of increased efforts in research and development of prevention strategies, including consideration of vaccine development, coupled with appropriate ability to test the effectiveness of such strategies in large clinical trials of children and young adults.

(July 1, 1944, ch. 373, title IV, § 434A, as added Pub. L. 106–310, div. A, title IV, § 402, Oct. 17, 2000, 114 Stat. 1112; amended Pub. L. 109–482, title I, § 103(b)(21), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 struck out heading and text of subsec. (d). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

SUBPART 4—NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES

§ 285d. Purpose of Institute

The general purpose of the National Institute of Arthritis and Musculoskeletal and Skin Diseases (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research and training, the dissemination of health information, and other programs with respect to arthritis and musculoskeletal and skin diseases (including sports-related disorders), with particular attention to the effect of these diseases on children.

(July 1, 1944, ch. 373, title IV, § 435, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 848; amended Pub. L. 103–43, title VII, § 701(a), June 10, 1993, 107 Stat. 162.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''(including sports-related disorders), with particular attention to the effect of these diseases on children'' for '', including sports-related disorders''.

§ 285d–1. National arthritis and musculoskeletal and skin diseases program

(a) Plan to expand, intensify, and coordinate activities; submission; periodic review and revision

The Director of the Institute, with the advice of the Institute's advisory council, shall prepare and transmit to the Director of NIH a plan for a national arthritis and musculoskeletal and skin diseases program to expand, intensify, and

coordinate the activities of the Institute respecting arthritis and musculoskeletal and skin diseases. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The plan shall place particular emphasis upon expanding research into better understanding the causes and the development of effective treatments for arthritis affecting children. The Director of the Institute shall periodically review and revise such plan and shall transmit any revisions of such plan to the Director of NIH.

(b) Coordination of activities with other national research institutes; minimum activities under program

Activities under the national arthritis and musculoskeletal and skin diseases program shall be coordinated with the other national research institutes to the extent that such institutes have responsibilities respecting arthritis and musculoskeletal and skin diseases, and shall, at least, provide for—

(1) investigation into the epidemiology, etiology, and prevention of all forms of arthritis and musculoskeletal and skin diseases, including sports-related disorders, primarily through the support of basic research in such areas as immunology, genetics, biochemistry, microbiology, physiology, bioengineering, and any other scientific discipline which can contribute important knowledge to the treatment and understanding of arthritis and musculoskeletal and skin diseases;

(2) research into the development, trial, and evaluation of techniques, drugs, and devices used in the diagnosis, treatment, including medical rehabilitation, and prevention of arthritis and musculoskeletal and skin diseases;

(3) research on the refinement, development, and evaluation of technological devices that will replace or be a substitute for damaged bone, muscle, and joints and other supporting structures;

(4) the establishment of mechanisms to monitor the causes of athletic injuries and identify ways of preventing such injuries on scholastic athletic fields; and

(5) research into the causes of arthritis affecting children and the development, trial, and evaluation of techniques, drugs and devices used in the diagnosis, treatment (including medical rehabilitation), and prevention of arthritis in children.

(c) Program to be carried out in accordance with plan

The Director of the Institute shall carry out the national arthritis and musculoskeletal and skin diseases program in accordance with the plan prepared under subsection (a) of this section and any revisions of such plan made under such subsection.

(July 1, 1944, ch. 373, title IV, § 436, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 848; amended Pub. L. 100–607, title I, § 136, Nov. 4, 1988, 102 Stat. 3056; Pub. L. 103–43, title VII, § 701(b), June 10, 1993, 107 Stat. 162.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43, § 701(b)(1), inserted after second sentence ''The plan shall place particular emphasis upon expanding research into better understanding the causes and the development of effective treatments for arthritis affecting children.''

Subsec. (b)(5). Pub. L. 103–43, § 701(b)(2), added par. (5).

1988—Pub. L. 100–607 inserted ''and skin'' after ''musculoskeletal'' in section catchline and wherever appearing in text.

§ 285d–2. Research and training

The Director of the Institute shall—

(1) carry out programs of support for research and training (other than training for which Ruth L. Kirschstein National Research Service Awards may be made under section 288 of this title) in the diagnosis, prevention, and treatment of arthritis and musculoskeletal and skin diseases, including support for training in medical schools, graduate clinical training, graduate training in epidemiology, epidemiology studies, clinical trials, and interdisciplinary research programs; and

(2) establish programs of evaluation, planning, and dissemination of knowledge related to such research and training.

(July 1, 1944, ch. 373, title IV, § 437, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 849; amended Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

AMENDMENTS

2002—Par. (1). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards''.

§ 285d–3. Data system and information clearinghouse

(a) The Director of the Institute shall establish the National Arthritis and Musculoskeletal and Skin Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with arthritis and musculoskeletal and skin diseases, including where possible, data involving general populations for the purpose of detection of individuals with a risk of developing arthritis and musculoskeletal and skin diseases.

(b) The Director of the Institute shall establish the National Arthritis and Musculoskeletal and Skin Diseases Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of arthritis and musculoskeletal and skin diseases, including juvenile arthritis and related conditions, by health professionals, patients, and the public.

(July 1, 1944, ch. 373, title IV, § 438, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 849; amended Pub. L. 106–310, div. A, title III, § 302, Oct. 17, 2000, 114 Stat. 1111.)

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310 inserted '', including juvenile arthritis and related conditions,'' after ''skin diseases''.

§ 285d–4. Interagency coordinating committees

(a) Establishment and purpose

For the purpose of—

(1) better coordination of the research activities of all the national research institutes

relating to arthritis, musculoskeletal diseases, and skin diseases, including sports-related disorders; and

(2) coordinating the aspects of all Federal health programs and activities relating to arthritis, musculoskeletal diseases, and skin diseases in order to assure the adequacy and technical soundness of such programs and activities and in order to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities,

the Secretary shall establish an Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee and a Skin Diseases Interagency Coordinating Committee (hereafter in this section individually referred to as a ''Committee'').

(b) Membership; chairman; meetings

Each Committee shall be composed of the Directors of each of the national research institutes and divisions involved in research regarding the diseases with respect to which the Committee is established, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and representatives of all other Federal departments and agencies (as determined by the Secretary) whose programs involve health functions or responsibilities relevant to arthritis and musculoskeletal diseases or skin diseases, as the case may be. Each Committee shall be chaired by the Director of NIH (or the designee of the Director). Each Committee shall meet at the call of the chairman, but not less often than four times a year.

(July 1, 1944, ch. 373, title IV, § 439, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 849; amended Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103–43, title XX, § 2008(b)(6), June 10, 1993, 107 Stat. 211; Pub. L. 105–362, title VI, § 601(a)(1)(D), Nov. 10, 1998, 112 Stat. 3285.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–362 struck out subsec. (c) which read as follows: ''Not later than 120 days after the end of each fiscal year, each Committee shall prepare and transmit to the Secretary, the Director of NIH, the Director of the Institute, and the advisory council for the Institute a report detailing the activities of the Committee in such fiscal year in carrying out paragraphs (1) and (2) of subsection (a) of this section.''

1993—Subsec. (b). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (b). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

§ 285d–5. Arthritis and musculoskeletal diseases demonstration projects

(a) Grants for establishment and support

The Director of the Institute may make grants to public and private nonprofit entities to establish and support projects for the development and demonstration of methods for screening, detection, and referral for treatment of arthritis and musculoskeletal diseases and for the dissemination of information on such methods to the health and allied health professions. Activities under such projects shall be coordinated with Federal, State, local, and regional health agencies, centers assisted under section 285d–6 of this title, and the data system established under subsection (c) of this section.

(b) Programs included

Projects supported under this section shall include—

(1) programs which emphasize the development and demonstration of new and improved methods of screening and early detection, referral for treatment, and diagnosis of individuals with a risk of developing arthritis and musculoskeletal diseases;

(2) programs which emphasize the development and demonstration of new and improved methods for patient referral from local hospitals and physicians to appropriate centers for early diagnosis and treatment;

(3) programs which emphasize the development and demonstration of new and improved means of standardizing patient data and recordkeeping;

(4) programs which emphasize the development and demonstration of new and improved methods of dissemination of knowledge about the programs, methods, and means referred to in paragraphs (1), (2), and (3) of this subsection to health and allied health professionals;

(5) programs which emphasize the development and demonstration of new and improved methods for the dissemination to the general public of information—

(A) on the importance of early detection of arthritis and musculoskeletal diseases, of seeking prompt treatment, and of following an appropriate regimen; and

(B) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive treatment, and control methods for arthritis and unapproved and ineffective drugs and devices for arthritis and musculoskeletal diseases; and

(6) projects for investigation into the epidemiology of all forms and aspects of arthritis and musculoskeletal diseases, including investigations into the social, environmental, behavioral, nutritional, and genetic determinants and influences involved in the epidemiology of arthritis and musculoskeletal diseases.

(c) Standardization of patient data and recordkeeping

The Director shall provide for the standardization of patient data and recordkeeping for the collection, storage, analysis, retrieval, and dissemination of such data in cooperation with projects assisted under this section, centers assisted under section 285d–6 of this title, and other persons engaged in arthritis and musculoskeletal disease programs.

(July 1, 1944, ch. 373, title IV, § 440, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 850.)

§ 285d–6. Multipurpose arthritis and musculoskeletal diseases centers

(a) Development, modernization, and operation

The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including staffing and other operating costs such as the costs of patient care required for research) of new and existing centers for arthritis and musculoskeletal diseases. For purposes of this section, the term ''modernization'' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

(b) Duties and functions

Each center assisted under this section shall—

(1)(A) use the facilities of a single institution or a consortium of cooperating institutions, and (B) meet such qualifications as may be prescribed by the Secretary; and

(2) conduct—

(A) basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of and rehabilitation from arthritis and musculoskeletal diseases and complications resulting from arthritis and musculoskeletal diseases, including research into implantable biomaterials and biomechanical and other orthopedic procedures;

(B) training programs for physicians, scientists, and other health and allied health professionals;

(C) information and continuing education programs for physicians and other health and allied health professionals who provide care for patients with arthritis and musculoskeletal diseases; and

(D) programs for the dissemination to the general public of information—

(i) on the importance of early detection of arthritis and musculoskeletal diseases, of seeking prompt treatment, and of following an appropriate regimen; and

(ii) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive, treatment, and control methods and unapproved and ineffective drugs and devices.

A center may use funds provided under subsection (a) of this section to provide stipends for health professionals enrolled in training programs described in paragraph (2)(B).

(c) Optional programs

Each center assisted under this section may conduct programs to—

(1) establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals with a risk of developing arthritis and musculoskeletal diseases;

(2) disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping; and

(3) develop community consultative services to facilitate the referral of patients to centers for treatment.

(d) Geographical distribution

The Director of the Institute shall, insofar as practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of children affected by arthritis and musculoskeletal diseases.

(e) Period of support; additional periods

Support of a center under this section may be for a period of not to exceed five years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(f) Treatment and rehabilitation of children

Not later than October 1, 1993, the Director shall establish a multipurpose arthritis and musculoskeletal disease center for the purpose of expanding the level of research into the cause, diagnosis, early detection, prevention, control, and treatment of, and rehabilitation of children with arthritis and musculoskeletal diseases.

(July 1, 1944, ch. 373, title IV, § 441, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 851; amended Pub. L. 100–607, title I, § 137, Nov. 4, 1988, 102 Stat. 3056; Pub. L. 103–43, title VII, § 701(c), June 10, 1993, 107 Stat. 162.)

AMENDMENTS

1993—Subsec. (f). Pub. L. 103–43 added subsec. (f).

1988—Subsec. (b)(2)(A). Pub. L. 100–607 inserted ''and rehabilitation from'' after ''and treatment of''.

§ 285d–6a. Lupus

(a) In general

The Director of the Institute shall expand and intensify research and related activities of the Institute with respect to lupus.

(b) Coordination with other institutes

The Director of the Institute shall coordinate the activities of the Director under subsection (a) of this section with similar activities conducted by the other national research institutes and agencies of the National Institutes of Health to the extent that such Institutes and agencies have responsibilities that are related to lupus.

(c) Programs for lupus

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research to expand the understanding of the causes of, and to find a cure for, lupus. Activities under such subsection shall include conducting and supporting the following:

(1) Research to determine the reasons underlying the elevated prevalence of lupus in women, including African-American women.

(2) Basic research concerning the etiology and causes of the disease.

(3) Epidemiological studies to address the frequency and natural history of the disease

and the differences among the sexes and among racial and ethnic groups with respect to the disease.

(4) The development of improved diagnostic techniques.

(5) Clinical research for the development and evaluation of new treatments, including new biological agents.

(6) Information and education programs for health care professionals and the public.

(July 1, 1944, ch. 373, title IV, § 441A, as added Pub. L. 106–505, title V, § 511, Nov. 13, 2000, 114 Stat. 2342; amended Pub. L. 109–482, title I, § 103(b)(22), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 struck out heading and text of subsec. (d). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2003.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

FINDINGS

Pub. L. 106–505, title V, § 502, Nov. 13, 2000, 114 Stat. 2342, provided that: ''The Congress finds that—

''(1) lupus is a serious, complex, inflammatory, autoimmune disease of particular concern to women;

''(2) lupus affects women nine times more often than men;

''(3) there are three main types of lupus: systemic lupus, a serious form of the disease that affects many parts of the body; discoid lupus, a form of the disease that affects mainly the skin; and drug-induced lupus caused by certain medications;

''(4) lupus can be fatal if not detected and treated early;

''(5) the disease can simultaneously affect various areas of the body, such as the skin, joints, kidneys, and brain, and can be difficult to diagnose because the symptoms of lupus are similar to those of many other diseases;

''(6) lupus disproportionately affects African-American women, as the prevalence of the disease among such women is three times the prevalence among white women, and an estimated 1 in 250 African-American women between the ages of 15 and 65 develops the disease;

''(7) it has been estimated that between 1,400,000 and 2,000,000 Americans have been diagnosed with the disease, and that many more have undiagnosed cases;

''(8) current treatments for the disease can be effective, but may lead to damaging side effects;

''(9) many victims of the disease suffer debilitating pain and fatigue, making it difficult to maintain employment and lead normal lives; and

''(10) in fiscal year 1996, the amount allocated by the National Institutes of Health for research on lupus was $33,000,000, which is less than one-half of 1 percent of the budget for such Institutes.''

§ 285d–7. Advisory Board

(a) Establishment

The Secretary shall establish in the Institute the National Arthritis and Musculoskeletal and Skin Diseases Advisory Board (hereafter in this section referred to as the ''Advisory Board'').

(b) Membership; ex officio members

The Advisory Board shall be composed of twenty appointed members and nonvoting, ex officio members, as follows:

(1) The Secretary shall appoint—

(A) twelve members from individuals who are scientists, physicians, and other health professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to arthritis, musculoskeletal diseases, and skin diseases; and

(B) eight members from the general public who are knowledgeable with respect to such diseases, including one member who is a person who has such a disease, one person who is the parent of an adult with such a disease, and two members who are parents of children with arthritis.

Of the appointed members at least five shall by virtue of training or experience be knowledgeable in health education, nursing, data systems, public information, or community program development.

(2) The following shall be ex officio members of the Advisory Board:

(A) the Assistant Secretary for Health, the Director of NIH, the Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the Director of the Centers for Disease Control and Prevention, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

(c) Compensation

Members of the Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Advisory Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Advisory Board.

(d) Term of office; vacancy

The term of office of an appointed member of the Advisory Board is four years. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days after the date the vacancy occurred.

(e) Chairman

The members of the Advisory Board shall select a chairman from among the appointed members.

(f) Executive director, professional and clerical staff; administrative support services and facilities

The Secretary shall, after consultation with and consideration of the recommendations of

the Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, and (through contracts or other arrangements) with such administrative support services and facilities, such information, and such services of consultants, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

(g) Meetings

The Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

(h) Duties and functions

The Advisory Board shall—

(1) review and evaluate the implementation of the plan prepared under section 285d–1(a) of this title and periodically update the plan to ensure its continuing relevance;

(2) for the purpose of assuring the most effective use and organization of resources respecting arthritis, musculoskeletal diseases and skin diseases, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

(3) maintain liaison with other advisory bodies for Federal agencies involved in the implementation of such plan, the interagency coordinating committees for such diseases established under section 285d–4 of this title, and with key non-Federal entities involved in activities affecting the control of such diseases.

(i) Subcommittees; establishment and membership

In carrying out its functions, the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

(j) Termination of predecessor board; time within which to appoint members

The National Arthritis Advisory Board in existence on November 20, 1985, shall terminate upon the appointment of a successor Board under subsection (a) of this section. The Secretary shall make appointments to the Advisory Board established under subsection (a) of this section before the expiration of 90 days after November 20, 1985. The member of the Board in existence on November 20, 1985, may be appointed, in accordance with subsections (b) and (d) of this section, to the Advisory Board established under subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 442, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 852; amended Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 102–531, title III, § 312(d)(7), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 103–43, title VII, § 701(d), title XX, § 2008(b)(7), June 10, 1993, 107 Stat. 162, 211; Pub. L. 109–482, title I, § 104(b)(1)(I), Jan. 15, 2007, 120 Stat. 3693.)

AMENDMENTS

2007—Subsecs. (j), (k). Pub. L. 109–482 redesignated subsec. (k) as (j) and struck out former subsec. (j) which required the Advisory Board to prepare an annual report for the Secretary and set out the subjects for report.

1993—Subsec. (a). Pub. L. 103–43, § 701(d)(1), inserted ''and Musculoskeletal and Skin Diseases'' after ''Arthritis''.

Subsec. (b). Pub. L. 103–43, §§ 701(d)(2), 2008(b)(7), substituted ''twenty'' for ''eighteen'' in introductory provisions, ''eight'' for ''six'' and ''including one member who is a person who has such a disease, one person who is the parent of an adult with such a disease, and two members who are parents of children with arthritis'' for ''including at least one member who is a person who has such a disease and one member who is a parent of a person who has such a disease'' in par. (1)(B), and ''Department of Veterans Affairs'' for ''Veterans' Administration'' in par. (2)(A).

Subsec. (j)(5). Pub. L. 103–43, § 701(d)(3), added par. (5).

1992—Subsec. (b)(2)(A). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285d–8. Juvenile arthritis and related conditions

(a) Expansion and coordination of activities

The Director of the Institute, in coordination with the Director of the National Institute of Allergy and Infectious Diseases, shall expand and intensify the programs of such Institutes with respect to research and related activities

concerning juvenile arthritis and related conditions.

(b) Coordination

The Directors referred to in subsection (a) of this section shall jointly coordinate the programs referred to in such subsection and consult with the Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee.

(July 1, 1944, ch. 373, title IV, § 442A, as added Pub. L. 106–310, div. A, title III, § 301(a), Oct. 17, 2000, 114 Stat. 1111; amended Pub. L. 109–482, title I, § 103(b)(23), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (c). Pub. L. 109–482 struck out heading and text of subsec. (c). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

SUBPART 5—NATIONAL INSTITUTE ON AGING

§ 285e. Purpose of Institute

The general purpose of the National Institute on Aging (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical, social, and behavioral research, training, health information dissemination, and other programs with respect to the aging process and the diseases and other special problems and needs of the aged.

(July 1, 1944, ch. 373, title IV, § 443, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 854.)

STUDY OF MALNUTRITION IN ELDERLY

Pub. L. 103–43, title XIX, § 1902, June 10, 1993, 107 Stat. 201, directed Secretary of Health and Human Services, acting through National Institute on Aging, to conduct a 3-year study on health benefits and cost-effectiveness of nutrition screening and intervention activities of the elderly, and a 3-year study to determine extent of malnutrition in elderly individuals in hospitals and long-term care facilities and in elderly individuals who are living independently, provided for creation of advisory panel to oversee studies, provided for submission to Congress of reports containing findings of such studies, and provided for termination of advisory panel 3 years after June 10, 1993.

STUDY OF PERSONNEL FOR HEALTH NEEDS OF ELDERLY

Section 8 of Pub. L. 99–158 directed Secretary to conduct a study on the adequacy and availability of personnel to meet the current and projected health needs (including needs for home and community-based care) of elderly Americans through the year 2020, and report the results of the study, with recommendations, to Congress by Mar. 1, 1987.

§ 285e–1. Special functions

(a) Education and training of adequate numbers of personnel

In carrying out the training responsibilities under this chapter or any other Act for health and allied health professions personnel, the Secretary shall take appropriate steps to insure the education and training of adequate numbers of allied health, nursing, and paramedical personnel in the field of health care for the aged.

(b) Scientific studies

The Director of the Institute shall conduct scientific studies to measure the impact on the biological, medical, social, and psychological aspects of aging of programs and activities assisted or conducted by the Department of Health and Human Services.

(c) Public information and education programs

The Director of the Institute shall carry out public information and education programs designed to disseminate as widely as possible the findings of research sponsored by the Institute, other relevant aging research and studies, and other information about the process of aging which may assist elderly and near-elderly persons in dealing with, and all Americans in understanding, the problems and processes associated with growing older.

(d) Grants for research relating to Alzheimer's Disease

The Director of the Institute shall make grants to public and private nonprofit institutions to conduct research relating to Alzheimer's Disease.

(July 1, 1944, ch. 373, title IV, § 444, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 854.)

§ 285e–2. Alzheimer's Disease centers

(a) Cooperative agreements and grants for establishing and supporting

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities (including university medical centers) to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support (including staffing) for centers for basic and clinical research (including multidisciplinary research) into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for Alzheimer's disease.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(b) Use of Federal payments under cooperative agreement or grant

(1) Federal payments made under a cooperative agreement or grant under subsection (a) of this section may, with respect to Alzheimer's disease, be used for—

(A) diagnostic examinations, patient assessments, patient care costs, and other costs necessary for conducting research;

(B) training, including training for allied health professionals;

(C) diagnostic and treatment clinics designed to meet the special needs of minority and rural populations and other underserved populations;

(D) activities to educate the public; and

(E) the dissemination of information.

(2) For purposes of paragraph (1), the term ''training'' does not include research training

for which Ruth L. Kirschstein National Research Service Awards may be provided under section 288 of this title.

(c) Support period; additional periods

Support of a center under subsection (a) of this section may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 445, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 855; amended Pub. L. 101–557, title II, § 201, Nov. 15, 1990, 104 Stat. 2767; Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards''.

1990—Subsec. (a)(1). Pub. L. 101–557, § 201(1), inserted ''(including university medical centers)'' after ''nonprofit entities'', ''(including staffing)'' after ''operating support'', and ''(including multidisciplinary research)'' after ''clinical research'' and substituted ''Alzheimer's disease'' for ''Alzheimer's Disease''.

Subsec. (b). Pub. L. 101–557, § 201(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Federal payments made under a cooperative agreement or grant under subsection (a) of this section may be used for—

''(1) construction (notwithstanding any limitation under section 289e of this title);

''(2) staffing and other basic operating costs, including such patient care costs as are required for research;

''(3) training, including training for allied health professionals; and

''(4) demonstration purposes.

As used in this subsection, the term 'construction' does not include the acquisition of land, and the term 'training' does not include research training for which National Research Service Awards may be provided under section 288 of this title.''

ALZHEIMER'S DISEASE RESEARCH

Pub. L. 100–175, title III, Nov. 29, 1987, 101 Stat. 972, provided that:

''SEC. 301. REQUIREMENT FOR CLINICAL TRIALS.

''(a) IN GENERAL.—The Director of the National Institute on Aging shall provide for the conduct of clinical trials on the efficacy of the use of such promising therapeutic agents as have been or may be discovered and recommended for further scientific analysis by the National Institute on Aging and the Food and Drug Administration to treat individuals with Alzheimer's disease, to retard the progression of symptoms of Alzheimer's disease, or to improve the functioning of individuals with such disease.

''(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to affect adversely any research being conducted as of the date of the enactment of this Act [Nov. 29, 1987].

''SEC. 302. AUTHORIZATION OF APPROPRIATIONS.

''For the purpose of carrying out section 301, there is authorized to be appropriated $2,000,000 for fiscal year 1988.''

ALZHEIMER'S DISEASE REGISTRY

Section 12 of Pub. L. 99–158, which was formerly set out as a note under this section, was renumbered section 445G of the Public Health Service Act by Pub. L. 103–43, title VIII, § 801(a), June 10, 1993, 107 Stat. 163, and is classified to section 285e–9 of this title.

§ 285e–3. Claude D. Pepper Older Americans Independence Centers

(a) Development and expansion of centers

The Director of the Institute shall enter into cooperative agreements with, and make grants to, public and private nonprofit entities for the development or expansion of not less than 10 centers of excellence in geriatric research and training of researchers. Each such center shall be known as a Claude D. Pepper Older Americans Independence Center.

(b) Functions of centers

Each center developed or expanded under this section shall—

(1) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Director; and

(2) conduct—

(A) research into the aging processes and into the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause, which research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals; and

(B) programs to develop individuals capable of conducting research described in subparagraph (A).

(c) Geographic distribution of centers

In making cooperative agreements and grants under this section for the development or expansion of centers, the Director of the Institute shall ensure that, to the extent practicable, any such centers are distributed equitably among the principal geographic regions of the United States.

(d) "Independence" defined

For purposes of this section, the term ''independence'', with respect to diseases, disorders, and complications of aging, means the functional ability of individuals to perform activities of daily living or instrumental activities of daily living without assistance or supervision.

(July 1, 1944, ch. 373, title IV, § 445A, as added Pub. L. 100–607, title I, § 141, Nov. 4, 1988, 102 Stat. 3056; amended Pub. L. 101–557, title II, § 202, Nov. 15, 1990, 104 Stat. 2767.)

AMENDMENTS

1990—Pub. L. 101–557, § 202(a)(1), substituted ''Claude D. Pepper Older Americans Independence Centers'' for ''Centers of geriatric research and training'' in section catchline.

Subsec. (a). Pub. L. 101–557, § 202(a)(2), (b)(1)(A), inserted ''not less than 10'' before ''centers of excellence'' and inserted provision designating centers as Claude D. Pepper Older Americans Independence Centers.

Subsec. (b)(2)(A). Pub. L. 101–557, § 202(b)(1)(B), inserted before semicolon at end '', including menopause,

which research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals''.

Subsec. (b)(2)(B). Pub. L. 101–557, § 202(b)(2), substituted ''research described in subparagraph (A)'' for ''research concerning aging and concerning such diseases, disorders, and complications.''

Subsec. (d). Pub. L. 101–557, § 202(c), added subsec. (d).

§ 285e–4. Awards for leadership and excellence in Alzheimer's disease and related dementias

(a) Senior researchers in biomedical research

The Director of the Institute shall make awards to senior researchers who have made distinguished achievements in biomedical research in areas relating to Alzheimer's disease and related dementias. Awards under this section shall be used by the recipients to support research in areas relating to such disease and dementias, and may be used by the recipients to train junior researchers who demonstrate exceptional promise to conduct research in such areas.

(b) Eligible centers

The Director of the Institute may make awards under this section to researchers at centers supported under section 285e–2 of this title and to researchers at other public and nonprofit private entities.

(c) Required recommendation

The Director of the Institute shall make awards under this section only to researchers who have been recommended for such awards by the National Advisory Council on Aging.

(d) Selection procedures

The Director of the Institute shall establish procedures for the selection of the recipients of awards under this section.

(e) Term of award; renewal

Awards under this section shall be made for a one-year period, and may be renewed for not more than six additional consecutive one-year periods.

(July 1, 1944, ch. 373, title IV, § 445B, formerly Pub. L. 99–660, title IX, § 931, Nov. 14, 1986, 100 Stat. 3807; renumbered § 445B of act July 1, 1944; amended Pub. L. 100–607, title I, § 142(a), (d)(1), Nov. 4, 1988, 102 Stat. 3057.)

CODIFICATION

Section was formerly classified to section 11231 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11231 of this title as this section.

Subsec. (a). Pub. L. 100–607, § 142(d)(1)(A), substituted ''the Institute'' for ''the National Institute on Aging''.

Subsec. (b). Pub. L. 100–607, § 142(d)(1)(B), substituted ''the Institute'' for ''the National Institute on Aging'' and made technical amendment to reference to section 285e–2 of this title to correct reference to corresponding provision of original act.

Subsecs. (c), (d). Pub. L. 100–607, § 142(d)(1)(C), substituted ''the Institute'' for ''the National Institute on Aging''.

AVAILABILITY OF APPROPRIATIONS

Section 142(b) of Pub. L. 100–607 provided that: ''With respect to amounts made available in appropriation Acts for the purpose of carrying out the programs transferred by subsection (a) to the Public Health Service Act [sections 285e–4 to 285e–8 of this title], such subsection may not be construed to affect the availability of such funds for such purpose.''

§ 285e–5. Research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families

(a) Grants for research

The Director of the Institute shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b) Preparation of plan; contents; revision

(1) Within 6 months after November 14, 1986, the Director of the Institute shall prepare and transmit to the Chairman of the Council on Alzheimer's Disease (in this section referred to as the ''Council'') a plan for the research to be conducted under subsection (a) of this section. The plan shall—

(A) provide for research concerning—

(i) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias; and

(ii) the development and evaluation of reliable and valid multidimensional diagnostic and assessment procedures and instruments; and

(B) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and related dementias, including centers supported under section 285e–2 of this title, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the Institute shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) Consultation for preparation and revision of plan

In preparing and revising the plan required by subsection (b) of this section, the Director of the Institute shall consult with the Chairman of the Council and the heads of agencies within the Department.

(d) Grants for promoting independence and preventing secondary disabilities

the[1] Director of the Institute may develop, or make grants to develop—

[1] So in original. Probably should be capitalized.

(1) model techniques to—

(A) promote greater independence, including enhanced independence in performing activities of daily living and instrumental activities of daily living, for persons with Alzheimer's disease and related disorders; and

(B) prevent or reduce the severity of secondary disabilities, including confusional episodes, falls, bladder and bowel incontinence, and adverse effects of prescription and over-the-counter medications, in such persons; and

(2) model curricula for health care professionals, health care paraprofessionals, and family caregivers, for training and application in the use of such techniques.

(e) "Council on Alzheimer's Disease" defined

For purposes of this section, the term ''Council on Alzheimer's Disease'' means the council established in section 11211(a)[2] of this title.

(July 1, 1944, ch. 373, title IV, § 445C, formerly Pub. L. 99–660, title IX, § 941, Nov. 14, 1986, 100 Stat. 3808; renumbered § 445C of act July 1, 1944; amended Pub. L. 100–607, title I, § 142(a), (d)(2), Nov. 4, 1988, 102 Stat. 3057, 3058; Pub. L. 102–507, § 9, Oct. 24, 1992, 106 Stat. 3287; Pub. L. 103–43, title VIII, § 804, June 10, 1993, 107 Stat. 164.)

REFERENCES IN TEXT

Section 11211 of this title, referred to in subsec. (e), was repealed by Pub. L. 105–362, title VI, § 601(a)(2)(E), Nov. 10, 1998, 112 Stat. 3286.

CODIFICATION

Section was formerly classified to section 11241 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–43, § 804(1), inserted ''on Alzheimer's Disease (in this section referred to as the 'Council')'' after ''Council''.

Subsec. (e). Pub. L. 103–43, § 804(2), added subsec. (e).

1992—Subsec. (d). Pub. L. 102–507 added subsec. (d).

1988—Pub. L. 100–607, § 142(a), renumbered section 11241 of this title as this section.

Subsec. (a). Pub. L. 100–607, § 142(d)(2)(A), substituted ''the Institute'' for ''the National Institute on Aging''.

Subsec. (b)(1). Pub. L. 100–607, § 142(d)(2)(B)(i)(I), in introductory provisions, substituted ''the date of enactment of the Alzheimer's Disease and Related Dementias Services Research Act of 1986'' for ''the date of enactment of this Act'', which for purposes of codification was translated as ''November 14, 1986'', thus requiring no change in text.

Pub. L. 100–607, § 142(d)(2)(B)(i)(II), in introductory provisions, substituted ''the Institute'' for ''the National Institute on Aging''.

Subsec. (b)(1)(B). Pub. L. 100–607, § 142(d)(2)(B)(ii), made technical amendment to reference to section 285e–2 of this title to correct reference to corresponding provision of original act.

Subsecs. (b)(2), (c). Pub. L. 100–607, § 142(d)(2)(B)(iii), (C), substituted ''the Institute'' for ''the National Institute on Aging''.

§ 285e–6. Dissemination of research results

The Director of the Institute shall disseminate the results of research conducted under section 285e–5 of this title and this section to appropriate professional entities and to the public.

(July 1, 1944, ch. 373, title IV, § 445D, formerly Pub. L. 99–660, title IX, § 942, Nov. 14, 1986, 100 Stat. 3809; renumbered § 445D of act July 1, 1944; amended Pub. L. 100–607, title I, § 142(a), (d)(3), Nov. 4, 1988, 102 Stat. 3057, 3058.)

CODIFICATION

Section was formerly classified to section 11242 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11242 of this title as this section.

Pub. L. 100–607, § 142(d)(3), substituted ''the Institute'' for ''the National Institute on Aging'' and ''section 285e–5 of this title and this section'' for ''this part''.

§ 285e–7. Clearinghouse on Alzheimer's Disease

(a) Establishment; purpose; duties; publication of summary

The Director of the Institute shall establish the Clearinghouse on Alzheimer's Disease (hereinafter referred to as the ''Clearinghouse''). The purpose of the Clearinghouse is the dissemination of information concerning services available for individuals with Alzheimer's disease and related dementias and their families. The Clearinghouse shall—

(1) compile, archive, and disseminate information concerning research, demonstration, evaluation, and training programs and projects concerning Alzheimer's disease and related dementias; and

(2) annually publish a summary of the information compiled under paragraph (1) during the preceding 12-month period, and make such information available upon request to appropriate individuals and entities, including educational institutions, research entities, and Federal and public agencies.

(b) Fee for information

The Clearinghouse may charge an appropriate fee for information provided through the toll-free telephone line established under subsection (a)(3).[1]

(c) Summaries of research findings from other agencies

The Director of the Institute, the Director of the National Institute of Mental Health, and the Director of the National Center for Health Services Research and Health Care Technology Assessment shall provide to the Clearinghouse summaries of the findings of research conducted under part D.

(July 1, 1944, ch. 373, title IV, § 445E, formerly Pub. L. 99–660, title IX, § 951, Nov. 14, 1986, 100 Stat. 3813; renumbered § 445E of act July 1, 1944, and amended Pub. L. 100–607, title I, § 142(a), (d)(4), Nov. 4, 1988, 102 Stat. 3057, 3058.)

REFERENCES IN TEXT

Part D, referred to in subsec. (c), probably means part D of title IX of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3808, as amended, which is classified to subchapter IV (§ 11251 et seq.) of chapter 118 of this title. Prior to renumbering by Pub. L. 100–607, this section was part of title IX of Pub. L. 99–660.

CODIFICATION

Section was formerly classified to section 11281 of this title prior to renumbering by Pub. L. 100–607.

[2] See References in Text note below.

[1] So in original. No subsec. (a)(3) has been enacted.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11281 of this title as this section.

Subsec. (a). Pub. L. 100–607, § 142(d)(4)(A), substituted ''the Institute'' for ''the National Institute on Aging'' in introductory provisions.

Subsec. (c). Pub. L. 100–607, § 142(d)(4)(B), substituted ''the Institute'' for ''the National Institute on Aging'' and ''part D'' for ''part E''.

§ 285e–8. Dissemination project

(a) Grant or contract for establishment

The Director of the Institute shall make a grant to, or enter into a contract with, a national organization representing individuals with Alzheimer's disease and related dementias for the conduct of the activities described in subsection (b) of this section.

(b) Project activities

The organization receiving a grant or contract under this section shall—

(1) establish a central computerized information system to—

(A) compile and disseminate information concerning initiatives by State and local governments and private entities to provide programs and services for individuals with Alzheimer's disease and related dementias; and

(B) translate scientific and technical information concerning such initiatives into information readily understandable by the general public, and make such information available upon request; and

(2) establish a national toll-free telephone line to make available the information described in paragraph (1), and information concerning Federal programs, services, and benefits for individuals with Alzheimer's disease and related dementias and their families.

(c) Fees for information; exception

The organization receiving a grant or contract under this section may charge appropriate fees for information provided through the toll-free telephone line established under subsection (b)(2) of this section, and may make exceptions to such fees for individuals and organizations who are not financially able to pay such fees.

(d) Application for grant or contract; contents

In order to receive a grant or contract under this section, an organization shall submit an application to the Director of the Institute. Such application shall contain—

(1) information demonstrating that such organization has a network of contacts which will enable such organization to receive information necessary to the operation of the central computerized information system described in subsection (b)(1) of this section;

(2) information demonstrating that, by the end of fiscal year 1991, such organization will be financially able to, and will, carry out the activities described in subsection (b) of this section without a grant or contract from the Federal Government; and

(3) such other information as the Director may prescribe.

(July 1, 1944, ch. 373, title IV, § 445F, formerly Pub. L. 99–660, title IX, § 952, Nov. 14, 1986, 100 Stat. 3813; renumbered § 445F of act July 1, 1944, and amended Pub. L. 100–607, title I, § 142(a), (d)(5), Nov. 4, 1988, 102 Stat. 3057, 3058.)

CODIFICATION

Section was formerly classified to section 11282 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11282 of this title as this section.

Subsecs. (a), (d). Pub. L. 100–607, § 142(d)(5), substituted ''the Institute'' for ''the National Institute on Aging''.

§ 285e–9. Alzheimer's disease registry

(a) In general

The Director of the Institute may make a grant to develop a registry for the collection of epidemiological data about Alzheimer's disease and its incidence in the United States, to train personnel in the collection of such data, and for other matters respecting such disease.

(b) Qualifications

To qualify for a grant under subsection (a) of this section an applicant shall—

(1) be an accredited school of medicine or public health which has expertise in the collection of epidemiological data about individuals with Alzheimer's disease and in the development of disease registries, and

(2) have access to a large patient population, including a patient population representative of diverse ethnic backgrounds.

(July 1, 1944, ch. 373, title IV, § 445G, formerly Pub. L. 99–158, § 12, Nov. 20, 1985, 99 Stat. 885, as renumbered § 445G and amended Pub. L. 103–43, title VIII, § 801, June 10, 1993, 107 Stat. 163.)

CODIFICATION

Section was formerly set out as a note under section 285e–2 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Pub. L. 103–43, § 801(b)(1), reenacted section catchline without change.

Subsec. (a). Pub. L. 103–43, § 801(b)(1), substituted in heading ''In general'' for ''Grant authority'' and in text substituted ''Director of the Institute'' for ''Director of the National Institute on Aging''.

Subsec. (c). Pub. L. 103–43, § 801(b)(2), struck out subsec. (c) which authorized appropriations of $2,500,000 for grants to remain available until expended or through fiscal year 1989, whichever occurred first.

§ 285e–10. Aging processes regarding women

The Director of the Institute, in addition to other special functions specified in section 285e–1 of this title and in cooperation with the Directors of the other national research institutes and agencies of the National Institutes of Health, shall conduct research into the aging processes of women, with particular emphasis given to the effects of menopause and the physiological and behavioral changes occurring during the transition from pre- to post-menopause, and into the diagnosis, disorders, and complications related to aging and loss of ovarian hormones in women.

(July 1, 1944, ch. 373, title IV, § 445H, as added Pub. L. 103–43, title VIII, § 802, June 10, 1993, 107

Stat. 163; amended Pub. L. 105–340, title I, § 105, Oct. 31, 1998, 112 Stat. 3193; Pub. L. 109–482, title I, § 103(b)(24), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Pub. L. 109–482 struck out subsec. (a) designation before ''The Director'' and subsec. (b) which read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1999 through 2003. The authorization of appropriations established in the preceding sentence is in addition to any other authorization of appropriation that is available for such purpose.''

1998—Pub. L. 105–340 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 285e–10a. Alzheimer's clinical research and training awards

(a) In general

The Director of the Institute is authorized to establish and maintain a program to enhance and promote the translation of new scientific knowledge into clinical practice related to the diagnosis, care and treatment of individuals with Alzheimer's disease.

(b) Support of promising clinicians

In order to foster the application of the most current developments in the etiology, pathogenesis, diagnosis, prevention and treatment of Alzheimer's disease, amounts made available under this section shall be directed to the support of promising clinicians through awards for research, study, and practice at centers of excellence in Alzheimer's disease research and treatment.

(c) Excellence in certain fields

Research shall be carried out under awards made under subsection (b) of this section in environments of demonstrated excellence in neuroscience, neurobiology, geriatric medicine, and psychiatry and shall foster innovation and integration of such disciplines or other environments determined suitable by the Director of the Institute.

(July 1, 1944, ch. 373, title IV, § 445I, as added Pub. L. 106–505, title VIII, § 801(2), Nov. 13, 2000, 114 Stat. 2349; amended Pub. L. 109–482, title I, § 103(b)(25), Jan. 15, 2007, 120 Stat. 3688.)

PRIOR PROVISIONS

A prior section 445I of act July 1, 1944, was renumbered section 445J and was classified to section 285e–11 of this title prior to repeal by Pub. L. 109–482.

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 struck out heading and text of subsec. (d). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated $2,250,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 through 2005.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 285e–11. Repealed. Pub. L. 109–482, title I, § 103(b)(26), Jan. 15, 2007, 120 Stat. 3688

Section, act July 1, 1944, ch. 373, title IV, § 445J, formerly § 445I, as added Pub. L. 103–43, title VIII, § 803, June 10, 1993, 107 Stat. 163; renumbered § 445J, Pub. L. 106–505, title VIII, § 801(1), Nov. 13, 2000, 114 Stat. 2349, authorized appropriations to carry out this subpart.

EFFECTIVE DATE OF REPEAL

Repeal applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

SUBPART 6—NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

§ 285f. Purpose of Institute

The general purpose of the National Institute of Allergy and Infectious Diseases is the conduct and support of research, training, health information dissemination, and other programs with respect to allergic and immunologic diseases and disorders and infectious diseases, including tropical diseases.

(July 1, 1944, ch. 373, title IV, § 446, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 855; amended Pub. L. 103–43, title IX, § 901, June 10, 1993, 107 Stat. 164.)

AMENDMENTS

1993—Pub. L. 103–43 inserted before period at end '', including tropical diseases''.

§ 285f–1. Research centers regarding chronic fatigue syndrome

(a) The Director of the Institute, after consultation with the advisory council for the Institute, may make grants to, or enter into contracts with, public or nonprofit private entities for the development and operation of centers to conduct basic and clinical research on chronic fatigue syndrome.

(b) Each center assisted under this section shall use the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director of the Institute.

(July 1, 1944, ch. 373, title IV, § 447, as added Pub. L. 103–43, title IX, § 902(a), June 10, 1993, 107 Stat. 164.)

CODIFICATION

Another section 447 of act July 1, 1944, was renumbered section 447A and is classified to section 285f–2 of this title.

EXTRAMURAL STUDY SECTION

Section 902(b) of Pub. L. 103–43 provided that: ''Not later than 6 months after the date of enactment of this Act [June 10, 1993], the Secretary of Health and Human Services shall establish an extramural study section for chronic fatigue syndrome research.''

RESEARCH ACTIVITIES ON CHRONIC FATIGUE SYNDROME

Section 1903 of Pub. L. 103–43 directed Secretary of Health and Human Services to, not later than Oct. 1, 1993, and annually thereafter for next 3 years, prepare

and submit to Congress a report that summarizes research activities conducted or supported by National Institutes of Health concerning chronic fatigue syndrome, with information concerning grants made, cooperative agreements or contracts entered into, intramural activities, research priorities and needs, and plan to address such priorities and needs.

§ 285f–2. Research and research training regarding tuberculosis

In carrying out section 285f of this title, the Director of the Institute shall conduct or support research and research training regarding the cause, diagnosis, early detection, prevention and treatment of tuberculosis.

(July 1, 1944, ch. 373, title IV, § 447A, formerly § 447, as added Pub. L. 103–183, title III, § 302(a), Dec. 14, 1993, 107 Stat. 2235; renumbered § 447A, Pub. L. 105–392, title IV, § 401(b)(3), Nov. 13, 1998, 112 Stat. 3587; amended Pub. L. 109–482, title I, § 103(b)(27), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Pub. L. 109–482 struck out subsec. (a) designation before ''In carrying out'' and subsec. (b) which read as follows: ''For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated $50,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998. Such authorization is in addition to any other authorization of appropriations that is available for such purpose.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

RESEARCH THROUGH FOOD AND DRUG ADMINISTRATION

Section 303 of Pub. L. 103–183 provided that: ''The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall implement a tuberculosis drug and device research program under which the Commissioner may—

''(1) provide assistance to other Federal agencies for the development of tuberculosis protocols;

''(2) review and evaluate medical devices designed for the diagnosis and control of airborne tuberculosis; and

''(3) conduct research concerning drugs or devices to be used in diagnosing, controlling and preventing tuberculosis.''

§ 285f–3. Sexually transmitted disease clinical research and training awards

(a) In general

The Director of the Institute is authorized to establish and maintain a program to enhance and promote the translation of new scientific knowledge into clinical practice related to the diagnosis, care and treatment of individuals with sexually transmitted diseases.

(b) Support of promising clinicians

In order to foster the application of the most current developments in the etiology, pathogenesis, diagnosis, prevention and treatment of sexually transmitted diseases, amounts made available under this section shall be directed to the support of promising clinicians through awards for research, study, and practice at centers of excellence in sexually transmitted disease research and treatment.

(c) Excellence in certain fields

Research shall be carried out under awards made under subsection (b) of this section in environments of demonstrated excellence in the etiology and pathogenesis of sexually transmitted diseases and shall foster innovation and integration of such disciplines or other environments determined suitable by the Director of the Institute.

(July 1, 1944, ch. 373, title IV, § 447B, as added Pub. L. 106–505, title IX, § 901, Nov. 13, 2000, 114 Stat. 2349; amended Pub. L. 109–482, title I, § 103(b)(28), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 struck out heading and text of subsec. (d). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated $2,250,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 through 2005.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

SUBPART 7—NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

§ 285g. Purpose of Institute

The general purpose of the National Institute of Child Health and Human Development (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to gynecologic health, maternal health, child health, mental retardation, human growth and development, including prenatal development, population research, and special health problems and requirements of mothers and children.

(July 1, 1944, ch. 373, title IV, § 448, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856; amended Pub. L. 106–554, § 1(a)(1) [title II, § 215], Dec. 21, 2000, 114 Stat. 2763, 2763A–28.)

AMENDMENTS

2000—Pub. L. 106–554 inserted ''gynecologic health,'' after ''with respect to''.

LONG-TERM CHILD DEVELOPMENT STUDY

Pub. L. 106–310, div. A, title X, § 1004, Oct. 17, 2000, 114 Stat. 1130, as amended by Pub. L. 108–446, title III, § 301, Dec. 3, 2004, 118 Stat. 2803; Pub. L. 109–482, title I, § 104(b)(3)(E), Jan. 15, 2007, 120 Stat. 3694, provided that:

''(a) PURPOSE.—It is the purpose of this section to authorize the National Institute of Child Health and Human Development to conduct a national longitudinal study of environmental influences (including physical, chemical, biological, and psychosocial) on children's health and development.

''(b) IN GENERAL.—The Director of the National Institute of Child Health and Human Development shall establish a consortium of representatives from appropriate Federal agencies (including the Centers for Disease Control and Prevention, the Environmental Protection Agency, and the Department of Education) to—

''(1) plan, develop, and implement a prospective cohort study, from birth to adulthood, to evaluate the effects of both chronic and intermittent exposures on child health and human development; and

''(2) investigate basic mechanisms of developmental disorders and environmental factors, both risk and protective, that influence health and developmental processes.

''(c) REQUIREMENT.—The study under subsection (b) shall—

''(1) incorporate behavioral, emotional, educational, and contextual consequences to enable a complete assessment of the physical, chemical, biological and psychosocial environmental influences on children's well-being;

''(2) gather data on environmental influences and outcomes on diverse populations of children, which may include the consideration of prenatal exposures;

''(3) consider health disparities among children which may include the consideration of prenatal exposures; and

''(4) be conducted in compliance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), including the requirement of prior parental consent for the disclosure of any education records, except without the use of authority or exceptions granted to authorized representatives of the Secretary of Education for the evaluation of Federally-supported education programs or in connection with the enforcement of the Federal legal requirements that relate to such programs.

''[(d) REPEALED. Pub. L. 109–482, title I, § 104(b)(3)(E), Jan. 15, 2007, 120 Stat. 3694.]

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $18,000,000 for fiscal year 2001, and such sums as may be necessary for each [sic] the fiscal years 2002 through 2005.''

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY; COMPOSITION; VOLUNTARY SERVICES; DURATION

Pub. L. 100–436, title IV, Sept. 20, 1988, 102 Stat. 1709, provided that the National Commission to Prevent Infant Mortality was to be composed of sixteen members, including seven at large members, and that it had power to accept voluntary and uncompensated services, notwithstanding section 1342 of title 31, and was to continue operating, notwithstanding sections 208 and 209 of Pub. L. 99–660 (formerly set out below).

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Pub. L. 99–660, title II, Nov. 14, 1986, 100 Stat. 3752, known as the National Commission to Prevent Infant Mortality Act of 1986, established National Commission to Prevent Infant Mortality to examine and make recommendation on government and private resources, policies, and programs which impact on infant mortality, required Commission to submit recommendations to President and Congress no later than one year after Nov. 14, 1986, and terminated Commission 90 days after submission of recommendations.

§ 285g–1. Sudden infant death syndrome research

The Director of the Institute shall conduct and support research which specifically relates to sudden infant death syndrome.

(July 1, 1944, ch. 373, title IV, § 449, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856.)

§ 285g–2. Mental retardation research

The Director of the Institute shall conduct and support research and related activities into the causes, prevention, and treatment of mental retardation.

(July 1, 1944, ch. 373, title IV, § 450, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856.)

§ 285g–3. Associate Director for Prevention; appointment; function

There shall be in the Institute an Associate Director for Prevention to coordinate and promote the programs in the Institute concerning the prevention of health problems of mothers and children. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(July 1, 1944, ch. 373, title IV, § 451, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856; amended Pub. L. 105–362, title VI, § 601(a)(1)(E), Nov. 10, 1998, 112 Stat. 3285.)

AMENDMENTS

1998—Pub. L. 105–362 struck out subsec. (a) designation and struck out subsec. (b) which read as follows: ''The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.''

§ 285g–4. National Center for Medical Rehabilitation Research

(a) Establishment of Center

There shall be in the Institute an agency to be known as the National Center for Medical Rehabilitation Research (hereafter in this section referred to as the ''Center''). The Director of the Institute shall appoint a qualified individual to serve as Director of the Center. The Director of the Center shall report directly to the Director of the Institute.

(b) Purpose

The general purpose of the Center is the conduct and support of research and research training (including research on the development of orthotic and prosthetic devices), the dissemination of health information, and other programs with respect to the rehabilitation of individuals with physical disabilities resulting from diseases or disorders of the neurological, musculoskeletal, cardiovascular, pulmonary, or any other physiological system (hereafter in this section referred to as ''medical rehabilitation'').

(c) Authority of Director

(1) In carrying out the purpose described in subsection (b) of this section, the Director of the Center may—

(A) provide for clinical trials regarding medical rehabilitation;

(B) provide for research regarding model systems of medical rehabilitation;

(C) coordinate the activities of the Center with similar activities of other agencies of the Federal Government, including the other agencies of the National Institutes of Health, and with similar activities of other public entities and of private entities;

(D) support multidisciplinary medical rehabilitation research conducted or supported by more than one such agency;

(E) in consultation with the advisory council for the Institute and with the approval of the Director of NIH—

(i) establish technical and scientific peer review groups in addition to those appointed under section 282(b)(16) of this title; and

(ii) appoint the members of peer review groups established under subparagraph (A); and

(F) support medical rehabilitation research and training centers.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under subparagraph (E).

(2) In carrying out this section, the Director of the Center may make grants and enter into cooperative agreements and contracts.

(d) Research Plan

(1) In consultation with the Director of the Center, the coordinating committee established under subsection (e) of this section, and the advisory board established under subsection (f) of this section, the Director of the Institute shall develop a comprehensive plan for the conduct and support of medical rehabilitation research (hereafter in this section referred to as the ''Research Plan'').

(2) The Research Plan shall—

(A) identify current medical rehabilitation research activities conducted or supported by the Federal Government, opportunities and needs for additional research, and priorities for such research; and

(B) make recommendations for the coordination of such research conducted or supported by the National Institutes of Health and other agencies of the Federal Government.

(3)(A) Not later than 18 months after the date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, the Director of the Institute shall transmit the Research Plan to the Director of NIH, who shall submit the Plan to the President and the Congress.

(B) Subparagraph (A) shall be carried out independently of the process of reporting that is required in sections 283 and 284b[1] of this title.

(4) The Director of the Institute shall periodically revise and update the Research Plan as appropriate, after consultation with the Director of the Center, the coordinating committee established under subsection (e) of this section, and the advisory board established under subsection (f) of this section. A description of any revisions in the Research Plan shall be contained in each report prepared under section 284b[1] of this title by the Director of the Institute.

(e) Medical Rehabilitation Coordinating Committee

(1) The Director of NIH shall establish a committee to be known as the Medical Rehabilitation Coordinating Committee (hereafter in this section referred to as the ''Coordinating Committee'').

(2) The Coordinating Committee shall make recommendations to the Director of the Institute and the Director of the Center with respect to the content of the Research Plan and with respect to the activities of the Center that are carried out in conjunction with other agencies of the National Institutes of Health and with other agencies of the Federal Government.

(3) The Coordinating Committee shall be composed of the Director of the Center, the Director of the Institute, and the Directors of the National Institute on Aging, the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Heart, Lung, and Blood Institute, the National Institute of Neurological Disorders and Stroke, and such other national research institutes and such representatives of other agencies of the Federal Government as the Director of NIH determines to be appropriate.

(4) The Coordinating Committee shall be chaired by the Director of the Center.

(f) National Advisory Board on Medical Rehabilitation Research

(1) Not later than 90 days after the date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, the Director of NIH shall establish a National Advisory Board on Medical Rehabilitation Research (hereafter in this section referred to as the ''Advisory Board'').

(2) The Advisory Board shall review and assess Federal research priorities, activities, and findings regarding medical rehabilitation research, and shall advise the Director of the Center and the Director of the Institute on the provisions of the Research Plan.

(3)(A) The Director of NIH shall appoint to the Advisory Board 18 qualified representatives of the public who are not officers or employees of the Federal Government. Of such members, 12 shall be representatives of health and scientific disciplines with respect to medical rehabilitation and 6 shall be individuals representing the interests of individuals undergoing, or in need of, medical rehabilitation.

(B) The following officials shall serve as ex officio members of the Advisory Board:

(i) The Director of the Center.

(ii) The Director of the Institute.

(iii) The Director of the National Institute on Aging.

(iv) The Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

(v) The Director of the National Institute on Deafness and Other Communication Disorders.

(vi) The Director of the National Heart, Lung, and Blood Institute.

(vii) The Director of the National Institute of Neurological Disorders and Stroke.

(viii) The Director of the National Institute on Disability and Rehabilitation Research.

(ix) The Commissioner for Rehabilitation Services Administration.

(x) The Assistant Secretary of Defense (Health Affairs).

(xi) The Under Secretary for Health of the Department of Veterans Affairs.

(4) The members of the Advisory Board shall, from among the members appointed under paragraph (3)(A), designate an individual to serve as the chair of the Advisory Board.

(July 1, 1944, ch. 373, title IV, § 452, as added Pub. L. 101–613, § 3(a), Nov. 16, 1990, 104 Stat. 3227; amended Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 109–482, title I, § 102(f)(1)(B), Jan. 15, 2007, 120 Stat. 3685.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770,

[1] See References in Text note below.

as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, referred to in subsecs. (d)(3)(A) and (f)(1), probably means the date of enactment of the National Institutes of Health Amendments of 1990, Pub. L. 101–613, which was approved Nov. 16, 1990.

Section 284b of this title, referred to in subsec. (d)(3)(B), (4), was repealed by Pub. L. 109–482, title I, § 104(b)(1)(C), Jan. 15, 2007, 120 Stat. 3693.

AMENDMENTS

2007—Subsec. (c)(1)(E)(i). Pub. L. 109–482 substituted ''section 282(b)(16)'' for ''section 282(b)(6)''.

1992—Subsec. (f)(3)(B)(xi). Pub. L. 102–405 substituted ''Under Secretary for Health of the Department of Veterans Affairs'' for ''Chief Medical Director of the Department of Veterans Affairs''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

PREVENTING DUPLICATIVE PROGRAMS OF MEDICAL REHABILITATION RESEARCH

Section 3(b) of Pub. L. 101–613 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services and the heads of other Federal agencies shall—

''(A) jointly review the programs being carried out (or proposed to be carried out) by each such official with respect to medical rehabilitation research; and

''(B) as appropriate, enter into agreements for preventing duplication among such programs.

''(2) TIME FOR COMPLETION.—The agreements required in paragraph (1)(B) shall be made not later than one year after the date of the enactment of this Act [Nov. 16, 1990].

''(3) DEFINITION OF MEDICAL REHABILITATION.—For purposes of this subsection, the term 'medical rehabilitation' means the rehabilitation of individuals with physical disabilities resulting from diseases or disorders of the neurological, musculoskeletal, cardiovascular, pulmonary, or any other physiological system.''

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 285g–5. Research centers with respect to contraception and infertility

(a) Grants and contracts

The Director of the Institute, after consultation with the advisory council for the Institute, shall make grants to, or enter into contracts with, public or nonprofit private entities for the development and operation of centers to conduct activities for the purpose of improving methods of contraception and centers to conduct activities for the purpose of improving methods of diagnosis and treatment of infertility.

(b) Number of centers

In carrying out subsection (a) of this section, the Director of the Institute shall, subject to the extent of amounts made available in appropriations Acts, provide for the establishment of three centers with respect to contraception and for two centers with respect to infertility.

(c) Duties

(1) Each center assisted under this section shall, in carrying out the purpose of the center involved—

(A) conduct clinical and other applied research, including—

(i) for centers with respect to contraception, clinical trials of new or improved drugs and devices for use by males and females (including barrier methods); and

(ii) for centers with respect to infertility, clinical trials of new or improved drugs and devices for the diagnosis and treatment of infertility in males and females;

(B) develop protocols for training physicians, scientists, nurses, and other health and allied health professionals;

(C) conduct training programs for such individuals;

(D) develop model continuing education programs for such professionals; and

(E) disseminate information to such professionals and the public.

(2) A center may use funds provided under subsection (a) of this section to provide stipends for health and allied health professionals enrolled in programs described in subparagraph (C) of paragraph (1), and to provide fees to individuals serving as subjects in clinical trials conducted under such paragraph.

(d) Coordination of information

The Director of the Institute shall, as appropriate, provide for the coordination of information among the centers assisted under this section.

(e) Facilities

Each center assisted under subsection (a) of this section shall use the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director of the Institute.

(f) Period of support

Support of a center under subsection (a) of this section may be for a period not exceeding 5 years. Such period may be extended for one or more additional periods not exceeding 5 years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 452A, as added Pub. L. 103–43, title X, § 1001, June 10, 1993, 107 Stat. 165; amended Pub. L. 109–482, title I, § 103(b)(29), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (g). Pub. L. 109–482 struck out subsec. (g) which read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 285g–6. Program regarding obstetrics and gynecology

The Director of the Institute shall establish and maintain within the Institute an intramural laboratory and clinical research program in obstetrics and gynecology.

(July 1, 1944, ch. 373, title IV, § 452B, as added Pub. L. 103–43, title X, § 1011, June 10, 1993, 107 Stat. 166.)

§ 285g–7. Child health research centers

The Director of the Institute shall develop and support centers for conducting research with respect to child health. Such centers shall give priority to the expeditious transfer of advances from basic science to clinical applications and improving the care of infants and children.

(July 1, 1944, ch. 373, title IV, § 452C, as added Pub. L. 103–43, title X, § 1021, June 10, 1993, 107 Stat. 167.)

§ 285g–8. Prospective longitudinal study on adolescent health

(a) In general

Not later than October 1, 1993, the Director of the Institute shall commence a study for the purpose of providing information on the general health and well-being of adolescents in the United States, including, with respect to such adolescents, information on—

(1) the behaviors that promote health and the behaviors that are detrimental to health; and

(2) the influence on health of factors particular to the communities in which the adolescents reside.

(b) Design of study

(1) In general

The study required in subsection (a) of this section shall be a longitudinal study in which a substantial number of adolescents participate as subjects. With respect to the purpose described in such subsection, the study shall monitor the subjects throughout the period of the study to determine the health status of the subjects and any change in such status over time.

(2) Population-specific analyses

The study required in subsection (a) of this section shall be conducted with respect to the population of adolescents who are female, the population of adolescents who are male, various socioeconomic populations of adolescents, and various racial and ethnic populations of adolescents. The study shall be designed and conducted in a manner sufficient to provide for a valid analysis of whether there are significant differences among such populations in health status and whether and to what extent any such differences are due to factors particular to the populations involved.

(c) Coordination with Women's Health Initiative

With respect to the national study of women being conducted by the Secretary and known as the Women's Health Initiative, the Secretary shall ensure that such study is coordinated with the component of the study required in subsection (a) of this section that concerns adolescent females, including coordination in the design of the 2 studies.

(July 1, 1944, ch. 373, title IV, § 452D, as added Pub. L. 103–43, title X, § 1031, June 10, 1993, 107 Stat. 167.)

§ 285g–9. Fragile X

(a) Expansion and coordination of research activities

The Director of the Institute, after consultation with the advisory council for the Institute, shall expand, intensify, and coordinate the activities of the Institute with respect to research on the disease known as fragile X.

(b) Research centers

(1) In general

The Director of the Institute shall make grants or enter into contracts for the development and operation of centers to conduct research for the purposes of improving the diagnosis and treatment of, and finding the cure for, fragile X.

(2) Number of centers

(A) In general

In carrying out paragraph (1), the Director of the Institute shall, to the extent that amounts are appropriated, and subject to subparagraph (B), provide for the establishment of at least three fragile X research centers.

(B) Peer review requirement

The Director of the Institute shall make a grant to, or enter into a contract with, an entity for purposes of establishing a center under paragraph (1) only if the grant or contract has been recommended after technical and scientific peer review required by regulations under section 289a of this title.

(3) Activities

The Director of the Institute, with the assistance of centers established under paragraph (1), shall conduct and support basic and biomedical research into the detection and treatment of fragile X.

(4) Coordination among centers

The Director of the Institute shall, as appropriate, provide for the coordination of the activities of the centers assisted under this section, including providing for the exchange of information among the centers.

(5) Certain administrative requirements

Each center assisted under paragraph (1) shall use the facilities of a single institution,

or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director of the Institute.

(6) Duration of support

Support may be provided to a center under paragraph (1) for a period not exceeding 5 years. Such period may be extended for one or more additional periods, each of which may not exceed 5 years, if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period be extended.

(July 1, 1944, ch. 373, title IV, § 452E, as added Pub. L. 106–310, div. A, title II, § 201, Oct. 17, 2000, 114 Stat. 1109; amended Pub. L. 109–482, title I, § 103(b)(30), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (b)(7). Pub. L. 109–482 struck out heading and text of par. (7). Text read as follows: ''For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 285g–10. Investment in tomorrow's pediatric researchers

In order to ensure the future supply of researchers dedicated to the care and research needs of children, the Director of the Institute, after consultation with the Administrator of the Health Resources and Services Administration, shall support activities to provide for—

(1) an increase in the number and size of institutional training grants to institutions supporting pediatric training; and

(2) an increase in the number of career development awards for health professionals who intend to build careers in pediatric basic and clinical research.

(July 1, 1944, ch. 373, title IV, § 452G, as added Pub. L. 106–310, div. A, title X, § 1002(a), Oct. 17, 2000, 114 Stat. 1128; amended Pub. L. 109–482, title I, § 103(b)(31), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Pub. L. 109–482 struck out subsec. (a) designation and heading before ''In order to'' and struck out heading and text of subsec. (b). Text read as follows: ''For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

SUBPART 8—NATIONAL INSTITUTE OF DENTAL RESEARCH

§ 285h. Purpose of Institute

The general purpose of the National Institute of Dental Research is the conduct and support of research, training, health information dissemination, and other programs with respect to the cause, prevention, and methods of diagnosis and treatment of dental and oral diseases and conditions.

(July 1, 1944, ch. 373, title IV, § 453, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856.)

SUBPART 9—NATIONAL EYE INSTITUTE

§ 285i. Purpose of Institute

The general purpose of the National Eye Institute (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to blinding eye diseases, visual disorders, mechanisms of visual function, preservation of sight, and the special health problems and requirements of the blind. Subject to section 285i–1 of this title, the Director of the Institute may carry out a program of grants for public and private nonprofit vision research facilities.

(July 1, 1944, ch. 373, title IV, § 455, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856; amended Pub. L. 103–43, title XI, § 1101(b), June 10, 1993, 107 Stat. 169.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''Subject to section 285i–1 of this title, the Director'' for ''The Director'' in second sentence.

§ 285i–1. Clinical research on eye care and diabetes

(a) Program of grants

The Director of the Institute, in consultation with the advisory council for the Institute, may award research grants to one or more Diabetes Eye Research Institutions for the support of programs in clinical or health services aimed at—

(1) providing comprehensive eye care services for people with diabetes, including a full complement of preventive, diagnostic and treatment procedures;

(2) developing new and improved techniques of patient care through basic and clinical research;

(3) assisting in translation of the latest research advances into clinical practice; and

(4) expanding the knowledge of the eye and diabetes through further research.

(b) Use of funds

Amounts received under a grant awarded under this section shall be used for the following:

(1) Establishing the biochemical, cellular, and genetic mechanisms associated with diabetic eye disease and the earlier detection of pending eye abnormalities. The focus of work under this paragraph shall require that ophthalmologists have training in the most up-to-date molecular and cell biological methods.

(2) Establishing new frontiers in technology, such as video-based diagnostic and research resources, to—

(A) provide improved patient care;

(B) provide for the evaluation of retinal physiology and its affect on diabetes; and

(C) provide for the assessment of risks for the development and progression of diabetic eye disease and a more immediate evaluation of various therapies aimed at preventing diabetic eye disease.

Such technologies shall be designed to permit evaluations to be performed both in humans and in animal models.

(3) The translation of the results of vision research into the improved care of patients with diabetic eye disease. Such translation shall require the application of institutional resources that encompass patient care, clinical research and basic laboratory research.

(4) The conduct of research concerning the outcomes of eye care treatments and eye health education programs as they relate to patients with diabetic eye disease, including the evaluation of regional approaches to such research.

(c) Authorized expenditures

The purposes for which a grant under subsection (a) of this section may be expended include equipment for the research described in such subsection.

(July 1, 1944, ch. 373, title IV, § 456, as added Pub. L. 103–43, title XI, § 1101(a), June 10, 1993, 107 Stat. 168.)

SUBPART 10—NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE

AMENDMENTS

1988—Pub. L. 100–553, § 2(2), Oct. 28, 1988, 102 Stat. 2769, and Pub. L. 100–607, title I, § 101(2), Nov. 4, 1988, 102 Stat. 3049, made identical amendments to subpart heading, substituting ''Neurological Disorders'' for ''Neurological and Communicative Disorders''. Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238, amended subpart heading to read as if the amendment by Pub. L. 100–607 had not been enacted.

§ 285j. Purpose of Institute

The general purpose of the National Institute of Neurological Disorders and Stroke (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to neurological disease and disorder and stroke.

(July 1, 1944, ch. 373, title IV, § 457, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857; amended Pub. L. 100–553, § 2(3), Oct. 28, 1988, 102 Stat. 2769; Pub. L. 100–607, title I, § 101(3), Nov. 4, 1988, 102 Stat. 3049; Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238; Pub. L. 101–93, § 5(a), Aug. 16, 1989, 103 Stat. 611.)

AMENDMENTS

1989—Pub. L. 101–93 substituted ''disease and'' for ''disease and and''.

1988—Pub. L. 100–553 and Pub. L. 100–607 made identical amendments, substituting ''Neurological Disorders'' for ''Neurological and Communicative Disorders'' and ''and disorder and stroke'' for ''disorder, stroke, and disorders of human communication''. Pub. L. 100–690 amended this section to read as if the amendments by Pub. L. 100–607 had not been enacted.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285j–1. Spinal cord regeneration research

The Director of the Institute shall conduct and support research into spinal cord regeneration.

(July 1, 1944, ch. 373, title IV, § 458, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857.)

INTERAGENCY COMMITTEE ON SPINAL CORD INJURY

Section 7 of Pub. L. 99–158 provided that:

''(a) ESTABLISHMENT.—Within 90 days after the date of enactment of this Act [Nov. 20, 1985], the Secretary of Health and Human Services shall establish in the National Institute of Neurological and Communicative Diseases and Stroke an Interagency Committee on Spinal Cord Injury (hereafter in this section referred to as the 'Interagency Committee'). The Interagency Committee shall plan, develop, coordinate, and implement comprehensive Federal initiatives in research on spinal cord injury and regeneration.

''(b) COMMITTEE COMPOSITION AND MEETINGS.—(1) The Interagency Committee shall consist of representatives from—

''(A) the National Institute on Neurological and Communicative Disorders and Stroke;

''(B) the Department of Defense;

''(C) the Department of Education;

''(D) the Veterans' Administration;

''(E) the Office of Science and Technology Policy; and

''(F) the National Science Foundation;

designated by the heads of such entities.

''(2) The Interagency Committee shall meet at least four times. The Secretary of Health and Human Services shall select the Chairman of the Interagency Committee from the members of the Interagency Committee.

''(c) REPORT.—Within the 18 months after the date of enactment of this Act [Nov. 20, 1985], the Interagency Committee shall prepare and transmit to the Congress a report concerning its activities under this section. The report shall include a description of research projects on spinal cord injury and regeneration conducted or supported by Federal agencies during such 18-month period, the nature and purpose of each such project, the amounts expended for each such project, and an identification of the entity which conducted the research under each such project.

''(d) TERMINATION.—The Interagency Committee shall terminate 90 days after the date on which the Interagency Committee transmits the report required by subsection (c) to the Congress.''

§ 285j–2. Bioengineering research

The Director of the Institute shall make grants or enter into contracts for research on the means to overcome paralysis of the extremities through electrical stimulation and the use of computers.

(July 1, 1944, ch. 373, title IV, § 459, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857.)

§ 285j–3. Research on multiple sclerosis

The Director of the Institute shall conduct and support research on multiple sclerosis, especially research on effects of genetics and hormonal changes on the progress of the disease.

(July 1, 1944, ch. 373, title IV, § 460, as added Pub. L. 103–43, title XII, § 1201, June 10, 1993, 107 Stat. 169.)

SUBPART 11—NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

§ 285k. Purpose of Institute

The general purpose of the National Institute of General Medical Sciences is the conduct and support of research, training, and, as appropriate, health information dissemination, and other programs with respect to general or basic medical sciences and related natural or behavioral sciences which have significance for two or more other national research institutes or are outside the general area of responsibility of any other national research institute.

(July 1, 1944, ch. 373, title IV, § 461, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857.)

SUBPART 12—NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

§ 285*l*. Purpose of Institute

The general purpose of the National Institute of Environmental Health Sciences (in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to factors in the environment that affect human health, directly or indirectly.

(July 1, 1944, ch. 373, title IV, § 463, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857; amended Pub. L. 103–43, title XIII, § 1301(b), June 10, 1993, 107 Stat. 170.)

AMENDMENTS

1993—Pub. L. 103–43 inserted ''(in this subpart referred to as the 'Institute')'' after ''Sciences''.

§ 285*l*–1. Applied Toxicological Research and Testing Program

(a) There is established within the Institute a program for conducting applied research and testing regarding toxicology, which program shall be known as the Applied Toxicological Research and Testing Program.

(b) In carrying out the program established under subsection (a) of this section, the Director of the Institute shall, with respect to toxicology, carry out activities—

(1) to expand knowledge of the health effects of environmental agents;

(2) to broaden the spectrum of toxicology information that is obtained on selected chemicals;

(3) to develop and validate assays and protocols, including alternative methods that can reduce or eliminate the use of animals in acute or chronic safety testing;

(4) to establish criteria for the validation and regulatory acceptance of alternative testing and to recommend a process through which scientifically validated alternative methods can be accepted for regulatory use;

(5) to communicate the results of research to government agencies, to medical, scientific, and regulatory communities, and to the public; and

(6) to integrate related activities of the Department of Health and Human Services.

(July 1, 1944, ch. 373, title IV, § 463A, as added Pub. L. 103–43, title XIII, § 1301(a), June 10, 1993, 107 Stat. 169.)

§ 285*l*–2. Definitions

In sections 285*l*–2 to 285*l*–5 of this title:

(1) Alternative test method

The term ''alternative test method'' means a test method that—

(A) includes any new or revised test method; and

(B)(i) reduces the number of animals required;

(ii) refines procedures to lessen or eliminate pain or distress to animals, or enhances animal well-being; or

(iii) replaces animals with non-animal systems or one animal species with a phylogenetically lower animal species, such as replacing a mammal with an invertebrate.

(2) ICCVAM test recommendation

The term ''ICCVAM test recommendation'' means a summary report prepared by the ICCVAM characterizing the results of a scientific expert peer review of a test method.

(Pub. L. 106–545, § 2, Dec. 19, 2000, 114 Stat. 2721.)

CODIFICATION

Section was enacted as part of the ICCVAM Authorization Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 285*l*–3. Interagency Coordinating Committee on the Validation of Alternative Methods

(a) In general

With respect to the interagency coordinating committee that is known as the Interagency Coordinating Committee on the Validation of Alternative Methods (referred to in sections 285*l*–2 to 285*l*–5 of this title as ''ICCVAM'') and that was established by the Director of the National Institute of Environmental Health Sciences for purposes of section 285*l*–1(b) of this title, the Director of the Institute shall designate such committee as a permanent interagency coordinating committee of the Institute under the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods. Sections 285*l*–2 to 285*l*–5 of this title may not be construed as affecting the authorities of such Director regarding ICCVAM that were in effect on the day before December 19, 2000, except to the extent inconsistent with sections 285*l*–2 to 285*l*–5 of this title.

(b) Purposes

The purposes of the ICCVAM shall be to—

(1) increase the efficiency and effectiveness of Federal agency test method review;

(2) eliminate unnecessary duplicative efforts and share experiences between Federal regulatory agencies;

(3) optimize utilization of scientific expertise outside the Federal Government;

(4) ensure that new and revised test methods are validated to meet the needs of Federal agencies; and

(5) reduce, refine, or replace the use of animals in testing, where feasible.

(c) Composition

The ICCVAM shall be composed of the heads of the following Federal agencies (or their designees):

(1) Agency for Toxic Substances and Disease Registry.

(2) Consumer Product Safety Commission.

(3) Department of Agriculture.

(4) Department of Defense.

(5) Department of Energy.

(6) Department of the Interior.

(7) Department of Transportation.

(8) Environmental Protection Agency.

(9) Food and Drug Administration.

(10) National Institute for Occupational Safety and Health.

(11) National Institutes of Health.

(12) National Cancer Institute.

(13) National Institute of Environmental Health Sciences.

(14) National Library of Medicine.

(15) Occupational Safety and Health Administration.

(16) Any other agency that develops, or employs tests or test data using animals, or regulates on the basis of the use of animals in toxicity testing.

(d) Scientific Advisory Committee

(1) Establishment

The Director of the National Institute of Environmental Health Sciences shall establish a Scientific Advisory Committee (referred to in sections 285*l*–2 to 285*l*–5 of this title as the ''SAC'') to advise ICCVAM and the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods regarding ICCVAM activities. The activities of the SAC shall be subject to provisions of the Federal Advisory Committee Act.

(2) Membership

(A) In general

The SAC shall be composed of the following voting members:

(i) At least one knowledgeable representative having a history of expertise, development, or evaluation of new or revised or alternative test methods from each of—

(I) the personal care, pharmaceutical, industrial chemicals, or agriculture industry;

(II) any other industry that is regulated by the Federal agencies specified in subsection (c) of this section; and

(III) a national animal protection organization established under section 501(c)(3) of title 26.

(ii) Representatives (selected by the Director of the National Institute of Environmental Health Sciences) from an academic institution, a State government agency, an international regulatory body, or any corporation developing or marketing new or revised or alternative test methodologies, including contract laboratories.

(B) Nonvoting ex officio members

The membership of the SAC shall, in addition to voting members under subparagraph (A), include as nonvoting ex officio members the agency heads specified in subsection (c) of this section (or their designees).

(e) Duties

The ICCVAM shall, consistent with the purposes described in subsection (b) of this section, carry out the following functions:

(1) Review and evaluate new or revised or alternative test methods, including batteries of tests and test screens, that may be acceptable for specific regulatory uses, including the coordination of technical reviews of proposed new or revised or alternative test methods of interagency interest.

(2) Facilitate appropriate interagency and international harmonization of acute or chronic toxicological test protocols that encourage the reduction, refinement, or replacement of animal test methods.

(3) Facilitate and provide guidance on the development of validation criteria, validation studies and processes for new or revised or alternative test methods and help facilitate the acceptance of such scientifically valid test methods and awareness of accepted test methods by Federal agencies and other stakeholders.

(4) Submit ICCVAM test recommendations for the test method reviewed by the ICCVAM, through expeditious transmittal by the Secretary of Health and Human Services (or the designee of the Secretary), to each appropriate Federal agency, along with the identification of specific agency guidelines, recommendations, or regulations for a test method, including batteries of tests and test screens, for chemicals or class of chemicals within a regulatory framework that may be appropriate for scientific improvement, while seeking to reduce, refine, or replace animal test methods.

(5) Consider for review and evaluation, petitions received from the public that—

(A) identify a specific regulation, recommendation, or guideline regarding a regulatory mandate; and

(B) recommend new or revised or alternative test methods and provide valid scientific evidence of the potential of the test method.

(6) Make available to the public final ICCVAM test recommendations to appropriate Federal agencies and the responses from the agencies regarding such recommendations.

(7) Prepare reports to be made available to the public on its progress under sections 285*l*–2 to 285*l*–5 of this title. The first report shall be completed not later than 12 months after December 19, 2000, and subsequent reports shall be completed biennially thereafter.

(Pub. L. 106–545, § 3, Dec. 19, 2000, 114 Stat. 2721.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was enacted as part of the ICCVAM Authorization Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year

period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 285*l*–4. Federal agency action

(a) Identification of tests

With respect to each Federal agency carrying out a program that requires or recommends acute or chronic toxicological testing, such agency shall, not later than 180 days after receiving an ICCVAM test recommendation, identify and forward to the ICCVAM any relevant test method specified in a regulation or industry-wide guideline which specifically, or in practice requires, recommends, or encourages the use of an animal acute or chronic toxicological test method for which the ICCVAM test recommendation may be added or substituted.

(b) Alternatives

Each Federal agency carrying out a program described in subsection (a) of this section shall promote and encourage the development and use of alternatives to animal test methods (including batteries of tests and test screens), where appropriate, for the purpose of complying with Federal statutes, regulations, guidelines, or recommendations (in each instance, and for each chemical class) if such test methods are found to be effective for generating data, in an amount and of a scientific value that is at least equivalent to the data generated from existing tests, for hazard identification, dose-response assessment, or risk assessment purposes.

(c) Test method validation

Each Federal agency carrying out a program described in subsection (a) of this section shall ensure that any new or revised acute or chronic toxicity test method, including animal test methods and alternatives, is determined to be valid for its proposed use prior to requiring, recommending, or encouraging the application of such test method.

(d) Review

Not later than 180 days after receipt of an ICCVAM test recommendation, a Federal agency carrying out a program described in subsection (a) of this section shall review such recommendation and notify the ICCVAM in writing of its findings.

(e) Recommendation adoption

Each Federal agency carrying out a program described in subsection (a) of this section, or its specific regulatory unit or units, shall adopt the ICCVAM test recommendation unless such Federal agency determines that—

(1) the ICCVAM test recommendation is not adequate in terms of biological relevance for the regulatory goal authorized by that agency, or mandated by Congress;

(2) the ICCVAM test recommendation does not generate data, in an amount and of a scientific value that is at least equivalent to the data generated prior to such recommendation, for the appropriate hazard identification, dose-response assessment, or risk assessment purposes as the current test method recommended or required by that agency;

(3) the agency does not employ, recommend, or require testing for that class of chemical or for the recommended test endpoint; or

(4) the ICCVAM test recommendation is unacceptable for satisfactorily fulfilling the test needs for that particular agency and its respective congressional mandate.

(Pub. L. 106–545, § 4, Dec. 19, 2000, 114 Stat. 2723.)

CODIFICATION

Section was enacted as part of the ICCVAM Authorization Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 285*l*–5. Application

(a) Application

Sections 285*l*–2 to 285*l*–5 of this title shall not apply to research, including research performed using biotechnology techniques, or research related to the causes, diagnosis, treatment, control, or prevention of physical or mental diseases or impairments of humans or animals.

(b) Use of test methods

Nothing in sections 285*l*–2 to 285*l*–5 of this title shall prevent a Federal agency from retaining final authority for incorporating the test methods recommended by the ICCVAM in the manner determined to be appropriate by such Federal agency or regulatory body.

(c) Limitation

Nothing in sections 285*l*–2 to 285*l*–5 of this title shall be construed to require a manufacturer that is currently not required to perform animal testing to perform such tests. Nothing in sections 285*l*–2 to 285*l*–5 of this title shall be construed to require a manufacturer to perform redundant endpoint specific testing.

(d) Submission of tests and data

Nothing in sections 285*l*–2 to 285*l*–5 of this title precludes a party from submitting a test method or scientific data directly to a Federal agency for use in a regulatory program.

(Pub. L. 106–545, § 5, Dec. 19, 2000, 114 Stat. 2724.)

CODIFICATION

Section was enacted as part of the ICCVAM Authorization Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 285*l*–6. Methods of controlling certain insect and vermin populations

The Director of the Institute shall conduct or support research to identify or develop methods of controlling insect and vermin populations that transmit to humans diseases that have significant adverse health consequences.

(July 1, 1944, ch. 373, title IV, § 463B, as added Pub. L. 108–75, § 3, Aug. 15, 2003, 117 Stat. 902.)

SUBPART 13—NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS

§ 285m. Purpose of Institute

The general purpose of the National Institute on Deafness and Other Communication Disorders (hereafter referred to in this subpart as the ''Institute'') is the conduct and support of research and training, the dissemination of health information, and other programs with respect to disorders of hearing and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell.

(July 1, 1944, ch. 373, title IV, § 464, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2769, and Pub. L. 100–607, title I, § 101(4), Nov. 4, 1988, 102 Stat. 3049; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which enacted this section, had not been enacted. See Codification note above.

SHORT TITLE OF 1988 AMENDMENT

For short title of Pub. L. 100–553 which enacted this subpart and amended sections 281 and 285j of this title as the ''National Deafness and Other Communication Disorders Act of 1988'', see section 1 of Pub. L. 100–553, set out as a note under section 201 of this title.

EFFECT OF ENACTMENT OF SIMILAR PROVISIONS

Section 2613(b) of Pub. L. 100–690 provided that:

''(1) Paragraphs (2) and (3) shall take effect immediately after the enactment of both the bill, S. 1727, of the One Hundredth Congress [Pub. L. 100–553, approved Oct. 28, 1988], and the Health Omnibus Programs Extension of 1988 [Pub. L. 100–607, approved Nov. 4, 1988].

''(2)(A) The provisions of the Public Health Service Act referred to in subparagraph (B), as similarly amended by the enactment of the bill, S. 1727, of the One Hundredth Congress, by subtitle A of title I of the Health Omnibus Programs Extension of 1988, and by subsection (a)(1) of this section, are amended to read as if the amendments made by such subtitle A and such subsection (a)(1) had not been enacted.

''(B) The provisions of the Public Health Service Act referred to in subparagraph (A) are—

''(A) sections 401(b)(1) and 457 [sections 281(b)(1) and 285j of this title];

''(B) part C of title IV [this part]; and

''(C) the heading for subpart 10 of such part C [42 U.S.C. prec. 285j].

''(3) Subsection (a)(2) of this section [set out below] is repealed.''

TRANSITIONAL AND SAVINGS PROVISIONS

Section 3 of Pub. L. 100–553 provided that:

''(a) TRANSFER OF PERSONNEL, ASSETS, AND LIABILITIES.—Personnel employed by the National Institutes of Health in connection with the functions vested under section 2 [enacting this subpart and amending sections 281 and 285j of this title] in the Director of the National Institute on Deafness and Other Communication Disorders, and assets, property, contracts, liabilities, records, unexpended balances of appropriations, authorizations, allocations, and other funds of the National Institutes of Health, arising from or employed, held, used, available to, or to be made available, in connection with such functions shall be transferred to the Director for appropriate allocation. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

''(b) SAVINGS PROVISIONS.—With respect to functions vested under section 1 [probably means section 2, enacting this subpart and amending sections 281 and 285j of this title] in the Director of the National Institute on Deafness and Other Communication Disorders, all orders, rules, regulations, grants, contracts, certificates, licenses, privileges, and other determinations, actions, or official documents, that have been issued, made, granted, or allowed to become effective, and that are effective on the date of the enactment of this Act [Oct. 28, 1988], shall continue in effect according to their terms unless changed pursuant to law.''

Section 2612(a)(2) of Pub. L. 100–690, which enacted provisions that were substantially identical to the transitional and savings provisions above, was repealed by section 2613(b)(3) of Pub. L. 100–690.

§ 285m–1. National Deafness and Other Communication Disorders Program

(a) The Director of the Institute, with the advice of the Institute's advisory council, shall establish a National Deafness and Other Communication Disorders Program (hereafter in this section referred to as the ''Program''). The Director or[1] the Institute shall, with respect to the Program, prepare and transmit to the Director of NIH a plan to initiate, expand, intensify and coordinate activities of the Institute respecting disorders of hearing (including tinnitus) and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise the plan and shall transmit any revisions of the plan to the Director of NIH.

(b) Activities under the Program shall include—

(1) investigation into the etiology, pathology, detection, treatment, and prevention of all forms of disorders of hearing and other communication processes, primarily through the support of basic research in such areas as anatomy, audiology, biochemistry, bioengineering, epidemiology, genetics, immunology, microbiology, molecular biology, the neurosciences, otolaryngology, psychology, pharmacology, physiology, speech and language pathology, and any other scientific disciplines that can contribute important knowledge to the understanding and elimination of disorders of hearing and other communication processes;

(2) research into the evaluation of techniques (including surgical, medical, and behavioral approaches) and devices (including hearing aids, implanted auditory and nonauditory prosthetic devices and other communication aids) used in diagnosis, treatment, rehabilitation, and prevention of disorders of hearing and other communication processes;

(3) research into prevention, and early detection and diagnosis, of hearing loss and speech

[1] So in original. Probably should be ''of''.

and language disturbances (including stuttering) and research into preventing the effects of such disorders on learning and learning disabilities with extension of programs for appropriate referral and rehabilitation;

(4) research into the detection, treatment, and prevention of disorders of hearing and other communication processes in the growing elderly population with extension of rehabilitative programs to ensure continued effective communication skills in such population;

(5) research to expand knowledge of the effects of environmental agents that influence hearing or other communication processes; and

(6) developing and facilitating intramural programs on clinical and fundamental aspects of disorders of hearing and all other communication processes.

(July 1, 1944, ch. 373, title IV, § 464A, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2769, and Pub. L. 100–607, title I, § 101(4), Nov. 4, 1988, 102 Stat. 3049; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285m–2. Data System and Information Clearinghouse

(a) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with disorders of hearing or other communication processes, including where possible, data involving general populations for the purpose of identifying individuals at risk of developing such disorders.

(b) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of disorders of hearing and other communication processes by health professionals, patients, industry, and the public.

(July 1, 1944, ch. 373, title IV, § 464B, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2770, and Pub. L. 100–607, title I, § 101(4), Nov. 4, 1988, 102 Stat. 3050; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285m–3. Multipurpose deafness and other communication disorders center

(a) Development, modernization and operation; "modernization" defined

The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including care required for research) of new and existing centers for studies of disorders of hearing and other communication processes. For purposes of this section, the term ''modernization'' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

(b) Use of facilities; qualifications

Each center assisted under this section shall—

(1) use the facilities of a single institution or a consortium of cooperating institutions; and

(2) meet such qualifications as may be prescribed by the Secretary.

(c) Requisite programs

Each center assisted under this section shall, at least, conduct—

(1) basic and clinical research into the cause diagnosis, early detection, prevention, control and treatment of disorders of hearing and other communication processes and complications resulting from such disorders, including research into rehabilitative aids, implantable biomaterials, auditory speech processors, speech production devices, and other otolaryngologic procedures;

(2) training programs for physicians, scientists, and other health and allied health professionals;

(3) information and continuing education programs for physicians and other health and allied health professionals who will provide care for patients with disorders of hearing or other communication processes; and

(4) programs for the dissemination to the general public of information—

(A) on the importance of early detection of disorders of hearing and other communication processes, of seeking prompt treatment, rehabilitation, and of following an appropriate regimen; and

(B) on the importance of avoiding exposure to noise and other environmental toxic agents that may affect disorders of hearing or other communication processes.

(d) Stipends

A center may use funds provided under subsection (a) of this section to provide stipends for

health professionals enrolled in training programs described in subsection (c)(2) of this section.

(e) Discretionary programs

Each center assisted under this section may conduct programs—

(1) to establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals at risk of developing disorders of hearing or other communication processes; and

(2) to disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping.

(f) Equitable geographical distribution; needs of elderly and children

The Director of the Institute shall, to the extent practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of the elderly, and of children (particularly with respect to their education and training), affected by disorders of hearing or other communication processes.

(g) Period of support; recommended extensions of peer review group

Support of a center under this section may be for a period not to exceed seven years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director, with the advice of the Institute's advisory council, if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 464C, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2771, and Pub. L. 100–607, title I, § 101(4), Nov. 4, 1988, 102 Stat. 3050; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285m–4. National Institute on Deafness and Other Communication Disorders Advisory Board

(a) Establishment

The Secretary shall establish in the Institute the National Deafness and Other Communication Disorders Advisory Board (hereafter in this section referred to as the ''Advisory Board'').

(b) Composition; qualifications; appointed and ex officio members

The Advisory Board shall be composed of eighteen appointed members and nonvoting ex officio members as follows:

(1) The Secretary shall appoint—

(A) twelve members from individuals who are scientists, physicians, and other health and rehabilitation professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to deafness and other communication disorders, including not less than two persons with a communication disorder; and

(B) six members from the general public who are knowledgeable with respect to such disorders, including not less than one person with a communication disorder and not less than one person who is a parent of an individual with such a disorder.

Of the appointed members, not less than five shall by virtue of training or experience be knowledgeable in diagnoses and rehabilitation of communication disorders, education of the hearing, speech, or language impaired, public health, public information, community program development, occupational hazards to communications senses, or the aging process.

(2) The following shall be ex officio members of each Advisory Board:

(A) The Assistant Secretary for Health, the Director of NIH, the Director of the National Institute on Deafness and Other Communication Disorders, the Director of the Centers for Disease Control and Prevention, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers).

(B) Such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

(c) Compensation

Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Board.

(d) Term of office; vacancies

The term of office of an appointed member of the Advisory Board is four years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days from the date the vacancy occurred.

(e) Chairman

The members of the Advisory Board shall select a chairman from among the appointed members.

(f) Personnel; executive director; professional and clerical staff members; consultants; information and administrative support services and facilities

The Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, such services of consultants, such information, and (through contracts or other arrangements) such administrative support services and facilities, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

(g) Meetings

The Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

(h) Functions

The Advisory Board shall—

(1) review and evaluate the implementation of the plan prepared under section 285m–1(a) of this title and periodically update the plan to ensure its continuing relevance;

(2) for the purpose of assuring the most effective use and organization of resources respecting deafness and other communication disorders, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan and with key non-Federal entities involved in activities affecting the control of such disorders.

(i) Subcommittee activities; workshops and conferences; collection of data

In carrying out its functions, the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

(j) Repealed. Pub. L. 109–482, title I, § 104(b)(1)(J), Jan. 15, 2007, 120 Stat. 3693

(k) Commencement of existence

The National Deafness and Other Communication Disorders Advisory Board shall be established not later than April 1, 1989.

(July 1, 1944, ch. 373, title IV, § 464D, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2772, and Pub. L. 100–690, title II, § 2613(a)(1), Nov. 18, 1988, 102 Stat. 4235; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238; Pub. L. 101–93, § 5(b), Aug. 16, 1989, 103 Stat. 611; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 102–531, title III, § 312(d)(8), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 103–43, title XX, § 2008(b)(8), June 10, 1993, 107 Stat. 211; Pub. L. 109–482, title I, § 104(b)(1)(J), Jan. 15, 2007, 120 Stat. 3693.)

CODIFICATION

Pub. L. 100–553 and section 2613(a)(1) of Pub. L. 100–690 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

2007—Subsec. (j). Pub. L. 109–482 struck out subsec. (j) which read as follows: ''The Advisory Board shall prepare an annual report for the Secretary which—

''(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

''(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to the deafness and other communication disorders;

''(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such disorders in such fiscal year; and

''(4) contains the Advisory Board's recommendations (if any) for changes in the plan prepared under section 285m–1(a) of this title.''

1993—Subsec. (b)(2)(A). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (b)(2)(A). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1989—Subsec. (k). Pub. L. 101–93 substituted ''April 1, 1989'' for ''90 days after the date of the enactment of the National Institute on Deafness and Other Communication Disorders Act''.

1988—Pub. L. 100–690, § 2613(b)(2), amended this section to read as if the amendments made by Pub. L. 100–690, § 2613(a)(1), which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by section 2613(b)(2) of Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as

may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285m–5. Interagency Coordinating Committee

(a) Establishment

The Secretary may establish a committee to be known as the Deafness and Other Communication Disorders Interagency Coordinating Committee (hereafter in this section referred to as the ''Coordinating Committee'').

(b) Functions

The Coordinating Committee shall, with respect to deafness and other communication disorders—

(1) provide for the coordination of the activities of the national research institutes; and

(2) coordinate the aspects of all Federal health programs and activities relating to deafness and other communication disorders in order to assure the adequacy and technical soundness of such programs and activities and in order to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities.

(c) Composition

The Coordinating Committee shall be composed of the directors of each of the national research institutes and divisions involved in research with respect to deafness and other communication disorders and representatives of all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to deafness and other communication disorders.

(d) Chairman; meetings

The Coordinating Committee shall be chaired by the Director of NIH (or the designee of the Director). The Committee shall meet at the call of the chair, but not less often than four times a year.

(July 1, 1944, ch. 373, title IV, § 464E, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2774, and Pub. L. 100–690, title II, § 2613(a)(1), Nov. 18, 1988, 102 Stat. 4237; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238; Pub. L. 103–43, title XX, § 2008(b)(9), June 10, 1993, 107 Stat. 211; Pub. L. 109–482, title I, § 104(b)(1)(K), Jan. 15, 2007, 120 Stat. 3693.)

CODIFICATION

Pub. L. 100–553 and section 2613(a)(1) of Pub. L. 100–690 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

2007—Subsec. (e). Pub. L. 109–482 struck out subsec. (e) which read as follows: ''Not later than 120 days after the end of each fiscal year, the Coordinating Committee shall prepare and transmit to the Secretary, the Director of NIH, the Director of the Institute, and the advisory council for the Institute a report detailing the activities of the Committee in such fiscal year in carrying out subsection (b) of this section.''

1993—Subsecs. (d), (e). Pub. L. 103–43 inserted ''Coordinating'' before ''Committee'' in first sentence of subsec. (d) and before first reference to ''Committee'' in subsec. (e).

1988—Pub. L. 100–690, § 2613(b)(2), amended this section to read as if the amendments made by Pub. L. 100–690, § 2613(a)(1), which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by section 2613(b)(2) of Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285m–6. Limitation on administrative expenses

With respect to amounts appropriated for a fiscal year for the National Institutes of Health, the limitation established in section 284c(a)(1) of this title on the expenditure of such amounts for administrative expenses shall apply to administrative expenses of the National Institute on Deafness and Other Communication Disorders.

(July 1, 1944, ch. 373, title IV, § 464F, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2774, and Pub. L. 100–690, title II, § 2613(a)(1), Nov. 18, 1988, 102 Stat. 4238; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238; Pub. L. 103–43, title IV, § 403(b)(2), June 10, 1993, 107 Stat. 158.)

CODIFICATION

Pub. L. 100–553 and section 2613(a)(1) of Pub. L. 100–690 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1993—Pub. L. 103–43 substituted ''section 284c(a)(1)'' for ''section 284c(b)(1)''.

1988—Pub. L. 100–690, § 2613(b)(2), amended this section to read as if the amendments made by Pub. L. 100–690, § 2613(a)(1), which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by section 2613(b)(2) of Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

SUBPART 14—NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM

§ 285n. Purpose of Institute

(a) In general

The general purpose of the National Institute on Alcohol Abuse and Alcoholism (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical and behavioral research, health services research, research training, and health information dissemination with respect to the prevention of alcohol abuse and the treatment of alcoholism.

(b) Research program

The research program established under this subpart shall encompass the social, behavioral, and biomedical etiology, mental and physical health consequences, and social and economic consequences of alcohol abuse and alcoholism. In carrying out the program, the Director of the Institute is authorized to—

(1) collect and disseminate through publications and other appropriate means (including the development of curriculum materials), information as to, and the practical application of, the research and other activities under the program;

(2) make available research facilities of the Public Health Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(3) make grants to universities, hospitals, laboratories, and other public or nonprofit institutions, and to individuals for such research projects as are recommended by the National Advisory Council on Alcohol Abuse and Alcoholism, giving special consideration to projects relating to—

(A) the relationship between alcohol abuse and domestic violence,

(B) the effects of alcohol use during pregnancy,

(C) the impact of alcoholism and alcohol abuse on the family, the workplace, and systems for the delivery of health services,

(D) the relationship between the abuse of alcohol and other drugs,

(E) the effect on the incidence of alcohol abuse and alcoholism of social pressures, legal requirements respecting the use of alcoholic beverages, the cost of such beverages, and the economic status and education of users of such beverages,

(F) the interrelationship between alcohol use and other health problems,

(G) the comparison of the cost and effectiveness of various treatment methods for alcoholism and alcohol abuse and the effectiveness of prevention and intervention programs for alcoholism and alcohol abuse,

(H) alcoholism and alcohol abuse among women;

(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(5) promote the coordination of research programs conducted by the Institute, and similar programs conducted by the National Institute of Drug Abuse and by other departments, agencies, organizations, and individuals, including all National Institutes of Health research activities which are or may be related to the problems of individuals suffering from alcoholism or alcohol abuse or those of their families or the impact of alcohol abuse on other health problems;

(6) conduct an intramural program of biomedical, behavioral, epidemiological, and social research, including research into the most effective means of treatment and service delivery, and including research involving human subjects, which is—

(A) located in an institution capable of providing all necessary medical care for such human subjects, including complete 24-hour medical diagnostic services by or under the supervision of physicians, acute and intensive medical care, including 24-hour emergency care, psychiatric care, and such other care as is determined to be necessary for individuals suffering from alcoholism and alcohol abuse; and

(B) associated with an accredited medical or research training institution;

(7) for purposes of study, admit and treat at institutions, hospitals, and stations of the Public Health Service, persons not otherwise eligible for such treatment;

(8) provide to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical and other scientific research methods to experiments, studies, and surveys in health and medical fields;

(9) enter into contracts under this subchapter without regard to section 3324(a) and (b) of title 31 and section 5 of title 41; and

(10) adopt, upon recommendation of the National Advisory Council on Alcohol Abuse and Alcoholism, such additional means as he deems necessary or appropriate to carry out the purposes of this section.

(c) Collaboration

The Director of the Institute shall collaborate with the Administrator of the Substance Abuse and Mental Health Services Administration in focusing the services research activities of the Institute and in disseminating the results of such research to health professionals and the general public.

(July 1, 1944, ch. 373, title IV, §464H, as added and amended Pub. L. 102–321, title I, §122(a), (b), July 10, 1992, 106 Stat. 358, 359; Pub. L. 102–352, §2(a)(1), Aug. 26, 1992, 106 Stat. 938; Pub. L. 109–482, title I, §103(b)(32), Jan. 15, 2007, 120 Stat. 3688.)

CODIFICATION

Section 290bb(b) of this title, which was transferred to subsec. (b) of this section and amended by Pub. L. 102–321, was based on act July 1, 1944, ch. 373, title V, §510, formerly Pub. L. 91–616, title V, §501(b), as added Pub. L. 94–371, §7, July 26, 1976, 90 Stat. 1038; amended Pub. L. 95–622, title II, §268(d), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96–180, §14(b), Jan. 2, 1980, 93 Stat. 1305; renumbered §510(b) of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(9), 97 Stat. 179; Oct. 19, 1984, Pub. L. 98–509, title II, §205(a)(1), 98 Stat. 2361.

In subsec. (b)(9), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 struck out subsec. (d) which related to authorization of appropriations and allocation for health services research.

1992—Subsec. (a). Pub. L. 102–352 substituted ''Institute on Alcohol'' for ''Institute of Alcohol''.

Subsec. (b). Pub. L. 102–321, §122(b)(1), (2)(A), transferred subsec. (b) of section 290bb of this title to subsec. (b) of this section, substituted ''(b) RESEARCH PRO-

GRAM.—The research program established under this subpart shall encompass the social, behavioral, and biomedical etiology, mental and physical health consequences, and social and economic consequences of alcohol abuse and alcoholism. In carrying out the program, the Director of the Institute is authorized'' for ''(b) In carrying out the program described in subsection (a) of this section, the Secretary, acting through the Institute, is authorized'' in introductory provisions, and substituted a semicolon for period at end of par. (3)(H).

Subsecs. (c), (d). Pub. L. 102–321, § 122(b)(2)(B), added subsecs. (c) and (d).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 3 of Pub. L. 102–352 provided that: ''The amendments made by—

''(1) subsection (a) of section 2 [amending this section and sections 285n–2, 285*o*, 285*o*–2, 285p, 290aa–1, 290aa–3, 300x–7, 300x–27, 300x–33, 300x–53, and 300y of this title], shall take effect immediately upon the effectuation of the amendments made by titles I and II of the ADAMHA Reorganization Act [Pub. L. 102–321, see Effective Date of 1992 Amendment note set out under section 236 of this title]; and

''(2) subsections (b) and (c) of section 2 [amending sections 290cc–21, 290cc–28, and 290cc–30 of this title and provisions set out as notes under sections 290aa and 300x of this title], shall take effect on the date of enactment of this Act [Aug. 26, 1992].''

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REQUIRED ALLOCATIONS FOR HEALTH SERVICES RESEARCH

Pub. L. 103–43, title XX, § 2016(b), June 10, 1993, 107 Stat. 218, provided that, with respect to the allocation for health services research required in former subsec. (d)(2) of this section and former sections 285*o*(d)(2) and 285p(f)(2) of this title, the term ''15 percent'' appearing in each of such provisions was deemed to be 12 percent in the case of allocations for fiscal year 1993.

STUDY ON FETAL ALCOHOL EFFECT AND FETAL ALCOHOL SYNDROME

Section 705 of Pub. L. 102–321 directed Secretary of Health and Human Services to enter into a contract with a public or nonprofit private entity to conduct a study on the prevalence of fetal alcohol effect and fetal alcohol syndrome in the general population of the United States and on the adequacy of Federal efforts to reduce the incidence of such conditions (including efforts regarding appropriate training for health care providers in identifying such effect or syndrome), and to ensure that a report outlining this study be submitted to Congress not later than 18 months after July 10, 1992.

ALCOHOLISM AND ALCOHOL ABUSE TREATMENT STUDY

Pub. L. 99–570, title IV, § 4022, Oct. 27, 1986, 100 Stat. 3207–124, directed Secretary of Health and Human Services, acting through Director of National Institute on Alcohol Abuse and Alcoholism, to conduct a study of alternative approaches for alcoholism and alcohol abuse treatment and rehabilitation and of financing alternatives including policies and experiences of third party insurers and State and municipal governments; to recommend policies and programs for research, planning, administration, and reimbursement for treatment and rehabilitation; to request National Academy of Sciences to conduct such study in consultation with Director of National Institute on Alcohol Abuse and Alcoholism under an arrangement entered into with consent of Academy that actual expenses of Academy will be paid by Secretary and that Academy would submit a final report to Secretary no later than 24 months after the arrangement was entered into; and to transmit a final report to Congress no later than 30 days after receiving Academy's report.

§ 285n–1. Associate Director for Prevention

(a) In general

There shall be in the Institute an Associate Director for Prevention who shall be responsible for the full-time coordination and promotion of the programs in the Institute concerning the prevention of alcohol abuse and alcoholism. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or expertise are experts in alcohol abuse and alcoholism or the prevention of such.

(b) Biennial report

The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b[1] of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 464I, as added Pub. L. 102–321, title I, § 122(c), July 10, 1992, 106 Stat. 359.)

REFERENCES IN TEXT

Section 284b of this title, referred to in subsec. (b), was repealed by Pub. L. 109–482, title I, § 104(b)(1)(C), Jan. 15, 2007, 120 Stat. 3693.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285n–2. National Alcohol Research Centers; mandatory grant for research of effects of alcohol on elderly

(a) Designation; procedures applicable for approval of applications

The Secretary acting through the Institute may designate National Alcohol Research Centers for the purpose of interdisciplinary research relating to alcoholism and other biomedical, behavioral, and social issues related to alcoholism and alcohol abuse. No entity may be designated as a Center unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such manner and contain such information as the Secretary may reasonably require. The Secretary may not approve such an application unless—

(1) the application contains or is supported by reasonable assurances that—

(A) the applicant has the experience, or capability, to conduct, through biomedical, behavioral, social, and related disciplines,

[1] See References in Text note below.

long-term research on alcoholism and other alcohol problems and to provide coordination of such research among such disciplines;

(B) the applicant has available to it sufficient facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application;

(C) the applicant has facilities and personnel to provide training in the prevention and treatment of alcoholism and other alcohol problems;

(D) the applicant has the capacity to train predoctoral and postdoctoral students for careers in research on alcoholism and other alcohol problems;

(E) the applicant has the capacity to conduct courses on alcohol problems and research on alcohol problems for undergraduate and graduate students, and for medical and osteopathic, nursing, social work, and other specialized graduate students; and

(F) the applicant has the capacity to conduct programs of continuing education in such medical, legal, and social service fields as the Secretary may require.[1]

(2) the application contains a detailed five-year plan for research relating to alcoholism and other alcohol problems.

(b) Annual grants; amount; limitation on uses

The Secretary shall, under such conditions as the Secretary may reasonably require, make annual grants to Centers which have been designated under this section. No funds provided under a grant under this subsection may be used for the purchase of any land or the purchase, construction, preservation, or repair of any building. For the purposes of the preceding sentence, the term ''construction'' has the meaning given that term by section 292a(1)[2] of this title. The Secretary shall include in the grants made under this section for fiscal years beginning after September 30, 1981, a grant to a designated Center for research on the effects of alcohol on the elderly.

(July 1, 1944, ch. 373, title IV, § 464J, formerly title V, § 511, formerly Pub. L. 91–616, title V, § 503, formerly § 504, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 95–622, title I, § 110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96–180, § 16, Jan. 2, 1980, 93 Stat. 1305; renumbered § 503 of Pub. L. 91–616 and amended Pub. L. 97–35, title IX, § 965(b), (c), Aug. 13, 1981, 95 Stat. 594; renumbered § 511 of act July 1, 1944, and amended Pub. L. 98–24, § 2(b)(9), Apr. 26, 1983, 97 Stat. 179; Pub. L. 99–570, title IV, § 4008, Oct. 27, 1986, 100 Stat. 3207–115; renumbered title IV, § 464J and amended Pub. L. 102–321, title I, § 122(d), July 10, 1992, 106 Stat. 360; Pub. L. 102–352, § 2(a)(2), Aug. 26, 1992, 106 Stat. 938.)

REFERENCES IN TEXT

Section 292a of this title, referred to in subsec. (b), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see sections 292*o* and 295p of this title.

CODIFICATION

Section was formerly classified to section 290bb–1 of this title prior to renumbering by Pub. L. 102–321.

Section was formerly classified to section 4587 of this title prior to renumbering by Pub. L. 98–24.

Section was formerly classified to section 4588 of this title prior to renumbering by Pub. L. 97–35.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–352 substituted ''292a(1)'' for ''292a(2)''.

Pub. L. 102–321, § 122(d)(2), struck ''or rental'' before ''of any land''.

1986—Subsec. (b). Pub. L. 99–570, § 4008(1), which directed that subsec. (b) be amended by striking out ''or rental'' before ''any land'', could not be executed because ''or rental'' appeared before ''of any land''.

Pub. L. 99–570, § 4008(2), struck out ''rental,'' before ''purchase''.

1983—Subsec. (a). Pub. L. 98–24, § 2(b)(9)(B)(i), struck out direction that, insofar as practicable, the Secretary approve applications under this subsection in a manner resulting in an equitable geographic distribution of Centers.

Subsec. (b). Pub. L. 98–24, § 2(b)(9)(B)(ii), (iii), struck out provision that no annual grant to any Center might exceed $1,500,000, and made a technical amendment to reference to section 292a of this title to reflect the transfer of this section to the Public Health Service Act.

Subsec. (c). Pub. L. 98–24, § 2(b)(9)(B)(iv), struck out subsec. (c) which authorized $6,000,000 for each of fiscal years ending Sept. 30, 1977, 1978, and 1979, $8,000,000 for fiscal year ending Sept. 30, 1980, and $9,000,000 for fiscal year ending Sept. 30, 1981.

1981—Subsec. (b). Pub. L. 97–35, § 965(b), inserted provisions relating to grants made for fiscal years beginning after Sept. 30, 1981.

1980—Subsec. (a). Pub. L. 96–180, § 16(a), substituted: in first sentence ''biomedical, behavioral, and social issues related to alcoholism and alcohol abuse'' for ''alcohol problems''; in par. (1)(B) ''facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application'' for ''laboratory facilities and reference services (including reference services that will afford access to scientific alcohol literature)''; and in par. (1)(E) ''medical and osteopathic, nursing, social work, and other specialized graduate students; and'' for ''medical and osteopathic students and physicians;'', and added par. (1)(F).

Subsec. (b). Pub. L. 96–180, § 16(b), increased annual grant limitation to $1,500,000 from $1,000,000.

Subsec. (c). Pub. L. 96–180, § 16(c), authorized appropriation of $8,000,000 and $9,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

1978—Subsec. (a). Pub. L. 95–622 inserted provision following par. (2) relating to approval of applications under this subsection by the Secretary in a manner which results in equitable geographic distribution of Centers.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

[1] So in original. The period probably should be ''; and''.

[2] See References in Text note below.

SUBPART 15—NATIONAL INSTITUTE ON DRUG ABUSE

§ 285*o*. Purpose of Institute

(a) In general

The general purpose of the National Institute on Drug Abuse (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical and behavioral research, health services research, research training, and health information dissemination with respect to the prevention of drug abuse and the treatment of drug abusers.

(b) Research program

The research program established under this subpart shall encompass the social, behavioral, and biomedical etiology, mental and physical health consequences, and social and economic consequences of drug abuse. In carrying out the program, the Director of the Institute shall give special consideration to projects relating to drug abuse among women (particularly with respect to pregnant women).

(c) Collaboration

The Director of the Institute shall collaborate with the Substance Abuse and Mental Health Services Administration in focusing the services research activities of the Institute and in disseminating the results of such research to health professionals and the general public.

(July 1, 1944, ch. 373, title IV, § 464L, as added Pub. L. 102–321, title I, § 123(a), July 10, 1992, 106 Stat. 360; amended Pub. L. 102–352, § 2(a)(3), Aug. 26, 1992, 106 Stat. 938; Pub. L. 109–482, title I, § 103(b)(33), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 struck out subsec. (d) which related to authorization of appropriations and allocation for health services research.

1992—Subsec. (d)(1). Pub. L. 102–352 inserted ''other than section 285*o*–4 of this title,'' after ''this subpart,''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285*o*–1. Associate Director for Prevention

(a) In general

There shall be in the Institute an Associate Director for Prevention who shall be responsible for the full-time coordination and promotion of the programs in the Institute concerning the prevention of drug abuse. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or expertise are experts in drug abuse and the prevention of such abuse.

(b) Report

The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b[1] of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 464M, as added Pub. L. 102–321, title I, § 123(b), July 10, 1992, 106 Stat. 361.)

REFERENCES IN TEXT

Section 284b of this title, referred to in subsec. (b), was repealed by Pub. L. 109–482, title I, § 104(b)(1)(C), Jan. 15, 2007, 120 Stat. 3693.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285*o*–2. Drug Abuse Research Centers

(a) Authority

The Director of the Institute may designate National Drug Abuse Research Centers for the purpose of interdisciplinary research relating to drug abuse and other biomedical, behavioral, and social issues related to drug abuse. No entity may be designated as a Center unless an application therefore has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such manner and contain such information as the Secretary may reasonably require. The Secretary may not approve such an application unless—

(1) the application contains or is supported by reasonable assurances that—

(A) the applicant has the experience, or capability, to conduct, through biomedical, behavioral, social, and related disciplines, long-term research on drug abuse and to provide coordination of such research among such disciplines;

(B) the applicant has available to it sufficient facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application;

(C) the applicant has facilities and personnel to provide training in the prevention and treatment of drug abuse;

(D) the applicant has the capacity to train predoctoral and postdoctoral students for careers in research on drug abuse;

(E) the applicant has the capacity to conduct courses on drug abuse problems and research on drug abuse for undergraduate and graduate students, and medical and osteopathic, nursing, social work, and other specialized graduate students; and

(F) the applicant has the capacity to conduct programs of continuing education in such medical, legal, and social service fields as the Secretary may require.[1]

(2) the application contains a detailed five-year plan for research relating to drug abuse.

[1] See References in Text note below.

[1] So in original. The period probably should be ''; and''.

(b) Grants

The Director of the Institute shall, under such conditions as the Secretary may reasonably require, make annual grants to Centers which have been designated under this section. No funds provided under a grant under this subsection may be used for the purchase of any land or the purchase, construction, preservation, or repair of any building. For the purposes of the preceding sentence, the term ''construction'' has the meaning given that term by section 292a(1)[2] of this title.

(c) Drug abuse and addiction research

(1) Grants or cooperative agreements

The Director of the Institute may make grants or enter into cooperative agreements to expand the current and ongoing interdisciplinary research and clinical trials with treatment centers of the National Drug Abuse Treatment Clinical Trials Network relating to drug abuse and addiction, including related biomedical, behavioral, and social issues.

(2) Use of funds

Amounts made available under a grant or cooperative agreement under paragraph (1) for drug abuse and addiction may be used for research and clinical trials relating to—

(A) the effects of drug abuse on the human body, including the brain;

(B) the addictive nature of drugs and how such effects differ with respect to different individuals;

(C) the connection between drug abuse and mental health;

(D) the identification and evaluation of the most effective methods of prevention of drug abuse and addiction;

(E) the identification and development of the most effective methods of treatment of drug addiction, including pharmacological treatments;

(F) risk factors for drug abuse;

(G) effects of drug abuse and addiction on pregnant women and their fetuses; and

(H) cultural, social, behavioral, neurological, and psychological reasons that individuals abuse drugs, or refrain from abusing drugs.

(3) Research results

The Director shall promptly disseminate research results under this subsection to Federal, State, and local entities involved in combating drug abuse and addiction.

(July 1, 1944, ch. 373, title IV, § 464N, as added Pub. L. 102–321, title I, § 123(b), July 10, 1992, 106 Stat. 361; amended Pub. L. 102–352, § 2(a)(4), Aug. 26, 1992, 106 Stat. 938; Pub. L. 106–310, div. B, title XXXVI, § 3631, Oct. 17, 2000, 114 Stat. 1235; Pub. L. 107–273, div. B, title II, § 2203, Nov. 2, 2002, 116 Stat. 1794; Pub. L. 109–482, title I, § 103(b)(34), Jan. 15, 2007, 120 Stat. 3688.)

REFERENCES IN TEXT

Section 292a of this title, referred to in subsec. (b), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see sections 292*o* and 295p of this title.

AMENDMENTS

2007—Subsec. (c)(4). Pub. L. 109–482 struck out par. (4) which authorized appropriations and provided they were supplemental to other funding of research on drug abuse.

2002—Subsec. (c). Pub. L. 107–273 amended heading and text of subsec. (c) generally, substituting provisions relating to grants or cooperative agreements for research and clinical trials relating to drug abuse and addiction for similar provisions relating to grants or cooperative agreements for research and clinical trials relating to methamphetamine abuse and addiction.

2000—Subsec. (c). Pub. L. 106–310 added subsec. (c).

1992—Subsec. (b). Pub. L. 102–352 substituted ''292a(1)'' for ''292a(2)''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285*o*–3. Office on AIDS

The Director of the Institute shall establish within the Institute an Office on AIDS. The Office shall be responsible for the coordination of research and determining the direction of the Institute with respect to AIDS research related to—

(1) primary prevention of the spread of HIV, including transmission via drug abuse;

(2) drug abuse services research; and

(3) other matters determined appropriate by the Director.

(July 1, 1944, ch. 373, title IV, § 464O, as added Pub. L. 102–321, title I, § 123(b), July 10, 1992, 106 Stat. 362.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

STUDY BY NATIONAL ACADEMY OF SCIENCES

Section 706 of Pub. L. 102–321 directed Secretary of Health and Human Services to contract for a study or studies relating to programs that provide both sterile hypodermic needles and bleach to individuals in order to reduce the risk of contracting acquired immune deficiency syndrome or related conditions, in order to determine extent to which such programs promote the abuse of drugs or otherwise altered any behaviors constituting a substantial risk of contracting AIDS or

[2] See References in Text note below.

hepatitus, or of transmitting such conditions, and further directed Secretary to ensure that a report is submitted to Congress on the results of this study not later than 18 months after July 10, 1992.

§ 285*o*–4. Medication Development Program

(a) Establishment

There is established in the Institute a Medication Development Program through which the Director of such Institute shall—

(1) conduct periodic meetings with the Commissioner of Food and Drugs to discuss measures that may facilitate the approval process of drug abuse treatments;

(2) encourage and promote (through grants, contracts, international collaboration, or otherwise) expanded research programs, investigations, experiments, community trials, and studies, into the development and use of medications to treat drug addiction;

(3) establish or provide for the establishment of research facilities;

(4) report on the activities of other relevant agencies relating to the development and use of pharmacotherapeutic treatments for drug addiction;

(5) collect, analyze, and disseminate data useful in the development and use of pharmacotherapeutic treatments for drug addiction and collect, catalog, analyze, and disseminate through international channels, the results of such research;

(6) directly or through grants, contracts, or cooperative agreements, support training in the fundamental sciences and clinical disciplines related to the pharmacotherapeutic treatment of drug abuse, including the use of training stipends, fellowships, and awards where appropriate; and

(7) coordinate the activities conducted under this section with related activities conducted within the National Institute on Alcohol Abuse and Alcoholism, the National Institute of Mental Health, and other appropriate institutes and shall consult with the Directors of such Institutes.

(b) Duties

In carrying out the activities described in subsection (a) of this section, the Director of the Institute—

(1) shall collect and disseminate through publications and other appropriate means, information pertaining to the research and other activities under this section;

(2) shall make grants to or enter into contracts and cooperative agreements with individuals and public and private entities to further the goals of the program;

(3) may, in accordance with section 289e of this title, and in consultation with the National Advisory Council on Drug Abuse, acquire, construct, improve, repair, operate, and maintain pharmacotherapeutic research centers, laboratories, and other necessary facilities and equipment, and such other real or personal property as the Director determines necessary, and may, in consultation with such Advisory Council, make grants for the construction or renovation of facilities to carry out the purposes of this section;

(4) may accept voluntary and uncompensated services;

(5) may accept gifts, or donations of services, money, or property, real, personal, or mixed, tangible or intangible; and

(6) shall take necessary action to ensure that all channels for the dissemination and exchange of scientific knowledge and information are maintained between the Institute and the other scientific, medical, and biomedical disciplines and organizations nationally and internationally.

(c) Report

(1) In general

Not later than December 31, 1992, and each December 31 thereafter, the Director of the Institute shall submit to the Office of National Drug Control Policy established under section 1501[1] of title 21 a report, in accordance with paragraph (3), that describes the objectives and activities of the program assisted under this section.

(2) National Drug Control Strategy

The Director of National Drug Control Policy shall incorporate, by reference or otherwise, each report submitted under this subsection in the National Drug Control Strategy submitted the following February 1 under section 1504[1] of title 21.

(d) "Pharmacotherapeutics" defined

For purposes of this section, the term ''pharmacotherapeutics'' means medications used to treat the symptoms and disease of drug abuse, including medications to—

(1) block the effects of abused drugs;

(2) reduce the craving for abused drugs;

(3) moderate or eliminate withdrawal symptoms;

(4) block or reverse the toxic effect of abused drugs; or

(5) prevent relapse in persons who have been detoxified from drugs of abuse.

(July 1, 1944, ch. 373, title IV, § 464P, as added Pub. L. 102–321, title I, § 123(b), July 10, 1992, 106 Stat. 362; amended Pub. L. 103–43, title XX, § 2008(b)(10), June 10, 1993, 107 Stat. 211; Pub. L. 109–482, title I, § 103(b)(35), Jan. 15, 2007, 120 Stat. 3688.)

REFERENCES IN TEXT

Sections 1501 and 1504 of title 21, referred to in subsec. (c), were repealed by Pub. L. 100–690, title I, § 1009, Nov. 18, 1988, 102 Stat. 4188, as amended.

AMENDMENTS

2007—Subsec. (e). Pub. L. 109–482 struck out heading and text of subsec. (e). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated $85,000,000 for fiscal year 1993, and $95,000,000 for fiscal year 1994.''

1993—Subsec. (b)(6). Pub. L. 103–43 substituted ''Institute'' for ''Administration''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

[1] See References in Text note below.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REPORT BY INSTITUTE ON MEDICINE

Section 701 of Pub. L. 102–321 directed Secretary of Health and Human Services to enter into a contract with a public or nonprofit private entity to conduct a study concerning (1) role of the private sector in development of anti-addiction medications, including legislative proposals designed to encourage private sector development of such medications, (2) process by which anti-addiction medications receive marketing approval from Food and Drug Administration, including an assessment of feasibility of expediting marketing approval process in a manner consistent with maintaining safety and effectiveness of such medications, (3) with respect to pharmacotherapeutic treatments for drug addiction (A) recommendations with respect to a national strategy for developing such treatments and improvements in such strategy, (B) state of the scientific knowledge concerning such treatments, and (C) assessment of progress toward development of safe, effective pharmacological treatments for drug addiction, and (4) other related information determined appropriate by the authors of the study, and to submit to Congress a report of the results of such study not later than 18 months after July 10, 1992.

SUBPART 16—NATIONAL INSTITUTE OF MENTAL HEALTH

§ 285p. Purpose of Institute

(a) In general

The general purpose of the National Institute of Mental Health (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical and behavioral research, health services research, research training, and health information dissemination with respect to the cause, diagnosis, treatment, control and prevention of mental illness.

(b) Research program

The research program established under this subpart shall include support for biomedical and behavioral neuroscience and shall be designed to further the treatment and prevention of mental illness, the promotion of mental health, and the study of the psychological, social and legal factors that influence behavior.

(c) Collaboration

The Director of the Institute shall collaborate with the Administrator of the Substance Abuse and Mental Health Services Administration in focusing the services research activities of the Institute and in disseminating the results of such research to health professionals and the general public.

(d) Information with respect to suicide

(1) In general

The Director of the Institute shall—

(A) develop and publish information with respect to the causes of suicide and the means of preventing suicide; and

(B) make such information generally available to the public and to health professionals.

(2) Youth suicide

Information described in paragraph (1) shall especially relate to suicide among individuals under 24 years of age.

(e) Associate Director for Special Populations

(1) In general

The Director of the Institute shall designate an Associate Director for Special Populations.

(2) Duties

The Associate Director for Special Populations shall—

(A) develop and coordinate research policies and programs to assure increased emphasis on the mental health needs of women and minority populations;

(B) support programs of basic and applied social and behavioral research on the mental health problems of women and minority populations;

(C) study the effects of discrimination on institutions and individuals, including majority institutions and individuals;

(D) support and develop research designed to eliminate institutional discrimination; and

(E) provide increased emphasis on the concerns of women and minority populations in training programs, service delivery programs, and research endeavors of the Institute.

(July 1, 1944, ch. 373, title IV, § 464R, as added Pub. L. 102–321, title I, § 124(a), July 10, 1992, 106 Stat. 364; amended Pub. L. 102–352, § 2(a)(5), Aug. 26, 1992, 106 Stat. 938; Pub. L. 109–482, title I, § 103(b)(36), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (f). Pub. L. 109–482 struck out subsec. (f) which authorized appropriations and provided that at least 15% of the appropriated amounts were to carry out health services research relating to mental health.

1992—Subsec. (f)(1). Pub. L. 102–352 struck out ''other than section 285*o*–4 of this title'' after ''this subpart''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

STUDY OF BARRIERS TO INSURANCE COVERAGE OF TREATMENT FOR MENTAL ILLNESS AND SUBSTANCE ABUSE

Section 704 of Pub. L. 102–321 directed Secretary of Health and Human Services, acting through Director of the National Institute of Mental Health and in consultation with Administrator of Health Care Financing Administration, to conduct a study of the barriers to insurance coverage for the treatment of mental illness and substance abuse and to submit a report to Congress on the results of such study not later than Oct. 1, 1993.

§ 285p–1. Associate Director for Prevention

(a) In general

There shall be in the Institute an Associate Director for Prevention who shall be responsible

for the full-time coordination and promotion of the programs in the Institute concerning the prevention of mental disorder. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or expertise are experts in mental disorder and the prevention of such.

(b) Report

The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b[1] of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 464S, as added Pub. L. 102–321, title I, § 124(b), July 10, 1992, 106 Stat. 365.)

REFERENCES IN TEXT

Section 284b of this title, referred to in subsec. (b), was repealed by Pub. L. 109–482, title I, § 104(b)(1)(C), Jan. 15, 2007, 120 Stat. 3693.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285p–2. Office of Rural Mental Health Research

(a) In general

There is established within the Institute an office to be known as the Office of Rural Mental Health Research (hereafter in this section referred to as the ''Office''). The Office shall be headed by a director, who shall be appointed by the Director of such Institute from among individuals experienced or knowledgeable in the provision of mental health services in rural areas. The Secretary shall carry out the authorities established in this section acting through the Director of the Office.

(b) Coordination of activities

The Director of the Office, in consultation with the Director of the Institute and with the Director of the Office of Rural Health Policy, shall—

(1) coordinate the research activities of the Department of Health and Human Services as such activities relate to the mental health of residents of rural areas; and

(2) coordinate the activities of the Office with similar activities of public and nonprofit private entities.

(c) Research, demonstrations, evaluations, and dissemination

The Director of the Office may, with respect to the mental health of adults and children residing in rural areas—

(1) conduct research on conditions that are unique to the residents of rural areas, or more serious or prevalent in such residents;

(2) conduct research on improving the delivery of services in such areas; and

(3) disseminate information to appropriate public and nonprofit private entities.

(d) Authority regarding grants and contracts

The Director of the Office may carry out the authorities established in subsection (c) of this section directly and through grants, cooperative agreements, or contracts with public or nonprofit private entities.

(July 1, 1944, ch. 373, title IV, § 464T, as added Pub. L. 102–321, title I, § 124(b), July 10, 1992, 106 Stat. 365; amended Pub. L. 109–482, title I, § 104(b)(1)(L), Jan. 15, 2007, 120 Stat. 3693.)

AMENDMENTS

2007—Subsec. (e). Pub. L. 109–482 struck out heading and text of subsec. (e). Text read as follows: ''Not later than February 1, 1993, and each fiscal year thereafter, the Director shall submit to the Subcommittee on Health and the Environment of the Committee on Energy and Commerce (of the House of Representatives), and to the Committee on Labor and Human Resources (of the Senate), a report describing the activities of the Office during the preceding fiscal year, including a summary of the activities of demonstration projects and a summary of evaluations of the projects.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285p–3. Office on AIDS

The Director of the Institute shall establish within the Institute an Office on AIDS. The Office shall be responsible for the coordination of research and determining the direction of the Institute with respect to AIDS research related to—

(1) primary prevention of the spread of HIV, including transmission via sexual behavior;

(2) mental health services research; and

(3) other matters determined appropriate by the Director.

(July 1, 1944, ch. 373, title IV, § 464U, as added Pub. L. 102–321, title I, § 124(b), July 10, 1992, 106 Stat. 366.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SUBPART 17—NATIONAL INSTITUTE OF NURSING RESEARCH

§ 285q. Purpose of Institute

The general purpose of the National Institute of Nursing Research (in this subpart referred to as the ''Institute'') is the conduct and support of, and dissemination of information respecting, basic and clinical nursing research, training, and other programs in patient care research.

(July 1, 1944, ch. 373, title IV, § 464V, formerly § 483, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 867; renumbered § 464V and amended Pub. L. 103–43, title XV, § 1511(a)(1), (b)(2), June 10, 1993, 107 Stat. 178, 179.)

CODIFICATION

Section was formerly classified to section 287c of this title prior to renumbering by Pub. L. 103–43.

[1] See References in Text note below.

AMENDMENTS

1993—Pub. L. 103–43, § 1511(a)(1) substituted ''Institute'' for ''Center'' in section catchline and ''National Institute of Nursing Research (in this subpart referred to as the 'Institute')'' for ''National Center for Nursing Research (hereafter in this subpart referred to as the 'Center')'' in text.

STUDY ON ADEQUACY OF NUMBER OF NURSES

Section 1512 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of National Institute of Nursing Research, to enter into a contract with a public or nonprofit private entity to conduct a study for purpose of determining whether and to what extent there is a need for an increase in the number of nurses in hospitals and nursing homes in order to promote the quality of patient care and reduce the incidence among nurses of work-related injuries and stress and to complete such study and submit a report to Congress not later than 18 months after June 10, 1993.

§ 285q–1. Specific authorities

To carry out section 285q of this title, the Director of the Institute may provide research training and instruction and establish, in the Institute and other nonprofit institutions, research traineeships and fellowships in the study and investigation of the prevention of disease, health promotion, and the nursing care of individuals with and the families of individuals with acute and chronic illnesses. The Director of the Institute may provide individuals receiving such training and instruction or such traineeships or fellowships with such stipends and allowances (including amounts for travel and subsistence and dependency allowances) as the Director determines necessary. The Director may make grants to nonprofit institutions to provide such training and instruction and traineeships and fellowships.

(July 1, 1944, ch. 373, title IV, § 464W, formerly § 484, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 867; renumbered § 464W and amended Pub. L. 103–43, title XV, § 1511(a)(2), (b)(2), (4)(A), June 10, 1993, 107 Stat. 178, 179.)

CODIFICATION

Section was formerly classified to section 287c–1 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Pub. L. 103–43, § 1511(a)(2), (b)(4)(A), substituted ''section 285q'' for ''section 287c'' and ''Institute'' for ''Center'' wherever appearing.

§ 285q–2. Advisory council

(a) Appointment; functions and duties; acceptance of conditional gifts; subcommittees

(1) The Secretary shall appoint an advisory council for the Institute which shall advise, assist, consult with, and make recommendations to the Secretary and the Director of the Institute on matters related to the activities carried out by and through the Institute and the policies respecting such activities.

(2) The advisory council for the Institute may recommend to the Secretary acceptance, in accordance with section 238 of this title, of conditional gifts for study, investigations, and research and for the acquisition of grounds or construction, equipping, or maintenance of facilities for the Institute.

(3) The advisory council for the Institute—

(A)(i) may make recommendations to the Director of the Institute respecting research conducted at the Institute,

(ii) may review applications for grants and cooperative agreements for research or training and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the Institute;

(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspects of human health with respect to which the Institute is concerned and with the approval of the Director of the Institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; ex officio members; compensation

(1) The advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary.

(2) The ex officio members of the advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the Institute, the chief nursing officer of the Department of Veterans Affairs, the Assistant Secretary of Defense for Health Affairs, the Director of the Division of Nursing of the Health Resources and Services Administration (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of the advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the Institute. Of the members appointed pursuant to this subparagraph, at least seven shall be professional nurses who are recognized experts in the area of clinical practice, education, or research.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of the advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of the advisory council shall receive, for each day (in-

cluding traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule.

(c) Term of office; vacancy; reappointment

The term of office of an appointed member of the advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; selection; term of office

The chairman of the advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the Institute to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Director of the Institute, but at least three times each fiscal year. The location of the meetings of the advisory council is subject to the approval of the Director of the Institute.

(f) Executive secretary; staff; orientation and training for new members

The Director of the Institute shall designate a member of the staff of the Institute to serve as the executive secretary of the advisory council. The Director of the Institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of the Institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Material for inclusion in biennial report; additional reports

The advisory council may prepare, for inclusion in the biennial report made under section 285q–3 of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the Institute in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the Institute. The advisory council may prepare such additional reports as it may determine appropriate.

(July 1, 1944, ch. 373, title IV, § 464X, formerly § 485, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 867; amended Pub. L. 101–381, title I, § 102(4), Aug. 18, 1990, 104 Stat. 586; Pub. L. 102–54, § 13(q)(1)(E), June 13, 1991, 105 Stat. 279; renumbered § 464X and amended Pub. L. 103–43, title XV, § 1511(a)(3), (b)(2), (4)(B), title XX, §§ 2008(b)(13), 2010(b)(5), June 10, 1993, 107 Stat. 178, 179, 211, 214.)

CODIFICATION

Section was formerly classified to section 285c–2 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43, § 1511(a)(3)(A), substituted ''Institute'' for ''Center'' wherever appearing.

Subsec. (a)(2). Pub. L. 103–43, § 2010(b)(5), which directed the substitution of ''section 238'' for ''section 300aaa'' in section 287c–2(a)(2) of this title, was executed to subsec. (a)(2) of this section to reflect the probable intent of Congress and the renumbering of this section. See Codification note above.

Subsec. (b)(2)(A). Pub. L. 103–43, § 2008(b)(13), which directed the substitution of ''Department of Veterans Affairs'' for ''Veterans' Administration'' in section 287c–2(b)(2)(A) of this title could not be executed because the words ''Veterans' Administration'' do not appear in subsec. (b)(2)(A) of this section subsequent to amendment by Pub. L. 102–54 and because of the renumbering of this section. See Codification note above and 1991 Amendment note below.

Pub. L. 103–43, §§ 1511(a)(3)(B)(i), substituted ''Institute'' for ''Center''.

Subsec. (b)(3)(A). Pub. L. 103–43, § 1511(a)(3)(B)(ii), substituted ''Institute'' for ''Center''.

Subsecs. (d) to (f). Pub. L. 103–43, § 1511(a)(3)(C), substituted ''Institute'' for ''Center'' wherever appearing.

Subsec. (g). Pub. L. 103–43, § 1511(a)(3)(C), (b)(4)(B), substituted ''section 285q–3'' for ''section 287c–3'' and ''Institute'' for ''Center'' in two places.

1991—Subsec. (b)(2)(A). Pub. L. 102–54 substituted ''chief nursing officer of the Department of Veterans Affairs'' for ''Chief Nursing Officer of the Veterans' Administration''.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285q–3. Biennial report

The Director of the Institute after consultation with the advisory council for the Institute, shall prepare for inclusion in the biennial report made under section 283 of this title a biennial report which shall consist of a description of the activities of the Institute and program policies of the Director of the Institute in the fiscal years respecting which the report is prepared. The Director of the Institute may prepare such additional reports as the Director determines appropriate. The Director of the Institute shall provide the advisory council of the Institute an opportunity for the submission of the written comments referred to in section 285q–2(g) of this title.

(July 1, 1944, ch. 373, title IV, § 464Y, formerly § 486, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 869; renumbered § 485A, renumbered § 464Y, and amended Pub. L. 103–43, title I, § 141(a)(1), title XV, § 1511(a)(4), (b)(2), (4)(C), June 10, 1993, 107 Stat. 136, 179.)

CODIFICATION

Section was formerly classified to section 287c–3 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Pub. L. 103–43, § 1511(a)(4), (b)(4)(C), substituted ''Institute'' for ''Center'' wherever appearing and ''section 285q–2(g)'' for ''section 287c–2(g)''.

SUBPART 18—NATIONAL INSTITUTE OF BIOMEDICAL IMAGING AND BIOENGINEERING

§ 285r. Purpose of the Institute

(a) In general

The general purpose of the National Institute of Biomedical Imaging and Bioengineering (in this section referred to as the ''Institute'') is the conduct and support of research, training, the dissemination of health information, and other programs with respect to biomedical imaging, biomedical engineering, and associated technologies and modalities with biomedical applications (in this section referred to as ''biomedical imaging and bioengineering'').

(b) National Biomedical Imaging and Bioengineering Program

(1) The Director of the Institute, with the advice of the Institute's advisory council, shall establish a National Biomedical Imaging and Bioengineering Program (in this section referred to as the ''Program'').

(2) Activities under the Program shall include the following with respect to biomedical imaging and bioengineering:

(A) Research into the development of new techniques and devices.

(B) Related research in physics, engineering, mathematics, computer science, and other disciplines.

(C) Technology assessments and outcomes studies to evaluate the effectiveness of biologics, materials, processes, devices, procedures, and informatics.

(D) Research in screening for diseases and disorders.

(E) The advancement of existing imaging and bioengineering modalities, including imaging, biomaterials, and informatics.

(F) The development of target-specific agents to enhance images and to identify and delineate disease.

(G) The development of advanced engineering and imaging technologies and techniques for research from the molecular and genetic to the whole organ and body levels.

(H) The development of new techniques and devices for more effective interventional procedures (such as image-guided interventions).

(3)(A) With respect to the Program, the Director of the Institute shall prepare and transmit to the Secretary and the Director of NIH a plan to initiate, expand, intensify, and coordinate activities of the Institute with respect to biomedical imaging and bioengineering. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise the plan and shall transmit any revisions of the plan to the Secretary and the Director of NIH.

(B) The plan under subparagraph (A) shall include the recommendations of the Director of the Institute with respect to the following:

(i) Where appropriate, the consolidation of programs of the National Institutes of Health for the express purpose of enhancing support of activities regarding basic biomedical imaging and bioengineering research.

(ii) The coordination of the activities of the Institute with related activities of the other agencies of the National Institutes of Health and with related activities of other Federal agencies.

(c) Membership

The establishment under section 284a of this title of an advisory council for the Institute is subject to the following:

(1) The number of members appointed by the Secretary shall be 12.

(2) Of such members—

(A) six members shall be scientists, engineers, physicians, and other health professionals who represent disciplines in biomedical imaging and bioengineering and who are not officers or employees of the United States; and

(B) six members shall be scientists, engineers, physicians, and other health professionals who represent other disciplines and are knowledgeable about the applications of biomedical imaging and bioengineering in medicine, and who are not officers or employees of the United States.

(3) In addition to the ex officio members specified in section 284a(b)(2) of this title, the ex officio members of the advisory council shall include the Director of the Centers for Disease Control and Prevention, the Director of the National Science Foundation, and the Director of the National Institute of Standards and Technology (or the designees of such officers).

(July 1, 1944, ch. 373, title IV, § 464z, as added Pub. L. 106–580, § 3(a), Dec. 29, 2000, 114 Stat. 3089; amended Pub. L. 109–482, title I, § 103(b)(37), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 struck out subsec. (d) which related to appropriations for fiscal years 2001 to 2003.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE

Pub. L. 106–580, § 4, Dec. 29, 2000, 114 Stat. 3092, provided that: ''This Act [enacting this subpart, amending section 281 of this title, and enacting provisions set out as notes under this section and section 201 of this title] takes effect October 1, 2000, or upon the date of the enactment of this Act [Dec. 29, 2000], whichever occurs later.''

FINDINGS

Pub. L. 106–580, § 2, Dec. 29, 2000, 114 Stat. 3088, provided that: ''The Congress makes the following findings:

''(1) Basic research in imaging, bioengineering, computer science, informatics, and related fields is critical to improving health care but is fundamentally different from the research in molecular biology on which the current national research institutes at the National Institutes of Health ('NIH') are based. To ensure the development of new techniques and technologies for the 21st century, these disciplines therefore require an identity and research home at the NIH that is independent of the existing institute structure.

''(2) Advances based on medical research promise new, more effective treatments for a wide variety of diseases, but the development of new, noninvasive imaging techniques for earlier detection and diagnosis of disease is essential to take full advantage of such new treatments and to promote the general improvement of health care.

''(3) The development of advanced genetic and molecular imaging techniques is necessary to continue the current rapid pace of discovery in molecular biology.

''(4) Advances in telemedicine, and teleradiology in particular, are increasingly important in the delivery of high quality, reliable medical care to rural citizens and other underserved populations. To fulfill the promise of telemedicine and related technologies fully, a structure is needed at the NIH to support basic research focused on the acquisition, transmission, processing, and optimal display of images.

''(5) A number of Federal departments and agencies support imaging and engineering research with potential medical applications, but a central coordinating body, preferably housed at the NIH, is needed to coordinate these disparate efforts and facilitate the transfer of technologies with medical applications.

''(6) Several breakthrough imaging technologies, including magnetic resonance imaging ('MRI') and computed tomography ('CT'), have been developed primarily abroad, in large part because of the absence of a home at the NIH for basic research in imaging and related fields. The establishment of a central focus for imaging and bioengineering research at the NIH would promote both scientific advance and United States economic development.

''(7) At a time when a consensus exists to add significant resources to the NIH in coming years, it is appropriate to modernize the structure of the NIH to ensure that research dollars are expended more effectively and efficiently and that the fields of medical science that have contributed the most to the detection, diagnosis, and treatment of disease in recent years receive appropriate emphasis.

''(8) The establishment of a National Institute of Biomedical Imaging and Bioengineering at the NIH would accelerate the development of new technologies with clinical and research applications, improve coordination and efficiency at the NIH and throughout the Federal Government, reduce duplication and waste, lay the foundation for a new medical information age, promote economic development, and provide a structure to train the young researchers who will make the pathbreaking discoveries of the next century.''

ESTABLISHMENT OF INSTITUTE AND ADVISORY COUNCIL

Pub. L. 106–580, § 3(b)–(d), Dec. 29, 2000, 114 Stat. 3091, provided that:

''(b) USE OF EXISTING RESOURCES.—In providing for the establishment of the National Institute of Biomedical Imaging and Bioengineering pursuant to the amendment made by subsection (a) [enacting this subpart], the Director of the National Institutes of Health (referred to in this subsection as 'NIH')—

''(1) may transfer to the National Institute of Biomedical Imaging and Bioengineering such personnel of NIH as the Director determines to be appropriate;

''(2) may, for quarters for such Institute, utilize such facilities of NIH as the Director determines to be appropriate; and

''(3) may obtain administrative support for the Institute from the other agencies of NIH, including the other national research institutes.

''(c) CONSTRUCTION OF FACILITIES.—None of the provisions of this Act [enacting this subpart, amending section 281 of this title, and enacting provisions set out as notes under this section and section 201 of this title] or the amendments made by the Act may be construed as authorizing the construction of facilities, or the acquisition of land, for purposes of the establishment or operation of the National Institute of Biomedical Imaging and Bioengineering.

''(d) DATE CERTAIN FOR ESTABLISHMENT OF ADVISORY COUNCIL.—Not later than 90 days after the effective date of this Act [Dec. 29, 2000] under section 4 [set out above], the Secretary of Health and Human Services shall complete the establishment of an advisory council for the National Institute of Biomedical Imaging and Bioengineering in accordance with section 406 of the Public Health Service Act [section 284a of this title] and in accordance with section 464z of such Act (as added by subsection (a) of this section) [this section].''

SUBPART 19—NATIONAL HUMAN GENOME RESEARCH INSTITUTE

AMENDMENTS

2007—Pub. L. 109–482, title I, § 101(c)(1)–(3), Jan. 15, 2007, 120 Stat. 3681, redesignated subpart 3 of part E of this subchapter as this subpart.

§ 285s. Purpose of Institute

(a) General purpose

The general purpose of the National Human Genome Research Institute (in this subpart referred to as the ''Institute'') is to characterize the structure and function of the human genome, including the mapping and sequencing of individual genes. Such purpose includes—

(1) planning and coordinating the research goal of the genome project;

(2) reviewing and funding research proposals;

(3) developing training programs;

(4) coordinating international genome research;

(5) communicating advances in genome science to the public; and

(6) reviewing and funding proposals to address the ethical and legal issues associated with the genome project (including legal issues regarding patents).

(b) Research training

The Director of the Institute may conduct and support research training—

(1) for which fellowship support is not provided under section 288 of this title; and

(2) that is not residency training of physicians or other health professionals.

(c) Amount available for ethical and legal issues

(1) Except as provided in paragraph (2), of the amounts appropriated to carry out subsection (a) of this section for a fiscal year, the Director of the Institute shall make available not less than 5 percent for carrying out paragraph (6) of such subsection.

(2) With respect to providing funds under subsection (a)(6) of this section for proposals to address the ethical issues associated with the genome project, paragraph (1) shall not apply for a fiscal year if the Director of the Institute certifies to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, that the Director has determined that an insufficient number of such proposals meet the applicable requirements of sections 289 and 289a of this title.

(July 1, 1944, ch. 373, title IV, § 464z–1, formerly § 485B, as added Pub. L. 103–43, title XV, § 1521(2), June 10, 1993, 107 Stat. 180; renumbered § 464z–1 and amended Pub. L. 109–482, title I, § 101(c)(4), Jan. 15, 2007, 120 Stat. 3681.)

CODIFICATION

Section was formerly classified to section 287c of this title prior to renumbering by Pub. L. 109–482.

AMENDMENTS

2007—Pub. L. 109–482, § 101(c)(4)(C), substituted ''Institute'' for ''Center'' wherever appearing in section catchline and text.

Subsec. (a). Pub. L. 109–482, § 101(c)(4)(B), substituted ''National Human Genome Research Institute'' for ''National Center for Human Genome Research'' in introductory provisions.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

PART D—NATIONAL LIBRARY OF MEDICINE

SUBPART 1—GENERAL PROVISIONS

§ 286. National Library of Medicine

(a) Purpose and establishment

In order to assist the advancement of medical and related sciences and to aid the dissemination and exchange of scientific and other information important to the progress of medicine and to the public health, there is established the National Library of Medicine (hereafter in this part referred to as the ''Library'').

(b) Functions

The Secretary, through the Library and subject to subsection (d) of this section, shall—

(1) acquire and preserve books, periodicals, prints, films, recordings, and other library materials pertinent to medicine;

(2) organize the materials specified in paragraph (1) by appropriate cataloging, indexing, and bibliographical listings;

(3) publish and disseminate the catalogs, indexes, and bibliographies referred to in paragraph (2);

(4) make available, through loans, photographic or other copying procedures, or otherwise, such materials in the Library as the Secretary determines appropriate;

(5) provide reference and research assistance;

(6) publicize the availability from the Library of the products and services described in any of paragraphs (1) through (5);

(7) promote the use of computers and telecommunications by health professionals (including health professionals in rural areas) for the purpose of improving access to biomedical information for health care delivery and medical research; and

(8) engage in such other activities as the Secretary determines appropriate and as the Library's resources permit.

(c) Exchange, destruction, or disposal of materials not needed

The Secretary may exchange, destroy, or otherwise dispose of any books, periodicals, films, and other library materials not needed for the permanent use of the Library.

(d) Availability of publications, materials, facilities, or services; prescription of rules

(1) The Secretary may, after obtaining the advice and recommendations of the Board of Regents, prescribe rules under which the Library will—

(A) provide copies of its publications or materials,

(B) will make available its facilities for research, or

(C) will make available its bibliographic, reference, or other services,

to public and private entities and individuals.

(2) Rules prescribed under paragraph (1) may provide for making available such publications, materials, facilities, or services—

(A) without charge as a public service,

(B) upon a loan, exchange, or charge basis, or

(C) in appropriate circumstances, under contract arrangements made with a public or other nonprofit entity.

(e) Regional medical libraries; establishment

Whenever the Secretary, with the advice of the Board of Regents, determines that—

(1) in any geographic area of the United States there is no regional medical library adequate to serve such area;

(2) under criteria prescribed for the administration of section 286b–6 of this title, there is a need for a regional medical library to serve such area; and

(3) because there is no medical library located in such area which, with financial assistance under section 286b–6 of this title, can feasibly be developed into a regional medical library adequate to serve such area,

the Secretary may establish, as a branch of the Library, a regional medical library to serve the needs of such area.

(f) Acceptance and administration of gifts; memorials

Section 238 of this title shall be applicable to the acceptance and administration of gifts made for the benefit of the Library or for carrying out any of its functions, and the Board of Regents shall make recommendations to the Secretary relating to establishment within the Library of suitable memorials to the donors.

(g) "Medicine" and "medical" defined

For purposes of this part, the terms ''medicine'' and ''medical'', except when used in section 286a of this title, include preventive and therapeutic medicine, dentistry, pharmacy, hospitalization, nursing, public health, and the fundamental sciences related thereto, and other related fields of study, research, or activity.

(July 1, 1944, ch. 373, title IV, § 465, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857; amended Pub. L. 99–660, title III, § 311(b)(1), Nov. 14, 1986, 100 Stat. 3779; Pub. L. 100–202, § 101(h) [title II, § 215], Dec. 22, 1987, 101 Stat. 1329–256, 1329–275; Pub. L. 100–607, title II, § 204(2), Nov. 4, 1988, 102 Stat. 3079; Pub. L. 100–690, title II, § 2620(b)(1), Nov. 18, 1988, 102 Stat. 4244; Pub. L. 101–381, title I, § 102(2), Aug. 18, 1990, 104 Stat. 585; Pub. L. 103–43, title XIV, § 1401(a), (c)(1), title XX, § 2010(b)(3), June 10, 1993, 107 Stat. 170, 214.)

AMENDMENTS

1993—Pub. L. 103–43, § 1401(c)(1), repealed amendment by Pub. L. 100–202. See 1987 Amendment note below.

Subsec. (b)(6) to (8). Pub. L. 103–43, § 1401(a), added pars. (6) and (7) and redesignated former par. (6) as (8).

Subsec. (f). Pub. L. 103–43, § 2010(b)(3), substituted ''Section 238'' for ''Section 300aaa''.

1990—Subsec. (f). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (f). Pub. L. 100–690 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

Pub. L. 100–607 substituted ''300aaa'' for ''300cc''.

1987—Pub. L. 100–202, which directed the amendment of ''Section 465(B) of 42 U.S.C. 286'' by inserting ''between (5) and (6) an additional charge to the Secretary to 'publicize the availability of the above products and services of the National Library of Medicine' '', was repealed by Pub. L. 103–43, § 1401(c)(1).

1986—Subsec. (f). Pub. L. 99–660 substituted ''section 300cc of this title'' for ''section 300aa of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

APPLICABILITY OF CERTAIN NEW AUTHORITY

Section 1401(c)(2) of Pub. L. 103–43 provided that: ''With respect to the authority established for the National Library of Medicine in section 465(b)(6) of the Public Health Service Act, as added by subsection (a) of this section [subsec. (b)(6) of this section], such authority shall be effective as if the authority had been established on December 22, 1987.''

§ 286a. Board of Regents

(a) Membership; ex officio members

(1)(A) The Board of Regents of the National Library of Medicine consists of ex officio members and ten members appointed by the Secretary.

(B) The ex officio members are the Surgeons General of the Public Health Service, the Army, the Navy, and the Air Force, the Under Secretary for Health of the Department of Veterans Affairs, the Dean of the Uniformed Services University of the Health Sciences, the Assistant Director for Biological, Behavioral, and Social Sciences of the National Science Foundation, the Director of the National Agricultural Library, and the Librarian of Congress (or their designees).

(C) The appointed members shall be selected from among leaders in the various fields of the fundamental sciences, medicine, dentistry, public health, hospital administration, pharmacology, health communications technology, or scientific or medical library work, or in public affairs. At least six of the appointed members shall be selected from among leaders in the fields of medical, dental, or public health research or education.

(2) The Board shall annually elect one of the appointed members to serve as chairman until the next election. The Secretary shall designate a member of the Library staff to act as executive secretary of the Board.

(b) Recommendations on matters of policy; recommendations included in annual report; use of services of members by Secretary

The Board shall advise, consult with, and make recommendations to the Secretary on matters of policy in regard to the Library, including such matters as the acquisition of materials for the Library, the scope, content, and organization of the Library's services, and the rules under which its materials, publications, facilities, and services shall be made available to various kinds of users. The Secretary shall include in the annual report of the Secretary to the Congress a statement covering the recommendations made by the Board and the disposition thereof. The Secretary may use the services of any member of the Board in connection with matters related to the work of the Library, for

such periods, in addition to conference periods, as the Secretary may determine.

(c) Term of office; vacancy; reappointment

Each appointed member of the Board shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor of such member was appointed shall be appointed for the remainder of such term. None of the appointed members shall be eligible for reappointment within one year after the end of the preceding term of such member.

(July 1, 1944, ch. 373, title IV, § 466, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 859; amended Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103–43, title XX, § 2008(b)(11), June 10, 1993, 107 Stat. 211.)

AMENDMENTS

1993—Subsec. (a)(1)(B). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (a)(1)(B). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

§ 286a–1. Library facilities

The Administrator of General Services may acquire, by purchase, condemnation, donation, or otherwise, a suitable site or sites, selected by the Secretary in accordance with the direction of the Board, for suitable and adequate buildings and facilities for use of the Library and to erect thereon, furnish, and equip such buildings and facilities. Amounts appropriated to carry out this section may be used for the cost of preparation of drawings and specifications, supervision of construction, and other administrative expenses incident to the work. The Administrator of General Services shall prepare the plans and specifications, make all necessary contracts, and supervise construction.

(July 1, 1944, ch. 373, title IV, § 467, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 859; amended Pub. L. 109–482, title I, § 103(b)(38), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Pub. L. 109–482 substituted ''for suitable and adequate buildings and facilities for use of the Library'' for ''for such buildings and facilities'' and ''Amounts appropriated to carry out this section may be used for'' for ''The amounts authorized to be appropriated by this section include'' and struck out first sentence which read as follows: ''There are authorized to be appropriated amounts sufficient for the erection and equipment of suitable and adequate buildings and facilities for use of the Library.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 286a–2. Repealed. Pub. L. 109–482, title I, § 103(b)(39), Jan. 15, 2007, 120 Stat. 3688

Section, act July 1, 1944, ch. 373, title IV, § 468, as added Pub. L. 103–43, title XIV, § 1402(a), June 10, 1993, 107 Stat. 170, authorized appropriations for this part.

EFFECTIVE DATE OF REPEAL

Repeal applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

SUBPART 2—FINANCIAL ASSISTANCE

§ 286b. Repealed. Pub. L. 103–43, title XIV, § 1402(b), June 10, 1993, 107 Stat. 171

Section, act July 1, 1944, ch. 373, title IV, § 469, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 860; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 146(a), 102 Stat. 3058, authorized appropriations for grants and contracts under sections 286b–3 through 286b–7 of this title.

§ 286b–1. Definitions

As used in this subpart—

(1) the term ''medical library'' means a library related to the sciences related to health; and

(2) the term ''sciences related to health'' includes medicine, osteopathy, dentistry, and public health, and fundamental and applied sciences when related thereto.

(July 1, 1944, ch. 373, title IV, § 470, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 860.)

§ 286b–2. National Medical Libraries Assistance Advisory Board

(a) Board of Regents of National Library of Medicine to serve as

The Board of Regents of the National Library of Medicine shall also serve as the National Medical Libraries Assistance Advisory Board (hereafter in this subpart referred to as the ''Board'').

(b) Functions

The Board shall advise and assist the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this subpart.

(c) Use of services of members by Secretary

The Secretary may use the services of any member of the Board, in connection with matters related to the administration of this part for such periods, in addition to conference periods, as the Secretary may determine.

(d) Compensation

Appointed members of the Board who are not otherwise in the employ of the United States, while attending conferences of the Board or otherwise serving at the request of the Secretary in connection with the administration of this subpart, shall be entitled to receive compensation, per diem in lieu of subsistence, and travel expenses in the same manner and under the same conditions as that prescribed under section 210(c) of this title when attending conferences, traveling, or serving at the request of the Secretary in connection with the Board's function under this section.

(July 1, 1944, ch. 373, title IV, § 471, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 860.)

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year pe-

riod beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 286b–3. Grants for training in medical library sciences

The Secretary shall make grants—

(1) to individuals to enable them to accept traineeships and fellowships leading to post-baccalaureate academic degrees in the field of medical library science, in related fields pertaining to sciences related to health, or in the field of the communication of information;

(2) to individuals who are librarians or specialists in information on sciences relating to health, to enable them to undergo intensive training or retraining so as to attain greater competence in their occupations (including competence in the fields of automatic data processing and retrieval);

(3) to assist appropriate public and private nonprofit institutions in developing, expanding, and improving training programs in library science and the field of communications of information pertaining to sciences relating to health; and

(4) to assist in the establishment of internship programs in established medical libraries meeting standards which the Secretary shall prescribe.

(July 1, 1944, ch. 373, title IV, § 472, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 860.)

§ 286b–4. Assistance for projects in sciences related to health, for research and development in medical library science, and for development of education technologies

(a) Compilation of existing and original writings on health

The Secretary shall make grants to physicians and other practitioners in the sciences related to health, to scientists, and to public or nonprofit private institutions on behalf of such physicians, other practitioners, and scientists for the compilation of existing, or the writing of original, contributions relating to scientific, social, or cultural advancements in sciences related to health. In making such grants, the Secretary shall make appropriate arrangements under which the facilities of the Library and the facilities of libraries of public and private nonprofit institutions of higher learning may be made available in connection with the projects for which such grants are made.

(b) Medical library science and related activities

The Secretary shall make grants to appropriate public or private nonprofit institutions and enter into contracts with appropriate persons, for purposes of carrying out projects of research, investigations, and demonstrations in the field of medical library science and related activities and for the development of new techniques, systems, and equipment, for processing, storing, retrieving, and distributing information pertaining to sciences related to health.

(c) Development of education technologies

(1) The Secretary shall make grants to public or nonprofit private institutions for the purpose of carrying out projects of research on, and development and demonstration of, new education technologies.

(2) The purposes for which a grant under paragraph (1) may be made include projects concerning—

(A) computer-assisted teaching and testing of clinical competence at health professions and research institutions;

(B) the effective transfer of new information from research laboratories to appropriate clinical applications;

(C) the expansion of the laboratory and clinical uses of computer-stored research databases; and

(D) the testing of new technologies for training health care professionals.

(3) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees to make the projects available with respect to—

(A) assisting in the training of health professions students; and

(B) enhancing and improving the capabilities of health professionals regarding research and teaching.

(July 1, 1944, ch. 373, title IV, § 473, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 861; amended Pub. L. 103–43, title XIV, § 1411, June 10, 1993, 107 Stat. 171.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 added subsec. (c).

§ 286b–5. Grants for establishing, expanding, and improving basic resources of medical libraries and related instrumentalities

(a) The Secretary shall make grants of money, materials, or both, to public or private nonprofit medical libraries and related scientific communication instrumentalities for the purpose of establishing, expanding, and improving their basic medical library or related resources. A grant under this subsection may be used for—

(1) the acquisition of books, journals, photographs, motion picture and other films, and other similar materials;

(2) cataloging, binding, and other services and procedures for processing library resource materials for use by those who are served by the library or related instrumentality;

(3) the acquisition of duplication devices, facsimile equipment, film projectors, recording equipment, and other equipment to facilitate the use of the resources of the library or related instrumentality by those who are served by it; and

(4) the introduction of new technologies in medical librarianship.

(b)(1) The amount of any grant under this section to any medical library or related instru-

mentality shall be determined by the Secretary on the basis of the scope of library or related services provided by such library or instrumentality in relation to the population and purposes served by it. In making a determination of the scope of services served by any medical library or related instrumentality, the Secretary shall take into account—

(A) the number of graduate and undergraduate students making use of the resources of such library or instrumentality;

(B) the number of physicians and other practitioners in the sciences related to health utilizing the resources of such library or instrumentality;

(C) the type of supportive staffs, if any, available to such library or instrumentality;

(D) the type, size, and qualifications of the faculty of any school with which such library or instrumentality is affiliated;

(E) the staff of any hospital or hospitals or of any clinic or clinics with which such library or instrumentality is affiliated; and

(F) the geographic area served by such library or instrumentality and the availability within such area of medical library or related services provided by other libraries or related instrumentalities.

(2) Grants to such medical libraries or related instrumentalities under this section shall be in such amounts as the Secretary may by regulation prescribe with a view to assuring adequate continuing financial support for such libraries or instrumentalities from other sources during and after the period for which grants are provided, except that in no case shall any grant under this section to a medical library or related instrumentality for any fiscal year exceed $1,000,000.

(July 1, 1944, ch. 373, title IV, § 474, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 861; amended Pub. L. 100–607, title I, § 146(b), Nov. 4, 1988, 102 Stat. 3058; Pub. L. 103–43, title XIV, § 1401(b), June 10, 1993, 107 Stat. 170.)

AMENDMENTS

1993—Subsec. (b)(2). Pub. L. 103–43 substituted ''$1,000,000'' for ''$750,000''.

1988—Subsec. (b)(2). Pub. L. 100–607 substituted ''$750,000'' for ''$500,000''.

§ 286b–6. Grants and contracts for establishment of regional medical libraries

(a) Existing public or private nonprofit medical libraries

The Secretary, with the advice of the Board, shall make grants to and enter into contracts with existing public or private nonprofit medical libraries so as to enable each of them to serve as the regional medical library for the geographical area in which it is located.

(b) Uses for grants and contracts

The uses for which grants and contracts under this section may be employed include the—

(1) acquisition of books, journals, and other similar materials;

(2) cataloging, binding, and other procedures for processing library resource materials for use by those who are served by the library;

(3) acquisition of duplicating devices and other equipment to facilitate the use of the resources of the library by those who are served by it;

(4) acquisition of mechanisms and employment of personnel for the speedy transmission of materials from the regional library to local libraries in the geographic area served by the regional library; and

(5) planning for services and activities under this section.

(c) Conditions

(1) Grants and contracts under this section shall only be made to or entered into with medical libraries which agree—

(A) to modify and increase their library resources, and to supplement the resources of cooperating libraries in the region, so as to be able to provide adequate supportive services to all libraries in the region as well as to individual users of library services; and

(B) to provide free loan services to qualified users and make available photoduplicated or facsimile copies of biomedical materials which qualified requesters may retain.

(2) The Secretary, in awarding grants and contracts under this section, shall give priority to medical libraries having the greatest potential of fulfilling the needs for regional medical libraries. In determining the priority to be assigned to any medical library, the Secretary shall consider—

(A) the adequacy of the library (in terms of collections, personnel, equipment, and other facilities) as a basis for a regional medical library; and

(B) the size and nature of the population to be served in the region in which the library is located.

(d) Basic resources materials; limitation on grant or contract

Grants and contracts under this section for basic resource materials to a library may not exceed—

(1) 50 percent of the library's annual operating expense (exclusive of Federal financial assistance under this part) for the preceding year; or

(2) in case of the first year in which the library receives a grant under this section for basic resource materials, 50 percent of its average annual operating expenses over the past three years (or if it had been in operation for less than three years, its annual operating expenses determined by the Secretary in accordance with regulations).

(July 1, 1944, ch. 373, title IV, § 475, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 862.)

§ 286b–7. Financial support of biomedical scientific publications

(a) The Secretary, with the advice of the Board, shall make grants to, and enter into appropriate contracts with, public or private nonprofit institutions of higher education and individual scientists for the purpose of supporting biomedical scientific publications of a nonprofit nature and to procure the compilation, writing,

editing, and publication of reviews, abstracts, indices, handbooks, bibliographies, and related matter pertaining to scientific works and scientific developments.

(b) Grants under subsection (a) of this section in support of any single periodical publication may not be made for more than three years, except in those cases in which the Secretary determines that further support is necessary to carry out the purposes of subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 476, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 863.)

§ 286b–8. Grant payments, records, and audit

(a) Payments under grants made under sections 286b–3, 286b–4, 286b–5, 286b–6, and 286b–7 of this title may be made in advance or by way of reimbursement and in such installments as the Secretary shall prescribe by regulation after consultation with the Board.

(b)(1) Each recipient of a grant under this subpart shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients that are pertinent to any grant received under this subpart.

(July 1, 1944, ch. 373, title IV, § 477, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 863.)

SUBPART 3—NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION

§ 286c. Purpose, establishment, functions, and funding of National Center for Biotechnology Information

(a) Establishment

In order to focus and expand the collection, storage, retrieval, and dissemination of the results of biotechnology research by information systems, and to support and enhance the development of new information technologies to aid in the understanding of the molecular processes that control health and disease, there is established the National Center for Biotechnology Information (hereinafter in this section referred to as the ''Center'') in the National Library of Medicine.

(b) Functions

The Secretary, through the Center and subject to section 286(d) of this title, shall—

(1) design, develop, implement, and manage automated systems for the collection, storage, retrieval, analysis, and dissemination of knowledge concerning human molecular biology, biochemistry, and genetics;

(2) perform research into advanced methods of computer-based information processing capable of representing and analyzing the vast number of biologically important molecules and compounds;

(3) enable persons engaged in biotechnology research and medical care to use systems developed under paragraph (1) and methods described in paragraph (2); and

(4) coordinate, as much as is practicable, efforts to gather biotechnology information on an international basis.

(July 1, 1944, ch. 373, title IV, § 478, as added Pub. L. 100–607, title I, § 105, Nov. 4, 1988, 102 Stat. 3052; amended Pub. L. 103–43, title XIV, § 1402(b), June 10, 1993, 107 Stat. 171.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 struck out subsec. (c) which read as follows: ''For the purpose of performing the duties specified in subsection (b) of this section, there are authorized to be appropriated $8,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990. Funds appropriated under this subsection shall remain available until expended.''

SUBPART 4—NATIONAL INFORMATION CENTER ON HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY

§ 286d. National Information Center

(a) Establishment

There is established within the Library an entity to be known as the National Information Center on Health Services Research and Health Care Technology (in this section referred to as the ''Center'').

(b) Purpose

The purpose of the Center is the collection, storage, analysis, retrieval, and dissemination of information on health services research, clinical practice guidelines, and on health care technology, including the assessment of such technology. Such purpose includes developing and maintaining data bases and developing and implementing methods of carrying out such purpose.

(c) Electronic, convenient format; criteria for inclusion

The Director of the Center shall ensure that information under subsection (b) of this section concerning clinical practice guidelines is collected and maintained electronically and in a convenient format. Such Director shall develop and publish criteria for the inclusion of practice guidelines and technology assessments in the information center database.

(d) Coordination with Director of the Agency for Healthcare Research and Quality

The Secretary, acting through the Center, shall coordinate the activities carried out under this section through the Center with related activities of the Director of the Agency for Healthcare Research and Quality.

(July 1, 1944, ch. 373, title IV, § 478A, as added Pub. L. 103–43, title XIV, § 1421, June 10, 1993, 107 Stat. 171; amended Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

AMENDMENTS

1999—Subsec. (d). Pub. L. 106–129 substituted ''Director of the Agency for Healthcare Research and Qual-

ity'' for ''Administrator for Health Care Policy and Research''.

CONSTRUCTION

Section 1422(b) of Pub. L. 103–43 provided that: ''The amendments made by section 3 of Public Law 102–410 (106 Stat. 2094) [amending section 299a–1 of this title], by section 1421 of this Act [enacting this section], and by subsection (a) of this section [amending section 299a–1 of this title] may not be construed as terminating the information center on health care technologies and health care technology assessment established under section 904 of the Public Health Service Act [section 299a–2 of this title], as in effect on the day before the date of the enactment of Public Law 102–410 [Oct. 13, 1992]. Such center shall be considered to be the center established in section 478A of the Public Health Service Act, as added by section 1421 of this Act [this section], and shall be subject to the provisions of such section 478A.''

PART E—OTHER AGENCIES OF NIH

SUBPART 1—NATIONAL CENTER FOR RESEARCH RESOURCES

§ 287. General purpose

The general purpose of the National Center for Research Resources (in this subpart referred to as the ''Center'') is to strengthen and enhance the research environments of entities engaged in health-related research by developing and supporting essential research resources.

(July 1, 1944, ch. 373, title IV, § 479, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 864; amended Pub. L. 103–43, title XV, § 1501(2)(B), June 10, 1993, 107 Stat. 172.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''the National Center for Research Resources (in this subpart referred to as the 'Center')'' for ''the Division of Research Resources''.

SHARED INSTRUMENTATION GRANT PROGRAM

Pub. L. 106–505, title III, § 305, Nov. 13, 2000, 114 Stat. 2335, provided that:

''(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $100,000,000 for fiscal year 2000, and such sums as may be necessary for each subsequent fiscal year, to enable the Secretary of Health and Human Services, acting through the Director of the National Center for Research Resources, to provide for the continued operation of the Shared Instrumentation Grant Program (initiated in fiscal year 1992 under the authority of section 479 of the Public Health Service Act (42 U.S.C. 287 et seq.)).

''(b) REQUIREMENTS FOR GRANTS.—In determining whether to award a grant to an applicant under the program described in subsection (a), the Director of the National Center for Research Resources shall consider—

''(1) the extent to which an award for the specific instrument involved would meet the scientific needs and enhance the planned research endeavors of the major users by providing an instrument that is unavailable or to which availability is highly limited;

''(2) with respect to the instrument involved, the availability and commitment of the appropriate technical expertise within the major user group or the applicant institution for use of the instrumentation;

''(3) the adequacy of the organizational plan for the use of the instrument involved and the internal advisory committee for oversight of the applicant, including sharing arrangements if any;

''(4) the applicant's commitment for continued support of the utilization and maintenance of the instrument; and

''(5) the extent to which the specified instrument will be shared and the benefit of the proposed instrument to the overall research community to be served.

''(c) PEER REVIEW.—In awarding grants under the program described in subsection (a)[, the] Director of the National Center for Research Resources shall comply with the peer review requirements in section 492 of the Public Health Service Act (42 U.S.C. 289a).''

§ 287a. Advisory council

(a) Appointment; functions and duties; acceptance of conditional gifts; subcommittees

(1) The Secretary shall appoint an advisory council for the Center which shall advise, assist, consult with, and make recommendations to the Secretary and the Director of the Center on matters related to the activities carried out by and through the Center and the policies respecting such activities.

(2) The advisory council for the Center may recommend to the Secretary acceptance, in accordance with section 238 of this title, of conditional gifts for study, investigations, and research and for the acquisition of grounds or construction, equipping, or maintenance of facilities for the Center.

(3) The advisory council for the Center—

(A)(i) may make recommendations to the Director of the Center respecting research conducted at the Center,

(ii) may review applications for grants and cooperative agreements for research or training and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the Center;

(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspects of human health with respect to which the Center is concerned and with the approval of the Director of the Center make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; ex officio members; compensation

(1) The advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary.

(2) The ex officio members of the advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the Center, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of the advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the Center.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of the advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of the advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule.

(c) Term of office; vacancy; reappointment

The term of office of an appointed member of the advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; selection; term of office

The chairman of the advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the Center to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Director of the Center, but at least three times each fiscal year. The location of the meetings of the advisory council is subject to the approval of the Director of the Center.

(f) Executive secretary; staff; orientation and training for new members

The Director of the Center shall designate a member of the staff of the Center to serve as the executive secretary of the advisory council. The Director of the Center shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of the Center shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Material for inclusion in biennial report; additional reports

The advisory council may prepare, for inclusion in the biennial report made under section 287a–1 of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the Center in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the Center. The advisory council may prepare such additional reports as it may determine appropriate.

(h) Advisory council in existence on November 20, 1985

This section does not terminate the membership of the advisory council for the Center which was in existence on November 20, 1985. After November 20, 1985—

(1) the Secretary shall make appointments to such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by this section;

(2) the advisory council shall organize itself in accordance with this section and exercise the functions prescribed by this section; and

(3) the Director of the Center shall perform for such advisory council the functions prescribed by this section.

(July 1, 1944, ch. 373, title IV, § 480, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 864; amended Pub. L. 101–381, title I, § 102(3), Aug. 18, 1990, 104 Stat. 586; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103–43, title XV, § 1501(2)(C), (D), title XX, §§ 2008(b)(12), 2010(b)(4), June 10, 1993, 107 Stat. 172, 173, 211, 214.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–43, § 1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' after ''advisory council for'' and substituted ''the Center'' for ''the Division'' in two places.

Subsec. (a)(2). Pub. L. 103–43, §§ 1501(2)(C), (D), 2010(b)(4), substituted ''the Center'' for ''the Division of Research Resources'' after ''advisory council for'', ''section 238'' for ''section 300aaa'', and ''the Center'' for ''the Division''.

Subsec. (a)(3). Pub. L. 103–43, § 1501(2)(D), substituted ''the Center'' for ''the Division'' wherever appearing.

Subsec. (b). Pub. L. 103–43, §§ 1501(2)(C), (D), 2008(b)(12), in par. (2)(A) substituted ''the Center'' for ''the Division of Research Resources'' and ''Department of Veterans Affairs'' for ''Veterans' Administration'' and in par. (3)(A) substituted ''the Center'' for ''the Division''.

Subsec. (d). Pub. L. 103–43, § 1501(2)(C), substituted ''the Center'' for ''the Division of Research Resources''.

Subsec. (e). Pub. L. 103–43, § 1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division''.

Subsec. (f). Pub. L. 103–43, § 1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division'' in three places.

Subsec. (g). Pub. L. 103–43, § 1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division''.

Subsec. (h). Pub. L. 103–43, § 1501(2)(C), substituted ''the Center'' for ''the Division of Research Resources'' in introductory provisions and in par. (3).

1992—Subsec. (b)(2)(A). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 287a–1. Biennial report

The Director of the Center, after consultation with the advisory council for the Center, shall prepare for inclusion in the biennial report made under section 283 of this title a biennial report which shall consist of a description of the activities of the Center and program policies of the Director of the Center in the fiscal years respecting which the report is prepared. The Director of the Center may prepare such additional reports as the Director determines appropriate. The Director of the Center shall provide the advisory council of the Center an opportunity for the submission of the written comments referred to in section 287a(g) of this title.

(July 1, 1944, ch. 373, title IV, § 481, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 866; amended Pub. L. 103–43, title XV, § 1501(2)(C), (D), June 10, 1993, 107 Stat. 172, 173.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division'' wherever appearing.

§ 287a–2. Biomedical and behavioral research facilities

(a) Modernization and construction of facilities

(1) In general

The Director of NIH, acting through the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases, may make grants or contracts to public and nonprofit private entities to expand, remodel, renovate, or alter existing research facilities or construct new research facilities, subject to the provisions of this section.

(2) Construction and cost of construction

For purposes of this section, the terms ''construction'' and ''cost of construction'' include the construction of new buildings and the expansion, renovation, remodeling, and alteration of existing buildings, including architects' fees, but do not include the cost of acquisition of land or off-site improvements.

(b) Scientific and technical review boards for merit-based review of proposals

(1) In general: approval as precondition to grants

(A) Establishment

There is established within the Center a Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities (referred to in this section as the ''Board'').

(B) Requirement

The Director of the Center may approve an application for a grant under subsection (a) of this section only if the Board has under paragraph (2) recommended the application for approval.

(2) Duties

(A) Advice

The Board shall provide advice to the Director of the Center and the advisory council established under section 287a of this title (in this section referred to as the ''Advisory Council'') in carrying out this section.

(B) Determination of merit

In carrying out subparagraph (A), the Board shall make a determination of the merit of each application submitted for a grant under subsection (a) of this section, after consideration of the requirements established in subsection (c) of this section, and shall report the results of the determination to the Director of the Center and the Advisory Council. Such determinations shall be conducted in a manner consistent with procedures established under section 289a of this title.

(C) Amount

In carrying out subparagraph (A), the Board shall, in the case of applications recommended for approval, make recommendations to the Director and the Advisory Council on the amount that should be provided under the grant.

(D) Annual report

In carrying out subparagraph (A), the Board shall prepare an annual report for the Director of the Center and the Advisory Council describing the activities of the Board in the fiscal year for which the report is made. Each such report shall be available to the public, and shall—

(i) summarize and analyze expenditures made under this section;

(ii) provide a summary of the types, numbers, and amounts of applications that were recommended for grants under subsection (a) of this section but that were not approved by the Director of the Center; and

(iii) contain the recommendations of the Board for any changes in the administration of this section.

(3) Membership

(A) In general

Subject to subparagraph (B), the Board shall be composed of 15 members to be appointed by the Director of the Center, and such ad-hoc or temporary members as the Director of the Center determines to be appropriate. All members of the Board, including temporary and ad-hoc members, shall be voting members.

(B) Limitation

Not more than three individuals who are officers or employees of the Federal Government may serve as members of the Board.

(4) Certain requirements regarding membership

In selecting individuals for membership on the Board, the Director of the Center shall ensure that the members are individuals who, by virtue of their training or experience, are eminently qualified to perform peer review functions. In selecting such individuals for such membership, the Director of the Center shall ensure that the members of the Board collectively—

(A) are experienced in the planning, construction, financing, and administration of entities that conduct biomedical or behavioral research sciences;

(B) are knowledgeable in making determinations of the need of entities for biomedical or behavioral research facilities, including such facilities for the dentistry, nursing, pharmacy, and allied health professions;

(C) are knowledgeable in evaluating the relative priorities for applications for grants under subsection (a) of this section in view of the overall research needs of the United States; and

(D) are experienced with emerging centers of excellence, as described in subsection (c)(2) of this section.

(5) Certain authorities

(A) Workshops and conferences

In carrying out paragraph (2), the Board may convene workshops and conferences, and collect data as the Board considers appropriate.

(B) Subcommittees

In carrying out paragraph (2), the Board may establish subcommittees within the Board. Such subcommittees may hold meetings as determined necessary to enable the subcommittee to carry out its duties.

(6) Terms

(A) In general

Except as provided in subparagraph (B), each appointed member of the Board shall hold office for a term of 4 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of the term of the predecessor.

(B) Staggered terms

Members appointed to the Board shall serve staggered terms as specified by the Director of the Center when making the appointments.

(C) Reappointment

No member of the Board shall be eligible for reappointment to the Board until 1 year has elapsed after the end of the most recent term of the member.

(7) Compensation

Members of the Board who are not officers or employees of the United States shall receive for each day the members are engaged in the performance of the functions of the Board compensation at the same rate received by members of other national advisory councils established under this subchapter.

(c) Requirements for grants

(1) In general

The Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases may make a grant under subsection (a) of this section only if the applicant for the grant meets the following conditions:

(A) The applicant is determined by such Director to be competent to engage in the type of research for which the proposed facility is to be constructed.

(B) The applicant provides assurances satisfactory to the Director that—

(i) for not less than 20 years after completion of the construction involved, the facility will be used for the purposes of the research for which it is to be constructed;

(ii) sufficient funds will be available to meet the non-Federal share of the cost of constructing the facility;

(iii) sufficient funds will be available, when construction is completed, for the effective use of the facility for the research for which it is being constructed; and

(iv) the proposed construction will expand the applicant's capacity for research, or is necessary to improve or maintain the quality of the applicant's research.

(C) The applicant meets reasonable qualifications established by the Director with respect to—

(i) the relative scientific and technical merit of the applications, and the relative effectiveness of the proposed facilities, in expanding the capacity for biomedical or behavioral research and in improving the quality of such research;

(ii) the quality of the research or training, or both, to be carried out in the facilities involved;

(iii) the congruence of the research activities to be carried out within the facility with the research and investigator manpower needs of the United States; and

(iv) the age and condition of existing research facilities.

(D) The applicant has demonstrated a commitment to enhancing and expanding the research productivity of the applicant.

(2) Institutions of emerging excellence

From the amount appropriated to carry out this section for a fiscal year up to $50,000,000,

the Director of the Center shall make available 25 percent of such amount, and from the amount appropriated to carry out this section for a fiscal year that is over $50,000,000, the Director of the Center shall make available up to 25 percent of such amount, for grants under subsection (a) of this section to applicants that in addition to meeting the requirements established in paragraph (1), have demonstrated emerging excellence in biomedical or behavioral research, as follows:

(A) The applicant has a plan for research or training advancement and possesses the ability to carry out the plan.

(B) The applicant carries out research and research training programs that have a special relevance to a problem, concern, or unmet health need of the United States.

(C) The applicant has been productive in research or research development and training.

(D) The applicant—

(i) has been designated as a center of excellence under section 293c[1] of this title;

(ii) is located in a geographic area whose population includes a significant number of individuals with health status deficit, and the applicant provides health services to such individuals; or

(iii) is located in a geographic area in which a deficit in health care technology, services, or research resources may adversely affect the health status of the population of the area in the future, and the applicant is carrying out activities with respect to protecting the health status of such population.

(d) Requirement of application

The Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Director and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out this section.

(e) Amount of grant; payments

(1) Amount

The amount of any grant awarded under subsection (a) of this section shall be determined by the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases, except that such amount shall not exceed—

(A) 50 percent (or, in the case of the Institute, 75 percent) of the necessary cost of the construction of a proposed facility as determined by the Director; or

(B) in the case of a multipurpose facility, 40 percent (or, in the case of the Institute, 75 percent) of that part of the necessary cost of construction that the Director determines to be proportionate to the contemplated use of the facility.

(2) Reservation of amounts

On the approval of any application for a grant under subsection (a) of this section, the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases shall reserve, from any appropriation available for such grants, the amount of such grant, and shall pay such amount, in advance or by way of reimbursement, and in such installments consistent with the construction progress, as the Director may determine appropriate. The reservation of any amount by the Director under this paragraph may be amended by the Director, either on the approval of an amendment of the application or on the revision of the estimated cost of construction of the facility.

(3) Exclusion of certain costs

In determining the amount of any grant under subsection (a) of this section, there shall be excluded from the cost of construction an amount equal to the sum of—

(A) the amount of any other Federal grant that the applicant has obtained, or is assured of obtaining, with respect to construction that is to be financed in part by a grant authorized under this section; and

(B) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

(4) Waiver of limitations

The limitations imposed under paragraph (1) may be waived at the discretion of the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases for applicants meeting the conditions described in subsection (c) of this section.

(f) Recapture of payments

If, not later than 20 years after the completion of construction for which a grant has been awarded under subsection (a) of this section—

(1) in the case of an award by the Director of the Center, the applicant or other owner of the facility shall cease to be a public or non profit[2] private entity; or

(2) the facility shall cease to be used for the research purposes for which it was constructed (unless the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from obligation to do so),

the United States shall be entitled to recover from the applicant or other owner of the facility the amount bearing the same ratio to the current value (as determined by an agreement between the parties or by action brought in the United States District Court for the district in which such facility is situated) of the facility as the amount of the Federal participation bore to the cost of the construction of such facility.

(g) Guidelines

Not later than 6 months after June 10, 1993, the Director of the Center, after consultation with the Advisory Council, shall issue guidelines with respect to grants under subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 481A, as added Pub. L. 103–43, title XV, § 1502, June 10, 1993, 107

[1] See References in Text note below.

[2] So in original. Probably should be ''nonprofit''.

Stat. 173; amended Pub. L. 105–392, title I, § 101(c), Nov. 13, 1998, 112 Stat. 3537; Pub. L. 106–505, title III, § 303, Nov. 13, 2000, 114 Stat. 2330; Pub. L. 108–276, § 2(b), July 21, 2004, 118 Stat. 841; Pub. L. 109–482, title I, §§ 103(b)(40), 104(b)(1)(M), Jan. 15, 2007, 120 Stat. 3688, 3693.)

REFERENCES IN TEXT

Section 293c of this title, referred to in subsec. (c)(2)(D)(i), does not contain provisions relating to designation as a center of excellence. See section 293 of this title.

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 109–482, § 103(b)(40)(A), in introductory provisions, substituted ''to carry out this section for a fiscal year up to'' for ''under subsection (i)(1) of this section for a fiscal year up to'' and ''to carry out this section for a fiscal year that'' for ''under such subsection for a fiscal year that''.

Subsec. (h). Pub. L. 109–482, § 104(b)(1)(M), struck out subsec. (h) which required biennial report concerning the status of biomedical and behavioral research facilities and the availability and condition of laboratory equipment.

Subsec. (i). Pub. L. 109–482, § 103(b)(40)(B), struck out subsec. (i) which authorized appropriations for the National Center for Research Resources and the National Institute of Allergy and Infectious Diseases.

2004—Subsec. (a)(1). Pub. L. 108–276, § 2(b)(1), inserted ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''.

Subsec. (c)(1). Pub. L. 108–276, § 2(b)(2)(A), inserted ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''.

Subsec. (c)(2). Pub. L. 108–276, § 2(b)(2)(B), substituted ''subsection (i)(1)'' for ''subsection (i)'' in introductory provisions.

Subsec. (d). Pub. L. 108–276, § 2(b)(3), inserted ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''.

Subsec. (e)(1). Pub. L. 108–276, § 2(b)(4)(A)(i), inserted ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center'' in introductory provisions.

Subsec. (e)(1)(A). Pub. L. 108–276, § 2(b)(4)(A)(ii), inserted ''(or, in the case of the Institute, 75 percent)'' after ''50 percent''.

Subsec. (e)(1)(B). Pub. L. 108–276, § 2(b)(4)(A)(iii), inserted ''(or, in the case of the Institute, 75 percent)'' after ''40 percent''.

Subsec. (e)(2). Pub. L. 108–276, § 2(b)(4)(B), inserted ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''.

Subsec. (e)(4). Pub. L.108–276, § 2(b)(4)(C), inserted ''of the Center or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director''.

Subsec. (f)(1). Pub. L. 108–276, § 2(b)(5)(A), inserted ''in the case of an award by the Director of the Center,'' before ''the applicant''.

Subsec. (f)(2). Pub. L. 108–276, § 2(b)(5)(B), inserted ''of the Center or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director''.

Subsec. (i). Pub. L. 108–276, § 2(b)(6), designated existing provisions as par. (1), inserted heading, substituted ''For the purpose of carrying out this section with respect to the Center,'' for ''For the purpose of carrying out this section,'', and added par. (2).

2000—Pub. L. 106–505 amended section generally, adding provisions requiring the Director to provide Congress with biennial status reports.

1998—Subsec. (c)(3)(D)(i). Pub. L. 105–392 substituted ''part B of subchapter V of this chapter'' for ''section 293c of this title''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

FINDINGS

Pub. L. 106–505, title III, § 302, Nov. 13, 2000, 114 Stat. 2330, provided that: ''Congress finds that—

''(1) the National Institutes of Health is the principal source of Federal funding for medical research at universities and other research institutions in the United States;

''(2) the National Institutes of Health has received a substantial increase in research funding from Congress for the purpose of expanding the national investment of the United States in behavioral and biomedical research;

''(3) the infrastructure of our research institutions is central to the continued leadership of the United States in medical research;

''(4) as Congress increases the investment in cutting-edge basic and clinical research, it is critical that Congress also examine the current quality of the laboratories and buildings where research is being conducted, as well as the quality of laboratory equipment used in research;

''(5) many of the research facilities and laboratories in the United States are outdated and inadequate;

''(6) the National Science Foundation found, in a 1998 report on the status of biomedical research facilities, that over 60 percent of research-performing institutions indicated that they had an inadequate amount of medical research space;

''(7) the National Science Foundation reports that academic institutions have deferred nearly $11,000,000,000 in renovation and construction projects because of a lack of funds; and

''(8) future increases in Federal funding for the National Institutes of Health must include increased support for the renovation and construction of extramural research facilities in the United States and the purchase of state-of-the-art laboratory instrumentation.''

§ 287a–3. Construction of regional centers for research on primates

(a) With respect to activities carried out by the National Center for Research Resources to support regional centers for research on primates, the Director of NIH may, for each of the fiscal years 2000 through 2002, reserve from the amounts appropriated to carry out section 287a–2 of this title such sums as necessary for the purpose of making awards of grants and contracts to public or nonprofit private entities to construct, renovate, or otherwise improve such regional centers. The reservation of such amounts for any fiscal year is subject to the availability of qualified applicants for such awards.

(b) The Director of NIH may not make a grant or enter into a contract under subsection (a) of this section unless the applicant for such assistance agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $4 of Federal funds provided in such assistance.

(July 1, 1944, ch. 373, title IV, § 481B, as added Pub. L. 103–43, title XV, § 1503, June 10, 1993, 107 Stat. 178; amended Pub. L. 105–392, title IV, § 411, Nov. 13, 1998, 112 Stat. 3590; Pub. L. 106–505, title III, § 304, Nov. 13, 2000, 114 Stat. 2335; Pub. L. 109–482, title I, § 103(b)(41), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 109–482, which directed the substitution of ''to carry out section 287a–2'' for ''under section 287a–2(h)'', was executed by making substitution for ''under section 287a–2(i)'', to reflect the probable intent of Congress.

2000—Subsec. (a). Pub. L. 106–505, which directed the amendment of subsec. (a) by substituting ''2000 through 2002, reserve from the amounts appropriated under section 287a–2(i) of this title such sums as necessary'' for '''1994' and all that follows through '$5,000,000' '', was executed by making the substitution for ''1994 through 1996, reserve from the amounts appropriated under section 287a–2(h) of this title up to $2,500,000'', to reflect the probable intent of Congress and the amendment by Pub. L. 105–392. See 1998 Amendment note below.

1998—Subsec. (a). Pub. L. 105–392, in first sentence, substituted ''may'' for ''shall'' and ''up to $2,500,000'' for ''$5,000,000''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 287a–3a. Sanctuary system for surplus chimpanzees

(a) In general

The Secretary shall provide for the establishment and operation in accordance with this section of a system to provide for the lifetime care of chimpanzees that have been used, or were bred or purchased for use, in research conducted or supported by the National Institutes of Health, the Food and Drug Administration, or other agencies of the Federal Government, and with respect to which it has been determined by the Secretary that the chimpanzees are not needed for such research (in this section referred to as ''surplus chimpanzees'').

(b) Administration of sanctuary system

The Secretary shall carry out this section, including the establishment of regulations under subsection (d) of this section, in consultation with the board of directors of the nonprofit private entity that receives the contract under subsection (e) of this section (relating to the operation of the sanctuary system).

(c) Acceptance of chimpanzees into system

All surplus chimpanzees owned by the Federal Government shall be accepted into the sanctuary system. Subject to standards under subsection (d)(4) of this section, any chimpanzee that is not owned by the Federal Government can be accepted into the system if the owner transfers to the sanctuary system title to the chimpanzee.

(d) Standards for permanent retirement of surplus chimpanzees

(1) In general

Not later than 180 days after December 20, 2000, the Secretary shall by regulation establish standards for operating the sanctuary system to provide for the permanent retirement of surplus chimpanzees. In establishing the standards, the Secretary shall consider the recommendations of the board of directors of the nonprofit private entity that receives the contract under subsection (e) of this section, and shall consider the recommendations of the National Research Council applicable to surplus chimpanzees that are made in the report published in 1997 and entitled ''Chimpanzees in Research—Strategies for Their Ethical Care, Management, and Use''.

(2) Chimpanzees accepted into system

With respect to chimpanzees that are accepted into the sanctuary system, standards under paragraph (1) shall include the following:

(A) A prohibition that the chimpanzees may not be used for research, except as authorized under paragraph (3).

(B) Provisions regarding the housing of the chimpanzees.

(C) Provisions regarding the behavioral well-being of the chimpanzees.

(D) A requirement that the chimpanzees be cared for in accordance with the Animal Welfare Act [7 U.S.C. 2131 et seq.].

(E) A requirement that the chimpanzees be prevented from breeding.

(F) A requirement that complete histories be maintained on the health and use in research of the chimpanzees.

(G) A requirement that the chimpanzees be monitored for the purpose of promptly detecting the presence in the chimpanzees of any condition that may be a threat to the public health or the health of other chimpanzees.

(H) A requirement that chimpanzees posing such a threat be contained in accordance with applicable recommendations of the Director of the Centers for Disease Control and Prevention.

(I) A prohibition that none of the chimpanzees may be subjected to euthanasia, except as in the best interests of the chimpanzee involved, as determined by the system and an attending veterinarian.

(J) A prohibition that the chimpanzees may not be discharged from the system. If any chimpanzee is removed from a sanctuary facility for purposes of research authorized under paragraph (3)(A)(ii), the chimpanzee shall be returned immediately upon the completion of that research. All costs associated with the removal of the chimpanzee from the facility, with the care of the chimpanzee during such absence from the facility, and with the return of the chimpanzee to the facility shall be the responsibility of the entity that obtains approval under such paragraph regarding use of the chimpanzee and removes the chimpanzee from the sanctuary facility.

(K) A provision that the Secretary may, in the discretion of the Secretary, accept into the system chimpanzees that are not surplus chimpanzees.

(L) Such additional standards as the Secretary determines to be appropriate.

(3) Restrictions regarding research

(A) In general

For purposes of paragraph (2)(A), standards under paragraph (1) shall provide that a chimpanzee accepted into the sanctuary sys-

tem may not be used for studies or research, except as provided in clause (i) or (ii), as follows:

(i) The chimpanzee may be used for noninvasive behavioral studies or medical studies based on information collected during the course of normal veterinary care that is provided for the benefit of the chimpanzee, provided that any such study involves minimal physical and mental harm, pain, distress, and disturbance to the chimpanzee and the social group in which the chimpanzee lives.

(ii) The chimpanzee may be used in research if—

(I) the Secretary finds that there are special circumstances in which there is need for that individual, specific chimpanzee (based on that chimpanzee's prior medical history, prior research protocols, and current status), and there is no chimpanzee with a similar history and current status that is reasonably available among chimpanzees that are not in the sanctuary system;

(II) the Secretary finds that there are technological or medical advancements that were not available at the time the chimpanzee entered the sanctuary system, and that such advancements can and will be used in the research;

(III) the Secretary finds that the research is essential to address an important public health need; and

(IV) the design of the research involves minimal pain and physical harm to the chimpanzee, and otherwise minimizes mental harm, distress, and disturbance to the chimpanzee and the social group in which the chimpanzee lives (including with respect to removal of the chimpanzee from the sanctuary facility involved).

(B) Approval of research design

(i) Evaluation by sanctuary board

With respect to a proposed use in research of a chimpanzee in the sanctuary system under subparagraph (A)(ii), the board of directors of the nonprofit private entity that receives the contract under subsection (e) of this section shall, after consultation with the head of the sanctuary facility in which the chimpanzee has been placed and with the attending veterinarian, evaluate whether the design of the research meets the conditions described in subparagraph (A)(ii)(IV) and shall submit to the Secretary the findings of the evaluation.

(ii) Acceptance of board findings

The Secretary shall accept the findings submitted to the Secretary under clause (i) by the board of directors referred to in such clause unless the Secretary makes a determination that the findings of the board are arbitrary or capricious.

(iii) Public participation

With respect to a proposed use in research of a chimpanzee in the sanctuary system under subparagraph (A)(ii), the proposal shall not be approved until—

(I) the Secretary publishes in the Federal Register the proposed findings of the Secretary under such subparagraph, the findings of the evaluation by the board under clause (i) of this subparagraph, and the proposed evaluation by the Secretary under clause (ii) of this subparagraph; and

(II) the Secretary seeks public comment for a period of not less than 60 days.

(C) Additional restriction

For purposes of paragraph (2)(A), a condition for the use in studies or research of a chimpanzee accepted into the sanctuary system is (in addition to conditions under subparagraphs (A) and (B) of this paragraph) that the applicant for such use has not been fined for, or signed a consent decree for, any violation of the Animal Welfare Act [7 U.S.C. 2131 et seq.].

(4) Non-Federal chimpanzees offered for acceptance into system

With respect to a chimpanzee that is not owned by the Federal Government and is offered for acceptance into the sanctuary system, standards under paragraph (1) shall include the following:

(A) A provision that the Secretary may authorize the imposition of a fee for accepting such chimpanzee into the system, except as follows:

(i) Such a fee may not be imposed for accepting the chimpanzee if, on the day before December 20, 2000, the chimpanzee was owned by the nonprofit private entity that receives the contract under subsection (e) of this section or by any individual sanctuary facility receiving a subcontract or grant under subsection (e)(1) of this section.

(ii) Such a fee may not be imposed for accepting the chimpanzee if the chimpanzee is owned by an entity that operates a primate center, and if the chimpanzee is housed in the primate center pursuant to the program for regional centers for research on primates that is carried out by the National Center for Research Resources.

Any fees collected under this subparagraph are available to the Secretary for the costs of operating the system. Any other fees received by the Secretary for the long-term care of chimpanzees (including any Federal fees that are collected for such purpose and are identified in the report under section 3 of the Chimpanzee Health Improvement, Maintenance, and Protection Act) are available for operating the system, in addition to availability for such other purposes as may be authorized for the use of the fees.

(B) A provision that the Secretary may deny such chimpanzee acceptance into the system if the capacity of the system is not sufficient to accept the chimpanzee, taking into account the physical capacity of the

system; the financial resources of the system; the number of individuals serving as the staff of the system, including the number of professional staff; the necessity of providing for the safety of the staff and of the public; the necessity of caring for accepted chimpanzees in accordance with the standards under paragraph (1); and such other factors as may be appropriate.

(C) A provision that the Secretary may deny such chimpanzee acceptance into the system if a complete history of the health and use in research of the chimpanzee is not available to the Secretary.

(D) Such additional standards as the Secretary determines to be appropriate.

(e) Award of contract for operation of system

(1) In general

Subject to the availability of funds pursuant to subsection (g) of this section, the Secretary shall make an award of a contract to a nonprofit private entity under which the entity has the responsibility of operating (and establishing, as applicable) the sanctuary system and awarding subcontracts or grants to individual sanctuary facilities that meet the standards under subsection (d) of this section.

(2) Requirements

The Secretary may make an award under paragraph (1) to a nonprofit private entity only if the entity meets the following requirements:

(A) The entity has a governing board of directors that is composed and appointed in accordance with paragraph (3) and is satisfactory to the Secretary.

(B) The terms of service for members of such board are in accordance with paragraph (3).

(C) The members of the board serve without compensation. The members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the board.

(D) The entity has an executive director meeting such requirements as the Secretary determines to be appropriate.

(E) The entity makes the agreement described in paragraph (4) (relating to non-Federal contributions).

(F) The entity agrees to comply with standards under subsection (d) of this section.

(G) The entity agrees to make necropsy reports on chimpanzees in the sanctuary system available on a reasonable basis to persons who conduct biomedical or behavioral research, with priority given to such persons who are Federal employees or who receive financial support from the Federal Government for research.

(H) Such other requirements as the Secretary determines to be appropriate.

(3) Board of directors

For purposes of subparagraphs (A) and (B) of paragraph (2):

(A) The governing board of directors of the nonprofit private entity involved is composed and appointed in accordance with this paragraph if the following conditions are met:

(i) Such board is composed of not more than 13 voting members.

(ii) Such members include individuals with expertise and experience in the science of managing captive chimpanzees (including primate veterinary care), appointed from among individuals endorsed by organizations that represent individuals in such field.

(iii) Such members include individuals with expertise and experience in the field of animal protection, appointed from among individuals endorsed by organizations that represent individuals in such field.

(iv) Such members include individuals with expertise and experience in the zoological field (including behavioral primatology), appointed from among individuals endorsed by organizations that represent individuals in such field.

(v) Such members include individuals with expertise and experience in the field of the business and management of nonprofit organizations, appointed from among individuals endorsed by organizations that represent individuals in such field.

(vi) Such members include representatives from entities that provide accreditation in the field of laboratory animal medicine.

(vii) Such members include individuals with expertise and experience in the field of containing biohazards.

(viii) Such members include an additional member who serves as the chair of the board, appointed from among individuals who have been endorsed for purposes of clause (ii), (iii), (iv), or (v).

(ix) None of the members of the board has been fined for, or signed a consent decree for, any violation of the Animal Welfare Act [7 U.S.C. 2131 et seq.].

(B) The terms of service for members of the board of directors are in accordance with this paragraph if the following conditions are met:

(i) The term of the chair of the board is 3 years.

(ii) The initial members of the board select, by a random method, one member from each of the six fields specified in subparagraph (A) to serve a term of 2 years and (in addition to the chair) one member from each of such fields to serve a term of 3 years.

(iii) After the initial terms under clause (ii) expire, each member of the board (other than the chair) is appointed to serve a term of 2 years.

(iv) An individual whose term of service expires may be reappointed to the board.

(v) A vacancy in the membership of the board is filled in the manner in which the original appointment was made.

(vi) If a member of the board does not serve the full term applicable to the member, the individual appointed to fill the re-

sulting vacancy is appointed for the remainder of the term of the predecessor member.

(4) Requirement of matching funds

The agreement required in paragraph (2)(E) for a nonprofit private entity (relating to the award of the contract under paragraph (1)) is an agreement that, with respect to the costs to be incurred by the entity in establishing and operating the sanctuary system, the entity will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs, in cash or in kind, in an amount not less than the following, as applicable:

(A) For expenses associated with establishing the sanctuary system (as determined by the Secretary), 10 percent of such costs ($1 for each $9 of Federal funds provided under the contract under paragraph (1)).

(B) For expenses associated with operating the sanctuary system (as determined by the Secretary), 25 percent of such costs ($1 for each $3 of Federal funds provided under such contract).

(5) Establishment of contract entity

If the Secretary determines that an entity meeting the requirements of paragraph (2) does not exist, not later than 60 days after December 20, 2000, the Secretary shall, for purposes of paragraph (1), make a grant for the establishment of such an entity, including paying the cost of incorporating the entity under the law of one of the States.

(f) Definitions

For purposes of this section:

(1) Permanent retirement

The term ''permanent retirement'', with respect to a chimpanzee that has been accepted into the sanctuary system, means that under subsection (a) of this section the system provides for the lifetime care of the chimpanzee, that under subsection (d)(2) of this section the system does not permit the chimpanzee to be used in research (except as authorized under subsection (d)(3) of this section) or to be euthanized (except as provided in subsection (d)(2)(I) of this section), that under subsection (d)(2) of this section the system will not discharge the chimpanzee from the system, and that under such subsection the system otherwise cares for the chimpanzee.

(2) Sanctuary system

The term ''sanctuary system'' means the system described in subsection (a) of this section.

(3) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(4) Surplus chimpanzees

The term ''surplus chimpanzees'' has the meaning given that term in subsection (a) of this section.

(g) Funding

(1) In general

Of the amount appropriated under this chapter for fiscal year 2001 and each subsequent fiscal year, the Secretary, subject to paragraph (2), shall reserve a portion for purposes of the operation (and establishment, as applicable) of the sanctuary system and for purposes of paragraph (3), except that the Secretary may not for such purposes reserve any further funds from such amount after the aggregate total of the funds so reserved for such fiscal years reaches $30,000,000. The purposes for which funds reserved under the preceding sentence may be expended include the construction and renovation of facilities for the sanctuary system.

(2) Limitation

Funds may not be reserved for a fiscal year under paragraph (1) unless the amount appropriated under this chapter for such year equals or exceeds the amount appropriated under this chapter for fiscal year 1999.

(3) Use of funds for other compliant facilities

With respect to amounts reserved under paragraph (1) for a fiscal year, the Secretary may use a portion of such amounts to make awards of grants or contracts to public or private entities operating facilities that, as determined by the board of directors of the nonprofit private entity that receives the contract under subsection (e) of this section, provide for the retirement of chimpanzees in accordance with the same standards that apply to the sanctuary system pursuant to regulations under subsection (d) of this section. Such an award may be expended for the expenses of operating the facilities involved.

(July 1, 1944, ch. 373, title IV, § 481C, as added Pub. L. 106–551, § 2, Dec. 20, 2000, 114 Stat. 2752.)

REFERENCES IN TEXT

The Animal Welfare Act, referred to in subsecs. (d)(2)(D), (3)(C) and (e)(3)(A)(ix), is Pub. L. 89–544, Aug. 24, 1966, 80 Stat. 350, as amended, which is classified generally to chapter 54 (§ 2131 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2131 of Title 7 and Tables.

Section 3 of the Chimpanzee Health Improvement, Maintenance, and Protection Act, referred to in subsec. (d)(4)(A), is section 3 of Pub. L. 106–551, which is set out as a note below.

CODIFICATION

Another section 481C of act July 1, 1944, is classified to section 287a–4 of this title.

REPORT TO CONGRESS REGARDING NUMBER OF CHIMPANZEES AND FUNDING FOR CARE OF CHIMPANZEES

Pub. L. 106–551, § 3, Dec. 20, 2000, 114 Stat. 2759, provided that:

''With respect to chimpanzees that have been used, or were bred or purchased for use, in research conducted or supported by the National Institutes of Health, the Food and Drug Administration, or other agencies of the Federal Government, the Secretary of Health and Human Services shall, not later than 365 days after the date of the enactment of this Act [Dec. 20, 2000], submit to Congress a report providing the following information:

''(1) The number of such chimpanzees in the United States, whether owned or held by the Federal Government, any of the States, or private entities.

''(2) An identification of any requirement imposed by the Federal Government that, as a condition of the use of such a chimpanzee in research by a non-Federal entity—

''(A) fees be paid by the entity to the Federal Government for the purpose of providing for the care of the chimpanzee (including any fees for long-term care); or

''(B) funds be provided by the entity to a State, unit of local government, or private entity for an endowment or other financial account whose purpose is to provide for the care of the chimpanzee (including any funds provided for long-term care).

''(3) An accounting for fiscal years 1999 and 2000 of all fees paid and funds provided by non-Federal entities pursuant to requirements described in subparagraphs (A) and (B) of paragraph (2).

''(4) In the case of such fees, a specification of whether the fees were available to the Secretary (or other Federal officials) pursuant to annual appropriations Acts or pursuant to permanent appropriations.''

§ 287a–4. General clinical research centers

(a) Grants

The Director of the National Center for Research Resources shall award grants for the establishment of general clinical research centers to provide the infrastructure for clinical research including clinical research training and career enhancement. Such centers shall support clinical studies and career development in all settings of the hospital or academic medical center involved.

(b) Activities

In carrying out subsection (a) of this section, the Director of National Institutes of Health shall expand the activities of the general clinical research centers through the increased use of telecommunications and telemedicine initiatives.

(July 1, 1944, ch. 373, title IV, § 481C, as added Pub. L. 106–505, title II, § 204(a), Nov. 13, 2000, 114 Stat. 2327; amended Pub. L. 109–482, title I, § 103(b)(42), Jan. 15, 2007, 120 Stat. 3688.)

CODIFICATION

Another section 481C of act July 1, 1944, is classified to section 287a–3a of this title.

AMENDMENTS

2007—Subsec. (c). Pub. L. 109–482 struck out heading and text of subsec. (c). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

SUBPART 2—JOHN E. FOGARTY INTERNATIONAL CENTER FOR ADVANCED STUDY IN HEALTH SCIENCES

§ 287b. General purpose

The general purpose of the John E. Fogarty International Center for Advanced Study in the Health Sciences is to—

(1) facilitate the assembly of scientists and others in the biomedical, behavioral, and related fields for discussion, study, and research relating to the development of health science internationally;

(2) provide research programs, conferences, and seminars to further international cooperation and collaboration in the life sciences;

(3) provide postdoctorate fellowships for research training in the United States and abroad and promote exchanges of senior scientists between the United States and other countries;

(4) coordinate the activities of the National Institutes of Health concerned with the health sciences internationally; and

(5) receive foreign visitors to the National Institutes of Health.

(July 1, 1944, ch. 373, title IV, § 482, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 866.)

SUBPART 3—NATIONAL CENTER FOR HUMAN GENOME RESEARCH

CODIFICATION

Subpart 3 of part E of title IV of act July 1, 1944, comprising this subpart, was renumbered subpart 19 of part C of title IV by Pub. L. 109–482, title I, § 101(c)(1)–(3), Jan. 15, 2007, 120 Stat. 3681, and is classified to subpart 19 (§ 285s) of part C of this subchapter.

§ 287c. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title IV, § 485B, as added Pub. L. 103–43, title XV, § 1521(2), June 10, 1993, 107 Stat. 180, which set out the purpose of the National Center for Human Genome Research, was renumbered section 464z–1 of act July 1, 1944, by Pub. L. 109–482, title I, § 101(c)(4)(A), Jan. 15, 2007, 120 Stat. 3681, and transferred to section 285s of this title.

PRIOR PROVISIONS

Another prior section 287c, act July 1, 1944, ch. 373, title IV, § 483, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 867, and amended, which related to purpose of National Center for Nursing Research, was renumbered section 464V of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q of this title.

A prior section 287c–1, act July 1, 1944, ch. 373, title IV, § 484, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 867, and amended, which related to specific authorities of the Director of the Center, was renumbered section 464W of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q–1 of this title.

A prior section 287c–2, act July 1, 1944, ch. 373, title IV, § 485, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 867, and amended, which related to the advisory council for the Center, was renumbered section 464X of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q–2 of this title.

A prior section 287c–3, act July 1, 1944, ch. 373, title IV, § 486, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 869, and amended, which related to biennial report of activities of the Center, was renumbered section 464Y of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q–3 of this title.

SUBPART 4—OFFICE OF DIETARY SUPPLEMENTS

§ 287c–11. Dietary supplements

(a) Establishment

The Secretary shall establish an Office of Dietary Supplements within the National Institutes of Health.

(b) Purpose

The purposes of the Office are—

(1) to explore more fully the potential role of dietary supplements as a significant part of

the efforts of the United States to improve health care; and

(2) to promote scientific study of the benefits of dietary supplements in maintaining health and preventing chronic disease and other health-related conditions.

(c) Duties

The Director of the Office of Dietary Supplements shall—

(1) conduct and coordinate scientific research within the National Institutes of Health relating to dietary supplements and the extent to which the use of dietary supplements can limit or reduce the risk of diseases such as heart disease, cancer, birth defects, osteoporosis, cataracts, or prostatism;

(2) collect and compile the results of scientific research relating to dietary supplements, including scientific data from foreign sources or the Office of Alternative Medicine;

(3) serve as the principal advisor to the Secretary and to the Assistant Secretary for Health and provide advice to the Director of the National Institutes of Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of Food and Drugs on issues relating to dietary supplements including—

(A) dietary intake regulations;

(B) the safety of dietary supplements;

(C) claims characterizing the relationship between—

(i) dietary supplements; and

(ii)(I) prevention of disease or other health-related conditions; and

(II) maintenance of health; and

(D) scientific issues arising in connection with the labeling and composition of dietary supplements;

(4) compile a database of scientific research on dietary supplements and individual nutrients; and

(5) coordinate funding relating to dietary supplements for the National Institutes of Health.

(d) "Dietary supplement" defined

As used in this section, the term ''dietary supplement'' has the meaning given the term in section 321(ff) of title 21.

(July 1, 1944, ch. 373, title IV, § 485C, as added Pub. L. 103–417, § 13(a), Oct. 25, 1994, 108 Stat. 4334; amended Pub. L. 109–482, title I, § 103(b)(43), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (e). Pub. L. 109–482 struck out heading and text of subsec. (e). Text read as follows: ''There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 1994 and such sums as may be necessary for each subsequent fiscal year.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

SUBPART 5—NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE MEDICINE

§ 287c–21. Purpose of Center

(a) In general

The general purposes of the National Center for Complementary and Alternative Medicine (in this subpart referred to as the ''Center'') are the conduct and support of basic and applied research (including both intramural and extramural research), research training, the dissemination of health information, and other programs with respect to identifying, investigating, and validating complementary and alternative treatment, diagnostic and prevention modalities, disciplines and systems. The Center shall be headed by a director, who shall be appointed by the Secretary. The Director of the Center shall report directly to the Director of NIH.

(b) Advisory council

The Secretary shall establish an advisory council for the Center in accordance with section 284a of this title, except that at least half of the members of the advisory council who are not ex officio members shall include practitioners licensed in one or more of the major systems with which the Center is concerned, and at least 3 individuals representing the interests of individual consumers of complementary and alternative medicine.

(c) Complement to conventional medicine

In carrying out subsection (a) of this section, the Director of the Center shall, as appropriate, study the integration of alternative treatment, diagnostic and prevention systems, modalities, and disciplines with the practice of conventional medicine as a complement to such medicine and into health care delivery systems in the United States.

(d) Appropriate scientific expertise and coordination with institutes and Federal agencies

The Director of the Center, after consultation with the advisory council for the Center and the division of research grants, shall ensure that scientists with appropriate expertise in research on complementary and alternative medicine are incorporated into the review, oversight, and management processes of all research projects and other activities funded by the Center. In carrying out this subsection, the Director of the Center, as necessary, may establish review groups with appropriate scientific expertise. The Director of the Center shall coordinate efforts with other Institutes and Federal agencies to ensure appropriate scientific input and management.

(e) Evaluation of various disciplines and systems

In carrying out subsection (a) of this section, the Director of the Center shall identify and evaluate alternative and complementary medical treatment, diagnostic and prevention modalities in each of the disciplines and systems with which the Center is concerned, including each discipline and system in which accreditation, national certification, or a State license is available.

(f) Ensuring high quality, rigorous scientific review

In order to ensure high quality, rigorous scientific review of complementary and alternative, diagnostic and prevention modalities, disciplines and systems, the Director of the Center shall conduct or support the following activities:

(1) Outcomes research and investigations.
(2) Epidemiological studies.
(3) Health services research.
(4) Basic science research.
(5) Clinical trials.
(6) Other appropriate research and investigational activities.

The Director of NIH, in coordination with the Director of the Center, shall designate specific personnel in each Institute to serve as full-time liaisons with the Center in facilitating appropriate coordination and scientific input.

(g) Data system; information clearinghouse

(1) Data system

The Director of the Center shall establish a bibliographic system for the collection, storage, and retrieval of worldwide research relating to complementary and alternative treatment, diagnostic and prevention modalities, disciplines and systems. Such a system shall be regularly updated and publicly accessible.

(2) Clearinghouse

The Director of the Center shall establish an information clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of alternative medical treatment, diagnostic and prevention practices by health professionals, patients, industry, and the public.

(h) Research centers

The Director of the Center, after consultation with the advisory council for the Center, shall provide support for the development and operation of multipurpose centers to conduct research and other activities described in subsection (a) of this section with respect to complementary and alternative treatment, diagnostic and prevention modalities, disciplines and systems. The provision of support for the development and operation of such centers shall include accredited complementary and alternative medicine research and education facilities.

(i) Availability of resources

After consultation with the Director of the Center, the Director of NIH shall ensure that resources of the National Institutes of Health, including laboratory and clinical facilities, fellowships (including research training fellowship and junior and senior clinical fellowships), and other resources are sufficiently available to enable the Center to appropriately and effectively carry out its duties as described in subsection (a) of this section. The Director of NIH, in coordination with the Director of the Center, shall designate specific personnel in each Institute to serve as full-time liaisons with the Center in facilitating appropriate coordination and scientific input.

(j) Availability of appropriations

Amounts appropriated to carry out this section for fiscal year 1999 are available for obligation through September 30, 2001. Amounts appropriated to carry out this section for fiscal year 2000 are available for obligation through September 30, 2001.

(July 1, 1944, ch. 373, title IV, § 485D, as added Pub. L. 105–277, div. A, § 101(f) [title VI, § 601(2)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–387.)

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

EXECUTIVE ORDER NO. 13147

Ex. Ord. No. 13147, Mar. 7, 2000, 65 F.R. 13233, as amended by Ex. Ord. No. 13167, Sept. 15, 2000, 65 F.R. 54079 [57079], 65 F.R. 57436, which established White House Commission on Complementary and Alternative Medicine Policy, was revoked by Ex. Ord. No. 13316, § 3(i), Sept. 17, 2003, 68 F.R. 55256, eff. Sept. 30, 2003.

SUBPART 6—NATIONAL CENTER ON MINORITY HEALTH AND HEALTH DISPARITIES

§ 287c–31. Purpose of Center

(a) In general

The general purpose of the National Center on Minority Health and Health Disparities (in this subpart referred to as the ''Center'') is the conduct and support of research, training, dissemination of information, and other programs with respect to minority health conditions and other populations with health disparities.

(b) Priorities

The Director of the Center shall in expending amounts appropriated under this subpart give priority to conducting and supporting minority health disparities research.

(c) Minority health disparities research

For purposes of this subpart:

(1) The term ''minority health disparities research'' means basic, clinical, and behavioral research on minority health conditions (as defined in paragraph (2)), including research to prevent, diagnose, and treat such conditions.

(2) The term ''minority health conditions'', with respect to individuals who are members of minority groups, means all diseases, disorders, and conditions (including with respect to mental health and substance abuse)—

(A) unique to, more serious, or more prevalent in such individuals;

(B) for which the factors of medical risk or types of medical intervention may be dif-

ferent for such individuals, or for which it is unknown whether such factors or types are different for such individuals; or

(C) with respect to which there has been insufficient research involving such individuals as subjects or insufficient data on such individuals.

(3) The term ''minority group'' has the meaning given the term ''racial and ethnic minority group'' in section 300u–6 of this title.

(4) The terms ''minority'' and ''minorities'' refer to individuals from a minority group.

(d) Health disparity populations

For purposes of this subpart:

(1) A population is a health disparity population if, as determined by the Director of the Center after consultation with the Director of the Agency for Healthcare Research and Quality, there is a significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population.

(2) The Director shall give priority consideration to determining whether minority groups qualify as health disparity populations under paragraph (1).

(3) The term ''health disparities research'' means basic, clinical, and behavioral research on health disparity populations (including individual members and communities of such populations) that relates to health disparities as defined under paragraph (1), including the causes of such disparities and methods to prevent, diagnose, and treat such disparities.

(e) Coordination of activities

The Director of the Center shall act as the primary Federal official with responsibility for coordinating all minority health disparities research and other health disparities research conducted or supported by the National Institutes of Health, and—

(1) shall represent the health disparities research program of the National Institutes of Health, including the minority health disparities research program, at all relevant Executive branch task forces, committees and planning activities; and

(2) shall maintain communications with all relevant Public Health Service agencies, including the Indian Health Service, and various other departments of the Federal Government to ensure the timely transmission of information concerning advances in minority health disparities research and other health disparities research between these various agencies for dissemination to affected communities and health care providers.

(f) Collaborative comprehensive plan and budget

(1) In general

Subject to the provisions of this section and other applicable law, the Director of NIH, the Director of the Center, and the directors of the other agencies of the National Institutes of Health in collaboration (and in consultation with the advisory council for the Center) shall—

(A) establish a comprehensive plan and budget for the conduct and support of all minority health disparities research and other health disparities research activities of the agencies of the National Institutes of Health (which plan and budget shall be first established under this subsection not later than 12 months after November 22, 2000);

(B) ensure that the plan and budget establish priorities among the health disparities research activities that such agencies are authorized to carry out;

(C) ensure that the plan and budget establish objectives regarding such activities, describes the means for achieving the objectives, and designates the date by which the objectives are expected to be achieved;

(D) ensure that, with respect to amounts appropriated for activities of the Center, the plan and budget give priority in the expenditure of funds to conducting and supporting minority health disparities research;

(E) ensure that all amounts appropriated for such activities are expended in accordance with the plan and budget;

(F) review the plan and budget not less than annually, and revise the plan and budget as appropriate;

(G) ensure that the plan and budget serve as a broad, binding statement of policies regarding minority health disparities research and other health disparities research activities of the agencies, but do not remove the responsibility of the heads of the agencies for the approval of specific programs or projects, or for other details of the daily administration of such activities, in accordance with the plan and budget; and

(H) promote coordination and collaboration among the agencies conducting or supporting minority health or other health disparities research.

(2) Certain components of plan and budget

With respect to health disparities research activities of the agencies of the National Institutes of Health, the Director of the Center shall ensure that the plan and budget under paragraph (1) provide for—

(A) basic research and applied research, including research and development with respect to products;

(B) research that is conducted by the agencies;

(C) research that is supported by the agencies;

(D) proposals developed pursuant to solicitations by the agencies and for proposals developed independently of such solicitations; and

(E) behavioral research and social sciences research, which may include cultural and linguistic research in each of the agencies.

(3) Minority health disparities research

The plan and budget under paragraph (1) shall include a separate statement of the plan and budget for minority health disparities research.

(g) Participation in clinical research

The Director of the Center shall work with the Director of NIH and the directors of the agencies of the National Institutes of Health to carry out

the provisions of section 289a–2 of this title that relate to minority groups.

(h) Research endowments

(1) In general

The Director of the Center may carry out a program to facilitate minority health disparities research and other health disparities research by providing for research endowments at centers of excellence under section 293 of this title.

(2) Eligibility

The Director of the Center may provide for a research endowment under paragraph (1) only if the institution involved meets the following conditions:

(A) The institution does not have an endowment that is worth in excess of an amount equal to 50 percent of the national average of endowment funds at institutions that conduct similar biomedical research or training of health professionals.

(B) The application of the institution under paragraph (1) regarding a research endowment has been recommended pursuant to technical and scientific peer review and has been approved by the advisory council under subsection (j) of this section.

(i) Certain activities

In carrying out subsection (a) of this section, the Director of the Center—

(1) shall assist the Director of the National Center for Research Resources in carrying out section 287a–1(c)(3)[1] of this title and in committing resources for construction at Institutions of Emerging Excellence;

(2) shall establish projects to promote cooperation among Federal agencies, State, local, tribal, and regional public health agencies, and private entities in health disparities research; and

(3) may utilize information from previous health initiatives concerning minorities and other health disparity populations.

(j) Advisory council

(1) In general

The Secretary shall, in accordance with section 284a of this title, establish an advisory council to advise, assist, consult with, and make recommendations to the Director of the Center on matters relating to the activities described in subsection (a) of this section, and with respect to such activities to carry out any other functions described in section 284a of this title for advisory councils under such section. Functions under the preceding sentence shall include making recommendations on budgetary allocations made in the plan under subsection (f) of this section, and shall include reviewing reports under subsection (k) of this section before the reports are submitted under such subsection.

(2) Membership

With respect to the membership of the advisory council under paragraph (1), a majority of the members shall be individuals with demonstrated expertise regarding minority health disparity and other health disparity issues; representatives of communities impacted by minority and other health disparities shall be included; and a diversity of health professionals shall be represented. The membership shall in addition include a representative of the Office of Behavioral and Social Sciences Research under section 283c of this title.

(July 1, 1944, ch. 373, title IV, § 485E, as added Pub. L. 106–525, title I, § 101(a), Nov. 22, 2000, 114 Stat. 2497; amended Pub. L. 109–482, title I, §§ 103(b)(44), 104(b)(1)(N), Jan. 15, 2007, 120 Stat. 3688, 3693.)

AMENDMENTS

2007—Subsec. (k). Pub. L. 109–482, § 104(b)(1)(N), struck out heading and text of subsec. (k). Text read as follows: ''The Director of the Center shall prepare an annual report on the activities carried out or to be carried out by the Center, and shall submit each such report to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Commerce of the House of Representatives, the Secretary, and the Director of NIH. With respect to the fiscal year involved, the report shall—

''(1) describe and evaluate the progress made in health disparities research conducted or supported by the national research institutes;

''(2) summarize and analyze expenditures made for activities with respect to health disparities research conducted or supported by the National Institutes of Health;

''(3) include a separate statement applying the requirements of paragraphs (1) and (2) specifically to minority health disparities research; and

''(4) contain such recommendations as the Director considers appropriate.''

Subsec. (*l*). Pub. L. 109–482, § 103(b)(44), struck out heading and text of subsec. (*l*). Text read as follows: ''For the purpose of carrying out this subpart, there are authorized to be appropriated $100,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 through 2005. Such authorization of appropriations is in addition to other authorizations of appropriations that are available for the conduct and support of minority health disparities research or other health disparities research by the agencies of the National Institutes of Health.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

FINDINGS

Pub. L. 106–525, § 2, Nov. 22, 2000, 114 Stat. 2495, provided that: ''The Congress finds as follows:

''(1) Despite notable progress in the overall health of the Nation, there are continuing disparities in the burden of illness and death experienced by African Americans, Hispanics, Native Americans, Alaska Natives, and Asian Pacific Islanders, compared to the United States population as a whole.

''(2) The largest numbers of the medically underserved are white individuals, and many of them have the same health care access problems as do members of minority groups. Nearly 20,000,000 white individuals live below the poverty line with many living in nonmetropolitan, rural areas such as Appalachia, where the high percentage of counties designated as health professional shortage areas (47 percent) and the high rate of poverty contribute to disparity outcomes. However, there is a higher proportion of racial and ethnic minorities in the United States represented among the medically underserved.

[1] So in original. Section 287a–1 of this title does not contain subsections.

''(3) There is a national need for minority scientists in the fields of biomedical, clinical, behavioral, and health services research. Ninety percent of minority physicians educated at Historically Black Medical Colleges live and serve in minority communities.

''(4) Demographic trends inspire concern about the Nation's ability to meet its future scientific, technological, and engineering workforce needs. Historically, non-Hispanic white males have made up the majority of the United States scientific, technological, and engineering workers.

''(5) The Hispanic and Black population will increase significantly in the next 50 years. The scientific, technological, and engineering workforce may decrease if participation by underrepresented minorities remains the same.

''(6) Increasing rates of Black and Hispanic workers can help ensure a strong scientific, technological, and engineering workforce.

''(7) Individuals such as underrepresented minorities and women in the scientific, technological, and engineering workforce enable society to address its diverse needs.

''(8) If there had not been a substantial increase in the number of science and engineering degrees awarded to women and underrepresented minorities over the past few decades, the United States would be facing even greater shortages in scientific, technological, and engineering workers.

''(9) In order to effectively promote a diverse and strong 21st century scientific, technological, and engineering workforce, Federal agencies should expand or add programs that effectively overcome barriers such as educational transition from one level to the next and student requirements for financial resources.

''(10) Federal agencies should work in concert with the private nonprofit sector to emphasize the recruitment and retention of qualified individuals from ethnic and gender groups that are currently underrepresented in the scientific, technological, and engineering workforce.

''(11) Behavioral and social sciences research has increased awareness and understanding of factors associated with health care utilization and access, patient attitudes toward health services, and risk and protective behaviors that affect health and illness. These factors have the potential to then be modified to help close the health disparities gap among ethnic minority populations. In addition, there is a shortage of minority behavioral science researchers and behavioral health care professionals. According to the National Science Foundation, only 15.5 percent of behavioral research-oriented psychology doctorate degrees were awarded to minority students in 1997. In addition, only 17.9 percent of practice-oriented psychology doctorate degrees were awarded to ethnic minorities.''

REPORT REGARDING RESOURCES OF NATIONAL INSTITUTES OF HEALTH DEDICATED TO MINORITY AND OTHER HEALTH DISPARITIES RESEARCH

Pub. L. 106–525, title I, § 105, Nov. 22, 2000, 114 Stat. 2504, which required the Director of the National Center on Minority Health and Health Disparities to submit to Congress, the Secretary of Health and Human Services, and the Director of the NIH a report, not later than Dec. 1, 2003, containing recommendations for the methodology to be used to determine the extent of NIH resources dedicated to minority health disparities research and a determination of whether there had been an increase in the level of NIH resources dedicated to minority health disparities research, was repealed by Pub. L. 109–482, title I, § 104(b)(3)(G), Jan. 15, 2007, 120 Stat. 3694.

PUBLIC AWARENESS AND DISSEMINATION OF INFORMATION ON HEALTH DISPARITIES

Pub. L. 106–525, title V, § 501, Nov. 22, 2000, 114 Stat. 2510, provided that:

''(a) PUBLIC AWARENESS ON HEALTH DISPARITIES.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct a national campaign to inform the public and health care professionals about health disparities in minority and other underserved populations by disseminating information and materials available on specific diseases affecting these populations and programs and activities to address these disparities. The campaign shall—

''(1) have a specific focus on minority and other underserved communities with health disparities; and

''(2) include an evaluation component to assess the impact of the national campaign in raising awareness of health disparities and information on available resources.

''(b) DISSEMINATION OF INFORMATION ON HEALTH DISPARITIES.—The Secretary shall develop and implement a plan for the dissemination of information and findings with respect to health disparities under titles I, II, III, and IV of this Act [see Tables for classification]. The plan shall—

''(1) include the participation of all agencies of the Department of Health and Human Services that are responsible for serving populations included in the health disparities research; and

''(2) have agency-specific strategies for disseminating relevant findings and information on health disparities and improving health care services to affected communities.''

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 287c–32. Centers of excellence for research education and training

(a) In general

The Director of the Center shall make awards of grants or contracts to designated biomedical and behavioral research institutions under paragraph (1) of subsection (c) of this section, or to consortia under paragraph (2) of such subsection, for the purpose of assisting the institutions in supporting programs of excellence in biomedical and behavioral research training for individuals who are members of minority health disparity populations or other health disparity populations.

(b) Required use of funds

An award may be made under subsection (a) of this section only if the applicant involved agrees that the grant will be expended—

(1) to train members of minority health disparity populations or other health disparity populations as professionals in the area of biomedical or behavioral research or both; or

(2) to expand, remodel, renovate, or alter existing research facilities or construct new research facilities for the purpose of conducting

minority health disparities research and other health disparities research.

(c) Centers of excellence

(1) In general

For purposes of this section, a designated biomedical and behavioral research institution is a biomedical and behavioral research institution that—

(A) has a significant number of members of minority health disparity populations or other health disparity populations enrolled as students in the institution (including individuals accepted for enrollment in the institution);

(B) has been effective in assisting such students of the institution to complete the program of education or training and receive the degree involved;

(C) has made significant efforts to recruit minority students to enroll in and graduate from the institution, which may include providing means-tested scholarships and other financial assistance as appropriate; and

(D) has made significant recruitment efforts to increase the number of minority or other members of health disparity populations serving in faculty or administrative positions at the institution.

(2) Consortium

Any designated biomedical and behavioral research institution involved may, with other biomedical and behavioral institutions (designated or otherwise), including tribal health programs, form a consortium to receive an award under subsection (a) of this section.

(3) Application of criteria to other programs

In the case of any criteria established by the Director of the Center for purposes of determining whether institutions meet the conditions described in paragraph (1), this section may not, with respect to minority health disparity populations or other health disparity populations, be construed to authorize, require, or prohibit the use of such criteria in any program other than the program established in this section.

(d) Duration of grant

The period during which payments are made under a grant under subsection (a) of this section may not exceed 5 years. Such payments shall be subject to annual approval by the Director of the Center and to the availability of appropriations for the fiscal year involved to make the payments.

(e) Maintenance of effort

(1) In general

With respect to activities for which an award under subsection (a) of this section is authorized to be expended, the Director of the Center may not make such an award to a designated research institution or consortium for any fiscal year unless the institution, or institutions in the consortium, as the case may be, agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the institutions involved for the fiscal year preceding the fiscal year for which such institutions receive such an award.

(2) Use of Federal funds

With respect to any Federal amounts received by a designated research institution or consortium and available for carrying out activities for which an award under subsection (a) of this section is authorized to be expended, the Director of the Center may make such an award only if the institutions involved agree that the institutions will, before expending the award, expend the Federal amounts obtained from sources other than the award.

(f) Certain expenditures

The Director of the Center may authorize a designated biomedical and behavioral research institution to expend a portion of an award under subsection (a) of this section for research endowments.

(g) Definitions

For purposes of this section:

(1) The term ''designated biomedical and behavioral research institution'' has the meaning indicated for such term in subsection (c)(1) of this section. Such term includes any health professions school receiving an award of a grant or contract under section 293 of this title.

(2) The term ''program of excellence'' means any program carried out by a designated biomedical and behavioral research institution with an award under subsection (a) of this section, if the program is for purposes for which the institution involved is authorized in subsection (b) of this section to expend the grant.

(July 1, 1944, ch. 373, title IV, § 485F, as added Pub. L. 106–525, title I, § 102, Nov. 22, 2000, 114 Stat. 2501; amended Pub. L. 109–482, title I, § 103(b)(45), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (h). Pub. L. 109–482 struck out heading and text of subsec. (h). Text read as follows: ''For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 287c–33. Loan repayment program for minority health disparities research

(a) In general

The Director of the Center shall establish a program of entering into contracts with qualified health professionals under which such health professionals agree to engage in minority health disparities research or other health disparities research in consideration of the Federal Government agreeing to repay, for each year of engaging in such research, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(b) Service provisions

The provisions of sections 254*l*–1, 254m, and 254*o* of this title shall, except as inconsistent

with subsection (a) of this section, apply to the program established in such subsection to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter.

(c) Requirement regarding health disparity populations

The Director of the Center shall ensure that not fewer than 50 percent of the contracts entered into under subsection (a) of this section are for appropriately qualified health professionals who are members of a health disparity population.

(d) Priority

With respect to minority health disparities research and other health disparities research under subsection (a) of this section, the Secretary shall ensure that priority is given to conducting projects of biomedical research.

(July 1, 1944, ch. 373, title IV, § 485G, as added Pub. L. 106–525, title I, § 103, Nov. 22, 2000, 114 Stat. 2503; amended Pub. L. 109–482, title I, § 103(b)(46), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (e). Pub. L. 109–482 struck out subsec. (e) which related to authorization and availability of appropriations.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 287c–34. General provisions regarding the Center

The Secretary, acting through the Director of the National Institutes of Health, shall provide administrative support and support services to the Director of the Center and shall ensure that such support takes maximum advantage of existing administrative structures at the agencies of the National Institutes of Health.

(July 1, 1944, ch. 373, title IV, § 485H, as added Pub. L. 106–525, title I, § 104, Nov. 22, 2000, 114 Stat. 2503; amended Pub. L. 109–482, title I, § 104(b)(1)(O), Jan. 15, 2007, 120 Stat. 3693.)

AMENDMENTS

2007—Pub. L. 109–482 struck out subsec. (a) designation and heading before ''The Secretary'' and struck out subsec. (b) which related to evaluation of this subpart not later than 5 years after Nov. 22, 2000, and report on such evaluation not later than 1 year after its commencement.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

PART F—RESEARCH ON WOMEN'S HEALTH

§ 287d. Office of Research on Women's Health

(a) Establishment

There is established within the Office of the Director of NIH an office to be known as the Office of Research on Women's Health (in this part referred to as the ''Office''). The Office shall be headed by a director, who shall be appointed by the Director of NIH.

(b) Purpose

The Director of the Office shall—

(1) identify projects of research on women's health that should be conducted or supported by the national research institutes;

(2) identify multidisciplinary research relating to research on women's health that should be so conducted or supported;

(3) carry out paragraphs (1) and (2) with respect to the aging process in women, with priority given to menopause;

(4) promote coordination and collaboration among entities conducting research identified under any of paragraphs (1) through (3);

(5) encourage the conduct of such research by entities receiving funds from the national research institutes;

(6) recommend an agenda for conducting and supporting such research;

(7) promote the sufficient allocation of the resources of the national research institutes for conducting and supporting such research;

(8) assist in the administration of section 289a–2 of this title with respect to the inclusion of women as subjects in clinical research; and

(9) prepare the report required in section 287d–2 of this title.

(c) Coordinating Committee

(1) In carrying out subsection (b) of this section, the Director of the Office shall establish a committee to be known as the Coordinating Committee on Research on Women's Health (in this subsection referred to as the ''Coordinating Committee'').

(2) The Coordinating Committee shall be composed of the Directors of the national research institutes (or the designees of the Directors).

(3) The Director of the Office shall serve as the chair of the Coordinating Committee.

(4) With respect to research on women's health, the Coordinating Committee shall assist the Director of the Office in—

(A) identifying the need for such research, and making an estimate each fiscal year of the funds needed to adequately support the research;

(B) identifying needs regarding the coordination of research activities, including intramural and extramural multidisciplinary activities;

(C) supporting the development of methodologies to determine the circumstances in which obtaining data specific to women (including data relating to the age of women and the membership of women in ethnic or racial groups) is an appropriate function of clinical trials of treatments and therapies;

(D) supporting the development and expansion of clinical trials of treatments and therapies for which obtaining such data has been determined to be an appropriate function; and

(E) encouraging the national research institutes to conduct and support such research, including such clinical trials.

(d) Advisory Committee

(1) In carrying out subsection (b) of this section, the Director of the Office shall establish an advisory committee to be known as the Advisory Committee on Research on Women's Health (in this subsection referred to as the ''Advisory Committee'').

(2) The Advisory Committee shall be composed of no fewer than 12, and not more than 18 individuals, who are not officers or employees of the Federal Government. The Director of NIH shall make appointments to the Advisory Committee from among physicians, practitioners, scientists, and other health professionals, whose clinical practice, research specialization, or professional expertise includes a significant focus on research on women's health. A majority of the members of the Advisory Committee shall be women.

(3) The Director of the Office shall serve as the chair of the Advisory Committee.

(4) The Advisory Committee shall—

(A) advise the Director of the Office on appropriate research activities to be undertaken by the national research institutes with respect to—

(i) research on women's health;

(ii) research on gender differences in clinical drug trials, including responses to pharmacological drugs;

(iii) research on gender differences in disease etiology, course, and treatment;

(iv) research on obstetrical and gynecological health conditions, diseases, and treatments; and

(v) research on women's health conditions which require a multidisciplinary approach;

(B) report to the Director of the Office on such research;

(C) provide recommendations to such Director regarding activities of the Office (including recommendations on the development of the methodologies described in subsection (c)(4)(C) of this section and recommendations on priorities in carrying out research described in subparagraph (A)); and

(D) assist in monitoring compliance with section 289a–2 of this title regarding the inclusion of women in clinical research.

(5)(A) The Advisory Committee shall prepare a biennial report describing the activities of the Committee, including findings made by the Committee regarding—

(i) compliance with section 289a–2 of this title;

(ii) the extent of expenditures made for research on women's health by the agencies of the National Institutes of Health; and

(iii) the level of funding needed for such research.

(B) The report required in subparagraph (A) shall be submitted to the Director of NIH for inclusion in the report required in section 283 of this title.

(e) Representation of women among researchers

The Secretary, acting through the Assistant Secretary for Personnel and in collaboration with the Director of the Office, shall determine the extent to which women are represented among senior physicians and scientists of the national research institutes and among physicians and scientists conducting research with funds provided by such institutes, and as appropriate, carry out activities to increase the extent of such representation.

(f) Definitions

For purposes of this part:

(1) The term ''women's health conditions'', with respect to women of all age, ethnic, and racial groups, means all diseases, disorders, and conditions (including with respect to mental health)—

(A) unique to, more serious, or more prevalent in women;

(B) for which the factors of medical risk or types of medical intervention are different for women, or for which it is unknown whether such factors or types are different for women; or

(C) with respect to which there has been insufficient clinical research involving women as subjects or insufficient clinical data on women.

(2) The term ''research on women's health'' means research on women's health conditions, including research on preventing such conditions.

(July 1, 1944, ch. 373, title IV, § 486, as added Pub. L. 103–43, title I, § 141(a)(3), June 10, 1993, 107 Stat. 136; amended Pub. L. 105–340, title I, § 106, Oct. 31, 1998, 112 Stat. 3193.)

AMENDMENTS

1998—Subsec. (d)(2). Pub. L. 105–340 substituted ''NIH'' for ''the Office''.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 287d–1. National data system and clearinghouse on research on women's health

(a) Data system

(1) The Director of NIH, in consultation with the Director of the Office and the Director of the National Library of Medicine, shall establish a data system for the collection, storage, analysis, retrieval, and dissemination of information regarding research on women's health that is conducted or supported by the national research institutes. Information from the data system shall be available through information systems available to health care professionals and providers, researchers, and members of the public.

(2) The data system established under paragraph (1) shall include a registry of clinical

trials of experimental treatments that have been developed for research on women's health. Such registry shall include information on subject eligibility criteria, sex, age, ethnicity or race, and the location of the trial site or sites. Principal investigators of such clinical trials shall provide this information to the registry within 30 days after it is available. Once a trial has been completed, the principal investigator shall provide the registry with information pertaining to the results, including potential toxicities or adverse effects associated with the experimental treatment or treatments evaluated.

(b) Clearinghouse

The Director of NIH, in consultation with the Director of the Office and with the National Library of Medicine, shall establish, maintain, and operate a program to provide information on research and prevention activities of the national research institutes that relate to research on women's health.

(July 1, 1944, ch. 373, title IV, § 486A, as added Pub. L. 103–43, title I, § 141(a)(3), June 10, 1993, 107 Stat. 138.)

§ 287d–2. Biennial report

(a) In general

With respect to research on women's health, the Director of the Office shall, not later than February 1, 1994, and biennially thereafter, prepare a report—

(1) describing and evaluating the progress made during the preceding 2 fiscal years in research and treatment conducted or supported by the National Institutes of Health;

(2) describing and analyzing the professional status of women physicians and scientists of such Institutes, including the identification of problems and barriers regarding advancements;

(3) summarizing and analyzing expenditures made by the agencies of such Institutes (and by such Office) during the preceding 2 fiscal years; and

(4) making such recommendations for legislative and administrative initiatives as the Director of the Office determines to be appropriate.

(b) Inclusion in biennial report of Director of NIH

The Director of the Office shall submit each report prepared under subsection (a) of this section to the Director of NIH for inclusion in the report submitted to the President and the Congress under section 283 of this title.

(July 1, 1944, ch. 373, title IV, § 486B, as added Pub. L. 103–43, title I, § 141(a)(3), June 10, 1993, 107 Stat. 139.)

PART G—AWARDS AND TRAINING

AMENDMENTS

1993—Pub. L. 103–43, title I, § 141(a)(2), June 10, 1993, 107 Stat. 136, redesignated part F ''Awards and Training'' as G. Former part G ''General Provisions'' redesignated H.

§ 288. Ruth L. Kirschstein National Research Service Awards

(a) Biomedical and behavioral research and research training; programs and institutions included; restriction; special consideration

(1) The Secretary shall—

(A) provide Ruth L. Kirschstein National Research Service Awards for—

(i) biomedical and behavioral research at the National Institutes of Health in matters relating to the cause, diagnosis, prevention, and treatment of the diseases or other health problems to which the activities of the National Institutes of Health and Administration[1] are directed;

(ii) training at the National Institutes of Health and at the Administration[1] of individuals to undertake such research;

(iii) biomedical and behavioral research and health services research (including research in primary medical care) at public and nonprofit private entities; and

(iv) pre-doctoral and post-doctoral training at public and private institutions of individuals to undertake biomedical and behavioral research;

(B) make grants to public and nonprofit private institutions to enable such institutions to make Ruth L. Kirschstein National Research Service Awards for research (and training to undertake biomedical and behavioral research) in the matters described in subparagraph (A)(i) to individuals selected by such institutions; and

(C) provide contracts for scholarships and loan repayments in accordance with sections 288–4 and 288–5 of this title, subject to providing not more than an aggregate 50 such contracts during the fiscal years 1994 through 1996.

A reference in this subsection to the National Institutes of Health shall be considered to include the institutes, agencies, divisions, and bureaus included in the National Institutes of Health or under the Administration,[1] as the case may be.

(2) Ruth L. Kirschstein National Research Service Awards may not be used to support residency training of physicians and other health professionals.

(3) In awarding Ruth L. Kirschstein National Research Service Awards under this section, the Secretary shall take account of the Nation's overall need for biomedical research personnel by giving special consideration to physicians who agree to undertake a minimum of two years of biomedical research.

(4) The Secretary shall carry out paragraph (1) in a manner that will result in the recruitment of women, and individuals from disadvantaged backgrounds (including racial and ethnic minorities), into fields of biomedical or behavioral research and in the provision of research training to women and such individuals.

[1] So in original. Reference to Administration probably should not appear.

(b) Prerequisites for Award; review and approval by appropriate advisory councils; Award period; uses for Award; payments to non-Federal public or nonprofit private institutions

(1) No Ruth L. Kirschstein National Research Service Award may be made by the Secretary to any individual unless—

(A) the individual has submitted to the Secretary an application therefor and the Secretary has approved the application;

(B) the individual provides, in such form and manner as the Secretary shall by regulation prescribe, assurances satisfactory to the Secretary that the individual will meet the service requirement of subsection (c) of this section; and

(C) in the case of a Ruth L. Kirschstein National Research Service Award for a purpose described in subsection (a)(1)(A)(iii) of this section, the individual has been sponsored (in such manner as the Secretary may by regulation require) by the institution at which the research or training under the award will be conducted.

An application for an award shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe.

(2) The making of grants under subsection (a)(1)(B) of this section for Ruth L. Kirschstein National Research Service Awards shall be subject to review and approval by the appropriate advisory councils within the Department of Health and Human Services (A) whose activities relate to the research or training under the awards, or (B) for the entity at which such research or training will be conducted.

(3) No grant may be made under subsection (a)(1)(B) of this section unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe. Subject to the provisions of this section (other than paragraph (1)), Ruth L. Kirschstein National Research Service Awards made under a grant under subsection (a)(1)(B) of this section shall be made in accordance with such regulations as the Secretary shall prescribe.

(4) The period of any Ruth L. Kirschstein National Research Service Award made to any individual under subsection (a) of this section may not exceed—

(A) five years in the aggregate for pre-doctoral training; and

(B) three years in the aggregate for post-doctoral training;

unless the Secretary for good cause shown waives the application of such limit to such individual.

(5) Ruth L. Kirschstein National Research Service Awards shall provide for such stipends, tuition, fees, and allowances (including travel and subsistence expenses and dependency allowances), adjusted periodically to reflect increases in the cost of living, for the recipients of the awards as the Secretary may deem necessary. A Ruth L. Kirschstein National Research Service Award made to an individual for research or research training at a non-Federal public or nonprofit private institution shall also provide for payments to be made to the institution for the cost of support services (including the cost of faculty salaries, supplies, equipment, general research support, and related items) provided such individual by such institution. The amount of any such payments to any institution shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the institution for establishing and maintaining the quality of its biomedical and behavioral research and training programs.

(c) Health research or teaching; service period; recovery upon noncompliance with service requirement, formula; cancellation or waiver of obligation

(1) Each individual who is awarded a Ruth L. Kirschstein National Research Service Award for postdoctoral research training shall, in accordance with paragraph (3), engage in research training, research, or teaching that is health-related (or any combination thereof) for the period specified in paragraph (2). Such period shall be served in accordance with the usual patterns of scientific employment.

(2)(A) The period referred to in paragraph (1) is 12 months, or one month for each month for which the individual involved receives a Ruth L. Kirschstein National Research Service Award for postdoctoral research training, whichever is less.

(B) With respect to postdoctoral research training, in any case in which an individual receives a Ruth L. Kirschstein National Research Service Award for more than 12 months, the 13th month and each subsequent month of performing activities under the Award shall be considered to be activities engaged in toward satisfaction of the requirement established in paragraph (1) regarding a period of service.

(3) The requirement of paragraph (1) shall be complied with by any individual to whom it applies within such reasonable period of time, after the completion of such individual's award, as the Secretary shall by regulation prescribe. The Secretary shall by regulation prescribe the type of research and teaching in which an individual may engage to comply with such requirement and such other requirements respecting research and teaching as the Secretary considers appropriate.

(4)(A) If any individual to whom the requirement of paragraph (1) is applicable fails, within the period prescribed by paragraph (3), to comply with such requirements, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula—

$$A=\phi\left(\frac{t-s}{t}\right)$$

in which ''A'' is the amount the United States is entitled to recover; ''ϕ'' is the sum of the total amount paid under one or more Ruth L. Kirschstein National Research Service Awards to such individual; ''t'' is the total number of months in such individual's service obligation; and ''s'' is the number of months of such obligation served by such individual in accordance with paragraphs (1) and (2) of this subsection.

(B) Any amount which the United States is entitled to recover under subparagraph (A) shall, within the three-year period beginning on the date the United States becomes entitled to recover such amount, be paid to the United States. Until any amount due the United States under subparagraph (A) on account of any Ruth L. Kirschstein National Research Service Award is paid, there shall accrue to the United States interest on such amount at a rate fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date the United States becomes entitled to such amount.

(5)(A) Any obligation of an individual under paragraph (1) shall be canceled upon the death of such individual.

(B) The Secretary shall by regulation provide for the waiver or suspension of any such obligation applicable to any individual whenever compliance by such individual is impossible or would involve substantial hardship to such individual or would be against equity and good conscience.

(July 1, 1944, ch. 373, title IV, § 487, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 869; amended Pub. L. 100–607, title I, § 151, title VI, § 635, Nov. 4, 1988, 102 Stat. 3058, 3148; Pub. L. 101–93, § 5(d), Aug. 16, 1989, 103 Stat. 612; Pub. L. 101–239, title VI, § 6103(e)(7), Dec. 19, 1989, 103 Stat. 2208; Pub. L. 102–321, title I, § 163(b)(4), July 10, 1992, 106 Stat. 376; Pub. L. 103–43, title XVI, §§ 1601, 1602, 1632, 1641, title XX, § 2008(b)(14), June 10, 1993, 107 Stat. 181, 186, 211; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 107–206, title I, § 804(a), (b), Aug. 2, 2002, 116 Stat. 874; Pub. L. 109–482, title I, § 103(b)(47), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (d). Pub. L. 109–482 struck out subsec. (d) which related to authorization and apportionment of appropriations.

2002—Pub. L. 107–206 inserted ''Ruth L. Kirschstein'' before ''National Research Service Award'' and ''National Research Service Awards'' wherever appearing in section catchline and text.

1999—Subsec. (d)(3). Pub. L. 106–129 substituted ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research''.

1993—Subsec. (a)(1)(C). Pub. L. 103–43, § 1632, added subpar. (C).

Subsec. (a)(4). Pub. L. 103–43, § 1601, added par. (4).

Subsec. (c)(1), (2). Pub. L. 103–43, § 1602, added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) Each individual who is awarded a National Research Service Award (other than an individual who is a pre-baccalaureate student who is awarded a National Research Service Award for research training) shall, in accordance with paragraph (3), engage in health research or teaching or any combination thereof which is in accordance with the usual patterns of academic employment, for a period computed in accordance with paragraph (2).

''(2) For each month for which an individual receives a National Research Service Award which is made for a period in excess of twelve months, such individual shall engage in one month of health research or teaching or any combination thereof which is in accordance with the usual patterns of academic employment.''

Subsec. (d). Pub. L. 103–43, § 1641(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''For the purpose of making payments under National Research Service Awards and under grants for such Awards, there are authorized to be appropriated $300,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.''

Subsec. (d)(3). Pub. L. 103–43, §§ 1641(2), 2008(b)(14), substituted ''1 percent'' for ''one-half of one percent'' in two places, ''293k, 293*l*, or 293m'' for ''295g, 295g–4, or 295g–6'', and ''242b(a)'' for ''242b(a)(3)''.

1992—Subsec. (a)(1). Pub. L. 102–321 struck out ''and the Alcohol, Drug Abuse, and Mental Health Administration'' before ''in matters relating to'' in subpar. (A)(i) and struck out ''or the Alcohol, Drug Abuse, and Mental Health Administration'' before ''shall be considered'' in last sentence.

1989—Subsec. (d)(3). Pub. L. 101–93 directed that par. (3), as similarly amended by sections 151(2) and 635 of Pub. L. 100–607, be amended to read as if the amendment made by such section 635 had not been enacted. See 1988 Amendment note below.

Subsec. (d)(3)(B). Pub. L. 101–239 substituted ''Agency for Health Care Policy and Research'' for ''National Center for Health Services Research and Health Care Technology Assessment''.

1988—Subsec. (d). Pub. L. 100–607, § 151(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''There are authorized to be appropriated to make payments under National Research Service Awards and under grants for such awards $244,000,000 for fiscal year 1986, $260,000,000 for fiscal year 1987, and $275,000,000 for fiscal year 1988.''

Subsec. (d)(3). Pub. L. 100–607, §§ 151(2), 635, made identical amendments, inserting ''to the Secretary, acting through the Administrator of the Health Resources and Services Administration,'' after first reference to ''available''.

CHANGE OF NAME

Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874, provided that: ''Any reference in any law (other than this Act [see Tables for classification]), regulation, document, record, map, or other paper of the United States to 'National Research Service Awards' shall be considered to be a reference to 'Ruth L. Kirschstein National Research Service Awards'.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 288–1. Loan repayment program for research with respect to acquired immune deficiency syndrome

(a) In general

The Secretary shall carry out a program of entering into agreements with appropriately qualified health professionals under which such health professionals agree to conduct, as employees of the National Institutes of Health, research with respect to acquired immune deficiency syndrome in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(b) Applicability of certain provisions

With respect to the National Health Service Corps Loan Repayment Program established in

subpart III of part D of subchapter II of this chapter, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in such subsection (a) of this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

(July 1, 1944, ch. 373, title IV, § 487A, as added Pub. L. 100–607, title VI, § 634(a), Nov. 4, 1988, 102 Stat. 3148; amended Pub. L. 103–43, title XVI, § 1611(a), June 10, 1993, 107 Stat. 181; Pub. L. 105–392, title IV, § 410(a), Nov. 13, 1998, 112 Stat. 3589; Pub. L. 109–482, title I, § 103(b)(48), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (c). Pub. L. 109–482 struck out heading and text of subsec. (c). Text read as follows: ''For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 2001.''

1998—Subsec. (a). Pub. L. 105–392, § 410(a)(1), substituted ''$35,000'' for ''$20,000''.

Subsec. (c). Pub. L. 105–392, § 410(a)(2), substituted ''2001'' for ''1996''.

1993—Pub. L. 103–43 amended section generally, in subsec. (a) redesignating former par. (1) as entire subsec., striking out provisions setting a deadline for implementation of the program and former par. (2) containing a limitation that the health professional have a substantial amount of educational loans relative to income and not have been employed at the National Institutes of Health during the 1-year period preceding Nov. 4, 1988, reenacting subsec. (b) without change, and in subsec. (c) redesignating former par. (1) as entire subsec., substituting authorization of appropriations for fiscal years 1994 through 1996 for authorization of appropriations for fiscal years 1989 through 1991, and striking out former par. (2) relating to continued availability of appropriated amounts.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 1611(b) of Pub. L. 103–43 provided that: ''The amendment made by subsection (a) [amending this section] does not apply to any agreement entered into under section 487A of the Public Health Service Act [this section] before the date of the enactment of this Act [June 10, 1993]. Each such agreement continues to be subject to the terms of the agreement in effect on the day before such date.''

§ 288–2. Loan repayment program for research with respect to contraception and infertility

(a) Establishment

The Secretary, in consultation with the Director of the National Institute of Child Health and Human Development, shall establish a program of entering into contracts with qualified health professionals (including graduate students) under which such health professionals agree to conduct research with respect to contraception, or with respect to infertility, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(b) Contracts, obligated service, breach of contract

The provisions of sections 254*l*–1, 254m, and 254*o* of this title shall, except as inconsistent with subsection (a) of this section, apply to the program established in subsection (a) of this section to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter.

(c) Availability of funds

Amounts available for carrying out this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were made available.

(July 1, 1944, ch. 373, title IV, § 487B, as added Pub. L. 103–43, title X, § 1002, June 10, 1993, 107 Stat. 166; amended Pub. L. 105–392, title IV, § 410(b), Nov. 13, 1998, 112 Stat. 3589.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392 substituted ''$35,000'' for ''$20,000''.

§ 288–3. Loan repayment program for research generally

(a) In general

(1) Authority for program

Subject to paragraph (2), the Secretary shall carry out a program of entering into contracts with appropriately qualified health professionals under which such health professionals agree to conduct research, as employees of the National Institutes of Health, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(2) Limitation

The Secretary may not enter into an agreement with a health professional pursuant to paragraph (1) unless such professional—

(A) has a substantial amount of educational loans relative to income; and

(B) agrees to serve as an employee of the National Institutes of Health for purposes of paragraph (1) for a period of not less than 3 years.

(b) Applicability of certain provisions

With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in such subsection (a) of this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

(July 1, 1944, ch. 373, title IV, § 487C, as added Pub. L. 103–43, title XVI, § 1621, June 10, 1993, 107 Stat. 182; amended Pub. L. 105–392, title IV, § 410(c), Nov. 13, 1998, 112 Stat. 3589.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–392 substituted ''$35,000'' for ''$20,000''.

§ 288–4. Undergraduate scholarship program regarding professions needed by National Research Institutes

(a) Establishment of program

(1) In general

Subject to section 288(a)(1)(C) of this title, the Secretary, acting through the Director of NIH, may carry out a program of entering into contracts with individuals described in paragraph (2) under which—

(A) the Director of NIH agrees to provide to the individuals scholarships for pursuing, as undergraduates at accredited institutions of higher education, academic programs appropriate for careers in professions needed by the National Institutes of Health; and

(B) the individuals agree to serve as employees of the National Institutes of Health, for the period described in subsection (c) of this section, in positions that are needed by the National Institutes of Health and for which the individuals are qualified.

(2) Individuals from disadvantaged backgrounds

The individuals referred to in paragraph (1) are individuals who—

(A) are enrolled or accepted for enrollment as full-time undergraduates at accredited institutions of higher education; and

(B) are from disadvantaged backgrounds.

(b) Facilitation of interest of students in careers at National Institutes of Health

In providing employment to individuals pursuant to contracts under subsection (a)(1) of this section, the Director of NIH shall carry out activities to facilitate the interest of the individuals in pursuing careers as employees of the National Institutes of Health.

(c) Period of obligated service

(1) Duration of service

For purposes of subparagraph (B) of subsection (a)(1) of this section, the period of service for which an individual is obligated to serve as an employee of the National Institutes of Health is, subject to paragraph (2)(A), 12 months for each academic year for which the scholarship under such subsection is provided.

(2) Schedule for service

(A) Subject to subparagraph (B), the Director of NIH may not provide a scholarship under subsection (a) of this section unless the individual applying for the scholarship agrees that—

(i) the individual will serve as an employee of the National Institutes of Health full-time for not less than 10 consecutive weeks of each year during which the individual is attending the educational institution involved and receiving such a scholarship;

(ii) the period of service as such an employee that the individual is obligated to provide under clause (i) is in addition to the period of service as such an employee that the individual is obligated to provide under subsection (a)(1)(B) of this section; and

(iii) not later than 60 days after obtaining the educational degree involved, the individual will begin serving full-time as such an employee in satisfaction of the period of service that the individual is obligated to provide under subsection (a)(1)(B) of this section.

(B) The Director of NIH may defer the obligation of an individual to provide a period of service under subsection (a)(1)(B) of this section, if the Director determines that such a deferral is appropriate.

(3) Applicability of certain provisions relating to appointment and compensation

For any period in which an individual provides service as an employee of the National Institutes of Health in satisfaction of the obligation of the individual under subsection (a)(1)(B) of this section or paragraph (2)(A)(i), the individual may be appointed as such an employee without regard to the provisions of title 5 relating to appointment and compensation.

(d) Provisions regarding scholarship

(1) Approval of academic program

The Director of NIH may not provide a scholarship under subsection (a) of this section for an academic year unless—

(A) the individual applying for the scholarship has submitted to the Director a proposed academic program for the year and the Director has approved the program; and

(B) the individual agrees that the program will not be altered without the approval of the Director.

(2) Academic standing

The Director of NIH may not provide a scholarship under subsection (a) of this section for an academic year unless the individual applying for the scholarship agrees to maintain an acceptable level of academic standing, as determined by the educational institution involved in accordance with regulations issued by the Secretary.

(3) Limitation on amount

The Director of NIH may not provide a scholarship under subsection (a) of this section for an academic year in an amount exceeding $20,000.

(4) Authorized uses

A scholarship provided under subsection (a) of this section may be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in attending the school involved.

(5) Contract regarding direct payments to institution

In the case of an institution of higher education with respect to which a scholarship under subsection (a) of this section is provided, the Director of NIH may enter into a contract with the institution under which the amounts provided in the scholarship for tuition and other educational expenses are paid directly to the institution.

(e) Penalties for breach of scholarship contract

The provisions of section 254*o* of this title shall apply to the program established in sub-

section (a) of this section to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in section 254*l*–1 of this title.

(f) Requirement of application

The Director of NIH may not provide a scholarship under subsection (a) of this section unless an application for the scholarship is submitted to the Director and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out this section.

(g) Availability of authorization of appropriations

Amounts appropriated for a fiscal year for scholarships under this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were appropriated.

(July 1, 1944, ch. 373, title IV, § 487D, as added Pub. L. 103–43, title XVI, § 1631, June 10, 1993, 107 Stat. 183.)

REFERENCES IN TEXT

The provisions of title 5 relating to appointment and compensation, referred to in subsec. (c)(3), are classified generally to section 3301 et seq. and section 5301 et seq., respectively, of Title 5, Government Organization and Employees.

§ 288–5. Loan repayment program regarding clinical researchers from disadvantaged backgrounds

(a) Implementation of program

(1) In general

Subject to section 288(a)(1)(C) of this title, the Secretary, acting through the Director of NIH may, subject to paragraph (2), carry out a program of entering into contracts with appropriately qualified health professionals who are from disadvantaged backgrounds under which such health professionals agree to conduct clinical research in consideration of the Federal Government agreeing to pay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of the health professionals.

(2) Limitation

The Director of NIH may not enter into a contract with a health professional pursuant to paragraph (1) unless such professional has a substantial amount of education loans relative to income.

(3) Applicability of certain provisions regarding obligated service

Except to the extent inconsistent with this section, the provisions of sections 254*l*–1, 254m and 254*o* of this title shall apply to the program established in paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in section 254*l*–1 of this title.

(b) Availability of authorization of appropriations

Amounts appropriated for a fiscal year for contracts under subsection (a) of this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were appropriated.

(July 1, 1944, ch. 373, title IV, § 487E, as added Pub. L. 103–43, title XVI, § 1631, June 10, 1993, 107 Stat. 185; amended Pub. L. 105–392, title IV, § 410(d), Nov. 13, 1998, 112 Stat. 3589; Pub. L. 106–554, § 1(a)(1) [title II, § 223], Dec. 21, 2000, 114 Stat. 2763, 2763A–30.)

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–554 struck out ''as employees of the National Institutes of Health'' after ''conduct clinical research''.

1998—Subsec. (a)(1). Pub. L. 105–392, § 410(d)(1), substituted ''$35,000'' for ''$20,000''.

Subsec. (a)(3). Pub. L. 105–392, § 410(d)(2), substituted ''254*l*–1, 254m'' for ''254m''.

§ 288–5a. Loan repayment program regarding clinical researchers

(a) In general

The Secretary, acting through the Director of the National Institutes of Health, shall establish a program to enter into contracts with qualified health professionals under which such health professionals agree to conduct clinical research, in consideration of the Federal Government agreeing to repay, for each year of service conducting such research, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(b) Application of provisions

The provisions of sections 254*l*–1, 254m, and 254*o* of this title shall, except as inconsistent with subsection (a) of this section, apply to the program established under subsection (a) of this section to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter.

(July 1, 1944, ch. 373, title IV, § 487F, as added Pub. L. 106–505, title II, § 205, Nov. 13, 2000, 114 Stat. 2329; amended Pub. L. 109–482, title I, § 103(b)(49), Jan. 15, 2007, 120 Stat. 3689.)

CODIFICATION

Another section 487F of act July 1, 1944, is classified to section 288–6 of this title.

AMENDMENTS

2007—Subsec. (c). Pub. L. 109–482 struck out subsec. (c) which related to authorization and availability of appropriations.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 288–6. Pediatric research loan repayment program

(a) In general

The Secretary, in consultation with the Director of NIH, may establish a pediatric research loan repayment program. Through such program—

(1) the Secretary shall enter into contracts with qualified health professionals under

which such professionals will agree to conduct pediatric research, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of such professionals; and

(2) the Secretary shall, for the purpose of providing reimbursements for tax liability resulting from payments made under paragraph (1) on behalf of an individual, make payments, in addition to payments under such paragraph, to the individual in an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved.

(b) Application of other provisions

The provisions of sections 254*l*–1, 254m, and 254*o* of this title shall, except as inconsistent with paragraph (1), apply to the program established under such paragraph to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established under subpart III of part D of subchapter II of this chapter.

(c) Funding

(1) In general

For the purpose of carrying out this section with respect to a national research institute the Secretary may reserve, from amounts appropriated for such institute for the fiscal year involved, such amounts as the Secretary determines to be appropriate.

(2) Availability of funds

Amounts made available to carry out this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which such amounts were made available.

(July 1, 1944, ch. 373, title IV, § 487F, as added Pub. L. 106–310, div. A, title X, § 1002(b), Oct. 17, 2000, 114 Stat. 1129.)

CODIFICATION

Another section 487F of act July 1, 1944, is classified to section 288–5a of this title.

§ 288a. Visiting Scientist Awards

(a) The Secretary may make awards (hereafter in this section referred to as ''Visiting Scientist Awards'') to outstanding scientists who agree to serve as visiting scientists at institutions of postsecondary education which have significant enrollments of disadvantaged students. Visiting Scientist Awards shall be made by the Secretary to enable the faculty and students of such institutions to draw upon the special talents of scientists from other institutions for the purpose of receiving guidance, advice, and instruction with regard to research, teaching, and curriculum development in the biomedical and behavioral sciences and such other aspects of these sciences as the Secretary shall deem appropriate.

(b) The amount of each Visiting Scientist Award shall include such sum as shall be commensurate with the salary or remuneration which the individual receiving the award would have been entitled to receive from the institution with which the individual has, or had, a permanent or immediately prior affiliation. Eligibility for and terms of Visiting Scientist Awards shall be determined in accordance with regulations the Secretary shall prescribe.

(July 1, 1944, ch. 373, title IV, § 488, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 872.)

§ 288b. Studies respecting biomedical and behavioral research personnel

(a) Scope of undertaking

The Secretary shall, in accordance with subsection (b) of this section, arrange for the conduct of a continuing study to—

(1) establish (A) the Nation's overall need for biomedical and behavioral research personnel, (B) the subject areas in which such personnel are needed and the number of such personnel needed in each such area, and (C) the kinds and extent of training which should be provided such personnel;

(2) assess (A) current training programs available for the training of biomedical and behavioral research personnel which are conducted under this chapter, at or through national research institutes under the National Institutes of Health, and (B) other current training programs available for the training of such personnel;

(3) identify the kinds of research positions available to and held by individuals completing such programs;

(4) determine, to the extent feasible, whether the programs referred to in clause (B) of paragraph (2) would be adequate to meet the needs established under paragraph (1) if the programs referred to in clause (A) of paragraph (2) were terminated; and

(5) determine what modifications in the programs referred to in paragraph (2) are required to meet the needs established under paragraph (1).

(b) Arrangement with National Academy of Sciences or other nonprofit private groups or associations

(1) The Secretary shall request the National Academy of Sciences to conduct the study required by subsection (a) of this section under an arrangement under which the actual expenses incurred by such Academy in conducting such study will be paid by the Secretary. If the National Academy of Sciences is willing to do so, the Secretary shall enter into such an arrangement with such Academy for the conduct of such study.

(2) If the National Academy of Sciences is unwilling to conduct such study under such an arrangement, then the Secretary shall enter into a similar arrangement with other appropriate nonprofit private groups or associations under which such groups or associations will conduct such study and prepare and submit the reports thereon as provided in subsection (c) of this section.[1]

(3) The National Academy of Sciences or other group or association conducting the study required by subsection (a) of this section shall conduct such study in consultation with the Director of NIH.

[1] See References in Text note below.

(July 1, 1944, ch. 373, title IV, § 489, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 872; amended Pub. L. 102–321, title I, § 163(b)(5), July 10, 1992, 106 Stat. 376.)

REFERENCES IN TEXT

Subsection (c), referred to in subsec. (b)(2), was omitted from the Code. See Codification note below.

CODIFICATION

Subsec. (c) of this section, which required the Secretary to submit a report on results of the study required under subsec. (a) of this section to certain committees of Congress at least once every four years, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 96 of House Document No. 103–7.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–321 struck out ''and institutes under the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

PART H—GENERAL PROVISIONS

AMENDMENTS

1993—Pub. L. 103–43, title I, § 141(a)(2), June 10, 1993, 107 Stat. 136, redesignated part G ''General Provisions'' as H. Former part H ''National Foundation for Biomedical Research'' redesignated I.

§ 289. Institutional review boards; ethics guidance program

(a) The Secretary shall by regulation require that each entity which applies for a grant, contract, or cooperative agreement under this chapter for any project or program which involves the conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant, contract, or cooperative agreement assurances satisfactory to the Secretary that it has established (in accordance with regulations which the Secretary shall prescribe) a board (to be known as an ''Institutional Review Board'') to review biomedical and behavioral research involving human subjects conducted at or supported by such entity in order to protect the rights of the human subjects of such research.

(b)(1) The Secretary shall establish a program within the Department of Health and Human Services under which requests for clarification and guidance with respect to ethical issues raised in connection with biomedical or behavioral research involving human subjects are responded to promptly and appropriately.

(2) The Secretary shall establish a process for the prompt and appropriate response to information provided to the Director of NIH respecting incidences of violations of the rights of human subjects of research for which funds have been made available under this chapter. The process shall include procedures for the receiving of reports of such information from recipients of funds under this chapter and taking appropriate action with respect to such violations.

(July 1, 1944, ch. 373, title IV, § 491, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 873.)

STUDY CONCERNING RESEARCH INVOLVING CHILDREN

Pub. L. 107–109, § 12, Jan. 4, 2002, 115 Stat. 1416, provided that:

''(a) CONTRACT WITH INSTITUTE OF MEDICINE.—The Secretary of Health and Human Services shall enter into a contract with the Institute of Medicine for—

''(1) the conduct, in accordance with subsection (b), of a review of—

''(A) Federal regulations in effect on the date of the enactment of this Act [Jan. 4, 2002] relating to research involving children;

''(B) federally prepared or supported reports relating to research involving children; and

''(C) federally supported evidence-based research involving children; and

''(2) the submission to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, not later than two years after the date of enactment of this Act, of a report concerning the review conducted under paragraph (1) that includes recommendations on best practices relating to research involving children.

''(b) AREAS OF REVIEW.—In conducting the review under subsection (a)(1), the Institute of Medicine shall consider the following:

''(1) The written and oral process of obtaining and defining 'assent', 'permission' and 'informed consent' with respect to child clinical research participants and the parents, guardians, and the individuals who may serve as the legally authorized representatives of such children (as defined in subpart A of part 46 of title 45, Code of Federal Regulations).

''(2) The expectations and comprehension of child research participants and the parents, guardians, or legally authorized representatives of such children, for the direct benefits and risks of the child's research involvement, particularly in terms of research versus therapeutic treatment.

''(3) The definition of 'minimal risk' with respect to a healthy child or a child with an illness.

''(4) The appropriateness of the regulations applicable to children of differing ages and maturity levels, including regulations relating to legal status.

''(5) Whether payment (financial or otherwise) may be provided to a child or his or her parent, guardian, or legally authorized representative for the participation of the child in research, and if so, the amount and type of payment that may be made.

''(6) Compliance with the regulations referred to in subsection (a)(1)(A), the monitoring of such compliance (including the role of institutional review boards), and the enforcement actions taken for violations of such regulations.

''(7) The unique roles and responsibilities of institutional review boards in reviewing research involving children, including composition of membership on institutional review boards.

''(c) REQUIREMENTS OF EXPERTISE.—The Institute of Medicine shall conduct the review under subsection (a)(1) and make recommendations under subsection (a)(2) in conjunction with experts in pediatric medicine, pediatric research, and the ethical conduct of research involving children.''

REQUIREMENT FOR ADDITIONAL PROTECTIONS FOR CHILDREN INVOLVED IN RESEARCH

Pub. L. 106–310, div. A, title XXVII, § 2701, Oct. 17, 2000, 114 Stat. 1167, as amended by Pub. L. 106–505, title X, § 1001(a), Nov. 13, 2000, 114 Stat. 2350, provided that: ''Notwithstanding any other provision of law, not later than 6 months after the date of the enactment of this Act [Oct. 17, 2000], the Secretary of Health and Human Services shall require that all research involving children that is conducted, supported, or regulated by the Department of Health and Human Services be in com-

pliance with subpart D of part 46 of title 45, Code of Federal Regulations.''

[Pub. L. 106–505, title X, § 1001(b), Nov. 13, 2000, 114 Stat. 2350, provided that: ''The amendment made by subsection (a) [amending section 2701 of Pub. L. 106–310, set out above] takes effect on the date of the enactment of the Children's Health Act of 2000 [Oct. 17, 2000].'']

§ 289a. Peer review requirements

(a) Applications for biomedical and behavioral research grants, cooperative agreements, and contracts; regulations

(1) The Secretary, acting through the Director of NIH, shall by regulation require appropriate technical and scientific peer review of—

(A) applications made for grants and cooperative agreements under this chapter for biomedical and behavioral research; and

(B) applications made for biomedical and behavioral research and development contracts to be administered through the National Institutes of Health.

(2) Regulations promulgated under paragraph (1) shall require that the review of applications made for grants, contracts, and cooperative agreements required by the regulations be conducted—

(A) to the extent practical, in a manner consistent with the system for technical and scientific peer review applicable on November 20, 1985, to grants under this chapter for biomedical and behavioral research, and

(B) to the extent practical, by technical and scientific peer review groups performing such review on or before November 20, 1985,

and shall authorize such review to be conducted by groups appointed under sections 282(b)(16) and 284(c)(3) of this title.

(b) Periodic review of research at National Institutes of Health

The Director of NIH shall establish procedures for periodic technical and scientific peer review of research at the National Institutes of Health. Such procedures shall require that—

(1) the reviewing entity be provided a written description of the research to be reviewed, and

(2) the reviewing entity provide the advisory council of the national research institute involved with such description and the results of the review by the entity,

and shall authorize such review to be conducted by groups appointed under sections 282(b)(6)[1] and 284(c)(3) of this title.

(c) Compliance with requirements for inclusion of women and minorities in clinical research

(1) In technical and scientific peer review under this section of proposals for clinical research, the consideration of any such proposal (including the initial consideration) shall, except as provided in paragraph (2), include an evaluation of the technical and scientific merit of the proposal regarding compliance with section 289a–2 of this title.

(2) Paragraph (1) shall not apply to any proposal for clinical research that, pursuant to subsection (b) of section 289a–2 of this title, is not subject to the requirement of subsection (a) of such section regarding the inclusion of women and members of minority groups as subjects in clinical research.

(July 1, 1944, ch. 373, title IV, § 492, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 874; amended Pub. L. 103–43, title I, § 132, June 10, 1993, 107 Stat. 135; Pub. L. 109–482, title I, § 102(f)(1)(B), Jan. 15, 2007, 120 Stat. 3685.)

REFERENCES IN TEXT

Section 282(b)(6) of this title, referred to in subsec. (b), was redesignated section 282(b)(16) by Pub. L. 109–482, title I, § 102(a)(3), Jan. 15, 2007, 120 Stat. 3681.

AMENDMENTS

2007—Subsec. (a)(2). Pub. L. 109–482 substituted ''sections 282(b)(16)'' for ''sections 282(b)(6)'' in concluding provisions.

1993—Subsec. (c). Pub. L. 103–43 added subsec. (c).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 289a–1. Certain provisions regarding review and approval of proposals for research

(a) Review as precondition to research

(1) Protection of human research subjects

(A) In the case of any application submitted to the Secretary for financial assistance to conduct research, the Secretary may not approve or fund any application that is subject to review under section 289(a) of this title by an Institutional Review Board unless the application has undergone review in accordance with such section and has been recommended for approval by a majority of the members of the Board conducting such review.

(B) In the case of research that is subject to review under procedures established by the Secretary for the protection of human subjects in clinical research conducted by the National Institutes of Health, the Secretary may not authorize the conduct of the research unless the research has, pursuant to such procedures, been recommended for approval.

(2) Peer review

In the case of any proposal for the National Institutes of Health to conduct or support research, the Secretary may not approve or fund any proposal that is subject to technical and scientific peer review under section 289a of this title unless the proposal has undergone such review in accordance with such section and has been recommended for approval by a majority of the members of the entity conducting such review, and unless a majority of the voting members of the appropriate advisory council under section 284a of this title, or as applicable, of the advisory council under section 282(k) of this title, has recommended the proposal for approval.

(b) Ethical review of research

(1) Procedures regarding withholding of funds

If research has been recommended for approval for purposes of subsection (a) of this

[1] See References in Text note below.

section, the Secretary may not withhold funds for the research because of ethical considerations unless—

(A) the Secretary convenes an advisory board in accordance with paragraph (5) to study such considerations; and

(B)(i) the majority of the advisory board recommends that, because of such considerations, the Secretary withhold funds for the research; or

(ii) the majority of such board recommends that the Secretary not withhold funds for the research because of such considerations, but the Secretary finds, on the basis of the report submitted under paragraph (5)(B)(ii), that the recommendation is arbitrary and capricious.

(2) Rules of construction

Paragraph (1) may not be construed as prohibiting the Secretary from withholding funds for research on the basis of—

(A) the inadequacy of the qualifications of the entities that would be involved with the conduct of the research (including the entity that would directly receive the funds from the Secretary), subject to the condition that, with respect to the process of review through which the research was recommended for approval for purposes of subsection (a) of this section, all findings regarding such qualifications made in such process are conclusive; or

(B) the priorities established by the Secretary for the allocation of funds among projects of research that have been so recommended.

(3) Applicability

The limitation established in paragraph (1) regarding the authority to withhold funds because of ethical considerations shall apply without regard to whether the withholding of funds on such basis is characterized as a disapproval, a moratorium, a prohibition, or other characterization.

(4) Preliminary matters regarding use of procedures

(A) If the Secretary makes a determination that an advisory board should be convened for purposes of paragraph (1), the Secretary shall, through a statement published in the Federal Register, announce the intention of the Secretary to convene such a board.

(B) A statement issued under subparagraph (A) shall include a request that interested individuals submit to the Secretary recommendations specifying the particular individuals who should be appointed to the advisory board involved. The Secretary shall consider such recommendations in making appointments to the board.

(C) The Secretary may not make appointments to an advisory board under paragraph (1) until the expiration of the 30-day period beginning on the date on which the statement required in subparagraph (A) is made with respect to the board.

(5) Ethics advisory boards

(A) Any advisory board convened for purposes of paragraph (1) shall be known as an ethics advisory board (in this paragraph referred to as an ''ethics board'').

(B)(i) An ethics board shall advise, consult with, and make recommendations to the Secretary regarding the ethics of the project of biomedical or behavioral research with respect to which the board has been convened.

(ii) Not later than 180 days after the date on which the statement required in paragraph (4)(A) is made with respect to an ethics board, the board shall submit to the Secretary, and to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report describing the findings of the board regarding the project of research involved and making a recommendation under clause (i) of whether the Secretary should or should not withhold funds for the project. The report shall include the information considered in making the findings.

(C) An ethics board shall be composed of no fewer than 14, and no more than 20, individuals who are not officers or employees of the United States. The Secretary shall make appointments to the board from among individuals with special qualifications and competence to provide advice and recommendations regarding ethical matters in biomedical and behavioral research. Of the members of the board—

(i) no fewer than 1 shall be an attorney;

(ii) no fewer than 1 shall be an ethicist;

(iii) no fewer than 1 shall be a practicing physician;

(iv) no fewer than 1 shall be a theologian; and

(v) no fewer than one-third, and no more than one-half, shall be scientists with substantial accomplishments in biomedical or behavioral research.

(D) The term of service as a member of an ethics board shall be for the life of the board. If such a member does not serve the full term of such service, the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(E) A member of an ethics board shall be subject to removal from the board by the Secretary for neglect of duty or malfeasance or for other good cause shown.

(F) The Secretary shall designate an individual from among the members of an ethics board to serve as the chair of the board.

(G) In carrying out subparagraph (B)(i) with respect to a project of research, an ethics board shall conduct inquiries and hold public hearings.

(H) In carrying out subparagraph (B)(i) with respect to a project of research, an ethics board shall have access to all relevant information possessed by the Department of Health and Human Services, or available to the Secretary from other agencies.

(I) Members of an ethics board shall receive compensation for each day engaged in carrying out the duties of the board, including time engaged in traveling for purposes of such duties. Such compensation may not be provided in an amount in excess of the maximum rate

of basic pay payable for GS–18 of the General Schedule.

(J) The Secretary, acting through the Director of the National Institutes of Health, shall provide to each ethics board reasonable staff and assistance to carry out the duties of the board.

(K) An ethics board shall terminate 30 days after the date on which the report required in subparagraph (B)(ii) is submitted to the Secretary and the congressional committees specified in such subparagraph.

(6) "Ethical considerations" defined

For purposes of this subsection, the term ''ethical considerations'' means considerations as to whether the nature of the research involved is such that it is unethical to conduct or support the research.

(July 1, 1944, ch. 373, title IV, § 492A, as added Pub. L. 103–43, title I, § 101, June 10, 1993, 107 Stat. 126; amended Pub. L. 109–482, title I, § 102(e), Jan. 15, 2007, 120 Stat. 3684.)

AMENDMENTS

2007—Subsec. (a)(2). Pub. L. 109–482 inserted before period at end '', and unless a majority of the voting members of the appropriate advisory council under section 284a of this title, or as applicable, of the advisory council under section 282(k) of this title, has recommended the proposal for approval''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 289a–2. Inclusion of women and minorities in clinical research

(a) Requirement of inclusion

(1) In general

In conducting or supporting clinical research for purposes of this subchapter, the Director of NIH shall, subject to subsection (b) of this section, ensure that—

(A) women are included as subjects in each project of such research; and

(B) members of minority groups are included as subjects in such research.

(2) Outreach regarding participation as subjects

The Director of NIH, in consultation with the Director of the Office of Research on Women's Health and the Director of the Office of Research on Minority Health, shall conduct or support outreach programs for the recruitment of women and members of minority groups as subjects in projects of clinical research.

(b) Inapplicability of requirement

The requirement established in subsection (a) of this section regarding women and members of minority groups shall not apply to a project of clinical research if the inclusion, as subjects in the project, of women and members of minority groups, respectively—

(1) is inappropriate with respect to the health of the subjects;

(2) is inappropriate with respect to the purpose of the research; or

(3) is inappropriate under such other circumstances as the Director of NIH may designate.

(c) Design of clinical trials

In the case of any clinical trial in which women or members of minority groups will under subsection (a) of this section be included as subjects, the Director of NIH shall ensure that the trial is designed and carried out in a manner sufficient to provide for a valid analysis of whether the variables being studied in the trial affect women or members of minority groups, as the case may be, differently than other subjects in the trial.

(d) Guidelines

(1) In general

Subject to paragraph (2), the Director of NIH, in consultation with the Director of the Office of Research on Women's Health and the Director of the Office of Research on Minority Health, shall establish guidelines regarding the requirements of this section. The guidelines shall include guidelines regarding—

(A) the circumstances under which the inclusion of women and minorities as subjects in projects of clinical research is inappropriate for purposes of subsection (b) of this section;

(B) the manner in which clinical trials are required to be designed and carried out for purposes of subsection (c) of this section; and

(C) the operation of outreach programs under subsection (a) of this section.

(2) Certain provisions

With respect to the circumstances under which the inclusion of women or members of minority groups (as the case may be) as subjects in a project of clinical research is inappropriate for purposes of subsection (b) of this section, the following applies to guidelines under paragraph (1):

(A)(i) In the case of a clinical trial, the guidelines shall provide that the costs of

such inclusion in the trial is not a permissible consideration in determining whether such inclusion is inappropriate.

(ii) In the case of other projects of clinical research, the guidelines shall provide that the costs of such inclusion in the project is not a permissible consideration in determining whether such inclusion is inappropriate unless the data regarding women or members of minority groups, respectively, that would be obtained in such project (in the event that such inclusion were required) have been or are being obtained through other means that provide data of comparable quality.

(B) In the case of a clinical trial, the guidelines may provide that such inclusion in the trial is not required if there is substantial scientific data demonstrating that there is no significant difference between—

(i) the effects that the variables to be studied in the trial have on women or members of minority groups, respectively; and

(ii) the effects that the variables have on the individuals who would serve as subjects in the trial in the event that such inclusion were not required.

(e) Date certain for guidelines; applicability

(1) Date certain

The guidelines required in subsection (d) of this section shall be established and published in the Federal Register not later than 180 days after June 10, 1993.

(2) Applicability

For fiscal year 1995 and subsequent fiscal years, the Director of NIH may not approve any proposal of clinical research to be conducted or supported by any agency of the National Institutes of Health unless the proposal specifies the manner in which the research will comply with this section.

(f) Reports by advisory councils

The advisory council of each national research institute shall prepare biennial reports describing the manner in which the institute has complied with this section. Each such report shall be submitted to the Director of the institute involved for inclusion in the biennial report under section 283 of this title.

(g) Definitions

For purposes of this section:

(1) The term ''project of clinical research'' includes a clinical trial.

(2) The term ''minority group'' includes subpopulations of minority groups. The Director of NIH shall, through the guidelines established under subsection (d) of this section, define the terms ''minority group'' and ''subpopulation'' for purposes of the preceding sentence.

(July 1, 1944, ch. 373, title IV, § 492B, as added Pub. L. 103–43, title I, § 131, June 10, 1993, 107 Stat. 133.)

INAPPLICABILITY TO CURRENT PROJECTS

Section 133 of Pub. L. 103–43 provided that: ''Section 492B of the Public Health Service Act, as added by section 131 of this Act [this section], shall not apply with respect to projects of clinical research for which initial funding was provided prior to the date of the enactment of this Act [June 10, 1993]. With respect to the inclusion of women and minorities as subjects in clinical research conducted or supported by the National Institutes of Health, any policies of the Secretary of Health and Human Services regarding such inclusion that are in effect on the day before the date of the enactment of this Act shall continue to apply to the projects referred to in the preceding sentence.''

§ 289b. Office of Research Integrity

(a) In general

(1) Establishment of Office

Not later than 90 days after June 10, 1993, the Secretary shall establish an office to be known as the Office of Research Integrity (referred to in this section as the ''Office''), which shall be established as an independent entity in the Department of Health and Human Services.

(2) Appointment of Director

The Office shall be headed by a Director, who shall be appointed by the Secretary, be experienced and specially trained in the conduct of research, and have experience in the conduct of investigations of research misconduct. The Secretary shall carry out this section acting through the Director of the Office. The Director shall report to the Secretary.

(3) Definitions

(A) The Secretary shall by regulation establish a definition for the term ''research misconduct'' for purposes of this section.

(B) For purposes of this section, the term ''financial assistance'' means a grant, contract, or cooperative agreement.

(b) Existence of administrative processes as condition of funding for research

The Secretary shall by regulation require that each entity that applies for financial assistance under this chapter for any project or program that involves the conduct of biomedical or behavioral research submit in or with its application for such assistance—

(1) assurances satisfactory to the Secretary that such entity has established and has in effect (in accordance with regulations which the Secretary shall prescribe) an administrative process to review reports of research misconduct in connection with biomedical and behavioral research conducted at or sponsored by such entity;

(2) an agreement that the entity will report to the Director any investigation of alleged research misconduct in connection with projects for which funds have been made available under this chapter that appears substantial; and

(3) an agreement that the entity will comply with regulations issued under this section.

(c) Process for response of Director

The Secretary shall by regulation establish a process to be followed by the Director for the prompt and appropriate—

(1) response to information provided to the Director respecting research misconduct in connection with projects for which funds have been made available under this chapter;

(2) receipt of reports by the Director of such information from recipients of funds under this chapter;

(3) conduct of investigations, when appropriate; and

(4) taking of other actions, including appropriate remedies, with respect to such misconduct.

(d) Monitoring by Director

The Secretary shall by regulation establish procedures for the Director to monitor administrative processes and investigations that have been established or carried out under this section.

(e) Protection of whistleblowers

(1) In general

In the case of any entity required to establish administrative processes under subsection (b) of this section, the Secretary shall by regulation establish standards for preventing, and for responding to the occurrence of retaliation by such entity, its officials or agents, against an employee in the terms and conditions of employment in response to the employee having in good faith—

(A) made an allegation that the entity, its officials or agents, has engaged in or failed to adequately respond to an allegation of research misconduct; or

(B) cooperated with an investigation of such an allegation.

(2) Monitoring by Secretary

The Secretary shall by regulation establish procedures for the Director to monitor the implementation of the standards established by an entity under paragraph (1) for the purpose of determining whether the procedures have been established, and are being utilized, in accordance with the standards established under such paragraph.

(3) Noncompliance

The Secretary shall by regulation establish remedies for noncompliance by an entity, its officials or agents, which has engaged in retaliation in violation of the standards established under paragraph (1). Such remedies may include termination of funding provided by the Secretary for such project or recovery of funding being provided by the Secretary for such project, or other actions as appropriate.

(July 1, 1944, ch. 373, title IV, § 493, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 874; amended Pub. L. 103–43, title I, §§ 161, 163, June 10, 1993, 107 Stat. 140, 142.)

CODIFICATION

June 10, 1993, referred to in subsec. (a)(1), was in the original ''the date of enactment of this section'' which was translated as meaning the date of enactment of Pub. L. 103–43, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

1993—Pub. L. 103–43, § 161, amended section generally. Prior to amendment, section read as follows:

''(a) The Secretary shall by regulation require that each entity which applies for a grant, contract, or cooperative agreement under this chapter for any project or program which involves the conduct of biomedical or behavioral research submit in or with its application for such grant, contract, or cooperative agreement assurances satisfactory to the Secretary that such entity—

''(1) has established (in accordance with regulations which the Secretary shall prescribe) an administrative process to review reports of scientific fraud in connection with biomedical and behavioral research conducted at or sponsored by such entity; and

''(2) will report to the Secretary any investigation of alleged scientific fraud which appears substantial.

''(b) The Director of NIH shall establish a process for the prompt and appropriate response to information provided the Director of NIH respecting scientific fraud in connection with projects for which funds have been made available under this chapter. The process shall include procedures for the receiving of reports of such information from recipients of funds under this chapter and taking appropriate action with respect to such fraud.''

Subsec. (e). Pub. L. 103–43, § 163, added subsec. (e).

REGULATIONS

Section 165 of Pub. L. 103–43 provided that:

''(a) ISSUANCE OF FINAL RULES.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [June 10, 1993], the Secretary shall, subject to paragraph (2), issue the final rule for each regulation required in section 493 or 493A of the Public Health Service Act [this section and section 289b–1 of this title].

''(2) DEFINITION OF RESEARCH MISCONDUCT.—Not later than 90 days after the date on which the report required in section 162(e) [107 Stat. 142] is submitted to the Secretary, the Secretary shall issue the final rule for the regulations required in section 493 of the Public Health Service Act with respect to the definition of the term 'research misconduct'.

''(b) APPLICABILITY TO ONGOING INVESTIGATIONS.—The final rule issued pursuant to subsection (a) for investigations under section 493 of the Public Health Service Act [this section] does not apply to investigations commenced before the date of the enactment of this Act [June 10, 1993] under authority of such section as in effect before such date.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'section 493 of the Public Health Service Act' means such section as amended by sections 161 and 163 of this Act [this section], except as indicated otherwise in subsection (b).

''(2) The term 'section 493A of the Public Health Service Act' means such section as added by section 164 of this Act [section 289b–1 of this title].

''(3) The term 'Secretary' means the Secretary of Health and Human Services.''

§ 289b–1. Protection against financial conflicts of interest in certain projects of research

(a) Issuance of regulations

The Secretary shall by regulation define the specific circumstances that constitute the existence of a financial interest in a project on the part of an entity or individual that will, or may be reasonably expected to, create a bias in favor of obtaining results in such project that are consistent with such financial interest. Such definition shall apply uniformly to each entity or individual conducting a research project under this chapter. In the case of any entity or individual receiving assistance from the Secretary for a project of research described in subsection (b) of this section, the Secretary shall by regulation establish standards for responding to, including managing, reducing, or eliminating, the existence of such a financial interest. The entity may adopt individualized procedures for implementing the standards.

(b) Relevant projects

A project of research referred to in subsection (a) of this section is a project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment and for which such entity is receiving assistance from the Secretary.

(c) Identifying and reporting to Secretary

The Secretary shall by regulation require that each entity described in subsection (a) of this section that applies for assistance under this chapter for any project described in subsection (b) of this section submit in or with its application for such assistance—

(1) assurances satisfactory to the Secretary that such entity has established and has in effect an administrative process under subsection (a) of this section to identify financial interests (as defined under subsection (a) of this section) that exist regarding the project; and

(2) an agreement that the entity will report to the Secretary such interests identified by the entity and how any such interests identified by the entity will be managed or eliminated in order that the project in question will be protected from bias that may stem from such interests; and

(3) an agreement that the entity will comply with regulations issued under this section.

(d) Monitoring of process

The Secretary shall monitor the establishment and conduct of the administrative process established by an entity pursuant to subsection (a) of this section.

(e) Response

In any case in which the Secretary determines that an entity has failed to comply with subsection (c) of this section regarding a project of research described in subsection (b) of this section, the Secretary—

(1) shall require that, as a condition of receiving assistance, the entity disclose the existence of a financial interest (as defined under subsection (a) of this section) in each public presentation of the results of such project; and

(2) may take such other actions as the Secretary determines to be appropriate.

(f) Definitions

For purposes of this section:

(1) The term ''financial interest'' includes the receipt of consulting fees or honoraria and the ownership of stock or equity.

(2) The term ''assistance'', with respect to conducting a project of research, means a grant, contract, or cooperative agreement.

(July 1, 1944, ch. 373, title IV, § 493A, as added Pub. L. 103–43, title I, § 164, June 10, 1993, 107 Stat. 142.)

REGULATIONS

Final rule for regulations required in this section to be issued not later than 180 days after June 10, 1993, see section 165 of Pub. L. 103–43, set out as a note under section 289b of this title.

§ 289c. Research on public health emergencies

If the Secretary determines, after consultation with the Director of NIH, the Commissioner of the Food and Drug Administration, or the Director of the Centers for Disease Control and Prevention, that a disease or disorder constitutes a public health emergency, the Secretary, acting through the Director of NIH—

(1) shall expedite the review by advisory councils under section 284a of this title and by peer review groups under section 289a of this title of applications for grants for research on such disease or disorder or proposals for contracts for such research;

(2) shall exercise the authority in section 5 of title 41 respecting public exigencies to waive the advertising requirements of such section in the case of proposals for contracts for such research;

(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

(July 1, 1944, ch. 373, title IV, § 494, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 875; amended Pub. L. 102–531, title III, § 312(d)(9), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 109–482, title I, § 104(b)(1)(P), Jan. 15, 2007, 120 Stat. 3693.)

AMENDMENTS

2007—Pub. L. 109–482 struck out subsec. (a) designation before ''If the Secretary'' and subsec. (b) which read as follows: ''Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) of this section in such fiscal year.''

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

§ 289c–1. Collaborative use of certain health services research funds

The Secretary shall ensure that amounts made available under subparts 14, 15 and 16 of part C for health services research relating to alcohol abuse and alcoholism, drug abuse and mental health be used collaboratively, as appropriate, and in consultation with the Agency for Healthcare Research and Quality.

(July 1, 1944, ch. 373, title IV, § 494A, as added Pub. L. 102–321, title I, § 125, July 10, 1992, 106 Stat. 366; amended Pub. L. 103–43, title XX, § 2016(c), June 10, 1993, 107 Stat. 218; Pub. L. 104–66, title I, § 1062(b), Dec. 21, 1995, 109 Stat. 720; Pub. L. 105–362, title VI, § 601(a)(1)(F), Nov. 10, 1998, 112 Stat. 3285; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

REFERENCES IN TEXT

Subparts 14, 15 and 16 of part C, referred to in text, are classified to sections 285n et seq., 285*o* et seq., and 285p et seq., respectively, of this title.

AMENDMENTS

1999—Pub. L. 106–129, which directed the substitution of ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research'', was executed by making the substitution for ''Agency for Health Care Policy Research'', to reflect the probable intent of Congress.

1998—Pub. L. 105–362 struck out heading and designation of subsec. (a) and heading and text of subsec. (b). Text of subsec. (b) read as follows: ''Not later than December 30, 1993, and each December 30 thereafter, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the activities carried out with the amounts referred to in subsection (a) of this section.''

1995—Subsec. (b). Pub. L. 104–66 substituted ''December 30, 1993, and each December 30 thereafter'' for ''September 30, 1993, and annually thereafter''.

1993—Subsec. (b). Pub. L. 103–43 substituted ''September 30, 1993'' for ''May 3, 1993''.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 289d. Animals in research

(a) Establishment of guidelines

The Secretary, acting through the Director of NIH, shall establish guidelines for the following:

(1) The proper care of animals to be used in biomedical and behavioral research.

(2) The proper treatment of animals while being used in such research. Guidelines under this paragraph shall require—

(A) the appropriate use of tranquilizers, analgesics, anesthetics, paralytics, and euthanasia for animals in such research; and

(B) appropriate pre-surgical and post-surgical veterinary medical and nursing care for animals in such research.

Such guidelines shall not be construed to prescribe methods of research.

(3) The organization and operation of animal care committees in accordance with subsection (b) of this section.

(b) Animal care committees; establishment; membership; functions

(1) Guidelines of the Secretary under subsection (a)(3) of this section shall require animal care committees at each entity which conducts biomedical and behavioral research with funds provided under this chapter (including the National Institutes of Health and the national research institutes) to assure compliance with the guidelines established under subsection (a) of this section.

(2) Each animal care committee shall be appointed by the chief executive officer of the entity for which the committee is established, shall be composed of not fewer than three members, and shall include at least one individual who has no association with such entity and at least one doctor of veterinary medicine.

(3) Each animal care committee of a research entity shall—

(A) review the care and treatment of animals in all animal study areas and facilities of the research entity at least semi-annually to evaluate compliance with applicable guidelines established under subsection (a) of this section for appropriate animal care and treatment;

(B) keep appropriate records of reviews conducted under subparagraph (A); and

(C) for each review conducted under subparagraph (A), file with the Director of NIH at least annually (i) a certification that the review has been conducted, and (ii) reports of any violations of guidelines established under subsection (a) of this section or assurances required under paragraph (1) which were observed in such review and which have continued after notice by the committee to the research entity involved of the violations.

Reports filed under subparagraph (C) shall include any minority views filed by members of the committee.

(c) Assurances required in application or contract proposal; reasons for use of animals; notice and comment requirements for promulgation of regulations

The Director of NIH shall require each applicant for a grant, contract, or cooperative agreement involving research on animals which is administered by the National Institutes of Health or any national research institute to include in its application or contract proposal, submitted after the expiration of the twelve-month period beginning on November 20, 1985—

(1) assurances satisfactory to the Director of NIH that—

(A) the applicant meets the requirements of the guidelines established under paragraphs (1) and (2) of subsection (a) of this section and has an animal care committee which meets the requirements of subsection (b) of this section; and

(B) scientists, animal technicians, and other personnel involved with animal care, treatment, and use by the applicant have available to them instruction or training in the humane practice of animal maintenance and experimentation, and the concept, availability, and use of research or testing methods that limit the use of animals or limit animal distress; and

(2) a statement of the reasons for the use of animals in the research to be conducted with funds provided under such grant or contract.

Notwithstanding subsection (a)(2) of section 553 of title 5, regulations under this subsection shall be promulgated in accordance with the notice and comment requirements of such section.

(d) Failure to meet guidelines; suspension or revocation of grant or contract

If the Director of NIH determines that—

(1) the conditions of animal care, treatment, or use in an entity which is receiving a grant, contract, or cooperative agreement involving research on animals under this subchapter do not meet applicable guidelines established under subsection (a) of this section;

(2) the entity has been notified by the Director of NIH of such determination and has been given a reasonable opportunity to take corrective action; and

(3) no action has been taken by the entity to correct such conditions;

the Director of NIH shall suspend or revoke such grant or contract under such conditions as the Director determines appropriate.

(e) Disclosure of trade secrets or privileged or confidential information

No guideline or regulation promulgated under subsection (a) or (c) of this section may require a research entity to disclose publicly trade secrets or commercial or financial information which is privileged or confidential.

(July 1, 1944, ch. 373, title IV, § 495, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 875.)

PROHIBITION ON FUNDING OF PROJECTS INVOLVING USE OF CHIMPANZEES OBTAINED FROM THE WILD

Pub. L. 102–394, title II, § 213, Oct. 6, 1992, 106 Stat. 1812, provided that: ''No funds appropriated under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be used by the National Institutes of Health, or any other Federal agency, or recipient of Federal funds on any project that entails the capture or procurement of chimpanzees obtained from the wild. For purposes of this section, the term 'recipient of Federal funds' includes private citizens, corporations, or other research institutions located outside of the United States that are recipients of Federal funds.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 213, Nov. 26, 1991, 105 Stat. 1127.

Pub. L. 101–517, title II, § 211, Nov. 5, 1990, 104 Stat. 2209.

Pub. L. 101–166, title II, § 214, Nov. 21, 1989, 103 Stat. 1178.

PLAN FOR RESEARCH INVOLVING ANIMALS

Section 4 of Pub. L. 99–158 directed Director of National Institutes of Health to establish, not later than Oct. 1, 1986, a plan for research into methods of biomedical research and experimentation which reduces the use of animals in research or which produce less pain and distress in animals to develop methods found to be valid and reliable, to train scientists in use of such methods, to disseminate information on such methods and to establish an Interagency Coordinating Committee to assist in development of the plan, prior to repeal by Pub. L. 103–43, title II, § 205(b), June 10, 1993, 107 Stat. 148. See section 283e of this title.

§ 289e. Use of appropriations

(a) Appropriations to carry out the purposes of this subchapter, unless otherwise expressly provided, may be expended in the District of Columbia for—

(1) personal services;

(2) stenographic recording and translating services;

(3) travel expenses (including the expenses of attendance at meetings when specifically authorized by the Secretary);

(4) rental;

(5) supplies and equipment;

(6) purchase and exchange of medical books, books of reference, directories, periodicals, newspapers, and press clippings;

(7) purchase, operation, and maintenance of passenger motor vehicles;

(8) printing and binding (in addition to that otherwise provided by law); and

(9) all other necessary expenses in carrying out this subchapter.

Such appropriations may be expended by contract if deemed necessary, without regard to section 5 of title 41.

(b)(1) None of the amounts appropriated under this chapter for the purposes of this subchapter may be obligated for the construction of facilities (including the acquisition of land) unless a provision of this subchapter establishes express authority for such purpose and unless the Act making appropriations under such provision specifies that the amounts appropriated are available for such purpose.

(2) Any grants, cooperative agreements, or contracts authorized in this subchapter for the construction of facilities may be awarded only on a competitive basis.

(July 1, 1944, ch. 373, title IV, § 496, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 877; amended Pub. L. 101–190, § 8, Nov. 29, 1989, 103 Stat. 1695; Pub. L. 103–43, title XX, § 2008(b)(15), June 10, 1993, 107 Stat. 211.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43 substituted ''Appropriations to carry out the purposes of this subchapter'' for ''Such appropriations''.

1989—Subsec. (a). Pub. L. 101–190 designated existing provisions as subsec. (a), struck out first sentence which read as follows: ''Appropriations to carry out the purposes of this subchapter shall be available for the acquisition of land or the erection of buildings only if so specified.'', and added subsec. (b).

CONSTRUCTION OF BIOMEDICAL FACILITIES FOR DEVELOPMENT AND BREEDING OF SPECIALIZED STRAINS OF MICE

Sections 1 to 7 of Pub. L. 101–190, as amended by Pub. L. 101–374, § 4(a), (c)(1), Aug. 15, 1990, 104 Stat. 458, 459, authorized a reservation of funds for making a grant to construct facilities for development and breeding of specialized strains of mice for use in biomedical research, provided for a competitive grant award process, required applicant for the grant to agree to a twenty-year transferable obligation, restricted grant applicant to public or nonprofit private status, with assurances of sufficient financial resources, set forth other grant requirements, and specified consequences of failure to comply with agreements and violation of the twenty-year obligation.

§ 289f. Gifts and donations; memorials

The Secretary may, in accordance with section 238 of this title, accept conditional gifts for the National Institutes of Health or a national research institute or for the acquisition of grounds or for the erection, equipment, or maintenance of facilities for the National Institutes of Health or a national research institute. Donations of $50,000 or over for the National Institutes of Health or a national research institute for carrying out the purposes of this subchapter may be acknowledged by the establishment within the National Institutes of Health or a national research institute of suitable memorials to the donors.

(July 1, 1944, ch. 373, title IV, § 497, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 877; amended Pub. L. 99–660, title III, § 311(b)(1), Nov. 14, 1986,

100 Stat. 3779; Pub. L. 100–607, title II, § 204(3), Nov. 4, 1988, 102 Stat. 3079; Pub. L. 100–690, title II, § 2620(b)(2), Nov. 18, 1988, 102 Stat. 4244; Pub. L. 101–381, title I, § 102(5), Aug. 18, 1990, 104 Stat. 586; Pub. L. 103–43, title XX, § 2010(b)(6), June 10, 1993, 107 Stat. 214.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''section 238'' for ''section 300aaa''.

1990—Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Pub. L. 100–690 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

Pub. L. 100–607 substituted ''300aaa'' for ''300cc''.

1986—Pub. L. 99–660 substituted ''section 300cc of this title'' for ''section 300aa of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

§ 289g. Fetal research

(a) Conduct or support by Secretary; restrictions

The Secretary may not conduct or support any research or experimentation, in the United States or in any other country, on a nonviable living human fetus ex utero or a living human fetus ex utero for whom viability has not been ascertained unless the research or experimentation—

(1) may enhance the well-being or meet the health needs of the fetus or enhance the probability of its survival to viability; or

(2) will pose no added risk of suffering, injury, or death to the fetus and the purpose of the research or experimentation is the development of important biomedical knowledge which cannot be obtained by other means.

(b) Risk standard for fetuses intended to be aborted and fetuses intended to be carried to term to be same

In administering the regulations for the protection of human research subjects which—

(1) apply to research conducted or supported by the Secretary;

(2) involve living human fetuses in utero; and

(3) are published in section 46.208 of part 46 of title 45 of the Code of Federal Regulations;

or any successor to such regulations, the Secretary shall require that the risk standard (published in section 46.102(g) of such part 46 or any successor to such regulations) be the same for fetuses which are intended to be aborted and fetuses which are intended to be carried to term.

(July 1, 1944, ch. 373, title IV, § 498, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 877; amended Pub. L. 100–607, title I, §§ 156, 157(b), Nov. 4, 1988, 102 Stat. 3059; Pub. L. 103–43, title I, § 121(b)(1), June 10, 1993, 107 Stat. 133.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 struck out subsec. (c) which directed Biomedical Ethics Advisory Committee to conduct a study of the nature, advisability, and biomedical and ethical implications of exercising any waiver of the risk standard published in section 46.102(g) of part 46 of title 45 of the Code of Federal Regulations and to report its finding to the Biomedical Ethics Board not later than 24 months after Nov. 4, 1988, which report was to be then transmitted to specified Congressional committees.

1988—Subsec. (c)(1). Pub. L. 100–607, § 157(b), substituted ''24 months after November 4, 1988'' for ''thirty months after November 20, 1985''.

Subsec. (c)(2). Pub. L. 100–607, § 156(1), substituted ''24-month period beginning on November 4, 1988'' for ''thirty-six month period beginning on November 20, 1985''.

Subsec. (c)(3). Pub. L. 100–607, § 156(2), substituted ''1990'' for ''1988''.

NULLIFICATION OF CERTAIN PROVISIONS

Section 121(c) of Pub. L. 103–43 provided that: ''The provisions of Executive Order 12806 (57 Fed. Reg. 21589 (May 21, 1992)) [formerly set out below] shall not have any legal effect. The provisions of section 204(d) of part 46 of title 45 of the Code of Federal Regulations (45 CFR 46.204(d)) shall not have any legal effect.''

EXECUTIVE ORDER NO. 12806. ESTABLISHMENT OF FETAL TISSUE BANK

Ex. Ord. No. 12806, May 19, 1992, 57 F.R. 21589, which established a human fetal tissue bank, was nullified by Pub. L. 103–43, title I, § 121(c), June 10, 1993, 107 Stat. 133, set out above.

FEDERAL FUNDING OF FETAL TISSUE TRANSPLANTATION RESEARCH

Memorandum of President of the United States, Jan. 22, 1993, 58 F.R. 7457, provided:

Memorandum for the Secretary of Health and Human Services

On March 22, 1988, the Assistant Secretary for Health of Health and Human Services (''HHS'') imposed a temporary moratorium on Federal funding of research involving transplantation of fetal tissue from induced abortions. Contrary to the recommendations of a National Institutes of Health advisory panel, on November 2, 1989, the Secretary of Health and Human Services extended the moratorium indefinitely. This moratorium has significantly hampered the development of possible treatments for individuals afflicted with serious diseases and disorders, such as Parkinson's disease, Alzheimer's disease, diabetes, and leukemia. Accordingly, I hereby direct that you immediately lift the moratorium.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 289g–1. Research on transplantation of fetal tissue

(a) Establishment of program

(1) In general

The Secretary may conduct or support research on the transplantation of human fetal tissue for therapeutic purposes.

(2) Source of tissue

Human fetal tissue may be used in research carried out under paragraph (1) regardless of whether the tissue is obtained pursuant to a spontaneous or induced abortion or pursuant to a stillbirth.

(b) Informed consent of donor

(1) In general

In research carried out under subsection (a) of this section, human fetal tissue may be

used only if the woman providing the tissue makes a statement, made in writing and signed by the woman, declaring that—

(A) the woman donates the fetal tissue for use in research described in subsection (a) of this section;

(B) the donation is made without any restriction regarding the identity of individuals who may be the recipients of transplantations of the tissue; and

(C) the woman has not been informed of the identity of any such individuals.

(2) Additional statement

In research carried out under subsection (a) of this section, human fetal tissue may be used only if the attending physician with respect to obtaining the tissue from the woman involved makes a statement, made in writing and signed by the physician, declaring that—

(A) in the case of tissue obtained pursuant to an induced abortion—

(i) the consent of the woman for the abortion was obtained prior to requesting or obtaining consent for a donation of the tissue for use in such research;

(ii) no alteration of the timing, method, or procedures used to terminate the pregnancy was made solely for the purposes of obtaining the tissue; and

(iii) the abortion was performed in accordance with applicable State law;

(B) the tissue has been donated by the woman in accordance with paragraph (1); and

(C) full disclosure has been provided to the woman with regard to—

(i) such physician's interest, if any, in the research to be conducted with the tissue; and

(ii) any known medical risks to the woman or risks to her privacy that might be associated with the donation of the tissue and that are in addition to risks of such type that are associated with the woman's medical care.

(c) Informed consent of researcher and donee

In research carried out under subsection (a) of this section, human fetal tissue may be used only if the individual with the principal responsibility for conducting the research involved makes a statement, made in writing and signed by the individual, declaring that the individual—

(1) is aware that—

(A) the tissue is human fetal tissue;

(B) the tissue may have been obtained pursuant to a spontaneous or induced abortion or pursuant to a stillbirth; and

(C) the tissue was donated for research purposes;

(2) has provided such information to other individuals with responsibilities regarding the research;

(3) will require, prior to obtaining the consent of an individual to be a recipient of a transplantation of the tissue, written acknowledgment of receipt of such information by such recipient; and

(4) has had no part in any decisions as to the timing, method, or procedures used to terminate the pregnancy made solely for the purposes of the research.

(d) Availability of statements for audit

(1) In general

In research carried out under subsection (a) of this section, human fetal tissue may be used only if the head of the agency or other entity conducting the research involved certifies to the Secretary that the statements required under subsections (b)(2) and (c) of this section will be available for audit by the Secretary.

(2) Confidentiality of audit

Any audit conducted by the Secretary pursuant to paragraph (1) shall be conducted in a confidential manner to protect the privacy rights of the individuals and entities involved in such research, including such individuals and entities involved in the donation, transfer, receipt, or transplantation of human fetal tissue. With respect to any material or information obtained pursuant to such audit, the Secretary shall—

(A) use such material or information only for the purposes of verifying compliance with the requirements of this section;

(B) not disclose or publish such material or information, except where required by Federal law, in which case such material or information shall be coded in a manner such that the identities of such individuals and entities are protected; and

(C) not maintain such material or information after completion of such audit, except where necessary for the purposes of such audit.

(e) Applicability of State and local law

(1) Research conducted by recipients of assistance

The Secretary may not provide support for research under subsection (a) of this section unless the applicant for the financial assistance involved agrees to conduct the research in accordance with applicable State law.

(2) Research conducted by Secretary

The Secretary may conduct research under subsection (a) of this section only in accordance with applicable State and local law.

(f) Report

The Secretary shall annually submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities carried out under this section during the preceding fiscal year, including a description of whether and to what extent research under subsection (a) of this section has been conducted in accordance with this section.

(g) "Human fetal tissue" defined

For purposes of this section, the term ''human fetal tissue'' means tissue or cells obtained from a dead human embryo or fetus after a spontaneous or induced abortion, or after a stillbirth.

(July 1, 1944, ch. 373, title IV, § 498A, as added Pub. L. 103–43, title I, § 111, June 10, 1993, 107 Stat. 129.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

NULLIFICATION OF MORATORIUM

Section 113 of Pub. L. 103–43 provided that:

''(a) IN GENERAL.—Except as provided in subsection (c), no official of the executive branch may impose a policy that the Department of Health and Human Services is prohibited from conducting or supporting any research on the transplantation of human fetal tissue for therapeutic purposes. Such research shall be carried out in accordance with section 498A of the Public Health Service Act [this section] (as added by section 111 of this Act), without regard to any such policy that may have been in effect prior to the date of the enactment of this Act [June 10, 1993].

''(b) PROHIBITION AGAINST WITHHOLDING OF FUNDS IN CASES OF TECHNICAL AND SCIENTIFIC MERIT.—

''(1) IN GENERAL.—Subject to subsection (b)(2) of section 492A of the Public Health Service Act [section 289a–1(b)(2) of this title] (as added by section 101 of this Act), in the case of any proposal for research on the transplantation of human fetal tissue for therapeutic purposes, the Secretary of Health and Human Services may not withhold funds for the research if—

''(A) the research has been approved for purposes of subsection (a) of such section 492A;

''(B) the research will be carried out in accordance with section 498A of such Act [this section] (as added by section 111 of this Act); and

''(C) there are reasonable assurances that the research will not utilize any human fetal tissue that has been obtained in violation of section 498B(a) of such Act [section 289g–2(a) of this title] (as added by section 112 of this Act).

''(2) STANDING APPROVAL REGARDING ETHICAL STATUS.—In the case of any proposal for research on the transplantation of human fetal tissue for therapeutic purposes, the issuance in December 1988 of the Report of the Human Fetal Tissue Transplantation Research Panel shall be deemed to be a report—

''(A) issued by an ethics advisory board pursuant to section 492A(b)(5)(B)(ii) of the Public Health Service Act (as added by section 101 of this Act); and

''(B) finding, on a basis that is neither arbitrary nor capricious, that the nature of the research is such that it is not unethical to conduct or support the research.

''(c) AUTHORITY FOR WITHHOLDING FUNDS FROM RESEARCH.—In the case of any research on the transplantation of human fetal tissue for therapeutic purposes, the Secretary of Health and Human Services may withhold funds for the research if any of the conditions specified in any of subparagraphs (A) through (C) of subsection (b)(1) are not met with respect to the research.

''(d) DEFINITION.—For purposes of this section, the term 'human fetal tissue' has the meaning given such term in section 498A(f) of the Public Health Service Act [subsec. (f) of this section] (as added by section 111 of this Act).''

REPORT BY GENERAL ACCOUNTING OFFICE ON ADEQUACY OF REQUIREMENTS

Section 114 of Pub. L. 103–43 provided that, with respect to research on the transplantation of human fetal tissue for therapeutic purposes, the Comptroller General of the United States was to conduct an audit for the purpose of determining whether and to what extent such research conducted or supported by Secretary of Health and Human Services had been conducted in accordance with this section and whether and to what extent there have been violations of section 289g–2 of this title and directed the Comptroller General to complete the audit and report the findings to Congress, not later than May 19, 1995.

§ 289g–2. Prohibitions regarding human fetal tissue

(a) Purchase of tissue

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce.

(b) Solicitation or acceptance of tissue as directed donation for use in transplantation

It shall be unlawful for any person to solicit or knowingly acquire, receive, or accept a donation of human fetal tissue for the purpose of transplantation of such tissue into another person if the donation affects interstate commerce, the tissue will be or is obtained pursuant to an induced abortion, and—

(1) the donation will be or is made pursuant to a promise to the donating individual that the donated tissue will be transplanted into a recipient specified by such individual;

(2) the donated tissue will be transplanted into a relative of the donating individual; or

(3) the person who solicits or knowingly acquires, receives, or accepts the donation has provided valuable consideration for the costs associated with such abortion.

(c) Solicitation or acceptance of tissue from fetuses gestated for research purposes

It shall be unlawful for any person or entity involved or engaged in interstate commerce to—

(1) solicit or knowingly acquire, receive, or accept a donation of human fetal tissue knowing that a human pregnancy was deliberately initiated to provide such tissue; or

(2) knowingly acquire, receive, or accept tissue or cells obtained from a human embryo or fetus that was gestated in the uterus of a nonhuman animal.

(d) Criminal penalties for violations

(1) In general

Any person who violates subsection (a), (b), or (c) shall be fined in accordance with title 18, subject to paragraph (2), or imprisoned for not more than 10 years, or both.

(2) Penalties applicable to persons receiving consideration

With respect to the imposition of a fine under paragraph (1), if the person involved violates subsection (a) or (b)(3), a fine shall be imposed in an amount not less than twice the amount of the valuable consideration received.

(e) Definitions

For purposes of this section:

(1) The term ''human fetal tissue'' has the meaning given such term in section 289g–1(g) of this title.

(2) The term ''interstate commerce'' has the meaning given such term in section 321(b) of title 21.

(3) The term ''valuable consideration'' does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.

(July 1, 1944, ch. 373, title IV, § 498B, as added Pub. L. 103–43, title I, § 112, June 10, 1993, 107 Stat. 131; amended Pub. L. 109–242, § 2, July 19, 2006, 120 Stat. 570.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–242, § 2(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 109–242, § 2(1), (3), redesignated subsec. (c) as (d) and substituted ''(a), (b), or (c)'' for ''(a) or (b)'' in par. (1). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 109–242, § 2(1), (4), redesignated subsec. (d) as (e) and substituted ''section 289g–1(g)'' for ''section 289g–1(f)'' in par. (1).

§ 289g–3. Breast implant research

(a) In general

The Director of NIH may conduct or support research to examine the long-term health implications of silicone breast implants, both gel and saline filled. Such research studies may include the following:

(1) Developing and examining techniques to measure concentrations of silicone in body fluids and tissues.

(2) Surveillance of recipients of silicone breast implants, including long-term outcomes and local complications.

(b) Definition

For purposes of this section, the term ''breast implant'' means a breast prosthesis that is implanted to augment or reconstruct the female breast.

(July 1, 1944, ch. 373, title IV, § 498C, as added Pub. L. 107–250, title II, § 215(b), Oct. 26, 2002, 116 Stat. 1615.)

BREAST IMPLANTS; STUDY BY COMPTROLLER GENERAL

Pub. L. 107–250, title II, § 214, Oct. 26, 2002, 116 Stat. 1615, provided that:

''(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to determine the following with respect to breast implants:

''(1) The content of information typically provided by health professionals to women who consult with such professionals on the issue of whether to undergo breast implant surgery.

''(2) Whether such information is provided by physicians or other health professionals, and whether the information is provided verbally or in writing, and at what point in the process of determining whether to undergo surgery is such information provided.

''(3) Whether the information presented, as a whole, provides a complete and accurate discussion of the risks and benefits of breast implants, and the extent to which women who receive such information understand the risks and benefits.

''(4) The number of adverse events that have been reported, and whether such events have been adequately investigated.

''(5) With respect to women who participate as subjects in research being carried out regarding the safety and effectiveness of breast implants:

''(A) The content of information provided to the women during the process of obtaining the informed consent of the women to be subjects, and the extent to which such information is updated.

''(B) Whether such process provides written explanations of the criteria for being subjects in the research.

''(C) The point at which, in the planning or conduct of the research, the women are provided information regarding the provision of informed consent to be subjects.

''(b) REPORT.—The Comptroller General shall submit to the Congress a report describing the findings of the study.

''(c) DEFINITION.—For purposes of this section, the term 'breast implant' means a breast prosthesis that is implanted to augment or reconstruct the female breast.''

§ 289h. Repealed. Pub. L. 103–43, title I, § 121(b)(2), June 10, 1993, 107 Stat. 133

Section, act July 1, 1944, ch. 373, title IV, § 499, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 878, related to construction of subchapter.

§ 290. National Institutes of Health Management Fund; establishment; advancements; availability; final adjustments of advances

For the purpose of facilitating the economical and efficient conduct of operations in the National Institutes of Health which are financed by two or more appropriations where the costs of operation are not readily susceptible of distribution as charges to such appropriations, there is established the National Institutes of Health Management Fund. Such amounts as the Director of the National Institutes of Health may determine to represent a reasonable distribution of estimated costs among the various appropriations involved may be advanced each year to this fund and shall be available for expenditure for such costs under such regulations as may be prescribed by said Director, including the operation of facilities for the sale of meals to employees and others at rates to be determined by said Director to be sufficient to cover the reasonable value of the meals served and the proceeds thereof shall be deposited to the credit of this fund: *Provided*, That funds advanced to this fund shall be available only in the fiscal year in which they are advanced: *Provided further*, That final adjustments of advances in accordance with actual costs shall be effected wherever practicable with the appropriations from which such funds are advanced.

(Pub. L. 85–67, title II, § 201, June 29, 1957, 71 Stat. 220; Pub. L. 87–290, title II, § 201, Sept. 22, 1961, 75 Stat. 603.)

CODIFICATION

Section was enacted as a part of the Department of Health, Education, and Welfare Appropriation Act, 1958, and not as a part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1961—Pub. L. 87–290 substituted ''reasonable value of the meals served'' for ''cost of such operation''.

§ 290a. Victims of fire

(a) Research on burns, burn injuries, and rehabilitation

The Secretary of Health and Human Services shall establish, within the National Institutes of Health and in cooperation with the Director, an expanded program of research on burns, treatment of burn injuries, and rehabilitation of victims of fires. The National Institutes of Health shall—

(1) sponsor and encourage the establishment throughout the Nation of twenty-five additional burn centers, which shall comprise separate hospital facilities providing specialized burn treatment and including research and teaching programs and twenty-five additional burn units, which shall comprise specialized facilities in general hospitals used only for burn victims;

(2) provide training and continuing support of specialists to staff the new burn centers and burn units;

(3) sponsor and encourage the establishment of ninety burn programs in general hospitals which comprise staffs of burn injury specialists;

(4) provide special training in emergency care for burn victims;

(5) augment sponsorship of research on burns and burn treatment;

(6) administer and support a systematic program of research concerning smoke inhalation injuries; and

(7) sponsor and support other research and training programs in the treatment and rehabilitation of burn injury victims.

(b) Authorization of appropriations

For purposes of this section, there are authorized to be appropriated not to exceed $5,000,000 for the fiscal year ending June 30, 1975 and not to exceed $8,000,000 for the fiscal year ending June 30, 1976.

(Pub. L. 93–498, § 19, Oct. 29, 1974, 88 Stat. 1547; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 106–503, title I, § 110(a)(2)(B)(vii), Nov. 13, 2000, 114 Stat. 2302.)

CODIFICATION

Section was enacted as part of the Federal Fire Prevention and Control Act of 1974 (which is classified principally to chapter 49 (§ 2201 et seq.) of Title 15), and not as a part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–503 substituted ''in cooperation with the Director'' for ''in cooperation with the Secretary''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DEFINITIONS

For definition of terms used in this section, see section 2203 of Title 15, Commerce and Trade.

PART I—FOUNDATION FOR THE NATIONAL INSTITUTES OF HEALTH

AMENDMENTS

1998—Pub. L. 105–392, title IV, § 418(1), Nov. 13, 1998, 112 Stat. 3591, substituted ''Foundation for the National Institutes of Health'' for ''National Foundation for Biomedical Research'' in part heading.

1993—Pub. L. 103–43, title I, § 141(a)(2), June 10, 1993, 107 Stat. 136, redesignated part H ''National Foundation for Biomedical Research'' as I.

§ 290b. Establishment and duties of Foundation

(a) In general

The Secretary shall, acting through the Director of NIH, establish a nonprofit corporation to be known as the Foundation for the National Institutes of Health (hereafter in this section referred to as the ''Foundation''). The Foundation shall not be an agency or instrumentality of the United States Government.

(b) Purpose of Foundation

The purpose of the Foundation shall be to support the National Institutes of Health in its mission (including collection of funds for pediatric pharmacologic research), and to advance collaboration with biomedical researchers from universities, industry, and nonprofit organizations.

(c) Certain activities of Foundation

(1) In general

In carrying out subsection (b) of this section, the Foundation may solicit and accept gifts, grants, and other donations, establish accounts, and invest and expend funds in support of the following activities with respect to the purpose described in such subsection:

(A) A program to provide and administer endowed positions that are associated with the research program of the National Institutes of Health. Such endowments may be expended for the compensation of individuals holding the positions, for staff, equipment, quarters, travel, and other expenditures that are appropriate in supporting the endowed positions.

(B) A program to provide and administer fellowships and grants to research personnel in order to work and study in association with the National Institutes of Health. Such fellowships and grants may include stipends, travel, health insurance benefits and other appropriate expenses. The recipients of fel-

lowships shall be selected by the donors and the Foundation upon the recommendation of the National Institutes of Health employees in the laboratory where the fellow would serve, and shall be subject to the agreement of the Director of the National Institutes of Health and the Executive Director of the Foundation.

(C) A program to collect funds for pediatric pharmacologic research and studies listed by the Secretary pursuant to section 284m(a)(1)(A) of this title and referred under section 355a(d)(4)(C) of title 21.

(D) Supplementary programs to provide for—

(i) scientists of other countries to serve in research capacities in the United States in association with the National Institutes of Health or elsewhere, or opportunities for employees of the National Institutes of Health or other public health officials in the United States to serve in such capacities in other countries, or both;

(ii) the conduct and support of studies, projects, and research, which may include stipends, travel and other support for personnel in collaboration with national and international non-profit and for-profit organizations;

(iii) the conduct and support of forums, meetings, conferences, courses, and training workshops that may include undergraduate, graduate, post-graduate, and post-doctoral accredited courses and the maintenance of accreditation of such courses by the Foundation at the State and national level for college or continuing education credits or for degrees;

(iv) programs to support and encourage teachers and students of science at all levels of education and programs for the general public which promote the understanding of science;

(v) programs for writing, editing, printing, publishing, and vending of books and other materials; and

(vi) the conduct of other activities to carry out and support the purpose described in subsection (b) of this section.

(2) Fees

The Foundation may assess fees for the provision of professional, administrative and management services by the Foundation in amounts determined reasonable and appropriate by the Executive Director.

(3) Authority of Foundation

The Foundation shall be the sole entity responsible for carrying out the activities described in this subsection.

(d) Board of Directors

(1) Composition

(A) The Foundation shall have a Board of Directors (hereafter referred to in this section as the ''Board''), which shall be composed of ex officio and appointed members in accordance with this subsection. All appointed members of the Board shall be voting members.

(B) The ex officio members of the Board shall be—

(i) the Chairman and ranking minority member of the Subcommittee on Health and the Environment (Committee on Energy and Commerce) or their designees, in the case of the House of Representatives;

(ii) the Chairman and ranking minority member of the Committee on Labor and Human Resources or their designees, in the case of the Senate;

(iii) the Director of the National Institutes of Health; and

(iv) the Commissioner of Food and Drugs.

(C) The ex officio members of the Board under subparagraph (B) shall appoint to the Board individuals from among a list of candidates to be provided by the National Academy of Science. Such appointed members shall include—

(i) representatives of the general biomedical field;

(ii) representatives of experts in pediatric medicine and research;

(iii) representatives of the general biobehavioral field, which may include experts in biomedical ethics; and

(iv) representatives of the general public, which may include representatives of affected industries.

(D)(i) Not later than 30 days after June 10, 1993, the Director of the National Institutes of Health shall convene a meeting of the ex officio members of the Board to—

(I) incorporate the Foundation and establish the general policies of the Foundation for carrying out the purposes of subsection (b) of this section, including the establishment of the bylaws of the Foundation; and

(II) appoint the members of the Board in accordance with subparagraph (C).

(ii) Upon the appointment of the appointed members of the Board under clause (i)(II), the terms of service as members of the Board of the ex officio members of the Board described in clauses (i) and (ii) of subparagraph (B) shall terminate. The ex officio members of the Board described in clauses (iii) and (iv) of subparagraph (B) shall continue to serve as ex officio members of the Board.

(E) The agreement of not less than three-fifths of the members of the ex officio members of the Board shall be required for the appointment of each member to the initial Board.

(F) No employee of the National Institutes of Health shall be appointed as a member of the Board.

(G) The Board may, through amendments to the bylaws of the Foundation, provide that the number of appointed members of the Board shall be greater than the number specified in subparagraph (C).

(2) Chair

(A) The ex officio members of the Board under paragraph (1)(B) shall designate an individual to serve as the initial Chair of the Board.

(B) Upon the termination of the term of service of the initial Chair of the Board, the appointed members of the Board shall elect a

member of the Board to serve as the Chair of the Board.

(3) Terms and vacancies

(A) The term of office of each member of the Board appointed under paragraph (1)(C) shall be 5 years, except that the terms of offices for the initial appointed members of the Board shall expire as determined by the ex officio members and the Chair.

(B) Any vacancy in the membership of the appointed members of the Board shall be filled in accordance with the bylaws of the Foundation established in accordance with paragraph (6), and shall not affect the power of the remaining appointed members to execute the duties of the Board.

(C) If a member of the Board does not serve the full term applicable under subparagraph (A), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(D) A member of the Board may continue to serve after the expiration of the term of the member until a successor is appointed.

(4) Compensation

Members of the Board may not receive compensation for service on the Board. Such members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Board, as set forth in the bylaws issued by the Board.

(5) Meetings and quorum

A majority of the appointed members of the Board shall constitute a quorum for purposes of conducting the business of the Board.

(6) Certain bylaws

(A) In establishing bylaws under this subsection, the Board shall ensure that the following are provided for:

(i) Policies for the selection of the officers, employees, agents, and contractors of the Foundation.

(ii) Policies, including ethical standards, for the acceptance, solicitation, and disposition of donations and grants to the Foundation and for the disposition of the assets of the Foundation. Policies with respect to ethical standards shall ensure that officers, employees and agents of the Foundation (including members of the Board) avoid encumbrances that would result in a conflict of interest, including a financial conflict of interest or a divided allegiance. Such policies shall include requirements for the provision of information concerning any ownership or controlling interest in entities related to the activities of the Foundation by such officers, employees and agents and their spouses and relatives.

(iii) Policies for the conduct of the general operations of the Foundation.

(iv) Policies for writing, editing, printing, publishing, and vending of books and other materials.

(B) In establishing bylaws under this subsection, the Board shall ensure that such bylaws (and activities carried out under the bylaws) do not—

(i) reflect unfavorably upon the ability of the Foundation or the National Institutes of Health to carry out its responsibilities or official duties in a fair and objective manner; or

(ii) compromise, or appear to compromise, the integrity of any governmental agency or program, or any officer or employee involved in such program.

(e) Incorporation

The initial members of the Board shall serve as incorporators and shall take whatever actions necessary to incorporate the Foundation.

(f) Nonprofit status

The Foundation shall be considered to be a corporation under section 501(c) of title 26, and shall be subject to the provisions of such section.

(g) Executive Director

(1) In general

The Foundation shall have an Executive Director who shall be appointed by the Board and shall serve at the pleasure of the Board. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Board shall prescribe.

(2) Compensation

The rate of compensation of the Executive Director shall be fixed by the Board.

(h) Powers

In carrying out subsection (b) of this section, the Foundation may—

(1) operate under the direction of its Board;

(2) adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) provide for 1 or more officers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) hire, promote, compensate, and discharge officers and employees of the Foundation, and define the duties of the officers and employees;

(5) with the consent of any executive department or independent agency, use the information, services, staff, and facilities of such in carrying out this section;

(6) sue and be sued in its corporate name, and complain and defend in courts of competent jurisdiction;

(7) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this part;

(8) establish a process for the selection of candidates for positions under subsection (c) of this section;

(9) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

(10) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

(11) solicit, accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

(12) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation;

(13) appoint other groups of advisors as may be determined necessary from time to time to carry out the functions of the Foundation;

(14) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation; and

(15) exercise other powers as set forth in this section, and such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this part.

(i) Administrative control

No participant in the program established under this part shall exercise any administrative control over any Federal employee.

(j) General provisions

(1) Foundation integrity

The members of the Board shall be accountable for the integrity of the operations of the Foundation and shall ensure such integrity through the development and enforcement of criteria and procedures relating to standards of conduct, financial disclosure statements, conflict of interest rules, recusal and waiver rules, audits and other matter determined appropriate by the Board.

(2) Financial conflicts of interest

Any individual who is an officer, employee, or member of the Board of the Foundation may not (in accordance with policies and requirements developed under subsection (d)(6)) personally or substantially participate in the consideration or determination by the Foundation of any matter that would directly or predictably affect any financial interest of the individual or a relative (as such term is defined in section 109(16) of the Ethics in Government Act of 1978) of the individual, of any business organization or other entity, or of which the individual is an officer or employee, or is negotiating for employment, or in which the individual has any other financial interest.

(3) Audits; availability of records

The Foundation shall—

(A) provide for annual audits of the financial condition of the Foundation; and

(B) make such audits, and all other records, documents, and other papers of the Foundation, available to the Secretary and the Comptroller General of the United States for examination or audit.

(4) Reports

(A) Not later than 5 months following the end of each fiscal year, the Foundation shall publish a report describing the activities of the Foundation during the preceding fiscal year. Each such report shall include for the fiscal year involved a comprehensive statement of the operations, activities, financial condition, and accomplishments of the Foundation, including an accounting of the use of amounts transferred under subsection (*l*).

(B) With respect to the financial condition of the Foundation, each report under subparagraph (A) shall include the source, and a description of, all gifts or grants to the Foundation of real or personal property, and the source and amount of all gifts or grants to the Foundation of money. Each such report shall include a specification of any restrictions on the purposes for which gifts or grants to the Foundation may be used.

(C) The Foundation shall make copies of each report submitted under subparagraph (A) available—

(i) for public inspection, and shall upon request provide a copy of the report to any individual for a charge that shall not exceed the cost of providing the copy; and

(ii) to the appropriate committees of Congress.

(D) The Board shall annually hold a public meeting to summarize the activities of the Foundation and distribute written reports concerning such activities and the scientific results derived from such activities.

(5) Service of Federal employees

Federal employees may serve on committees advisory to the Foundation and otherwise cooperate with and assist the Foundation in carrying out its function, so long as the employees do not direct or control Foundation activities.

(6) Relationship with existing entities

The Foundation may, pursuant to appropriate agreements, merge with, acquire, or use the resources of existing nonprofit private corporations with missions similar to the purposes of the Foundation, such as the Foundation for Advanced Education in the Sciences.

(7) Intellectual property rights

The Board shall adopt written standards with respect to the ownership of any intellectual property rights derived from the collaborative efforts of the Foundation prior to the commencement of such efforts.

(8) National Institutes of Health Amendments of 1990

The activities conducted in support of the National Institutes of Health Amendments of 1990 (Public Law 101–613), and the amendments made by such Act, shall not be nullified by the enactment of this section.[1]

(9) Limitation of activities

(A) In general

The Foundation shall exist solely as an entity to work in collaboration with the research programs of the National Institutes of Health. The Foundation may not undertake activities (such as the operation of independent laboratories or competing for Federal research funds) that are independent of those of the National Institutes of Health research programs.

[1] So in original. Probably should be ''subsection''.

(B) Gifts, grants, and other donations

(i) In general

Gifts, grants, and other donations to the Foundation may be designated for pediatric research and studies on drugs, and funds so designated shall be used solely for grants for research and studies under subsection (c)(1)(C) of this section.

(ii) Other gifts

Other gifts, grants, or donations received by the Foundation and not described in clause (i) may also be used to support such pediatric research and studies.

(iii) Report

The recipient of a grant for research and studies shall agree to provide the Director of the National Institutes of Health and the Commissioner of Food and Drugs, at the conclusion of the research and studies—

(I) a report describing the results of the research and studies; and

(II) all data generated in connection with the research and studies.

(iv) Action by the Commissioner of Food and Drugs

The Commissioner of Food and Drugs shall take appropriate action in response to a report received under clause (iii) in accordance with paragraphs (7) through (12) of section 284m(c) of this title, including negotiating with the holders of approved applications for the drugs studied for any labeling changes that the Commissioner determines to be appropriate and requests the holders to make.

(C) Applicability

Subparagraph (A) does not apply to the program described in subsection (c)(1)(C) of this section.

(10) Transfer of funds

The Foundation may transfer funds to the National Institutes of Health and the National Institutes of Health may accept transfers of funds from the Foundation. Any funds transferred under this paragraph shall be subject to all Federal limitations relating to federally-funded research.

(k) Duties of Director

(1) Applicability of certain standards to non-Federal employees

In the case of any individual who is not an employee of the Federal Government and who serves in association with the National Institutes of Health, with respect to financial assistance received from the Foundation, the Foundation may not provide the assistance of, or otherwise permit the work at the National Institutes of Health to begin until a memorandum of understanding between the individual and the Director of the National Institutes of Health, or the designee of such Director, has been executed specifying that the individual shall be subject to such ethical and procedural standards of conduct relating to duties performed at the National Institutes of Health, as the Director of the National Institutes of Health determines is appropriate.

(2) Support services

The Director of the National Institutes of Health may provide facilities, utilities and support services to the Foundation if it is determined by the Director to be advantageous to the research programs of the National Institutes of Health.

(*l*) Funding

From amounts appropriated to the National Institutes of Health, for each fiscal year, the Director of NIH shall transfer not less than $500,000 and not more than $1,250,000 to the Foundation.

(July 1, 1944, ch. 373, title IV, § 499, formerly § 499A, as added Pub. L. 101–613, § 2, Nov. 16, 1990, 104 Stat. 3224; amended Pub. L. 102–170, title II, § 216, Nov. 26, 1991, 105 Stat. 1128; Pub. L. 102–321, title I, § 163(b)(6), July 10, 1992, 106 Stat. 376; renumbered § 499 and amended Pub. L. 103–43, title I, § 121(b)(3), title XVII, § 1701, June 10, 1993, 107 Stat. 133, 186; Pub. L. 104–316, title I, § 122(b), Oct. 19, 1996, 110 Stat. 3836; Pub. L. 105–392, title IV, § 418(2), Nov. 13, 1998, 112 Stat. 3591; Pub. L. 107–109, § 13, Jan. 4, 2002, 115 Stat. 1417; Pub. L. 109–482, title I, § 107, Jan. 15, 2007, 120 Stat. 3696.)

REFERENCES IN TEXT

Section 109(16) of the Ethics in Government Act of 1978, referred to in subsec. (j)(2), is section 109(16) of Pub. L. 95–521, which is set out in the Appendix to Title 5, Government Organization and Employees.

The National Institutes of Health Amendments of 1990, referred to in subsec. (j)(8), is Pub. L. 101–613, Nov. 16, 1990, 104 Stat. 3224, as amended, which enacted this section, section 285g–4 of this title, and provisions set out as notes under section 201 and 285g–4 of this title. For complete classification of this Act to the Code, see Short Title of 1990 Amendments note set out under section 201 of this title and Tables.

PRIOR PROVISIONS

A prior section 499 of act July 1, 1944, was classified to section 289h of this title prior to repeal by Pub. L. 103–43.

AMENDMENTS

2007—Subsec. (d)(1)(D)(ii). Pub. L. 109–482, § 107(1)(A)(i), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''Upon the appointment of the members of the Board under clause (i)(II), the terms of service of the ex officio members of the Board as members of the Board shall terminate.''

Subsec. (d)(1)(G). Pub. L. 109–482, § 107(1)(A)(ii), inserted ''appointed'' after ''that the number of''.

Subsec. (d)(3)(B). Pub. L. 109–482, § 107(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Any vacancy in the membership of the Board shall be filled in the manner in which the original position was made and shall not affect the power of the remaining members to execute the duties of the Board.''

Subsec. (d)(5). Pub. L. 109–482, § 107(1)(C), inserted ''appointed'' after ''majority of the''.

Subsec. (j)(2). Pub. L. 109–482, § 107(2)(A), substituted ''subsection (d)(6)'' for ''subsection (d)(2)(B)(i)(II)''.

Subsec. (j)(4)(A). Pub. L. 109–482, § 107(2)(B)(i), inserted '', including an accounting of the use of amounts transferred under subsection (*l*)'' before period at end.

Subsec. (j)(4)(C). Pub. L. 109–482, § 107(2)(B)(ii), added subpar. (C) and struck out former subpar. (C) which read as follows: ''The Foundation shall make copies of each report submitted under subparagraph (A) available for public inspection, and shall upon request pro-

vide a copy of the report to any individual for a charge not exceeding the cost of providing the copy.''

Subsec. (j)(10). Pub. L. 109–482, §107(2)(C), substituted ''of Health and the National Institutes of Health may accept transfers of funds from the Foundation'' for ''of Health''.

Subsec. (*l*). Pub. L. 109–482, §107(3), added subsec. (*l*) and struck out former subsec. (*l*) which related to authorization of appropriations and limitation regarding other funds.

2002—Subsec. (b). Pub. L. 107–109, §13(1), inserted ''(including collection of funds for pediatric pharmacologic research)'' after ''mission''.

Subsec. (c)(1)(C), (D). Pub. L. 107–109, §13(2), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(1)(B)(iv). Pub. L. 107–109, §13(3)(A)(i), added cl. (iv).

Subsec. (d)(1)(C). Pub. L. 107–109, §13(3)(A)(ii), added subpar. (C) and struck out former subpar. (C) which read as follows: ''The ex officio members of the Board under subparagraph (B) shall appoint to the Board 11 individuals from among a list of candidates to be provided by the National Academy of Science. Of such appointed members—

''(i) 4 shall be representative of the general biomedical field;

''(ii) 2 shall be representatives of the general biobehavorial field; and

''(iii) 5 shall be representatives of the general public.''

Subsec. (d)(2)(B). Pub. L. 107–109, §13(3)(B), realigned margin.

Subsec. (e) to (g). Pub. L. 107–109, §13(5), redesignated subsecs. (f) to (h) as (e) to (g), respectively.

Subsec. (h). Pub. L. 107–109, §13(5), (6), redesignated subsec. (i) as (h) and substituted ''solicit,'' for ''solicit'' in par. (11). Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 107–109, §13(5), redesignated subsec. (j) as (i). Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 107–109, §13(5), redesignated subsec. (k) as (j). Former subsec. (j) redesignated (i).

Subsec. (j)(1). Pub. L. 107–109, §13(7), struck out ''(including those developed under subsection (d)(2)(B)(i)(II))'' after ''procedures relating to standards of conduct''.

Subsec. (j)(2). Pub. L. 107–109, §13(7), which directed striking out ''(including those developed under subsection (d)(2)(B)(i)(II))'' in par. (2), could not be executed because those words do not appear in par. (2).

Subsec. (k). Pub. L. 107–109, §13(5), redesignated subsec. (*l*) as (k). Former subsec. (k) redesignated (j).

Subsec. (k)(9). Pub. L. 107–109, §13(4), designated existing provisions as subpar. (A), inserted subpar. heading, and added subpars. (B) and (C).

Subsecs. (*l*), (m). Pub. L. 107–109, §13(5), redesignated subsec. (m) as (*l*). Former subsec. (*l*) redesignated (k).

1998—Subsec. (a). Pub. L. 105–392, §418(2)(A), substituted ''Foundation for the National Institutes of Health'' for ''National Foundation for Biomedical Research''.

Subsec. (k)(10). Pub. L. 105–392, §418(2)(B), struck out ''not'' after ''may'' and inserted at end ''Any funds transferred under this paragraph shall be subject to all Federal limitations relating to federally-funded research.''

Subsec. (m)(1). Pub. L. 105–392, §418(2)(C), substituted ''$500,000 for each fiscal year'' for ''$200,000 for the fiscal years 1994 and 1995''.

1996—Subsec. (n). Pub. L. 104–316 struck out subsec. (n) which required Comptroller General to conduct audit and prepare report to Congress on adequacy of compliance of the Foundation with guidelines established under this section.

1993—Subsec. (a). Pub. L. 103–43, §1701(1), inserted '', acting through the Director of NIH,'' after ''Secretary shall'' and struck out '', except for the purposes of the Ethics in Government Act and the Technology Transfer Act,'' after ''shall not''.

Subsec. (b). Pub. L. 103–43, §1701(3), added subsec. (b) and struck out heading and text of former subsec. (b). Text related to duties of Foundation.

Subsec. (c). Pub. L. 103–43, §1701(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103–43, §1701(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (f).

Subsec. (d)(1). Pub. L. 103–43, §1701(4)(A), substituted ''appointed members of the Board'' for ''members of the Foundation'' in subpar. (A), ''Board'' for ''Council'' in subpar. (B), and ''appoint to the Board'' for ''appoint to the Council'' in subpar. (C), and added subpars. (D) to (G).

Subsec. (d)(2). Pub. L. 103–43, §1701(4)(B), designated existing provisions as subpar. (A), substituted ''an individual to serve as the initial Chair'' for ''an appointed member of the Board to serve as the Chair'', and added subpar. (B).

Subsec. (d)(3)(A). Pub. L. 103–43, §1701(4)(C), substituted ''(1)(C)'' for ''(2)(C)''.

Subsec. (d)(5), (6). Pub. L. 103–43, §1701(4)(D), added pars. (5) and (6).

Subsec. (e). Pub. L. 103–43, §1701(2), redesignated subsec. (e) as (g).

Subsecs. (f) to (h). Pub. L. 103–43, §1701(2), redesignated subsecs. (d) to (f) as (f) to (h), respectively. Former subsecs. (g) and (h) redesignated (i) and (j), respectively.

Subsec. (i). Pub. L. 103–43, §1701(2), redesignated subsec. (g) as (i). Former subsec. (i) redesignated (m).

Subsec. (i)(4). Pub. L. 103–43, §1701(5)(A), inserted before period at end '', and define the duties of the officers and employees''.

Subsec. (i)(5), (6). Pub. L. 103–43, §1701(5)(B), (C), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''prescribe by its Board its bylaws, that shall be consistent with law, and that shall provide for the manner in which—

''(A) its officers, employees, and agents are selected;

''(B) its property is acquired, held, and transferred;

''(C) its general operations are to be conducted; and

''(D) the privileges granted by law are exercised and enjoyed;''.

Subsec. (i)(7). Pub. L. 103–43, §1701(5)(C), (D), redesignated par. (8) as (7) and substituted ''part'' for ''subtitle''. Former par. (7) redesignated (6).

Subsec. (i)(8). Pub. L. 103–43, §1701(5)(C), (E), redesignated par. (9) as (8) and substituted ''establish a process for the selection of candidates for positions under subsection (c) of this section'' for ''establish a mechanism for the selection of candidates, subject to the approval of the Director of the National Institutes of Health, for the endowed scientific positions within the organizational structure of the intramural research programs of the National Institutes of Health and candidates for participation in the National Institutes of Health Scholars program''.

Subsec. (i)(9), (10). Pub. L. 103–43, §1701(5)(C), redesignated pars. (10) and (11) as (9) and (10), respectively. Former par. (9) redesignated (8).

Subsec. (i)(11). Pub. L. 103–43, §1701(5)(C), (F), redesignated par. (12) as (11) and inserted ''solicit'' before ''accept''. Former par. (11) redesignated (10).

Subsec. (i)(12), (13). Pub. L. 103–43, §1701(5)(C), redesignated pars. (13) and (14) as (12) and (13), respectively. Former par. (12) redesignated (11).

Subsec. (i)(14). Pub. L. 103–43, §1701(5)(G), (H), added par. (14). Former par. (14) redesignated (13).

Subsec. (i)(15). Pub. L. 103–43, §1701(5)(I), substituted ''part'' for ''subtitle''.

Subsec. (j). Pub. L. 103–43, §1701(2), redesignated subsec. (h) as (j).

Subsecs. (k), (*l*). Pub. L. 103–43, §1701(6), added subsecs. (k) and (*l*).

Subsec. (m). Pub. L. 103–43, §1701(7), amended heading and text of subsec. (m) generally. Prior to amendment, text read as follows:

''(1) AUTHORIZATION OF APPROPRIATIONS.—Subject to paragraph (2), for the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1995.

''(2) LIMITATIONS.—

''(A) Amounts appropriated under paragraph (1) or made available under subparagraph (C) may not be provided to the fund established under subsection (b)(1)(A) of this section.

''(B) For the first fiscal year for which amounts are appropriated under paragraph (1), $200,000 is authorized to be appropriated.

''(C) With respect to the first fiscal year for which amounts are appropriated under paragraph (1), the Secretary may, from amounts appropriated for such fiscal year for the programs of the Department of Health and Human Services, make available not more than $200,000 for carrying out this part, subject to subparagraph (A).''

Pub. L. 103–43, § 1701(2), redesignated subsec. (i) as (m).

Subsec. (n). Pub. L. 103–43, § 1701(8), added subsec. (n).

1992—Subsec. (g)(9). Pub. L. 102–321 struck out ''or the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration'' after ''Director of the National Institutes of Health'' and ''and the Alcohol, Drug Abuse, and Mental Health Administration'' after ''research programs of the National Institutes of Health''.

1991—Subsec. (c)(1)(C). Pub. L. 102–170, § 216(1), substituted ''11'' for ''9''.

Subsec. (c)(1)(C)(iii). Pub. L. 102–170, § 216(2), substituted ''5'' for ''3''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SUBCHAPTER III–A—SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

PART A—ORGANIZATION AND GENERAL AUTHORITIES

§ 290aa. Substance Abuse and Mental Health Services Administration

(a) Establishment

The Substance Abuse and Mental Health Services Administration (hereafter referred to in this subchapter as the ''Administration'') is an agency of the Service.

(b) Agencies

The following entities are agencies of the Administration:

(1) The Center for Substance Abuse Treatment.

(2) The Center for Substance Abuse Prevention.

(3) The Center for Mental Health Services.

(c) Administrator and Deputy Administrator

(1) Administrator

The Administration shall be headed by an Administrator (hereinafter in this subchapter referred to as the ''Administrator'') who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Deputy Administrator

The Administrator, with the approval of the Secretary, may appoint a Deputy Administrator and may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the activities to be carried out through the Administration.

(d) Authorities

The Secretary, acting through the Administrator, shall—

(1) supervise the functions of the agencies of the Administration in order to assure that the programs carried out through each such agency receive appropriate and equitable support and that there is cooperation among the agencies in the implementation of such programs;

(2) establish and implement, through the respective agencies, a comprehensive program to improve the provision of treatment and related services to individuals with respect to substance abuse and mental illness and to improve prevention services, promote mental health and protect the legal rights of individuals with mental illnesses and individuals who are substance abusers;

(3) carry out the administrative and financial management, policy development and planning, evaluation, knowledge dissemination, and public information functions that are required for the implementation of this subchapter;

(4) assure that the Administration conduct and coordinate demonstration projects, evaluations, and service system assessments and other activities necessary to improve the availability and quality of treatment, prevention and related services;

(5) support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs;

(6) in cooperation with the National Institutes of Health, the Centers for Disease Control and the Health Resources and Services Administration develop educational materials and intervention strategies to reduce the risks of HIV or tuberculosis among substance abusers and individuals with mental illness and to develop appropriate mental health services for individuals with such illnesses;

(7) coordinate Federal policy with respect to the provision of treatment services for substance abuse utilizing anti-addiction medications, including methadone;

(8) conduct programs, and assure the coordination of such programs with activities of the

National Institutes of Health and the Agency for Healthcare Research and Quality, as appropriate, to evaluate the process, outcomes and community impact of treatment and prevention services and systems of care in order to identify the manner in which such services can most effectively be provided;

(9) collaborate with the Director of the National Institutes of Health in the development of a system by which the relevant research findings of the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, the National Institute of Mental Health, and, as appropriate, the Agency for Healthcare Research and Quality are disseminated to service providers in a manner designed to improve the delivery and effectiveness of treatment and prevention services;

(10) encourage public and private entities that provide health insurance to provide benefits for substance abuse and mental health services;

(11) promote the integration of substance abuse and mental health services into the mainstream of the health care delivery system of the United States;

(12) monitor compliance by hospitals and other facilities with the requirements of sections 290dd–1 and 290dd–2 of this title;

(13) with respect to grant programs authorized under this subchapter, assure that—

(A) all grants that are awarded for the provision of services are subject to performance and outcome evaluations; and

(B) all grants that are awarded to entities other than States are awarded only after the State in which the entity intends to provide services—

(i) is notified of the pendency of the grant application; and

(ii) is afforded an opportunity to comment on the merits of the application;

(14) assure that services provided with amounts appropriated under this subchapter are provided bilingually, if appropriate;

(15) improve coordination among prevention programs, treatment facilities and nonhealth care systems such as employers, labor unions, and schools, and encourage the adoption of employee assistance programs and student assistance programs;

(16) maintain a clearinghouse for substance abuse and mental health information to assure the widespread dissemination of such information to States, political subdivisions, educational agencies and institutions, treatment providers, and the general public;

(17) in collaboration with the National Institute on Aging, and in consultation with the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism and the National Institute of Mental Health, as appropriate, promote and evaluate substance abuse services for older Americans in need of such services, and mental health services for older Americans who are seriously mentally ill; and

(18) promote the coordination of service programs conducted by other departments, agencies, organizations and individuals that are or may be related to the problems of individuals suffering from mental illness or substance abuse, including liaisons with the Social Security Administration, Centers for Medicare & Medicaid Services, and other programs of the Department, as well as liaisons with the Department of Education, Department of Justice, and other Federal Departments and offices, as appropriate.

(e) Associate Administrator for Alcohol Prevention and Treatment Policy

(1) In general

There may be in the Administration an Associate Administrator for Alcohol Prevention and Treatment Policy to whom the Administrator may delegate the functions of promoting, monitoring, and evaluating service programs for the prevention and treatment of alcoholism and alcohol abuse within the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment and the Center for Mental Health Services, and coordinating such programs among the Centers, and among the Centers and other public and private entities. The Associate Administrator also may ensure that alcohol prevention, education, and policy strategies are integrated into all programs of the Centers that address substance abuse prevention, education, and policy, and that the Center for Substance Abuse Prevention addresses the Healthy People 2010 goals and the National Dietary Guidelines of the Department of Health and Human Services and the Department of Agriculture related to alcohol consumption.

(2) Plan

(A) The Administrator, acting through the Associate Administrator for Alcohol Prevention and Treatment Policy, shall develop, and periodically review and as appropriate revise, a plan for programs and policies to treat and prevent alcoholism and alcohol abuse. The plan shall be developed (and reviewed and revised) in collaboration with the Directors of the Centers of the Administration and in consultation with members of other Federal agencies and public and private entities.

(B) Not later than 1 year after July 10, 1992, the Administrator shall submit to the Congress the first plan developed under subparagraph (A).

(3) Report

(A) Not less than once during each 2 years, the Administrator, acting through the Associate Administrator for Alcohol Prevention and Treatment Policy, shall prepare a report describing the alcoholism and alcohol abuse prevention and treatment programs undertaken by the Administration and its agencies, and the report shall include a detailed statement of the expenditures made for the activities reported on and the personnel used in connection with such activities.

(B) Each report under subparagraph (A) shall include a description of any revisions in the plan under paragraph (2) made during the preceding 2 years.

(C) Each report under subparagraph (A) shall be submitted to the Administrator for inclu-

sion in the biennial report under subsection (k) of this section.

(f) Associate Administrator for Women's Services

(1) Appointment

The Administrator, with the approval of the Secretary, shall appoint an Associate Administrator for Women's Services.

(2) Duties

The Associate Administrator appointed under paragraph (1) shall—

(A) establish a committee to be known as the Coordinating Committee for Women's Services (hereafter in this subparagraph referred to as the ''Coordinating Committee''), which shall be composed of the Directors of the agencies of the Administration (or the designees of the Directors);

(B) acting through the Coordinating Committee, with respect to women's substance abuse and mental health services—

(i) identify the need for such services, and make an estimate each fiscal year of the funds needed to adequately support the services;

(ii) identify needs regarding the coordination of services;

(iii) encourage the agencies of the Administration to support such services; and

(iv) assure that the unique needs of minority women, including Native American, Hispanic, African-American and Asian women, are recognized and addressed within the activities of the Administration; and

(C) establish an advisory committee to be known as the Advisory Committee for Women's Services, which shall be composed of not more than 10 individuals, a majority of whom shall be women, who are not officers or employees of the Federal Government, to be appointed by the Administrator from among physicians, practitioners, treatment providers, and other health professionals, whose clinical practice, specialization, or professional expertise includes a significant focus on women's substance abuse and mental health conditions, that shall—

(i) advise the Associate Administrator on appropriate activities to be undertaken by the agencies of the Administration with respect to women's substance abuse and mental health services, including services which require a multidisciplinary approach;

(ii) collect and review data, including information provided by the Secretary (including the material referred to in paragraph (3)), and report biannually to the Administrator regarding the extent to which women are represented among senior personnel, and make recommendations regarding improvement in the participation of women in the workforce of the Administration; and

(iii) prepare, for inclusion in the biennial report required pursuant to subsection (k) of this section, a description of activities of the Committee, including findings made by the Committee regarding—

(I) the extent of expenditures made for women's substance abuse and mental health services by the agencies of the Administration; and

(II) the estimated level of funding needed for substance abuse and mental health services to meet the needs of women;

(D) improve the collection of data on women's health by—

(i) reviewing the current data at the Administration to determine its uniformity and applicability;

(ii) developing standards for all programs funded by the Administration so that data are, to the extent practicable, collected and reported using common reporting formats, linkages and definitions; and

(iii) reporting to the Administrator a plan for incorporating the standards developed under clause (ii) in all Administration programs and a plan to assure that the data so collected are accessible to health professionals, providers, researchers, and members of the public; and

(E) shall establish, maintain, and operate a program to provide information on women's substance abuse and mental health services.

(3) Study

(A) The Secretary, acting through the Assistant Secretary for Personnel, shall conduct a study to evaluate the extent to which women are represented among senior personnel at the Administration.

(B) Not later than 90 days after July 10, 1992, the Assistant Secretary for Personnel shall provide the Advisory Committee for Women's Services with a study plan, including the methodology of the study and any sampling frames. Not later than 180 days after July 10, 1992, the Assistant Secretary shall prepare and submit directly to the Advisory Committee a report concerning the results of the study conducted under subparagraph (A).

(C) The Secretary shall prepare and provide to the Advisory Committee for Women's Services any additional data as requested.

(4) Definition

For purposes of this subsection, the term ''women's substance abuse and mental health conditions'', with respect to women of all age, ethnic, and racial groups, means all aspects of substance abuse and mental illness—

(A) unique to or more prevalent among women; or

(B) with respect to which there have been insufficient services involving women or insufficient data.

(g) Services of experts

(1) In general

The Administrator may obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the number of days or the period of service) the services of not more than 20 experts or consultants who have professional qualifications.

Such experts and consultants shall be obtained for the Administration and for each of its agencies.

(2) Compensation and expenses

(A) Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a), 5724a(c), and 5726(c) of title 5.

(B) Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1), unless and until the expert or consultant agrees in writing to complete the entire period of assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond the control of the expert or consultant that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a debt of the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

(h) Peer review groups

The Administrator shall, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, establish such peer review groups and program advisory committees as are needed to carry out the requirements of this subchapter and appoint and pay members of such groups, except that officers and employees of the United States shall not receive additional compensation for services as members of such groups. The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under this subsection.

(i) Voluntary services

The Administrator may accept voluntary and uncompensated services.

(j) Administration

The Administrator shall ensure that programs and activities assigned under this subchapter to the Administration are fully administered by the respective Centers to which such programs and activities are assigned.

(k) Report concerning activities and progress

Not later than February 10, 1994, and once every 2 years thereafter, the Administrator shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, the report containing—

(1) a description of the activities carried out by the Administration;

(2) a description of any measurable progress made in improving the availability and quality of substance abuse and mental health services;

(3) a description of the mechanisms by which relevant research findings of the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute of Mental Health have been disseminated to service providers or otherwise utilized by the Administration to further the purposes of this subchapter; and

(4) any report required in this subchapter to be submitted to the Adminstrator[1] for inclusion in the report under this subsection.

(*l*) Applications for grants and contracts

With respect to awards of grants, cooperative agreements, and contracts under this subchapter, the Administrator, or the Director of the Center involved, as the case may be, may not make such an award unless—

(1) an application for the award is submitted to the official involved;

(2) with respect to carrying out the purpose for which the award is to be provided, the application provides assurances of compliance satisfactory to such official; and

(3) the application is otherwise in such form, is made in such manner, and contains such agreements, assurances, and information as the official determines to be necessary to carry out the purpose for which the award is to be provided.

(m) Emergency response

(1) In general

Notwithstanding section 290aa–3 of this title and except as provided in paragraph (2), the Secretary may use not to exceed 2.5 percent of all amounts appropriated under this subchapter for a fiscal year to make noncompetitive grants, contracts or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities.

(2) Exceptions

Amounts appropriated under part C of this subchapter shall not be subject to paragraph (1).

(3) Emergencies

The Secretary shall establish criteria for determining that a substance abuse or mental health emergency exists and publish such criteria in the Federal Register prior to providing funds under this subsection.

(n) Limitation on the use of certain information

No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under section 290aa–4 of this title may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose. Such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Secretary) to its publication or release in other form.

(*o*) Authorization of appropriations

For the purpose of providing grants, cooperative agreements, and contracts under this sec-

[1] So in original. Probably should be ''Administrator''.

tion, there are authorized to be appropriated $25,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 501, formerly Pub. L. 93–282, title II, § 201, May 14, 1974, 88 Stat. 134, as amended Pub. L. 94–371, § 8, July 26, 1976, 90 Stat. 1040; renumbered § 501 of act July 1, 1944, and amended Pub. L. 98–24, § 2(b)(2), Apr. 26, 1983, 97 Stat. 176; Pub. L. 98–509, title II, § 201, title III, § 301(c)(1), Oct. 19, 1984, 98 Stat. 2359, 2364; Pub. L. 99–570, title IV, § 4003, Oct. 27, 1986, 100 Stat. 3207–106; Pub. L. 100–690, title II, § 2058(a)(2), Nov. 18, 1988, 102 Stat. 4213; Pub. L. 101–93, § 3(f), Aug. 16, 1989, 103 Stat. 611; Pub. L. 102–321, title I, § 101(a), July 10, 1992, 106 Stat. 324; Pub. L. 104–201, div. A, title XVII, § 1723(a)(3)(A), Sept. 23, 1996, 110 Stat. 2759; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 106–310, div. B, title XXXI, § 3102, title XXXIV, § 3401(a), Oct. 17, 2000, 114 Stat. 1170, 1218; Pub. L. 108–173, title IX, § 900(e)(2)(A), Dec. 8, 2003, 117 Stat. 2372.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (h), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

CODIFICATION

Section was formerly classified to section 3511 of this title prior to renumbering by Pub. L. 98–24.

PRIOR PROVISIONS

A prior section 501 of act July 1, 1944, which was classified to section 219 of this title, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

AMENDMENTS

2003—Subsec. (d)(18). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

2000—Subsec. (e)(1). Pub. L. 106–310, § 3401(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''There shall be in the Administration an Associate Administrator for Alcohol Prevention and Treatment Policy to whom the Administrator shall delegate the functions of promoting, monitoring, and evaluating service programs for the prevention and treatment of alcoholism and alcohol abuse within the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services, and coordinating such programs among the Centers, and among the Centers and other public and private entities. The Associate Administrator also shall ensure that alcohol prevention, education, and policy strategies are integrated into all programs of the Centers that address substance abuse prevention, education, and policy, and that the Center for Substance Abuse Prevention addresses the Healthy People 2000 goals and the National Dietary Guidelines of the Department of Health and Human Services and the Department of Agriculture related to alcohol consumption.''

Subsecs. (m) to (*o*). Pub. L. 106–310, § 3102, added subsecs. (m) and (n), redesignated former subsec. (m) as (*o*), and substituted ''2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003'' for ''1993, and such sums as may be necessary for fiscal year 1994'' before period at end.

1999—Subsec. (d)(8), (9). Pub. L. 106–129, which directed the substitution of ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research'', was executed by making the substitution for ''Agency for Health Care Policy Research'', to reflect the probable intent of Congress.

1996—Subsec. (g)(2)(A). Pub. L. 104–201 substituted ''5724a(a), 5724a(c)'' for ''5724a(a)(1), 5724a(a)(3)''.

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to the Substance Abuse and Mental Health Services Administration for provisions relating to the Alcohol, Drug Abuse, and Mental Health Administration.

1989—Subsec. (b)(4). Pub. L. 101–93, § 3(f)(1), substituted ''for'' for ''of''.

Subsec. (j). Pub. L. 101–93, § 3(f)(2), substituted ''section 290aa–5 of this title, establish program advisory committees, and pay members of such groups and committees'' for ''section 290aa–5 of this title and appoint and pay members of such groups'' and ''as members of such groups or committees'' for ''as members of such groups''.

1988—Subsec. (b)(4). Pub. L. 100–690, § 2058(a)(2)(A), added par. (4).

Subsec. (e)(2). Pub. L. 100–690, § 2058(a)(2)(B), substituted ''Not less than once each three years, the Administrator'' for ''The Administrator'' and ''shall submit'' for ''shall annually submit''.

Subsec. (f). Pub. L. 100–690, § 2058(a)(2)(C), substituted ''misconduct'' for ''fraud'' in heading and two places in text.

Subsecs. (k) to (m). Pub. L. 100–690, § 2058(a)(2)(D), (E), added subsecs. (k) to (m) and struck out former subsec. (k), which related to Alcohol, Drug Abuse, and Mental Health Advisory Board, including its duties, membership, terms of office, compensation, personnel, chairman, meetings, and reports to Congress.

1986—Pub. L. 99–570 amended section generally, revising and restating former subsecs. (a), (b), (c), (d), (e), (f), (g), and (h) as (c), (d), (k), (h), (e), (f), (g), and (i), respectively, and adding new subsecs. (a), (b), and (j).

1984—Pub. L. 98–509, § 301(c)(1), amended directory language of Pub. L. 98–24, § 2(b)(2). See 1983 Amendment note below.

Subsec. (c). Pub. L. 98–509, § 201(a), substituted provisions relating to the Alcohol, Drug Abuse, and Mental Health Advisory Board for provisions relating to the National Panel on Alcohol, Drug Abuse, and Mental Health.

Subsecs. (g), (h). Pub. L. 98–509, § 201(b), added subsecs. (g) and (h).

1983—Pub. L. 98–24, § 2(b)(2), as amended by Pub. L. 98–509, § 301(c)(1), renumbered section 3511 of this title as this section.

Subsec. (a). Pub. L. 98–24, § 2(b)(2)(A), struck out ''of Health, Education, and Welfare'' after ''The Secretary'' and ''Department''.

Subsec. (c). Pub. L. 98–24, § 2(b)(2)(A), (B), struck out ''of Health, Education, and Welfare'' after ''The Secretary'', and made a technical amendment to reference to section 218 of this title to reflect the transfer of this section to the Public Health Service Act.

Subsec. (d). Pub. L. 98–24, § 2(b)(2)(C), substituted provisions directing the Administrator to distribute information on the hazards of alcoholism and the abuse of alcohol and drugs for provisions directing the Secretary, through the Administration, to evaluate and make recommendations regarding improved, coordinated activities, where appropriate, for public education and other prevention programs with respect to the abuse of alcohol and other substances.

Subsecs. (e), (f). Pub. L. 98–24, § 2(b)(2)(D), added subsecs. (e) and (f).

1976—Subsec. (d). Pub. L. 94–371 added subsec. (d).

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on

Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

Section 161 of Pub. L. 102–321 provided that: ''Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Alcohol, Drug Abuse and Mental Health Administration or to the Administrator of the Alcohol, Drug Abuse and Mental Health Administration shall be deemed to refer to the Substance Abuse and Mental Health Services Administration or to the Administrator of the Substance Abuse and Mental Health Services Administration.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

TRANSFER PROVISIONS

Subtitle D of title I of Pub. L. 102–321, as amended by Pub. L. 102–352, § 2(b)(1), Aug. 26, 1992, 106 Stat. 939, provided that:

''SEC. 141. TRANSFERS.

''(a) SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION.—Except as specifically provided otherwise in this Act [see Tables for classification] or an amendment made by this Act, there are transferred to the Administrator of the Substance Abuse and Mental Health Services Administration all service related functions which the Administrator of the Alcohol, Drug Abuse and Mental Health Administration, or the Director of any entity within the Alcohol, Drug Abuse and Mental Health Administration, exercised before the date of the enactment of this Act [July 10, 1992] and all related functions of any officer or employee of the Alcohol, Drug Abuse and Mental Health Administration.

''(b) NATIONAL INSTITUTES.—Except as specifically provided otherwise in this Act or an amendment made by this Act, there are transferred to the appropriate Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health, through the Director of the National Institutes of Health, all research related functions which the Administrator of the Alcohol, Drug Abuse and Mental Health Administration exercised before the date of the enactment of this Act and all related functions of any officer or employee of the Alcohol, Drug Abuse, and Mental Health Administration.

''(c) ADEQUATE PERSONNEL AND RESOURCES.—The transfers required under this subtitle shall be effectuated in a manner that ensures that the Substance Abuse and Mental Health Services Administration has adequate personnel and resources to carry out its statutory responsibilities and that the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health have adequate personnel and resources to enable such institutes to carry out their respective statutory responsibilities.

''SEC. 142. TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.

''(a) SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION.—Except as otherwise provided in the Public Health Service Act [this chapter], all personnel employed in connection with, and all assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred to the Administrator of the Substance Abuse and Mental Health Services Administration by this subtitle, subject to section 1531 of title 31, United States Code, shall be transferred to the Substance Abuse and Mental Health Services Administration. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

''(b) NATIONAL INSTITUTES.—Except as otherwise provided in the Public Health Service Act, all personnel employed in connection with, and all assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred to the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health by this subtitle, subject to section 1531 of title 31, United States Code, shall be transferred to the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

''(c) CUSTODY OF BALANCES.—The actual transfer of custody of obligation balances is not required in order to implement this section.

''SEC. 143. INCIDENTAL TRANSFERS.

''Prior to October 1, 1992, the Secretary of Health and Human Services is authorized to make such determinations as may be necessary with regard to the functions transferred by this subtitle, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subtitle and the Public Health Service Act [this chapter]. Such Secretary shall provide for the termination of the affairs of all entities terminated by this subtitle and for such further measures and dispositions as may be necessary to effectuate the purposes of this subtitle.

''SEC. 144. EFFECT ON PERSONNEL.

''(a) IN GENERAL.—Except as otherwise provided by this subtitle and the Public Health Service Act [this chapter], the transfer pursuant to this subtitle of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer of such employee under this subtitle.

''(b) EXECUTIVE SCHEDULE POSITIONS.—Any person who, on the day preceding the effective date of this Act [see Effective Date of 1992 Amendment note set out under section 236 of this title], held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Substance Abuse and Mental Health Services Administration to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

''SEC. 145. SAVINGS PROVISIONS.

''(a) EFFECT ON PREVIOUS DETERMINATIONS.—All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges that—

''(1) have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred by this subtitle; and

''(2) are in effect on the date of enactment of this Act [July 10, 1992];

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Director of the National Institutes of Health, or the Administrator of the Substance Abuse and Mental Health Services Administration, as appropriate, a court of competent jurisdiction, or by operation of law.

''(b) CONTINUATION OF PROCEEDINGS.—

''(1) IN GENERAL.—The provisions of this subtitle shall not affect any proceedings, including notices of proposed rule making, or any application for any license, permit, certificate, or financial assistance pending on the date of enactment of this Act before the Department of Health and Human Services, which relates to the Alcohol, Drug Abuse and Mental Health Administration or the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, or the National Institute of Mental Health, or any office thereof with respect to functions transferred by this subtitle. Such proceedings or applications, to the extent that they relate to functions transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made under such orders, as if this Act [see Tables for classification] had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health by a court of competent jurisdiction, or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subtitle had not been enacted.

''(2) REGULATIONS.—The Secretary of Health and Human Services is authorized to issue regulations providing for the orderly transfer of proceedings continued under paragraph (1).

''(c) EFFECT ON LEGAL ACTIONS.—Except as provided in subsection (e)—

''(1) the provisions of this subtitle do not affect actions commenced prior to the date of enactment of this Act [July 10, 1992]; and

''(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

''(d) NO ABATEMENT OF ACTIONS OR PROCEEDINGS.—No action or other proceeding commenced by or against any officer in his official capacity as an officer of the Department of Health and Human Services with respect to functions transferred by this subtitle shall abate by reason of the enactment of this Act [see Tables for classification]. No cause of action by or against the Department of Health and Human Services with respect to functions transferred by this subtitle, or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this Act. Causes of action and actions with respect to a function transferred by this subtitle, or other proceedings may be asserted by or against the United States or the Administrator of the Alcohol, Drug Abuse and Mental Health Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health, as may be appropriate, and, in an action pending when this Act takes effect [see Effective Date of 1992 Amendment note set out under section 236 of this title], the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this subsection.

''(e) SUBSTITUTION.—If, before the date of enactment of this Act [July 10, 1992], the Department of Health and Human Services, or any officer thereof in the official capacity of such officer, is a party to an action, and under this subtitle any function of such Department, Office, or officer is transferred to the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health, then such action shall be continued with the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health, as the case may be, substituted or added as a party.

''(f) JUDICIAL REVIEW.—Orders and actions of the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health in the exercise of functions transferred to the Directors by this subtitle shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the Administrator of the Alcohol, Drug Abuse and Mental Health Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health, or any office or officer thereof, in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this subtitle shall apply to the exercise of such function by the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors.

''SEC. 146. TRANSITION.

''With the consent of the Secretary of Health and Human Services, the Administrator of the Substance Abuse and Mental Health Services Administration and the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health are authorized to utilize—

''(1) the services of such officers, employees, and other personnel of the Department with respect to functions transferred to the Administrator of the Substance Abuse and Mental Health Services Administration and the Director of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health by this subtitle; and

''(2) funds appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this subtitle.

''SEC. 147. PEER REVIEW.

''With respect to fiscal years 1993 through 1996, the peer review systems, advisory councils and scientific advisory committees utilized, or approved for utilization, by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health prior to the transfer of such Institutes to the National Institute of Health shall be utilized by such Institutes.

''SEC. 148. MERGERS.

''Notwithstanding the provisions of section 401(c)(2) of the Public Health Service Act (42 U.S.C. 281(c)(2)), the Secretary of Health and Human Services may not merge the National Institute on Alcohol Abuse and Al-

coholism, the National Institute on Drug Abuse or the National Institute of Mental Health with any other institute or entity (or with each other) within the national research institutes for a 5-year period beginning on the date of enactment of this Act [July 10, 1992].

''SEC. 149. CONDUCT OF MULTI-YEAR RESEARCH PROJECTS.

''With respect to multi-year grants awarded prior to fiscal year 1993 by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health with amounts received under section 1911(b) [former section 300x(b) of this title], as such section existed one day prior to the date of enactment of this Act [July 10, 1992], such grants shall be continued for the entire period of the grant through the utilization of funds made available pursuant to sections 464H, 464L, and 464R [sections 285n, 285*o*, 285p of this title], as appropriate, subject to satisfactory performance.

''SEC. 150. SEPARABILITY.

''If a provision of this subtitle or its application to any person or circumstance is held invalid, neither the remainder of this Act [see Tables for classification] nor the application of the provision to other persons or circumstances shall be affected.

''SEC. 151. BUDGETARY AUTHORITY.

''With respect to fiscal years 1994 and 1995, the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health shall notwithstanding section 405(a) [section 284(a) of this title], prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate (including an estimate of the number and type of personnel needs for the Institute) for their respective Institutes, after reasonable opportunity for comment (but without change) by the Secretary of Health and Human Services, the Director of the National Institutes of Health, and the Institute's advisory council.''

REPORT BY SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

Section 708 of Pub. L. 102–321 directed Administrator of Substance Abuse and Mental Health Services Administration to submit to Congress an interim report, not later than 6 months after July 10, 1992, and a final report, not later than Oct. 1, 1993, concerning current policies and barriers to provision of substance abuse and mental health services, with emphasis on barriers to health insurance and Medicaid coverage of such services, and further directed Secretary of Health and Human Services to initiate, not later than Jan. 1, 1994, research and demonstration projects which, consistent with information from reports submitted by the Administrator, explore alternative mechanisms of providing health insurance and treatment services for substance abuse and mental illness.

RELATIONSHIP BETWEEN MENTAL ILLNESS AND SUBSTANCE ABUSE

Section 2071 of Pub. L. 100–690 directed Secretary of Health and Human Services to conduct a study for the purpose of determining the relationship between mental illness and substance abuse, and developing recommendations on the most effective methods of treatment for individuals with both mental illness and substance abuse problems, and, not later than 12 months after Nov. 18, 1988, to complete the study and submit to Congress the findings made as a result of the study.

REPORT WITH RESPECT TO ADMINISTRATION OF CERTAIN RESEARCH PROGRAMS

Section 2073 of Pub. L. 100–690 directed Secretary of Health and Human Services to request National Academy of Sciences to conduct a review of research activities of National Institutes of Health and the Alcohol, Drug Abuse, and Mental Health Administration and, not later than 12 months after the date on which any contract requested is entered into, provide for the completion of the review and submit to Congress a report describing the findings made as a result of the review, with Secretary of Health and Human Services authorized to enter into a contract with National Academy of Sciences to carry out the review.

CONGRESSIONAL STATEMENT OF POLICY FOR ALCOHOL AND DRUG ABUSE AMENDMENTS OF 1983

Section 1(b) of Pub. L. 98–24 provided that: ''It is the policy of the United States and the purpose of this Act [see Short Title of 1983 Amendment note set out under section 201 of this title] to provide leadership in the national effort to reduce the incidence of alcoholism and alcohol-related problems and drug abuse through—

''(1) a continued Federal commitment to research into the behavioral and biomedical etiology, the treatment, and the mental and physical health and social and economic consequences of alcohol abuse and alcoholism and drug abuse;

''(2) a commitment to—

''(A) extensive dissemination to States, units of local government, community organizations, and private groups of the most recent information and research findings with respect to alcohol abuse and alcoholism and drug abuse, including information with respect to the application of research findings; and

''(B) the accomplishment of such dissemination through up-to-date publications, demonstrations, educational programs, and other appropriate means;

''(3) the provision of technical assistance to research personnel; services personnel, and prevention personnel in the field of alcohol abuse and alcoholism and drug abuse;

''(4) the development and encouragement of prevention programs designed to combat the spread of alcoholism, alcohol abuse, drug abuse, and the abuse of other legal and illegal substances;

''(5) the development and encouragement of effective occupational prevention and treatment programs within Government and in cooperation with the private sector; and

''(6) the provision of a Federal response to alcohol abuse and alcoholism and drug abuse which encourages the greatest participation by the private sector, both financially and otherwise, and concentrates on carrying out functions relating to alcohol abuse and alcoholism and drug abuse which are truly national in scope.''

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH REPORTS BY THE SECRETARY

Section 3 of Pub. L. 98–24 directed Secretary of Health and Human Services to submit to Congress, on or before Jan. 15, 1984, a report describing the extent to which Federal and State programs, departments, and agencies are concerned and are dealing effectively with problems of alcohol abuse and alcoholism, problems of drug abuse, and mental illness.

TRANSFER OF BALANCES IN WORKING CAPITAL FUND, NARCOTIC HOSPITALS, TO SURPLUS FUND

Act July 8, 1947, ch. 210, title II, § 201, 61 Stat. 269, provided: ''That as of June 30, 1947, and the end of each fiscal year thereafter any balances in the 'Working capital fund, narcotic hospitals,' in excess of $150,000 shall be transferred to the surplus fund of the Treasury.''

[Section 201 of act July 8, 1947, set out above, was formerly classified to section 258a of this title.]

§ 290aa–1. Advisory councils

(a) Appointment

(1) In general

The Secretary shall appoint an advisory council for—

(A) the Substance Abuse and Mental Health Services Administration;

(B) the Center for Substance Abuse Treatment;

(C) the Center for Substance Abuse Prevention; and

(D) the Center for Mental Health Services.

Each such advisory council shall advise, consult with, and make recommendations to the Secretary and the Administrator or Director of the Administration or Center for which the advisory council is established concerning matters relating to the activities carried out by and through the Administration or Center and the policies respecting such activities.

(2) Function and activities

An advisory council—

(A)(i) may on the basis of the materials provided by the organization respecting activities conducted at the organization, make recommendations to the Administrator or Director of the Administration or Center for which it was established respecting such activities;

(ii) shall review applications submitted for grants and cooperative agreements for activities for which advisory council approval is required under section 290aa–3(d)(2) of this title and recommend for approval applications for projects that show promise of making valuable contributions to the Administration's mission; and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the organization;

(B) may collect, by correspondence or by personal investigation, information as to studies and services that are being carried on in the United States or any other country as to the diseases, disorders, or other aspects of human health with respect to which the organization was established and with the approval of the Administrator or Director, whichever is appropriate, make such information available through appropriate publications for the benefit of public and private health entities and health professions personnel and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership

(1) In general

Each advisory council shall consist of nonvoting ex officio members and not more than 12 members to be appointed by the Secretary under paragraph (3).

(2) Ex officio members

The ex officio members of an advisory council shall consist of—

(A) the Secretary;

(B) the Administrator;

(C) the Director of the Center for which the council is established;

(D) the Under Secretary for Health of the Department of Veterans Affairs;

(E) the Assistant Secretary for Defense for Health Affairs (or the designates of such officers); and

(F) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) Appointed members

Individuals shall be appointed to an advisory council under paragraph (1) as follows:

(A) Nine of the members shall be appointed by the Secretary from among the leading representatives of the health disciplines (including public health and behavioral and social sciences) relevant to the activities of the Administration or Center for which the advisory council is established.

(B) Three of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, public relations, law, health policy economics, or management.

(4) Compensation

Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The remaining members of an advisory council shall receive, for each day (including travel time) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent to the annual rate in effect for grade GS–18 of the General Schedule.

(c) Terms of office

(1) In general

The term of office of a member of an advisory council appointed under subsection (b) of this section shall be 4 years, except that any member appointed to fill a vacancy for an unexpired term shall serve for the remainder of such term. The Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members not all expire in the same year. A member of an advisory council may serve after the expiration of such member's term until a successor has been appointed and taken office.

(2) Reappointments

A member who has been appointed to an advisory council for a term of 4 years may not be reappointed to an advisory council during the 2-year period beginning on the date on which such 4-year term expired.

(3) Time for appointment

If a vacancy occurs in an advisory council among the members under subsection (b) of this section, the Secretary shall make an appointment to fill such vacancy within 90 days from the date the vacancy occurs.

(d) Chair

The Secretary shall select a member of an advisory council to serve as the chair of the council. The Secretary may so select an individual from among the appointed members, or may select the Administrator or the Director of the Center involved. The term of office of the chair shall be 2 years.

(e) Meetings

An advisory council shall meet at the call of the chairperson or upon the request of the Ad-

ministrator or Director of the Administration or Center for which the advisory council is established, but in no event less than 2 times during each fiscal year. The location of the meetings of each advisory council shall be subject to the approval of the Administrator or Director of Administration or Center for which the council was established.

(f) Executive Secretary and staff

The Administrator or Director of the Administration or Center for which the advisory council is established shall designate a member of the staff of the Administration or Center for which the advisory council is established to serve as the Executive Secretary of the advisory council. The Administrator or Director shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Administrator or Director shall provide orientation and training for new members of the advisory council to provide for their effective participation in the functions of the advisory council.

(July 1, 1944, ch. 373, title V, § 502, formerly § 505, as added Pub. L. 99–570, title IV, § 4004(a), Oct. 27, 1986, 100 Stat. 3207–109; amended Pub. L. 100–527, § 10(4), Oct. 25, 1988, 102 Stat. 2641; Pub. L. 101–381, title I, § 102(6), Aug. 18, 1990, 104 Stat. 586; renumbered § 502 and amended Pub. L. 102–321, title I, § 102, July 10, 1992, 106 Stat. 331; Pub. L. 102–352, § 2(a)(6), Aug. 26, 1992, 106 Stat. 938; Pub. L. 103–446, title XII, § 1203(a)(1), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 106–310, div. B, title XXXIV, § 3402, Oct. 17, 2000, 114 Stat. 1219.)

CODIFICATION

Section was formerly classified to section 290aa–3a of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–1, act July 1, 1944, ch. 373, title V, § 502, formerly Pub. L. 91–616, title I, § 101, Dec. 31, 1970, 84 Stat. 1848, as amended Pub. L. 93–282, title II, § 203(a), May 14, 1974, 88 Stat. 135; Pub. L. 96–180, § 3, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97–35, title IX, § 966(a), Aug. 13, 1981, 95 Stat. 595; renumbered § 502 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(3), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98–509, title II, § 205(b)(2), 98 Stat. 2361; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(b)(1), 100 Stat. 3207–114, related to National Institute on Alcohol Abuse and Alcoholism, prior to repeal by Pub. L. 102–321, title I, § 101(b), July 10, 1992, 106 Stat. 331. See section 285n of this title.

A prior section 502 of act July 1, 1944, which was classified to section 220 of this title, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–310 substituted ''2 times during each fiscal year'' for ''3 times during each fiscal year''.

1994—Subsec. (b)(2)(D). Pub. L. 103–446 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''the Chief Medical Director of the Veterans Administration; and''.

1992—Pub. L. 102–352 substituted ''or management'' for ''and management'' in subsec. (b)(3)(B).

Pub. L. 102–321 amended section generally, substituting provisions relating to appointment of advisory councils to Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, Center for Substance Abuse Prevention, and Center for Mental Health Services for provisions appointing advisory councils for National Institute on Alcohol Abuse and Alcoholism, National Institute on Drug Abuse, and National Institute of Mental Health.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (b)(2)(A). Pub. L. 100–527 substituted ''Chief Medical Director of the Department of Veterans Affairs'' for ''Chief Medical Director of the Veterans' Administration''.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

CONTINUATION OF EXISTING ADVISORY COUNCILS

Section 4004(b) of Pub. L. 99–570 provided that: ''The amendment made by subsection (a) [enacting this section and renumbering this section and section 290aa–5 of this title] does not terminate the membership of any advisory council for the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, or the National Institute of Mental Health which was in existence on the date of enactment of this Act [Oct. 27, 1986]. After such date—

''(1) the Secretary of Health and Human Services shall make appointments to each such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by section 505 [now 502] of the Public Health Service Act [this section];

''(2) each advisory council shall organize itself in accordance with such section and exercise the functions prescribed by such section; and

''(3) the Director of each such institute shall perform for such advisory council the functions prescribed by such section.''

§ 290aa–2. Omitted

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 503, formerly § 505, as added Pub. L. 98–24, § 2(b)(7), Apr. 26, 1983, 97 Stat. 178; renumbered § 506, Pub. L. 99–570, title IV, § 4004(a), Oct. 27, 1986, 100 Stat. 3207–109; renumbered § 503, Pub. L. 102–321, title I, § 103, July 10, 1992, 106 Stat. 333, which required the Secretary of Health and Human Services to submit triennial reports to Congress on the health consequences of using alcoholic beverages, the health consequences and extent of drug abuse in the United States, and current research findings made with respect to drug abuse, including current findings on the health effects of marihuana and the addictive property of tobacco, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, pages 92 and 93 of House Document No. 103–7.

Section was formerly classified to section 290aa–4 of this title prior to renumbering by Pub. L. 102–321.

A prior section 290aa–2, act July 1, 1944, ch. 373, title V, § 503, formerly Pub. L. 92–255, title IV, § 406(a), title V, § 501, Mar. 21, 1972, 86 Stat. 78, 85; amended Pub. L. 93–282, title II, § 204, May 14, 1974, 88 Stat. 136; Pub. L. 94–237, § 12(a), Mar. 19, 1976, 90 Stat. 247; Pub. L. 96–181, § 10, Jan. 2, 1980, 93 Stat. 1314; Pub. L. 97–35, title IX, §§ 968(a), 973(f), Aug. 13, 1981, 95 Stat. 595, 598; renumbered § 503 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(4), (5), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98–509, title II, §§ 202, 205(b)(1), 98 Stat. 2360, 2361; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(b)(2), 100 Stat. 3207–114, related to National Institute on Drug Abuse, prior to repeal by Pub. L. 102–321, title I, § 101(b), July 10, 1992, 106 Stat. 331. See section 285*o* of this title.

A prior section 503 of act July 1, 1944, which was classified to section 221 of this title, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

§ 290aa–2a. Report on individuals with co-occurring mental illness and substance abuse disorders

(a) In general

Not later than 2 years after October 17, 2000, the Secretary shall, after consultation with organizations representing States, mental health and substance abuse treatment providers, prevention specialists, individuals receiving treatment services, and family members of such individuals, prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Commerce of the House of Representatives, a report on prevention and treatment services for individuals who have co-occurring mental illness and substance abuse disorders.

(b) Report content

The report under subsection (a) of this section shall be based on data collected from existing Federal and State surveys regarding the treatment of co-occurring mental illness and substance abuse disorders and shall include—

(1) a summary of the manner in which individuals with co-occurring disorders are receiving treatment, including the most up-to-date information available regarding the number of children and adults with co-occurring mental illness and substance abuse disorders and the manner in which funds provided under sections 300x and 300x–21 of this title are being utilized, including the number of such children and adults served with such funds;

(2) a summary of improvements necessary to ensure that individuals with co-occurring mental illness and substance abuse disorders receive the services they need;

(3) a summary of practices for preventing substance abuse among individuals who have a mental illness and are at risk of having or acquiring a substance abuse disorder; and

(4) a summary of evidenced-based practices for treating individuals with co-occurring mental illness and substance abuse disorders and recommendations for implementing such practices.

(c) Funds for report

The Secretary may obligate funds to carry out this section with such appropriations as are available.

(July 1, 1944, ch. 373, title V, § 503A, as added Pub. L. 106–310, div. B, title XXXIV, § 3406, Oct. 17, 2000, 114 Stat. 1221.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 290aa–3. Peer review

(a) In general

The Secretary, after consultation with the Administrator, shall require appropriate peer review of grants, cooperative agreements, and contracts to be administered through the agency which exceed the simple acquisition threshold as defined in section 403(11) of title 41.

(b) Members

The members of any peer review group established under subsection (a) of this section shall be individuals who by virtue of their training or experience are eminently qualified to perform the review functions of the group. Not more than one-fourth of the members of any such peer review group shall be officers or employees of the United States.

(c) Advisory council review

If the direct cost of a grant or cooperative agreement (described in subsection (a) of this section) exceeds the simple acquisition threshold as defined by section 403(11) of title 41, the Secretary may make such a grant or cooperative agreement only if such grant or cooperative agreement is recommended—

(1) after peer review required under subsection (a) of this section; and

(2) by the appropriate advisory council.

(d) Conditions

The Secretary may establish limited exceptions to the limitations contained in this section regarding participation of Federal employees and advisory council approval. The circumstances under which the Secretary may make such an exception shall be made public.

(July 1, 1944, ch. 373, title V, § 504, formerly § 506, as added Pub. L. 98–24, § 2(b)(7), Apr. 26, 1983, 97 Stat. 178; amended Pub. L. 99–158, § 3(c), Nov. 20,

1985, 99 Stat. 879; renumbered § 507 and amended Pub. L. 99–570, title IV, §§ 4004(a), 4007, Oct. 27, 1986, 100 Stat. 3207–109, 3207–115; renumbered § 504 and amended Pub. L. 102–321, title I, § 104, July 10, 1992, 106 Stat. 333; Pub. L. 102–352, § 2(a)(7), Aug. 26, 1992, 106 Stat. 938; Pub. L. 105–392, title IV, § 412, Nov. 13, 1998, 112 Stat. 3590; Pub. L. 106–310, div. B, title XXXIV, § 3401(b), Oct. 17, 2000, 114 Stat. 1218.)

CODIFICATION

Section was formerly classified to section 290aa–5 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–3, act July 1, 1944, ch. 373, title V, § 504, formerly title IV, § 455, as added May 14, 1974, Pub. L. 93–282, title II, § 202, 88 Stat. 135; amended Oct. 7, 1980, Pub. L. 96–398, title III, § 325, title IV, § 401(a), title VIII, § 804(a), 94 Stat. 1596, 1597, 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(1), 95 Stat. 560; renumbered title V, § 504, Apr. 26, 1983, Pub. L. 98–24, § 2(b)(6), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98–509, title II, §§ 203, 204, 98 Stat. 2360, 2361; Oct. 7, 1985, Pub. L. 99–117, § 11(b), 99 Stat. 495; Oct. 27, 1986, Pub. L. 99–570, title IV, §§ 4011(a), 4012, 4013, 4021(a), (b)(1), 100 Stat. 3207–115, 3207–116, 3207–124; Nov. 14, 1986, Pub. L. 99–660, title V, § 504, 100 Stat. 3797; Nov. 18, 1988, Pub. L. 100–690, title II, § 2057(1), (2), 102 Stat. 4211, related to National Institute of Mental Health, prior to repeal by Pub. L. 102–321, title I, § 101(b), July 10, 1992, 106 Stat. 331. See section 285p of this title.

A prior section 504 of act July 1, 1944, which was classified to section 222 of this title, was renumbered section 2104 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–3 of this title, renumbered section 2304 of act July 1, 1944, by Pub. L. 99–660 and transferred to section 300cc–3 of this title, prior to repeal by Pub. L. 98–621, § 10(s), Nov. 8, 1984, 98 Stat. 3381.

AMENDMENTS

2000—Pub. L. 106–310 reenacted section catchline without change and amended text generally, substituting, in subsec. (a), provisions requiring, after consultation with the Administrator of the Substance Abuse and Mental Health Services Administration, appropriate peer review of grants, cooperative agreements, and contracts to be administered through the agency that exceed the simple acquisition threshold as defined in section 403 of title 41 for provisions requiring such peer review after consultation with the Directors of the Center for Substance Abuse Treatment, the Center for Substance Abuse Prevention, and the Center for Mental Health Services, in subsec. (b), provisions relating to members of peer groups qualified to perform review functions under subsec. (a) for similar provisions in former subsec. (b) but which included reference to regulatory establishment of such groups, in subsec. (c), provisions relating to advisory council review for provisions relating to requirements and specification of regulations promulgated under subsec. (a), and in subsec. (d), provisions relating to Secretary's authority to establish exceptions to the limitations in section regarding participation of Federal employees and advisory council approval for provisions relating to recommendations.

1998—Subsec. (d)(2). Pub. L. 105–392 substituted "or cooperative agreement" for "cooperative agreement, or contract" wherever appearing in introductory provisions.

1992—Pub. L. 102–352 struck out "by regulation" after "Center for Mental Health Services, shall" in subsec. (a).

Pub. L. 102–321 amended section generally, substituting provisions relating to peer review of grants, cooperative agreements, and contracts administered through the Centers for Substance Abuse Treatment, Substance Abuse Prevention, and Mental Health Services for provisions relating to peer review of biomedical and behavioral research and development grants, cooperative agreements, and contracts administered through the National Institutes of Mental Health, Alcohol Abuse and Alcoholism, and Drug Abuse.

1986—Subsec. (b). Pub. L. 99–570, § 4007, inserted "applications made for" before "grants, cooperative" in introductory text.

1985—Subsec. (e). Pub. L. 99–158 added subsec. (e).

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290aa–3a. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 505, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4004(a), 100 Stat. 3207–109, and amended, which related to advisory councils for the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health, was renumbered section 502 of act July 1, 1944, by Pub. L. 102–321, title I, § 102(1), July 10, 1992, 106 Stat. 331, and transferred to section 290aa–1 of this title.

§ 290aa–4. Data collection

(a) Requirement of annual collection of data on mental illness and substance abuse

The Secretary, acting through the Administrator, shall collect data each year on—

(1) the national incidence and prevalence of the various forms of mental illness and substance abuse; and

(2) the incidence and prevalence of such various forms in major metropolitan areas selected by the Administrator.

(b) Requisite areas of data collection on mental health

With respect to the activities of the Administrator under subsection (a) of this section relating to mental health, the Administrator shall ensure that such activities include, at a minimum, the collection of data on—

(1) the number and variety of public and nonprofit private treatment programs;

(2) the number and demographic characteristics of individuals receiving treatment through such programs;

(3) the type of care received by such individuals; and

(4) such other data as may be appropriate.

(c) Requisite areas of data collection on substance abuse

(1) With respect to the activities of the Administrator under subsection (a) of this section relating to substance abuse, the Administrator shall ensure that such activities include, at a minimum, the collection of data on—

(A) the number of individuals admitted to the emergency rooms of hospitals as a result of the abuse of alcohol or other drugs;

(B) the number of deaths occurring as a result of substance abuse, as indicated in reports by coroners;

(C) the number and variety of public and private nonprofit treatment programs, including the number and type of patient slots available;

(D) the number of individuals seeking treatment through such programs, the number and demographic characteristics of individuals receiving such treatment, the percentage of individuals who complete such programs, and, with respect to individuals receiving such treatment, the length of time between an individual's request for treatment and the commencement of treatment;

(E) the number of such individuals who return for treatment after the completion of a prior treatment in such programs and the method of treatment utilized during the prior treatment;

(F) the number of individuals receiving public assistance for such treatment programs;

(G) the costs of the different types of treatment modalities for drug and alcohol abuse and the aggregate relative costs of each such treatment modality provided within a State in each fiscal year;

(H) to the extent of available information, the number of individuals receiving treatment for alcohol or drug abuse who have private insurance coverage for the costs of such treatment;

(I) the extent of alcohol and drug abuse among high school students and among the general population; and

(J) the number of alcohol and drug abuse counselors and other substance abuse treatment personnel employed in public and private treatment facilities.

(2) Annual surveys shall be carried out in the collection of data under this subsection. Summaries and analyses of the data collected shall be made available to the public.

(d) Development of uniform criteria for data collection

After consultation with the States and with appropriate national organizations, the Administrator shall develop uniform criteria for the collection of data, using the best available technology, pursuant to this section.

(July 1, 1944, ch. 373, title V, § 505, formerly § 509D, as added Pub. L. 100–690, title II, § 2052(a), Nov. 18, 1988, 102 Stat. 4207; amended Pub. L. 101–93, § 3(b), Aug. 16, 1989, 103 Stat. 609; renumbered § 505, Pub. L. 102–321, title I, § 105, July 10, 1992, 106 Stat. 334; Pub. L. 103–43, title XX, § 2010(b)(7), June 10, 1993, 107 Stat. 214.)

CODIFICATION

Section was formerly classified to section 290aa–11 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–4, act July 1, 1944, ch. 373, title V, § 506, formerly § 505, as added Apr. 26, 1983, Pub. L. 98–24, § 2(b)(7), 97 Stat. 178; renumbered § 506, Oct. 27, 1986, Pub. L. 99–570, title IV, § 4004(a), 100 Stat. 3207–109, which related to reports on alcoholism and alcohol and drug abuse, was renumbered section 503 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–2 of this title.

A prior section 505 of act July 1, 1944, was renumbered section 502 by section 102 of Pub. L. 102–321 and is classified to section 290aa–1 of this title.

Another prior section 505 of act July 1, 1944, which was classified to section 223 of this title, was renumbered section 2105 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–4 of this title, renumbered section 2305 of act July 1, 1944, by Pub. L. 99–660 and transferred to section 300cc–4 of this title, prior to repeal by Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

1993—Pub. L. 103–43, § 2010(b)(7), which directed the substitution of "section 238 of this title" for "section 300aaa of this title" in section 505(a)(2) of act July 1, 1944 (this section), could not be executed because the language did not appear. Amendment was probably intended for prior section 505 which was renumbered section 502 and amended generally by Pub. L. 102–321, § 102, which is classified to section 290aa–1 of this title.

1989—Subsec. (c)(1)(A). Pub. L. 101–93, § 3(b)(1), substituted "alcohol or" for "alcohol and".

Subsec. (c)(2). Pub. L. 101–93, § 3(b)(2), substituted "this subsection" for "this section".

NATIONAL SURVEY ON DRUG USE AND HEALTH

Pub. L. 108–358, § 5, Oct. 22, 2004, 118 Stat. 1664, provided that:

"(a) IN GENERAL.—The Secretary of Health and Human Services shall ensure that the National Survey on Drug Use and Health includes questions concerning the use of anabolic steroids.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $1,000,000 for each of fiscal years 2005 through 2010."

REPORTS ON CONSUMPTION OF METHAMPHETAMINE AND OTHER ILLICIT DRUGS

Pub. L. 106–310, div. B, title XXXVI, § 3641, Oct. 17, 2000, 114 Stat. 1237, provided that: "The Secretary of Health and Human Services shall include in each National Household Survey on Drug Abuse appropriate prevalence data and information on the consumption of methamphetamine and other illicit drugs in rural areas, metropolitan areas, and consolidated metropolitan areas."

PUBLIC HEALTH MONITORING OF METHAMPHETAMINE ABUSE

Pub. L. 104–237, title V, § 502, Oct. 3, 1996, 110 Stat. 3112, provided that: "The Secretary of Health and Human Services shall develop a public health monitoring program to monitor methamphetamine abuse in the United States. The program shall include the collection and dissemination of data related to methamphetamine abuse which can be used by public health officials in policy development."

§ 290aa–5. Grants for the benefit of homeless individuals

(a) In general

The Secretary shall award grants, contracts and cooperative agreements to community-based public and private nonprofit entities for the purposes of providing mental health and substance abuse services for homeless individuals. In carrying out this section, the Secretary shall consult with the Interagency Council on the Homeless[1], established under section 11311 of this title.

(b) Preferences

In awarding grants, contracts, and cooperative agreements under subsection (a) of this section, the Secretary shall give a preference to—

(1) entities that provide integrated primary health, substance abuse, and mental health services to homeless individuals;

[1] See Change of Name note below.

(2) entities that demonstrate effectiveness in serving runaway, homeless, and street youth;

(3) entities that have experience in providing substance abuse and mental health services to homeless individuals;

(4) entities that demonstrate experience in providing housing for individuals in treatment for or in recovery from mental illness or substance abuse; and

(5) entities that demonstrate effectiveness in serving homeless veterans.

(c) Services for certain individuals

In awarding grants, contracts, and cooperative agreements under subsection (a) of this section, the Secretary shall not—

(1) prohibit the provision of services under such subsection to homeless individuals who are suffering from a substance abuse disorder and are not suffering from a mental health disorder; and

(2) make payments under subsection (a) of this section to any entity that has a policy of—

(A) excluding individuals from mental health services due to the existence or suspicion of substance abuse; or

(B) has a policy of excluding individuals from substance abuse services due to the existence or suspicion of mental illness.

(d) Term of the awards

No entity may receive a grant, contract, or cooperative agreement under subsection (a) of this section for more than 5 years.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $50,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 506, formerly § 512, as added Pub. L. 98–509, title II, § 206(a), Oct. 19, 1984, 98 Stat. 2361; amended Pub. L. 100–77, title VI, § 613(a), (b), July 22, 1987, 101 Stat. 524; renumbered § 506 and amended Pub. L. 102–321, title I, § 106, July 10, 1992, 106 Stat. 334; Pub. L. 106–310, div. B, title XXXII, § 3202, Oct. 17, 2000, 114 Stat. 1190; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

CODIFICATION

Section was formerly classified to section 290bb–1a of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–5, act July 1, 1944, ch. 373, title V, § 507, formerly § 506, as added Apr. 26, 1983, Pub. L. 98–24, § 2(b)(7), 97 Stat. 178; amended Nov. 20, 1985, Pub. L. 99–158, § 3(c), 99 Stat. 879; renumbered § 507 and amended Oct. 27, 1986, Pub. L. 99–570, title IV, §§ 4004(a), 4007, 100 Stat. 3207–109, 3207–115, which related to peer review of biomedical and behavioral research and development grants, was renumbered section 504 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–3 of this title.

A prior section 506 of act July 1, 1944, which was classified to section 224 of this title, was successively renumbered by subsequent acts, and transferred, see section 238c of this title.

AMENDMENTS

2000—Pub. L. 106–310 amended section catchline and text generally, substituting present provisions for provisions, in subsec. (a), authorizing Secretary to make grants for benefit of homeless individuals through the Administrator of Substance Abuse and Mental Health Services Administration, in subsec. (b), relating to preferences for grants to entities providing integrated primary health, substance abuse, and mental health services, in subsec. (c), relating to services for certain individuals, in subsec. (d), relating to 5-year grants with renewals, and in subsec. (e), authorizing appropriations for fiscal years 1993 and 1994.

Subsec. (a). Pub. L. 106–400 made technical amendment to reference in original act which appears in text as reference to section 11311 of this title.

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to grants for benefit of homeless individuals for provisions relating to alcohol abuse and alcoholism demonstration projects.

1987—Subsecs. (c), (d). Pub. L. 100–77 added subsec. (c), redesignated former subsec. (c) as (d), and substituted ''subsection (a) or (c)'' for ''subsection (a)''.

CHANGE OF NAME

Interagency Council on the Homeless changed to United States Interagency Council on Homelessness by Pub. L. 108–199, div. G, title II, § 216, Jan. 23, 2004, 118 Stat. 394.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290aa–5a. Alcohol and drug prevention or treatment services for Indians and Native Alaskans

(a) In general

The Secretary shall award grants, contracts, or cooperative agreements to public and private nonprofit entities, including Native Alaskan entities and Indian tribes and tribal organizations, for the purpose of providing alcohol and drug prevention or treatment services for Indians and Native Alaskans.

(b) Priority

In awarding grants, contracts, or cooperative agreements under subsection (a) of this section, the Secretary shall give priority to applicants that—

(1) propose to provide alcohol and drug prevention or treatment services on reservations;

(2) propose to employ culturally-appropriate approaches, as determined by the Secretary, in providing such services; and

(3) have provided prevention or treatment services to Native Alaskan entities and Indian tribes and tribal organizations for at least 1 year prior to applying for a grant under this section.

(c) Duration

The Secretary shall award grants, contracts, or cooperative agreements under subsection (a) of this section for a period not to exceed 5 years.

(d) Application

An entity desiring a grant, contract, or cooperative agreement under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(e) Evaluation

An entity that receives a grant, contract, or cooperative agreement under subsection (a) of

this section shall submit, in the application for such grant, a plan for the evaluation of any project undertaken with funds provided under this section. Such entity shall provide the Secretary with periodic evaluations of the progress of such project and such evaluation at the completion of such project as the Secretary determines to be appropriate. The final evaluation submitted by such entity shall include a recommendation as to whether such project shall continue.

(f) Report

Not later than 3 years after October 17, 2000, and annually thereafter, the Secretary shall prepare and submit, to the Committee on Health, Education, Labor, and Pensions of the Senate, a report describing the services provided pursuant to this section.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $15,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 506A, as added Pub. L. 106–310, div. B, title XXXIII, § 3306, Oct. 17, 2000, 114 Stat. 1215.)

§ 290aa–5b. Grants for ecstasy and other club drugs abuse prevention

(a) Authority

The Administrator may make grants to, and enter into contracts and cooperative agreements with, public and nonprofit private entities to enable such entities—

(1) to carry out school-based programs concerning the dangers of the abuse of and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other drugs commonly referred to as ''club drugs'' using methods that are effective and science-based, including initiatives that give students the responsibility to create their own anti-drug abuse education programs for their schools; and

(2) to carry out community-based abuse and addiction prevention programs relating to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs that are effective and science-based.

(b) Use of funds

Amounts made available under a grant, contract or cooperative agreement under subsection (a) of this section shall be used for planning, establishing, or administering prevention programs relating to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs.

(c) Use of funds

(1) Discretionary functions

Amounts provided to an entity under this section may be used—

(A) to carry out school-based programs that are focused on those districts with high or increasing rates of abuse and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs and targeted at populations that are most at risk to start abusing these drugs;

(B) to carry out community-based prevention programs that are focused on those populations within the community that are most at-risk for abuse of and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs;

(C) to assist local government entities to conduct appropriate prevention activities relating to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs;

(D) to train and educate State and local law enforcement officials, prevention and education officials, health professionals, members of community anti-drug coalitions and parents on the signs of abuse of and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs and the options for treatment and prevention;

(E) for planning, administration, and educational activities related to the prevention of abuse of and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs;

(F) for the monitoring and evaluation of prevention activities relating to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs and reporting and disseminating resulting information to the public; and

(G) for targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

(2) Priority

The Administrator shall give priority in awarding grants under this section to rural and urban areas that are experiencing a high rate or rapid increases in abuse and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs.

(d) Allocation and report

(1) Prevention program allocation

Not less than $500,000 of the amount appropriated in each fiscal year to carry out this section shall be made available to the Administrator, acting in consultation with other Federal agencies, to support and conduct periodic analyses and evaluations of effective prevention programs for abuse of and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs and the development of appropriate strategies for disseminating information about and implementing such programs.

(2) Report

The Administrator shall annually prepare and submit to the Committee on Health, Education, Labor, and Pensions, the Committee on the Judiciary, and the Committee on Appropriations of the Senate, and the Committee on Commerce, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives, a report containing the results of the analyses and evaluations conducted under paragraph (1).

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section—

(1) $10,000,000 for fiscal year 2001; and

(2) such sums as may be necessary for each succeeding fiscal year.

(July 1, 1944, ch. 373, title V, § 506B, as added Pub. L. 106–310, div. B, title XXXVI, § 3665(a), Oct. 17, 2000, 114 Stat. 1244.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

FINDINGS

Pub. L. 106–310, div. B, title XXXVI, § 3662, Oct. 17, 2000, 114 Stat. 1241, provided that: ''Congress makes the following findings:

''(1) The illegal importation of 3,4-methylenedioxy methamphetamine, commonly referred to as 'MDMA' or 'Ecstasy' (referred to in this subtitle [subtitle C (§§ 3661–3665) of title XXXVI of div. B of Pub. L. 106–310, see section 3661 of Pub. L. 106–310, set out as a Short Title of 2000 Amendment note under section 201 of this title] as 'Ecstasy'), has increased in recent years, as evidenced by the fact that Ecstasy seizures by the United States Customs Service have increased from less than 500,000 tablets during fiscal year 1997 to more than 9,000,000 tablets during the first 9 months of fiscal year 2000.

''(2) Use of Ecstasy can cause long-lasting, and perhaps permanent, damage to the serotonin system of the brain, which is fundamental to the integration of information and emotion, and this damage can cause long-term problems with learning and memory.

''(3) Due to the popularity and marketability of Ecstasy, there are numerous Internet websites with information on the effects of Ecstasy, the production of Ecstasy, and the locations of Ecstasy use (often referred to as 'raves'). The availability of this information targets the primary users of Ecstasy, who are most often college students, young professionals, and other young people from middle- to high-income families.

''(4) Greater emphasis needs to be placed on—

''(A) penalties associated with the manufacture, distribution, and use of Ecstasy;

''(B) the education of young people on the negative health effects of Ecstasy, since the reputation of Ecstasy as a 'safe' drug is the most dangerous component of Ecstasy;

''(C) the education of State and local law enforcement agencies regarding the growing problem of Ecstasy trafficking across the United States;

''(D) reducing the number of deaths caused by Ecstasy use and the combined use of Ecstasy with other 'club' drugs and alcohol; and

''(E) adequate funding for research by the National Institute on Drug Abuse to—

''(i) identify those most vulnerable to using Ecstasy and develop science-based prevention approaches tailored to the specific needs of individuals at high risk;

''(ii) understand how Ecstasy produces its toxic effects and how to reverse neurotoxic damage;

''(iii) develop treatments, including new medications and behavioral treatment approaches;

''(iv) better understand the effects that Ecstasy has on the developing children and adolescents; and

''(v) translate research findings into useful tools and ensure their effective dissemination.''

§§ 290aa–6 to 290aa–8. Transferred

CODIFICATION

Section 290aa–6, act July 1, 1944, ch. 373, title V, § 508, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–111, and amended, which related to the Office of Substance Abuse Prevention, was renumbered section 515 of act July 1, 1944, by Pub. L. 102–321, title I, § 113(b), July 10, 1992, 106 Stat. 345, and transferred to section 290bb–21 of this title.

Section 290aa–7, act July 1, 1944, ch. 373, title V, § 509, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–112, which related to Alcohol and Drug Abuse Information Clearinghouse, was renumbered section 516 of act July 1, 1944, by Pub. L. 102–321, title I, § 113(f)(1)–(3), July 10, 1992, 106 Stat. 345, and transferred to section 290bb–22 of this title.

Section 290aa–8, act July 1, 1944, ch. 373, title V, § 509A, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–113, and amended, which related to alcohol and drug abuse prevention, treatment, and rehabilitation model projects for high risk youth, was renumbered section 517 of act July 1, 1944, by Pub. L. 102–321, title I, § 114(a), July 10, 1992, 106 Stat. 346, and transferred to section 290bb–23 of this title.

§§ 290aa–9, 290aa–10. Repealed. Pub. L. 102–321, title I, § 120(a), July 10, 1992, 106 Stat. 358

Section 290aa–9, act July 1, 1944, ch. 373, title V, § 509B, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4006, 100 Stat. 3207–114; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(11), 106 Stat. 3505, related to research on public health emergencies.

Section 290aa–10, act July 1, 1944, ch. 373, title V, § 509C, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 420 [4020], 100 Stat. 3207–122, related to guidelines for use of animals in research.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290aa–11. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 509D, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2052(a), 102 Stat. 4207, and amended, which related to the collection of data on mental illness and substance abuse, was renumbered section 505 of act July 1, 1944, by Pub. L. 102–321, title I, § 105, July 10, 1992, 106 Stat. 334, and transferred to section 290aa–4 of this title.

§§ 290aa–12 to 290aa–14. Repealed. Pub. L. 102–321, title I, § 120(a), July 10, 1992, 106 Stat. 358

Section 290aa–12, act July 1, 1944, ch. 373, title V, § 509E, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2053, 102 Stat. 4208; amended Aug. 16, 1989, Pub. L. 101–93, § 3(c), 103 Stat. 610; Aug. 15, 1990, Pub. L. 101–374, § 2(a)–(c)(2), 104 Stat. 456, related to reduction of waiting periods for drug abuse treatment.

Section 290aa–13, act July 1, 1944, ch. 373, title V, § 509F, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2054, 102 Stat. 4209, related to model projects for pregnant and post partum women and their infants.

Section 290aa–14, act July 1, 1944, ch. 373, title V, § 509G, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2055, 102 Stat. 4210; amended Aug. 16, 1989, Pub. L. 101–93, § 3(d), 103 Stat. 610, related to drug abuse demonstration projects of national significance.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

PART B—CENTERS AND PROGRAMS

SUBPART 1—CENTER FOR SUBSTANCE ABUSE TREATMENT

§ 290bb. Center for Substance Abuse Treatment

(a) Establishment

There is established in the Administration a Center for Substance Abuse Treatment (hereafter in this section referred to as the ''Center''). The Center shall be headed by a Director (hereafter in this section referred to as the ''Director'') appointed by the Secretary from among individuals with extensive experience or academic qualifications in the treatment of substance abuse or in the evaluation of substance abuse treatment systems.

(b) Duties

The Director of the Center shall—

(1) administer the substance abuse treatment block grant program authorized in section 300x–21 of this title;

(2) ensure that emphasis is placed on children and adolescents in the development of treatment programs;

(3) collaborate with the Attorney General to develop programs to provide substance abuse treatment services to individuals who have had contact with the Justice system, especially adolescents;

(4) collaborate with the Director of the Center for Substance Abuse Prevention in order to provide outreach services to identify individuals in need of treatment services, with emphasis on the provision of such services to pregnant and postpartum women and their infants and to individuals who abuse drugs intravenously;

(5) collaborate with the Director of the National Institute on Drug Abuse, with the Director of the National Institute on Alcohol Abuse and Alcoholism, and with the States to promote the study, dissemination, and implementation of research findings that will improve the delivery and effectiveness of treatment services;

(6) collaborate with the Administrator of the Health Resources and Services Administration and the Administrator of the Centers for Medicare & Medicaid Services to promote the increased integration into the mainstream of the health care system of the United States of programs for providing treatment services;

(7) evaluate plans submitted by the States pursuant to section 300x–32(a)(6) of this title in order to determine whether the plans adequately provide for the availability, allocation, and effectiveness of treatment services;

(8) sponsor regional workshops on improving the quality and availability of treatment services;

(9) provide technical assistance to public and nonprofit private entities that provide treatment services, including technical assistance with respect to the process of submitting to the Director applications for any program of grants or contracts carried out by the Director;

(10) encourage the States to expand the availability (relative to fiscal year 1992) of programs providing treatment services through self-run, self-supported recovery based on the programs of housing operated pursuant to section 300x–25 of this title;

(11) carry out activities to educate individuals on the need for establishing treatment facilities within their communities;

(12) encourage public and private entities that provide health insurance to provide benefits for outpatient treatment services and other nonhospital-based treatment services;

(13) evaluate treatment programs to determine the quality and appropriateness of various forms of treatment, which shall be carried out through grants, contracts, or cooperative agreements provided to public or nonprofit private entities; and

(14) in carrying out paragraph (13), assess the quality, appropriateness, and costs of various treatment forms for specific patient groups.

(c) Grants and contracts

In carrying out the duties established in subsection (b) of this section, the Director may make grants to and enter into contracts and cooperative agreements with public and nonprofit private entities.

(July 1, 1944, ch. 373, title V, § 507, as added Pub. L. 102–321, title I, § 107(2), July 10, 1992, 106 Stat. 335; amended Pub. L. 106–310, div. B, title XXXI, § 3112(a), Oct. 17, 2000, 114 Stat. 1188; Pub. L. 108–173, title IX, § 900(e)(2)(B), Dec. 8, 2003, 117 Stat. 2372.)

PRIOR PROVISIONS

A prior section 290bb, act July 1, 1944, ch. 373, title V, § 510, formerly Pub. L. 91–616, title V, § 501, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038; amended Pub. L. 95–622, title II, § 268(c), (d), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96–180, § 14, Jan. 2, 1980, 93 Stat. 1305; renumbered § 510 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(9), 97 Stat. 179; Oct. 19, 1984, Pub. L. 98–509, title II, §§ 205(a)(1), 206(c)(1), 98 Stat. 2361, 2362, related to encouragement of alcohol abuse and alcoholism research, prior to repeal by Pub. L. 102–321, § 122(b)(1). Prior to repeal, section 510(b) of act July 1, 1944, was renumbered section 464H(b) by Pub. L. 102–321 and transferred to section 285n(b) of this title.

A prior section 507 of act July 1, 1944, which was classified to section 290aa–5 of this title, was renumbered section 504 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–3 of this title.

AMENDMENTS

2003—Subsec. (b)(6). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

2000—Subsec. (b)(2) to (6). Pub. L. 106–310, § 3112(a)(1), (2), added pars. (2) and (3) and redesignated former pars. (2) to (4) as (4) to (6), respectively. Former pars. (5) and (6) redesignated (7) and (8), respectively.

Subsec. (b)(7). Pub. L. 106–310, § 3112(a)(1), (3), redesignated par. (5) as (7) and substituted ''services'' for ''services, and monitor the use of revolving loan funds pursuant to section 300x–25 of this title''. Former par. (7) redesignated (9).

Subsec. (b)(8) to (12). Pub. L. 106–310, § 3112(a)(1), redesignated pars. (6) to (10) as (8) to (12), respectively. Former pars. (11) and (12) redesignated (13) and (14), respectively.

Subsec. (b)(13). Pub. L. 106–310, § 3112(a)(1), (4), redesignated par. (11) as (13) and substituted ''treatment, which shall'' for ''treatment, including the effect of living in housing provided by programs established under section 300x–25 of this title, which shall''.

Subsec. (b)(14). Pub. L. 106–310, § 3112(a)(1), (5), redesignated par. (12) as (14) and substituted ''paragraph (13)'' for ''paragraph (11)''.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290bb–1. Residential treatment programs for pregnant and postpartum women

(a) In general

The Director of the Center for Substance Abuse Treatment shall provide awards of grants, cooperative agreement, or contracts to public and nonprofit private entities for the purpose of providing to pregnant and postpartum women treatment for substance abuse through programs in which, during the course of receiving treatment—

(1) the women reside in facilities provided by the programs;

(2) the minor children of the women reside with the women in such facilities, if the women so request; and

(3) the services described in subsection (d) of this section are available to or on behalf of the women.

(b) Availability of services for each participant

A funding agreement for an award under subsection (a) of this section for an applicant is that, in the program operated pursuant to such subsection—

(1) treatment services and each supplemental service will be available through the applicant, either directly or through agreements with other public or nonprofit private entities; and

(2) the services will be made available to each woman admitted to the program.

(c) Individualized plan of services

A funding agreement for an award under subsection (a) of this section for an applicant is that—

(1) in providing authorized services for an eligible woman pursuant to such subsection, the applicant will, in consultation with the women, prepare an individualized plan for the provision to the woman of the services; and

(2) treatment services under the plan will include—

(A) individual, group, and family counseling, as appropriate, regarding substance abuse; and

(B) follow-up services to assist the woman in preventing a relapse into such abuse.

(d) Required supplemental services

In the case of an eligible woman, the services referred to in subsection (a)(3) of this section are as follows:

(1) Prenatal and postpartum health care.

(2) Referrals for necessary hospital services.

(3) For the infants and children of the woman—

(A) pediatric health care, including treatment for any perinatal effects of maternal substance abuse and including screenings regarding the physical and mental development of the infants and children;

(B) counseling and other mental health services, in the case of children; and

(C) comprehensive social services.

(4) Providing supervision of children during periods in which the woman is engaged in therapy or in other necessary health or rehabilitative activities.

(5) Training in parenting.

(6) Counseling on the human immunodeficiency virus and on acquired immune deficiency syndrome.

(7) Counseling on domestic violence and sexual abuse.

(8) Counseling on obtaining employment, including the importance of graduating from a secondary school.

(9) Reasonable efforts to preserve and support the family units of the women, including promoting the appropriate involvement of parents and others, and counseling the children of the women.

(10) Planning for and counseling to assist reentry into society, both before and after discharge, including referrals to any public or nonprofit private entities in the community involved that provide services appropriate for the women and the children of the women.

(11) Case management services, including—

(A) assessing the extent to which authorized services are appropriate for the women and their children;

(B) in the case of the services that are appropriate, ensuring that the services are provided in a coordinated manner; and

(C) assistance in establishing eligibility for assistance under Federal, State, and local programs providing health services, mental health services, housing services, employment services, educational services, or social services.

(e) Minimum qualifications for receipt of award

(1) Certification by relevant State agency

With respect to the principal agency of the State involved that administers programs relating to substance abuse, the Director may make an award under subsection (a) of this section to an applicant only if the agency has certified to the Director that—

(A) the applicant has the capacity to carry out a program described in subsection (a) of this section;

(B) the plans of the applicant for such a program are consistent with the policies of such agency regarding the treatment of substance abuse; and

(C) the applicant, or any entity through which the applicant will provide authorized services, meets all applicable State licensure or certification requirements regarding the provision of the services involved.

(2) Status as medicaid provider

(A) Subject to subparagraphs (B) and (C), the Director may make an award under subsection (a) of this section only if, in the case of any authorized service that is available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i) the applicant for the award will provide the service directly, and the applicant has

entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the applicant will enter into an agreement with a public or nonprofit private entity under which the entity will provide the service, and the entity has entered into such a participation agreement plan and is qualified to receive such payments.

(B)(i) In the case of an entity making an agreement pursuant to subparagraph (A)(ii) regarding the provision of services, the requirement established in such subparagraph regarding a participation agreement shall be waived by the Director if the entity does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits plan.

(ii) A determination by the Director of whether an entity referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the entity accepts voluntary donations regarding the provision of services to the public.

(C) With respect to any authorized service that is available pursuant to the State plan described in subparagraph (A), the requirements established in such subparagraph shall not apply to the provision of any such service by an institution for mental diseases to an individual who has attained 21 years of age and who has not attained 65 years of age. For purposes of the preceding sentence, the term ''institution for mental diseases'' has the meaning given such term in section 1905(i) of the Social Security Act [42 U.S.C. 1396d(i)].

(f) Requirement of matching funds

(1) In general

With respect to the costs of the program to be carried out by an applicant pursuant to subsection (a) of this section, a funding agreement for an award under such subsection is that the applicant will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

(A) for the first fiscal year for which the applicant receives payments under an award under such subsection, is not less than $1 for each $9 of Federal funds provided in the award;

(B) for any second such fiscal year, is not less than $1 for each $9 of Federal funds provided in the award; and

(C) for any subsequent such fiscal year, is not less than $1 for each $3 of Federal funds provided in the award.

(2) Determination of amount contributed

Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(g) Outreach

A funding agreement for an award under subsection (a) of this section for an applicant is that the applicant will provide outreach services in the community involved to identify women who are engaging in substance abuse and to encourage the women to undergo treatment for such abuse.

(h) Accessibility of program; cultural context of services

A funding agreement for an award under subsection (a) of this section for an applicant is that—

(1) the program operated pursuant to such subsection will be operated at a location that is accessible to low-income pregnant and postpartum women; and

(2) authorized services will be provided in the language and the cultural context that is most appropriate.

(i) Continuing education

A funding agreement for an award under subsection (a) of this section is that the applicant involved will provide for continuing education in treatment services for the individuals who will provide treatment in the program to be operated by the applicant pursuant to such subsection.

(j) Imposition of charges

A funding agreement for an award under subsection (a) of this section for an applicant is that, if a charge is imposed for the provision of authorized services to on[1] behalf of an eligible woman, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the woman involved; and

(3) will not be imposed on any such woman with an income of less than 185 percent of the official poverty line, as established by the Director of the Office for Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(k) Reports to Director

A funding agreement for an award under subsection (a) of this section is that the applicant involved will submit to the Director a report—

(1) describing the utilization and costs of services provided under the award;

(2) specifying the number of women served, the number of infants served, and the type and costs of services provided; and

(3) providing such other information as the Director determines to be appropriate.

(*l*) Requirement of application

The Director may make an award under subsection (a) of this section only if an application for the award is submitted to the Director containing such agreements, and the application is in such form, is made in such manner, and contains such other agreements and such assurances and information as the Director determines to be necessary to carry out this section.

(m) Equitable allocation of awards

In making awards under subsection (a) of this section, the Director shall ensure that the

[1] So in original. Probably should be preceded by ''or''.

awards are equitably allocated among the principal geographic regions of the United States, subject to the availability of qualified applicants for the awards.

(n) Duration of award

The period during which payments are made to an entity from an award under subsection (a) of this section may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Director of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed to establish a limitation on the number of awards under such subsection that may be made to an entity.

(*o*) Evaluations; dissemination of findings

The Director shall, directly or through contract, provide for the conduct of evaluations of programs carried out pursuant to subsection (a) of this section. The Director shall disseminate to the States the findings made as a result of the evaluations.

(p) Reports to Congress

Not later than October 1, 1994, the Director shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing programs carried out pursuant to this section. Every 2 years thereafter, the Director shall prepare a report describing such programs carried out during the preceding 2 years, and shall submit the report to the Administrator for inclusion in the biennial report under section 290aa(k) of this title. Each report under this subsection shall include a summary of any evaluations conducted under subsection (m) of this section during the period with respect to which the report is prepared.

(q) Definitions

For purposes of this section:

(1) The term ''authorized services'' means treatment services and supplemental services.

(2) The term ''eligible woman'' means a woman who has been admitted to a program operated pursuant to subsection (a) of this section.

(3) The term ''funding agreement under subsection (a)'' of this section, with respect to an award under subsection (a) of this section, means that the Director may make the award only if the applicant makes the agreement involved.

(4) The term ''treatment services'' means treatment for substance abuse, including the counseling and services described in subsection (c)(2) of this section.

(5) The term ''supplemental services'' means the services described in subsection (d) of this section.

(r) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary to fiscal years 2001 through 2003.

(July 1, 1944, ch. 373, title V, §508, as added Pub. L. 102–321, title I, §108(a), July 10, 1992, 106 Stat. 336; amended Pub. L. 106–310, div. B, title XXXIII, §3301(a), Oct. 17, 2000, 114 Stat. 1207.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 290bb–1, act July 1, 1944, ch. 373, title V, §511, formerly Pub. L. 91–616, title V, §503, formerly §504, as added Pub. L. 94–371, §7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 95–622, title I, §110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96–180, §16, Jan. 2, 1980, 93 Stat. 1305; renumbered §503 of Pub. L. 91–616 and amended Pub. L. 97–35, title IX, §965(b), (c), Aug. 13, 1981, 95 Stat. 594; renumbered §511 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(9), 97 Stat. 179; Oct. 27, 1986, Pub. L. 99–570, title IV, §4008, 100 Stat. 3207–115, which related to National Alcohol Research Centers and a mandatory grant for research of the effects of alcohol on the elderly, was renumbered section 464J of title IV of act July 1, 1944, by Pub. L. 102–321 and transferred to section 285n–2 of this title.

A prior section 508 of act July 1, 1944, which was classified to section 290aa–6 of this title, was renumbered section 515 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–21 of this title.

AMENDMENTS

2000—Subsec. (r). Pub. L. 106–310 reenacted heading without change and amended text generally, substituting provisions authorizing appropriations for fiscal years 2001 to 2003 for provisions authorizing appropriations for fiscal years 1993 and 1994 and authorizing appropriations from the special forfeiture fund of the Director of the Office of National Drug Control Policy.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

TRANSITIONAL AND SAVINGS PROVISIONS

Section 108(b) of Pub. L. 102–321 provided that:

''(1) SAVINGS PROVISION FOR COMPLETION OF CURRENT PROJECTS.—

''(A) Subject to paragraph (2), in the case of any project for which a grant under former section 509F [former 42 U.S.C. 290aa–13] was provided for fiscal year 1992, the Secretary of Health and Human Services may continue in effect the grant for fiscal year 1993 and subsequent fiscal years, subject to the duration of any such grant not exceeding the period determined by the Secretary in first approving the grant. Subject to approval by the Administrator, such

grants may be administered by the Center for Substance Abuse Prevention.

''(B) Subparagraph (A) shall apply with respect to a project notwithstanding that the project is not eligible to receive a grant under current section 508 or 509 [42 U.S.C. 290bb–1, 290bb–2].

''(2) LIMITATION ON FUNDING FOR CERTAIN PROJECTS.—With respect to the amounts appropriated for any fiscal year under current section 508, any such amounts appropriated in excess of the amount appropriated for fiscal year 1992 under former section 509F shall be available only for grants under current section 508.

''(3) DEFINITIONS.—For purposes of this subsection:

''(A) The term 'former section 509F' means section 509F of the Public Health Service Act [former 42 U.S.C. 290aa–13], as in effect for fiscal year 1992.

''(B) The term 'current section 508' means section 508 of the Public Health Service Act [42 U.S.C. 290bb–1], as in effect for fiscal year 1993 and subsequent fiscal years.

''(C) The term 'current section 509' means section 509 of the Public Health Service Act [42 U.S.C. 290bb–2], as in effect for fiscal year 1993 and subsequent fiscal years.''

§ 290bb–1a. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 512, as added Oct. 19, 1984, Pub. L. 98–509, title II, § 206(a), 98 Stat. 2361, and amended, which related to alcohol abuse and alcoholism demonstration projects, was renumbered section 506 of act July 1, 1944, by Pub. L. 102–321, title I, § 106(a), July 10, 1992, 106 Stat. 334, and transferred to section 290aa–5 of this title.

§ 290bb–2. Priority substance abuse treatment needs of regional and national significance

(a) Projects

The Secretary shall address priority substance abuse treatment needs of regional and national significance (as determined under subsection (b) of this section) through the provision of or through assistance for—

(1) knowledge development and application projects for treatment and rehabilitation and the conduct or support of evaluations of such projects;

(2) training and technical assistance; and

(3) targeted capacity response programs.

The Secretary may carry out the activities described in this section directly or through grants or cooperative agreements with States, political subdivisions of States, Indian tribes and tribal organizations, other public or nonprofit private entities.

(b) Priority substance abuse treatment needs

(1) In general

Priority substance abuse treatment needs of regional and national significance shall be determined by the Secretary after consultation with States and other interested groups. The Secretary shall meet with the States and interested groups on an annual basis to discuss program priorities.

(2) Special consideration

In developing program priorities under paragraph (1), the Secretary shall give special consideration to promoting the integration of substance abuse treatment services into primary health care systems.

(c) Requirements

(1) In general

Recipients of grants, contracts, or cooperative agreements under this section shall comply with information and application requirements determined appropriate by the Secretary.

(2) Duration of award

With respect to a grant, contract, or cooperative agreement awarded under this section, the period during which payments under such award are made to the recipient may not exceed 5 years.

(3) Matching funds

The Secretary may, for projects carried out under subsection (a) of this section, require that entities that apply for grants, contracts, or cooperative agreements under that project provide non-Federal matching funds, as determined appropriate by the Secretary, to ensure the institutional commitment of the entity to the projects funded under the grant, contract, or cooperative agreement. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(4) Maintenance of effort

With respect to activities for which a grant, contract, or cooperative agreement is awarded under this section, the Secretary may require that recipients for specific projects under subsection (a) of this section agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the fiscal year for which the entity receives such a grant, contract, or cooperative agreement.

(d) Evaluation

The Secretary shall evaluate each project carried out under subsection (a)(1) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(e) Information and education

The Secretary shall establish comprehensive information and education programs to disseminate and apply the findings of the knowledge development and application, training and technical assistance programs, and targeted capacity response programs under this section to the general public, to health professionals and other interested groups. The Secretary shall make every effort to provide linkages between the findings of supported projects and State agencies responsible for carrying out substance abuse prevention and treatment programs.

(f) Authorization of appropriation

There are authorized to be appropriated to carry out this section, $300,000,000 for fiscal year 2001 and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 509, as added Pub. L. 102–321, title I, § 108(a), July 10, 1992, 106 Stat. 341; amended Pub. L. 106–310, div. B, title XXXIII, § 3301(b), Oct. 17, 2000, 114 Stat. 1207.)

PRIOR PROVISIONS

A prior section 290bb–2, act July 1, 1944, ch. 373, title V, § 513, formerly § 512, formerly Pub. L. 91–616, title V, § 504, formerly § 503, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 96–180, § 15, Jan. 2, 1980, 93 Stat. 1305; renumbered § 504 of Pub. L. 91–616 and amended Pub. L. 97–35, title IX, § 965(a), (c), Aug. 13, 1981, 95 Stat. 594; Pub. L. 97–414, § 9(e), Jan. 4, 1983, 96 Stat. 2064; renumbered § 512 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(9), 97 Stat. 179; renumbered § 513 and amended Oct. 19, 1984, Pub. L. 98–509, title II, §§ 206(a), 207(a), 98 Stat. 2361, 2362; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4010(a), 100 Stat. 3207–115; July 22, 1987, Pub. L. 100–77, title VI, § 613(c), 101 Stat. 524; Nov. 4, 1988, Pub. L. 100–607, title VIII, § 822, 102 Stat. 3171; Nov. 7, 1988, Pub. L. 100–628, title VI, § 622, 102 Stat. 3244; Nov. 18, 1988, Pub. L. 100–690, title II, § 2056(a), 102 Stat. 4211; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), 103 Stat. 615; Nov. 29, 1990, Pub. L. 101–645, title V, § 522, 104 Stat. 4734, authorized appropriations to carry out alcohol abuse and alcoholism research, prior to repeal by Pub. L. 102–321, § 122(d)[(e)].

A prior section 509 of act July 1, 1944, which was classified to section 290aa–7 of this title, was renumbered section 516 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–22 of this title.

AMENDMENTS

2000—Pub. L. 106–310 amended section catchline and text generally, substituting provisions relating to priority substance abuse treatment needs of regional and national significance for provisions relating to outpatient treatment programs for pregnant and postpartum women.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290bb–2a. Medical treatment of narcotics addiction; report to Congress

The Secretary of Health and Human Services, after consultation with the Attorney General and with national organizations representative of persons with knowledge and experience in the treatment of narcotic addicts, shall determine the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts, and shall report thereon from time to time to the Congress.

(Pub. L. 91–513, title I, § 4, Oct. 27, 1970, 84 Stat. 1241; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was not enacted as part of the Public Health Service Act which comprises this chapter.

Section was formerly classified to section 257a of this title.

CHANGE OF NAME

"Secretary of Health and Human Services" substituted in text for "Secretary of Health, Education, and Welfare" pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§§ 290bb–3 to 290bb–5. Repealed. Pub. L. 106–310, div. B, title XXXIII, § 3301(c)(1)–(3), Oct. 17, 2000, 114 Stat. 1209

Section 290bb–3, act July 1, 1944, ch. 373, title V, § 510, as added Pub. L. 102–321, title I, § 109, July 10, 1992, 106 Stat. 342, related to demonstration projects of national significance.

A prior section 510 of act July 1, 1944, was classified to section 290bb of this title, prior to repeal by Pub. L. 102–321, § 122(b)(1). Prior to repeal, section 510(b) of act July 1, 1944, was renumbered section 464H(b) by Pub. L. 102–321 and transferred to section 285n(b) of this title.

Another prior section 510 of act July 1, 1944, which was classified to section 228 of this title, was successively renumbered by subsequent acts and transferred, see section 238g of this title.

Section 290bb–4, act July 1, 1944, ch. 373, title V, § 511, as added Pub. L. 102–321, title I, § 110, July 10, 1992, 106 Stat. 343, related to grants for substance abuse treatment in State and local criminal justice systems.

A prior section 511 of act July 1, 1944, which was classified to section 290bb–1 of this title, was renumbered section 464J of act July 1, 1944, by Pub. L. 102–321 and transferred to section 285n–2 of this title.

Another prior section 511 of act July 1, 1944, which was classified to section 229 of this title, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

Section 290bb–5, act July 1, 1944, ch. 373, title V, § 512, as added Pub. L. 102–321, title I, § 111, July 10, 1992, 106 Stat. 344, related to training in provision of treatment services.

A prior section 512 of act July 1, 1944, which was classified to section 290bb–1a of this title, was renumbered section 506 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–5 of this title.

Another prior section 512 of act July 1, 1944, was renumbered section 513 by Pub. L. 98–509 and classified to section 290bb–2 of this title, prior to repeal by Pub. L. 102–321, § 122(d)[(e)].

Another prior section 512 of act July 1, 1944, which was classified to section 229a of this title, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

§ 290bb–6. Action by Center for Substance Abuse Treatment and States concerning military facilities

(a) Center for Substance Abuse Treatment

The Director of the Center for Substance Abuse Treatment shall—

(1) coordinate with the agencies represented on the Commission on Alternative Utilization of Military Facilities the utilization of military facilities or parts thereof, as identified by such Commission, established under the National Defense Authorization Act of 1989, that could be utilized or renovated to house nonviolent persons for drug treatment purposes;

(2) notify State agencies responsible for the oversight of drug abuse treatment entities and programs of the availability of space at the installations identified in paragraph (1); and

(3) assist State agencies responsible for the oversight of drug abuse treatment entities and programs in developing methods for adapting the installations described in paragraph (1) into residential treatment centers.

(b) States

With regard to military facilities or parts thereof, as identified by the Commission on Alternative Utilization of Military Facilities established under section 3042 of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988,[1] that could be utilized or renovated to house nonviolent persons for drug treatment purposes, State agencies

[1] See References in Text note below.

responsible for the oversight of drug abuse treatment entities and programs shall—

(1) establish eligibility criteria for the treatment of individuals at such facilities;

(2) select treatment providers to provide drug abuse treatment at such facilities;

(3) provide assistance to treatment providers selected under paragraph (2) to assist such providers in securing financing to fund the cost of the programs at such facilities; and

(4) establish, regulate, and coordinate with the military official in charge of the facility, work programs for individuals receiving treatment at such facilities.

(c) Reservation of space

Prior to notifying States of the availability of space at military facilities under subsection (a)(2) of this section, the Director may reserve space at such facilities to conduct research or demonstration projects.

(July 1, 1944, ch. 373, title V, § 513, formerly § 561, as added Pub. L. 100–690, title II, § 2081(a), Nov. 18, 1988, 102 Stat. 4215; renumbered § 513 and amended Pub. L. 102–321, title I, § 112(a), (b)(1), July 10, 1992, 106 Stat. 344, 345.)

REFERENCES IN TEXT

The National Defense Authorization Act of 1989, referred to in subsec. (a)(1), probably means the National Defense Authorization Act, Fiscal Year 1989, Pub. L. 100–456, Sept. 29, 1988, 102 Stat. 1918. For complete classification of this Act to the Code, see Tables.

Section 3042 of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, referred to in subsec. (b), probably should be a reference to section 2819 of the National Defense Authorization Act, Fiscal Year 1989, Pub. L. 100–456, div. B, title XXVIII, Sept. 29, 1988, 102 Stat. 2119, which established the Commission on Alternative Utilization of Military Facilities and which was set out as a note under section 2391 of Title 10, Armed Forces, prior to repeal by Pub. L. 105–261, div. A, title X, § 1031(b), Oct. 17, 1998, 112 Stat. 2123. The Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988 is subtitle A of title II of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4193, and does not contain a section 3042.

CODIFICATION

Section was formerly classified to section 290ff of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 513 of act July 1, 1944, was classified to section 290bb–2 of this title prior to repeal by Pub. L. 102–321, title I, § 122(d)[(e)], July 10, 1992, 106 Stat. 360.

Another prior section 513 of act July 1, 1944, which was classified to section 229b of this title, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321, § 112(b)(1), substituted provisions relating to Center for Substance Abuse Treatment for provisions relating to National Institute on Drug Abuse in heading and text.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290bb–7. Substance abuse treatment services for children and adolescents

(a) In general

The Secretary shall award grants, contracts, or cooperative agreements to public and private nonprofit entities, including Native Alaskan entities and Indian tribes and tribal organizations, for the purpose of providing substance abuse treatment services for children and adolescents.

(b) Priority

In awarding grants, contracts, or cooperative agreements under subsection (a) of this section, the Secretary shall give priority to applicants who propose to—

(1) apply evidenced-based and cost effective methods for the treatment of substance abuse among children and adolescents;

(2) coordinate the provision of treatment services with other social service agencies in the community, including educational, juvenile justice, child welfare, and mental health agencies;

(3) provide a continuum of integrated treatment services, including case management, for children and adolescents with substance abuse disorders and their families;

(4) provide treatment that is gender-specific and culturally appropriate;

(5) involve and work with families of children and adolescents receiving treatment;

(6) provide aftercare services for children and adolescents and their families after completion of substance abuse treatment; and

(7) address the relationship between substance abuse and violence.

(c) Duration of grants

The Secretary shall award grants, contracts, or cooperative agreements under subsection (a) of this section for periods not to exceed 5 fiscal years.

(d) Application

An entity desiring a grant, contract, or cooperative agreement under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(e) Evaluation

An entity that receives a grant, contract, or cooperative agreement under subsection (a) of this section shall submit, in the application for such grant, contract, or cooperative agreement, a plan for the evaluation of any project undertaken with funds provided under this section. Such entity shall provide the Secretary with periodic evaluations of the progress of such project and such evaluation at the completion of such project as the Secretary determines to be appropriate.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $40,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 514, as added Pub. L. 106–310, div. B, title XXXI, § 3104(a), Oct. 17, 2000, 114 Stat. 1171.)

CODIFICATION

Another section 514 of act July 1, 1944, is classified to section 290bb–9 of this title.

§ 290bb–8. Early intervention services for children and adolescents

(a) In general

The Secretary shall award grants, contracts, or cooperative agreements to public and private nonprofit entities, including local educational agencies (as defined in section 8801 of title 20),[1] for the purpose of providing early intervention substance abuse services for children and adolescents.

(b) Priority

In awarding grants, contracts, or cooperative agreements under subsection (a) of this section, the Secretary shall give priority to applicants who demonstrate an ability to—

(1) screen for and assess substance use and abuse by children and adolescents;

(2) make appropriate referrals for children and adolescents who are in need of treatment for substance abuse;

(3) provide early intervention services, including counseling and ancillary services, that are designed to meet the developmental needs of children and adolescents who are at risk for substance abuse; and

(4) develop networks with the educational, juvenile justice, social services, and other agencies and organizations in the State or local community involved that will work to identify children and adolescents who are in need of substance abuse treatment services.

(c) Condition

In awarding grants, contracts, or cooperative agreements under subsection (a) of this section, the Secretary shall ensure that such grants, contracts, or cooperative agreements are allocated, subject to the availability of qualified applicants, among the principal geographic regions of the United States, to Indian tribes and tribal organizations, and to urban and rural areas.

(d) Duration of grants

The Secretary shall award grants, contracts, or cooperative agreements under subsection (a) of this section for periods not to exceed 5 fiscal years.

(e) Application

An entity desiring a grant, contract, or cooperative agreement under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(f) Evaluation

An entity that receives a grant, contract, or cooperative agreement under subsection (a) of this section shall submit, in the application for such grant, contract, or cooperative agreement, a plan for the evaluation of any project undertaken with funds provided under this section. Such entity shall provide the Secretary with periodic evaluations of the progress of such project and such evaluation at the completion of such project as the Secretary determines to be appropriate.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $20,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 514A, as added Pub. L. 106–310, div. B, title XXXI, § 3104(a), Oct. 17, 2000, 114 Stat. 1172.)

REFERENCES IN TEXT

Section 8801 of title 20, referred to in subsec. (a), was repealed by Pub. L. 107–110, title X, § 1011(5)(C), Jan. 8, 2002, 115 Stat. 1986. See section 7801 of Title 20, Education.

§ 290bb–9. Methamphetamine and amphetamine treatment initiative

(a) Grants

(1) Authority to make grants

The Director of the Center for Substance Abuse Treatment may make grants to States and Indian tribes recognized by the United States that have a high rate, or have had a rapid increase, in methamphetamine or amphetamine abuse or addiction in order to permit such States and Indian tribes to expand activities in connection with the treatment of methamphetamine or amphetamine abuser or addiction in the specific geographical areas of such States or Indian tribes, as the case may be, where there is such a rate or has been such an increase.

(2) Recipients

Any grants under paragraph (1) shall be directed to the substance abuse directors of the States, and of the appropriate tribal government authorities of the Indian tribes, selected by the Director to receive such grants.

(3) Nature of activities

Any activities under a grant under paragraph (1) shall be based on reliable scientific evidence of their efficacy in the treatment of methamphetamine or amphetamine abuse or addiction.

(b) Geographic distribution

The Director shall ensure that grants under subsection (a) of this section are distributed equitably among the various regions of the country and among rural, urban, and suburban areas that are affected by methamphetamine or amphetamine abuse or addiction.

(c) Additional activities

The Director shall—

(1) evaluate the activities supported by grants under subsection (a) of this section;

(2) disseminate widely such significant information derived from the evaluation as the Director considers appropriate to assist States, Indian tribes, and private providers of treatment services for methamphetamine or amphetamine abuser or addiction in the treatment of methamphetamine or amphetamine abuse or addiction; and

(3) provide States, Indian tribes, and such providers with technical assistance in connection with the provision of such treatment.

[1] See References in Text note below.

(d) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2000 and such sums as may be necessary for each of fiscal years 2001 and 2002.

(2) Use of certain funds

Of the funds appropriated to carry out this section in any fiscal year, the lesser of 5 percent of such funds or $1,000,000 shall be available to the Director for purposes of carrying out subsection (c) of this section.

(July 1, 1944, ch. 373, title V, § 514, as added Pub. L. 106–310, div. B, title XXXVI, § 3632, Oct. 17, 2000, 114 Stat. 1236.)

CODIFICATION

Another section 514 of act July 1, 1944, is classified to section 290bb–7 of this title.

SUBPART 2—CENTER FOR SUBSTANCE ABUSE PREVENTION

§ 290bb–21. Office for Substance Abuse Prevention

(a) Establishment; Director

There is established in the Administration an Office for Substance Abuse Prevention (hereafter referred to in this part as the ''Prevention Center''). The Office[1] shall be headed by a Director appointed by the Secretary from individuals with extensive experience or academic qualifications in the prevention of drug or alcohol abuse.

(b) Duties of Director

The Director of the Prevention Center shall—

(1) sponsor regional workshops on the prevention of drug and alcohol abuse;

(2) coordinate the findings of research sponsored by agencies of the Service on the prevention of drug and alcohol abuse;

(3) develop effective drug and alcohol abuse prevention literature (including literature on the adverse effects of cocaine free base (known as ''crack''));

(4) in cooperation with the Secretary of Education, assure the widespread dissemination of prevention materials among States, political subdivisions, and school systems;

(5) support clinical training programs for substance abuse counselors and other health professionals involved in drug abuse education, prevention,;[2]

(6) in cooperation with the Director of the Centers for Disease Control and Prevention, develop educational materials to reduce the risks of acquired immune deficiency syndrome among intravenous drug abusers;

(7) conduct training, technical assistance, data collection, and evaluation activities of programs supported under the Drug Free Schools and Communities Act of 1986;

(8) support the development of model, innovative, community-based programs to discourage alcohol and drug abuse among young people;

(9) collaborate with the Attorney General of the Department of Justice to develop programs to prevent drug abuse among high risk youth;

(10) prepare for distribution documentary films and public service announcements for television and radio to educate the public, especially adolescent audiences, concerning the dangers to health resulting from the consumption of alcohol and drugs and, to the extent feasible, use appropriate private organizations and business concerns in the preparation of such announcements; and

(11) develop and support innovative demonstration programs designed to identify and deter the improper use or abuse of anabolic steroids by students, especially students in secondary schools.

(c) Grants, contracts and cooperative agreements

The Director may make grants and enter into contracts and cooperative agreements in carrying out subsection (b) of this section.

(d) National data base

The Director of the Prevention Center shall establish a national data base providing information on programs for the prevention of substance abuse. The data base shall contain information appropriate for use by public entities and information appropriate for use by nonprofit private entities.

(July 1, 1944, ch. 373, title V, § 515, formerly § 508, as added Pub. L. 99–570, title IV, § 4005(a), Oct. 27, 1986, 100 Stat. 3207–111; amended Pub. L. 100–690, title II, § 2051(a)–(c), Nov. 18, 1988, 102 Stat. 4206; Pub. L. 101–93, § 3(a), Aug. 16, 1989, 103 Stat. 609; Pub. L. 101–647, title XIX, § 1906, Nov. 29, 1990, 104 Stat. 4854; renumbered § 515 and amended Pub. L. 102–321, title I, § 113(b)–(e), July 10, 1992, 106 Stat. 345; Pub. L. 102–531, title III, § 312(d)(10), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 106–310, div. B, title XXXI, § 3112(b), Oct. 17, 2000, 114 Stat. 1188.)

REFERENCES IN TEXT

The Drug-Free Schools and Communities Act of 1986, referred to in subsec. (b)(7), means title V of Pub. L. 89–10 as added by Pub. L. 100–297, title I, § 1001, Apr. 28, 1988, 102 Stat. 252, which was classified generally to subchapter V (§ 3171 et seq.) of chapter 47 of Title 20, Education, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. For provisions relating to safe and drug-free schools and communities, see section 7101 et seq. of Title 20.

CODIFICATION

Section was formerly classified to section 290aa–6 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 515 of act July 1, 1944, was classified to section 290cc of this title, prior to repeal by Pub. L. 102–321, title I, § 123(c), July 10, 1992, 106 Stat. 363.

Another prior section 515 of act July 1, 1944, which was classified to section 229d of this title, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

AMENDMENTS

2000—Subsec. (b)(9). Pub. L. 106–310, § 3112(b)(2), added par. (9). Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 106–310, § 3112(b)(1), (3), redesignated par. (9) as (10) and substituted ''educate the pub-

[1] So in original. Probably should be ''Prevention Center''.

[2] So in original. Probably should be ''education and prevention;''.

lic, especially adolescent audiences, concerning'' for ''educate the public concerning''. Former par. (10) redesignated (11).

Subsec. (b)(11). Pub. L. 106–310, § 3112(b)(1), redesignated par. (10) as (11).

1992—Subsec. (a). Pub. L. 102–321, § 113(e)(1), substituted ''(hereafter referred to in this part as the 'Prevention Center')'' for ''(hereafter in this part referred to as the 'Office')''.

Subsec. (b). Pub. L. 102–321, § 113(e)(2), substituted ''Prevention Center'' for ''Office'' in introductory provisions.

Subsec. (b)(5). Pub. L. 102–321, § 113(c)(1), struck out ''and intervention'' after ''prevention,''.

Subsec. (b)(6). Pub. L. 102–531, which directed the amendment of ''section 508(b)(6) (42 U.S.C. 290aa–6(b)(6))'' of act July 1, 1944, by substituting ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'', was executed to subsec. (b)(6) of this section to reflect the probable intent of Congress and the intervening renumbering of section 508 of act July 1, 1944, as section 515 of that act by Pub. L. 102–321, § 113(b)(2).

Subsec. (b)(9). Pub. L. 102–321, § 113(c)(4), inserted ''and'' after semicolon at end.

Subsec. (b)(10) to (12). Pub. L. 102–321, § 113(c)(2)–(4), redesignated par. (12) as (10) and struck out former pars. (10) and (11) which read as follows:

''(10)(A) provide assistance to communities to develop comprehensive long-term strategies for the prevention of substance abuse; and

''(B) evaluate the success of different community approaches toward the prevention of substance abuse;

''(11) through schools of health professions, schools of allied health professions, schools of nursing, and schools of social work, carry out programs—

''(A) to train individuals in the diagnosis and treatment of alcohol and drug abuse; and

''(B) to develop appropriate curricula and materials for the training described in subparagraph (A); and''.

Subsec. (d). Pub. L. 102–321, § 113(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) For the purpose of carrying out this section and sections 290aa–7, 290aa–8, and 290aa–13 of this title, there are authorized to be appropriated $95,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

''(2) Of the amounts appropriated pursuant to paragraph (1) for a fiscal year, the Secretary shall make available not less than $5,000,000 to carry out paragraphs (5) and (11) of subsection (b) of this section.''

1990—Subsec. (b)(12). Pub. L. 101–647 added par. (12).

1989—Subsec. (b)(11)(B). Pub. L. 101–93, § 3(a)(2), substituted ''subparagraph (A)'' for ''subparagraph (a)''.

Subsec. (d)(1). Pub. L. 101–93, § 3(a)(1), inserted a comma after ''290aa–13 of this title''.

1988—Subsec. (b)(5). Pub. L. 100–690, § 2051(b)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''support programs of clinical training of substance abuse counselors and other health professionals;''.

Subsec. (b)(10). Pub. L. 100–690, § 2051(b)(2) added par. (10).

Subsec. (b)(11). Pub. L. 100–690, § 2051(c), added par. (11).

Subsec. (d). Pub. L. 100–690, § 2051(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Of the amounts available under the second sentence of section 300y(a) of this title to carry out this section and section 290aa–8 of this title, $20,000,000 shall be available to carry out section 290aa–8 of this title.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290bb–22. Priority substance abuse prevention needs of regional and national significance

(a) Projects

The Secretary shall address priority substance abuse prevention needs of regional and national significance (as determined under subsection (b) of this section) through the provision of or through assistance for—

(1) knowledge development and application projects for prevention and the conduct or support of evaluations of such projects;

(2) training and technical assistance; and

(3) targeted capacity response programs.

The Secretary may carry out the activities described in this section directly or through grants or cooperative agreements with States, political subdivisions of States, Indian tribes and tribal organizations, or other public or nonprofit private entities.

(b) Priority substance abuse prevention needs

(1) In general

Priority substance abuse prevention needs of regional and national significance shall be determined by the Secretary in consultation with the States and other interested groups. The Secretary shall meet with the States and interested groups on an annual basis to discuss program priorities.

(2) Special consideration

In developing program priorities under paragraph (1), the Secretary shall give special consideration to—

(A) applying the most promising strategies and research-based primary prevention approaches; and

(B) promoting the integration of substance abuse prevention information and activities into primary health care systems.

(c) Requirements

(1) In general

Recipients of grants, contracts, and cooperative agreements under this section shall comply with information and application requirements determined appropriate by the Secretary.

(2) Duration of award

With respect to a grant, contract, or cooperative agreement awarded under this section, the period during which payments under such award are made to the recipient may not exceed 5 years.

(3) Matching funds

The Secretary may, for projects carried out under subsection (a) of this section, require that entities that apply for grants, contracts, or cooperative agreements under that project provide non-Federal matching funds, as determined appropriate by the Secretary, to ensure the institutional commitment of the entity to the projects funded under the grant, contract, or cooperative agreement. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(4) Maintenance of effort

With respect to activities for which a grant, contract, or cooperative agreement is awarded

under this section, the Secretary may require that recipients for specific projects under subsection (a) of this section agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the fiscal year for which the entity receives such a grant, contract, or cooperative agreement.

(d) Evaluation

The Secretary shall evaluate each project carried out under subsection (a)(1) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(e) Information and education

The Secretary shall establish comprehensive information and education programs to disseminate the findings of the knowledge development and application, training and technical assistance programs, and targeted capacity response programs under this section to the general public and to health professionals. The Secretary shall make every effort to provide linkages between the findings of supported projects and State agencies responsible for carrying out substance abuse prevention and treatment programs.

(f) Authorization of appropriation

There are authorized to be appropriated to carry out this section, $300,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 516, formerly § 509, as added Pub. L. 99–570, title IV, § 4005(a), Oct. 27, 1986, 100 Stat. 3207–112; renumbered § 516 and amended Pub. L. 102–321, title I, § 113(f), July 10, 1992, 106 Stat. 345; Pub. L. 106–310, div. B, title XXXIII, § 3302(a), Oct. 17, 2000, 114 Stat. 1209.)

CODIFICATION

Section was formerly classified to section 290aa–7 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 516 of act July 1, 1944, was classified to section 290cc–1 of this title, prior to repeal by Pub. L. 102–321, title I, § 123(c), July 10, 1992, 106 Stat. 363.

AMENDMENTS

2000—Pub. L. 106–310 amended section catchline and text generally, substituting provisions relating to priority substance abuse prevention needs of regional and national significance for provisions relating to community programs.

1992—Pub. L. 102–321, § 113(f)(4), amended section generally, substituting provisions relating to community programs for provisions relating to alcohol and drug abuse information clearinghouse.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290bb–23. Prevention, treatment, and rehabilitation model projects for high risk youth

(a) Grants to public and nonprofit private entities

The Secretary, through the Director of the Prevention Center, shall make grants to public and nonprofit private entities for projects to demonstrate effective models for the prevention, treatment, and rehabilitation of drug abuse and alcohol abuse among high risk youth.

(b) Priority of projects

(1) In making grants for drug abuse and alcohol abuse prevention projects under this section, the Secretary shall give priority to applications for projects directed at children of substance abusers, latchkey children, children at risk of abuse or neglect, preschool children eligible for services under the Head Start Act [42 U.S.C. 9831 et seq.], children at risk of dropping out of school, children at risk of becoming adolescent parents, and children who do not attend school and who are at risk of being unemployed.

(2) In making grants for drug abuse and alcohol abuse treatment and rehabilitation projects under this section, the Secretary shall give priority to projects which address the relationship between drug abuse or alcohol abuse and physical child abuse, sexual child abuse, emotional child abuse, dropping out of school, unemployment, delinquency, pregnancy, violence, suicide, or mental health problems.

(3) In making grants under this section, the Secretary shall give priority to applications from community based organizations for projects to develop innovative models with multiple, coordinated services for the prevention or for the treatment and rehabilitation of drug abuse or alcohol abuse by high risk youth.

(4) In making grants under this section, the Secretary shall give priority to applications for projects to demonstrate effective models with multiple, coordinated services which may be replicated and which are for the prevention or for the treatment and rehabilitation of drug abuse or alcohol abuse by high risk youth.

(5) In making grants under this section, the Secretary shall give priority to applications that employ research designs adequate for evaluating the effectiveness of the program.

(c) Strategies for reducing use

The Secretary shall ensure that projects under subsection (a) of this section include strategies for reducing the use of alcoholic beverages and tobacco products by individuals to whom it is unlawful to sell or distribute such beverages or products.

(d) Regionally equal distribution of grants

To the extent feasible, the Secretary shall make grants under this section in all regions of the United States, and shall ensure the distribution of grants under this section among urban and rural areas.

(e) Application for grants

In order to receive a grant for a project under this section for a fiscal year, a public or nonprofit private entity shall submit an application to the Secretary, acting through the Office.[1] The Secretary may provide to the Governor of the State the opportunity to review and comment on such application. Such application shall be in such form, shall contain such information, and

[1] So in original. Probably should be ''Prevention Center''.

shall be submitted at such time as the Secretary may by regulation prescribe.

(f) Evaluation of projects

The Director of the Office[1] shall evaluate projects conducted with grants under this section.

(g) "High risk youth" defined

For purposes of this section, the term ''high risk youth'' means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(1) is identified as a child of a substance abuser;

(2) is a victim of physical, sexual, or psychological abuse;

(3) has dropped out of school;

(4) has become pregnant;

(5) is economically disadvantaged;

(6) has committed a violent or delinquent act;

(7) has experienced mental health problems;

(8) has attempted suicide;

(9) has experienced long-term physical pain due to injury; or

(10) has experienced chronic failure in school.

(h) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2003.

(July 1, 1944, ch. 373, title V, § 517, formerly § 509A, as added Pub. L. 99–570, title IV, § 4005(a), Oct. 27, 1986, 100 Stat. 3207–113; amended Pub. L. 100–690, title II, § 2051(d), Nov. 18, 1988, 102 Stat. 4206; renumbered § 517 and amended Pub. L. 102–321, title I, § 114, July 10, 1992, 106 Stat. 346; Pub. L. 106–310, div. B, title XXXI, § 3103, Oct. 17, 2000, 114 Stat. 1171.)

REFERENCES IN TEXT

The Head Start Act, referred to in subsec. (b)(1), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

CODIFICATION

Section was formerly classified to section 290aa–8 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 517 of act July 1, 1944, was classified to section 290cc–2 of this title, prior to repeal by Pub. L. 102–321, title I, § 123(c), July 10, 1992, 106 Stat. 363.

AMENDMENTS

2000—Subsec. (h). Pub. L. 106–310 substituted ''such sums as may be necessary for each of the fiscal years 2001 through 2003'' for ''$70,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994''.

1992—Subsec. (a). Pub. L. 102–321, § 114(d), substituted ''Prevention Center'' for ''Office''.

Subsecs. (c) to (g). Pub. L. 102–321, § 114(b), added subsec. (c) and redesignated former subsecs. (c) through (f) as (d) through (g), respectively.

Subsec. (h). Pub. L. 102–321, § 114(c), added subsec. (h).

1988—Subsec. (b)(5). Pub. L. 100–690, § 2051(d)(1), added par. (5).

Subsec. (f)(9). Pub. L. 100–690, § 2051(d)(2)(B), amended par. (9) generally, substituting ''has experienced long-term physical pain due to injury; or'' for ''is disabled by injuries.''

Subsec. (f)(10). Pub. L. 100–690, § 2051(d)(2)(C), added par. (10).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290bb–24. Repealed. Pub. L. 106–310, div. B, title XXXIII, § 3302(b), Oct. 17, 2000, 114 Stat. 1210

Section, act July 1, 1944, ch. 373, title V, § 518, as added Pub. L. 102–321, title I, § 171, July 10, 1992, 106 Stat. 377, related to employee assistance programs.

A prior section 518 of act July 1, 1944, was classified to section 290cc–11 of this title, prior to repeal by Pub. L. 102–321, § 120(b)(3).

§ 290bb–25. Grants for services for children of substance abusers

(a) Establishment

(1) In general

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall make grants to public and nonprofit private entities for the purpose of carrying out programs—

(A) to provide the services described in subsection (b) of this section to children of substance abusers;

(B) to provide the applicable services described in subsection (c) of this section to families in which a member is a substance abuser;

(C) to identify such children and such families through youth service agencies, family social services, child care providers, Head Start, schools and after-school programs, early childhood development programs, community-based family resource and support centers, the criminal justice system, health, substance abuse and mental health providers through screenings conducted during regular childhood examinations and other examinations, self and family member referrals, substance abuse treatment services, and other providers of services to children and families; and

(D) to provide education and training to health, substance abuse and mental health professionals, and other providers of services to children and families through youth service agencies, family social services, child care, Head Start, schools and after-school programs, early childhood development programs, community-based family resource and support centers, the criminal justice system, and other providers of services to children and families.

(2) Administrative consultations

The Administrator of the Administration for Children, Youth, and Families and the Administrator of the Health Resources and Services Administration shall be consulted regarding the promulgation of program guidelines and funding priorities under this section.

(3) Requirement of status as medicaid provider

(A) Subject to subparagraph (B), the Secretary may make a grant under paragraph (1) only if, in the case of any service under such paragraph that is covered in the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i)(I) the entity involved will provide the service directly, and the entity has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(II) the entity will enter into an agreement with an organization under which the organization will provide the service, and the organization has entered into such a participation agreement and is qualified to receive such payments; and

(ii) the entity will identify children who may be eligible for medical assistance under a State program under title XIX or XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.].

(B)(i) In the case of an organization making an agreement under subparagraph (A)(ii)[1] regarding the provision of services under paragraph (1), the requirement established in such subparagraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health or mental health services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(ii) A determination by the Secretary of whether an organization referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.

(b) Services for children of substance abusers

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees to make available (directly or through agreements with other entities) to children of substance abusers each of the following services:

(1) Periodic evaluation of children for developmental, psychological, alcohol and drug, and medical problems.

(2) Primary pediatric care.

(3) Other necessary health and mental health services.

(4) Therapeutic intervention services for children, including provision of therapeutic child care.

(5) Developmentally and age-appropriate drug and alcohol early intervention, treatment and prevention services.

(6) Counseling related to the witnessing of chronic violence.

(7) Referrals for, and assistance in establishing eligibility for, services provided under—

(A) education and special education programs;

(B) Head Start programs established under the Head Start Act [42 U.S.C. 9831 et seq.];

(C) other early childhood programs;

(D) employment and training programs;

(E) public assistance programs provided by Federal, State, or local governments; and

(F) programs offered by vocational rehabilitation agencies, recreation departments, and housing agencies.

(8) Additional developmental services that are consistent with the provision of early intervention services, as such term is defined in part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.].

Services shall be provided under paragraphs (2) through (8) by a public health nurse, social worker, or similar professional, or by a trained worker from the community who is supervised by a professional, or by an entity, where the professional or entity provides assurances that the professional or entity is licensed or certified by the State if required and is complying with applicable licensure or certification requirements.

(c) Services for affected families

The Secretary may make a grant under subsection (a) of this section only if, in the case of families in which a member is a substance abuser, the applicant involved agrees to make available (directly or through agreements with other entities) each of the following services, as applicable to the family member involved:

(1) Services as follows, to be provided by a public health nurse, social worker, or similar professional, or by a trained worker from the community who is supervised by a professional, or by an entity, where the professional or entity provides assurances that the professional or entity is licensed or certified by the State if required and is complying with applicable licensure or certification requirements:

(A) Counseling to substance abusers on the benefits and availability of substance abuse treatment services and services for children of substance abusers.

(B) Assistance to substance abusers in obtaining and using substance abuse treatment services and in obtaining the services described in subsection (b) of this section for their children.

(C) Visiting and providing support to substance abusers, especially pregnant women, who are receiving substance abuse treatment services or whose children are receiving services under subsection (b) of this section.

(D) Aggressive outreach to family members with substance abuse problems.

(E) Inclusion of consumer in the development, implementation, and monitoring of Family Services Plan.

(2) In the case of substance abusers:

(A) Alcohol and drug treatment services, including screening and assessment, diagnosis, detoxification, individual, group and family counseling, relapse prevention, pharmacotherapy treatment, after-care services, and case management.

(B) Primary health care and mental health services, including prenatal and post partum care for pregnant women.

[1] See References in Text note below.

(C) Consultation and referral regarding subsequent pregnancies and life options and counseling on the human immunodeficiency virus and acquired immune deficiency syndrome.

(D) Where appropriate, counseling regarding family violence.

(E) Career planning and education services.

(F) Referrals for, and assistance in establishing eligibility for, services described in subsection (b)(7) of this section.

(3) In the case of substance abusers, spouses of substance abusers, extended family members of substance abusers, caretakers of children of substance abusers, and other people significantly involved in the lives of substance abusers or the children of substance abusers:

(A) An assessment of the strengths and service needs of the family and the assignment of a case manager who will coordinate services for the family.

(B) Therapeutic intervention services, such as parental counseling, joint counseling sessions for families and children, and family therapy.

(C) Child care or other care for the child to enable the parent to attend treatment or other activities and respite care services.

(D) Parenting education services and parent support groups which include child abuse and neglect prevention techniques.

(E) Support services, including, where appropriate, transportation services.

(F) Where appropriate, referral of other family members to related services such as job training.

(G) Aftercare services, including continued support through parent groups and home visits.

(d) Training for providers of services to children and families

The Secretary may make a grant under subsection (a) of this section for the training of health, substance abuse and mental health professionals and other providers of services to children and families through youth service agencies, family social services, child care providers, Head Start, schools and after-school programs, early childhood development programs, community-based family resource centers, the criminal justice system, and other providers of services to children and families. Such training shall be to assist professionals in recognizing the drug and alcohol problems of their clients and to enhance their skills in identifying and understanding the nature of substance abuse, and obtaining substance abuse early intervention, prevention and treatment resources.

(e) Eligible entities

The Secretary shall distribute the grants through the following types of entities:

(1) Alcohol and drug early intervention, prevention or treatment programs, especially those providing treatment to pregnant women and mothers and their children.

(2) Public or nonprofit private entities that provide health or social services to disadvantaged populations, and that have—

(A) expertise in applying the services to the particular problems of substance abusers and the children of substance abusers; or

(B) an affiliation or contractual relationship with one or more substance abuse treatment programs or pediatric health or mental health providers and family mental health providers.

(3) Consortia of public or nonprofit private entities that include at least one substance abuse treatment program.

(4) Indian tribes.

(f) Federal share

The Federal share of a program carried out under subsection (a) of this section shall be 90 percent. The Secretary shall accept the value of in-kind contributions, including facilities and personnel, made by the grant recipient as a part or all of the non-Federal share of grants.

(g) Restrictions on use of grant

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that the grant will not be expended—

(1) to provide inpatient hospital services;

(2) to make cash payments to intended recipients of services;

(3) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(h) Submission to Secretary of certain information

The Secretary may make a grant under subsection (a) of this section only if the applicant involved submits to the Secretary—

(1) a description of the population that is to receive services under this section and a description of such services that are to be provided and measurable goals and objectives;

(2) a description of the mechanism that will be used to involve the local public agencies responsible for health, including maternal and child health[2] mental health, child welfare, education, juvenile justice, developmental disabilities, and substance abuse in planning and providing services under this section, as well as evidence that the proposal has been coordinated with the State agencies responsible for administering those programs, the State agency responsible for administering alcohol and drug programs, the State lead agency, and the State Interagency Coordinating Council under part H[3] of the Individuals with Disabilities Education Act; and;[4]

(3) such other information as the Secretary determines to be appropriate.

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[2] So in original. Probably should be followed by a comma.

[3] See References in Text note below.

[4] So in original. The semicolon probably should not appear after ''and''.

(i) Reports to Secretary

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that for each fiscal year for which the applicant receives such a grant the applicant, in accordance with uniform standards developed by the Secretary, will submit to the Secretary a report containing—

(1) a description of specific services and activities provided under the grant;

(2) information regarding progress toward meeting the program's stated goals and objectives;

(3) information concerning the extent of use of services provided under the grant, including the number of referrals to related services and information on other programs or services accessed by children, parents, and other caretakers;

(4) information concerning the extent to which parents were able to access and receive treatment for alcohol and drug abuse and sustain participation in treatment over time until the provider and the individual receiving treatment agree to end such treatment, and the extent to which parents re-enter treatment after the successful or unsuccessful termination of treatment;

(5) information concerning the costs of the services provided and the source of financing for health care services;

(6) information concerning—

(A) the number and characteristics of families, parents, and children served, including a description of the type and severity of childhood disabilities, and an analysis of the number of children served by age;

(B) the number of children served who remained with their parents during the period in which entities provided services under this section; and

(C) the number of case workers or other professionals trained to identify and address substance abuse issues.

(7) information on hospitalization or emergency room use by the family members participating in the program; and

(8) such other information as the Secretary determines to be appropriate.

(j) Requirement of application

The Secretary may make any grant under subsection (a) of this section only if—

(1) an application for the grant is submitted to the Secretary;

(2) the application contains the agreements required in this section and the information required in subsection (h) of this section; and

(3) the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(k) Evaluations

The Secretary shall periodically conduct evaluations to determine the effectiveness of programs supported under subsection (a) of this section—

(1) in reducing the incidence of alcohol and drug abuse among substance abusers participating in the programs;

(2) in preventing adverse health conditions in children of substance abusers;

(3) in promoting better utilization of health and developmental services and improving the health, developmental, and psychological status of children receiving services under the program; and

(4) in improving parental and family functioning, including increased participation in work or employment-related activities and decreased participation in welfare programs.

***(l)* Report to Congress**

Not later than 2 years after the date on which amounts are first appropriated under subjection[5] (*o*) of this section, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report that contains a description of programs carried out under this section. At a minimum, the report shall contain—

(1) information concerning the number and type of programs receiving grants;

(2) information concerning the type and use of services offered; and

(3) information concerning—

(A) the number and characteristics of families, parents, and children served; and

(B) the number of children served who remained with their parents during or after the period in which entities provided services under this section.

analyzed by the type of entity described in subsection (e) of this section that provided services;[6]

(m) Data collection

The Secretary shall periodically collect and report on information concerning the numbers of children in substance abusing families, including information on the age, gender and ethnicity of the children, the composition and income of the family, and the source of health care finances. The periodic report shall include a quantitative estimate of the prevalence of alcohol and drug problems in families involved in the child welfare system, the barriers to treatment and prevention services facing these families, and policy recommendations for removing the identified barriers, including training for child welfare workers.

(n) Definitions

For purposes of this section:

(1) The term ''caretaker'', with respect to a child of a substance abuser, means any individual acting in a parental role regarding the child (including any birth parent, foster parent, adoptive parent, relative of such a child, or other individual acting in such a role).

(2) The term ''children of substance abusers'' means—

(A) children who have lived or are living in a household with a substance abuser who is acting in a parental role regarding the children; and

(B) children who have been prenatally exposed to alcohol or other drugs.

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[5] So in original. Probably should be ''subsection''.

[6] So in original. The semicolon probably should be a period.

(3) The term ''Indian tribe'' means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term ''public or nonprofit private entities that provide health or social services to disadvantaged populations'' includes community-based organizations, local public health departments, community action agencies, hospitals, community health centers, child welfare agencies, developmental disabilities service providers, and family resource and support programs.

(5) The term ''substance abuse'' means the abuse of alcohol or other drugs.

(*o*) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $50,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 519, formerly title III, § 399D, as added Pub. L. 102–321, title IV, § 401(a), July 10, 1992, 106 Stat. 419; renumbered § 399A, renumbered title V, § 519, and amended Pub. L. 106–310, div. A, title V, § 502(1), div. B, title XXXI, § 3106(a)–(m), Oct. 17, 2000, 114 Stat. 1115, 1175–1179; Pub. L. 108–446, title III, § 305(i)(1), (3), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Subparagraph (A)(ii), referred to in subsec. (a)(3)(B)(i), meaning subsec. (a)(3)(A)(ii) of this section was redesignated as subsec. (a)(3)(A)(i)(II) and a new subsec. (a)(3)(A)(ii) was added by Pub. L. 106–310, div. B, title XXXI, § 3106(a)(3)(B)(i), (C), Oct. 17, 2000, 114 Stat. 1176.

The Head Start Act, referred to in subsec. (b)(7)(B), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (b)(8) and (h)(2), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20, Education. Part H of the Act was classified generally to subchapter VIII (§ 1471 et seq.) of chapter 33 of Title 20, prior to repeal by Pub. L. 105–17, title II, § 203(b), June 4, 1997, 111 Stat. 157, effective July 1, 1998. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (n)(3), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

CODIFICATION

Section was formerly classified to section 280d of this title.

AMENDMENTS

2004—Subsecs. (b)(8), (f). Pub. L. 108–446, § 305(i)(1), (3), which directed amendment of subsecs. (b)(8) and (f) of section 399A of the Public Health Service Act by substituting ''part C'' for ''part H'', was executed to subsec. (b)(8) of this section, which is section 519 of the Public Health Service Act, to reflect the probable intent of Congress and the renumbering of this section and repeal of former subsec. (f). See 2000 Amendments notes below.

2000—Pub. L. 106–310, § 3106(a)–(m), which directed numerous amendments to section 399D of the Public Health Service Act and the subsequent renumbering of that section as section 519 of title V of the Act, was executed by amending this section and renumbering this section as section 519 of title V, to reflect the probable intent of Congress, notwithstanding the intervening renumbering of this section as section 399A of the Act by section 502(1) of Pub. L. 106–310. See source credit above and notes below.

Subsec. (a)(1). Pub. L. 106–310, § 3106(a)(1)(A), substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Administrator of the Health Resources and Services Administration'' in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 106–310, § 3106(a)(2)(A), struck out ''and'' at end.

Subsec. (a)(1)(C). Pub. L. 106–310, § 3106(a)(2)(B), substituted ''through youth service agencies, family social services, child care providers, Head Start, schools and after-school programs, early childhood development programs, community-based family resource and support centers, the criminal justice system, health, substance abuse and mental health providers through screenings conducted during regular childhood examinations and other examinations, self and family member referrals, substance abuse treatment services, and other providers of services to children and families; and'' for period at end.

Subsec. (a)(1)(D). Pub. L. 106–310, § 3106(a)(2)(C), added subpar. (D).

Subsec. (a)(2). Pub. L. 106–310, § 3106(a)(1)(B), substituted ''Administrator of the Health Resources and Services Administration'' for ''Administrator of the Substance Abuse and Mental Health Services Administration''.

Subsec. (a)(3)(A). Pub. L. 106–310, § 3106(a)(3), redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and added cl. (ii).

Subsec. (b). Pub. L. 106–310, § 3106(b)(3), inserted concluding provisions.

Subsec. (b)(1). Pub. L. 106–310, § 3106(b)(1), inserted ''alcohol and drug,'' after ''psychological,''.

Subsec. (b)(5). Pub. L. 106–310, § 3106(b)(2), added par. (5) and struck out former par. (5) relating to preventive counseling services.

Subsec. (c)(1). Pub. L. 106–310, § 3106(c)(1)(A), inserted '', or by an entity, where the professional or entity provides assurances that the professional or entity is licensed or certified by the State if required and is complying with applicable licensure or certification requirements'' before colon in introductory provisions.

Subsec. (c)(1)(D), (E). Pub. L. 106–310, § 3106(c)(1)(B), added subpars. (D) and (E).

Subsec. (c)(2)(A). Pub. L. 106–310, § 3106(c)(2)(A), added subpar. (A) and struck out former subpar. (A) relating to encouragement to participate in and referrals to appropriate substance abuse treatment.

Subsec. (c)(2)(C). Pub. L. 106–310, § 3106(c)(2)(B), which directed substitution of ''and counseling on the human immunodeficiency virus and acquired immune deficiency syndrome'' for '', including educational and career planning'', was executed by making the substitution for '', including education and career planning'' to reflect the probable intent of Congress.

Subsec. (c)(2)(D). Pub. L. 106–310, § 3106(c)(2)(C), struck out ''conflict and'' before ''violence''.

Subsec. (c)(2)(E). Pub. L. 106–310, § 3106(c)(2)(D), substituted ''Career planning and education services'' for ''Remedial education services''.

Subsec. (c)(3)(D). Pub. L. 106–310, § 3106(c)(3), inserted ''which include child abuse and neglect prevention techniques'' before period at end.

Subsec. (d). Pub. L. 106–310, § 3106(*l*)(3), (4), added subsec. (d) and redesignated former subsec. (d) as (e).

Pub. L. 106–310, § 3106(d)(1), substituted ''Eligible entities'' for ''Considerations in making grants'' in heading and ''The Secretary shall distribute the grants through the following types of entities:'' for ''In making grants under subsection (a) of this section, the Secretary shall ensure that the grants are reasonably distributed among the following types of entities:'' in introductory provisions.

Subsec. (d)(1). Pub. L. 106–310, § 3106(d)(2), substituted ''drug early intervention, prevention or treatment programs'' for ''drug treatment programs''.

Subsec. (d)(2)(A). Pub. L. 106–310, § 3106(d)(3)(A), substituted ''; or'' for ''; and''.

Subsec. (d)(2)(B). Pub. L. 106–310, § 3106(d)(3)(B), inserted ''or pediatric health or mental health providers and family mental health providers'' before period at end.

Subsec. (e). Pub. L. 106–310, § 3106(*l*)(3), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106–310, § 3106(*l*)(1), (3), redesignated subsec. (e) as (f) and struck out former subsec. (f) relating to coordination with other providers.

Subsec. (h)(2). Pub. L. 106–310, § 3106(e)(1), inserted ''including maternal and child health'' before ''mental health'', struck out ''treatment programs'' after ''substance abuse'', and substituted '', the State agency responsible for administering alcohol and drug programs, the State lead agency, and the State Interagency Coordinating Council under part H of the Individuals with Disabilities Education Act; and'' for ''and the State agency responsible for administering public maternal and child health services''.

Subsec. (h)(3), (4). Pub. L. 106–310, § 3106(e)(2), redesignated par. (4) as (3) and struck out former par. (3) relating to requirement to submit to Secretary information demonstrating that the applicant has established a collaborative relationship with child welfare agencies and child protective services.

Subsec. (i)(6)(B). Pub. L. 106–310, § 3106(f)(1), inserted ''and'' at end.

Subsec. (i)(6)(C). Pub. L. 106–310, § 3106(f)(2), added subpar. (C) and struck out former subpar. (C) relating to the number of children served who were placed in out-of-home care during the period in which entities provided services under section.

Subsec. (i)(6)(D), (E). Pub. L. 106–310, § 3106(f)(2), struck out subpars. (D) and (E) relating to the number of children described in subparagraph (C) who were reunited with their families and the number of children described in subparagraph (C) for whom a permanent plan has not been made or for whom the permanent plan is other than family reunification, respectively.

Subsec. (k). Pub. L. 106–310, § 3106(*l*)(2), (3), redesignated subsec. (*l*) as (k) and struck out former subsec. (k) relating to peer review.

Subsec. (k)(2). Pub. L. 106–310, § 3106(*l*)(5), which directed amendment of subsec. (k)(2) of this section by substituting ''(i)'' for ''(h)'', could not be executed because ''(h)'' does not appear in subsec. (k)(2).

Subsec. (*l*). Pub. L. 106–310, § 3106(*l*)(3), redesignated subsec. (m) as (*l*). Former subsec. (*l*) redesignated (k).

Subsec. (*l*)(3). Pub. L. 106–310, § 3106(*l*)(6), which directed substitution of ''(e)'' for ''(d)'' in subsec. (m)(3)(E), was executed by making the substitution in concluding provisions of subsec. (*l*)(3) to reflect the probable intent of Congress and the amendment by Pub. L. 106–310, § 3106(*l*)(3). See above.

Pub. L. 106–310, § 3106(g)(1), inserted ''and'' at end.

Subsec. (*l*)(4). Pub. L. 106–310, § 3106(g)(2), substituted '', including increased participation in work or employment-related activities and decreased participation in welfare programs.'' for semicolon at end.

Subsec. (*l*)(5), (6). Pub. L. 106–310, § 3106(g)(3), struck out pars. (5) and (6) relating to reducing the incidence of out-of-home placement for children whose parents receive services under the program and facilitating the reunification of families after children have been placed in out-of-home care, respectively.

Subsec. (m). Pub. L. 106–310, § 3106(*l*)(3), redesignated subsec. (n) as (m). Former subsec. (m) redesignated (*l*).

Subsec. (m)(2). Pub. L. 106–310, § 3106(h)(1), inserted ''and'' at end.

Subsec. (m)(3)(A). Pub. L. 106–310, § 3106(h)(2)(A), inserted ''and'' at end.

Subsec. (m)(3)(B). Pub. L. 106–310, § 3106(h)(2)(B), substituted period for semicolon at end.

Subsec. (m)(3)(C) to (E). Pub. L. 106–310, § 3106(h)(2)(C), struck out subpars. (C) to (E) relating to the number of children served who were placed in out-of-home care during the period in which entities provided services under this section, the number of children described in subparagraph (C) who were reunited with their families, and the number of children described in subparagraph (C) who were permanently placed in out-of-home care, respectively.

Subsec. (m)(4). Pub. L. 106–310, § 3106(h)(3), struck out par. (4) relating to an analysis of the access provided to, and use of, related services and alcohol and drug treatment through programs carried out under this section.

Subsec. (m)(5). Pub. L. 106–310, § 3106(*l*)(6), which directed amendment of subsec. (m)(5) by substituting ''(e)'' for ''(d)'', could not be executed because subsec. (m) did not contain a par. (5) or a reference to ''(d)'' subsequent to the amendments by Pub. L. 106–310, § 3106(h)(3), (*l*)(3). See notes above and below.

Pub. L. 106–310, § 3106(h)(3), struck out par. (5) relating to a comparison of the costs of providing services through each of the types of entities described in subsection (d) of this section.

Subsec. (n). Pub. L. 106–310, § 3106(*l*)(3), redesignated subsec. (*o*) as (n). Former subsec. (n) redesignated (m).

Pub. L. 106–310, § 3106(i), inserted at end ''The periodic report shall include a quantitative estimate of the prevalence of alcohol and drug problems in families involved in the child welfare system, the barriers to treatment and prevention services facing these families, and policy recommendations for removing the identified barriers, including training for child welfare workers.''

Subsec. (*o*). Pub. L. 106–310, § 3106(*l*)(3), redesignated subsec. (p) as (*o*). Former subsec. (*o*) redesignated (n).

Subsec. (*o*)(2)(B). Pub. L. 106–310, § 3106(j), struck out ''dangerous'' before ''drugs''.

Subsec. (p). Pub. L. 106–310, § 3106(*l*)(3), redesignated subsec. (p) as (*o*).

Pub. L. 106–310, § 3106(k), amended heading and text of subsec. (p) generally, substituting provisions relating to authorization of appropriations for provisions relating to funding for carrying out section.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE

Section effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993

and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

CONSTRUCTION

Section 401(b) of Pub. L. 102–321 provided that: ''With respect to the program established in section 399D [now 519] of the Public Health Service Act [this section] (as added by subsection (a) of this section), nothing in such section 399D may be construed as establishing for any other Federal program any requirement, authority, or prohibition, including with respect to recipients of funds under such other Federal programs.''

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

§ 290bb–25a. Grants for strengthening families

(a) Program authorized

The Secretary, acting through the Director of the Prevention Center, may make grants to public and nonprofit private entities to develop and implement model substance abuse prevention programs to provide early intervention and substance abuse prevention services for individuals of high-risk families and the communities in which such individuals reside.

(b) Priority

In awarding grants under subsection (a) of this section, the Secretary shall give priority to applicants that—

(1) have proven experience in preventing substance abuse by individuals of high-risk families and reducing substance abuse in communities of such individuals;

(2) have demonstrated the capacity to implement community-based partnership initiatives that are sensitive to the diverse backgrounds of individuals of high-risk families and the communities of such individuals;

(3) have experience in providing technical assistance to support substance abuse prevention programs that are community-based;

(4) have demonstrated the capacity to implement research-based substance abuse prevention strategies; and

(5) have implemented programs that involve families, residents, community agencies, and institutions in the implementation and design of such programs.

(c) Duration of grants

The Secretary shall award grants under subsection (a) of this section for a period not to exceed 5 years.

(d) Use of funds

An applicant that is awarded a grant under subsection (a) of this section shall—

(1) in the first fiscal year that such funds are received under the grant, use such funds to develop a model substance abuse prevention program; and

(2) in the fiscal year following the first fiscal year that such funds are received, use such funds to implement the program developed under paragraph (1) to provide early intervention and substance abuse prevention services to—

(A) strengthen the environment of children of high risk families by targeting interventions at the families of such children and the communities in which such children reside;

(B) strengthen protective factors, such as—

(i) positive adult role models;

(ii) messages that oppose substance abuse;

(iii) community actions designed to reduce accessibility to and use of illegal substances; and

(iv) willingness of individuals of families in which substance abuse occurs to seek treatment for substance abuse;

(C) reduce family and community risks, such as family violence, alcohol or drug abuse, crime, and other behaviors that may effect healthy child development and increase the likelihood of substance abuse; and

(D) build collaborative and formal partnerships between community agencies, institutions, and businesses to ensure that comprehensive high quality services are provided, such as early childhood education, health care, family support programs, parent education programs, and home visits for infants.

(e) Application

To be eligible to receive a grant under subsection (a) of this section, an applicant shall prepare and submit to the Secretary an application that—

(1) describes a model substance abuse prevention program that such applicant will establish;

(2) describes the manner in which the services described in subsection (d)(2) of this section will be provided; and

(3) describe[1] in as much detail as possible the results that the entity expects to achieve in implementing such a program.

(f) Matching funding

The Secretary may not make a grant to a[2] entity under subsection (a) of this section unless that entity agrees that, with respect to the costs to be incurred by the entity in carrying out the program for which the grant was awarded, the entity will make available non-Federal contributions in an amount that is not less than 40 percent of the amount provided under the grant.

(g) Report to Secretary

An applicant that is awarded a grant under subsection (a) of this section shall prepare and submit to the Secretary a report in such form and containing such information as the Secretary may require, including an assessment of the efficacy of the model substance abuse prevention program implemented by the applicant and the short, intermediate, and long term results of such program.

[1] So in original. Probably should be ''describes''.

[2] So in original. Probably should be ''an''.

(h) Evaluations

The Secretary shall conduct evaluations, based in part on the reports submitted under subsection (g) of this section, to determine the effectiveness of the programs funded under subsection (a) of this section in reducing substance use in high-risk families and in making communities in which such families reside in stronger. The Secretary shall submit such evaluations to the appropriate committees of Congress.

(i) High-risk families

In this section, the term ''high-risk family'' means a family in which the individuals of such family are at a significant risk of using or abusing alcohol or any illegal substance.

(j) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $3,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 519A, as added Pub. L. 106–310, div. B, title XXXI, § 3108, Oct. 17, 2000, 114 Stat. 1180.)

§ 290bb–25b. Programs to reduce underage drinking

(a) Definitions

For purposes of this section:

(1) The term ''alcohol beverage industry'' means the brewers, vintners, distillers, importers, distributors, and retail or online outlets that sell or serve beer, wine, and distilled spirits.

(2) The term ''school-based prevention'' means programs, which are institutionalized, and run by staff members or school-designated persons or organizations in any grade of school, kindergarten through 12th grade.

(3) The term ''youth'' means persons under the age of 21.

(4) The term ''IOM report'' means the report released in September 2003 by the National Research Council, Institute of Medicine, and entitled ''Reducing Underage Drinking: A Collective Responsibility''.

(b) Sense of Congress

It is the sense of the Congress that:

(1) A multi-faceted effort is needed to more successfully address the problem of underage drinking in the United States. A coordinated approach to prevention, intervention, treatment, enforcement, and research is key to making progress. This chapter recognizes the need for a focused national effort, and addresses particulars of the Federal portion of that effort, as well as Federal support for State activities.

(2) The Secretary of Health and Human Services shall continue to conduct research and collect data on the short and long-range impact of alcohol use and abuse upon adolescent brain development and other organ systems.

(3) States and communities, including colleges and universities, are encouraged to adopt comprehensive prevention approaches, including—

(A) evidence-based screening, programs and curricula;

(B) brief intervention strategies;

(C) consistent policy enforcement; and

(D) environmental changes that limit underage access to alcohol.

(4) Public health groups, consumer groups, and the alcohol beverage industry should continue and expand evidence-based efforts to prevent and reduce underage drinking.

(5) The entertainment industries have a powerful impact on youth, and they should use rating systems and marketing codes to reduce the likelihood that underage audiences will be exposed to movies, recordings, or television programs with unsuitable alcohol content.

(6) The National Collegiate Athletic Association, its member colleges and universities, and athletic conferences should affirm a commitment to a policy of discouraging alcohol use among underage students and other young fans.

(7) Alcohol is a unique product and should be regulated differently than other products by the States and Federal Government. States have primary authority to regulate alcohol distribution and sale, and the Federal Government should support and supplement these State efforts. States also have a responsibility to fight youth access to alcohol and reduce underage drinking. Continued State regulation and licensing of the manufacture, importation, sale, distribution, transportation and storage of alcoholic beverages are clearly in the public interest and are critical to promoting responsible consumption, preventing illegal access to alcohol by persons under 21 years of age from commercial and non-commercial sources, maintaining industry integrity and an orderly marketplace, and furthering effective State tax collection.

(c) Interagency coordinating committee; annual report on State underage drinking prevention and enforcement activities

(1) Interagency coordinating committee on the prevention of underage drinking

(A) In general

The Secretary, in collaboration with the Federal officials specified in subparagraph (B), shall formally establish and enhance the efforts of the interagency coordinating committee, that began operating in 2004, focusing on underage drinking (referred to in this subsection as the ''Committee'').

(B) Other agencies

The officials referred to in paragraph (1) are the Secretary of Education, the Attorney General, the Secretary of Transportation, the Secretary of the Treasury, the Secretary of Defense, the Surgeon General, the Director of the Centers for Disease Control and Prevention, the Director of the National Institute on Alcohol Abuse and Alcoholism, the Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the National Institute on Drug Abuse, the Assistant Secretary for Children and Families, the Director of the Office of National Drug Control Policy, the Administrator of the National Highway Traffic Safety Administration, the Adminis-

trator of the Office of Juvenile Justice and Delinquency Prevention, the Chairman of the Federal Trade Commission, and such other Federal officials as the Secretary of Health and Human Services determines to be appropriate.

(C) Chair

The Secretary of Health and Human Services shall serve as the chair of the Committee.

(D) Duties

The Committee shall guide policy and program development across the Federal Government with respect to underage drinking, provided, however, that nothing in this section shall be construed as transferring regulatory or program authority from an Agency to the Coordinating Committee.

(E) Consultations

The Committee shall actively seek the input of and shall consult with all appropriate and interested parties, including States, public health research and interest groups, foundations, and alcohol beverage industry trade associations and companies.

(F) Annual report

(i) In general

The Secretary, on behalf of the Committee, shall annually submit to the Congress a report that summarizes—

(I) all programs and policies of Federal agencies designed to prevent and reduce underage drinking;

(II) the extent of progress in preventing and reducing underage drinking nationally;

(III) data that the Secretary shall collect with respect to the information specified in clause (ii); and

(IV) such other information regarding underage drinking as the Secretary determines to be appropriate.

(ii) Certain information

The report under clause (i) shall include information on the following:

(I) Patterns and consequences of underage drinking as reported in research and surveys such as, but not limited to Monitoring the Future, Youth Risk Behavior Surveillance System, the National Survey on Drug Use and Health, and the Fatality Analysis Reporting System.

(II) Measures of the availability of alcohol from commercial and non-commercial sources to underage populations.

(III) Measures of the exposure of underage populations to messages regarding alcohol in advertising and the entertainment media as reported by the Federal Trade Commission.

(IV) Surveillance data, including information on the onset and prevalence of underage drinking, consumption patterns and the means of underage access. The Secretary shall develop a plan to improve the collection, measurement and consistency of reporting Federal underage alcohol data.

(V) Any additional findings resulting from research conducted or supported under subsection (f).

(VI) Evidence-based best practices to prevent and reduce underage drinking and provide treatment services to those youth who need them.

(2) Annual report on state underage drinking prevention and enforcement activities

(A) In general

The Secretary shall, with input and collaboration from other appropriate Federal agencies, States, Indian tribes, territories, and public health, consumer, and alcohol beverage industry groups, annually issue a report on each State's performance in enacting, enforcing, and creating laws, regulations, and programs to prevent or reduce underage drinking.

(B) State performance measures

(i) In general

The Secretary shall develop, in consultation with the Committee, a set of measures to be used in preparing the report on best practices.

(ii) Categories

In developing these measures, the Secretary shall consider categories including, but not limited to:

(I) Whether or not the State has comprehensive anti-underage drinking laws such as for the illegal sale, purchase, attempt to purchase, consumption, or possession of alcohol; illegal use of fraudulent ID; illegal furnishing or obtaining of alcohol for an individual under 21 years; the degree of strictness of the penalties for such offenses; and the prevalence of the enforcement of each of these infractions.

(II) Whether or not the State has comprehensive liability statutes pertaining to underage access to alcohol such as dram shop, social host, and house party laws, and the prevalence of enforcement of each of these laws.

(III) Whether or not the State encourages and conducts comprehensive enforcement efforts to prevent underage access to alcohol at retail outlets, such as random compliance checks and shoulder tap programs, and the number of compliance checks within alcohol retail outlets measured against the number of total alcohol retail outlets in each State, and the result of such checks.

(IV) Whether or not the State encourages training on the proper selling and serving of alcohol for all sellers and servers of alcohol as a condition of employment.

(V) Whether or not the State has policies and regulations with regard to direct sales to consumers and home delivery of alcoholic beverages.

(VI) Whether or not the State has programs or laws to deter adults from purchasing alcohol for minors; and the number of adults targeted by these programs.

(VII) Whether or not the State has programs targeted to youths, parents, and caregivers to deter underage drinking; and the number of individuals served by these programs.

(VIII) Whether or not the State has enacted graduated drivers licenses and the extent of those provisions.

(IX) The amount that the State invests, per youth capita, on the prevention of underage drinking, further broken down by the amount spent on—

(aa) compliance check programs in retail outlets, including providing technology to prevent and detect the use of false identification by minors to make alcohol purchases;

(bb) checkpoints and saturation patrols that include the goal of reducing and deterring underage drinking;

(cc) community-based, school-based, and higher-education-based programs to prevent underage drinking;

(dd) underage drinking prevention programs that target youth within the juvenile justice and child welfare systems; and

(ee) other State efforts or programs as deemed appropriate.

(3) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $1,000,000 for fiscal year 2007, and $1,000,000 for each of the fiscal years 2008 through 2010.

(d) National media campaign to prevent underage drinking

(1) Scope of the campaign

The Secretary shall continue to fund and oversee the production, broadcasting, and evaluation of the national adult-oriented media public service campaign if the Secretary determines that such campaign is effective in achieving the media campaign's measurable objectives.

(2) Report

The Secretary shall provide a report to the Congress annually detailing the production, broadcasting, and evaluation of the campaign referred to in paragraph (1), and to detail in the report the effectiveness of the campaign in reducing underage drinking, the need for and likely effectiveness of an expanded adult-oriented media campaign, and the feasibility and the likely effectiveness of a national youth-focused media campaign to combat underage drinking.

(3) Consultation requirement

In carrying out the media campaign, the Secretary shall direct the entity carrying out the national adult-oriented media public service campaign to consult with interested parties including both the alcohol beverage industry and public health and consumer groups. The progress of this consultative process is to be covered in the report under paragraph (2).

(4) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection, $1,000,000 for fiscal year 2007 and $1,000,000 for each of the fiscal years 2008 through 2010.

(e) Interventions

(1) Community-based coalition enhancement grants to prevent underage drinking

(A) Authorization of program

The Administrator of the Substance Abuse and Mental Health Services Administration, in consultation with the Director of the Office of National Drug Control Policy, shall award, if the Administrator determines that the Department of Health and Human Services is not currently conducting activities that duplicate activities of the type described in this subsection, ''enhancement grants'' to eligible entities to design, test, evaluate and disseminate effective strategies to maximize the effectiveness of community-wide approaches to preventing and reducing underage drinking. This subsection is subject to the availability of appropriations.

(B) Purposes

The purposes of this paragraph are to—

(i) prevent and reduce alcohol use among youth in communities throughout the United States;

(ii) strengthen collaboration among communities, the Federal Government, and State, local, and tribal governments;

(iii) enhance intergovernmental cooperation and coordination on the issue of alcohol use among youth;

(iv) serve as a catalyst for increased citizen participation and greater collaboration among all sectors and organizations of a community that first demonstrates a long-term commitment to reducing alcohol use among youth;

(v) disseminate to communities timely information regarding state-of-the-art practices and initiatives that have proven to be effective in preventing and reducing alcohol use among youth; and

(vi) enhance, not supplant, effective local community initiatives for preventing and reducing alcohol use among youth.

(C) Application

An eligible entity desiring an enhancement grant under this paragraph shall submit an application to the Administrator at such time, and in such manner, and accompanied by such information as the Administrator may require. Each application shall include—

(i) a complete description of the entity's current underage alcohol use prevention initiatives and how the grant will appropriately enhance the focus on underage drinking issues; or

(ii) a complete description of the entity's current initiatives, and how it will use this grant to enhance those initiatives by adding a focus on underage drinking prevention.

(D) Uses of funds

Each eligible entity that receives a grant under this paragraph shall use the grant

funds to carry out the activities described in such entity's application submitted pursuant to subparagraph (C). Grants under this paragraph shall not exceed $50,000 per year and may not exceed four years.

(E) Supplement not supplant

Grant funds provided under this paragraph shall be used to supplement, not supplant, Federal and non-Federal funds available for carrying out the activities described in this paragraph.

(F) Evaluation

Grants under this paragraph shall be subject to the same evaluation requirements and procedures as the evaluation requirements and procedures imposed on recipients of drug free community grants.

(G) Definitions

For purposes of this paragraph, the term ''eligible entity'' means an organization that is currently receiving or has received grant funds under the Drug-Free Communities Act of 1997 (21 U.S.C. 1521 et seq.).

(H) Administrative expenses

Not more than 6 percent of a grant under this paragraph may be expended for administrative expenses.

(I) Authorization of appropriations

There are authorized to be appropriated to carry out this paragraph $5,000,000 for fiscal year 2007, and $5,000,000 for each of the fiscal years 2008 through 2010.

(2) Grants directed at preventing and reducing alcohol abuse at institutions of higher education

(A) Authorization of program

The Secretary shall award grants to eligible entities to enable the entities to prevent and reduce the rate of underage alcohol consumption including binge drinking among students at institutions of higher education.

(B) Applications

An eligible entity that desires to receive a grant under this paragraph shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each application shall include—

(i) a description of how the eligible entity will work to enhance an existing, or where none exists to build a, statewide coalition;

(ii) a description of how the eligible entity will target underage students in the State;

(iii) a description of how the eligible entity intends to ensure that the statewide coalition is actually implementing the purpose of this section and moving toward indicators described in subparagraph (D);

(iv) a list of the members of the statewide coalition or interested parties involved in the work of the eligible entity;

(v) a description of how the eligible entity intends to work with State agencies on substance abuse prevention and education;

(vi) the anticipated impact of funds provided under this paragraph in preventing and reducing the rates of underage alcohol use;

(vii) outreach strategies, including ways in which the eligible entity proposes to—

(I) reach out to students and community stakeholders;

(II) promote the purpose of this paragraph;

(III) address the range of needs of the students and the surrounding communities; and

(IV) address community norms for underage students regarding alcohol use; and

(viii) such additional information as required by the Secretary.

(C) Uses of funds

Each eligible entity that receives a grant under this paragraph shall use the grant funds to carry out the activities described in such entity's application submitted pursuant to subparagraph (B).

(D) Accountability

On the date on which the Secretary first publishes a notice in the Federal Register soliciting applications for grants under this paragraph, the Secretary shall include in the notice achievement indicators for the program authorized under this paragraph. The achievement indicators shall be designed—

(i) to measure the impact that the statewide coalitions assisted under this paragraph are having on the institutions of higher education and the surrounding communities, including changes in the number of incidents of any kind in which students have abused alcohol or consumed alcohol while under the age of 21 (including violations, physical assaults, sexual assaults, reports of intimidation, disruptions of school functions, disruptions of student studies, mental health referrals, illnesses, or deaths);

(ii) to measure the quality and accessibility of the programs or information offered by the eligible entity; and

(iii) to provide such other measures of program impact as the Secretary determines appropriate.

(E) Supplement not supplant

Grant funds provided under this paragraph shall be used to supplement, and not supplant, Federal and non-Federal funds available for carrying out the activities described in this paragraph.

(F) Definitions

For purposes of this paragraph:

(i) Eligible entity

The term ''eligible entity'' means a State, institution of higher education, or nonprofit entity.

(ii) Institution of higher education

The term ''institution of higher education'' has the meaning given the term in section 1001(a) of title 20.

(iii) Secretary

The term ''Secretary'' means the Secretary of Education.

(iv) State

The term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(v) Statewide coalition

The term ''statewide coalition'' means a coalition that—

(I) includes, but is not limited to—

(aa) institutions of higher education within a State; and

(bb) a nonprofit group, a community underage drinking prevention coalition, or another substance abuse prevention group within a State; and

(II) works toward lowering the alcohol abuse rate by targeting underage students at institutions of higher education throughout the State and in the surrounding communities.

(vi) Surrounding community

The term ''surrounding community'' means the community—

(I) that surrounds an institution of higher education participating in a statewide coalition;

(II) where the students from the institution of higher education take part in the community; and

(III) where students from the institution of higher education live in off-campus housing.

(G) Administrative expenses

Not more than 5 percent of a grant under this paragraph may be expended for administrative expenses.

(H) Authorization of appropriations

There are authorized to be appropriated to carry out this paragraph $5,000,000 for fiscal year 2007, and $5,000,000 for each of the fiscal years 2008 through 2010.

(f) Additional research

(1) Additional research on underage drinking

(A) In general

The Secretary shall, subject to the availability of appropriations, collect data, and conduct or support research that is not duplicative of research currently being conducted or supported by the Department of Health and Human Services, on underage drinking, with respect to the following:

(i) Comprehensive community-based programs or strategies and statewide systems to prevent and reduce underage drinking, across the underage years from early childhood to age 21, including programs funded and implemented by government entities, public health interest groups and foundations, and alcohol beverage companies and trade associations.

(ii) Annually obtain and report more precise information than is currently collected on the scope of the underage drinking problem and patterns of underage alcohol consumption, including improved knowledge about the problem and progress in preventing, reducing and treating underage drinking; as well as information on the rate of exposure of youth to advertising and other media messages encouraging and discouraging alcohol consumption.

(iii) Compiling information on the involvement of alcohol in unnatural deaths of persons ages 12 to 20 in the United States, including suicides, homicides, and unintentional injuries such as falls, drownings, burns, poisonings, and motor vehicle crash deaths.

(B) Certain matters

The Secretary shall carry out activities toward the following objectives with respect to underage drinking:

(i) Obtaining new epidemiological data within the national or targeted surveys that identify alcohol use and attitudes about alcohol use during pre- and early adolescence, including harm caused to self or others as a result of adolescent alcohol use such as violence, date rape, risky sexual behavior, and prenatal alcohol exposure.

(ii) Developing or identifying successful clinical treatments for youth with alcohol problems.

(C) Peer review

Research under subparagraph (A) shall meet current Federal standards for scientific peer review.

(2) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $6,000,000 for fiscal year 2007, and $6,000,000 for each of the fiscal years 2008 through 2010.

(July 1, 1944, ch. 373, title V, § 519B, as added Pub. L. 106–310, div. B, title XXXI, § 3109, Oct. 17, 2000, 114 Stat. 1182; amended Pub. L. 109–422, § 2, Dec. 20, 2006, 120 Stat. 2890.)

REFERENCES IN TEXT

The Drug-Free Communities Act of 1997, referred to in subsec. (e)(1)(G), is Pub. L. 105–20, June 27, 1997, 111 Stat. 224, which is classified principally to subchapter II (§ 1521 et seq.) of chapter 20 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1501 of Title 21 and Tables.

AMENDMENTS

2006—Pub. L. 109–422 added subsecs. (a) to (f) and struck out former subsecs. (a) to (f), which related, respectively, to the Secretary's authority to make grants, cooperative agreements, or contracts for programs to prevent underage drinking; eligibility requirements; evaluation; geographical distribution; duration of award; and authorization of appropriations.

§ 290bb–25c. Services for individuals with fetal alcohol syndrome

(a) In general

The Secretary shall make awards of grants, cooperative agreements, or contracts to public and nonprofit private entities, including Indian tribes and tribal organizations, to provide serv-

ices to individuals diagnosed with fetal alcohol syndrome or alcohol-related birth defects.

(b) Use of funds

An award under subsection (a) of this section may, subject to subsection (d) of this section, be used to—

(1) screen and test individuals to determine the type and level of services needed;

(2) develop a comprehensive plan for providing services to the individual;

(3) provide mental health counseling;

(4) provide substance abuse prevention services and treatment, if needed;

(5) coordinate services with other social programs including social services, justice system, educational services, health services, mental health and substance abuse services, financial assistance programs, vocational services and housing assistance programs;

(6) provide vocational services;

(7) provide health counseling;

(8) provide housing assistance;

(9) parenting[1] skills training;

(10) overall[1] case management;

(11) supportive[1] services for families of individuals with Fetal Alcohol Syndrome; and

(12) provide other services and programs, to the extent authorized by the Secretary after consideration of recommendations made by the National Task Force on Fetal Alcohol Syndrome.

(c) Requirements

To be eligible to receive an award under subsection (a) of this section, an applicant shall—

(1) demonstrate that the program will be part of a coordinated, comprehensive system of care for such individuals;

(2) demonstrate an established communication with other social programs in the community including social services, justice system, financial assistance programs, health services, educational services, mental health and substance abuse services, vocational services and housing assistance services;

(3) show a history of working with individuals with fetal alcohol syndrome or alcohol-related birth defects;

(4) provide assurance that the services will be provided in a culturally and linguistically appropriate manner; and

(5) provide assurance that at the end of the 5-year award period, other mechanisms will be identified to meet the needs of the individuals and families served under such award.

(d) Relationship to payments under other programs

An award may be made under subsection (a) of this section only if the applicant involved agrees that the award will not be expended to pay the expenses of providing any service under this section to an individual to the extent that payment has been made, or can reasonably be expected to be made, with respect to such expenses—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

[1] So in original. Probably should be preceded by ''provide''.

(e) Duration of awards

With respect to an award under subsection (a) of this section, the period during which payments under such award are made to the recipient may not exceed 5 years.

(f) Evaluation

The Secretary shall evaluate each project carried out under subsection (a) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(g) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $25,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(2) Allocation

Of the amounts appropriated under paragraph (1) for a fiscal year, not less than $300,000 shall, for purposes relating to fetal alcohol syndrome and alcohol-related birth defects, be made available for collaborative, coordinated interagency efforts with the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Child Health and Human Development, the Health Resources and Services Administration, the Agency for Healthcare Research and Quality, the Centers for Disease Control and Prevention, the Department of Education, and the Department of Justice.

(July 1, 1944, ch. 373, title V, § 519C, as added Pub. L. 106–310, div. B, title XXXI, § 3110, Oct. 17, 2000, 114 Stat. 1183.)

§ 290bb–25d. Centers of excellence on services for individuals with fetal alcohol syndrome and alcohol-related birth defects and treatment for individuals with such conditions and their families

(a) In general

The Secretary shall make awards of grants, cooperative agreements, or contracts to public or nonprofit private entities for the purposes of establishing not more than four centers of excellence to study techniques for the prevention of fetal alcohol syndrome and alcohol-related birth defects and adaptations of innovative clinical interventions and service delivery improvements for the provision of comprehensive services to individuals with fetal alcohol syndrome or alcohol-related birth defects and their families and for providing training on such conditions.

(b) Use of funds

An award under subsection (a) of this section may be used to—

(1) study adaptations of innovative clinical interventions and service delivery improvements strategies for children and adults with fetal alcohol syndrome or alcohol-related birth defects and their families;

(2) identify communities which have an exemplary comprehensive system of care for such individuals so that they can provide tech-

nical assistance to other communities attempting to set up such a system of care;

(3) provide technical assistance to communities who do not have a comprehensive system of care for such individuals and their families;

(4) train community leaders, mental health and substance abuse professionals, families, law enforcement personnel, judges, health professionals, persons working in financial assistance programs, social service personnel, child welfare professionals, and other service providers on the implications of fetal alcohol syndrome and alcohol-related birth defects, the early identification of and referral for such conditions;

(5) develop innovative techniques for preventing alcohol use by women in child bearing years;

(6) perform other functions, to the extent authorized by the Secretary after consideration of recommendations made by the National Task Force on Fetal Alcohol Syndrome.

(c) Report

(1) In general

A recipient of an award under subsection (a) of this section shall at the end of the period of funding report to the Secretary on any innovative techniques that have been discovered for preventing alcohol use among women of child bearing years.

(2) Dissemination of findings

The Secretary shall upon receiving a report under paragraph (1) disseminate the findings to appropriate public and private entities.

(d) Duration of awards

With respect to an award under subsection (a) of this section, the period during which payments under such award are made to the recipient may not exceed 5 years.

(e) Evaluation

The Secretary shall evaluate each project carried out under subsection (a) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(f) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $5,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 519D, as added Pub. L. 106–310, div. B, title XXXI, § 3110, Oct. 17, 2000, 114 Stat. 1185.)

§ 290bb–25e. Prevention of methamphetamine and inhalant abuse and addiction

(a) Grants

The Director of the Center for Substance Abuse Prevention (referred to in this section as the ''Director'') may make grants to and enter into contracts and cooperative agreements with public and nonprofit private entities to enable such entities—

(1) to carry out school-based programs concerning the dangers of methamphetamine or inhalant abuse and addiction, using methods that are effective and evidence-based, including initiatives that give students the responsibility to create their own anti-drug abuse education programs for their schools; and

(2) to carry out community-based methamphetamine or inhalant abuse and addiction prevention programs that are effective and evidence-based.

(b) Use of funds

Amounts made available under a grant, contract or cooperative agreement under subsection (a) of this section shall be used for planning, establishing, or administering methamphetamine or inhalant prevention programs in accordance with subsection (c) of this section.

(c) Prevention programs and activities

(1) In general

Amounts provided under this section may be used—

(A) to carry out school-based programs that are focused on those districts with high or increasing rates of methamphetamine or inhalant abuse and addiction and targeted at populations which are most at risk to start methamphetamine or inhalant abuse;

(B) to carry out community-based prevention programs that are focused on those populations within the community that are most at-risk for methamphetamine or inhalant abuse and addiction;

(C) to assist local government entities to conduct appropriate methamphetamine or inhalant prevention activities;

(D) to train and educate State and local law enforcement officials, prevention and education officials, members of community anti-drug coalitions and parents on the signs of methamphetamine or inhalant abuse and addiction and the options for treatment and prevention;

(E) for planning, administration, and educational activities related to the prevention of methamphetamine or inhalant abuse and addiction;

(F) for the monitoring and evaluation of methamphetamine or inhalant prevention activities, and reporting and disseminating resulting information to the public; and

(G) for targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

(2) Priority

The Director shall give priority in making grants under this section to rural and urban areas that are experiencing a high rate or rapid increases in methamphetamine or inhalant abuse and addiction.

(d) Analyses and evaluation

(1) In general

Up to $500,000 of the amount available in each fiscal year to carry out this section shall be made available to the Director, acting in consultation with other Federal agencies, to support and conduct periodic analyses and evaluations of effective prevention programs for methamphetamine or inhalant abuse and

addiction and the development of appropriate strategies for disseminating information about and implementing these programs.

(2) Annual reports

The Director shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Commerce and Committee on Appropriations of the House of Representatives, an annual report with the results of the analyses and evaluation under paragraph (1).

(e) Authorization of appropriations

There is authorized to be appropriated to carry out subsection (a) of this section, $10,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 519E, as added Pub. L. 106–310, div. B, title XXXI, § 3104(c), Oct. 17, 2000, 114 Stat. 1173.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 290bb–25f. Prevention and education programs

(a) In general

The Secretary of Health and Human Services (referred to in this Act as the ''Secretary'') shall award grants to public and nonprofit private entities to enable such entities to carry out science-based education programs in elementary and secondary schools to highlight the harmful effects of anabolic steroids.

(b) Eligibility

(1) Application

To be eligible for grants under subsection (a) of this section, an entity shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(2) Preference

In awarding grants under subsection (a) of this section, the Secretary shall give preference to applicants that intend to use grant funds to carry out programs based on—

(A) the Athletes Training and Learning to Avoid Steroids program;

(B) The Athletes Targeting Healthy Exercise and Nutrition Alternatives program; and

(C) other programs determined to be effective by the National Institute on Drug Abuse.

(c) Use of funds

Amounts received under a grant under subsection (a) of this section shall be used for education programs that will directly communicate with teachers, principals, coaches, as well as elementary and secondary school children concerning the harmful effects of anabolic steroids.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $15,000,000 for each of fiscal years 2005 through 2010.

(Pub. L. 108–358, § 4, Oct. 22, 2004, 118 Stat. 1664.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means Pub. L. 108–358, October 22, 2004, 92 Stat. 1661, known as the Anabolic Steroid Control Act of 2004. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 801 of Title 21, Food and Drugs, and Tables.

CODIFICATION

Section was enacted as part of the Anabolic Steroid Control Act of 2004, and not as part of the Public Health Service Act which comprises this chapter.

SUBPART 3—CENTER FOR MENTAL HEALTH SERVICES

§ 290bb–31. Center for Mental Health Services

(a) Establishment

There is established in the Administration a Center for Mental Health Services (hereafter in this section referred to as the ''Center''). The Center shall be headed by a Director (hereafter in this section referred to as the ''Director'') appointed by the Secretary from among individuals with extensive experience or academic qualifications in the provision of mental health services or in the evaluation of mental health service systems.

(b) Duties

The Director of the Center shall—

(1) design national goals and establish national priorities for—

(A) the prevention of mental illness; and

(B) the promotion of mental health;

(2) encourage and assist local entities and State agencies to achieve the goals and priorities described in paragraph (1);

(3) collaborate with the Department of Education and the Department of Justice to develop programs to assist local communities in addressing violence among children and adolescents;

(4) develop and coordinate Federal prevention policies and programs and to assure increased focus on the prevention of mental illness and the promotion of mental health;

(5) develop improved methods of treating individuals with mental health problems and improved methods of assisting the families of such individuals;

(6) administer the mental health services block grant program authorized in section 300x of this title;

(7) promote policies and programs at Federal, State, and local levels and in the private sector that foster independence and protect the legal rights of persons with mental illness, including carrying out the provisions of the Protection and Advocacy of Mentally Ill Individuals Act[1] [42 U.S.C. 10801 et seq.];

(8) carry out the programs under part C of this subchapter; and

[1] See References in Text note below.

(9) carry out responsibilities for the Human Resource Development programs;

(10) conduct services-related assessments, including evaluations of the organization and financing of care, self-help and consumer-run programs, mental health economics, mental health service systems, rural mental health, and improve the capacity of State to conduct evaluations of publicly funded mental health programs;

(11) establish a clearinghouse for mental health information to assure the widespread dissemination of such information to States, political subdivisions, educational agencies and institutions, treatment and prevention service providers, and the general public, including information concerning the practical application of research supported by the National Institute of Mental Health that is applicable to improving the delivery of services;

(12) provide technical assistance to public and private entities that are providers of mental health services;

(13) monitor and enforce obligations incurred by community mental health centers pursuant to the Community Mental Health Centers Act (as in effect prior to the repeal of such Act on August 13, 1981, by section 902(e)(2)(B) of Public Law 97–35 (95 Stat. 560));

(14) conduct surveys with respect to mental health, such as the National Reporting Program; and

(15) assist States in improving their mental health data collection.

(c) Grants and contracts

In carrying out the duties established in subsection (b) of this section, the Director may make grants to and enter into contracts and cooperative agreements with public and nonprofit private entities.

(July 1, 1944, ch. 373, title V, § 520, as added Pub. L. 102–321, title I, § 115(a), July 10, 1992, 106 Stat. 346; amended Pub. L. 106–310, div. B, title XXXI, § 3112(c), Oct. 17, 2000, 114 Stat. 1188.)

REFERENCES IN TEXT

The Protection and Advocacy of Mentally Ill Individuals Act, referred to in subsec. (b)(7), probably means the Protection and Advocacy for Mentally Ill Individuals Act of 1986, which was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

The Community Mental Health Centers Act, referred to in subsec. (b)(13), is title II of Pub. L. 88–164, as added by Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560.

PRIOR PROVISIONS

A prior section 520 of act July 1, 1944, which was classified to section 290cc–13 of this title, was renumbered section 520A of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–32 of this title.

Another prior section 520 of act July 1, 1944, was renumbered section 519 by Pub. L. 101–93 and classified to section 290cc–12 of this title, prior to repeal by Pub. L. 102–321, § 117.

AMENDMENTS

2000—Subsec. (b)(3) to (7). Pub. L. 106–310, § 3112(c)(1), (2), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively. Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 106–310, § 3112(c)(1), (3), redesignated par. (7) as (8) and substituted ''programs under part C of this subchapter'' for ''programs authorized under sections 290bb–32 and 290cc–21 of this title, including the Community Support Program and the Child and Adolescent Service System Programs''. Former par. (8) redesignated (9).

Subsec. (b)(9). Pub. L. 106–310, § 3112(c)(4), which directed the amendment of par. (9) by substituting ''programs'' for ''program and programs of clinical training for professional and paraprofessional personnel pursuant to section 242a of this title'' was executed by making the substitution for the phrase which began with the words ''program, and programs'', to reflect the probable intent of Congress.

Pub. L. 106–310, § 3112(c)(1), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Subsec. (b)(10) to (15). Pub. L. 106–310, § 3112(c)(1), redesignated pars. (9) to (14) as (10) to (15), respectively.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

MENTAL HEALTH SERVICES FOR INDIVIDUALS IN CORRECTIONAL FACILITIES

Section 703 of Pub. L. 102–321 directed Secretary of Health and Human Services, acting through Director of Center for Mental Health Services, not later than July 10, 1992, to prepare and submit to Congress a report concerning most effective methods for providing mental health services to individuals who come into contact with the criminal justice system, including those individuals incarcerated in correctional facilities (including local jails and detention facilities), and the obstacles to providing such services, with such study to be carried out in consultation with the National Institute of Mental Health, the Department of Justice, and other appropriate public and private entities.

EXECUTIVE ORDER NO. 13263

Ex. Ord. No. 13263, Apr. 29, 2002, 67 F.R. 22337, which established President's New Freedom Commission on Mental Health, was revoked by Ex. Ord. No. 13316, § 3(g), Sept. 17, 2003, 68 F.R. 55256, eff. Sept. 30, 2003.

§ 290bb–32. Priority mental health needs of regional and national significance

(a) Projects

The Secretary shall address priority mental health needs of regional and national significance (as determined under subsection (b) of this section) through the provision of or through assistance for—

(1) knowledge development and application projects for prevention, treatment, and rehabilitation, and the conduct or support of evaluations of such projects;

(2) training and technical assistance programs;

(3) targeted capacity response programs; and

(4) systems change grants including statewide family network grants and client-oriented and consumer run self-help activities.

The Secretary may carry out the activities described in this subsection directly or through

grants or cooperative agreements with States, political subdivisions of States, Indian tribes and tribal organizations, other public or private nonprofit entities.

(b) Priority mental health needs

(1) Determination of needs

Priority mental health needs of regional and national significance shall be determined by the Secretary in consultation with States and other interested groups. The Secretary shall meet with the States and interested groups on an annual basis to discuss program priorities.

(2) Special consideration

In developing program priorities described in paragraph (1), the Secretary shall give special consideration to promoting the integration of mental health services into primary health care systems.

(c) Requirements

(1) In general

Recipients of grants, contracts, and cooperative agreements under this section shall comply with information and application requirements determined appropriate by the Secretary.

(2) Duration of award

With respect to a grant, contract, or cooperative agreement awarded under this section, the period during which payments under such award are made to the recipient may not exceed 5 years.

(3) Matching funds

The Secretary may, for projects carried out under subsection (a) of this section, require that entities that apply for grants, contracts, or cooperative agreements under this section provide non-Federal matching funds, as determined appropriate by the Secretary, to ensure the institutional commitment of the entity to the projects funded under the grant, contract, or cooperative agreement. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(4) Maintenance of effort

With respect to activities for which a grant, contract or cooperative agreement is awarded under this section, the Secretary may require that recipients for specific projects under subsection (a) of this section agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the fiscal year for which the entity receives such a grant, contract, or cooperative agreement.

(d) Evaluation

The Secretary shall evaluate each project carried out under subsection (a)(1) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(e) Information and education

(1) In general

The Secretary shall establish information and education programs to disseminate and apply the findings of the knowledge development and application, training, and technical assistance programs, and targeted capacity response programs, under this section to the general public, to health care professionals, and to interested groups. The Secretary shall make every effort to provide linkages between the findings of supported projects and State agencies responsible for carrying out mental health services.

(2) Rural and underserved areas

In disseminating information on evidence-based practices in the provision of children's mental health services under this subsection, the Secretary shall ensure that such information is distributed to rural and medically underserved areas.

(f) Authorization of appropriation

(1) In general

There are authorized to be appropriated to carry out this section, $300,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(2) Data infrastructure

If amounts are not appropriated for a fiscal year to carry out section 300y of this title with respect to mental health, then the Secretary shall make available, from the amounts appropriated for such fiscal year under paragraph (1), an amount equal to the sum of $6,000,000 and 10 percent of all amounts appropriated for such fiscal year under such paragraph in excess of $100,000,000, to carry out such section 300y of this title.

(July 1, 1944, ch. 373, title V, § 520A, as added Pub. L. 100–690, title II, § 2057(3), Nov. 18, 1988, 102 Stat. 4212; renumbered § 520 and amended Pub. L. 101–93, § 3(e), (g), Aug. 16, 1989, 103 Stat. 610, 611; Pub. L. 101–639, § 2, Nov. 28, 1990, 104 Stat. 4600; renumbered § 520A and amended Pub. L. 102–321, title I, § 116, July 10, 1992, 106 Stat. 348; Pub. L. 106–310, div. B, title XXXII, § 3201(a), Oct. 17, 2000, 114 Stat. 1189.)

CODIFICATION

Section was formerly classified to section 290cc–13 of this title prior to renumbering by Pub. L. 102–321.

AMENDMENTS

2000—Pub. L. 106–310 amended section catchline and text generally, substituting provisions relating to priority mental health needs of regional and national significance for provisions relating to establishment of grant programs for demonstration projects.

1992—Subsec. (a)(1). Pub. L. 102–321, § 116(b)(1), substituted ''Center for Mental Health Services'' for ''National Institute of Mental Health''.

Subsec. (c). Pub. L. 102–321, § 116(b)(2), substituted ''five'' for ''three''.

Subsec. (e)(1). Pub. L. 102–321, § 116(b)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.''

1990—Subsec. (a). Pub. L. 101–639, § 2(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary, acting through the Director, may make grants to States, political subdivisions of States, and nonprofit private agencies—

''(1) for mental health services demonstration projects for the planning, coordination, and improve-

ment of community services (including outreach and self-help services) for seriously mentally ill individuals, seriously emotionally disturbed children and youth, elderly individuals, and homeless seriously mentally ill individuals, and for the conduct of research concerning such services;

''(2) for demonstration projects for the prevention of youth suicide;

''(3) for demonstration projects for the improvement of the recognition, assessment, treatment, and clinical management of depressive disorders; and

''(4) for demonstration projects for treatment and prevention relating to sex offenses.''

Subsec. (e)(1). Pub. L. 101–639, § 2(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of carrying out this section, there are authorized to be appropriated $60,000,000 for each of the fiscal years 1989 and 1990.''

1989—Pub. L. 101–93 substituted ''programs'' for ''program'' in section catchline and in subsec. (a) substituted ''seriously mentally ill'' for ''chronically mentally ill'' wherever appearing, redesignated par. (5) as (4), and inserted ''for'' before ''demonstration'' in pars. (2), (3), and (4).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

COMMUNITY MENTAL HEALTH SERVICES DEMONSTRATION PROJECTS FOR HOMELESS INDIVIDUALS WHO ARE CHRONICALLY MENTALLY ILL

Pub. L. 100–77, title VI, § 612, July 22, 1987, 101 Stat. 523, as amended by Pub. L. 100–607, title VIII, § 821, Nov. 4, 1988, 102 Stat. 3171; Pub. L. 100–628, title VI, § 621, Nov. 7, 1988, 102 Stat. 3244; Pub. L. 101–93, § 5(t)(1), (2), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, § 521, Nov. 29, 1990, 104 Stat. 4734, which authorized to be appropriated for payments under this section such sums as may be necessary for each of the fiscal years 1991 through 1993, in addition to any other amounts authorized to be appropriated for such payments for each of such fiscal years with such additional amounts to be available only for the provision of community-based mental health services to homeless individuals who are chronically mentally ill, and amounts paid to grantees under subsection (a) of this section that remain unobligated at the end of the fiscal year in which the amounts were received to remain available to grantees during the succeeding fiscal year for the purposes for which the payments were made, was repealed by Pub. L. 106–310, div. B, title XXXII, § 3201(b)(3), Oct. 17, 2000, 114 Stat. 1190.

§ 290bb–33. Repealed. Pub. L. 106–310, div. B, title XXXII, § 3201(b)(2), Oct. 17, 2000, 114 Stat. 1190

Section, act July 1, 1944, ch. 373, title V, § 520B, formerly title XXIV, § 2441, as added Pub. L. 100–607, title II, § 211, Nov. 4, 1988, 102 Stat. 3092; renumbered title V, § 520B, and amended Pub. L. 102–321, title I, § 118(a), (b)(2), July 10, 1992, 106 Stat. 348, 349, related to demonstration projects for individuals with positive test results.

§ 290bb–34. Youth interagency research, training, and technical assistance centers

(a) Program authorized

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, and in consultation with the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the Bureau of Justice Assistance and the Director of the National Institutes of Health—

(1) shall award grants or contracts to public or nonprofit private entities to establish not more than four research, training, and technical assistance centers to carry out the activities described in subsection (c) of this section; and

(2) shall award a competitive grant to 1 additional research, training, and technical assistance center to carry out the activities described in subsection (d) of this section.

(b) Application

A public or private nonprofit entity desiring a grant or contract under subsection (a) of this section shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) Authorized activities

A center established under a grant or contract under subsection (a)(1) of this section shall—

(1) provide training with respect to state-of-the-art mental health and justice-related services and successful mental health and substance abuse-justice collaborations that focus on children and adolescents, to public policymakers, law enforcement administrators, public defenders, police, probation officers, judges, parole officials, jail administrators and mental health and substance abuse providers and administrators;

(2) engage in research and evaluations concerning State and local justice and mental health systems, including system redesign initiatives, and disseminate information concerning the results of such evaluations;

(3) provide direct technical assistance, including assistance provided through toll-free telephone numbers, concerning issues such as how to accommodate individuals who are being processed through the courts under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), what types of mental health or substance abuse service approaches are effective within the judicial system, and how community-based mental health or substance abuse services can be more effective, including relevant regional, ethnic, and gender-related considerations; and

(4) provide information, training, and technical assistance to State and local governmental officials to enhance the capacity of such officials to provide appropriate services relating to mental health or substance abuse.

(d) Additional center

The additional research, training, and technical assistance center established under subsection (a)(2) of this section shall provide appropriate information, training, and technical assistance to States, political subdivisions of a State, Federally recognized Indian tribes, tribal organizations, institutions of higher education, public organizations, or private nonprofit organizations for—

(1) the development or continuation of statewide or tribal youth suicide early intervention and prevention strategies;

(2) ensuring the surveillance of youth suicide early intervention and prevention strategies;

(3) studying the costs and effectiveness of statewide youth suicide early intervention and prevention strategies in order to provide information concerning relevant issues of importance to State, tribal, and national policymakers;

(4) further identifying and understanding causes and associated risk factors for youth suicide;

(5) analyzing the efficacy of new and existing youth suicide early intervention techniques and technology;

(6) ensuring the surveillance of suicidal behaviors and nonfatal suicidal attempts;

(7) studying the effectiveness of State-sponsored statewide and tribal youth suicide early intervention and prevention strategies on the overall wellness and health promotion strategies related to suicide attempts;

(8) promoting the sharing of data regarding youth suicide with Federal agencies involved with youth suicide early intervention and prevention, and State-sponsored statewide or tribal youth suicide early intervention and prevention strategies for the purpose of identifying previously unknown mental health causes and associated risk factors for suicide in youth;

(9) evaluating and disseminating outcomes and best practices of mental and behavioral health services at institutions of higher education; and

(10) other activities determined appropriate by the Secretary.

(e) Authorization of appropriations

(1) For the purpose of awarding grants or contracts under subsection (a)(1) of this section, there is authorized to be appropriated $4,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 and 2003.

(2) For the purpose of awarding a grant under subsection (a)(2) of this section, there are authorized to be appropriated $3,000,000 for fiscal year 2005, $4,000,000 for fiscal year 2006, and $5,000,000 for fiscal year 2007.

(July 1, 1944, ch. 373, title V, § 520C, as added Pub. L. 106–310, div. B, title XXXI, § 3104(b), Oct. 17, 2000, 114 Stat. 1173; amended Pub. L. 108–355, § 3(a), Oct. 21, 2004, 118 Stat. 1405.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (c)(3), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§ 12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–355, § 3(a)(1), substituted dash for comma after ''National Institutes of Health'', designated remainder of existing provisions as par. (1), substituted ''; and'' for period, and added par. (2).

Subsec. (c). Pub. L. 108–355, § 3(a)(2), substituted ''(a)(1)'' for ''(a)'' in introductory provisions.

Subsec. (d). Pub. L. 108–355, § 3(a)(5), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 108–355, § 3(a)(3), designated existing provisions as par. (1), substituted ''awarding grants or contracts under subsection (a)(1) of this section'' for ''carrying out this section'', and added par. (2).

Subsec. (e). Pub. L. 108–355, § 3(a)(4), redesignated subsec. (d) as (e).

§ 290bb–35. Services for youth offenders

(a) In general

The Secretary, acting through the Director of the Center for Mental Health Services, and in consultation with the Director of the Center for Substance Abuse Treatment, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, and the Director of the Special Education Programs, shall award grants on a competitive basis to State or local juvenile justice agencies to enable such agencies to provide aftercare services for youth offenders who have been discharged from facilities in the juvenile or criminal justice system and have serious emotional disturbances or are at risk of developing such disturbances.

(b) Use of funds

A State or local juvenile justice agency receiving a grant under subsection (a) of this section shall use the amounts provided under the grant—

(1) to develop a plan describing the manner in which the agency will provide services for each youth offender who has a serious emotional disturbance and has been detained or incarcerated in facilities within the juvenile or criminal justice system;

(2) to provide a network of core or aftercare services or access to such services for each youth offender, including diagnostic and evaluation services, substance abuse treatment services, outpatient mental health care services, medication management services, intensive home-based therapy, intensive day treatment services, respite care, and therapeutic foster care;

(3) to establish a program that coordinates with other State and local agencies providing recreational, social, educational, vocational, or operational services for youth, to enable the agency receiving a grant under this section to provide community-based system of care services for each youth offender that addresses the special needs of the youth and helps the youth access all of the aforementioned services; and

(4) using not more than 20 percent of funds received, to provide planning and transition services as described in paragraph (3) for youth offenders while such youth are incarcerated or detained.

(c) Application

A State or local juvenile justice agency that desires a grant under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(d) Report

Not later than 3 years after October 17, 2000, and annually thereafter, the Secretary shall prepare and submit, to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Commerce of the House of Representatives, a report that describes the services provided pursuant to this section.

(e) Definitions

In this section:

(1) Serious emotional disturbance

The term ''serious emotional disturbance'' with respect to a youth offender means an offender who currently, or at any time within the 1-year period ending on the day on which services are sought under this section, has a diagnosable mental, behavioral, or emotional disorder that functionally impairs the offender's life by substantially limiting the offender's role in family, school, or community activities, and interfering with the offender's ability to achieve or maintain one or more developmentally-appropriate social, behavior, cognitive, communicative, or adaptive skills.

(2) Community-based system of care

The term ''community-based system of care'' means the provision of services for the youth offender by various State or local agencies that in an interagency fashion or operating as a network addresses the recreational, social, educational, vocational, mental health, substance abuse, and operational needs of the youth offender.

(3) Youth offender

The term ''youth offender'' means an individual who is 21 years of age or younger who has been discharged from a State or local juvenile or criminal justice system, except that if the individual is between the ages of 18 and 21 years, such individual has had contact with the State or local juvenile or criminal justice system prior to attaining 18 years of age and is under the jurisdiction of such a system at the time services are sought.

(f) Authorization of appropriations

There is authorized to be appropriated to carry out this section $40,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 520D, as added Pub. L. 106–310, div. B, title XXXI, § 3107, Oct. 17, 2000, 114 Stat. 1179.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 290bb–36. Youth suicide early intervention and prevention strategies

(a) In general

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall award grants or cooperative agreements to eligible entities to—

(1) develop and implement State-sponsored statewide or tribal youth suicide early intervention and prevention strategies in schools, educational institutions, juvenile justice systems, substance abuse programs, mental health programs, foster care systems, and other child and youth support organizations;

(2) support public organizations and private nonprofit organizations actively involved in State-sponsored statewide or tribal youth suicide early intervention and prevention strategies and in the development and continuation of State-sponsored statewide youth suicide early intervention and prevention strategies;

(3) provide grants to institutions of higher education to coordinate the implementation of State-sponsored statewide or tribal youth suicide early intervention and prevention strategies;

(4) collect and analyze data on State-sponsored statewide or tribal youth suicide early intervention and prevention services that can be used to monitor the effectiveness of such services and for research, technical assistance, and policy development; and

(5) assist eligible entities, through State-sponsored statewide or tribal youth suicide early intervention and prevention strategies, in achieving targets for youth suicide reductions under title V of the Social Security Act [42 U.S.C. 701 et seq.].

(b) Eligible entity

(1) Definition

In this section, the term ''eligible entity'' means—

(A) a State;

(B) a public organization or private nonprofit organization designated by a State to develop or direct the State-sponsored statewide youth suicide early intervention and prevention strategy; or

(C) a Federally recognized Indian tribe or tribal organization (as defined in the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]) or an urban Indian organization (as defined in the Indian Health Care Improvement Act [25 U.S.C. 1601 et seq.]) that is actively involved in the development and continuation of a tribal youth suicide early intervention and prevention strategy.

(2) Limitation

In carrying out this section, the Secretary shall ensure that each State is awarded only 1 grant or cooperative agreement under this section. For purposes of the preceding sentence, a State shall be considered to have been awarded a grant or cooperative agreement if the eligible entity involved is the State or an entity designated by the State under paragraph (1)(B). Nothing in this paragraph shall be construed to apply to entities described in paragraph (1)(C).

(c) Preference

In providing assistance under a grant or cooperative agreement under this section, an eligible entity shall give preference to public organizations, private nonprofit organizations, political subdivisions, institutions of higher education, and tribal organizations actively involved with the State-sponsored statewide or tribal youth suicide early intervention and prevention strategy that—

(1) provide early intervention and assessment services, including screening programs, to youth who are at risk for mental or emotional disorders that may lead to a suicide attempt, and that are integrated with school

systems, educational institutions, juvenile justice systems, substance abuse programs, mental health programs, foster care systems, and other child and youth support organizations;

(2) demonstrate collaboration among early intervention and prevention services or certify that entities will engage in future collaboration;

(3) employ or include in their applications a commitment to evaluate youth suicide early intervention and prevention practices and strategies adapted to the local community;

(4) provide timely referrals for appropriate community-based mental health care and treatment of youth who are at risk for suicide in child-serving settings and agencies;

(5) provide immediate support and information resources to families of youth who are at risk for suicide;

(6) offer access to services and care to youth with diverse linguistic and cultural backgrounds;

(7) offer appropriate postsuicide intervention services, care, and information to families, friends, schools, educational institutions, juvenile justice systems, substance abuse programs, mental health programs, foster care systems, and other child and youth support organizations of youth who recently completed suicide;

(8) offer continuous and up-to-date information and awareness campaigns that target parents, family members, child care professionals, community care providers, and the general public and highlight the risk factors associated with youth suicide and the life-saving help and care available from early intervention and prevention services;

(9) ensure that information and awareness campaigns on youth suicide risk factors, and early intervention and prevention services, use effective communication mechanisms that are targeted to and reach youth, families, schools, educational institutions, and youth organizations;

(10) provide a timely response system to ensure that child-serving professionals and providers are properly trained in youth suicide early intervention and prevention strategies and that child-serving professionals and providers involved in early intervention and prevention services are properly trained in effectively identifying youth who are at risk for suicide;

(11) provide continuous training activities for child care professionals and community care providers on the latest youth suicide early intervention and prevention services practices and strategies;

(12) conduct annual self-evaluations of outcomes and activities, including consulting with interested families and advocacy organizations;

(13) provide services in areas or regions with rates of youth suicide that exceed the national average as determined by the Centers for Disease Control and Prevention; and

(14) obtain informed written consent from a parent or legal guardian of an at-risk child before involving the child in a youth suicide early intervention and prevention program.

(d) Requirement for direct services

Not less than 85 percent of grant funds received under this section shall be used to provide direct services, of which not less than 5 percent shall be used for activities authorized under subsection (a)(3) of this section.

(e) Coordination and collaboration

(1) In general

In carrying out this section, the Secretary shall collaborate with relevant Federal agencies and suicide working groups responsible for early intervention and prevention services relating to youth suicide.

(2) Consultation

In carrying out this section, the Secretary shall consult with—

(A) State and local agencies, including agencies responsible for early intervention and prevention services under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], the State Children's Health Insurance Program under title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.], and programs funded by grants under title V of the Social Security Act [42 U.S.C. 701 et seq.];

(B) local and national organizations that serve youth at risk for suicide and their families;

(C) relevant national medical and other health and education specialty organizations;

(D) youth who are at risk for suicide, who have survived suicide attempts, or who are currently receiving care from early intervention services;

(E) families and friends of youth who are at risk for suicide, who have survived suicide attempts, who are currently receiving care from early intervention and prevention services, or who have completed suicide;

(F) qualified professionals who possess the specialized knowledge, skills, experience, and relevant attributes needed to serve youth at risk for suicide and their families; and

(G) third-party payers, managed care organizations, and related commercial industries.

(3) Policy development

In carrying out this section, the Secretary shall—

(A) coordinate and collaborate on policy development at the Federal level with the relevant Department of Health and Human Services agencies and suicide working groups; and

(B) consult on policy development at the Federal level with the private sector, including consumer, medical, suicide prevention advocacy groups, and other health and education professional-based organizations, with respect to State-sponsored statewide or tribal youth suicide early intervention and prevention strategies.

(f) Rule of construction; religious and moral accommodation

Nothing in this section shall be construed to require suicide assessment, early intervention,

or treatment services for youth whose parents or legal guardians object based on the parents' or legal guardians' religious beliefs or moral objections.

(g) Evaluations and report

(1) Evaluations by eligible entities

Not later than 18 months after receiving a grant or cooperative agreement under this section, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant or agreement.

(2) Report

Not later than 2 years after October 21, 2004, the Secretary shall submit to the appropriate committees of Congress a report concerning the results of—

(A) the evaluations conducted under paragraph (1); and

(B) an evaluation conducted by the Secretary to analyze the effectiveness and efficacy of the activities conducted with grants, collaborations, and consultations under this section.

(h) Rule of construction; student medication

Nothing in this section or section 290bb–36a of this title shall be construed to allow school personnel to require that a student obtain any medication as a condition of attending school or receiving services.

(i) Prohibition

Funds appropriated to carry out this section, section 290bb–34 of this title, section 290bb–36a of this title, or section 290bb–36b of this title shall not be used to pay for or refer for abortion.

(j) Parental consent

States and entities receiving funding under this section and section 290bb–36a of this title shall obtain prior written, informed consent from the child's parent or legal guardian for assessment services, school-sponsored programs, and treatment involving medication related to youth suicide conducted in elementary and secondary schools. The requirement of the preceding sentence does not apply in the following cases:

(1) In an emergency, where it is necessary to protect the immediate health and safety of the student or other students.

(2) Other instances, as defined by the State, where parental consent cannot reasonably be obtained.

(k) Relation to education provisions

Nothing in this section or section 290bb–36a of this title shall be construed to supersede section 1232g of title 20, including the requirement of prior parental consent for the disclosure of any education records. Nothing in this section or section 290bb–36a of this title shall be construed to modify or affect parental notification requirements for programs authorized under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] (as amended by the No Child Left Behind Act of 2001; Public Law 107–110).

(*l*) Definitions

In this section:

(1) Early intervention

The term ''early intervention'' means a strategy or approach that is intended to prevent an outcome or to alter the course of an existing condition.

(2) Educational institution; institution of higher education; school

The term—

(A) ''educational institution'' means a school or institution of higher education;

(B) ''institution of higher education'' has the meaning given such term in section 1001 of title 20; and

(C) ''school'' means an elementary or secondary school (as such terms are defined in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801]).

(3) Prevention

The term ''prevention'' means a strategy or approach that reduces the likelihood or risk of onset, or delays the onset, of adverse health problems that have been known to lead to suicide.

(4) Youth

The term ''youth'' means individuals who are between 10 and 24 years of age.

(m) Authorization of appropriations

(1) In general

For the purpose of carrying out this section, there are authorized to be appropriated $7,000,000 for fiscal year 2005, $18,000,000 for fiscal year 2006, and $30,000,000 for fiscal year 2007.

(2) Preference

If less than $3,500,000 is appropriated for any fiscal year to carry out this section, in awarding grants and cooperative agreements under this section during the fiscal year, the Secretary shall give preference to States that have rates of suicide that significantly exceed the national average as determined by the Centers for Disease Control and Prevention.

(July 1, 1944, ch. 373, title V, § 520E, as added Pub. L. 108–355, § 3(c), Oct. 21, 2004, 118 Stat. 1409.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(5) and (e)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XIX, and XXI of the Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (b)(1)(C), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (b)(1)(C), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§ 1601 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (k), is Pub. L. 89–10, Apr. 11,

1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§ 6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The No Child Left Behind Act of 2001, referred to in subsec. (k), is Pub. L. 107–110, Jan. 8, 2002, 115 Stat. 1425. For complete classification of this Act to the Code, see Short Title of 2002 Amendment note set out under section 6301 of Title 20, Education, and Tables.

PRIOR PROVISIONS

A prior section 290bb–36, act July 1, 1944, ch. 373, title V, § 520E, as added Pub. L. 106–310, div. B, title XXXI, § 3111, Oct. 17, 2000, 114 Stat. 1186, and amended, which related to suicide prevention for children and adolescents, was renumbered section 520E–1 of act July 1, 1944, by Pub. L. 108–355, § 3(b)(2), Oct. 21, 2004, 118 Stat. 1409, and transferred to section 290bb–36a of this title.

CONGRESSIONAL FINDINGS

Pub. L. 108–355, § 2, Oct. 21, 2004, 118 Stat. 1404, provided that: ''Congress makes the following findings:

''(1) More children and young adults die from suicide each year than from cancer, heart disease, AIDS, birth defects, stroke, and chronic lung disease combined.

''(2) Over 4,000 children and young adults tragically take their lives every year, making suicide the third overall cause of death between the ages of 10 and 24. According to the Centers for Disease Control and Prevention, suicide is the third overall cause of death among college-age students.

''(3) According to the National Center for Injury Prevention and Control of the Centers for Disease Control and Prevention, children and young adults accounted for 15 percent of all suicides completed in 2000.

''(4) From 1952 to 1995, the rate of suicide in children and young adults tripled.

''(5) From 1980 to 1997, the rate of suicide among young adults ages 15 to 19 increased 11 percent.

''(6) From 1980 to 1997, the rate of suicide among children ages 10 to 14 increased 109 percent.

''(7) According to the National Center of Health Statistics, suicide rates among Native Americans range from 1.5 to 3 times the national average for other groups, with young people ages 15 to 34 making up 64 percent of all suicides.

''(8) Congress has recognized that youth suicide is a public health tragedy linked to underlying mental health problems and that youth suicide early intervention and prevention activities are national priorities.

''(9) Youth suicide early intervention and prevention have been listed as urgent public health priorities by the President's New Freedom Commission in [probably should be ''on''] Mental Health (2002), the Institute of Medicine's Reducing Suicide: A National Imperative (2002), the National Strategy for Suicide Prevention: Goals and Objectives for Action (2001), and the Surgeon General's Call to Action To Prevent Suicide (1999).

''(10) Many States have already developed comprehensive statewide youth suicide early intervention and prevention strategies that seek to provide effective early intervention and prevention services.

''(11) In a recent report, a startling 85 percent of college counseling centers revealed an increase in the number of students they see with psychological problems. Furthermore, the American College Health Association found that 61 percent of college students reported feeling hopeless, 45 percent said they felt so depressed they could barely function, and 9 percent felt suicidal.

''(12) There is clear evidence of an increased incidence of depression among college students. According to a survey described in the Chronicle of Higher Education (February 1, 2002), depression among freshmen has nearly doubled (from 8.2 percent to 16.3 percent). Without treatment, researchers recently noted that 'depressed adolescents are at risk for school failure, social isolation, promiscuity, self-medication with drugs and alcohol, and suicide—now the third leading cause of death among 10–24 year olds.'.

''(13) Researchers who conducted the study 'Changes in Counseling Center Client Problems Across 13 Years' (1989–2001) at Kansas State University stated that 'students are experiencing more stress, more anxiety, more depression than they were a decade ago.' (The Chronicle of Higher Education, February 14, 2003).

''(14) According to the 2001 National Household Survey on Drug Abuse, 20 percent of full-time undergraduate college students use illicit drugs.

''(15) The 2001 National Household Survey on Drug Abuse also reported that 18.4 percent of adults aged 18 to 24 are dependent on or abusing illicit drugs or alcohol. In addition, the study found that 'serious mental illness is highly correlated with substance dependence or abuse. Among adults with serious mental illness in 2001, 20.3 percent were dependent on or abused alcohol or illicit drugs, while the rate among adults without serious mental illness was only 6.3 percent.'.

''(16) A 2003 Gallagher's Survey of Counseling Center Directors found that 81 percent were concerned about the increasing number of students with more serious psychological problems, 67 percent reported a need for more psychiatric services, and 63 percent reported problems with growing demand for services without an appropriate increase in resources.

''(17) The International Association of Counseling Services accreditation standards recommend 1 counselor per 1,000 to 1,500 students. According to the 2003 Gallagher's Survey of Counseling Center Directors, the ratio of counselors to students is as high as 1 counselor per 2,400 students at institutions of higher education with more than 15,000 students.''

§ 290bb–36a. Suicide prevention for youth

(a) In general

The Secretary shall award grants or cooperative agreements to public organizations, private nonprofit organizations, political subdivisions, consortia of political subdivisions, consortia of States, or Federally recognized Indian tribes or tribal organizations to design early intervention and prevention strategies that will complement the State-sponsored statewide or tribal youth suicide early intervention and prevention strategies developed pursuant to section 290bb–36 of this title.

(b) Collaboration

In carrying out subsection (a) of this section, the Secretary shall ensure that activities under this section are coordinated with the relevant Department of Health and Human Services agencies and suicide working groups.

(c) Requirements

A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or federally recognized Indian tribe or tribal organization desiring a grant, contract, or cooperative agreement under this section shall demonstrate that the suicide prevention program such entity proposes will—

(1)(A) comply with the State-sponsored statewide early intervention and prevention strategy as developed under section 290bb–36 of this title; and

(B) in the case of a consortium of States, receive the support of all States involved;

(2) provide for the timely assessment, treatment, or referral for mental health or substance abuse services of youth at risk for suicide;

(3) be based on suicide prevention practices and strategies that are adapted to the local community;

(4) integrate its suicide prevention program into the existing health care system in the community including general, mental, and behavioral health services, and substance abuse services;

(5) be integrated into other systems in the community that address the needs of youth including the school systems, educational institutions, juvenile justice system, substance abuse programs, mental health programs, foster care systems, and community child and youth support organizations;

(6) use primary prevention methods to educate and raise awareness in the local community by disseminating evidence-based information about suicide prevention;

(7) include suicide prevention, mental health, and related information and services for the families and friends of those who completed suicide, as needed;

(8) offer access to services and care to youth with diverse linguistic and cultural backgrounds;

(9) conduct annual self-evaluations of outcomes and activities, including consulting with interested families and advocacy organizations;[1]

(10) ensure that staff used in the program are trained in suicide prevention and that professionals involved in the system of care have received training in identifying persons at risk of suicide.

(d) Use of funds

Amounts provided under a grant or cooperative agreement under this section shall be used to supplement, and not supplant, Federal and non-Federal funds available for carrying out the activities described in this section. Applicants shall provide financial information to demonstrate compliance with this section.

(e) Condition

An applicant for a grant or cooperative agreement under subsection (a) of this section shall demonstrate to the Secretary that the application complies with the State-sponsored statewide early intervention and prevention strategy as developed under section 290bb–36 of this title and the applicant has the support of the local community and relevant public health officials.

(f) Special populations

In awarding grants and cooperative agreements under subsection (a) of this section, the Secretary shall ensure that such awards are made in a manner that will focus on the needs of communities or groups that experience high or rapidly rising rates of suicide.

(g) Application

A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or Federally recognized Indian tribe or tribal organization receiving a grant or cooperative agreement under subsection (a) of this section shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Such application shall include a plan for the rigorous evaluation of activities funded under the grant or cooperative agreement, including a process and outcome evaluation.

(h) Distribution of awards

In awarding grants and cooperative agreements under subsection (a) of this section, the Secretary shall ensure that such awards are distributed among the geographical regions of the United States and between urban and rural settings.

(i) Evaluation

A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or Federally recognized Indian tribe or tribal organization receiving a grant or cooperative agreement under subsection (a) of this section shall prepare and submit to the Secretary at the end of the program period, an evaluation of all activities funded under this section.

(j) Dissemination and education

The Secretary shall ensure that findings derived from activities carried out under this section are disseminated to State, county and local governmental agencies and public and private nonprofit organizations active in promoting suicide prevention and family support activities.

(k) Duration of projects

With respect to a grant, contract, or cooperative agreement awarded under this section, the period during which payments under such award may be made to the recipient may not exceed 3 years.

(*l*) Study

Within 1 year after October 17, 2000, the Secretary shall, directly or by grant or contract, initiate a study to assemble and analyze data to identify—

(1) unique profiles of children under 13 who attempt or complete suicide;

(2) unique profiles of youths between ages 13 and 24 who attempt or complete suicide; and

(3) a profile of services available to these groups and the use of these services by children and youths from paragraphs (1) and (2).

(m) Definitions

In this section, the terms ''early intervention'', ''educational institution'', ''institution of higher education'', ''prevention'', ''school'', and ''youth'' have the meanings given to those terms in section 290bb–36 of this title.

(n) Authorization of appropriation

For purposes of carrying out this section, there is authorized to be appropriated $75,000,000 for fiscal year 2001 and such sums as may be necessary for each of the fiscal years 2002 through 2003.

[1] So in original. Probably should be followed by ''and''.

(July 1, 1944, ch. 373, title V, § 520E–1, formerly § 520E, as added Pub. L. 106–310, div. B, title XXXI, § 3111, Oct. 17, 2000, 114 Stat. 1186; renumbered § 520E–1 and amended Pub. L. 108–355, § 3(b), Oct. 21, 2004, 118 Stat. 1407.)

CODIFICATION

Section was formerly classified to section 290bb–36 of this title prior to renumbering by Pub. L. 108–355.

AMENDMENTS

2004—Pub. L. 108–355, § 3(b)(1)(A), substituted ''youth'' for ''children and adolescents'' in section catchline.

Subsec. (a). Pub. L. 108–355, § 3(b)(1)(B), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''The Secretary shall award grants, contracts, or cooperative agreements to States, political subdivisions of States, Indian tribes, tribal organizations, public organizations, or private nonprofit organizations to establish programs to reduce suicide deaths in the United States among children and adolescents.''

Subsec. (b). Pub. L. 108–355, § 3(b)(1)(C), substituted ''with the relevant Department of Health and Human Services agencies and suicide working groups.'' for ''among the Substance Abuse and Mental Health Services Administration, the relevant institutes at the National Institutes of Health, the Centers for Disease Control and Prevention, the Health Resources and Services Administration, and the Administration on Children and Families.''

Subsec. (c). Pub. L. 108–355, § 3(b)(1)(D)(i), substituted ''A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or federally recognized Indian tribe or tribal organization desiring'' for ''A State, political subdivision of a State, Indian tribe, tribal organization, public organization, or private nonprofit organization desiring'' in introductory provisions.

Subsec. (c)(1). Pub. L. 108–355, § 3(b)(1)(D)(iii), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 108–355, § 3(b)(1)(D)(ii), (iv), redesignated par. (1) as (2) and substituted ''youth'' for ''children and adolescents''. Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 108–355, § 3(b)(1)(D)(ii), (v), redesignated par. (2) as (3) and struck out ''best evidence-based,'' after ''based on''. Former par. (3) redesignated (4).

Subsec. (c)(4). Pub. L. 108–355, § 3(b)(1)(D)(ii), (vi), redesignated par. (3) as (4) and substituted ''general, mental, and behavioral health services, and substance abuse services;'' for ''primary health care, mental health services, and substance abuse services;''. Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 108–355, § 3(b)(1)(D)(ii), (vii), redesignated par. (4) as (5) and substituted ''youth including the school systems, educational institutions, juvenile justice system, substance abuse programs, mental health programs, foster care systems, and community child and youth support organizations;'' for ''children and adolescents including the educational system, juvenile justice system, welfare and child protection systems, and community youth support organizations;''. Former par. (5) redesignated (6).

Subsec. (c)(6), (7). Pub. L. 108–355, § 3(b)(1)(D)(ii), redesignated pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (c)(8). Pub. L. 108–355, § 3(b)(1)(D)(viii), added par. (8) and struck out former par. (8) which read as follows: ''provide linguistically appropriate and culturally competent services, as needed;''.

Pub. L. 108–355, § 3(b)(1)(D)(ii), redesignated par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (c)(9). Pub. L. 108–355, § 3(b)(1)(D)(ix), added par. (9) and struck out former par. (9) which read as follows: ''provide a plan for the evaluation of outcomes and activities at the local level, according to standards established by the Secretary, and agree to participate in a national evaluation; and''.

Pub. L. 108–355, § 3(b)(1)(D)(ii), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Subsec. (c)(10). Pub. L. 108–355, § 3(b)(1)(D)(ii), redesignated par. (9) as (10).

Subsec. (d). Pub. L. 108–355, § 3(b)(1)(E), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''Amounts provided under grants, contracts, or cooperative agreements under subsection (a) of this section shall be used to supplement and not supplant other Federal, State, and local public funds that are expended to provide services for eligible individuals.''

Subsec. (e). Pub. L. 108–355, § 3(b)(1)(F), struck out '', contract,'' after ''grant'' and inserted ''application complies with the State-sponsored statewide early intervention and prevention strategy as developed under section 290bb–36 of this title and the'' after ''Secretary that the''.

Subsec. (f). Pub. L. 108–355, § 3(b)(1)(G), struck out '', contracts,'' after ''grants''.

Subsec. (g). Pub. L. 108–355, § 3(b)(1)(H), substituted ''A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or Federally recognized Indian tribe or tribal organization receiving'' for ''A State, political subdivision of a State, Indian tribe, tribal organization, public organization, or private nonprofit organization receiving'' and struck out '', contract,'' after ''grant'' in two places.

Subsec. (h). Pub. L. 108–355, § 3(b)(1)(I), struck out '', contracts,'' after ''grants''.

Subsec. (i). Pub. L. 108–355, § 3(b)(1)(J), substituted ''A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or Federally recognized Indian tribe or tribal organization receiving'' for ''A State, political subdivision of a State, Indian tribe, tribal organization, public organization, or private nonprofit organization receiving'' and struck out '', contract,'' after ''grant''.

Subsec. (k). Pub. L. 108–355, § 3(b)(1)(K), substituted ''3 years'' for ''5 years''.

Subsec. (*l*)(2). Pub. L. 108–355, § 3(b)(1)(L)(i), substituted ''24'' for ''21''.

Subsec. (*l*)(3). Pub. L. 108–355, § 3(b)(1)(L)(ii), struck out ''which might have been'' after ''profile of services''.

Subsec. (m). Pub. L. 108–355, § 3(b)(1)(O), added subsec. (m). Former subsec. (m) redesignated (n).

Pub. L. 108–355, § 3(b)(1)(M), struck out par. (1) designation and heading and struck out heading and text of par. (2). Text read as follows: ''In carrying out this section, the Secretary shall use 1 percent of the amount appropriated under paragraph (1) for each fiscal year for managing programs under this section.''

Subsec. (n). Pub. L. 108–355, § 3(b)(1)(N), redesignated subsec. (m) as (n).

TEEN SUICIDE PREVENTION STUDY

Pub. L. 106–386, div. B, title VI, § 1602, Oct. 28, 2000, 114 Stat. 1538, provided that:

''(a) SHORT TITLE.—This section may be cited as the 'Teen Suicide Prevention Act of 2000'.

''(b) FINDINGS.—Congress finds that—

''(1) measures that increase public awareness of suicide as a preventable public health problem, and target parents and youth so that suicide risks and warning signs can be recognized, will help to eliminate the ignorance and stigma of suicide as barriers to youth and families seeking preventive care;

''(2) suicide prevention efforts in the year 2000 should—

''(A) target at-risk youth, particularly youth with mental health problems, substance abuse problems, or contact with the juvenile justice system;

''(B) involve—

''(i) the identification of the characteristics of the at-risk youth and other youth who are contemplating suicide, and barriers to treatment of the youth; and

''(ii) the development of model treatment programs for the youth;

''(C) include a pilot study of the outcomes of treatment for juvenile delinquents with mental health or substance abuse problems;

''(D) include a public education approach to combat the negative effects of the stigma of, and discrimination against individuals with, mental health and substance abuse problems; and

''(E) include a nationwide effort to develop, implement, and evaluate a mental health awareness program for schools, communities, and families;

''(3) although numerous symptoms, diagnoses, traits, characteristics, and psychosocial stressors of suicide have been investigated, no single factor or set of factors has ever come close to predicting suicide with accuracy;

''(4) research of United States youth, such as a 1994 study by Lewinsohn, Rohde, and Seeley, has shown predictors of suicide, such as a history of suicide attempts, current suicidal ideation and depression, a recent attempt or completed suicide by a friend, and low self-esteem; and

''(5) epidemiological data illustrate—

''(A) the trend of suicide at younger ages as well as increases in suicidal ideation among youth in the United States; and

''(B) distinct differences in approaches to suicide by gender, with—

''(i) 3 to 5 times as many females as males attempting suicide; and

''(ii) 3 to 5 times as many males as females completing suicide.

''(c) PURPOSE.—The purpose of this section is to provide for a study of predictors of suicide among at-risk and other youth, and barriers that prevent the youth from receiving treatment, to facilitate the development of model treatment programs and public education and awareness efforts.

''(d) STUDY.—Not later than 1 year after the date of the enactment of this Act [Oct. 28, 2000], the Secretary of Health and Human Services shall carry out, directly or by grant or contract, a study that is designed to identify—

''(1) the characteristics of at-risk and other youth age 13 through 21 who are contemplating suicide;

''(2) the characteristics of at-risk and other youth who are younger than age 13 and are contemplating suicide; and

''(3) the barriers that prevent youth described in paragraphs (1) and (2) from receiving treatment.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.''

[For definition of ''youth'' as used in section 1602 of Pub. L. 106–386, set out above, see section 1002 of Pub. L. 106–386, set out as a note under section 3796gg–2 of this title.]

§ 290bb–36b. Mental and behavioral health services on campus

(a) In general

The Secretary, acting through the Director of the Center for Mental Health Services, in consultation with the Secretary of Education, may award grants on a competitive basis to institutions of higher education to enhance services for students with mental and behavioral health problems that can lead to school failure, such as depression, substance abuse, and suicide attempts, so that students will successfully complete their studies.

(b) Use of funds

The Secretary may not make a grant to an institution of higher education under this section unless the institution agrees to use the grant only for—

(1) educational seminars;

(2) the operation of hot lines;

(3) preparation of informational material;

(4) preparation of educational materials for families of students to increase awareness of potential mental and behavioral health issues of students enrolled at the institution of higher education;

(5) training programs for students and campus personnel to respond effectively to students with mental and behavioral health problems that can lead to school failure, such as depression, substance abuse, and suicide attempts; or

(6) the creation of a networking infrastructure to link colleges and universities that do not have mental health services with health care providers who can treat mental and behavioral health problems.

(c) Eligible grant recipients

Any institution of higher education receiving a grant under this section may carry out activities under the grant through—

(1) college counseling centers;

(2) college and university psychological service centers;

(3) mental health centers;

(4) psychology training clinics; or

(5) institution of higher education supported, evidence-based, mental health and substance abuse programs.

(d) Application

An institution of higher education desiring a grant under this section shall prepare and submit an application to the Secretary at such time and in such manner as the Secretary may require. At a minimum, the application shall include the following:

(1) A description of identified mental and behavioral health needs of students at the institution of higher education.

(2) A description of Federal, State, local, private, and institutional resources currently available to address the needs described in paragraph (1) at the institution of higher education.

(3) A description of the outreach strategies of the institution of higher education for promoting access to services, including a proposed plan for reaching those students most in need of mental health services.

(4) A plan to evaluate program outcomes, including a description of the proposed use of funds, the program objectives, and how the objectives will be met.

(5) An assurance that the institution will submit a report to the Secretary each fiscal year on the activities carried out with the grant and the results achieved through those activities.

(e) Requirement of matching funds

(1) In general

The Secretary may make a grant under this section to an institution of higher education only if the institution agrees to make available (directly or through donations from public or private entities) non-Federal contributions in an amount that is not less than $1 for each $1 of Federal funds provided in the grant,

toward the costs of activities carried out with the grant (as described in subsection (b) of this section) and other activities by the institution to reduce student mental and behavioral health problems.

(2) Determination of amount contributed

Non-Federal contributions required under paragraph (1) may be in cash or in kind. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(3) Waiver

The Secretary may waive the requirement established in paragraph (1) with respect to an institution of higher education if the Secretary determines that extraordinary need at the institution justifies the waiver.

(f) Reports

For each fiscal year that grants are awarded under this section, the Secretary shall conduct a study on the results of the grants and submit to the Congress a report on such results that includes the following:

(1) An evaluation of the grant program outcomes, including a summary of activities carried out with the grant and the results achieved through those activities.

(2) Recommendations on how to improve access to mental and behavioral health services at institutions of higher education, including efforts to reduce the incidence of suicide and substance abuse.

(g) Definition

In this section, the term ''institution of higher education'' has the meaning given such term in section 1001 of title 20.

(h) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $5,000,000 for fiscal year 2005, $5,000,000 for fiscal year 2006, and $5,000,000 for fiscal year 2007.

(July 1, 1944, ch. 373, title V, § 520E–2, as added Pub. L. 108–355, § 3(d), Oct. 21, 2004, 118 Stat. 1413.)

§ 290bb–37. Grants for emergency mental health centers

(a) Program authorized

The Secretary shall award grants to States, political subdivisions of States, Indian tribes, and tribal organizations to support the designation of hospitals and health centers as Emergency Mental Health Centers.

(b) Health center

In this section, the term ''health center'' has the meaning given such term in section 254b of this title, and includes community health centers and community mental health centers.

(c) Distribution of awards

The Secretary shall ensure that such grants awarded under subsection (a) of this section are equitably distributed among the geographical regions of the United States, between urban and rural populations, and between different settings of care including health centers, mental health centers, hospitals, and other psychiatric units or facilities.

(d) Application

A State, political subdivision of a State, Indian tribe, or tribal organization that desires a grant under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including a plan for the rigorous evaluation of activities carried out with funds received under this section.

(e) Use of funds

(1) In general

A State, political subdivision of a State, Indian tribe, or tribal organization receiving a grant under subsection (a) of this section shall use funds from such grant to establish or designate hospitals and health centers as Emergency Mental Health Centers.

(2) Emergency mental health centers

Such emergency mental health centers described in paragraph (1)—

(A) shall—

(i) serve as a central receiving point in the community for individuals who may be in need of emergency mental health services;

(ii) purchase, if needed, any equipment necessary to evaluate, diagnose and stabilize an individual with a mental illness;

(iii) provide training, if needed, to the medical personnel staffing the Emergency Mental Health Center to evaluate, diagnose, stabilize, and treat an individual with a mental illness; and

(iv) provide any treatment that is necessary for an individual with a mental illness or a referral for such individual to another facility where such treatment may be received; and

(B) may establish and train a mobile crisis intervention team to respond to mental health emergencies within the community.

(f) Evaluation

A State, political subdivision of a State, Indian tribe, or tribal organization that receives a grant under subsection (a) of this section shall prepare and submit an evaluation to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, including an evaluation of activities carried out with funds received under this section and a process and outcomes evaluation.

(g) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $25,000,000 for fiscal year 2001 and such sums as may be necessary for each of the fiscal years 2002 through 2003.

(July 1, 1944, ch. 373, title V, § 520F, as added Pub. L. 106–310, div. B, title XXXII, § 3209, Oct. 17, 2000, 114 Stat. 1200.)

§ 290bb–38. Grants for jail diversion programs

(a) Program authorized

The Secretary shall make up to 125 grants to States, political subdivisions of States, Indian tribes, and tribal organizations, acting directly or through agreements with other public or nonprofit entities, to develop and implement programs to divert individuals with a mental illness from the criminal justice system to community-based services.

(b) Administration

(1) Consultation

The Secretary shall consult with the Attorney General and any other appropriate officials in carrying out this section.

(2) Regulatory authority

The Secretary shall issue regulations and guidelines necessary to carry out this section, including methodologies and outcome measures for evaluating programs carried out by States, political subdivisions of States, Indian tribes, and tribal organizations receiving grants under subsection (a) of this section.

(c) Applications

(1) In general

To receive a grant under subsection (a) of this section, the chief executive of a State, chief executive of a subdivision of a State, Indian tribe or tribal organization shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall reasonably require.

(2) Content

Such application shall—

(A) contain an assurance that—

(i) community-based mental health services will be available for the individuals who are diverted from the criminal justice system, and that such services are based on the best known practices, reflect current research findings, include case management, assertive community treatment, medication management and access, integrated mental health and co-occurring substance abuse treatment, and psychiatric rehabilitation, and will be coordinated with social services, including life skills training, housing placement, vocational training, education job placement, and health care;

(ii) there has been relevant interagency collaboration between the appropriate criminal justice, mental health, and substance abuse systems; and

(iii) the Federal support provided will be used to supplement, and not supplant, State, local, Indian tribe, or tribal organization sources of funding that would otherwise be available;

(B) demonstrate that the diversion program will be integrated with an existing system of care for those with mental illness;

(C) explain the applicant's inability to fund the program adequately without Federal assistance;

(D) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

(E) describe methodology and outcome measures that will be used in evaluating the program.

(d) Use of funds

A State, political subdivision of a State, Indian tribe, or tribal organization that receives a grant under subsection (a) of this section may use funds received under such grant to—

(1) integrate the diversion program into the existing system of care;

(2) create or expand community-based mental health and co-occurring mental illness and substance abuse services to accommodate the diversion program;

(3) train professionals involved in the system of care, and law enforcement officers, attorneys, and judges; and

(4) provide community outreach and crisis intervention.

(e) Federal share

(1) In general

The Secretary shall pay to a State, political subdivision of a State, Indian tribe, or tribal organization receiving a grant under subsection (a) of this section the Federal share of the cost of activities described in the application.

(2) Federal share

The Federal share of a grant made under this section shall not exceed 75 percent of the total cost of the program carried out by the State, political subdivision of a State, Indian tribe, or tribal organization. Such share shall be used for new expenses of the program carried out by such State, political subdivision of a State, Indian tribe, or tribal organization.

(3) Non-Federal share

The non-Federal share of payments made under this section may be made in cash or in kind fairly evaluated, including planned equipment or services. The Secretary may waive the requirement of matching contributions.

(f) Geographic distribution

The Secretary shall ensure that such grants awarded under subsection (a) of this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

(g) Training and technical assistance

Training and technical assistance may be provided by the Secretary to assist a State, political subdivision of a State, Indian tribe, or tribal organization receiving a grant under subsection (a) of this section in establishing and operating a diversion program.

(h) Evaluations

The programs described in subsection (a) of this section shall be evaluated not less than one time in every 12-month period using the methodology and outcome measures identified in the grant application.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year

2001, and such sums as may be necessary for fiscal years 2002 through 2003.

(July 1, 1944, ch. 373, title V, § 520G, as added Pub. L. 106–310, div. B, title XXXII, § 3210, Oct. 17, 2000, 114 Stat. 1201.)

§ 290bb–39. Improving outcomes for children and adolescents through services integration between child welfare and mental health services

(a) In general

The Secretary shall award grants, contracts or cooperative agreements to States, political subdivisions of States, Indian tribes, and tribal organizations to provide integrated child welfare and mental health services for children and adolescents under 19 years of age in the child welfare system or at risk for becoming part of the system, and parents or caregivers with a mental illness or a mental illness and a co-occurring substance abuse disorder.

(b) Duration

With respect to a grant, contract or cooperative agreement awarded under this section, the period during which payments under such award are made to the recipient may not exceed 5 years.

(c) Application

(1) In general

To be eligible to receive an award under subsection (a) of this section, a State, political subdivision of a State, Indian tribe, or tribal organization shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(2) Content

An application submitted under paragraph (1) shall—

(A) describe the program to be funded under the grant, contract or cooperative agreement;

(B) explain how such program reflects best practices in the provision of child welfare and mental health services; and

(C) provide assurances that—

(i) persons providing services under the grant, contract or cooperative agreement are adequately trained to provide such services; and

(ii) the services will be provided in accordance with subsection (d) of this section.

(d) Use of funds

A State, political subdivision of a State, Indian tribe, or tribal organization that receives a grant, contract, or cooperative agreement under subsection (a) of this section shall use amounts made available through such grant, contract or cooperative agreement to—

(1) provide family-centered, comprehensive, and coordinated child welfare and mental health services, including prevention, early intervention and treatment services for children and adolescents, and for their parents or caregivers;

(2) ensure a single point of access for such coordinated services;

(3) provide integrated mental health and substance abuse treatment for children, adolescents, and parents or caregivers with a mental illness and a co-occurring substance abuse disorder;

(4) provide training for the child welfare, mental health and substance abuse professionals who will participate in the program carried out under this section;

(5) provide technical assistance to child welfare and mental health agencies;

(6) develop cooperative efforts with other service entities in the community, including education, social services, juvenile justice, and primary health care agencies;

(7) coordinate services with services provided under the Medicaid program and the State Children's Health Insurance Program under titles XIX and XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.];

(8) provide linguistically appropriate and culturally competent services; and

(9) evaluate the effectiveness and cost-efficiency of the integrated services that measure the level of coordination, outcome measures for parents or caregivers with a mental illness or a mental illness and a co-occurring substance abuse disorder, and outcome measures for children.

(e) Distribution of awards

The Secretary shall ensure that grants, contracts, and cooperative agreements awarded under subsection (a) of this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

(f) Evaluation

The Secretary shall evaluate each program carried out by a State, political subdivision of a State, Indian tribe, or tribal organization under subsection (a) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(g) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 520H, as added Pub. L. 106–310, div. B, title XXXII, § 3211, Oct. 17, 2000, 114 Stat. 1203.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(7), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 290bb–40. Grants for the integrated treatment of serious mental illness and co-occurring substance abuse

(a) In general

The Secretary shall award grants, contracts, or cooperative agreements to States, political subdivisions of States, Indian tribes, tribal orga-

nizations, and private nonprofit organizations for the development or expansion of programs to provide integrated treatment services for individuals with a serious mental illness and a co-occurring substance abuse disorder.

(b) Priority

In awarding grants, contracts, and cooperative agreements under subsection (a) of this section, the Secretary shall give priority to applicants that emphasize the provision of services for individuals with a serious mental illness and a co-occurring substance abuse disorder who—

(1) have a history of interactions with law enforcement or the criminal justice system;

(2) have recently been released from incarceration;

(3) have a history of unsuccessful treatment in either an inpatient or outpatient setting;

(4) have never followed through with outpatient services despite repeated referrals; or

(5) are homeless.

(c) Use of funds

A State, political subdivision of a State, Indian tribe, tribal organization, or private nonprofit organization that receives a grant, contract, or cooperative agreement under subsection (a) of this section shall use funds received under such grant—

(1) to provide fully integrated services rather than serial or parallel services;

(2) to employ staff that are cross-trained in the diagnosis and treatment of both serious mental illness and substance abuse;

(3) to provide integrated mental health and substance abuse services at the same location;

(4) to provide services that are linguistically appropriate and culturally competent;

(5) to provide at least 10 programs for integrated treatment of both mental illness and substance abuse at sites that previously provided only mental health services or only substance abuse services; and

(6) to provide services in coordination with other existing public and private community programs.

(d) Condition

The Secretary shall ensure that a State, political subdivision of a State, Indian tribe, tribal organization, or private nonprofit organization that receives a grant, contract, or cooperative agreement under subsection (a) of this section maintains the level of effort necessary to sustain existing mental health and substance abuse programs for other populations served by mental health systems in the community.

(e) Distribution of awards

The Secretary shall ensure that grants, contracts, or cooperative agreements awarded under subsection (a) of this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

(f) Duration

The Secretary shall award grants, contract, or cooperative agreements under this subsection for a period of not more than 5 years.

(g) Application

A State, political subdivision of a State, Indian tribe, tribal organization, or private nonprofit organization that desires a grant, contract, or cooperative agreement under this subsection shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Such application shall include a plan for the rigorous evaluation of activities funded with an award under such subsection, including a process and outcomes evaluation.

(h) Evaluation

A State, political subdivision of a State, Indian tribe, tribal organization, or private nonprofit organization that receives a grant, contract, or cooperative agreement under this subsection shall prepare and submit a plan for the rigorous evaluation of the program funded under such grant, contract, or agreement, including both process and outcomes evaluation, and the submission of an evaluation at the end of the project period.

(i) Authorization of appropriation

There is authorized to be appropriated to carry out this subsection $40,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 through 2003.

(July 1, 1944, ch. 373, title V, § 520I, as added Pub. L. 106–310, div. B, title XXXII, § 3212, Oct. 17, 2000, 114 Stat. 1205.)

§ 290bb–41. Training grants

(a) In general

The Secretary shall award grants in accordance with the provisions of this section.

(b) Mental illness awareness training grants

(1) In general

The Secretary shall award grants to States, political subdivisions of States, Indian tribes, tribal organizations, and nonprofit private entities to train teachers and other relevant school personnel to recognize symptoms of childhood and adolescent mental disorders, to refer family members to the appropriate mental health services if necessary, to train emergency services personnel to identify and appropriately respond to persons with a mental illness, and to provide education to such teachers and personnel regarding resources that are available in the community for individuals with a mental illness.

(2) Emergency services personnel

In this subsection, the term ''emergency services personnel'' includes paramedics, firefighters, and emergency medical technicians.

(3) Distribution of awards

The Secretary shall ensure that such grants awarded under this subsection are equitably distributed among the geographical regions of the United States and between urban and rural populations.

(4) Application

A State, political subdivision of a State, Indian tribe, tribal organization, or nonprofit private entity that desires a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and

containing such information as the Secretary may require, including a plan for the rigorous evaluation of activities that are carried out with funds received under a grant under this subsection.

(5) Use of funds

A State, political subdivision of a State, Indian tribe, tribal organization, or nonprofit private entity receiving a grant under this subsection shall use funds from such grant to—

(A) train teachers and other relevant school personnel to recognize symptoms of childhood and adolescent mental disorders and appropriately respond;

(B) train emergency services personnel to identify and appropriately respond to persons with a mental illness; and

(C) provide education to such teachers and personnel regarding resources that are available in the community for individuals with a mental illness.

(6) Evaluation

A State, political subdivision of a State, Indian tribe, tribal organization, or nonprofit private entity that receives a grant under this subsection shall prepare and submit an evaluation to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, including an evaluation of activities carried out with funds received under the grant under this subsection and a process and outcome evaluation.

(7) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection, $25,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2003.

(July 1, 1944, ch.373, title V, § 520J, as added Pub. L. 106–310, div. B, title XXXII, § 3213, Oct. 17, 2000, 114 Stat. 1206.)

§§ 290cc to 290cc–12. Repealed. Pub. L. 102–321, title I, §§ 117, 120(b)(3), 123(c), July 10, 1992, 106 Stat. 348, 358, 363

Section 290cc, act July 1, 1944, ch. 373, title V, § 515, formerly Pub. L. 92–255, title V, § 503, as added Pub. L. 94–237, § 13(a), Mar. 19, 1976, 90 Stat. 248; amended Pub. L. 95–461, § 2(c), Oct. 14, 1978, 92 Stat. 1268; Pub. L. 96–181, § 12, Jan. 2, 1980, 93 Stat. 1315; Pub. L. 97–35, title IX, § 972(a), (b), Aug. 13, 1981, 95 Stat. 597; renumbered § 515 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(11), 97 Stat. 180; Oct. 19, 1984, Pub. L. 98–509, title II, §§ 205(a)(2), 206(c)(2), 207(b), 98 Stat. 2361–2363; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4009, 100 Stat. 3207–115; Nov. 18, 1988, Pub. L. 100–690, title II, § 2058(a)(3), 102 Stat. 4214, related to encouraging drug abuse research.

Section 290cc–1, act July 1, 1944, ch. 373, title V, § 516, as added Oct. 19, 1984, Pub. L. 98–509, title II, § 206(b), 98 Stat. 2362; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2058(a)(4), 102 Stat. 4214, related to drug abuse demonstration projects.

Section 290cc–2, act July 1, 1944, ch. 373, title V, § 517, as added Oct. 19, 1984, Pub. L. 98–509, title II, § 207(b), 98 Stat. 2363; amended Oct. 27, 1986, Pub. L. 99–570, title IV, § 4010(b), 100 Stat. 3207–115; Nov. 18, 1988, Pub. L. 100–690, title II, § 2056(b), 102 Stat. 4211; Aug. 15, 1990, Pub. L. 101–374, § 3(a), 104 Stat. 457, authorized appropriations for drug abuse research.

Section 290cc–11, act July 1, 1944, ch. 373, title V, § 518, formerly § 519, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2057(3), 102 Stat. 4212; renumbered § 518, Aug. 16, 1989, Pub. L. 101–93, § 3(e)(1)(A), 103 Stat. 610, related to establishment of a mental health research program.

Section 290cc–12, act July 1, 1944, ch. 373, title V, § 519, formerly § 520, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2057(3), 102 Stat. 4212; renumbered § 519, Aug. 16, 1989, Pub. L. 101–93, § 3(e)(1)(A), 103 Stat. 610, related to National Mental Health Education Program.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290cc–13. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 520, formerly § 520A, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2057(3), 102 Stat. 4212, and amended, which related to establishment of grant programs for demonstration projects for drug abuse research, was renumbered section 520A of act July 1, 1944 by Pub. L. 102–321, title I, § 116(a), July 10, 1992, 106 Stat. 348, and transferred to section 290bb–32 of this title.

PART C—PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS

§ 290cc–21. Formula grants to States

For the purpose of carrying out section 290cc–22 of this title, the Secretary, acting through the Director of the Center for Mental Health Services, shall for each of the fiscal years 1991 through 1994 make an allotment for each State in an amount determined in accordance with section 290cc–24 of this title. The Secretary shall make payments, as grants, each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 290cc–29 of this title.

(July 1, 1944, ch. 373, title V, § 521, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 516; amended Pub. L. 100–607, title VIII, § 813(1), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100–628, title VI, § 613(1), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 101–93, § 5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4726; Pub. L. 102–321, title I, §§ 162(1), 163(a)(1), July 10, 1992, 106 Stat. 375; Pub. L. 102–352, § 2(b)(2), Aug. 26, 1992, 106 Stat. 939.)

PRIOR PROVISIONS

A prior section 521 of act July 1, 1944, was renumbered section 542 by section 611(2) of Pub. L. 100–77 and is classified to section 290dd–1 of this title.

AMENDMENTS

1992—Pub. L. 102–352 repealed Pub. L. 102–321, § 163(a)(1), which directed the substitution of ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Director of the National Institute of Mental Health''.

Pub. L. 102–321, § 162(1), substituted ''Center for Mental Health Services'' for ''National Institute of Mental Health''.

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to formula grants to States for provisions relating to establishment of block grant program for services to homeless individuals who are chronically mentally ill.

1989—Subsec. (a). Pub. L. 101–93 directed that subsec. (a) of this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending first sentence generally. Prior to amendment, first sentence read as follows: ''The Secretary shall for fiscal years 1987 and 1988 allot to each State an amount determined in accordance with sections 290cc–28 and 290cc–29 of this title.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 254e of this title.

§ 290cc–22. Purpose of grants

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that the payments will be expended solely for making grants to political subdivisions of the State, and to nonprofit private entities (including community-based veterans organizations and other community organizations), for the purpose of providing the services specified in subsection (b) of this section to individuals who—

(1)(A) are suffering from serious mental illness; or

(B) are suffering from serious mental illness and from substance abuse; and

(2) are homeless or at imminent risk of becoming homeless.

(b) Specification of services

The services referred to in subsection (a) of this section are—

(1) outreach services;

(2) screening and diagnostic treatment services;

(3) habilitation and rehabilitation services;

(4) community mental health services;

(5) alcohol or drug treatment services;

(6) staff training, including the training of individuals who work in shelters, mental health clinics, substance abuse programs, and other sites where homeless individuals require services;

(7) case management services, including—

(A) preparing a plan for the provision of community mental health services to the eligible homeless individual involved, and reviewing such plan not less than once every 3 months;

(B) providing assistance in obtaining and coordinating social and maintenance services for the eligible homeless individuals, including services relating to daily living activities, personal financial planning, transportation services, and habilitation and rehabilitation services, prevocational and vocational services, and housing services;

(C) providing assistance to the eligible homeless individual in obtaining income support services, including housing assistance, food stamps, and supplemental security income benefits;

(D) referring the eligible homeless individual for such other services as may be appropriate; and

(E) providing representative payee services in accordance with section 1631(a)(2) of the Social Security Act [42 U.S.C. 1383(a)(2)] if the eligible homeless individual is receiving aid under title XVI of such act [42 U.S.C. 1381 et seq.] and if the applicant is designated by the Secretary to provide such services;

(8) supportive and supervisory services in residential settings;

(9) referrals for primary health services, job training, educational services, and relevant housing services;

(10) subject to subsection (h)(1) of this section—

(A) minor renovation, expansion, and repair of housing;

(B) planning of housing;

(C) technical assistance in applying for housing assistance;

(D) improving the coordination of housing services;

(E) security deposits;

(F) the costs associated with matching eligible homeless individuals with appropriate housing situations; and

(G) 1-time rental payments to prevent eviction; and

(11) other appropriate services, as determined by the Secretary.

(c) Coordination

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees to make grants pursuant to subsection (a) of this section only to entities that have the capacity to provide, directly or through arrangements, the services specified in subsection (b) of this section, including coordinating the provision of services in order to meet the needs of eligible homeless individuals who are both mentally ill and suffering from substance abuse.

(d) Special consideration regarding veterans

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that, in making grants to entities pursuant to subsection (a) of this section, the State will give special consideration to entities with a demonstrated effectiveness in serving homeless veterans.

(e) Special rules

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that grants pursuant to subsection (a) of this section will not be made to any entity that—

(1) has a policy of excluding individuals from mental health services due to the existence or suspicion of substance abuse; or

(2) has a policy of excluding individuals from substance abuse services due to the existence or suspicion of mental illness.

(f) Administrative expenses

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that not more than 4 percent of the payments will be expended for administrative expenses regarding the payments.

(g) Maintenance of effort

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that the State will maintain State expenditures for services specified in subsection (b) of this section at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive such payments.

(h) Restrictions on use of funds

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that—

(1) not more than 20 percent of the payments will be expended for housing services under subsection (b)(10) of this section; and

(2) the payments will not be expended—

(A) to support emergency shelters or construction of housing facilities;

(B) for inpatient psychiatric treatment costs or inpatient substance abuse treatment costs; or

(C) to make cash payments to intended recipients of mental health or substance abuse services.

(i) Waiver for territories

With respect to the United States Virgin Islands, Guam, American Samoa, Palau, the Marshall Islands, and the Commonwealth of the Northern Mariana Islands, the Secretary may waive the provisions of this part that the Secretary determines to be appropriate.

(July 1, 1944, ch. 373, title V, § 522, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 516; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4726; Pub. L. 106–310, div. B, title XXXII, § 3203(a), Oct. 17, 2000, 114 Stat. 1191.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(7)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVI of the Act is classified generally to subchapter XVI (§ 1381 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 522 of act July 1, 1944, was renumbered section 543 by section 611(2) of Pub. L. 100–77 and is classified to section 290dd–2 of this title.

AMENDMENTS

2000—Subsec. (i). Pub. L. 106–310 added subsec. (i).

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to purpose of grants for provisions relating to requirement of submission of application containing certain agreements.

§ 290cc–23. Requirement of matching funds

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless, with respect to the costs of providing services pursuant to section 290cc–22 of this title, the State involved agrees to make available, directly or through donations from public or private entities, non-Federal contributions toward such costs in an amount that is not less than $1 for each $3 of Federal funds provided in such payments.

(b) Determination of amount

Non-Federal contributions required in subsection (a) of this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, shall not be included in determining the amount of such non-Federal contributions.

(c) Limitation regarding grants by States

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that the State will not require the entities to which grants are provided pursuant to section 290cc–22(a) of this title to provide non-Federal contributions in excess of the non-Federal contributions described in subsection (a) of this section.

(July 1, 1944, ch. 373, title V, § 523, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 517; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4728.)

PRIOR PROVISIONS

A prior section 523 of act July 1, 1944, was renumbered section 544 by section 611(2) of Pub. L. 100–77 and is classified to section 290dd–3 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), general requirements; and in subsec. (b), determination of amount of non-Federal contribution.

§ 290cc–24. Determination of amount of allotment

(a) Minimum allotment

The allotment for a State under section 290cc–21 of this title for a fiscal year shall be the greater of—

(1) $300,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and $50,000 for each of Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands; and

(2) an amount determined in accordance with subsection (b) of this section.

(b) Determination under formula

The amount referred to in subsection (a)(2) of this section is the product of—

(1) an amount equal to the amount appropriated under section 290cc–35(a) of this title for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) an amount equal to the population living in urbanized areas of the State involved, as indicated by the most recent data collected by the Bureau of the Census; and

(B) an amount equal to the population living in urbanized areas of the United States,

as indicated by the sum of the respective amounts determined for the States under subparagraph (A).

(July 1, 1944, ch. 373, title V, § 524, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 517; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4728.)

PRIOR PROVISIONS

A prior section 524 of act July 1, 1944, was renumbered section 545 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to determination of amount of allotment for provisions relating to requiring provision of certain mental health services.

§ 290cc–25. Conversion to categorical program in event of failure of State regarding expenditure of grants

(a) In general

Subject to subsection (c) of this section, the Secretary shall, from the amounts specified in subsection (b) of this section, make grants to public and nonprofit private entities for the purpose of providing to eligible homeless individuals the services specified in section 290cc–22(b) of this title.

(b) Specification of funds

The amounts referred to in subsection (a) of this section are any amounts made available in appropriations Acts for allotments under section 290cc–21 of this title that are not paid to a State as a result of—

(A) the failure of the State to submit an application under section 290cc–29 of this title;

(B) the failure of the State, in the determination of the Secretary, to prepare the application in accordance with such section or to submit the application within a reasonable period of time; or

(C) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

(c) Requirement of provision of services in State involved

With respect to grants under subsection (a) of this section, amounts made available under subsection (b) of this section as a result of the State involved shall be available only for grants to provide services in such State.

(July 1, 1944, ch. 373, title V, § 525, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 518; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4729.)

PRIOR PROVISIONS

A prior section 525 of act July 1, 1944, was renumbered section 546 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee–1 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to conversion to categorical program in event of failure of State regarding expenditure of grants for provisions relating to restrictions on use of payments.

§ 290cc–26. Provision of certain information from State

The Secretary may not make payments under section 290cc–21 of this title to a State unless, as part of the application required in section 290cc–29 of this title, the State submits to the Secretary a statement—

(1) identifying existing programs providing services and housing to eligible homeless individuals and identify gaps in the delivery systems of such programs;

(2) containing a plan for providing services and housing to eligible homeless individuals, which plan—

(A) describes the coordinated and comprehensive means of providing services and housing to homeless individuals; and

(B) includes documentation that suitable housing for eligible homeless individuals will accompany the provision of services to such individuals;

(3) describes the source of the non-Federal contributions described in section 290cc–23 of this title;

(4) contains assurances that the non-Federal contributions described in section 290cc–23 of this title will be available at the beginning of the grant period;

(5) describe any voucher system that may be used to carry out this part; and

(6) contain such other information or assurances as the Secretary may reasonably require.

(July 1, 1944, ch. 373, title V, § 526, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 519; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4729.)

PRIOR PROVISIONS

A prior section 526 of act July 1, 1944, was renumbered section 547 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee–2 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to providing certain information from State for provisions relating to requirement of submission of description of intended use of block grant.

§ 290cc–27. Description of intended expenditures of grant

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless—

(1) as part of the application required in section 290cc–29 of this title, the State involved submits to the Secretary a description of the intended use for the fiscal year of the amounts for which the State is applying pursuant to such section;

(2) such description identifies the geographic areas within the State in which the greatest numbers of homeless individuals with a need for mental health, substance abuse, and housing services are located;

(3) such description provides information relating to the programs and activities to be supported and services to be provided, including information relating to coordinating such

programs and activities with any similar programs and activities of public and private entities; and

(4) the State agrees that such description will be revised throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State pursuant to section 290cc–22 of this title.

(b) Opportunity for public comment

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that, in developing and carrying out the description required in subsection (a) of this section, the State will provide public notice with respect to the description (including any revisions) and such opportunities as may be necessary to provide interested persons, such as family members, consumers, and mental health, substance abuse, and housing agencies, an opportunity to present comments and recommendations with respect to the description.

(c) Relationship to State comprehensive mental health services plan

(1) In general

The Secretary may not make payments under section 290cc–21 of this title unless the services to be provided pursuant to the description required in subsection (a) of this section are consistent with the State comprehensive mental health services plan required in subpart 2[1] of part B of subchapter XVII of this chapter.

(2) Special rule

The Secretary may not make payments under section 290cc–21 of this title unless the services to be provided pursuant to the description required in subsection (a) of this section have been considered in the preparation of, have been included in, and are consistent with, the State comprehensive mental health services plan referred to in paragraph (1).

(July 1, 1944, ch. 373, title V, § 527, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 520; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4730.)

REFERENCES IN TEXT

Subpart 2 of part B of subchapter XVII of this chapter, referred to in subsec. (c)(1), which related to State comprehensive mental health services plans and which was classified to section 300x–10 et seq. of this title, was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378, and a new subpart 2 of part B of subchapter XVII of this chapter, relating to block grants for prevention and treatment of substance abuse, was added by section 202 of Pub. L. 102–321 and classified to section 300x–21 et seq. of this title.

PRIOR PROVISIONS

A prior section 527 of act July 1, 1944, was renumbered section 548 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee–3 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to description of intended expenditures of grant for provisions relating to requirement of reports by States.

[1] See References in Text note below.

§ 290cc–28. Requirement of reports by States

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that, by not later than January 31 of each fiscal year, the State will prepare and submit to the Secretary a report in such form and containing such information as the Secretary determines (after consultation with the Administrator of the Substance Abuse and Mental Health Services Administration) to be necessary for—

(1) securing a record and a description of the purposes for which amounts received under section 290cc–21 of this title were expended during the preceding fiscal year and of the recipients of such amounts; and

(2) determining whether such amounts were expended in accordance with the provisions of this part.

(b) Availability to public of reports

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees to make copies of the reports described in subsection (a) of this section available for public inspection.

(c) Evaluations

The Administrator of the Substance Abuse and Mental Health Services Administration shall evaluate at least once every 3 years the expenditures of grants under this part by eligible entities in order to ensure that expenditures are consistent with the provisions of this part, and shall include in such evaluation recommendations regarding changes needed in program design or operations.

(July 1, 1944, ch. 373, title V, § 528, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 520; amended Pub. L. 100–607, title VIII, § 812(b), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100–628, title VI, § 612(b), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 100–690, title II, § 2614(a), Nov. 18, 1988, 102 Stat. 4239; Pub. L. 101–93, § 5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4730; Pub. L. 102–321, title I, § 163(a)(1), formerly § 163(a)(2), July 10, 1992, 106 Stat. 375, renumbered § 163(a)(1), Pub. L. 102–352, § 2(b)(2), Aug. 26, 1992, 106 Stat. 939; Pub. L. 104–316, title I, § 122(c), Oct. 19, 1996, 110 Stat. 3836.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–316, § 122(c)(1), struck out "the Comptroller General of the United States, and" after "(after consultation with".

Subsec. (c). Pub. L. 104–316, § 122(c)(2), struck out "Comptroller General of the United States in cooperation with the" before "Administrator" and struck out comma after "Administration".

1992—Subsec. (a). Pub. L. 102–321, § 163(a)(1)(A), as renumbered by Pub. L. 102–352, substituted "and the Administrator of the Substance Abuse and Mental Health Services Administration" for "the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse".

Subsec. (c). Pub. L. 102–321, § 163(a)(1)(B), as renumbered by Pub. L. 102–352, substituted "Administrator of the Substance Abuse and Mental Health Services Administration" for "National Institute of Mental Health".

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to requirement of reports by States for provisions relating to determination of amount of allotments.

1989—Subsec. (a)(1). Pub. L. 101–93 directed that subsec. (a)(1) of this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a)(1). Pub. L. 100–690 substituted ''the Commonwealth of the Northern Mariana Islands'' for ''the Northern Mariana Islands''.

Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending par. (1) generally. Prior to amendment, par. (1) read as follows: ''$275,000; and''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 254e of this title.

§ 290cc–29. Requirement of application

The Secretary may not make payments under section 290cc–21 of this title unless the State involved—

(1) submits to the Secretary an application for the payments containing agreements and information in accordance with this part;

(2) the agreements are made through certification from the chief executive officer of the State; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(July 1, 1944, ch. 373, title V, § 529, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 520; amended Pub. L. 100–607, title VIII, § 811(b), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100–628, title VI, § 611(b), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 101–93, § 5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4731.)

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to requirement of application for provisions relating to conversion to State categorical program in event of failure of State with respect to expending allotment.

1989—Pub. L. 101–93 directed that this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending section generally by substituting present provisions for provisions which had related to: in subsec. (a), additional allotments for certain States; in subsec. (b), description of funds; and in subsec. (c), determination of amount of allotment.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 254e of this title.

§ 290cc–30. Technical assistance

The Secretary, through the agencies of the Administration, shall provide technical assistance to eligible entities in developing planning and operating programs in accordance with the provisions of this part.

(July 1, 1944, ch. 373, title V, § 530, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 521; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4731; Pub. L. 102–321, title I, §§ 162(2), 163(a)(3), July 10, 1992, 106 Stat. 375; Pub. L. 102–352, § 2(b)(2), Aug. 26, 1992, 106 Stat. 939.)

AMENDMENTS

1992—Pub. L. 102–352 repealed Pub. L. 102–321, § 163(a)(3), which directed the substitution of ''the Administrator of the Substance Abuse and Mental Health Services Administration'' for ''the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse''.

Pub. L. 102–321, § 162(2), which directed the substitution of ''through the agencies of the Administration'' for ''through the National'' and all that follows through ''Abuse'', was executed by making the substitution for ''through the National Institute of Mental Health, the National Institute of Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse'' to reflect the probable intent of Congress.

1990—Pub. L. 101–645 amended section generally, substituting provision relating to technical assistance for provision relating to disbursement and availability of funds.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290cc–31. Failure to comply with agreements

(a) Repayment of payments

(1) The Secretary may, subject to subsection (c) of this section, require a State to repay any payments received by the State under section 290cc–21 of this title that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 290cc–29 of this title.

(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 290cc–21 of this title.

(b) Withholding of payments

(1) The Secretary may, subject to subsection (c) of this section, withhold payments due under section 290cc–21 of this title if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 290cc–29 of this title.

(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 290cc–21 of this title in accordance with the agreements referred to in such paragraph.

(3) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the agreements referred to in such paragraph.

(c) Opportunity for hearing

Before requiring repayment of payments under subsection (a)(1) of this section, or withholding payments under subsection (b)(1) of this section, the Secretary shall provide to the State an opportunity for a hearing.

(d) Rule of construction

Notwithstanding any other provision of this part, a State receiving payments under section 290cc–21 of this title may not, with respect to any agreements required to be contained in the application submitted under section 290cc–29 of this title, be considered to be in violation of any such agreements by reason of the fact that the State, in the regular course of providing services under section 290cc–22(b) of this title to eligible homeless individuals, incidentally provides services to homeless individuals who are not eligible homeless individuals.

(July 1, 1944, ch. 373, title V, § 531, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 521; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4731.)

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to failure to comply with agreements for provision relating to technical assistance.

§ 290cc–32. Prohibition against certain false statements

(a) In general

(1) A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 290cc–21 of this title.

(2) A person with knowledge of the occurrence of any event affecting the right of the person to receive any amounts from payments made to the State under section 290cc–21 of this title may not conceal or fail to disclose any such event with the intent of securing such an amount that the person is not authorized to receive or securing such an amount in an amount greater than the amount the person is authorized to receive.

(b) Criminal penalty for violation of prohibition

Any person who violates a prohibition established in subsection (a) of this section may for each violation be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title V, § 532, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 521; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4732.)

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to prohibition against certain false statements for provisions relating to failure to comply with agreements.

§ 290cc–33. Nondiscrimination

(a) In general

(1) Rule of construction regarding certain civil rights laws

For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under section 290cc–21 of this title shall be considered to be programs and activities receiving Federal financial assistance.

(2) Prohibition

No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under section 290cc–21 of this title.

(b) Enforcement

(1) Referrals to Attorney General after notice

Whenever the Secretary finds that a State, or an entity that has received a payment pursuant to section 290cc–21 of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as may be applicable; or

(C) take such other actions as may be authorized by law.

(2) Authority of Attorney General

When a matter is referred to the Attorney General pursuant to paragraph (1)(A), or when-

ever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(July 1, 1944, ch. 373, title V, § 533, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 522; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4732.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(1)(B), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to nondiscrimination for provision relating to establishment of prohibition against making certain false statements.

§ 290cc–34. Definitions

For purposes of this part:

(1) Eligible homeless individual

The term ''eligible homeless individual'' means an individual described in section 290cc–22(a) of this title.

(2) Homeless individual

The term ''homeless individual'' has the meaning given such term in section 254b(h)(5) of this title.

(3) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) Substance abuse

The term ''substance abuse'' means the abuse of alcohol or other drugs.

(July 1, 1944, ch. 373, title V, § 534, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 522; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4733; Pub. L. 107–251, title VI, § 601(b), Oct. 26, 2002, 116 Stat. 1665.)

AMENDMENTS

2002—Par. (2). Pub. L. 107–251 substituted ''254b(h)(5) '' for ''256(r)''.

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to definitions for provisions relating to nondiscrimination.

§ 290cc–35. Funding

(a) Authorization of appropriations

For the purpose of carrying out this part, there is authorized to be appropriated $75,000,000 for each of the fiscal years 2001 through 2003.

(b) Effect of insufficient appropriations for minimum allotments

(1) In general

If the amounts made available under subsection (a) of this section for a fiscal year are insufficient for providing each State with an allotment under section 290cc–21 of this title of not less than the applicable amount under section 290cc–24(a)(1) of this title, the Secretary shall, from such amounts as are made available under such subsection, make grants to the States for providing to eligible homeless individuals the services specified in section 290cc–22(b) of this title.

(2) Rule of construction

Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.

(July 1, 1944, ch. 373, title V, § 535, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 523; amended Pub. L. 100–607, title VIII, § 811(a), Nov. 4, 1988, 102 Stat. 3169; Pub. L. 100–628, title VI, § 611(a), Nov. 7, 1988, 102 Stat. 3242; Pub. L. 101–93, § 5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4733; Pub. L. 106–310, div. B, title XXXII, § 3203(b), Oct. 17, 2000, 114 Stat. 1191.)

PRIOR PROVISIONS

A prior section 290cc–36, act July 1, 1944, ch. 373, title V, § 536, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 523, and amended Nov. 4, 1988, Pub. L. 100–607, title VIII, §§ 802(b)(3), 812(a), 102 Stat. 3169, 3170; Nov. 7, 1988, Pub. L. 100–628, title VI, §§ 602(b)(3), 612(a), 102 Stat. 3242, 3243; Nov. 18, 1988, Pub. L. 100–690, title II, § 2614(b), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), 103 Stat. 615, defined terms used in this part, prior to the general revision of this part by Pub. L. 101–645.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310 substituted ''fiscal years 2001 through 2003'' for ''fiscal years 1991 through 1994''.

1990—Pub. L. 101–645 amended section generally, substituting present provisions for similar provisions authorizing appropriations and providing for minimum allotments.

1989—Pub. L. 101–93 directed that this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated to carry out this part $35,000,000 for fiscal year 1987 and such sums as may be necessary for fiscal year 1988.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 254e of this title.

PART D—MISCELLANEOUS PROVISIONS RELATING TO SUBSTANCE ABUSE AND MENTAL HEALTH

§ 290dd. Substance abuse among government and other employees

(a) Programs and services

(1) Development

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall be responsible for fostering substance abuse prevention and treatment programs and services in State and local governments and in private industry.

(2) Model programs

(A) In general

Consistent with the responsibilities described in paragraph (1), the Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall develop a variety of model programs suitable for replication on a cost-effective basis in different types of business concerns and State and local governmental entities.

(B) Dissemination of information

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall disseminate information and materials relative to such model programs to the State agencies responsible for the administration of substance abuse prevention, treatment, and rehabilitation activities and shall, to the extent feasible provide technical assistance to such agencies as requested.

(b) Deprivation of employment

(1) Prohibition

No person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the grounds of prior substance abuse.

(2) Application

This subsection shall not apply to employment in—

(A) the Central Intelligence Agency;

(B) the Federal Bureau of Investigation;

(C) the National Security Agency;

(D) any other department or agency of the Federal Government designated for purposes of national security by the President; or

(E) in any position in any department or agency of the Federal Government, not referred to in subparagraphs (A) through (D), which position is determined pursuant to regulations prescribed by the head of such agency or department to be a sensitive position.

(3) Rehabilitation Act

The inapplicability of the prohibition described in paragraph (1) to the employment described in paragraph (2) shall not be construed to reflect on the applicability of the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] or other anti-discrimination laws to such employment.

(c) Construction

This section shall not be construed to prohibit the dismissal from employment of a Federal civilian employee who cannot properly function in his employment.

(July 1, 1944, ch. 373, title V, § 541, formerly Pub. L. 91–616, title III, § 301, Dec. 31, 1970, 84 Stat. 1849, as amended Pub. L. 92–554, Oct. 25, 1972, 86 Stat. 1167; Pub. L. 93–282, title I, § 105(a), May 14, 1974, 88 Stat. 127; Pub. L. 94–371, § 3(a), July 26, 1976, 90 Stat. 1035; Pub. L. 96–180, § 7, Jan. 2, 1980, 93 Stat. 1303; Pub. L. 97–35, title IX, § 962(a), Aug. 13, 1981, 95 Stat. 592; renumbered § 520 of act July 1, 1944, and amended Pub. L. 98–24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181; Pub. L. 98–509, title III, § 301(c)(2), Oct. 19, 1984, 98 Stat. 2364; renumbered § 541, Pub. L. 100–77, title VI, § 611(2), July 22, 1987, 101 Stat. 516; Pub. L. 100–607, title VIII, § 813(2), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100–628, title VI, § 613(2), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 101–93, § 5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 102–321, title I, § 131, July 10, 1992, 106 Stat. 366.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b)(3), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

CODIFICATION

Section was formerly classified to section 4571 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to substance abuse among government and other employees for provisions relating to technical assistance to States relative to alcohol abuse and alcoholism programs.

1989—Subsec. (a)(4). Pub. L. 101–93 directed that subsec. (a)(4) of this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a)(4). Pub. L. 100–607 and Pub. L. 100–628 made identical technical amendments to reference to section 290dd–2 of this title to reflect renumbering of corresponding section of original act.

1984—Pub. L. 98–509 amended directory language of Pub. L. 98–24, § 2(b)(13). See 1983 Amendment note below.

1983—Pub. L. 98–24, § 2(b)(13), as amended by Pub. L. 98–509 renumbered section 4571 of this title as this section.

Subsec. (a). Pub. L. 98–24, § 2(b)(13)(A)(i), substituted "the National Institute on Alcohol Abuse and Alcoholism" for "the Institute".

Subsec. (a)(4). Pub. L. 98–24, § 2(b)(13)(A)(ii), substituted "section 290dd–2 of this title" for "section 4581 of this title".

Subsec. (b). Pub. L. 98–24, § 2(b)(13)(A)(iii), substituted "this subchapter" for references to "this chapter", meaning chapter 60 (§ 4541 et seq.) of this title, and the Drug Abuse Prevention, Treatment, and Rehabilitation Act [21 U.S.C. 1101 et seq.].

1981—Pub. L. 97–35 restructured provisions and substituted provisions relating to technical assistance for enumerated activities, and improvement of coordina-

tion with Drug Abuse Prevention, Treatment, and Rehabilitation Act, for provisions authorizing appropriations through fiscal year ending Sept. 30, 1981, for covered activities.

1980—Pub. L. 96–180 authorized appropriation of $60,000,000 and $65,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

1976—Pub. L. 94–371 struck out ''and'' after ''1975'' and inserted provisions authorizing $70,000,000 to be appropriated for fiscal year ending Sept. 30, 1977, $77,000,000 to be appropriated for fiscal year ending Sept. 30, 1978, and $85,000,000 to be appropriated for fiscal year ending Sept. 30, 1979.

1974—Pub. L. 93–282 authorized appropriation of $80,000,000 for fiscal years ending June 30, 1975 and June 30, 1976.

1972—Pub. L. 92–554 substituted ''for each of the next two fiscal years'' for ''for the fiscal year ending June 30, 1973''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 254e of this title.

§ 290dd–1. Admission of substance abusers to private and public hospitals and outpatient facilities

(a) Nondiscrimination

Substance abusers who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their substance abuse, by any private or public general hospital, or outpatient facility (as defined in section 300s–3(4) of this title) which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency.

(b) Regulations

(1) In general

The Secretary shall issue regulations for the enforcement of the policy of subsection (a) of this section with respect to the admission and treatment of substance abusers in hospitals and outpatient facilities which receive support of any kind from any program administered by the Secretary. Such regulations shall include procedures for determining (after opportunity for a hearing if requested) if a violation of subsection (a) of this section has occurred, notification of failure to comply with such subsection, and opportunity for a violator to comply with such subsection. If the Secretary determines that a hospital or outpatient facility subject to such regulations has violated subsection (a) of this section and such violation continues after an opportunity has been afforded for compliance, the Secretary may suspend or revoke, after opportunity for a hearing, all or part of any support of any kind received by such hospital from any program administered by the Secretary. The Secretary may consult with the officials responsible for the administration of any other Federal program from which such hospital or outpatient facility receives support of any kind, with respect to the suspension or revocation of such other Federal support for such hospital or outpatient facility.

(2) Department of Veterans Affairs

The Secretary of Veterans Affairs, acting through the Under Secretary for Health, shall, to the maximum feasible extent consistent with their responsibilities under title 38, prescribe regulations making applicable the regulations prescribed by the Secretary under paragraph (1) to the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from substance abuse. In prescribing and implementing regulations pursuant to this paragraph, the Secretary shall, from time to time, consult with the Secretary of Health and Human Services in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

(July 1, 1944, ch. 373, title V, § 542, formerly Pub. L. 91–616, title II, § 201, Dec. 31, 1970, 84 Stat. 1849, as amended Pub. L. 96–180, § 6(a), (b)(1), (2)(B), Jan. 2, 1980, 93 Stat. 1302, 1303; Pub. L. 97–35, title IX, §§ 961, 966(d), (e), Aug. 13, 1981, 95 Stat. 592, 595; renumbered § 521 of act July 1, 1944, and amended Pub. L. 98–24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181; Pub. L. 98–509, title III, § 301(c)(2), Oct. 19, 1984, 98 Stat. 2364; Pub. L. 99–570, title VI, § 6002(b)(1), Oct. 27, 1986, 100 Stat. 3207–158; renumbered § 542, Pub. L. 100–77, title VI, § 611(2), July 22, 1987, 101 Stat. 516; Pub. L. 102–321, title I, § 131, July 10, 1992, 106 Stat. 368; Pub. L. 103–446, title XII, § 1203(a)(2), Nov. 2, 1994, 108 Stat. 4689.)

CODIFICATION

Section was formerly classified to section 4561 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–446 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to admission of substance abusers to private and public hospitals and outpatient facilities for provisions relating to programs for government and other employees.

1986—Subsec. (a). Pub. L. 99–570, § 6002(b)(1), redesignated subsec. (b) as (a), struck out ''similar'' after ''fostering and encouraging'' in par. (1), and struck out former subsec. (a) which read as follows: ''The Office of Personnel Management shall be responsible for developing and maintaining, in cooperation with the Secretary and with other Federal agencies and departments, and in accordance with the provisions of subpart F of part III of title 5, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among Federal civilian employees, consistent with the purposes of this chapter. Such agencies and departments are encouraged to extend, to the extent feasible, these programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such policies and services shall make optimal use of existing governmental facilities, services, and skills.''

Subsecs. (b) to (d). Pub. L. 99–570, § 6002(b)(1)(C), redesignated subsecs. (c) and (d) as (b) and (c), respectively. Former subsec. (b) redesignated (a).

1984—Pub. L. 98–509 amended directory language of Pub. L. 98–24, § 2(b)(13). See 1983 Amendment note below.

1983—Pub. L. 98–24, § 2(b)(13), as amended by Pub. L. 98–509, renumbered section 4561 of this title as this section.

Subsec. (b)(4). Pub. L. 98–24, § 2(b)(13)(B)(i), substituted ''section 290ee–1 of this title'' for ''section 1180(b) of title 21''.

Subsec. (d). Pub. L. 98–24, § 2(b)(13)(B)(ii), substituted ''this section'' for ''this subchapter'', meaning subchapter II (§ 4561 et seq.) of chapter 60 of this title.

1981—Subsec. (b). Pub. L. 97–35, §§ 961, 966(d), made changes in nomenclature, and substituted provisions relating to responsible State administrative agencies, for provisions relating to single State agencies designated pursuant to section 4573 of this title.

1980—Pub. L. 96–180, § 6(b)(2)(A), amended section catchline.

Subsec. (a). Pub. L. 96–180, § 6(a), substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and inserted provisions that require compliance with provisions of subpart F of part III of title 5 and encourage agencies and departments to extend the programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics.

Subsec. (b). Pub. L. 96–180, § 6(b)(1), designated existing provisions as par. (1), made the Secretary responsible for encouragement of programs and services, required the programs and services to be designed for application to families of employees and to employees who have family members who are alcoholics, and added pars. (2) to (4).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290dd–2. Confidentiality of records

(a) Requirement

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Permitted disclosure

(1) Consent

The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Method for disclosure

Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Use of records in criminal proceedings

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Application

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when such individual ceases to be a patient.

(e) Nonapplicability

The prohibitions of this section do not apply to any interchange of records—

(1) within the Uniformed Services or within those components of the Department of Veterans Affairs furnishing health care to veterans; or

(2) between such components and the Uniformed Services.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalties

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined in accordance with title 18.

(g) Regulations

Except as provided in subsection (h) of this section, the Secretary shall prescribe regulations to carry out the purposes of this section. Such regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(h) Application to Department of Veterans Affairs

The Secretary of Veterans Affairs, acting through the Under Secretary for Health, shall,

to the maximum feasible extent consistent with their responsibilities under title 38, prescribe regulations making applicable the regulations prescribed by the Secretary of Health and Human Services under subsection (g) of this section to records maintained in connection with the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from substance abuse. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs shall, from time to time, consult with the Secretary of Health and Human Services in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

(July 1, 1944, ch. 373, title V, § 543, formerly Pub. L. 91–616, title III, § 321, Dec. 31, 1970, 84 Stat. 1852, as amended Pub. L. 93–282, title I, § 121(a), May 14, 1974, 88 Stat. 130; Pub. L. 94–371, § 11(a), (b), July 26, 1976, 90 Stat. 1041; Pub. L. 94–581, title I, § 111(c)(1), Oct. 21, 1976, 90 Stat. 2852; renumbered § 522 of act July 1, 1944, and amended Pub. L. 98–24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181; renumbered § 543, Pub. L. 100–77, title VI, § 611(2), July 22, 1987, 101 Stat. 516; Pub. L. 102–321, title I, § 131, July 10, 1992, 106 Stat. 368; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 105–392, title IV, § 402(c), Nov. 13, 1998, 112 Stat. 3588.)

CODIFICATION

Section was formerly classified to section 4581 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1998—Subsec. (e)(1), (2). Pub. L. 105–392 substituted ''Uniformed Services'' for ''Armed Forces''.

1992—Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director'' in subsec. (h).

Pub. L. 102–321 amended section generally, substituting provisions relating to confidentiality of records for provisions relating to admission of alcohol abusers and alcoholics to general hospitals and outpatient facilities.

1983—Pub. L. 98–24, § 2(b)(13), renumbered section 4581 of this title as this section.

Subsec. (a). Pub. L. 98–24, § 2(b)(13)(C), made a technical amendment to reference to section 300s–3 of this title.

1976—Subsec. (a). Pub. L. 94–371, § 11(a), inserted '', or outpatient facility (as defined in section 300s–3(6) of this title)'' after ''hospital''.

Subsec. (b)(1). Pub. L. 94–371, § 11(b), inserted ''and outpatient facilities'' after ''hospitals'', and ''or outpatient facility'' after ''hospital'' wherever appearing, and substituted ''shall issue regulations not later than December 31, 1976'' for ''is authorized to make regulations''.

Subsec. (b)(2). Pub. L. 94–581 provided that subsec. (b)(2), which directed the Administrator of Veteran's Affairs, through the Chief Medical Director, to prescribe regulations making applicable the regulations prescribed by the Secretary under subsec. (b)(1) to the provision of hospital care, nursing home care, domiciliary care, and medical services under title 38 to veterans suffering from alcohol abuse or alcoholism and to consult with the Secretary in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribed, was superseded by section 4131 [now 7331] et seq. of Title 38, Veterans' Benefits.

1974—Subsec. (a). Pub. L. 93–282, in revising text, prohibited discrimination because of alcohol abuse, substituted provisions respecting eligibility for admission and treatment based on suffering from medical conditions for former provision based on medical need and ineligibility, because of discrimination, for support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency for former requirement for treatment by a general hospital which received Federal funds, and deleted prohibition against receiving Federal financial assistance for violation of section and for termination of Federal assistance on failure to comply, now incorporated in regulation authorization of subsec. (b) of this section.

Subsec. (b). Pub. L. 93–282 substituted provisions respecting issuance of regulations by the Secretary concerning enforcement procedures and suspension or revocation of Federal support and by the Administrator concerning applicable regulations for veterans, and for coordination of the respective regulations for former provisions respecting judicial review.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–581 effective Oct. 21, 1976, see section 211 of Pub. L. 94–581, set out as a note under section 111 of Title 38, Veterans' Benefits.

REPORT OF ADMINISTRATOR OF VETERANS' AFFAIRS TO CONGRESSIONAL COMMITTEES; PUBLICATION IN FEDERAL REGISTER

Section 121(b) of Pub. L. 93–282, which directed Administrator of Veterans' Affairs to submit to appropriate committees of House of Representatives and Senate a full report (1) on regulations (including guidelines, policies, and procedures thereunder) he had prescribed pursuant to section 321(b)(2) of Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [former subsec. (b)(2) of this section], (2) explaining bases for any inconsistency between such regulations and regulations of Secretary under section 321(b)(1) of such Act [subsec. (b)(1) of this section], (3) on extent, substance, and results of his consultations with Secretary respecting prescribing and implementation of Administrator's regulations, and (4) containing such recommendations for legislation and administrative actions as he determined were necessary and desirable, with Administrator to submit report not later than sixty days after effective date of regulations prescribed by Secretary under such section 321(b)(1) [subsec. (b)(1) of this section], and to publish such report in Federal Register, was characterized by section 111(c)(5) of Pub. L. 94–581 as having been superseded by section 4134 [now 7334] of Title 38, Veterans' Benefits.

§§ 290dd–3 to 290ee–3. Omitted

CODIFICATION

Sections 290dd–3 to 290ee–3 were omitted in the general revision of this part by Pub. L. 102–321.

Section 290dd–3, act July 1, 1944, ch. 373, title V, § 544, formerly Pub. L. 91–616, title III, § 333, Dec. 31, 1970, 84 Stat. 1853, as amended Pub. L. 93–282, title I, § 122(a), May 14, 1974, 88 Stat. 131; Pub. L. 94–581, title I, § 111(c)(4), Oct. 21, 1976, 90 Stat. 2852; renumbered § 523 of act July 1, 1944, Apr. 26, 1983, Pub. L. 98–24, § 2(b)(13), 97 Stat. 181; Aug. 27, 1986, Pub. L. 99–401, title I, § 106(a), 100 Stat. 907; renumbered § 544, July 22, 1987, Pub. L. 100–77, title VI, § 611(2), 101 Stat. 516; June 13, 1991, Pub. L. 102–54, § 13(q)(1)(A)(ii), 105 Stat. 278, related to confidentiality of patient records for alcohol abuse and alcoholism programs. See section 290dd–2 of this title.

Section 290ee, act July 1, 1944, ch. 373, title V, § 545, formerly Pub. L. 92–255, title V, § 502, as added Pub. L.

94–237, § 12(b)(1), Mar. 19, 1976, 90 Stat. 247, and amended Pub. L. 95–461, § 5, Oct. 14, 1978, 92 Stat. 1269; Pub. L. 96–181, § 11, Jan. 2, 1980, 93 Stat. 1315; renumbered § 524 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(15), 97 Stat. 181; renumbered § 545, July 22, 1987, Pub. L. 100–77, title VI, § 611(2), 101 Stat. 516; Nov. 4, 1988, Pub. L. 100–607, title VIII, § 813(3), 102 Stat. 3170; Nov. 7, 1988, Pub. L. 100–628, title VI, § 613(3), 102 Stat. 3243; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), 103 Stat. 615, related to technical assistance to State and local agencies by National Institute on Drug Abuse.

Section 290ee–1, act July 1, 1944, ch. 373, title V, § 546, formerly Pub. L. 92–255, title IV, § 413, Mar. 21, 1972, 86 Stat. 84, as amended Pub. L. 96–181, § 8(a), (b)(1), Jan. 2, 1980, 93 Stat. 1313, 1314; Pub. L. 97–35, title IX, § 973(e), Aug. 13, 1981, 95 Stat. 598; renumbered § 525 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(16)(A), 97 Stat. 182; Oct. 27, 1986, Pub. L. 99–570, title VI, § 6002(b)(2), 100 Stat. 3207–159; renumbered § 546, July 22, 1987, Pub. L. 100–77, title VI, § 611(2), 101 Stat. 516; Nov. 4, 1988, Pub. L. 100–607, title VIII, § 813(4), 102 Stat. 3171; Nov. 7, 1988, Pub. L. 100–628, title VI, § 613(4), 102 Stat. 3243; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), 103 Stat. 615, related to drug abuse among government and other employees.

Section 290ee–2, act July 1, 1944, ch. 373, title V, § 547, formerly Pub. L. 92–255, title IV, § 407, Mar. 21, 1972, 86 Stat. 78, as amended Pub. L. 94–237, § 6(a), Mar. 19, 1976, 90 Stat. 244; Pub. L. 94–581, title I, § 111(c)(2), Oct. 21, 1976, 90 Stat. 2852; renumbered § 526 of act July 1, 1944, Apr. 26, 1983. Pub. L. 98–24, § 2(b)(16)(B), 97 Stat. 182; renumbered § 547, July 22, 1987, Pub. L. 100–77, title VI, § 611(2), 101 Stat. 516, related to admission of drug abusers to private and public hospitals.

Section 290ee–3, act July 1, 1944, ch. 373, title V, § 548, formerly Pub. L. 92–255, title IV, § 408, Mar. 21, 1972, 86 Stat. 79, as amended Pub. L. 93–282, title III, § 303(a), (b), May 14, 1974, 88 Stat. 137, 138; Pub. L. 94–237, § 4(c)(5)(A), Mar. 19, 1976, 90 Stat. 244; Pub. L. 94–581, title I, § 111(c)(3), Oct. 21, 1976, 90 Stat. 2852; Pub. L. 97–35, title IX, § 973(d), Aug. 13, 1981, 95 Stat. 598; renumbered § 527 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(16)(B), 97 Stat. 182; Aug. 27, 1986, Pub. L. 99–401, title I, § 106(b), 100 Stat. 907; renumbered § 548, July 22, 1987, Pub. L. 100–77, title VI, § 611(2), 101 Stat. 516; June 13, 1991, Pub. L. 102–54, § 13(q)(1)(A)(iii), (B)(ii), 105 Stat. 278, related to confidentiality of patient records for drug abuse programs. See section 290dd–2 of this title.

PART E—CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCES

§ 290ff. Comprehensive community mental health services for children with serious emotional disturbances

(a) Grants to certain public entities

(1) In general

The Secretary, acting through the Director of the Center for Mental Health Services, shall make grants to public entities for the purpose of providing comprehensive community mental health services to children with a serious emotional disturbance.

(2) "Public entity" defined

For purposes of this part, the term ''public entity'' means any State, any political subdivision of a State, and any Indian tribe or tribal organization (as defined in section 450b(b) and section 450b(c)[1] of title 25).

[1] See References in Text note below.

(b) Considerations in making grants

(1) Requirement of status as grantee under part B of subchapter XVII

The Secretary may make a grant under subsection (a) of this section to a public entity only if—

(A) in the case of a public entity that is a State, the State is a grantee under section 300x of this title;

(B) in the case of a public entity that is a political subdivision of a State, the State in which the political subdivision is located is such a grantee; and

(C) in the case of a public entity that is an Indian tribe or tribal organization, the State in which the tribe or tribal organization is located is such a grantee.

(2) Requirement of status as medicaid provider

(A) Subject to subparagraph (B), the Secretary may make a grant under subsection (a) of this section only if, in the case of any service under such subsection that is covered in the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i) the public entity involved will provide the service directly, and the entity has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the public entity will enter into an agreement with an organization under which the organization will provide the service, and the organization has entered into such a participation agreement and is qualified to receive such payments.

(B)(i) In the case of an organization making an agreement under subparagraph (A)(ii) regarding the provision of services under subsection (a) of this section, the requirement established in such subparagraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health or mental health services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(ii) A determination by the Secretary of whether an organization referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.

(3) Certain considerations

In making grants under subsection (a) of this section, the Secretary shall—

(A) equitably allocate such assistance among the principal geographic regions of the United States;

(B) consider the extent to which the public entity involved has a need for the grant; and

(C) in the case of any public entity that is a political subdivision of a State or that is an Indian tribe or tribal organization—

(i) shall consider any comments regarding the application of the entity for such a

grant that are received by the Secretary from the State in which the entity is located; and

(ii) shall give special consideration to the entity if the State agrees to provide a portion of the non-Federal contributions required in subsection (c) of this section regarding such a grant.

(c) Matching funds

(1) In general

A funding agreement for a grant under subsection (a) of this section is that the public entity involved will, with respect to the costs to be incurred by the entity in carrying out the purpose described in such subsection, make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

(A) for the first fiscal year for which the entity receives payments from a grant under such subsection, is not less than $1 for each $3 of Federal funds provided in the grant;

(B) for any second or third such fiscal year, is not less than $1 for each $3 of Federal funds provided in the grant;

(C) for any fourth such fiscal year, is not less than $1 for each $1 of Federal funds provided in the grant; and

(D) for any fifth and sixth such fiscal year,[2] is not less than $2 for each $1 of Federal funds provided in the grant.

(2) Determination of amount contributed

(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) In making a determination of the amount of non-Federal contributions for purposes of subparagraph (A), the Secretary may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the public entity involved toward the purpose described in subsection (a) of this section for the 2-year period preceding the first fiscal year for which the entity receives a grant under such section.

(July 1, 1944, ch. 373, title V, § 561, as added Pub. L. 102–321, title I, § 119, July 10, 1992, 106 Stat. 349; amended Pub. L. 103–43, title XX, § 2017(1), June 10, 1993, 107 Stat. 218; Pub. L. 106–310, div. B, title XXXI, § 3105(a), Oct. 17, 2000, 114 Stat. 1175.)

REFERENCES IN TEXT

Subsections (b) and (c) of section 450b of title 25, referred to in subsec. (a)(2), do not contain definitions of the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in section 450b of Title 25, Indians.

The Social Security Act, referred to in subsec. (b)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title.

[2] So in original. Probably should be ''years,''.

For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 290ff, act July 1, 1944, ch. 373, title V, § 561, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2081(a), 102 Stat. 4216, which related to action by National Institute on Drug Abuse and States concerning military facilities, was renumbered section 513 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–6 of this title.

AMENDMENTS

2000—Subsec. (c)(1)(D). Pub. L. 106–310 substituted ''fifth and sixth such fiscal year'' for ''fifth such fiscal year''.

1993—Subsec. (a)(2). Pub. L. 103–43, § 2017(1)(A), substituted ''this part'' for ''this subpart''.

Subsec. (b)(1)(B), (C). Pub. L. 103–43, § 2017(1)(B), substituted ''is such a grantee'' for ''is receiving such payments''.

EFFECTIVE DATE

Part effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

CURRENT GRANTEES

Pub. L. 106–310, div. B, title XXXI, § 3105(e), Oct. 17, 2000, 114 Stat. 1175, provided that:

''(1) IN GENERAL.—Entities with active grants under section 561 of the Public Health Service Act (42 U.S.C. 290ff) on the date of the enactment of this Act [Oct. 17, 2000] shall be eligible to receive a sixth year of funding under the grant in an amount not to exceed the amount that such grantee received in the fifth year of funding under such grant. Such sixth year may be funded without requiring peer and Advisory Council review as required under section 504 of such Act (42 U.S.C. 290aa–3).

''(2) LIMITATION.—Paragraph (1) shall apply with respect to a grantee only if the grantee agrees to comply with the provisions of section 561 as amended by subsection (a).''

§ 290ff–1. Requirements with respect to carrying out purpose of grants

(a) Systems of comprehensive care

(1) In general

A funding agreement for a grant under section 290ff(a) of this title is that, with respect to children with a serious emotional disturbance, the public entity involved will carry out the purpose described in such section only through establishing and operating 1 or more systems of care for making each of the mental health services specified in subsection (c) of this section available to each child provided access to the system. In providing for such a system, the public entity may make grants to, and enter into contracts with, public and nonprofit private entities.

(2) Structure of system

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under paragraph (1) will—

(A) be established in a community selected by the public entity involved;

(B) consist of such public agencies and nonprofit private entities in the community as are necessary to ensure that each of the services specified in subsection (c) of this section is available to each child provided access to the system;

(C) be established pursuant to agreements that the public entity enters into with the agencies and entities described in subparagraph (B);

(D) coordinate the provision of the services of the system; and

(E) establish an office whose functions are to serve as the location through which children are provided access to the system, to coordinate the provision of services of the system, and to provide information to the public regarding the system.

(3) Collaboration of local public entities

A funding agreement for a grant under section 290ff(a) of this title is that, for purposes of the establishment and operation of a system of care under paragraph (1), the public entity involved will seek collaboration among all public agencies that provide human services in the community in which the system is established, including but not limited to those providing mental health services, educational services, child welfare services, or juvenile justice services.

(b) Limitation on age of children provided access to system

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under subsection (a) of this section will not provide an individual with access to the system if the individual is more than 21 years of age.

(c) Required mental health services of system

A funding agreement for a grant under section 290ff(a) of this title is that mental health services provided by a system of care under subsection (a) of this section will include, with respect to a serious emotional disturbance in a child—

(1) diagnostic and evaluation services;

(2) outpatient services provided in a clinic, office, school or other appropriate location, including individual, group and family counseling services, professional consultation, and review and management of medications;

(3) emergency services, available 24-hours a day, 7 days a week;

(4) intensive home-based services for children and their families when the child is at imminent risk of out-of-home placement;

(5) intensive day-treatment services;

(6) respite care;

(7) therapeutic foster care services, and services in therapeutic foster family homes or individual therapeutic residential homes, and groups homes caring for not more than 10 children; and

(8) assisting the child in making the transition from the services received as a child to the services to be received as an adult.

(d) Required arrangements regarding other appropriate services

(1) In general

A funding agreement for a grant under section 290ff(a) of this title is that—

(A) a system of care under subsection (a) of this section will enter into a memorandum of understanding with each of the providers specified in paragraph (2) in order to facilitate the availability of the services of the provider involved to each child provided access to the system; and

(B) the grant under such section 290ff(a) of this title, and the non-Federal contributions made with respect to the grant, will not be expended to pay the costs of providing such non-mental health services to any individual.

(2) Specification of non-mental health services

The providers referred to in paragraph (1) are providers of medical services other than mental health services, providers of educational services, providers of vocational counseling and vocational rehabilitation services, and providers of protection and advocacy services with respect to mental health.

(3) Facilitation of services of certain programs

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under subsection (a) of this section will, for purposes of paragraph (1), enter into a memorandum of understanding regarding facilitation of—

(A) services available pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], including services regarding early periodic screening, diagnosis, and treatment;

(B) services available under parts B and C of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq., 1431 et seq.]; and

(C) services available under other appropriate programs, as identified by the Secretary.

(e) General provisions regarding services of system

(1) Case management services

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under subsection (a) of this section will provide for the case management of each child provided access to the system in order to ensure that—

(A) the services provided through the system to the child are coordinated and that the need of each such child for the services is periodically reassessed;

(B) information is provided to the family of the child on the extent of progress being made toward the objectives established for the child under the plan of services implemented for the child pursuant to section 290ff–2 of this title; and

(C) the system provides assistance with respect to—

(i) establishing the eligibility of the child, and the family of the child, for financial assistance and services under Federal, State, or local programs providing for health services, mental health services, educational services, social services, or other services; and

(ii) seeking to ensure that the child receives appropriate services available under such programs.

(2) Other provisions

A funding agreement for a grant under section 290ff(a) of this title is that a system of

care under subsection (a) of this section, in providing the services of the system, will—

(A) provide the services of the system in the cultural context that is most appropriate for the child and family involved;

(B) ensure that individuals providing such services to the child can effectively communicate with the child and family in the most direct manner;

(C) provide the services without discriminating against the child or the family of the child on the basis of race, religion, national origin, sex, disability, or age;

(D) seek to ensure that each child provided access to the system of care remains in the least restrictive, most normative environment that is clinically appropriate; and

(E) provide outreach services to inform individuals, as appropriate, of the services available from the system, including identifying children with a serious emotional disturbance who are in the early stages of such disturbance.

(3) Rule of construction

An agreement made under paragraph (2) may not be construed—

(A) with respect to subparagraph (C) of such paragraph—

(i) to prohibit a system of care under subsection (a) of this section from requiring that, in housing provided by the grantee for purposes of residential treatment services authorized under subsection (c) of this section, males and females be segregated to the extent appropriate in the treatment of the children involved; or

(ii) to prohibit the system of care from complying with the agreement made under subsection (b) of this section; or

(B) with respect to subparagraph (D) of such paragraph, to authorize the system of care to expend the grant under section 290ff(a) of this title (or the non-Federal contributions made with respect to the grant) to provide legal services or any service with respect to which expenditures regarding the grant are prohibited under subsection (d)(1)(B) of this section.

(f) Restrictions on use of grant

A funding agreement for a grant under section 290ff(a) of this title is that the grant, and the non-Federal contributions made with respect to the grant, will not be expended—

(1) to purchase or improve real property (including the construction or renovation of facilities);

(2) to provide for room and board in residential programs serving 10 or fewer children;

(3) to provide for room and board or other services or expenditures associated with care of children in residential treatment centers serving more than 10 children or in inpatient hospital settings, except intensive home-based services and other services provided on an ambulatory or outpatient basis; or

(4) to provide for the training of any individual, except training authorized in section 290ff–3(a)(2) of this title and training provided through any appropriate course in continuing education whose duration does not exceed 2 days.

(g) Waivers

The Secretary may waive one or more of the requirements of subsection (c) of this section for a public entity that is an Indian Tribe or tribal organization, or American Samoa, Guam, the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, or the United States Virgin Islands if the Secretary determines, after peer review, that the system of care is family-centered and uses the least restrictive environment that is clinically appropriate.

(July 1, 1944, ch. 373, title V, § 562, as added Pub. L. 102–321, title I, § 119, July 10, 1992, 106 Stat. 351; amended Pub. L. 106–310, div. B, title XXXI, § 3105(b), Oct. 17, 2000, 114 Stat. 1175; Pub. L. 108–446, title III, § 305(i)(4), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(3)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (d)(3)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Parts B and C of the Act are classified generally to subchapters II (§ 1411 et seq.) and III (§ 1431 et seq.), respectively, of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2004—Subsec. (d)(3)(B). Pub. L. 108–446 substituted ''and C'' for ''and H''.

2000—Subsec. (g). Pub. L. 106–310 added subsec. (g).

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290ff–2. Individualized plan for services

(a) In general

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under section 290ff–1(a) of this title will develop and carry out an individualized plan of services for each child provided access to the system, and that the plan will be developed and carried out with the participation of the family of the child and, unless clinically inappropriate, with the participation of the child.

(b) Multidisciplinary team

A funding agreement for a grant under section 290ff(a) of this title is that the plan required in subsection (a) of this section will be developed, and reviewed and as appropriate revised not less than once each year, by a multidisciplinary team of appropriately qualified individuals who provide services through the system, including as appropriate mental health services, other health services, educational services, social services, and vocational counseling and rehabilitation;[1]

[1] So in original. The semicolon probably should be a period.

(c) Coordination with services under Individuals with Disabilities Education Act

A funding agreement for a grant under section 290ff(a) of this title is that, with respect to a plan under subsection (a) of this section for a child, the multidisciplinary team required in subsection (b) of this section will—

(1) in developing, carrying out, reviewing, and revising the plan consider any individualized education program in effect for the child pursuant to part B of the Individuals with Disabilities Education Act [42 U.S.C. 1411 et seq.];

(2) ensure that the plan is consistent with such individualized education program and provides for coordinating services under the plan with services under such program; and

(3) ensure that the memorandum of understanding entered into under section 290ff–1(d)(3)(B) of this title regarding such Act [20 U.S.C. 1400 et seq.] includes provisions regarding compliance with this subsection.

(d) Contents of plan

A funding agreement for a grant under section 290ff(a) of this title is that the plan required in subsection (a) of this section for a child will—

(1) identify and state the needs of the child for the services available pursuant to section 290ff–1 of this title through the system;

(2) provide for each of such services that is appropriate to the circumstances of the child, including, except in the case of children who are less than 14 years of age, the provision of appropriate vocational counseling and rehabilitation, and transition services (as defined in section 602 [20 U.S.C. 1401] of the Individuals with Disabilities Education Act);

(3) establish objectives to be achieved regarding the needs of the child and the methodology for achieving the objectives; and

(4) designate an individual to be responsible for providing the case management required in section 290ff–1(e)(1) of this title or certify that case management services will be provided to the child as part of the individualized education program of the child under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.].

(July 1, 1944, ch. 373, title V, § 563, as added Pub. L. 102–321, title I, § 119, July 10, 1992, 106 Stat. 354; amended Pub. L. 108–446, title III, § 305(i)(5), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsecs. (c)(1), (3) and (d)(4), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. Part B of the Act is classified generally to subchapter II (§ 1411 et seq.) of chapter 33 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2004—Subsec. (d)(2). Pub. L. 108–446 substituted ''section 602'' for ''section 602(a)(19)''.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290ff–3. Additional provisions

(a) Optional services

In addition to services described in subsection (c) of section 290ff–1 of this title, a system of care under subsection (a) of such section may, in expending a grant under section 290ff(a) of this title, provide for—

(1) preliminary assessments to determine whether a child should be provided access to the system;

(2) training in—

(A) the administration of the system;

(B) the provision of intensive home-based services under paragraph (4) of section 290ff–1(c) of this title, intensive day treatment under paragraph (5) of such section, and foster care or group homes under paragraph (7) of such section; and

(C) the development of individualized plans for purposes of section 290ff–2 of this title;

(3) recreational activities for children provided access to the system; and

(4) such other services as may be appropriate in providing for the comprehensive needs with respect to mental health of children with a serious emotional disturbance.

(b) Comprehensive plan

The Secretary may make a grant under section 290ff(a) of this title only if, with respect to the jurisdiction of the public entity involved, the entity has submitted to the Secretary, and has had approved by the Secretary, a plan for the development of a jurisdiction-wide system of care for community-based services for children with a serious emotional disturbance that specifies the progress the public entity has made in developing the jurisdiction-wide system, the extent of cooperation across agencies serving children in the establishment of the system, the Federal and non-Federal resources currently committed to the establishment of the system, and the current gaps in community services and the manner in which the grant under section 290ff(a) of this title will be expended to address such gaps and establish local systems of care.

(c) Limitation on imposition of fees for services

A funding agreement for a grant under section 290ff(a) of this title is that, if a charge is imposed for the provision of services under the grant, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the family of the child involved; and

(3) will not be imposed on any child whose family has income and resources of equal to or less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(d) Relationship to items and services under other programs

A funding agreement for a grant under section 290ff(a) of this title is that the grant, and the non-Federal contributions made with respect to the grant, will not be expended to make payment for any item or service to the extent that

payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(e) Limitation on administrative expenses

A funding agreement for a grant under section 290ff(a) of this title is that not more than 2 percent of the grant will be expended for administrative expenses incurred with respect to the grant by the public entity involved.

(f) Reports to Secretary

A funding agreement for a grant under section 290ff(a) of this title is that the public entity involved will annually submit to the Secretary a report on the activities of the entity under the grant that includes a description of the number of children provided access to systems of care operated pursuant to the grant, the demographic characteristics of the children, the types and costs of services provided pursuant to the grant, the availability and use of third-party reimbursements, estimates of the unmet need for such services in the jurisdiction of the entity, and the manner in which the grant has been expended toward the establishment of a jurisdiction-wide system of care for children with a serious emotional disturbance, and such other information as the Secretary may require with respect to the grant.

(g) Description of intended uses of grant

The Secretary may make a grant under section 290ff(a) of this title only if—

(1) the public entity involved submits to the Secretary a description of the purposes for which the entity intends to expend the grant;

(2) the description identifies the populations, areas, and localities in the jurisdiction of the entity with a need for services under this section; and

(3) the description provides information relating to the services and activities to be provided, including a description of the manner in which the services and activities will be coordinated with any similar services or activities of public or nonprofit entities.

(h) Requirement of application

The Secretary may make a grant under section 290ff(a) of this title only if an application for the grant is submitted to the Secretary, the application contains the description of intended uses required in subsection (g) of this section, and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title V, § 564, as added Pub. L. 102–321, title I, § 119, July 10, 1992, 106 Stat. 355.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290ff–4. General provisions

(a) Duration of support

The period during which payments are made to a public entity from a grant under section 290ff(a) of this title may not exceed 6 fiscal years.

(b) Technical assistance

(1) In general

The Secretary shall, upon the request of a public entity receiving a grant under section 290ff(a) of this title—

(A) provide technical assistance to the entity regarding the process of submitting to the Secretary applications for grants under section 290ff(a) of this title; and

(B) provide to the entity training and technical assistance with respect to the planning, development, and operation of systems of care pursuant to section 290ff–1 of this title.

(2) Authority for grants and contracts

The Secretary may provide technical assistance under subsection (a) of this section directly or through grants to, or contracts with, public and nonprofit private entities.

(c) Evaluations and reports by Secretary

(1) In general

The Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out pursuant to section 290ff(a) of this title. The evaluations shall assess the effectiveness of the systems of care operated pursuant to such section, including longitudinal studies of outcomes of services provided by such systems, other studies regarding such outcomes, the effect of activities under this part on the utilization of hospital and other institutional settings, the barriers to and achievements resulting from interagency collaboration in providing community-based services to children with a serious emotional disturbance, and assessments by parents of the effectiveness of the systems of care.

(2) Report to Congress

The Secretary shall, not later than 1 year after the date on which amounts are first appropriated under subsection (c) of this section, and annually thereafter, submit to the Congress a report summarizing evaluations carried out pursuant to paragraph (1) during the preceding fiscal year and making such recommendations for administrative and legislative initiatives with respect to this section as the Secretary determines to be appropriate.

(d) Definitions

For purposes of this part:

(1) The term ''child'' means an individual not more than 21 years of age.

(2) The term ''family'', with respect to a child provided access to a system of care under section 290ff–1(a) of this title, means—

(A) the legal guardian of the child; and

(B) as appropriate regarding mental health services for the child, the parents of the child (biological or adoptive, as the case may be) and any foster parents of the child.

(3) The term ''funding agreement'', with respect to a grant under section 290ff(a) of this title to a public entity, means that the Secretary may make such a grant only if the public entity makes the agreement involved.

(4) The term ''serious emotional disturbance'' includes, with respect to a child, any child who has a serious emotional disorder, a serious behavioral disorder, or a serious mental disorder.

(e) Rule of construction

Nothing in this part shall be construed as limiting the rights of a child with a serious emotional disturbance under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.].

(f) Funding

(1) Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $100,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(2) Limitation regarding technical assistance

Not more than 10 percent of the amounts appropriated under paragraph (1) for a fiscal year may be expended for carrying out subsection (b) of this section.

(July 1, 1944, ch. 373, title V, § 565, as added Pub. L. 102–321, title I, § 119, July 10, 1992, 106 Stat. 356; amended Pub. L. 103–43, title XX, § 2017(2), June 10, 1993, 107 Stat. 218; Pub. L. 106–310, div. B, title XXXI, § 3105(c), (d), Oct. 17, 2000, 114 Stat. 1175.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (e), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, § 3105(c), substituted ''6 fiscal years'' for ''5 fiscal years''.

Subsec. (f)(1). Pub. L. 106–310, § 3105(d), substituted ''2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003'' for ''1993, and such sums as may be necessary for fiscal year 1994''.

1993—Subsec. (c)(1), (d), (f)(1). Pub. L. 103–43, § 2017(2)(A), (B), (C)(i), substituted ''this part'' for ''this subpart''.

Subsec. (f)(2). Pub. L. 103–43, § 2017(2)(C)(ii), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available not less than $3,000,000 for the purpose of carrying out subsection (b) of this section.''

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

PART F—MODEL COMPREHENSIVE PROGRAM FOR TREATMENT OF SUBSTANCE ABUSE

§ 290gg. Repealed. Pub. L. 106–310, div. B, title XXXIII, § 3301(c)(4), Oct. 17, 2000, 114 Stat. 1209

Section, act July 1, 1944, ch. 373, title V, § 571, as added Pub. L. 102–321, title III, § 301, July 10, 1992, 106 Stat. 417, related to demonstration program in national capital area.

PART G—PROJECTS FOR CHILDREN AND VIOLENCE

CODIFICATION

This part is comprised of part G of title V of act July 1, 1944. Another part G of title V of act July 1, 1944, is classified to part J (§ 290kk et seq.) of this subchapter.

§ 290hh. Children and violence

(a) In general

The Secretary, in consultation with the Secretary of Education and the Attorney General, shall carry out directly or through grants, contracts or cooperative agreements with public entities a program to assist local communities in developing ways to assist children in dealing with violence.

(b) Activities

Under the program under subsection (a) of this section, the Secretary may—

(1) provide financial support to enable local communities to implement programs to foster the health and development of children;

(2) provide technical assistance to local communities with respect to the development of programs described in paragraph (1);

(3) provide assistance to local communities in the development of policies to address violence when and if it occurs;

(4) assist in the creation of community partnerships among law enforcement, education systems and mental health and substance abuse service systems; and

(5) establish mechanisms for children and adolescents to report incidents of violence or plans by other children or adolescents to commit violence.

(c) Requirements

An application for a grant, contract or cooperative agreement under subsection (a) of this section shall demonstrate that—

(1) the applicant will use amounts received to create a partnership described in subsection (b)(4) of this section to address issues of violence in schools;

(2) the activities carried out by the applicant will provide a comprehensive method for addressing violence, that will include—

(A) security;

(B) educational reform;

(C) the review and updating of school policies;

(D) alcohol and drug abuse prevention and early intervention services;

(E) mental health prevention and treatment services; and

(F) early childhood development and psychosocial services; and

(3) the applicant will use amounts received only for the services described in subparagraphs (D), (E), and (F) of paragraph (2).

(d) Geographical distribution

The Secretary shall ensure that grants, contracts or cooperative agreements under subsection (a) of this section will be distributed equitably among the regions of the country and among urban and rural areas.

(e) Duration of awards

With respect to a grant, contract or cooperative agreement under subsection (a) of this section, the period during which payments under such an award will be made to the recipient may not exceed 5 years.

(f) Evaluation

The Secretary shall conduct an evaluation of each project carried out under this section and shall disseminate the results of such evaluations to appropriate public and private entities.

(g) Information and education

The Secretary shall establish comprehensive information and education programs to disseminate the findings of the knowledge development and application under this section to the general public and to health care professionals.

(h) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $100,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 581, as added Pub. L. 106–310, div. B, title XXXI, § 3101, Oct. 17, 2000, 114 Stat. 1168.)

CODIFICATION

Another section 581 of act July 1, 1944, is classified to section 290kk of this title.

§ 290hh–1. Grants to address the problems of persons who experience violence related stress

(a) In general

The Secretary shall award grants, contracts or cooperative agreements to public and nonprofit private entities, as well as to Indian tribes and tribal organizations, for the purpose of developing programs focusing on the behavioral and biological aspects of psychological trauma response and for developing knowledge with regard to evidence-based practices for treating psychiatric disorders of children and youth resulting from witnessing or experiencing a traumatic event.

(b) Priorities

In awarding grants, contracts or cooperative agreements under subsection (a) of this section related to the development of knowledge on evidence-based practices for treating disorders associated with psychological trauma, the Secretary shall give priority to mental health agencies and programs that have established clinical and basic research experience in the field of trauma-related mental disorders.

(c) Geographical distribution

The Secretary shall ensure that grants, contracts or cooperative agreements under subsection (a) of this section with respect to centers of excellence are distributed equitably among the regions of the country and among urban and rural areas.

(d) Evaluation

The Secretary, as part of the application process, shall require that each applicant for a grant, contract or cooperative agreement under subsection (a) of this section submit a plan for the rigorous evaluation of the activities funded under the grant, contract or agreement, including both process and outcomes evaluation, and the submission of an evaluation at the end of the project period.

(e) Duration of awards

With respect to a grant, contract or cooperative agreement under subsection (a) of this section, the period during which payments under such an award will be made to the recipient may not exceed 5 years. Such grants, contracts or agreements may be renewed.

(f) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $50,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2003 through 2006.

(g) Short title

This section may be cited as the ''Donald J. Cohen National Child Traumatic Stress Initiative''.

(July 1, 1944, ch. 373, title V, § 582, as added Pub. L. 106–310, div. B, title XXXI, § 3101, Oct. 17, 2000, 114 Stat. 1169; amended Pub. L. 107–116, title II, § 218, Jan. 10, 2002, 115 Stat. 2201; Pub. L. 107–188, title I, § 155, June 12, 2002, 116 Stat. 633.)

CODIFICATION

Another section 582 of act July 1, 1944, is classified to section 290kk–1 of this title.

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–188 substituted ''2003 through 2006'' for ''2002 and 2003''.

Subsec. (g). Pub. L. 107–116 added subsec. (g).

PART H—REQUIREMENT RELATING TO THE RIGHTS OF RESIDENTS OF CERTAIN FACILITIES

§ 290ii. Requirement relating to the rights of residents of certain facilities

(a) In general

A public or private general hospital, nursing facility, intermediate care facility, or other health care facility, that receives support in any form from any program supported in whole or in part with funds appropriated to any Federal department or agency shall protect and promote the rights of each resident of the facility, including the right to be free from physical or mental abuse, corporal punishment, and any restraints or involuntary seclusions imposed for purposes of discipline or convenience.

(b) Requirements

Restraints and seclusion may only be imposed on a resident of a facility described in subsection (a) of this section if—

(1) the restraints or seclusion are imposed to ensure the physical safety of the resident, a staff member, or others; and

(2) the restraints or seclusion are imposed only upon the written order of a physician, or other licensed practitioner permitted by the

State and the facility to order such restraint or seclusion, that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(c) Current law

This part shall not be construed to affect or impede any Federal or State law or regulations that provide greater protections than this part regarding seclusion and restraint.

(d) Definitions

In this section:

(1) Restraints

The term ''restraints'' means—

(A) any physical restraint that is a mechanical or personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely, not including devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or any other methods that involves the physical holding of a resident for the purpose of conducting routine physical examinations or tests or to protect the resident from falling out of bed or to permit the resident to participate in activities without the risk of physical harm to the resident (such term does not include a physical escort); and

(B) a drug or medication that is used as a restraint to control behavior or restrict the resident's freedom of movement that is not a standard treatment for the resident's medical or psychiatric condition.

(2) Seclusion

The term ''seclusion'' means a behavior control technique involving locked isolation. Such term does not include a time out.

(3) Physical escort

The term ''physical escort'' means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.

(4) Time out

The term ''time out'' means a behavior management technique that is part of an approved treatment program and may involve the separation of the resident from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

(July 1, 1944, ch. 373, title V, § 591, as added Pub. L. 106–310, div. B, title XXXII, § 3207, Oct. 17, 2000, 114 Stat. 1195.)

§ 290ii–1. Reporting requirement

(a) In general

Each facility to which the Protection and Advocacy for Mentally Ill Individuals Act of 1986[1] [42 U.S.C. 10801 et seq.] applies shall notify the appropriate agency, as determined by the Secretary, of each death that occurs at each such facility while a patient is restrained or in seclusion, of each death occurring within 24 hours after the patient has been removed from restraints and seclusion, or where it is reasonable to assume that a patient's death is a result of such seclusion or restraint. A notification under this section shall include the name of the resident and shall be provided not later than 7 days after the date of the death of the individual involved.

(b) Facility

In this section, the term ''facility'' has the meaning given the term ''facilities'' in section 102(3) of the Protection and Advocacy for Mentally Ill Individuals Act of 1986[1] (42 U.S.C. 10802(3)).

(July 1, 1944, ch. 373, title V, § 592, as added Pub. L. 106–310, div. B, title XXXII, § 3207, Oct. 17, 2000, 114 Stat. 1196.)

REFERENCES IN TEXT

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in text, was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

§ 290ii–2. Regulations and enforcement

(a) Training

Not later than 1 year after October 17, 2000, the Secretary, after consultation with appropriate State and local protection and advocacy organizations, physicians, facilities, and other health care professionals and patients, shall promulgate regulations that require facilities to which the Protection and Advocacy for Mentally Ill Individuals Act of 1986[1] (42 U.S.C. 10801 et seq.) applies, to meet the requirements of subsection (b) of this section.

(b) Requirements

The regulations promulgated under subsection (a) of this section shall require that—

(1) facilities described in subsection (a) of this section ensure that there is an adequate number of qualified professional and supportive staff to evaluate patients, formulate written individualized, comprehensive treatment plans, and to provide active treatment measures;

(2) appropriate training be provided for the staff of such facilities in the use of restraints and any alternatives to the use of restraints; and

(3) such facilities provide complete and accurate notification of deaths, as required under section 290ii–1(a) of this title.

(c) Enforcement

A facility to which this part applies that fails to comply with any requirement of this part, including a failure to provide appropriate training, shall not be eligible for participation in any program supported in whole or in part by funds appropriated to any Federal department or agency.

[1] See References in Text note below.

[1] See References in Text note below.

(July 1, 1944, ch. 373, title V, § 593, as added Pub. L. 106–310, div. B, title XXXII, § 3207, Oct. 17, 2000, 114 Stat. 1196.)

REFERENCES IN TEXT

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (a), was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

PART I—REQUIREMENT RELATING TO THE RIGHTS OF RESIDENTS OF CERTAIN NON-MEDICAL, COMMUNITY-BASED FACILITIES FOR CHILDREN AND YOUTH

§ 290jj. Requirement relating to the rights of residents of certain non-medical, community-based facilities for children and youth

(a) Protection of rights

(1) In general

A public or private non-medical, community-based facility for children and youth (as defined in regulations to be promulgated by the Secretary) that receives support in any form from any program supported in whole or in part with funds appropriated under this chapter shall protect and promote the rights of each resident of the facility, including the right to be free from physical or mental abuse, corporal punishment, and any restraints or involuntary seclusions imposed for purposes of discipline or convenience.

(2) Nonapplicability

Notwithstanding this part, a facility that provides inpatient psychiatric treatment services for individuals under the age of 21, as authorized and defined in subsections (a)(16) and (h) of section 1905 of the Social Security Act [42 U.S.C. 1396d], shall comply with the requirements of part H of this subchapter.

(3) Applicability of Medicaid provisions

A non-medical, community-based facility for children and youth funded under the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall continue to meet all existing requirements for participation in such program that are not affected by this part.

(b) Requirements

(1) In general

Physical restraints and seclusion may only be imposed on a resident of a facility described in subsection (a) of this section if—

(A) the restraints or seclusion are imposed only in emergency circumstances and only to ensure the immediate physical safety of the resident, a staff member, or others and less restrictive interventions have been determined to be ineffective; and

(B) the restraints or seclusion are imposed only by an individual trained and certified, by a State-recognized body (as defined in regulation promulgated by the Secretary) and pursuant to a process determined appropriate by the State and approved by the Secretary, in the prevention and use of physical restraint and seclusion, including the needs and behaviors of the population served, relationship building, alternatives to restraint and seclusion, de-escalation methods, avoiding power struggles, thresholds for restraints and seclusion, the physiological and psychological impact of restraint and seclusion, monitoring physical signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits, the process for obtaining approval for continued restraints, procedures to address problematic restraints, documentation, processing with children, and follow-up with staff, and investigation of injuries and complaints.

(2) Interim procedures relating to training and certification

(A) In general

Until such time as the State develops a process to assure the proper training and certification of facility personnel in the skills and competencies referred[1] in paragraph (1)(B), the facility involved shall develop and implement an interim procedure that meets the requirements of subparagraph (B).

(B) Requirements

A procedure developed under subparagraph (A) shall—

(i) ensure that a supervisory or senior staff person with training in restraint and seclusion who is competent to conduct a face-to-face assessment (as defined in regulations promulgated by the Secretary), will assess the mental and physical well-being of the child or youth being restrained or secluded and assure that the restraint or seclusion is being done in a safe manner;

(ii) ensure that the assessment required under clause (i) take place as soon as practicable, but in no case later than 1 hour after the initiation of the restraint or seclusion; and

(iii) ensure that the supervisory or senior staff person continues to monitor the situation for the duration of the restraint and seclusion.

(3) Limitations

(A) In general

The use of a drug or medication that is used as a restraint to control behavior or restrict the resident's freedom of movement that is not a standard treatment for the resident's medical or psychiatric condition in nonmedical community-based facilities for children and youth described in subsection (a)(1) of this section is prohibited.

(B) Prohibition

The use of mechanical restraints in nonmedical, community-based facilities for children and youth described in subsection (a)(1) of this section is prohibited.

[1] So in original. Probably should be followed by ''to''.

(C) Limitation

A non-medical, community-based facility for children and youth described in subsection (a)(1) of this section may only use seclusion when a staff member is continuously face-to-face monitoring the resident and when strong licensing or accreditation and internal controls are in place.

(c) Rule of construction

(1) In general

Nothing in this section shall be construed as prohibiting the use of restraints for medical immobilization, adaptive support, or medical protection.

(2) Current law

This part shall not be construed to affect or impede any Federal or State law or regulations that provide greater protections than this part regarding seclusion and restraint.

(d) Definitions

In this section:

(1) Mechanical restraint

The term ''mechanical restraint'' means the use of devices as a means of restricting a resident's freedom of movement.

(2) Physical escort

The term ''physical escort'' means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.

(3) Physical restraint

The term ''physical restraint'' means a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely. Such term does not include a physical escort.

(4) Seclusion

The term ''seclusion'' means a behavior control technique involving locked isolation. Such term does not include a time out.

(5) Time out

The term ''time out'' means a behavior management technique that is part of an approved treatment program and may involve the separation of the resident from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

(July 1, 1944, ch. 373, title V, § 595, as added Pub. L. 106–310, div. B, title XXXII, § 3208, Oct. 17, 2000, 114 Stat. 1197.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 290jj–1. Reporting requirement

Each facility to which this part applies shall notify the appropriate State licensing or regulatory agency, as determined by the Secretary—

(1) of each death that occurs at each such facility. A notification under this section shall include the name of the resident and shall be provided not later than 24 hours after the time of the individuals[1] death; and

(2) of the use of seclusion or restraints in accordance with regulations promulgated by the Secretary, in consultation with the States.

(July 1, 1944, ch. 373, title V, § 595A, as added Pub. L. 106–310, div. B, title XXXII, § 3208, Oct. 17, 2000, 114 Stat. 1199.)

§ 290jj–2. Regulations and enforcement

(a) Training

Not later than 6 months after October 17, 2000, the Secretary, after consultation with appropriate State, local, public and private protection and advocacy organizations, health care professionals, social workers, facilities, and patients, shall promulgate regulations that—

(1) require States that license non-medical, community-based residential facilities for children and youth to develop licensing rules and monitoring requirements concerning behavior management practice that will ensure compliance with Federal regulations and to meet the requirements of subsection (b) of this section;

(2) require States to develop and implement such licensing rules and monitoring requirements within 1 year after the promulgation of the regulations referred to in the matter preceding paragraph (1); and

(3) support the development of national guidelines and standards on the quality, quantity, orientation and training, required under this part, as well as the certification or licensure of those staff responsible for the implementation of behavioral intervention concepts and techniques.

(b) Requirements

The regulations promulgated under subsection (a) of this section shall require—

(1) that facilities described in subsection (a) of this section ensure that there is an adequate number of qualified professional and supportive staff to evaluate residents, formulate written individualized, comprehensive treatment plans, and to provide active treatment measures;

(2) the provision of appropriate training and certification of the staff of such facilities in the prevention and use of physical restraint and seclusion, including the needs and behaviors of the population served, relationship building, alternatives to restraint, de-escalation methods, avoiding power struggles, thresholds for restraints, the physiological impact of restraint and seclusion, monitoring physical signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits for the use of restraint and seclusion, the process for obtaining approval for continued restraints and seclusion, procedures to address problematic restraints, documentation, processing with children, and follow-up with staff, and investigation of injuries and complaints; and

(3) that such facilities provide complete and accurate notification of deaths, as required under section 290jj–1(1) of this title.

[1] So in original. Probably should be ''individual's''.

(c) Enforcement

A State to which this part applies that fails to comply with any requirement of this part, including a failure to provide appropriate training and certification, shall not be eligible for participation in any program supported in whole or in part by funds appropriated under this chapter.

(July 1, 1944, ch. 373, title V, § 595B, as added Pub. L. 106–310, div. B, title XXXII, § 3208, Oct. 17, 2000, 114 Stat. 1199.)

PART J—SERVICES PROVIDED THROUGH RELIGIOUS ORGANIZATIONS

CODIFICATION

This part was, in the original, part G of title V of act July 1, 1944, and has been redesignated as part J for purposes of codification. Another part G of title V of act July 1, 1944, is classified to part G (§ 290hh et seq.) of this subchapter.

§ 290kk. Applicability to designated programs

(a) Designated programs

Subject to subsection (b) of this section, this part applies to discretionary and formula grant programs administered by the Substance Abuse and Mental Health Services Administration that make awards of financial assistance to public or private entities for the purpose of carrying out activities to prevent or treat substance abuse (in this part referred to as a ''designated program''). Designated programs include the program under subpart II of part B of subchapter XVII of this chapter (relating to formula grants to the States).

(b) Limitation

This part does not apply to any award of financial assistance under a designated program for a purpose other than the purpose specified in subsection (a) of this section.

(c) Definitions

For purposes of this part (and subject to subsection (b) of this section):

(1) The term ''designated program'' has the meaning given such term in subsection (a) of this section.

(2) The term ''financial assistance'' means a grant, cooperative agreement, or contract.

(3) The term ''program beneficiary'' means an individual who receives program services.

(4) The term ''program participant'' means a public or private entity that has received financial assistance under a designated program.

(5) The term ''program services'' means treatment for substance abuse, or preventive services regarding such abuse, provided pursuant to an award of financial assistance under a designated program.

(6) The term ''religious organization'' means a nonprofit religious organization.

(July 1, 1944, ch. 373, title V, § 581, as added Pub. L. 106–554, § 1(a)(7) [title I, § 144], Dec. 21, 2000, 114 Stat. 2763, 2763A–619.)

CODIFICATION

Another section 581 of act July 1, 1944, is classified to section 290hh of this title.

§ 290kk–1. Religious organizations as program participants

(a) In general

Notwithstanding any other provision of law, a religious organization, on the same basis as any other nonprofit private provider—

(1) may receive financial assistance under a designated program; and

(2) may be a provider of services under a designated program.

(b) Religious organizations

The purpose of this section is to allow religious organizations to be program participants on the same basis as any other nonprofit private provider without impairing the religious character of such organizations, and without diminishing the religious freedom of program beneficiaries.

(c) Nondiscrimination against religious organizations

(1) Eligibility as program participants

Religious organizations are eligible to be program participants on the same basis as any other nonprofit private organization as long as the programs are implemented consistent with the Establishment Clause and Free Exercise Clause of the First Amendment to the United States Constitution. Nothing in this chapter shall be construed to restrict the ability of the Federal Government, or a State or local government receiving funds under such programs, to apply to religious organizations the same eligibility conditions in designated programs as are applied to any other nonprofit private organization.

(2) Nondiscrimination

Neither the Federal Government nor a State or local government receiving funds under designated programs shall discriminate against an organization that is or applies to be a program participant on the basis that the organization has a religious character.

(d) Religious character and freedom

(1) Religious organizations

Except as provided in this section, any religious organization that is a program participant shall retain its independence from Federal, State, and local government, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State shall require a religious organization to—

(A) alter its form of internal governance; or

(B) remove religious art, icons, scripture, or other symbols,

in order to be a program participant.

(e) Employment practices

Nothing in this section shall be construed to modify or affect the provisions of any other Federal or State law or regulation that relates to discrimination in employment. A religious organization's exemption provided under section

2000e–1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, a designated program.

(f) Rights of program beneficiaries

(1) In general

If an individual who is a program beneficiary or a prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection such program participant shall refer such individual to, and the appropriate Federal, State, or local government that administers a designated program or is a program participant shall provide to such individual (if otherwise eligible for such services), program services that—

(A) are from an alternative provider that is accessible to, and has the capacity to provide such services to, such individual; and

(B) have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection.

Upon referring a program beneficiary to an alternative provider, the program participant shall notify the appropriate Federal, State, or local government agency that administers the program of such referral.

(2) Notices

Program participants, public agencies that refer individuals to designated programs, and the appropriate Federal, State, or local governments that administer designated programs or are program participants shall ensure that notice is provided to program beneficiaries or prospective program beneficiaries of their rights under this section.

(3) Additional requirements

A program participant making a referral pursuant to paragraph (1) shall—

(A) prior to making such referral, consider any list that the State or local government makes available of entities in the geographic area that provide program services; and

(B) ensure that the individual makes contact with the alternative provider to which the individual is referred.

(4) Nondiscrimination

A religious organization that is a program participant shall not in providing program services or engaging in outreach activities under designated programs discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(g) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization that is a program participant shall be subject to the same regulations as other recipients of awards of Federal financial assistance to account, in accordance with generally accepted auditing principles, for the use of the funds provided under such awards.

(2) Limited audit

With respect to the award involved, a religious organization that is a program participant shall segregate Federal amounts provided under award into a separate account from non-Federal funds. Only the award funds shall be subject to audit by the government.

(h) Compliance

With respect to compliance with this section by an agency, a religious organization may obtain judicial review of agency action in accordance with chapter 7 of title 5.

(July 1, 1944, ch. 373, title V, § 582, as added Pub. L. 106–554, § 1(a)(7) [title I, § 144], Dec. 21, 2000, 114 Stat. 2763, 2763A–620.)

CODIFICATION

Another section 582 of act July 1, 1944, is classified to section 290hh–1 of this title.

§ 290kk–2. Limitations on use of funds for certain purposes

No funds provided under a designated program shall be expended for sectarian worship, instruction, or proselytization.

(July 1, 1944, ch. 373, title V, § 583, as added Pub. L. 106–554, § 1(a)(7) [title I, § 144], Dec. 21, 2000, 114 Stat. 2763, 2763A–622.)

§ 290kk–3. Educational requirements for personnel in drug treatment programs

(a) Findings

The Congress finds that—

(1) establishing unduly rigid or uniform educational qualification for counselors and other personnel in drug treatment programs may undermine the effectiveness of such programs; and

(2) such educational requirements for counselors and other personnel may hinder or prevent the provision of needed drug treatment services.

(b) Nondiscrimination

In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training includes basic content substantially equivalent to the content provided by nonreligious organizations that the State or local government would credit for purposes of determining whether the relevant requirements have been satisfied.

(July 1, 1944, ch. 373, title V, § 584, as added Pub. L. 106–554, § 1(a)(7) [title I, § 144], Dec. 21, 2000, 114 Stat. 2763, 2763A–622.)

SUBCHAPTER IV—CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

§ 291. Congressional declaration of purpose

The purpose of this subchapter is—

(a) to assist the several States in the carrying out of their programs for the construction and modernization of such public or other nonprofit community hospitals and other medical facilities as may be necessary, in conjunction with existing facilities, to furnish adequate hospital, clinic, or similar services to all their people;

(b) to stimulate the development of new or improved types of physical facilities for medical, diagnostic, preventive, treatment, or rehabilitative services; and

(c) to promote research, experiments, and demonstrations relating to the effective development and utilization of hospital, clinic, or similar services, facilities, and resources, and to promote the coordination of such research, experiments, and demonstrations and the useful application of their results.

(July 1, 1944, ch. 373, title VI, § 600, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 447.)

PRIOR PROVISIONS

A prior section 291, act July 1, 1944, ch. 373, title VI, § 601, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 6, 63 Stat. 900; July 12, 1954, ch. 471, § 4(a), 68 Stat. 464, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

Provisions similar to those comprising this section were contained in former section 291*o*, act July 1, 1944, ch. 373, title VI, § 641, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, prior to the general amendment of this subchapter by Pub. L. 88–443.

EFFECTIVE DATE

Section 3(b) of Pub. L. 88–443, as amended by Pub. L. 91–296, title I, § 120, June 30, 1970, 84 Stat. 343, provided that: "The amendment made by subsection (a) [enacting this section and sections 291a to 291j, 291k to 291m, 291n, and 291*o* of this title] shall become effective upon the date of enactment of this Act [Aug. 18, 1964], except that—

"(1) all applications approved by the Surgeon General under title VI of the Public Health Service Act [this subchapter] prior to such date, and allotments of sums appropriated prior to such date, shall be governed by the provisions of such title VI in effect prior to such date;

"(2) allotment percentages promulgated by the Surgeon General under such title VI during 1962 shall continue to be effective for purposes of such title as amended by this Act for the fiscal year ending June 30, 1965;

"(3) the terms of members of the Federal Hospital Council who are serving on such Council prior to such date shall expire on the date they would have expired had this Act not been enacted;

"(4) the provisions of the fourth sentence of section 636(a) of the Public Health Service Act [former section 291n of this title], as in effect prior to the enactment of this Act, shall apply in lieu of the fourth sentence of section 624(a) of the Public Health Service Act [section 291n(a) of this title], as amended by this Act, in the case of any project for construction of a facility or for acquisition of equipment with respect to which a grant for any part thereof or for planning such construction or equipment was made prior to the enactment of this Act;

"(5) no application with respect to a project for modernization of any facility in any State may be approved by the Surgeon General, for purposes of receiving funds from an allotment under section 602(a)(2) of the Public Health Service Act, as amended by this Act [section 291b(a)(2) of this title], before July 1, 1965, or before such State has had a State plan approved by the Surgeon General as meeting the requirements of section 604(a)(4)(E) [section 291d(a)(4)(E) of this title] as well as the other requirements of section 604 of such Act as so amended [section 291d of this title];

"(6) the provisions of clause (b) of section 609 of the Public Health Service Act [section 291i of this title], as amended by this Act, shall apply with respect to any project whether it was approved, and whether the event specified in such clause occurred, before, on, or after the date of enactment of this Act [June 30, 1970], except that it shall not apply in the case of any project with respect to which recovery under title VI of such Act [this subchapter] has been made prior to the enactment of this paragraph."

PART A—GRANTS AND LOANS FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

§ 291a. Authorization of appropriations

In order to assist the States in carrying out the purposes of section 291 of this title, there are authorized to be appropriated—

(a) for the fiscal year ending June 30, 1974—

(1) $20,800,000 for grants for the construction of public or other nonprofit facilities for long-term care;

(2) $70,000,000 for grants for the construction of public or other nonprofit outpatient facilities;

(3) $15,000,000 for grants for the construction of public or other nonprofit rehabilitation facilities;

(b) for grants for the construction of public or other nonprofit hospitals and public health centers, $150,000,000 for the fiscal year ending June 30, 1965, $160,000,000 for the fiscal year ending June 30, 1966, $170,000,000 for the fiscal year ending June 30, 1967, $180,000,000 each for the next two fiscal years, $195,000,000 for the fiscal year ending June 30, 1970, $147,500,000 for the fiscal year ending June 30, 1971, $152,500,000 for the fiscal year ending June 30, 1972, $157,500,000 for the fiscal year ending June 30, 1973, and $41,400,000 for the fiscal year ending June 30, 1974; and

(c) for grants for modernization of the facilities referred to in paragraphs (a) and (b), $65,000,000 for the fiscal year ending June 30, 1971, $80,000,000 for the fiscal year ending June 30, 1972, $90,000,000 for the fiscal year ending June 30, 1973, and $50,000,000 for the fiscal year ending June 30, 1974.

(July 1, 1944, ch. 373, title VI, § 601, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 448; amended Pub. L. 90–574, title IV, § 402(a), Oct. 15, 1968, 82 Stat. 1011; Pub. L. 91–296, title I, §§ 101(a), 102(a), 116(a), June 30, 1970, 84 Stat. 337, 341; Pub. L. 93–45, title I, § 108(a), June 18, 1973, 87 Stat. 92.)

PRIOR PROVISIONS

A prior section 291a, act July 1, 1944, ch. 373, title VI, § 611, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, authorized appropriations for surveys and planning, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291d, act July 1, 1944, ch. 373, title VI, § 621, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 2(a), 63 Stat. 897; July 27, 1953, ch. 243, 67 Stat. 196; Aug. 2, 1956, ch. 871, title IV, § 401, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(a), 72 Stat. 616, related to subject matter similar to this

section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291p, act July 1, 1944, ch. 373, title VI, § 646, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291s, act July 1, 1944, ch. 373, title VI, § 651, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 2, 1956, ch. 871, title IV, § 402, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(b), 72 Stat. 616; Oct. 5, 1961, Pub. L. 87–395, § 3(a), 75 Stat. 825, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–45, § 108(a)(1), substituted introductory text reading ''fiscal year ending June 30, 1974'' for ''fiscal year ending June 30, 1965, and each of the next eight fiscal years'' and in cl. (1) ''$20,800,000'' for ''$85,000,000''.

Subsec. (b). Pub. L. 93–45, § 108(a)(2), authorized appropriations of $41,400,000 for fiscal year ending June 30, 1974.

Subsec. (c). Pub. L. 93–45, § 108(a)(3), authorized appropriations of $50,000,000 for fiscal year ending June 30, 1974.

1970—Par. (a). Pub. L. 91–296, §§ 101(a)(1), (2), 116(a), substituted ''outpatient facilities'' for ''diagnostic or treatment centers'' in enumeration of facilities eligible for construction grants, extended through fiscal year ending June 30, 1973, authority to appropriate funds for construction grants, increased from $70,000,000 to $85,000,000 annual authority to make grants for public or other nonprofit facilities for long-term care, from $20,000,000 to $70,000,000 authority for public or other nonprofit outpatient facilities, and from $10,000,000 to $15,000,000 authority for public or other nonprofit rehabilitation facilities.

Par. (b). Pub. L. 91–296, §§ 101(a)(3), 102(a)(1), struck out provisions authorizing grants for modernization of facilities and inserted provisions authorizing appropriation of $147,500,000 for fiscal year ending June 30, 1971, $152,500,000 for fiscal year ending June 30, 1972, and $157,500,000 for fiscal year ending June 30, 1973, for grants for construction of public or other nonprofit hospitals and public health centers

Par. (c). Pub. L. 91–296, § 102(a)(2), added par. (c).

1968—Par. (a). Pub. L. 90–574, § 402(a)(1), substituted ''next five'' for ''next four''.

Par. (b). Pub. L. 90–574, § 402(a)(2), authorized appropriation of $195,000,000 for fiscal year ending June 30, 1970.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 101(b) of Pub. L. 91–296 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect with respect to appropriations made under such section 601 [this section] for fiscal years beginning after June 30, 1970.''

Section 102(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations made under this section for fiscal years beginning after June 30, 1970.

§ 291b. State allotments

(a) Computation for individual States; formulas for both new construction and modernization

(1) Each State shall be entitled for each fiscal year to an allotment bearing the same ratio to the sums appropriated for such year pursuant to subparagraphs (1), (2), and (3), respectively, of section 291a(a) of this title, and to an allotment bearing the same ratio to the sums appropriated for such year pursuant to section 291a(b) of this title, as the product of—

(A) the population of such State, and

(B) the square of its allotment percentage,

bears to the sum of the corresponding products for all of the States.

(2) For each fiscal year, the Secretary shall, in accordance with regulations, make allotments among the States, from the sums appropriated for such year under section 291a(c) of this title, on the basis of the population, the financial need, and the extent of the need for modernization of the facilities referred to in paragraphs (a) and (b) of section 291a of this title, of the respective States.

(b) Minimum allotments

(1) The allotment to any State under subsection (a) of this section for any fiscal year which is less than—

(A) $50,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $100,000 for any other State, in the case of an allotment for grants for the construction of public or other nonprofit rehabilitation facilities,

(B) $100,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $200,000 for any other State in the case of an allotment for grants for the construction of public or other nonprofit outpatient facilities,

(C) $200,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $300,000 for any other State in the case of an allotment for grants for the construction of public or other nonprofit facilities for long-term care or for the construction of public or other nonprofit hospitals and public health centers, or for the modernization of facilities referred to in paragraph (a) or (b) of section 291a of this title, or

(D) $200,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $300,000 for any other State in the case of an allotment for grants for the modernization of facilities referred to in paragraphs (a) and (b) of section 291a of this title,

shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotment from appropriations under such subparagraph or paragraph to each of the remaining States under subsection (a) of this section, but with such adjustments as may be necessary to prevent the allotment of any of such remaining States from appropriations under such subparagraph or paragraph from being thereby reduced to less than that amount.

(2) An allotment of the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam for any fiscal year may be increased as provided in paragraph (1) only to the extent it satisfies the Surgeon General, at such time prior to the beginning of such year as the Surgeon General may designate, that such increase will be used for payments under and in accordance with the provisions of this part.

(c) Allotment percentages; definitions; determination

For the purposes of this part—

(1) The ''allotment percentage'' for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (A) the allotment percentage shall in no case be more than 75 per centum or less than 33⅓ per centum, and (B) the allotment percentage for the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands shall be 75 per centum.

(2) The allotment percentages shall be determined by the Surgeon General between July 1 and September 30 of each even-numbered year, on the basis of the average of the per capita incomes of each of the States and of the United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce, and the States shall be notified promptly thereof. Such determination shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such determination.

(3) The population of the several States shall be determined on the basis of the latest figures certified by the Department of Commerce.

(4) The term ''United States'' means (but only for purposes of paragraphs (1) and (2)) the fifty States and the District of Columbia.

(d) Availability of allotments in subsequent years

(1) Any sum allotted to a State, other than the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam for a fiscal year under this section and remaining unobligated at the end of such year shall remain available to such State, for the purpose for which made, for the next two fiscal years (and for such years only), in addition to the sums allotted to such State for such purposes for such next two fiscal years.

(2) Any sum allotted to the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam for a fiscal year under this section and remaining unobligated at the end of such year shall remain available to it, for the purpose for which made, for the next two fiscal years (and for such years only), in addition to the sums allotted to it for such purpose for each of such next two fiscal years.

(e) Transfer of allotments

(1) Upon the request of any State that a specified portion of any allotment of such State under subsection (a) of this section for any fiscal year be added to any other allotment or allotments of such State under such subsection for such year, the Secretary shall promptly (but after application of subsection (b) of this section) adjust the allotments of such State in accordance with such request and shall notify the State agency; except that the aggregate of the portions so transferred from an allotment for a fiscal year pursuant to this paragraph may not exceed the amount specified with respect to such allotment in clause (A), (B), (C), or (D), as the case may be, of subsection (b)(1) of this section which is applicable to such State.

(2) In addition to the transfer of portions of allotments under paragraph (1), upon the request of any State that a specified portion of any allotment of such State under subsection (a) of this section, other than an allotment for grants for the construction of public or other nonprofit rehabilitation facilities, be added to another allotment of such State under such subsection, other than an allotment for grants for the construction of public or other nonprofit hospitals and public health centers, and upon simultaneous certification to the Secretary by the State agency in such State to the effect that—

(A) it has afforded a reasonable opportunity to make applications for the portion so specified and there have been no approvable applications for such portion, or

(B) in the case of a request to transfer a portion of an allotment for grants for the construction of public or other nonprofit hospitals and public health centers, use of such portion as requested by such State agency will better carry out the purposes of this subchapter,

the Secretary shall promptly (but after application of subsection (b) of this section) adjust the allotments of such State in accordance with such request and shall notify the State agency.

(3) In addition to the transfer of portions of allotments under paragraph (1) or (2), upon the request of any State that a specified portion of an allotment of such State under paragraph (2) of subsection (a) of this section be added to an allotment of such State under paragraph (1) of such subsection for grants for the construction of public or other nonprofit hospitals and public health centers, and upon simultaneous certification by the State agency in such State to the effect that the need for new public or other nonprofit hospitals and public health centers is substantially greater than the need for modernization of facilities referred to in paragraph (a) or (b) of section 291a of this title, the Secretary shall promptly (but after application of subsection (b) of this section) adjust the allotments of such State in accordance with such request and shall notify the State agency.

(4) After adjustment of allotments of any State, as provided in paragraph (1), (2), or (3) of this subsection, the allotments as so adjusted shall be deemed to be the State's allotments under this section.

(f) Request by State to transfer portion of allotment

In accordance with regulations, any State may file with the Surgeon General a request that a specified portion of an allotment to it under this part for grants for construction of any type of facility, or for modernization of facilities, be added to the corresponding allotment of another State for the purpose of meeting a portion of the Federal share of the cost of a project for the construction of a facility of that type in such other State, or for modernization of a facility in such other State, as the case may be. If it is found by the Surgeon General (or, in the case of a rehabilitation facility, by the Surgeon General and the Secretary) that construction or modernization of the facility with respect to which the request is made would meet needs of the State making the request and that use of the specified portion of such State's allotment, as requested by it, would assist in carrying out the

purposes of this subchapter, such portion of such State's allotment shall be added to the corresponding allotment of the other State, to be used for the purpose referred to above.

(July 1, 1944, ch. 373, title VI, § 602, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 448; amended Pub. L. 90–574, title IV, § 402(b), Oct. 15, 1968, 82 Stat. 1011; Pub. L. 91–296, title I, §§ 103(a), (b), 104, 116(a), 119(a)–(c), 122, June 30, 1970, 84 Stat. 338, 341, 343, 344.)

PRIOR PROVISIONS

A prior section 291b, act July 1, 1944, ch. 373, title VI, § 612, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, related to a State application for funds, its requirements and its approval, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291c, act July 1, 1944, ch. 373, title VI, § 624, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1941, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291g, act July 1, 1944, ch. 373, title VI, § 624, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 29, 1948, ch. 728, § 1, 62 Stat. 1103; Oct. 25, 1949, ch. 722, §§ 3(b), 7, 63 Stat. 899, 901; Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291i(a) to (d), act July 1, 1944, ch. 373, title VI, § 631, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 544, 62 Stat. 531; Aug. 1, 1956, ch. 852, § 19(a), (b), 70 Stat. 911; June 25, 1959, Pub. L. 86–70, § 31(c), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, § 29(d), 74 Stat. 419; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(2), 76 Stat. 587, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291n–1, act July 1, 1944, ch. 373, title VI, § 637, formerly § 654(c), as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, renumbered and amended Aug. 14, 1959, Pub. L. 86–158, title II, § 201, 73 Stat. 349, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291r, act July 1, 1944, ch. 373, title VI, § 648, as added July 12, 1954, ch. 471, § 2, 68 Stat. 462, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291t, act July 1, 1944, ch. 373, title VI, § 652, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Oct. 5, 1961, Pub. L. 87–395, § 3(b), 75 Stat. 825; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291v(b), act July 1, 1944, ch. 373, title VI, § 654, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91–296, § 103(a), substituted "sums appropriated for such year" for "new hospital portion of the sums appropriated for such year" and struck out provision setting out a formula for determining new hospital portion of sums appropriated pursuant to section 291a(b) of this title.

Subsec. (a)(2). Pub. L. 91–296, § 103(a), substituted "Secretary" for "Surgeon General", and substituted reference to sums appropriated for such year under section 291a(c) of this title for reference to remainder of sums appropriated pursuant to section 291a(b) of this title (which portion was to be available for grants for modernization of facilities referred to in paragraphs (a) and (b) of section 291a of this title).

Subsec. (b)(1)(A). Pub. L. 91–296, §§ 103(b)(1), 119(a)(1), substituted "$50,000" and "$100,000" for "$25,000" and "$50,000", respectively, and inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b)(1)(B). Pub. L. 91–296, §§ 103(b)(2), 116(a), 119(a)(1), substituted "$100,000" and "$200,000" for "$50,000" and "$100,000", respectively, substituted "outpatient facilities" for "diagnostic or treatment centers", and inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b)(1)(C). Pub. L. 91–296, §§ 103(b)(3), 119(a)(1), substituted "$200,000" and "$300,000" for "$100,000" and "$200,000", respectively, and inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b)(1)(D). Pub. L. 91–296, § 103(b)(4), added subpar. (D).

Subsecs. (b)(2), (c)(1). Pub. L. 91–296, § 119(a)(2), (b), inserted reference to Trust Territory of the Pacific Islands.

Subsec. (d)(1). Pub. L. 91–296, §§ 119(c), 122, inserted reference to Trust Territory of the Pacific Islands and substituted two years for one year as the time span following a year in which allotted sums remaining unobligated at the end thereof during which such unobligated funds remain available.

Subsec. (d)(2). Pub. L. 91–296, § 119(c), inserted references to Trust Territory of the Pacific Islands.

Subsec. (e). Pub. L. 91–296, § 104, authorized any State to make transfers of any amount up to the minimum amount allotted to any state for a particular category and authorized all amounts above such minimums to be transferred from one category of assistance to another without restriction on the amounts with the exception that no funds could be transferred from rehabilitation facilities category or to new hospital construction category and that all transfers be justified on the basis that either there are no approvable applications in the category from which funds are transferred or, in case of transfers from new hospital construction category, the purposes of the program would be better served by the transfer, and authorized transfers to new hospital construction from modernization category if need is greater.

1968—Subsec. (a)(1). Pub. L. 90–574, § 402(b)(1), inserted provision for two-thirds of the sums appropriated in the case of the fifth fiscal year thereafter.

Subsec. (e)(2)(E). Pub. L. 90–574, § 402(b)(2), added subpar. (E).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 103(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations made pursuant to section 291a of this title for fiscal years beginning after June 30, 1970.

Section 103(b) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to allotments from appropriations made pursuant to section 291a of this title for fiscal years beginning after June 30, 1970.

Section 104 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to allotments made pursuant to section 291a of this title for fiscal years beginning after June 30, 1970.

Section 119(e) of Pub. L. 91–296 provided that: "The amendments made by this section [amending this section and section 291*o* of this title] shall apply with respect to allotments (and grants therefrom) under part A of title VI of the Public Health Service Act [this part] for fiscal years ending after June 30, 1970, and with respect to loan guarantees and loans under part B of such title [part B of this subchapter] made after June 30, 1970."

Section 122 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to allotments made from appropriations under section 291a of this title for fiscal years beginning after June 30, 1970.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855,

80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

AVAILABILITY OF FUNDS FOR OBLIGATION FROM ALLOTMENT FOR ADMINISTRATION OF PLAN

Pub. L. 93–641, § 5(b), Jan. 4, 1975, 88 Stat. 2274, provided that any State having in the fiscal year ending June 30, 1975 or the next fiscal year funds available for obligation from its allotments under section 291a et seq. of this title, may in such fiscal year use for the proper and efficient administration during such year of its State plan an amount of such funds not exceeding 4 percentum of such funds or $100,000, whichever is less.

ALLOTMENT STUDY; REPORT TO CONGRESS

Section 103(c) of Pub. L. 91–296 directed Secretary to study effects of the formula specified in subsec. (a)(1) of this section for allotment among the States for construction of health facilities, with results of such study together with recommendations for change to be reported to Congress on May 15, 1972.

APPROVAL OF APPLICATION FOR MODERNIZATION PRIOR TO JULY 1, 1965, OR BEFORE APPROVAL OF A STATE PLAN

Section 3(b)(5) of Pub. L. 88–443, providing that no application for modernization of any facility may be approved for purposes of receiving funds before the approval of a State plan, as well as other requirements, is set out as an Effective Date note under section 291 of this title.

§ 291c. General regulations

The Surgeon General, with the approval of the Federal Hospital Council and the Secretary of Health and Human Services shall by general regulations prescribe—

(a) Priority of projects; determination

the general manner in which the State agency shall determine the priority of projects based on the relative need of different areas lacking adequate facilities of various types for which assistance is available under this part, giving special consideration—

(1) in the case of projects for the construction of hospitals, to facilities serving areas with relatively small financial resources and, at the option of the State, rural communities;

(2) in the case of projects for the construction of rehabilitation facilities, to facilities operated in connection with a university teaching hospital which will provide an integrated program of medical, psychological, social, and vocational evaluation and services under competent supervision;

(3) in the case of projects for modernization of facilities, to facilities serving densely populated areas;

(4) in the case of projects for construction or modernization of outpatient facilities, to any outpatient facility that will be located in, and provide services for residents of, an area determined by the Secretary to be a rural or urban poverty area;

(5) to projects for facilities which, alone or in conjunction with other facilities, will provide comprehensive health care, including outpatient and preventive care as well as hospitalization;

(6) to facilities which will provide training in health or allied health professions; and

(7) to facilities which will provide to a significant extent, for the treatment of alcoholism;

(b) Standards of construction and equipment

general standards of construction and equipment for facilities of different classes and in different types of location, for which assistance is available under this part;

(c) Criteria for determining needs for beds, hospitals and other facilities; plans for distribution of beds and facilities

criteria for determining needs for general hospital and long-term care beds, and needs for hospitals and other facilities for which aid under this part is available, and for developing plans for the distribution of such beds and facilities;

(d) Criteria for determining need for modernization

criteria for determining the extent to which existing facilities, for which aid under this part is available, are in need of modernization; and

(e) State plan requirements; assurances necessary for approval of application

that the State plan shall provide for adequate hospitals, and other facilities for which aid under this part is available, for all persons residing in the State, and adequate hospitals (and such other facilities) to furnish needed services for persons unable to pay therefor. Such regulations may also require that before approval of an application for a project is recommended by a State agency to the Surgeon General for approval under this part, assurance shall be received by the State from the applicant that (1) the facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant; and (2) there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint.

(July 1, 1944, ch. 373, title VI, § 603, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 451; amended Pub. L. 88–581, § 3(b), Sept. 4, 1964, 78 Stat. 919; Pub. L. 91–296, title I, § 110, June 30, 1970, 84 Stat. 339; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

PRIOR PROVISIONS

A prior section 291c, act July 1, 1944, ch. 373, title VI, § 613, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, related to allotments to States, the determination of their amount, and the disposition of unexpended funds, prior to the general amendment of this subchapter by

Pub. L. 88–443. See section 291(a), (b) and (d) of this title.

Provisions similar to those comprising this section were contained in a prior section 291e, act July 1, 1944, ch. 373, title VI, § 622, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–296 struck out from cl. (1) provisions requiring that States give special consideration for projects for hospitals serving rural areas but inserted provisions making such preference optional with each State and added cls. (4) to (7).

1964—Subsec. (a)(4). Pub. L. 88–581 struck out cl. (4) relating to hospital facilities which ''will include new or expanded facilities for nurse training''.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 110 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 3(b) of Pub. L. 88–581 provided that the amendments made by such section 3(b) [amending this section and sections 291*o* and 293c of this title] are effective with respect to applications for grants from appropriations for fiscal years beginning after June 30, 1965.

TRANSFER OF FUNCTIONS

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 291d. State plans

(a) Submission; requirements

Any State desiring to participate in this part may submit a State plan. Such plan must—

(1) designate a single State agency as the sole agency for the administration of the plan, or designate such agency as the sole agency for supervising the administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) of this subsection will have authority to carry out such plan in conformity with this part;

(3) provide for the designation of a State advisory council which shall include (A) representatives of nongovernmental organizations or groups, and of public agencies, concerned with the operation, construction, or utilization of hospital or other facilities for diagnosis, prevention, or treatment of illness or disease, or for provision of rehabilitation services, and representatives particularly concerned with education or training of health professions personnel, and (B) an equal number of representatives of consumers familiar with the need for the services provided by such facilities, to consult with the State agency in carrying out the plan, and provide, if such council does not include any representatives of nongovernmental organizations or groups, or State agencies, concerned with rehabilitation, for consultation with organizations, groups, and State agencies so concerned;

(4) set forth, in accordance with criteria established in regulations prescribed under section 291c of this title and on the basis of a statewide inventory of existing facilities, a survey of need, and (except to the extent provided by or pursuant to such regulations) community, area, or regional plans—

(A) the number of general hospital beds and long-term care beds, and the number and types of hospital facilities and facilities for long-term care, needed to provide adequate facilities for inpatient care of people residing in the State, and a plan for the distribution of such beds and facilities in service areas throughout the State;

(B) the public health centers needed to provide adequate public health services for people residing in the State, and a plan for the distribution of such centers throughout the State;

(C) the outpatient facilities needed to provide adequate diagnostic or treatment services to ambulatory patients residing in the State, and a plan for distribution of such facilities throughout the State;

(D) the rehabilitation facilities needed to assure adequate rehabilitation services for disabled persons residing in the State, and a plan for distribution of such facilities throughout the State; and

(E) effective January 1, 1966, the extent to which existing facilities referred to in section 291a(a) or (b) of this title in the State are in need of modernization;

(5) set forth a construction and modernization program conforming to the provisions set forth pursuant to paragraph (4) of this subsection and regulations prescribed under section 291c of this title and providing for construction or modernization of the hospital or long-term care facilities, public health centers, outpatient facilities, and rehabilitation facilities which are needed, as determined under the provisions so set forth pursuant to paragraph (4) of this subsection;

(6) set forth, with respect to each of such types of medical facilities, the relative need, determined in accordance with regulations prescribed under section 291c of this title, for projects for facilities of that type, and provide for the construction or modernization, insofar as financial resources available therefor and for maintenance and operation make possible, in the order of such relative need;

(7) provide minimum standards (to be fixed in the discretion of the State) for the maintenance and operation of facilities providing inpatient care which receive aid under this part and, effective July 1, 1966, provide for enforcement of such standards with respect to projects approved by the Surgeon General under this part after June 30, 1964;

(8) provide such methods of administration of the State plan, including methods relating

to the establishment and maintenance of personnel standards on a merit basis (except that the Surgeon General shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods), as are found by the Surgeon General to be necessary for the proper and efficient operation of the plan;

(9) provide for affording to every applicant for a construction or modernization project an opportunity for a hearing before the State agency;

(10) provide that the State agency will make such reports, in such form and containing such information, as the Surgeon General may from time to time reasonably require, and will keep such records and afford such access thereto as the Surgeon General may find necessary to assure the correctness and verification of such reports;

(11) provide that the Comptroller General of the United States or his duly authorized representatives shall have access for the purpose of audit and examination to the records specified in paragraph (10) of this subsection;

(12) provide that the State agency will from time to time, but not less often than annually, review its State plan and submit to the Surgeon General any modifications thereof which it considers necessary; and

(13) Effective July 1, 1971, provide that before any project for construction or modernization of any general hospital is approved by the State agency there will be reasonable assurance of adequate provision for extended care services (as determined in accordance with regulations) to patients of such hospital when such services are medically appropriate for them, with such services being provided in facilities which (A) are structurally part of, physically connected with, or in immediate proximity to, such hospital, and (B) either (i) are under the supervision of the professional staff of such hospital or (ii) have organized medical staffs and have in effect transfer agreements with such hospital; except that the Secretary may, at the request of the State agency, waive compliance with clause (A) or (B), or both such clauses, as the case may be, in the case of any project if the State agency has determined that compliance with such clause or clauses in such case would be inadvisable.

(b) Approval by Surgeon General; hearing after disapproval

The Surgeon General shall approve any State plan and any modification thereof which complies with the provisions of subsection (a) of this section. If any such plan or modification thereof shall have been disapproved by the Surgeon General for failure to comply with subsection (a) of this section, the Federal Hospital Council shall, upon request of the State agency, afford it an opportunity for hearing. If such Council determines that the plan or modification complies with the provisions of such subsection, the Surgeon General shall thereupon approve such plan or modification.

(July 1, 1944, ch. 373, title VI, § 604, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 452; amended Pub. L. 91–296, title I, §§ 115, 116(b), (c), 123, June 30, 1970, 84 Stat. 341, 342, 344.)

PRIOR PROVISIONS

A prior section 291d, act July 1, 1944, ch. 373, title VI, § 621, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 2(a), 63 Stat. 898; July 27, 1953, ch. 243, 67 Stat. 196; Aug. 2, 1956, ch. 871, title IV, § 401, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(a), 72 Stat. 616, authorized appropriations for construction of hospitals and related facilities, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291a of this title.

Provisions similar to those comprising this section were contained in a prior section 291f(a), (b), act July 1, 1944, ch. 373, title VI, § 623, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a)(3). Pub. L. 91–296, § 115, inserted requirement that State advisory councils include representatives particularly concerned with education or training of health professions personnel.

Subsec. (a)(4)(C). Pub. L. 91–296, § 116(b), substituted ''outpatient facilities'' for ''diagnostic or treatment centers'' and ''such facilities'' for ''such centers''.

Subsec. (a)(5). Pub. L. 91–296, § 116(c), substituted ''outpatient facilities'' for ''diagnostic or treatment centers''.

Subsec. (a)(13). Pub. L. 91–296, § 123, added par. (13).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 115 of Pub. L. 91–296 provided that the amendment made by that section is effective July 1, 1970.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Health and Human Services under subsec. (a)(8) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(C) of this title.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

FUNDS FOR MODERNIZATION PROJECTS; CONDITIONS TO BE MET BEFORE APPROVAL

Section 3(b)(5) of Pub. L. 88–443 provided that no application with respect to a modernization project may be approved for purposes of receiving funds from an allotment under section 291(a)(2) of this title before July 1, 1965, or before a State plan has been approved, as well as certain other requirements. See Effective Date note under section 291 of this title.

§ 291e. Projects for construction or modernization

(a) Application; contents

For each project pursuant to a State plan approved under this part, there shall be submitted to the Surgeon General, through the State agency, an application by the State or a political subdivision thereof or by a public or other nonprofit agency. If two or more such agencies join in the project, the application may be filed by one or more of such agencies. Such application shall set forth—

(1) a description of the site for such project;

(2) plans and specifications therefor, in accordance with regulations prescribed under section 291c of this title;

(3) reasonable assurance that title to such site is or will be vested in one or more of the agencies filing the application or in a public or other nonprofit agency which is to operate the facility on completion of the project;

(4) reasonable assurance that adequate financial support will be available for the completion of the project and for its maintenance and operation when completed;

(5) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of construction or modernization on the project will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40; and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 3145 of title 40; and

(6) a certification by the State agency of the Federal share for the project.

(b) Approval by Surgeon General; requisites; additional approval by Secretary of Health and Human Services

The Surgeon General shall approve such application if sufficient funds to pay the Federal share of the cost of such project are available from the appropriate allotment to the State, and if the Surgeon General finds (1) that the application contains such reasonable assurance as to title, financial support, and payment of prevailing rates of wages; (2) that the plans and specifications are in accord with the regulations prescribed pursuant to section 291c of this title; (3) that the application is in conformity with the State plan approved under section 291d of this title and contains an assurance that in the operation of the project there will be compliance with the applicable requirements of the regulations prescribed under section 291c(e) of this title, and with State standards for operation and maintenance; and (4) that the application has been approved and recommended by the State agency, opportunity has been provided, prior to such approval and recommendation, for consideration of the project by the public or nonprofit private agency or organization which has developed the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 246(b) of this title covering the area in which such project is to be located or, if there is no such agency or organization, by the State agency administering or supervising the administration of the State plan approved under section 246(a) of this title, and the application is for a project which is entitled to priority over other projects within the State in accordance with the regulations prescribed pursuant to section 291c(a) of this title. Notwithstanding the preceding sentence, the Surgeon General may approve such an application for a project for construction or modernization of a rehabilitation facility only if it is also approved by the Secretary of Health and Human Services.

(c) Opportunity for hearing required prior to disapproval

No application shall be disapproved until the Surgeon General has afforded the State agency an opportunity for a hearing.

(d) Amendments subject to same approval as original applications

Amendment of any approved application shall be subject to approval in the same manner as an original application.

(e) Outpatient facilities; requirements of applicants

Notwithstanding any other provision of this subchapter, no application for an outpatient facility shall be approved under this section unless the applicant is (1) a State, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital (as defined in section 291*o* of this title) or which provides reasonable assurance that the services of a general hospital will be available to patients of such facility who are in need of hospital care.

(July 1, 1944, ch. 373, title VI, § 605, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 453; amended Pub. L. 91–296, title I, §§ 111(a), 116(e), June 30, 1970, 84 Stat. 340, 342; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (a)(5), is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (a) (5), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 291e, act July 1944, ch. 373, title VI, § 622, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, authorized Surgeon General to prescribe general regulations, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291c of this title.

A prior section 291h(a), (c), act July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 8, 63 Stat. 901, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291v(d), act July 1, 1944, ch. 373, title VI, § 654, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (b)(4). Pub. L. 91–296, § 111(a), inserted provisions requiring that the appropriate area wide health planning agency be given an opportunity to consider the project for which an application is made before approval is given.

Subsec. (e). Pub. L. 91–296, § 116(e), substituted ''an outpatient facility'' for ''a diagnostic or treatment center'' and inserted provisions extending coverage to in-

clude corporations and associations which, although not owning or operating hospitals offer services of a general hospital to patients in need of hospital care.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 111(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

Amendment by section 116(e) of Pub. L. 91–296 applicable with respect to applications approved under this subchapter after June 30, 1970, see section 116(g) of Pub. L. 91–296, set out as a note under section 291*o* of this title.

TRANSFER OF FUNCTIONS

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (b) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

APPLICATIONS APPROVED PRIOR TO AUG. 18, 1964

Section 3(b)(1) of Pub. L. 88–443, providing that applications approved, and allotments appropriated prior to Aug. 18, 1964, shall be governed by this subchapter as in effect prior to such date, is set out as an Effective Date note under section 291 of this title.

FUNDS FOR MODERNIZATION PROJECTS; CONDITIONS TO BE MET BEFORE APPROVAL

Section 3(b)(5) of Pub. L. 88–443 provided that no application with respect to a modernization project may be approved for purposes of receiving funds from an allotment under section 291(a)(2) of this title before July 1, 1965, or before a State plan has been approved, as well as certain other requirements. See Effective Date note set out under section 291 of this title.

§ 291f. Payments for construction or modernization

(a) Certification of work by Surgeon General; conditions affecting payments

Upon certification to the Surgeon General by the State agency, based upon inspection by it, that work has been performed upon a project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment is due to the applicant, such installment shall be paid to the State, from the applicable allotment of such State, except that (1) if the State is not authorized by law to make payments to the applicant, or if the State so requests, the payment shall be made directly to the applicant, (2) if the Surgeon General, after investigation or otherwise, has reason to believe that any act (or failure to act) has occurred requiring action pursuant to section 291g of this title, payment may, after he has given the State agency notice of opportunity for hearing pursuant to such section, be withheld, in whole or in part, pending corrective action or action based on such hearing, and (3) the total of payments under this subsection with respect to such project may not exceed an amount equal to the Federal share of the cost of construction of such project.

(b) Additional payments in cases of amended applications

In case an amendment to an approved application is approved as provided in section 291e of this title or the estimated cost of a project is revised upward, any additional payment with respect thereto may be made from the applicable allotment of the State for the fiscal year in which such amendment or revision is approved.

(c) Administration expenses; use of portion of allotments to defray; manner of payment

(1) At the request of any State, a portion of any allotment or allotments of such State under this part shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Surgeon General for the proper and efficient administration during such year of the State plan approved under this part; except that not more than 4 per centum of the total of the allotments of such State for a year, or $100,000, whichever is less, shall be available for such purpose for such year. Payments of amounts due under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Surgeon General may determine.

(2) Any amount paid under paragraph (1) of this subsection to any State for any fiscal year shall be paid on condition that there shall be expended from State sources for such year for administration of the State plan approved under this part not less than the total amount expended for such purposes from such sources during the fiscal year ending June 30, 1970.

(July 1, 1944, ch. 373, title VI, § 606, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 454; amended Pub. L. 91–296, title I, § 112, June 30, 1970, 84 Stat. 340.)

PRIOR PROVISIONS

A prior section 291f, act July 1, 1944, ch. 373, title VI, § 623, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 554, 62 Stat. 536; Oct. 25, 1949, ch. 722, § 3(a), 63 Stat. 899, related to State plans, their submission, and their requirements, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291d of this title.

Provisions similar to those comprising subsec. (a) of this section were contained in former section 291h(b), acts July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 3(b), 63 Stat. 899, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (c)(1). Pub. L. 91–296, § 112(1), substituted ''4 per centum'' for ''2 per centum'' and ''$100,000 for $50,000''.

Subsec. (c)(2). Pub. L. 91–296, § 112(2), substituted ''June 30, 1970'' for ''June 30, 1964''.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 112 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to expenditures under a State plan approved under this subchapter which are made for administration of such plan during any fiscal year beginning after June 30, 1970.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855,

80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 291g. Withholding of payments; noncompliance with requirements

Whenever the Surgeon General, after reasonable notice and opportunity for hearing to the State agency designated as provided in section 291d(a)(1) of this title, finds—

(a) that the State agency is not complying substantially with the provisions required by section 291d of this title to be included in its State plan; or

(b) that any assurance required to be given in an application filed under section 291e of this title is not being or cannot be carried out; or

(c) that there is a substantial failure to carry out plans and specifications approved by the Surgeon General under section 291e of this title; or

(d) that adequate State funds are not being provided annually for the direct administration of the State plan,

the Surgeon General may forthwith notify the State agency that—

(e) no further payments will be made to the State under this part, or

(f) no further payments will be made from the allotments of such State from appropriations under any one or more subparagraphs or paragraphs of section 291a of this title, or for any project or projects, designated by the Surgeon General as being affected by the action or inaction referred to in paragraph (a), (b), (c), or (d) of this section,

as the Surgeon General may determine to be appropriate under the circumstances; and, except with regard to any project for which the application has already been approved and which is not directly affected, further payments may be withheld, in whole or in part, until there is no longer any failure to comply (or carry out the assurance or plans and specifications or provide adequate State funds, as the case may be) or, if such compliance (or other action) is impossible, until the State repays or arranges for the repayment of Federal moneys to which the recipient was not entitled.

(July 1, 1944, ch. 373, title VI, § 607, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 455.)

PRIOR PROVISIONS

A prior section 291g, act July 1, 1944, ch. 373, title VI, § 624, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 29, 1948, ch. 728, § 1, 62 Stat. 1103; Oct. 25, 1949, ch. 722, §§ 3(b), 7, 63 Stat. 899, 901; Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, authorized allotments to States for construction, specified their amount, and provided for availability for unexpended funds, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291b of this title.

Provisions similar to those comprising this section were contained in former section 291j(a), acts July 1, 1944, ch. 373, title VI, § 632, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 4, 63 Stat. 900; July 12, 1954, ch. 471, § 4(g), 68 Stat. 466, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 291h. Judicial review

(a) Refusal to approve application; procedure; jurisdiction of court of appeals

If the Surgeon General refuses to approve any application for a project submitted under section 291e of this title or section 291j of this title, the State agency through which such application was submitted, or if any State is dissatisfied with his action under section 291g of this title such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose. The Surgeon General shall thereupon file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Surgeon General or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Surgeon General may modify or set aside his order.

(b) Conclusiveness of Surgeon General's findings; remand; new or modified findings

The findings of the Surgeon General as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Review by Supreme Court; stay of Surgeon General's action

The judgment of the court affirming or setting aside, in whole or in part, any action of the Surgeon General shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Surgeon General's action.

(July 1, 1944, ch. 373, title VI, § 608, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 456.)

PRIOR PROVISIONS

A prior section 291h, act July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041;

amended Oct. 25, 1949, ch. 722, §§3(b–d), 8, 63 Stat. 899, 901; July 12, 1954, ch. 471, §4(b), 68 Stat. 464, related to projects for construction, the application required and its contents and approval by the Surgeon General, and provided for a hearing prior to disapproval of the application, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291e of this title.

Provisions similar to those comprising this section were contained in former section 291j(b), act July 1, 1944, ch. 373, title VI, §632, as added Aug. 13, 1946, ch. 958, §2, 60 Stat. 1041; amended June 28, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; July 12, 1954, ch. 471, §4(g), 68 Stat. 466; Aug. 28, 1958, Pub. L. 85–791, §27, 72 Stat. 950, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 291i. Recovery of expenditures under certain conditions

(a) Persons liable

If any facility with respect to which funds have been paid under section 291f of this title shall, at any time within 20 years after the completion of construction or modernization—

(1) be sold or transferred to any entity (A) which is not qualified to file an application under section 291e of this title, or (B) which is not approved as a transferee by the State agency designated pursuant to section 291d of this title, or its successor, or

(2) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility,

the United States shall be entitled to recover, whether from the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount determined under subsection (c) of this section.

(b) Notice to Secretary

The transferor of a facility which is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which is changed as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change not later than the expiration of 10 days from the date on which such sale, transfer, or change occurs.

(c) Amount of recovery; interest; interest period

(1) Except as provided in paragraph (2), the amount the United States shall be entitled to recover under subsection (a) of this section is an amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district for which the facility involved is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the construction or modernization of such project or projects.

(2)(A) After the expiration of—

(i) 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which is sold or transferred or the use of which changes after July 18, 1984, or

(ii) thirty days after July 18, 1984, or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984.[1]

the amount which the United States is entitled to recover under paragraph (1) with respect to a facility shall be the amount prescribed by paragraph (1) plus interest, during the period described in subparagraph (B), at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly ninety-day Treasury bill auction rate.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984, thirty days after such date or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section,

(ii) in the case of a facility with respect to which notice is provided in accordance with subsection (b) of this section, upon the expiration of 180 days after the receipt of such notice, or

(iii) in the case of a facility with respect to which such notice is not provided as prescribed by subsection (b) of this section, on the date of the sale, transfer, or change of use for which such notice was to be provided,

and ending on the date the amount the United States is entitled to under paragraph (1) is collected.

(d) Waiver

(1) The Secretary may waive the recovery rights of the United States under subsection (a)(1) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that the entity to which the facility was sold or transferred—

(A) has established an irrevocable trust—

(i) in an amount equal to the greater of twice the cost of the remaining obligation of the facility under clause (2) of section 291c(e) of this title or the amount, determined under subsection (c) of this section, that the United States is entitled to recover, and

(ii) which will only be used by the entity to provide the care required by clause (2) of section 291c(e) of this title; and

(B) will meet the obligation of the facility under clause (1) of section 291c(e) of this title.

(2) The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility in

[1] So in original. The period probably should be a comma.

any State if the Secretary determines, in accordance with regulations, that there is good cause for waiving such rights with respect to such facility.

(e) Lien

The right of recovery of the United States under subsection (a) of this section shall not constitute a lien on any facility with respect to which funds have been paid under section 291f of this title.

(July 1, 1944, ch. 373, title VI, § 609, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 456; amended Pub. L. 91–296, title I § 116(d), June 30, 1970, 84 Stat. 342; Pub. L. 98–369, div. B, title III, § 2381(a), July 18, 1984, 98 Stat. 1112.)

PRIOR PROVISIONS

A prior section 291i, act July 1, 1944, ch. 373, title VI, § 631, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 544, 62 Stat. 531; Oct. 25, 1949, ch. 722, § 9, 63 Stat. 901; July 12, 1954, ch. 471, § 4(c)–(f), 68 Stat. 465, 466; Aug. 1, 1956, ch. 852, § 19(a), (b), 70 Stat. 911; June 25, 1959, Pub. L. 86–70, § 31(c), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, § 29(d), 74 Stat. 419; Oct. 5, 1961, Pub. L. 87–395, § 5, 75 Stat. 826; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(2), 76 Stat. 587, related to allotment percentages, and contained various definitions, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291b of this title.

Provisions similar to those comprising this section were contained in section 291h(e) of this title, act July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 3(c), 63 Stat. 899, 901; July 12, 1954, ch. 471, § 4(b), 68 Stat. 464, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1984—Pub. L. 98–369 amended section generally. Prior to amendment, section read as follows: ''If any facility with respect to which funds have been paid under section 291f of this title shall, at any time within twenty years after the completion of construction—

''(a) be sold or transferred to any person, agency, or organization (1) which is not qualified to file an application under section 291e of this title, or (2) which is not approved as a transferee by the State agency designated pursuant to section 291d of this title, or its successor, or

''(b) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility, unless the Surgeon General determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from this obligation,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction or modernization under such project or projects. Such right of recovery shall not constitute a lien upon said facility prior to judgment.''

1970—Cl. (b). Pub. L. 91–296 substituted ''outpatient facility'' for ''diagnostic or treatment center''.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

REGULATIONS AND PERSONNEL

Section 2381(c) of Pub. L. 98–369 provided that: ''Not later than the expiration of the one-hundred-and-eighty-day period beginning on the date of the enactment of this section [July 18, 1984], the Secretary shall have in effect regulations and personnel to place in effect the amendments made by this section [amending sections 291i and 300s–1a of this title].''

§ 291j. Loans

(a) Authorization; conditions

In order further to assist the States in carrying out the purposes of this subchapter, the Surgeon General is authorized to make a loan of funds to the applicant for any project for construction or modernization which meets all of the conditions specified for a grant under this part.

(b) Approval; payments to applicants

Except as provided in this section, an application for a loan with respect to any project under this part shall be submitted, and shall be approved by the Surgeon General, in accordance with the same procedures and subject to the same limitations and conditions as would be applicable to the making of a grant under this part for such project. Any such application may be approved in any fiscal year only if sufficient funds are available from the allotment for the type of project involved. All loans under this section shall be paid directly to the applicant.

(c) Terms

(1) The amount of a loan under this part shall not exceed an amount equal to the Federal share of the estimated cost of construction or modernization under the project. Where a loan and a grant are made under this part with respect to the same project, the aggregate amount of such loan and such grant shall not exceed an amount equal to the Federal share of the estimated cost of construction or modernization under the project. Each loan shall bear interest at the rate arrived at by adding one-quarter of 1 per centum per annum to the rate which the Secretary of the Treasury determines to be equal to the current average yield on all outstanding marketable obligations of the United States as of the last day of the month preceding the date the application for the loan is approved and by adjusting the result so obtained to the nearest one-eighth of 1 per centum. Each loan made under this part shall mature not more than forty years after the date on which such loan is made, except that nothing in this part shall prohibit the payment of all or part of the loan at any time prior to the maturity date. In addition to the terms and conditions provided for, each loan under this part shall be made subject to such terms, conditions, and covenants relating to repayment of principal, payment of interest, and other matters as may be agreed upon by the applicant and the Surgeon General.

(2) The Surgeon General may enter into agreements modifying any of the terms and condi-

tions of a loan made under this part whenever he determines such action is necessary to protect the financial interest of the United States.

(3) If, at any time before a loan for a project has been repaid in full, any of the events specified in clause (a) or clause (b) of section 291i[1] of this title occurs with respect to such project, the unpaid balance of the loan shall become immediately due and payable by the applicant, and any transferee of the facility shall be liable to the United States for such repayment.

(d) Funds; miscellaneous receipts

Any loan under this part shall be made out of the allotment from which a grant for the project concerned would be made. Payments of interest and repayments of principal on loans under this part shall be deposited in the Treasury as miscellaneous receipts.

(July 1, 1944, ch. 373, title VI, § 610, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 457.)

REFERENCES IN TEXT

Section 291i of this title, referred to in subsec. (c)(3), was amended generally by Pub. L. 98–369, div. B, title III, § 2381(a), July 18, 1984, 98 Stat. 1112, and, as so amended, the provisions contained in former cls. (a) and (b) of section 291i are covered by section 291i(a)(1) and (2).

PRIOR PROVISIONS

A prior section 291j, act July 1, 1944, ch. 373, title VI, § 632, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 25, 1949, ch. 722, § 4, 63 Stat. 900; July 12, 1954, ch. 471, § 4(g), 68 Stat. 466; Aug. 28, 1958, Pub. L. 85–791, § 27, 72 Stat. 950, related to withholding of certification for noncompliance with requirements, appeal, conclusiveness of findings, the jurisdiction of the courts of appeals and to review by the Supreme Court, prior to the general amendment of this subchapter by Pub. L. 88–443. See sections 291g and 291h of this title.

Provisions similar to those comprising this section were contained in sections 291w to 291z of this title, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

PART B—LOAN GUARANTEES AND LOANS FOR MODERNIZATION AND CONSTRUCTION OF HOSPITALS AND OTHER MEDICAL FACILITIES

§ 291j–1. Loan guarantees and loans

(a) Authority of Secretary

(1) In order to assist nonprofit private agencies to carry out needed projects for the modernization or construction of nonprofit private hospitals, facilities for long-term care, outpatient facilities, and rehabilitation facilities, the Secretary, during the period July 1, 1970, through June 30, 1974, may, in accordance with the provisions of this part, guarantee to non-Federal lenders making loans to such agencies for such projects, payment of principal of and interest on loans, made by such lenders, which are approved under this part.

(2) In order to assist public agencies to carry out needed projects for the modernization or construction of public health centers, and public hospitals, facilities for long-term care, outpatient facilities, and rehabilitation facilities, the Secretary, during the period July 1, 1970, through June 30, 1974, may, in accordance with the provisions of this part, make loans to such agencies which shall be sold and guaranteed in accordance with section 291j–7 of this title.

(b) Cost limitations

(1) No loan guarantee under this part with respect to any modernization or construction project may apply to so much of the principal amount thereof as, when added to the amount of any grant or loan under part A of this subchapter with respect to such project, exceeds 90 per centum of the cost of such project.

(2) No loan to a public agency under this part shall be made in an amount which, when added to the amount of any grant or loan under part A of this subchapter with respect to such project, exceeds 90 per centum of the cost of such project.

(c) Administrative assistance

The Secretary, with the consent of the Secretary of Housing and Urban Development, shall obtain from the Department of Housing and Urban Development such assistance with respect to the administration of this part as will promote efficiency and economy thereof.

(July 1, 1944, ch. 373, title VI, § 621, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 344; amended Pub. L. 93–45, title I, § 108(b)(1), June 18, 1973, 87 Stat. 93.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–45 extended termination date of guarantee and loan making period in pars. (1) and (2) from June 30, 1973, to June 30, 1974.

§ 291j–2. Allocation among States

(a) Allotment regulations

For each fiscal year, the total amount of principal of loans to nonprofit private agencies which may be guaranteed or loans to public agencies which may be directly made under this part shall be allotted by the Secretary among the States, in accordance with regulations, on the basis of each State's relative population, financial need, need for construction of the facilities referred to in section 291j–1(a) of this title, and need for modernization of such facilities.

(b) Reallotment

Any amount allotted under subsection (a) of this section to a State for a fiscal year ending before July 1, 1973, and remaining unobligated at the end of such year shall remain available to such State, for the purpose for which made, for the next two fiscal years (and for such years only), and any such amount shall be in addition to the amounts allotted to such State for such purpose for each of such next two fiscal years;

[1] See References in Text note below.

except that, with the consent of any such State, any such amount remaining unobligated at the end of the first of such next fiscal year may be reallotted (on such basis as the Secretary deems equitable and consistent with the purposes of this subchapter) to other States which have need therefor. Any amounts so reallotted to a State shall be available for the purposes for which made until the close of the second such next two fiscal years and shall be in addition to the amount allotted and available to such State for the same period.

(c) Time of availability of amounts for subsequent allotment

Any amount allotted or reallotted to a State under this section for a fiscal year shall not, until the expiration of the period during which it is available for obligation, be considered as available for allotment for a subsequent fiscal year.

(d) Modernization or construction commenced on or after January 1, 1968

The allotments of any State under subsection (a) of this section for the fiscal year ending June 30, 1971, and the succeeding fiscal year shall also be available to guarantee loans with respect to any project, for modernization or construction of a nonprofit private hospital or other health facility referred to in section 291j–1(a)(1) of this title, if the modernization or construction of such facility was not commenced earlier than January 1, 1968, and if the State certifies and the Secretary finds that without such guaranteed loan such facility could not be completed and begin to operate or could not continue to operate, but with such guaranteed loan would be able to do so: *Provided*, That this subsection shall not apply to more than two projects in any one State.

(July 1, 1944, ch. 373, title VI, § 622, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 345.)

§ 291j–3. Applications and conditions

(a) Contents of applications

For each project for which a guarantee of a loan to a nonprofit private agency or a direct loan to a public agency is sought under this part, there shall be submitted to the Secretary, through the State agency designated in accordance with section 291d of this title, an application by such private nonprofit agency or by such public agency. If two or more private nonprofit agencies, or two or more public agencies, join in the project, the application may be filed by one or more such agencies. Such application shall (1) set forth all of the descriptions, plans, specifications, assurances, and information which are required by the third sentence of section 291e(a) of this title (other than clause (6) thereof) with respect to applications submitted under that section, (2) contain such other information as the Secretary may require to carry out the purposes of this part, and (3) include a certification by the State agency of the total cost of the project and the amount of the loan for which a guarantee is sought under this part, or the amount of the direct loan sought under this part, as the case may be.

(b) Conditions for approval

The Secretary may approve such application only if—

(1) there remains sufficient balance in the allotment determined for such State pursuant to section 291j–2 of this title to cover the amount of the loan for which a guarantee is sought, or the amount of the direct loan sought (as the case may be), in such application,

(2) he makes each of the findings which are required by clauses (1) through (4) of section 291e(b) of this title for the approval of applications for projects thereunder (except that, in the case of the finding required under such clause (4) of entitlement of a project to a priority established under section 291c(a) of this title; such finding shall be made without regard to the provisions of clauses (1) and (3) of such section),

(3) he finds that there is compliance with section 291e(e) of this title,

(4) he obtains assurances that the applicant will keep such records, and afford such access thereto, and make such reports, in such form and containing such information, as the Secretary may reasonably require, and

(5) he also determines, in the case of a loan for which a guarantee is sought, that the terms, conditions, maturity, security (if any), and schedule and amounts of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable and in accord with regulations, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States.

(c) Hearing

No application under this section shall be disapproved until the Secretary has afforded the State agency an opportunity for a hearing.

(d) Amendment of approved applications

Amendment of an approved application shall be subject to approval in the same manner as an original application.

(e) Recovery rights; terms and conditions

(1) In the case of any loan to a nonprofit private agency, the United States shall be entitled to recover from the applicant the amount of any payments made pursuant to any guarantee of such loan under this part, unless the Secretary for good cause waives its right of recovery, and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

(2) Guarantees of loans to nonprofit private agencies under this part shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this part will be achieved, and, to the extent permitted by subsection (f) of this section, any of such terms and conditions may be modified by the Secretary to the extent he

determines it to be consistent with the financial interest of the United States.

(f) Incontestable guarantee

Any guarantee of a loan to a nonprofit private agency made by the Secretary pursuant to this part shall be incontestable in the hands of an applicant on whose behalf such guarantee is made, and as to any person who makes or contracts to make a loan to such applicant in reliance thereon, except for fraud or misrepresentation on the part of such applicant or such other person.

(July 1, 1944, ch. 373, title VI, § 623, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 346.)

§ 291j–4. Payment of interest on guaranteed loans

(a) Subject to the provisions of subsection (b) of this section, in the case of a guarantee of any loan to a nonprofit private agency under this part with respect to a hospital or other medical facility, the Secretary shall pay, to the holder of such loan and for and on behalf of such hospital or other medical facility amounts sufficient to reduce by 3 per centum per annum the net effective interest rate otherwise payable on such loan. Each holder of a loan, to a nonprofit private agency, which is guaranteed under this part shall have a contractual right to receive from the United States interest payments required by the preceding sentence.

(b) Contracts to make the payments provided for in this section shall not carry an aggregate amount greater than such amount as may be provided in appropriations Acts.

(July 1, 1944, ch. 373, title VI, § 624, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 347.)

§ 291j–5. Limitation on amounts of loans guaranteed or directly made

The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued, or which have been directly made, under this part may not exceed the lesser of—

(1) such limitations as may be specified in appropriations Acts, or

(2) in the case of loans covered by allotments for the fiscal year ending June 30, 1971, $500,000,000; for the fiscal year ending June 30, 1972, $1,000,000,000; and for each of the fiscal years ending June 30, 1973, and June 30, 1974, $1,500,000,000.

(July 1, 1944, ch. 373, title VI, § 625, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 347; amended Pub. L. 93–45, title I, § 108(b)(2), June 18, 1973, 87 Stat. 93.)

AMENDMENTS

1973—Pub. L. 93–45 provided for a limitation of $1,500,000,000 on amount of loans outstanding in the case of loans covered by allotments for fiscal year ending June 30, 1974.

§ 291j–6. Loan guarantee and loan fund

(a)(1) There is hereby established in the Treasury a loan guarantee and loan fund (hereinafter in this section referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriations Acts, (i) to enable him to discharge his responsibilities under guarantees issued by him under this part, (ii) for payment of interest on the loans to nonprofit agencies which are guaranteed, (iii) for direct loans to public agencies which are sold and guaranteed, (iv) for payment of interest with respect to such loans, and (v) for repurchase by him of direct loans to public agencies which have been sold and guaranteed. There are authorized to be appropriated to the fund from time to time such amounts as may be necessary to provide capital required for the fund. To the extent authorized from time to time in appropriation Acts, there shall be deposited in the fund amounts received by the Secretary as interest payments or repayments of principal on loans and any other moneys, property, or assets derived by him from his operations under this part, including any moneys derived from the sale of assets.

(2) Of the moneys in the fund, there shall be available to the Secretary for the purpose of making of direct loans to public agencies only such sums as shall have been appropriated for such purpose pursuant to section 291j–7 of this title or sums received by the Secretary from the sale of such loans (in accordance with such section) and authorized in appropriations Acts to be used for such purpose.

(b) If at any time the moneys in the fund are insufficient to enable the Secretary to discharge his responsibilities under this part—

(i) to make payments of interest on loans to nonprofit private agencies which he has guaranteed under this part;

(ii) to otherwise comply with guarantees under this part of loans to nonprofit private agencies;

(iii) to make payments of interest subsidies with respect to loans to public agencies which he has made, sold, and guaranteed under this part;

(iv) in the event of default by public agencies to make payments of principal and interest on loans which the Secretary has made, sold, and guaranteed, under this part, to make such payments to the purchaser of such loan;

(v) to repurchase loans to public agencies which have been sold and guaranteed under this part,

he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, but only in such amounts as may be specified from time to time in appropriations Acts. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued

hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from such fund.

(July 1, 1944, ch. 373, title VI, § 626, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 347.)

CODIFICATION

In subsec. (b), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act, as amended'' and ''that Act, as amended'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 291j–7. Loans to public facilities

(a) Interest rates; security; equitable geographical distribution

(1) Any loan made by the Secretary to a public agency under this part for the modernization or construction of a public hospital or other health facility shall require such public agency to pay interest thereon at a rate comparable to the current rate of interest prevailing with respect to loans, to nonprofit private agencies, which are guaranteed under this part, for the modernization or construction of similar facilities in the same or similar areas, minus 3 per centum per annum.

(2)(A) No loan to a public agency shall be made under this part unless—

(i) the Secretary is reasonably satisfied that such agency will be able to make payments of principal and interest thereon when due, and

(ii) such agency provides the Secretary with reasonable assurances that there will be available to such agency such additional funds as may be necessary to complete the project with respect to which such loan is requested.

(B) Any loan to a public agency shall have such security, have such maturity date, be repayable in such installments, and be subject to such other terms and conditions (including provision for recovery in case of default) as the Secretary determines to be necessary to carry out the purposes of this part while adequately protecting the financial interests of the United States.

(3) In making loans to public agencies under this part, the Secretary shall give due regard to achieving an equitable geographical distribution of such loans.

(b) Sale

(1) The Secretary shall from time to time, but with due regard to the financial interests of the United States, sell loans referred to in subsection (a)(1) of this section either on the private market or to the Federal National Mortgage Association in accordance with section 1717 of title 12.

(2) Any loan so sold shall be sold for an amount which is equal (or approximately equal) to the amount of the unpaid principal of such loan as of the time of sale.

(c) Agreements

(1) The Secretary is authorized to enter into an agreement with the purchaser of any loan sold under this part under which the Secretary agrees—

(A) to guarantee to such purchaser (and any successor in interest to such purchaser) payment of the principal and interest payable under such loan, and

(B) to pay as an interest subsidy to such purchaser (and any successor in interest of such purchaser) amounts which when added to the amount of interest payable on such loan, are equivalent to a reasonable rate of interest on such loan as determined by the Secretary, after taking into account the range of prevailing interest rates in the private market on similar loans and the risks assumed by the United States.

(2) Any such agreement—

(A) may provide that the Secretary shall act as agent of any such purchaser, for the purpose of collecting from the public agency to which such loan was made and paying over to such purchaser, any payments of principal and interest payable by such agency under such loan;

(B) may provide for the repurchase by the Secretary of any such loan on such terms and conditions as may be specified in the agreement;

(C) shall provide that, in the event of any default by the public agency to which such loan was made in payment of principal and interest due on such loan, the Secretary shall, upon notification to the purchaser (or to the successor in interest of such purchaser), have the option to close out such loan (and any obligations of the Secretary with respect thereto) by paying to the purchaser (or his successor in interest) the total amount of outstanding principal and interest due thereon at the time of such notification; and

(D) shall provide that, in the event such loan is closed out as provided in subparagraph (C), or in the event of any other loss incurred by the Secretary by reason of the failure of such public agency to make payments of principal and interest on such loan, the Secretary shall be subrogated to all rights of such purchaser for recovery of such loss from such public agency.

(d) Right of recovery; waiver

The Secretary may, for good cause, waive any right of recovery which he has against a public agency by reason of the failure of such agency to make payments of principal and interest on a loan made to such agency under this part.

(e) Interest and interest subsidies as gross income under Internal Revenue Code

After any loan to a public agency under this part has been sold and guaranteed, interest paid on such loan and any interest subsidy paid by the Secretary with respect to such loan which is received by the purchaser thereof (or his successor in interest) shall be included in gross income for the purposes of chapter 1 of title 26.

(f) Sales proceeds; deposit and use

Amounts received by the Secretary as proceeds from the sale of loans under this section shall be deposited in the loan fund established by section 291j–6 of this title, and shall be available to the Secretary for the making of further loans under this part in accordance with the provisions of subsection (a)(2) of such section.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary, for deposit in the loan fund established by section 291j–6 of this title, $30,000,000 to provide initial capital for the making of direct loans by the Secretary to public agencies for the modernization or construction of facilities referred to in subsection (a)(1) of this section.

(July 1, 1944, ch. 373, title VI, § 627, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 349; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsec. (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

COMMITMENTS FOR DIRECT LOANS TO PUBLIC AGENCIES

Pub. L. 91–667, title II, § 200, Jan. 11, 1971, 84 Stat. 2007, provided: ''That the Secretary is authorized to issue commitments for direct loans to public agencies in accordance with section 627 of the Public Health Service Act [this section] which shall constitute contractual obligations of the United States, the total of such outstanding commitments not to exceed $30,000,000 at any given time; to sell obligations received pursuant to such commitments as provided in section 627, and the proceeds of any such sale shall be used to make a direct loan pursuant to the outstanding commitment under which the obligations were received.''

PART C—CONSTRUCTION OR MODERNIZATION OF EMERGENCY ROOMS

§ 291j–8. Authorization of appropriations

In order to assist in the provision of adequate emergency room service in various communities of the Nation for treatment of accident victims and handling of other medical emergencies through special project grants for the construction or modernization of emergency rooms of general hospitals, there are authorized to be appropriated $20,000,000 each for the fiscal year ending June 30, 1971, and the next two fiscal years.

(July 1, 1944, ch. 373, title VI, § 631, as added Pub. L. 91–296, title III, § 301, June 30, 1970, 84 Stat. 351.)

§ 291j–9. Eligibility for grants

Funds appropriated pursuant to section 291j–8 of this title shall be available for grants by the Secretary for not to exceed 50 per centum of the cost of construction or modernization of emergency rooms of public or nonprofit general hospitals, including provision or replacement of medical transportation facilities. Such grants shall be made by the Secretary only after consultation with the State agency designated in accordance with section 291d(a)(1) of this title. In order to be eligible for a grant under this part, the project, and the applicant therefor, must meet such criteria as may be prescribed by regulations. Such regulations shall be so designed as to provide aid only with respect to projects for which adequate assistance is not readily available from other Federal, State, local, or other sources, and to assist in providing modern, efficient, and effective emergency room service needed to care for victims of highway, industrial, agricultural, or other accidents and to handle other medical emergencies, and to assist in providing such service in geographical areas which have special need therefor.

(July 1, 1944, ch. 373, title VI, § 632, as added Pub. L. 91–296, title III, § 301, June 30, 1970, 84 Stat. 351.)

§ 291j–10. Payments

Grants under this part shall be paid in advance or by way of reimbursement, in such installments and on such conditions, as in the judgment of the Secretary will best carry out the purposes of this part.

(July 1, 1944, ch. 373, title VI, § 633, as added Pub. L. 91–296, title III, § 301, June 30, 1970, 84 Stat. 351.)

PART D—GENERAL PROVISIONS

§ 291k. Federal Hospital Council

(a) Membership; qualifications

In administering this subchapter, the Surgeon General shall consult with a Federal Hospital Council consisting of the Surgeon General, who shall serve as Chairman ex officio, and twelve members appointed by the Secretary of Health and Human Services. Six of the twelve appointed members shall be persons who are outstanding in fields pertaining to medical facility and health activities, and three of these six shall be authorities in matters relating to the operation of hospitals or other medical facilities, one of them shall be an authority in matters relating to the mentally retarded, and one of them shall be an authority in matters relating to mental health, and the other six members shall be appointed to represent the consumers of the services provided by such facilities and shall be persons familiar with the need for such services in urban or rural areas.

(b) Term of membership

Each appointed member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. An appointed member shall not be eligible to serve continuously for more than two terms (whether beginning before or after August 18, 1964) but shall be eligible for re-

appointment if he has not served immediately preceding his reappointment.

(c) Meetings; annual or by call of Surgeon General

The Council shall meet as frequently as the Surgeon General deems necessary, but not less than once each year. Upon request by three or more members, it shall be the duty of the Surgeon General to call a meeting of the Council.

(d) Advisory or technical committees

The Council is authorized to appoint such special advisory or technical committees as may be useful in carrying out its functions.

(July 1, 1944, ch. 373, title VI, § 641, formerly § 621, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 458, renumbered § 641, Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 344; amended Pub. L. 91–515, title VI, § 601(b)(2), Oct. 30, 1970, 84 Stat. 1311; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in subsec. (b) of a prior section 291k, act July 1, 1944, ch. 373, title VI, § 633, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 24, 1948, ch. 621, § 6(b), 62 Stat. 602; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (e). Pub. L. 91–515 struck out subsec. (e) which related to payment of compensation and travel expenses of appointed Council members and members of advisory or technical committees while serving on Council business.

TRANSFER OF FUNCTIONS

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

TERMS OF FEDERAL HOSPITAL COUNCIL MEMBERS

Section 3(b)(3) of Pub. L. 88–443 providing that the terms of members serving on the Council prior to Aug. 18, 1964, shall expire on the date they would have expired had Pub. L. 88–443 not been enacted, is set out as an Effective Date note under section 291 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 291*l*. Conference of State agencies

Whenever in his opinion the purposes of this subchapter would be promoted by a conference, the Surgeon General may invite representatives of as many State agencies, designated in accordance with section 291d of this title, to confer as he deems necessary or proper. A conference of the representatives of all such State agencies shall be called annually by the Surgeon General. Upon the application of five or more of such State agencies, it shall be the duty of the Surgeon General to call a conference of representatives of all State agencies joining in the request.

(July 1, 1944, ch. 373, title VI, § 642, formerly § 622, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 458, and renumbered § 642, Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 344.)

PRIOR PROVISIONS

A prior section 291*l*, act July 1, 1944, ch. 373, title VI, § 634, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, contained provisions similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 291m. State control of operations

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility with respect to which any funds have been or may be expended under this subchapter.

(July 1, 1944, ch. 373, title VI, § 643, formerly § 623, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 458, and renumbered § 643, Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 344.)

PRIOR PROVISIONS

A prior section 291m, act July 1, 1944, ch. 373, title VI, § 635, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended July 12, 1954, ch. 471, § 4(h), 68 Stat. 467, contained provisions similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

§ 291m–1. Loans for certain hospital experimentation projects

(a) Other public or private sources unavailable for alleviation of hardship due to increased construction costs

In order to alleviate hardship on any recipient of a grant under section 291n[1] of this title (as in effect immediately before August 18, 1964) for a project for the construction of an experimental or demonstration facility having as its specific purpose the application of novel means for the reduction of hospital costs with respect to which there has been a substantial increase in the cost of such construction (over the estimated cost of such project on the basis of which such grant was made) through no fault of such recipient,

[1] See References in Text note below.

the Secretary is authorized to make a loan to such recipient not exceeding 66⅔ per centum of such increased costs, as determined by the Secretary, if the Secretary determines that such recipient is unable to obtain such an amount for such purpose from other public or private sources.

(b) Application; form; information

Any such loan shall be made only on the basis of an application submitted to the Secretary in such form and containing such information and assurances as he may prescribe.

(c) Interest; repayment period

Each such loan shall bear interest at the rate of 2½ per centum per annum on the unpaid balance thereof and shall be repayable over a period determined by the Secretary to be appropriate, but not exceeding fifty years.

(d) Authorization of appropriation

There are hereby authorized to be appropriated $3,500,000 to carry out the provisions of this section.

(July 1, 1944, ch. 373, title VI, § 643A, formerly § 623A, as added Pub. L. 90–174, § 11, Dec. 5, 1967, 81 Stat. 541, and renumbered § 643A, Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 344.)

REFERENCES IN TEXT

Section 291n of this title, referred to in subsec. (a), was repealed by Pub. L. 90–174, § 3(b)(1), Dec. 5, 1967, 81 Stat. 535.

§ 291n. Repealed. Pub. L. 90–174, § 3(b)(1), Dec. 5, 1967, 81 Stat. 535

Section, act July 1, 1944, ch. 373, title VI, § 644, formerly § 624, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 459, and renumbered § 644, June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 344, provided for research, experiments and demonstrations in utilization of medical facilities, authorization, grants-in-aid, amounts, payment, conditions, authorization of appropriations, and right of recovery of United States Government. See section 242b of this title.

Provisions similar to those comprising this section were contained in a prior section 291n, act July 1, 1944, ch. 373, title VI, § 636, as added Oct. 25, 1949, ch. 722, § 5, 63 Stat. 900; amended Oct. 6, 1961, Pub. L. 87–395, § 4, 75 Stat. 825, prior to the general amendment of this subchapter by Pub. L. 88–443.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to appropriations for fiscal year ending after June 30, 1967, see section 3(b) of Pub. L. 90–174, set out as an Effective Date of 1967 Amendment note under section 246 of this title.

§ 291n–1. Omitted

CODIFICATION

Section, act July 1, 1944, ch. 373, title VI, § 637, formerly § 654(c), as added July 12, 1954, ch. 471, § 3, 68 Stat. 463; renumbered § 637 and amended Aug. 14, 1959, Pub. L. 86–158, title II, § 201, 73 Stat. 349, related to transfers of allotments between States, prior to the general amendment of this subchapter by Pub. L. 88–443, Aug. 18, 1964, 78 Stat. 447. See section 291b of this title.

§ 291*o*. Definitions

For the purposes of this subchapter—

(a) The term ''State'' includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the District of Columbia.

(b)(1) The term ''Federal share'' with respect to any project means the proportion of the cost of such project to be paid by the Federal Government under this subchapter.

(2) With respect to any project in any State for which a grant is made from an allotment from an appropriation under section 291a of this title, the Federal share shall be the amount determined by the State agency designated in accordance with section 291d of this title, but not more than 66⅔ per centum or the State's allotment percentage, whichever is the lower, except that, if the State's allotment percentage is lower than 50 per centum, such allotment percentage shall be deemed to be 50 per centum for purposes of this paragraph.

(3) Prior to the approval of the first project in a State during any fiscal year the State agency designated in accordance with section 291d of this title shall give the Secretary written notification of the maximum Federal share established pursuant to paragraph (2) of this subsection for projects in such State to be approved by the Secretary during such fiscal year and the method for determining the actual Federal share to be paid with respect to such projects; and such maximum Federal share and such method of determination for projects in such State approved during such fiscal year shall not be changed after such approval.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this subsection, the Federal share shall, at the option of the State agency, be equal to the per centum provided under such paragraphs plus an incentive per centum (which when combined with the per centum provided under such paragraphs shall not exceed 90 per centum) specified by the State agency in the case of (A) projects that will provide services primarily for persons in an area determined by the Secretary to be a rural or urban poverty area, and (B) projects that offer potential for reducing health care costs through shared services among health care facilities, through interfacility cooperation, or through the construction or modernization of free-standing outpatient facilities.

(c) The term ''hospital'' includes general, tuberculosis, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities, operated in connection with hospitals, and also includes education or training facilities for health professions personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.

(d) The term ''public health center'' means a publicly owned facility for the provision of public health services, including related publicly owned facilities such as laboratories, clinics, and administrative offices operated in connection with such a facility.

(e) The term ''nonprofit'' as applied to any facility means a facility which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which

inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(f) The term ''outpatient facility'' means a facility (located in or apart from a hospital) for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients)—

(1) which is operated in connection with a hospital, or

(2) in which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State, or, in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State; or

(3) which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which provides to its patients a reasonably full-range of diagnostic and treatment services.

(g) The term ''rehabilitation facility'' means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of—

(1) medical evaluation and services, and

(2) psychological, social, or vocational evaluation and services,

under competent professional supervision, and in the case of which—

(3) the major portion of the required evaluation and services is furnished within the facility; and

(4) either (A) the facility is operated in connection with a hospital, or (B) all medical and related health services are prescribed by, or are under the general direction of, persons licensed to practice medicine or surgery in the State.

(h) The term ''facility for long-term care'' means a facility (including an extended care facility) providing in-patient care for convalescent or chronic disease patients who require skilled nursing care and related medical services—

(1) which is a hospital (other than a hospital primarily for the care and treatment of mentally ill or tuberculosis patients) or is operated in connection with a hospital, or

(2) in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State.

(i) The term ''construction'' includes construction of new buildings, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings (including medical transportation facilities) and, in any case in which it will help to provide a service not previously provided in the community, equipment of any buildings; including architects' fees, but excluding the cost of off-site improvements and, except with respect to public health centers, the cost of the acquisition of land.

(j) The term ''cost'' as applied to construction or modernization means the amount found by the Surgeon General to be necessary for construction and modernization respectively, under a project, except that such term, as applied to a project for modernization of a facility for which a grant or loan is to be made from an allotment under section 291b(a)(2) of this title, does not include any amount found by the Surgeon General to be attributable to expansion of the bed capacity of such facility.

(k) The term ''modernization'' includes alteration, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and replacement of obsolete, built-in (as determined in accordance with regulations) equipment of existing buildings.

(*l*) The term ''title'', when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Surgeon General finds sufficient to assure for a period of not less than fifty years' undisturbed use and possession for the purposes of construction and operation of the project.

(July 1, 1944, ch. 373, title VI, § 645, formerly § 625, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 460; amended Pub. L. 88–581, § 3(b), Sept. 4, 1964, 78 Stat. 919; renumbered § 645 and amended Pub. L. 91–296, title I, §§ 113, 114(a), 116(f), 117, 118, 119(d), title II, § 201, June 30, 1970, 84 Stat. 340, 341, 342, 343, 344.)

PRIOR PROVISIONS

A prior section 291*o*, act July 1, 1944, ch. 373, title VI, § 641, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to a declaration of purpose with respect to diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, and nursing homes, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291 of this title.

Provisions similar to those comprising this section were contained in section 291i(d) to (*o*), act July 1, 1944, ch. 373, title VI, § 631, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 544, § 1(b), 62 Stat. 531; Oct. 25, 1949, ch. 722, § 9, 63 Stat. 901; July 12, 1954, ch. 471, § 4(c) to (f), 68 Stat. 465, 466; Aug. 1, 1956, ch. 852, § 19(b), 70 Stat. 911; June 25, 1959, Pub. L. 86–70, § 31(c), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, § 29(d), 74 Stat. 419; Oct. 5, 1961, Pub. L. 87–395, § 5, 75 Stat. 826; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(2), 76 Stat. 587, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–296, § 119(d), inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b). Pub. L. 91–296, § 113, provided that Federal share of any project be in such amount, not in excess of two-thirds, as the State agency determined and authorized a higher Federal share of up to 90 per centum, in case of rural or urban poverty projects, and facilities which might reduce health costs through shared services, interfacility cooperation, and free-standing ambulatory care centers.

Subsec. (c). Pub. L. 91–296, § 114(a), inserted references to extended care facilities, facilities related to programs for home health services, and self-care units operated in connection with hospitals and education or training facilities for health professions personnel operated as an integral part of a hospital.

Subsec. (f). Pub. L. 91–296, § 116(f), substituted ''outpatient facility'' for ''diagnostic or treatment center'', inserted ''(located in or apart from a hospital)'' after ''means at facility'', inserted ''(including ambulatory inpatients)'' after ''ambulatory patients'', and added par. (3).

Subsec. (h). Pub. L. 91–296, § 117, inserted ''(including an extended care facility)'' after ''means a facility''.

Subsec. (i). Pub. L. 91–296, § 118, inserted reference to equipment of any buildings in cases in which such equipment will help to provide a service not previously provided in the community.

1964—Subsec. (c). Pub. L. 88–581 substituted ''nurses' home facilities'' for ''nurses' home and training facilities''.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 113 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to projects approved under this subchapter after June 30, 1970.

Section 114(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

Section 116(g) of Pub. L. 91–296 provided that: ''The amendments made by subsection (e) [amending this section] and paragraphs (2) and (3) of subsection (f) of this section [amending section 291e of this title] shall apply with respect to applications approved under title VI of such Act [this subchapter] after June 30, 1970.''

Section 117 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

Section 118 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to projects approved under this subchapter after June 30, 1970.

Amendment by section 119(d) of Pub. L. 91–296 applicable with respect to allotments and grants therefrom under part A of this subchapter for fiscal years ending after June 30, 1970, and with respect to loan guarantees and loans under part B of this subchapter made after June 30, 1970, see section 119(e) of Pub. L. 91–296, set out as a note under section 291b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–581 effective with respect to applications for grants from appropriations for fiscal years beginning after June 30, 1965, see section 3(b) of Pub. L. 88–581, set out as a note under section 291c of this title.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 291*o*–1. Financial statements

In the case of any facility for which a grant, loan, or loan guarantee has been made under this subchapter, the applicant for such grant, loan, or loan guarantee (or, if appropriate, such other person as the Secretary may prescribe) shall file at least annually with the State agency for the State in which the facility is located a statement which shall be in such form, and contain such information, as the Secretary may require to accurately show—

(1) the financial operations of the facility, and

(2) the costs to the facility of providing health services in the facility and the charges made by the facility for providing such services,

during the period with respect to which the statement is filed.

(July 1, 1944, ch. 373, title VI, § 646, as added Pub. L. 91–296, title I, § 121, June 30, 1970, 84 Stat. 343.)

PRIOR PROVISIONS

Sections 291p to 291z were omitted in the general amendment of this subchapter by Pub. L. 88–443, Aug. 18, 1964, 78 Stat. 447.

Section 291p, act July 1, 1944, ch. 373, title VI, § 646, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to appropriations to States for carrying out purposes of section 291*o*(a) of this title.

Section 291q, act July 1, 1944, ch. 373, title VI, § 647, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to State application for funds for carrying out purposes of section 291*o*(a) of this title.

Section 291r, act July 1, 1944, ch. 373, title VI, § 648, as added July 12, 1954, ch. 471, § 2, 68 Stat. 462, related to allotments to States of appropriations made pursuant to section 291p of this title.

Section 291s, act July 1, 1944, ch. 373, title VI, § 651, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 2, 1956, ch. 871, title IV, § 402, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(b), 72 Stat. 616; Oct. 5, 1961, Pub. L. 87–395, § 3(a), 75 Stat. 825, related to appropriations for assistance to States in carrying out purposes of section 291*o*(b) of this title.

Section 291t, act July 1, 1944, ch. 373, title VI, 652, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Oct. 5, 1961, Pub. L. 87–395, § 3(b), 75 Stat. 825; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, related to allotments to States of sums appropriated under section 291s of this title.

Section 291u, act July 1, 1944, ch. 373, title VI, § 653, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, related to revision of regulations and State plans to cover benefits of sections 291s to 291v of this title.

Section 291v, act July 1, 1944, ch. 373, title VI, § 654, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463; amended Aug. 14, 1959, Pub. L. 86–158, title II, § 201, 73 Stat. 349, related to applications and payments for projects under sections 291s to 291v of this title.

Section 291w, act July 1, 1944, ch. 373, title VI, § 661, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 489; amended Oct. 5, 1961, Pub. L. 87–395, § 6, 75 Stat. 826, related to an authorization of Surgeon General to make loans for construction.

Section 291x, act July 1, 1944, ch. 373, title VI, § 662, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 489, related to approval of construction loans by Surgeon General.

Section 291y, act July 1, 1944, ch. 373, title VI, § 663, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 489, related to terms of the loans with respect to sections 291w to 291z of this title.

Section 291z, act July 1, 1944, ch. 373, title VI, § 664, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 490, related to allotment of funds for loans under this subchapter.

SUBCHAPTER V—HEALTH PROFESSIONS EDUCATION

PART A—STUDENT LOANS

SUBPART I—INSURED HEALTH EDUCATION ASSISTANCE LOANS TO GRADUATE STUDENTS

§ 292. Statement of purpose

The purpose of this subpart is to enable the Secretary to provide a Federal program of student loan insurance for students in (and certain former students of) eligible institutions (as defined in section 292*o* of this title).

(July 1, 1944, ch. 373, title VII, § 701, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.)

PRIOR PROVISIONS

A prior section 292, act July 1, 1944, ch. 373, title VII, § 700, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 201(b), 90 Stat. 2246, set forth limitations on use of appropriations, prior to repeal by Pub. L. 97–35, title XXVII, § 2715, Aug. 13, 1981, 95 Stat. 913.

Another prior section 292, act July 1, 1944, ch. 373, title VII, § 701, as added July 30, 1956, ch. 779, § 2, 70 Stat. 717; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164, stated Congressional findings and declaration of policy respecting grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 701 of act July 1, 1944, was classified to section 292a of this title prior to the general revision of this subchapter by Pub. L. 102–408.

EFFECTIVE DATE

Section 103 of Pub. L. 102–408 provided that: "The amendment made by section 102 [enacting this subchapter] takes effect on the date of the enactment of this Act [Oct. 13, 1992], except that section 708 of the Public Health Service Act [section 292g of this title], as added by section 102 of this Act, takes effect January 1, 1993. Until such date, section 732(c) of the Public Health Service Act [former section 294e(c) of this title], as in effect on the day before the date of the enactment of this Act, continues in effect in lieu of such section 708."

STUDY ON EFFECTIVENESS OF HEALTH PROFESSIONS PROGRAMS

Pub. L. 102–408, title III, § 309, Oct. 13, 1992, 106 Stat. 2089, directed the Comptroller General to conduct a study of the programs carried out under this subchapter and subchapter VI of this chapter for the purpose of determining the effectiveness of such programs in increasing the number of primary care providers (physicians, physician assistants, nurse midwives, nurse practitioners and general dentists), nurses and allied health personnel, improving the geographic distribution of health professionals in medically underserved and rural areas, and recruiting and retaining as students in health professions schools individuals who are members of a minority group, and report to the Congress not later than Jan. 1, 1994, on findings and recommendations made as a result of the study relevant to the reauthorization of such programs.

§ 292a. Scope and duration of loan insurance program

(a) In general

The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 292*o* of this title) to borrowers covered by Federal loan insurance under this subpart shall not exceed $350,000,000 for fiscal year 1993, $375,000,000 for fiscal year 1994, and $425,000,000 for fiscal year 1995. If the total amount of new loans made and installments paid pursuant to lines of credit in any fiscal year is less than the ceiling established for such year, the difference between the loans made and installments paid and the ceiling shall be carried over to the next fiscal year and added to the ceiling applicable to that fiscal year, and if in any fiscal year no ceiling has been established, any difference carried over shall constitute the ceiling for making new loans (including loans to new borrowers) and paying installments for such fiscal year. Thereafter, Federal loan insurance pursuant to this subpart may be granted only for loans made (or for loan installments paid pursuant to lines of credit) to enable students, who have obtained prior loans insured under this subpart, to continue or complete their educational program or to obtain a loan under section 292d(a)(1)(B) of this title to pay interest on such prior loans; but no insurance may be granted for any loan made or installment paid after September 30, 1998. The total principal amount of Federal loan insurance available under this subsection shall be granted by the Secretary without regard to any apportionment for the purpose of chapter 15 of title 31 and without regard to any similar limitation.

(b) Certain limitations and priorities

(1) Limitations regarding lenders, States, or areas

The Secretary may, if necessary to assure an equitable distribution of the benefits of this subpart, assign, within the maximum amounts specified in subsection (a) of this section, Federal loan insurance quotas applicable to eligible lenders, or to States or areas, and may from time to time reassign unused portions of these quotas.

(2) Priority for certain lenders

In providing certificates of insurance under section 292e of this title through comprehensive contracts, the Secretary shall give priority to eligible lenders that agree—

(A) to make loans to students at interest rates below the rates prevailing, during the period involved, for loans covered by Federal loan insurance pursuant to this subpart; or

(B) to make such loans under terms that are otherwise favorable to the student relative to the terms under which eligible lenders are generally making such loans during such period.

(c) Authority of Student Loan Marketing Association

(1) In general

Subject to paragraph (2), the Student Loan Marketing Association, established under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.], is authorized to make advances on the security of, purchase, service, sell, consolidate, or otherwise deal in loans which are insured by the Secretary under this subpart, except that if any loan made under this subpart is included in a consolidated loan pursuant to the authority of the Association under part B of title IV of the Higher Education Act of 1965, the interest rate on such consolidated loan shall be set at the weighted average interest rate of all such loans offered for consolidation and the resultant per centum shall be rounded downward to the nearest one-eighth of 1 per centum, except that the interest rate shall be no less than the applicable interest rate of the guaranteed student loan program established under part B of title IV of the Higher Education Act of 1965. In the case of such a consolidated loan, the borrower shall be responsible for any interest which accrues prior to the beginning of the repayment period of the loan, or which accrues

during a period in which principal need not be paid (whether or not such principal is in fact paid) by reason of any provision of the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.].

(2) Applicability of certain Federal regulations

With respect to Federal regulations for lenders, this subpart may not be construed to preclude the applicability of such regulations to the Student Loan Marketing Association or to any other entity in the business of purchasing student loans, including such regulations with respect to applications, contracts, and due diligence.

(July 1, 1944, ch. 373, title VII, § 702, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (c)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. Part B of title IV of the Act is classified generally to part B (§ 1071 et seq.) of subchapter IV of chapter 28 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 292a, act July 1, 1944, ch. 373, title VII, § 701, formerly § 724, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 169; amended Oct. 22, 1965, Pub. L. 89–290, § 2(b), 79 Stat. 1056; Nov. 2, 1966, Pub. L. 89–709, § 2(c), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, § 105(c), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(c)(1)–(4), (f)(2)(B), 85 Stat. 431, 432, 435; renumbered § 701 and amended Oct. 12, 1976, Pub. L. 94–484, title II, § 201(c), (e), 90 Stat. 2247; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2716, 95 Stat. 913; Oct. 22, 1985, Pub. L. 99–129, title II, §§ 201(a), (b), 202, 203, 204(a), (b), 99 Stat. 525–527; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 620(a), 623, 628(1), 629(b)(1), (2), 102 Stat. 3141, 3142, 3145, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*l*), 103 Stat. 613, defined terms for purposes of this subchapter, prior to the general revision of this subchapter by Pub. L. 102–408. See sections 292*o* and 295p of this title.

Another prior section 292a, act July 1, 1944, ch. 373, title VII, § 702, as added July 30, 1956, ch. 779, § 2, 70 Stat. 717; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164, defined ''Council'', ''construction'', ''cost of construction'', ''nonprofit institution'', and ''sciences related to health'' as applicable to grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 702 of act July 1, 1944, was classified to section 292b of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 292b. Limitations on individual insured loans and on loan insurance

(a) In general

The total of the loans made to a student in any academic year or its equivalent (as determined by the Secretary) which may be covered by Federal loan insurance under this subpart may not exceed $20,000 in the case of a student enrolled in a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, or podiatric medicine, and $12,500 in the case of a student enrolled in a school of pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or behavioral and mental health practice, including clinical psychology. The aggregate insured unpaid principal amount for all such insured loans made to any borrower shall not at any time exceed $80,000 in the case of a borrower who is or was a student enrolled in a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, or podiatric medicine, and $50,000 in the case of a borrower who is or was a student enrolled in a school of pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or clinical psychology. The annual insurable limit per student shall not be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any year in excess of the annual limit.

(b) Extent of insurance liability

The insurance liability on any loan insured by the Secretary under this subpart shall be 100 percent of the unpaid balance of the principal amount of the loan plus interest. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under the provisions of section 292f or 292m of this title.

(July 1, 1944, ch. 373, title VII, § 703, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1995; amended Pub. L. 105–392, title I, § 141(c)(1), Nov. 13, 1998, 112 Stat. 3579.)

PRIOR PROVISIONS

A prior section 292b, act July 1, 1944, ch. 373, title VII, § 702, formerly § 725, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 169; amended Sept. 4, 1964, Pub. L. 88–581, § 3(c), 78 Stat. 919; Nov. 2, 1966, Pub. L. 89–709, § 2(d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 3(a), 80 Stat. 1230; Dec. 5, 1967, Pub. L. 90–174, § 12(c), 81 Stat. 541; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title I, § 108(a), 85 Stat. 460; renumbered § 702 and amended Oct. 12, 1976, Pub. L. 94–484, title II, §§ 201(c), 202(a)(1), (2), (b), 90 Stat. 2247, 2248; Oct. 22, 1985, Pub. L. 99–129, title II, § 205(a), 99 Stat. 527; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 620(b), 628(2), 102 Stat. 3141, 3145, related to National Advisory Council on Education for Health Professions, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 292b, act July 1, 1944, ch. 373, title VII, § 703, as added July 30, 1956, ch. 779, § 2, 70 Stat. 717; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164; Aug. 16, 1968, Pub. L. 90–490, title IV, § 403, 82 Stat. 789; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(a)(1), (b)(2), 84 Stat. 1310, 1311; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(A), 85 Stat. 437, related to National Advisory Council on Health Research Facilities, providing for its establishment, composition, selection of members; its functions; and use of its services in administration of grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 703 of act July 1, 1994, was classified to section 292c of this title prior to repeal by Pub. L. 99–129.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392 substituted ''or behavioral and mental health practice, including clinical psychology'' for ''or clinical psychology'' in first sentence.

§ 292c. Sources of funds

Loans made by eligible lenders in accordance with this subpart shall be insurable by the Sec-

retary whether made from funds fully owned by the lender or from funds held by the lender in a trust or similar capacity and available for such loans.

(July 1, 1944, ch. 373, title VII, § 704, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1996.)

PRIOR PROVISIONS

A prior section 292c, act July 1, 1944, ch. 373, title VII, § 703, formerly § 799, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 206, 84 Stat. 1354; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 109, 85 Stat. 461; renumbered § 703 and amended Oct. 12, 1976, Pub. L. 94–484, title II, §§ 201(c), 203, 90 Stat. 2247, 2248; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2717, 95 Stat. 914, related to advance funding for grants and contracts, prior to repeal by Pub. L. 99–129, title II, § 220(a), Oct. 22, 1985, 99 Stat. 543.

Another prior section 292c, act July 1, 1944, ch. 373, title VII, § 704, as added July 30, 1956, 779, § 2, 70 Stat. 718; amended Aug. 27, 1958, Pub. L. 85–777, § 1(a), 72 Stat. 933; Oct. 5, 1961, Pub. L. 87–395, § 8(a), (d), 75 Stat. 827; Oct. 17, 1962, Pub. L. 87–838, § 4(a), 76 Stat. 1074; Aug. 9, 1965, Pub. L. 89–115, § 2(a), 79 Stat. 448; Aug. 16, 1968, Pub. L. 90–490, title IV, § 401(a), 82 Stat. 789, related to authorization of appropriations and availability of funds for grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 704 of act July 1, 1944, was classified to section 292d of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 292d. Eligibility of borrowers and terms of insured loans

(a) In general

A loan by an eligible lender shall be insurable by the Secretary under the provisions of this subpart only if—

(1) made to—

(A) a student who—

(i)(I) has been accepted for enrollment at an eligible institution, or (II) in the case of a student attending an eligible institution, is in good standing at that institution, as determined by the institution;

(ii) is or will be a full-time student at the eligible institution;

(iii) has agreed that all funds received under such loan shall be used solely for tuition, other reasonable educational expenses, including fees, books, and laboratory expenses, and reasonable living expenses, incurred by such students;

(iv) if required under section 453 of title 50, Appendix, to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section; and

(v) in the case of a pharmacy student, has satisfactorily completed three years of training; or

(B) an individual who—

(i) has previously had a loan insured under this subpart when the individual was a full-time student at an eligible institution;

(ii) is in a period during which, pursuant to paragraph (2), the principal amount of such previous loan need not be paid;

(iii) has agreed that all funds received under the proposed loan shall be used solely for repayment of interest due on previous loans made under this subpart; and

(iv) if required under section 453 of title 50, Appendix, to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section;

(2) evidenced by a note or other written agreement which—

(A) is made without security and without endorsement, except that if the borrower is a minor and such note or other written agreement executed by him would not, under the applicable law, create a binding obligation, an endorsement may be required;

(B) provides for repayment of the principal amount of the loan in installments over a period of not less than 10 years (unless sooner repaid) nor more than 25 years beginning not earlier than 9 months nor later than 12 months after the date of—

(i) the date on which—

(I) the borrower ceases to be a participant in an accredited internship or residency program of not more than four years in duration;

(II) the borrower completes the fourth year of an accredited internship or residency program of more than four years in duration; or

(III) the borrower, if not a participant in a program described in subclause (I) or (II), ceases to carry, at an eligible institution, the normal full-time academic workload as determined by the institution; or

(ii) the date on which a borrower who is a graduate of an eligible institution ceases to be a participant in a fellowship training program not in excess of two years or a participant in a full-time educational activity not in excess of two years, which—

(I) is directly related to the health profession for which the borrower prepared at an eligible institution, as determined by the Secretary; and

(II) may be engaged in by the borrower during such a two-year period which begins within twelve months after the completion of the borrower's participation in a program described in subclause (I) or (II) of clause (i) or prior to the completion of the borrower's participation in such program,

except as provided in subparagraph (C), except that the period of the loan may not exceed 33 years from the date of execution of the note or written agreement evidencing it, and except that the note or other written instrument may contain such provisions relating to repayment in the event of default in the payment of interest or in the payment of the costs of insurance premiums, or other default by the borrower, as may be authorized by regulations of the Secretary in effect at the time the loan is made;

(C) provides that periodic installments of principal and interest need not be paid, but interest shall accrue, during any period (i) during which the borrower is pursuing a full-

time course of study at an eligible institution (or at an institution defined by section 1002(a) of title 20); (ii) not in excess of four years during which the borrower is a participant in an accredited internship or residency program (including any period in such a program described in subclause (I) or subclause (II) of subparagraph (B)(i)); (iii) not in excess of three years, during which the borrower is a member of the Armed Forces of the United States; (iv) not in excess of three years during which the borrower is in service as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.]; (v) not in excess of three years during which the borrower is a member of the National Health Service Corps; (vi) not in excess of three years during which the borrower is in service as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4951 et seq.]; (vii) not in excess of 3 years, for a borrower who has completed an accredited internship or residency training program in osteopathic general practice, family medicine, general internal medicine, preventive medicine, or general pediatrics and who is practicing primary care; (viii) not in excess of 1 year, for borrowers who are graduates of schools of chiropractic; (ix) any period not in excess of two years which is described in subparagraph (B)(ii); (x) not in excess of three years, during which the borrower is providing health care services to Indians through an Indian health program (as defined in section 1616a(a)(2)(A) of title 25;[1] and (xi) in addition to all other deferments for which the borrower is eligible under clauses (i) through (x), any period during which the borrower is a member of the Armed Forces on active duty during the Persian Gulf conflict, and any period described in clauses (i) through (xi) shall not be included in determining the 25-year period described in subparagraph (B);

(D) provides for interest on the unpaid principal balance of the loan at a yearly rate, not exceeding the applicable maximum rate prescribed and defined by the Secretary (within the limits set forth in subsection (b) of this section) on a national, regional, or other appropriate basis, which interest shall be compounded not more frequently than annually and payable in installments over the period of the loan except as provided in subparagraph (C), except that the note or other written agreement may provide that payment of any interest may be deferred until not later than the date upon which repayment of the first installment of principal falls due or the date repayment of principal is required to resume (whichever is applicable) and may further provide that, on such date, the amount of the interest which has so accrued may be added to the principal for the purposes of calculating a repayment schedule;

(E) offers, in accordance with criteria prescribed by regulation by the Secretary, a schedule for repayment of principal and interest under which payment of a portion of the principal and interest otherwise payable at the beginning of the repayment period (as defined in such regulations) is deferred until a later time in the period;

(F) entitles the borrower to accelerate without penalty repayment of the whole or any part of the loan;

(G) provides that the check for the proceeds of the loan shall be made payable jointly to the borrower and the eligible institution in which the borrower is enrolled; and

(H) contains such other terms and conditions consistent with the provisions of this subpart and with the regulations issued by the Secretary pursuant to this subpart, as may be agreed upon by the parties to such loan, including, if agreed upon, a provision requiring the borrower to pay to the lender, in addition to principal and interest, amounts equal to the insurance premiums payable by the lender to the Secretary with respect to such loan; and

(3) subject to the consent of the student and subject to applicable law, the eligible lender has obtained from the student appropriate demographic information regarding the student, including racial or ethnic background.

(b) Limitation on rate of interest

The rate of interest prescribed and defined by the Secretary for the purpose of subsection (a)(2)(D) of this section may not exceed the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the previous quarter plus 3 percentage points, rounded to the next higher one-eighth of 1 percent.

(c) Minimum annual payment by borrower

The total of the payments by a borrower during any year or any repayment period with respect to the aggregate amount of all loans to that borrower which are insured under this subpart shall not be less than the annual interest on the outstanding principal, except as provided in subsection (a)(2)(C) of this section, unless the borrower, in the written agreement described in subsection (a)(2) of this section, agrees to make payments during any year or any repayment period in a lesser amount.

(d) Applicability of certain laws on rate or amount of interest

No provision of any law of the United States (other than subsections (a)(2)(D) and (b) of this section) or of any State that limits the rate or amount of interest payable on loans shall apply to a loan insured under this subpart.

(e) Determination regarding forbearance

Any period of time granted to a borrower under this subpart in the form of forbearance on the loan shall not be included in the 25-year total loan repayment period under subsection (a)(2)(C) of this section.

(f) Loan repayment schedule

Lenders and holders under this subpart shall offer borrowers graduated loan repayment schedules that, during the first 5 years of loan repayment, are based on the borrower's debt-to-income ratio.

[1] So in original. Probably should be preceded by a closing parenthesis.

(g) Rule of construction regarding determination of need of students

With respect to any determination of the financial need of a student for a loan covered by Federal loan insurance under this subpart, this subpart may not be construed to limit the authority of any school to make such allowances for students with special circumstances as the school determines appropriate.

(h) Definitions

For purposes of this section:

(1) The term ''active duty'' has the meaning given such term in section 101(18) of title 37, except that such term does not include active duty for training.

(2) The term ''Persian Gulf conflict'' means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(July 1, 1944, ch. 373, title VII, § 705, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1996; amended Pub. L. 103–43, title XX, § 2014(a)(1), June 10, 1993, 107 Stat. 215; Pub. L. 105–244, title I, § 102(a)(13)(A), Oct. 7, 1998, 112 Stat. 1620; Pub. L. 105–392, title I, § 141(a)(1), (2), Nov. 13, 1998, 112 Stat. 3578.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (a)(2)(C), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (a)(2)(C), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§ 4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 292d, act July 1, 1944, ch. 373, title VII, § 704, formerly § 799A, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 207, 84 Stat. 1355; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 110(2), 85 Stat. 461; July 12, 1974, Pub. L. 93–348, title I, § 105, 88 Stat. 347; renumbered § 704, Oct. 12, 1976, Pub. L. 94–484, title II, § 201(c), 90 Stat. 2247; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 620(c), 628(3), 629(b)(2), 102 Stat. 3141, 3145, 3146, prohibited discrimination on the basis of sex, prior to the general revision of this subchapter by Pub. L. 102–408. See section 295m of this title.

Another prior section 292d, act July 1, 1944, ch. 373, title VII, § 705, as added July 30, 1956, ch. 779, § 2, 70 Stat. 718; amended Aug. 27, 1958, Pub. L. 85–777, § 1(b), 72 Stat. 933; Oct. 5, 1961, Pub. L. 87–395, § 8(b), (d), 75 Stat. 827; Oct. 17, 1962, Pub. L. 87–838, § 4(b), 76 Stat. 1074; Sept. 24, 1963, Pub. L. 88–129, §§ 2(a), 3(a), 77 Stat. 164, 173; Aug. 9, 1965, Pub. L. 89–115, § 2(b), 79 Stat. 448; Aug. 16, 1968, Pub. L. 90–490, title IV, § 401(b), 82 Stat. 789; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(1), (2)(A), 85 Stat. 437, related to applications for grants for construction of health research facilities, providing for time of filing, eligibility, recommendation and approval and requirement of findings, conditional approval, and matters considered, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 705 of act July 1, 1944, was classified to section 292e of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a)(2)(C). Pub. L. 105–392 added cl. (x), redesignated former cl. (x) as (xi) and substituted ''(x)'' for ''(ix)'', and substituted ''(xi)'' for ''(x)'' in concluding provisions.

Pub. L. 105–244 substituted ''section 1002(a)'' for ''section 1088(a)'' in cl. (i).

1993—Subsec. (a)(2)(H), (I). Pub. L. 103–43 redesignated subpar. (I) as (H) and struck out former subpar. (H) which read as follows: ''notwithstanding the provisions of the Fair Debt Collection Practices Act, authorizes an institution or postgraduate training program attended by the borrower to assist in the collection of any loan that becomes delinquent, including providing information concerning the borrower to the Secretary and to past and present lenders and holders of the borrower's loans; and''.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–392, title I, § 141(a)(3), Nov. 13, 1998, 112 Stat. 3578, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to services provided on or after the first day of the third month that begins after the date of the enactment of this Act [Nov. 13, 1998].''

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

§ 292e. Certificate of loan insurance; effective date of insurance

(a) In general

(1) Authority for issuance of certificate

If, upon application by an eligible lender, made upon such form, containing such information, and supported by such evidence as the Secretary may require, and otherwise in conformity with this section, the Secretary finds that the applicant has made a loan to an eligible borrower which is insurable under the provisions of this subpart, he may issue to the applicant a certificate of insurance covering the loan and setting forth the amount and terms of the insurance.

(2) Effective date of insurance

Insurance evidenced by a certificate of insurance pursuant to subsection (a)(1) of this section shall become effective upon the date of issuance of the certificate, except that the Secretary is authorized, in accordance with regulations, to issue commitments with respect to proposed loans, or with respect to lines (or proposed lines) of credit, submitted by eligible lenders, and in that event, upon compliance with subsection (a)(1) of this section by the lender, the certificate of insurance may be issued effective as of the date when any loan, or any payment by the lender pursuant to a line of credit, to be covered by such insurance is made to a student described in section 292d(a)(1) of this title. Such insurance shall cease to be effective upon 60 days' default by the lender in the payment of any installment of the premiums payable pursuant to section 292g of this title.

(3) Certain agreements for lenders

An application submitted pursuant to subsection (a)(1) of this section shall contain—

(A) an agreement by the applicant to pay, in accordance with regulations, the premiums fixed by the Secretary pursuant to section 292g of this title; and

(B) an agreement by the applicant that if the loan is covered by insurance the appli-

cant will submit such supplementary reports and statements during the effective period of the loan agreement, upon such forms, at such times, and containing such information as the Secretary may prescribe by or pursuant to regulation.

(b) Authority regarding comprehensive insurance coverage

(1) In general

In lieu of requiring a separate insurance application and issuing a separate certificate of insurance for each loan made by an eligible lender as provided in subsection (a) of this section, the Secretary may, in accordance with regulations consistent with section 292a of this title, issue to any eligible lender applying therefor a certificate of comprehensive insurance coverage which shall, without further action by the Secretary, insure all insurable loans made by that lender, on or after the date of the certificate and before a specified cutoff date, within the limits of an aggregate maximum amount stated in the certificate. Such regulations may provide for conditioning such insurance, with respect to any loan, upon compliance by the lender with such requirements (to be stated or incorporated by reference in the certificate) as in the Secretary's judgment will best achieve the purpose of this subsection while protecting the financial interest of the United States and promoting the objectives of this subpart, including (but not limited to) provisions as to the reporting of such loans and information relevant thereto to the Secretary and as to the payment of initial and other premiums and the effect of default therein, and including provision for confirmation by the Secretary from time to time (through endorsement of the certificate) of the coverage of specific new loans by such certificate, which confirmation shall be incontestable by the Secretary in the absence of fraud or misrepresentation of fact or patent error.

(2) Lines of credit beyond cutoff date

If the holder of a certificate of comprehensive insurance coverage issued under this subsection grants to a borrower a line of credit extending beyond the cutoff date specified in that certificate, loans or payments thereon made by the holder after that date pursuant to the line of credit shall not be deemed to be included in the coverage of that certificate except as may be specifically provided therein; but, subject to the limitations of section 292a of this title, the Secretary may, in accordance with regulations, make commitments to insure such future loans or payments, and such commitments may be honored either as provided in subsection (a) of this section or by inclusion of such insurance in comprehensive coverage under this subsection for the period or periods in which such future loans or payments are made.

(c) Assignment of insurance rights

The rights of an eligible lender arising under insurance evidenced by a certificate of insurance issued to it under this section may be assigned by such lender, subject to regulation by the Secretary, only to—

(1) another eligible lender (including a public entity in the business of purchasing student loans); or

(2) the Student Loan Marketing Association.

(d) Effect of refinancing or consolidation of obligations

The consolidation of the obligations of two or more federally insured loans obtained by a borrower in any fiscal year into a single obligation evidenced by a single instrument of indebtedness or the refinancing of a single loan shall not affect the insurance by the United States. If the loans thus consolidated are covered by separate certificates of insurance issued under subsection (a) of this section, the Secretary may upon surrender of the original certificates issue a new certificate of insurance in accordance with that subsection upon the consolidated obligation. If the loans thus consolidated are covered by a single comprehensive certificate issued under subsection (b) of this section, the Secretary may amend that certificate accordingly.

(e) Rule of construction regarding consolidation of debts and refinancing

Nothing in this section shall be construed to preclude the lender and the borrower, by mutual agreement, from consolidating all of the borrower's loans insured under this subpart into a single instrument (or, if the borrower obtained only 1 loan insured under this subpart, refinancing the loan 1 time) under the terms applicable to an insured loan made at the same time as the consolidation. The lender or loan holder should provide full information to the borrower concerning the advantages and disadvantages of loan consolidation or refinancing. Nothing in this section shall be construed to preclude the consolidation of the borrower's loans insured under this subpart under section 1078–3 of title 20. Any loans insured pursuant to this subpart that are consolidated under section 1078–3 of title 20 shall not be eligible for special allowance payments under section 1087–1 of title 20.

(July 1, 1944, ch. 373, title VII, § 706, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2000; amended Pub. L. 105–392, title I, § 145, Nov. 13, 1998, 112 Stat. 3581.)

PRIOR PROVISIONS

A prior section 292e, act July 1, 1944, ch. 373, title VII, § 705, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 204, 90 Stat. 2248; amended Nov. 9, 1978, Pub. L. 95–623, § 11(f), 92 Stat. 3456; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2718, 95 Stat. 914, related to establishment and maintenance of records and annual financial reports and audits, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 292e, act July 1, 1944, ch. 373, title VII, § 706, as added July 30, 1956, 779, § 2, 70 Stat. 719; amended Oct. 5, 1961, Pub. L. 87–395, § 8(c), (d), 75 Stat. 827; Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164; Aug. 16, 1968, Pub. L. 90–490, title IV, § 402, 82 Stat. 789; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(A), (B), 85 Stat. 437, limited amount of grant available for construction of health research facilities, including provisions relating to its maximum, reservation of amount, manner of payment, and exclusion of amounts granted by certain other funds, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 706 of act July 1, 1944, was classified to section 292f of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 706 of act July 1, 1944, was classified to section 230 of this title prior to repeal by act Apr. 27, 1956, ch. 211, § 5(e), 70 Stat. 117.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–392, § 145(1), in heading, substituted ''refinancing or consolidation'' for ''consolidation'' and, in first sentence, substituted ''indebtedness or the refinancing of a single loan'' for ''indebtedness''.

Subsec. (e). Pub. L. 105–392, § 145(2), in heading, substituted ''debts and refinancing'' for ''debts'', in first sentence, substituted ''all of the borrower's loans insured under this subpart into a single instrument (or, if the borrower obtained only 1 loan insured under this subpart, refinancing the loan 1 time)'' for ''all of the borrower's debts into a single instrument'', and in second sentence, substituted ''consolidation or refinancing'' for ''consolidation''.

§ 292f. Default of borrower

(a) Conditions for payment to beneficiary

(1) In general

Upon default by the borrower on any loan covered by Federal loan insurance pursuant to this subpart, and after a substantial collection effort (including, subject to subsection (h) of this section, commencement and prosecution of an action) as determined under regulations of the Secretary, the insurance beneficiary shall promptly notify the Secretary and the Secretary shall, if requested (at that time or after further collection efforts) by the beneficiary, or may on his own motion, if the insurance is still in effect, pay to the beneficiary the amount of the loss sustained by the insured upon that loan as soon as that amount has been determined, except that, if the insurance beneficiary including any servicer of the loan is not designated for ''exceptional performance'', as set forth in paragraph (2), the Secretary shall pay to the beneficiary a sum equal to 98 percent of the amount of the loss sustained by the insured upon that loan.

(2) Exceptional performance

(A) Authority

Where the Secretary determines that an eligible lender, holder, or servicer has a compliance performance rating that equals or exceeds 97 percent, the Secretary shall designate that eligible lender, holder, or servicer, as the case may be, for exceptional performance.

(B) Compliance performance rating

For purposes of subparagraph (A), a compliance performance rating is determined with respect to compliance with due diligence in the disbursement, servicing, and collection of loans under this subpart for each year for which the determination is made. Such rating shall be equal to the percentage of all due diligence requirements applicable to each loan, on average, as established by the Secretary, with respect to loans serviced during the period by the eligible lender, holder, or servicer.

(C) Annual audits for lenders, holders, and servicers

Each eligible lender, holder, or servicer desiring a designation under subparagraph (A) shall have an annual financial and compliance audit conducted with respect to the loan portfolio of such eligible lender, holder, or servicer, by a qualified independent organization from a list of qualified organizations identified by the Secretary and in accordance with standards established by the Secretary. The standards shall measure the lender's, holder's, or servicer's compliance with due diligence standards and shall include a defined statistical sampling technique designed to measure the performance rating of the eligible lender, holder, or servicer for the purpose of this section. Each eligible lender, holder, or servicer shall submit the audit required by this section to the Secretary.

(D) Secretary's determinations

The Secretary shall make the determination under subparagraph (A) based upon the audits submitted under this paragraph and any information in the possession of the Secretary or submitted by any other agency or office of the Federal Government.

(E) Quarterly compliance audit

To maintain its status as an exceptional performer, the lender, holder, or servicer shall undergo a quarterly compliance audit at the end of each quarter (other than the quarter in which status as an exceptional performer is established through a financial and compliance audit, as described in subparagraph (C)), and submit the results of such audit to the Secretary. The compliance audit shall review compliance with due diligence requirements for the period beginning on the day after the ending date of the previous audit, in accordance with standards determined by the Secretary.

(F) Revocation authority

The Secretary shall revoke the designation of a lender, holder, or servicer under subparagraph (A) if any quarterly audit required under subparagraph (E) is not received by the Secretary by the date established by the Secretary or if the audit indicates the lender, holder, or servicer has failed to meet the standards for designation as an exceptional performer under subparagraph (A). A lender, holder, or servicer receiving a compliance audit not meeting the standard for designation as an exceptional performer may reapply for designation under subparagraph (A) at any time.

(G) Documentation

Nothing in this section shall restrict or limit the authority of the Secretary to require the submission of claims documentation evidencing servicing performed on loans, except that the Secretary may not require exceptional performers to submit greater documentation than that required for lenders, holders, and servicers not designated under subparagraph (A).

(H) Cost of audits

Each eligible lender, holder, or servicer shall pay for all the costs associated with the audits required under this section.

(I) Additional revocation authority

Notwithstanding any other provision of this section, a designation under subparagraph (A) may be revoked at any time by the Secretary if the Secretary determines that the eligible lender, holder, or servicer has failed to maintain an overall level of compliance consistent with the audit submitted by the eligible lender, holder, or servicer under this paragraph or if the Secretary asserts that the lender, holder, or servicer may have engaged in fraud in securing designation under subparagraph (A) or is failing to service loans in accordance with program requirements.

(J) Noncompliance

A lender, holder, or servicer designated under subparagraph (A) that fails to service loans or otherwise comply with applicable program regulations shall be considered in violation of the Federal False Claims Act.

(b) Subrogation

Upon payment by the Secretary of the amount of the loss pursuant to subsection (a) of this section, the United States shall be subrogated for all of the rights of the holder of the obligation upon the insured loan and shall be entitled to an assignment of the note or other evidence of the insured loan by the insurance beneficiary. If the net recovery made by the Secretary on a loan after deduction of the cost of that recovery (including reasonable administrative costs) exceeds the amount of the loss, the excess shall be paid over to the insured. The Secretary may sell without recourse to eligible lenders (or other entities that the Secretary determines are capable of dealing in such loans) notes or other evidence of loans received through assignment under the first sentence.

(c) Forbearance

Nothing in this section or in this subpart shall be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the insured loan and approved by the Secretary or to preclude forbearance by the Secretary in the enforcement of the insured obligation after payment on that insurance.

(d) Reasonable care and diligence regarding loans

Nothing in this section or in this subpart shall be construed to excuse the eligible lender or holder of a federally insured loan from exercising reasonable care and diligence in the making of loans under the provisions of this subpart and from exercising a substantial effort in the collection of loans under the provisions of this subpart. If the Secretary, after reasonable notice and opportunity for hearing to an eligible lender, finds that the lender has failed to exercise such care and diligence, to exercise such substantial efforts, to make the reports and statements required under section 292e(a)(3) of this title, or to pay the required Federal loan insurance premiums, he shall disqualify that lender from obtaining further Federal insurance on loans granted pursuant to this subpart until he is satisfied that its failure has ceased and finds that there is reasonable assurance that the lender will in the future exercise necessary care and diligence, exercise substantial effort, or comply with such requirements, as the case may be.

(e) Definitions

For purposes of this section:

(1) The term ''insurance beneficiary'' means the insured or its authorized assignee in accordance with section 292e(c) of this title.

(2) The term ''amount of the loss'' means, with respect to a loan, unpaid balance of the principal amount and interest on such loan, less the amount of any judgment collected pursuant to default proceedings commenced by the eligible lender or holder involved.

(3) The term ''default'' includes only such defaults as have existed for 120 days.

(4) The term ''servicer'' means any agency acting on behalf of the insurance beneficiary.

(f) Reductions in Federal reimbursements or payments for defaulting borrowers

The Secretary shall, after notice and opportunity for a hearing, cause to be reduced Federal reimbursements or payments for health services under any Federal law to borrowers who are practicing their professions and have defaulted on their loans insured under this subpart in amounts up to the remaining balance of such loans. Procedures for reduction of payments under the medicare program are provided under section 1395ccc of this title. Notwithstanding such section 1395ccc of this title, any funds recovered under this subsection shall be deposited in the insurance fund established under section 292i of this title.

(g) Conditions for discharge of debt in bankruptcy

Notwithstanding any other provision of Federal or State law, a debt that is a loan insured under the authority of this subpart may be released by a discharge in bankruptcy under any chapter of title 11, only if such discharge is granted—

(1) after the expiration of the seven-year period beginning on the first date when repayment of such loan is required, exclusive of any period after such date in which the obligation to pay installments on the loan is suspended;

(2) upon a finding by the Bankruptcy Court that the nondischarge of such debt would be unconscionable; and

(3) upon the condition that the Secretary shall not have waived the Secretary's rights to apply subsection (f) of this section to the borrower and the discharged debt.

(h) Requirement regarding actions for default

(1) In general

With respect to the default by a borrower on any loan covered by Federal loan insurance under this subpart, the Secretary shall, under subsection (a) of this section, require an eligible lender or holder to commence and prosecute an action for such default unless—

(A) in the determination of the Secretary—

(i) the eligible lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful with respect to such efforts, or

(ii) prosecution of such an action would be fruitless because of the financial or other circumstances of the borrower;

(B) for such loans made before November 4, 1988, the loan involved was made in an amount of less than $5,000; or

(C) for such loans made after November 4, 1988, the loan involved was made in an amount of less than $2,500.

(2) Relationship to claim for payment

With respect to an eligible lender or holder that has commenced an action pursuant to subsection (a) of this section, the Secretary shall make the payment required in such subsection, or deny the claim for such payment, not later than 60 days after the date on which the Secretary determines that the lender or holder has made reasonable efforts to secure a judgment and collect on the judgment entered into pursuant to this subsection.

(3) State court judgments

With respect to any State court judgment that is obtained by a lender or holder against a borrower for default on a loan insured under this subpart and that is subrogated to the United States under subsection (b) of this section, any United States attorney may register such judgment with the Federal courts for enforcement.

(i) Inapplicability of Federal and State statute of limitations on actions for loan collection

Notwithstanding any other provision of Federal or State law, there shall be no limitation on the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action may be initiated or taken by the Secretary, the Attorney General, or other administrative head of another Federal agency, as the case may be, for the repayment of the amount due from a borrower on a loan made under this subpart that has been assigned to the Secretary under subsection (b) of this section.

(j) School collection assistance

An institution or postgraduate training program attended by a borrower may assist in the collection of any loan of that borrower made under this subpart which becomes delinquent, including providing information concerning the borrower to the Secretary and to past and present lenders and holders of the borrower's loans, contacting the borrower in order to encourage repayment, and withholding services in accordance with regulations issued by the Secretary under section 292n(a)(7) of this title. The institution or postgraduate training program shall not be subject to section 1692g of title 15 for purposes of carrying out activities authorized by this section.

(July 1, 1944, ch. 373, title VII, § 707, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2002; amended Pub. L. 103–43, title XX, § 2014(a)(2), June 10, 1993, 107 Stat. 215; Pub. L. 105–392, title I, §§ 142(a), (b), 144(a), Nov. 13, 1998, 112 Stat. 3579, 3581.)

REFERENCES IN TEXT

The Federal False Claims Act, referred to in subsec. (a)(2)(J), probably means the False Claims Act which was the popular name for sections 231, 232, 233, and 235 of former Title 31, Money and Finance. Sections 231, 232, 233, and 235 were repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1084, and reenacted by the first section thereof as sections 3729 to 3731 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 292f, act July 1, 1944, ch. 373, title VII, § 706, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 204, 90 Stat. 2249, authorized contracts under this subchapter without regard to certain provisions, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 292f, act July 1, 1944, ch. 373, title VII, § 707, as added July 30, 1956, ch. 779, § 2, 70 Stat. 720; amended Oct. 5, 1961, Pub. L. 87–395, § 8(d), 75 Stat. 827; Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(A), 85 Stat. 437, provided for recapture of payments relating to grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 707 of act July 1, 1944, was classified to section 292g of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392, § 142(a), designated existing provisions as par. (1), inserted heading, substituted "determined, except that, if the insurance beneficiary including any servicer of the loan is not designated for 'exceptional performance', as set forth in paragraph (2), the Secretary shall pay to the beneficiary a sum equal to 98 percent of the amount of the loss sustained by the insured upon that loan." for "determined.", struck out at end "Not later than one year after October 13, 1992, the Secretary shall establish performance standards for lenders and holders of loans under this subpart, including fees to be imposed for failing to meet such standards.", and added par. (2).

Subsec. (e)(4). Pub. L. 105–392, § 142(b), added par. (4).

Subsec. (g). Pub. L. 105–392, § 144(a), substituted "Notwithstanding any other provision of Federal or State law, a debt that is a loan insured" for "A debt which is a loan insured" in introductory provisions.

1993—Subsec. (g)(1). Pub. L. 103–43, § 2014(a)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "after the expiration of the five-year period beginning on the first date, as specified in subparagraphs (B) and (C) of section 292d(a)(2) of this title, when repayment of such loan is required;".

Subsec. (j). Pub. L. 103–43, § 2014(a)(2)(B), added subsec. (j).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–392, title I, § 142(c), Nov. 13, 1998, 112 Stat. 3581, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to loans submitted to the Secretary for payment on or after the first day of the sixth month that begins after the date of enactment of this Act [Nov. 13, 1998]."

Pub. L. 105–392, title I, § 144(b), Nov. 13, 1998, 112 Stat. 3581, provided that: "The amendment made by subsection (a) [amending this section] shall apply to any loan insured under the authority of subpart I of part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) that is listed or scheduled by the debtor in a case under title XI, United States Code [Title 11, Bankruptcy], filed—

"(1) on or after the date of enactment of this Act [Nov. 13, 1998]; or

"(2) prior to such date of enactment in which a discharge has not been granted."

§ 292g. Risk-based premiums

(a) Authority

With respect to a loan made under this subpart on or after January 1, 1993, the Secretary,

in accordance with subsection (b) of this section, shall assess a risk-based premium on an eligible borrower and, if required under this section, an eligible institution that is based on the default rate of the eligible institution involved (as defined in section 292*o* of this title).

(b) Assessment of premium

Except as provided in subsection (d)(2) of this section, the risk-based premium to be assessed under subsection (a) of this section shall be as follows:

(1) Low-risk rate

With respect to an eligible borrower seeking to obtain a loan for attendance at an eligible institution that has a default rate of not to exceed five percent, such borrower shall be assessed a risk-based premium in an amount equal to 6 percent of the principal amount of the loan.

(2) Medium-risk rate

(A) In general

With respect to an eligible borrower seeking to obtain a loan for attendance at an eligible institution that has a default rate of in excess of five percent but not to exceed 10 percent—

(i) such borrower shall be assessed a risk-based premium in an amount equal to 8 percent of the principal amount of the loan; and

(ii) such institution shall be assessed a risk-based premium in an amount equal to 5 percent of the principal amount of the loan.

(B) Default management plan

An institution of the type described in subparagraph (A) shall prepare and submit to the Secretary for approval, an annual default management plan, that shall specify the detailed short-term and long-term procedures that such institution will have in place to minimize defaults on loans to borrowers under this subpart. Under such plan the institution shall, among other measures, provide an exit interview to all borrowers that includes information concerning repayment schedules, loan deferments, forbearance, and the consequences of default.

(3) High-risk rate

(A) In general

With respect to an eligible borrower seeking to obtain a loan for attendance at an eligible institution that has a default rate of in excess of 10 percent but not to exceed 20 percent—

(i) such borrower shall be assessed a risk-based premium in an amount equal to 8 percent of the principal amount of the loan; and

(ii) such institution shall be assessed a risk-based premium in an amount equal to 10 percent of the principal amount of the loan.

(B) Default management plan

An institution of the type described in subparagraph (A) shall prepare and submit to the Secretary for approval a plan that meets the requirements of paragraph (2)(B).

(4) Ineligibility

An individual shall not be eligible to obtain a loan under this subpart for attendance at an institution that has a default rate in excess of 20 percent.

(c) Reduction of risk-based premium

Lenders shall reduce by 50 percent the risk-based premium to eligible borrowers if a credit worthy parent or other responsible party co-signs the loan note.

(d) Administrative waivers

(1) Hearing

The Secretary shall afford an institution not less than one hearing, and may consider mitigating circumstances, prior to making such institution ineligible for participation in the program under this subpart.

(2) Exceptions

In carrying out this section with respect to an institution, the Secretary may grant an institution a waiver of requirements of paragraphs (2) through (4) of subsection (b) of this section if the Secretary determines that the default rate for such institution is not an accurate indicator because the volume of the loans under this subpart made by such institution has been insufficient.

(3) Transition for certain institutions

During the 3-year period beginning on October 13, 1992—

(A) subsection (b)(4) of this section shall not apply with respect to any eligible institution that is a Historically Black College or University; and

(B) any such institution that has a default rate in excess of 20 percent, and any eligible borrower seeking a loan for attendance at the institution, shall be subject to subsection (b)(3) of this section to the same extent and in the same manner as eligible institutions and borrowers described in such subsection.

(e) Payoff to reduce risk category

An institution may pay off the outstanding principal and interest owed by the borrowers of such institution who have defaulted on loans made under this subpart in order to reduce the risk category of the institution.

(July 1, 1944, ch. 373, title VII, § 708, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2004.)

PRIOR PROVISIONS

A prior section 292g, act July 1, 1944, ch. 373, title VII, § 707, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 205, 90 Stat. 2249; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(r), 91 Stat. 395, related to delegation of authority by the Secretary, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 292g, act July 1, 1944, ch. 373, title VII, § 708, as added July 30, 1956, ch. 779, § 2, 70 Stat. 720; amended Oct. 5, 1961, Pub. L. 87–395, § 8(d), 75 Stat. 827; Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164, prohibited Federal interference with administration of institutions where grants were made for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 708 of act July 1, 1944, was classified to section 292h of this title prior to the general revision of this subchapter by Pub. L. 102–408.

EFFECTIVE DATE

Section effective Jan. 1, 1993, and until such date, former section 294e(c) of this title, as in effect on the day before Oct. 13, 1992, to continue in effect in lieu of this section, see section 103 of Pub. L. 102–408, set out as a note under section 292 of this title.

§ 292h. Office for Health Education Assistance Loan Default Reduction

(a) Establishment

The Secretary shall establish, within the Division of Student Assistance of the Bureau of Health Professions, an office to be known as the Office for Health Education Assistance Loan Default Reduction (in this section referred to as the ''Office'').

(b) Purpose and functions

It shall be the purpose of the Office to achieve a reduction in the number and amounts of defaults on loans guaranteed under this subpart. In carrying out such purpose the Office shall—

(1) conduct analytical and evaluative studies concerning loans and loan defaults;

(2) carry out activities designed to reduce loan defaults;

(3) respond to special circumstances that may exist in the financial lending environment that may lead to loan defaults;

(4) coordinate with other Federal entities that are involved with student loan programs, including—

(A) with respect to the Department of Education, in the development of a single student loan application form, a single student loan deferment form, a single disability form, and a central student loan database; and

(B) with respect to the Department of Justice, in the recovery of payments from health professionals who have defaulted on loans guaranteed under this subpart; and

(5) provide technical assistance to borrowers, lenders, holders, and institutions concerning deferments and collection activities.

(c) Additional duties

In conjunction with the report submitted under subsection (b) of this section, the Office shall—

(1) compile, and publish in the Federal Register, a list of the borrowers who are in default under this subpart; and

(2) send the report and notices of default with respect to these borrowers to relevant Federal agencies and to schools, school associations, professional and specialty associations, State licensing boards, hospitals with which such borrowers may be associated, and any other relevant organizations.

(d) Allocation of funds for Office

In the case of amounts reserved under section 292i(a)(2)(B) of this title for obligation under this subsection, the Secretary may obligate the amounts for the purpose of administering the Office, including 7 full-time equivalent employment positions for such Office. With respect to such purpose, amounts made available under the preceding sentence are in addition to amounts made available to the Health Resources and Services Administration for program management for the fiscal year involved. With respect to such employment positions, the positions are in addition to the number of full-time equivalent employment positions that otherwise is authorized for the Department of Health and Human Services for the fiscal year involved.

(July 1, 1944, ch. 373, title VII, § 709, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2006; amended Pub. L. 105–392, title I, § 141(b), Nov. 13, 1998, 112 Stat. 3579.)

PRIOR PROVISIONS

A prior section 292h, act July 1, 1944, ch. 373, title VII, § 708, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 206, 90 Stat. 2250; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(a), 91 Stat. 389; Nov. 9, 1978, Pub. L. 95–623, § 12(a), 92 Stat. 3457; Dec. 11, 1980, Pub. L. 96–511, § 4(c), 94 Stat. 2826; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2719, 95 Stat. 914; Oct. 22, 1985, Pub. L. 99–129, title II, § 220(b), 99 Stat. 543; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 616(c)(1), 626, 102 Stat. 3139, 3144; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(a), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(m), 103 Stat. 613, related to health professions data, prior to the general revision of this subchapter by Pub. L. 102–408. See section 295k of this title.

Another prior section 292h, act July 1, 1944, ch. 373, title VII, § 709, as added July 30, 1956, ch. 779, § 2, 70 Stat. 720; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(C), 85 Stat. 437, provided for issuance of general, administrative, and other regulations for implementation of grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 709 of act July 1, 1944, was classified to section 292i of this title prior to repeal by Pub. L. 97–35, title XXVII, § 2720(a), Aug. 13, 1981, 95 Stat. 915.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–392 inserted ''and'' at end of par. (4)(B), substituted a period for ''; and'' at end of par. (5), and struck out par. (6) which read as follows: ''prepare and submit a report not later than March 31, 1993, and annually, thereafter, to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives concerning—

''(A) the default rates for each—

''(i) institution described in section 292*o*(1) of this title that is participating in the loan programs under this subpart;

''(ii) lender participating in the loan program under this subpart; and

''(iii) loan holder under this subpart;

''(B) the total amounts recovered pursuant to section 292f(b) of this title during the preceding fiscal year; and

''(C) a plan for improving the extent of such recoveries during the current fiscal year.''

§ 292i. Insurance account

(a) In general

(1) Establishment

There is hereby established a student loan insurance account (in this section referred to as the ''Account'') which shall be available without fiscal year limitation to the Secretary for making payments in connection with the collection and default of loans insured under this subpart by the Secretary.

(2) Funding

(A) Except as provided in subparagraph (B), all amounts received by the Secretary as premium charges for insurance and as receipts, earnings, or proceeds derived from any claim or other assets acquired by the Secretary in connection with his operations under this subpart, and any other moneys, property, or assets derived by the Secretary from the operations of the Secretary in connection with this section, shall be deposited in the Account.

(B) With respect to amounts described in subparagraph (A) that are received by the Secretary for fiscal year 1993 and subsequent fiscal years, the Secretary may, before depositing such amounts in the Account, reserve from the amounts each such fiscal year not more than $1,000,000 for obligation under section 292h(d) of this title.

(3) Expenditures

All payments in connection with the default of loans insured by the Secretary under this subpart shall be paid from the Account.

(b) Contingent authority for issuance of notes or other obligations

If at any time the moneys in the Account are insufficient to make payments in connection with the collection or default of any loan insured by the Secretary under this subpart, the Secretary of the Treasury may lend the Account such amounts as may be necessary to make the payments involved, subject to the Federal Credit Reform Act of 1990 [2 U.S.C. 661 et seq.].

(July 1, 1944, ch. 373, title VII, § 710, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2007; amended Pub. L. 105–392, title I, § 143, Nov. 13, 1998, 112 Stat. 3581.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (b), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 621 of Title 2 and Tables.

PRIOR PROVISIONS

A prior section 292i, act July 1, 1944, ch. 373, title VII, § 709, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 207, 90 Stat. 2252; amended Nov. 9, 1978, Pub. L. 95–623, § 12(b), 92 Stat. 3457, related to shared schedule residency training positions, prior to repeal by Pub. L. 97–35, title XXVII, § 2720(a), Aug. 13, 1981, 95 Stat. 915.

Another prior section 292i, act July 1, 1944, ch. 373, title VII, § 710, as added July 30, 1956, ch. 779, § 2, 70 Stat. 720; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(A), 85 Stat. 437, related to preparation and submission of annual reports to the Congress through the President, including its contents, as to grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 710 of act July 1, 1944, was classified to section 292k of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 710 of act July 1, 1944, was renumbered section 709 by Pub. L. 97–35 and was classified to section 292j of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a)(2)(B). Pub. L. 105–392 substituted ''fiscal year 1993 and subsequent fiscal years'' for ''any of the fiscal years 1993 through 1996''.

§ 292j. Powers and responsibilities of Secretary

(a) In general

In the performance of, and with respect to, the functions, powers, and duties vested in the Secretary by this subpart, the Secretary is authorized as follows:

(1) To prescribe such regulations as may be necessary to carry out the purposes of this subpart.

(2) To sue and be sued in any district court of the United States. Such district courts shall have jurisdiction of civil actions arising under this subpart without regard to the amount in controversy, and any action instituted under this subsection by or against the Secretary shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in that office. No attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or property under the control of the Secretary. Nothing herein shall be constructed to except litigation arising out of activities under this subpart from the application of sections 517 and 547 of title 28.

(3) To include in any contract for Federal loan insurance such terms, conditions, and covenants relating to repayment of principal and payments of interest, relating to his obligations and rights and to those of eligible lenders, and borrowers in case of default, and relating to such other matters as the Secretary determines to be necessary to assure that the purposes of this subpart will be achieved. Any term, condition, and covenant made pursuant to this paragraph or any other provisions of this subpart may be modified by the Secretary if the Secretary determines that modification is necessary to protect the financial interest of the United States.

(4) Subject to the specific limitations in the subpart, to consent to the modification of any note or other instrument evidencing a loan which has been insured by him under this subpart (including modifications with respect to the rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision).

(5) To enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right or[1] redemption.

(b) Annual budget; accounts

The Secretary shall, with respect to the financial operations arising by reason of this subpart—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31; and

(2) maintain with respect to insurance under this subpart an integral set of accounts.

[1] So in original. Probably should be ''of''.

(July 1, 1944, ch. 373, title VII, § 711, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2007.)

CODIFICATION

In subsec. (b)(1), ''chapter 91 of title 31'' was substituted for ''the Government Corporation Control Act'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 292j, act July 1, 1944, ch. 373, title VII, § 709, formerly § 710, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 208, 90 Stat. 2252; renumbered § 709 and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, §§ 2720(b), 2721, 95 Stat. 915; Oct. 22, 1985, Pub. L. 99–129, title II, § 206, 99 Stat. 527, related to payment under grants, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 292j, act July 1, 1944, ch. 373, title VII, § 711, as added Sept. 24, 1963, Pub. L. 88–129, § 3(b), 77 Stat. 173; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(A), 85 Stat. 437, provided for technical assistance in connection with grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

§ 292k. Participation by Federal credit unions in Federal, State, and private student loan insurance programs

Notwithstanding any other provision of law, Federal credit unions shall, pursuant to regulations of the Administrator of the National Credit Union Administration, have power to make insured loans to eligible students in accordance with the provisions of this subpart relating to Federal insured loans.

(July 1, 1944, ch. 373, title VII, § 712, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2008.)

PRIOR PROVISIONS

A prior section 292k, act July 1, 1944, ch. 373, title VII, § 710, formerly § 711, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 209, 90 Stat. 2253; renumbered § 710 and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, §§ 2720(b), 2722, 95 Stat. 915, related to differential tuition and fees, prior to the general revision of this subchapter by Pub. L. 102–408.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

§ 292*l*. Determination of eligible students

For purposes of determining eligible students under this part, in the case of a public school in a State that offers an accelerated, integrated program of study combining undergraduate premedical education and medical education leading to advanced entry, by contractual agreement, into an accredited four-year school of medicine which provides the remaining training leading to a degree of doctor of medicine, whenever in this part a provision refers to a student at a school of medicine, such reference shall include only a student enrolled in any of the last four years of such accelerated, integrated program of study.

(July 1, 1944, ch. 373, title VII, § 713, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2008.)

§ 292m. Repayment by Secretary of loans of deceased or disabled borrowers

If a borrower who has received a loan dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan from the account established under section 292i of this title.

(July 1, 1944, ch. 373, title VII, § 714, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2008.)

§ 292n. Additional requirements for institutions and lenders

(a) In general

Notwithstanding any other provision of this subpart, the Secretary is authorized to prescribe such regulations as may be necessary to provide for—

(1) a fiscal audit of an eligible institution with regard to any funds obtained from a borrower who has received a loan insured under this subpart;

(2) the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid with respect to funds obtained from a student who has received a loan insured under this subpart;

(3) the limitation, suspension, or termination of the eligibility under this subpart of any otherwise eligible institution, whenever the Secretary has determined, after notice and affording an opportunity for hearing, that such institution has violated or failed to carry out any regulation prescribed under this subpart;

(4) the collection of information from the borrower, lender, or eligible institution to assure compliance with the provisions of section 292d of this title;

(5) the assessing of tuition or fees to borrowers in amounts that are the same or less than the amount of tuition and fees assessed to nonborrowers;

(6) the submission, by the institution or the lender to the Office of Health Education Assistance Loan Default Reduction, of information concerning each loan made under this subpart, including the date when each such loan was originated, the date when each such loan is sold, the identity of the loan holder and information concerning a change in the borrower's status;

(7) the withholding of services, including academic transcripts, financial aid transcripts, and alumni services, by an institution from a borrower upon the default of such borrower of a loan under this subpart, except in case of a borrower who has filed for bankruptcy; and

(8) the offering, by the lender to the borrower, of a variety of repayment options, including fixed-rate, graduated repayment with negative amortization permitted, and income dependent payments for a limited period followed by level monthly payments.

(b) Recording by institution of information on students

The Secretary shall require an eligible institution to record, and make available to the lender and to the Secretary upon request, the name, address, postgraduate destination, and other reasonable identifying information for each student of such institution who has a loan insured under this subpart.

(c) Workshop for student borrowers

Each participating eligible institution must have, at the beginning of each academic year, a workshop concerning the provisions of this subpart that all student borrowers shall be required to attend.

(July 1, 1944, ch. 373, title VII, § 715, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2009.)

§ 292*o*. Definitions

For purposes of this subpart:

(1) The term ''eligible institution'' means, with respect to a fiscal year, a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or behavioral and mental health practice, including clinical psychology.

(2) The term ''eligible lender'' means an eligible institution that became a lender under this subpart prior to September 15, 1992, an agency or instrumentality of a State, a financial or credit institution (including an insurance company) which is subject to examination and supervision by an agency of the United States or of any State, a pension fund approved by the Secretary for this purpose, or a nonprofit private entity designated by the State, regulated by the State, and approved by the Secretary.

(3) The term ''line of credit'' means an arrangement or agreement between the lender and the borrower whereby a loan is paid out by the lender to the borrower in annual installments, or whereby the lender agrees to make, in addition to the initial loan, additional loans in subsequent years.

(4) The term ''school of allied health'' means a program in a school of allied health (as defined in section 295p of this title) which leads to a masters' degree or a doctoral degree.

(5)(A) The term ''default rate'', in the case of an eligible entity, means the percentage constituted by the ratio of—

(i) the principal amount of loans insured under this subpart—

(I) that are made with respect to the entity and that enter repayment status after April 7, 1987; and

(II) for which amounts have been paid under section 292f(a) of this title to insurance beneficiaries, exclusive of any loan for which amounts have been so paid as a result of the death or total and permanent disability of the borrower; exclusive of any loan for which the borrower begins payments to the Secretary on the loan pursuant to section 292f(b) of this title and maintains payments for 12 consecutive months in accordance with the agreement involved (with the loan subsequently being included or excluded, as the case may be, as amounts paid under section 292f(a) of this title according to whether further defaults occur and whether with respect to the default involved compliance with such requirement regarding 12 consecutive months occurs); and exclusive of any loan on which payments may not be recovered by reason of the obligation under the loan being discharged in bankruptcy under title 11; to

(ii) the total principal amount of loans insured under this subpart that are made with respect to the entity and that enter repayment status after April 7, 1987.

(B) For purposes of subparagraph (A), a loan insured under this subpart shall be considered to have entered repayment status if the applicable period described in subparagraph (B) of section 292d(a)(2) of this title regarding the loan has expired (without regard to whether any period described in subparagraph (C) of such section is applicable regarding the loan).

(C) For purposes of subparagraph (A), the term ''eligible entity'' means an eligible institution, an eligible lender, or a holder, as the case may be.

(D) For purposes of subparagraph (A), a loan is made with respect to an eligible entity if—

(i) in the case of an eligible institution, the loan was made to students of the institution;

(ii) in the case of an eligible lender, the loan was made by the lender; and

(iii) in the case of a holder, the loan was purchased by the holder.

(July 1, 1944, ch. 373, title VII, § 719, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2009; amended Pub. L. 105–392, title I, § 141(c)(2), Nov. 13, 1998, 112 Stat. 3579.)

AMENDMENTS

1998—Par. (1). Pub. L. 105–392 substituted ''or behavioral and mental health practice, including clinical psychology'' for ''or clinical psychology''.

§ 292p. Authorization of appropriations

(a) In general

For fiscal year 1993 and subsequent fiscal years, there are authorized to be appropriated such sums as may be necessary for the adequacy of the student loan insurance account under this subpart and for the purpose of administering this subpart.

(b) Availability of sums

Sums appropriated under subsection (a) of this section shall remain available until expended.

(July 1, 1944, ch. 373, title VII, § 720, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2011.)

PRIOR PROVISIONS

A prior section 720 of act July 1, 1944, was classified to section 293 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SUBPART II—FEDERALLY-SUPPORTED STUDENT LOAN FUNDS

§ 292q. Agreements for operation of school loan funds

(a) Fund agreements

The Secretary is authorized to enter into an agreement for the establishment and operation of a student loan fund in accordance with this subpart with any public or other nonprofit school of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, or veterinary medicine.

(b) Requirements

Each agreement entered into under this section shall—

(1) provide for establishment of a student loan fund by the school;

(2) provide for deposit in the fund of—

(A) the Federal capital contributions to the fund;

(B) an amount equal to not less than one-ninth of such Federal capital contributions, contributed by such institution;

(C) collections of principal and interest on loans made from the fund;

(D) collections pursuant to section 292r(j) of this title; and

(E) any other earnings of the fund;

(3) provide that the fund shall be used only for loans to students of the school in accordance with the agreement and for costs of collection of such loans and interest thereon;

(4) provide that loans may be made from such funds only to students pursuing a full-time course of study at the school leading to a degree of doctor of medicine, doctor of dentistry or an equivalent degree, doctor of osteopathy, bachelor of science in pharmacy or an equivalent degree, doctor of pharmacy or an equivalent degree, doctor of podiatric medicine or an equivalent degree, doctor of optometry or an equivalent degree, or doctor of veterinary medicine or an equivalent degree;

(5) provide that the school shall advise, in writing, each applicant for a loan from the student loan fund of the provisions of section 292r of this title under which outstanding loans from the student loan fund may be paid (in whole or in part) by the Secretary; and

(6) contain such other provisions as are necessary to protect the financial interests of the United States.

(c) Failure of school to collect loans

(1) In general

Any standard established by the Secretary by regulation for the collection by schools of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, or veterinary medicine of loans made pursuant to loan agreements under this subpart shall provide that the failure of any such school to collect such loans shall be measured in accordance with this subsection. This subsection may not be construed to require such schools to reimburse the student loan fund under this subpart for loans that became uncollectible prior to August 1985 or to penalize such schools with respect to such loans.

(2) Extent of failure

The measurement of a school's failure to collect loans made under this subpart shall be the ratio (stated as a percentage) that the defaulted principal amount outstanding of such school bears to the matured loans of such school.

(3) Definitions

For purposes of this subsection:

(A) The term ''default'' means the failure of a borrower of a loan made under this subpart to—

(i) make an installment payment when due; or

(ii) comply with any other term of the promissory note for such loan,

except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy or if the school reasonably concludes from written contracts with the borrower that the borrower intends to repay the loan.

(B) The term ''defaulted principal amount outstanding'' means the total amount borrowed from the loan fund of a school that has reached the repayment stage (minus any principal amount repaid or canceled) on loans—

(i) repayable monthly and in default for at least 120 days; and

(ii) repayable less frequently than monthly and in default for at least 180 days;

(C) The term ''grace period'' means the period of one year beginning on the date on which the borrower ceases to pursue a full-time course of study at a school of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, or veterinary medicine; and

(D) The term ''matured loans'' means the total principal amount of all loans made by a school under this subpart minus the total principal amount of loans made by such school to students who are—

(i) enrolled in a full-time course of study at such school; or

(ii) in their grace period.

(July 1, 1944, ch. 373, title VII, § 721, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2011.)

PRIOR PROVISIONS

A prior section 721 of act July 1, 1944, was classified to section 293a of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 292r. Loan provisions

(a) Amount of loan

(1) In general

Loans from a student loan fund (established under an agreement with a school under section 292q of this title) may not, subject to paragraph (2), exceed for any student for a school year (or its equivalent) the cost of attendance (including tuition, other reasonable educational expenses, and reasonable living costs) for that year at the educational institu-

tion attended by the student (as determined by such educational institution).

(2) Third and fourth years of medical school

For purposes of paragraph (1), the amount of the loan may, in the case of the third or fourth year of a student at a school of medicine or osteopathic medicine, be increased to the extent necessary to pay the balances of loans that, from sources other than the student loan fund under section 292q of this title, were made to the individual for attendance at the school. The authority to make such an increase is subject to the school and the student agreeing that such amount (as increased) will be expended to pay such balances.

(b) Terms and conditions

Subject to section 292s of this title, any such loans shall be made on such terms and conditions as the school may determine, but may be made only to a student—

(1) who is in need of the amount thereof to pursue a full-time course of study at the school leading to a degree of doctor of medicine, doctor of dentistry or an equivalent degree, doctor of osteopathy, bachelor of science in pharmacy or an equivalent degree, doctor of pharmacy or an equivalent degree, doctor of podiatric medicine or an equivalent degree, doctor of optometry or an equivalent degree, or doctor of veterinary medicine or an equivalent degree; and

(2) who, if required under section 453 of title 50, Appendix, to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section.

(c) Repayment; exclusions from repayment period

Such loans shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the period of not less than 10 years nor more than 25 years, at the discretion of the institution, which begins one year after the student ceases to pursue a full-time course of study at a school of medicine, osteopathic medicine, dentistry, pharmacy, podiatry, optometry, or veterinary medicine, excluding from such period—

(1) all periods—

(A) not in excess of three years of active duty performed by the borrower as a member of a uniformed service;

(B) not in excess of three years during which the borrower serves as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.];

(C) during which the borrower participates in advanced professional training, including internships and residencies; and

(D) during which the borrower is pursuing a full-time course of study at such a school; and

(2) a period—

(A) not in excess of two years during which a borrower who is a full-time student in such a school leaves the school, with the intent to return to such school as a full-time student, in order to engage in a full-time educational activity which is directly related to the health profession for which the borrower is preparing, as determined by the Secretary; or

(B) not in excess of two years during which a borrower who is a graduate of such a school is a participant in a fellowship training program or a full-time educational activity which—

(i) is directly related to the health profession for which such borrower prepared at such school, as determined by the Secretary; and

(ii) may be engaged in by the borrower during such a two-year period which begins within twelve months after the completion of the borrower's participation in advanced professional training described in paragraph (1)(C) or prior to the completion of such borrower's participation in such training.

(d) Cancellation of liability

The liability to repay the unpaid balance of such a loan and accrued interest thereon shall be canceled upon the death of the borrower, or if the Secretary determines that he has become permanently, and totally disabled.

(e) Rate of interest

Such loans shall bear interest, on the unpaid balance of the loan, computed only for periods for which the loan is repayable, at the rate of 5 percent per year.

(f) Security or endorsement

Loans shall be made under this subpart without security or endorsement, except that if the borrower is a minor and the note or other evidence of obligation executed by him would not, under the applicable law, create a binding obligation, either security or endorsement may be required.

(g) Transferring and assigning loans

No note or other evidence of a loan made under this subpart may be transferred or assigned by the school making the loan except that, if the borrowers transfer to another school participating in the program under this subpart, such note or other evidence of a loan may be transferred to such other school.

(h) Charge with respect to insurance for certain cancellations

Subject to regulations of the Secretary, a school may assess a charge with respect to loans made this subpart[1] to cover the costs of insuring against cancellation of liability under subsection (d) of this section.

(i) Charge with respect to late payments

Subject to regulations of the Secretary, and in accordance with this section, a school shall assess a charge with respect to a loan made under this subpart for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment of the loan under subsection (c) of this section, for any failure to file timely and satisfactory evidence of such entitlement. No such charge may be made if the payment of such

[1] So in original. Probably should be "under this subpart".

installment or the filing of such evidence is made within 60 days after the date on which such installment or filing is due. The amount of any such charge may not exceed an amount equal to 6 percent of the amount of such installment. The school may elect to add the amount of any such charge to the principal amount of the loan as of the first day after the day on which such installment or evidence was due, or to make the amount of the charge payable to the school not later than the due date of the next installment after receipt by the borrower of notice of the assessment of the charge.

(j) Authority of schools regarding rate of payment

A school may provide, in accordance with regulations of the Secretary, that during the repayment period of a loan from a loan fund established pursuant to an agreement under this subpart payments of principal and interest by the borrower with respect to all the outstanding loans made to him from loan funds so established shall be at a rate equal to not less than $40 per month.

(k) Authority regarding repayments by Secretary

Upon application by a person who received, and is under an obligation to repay, any loan made to such person as a health professions student to enable him to study medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, or podiatry, the Secretary may undertake to repay (without liability to the applicant) all or any part of such loan, and any interest or portion thereof outstanding thereon, upon his determination, pursuant to regulations establishing criteria therefor, that the applicant—

(1) failed to complete such studies leading to his first professional degree;

(2) is in exceptionally needy circumstances;

(3) is from a low-income or disadvantaged family as those terms may be defined by such regulations; and

(4) has not resumed, or cannot reasonably be expected to resume, the study of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, or podiatric medicine, within two years following the date upon which he terminated such studies.

(*l*) Collection efforts by Secretary

The Secretary is authorized to attempt to collect any loan which was made under this subpart, which is in default, and which was referred to the Secretary by a school with which the Secretary has an agreement under this subpart, on behalf of that school under such terms and conditions as the Secretary may prescribe (including reimbursement from the school's student loan fund for expenses the Secretary may reasonably incur in attempting collection), but only if the school has complied with such requirements as the Secretary may specify by regulation with respect to the collection of loans under this subpart. A loan so referred shall be treated as a debt subject to section 5514 of title 5. Amounts collected shall be deposited in the school's student loan fund. Whenever the Secretary desires the institution of a civil action regarding any such loan, the Secretary shall refer the matter to the Attorney General for appropriate action.

(m) Elimination of statute of limitation for loan collections

(1) Purpose

It is the purpose of this subsection to ensure that obligations to repay loans under this section are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.

(2) Prohibition

Notwithstanding any other provision of Federal or State law, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action may be initiated or taken by a school that has an agreement with the Secretary pursuant to section 292q of this title that is seeking the repayment of the amount due from a borrower on a loan made under this subpart after the default of the borrower on such loan.

(July 1, 1944, ch. 373, title VII, § 722, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2012; amended Pub. L. 103–43, title XX, § 2014(b), June 10, 1993, 107 Stat. 215; Pub. L. 105–392, title I, § 134(a), (b)(1), Nov. 13, 1998, 112 Stat. 3577, 3578.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (c)(1)(B), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

PRIOR PROVISIONS

A prior section 722 of act July 1, 1944, was classified to section 293b of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–392, § 134(a)(1), substituted "the cost of attendance (including tuition, other reasonable educational expenses, and reasonable living costs) for that year at the educational institution attended by the student (as determined by such educational institution)." for "the sum of—

"(A) the cost of tuition for such year at such school, and

"(B) $2,500."

Subsec. (a)(2). Pub. L. 105–392, § 134(a)(2), substituted "the amount of the loan may, in the case of the third or fourth year of a student at a school of medicine or osteopathic medicine, be increased to the extent necessary" for "the amount $2,500 may, in the case of the third or fourth year of a student at school of medicine or osteopathic medicine, be increased to the extent necessary (including such $2,500)".

Subsec. (c). Pub. L. 105–392, § 134(a)(3), in heading, substituted "repayment" for "ten-year" and, in introductory provisions, substituted "period of not less than 10 years nor more than 25 years, at the discretion of the institution, which begins" for "ten-year period which begins" and "such period" for "such ten-year period".

Subsec. (j). Pub. L. 105–392, § 134(a)(4), substituted "$40" for "$15".

Subsec. (m). Pub. L. 105–392, § 134(b)(1), added subsec. (m).

1993—Subsec. (a). Pub. L. 103–43, § 2014(b)(1), amended heading and text of subsec. (a) generally. Prior to

amendment, text read as follows: ''Loans from a student loan fund (established under an agreement with a school under section 292q of this title) may not exceed for any student for each school year (or its equivalent) the sum of—

''(1) the cost of tuition for such year at such school, and

''(2) $2,500.''

Subsec. (b)(2), (3). Pub. L. 103–43, § 2014(b)(2), redesignated par. (3) as (2) and struck out former par. (2), which read as follows: ''who, if pursuing a full-time course of study at the school leading to a degree of doctor of medicine or doctor of osteopathy, is of exceptional financial need (as defined by regulations of the Secretary); and''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–392, title I, § 134(b)(2), Nov. 13, 1998, 112 Stat. 3578, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to actions pending on or after the date of enactment of this Act [Nov. 13, 1998].''

§ 292s. Medical schools and primary health care

(a) Requirements for students

(1) In general

Subject to the provisions of this subsection, in the case of student loan funds established under section 292q of this title by schools of medicine or osteopathic medicine, each agreement entered into under such section with such a school shall provide (in addition to the provisions required in subsection (b) of such section) that the school will make a loan from such fund to a student only if the student agrees—

(A) to enter and complete a residency training program in primary health care not later than 4 years after the date on which the student graduates from such school; and

(B) to practice in such care through the date on which the loan is repaid in full.

(2) Inapplicability to certain students

(A) The requirement established in paragraph (1) regarding the student loan fund of a school does not apply to a student if—

(i) the first loan to the student from such fund is made before July 1, 1993; or

(ii) the loan is made from—

(I) a Federal capital contribution under section 292q of this title that is made from amounts appropriated under section 292t(f)[1] of this title (in this section referred to as an ''exempt Federal capital contribution''); or

(II) a school contribution made under section 292q of this title pursuant to such a Federal capital contribution (in this section referred to as an ''exempt school contribution'').

(B) A Federal capital contribution under section 292q of this title may not be construed as being an exempt Federal capital contribution if the contribution was made from amounts appropriated before October 1, 1990. A school contribution under section 292q of this title may not be construed as being an exempt school contribution if the contribution was made pursuant to a Federal capital contribution under such section that was made from amounts appropriated before such date.

(3) Noncompliance by student

Each agreement entered into with a student pursuant to paragraph (1) shall provide that, if the student fails to comply with such agreement, the loan involved will begin to accrue interest at a rate of 18 percent per year beginning on the date of such noncompliance.

(4) Waivers

(A) With respect to the obligation of an individual under an agreement made under paragraph (1) as a student, the Secretary shall provide for the partial or total waiver or suspension of the obligation whenever compliance by the individual is impossible, or would involve extreme hardship to the individual, and if enforcement of the obligation with respect to the individual would be unconscionable.

(B) For purposes of subparagraph (A), the obligation of an individual shall be waived if—

(i) the status of the individual as a student of the school involved is terminated before graduation from the school, whether voluntarily or involuntarily; and

(ii) the individual does not, after such termination, resume attendance at the school or begin attendance at any other school of medicine or osteopathic medicine.

(C) If an individual resumes or begins attendance for purposes of subparagraph (B), the obligation of the individual under the agreement under paragraph (1) shall be considered to have been suspended for the period in which the individual was not in attendance.

(D) This paragraph may not be construed as authorizing the waiver or suspension of the obligation of a student to repay, in accordance with section 292r of this title, loans from student loan funds under section 292q of this title.

(b) Requirements for schools

(1) In general

Subject to the provisions of this subsection, in the case of student loan funds established under section 292q of this title by schools of medicine or osteopathic medicine, each agreement entered into under such section with such a school shall provide (in addition to the provisions required in subsection (b) of such section) that, for the 1-year period ending on June 30, 1997;[2] and for the 1-year period ending on June 30 of each subsequent fiscal year, the school will meet not less than 1 of the conditions described in paragraph (2) with respect to graduates of the school whose date of graduation from the school occurred approximately 4 years before the end of the 1-year period involved.

(2) Description of conditions

With respect to graduates described in paragraph (1) (in this paragraph referred to as ''designated graduates''), the conditions referred to in such paragraph for a school for a 1-year period are as follows:

(A) Not less than 50 percent of designated graduates of the school meet the criterion of

[1] See References in Text note below.

[2] So in original. The semicolon probably should be a comma.

either being in a residency training program in primary health care, or being engaged in a practice in such care (having completed such a program).

(B) Not less than 25 percent of the designated graduates of the school meet such criterion, and such percentage is not less than 5 percentage points above the percentage of such graduates meeting such criterion for the preceding 1-year period.

(C) In the case of schools of medicine or osteopathic medicine with student loans funds under section 292q of this title, the school involved is at or above the 75th percentile of such schools whose designated graduates meet such criterion.

(3) Determinations by Secretary

Not later than 90 days after the close of each 1-year period described in paragraph (1), the Secretary shall make a determination of whether the school involved has for such period complied with such paragraph and shall in writing inform the school of the determination. Such determination shall be made only after consideration of the report submitted to the Secretary by the school under paragraph (6).

(4) Noncompliance by school

(A)(i) Subject to subparagraph (C), each agreement under section 292q of this title with a school of medicine or osteopathic medicine shall provide that, if the school fails to comply with paragraph (1) for a 1-year period under such paragraph, the school—

(I) will pay to the Secretary the amount applicable under subparagraph (B) for the period; and

(II) will pay such amount not later than 90 days after the school is informed under paragraph (3) of the determination of the Secretary regarding such period.

(ii) Any amount that a school is required to pay under clause (i) may be paid from the student loan fund of the school under section 292q of this title.

(B) For purposes of subparagraph (A), the amount applicable for a school, subject to subparagraph (C), is—

(i) for the 1-year period ending June 30, 1997, an amount equal to 10 percent of the income received during such period by the student loan fund of the school under section 292q of this title;

(ii) for the 1-year period ending June 30, 1998, an amount equal to 20 percent of the income received during such period by the student loan fund; and

(iii) for any subsequent 1-year period under paragraph (1), an amount equal to 30 percent of the income received during such period by the student loan fund.

(C) In determining the amount of income that a student loan fund has received for purposes of subparagraph (B), the Secretary shall exclude any income derived from exempt contributions. Payments made to the Secretary under subparagraph (A) may not be made with such contributions or with income derived from such contributions.

(5) Expenditure of payments

(A) Amounts paid to the Secretary under paragraph (4) shall be expended to make Federal capital contributions to student loan funds under section 292q of this title of schools that are in compliance with paragraph (1).

(B) A Federal capital contribution under section 292q of this title may not be construed as being an exempt Federal capital contribution if the contribution is made from payments under subparagraph (A). A school contribution under such section may not be construed as being an exempt school contribution if the contribution is made pursuant to a Federal capital contribution from such payments.

(6) Reports by schools

Each agreement under section 292q of this title with a school of medicine or osteopathic medicine shall provide that the school will submit to the Secretary a report for each 1-year period under paragraph (1) that provides such information as the Secretary determines to be necessary for carrying out this subsection. Each such report shall include statistics concerning the current training or practice status of all graduates of such school whose date of graduation from the school occurred approximately 4 years before the end of the 1-year period involved.

(c) Definitions

For purposes of this section:

(1) The term ''exempt contributions'' means exempt Federal capital contributions and exempt school contributions.

(2) The term ''exempt Federal capital contribution'' means a Federal capital contribution described in subclause (I) of subsection (a)(2)(A)(ii) of this section.

(3) The term ''exempt school contribution'' means a school contribution described in subclause (II) of subsection (a)(2)(A)(ii) of this section.

(4) The term ''income'', with respect to a student fund under section 292q of this title, means payments of principal and interest on any loan made from the fund, and any other earnings of the fund.

(5) The term ''primary health care'' means family medicine, general internal medicine, general pediatrics, preventive medicine, or osteopathic general practice.

(July 1, 1944, ch. 373, title VII, § 723, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2015; amended Pub. L. 103–43, title XX, § 2014(c), June 10, 1993, 107 Stat. 216; Pub. L. 105–392, title I, § 131, Nov. 13, 1998, 112 Stat. 3574.)

REFERENCES IN TEXT

Section 292t(f) of this title, referred to in subsec. (a)(2)(A)(ii)(I), contained provisions in par. (1) relating to appropriation of funds for Federal capital contributions to student loan funds, prior to repeal by Pub. L. 105–392, title I, § 132(b), Nov. 13, 1998, 112 Stat. 3575, eff. Oct. 1, 2002.

PRIOR PROVISIONS

A prior section 723 of act July 1, 1944, was classified to section 293c of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–392, § 131(b), reenacted heading without change and amended text of par. (3) generally. Prior to amendment, text read as follows: ''Each agreement entered into with a student pursuant to paragraph (1) shall provide that, if the student fails to comply with the agreement—

''(A) the balance due on the loan involved will be immediately recomputed from the date of issuance at an interest rate of 12 percent per year, compounded annually; and

''(B) the recomputed balance will be paid not later than the expiration of the 3-year period beginning on the date on which the student fails to comply with the agreement.''

Subsec. (b)(1). Pub. L. 105–392, § 131(a), substituted ''4 years before'' for ''3 years before''.

Subsecs. (c), (d). Pub. L. 105–392, § 131(c), redesignated subsec. (d) as (c) and struck out heading and text of subsec. (c). Text read as follows: ''The Secretary shall each fiscal year submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a report regarding the administration of this section, including the extent of compliance with the requirements of this section, during the preceding fiscal year.''

1993—Subsec. (a)(4). Pub. L. 103–43, § 2014(c)(1), added par. (4).

Subsec. (b)(1). Pub. L. 103–43, § 2014(c)(2)(A), substituted ''1997;'' for ''1994,'' and ''3 years before'' for ''4 years before''.

Subsec. (b)(2)(B). Pub. L. 103–43, § 2014(c)(2)(B), substituted ''25 percent'' for ''15 percent''.

Subsec. (b)(4)(B). Pub. L. 103–43, § 2014(c)(2)(C), substituted ''1997'' for ''1994'' in cl. (i) and ''1998'' for ''1995'' in cl. (ii).

§ 292t. Individuals from disadvantaged backgrounds

(a) Fund agreements regarding certain amounts

With respect to amounts appropriated under subsection (f) of this section, each agreement entered into under section 292q of this title with a school shall provide (in addition to the provisions required in subsection (b) of such section) that—

(1) any Federal capital contribution made to the student loan fund of the school from such amounts, together with the school contribution appropriate under subsection (b)(2)(B) of such section to the amount of the Federal capital contribution, will be utilized only for the purpose of—

(A) making loans to individuals from disadvantaged backgrounds; and

(B) the costs of the collection of the loans and interest on the loans; and

(2) collections of principal and interest on loans made pursuant to paragraph (1), and any other earnings of the student loan fund attributable to amounts that are in the fund pursuant to such paragraph, will be utilized only for the purpose described in such paragraph.

(b) Minimum qualifications for schools

The Secretary may not make a Federal capital contribution for purposes of subsection (a) of this section for a fiscal year unless the health professions school involved—

(1) is carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including racial and ethnic minorities; and

(2) is carrying out a program for recruiting and retaining minority faculty.

(c) Certain agreements regarding education of students; date certain for compliance

The Secretary may not make a Federal capital contribution for purposes of subsection (a) of this section for a fiscal year unless the health professions school involved agrees—

(1) to ensure that adequate instruction regarding minority health issues is provided for in the curricula of the school;

(2) with respect to health clinics providing services to a significant number of individuals who are from disadvantaged backgrounds, including members of minority groups, to enter into arrangements with 1 or more such clinics for the purpose of providing students of the school with experience in providing clinical services to such individuals;

(3) with respect to public or nonprofit private secondary educational institutions and undergraduate institutions of higher education, to enter into arrangements with 1 or more such institutions for the purpose of carrying out programs regarding the educational preparation of disadvantaged students, including minority students, to enter the health professions and regarding the recruitment of such individuals into the health professions;

(4) to establish a mentor program for assisting disadvantaged students, including minority students, regarding the completion of the educational requirements for degrees from the school;

(5) to be carrying out each of the activities specified in any of paragraphs (1) through (4) by not later than 1 year after the date on which the first Federal capital contribution is made to the school for purposes of subsection (a) of this section; and

(6) to continue carrying out such activities, and the activities specified in paragraphs (1) and (2) of subsection (b) of this section, throughout the period during which the student loan fund established pursuant to section 292q(b) of this title is in operation.

(d) Availability of other amounts

With respect to Federal capital contributions to student loan funds under agreements under section 292q(b) of this title, any such contributions made before October 1, 1990, together with the school contributions appropriate under paragraph (2)(B) of such section to the amount of the Federal capital contributions, may be utilized for the purpose of making loans to individuals from disadvantaged backgrounds, subject to section 292s(a)(2)(B) of this title.

(e) "Disadvantaged" defined

For purposes of this section, the term ''disadvantaged'', with respect to an individual, shall be defined by the Secretary.

(f) Authorization of appropriations

(1) Repealed. Pub. L. 105–392, title I, § 132(b), Nov. 13, 1998, 112 Stat. 3575

(2) Special consideration for certain schools

In making Federal capital contributions to student loan funds for purposes of subsection

(a) of this section, the Secretary shall give special consideration to health professions schools that have enrollments of underrepresented minorities above the national average for health professions schools.

(July 1, 1944, ch. 373, title VII, § 724, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2018; amended Pub. L. 105–392, title I, § 132, Nov. 13, 1998, 112 Stat. 3575.)

PRIOR PROVISIONS

A prior section 724 of act July 1, 1944, was classified to section 293d of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (f)(1). Pub. L. 105–392, § 132(b), struck out heading and text of par. (1). Text read as follows: ''With respect to making Federal capital contributions to student loan funds for purposes of subsection (a) of this section, there is authorized to be appropriated for such contributions $8,000,000 for each of the fiscal years 1998 through 2002.''

Pub. L. 105–392, § 132(a), substituted ''$8,000,000 for each of the fiscal years 1998 through 2002'' for ''$15,000,000 for fiscal year 1993''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–392, title I, § 132(b), Nov. 13, 1998, 112 Stat. 3575, provided that the repeal of subsec. (f)(1) of this section is effective Oct. 1, 2002.

§ 292u. Administrative provisions

The Secretary may agree to modifications of agreements or loans made under this subpart, and may compromise, waive, or release any right, title, claim, or demand of the United States arising or acquired under this subpart.

(July 1, 1944, ch. 373, title VII, § 725, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2019.)

PRIOR PROVISIONS

A prior section 725 of act July 1, 1944, was classified to section 293e of this title prior to the general revision of this subchapter by Pub. L. 102–408.

HEALTH PROFESSIONS EDUCATION FUND; AVAILABILITY OF FUND; DEPOSIT IN FUND OF: INTEREST PAYMENTS OR REPAYMENTS OF PRINCIPAL ON LOANS; TRANSFER OF EXCESS MONEYS TO GENERAL FUND OF THE TREASURY; AUTHORIZATION OF APPROPRIATIONS FOR PAYMENTS UNDER AGREEMENTS

Section 406(b), (c) of Pub. L. 94–484 provided that:

''(b) The health professions education fund created within the Treasury by section 744(d)(1) of the Public Health Service Act (as in effect before the date of enactment of this Act) [former section 294d(d)(1) of this title] shall remain available to the Secretary of Health, Education, and Welfare [now Health and Human Services] for the purpose of meeting his responsibilities respecting participations in obligations acquired under such section. The Secretary shall continue to deposit in such fund all amounts received by him as interest payments or repayments of principal on loans under such section 744 [former section 294d of this title]. If at any time the Secretary determines the moneys in the fund exceed the present and any reasonable prospective future requirements of such fund, such excess may be transferred to the general fund of the Treasury.

''(c) There are authorized to be appropriated without fiscal year limitation such sums as may be necessary to enable the Secretary to make payments under agreements entered into under section 744(b) [former section 294d(b) of this title] of the Public Health Service Act before September 30, 1977.''

§ 292v. Provision by schools of information to students

(a) In general

With respect to loans made by a school under this subpart after June 30, 1986, each school, in order to carry out the provisions of sections 292q and 292r of this title, shall, at any time such school makes such a loan to a student under this subpart, provide thorough and adequate loan information on loans made under this subpart to the student. The loan information required to be provided to the student by this subsection shall include—

(1) the yearly and cumulative maximum amounts that may be borrowed by the student;

(2) the terms under which repayment of the loan will begin;

(3) the maximum number of years in which the loan must be repaid;

(4) the interest rate that will be paid by the borrower and the minimum amount of the required monthly payment;

(5) the amount of any other fees charged to the borrower by the lender;

(6) any options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan;

(7) a definition of default on the loan and a specification of the consequences which will result to the borrower if the borrower defaults, including a description of any arrangements which may be made with credit bureau organizations;

(8) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(9) a description of the actions that may be taken by the Federal Government to collect the loan, including a description of the type of information concerning the borrower that the Federal Government may disclose to (A) officers, employees, or agents of the Department of Health and Human Services, (B) officers, employees, or agents of schools with which the Secretary has an agreement under this subpart, or (C) any other person involved in the collection of a loan under this subpart.

(b) Statement regarding loan

Each school shall, immediately prior to the graduation from such school of a student who receives a loan under this subpart after June 30, 1986, provide such student with a statement specifying—

(1) each amount borrowed by the student under this subpart;

(2) the total amount borrowed by the student under this subpart; and

(3) a schedule for the repayment of the amounts borrowed under this subpart, including the number, amount, and frequency of payments to be made.

(July 1, 1944, ch. 373, title VII, § 726, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2020.)

PRIOR PROVISIONS

A prior section 726 of act July 1, 1944, was classified to section 293f of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 726 of act July 1, 1944, was classified to section 293f of this title prior to repeal by Pub. L. 94–484.

§ 292w. Procedures for appeal of termination of agreements

In any case in which the Secretary intends to terminate an agreement with a school under this subpart, the Secretary shall provide the school with a written notice specifying such intention and stating that the school may request a formal hearing with respect to such termination. If the school requests such a hearing within 30 days after the receipt of such notice, the Secretary shall provide such school with a hearing conducted by an administrative law judge.

(July 1, 1944, ch. 373, title VII, § 727, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2020.)

PRIOR PROVISIONS

A prior section 727 of act July 1, 1944, was classified to section 294 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 727 of act July 1, 1944, was classified to section 293g of this title prior to renumbering by Pub. L. 94–484.

§ 292x. Distribution of assets from loan funds

(a) Distribution after termination of fund

If a school terminates a loan fund established under an agreement pursuant to section 292q(b) of this title, or if the Secretary for good cause terminates the agreement with the school, there shall be a capital distribution as follows:

(1) The Secretary shall first be paid an amount which bears the same ratio to such balance in such fund on the date of termination of the fund as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 292q(b)(2)(A) of this title bears to the total amount in such fund derived from such Federal capital contributions and from funds deposited therein pursuant to section 292q(b)(2)(B) of this title.

(2) The remainder of such balance shall be paid to the school.

(b) Payment of proportionate share to Secretary

If a capital distribution is made under subsection (a) of this section, the school involved shall, after the capital distribution, pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school in payment of principal or interest on loans made from the loan fund established pursuant to section 292q(b) of this title as was determined by the Secretary under subsection (a) of this section.

(July 1, 1944, ch. 373, title VII, § 728, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2021.)

PRIOR PROVISIONS

A prior section 728 of act July 1, 1944, was classified to section 294a of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 728 of act July 1, 1944, was classified to section 293h of this title prior to renumbering by Pub. L. 94–484.

§ 292y. General provisions

(a) Date certain for applications

The Secretary shall from time to time set dates by which schools must file applications for Federal capital contributions.

(b) Contingent reduction in allotments

If the total of the amounts requested for any fiscal year in such applications exceeds the amounts appropriated under this section for that fiscal year, the allotment to the loan fund of each such school shall be reduced to whichever of the following is the smaller: (A) the amount requested in its application; or (B) an amount which bears the same ratio to the amounts appropriated as the number of students estimated by the Secretary to be enrolled in such school during such fiscal year bears to the estimated total number of students in all such schools during such year. Amounts remaining after allotment under the preceding sentence shall be reallotted in accordance with clause (B) of such sentence among schools whose applications requested more than the amounts so allotted to their loan funds, but with such adjustments as may be necessary to prevent the total allotted to any such school's loan fund from exceeding the total so requested by it.

(c) Allotment of excess funds

Funds available in any fiscal year for payment to schools under this subpart which are in excess of the amount appropriated pursuant to this section for that year shall be allotted among schools in such manner as the Secretary determines will best carry out the purposes of this subpart.

(d) Payment of installments to schools

Allotments to a loan fund of a school shall be paid to it from time to time in such installments as the Secretary determines will not result in unnecessary accumulations in the loan fund at such school.

(e) Disposition of funds returned to Secretary

(1) Expenditure for Federal capital contributions

Subject to section 292s(b)(5) of this title, any amounts from student loan funds under section 292q of this title that are returned to the Secretary by health professions schools shall be expended to make Federal capital contributions to such funds.

(2) Date certain for contributions

Amounts described in paragraph (1) that are returned to the Secretary shall be obligated before the end of the succeeding fiscal year.

(3) Preference in making contributions

In making Federal capital contributions to student loans funds under section 292q of this title for a fiscal year from amounts described in paragraph (1), the Secretary shall give preference to health professions schools of the same disciplines as the health professions schools returning such amounts for the period during which the amounts expended for such contributions were received by the Secretary. Any such amounts that, prior to being so returned, were available only for the purpose of

loans under this subpart to individuals from disadvantaged backgrounds shall be available only for such purpose.

(f) Funding for certain medical schools

(1) Authorization of appropriations

For the purpose of making Federal capital contributions to student loan funds established under section 292q of this title by schools of medicine or osteopathic medicine, there is authorized to be appropriated $10,000,000 for each of the fiscal years 1994 through 1996.

(2) Minimum requirements

(A) Subject to subparagraph (B), the Secretary may make a Federal capital contribution pursuant to paragraph (1) only if the school of medicine or osteopathic medicine involved meets the conditions described in subparagraph (A) of section 292s(b)(2) of this title or the conditions described in subparagraph (C) of such section.

(B) For purposes of subparagraph (A), the conditions referred to in such subparagraph shall be applied with respect to graduates of the school involved whose date of graduation occurred approximately 3 years before June 30 of the fiscal year preceding the fiscal year for which the Federal capital contribution involved is made.

(July 1, 1944, ch. 373, title VII, § 735, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2021; amended Pub. L. 102–531, title III, § 313(a)(1), Oct. 27, 1992, 106 Stat. 3507; Pub. L. 103–43, title XX, § 2014(d), June 10, 1993, 107 Stat. 217; Pub. L. 105–392, title I, § 134(c), Nov. 13, 1998, 112 Stat. 3578.)

PRIOR PROVISIONS

A prior section 735 of act July 1, 1944, was classified to section 294h of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (e)(2). Pub. L. 105–392 reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''Amounts described in paragraph (1) that are returned to the Secretary before the fourth quarter of a fiscal year shall be obligated before the end of such fiscal year, and may not be obligated before the fourth quarter. For purposes of the preceding sentence, amounts returned to the Secretary during the last quarter of a fiscal year are deemed to have been returned during the first three quarters of the succeeding fiscal year.''

1993—Subsec. (f). Pub. L. 103–43 added subsec. (f).

1992—Subsec. (b). Pub. L. 102–531 inserted designations for cls. (A) and (B) in first sentence.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 313(c) of Pub. L. 102–531 provided that: ''The amendments described in this section [amending this section and sections 293j, 293*l*, 294n, 295j, 295*l*, 295n, 295*o*, 296k, and 298b–7 of this title, repealing section 297j of this title, redesignating subpart IV of part B of subchapter VI of this chapter as subpart III, and amending provisions set out as a note under section 295k of this title] are made, and take effect, immediately after the enactment of the bill, H.R. 3508, of the One Hundred Second Congress [Pub. L. 102–408, approved Oct. 13, 1992].''

PART B—HEALTH PROFESSIONS TRAINING FOR DIVERSITY

§ 293. Centers of excellence

(a) In general

The Secretary shall make grants to, and enter into contracts with, designated health professions schools described in subsection (c) of this section, and other public and nonprofit health or educational entities, for the purpose of assisting the schools in supporting programs of excellence in health professions education for under-represented minority individuals.

(b) Required use of funds

The Secretary may not make a grant under subsection (a) of this section unless the designated health professions school involved agrees, subject to subsection (c)(1)(C) of this section, to expend the grant—

(1) to develop a large competitive applicant pool through linkages with institutions of higher education, local school districts, and other community-based entities and establish an education pipeline for health professions careers;

(2) to establish, strengthen, or expand programs to enhance the academic performance of under-represented minority students attending the school;

(3) to improve the capacity of such school to train, recruit, and retain under-represented minority faculty including the payment of such stipends and fellowships as the Secretary may determine appropriate;

(4) to carry out activities to improve the information resources, clinical education, curricula and cultural competence of the graduates of the school, as it relates to minority health issues;

(5) to facilitate faculty and student research on health issues particularly affecting under-represented minority groups, including research on issues relating to the delivery of health care;

(6) to carry out a program to train students of the school in providing health services to a significant number of under-represented minority individuals through training provided to such students at community-based health facilities that—

(A) provide such health services; and

(B) are located at a site remote from the main site of the teaching facilities of the school; and

(7) to provide stipends as the Secretary determines appropriate, in amounts as the Secretary determines appropriate.

(c) Centers of excellence

(1) Designated schools

(A) In general

The designated health professions schools referred to in subsection (a) of this section are such schools that meet each of the conditions specified in subparagraphs (B) and (C), and that—

(i) meet each of the conditions specified in paragraph (2)(A);

(ii) meet each of the conditions specified in paragraph (3);

(iii) meet each of the conditions specified in paragraph (4); or

(iv) meet each of the conditions specified in paragraph (5).

(B) General conditions

The conditions specified in this subparagraph are that a designated health professions school—

(i) has a significant number of under-represented minority individuals enrolled in the school, including individuals accepted for enrollment in the school;

(ii) has been effective in assisting under-represented minority students of the school to complete the program of education and receive the degree involved;

(iii) has been effective in recruiting under-represented minority individuals to enroll in and graduate from the school, including providing scholarships and other financial assistance to such individuals and encouraging under-represented minority students from all levels of the educational pipeline to pursue health professions careers; and

(iv) has made significant recruitment efforts to increase the number of under-represented minority individuals serving in faculty or administrative positions at the school.

(C) Consortium

The condition specified in this subparagraph is that, in accordance with subsection (e)(1) of this section, the designated health profession school involved has with other health profession schools (designated or otherwise) formed a consortium to carry out the purposes described in subsection (b) of this section at the schools of the consortium.

(D) Application of criteria to other programs

In the case of any criteria established by the Secretary for purposes of determining whether schools meet the conditions described in subparagraph (B), this section may not, with respect to racial and ethnic minorities, be construed to authorize, require, or prohibit the use of such criteria in any program other than the program established in this section.

(2) Centers of excellence at certain historically black colleges and universities

(A) Conditions

The conditions specified in this subparagraph are that a designated health professions school—

(i) is a school described in section 295p(1) of this title; and

(ii) received a contract under section 295g–8b of this title for fiscal year 1987, as such section was in effect for such fiscal year.

(B) Use of grant

In addition to the purposes described in subsection (b) of this section, a grant under subsection (a) of this section to a designated health professions school meeting the conditions described in subparagraph (A) may be expended—

(i) to develop a plan to achieve institutional improvements, including financial independence, to enable the school to support programs of excellence in health professions education for under-represented minority individuals; and

(ii) to provide improved access to the library and informational resources of the school.

(C) Exception

The requirements of paragraph (1)(C) shall not apply to a historically black college or university that receives funding under paragraphs[1] (2) or (5).

(3) Hispanic centers of excellence

The conditions specified in this paragraph are that—

(A) with respect to Hispanic individuals, each of clauses (i) through (iv) of paragraph (1)(B) applies to the designated health professions school involved;

(B) the school agrees, as a condition of receiving a grant under subsection (a) of this section, that the school will, in carrying out the duties described in subsection (b) of this section, give priority to carrying out the duties with respect to Hispanic individuals; and

(C) the school agrees, as a condition of receiving a grant under subsection (a) of this section, that—

(i) the school will establish an arrangement with 1 or more public or nonprofit community based Hispanic serving organizations, or public or nonprofit private institutions of higher education, including schools of nursing, whose enrollment of students has traditionally included a significant number of Hispanic individuals, the purposes of which will be to carry out a program—

(I) to identify Hispanic students who are interested in a career in the health profession involved; and

(II) to facilitate the educational preparation of such students to enter the health professions school; and

(ii) the school will make efforts to recruit Hispanic students, including students who have participated in the undergraduate or other matriculation program carried out under arrangements established by the school pursuant to clause (i)(II) and will assist Hispanic students regarding the completion of the educational requirements for a degree from the school.

(4) Native American centers of excellence

Subject to subsection (e) of this section, the conditions specified in this paragraph are that—

(A) with respect to Native Americans, each of clauses (i) through (iv) of paragraph (1)(B) applies to the designated health professions school involved;

[1] So in original. Probably should be ''paragraph''.

(B) the school agrees, as a condition of receiving a grant under subsection (a) of this section, that the school will, in carrying out the duties described in subsection (b) of this section, give priority to carrying out the duties with respect to Native Americans; and

(C) the school agrees, as a condition of receiving a grant under subsection (a) of this section, that—

(i) the school will establish an arrangement with 1 or more public or nonprofit private institutions of higher education, including schools of nursing, whose enrollment of students has traditionally included a significant number of Native Americans, the purpose of which arrangement will be to carry out a program—

(I) to identify Native American students, from the institutions of higher education referred to in clause (i), who are interested in health professions careers; and

(II) to facilitate the educational preparation of such students to enter the designated health professions school; and

(ii) the designated health professions school will make efforts to recruit Native American students, including students who have participated in the undergraduate program carried out under arrangements established by the school pursuant to clause (i) and will assist Native American students regarding the completion of the educational requirements for a degree from the designated health professions school.

(5) Other centers of excellence

The conditions specified in this paragraph are—

(A) with respect to other centers of excellence, the conditions described in clauses (i) through (iv) of paragraph (1)(B); and

(B) that the health professions school involved has an enrollment of under-represented minorities above the national average for such enrollments of health professions schools.

(d) Designation as center of excellence

(1) In general

Any designated health professions school receiving a grant under subsection (a) of this section and meeting the conditions described in paragraph (2) or (5) of subsection (c) of this section shall, for purposes of this section, be designated by the Secretary as a Center of Excellence in Under-Represented Minority Health Professions Education.

(2) Hispanic centers of excellence

Any designated health professions school receiving a grant under subsection (a) of this section and meeting the conditions described in subsection (c)(3) of this section shall, for purposes of this section, be designated by the Secretary as a Hispanic Center of Excellence in Health Professions Education.

(3) Native American centers of excellence

Any designated health professions school receiving a grant under subsection (a) of this section and meeting the conditions described in subsection (c)(4) of this section shall, for purposes of this section, be designated by the Secretary as a Native American Center of Excellence in Health Professions Education. Any consortium receiving such a grant pursuant to subsection (e) of this section shall, for purposes of this section, be so designated.

(e) Authority regarding Native American centers of excellence

With respect to meeting the conditions specified in subsection (c)(4) of this section, the Secretary may make a grant under subsection (a) of this section to a designated health professions school that does not meet such conditions if—

(1) the school has formed a consortium in accordance with subsection (d)(1) of this section; and

(2) the schools of the consortium collectively meet such conditions, without regard to whether the schools individually meet such conditions.

(f) Duration of grant

The period during which payments are made under a grant under subsection (a) of this section may not exceed 5 years. Such payments shall be subject to annual approval by the Secretary and to the availability of appropriations for the fiscal year involved to make the payments.

(g) Definitions

In this section:

(1) Designated health professions school

(A) In general

The term ''health professions school'' means, except as provided in subparagraph (B), a school of medicine, a school of osteopathic medicine, a school of dentistry, a school of pharmacy, or a graduate program in behavioral or mental health.

(B) Exception

The definition established in subparagraph (A) shall not apply to the use of the term ''designated health professions school'' for purposes of subsection (c)(2) of this section.

(2) Program of excellence

The term ''program of excellence'' means any program carried out by a designated health professions school with a grant made under subsection (a) of this section, if the program is for purposes for which the school involved is authorized in subsection (b) or (c) of this section to expend the grant.

(3) Native Americans

The term ''Native Americans'' means American Indians, Alaskan Natives, Aleuts, and Native Hawaiians.

(h) Funding

(1) Authorization of appropriations

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $26,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(2) Allocations

Based on the amount appropriated under paragraph (1) for a fiscal year, one of the following subparagraphs shall apply:

(A) In general

If the amounts appropriated under paragraph (1) for a fiscal year are $24,000,000 or less—

(i) the Secretary shall make available $12,000,000 for grants under subsection (a) of this section to health professions schools that meet the conditions described in subsection (c)(2)(A) of this section; and

(ii) and available after grants are made with funds under clause (i), the Secretary shall make available—

(I) 60 percent of such amount for grants under subsection (a) of this section to health professions schools that meet the conditions described in paragraph (3) or (4) of subsection (c) of this section (including meeting the conditions under subsection (e) of this section); and

(II) 40 percent of such amount for grants under subsection (a) of this section to health professions schools that meet the conditions described in subsection (c)(5) of this section.

(B) Funding in excess of $24,000,000

If amounts appropriated under paragraph (1) for a fiscal year exceed $24,000,000 but are less than $30,000,000—

(i) 80 percent of such excess amounts shall be made available for grants under subsection (a) of this section to health professions schools that meet the requirements described in paragraph (3) or (4) of subsection (c) of this section (including meeting conditions pursuant to subsection (e) of this section); and

(ii) 20 percent of such excess amount shall be made available for grants under subsection (a) of this section to health professions schools that meet the conditions described in subsection (c)(5) of this section.

(C) Funding in excess of $30,000,000

If amounts appropriated under paragraph (1) for a fiscal year are $30,000,000 or more, the Secretary shall make available—

(i) not less than $12,000,000 for grants under subsection (a) of this section to health professions schools that meet the conditions described in subsection (c)(2)(A) of this section;

(ii) not less than $12,000,000 for grants under subsection (a) of this section to health professions schools that meet the conditions described in paragraph (3) or (4) of subsection (c) of this section (including meeting conditions pursuant to subsection (e) of this section);

(iii) not less than $6,000,000 for grants under subsection (a) of this section to health professions schools that meet the conditions described in subsection (c)(5) of this section; and

(iv) after grants are made with funds under clauses (i) through (iii), any remaining funds for grants under subsection (a) of this section to health professions schools that meet the conditions described in paragraph (2)(A), (3), (4), or (5) of subsection (c) of this section.

(3) No limitation

Nothing in this subsection shall be construed as limiting the centers of excellence referred to in this section to the designated amount, or to preclude such entities from competing for other grants under this section.

(4) Maintenance of effort

(A) In general

With respect to activities for which a grant made under this part are authorized to be expended, the Secretary may not make such a grant to a center of excellence for any fiscal year unless the center agrees to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the center for the fiscal year preceding the fiscal year for which the school receives such a grant.

(B) Use of Federal funds

With respect to any Federal amounts received by a center of excellence and available for carrying out activities for which a grant under this part is authorized to be expended, the Secretary may not make such a grant to the center for any fiscal year unless the center agrees that the center will, before expending the grant, expend the Federal amounts obtained from sources other than the grant.

(July 1, 1944, ch. 373, title VII, § 736, as added Pub. L. 105–392, title I, § 101(a), Nov. 13, 1998, 112 Stat. 3525.)

REFERENCES IN TEXT

Section 295g–8b of this title, referred to in subsec. (c)(2)(A)(ii), was omitted in the general amendment of this subchapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

PRIOR PROVISIONS

A prior section 293, act July 1, 1944, ch. 373, title VII, § 736, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2022, authorized grants to schools of medicine, osteopathic medicine, and dentistry for need-based scholarships, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 293, act July 1, 1944, ch. 373, title VII, § 720, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 164; amended Sept. 4, 1964, Pub. L. 88–581, § 3(a), 78 Stat. 919; Oct. 22, 1965, Pub. L. 89–290, § 3(a), 79 Stat. 1056; Nov. 2, 1966, Pub. L. 89–709, § 2(a), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, § 101(a), (b)(1), 82 Stat. 773; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(a), 85 Stat. 431; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(c), title III, § 302, 90 Stat. 2244, 2253; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2723(a), (b), 95 Stat. 915, authorized grants for construction of teaching facilities for medical, dental, and other health personnel, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 736 of act July 1, 1944, was classified to section 294i of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SAVINGS PROVISION

Pub. L. 105–392, title I, § 110, Nov. 13, 1998, 112 Stat. 3562, provided that: ''In the case of any authority for

making awards of grants or contracts that is terminated by the amendments made by this subtitle [subtitle A (§§ 101–110) of title I of Pub. L. 105–392, see Tables for classification], the Secretary of Health and Human Services may, notwithstanding the termination of the authority, continue in effect any grant or contract made under the authority that is in effect on the day before the date of the enactment of this Act [Nov. 13, 1998], subject to the duration of any such grant or contract not exceeding the period determined by the Secretary in first approving such financial assistance, or in approving the most recent request made (before the date of such enactment) for continuation of such assistance, as the case may be.''

§ 293a. Scholarships for disadvantaged students

(a) In general

The Secretary may make a grant to an eligible entity (as defined in subsection (d)(1) of this section) under this section for the awarding of scholarships by schools to any full-time student who is an eligible individual as defined in subsection (d) of this section. Such scholarships may be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in the attendance of such school.

(b) Preference in providing scholarships

The Secretary may not make a grant to an entity under subsection (a) of this section unless the health professions and nursing schools involved agree that, in providing scholarships pursuant to the grant, the schools will give preference to students for whom the costs of attending the schools would constitute a severe financial hardship and, notwithstanding other provisions of this section, to former recipients of scholarships under sections 293 and 293d(d)(2)(B) of this title (as such sections existed on the day before November 13, 1998).

(c) Amount of award

In awarding grants to eligible entities that are health professions and nursing schools, the Secretary shall give priority to eligible entities based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities.

(d) Definitions

In this section:

(1) Eligible entities

The term ''eligible entities'' means an entity that—

(A) is a school of medicine, osteopathic medicine, dentistry, nursing (as defined in section 296 of this title), pharmacy, podiatric medicine, optometry, veterinary medicine, public health, chiropractic, or allied health, a school offering a graduate program in behavioral and mental health practice, or an entity providing programs for the training of physician assistants; and

(B) is carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups.

(2) Eligible individual

The term ''eligible individual'' means an individual who—

(A) is from a disadvantaged background;

(B) has a financial need for a scholarship; and

(C) is enrolled (or accepted for enrollment) at an eligible health professions or nursing school as a full-time student in a program leading to a degree in a health profession or nursing.

(July 1, 1944, ch. 373, title VII, § 737, as added Pub. L. 105–392, title I, § 101(a), Nov. 13, 1998, 112 Stat. 3531.)

PRIOR PROVISIONS

A prior section 293a, act July 1, 1944, ch. 373, title VII, § 737, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2023, authorized grants to health professions schools for provision of scholarships and undergraduate assistance, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 293a, act July 1, 1944, ch. 373, title VII, § 721, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 165; amended Sept. 4, 1964, Pub. L. 88–581, § 3(b), 78 Stat. 919; Oct. 22, 1965, Pub. L. 89–290, §§ 3(b), (c), 5(a), 79 Stat. 1056–1058; Nov. 2, 1966, Pub. L. 89–709, § 2(b), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, §§ 103(a)(3), 105(a), (b), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, §§ 102(e), (f)(1), (2)(A), (g), (h), (j)(2), (3), (7)(A), 108(b)(1), 85 Stat. 434–437, 461; Oct. 12, 1976, Pub. L. 94–484, title III, §§ 301, 303, 308(a), 90 Stat. 2253, 2254, 2256; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(b), 91 Stat. 389; Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §§ 2723(c), (d), 2724(a), 95 Stat. 916; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 628(4), 629(b)(2), 102 Stat. 3145, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(1), 103 Stat. 614, related to applications and eligibility for grants for construction of teaching facilities for medical, dental, and other health personnel, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 737 of act July 1, 1944, was classified to section 294j of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 293b. Loan repayments and fellowships regarding faculty positions

(a) Loan repayments

(1) Establishment of program

The Secretary shall establish a program of entering into contracts with individuals described in paragraph (2) under which the individuals agree to serve as members of the faculties of schools described in paragraph (3) in consideration of the Federal Government agreeing to pay, for each year of such service, not more than $20,000 of the principal and interest of the educational loans of such individuals.

(2) Eligible individuals

The individuals referred to in paragraph (1) are individuals from disadvantaged backgrounds who—

(A) have a degree in medicine, osteopathic medicine, dentistry, nursing, or another health profession;

(B) are enrolled in an approved graduate training program in medicine, osteopathic medicine, dentistry, nursing, or other health profession; or

(C) are enrolled as full-time students—

(i) in an accredited (as determined by the Secretary) school described in paragraph (3); and

(ii) in the final year of a course of a study or program, offered by such institution and approved by the Secretary, leading to a degree from such a school.

(3) Eligible health professions schools

The schools described in this paragraph are schools of medicine, nursing (as schools of nursing are defined in section 296 of this title), osteopathic medicine, dentistry, pharmacy, allied health, podiatric medicine, optometry, veterinary medicine, or public health, or schools offering graduate programs in behavioral and mental health.

(4) Requirements regarding faculty positions

The Secretary may not enter into a contract under paragraph (1) unless—

(A) the individual involved has entered into a contract with a school described in paragraph (3) to serve as a member of the faculty of the school for not less than 2 years; and

(B) the contract referred to in subparagraph (A) provides that—

(i) the school will, for each year for which the individual will serve as a member of the faculty under the contract with the school, make payments of the principal and interest due on the educational loans of the individual for such year in an amount equal to the amount of such payments made by the Secretary for the year;

(ii) the payments made by the school pursuant to clause (i) on behalf of the individual will be in addition to the pay that the individual would otherwise receive for serving as a member of such faculty; and

(iii) the school, in making a determination of the amount of compensation to be provided by the school to the individual for serving as a member of the faculty, will make the determination without regard to the amount of payments made (or to be made) to the individual by the Federal Government under paragraph (1).

(5) Applicability of certain provisions

The provisions of sections 254m, 254p, and 254q–1 of this title shall apply to the program established in paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter, including the applicability of provisions regarding reimbursements for increased tax liability and regarding bankruptcy.

(6) Waiver regarding school contributions

The Secretary may waive the requirement established in paragraph (4)(B) if the Secretary determines that the requirement will impose an undue financial hardship on the school involved.

(b) Fellowships

(1) In general

The Secretary may make grants to and enter into contracts with eligible entities to assist such entities in increasing the number of underrepresented minority individuals who are members of the faculty of such schools.

(2) Applications

To be eligible to receive a grant or contract under this subsection, an entity shall provide an assurance, in the application submitted by the entity, that—

(A) amounts received under such a grant or contract will be used to award a fellowship to an individual only if the individual meets the requirements of paragraphs (3) and (4); and

(B) each fellowship awarded pursuant to the grant or contract will include—

(i) a stipend in an amount not exceeding 50 percent of the regular salary of a similar faculty member for not to exceed 3 years of training; and

(ii) an allowance for other expenses, such as travel to professional meetings and costs related to specialized training.

(3) Eligibility

To be eligible to receive a grant or contract under paragraph (1), an applicant shall demonstrate to the Secretary that such applicant has or will have the ability to—

(A) identify, recruit and select underrepresented minority individuals who have the potential for teaching, administration, or conducting research at a health professions institution;

(B) provide such individuals with the skills necessary to enable them to secure a tenured faculty position at such institution, which may include training with respect to pedagogical skills, program administration, the design and conduct of research, grants writing, and the preparation of articles suitable for publication in peer reviewed journals;

(C) provide services designed to assist such individuals in their preparation for an academic career, including the provision of counselors; and

(D) provide health services to rural or medically underserved populations.

(4) Requirements

To be eligible to receive a grant or contract under paragraph (1) an applicant shall—

(A) provide an assurance that such applicant will make available (directly through cash donations) $1 for every $1 of Federal funds received under this section for the fellowship;

(B) provide an assurance that institutional support will be provided for the individual for the second and third years at a level that is equal to the total amount of institutional funds provided in the year in which the grant or contract was awarded;

(C) provide an assurance that the individual that will receive the fellowship will be a member of the faculty of the applicant school; and

(D) provide an assurance that the individual that will receive the fellowship will have, at a minimum, appropriate advanced preparation (such as a master's or doctoral degree) and special skills necessary to enable such individual to teach and practice.

(5) Definition

For purposes of this subsection, the term ''underrepresented minority individuals''

means individuals who are members of racial or ethnic minority groups that are underrepresented in the health professions including nursing.

(July 1, 1944, ch. 373, title VII, § 738, as added Pub. L. 105–392, title I, § 101(a), Nov. 13, 1998, 112 Stat. 3532.)

REFERENCES IN TEXT

Subpart III of part D of subchapter II of this chapter, referred to in subsec. (a)(5), is classified to section 254*l* et seq. of this title.

PRIOR PROVISIONS

A prior section 293b, act July 1, 1944, ch. 373, title VII, § 738, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2025, related to loan repayments and fellowships regarding faculty positions, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 293b, act July 1, 1944, ch. 373, title VII, § 722, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 168; amended Aug. 16, 1968, Pub. L. 90–490, title I, §§ 102(a), 104(a), 82 Stat. 773, 774; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(b), (j)(4), (7), 85 Stat. 431, 436, 437; Oct. 12, 1976, Pub. L. 94–484, title III, § 304, 90 Stat. 2255; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2723(e), 95 Stat. 916, related to amounts of grants and grants for multipurpose facilities, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 738 of act July 1, 1944, was classified to section 294k of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 293c. Educational assistance in the health professions regarding individuals from disadvantaged backgrounds

(a) In general

(1) Authority for grants

For the purpose of assisting individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary, to undertake education to enter a health profession, the Secretary may make grants to and enter into contracts with schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, and podiatric medicine, public and nonprofit private schools that offer graduate programs in behavioral and mental health, programs for the training of physician assistants, and other public or private nonprofit health or educational entities to assist in meeting the costs described in paragraph (2).

(2) Authorized expenditures

A grant or contract under paragraph (1) may be used by the entity to meet the cost of—

(A) identifying, recruiting, and selecting individuals from disadvantaged backgrounds, as so determined, for education and training in a health profession;

(B) facilitating the entry of such individuals into such a school;

(C) providing counseling, mentoring, or other services designed to assist such individuals to complete successfully their education at such a school;

(D) providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education and health research training designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education;

(E) publicizing existing sources of financial aid available to students in the education program of such a school or who are undertaking training necessary to qualify them to enroll in such a program;

(F) paying such scholarships as the Secretary may determine for such individuals for any period of health professions education at a health professions school;

(G) paying such stipends as the Secretary may approve for such individuals for any period of education in student-enhancement programs (other than regular courses), except that such a stipend may not be provided to an individual for more than 12 months, and such a stipend shall be in an amount determined appropriate by the Secretary (notwithstanding any other provision of law regarding the amount of stipends);

(H) carrying out programs under which such individuals gain experience regarding a career in a field of primary health care through working at facilities of public or private nonprofit community-based providers of primary health services; and

(I) conducting activities to develop a larger and more competitive applicant pool through partnerships with institutions of higher education, school districts, and other community-based entities.

(3) Definition

In this section, the term ''regular course of education of such a school'' as used in subparagraph (D) includes a graduate program in behavioral or mental health.

(b) Requirements for awards

In making awards to eligible entities under subsection (a)(1) of this section, the Secretary shall give preference to approved applications for programs that involve a comprehensive approach by several public or nonprofit private health or educational entities to establish, enhance and expand educational programs that will result in the development of a competitive applicant pool of individuals from disadvantaged backgrounds who desire to pursue health professions careers. In considering awards for such a comprehensive partnership approach, the following shall apply with respect to the entity involved:

(1) The entity shall have a demonstrated commitment to such approach through formal agreements that have common objectives with institutions of higher education, school districts, and other community-based entities.

(2) Such formal agreements shall reflect the coordination of educational activities and support services, increased linkages, and the consolidation of resources within a specific geographic area.

(3) The design of the educational activities involved shall provide for the establishment of a competitive health professions applicant pool of individuals from disadvantaged backgrounds by enhancing the total preparation

(academic and social) of such individuals to pursue a health professions career.

(4) The programs or activities under the award shall focus on developing a culturally competent health care workforce that will serve the unserved and underserved populations within the geographic area.

(c) Equitable allocation of financial assistance

The Secretary, to the extent practicable, shall ensure that services and activities under subsection (a) of this section are adequately allocated among the various racial and ethnic populations who are from disadvantaged backgrounds.

(d) Matching requirements

The Secretary may require that an entity that applies for a grant or contract under subsection (a) of this section, provide non-Federal matching funds, as appropriate, to ensure the institutional commitment of the entity to the projects funded under the grant or contract. As determined by the Secretary, such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

(July 1, 1944, ch. 373, title VII, § 739, as added Pub. L. 105–392, title I, § 101(a), Nov. 13, 1998, 112 Stat. 3534.)

PRIOR PROVISIONS

A prior section 293c, act July 1, 1944, ch. 373, title VII, § 739, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2027, related to centers of excellence in health professions education for minority individuals, prior to the general amendment of this part by Pub. L. 105–392. See section 293 of this title.

Another prior section 293c, act July 1, 1944, ch. 373, title VII, § 723, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 168; amended Aug. 16, 1968, Pub. L. 90–490, title I, § 103(a)(1), (2), 82 Stat. 773; Nov. 18, 1971, Pub. L. 92–157,title I, § 102(c)(5), (f)(2)(C), (j)(1), (5), 85 Stat. 432, 435–437; Oct. 12, 1976, Pub. L. 94–484, title III, § 305, 90 Stat. 2255; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2723(f), 95 Stat. 916; Oct. 22, 1985, Pub. L. 99–129, title II, § 207(a), 99 Stat. 527, related to recovery by United States of grant moneys where facility was no longer owned by a public or nonprofit agency or where it ceased to be used for teaching or training purposes, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 739 of act July 1, 1944, was classified to section 294*l* of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 293d. Authorization of appropriation

(a) Scholarships

There are authorized to be appropriated to carry out section 293a of this title, $37,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002. Of the amount appropriated in any fiscal year, the Secretary shall ensure that not less than 16 percent shall be distributed to schools of nursing.

(b) Loan repayments and fellowships

For the purpose of carrying out section 293b of this title, there is authorized to be appropriated $1,100,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(c) Educational assistance in health professions regarding individuals from disadvantaged backgrounds

For the purpose of grants and contracts under section 293c(a)(1) of this title, there is authorized to be appropriated $29,400,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002. The Secretary may use not to exceed 20 percent of the amount appropriated for a fiscal year under this subsection to provide scholarships under section 293c(a)(2)(F) of this title.

(d) Report

Not later than 6 months after November 13, 1998, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the efforts of the Secretary to address the need for a representative mix of individuals from historically minority health professions schools, or from institutions or other entities that historically or by geographic location have a demonstrated record of training or educating underrepresented minorities, within various health professions disciplines, on peer review councils.

(July 1, 1944, ch. 373, title VII, § 740, as added Pub. L. 105–392, title I, § 101(a), Nov. 13, 1998, 112 Stat. 3536.)

PRIOR PROVISIONS

A prior section 293d, act July 1, 1944, ch. 373, title VII, § 740, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2032, related to educational assistance regarding undergraduates, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 293d, act July 1, 1944, ch. 373, title VII, § 724, formerly § 727, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 102(j)(7)(B), 85 Stat. 437; renumbered § 724 and amended Oct. 12, 1976, Pub. L. 94–484, title III, § 308(c), (d), 90 Stat. 2257, related to promulgation of regulations by Secretary, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 293d, act July 1, 1944, ch. 373, title VII, § 701, formerly § 724, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 169; amended Oct. 22, 1965, Pub. L. 89–290, § 2(b), 79 Stat. 1056; Nov. 2, 1966, Pub. L. 89–709, § 2(c), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, § 105(c), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(c)(1)–(4), (f)(2)(B), 85 Stat. 431, 432, 435, which related to definitions, was renumbered § 701 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292a of this title.

A prior section 740 of act July 1, 1944, was classified to section 294m of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 293e. Grants for health professions education

(a) Grants for health professions education in health disparities and cultural competency

(1) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make awards of grants, contracts, or cooperative agreements to public and nonprofit private entities (including tribal entities) for the purpose of carrying out research and demonstration projects (including research and demonstration projects for continuing health professions education) for training and education of health professionals

for the reduction of disparities in health care outcomes and the provision of culturally competent health care.

(2) Eligible entities

Unless specifically required otherwise in this subchapter, the Secretary shall accept applications for grants or contracts under this section from health professions schools, academic health centers, State or local governments, or other appropriate public or private nonprofit entities (or consortia of entities, including entities promoting multidisciplinary approaches) for funding and participation in health professions training activities. The Secretary may accept applications from for-profit private entities as determined appropriate by the Secretary.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out subsection (a) of this section, $3,500,000 for fiscal year 2001, $7,000,000 for fiscal year 2002, $7,000,000 for fiscal year 2003, and $3,500,000 for fiscal year 2004.

(July 1, 1944, ch. 373, title VII, § 741, as added Pub. L. 106–525, title IV, § 401(a), Nov. 22, 2000, 114 Stat. 2508.)

PRIOR PROVISIONS

A prior section 293e, act July 1, 1944, ch. 373, title VII, § 725, formerly § 728, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Sept. 4, 1964, Pub. L. 88–581, § 3(d), 78 Stat. 919; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(i), 85 Stat. 436; renumbered § 725, Oct. 12, 1976, Pub. L. 94–484, title III, § 308(d), 90 Stat. 2257, related to technical assistance to applicants for grants for construction of teaching facilities for medical, dental, and other health personnel, and to States or interstate planning agencies to plan programs for relieving shortages of training of health personnel, prior to the general amendment of this subchapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

Another prior section 293e, act July 1, 1944, ch. 373, title VII, § 702, formerly § 725, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 169; amended Sept. 4, 1964, Pub. L. 88–581, § 3(c), 78 Stat. 919; Nov. 2, 1966, Pub. L. 89–709, § 2(d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 3(a), 80 Stat. 1230; Dec. 5, 1967, Pub. L. 90–174, § 12(c), 81 Stat. 541; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title I, § 108(a), 85 Stat. 460, was renumbered § 702 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292b of this title, and subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

A prior section 293f, act July 1, 1944, ch. 373, title VII, § 726, formerly § 729, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 102(d), 85 Stat. 432; renumbered § 726 and amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(d), title III, §§ 306, 308(d), 90 Stat. 2244, 2256, 2257; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2725, 95 Stat. 916, related to loan guarantees and interest subsidies, prior to the general amendment of this subchapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

Another prior section 293f, act July 1, 1944, ch. 373, title VII, § 726, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170, provided for noninterference with administration of institutions, prior to repeal by Pub. L. 94–484, title III, § 308(b), Oct. 12, 1976, 90 Stat. 2257.

A prior section 293g, act July 1, 1944, ch. 373, title VII, § 727, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 102(j)(7)(B), 85 Stat. 437, which related to regulations, was renumbered section 724 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 293d of this title, and subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

A prior section 293h, act July 1, 1944, ch. 373, title VII, § 728, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Sept. 4, 1964, Pub. L. 88–581, § 3(d), 78 Stat. 919; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(i), 85 Stat. 436, which related to technical assistance, was renumbered section 726 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 293e of this title, and subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

A prior section 293i, act July 1, 1944, ch. 373, title VII, § 729, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 102(d), 85 Stat. 432, which related to loan guarantees and interest subsidies, was renumbered section 726 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 293f of this title, and subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

NATIONAL CONFERENCE ON HEALTH PROFESSIONS EDUCATION AND HEALTH DISPARITIES

Pub. L. 106–525, title IV, § 402, Nov. 22, 2000, 114 Stat. 2509, provided that:

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Nov. 22, 2000], the Secretary of Health and Human Services (in this section referred to as the 'Secretary'), acting through the Administrator of the Health Resources and Services Administration, shall convene a national conference on health professions education as a method for reducing disparities in health outcomes.

''(b) PARTICIPANTS.—The Secretary shall include in the national conference convened under subsection (a) advocacy groups and educational entities as described in section 741 of the Public Health Service Act [this section] (as added by section 401), tribal health programs, health centers under section 330 of such Act [section 254b of this title], and other interested parties.

''(c) ISSUES.—The national conference convened under subsection (a) shall include, but is not limited to, issues that address the role and impact of health professions education on the reduction of disparities in health outcomes, including the role of education on cultural competency. The conference shall focus on methods to achieve reductions in disparities in health outcomes through health professions education (including continuing education programs) and strategies for outcomes measurement to assess the effectiveness of education in reducing disparities.

''(d) PUBLICATION OF FINDINGS.—Not later than 6 months after the national conference under subsection (a) has convened, the Secretary shall publish in the Federal Register a summary of the proceedings and findings of the conference.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.''

PART C—TRAINING IN FAMILY MEDICINE, GENERAL INTERNAL MEDICINE, GENERAL PEDIATRICS, PHYSICIAN ASSISTANTS, GENERAL DENTISTRY, AND PEDIATRIC DENTISTRY

§ 293j. Repealed. Pub. L. 105–392, title I, § 102(2), Nov. 13, 1998, 112 Stat. 3537

Section, act July 1, 1944, ch. 373, title VII, § 746, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2034; amended Pub. L. 102–531, title III, § 313(a)(2), Oct. 27, 1992, 106 Stat. 3507; Pub. L. 103–43, title XX, § 2008(i)(3), June 10, 1993, 107 Stat. 213, related to area health education center programs.

A prior section 746 of act July 1, 1944, was classified to section 294q–2 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 293k. Family medicine, general internal medicine, general pediatrics, general dentistry, pediatric dentistry, and physician assistants

(a) Training generally

The Secretary may make grants to, or enter into contracts with, any public or nonprofit private hospital, school of medicine or osteopathic medicine, or to or with a public or private nonprofit entity (which the Secretary has determined is capable of carrying out such grant or contract)—

(1) to plan, develop, and operate, or participate in, an approved professional training program (including an approved residency or internship program) in the field of family medicine, internal medicine, or pediatrics for medical (M.D. and D.O.) students, interns (including interns in internships in osteopathic medicine), residents, or practicing physicians that emphasizes training for the practice of family medicine, general internal medicine, or general pediatrics (as defined by the Secretary);

(2) to provide financial assistance (in the form of traineeships and fellowships) to medical (M.D. and D.O.) students, interns (including interns in internships in osteopathic medicine), residents, practicing physicians, or other medical personnel, who are in need thereof, who are participants in any such program, and who plan to specialize or work in the practice of family medicine, general internal medicine, or general pediatrics;

(3) to plan, develop, and operate a program for the training of physicians who plan to teach in family medicine (including geriatrics), general internal medicine or general pediatrics training programs;

(4) to provide financial assistance (in the form of traineeships and fellowships) to physicians who are participants in any such program and who plan to teach in a family medicine (including geriatrics), general internal medicine or general pediatrics training program;

(5) to meet the costs of projects to plan, develop, and operate or maintain programs for the training of physician assistants (as defined in section 295p of this title), and for the training of individuals who will teach in programs to provide such training; and

(6) to meet the costs of planning, developing, or operating programs, and to provide financial assistance to residents in such programs, of general dentistry or pediatric dentistry.

For purposes of paragraph (6), entities eligible for such grants or contracts shall include entities that have programs in dental schools, approved residency programs in the general or pediatric practice of dentistry, approved advanced education programs in the general or pediatric practice of dentistry, or approved residency programs in pediatric dentistry.

(b) Academic administrative units

(1) In general

The Secretary may make grants to or enter into contracts with schools of medicine or osteopathic medicine to meet the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine, general internal medicine, or general pediatrics.

(2) Preference in making awards

In making awards of grants and contracts under paragraph (1), the Secretary shall give preference to any qualified applicant for such an award that agrees to expend the award for the purpose of—

(A) establishing an academic administrative unit for programs in family medicine, general internal medicine, or general pediatrics;[1]

(B) substantially expanding the programs of such a unit; or[1]

(3) Priority in making awards

In making awards of grants and contracts under paragraph (1), the Secretary shall give priority to any qualified applicant for such an award that proposes a collaborative project between departments of primary care.

(c) Priority

(1) In general

With respect to programs for the training of interns or residents, the Secretary shall give priority in awarding grants under this section to qualified applicants that have a record of training the greatest percentage of providers, or that have demonstrated significant improvements in the percentage of providers, which enter and remain in primary care practice or general or pediatric dentistry.

(2) Disadvantaged individuals

With respect to programs for the training of interns, residents, or physician assistants, the Secretary shall give priority in awarding grants under this section to qualified applicants that have a record of training individuals who are from disadvantaged backgrounds (including racial and ethnic minorities underrepresented among primary care practice or general or pediatric dentistry).

(3) Special consideration

In awarding grants under this section the Secretary shall give special consideration to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV-AIDS, substance abusers, homeless, and victims of domestic violence.

(d) Duration of award

The period during which payments are made to an entity from an award of a grant or contract under subsection (a) of this section may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments.

(e) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated

[1] So in original.

$78,300,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(2) Allocation

(A) In general

Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available—

(i) not less than $49,300,000 for awards of grants and contracts under subsection (a) of this section to programs of family medicine, of which not less than $8,600,000 shall be made available for awards of grants and contracts under subsection (b) of this section for family medicine academic administrative units;

(ii) not less than $17,700,000 for awards of grants and contracts under subsection (a) of this section to programs of general internal medicine and general pediatrics;

(iii) not less than $6,800,000 for awards of grants and contracts under subsection (a) of this section to programs relating to physician assistants; and

(iv) not less than $4,500,000 for awards of grants and contracts under subsection (a) of this section to programs of general or pediatric dentistry.

(B) Ratable reduction

If amounts appropriated under paragraph (1) for any fiscal year are less than the amount required to comply with subparagraph (A), the Secretary shall ratably reduce the amount to be made available under each of clauses (i) through (iv) of such subparagraph accordingly.

(July 1, 1944, ch. 373, title VII, § 747, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2042; amended Pub. L. 105–392, title I, § 102(3), Nov. 13, 1998, 112 Stat. 3537.)

PRIOR PROVISIONS

A prior section 747 of act July 1, 1944, was classified to section 294q–3 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Pub. L. 105–392, § 102(3)(A), substituted ''Family medicine, general internal medicine, general pediatrics, general dentistry, pediatric dentistry, and physician assistants'' for ''Family medicine'' in section catchline.

Subsec. (a). Pub. L. 105–392, § 102(3)(B)(iv), (v), (vii), added pars. (5) and (6) and concluding provisions.

Subsec. (a)(1). Pub. L. 105–392, § 102(3)(B)(i), inserted '', internal medicine, or pediatrics'' after ''family medicine'' and inserted before semicolon at end ''that emphasizes training for the practice of family medicine, general internal medicine, or general pediatrics (as defined by the Secretary)''.

Subsec. (a)(2). Pub. L. 105–392, § 102(3)(B)(ii), inserted '', general internal medicine, or general pediatrics'' before semicolon at end.

Subsec. (a)(3), (4). Pub. L. 105–392, § 102(3)(B)(iii), inserted ''(including geriatrics), general internal medicine or general pediatrics'' after ''family medicine''.

Subsec. (b)(1), (2)(A). Pub. L. 105–392, § 102(3)(C)(i), inserted '', general internal medicine, or general pediatrics'' after ''family medicine''.

Subsec. (b)(3). Pub. L. 105–392, § 102(3)(C)(ii), (iii), added par. (3).

Subsecs. (c) to (e). Pub. L. 105–392, § 102(3)(D), (E), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (e)(1). Pub. L. 105–392, § 102(3)(F)(i), substituted ''$78,300,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.'' for ''$54,000,000 for each of the fiscal years 1993 through 1995.''

Subsec. (e)(2). Pub. L. 105–392, § 102(3)(F)(ii), added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available not less than 20 percent for awards of grants and contracts under subsection (b) of this section.''

§ 293*l*. Advisory Committee on Training in Primary Care Medicine and Dentistry

(a) Establishment

The Secretary shall establish an advisory committee to be known as the Advisory Committee on Training in Primary Care Medicine and Dentistry (in this section referred to as the ''Advisory Committee'').

(b) Composition

(1) In general

The Secretary shall determine the appropriate number of individuals to serve on the Advisory Committee. Such individuals shall not be officers or employees of the Federal Government.

(2) Appointment

Not later than 90 days after November 13, 1998, the Secretary shall appoint the members of the Advisory Committee from among individuals who are health professionals. In making such appointments, the Secretary shall ensure a fair balance between the health professions, that at least 75 percent of the members of the Advisory Committee are health professionals, a broad geographic representation of members and a balance between urban and rural members. Members shall be appointed based on their competence, interest, and knowledge of the mission of the profession involved.

(3) Minority representation

In appointing the members of the Advisory Committee under paragraph (2), the Secretary shall ensure the adequate representation of women and minorities.

(c) Terms

(1) In general

A member of the Advisory Committee shall be appointed for a term of 3 years, except that of the members first appointed—

(A) ⅓ of such members shall serve for a term of 1 year;

(B) ⅓ of such members shall serve for a term of 2 years; and

(C) ⅓ of such members shall serve for a term of 3 years.

(2) Vacancies

(A) In general

A vacancy on the Advisory Committee shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) Filling unexpired term

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) Duties

The Advisory Committee shall—

(1) provide advice and recommendations to the Secretary concerning policy and program development and other matters of significance concerning the activities under section 293k of this title; and

(2) not later than 3 years after November 13, 1998, and annually thereafter, prepare and submit to the Secretary, and the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives, a report describing the activities of the Committee, including findings and recommendations made by the Committee concerning the activities under section 293k of this title.

(e) Meetings and documents

(1) Meetings

The Advisory Committee shall meet not less than 2 times each year. Such meetings shall be held jointly with other related entities established under this subchapter where appropriate.

(2) Documents

Not later than 14 days prior to the convening of a meeting under paragraph (1), the Advisory Committee shall prepare and make available an agenda of the matters to be considered by the Advisory Committee at such meeting. At any such meeting, the Advisory Council[1] shall distribute materials with respect to the issues to be addressed at the meeting. Not later than 30 days after the adjourning of such a meeting, the Advisory Committee shall prepare and make available a summary of the meeting and any actions taken by the Committee based upon the meeting.

(f) Compensation and expenses

(1) Compensation

Each member of the Advisory Committee shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Committee.

(2) Expenses

The members of the Advisory Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Committee.

(g) FACA

The Federal Advisory Committee Act shall apply to the Advisory Committee under this section only to the extent that the provisions of such Act do not conflict with the requirements of this section.

(July 1, 1944, ch. 373, title VII, § 748, as added Pub. L. 105–392, title I, § 102(4), Nov. 13, 1998, 112 Stat. 3539.)

[1] So in original. Probably should be ''Committee''.

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (g), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

November 13, 1998, referred to in subsec. (b)(2), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 105–392, which enacted this section, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 293*l*, act July 1, 1944, ch. 373, title VII, § 748, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2043; amended Pub. L. 102–531, title III, § 313(a)(3), Oct. 27, 1992, 106 Stat. 3507, authorized grants and contracts for development of general internal medicine and general pediatrics training programs, prior to repeal by Pub. L. 105–392, title I, § 102(4), Nov. 13, 1998, 112 Stat. 3539.

A prior section 748 of act July 1, 1944, was classified to section 294r of this title prior to renumbering by Pub. L. 97–35.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§§ 293m to 293p. Repealed. Pub. L. 105–392, title I, § 102(4), Nov. 13, 1998, 112 Stat. 3539

Section 293m, act July 1, 1944, ch. 373, title VII, § 749, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2043, authorized grants and contracts for development of programs in general practice of dentistry.

A prior section 749 of act July 1, 1944, was classified to section 294s of this title prior to renumbering by Pub. L. 97–35.

Section 293n, act July 1, 1944, ch. 373, title VII, § 750, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2044, authorized grants and contracts for development of training programs for physician assistants.

Section 293*o*, act July 1, 1944, ch. 373, title VII, § 751, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2044, authorized grants and contracts for implementation of training projects for podiatric physicians.

Section 293p, act July 1, 1944, ch. 373, title VII, § 752, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2045, set forth general provisions relating to traineeships and fellowships.

PART D—INTERDISCIPLINARY, COMMUNITY-BASED LINKAGES

§ 294. General provisions

(a) Collaboration

To be eligible to receive assistance under this part, an academic institution shall use such as-

sistance in collaboration with 2 or more disciplines.

(b) Activities

An entity shall use assistance under this part to carry out innovative demonstration projects for strategic workforce supplementation activities as needed to meet national goals for interdisciplinary, community-based linkages. Such assistance may be used consistent with this part—

(1) to develop and support training programs;

(2) for faculty development;

(3) for model demonstration programs;

(4) for the provision of stipends for fellowship trainees;

(5) to provide technical assistance; and

(6) for other activities that will produce outcomes consistent with the purposes of this part.

(July 1, 1944, ch. 373, title VII, § 750, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3541.)

PRIOR PROVISIONS

A prior section 294, act July 1, 1944, ch. 373, title VII, § 761, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2045; amended Pub. L. 103–43, title XX, § 2014(e), June 10, 1993, 107 Stat. 217, authorized grants for traineeships in health professions fields experiencing severe shortages of health professionals, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294, act July 1, 1944, ch. 373, title VII, § 727, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2257; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(1), 91 Stat. 1506, stated purpose of and authorized appropriations for Federal program of student loan insurance, prior to the general amendment of this subchapter by Pub. L. 102–408. See sections 292 and 292p of this title.

Another prior section 294, act July 1, 1944, ch. 373, title VII, § 740, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Oct. 13, 1964, Pub. L. 88–654, § 1(a), (b), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, §§ 2(b), 4(a), (f)(1), (2), 79 Stat. 1056 to 1058; Nov. 2, 1966, Pub. L. 89–709, § 3(a), (b), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 5(c)(1), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I § 121(a)(1), (2), (5)(B), 82 Stat. 777, 778; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(1), (4), (f)(2), 85 Stat. 451; Aug. 23, 1974, Pub. L. 93–385, § 2(b), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, 1105(b), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title IV, § 402, 90 Stat. 2266, which related to loan agreements for the establishment of student loan funds, was transferred to section 294m of this title.

A prior section 750 of act July 1, 1944, was classified to section 293n of this title prior to repeal by Pub. L. 105–392.

§ 294a. Area health education centers

(a) Authority for provision of financial assistance

(1) Assistance for planning, development, and operation of programs

(A) In general

The Secretary shall award grants to and enter into contracts with schools of medicine and osteopathic medicine, and incorporated consortia made up of such schools, or the parent institutions of such schools, for projects for the planning, development and operation of area health education center programs that—

(i) improve the recruitment, distribution, supply, quality and efficiency of personnel providing health services in underserved rural and urban areas and personnel providing health services to populations having demonstrated serious unmet health care needs;

(ii) increase the number of primary care physicians and other primary care providers who provide services in underserved areas through the offering of an educational continuum of health career recruitment through clinical education concerning underserved areas in a comprehensive health workforce strategy;

(iii) carry out recruitment and health career awareness programs to recruit individuals from underserved areas and underrepresented populations, including minority and other elementary or secondary students, into the health professions;

(iv) prepare individuals to more effectively provide health services to underserved areas or underserved populations through field placements, preceptorships, the conduct of or support of community-based primary care residency programs, and agreements with community-based organizations such as community health centers, migrant health centers, Indian health centers, public health departments and others;

(v) conduct health professions education and training activities for students of health professions schools and medical residents;

(vi) conduct at least 10 percent of medical student required clinical education at sites remote to the primary teaching facility of the contracting institution; and

(vii) provide information dissemination and educational support to reduce professional isolation, increase retention, enhance the practice environment, and improve health care through the timely dissemination of research findings using relevant resources.

(B) Other eligible entities

With respect to a State in which no area health education center program is in operation, the Secretary may award a grant or contract under subparagraph (A) to a school of nursing.

(C) Project terms

(i) In general

Except as provided in clause (ii), the period during which payments may be made under an award under subparagraph (A) may not exceed—

(I) in the case of a project, 12 years or

(II) in the case of a center within a project, 6 years.

(ii) Exception

The periods described in clause (i) shall not apply to projects that have completed the initial period of Federal funding under this section and that desire to compete for model awards under paragraph (2)(A).

(2) Assistance for operation of model programs

(A) In general

In the case of any entity described in paragraph (1)(A) that—

(i) has previously received funds under this section;

(ii) is operating an area health education center program; and

(iii) is no longer receiving financial assistance under paragraph (1);

the Secretary may provide financial assistance to such entity to pay the costs of operating and carrying out the requirements of the program as described in paragraph (1).

(B) Matching requirement

With respect to the costs of operating a model program under subparagraph (A), an entity, to be eligible for financial assistance under subparagraph (A), shall make available (directly or through contributions from State, county or municipal governments, or the private sector) recurring non-Federal contributions in cash toward such costs in an amount that is equal to not less than 50 percent of such costs.

(C) Limitation

The aggregate amount of awards provided under subparagraph (A) to entities in a State for a fiscal year may not exceed the lesser of—

(i) $2,000,000; or

(ii) an amount equal to the product of $250,000 and the aggregate number of area health education centers operated in the State by such entities.

(b) Requirements for centers

(1) General requirement

Each area health education center that receives funds under this section shall encourage the regionalization of health professions schools through the establishment of partnerships with community-based organizations.

(2) Service area

Each area health education center that receives funds under this section shall specifically designate a geographic area or medically underserved population to be served by the center. Such area or population shall be in a location removed from the main location of the teaching facilities of the schools participating in the program with such center.

(3) Other requirements

Each area health education center that receives funds under this section shall—

(A) assess the health personnel needs of the area to be served by the center and assist in the planning and development of training programs to meet such needs;

(B) arrange and support rotations for students and residents in family medicine, general internal medicine or general pediatrics, with at least one center in each program being affiliated with or conducting a rotating osteopathic internship or medical residency training program in family medicine (including geriatrics), general internal medicine (including geriatrics), or general pediatrics in which no fewer than 4 individuals are enrolled in first-year positions;

(C) conduct and participate in interdisciplinary training that involves physicians and other health personnel including, where practicable, public health professionals, physician assistants, nurse practitioners, nurse midwives, and behavioral and mental health providers; and

(D) have an advisory board, at least 75 percent of the members of which shall be individuals, including both health service providers and consumers, from the area served by the center.

(c) Certain provisions regarding funding

(1) Allocation to center

Not less than 75 percent of the total amount of Federal funds provided to an entity under this section shall be allocated by an area health education center program to the area health education center. Such entity shall enter into an agreement with each center for purposes of specifying the allocation of such 75 percent of funds.

(2) Operating costs

With respect to the operating costs of the area health education center program of an entity receiving funds under this section, the entity shall make available (directly or through contributions from State, county or municipal governments, or the private sector) non-Federal contributions in cash toward such costs in an amount that is equal to not less than 50 percent of such costs, except that the Secretary may grant a waiver for up to 75 percent of the amount of the required non-Federal match in the first 3 years in which an entity receives funds under this section.

(July 1, 1944, ch. 373, title VII, § 751, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3541.)

PRIOR PROVISIONS

A prior section 294a, act July 1, 1944, ch. 373, title VII, § 762, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2046, authorized grants and contracts for public health special projects, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294a, act July 1, 1944, ch. 373, title VII, § 728, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2257; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(2)–(4), 91 Stat. 1506; Dec. 17, 1980, Pub. L. 96–538, title IV, § 401, 94 Stat. 3192; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2726, 95 Stat. 916; Oct. 22, 1985, Pub. L. 99–129, title I, § 101, title II, § 208(h), 99 Stat. 523, 532; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 602(a)–(d), 636, title VII, § 707, 102 Stat. 3122, 3149, 3159; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(b), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(g)(1), 103 Stat. 612, related to Federal student loan insurance program, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292a of this title.

Another prior section 294a, act July 1, 1944, ch. 373, title VII, § 741, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 171; amended Oct. 13, 1964, Pub. L. 88–654, § 1(c), (d), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, § 4(b), (f)(3), (4), (g)(1), 79 Stat. 1057, 1058; Nov. 2, 1966, Pub. L. 89–709, § 3(c), (d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 4, 80 Stat. 1230; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(a)(3), (4), (5)(A), 82 Stat. 777; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(b)–(d), (e)(4), (f)(2), 85 Stat.

449–451; Oct. 27, 1972, Pub. L. 92–585, § 4, 86 Stat. 1293; Oct. 12, 1976, Pub. L. 94–484, title IV, §§ 403(a), (b), (d), 407(d)(1), 90 Stat. 2266, 2279, which related to loan provisions, was transferred to section 294n of this title.

A prior section 751 of act July 1, 1944, was classified to section 293*o* of this title prior to repeal by Pub. L. 105–392.

Another prior section 751 of act July 1, 1944, was classified to section 294r of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 751 of act July 1, 1944, was classified to section 294t of this title prior to renumbering by Pub. L. 97–35.

§ 294b. Health education and training centers

(a) In general

To be eligible for funds under this section, a health education training center shall be an entity otherwise eligible for funds under section 294a of this title that—

(1) addresses the persistent and severe unmet health care needs in States along the border between the United States and Mexico and in the State of Florida, and in other urban and rural areas with populations with serious unmet health care needs;

(2) establishes an advisory board comprised of health service providers, educators and consumers from the service area;

(3) conducts training and education programs for health professions students in these areas;

(4) conducts training in health education services, including training to prepare community health workers; and

(5) supports health professionals (including nursing) practicing in the area through educational and other services.

(b) Allocation of funds

The Secretary shall make available 50 percent of the amounts appropriated for each fiscal year under this section[1] for the establishment or operation of health education training centers through projects in States along the border between the United States and Mexico and in the State of Florida.

(July 1, 1944, ch. 373, title VII, § 752, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3544.)

REFERENCES IN TEXT

This section, referred to in subsec. (b), was in the original ''section 752'' meaning section 752 of act July 1, 1944, ch. 373, title VII, as added by Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3544, which is classified to this section. Provisions allocating appropriations for awards of grants and contracts under this section and providing that not less than 50 percent of the amount be made available for centers described in subsection (a)(1) of this section are contained in section 757(b)(1)(B) of act July 1, 1944, which is classified to section 294g(b)(1)(B) of this title.

PRIOR PROVISIONS

A prior section 294b, act July 1, 1944, ch. 373, title VII, § 763, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2047, authorized grants and contracts for development of preventive medicine and dental public health programs, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294b, act July 1, 1944, ch. 373, title VII, § 729, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2258; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(5), 91 Stat. 1506; Sept. 29, 1979, Pub. L. 96–76, title II, § 201, 93 Stat. 582; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2727, 95 Stat. 917; Oct. 22, 1985, Pub. L. 99–129, title II, § 208(g)(1), 99 Stat. 531; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 628(5), 629(b)(2), 102 Stat. 3145, 3146, related to limitations on individually insured loans and loan insurance, prior to the general revision of this subchapter by Pub. L. 102–408. See section 292b of this title.

Another prior section 294b, act July 1, 1944, ch. 373, title VII, § 742, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, § 4(c), 79 Stat. 1057; Nov. 2, 1966, Pub. L. 89–709, § 3(e), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 5(b), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(b), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(a), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(a), (f)(2), 85 Stat. 449, 451; Aug. 23, 1974, Pub. L. 93–385, § 2(a), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1105(a), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(e), title IV, §§ 404, 406(d), 90 Stat. 2244, 2267, 2268, which related to authorization of appropriations, was transferred to section 294*o* of this title.

A prior section 752 of act July 1, 1944, was classified to section 293p of this title prior to repeal by Pub. L. 105–392.

Another prior section 752 of act July 1, 1944, was classified to section 294u of this title prior to renumbering by Pub. L. 97–35.

§ 294c. Education and training relating to geriatrics

(a) Geriatric education centers

(1) In general

The Secretary shall award grants or contracts under this section to entities described in paragraphs[1] (1), (3), or (4) of section 295p of this title, and section 296(2) of this title, for the establishment or operation of geriatric education centers.

(2) Requirements

A geriatric education center is a program that—

(A) improves the training of health professionals in geriatrics, including geriatric residencies, traineeships, or fellowships;

(B) develops and disseminates curricula relating to the treatment of the health problems of elderly individuals;

(C) supports the training and retraining of faculty to provide instruction in geriatrics;

(D) supports continuing education of health professionals who provide geriatric care; and

(E) provides students with clinical training in geriatrics in nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers.

(b) Geriatric training regarding physicians and dentists

(1) In general

The Secretary may make grants to, and enter into contracts with, schools of medicine, schools of osteopathic medicine, teaching hospitals, and graduate medical education programs, for the purpose of providing support (including residencies, traineeships, and fel-

[1] See References in Text note below.

[1] So in original. Probably should be ''paragraph''.

lowships) for geriatric training projects to train physicians, dentists and behavioral and mental health professionals who plan to teach geriatric medicine, geriatric behavioral or mental health, or geriatric dentistry.

(2) Requirements

Each project for which a grant or contract is made under this subsection shall—

(A) be staffed by full-time teaching physicians who have experience or training in geriatric medicine or geriatric behavioral or mental health;

(B) be staffed, or enter into an agreement with an institution staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;

(C) be staffed, or enter into an agreement with an institution staffed by full-time or part-time teaching behavioral mental health professionals who have experience or training in geriatric behavioral or mental health;

(D) be based in a graduate medical education program in internal medicine or family medicine or in a department of geriatrics or behavioral or mental health;

(E) provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric behavioral or mental health units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals; and

(F) provide training in geriatrics through one or both of the training options described in subparagraphs (A) and (B) of paragraph (3).

(3) Training options

The training options referred to in subparagraph (F) of paragraph (2) shall be as follows:

(A) A 1-year retraining program in geriatrics for—

(i) physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and behavioral or mental health at schools of medicine and osteopathic medicine;

(ii) dentists who are faculty members at schools of dentistry or at hospital departments of dentistry; and

(iii) behavioral or mental health professionals who are faculty members in departments of behavioral or mental health; and

(B) A 2-year internal medicine or family medicine fellowship program providing emphasis in geriatrics, which shall be designed to provide training in clinical geriatrics and geriatrics research for—

(i) physicians who have completed graduate medical education programs in internal medicine, family medicine, behavioral or mental health, neurology, gynecology, or rehabilitation medicine;

(ii) dentists who have demonstrated a commitment to an academic career and who have completed postdoctoral dental training, including postdoctoral dental education programs or who have relevant advanced training or experience; and

(iii) behavioral or mental health professionals who have completed graduate medical education programs in behavioral or mental health.

(4) Definitions

For purposes of this subsection:

(A) The term ''graduate medical education program'' means a program sponsored by a school of medicine, a school of osteopathic medicine, a hospital, or a public or private institution that—

(i) offers postgraduate medical training in the specialties and subspecialties of medicine; and

(ii) has been accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association through its Committee on Postdoctoral Training.

(B) The term ''post-doctoral dental education program'' means a program sponsored by a school of dentistry, a hospital, or a public or private institution that—

(i) offers post-doctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and

(ii) has been accredited by the Commission on Dental Accreditation.

(c) Geriatric faculty fellowships

(1) Establishment of program

The Secretary shall establish a program to provide Geriatric Academic Career Awards to eligible individuals to promote the career development of such individuals as academic geriatricians.

(2) Eligible individuals

To be eligible to receive an Award under paragraph (1), an individual shall—

(A) be board certified or board eligible in internal medicine, family practice, or psychiatry;

(B) have completed an approved fellowship program in geriatrics; and

(C) have a junior faculty appointment at an accredited (as determined by the Secretary) school of medicine or osteopathic medicine.

(3) Limitations

No Award under paragraph (1) may be made to an eligible individual unless the individual—

(A) has submitted to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, and the Secretary has approved such application; and

(B) provides, in such form and manner as the Secretary may require, assurances that the individual will meet the service requirement described in subsection (e)[2].

[2] So in original. Probably should be ''paragraph (5)''.

(4) Amount and term

(A) Amount

The amount of an Award under this section shall equal $50,000 for fiscal year 1998, adjusted for subsequent fiscal years to reflect the increase in the Consumer Price Index.

(B) Term

The term of any Award made under this subsection shall not exceed 5 years.

(5) Service requirement

An individual who receives an Award under this subsection shall provide training in clinical geriatrics, including the training of interdisciplinary teams of health care professionals. The provision of such training shall constitute at least 75 percent of the obligations of such individual under the Award.

(July 1, 1944, ch. 373, title VII, § 753, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3544; amended Pub. L. 107–205, title II, § 202(b), Aug. 1, 2002, 116 Stat. 817.)

PRIOR PROVISIONS

A prior section 294c, act July 1, 1944, ch. 373, title VII, § 765, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2047, authorized appropriations for purpose of carrying out subpart I of this part, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294c, act July 1, 1944, ch. 373, title VII, § 730, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2258, related to sources of funds for eligible student loans, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292c of this title.

Another prior section 294c, act July 1, 1944, ch. 373, title VII, § 743, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, § 4(d), 79 Stat. 1057; Nov. 3, 1966, Pub. L. 89–751, § 5(c)(2), (3), 80 Stat. 1233; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(c), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(b), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(2), (f)(2), 85 Stat. 451; Oct. 12, 1976, Pub. L. 94–484, title IV, §§ 405, 406(e), 90 Stat. 2267, 2268, which related to the distribution of assets from loan funds, was transferred to section 294p of this title.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–205 substituted ‘‘, and section 296(2) of this title,’’ for ‘‘, and section 298b(2) of this title,’’.

§ 294d. Quentin N. Burdick program for rural interdisciplinary training

(a) Grants

The Secretary may make grants or contracts under this section to help entities fund authorized activities under an application approved under subsection (c) of this section.

(b) Use of amounts

(1) In general

Amounts provided under subsection (a) of this section shall be used by the recipients to fund interdisciplinary training projects designed to—

(A) use new and innovative methods to train health care practitioners to provide services in rural areas;

(B) demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care;

(C) deliver health care services to individuals residing in rural areas;

(D) enhance the amount of relevant research conducted concerning health care issues in rural areas; and

(E) increase the recruitment and retention of health care practitioners from rural areas and make rural practice a more attractive career choice for health care practitioners.

(2) Methods

A recipient of funds under subsection (a) of this section may use various methods in carrying out the projects described in paragraph (1), including—

(A) the distribution of stipends to students of eligible applicants;

(B) the establishment of a post-doctoral fellowship program;

(C) the training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

(D) the purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

(3) Administration

(A) In general

An applicant shall not use more than 10 percent of the funds made available to such applicant under subsection (a) of this section for administrative expenses.

(B) Training

Not more than 10 percent of the individuals receiving training with funds made available to an applicant under subsection (a) of this section shall be trained as doctors of medicine or doctors of osteopathy.

(C) Limitation

An institution that receives a grant under this section shall use amounts received under such grant to supplement, not supplant, amounts made available by such institution for activities of the type described in subsection (b)(1) of this section in the fiscal year preceding the year for which the grant is received.

(c) Applications

Applications submitted for assistance under this section shall—

(1) be jointly submitted by at least two eligible applicants with the express purpose of assisting individuals in academic institutions in establishing long-term collaborative relationships with health care providers in rural areas; and

(2) designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community behavioral and mental health centers, long-term care facilities, Native Hawaiian health centers, or facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization

under a contract with the Indian Health Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(d) Definitions

For the purposes of this section, the term ''rural'' means geographic areas that are located outside of standard metropolitan statistical areas.

(July 1, 1944, ch. 373, title VII, § 754, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3547.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (c)(2), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 294d, act July 1, 1944, ch. 373, title VII, § 766, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2047, authorized grants and contracts for development of advanced training of allied health professionals, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294d, act July 1, 1944, ch. 373, title VII, § 731, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2258; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(c)(1), (2), 91 Stat. 389, 390; Dec. 19, 1977, Pub. L. 95–215, § 4(a)–(d), (e)(6), 91 Stat. 1505, 1506; Dec. 17, 1980, Pub. L. 96–538, title IV, § 402, 94 Stat. 3192; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2728, 95 Stat. 918; Oct. 22, 1985, Pub. L. 99–129, title II, §§ 208(a), (b)(1), (2), (c)(1), (d), (i), 211(a)(2), 99 Stat. 529–532, 539; Nov. 4, 1988, Pub. L. 100–607, title VI, § 602(e), (f), 102 Stat. 3123; Apr. 6, 1991, Pub. L. 102–25, title III, § 374, 105 Stat. 95; July 23, 1992, Pub. L. 102–325, title IV, § 427(b)(2), 106 Stat. 549, related to eligibility of borrowers and terms of insurance, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292d of this title.

Another prior section 294d, act July 1, 1944, ch. 373, title VII, § 744, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 173; amended Oct. 22, 1965, Pub. L. 89–290, § 4(e), 79 Stat. 1057; Nov. 3, 1966, Pub. L. 89–751, § 5(a), 80 Stat. 1230; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(d), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(c), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(3), (f)(2), 85 Stat. 451, provided for loans to schools to capitalize health professions student loan funds, prior to repeal by Pub. L. 94–484, title IV, § 406(a)(1), Oct. 12, 1976, 90 Stat. 2268.

§ 294e. Allied health and other disciplines

(a) In general

The Secretary may make grants or contracts under this section to help entities fund activities of the type described in subsection (b) of this section.

(b) Activities

Activities of the type described in this subsection include the following:

(1) Assisting entities in meeting the costs associated with expanding or establishing programs that will increase the number of individuals trained in allied health professions. Programs and activities funded under this paragraph may include—

(A) those that expand enrollments in allied health professions with the greatest shortages or whose services are most needed by the elderly;

(B) those that provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences;

(C) those that establish community-based allied health training programs that link academic centers to rural clinical settings;

(D) those that provide career advancement training for practicing allied health professionals;

(E) those that expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained;

(F) those that develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics;

(G) those that expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly;

(H) those that expand or establish demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research;

(I) those that provide financial assistance (in the form of traineeships) to students who are participants in any such program; and

(i) who plan to pursue a career in an allied health field that has a demonstrated personnel shortage; and

(ii) who agree upon completion of the training program to practice in a medically underserved community;

that shall be utilized to assist in the payment of all or part of the costs associated with tuition, fees and such other stipends as the Secretary may consider necessary; and

(J) those to meet the costs of projects to plan, develop, and operate or maintain graduate programs in behavioral and mental health practice.

(2) Planning and implementing projects in preventive and primary care training for podiatric physicians in approved or provisionally approved residency programs that shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

(3) Carrying out demonstration projects in which chiropractors and physicians collaborate to identify and provide effective treatment for spinal and lower-back conditions.

(July 1, 1944, ch. 373, title VII, § 755, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3548.)

PRIOR PROVISIONS

A prior section 294e, act July 1, 1944, ch. 373, title VII, § 767, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2048, authorized grants and contracts for establishment of programs to increase number of allied health professionals, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294e, act July 1, 1944, ch. 373, title VII, § 732, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2260; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(c)(3), (4), 91 Stat. 390; Dec. 19, 1977, Pub. L. 95–215, § 4(e)(8), (9), 91 Stat. 1506; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2729, 95 Stat. 918; Oct. 22, 1985, Pub. L. 99–129, title II, § 208(e), 99 Stat. 531; Nov. 4, 1988, Pub. L. 100–607, title VI, § 602(g), 102 Stat. 3123, related to certificates of loan insurance, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292e of this title.

Another prior section 294e, act July 1, 1944, ch. 373, title VII, § 744, formerly § 745, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 173; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 105(f)(2), 85 Stat. 451; renumbered § 744, Oct. 12, 1976, Pub. L. 94–484, title IV, § 406(a)(2), 90 Stat. 2268, which related to administrative provisions, was transferred to section 294q of this title.

§ 294f. Advisory Committee on Interdisciplinary, Community-Based Linkages

(a) Establishment

The Secretary shall establish an advisory committee to be known as the Advisory Committee on Interdisciplinary, Community-Based Linkages (in this section referred to as the ''Advisory Committee'').

(b) Composition

(1) In general

The Secretary shall determine the appropriate number of individuals to serve on the Advisory Committee. Such individuals shall not be officers or employees of the Federal Government.

(2) Appointment

Not later than 90 days after November 13, 1998, the Secretary shall appoint the members of the Advisory Committee from among individuals who are health professionals from schools of the types described in sections 294a(a)(1)(A), 294a(a)(1)(B), 294c(b), 294d(3)(A), and 294e(b) of this title. In making such appointments, the Secretary shall ensure a fair balance between the health professions, that at least 75 percent of the members of the Advisory Committee are health professionals, a broad geographic representation of members and a balance between urban and rural members. Members shall be appointed based on their competence, interest, and knowledge of the mission of the profession involved.

(3) Minority representation

In appointing the members of the Advisory Committee under paragraph (2), the Secretary shall ensure the adequate representation of women and minorities.

(c) Terms

(1) In general

A member of the Advisory Committee shall be appointed for a term of 3 years, except that of the members first appointed—

(A) ⅓ of the members shall serve for a term of 1 year;

(B) ⅓ of the members shall serve for a term of 2 years; and

(C) ⅓ of the members shall serve for a term of 3 years.

(2) Vacancies

(A) In general

A vacancy on the Advisory Committee shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) Filling unexpired term

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) Duties

The Advisory Committee shall—

(1) provide advice and recommendations to the Secretary concerning policy and program development and other matters of significance concerning the activities under this part; and

(2) not later than 3 years after November 13, 1998, and annually thereafter, prepare and submit to the Secretary, and the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives, a report describing the activities of the Committee, including findings and recommendations made by the Committee concerning the activities under this part.

(e) Meetings and documents

(1) Meetings

The Advisory Committee shall meet not less than 3 times each year. Such meetings shall be held jointly with other related entities established under this subchapter where appropriate.

(2) Documents

Not later than 14 days prior to the convening of a meeting under paragraph (1), the Advisory Committee shall prepare and make available an agenda of the matters to be considered by the Advisory Committee at such meeting. At any such meeting, the Advisory Council[1] shall distribute materials with respect to the issues to be addressed at the meeting. Not later than 30 days after the adjourning of such a meeting, the Advisory Committee shall prepare and make available a summary of the meeting and any actions taken by the Committee based upon the meeting.

(f) Compensation and expenses

(1) Compensation

Each member of the Advisory Committee shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Committee.

(2) Expenses

The members of the Advisory Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Committee.

(g) FACA

The Federal Advisory Committee Act shall apply to the Advisory Committee under this sec-

[1] So in original. Probably should be ''Committee''.

tion only to the extent that the provisions of such Act do not conflict with the requirements of this section.

(July 1, 1944, ch. 373, title VII, § 756, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3549.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (g), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

November 13, 1998, referred to in subsec. (b)(2), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 105–392, which amended this part generally, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 294f, act July 1, 1944, ch. 373, title VII, § 733, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2262; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(10), 91 Stat. 1506; Nov. 6, 1978, Pub. L. 95–598, title III, § 327, 92 Stat. 2679; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2730, 95 Stat. 919; July 1, 1988, Pub. L. 100–360, title IV, § 411(f)(10)(C)(ii), 102 Stat. 781; Nov. 4, 1988, Pub. L. 100–607, title VI, § 602(h)–(k), 102 Stat. 3123; Aug. 16, 1989, Pub. L. 101–93, § 7, 103 Stat. 615, related to procedures upon default by borrower under student loan insurance program, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292f of this title.

Another prior section 294f, act July 1, 1944, ch. 373, title VII, § 746, as added Aug. 16, 1968, Pub. L. 90–490, title I, § 121(e), 82 Stat. 778; amended Nov. 18, 1971, Pub. L. 92–157, title I, §§ 105(f)(2), 106(b)(5), 85 Stat. 451, 453, provided for transfer of funds to scholarships in relation to loans to students studying in United States, prior to repeal by Pub. L. 94–484, title IV, § 406(a)(1), Oct. 12, 1976, 90 Stat. 2268.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 294g. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this part, $55,600,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(b) Allocation

(1) In general

Of the amounts appropriated under subsection (a) of this section for a fiscal year, the Secretary shall make available—

(A) not less than $28,587,000 for awards of grants and contracts under section 294a of this title;

(B) not less than $3,765,000 for awards of grants and contracts under section 294b of this title, of which not less than 50 percent of such amount shall be made available for centers described in subsection (a)(1) of such section; and

(C) not less than $22,631,000 for awards of grants and contracts under sections 294c, 294d, and 294e of this title.

(2) Ratable reduction

If amounts appropriated under subsection (a) of this section for any fiscal year are less than the amount required to comply with paragraph (1), the Secretary shall ratably reduce the amount to be made available under each of subparagraphs (A) through (C) of such paragraph accordingly.

(3) Increase in amounts

If amounts appropriated for a fiscal year under subsection (a) of this section exceed the amount authorized under such subsection for such fiscal year, the Secretary may increase the amount to be made available for programs and activities under this part without regard to the amounts specified in each of subparagraphs (A) through (C) of paragraph (2).

(c) Obligation of certain amounts

(1) Area health education center programs

Of the amounts made available under subsection (b)(1)(A) of this section for each fiscal year, the Secretary may obligate for awards under section 294a(a)(2) of this title—

(A) not less than 23 percent of such amounts in fiscal year 1998;

(B) not less than 30 percent of such amounts in fiscal year 1999;

(C) not less than 35 percent of such amounts in fiscal year 2000;

(D) not less than 40 percent of such amounts in fiscal year 2001; and

(E) not less than 45 percent of such amounts in fiscal year 2002.

(2) Sense of Congress

It is the sense of the Congress that—

(A) every State have an area health education center program in effect under this section; and

(B) the ratio of Federal funding for the model program under section 294a(a)(2) of this title should increase over time and that Federal funding for other awards under this section shall decrease so that the national program will become entirely comprised of programs that are funded at least 50 percent by State and local partners.

(July 1, 1944, ch. 373, title VII, § 757, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3551.)

PRIOR PROVISIONS

A prior section 294g, act July 1, 1944, ch. 373, title VII, § 734, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2263; amended Oct. 22, 1985, Pub. L. 99–129, title II, § 208(f), 99 Stat. 531, related to establishment of a student loan insurance fund, prior to the gen-

eral amendment of this subchapter by Pub. L. 102–408. See section 292i of this title.

Another prior section 294g, act July 1, 1944, ch. 373, title VII, § 747, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 105(f)(4), 85 Stat. 451; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(f), 90 Stat. 2244, provided for student loans to citizens of United States who were full-time students in schools of medicine located outside United States, prior to repeal by Pub. L. 94–484, title IV, § 401(a), Oct. 12, 1976, 90 Stat. 2257, effective Oct. 1, 1976.

§ 294h. Interdisciplinary training and education on domestic violence and other types of violence and abuse

(a) Grants

The Secretary, acting through the Director of the Health Resources and Services Administration, shall award grants under this section to develop interdisciplinary training and education programs that provide undergraduate, graduate, post-graduate medical, nursing (including advanced practice nursing students), and other health professions students with an understanding of, and clinical skills pertinent to, domestic violence, sexual assault, stalking, and dating violence.

(b) Eligibility

To be eligible to receive a grant under this section an entity shall—

(1) be an accredited school of allopathic or osteopathic medicine;

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(A) information to demonstrate that the applicant includes the meaningful participation of a school of nursing and at least one other school of health professions or graduate program in public health, dentistry, social work, midwifery, or behavioral and mental health;

(B) strategies for the dissemination and sharing of curricula and other educational materials developed under the grant to other interested medical and nursing schools and national resource repositories for materials on domestic violence and sexual assault; and

(C) a plan for consulting with community-based coalitions or individuals who have experience and expertise in issues related to domestic violence, sexual assault, dating violence, and stalking for services provided under the program carried out under the grant.

(c) Use of funds

(1) Required uses

Amounts provided under a grant under this section shall be used to—

(A) fund interdisciplinary training and education projects that are designed to train medical, nursing, and other health professions students and residents to identify and provide health care services (including mental or behavioral health care services and referrals to appropriate community services) to individuals who are experiencing or who have experienced domestic violence, sexual assault, and stalking or dating violence; and

(B) plan and develop culturally competent clinical components for integration into approved residency training programs that address health issues related to domestic violence, sexual assault, dating violence, and stalking, along with other forms of violence as appropriate, and include the primacy of victim safety and confidentiality.

(2) Permissive uses

Amounts provided under a grant under this section may be used to—

(A) offer community-based training opportunities in rural areas for medical, nursing, and other students and residents on domestic violence, sexual assault, stalking, and dating violence, and other forms of violence and abuse, which may include the use of distance learning networks and other available technologies needed to reach isolated rural areas; or

(B) provide stipends to students who are underrepresented in the health professions as necessary to promote and enable their participation in clerkships, preceptorships, or other offsite training experiences that are designed to develop health care clinical skills related to domestic violence, sexual assault, dating violence, and stalking.

(3) Requirements

(A) Confidentiality and safety

Grantees under this section shall ensure that all educational programs developed with grant funds address issues of confidentiality and patient safety, and that faculty and staff associated with delivering educational components are fully trained in procedures that will protect the immediate and ongoing security of the patients, patient records, and staff. Advocacy-based coalitions or other expertise available in the community shall be consulted on the development and adequacy of confidentially and security procedures, and shall be fairly compensated by grantees for their services.

(B) Rural programs

Rural training programs carried out under paragraph (2)(A) shall reflect adjustments in protocols and procedures or referrals that may be needed to protect the confidentiality and safety of patients who live in small or isolated communities and who are currently or have previously experienced violence or abuse.

(4) Child and elder abuse

Issues related to child and elder abuse may be addressed as part of a comprehensive programmatic approach implemented under a grant under this section.

(d) Requirements of grantees

(1) Limitation on administrative expenses

A grantee shall not use more than 10 percent of the amounts received under a grant under this section for administrative expenses.

(2) Contribution of funds

A grantee under this section, and any entity receiving assistance under the grant for train-

ing and education, shall contribute non-Federal funds, either directly or through in-kind contributions, to the costs of the activities to be funded under the grant in an amount that is not less than 25 percent of the total cost of such activities.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $3,000,000 for each of fiscal years 2007 through 2011. Amounts appropriated under this subsection shall remain available until expended.

(July 1, 1944, ch. 373, title VII, § 758, as added Pub. L. 109–162, title V, § 503, Jan. 5, 2006, 119 Stat. 3024; amended Pub. L. 109–271, § 4(c), Aug. 12, 2006, 120 Stat. 758.)

PRIOR PROVISIONS

A prior section 294h, act July 1, 1944, ch. 373, title VII, § 735, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2263; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(c)(5), 91 Stat. 390; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2709(e)(4)(B), 95 Stat. 911; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035, related to functions, powers, and duties of the Secretary under the Federal student loan insurance program, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292j of this title.

A prior section 294i, act July 1, 1944, ch. 373, title VII, § 771, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2049, authorized grants to educational entities offering programs in health administration, hospital administration, or health policy analysis and planning, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294i, act July 1, 1944, ch. 373, title VII, § 736, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2265; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(d), 91 Stat. 390, related to participation by Federal credit unions in Federal, State, and private student loan insurance programs, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292k of this title.

Sections 294j to 294m were omitted in the general amendment of this subchapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

Section 294j, act July 1, 1944, ch. 373, title VII, § 737, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2265; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(c)(6), 91 Stat. 390; Dec. 19, 1977, Pub. L. 95–215, § 4(f), 91 Stat. 1506; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2731, 95 Stat. 919; Jan. 4, 1983, Pub. L. 97–414, § 8(i), 96 Stat. 2061; Oct. 22, 1985, Pub. L. 99–129, title II, §§ 201(c), 204(c), 208(g)(2), 99 Stat. 525, 527, 531; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 602(*l*), 628(6), 629(b)(2), 102 Stat. 3124, 3145, 3146, defined ''eligible institution'', ''eligible lender'', ''line of credit'', and ''school of allied health''. See section 292*o* of this title.

Section 294j–1, act July 1, 1944, ch. 373, title VII, § 737A, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2732, 95 Stat. 919, related to determination of eligible students. See section 292*l* of this title.

Section 294k, act July 1, 1944, ch. 373, title VII, § 738, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2265; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(12), 91 Stat. 1506, related to repayment of loans of deceased or disabled borrowers from student loan insurance fund. See section 292m of this title.

Section 294*l*, act July 1, 1944, ch. 373, title VII, § 739, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2266; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(13), 91 Stat. 1506; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2733, 95 Stat. 920, related to eligibility of institutions and recordation and availability of information. See section 292n of this title.

Section 294*l*–1, act July 1, 1944, ch. 373, title VII, § 739A, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 602(m), 102 Stat. 3124, related to reissuance and refinancing of certain loans.

Section 294m, act July 1, 1944, ch. 373, title VII, § 740, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Oct. 13, 1964, Pub. L. 88–654, § 1(a), (b), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, §§ 2(b), 4 (a), (f)(1), (2), 79 Stat. 1056–1058; Nov. 2, 1966, Pub. L. 89–709, § 3(a), (b), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 5(c)(1), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(a)(1), (2), (5)(B), 82 Stat. 777, 778; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(1), (4), (f)(2), 85 Stat. 451; Aug. 23, 1974, Pub. L. 93–385, § 2(b), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1105(b), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title IV, § 402, 90 Stat. 2266; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(a)(1), (j)(1), 99 Stat. 532, 536; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 603(a), 628(7), 629(b)(2), 102 Stat. 3125, 3145, 3146; Nov. 6, 1990, Pub. L. 101–527, § 5(a), (b), 104 Stat. 2322, 2323, related to loan agreements for establishment of student loan funds. See section 292q of this title.

AMENDMENTS

2006—Subsec. (c)(1)(A). Pub. L. 109–271 inserted ''experiencing'' after ''to individuals who are''.

PART E—HEALTH PROFESSIONS AND PUBLIC HEALTH WORKFORCE

SUBPART 1—HEALTH PROFESSIONS WORKFORCE INFORMATION AND ANALYSIS

§ 294n. Health professions workforce information and analysis

(a) Purpose

It is the purpose of this section to—

(1) provide for the development of information describing the health professions workforce and the analysis of workforce related issues; and

(2) provide necessary information for decision-making regarding future directions in health professions and nursing programs in response to societal and professional needs.

(b) Grants or contracts

The Secretary may award grants or contracts to State or local governments, health professions schools, schools of nursing, academic health centers, community-based health facilities, and other appropriate public or private nonprofit entities to provide for—

(1) targeted information collection and analysis activities related to the purposes described in subsection (a) of this section;

(2) research on high priority workforce questions;

(3) the development of a non-Federal analytic and research infrastructure related to the purposes described in subsection (a) of this section; and

(4) the conduct of program evaluation and assessment.

(c) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section, $750,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(2) Reservation

Of the amounts appropriated under subsection (a) of this section for a fiscal year, the Secretary shall reserve not less than $600,000

for conducting health professions research and for carrying out data collection and analysis in accordance with section 295k of this title.

(3) Availability of additional funds

Amounts otherwise appropriated for programs or activities under this subchapter may be used for activities under subsection (b) of this section with respect to the programs or activities from which such amounts were made available.

(July 1, 1944, ch. 373, title VII, § 761, as added Pub. L. 105–392, title I, § 104(a), Nov. 13, 1998, 112 Stat. 3552.)

PRIOR PROVISIONS

A prior section 294n, act July 1, 1944, ch. 373, title VII, § 776, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2050, and amended, which related to grants and contracts to provide health care for individuals with acquired immune deficiency syndrome, was renumbered section 2692 of title XXVI of act July 1, 1944, by Pub. L. 104–146, § 3(h)(3), May 20, 1996, 110 Stat. 1364, and transferred to section 300ff–111 of this title.

Another prior section 294n, act July 1, 1944, ch. 373, title VII, § 741, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 171; amended Oct. 13, 1964, Pub. L. 88–654, § 1(c), (d), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, § 4(b), (f)(3), (4), (g)(1), 79 Stat. 1057, 1058; Nov. 2, 1966, Pub. L. 89–709, § 3(c), (d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 4, 80 Stat. 1230; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(a)(3), (4), (5)(A), 82 Stat. 777; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(b)–(d), (e)(4), (f)(2), 85 Stat. 449–451; Oct. 27, 1972, Pub. L. 92–585, § 4, 86 Stat. 1293; Oct. 12, 1976, Pub. L. 94–484, title IV, §§ 403(a), (b), (d), 407(d)(1), 90 Stat. 2266, 2267, 2279; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(e)(1), (2), 91 Stat. 390; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2735, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(a)(2), (3), (b), (c)(1), (d)–(f), 99 Stat. 532, 534; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 603(b), (c), 628(8), 629(b)(2), 102 Stat. 3125, 3145, 3146; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035, outlined provisions for loans from a student loan fund, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292r of this title.

A prior section 761 of act July 1, 1944, was classified to section 294 of this title prior to the general amendment of part D of this subchapter by Pub. L. 105–392.

Another prior section 761 of act July 1, 1944, was classified to section 294cc of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 761 of act July 1, 1944, was classified to section 295 of this title prior to repeal by Pub. L. 99–129.

Another prior section 761 of act July 1, 1944, was classified to section 295 of this title prior to the general amendment of part D of this subchapter by Pub. L. 91–696.

§ 294o. Advisory Council on Graduate Medical Education

(a) Establishment; duties

There is established the Council on Graduate Medical Education (in this section referred to as the ''Council''). The Council shall—

(1) make recommendations to the Secretary of Health and Human Services (in this section referred to as the ''Secretary''), and to the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives, with respect to—

(A) the supply and distribution of physicians in the United States;

(B) current and future shortages or excesses of physicians in medical and surgical specialties and subspecialties;

(C) issues relating to foreign medical school graduates;

(D) appropriate Federal policies with respect to the matters specified in subparagraphs (A), (B), and (C), including policies concerning changes in the financing of undergraduate and graduate medical education programs and changes in the types of medical education training in graduate medical education programs;

(E) appropriate efforts to be carried out by hospitals, schools of medicine, schools of osteopathic medicine, and accrediting bodies with respect to the matters specified in subparagraphs (A), (B), and (C), including efforts for changes in undergraduate and graduate medical education programs; and

(F) deficiencies in, and needs for improvements in, existing data bases concerning the supply and distribution of, and postgraduate training programs for, physicians in the United States and steps that should be taken to eliminate those deficiencies; and

(2) encourage entities providing graduate medical education to conduct activities to voluntarily achieve the recommendations of the Council under paragraph (1)(E).

(b) Composition

The Council shall be composed of—

(1) the Assistant Secretary for Health or the designee of the Assistant Secretary;

(2) the Administrator of the Health Care Financing Administration;

(3) the Chief Medical Director of the Department of Veterans Affairs;

(4) 6 members appointed by the Secretary to include representatives of practicing primary care physicians, national and specialty physician organizations, foreign medical graduates, and medical student and house staff associations;

(5) 4 members appointed by the Secretary to include representatives of schools of medicine and osteopathic medicine and public and private teaching hospitals; and

(6) 4 members appointed by the Secretary to include representatives of health insurers, business, and labor.

(c) Terms of appointed members

(1) In general; staggered rotation

Members of the Council appointed under paragraphs (4), (5), and (6) of subsection (b) of this section shall be appointed for a term of 4 years, except that the term of office of the members first appointed shall expire, as designated by the Secretary at the time of appointment, 4 at the end of 1 year, 4 at the end of 2 years, 3 at the end of 3 years, and 3 at the end of 4 years.

(2) Date certain for appointment

The Secretary shall appoint the first members to the Council under paragraphs (4), (5), and (6) of subsection (b) of this section within 60 days after October 13, 1992.

(d) Chair

The Council shall elect one of its members as Chairman of the Council.

(e) Quorum

Nine members of the Council shall constitute a quorum, but a lesser number may hold hearings.

(f) Vacancies

Any vacancy in the Council shall not affect its power to function.

(g) Compensation

Each member of the Council who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate prescribed for GS–18 under the General Schedule under section 5332 of title 5 for each day, including traveltime,[1] such member is engaged in the actual performance of duties as a member of the Council. A member of the Council who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(h) Certain authorities and duties

(1) Authorities

In order to carry out the provisions of this section, the Council is authorized to—

(A) collect such information, hold such hearings, and sit and act at such times and places, either as a whole or by subcommittee, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Council or such subcommittee may consider available; and

(B) request the cooperation and assistance of Federal departments, agencies, and instrumentalities, and such departments, agencies, and instrumentalities are authorized to provide such cooperation and assistance.

(2) Coordination of activities

The Council shall coordinate its activities with the activities of the Secretary under section 295k of this title. The Secretary shall, in cooperation with the Council and pursuant to the recommendations of the Council, take such steps as are practicable to eliminate deficiencies in the data base established under section 295k of this title and shall make available in its reports such comprehensive data sets as are developed pursuant to this section.

(i) Requirement regarding reports

In the reports required under subsection (a) of this section, the Council shall specify its activities during the period for which the report is made.

(j) Final report

Not later than April 1, 2002, the Council shall submit a final report under subsection (a) of this section.

(k) Termination

The Council shall terminate September 30, 2003.

[1] So in original. Probably should be ''travel time,''.

(*l*) Funding

Amounts otherwise appropriated under this subchapter may be utilized by the Secretary to support the activities of the Council.

(July 1, 1944, ch. 373, title VII, § 762, formerly Pub. L. 102–408, title III, § 301, Oct. 13, 1992, 106 Stat. 2080, as amended Pub. L. 102–531, title III, § 313(b), Oct. 27, 1992, 106 Stat. 3507; renumbered § 762 of act July 1, 1944, and amended Pub. L. 105–392, title I, § 104(b), Nov. 13, 1998, 112 Stat. 3552; Pub. L. 107–251, title V, § 502, Oct. 26, 2002, 116 Stat. 1664.)

CODIFICATION

Section was formerly set out as a note under section 295k of this title prior to renumbering by Pub. L. 105–392.

PRIOR PROVISIONS

A prior section 294*o*, act July 1, 1944, ch. 373, title VII, § 777, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2052, authorized grants and contracts for improvement of training in geriatrics, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294*o*, act July 1, 1944, ch. 373, title VII, § 742, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, § 4(c), 79 Stat. 1057; Nov. 2, 1966, Pub. L. 89–709, § 3(e), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 5(b), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(b), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(a), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(a), (f)(2), 85 Stat. 449, 451; Aug. 23, 1974, Pub. L. 93–385, § 2(a), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1105(a), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(e), title IV, §§ 404, 406(d), 90 Stat. 2244, 2267, 2268; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2734, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(g), 99 Stat. 534; Nov. 6, 1990, Pub. L. 101–527, § 5(c), 104 Stat. 2323, provided for authorization of appropriations for purpose of making Federal contributions into student loan funds, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292y of this title.

A prior section 762 of act July 1, 1944, was classified to section 295a of this title prior to repeal by Pub. L. 99–129.

Another prior section 762 of act July 1, 1944, was classified to section 295a of this title prior to the general amendment of part D of this subchapter by Pub. L. 91–696.

AMENDMENTS

2002—Subsec. (k). Pub. L. 107–251 substituted ''2003'' for ''2002''.

1998—Subsec. (j). Pub. L. 105–392, § 104(b)(1), substituted ''2002'' for ''1995''.

Subsec. (k). Pub. L. 105–392, § 104(b)(2), substituted ''2002'' for ''1995''.

Subsec. (*l*). Pub. L. 105–392, § 104(b)(3), added subsec. (*l*).

1992—Subsec. (a)(2). Pub. L. 102–531 substituted ''voluntarily'' for ''voluntary''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and ex-

changes and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Reference to Chief Medical Director of Department of Veterans Affairs deemed to refer to Under Secretary for Health of Department of Veterans Affairs pursuant to section 302(e) of Pub. L. 102–405, set out as a note under section 305 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

FUNDING FOR COUNCIL ON GRADUATE MEDICAL EDUCATION

Pub. L. 109–149, title II, § 219, Dec. 30, 2005, 119 Stat. 2861, provided that: ''Notwithstanding any other provisions of law, funds made available in this Act [see Tables for classification] may be used to continue operating the Council on Graduate Medical Education established by section 301 of Public Law 102–408 [now section 762 of act July 1, 1944, which is classified to this section].''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 108–447, div. F, title II, § 218, Dec. 8, 2004, 118 Stat. 3141.

Pub. L. 108–199, div. E, title II, § 219, Jan. 23, 2004, 118 Stat. 255.

§ 294p. Pediatric rheumatology

(a) In general

The Secretary, acting through the appropriate agencies, shall evaluate whether the number of pediatric rheumatologists is sufficient to address the health care needs of children with arthritis and related conditions, and if the Secretary determines that the number is not sufficient, shall develop strategies to help address the shortfall.

(b) Report to Congress

Not later than October 1, 2001, the Secretary shall submit to the Congress a report describing the results of the evaluation under subsection (a) of this section, and as applicable, the strategies developed under such subsection.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title VII, § 763, as added Pub. L. 106–310, div. A, title III, § 301(b), Oct. 17, 2000, 114 Stat. 1111.)

PRIOR PROVISIONS

A prior section 294p, act July 1, 1944, ch. 373, title VII, § 778, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2054, authorized grants and contracts to assist provision of health care in rural areas, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294p, act July 1, 1944, ch. 373, title VII, § 743, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, § 4(d), 79 Stat. 1057; Nov. 3, 1966, Pub. L. 89–751, § 5(c)(2), (3), 80 Stat. 1233; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(c), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(b), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(2), (f)(2), 85 Stat. 451; Oct. 12, 1976, Pub. L. 94–484, title IV, §§ 405, 406(e), 90 Stat. 2267, 2268; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2736, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(i), 99 Stat. 536; Nov. 4, 1988, Pub. L. 100–607, title VI, § 603(d), 102 Stat. 3125, related to distribution of assets from loan funds, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292x of this title.

A prior section 763 of act July 1, 1944, was classified to section 294b of this title prior to the general amendment of part D of this subchapter by Pub. L. 105–392.

Another prior section 763 of act July 1, 1944, was classified to section 295b of this title prior to repeal by Pub. L. 99–129.

Another prior section 763 of act July 1, 1944, was classified to section 295b of this title prior to the general amendment of former part D of this subchapter by Pub. L. 91–696.

Prior sections 294q to 294r were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 294q, act July 1, 1944, ch. 373, title VII, § 744, formerly § 745, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 173; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 105(f)(2), 85 Stat. 451; renumbered § 744, Oct. 12, 1976, Pub. L. 94–484, title IV, § 406(a)(2), 90 Stat. 2268, related to administrative provisions. See section 292u of this title.

Section 294q–1, act July 1, 1944, ch. 373, title VII, § 745, as added Oct. 22, 1985, Pub. L. 99–129, title II, § 209(h)(2), 99 Stat. 535, related to student loan information to be furnished to students. See section 292v of this title.

Section 294q–2, act July 1, 1944, ch. 373, title VII, § 746, as added Oct. 22, 1985, Pub. L. 99–129, title II, § 209(h)(2), 99 Stat. 536, related to procedures for appeal of terminations of agreements with schools. See section 292w of this title.

Section 294q–3, act July 1, 1944, ch. 373, title VII, § 747, formerly § 745, as added and renumbered § 747, Oct. 22, 1985, Pub. L. 99–129, title II, § 209(a)(4), (h)(1), 99 Stat. 532, 535, defined ''school of pharmacy''.

Section 294r, act July 1, 1944, ch. 373, title VII, § 751, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 604, 102 Stat. 3126, related to establishment of a loan repayment program for allied health personnel.

Another prior section 294r, act July 1, 1944, ch. 373, title VII, § 748, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(a), 90 Stat. 2279; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(f), 91 Stat. 391; Dec. 19, 1977, Pub. L. 95–215, § 3, 91 Stat. 1504; Sept. 29, 1979, Pub. L. 96–76, title II, § 206(a), 93 Stat. 583, which related to traineeships for students in schools of public health, was renumbered section 792 of act July 1, 1944, by Pub. L. 97–35 and transferred to section 295h–1b of this title, and was subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

A prior section 294s, act July 1, 1944, ch. 373, title VII, § 749, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(a), 90 Stat. 2280; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(f), 91 Stat. 391, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, which related to traineeships for students in other graduate programs, was renumbered section 791A of act July 1, 1944, by Pub. L. 97–35 and transferred to section 295h–1a of this title, and was subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

A prior section 294t, act July 1, 1944, ch. 373, title VII, § 751, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2281; amended Dec. 19, 1977, Pub. L. 95–215, § 5, 91 Stat. 1506; Nov. 9, 1978, Pub. L. 95–623, § 12(c), 92 Stat. 3457; Nov. 10, 1978, Pub. L. 95–626, title I, § 113(b), 92 Stat. 3563; July 10, 1979, Pub. L. 96–32, § 7(i), 93 Stat. 84, which related to National Health Service Corps Scholarships Program, was renumbered section

338A of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254*l* of this title.

A prior section 294u, act July 1, 1944, ch. 373, title VII, § 752, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2284; amended Nov. 10, 1978, Pub. L. 95–626, title I, § 113(b), 92 Stat. 3563; Sept. 29, 1979, Pub. L. 96–76, title II, § 202(a), (b), 93 Stat. 582, which related to obligated service under contract, was renumbered section 338B of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254m of this title, and subsequently renumbered section 338C of act July 1, 1944, by Pub. L. 100–177.

A prior section 294v, act July 1, 1944, ch. 373, title VII, § 753, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2285; amended Dec. 17, 1980, Pub. L. 96–538, title IV, § 403, 94 Stat. 3192, which related to private practice, was renumbered section 338C of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254n of this title, and subsequently renumbered section 338D of act July 1, 1944, by Pub. L. 100–177.

A prior section 294w, act July 1, 1944, ch. 373, title VII, § 754, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2286; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(g), 91 Stat. 391, which related to breach of scholarship contract, was renumbered section 338D of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254*o* of this title, and subsequently renumbered section 338E of act July 1, 1944, by Pub. L. 100–177.

A prior section 294x, act July 1, 1944, ch. 373, title VII, § 755, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2287, which related to special grants for former Corps member to enter private practice, was renumbered section 338E of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254p of this title, and subsequently renumbered section 338F of act July 1, 1944, by Pub. L. 100–177, and section 338G of act July 1, 1944, by Pub. L. 101–597.

A prior section 294y, act July 1, 1944, ch. 373, title VII, § 756, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2288, which related to authorization of appropriations, was renumbered section 338F of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254q of this title, and subsequently renumbered section 338G of act July 1, 1944, prior to repeal by Pub. L. 100–177, title II, §§ 201(2), 203, Dec. 1, 1987, 101 Stat. 992, 999.

A prior section 294y–1, act July 1, 1944, ch. 373, title VII, § 757, as added Aug. 1, 1977, Pub. L. 95–83, title III, § 307(n)(1), 91 Stat. 392; amended Dec. 17, 1980, Pub. L. 96–537, § 3(d), 94 Stat. 3174, which related to Indian Health Scholarships, was renumbered section 338G of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254r of this title, and subsequently renumbered section 338I of act July 1, 1944, by Pub. L. 100–177, prior to repeal by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

Prior sections 294z to 294cc were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 294z, act July 1, 1944, ch. 373, title VII, § 758, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(c), 90 Stat. 2289; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(h), 91 Stat. 391; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2737, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title I, § 102, title II, § 210(a), 99 Stat. 523, 537; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 605, 628(9), 629(b)(2), 102 Stat. 3126, 3146, related to scholarships for students of exceptional financial need.

Section 294aa, act July 1, 1944, ch. 373, title VII, § 759, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(c), 90 Stat. 2289; amended Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035, established a Lister Hill scholarship program of grants for family practice of medicine.

Section 294bb, act July 1, 1944, ch. 373, title VII, § 760, as added Nov. 6, 1990, Pub. L. 101–527, § 6, 104 Stat. 2323, related to grants and other assistance for students from disadvantaged backgrounds. See section 293a of this title.

Section 294cc, act July 1, 1944, ch. 373, title VII, § 761, as added Nov. 6, 1990, Pub. L. 101–527, § 6, 104 Stat. 2325, related to a loan repayment program regarding service on faculties of certain health professions schools. See section 293b of this title.

SUBPART 2—PUBLIC HEALTH WORKFORCE

§ 295. General provisions

(a) In general

The Secretary may award grants or contracts to eligible entities to increase the number of individuals in the public health workforce, to enhance the quality of such workforce, and to enhance the ability of the workforce to meet national, State, and local health care needs.

(b) Eligibility

To be eligible to receive a grant or contract under subsection (a) of this section an entity shall—

(1) be—

(A) a health professions school, including an accredited school or program of public health, health administration, preventive medicine, or dental public health or a school providing health management programs;

(B) an academic health center;

(C) a State or local government; or

(D) any other appropriate public or private nonprofit entity; and

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) Preference

In awarding grants or contracts under this section the Secretary may grant a preference to entities—

(1) serving individuals who are from disadvantaged backgrounds (including underrepresented racial and ethnic minorities); and

(2) graduating large proportions of individuals who serve in underserved communities.

(d) Activities

Amounts provided under a grant or contract awarded under this section may be used for—

(1) the costs of planning, developing, or operating demonstration training programs;

(2) faculty development;

(3) trainee support;

(4) technical assistance;

(5) to meet the costs of projects—

(A) to plan and develop new residency training programs and to maintain or improve existing residency training programs in preventive medicine and dental public health, that have available full-time faculty members with training and experience in the fields of preventive medicine and dental public health; and

(B) to provide financial assistance to residency trainees enrolled in such programs;

(6) the retraining of existing public health workers as well as for increasing the supply of new practitioners to address priority public health, preventive medicine, public health dentistry, and health administration needs;

(7) preparing public health professionals for employment at the State and community levels; or

(8) other activities that may produce outcomes that are consistent with the purposes of this section.

(e) Traineeships

(1) In general

With respect to amounts used under this section for the training of health professionals, such training programs shall be designed to—

(A) make public health education more accessible to the public and private health workforce;

(B) increase the relevance of public health academic preparation to public health practice in the future;

(C) provide education or training for students from traditional on-campus programs in practice-based sites; or

(D) develop educational methods and distance-based approaches or technology that address adult learning requirements and increase knowledge and skills related to community-based cultural diversity in public health education.

(2) Severe shortage disciplines

Amounts provided under grants or contracts under this section may be used for the operation of programs designed to award traineeships to students in accredited schools of public health who enter educational programs in fields where there is a severe shortage of public health professionals, including epidemiology, biostatistics, environmental health, toxicology, public health nursing, nutrition, preventive medicine, maternal and child health, and behavioral and mental health professions.

(July 1, 1944, ch. 373, title VII, § 765, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3553.)

PRIOR PROVISIONS

A prior section 295, act July 1, 1944, ch. 373, title VII, § 781, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2055; amended Pub. L. 105–12, § 12(b), Apr. 30, 1997, 111 Stat. 29, authorized grants and contracts for research on certain health professions issues, prior to repeal by Pub. L. 105–392, title I, § 106(a)(1), Nov. 13, 1998, 112 Stat. 3557.

Another prior section 295, act July 1, 1944, ch. 373, title VII, § 761, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–1; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, provided Congressional declaration of purpose for former part D of this subchapter, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295, act July 1, 1944, ch. 373, title VII, § 761, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 282, related to authorization of appropriations respecting grants for construction of mental retardation facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

A prior section 765 of act July 1, 1944, was classified to section 294c of this title prior to the general amendment of part D of this subchapter by Pub. L. 105–392.

Another prior section 765 of act July 1, 1944, was classified to section 295d of this title prior to repeal by Pub. L. 99–129.

Another prior section 765 of act July 1, 1944, was classified to section 295d of this title prior to the general amendment of part D of this subchapter by Pub. L. 91–696.

§ 295a. Public health training centers

(a) In general

The Secretary may make grants or contracts for the operation of public health training centers.

(b) Eligible entities

(1) In general

A public health training center shall be an accredited school of public health, or another public or nonprofit private institution accredited for the provision of graduate or specialized training in public health, that plans, develops, operates, and evaluates projects that are in furtherance of the goals established by the Secretary for the year 2000 in the areas of preventive medicine, health promotion and disease prevention, or improving access to and quality of health services in medically underserved communities.

(2) Preference

In awarding grants or contracts under this section the Secretary shall give preference to accredited schools of public health.

(c) Certain requirements

With respect to a public health training center, an award may not be made under subsection (a) of this section unless the program agrees that it—

(1) will establish or strengthen field placements for students in public or nonprofit private health agencies or organizations;

(2) will involve faculty members and students in collaborative projects to enhance public health services to medically underserved communities;

(3) will specifically designate a geographic area or medically underserved population to be served by the center that shall be in a location removed from the main location of the teaching facility of the school that is participating in the program with such center; and

(4) will assess the health personnel needs of the area to be served by the center and assist in the planning and development of training programs to meet such needs.

(July 1, 1944, ch. 373, title VII, § 766, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3554.)

PRIOR PROVISIONS

A prior section 295a, act July 1, 1944, ch. 373, title VII, § 782, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2057, authorized grants and contracts for chiropractic demonstration projects, prior to repeal by Pub. L. 105–392, title I, § 106(a)(1), Nov. 13, 1998, 112 Stat. 3557.

Another prior section 295a, act July 1, 1944, ch. 373, title VII, § 762, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–2, authorized appropriations for former part D of this subchapter, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295a, act July 1, 1944, ch. 373, title VII, § 762, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 282, related to applications for grants for construction of mental retardation facilities, including their approval by Surgeon General and consideration of certain matters, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

A prior section 766 of act July 1, 1944, was classified to section 294d of this title prior to the general amendment of part D of this subchapter by Pub. L. 105–392.

Another prior section 766 of act July 1, 1944, was classified to section 295d–1 of this title prior to repeal by Pub. L. 99–129.

Another prior section 766 of act July 1, 1944, was classified to section 295d–1 of this title prior to the general amendment of part D of this subchapter by Pub. L. 91–696.

§ 295b. Public health traineeships

(a) In general

The Secretary may make grants to accredited schools of public health, and to other public or nonprofit private institutions accredited for the provision of graduate or specialized training in public health, for the purpose of assisting such schools and institutions in providing traineeships to individuals described in subsection (b)(3) of this section.

(b) Certain requirements

(1) Amount

The amount of any grant under this section shall be determined by the Secretary.

(2) Use of grant

Traineeships awarded under grants made under subsection (a) of this section shall provide for tuition and fees and such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the trainees as the Secretary may deem necessary.

(3) Eligible individuals

The individuals referred to in subsection (a) of this section are individuals who are pursuing a course of study in a health professions field in which there is a severe shortage of health professionals (which fields include the fields of epidemiology, environmental health, biostatistics, toxicology, nutrition, and maternal and child health).

(July 1, 1944, ch. 373, title VII, § 767, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3555.)

PRIOR PROVISIONS

A prior section 295b, act July 1, 1944, ch. 373, title VII, § 763, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–2, authorized Secretary to make grants and to set limitations and conditions on grants, required applications for grants, limited use of grant funds, set forth method of payment of grants, and provided for protection of financial interests of the United States, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295b, act July 1, 1944, ch. 373, title VII, § 763, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 283, related to amount of grants for construction of mental retardation facilities, including maximum payments, advances or reimbursement, installments, conditions, and nonduplication of grants, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

A prior section 767 of act July 1, 1944, was classified to section 295e–1 of this title prior to repeal by Pub. L. 99–129.

Another prior section 767 of act July 1, 1944, was classified to section 295d–2 of this title prior to repeal by Pub. L. 99–129.

§ 295c. Preventive medicine; dental public health

(a) In general

The Secretary may make grants to and enter into contracts with schools of medicine, osteopathic medicine, public health, and dentistry to meet the costs of projects—

(1) to plan and develop new residency training programs and to maintain or improve existing residency training programs in preventive medicine and dental public health; and

(2) to provide financial assistance to residency trainees enrolled in such programs.

(b) Administration

(1) Amount

The amount of any grant under subsection (a) of this section shall be determined by the Secretary.

(2) Eligibility

To be eligible for a grant under subsection (a) of this section, the applicant must demonstrate to the Secretary that it has or will have available full-time faculty members with training and experience in the fields of preventive medicine or dental public health and support from other faculty members trained in public health and other relevant specialties and disciplines.

(3) Other funds

Schools of medicine, osteopathic medicine, dentistry, and public health may use funds committed by State, local, or county public health officers as matching amounts for Federal grant funds for residency training programs in preventive medicine.

(July 1, 1944, ch. 373, title VII, § 768, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3555.)

PRIOR PROVISIONS

A prior section 295c, act July 1, 1944, ch. 373, title VII, § 764, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–2; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, established requirements of eligibility for grants, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295c, act July 1, 1944, ch. 373, title VII, § 764, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 283, related to recovery of expenditures under certain conditions respecting grants for construction of mental retardation facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

§ 295d. Health administration traineeships and special projects

(a) In general

The Secretary may make grants to State or local governments (that have in effect preventive medical and dental public health residency programs) or public or nonprofit private educational entities (including graduate schools of social work and business schools that have health management programs) that offer a program described in subsection (b) of this section—

(1) to provide traineeships for students enrolled in such a program; and

(2) to assist accredited programs health administration in the development or improve-

ment of programs to prepare students for employment with public or nonprofit private entities.

(b) Relevant programs

The program referred to in subsection (a) of this section is an accredited program in health administration, hospital administration, or health policy analysis and planning, which program is accredited by a body or bodies approved for such purpose by the Secretary of Education and which meets such other quality standards as the Secretary of Health and Human Services by regulation may prescribe.

(c) Preference in making grants

In making grants under subsection (a) of this section, the Secretary shall give preference to qualified applicants that meet the following conditions:

(1) Not less than 25 percent of the graduates of the applicant are engaged in full-time practice settings in medically underserved communities.

(2) The applicant recruits and admits students from medically underserved communities.

(3) For the purpose of training students, the applicant has established relationships with public and nonprofit providers of health care in the community involved.

(4) In training students, the applicant emphasizes employment with public or nonprofit private entities.

(d) Certain provisions regarding traineeships

(1) Use of grant

Traineeships awarded under grants made under subsection (a) of this section shall provide for tuition and fees and such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the trainees as the Secretary may deem necessary.

(2) Preference for certain students

Each entity applying for a grant under subsection (a) of this section for traineeships shall assure to the satisfaction of the Secretary that the entity will give priority to awarding the traineeships to students who demonstrate a commitment to employment with public or nonprofit private entities in the fields with respect to which the traineeships are awarded.

(July 1, 1944, ch. 373, title VII, § 769, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3556.)

PRIOR PROVISIONS

A prior section 295d, act July 1, 1944, ch. 373, title VII, § 765, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–3; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, related to requisites for approval of grants, establishment of separate medical school departments of family medicine, establishment of special hospital programs of family medicine, and supplementation of non-Federal funds, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295d, act July 1, 1944, ch. 373, title VII, § 765, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 284, related to noninterference with administration of institutions respecting grants for construction of mental retardation facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

Prior sections 295d–1 and 295d–2 were repealed by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Section 295d–1, act July 1, 1944, ch. 373, title VII, § 766, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–4, related to establishment and funding of planning and developmental grants.

Another prior section 295d–1, act July 1, 1944, ch. 373, title VII, § 766, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 284, related to definitions in connection with grants for construction of mental retardation research facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

Section 295d–2, act July 1, 1944, ch. 373, title VII, § 767, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–4, established Advisory Council on Family Medicine and provided for its composition, term and compensation of its members, and its duties and functions.

§ 295e. Authorization of appropriations

(a) In general

For the purpose of carrying out this subpart, there is authorized to be appropriated $9,100,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(b) Limitation regarding certain program

In obligating amounts appropriated under subsection (a) of this section, the Secretary may not obligate more than 30 percent for carrying out section 295b of this title.

(July 1, 1944, ch. 373, title VII, § 770, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3556.)

PRIOR PROVISIONS

A prior section 295e, act July 1, 1944, ch. 373, title VII, § 768, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–5, set forth definitions for former part D of this subchapter, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295e consisted of section 766 of act July 1, 1944. The classification of section 766 of act July 1, 1944, was changed to section 295d–1 of this title for purposes of codification.

Prior sections 295e–1 to 295e–5 were repealed by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Section 295e–1, act July 1, 1944, ch. 373, title VII, § 767, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 107(b), 85 Stat. 457; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(g), 90 Stat. 2244, authorized appropriations for grants to public or nonprofit private hospitals for training, traineeships, and fellowships in family medicine.

Section 295e–2, act July 1, 1944, ch. 373, title VII, § 768, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 107(b), 85 Stat. 458; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(h), 90 Stat. 2244, established grants for postgraduate training programs for physicians and dentists and authorized appropriations for those grants.

Section 295e–3, act July 1, 1944, ch. 373, title VII, § 769, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 107(b), 85 Stat. 459; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(i), 90 Stat. 2245, authorized the Secretary to make grants for training, traineeships, and fellowships for health professions teaching personnel and authorized appropriations for those grants.

Section 295e–4, act July 1, 1944, ch. 373, title VII, § 769A, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 107(b), 85 Stat. 459; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(j), 90 Stat. 2245, authorized appropriations for grants for computer technology health care demonstration programs.

Section 295e–5, act July 1, 1944, ch. 373, title VII, § 769B, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 107(b), 85 Stat. 460, required applications for grants and approval of grants by Secretary and set forth payment limitations.

Prior sections 295f to 295f–3 were repealed by act July 1, 1944, ch. 373, title VII, § 773, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 606(b), 102 Stat. 3127, effective Oct. 1, 1990.

Section 295f, act July 1, 1944, ch. 373, title VII, § 770, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1052; amended Aug. 16, 1968, Pub. L. 90–490, title I, § 111(a), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 437; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(k), title V, § 501(a)–(c), 90 Stat. 2245, 2290, 2291; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(a)(1), 95 Stat. 927; Oct. 22, 1985, Pub. L. 99–129, title II, § 211(a)(1), 99 Stat. 537; Nov. 4, 1988, Pub. L. 100–607, title VI, § 606(a), 102 Stat. 3127, related to capitation grants for schools of public health.

Section 295f–1, act July 1, 1944, ch. 373, title VII, § 771, as added Oct. 12, 1976, Pub. L. 94–484, title V, § 502, 90 Stat. 2293; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(i), 91 Stat. 391; Dec. 19, 1977, Pub. L. 95–215, §§ 1(a), 2, 91 Stat. 1503, 1504; Nov. 9, 1978, Pub. L. 95–623, §§ 11(g), 12(d), 92 Stat. 3456, 3457; Sept. 29, 1979, Pub. L. 96–76, title II, § 207, 93 Stat. 583; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(a)(2), 95 Stat. 927; Oct. 22, 1985, Pub. L. 99–129, title II, § 211(b), 99 Stat. 539, related to eligibility for capitation grants.

Another prior section 295f–1, act July 1, 1944, ch. 373, title VII, § 771, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1052; amended Aug. 16, 1968, Pub. L. 90–490, title I, § 111(a), 82 Stat. 775; Nov. 2, 1970, Pub. L. 91–519, title I, § 101(a), 84 Stat. 1343; Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 443; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(*l*), 90 Stat. 2245, authorized start-up assistance, prior to repeal by Pub. L. 94–484, title V, § 502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

Section 295f–2, act July 1, 1944, ch. 373, title VII, § 772, formerly § 775, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 448; renumbered § 772 and amended Oct. 12, 1976, Pub. L. 94–484, title V, § 503(a), 90 Stat. 2300; Dec. 19, 1977, Pub. L. 95–215, §§ 1(b), 8(c), 91 Stat. 1504, 1507; Nov. 9, 1978, Pub. L. 95–623, § 12(j), 92 Stat. 3457; Oct. 22, 1985, Pub. L. 99–129, title II, § 211(c), 99 Stat. 539, related to applications for capitation grants.

Another prior section 295f–2, act July 1, 1944, ch. 373, title VII, § 772, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1053; amended Aug. 16, 1968, Pub. L. 90–490, title I, § 111(a), (e), 82 Stat. 776, 777; Nov. 2, 1970, Pub. L. 91–519, title I, § 102(a), 84 Stat. 1343; Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 444; Nov. 16, 1973, Pub. L. 93–154, § 3(b), 87 Stat. 604; July 12, 1974, Pub. L. 93–348, title II, § 215, 88 Stat. 354; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(m), 90 Stat. 2245, provided special project grants and contracts, prior to repeal by Pub. L. 94–484, title V, § 502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

Section 295f–3, act July 1, 1944, ch. 373, title VII, § 773, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 606(b), 102 Stat. 3127, provided for repeal of former part D of this subchapter, effective Oct. 1, 1990.

Another prior section 295f–3, act July 1, 1944, ch. 373, title VII, § 773, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1053; amended Aug. 16, 1968, Pub. L. 90–490, title I, § 111(b), 82 Stat. 776; Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 446; July 12, 1974, Pub. L. 93–348, title I, § 106, 88 Stat. 347; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(n), 90 Stat. 2245, authorized grants to assist health professions schools which were in financial distress, prior to repeal by Pub. L. 94–484, title V, § 502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

A prior section 295f–4, act July 1, 1944, ch. 373, title VII, § 774, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1054; amended Aug. 16, 1968, Pub. L. 90–490, title I, § 111(c)(1), (2), 82 Stat. 777; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 446; Nov. 16, 1973, Pub. L. 93–154, § 3(c), 87 Stat. 605; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(*o*), 90 Stat. 2245, authorized health manpower education initiative awards prior to repeal by Pub. L. 94–484, title V, § 502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

A prior section 295f–5, act July 1, 1944, ch. 373, title VII, § 775, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 448, which related to applications for capitation, start-up, special project, and financial distress grants, was renumbered section 772 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 295f–2 of this title.

A prior section 295f–6, act July 1, 1944, ch. 373, title VII, § 776, as added Nov. 16, 1973, Pub. L. 93–154, § 3(a), 87 Stat. 604, which related to training in emergency medical services, was renumbered section 789 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 295g–9 of this title.

Prior sections 295g to 295g–2 were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 295g, act July 1, 1944, ch. 373, title VII, § 780, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2311; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2738, 95 Stat. 921; Oct. 22, 1985, Pub. L. 99–129, title I, § 103, title II, § 212, 99 Stat. 523, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 607, 629(b)(1), 102 Stat. 3127, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), 103 Stat. 614, related to project grants for establishment of departments of family medicine.

Another prior section 295g, act July 1, 1944, ch. 373, title VII, § 780, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1055; amended Aug. 16, 1968, Pub. L. 90–490, title I, §§ 111(c)(4), 122(a) to (c), 82 Stat. 777, 779; July 9, 1971, Pub. L. 92–52, § 2, 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, §§ 106(a), (b)(3), (4), 108(b)(2), title III, § 301(g), 85 Stat. 452, 453, 461, 464; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(p), 90 Stat. 2245, related to scholarship grants for study in United States, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Section 295g–1, act July 1, 1944, ch. 373, title VII, § 781, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2312; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(j), 91 Stat. 392; Sept. 29, 1979, Pub. L. 96–76, title II, § 203, 93 Stat. 582; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2739, 95 Stat. 921; Jan. 4, 1983, Pub. L. 97–414, § 8(j), 96 Stat. 2061; Aug. 15, 1985, Pub. L. 99–91, § 7, 99 Stat. 392; Oct. 22, 1985, Pub. L. 99–129, title I, § 104, title II, § 213, 99 Stat. 523, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 608, 629(b)(3), 102 Stat. 3127, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), (5), (6), 103 Stat. 614; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035, related to area health education centers.

Another prior section 295g–1, act July 1, 1944, ch. 373, title VII, § 781, as added Aug. 16, 1968, Pub. L. 90–490, title I, § 122(d), 82 Stat. 779; amended Nov. 18, 1971, Pub. L. 92–157, title I, §§ 105(f)(3), 106(b)(4), 85 Stat. 451, 453, provided for transfer of monies to student loan fund, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Section 295g–2, act July 1, 1944, ch. 373, title VII, § 782, formerly § 788A, as added Aug. 18, 1987, Pub. L. 100–97, § 3, 101 Stat. 713; renumbered § 782 and amended Nov. 4, 1988, Pub. L. 100–607, title VI, § 614, 102 Stat. 3136; amended Aug. 16, 1989, Pub. L. 101–93, § 5(i), 103 Stat. 613; Nov. 6, 1990, Pub. L. 101–527, § 4(a), 104 Stat. 2318, provided for programs of excellence in health professions education for minorities. See section 293 of this title.

Another prior section 295g–2, act July 1, 1944, ch. 373, title VII, § 782, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2314; amended Nov. 9, 1978, Pub. L. 95–623, § 12(e), 92 Stat. 3457, authorized Secretary to make grants to schools of medicine and osteopathy for programs to train United States citizens formerly enrolled in medical schools in foreign countries, authorized appropriations for those grants, and set

forth reporting requirements, prior to repeal by Pub. L. 99–129, title II, § 220(d), Oct. 22, 1985, 99 Stat. 544.

A prior section 295g–3, act July 1, 1944, ch. 373, title VII, § 783, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2314; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2740, 95 Stat. 922; Oct. 22, 1985, Pub. L. 99–129, title I, § 105, 99 Stat. 524, related to programs for physician assistants, prior to repeal by Pub. L. 100–607, title VI, § 615(b), Nov. 4, 1988, 102 Stat. 3138.

Prior sections 295g–4 to 295g–8 were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 295g–4, act July 1, 1944, ch. 373, title VII, § 784, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2315; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2741, 95 Stat. 922; Jan. 4, 1983, Pub. L. 97–414, § 9(f), 96 Stat. 2064; Oct. 22, 1985, Pub. L. 99–129, title I, § 106, title II, § 214, 99 Stat. 524, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, § 609, 102 Stat. 3130; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(c), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), 103 Stat. 614, related to grants and contracts for training, traineeships, and fellowships in general internal medicine and general pediatrics.

Section 295g–5, act July 1, 1944, ch. 373, title VII, § 785, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 610(a)(2), 102 Stat. 3130, related to residency programs in the general practice of dentistry.

Another prior section 295g–5, act July 1, 1944, ch. 373, title VII, § 785, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2315, established grants to public or private nonprofit colleges or universities for occupational health training and education centers and authorized appropriations for those grants, prior to repeal by Pub. L. 99–129, title II, § 220(e), Oct. 22, 1985, 99 Stat. 544.

Section 295g–6, act July 1, 1944, ch. 373, title VII, § 786, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2316; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2742, 95 Stat. 923; Oct. 22, 1985, Pub. L. 99–129, title I, § 107, title II, § 215, 99 Stat. 524, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, § 610(a)(1), (b), 102 Stat. 3130, 3131; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), (6), 103 Stat. 614, related to grants and contracts for specified family medicine programs. See section 293k of this title.

Section 295g–7, act July 1, 1944, ch. 373, title VII, § 787, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2317; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2743, 95 Stat. 923; Oct. 22, 1985, Pub. L. 99–129, title I, § 108, title II, § 216, 99 Stat. 524, 541; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 611(a)–(e), 628(10), 629(b)(2), 102 Stat. 3131, 3132, 3146; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(d), (e), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(h), (*o*)(2), 103 Stat. 612, 614, related to educational assistance to individuals from disadvantaged backgrounds. See section 293c of this title.

Section 295g–7a, act July 1, 1944, ch. 373, title VII, § 787A, as added and amended Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 612, 629(b)(2), 102 Stat. 3132, 3146, related to a retention program for health professions schools with individuals from disadvantaged backgrounds. See section 293 et seq. of this title.

Section 295g–8, act July 1, 1944, ch. 373, title VII, § 788, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2318; amended Nov. 9, 1978, Pub. L. 95–623, § 12(f), 92 Stat. 3457; Sept. 29, 1979, Pub. L. 96–76, title II, § 205, 93 Stat. 583; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2744(a)(1), (b)–(f), 95 Stat. 923, 924; Oct. 22, 1985, Pub. L. 99–129, title I, § 109, title II, § 217, 99 Stat. 524, 541; Nov. 14, 1986, Pub. L. 99–660, title VI, § 601, 100 Stat. 3797; Dec. 1, 1987, Pub. L. 100–177, title IV, § 401, 101 Stat. 1007; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 613(a), 628(11), 629(b)(2), 102 Stat. 3133, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(2), (3), 103 Stat. 614; July 23, 1992, Pub. L. 102–325, title XV, § 1559, 106 Stat. 841, related to grants and contracts for special projects.

Another prior section 295g–8, act July 1, 1944, ch. 373, title VII, § 788A, as added Aug. 18, 1987, Pub. L. 100–97, § 3, 101 Stat. 713, which related to grants for minority education, was renumbered section 782 of act July 1, 1944, by Pub. L. 100–607 and transferred to section 295g–2 of this title.

A prior section 295g–8a, act July 1, 1944, ch. 373, title VII, § 788A, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2745, 95 Stat. 925, authorized Secretary to make grants or enter into contracts with schools in serious financial distress to assist their operations, under certain terms and conditions, prior to repeal by Pub. L. 99–129, title II, § 220(f)(1), Oct. 22, 1985, 99 Stat. 544.

Prior sections 295g–8b to 295g–10 were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 295g–8b, act July 1, 1944, ch. 373, title VII, § 788A, formerly § 788B, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2745, 95 Stat. 926; amended Oct. 22, 1985, Pub. L. 99–129, title I, § 110, title II, §§ 218, 220(f)(2)–(4), 99 Stat. 524, 543, 544; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 622, 629(b)(2), 102 Stat. 3141, 3146; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(g), 102 Stat. 4239; renumbered § 788A and amended Aug. 16, 1989, Pub. L. 101–93, § 5(k), (*o*)(4), 103 Stat. 613, 614, related to training with respect to acquired immune deficiency syndrome. See section 300ff–111 of this title.

Another prior section 788A of act July 1, 1944, was renumbered section 782 by section 614(a) of Pub. L. 100–607, as amended, and classified to section 295g–2 of this title.

Section 295g–9, act July 1, 1944, ch. 373, title VII, § 789, as added and amended Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 615(a), 629(b)(1), 102 Stat. 3136, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), 103 Stat. 614, related to geriatric education centers and geriatric training.

Another prior section 295g–9, act July 1, 1944, ch. 373, title VII, § 789, formerly § 776, as added Nov. 16, 1973, Pub. L. 93–154, § 3(a), 87 Stat. 604; renumbered § 789, Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(b), 90 Stat. 2322; amended Oct. 21, 1976, Pub. L. 94–573, § 12, 90 Stat. 2717; July 10, 1979, Pub. L. 96–32, § 7(h), 93 Stat. 84; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(k), 91 Stat. 392; Dec. 12, 1979, Pub. L. 96–142, title I, § 102, 93 Stat. 1067, authorized Secretary to make grants and enter into contracts for training in emergency medical services, set forth eligibility requirements and amounts, directed Secretary to use a uniform funding cycle, and authorized appropriations for those grants and contracts, prior to repeal by Pub. L. 99–129, title II, § 220(g), Oct. 22, 1985, 99 Stat. 544.

Section 295g–10, act July 1, 1944, ch. 373, title VII, § 790, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(c), 90 Stat. 2322; amended Nov. 4, 1988, Pub. L. 100–607, title VI, § 616(a), (b), 102 Stat. 3138, provided general provisions.

A prior section 295g–10a, Pub. L. 100–607, title VI, § 633, Nov. 4, 1988, 102 Stat. 3147, required with respect to the application and award process for certain health personnel training programs the semiannual issuance of solicitations for grant applications and the preliminary review of applications for technical sufficiency, prior to repeal by Pub. L. 102–408, title III, § 311, Oct. 13, 1992, 106 Stat. 2091.

A prior section 295g–11, act July 1, 1944, ch. 373, title VII, § 790A, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 617, 102 Stat. 3140, related to public health special projects, prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 295g–11, act July 1, 1944, ch. 373, title VII, § 785, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 106(b)(6), 85 Stat. 453; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(q), 90 Stat. 2245, provided scholarship grants for study abroad, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Prior sections 295g–21 to 295g–23 were repealed by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Section 295g–21, act July 1, 1944, ch. 373, title VII, § 784, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 106(c), 85 Stat. 455, provided scholarship grants in relation to physician shortage area scholarship program.

Section 295g–22, act July 1, 1944, ch. 373, title VII, § 785, as added Nov. 18, 1971, Pub. L. 92–157, title I,

§ 106(c), 85 Stat. 457, related to administration of and contractual arrangements for implementation of the physician shortage area scholarship program.

Section 295g–23, act July 1, 1944, ch. 373, title VII, § 786, as added Nov. 18, 1971 Pub. L. 92–157, title I, § 106(c), 85 Stat. 457; amended Apr. 22, 1976, Pub. L. 94–278, title XI, § 1104, 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(r), 90 Stat. 2246, authorized appropriations for physician shortage area scholarships in amount of $2,500,000; $3,000,000; $3,500,000; $3,500,000; and $2,000,000 for fiscal years ending June 30, 1972, through 1976, and for fiscal years ending Sept. 30, 1977, and thereafter such sums necessary to continue making grants to students who prior to July 1, 1976, received grants and were eligible for grants during the succeeding fiscal year.

A prior section 295h, act July 1, 1944, ch. 373, title VII, § 791, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2303; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(b)(1), 95 Stat. 927; Jan. 4, 1983, Pub. L. 97–414, § 8(k)(2), 96 Stat. 2061; Oct. 22, 1985, Pub. L. 99–129, title I, § 111, title II, § 219, 99 Stat. 524, 543; Nov. 4, 1988, Pub. L. 100–607, title VI, § 618, 102 Stat. 3140; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(f), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(j), 103 Stat. 613, related to grants for graduate programs in health administration, prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 295h, act July 1, 1944, ch. 373, title VII, § 791, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1222; amended Aug. 16, 1968, Pub. L. 90–490, title III, § 301(a)(1), 82 Stat. 788; Nov. 2, 1970, Pub. L. 91–519, title II, § 201, 84 Stat. 1344, provided for grants for construction of teaching facilities of allied health professions personnel, prior to the general amendment of this part by Pub. L. 94–484.

A prior section 295h–1, act July 1, 1944, ch. 373, title VII, § 792, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2304; amended Nov. 10, 1978, Pub. L. 95–626, title I, § 121, 92 Stat. 3570; Sept. 29, 1979, Pub. L. 96–76, title II, § 206(b), 93 Stat. 583, related to special projects for accredited schools of public health and graduate programs in health administration, prior to repeal by Pub. L. 97–35, title XXVII, § 2746(c), Aug. 13, 1981, 95 Stat. 927.

Another prior section 295h–1, act July 1, 1944, ch. 373, title VII, § 792, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1226; amended Aug. 16, 1968, Pub. L. 90–490, title III, § 301(a)(2), 82 Stat. 788; Nov. 2, 1970, Pub. L. 91–519, title II, § 202(a), (b), 84 Stat. 1344, 1345; June 18, 1973, Pub. L. 93–45, title I, § 109(a), (b), 87 Stat. 93; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(s)(1), (2), 90 Stat. 2246, provided for grants to improve quality of training centers for allied health professions, prior to the general amendment of this part by Pub. L. 94–484.

Prior sections 295h–1a to 295h–2 were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 295h–1a, act July 1, 1944, ch. 373, title VII, § 791A, formerly § 749, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(a), 90 Stat. 2280; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(f), 91 Stat. 391; Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692; renumbered § 791A and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(b)(2), 95 Stat. 927; Jan. 4, 1983, Pub. L. 97–414, § 8(k)(1), 96 Stat. 2061; Oct. 22, 1985, Pub. L. 99–129, title I, § 112, 99 Stat. 525; Nov. 4, 1988, Pub. L. 100–607, title VI, § 619, 102 Stat. 3140, related to traineeships for students in other graduate programs.

Section 295h–1b, act July 1, 1944, ch. 373, title VII, § 792; formerly § 748, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(a), 90 Stat. 2279; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(f), 91 Stat. 391; Dec. 19, 1977, Pub. L. 95–215, § 3, 91 Stat. 1504; Sept. 29, 1979, Pub. L. 96–76, title II, § 206(a), 93 Stat. 583; renumbered § 792 and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(d), 95 Stat. 927; Oct. 22, 1985, Pub. L. 99–129, title I, § 113, 99 Stat. 525; Nov. 4, 1988, Pub. L. 100–607, title VI, § 621, 102 Stat. 3141, related to traineeships for students in schools of public health.

Another prior section 792 of act July 1, 1944, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2304, was classified to section 295h–1 of this title prior to repeal by Pub. L. 97–35, title XXVII, § 2746(c), Aug. 13, 1981, 95 Stat. 927.

Section 295h–1c, act July 1, 1944, ch. 373, title VII, § 793, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(f), 95 Stat. 928; amended Oct. 22, 1985, Pub. L. 99–129, title I, § 114, 99 Stat. 525; Nov. 4, 1988, Pub. L. 100–607, title VI, § 629(b)(2), 102 Stat. 3146, related to training in preventive medicine.

Another prior section 793 of act July 1, 1944, was renumbered section 794 by Pub. L. 97–35, title XXVII, § 2746(f), Aug. 13, 1981, 95 Stat. 928, and classified to section 295h–2 of this title.

Section 295h–2, act July 1, 1944, ch. 373, title VII, § 794, formerly § 793, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2305; amended S. Res. No. 4, Feb. 4, 1977; Nov. 9, 1978, Pub. L. 95–623, § 12(g), 92 Stat. 3457; S. Res. No. 30, Mar. 7, 1979; H. Res. No. 549, Mar. 25, 1980; renumbered § 794, Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(f), 95 Stat. 928, related to statistics and annual report to Congress.

Another prior section 295h–2, act July 1, 1944, ch. 373, title VII, § 793, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228; amended Aug. 16, 1968, Pub. L. 90–490, title III, § 301(a)(3), 82 Stat. 788; Nov. 2, 1970, Pub. L. 91–519, title II, § 203, 84 Stat. 1436; June 18, 1973, Pub. L. 93–45, title I, § 109(c), 87 Stat. 93; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(s)(3), 90 Stat. 2246, provided traineeships for advanced training of allied health professions personnel, including authorization of appropriations, prior to the general amendment of this part by Pub. L. 94–484.

Another prior section 794 of act July 1, 1944, ch. 373, title VII, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228, was classified to section 294h–3 of this title prior to repeal by Pub. L. 91–519, title II, § 202(d), Nov. 2, 1970, 84 Stat. 1345.

A prior section 295h–3, act July 1, 1944, ch. 373, title VII, § 794, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228; amended Aug. 16, 1968, Pub. L. 90–490, title III, § 301(a)(4), (b), 82 Stat. 788, authorized appropriations for grants to public or nonprofit private agencies, institutions, and organizations for projects to develop, demonstrate, or evaluate curriculums and methods for the training of health technologists, prior to repeal by Pub. L. 91–519, title II, § 202(d), Nov. 2, 1970, 84 Stat. 1345, effective with respect to the fiscal year beginning July 1, 1970.

Prior sections 295h–3a to 295h–3d were omitted in the general amendment of this part by Pub. L. 94–484.

Section 295h–3a, act July 1, 1944, ch. 373, title VII, § 794A, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1346; amended June 18, 1973, Pub. L. 93–45, title I, § 109(d), 87 Stat. 93; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(s)(4), 90 Stat. 2246, provided for grants and contracts to encourage full utilization of educational talent for allied health professions and authorizing appropriations.

Section 295h–3b, act July 1, 1944, ch. 373, title VII, § 794B, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1346, provided for scholarship grants for training in allied health professions.

Section 295h–3c, act July 1, 1944, ch. 373, title VII, § 794C, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1347, provided for work-study programs in training in allied health professions.

Section 295h–3d, act July 1, 1944, ch. 373, title VII, § 794D, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1349; amended Nov. 18, 1971, Pub. L. 92–157, title III, § 301(e), 85 Stat. 464, provided for loans for students of allied health professions.

Prior sections 295h–4 to 295h–7 were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 295h–4, act July 1, 1944, ch. 373, title VII, § 795, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2306; amended Oct. 17, 1979, Pub. L. 96–88, title

III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, defined ''allied health personnel'', ''training center for allied health professions'', and ''nonprofit''. See section 295p of this title.

Another prior section 295h–4, act July 1, 1944, ch. 373, title VII, § 795, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228; amended Dec. 5, 1967, Pub. L. 90–174, § 12(e), 81 Stat. 542; Nov. 2, 1970, Pub. L. 91–519, title II, § 202(c), 84 Stat. 1344; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(f), 85 Stat. 464, defined ''training center for allied health professions''; ''full-time student''; ''nonprofit''; ''construction'' and ''cost of construction''; and ''affiliated hospital'', prior to the general amendment of this part by Pub. L. 94–484.

Section 295h–5, act July 1, 1944, ch. 373, title VII, § 796, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2307; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(*l*), (m), 91 Stat. 392; Nov. 4, 1988, Pub. L. 100–607, title VI, § 624, 102 Stat. 3143; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(f) [(h)], 102 Stat. 4240, related to project grants and contracts with eligible entities to improve the effectiveness of allied health administration and practitioners. See section 294e of this title.

Another prior section 295h–5, act July 1, 1944, ch. 373, title VII, § 796, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1230, provided for keeping of records and audits in relation to training in allied health professions, prior to the general amendment of this part by Pub. L. 94–484.

Section 295h–6, act July 1, 1944, ch. 373, title VII, § 797, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2308; amended Nov. 4, 1988, Pub. L. 100–607, title VI, § 625, 102 Stat. 3144, related to traineeships for advanced training of allied health personnel.

Another prior section 295h–6, act July 1, 1944, ch. 373, title VII, § 797, as added Aug. 16, 1968, Pub. L. 90–490, title III, § 301(c), 82 Stat. 788, authorized the use of up to one-half of one per centum of appropriated funds for evaluation of programs covered thereby, prior to repeal by Pub. L. 91–296, title IV, § 401(b)(1)(E), June 30, 1970, 84 Stat. 352, effective with respect to appropriations for fiscal years beginning after June 30, 1970.

Section 295h–7, act July 1, 1944, ch. 373, title VII, § 798, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2309, related to educational assistance to disadvantaged individuals in allied health training.

Another prior section 295h–7, act July 1, 1944, ch. 373, title VII, § 798, as added Aug. 16, 1968, Pub. L. 90–490, title III, § 301(d), 82 Stat. 788; amended Nov. 2, 1970, Pub. L. 91–519, title II, § 205, 84 Stat. 1354, directed Secretary to conduct a study of the allied health programs, prior to the general amendment of this part by Pub. L. 94–484.

A prior section 295h–8, act July 1, 1944, ch. 373, title VII, § 799, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 206, 84 Stat. 1354; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 109, 85 Stat. 461, which related to advance funding, was renumbered section 703 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292c of this title.

A prior section 295h–9, act July 1, 1944, ch. 373, title VII, § 799A, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 207, 84 Stat. 1355, § 704; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 110(2), 85 Stat. 461; July 12, 1974, Pub. L. 93–348, title I, § 105, 88 Stat. 347, which related to sexual discrimination, was renumbered section 704 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292d of this title.

A prior section 295i, act July 1, 1944, ch. 373, title VII, § 799, as added Apr. 7, 1986, Pub. L. 99–272, title XVII, § 17001, 100 Stat. 357; amended Oct. 25, 1988, Pub. L. 100–527, § 10(4), 102 Stat. 2641; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 627, 629(b)(1), 102 Stat. 3145, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), 103 Stat. 614; Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985, established a Council on Graduate Medical Education, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 294*o* of this title.

PART F—GENERAL PROVISIONS

AMENDMENTS

1998—Pub. L. 105–392, title I, § 106(a)(2)(A), Nov. 13, 1998, 112 Stat. 3557, redesignated part G as F.

§ 295j. Preferences and required information in certain programs

(a) Preferences in making awards

(1) In general

Subject to paragraph (2), in making awards of grants or contracts under any of sections 293k and 294 of this title, the Secretary shall give preference to any qualified applicant that—

(A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

(2) Limitation regarding peer review

For purposes of paragraph (1), the Secretary may not give an applicant preference if the proposal of the applicant is ranked at or below the 20th percentile of proposals that have been recommended for approval by peer review groups.

(b) "Graduate" defined

For purposes of this section, the term ''graduate'' means, unless otherwise specified, an individual who has successfully completed all training and residency requirements necessary for full certification in the health profession selected by the individual.

(c) Exceptions for new programs

(1) In general

To permit new programs to compete equitably for funding under this section, those new programs that meet at least 4 of the criteria described in paragraph (3) shall qualify for a funding preference under this section.

(2) Definition

As used in this subsection, the term ''new program'' means any program that has graduated less than three classes. Upon graduating at least three classes, a program shall have the capability to provide the information necessary to qualify the program for the general funding preferences described in subsection (a) of this section.

(3) Criteria

The criteria referred to in paragraph (1) are the following:

(A) The mission statement of the program identifies a specific purpose of the program as being the preparation of health professionals to serve underserved populations.

(B) The curriculum of the program includes content which will help to prepare practitioners to serve underserved populations.

(C) Substantial clinical training experience is required under the program in medically underserved communities.

(D) A minimum of 20 percent of the clinical faculty of the program spend at least 50 percent of their time providing or supervising care in medically underserved communities.

(E) The entire program or a substantial portion of the program is physically located in a medically underserved community.

(F) Student assistance, which is linked to service in medically underserved communities following graduation, is available to the students in the program.

(G) The program provides a placement mechanism for deploying graduates to medically underserved communities.

(July 1, 1944, ch. 373, title VII, § 791, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2058; amended Pub. L. 102–531, title III, § 313(a)(5), Oct. 27, 1992, 106 Stat. 3507; Pub. L. 105–392, title I, §§ 106(a)(2)(B), 107, Nov. 13, 1998, 112 Stat. 3557, 3560.)

PRIOR PROVISIONS

A prior section 295j, act July 1, 1944, ch. 373, title VII, § 799A, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 637(a), 102 Stat. 3149; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(g)[(i)], 102 Stat. 4240; Aug. 16, 1989, Pub. L. 101–93, § 5(n), 103 Stat. 613, related to grants and contracts to provide health care in rural areas, prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 295j, act July 1, 1944, ch. 373, title VII, § 799A, as added Nov. 23, 1988, Pub. L. 100–713, title VII, § 714, 102 Stat. 4834, relating to grants and contracts to provide health care in rural areas, prior to repeal by Pub. L. 100–607, title VI, § 637(b), Nov. 4, 1988, 102 Stat. 3151. Subsequently, section 637(b) of Pub. L. 100–607 was repealed by Pub. L. 101–93, § 5(n)(1), Aug. 16, 1989, 103 Stat. 613, and section 5(n)(2) of Pub. L. 101–93 amended this subchapter to read as if the amendment made by section 714 of Pub. L. 100–713 had not been enacted.

A prior section 791 of act July 1, 1944, was classified to section 295h of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–392, § 107(b)(1), substituted "sections 293k and 294 of this title" for "sections 293k through 293*o* of this title, under section 294b of this title, or under section 294d or 294e of this title" in introductory provisions.

Subsec. (a)(2). Pub. L. 105–392, § 107(b)(2), struck out "under section 295*o*(a) of this title" before period at end.

Subsec. (b). Pub. L. 105–392, § 106(a)(2)(B), redesignated subsec. (c) as (b) and struck out former subsec. (b) which required submission of certain information by applicant.

Subsec. (c). Pub. L. 105–392, §§ 106(a)(2)(B)(ii), 107(a), added subsec. (c) and redesignated former subsec. (c) as (b).

1992—Subsec. (b). Pub. L. 102–531, in introductory provisions, inserted references to sections 294d and 294e of this title and substituted reference to section 295*o*(f)(2) of this title for reference to section 293p(a) of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

REQUIRED ASSURANCES REGARDING BLOODBORNE DISEASES

Section 308 of Pub. L. 102–408 provided that: "With respect to awards of grants or contracts under title VII or VIII of the Public Health Service Act [this subchapter or subchapter VI of this chapter], the Secretary of Health and Human Services may make such an award for the provision of traineeships only if the applicant for the award provides assurances satisfactory to the Secretary that all trainees will, as appropriate, receive instruction in the utilization of universal precautions and infection control procedures for the prevention of the transmission of bloodborne diseases."

§ 295k. Health professions data

(a) In general

The Secretary shall establish a program, including a uniform health professions data reporting system, to collect, compile, and analyze data on health professions personnel which program shall initially include data respecting all physicians and dentists in the States. The Secretary is authorized to expand the program to include, whenever he determines it necessary, the collection, compilation, and analysis of data respecting pharmacists, optometrists, podiatrists, veterinarians, public health personnel, audiologists, speech pathologists, health care administration personnel, nurses, allied health personnel, medical technologists, chiropractors, clinical psychologists, professional counselors, and any other health personnel in States designated by the Secretary to be included in the program. Such data shall include data respecting the training, licensure status (including permanent, temporary, partial, limited, or institutional), place or places of practice, professional specialty, practice characteristics, place and date of birth, sex, and socioeconomic background of health professions personnel and such other demographic information regarding health professions personnel as the Secretary may require.

(b) Certain authorities and requirements

(1) Sources of information

In carrying out subsection (a) of this section, the Secretary shall collect available information from appropriate local, State, and Federal agencies and other appropriate sources.

(2) Contracts for studies of health professions

The Secretary shall conduct or enter into contracts for the conduct of analytic and descriptive studies of the health professions, including evaluations and projections of the supply of, and requirements for, the health professions by specialty and geographic location. Such studies shall include studies determining by specialty and geographic location the number of health professionals (including allied health professionals and health care administration personnel) who are members of minority groups, including Hispanics, and studies providing by specialty and geographic location evaluations and projections of the supply of, and requirements for, health professionals (including allied health professionals and health care administration personnel) to serve minority groups, including Hispanics.

(3) Grants and contracts regarding States

The Secretary is authorized to make grants and to enter into contracts with States (or an appropriate nonprofit private entity in any

State) for the purpose of participating in the program established under subsection (a) of this section. The Secretary shall determine the amount and scope of any such grant or contract. To be eligible for a grant or contract under this paragraph a State or entity shall submit an application in such form and manner and containing such information as the Secretary shall require. Such application shall include reasonable assurance, satisfactory to the Secretary, that—

(A) such State (or nonprofit entity within a State) will establish a program of mandatory annual registration of the health professions personnel described in subsection (a) of this section who reside or practice in such State and of health institutions licensed by such State, which registration shall include such information as the Secretary shall determine to be appropriate;

(B) such State or entity shall collect such information and report it to the Secretary in such form and manner as the Secretary shall prescribe; and

(C) such State or entity shall comply with the requirements of subsection (e) of this section.

(d)[1] Reports to Congress

The Secretary shall submit to the Congress on October 1, 1993, and biennially thereafter, the following reports:

(1) A comprehensive report regarding the status of health personnel according to profession, including a report regarding the analytic and descriptive studies conducted under this section.

(2) A comprehensive report regarding applicants to, and students enrolled in, programs and institutions for the training of health personnel, including descriptions and analyses of student indebtedness, student need for financial assistance, financial resources to meet the needs of students, student career choices such as practice specialty and geographic location and the relationship, if any, between student indebtedness and career choices.

(e) Requirements regarding personal data

(1) In general

The Secretary and each program entity shall in securing and maintaining any record of individually identifiable personal data (hereinafter in this subsection referred to as ''personal data'') for purposes of this section—

(A) inform any individual who is asked to supply personal data whether he is legally required, or may refuse, to supply such data and inform him of any specific consequences, known to the Secretary or program entity, as the case may be, of providing or not providing such data;

(B) upon request, inform any individual if he is the subject of personal data secured or maintained by the Secretary or program entity, as the case may be, and make the data available to him in a form comprehensible to him;

(C) assure that no use is made of personal data which use is not within the purposes of this section unless an informed consent has been obtained from the individual who is the subject of such data; and

(D) upon request, inform any individual of the use being made of personal data respecting such individual and of the identity of the individuals and entities which will use the data and their relationship to the programs under this section.

(2) Consent as precondition to disclosure

Any entity which maintains a record of personal data and which receives a request from the Secretary or a program entity for such data for purposes of this section shall not transfer any such data to the Secretary or to a program entity unless the individual whose personal data is to be so transferred gives an informed consent for such transfer.

(3) Disclosure by Secretary

(A) Notwithstanding any other provision of law, personal data collected by the Secretary or any program entity under this section may not be made available or disclosed by the Secretary or any program entity to any person other than the individual who is the subject of such data unless (i) such person requires such data for purposes of this section, or (ii) in response to a demand for such data made by means of compulsory legal process. Any individual who is the subject of personal data made available or disclosed under clause (ii) shall be notified of the demand for such data.

(B) Subject to all applicable laws regarding confidentiality, only the data collected by the Secretary under this section which is not personal data shall be made available to bona fide researchers and policy analysts (including the Congress) for the purposes of assisting in the conduct of studies respecting health professions personnel.

(4) "Program entity" defined

For purposes of this subsection, the term ''program entity'' means any public or private entity which collects, compiles, or analyzes health professions data under a grant, contract, or other arrangement with the Secretary under this section.

(g)[2] Technical assistance

The Secretary shall provide technical assistance to the States and political subdivisions thereof in the development of systems (including model laws) concerning confidentiality and comparability of data collected pursuant to this section.

(h) Grants and contracts regarding nonprofit entities

(1) In general

In carrying out subsection (a) of this section, the Secretary may make grants, or enter into contracts and cooperative agreements with, and provide technical assistance to, any nonprofit entity in order to establish a uniform allied health professions data reporting system to collect, compile, and analyze data on the allied health professions personnel.

[1] So in original. No subsec. (c) has been enacted.

[2] So in original. No subsec. (f) has been enacted.

(2) Reports

With respect to reports required in subsection (d) of this section, each such report made on or after October 1, 1991, shall include a description and analysis of data collected pursuant to paragraph (1).

(July 1, 1944, ch. 373, title VII, § 792, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2058; amended Pub. L. 105–392, title I, § 106(b), Nov. 13, 1998, 112 Stat. 3559.)

PRIOR PROVISIONS

A prior section 792 of act July 1, 1944, was classified to section 295h–1b of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 792 of act July 1, 1944, was classified to section 295h–1 of this title prior to repeal by Pub. L. 97–35.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392 inserted ''professional counselors,'' after ''clinical psychologists,''.

STUDY REGARDING SHORTAGES OF LICENSED PHARMACISTS

Pub. L. 106–129, § 5, Dec. 6, 1999, 113 Stat. 1675, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary'), acting through the appropriate agencies of the Public Health Service, shall conduct a study to determine whether and to what extent there is a shortage of licensed pharmacists. In carrying out the study, the Secretary shall seek the comments of appropriate public and private entities regarding any such shortage.

''(b) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act [Dec. 6, 1999], the Secretary shall complete the study under subsection (a) and submit to the Congress a report that describes the findings made through the study and that contains a summary of the comments received by the Secretary pursuant to such subsection.''

ADVISORY COUNCIL ON GRADUATE MEDICAL EDUCATION

Section 301 of Pub. L. 102–408, as amended by Pub. L. 102–531, title III, § 313(b), Oct. 27, 1992, 106 Stat. 3507; Pub. L. 105–392, title I, § 104(b)(1)–(3), Nov. 13, 1998, 112 Stat. 3552, which was formerly set out as a note under this section, was renumbered section 762 of the Public Health Service Act by Pub. L. 105–392, title I, § 104(b)(4)–(6), Nov. 13, 1998, 112 Stat. 3553, and is classified to section 294*o* of this title.

COMMISSION ON ALLIED HEALTH

Section 302 of Pub. L. 102–408 provided for establishment of a National Commission on Allied Health, charged with (1) making recommendations to the Secretary of Health and Human Services and Congress with respect to nationwide supply and distribution of allied health personnel, current and future shortages of personnel, priority research needs within allied health professions, Federal policies relating to personnel and research as well as undergraduate and graduate financing, concerted efforts on part of allied health facilities and educational institutions to address such matters, and needs with respect to nationwide data bases concerning supply and distribution of allied health personnel, and (2) encouraging entities providing allied health education to voluntarily achieve recommendations of Commission, and further provided for composition of Commission, date certain for appointments to Commission, resources for Commission activities, an interim progress report due not later than Oct. 1, 1993, a final report due not later than Apr. 1, 1994, and termination of Commission 60 days after submission of final report.

STUDY REGARDING SHORTAGE OF CLINICAL LABORATORY TECHNOLOGISTS FOR MEDICALLY UNDERSERVED AND RURAL COMMUNITIES

Section 303 of Pub. L. 102–408 directed Secretary of Health and Human Services, with respect to the shortage of clinical laboratory technologists, to conduct a study for the purpose of determining whether there are special or unique factors affecting the supply of clinical laboratory technologists in medically underserved and rural communities, and assessing alternative routes for certification of the competence of individuals to serve as such technologists, with consideration of the role of entities providing such certifications, and, not later than Oct. 1, 1993, complete the study and submit to Committee on Energy and Commerce of House of Representatives, and to Committee on Labor and Human Resources of Senate, a report describing the findings made as result of the study.

NATIONAL ADVISORY COUNCIL ON MEDICAL LICENSURE

Section 307 of Pub. L. 102–408 directed Secretary of Health and Human Services to establish National Advisory Council on Medical Licensure to advise Secretary on American Medical Association's system of verifying and maintaining information regarding qualifications of individuals to practice medicine, as well as advice regarding establishment and operation of any similar system, provided for activities of Council, including review of private credentials verification system and recommendations on how it could be improved, as well as review of State procedures for licensing individuals licensed in other States and procedures for licensing international medical graduates, provided for composition of Council and appointment of members, required submission of an interim report to Congress not later than Sept. 30, 1993, and a final report with recommendations not later than Sept. 30, 1995, provided for termination of Council not later than Sept. 30, 1995, or upon submission of final report, whichever is earlier, and further directed Secretary, in cooperation with Council to submit to Congress, not later than Sept. 30, 1994, study of not less than 10 States for purposes of determining average time required for States to process licensure applications of domestic and international medical graduates as well as percentages of domestic and international licensure applications approved.

§ 295*l*. Repealed. Pub. L. 105–392, title I, § 106(a)(2)(C), Nov. 13, 1998, 112 Stat. 3557

Section, act July 1, 1944, ch. 373, title VII, § 793, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2061; amended Pub. L. 102–531, title III, § 313(a)(6), Oct. 27, 1992, 106 Stat. 3507, required development, publication, dissemination, and biennial report to Congress on statistics respecting public and community health personnel.

A prior section 793 of act July 1, 1944, was classified to section 295h–1c of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 793 of act July 1, 1944, was renumbered section 794 by Pub. L. 97–35 and classified to section 295h–2 of this title.

§ 295m. Prohibition against discrimination on basis of sex

The Secretary may not make a grant, loan guarantee, or interest subsidy payment under this subchapter to, or for the benefit of, any school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, pharmacy, podiatric medicine, or public health or any training center for allied health personnel, or graduate program in clinical psychology, unless the application for the grant, loan guaran-

tee, or interest subsidy payment contains assurances satisfactory to the Secretary that the school or training center will not discriminate on the basis of sex in the admission of individuals to its training programs. The Secretary may not enter into a contract under this subchapter with any such school or training center unless the school, training center, or graduate program furnishes assurances satisfactory to the Secretary that it will not discriminate on the basis of sex in the admission of individuals to its training programs. In the case of a school of medicine which—

(1) on October 13, 1992, is in the process of changing its status as an institution which admits only female students to that of an institution which admits students without regard to their sex, and

(2) is carrying out such change in accordance with a plan approved by the Secretary,

the provisions of the preceding sentences of this section shall apply only with respect to a grant, contract, loan guarantee, or interest subsidy to, or for the benefit of such a school for a fiscal year beginning after June 30, 1979.

(July 1, 1944, ch. 373, title VII, § 794, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2063.)

PRIOR PROVISIONS

A prior section 794 of act July 1, 1944, was classified to section 295h–2 of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 794 of act July 1, 1944, was classified to section 294h–3 of this title prior to repeal by Pub. L. 91–519.

§ 295n. Repealed. Pub. L. 105–392, title I, § 101(b)(1), Nov. 13, 1998, 112 Stat. 3537

Section, act July 1, 1944, ch. 373, title VII, § 795, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2063; amended Pub. L. 102–531, title III, § 313(a)(7), Oct. 27, 1992, 106 Stat. 3507, related to obligated service regarding certain programs.

A prior section 795 of act July 1, 1944, was classified to section 295h–4 of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 795 of act July 1, 1944, was classified to section 295h–4 of this title prior to the general amendment of part G of this subchapter by Pub. L. 94–484.

SAVINGS PROVISION

Pub. L. 105–392, title I, § 101(b)(2), Nov. 13, 1998, 112 Stat. 3537, provided that: ''The amendments made by this section [enacting sections 293 to 293d of this title, amending section 287a–2 of this title, and repealing this section and former sections 293 to 293d of this title] shall not be construed to terminate agreements that, on the day before the date of enactment of this Act [Nov. 13, 1998], are in effect pursuant to section 795 of the Public Health Service Act (42 U.S.C. 795 [295n]) as such section existed on such date. Such agreements shall continue in effect in accordance with the terms of the agreements. With respect to compliance with such agreements, any period of practice as a provider of primary health services shall be counted towards the satisfaction of the requirement of practice pursuant to such section 795.''

§ 295n–1. Application

(a) In general

To be eligible to receive a grant or contract under this subchapter, an eligible entity shall prepare and submit to the Secretary an application that meets the requirements of this section, at such time, in such manner, and containing such information as the Secretary may require.

(b) Plan

An application submitted under this section shall contain the plan of the applicant for carrying out a project with amounts received under this subchapter. Such plan shall be consistent with relevant Federal, State, or regional health professions program plans.

(c) Performance outcome standards

An application submitted under this section shall contain a specification by the applicant entity of performance outcome standards that the project to be funded under the grant or contract will be measured against. Such standards shall address relevant health workforce needs that the project will meet. The recipient of a grant or contract under this section shall meet the standards set forth in the grant or contract application.

(d) Linkages

An application submitted under this section shall contain a description of the linkages with relevant educational and health care entities, including training programs for other health professionals as appropriate, that the project to be funded under the grant or contract will establish. To the extent practicable, grantees under this section shall establish linkages with health care providers who provide care for underserved communities and populations.

(July 1, 1944, ch. 373, title VII, § 796, as added Pub. L. 105–392, title I, § 106(a)(2)(F), Nov. 13, 1998, 112 Stat. 3557.)

§ 295n–2. Use of funds

(a) In general

Amounts provided under a grant or contract awarded under this subchapter may be used for training program development and support, faculty development, model demonstrations, trainee support including tuition, books, program fees and reasonable living expenses during the period of training, technical assistance, workforce analysis, dissemination of information, and exploring new policy directions, as appropriate to meet recognized health workforce objectives, in accordance with this subchapter.

(b) Maintenance of effort

With respect to activities for which a grant awarded under this subchapter is to be expended, the entity shall agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the fiscal year for which the entity receives such a grant.

(July 1, 1944, ch. 373, title VII, § 797, as added Pub. L. 105–392, title I, § 106(a)(2)(F), Nov. 13, 1998, 112 Stat. 3557.)

§ 295*o*. Matching requirement

The Secretary may require that an entity that applies for a grant or contract under this sub-

chapter provide non-Federal matching funds, as appropriate, to ensure the institutional commitment of the entity to the projects funded under the grant. As determined by the Secretary, such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

(July 1, 1944, ch. 373, title VII, § 798, as added Pub. L. 105–392, title I, § 106(a)(2)(F), Nov. 13, 1998, 112 Stat. 3558.)

PRIOR PROVISIONS

A prior section 295*o*, act July 1, 1944, ch. 373, title VII, § 798, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2064; amended Pub. L. 102–531, title III, § 313(a)(8), Oct. 27, 1992, 106 Stat. 3507, set forth certain general provisions relating to this subchapter, prior to repeal by Pub. L. 105–392, title I, § 106(a)(2)(D), Nov. 13, 1998, 112 Stat. 3557.

A prior section 798 of act July 1, 1944, was classified to section 295h–7 of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 798 of act July 1, 1944, was classified to section 295h–7 of this title prior to the general amendment of part G of this subchapter by Pub. L. 94–484.

§ 295*o*–1. Generally applicable provisions

(a) Awarding of grants and contracts

The Secretary shall ensure that grants and contracts under this subchapter are awarded on a competitive basis, as appropriate, to carry out innovative demonstration projects or provide for strategic workforce supplementation activities as needed to meet health workforce goals and in accordance with this subchapter. Contracts may be entered into under this subchapter with public or private entities as may be necessary.

(b) Eligible entities

Unless specifically required otherwise in this subchapter, the Secretary shall accept applications for grants or contracts under this subchapter from health professions schools, academic health centers, State or local governments, or other appropriate public or private nonprofit entities for funding and participation in health professions and nursing training activities. The Secretary may accept applications from for-profit private entities if determined appropriate by the Secretary.

(c) Information requirements

(1) In general

Recipients of grants and contracts under this subchapter shall meet information requirements as specified by the Secretary.

(2) Data collection

The Secretary shall establish procedures to ensure that, with respect to any data collection required under this subchapter, such data is collected in a manner that takes into account age, sex, race, and ethnicity.

(3) Use of funds

The Secretary shall establish procedures to permit the use of amounts appropriated under this subchapter to be used for data collection purposes.

(4) Evaluations

The Secretary shall establish procedures to ensure the annual evaluation of programs and projects operated by recipients of grants or contracts under this subchapter. Such procedures shall ensure that continued funding for such programs and projects will be conditioned upon a demonstration that satisfactory progress has been made by the program or project in meeting the objectives of the program or project.

(d) Training programs

Training programs conducted with amounts received under this subchapter shall meet applicable accreditation and quality standards.

(e) Duration of assistance

(1) In general

Subject to paragraph (2), in the case of an award to an entity of a grant, cooperative agreement, or contract under this subchapter, the period during which payments are made to the entity under the award may not exceed 5 years. The provision of payments under the award shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This paragraph may not be construed as limiting the number of awards under the program involved that may be made to the entity.

(2) Limitation

In the case of an award to an entity of a grant, cooperative agreement, or contract under this subchapter, paragraph (1) shall apply only to the extent not inconsistent with any other provision of this subchapter that relates to the period during which payments may be made under the award.

(f) Peer review regarding certain programs

(1) In general

Each application for a grant under this subchapter, except any scholarship or loan program, including those under sections[1] 292, 292q, or 292s of this title, shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

(2) Composition

Each peer review group under this subsection shall be composed principally of individuals who are not officers or employees of the Federal Government. In providing for the establishment of peer review groups and procedures, the Secretary shall ensure sex, racial, ethnic, and geographic balance among the membership of such groups.

(3) Administration

This subsection shall be carried out by the Secretary acting through the Administrator of the Health Resources and Services Administration.

(g) Preference or priority considerations

In considering a preference or priority for funding which is based on outcome measures for

[1] So in original. Probably should be "section".

an eligible entity under this subchapter, the Secretary may also consider the future ability of the eligible entity to meet the outcome preference or priority through improvements in the eligible entity's program design.

(h) Analytic activities

The Secretary shall ensure that—

(1) cross-cutting workforce analytical activities are carried out as part of the workforce information and analysis activities under section 294n of this title; and

(2) discipline-specific workforce information and analytical activities are carried out as part of—

(A) the community-based linkage program under part D of this subchapter; and

(B) the health workforce development program under subpart 2 of part E of this subchapter.

(i) Osteopathic Schools

For purposes of this subchapter, any reference to—

(1) medical schools shall include osteopathic medical schools; and

(2) medical students shall include osteopathic medical students.

(July 1, 1944, ch. 373, title VII, § 799, as added Pub. L. 105–392, title I, § 106(a)(2)(F), Nov. 13, 1998, 112 Stat. 3558.)

PRIOR PROVISIONS

A prior section 799 of act July 1, 1944, was renumbered section 799B by Pub. L. 105–392 and classified to section 295p of this title.

Another prior section 799 of act July 1, 1944, was classified to section 295i of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

§ 295*o*–2. Technical assistance

Funds appropriated under this subchapter may be used by the Secretary to provide technical assistance in relation to any of the authorities under this subchapter.

(July 1, 1944, ch. 373, title VII, § 799A, as added Pub. L. 105–392, title I, § 106(a)(2)(F), Nov. 13, 1998, 112 Stat. 3559.)

§ 295p. Definitions

For purposes of this subchapter:

(1)(A) The terms ''school of medicine'', ''school of dentistry'', ''school of osteopathic medicine'', ''school of pharmacy'', ''school of optometry'', ''school of podiatric medicine'', ''school of veterinary medicine'', ''school of public health'', and ''school of chiropractic'' mean an accredited public or nonprofit private school in a State that provides training leading, respectively, to a degree of doctor of medicine, a degree of doctor of dentistry or an equivalent degree, a degree of doctor of osteopathy, a degree of bachelor of science in pharmacy or an equivalent degree or a degree of doctor of pharmacy or an equivalent degree, a degree of doctor of optometry or an equivalent degree, a degree of doctor of podiatric medicine or an equivalent degree, a degree of doctor of veterinary medicine or an equivalent degree, a graduate degree in public health or an equivalent degree, and a degree of doctor of chiropractic or an equivalent degree, and including advanced training related to such training provided by any such school.

(B) The terms ''graduate program in health administration'' and ''graduate program in clinical psychology'' mean an accredited graduate program in a public or nonprofit private institution in a State that provides training leading, respectively, to a graduate degree in health administration or an equivalent degree and a doctoral degree in clinical psychology or an equivalent degree.

(C) The terms ''graduate program in clinical social work'' and ''graduate program in marriage and family therapy'' and ''graduate program in professional counseling'' mean an accredited graduate program in a public or nonprofit private institution in a State that provides training, respectively, in a concentration in health or mental health care leading to a graduate degree in social work and a concentration leading to a graduate degree in marriage and family therapy and a concentration leading to a graduate degree in counseling.

(D) The term ''graduate program in behavioral health and mental health practice'' means a graduate program in clinical psychology, behavioral health and mental health practice, clinical social work, professional counseling, or marriage and family therapy.

(E) The term ''accredited'', when applied to a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, or chiropractic, or a graduate program in health administration, clinical psychology, clinical social work, professional counseling, or marriage and family therapy, means a school or program that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, except that a new school or program that, by reason of an insufficient period of operation, is not, at the time of application for a grant or contract under this subchapter, eligible for accreditation by such a recognized body or bodies, shall be deemed accredited for purposes of this subchapter, if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school or program will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of the first entering class in such school or program.

(2) The term ''teaching facilities'' means areas dedicated for use by students, faculty, or administrative or maintenance personnel for clinical purposes, research activities, libraries, classrooms, offices, auditoriums, dining areas, student activities, or other related purposes necessary for, and appropriate to, the conduct of comprehensive programs of education. Such term includes interim facilities but does not include off-site improvements or living quarters.

(3) The term ''program for the training of physician assistants'' means an educational program that—

(A) has as its objective the education of individuals who will, upon completion of their

studies in the program, be qualified to provide primary care under the supervision of a physician;

(B) extends for at least one academic year and consists of—

(i) supervised clinical practice; and

(ii) at least four months (in the aggregate) of classroom instruction, directed toward preparing students to deliver health care;

(C) has an enrollment of not less than eight students; and

(D) trains students in primary care, disease prevention, health promotion, geriatric medicine, and home health care.

(4) The term ''school of allied health'' means a public or nonprofit private college, junior college, or university or hospital-based educational entity that—

(A) provides, or can provide, programs of education to enable individuals to become allied health professionals or to provide additional training for allied health professionals;

(B) provides training for not less than a total of twenty persons in the allied health curricula (except that this subparagraph shall not apply to any hospital-based educational entity);

(C) includes or is affiliated with a teaching hospital; and

(D) is accredited by a recognized body or bodies approved for such purposes by the Secretary of Education, or which provides to the Secretary satisfactory assurance by such accrediting body or bodies that reasonable progress is being made toward accreditation.

(5) The term ''allied health professionals'' means a health professional (other than a registered nurse or physician assistant)—

(A) who has received a certificate, an associate's degree, a bachelor's degree, a master's degree, a doctoral degree, or postbaccalaureate training, in a science relating to health care;

(B) who shares in the responsibility for the delivery of health care services or related services, including—

(i) services relating to the identification, evaluation, and prevention of disease and disorders;

(ii) dietary and nutrition services;

(iii) health promotion services;

(iv) rehabilitation services; or

(v) health systems management services; and

(C) who has not received a degree of doctor of medicine, a degree of doctor of osteopathy, a degree of doctor of dentistry or an equivalent degree, a degree of doctor of veterinary medicine or an equivalent degree, a degree of doctor of optometry or an equivalent degree, a degree of doctor of podiatric medicine or an equivalent degree, a degree of bachelor of science in pharmacy or an equivalent degree, a degree of doctor of pharmacy or an equivalent degree, a graduate degree in public health or an equivalent degree, a degree of doctor of chiropractic or an equivalent degree, a graduate degree in health administration or an equivalent degree, a doctoral degree in clinical psychology or an equivalent degree, or a degree in social work or an equivalent degree or a degree in counseling or an equivalent degree.

(6) The term ''medically underserved community'' means an urban or rural area or population that—

(A) is eligible for designation under section 254e of this title as a health professional shortage area;

(B) is eligible to be served by a migrant health center under section 254b[1] of this title, a community health center under section 254c[1] of this title, a grantee under section 254b(h) of this title (relating to homeless individuals), or a grantee under section 256a[1] of this title (relating to residents of public housing);

(C) has a shortage of personal health services, as determined under criteria issued by the Secretary under section 1395x(aa)(2) of this title (relating to rural health clinics); or

(D) is designated by a State Governor (in consultation with the medical community) as a shortage area or medically underserved community.

(7) The term ''Department'' means the Department of Health and Human Services.

(8) The term ''nonprofit'' refers to the status of an entity owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(9) The term ''State'' includes, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(10)(A) Subject to subparagraph (B), the term ''underrepresented minorities'' means, with respect to a health profession, racial and ethnic populations that are underrepresented in the health profession relative to the number of individuals who are members of the population involved.

(B) For purposes of subparagraph (A), Asian individuals shall be considered by the various subpopulations of such individuals.

(11) The term ''psychologist'' means an individual who—

(A) holds a doctoral degree in psychology; and

(B) is licensed or certified on the basis of the doctoral degree in psychology, by the State in which the individual practices, at the independent practice level of psychology to furnish diagnostic, assessment, preventive, and therapeutic services directly to individuals.

(July 1, 1944, ch. 373, title VII, § 799B, formerly § 799, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2066; renumbered § 799B and

[1] See References in Text notes below.

amended Pub. L. 105–392, title I, §§106(a)(2)(E), 108, Nov. 13, 1998, 112 Stat. 3557, 3560; Pub. L. 107–251, title VI, §601(a), Oct. 26, 2002, 116 Stat. 1664.)

REFERENCES IN TEXT

The reference to section 254b of this title the first place appearing and the reference to section 254c of this title, referred to in par. (6)(B), were in the original references to sections 329 and 330, meaning sections 329 and 330 of act July 1, 1944, which were omitted in the general amendment of subpart I (§254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, §2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

Section 256a of this title, referred to in par. (6)(B), was repealed by Pub. L. 104–299, §4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

AMENDMENTS

2002—Par. (6)(B). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

1998—Par. (1)(C). Pub. L. 105–392, §108(b)(1)(A), inserted ''and 'graduate program in professional counseling' '' before ''mean an'' and ''and a concentration leading to a graduate degree in counseling'' before period at end.

Par. (1)(D). Pub. L. 105–392, §108(a), (b)(1)(B), inserted ''behavioral health and'' before ''mental'', ''behavioral health and mental health practice,'' before ''clinical'', and ''professional counseling,'' after ''social work,''.

Par. (1)(E). Pub. L. 105–392, §108(b)(1)(C), inserted ''professional counseling,'' after ''social work,''.

Par. (3). Pub. L. 105–392, §108(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'program for the training of physician assistants' means an educational program that—

''(A) has as its objective the education of individuals who will, upon completion of their studies in the program, be qualified to provide primary health care under the supervision of a physician; and

''(B) meets regulations prescribed by the Secretary in accordance with section 293n(b) of this title.''

Par. (5)(C). Pub. L. 105–392, §108(b)(2), inserted ''or a degree in counseling or an equivalent degree'' before period at end.

Par. (6)(D). Pub. L. 105–392, §108(c), added subpar. (D).

Par. (11). Pub. L. 105–392, §108(e), added par. (11).

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER VI—NURSING WORKFORCE DEVELOPMENT

AMENDMENTS

1998—Pub. L. 105–392, title I, §123(1), Nov. 13, 1998, 112 Stat. 3562, added subchapter VI heading and struck out former subchapter VI heading ''NURSE EDUCATION''.

1985—Pub. L. 99–92, §9(b)(3), Aug. 16, 1985, 99 Stat. 400, substituted ''NURSE EDUCATION'' for ''NURSE TRAINING'' in subchapter VI heading.

PART A—GENERAL PROVISIONS

AMENDMENTS

1998—Pub. L. 105–392, title I, §123(4), Nov. 13, 1998, 112 Stat. 3563, added part A heading and struck out former part A heading ''Special Projects''.

1985—Pub. L. 99–92, §9(b)(1), (2), Aug. 16, 1985, 99 Stat. 400, substituted ''Special Projects'' for ''Assistance for Expansion and Improvement of Nurse Training'' as part A heading, and struck out headings for subparts I, II, III, and IV of part A which read as follows: ''Subpart I—Construction Assistance'', ''Subpart II—Capitation Grants'', ''Subpart III—Financial Distress Grants'', and ''Subpart IV—Special Projects''.

§ 296. Definitions

As used in this subchapter:

(1) Eligible entities

The term ''eligible entities'' means schools of nursing, nursing centers, academic health centers, State or local governments, and other public or private nonprofit entities determined appropriate by the Secretary that submit to the Secretary an application in accordance with section 296a of this title.

(2) School of nursing

The term ''school of nursing'' means a collegiate, associate degree, or diploma school of nursing in a State.

(3) Collegiate school of nursing

The term ''collegiate school of nursing'' means a department, division, or other administrative unit in a college or university which provides primarily or exclusively a program of education in professional nursing and related subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing, or to an equivalent degree, and including advanced training related to such program of education provided by such school, but only if such program, or such unit, college or university is accredited.

(4) Associate degree school of nursing

The term ''associate degree school of nursing'' means a department, division, or other administrative unit in a junior college, community college, college, or university which provides primarily or exclusively a two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or to an equivalent degree, but only if such program, or such unit, college, or university is accredited.

(5) Diploma school of nursing

The term ''diploma school of nursing'' means a school affiliated with a hospital or university, or an independent school, which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to a diploma or to equivalent indicia that such program has been satisfactorily completed, but only if such program, or such affiliated school or such hospital or university or such independent school is accredited.

(6) Accredited

(A) In general

Except as provided in subparagraph (B), the term ''accredited'' when applied to any

program of nurse education means a program accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education and when applied to a hospital, school, college, or university (or a unit thereof) means a hospital, school, college, or university (or a unit thereof) which is accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education. For the purpose of this paragraph, the Secretary of Education shall publish a list of recognized accrediting bodies, and of State agencies, which the Secretary of Education determines to be reliable authority as to the quality of education offered.

(B) New programs

A new program of nursing that, by reason of an insufficient period of operation, is not, at the time of the submission of an application for a grant or contract under this subchapter, eligible for accreditation by such a recognized body or bodies or State agency, shall be deemed accredited for purposes of this subchapter if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the program will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of students of the first entering class in such a program.

(7) Nonprofit

The term ''nonprofit'' as applied to any school, agency, organization, or institution means one which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(8) State

The term ''State'' means a State, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

(9) Ambulatory surgical center

The term ''ambulatory surgical center'' has the meaning applicable to such term under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(10) Federally qualified health center

The term ''Federally qualified health center'' has the meaning given such term under section 1861(aa)(4) of the Social Security Act [42 U.S.C. 1395x(aa)(4)].

(11) Health care facility

The term ''health care facility'' means an Indian Health Service health center, a Native Hawaiian health center, a hospital, a Federally qualified health center, a rural health clinic, a nursing home, a home health agency, a hospice program, a public health clinic, a State or local department of public health, a skilled nursing facility, an ambulatory surgical center, or any other facility designated by the Secretary.

(12) Home health agency

The term ''home health agency'' has the meaning given such term in section 1861(*o*) of the Social Security Act [42 U.S.C. 1395x(*o*)].

(13) Hospice program

The term ''hospice program'' has the meaning given such term in section 1861(dd)(2) of the Social Security Act [42 U.S.C. 1395x(dd)(2)].

(14) Rural health clinic

The term ''rural health clinic'' has the meaning given such term in section 1861(aa)(2) of the Social Security Act [42 U.S.C. 1395x(aa)(2)].

(15) Skilled nursing facility

The term ''skilled nursing facility'' has the meaning given such term in section 1819(a) of the Social Security Act [42 U.S.C. 1395i–3(a)].

(July 1, 1944, ch. 373, title VIII, § 801, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3562; amended Pub. L. 107–205, title I, § 101, Aug. 1, 2002, 116 Stat. 811.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (9), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 296, act July 1, 1944, ch. 373, title VIII, § 801 as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 908; amended Nov. 3, 1966, Pub. L. 89–751, § 8(a), 80 Stat. 1236; Aug. 16, 1968, Pub. L. 90–490, title II, § 201(a), 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, § 2(a), 85 Stat. 465; July 29, 1975, Pub. L. 94–63, title IX, §§ 902(a), 910(a)(1), 89 Stat. 354, 355; Sept. 29, 1979, Pub. L. 96–76, title I, § 102, 93 Stat. 579, authorized appropriations for construction grants, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

AMENDMENTS

2002—Pars. (9) to (15). Pub. L. 107–205 added pars. (9) to (15).

SAVINGS PROVISION

Pub. L. 105–392, title I, § 124, Nov. 13, 1998, 112 Stat. 3574, provided that: ''In the case of any authority for making awards of grants or contracts that is terminated by the amendment made by section 123 [enacting sections 296, 296a to 296f, 296j, 296m, 296p, 297q, and 297t of this title, transferring section 298b–2 of this title to section 296g of this title, and repealing sections 296k to 296m, 296r, 297, 297–1, 297c, 298, 298a, 298b, 298b–1, 298b–3 to 298b–5, and 298b–7 of this title], the Secretary of Health and Human Services may, notwithstanding the termination of the authority, continue in effect any grant or contract made under the authority that is in effect on the day before the date of the enactment of this Act [Nov. 13, 1998], subject to the duration of any such grant or contract not exceeding the period determined by the Secretary in first approving such financial assistance, or in approving the most recent request made (before the date of such enactment) for continuation of such assistance, as the case may be.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

REPORTS BY GOVERNMENT ACCOUNTABILITY OFFICE

Pub. L. 107–205, title II, § 204, Aug. 1, 2002, 116 Stat. 818, provided that:

''(a) NATIONAL VARIATIONS.—Not later than 4 years after the date of the enactment of this Act [Aug. 1, 2002], the Comptroller General of the United States shall conduct a survey to determine national variations in the nursing shortage at hospitals, nursing homes, and other health care providers, and submit a report, including recommendations, to the Congress on Federal remedies to ease nursing shortages. The Comptroller General shall submit to the Congress this report describing the findings relating to ownership status and associated remedies.

''(b) HIRING DIFFERENCES AMONG CERTAIN PRIVATE ENTITIES.—The Comptroller General of the United States shall conduct a study to determine differences in the hiring of nurses by nonprofit private entities as compared to the hiring of nurses by private entities that are not nonprofit. In carrying out the study, the Comptroller General shall determine the effect of the inclusion of private entities that are not nonprofit in the program under section 846 of the Public Health Service Act [section 297n of this title]. Not later than 4 years after the date of the enactment of this Act [Aug. 1, 2002], the Comptroller General shall submit to the Congress a report describing the findings of the study.

''(c) NURSING SCHOLARSHIPS.—The Comptroller General of the United States shall conduct an evaluation of whether the program carried out under section 846(d) of the Public Health Service Act [section 297n(d) of this title] has demonstrably increased the number of applicants to schools of nursing and, not later than 4 years after the date of the enactment of this Act [Aug. 1, 2002], submit a report to the Congress on the results of such evaluation.''

PURPOSE

Pub. L. 105–392, title I, § 122, Nov. 13, 1998, 112 Stat. 3562, provided that: ''It is the purpose of this subtitle [subtitle B (§§ 121–124) of title I of Pub. L. 105–392, see Short Title of 1998 Amendment note set out under section 201 of this title] to restructure the nurse education authorities of title VIII of the Public Health Service Act [this subchapter] to permit a comprehensive, flexible, and effective approach to Federal support for nursing workforce development.''

INFORMATION RESPECTING SUPPLY AND DISTRIBUTION OF AND REQUIREMENTS FOR NURSES; DETERMINATION PROCEDURES; SURVEYS AND COLLECTION OF DATES; ANNUAL REPORT TO CONGRESS ON DETERMINATIONS, ETC.; REVIEW BY OFFICE OF MANAGEMENT AND BUDGET OF REPORT PRIOR TO SUBMISSION

Section 951 of Pub. L. 94–63, as amended by Pub. L. 95–623, § 12(h), Nov. 9, 1978, 92 Stat. 3457, provided that:

''(a)(1) Using procedures developed in accordance with paragraph (3), the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary') shall determine on a continuing basis—

''(A) the supply (both current and projected and within the United States and within each State) of registered nurses, licensed practical and vocational nurses, nurse's aides, registered nurses with advanced training or graduate degrees, and nurse practitioners;

''(B) the distribution within the United States and within each State, of such nurses so as to determine (i) those areas of the United States which are oversupplied or undersupplied, or which have an adequate supply of such nurses in relation to the population of the area, and (ii) the demand for the services which such nurses provide; and

''(C) the current and future requirements for such nurses, nationally and within each State.

''(2) The Secretary shall survey and gather data, on a continuing basis, on—

''(A) the number and distribution of nurses, by type of employment and location of practice;

''(B) the number of nurses who are practicing full time and those who are employed part time, within the United States and within each State;

''(C) the average rates of compensation for nurses, by type of practice and location of practice;

''(D) the activity status of the total number of registered nurses within the United States and within each State;

''(E) the number of nurses with advanced training or graduate degrees in nursing, by specialty, including nurse practitioners, nurse clinicians, nurse researchers, nurse educators, and nurse supervisors and administrators; and

''(F) the number of registered nurses entering the United States annually from other nations, by country of nurse training and by immigrant status.

''(3) Within six months of the date of the enactment of this Act [July 29, 1975], the Secretary shall develop procedures for determining (on both a current and projected basis) the supply and distribution of and requirements for nurses within the United States and within each State.

''(b) Not later than October 1, 1979, and October 1 of each odd-numbered year thereafter, the Secretary shall report to the Congress—

''(1) his determinations under subsection (a)(1) and the data gathered under subsection (a)(2);

''(2) an analysis of such determination and data; and

''(3) recommendations for such legislation as the Secretary determines, based on such determinations and data, will achieve (A) an equitable distribution of nurses within the United States and within each State, and (B) adequate supplies of nurses within the United States and within each State.

''(c) The Office of Management and Budget may review the Secretary's report under subsection (b) before its submission to the Congress, but the Office may not revise the report or delay its submission, and it may submit to the Congress its comments (and those of other departments or agencies of the Government) respecting such report.''

§ 296a. Application

(a) In general

To be eligible to receive a grant or contract under this subchapter, an eligible entity shall prepare and submit to the Secretary an application that meets the requirements of this section, at such time, in such manner, and containing such information as the Secretary may require.

(b) Plan

An application submitted under this section shall contain the plan of the applicant for carrying out a project with amounts received under this subchapter. Such plan shall be consistent with relevant Federal, State, or regional program plans.

(c) Performance outcome standards

An application submitted under this section shall contain a specification by the applicant entity of performance outcome standards that the project to be funded under the grant or contract will be measured against. Such standards shall address relevant national nursing needs that the project will meet. The recipient of a grant or contract under this section shall meet

the standards set forth in the grant or contract application.

(d) Linkages

An application submitted under this section shall contain a description of the linkages with relevant educational and health care entities, including training programs for other health professionals as appropriate, that the project to be funded under the grant or contract will establish.

(July 1, 1944, ch. 373, title VIII, § 802, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3564.)

PRIOR PROVISIONS

A prior section 296a, act July 1, 1944, ch. 373, title VIII, § 802, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 909; amended Aug. 16, 1968, Pub. L. 90–490, title II, § 201(b), 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, §§ 2(d)(3), (e), (f), 13, 85 Stat. 468, 480; July 29, 1975, Pub. L. 94–63, title IX, §§ 910(a)(2), 941(a), 89 Stat. 355, 363, related to time of submission, determinations, etc., respecting applications for construction grants, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

§ 296b. Use of funds

(a) In general

Amounts provided under a grant or contract awarded under this subchapter may be used for training program development and support, faculty development, model demonstrations, trainee support including tuition, books, program fees and reasonable living expenses during the period of training, technical assistance, workforce analysis, and dissemination of information, as appropriate to meet recognized nursing objectives, in accordance with this subchapter.

(b) Maintenance of effort

With respect to activities for which a grant awarded under this subchapter is to be expended, the entity shall agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the fiscal year for which the entity receives such a grant.

(July 1, 1944, ch. 373, title VIII, § 803, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3564.)

PRIOR PROVISIONS

A prior section 296b, act July 1, 1944, ch. 373, title VIII, § 803, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 911; amended Aug. 16, 1968, Pub. L. 90–490, title II, § 202, 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, §§ 2(b), 13, 85 Stat. 465, 480; July 29, 1975, Pub. L. 94–63, title IX, § 941(b), 89 Stat. 364, set forth provisions relating to amount of construction grant, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

§ 296c. Matching requirement

The Secretary may require that an entity that applies for a grant or contract under this subchapter provide non-Federal matching funds, as appropriate, to ensure the institutional commitment of the entity to the projects funded under the grant. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

(July 1, 1944, ch. 373, title VIII, § 804, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3565.)

PRIOR PROVISIONS

A prior section 296c, act July 1, 1944, ch. 373, title VIII, § 804, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 911; amended Nov. 18, 1971, Pub. L. 92–158, §§ 2(d)(3), 13, 85 Stat. 468, 480; July 29, 1975, Pub. L. 94–63, title IX, § 941(c), 89 Stat. 364, which related to recovery of payments of funds by United States for construction of facilities, was renumbered section 858 of act July 1, 1944, by Pub. L. 99–92 and transferred to section 298b–5 of this title.

§ 296d. Preference

In awarding grants or contracts under this subchapter, the Secretary shall give preference to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

(July 1, 1944, ch. 373, title VIII, § 805, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3565.)

PRIOR PROVISIONS

A prior section 296d, act July 1, 1944, ch. 373, title VIII, § 805, formerly § 809, as added Nov. 18, 1971, Pub. L. 92–158, § 2(c), 85 Stat. 465; renumbered § 805 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 902(d), 910(b)(1)(A), (B)(i), (2), (c), 911(b), 941(d), 89 Stat. 355, 356, 364; Sept. 29, 1979, Pub. L. 96–76, title I, § 103, 93 Stat. 579, related to applications, amounts, etc., for loan guarantees and interest subsidies for construction of training facilities by nonprofit nursing schools, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

Another prior section 296d, act July 1, 1944, ch. 373, title VIII, § 805, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 912; amended Aug. 16, 1968, Pub. L. 90–490, title II, §§ 211, 215, 82 Stat. 780, 783; Nov. 18, 1971, Pub. L. 92–158, § 3(b), 85 Stat. 469, relating to special project grants and contracts for nurse training programs, was repealed by Pub. L. 94–63, title IX, § 922, July 29, 1975, 89 Stat. 359, eff. July 1, 1975.

§ 296e. Generally applicable provisions

(a) Awarding of grants and contracts

The Secretary shall ensure that grants and contracts under this subchapter are awarded on a competitive basis, as appropriate, to carry out innovative demonstration projects or provide for strategic workforce supplementation activities as needed to meet national nursing service goals and in accordance with this subchapter. Contracts may be entered into under this subchapter with public or private entities as determined necessary by the Secretary.

(b) Information requirements

(1) In general

Recipients of grants and contracts under this subchapter shall meet information requirements as specified by the Secretary.

(2) Evaluations

The Secretary shall establish procedures to ensure the annual evaluation of programs and projects operated by recipients of grants under

this subchapter. Such procedures shall ensure that continued funding for such programs and projects will be conditioned upon a demonstration that satisfactory progress has been made by the program or project in meeting the objectives of the program or project.

(c) Training programs

Training programs conducted with amounts received under this subchapter shall meet applicable accreditation and quality standards.

(d) Duration of assistance

(1) In general

Subject to paragraph (2), in the case of an award to an entity of a grant, cooperative agreement, or contract under this subchapter, the period during which payments are made to the entity under the award may not exceed 5 years. The provision of payments under the award shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This paragraph may not be construed as limiting the number of awards under the program involved that may be made to the entity.

(2) Limitation

In the case of an award to an entity of a grant, cooperative agreement, or contract under this subchapter, paragraph (1) shall apply only to the extent not inconsistent with any other provision of this subchapter that relates to the period during which payments may be made under the award.

(e) Peer review regarding certain programs

(1) In general

Each application for a grant under this subchapter, except advanced nurse traineeship grants under section 296j(a)(2) of this title, shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

(2) Composition

Each peer review group under this subsection shall be composed principally of individuals who are not officers or employees of the Federal Government. In providing for the establishment of peer review groups and procedures, the Secretary shall, except as otherwise provided, ensure sex, racial, ethnic, and geographic representation among the membership of such groups.

(3) Administration

This subsection shall be carried out by the Secretary acting through the Administrator of the Health Resources and Services Administration.

(f) Analytic activities

The Secretary shall ensure that—

(1) cross-cutting workforce analytical activities are carried out as part of the workforce information and analysis activities under this subchapter; and

(2) discipline-specific workforce information is developed and analytical activities are carried out as part of—

(A) the advanced education nursing activities under part B of this subchapter;

(B) the workforce diversity activities under part C of this subchapter; and

(C) basic nursing education and practice activities under part D of this subchapter.

(g) State and regional priorities

Activities under grants or contracts under this subchapter shall, to the extent practicable, be consistent with related Federal, State, or regional nursing professions program plans and priorities.

(h) Filing of applications

(1) In general

Applications for grants or contracts under this subchapter may be submitted by health professions schools, schools of nursing, academic health centers, State or local governments, or other appropriate public or private nonprofit entities as determined appropriate by the Secretary in accordance with this subchapter.

(2) For-profit entities

Notwithstanding paragraph (1), a for-profit entity may be eligible for a grant or contract under this subchapter as determined appropriate by the Secretary.

(July 1, 1944, ch. 373, title VIII, § 806, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3565.)

PRIOR PROVISIONS

A prior section 296e, act July 1, 1944, ch. 373, title VIII, § 810, formerly § 806, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 912; amended Dec. 5, 1967, Pub. L. 90–174, § 12(a), 81 Stat. 541; Aug. 16, 1968, Pub. L. 90–490, title II, § 211, 82 Stat. 781; Nov. 18, 1971, Pub. L. 92–158, § 4(a), 85 Stat. 470; renumbered § 810 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 902(b), 915(a)–(c), 916(a), (b), 941(e), 89 Stat. 354, 356, 358, 365; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(*o*)(1)–(4), 91 Stat. 393; Sept. 29, 1979, Pub. L. 96–76, title I, § 104, 93 Stat. 579, set forth provisions relating to computation, requirements, etc., respecting grants for institutional support, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

§ 296e–1. Grants for health professions education

(a) Grants for health professions education in health disparities and cultural competency

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make awards of grants, contracts, or cooperative agreements to eligible entities for the purpose of carrying out research and demonstration projects (including research and demonstration projects for continuing health professions education) for training and education for the reduction of disparities in health care outcomes and the provision of culturally competent health care. Grants under this section shall be the same as provided in section 293e of this title.

(b) Authorization of appropriations

There are to be appropriated to carry out subsection (a) of this section such sums as may be necessary for each of the fiscal years 2001 through 2004.

(July 1, 1944, ch. 373, title VIII, § 807, as added Pub. L. 106–525, title IV, § 401(b)(2), Nov. 22, 2000, 114 Stat. 2508.)

PRIOR PROVISIONS

A prior section 807 of act July 1, 1944, was renumbered section 808 by Pub. L. 106–525 and is classified to section 296f of this title.

Another prior section 807 of act July 1, 1944, was renumbered section 811 and classified to section 296f of this title prior to repeal by Pub. L. 99–92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400.

§ 296f. Technical assistance

Funds appropriated under this subchapter may be used by the Secretary to provide technical assistance in relation to any of the authorities under this subchapter.

(July 1, 1944, ch. 373, title VIII, § 808, formerly § 807, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3566; renumbered § 808, Pub. L. 106–525, title IV, § 401(b)(1), Nov. 22, 2000, 114 Stat. 2508.)

PRIOR PROVISIONS

A prior section 296f, act July 1, 1944, ch. 373, title VIII, § 811, formerly § 807, as added Aug. 16, 1968, Pub. L. 90–490, title II, § 212, 82 Stat. 782; amended Nov. 18, 1971, Pub. L. 92–158, § 4(c), 85 Stat. 475; renumbered § 811 and amended July 29, 1975, Pub. L. 94–63, title IX, § 941(f), 89 Stat. 365, related to filing dates, etc., for applications for grants, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

A prior section 808 of act July 1, 1944, was classified to section 296g of this title prior to repeal by Pub. L. 94–63, title IX, § 922, July 29, 1975, 89 Stat. 359.

§ 296g. Prohibition against discrimination by schools on basis of sex

The Secretary may not make a grant, loan guarantee, or interest subsidy payment under this subchapter to, or for the benefit of, any school of nursing unless the application for the grant, loan guarantee, or interest subsidy payment contains assurances satisfactory to the Secretary that the school will not discriminate on the basis of sex in the admission of individuals to its training programs. The Secretary may not enter into a contract under this subchapter with any school unless the school furnishes assurances satisfactory to the Secretary that it will not discriminate on the basis of sex in the admission of individuals to its training programs.

(July 1, 1944, ch. 373, title VIII, § 810, formerly § 845, as added Pub. L. 92–158, § 11, Nov. 18, 1971, 85 Stat. 479; renumbered § 855, Pub. L. 94–63, title IX, § 941(k)(1), July 29, 1975, 89 Stat. 366; renumbered § 810, Pub. L. 105–392, title I, § 123(6), Nov. 13, 1998, 112 Stat. 3574.)

CODIFICATION

Section was formerly classified to section 298b–2 of this title prior to renumbering by Pub. L. 105–392.

Amendment by Pub. L. 105–392, which directed the renumbering of section 855 of act July 1, 1944, as section 810 of that act, and the transfer of that section so as to appear after section 809 of that act, was executed by transferring the renumbered section so as to appear after section 807 of act July 1, 1944, to reflect the probable intent of Congress. No section 809 was enacted.

PRIOR PROVISIONS

A prior section 296g, act July 1, 1944, ch. 373, title VIII, § 808, as added Aug. 16, 1968, Pub. L. 90–490, title II § 212, 82 Stat. 783; amended Nov. 18, 1971, Pub. L. 92–158, § 3(a), 85 Stat. 469; July 29, 1975, Pub. L. 94–63, title IX, § 902(c), 89 Stat. 354, authorized appropriations for special project grants and contracts and financial distress grants from the fiscal year ending June 30, 1972 through the fiscal year ending June 30, 1975, prior to repeal by Pub. L. 94–63, title IX, §§ 905, 922, July 29, 1975, 89 Stat. 355, 359, effective July 1, 1975.

A prior section 296h, act July 1, 1944, ch. 373, title VIII, § 809, as added Nov. 18, 1971, Pub. L. 92–158, § 2(c), 85 Stat. 465, which related to loan guarantees and interest subsidies for construction of training facilities by nonprofit nursing schools, was renumbered section 805 of act July 1, 1944, by Pub. L. 94–63 and transferred to section 296d of this title.

A prior section 296i, act July 1, 1944, ch. 373, title VIII, § 810, as added Nov. 18, 1971, Pub. L. 92–158, § 4(b), 85 Stat. 474; amended July 29, 1975, Pub. L. 94–63, title IX, § 902(e), 89 Stat. 355, authorized grants for start-up programs for new nurse training programs, and set out prerequisites, etc., prior to repeal by Pub. L. 94–63, title IX, §§ 905, 931(b), July 29, 1975, 89 Stat. 355, 362, effective July 1, 1975.

PART B—NURSE PRACTITIONERS, NURSE MIDWIVES, NURSE ANESTHETISTS, AND OTHER ADVANCED EDUCATION NURSES

PRIOR PROVISIONS

A prior part B related to assistance to nursing students and consisted of sections 297 to 297n, prior to the general amendment of this subchapter by Pub. L. 105–392.

§ 296j. Advanced education nursing grants

(a) In general

The Secretary may award grants to and enter into contracts with eligible entities to meet the costs of—

(1) projects that support the enhancement of advanced nursing education and practice; and

(2) traineeships for individuals in advanced nursing education programs.

(b) Definition of advanced education nurses

For purposes of this section, the term ''advanced education nurses'' means individuals trained in advanced degree programs including individuals in combined R.N./Master's degree programs, post-nursing master's certificate programs, or, in the case of nurse midwives, in certificate programs in existence on the date that is one day prior to November 13, 1998, to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators, or public health nurses, or in other nurse specialties determined by the Secretary to require advanced education.

(c) Authorized nurse practitioner and nurse midwifery programs

Nurse practitioner and nurse midwifery programs eligible for support under this section are educational programs for registered nurses (irrespective of the type of school of nursing in which the nurses received their training) that—

(1) meet guidelines prescribed by the Secretary; and

(2) have as their objective the education of nurses who will upon completion of their studies in such programs, be qualified to effec-

tively provide primary health care, including primary health care in homes and in ambulatory care facilities, long-term care facilities, acute care, and other health care settings.

(d) Authorized nurse anesthesia programs

Nurse anesthesia programs eligible for support under this section are education programs that—

(1) provide registered nurses with full-time anesthetist education; and

(2) are accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs.

(e) Other authorized educational programs

The Secretary shall prescribe guidelines as appropriate for other advanced nurse education programs eligible for support under this section.

(f) Traineeships

(1) In general

The Secretary may not award a grant to an applicant under subsection (a) of this section unless the applicant involved agrees that traineeships provided with the grant will only pay all or part of the costs of—

(A) the tuition, books, and fees of the program of advanced nurse education with respect to which the traineeship is provided; and

(B) the reasonable living expenses of the individual during the period for which the traineeship is provided.

(2) Doctoral programs

The Secretary may not obligate more than 10 percent of the traineeships under subsection (a) of this section for individuals in doctorate degree programs.

(3) Special consideration

In making awards of grants and contracts under subsection (a)(2) of this section, the Secretary shall give special consideration to an eligible entity that agrees to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under section 254e of this title.

(July 1, 1944, ch. 373, title VIII, § 811, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3566.)

PRIOR PROVISIONS

A prior section 296j, act July 1, 1944, ch. 373, title VIII, § 815, as added July 29, 1975, Pub. L. 94–63, title IX, § 921, 89 Stat. 358; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2752, 95 Stat. 929, set forth provisions relating to authorization, terms and conditions, etc., respecting grants for operational costs or meeting accreditation requirements, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

Prior sections 296k and 296*l* were repealed by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

Section 296k, act July 1, 1944, ch. 373, title VIII, § 820, as added Pub. L. 94–63, title IX, § 931(a), July 29, 1975, 89 Stat. 359; amended Pub. L. 96–76, title I, § 105, Sept. 29, 1979, 93 Stat. 579; Pub. L. 97–35, title XXVII, § 2753(a)(1), (b), Aug. 13, 1981, 95 Stat. 929; Pub. L. 99–92, § 3, Aug. 16, 1985, 99 Stat. 393; Pub. L. 99–129, title II, § 227(a), Oct. 22, 1985, 99 Stat. 547; Pub. L. 100–607, title VII, §§ 701(a)(2), (b)–(i), 721(b)(1), Nov. 4, 1988, 102 Stat. 3153–3156, 3165; Pub. L. 102–408, title II, § 202(a), Oct. 13, 1992, 106 Stat. 2069; Pub. L. 102–531, title III, § 313(a)(9), Oct. 27, 1992, 106 Stat. 3507, authorized grants and contracts for special projects.

Section 296*l*, act July 1, 1944, ch. 373, title VIII, § 821, as added Pub. L. 94–63, title IX, § 931(a), July 29, 1975, 89 Stat. 361; amended Pub. L. 96–76, title I, § 106, Sept. 29, 1979, 93 Stat. 579; Pub. L. 97–35, title XXVII, § 2754, Aug. 13, 1981, 95 Stat. 930; Pub. L. 99–92, § 4, Aug. 16, 1985, 99 Stat. 394; Pub. L. 99–129, title II, § 227(b), Oct. 22, 1985, 99 Stat. 548; Pub. L. 100–607, title VII, § 702, Nov. 4, 1988, 102 Stat. 3157; Pub. L. 102–408, title II, § 203, Oct. 13, 1992, 106 Stat. 2072, authorized grants and contracts for advanced nurse education.

PART C—INCREASING NURSING WORKFORCE DIVERSITY

PRIOR PROVISIONS

A prior part C set forth general provisions and consisted of sections 298 to 298b–7, prior to the general amendment of this subchapter by Pub. L. 105–392.

§ 296m. Workforce diversity grants

(a) In general

The Secretary may award grants to and enter into contracts with eligible entities to meet the costs of special projects to increase nursing education opportunities for individuals who are from disadvantaged backgrounds (including racial and ethnic minorities underrepresented among registered nurses) by providing student scholarships or stipends, pre-entry preparation, and retention activities.

(b) Guidance

In carrying out subsection (a) of this section, the Secretary shall take into consideration the recommendations of the First, Second and Third Invitational Congresses for Minority Nurse Leaders on ''Caring for the Emerging Majority,'' in 1992, 1993 and 1997, and consult with nursing associations including the American Nurses Association, the National League for Nursing, the American Association of Colleges of Nursing, the National Black Nurses Association, the National Association of Hispanic Nurses, the Association of Asian American and Pacific Islander Nurses, the Native American Indian and Alaskan Nurses Association, and the National Council of State Boards of Nursing.

(c) Required information and conditions for award recipients

(1) In general

Recipients of awards under this section may be required, where requested, to report to the Secretary concerning the annual admission, retention, and graduation rates for individuals from disadvantaged backgrounds and ethnic and racial minorities in the school or schools involved in the projects.

(2) Falling rates

If any of the rates reported under paragraph (1) fall below the average of the two previous years, the grant or contract recipient shall provide the Secretary with plans for immediately improving such rates.

(3) Ineligibility

A recipient described in paragraph (2) shall be ineligible for continued funding under this section if the plan of the recipient fails to im-

prove the rates within the 1-year period beginning on the date such plan is implemented.

(July 1, 1944, ch. 373, title VIII, § 821, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3568.)

PRIOR PROVISIONS

A prior section 296m, act July 1, 1944, ch. 373, title VIII, § 822, as added Pub. L. 94–63, title IX, § 931(a), July 29, 1975, 89 Stat. 361; amended Pub. L. 95–83, title III, § 307(*o*)(5)(A), Aug. 1, 1977, 91 Stat. 393; Pub. L. 96–76, title I, § 107, Sept. 29, 1979, 93 Stat. 579; Pub. L. 97–35, title XXVII, § 2755, Aug. 13, 1981, 95 Stat. 930; Pub. L. 99–92, § 5, Aug. 16, 1985, 99 Stat. 394; Pub. L. 99–129, title II, § 227(c), Oct. 22, 1985, 99 Stat. 548; Pub. L. 100–607, title VII, § 703, Nov. 4, 1988, 102 Stat. 3157; Pub. L. 101–93, § 5(q), Aug. 16, 1989, 103 Stat. 614; Pub. L. 101–597, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3035; Pub. L. 102–408, title II, § 204, Oct. 13, 1992, 106 Stat. 2072, authorized grants and contracts for nurse practitioner and nurse midwife programs, prior to repeal by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

A prior section 821 of act July 1, 1944, was classified to section 296*l* of this title prior to repeal by Pub. L. 105–392.

PART D—STRENGTHENING CAPACITY FOR BASIC NURSE EDUCATION AND PRACTICE

PRIOR PROVISIONS

A prior part D related to scholarship grants to schools of nursing and consisted of sections 298c to 298c–8, prior to the general amendment of this subchapter by Pub. L. 105–392.

§ 296p. Nurse education, practice, and retention grants

(a) Education priority areas

The Secretary may award grants to or enter into contracts with eligible entities for—

(1) expanding the enrollment in baccalaureate nursing programs;

(2) developing and implementing internship and residency programs to encourage mentoring and the development of specialties; or

(3) providing education in new technologies, including distance learning methodologies.

(b) Practice priority areas

The Secretary may award grants to or enter into contracts with eligible entities for—

(1) establishing or expanding nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities;

(2) providing care for underserved populations and other high-risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, the homeless, and victims of domestic violence;

(3) providing managed care, quality improvement, and other skills needed to practice in existing and emerging organized health care systems; or

(4) developing cultural competencies among nurses.

(c) Retention priority areas

The Secretary may award grants to and enter into contracts with eligible entities to enhance the nursing workforce by initiating and maintaining nurse retention programs pursuant to paragraph (1) or (2).

(1) Grants for career ladder programs

The Secretary may award grants to and enter into contracts with eligible entities for programs—

(A) to promote career advancement for nursing personnel in a variety of training settings, cross training or specialty training among diverse population groups, and the advancement of individuals including to become professional nurses, advanced education nurses, licensed practical nurses, certified nurse assistants, and home health aides; and

(B) to assist individuals in obtaining education and training required to enter the nursing profession and advance within such profession, such as by providing career counseling and mentoring.

(2) Enhancing patient care delivery systems

(A) Grants

The Secretary may award grants to eligible entities to improve the retention of nurses and enhance patient care that is directly related to nursing activities by enhancing collaboration and communication among nurses and other health care professionals, and by promoting nurse involvement in the organizational and clinical decisionmaking processes of a health care facility.

(B) Preference

In making awards of grants under this paragraph, the Secretary shall give a preference to applicants that have not previously received an award under this paragraph.

(C) Continuation of an award

The Secretary shall make continuation of any award under this paragraph beyond the second year of such award contingent on the recipient of such award having demonstrated to the Secretary measurable and substantive improvement in nurse retention or patient care.

(d) Other priority areas

The Secretary may award grants to or enter into contracts with eligible entities to address other areas that are of high priority to nurse education, practice, and retention, as determined by the Secretary.

(e) Preference

For purposes of any amount of funds appropriated to carry out this section for fiscal year 2003, 2004, or 2005 that is in excess of the amount of funds appropriated to carry out this section for fiscal year 2002, the Secretary shall give preference to awarding grants or entering into contracts under subsections (a)(2) and (c) of this section.

(f) Report

The Secretary shall submit to the Congress before the end of each fiscal year a report on the grants awarded and the contracts entered into under this section. Each such report shall identify the overall number of such grants and contracts and provide an explanation of why each

such grant or contract will meet the priority need of the nursing workforce.

(g) Eligible entity

For purposes of this section, the term ''eligible entity'' includes a school of nursing, a health care facility, or a partnership of such a school and facility.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title VIII, § 831, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3568; amended Pub. L. 107–205, title II, § 201, Aug. 1, 2002, 116 Stat. 815.)

PRIOR PROVISIONS

A prior section 831 of act July 1, 1944, was classified to section 297–1 of this title prior to repeal by Pub. L. 105–392.

Prior sections 296r, 297, and 297–1 were repealed by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

Section 296r, act July 1, 1944, ch. 373, title VIII, § 827, as added Pub. L. 100–607, title VII, § 701(a)(3), Nov. 4, 1988, 102 Stat. 3153; amended Pub. L. 102–408, title II, § 205, Oct. 13, 1992, 106 Stat. 2073, authorized grants and contracts for special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds.

Section 297, act July 1, 1944, ch. 373, title VIII, § 830, formerly § 821, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 913; amended Pub. L. 90–490, title II, § 221, Aug. 16, 1968, 82 Stat. 783; Pub. L. 92–52, § 5, July 9, 1971, 85 Stat. 145; Pub. L. 92–158, §§ 5, 13, Nov. 18, 1971, 85 Stat. 475, 480; renumbered § 830 and amended Pub. L. 94–63, title IX, §§ 935, 941(g)(2), July 29, 1975, 89 Stat. 362, 365; Pub. L. 94–484, title IX, § 901, Oct. 12, 1976, 90 Stat. 2323; Pub. L. 95–83, title III, § 307(*o*)(5)(B), Aug. 1, 1977, 91 Stat. 394; Pub. L. 96–76, title I, § 108, Sept. 29, 1979, 93 Stat. 579; Pub. L. 97–35, title XXVII, § 2756, Aug. 13, 1981, 95 Stat. 931; Pub. L. 99–92, § 6, Aug. 16, 1985, 99 Stat. 395; Pub. L. 100–607, title VII, § 711, Nov. 4, 1988, 102 Stat. 3159; Pub. L. 102–408, title II, § 206, Oct. 13, 1992, 106 Stat. 2073; Pub. L. 103–43, title XX, § 2014(f), June 10, 1993, 107 Stat. 217, authorized grants for traineeships for advanced education of professional nurses.

Section 297–1, act July 1, 1944, ch. 373, title VIII, § 831, as added Pub. L. 96–76, title I, § 111, Sept. 29, 1979, 93 Stat. 580; amended Pub. L. 97–414, § 8(*l*), Jan. 4, 1983, 96 Stat. 2061; Pub. L. 99–92, § 7, Aug. 16, 1985, 99 Stat. 396; Pub. L. 100–607, title VII, § 712, Nov. 4, 1988, 102 Stat. 3160; Pub. L. 102–408, title II, § 207, Oct. 13, 1992, 106 Stat. 2074, authorized grants for training of nurse anesthetists.

AMENDMENTS

2002—Pub. L. 107–205 amended section catchline and text generally. Prior to amendment, text read as follows:

''(a) IN GENERAL.—The Secretary may award grants to and enter into contracts with eligible entities for projects to strengthen capacity for basic nurse education and practice.

''(b) PRIORITY AREAS.—In awarding grants or contracts under this section the Secretary shall give priority to entities that will use amounts provided under such a grant or contract to enhance the educational mix and utilization of the basic nursing workforce by strengthening programs that provide basic nurse education, such as through—

''(1) establishing or expanding nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities;

''(2) providing care for underserved populations and other high-risk groups such as the elderly, individuals with HIV-AIDS, substance abusers, the homeless, and victims of domestic violence;

''(3) providing managed care, quality improvement, and other skills needed to practice in existing and emerging organized health care systems;

''(4) developing cultural competencies among nurses;

''(5) expanding the enrollment in baccalaureate nursing programs;

''(6) promoting career mobility for nursing personnel in a variety of training settings and cross training or specialty training among diverse population groups;

''(7) providing education in informatics, including distance learning methodologies; or

''(8) other priority areas as determined by the Secretary.''

PART E—STUDENT LOANS

AMENDMENTS

1998—Pub. L. 105–392, title I, § 123(2), Nov. 13, 1998, 112 Stat. 3562, redesignated subpart II of part B as part E.

1975—Pub. L. 94–63, title IX, § 941(g)(3), July 29, 1975, 89 Stat. 365, inserted subpart II heading.

§ 297a. Student loan fund

(a) Agreements to establish and operate fund authorized

The Secretary is authorized to enter into an agreement for the establishment and operation of a student loan fund in accordance with this part[1] with any public or nonprofit private school of nursing which is located in a State.

(b) Provisions of agreements

Each agreement entered into under this section shall—

(1) provide for establishment of a student loan fund by the school;

(2) provide for deposit in the fund, except as provided in section 297h of this title, of (A) the Federal capital contributions paid from allotments under section 297d of this title to the school by the Secretary, (B) an additional amount from other sources equal to not less than one-ninth of such Federal capital contributions, (C) collections of principal and interest on loans made from the fund, (D) collections pursuant to section 297b(f) of this title, and (E) any other earnings of the fund;

(3) provide that the fund, except as provided in section 297h of this title, shall be used only for loans to students of the school in accordance with the agreement and for costs of collection of such loans and interest thereon;

(4) provide that loans may be made from such fund only to students pursuing a fulltime or half-time course of study at the school leading to a baccalaureate or associate degree in nursing or an equivalent degree or a diploma in nursing, or to a graduate degree in nursing;

(5) contain such other provisions as are necessary to protect the financial interests of the United States.

(c) Regulatory standards applicable to collection of loans

(1) Any standard established by the Secretary by regulation for the collection by schools of

[1] See References in Text note below.

nursing of loans made pursuant to loan agreements under this part[1] shall provide that the failure of any such school to collect such loans shall be measured in accordance with this subsection. With respect to the student loan fund established pursuant to such agreements, this subsection may not be construed to require such schools to reimburse such loan fund for loans that became uncollectable prior to 1983.

(2) The measurement of a school's failure to collect loans made under this part[1] shall be the ratio (stated as a percentage) that the defaulted principal amount outstanding of such school bears to the matured loans of such school.

(3) For purposes of this subsection—

(A) the term ''default'' means the failure of a borrower of a loan made under this part[1] to—

(i) make an installment payment when due; or

(ii) comply with any other term of the promissory note for such loan,

except that a loan made under this part[1] shall not be considered to be in default if the loan is discharged in bankruptcy or if the school reasonably concludes from written contacts with the borrower that the borrower intends to repay the loan;

(B) the term ''defaulted principal amount outstanding'' means the total amount borrowed from the loan fund of a school that has reached the repayment stage (minus any principal amount repaid or cancelled) on loans—

(i) repayable monthly and in default for at least 120 days; and

(ii) repayable less frequently than monthly and in default for at least 180 days;

(C) the term ''grace period'' means the period of nine months beginning on the date on which the borrower ceases to pursue a full-time or half-time course of study at a school of nursing; and

(D) the term ''matured loans'' means the total principal amount of all loans made by a school of nursing under this part[1] minus the total principal amount of loans made by such school to students who are—

(i) enrolled in a full-time or half-time course of study at such school; or

(ii) in their grace period.

(July 1, 1944, ch. 373, title VIII, § 835, formerly § 822, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 913; amended Pub. L. 90–490, title II, § 222(a), (c)(2), Aug. 16, 1968, 82 Stat. 783, 784; Pub. L. 92–158, § 6(d)(3), (e), Nov. 18, 1971, 85 Stat. 478; Pub. L. 93–385, § 3(b), Aug. 23, 1974, 88 Stat. 741; renumbered § 835 and amended Pub. L. 94–63, title IX, §§ 936(a), 941(h)(1)–(3), (i)(1), (2), July 29, 1975, 89 Stat. 362, 365, 366; Pub. L. 96–76, title I, § 109(a), Sept. 29, 1979, 93 Stat. 579; Pub. L. 97–35, title XXVII, § 2757(a), Aug. 13, 1981, 95 Stat. 931; Pub. L. 99–92, § 8(a), Aug. 16, 1985, 99 Stat. 397; Pub. L. 99–129, title II, § 209(j)(2), Oct. 22, 1985, 99 Stat. 536; Pub. L. 100–607, title VII, § 713(a), Nov. 4, 1988, 102 Stat. 3160.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (c), was in the original ''this subpart'' and was translated to reflect the probable intent of Congress and the redesignation of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, § 123(2), Nov. 13, 1998, 112 Stat. 3562.

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100–607 inserted provisions relating to reimbursement of student loan fund for certain uncollectable loans.

1985—Subsec. (c). Pub. L. 99–92 added subsec. (c).

Subsec. (c)(3)(C). Pub. L. 99–129, § 209(j)(2)(A), substituted provisions defining ''grace period'' as the period of nine months beginning on the date on which the borrower ceases to pursue a full-time or half-time course of study at a school of nursing for former provisions defining ''grace period'' as the period of one year beginning on (i) the date on which the borrower ceased to pursue a full-time or half-time course of study at a school of nursing; or (ii) the date on which ended any period described in clause (A) or (B) of section 297b(b)(2) of this title which was applicable to such borrower, whichever was later.

Subsec. (c)(3)(D)(ii). Pub. L. 99–129, § 209(j)(2)(B), struck out ''first'' before ''grace period.''

1981—Subsec. (b)(4). Pub. L. 97–35 struck out provisions respecting prohibition on loans to students attending school before Oct. 1, 1980.

1979—Subsec. (b)(4). Pub. L. 96–76 substituted ''1980'' for ''1978''.

1975—Subsec. (a). Pub. L. 94–63, § 941(h)(1), (2), substituted ''subpart'' for ''part'' and struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (b). Pub. L. 94–63, §§ 936(a), 941(h)(3), (i)(2), in cl. (2) substituted ''from allotments under section 297d of this title'' for ''under this part'', in cl. (4) substituted ''October 1, 1978'' for ''July 1, 1975'', and in cls. (2) and (3) substituted references to sections 836 and 841 of the Act for references to sections 823 and 829, which had previously been translated as sections 297b and 297h of this title, respectively, requiring no further translations in the text as a result of the renumbering of the Public Health Service Act.

1974—Subsec. (b)(4). Pub. L. 93–385 substituted ''1975'' for ''1974''.

1971—Subsec. (b)(4). Pub. L. 92–158 substituted ''full-time or half-time course of study'' for ''full-time course of study'' and ''1974'' for ''1971''.

1968—Subsec. (b)(2). Pub. L. 90–490, § 222(a)(1), (c)(2), inserted '', except as provided in section 297h of this title,'' after ''fund'' where first appearing and added cl. (D) and redesignated former cl. (D) as (E), respectively.

Subsec. (b)(3). Pub. L. 90–490, § 222(a)(1), inserted '', except as provided in section 297h of this title'' after ''fund'' where first appearing and authorized the cancellation of an additional 50 per centum of a nursery student loan.

Subsec. (b)(4). Pub. L. 90–490, § 222(a)(2), substituted ''1971'' for ''1969''.

EFFECTIVE DATE OF 1985 AMENDMENTS

Amendment by Pub. L. 99–129 effective June 30, 1984, see section 228(b)(5) of Pub. L. 99–129, set out as a note under section 254*l* of this title.

Section 10 of Pub. L. 99–92 provided that:

''(a) Except as provided in subsection (b), this Act [enacting section 297i of this title, transferring section 296c to section 298b–5 of this title, amending this section, sections 296k, 296*l*, 296m, 297, 297–1, 297b, 297d, 297e, 298, 298b, and 298b–5 of this title, sections 1332, 1333, 1336, and 1341 of Title 15, Commerce and Trade, and section 6103 of Title 26, Internal Revenue Code, repealing sections 296 to 296b, 296d to 296f, 296j, 297h, and 297j of this title, and enacting provisions set out as notes under sections 201 and 298b–5 of this title and section 1333 of Title 15] and the amendments and repeals made by this Act shall take effect on October 1, 1985.

''(b)(1) The provisions of section 9(c) of this Act [transferring section 296c of this title to section 298b–5 of this title, amending section 298b–5 of this title, and enacting provisions set out as notes under section

298b–5 of this title] and the amendment made by paragraph (1) of such section shall take effect on the date of enactment of this Act [Aug. 16, 1985].

''(2) The amendment made by section 8(a) of this Act [amending section 297a of this title] shall take effect June 30, 1984.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 905 of Pub. L. 94–63 provided that: ''Except as may otherwise be specifically provided, the amendments made by this part [part B (§§ 905–937) of title IX of Pub. L. 94–63, enacting sections 296j to 296m of this title, amending sections 296, 296a, 296d, 296e, 297 to 297c, 297e, and 297j of this title, repealing sections 296d, 296g, 296i, 297f, and 298c–7 of this title, and enacting provisions set out as notes under sections 296, 296a, 296d, 296e, 296m, 297, 297b, and 297f of this title] shall take effect July 1, 1975. The amendments made by this part to provisions of title VIII of the Public Health Service Act [this subchapter] (hereinafter in this part referred to as the 'Act') are made to such provisions as amended by part A of this title [amending sections 296, 296d, 296e, 296g, 296i, 297j, and 298c–7 of this title].''

Section 942 of Pub. L. 94–63 provided that: ''The amendments made by section 941 [enacting section 298b–3 of this title, amending sections 296a to 296d, 296f, 297a to 297e, 297g to 297k, 298, and 298b of this title, and repealing section 298c–8 of this title] shall take effect July 1, 1975. Except as otherwise specifically provided, the amendments made by section 941 to provisions of title VIII of the Act [this subchapter] are made to such provisions as in effect July 1, 1975, and as amended by part B of this title [see note set out above].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 222(c)(2) of Pub. L. 90–490 applicable with respect to loans made after June 30, 1969, see section 222(i) of Pub. L. 90–490, set out as a note under section 297b of this title.

§ 297b. Loan provisions

(a) Maximum amount per individual per year; preference to first year students

The total of the loans for any academic year (or its equivalent, as determined under regulations of the Secretary) made by schools of nursing from loan funds established pursuant to agreements under this part[1] may not exceed $2,500 in the case of any student, except that for the final two academic years of the program involved, such total may not exceed $4,000. The aggregate of the loans for all years from such funds may not exceed $13,000 in the case of any student. In the granting of such loans, a school shall give preference to licensed practical nurses, to persons with exceptional financial need, and to persons who enter as first-year students after enactment of this subchapter.

(b) Terms and conditions

Loans from any such student loan fund by any school shall be made on such terms and conditions as the school may determine; subject, however, to such conditions, limitations, and requirements as the Secretary may prescribe (by regulation or in the agreement with the school) with a view to preventing impairment of the capital of such fund to the maximum extent practicable in the light of the objective of enabling the student to complete his course of study; and except that—

(1) such a loan may be made only to a student who (A) is in need of the amount of the loan to pursue a full-time or half-time course of study at the school leading to a baccalaureate or associate degree in nursing or an equivalent degree, or a diploma in nursing, or a graduate degree in nursing, (B) is capable, in the opinion of the school, of maintaining good standing in such course of study, and (C) with respect to any student enrolling in the school after June 30, 1986, is of financial need (as defined in regulations issued by the Secretary);;[2]

(2) such a loan shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the ten-year period which begins nine months after the student ceases to pursue a full-time or half-time course of study at a school of nursing, excluding from such 10-year period all (A) periods (up to three years) of (i) active duty performed by the borrower as a member of a uniformed service, or (ii) service as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.], (B) periods (up to ten years) during which the borrower is pursuing a full-time or half-time course of study at a collegiate school of nursing leading to baccalaureate degree in nursing or an equivalent degree, or to graduate degree in nursing, or is otherwise pursuing advanced professional training in nursing (or training to be a nurse anesthetist), and (C) such additional periods under the terms of paragraph (8) of this subsection;

(3) in the case of a student who received such a loan before September 29, 1979, an amount up to 85 per centum of any such loan made before such date (plus interest thereon) shall be canceled for full-time employment as a professional nurse (including teaching in any of the fields of nurse training and service as an administrator, supervisor, or consultant in any of the fields of nursing) in any public or nonprofit private agency, institution, or organization (including neighborhood health centers), at the rate of 15 per centum of the amount of such loan (plus interest) unpaid on the first day of such service for each of the first, second, and third complete year of such service, and 20 per centum of such amount (plus interest) for each complete fourth and fifth year of such service;

(4) the liability to repay the unpaid balance of such loan and accrued interest thereon shall be canceled upon the death of the borrower, or if the Secretary determines that he has become permanently and totally disabled;

(5) such a loan shall bear interest on the unpaid balance of the loan, computed only for periods during which the loan is repayable, at the rate of 5 percent per annum;

(6) such a loan shall be made without security or endorsement, except that if the borrower is a minor and the note or other evidence of obligation executed by him would not, under the applicable law, create a binding obligation, either security or endorsement may be required;

(7) no note or other evidence of any such loan may be transferred or assigned by the school making the loan except that, if the bor-

[1] See References in Text note below.

[2] So in original.

rower transfers to another school participating in the program under this part[1] such note or other evidence of a loan may be transferred to such other school; and

(8) pursuant to uniform criteria established by the Secretary, the repayment period established under paragraph (2) for any student borrower who during the repayment period failed to make consecutive payments and who, during the last 12 months of the repayment period, has made at least 12 consecutive payments may be extended for a period not to exceed 10 years.

(c) Cancellation

Where all or any part of a loan, or interest, is canceled under this section, the Secretary shall pay to the school an amount equal to the school's proportionate share of the canceled portion, as determined by the Secretary.

(d) Installments

Any loan for any year by a school from a student loan fund established pursuant to an agreement under this part[1] shall be made in such installments as may be provided in regulations of the Secretary or such agreement and, upon notice to the Secretary by the school that any recipient of a loan is failing to maintain satisfactory standing, any or all further installments of his loan shall be withheld, as may be appropriate.

(e) Availability to eligible students in need

An agreement under this part[1] with any school shall include provisions designed to make loans from the student loan fund established thereunder reasonably available (to the extent of the available funds in such fund) to all eligible students in the school in need thereof.

(f) Penalty for late payment

Subject to regulations of the Secretary and in accordance with this section, a school shall assess a charge with respect to a loan from the loan fund established pursuant to an agreement under this part[1] for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment of the loan under subsection (b)(2) of this section or cancellation of part or all of the loan under subsection (b)(3) of this section, for any failure to file timely and satisfactory evidence for such entitlement. No such charge may be made if the payment of such installment or the filing of such evidence is made within 60 days after the date on which such installment or filing is due. The amount of any such charge may not exceed an amount equal to 6 percent of the amount of such installment. The school may elect to add the amount of any such charge to the principal amount of the loan as of the first day after the day on which such installment or evidence was due, or to make the amount of the charge payable to the school not later than the due date of the next installment after receipt by the borrower of notice of the assessment of the charge.

(g) Minimum monthly repayment

A school may provide in accordance with regulations of the Secretary, that during the repayment period of a loan from a loan fund established pursuant to an agreement under this part[1] payments of principal and interest by the borrower with respect to all the outstanding loans made to him from loan funds so established shall be at a rate equal to not less than $40 per month.

(h) Loan cancellation

Notwithstanding the amendment made by section 6(b) of the Nurse Training Act of 1971 to this section—

(A) any person who obtained one or more loans from a loan fund established under this part,[1] who before November 18, 1971, became eligible for cancellation of all or part of such loans (including accrued interest) under this section (as in effect on the day before such date), and who on such date was not engaged in a service for which loan cancellation was authorized under this section (as so in effect), may at any time elect to receive such cancellation in accordance with this subsection (as so in effect); and

(B) in the case of any person who obtained one or more loans from a loan fund established under this part[1] and who on such date was engaged in a service for which cancellation of all or part of such loans (including accrued interest) was authorized under this section (as so in effect), this section (as so in effect) shall continue to apply to such person for purposes of providing such loan cancellation until he terminates such service.

Nothing in this subsection shall be construed to prevent any person from entering into an agreement for loan cancellation under subsection (h)[1] of this section (as amended by section 6(b)(2) of the Nurse Training Act of 1971).

(i) Loan repayment

Upon application by a person who received, and is under an obligation to repay, any loan made to such person as a nursing student, the Secretary may undertake to repay (without liability to the applicant) all or any part of such loan, and any interest or portion thereof outstanding thereon, upon his determination, pursuant to regulations establishing criteria therefor, that the applicant—

(1) failed to complete the nursing studies with respect to which such loan was made;

(2) is in exceptionally needy circumstances; and

(3) has not resumed, or cannot reasonably be expected to resume, such nursing studies within two years following the date upon which the applicant terminated the studies with respect to which such loan was made.

(j) Collection by Secretary of loan in default; preconditions and procedures applicable

The Secretary is authorized to attempt to collect any loan which was made under this part,[1] which is in default, and which was referred to the Secretary by a school of nursing with which the Secretary has an agreement under this part,[1] on behalf of that school under such terms and conditions as the Secretary may prescribe (including reimbursement from the school's student loan fund for expenses the Secretary may reasonably incur in attempting collection), but only if the school has complied with such re-

quirements as the Secretary may specify by regulation with respect to the collection of loans under this part.[1] A loan so referred shall be treated as a debt subject to section 5514 of title 5. Amounts collected shall be deposited in the school's student loan fund. Whenever the Secretary desires the institution of a civil action regarding any such loan, the Secretary shall refer the matter to the Attorney General for appropriate action.

(k) Redesignated (j)

(*l*) Elimination of statute of limitation for loan collections

(1) Purpose

It is the purpose of this subsection to ensure that obligations to repay loans under this section are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.

(2) Prohibition

Notwithstanding any other provision of Federal or State law, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action may be initiated or taken by a school of nursing that has an agreement with the Secretary pursuant to section 297a of this title that is seeking the repayment of the amount due from a borrower on a loan made under this part[1] after the default of the borrower on such loan.

(July 1, 1944, ch. 373, title VIII, § 836, formerly § 823, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 914; amended Pub. L. 89–290, § 4(g)(2), Oct. 22, 1965, 79 Stat. 1058; Pub. L. 90–490, title II, § 222(b), (c)(1), Aug. 16, 1968, 82 Stat. 783, 784; Pub. L. 92–158, § 6(a), (b)(1), (e), Nov. 18, 1971, 85 Stat. 475, 476, 478; renumbered § 836 and amended Pub. L. 94–63, title IX, §§ 936(b), 941(h)(1), (2), (5), (i)(1), July 29, 1975, 89 Stat. 363, 365; Pub. L. 96–76, title I, § 112, Sept. 29, 1979, 93 Stat. 580; Pub. L. 97–35, title XXVII, § 2757(b), Aug. 13, 1981, 95 Stat. 931; Pub. L. 99–92, § 8(b)–(d), Aug. 16, 1985, 99 Stat. 398; Pub. L. 100–607, title VII, §§ 713(b)–(g), 714(a)–(c), Nov. 4, 1988, 102 Stat. 3160, 3161; Pub. L. 101–93, § 5(r), Aug. 16, 1989, 103 Stat. 614; Pub. L. 102–408, title II, § 211(a)(1), Oct. 13, 1992, 106 Stat. 2078; Pub. L. 105–392, title I, § 133(a)–(c)(1), Nov. 13, 1998, 112 Stat. 3575.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a), (b)(7), (d) to (h), (j), and (*l*)(2), was in the original "this subpart" and was translated to reflect the probable intent of Congress and the redesignation of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, § 123(2), Nov. 13, 1998, 112 Stat. 3562.

The Peace Corps Act, referred to in subsec. (b)(2), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Subsection (h) of this section, referred to in subsec. (h), was struck out and subsec. (i) was redesignated (h) by Pub. L. 102–408. See 1992 Amendment note below.

Section 6(b) of the Nurse Training Act of 1971, referred to in subsec. (h), is section 6(b) of Pub. L. 92–158, Nov. 18, 1971, 85 Stat. 477. Section 6(b)(1) amended subsec. (b)(3) of this section, added former subsec. (h) of this section, and enacted the provisions editorially classified to subsec. (i) [now (h)] of this section. Section 6(b)(2) enacted section 297i of this title which was transferred and redesignated as subsec. (j) [now (i)] of this section pursuant to section 941(h)(5) of Pub. L. 94–63.

CODIFICATION

Provisions of subsec. (h) of this section were, in the original, enacted by section 6(b)(1) of Pub. L. 92–158, without directory language with respect to classification in the Code and were editorially set out as subsec. (i) [now (h)] as the probable intent of Congress.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–392, § 133(a)(1), substituted semicolon for period at end.

Subsec. (b)(2)(C). Pub. L. 105–392, § 133(a)(2), added subpar. (C).

Subsec. (b)(8). Pub. L. 105–392, § 133(a)(3), (4), added par. (8).

Subsec. (g). Pub. L. 105–392, § 133(b), substituted "$40" for "$15".

Subsec. (*l*). Pub. L. 105–392, § 133(c)(1), added subsec. (*l*).

1992—Subsecs. (h) to (k). Pub. L. 102–408 redesignated subsecs. (i) to (k) as (h) to (j), respectively, and struck out former subsec. (h) which provided for a loan repayment program. See section 297n of this title.

1989—Subsec. (h)(6)(C). Pub. L. 101–93 substituted "means a skilled nursing facility, as such term is defined in section 1395x(j) of this title, and an intermediate care facility, as such term is defined in section 1396d(c) of this title" for "means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1396d of this title".

1988—Subsec. (a). Pub. L. 100–607, § 713(b), (c), inserted in first sentence ", except that for the final two academic years of the program involved, such total may not exceed $4,000", substituted "$13,000" for "$10,000" in second sentence, and inserted ", to persons with exceptional financial need," after "nurses" in third sentence.

Subsec. (b)(1)(C). Pub. L. 100–607, § 713(d), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "if a student who will enroll in the school after June 30, 1986, is of exceptional financial need (as defined by regulations of the Secretary)".

Subsec. (b)(2)(B). Pub. L. 100–607, § 713(e), substituted "ten" for "five" and inserted "or half-time" after "a full-time".

Subsec. (b)(5). Pub. L. 100–607, § 713(f), substituted "5 percent" for "6 per centum".

Subsec. (h)(1)(C). Pub. L. 100–607, § 714(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "who enters into an agreement with the Secretary to serve as a nurse for a period of at least two years in an area in a State determined by the Secretary, after consultation with the appropriate State health authority (as determined by the Secretary by regulations), to have a shortage of and need for nurses;".

Subsecs. (h)(5), (6). Pub. L. 100–607, § 714(b), (c), added pars. (5) and (6).

Subsec. (j)(2) to (4). Pub. L. 100–607, § 713(g), redesignated par. (4) as (3) and struck out former par. (3) which related to low-income or disadvantaged family.

1985—Subsec. (b)(1). Pub. L. 99–92, § 8(b), which directed that cl. (C) be inserted before period, was executed by inserting cl. (C) before the semicolon as the probable intent of Congress.

Subsec. (f). Pub. L. 99–92, § 8(c), substituted "the Secretary and in accordance with this section, a school shall" for "the Secretary, a school may", and substituted provisions relating to charges not allowed in certain cases and allowed where payment is late for provisions relating to maximum amount of late charges.

Subsec. (k). Pub. L. 99–92, § 8(d), added subsec. (k).

1981—Subsec. (b)(5). Pub. L. 97–35 substituted ''6'' for ''3''.

1979—Subsec. (b)(3). Pub. L. 96–76 inserted provisions requiring conditions to be applicable to loans arising prior to Sept. 29, 1979.

1975—Subsec. (a). Pub. L. 94–63, § 941(h)(1), substituted ''subpart'' for ''part''.

Subsec. (b). Pub. L. 94–63, § 941(h)(2), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (b)(2)(B). Pub. L. 94–63, § 936(b), inserted ''(or training to be a nurse anesthetist)'' after ''professional training in nursing''.

Subsec. (b)(7). Pub. L. 94–63, § 941(h)(1), substituted ''subpart'' for ''part''.

Subsec. (c). Pub. L. 94–63, § 941(h)(2), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsecs. (d) to (i). Pub. L. 94–63, § 941(h)(1), substituted ''subpart'' for ''part'' whenever appearing.

Subsec. (j). Pub. L. 94–63, § 941(h)(5), added subsec. (j), formerly classified as section 297i of this title pursuant to enactment as section 830 of act July 1, 1944, ch. 373. Section 941(h)(5)(A) of Pub. L. 94–63 transferred such former section to this section and section 941(h)(5)(B) redesignated provision as subsec. (j).

1971—Subsec. (a). Pub. L. 92–158, § 6(a), substituted ''$2,500'' for ''$1,500'' and ''$10,000'' for ''$60,000''.

Subsec. (b)(1). Pub. L. 92–158, § 6(e), substituted ''full-time or half-time course of study'' for ''full-time course of study''.

Subsec. (b)(2). Pub. L. 92–158, § 6(e), in text preceding cl. (A), substituted ''full-time or half-time course of study'' for ''full-time course of study''.

Subsec. (b)(3). Pub. L. 92–158, § 6(b)(1)(A), substituted provisions cancelling up to 85 per centum of loan, for provisions cancelling up to 50 per centum of loan, where borrower holds full-time employment as a professional nurse, added to areas of possible employment under this par. by inserting reference to any public or nonprofit organization including neighborhood health centers, substituted, with regard to the rate of cancellation of loan, the rate of 15 per centum of the amount unpaid on the first day of service, continuing at such rate with each of the first, second and third complete years of such service and 20 per centum of such amount with each complete fourth and fifth year of service for the rate of 10 per centum of the amount unpaid on the first day of service and to continue with each complete year of service, and struck out reference to 15 per centum rate of cancellation per complete year of service plus, for the purpose of such higher rate, the cancellation of an additional 50 per centum of such loan where such service is in a public or nonprofit hospital in any area which is determined, in accordance with the regulations of the Secretary, to be in an area having a substantial shortage of such nurses at such hospitals.

Subsec. (h). Pub. L. 92–158, § 6(b)(1)(B), added subsec. (h).

1968—Subsec. (a). Pub. L. 90–490, § 222(b)(1), increased limitation on amount of annual loans per student from $1,000 to $1,500, required preferences in granting of loans to licensed practical nurses, and limited aggregate of loans for all years to any one student to $6,000.

Subsec. (b)(2). Pub. L. 90–490, § 222(b)(2), provided for commencement of repayment nine months, rather than one year, after student ceases to pursue full-time course of study, excluded from ten-year repayment period periods (up to three years) of active duty as member of a uniformed service or Peace Corps volunteer service and periods (up to five years) as undergraduate or graduate degree student in nursing, including advanced professional training in nursing, and struck out prohibition against accrual of interest on loans.

Subsec. (b)(3). Pub. L. 90–490, § 222(b)(3), authorized cancellation of an additional 50 per centum of a nursing student loan (plus interest) at rate of 15 per centum for each complete year of service in a public or other nonprofit hospital in an area with a substantial shortage of nurses.

Subsec. (b)(5). Pub. L. 90–490, § 222(b)(4), struck out provisions for an interest rate which is the greater of 3 per centum or the going Federal rate at time loan is made, defining going Federal rate, and making rate determined for first loan applicable to any subsequent loan.

Subsecs. (f), (g). Pub. L. 90–490, § 222(c)(1), added subsecs. (f) and (g).

1965—Subsec. (b)(5). Pub. L. 89–290 applied rate of interest for first loan obtained by a student from a loan fund established under this part to any subsequent loan to such student from such fund during his course of study.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–392, title I, § 133(c)(2), Nov. 13, 1998, 112 Stat. 3576, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to actions pending on or after the date of enactment of this Act [Nov. 13, 1998].''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 936(b) of Pub. L. 94–63 provided that the amendment made by that section is effective with respect to periods of training to be a nurse anesthetist undertaken on or after July 29, 1975.

Amendment by section 941(h)(1), (2), (5), (i)(1) of Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 6(a)(1) of Pub. L. 92–158 provided that the amendment made by that section is effective with respect to academic years (or their equivalent as determined under regulations of the Secretary of Health, Education, and Welfare under this section) beginning after June 30, 1971.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 222(i) of Pub. L. 90–490 provided that: ''The amendments made by subsection (b)(1) and (2) [amending this section] shall apply with respect to all loans made after June 30, 1969, and with respect to loans made from a student loan fund established under an agreement pursuant to section 822 [section 297a of this title], before July 1, 1969, to the extent agreed to by the school which made the loans and the Secretary (but then only for years beginning after June 30, 1968). The amendments made by subsection (b)(4) [amending this section] and subsection (c) [amending this section and section 297a of this title] shall apply with respect to loans made after June 30, 1969. The amendment made by subsection (h) [enacting section 297h of this title] shall apply with respect to appropriations for fiscal years beginning after June 30, 1969. The amendment made by subsection (b)(3) [amending this section] shall apply with respect to service, specified in section 823(b)(3) of such Act [subsec. (b)(3) of this section] performed during academic years beginning after the enactment of this Act, whether the loan was made before or after such enactment [Aug. 16, 1968].''

CONSTRUCTION OF 1992 AMENDMENT

Section 211(b) of Pub. L. 102–408 provided that: ''With respect to section 836(h) of the Public Health Service Act [former subsec. (h) of this section], as in effect prior to the date of the enactment of this Act [Oct. 13, 1992], any agreement entered into under such section that is in effect on the day before such date remains in effect in accordance with the terms of the agreement, notwithstanding the amendment made by subsection (a) of this section [enacting section 297n of this title, amending this section, and repealing section 297c–1 of this title].''

§297c. Repealed. Pub. L. 105–392, title I, §123(3), Nov. 13, 1998, 112 Stat. 3562

Section, act July 1, 1944, ch. 373, title VIII, §837, formerly §824, as added Pub. L. 88–581, §2, Sept. 4, 1964, 78 Stat. 915; amended Pub. L. 89–751, §6(b), Nov. 3, 1966, 80 Stat. 1235; Pub. L. 90–490, title II, §222(d), Aug. 16, 1968, 82 Stat. 784; Pub. L. 92–52, §3(a), July 9, 1971, 85 Stat. 144; Pub. L. 92–158, §6(c), Nov. 18, 1971, 85 Stat. 477; Pub. L. 93–385, §3(a), Aug. 23, 1974, 88 Stat. 741; renumbered §837 and amended Pub. L. 94–63, title IX, §§936(c), 941(i)(1), (3), July 29, 1975, 89 Stat. 363, 365, 366; Pub. L. 96–76, title I, §109(b), Sept. 29, 1979, 93 Stat. 580; Pub. L. 97–35, title XXVII, §2757(c), Aug. 13, 1981, 95 Stat. 931, authorized appropriations for student loan funds for certain fiscal years.

§297c–1. Repealed. Pub. L. 102–408, title II, §211(a)(2), Oct. 13, 1992, 106 Stat. 2078

Section, act July 1, 1944, ch. 373, title VIII, §837A, as added Nov. 4, 1988, Pub. L. 100–607, title VII, §714(d), 102 Stat. 3162, authorized appropriations for educational loan repayments for service in certain health facilities.

§297d. Allotments and payments of Federal capital contributions

(a) Application for allotment; reduction or adjustment of amount requested in application; reallotment; continued availability of funds

(1) The Secretary shall from time to time set dates by which schools of nursing must file applications for Federal capital contributions.

(2)(A) If the total of the amounts requested for any fiscal year in such applications exceeds the total amount appropriated under section 297c[1] of this title for that fiscal year, the allotment from such total amount to the loan fund of each school of nursing shall be reduced to whichever of the following is the smaller:

(i) The amount requested in its application.

(ii) An amount which bears the same ratio to the total amount appropriated as the number of students estimated by the Secretary to be enrolled on a full-time basis in such school during such fiscal year bears to the estimated total number of students enrolled in all such schools on a full-time basis during such year.

(B) Amounts remaining after allotment under subparagraph (A) shall be reallotted in accordance with clause (ii) of such subparagraph among schools whose applications requested more than the amounts so allotted to their loan funds, but with such adjustments as may be necessary to prevent the total allotted to any such school's loan fund under this paragraph and paragraph (3) from exceeding the total so requested by it.

(3) Funds which, pursuant to section 297e(c) of this title or pursuant to a loan agreement under section 297a of this title are returned to the Secretary in any fiscal year, shall be available for allotment until expended. Funds described in the preceding sentence shall be allotted among schools of nursing in such manner as the Secretary determines will best carry out this part.[1]

(b) Installment payment of allotments

Allotments to a loan fund of a school shall be paid to it from time to time in such installments as the Secretary determines will not result in unnecessary accumulations in the loan fund at such school.

(c) Manner of payment

The Federal capital contributions to a loan fund of a school under this part[1] shall be paid to it from time to time in such installments as the Secretary determines will not result in unnecessary accumulations in the loan fund at such school.

(July 1, 1944, ch. 373, title VIII, §838, formerly §825, as added Pub. L. 88–581, §2, Sept. 4, 1964, 78 Stat. 915; amended Pub. L. 89–751, §6(c), Nov. 3, 1966, 80 Stat. 1235; Pub. L. 90–490, title II, §222(e), Aug. 16, 1968, 82 Stat. 785; renumbered §838 and amended Pub. L. 94–63, title IX, §941(h)(1), (2), (4)(A), (i)(1), (4), July 29, 1975, 89 Stat. 365, 366; Pub. L. 99–92, §8(e), Aug. 16, 1985, 99 Stat. 398; Pub. L. 100–607, title VII, §713(h)(1), Nov. 4, 1988, 102 Stat. 3161; Pub. L. 102–408, title II, §208(a), Oct. 13, 1992, 106 Stat. 2075.)

REFERENCES IN TEXT

Section 297c of this title, referred to in subsec. (a)(2)(A), was repealed by Pub. L. 105–392, title I, §123(3), Nov. 13, 1998, 112 Stat. 3562.

This part, referred to in subsecs. (a)(3) and (c), was in the original "this subpart" and was translated to reflect the probable intent of Congress and the redesignation of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, §123(2), Nov. 13, 1998, 112 Stat. 3562.

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–408 struck out "(A)" after "(3)", substituted "available for allotment until expended." for "available for allotment in such fiscal year and in the fiscal year succeeding the fiscal year." and "this subpart." for "this subpart, except that in making such allotments, the Secretary shall give priority to schools of nursing which established student loan funds under this subpart after September 30, 1975.", and struck out subpar. (B) which read as follows: "With respect to funds available pursuant to subparagraph (A), any such funds returned to the Secretary and not allotted by the Secretary, during the period of availability specified in such subparagraph, shall be available to carry out section 297j of this title and, for such purpose, shall remain available until expended."

1988—Subsec. (a)(3). Pub. L. 100–607 designated existing provisions as subpar. (A) and added subpar. (B).

1985—Subsec. (a). Pub. L. 99–92 amended subsec. (a) generally, substituting provisions relating to application for allotment, reduction or adjustment of amount requested in application, reallotment, and availability of funds for allotment during fiscal years for provisions relating to determination of amount of allotment.

Subsec. (b). Pub. L. 99–92 amended subsec. (b) generally, substituting provisions relating to payment to a loan fund of a school of allotments for provisions relating to application for allotment, adjustment or reduction of amount requested in application, and reallotment.

1975—Subsec. (a). Pub. L. 94–63, §941(h)(1), (4)(A)(i), (i)(4), substituted "subpart" for "part" wherever appearing, struck out "(whether as Federal capital contributions or as loans to schools under section 297f of this title)" before "which are in excess", and substituted references to section 847 of the Act for references to section 824, which had previously been translated as section 297c of this title, requiring no further translations in text as a result of renumbering of the Public Health Service Act.

Subsec. (b)(1). Pub. L. 94–63, §941(h)(4)(A)(ii), struck out ", and for loans pursuant to section 297f of this title," after "contributions".

Subsec. (b)(2). Pub. L. 94–63, §941(h)(2), struck out "of Health, Education, and Welfare" after "Secretary".

[1] See References in Text note below.

Subsec. (c). Pub. L. 94–63, § 941(h)(1), substituted ''subpart'' for ''part''.

1968—Subsec. (a). Pub. L. 90–490 substituted a new formula for distribution of Federal funds among schools of nursing by providing for allotment of funds among the schools entirely on the basis of their relative enrollments for former provisions which allocated funds among the States, 50 per centum on the basis of relative number of high school graduates, and 50 per centum on the basis of relative number of students enrolled in schools of nursing, and provided for determination of number of persons enrolled in such schools for most recent year for which satisfactory data are available to the Secretary.

1966—Subsec. (a). Pub. L. 89–751, § 6(c)(1), authorized allotment of appropriations for payment as Federal capital contributions or as loans to schools under section 297f of this title, and directed that funds available in any fiscal year for payment to schools under this part (whether as Federal capital contributions or as loans to schools under section 297f of this title) which are in excess of the amount appropriated pursuant to section 297c of this title for that year shall be allotted among States and among schools within States in such manner as the Secretary determinates will best carry out the purposes of this part.

Subsec. (b)(1). Pub. L. 89–751, § 6(c)(2), substituted ''schools of nursing in a State must file applications for Federal capital contributions, and for loans pursuant to section 297f of this title, from the allotment of such State under the first two sentences of subsection (a) of this section'' for ''schools of nursing with which he has in effect agreements under this part must file applications for Federal capital contributions to their loan funds pursuant to section 297a(b)(2)(A) of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 713(h)(2) of Pub. L. 100–607 provided that: ''Except as provided in Public Law 100–436 [Sept. 20, 1988, 102 Stat. 1680, see Tables for classification], the amendment made by paragraph (1) [amending this section] shall take effect as if such amendment had been effective on September 30, 1988, and as if section 843 of the Public Health Service Act, as added by section 715 of this title [section 297j of this title], had been effective on such date.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 6(e)(1) of Pub. L. 89–751 provided that: ''The amendments made by this section [amending this section and sections 297c, 297e, and 297f of this title] shall be effective in the case of payments to student loan funds made after the enactment of this Act [Nov. 3, 1966], except in the case of payments pursuant to commitments (made prior to enactment of this Act) to make loans under section 827 of the Public Health Service Act [section 297f of this title] as in effect prior to the enactment of this Act.''

APPLICABILITY OF REORG. PLAN NO. 3 OF 1966

Section 9 of Pub. L. 89–751 provided that: ''The amendments made by this Act [enacting former sections 295h to 295h–5 and 298c to 298c–8 of this title and amending this section, former sections 292b, 294d, 294n to 294p, 296, and 297c, section 297e, former section 297f, and section 298 of this title, and section 1717 of Title 12, Banks and Banking] shall be subject to the provisions of Reorganization Plan Numbered 3 of 1966 [set out as a note under section 202 of this title].''

§ 297e. Distribution of assets from loan funds

(a) Capital distribution of balance of loan fund

If a school terminates a loan fund established under an agreement pursuant to section 297a(b) of this title, or if the Secretary for good cause terminates the agreement with the school, there shall be a capital distribution as follows:

(1) The Secretary shall first be paid an amount which bears the same ratio to such balance in such fund on the date of termination of the fund as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 297a(b)(2)(A) of this title bears to the total amount in such fund derived from such Federal capital contributions and from funds deposited therein pursuant to section 297a(b)(2)(B) of this title.

(2) The remainder of such balance shall be paid to the school.

(b) Payment of principal or interest on loans

If a capital distribution is made under subsection (a) of this section, the school involved shall, after such capital distribution, pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school in payment of principal or interest on loans made from the loan fund established under section 297a(b) of this title as determined by the Secretary under subsection (a) of this section.

(c) Payment of balance of loan fund

(1) Within 90 days after the termination of any agreement with a school under section 297a of this title or the termination in any other manner of a school's participation in the loan program under this part,[1] such school shall pay to the Secretary from the balance of the loan fund of such school established under section 297a of this title, an amount which bears the same ratio to the balance in such fund on the date of such termination as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 297a(b)(2)(A) of this title bears to the total amount in such fund on such date derived from such Federal capital contributions and from funds deposited in the fund pursuant to section 297a(b)(2)(B) of this title. The remainder of such balance shall be paid to the school.

(2) A school to which paragraph (1) applies shall pay to the Secretary after the date on which payment is made under such paragraph and not less than quarterly, the same proportionate share of amounts received by the school after the date of termination referred to in paragraph (1) in payment of principal or interest on loans made from the loan fund as was determined for the Secretary under such paragraph.

(July 1, 1944, ch. 373, title VIII, § 839, formerly § 826, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 916; amended Pub. L. 89–751, § 6(d), Nov. 3, 1966, 80 Stat. 1235; Pub. L. 90–490, title II, § 222(f), Aug. 16, 1968, 82 Stat. 785; Pub. L. 92–52, § 3(b), July 9, 1971, 85 Stat. 145; Pub. L. 92–158, § 6(d)(1), Nov. 18, 1971, 85 Stat. 478; renumbered § 839 and amended Pub. L. 94–63, title IX, §§ 936(d),

[1] See References in Text note below.

941(h)(1), (2), (4)(B), (i)(1), (5), July 29, 1975, 89 Stat. 363, 365, 366; Pub. L. 96–32, § 7(j), July 10, 1979, 93 Stat. 84; Pub. L. 96–76, title I, § 109(c), Sept. 29, 1979, 93 Stat. 580; Pub. L. 97–35, title XXVII, § 2757(d), Aug. 13, 1981, 95 Stat. 931; Pub. L. 99–92, § 8(f), Aug. 16, 1985, 99 Stat. 399; Pub. L. 100–607, title VII, § 713(i), Nov. 4, 1988, 102 Stat. 3161; Pub. L. 102–408, title II, § 208(b), Oct. 13, 1992, 106 Stat. 2075; Pub. L. 105–392, title I, § 133(e), Nov. 13, 1998, 112 Stat. 3577.)

REFERENCES IN TEXT

This part, referred to in subsec. (c)(1), was in the original ''this subpart'' and was translated to reflect the probable intent of Congress and the redesignation of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, § 123(2), Nov. 13, 1998, 112 Stat. 3562.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392, § 133(e)(1)(A), added introductory provisions and struck out former introductory provisions which read as follows: ''After September 30, 1996, and not later than December 31, 1999, there shall be a capital distribution of the balance of the loan fund established under an agreement pursuant to section 297a of this title by each school as follows:''.

Subsec. (a)(1). Pub. L. 105–392, § 133(e)(1)(B), substituted ''on the date of termination of the fund'' for ''at the close of September 30, 1999,''.

Subsec. (b). Pub. L. 105–392, § 133(e)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''After December 31, 1999, each school with which the Secretary has made an agreement under this subpart shall pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school after September 30, 1999, in payment of principal or interest on loans made from the loan fund established pursuant to such agreement as was determined for the Secretary under subsection (a) of this section.''

1992—Subsec. (a). Pub. L. 102–408, § 208(b)(2), substituted ''1999'' for ''1994'' in introductory provisions and in par. (1).

Pub. L. 102–408, § 208(b)(1), substituted ''1996'' for ''1991'' in introductory provisions.

Subsec. (b). Pub. L. 102–408, § 208(b)(2), substituted ''1999'' for ''1994'' in two places.

1988—Subsec. (a). Pub. L. 100–607, § 713(i)(1)(A), which directed substitution of ''1994'' for ''1991'' in text preceding par. (1), was executed by making the substitution for ''1991'' the second time appearing to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 100–607, § 713(i)(1)(B), substituted ''1994'' for ''1991''.

Subsec. (b). Pub. L. 100–607, § 713(i)(2), substituted ''1994'' for ''1991'' in two places.

1985—Subsecs. (a), (b). Pub. L. 99–92, § 8(f)(1), substituted ''1991'' for ''1987'' wherever appearing.

Subsec. (c). Pub. L. 99–92, § 8(f)(2), added subsec. (c).

1981—Pub. L. 97–35 substituted ''1987'' for ''1983'' wherever appearing.

1979—Subsec. (a). Pub. L. 96–76, § 109(c)(1), substituted ''September 30, 1983, and not later than December 31, 1983'' for ''September 30, 1980, and not later than December 31, 1981''. Prior to amendment, subsec. (a) referred to ''December 31, 1980'' rather than to ''December 31, 1981'' as cited in directory language of Pub. L. 96–76. See below for explanation of amendment by Pub. L. 96–32.

Pub. L. 96–32 substituted ''December 31, 1980'' for ''September 30, 1977''.

Subsec. (a)(1). Pub. L. 96–76, § 109(c)(2), substituted ''1983'' for ''1980''.

Subsec. (b). Pub. L. 96–76, § 109(c)(3), substituted ''1983'' for ''1980'' wherever appearing.

1975—Subsec. (a). Pub. L. 94–63, §§ 936(d), 941(h)(2), (i)(5), substituted ''September 30, 1980'' for ''June 30, 1977'' wherever appearing, struck out ''of Health, Education, and Welfare'' after ''Secretary'', and substituted references to section 835 of the Act for references to section 822, which had previously been translated as section 297a of this title, requiring no further translations in text as a result of renumbering of the Public Health Service Act.

Subsec. (b). Pub. L. 94–63, §§ 936(d), 941(h)(1), (4)(B), substituted ''subpart'' for ''part'', ''September 30, 1980'' for ''June 30, 1977'', and ''December 31, 1980'' for ''September 30, 1977'' and struck out provisions relating to payments from revolving fund established by section 297f(d) of this title.

1971—Pub. L. 92–158 substituted ''1977'' for ''1975'' wherever appearing.

Pub. L. 92–52 substituted ''1975'' for ''1974'' wherever appearing.

1968—Pub. L. 90–490 substituted ''1974'' for ''1972'' wherever appearing.

1966—Subsec. (a). Pub. L. 89–751, § 6(d)(1), (2), substituted ''an agreement pursuant to section 297a(b) of this title'' for ''this part'' in opening provisions, and in par. (1) substituted ''such balance'' for ''the balance''.

Subsec. (b). Pub. L. 89–751, § 6(d)(3), inserted ''(other than so much of such fund as relates to payments from the revolving fund established by section 297f(d) of this title)''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 936(d) of Pub. L. 94–63 effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as a note under section 297a of this title.

Amendment by section 941(h)(1), (2), (4)(B), (i)(1), (5) of Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–751 effective in the case of payments to student loan funds made after Nov. 3, 1966, except in the case of payments pursuant to commitments (made prior to Nov. 3, 1966) to make loans under section 297f of this title as in effect prior to Nov. 3, 1966, see section 6(e)(1) of Pub. L. 89–751, set out as a note under section 297d of this title.

§ 297f. Repealed. Pub. L. 94–63, title IX, § 936(e)(1), July 29, 1975, 89 Stat. 363

Section, act July 1, 1944, ch. 373, title VIII, § 827, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 917; amended Nov. 3, 1966, Pub. L. 89–751, § 6(a), 80 Stat. 1233; Aug. 16, 1968, Pub. L. 90–490, title II, § 222(g), 82 Stat. 785; July 9, 1971, Pub. L. 92–52, § 3(c), 85 Stat. 145; Nov. 18, 1971, Pub. L. 92–158, § 6(d)(2), 85 Stat. 478, set out provisions relating to terms, conditions, limitations, manner of payment, etc., of loans to schools of nursing to capitalize student loan funds.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 297a of this title.

AVAILABILITY OF NURSE TRAINING REVOLVING FUND FOR PAYMENT OF OBLIGATIONS DEPOSITS INTO FUND; TRANSFER OF EXCESS AMOUNTS TO GENERAL FUND OF TREASURY AUTHORIZATION OF APPROPRIATIONS

Section 936(e)(2), (3) of Pub. L. 94–63 provided that:

''(2) The nurse training fund created within the Treasury by section 827(d)(1) of the Act [section 297f(d)(1) of this title] shall remain available to the Secretary of Health, Education, and Welfare [now Health and Human Services] for the purpose of meeting

his responsibilities respecting participations in obligations acquired under section 827 of the Act [this section]. The Secretary shall continue to deposit in such fund all amounts received by him as interest payments or repayments of principal on loans under such section 27[827]. If at any time the Secretary determines the moneys in the funds exceed the present and any reasonable prospective further requirements of such fund, such excess may be transferred to the general fund of the Treasury.

''(3) There are authorized to be appropriated without fiscal year limitation such sums as may be necessary to enable the Secretary to make payments under agreements entered into under section 827(b) of the Act [section 297f(b) of this title] before the date of the enactment of this Act [July 29, 1975].''

CONVERSION OF FEDERAL CAPITAL CONTRIBUTION TO A LOAN UNDER SECTION 297f OF THIS TITLE

Pub. L. 89–751, § 6(e)(2), Nov. 3, 1966, 80 Stat. 1236, authorized the Secretary of Health, Education, and Welfare to convert a Federal capital contribution to a student loan fund of a particular institution, made under this subchapter, from funds appropriated pursuant thereto for the fiscal year ending June 30, 1967, to a loan under section 297f of this title.

§ 297g. Modification of agreements; compromise, waiver or release

The Secretary may agree to modifications of agreements made under this part,[1] and may compromise, waive, or release any right, title, claim, or demand of the United States arising or acquired under this part.[1]

(July 1, 1944, ch. 373, title VIII, § 840, formerly § 828, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 917; renumbered § 840 and amended Pub. L. 94–63, title IX, § 941(h)(1), (4)(C), (i)(1), July 29, 1975, 89 Stat. 365.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subpart'' and was translated to reflect the probable intent of Congress and the redesignation of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, § 123(2), Nov. 13, 1998, 112 Stat. 3562.

AMENDMENTS

1975—Pub. L. 94–63, § 941(h)(1), (4)(C), substituted ''subpart'' for ''part'' wherever appearing and struck out ''or loans'' after ''agreements''.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 297a of this title.

§ 297h. Repealed. Pub. L. 99–92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400

Section, act July 1, 1944, ch. 373, title VIII, § 841, formerly § 829, as added Aug. 16, 1968, Pub. L. 90–490, title II, § 222(h), 82 Stat. 785; renumbered § 841 and amended July 29, 1975, Pub. L. 94–63, title IX, § 941(i)(1), (6), 89 Stat. 365, 366, related to transfers to the scholarship program.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 297a of this title.

§ 297i. Procedures for appeal of terminations

In any case in which the Secretary intends to terminate an agreement with a school of nursing under this part,[1] the Secretary shall provide the school with a written notice specifying such intention and stating that the school may request a formal hearing with respect to such termination. If the school requests such a hearing within 30 days after the receipt of such notice, the Secretary shall provide such school with a hearing conducted by an administrative law judge.

(July 1, 1944, ch. 373, title VIII, § 842, as added Pub. L. 99–92, § 8(g), Aug. 16, 1985, 99 Stat. 399.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subpart'' and was translated to reflect the probable intent of Congress and the redesignation of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, § 123(2), Nov. 13, 1998, 112 Stat. 3562.

PRIOR PROVISIONS

A prior section 297i, act July 1, 1944, ch. 373, title VIII, § 830, as added Nov. 18, 1971, Pub. L. 92–158, § 6(b)(2), 85 Stat. 477, relating to loan forgiveness, was transferred to and redesignated as subsec. (j) of section 823 of act July 1, 1944, which is classified to section 297b of this title, by Pub. L. 94–63, title IX, § 941(h)(5), July 29, 1975, 89 Stat. 365.

A prior section 842 of act July 1, 1944, was renumbered section 852, and was classified to section 298a of this title prior to repeal by Pub. L. 105–392.

A prior section 297j, act July 1, 1944, ch. 373, title VIII, § 843, as added Nov. 4, 1988, Pub. L. 100–607, title VII, § 715, 102 Stat. 3162; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2616(a), 102 Stat. 4240; Aug. 16, 1989, Pub. L. 101–93, § 5(s), 103 Stat. 614, provided grant authority for scholarships for undergraduate education of professional nurses, prior to repeal by Pub. L. 102–531, title III, § 313(a)(11), (c), Oct. 27, 1992, 106 Stat. 3507, effective immediately after enactment of Pub. L. 102–408, approved Oct. 13, 1992.

A prior section 843 of act July 1, 1944, was renumbered section 853, and was classified to section 298b of this title prior to repeal by Pub. L. 105–392.

Another prior section 297j, act July 1, 1944, ch. 373, title VIII, § 845, formerly § 860, as added Aug. 16, 1968, Pub. L. 90–490, title II, § 223(a), 82 Stat. 785; amended July 9, 1971, Pub. L. 92–52, § 4, 85 Stat. 145; Nov. 18, 1971, Pub. L. 92–158, § 7, 85 Stat. 478; renumbered § 845 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 902(f), 937, 941(j)(1), (2), 89 Stat. 355, 363, 366; Sept. 29, 1979, Pub. L. 96–76, title I, § 110(a), (b), 93 Stat. 580; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2758(a), (b), 95 Stat. 932, set forth provisions relating to scholarship grants to schools of nursing, prior to repeal by Pub. L. 99–92, § 9(a)(2), Aug. 16, 1985, 99 Stat. 400, eff. Oct. 1, 1985.

A prior section 845 of act July 1, 1944, was renumbered section 855, and was classified to section 298b–2 of this title prior to repeal by Pub. L. 105–392.

A prior section 297k, act July 1, 1944, ch. 373, title VIII, § 846, formerly § 861, as added Aug. 16, 1968, Pub. L. 90–490, title II, § 223(a), 82 Stat. 786; renumbered § 846 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 941(j)(1), (3), 89 Stat. 366, related to transfers of funds to student loan program, prior to repeal by Pub. L. 97–35, title XXVII, § 2758(c), Aug. 13, 1981, 95 Stat. 932.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 297a of this title.

§ 297n. Loan repayment and scholarship programs

(a) In general

In the case of any individual—

[1] See References in Text note below.

[1] See References in Text note below.

(1) who has received a baccalaureate or associate degree in nursing (or an equivalent degree), a diploma in nursing, or a graduate degree in nursing;

(2) who obtained (A) one or more loans from a loan fund established under subpart II,[1] or (B) any other educational loan for nurse training costs; and

(3) who enters into an agreement with the Secretary to serve as nurse for a period of not less than two years at a health care facility with a critical shortage of nurses;

the Secretary shall make payments in accordance with subsection (b) of this section, for and on behalf of that individual, on the principal of and interest on any loan of that individual described in paragraph (2) of this subsection which is outstanding on the date the individual begins the service specified in the agreement described in paragraph (3) of this subsection. After fiscal year 2007, the Secretary may not, pursuant to any agreement entered into under this subsection, assign a nurse to any private entity unless that entity is nonprofit.

(b) Manner of payments

The payments described in subsection (a) of this section shall be made by the Secretary as follows:

(1) Upon completion by the individual for whom the payments are to be made of the first year of the service specified in the agreement entered into with the Secretary under subsection (a) of this section, the Secretary shall pay 30 percent of the principal of, and the interest on each loan of such individual described in subsection (a)(2) of this section which is outstanding on the date he began such practice.

(2) Upon completion by that individual of the second year of such service, the Secretary shall pay another 30 percent of the principal of, and the interest on each such loan.

(3) Upon completion by that individual of a third year of such service, the Secretary shall pay another 25 percent of the principal of, and the interest on each such loan.

(c) Payment by due date

Notwithstanding the requirement of completion of practice specified in subsection (b) of this section, the Secretary shall, on or before the due date thereof, pay any loan or loan installment which may fall due within the period of service for which the borrower may receive payments under this subsection, upon the declaration of such borrower, at such times and in such manner as the Secretary may prescribe (and supported by such other evidence as the Secretary may reasonably require), that the borrower is then serving as described by subsection (a)(3) of this section, and that the borrower will continue to so serve for the period required (in the absence of this subsection) to entitle the borrower to have made the payments provided by this subsection for such period; except that not more than 85 percent of the principal of any such loan shall be paid pursuant to this subsection.

[1] See References in Text note below.

(d) Scholarship program

(1) In general

The Secretary shall (for fiscal years 2003 and 2004) and may (for fiscal years thereafter) carry out a program of entering into contracts with eligible individuals under which such individuals agree to serve as nurses for a period of not less than 2 years at a health care facility with a critical shortage of nurses, in consideration of the Federal Government agreeing to provide to the individuals scholarships for attendance at schools of nursing.

(2) Eligible individuals

In this subsection, the term ''eligible individual'' means an individual who is enrolled or accepted for enrollment as a full-time or part-time student in a school of nursing.

(3) Service requirement

(A) In general

The Secretary may not enter into a contract with an eligible individual under this subsection unless the individual agrees to serve as a nurse at a health care facility with a critical shortage of nurses for a period of full-time service of not less than 2 years, or for a period of part-time service in accordance with subparagraph (B).

(B) Part-time service

An individual may complete the period of service described in subparagraph (A) on a part-time basis if the individual has a written agreement that—

(i) is entered into by the facility and the individual and is approved by the Secretary; and

(ii) provides that the period of obligated service will be extended so that the aggregate amount of service performed will equal the amount of service that would be performed through a period of full-time service of not less than 2 years.

(4) Applicability of certain provisions

The provisions of subpart III of part D of subchapter II of this chapter shall, except as inconsistent with this section, apply to the program established in paragraph (1) in the same manner and to the same extent as such provisions apply to the National Health Service Corps Scholarship Program established in such subpart.

(e) Preferences regarding participants

In entering into agreements under subsection (a) or (d) of this section, the Secretary shall give preference to qualified applicants with the greatest financial need.

(f) Condition of agreement

The Secretary may make payments under subsection (a) of this section on behalf of an individual only if the agreement under such subsection provides that section 298b–7(c)[1] of this title is applicable to the individual.

(g) Breach of agreement

(1) In general

In the case of any program under this section under which an individual makes an

agreement to provide health services for a period of time in accordance with such program in consideration of receiving an award of Federal funds regarding education as a nurse (including an award for the repayment of loans), the following applies if the agreement provides that this subsection is applicable:

(A) In the case of a program under this section that makes an award of Federal funds for attending an accredited program of nursing (in this section referred to as a ''nursing program''), the individual is liable to the Federal Government for the amount of such award (including amounts provided for expenses related to such attendance), and for interest on such amount at the maximum legal prevailing rate, if the individual—

(i) fails to maintain an acceptable level of academic standing in the nursing program (as indicated by the program in accordance with requirements established by the Secretary);

(ii) is dismissed from the nursing program for disciplinary reasons; or

(iii) voluntarily terminates the nursing program.

(B) The individual is liable to the Federal Government for the amount of such award (including amounts provided for expenses related to such attendance), and for interest on such amount at the maximum legal prevailing rate, if the individual fails to provide health services in accordance with the program under this section for the period of time applicable under the program.

(2) Waiver or suspension of liability

In the case of an individual or health facility making an agreement for purposes of paragraph (1), the Secretary shall provide for the waiver or suspension of liability under such subsection if compliance by the individual or the health facility, as the case may be, with the agreements involved is impossible, or would involve extreme hardship to the individual or facility, and if enforcement of the agreements with respect to the individual or facility would be unconscionable.

(3) Date certain for recovery

Subject to paragraph (2), any amount that the Federal Government is entitled to recover under paragraph (1) shall be paid to the United States not later than the expiration of the 3-year period beginning on the date the United States becomes so entitled.

(4) Availability

Amounts recovered under paragraph (1) with respect to a program under this section shall be available for the purposes of such program, and shall remain available for such purposes until expended.

(h) Reports

Not later than 18 months after August 1, 2002, and annually thereafter, the Secretary shall prepare and submit to the Congress a report describing the programs carried out under this section, including statements regarding—

(1) the number of enrollees, scholarships, loan repayments, and grant recipients;

(2) the number of graduates;

(3) the amount of scholarship payments and loan repayments made;

(4) which educational institution the recipients attended;

(5) the number and placement location of the scholarship and loan repayment recipients at health care facilities with a critical shortage of nurses;

(6) the default rate and actions required;

(7) the amount of outstanding default funds of both the scholarship and loan repayment programs;

(8) to the extent that it can be determined, the reason for the default;

(9) the demographics of the individuals participating in the scholarship and loan repayment programs;

(10) justification for the allocation of funds between the scholarship and loan repayment programs; and

(11) an evaluation of the overall costs and benefits of the programs.

(i) Funding

(1) Authorization of appropriations

For the purpose of payments under agreements entered into under subsection (a) or (d) of this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003 through 2007.

(2) Allocations

Of the amounts appropriated under paragraph (1), the Secretary may, as determined appropriate by the Secretary, allocate amounts between the program under subsection (a) of this section and the program under subsection (d) of this section.

(July 1, 1944, ch. 373, title VIII, § 846, as added Pub. L. 102–408, title II, § 211(a)(3), Oct. 13, 1992, 106 Stat. 2078; amended Pub. L. 105–392, title I, § 133(d), Nov. 13, 1998, 112 Stat. 3576; Pub. L. 107–205, title I, § 103, Aug. 1, 2002, 116 Stat. 813.)

REFERENCES IN TEXT

Subpart II, referred to in subsec. (a)(2), probably should be ''this part'' to reflect the redesignation of subpart II of former part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, § 123(2), Nov. 13, 1998, 112 Stat. 3562.

Section 298b–7(c) of this title, referred to in subsec. (f), was repealed by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

PRIOR PROVISIONS

A prior section 297n, act July 1, 1944, ch. 373, title VIII, § 847, as added Nov. 4, 1988, Pub. L. 100–607, title VII, § 716, 102 Stat. 3163; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2616(b), 102 Stat. 4240, established a demonstration program for student loans with respect to service in certain health care facilities in underserved areas, prior to repeal by Pub. L. 102–408, title II, § 210, Oct. 13, 1992, 106 Stat. 2078.

A prior section 846 of act July 1, 1944, was classified to section 297k of this title and was repealed by Pub. L. 97–35.

AMENDMENTS

2002—Pub. L. 107–205, § 103(b)(1), substituted ''Loan repayment and scholarship programs'' for ''Loan repayment program'' in section catchline.

Subsec. (a). Pub. L. 107–205, § 103(a)(2), inserted at end of concluding provisions ''After fiscal year 2007, the

Secretary may not, pursuant to any agreement entered into under this subsection, assign a nurse to any private entity unless that entity is nonprofit.''

Subsec. (a)(3). Pub. L. 107–205, § 103(a)(1), substituted ''at a health care facility with a critical shortage of nurses'' for ''in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a rural health clinic, or in a public or nonprofit private health facility determined by the Secretary to have a critical shortage of nurses''.

Subsec. (d). Pub. L. 107–205, § 103(b)(4), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 107–205, § 103(c), substituted ''under subsection (a) or (d) of this section, the Secretary shall give preference to qualified applicants with the greatest financial need.'' for ''under subsection (a) of this section, the Secretary shall give preference—

''(1) to qualified applicants with the greatest financial need; and

''(2) to qualified applicants that, with respect to health facilities described in such subsection, agree to serve in such health facilities located in geographic areas with a shortage of and need for nurses, as determined by the Secretary.''

Subsec. (f). Pub. L. 107–205, § 103(b)(2), (3), redesignated subsec. (d) as (f) and transferred it to appear after subsec. (e). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 107–205, § 103(b)(2), (3), redesignated subsec. (h) as (g) and transferred it to appear after subsec. (f). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 107–205, § 103(b)(2), (d), redesignated subsec. (f) as (h) and amended it generally. Prior to amendment, text of subsec. read as follows: ''For purposes of this section:

''(1) The term 'community health center' has the meaning given such term in section 254c(a) of this title.

''(2) The term 'migrant health center' has the meaning given such term in section 254b(a)(1) of this title.

''(3) The term 'rural health clinic' has the meaning given such term in section 1395x(aa)(2) of this title.''

Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 107–205, § 103(b)(2), (e), redesignated subsec. (g) as (i) and amended it generally. Prior to amendment, text of subsec. read as follows: ''For the purpose of payments under agreements entered into under subsection (a) of this section, there are authorized to be appropriated $5,000,000 for fiscal year 1993, and $6,000,000 for fiscal year 1994.''

1998—Subsec. (h). Pub. L. 105–392 added subsec. (h).

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

§ 297n–1. Nurse faculty loan program

(a) Establishment

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may enter into an agreement with any school of nursing for the establishment and operation of a student loan fund in accordance with this section, to increase the number of qualified nursing faculty.

(b) Agreements

Each agreement entered into under subsection (a) of this section shall—

(1) provide for the establishment of a student loan fund by the school involved;

(2) provide for deposit in the fund of—

(A) the Federal capital contributions to the fund;

(B) an amount equal to not less than one-ninth of such Federal capital contributions, contributed by such school;

(C) collections of principal and interest on loans made from the fund; and

(D) any other earnings of the fund;

(3) provide that the fund will be used only for loans to students of the school in accordance with subsection (c) of this section and for costs of collection of such loans and interest thereon;

(4) provide that loans may be made from such fund only to students pursuing a full-time course of study or, at the discretion of the Secretary, a part-time course of study in an advanced degree program described in section 296j(b) of this title; and

(5) contain such other provisions as are necessary to protect the financial interests of the United States.

(c) Loan provisions

Loans from any student loan fund established by a school pursuant to an agreement under subsection (a) of this section shall be made to an individual on such terms and conditions as the school may determine, except that—

(1) such terms and conditions are subject to any conditions, limitations, and requirements prescribed by the Secretary;

(2) in the case of any individual, the total of the loans for any academic year made by schools of nursing from loan funds established pursuant to agreements under subsection (a) of this section may not exceed $30,000, plus any amount determined by the Secretary on an annual basis to reflect inflation;

(3) an amount up to 85 percent of any such loan (plus interest thereon) shall be canceled by the school as follows:

(A) upon completion by the individual of each of the first, second, and third year of full-time employment, required by the loan agreement entered into under this subsection, as a faculty member in a school of nursing, the school shall cancel 20 percent of the principle of, and the interest on, the amount of such loan unpaid on the first day of such employment; and

(B) upon completion by the individual of the fourth year of full-time employment, required by the loan agreement entered into under this subsection, as a faculty member in a school of nursing, the school shall cancel 25 percent of the principle of, and the interest on, the amount of such loan unpaid on the first day of such employment;

(4) such a loan may be used to pay the cost of tuition, fees, books, laboratory expenses, and other reasonable education expenses;

(5) such a loan shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the 10-year period that begins 9 months after the individual ceases to pursue a course of study at a school of nursing; and

(6) such a loan shall—

(A) beginning on the date that is 3 months after the individual ceases to pursue a course of study at a school of nursing, bear interest on the unpaid balance of the loan at the rate of 3 percent per annum; or

(B) subject to subsection (e) of this section, if the school of nursing determines that the individual will not complete such course of study or serve as a faculty member as required under the loan agreement under this subsection, bear interest on the unpaid balance of the loan at the prevailing market rate.

(d) Payment of proportionate share

Where all or any part of a loan, or interest, is canceled under this section, the Secretary shall pay to the school an amount equal to the school's proportionate share of the canceled portion, as determined by the Secretary.

(e) Review by Secretary

At the request of the individual involved, the Secretary may review any determination by a school of nursing under subsection (c)(6)(B) of this section.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title VIII, § 846A, as added Pub. L. 107–205, title II, § 203, Aug. 1, 2002, 116 Stat. 817.)

PART F—FUNDING

§ 297q. Funding

(a) Authorization of appropriations

For the purpose of carrying out parts B, C, and D of this subchapter (subject to section 297t(g) of this title), there are authorized to be appropriated $65,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(b) Allocations for fiscal years 1998 through 2002

(1) Nurse practitioners; nurse midwives

(A) Fiscal year 1998

Of the amount appropriated under subsection (a) of this section for fiscal year 1998, the Secretary shall reserve not less than $17,564,000 for making awards of grants and contracts under section 296m of this title as such section was in effect for fiscal year 1998.

(B) Fiscal years 1999 through 2002

Of the amount appropriated under subsection (a) of this section for fiscal year 1999 or any of the fiscal years 2000 through 2002, the Secretary, subject to subsection (d) of this section, shall reserve for the fiscal year involved, for making awards of grants and contracts under part B of this subchapter with respect to nurse practitioners and nurse midwives, not less than the percentage constituted by the ratio of the amount appropriated under section 296m of this title as such section was in effect for fiscal year 1998 to the total of the amounts appropriated under this subchapter for such fiscal year. For purposes of the preceding sentence, the Secretary, in determining the amount that has been reserved for the fiscal year involved, shall include any amounts appropriated under subsection (a) of this section for the fiscal year that are obligated by the Secretary to continue in effect grants or contracts under section 296m of this title as such section was in effect for fiscal year 1998.

(2) Nurse anesthetists

(A) Fiscal year 1998

Of the amount appropriated under subsection (a) of this section for fiscal year 1998, the Secretary shall reserve not less than $2,761,000 for making awards of grants and contracts under section 297–1 of this title as such section was in effect for fiscal year 1998.

(B) Fiscal years 1999 through 2002

Of the amount appropriated under subsection (a) of this section for fiscal year 1999 or any of the fiscal years 2000 through 2002, the Secretary, subject to subsection (d) of this section, shall reserve for the fiscal year involved, for making awards of grants and contracts under part B of this subchapter with respect to nurse anesthetists, not less than the percentage constituted by the ratio of the amount appropriated under section 297–1 of this title as such section was in effect for fiscal year 1998 to the total of the amounts appropriated under this subchapter for such fiscal year. For purposes of the preceding sentence, the Secretary, in determining the amount that has been reserved for the fiscal year involved, shall include any amounts appropriated under subsection (a) of this section for the fiscal year that are obligated by the Secretary to continue in effect grants or contracts under section 297–1 of this title as such section was in effect for fiscal year 1998.

(c) Allocations after fiscal year 2002

(1) In general

For fiscal year 2003 and subsequent fiscal years, amounts appropriated under subsection (a) of this section for the fiscal year involved shall be allocated by the Secretary among parts B, C, and D of this subchapter (and programs within such parts) according to a methodology that is developed in accordance with paragraph (2). The Secretary shall enter into a contract with a public or private entity for the purpose of developing the methodology. The contract shall require that the development of the methodology be completed not later than February 1, 2002.

(2) Use of certain factors

The contract under paragraph (1) shall provide that the methodology under such paragraph will be developed in accordance with the following:

(A) The methodology will take into account the need for and the distribution of health services among medically underserved populations, as determined according

to the factors that apply under section 254b(b)(3) of this title.

(B) The methodology will take into account the need for and the distribution of health services in health professional shortage areas, as determined according to the factors that apply under section 254e(b) of this title.

(C) The methodology will take into account the need for and the distribution of mental health services among medically underserved populations and in health professional shortage areas.

(D) The methodology will be developed in consultation with individuals in the field of nursing, including registered nurses, nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, nursing educators and educational institutions, nurse executives, pediatric nurse associates and practitioners, and women's health, obstetric, and neonatal nurses.

(E) The methodology will take into account the following factors with respect to the States:

(i) A provider population ratio equivalent to a managed care formula of 1/1,500 for primary care services.

(ii) The use of whole rather than fractional counts in determining the number of health care providers.

(iii) The counting of only employed health care providers in determining the number of health care providers.

(iv) The number of families whose income is less than 200 percent of the official poverty line (as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title).

(v) The rate of infant mortality and the rate of low-birthweight births.

(vi) The percentage of the general population constituted by individuals who are members of racial or ethnic minority groups, stated both by minority group and in the aggregate.

(vii) The percentage of the general population constituted by individuals who are of Hispanic ethnicity.

(viii) The number of individuals residing in health professional shortage areas, and the number of individuals who are members of medically underserved populations.

(ix) The percentage of the general population constituted by elderly individuals.

(x) The extent to which the populations served have a choice of providers.

(xi) The impact of care on hospitalizations and emergency room use.

(xii) The number of individuals who lack proficiency in speaking the English language.

(xiii) Such additional factors as the Secretary determines to be appropriate.

(3) Report to Congress

Not later than 30 days after the completion of the development of the methodology required in paragraph (1), the Secretary shall submit to the Committee on Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the methodology and explaining the effects of the methodology on the allocation among parts B, C, and D of this subchapter (and programs within such parts) of amounts appropriated under subsection (a) of this section for the first fiscal year for which the methodology will be in effect. Such explanation shall include a comparison of the allocation for such fiscal year with the allocation made under this section for the preceding fiscal year.

(d) Use of methodology before fiscal year 2003

With respect to the fiscal years 1999 through 2002, if the report required in subsection (c)(3) of this section is submitted in accordance with such subsection not later than 90 days before the beginning of such a fiscal year, the Secretary may for such year implement the methodology described in the report (rather than implementing the methodology in fiscal year 2003), in which case subsection (b) of this section ceases to be in effect. The authority under the preceding sentence is subject to the condition that the fiscal year for which the methodology is implemented be the same fiscal year identified in such report as the fiscal year for which the methodology will first be in effect.

(e) Authority for use of additional factors in methodology

(1) In general

The Secretary shall make the determinations specified in paragraph (2). For any fiscal year beginning after the first fiscal year for which the methodology under subsection (c)(1) of this section is in effect, the Secretary may alter the methodology by including the information from such determinations as factors in the methodology.

(2) Relevant determinations

The determinations referred to in paragraph (1) are as follows:

(A) The need for and the distribution of health services among populations for which it is difficult to determine the number of individuals who are in the population, such as homeless individuals; migratory and seasonal agricultural workers and their families; individuals infected with the human immunodeficiency virus, and individuals who abuse drugs.

(B) In the case of a population for which the determinations under subparagraph (A) are made, the extent to which the population includes individuals who are members of racial or ethnic minority groups and a specification of the skills needed to provide health services to such individuals in the language and the educational and cultural context that is most appropriate to the individuals.

(C) Data, obtained from the Director of the Centers for Disease Control and Prevention, on rates of morbidity and mortality among various populations (including data on the rates of maternal and infant mortality and data on the rates of low-birthweight births of living infants).

(D) Data from the Health Plan Employer Data and Information Set, as appropriate.

(July 1, 1944, ch. 373, title VIII, § 841, as added Pub. L. 105–392, title I, § 123(5), Nov. 13, 1998, 112 Stat. 3569.)

REFERENCES IN TEXT

Section 296m of this title, referred to in subsec. (b)(1), was repealed and a new section 296m was enacted by Pub. L. 105–392, title I, § 123(1), (4), Nov. 13, 1998, 112 Stat. 3562, 3568.

Section 297–1 of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

PRIOR PROVISIONS

A prior section 841 of act July 1, 1944, was classified to section 297h of this title prior to repeal by Pub. L. 99–92.

Another prior section 841 of act July 1, 1944, was renumbered section 851, and was classified to section 298 of this title prior to repeal by Pub. L. 105–392.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

PART G—NATIONAL ADVISORY COUNCIL ON NURSE EDUCATION AND PRACTICE

§ 297t. National Advisory Council on Nurse Education and Practice

(a) Establishment

The Secretary shall establish an advisory council to be known as the National Advisory Council on Nurse Education and Practice (in this section referred to as the ''Advisory Council'').

(b) Composition

(1) In general

The Advisory Council shall be composed of—

(A) not less than 21, nor more than 23 individuals, who are not officers or employees of the Federal Government, appointed by the Secretary without regard to the Federal civil service laws, of which—

(i) 2 shall be selected from full-time students enrolled in schools of nursing;

(ii) 2 shall be selected from the general public;

(iii) 2 shall be selected from practicing professional nurses; and

(iv) 9 shall be selected from among the leading authorities in the various fields of nursing, higher, secondary education, and associate degree schools of nursing, and from representatives of advanced education nursing groups (such as nurse practitioners, nurse midwives, and nurse anesthetists), hospitals, and other institutions and organizations which provide nursing services; and

(B) the Secretary (or the delegate of the Secretary (who shall be an ex officio member and shall serve as the Chairperson)).

(2) Appointment

Not later than 90 days after November 13, 1998, the Secretary shall appoint the members of the Advisory Council and each such member shall serve a 4 year term. In making such appointments, the Secretary shall ensure a fair balance between the nursing professions, a broad geographic representation of members and a balance between urban and rural members. Members shall be appointed based on their competence, interest, and knowledge of the mission of the profession involved. A majority of the members shall be nurses.

(3) Minority representation

In appointing the members of the Advisory Council under paragraph (1), the Secretary shall ensure the adequate representation of minorities.

(c) Vacancies

(1) In general

A vacancy on the Advisory Council shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(2) Filling unexpired term

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) Duties

The Advisory Council shall—

(1) provide advice and recommendations to the Secretary and Congress concerning policy matters arising in the administration of this subchapter, including the range of issues relating to the nurse workforce, education, and practice improvement;

(2) provide advice to the Secretary and Congress in the preparation of general regulations and with respect to policy matters arising in the administration of this subchapter, including the range of issues relating to nurse supply, education and practice improvement; and

(3) not later than 3 years after November 13, 1998, and annually thereafter, prepare and submit to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives, a report describing the activities of the Council, including findings and recommendations made by the Council concerning the activities under this subchapter.

(e) Meetings and documents

(1) Meetings

The Advisory Council shall meet not less than 2 times each year. Such meetings shall be held jointly with other related entities established under this subchapter where appropriate.

(2) Documents

Not later than 14 days prior to the convening of a meeting under paragraph (1), the Advisory Council shall prepare and make available an agenda of the matters to be considered by the Advisory Council at such meeting. At any such meeting, the Advisory Council shall dis-

tribute materials with respect to the issues to be addressed at the meeting. Not later than 30 days after the adjourning of such a meeting, the Advisory Council shall prepare and make available a summary of the meeting and any actions taken by the Council based upon the meeting.

(f) Compensation and expenses

(1) Compensation

Each member of the Advisory Council shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Council. All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) Expenses

The members of the Advisory Council shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Council.

(g) Funding

Amounts appropriated under this subchapter may be utilized by the Secretary to support the nurse education and practice activities of the Council.

(h) FACA

The Federal Advisory Committee Act shall apply to the Advisory Committee under this section only to the extent that the provisions of such Act do not conflict with the requirements of this section.

(July 1, 1944, ch. 373, title VIII, § 845, as added Pub. L. 105–392, title I, § 123(5), Nov. 13, 1998, 112 Stat. 3572.)

REFERENCES IN TEXT

The Federal civil-service laws, referred to in subsec. (b)(1)(A), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

November 13, 1998, referred to in subsec. (b)(2), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 105–392, which enacted this part, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 845 of act July 1, 1944, was classified to section 297j of this title, prior to repeal by Pub. L. 99–92.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART H—PUBLIC SERVICE ANNOUNCEMENTS

§ 297w. Public service announcements

(a) In general

The Secretary shall develop and issue public service announcements that advertise and promote the nursing profession, highlight the advantages and rewards of nursing, and encourage individuals to enter the nursing profession.

(b) Method

The public service announcements described in subsection (a) of this section shall be broadcast through appropriate media outlets, including television or radio, in a manner intended to reach as wide and diverse an audience as possible.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title VIII, § 851, as added Pub. L. 107–205, title I, § 102, Aug. 1, 2002, 116 Stat. 812.)

PRIOR PROVISIONS

A prior section 851 of act July 1, 1944, was classified to section 298 of this title, prior to repeal by Pub. L. 105–392.

§ 297x. State and local public service announcements

(a) In general

The Secretary may award grants to eligible entities to support State and local advertising campaigns through appropriate media outlets to promote the nursing profession, highlight the advantages and rewards of nursing, and encourage individuals from disadvantaged backgrounds to enter the nursing profession.

(b) Use of funds

An eligible entity that receives a grant under subsection (a) of this section shall use funds received through such grant to acquire local television and radio time, place advertisements in local newspapers, or post information on billboards or on the Internet in a manner intended to reach as wide and diverse an audience as possible, in order to—

(1) advertise and promote the nursing profession;

(2) promote nursing education programs;

(3) inform the public of financial assistance regarding such education programs;

(4) highlight individuals in the community who are practicing nursing in order to recruit new nurses; or

(5) provide any other information to recruit individuals for the nursing profession.

(c) Limitation

An eligible entity that receives a grant under subsection (a) of this section shall not use funds received through such grant to advertise particular employment opportunities.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title VIII, § 852, as added Pub. L. 107–205, title I, § 102, Aug. 1, 2002, 116 Stat. 812.)

PRIOR PROVISIONS

A prior section 852 of act July 1, 1944, was classified to section 298a of this title, prior to repeal by Pub. L. 105–392.

PART I—COMPREHENSIVE GERIATRIC EDUCATION

§ 298. Comprehensive geriatric education

(a) Program authorized

The Secretary shall award grants to eligible entities to develop and implement, in coordination with programs under section 294c of this title, programs and initiatives to train and educate individuals in providing geriatric care for the elderly.

(b) Use of funds

An eligible entity that receives a grant under subsection (a) of this section shall use funds under such grant to—

(1) provide training to individuals who will provide geriatric care for the elderly;

(2) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(3) train faculty members in geriatrics; or

(4) provide continuing education to individuals who provide geriatric care.

(c) Application

An eligible entity desiring a grant under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(d) Eligible entity

For purposes of this section, the term ''eligible entity'' includes a school of nursing, a health care facility, a program leading to certification as a certified nurse assistant, a partnership of such a school and facility, or a partnership of such a program and facility.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title VIII, § 855, as added Pub. L. 107–205, title II, § 202(a), Aug. 1, 2002, 116 Stat. 816.)

PRIOR PROVISIONS

A prior section 298, act July 1, 1944, ch. 373, title VIII, § 851, formerly § 841, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 917; amended Pub. L. 89–751, § 3(b), Nov. 3, 1966, 80 Stat. 1230; Pub. L. 91–515, title VI, § 601(b)(2), Oct. 30, 1970, 84 Stat. 1311; Pub. L. 92–158, §§ 9, 13, Nov. 18, 1971, 85 Stat. 479, 480; renumbered § 851 and amended Pub. L. 94–63, title IX, § 941(k)(1), (2), July 29, 1975, 89 Stat. 366; Pub. L. 97–35, title XXVII, § 2759(a), Aug. 13, 1981, 95 Stat. 932; Pub. L. 99–92, § 9(d), Aug. 16, 1985, 99 Stat. 402; Pub. L. 100–607, title VII, § 721(a), Nov. 4, 1988, 102 Stat. 3165; Pub. L. 102–408, title II, § 212, Oct. 13, 1992, 106 Stat. 2079, related to Advisory Council on Nurse Education and Practice, prior to repeal by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562. See section 297t of this title.

A prior section 855 of act July 1, 1944, was classified to section 298b–2 of this title, prior to renumbering by Pub. L. 105–392 and transfer to section 296g of this title.

Prior sections 298a to 298b–1 were repealed by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

Section 298a, act July 1, 1944, ch. 373, title VIII, § 852, formerly § 842, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 918; renumbered § 852 and amended Pub. L. 94–63, title IX, § 941(k)(1), July 29, 1975, 89 Stat. 366, directed Federal noninterference with administration of institutions.

Section 298b, act July 1, 1944, ch. 373, title VIII, § 853, formerly § 843, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 918; amended Pub. L. 89–290, § 5(b), Oct. 22, 1965, 79 Stat. 1058; Pub. L. 90–490, title II, §§ 203, 204, 213, 231, Aug. 16, 1968, 82 Stat. 780, 783, 787; Pub. L. 92–158, § 2(d)(1), (2), Nov. 18, 1971, 85 Stat. 467, 468; renumbered § 853 and amended Pub. L. 94–63, title IX, § 941(k)(1), (3), July 29, 1975, 89 Stat. 366, 367; Pub. L. 96–32, § 7(k), July 10, 1979, 93 Stat. 84; Pub. L. 97–35, title XXVII, § 2759(b), Aug. 13, 1981, 95 Stat. 932; Pub. L. 99–92, § 9(e), (f), Aug. 16, 1985, 99 Stat. 402; Pub. L. 102–408, title II, § 202(b), Oct. 13, 1992, 106 Stat. 2071, defined terms.

Section 298b–1, act July 1, 1944, ch. 373, title VIII, § 854, formerly § 844, as added Pub. L. 92–158, § 10, Nov. 18, 1971, 85 Stat. 479; renumbered § 854, Pub. L. 94–63, title IX, § 941(k)(1), July 29, 1975, 89 Stat. 366, authorized advance funding for grants, contracts, or other payments.

A prior section 298b–2, act July 1, 1944, ch. 373, title VIII, § 855, formerly § 845, as added Pub. L. 92–158, § 11, Nov. 18, 1971, 85 Stat. 479; renumbered § 855, Pub. L. 94–63, title IX, § 941(k)(1), July 29, 1975, 89 Stat. 366, which prohibited discrimination by schools on basis of sex, was renumbered section 810 of act July 1, 1944, by Pub. L. 105–392 and transferred to section 296g of this title.

Prior sections 298b–3 to 298b–5 were repealed by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

Section 298b–3, act July 1, 1944, ch. 373, title VIII, § 856, as added Pub. L. 94–63, title IX, § 941(k)(4), July 29, 1975, 89 Stat. 367; amended Pub. L. 97–35, title XXVII, § 2759(c), Aug. 13, 1981, 95 Stat. 932; Pub. L. 100–607, title VII, § 721(b)(2), Nov. 4, 1988, 102 Stat. 3165, related to delegation of authority to administer programs.

Section 298b–4, act July 1, 1944, ch. 373, title VIII, § 857, as added Pub. L. 97–414, § 8(m), Jan. 4, 1983, 96 Stat. 2061, authorized use of funds to provide technical assistance.

Section 298b–5, act July 1, 1944, ch. 373, title VIII, § 858, formerly § 804, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 911; amended Pub. L. 92–158, §§ 2(d)(3), 13, Nov. 18, 1971, 85 Stat. 468, 480; Pub. L. 94–63, title IX, § 941(c), July 29, 1975, 89 Stat. 364; renumbered § 858 and amended Pub. L. 99–92, § 9(c)(1), Aug. 16, 1985, 99 Stat. 400; Pub. L. 99–129, title II, § 207(e)(1)–(3), Oct. 22, 1985, 99 Stat. 529, described conditions for United States recovery for construction assistance.

A prior section 298b–6, act July 1, 1944, ch. 373, title VIII, § 859, as added Nov. 4, 1988, Pub. L. 100–607, title VII, § 722, 102 Stat. 3165; amended Oct. 13, 1992, Pub. L. 102–408, title II, § 213, 106 Stat. 2080, directed Secretary to provide for evaluations of projects carried out pursuant to this subchapter and submit reports to Congress summarizing evaluations, and made one percent of amount appropriated each fiscal year available to carry out section, prior to repeal by Pub. L. 104–66, title I, § 1061(c), Dec. 21, 1995, 109 Stat. 719.

A prior section 298b–7, act July 1, 1944, ch. 373, title VIII, § 860, as added Pub. L. 102–408, title II, § 209, Oct. 13, 1992, 106 Stat. 2075; amended Pub. L. 102–531, title III, § 313(a)(10), Oct. 27, 1992, 106 Stat. 3507; Pub. L. 103–43, title XX, § 2014(g), June 10, 1993, 107 Stat. 217, set forth certain generally applicable provisions, prior to repeal by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

A prior section 298c, act July 1, 1944, ch. 373, title VIII, § 860, as added Aug. 16, 1968, Pub. L. 90–490, title II, § 223(a), 82 Stat. 785; amended July 9, 1971, Pub. L. 92–52, § 4, 85 Stat. 145; Nov. 18, 1971, Pub. L. 92–158, § 7, 85 Stat. 478, which related to scholarship grants, was renumbered section 845 of act July 1, 1944, by Pub. L. 94–63 and transferred to section 297j of this title and subsequently repealed.

Another prior section 298c, act July 1, 1944, ch. 373, title VIII, § 861, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1236, stated the purposes of opportunity grants for nursing education and authorized appropriations of $3,000,000, $5,000,000, and $7,000,000 for fiscal years ending June 30, 1967, 1968, and 1969, respectively, to be available for payments to institutions until close of fiscal year succeeding fiscal year for which appropriated, prior to the reorganization and amendment of this subchapter by Pub. L. 90–490.

A prior section 298c–1, act July 1, 1944, ch. 373, title VIII, § 861, as added Aug. 16, 1968, Pub. L. 90–490, title II, § 223(a), 82 Stat. 786, related to transfers to student loan program, was renumbered section 846 of act July 1, 1944, by Pub. L. 94–63 and transferred to section 297k of this title and subsequently repealed.

Another prior section 298c–1, act July 1, 1944, ch. 373, title VIII, § 862, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1237, prescribed amount of nursing educational opportunity grant and provided for its annual determination, prior to the reorganization and amendment of this subchapter by Pub. L. 90–490.

Sections 298c–2 to 298c–6 were omitted in the reorganization and amendment of this subchapter by Pub. L. 90–490, title II, § 223, Aug. 16, 1968, 82 Stat. 785.

Section 298c–2, act July 1, 1944, ch. 373, title VIII, § 863, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1237, related to duration of a nursing educational opportunity grant.

Section 298c–3, act July 1, 1944, ch. 373, title VIII, § 864, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1238, related to selection of recipients of nursing educational opportunity grants.

Section 298c–4, act July 1, 1944, ch. 373, title VIII, § 865, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1238, related to allotment of nursing educational opportunity grant funds among States.

Section 298c–5, act July 1, 1944, ch. 373, title VIII, § 866, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1238, related to allocation of allotted funds to schools of nursing.

Section 298c–6, act July 1, 1944, ch. 373, title VIII, § 867, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1239, related to agreements with schools of nursing.

A prior section 298c–7, act July 1, 1944, ch. 373, title VIII, § 868, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1239; amended Nov. 18, 1971, Pub. L. 92–158, § 8, 85 Stat. 478; July 29, 1975, Pub. L. 94–63, title IX, § 902(g), 89 Stat. 355, authorized grants and contracts to encourage full utilization of educational talent for nursing profession and authorized appropriations from fiscal year ending June 30, 1972 through fiscal year ending June 30, 1975 for implementation, prior to repeal by Pub. L. 94–63, title IX, §§ 905, 931(b), July 29, 1975, 89 Stat. 355, 362, effective July 1, 1975.

A prior section 298c–8, act July 1, 1944, ch. 373, title VIII, § 869, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1240, defined ''academic year'', prior to repeal by Pub. L. 94–63, title IX, §§ 941(j)(4), 942, July 29, 1975, 89 Stat. 366, 367, effective July 1, 1975.

SUBCHAPTER VII—AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

PRIOR PROVISIONS

A prior subchapter VII, related to the Agency for Health Care Policy and Research and consisted of sections 299 to 299c–6, prior to the general amendment of this subchapter by Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1653.

Another prior subchapter VII, related to education, research, training, and demonstrations in heart disease, cancer, stroke, and related diseases and consisted of sections 299 to 299j, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

PART A—ESTABLISHMENT AND GENERAL DUTIES

§ 299. Mission and duties

(a) In general

There is established within the Public Health Service an agency to be known as the Agency for Healthcare Research and Quality, which shall be headed by a director appointed by the Secretary. The Secretary shall carry out this subchapter acting through the Director.

(b) Mission

The purpose of the Agency is to enhance the quality, appropriateness, and effectiveness of health services, and access to such services, through the establishment of a broad base of scientific research and through the promotion of improvements in clinical and health system practices, including the prevention of diseases and other health conditions. The Agency shall promote health care quality improvement by conducting and supporting—

(1) research that develops and presents scientific evidence regarding all aspects of health care, including—

(A) the development and assessment of methods for enhancing patient participation in their own care and for facilitating shared patient-physician decision-making;

(B) the outcomes, effectiveness, and cost-effectiveness of health care practices, including preventive measures and long-term care;

(C) existing and innovative technologies;

(D) the costs and utilization of, and access to health care;

(E) the ways in which health care services are organized, delivered, and financed and the interaction and impact of these factors on the quality of patient care;

(F) methods for measuring quality and strategies for improving quality; and

(G) ways in which patients, consumers, purchasers, and practitioners acquire new information about best practices and health benefits, the determinants and impact of their use of this information;

(2) the synthesis and dissemination of available scientific evidence for use by patients, consumers, practitioners, providers, purchasers, policy makers, and educators; and

(3) initiatives to advance private and public efforts to improve health care quality.

(c) Requirements with respect to rural and inner-city areas and priority populations

(1) Research, evaluations and demonstration projects

In carrying out this subchapter, the Director shall conduct and support research and evaluations, and support demonstration projects, with respect to—

(A) the delivery of health care in inner-city areas, and in rural areas (including frontier areas); and

(B) health care for priority populations, which shall include—

(i) low-income groups;

(ii) minority groups;

(iii) women;

(iv) children;

(v) the elderly; and

(vi) individuals with special health care needs, including individuals with disabilities and individuals who need chronic care or end-of-life health care.

(2) Process to ensure appropriate research

The Director shall establish a process to ensure that the requirements of paragraph (1) are reflected in the overall portfolio of research conducted and supported by the Agency.

(3) Office of Priority Populations

The Director shall establish an Office of Priority Populations to assist in carrying out the requirements of paragraph (1).

(July 1, 1944, ch. 373, title IX, § 901, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1653.)

PRIOR PROVISIONS

A prior section 299, act July 1, 1944, ch. 373, title IX, § 901, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2189; amended Pub. L. 102–410, § 2(a), Oct. 13, 1992, 106 Stat. 2094, established the Agency for Health Care Policy and Research, prior to the general amendment of this subchapter by Pub. L. 106–129.

Another prior section 299, act July 1, 1944, ch. 373, title IX, § 900, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 926; amended Oct. 30, 1970, Pub. L. 91–515, title I, § 102, 84 Stat. 1297, set forth Congressional declaration of purpose of this subchapter to encourage and assist regional cooperative arrangements among medical schools, research institutions, and hospitals for research, training and medical data exchange, and to improve quality and capacity of health manpower and facilities available throughout the nation, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

A prior section 901 of act July 1, 1944, was classified to section 299a of this title prior to repeal by Pub. L. 99–117.

CONSTRUCTION

Pub. L. 106–129, § 2(b), Dec. 6, 1999, 113 Stat. 1670, provided that:

''(1) IN GENERAL.—Section 901(a) of the Public Health Service Act [subsec. (a) of this section] (as added by subsection (a) of this section) applies as a redesignation of the agency that carried out title IX of such Act [this subchapter] on the day before the date of the enactment of this Act [Dec. 6, 1999], and not as the termination of such agency and the establishment of a different agency. The amendment made by subsection (a) of this section [enacting this subchapter] does not affect appointments of the personnel of such agency who were employed at the agency on the day before such date, including the appointments of members of advisory councils or study sections of the agency who were serving on the day before such date of enactment.

''(2) REFERENCES.—Any reference in law to the Agency for Health Care Policy and Research is deemed to be a reference to the Agency for Healthcare Research and Quality, and any reference in law to the Administrator for Health Care Policy and Research is deemed to be a reference to the Director of the Agency for Healthcare Research and Quality.''

TRANSITIONAL AND SAVINGS PROVISIONS

Section 6103(f) of Pub. L. 101–239 provided that personnel of the Department of Health and Human Services employed, and Department assets used in connection with Department functions, on Dec. 19, 1989, be transferred to the Administrator for Health Care Policy and Research for appropriate allocation, and provided that orders, rules, regulations, grants, contracts, certificates, licenses, privileges, and other determinations, actions, or official documents would continue in effect according to their terms unless changed pursuant to law.

IOM STUDY ON DRUG SAFETY AND QUALITY

Pub. L. 108–173, title I, § 107(c), Dec. 8, 2003, 117 Stat. 2170, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall enter into a contract with the Institutes of Medicine of the National Academies of Science (such Institutes referred to in this subsection as the 'IOM') to carry out a comprehensive study (in this subsection referred to as the 'study') of drug safety and quality issues in order to provide a blueprint for system-wide change.

''(2) OBJECTIVES.—

''(A) The study shall develop a full understanding of drug safety and quality issues through an evidence-based review of literature, case studies, and analysis. This review will consider the nature and causes of medication errors, their impact on patients, the differences in causation, impact, and prevention across multiple dimensions of health care delivery-including patient populations, care settings, clinicians, and institutional cultures.

''(B) The study shall attempt to develop credible estimates of the incidence, severity, costs of medication errors that can be useful in prioritizing resources for national quality improvement efforts and influencing national health care policy.

''(C) The study shall evaluate alternative approaches to reducing medication errors in terms of their efficacy, cost-effectiveness, appropriateness in different settings and circumstances, feasibility, institutional barriers to implementation, associated risks, and the quality of evidence supporting the approach.

''(D) The study shall provide guidance to consumers, providers, payers, and other key stakeholders on high-priority strategies to achieve both short-term and long-term drug safety goals, to elucidate the goals and expected results of such initiatives and support the business case for them, and to identify critical success factors and key levers for achieving success.

''(E) The study shall assess the opportunities and key impediments to broad nationwide implementation of medication error reductions, and to provide guidance to policy-makers and government agencies (including the Food and Drug Administration, the Centers for Medicare & Medicaid Services, and the National Institutes of Health) in promoting a national agenda for medication error reduction.

''(F) The study shall develop an applied research agenda to evaluate the health and cost impacts of alternative interventions, and to assess collaborative public and private strategies for implementing the research agenda through AHRQ and other government agencies.

''(3) CONDUCT OF STUDY.—

''(A) EXPERT COMMITTEE.—In conducting the study, the IOM shall convene a committee of leading experts and key stakeholders in pharmaceutical management and drug safety, including clinicians, health services researchers, pharmacists, system administrators, payer representatives, and others.

''(B) COMPLETION.—The study shall be completed within an 18-month period.

''(4) REPORT.—A report on the study shall be submitted to Congress upon the completion of the study.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.''

HEALTH CARE THAT WORKS FOR ALL AMERICANS: CITIZENS HEALTH CARE WORKING GROUP

Pub. L. 108–173, title X, §1014, Dec. 8, 2003, 117 Stat. 2441, provided that:

''(a) FINDINGS.—Congress finds the following:

''(1) In order to improve the health care system, the American public must engage in an informed national public debate to make choices about the services they want covered, what health care coverage they want, and how they are willing to pay for coverage.

''(2) More than a trillion dollars annually is spent on the health care system, yet—

''(A) 41,000,000 Americans are uninsured;

''(B) insured individuals do not always have access to essential, effective services to improve and maintain their health; and

''(C) employers, who cover over 170,000,000 Americans, find providing coverage increasingly difficult because of rising costs and double digit premium increases.

''(3) Despite increases in medical care spending that are greater than the rate of inflation, population growth, and Gross Domestic Product growth, there has not been a commensurate improvement in our health status as a nation.

''(4) Health care costs for even just 1 member of a family can be catastrophic, resulting in medical bills potentially harming the economic stability of the entire family.

''(5) Common life occurrences can jeopardize the ability of a family to retain private coverage or jeopardize access to public coverage.

''(6) Innovations in health care access, coverage, and quality of care, including the use of technology, have often come from States, local communities, and private sector organizations, but more creative policies could tap this potential.

''(7) Despite our Nation's wealth, the health care system does not provide coverage to all Americans who want it.

''(b) PURPOSES.—The purposes of this section are—

''(1) to provide for a nationwide public debate about improving the health care system to provide every American with the ability to obtain quality, affordable health care coverage; and

''(2) to provide for a vote by Congress on the recommendations that result from the debate.

''(c) ESTABLISHMENT.—The Secretary [of Health and Human Services], acting through the Agency for Healthcare Research and Quality, shall establish an entity to be known as the Citizens' Health Care Working Group (referred to in this section as the 'Working Group').

''(d) MEMBERSHIP.—

''(1) NUMBER AND APPOINTMENT.—The Working Group shall be composed of 15 members. One member shall be the Secretary. The Comptroller General of the United States shall appoint 14 members.

''(2) QUALIFICATIONS.—

''(A) IN GENERAL.—The membership of the Working Group shall include—

''(i) consumers of health services that represent those individuals who have not had insurance within 2 years of appointment, that have had chronic illnesses, including mental illness, are disabled, and those who receive insurance coverage through medicare and medicaid; and

''(ii) individuals with expertise in financing and paying for benefits and access to care, business and labor perspectives, and providers of health care.

The membership shall reflect a broad geographic representation and a balance between urban and rural representatives.

''(B) PROHIBITED APPOINTMENTS.—Members of the Working Group shall not include Members of Congress or other elected government officials (Federal, State, or local). Individuals appointed to the Working Group shall not be paid employees or representatives of associations or advocacy organizations involved in the health care system.

''(e) PERIOD OF APPOINTMENT.—Members of the Working Group shall be appointed for a [sic] life of the Working Group. Any vacancies shall not affect the power and duties of the Working Group but shall be filled in the same manner as the original appointment.

''(f) DESIGNATION OF THE CHAIRPERSON.—Not later than 15 days after the date on which all members of the Working Group have been appointed under subsection (d)(1), the Comptroller General shall designate the chairperson of the Working Group.

''(g) SUBCOMMITTEES.—The Working Group may establish subcommittees if doing so increases the efficiency of the Working Group in completing its tasks.

''(h) DUTIES.—

''(1) HEARINGS.—Not later than 90 days after the date of the designation of the chairperson under subsection (f), the Working Group shall hold hearings to examine—

''(A) the capacity of the public and private health care systems to expand coverage options;

''(B) the cost of health care and the effectiveness of care provided at all stages of disease;

''(C) innovative State strategies used to expand health care coverage and lower health care costs;

''(D) local community solutions to accessing health care coverage;

''(E) efforts to enroll individuals currently eligible for public or private health care coverage;

''(F) the role of evidence-based medical practices that can be documented as restoring, maintaining, or improving a patient's health, and the use of technology in supporting providers in improving quality of care and lowering costs; and

''(G) strategies to assist purchasers of health care, including consumers, to become more aware of the impact of costs, and to lower the costs of health care.

''(2) ADDITIONAL HEARINGS.—The Working Group may hold additional hearings on subjects other than those listed in paragraph (1) so long as such hearings are determined to be necessary by the Working Group in carrying out the purposes of this section. Such additional hearings do not have to be completed within the time period specified in paragraph (1) but shall not delay the other activities of the Working Group under this section.

''(3) THE HEALTH REPORT TO THE AMERICAN PEOPLE.—Not later than 90 days after the hearings described in paragraphs (1) and (2) are completed, the Working Group shall prepare and make available to health care consumers through the Internet and other appropriate public channels, a report to be entitled, 'The Health Report to the American People'. Such report shall be understandable to the general public and include—

''(A) a summary of—

''(i) health care and related services that may be used by individuals throughout their life span;

''(ii) the cost of health care services and their medical effectiveness in providing better quality of care for different age groups;

''(iii) the source of coverage and payment, including reimbursement, for health care services;

''(iv) the reasons people are uninsured or underinsured and the cost to taxpayers, purchasers of

health services, and communities when Americans are uninsured or underinsured;

''(v) the impact on health care outcomes and costs when individuals are treated in all stages of disease;

''(vi) health care cost containment strategies; and

''(vii) information on health care needs that need to be addressed;

''(B) examples of community strategies to provide health care coverage or access;

''(C) information on geographic-specific issues relating to health care;

''(D) information concerning the cost of care in different settings, including institutional-based care and home and community-based care;

''(E) a summary of ways to finance health care coverage; and

''(F) the role of technology in providing future health care including ways to support the information needs of patients and providers.

''(4) COMMUNITY MEETINGS.—

''(A) IN GENERAL.—Not later than 1 year after the date on which all the members of the Working Group have been appointed under subsection (d)(1) and appropriations are first made available to carry out this section, the Working Group shall initiate health care community meetings throughout the United States (in this paragraph referred to as 'community meetings'). Such community meetings may be geographically or regionally based and shall be completed within 180 days after the initiation of the first meeting.

''(B) NUMBER OF MEETINGS.—The Working Group shall hold a sufficient number of community meetings in order to receive information that reflects—

''(i) the geographic differences throughout the United States;

''(ii) diverse populations; and

''(iii) a balance among urban and rural populations.

''(C) MEETING REQUIREMENTS.—

''(i) FACILITATOR.—A State health officer may be the facilitator at the community meetings.

''(ii) ATTENDANCE.—At least 1 member of the Working Group shall attend and serve as chair of each community meeting. Other members may participate through interactive technology.

''(iii) TOPICS.—The community meetings shall, at a minimum, address the following questions:

''(I) What health care benefits and services should be provided?

''(II) How does the American public want health care delivered?

''(III) How should health care coverage be financed?

''(IV) What trade-offs are the American public willing to make in either benefits or financing to ensure access to affordable, high quality health care coverage and services?

''(iv) INTERACTIVE TECHNOLOGY.—The Working Group may encourage public participation in community meetings through interactive technology and other means as determined appropriate by the Working Group.

''(D) INTERIM REQUIREMENTS.—Not later than 180 days after the date of completion of the community meetings, the Working Group shall prepare and make available to the public through the Internet and other appropriate public channels, an interim set of recommendations on health care coverage and ways to improve and strengthen the health care system based on the information and preferences expressed at the community meetings. There shall be a 90-day public comment period on such recommendations.

''(i) RECOMMENDATIONS.—Not later than 120 days after the expiration of the public comment period described in subsection (h)(4)(D), the Working Group shall submit to Congress and the President a final set of recommendations.

''(j) ADMINISTRATION.—

''(1) EXECUTIVE DIRECTOR.—There shall be an Executive Director of the Working Group who shall be appointed by the chairperson of the Working Group in consultation with the members of the Working Group.

''(2) COMPENSATION.—While serving on the business of the Working Group (including travel time), a member of the Working Group shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the chairperson of the Working Group. For purposes of pay and employment benefits, rights, and privileges, all personnel of the Working Group shall be treated as if they were employees of the Senate.

''(3) INFORMATION FROM FEDERAL AGENCIES.—The Working Group may secure directly from any Federal department or agency such information as the Working Group considers necessary to carry out this section. Upon request of the Working Group, the head of such department or agency shall furnish such information.

''(4) POSTAL SERVICES.—The Working Group may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(k) DETAIL.—Not more than 10 Federal Government employees employed by the Department of Labor and 10 Federal Government employees employed by the Department of Health and Human Services may be detailed to the Working Group under this section without further reimbursement. Any detail of an employee shall be without interruption or loss of civil service status or privilege.

''(*l*) TEMPORARY AND INTERMITTENT SERVICES.—The chairperson of the Working Group may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

''(m) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this Act [Dec. 8, 2003], and annually thereafter during the existence of the Working Group, the Working Group shall report to Congress and make public a detailed description of the expenditures of the Working Group used to carry out its duties under this section.

''(n) SUNSET OF WORKING GROUP.—The Working Group shall terminate on the date that is 2 years after the date on which all the members of the Working Group have been appointed under subsection (d)(1) and appropriations are first made available to carry out this section.

''(*o*) ADMINISTRATION REVIEW AND COMMENTS.—Not later than 45 days after receiving the final recommendations of the Working Group under subsection (i), the President shall submit a report to Congress which shall contain—

''(1) additional views and comments on such recommendations; and

''(2) recommendations for such legislation and administrative actions as the President considers appropriate.

''(p) REQUIRED CONGRESSIONAL ACTION.—Not later than 45 days after receiving the report submitted by the President under subsection (*o*), each committee of jurisdiction of Congress, the Committee on Finance of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on Energy and Commerce of the House of Representatives, [and the] Committee on Education and the Workforce of the House of Representatives, shall hold at least 1 hearing on such report and on the final recommendations of the Working Group submitted under subsection (i).

''(q) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section, other than subsection (h)(3), $3,000,000 for each of fiscal years 2005 and 2006.

''(2) HEALTH REPORT TO THE AMERICAN PEOPLE.—There are authorized to be appropriated for the preparation and dissemination of the Health Report to the American People described in subsection (h)(3), such sums as may be necessary for the fiscal year in which the report is required to be submitted.''

EXECUTIVE ORDER NO. 13017

Ex. Ord. No. 13017, Sept. 5, 1996, 61 F.R. 47659, as amended by Ex. Ord. No. 13040, Mar. 25, 1997, 62 F.R. 14773; Ex. Ord. No. 13056, July 21, 1997, 62 F.R. 39415, which established the Advisory Commission on Consumer Protection and Quality in the Health Care Industry, was revoked by Ex. Ord. No. 13138, § 3(a), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 299a. General authorities

(a) In general

In carrying out section 299(b) of this title, the Director shall conduct and support research, evaluations, and training, support demonstration projects, research networks, and multidisciplinary centers, provide technical assistance, and disseminate information on health care and on systems for the delivery of such care, including activities with respect to—

(1) the quality, effectiveness, efficiency, appropriateness and value of health care services;

(2) quality measurement and improvement;

(3) the outcomes, cost, cost-effectiveness, and use of health care services and access to such services;

(4) clinical practice, including primary care and practice-oriented research;

(5) health care technologies, facilities, and equipment;

(6) health care costs, productivity, organization, and market forces;

(7) health promotion and disease prevention, including clinical preventive services;

(8) health statistics, surveys, database development, and epidemiology; and

(9) medical liability.

(b) Health services training grants

(1) In general

The Director may provide training grants in the field of health services research related to activities authorized under subsection (a) of this section, to include pre- and post-doctoral fellowships and training programs, young investigator awards, and other programs and activities as appropriate. In carrying out this subsection, the Director shall make use of funds made available under section 288(d)(3) of this title as well as other appropriated funds.

(2) Requirements

In developing priorities for the allocation of training funds under this subsection, the Director shall take into consideration shortages in the number of trained researchers who are addressing health care issues for the priority populations identified in section 299(c)(1)(B) of this title and in addition, shall take into consideration indications of long-term commitment, amongst applicants for training funds, to addressing health care needs of the priority populations.

(c) Multidisciplinary centers

The Director may provide financial assistance to assist in meeting the costs of planning and establishing new centers, and operating existing and new centers, for multidisciplinary health services research, demonstration projects, evaluations, training, and policy analysis with respect to the matters referred to in subsection (a) of this section.

(d) Relation to certain authorities regarding social security

Activities authorized in this section shall be appropriately coordinated with experiments, demonstration projects, and other related activities authorized by the Social Security Act [42 U.S.C. 301 et seq.] and the Social Security Amendments of 1967. Activities under subsection (a)(2) of this section that affect the programs under titles XVIII, XIX and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.] shall be carried out consistent with section 1142 of such Act [42 U.S.C. 1320b–12].

(e) Disclaimer

The Agency shall not mandate national standards of clinical practice or quality health care standards. Recommendations resulting from projects funded and published by the Agency shall include a corresponding disclaimer.

(f) Rule of construction

Nothing in this section shall be construed to imply that the Agency's role is to mandate a national standard or specific approach to quality measurement and reporting. In research and quality improvement activities, the Agency shall consider a wide range of choices, providers, health care delivery systems, and individual preferences.

(July 1, 1944, ch. 373, title IX, § 902, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1654; amended Pub. L. 106–525, title II, § 201(a)(1), Nov. 22, 2000, 114 Stat. 2505.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Social Security Amendments of 1967, referred to in subsec. (d), is Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, as amended. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 299a, act July 1, 1944, ch. 373, title IX, § 902, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2189; amended Pub. L. 101–639, § 3(d), Nov. 28, 1990, 104 Stat. 4603; Pub. L. 102–410, § 2(b), Oct. 13, 1992, 106 Stat. 2094, required Administrator to conduct and support research, demonstration projects, evaluations, training, guideline development, and dissemina-

tion of information on health care services and on systems for delivery of such services, prior to the general amendment of this subchapter by Pub. L. 106–129.

Another prior section 299a, act July 1, 1944, ch. 373, title IX, § 901, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 926; amended Oct. 15, 1968, Pub. L. 90–574, title I, §§ 101, 102, 107, 82 Stat. 1005, 1006; June 30, 1970, Pub. L. 91–296, title IV, § 401(b)(1)(F), 84 Stat. 352; Oct. 30, 1970, Pub. L. 91–515, title I, § 103, 84 Stat. 1298; June 18, 1973, Pub. L. 93–45, title I, § 110, 87 Stat. 93, authorized appropriations for grants and contracts to carry out purposes of this subchapter and set forth extent of and limitations on grants, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

A prior section 902 of act July 1, 1944, was classified to section 299b of this title prior to repeal by Pub. L. 99–117.

AMENDMENTS

2000—Subsec. (g). Pub. L. 106–525 struck out heading and text of subsec. (g). Text read as follows: ''Beginning with fiscal year 2003, the Director shall annually submit to the Congress a report regarding prevailing disparities in health care delivery as it relates to racial factors and socioeconomic factors in priority populations.''

REDUCING ADMINISTRATIVE HEALTH CARE COSTS

Pub. L. 103–43, title XIX, § 1909, June 10, 1993, 107 Stat. 205, as amended by Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 108–173, title IX, § 900(e)(6)(F), Dec. 8, 2003, 117 Stat. 2374, provided that: ''The Secretary of Health and Human Services, acting through the Agency for Healthcare Research and Quality and, to the extent possible, in consultation with the Centers for Medicare & Medicaid Services, may fund research to develop a text-based standardized billing process, through the utilization of text-based information retrieval and natural language processing techniques applied to automatic coding and analysis of textual patient discharge summaries and other text-based electronic medical records, within a parallel general purpose (shared memory) high performance computing environment. The Secretary shall determine whether such a standardized approach to medical billing, through the utilization of the text-based hospital discharge summary as well as electronic patient records can reduce the administrative billing costs of health care delivery.''

§ 299a–1. Research on health disparities

(a) In general

The Director shall—

(1) conduct and support research to identify populations for which there is a significant disparity in the quality, outcomes, cost, or use of health care services or access to and satisfaction with such services, as compared to the general population;

(2) conduct and support research on the causes of and barriers to reducing the health disparities identified in paragraph (1), taking into account such factors as socioeconomic status, attitudes toward health, the language spoken, the extent of formal education, the area or community in which the population resides, and other factors the Director determines to be appropriate;

(3) conduct and support research and support demonstration projects to identify, test, and evaluate strategies for reducing or eliminating health disparities, including development or identification of effective service delivery models, and disseminate effective strategies and models;

(4) develop measures and tools for the assessment and improvement of the outcomes, quality, and appropriateness of health care services provided to health disparity populations;

(5) in carrying out section 299a(c) of this title, provide support to increase the number of researchers who are members of health disparity populations, and the health services research capacity of institutions that train such researchers; and

(6) beginning with fiscal year 2003, annually submit to the Congress a report regarding prevailing disparities in health care delivery as it relates to racial factors and socioeconomic factors in priority populations.

(b) Research and demonstration projects

(1) In general

In carrying out subsection (a) of this section, the Director shall conduct and support research and support demonstrations to—

(A) identify the clinical, cultural, socioeconomic, geographic, and organizational factors that contribute to health disparities, including minority health disparity populations, which research shall include behavioral research, such as examination of patterns of clinical decisionmaking, and research on access, outreach, and the availability of related support services (such as cultural and linguistic services);

(B) identify and evaluate clinical and organizational strategies to improve the quality, outcomes, and access to care for health disparity populations, including minority health disparity populations;

(C) test such strategies and widely disseminate those strategies for which there is scientific evidence of effectiveness; and

(D) determine the most effective approaches for disseminating research findings to health disparity populations, including minority populations.

(2) Use of certain strategies

In carrying out this section, the Director shall implement research strategies and mechanisms that will enhance the involvement of individuals who are members of minority health disparity populations or other health disparity populations, health services researchers who are such individuals, institutions that train such individuals as researchers, members of minority health disparity populations or other health disparity populations for whom the Agency is attempting to improve the quality and outcomes of care, and representatives of appropriate tribal or other community-based organizations with respect to health disparity populations. Such research strategies and mechanisms may include the use of—

(A) centers of excellence that can demonstrate, either individually or through consortia, a combination of multi-disciplinary expertise in outcomes or quality improvement research, linkages to relevant sites of care, and a demonstrated capacity to involve members and communities of health disparity populations, including minority health disparity populations, in the planning, con-

duct, dissemination, and translation of research;

(B) provider-based research networks, including health plans, facilities, or delivery system sites of care (especially primary care), that make extensive use of health care providers who are members of health disparity populations or who serve patients in such populations and have the capacity to evaluate and promote quality improvement;

(C) service delivery models (such as health centers under section 254b of this title and the Indian Health Service) to reduce health disparities; and

(D) innovative mechanisms or strategies that will facilitate the translation of past research investments into clinical practices that can reasonably be expected to benefit these populations.

(c) Quality measurement development

(1) In general

To ensure that health disparity populations, including minority health disparity populations, benefit from the progress made in the ability of individuals to measure the quality of health care delivery, the Director shall support the development of quality of health care measures that assess the experience of such populations with health care systems, such as measures that assess the access of such populations to health care, the cultural competence of the care provided, the quality of the care provided, the outcomes of care, or other aspects of health care practice that the Director determines to be important.

(2) Examination of certain practices

The Director shall examine the practices of providers that have a record of reducing health disparities or have experience in providing culturally competent health services to minority health disparity populations or other health disparity populations. In examining such practices of providers funded under the authorities of this chapter, the Director shall consult with the heads of the relevant agencies of the Public Health Service.

(3) Report

Not later than 36 months after November 22, 2000, the Secretary, acting through the Director, shall prepare and submit to the appropriate committees of Congress a report describing the state-of-the-art of quality measurement for minority and other health disparity populations that will identify critical unmet needs, the current activities of the Department to address those needs, and a description of related activities in the private sector.

(d) Definition

For purposes of this section:

(1) The term ''health disparity population'' has the meaning given such term in section 287c–31 of this title, except that in addition to the meaning so given, the Director may determine that such term includes populations for which there is a significant disparity in the quality, outcomes, cost, or use of health care services or access to or satisfaction with such services as compared to the general population.

(2) The term ''minority'', with respect to populations, refers to racial and ethnic minority groups as defined in section 300u–6 of this title.

(July 1, 1944, ch. 373, title IX, § 903, as added Pub. L. 106–525, title II, § 201(a)(2), Nov. 22, 2000, 114 Stat. 2505.)

PRIOR PROVISIONS

A prior section 299a–1, act July 1, 1944, ch. 373, title IX, § 903, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2190; amended Pub. L. 102–410, § 3, Oct. 13, 1992, 106 Stat. 2094; Pub. L. 103–43, title XIV, § 1422(a), June 10, 1993, 107 Stat. 172, related to public dissemination of information about studies and projects prior to the general amendment of this subchapter by Pub. L. 106–129. See section 299c–3 of this title.

A prior section 903 of act July 1, 1944, was classified to section 299c of this title prior to repeal by Pub. L. 99–117.

Prior sections 299a–2 and 299a–3 were omitted in the general amendment of this subchapter by Pub. L. 106–129.

Section 299a–2, act July 1, 1944, ch. 373, title IX, § 904, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2191; amended Pub. L. 102–410, § 4(a), Oct. 13, 1992, 106 Stat. 2095; Pub. L. 103–43, title XX, § 2013(1), June 10, 1993, 107 Stat. 214, related to health care technology assessment. See section 299b–5 of this title.

Section 299a–3, act July 1, 1944, ch. 373, title IX, § 905, as added Pub. L. 105–115, title IV, § 409, Nov. 21, 1997, 111 Stat. 2371, established demonstration program regarding centers for education and research on therapeutics. See section 299b–1(b) of this title.

PART B—HEALTH CARE IMPROVEMENT RESEARCH

§ 299b. Health care outcome improvement research

(a) Evidence rating systems

In collaboration with experts from the public and private sector, the Agency shall identify and disseminate methods or systems to assess health care research results, particularly methods or systems to rate the strength of the scientific evidence underlying health care practice, recommendations in the research literature, and technology assessments. The Agency shall make methods or systems for evidence rating widely available. Agency publications containing health care recommendations shall indicate the level of substantiating evidence using such methods or systems.

(b) Health care improvement research centers and provider-based research networks

(1) In general

In order to address the full continuum of care and outcomes research, to link research to practice improvement, and to speed the dissemination of research findings to community practice settings, the Agency shall employ research strategies and mechanisms that will link research directly with clinical practice in geographically diverse locations throughout the United States, including—

(A) health care improvement research centers that combine demonstrated multidisciplinary expertise in outcomes or quality improvement research with linkages to relevant sites of care;

(B) provider-based research networks, including plan, facility, or delivery system sites of care (especially primary care), that can evaluate outcomes and evaluate and promote quality improvement; and

(C) other innovative mechanisms or strategies to link research with clinical practice.

(2) Requirements

The Director is authorized to establish the requirements for entities applying for grants under this subsection.

(July 1, 1944, ch. 373, title IX, § 911, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1656.)

PRIOR PROVISIONS

A prior section 299b, act July 1, 1944, ch. 373, title IX, § 911, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2192; amended Pub. L. 102–410, § 5(b), Oct. 13, 1992, 106 Stat. 2097, related to establishment of Office of the Forum for Quality and Effectiveness in Health Care, prior to the general amendment of this subchapter by Pub. L. 106–129.

Another prior section 299b, act July 1, 1944, ch. 373, title IX, § 902, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 927; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 103, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 104, 111(b), 84 Stat. 1299, 1301, defined terms for purposes of this subchapter, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

§ 299b–1. Private-public partnerships to improve organization and delivery

(a) Support for efforts to develop information on quality

(1) Scientific and technical support

In its role as the principal agency for health care research and quality, the Agency may provide scientific and technical support for private and public efforts to improve health care quality, including the activities of accrediting organizations.

(2) Role of the Agency

With respect to paragraph (1), the role of the Agency shall include—

(A) the identification and assessment of methods for the evaluation of the health of—

(i) enrollees in health plans by type of plan, provider, and provider arrangements; and

(ii) other populations, including those receiving long-term care services;

(B) the ongoing development, testing, and dissemination of quality measures, including measures of health and functional outcomes;

(C) the compilation and dissemination of health care quality measures developed in the private and public sector;

(D) assistance in the development of improved health care information systems;

(E) the development of survey tools for the purpose of measuring participant and beneficiary assessments of their health care; and

(F) identifying and disseminating information on mechanisms for the integration of information on quality into purchaser and consumer decision-making processes.

(b) Centers for education and research on therapeutics

(1) In general

The Secretary, acting through the Director and in consultation with the Commissioner of Food and Drugs, shall establish a program for the purpose of making one or more grants for the establishment and operation of one or more centers to carry out the activities specified in paragraph (2).

(2) Required activities

The activities referred to in this paragraph are the following:

(A) The conduct of state-of-the-art research for the following purposes:

(i) To increase awareness of—

(I) new uses of drugs, biological products, and devices;

(II) ways to improve the effective use of drugs, biological products, and devices; and

(III) risks of new uses and risks of combinations of drugs and biological products.

(ii) To provide objective clinical information to the following individuals and entities:

(I) Health care practitioners and other providers of health care goods or services.

(II) Pharmacists, pharmacy benefit managers and purchasers.

(III) Health maintenance organizations and other managed health care organizations.

(IV) Health care insurers and governmental agencies.

(V) Patients and consumers.

(iii) To improve the quality of health care while reducing the cost of health care through—

(I) an increase in the appropriate use of drugs, biological products, or devices; and

(II) the prevention of adverse effects of drugs, biological products, and devices and the consequences of such effects, such as unnecessary hospitalizations.

(B) The conduct of research on the comparative effectiveness, cost-effectiveness, and safety of drugs, biological products, and devices.

(C) Such other activities as the Secretary determines to be appropriate, except that a grant may not be expended to assist the Secretary in the review of new drugs, biological products, and devices.

(c) Reducing errors in medicine

The Director shall, in accordance with part C of this subchapter, conduct and support research and build private-public partnerships to—

(1) identify the causes of preventable health care errors and patient injury in health care delivery;

(2) develop, demonstrate, and evaluate strategies for reducing errors and improving patient safety; and

(3) disseminate such effective strategies throughout the health care industry.

(July 1, 1944, ch. 373, title IX, § 912, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1656; amended Pub. L. 109–41, § 2(a)(1), July 29, 2005, 119 Stat. 424.)

PRIOR PROVISIONS

A prior section 299b–1, act July 1, 1944, ch. 373, title IX, § 912, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2192; amended Pub. L. 102–410, §§ 5(a)(1), (c)(1), 6(b), Oct. 13, 1992, 106 Stat. 2096, 2097, 2100, related to the duties of the Office of the Forum for Quality and Effectiveness in Health Care, prior to the general amendment of this subchapter by Pub. L. 106–129.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–41 inserted ", in accordance with part C of this subchapter," after "The Director shall" in introductory provisions.

§ 299b–2. Information on quality and cost of care

(a) In general

The Director shall—

(1) conduct a survey to collect data on a nationally representative sample of the population on the cost, use and, for fiscal year 2001 and subsequent fiscal years, quality of health care, including the types of health care services Americans use, their access to health care services, frequency of use, how much is paid for the services used, the source of those payments, the types and costs of private health insurance, access, satisfaction, and quality of care for the general population including rural residents and also for populations identified in section 299(c) of this title; and

(2) develop databases and tools that provide information to States on the quality, access, and use of health care services provided to their residents.

(b) Quality and outcomes information

(1) In general

Beginning in fiscal year 2001, the Director shall ensure that the survey conducted under subsection (a)(1) of this section will—

(A) identify determinants of health outcomes and functional status, including the health care needs of populations identified in section 299(c) of this title, provide data to study the relationships between health care quality, outcomes, access, use, and cost, measure changes over time, and monitor the overall national impact of Federal and State policy changes on health care;

(B) provide information on the quality of care and patient outcomes for frequently occurring clinical conditions for a nationally representative sample of the population including rural residents; and

(C) provide reliable national estimates for children and persons with special health care needs through the use of supplements or periodic expansions of the survey.

In expanding the Medical Expenditure Panel Survey, as in existence on December 6, 1999, in fiscal year 2001 to collect information on the quality of care, the Director shall take into account any outcomes measurements generally collected by private sector accreditation organizations.

(2) Annual report

Beginning in fiscal year 2003, the Secretary, acting through the Director, shall submit to Congress an annual report on national trends in the quality of health care provided to the American people.

(July 1, 1944, ch. 373, title IX, § 913, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1658.)

CODIFICATION

December 6, 1999, referred to in subsec. (b)(1), was in the original "the date of the enactment of this title", which was translated as meaning the date of enactment of Pub. L. 106–129, which amended this subchapter generally, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 299b–2, act July 1, 1944, ch. 373, title IX, § 913, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2193; amended Pub. L. 102–410, § 5(c)(2), (f)(1)(A), Oct. 13, 1992, 106 Stat. 2097, 2098, related to development of guidelines and standards, prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–3. Information systems for health care improvement

(a) In general

In order to foster a range of innovative approaches to the management and communication of health information, the Agency shall conduct and support research, evaluations, and initiatives to advance—

(1) the use of information systems for the study of health care quality and outcomes, including the generation of both individual provider and plan-level comparative performance data;

(2) training for health care practitioners and researchers in the use of information systems;

(3) the creation of effective linkages between various sources of health information, including the development of information networks;

(4) the delivery and coordination of evidence-based health care services, including the use of real-time health care decision-support programs;

(5) the utility and comparability of health information data and medical vocabularies by addressing issues related to the content, structure, definitions and coding of such information and data in consultation with appropriate Federal, State and private entities;

(6) the use of computer-based health records in all settings for the development of personal health records for individual health assessment and maintenance, and for monitoring public health and outcomes of care within populations; and

(7) the protection of individually identifiable information in health services research and health care quality improvement.

(b) Demonstration

The Agency shall support demonstrations into the use of new information tools aimed at improving shared decision-making between patients and their care-givers.

(c) Facilitating public access to information

The Director shall work with appropriate public and private sector entities to facilitate public access to information regarding the quality of and consumer satisfaction with health care.

(July 1, 1944, ch. 373, title IX, § 914, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1658.)

PRIOR PROVISIONS

A prior section 299b–3, act July 1, 1944, ch. 373, title IX, § 914, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2193; amended Pub. L. 102–410, §§ 5(c)(3), 6(a), 7, Oct. 13, 1992, 106 Stat. 2097, 2099, 2100; Pub. L. 103–43, title XX, § 2013(2), June 10, 1993, 107 Stat. 215, related to creation of an agenda and additional requirements, prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–4. Research supporting primary care and access in underserved areas

(a) Preventive Services Task Force

(1) Establishment and purpose

The Director may periodically convene a Preventive Services Task Force to be composed of individuals with appropriate expertise. Such a task force shall review the scientific evidence related to the effectiveness, appropriateness, and cost-effectiveness of clinical preventive services for the purpose of developing recommendations for the health care community, and updating previous clinical preventive recommendations.

(2) Role of Agency

The Agency shall provide ongoing administrative, research, and technical support for the operations of the Preventive Services Task Force, including coordinating and supporting the dissemination of the recommendations of the Task Force.

(3) Operation

In carrying out its responsibilities under paragraph (1), the Task Force is not subject to the provisions of Appendix 2 of title 5.

(b) Primary care research

(1) In general

There is established within the Agency a Center for Primary Care Research (referred to in this subsection as the ''Center'') that shall serve as the principal source of funding for primary care practice research in the Department of Health and Human Services. For purposes of this paragraph, primary care research focuses on the first contact when illness or health concerns arise, the diagnosis, treatment or referral to specialty care, preventive care, and the relationship between the clinician and the patient in the context of the family and community.

(2) Research

In carrying out this section, the Center shall conduct and support research concerning—

(A) the nature and characteristics of primary care practice;

(B) the management of commonly occurring clinical problems;

(C) the management of undifferentiated clinical problems; and

(D) the continuity and coordination of health services.

(July 1, 1944, ch. 373, title IX, § 915, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1659.)

REFERENCES IN TEXT

Appendix 2 of title 5, referred to in subsec. (a)(3), probably means the Federal Advisory Committee Act, Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 299b–4a. Studies on preventive interventions in primary care for older Americans

(a) Studies

The Secretary of Health and Human Services, acting through the United States Preventive Services Task Force, shall conduct a series of studies designed to identify preventive interventions that can be delivered in the primary care setting and that are most valuable to older Americans.

(b) Mission statement

The mission statement of the United States Preventive Services Task Force is amended to include the evaluation of services that are of particular relevance to older Americans.

(c) Report

Not later than 1 year after December 21, 2000, and annually thereafter, the Secretary of Health and Human Services shall submit to Congress a report on the conclusions of the studies conducted under subsection (a) of this section, together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(Pub. L. 106–554, § 1(a)(6) [title I, § 126], Dec. 21, 2000, 114 Stat. 2763, 2763A–479.)

CODIFICATION

Section was enacted as part of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Public Health Service Act which comprises this chapter.

§ 299b–5. Health care practice and technology innovation

(a) In general

The Director shall promote innovation in evidence-based health care practices and technologies by—

(1) conducting and supporting research on the development, diffusion, and use of health care technology;

(2) developing, evaluating, and disseminating methodologies for assessments of health care practices and technologies;

(3) conducting intramural and supporting extramural assessments of existing and new health care practices and technologies;

(4) promoting education and training and providing technical assistance in the use of health care practice and technology assessment methodologies and results; and

(5) working with the National Library of Medicine and the public and private sector to develop an electronic clearinghouse of currently available assessments and those in progress.

(b) Specification of process

(1) In general

Not later than December 31, 2000, the Director shall develop and publish a description of the methods used by the Agency and its contractors for health care practice and technology assessment.

(2) Consultations

In carrying out this subsection, the Director shall cooperate and consult with the Assistant Secretary for Health, the Administrator of the Centers for Medicare & Medicaid Services, the Director of the National Institutes of Health, the Commissioner of Food and Drugs, and the heads of any other interested Federal department or agency, and shall seek input, where appropriate, from professional societies and other private and public entities.

(3) Methodology

The Director shall, in developing the methods used under paragraph (1), consider—

(A) safety, efficacy, and effectiveness;

(B) legal, social, and ethical implications;

(C) costs, benefits, and cost-effectiveness;

(D) comparisons to alternate health care practices and technologies; and

(E) requirements of Food and Drug Administration approval to avoid duplication.

(c) Specific assessments

(1) In general

The Director shall conduct or support specific assessments of health care technologies and practices.

(2) Requests for assessments

The Director is authorized to conduct or support assessments, on a reimbursable basis, for the Centers for Medicare & Medicaid Services, the Department of Defense, the Department of Veterans Affairs, the Office of Personnel Management, and other public or private entities.

(3) Grants and contracts

In addition to conducting assessments, the Director may make grants to, or enter into cooperative agreements or contracts with, entities described in paragraph (4) for the purpose of conducting assessments of experimental, emerging, existing, or potentially outmoded health care technologies, and for related activities.

(4) Eligible entities

An entity described in this paragraph is an entity that is determined to be appropriate by the Director, including academic medical centers, research institutions and organizations, professional organizations, third party payers, governmental agencies, minority institutions of higher education (such as Historically Black Colleges and Universities, and Hispanic institutions), and consortia of appropriate research entities established for the purpose of conducting technology assessments.

(d) Medical examination of certain victims

(1) In general

The Director shall develop and disseminate a report on evidence-based clinical practices for—

(A) the examination and treatment by health professionals of individuals who are victims of sexual assault (including child molestation) or attempted sexual assault; and

(B) the training of health professionals, in consultation with the Health Resources and Services Administration, on performing medical evidentiary examinations of individuals who are victims of child abuse or neglect, sexual assault, elder abuse, or domestic violence.

(2) Certain considerations

In identifying the issues to be addressed by the report, the Director shall, to the extent practicable, take into consideration the expertise and experience of Federal and State law enforcement officials regarding the victims referred to in paragraph (1), and of other appropriate public and private entities (including medical societies, victim services organizations, sexual assault prevention organizations, and social services organizations).

(July 1, 1944, ch. 373, title IX, § 916, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1660; Pub. L. 108–173, title IX, § 900(e)(2)(C), Dec. 8, 2003, 117 Stat. 2372.)

AMENDMENTS

2003—Subsecs. (b)(2), (c)(2). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

§ 299b–6. Coordination of Federal Government quality improvement efforts

(a) Requirement

(1) In general

To avoid duplication and ensure that Federal resources are used efficiently and effectively, the Secretary, acting through the Director, shall coordinate all research, evaluations, and demonstrations related to health services research, quality measurement and quality improvement activities undertaken and supported by the Federal Government.

(2) Specific activities

The Director, in collaboration with the appropriate Federal officials representing all concerned executive agencies and departments, shall develop and manage a process to—

(A) improve interagency coordination, priority setting, and the use and sharing of research findings and data pertaining to Federal quality improvement programs, technology assessment, and health services research;

(B) strengthen the research information infrastructure, including databases, pertaining to Federal health services research and health care quality improvement initiatives;

(C) set specific goals for participating agencies and departments to further health services research and health care quality improvement; and

(D) strengthen the management of Federal health care quality improvement programs.

(b) Study by the Institute of Medicine

(1) In general

To provide Congress, the Department of Health and Human Services, and other relevant departments with an independent, external review of their quality oversight, quality improvement and quality research programs, the Secretary shall enter into a contract with the Institute of Medicine—

(A) to describe and evaluate current quality improvement, quality research and quality monitoring processes through—

(i) an overview of pertinent health services research activities and quality improvement efforts conducted by all Federal programs, with particular attention paid to those under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.]; and

(ii) a summary of the partnerships that the Department of Health and Human Services has pursued with private accreditation, quality measurement and improvement organizations; and

(B) to identify options and make recommendations to improve the efficiency and effectiveness of quality improvement programs through—

(i) the improved coordination of activities across the medicare, medicaid and child health insurance programs under titles XVIII, XIX and XXI of the Social Security Act and health services research programs;

(ii) the strengthening of patient choice and participation by incorporating state-of-the-art quality monitoring tools and making information on quality available; and

(iii) the enhancement of the most effective programs, consolidation as appropriate, and elimination of duplicative activities within various Federal agencies.

(2) Requirements

(A) In general

The Secretary shall enter into a contract with the Institute of Medicine for the preparation—

(i) not later than 12 months after December 6, 1999, of a report providing an overview of the quality improvement programs of the Department of Health and Human Services for the medicare, medicaid, and CHIP programs under titles XVIII, XIX, and XXI of the Social Security Act; and

(ii) not later than 24 months after December 6, 1999, of a final report containing recommendations.

(B) Reports

The Secretary shall submit the reports described in subparagraph (A) to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Commerce of the House of Representatives.

(July 1, 1944, ch. 373, title IX, § 917, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1661.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

December 6, 1999, referred to in subsec. (b)(2)(A), was in the original ''the date of the enactment of this title'', which was translated as meaning the date of enactment of Pub. L. 106–129, which amended this subchapter generally, to reflect the probable intent of Congress.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 299b–7. Research on outcomes of health care items and services

(a) Research, demonstrations, and evaluations

(1) Improvement of effectiveness and efficiency

(A) In general

To improve the quality, effectiveness, and efficiency of health care delivered pursuant to the programs established under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], the Secretary[1] acting through the Director of the Agency for Healthcare Research and Quality (in this section referred to as the ''Director''), shall conduct and support research to meet the priorities and requests for scientific evidence and information identified by such programs with respect to—

(i) the outcomes, comparative clinical effectiveness, and appropriateness of health care items and services (including prescription drugs); and

(ii) strategies for improving the efficiency and effectiveness of such programs, including the ways in which such items and services are organized, managed, and delivered under such programs.

(B) Specification

To respond to priorities and information requests in subparagraph (A), the Secretary may conduct or support, by grant, contract, or interagency agreement, research, demonstrations, evaluations, technology assessments, or other activities, including the provision of technical assistance, scientific expertise, or methodological assistance.

(2) Priorities

(A) In general

The Secretary shall establish a process to develop priorities that will guide the research, demonstrations, and evaluation activities undertaken pursuant to this section.

(B) Initial list

Not later than 6 months after December 8, 2003, the Secretary shall establish an initial list of priorities for research related to health care items and services (including prescription drugs).

(C) Process

In carrying out subparagraph (A), the Secretary—

(i) shall ensure that there is broad and ongoing consultation with relevant stake-

[1] So in original. Probably should be followed by a comma.

holders in identifying the highest priorities for research, demonstrations, and evaluations to support and improve the programs established under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.];

(ii) may include health care items and services which impose a high cost on such programs, as well as those which may be underutilized or overutilized and which may significantly improve the prevention, treatment, or cure of diseases and conditions (including chronic conditions) which impose high direct or indirect costs on patients or society; and

(iii) shall ensure that the research and activities undertaken pursuant to this section are responsive to the specified priorities and are conducted in a timely manner.

(3) Evaluation and synthesis of scientific evidence

(A) In general

The Secretary shall—

(i) evaluate and synthesize available scientific evidence related to health care items and services (including prescription drugs) identified as priorities in accordance with paragraph (2) with respect to the comparative clinical effectiveness, outcomes, appropriateness, and provision of such items and services (including prescription drugs);

(ii) identify issues for which existing scientific evidence is insufficient with respect to such health care items and services (including prescription drugs);

(iii) disseminate to prescription drug plans and MA–PD plans under part D of title XVIII of the Social Security Act [42 U.S.C. 1395w–101 et seq.], other health plans, and the public the findings made under clauses (i) and (ii); and

(iv) work in voluntary collaboration with public and private sector entities to facilitate the development of new scientific knowledge regarding health care items and services (including prescription drugs).

(B) Initial research

The Secretary shall complete the evaluation and synthesis of the initial research required by the priority list developed under paragraph (2)(B) not later than 18 months after the development of such list.

(C) Dissemination

(i) In general

To enhance patient safety and the quality of health care, the Secretary shall make available and disseminate in appropriate formats to prescription drugs plans under part D, and MA–PD plans under part C, of title XVIII of the Social Security Act [42 U.S.C. 1395w–101 et seq., 1395w–21 et seq.], other health plans, and the public the evaluations and syntheses prepared pursuant to subparagraph (A) and the findings of research conducted pursuant to paragraph (1). In carrying out this clause the Secretary, in order to facilitate the availability of such evaluations and syntheses or findings at every decision point in the health care system, shall—

(I) present such evaluations and syntheses or findings in a form that is easily understood by the individuals receiving health care items and services (including prescription drugs) under such plans and periodically assess that the requirements of this subclause have been met; and

(II) provide such evaluations and syntheses or findings and other relevant information through easily accessible and searchable electronic mechanisms, and in hard copy formats as appropriate.

(ii) Rule of construction

Nothing in this section shall be construed as—

(I) affecting the authority of the Secretary or the Commissioner of Food and Drugs under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] or the Public Health Service Act [42 U.S.C. 201 et seq.]; or

(II) conferring any authority referred to in subclause (I) to the Director.

(D) Accountability

In carrying out this paragraph, the Secretary shall implement activities in a manner that—

(i) makes publicly available all scientific evidence relied upon and the methodologies employed, provided such evidence and method are not protected from public disclosure by section 1905 of title 18 or other applicable law so that the results of the research, analyses, or syntheses can be evaluated or replicated; and

(ii) ensures that any information needs and unresolved issues identified in subparagraph (A)(ii) are taken into account in priority-setting for future research conducted by the Secretary.

(4) Confidentiality

(A) In general

In making use of administrative, clinical, and program data and information developed or collected with respect to the programs established under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], for purposes of carrying out the requirements of this section or the activities authorized under title IX of the Public Health Service Act (42 U.S.C. 299 et seq.), such data and information shall be protected in accordance with the confidentiality requirements of title IX of the Public Health Service Act.

(B) Rule of construction

Nothing in this section shall be construed to require or permit the disclosure of data provided to the Secretary that is otherwise protected from disclosure under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301

et seq.], section 1905 of title 18, or other applicable law.

(5) Evaluations

The Secretary shall conduct and support evaluations of the activities carried out under this section to determine the extent to which such activities have had an effect on outcomes and utilization of health care items and services.

(6) Improving information available to health care providers, patients, and policymakers

Not later than 18 months after December 8, 2003, the Secretary shall identify options that could be undertaken in voluntary collaboration with private and public entities (as appropriate) for the—

(A) provision of more timely information through the programs established under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], regarding the outcomes and quality of patient care, including clinical and patient-reported outcomes, especially with respect to interventions and conditions for which clinical trials would not be feasible or raise ethical concerns that are difficult to address;

(B) acceleration of the adoption of innovation and quality improvement under such programs; and

(C) development of management tools for the programs established under titles XIX and XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.], and with respect to the programs established under such titles, assess the feasibility of using administrative or claims data, to—

(i) improve oversight by State officials;

(ii) support Federal and State initiatives to improve the quality, safety, and efficiency of services provided under such programs; and

(iii) provide a basis for estimating the fiscal and coverage impact of Federal or State program and policy changes.

(b) Recommendations

(1) Disclaimer

In carrying out this section, the Director shall—

(A) not mandate national standards of clinical practice or quality health care standards; and

(B) include in any recommendations resulting from projects funded and published by the Director, a corresponding reference to the prohibition described in subparagraph (A).

(2) Requirement for implementation

Research, evaluation, and communication activities performed pursuant to this section shall reflect the principle that clinicians and patients should have the best available evidence upon which to make choices in health care items and services, in providers, and in health care delivery systems, recognizing that patient subpopulations and patient and physician preferences may vary.

(3) Rule of construction

Nothing in this section shall be construed to provide the Director with authority to mandate a national standard or require a specific approach to quality measurement and reporting.

(c) Research with respect to dissemination

The Secretary, acting through the Director, may conduct or support research with respect to improving methods of disseminating information in accordance with subsection (a)(3)(C) of this section.

(d) Limitation on CMS

The Administrator of the Centers for Medicare & Medicaid Services may not use data obtained in accordance with this section to withhold coverage of a prescription drug.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $50,000,000 for fiscal year 2004, and such sums as may be necessary for each fiscal year thereafter.

(Pub. L. 108–173, title X, § 1013, Dec. 8, 2003, 117 Stat. 2438.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(A), (2)(C)(i), (3)(A)(iii), (C)(i), (4)(A), (6)(A), (C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. Parts C and D of title XVIII of the Act are classified generally to parts C (§ 1395w–21 et seq.) and D (§ 1395w–101 et seq.), respectively, of subchapter XVIII of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a)(3)(C)(ii)(I), (4)(B), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Public Health Service Act, referred to in subsec. (a)(3)(C)(ii)(I), (4)(A), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter. Title IX of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and not as part of the Public Health Service Act which comprises this chapter.

DEFINITION OF "SECRETARY"

"Secretary" as meaning the Secretary of Health and Human Services, see section 1(c)(2) of Pub. L. 108–173, set out as a note under section 1301 of this title.

PART C—PATIENT SAFETY IMPROVEMENT

§ 299b–21. Definitions

In this part:

(1) HIPAA confidentiality regulations

The term "HIPAA confidentiality regulations" means regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).

(2) Identifiable patient safety work product

The term "identifiable patient safety work product" means patient safety work product that—

(A) is presented in a form and manner that allows the identification of any provider that is a subject of the work product, or any providers that participate in activities that are a subject of the work product;

(B) constitutes individually identifiable health information as that term is defined in the HIPAA confidentiality regulations; or

(C) is presented in a form and manner that allows the identification of an individual who reported information in the manner specified in section 299b–22(e) of this title.

(3) Nonidentifiable patient safety work product

The term ''nonidentifiable patient safety work product'' means patient safety work product that is not identifiable patient safety work product (as defined in paragraph (2)).

(4) Patient safety organization

The term ''patient safety organization'' means a private or public entity or component thereof that is listed by the Secretary pursuant to section 299b–24(d) of this title.

(5) Patient safety activities

The term ''patient safety activities'' means the following activities:

(A) Efforts to improve patient safety and the quality of health care delivery.

(B) The collection and analysis of patient safety work product.

(C) The development and dissemination of information with respect to improving patient safety, such as recommendations, protocols, or information regarding best practices.

(D) The utilization of patient safety work product for the purposes of encouraging a culture of safety and of providing feedback and assistance to effectively minimize patient risk.

(E) The maintenance of procedures to preserve confidentiality with respect to patient safety work product.

(F) The provision of appropriate security measures with respect to patient safety work product.

(G) The utilization of qualified staff.

(H) Activities related to the operation of a patient safety evaluation system and to the provision of feedback to participants in a patient safety evaluation system.

(6) Patient safety evaluation system

The term ''patient safety evaluation system'' means the collection, management, or analysis of information for reporting to or by a patient safety organization.

(7) Patient safety work product

(A) In general

Except as provided in subparagraph (B), the term ''patient safety work product'' means any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements—

(i) which—

(I) are assembled or developed by a provider for reporting to a patient safety organization and are reported to a patient safety organization; or

(II) are developed by a patient safety organization for the conduct of patient safety activities;

and which could result in improved patient safety, health care quality, or health care outcomes; or

(ii) which identify or constitute the deliberations or analysis of, or identify the fact of reporting pursuant to, a patient safety evaluation system.

(B) Clarification

(i) Information described in subparagraph (A) does not include a patient's medical record, billing and discharge information, or any other original patient or provider record.

(ii) Information described in subparagraph (A) does not include information that is collected, maintained, or developed separately, or exists separately, from a patient safety evaluation system. Such separate information or a copy thereof reported to a patient safety organization shall not by reason of its reporting be considered patient safety work product.

(iii) Nothing in this part shall be construed to limit—

(I) the discovery of or admissibility of information described in this subparagraph in a criminal, civil, or administrative proceeding;

(II) the reporting of information described in this subparagraph to a Federal, State, or local governmental agency for public health surveillance, investigation, or other public health purposes or health oversight purposes; or

(III) a provider's recordkeeping obligation with respect to information described in this subparagraph under Federal, State, or local law.

(8) Provider

The term ''provider'' means—

(A) an individual or entity licensed or otherwise authorized under State law to provide health care services, including—

(i) a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner's office, long term care facility, behavior health residential treatment facility, clinical laboratory, or health center; or

(ii) a physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner; or

(B) any other individual or entity specified in regulations promulgated by the Secretary.

(July 1, 1944, ch. 373, title IX, § 921, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 424.)

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in par. (1), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

PRIOR PROVISIONS

A prior section 921 of act July 1, 1944, was renumbered section 931 and is classified to section 299c of this title.

Another prior section 921 of act July 1, 1944, was classified to section 299c of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–22. Privilege and confidentiality protections

(a) Privilege

Notwithstanding any other provision of Federal, State, or local law, and subject to subsection (c) of this section, patient safety work product shall be privileged and shall not be—

(1) subject to a Federal, State, or local civil, criminal, or administrative subpoena or order, including in a Federal, State, or local civil or administrative disciplinary proceeding against a provider;

(2) subject to discovery in connection with a Federal, State, or local civil, criminal, or administrative proceeding, including in a Federal, State, or local civil or administrative disciplinary proceeding against a provider;

(3) subject to disclosure pursuant to section 552 of title 5 (commonly known as the Freedom of Information Act) or any other similar Federal, State, or local law;

(4) admitted as evidence in any Federal, State, or local governmental civil proceeding, criminal proceeding, administrative rulemaking proceeding, or administrative adjudicatory proceeding, including any such proceeding against a provider; or

(5) admitted in a professional disciplinary proceeding of a professional disciplinary body established or specifically authorized under State law.

(b) Confidentiality of patient safety work product

Notwithstanding any other provision of Federal, State, or local law, and subject to subsection (c) of this section, patient safety work product shall be confidential and shall not be disclosed.

(c) Exceptions

Except as provided in subsection (g)(3) of this section—

(1) Exceptions from privilege and confidentiality

Subsections (a) and (b) of this section shall not apply to (and shall not be construed to prohibit) one or more of the following disclosures:

(A) Disclosure of relevant patient safety work product for use in a criminal proceeding, but only after a court makes an in camera determination that such patient safety work product contains evidence of a criminal act and that such patient safety work product is material to the proceeding and not reasonably available from any other source.

(B) Disclosure of patient safety work product to the extent required to carry out subsection (f)(4)(A) of this section.

(C) Disclosure of identifiable patient safety work product if authorized by each provider identified in such work product.

(2) Exceptions from confidentiality

Subsection (b) of this section shall not apply to (and shall not be construed to prohibit) one or more of the following disclosures:

(A) Disclosure of patient safety work product to carry out patient safety activities.

(B) Disclosure of nonidentifiable patient safety work product.

(C) Disclosure of patient safety work product to grantees, contractors, or other entities carrying out research, evaluation, or demonstration projects authorized, funded, certified, or otherwise sanctioned by rule or other means by the Secretary, for the purpose of conducting research to the extent that disclosure of protected health information would be allowed for such purpose under the HIPAA confidentiality regulations.

(D) Disclosure by a provider to the Food and Drug Administration with respect to a product or activity regulated by the Food and Drug Administration.

(E) Voluntary disclosure of patient safety work product by a provider to an accrediting body that accredits that provider.

(F) Disclosures that the Secretary may determine, by rule or other means, are necessary for business operations and are consistent with the goals of this part.

(G) Disclosure of patient safety work product to law enforcement authorities relating to the commission of a crime (or to an event reasonably believed to be a crime) if the person making the disclosure believes, reasonably under the circumstances, that the patient safety work product that is disclosed is necessary for criminal law enforcement purposes.

(H) With respect to a person other than a patient safety organization, the disclosure of patient safety work product that does not include materials that—

(i) assess the quality of care of an identifiable provider; or

(ii) describe or pertain to one or more actions or failures to act by an identifiable provider.

(3) Exception from privilege

Subsection (a) of this section shall not apply to (and shall not be construed to prohibit) voluntary disclosure of nonidentifiable patient safety work product.

(d) Continued protection of information after disclosure

(1) In general

Patient safety work product that is disclosed under subsection (c) of this section shall continue to be privileged and confidential as provided for in subsections (a) and (b) of this section, and such disclosure shall not be treated as a waiver of privilege or confidentiality, and the privileged and confidential nature of such work product shall also apply to

such work product in the possession or control of a person to whom such work product was disclosed.

(2) Exception

Notwithstanding paragraph (1), and subject to paragraph (3)—

(A) if patient safety work product is disclosed in a criminal proceeding, the confidentiality protections provided for in subsection (b) of this section shall no longer apply to the work product so disclosed; and

(B) if patient safety work product is disclosed as provided for in subsection (c)(2)(B) of this section (relating to disclosure of nonidentifiable patient safety work product), the privilege and confidentiality protections provided for in subsections (a) and (b) of this section shall no longer apply to such work product.

(3) Construction

Paragraph (2) shall not be construed as terminating or limiting the privilege or confidentiality protections provided for in subsection (a) or (b) of this section with respect to patient safety work product other than the specific patient safety work product disclosed as provided for in subsection (c) of this section.

(4) Limitations on actions

(A) Patient safety organizations

(i) In general

A patient safety organization shall not be compelled to disclose information collected or developed under this part whether or not such information is patient safety work product unless such information is identified, is not patient safety work product, and is not reasonably available from another source.

(ii) Nonapplication

The limitation contained in clause (i) shall not apply in an action against a patient safety organization or with respect to disclosures pursuant to subsection (c)(1) of this section.

(B) Providers

An accrediting body shall not take an accrediting action against a provider based on the good faith participation of the provider in the collection, development, reporting, or maintenance of patient safety work product in accordance with this part. An accrediting body may not require a provider to reveal its communications with any patient safety organization established in accordance with this part.

(e) Reporter protection

(1) In general

A provider may not take an adverse employment action, as described in paragraph (2), against an individual based upon the fact that the individual in good faith reported information—

(A) to the provider with the intention of having the information reported to a patient safety organization; or

(B) directly to a patient safety organization.

(2) Adverse employment action

For purposes of this subsection, an ''adverse employment action'' includes—

(A) loss of employment, the failure to promote an individual, or the failure to provide any other employment-related benefit for which the individual would otherwise be eligible; or

(B) an adverse evaluation or decision made in relation to accreditation, certification, credentialing, or licensing of the individual.

(f) Enforcement

(1) Civil monetary penalty

Subject to paragraphs (2) and (3), a person who discloses identifiable patient safety work product in knowing or reckless violation of subsection (b) of this section shall be subject to a civil monetary penalty of not more than $10,000 for each act constituting such violation.

(2) Procedure

The provisions of section 1320a–7a of this title, other than subsections (a) and (b) and the first sentence of subsection (c)(1), shall apply to civil money penalties under this subsection in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a of this title.

(3) Relation to HIPAA

Penalties shall not be imposed both under this subsection and under the regulations issued pursuant to section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) for a single act or omission.

(4) Equitable relief

(A) In general

Without limiting remedies available to other parties, a civil action may be brought by any aggrieved individual to enjoin any act or practice that violates subsection (e) of this section and to obtain other appropriate equitable relief (including reinstatement, back pay, and restoration of benefits) to redress such violation.

(B) Against State employees

An entity that is a State or an agency of a State government may not assert the privilege described in subsection (a) of this section unless before the time of the assertion, the entity or, in the case of and with respect to an agency, the State has consented to be subject to an action described in subparagraph (A), and that consent has remained in effect.

(g) Rule of construction

Nothing in this section shall be construed—

(1) to limit the application of other Federal, State, or local laws that provide greater privilege or confidentiality protections than the privilege and confidentiality protections provided for in this section;

(2) to limit, alter, or affect the requirements of Federal, State, or local law pertaining to information that is not privileged or confidential under this section;

(3) except as provided in subsection (i) of this section, to alter or affect the implementation of any provision of the HIPAA confidentiality regulations or section 1320d–5 of this title (or regulations promulgated under such section);

(4) to limit the authority of any provider, patient safety organization, or other entity to enter into a contract requiring greater confidentiality or delegating authority to make a disclosure or use in accordance with this section;

(5) as preempting or otherwise affecting any State law requiring a provider to report information that is not patient safety work product; or

(6) to limit, alter, or affect any requirement for reporting to the Food and Drug Administration information regarding the safety of a product or activity regulated by the Food and Drug Administration.

(h) Clarification

Nothing in this part prohibits any person from conducting additional analysis for any purpose regardless of whether such additional analysis involves issues identical to or similar to those for which information was reported to or assessed by a patient safety organization or a patient safety evaluation system.

(i) Clarification of application of HIPAA confidentiality regulations to patient safety organizations

For purposes of applying the HIPAA confidentiality regulations—

(1) patient safety organizations shall be treated as business associates; and

(2) patient safety activities of such organizations in relation to a provider are deemed to be health care operations (as defined in such regulations) of the provider.

(j) Reports on strategies to improve patient safety

(1) Draft report

Not later than the date that is 18 months after any network of patient safety databases is operational, the Secretary, in consultation with the Director, shall prepare a draft report on effective strategies for reducing medical errors and increasing patient safety. The draft report shall include any measure determined appropriate by the Secretary to encourage the appropriate use of such strategies, including use in any federally funded programs. The Secretary shall make the draft report available for public comment and submit the draft report to the Institute of Medicine for review.

(2) Final report

Not later than 1 year after the date described in paragraph (1), the Secretary shall submit a final report to the Congress.

(July 1, 1944, ch. 373, title IX, § 922, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 427.)

REFERENCES IN TEXT

Section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (f)(3), is section 264(c)(1) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

PRIOR PROVISIONS

A prior section 922 of act July 1, 1944, was renumbered section 932 and is classified to section 299c–1 of this title.

Another prior section 922 of act July 1, 1944, was classified to section 299c–1 of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–23. Network of patient safety databases

(a) In general

The Secretary shall facilitate the creation of, and maintain, a network of patient safety databases that provides an interactive evidence-based management resource for providers, patient safety organizations, and other entities. The network of databases shall have the capacity to accept, aggregate across the network, and analyze nonidentifiable patient safety work product voluntarily reported by patient safety organizations, providers, or other entities. The Secretary shall assess the feasibility of providing for a single point of access to the network for qualified researchers for information aggregated across the network and, if feasible, provide for implementation.

(b) Data standards

The Secretary may determine common formats for the reporting to and among the network of patient safety databases maintained under subsection (a) of this section of nonidentifiable patient safety work product, including necessary work product elements, common and consistent definitions, and a standardized computer interface for the processing of such work product. To the extent practicable, such standards shall be consistent with the administrative simplification provisions of part C of title XI of the Social Security Act [42 U.S.C. 1320d et seq.].

(c) Use of information

Information reported to and among the network of patient safety databases under subsection (a) of this section shall be used to analyze national and regional statistics, including trends and patterns of health care errors. The information resulting from such analyses shall be made available to the public and included in the annual quality reports prepared under section 299b–2(b)(2) of this title.

(July 1, 1944, ch. 373, title IX, § 923, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 431.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part C of title XI of the Act is classified generally to part C (§ 1320d et seq.) of subchapter XI of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 923 of act July 1, 1944, was renumbered section 933 and is classified to section 299c–2 of this title.

Another prior section 923 of act July 1, 1944, was classified to section 299c–2 of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–24. Patient safety organization certification and listing

(a) Certification

(1) Initial certification

An entity that seeks to be a patient safety organization shall submit an initial certification to the Secretary that the entity—

(A) has policies and procedures in place to perform each of the patient safety activities described in section 299b–21(5) of this title; and

(B) upon being listed under subsection (d) of this section, will comply with the criteria described in subsection (b) of this section.

(2) Subsequent certifications

An entity that is a patient safety organization shall submit every 3 years after the date of its initial listing under subsection (d) of this section a subsequent certification to the Secretary that the entity—

(A) is performing each of the patient safety activities described in section 299b–21(5) of this title; and

(B) is complying with the criteria described in subsection (b) of this section.

(b) Criteria

(1) In general

The following are criteria for the initial and subsequent certification of an entity as a patient safety organization:

(A) The mission and primary activity of the entity are to conduct activities that are to improve patient safety and the quality of health care delivery.

(B) The entity has appropriately qualified staff (whether directly or through contract), including licensed or certified medical professionals.

(C) The entity, within each 24-month period that begins after the date of the initial listing under subsection (d) of this section, has bona fide contracts, each of a reasonable period of time, with more than 1 provider for the purpose of receiving and reviewing patient safety work product.

(D) The entity is not, and is not a component of, a health insurance issuer (as defined in section 300gg–91(b)(2) of this title).

(E) The entity shall fully disclose—

(i) any financial, reporting, or contractual relationship between the entity and any provider that contracts with the entity; and

(ii) if applicable, the fact that the entity is not managed, controlled, and operated independently from any provider that contracts with the entity.

(F) To the extent practical and appropriate, the entity collects patient safety work product from providers in a standardized manner that permits valid comparisons of similar cases among similar providers.

(G) The utilization of patient safety work product for the purpose of providing direct feedback and assistance to providers to effectively minimize patient risk.

(2) Additional criteria for component organizations

If an entity that seeks to be a patient safety organization is a component of another organization, the following are additional criteria for the initial and subsequent certification of the entity as a patient safety organization:

(A) The entity maintains patient safety work product separately from the rest of the organization, and establishes appropriate security measures to maintain the confidentiality of the patient safety work product.

(B) The entity does not make an unauthorized disclosure under this part of patient safety work product to the rest of the organization in breach of confidentiality.

(C) The mission of the entity does not create a conflict of interest with the rest of the organization.

(c) Review of certification

(1) In general

(A) Initial certification

Upon the submission by an entity of an initial certification under subsection (a)(1) of this section, the Secretary shall determine if the certification meets the requirements of subparagraphs (A) and (B) of such subsection.

(B) Subsequent certification

Upon the submission by an entity of a subsequent certification under subsection (a)(2) of this section, the Secretary shall review the certification with respect to requirements of subparagraphs (A) and (B) of such subsection.

(2) Notice of acceptance or non-acceptance

If the Secretary determines that—

(A) an entity's initial certification meets requirements referred to in paragraph (1)(A), the Secretary shall notify the entity of the acceptance of such certification; or

(B) an entity's initial certification does not meet such requirements, the Secretary shall notify the entity that such certification is not accepted and the reasons therefor.

(3) Disclosures regarding relationship to providers

The Secretary shall consider any disclosures under subsection (b)(1)(E) of this section by an entity and shall make public findings on whether the entity can fairly and accurately perform the patient safety activities of a patient safety organization. The Secretary shall take those findings into consideration in determining whether to accept the entity's initial certification and any subsequent certification submitted under subsection (a) of this section and, based on those findings, may deny, condition, or revoke acceptance of the entity's certification.

(d) Listing

The Secretary shall compile and maintain a listing of entities with respect to which there is an acceptance of a certification pursuant to subsection (c)(2)(A) of this section that has not been revoked under subsection (e) of this section or voluntarily relinquished.

(e) Revocation of acceptance of certification

(1) In general

If, after notice of deficiency, an opportunity for a hearing, and a reasonable opportunity for

correction, the Secretary determines that a patient safety organization does not meet the certification requirements under subsection (a)(2) of this section, including subparagraphs (A) and (B) of such subsection, the Secretary shall revoke the Secretary's acceptance of the certification of such organization.

(2) Supplying confirmation of notification to providers

Within 15 days of a revocation under paragraph (1), a patient safety organization shall submit to the Secretary a confirmation that the organization has taken all reasonable actions to notify each provider whose patient safety work product is collected or analyzed by the organization of such revocation.

(3) Publication of decision

If the Secretary revokes the certification of an organization under paragraph (1), the Secretary shall—

(A) remove the organization from the listing maintained under subsection (d) of this section; and

(B) publish notice of the revocation in the Federal Register.

(f) Status of data after removal from listing

(1) New data

With respect to the privilege and confidentiality protections described in section 299b–22 of this title, data submitted to an entity within 30 days after the entity is removed from the listing under subsection (e)(3)(A) of this section shall have the same status as data submitted while the entity was still listed.

(2) Protection to continue to apply

If the privilege and confidentiality protections described in section 299b–22 of this title applied to patient safety work product while an entity was listed, or to data described in paragraph (1), such protections shall continue to apply to such work product or data after the entity is removed from the listing under subsection (e)(3)(A) of this section.

(g) Disposition of work product and data

If the Secretary removes a patient safety organization from the listing as provided for in subsection (e)(3)(A) of this section, with respect to the patient safety work product or data described in subsection (f)(1) of this section that the patient safety organization received from another entity, such former patient safety organization shall—

(1) with the approval of the other entity and a patient safety organization, transfer such work product or data to such patient safety organization;

(2) return such work product or data to the entity that submitted the work product or data; or

(3) if returning such work product or data to such entity is not practicable, destroy such work product or data.

(July 1, 1944, ch. 373, title IX, § 924, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 431.)

PRIOR PROVISIONS

A prior section 924 of act July 1, 1944, was renumbered section 934 and is classified to section 299c–3 of this title.

Another prior section 924 of act July 1, 1944, was classified to section 299c–3 of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–25. Technical assistance

The Secretary, acting through the Director, may provide technical assistance to patient safety organizations, including convening annual meetings for patient safety organizations to discuss methodology, communication, data collection, or privacy concerns.

(July 1, 1944, ch. 373, title IX, § 925, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 434.)

PRIOR PROVISIONS

A prior section 925 of act July 1, 1944, was renumbered section 935 and is classified to section 299c–4 of this title.

Another prior section 925 of act July 1, 1944, was classified to section 299c–4 of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–26. Severability

If any provision of this part is held to be unconstitutional, the remainder of this part shall not be affected.

(July 1, 1944, ch. 373, title IX, § 926, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 434.)

PRIOR PROVISIONS

A prior section 926 of act July 1, 1944, was renumbered section 936 and is classified to section 299c–5 of this title.

Another prior section 926 of act July 1, 1944, was classified to section 299c–5 of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

PART D—GENERAL PROVISIONS

AMENDMENTS

2005—Pub. L. 109–41, § 2(a)(2), July 29, 2005, 119 Stat. 424, redesignated part C ''General Provisions'' as D.

§ 299c. Advisory Council for Healthcare Research and Quality

(a) Establishment

There is established an advisory council to be known as the National Advisory Council for Healthcare Research and Quality.

(b) Duties

(1) In general

The Advisory Council shall advise the Secretary and the Director with respect to activities proposed or undertaken to carry out the mission of the Agency under section 299(b) of this title.

(2) Certain recommendations

Activities of the Advisory Council under paragraph (1) shall include making recommendations to the Director regarding—

(A) priorities regarding health care research, especially studies related to quality, outcomes, cost and the utilization of, and access to, health care services;

(B) the field of health care research and related disciplines, especially issues related to training needs, and dissemination of information pertaining to health care quality; and

(C) the appropriate role of the Agency in each of these areas in light of private sector activity and identification of opportunities for public-private sector partnerships.

(c) Membership

(1) In general

The Advisory Council shall, in accordance with this subsection, be composed of appointed members and ex officio members. All members of the Advisory Council shall be voting members other than the individuals designated under paragraph (3)(B) as ex officio members.

(2) Appointed members

The Secretary shall appoint to the Advisory Council 21 appropriately qualified individuals. At least 17 members of the Advisory Council shall be representatives of the public who are not officers or employees of the United States and at least 1 member who shall be a specialist in the rural aspects of 1 or more of the professions or fields described in subparagraphs (A) through (G). The Secretary shall ensure that the appointed members of the Council, as a group, are representative of professions and entities concerned with, or affected by, activities under this subchapter and under section 1320b–12 of this title. Of such members—

(A) three shall be individuals distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care;

(B) three shall be individuals distinguished in the fields of health care quality research or health care improvement;

(C) three shall be individuals distinguished in the practice of medicine of which at least one shall be a primary care practitioner;

(D) three shall be individuals distinguished in the other health professions;

(E) three shall be individuals either representing the private health care sector, including health plans, providers, and purchasers or individuals distinguished as administrators of health care delivery systems;

(F) three shall be individuals distinguished in the fields of health care economics, information systems, law, ethics, business, or public policy; and

(G) three shall be individuals representing the interests of patients and consumers of health care.

(3) Ex officio members

The Secretary shall designate as ex officio members of the Advisory Council—

(A) the Assistant Secretary for Health, the Director of the National Institutes of Health, the Director of the Centers for Disease Control and Prevention, the Administrator of the Centers for Medicare & Medicaid Services, the Commissioner of the Food and Drug Administration, the Director of the Office of Personnel Management, the Assistant Secretary of Defense (Health Affairs), and the Under Secretary for Health of the Department of Veterans Affairs; and

(B) such other Federal officials as the Secretary may consider appropriate.

(d) Terms

(1) In general

Members of the Advisory Council appointed under subsection (c)(2) of this section shall serve for a term of 3 years.

(2) Staggered terms

To ensure the staggered rotation of one-third of the members of the Advisory Council each year, the Secretary is authorized to appoint the initial members of the Advisory Council for terms of 1, 2, or 3 years.

(3) Service beyond term

A member of the Council appointed under subsection (c)(2) of this section may continue to serve after the expiration of the term of the members until a successor is appointed.

(e) Vacancies

If a member of the Advisory Council appointed under subsection (c)(2) of this section does not serve the full term applicable under subsection (d) of this section, the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(f) Chair

The Director shall, from among the members of the Advisory Council appointed under subsection (c)(2) of this section, designate an individual to serve as the chair of the Advisory Council.

(g) Meetings

The Advisory Council shall meet not less than once during each discrete 4-month period and shall otherwise meet at the call of the Director or the chair.

(h) Compensation and reimbursement of expenses

(1) Appointed members

Members of the Advisory Council appointed under subsection (c)(2) of this section shall receive compensation for each day (including travel time) engaged in carrying out the duties of the Advisory Council unless declined by the member. Such compensation may not be in an amount in excess of the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day during which such member is engaged in the performance of the duties of the Advisory Council.

(2) Ex officio members

Officials designated under subsection (c)(3) of this section as ex officio members of the Advisory Council may not receive compensation for service on the Advisory Council in addition to the compensation otherwise received for duties carried out as officers of the United States.

(i) Staff

The Director shall provide to the Advisory Council such staff, information, and other assistance as may be necessary to carry out the duties of the Council.

(j) Duration

Notwithstanding section 14(a) of the Federal Advisory Committee Act, the Advisory Council

shall continue in existence until otherwise provided by law.

(July 1, 1944, ch. 373, title IX, § 931, formerly § 921, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1663; amended Pub. L. 108–173, title IX, § 900(e)(2)(D), Dec. 8, 2003, 117 Stat. 2372; renumbered § 931, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

REFERENCES IN TEXT

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (j), is section 14(a) of Pub. L. 92–463, which is set out in the Appendix to Title 5.

PRIOR PROVISIONS

A prior section 299c, act July 1, 1944, ch. 373, title IX, § 921, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2199; amended Pub. L. 102–410, § 8, Oct. 13, 1992, 106 Stat. 2100, established the Advisory Council for Health Care Policy, Research, and Evaluation, prior to the general amendment of this subchapter by Pub. L. 106–129.

Another prior section 299c, act July 1, 1944, ch. 373, title IX, § 903, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 927; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 104, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 105, 111(b), 84 Stat. 1299, 1301, authorized Secretary to make planning grants and set forth requirements for grant applications, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

2003—Subsec. (c)(3)(A). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

§ 299c–1. Peer review with respect to grants and contracts

(a) Requirement of review

(1) In general

Appropriate technical and scientific peer review shall be conducted with respect to each application for a grant, cooperative agreement, or contract under this subchapter.

(2) Reports to Director

Each peer review group to which an application is submitted pursuant to paragraph (1) shall report its finding and recommendations respecting the application to the Director in such form and in such manner as the Director shall require.

(b) Approval as precondition of awards

The Director may not approve an application described in subsection (a)(1) of this section unless the application is recommended for approval by a peer review group established under subsection (c) of this section.

(c) Establishment of peer review groups

(1) In general

The Director shall establish such technical and scientific peer review groups as may be necessary to carry out this section. Such groups shall be established without regard to the provisions of title 5 that govern appointments in the competitive service, and without regard to the provisions of chapter 51, and subchapter III of chapter 53, of such title that relate to classification and pay rates under the General Schedule.

(2) Membership

The members of any peer review group established under this section shall be appointed from among individuals who by virtue of their training or experience are eminently qualified to carry out the duties of such peer review group. Officers and employees of the United States may not constitute more than 25 percent of the membership of any such group. Such officers and employees may not receive compensation for service on such groups in addition to the compensation otherwise received for these duties carried out as such officers and employees.

(3) Duration

Notwithstanding section 14(a) of the Federal Advisory Committee Act, peer review groups established under this section may continue in existence until otherwise provided by law.

(4) Qualifications

Members of any peer review group shall, at a minimum, meet the following requirements:

(A) Such members shall agree in writing to treat information received, pursuant to their work for the group, as confidential information, except that this subparagraph shall not apply to public records and public information.

(B) Such members shall agree in writing to recuse themselves from participation in the peer review of specific applications which present a potential personal conflict of interest or appearance of such conflict, including employment in a directly affected organization, stock ownership, or any financial or other arrangement that might introduce bias in the process of peer review.

(d) Authority for procedural adjustments in certain cases

In the case of applications for financial assistance whose direct costs will not exceed $100,000, the Director may make appropriate adjustments in the procedures otherwise established by the Director for the conduct of peer review under this section. Such adjustments may be made for the purpose of encouraging the entry of individuals into the field of research, for the purpose of encouraging clinical practice-oriented or provider-based research, and for such other purposes as the Director may determine to be appropriate.

(e) Regulations

The Director shall issue regulations for the conduct of peer review under this section.

(July 1, 1944, ch. 373, title IX, § 932, formerly § 922, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1665; renumbered § 932, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

REFERENCES IN TEXT

The provisions of title 5 that govern appointments in the competitive service, referred to in subsec. (c)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (c)(3), is section 14(a) of Pub. L. 92–463, which is set out in the Appendix to Title 5.

PRIOR PROVISIONS

A prior section 299c–1, act July 1, 1944, ch. 373, title IX, § 922, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2201; amended Pub. L. 101–508, title IV,

§ 4118(f)(2)(F), Nov. 5, 1990, 104 Stat. 1388–70; Pub. L. 102–410, § 5(d), Oct. 13, 1992, 106 Stat. 2098, related to peer review with respect to grants and contracts, prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299c–2. Certain provisions with respect to development, collection, and dissemination of data

(a) Standards with respect to utility of data

(1) In general

To ensure the utility, accuracy, and sufficiency of data collected by or for the Agency for the purpose described in section 299(b) of this title, the Director shall establish standard methods for developing and collecting such data, taking into consideration—

(A) other Federal health data collection standards; and

(B) the differences between types of health care plans, delivery systems, health care providers, and provider arrangements.

(2) Relationship with other Department programs

In any case where standards under paragraph (1) may affect the administration of other programs carried out by the Department of Health and Human Services, including the programs under title XVIII, XIX or XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], or may affect health information that is subject to a standard developed under part C of title XI of the Social Security Act [42 U.S.C. 1320d et seq.], they shall be in the form of recommendations to the Secretary for such program.

(b) Statistics and analyses

The Director shall—

(1) take appropriate action to ensure that statistics and analyses developed under this subchapter are of high quality, timely, and duly comprehensive, and that the statistics are specific, standardized, and adequately analyzed and indexed; and

(2) publish, make available, and disseminate such statistics and analyses on as wide a basis as is practicable.

(c) Authority regarding certain requests

Upon request of a public or private entity, the Director may conduct or support research or analyses otherwise authorized by this subchapter pursuant to arrangements under which such entity will pay the cost of the services provided. Amounts received by the Director under such arrangements shall be available to the Director for obligation until expended.

(July 1, 1944, ch. 373, title IX, § 933, formerly § 923, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1666; renumbered § 933, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part C of title XI of the Act is classified generally to part C (§ 1320d et seq.) of title XI of chapter 7 of this title. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 299c–2, act July 1, 1944, ch. 373, title IX, § 923, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2202; amended Pub. L. 102–410, § 5(e), Oct. 12, 1992, 106 Stat. 2098, related to development, collection, and dissemination of data, prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299c–3. Dissemination of information

(a) In general

The Director shall—

(1) without regard to section 501 of title 44, promptly publish, make available, and otherwise disseminate, in a form understandable and on as broad a basis as practicable so as to maximize its use, the results of research, demonstration projects, and evaluations conducted or supported under this subchapter;

(2) ensure that information disseminated by the Agency is science-based and objective and undertakes consultation as necessary to assess the appropriateness and usefulness of the presentation of information that is targeted to specific audiences;

(3) promptly make available to the public data developed in such research, demonstration projects, and evaluations;

(4) provide, in collaboration with the National Library of Medicine where appropriate, indexing, abstracting, translating, publishing, and other services leading to a more effective and timely dissemination of information on research, demonstration projects, and evaluations with respect to health care to public and private entities and individuals engaged in the improvement of health care delivery and the general public, and undertake programs to develop new or improved methods for making such information available; and

(5) as appropriate, provide technical assistance to State and local government and health agencies and conduct liaison activities to such agencies to foster dissemination.

(b) Prohibition against restrictions

Except as provided in subsection (c) of this section, the Director may not restrict the publication or dissemination of data from, or the results of, projects conducted or supported under this subchapter.

(c) Limitation on use of certain information

No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under this subchapter may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Director) to its use for such other purpose. Such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Director) to its publication or release in other form.

(d) Penalty

Any person who violates subsection (c) of this section shall be subject to a civil monetary pen-

alty of not more than $10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected.

(July 1, 1944, ch. 373, title IX, § 934, formerly § 924, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1667; renumbered § 934, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

PRIOR PROVISIONS

A prior section 299c–3, act July 1, 1944, ch. 373, title IX, § 924, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2202; amended Pub. L. 102–410, § 9, Oct. 13, 1992, 106 Stat. 2100, related to additional provisions with respect to grants and contracts, prior to the general amendment of this subchapter by Pub. L. 106–129. See section 299c–4 of this title.

§ 299c–4. Additional provisions with respect to grants and contracts

(a) Financial conflicts of interest

With respect to projects for which awards of grants, cooperative agreements, or contracts are authorized to be made under this subchapter, the Director shall by regulation define—

(1) the specific circumstances that constitute financial interests in such projects that will, or may be reasonably expected to, create a bias in favor of obtaining results in the projects that are consistent with such interests; and

(2) the actions that will be taken by the Director in response to any such interests identified by the Director.

(b) Requirement of application

The Director may not, with respect to any program under this subchapter authorizing the provision of grants, cooperative agreements, or contracts, provide any such financial assistance unless an application for the assistance is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out the program involved.

(c) Provision of supplies and services in lieu of funds

(1) In general

Upon the request of an entity receiving a grant, cooperative agreement, or contract under this subchapter, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the entity in carrying out the project involved and, for such purpose, may detail to the entity any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in funds

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of the financial assistance involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Director. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(d) Applicability of certain provisions with respect to contracts

Contracts may be entered into under this part without regard to section 3324(a) and (b) of title 31 and section 5 of title 41.

(July 1, 1944, ch. 373, title IX, § 935, formerly § 925, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1668; renumbered § 935, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

CODIFICATION

In subsec. (d), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 299c–4, act July 1, 1944, ch. 373, title IX, § 925, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2203; amended Pub. L. 104–201, div. A, title XVII, § 1723(a)(3)(B), Sept. 23, 1996, 110 Stat. 2759, related to certain administrative authorities, prior to the general amendment of this subchapter by Pub. L. 106–129. See section 299c–5 of this title.

§ 299c–5. Certain administrative authorities

(a) Deputy director and other officers and employees

(1) Deputy director

The Director may appoint a deputy director for the Agency.

(2) Other officers and employees

The Director may appoint and fix the compensation of such officers and employees as may be necessary to carry out this subchapter. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5.

(b) Facilities

The Secretary, in carrying out this subchapter—

(1) may acquire, without regard to section 8141 of title 40, by lease or otherwise through the Administrator of General Services, buildings or portions of buildings in the District of Columbia or communities located adjacent to the District of Columbia for use for a period not to exceed 10 years; and

(2) may acquire, construct, improve, repair, operate, and maintain laboratory, research, and other necessary facilities and equipment, and such other real or personal property (including patents) as the Secretary deems necessary.

(c) Provision of financial assistance

The Director, in carrying out this subchapter, may make grants to public and nonprofit entities and individuals, and may enter into cooperative agreements or contracts with public and private entities and individuals.

(d) Utilization of certain personnel and resources

(1) Department of Health and Human Services

The Director, in carrying out this subchapter, may utilize personnel and equipment, facilities, and other physical resources of the

Department of Health and Human Services, permit appropriate (as determined by the Secretary) entities and individuals to utilize the physical resources of such Department, and provide technical assistance and advice.

(2) Other agencies

The Director, in carrying out this subchapter, may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, or of any foreign government, with or without reimbursement of such agencies.

(e) Consultants

The Secretary, in carrying out this subchapter, may secure, from time to time and for such periods as the Director deems advisable but in accordance with section 3109 of title 5, the assistance and advice of consultants from the United States or abroad.

(f) Experts

(1) In general

The Secretary may, in carrying out this subchapter, obtain the services of not more than 50 experts or consultants who have appropriate scientific or professional qualifications. Such experts or consultants shall be obtained in accordance with section 3109 of title 5, except that the limitation in such section on the duration of service shall not apply.

(2) Travel expenses

(A) In general

Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a), 5724a(c), and 5726(c) of title 5.

(B) Limitation

Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless and until the expert agrees in writing to complete the entire period of assignment, or 1 year, whichever is shorter, unless separated or reassigned for reasons that are beyond the control of the expert or consultant and that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a statutory obligation owed to the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

(g) Voluntary and uncompensated services

The Director, in carrying out this subchapter, may accept voluntary and uncompensated services.

(July 1, 1944, ch. 373, title IX, § 936, formerly § 926, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1668; renumbered § 936, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(2), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (b)(1), ''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 299c–5, act July 1, 1944, ch. 373, title IX, § 926, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2204; amended Pub. L. 101–381, title I, § 102(7), Aug. 18, 1990, 104 Stat. 586; Pub. L. 102–410, § 10, Oct. 13, 1992, 106 Stat. 2101; Pub. L. 103–43, title XX, § 2010(b)(8), June 10, 1993, 107 Stat. 214, authorized appropriations to carry out this subchapter, prior to the general amendment of this subchapter by Pub. L. 106–129. See section 299c–6 of this title.

§ 299c–6. Funding

(a) Intent

To ensure that the United States investment in biomedical research is rapidly translated into improvements in the quality of patient care, there must be a corresponding investment in research on the most effective clinical and organizational strategies for use of these findings in daily practice. The authorization levels in subsections (b) and (c) of this section provide for a proportionate increase in health care research as the United States investment in biomedical research increases.

(b) Authorization of appropriations

For the purpose of carrying out this subchapter, there are authorized to be appropriated $250,000,000 for fiscal year 2000, and such sums as may be necessary for each of the fiscal years 2001 through 2005.

(c) Evaluations

In addition to amounts available pursuant to subsection (b) of this section for carrying out this subchapter, there shall be made available for such purpose, from the amounts made available pursuant to section 238j of this title (relating to evaluations), an amount equal to 40 percent of the maximum amount authorized in such section 238j of this title to be made available for a fiscal year.

(d) Health disparities research

For the purpose of carrying out the activities under section 299a–1 of this title, there are authorized to be appropriated $50,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 through 2005.

(e) Patient safety and quality improvement

For the purpose of carrying out part C of this subchapter, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2006 through 2010.

(July 1, 1944, ch. 373, title IX, § 937, formerly § 927, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1670; amended Pub. L. 106–525, title II, § 201(b), Nov. 22, 2000, 114 Stat. 2507; renumbered § 937 and amended Pub. L. 109–41, § 2(a)(3), (b), July 29, 2005, 119 Stat. 424, 434.)

PRIOR PROVISIONS

A prior section 299c–6, act July 1, 1944, ch. 373, title IX, § 927, as added Pub. L. 101–239, title VI, § 6103(c), Dec.

19, 1989, 103 Stat. 2204, set out definitions, prior to the general amendment of this subchapter by Pub. L. 106–129. See section 299c–7 of this title.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–41, § 2(b), added subsec. (e).

2000—Subsec. (d). Pub. L. 106–525 added subsec. (d).

§ 299c–7. Definitions

In this subchapter:

(1) Advisory Council

The term ''Advisory Council'' means the National Advisory Council on Healthcare Research and Quality established under section 299c of this title.

(2) Agency

The term ''Agency'' means the Agency for Healthcare Research and Quality.

(3) Director

The term ''Director'' means the Director of the Agency for Healthcare Research and Quality.

(July 1, 1944, ch. 373, title IX, § 938, formerly § 928, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1670; renumbered § 938 and amended Pub. L. 109–41, § 2(a)(3), (4), July 29, 2005, 119 Stat. 424.)

PRIOR PROVISIONS

Prior sections 299d to 299j were repealed by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

Section 299d, act July 1, 1944, ch. 373, title IX, § 904, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 928; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 104, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 106, 111(b), 84 Stat. 1299, 1301, authorized Secretary to make grants for establishment and operation of regional medical programs and set forth requirements for grant applications.

Section 299e, act July 1, 1944, ch. 373, title IX, § 905, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 929; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 105, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 107(a), 111(b), title VI, § 601(b)(2), (4), 84 Stat. 1299, 1301, 1311; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided for establishment of a National Advisory Council on Regional Medical Programs and its functions.

Section 299f, act July 1, 1944, ch. 373, title IX, § 906, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930; amended Oct. 30, 1970, Pub. L. 91–515, title I, § 111(b), 84 Stat. 1301, authorized Secretary to establish rules and regulations covering terms of approval of grant applications and coordination of programs.

Section 299g, act July 1, 1944, ch. 373, title IX, § 907, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930; amended Oct. 30, 1970, Pub. L. 91–515, title I, §§ 108, 111(b), 84 Stat. 1300, 1301, directed Secretary to compile a list of facilities equipped and staffed to provide most advanced methods for diagnosing and treating certain diseases and illnesses.

Section 299h, act July 1, 1944, ch. 373, title IX, § 908, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930, called for a report to the President and the Congress on or before June 30, 1967, by Surgeon General concerning activities under this subchapter with required statements, appraisals, and recommendations.

Section 299i, act July 1, 1944, ch. 373, title IX, § 909, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930; amended Oct. 30, 1970, Pub. L. 91–515, title I, §§ 109, 111(b), 84 Stat. 1300, 1301; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided for recordkeeping by grant recipients and for accessibility of records for audit and examination.

Section 299j, act July 1, 1944, ch. 373, title IX, § 910, as added Oct. 15, 1968, Pub. L. 90–574, title I, § 106, 82 Stat. 1005; amended Oct. 30, 1970, Pub. L. 91–515, title I, § 110, 84 Stat. 1300, related to grants and contracts for multiprogram services, costs of special projects, and support of research, studies, investigations, training, and demonstrations.

AMENDMENTS

2005—Par. (1). Pub. L. 109–41, § 2(a)(4), made technical amendment to reference in original act which appears in text as reference to section 299c of this title, requiring no change in text.

SUBCHAPTER VIII—POPULATION RESEARCH AND VOLUNTARY FAMILY PLANNING PROGRAMS

§ 300. Project grants and contracts for family planning services

(a) Authority of Secretary

The Secretary is authorized to make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). To the extent practical, entities which receive grants or contracts under this subsection shall encourage familiy[1] participation in projects assisted under this subsection.

(b) Factors determining awards; establishment and preservation of rights of local and regional entities

In making grants and contracts under this section the Secretary shall take into account the number of patients to be served, the extent to which family planning services are needed locally, the relative need of the applicant, and its capacity to make rapid and effective use of such assistance. Local and regional entities shall be assured the right to apply for direct grants and contracts under this section, and the Secretary shall by regulation fully provide for and protect such right.

(c) Reduction of grant amount

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by the fair market value of any supplies or equipment furnished the grant recipient by the Secretary. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment on which the reduction of such grant is based. Such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(d) Authorization of appropriations

For the purpose of making grants and contracts under this section, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1971; $60,000,000 for the fiscal year ending June 30, 1972; $111,500,000 for the fiscal year ending June 30, 1973, $111,500,000 each for the fiscal years ending June 30, 1974, and

[1] So in original. Probably should be ''family''.

June 30, 1975; $115,000,000 for fiscal year 1976; $115,000,000 for the fiscal year ending September 30, 1977; $136,400,000 for the fiscal year ending September 30, 1978; $200,000,000 for the fiscal year ending September 30, 1979; $230,000,000 for the fiscal year ending September 30, 1980; $264,500,000 for the fiscal year ending September 30, 1981; $126,510,000 for the fiscal year ending September 30, 1982; $139,200,000 for the fiscal year ending September 30, 1983; $150,830,000 for the fiscal year ending September 30, 1984; and $158,400,000 for the fiscal year ending September 30, 1985.

(July 1, 1944, ch. 373, title X, §1001, as added Pub. L. 91–572, §6(c), Dec. 24, 1970, 84 Stat. 1506; amended Pub. L. 92–449, title III, §301, Sept. 30, 1972, 86 Stat. 754; Pub. L. 93–45, title I, §111(a), June 18, 1973, 87 Stat. 93; Pub. L. 94–63, title II, §§202(a), 204(a), (b), title VII, §701(d), July 29, 1975, 89 Stat. 306–308, 352; Pub. L. 95–83, title III, §305(a), Aug. 1, 1977, 91 Stat. 388; Pub. L. 95–613, §1(a)(1), (b)(1), Nov. 8, 1978, 92 Stat. 3093; Pub. L 97–35, title IX, §931(a)(1), (b)(1), Aug. 13, 1981, 95 Stat. 570; Pub. L. 97–414, §§8(n), 9(a), Jan. 4, 1983, 96 Stat. 2061, 2064; Pub. L. 98–512, §3(a), Oct. 19, 1984, 98 Stat. 2409; Pub. L. 98–555, §9, Oct. 30, 1984, 98 Stat. 2857.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–555 added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 98–512 inserted provisions authorizing appropriations for the fiscal year ending Sept. 30, 1985.

Subsec. (d). Pub. L. 98–555 redesignated former subsec. (c) as (d).

1983—Subsec. (c). Pub. L. 97–414, §8(n), substituted a semicolon for a comma after ''1981''.

Pub. L. 97–414, §9(a), amended directory language of Pub. L. 97–35, §931(a)(1), to correct a typographical error and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (a). Pub. L. 97–35, §931(b)(1), inserted provisions relating to family participation in projects.

Subsec. (c). Pub. L. 97–35, §931(a)(1), as amended by Pub. L. 97–414, §9(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (a). Pub. L. 95–613, §1(a)(1), inserted provisions relating to infertility services and services for adolescents.

Subsec. (c). Pub. L. 95–613, §1(b)(1), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (c). Pub. L. 95–83 substituted provision authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

1975—Subsec. (a). Pub. L. 94–63, §204(a), inserted provision relating to scope of family planning projects to be offered.

Subsec. (b). Pub. L. 94–63, §204(b), inserted provision relating to direct grants and contracts for local and regional entities.

Subsec. (c). Pub. L. 94–63, §§202(a), 701(d), inserted provisions authorizing appropriations for fiscal years ending June 30, 1975, 1976, and 1977.

1973—Subsec. (c). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

1972—Subsec. (c). Pub. L. 92–449 increased appropriations authorization for fiscal year ending June 30, 1973, to $111,500,000 from $90,000,000.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by sections 202(a) and 204(a), (b) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

STUDY AS TO DISCRIMINATION BY SCHOOLS OF MEDICINE, NURSING, OR OSTEOPATHY AGAINST APPLICANTS BECAUSE OF RELUCTANCE OR WILLINGNESS TO PARTICIPATE IN ABORTIONS OR STERILIZATIONS; REPORT NOT LATER THAN FEBRUARY 1, 1978

Pub. L. 95–215, §7, Dec. 19, 1977, 91 Stat. 1507, required Secretary of Health, Education, and Welfare to conduct a study and report to specific committees of Congress not later than Feb. 1, 1978, as to whether schools of medicine, nursing, or osteopathy discriminate against applicants because of applicant's reluctance or unwillingness to participate in performance of abortions or sterilizations contrary to religious beliefs or moral convictions.

CONGRESSIONAL DECLARATION OF PURPOSE

Section 2 of Pub. L. 91–572 provided that: ''It is the purpose of this Act [see Short Title of 1970 Amendment note set out under section 201 of this title]—

''(1) to assist in making comprehensive voluntary family planning services readily available to all persons desiring such services;

''(2) to coordinate domestic population and family planning research with the present and future needs of family planning programs;

''(3) to improve administrative and operational supervision of domestic family planning services and of population research programs related to such services;

''(4) to enable public and nonprofit private entities to plan and develop comprehensive programs of family planning services;

''(5) to develop and make readily available information (including educational materials) on family planning and population growth to all persons desiring such information;

''(6) to evaluate and improve the effectiveness of family planning service programs and of population research;

''(7) to assist in providing trained manpower needed to effectively carry out programs of population research and family planning services; and

''(8) to establish an Office of Population Affairs in the Department of Health, Education, and Welfare as a primary focus within the Federal Government on matters pertaining to population research and family planning, through which the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereafter in this Act referred to as the 'Secretary') shall carry out the purposes of this Act.''

THE TITLE X ''GAG RULE''

Memorandum of President of the United States, Jan. 22, 1993, 58 F.R. 7455, provided:

Memorandum for the Secretary of Health and Human Services

Title X of the Public Health Services Act [42 U.S.C. 300 et seq.] provides Federal funding for family planning clinics to provide services for low-income patients. The Act specifies that Title X funds may not be used for the performance of abortions, but places no restrictions on the ability of clinics that receive Title X funds to provide abortion counseling and referrals or to perform abortions using non-Title X funds. During the first 18 years of the program, medical professionals at Title X clinics provided complete, uncensored information, including nondirective abortion counseling. In February 1988, the Department of Health and Human Services adopted regulations, which have become known as the ''Gag Rule,'' prohibiting Title X recipients from providing their patients with information, counseling, or referrals concerning abortion. Subsequent attempts by the Bush Administration to modify the Gag Rule and ensuing litigation have created con-

fusion and uncertainty about the current legal status of the regulations.

The Gag Rule endangers women's lives and health by preventing them from receiving complete and accurate medical information and interferes with the doctor-patient relationship by prohibiting information that medical professionals are otherwise ethically and legally required to provide to their patients. Furthermore, the Gag Rule contravenes the clear intent of a majority of the members of both the United States Senate and House of Representatives, which twice passed legislation to block the Gag Rule's enforcement but failed to override Presidential vetoes.

For these reasons, you have informed me that you will suspend the Gag Rule pending the promulgation of new regulations in accordance with the ''notice and comment'' procedures of the Administrative Procedure Act [5 U.S.C. 551 et seq.]. I hereby direct you to take that action as soon as possible. I further direct that, within 30 days, you publish in the Federal Register new proposed regulations for public comment.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 300a. Formula grants to States for family planning services

(a) Authority of Secretary; prerequisites

The Secretary is authorized to make grants, from allotments made under subsection (b) of this section, to State health authorities to assist in planning, establishing, maintaining, coordinating, and evaluating family planning services. No grant may be made to a State health authority under this section unless such authority has submitted, and had approved by the Secretary, a State plan for a coordinated and comprehensive program of family planning services.

(b) Factors determining amount of State allotments

The sums appropriated to carry out the provisions of this section shall be allotted to the States by the Secretary on the basis of the population and the financial need of the respective States.

(c) "State" defined

For the purposes of this section, the term ''State'' includes the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the District of Columbia, and the Trust Territory of the Pacific Islands.

(d) Authorization of appropriations

For the purpose of making grants under this section, there are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1971; $15,000,000 for the fiscal year ending June 30, 1972; and $20,000,000 for the fiscal year ending June 30, 1973.

(July 1, 1944, ch. 373, title X, § 1002, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1506; amended Pub. L. 94–484, title IX, § 905(b)(1), Oct. 12, 1976, 90 Stat. 2325.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–484 defined ''State'' to include Northern Mariana Islands.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

STUDY OF STATE DELIVERY OF SERVICES; REPORT TO CONGRESS

Pub. L. 97–35, title IX, § 931(c), Aug. 13, 1981, 95 Stat. 570, directed Secretary of Health and Human Services to conduct a study of possible ways of State delivery of services for which assistance is authorized by title X of the Public Health Service Act [this subchapter] and to report to Congress on results of such study 18 months after Aug. 13, 1981.

§ 300a–1. Training grants and contracts; authorization of appropriations

(a) The Secretary is authorized to make grants to public or nonprofit private entities and to enter into contract with public or private entities and individuals to provide the training for personnel to carry out family planning service programs described in section 300 or 300a of this title.

(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1971; $3,000,000 for the fiscal year ending June 30, 1972; $4,000,000 for the fiscal year ending June 30, 1973; $3,000,000 each for the fiscal years ending June 30, 1974 and June 30, 1975; $4,000,000 for fiscal year ending 1976; $5,000,000 for the fiscal year ending September 30, 1977; $3,000,000 for the fiscal year ending September 30, 1978; $3,100,000 for the fiscal year ending September 30, 1979; $3,600,000 for the fiscal year ending September 30, 1980; $4,100,000 for the fiscal year ending September 30, 1981; $2,920,000 for the fiscal year ending September 30, 1982; $3,200,000 for the fiscal year ending September 30, 1983; $3,500,000 for the fiscal year ending September 30, 1984; and $3,500,000 for the fiscal year ending September 30, 1985.

(July 1, 1944, ch. 373, title X, § 1003, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1507; amended Pub. L. 93–45, title I, § 111(b), June 18, 1973, 87 Stat. 93; Pub. L. 94–63, title II, § 202(b), title VII, § 701(d), July 29, 1975, 89 Stat. 306, 352; Pub. L. 95–83, title III, § 305(b), Aug. 1, 1977, 91 Stat. 389; Pub. L. 95–613, § 1(b)(2), Nov. 8, 1978, 92 Stat. 3093; Pub. L. 97–35, title IX, § 931(a)(2), Aug. 13, 1981, 95 Stat. 570; Pub. L. 97–414, §§ 8(n), 9(a), Jan. 4, 1983, 96 Stat. 2061, 2064; Pub. L. 98–512, § 3(b), Oct. 19, 1984, 98 Stat. 2410.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–512 inserted provisions authorizing appropriations for fiscal year ending Sept. 30, 1985.

1983—Subsec. (b). Pub. L. 97–414, § 8(n), substituted a semicolon for a comma after ''1981''.

Pub. L. 97–414, § 9(a), amended directory language of Pub. L. 97–35, § 931(a)(2), to correct a typographical error and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (b). Pub. L. 97–35, as amended by Pub. L. 97–414, § 9(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (b). Pub. L. 95–613 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (b). Pub. L. 95–83 substituted provision authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

1975—Subsec. (b). Pub. L. 94–63 inserted provisions authorizing appropriations for fiscal years ending June 30, 1975, 1976, and 1977.

1973—Subsec. (b). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 202(b) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

§ 300a–2. Conduct, etc., of research activities

The Secretary may—

(1) conduct, and

(2) make grants to public or nonprofit private entities and enter into contracts with public or private entities and individuals for projects for,

research in the biomedical, contraceptive development, behavioral, and program implementation fields related to family planning and population.

(July 1, 1944, ch. 373, title X, § 1004, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1507; amended Pub. L. 93–45, title I, § 111(c), June 18, 1973, 87 Stat. 93; Pub. L. 94–63, title II, § 202(c), title VII, § 701(d), July 29, 1975, 89 Stat. 306, 352; Pub. L. 95–83, title III, § 305(c), Aug. 1, 1977, 91 Stat. 389; Pub. L. 95–613, § 1(b)(3), Nov. 8, 1978, 92 Stat. 3093; Pub. L. 96–32, § 1(a), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, § 931(b)(2), Aug. 13, 1981, 95 Stat. 570.)

AMENDMENTS

1981—Pub. L. 97–35 redesignated existing subsec. (a) as entire section, and struck out subsec. (b) which related to authorization and availability of appropriations.

1979—Subsec. (b)(1). Pub. L. 95–613, as amended by Pub. L. 96–32, substituted "$120,800,000" for "$3,600,000" as authorized appropriation for fiscal year ending Sept. 30, 1980.

1978—Subsec. (b)(1). Pub. L. 95–613 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (b). Pub. L. 95–83 in par. (1) substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977, and in par. (2) prohibited use of funds for administration of this section.

1975—Subsec. (a). Pub. L. 94–63, § 202(c), revised structure of provisions, inserted authorization for Secretary to conduct research, and struck out authority for grants and contracts in research training in specified fields.

Subsec. (b). Pub. L. 94–63, §§ 202(c), 701(d), revised structure of provisions and substituted provisions relating to authorization of appropriations for fiscal years 1976 and 1977 and availability of appropriated funds, for provisions authorizing appropriations for fiscal years ending June 30, 1971, through fiscal year ending June 30, 1975.

1973—Subsec. (b). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 1(b) of Pub. L. 96–32 provided that: "The amendment made by subsection (a) [amending this section] shall be effective as of November 8, 1978."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 202(c) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

§ 300a–3. Informational and educational materials development grants and contracts; authorization of appropriations

(a) The Secretary is authorized to make grants to public or nonprofit private entities and to enter into contracts with public or private entities and individuals to assist in developing and making available family planning and population growth information (including educational materials) to all persons desiring such information (or materials).

(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $750,000 for the fiscal year ending June 30, 1971; $1,000,000 for the fiscal year ending June 30, 1972; $1,250,000 for the fiscal year ending June 30, 1973; $909,000 each for the fiscal years ending June 30, 1974, and June 30, 1975; $2,000,000 for fiscal year 1976; $2,500,000 for the fiscal year ending September 30, 1977; $600,000 for the fiscal year ending September 30, 1978; $700,000 for the fiscal year ending September 30, 1979; $805,000 for the fiscal year ending September 30, 1980; $926,000 for the fiscal year ending September 30, 1981; $570,000 for the fiscal year ending September 30, 1982; $600,000 for the fiscal year ending September 30, 1983; $670,000 for the fiscal year ending September 30, 1984; and $700,000 for the fiscal year ending September 30, 1985.

(July 1, 1944, ch. 373, title X, § 1005, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1507; amended Pub. L. 93–45, title I, § 111(d), June 18, 1973, 87 Stat. 93; Pub. L. 94–63, title II, § 202(d), title VII, § 701(d), July 29, 1975, 89 Stat. 307, 352; Pub. L. 95–83, title III, § 305(d), Aug. 1, 1977, 91 Stat. 389; Pub. L. 95–613, § 1(b)(4), Nov. 8, 1978, 92 Stat. 3093; Pub. L. 97–35, title IX, § 931(a)(3), Aug. 13, 1981, 95 Stat. 570; Pub. L. 97–414, §§ 8(n), 9(a), Jan. 4, 1983, 96 Stat. 2061, 2064; Pub. L. 98–512, § 3(c), Oct. 19, 1984, 98 Stat. 2410.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–512 inserted provisions authorizing appropriations for fiscal year ending Sept. 30, 1985.

1983—Subsec. (b). Pub. L. 97–414, § 8(n), substituted a semicolon for a comma after "1981".

Pub. L. 97–414, § 9(a), amended directory language of Pub. L. 97–35, § 931(a)(3), to correct typographical error and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (b). Pub. L. 97–35, as amended by Pub. L. 97–414, § 9(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (b). Pub. L. 95–613 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (b). Pub. L. 95–83 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

1975—Subsec. (b). Pub. L. 94–63 inserted provisions authorizing appropriations for fiscal years ending June 30, 1975, 1976, and 1977.

1973—Subsec. (b). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 202(d) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

§ 300a–4. Grants and contracts

(a) Promulgation of regulations governing execution; amount of grants

Grants and contracts made under this subchapter shall be made in accordance with such regulations as the Secretary may promulgate. The amount of any grant under any section of this subchapter shall be determined by the Secretary; except that no grant under any such section for any program or project for a fiscal year beginning after June 30, 1975, may be made for less than 90 per centum of its costs (as determined under regulations of the Secretary) unless the grant is to be made for a program or project for which a grant was made (under the same section) for the fiscal year ending June 30, 1975, for less than 90 per centum of its costs (as so determined), in which case a grant under such section for that program or project for a fiscal year beginning after that date may be made for a percentage which shall not be less than the percentage of its costs for which the fiscal year 1975 grant was made.

(b) Payment of grants

Grants under this subchapter shall be payable in such installments and subject to such conditions as the Secretary may determine to be appropriate to assure that such grants will be effectively utilized for the purposes for which made.

(c) Prerequisites; "low-income family" defined

A grant may be made or contract entered into under section 300 or 300a of this title for a family planning service project or program only upon assurances satisfactory to the Secretary that—

(1) priority will be given in such project or program to the furnishing of such services to persons from low-income families; and

(2) no charge will be made in such project or program for services provided to any person from a low-income family except to the extent that payment will be made by a third party (including a government agency) which is authorized or is under legal obligation to pay such charge.

For purposes of this subsection, the term "low-income family" shall be defined by the Secretary in accordance with such criteria as he may prescribe so as to insure that economic status shall not be a deterrent to participation in the programs assisted under this subchapter.

(d) Suitability of informational or educational materials

(1) A grant may be made or a contract entered into under section 300 or 300a–3 of this title only upon assurances satisfactory to the Secretary that informational or educational materials developed or made available under the grant or contract will be suitable for the purposes of this subchapter and for the population or community to which they are to be made available, taking into account the educational and cultural background of the individuals to whom such materials are addressed and the standards of such population or community with respect to such materials.

(2) In the case of any grant or contract under section 300 of this title, such assurances shall provide for the review and approval of the suitability of such materials, prior to their distribution, by an advisory committee established by the grantee or contractor in accordance with the Secretary's regulations. Such a committee shall include individuals broadly representative of the population or community to which the materials are to be made available.

(July 1, 1944, ch. 373, title X, § 1006, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1507; amended Pub. L. 94–63, title II, § 204(c), (d), July 29, 1975, 89 Stat. 308; Pub. L. 95–613, § 1(a)(2), Nov. 8, 1978, 92 Stat. 3093.)

AMENDMENTS

1978—Pub. L. 95–613 added subsec. (d).

1975—Subsec. (a). Pub. L. 94–63, § 204(c), inserted provisions relating to amount of grants authorized pursuant to sections of this subchapter.

Subsec. (c). Pub. L. 94–63, § 204(d), inserted provision relating to economic status as part of the criteria to be included within definition of "low-income family".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

§ 300a–5. Voluntary participation by individuals; participation not prerequisite for eligibility or receipt of other services and information

The acceptance by any individual of family planning services or family planning or population growth information (including educational materials) provided through financial assistance under this subchapter (whether by grant or contract) shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program of the entity or individual that provided such service or information.

(July 1, 1944, ch. 373, title X, § 1007, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1508.)

§ 300a–6. Prohibition against funding programs using abortion as family planning method

None of the funds appropriated under this subchapter shall be used in programs where abortion is a method of family planning.

(July 1, 1944, ch. 373, title X, § 1008, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1508.)

§ 300a–6a. Repealed. Pub. L. 105–362, title VI, § 601(a)(1)(G), Nov. 10, 1998, 112 Stat. 3285

Section, act July 1, 1944, ch. 373, title X, § 1009, as added Pub. L. 94–63, title II, § 203(a), July 29, 1975, 89 Stat. 307; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 104–66, title I, § 1062(c), Dec. 21, 1995, 109 Stat. 720, related to plans and reports concerning family planning services.

§ 300a–7. Sterilization or abortion

(a) Omitted

(b) Prohibition of public officials and public authorities from imposition of certain requirements contrary to religious beliefs or moral convictions

The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service

Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6000 et seq.] by any individual or entity does not authorize any court or any public official or other public authority to require—

(1) such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

(2) such entity to—

(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

(B) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedures or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

(c) Discrimination prohibition

(1) No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6000 et seq.] after June 18, 1973, may—

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel,

because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

(2) No entity which receives after July 12, 1974, a grant or contract for biomedical or behavioral research under any program administered by the Secretary of Health and Human Services may—

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel,

because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity.

(d) Individual rights respecting certain requirements contrary to religious beliefs or moral convictions

No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.

(e) Prohibition on entities receiving Federal grant, etc., from discriminating against applicants for training or study because of refusal of applicant to participate on religious or moral grounds

No entity which receives, after September 29, 1979, any grant, contract, loan, loan guarantee, or interest subsidy under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15001 et seq.] may deny admission or otherwise discriminate against any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.

(Pub. L. 93–45, title IV, § 401, June 18, 1973, 87 Stat. 95; Pub. L. 93–348, title II, § 214, July 12, 1974, 88 Stat. 353; Pub. L. 96–76, title II, § 208, Sept. 29, 1979, 93 Stat. 583; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 106–402, title IV, § 401(b)(5), Oct. 30, 2000, 114 Stat. 1738.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsecs. (b), (c)(1), and (e), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter (§ 201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Community Mental Health Centers Act, referred to in subsecs. (b), (c)(1), and (e), is title II of Pub. L. 88–164, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560.

The Developmental Disabilities Services and Facilities Construction Act, referred to in subsecs. (b) and (c)(1), is title I of Pub. L. 88–164, Oct. 31, 1963, 77 Stat. 282, as renamed by Pub. L. 91–518, title II, § 207(a), Oct. 30, 1970, 84 Stat. 1327. Title I of Pub. L. 88–164, which was subsequently renamed the Developmental Disabilities Assistance and Bill of Rights Act by Pub. L. 95–602, title V, § 502, Nov. 6, 1978, 92 Stat. 3003, and amended generally by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, was classified generally to chapter 75 (§ 6000 et seq.) of this title, prior to repeal by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. For complete classification of this Act to the Code, see Tables.

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (e), is Pub. L.

106–402, Oct. 30, 2000, 114 Stat. 1677, which is classified principally to chapter 144 (§ 15001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

CODIFICATION

Section was enacted as part of Health Programs Extension Act of 1973, and not as part of Public Health Services Act which comprises this chapter.

Subsec. (a) of this section amended section 601 of Pub. L. 91–296, which is set out as an Availability of Appropriations note under section 201 of this title.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–402 substituted ''or the Developmental Disabilities Assistance and Bill of Rights Act of 2000 may deny'' for ''or the Developmental Disabilities Assistance and Bill of Rights Act may deny''.

1979—Subsec. (e). Pub. L. 96–76 added subsec. (e).

1974—Subsec. (c). Pub. L. 93–348, § 214, designated existing provisions as par. (1), redesignated pars. (1) and (2) of such provisions as subpars. (A) and (B), and added par. (2).

Subsec. (d). Pub. L. 93–348, § 214(b), added subsec. (d).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsecs. (c)(2) and (d), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 300a–8. Penalty for United States, etc., officer or employee coercing or endeavoring to coerce procedure upon beneficiary of Federal program

Any—

(1) officer or employee of the United States,

(2) officer or employee of any State, political subdivision of a State, or any other entity, which administers or supervises the administration of any program receiving Federal financial assistance, or

(3) person who receives, under any program receiving Federal financial assistance, compensation for services,

who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(Pub. L. 94–63, title II, § 205, July 29, 1975, 89 Stat. 308.)

CODIFICATION

Section was enacted as part of the Family Planning and Population Research Act of 1975, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

SUBCHAPTER VIII–A—ADOLESCENT PREGNANCIES

PART A—GRANT PROGRAM

§§ 300a–21 to 300a–28. Repealed. Pub. L. 97–35, title IX, § 955(b), title XXI, § 2193(f), Aug. 13, 1981, 95 Stat. 592, 828

Section 300a–21, Pub. L. 95–626, title VI, § 601, Nov. 10, 1978, 92 Stat. 3595, set forth Congressional findings and declaration of purpose with respect to grant program.

Section 300a–22, Pub. L. 95–626, title VI, § 602, Nov. 10, 1978, 92 Stat. 3595; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, defined terms ''Secretary'', ''eligible person'', ''eligible grant recipient'', ''core services'', ''supplemental services'', ''adolescent parent''.

Section 300a–23, Pub. L. 95–626, title VI, § 603, Nov. 10, 1978, 92 Stat. 3596, set forth authority to make grants.

Section 300a–24, Pub. L. 95–626, title VI, § 604, Nov. 10, 1978, 92 Stat. 3597, set forth authorized uses for grants.

Section 300a–25, Pub. L. 95–626, title VI, § 605, Nov. 10, 1978, 92 Stat. 3597, set forth provisions respecting priorities, amounts, and duration of grants.

Section 300a–26, Pub. L. 95–626, title VI, § 606, Nov. 10, 1978, 92 Stat. 3598, set forth application, etc., requirements for grant approval.

Section 300a–27, Pub. L. 95–626, title VI, § 607, Nov. 10, 1978, 92 Stat. 3601; Pub. L. 97–35, title XXI, § 2193(a)(2), Aug. 13, 1981, 95 Stat. 827, authorized appropriations from fiscal year ending Sept. 30, 1979, through fiscal year ending Sept. 30, 1982.

Section 300a–28, Pub. L. 95–626, title VI, § 608, Nov. 10, 1978, 92 Stat. 3601, set forth prohibition respecting use of funds to pay for performance of abortion.

See section 300z et seq. of this title.

EFFECTIVE DATE OF REPEAL

Section 955(b) of Pub. L. 97–35 provided that the repeal of sections 300a–21 to 300a–28 of this title is effective Oct. 1, 1981.

For effective date, savings, and transitional provisions relating to the repeal of sections 321a–21 to 321a–28 of this title by section 2193(f) of Pub. L. 97–35, and relating to the amendment of section 300a–27 of this title by section 2193(a)(2) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

STUDY OF ADOLESCENT PREGNANCY; REPORT NOT LATER THAN NOVEMBER 10, 1979

Pub. L. 95–626, title VIII, § 801, Nov. 10, 1978, 92 Stat. 3602, which provided for a study of the problem of adolescent pregnancies and the effectiveness of existing programs and a report, was repealed by section 955(b) of Pub. L. 97–35.

§ 300a–29. Omitted

CODIFICATION

Section, Pub. L. 95–626, title III, § 301, Nov. 10, 1978, 92 Stat. 3590, provided that grants or contracts made under this subchapter would be considered to have been made under this chapter for the purposes of sections 300*l*–2(e) and 300m–3(c)(6) of this title.

PART B—IMPROVING COORDINATION OF FEDERAL AND STATE PROGRAMS

§ 300a–41. Repealed. Pub. L. 97–35, title IX, § 955(b), title XXI, § 2193(f), Aug. 13, 1981, 95 Stat. 592, 828

Section, Pub. L. 95–626, title VII, § 701, Nov. 10, 1978, 92 Stat. 3601; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to improving coordination of Federal and State policies and programs.

EFFECTIVE DATE OF REPEAL

Section 955(b) of Pub. L. 97–35 provided that the repeal of this section is effective Oct. 1, 1981.

For effective date, savings, and transitional provisions relating to the repeal of this section by section 2193(f) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

SUBCHAPTER IX—GENETIC DISEASES, HEMOPHILIA PROGRAMS, AND SUDDEN INFANT DEATH SYNDROME

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(b)(3), Apr. 22, 1976, 90 Stat. 409, substituted ''GENETIC DISEASES'' for ''GENETIC BLOOD DISORDERS'' and inserted ''HEMOPHILIA PROGRAMS'' in subchapter heading.

1974—Pub. L. 93–270, § 3(b), Apr. 22, 1974, 88 Stat. 92, inserted ''SUDDEN INFANT DEATH SYNDROME'' in subchapter heading.

1972—Pub. L. 92–414, § 4(1), Aug. 29, 1972, 86 Stat. 652, substituted ''GENETIC BLOOD DISORDERS'' for ''SICKLE CELL ANEMIA PROGRAM'' as subchapter heading and designated former subchapter heading as part A, substituting ''Programs'' for ''Program''.

PART A—GENETIC DISEASES

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407, substituted ''Genetic Diseases'' for ''Sickle Cell Anemia Programs'' in part A heading.

§ 300b. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, § 1101, as added Apr. 22, 1976, Pub. L. 94–278, title IV, § 403(a), 90 Stat. 407; amended Nov. 10, 1978, Pub. L. 95–626, title II, § 205(b), (d)(2), (e), 92 Stat. 3583, 3584; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(B), 95 Stat. 826; Jan. 4, 1983, Pub. L. 97–414, § 8(*o*), 96 Stat. 2061, related to testing, counseling, information and education programs.

A prior section 300b, act July 1, 1944, ch. 373, title XI, § 1101, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 137; amended Aug. 29, 1972, Pub. L. 92–414, § 4(2), 86 Stat. 652, authorized Secretary to make grants and enter contracts with public and nonprofit private entities with respect to establishment of voluntary sickle cell anemia screening and counseling programs and to develop and disseminate informational and educational materials relating to sickle cell anemia, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

EFFECTIVE DATE OF 1981 AMENDMENT AND REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to the amendment and repeal of this section by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300b–1. Research project grants and contracts

In carrying out section 241 of this title, the Secretary may make grants to public and nonprofit private entities, and may enter into contracts with public and private entities and individuals, for projects for (1) basic or applied research leading to the understanding, diagnosis, treatment, and control of genetic diseases, (2) planning, establishing, demonstrating, and developing special programs for the training of genetic counselors, social and behavioral scientists, and other health professionals, (3) the development of programs to educate practicing physicians, other health professionals, and the public regarding the nature of genetic processes, the inheritance patterns of genetic diseases, and the means, methods, and facilities available to diagnose, control, counsel, and treat genetic diseases, and (4) the development of counseling and testing programs and other programs for the diagnosis, control, and treatment of genetic diseases. In making grants and entering into contracts for projects described in clause (1) of the preceding sentence, the Secretary shall give priority to applications for such grants or contracts which are submitted for research on sickle cell anemia and for research on Cooley's anemia.

(July 1, 1944, ch. 373, title XI, § 1102, as added Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 408.)

PRIOR PROVISIONS

A prior section 300b–1, act July 1, 1944, ch. 373, title XI, § 1102, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 138, authorized Secretary to make grants and enter contracts with public and private entities and individuals for projects concerned with research, research training in diagnosis, treatment and control of sickle cell anemia, informational and educational programs with respect to sickle cell anemia and development of counseling and testing programs, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

EFFECTIVE DATE

Section 403(c) of Pub. L. 94–278 provided that: ''The amendments made by subsections (a) and (b) [see section 401 of Pub. L. 94–278, set out as a Short Title of 1976 Amendment note under section 201 of this title] shall take effect July 1, 1976.''

SHORT TITLE OF 1976 AMENDMENT

For short title of title IV of Pub. L. 94–278, which enacted this part, omitted former part B of this subchapter, redesignated former parts C and D of this subchapter as parts B and C of this subchapter, respectively, as the ''National Sickle Cell Anemia, Cooley's Anemia, Tay-Sachs, and Genetic Diseases Act'', see section 401 of Pub. L. 94–278, set out as a note under section 201 of this title.

DEMONSTRATION PROGRAM FOR THE DEVELOPMENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS FOR THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE

Pub. L. 108–357, title VII, § 712(c), Oct. 22, 2004, 118 Stat. 1559, provided that:

''(1) AUTHORITY TO CONDUCT DEMONSTRATION PROGRAM.—

''(A) IN GENERAL.—The Administrator, through the Bureau of Primary Health Care and the Maternal and Child Health Bureau, shall conduct a demonstration program by making grants to up to 40 eligible entities for each fiscal year in which the program is conducted under this section [probably means this subsection] for the purpose of developing and establishing systemic mechanisms to improve the prevention and treatment of Sickle Cell Disease, including through—

''(i) the coordination of service delivery for individuals with Sickle Cell Disease;

''(ii) genetic counseling and testing;

''(iii) bundling of technical services related to the prevention and treatment of Sickle Cell Disease;

''(iv) training of health professionals; and

''(v) identifying and establishing other efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with Sickle Cell Disease.

''(B) GRANT AWARD REQUIREMENTS.—

''(i) GEOGRAPHIC DIVERSITY.—The Administrator shall, to the extent practicable, award grants under

this section [probably means this subsection] to eligible entities located in different regions of the United States.

''(ii) PRIORITY.—In awarding grants under this subsection, the Administrator shall give priority to awarding grants to eligible entities that are—

''(I) Federally-qualified health centers that have a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health; or

''(II) Federally-qualified health centers that intend to develop a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health.

''(2) ADDITIONAL REQUIREMENTS.—An eligible entity awarded a grant under this subsection shall use funds made available under the grant to carry out, in addition to the activities described in paragraph (1)(A), the following activities:

''(A) To facilitate and coordinate the delivery of education, treatment, and continuity of care for individuals with Sickle Cell Disease under—

''(i) the entity's collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity that works with individuals who have Sickle Cell Disease;

''(ii) the Sickle Cell Disease newborn screening program for the State in which the entity is located; and

''(iii) the maternal and child health program under title V of the Social Security Act (42 U.S.C. 701 et seq.) for the State in which the entity is located.

''(B) To train nursing and other health staff who provide care for individuals with Sickle Cell Disease.

''(C) To enter into a partnership with adult or pediatric hematologists in the region and other regional experts in Sickle Cell Disease at tertiary and academic health centers and State and county health offices.

''(D) To identify and secure resources for ensuring reimbursement under the medicaid program, State children's health insurance program, and other health programs for the prevention and treatment of Sickle Cell Disease.

''(3) NATIONAL COORDINATING CENTER.—

''(A) ESTABLISHMENT.—The Administrator shall enter into a contract with an entity to serve as the National Coordinating Center for the demonstration program conducted under this subsection.

''(B) ACTIVITIES DESCRIBED.—The National Coordinating Center shall—

''(i) collect, coordinate, monitor, and distribute data, best practices, and findings regarding the activities funded under grants made to eligible entities under the demonstration program;

''(ii) develop a model protocol for eligible entities with respect to the prevention and treatment of Sickle Cell Disease;

''(iii) develop educational materials regarding the prevention and treatment of Sickle Cell Disease; and

''(iv) prepare and submit to Congress a final report that includes recommendations regarding the effectiveness of the demonstration program conducted under this subsection and such direct outcome measures as—

''(I) the number and type of health care resources utilized (such as emergency room visits, hospital visits, length of stay, and physician visits for individuals with Sickle Cell Disease); and

''(II) the number of individuals that were tested and subsequently received genetic counseling for the sickle cell trait.

''(4) APPLICATION.—An eligible entity desiring a grant under this subsection shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require.

''(5) DEFINITIONS.—In this subsection:

''(A) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Health Resources and Services Administration.

''(B) ELIGIBLE ENTITY.—The term 'eligible entity' means a Federally-qualified health center, a nonprofit hospital or clinic, or a university health center that provides primary health care, that—

''(i) has a collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity with experience in working with individuals who have Sickle Cell Disease; and

''(ii) demonstrates to the Administrator that either the Federally-qualified health center, the nonprofit hospital or clinic, the university health center, the organization or entity described in clause (i), or the experts described in paragraph (2)(C), has at least 5 years of experience in working with individuals who have Sickle Cell Disease.

''(C) FEDERALLY-QUALIFIED HEALTH CENTER.—The term 'Federally-qualified health center' has the meaning given that term in section 1905(*l*)(2)(B) of the Social Security Act (42 U.S.C. 1396d(*l*)(2)(B)).

''(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, $10,000,000 for each of fiscal years 2005 through 2009.''

CONGRESSIONAL DECLARATION OF PURPOSE

Section 402 of Pub. L. 94–278, as amended by Pub. L. 95–626, title II, § 205(a), Nov. 10, 1978, 92 Stat. 3583, provided that: ''In order to preserve and protect the health and welfare of all citizens, it is the purpose of this title [see section 401 of Pub. L. 94–278, set out as a Short Title of 1976 Amendment note under section 201 of this title] to establish a national program to provide for basic and applied research, research training, testing, counseling, and information and education programs with respect to genetic diseases, and genetic conditions, such as Sickle Cell anemia, Cooley's Anemia, Tay–Sachs disease, cystic fibrosis, dysautonomia, hemophilia, retinitis pigmentosa, Huntington's chorea, muscular dystrophy, and genetic conditions leading to mental retardation or genetically caused mental disorders.''

§ 300b–2. Voluntary participation by individuals

The participation by any individual in any program or portion thereof under this part shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program.

(July 1, 1944, ch. 373, title XI, § 1103, as added Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 408.)

PRIOR PROVISIONS

A prior section 300b–2, act July 1, 1944, ch. 373, title XI, § 1103, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 138; amended Aug. 29, 1972, Pub. L. 92–414, § 4(3), 86 Stat. 652, was identical to this section, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

§ 300b–3. Application; special consideration to prior sickle cell anemia grant recipients

(a) Manner of submission; contents

A grant or contract under this part may be made upon application submitted to the Secretary at such time, in such manner, and containing and accompanied by such information, as the Secretary may require, including assurances for an evaluation whether performed by the applicant or by the Secretary. Such grant or

contract may be made available on less than a statewide or regional basis. Each applicant shall—

(1) provide that the programs and activities for which assistance under this part is sought will be administered by or under the supervision of the applicant;

(2) provide for strict confidentiality of all test results, medical records, and other information regarding testing, diagnosis, counseling, or treatment of any person treated, except for (A) such information as the patient (or his guardian) gives informed consent to be released, or (B) statistical data compiled without reference to the identity of any such patient;

(3) provide for community representation where appropriate in the development and operation of voluntary genetic testing or counseling programs funded by a grant or contract under this part; and

(4) establish fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting of Federal funds paid to the applicant under this part.

(b) Considerations for grants and contracts under section 300b–1 of this title

In making grants and entering into contracts for any fiscal year under section 241 of this title for projects described in section 300b–1 of this title the Secretary shall give special consideration to applications from entities that received grants from, or entered into contracts with, the Secretary for the preceding fiscal year for the conduct of comprehensive sickle cell centers or sickle cell screening and education clinics.

(July 1, 1944, ch. 373, title XI, § 1104, as added Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 408; amended Pub. L. 95–626, title II, § 205(c), Nov. 10, 1978, 92 Stat. 3584; Pub. L. 97–35, title XXI, § 2193(b)(2), (3), Aug. 13, 1981, 95 Stat. 827.)

PRIOR PROVISIONS

A prior section 300b–3, act July 1, 1944, ch. 373, title XI, § 1104, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 138; amended Aug. 29, 1972, Pub. L. 92–414, § 4(3), 86 Stat. 652, authorized grants to be made upon application to Secretary and required supervision of programs by applicant, confidentiality of test results, medical records and other information obtained from treated person, community representation in programs, assurances by applicant that priority will be given to persons of child bearing years, and demonstration by applicant of proper fiscal control and accounting procedures, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

AMENDMENTS

1981—Subsec. (a)(4), (5). Pub. L. 97–35, § 2193(b)(2), redesignated par. (5) as (4). Former par. (4), which related to testing and counseling requirements, was struck out.

Subsec. (b). Pub. L. 97–35, § 2193(b)(3), struck out subsec. (b) which related to grants and contracts under section 300b of this title. Former subsec. (c) was redesignated (b) and, as so redesignated, struck out reference to section 300b of this title.

Subsec. (c). Pub. L. 97–35, § 2193(b)(3), redesignated subsec. (c) as (b).

Subsec. (d). Pub. L. 97–35, § 2193(b)(3), struck out subsec. (d) which related to procedures applicable to grants, etc., under section 300b of this title.

1978—Subsec. (a). Pub. L. 95–626, § 205(c)(1), inserted requirement that application contain assurances for an evaluation whether performed by applicant or by Secretary and that grant or contract be made available on less than a statewide or regional basis.

Subsec. (d). Pub. L. 95–626, § 205(c)(2), added subsec. (d).

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300b–4. Public Health Service facilities

The Secretary shall establish a program within the Service to provide voluntary testing, diagnosis, counseling, and treatment of individuals respecting genetic diseases. Services under such program shall be made available through facilities of the Service to persons requesting such services, and the program shall provide appropriate publicity of the availability and voluntary nature of such services.

(July 1, 1944, ch. 373, title XI, § 1105, as added Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 409.)

PRIOR PROVISIONS

A prior section 300b–4, act July 1, 1944, ch. 373, title XI, § 1105, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 139, authorized Secretary to establish a program within the Public Health Service with respect to sickle cell anemia with such program to be made available through facilities of Public Health Service, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

§ 300b–5. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(4), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, § 1106, as added Apr. 22, 1976, Pub. L. 94–278, title IV, § 403(a), 90 Stat. 409, related to an annual report to President and Congress on administration of this part.

A prior section 300b–5, act July 1, 1944, ch. 373, title XI, § 1106, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 139; amended Aug. 29, 1972, Pub. L. 92–414, § 4(3), 86 Stat. 652, related to an annual report to President and Congress on administration of this part, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

EFFECTIVE DATE OF REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to repeal by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300b–6. Applied technology

The Secretary, acting through an identifiable administrative unit, shall—

(1) conduct epidemiological assessments and surveillance of genetic diseases to define the scope and extent of such diseases and the need for programs for the diagnosis, treatment, and control of such diseases, screening for such diseases, and the counseling of persons with such diseases;

(2) on the basis of the assessments and surveillance described in paragraph (1), develop for use by the States programs which combine

in an effective manner diagnosis, treatment, and control of such diseases, screening for such diseases, and counseling of persons with such diseases; and

(3) on the basis of the assessments and surveillance described in paragraph (1), provide technical assistance to States to implement the programs developed under paragraph (2) and train appropriate personnel for such programs.

In carrying out this section, the Secretary may, from funds allotted for use under section 702(a) of this title, make grants to or contracts with public or nonprofit private entities (including grants and contracts for demonstration projects).

(July 1, 1944, ch. 373, title XI, § 1107, as added Pub. L. 95–626, title II, § 205(d)(1), Nov. 10, 1978, 92 Stat. 3584; amended Pub. L. 97–35, title XXI, § 2193(b)(5), Aug. 13, 1981, 95 Stat. 827.)

AMENDMENTS

1981—Pub. L. 97–35 substituted provisions relating to allotments under section 702(a) of this title for provisions relating to appropriations under section 300b(b) of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300b–7. Tourette Syndrome

(a) In general

The Secretary shall develop and implement outreach programs to educate the public, health care providers, educators and community based organizations about the etiology, symptoms, diagnosis and treatment of Tourette Syndrome, with a particular emphasis on children with Tourette Syndrome. Such programs may be carried out by the Secretary directly and through awards of grants or contracts to public or nonprofit private entities.

(b) Certain activities

Activities under subsection (a) of this section shall include—

(1) the production and translation of educational materials, including public service announcements;

(2) the development of training material for health care providers, educators and community based organizations; and

(3) outreach efforts directed at the misdiagnosis and underdiagnosis of Tourette Syndrome in children and in minority groups.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XI, § 1108, as added Pub. L. 106–310, div. A, title XXIII, § 2301, Oct. 17, 2000, 114 Stat. 1157.)

§ 300b–8. Improved newborn and child screening for heritable disorders

(a) In general

The Secretary shall award grants to eligible entities to enhance, improve or expand the ability of State and local public health agencies to provide screening, counseling or health care services to newborns and children having or at risk for heritable disorders.

(b) Use of funds

Amounts provided under a grant awarded under subsection (a) of this section shall be used to—

(1) establish, expand, or improve systems or programs to provide screening, counseling, testing or specialty services for newborns and children at risk for heritable disorders;

(2) establish, expand, or improve programs or services to reduce mortality or morbidity from heritable disorders;

(3) establish, expand, or improve systems or programs to provide information and counseling on available therapies for newborns and children with heritable disorders;

(4) improve the access of medically underserved populations to screening, counseling, testing and specialty services for newborns and children having or at risk for heritable disorders; or

(5) conduct such other activities as may be necessary to enable newborns and children having or at risk for heritable disorders to receive screening, counseling, testing or specialty services, regardless of income, race, color, religion, sex, national origin, age, or disability.

(c) Eligible entities

To be eligible to receive a grant under subsection (a) of this section an entity shall—

(1) be a State or political subdivision of a State, or a consortium of two or more States or political subdivisions of States; and

(2) prepare and submit to the Secretary an application that includes—

(A) a plan to use amounts awarded under the grant to meet specific health status goals and objectives relative to heritable disorders, including attention to needs of medically underserved populations;

(B) a plan for the collection of outcome data or other methods of evaluating the degree to which amounts awarded under this grant will be used to achieve the goals and objectives identified under subparagraph (A);

(C) a plan for monitoring and ensuring the quality of services provided under the grant;

(D) an assurance that amounts awarded under the grant will be used only to implement the approved plan for the State;

(E) an assurance that the provision of services under the plan is coordinated with services provided under programs implemented in the State under title V, XVIII, XIX, XX, or XXI of the Social Security Act [42 U.S.C. 701 et seq., 1395 et seq., 1396 et seq. 1397 et seq., 1397aa et seq.] (subject to Federal regulations applicable to such programs) so that the coverage of services under such titles is not substantially diminished by the use of granted funds; and

(F) such other information determined by the Secretary to be necessary.

(d) Limitation

An eligible entity may not use amounts received under this section to—

(1) provide cash payments to or on behalf of affected individuals;

(2) provide inpatient services;

(3) purchase land or make capital improvements to property; or

(4) provide for proprietary research or training.

(e) Voluntary participation

The participation by any individual in any program or portion thereof established or operated with funds received under this section shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, another Federal or State program.

(f) Supplement not supplant

Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities of the type described in this section.

(g) Publication

(1) In general

An application submitted under subsection (c)(2) of this section shall be made public by the State in such a manner as to facilitate comment from any person, including through hearings and other methods used to facilitate comments from the public.

(2) Comments

Comments received by the State after the publication described in paragraph (1) shall be addressed in the application submitted under subsection (c)(2) of this section.

(h) Technical assistance

The Secretary shall provide to entities receiving grants under subsection (a) of this section such technical assistance as may be necessary to ensure the quality of programs conducted under this section.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XI, § 1109, as added Pub. L. 106–310, div. A, title XXVI, § 2601, Oct. 17, 2000, 114 Stat. 1164.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XVIII, XIX, XX, and XXI of the Act are classified generally to subchapters V (§ 701 et seq.), XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), XX (§ 1397 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 300b–9. Evaluating the effectiveness of newborn and child screening programs

(a) In general

The Secretary shall award grants to eligible entities to provide for the conduct of demonstration programs to evaluate the effectiveness of screening, counseling or health care services in reducing the morbidity and mortality caused by heritable disorders in newborns and children.

(b) Demonstration programs

A demonstration program conducted under a grant under this section shall be designed to evaluate and assess, within the jurisdiction of the entity receiving such grant—

(1) the effectiveness of screening, counseling, testing or specialty services for newborns and children at risk for heritable disorders in reducing the morbidity and mortality associated with such disorders;

(2) the effectiveness of screening, counseling, testing or specialty services in accurately and reliably diagnosing heritable disorders in newborns and children; or

(3) the availability of screening, counseling, testing or specialty services for newborns and children at risk for heritable disorders.

(c) Eligible entities

To be eligible to receive a grant under subsection (a) of this section an entity shall be a State or political subdivision of a State, or a consortium of two or more States or political subdivisions of States.

(July 1, 1944, ch. 373, title XI, § 1110, as added Pub. L. 106–310, div. A, title XXVI, § 2601, Oct. 17, 2000, 114 Stat. 1165.)

§ 300b–10. Advisory Committee on Heritable Disorders in Newborns and Children

(a) Establishment

The Secretary shall establish an advisory committee to be known as the ''Advisory Committee on Heritable Disorders in Newborns and Children'' (referred to in this section as the ''Advisory Committee'').

(b) Duties

The Advisory Committee shall—

(1) provide advice and recommendations to the Secretary concerning grants and projects awarded or funded under section 300b–8 of this title;

(2) provide technical information to the Secretary for the development of policies and priorities for the administration of grants under section 300b–8 of this title; and

(3) provide such recommendations, advice or information as may be necessary to enhance, expand or improve the ability of the Secretary to reduce the mortality or morbidity from heritable disorders.

(c) Membership

(1) In general

The Secretary shall appoint not to exceed 15 members to the Advisory Committee. In appointing such members, the Secretary shall ensure that the total membership of the Advisory Committee is an odd number.

(2) Required members

The Secretary shall appoint to the Advisory Committee under paragraph (1)—

(A) the Administrator of the Health Resources and Services Administration;

(B) the Director of the Centers for Disease Control and Prevention;

(C) the Director of the National Institutes of Health;

(D) the Director of the Agency for Healthcare Research and Quality;

(E) medical, technical, or scientific professionals with special expertise in heritable disorders, or in providing screening, counseling, testing or specialty services for newborns and children at risk for heritable disorders;

(F) members of the public having special expertise about or concern with heritable disorders; and

(G) representatives from such Federal agencies, public health constituencies, and medical professional societies as determined to be necessary by the Secretary, to fulfill the duties of the Advisory Committee, as established under subsection (b) of this section.

(July 1, 1944, ch. 373, title XI, § 1111, as added Pub. L. 106–310, div. A, title XXVI, § 2601, Oct. 17, 2000, 114 Stat. 1166.)

PRIOR PROVISIONS

Prior sections 300c to 300c–4 were repealed by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

Section 300c, act July 1, 1944, ch. 373, title XI, § 1111, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 650, authorized Secretary to make grants and enter contracts with public and private entities for establishment of screening, treatment, and counseling programs with respect to Cooley's Anemia.

Section 300c–1, act July 1, 1944, ch. 373, title XI, § 1112, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 651, required that any participation by an individual in any Cooley's Anemia programs should be on a purely voluntary basis.

Section 300c–2, act July 1, 1944, ch. 373, title XI, § 1113, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 651, provided for making of grant upon application to Secretary and listed certain requirements to be met by applicant.

Section 300c–3, act July 1, 1944, ch. 373, title XI, § 1114, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 652, authorized Secretary to establish a program with Public Health Service to provide for screening, counseling, and treatment with respect to Cooley's Anemia.

Section 300c–4, act July 1, 1944, ch. 373, title XI, § 1115, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 652, provided for Secretary's submission of a report to President for transmittal to Congress annually.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART B—SUDDEN INFANT DEATH SYNDROME

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(b)(2), Apr. 22, 1976, 90 Stat. 409, redesignated part C heading as part B.

§ 300c–11. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, § 1121, as added Apr. 22, 1974, Pub. L. 93–270, § 3(a), 88 Stat. 91; amended Apr. 22, 1976, Pub. L. 94–278, title IV, § 403(b)(1), 90 Stat. 409; S. Res. 4, Feb. 4, 1977; Aug. 1, 1977, Pub. L. 95–83, title III, § 306(a), 91 Stat. 389; Dec. 19, 1977, Pub. L. 95–215, § 8(a), 91 Stat. 1507; Nov. 8, 1978, Pub. L. 95–613, § 2, 92 Stat. 3094; Dec. 12, 1979, Pub. L. 96–142, title II, § 202, 93 Stat. 1070; H. Res. 549, Mar. 25, 1980; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(C), 95 Stat. 827, related to sudden infant death syndrome counseling, information, educational, and statistical programs.

EFFECTIVE DATE OF 1981 AMENDMENT AND REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to the amendment and repeal of this section by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300c–12. Sudden infant death syndrome research

From the sums appropriated to the National Institute of Child Health and Human Development, the Secretary shall assure that there are applied to research of the type described in subparagraphs (A) and (B) of subsection (b)(1)[1] of this section such amounts each year as will be adequate, given the leads and findings then available from such research, in order to make maximum feasible progress toward identification of infants at risk of sudden infant death syndrome and prevention of sudden infant death syndrome.

(July 1, 1944, ch. 373, title XI, § 1122, as added Pub. L. 96–142, title II, § 202, Dec. 12, 1979, 93 Stat. 1072; amended Pub. L. 99–158, § 3(a)(6), Nov. 20, 1985, 99 Stat. 879; Pub. L. 103–437, § 15(a)(1), Nov. 2, 1994, 108 Stat. 4591; Pub. L. 109–482, title I, § 104(b)(2)(B), Jan. 15, 2007, 120 Stat. 3693.)

REFERENCES IN TEXT

Subsection (b), referred to in text, was repealed by Pub. L. 109–482, title I, § 104(b)(2)(B)(ii), Jan. 15, 2007, 120 Stat. 3693. Prior to repeal, subparagraphs (A) and (B) of subsection (b)(1) read as follows:

''(A) the (i) number of applications approved by the Secretary in the fiscal year reported on for grants and contracts under this chapter for research which relates specifically to sudden infant death syndrome, (ii) total amount requested under such applications, (iii) number of such applications for which funds were provided in such fiscal year, and (iv) total amount of such funds; and

''(B) the (i) number of applications approved by the Secretary in such fiscal year for grants and contracts under this chapter for research which relates generally to sudden infant death syndrome, including high-risk pregnancy and high-risk infancy research which directly relates to sudden infant death syndrome, (ii) relationship of the high-risk pregnancy and high-risk infancy research to sudden infant death syndrome, (iii) total amount requested under such applications, (iv) number of such applications for which funds were provided in such fiscal year, and (v) total amount of such funds.''

[1] See References in Text note below.

AMENDMENTS

2007—Pub. L. 109–482 struck out subsec. (a) designation before ''From the sums'' and subsecs. (b) and (c) which related to annual report on data relating to applications for grants and contracts for research on sudden infant death syndrome and annual estimate of amounts requested for such research.

1994—Subsecs. (b)(1), (c). Pub. L. 103–437 substituted ''Energy and Commerce'' for ''Interstate and Foreign Commerce''.

1985—Subsec. (a). Pub. L. 99–158 struck out ''under section 289d of this title'' before '', the Secretary''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

PART C—HEMOPHILIA PROGRAMS

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(b)(2), Apr. 22, 1976, 90 Stat. 409, redesignated part D heading as part C.

§ 300c–21. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, § 1131, as added July 29, 1975, Pub. L. 94–63, title VI, § 606, 89 Stat. 350; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 306(b), 91 Stat. 389; Nov. 10, 1978, Pub. L. 95–626, title II, § 206(a), 92 Stat. 3584; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(D), 95 Stat. 827, related to comprehensive hemophilia diagnostic and treatment centers.

EFFECTIVE DATE OF 1981 AMENDMENT AND REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to the amendment and repeal of this section by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300c–22. Blood-separation centers

(a) Grants and contracts with public and nonprofit private entities for projects to develop and expand existing facilities; definitions

The Secretary may make grants to and enter into contracts with public and nonprofit private entities for projects to develop and expand, within existing facilities, blood-separation centers to separate and make available for distribution blood components to providers of blood services and manufacturers of blood fractions. For purposes of this section—

(1) the term ''blood components'' means those constituents of whole blood which are used for therapy and which are obtained by physical separation processes which result in licensed products such as red blood cells, platelets, white blood cells, AHF-rich plasma, fresh-frozen plasma, cryoprecipitate, and single unit plasma for infusion; and

(2) the term ''blood fractions'' means those constituents of plasma which are used for therapy and which are obtained by licensed fractionation processes presently used in manufacturing which result in licensed products such as normal serum albumin, plasma, protein fraction, prothrombin complex, fibrinogen, AHF concentrate, immune serum globulin, and hyperimmune globulins.

(b) Grants for alleviation of insufficient supplies of blood fractions

In the event the Secretary finds that there is an insufficient supply of blood fractions available to meet the needs for treatment of persons suffering from hemophilia, and that public and other nonprofit private centers already engaged in the production of blood fractions could alleviate such insufficiency with assistance under this subsection, he may make grants not to exceed $500,000 to such centers for the purposes of alleviating the insufficiency.

(c) Approval of application as prerequisite for grant or contract; form, manner of submission, and contents of application

No grant or contract may be made under subsection (a) or (b) of this section unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information as the Secretary shall by regulation prescribe.

(d) Nonapplicability of statutory provisions to contracts

Contracts may be entered into under subsection (a) of this section without regard to section 3324(a) and (b) of title 31 and section 5 of title 41.

(e) Authorization of appropriations

For the purpose of making payments under grants and contracts under subsections (a) and (b) of this section, there are authorized to be appropriated $4,000,000 for fiscal year 1976, $5,000,000 for the fiscal year ending September 30, 1977, $3,450,000 for the fiscal year ending September 30, 1978, $2,500,000 for the fiscal year ending September 30, 1979, $3,000,000 for the fiscal year ending September 30, 1980, and $3,500,000 for the fiscal year ending September 30, 1981.

(July 1, 1944, ch. 373, title XI, § 1132, as added Pub. L. 94–63, title VI, § 606, July 29, 1975, 89 Stat. 351; amended Pub. L. 95–83, title III, § 306(c), Aug. 1, 1977, 91 Stat. 389; Pub. L. 95–626, title II, § 206(b), Nov. 10, 1978, 92 Stat. 3584.)

CODIFICATION

In subsec. (d), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1978—Subsec. (e). Pub. L. 95–626 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (e). Pub. L. 95–83 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

RICKY RAY HEMOPHILIA RELIEF FUND

Pub. L. 105–369, Nov. 12, 1998, 112 Stat. 3368, as amended by Pub. L. 106–554, § 1(a)(6) [title IX, § 932], Dec. 21, 2000, 114 Stat. 2763, 2763A–585, provided that:

''SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This Act may be cited as the 'Ricky Ray Hemophilia Relief Fund Act of 1998'.

''(b) TABLE OF CONTENTS.—[Omitted.]

''TITLE I—HEMOPHILIA RELIEF FUND

''SEC. 101. RICKY RAY HEMOPHILIA RELIEF FUND.

''(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the 'Ricky Ray Hemophilia Relief Fund', which shall be administered by the Secretary of the Treasury.

''(b) INVESTMENT OF AMOUNTS IN FUND.—Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on and proceeds from any such investment shall be credited to and become part of the Fund.

''(c) AVAILABILITY OF FUND.—Amounts in the Fund shall be available only for disbursement by the Secretary of Health and Human Services under section 103.

''(d) TERMINATION.—The Fund shall terminate upon the expiration of the 5-year period beginning on the date of the enactment of this Act [Nov. 12, 1998]. If all of the amounts in the Fund have not been expended by the end of the 5-year period, investments of amounts in the Fund shall be liquidated, the receipts of such liquidation shall be deposited in the Fund, and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury of the United States.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Fund to carry out this title $750,000,000. There is appropriated to the Fund $475,000,000 for fiscal year 2001, to remain available until expended.

''SEC. 102. COMPASSIONATE PAYMENT RELATING TO INDIVIDUALS WITH BLOOD-CLOTTING DISORDERS AND HIV.

''(a) IN GENERAL.—If the conditions described in subsection (b) are met and if there are sufficient amounts in the Fund to make each payment, the Secretary shall make a single payment of $100,000 from the Fund to any individual who has an HIV infection and who is described in one of the following paragraphs:

''(1) The individual has any form of blood-clotting disorder, such as hemophilia, and was treated with antihemophilic factor at any time during the period beginning on July 1, 1982, and ending on December 31, 1987.

''(2) The individual—

''(A) is the lawful spouse of an individual described in paragraph (1); or

''(B) is the former lawful spouse of an individual described in paragraph (1) and was the lawful spouse of the individual at any time after a date, within the period described in such subparagraph, on which the individual was treated as described in such paragraph and through medical documentation can assert reasonable certainty of transmission of HIV from individual described in paragraph (1).

''(3) The individual acquired the HIV infection through perinatal transmission from a parent who is an individual described in paragraph (1) or (2).

''(b) CONDITIONS.—The conditions described in this subsection are, with respect to an individual, as follows:

''(1) SUBMISSION OF MEDICAL DOCUMENTATION OF HIV INFECTION.—The individual submits to the Secretary written medical documentation that the individual has an HIV infection.

''(2) PETITION.—A petition for the payment is filed with the Secretary by or on behalf of the individual.

''(3) DETERMINATION.—The Secretary determines, in accordance with section 103(b), that the petition meets the requirements of this title.

''SEC. 103. DETERMINATION AND PAYMENT.

''(a) ESTABLISHMENT OF FILING PROCEDURES.—The Secretary of Health and Human Services shall establish procedures under which individuals may submit petitions for payment under this title. The procedures shall include a requirement that each petition filed under this Act include written medical documentation that the relevant individual described in section 102(a)(1) has (or had) a blood-clotting disorder, such as hemophilia, and was treated as described in such section.

''(b) DETERMINATION.—For each petition filed under this title, the Secretary shall determine whether the petition meets the requirements of this title.

''(c) PAYMENT.—

''(1) IN GENERAL.—To the extent there are sufficient amounts in the Fund to cover each payment, the Secretary shall pay, from the Fund, each petition that the Secretary determines meets the requirements of this title in the order received.

''(2) PAYMENTS IN CASE OF DECEASED INDIVIDUALS.—

''(A) IN GENERAL.—In the case of an individual referred to in section 102(a) who is deceased at the time that payment is made under this section on a petition filed by or on behalf of the individual, the payment shall be made as follows:

''(i) If the individual is survived by a spouse who is living at the time of payment, the payment shall be made to such surviving spouse.

''(ii) If the individual is not survived by a spouse described in clause (i), the payment shall be made in equal shares to all children of the individual who are living at the time of the payment.

''(iii) If the individual is not survived by a person described in clause (i) or (ii), the payment shall be made in equal shares to the parents of the individual who are living at the time of the payment.

''(iv) If the individual is not survived by a person described in clause (i), (ii), or (iii), the payment shall revert back to the Fund.

''(B) FILING OF PETITION BY SURVIVOR.—If an individual eligible for payment under section 102(a) dies before filing a petition under this title, a survivor of the individual may file a petition for payment under this title on behalf of the individual if the survivor may receive payment under subparagraph (A).

''(C) DEFINITIONS.—For purposes of this paragraph:

''(i) The term 'spouse' means an individual who was lawfully married to the relevant individual at the time of death.

''(ii) The term 'child' includes a recognized natural child, a stepchild who lived with the relevant individual in a regular parent-child relationship, and an adopted child.

''(iii) The term 'parent' includes fathers and mothers through adoption.

''(3) TIMING OF PAYMENT.—The Secretary may not make a payment on a petition under this title before the expiration of the 120-day period beginning on the date of the enactment of this Act [Nov. 12, 1998] or after the expiration of the 5-year period beginning on the date of the enactment of this Act.

''(d) ACTION ON PETITIONS.—The Secretary shall complete the determination required by subsection (b) regarding a petition not later than 120 days after the date the petition is filed under this title.

''(e) HUMANITARIAN NATURE OF PAYMENT.—This Act does not create or admit any claim of or on behalf of the individual against the United States or against any officer, employee, or agent thereof acting within the scope of employment or agency that relate to an HIV infection arising from treatment with antihemophilic factor, at any time during the period beginning on July 1, 1982, and ending on December 31, 1987. A payment under this Act shall, however, when accepted by or on behalf of the individual, be in full satisfaction of all such claims by or on behalf of that individual.

''(f) ADMINISTRATIVE COSTS NOT PAID FROM FUND.—No costs incurred by the Secretary in carrying out this title may be paid from the Fund or set off against, or otherwise deducted from, any payment made under subsection (c)(1).

''(g) TERMINATION OF DUTIES OF SECRETARY.—The duties of the Secretary under this section shall cease when the Fund terminates.

''(h) TREATMENT OF PAYMENTS UNDER OTHER LAWS.—A payment under subsection (c)(1) to an individual—

''(1) shall be treated for purposes of the Internal Revenue Code of 1986 as damages described in section 104(a)(2) of such Code;

''(2) shall not be included as income or resources for purposes of determining the eligibility of the individual to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits, and such benefits shall not be secondary to, conditioned upon reimbursement from, or subject to any reduction because of receipt of, any such payment; and

''(3) shall not be treated as a third party payment or payment in relation to a legal liability with respect to such benefits and shall not be subject (whether by subrogation or otherwise) to recovery, recoupment, reimbursement, or collection with respect to such benefits (including the Federal or State governments or any entity that provides such benefits under a contract).

''(i) REGULATORY AUTHORITY.—The Secretary may issue regulations necessary to carry out this title.

''(j) TIME OF ISSUANCE OF PROCEDURES.—The Secretary shall, through the promulgation of appropriate regulations, guidelines, or otherwise, first establish the procedures to carry out this title not later than 120 days after the date of the enactment of this Act [Nov. 12, 1998].

''SEC. 104. LIMITATION ON TRANSFER OF RIGHTS AND NUMBER OF PETITIONS.

''(a) RIGHTS NOT ASSIGNABLE OR TRANSFERABLE.—Any right under this title shall not be assignable or transferable.

''(b) ONE PETITION WITH RESPECT TO EACH VICTIM.—With respect to each individual described in paragraph (1), (2), or (3) of section 102(a), the Secretary may not make payment with respect to more than one petition filed in respect to an individual.

''SEC. 105. TIME LIMITATION.

''The Secretary may not make any payment with respect to any petition filed under this title unless the petition is filed within 3 years after the date of the enactment of this Act [Nov. 12, 1998].

''SEC. 106. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT.

''A payment made under section 103(c)(1) shall not be considered as any form of compensation, or reimbursement for a loss, for purposes of imposing liability on the individual receiving the payment, on the basis of such receipt, to repay any insurance carrier for insurance payments or to repay any person on account of worker's compensation payments. A payment under this title shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

''SEC. 107. LIMITATION ON AGENT AND ATTORNEY FEES.

''Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the petition of an individual under this title, more than 5 percent of a payment made under this title on the petition. Any such representative who violates this section shall be fined not more than $50,000.

''SEC. 108. DEFINITIONS.

''For purposes of this title:

''(1) The term 'AIDS' means acquired immune deficiency syndrome.

''(2) The term 'Fund' means the Ricky Ray Hemophilia Relief Fund.

''(3) The term 'HIV' means human immunodeficiency virus.

''(4) Unless otherwise provided, the term 'Secretary' means Secretary of Health and Human Services.

''TITLE II—TREATMENT OF CERTAIN PAYMENTS IN HEMOPHILIA-CLOTTING-FACTOR SUIT UNDER THE SSI PROGRAM

''SEC. 201. TREATMENT OF CERTAIN PAYMENTS IN HEMOPHILIA-CLOTTING-FACTOR SUIT UNDER THE MEDICAID AND SSI PROGRAMS.

''(a) PRIVATE PAYMENTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the payments described in paragraph (2) shall not be considered income or resources in determining eligibility for, or the amount of—

''(A) medical assistance under title XIX of the Social Security Act [section 1396 et seq. of this title]; or

''(B) supplemental security income benefits under title XVI of the Social Security Act [section 1381 et seq. of this title].

''(2) PRIVATE PAYMENTS DESCRIBED.—The payments described in this subsection are—

''(A) payments made from any fund established pursuant to a class settlement in the case of Susan Walker v. Bayer Corporation, et al., 96–C–5024 (N.D. Ill.); and

''(B) payments made pursuant to a release of all claims in a case—

''(i) that is entered into in lieu of the class settlement referred to in subparagraph (A); and

''(ii) that is signed by all affected parties in such case on or before the later of—

''(I) December 31, 1997; or

''(II) the date that is 270 days after the date on which such release is first sent to the persons (or the legal representative of such persons) to whom the payment is to be made.

''(b) GOVERNMENT PAYMENTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the payments described in paragraph (2) shall not be considered income or resources in determining eligibility for, or the amount of supplemental security income benefits under title XVI of the Social Security Act [section 1381 et seq. of this title].

''(2) GOVERNMENT PAYMENTS DESCRIBED.—The payments described in this subsection are payments made from the Fund established pursuant to section 101 of this Act.''

SUBCHAPTER X—TRAUMA CARE

PART A—GENERAL AUTHORITY AND DUTIES OF SECRETARY

§ 300d. Establishment

(a) In general

The Secretary shall, with respect to trauma care—

(1) conduct and support research, training, evaluations, and demonstration projects;

(2) foster the development of appropriate, modern systems of such care through the sharing of information among agencies and individuals involved in the study and provision of such care;

(3) provide to State and local agencies technical assistance; and

(4) sponsor workshops and conferences.

(b) Grants, cooperative agreements, and contracts

The Secretary may make grants, and enter into cooperative agreements and contracts, for the purpose of carrying out subsection (a) of this section.

(c) Administration

The Administrator of the Health Resources and Services Administration shall ensure that

this subchapter is administered by the Division of Trauma and Emergency Medical Systems within such Administration. Such Division shall be headed by a director appointed by the Secretary from among individuals who are knowledgeable by training or experience in the development and operation of trauma and emergency medical systems.

(July 1, 1944, ch. 373, title XII, § 1201, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2916; amended Pub. L. 103–183, title VI, § 601(a), Dec. 14, 1993, 107 Stat. 2238; Pub. L. 104–146, § 12(b), May 20, 1996, 110 Stat. 1373.)

PRIOR PROVISIONS

A prior section 300d, act July 1, 1944, ch. 373, title XII, § 1201, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 594; amended Oct. 12, 1976, Pub. L. 94–484, title IX, § 905(b)(1), 90 Stat. 2325; Oct. 21, 1976, Pub. L. 94–573, §§ 2, 14(2), 90 Stat. 2709, 2718, defined terms applicable to this subchapter, prior to repeal by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 1201 of act July 1, 1944, ch. 373, title XII, formerly § 1205, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 597, was classified to section 300d–4 of this title prior to repeal by Pub. L. 99–117, § 12(e), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–146, in introductory provisions, substituted ''The Secretary shall,'' for ''The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall,''.

1993—Subsec. (a). Pub. L. 103–183, § 601(a)(1), in introductory provisions inserted '', acting through the Administrator of the Health Resources and Services Administration,'' after ''Secretary''.

Subsec. (c). Pub. L. 103–183, § 601(a)(2), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

CONGRESSIONAL STATEMENT OF FINDINGS

Section 2 of Pub. L. 101–590 provided that: ''The Congress finds that—

''(1) the Federal Government and the governments of the States have established a history of cooperation in the development, implementation, and monitoring of integrated, comprehensive systems for the provision of emergency medical services throughout the United States;

''(2) physical trauma is the leading cause of death of Americans between the ages of 1 and 44 and is the third leading cause of death in the general population of the United States;

''(3) physical trauma in the United States results in an aggregate annual cost of $180,000,000,000 in medical expenses, insurance, lost wages, and property damage;

''(4) barriers to the provision of prompt and appropriate emergency medical services exist in many areas of the United States;

''(5) few States and communities have developed and implemented trauma care systems;

''(6) many trauma centers have incurred substantial uncompensated costs in providing trauma care, and such costs have caused many such centers to cease participation in trauma care systems; and

''(7) the number of incidents of physical trauma in the United States is a serious medical and social problem, and the number of deaths resulting from such incidents can be substantially reduced by improving the trauma-care components of the systems for the provision of emergency medical services in the United States.''

§ 300d–1. Repealed. Pub. L. 103–183, title VI, § 601(b)(1), Dec. 14, 1993, 107 Stat. 2238; Pub. L. 105–392, title IV, § 401(a)(1)(A), Nov. 13, 1998, 112 Stat. 3587

Section, act July 1, 1944, ch. 373, title XII, § 1202, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2916, provided for establishment, membership, duties, etc., of Advisory Council on Trauma Care Systems.

A prior section 300d–1, act July 1, 1944, ch. 373, title XII, § 1202, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 595; amended Oct. 21, 1976, Pub. L. 94–573, § 3, 90 Stat. 2709; Dec. 12, 1979, Pub. L. 96–142, title I, § 103, 93 Stat. 1067, set forth provisions relating to grants and contracts for feasibility studies and planning, prior to repeal by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

§ 300d–2. Clearinghouse on Trauma Care and Emergency Medical Services

(a) Establishment

The Secretary shall by contract provide for the establishment and operation of a National Clearinghouse on Trauma Care and Emergency Medical Services (hereafter in this section referred to as the ''Clearinghouse'').

(b) Duties

The Clearinghouse shall—

(1) foster the development of appropriate, modern trauma care and emergency medical services (including the development of policies for the notification of family members of individuals involved in medical emergencies) through the sharing of information among agencies and individuals involved in planning, furnishing, and studying such services and care;

(2) collect, compile, and disseminate information on the achievements of, and problems experienced by, State and local agencies and private entities in providing trauma care and emergency medical services and, in so doing, give special consideration of the unique needs of rural areas;

(3) provide technical assistance relating to trauma care and emergency medical services to State and local agencies; and

(4) sponsor workshops and conferences on trauma care and emergency medical services.

(c) Fees and assessments

A contract entered into by the Secretary under this section may provide that the Clearinghouse charge fees or assessments in order to defray, and beginning with fiscal year 1992, to cover, the costs of operating the Clearinghouse.

(July 1, 1944, ch. 373, title XII, § 1202, formerly § 1203, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2917; renumbered § 1202, Pub. L. 103–183, title VI, § 601(b)(2), Dec. 14, 1993, 107 Stat. 2238; amended Pub. L. 105–392, title IV, § 401(a)(1)(A), Nov. 13, 1998, 112 Stat. 3587.)

PRIOR PROVISIONS

A prior section 300d–2, act July 1, 1944, ch. 373, title XII, § 1203, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 596; amended Oct. 21, 1976, Pub. L. 94–573, § 4, 90 Stat. 2710; Nov. 10, 1978, Pub. L. 95–626, title II, § 210(a), 92 Stat. 3588; July 10, 1979, Pub. L. 96–32, § 7(*l*), 93 Stat.

84, set forth provisions relating to grants and contracts for establishing and initial operation of emergency medical services systems, prior to repeal by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 1202 of act July 1, 1944, was classified to section 300d–1 of this title prior to repeal by Pub. L. 103–183.

Another prior section 1202 of act July 1, 1944, was classified to section 300d–6 of this title prior to repeal by Pub. L. 99–117.

AMENDMENTS

1998—Pub. L. 105–392 made technical correction to directory language of Pub. L. 103–183, § 601(b)(2), which renumbered this section.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

RECOMMENDATIONS REGARDING RESPONDING TO FOOD-RELATED ALLERGIC RESPONSES

Pub. L. 108–282, title II, § 210, Aug. 2, 2004, 118 Stat. 911, provided that: "The Secretary of Health and Human Services shall, in providing technical assistance relating to trauma care and emergency medical services to State and local agencies under section 1202(b)(3) of the Public Health Service Act (42 U.S.C. 300d–2(b)(3)), include technical assistance relating to the use of different modes of treatment for and prevention of allergic responses to foods."

§ 300d–3. Establishment of programs for improving trauma care in rural areas

(a) In general

The Secretary may make grants to public and nonprofit private entities for the purpose of carrying out research and demonstration projects with respect to improving the availability and quality of emergency medical services in rural areas—

(1) by developing innovative uses of communications technologies and the use of new communications technology;

(2) by developing model curricula for training emergency medical services personnel, including first responders, emergency medical technicians, emergency nurses and physicians, and paramedics—

(A) in the assessment, stabilization, treatment, preparation for transport, and resuscitation of seriously injured patients, with special attention to problems that arise during long transports and to methods of minimizing delays in transport to the appropriate facility; and

(B) in the management of the operation of the emergency medical services system;

(3) by making training for original certification, and continuing education, in the provision and management of emergency medical services more accessible to emergency medical personnel in rural areas through telecommunications, home studies, providing teachers and training at locations accessible to such personnel, and other methods;

(4) by developing innovative protocols and agreements to increase access to prehospital care and equipment necessary for the transportation of seriously injured patients to the appropriate facilities; and

(5) by evaluating the effectiveness of protocols with respect to emergency medical services and systems.

(b) Special consideration for certain rural areas

In making grants under subsection (a) of this section, the Secretary shall give special consideration to any applicant for the grant that will provide services under the grant in any rural area identified by a State under section 300d–14(c)(1) of this title.

(c) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title XII, § 1203, formerly § 1204, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2918; renumbered § 1203 and amended Pub. L. 103–183, title VI, § 601(b)(2), (f)(1), Dec. 14, 1993, 107 Stat. 2238, 2239; Pub. L. 105–392, title IV, § 401(a)(1), Nov. 13, 1998, 112 Stat. 3587.)

PRIOR PROVISIONS

A prior section 300d–3, act July 1, 1944, ch. 373, title XII, § 1204, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 597; amended Oct. 21, 1976, Pub. L. 94–573, § 5, 90 Stat. 2711; Nov. 10, 1978, Pub. L. 95–626, title II, § 210(b), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96–142, title I, § 104(a), (b), 93 Stat. 1067, 1068, set forth provisions relating to grants and contracts for expansion and improvements, prior to repeal by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 1203 of act July 1, 1994, was renumbered section 1202 and is classified to section 300d–2 of this title.

AMENDMENTS

1998—Pub. L. 105–392, § 401(a)(1), made technical corrections to directory language of Pub. L. 103–183, § 601(b)(2), which renumbered this section, and to directory language of Pub. L. 103–183, § 601(f)(1). See 1993 Amendment note below.

1993—Subsec. (c). Pub. L. 103–183, § 601(f)(1), as amended by Pub. L. 105–392, § 401(a)(1)(B), inserted "determines to be necessary to carry out this section" before period at end.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

§ 300d–4. Emergency medical services

(a)[1] Federal Interagency Committee on Emergency Medical Services

(1) Establishment

The Secretary of Transportation, the Secretary of Health and Human Services, and the Secretary of Homeland Security, acting through the Under Secretary for Emergency Preparedness and Response, shall establish a Federal Interagency Committee on Emergency Medical Services.

(2) Membership

The Interagency Committee shall consist of the following officials, or their designees:

[1] So in original. No subsec. (b) has been enacted.

(A) The Administrator, National Highway Traffic Safety Administration.

(B) The Director, Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security.

(C) The Administrator, Health Resources and Services Administration, Department of Health and Human Services.

(D) The Director, Centers for Disease Control and Prevention, Department of Health and Human Services.

(E) The Administrator, United States Fire Administration, Directorate of Emergency Preparedness and Response of the Department of Homeland Security.

(F) The Administrator, Centers for Medicare and Medicaid Services, Department of Health and Human Services.

(G) The Under Secretary of Defense for Personnel and Readiness.

(H) The Director, Indian Health Service, Department of Health and Human Services.

(I) The Chief, Wireless Telecommunications Bureau, Federal Communications Commission.

(J) A representative of any other Federal agency appointed by the Secretary of Transportation or the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response, in consultation with the Secretary of Health and Human Services, as having a significant role in relation to the purposes of the Interagency Committee.

(K) A State emergency medical services director appointed by the Secretary.

(3) Purposes

The purposes of the Interagency Committee are as follows:

(A) To ensure coordination among the Federal agencies involved with State, local, tribal, or regional emergency medical services and 9–1–1 systems.

(B) To identify State, local, tribal, or regional emergency medical services and 9–1–1 needs.

(C) To recommend new or expanded programs, including grant programs, for improving State, local, tribal, or regional emergency medical services and implementing improved emergency medical services communications technologies, including wireless 9–1–1.

(D) To identify ways to streamline the process through which Federal agencies support State, local, tribal or regional emergency medical services.

(E) To assist State, local, tribal or regional emergency medical services in setting priorities based on identified needs.

(F) To advise, consult, and make recommendations on matters relating to the implementation of the coordinated State emergency medical services programs.

(4) Administration

The Administrator of the National Highway Traffic Safety Administration, in cooperation with the Administrator of the Health Resources and Services Administration of the Department of Health and Human Services and the Director of the Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security, shall provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

(5) Leadership

The members of the Interagency Committee shall select a chairperson of the Committee each year.

(6) Meetings

The Interagency Committee shall meet as frequently as is determined necessary by the chairperson of the Committee.

(7) Annual reports

The Interagency Committee shall prepare an annual report to Congress regarding the Committee's activities, actions, and recommendations.

(Pub. L. 109–59, title X, § 10202, Aug. 10, 2005, 119 Stat. 1932.)

CODIFICATION

Section was enacted as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users or SAFETEA–LU, and not as part of the Public Health Service Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 300d–4, act July 1, 1944, ch. 373, title XII, § 1201, formerly § 1205, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 597; amended Oct. 21, 1976, Pub. L. 94–573, § 6, 90 Stat. 2713, renumbered § 1201 and amended Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(d)(1), (3), 95 Stat. 560, authorized Secretary to make grants and enter into contracts to support research in emergency medical techniques, methods, devices, and delivery, prior to repeal by Pub. L. 99–117, § 12(e), Oct. 7, 1985, 99 Stat. 495.

A prior section 300d–5, act July 1, 1944, ch. 373, title XII, § 1206, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 598; amended Oct. 21, 1976, Pub. L. 94–573, §§ 7, 14(2), 90 Stat. 2713, 2718; Nov. 10, 1978, Pub. L. 95–626, title II, § 210(c), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96–142, title I, § 104(c), 93 Stat. 1068, set forth general provisions respecting grants and contracts, prior to repeal by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 300d–6, act July 1, 1944, ch. 373, title XII, § 1202, formerly § 1207, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 602; amended Oct. 21, 1976, Pub. L. 94–573, § 8, 90 Stat. 2714; Nov. 10, 1978, Pub. L. 95–626, title II, § 210(d), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96–142, title I, § 105, 93 Stat. 1068; renumbered § 1202 and amended Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(d)(1), (4), 95 Stat. 560, authorized appropriations for purposes of this subchapter, prior to repeal by Pub. L. 99–117, § 12(e), Oct. 7, 1985, 99 Stat. 495.

Prior sections 300d–7 to 300d–9 were repealed by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

Section 300d–7, act July 1, 1944, ch. 373, title XII, § 1208, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 602; amended Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(b), 90 Stat. 2322; Oct. 21, 1976, Pub. L. 94–573, § 9, 90 Stat. 2715, set forth provisions relating to administration of emergency medical services administrative unit.

Section 300d–8, act July 1, 1944, ch. 373, title XII, § 1209, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 602; amended Oct. 21, 1976, Pub. L. 94–573, § 10, 90

Stat. 2716; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Dec. 12, 1979, Pub. L. 96–142, title I, § 106, 93 Stat. 1069, related to Interagency Committee on Emergency Medical Services.

Section 300d–9, act July 1, 1944, ch. 373, title XII, § 1210, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 603; amended Oct. 21, 1976, Pub. L. 94–573, § 11, 90 Stat. 2717, related to annual report to Congress.

PART B—FORMULA GRANTS WITH RESPECT TO MODIFICATIONS OF STATE PLANS

§ 300d–11. Establishment of program

(a) Requirement of allotments for States

The Secretary shall for each fiscal year make an allotment for each State in an amount determined in accordance with section 300d–18 of this title. The Secretary shall make payments, as grants, each fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 300d–17 of this title.

(b) Purpose

Except as provided in section 300d–33[1] of this title, the Secretary may not make payments under this part for a fiscal year unless the State involved agrees that, with respect to the trauma care component of the State plan for the provision of emergency medical services, the payments will be expended only for the purpose of developing, implementing, and monitoring the modifications to such component described in section 300d–13 of this title.

(July 1, 1944, ch. 373, title XII, § 1211, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2919.)

REFERENCES IN TEXT

Section 300d–33 of this title, referred to in subsec. (b), was repealed by Pub. L. 103–183, title VI, § 601(e), Dec. 14, 1993, 107 Stat. 2239.

§ 300d–12. Requirement of matching funds for fiscal years subsequent to first fiscal year of payments

(a) Non-Federal contributions

(1) In general

The Secretary may not make payments under section 300d–11(a) of this title unless the State involved agrees, with respect to the costs described in paragraph (2), to make available non-Federal contributions (in cash or in kind under subsection (b)(1) of this section) toward such costs in an amount equal to—

(A) for the second fiscal year of such payments to the State, not less than $1 for each $1 of Federal funds provided in such payments for such fiscal year; and

(B) for any subsequent fiscal year of such payments to the State, not less than $3 for each $1 of Federal funds provided in such payments for such fiscal year.

(2) Program costs

The costs referred to in paragraph (1) are—

(A) the costs to be incurred by the State in carrying out the purpose described in section 300d–11(b) of this title; or

(B) the costs of improving the quality and availability of emergency medical services in rural areas of the State.

(3) Initial year of payments

The Secretary may not require a State to make non-Federal contributions as a condition of receiving payments under section 300d–11(a) of this title for the first fiscal year of such payments to the State.

(b) Determination of amount of non-Federal contribution

With respect to compliance with subsection (a) of this section as a condition of receiving payments under section 300d–11(a) of this title—

(1) a State may make the non-Federal contributions required in such subsection in cash or in kind, fairly evaluated, including plant, equipment, or services;

(2) the Secretary may not, in making a determination of the amount of non-Federal contributions, include amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government; and

(3) the Secretary shall, in making such a determination, include only non-Federal contributions in excess of the amount of non-Federal contributions made by the State during fiscal year 1990 toward—

(A) the costs of providing trauma care in the State; and

(B) the costs of improving the quality and availability of emergency medical services in rural areas of the State.

(July 1, 1944, ch. 373, title XII, § 1212, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2919; amended Pub. L. 103–183, title VI, § 601(f)(2), Dec. 14, 1993, 107 Stat. 2239.)

AMENDMENTS

1993—Subsec. (a)(2)(A). Pub. L. 103–183 substituted ''section 300d–11(b)'' for ''section 300d–11(c)''.

§ 300d–13. Requirements with respect to carrying out purpose of allotments

(a) Trauma care modifications to State plan for emergency medical services

With respect to the trauma care component of a State plan for the provision of emergency medical services, the modifications referred to in section 300d–11(b) of this title are such modifications to the State plan as may be necessary for the State involved to ensure that the plan provides for access to the highest possible quality of trauma care, and that the plan—

(1) specifies that the modifications required pursuant to paragraphs (2) through (10) will be implemented by the principal State agency with respect to emergency medical services or by the designee of such agency;

(2) specifies any public or private entity that will designate trauma care regions and trauma centers in the State;

(3) subject to subsection (b) of this section, contains standards and requirements for the designation of level I and level II trauma centers, and in the case of rural areas level III trauma centers (including trauma centers with specified capabilities and expertise in the

[1] See References in Text note below.

care of the pediatric trauma patient), by such entity, including standards and requirements for—

(A) the number and types of trauma patients for whom such centers must provide care in order to ensure that such centers will have sufficient experience and expertise to be able to provide quality care for victims of injury;

(B) the resources and equipment needed by such centers; and

(C) the availability of rehabilitation services for trauma patients;

(4) subject to subsection (b) of this section, contains standards and requirements for the implementation of regional trauma care systems, including standards and guidelines (consistent with the provisions of section 1395dd of this title) for medically directed triage and transportation of trauma patients (including patients injured in rural areas) prior to care in designated trauma centers;

(5) subject to subsection (b) of this section, contains standards and requirements for medically directed triage and transport of severely injured children to designated trauma centers with specified capabilities and expertise in the care of the pediatric trauma patient;

(6) specifies procedures for the evaluation of designated trauma centers (including trauma centers described in paragraph (5)) and trauma care systems;

(7) provides for the establishment and collection of data from each designated trauma center in the State of a central data reporting and analysis system—

(A) to identify the number of severely injured trauma patients within regional trauma care systems in the State;

(B) to identify the cause of the injury and any factors contributing to the injury;

(C) to identify the nature and severity of the injury;

(D) to monitor trauma patient care (including prehospital care) in each designated trauma center within regional trauma care systems in the State (including relevant emergency-department discharges and rehabilitation information) for the purpose of evaluating the diagnosis, treatment and treatment outcome of such trauma patients;

(E) to identify the total amount of uncompensated trauma care expenditures for each fiscal year by each designated trauma center in the State; and

(F) to identify patients transferred within a regional trauma system, including reasons for such transfer;

(8) provides for the use of procedures by paramedics and emergency medical technicians to assess the severity of the injuries incurred by trauma patients;

(9) provides for appropriate transportation and transfer policies to ensure the delivery of patients to designated trauma centers and other facilities within and outside of the jurisdiction of such system, including policies to ensure that only individuals appropriately identified as trauma patients are transferred to designated trauma centers, and provides for periodic reviews of the transfers and the auditing of such transfers that are determined to be appropriate;

(10) conducts public education activities concerning injury prevention and obtaining access to trauma care; and

(11) with respect to the requirements established in this subsection, provides for coordination and cooperation between the State and any other State with which the State shares any standard metropolitan statistical area.

(b) Certain standards with respect to trauma care centers and systems

(1) In general

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees that, in carrying out paragraphs (3) through (5) of subsection (a) of this section, the State will adopt standards for the designation of trauma centers, and for triage, transfer, and transportation policies, and that the State will, in adopting such standards—

(A) take into account national standards concerning such;

(B) consult with medical, surgical, and nursing speciality groups, hospital associations, emergency medical services State and local directors, concerned advocates and other interested parties;

(C) conduct hearings on the proposed standards after providing adequate notice to the public concerning such hearing; and

(D) beginning in fiscal year 1992, take into account the model plan described in subsection (c) of this section.

(2) Quality of trauma care

The highest quality of trauma care shall be the primary goal of State standards adopted under this subsection.

(3) Approval by Secretary

The Secretary may not make payments under section 300d–11(a) of this title to a State if the Secretary determines that—

(A) in the case of payments for fiscal year 1991 and subsequent fiscal years, the State has not taken into account national standards, including those of the American College of Surgeons, the American College of Emergency Physicians and the American Academy of Pediatrics, in adopting standards under this subsection; or

(B) in the case of payments for fiscal year 1992 and subsequent fiscal years, the State has not, in adopting such standards, taken into account the model plan developed under subsection (c) of this section.

(c) Model trauma care plan

Not later than 1 year after November 16, 1990, the Secretary shall develop a model plan for the designation of trauma centers and for triage, transfer and transportation policies that may be adopted for guidance by the State. Such plan shall—

(1) take into account national standards, including those of the American College of Surgeons, American College of Emergency Physicians and the American Academy of Pediatrics;

(2) take into account existing State plans;

(3) be developed in consultation with medical, surgical, and nursing speciality groups, hospital associations, emergency medical services State directors and associations, and other interested parties; and

(4) include standards for the designation of rural health facilities and hospitals best able to receive, stabilize, and transfer trauma patients to the nearest appropriate designated trauma center, and for triage, transfer, and transportation policies as they relate to rural areas.

Standards described in paragraph (4) shall be applicable to all rural areas in the State, including both non-metropolitan areas and frontier areas that have populations of less than 6,000 per square mile.

(d) Rule of construction with respect to number of designated trauma centers

With respect to compliance with subsection (a) of this section as a condition of the receipt of a grant under section 300d–11(a) of this title, such subsection may not be construed to specify the number of trauma care centers designated pursuant to such subsection.

(July 1, 1944, ch. 373, title XII, § 1213, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2920; amended Pub. L. 103–183, title VI, § 601(f)(3), Dec. 14, 1993, 107 Stat. 2239; Pub. L. 105–392, title IV, § 401(b)(4), Nov. 13, 1998, 112 Stat. 3587.)

AMENDMENTS

1998—Subsec. (a)(8). Pub. L. 105–392 substituted ''provides for'' for ''provides for for''.

1993—Subsec. (a)(4). Pub. L. 103–183, § 601(f)(3)(A), substituted ''section 1395dd of this title)'' for ''section 1395dd of this title''.

Subsec. (a)(8), (9). Pub. L. 103–183, § 601(f)(3)(B), substituted ''provides for'' for ''to provide'' wherever appearing.

Subsec. (a)(10). Pub. L. 103–183, § 601(f)(3)(C), substituted ''conducts'' for ''to conduct''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

§ 300d–14. Requirement of submission to Secretary of trauma plan and certain information

(a) Trauma plan

(1) In general

For fiscal year 1991 and subsequent fiscal years, the Secretary may not make payments under section 300d–11(a) of this title unless, subject to paragraph (2), the State involved submits to the Secretary the trauma care component of the State plan for the provision of emergency medical services.

(2) Interim plan or description of efforts

For fiscal year 1991, if a State has not completed the trauma care component of the State plan described in paragraph (1), the State may provide, in lieu of a completed such component, an interim component or a description of efforts made toward the completion of the component.

(b) Information received by State reporting and analysis system

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees that the State will, not less than once each year, provide to the Secretary the information received by the State pursuant to section 300d–13(a)(7) of this title.

(c) Availability of emergency medical services in rural areas

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless—

(1) the State involved identifies any rural area in the State for which—

(A) there is no system of access to emergency medical services through the telephone number 911;

(B) there is no basic life-support system; or

(C) there is no advanced life-support system; and

(2) the State submits to the Secretary a list of rural areas identified pursuant to paragraph (1) or, if there are no such areas, a statement that there are no such areas.

(July 1, 1944, ch. 373, title XII, § 1214, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2922.)

§ 300d–15. Restrictions on use of payments

(a) In general

The Secretary may not, except as provided in subsection (b) of this section, make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees that the payments will not be expended—

(1) subject to section 300d–33[1] of this title, for any purpose other than developing, implementing, and monitoring the modifications required by section 300d–11(b) of this title to be made to the State plan for the provision of emergency medical services.[2]

(2) to make cash payments to intended recipients of services provided pursuant to such section;

(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical or communication equipment, ambulances, or aircraft;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(b) Exception

If the Secretary finds that the purpose described in section 300d–11(b) of this title cannot otherwise be carried out, the Secretary may, with respect to an otherwise qualified State, waive the restriction established in subsection (a)(3) of this section.

(July 1, 1944, ch. 373, title XII, § 1215, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2923.)

[1] See References in Text note below.

[2] So in original. The period probably should be a semicolon.

REFERENCES IN TEXT

Section 300d–33 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 103–183, title VI, § 601(e), Dec. 14, 1993, 107 Stat. 2239.

§ 300d–16. Requirement of reports by States

(a) In general

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees to prepare and submit to the Secretary an annual report in such form and containing such information as the Secretary determines (after consultation with the States) to be necessary for—

(1) securing a record and a description of the purposes for which payments received by the State pursuant to such section were expended and of the recipients of such payments; and

(2) determining whether the payments were expended in accordance with the purpose of the program involved.

(b) Availability to public of reports

The Secretary may not make payments under section 300d–11(a) of this title unless the State involved agrees that the State will make copies of the report described in subsection (a) of this section available for public inspection.

(c) Evaluations by Comptroller General

The Comptroller General of the United States shall evaluate the expenditures by States of payments under section 300d–11(a) of this title in order to assure that expenditures are consistent with the provisions of this part, and not later than December 1, 1994, prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report concerning such evaluation.

(July 1, 1944, ch. 373, title XII, § 1216, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2923; amended Pub. L. 103–183, title VI, § 601(c), Dec. 14, 1993, 107 Stat. 2238; Pub. L. 104–316, title I, § 122(d), Oct. 19, 1996, 110 Stat. 3837.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–316 struck out ''and the Comptroller General of the United States'' after ''with the States'' in introductory provisions.

1993—Subsec. (c). Pub. L. 103–183 substituted ''1994'' for ''1993''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300d–17. Requirement of submission of application containing certain agreements and assurances

The Secretary may not make payments under section 300d–11(a) of this title to a State for a fiscal year unless—

(1) the State submits to the Secretary an application for the payments containing agreements in accordance with this part;

(2) the agreements are made through certification from the chief executive officer of the State;

(3) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(4) the application contains the plan provisions and the information required to be submitted to the Secretary pursuant to section 300d–14 of this title; and

(5) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(July 1, 1944, ch. 373, title XII, § 1217, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2924.)

§ 300d–18. Determination of amount of allotment

(a) Minimum allotment

Subject to the extent of amounts made available in appropriations Acts, the amount of an allotment under section 300d–11(a) of this title for a State for a fiscal year shall be the greater of—

(1) the amount determined under subsection (b)(1) of this section; and

(2) $250,000 in the case of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and $50,000 in the case of each of the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) Determination under formula

(1) In general

The amount referred to in subsection (a)(1) of this section for a State for a fiscal year is the sum of—

(A) an amount determined under paragraph (2); and

(B) an amount determined under paragraph (3).

(2) Amount relating to population

The amount referred to in subparagraph (A) of paragraph (1) for a State for a fiscal year is the product of—

(A) an amount equal to 80 percent of the amounts appropriated under section 300d–32(a) of this title for the fiscal year and available for allotment under section 300d–11(a) of this title; and

(B) a percentage equal to the quotient of—

(i) an amount equal to the population of the State; divided by

(ii) an amount equal to the population of all States.

(3) Amount relating to square mileage

The amount referred to in subparagraph (B) of paragraph (1) for a State for a fiscal year is the product of—

(A) an amount equal to 20 percent of the amounts appropriated under section 300d–32(a) of this title for the fiscal year and available for allotment under section 300d–11(a) of this title; and

(B) a percentage equal to the quotient of—

(i) an amount equal to the lesser of 266,807 and the amount of the square mileage of the State; divided by

(ii) an amount equal to the sum of the respective amounts determined for the States under clause (i).

(c) Disposition of certain funds appropriated for allotments

(1) In general

Amounts described in paragraph (2) shall, in accordance with paragraph (3), be allotted by the Secretary to States receiving payments under section 300d–11(a) of this title for the fiscal year (other than any State referred to in paragraph (2)(C)).

(2) Type of amounts

The amounts referred to in paragraph (1) are any amounts made available pursuant to 300d–32(b)(3) of this title that are not paid under section 300d–11(a) of this title to a State as a result of—

(A) the failure of the State to submit an application under section 300d–17 of this title;

(B) the failure, in the determination of the Secretary, of the State to prepare within a reasonable period of time such application in compliance with such section; or

(C) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made for the State.

(3) Amount

The amount of an allotment under paragraph (1) for a State for a fiscal year shall be an amount equal to the product of—

(A) an amount equal to the amount described in paragraph (2) for the fiscal year involved; and

(B) the percentage determined under subsection (b)(2) of this section for the State.

(July 1, 1944, ch. 373, title XII, § 1218, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2924.)

§ 300d–19. Failure to comply with agreements

(a) Repayment of payments

(1) Requirement

The Secretary may, in accordance with subsection (b) of this section, require a State to repay any payments received by the State pursuant to section 300d–11(a) of this title that the Secretary determines were not expended by the State in accordance with the agreements required to be made by the State as a condition of the receipt of payments under such section.

(2) Offset of amounts

If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against any amount due to be paid to the State under section 300d–11(a) of this title.

(b) Opportunity for hearing

Before requiring repayment of payments under subsection (a)(1) of this section, the Secretary shall provide to the State an opportunity for a hearing.

(July 1, 1944, ch. 373, title XII, § 1219, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2925.)

§ 300d–20. Prohibition against certain false statements

(a) In general

(1) False statements or representations

A person may not knowingly and willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payments may be made by a State from amounts paid to the State under section 300d–11(a) of this title.

(2) Concealing or failing to disclose information

A person with knowledge of the occurrence of any event affecting the right of the person to receive any payments from amounts paid to the State under section 300d–11(a) of this title may not conceal or fail to disclose any such event with the intent of fraudulently securing such amount.

(b) Criminal penalty for violation of prohibition

Any person who violates a prohibition established in subsection (a) of this section may for each violation be fined in accordance with title 18, or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title XII, § 1220, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2925.)

§ 300d–21. Technical assistance and provision by Secretary of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary shall, without charge to a State receiving payments under section 300d–11(a) of this title, provide to the State (or to any public or nonprofit private entity designated by the State) technical assistance with respect to the planning, development, and operation of any program carried out pursuant to section 300d–11(b) of this title. The Secretary may provide such technical assistance directly, through contract, or through grants.

(b) Provision by Secretary of supplies and services in lieu of grant funds

(1) In general

Upon the request of a State receiving payments under section 300d–11(a) of this title, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out section 300d–11(b) of this title and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the

amount of payments to the State under section 300d–11(a) of this title by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XII, § 1221, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2926.)

PRIOR PROVISIONS

A prior section 300d–21, act July 1, 1944, ch. 373, title XII, § 1221, as added Oct. 21, 1976, Pub. L. 94–573, § 14(3), 90 Stat. 2718; amended Dec. 12, 1979, Pub. L. 96–142, title I, § 107(a)–(c), 93 Stat. 1069, related to programs for burn, trauma, and poison injuries, prior to repeal by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

§ 300d–22. Report by Secretary

Not later than October 1, 1995, the Secretary shall report to the appropriate committees of Congress on the activities of the States carried out pursuant to section 300d–11 of this title. Such report shall include an assessment of the extent to which Federal and State efforts to develop systems of trauma care and to designate trauma centers have reduced the incidence of mortality, and the incidence of permanent disability, resulting from trauma. Such report may include any recommendations of the Secretary for appropriate administrative and legislative initiatives with respect to trauma care.

(July 1, 1944, ch. 373, title XII, § 1222, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2926; amended Pub. L. 103–183, title VI, § 601(d), Dec. 14, 1993, 107 Stat. 2238.)

AMENDMENTS

1993—Pub. L. 103–183 substituted ''1995'' for ''1992'' and inserted after first sentence ''Such report shall include an assessment of the extent to which Federal and State efforts to develop systems of trauma care and to designate trauma centers have reduced the incidence of mortality, and the incidence of permanent disability, resulting from trauma.''

PART C—GENERAL PROVISIONS REGARDING PARTS A AND B

§ 300d–31. Definitions

For purposes of this part and parts A and B of this subchapter:

(1) Designated trauma center

The term ''designated trauma center'' means a trauma center designated in accordance with the modifications to the State plan described in section 300d–13 of this title.

(2) State plan regarding emergency medical services

The term ''State plan'', with respect to the provision of emergency medical services, means a plan for a comprehensive, organized system to provide for the access, response, triage, field stabilization, transport, hospital stabilization, definitive care, and rehabilitation of patients of all ages with respect to emergency medical services.

(3) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) Trauma

The term ''trauma'' means an injury resulting from exposure to a mechanical force.

(5) Trauma care component of State plan

The term ''trauma care component'', with respect to components of the State plan for the provision of emergency medical services, means a plan for a comprehensive health care system, within rural and urban areas of the State, for the prompt recognition, prehospital care, emergency medical care, acute surgical and medical care, rehabilitation, and outcome evaluation of seriously injured patients.

(July 1, 1944, ch. 373, title XII, § 1231, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2926; amended Pub. L. 102–321, title VI, § 602(2), July 10, 1992, 106 Stat. 436; Pub. L. 103–183, title VI, § 601(f)(4), Dec. 14, 1993, 107 Stat. 2239.)

AMENDMENTS

1993—Par. (3). Pub. L. 103–183 substituted ''Puerto Rico,'' for ''Puerto Rico;''.

1992—Pub. L. 102–321 substituted ''this part and parts A and B of this subchapter'' for ''this subchapter'' in introductory provisions.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective July 10, 1992, with provision for programs providing financial assistance, see section 801(b), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 300d–32. Funding

(a) Authorization of appropriations

For the purpose of carrying out parts A and B of this subchapter, there are authorized to be appropriated $6,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2002.

(b) Allocation of funds by Secretary

(1) General authority

For the purpose of carrying out part A of this subchapter, the Secretary shall make available 10 percent of the amounts appropriated for a fiscal year under subsection (a) of this section.

(2) Rural grants

For the purpose of carrying out section 300d–3[1] of this title, the Secretary shall make available 10 percent of the amounts appropriated for a fiscal year under subsection (a) of this section.

(3) Formula grants

(A) For the purpose of making allotments under section 300d–11(a) of this title, the Secretary shall, subject to subsection (c) of this section, make available 80 percent of the amounts appropriated for a fiscal year pursuant to subsection (a) of this section.

(B) Amounts paid to a State under section 300d–11(a) of this title for a fiscal year shall, for the purposes for which the amounts were

[1] See References in Text note below.

paid, remain available for obligation until the end of the fiscal year immediately following the fiscal year for which the amounts were paid.

(c) Effect of insufficient appropriations for minimum allotments

(1) In general

If the amounts made available under subsection (b)(3)(A) of this section for a fiscal year are insufficient for providing each State with an allotment under section 300d–11(a) of this title of not less than the applicable amount under section 300d–18(a)(2) of this title, the Secretary shall, from such amounts as are made available under subsection (b)(3)(A) of this section, make grants to States described in paragraph (2) for carrying out part B of this subchapter.

(2) Eligible States

The States referred to in paragraph (1) are States that—

(A) have the greatest need to develop, implement, and maintain trauma care systems; and

(B) demonstrate in their applications under section 300d–17 of this title the greatest commitment to establishing and maintaining such systems.

(3) Rule of construction

Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.

(July 1, 1944, ch. 373, title XII, § 1232, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2927; amended Pub. L. 102–321, title VI, § 602(3), July 10, 1992, 106 Stat. 436; Pub. L. 103–183, title VI, § 602, Dec. 14, 1993, 107 Stat. 2239; Pub. L. 105–392, title IV, §§ 401(a)(2), 413, Nov. 13, 1998, 112 Stat. 3587, 3590.)

REFERENCES IN TEXT

Section 300d–3 of this title, referred to in subsec. (b)(2), was in the original a reference to section 1204, meaning section 1204 of act July 1, 1944. Section 1204 was renumbered section 1203 by Pub. L. 103–183, title VI, § 601(b)(2), Dec. 14, 1993, 107 Stat. 2238.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392, § 413, substituted ''through 2002'' for ''and 1996''.

Pub. L. 105–392, § 401(a)(2), amended directory language of Pub. L. 103–183. See 1993 Amendment note below.

1993—Subsec. (a). Pub. L. 103–183, as amended by Pub. L. 105–392, § 401(a)(2), substituted ''For the purpose of carrying out parts A and B of this subchapter, there are authorized to be appropriated $6,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996'' for ''For the purpose of carrying out parts A and B of this subchapter, there are authorized to be appropriated $60,000,000 for fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992 and 1993''.

1992—Subsec. (a). Pub. L. 102–321 substituted ''parts A and B of this subchapter'' for ''this subchapter''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 401(a)(2) of Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective July 10, 1992, with provision for programs providing financial assistance, see section 801(b), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 300d–33. Repealed. Pub. L. 103–183, title VI, § 601(e), Dec. 14, 1993, 107 Stat. 2239

Section, act July 1, 1944, ch. 373, title XII, § 1233, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2927, related to waiver of requirement regarding purpose of grants.

PART D—TRAUMA CENTERS OPERATING IN AREAS SEVERELY AFFECTED BY DRUG-RELATED VIOLENCE

§ 300d–41. Grants for certain trauma centers

(a) In general

The Secretary may make grants for the purpose of providing for the operating expenses of trauma centers that have incurred substantial uncompensated costs in providing trauma care in geographic areas with a significant incidence of violence arising directly or indirectly from illicit trafficking in drugs. Grants under this subsection may be made only to such trauma centers.

(b) Minimum qualifications of centers

(1) Significant incidence of treating certain patients

(A) The Secretary may not make a grant under subsection (a) of this section to a trauma center unless the population of patients that has been served by the center for the period specified in subparagraph (B) includes a significant number of patients who were treated for—

(i) trauma resulting from the penetration of the skin by knives, bullets, or any other implement that can be used as a weapon; or

(ii) trauma that the center reasonably believes results from violence arising directly or indirectly from illicit trafficking in drugs.

(B) The period specified in this subparagraph is the 2-year period preceding the fiscal year for which the trauma center involved is applying to receive a grant under subsection (a) of this section.

(2) Participation in trauma care system operating under certain professional guidelines

The Secretary may not make a grant under subsection (a) of this section unless the trauma center involved is a participant in a system that—

(A) provides comprehensive medical care to victims of trauma in the geographic area in which the trauma center is located;

(B) is established by the State or political subdivision in which such center is located; and

(C)(i) has adopted guidelines for the designation of trauma centers, and for triage, transfer, and transportation policies, equivalent to (or more protective than) the applicable guidelines developed by the American College of Surgeons or utilized in the model plan established under section 300d–13(c) of this title; or

(ii) agrees that such guidelines will be adopted by the system not later than 6 months after the date on which the trauma center submits to the Secretary the application for the grant.

(3) Submission and approval of long-term plan

The Secretary may not make a grant under subsection (a) of this section unless the trauma center involved—

(A) submits to the Secretary a plan satisfactory to the Secretary that—

(i) is developed on the assumption that the center will continue to incur substantial uncompensated costs in providing trauma care; and

(ii) provides for the long-term continued operation of the center with an acceptable standard of medical care, notwithstanding such uncompensated costs; and

(B) agrees to implement the plan according to a schedule approved by the Secretary.

(July 1, 1944, ch. 373, title XII, § 1241, as added Pub. L. 102–321, title VI, § 601, July 10, 1992, 106 Stat. 433.)

EFFECTIVE DATE

Part effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 300d–42. Preferences in making grants

(a) In general

In making grants under section 300d–41(a) of this title, the Secretary shall give preference to any application—

(1) made by a trauma center that, for the purpose specified in such section, will receive financial assistance from the State or political subdivision involved for each fiscal year during which payments are made to the center from the grant, which financial assistance is exclusive of any assistance provided by the State or political subdivision as a non-Federal contribution under any Federal program requiring such a contribution; or

(2) made by a trauma center that, with respect to the system described in section 300d–41(b)(2) of this title in which the center is a participant—

(A) is providing trauma care in a geographic area in which the availability of trauma care has significantly decreased as a result of a trauma center in the area permanently ceasing participation in such system as of a date occurring during the 2-year period specified in section 300d–41(b)(1)(B) of this title; or

(B) will, in providing trauma care during the 1-year period beginning on the date on which the application for the grant is submitted, incur uncompensated costs in an amount rendering the center unable to continue participation in such system, resulting in a significant decrease in the availability of trauma care in the geographic area.

(b) Further preference for certain applications

With respect to applications for grants under section 300d–41 of this title that are receiving preference for purposes of subsection (a) of this section, the Secretary shall give further preference to any such application made by a trauma center for which a disproportionate percentage of the uncompensated costs of the center result from the provision of trauma care to individuals who neither are citizens nor aliens lawfully admitted to the United States for permanent residence.

(July 1, 1944, ch. 373, title XII, § 1242, as added Pub. L. 102–321, title VI, § 601, July 10, 1992, 106 Stat. 434.)

§ 300d–43. Certain agreements

(a) Commitment regarding continued participation in trauma care system

The Secretary may not make a grant under subsection (a) of section 300d–41 of this title unless the trauma center involved agrees that—

(1) the center will continue participation in the system described in subsection (b) of such section throughout the 3-year period beginning on the date that the center first receives payments under the grant; and

(2) if the agreement made pursuant to paragraph (1) is violated by the center, the center will be liable to the United States for an amount equal to the sum of—

(A) the amount of assistance provided to the center under subsection (a) of such section; and

(B) an amount representing interest on the amount specified in subparagraph (A).

(b) Maintenance of financial support

With respect to activities for which a grant under section 300d–41 of this title is authorized to be expended, the Secretary may not make such a grant unless the trauma center involved agrees that, during the period in which the center is receiving payments under the grant, the center will maintain expenditures for such activities at a level that is not less than the level maintained by the center during the fiscal year preceding the first fiscal year for which the center receives such payments.

(c) Trauma care registry

The Secretary may not make a grant under section 300d–41(a) of this title unless the trauma center involved agrees that—

(1) the center will operate a registry of trauma cases in accordance with the applicable guidelines described in section 300d–41(b)(2)(C) of this title, and will begin operation of the registry not later than 6 months after the date on which the center submits to the Secretary the application for the grant; and

(2) in carrying out paragraph (1), the center will maintain information on the number of trauma cases treated by the center and, for each such case, the extent to which the center incurs uncompensated costs in providing trauma care.

(July 1, 1944, ch. 373, title XII, § 1243, as added Pub. L. 102–321, title VI, § 601, July 10, 1992, 106 Stat. 434.)

§ 300d–44. General provisions

(a) Application

The Secretary may not make a grant under section 300d–41(a) of this title unless an applica-

tion for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(b) Limitation on duration of support

The period during which a trauma center receives payments under section 300d–41(a) of this title may not exceed 3 fiscal years, except that the Secretary may waive such requirement for the center and authorize the center to receive such payments for 1 additional fiscal year.

(c) Limitation on amount of grant

A grant under section 300d–41 of this title may not be made in an amount exceeding $2,000,000.

(July 1, 1944, ch. 373, title XII, § 1244, as added Pub. L. 102–321, title VI, § 601, July 10, 1992, 106 Stat. 435.)

§ 300d–45. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $100,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994. Such authorization of appropriations is in addition to any other authorization of appropriations or amounts that are available for such purpose.

(July 1, 1944, ch. 373, title XII, § 1245, as added Pub. L. 102–321, title VI, § 601, July 10, 1992, 106 Stat. 435.)

PART E—MISCELLANEOUS PROGRAMS

§ 300d–51. Residency training programs in emergency medicine

(a) In general

The Secretary may make grants to public and nonprofit private entities for the purpose of planning and developing approved residency training programs in emergency medicine.

(b) Identification and referral of domestic violence

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that training programs under subsection (a) of this section will provide education and training in identifying and referring cases of domestic violence.

(c) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $400,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title XII, § 1251, as added Pub. L. 102–408, title III, § 304, Oct. 13, 1992, 106 Stat. 2084.)

§ 300d–52. State grants for projects regarding traumatic brain injury

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to States for the purpose of carrying out projects to improve access to health and other services regarding traumatic brain injury.

(b) State advisory board

(1) In general

The Secretary may make a grant under subsection (a) of this section only if the State involved agrees to establish an advisory board within the appropriate health department of the State or within another department as designated by the chief executive officer of the State.

(2) Functions

An advisory board established under paragraph (1) shall advise and make recommendations to the State on ways to improve services coordination regarding traumatic brain injury. Such advisory boards shall encourage citizen participation through the establishment of public hearings and other types of community outreach programs. In developing recommendations under this paragraph, such boards shall consult with Federal, State, and local governmental agencies and with citizens groups and other private entities.

(3) Composition

An advisory board established under paragraph (1) shall be composed of—

(A) representatives of—

(i) the corresponding State agencies involved;

(ii) public and nonprofit private health related organizations;

(iii) other disability advisory or planning groups within the State;

(iv) members of an organization or foundation representing individuals with traumatic brain injury in that State; and

(v) injury control programs at the State or local level if such programs exist; and

(B) a substantial number of individuals with traumatic brain injury, or the family members of such individuals.

(c) Matching funds

(1) In general

With respect to the costs to be incurred by a State in carrying out the purpose described in subsection (a) of this section, the Secretary may make a grant under such subsection only if the State agrees to make available non-Federal contributions toward such costs in an amount that is not less than $1 for each $2 of Federal funds provided under the grant.

(2) Determination of amount contributed

Non-Federal contributions under paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

(d) Application for grant

The Secretary may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Continuation of previously awarded demonstration projects

A State that received a grant under this section prior to October 17, 2000, may compete for new project grants under this section after October 17, 2000.

(f) Use of State grants

(1) Community services and supports

A State shall (directly or through awards of contracts to nonprofit private entities) use amounts received under a grant under this section for the following:

(A) To develop, change, or enhance community-based service delivery systems that include timely access to comprehensive appropriate services and supports. Such service and supports—

(i) shall promote full participation by individuals with brain injury and their families in decision making regarding the services and supports; and

(ii) shall be designed for children and other individuals with traumatic brain injury.

(B) To focus on outreach to underserved and inappropriately served individuals, such as individuals in institutional settings, individuals with low socioeconomic resources, individuals in rural communities, and individuals in culturally and linguistically diverse communities.

(C) To award contracts to nonprofit entities for consumer or family service access training, consumer support, peer mentoring, and parent to parent programs.

(D) To develop individual and family service coordination or case management systems.

(E) To support other needs identified by the advisory board under subsection (b) of this section for the State involved.

(2) Best practices

(A) In general

State services and supports provided under a grant under this section shall reflect the best practices in the field of traumatic brain injury, shall be in compliance with title II of the Americans with Disabilities Act of 1990 [42 U.S.C. 12131 et seq.], and shall be supported by quality assurance measures as well as state-of-the-art health care and integrated community supports, regardless of the severity of injury.

(B) Demonstration by State agency

The State agency responsible for administering amounts received under a grant under this section shall demonstrate that it has obtained knowledge and expertise of traumatic brain injury and the unique needs associated with traumatic brain injury.

(3) State capacity building

A State may use amounts received under a grant under this section to—

(A) educate consumers and families;

(B) train professionals in public and private sector financing (such as third party payers, State agencies, community-based providers, schools, and educators);

(C) develop or improve case management or service coordination systems;

(D) develop best practices in areas such as family or consumer support, return to work, housing or supportive living personal assistance services, assistive technology and devices, behavioral health services, substance abuse services, and traumatic brain injury treatment and rehabilitation;

(E) tailor existing State systems to provide accommodations to the needs of individuals with brain injury (including systems administered by the State departments responsible for health, mental health, labor/employment, education, mental retardation/developmental disorders, transportation, and correctional systems);

(F) improve data sets coordinated across systems and other needs identified by a State plan supported by its advisory council; and

(G) develop capacity within targeted communities.

(g) Coordination of activities

The Secretary shall ensure that activities under this section are coordinated as appropriate with other Federal agencies that carry out activities regarding traumatic brain injury.

(h) Report

Not later than 2 years after July 29, 1996, the Secretary shall submit to the Committee on Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings and results of the programs established under this section, including measures of outcomes and consumer and surrogate satisfaction.

(i) "Traumatic brain injury" defined

For purposes of this section, the term ''traumatic brain injury'' means an acquired injury to the brain. Such term does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to trauma. The Secretary may revise the definition of such term as the Secretary determines necessary, after consultation with States and other appropriate public or nonprofit private entities.

(j) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XII, § 1252, as added Pub. L. 104–166, § 3, July 29, 1996, 110 Stat. 1446; amended Pub. L. 106–310, div. A, title XIII, § 1304, Oct. 17, 2000, 114 Stat. 1139.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (f)(2)(A), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended. Title II of the Act is classified generally to subchapter II (§ 12131 et seq.) of chapter 126 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106–310, § 1304(1), struck out ''demonstration'' before ''projects'' in section catchline.

Subsec. (a). Pub. L. 106–310, § 1304(2), struck out ''demonstration'' before ''projects''.

Subsec. (b)(3)(A)(iv). Pub. L. 106–310, § 1304(3)(A), substituted ''representing individuals with traumatic brain injury'' for ''representing traumatic brain injury survivors''.

Subsec. (b)(3)(B). Pub. L. 106–310, § 1304(3)(B), substituted ''with traumatic brain injury'' for ''who are survivors of traumatic brain injury''.

Subsec. (c)(1). Pub. L. 106–310, § 1304(4)(A), struck out '', in cash,'' before ''non-Federal contributions''.

Subsec. (c)(2). Pub. L. 106–310, § 1304(4)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In determining the amount of non-Federal contributions in cash that a State has provided pursuant to paragraph (1), the Secretary may not include any amounts provided to the State by the Federal Government.''

Subsecs. (e), (f). Pub. L. 106–310, § 1304(6), added subsecs. (e) and (f). Former subsecs. (e) and (f) redesignated (g) and (h), respectively.

Subsec. (g). Pub. L. 106–310, § 1304(5), (7), redesignated subsec. (e) as (g) and substituted ''Federal agencies'' for ''agencies of the Public Health Service''. Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 106–310, § 1304(5), redesignated subsec. (f) as (h). Former subsec. (h) redesignated (j).

Subsec. (i). Pub. L. 106–310, § 1304(5), (8), redesignated subsec. (g) as (i), substituted ''anoxia due to trauma'' for ''anoxia due to near drowning'' in second sentence, and inserted before period at end '', after consultation with States and other appropriate public or nonprofit private entities''.

Subsec. (j). Pub. L. 106–310, § 1304(9), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For the purpose of carrying out this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1997 through 1999.''

Pub. L. 106–310, § 1304(5), redesignated subsec. (h) as (j).

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

§ 300d–53. State grants for protection and advocacy services

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration (referred to in this section as the ''Administrator''), shall make grants to protection and advocacy systems for the purpose of enabling such systems to provide services to individuals with traumatic brain injury.

(b) Services provided

Services provided under this section may include the provision of—

(1) information, referrals, and advice;

(2) individual and family advocacy;

(3) legal representation; and

(4) specific assistance in self-advocacy.

(c) Application

To be eligible to receive a grant under this section, a protection and advocacy system shall submit an application to the Administrator at such time, in such form and manner, and accompanied by such information and assurances as the Administrator may require.

(d) Appropriations less than $2,700,000

(1) In general

With respect to any fiscal year in which the amount appropriated under subsection (i) of this section to carry out this section is less than $2,700,000, the Administrator shall make grants from such amount to individual protection and advocacy systems within States to enable such systems to plan for, develop outreach strategies for, and carry out services authorized under this section for individuals with traumatic brain injury.

(2) Amount

The amount of each grant provided under paragraph (1) shall be determined as set forth in paragraphs (2) and (3) of subsection (e) of this section.

(e) Appropriations of $2,700,000 or more

(1) Population basis

Except as provided in paragraph (2), with respect to each fiscal year in which the amount appropriated under subsection (i) of this section to carry out this section is $2,700,000 or more, the Administrator shall make a grant to a protection and advocacy system within each State.

(2) Amount

The amount of a grant provided to a system under paragraph (1) shall be equal to an amount bearing the same ratio to the total amount appropriated for the fiscal year involved under subsection (i) of this section as the population of the State in which the grantee is located bears to the population of all States.

(3) Minimums

Subject to the availability of appropriations, the amount of a grant[1] a protection and advocacy system under paragraph (1) for a fiscal year shall—

(A) in the case of a protection and advocacy system located in American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands, and the protection and advocacy system serving the American Indian consortium, not be less than $20,000; and

(B) in the case of a protection and advocacy system in a State not described in subparagraph (A), not be less than $50,000.

(4) Inflation adjustment

For each fiscal year in which the total amount appropriated under subsection (i) of this section to carry out this section is $5,000,000 or more, and such appropriated amount exceeds the total amount appropriated to carry out this section in the preceding fiscal year, the Administrator shall increase each of the minimum grants amount described in subparagraphs (A) and (B) of para-

[1] So in original. Probably should be followed by ''to''.

graph (3) by a percentage equal to the percentage increase in the total amount appropriated under subsection (i) of this section to carry out this section between the preceding fiscal year and the fiscal year involved.

(f) Carryover

Any amount paid to a protection and advocacy system that serves a State or the American Indian consortium for a fiscal year under this section that remains unobligated at the end of such fiscal year shall remain available to such system for obligation during the next fiscal year for the purposes for which such amount was originally provided.

(g) Direct payment

Notwithstanding any other provision of law, the Administrator shall pay directly to any protection and advocacy system that complies with the provisions of this section, the total amount of the grant for such system, unless the system provides otherwise for such payment.

(h) Annual report

Each protection and advocacy system that receives a payment under this section shall submit an annual report to the Administrator concerning the services provided to individuals with traumatic brain injury by such system.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2001, and such sums as may be necessary for each[2] the fiscal years 2002 through 2005.

(j) Definitions

In this section:

(1) American Indian consortium

The term ''American Indian consortium'' means a consortium established under part C of the Developmental Disabilities Assistance Bill of Rights Act (42 U.S.C. 6042 et seq.).[3]

(2) Protection and advocacy system

The term ''protection and advocacy system'' means a protection and advocacy system established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6042 et seq.).[3]

(3) State

The term ''State'', unless otherwise specified, means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(July 1, 1944, ch. 373, title XII, § 1253, as added Pub. L. 106–310, div. A, title XIII, § 1305, Oct. 17, 2000, 114 Stat. 1141.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (j)(1), (2), is title I of Pub. L. 88–164, as added by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, as amended, which was repealed by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. Part C of the Act was classified generally to subchapter III (§ 6041 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

PART F—INTERAGENCY PROGRAM FOR TRAUMA RESEARCH

§ 300d–61. Establishment of Program

(a) In general

The Secretary, acting through the Director of the National Institutes of Health (in this section referred to as the ''Director''), shall establish a comprehensive program of conducting basic and clinical research on trauma (in this section referred to as the ''Program''). The Program shall include research regarding the diagnosis, treatment, rehabilitation, and general management of trauma.

(b) Plan for Program

(1) In general

The Director, in consultation with the Trauma Research Interagency Coordinating Committee established under subsection (g) of this section, shall establish and implement a plan for carrying out the activities of the Program, including the activities described in subsection (d) of this section. All such activities shall be carried out in accordance with the plan. The plan shall be periodically reviewed, and revised as appropriate.

(2) Submission to Congress

Not later than December 1, 1993, the Director shall submit the plan required in paragraph (1) to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, together with an estimate of the funds needed for each of the fiscal years 1994 through 1996 to implement the plan.

(c) Participating agencies; coordination and collaboration

The Director—

(1) shall provide for the conduct of activities under the Program by the Directors of the agencies of the National Institutes of Health involved in research with respect to trauma;

(2) shall ensure that the activities of the Program are coordinated among such agencies; and

(3) shall, as appropriate, provide for collaboration among such agencies in carrying out such activities.

(d) Certain activities of Program

The Program shall include—

(1) studies with respect to all phases of trauma care, including prehospital, resuscitation, surgical intervention, critical care, infection control, wound healing, nutritional care and support, and medical rehabilitation care;

(2) basic and clinical research regarding the response of the body to trauma and the acute treatment and medical rehabilitation of individuals who are the victims of trauma;

(3) basic and clinical research regarding trauma care for pediatric and geriatric patients; and

(4) the authority to make awards of grants or contracts to public or nonprofit private en-

[2] So in original. Probably should be followed by ''of''.

[3] See References in Text note below.

tities for the conduct of basic and applied research regarding traumatic brain injury, which research may include—

(A) the development of new methods and modalities for the more effective diagnosis, measurement of degree of brain injury, post-injury monitoring and prognostic assessment of head injury for acute, subacute and later phases of care;

(B) the development, modification and evaluation of therapies that retard, prevent or reverse brain damage after acute head injury, that arrest further deterioration following injury and that provide the restitution of function for individuals with long-term injuries;

(C) the development of research on a continuum of care from acute care through rehabilitation, designed, to the extent practicable, to integrate rehabilitation and long-term outcome evaluation with acute care research;

(D) the development of programs that increase the participation of academic centers of excellence in head brain[1] injury treatment and rehabilitation research and training; and

(E) carrying out subparagraphs (A) through (D) with respect to cognitive disorders and neurobehavioral consequences arising from traumatic brain injury, including the development, modification, and evaluation of therapies and programs of rehabilitation toward reaching or restoring normal capabilities in areas such as reading, comprehension, speech, reasoning, and deduction.

(e) Mechanisms of support

In carrying out the Program, the Director, acting through the Directors of the agencies referred to in subsection (c)(1) of this section, may make grants to public and nonprofit entities, including designated trauma centers.

(f) Resources

The Director shall assure the availability of appropriate resources to carry out the Program, including the plan established under subsection (b) of this section (including the activities described in subsection (d) of this section).

(g) Coordinating Committee

(1) In general

There shall be established a Trauma Research Interagency Coordinating Committee (in this section referred to as the ''Coordinating Committee'').

(2) Duties

The Coordinating Committee shall make recommendations regarding—

(A) the activities of the Program to be carried out by each of the agencies represented on the Committee and the amount of funds needed by each of the agencies for such activities; and

(B) effective collaboration among the agencies in carrying out the activities.

(3) Composition

The Coordinating Committee shall be composed of the Directors of each of the agencies that, under subsection (c) of this section, have responsibilities under the Program, and any other individuals who are practitioners in the trauma field as designated by the Director of the National Institutes of Health.

(h) Definitions

For purposes of this section:

(1) The term ''designated trauma center'' has the meaning given such term in section 300d–31(1) of this title.

(2) The term ''Director'' means the Director of the National Institutes of Health.

(3) The term ''trauma'' means any serious injury that could result in loss of life or in significant disability and that would meet prehospital triage criteria for transport to a designated trauma center.

(4) The term ''traumatic brain injury'' means an acquired injury to the brain. Such term does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to trauma. The Secretary may revise the definition of such term as the Secretary determines necessary, after consultation with States and other appropriate public or nonprofit private entities.

(i) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XII, § 1261, as added Pub. L. 103–43, title III, § 303(a), June 10, 1993, 107 Stat. 151; amended Pub. L. 104–166, § 2, July 29, 1996, 110 Stat. 1445; Pub. L. 106–310, div. A, title XIII, § 1303, Oct. 17, 2000, 114 Stat. 1138.)

AMENDMENTS

2000—Subsec. (d)(4)(A). Pub. L. 106–310, § 1303(a)(1), substituted ''degree of brain injury'' for ''degree of injury''.

Subsec. (d)(4)(B). Pub. L. 106–310, § 1303(a)(2), which directed amendment of subpar. (B) by substituting ''acute brain injury'' for ''acute injury'', could not be executed because the phrase ''acute injury'' does not appear in text.

Subsec. (d)(4)(C). Pub. L. 106–310, § 1303(c)(1), struck out ''and'' after semicolon at end.

Subsec. (d)(4)(D). Pub. L. 106–310, § 1303(a)(3), (c)(2), substituted ''brain injury treatment'' for ''injury treatment'' and ''; and'' for period at end.

Subsec. (d)(4)(E). Pub. L. 106–310, § 1303(c)(3), added subpar. (E).

Subsec. (h)(4). Pub. L. 106–310, § 1303(b), substituted ''anoxia due to trauma'' for ''anoxia due to near drowning'' in second sentence and inserted before period at end '', after consultation with States and other appropriate public or nonprofit private entities''.

Subsec. (i). Pub. L. 106–310, § 1303(d), added subsec. (i).

1996—Subsec. (d)(4). Pub. L. 104–166, § 2(1), added par. (4).

Subsec. (h)(4). Pub. L. 104–166, § 2(2), added par. (4).

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a)

[1] So in original.

of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TRAUMATIC BRAIN INJURY STUDY; CONSENSUS CONFERENCE

Pub. L. 104–166, § 4, July 29, 1996, 110 Stat. 1448, as amended by Pub. L. 106–310, div. A, title XIII, § 1302, Oct. 17, 2000, 114 Stat. 1138, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary'), acting through the appropriate agencies of the Public Health Service, shall conduct a study for the purpose of carrying out the following with respect to traumatic brain injury:

''(A) In collaboration with appropriate State and local health-related agencies—

''(i)(I) determine the incidence and prevalence of traumatic brain injury in all age groups in the general population of the United States, including institutional settings; and

''(II) determine appropriate methodological strategies to obtain data on the incidence and prevalence of mild traumatic brain injury and report to Congress concerning such within 18 months of the date of the enactment of the Children's Health Act of 2000 [Oct. 17, 2000]; and

''(ii) develop a uniform reporting system under which States report incidents of traumatic brain injury.

''(B) Identify common therapeutic interventions which are used for the rehabilitation of individuals with such injuries, and shall, subject to the availability of information, include an analysis of—

''(i) the effectiveness of each such intervention in improving the functioning, including return to work or school and community participation, of individuals with brain injuries;

''(ii) the comparative effectiveness of interventions employed in the course of rehabilitation of individuals with brain injuries to achieve the same or similar clinical outcome; and

''(iii) the adequacy of existing measures of outcomes and knowledge of factors influencing differential outcomes.

''(C) Develop practice guidelines for the rehabilitation of traumatic brain injury at such time as appropriate scientific research becomes available.

''(2) DATES CERTAIN FOR REPORTS.—

''(A) Not later than 18 months after the date of the enactment of this Act [July 29, 1996], the Secretary shall submit to the Committee on Commerce of the House of Representatives, and to the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate, a report describing the findings made as a result of carrying out paragraph (1)(A).

''(B) Not later than 3 years after the date of the enactment of this Act, the Secretary shall submit to the Committees specified in subparagraph (A) a report describing the findings made as a result of carrying out subparagraphs (B) and (C) of paragraph (1).

''(b) CONSENSUS CONFERENCE.—The Secretary, acting through the Director of the National Center for Medical Rehabilitation Research within the National Institute for Child Health and Human Development, shall conduct a national consensus conference on managing traumatic brain injury and related rehabilitation concerns.

''(c) DEFINITION.—For purposes of this section, the term 'traumatic brain injury' means an acquired injury to the brain. Such term does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to near drowning. The Secretary may revise the definition of such term as the Secretary determines necessary.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.''

PART G—POISON CONTROL

§ 300d–71. Maintenance of a national toll-free number

(a) In general

The Secretary shall provide coordination and assistance to regional poison control centers for the establishment of a nationwide toll-free phone number to be used to access such centers.

(b) Rule of construction

Nothing in this section shall be construed as prohibiting the establishment or continued operation of any privately funded nationwide toll-free phone number used to provide advice and other assistance for poisonings or accidental exposures.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section $2,000,000 for each of the fiscal years 2000 through 2009. Funds appropriated under this subsection shall not be used to fund any toll-free phone number described in subsection (b) of this section.

(July 1, 1944, ch. 373, title XII, § 1271, as added Pub. L. 108–194, § 3, Dec. 19, 2003, 117 Stat. 2889.)

FINDINGS

Pub. L. 108–194, § 2, Dec. 19, 2003, 117 Stat. 2888, provided that: ''The Congress finds the following:

''(1) Poison control centers are our Nation's primary defense against injury and deaths from poisoning. Twenty-four hours a day, the general public as well as health care practitioners contact their local poison centers for help in diagnosing and treating victims of poisoning and other toxic exposures.

''(2) Poisoning is the third most common form of unintentional death in the United States. In any given year, there will be between 2,000,000 and 4,000,000 poison exposures. More than 50 percent of these exposures will involve children under the age of 6 who are exposed to toxic substances in their home. Poisoning accounts for 285,000 hospitalizations, 1,200,000 days of acute hospital care, and 13,000 fatalities annually.

''(3) Stabilizing the funding structure and increasing accessibility to poison control centers will promote the utilization of poison control centers, and reduce the inappropriate use of emergency medical services and other more costly health care services.

''(4) The tragic events of September 11, 2001, and the anthrax cases of October 2001, have dramatically changed our Nation. During this time period, poison centers in many areas of the country were answering thousands of additional calls from concerned residents. Many poison centers were relied upon as a source for accurate medical information about the disease and the complications resulting from prophylactic antibiotic therapy.

''(5) The 2001 Presidential Task Force on Citizen Preparedness in the War on Terrorism recommended that the Poison Control Centers be used as a source of public information and public education regarding potential biological, chemical, and nuclear domestic terrorism.

''(6) The increased demand placed upon poison centers to provide emergency information in the event of a terrorist event involving a biological, chemical, or nuclear toxin will dramatically increase call volume.''

§ 300d–72. Nationwide media campaign to promote poison control center utilization

(a) In general

The Secretary shall establish a national media campaign to educate the public and health care providers about poison prevention and the availability of poison control resources in local communities and to conduct advertising campaigns concerning the nationwide toll-free number established under section 300d–71 of this title.

(b) Contract with entity

The Secretary may carry out subsection (a) of this section by entering into contracts with one or more nationally recognized media firms for the development and distribution of monthly television, radio, and newspaper public service announcements.

(c) Evaluation

The Secretary shall—

(1) establish baseline measures and benchmarks to quantitatively evaluate the impact of the nationwide media campaign established under this section; and

(2) prepare and submit to the appropriate congressional committees an evaluation of the nationwide media campaign on an annual basis.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $600,000 for each of fiscal years 2000 through 2005 and such sums as may be necessary for each of fiscal years 2006 through 2009.

(July 1, 1944, ch. 373, title XII, § 1272, as added Pub. L. 108–194, § 3, Dec. 19, 2003, 117 Stat. 2889.)

§ 300d–73. Maintenance of the poison control center grant program

(a) Regional poison control centers

The Secretary shall award grants to certified regional poison control centers for the purposes of achieving the financial stability of such centers, and for preventing and providing treatment recommendations for poisonings.

(b) Other improvements

The Secretary shall also use amounts received under this section to—

(1) develop standardized poison prevention and poison control promotion programs;

(2) develop standard patient management guidelines for commonly encountered toxic exposures;

(3) improve and expand the poison control data collection systems, including, at the Secretary's discretion, by assisting the poison control centers to improve data collection activities;

(4) improve national toxic exposure surveillance by enhancing activities at the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry;

(5) expand the toxicologic expertise within poison control centers; and

(6) improve the capacity of poison control centers to answer high volumes of calls during times of national crisis.

(c) Certification

Except as provided in subsection (d) of this section, the Secretary may make a grant to a center under subsection (a) of this section only if—

(1) the center has been certified by a professional organization in the field of poison control, and the Secretary has approved the organization as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning; or

(2) the center has been certified by a State government, and the Secretary has approved the State government as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning.

(d) Waiver of certification requirements

(1) In general

The Secretary may grant a waiver of the certification requirement of subsection (c) of this section with respect to a noncertified poison control center or a newly established center that applies for a grant under this section if such center can reasonably demonstrate that the center will obtain such a certification within a reasonable period of time as determined appropriate by the Secretary.

(2) Renewal

The Secretary may renew a waiver under paragraph (1).

(3) Limitation

In no instance may the sum of the number of years for a waiver under paragraph (1) and a renewal under paragraph (2) exceed 5 years. The preceding sentence shall take effect as if enacted on February 25, 2000.

(e) Supplement not supplant

Amounts made available to a poison control center under this section shall be used to supplement and not supplant other Federal, State, or local funds provided for such center.

(f) Maintenance of effort

A poison control center, in utilizing the proceeds of a grant under this section, shall maintain the expenditures of the center for activities of the center at a level that is not less than the level of such expenditures maintained by the center for the fiscal year preceding the fiscal year for which the grant is received.

(g) Matching requirement

The Secretary may impose a matching requirement with respect to amounts provided under a grant under this section if the Secretary determines appropriate.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 2000 through 2004 and $27,500,000 for each of fiscal years 2005 through 2009.

(July 1, 1944, ch. 373, title XII, § 1273, as added Pub. L. 108–194, § 3, Dec. 19, 2003, 117 Stat. 2889.)

§ 300d–74. Rule of construction

Nothing in this part may be construed to ease any restriction in Federal law applicable to the amount or percentage of funds appropriated to carry out this part that may be used to prepare or submit a report.

(July 1, 1944, ch. 373, title XII, § 1274, as added Pub. L. 108–194, § 3, Dec. 19, 2003, 117 Stat. 2891.)

SUBCHAPTER XI—HEALTH MAINTENANCE ORGANIZATIONS

§ 300e. Requirements of health maintenance organizations

(a) "Health maintenance organization" defined

For purposes of this subchapter, the term ''health maintenance organization'' means a public or private entity which is organized under the laws of any State and which (1) provides basic and supplemental health services to its members in the manner prescribed by subsection (b) of this section, and (2) is organized and operated in the manner prescribed by subsection (c) of this section.

(b) Manner of supplying basic and supplemental health services to members

A health maintenance organization shall provide, without limitations as to time or cost other than those prescribed by or under this subchapter, basic and supplemental health services to its members in the following manner:

(1) Each member is to be provided basic health services for a basic health services payment which (A) is to be paid on a periodic basis without regard to the dates health services (within the basic health services) are provided; (B) is fixed without regard to the frequency, extent, or kind of health service (within the basic health services) actually furnished; (C) except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, is fixed under a community rating system; and (D) may be supplemented by additional nominal payments which may be required for the provision of specific services (within the basic health services), except that such payments may not be required where or in such a manner that they serve (as determined under regulations of the Secretary) as a barrier to the delivery of health services. Such additional nominal payments shall be fixed in accordance with the regulations of the Secretary. If a health maintenance organization offers to its members the opportunity to obtain basic health services through a physician not described in subsection (b)(3)(A) of this section, the organization may require, in addition to payments described in clause (D) of this paragraph, a reasonable deductible to be paid by a member when obtaining a basic health service from such a physician. A health maintenance organization may include a health service, defined as a supplemental health service by section 300e–1(2) of this title, in the basic health services provided its members for a basic health services payment described in the first sentence. In the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d)[1] of this title) provided comprehensive health services on a prepaid basis, the requirement of clause (C) shall not apply to such entity until the expiration of the forty-eight month period beginning with the month following the month in which the entity became such a qualified health organization. The requirements of this paragraph respecting the basic health services payment shall not apply to the provision of basic health services to a member for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or an insurance policy but only to the extent such benefits apply to such services. For the provision of such services for an illness or injury for which a member is entitled to benefits under such a law, the health maintenance organization may, if authorized by such law, charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law, the insurance carrier, employer, or other entity which under such law is to pay for the provision of such services or, to the extent that such member has been paid under such law for such services, such member. For the provision of such services for an illness or injury for which a member is entitled to benefits under an insurance policy, a health maintenance organization may charge or authorize the provider of such services to charge the insurance carrier under such policy or, to the extent that such member has been paid under such policy for such services, such member.

(2) For such payment or payments (hereinafter in this subchapter referred to as ''supplemental health services payments'') as the health maintenance organization may require in addition to the basic health services payment, the organization may provide to each of its members any of the health services which are included in supplemental health services (as defined in section 300e–1(2) of this title). Supplemental health services payments which are fixed on a prepayment basis shall be fixed under a community rating system unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, except that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d)[1] of this title) provided comprehensive health services on a prepaid basis, the requirement of this sentence shall not apply to such entity during the forty-eight month period beginning with the month following the month in which the entity became such a qualified health maintenance organization.

(3)(A) Except as provided in subparagraph (B), at least 90 percent of the services of a physician which are provided as basic health services shall be provided through—

[1] See References in Text note below.

(i) members of the staff of the health maintenance organization,

(ii) a medical group (or groups),

(iii) an individual practice association (or associations),

(iv) physicians or other health professionals who have contracted with the health maintenance organization for the provision of such services, or

(v) any combination of such staff, medical group (or groups), individual practice association (or associations) or physicians or other health professionals under contract with the organization.

(B) Subparagraph (A) does not apply to the provision of the services of a physician—

(i) which the health maintenance organization determines, in conformity with regulations of the Secretary, are unusual or infrequently used, or

(ii) which are provided a member of the organization in a manner other than that prescribed by subparagraph (A) because of an emergency which made it medically necessary that the service be provided to the member before it could be provided in a manner prescribed by subparagraph (A).

(C) Contracts between a health maintenance organization and health professionals for the provision of basic and supplemental health services shall include such provisions as the Secretary may require, but only to the extent that such requirements are designed to insure the delivery of quality health care services and sound fiscal management.

(D) For purposes of this paragraph the term ''health professional'' means physicians, dentists, nurses, podiatrists, optometrists, and such other individuals engaged in the delivery of health services as the Secretary may by regulation designate.

(4) Basic health services (and only such supplemental health services as members have contracted for) shall within the area served by the health maintenance organization be available and accessible to each of its members with reasonable promptness and in a manner which assures continuity, and when medically necessary be available and accessible twenty-four hours a day and seven days a week, except that a health maintenance organization which has a service area located wholly in a nonmetropolitan area may make a basic health service available outside its service area if that basic health service is not a primary care or emergency health care service and if there is an insufficient number of providers of that basic health service within the service area who will provide such service to members of the health maintenance organization. A member of a health maintenance organization shall be reimbursed by the organization for his expenses in securing basic and supplemental health services other than through the organization if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition.

(5) To the extent that a natural disaster, war, riot, civil insurrection, or any other similar event not within the control of a health maintenance organization (as determined under regulations of the Secretary) results in the facilities, personnel, or financial resources of a health maintenance organization not being available to provide or arrange for the provision of a basic or supplemental health service in accordance with the requirements of paragraphs (1) through (4) of this subsection, such requirements only require the organization to make a good-faith effort to provide or arrange for the provision of such service within such limitation on its facilities, personnel, or resources.

(6) A health maintenance organization that otherwise meets the requirements of this subchapter may offer a high-deductible health plan (as defined in section 220(c)(2) of title 26).

(c) Organizational requirements

Each health maintenance organization shall—

(1)(A) have—

(i) a fiscally sound operation, and

(ii) adequate provision against the risk of insolvency,

which is satisfactory to the Secretary, and (B) have administrative and managerial arrangements satisfactory to the Secretary;

(2) assume full financial risk on a prospective basis for the provision of basic health services, except that a health maintenance organization may (A) obtain insurance or make other arrangements for the cost of providing to any member basic health services the aggregate value of which exceeds $5,000 in any year, (B) obtain insurance or make other arrangements for the cost of basic health services provided to its members other than through the organization because medical necessity required their provision before they could be secured through the organization, (C) obtain insurance or make other arrangements for not more than 90 per centum of the amount by which its costs for any of its fiscal years exceed 115 per centum of its income for such fiscal year, and (D) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions;

(3)(A) enroll persons who are broadly representative of the various age, social, and income groups within the area it serves, except that in the case of a health maintenance organization which has a medically underserved population located (in whole or in part) in the area it serves, not more than 75 per centum of the members of that organization may be enrolled from the medically underserved population unless the area in which such population resides is also a rural area (as designated by the Secretary), and (B) carry out enrollment of members who are entitled to medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] in accordance with procedures approved under regulations promulgated by the Secretary;

(4) not expel or refuse to re-enroll any member because of his health status or his requirements for health services;

(5) be organized in such a manner that provides meaningful procedures for hearing and resolving grievances between the health maintenance organization (including the medical group or groups and other health delivery entities providing health services for the organization) and the members of the organization;

(6) have organizational arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for its health services which program (A) stresses health outcomes, and (B) provides review by physicians and other health professionals of the process followed in the provision of health services;

(7) adopt at least one of the following arrangements to protect its members from incurring liability for payment of any fees which are the legal obligation of such organization—

(A) a contractual arrangement with any hospital that is regularly used by the members of such organization prohibiting such hospital from holding any such member liable for payment of any fees which are the legal obligation of such organization;

(B) insolvency insurance, acceptable to the Secretary;

(C) adequate financial reserve, acceptable to the Secretary; and

(D) other arrangements, acceptable to the Secretary, to protect members,

except that the requirements of this paragraph shall not apply to a health maintenance organization if applicable State law provides the members of such organization with protection from liability for payment of any fees which are the legal obligation of such organization; and

(8) provide, in accordance with regulations of the Secretary (including safeguards concerning the confidentiality of the doctor-patient relationship), and effective procedure for developing, compiling, evaluating, and reporting to the Secretary, statistics and other information (which the Secretary shall publish and disseminate on an annual basis and which the health maintenance organization shall disclose, in a manner acceptable to the Secretary, to its members and the general public) relating to (A) the cost of its operations, (B) the patterns of utilization of its services, (C) the availability, accessibility, and acceptability of its services, (D) to the extent practical, developments in the health status of its members, and (E) such other matters as the Secretary may require.

The Secretary shall issue regulations stating the circumstances under which the Secretary, in administering paragraph (1)(A), will consider the resources of an organization which owns or controls a health maintenance organization. Such regulations shall require as a condition to consideration of resources that an organization which owns or controls a health maintenance organization shall provide satisfactory assurances that it will assume the financial obligations of the health maintenance organization.

(d) Application of rules by certain health maintenance organizations

An organization that offers health benefits coverage shall not be considered as failing to meet the requirements of this section notwithstanding that it provides, with respect to coverage offered in connection with a group health plan in the small or large group market (as defined in section 300gg–91(e) of this title), an affiliation period consistent with the provisions of section 300gg(g) of this title.

(July 1, 1944, ch. 373, title XIII, § 1301, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 914; amended Pub. L. 94–460, title I, §§ 101, 102(a), 103, 105(a), Oct. 8, 1976, 90 Stat. 1945–1947; Pub. L. 95–559, §§ 9(b), 10, 11(a)–(d), Nov. 1, 1978, 92 Stat. 2137–2139; Pub. L. 96–32, § 2(b), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, § 942(a)(1), (2), (b)–(e), Aug. 13, 1981, 95 Stat. 573, 574; Pub. L. 100–517, §§ 2–4(a), 5(a)(1), (2), (b), Oct. 24, 1988, 102 Stat. 2578, 2579; Pub. L. 104–191, title I, §§ 102(b), 193, Aug. 21, 1996, 110 Stat. 1976, 1988.)

REFERENCES IN TEXT

Section 300e–9(d) of this title, referred to in subsec. (b)(1), (2), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

The Social Security Act, referred to in subsec. (c)(3)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1996—Subsec. (b)(6). Pub. L. 104–191, § 193, added par. (6).

Subsec. (d). Pub. L. 104–191, § 102(b), added subsec. (d).

1988—Subsec. (a). Pub. L. 100–517, § 2, substituted "public or private entity which is organized under the laws of any State and" for "legal entity".

Subsec. (b)(1). Pub. L. 100–517, § 3, inserted after second sentence "If a health maintenance organization offers to its members the opportunity to obtain basic health services through a physician not described in subsection (b)(3)(A) of this section, the organization may require, in addition to payments described in clause (D) of this paragraph, a reasonable deductible to be paid by a member when obtaining a basic health service from such a physician."

Subsec. (b)(3)(A). Pub. L. 100–517, § 4(a), substituted "at least 90 percent of the services of a physician" for "the services of a physician".

Subsec. (c). Pub. L. 100–517, § 5(a)(2), inserted at end "The Secretary shall issue regulations stating the circumstances under which the Secretary, in administering paragraph (1)(A), will consider the resources of an organization which owns or controls a health maintenance organization. Such regulations shall require as a condition to consideration of resources that an organization which owns or controls a health maintenance organization shall provide satisfactory assurances that it will assume the financial obligations of the health maintenance organization."

Subsec. (c)(1)(A). Pub. L. 100–517, § 5(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "have a fiscally sound operation and adequate provision against the risk of insolvency which is satisfactory to the Secretary, and".

Subsec. (c)(5) to (9). Pub. L. 100–517, § 5(b), redesignated pars. (6) to (9) as (5) to (8), respectively, and struck out former par. (5) which read as follows: "(A) in the case of a private health maintenance organization, be organized in such a manner that assures that (i) at

least one-third of the membership of the policymaking body of the health maintenance organization will be members of the organization, and (ii) there will be equitable representation on such body of members from medically underserved populations served by the organization, and (B) in the case of a public health maintenance organization, have an advisory board to the policymaking body of the public entity operating the organization which board meets the requirements of clause (A) of this paragraph and to which may be delegated policymaking authority for the organization;''.

1981—Subsec. (b). Pub. L. 97–35, § 942(a)(1), (2), (b), (c), in par. (3)(A)(iv) struck out reference to subpar. (C), in par. (3)(B) substituted ''(B)'' for ''(B)(i)'', ''(i)'' for ''(I)'', ''(ii)'' for ''(II)'', and struck out cl. (ii) which related to forty-eight-month period after qualification as an organization, struck out par. (3)(C) which related to expiration of first four fiscal years as a qualified organization, redesignated par. (3)(D) as (3)(C) and substituted requirements respecting delivery and fiscal management, for requirements respecting appropriate continuing education, redesignated par. (3)(E) as (3)(D), and in par. (4) inserted provisions relating to service areas located in nonmetropolitan area, and substituted ''with reasonable promptness'' for ''promptly as appropriate''.

Subsec. (c). Pub. L. 97–35, § 942(d)(1), (e), in par. (2) substituted provisions specifying requirements with respect to insurance, etc., for provisions generalizing such insurance, etc., requirements, and added cl. (D), struck out par. (4) which related to open enrollment period, redesignated pars. (5) to (8) as (4) to (7), respectively, added par. (8), struck out pars. (9) and (10) which related to medical social and health education services, and continuing education, respectively, and redesignated par. (11) as (9).

Subsec. (d). Pub. L. 97–35, § 942(d)(2), struck out subsec. (d) which related to requirements, etc., respecting open enrollment period.

1979—Subsec. (b)(3). Pub. L. 96–32 amended directory language of section 11(a) of Pub. L. 95–559 by substituting reference to section ''1301'' for ''1310'' of the Public Health Service Act, as section to be amended, and required no change in text because amendment made by Pub. L. 95–559 had been executed to this section as the probable intent of Congress.

1978—Subsec. (b)(1). Pub. L. 95–559, §§ 10(a), 11(b), inserted ''except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education,'' after ''the requirement of clause (C)'' and inserted provisions permitting the health maintenance organization to seek reimbursement for the cost of services provided to a member who is entitled to benefits under a workmen's compensation law or insurance policy.

Subsec. (b)(2). Pub. L. 95–559, § 10(a), inserted ''unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education,'' after ''community rating system''.

Subsec. (b)(3). Pub. L. 95–559, § 11(a), as amended by Pub. L. 96–32, inserted provisions limiting the health maintenance organization from entering into contracts for health services with physicians other than members of the staff of the health maintenance organization, medical groups, or individual practice associations.

Subsec. (b)(4). Pub. L. 95–559, § 11(c), substituted ''basic and supplemental'' for ''basic or supplemental'' and ''if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition'' for ''if it was medically necessary that the services be provided before it could secure them through the organization''.

Subsec. (b)(5). Pub. L. 95–559, § 11(d), added par. (5).

Subsec. (c)(1). Pub. L. 95–559, § 10(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(3). Pub. L. 95–559, § 9(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(6). Pub. L. 95–559, § 10(c), designated existing provisions as subpar. (A), inserted ''in the case of a private health maintenance organization,'' before ''be organized in such'', and substituted ''(i)'' for ''(A)'' and ''(ii)'' for ''(B)'', and added subpar. (B).

1976—Subsec. (b)(1). Pub. L. 94–460, §§ 101(a), 105(a)(1), provided that a health maintenance organization may include a health service, defined as a supplemental health service by section 300e–1(2) of this title, in the basic health services provided its members for a basic health service payment described in the first sentence, and also provided that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title) provided comprehensive health services on a prepaid basis, the requirement of clause (C) would not apply to such entity until the expiration of the forty-eight month period beginning with the month following the month in which the entity became such a qualified health organization.

Subsec. (b)(2). Pub. L. 94–460, §§ 101(b), 105(a)(2), substituted ''the organization may provide to each of its members any of the health services which are included in supplemental health services (as defined in section 300e–1(2) of this title)'' for ''the organization shall provide to each of its members each health service (A) which is included in supplemental health services (as defined in section 300e–1(2) of this title), (B) for which the required health manpower are available in the area served by the organization, and (C) for the provision of which the member has contracted with the organization'' and inserted ''except that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title) provided comprehensive health services on a prepaid basis, the requirement of this sentence shall not apply to such entity during the forty-eight month period beginning with the month following the month in which the entity became such a qualified health maintenance organization'' after ''Supplemental health services payments which are fixed on a prepayment basis shall be fixed under a community rating system''.

Subsec. (b)(3). Pub. L. 94–460, § 102(a), inserted references to health professionals who have contracted with the health maintenance organization for the provision of such services and to the combination of staff, medical groups, individual practice associations, or health professionals under contract with the health maintenance organization, and inserted provisions allowing a health maintenance organization, during the thirty-six month period beginning with the month following the month in which the organization becomes a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title), to provide basic and supplemental health services through an entity which but for the requirement of section 300e–1(4)(C)(i) of this title would be a medical group for purposes of this subchapter, directing that after the expiration of such period, the organization may provide basic or supplemental health services through such an entity only if authorized by the Secretary in accordance with regulations which take into consideration the unusual circumstances of such entity, directing that a health maintenance organization may not, in any of its fiscal years, enter into contracts with health professionals or entities other than medical groups or individual practice associations if the amounts paid under such contracts for basic and supplemental health services exceed fifteen percent of the total amount to be paid in such fiscal year by the health maintenance organization to physicians for the provision of basic and supplemental health services, or, if the health maintenance organization principally serves a rural area, thirty percent of such amount, except that the sentence would not apply to the entering into of contracts for the purchase of basic and supplemental health services through an entity which but for the requirements of section 300e–1(4)(C)(i) of this title would be a medical group for purposes of this subchapter, and directing that contracts between a health maintenance organization and health professionals for the provision

of basic and supplemental health services include such provisions as the Secretary may require (including provisions requiring appropriate continuing education).

Subsec. (b)(4). Pub. L. 94–460, § 101(c), substituted ''and only such supplemental health services as members have contracted for'' for ''and supplemental health services in the case of the members who have contracted therefor''.

Subsec. (c)(4). Pub. L. 94–460, § 103(a), substituted provisions making a simple reference to an open enrollment period in accordance with the provisions of subsec. (d) of this section for provisions spelling out in detail the requirements for a health maintenance organization with regard to an open enrollment period.

Subsec. (d). Pub. L. 94–460, § 103(b), added subsec. (d).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 118 of title I of Pub. L. 94–460 provided that:

''(a) Except as provided in subsection (b), the amendments made by this title [enacting section 300e–15 of this title and amending this section, sections 300e–1 to 300e–11, 300e–13, and 300n–1 of this title, and section 8902 of Title 5, Government Organization and Employees] shall take effect on the date of the enactment of this Act [Oct. 8, 1976].

''(b)(1) The amendments made by sections 101 [amending this section], 102 [amending this section and section 300e–1 of this title], 103 [amending this section], 104 [amending section 300e–1 of this title], and 106 [amending section 300e–1 of this title] shall (A) apply with respect to grants, contracts, loans, and loan guarantees made under sections 1303, 1304, and 1305 of the Public Health Service Act [sections 300e–2, 300e–3, and 300e–4 of this title] for fiscal years beginning after September 30, 1976, (B) apply with respect to health benefit plans offered under section 1310 of such Act [section 300e–9 of this title] after such date, and (C) for purposes of section 1312 [section 300e–11 of this title] take effect October 1, 1976.

''(2) Subsection (d) of section 1301 of the Public Health Service Act [subsec. (d) of this section] (added by section 103(b) of this Act) shall take effect with respect to fiscal years of health maintenance organizations beginning on or after the date of the enactment of this Act [Oct. 8, 1976].

''(3) The amendments made by section 107 [amending sections 300e–2, 300e–3, and 300e–4 of this title] shall apply with respect to grants, contracts, loans, and loan guarantees made under sections 1303, 1304, and 1305 of the Public Health Service Act [sections 300e–2, 300e–3 and 300e–4 of this title] for fiscal years beginning after September 30, 1976.

''(4) The amendments made by sections 109(a)(1) [amending section 300e–4 of this title] and 109(c) [amending section 300e–7 of this title] shall apply with respect to loan guarantees made under section 1305 of the Public Health Service Act [section 300e–4 of this title] after September 30, 1976.

''(5) The amendment made by section 109(e) [amending section 300e–3 of this title] shall apply with respect to projects assisted under section 1304 of the Public Health Service Act [section 300e–3 of this title] after September 30, 1976.

''(6) The amendments made by paragraphs (1) and (2) of section 110(a) [amending section 300e–9 of this title] shall apply with respect to calendar quarters which begin after the date of the enactment of this Act [Oct. 8, 1976].

''(7) The amendments made by paragraphs (3) and (4) of section 110 [amending section 300e–9 of this title] shall apply with respect to failures of employers to comply with section 1310(a) of the Public Health Service Act [section 300e–9 of this title] after the date of the enactment of this Act [Oct. 8, 1976].

''(8) The amendment made by section 111 [amending section 300e–11 of this title] shall apply with respect to determinations of the Secretary of Health, Education, and Welfare described in section 1312(a) of the Public Health Service Act [section 300e–11(a) of this title] and made after the date of the enactment of this Act [Oct. 8, 1976].''

SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95–559 as the ''Health Maintenance Organization Amendments of 1978'', see section 1 of Pub. L. 95–559, set out as a note under section 201 of this title.

SHORT TITLE OF 1976 AMENDMENT

For short title of Pub. L. 94–460 which substantially amended this subchapter, as the ''Health Maintenance Organization Amendments of 1976'', see section 1(a) of Pub. L. 94–460, set out as a note under section 201 of this title.

SHORT TITLE

For short title of Pub. L. 93–222, which enacted this subchapter, as the ''Health Maintenance Organization Act of 1973'', see section 1 of Pub. L. 93–222, set out as a Short Title of 1973 Amendments note under section 201 of this title.

QUALIFICATION OF HEALTH MAINTENANCE ORGANIZATION CONTINGENT UPON CONTROLLING ORGANIZATION'S ASSUMPTION OF FINANCIAL OBLIGATIONS AND MEETING OTHER REQUIREMENTS

Section 5(a)(3) of Pub. L. 100–517 provided that: ''During the period prior to the effective date of regulations issued under section 1301(c) of the Public Health Service Act [subsec. (c) of this section] (as amended by paragraph (2)), the Secretary of Health and Human Services shall consider the application for qualification under section 1301(c)(1)(A) of such Act of a health maintenance organization—

''(A) which is owned or controlled by another organization, and

''(B) which requests that the resources of the other organization be considered in determining its qualification under such section,

if the Secretary receives satisfactory assurances from the other organization that it will assume the financial obligations of the health maintenance organization and if the Secretary determines that the other organization meets such other requirements as the Secretary determines are necessary.''

STUDY ON HEALTH MAINTENANCE ORGANIZATION PROGRAM

Pub. L. 99–660, title VIII, § 813, Nov. 14, 1986, 100 Stat. 3801, which provided for a study to assess the operation and impact of the provisions of this subchapter and a report to Congress on the findings and conclusions of such study within 18 months after Nov. 14, 1986, was repealed by Pub. L. 102–531, title III, § 311(a), Oct. 27, 1992, 106 Stat. 3503, effective as if such repeal was enacted on Nov. 14, 1986.

HEALTH CARE QUALITY ASSURANCE PROGRAMS STUDY

Section 4 of Pub. L. 93–222 required Secretary of Health, Education, and Welfare to contract for conduct of a study of health care quality assurance programs and submit a final report to specific committees of Congress by Jan. 31, 1976.

§ 300e–1. Definitions

For purposes of this subchapter:

(1) The term ''basic health services'' means—

(A) physician services (including consultant and referral services by a physician);

(B) inpatient and outpatient hospital services;

(C) medically necessary emergency health services;

(D) short-term (not to exceed twenty visits), outpatient evaluative and crisis intervention mental health services;

(E) medical treatment and referral services (including referral services to appropriate an-

cillary services) for the abuse of or addiction to alcohol and drugs;

(F) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(G) home health services; and

(H) preventive health services (including (i) immunizations, (ii) well-child care from birth, (iii) periodic health evaluations for adults, (iv) voluntary family planning services, (v) infertility services, and (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction).

Such term does not include a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for the protection of individual health. The Secretary shall publish in the Federal Register each determination made by him under the preceding sentence. If a service of a physician described in the preceding sentence may also be provided under applicable State law by a dentist, optometrist, podiatrist, psychologist, or other health care personnel, a health maintenance organization may provide such service through a dentist, optometrist, podiatrist, psychologist, or other health care personnel (as the case may be) licensed to provide such service. Such term includes a health service directly associated with an organ transplant only if such organ transplant was required to be included in basic health services on April 15, 1985. For purposes of this paragraph, the term ''home health services'' means health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the health maintenance organization.

(2) The term ''supplemental health services'' means any health service which is not included as a basic health service under paragraph (1) of this section. If a health service provided by a physician may also be provided under applicable State law by a dentist, optometrist, podiatrist, psychologist, or other health care personnel, a health maintenance organization may provide such service through an optometrist, dentist, podiatrist, psychologist, or other health care personnel (as the case may be) licensed to provide such service.

(3) The term ''member'' when used in connection with a health maintenance organization means an individual who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with the organization under which the organization assumes the responsibility for the provision to such individual of basic health services and of such supplemental health services as may be contracted for.

(4) The term ''medical group'' means a partnership, association, or other group—

(A) which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, podiatrists, and psychologists) as are necessary for the provision of health services for which the group is responsible;

(B) a majority of the members of which are licensed to practice medicine or osteopathy; and

(C) the members of which (i) as their principal professional activity engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility for the delivery of health services to members of a health maintenance organization, except that this clause does not apply before the end of the forty-eight month period beginning after the month in which the health maintenance oranization[1] becomes a qualified health maintenance organization as defined in section 300e–9(d)[2] of this title, or as authorized by the Secretary in accordance with regulations that take into consideration the unusual circumstances of the group; (ii) pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services; (iii) share medical and other records and substantial portions of major equipment and of professional, technical, and administrative staff; (iv) arrange for and encourage continuing education in the field of clinical medicine and related areas for the members of the group; and (v) establish an arrangement whereby a member's enrollment status is not known to the health professional who provides health services to the member.

(5) The term ''individual practice association'' means a partnership, corporation, association, or other legal entity which has entered into a services arrangement (or arrangements) with persons who are licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, psychology, or other health profession in a State and a majority of whom are licensed to practice medicine or osteopathy. Such an arrangement shall provide—

(A) that such persons shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(B) to the extent feasible, for the sharing by such persons of medical and other records, equipment, and professional, technical, and administrative staff.

(6) The term ''health systems agency'' means an entity which is designated in accordance with section 300*l*–4 of this title.

(7) The term ''medically underserved population'' means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. Such a designation may be made by the Secretary only after consideration of the comments (if any) of (A) each State health planning and development agency which covers (in whole or in part) such urban or rural area or the area in which such population group resides, and (B) each health systems agency designated for a health service area which covers (in whole or in part) such urban or rural area or the area in which such population group resides.

(8)(A) The term ''community rating system'' means the systems, described in subparagraphs

[1] So in original. Probably should be ''organization''.

[2] See References in Text note below.

(B) and (C), of fixing rates of payments for health services. A health maintenance organization may fix its rates of payments under the system described in subparagraph (B) or (C) or under both such systems, but a health maintenance organization may use only one such system for fixing its rates of payments for any one group.

(B) A system of fixing rates of payment for health services may provide that the rates shall be fixed on a per-person or per-family basis and may authorize the rates to vary with the number of persons in a family, but, except as authorized in subparagraph (D), such rates must be equivalent for all individuals and for all families of similar composition.

(C) A system of fixing rates of payment for health services may provide that the rates shall be fixed for individuals and families by groups. Except as authorized in subparagraph (D), such rates must be equivalent for all individuals in the same group and for all families of similar composition in the same group. If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

(i)(I) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

(II) determine its revenue requirements for providing services to the members of each class established under subclause (I), and

(III) fix the rates of payments for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under subclause (II) for providing services to them as members of the classes established under subclause (I), or

(ii) fix the rates of payments for the individuals and families of a group on the basis of the organization's revenue requirements for providing services to the group, except that the rates of payments for the individuals and families of a group of less than 100 persons may not be fixed at rates greater than 110 percent of the rate that would be fixed for such individuals and families under subparagraph (B) or clause (i) of this subparagraph.

The Secretary shall review the factors used by each health maintenance organization to establish classes under clause (i). If the Secretary determines that any such factor may not reasonably be used to predict the use of the health services by individuals and families, the Secretary shall disapprove such factor for such purpose. If a health maintenance organization is to fix rates of payment for a group under clause (ii), it shall, upon request of the entity with which it contracts to provide services to such group, disclose to that entity the method and data used in calculating the rates of payment.

(D) The following differentials in rates of payments may be established under the systems described in subparagraphs (B) and (C):

(i) Nominal differentials in such rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of members:

(I) Individual members (including their families).

(II) Small groups of members (as determined under regulations of the Secretary).

(III) Large groups of members (as determined under regulations of the Secretary).

(ii) Nominal differentials in such rates may be established to reflect the compositing of the rates of payment in a systematic manner to accommodate group purchasing practices of the various employers.

(iii) Differentials in such rates may be established for members enrolled in a health maintenance organization pursuant to a contract with a governmental authority under section 1079 or 1086 of title 10 or under any other governmental program (other than the health benefits program authorized by chapter 89 of title 5) or any health benefits program for employees of States, political subdivision of States, and other public entities.

(9) The term ''non-metropolitan area'' means an area no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget and which does not contain a city whose population exceeds fifty thousand individuals.

(July 1, 1944, ch. 373, title XIII, § 1302, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 917; amended Pub. L. 94–460, title I, §§ 102(b), 104, 105(b), (c), 106, 117(b)(1), (2), Oct. 8, 1976, 90 Stat. 1946–1948, 1955; Pub. L. 95–559, § 11(e), Nov. 1, 1978, 92 Stat. 2139; Pub. L. 97–35, title IX, § 942(f)–(j), Aug. 13, 1981, 95 Stat. 574, 575; Pub. L. 97–414, § 9(c), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 99–660, title VIII, §§ 812(a), 814, Nov. 14, 1986, 100 Stat. 3801, 3802; Pub. L. 100–517, § 6(b), Oct. 24, 1988, 102 Stat. 2579.)

REFERENCES IN TEXT

Section 300e–9(d) of this title, referred to in par. (4)(C), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

AMENDMENTS

1988—Par. (8)(C). Pub. L. 100–517, § 6(b)(1), amended third sentence generally. Prior to amendment, third sentence read as follows: ''If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

''(i) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

''(ii) determine its revenue requirements for providing services to the members of each class established under clause (i), and

''(iii) fix the rates of payment for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under clause (ii) for providing services to them as members of the classes established under clause (i).''

Pub. L. 100–517, § 6(b)(2), inserted at end ''If a health maintenance organization is to fix rates of payment for a group under clause (ii), it shall, upon request of the entity with which it contracts to provide services to such group, disclose to that entity the method and data used in calculating the rates of payment.''

1986—Par. (1). Pub. L. 99–660, § 814(a), inserted ''psychologist,'' in two places in fourth sentence.

Pub. L. 99–660, § 812(a), (b)(1), temporarily inserted ''Such term includes a health service directly associated with an organ transplant only if such organ transplant was required to be included in basic health services on April 15, 1985.'' in closing provisions. See Effective and Termination Dates of 1986 Amendment note below.

Par. (2). Pub. L. 99–660, § 814(a), inserted ''psychologist,'' in two places.

Par. (4)(A). Pub. L. 99–660, § 814(b), substituted ''podiatrists, and psychologists'' for ''and podiatrists''.

Par. (5). Pub. L. 99–660, § 814(c), inserted ''psychology,''.

1983—Par. (5)(B). Pub. L. 97–414 amended directory language of Pub. L. 97–35, § 942(i), to correct a typographical error, and did not involve any change in text. See 1981 Amendment note below.

1981—Par. (1). Pub. L. 97–35, § 942(f), struck out provisions authorizing health maintenance organizations to maintain, etc., drug use profiles of members.

Par. (2). Pub. L. 97–35, § 942(g), substituted provisions to include services not included under par. (1), for provisions enumerating specific services, substituted ''health service provided by a physician'' for ''service of a physician described in the preceding sentence'', and struck out provisions authorizing health maintenance organizations to maintain, etc., drug use profiles of members.

Par. (4)(C)(i). Pub. L. 97–35, § 942(h), inserted provisions relating to applicability to qualified organizations.

Par. (5)(B). Pub. L. 97–35, § 942(i), as amended by Pub. L. 97–414, § 9(c), struck out ''(i)'' after ''feasible'', and struck out cl. (ii) which related to continuing education.

Par. (8). Pub. L. 97–35, § 942(j), reorganized and restructured provisions and, among many changes, provided for determinations based upon subpars. (B) and (C), and set out determinations respecting differentials contained in former subpars. (B) and (C) as subpar. (D).

1978—Par. (1). Pub. L. 95–559 inserted provisions to exclude a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for protection of individual health and that the Secretary publish in Federal Register each determination made by him under preceding sentence.

1976—Par. (1). Pub. L. 94–460, § 104(a), substituted reference to immunization, well-child care from birth, periodic health evaluations for adults, and children's ear examinations conducted to determine need for hearing correction for reference to preventive dental care for children in (H) and, in the provisions following subpar. (H), inserted reference to ''other health care personnel''.

Par. (2). Pub. L. 94–460, § 104(b), substituted ''basic health service'' for ''basic health service under paragraph (1)(A) or (1)(H)'' in subpars. (B) and (C), added subpar. (G), and inserted reference to ''other health care personnel'' in provisions following subpar. (G).

Par. (4)(C). Pub. L. 94–460, §§ 102(b)(1), 106, substituted ''as their principal professional activity engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility for the delivery of health services to members of a health maintenance organization'' for ''as their principal professional activity and as a group responsibility engage in the coordinated practice of their profession for a health maintenance organization'' in cl. (i), substituted ''similar plan unrelated to the provision of specific health services'' for ''plan'' in cl. (ii), struck out former cl. (iv) which covered the utilization of additional professional personnel, allied health professions personnel, and other health personnel as are available and appropriate for the effective and efficient delivery of the services of the members of the group, redesignated former cl. (v) as (iv), and added cl. (v).

Par. (5)(B). Pub. L. 94–460, § 102(b)(2), struck out former cl. (i) which covered the utilization of additional professional personnel, allied health professions personnel, and other personnel as are available and appropriate for the effective and efficient delivery of the services of the persons who are parties to the arrangement, and redesignated former cls. (ii) and (iii) as (i) and (ii), respectively.

Par. (6). Pub. L. 94–460, § 117(b)(1), substituted provisions defining ''health systems agency'' for provisions defining ''section 314(a) State health planning agency'' and ''section 314(b) areawide health planning agency''.

Par. (7). Pub. L. 94–460, § 117(b)(2), substituted ''State health planning and development agency which'' for ''section 314(a) State health planning agency whose section 314(a) plan'' and ''health systems agency designated for a health service area which'' for ''section 314(b) areawide health planning agency whose section 314(b) plan''.

Par. (8). Pub. L. 94–460, § 105(b), (c), substituted ''to reflect differences in marketing costs and the different administrative costs'' for ''to reflect the different administrative costs'' in subpar. (A) preceding cl. (i), added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE AND TERMINATION DATES OF 1986 AMENDMENT

Section 812(b)(1) of Pub. L. 99–660, which provided that amendment by subsection (a), amending this section, was to take effect on Oct. 1, 1985, and was to cease to be in effect on Apr. 1, 1988, was repealed by Pub. L. 100–517, § 6(a), Oct. 24, 1988, 102 Stat. 2579.

Section 815 of title VIII of Pub. L. 99–660 provided that:

''(a) Except as provided in subsection (b) and section 812(b) [enacting provisions set out as notes above and below], this title and the amendments made by this title [amending this section and sections 300e–4, 300e–5 to 300e–10, 300e–16, and 300e–17 of this title, repealing sections 300e–2, 300e–3, and 300e–4a of this title, and enacting provisions set out as notes under this section and sections 201, 300e, 300e–4, and 300e–5 of this title] shall take effect on October 1, 1985.

''(b) Section 813 [enacting provisions set out as a note under section 300e of this title] shall take effect on the date of enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, except that amendment of pars. (1) and (2) of this section by section 104 of Pub. L. 94–460 and the amendment of pars. (4)(C) and (5)(B) of this section by sections 102 and 106 of Pub. L. 94–460 applicable with respect to grants, contracts, loans, and loan guarantees made under sections 300e–2, 300e–3, and 300e–4 of this title for fiscal years beginning after Sept. 30, 1976, applicable with respect to health benefit plans offered under section 300e–9 of this title after Sept. 30, 1976, and effective for purposes of section 300e–11 of this title on Oct. 1, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

CONSTRUCTION

Section 816 of title VIII of Pub. L. 99–660 provided that: ''The provisions of this title and of the amendments made by this title [amending this section and sections 300e–4, 300e–5 to 300e–10, 300e–16, and 300e–17 of this title, repealing sections 300e–2, 300e–3, and 300e–4a of this title, and enacting provisions set out as notes under this section and sections 201, 300e, 300e–4, and 300e–5 of this title] do not authorize the appropriation of any funds for fiscal year 1986.''

BASIC HEALTH SERVICE STATUS OF CERTAIN ORGAN TRANSPLANT SERVICES AFTER APRIL 1, 1988

Section 812(b)(2) of Pub. L. 99–660, which provided that after Apr. 1, 1988, for purposes of this subchapter, no health service directly associated with an organ transplant was to be considered to be a basic health service if such service would otherwise have been added as a basic health service between Apr. 15, 1985, and Apr.

1, 1988, was repealed by Pub. L. 100–517, § 6(a), Oct. 24, 1988, 102 Stat. 2579.

REPORTS RESPECTING MEDICALLY UNDERSERVED AREAS AND POPULATION GROUPS AND NON-METROPOLITAN AREAS

Section 5 of Pub. L. 93–222 directed Secretary of Health, Education, and Welfare to report to Congress the criteria used in the designation of medically underserved areas and population groups for purposes of par. (7) of this section by Dec. 29, 1973, and report to Congress the areas and population groups designated under par. (7) of this section, the comments of State and areawide health planning agencies, and areas which meet the definitional standards of par. (9) of this section for non-metropolitan areas by Dec. 29, 1974, and that the Office of Management and Budget may review such reports before their submission to Congress.

§§ 300e–2, 300e–3. Repealed. Pub. L. 99–660, title VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3799

Section 300e–2, act July 1, 1944, ch. 373, title XIII, § 1303, as added Dec. 29, 1973, Pub. L. 93–222, § 2, 87 Stat. 920; amended Oct. 8, 1976, Pub. L. 94–460, title I, §§ 107(a), 109(d)(1), 117(b)(3), 90 Stat. 1948, 1950, 1955; Aug. 13, 1981, Pub. L. 97–35, title IX, § 947(a), 95 Stat. 577, provided for grants and contracts for feasibility surveys.

Section 300e–3, act July 1, 1944, ch. 373, title XIII, § 1304, as added Dec. 29, 1973, Pub. L. 93–222, § 2, 87 Stat. 921; amended Apr. 21, 1976, Pub. L. 94–273, § 40, 90 Stat. 381; Oct. 8, 1976, Pub. L. 94–460, title I, §§ 107(b), 108(a), (b), (d)(1), 109(d)(2), (3), (e), 113(a), 117(b)(4), 90 Stat. 1948–1950, 1953, 1955; Nov. 1, 1978, Pub. L. 95–559, §§ 2(a), 3(a)–(c), 6, 92 Stat. 2131, 2134; July 10, 1979, Pub. L. 96–32, § 2(a), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 941(c), 947(b), 95 Stat. 573, 577, provided for grants, contracts, and loan guarantees for planning and for initial development costs.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as an Effective Date of 1986 Amendment note under section 300e–5 of this title.

Repeal effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

§ 300e–4. Loans and loan guarantees for initial operation costs

(a) Authority

The Secretary may—

(1) make loans to public or private health maintenance organizations to assist them in meeting the amount by which their costs of operation during a period not to exceed the first sixty months of their operation exceed their revenues in that period;

(2) make loans to public or private health maintenance organizations to assist them in meeting the amount by which their costs of operation, which the Secretary determines are attributable to significant expansion in their membership or area served and which are incurred during a period not to exceed the first sixty months of their operation after such expansion, exceed their revenues in that period which the Secretary determines are attributable to such expansion; and

(3) guarantee to non-Federal lenders payment of the principal of and the interest on loans made to private health maintenance organizations for the amounts referred to in paragraphs (1) and (2).

No loan or loan guarantee may be made under this subsection for the costs of operation of a health maintenance organization unless the Secretary determines that the organization has made all reasonable attempts to meet such costs, and unless the Secretary has made a grant or loan to, entered into a contract with, or guaranteed a loan for, the organization in fiscal year 1981, 1982, 1983, 1984, or 1985 under this section or section 300e–3(b)[1] of this title (as in effect before October 1, 1985).

(b) Limitations

(1) Except as provided in paragraph (2), the aggregate amount of principal of loans made or guaranteed, or both, under subsection (a) of this section for a health maintenance organization may not exceed $7,000,000. In any twelve-month period the amount disbursed to a health maintenance organization under this section (either directly by the Secretary, by an escrow agent under the terms of an escrow agreement, or by a lender under a guaranteed loan) may not exceed $3,000,000.

(2) The cumulative total of the principal of the loans outstanding at any time which have been directly made, or with respect to which guarantees have been issued, under subsection (a) of this section may not exceed such limitations as may be specified in appropriation Acts.

(c) Source of loan funds

Loans under this section shall be made from the fund established under section 300e–7(e) of this title.

(d) Time limit on loans and loan guarantees

No loan may be made or guaranteed under this section after September 30, 1986.

(e) Repealed. Pub. L. 97–35, title IX, § 947(c), Aug. 13, 1981, 95 Stat. 577

(f) Medically underserved populations

In considering applications for loan guarantees under this section, the Secretary shall give special consideration to applications for health maintenance organizations which will serve medically underserved populations.

(July 1, 1944, ch. 373, title XIII, § 1305, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 924; amended Pub. L. 93–641, § 8, Jan. 4, 1975, 88 Stat. 2276; Pub. L. 94–273, § 2(21), Apr. 21, 1976, 90 Stat. 376; Pub. L. 94–460, title I, §§ 107(c), 108(c), (d)(2), 109(a)(1), (2), 113(b), Oct. 8, 1976, 90 Stat. 1949, 1953; Pub. L. 95–559, §§ 2(b), 4(a), (b), Nov. 1, 1978, 92 Stat. 2131, 2132; Pub. L. 96–32, § 2(d), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, §§ 943(a)–(c), 947(c), Aug. 13, 1981, 95 Stat. 576, 577; Pub. L. 99–660, title VIII, § 804(a), Nov. 14, 1986, 100 Stat. 3800.)

REFERENCES IN TEXT

Section 300e–3(b) of this title, referred to in subsec. (a), was repealed by Pub. L. 99–660, title VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3799.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–660 inserted ‘‘, and unless the Secretary has made a grant or loan to, entered into a contract with, or guaranteed a loan for, the organiza-

[1] See References in Text note below.

tion in fiscal year 1981, 1982, 1983, 1984, or 1985 under this section or section 300e–3(b) of this title (as in effect before October 1, 1985)'' at end of last sentence.

1981—Subsec. (a). Pub. L. 97–35, § 943(a), in pars. (1) and (2) struck out ''nonprofit'' before ''private'', and in par. (3) substituted provisions respecting guarantees for private health maintenance organizations, for guarantees for nonprofit private health maintenance organizations.

Subsec. (b)(1). Pub. L. 97–35, § 943(b), generally revised limitations and, among many changes, increased amounts subject to coverage, and struck out requirements respecting Congressional oversight for increases in amounts.

Subsec. (d). Pub. L. 97–35, § 943(c), substituted ''1986'' for ''1981''.

Subsec. (e). Pub. L. 97–35, § 947(c), struck out subsec. (e) which related to projects in nonmetropolitan areas.

1979—Subsec. (b)(1). Pub. L. 96–32 substituted ''$4,500,000'' for ''$4,000,000'' in two places.

1978—Subsec. (a). Pub. L. 95–559, § 4(b)(1), substituted ''costs of operation'' for ''operating costs'' wherever appearing.

Subsec. (b)(1). Pub. L. 95–559, § 4(a), (b)(2), inserted ''(or $4,000,000 if the Secretary makes a written determination that such loans or loan guarantees are necessary to preserve the fiscally sound operation of the health maintenance organization and to protect against the risk of insolvency of the health maintenance organization and, within 30 days of the making of such loans or loan guarantees, furnishes the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the loans or loan guarantees and a copy of the written determination made with respect to the loans or loan guarantees and the reasons for the determination) through September 30, 1979, and $4,000,000 thereafter'' after ''$2,500,000'' and ''(or $2,000,000 if the Secretary makes a written determination that such disbursements are necessary to preserve the fiscally sound operation of the health maintenance organization and protect against the risk of insolvency of the health maintenance organization and, within 30 days of such disbursement, furnishes the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the disbursement and a copy of the written determination made with respect to it and the reasons for the determination) through September 30, 1979, and $2,000,000 thereafter'' after ''$1,000,000'' and substituted ''any twelve-month period'' for ''any fiscal year''.

Subsec. (d). Pub. L. 95–559, § 2(b), substituted ''September 30, 1981'' for ''September 30, 1980''.

1976—Subsec. (a)(1), (2). Pub. L. 94–460, §§ 107(c), 109(a)(1), substituted ''during a period not to exceed the first sixty months'' for ''in the period of the first thirty-six months''.

Subsec. (a)(3). Pub. L. 94–460, § 108(c), substituted reference to loans made to nonprofit private health maintenance organizations for the amounts referred to in paragraph (1) or (2), or to other private health maintenance organizations for such amounts but only if the health maintenance organization will serve a medically underserved population for reference to loans made to any private health maintenance organization (other than a private nonprofit health maintenance organization) for the amounts referred to in paragraph (1) or (2), but only if such health maintenance organization will serve a medically underserved population.

Subsec. (b)(1). Pub. L. 94–460, § 109(a)(2), substituted ''In any fiscal year the amount disbursed to a health maintenance organization under this section (either directly by the Secretary or by an escrow agent under the terms of an escrow agreement or by a lender under a loan guaranteed under this section) may not exceed $1,000,000'' for ''In any fiscal year, the amount disbursed under a loan or loans made or guaranteed under this section for a health maintenance organization may not exceed $1,000,000,000''.

Subsec. (d). Pub. L. 94–460, § 113(b), substituted ''No loan may be made or guaranteed under this section after September 30, 1980'' for ''A loan or loan guarantee may be made under this section through the fiscal year ending June 30, 1978''.

Pub. L. 94–273 substituted ''September'' for ''June''.

Subsec. (f). Pub. L. 94–460, § 108(d)(2), added subsec. (f).

1975—Subsec. (b)(1). Pub. L. 93–641 substituted provisions that amount disbursed under a loan or loans made or guaranteed under this section for a health maintenance organization may not exceed $1,000,000,000 for provisions that principal amount of any loan made or guaranteed under subsec. (a) of this section for a health maintenance organization may not exceed $1,000,000.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 804(b) of Pub. L. 99–660 provided that: ''The amendment made by subsection (a) [amending this section] does not apply to any loan or loan guarantee for the initial costs of operation of a health maintenance organization made under title XIII of the Public Health Service Act [this subchapter] before October 1, 1985.''

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(d) of Pub. L. 95–559 provided that: ''The amendments made by this section [amending this section and section 300e–7 of this title] shall only be effective for fiscal years beginning on or after October 1, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, except that the amendment of subsec. (a)(1), (2) of this section by section 107(c) of Pub. L. 94–460 applicable with respect to grants, contracts, loans, and loan guarantees made under this section and sections 300e–2 and 300e–3 of this title for fiscal years beginning after Sept. 30, 1976, and except that the amendment of subsec. (a)(1), (2) of this section by section 109(a)(1) of Pub. L. 94–460 applicable with respect to loan guarantees made under this section after Sept. 30, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–4a. Repealed. Pub. L. 99–660, title VIII, § 805(a), Nov. 14, 1986, 100 Stat. 3800

Section, act July 1, 1944, ch. 373, title XIII, § 1305A, as added Nov. 1, 1978, Pub. L. 95–559, § 5(a), 92 Stat. 2133; amended July 10, 1979, Pub. L. 96–32, § 2(e), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title IX, § 944, 95 Stat. 576, related to loans and loan guarantees for acquisition and construction of ambulatory health care facilities.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any loan or loan guarantee made under this section before Oct. 1, 1985, see section 805(c) of Pub. L. 99–660, set out as an Effective Date of 1986 Amendment note under section 300e–5 of this title.

Repeal effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

§ 300e–5. Application requirements

(a) Submission to and approval by Secretary required for making loans and loan guarantees

No loan or loan guarantee may be made under this subchapter unless an application therefor has been submitted to, and approved by, the Secretary.

(b) Application contents

The Secretary may not approve an application for a loan or loan guarantee under this subchapter unless—

(1) such application meets the requirements of section 300e–7 of this title;

(2) in the case of an application for assistance under section 300e–4 of this title, he determines that the applicant making the application would not be able to complete the project or undertaking for which the application is submitted without the assistance applied for;

(3) the application contains satisfactory specification of the existing or anticipated (A) population group or groups to be served by the proposed or existing health maintenance organization described in the application, (B) membership of such organization, (C) methods, terms, and periods of the enrollment of members of such organization, (D) estimated costs per member of the health and educational services to be provided by such organization and the nature of such costs, (E) sources of professional services for such organization, and organizational arrangements of such organization for providing health and educational services, (F) organizational arrangements of such organization for an ongoing quality assurance program in conformity with the requirements of section 300e(c) of this title, (G) sources of prepayment and other forms of payment for the services to be provided by such organization, (H) facilities, and additional capital investments and sources of financing therefor, available to such organization to provide the level and scope of services proposed, (I) administrative, managerial, and financial arrangements and capabilities of such organization, (J) role for members in the planning and policymaking for such organization, (K) grievance procedures for members of such organization, and (L) evaluations of the support for and acceptance of such organization by the population to be served, the sources of operating support, and the professional groups to be involved or affected thereby;

(4) contains or is supported by assurances satisfactory to the Secretary that the applicant making the application will, in accordance with such criteria as the Secretary shall by regulation prescribe, enroll, and maintain an enrollment of the maximum number of members that its available and potential resources (as determined under regulations of the Secretary) will enable it to effectively serve;

(5) in the case of an application made for a project which previously received a grant, contract, loan, or loan guarantee under this subchapter, such application contains or is supported by assurances satisfactory to the Secretary that the applicant making the application has the financial capability to adequately carry out the purposes of such project and has developed and operated such project in accordance with the requirements of this subchapter and with the plans contained in previous applications for such assistance;

(6) the application contains such assurances as the Secretary may require respecting the intent and the ability of the applicant to meet the requirements of paragraphs (1) and (2) of section 300e(b) of this title respecting the fixing of basic health services payments and supplemental health services payments under a community rating system; and

(7) the application is submitted in such form and manner, and contains such additional information, as the Secretary shall prescribe in regulations.

An organization making multiple applications for more than one loan or loan guarantee under this subchapter, simultaneously or over the course of time, shall not be required to submit duplicate or redundant information but shall be required to update the specifications (required by paragraph (3)) respecting the existing or proposed health maintenance organization in such manner and with such frequency as the Secretary may by regulation prescribe. In determining, for purposes of paragraph (2), whether an applicant would be able to complete a project or undertaking without the assistance applied for, the Secretary shall not consider any asset of the applicant the obligation of which for such undertaking or project would jeopardize the fiscal soundness of the applicant.

(c) Regulations

The Secretary shall by regulation establish standards and procedures for health systems agencies to follow in reviewing and commenting on applications for loans and loan guarantees under this subchapter.

(July 1, 1944, ch. 373, title XIII, § 1306, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 925; amended Pub. L. 94–460, title I, §§ 105(a)(3), 117(b)(5), (6), Oct. 8, 1976, 90 Stat. 1948, 1955; Pub. L. 95–559, § 12(b), (c), Nov. 1, 1978, 92 Stat. 2140; Pub. L. 99–660, title VIII, §§ 803(b)(1), 805(b), 806, Nov. 14, 1986, 100 Stat. 3799, 3800.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–660, § 803(b)(1)(A), substituted ''loan'' for ''grant, contract, loan,''.

Subsec. (b). Pub. L. 99–660, § 803(b)(1)(A), substituted ''loan'' for ''grant, contract, loan,'' in introductory text and in second sentence.

Subsec. (b)(1). Pub. L. 99–660, § 803(b)(1)(B), struck out ''in the case of an application for assistance under section 300e–2 or 300e–3 of this title, such application meets the application requirements of such section and in the case of an application for a loan or loan guarantee,'' before ''such application''.

Subsec. (b)(2). Pub. L. 99–660, § 805(b), struck out reference to section 300e–4a.

Pub. L. 99–660, § 803(b)(1)(C), struck out reference to section 300e–3.

Subsec. (b)(5) to (8). Pub. L. 99–660, § 806, redesignated pars. (6), (7), and (8) as (5), (6), and (7), respectively, and struck out former par. (5) which read as follows: ''each health systems agency designated for a health service area which covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted;''.

Subsec. (c). Pub. L. 99–660, § 803(b)(1)(D), substituted ''loans'' for ''grants, contracts, loans,''.

1978—Subsec. (b). Pub. L. 95–559 in par. (2) inserted ''in the case of an application for assistance under section 300e–3, 300e–4, or 300e–4a of this title,'' before ''he determines'' and in provisions following par. (8) inserted provision that in determining, for purposes of par. (2), whether an applicant would be able to complete a project or undertaking without the assistance

applied for, the Secretary not consider any asset of the applicant the obligation of which for such undertaking or project would jeopardize the fiscal soundness of the applicant.

1976—Subsec. (b)(5). Pub. L. 94–460, § 117(b)(5), substituted ''each health systems agency designated for a health service area which covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted;'' for ''the section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted, or if there is no such agency, the section 314(a) State health planning agency whose section 314(a) plan covers (in whole or in part) such area, has, in accordance with regulations of the Secretary under subsection (c) of this section, been provided an opportunity to review the application and to submit to the Secretary for his consideration its recommendations respecting approval of the application or if under applicable State law such an application may not be submitted without the approval of the section 314(b) areawide health planning agency or the section 314(a) State health planning agency, the required approval has been obtained;''.

Subsec. (b)(7), (8). Pub. L. 94–460, § 105(a)(3), added par. (7) and redesignated former par. (7) as (8).

Subsec. (c). Pub. L. 94–460, § 117(b)(6), substituted ''health systems agencies'' for ''section 314(b) areawide health planning agencies and section 314(a) State health planning agencies''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 803(c) of Pub. L. 99–660 provided that: ''The amendments made by this section [amending this section and sections 300e–6, 300e–8, and 300e–16 of this title and repealing sections 300e–2 and 300e–3 of this title] do not apply to any grant made or contract entered into under title XIII of the Public Health Service Act [this subchapter] before October 1, 1985.''

Section 805(c) of Pub. L. 99–660 provided that: ''The amendments made by this section [amending this section and repealing section 300e–4a of this title] do not apply to any loan or loan guarantee made under section 1305A of the Public Health Service Act [former section 300e–4a of this title] before October 1, 1985.''

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–6. Administration of assistance programs

(a) Recordkeeping; audit and examination

(1) Each recipient of a loan or loan guarantee under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of the loan (directly made or guaranteed), the total cost of the undertaking in connection with which the loan was given or used, the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary, or any of his duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of a loan or loan guarantee under this subchapter which relate to such assistance.

(b) Report upon expiration of period

Upon expiration of the period for which a loan or loan guarantee was provided an entity under this subchapter, such entity shall make a full and complete report to the Secretary in such manner as he may by regulation prescribe. Each such report shall contain, among such other matters as the Secretary may by regulation require, descriptions of plans, developments, and operations relating to the matters referred to in section 300e–5(b)(3) of this title.

(c) Repealed. Pub. L. 99–660, title VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3799

(d) Other entities considered health maintenance organizations

An entity which provides health services to a defined population on a prepaid basis and which has members who are entitled to insurance benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] or to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.] may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter if—

(1) with respect to its members who are entitled to such insurance benefits or to such medical assistance it (A) provides health services in accordance with section 300e(b) of this title, except that (i) it does not furnish to those members the health services (within the basic health services) for which it may not be compensated under such title XVIII [42 U.S.C. 1395 et seq.] or such State plan, and (ii) it does not fix the basic or supplemental health services payment for such members under a community rating system, and (B) is organized and operated in the manner prescribed by section 300e(c) of this title, except that it does not assume full financial risk on a prospective basis for the provision to such members of basic or supplemental health services with respect to which it is not required under such title XVIII or such State plan to assume such financial risk; and

(2) with respect to its other members it provides health services in accordance with section 300e(b) of this title and is organized and operated in the manner prescribed by section 300e(c) of this title.

An entity which provides health services to a defined population on a prepaid basis and which has members who are enrolled under the health benefits program authorized by chapter 89 of title 5, may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter if with respect to its other members it provides health services in accordance with section 300e(b) of this title and is organized and operated in the manner prescribed by section 300e(c) of this title.

(July 1, 1944, ch. 373, title XIII, § 1307, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 926; amended Pub. L. 94–460, title I, §§ 109(b)(1), 112, Oct. 8, 1976, 90 Stat. 1950, 1953; Pub. L. 97–35, title IX, § 943(d), Aug. 13, 1981, 95 Stat. 576; Pub. L. 99–660, title VIII, § 803(a), (b)(2), Nov. 14, 1986, 100 Stat. 3799, 3800.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–660, § 803(b)(2), substituted ''loan or loan guarantee'' for ''grant, contract, loan, or loan guarantee'', ''proceeds of the loan'' for ''proceeds of the grant, contract, or loan'', and ''with which the loan was given'' for ''with which such assistance was given''.

Subsecs. (a)(2), (b). Pub. L. 99–660, § 803(b)(2)(A), substituted ''loan or loan guarantee'' for ''grant, contract, loan, or loan guarantee''.

Subsec. (c). Pub. L. 99–660, § 803(a), struck out subsec. (c) which read as follows: ''If in any fiscal year the funds appropriated under section 300e–8 of this title are insufficient to fund all applications approved under this subchapter for that fiscal year, the Secretary shall, after applying the applicable priorities under sections 300e–2 and 300e–3 of this title, give priority to the funding of applications for projects which the Secretary determines are the most likely to be economically viable.''

1981—Subsec. (e). Pub. L. 97–35 struck out subsec. (e) which related to limitation on cumulative total of loan guarantees in any fiscal year.

1976—Subsec. (d). Pub. L. 94–460, § 112, inserted sentence at end setting conditions upon which an entity providing health services to a defined population on a prepaid basis may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter.

Subsec. (e). Pub. L. 94–460, § 109(b)(1), inserted ''for a private health maintenance organization (other than a private nonprofit health maintenance organization)'' after ''may be made'', and ''for private health maintenance organizations (other than private nonprofit health maintenance organizations)'' after ''guaranteed''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as a note under section 300e–5 of this title.

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–7. General provisions relating to loan guarantees and loans

(a) Conditions

(1) The Secretary may not approve an application for a loan guarantee under this subchapter unless he determines that (A) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for loans with similar maturities, terms, conditions, and security and the risks assumed by the United States, and (B) the loan would not be available on reasonable terms and conditions without the guarantee under this subchapter.

(2)(A) The United States shall be entitled to recover from the applicant for a loan guarantee under this subchapter the amount of any payment made pursuant to such guarantee, unless the Secretary for good cause waives such right of recovery; and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

(B) To the extent permitted by subparagraph (C), any terms and conditions applicable to a loan guarantee under this subchapter (including terms and conditions imposed under subparagraph (D)) may be modified by the Secretary to the extent he determines it to be consistent with the financial interest of the United States.

(C) Any loan guarantee made by the Secretary under this subchapter shall be incontestable (i) in the hands of an applicant on whose behalf such guarantee is made unless the applicant engaged in fraud or misrepresentation in securing such guarantee, and (ii) as to any person (or his successor in interest) who makes or contracts to make a loan to such applicant in reliance thereon unless such person (or his successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(D) Guarantees of loans under this subchapter shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this subchapter will be achieved.

(b) Application requirements

(1) The Secretary may not approve an application for a loan under this subchapter unless—

(A) the Secretary is reasonably satisfied that the applicant therefor will be able to make payments of principal and interest thereon when due, and

(B) the applicant provides the Secretary with reasonable assurances that there will be available to it such additional funds as may be necessary to complete the project or undertaking with respect to which such loan is requested.

(2) Any loan made under this subchapter shall (A) have such security, (B) have such maturity date, (C) be repayable in such installments, (D) on the date the loan is made, bear interest at a rate comparable to the rate of interest prevailing on such date with respect to marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges, and (E) be subject to such other terms and conditions (including provisions for recovery in case of default) as the Secretary determines to be necessary to carry out the purposes of this subchapter while adequately protecting the financial interests of the United States. On the date disbursements are made under a loan after the initial disbursement under the loan, the Secretary may change the rate of interest on the amount of the loan dis-

bursed on that date to a rate which is comparable to the rate of interest prevailing on the date the subsequent disbursement is made with respect to marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges.

(3) The Secretary may, for good cause but with due regard to the financial interests of the United States, waive any right of recovery which he has by reason of the failure of a borrower to make payments of principal of and interest on a loan made under this subchapter, except that if such loan is sold and guaranteed, any such waiver shall have no effect upon the Secretary's guarantee of timely payment of principal and interest.

(c) Sale of loans

(1) The Secretary may from time to time, but with due regard to the financial interests of the United States, sell loans made by him under this subchapter.

(2) The Secretary may agree, prior to his sale of any such loan, to guarantee to the purchaser (and any successor in interest of the purchaser) compliance by the borrower with the terms and conditions of such loan. Any such agreement shall contain such terms and conditions as the Secretary considers necessary to protect the financial interests of the United States or as otherwise appropriate. Any such agreement may (A) provide that the Secretary shall act as agent of any such purchaser for the purpose of collecting from the borrower to which such loan was made and paying over to such purchaser, any payments of principal and interest payable by such organization under such loan; and (B) provide for the repurchase by the Secretary of any such loan on such terms and conditions as may be specified in the agreement. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this paragraph.

(3) After any loan under this subchapter to a public health maintenance organization has been sold and guaranteed under this subsection, interest paid on such loan which is received by the purchaser thereof (or his successor in interest) shall be included in the gross income of the purchaser of the loan (or his successor in interest) for the purpose of chapter 1 of title 26.

(4) Amounts received by the Secretary as proceeds from the sale of loans under this subsection shall be deposited in the loan fund established under subsection (e) of this section.

(5) Any reference in this subchapter (other than in this subsection and in subsection (d) of this section) to a loan guarantee under this subchapter does not include a loan guarantee made under this subsection.

(d) Loan guarantee fund

(1) There is established in the Treasury a loan guarantee fund (hereinafter in this subsection referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, to enable him to discharge his responsibilities under loan guarantees issued by him under this subchapter and to take the action authorized by subsection (f) of this section. There are authorized to be appropriated from time to time such amounts as may be necessary to provide the sums required for the fund. To the extent authorized in appropriation Acts, there shall also be deposited in the fund amounts received by the Secretary in connection with loan guarantees under this subchapter and other property or assets derived by him from his operations respecting such loan guarantees, including any money derived from the sale of assets.

(2) If at any time the sums in the funds are insufficient to enable the Secretary to discharge his responsibilities under guarantees issued by him before October 1, 1986, under this subchapter and to take the action authorized by subsection (f) of this section, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued under this paragraph and for that purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which the securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this paragraph shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from the fund.

(e) Loan fund

There is established in the Treasury a loan fund (hereinafter in this subsection referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, to enable him to make loans under this subchapter and to take the action authorized by subsection (f) of this section. There shall also be deposited in the fund amounts received by the Secretary as interest payments and repayment of principal on loans made under this subchapter and other property or assets derived by him from his operations respecting such loans, from the sale of loans under subsection (c) of this section, or from the sale of assets.

(f) Actions to protect interest of United States in event of default

The Secretary may take such action as he deems appropriate to protect the interest of the United States in the event of a default on a loan

made or guaranteed under this subchapter, including taking possession of, holding, and using real property pledged as security for such a loan or loan guarantee.

(July 1, 1944, ch. 373, title XIII, § 1308, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 927; amended Pub. L. 94–460, title I, § 109(b)(2), (c), Oct. 8, 1976, 90 Stat. 1950; Pub. L. 95–559, § 4(c), Nov. 1, 1978, 92 Stat. 2132; Pub. L. 97–35, title IX, § 945, Aug. 13, 1981, 95 Stat. 577; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–660, title VIII, § 807, Nov. 14, 1986, 100 Stat. 3800.)

CODIFICATION

In subsec. (d)(2), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act'' and ''that Act'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Subsec. (c)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (d)(2). Pub. L. 99–660 inserted ''before October 1, 1986,'' after ''guarantees issued by him''.

1981—Subsec. (b)(2). Pub. L. 97–35 inserted provisions relating to changes in the rate of interest by the Secretary, and in cl. (D) made changes in nomenclature.

1978—Subsec. (d). Pub. L. 95–559, § 4(c)(2)(A), in pars. (1) and (2) inserted ''and to take the action authorized by subsection (f) of this section'' after ''by him under this subchapter''.

Subsec. (e). Pub. L. 95–559, § 4(c)(2)(B), inserted ''and to take the action authorized by subsection (f) of this section'' after ''loans under this subchapter''.

Subsec. (f). Pub. L. 95–559, § 4(c)(1), added subsec. (f).

1976—Subsec. (a)(1)(A). Pub. L. 94–460, § 109(c)(1), substituted ''for loans with similar maturities, terms, conditions, and security'' for ''for similar loans''.

Subsec. (b)(2)(D). Pub. L. 94–460, § 109(c)(2), substituted ''marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges'' for ''loans guaranteed under this subchapter''.

Subsec. (c)(5). Pub. L. 94–460, § 109(b)(2), added par. (5).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–559 effective only for fiscal years beginning on or after October 1, 1978, see section 4(d) of Pub. L. 95–559, set out as a note under section 300e–4 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, except that the amendment by section 109(c) of Pub. L. 94–460 applicable with respect to loan guarantees made under section 300e–4 of this title after Sept. 30, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–8. Authorization of appropriations

(a) For grants under section 300e–16 of this title there is authorized to be appropriated $1,000,000 for each of the fiscal years 1982, 1983, and 1984.

(b) To meet the obligations of the loan fund established under section 300e–7(e) of this title resulting from defaults on loans made from the fund and to meet the other obligations of the fund, there is authorized to be appropriated to the loan fund for fiscal years 1987, 1988, and 1989, such sums as may be necessary.

(July 1, 1944, ch. 373, title XIII, § 1309, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 930; amended Pub. L. 94–460, title I, § 113(c), Oct. 8, 1976, 90 Stat. 1954; Pub. L. 95–83, title I, § 105(b), Aug. 1, 1977, 91 Stat. 384; Pub. L. 95–559, §§ 2(c), 7(b), Nov. 1, 1978, 92 Stat. 2131, 2135; Pub. L. 97–35, title IX, § 941(a), (b), Aug. 13, 1981, 95 Stat. 572; Pub. L. 99–660, title VIII, §§ 803(b)(3), 811, Nov. 14, 1986, 100 Stat. 3800, 3801.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–660, § 803(b)(3), struck out par. (2) designation and struck out par. (1) which read as follows: ''For grants and contracts under sections 300e–2 and 300e–3 of this title there is authorized to be appropriated $20,000,000 for the fiscal years 1982, 1983, and 1984. No funds appropriated under this paragraph may be expended or obligated for a grant or contract unless the entity received a grant or contract under section 242a or 242b of this title during or before the fiscal year 1981.''

Subsec. (b). Pub. L. 99–660, § 811, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''To maintain in the loan fund established under section 300e–7(e) of this title for the purpose of making new loans a balance of at least $5,000,000 at the end of each fiscal year and to meet the obligations of the loan fund resulting from defaults on loans made from the fund and to meet the other obligations of the fund, there is authorized to be appropriated to the loan fund for fiscal years 1982, 1983, and 1984, such sums as may be necessary to assure such balance and meet such obligations.''

1981—Subsec. (a). Pub. L. 97–35, § 941(a), substituted provisions authorizing appropriations for fiscal years 1982, 1983, and 1984, and provisions respecting prior receipt of funds, for provisions authorizing appropriations for fiscal years ending June 30, 1974, 1975, and 1976, and Sept. 30, 1977, 1978, 1979, 1980, and 1981.

Subsec. (b). Pub. L. 97–35, § 941(b), substituted provisions relating to maintenance of the loan fund for fiscal years 1982, 1983, and 1984, for provisions relating to maintenance of the loan fund for fiscal years ending June 30, 1974, and 1975.

1978—Subsec. (a). Pub. L. 95–559 substituted ''300e–3(b) and 300e–16 of this title'' for ''and 300e–3(b) of this title'' and '', $31,000,000 for the fiscal year ending September 30, 1979, $65,000,000 for the fiscal year ending September 30, 1980, and $68,000,000 for the fiscal year ending September 30, 1981'' for ''; and for the purpose of making payments under grants and contracts under section 300e–3(b) of this title for the fiscal year ending September 30, 1979, there is authorized to be appropriated $50,000,000''.

1977—Subsec. (a). Pub. L. 95–83 substituted, where appearing the second time, ''September 30, 1979'' for ''September 30, 1977''.

1976—Subsec. (a). Pub. L. 94–460 substituted ''$40,000,000 for the fiscal year ending June 30, 1976, $45,000,000 for the fiscal year ending September 30, 1977, and $45,000,000 for the fiscal year ending September 30, 1978;'' for ''and $85,000,000 for the fiscal year ending June 30, 1976;'' and ''for the fiscal year ending September 30, 1977, there is authorized to be appropriated $50,000,000'' for ''for the fiscal year ending June 30, 1977, there is authorized to be appropriated $85,000,000''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 803(b)(3) of Pub. L. 99–660 not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as a note under section 300e–5 of this title.

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 7(b) of Pub. L. 95–559 effective only for fiscal years beginning on or after Oct. 1, 1978, see section 7(c) of Pub. L. 95–559, set out as an Effective Date note under section 300e–16 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–9. Employees' health benefits plans

(a) Regulations; membership option

In accordance with regulations which the Secretary shall prescribe—

(1) each employer—

(A) which is required during any calendar quarter to pay its employees the minimum wage prescribed by section 206 of title 29 (or would be required to pay its employees such wage but for section 213(a) of title 29), and

(B) which during such calendar quarter employed an average number of employees of not less than 25, and

(2) any State and each political subdivision thereof which during any calendar quarter employed an average number of employees of not less than 25, as a condition of payment to the State of funds under section 247b, 247c, or 300a of this title,

which offers to its employees in the calendar year beginning after such calendar quarter the option of membership in a qualified health maintenance organization which is engaged in the provision of basic health services in a health maintenance organization service area in which at least 25 of such employees reside shall meet the requirements of subsection (b) of this section with respect to any qualified health maintenance organization offered by the employer or State or political subdivision.

(b) Nondiscriminatory contributions for services; payroll deductions; effect on costs

(1) If a health benefits plan offered by an employer or a State or political subdivision includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.

(2) Each employer or State or political subdivision which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required shall, with the consent of an employee who exercises option of membership in a qualified health maintenance organization, arrange for the employee's contribution for membership in the organization to be paid through payroll deductions.

(3) No employer or State or political subdivision shall be required to pay more for health benefits as a result of the application of this subsection than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract for the provision of health benefits between the employer or State or political subdivision and its employees.

(c) "Qualified health maintenance organization" defined

For purposes of this section, the term ''qualified health maintenance organization'' means (1) a health maintenance organization which has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 300e(b) of this title and that it is organized and operated in the manner prescribed by section 300e(c) of this title, and (2) an entity which proposes to become a health maintenance organization and which the Secretary determines will when it becomes operational provide basic and supplemental health services to its members in the manner prescribed by section 300e(b) of this title and will be organized and operated in the manner prescribed by section 300e(c) of this title.

(d) Civil penalty; notice and presentation of views; review

(1) Any employer who knowingly does not comply with one or more of the requirements of paragraph (1) or (2) of subsection (b) of this section shall be subject to a civil penalty of not more than $10,000. If such noncompliance continues, a civil penalty may be assessed and collected under this subsection for each thirty-day period such noncompliance continues. Such penalty may be assessed by the Secretary and collected in a civil action brought by the United States in a United States district court.

(2) In any proceeding by the Secretary to assess a civil penalty under this subsection, no penalty shall be assessed until the employer charged shall have been given notice and an opportunity to present its views on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the Secretary shall consider the gravity of the noncompliance and the demonstrated good faith of the employer charged in attempting to achieve rapid compliance after notification by the Secretary of a noncompliance.

(3) In any civil action brought to review the assessment of a civil penalty assessed under this subsection, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty and in any civil action to collect such a civil penalty, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty unless in a prior civil action to review the assessment of such penalty the court held a trial de novo on such assessment.

(e) "Employer" defined

For purposes of this section, the term ''employer'' does not include (1) the Government of the United States, the government of the District of Columbia or any territory or possession of the United States, a State or any political subdivision thereof, or any agency or instrumentality (including the United States Postal Service and Postal Regulatory Commission) of any of the foregoing, except that such term includes nonappropriated fund instrumentalities of the Government of the United States; or (2) a church, convention or association of churches, or any organization operated, supervised or controlled by a church, convention or association of churches which organization (A) is an organization described in section 501(c)(3) of title 26, and (B) does not discriminate (i) in the employment, compensation, promotion, or termination of employment of any personnel, or (ii) in the extension of staff or other privileges to any physician or other health personnel, because such persons seek to obtain or obtained health care, or participate in providing health care, through a health maintenance organization.

(f) Termination of payment for failure to comply

If the Secretary, after reasonable notice and opportunity for a hearing to a State, finds that it or any of its political subdivisions has failed to comply with paragraph (1) or (2) of subsection (b) of this section, the Secretary shall terminate payments to such State under sections 247b, 247c, and 300a of this title and notify the Governor of such State that further payments under such sections will not be made to the State until the Secretary is satisfied that there will no longer be any such failure to comply.

(July 1, 1944, ch. 373, title XIII, § 1310, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 930; amended Pub. L. 94–460, title I, § 110(a), Oct. 8, 1976, 90 Stat. 1950; Pub. L. 95–559, §§ 8, 12(a)(1), Nov. 1, 1978, 92 Stat. 2135, 2140; Pub. L. 96–32, § 2(f), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, §§ 942(a)(3), (4), 946, Aug. 13, 1981, 95 Stat. 573, 577; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–660, title VIII, § 808, Nov. 14, 1986, 100 Stat. 3801; Pub. L. 100–517, §§ 4(b), 7(a)(1), (2), (b), Oct. 24, 1988, 102 Stat. 2578, 2580; Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242.)

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

1988—Pub. L. 100–517, § 7(b), amended section generally, substituting subsecs. (a) to (f) for former subsecs. (a) to (g).

Subsec. (b). Pub. L. 100–517, §§ 4(b), 7(a)(1)(A), in introductory provisions, substituted ''or a State or political subdivision'' for ''subject to subsection (a) of this section'', in par. (1), inserted ''and provides at least 90 percent of such services through physicians described in section 300e(b)(3)(A) of this title'', in par. (2), inserted ''and provides no more than 10 percent of such services through physicians who are not described in section 300e(b)(3)(A) of this title'', and in concluding provisions, substituted ''employer or State or political subdivision pursuant'' for ''employer pursuant''.

Subsec. (c). Pub. L. 100–517, § 7(a)(1)(B), (2), substituted ''No employer or State or political subdivision'' for ''No employer'', ''between the employer or State or political subdivision'' for ''between the employer'', and ''Each employer or State or political subdivision'' for ''Each employer'', and inserted at end ''If a health benefits plan offered by an employer or a State or political subdivision under subsection (a) of this section includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.''

1986—Subsec. (d). Pub. L. 99–660 struck out last sentence which read as follows: ''Every two years (or such longer period as the Secretary may by regulation prescribe) after the date a health maintenance organization becomes a qualified health maintenance organization under this subsection, the health maintenance organization must demonstrate to the Secretary that it is qualified within the meaning of this subsection.''

Subsec. (f). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1981—Subsec. (b)(1). Pub. L. 97–35, § 942(a)(3)(A), substituted provisions respecting provision of more than one-half of the basic services provided by physicians, for provisions respecting provision of basic services.

Subsec. (b)(2). Pub. L. 97–35, § 942(a)(3)(B), (4), inserted reference to provision by physicians, added cl. (B), and redesignated former cl. (B) as (C).

Subsec. (d). Pub. L. 97–35, § 946(a), inserted provisions relating to demonstration of continued qualification of organization.

Subsec. (f)(1). Pub. L. 97–35, § 946(b), inserted reference to United States nonappropriated fund instrumentalities.

1979—Subsec. (e)(1). Pub. L. 96–32 substituted ''subsection (a), (b), or (c)'' for ''subsection (a)''.

1978—Subsec. (b). Pub. L. 95–559, § 8(b), substituted in par. (1) ''through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups)'' for ''(A) without the use of an individual practice association and (B) without the use of contracts (except for contracts for unusual or infrequently used services) with health professionals'' and in par. (2) ''(B) a combination of such association (or associations), medical group (or groups), staff, and individual physicians and other health professionals under contract with the organization'' for ''(B) health professionals who have contracted with the health maintenance organization for the provision of such services, or (C) a combination of such association (or associations) or health professionals under contract with the organization''.

Subsec. (c). Pub. L. 95–559, § 8(a), inserted provision that each employer which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required and which is required by subsection (a) of this section to offer his employees the option of membership in a qualified health maintenance organization shall, with the consent of an employee who exercises such option, arrange for the employee's contribution for such membership to be paid through payroll deductions.

Subsec. (h). Pub. L. 95–559, § 12(a)(1), struck out subsec. (h) which provided that the duties and functions of the Secretary, insofar as they involve determinations as to whether an organization is a qualified health maintenance organization within the meaning of subsection (d) of this section, be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions be integrated with the administration of section 300e–11(a) of this title.

1976—Subsec. (a). Pub. L. 94–460, § 110(a)(1), substituted reference to each employer which is now or hereafter required for reference to each employer which is required, reference to basic health services in health maintenance organization service areas in which at least 25 of such employees reside for reference to basic and supplemental health services in the areas in which such employees reside, and inserted provisions requiring certain States and political subdivisions thereof to include in any health benefits plan the option of membership in qualified health maintenance organizations as a condition of payment to the State of funds under section 246(d), 247b, 247c, 300a, 300m–4, or 300p–3 of this title, and that the offer of membership in such an organization be first made to the employees' representative, if any, and then be made to each employee if the offer is accepted by the representative.

Subsec. (b)(1). Pub. L. 94–460, § 110(a)(2), substituted ''(A) without the use of an individual practice association and (B) without the use of contracts (except for contracts for unusual or infrequently used services) with health professionals'' for ''through professionals who are members of the staff of the organization or a medical group (or groups)''.

Subsec. (b)(2). Pub. L. 94–460, § 110(a)(2), substituted ''basic health services through (A) an individual practice association (or associations), (B) health professionals who have contracted with the health maintenance organization for the provision of such services, or (C) a combination of such association (or associations) or health professionals under contract with the organization'' for ''such services through an individual practice association (or associations)''.

Subsec. (c). Pub. L. 94–460, § 110(a)(3), struck out provision that failure of any employer to comply with the requirements of subsection (a) of this section be considered a willful violation of section 215 of title 29.

Subsecs. (e) to (h). Pub. L. 94–460, § 110(a)(4), added subsecs. (e) to (h).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7(b) of Pub. L. 100–517 provided that the amendment made by section 7(b) is effective 7 years after Oct. 24, 1988.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 942(a)(5) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (3)(A) [amending this section] shall apply with respect to the offering of a health maintenance organization in accordance with section 1310(b)(1) of the Public Health Service Act [subsec. (b)(1) of this section] after four years after the date the organization becomes a qualified health maintenance organization for purposes of section 1310 of such Act [this section] if the health maintenance organization provides assurances satisfactory to the Secretary that upon the expiration of such four years it will provide more than one half of its basic health services which are provided by physicians through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups).''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 110(a)(1), (2) of Pub. L. 94–460 applicable with respect to calendar quarters which began after Oct. 8, 1976, and amendment by section 110(a)(3), (4) of Pub. L. 94–460 applicable with respect to failures of employers to comply with section 300e–9 of this title after Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

COLLECTIVE BARGAINING AGREEMENTS IN EFFECT ON OCTOBER 24, 1988, UNAFFECTED

Section 7(a)(3) of Pub. L. 100–517 provided that: ''Nothing in section 1310 of the Public Health Service Act (42 U.S.C. 300e–9), as amended by this Act, shall be construed to supersede any provision of a collective bargaining agreement in effect on the date of enactment of this Act [Oct. 24, 1988].''

§ 300e–10. Restrictive State laws and practices

(a) Entities operating as health maintenance organizations

In the case of any entity—

(1) which cannot do business as a health maintenance organization in a State in which it proposes to furnish basic and supplemental health services because that State by law, regulation, or otherwise—

(A) requires as a condition to doing business in that State that a medical society approve the furnishing of services by the entity,

(B) requires that physicians constitute all or a percentage of its governing body,

(C) requires that all physicians or a percentage of physicians in the locale participate or be permitted to participate in the provision of services for the entity,

(D) requires that the entity meet requirements for insurers of health care services doing business in that State respecting initial capitalization and establishment of financial reserves against insolvency, or

(E) imposes requirements which would prohibit the entity from complying with the requirements of this subchapter, and

(2) for which a grant, contract, loan, or loan guarantee was made under this subchapter or which is a qualified health maintenance organization for purposes of section 300e–9 of this title (relating to employees' health benefits plans),

such requirements shall not apply to that entity so as to prevent it from operating as a health maintenance organization in accordance with section 300e of this title.

(b) Advertising

No State may establish or enforce any law which prevents a health maintenance organization for which a grant, contract, loan, or loan guarantee was made under this subchapter or which is a qualified health maintenance organization for purposes of section 300e–9 of this title (relating to employees' health benefits plans), from soliciting members through advertising its services, charges, or other nonprofessional aspects of its operation. This subsection does not authorize any advertising which identifies, refers to, or makes any qualitative judgement concerning, any health professional who provides services for a health maintenance organization.

(c) Digest of State laws, regulations, and practices; legal consultative assistance

The Secretary shall, within 6 months after October 8, 1976, develop a digest of State laws, regulations, and practices pertaining to development, establishment, and operation of health maintenance organizations which shall be updated at least annually and relevant sections of which shall be provided to the Governor of each State annually. Such digest shall indicate which State laws, regulations, and practices appear to

be inconsistent with the operation of this section. The Secretary shall also insure that appropriate legal consultative assistance is available to the States for the purpose of complying with the provisions of this section.

(July 1, 1944, ch. 373, title XIII, § 1311, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 931; amended Pub. L. 94–460, title I, § 114, Oct. 8, 1976, 90 Stat. 1954; Pub. L. 99–660, title VIII, § 809, Nov. 14, 1986, 100 Stat. 3801; Pub. L. 100–517, § 8, Oct. 24, 1988, 102 Stat. 2583.)

PRIOR PROVISIONS

A prior section 1311 of act July 1, 1944, was classified to section 211a of this title prior to repeal by Pub. L. 93–222, § 7(b).

AMENDMENTS

1988—Subsec. (a)(1)(E). Pub. L. 100–517 added subpar. (E).

1986—Subsec. (c). Pub. L. 99–660 substituted ''annually'' for ''quarterly'' after ''at least''.

1976—Subsec. (c). Pub. L. 94–460 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–11. Continued regulation of health maintenance organizations

(a) Determination of deficiency

If the Secretary determines that an entity which received a grant, contract, loan, or loan guarantee under this subchapter as a health maintenance organization or which was included in a health benefits plan offered to employees pursuant to section 300e–9 of this title—

(1) fails to provide basic and supplemental services to its members,

(2) fails to provide such services in the manner prescribed by section 300e(b) of this title, or

(3) is not organized or operated in the manner prescribed by section 300e(c) of this title,

the Secretary may take the action authorized by subsection (b) of this section.

(b) Action by Secretary upon determination

(1) If the Secretary makes, with respect to any entity which provided assurances to the Secretary under section 300e–9(d)(1)[1] of this title, a determination described in subsection (a) of this section, the Secretary shall notify the entity in writing of the determination. Such notice shall specify the manner in which the entity has not complied with such assurances and direct that the entity initiate (within 30 days of the date the notice is issued by the Secretary or within such longer period as the Secretary determines is reasonable) such action as may be necessary to bring (within such period as the Secretary shall prescribe) the entity into compliance with the assurances. If the entity fails to initiate corrective action within the period prescribed by the notice or fails to comply with the assurances within such period as the Secretary prescribes, then after the Secretary provides the entity a reasonable opportunity for reconsideration of his determination, including, at the entity's election, a fair hearing (A) the entity shall not be a qualified health maintenance organization for purposes of section 300e–9 of this title until such date as the Secretary determines that it is in compliance with the assurances, and (B) each employer which has offered membership in the entity in compliance with section 300e–9 of this title, each lawfully recognized collective bargaining representative or other employee representative which represents the employees of each such employer, and the members of such entity shall be notified by the entity that the entity is not a qualified health maintenance organization for purposes of such section. The notice required by clause (B) of the preceding sentence shall contain, in readily understandable language, the reasons for the determination that the entity is not a qualified health maintenance organization. The Secretary shall publish in the Federal Register each determination referred to in this paragraph.

(2) If the Secretary makes, with respect to an entity which has received a grant, contract, loan, or loan guarantee under this subchapter, a determination described in subsection (a) of this section, the Secretary may, in addition to any other remedies available to him, bring a civil action in the United States district court for the district in which such entity is located to enforce its compliance with the assurances it furnished respecting the provision of basic and supplemental health services or its organization or operation, as the case may be, which assurances were made in connection with its application under this subchapter for the grant, contract, loan, or loan guarantee.

(July 1, 1944, ch. 373, title XIII, § 1312, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 931; amended Pub. L. 94–460, title I, § 111, Oct. 8, 1976, 90 Stat. 1952; Pub. L. 95–559, § 12(a)(2), Nov. 1, 1978, 92 Stat. 2140; Pub. L. 97–35, title IX, § 949(a), Aug. 13, 1981, 95 Stat. 578.)

REFERENCES IN TEXT

Section 300e–9(d)(1) of this title, referred to in subsec. (b)(1), was redesignated section 300e–9(c)(1) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

PRIOR PROVISIONS

A prior section 1312 of act July 1, 1944, was classified to section 212a of this title prior to repeal by Pub. L. 93–222, § 7(b).

AMENDMENTS

1981—Subsec. (b)(1). Pub. L. 97–35 inserted provisions relating to opportunity for reconsideration of determination of Secretary.

1978—Subsec. (c). Pub. L. 95–559 struck out subsec. (c) which provided that the Secretary, acting through the Assistant Secretary for Health, administer subsections (a) and (b) of this section in the Office of the Assistant Secretary for Health.

1976—Subsec. (a). Pub. L. 94–460, § 111(a), substituted ''the Secretary may take the action authorized by subsection (b) of this section'' for ''the Secretary may, in

[1] See References in Text note below.

addition to any other remedies available to him, bring a civil action in the United States district court for the district in which such entity is located to enforce its compliance with any assurances it furnished him respecting the provision of basic and supplemental health services or its organization or operation, as the case may be, which assurances were made under section 300e–9 of this title or when application was made under this subchapter for a grant, contract, loan, or loan guarantee''.

Subsecs. (b), (c). Pub. L. 94–460, § 111(b), (c), added subsec. (b), redesignated former subsec. (b) as (c), and substituted ''acting through the Assistant Secretary for Health, shall administer subsections (a) and (b) of this section'' for ''through the Assistant Secretary for Health, shall administer subsection (a) of this section''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 applicable with respect to determinations of the Secretary of Health, Education, and Welfare described in subsec. (a) of this section and made after Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–12. Limitation on source of funding for health maintenance organizations

No funds appropriated under any provision of this chapter (except as provided in sections 254b[1] and 254b of this title) other than this subchapter may be used—

(1) for grants or contracts for surveys or other activities to determine the feasibility of developing or expanding health maintenance organizations or other entities which provide, directly or indirectly, health services to a defined population on a prepaid basis;

(2) for grants or contracts, or for payments under loan guarantees, for planning projects for the establishment or expansion of such organizations or entities;

(3) for grants or contracts, or for payments under loan guarantees, for projects for the initial development or expansion of such organizations or entities; or

(4) for loans, or for payments under loan guarantees, to assist in meeting the costs of the initial operation after establishment or expansion of such organizations or entities or in meeting the costs of such organizations in acquiring or constructing ambulatory health care facilities.

(July 1, 1944, ch. 373, title XIII, § 1313, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 932; amended Pub. L. 95–559, § 5(b), Nov. 1, 1978, 92 Stat. 2133; Pub. L. 95–626, title I, § 107, Nov. 10, 1978, 92 Stat. 3562; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 108–163, § 2(m)(2), Dec. 6, 2003, 117 Stat. 2023.)

REFERENCES IN TEXT

The reference to section 254b of this title the first place appearing in text was in the original a reference to section 329, meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626.

AMENDMENTS

2003—Pub. L. 108–163 substituted ''254b and 254b'' for ''254b, 254c, and 254b(h)'' in introductory provisions.

2002—Pub. L. 107–251 substituted ''254b(h)'' for ''256'' in introductory provisions.

1978—Pub. L. 95–626 inserted ''(except as provided in sections 254b, 254c, and 256 of this title)'' after ''under any provision of this chapter'' in provisions preceding par. (1).

Par. (4). Pub. L. 95–559 inserted ''or in meeting the costs of such organizations in acquiring or constructing ambulatory health care facilities'' after ''or entities''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§ 300e–13. Repealed. Pub. L. 97–35, title IX, § 949(b), Aug. 13, 1981, 95 Stat. 578

Section, acts July 1, 1944, ch. 373, title XIII, § 1314, as added Dec. 29, 1973, Pub. L. 93–222, § 2, 87 Stat. 932; amended Oct. 8, 1976, Pub. L. 94–460, title I, § 115, 90 Stat. 1954; Nov. 1, 1978, Pub. L. 95–559, § 13, 92 Stat. 2140, required the Comptroller General to: (a) evaluate the operations, particularly, specified aspects of the operations, of at least ten or one-half, whichever is greater, of the health maintenance organizations for which assistance was provided under sections 300e–2, 300e–3, and 300e–4 of this title, and which, by Dec. 31, 1976, were designated by the Secretary under section 300e–9(d) of this title as qualified health maintenance organizations, to Congress by June 30, 1978; (b) conduct a study of the economic effects on employers resulting from their compliance with the requirements of section 300e–9 of this title and report to Congress not later than 36 months after Dec. 29, 1973; (c) evaluate the operations of health maintenance organizations in comparison with others in distinct categories, in comparison with alternative forms of health care delivery, and their impact on the health of the public and report to Congress not later than 36 months after Dec. 29, 1973; and (d) evaluate the adequacy and effectiveness of the policies and procedures of the Secretary for the management of the grant and loan programs established by this subchapter and the adequacy of the amounts of assistance available under these programs and report to Congress not later than May 1, 1979.

§ 300e–14. Annual report

(a) The Secretary shall periodically review the programs of assistance authorized by this subchapter and make an annual report to the Congress of a summary of the activities under each program. The Secretary shall include in such summary—

(1) a summary of each grant, contract, loan, or loan guarantee made under this subchapter in the period covered by the report and a list of the health maintenance organizations which during such period became qualified health maintenance organizations for purposes of section 300e–9 of this title;

(2) the statistics and other information reported in such period to the Secretary in accordance with section 300e(c)(11)[1] of this title;

(3) findings with respect to the ability of the health maintenance organizations assisted under this subchapter—

(A) to operate on a fiscally sound basis without continued Federal financial assistance,

(B) to meet the requirements of section 300e(c) of this title respecting their organization and operation,

[1] See References in Text notes below.

[1] See References in Text note below.

(C) to provide basic and supplemental health services in the manner prescribed by section 300e(b) of this title,

(D) to include indigent and high-risk individuals in their membership, and

(E) to provide services to medically underserved populations; and

(4) findings with respect to—

(A) the operation of distinct categories of health maintenance organizations in comparison with each other,

(B) health maintenance organizations as a group in comparison with alternative forms of health care delivery, and

(C) the impact that health maintenance organizations, individually, by category, and as a group, have on the health of the public.

(b) The Office of Management and Budget may review the Secretary's report under subsection (a) of this section before its submission to the Congress, but the Office may not revise the report or delay its submission, and it may submit to the Congress its comments (and those of other departments or agencies of the Government) respecting such report.

(July 1, 1944, ch. 373, title XIII, § 1315, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 933.)

REFERENCES IN TEXT

Section 300e(c)(11) of this title, referred to in subsec. (a)(2), was redesignated section 300e(c)(9) of this title by Pub. L. 97–35, title IX, § 942(d)(1), Aug. 13, 1981, 95 Stat. 574, and redesignated section 300e(c)(8) of this title by Pub. L. 100–517, § 5(b), Oct. 24, 1988, 102 Stat. 2579.

§ 300e–14a. Health services for Indians and domestic agricultural migratory and seasonal workers

The Secretary of Health and Human Services, in connection with existing authority (except section 254b[1] of this title) for the provisions of health services to domestic agricultural migratory workers, to persons who perform seasonal agricultural services similar to the services performed by such workers, and to the families of such workers and persons, is authorized to arrange for the provision of health services to such workers and persons and their families through health maintenance organizations. In carrying out this section the Secretary may only use sums appropriated after December 29, 1973.

(Pub. L. 93–222, § 6(b), Dec. 29, 1973, 87 Stat. 936; Pub. L. 95–626, title I, § 102(b)(2), Nov. 10, 1978, 92 Stat. 3551; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Section 254b of this title, referred to in text, was in the original a reference to section 329 of the Public Health Service Act, act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Section 2 of Pub. L. 104–299 enacted a new section 330 of act July 1, 1944, which is classified to section 254b of this title.

CODIFICATION

Section was enacted as part of the Health Maintenance Organization Act of 1973, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1978—Pub. L. 95–626 substituted ''section 254b'' for ''section 247d''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in text, pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 300e–15. Repealed. Pub. L. 97–35, title IX, § 949(b), Aug. 13, 1981, 95 Stat. 578

Section, act July 1, 1944, ch. 373, title XIII, § 1316, as added Oct. 8, 1976, Pub. L. 94–460, title I, § 116, 90 Stat. 1954, related to administration of programs.

§ 300e–16. Training and technical assistance

(a) National Health Maintenance Organization Intern Program

(1) The Secretary shall establish a National Health Maintenance Organization Intern Program (hereinafter in this subsection referred to as the ''Program'') for the purpose of providing training to individuals to become administrators and medical directors of health maintenance organizations or to assume other managerial positions with health maintenance organizations. Under the Program the Secretary may directly provide internships for such training and may make grants to or enter into contracts with health maintenance organizations and other entities to provide such internships.

(2) No internship may be provided by the Secretary and no grant may be made or contract entered into by the Secretary for the provision of internships unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be in such form and contain such information, and be submitted to the Secretary in such manner, as the Secretary shall prescribe. Section 300e–5 of this title does not apply to an application submitted under this section.

(3) Internships under the Program shall provide for such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the recipients of the internships as the Secretary deems necessary. An internship provided an individual for training at a health maintenance organization or any other entity shall also provide for payments to be made to the organization or other entity for the cost of support services (including the cost of salaries, supplies, equipment, and related items) provided such individual by such organization or other entity. The amount of any such payments to any organization or other entity shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the organization or other entity for establishing and maintaining its training programs.

(4) Payments under grants under the Program may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary.

(b) Technical assistance

The Secretary shall provide technical assistance (1) to entities intending to become a quali-

[1] See References in Text note below.

fied health maintenance organization within the meaning of section 300e–9(d)[1] of this title, and (2) to health maintenance organizations. The Secretary may provide such technical assistance through grants to public and nonprofit private entities and contracts with public and private entities.

(c) Amounts provided in advance in appropriation acts

The authority of the Secretary to enter into contracts under subsections (a) and (b) of this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(July 1, 1944, ch. 373, title XIII, § 1317, as added Pub. L. 95–559, § 7(a), Nov. 1, 1978, 92 Stat. 2134; amended Pub. L. 99–660, title VIII, § 803(b)(4), Nov. 14, 1986, 100 Stat. 3800.)

REFERENCES IN TEXT

Section 300e–9(d) of this title, referred to in subsec. (b), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–660 redesignated cls. (2) and (3) as (1) and (2), respectively, and struck out former cl. (1) which read as follows: ''to entities in connection with projects for which assistance is being provided under section 300e–2 or 300e–3 of this title,''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as a note under section 300e–5 of this title.

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE

Section 7(c) of Pub. L. 95–559 provided that: ''The amendments made by this section [enacting this section and amending section 300e–8 of this title] shall only be effective for fiscal years beginning on or after October 1, 1978.''

§ 300e–17. Financial disclosure

(a) Financial information reported to Secretary

Each health maintenance organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

(1) Such information as the Secretary may require demonstrating that the health maintenance organization has a fiscally sound operation.

(2) A copy of the report, if any, filed with the Centers for Medicare & Medicaid Services containing the information required to be reported under section 1320a–3 of this title by disclosing entities and the information required to be supplied under section 1396a(a)(38) of this title.

(3) A description of transactions, as specified by the Secretary, between the health maintenance organization and a party in interest. Such transactions shall include—

(A) any sale or exchange, or leasing of any property between the health maintenance organization and a party in interest;

(B) any furnishing for consideration of goods, services (including management services), or facilities between the health maintenance organization and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical group (or groups), individual practice association (or associations), or any combination thereof; and

(C) any lending of money or other extension of credit between a health maintenance organization and a party in interest.

The Secretary may require that information reported respecting a health maintenance organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(b) "Party in interest" defined

For the purposes of this section the term ''party in interest'' means:

(1) any director, officer, partner, or employee responsible for management or administration of a health maintenance organization, any person who is directly or indirectly the beneficial owner of more than 5 per centum of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 per centum of the health maintenance organization, and, in the case of a health maintenance organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

(2) any entity in which a person described in paragraph (1)—

(A) is an officer or director;

(B) is a partner (if such entity is organized as a partnership);

(C) has directly or indirectly a beneficial interest of more than 5 per centum of the equity; or

(D) has a mortgage, deed of trust, note, on other interest valuing more than 5 per centum of the assets of such entity;

(3) any person directly or indirectly controlling, controlled by, or under common control with a health maintenance organization; and

(4) any spouse, child, or parent of an individual described in paragraph (1).

(c) Information availability

Each health maintenance organization shall make the information reported pursuant to subsection (a) of this section available to its enrollees upon reasonable request.

(d) Evaluation of transactions

The Secretary shall, as he deems necessary, conduct an evaluation of transactions reported to the Secretary under subsection (a)(3) of this section for the purpose of determining their adverse impact, if any, on the fiscal soundness and

[1] See References in Text note below.

reasonableness of charges to the health maintenance organization with respect to which they transpired. The Secretary shall evaluate the reported transactions of not less than five, or if there are more than twenty health maintenance organizations reporting such transactions, not less than one-fourth of the health maintenance organizations reporting any such transactions under subsection (a)(3) of this section.

(e) Repealed. Pub. L. 99–660, title VIII, § 810, Nov. 14, 1986, 100 Stat. 3801

(f) Rates

Nothing in this section shall be construed to confer upon the Secretary any authority to approve or disapprove the rates charged by any health maintenance organization.

(g) Annual financial statement

Any health maintenance organization failing to file with the Secretary the annual financial statement required in subsection (a) of this section shall be ineligible for any Federal assistance under this subchapter until such time as such statement is received by the Secretary and shall not be a qualified health maintenance organization for purposes of section 300e–9 of this title.

(h) Penalties

Whoever knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any statement filed pursuant to this section shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(July 1, 1944, ch. 373, title XIII, § 1318, as added Pub. L. 95–559, § 9(a), Nov. 1, 1978, 92 Stat. 2135; amended Pub. L. 97–35, title IX, § 948, Aug. 13, 1981, 95 Stat. 577; Pub. L. 99–660, title VIII, § 810, Nov. 14, 1986, 100 Stat. 3801; Pub. L. 108–173, title IX, § 900(e)(2)(E), Dec. 8, 2003, 117 Stat. 2372.)

AMENDMENTS

2003—Subsec. (a)(2). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

1986—Subsec. (e). Pub. L. 99–660 struck out subsec. (e) which read as follows: ''The Secretary shall file an annual report with the Congress on the operation of this section. Such report shall include—

''(1) an enumeration of standards and norms utilized to make the evaluations required under subsection (d) of this section;

''(2) an assessment of the degree of conformity or nonconformity of each health maintenance organization evaluated by the Secretary under subsection (d) of this section with such standards and norms;

''(3) what action, if any, the Secretary considers necessary under section 300e–11 of this title with respect to health maintenance organizations evaluated under subsection (d) of this section.''

1981—Subsec. (a). Pub. L. 97–35, § 948(a), (b), in par. (2) inserted reference to copy of the report, if any, filed with the Health Care Financing Administration, and in par. (3)(B) reorganized excluding provisions and, among revisions, inserted salaries paid to employees for services.

Subsec. (b)(1). Pub. L. 97–35, § 948(c), inserted ''responsible for management or administration'' after ''employee''.

Subsec. (b)(4). Pub. L. 97–35, § 948(d), substituted ''spouse, child, or parent'' for ''member of the immediate family''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

SUBCHAPTER XII—SAFETY OF PUBLIC WATER SYSTEMS

PART A—DEFINITIONS

§ 300f. Definitions

For purposes of this subchapter:

(1) The term ''primary drinking water regulation'' means a regulation which—

(A) applies to public water systems;

(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either—

(i) a maximum contaminant level, if, in the judgment of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1 of this title; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

At any time after promulgation of a regulation referred to in this paragraph, the Administrator may add equally effective quality control and testing procedures by guidance published in the Federal Register. Such procedures shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.

(2) The term ''secondary drinking water regulation'' which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary accordingly to geographic and other circumstances.

(3) The term ''maximum contaminant level'' means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(4) PUBLIC WATER SYSTEM.—

(A) IN GENERAL.—The term ''public water system'' means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(B) CONNECTIONS.—

(i) IN GENERAL.—For purposes of subparagraph (A), a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if—

(I) the water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

(II) the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(III) the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(ii) IRRIGATION DISTRICTS.—An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subclause (II) or (III) of clause (i).

(C) TRANSITION PERIOD.—A water supplier that would be a public water system only as a result of modifications made to this paragraph by the Safe Drinking Water Act Amendments of 1996 shall not be considered a public water system for purposes of the Act until the date that is two years after August 6, 1996. If a water supplier does not serve 15 service connections (as defined in subparagraphs (A) and (B)) or 25 people at any time after the conclusion of the 2-year period, the water supplier shall not be considered a public water system.

(5) The term ''supplier of water'' means any person who owns or operates a public water system.

(6) The term ''contaminant'' means any physical, chemical, biological, or radiological substance or matter in water.

(7) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(8) The term ''Agency'' means the Environmental Protection Agency.

(9) The term ''Council'' means the National Drinking Water Advisory Council established under section 300j–5 of this title.

(10) The term ''municipality'' means a city, town, or other public body created by or pursuant to State law, or an Indian Tribe.

(11) The term ''Federal agency'' means any department, agency, or instrumentality of the United States.

(12) The term ''person'' means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency).

(13)(A) Except as provided in subparagraph (B), the term ''State'' includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(B) For purposes of section 300j–12 of this title, the term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(14) The term ''Indian Tribe'' means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over any area. For purposes of section 300j–12 of this title, the term includes any Native village (as defined in section 1602(c) of title 43).

(15) COMMUNITY WATER SYSTEM.—The term ''community water system'' means a public water system that—

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(16) NONCOMMUNITY WATER SYSTEM.—The term ''noncommunity water system'' means a public water system that is not a community water system.

(July 1, 1944, ch. 373, title XIV, § 1401, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1660; amended Pub. L. 94–317, title III, § 301(b)(2), June 23, 1976, 90 Stat. 707; Pub. L. 94–484, title IX, § 905(b)(1), Oct. 12, 1976, 90 Stat. 2325; Pub. L. 95–190, § 8(b), Nov. 16, 1977, 91 Stat. 1397; Pub. L. 99–339, title III, § 302(b), June 19, 1986, 100 Stat. 666; Pub. L. 104–182, title I, § 101(a), (b)(1), Aug. 6, 1996, 110 Stat. 1615, 1616.)

REFERENCES IN TEXT

The Safe Drinking Water Act Amendments of 1996, referred to in par. (4)(C), is Pub. L. 104–182, Aug. 6, 1996, 110 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

1996—Par. (1). Pub. L. 104–182, § 101(a)(1)(B), inserted at end ''At any time after promulgation of a regulation referred to in this paragraph, the Administrator may add equally effective quality control and testing procedures by guidance published in the Federal Register. Such procedures shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.''

Par. (1)(D). Pub. L. 104–182, § 101(a)(1)(A), inserted ''accepted methods for'' before ''quality control''.

Par. (4). Pub. L. 104–182, § 101(b)(1), designated existing provisions as subpar. (A), inserted par. and subpar. headings, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, substituted ''water for human consumption through pipes or other constructed conveyances'' for ''piped water for human consumption'' in first sentence, and added subpars. (B) and (C).

Par. (13). Pub. L. 104–182, § 101(a)(2), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), the term'' for ''The term'', and added subpar. (B).

Par. (14). Pub. L. 104–182, § 101(a)(3), inserted at end ''For purposes of section 300j–12 of this title, the term includes any Native village (as defined in section 1602(c) of title 43).''

Pars. (15), (16). Pub. L. 104–182, § 101(a)(4), added pars. (15) and (16).

1986—Par. (10). Pub. L. 99–339, § 302(b)(2), substituted ''Indian Tribe'' for ''Indian tribal organization authorized by law''.

Par. (14). Pub. L. 99–339, § 302(b)(1), added par. (14).

1977—Par. (12). Pub. L. 95–190 expanded definition of ''person'' to include Federal agency, and officers, employees, and agents of any corporation, company, etc.

1976—Par. (13). Pub. L. 94–484 defined ''State'' to include Northern Mariana Islands.

Pub. L. 94–317 added par. (13).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2(b) of Pub. L. 104–182 provided that: ''Except as otherwise specified in this Act [enacting sections 300g–7 to 300g–9, 300h–8, 300j–3c, and 300j–12 to 300j–18 of this title and section 1263a of Title 33, Navigation and Navigable Waters, amending this section, sections 300g–1 to 300g–6, 300h, 300h–5 to 300h–7, 300i, 300i–1, 300j to 300j–2, 300j–4 to 300j–8, 300j–11, and 300j–21 to 300j–25 of this title, sections 4701 and 4721 of Title 16, Conservation, and section 349 of Title 21, Food and Drugs, repealing section 13551 of this title, enacting provisions set out as notes under this section, sections 201, 300g–1, 300j–1, and 300j–12 of this title, section 1281 of Title 33, and section 45 of former Title 40, Public Buildings, Property, and Works, and amending provisions set out as a note under section 201 of this title] or in the amendments made by this Act, this Act and the amendments made by this Act shall take effect on the date of enactment of this Act [Aug. 6, 1996].''

SHORT TITLE

This subchapter is known as the ''Safe Drinking Water Act'', see note set out under section 201 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

EFFECT OF PUBLIC LAW 104–182 ON FEDERAL WATER POLLUTION CONTROL ACT

Section 2(c) of Pub. L. 104–182 provided that: ''Except for the provisions of section 302 [42 U.S.C. 300j–12 note] (relating to transfers of funds), nothing in this Act [see Effective Date of 1996 Amendment note above] or in any amendments made by this Act to title XIV of the Public Health Service Act [this subchapter] (commonly known as the 'Safe Drinking Water Act') or any other law shall be construed by the Administrator of the Environmental Protection Agency or the courts as affecting, modifying, expanding, changing, or altering—

''(1) the provisions of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.];

''(2) the duties and responsibilities of the Administrator under that Act; or

''(3) the regulation or control of point or nonpoint sources of pollution discharged into waters covered by that Act.

The Administrator shall identify in the agency's annual budget all funding and full-time equivalents administering such title XIV separately from funding and staffing for the Federal Water Pollution Control Act.''

CONGRESSIONAL FINDINGS

Section 3 of Pub. L. 104–182 provided that: ''The Congress finds that—

''(1) safe drinking water is essential to the protection of public health;

''(2) because the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) now exceed the financial and technical capacity of some public water systems, especially many small public water systems, the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements;

''(3) the Federal Government commits to maintaining and improving its partnership with the States in the administration and implementation of the Safe Drinking Water Act;

''(4) States play a central role in the implementation of safe drinking water programs, and States need increased financial resources and appropriate flexibility to ensure the prompt and effective development and implementation of drinking water programs;

''(5) the existing process for the assessment and selection of additional drinking water contaminants needs to be revised and improved to ensure that there is a sound scientific basis for setting priorities in establishing drinking water regulations;

''(6) procedures for assessing the health effects of contaminants establishing drinking water standards should be revised to provide greater opportunity for public education and participation;

''(7) in considering the appropriate level of regulation for contaminants in drinking water, risk assessment, based on sound and objective science, and benefit-cost analysis are important analytical tools for improving the efficiency and effectiveness of drinking water regulations to protect human health;

''(8) more effective protection of public health requires—

''(A) a Federal commitment to set priorities that will allow scarce Federal, State, and local resources to be targeted toward the drinking water problems of greatest public health concern;

''(B) maximizing the value of the different and complementary strengths and responsibilities of the Federal and State governments in those States that have primary enforcement responsibility for the Safe Drinking Water Act; and

''(C) prevention of drinking water contamination through well-trained system operators, water systems with adequate managerial, technical, and financial capacity, and enhanced protection of source waters of public water systems;

''(9) compliance with the requirements of the Safe Drinking Water Act continues to be a concern at public water systems experiencing technical and financial limitations, and Federal, State, and local governments need more resources and more effective authority to attain the objectives of the Safe Drinking Water Act; and

''(10) consumers served by public water systems should be provided with information on the source of

the water they are drinking and its quality and safety, as well as prompt notification of any violation of drinking water regulations.''

GAO STUDY

Section 101(b)(2) of Pub. L. 104–182 provided that: ''The Comptroller General of the United States shall undertake a study to—

''(A) ascertain the numbers and locations of individuals and households relying for their residential water needs, including drinking, bathing, and cooking (or other similar uses) on irrigation water systems, mining water systems, industrial water systems, or other water systems covered by section 1401(4)(B) of the Safe Drinking Water Act [par. (4)(B) of this section] that are not public water systems subject to the Safe Drinking Water Act [this subchapter];

''(B) determine the sources and costs and affordability (to users and systems) of water used by such populations for their residential water needs; and

''(C) review State and water system compliance with the exclusion provisions of section 1401(4)(B) of such Act.

The Comptroller General shall submit a report to the Congress within 3 years after the date of enactment of this Act [Aug. 6, 1996] containing the results of such study.''

SAFE DRINKING WATER AMENDMENTS OF 1977 RESTRICTIONS ON APPROPRIATIONS FOR RESEARCH

Section 2(e) of Pub. L. 95–190 provided that: ''Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to authorize the appropriation of any amount for research under title XIV of the Public Health Service Act [this subchapter] (relating to safe drinking water).''

SAFE DRINKING WATER AMENDMENTS OF 1977 AS NOT AFFECTING AUTHORITY OF ADMINISTRATOR WITH RESPECT TO CONTAMINANTS

Section 3(e)(2) of Pub. L. 95–190 provided that: ''Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to alter or affect the Administrator's authority or duty under title 14 of the Public Health Service Act [this subchapter] to promulgate regulations or take other action with respect to any contaminant.''

RURAL WATER SURVEY; REPORT TO PRESIDENT AND CONGRESS; AUTHORIZATION OF APPROPRIATIONS

Section 3 of Pub. L. 93–523, as amended by Pub. L. 95–190, §§2(d), 3(d), Nov. 16, 1977, 91 Stat. 1393, 1394, directed Administrator of Environmental Protection Agency, after consultation with Secretary of Agriculture and the several States, to enter into arrangements with public or private entities to conduct a survey of quantity, quality, and availability of rural drinking water supplies, which survey was to include, but not be limited to, consideration of number of residents in each rural area who presently are being inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system, or who presently have limited or otherwise inadequate access to drinking water, or who, due to absence or inadequacy of a drinking water supply system, are exposed to an increased health hazard, and who have experienced incidents of chronic or acute illness, which may be attributed to inadequacy of a drinking water supply system. Survey to be completed within eighteen months of Dec. 16, 1974, and a final report thereon submitted, not later than six months after completion of survey, to President and to Congress.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART B—PUBLIC WATER SYSTEMS

§ 300g. Coverage

Subject to sections 300g–4 and 300g–5 of this title, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system—

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(3) which does not sell water to any person; and

(4) which is not a carrier which conveys passengers in interstate commerce.

(July 1, 1944, ch. 373, title XIV, §1411, as added Pub. L. 93–523, §2(a), Dec. 16, 1974, 88 Stat. 1662.)

§ 300g–1. National drinking water regulations

(a) National primary drinking water regulations; maximum contaminant level goals; simultaneous publication of regulations and goals

(1) Effective on June 19, 1986, each national interim or revised primary drinking water regulation promulgated under this section before June 19, 1986, shall be deemed to be a national primary drinking water regulation under subsection (b) of this section. No such regulation shall be required to comply with the standards set forth in subsection (b)(4) of this section unless such regulation is amended to establish a different maximum contaminant level after June 19, 1986.

(2) After June 19, 1986, each recommended maximum contaminant level published before June 19, 1986, shall be treated as a maximum contaminant level goal.

(3) Whenever a national primary drinking water regulation is proposed under subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be proposed simultaneously. Whenever a national primary drinking water regulation is promulgated under subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be published simultaneously.

(4) Paragraph (3) shall not apply to any recommended maximum contaminant level published before June 19, 1986.

(b) Standards

(1) IDENTIFICATION OF CONTAMINANTS FOR LISTING.—

(A) GENERAL AUTHORITY.—The Administrator shall, in accordance with the procedures estab-

lished by this subsection, publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for a contaminant (other than a contaminant referred to in paragraph (2) for which a national primary drinking water regulation has been promulgated as of August 6, 1996) if the Administrator determines that—

(i) the contaminant may have an adverse effect on the health of persons;

(ii) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and

(iii) in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems.

(B) REGULATION OF UNREGULATED CONTAMINANTS.—

(i) LISTING OF CONTAMINANTS FOR CONSIDERATION.—(I) Not later than 18 months after August 6, 1996, and every 5 years thereafter, the Administrator, after consultation with the scientific community, including the Science Advisory Board, after notice and opportunity for public comment, and after considering the occurrence data base established under section 300j–4(g) of this title, shall publish a list of contaminants which, at the time of publication, are not subject to any proposed or promulgated national primary drinking water regulation, which are known or anticipated to occur in public water systems, and which may require regulation under this subchapter.

(II) The unregulated contaminants considered under subclause (I) shall include, but not be limited to, substances referred to in section 9601(14) of this title, and substances registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

(III) The Administrator's decision whether or not to select an unregulated contaminant for a list under this clause shall not be subject to judicial review.

(ii) DETERMINATION TO REGULATE.—(I) Not later than 5 years after August 6, 1996, and every 5 years thereafter, the Administrator shall, after notice of the preliminary determination and opportunity for public comment, for not fewer than 5 contaminants included on the list published under clause (i), make determinations of whether or not to regulate such contaminants.

(II) A determination to regulate a contaminant shall be based on findings that the criteria of clauses (i), (ii), and (iii) of subparagraph (A) are satisfied. Such findings shall be based on the best available public health information, including the occurrence data base established under section 300j–4(g) of this title.

(III) The Administrator may make a determination to regulate a contaminant that does not appear on a list under clause (i) if the determination to regulate is made pursuant to subclause (II).

(IV) A determination under this clause not to regulate a contaminant shall be considered final agency action and subject to judicial review.

(iii) REVIEW.—Each document setting forth the determination for a contaminant under clause (ii) shall be available for public comment at such time as the determination is published.

(C) PRIORITIES.—In selecting unregulated contaminants for consideration under subparagraph (B), the Administrator shall select contaminants that present the greatest public health concern. The Administrator, in making such selection, shall take into consideration, among other factors of public health concern, the effect of such contaminants upon subgroups that comprise a meaningful portion of the general population (such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations) that are identifiable as being at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population.

(D) URGENT THREATS TO PUBLIC HEALTH.—The Administrator may promulgate an interim national primary drinking water regulation for a contaminant without making a determination for the contaminant under paragraph (4)(C), or completing the analysis under paragraph (3)(C), to address an urgent threat to public health as determined by the Administrator after consultation with and written response to any comments provided by the Secretary of Health and Human Services, acting through the director of the Centers for Disease Control and Prevention or the director of the National Institutes of Health. A determination for any contaminant in accordance with paragraph (4)(C) subject to an interim regulation under this subparagraph shall be issued, and a completed analysis meeting the requirements of paragraph (3)(C) shall be published, not later than 3 years after the date on which the regulation is promulgated and the regulation shall be repromulgated, or revised if appropriate, not later than 5 years after that date.

(E) REGULATION.—For each contaminant that the Administrator determines to regulate under subparagraph (B), the Administrator shall publish maximum contaminant level goals and promulgate, by rule, national primary drinking water regulations under this subsection. The Administrator shall propose the maximum contaminant level goal and national primary drinking water regulation for a contaminant not later than 24 months after the determination to regulate under subparagraph (B), and may publish such proposed regulation concurrent with the determination to regulate. The Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation within 18 months after the proposal thereof. The Administrator, by notice in the Federal Register, may extend the deadline for such promulgation for up to 9 months.

(F) HEALTH ADVISORIES AND OTHER ACTIONS.—The Administrator may publish health advisories (which are not regulations) or take

other appropriate actions for contaminants not subject to any national primary drinking water regulation.

(2) SCHEDULES AND DEADLINES.—

(A) IN GENERAL.—In the case of the contaminants listed in the Advance Notice of Proposed Rulemaking published in volume 47, Federal Register, page 9352, and in volume 48, Federal Register, page 45502, the Administrator shall publish maximum contaminant level goals and promulgate national primary drinking water regulations—

(i) not later than 1 year after June 19, 1986, for not fewer than 9 of the listed contaminants;

(ii) not later than 2 years after June 19, 1986, for not fewer than 40 of the listed contaminants; and

(iii) not later than 3 years after June 19, 1986, for the remainder of the listed contaminants.

(B) SUBSTITUTION OF CONTAMINANTS.—If the Administrator identifies a drinking water contaminant the regulation of which, in the judgment of the Administrator, is more likely to be protective of public health (taking into account the schedule for regulation under subparagraph (A)) than a contaminant referred to in subparagraph (A), the Administrator may publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for the identified contaminant in lieu of regulating the contaminant referred to in subparagraph (A). Substitutions may be made for not more than 7 contaminants referred to in subparagraph (A). Regulation of a contaminant identified under this subparagraph shall be in accordance with the schedule applicable to the contaminant for which the substitution is made.

(C) DISINFECTANTS AND DISINFECTION BYPRODUCTS.—The Administrator shall promulgate an Interim Enhanced Surface Water Treatment Rule, a Final Enhanced Surface Water Treatment Rule, a Stage I Disinfectants and Disinfection Byproducts Rule, and a Stage II Disinfectants and Disinfection Byproducts Rule in accordance with the schedule published in volume 59, Federal Register, page 6361 (February 10, 1994), in table III.13 of the proposed Information Collection Rule. If a delay occurs with respect to the promulgation of any rule in the schedule referred to in this subparagraph, all subsequent rules shall be completed as expeditiously as practicable but no later than a revised date that reflects the interval or intervals for the rules in the schedule.

(3) RISK ASSESSMENT, MANAGEMENT, AND COMMUNICATION.—

(A) USE OF SCIENCE IN DECISIONMAKING.—In carrying out this section, and, to the degree that an Agency action is based on science, the Administrator shall use—

(i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

(ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

(B) PUBLIC INFORMATION.—In carrying out this section, the Administrator shall ensure that the presentation of information on public health effects is comprehensive, informative, and understandable. The Administrator shall, in a document made available to the public in support of a regulation promulgated under this section, specify, to the extent practicable—

(i) each population addressed by any estimate of public health effects;

(ii) the expected risk or central estimate of risk for the specific populations;

(iii) each appropriate upper-bound or lower-bound estimate of risk;

(iv) each significant uncertainty identified in the process of the assessment of public health effects and studies that would assist in resolving the uncertainty; and

(v) peer-reviewed studies known to the Administrator that support, are directly relevant to, or fail to support any estimate of public health effects and the methodology used to reconcile inconsistencies in the scientific data.

(C) HEALTH RISK REDUCTION AND COST ANALYSIS.—

(i) MAXIMUM CONTAMINANT LEVELS.—When proposing any national primary drinking water regulation that includes a maximum contaminant level, the Administrator shall, with respect to a maximum contaminant level that is being considered in accordance with paragraph (4) and each alternative maximum contaminant level that is being considered pursuant to paragraph (5) or (6)(A), publish, seek public comment on, and use for the purposes of paragraphs (4), (5), and (6) an analysis of each of the following:

(I) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur as the result of treatment to comply with each level.

(II) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur from reductions in co-occurring contaminants that may be attributed solely to compliance with the maximum contaminant level, excluding benefits resulting from compliance with other proposed or promulgated regulations.

(III) Quantifiable and nonquantifiable costs for which there is a factual basis in the rulemaking record to conclude that such costs are likely to occur solely as a result of compliance with the maximum contaminant level, including monitoring, treatment, and other costs and excluding costs resulting from compliance with other proposed or promulgated regulations.

(IV) The incremental costs and benefits associated with each alternative maximum contaminant level considered.

(V) The effects of the contaminant on the general population and on groups within the general population such as infants,

children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population.

(VI) Any increased health risk that may occur as the result of compliance, including risks associated with co-occurring contaminants.

(VII) Other relevant factors, including the quality and extent of the information, the uncertainties in the analysis supporting subclauses (I) through (VI), and factors with respect to the degree and nature of the risk.

(ii) TREATMENT TECHNIQUES.—When proposing a national primary drinking water regulation that includes a treatment technique in accordance with paragraph (7)(A), the Administrator shall publish and seek public comment on an analysis of the health risk reduction benefits and costs likely to be experienced as the result of compliance with the treatment technique and alternative treatment techniques that are being considered, taking into account, as appropriate, the factors described in clause (i).

(iii) APPROACHES TO MEASURE AND VALUE BENEFITS.—The Administrator may identify valid approaches for the measurement and valuation of benefits under this subparagraph, including approaches to identify consumer willingness to pay for reductions in health risks from drinking water contaminants.

(iv) AUTHORIZATION.—There are authorized to be appropriated to the Administrator, acting through the Office of Ground Water and Drinking Water, to conduct studies, assessments, and analyses in support of regulations or the development of methods, $35,000,000 for each of fiscal years 1996 through 2003.

(4) GOALS AND STANDARDS.—

(A) MAXIMUM CONTAMINANT LEVEL GOALS.—Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.

(B) MAXIMUM CONTAMINANT LEVELS.—Except as provided in paragraphs (5) and (6), each national primary drinking water regulation for a contaminant for which a maximum contaminant level goal is established under this subsection shall specify a maximum contaminant level for such contaminant which is as close to the maximum contaminant level goal as is feasible.

(C) DETERMINATION.—At the time the Administrator proposes a national primary drinking water regulation under this paragraph, the Administrator shall publish a determination as to whether the benefits of the maximum contaminant level justify, or do not justify, the costs based on the analysis conducted under paragraph (3)(C).

(D) DEFINITION OF FEASIBLE.—For the purposes of this subsection, the term ''feasible'' means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purpose of this paragraph, granular activated carbon is feasible for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as granular activated carbon.

(E) FEASIBLE TECHNOLOGIES.—

(i) IN GENERAL.—Each national primary drinking water regulation which establishes a maximum contaminant level shall list the technology, treatment techniques, and other means which the Administrator finds to be feasible for purposes of meeting such maximum contaminant level, but a regulation under this subsection shall not require that any specified technology, treatment technique, or other means be used for purposes of meeting such maximum contaminant level.

(ii) LIST OF TECHNOLOGIES FOR SMALL SYSTEMS.—The Administrator shall include in the list any technology, treatment technique, or other means that is affordable, as determined by the Administrator in consultation with the States, for small public water systems serving—

(I) a population of 10,000 or fewer but more than 3,300;

(II) a population of 3,300 or fewer but more than 500; and

(III) a population of 500 or fewer but more than 25;

and that achieves compliance with the maximum contaminant level or treatment technique, including packaged or modular systems and point-of-entry or point-of-use treatment units. Point-of-entry and point-of-use treatment units shall be owned, controlled and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the maximum contaminant level or treatment technique and equipped with mechanical warnings to ensure that customers are automatically notified of operational problems. The Administrator shall not include in the list any point-of-use treatment technology, treatment technique, or other means to achieve compliance with a maximum contaminant level or treatment technique requirement for a microbial contaminant (or an indicator of a microbial contaminant). If the American National Standards Institute has issued product standards applicable to a specific type of point-of-entry or point-of-use treatment unit, individual units of that type shall not be accepted for compliance with a maximum contaminant level or treatment technique requirement unless they are independently certified in accordance with such standards. In listing

any technology, treatment technique, or other means pursuant to this clause, the Administrator shall consider the quality of the source water to be treated.

(iii) LIST OF TECHNOLOGIES THAT ACHIEVE COMPLIANCE.—Except as provided in clause (v), not later than 2 years after August 6, 1996, and after consultation with the States, the Administrator shall issue a list of technologies that achieve compliance with the maximum contaminant level or treatment technique for each category of public water systems described in subclauses (I), (II), and (III) of clause (ii) for each national primary drinking water regulation promulgated prior to June 19, 1986.

(iv) ADDITIONAL TECHNOLOGIES.—The Administrator may, at any time after a national primary drinking water regulation has been promulgated, supplement the list of technologies describing additional or new or innovative treatment technologies that meet the requirements of this paragraph for categories of small public water systems described in subclauses (I), (II), and (III) of clause (ii) that are subject to the regulation.

(v) TECHNOLOGIES THAT MEET SURFACE WATER TREATMENT RULE.—Within one year after August 6, 1996, the Administrator shall list technologies that meet the Surface Water Treatment Rule for each category of public water systems described in subclauses (I), (II), and (III) of clause (ii).

(5) ADDITIONAL HEALTH RISK CONSIDERATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (4), the Administrator may establish a maximum contaminant level for a contaminant at a level other than the feasible level, if the technology, treatment techniques, and other means used to determine the feasible level would result in an increase in the health risk from drinking water by—

(i) increasing the concentration of other contaminants in drinking water; or

(ii) interfering with the efficacy of drinking water treatment techniques or processes that are used to comply with other national primary drinking water regulations.

(B) ESTABLISHMENT OF LEVEL.—If the Administrator establishes a maximum contaminant level or levels or requires the use of treatment techniques for any contaminant or contaminants pursuant to the authority of this paragraph—

(i) the level or levels or treatment techniques shall minimize the overall risk of adverse health effects by balancing the risk from the contaminant and the risk from other contaminants the concentrations of which may be affected by the use of a treatment technique or process that would be employed to attain the maximum contaminant level or levels; and

(ii) the combination of technology, treatment techniques, or other means required to meet the level or levels shall not be more stringent than is feasible (as defined in paragraph (4)(D)).

(6) ADDITIONAL HEALTH RISK REDUCTION AND COST CONSIDERATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (4), if the Administrator determines based on an analysis conducted under paragraph (3)(C) that the benefits of a maximum contaminant level promulgated in accordance with paragraph (4) would not justify the costs of complying with the level, the Administrator may, after notice and opportunity for public comment, promulgate a maximum contaminant level for the contaminant that maximizes health risk reduction benefits at a cost that is justified by the benefits.

(B) EXCEPTION.—The Administrator shall not use the authority of this paragraph to promulgate a maximum contaminant level for a contaminant, if the benefits of compliance with a national primary drinking water regulation for the contaminant that would be promulgated in accordance with paragraph (4) experienced by—

(i) persons served by large public water systems; and

(ii) persons served by such other systems as are unlikely, based on information provided by the States, to receive a variance under section 300g–4(e) of this title (relating to small system variances);

would justify the costs to the systems of complying with the regulation. This subparagraph shall not apply if the contaminant is found almost exclusively in small systems eligible under section 300g–4(e) of this title for a small system variance.

(C) DISINFECTANTS AND DISINFECTION BYPRODUCTS.—The Administrator may not use the authority of this paragraph to establish a maximum contaminant level in a Stage I or Stage II national primary drinking water regulation (as described in paragraph (2)(C)) for contaminants that are disinfectants or disinfection byproducts, or to establish a maximum contaminant level or treatment technique requirement for the control of cryptosporidium. The authority of this paragraph may be used to establish regulations for the use of disinfection by systems relying on ground water sources as required by paragraph (8).

(D) JUDICIAL REVIEW.—A determination by the Administrator that the benefits of a maximum contaminant level or treatment requirement justify or do not justify the costs of complying with the level shall be reviewed by the court pursuant to section 300j–7 of this title only as part of a review of a final national primary drinking water regulation that has been promulgated based on the determination and shall not be set aside by the court under that section unless the court finds that the determination is arbitrary and capricious.

(7)(A) The Administrator is authorized to promulgate a national primary drinking water regulation that requires the use of a treatment technique in lieu of establishing a maximum contaminant level, if the Administrator makes a finding that it is not economically or technologically feasible to ascertain the level of the contaminant. In such case, the Administrator shall identify those treatment techniques which, in the Administrator's judgment, would prevent known or anticipated adverse effects on the

health of persons to the extent feasible. Such regulations shall specify each treatment technique known to the Administrator which meets the requirements of this paragraph, but the Administrator may grant a variance from any specified treatment technique in accordance with section 300g–4(a)(3) of this title.

(B) Any schedule referred to in this subsection for the promulgation of a national primary drinking water regulation for any contaminant shall apply in the same manner if the regulation requires a treatment technique in lieu of establishing a maximum contaminant level.

(C)(i) Not later than 18 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In promulgating such rules, the Administrator shall consider the quality of source waters, protection afforded by watershed management, treatment practices (such as disinfection and length of water storage) and other factors relevant to protection of health.

(ii) In lieu of the provisions of section 300g–4 of this title the Administrator shall specify procedures by which the State determines which public water systems within its jurisdiction shall adopt filtration under the criteria of clause (i). The State may require the public water system to provide studies or other information to assist in this determination. The procedures shall provide notice and opportunity for public hearing on this determination. If the State determines that filtration is required, the State shall prescribe a schedule for compliance by the public water system with the filtration requirement. A schedule shall require compliance within 18 months of a determination made under clause (iii).

(iii) Within 18 months from the time that the Administrator establishes the criteria and procedures under this subparagraph, a State with primary enforcement responsibility shall adopt any necessary regulations to implement this subparagraph. Within 12 months of adoption of such regulations the State shall make determinations regarding filtration for all the public water systems within its jurisdiction supplied by surface waters.

(iv) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to make the determination in clause (ii) in such State as the State would have under that clause. Any filtration requirement or schedule under this subparagraph shall be treated as if it were a requirement of a national primary drinking water regulation.

(v) As an additional alternative to the regulations promulgated pursuant to clauses (i) and (iii), including the criteria for avoiding filtration contained in 40 CFR 141.71, a State exercising primary enforcement responsibility for public water systems may, on a case-by-case basis, and after notice and opportunity for public comment, establish treatment requirements as an alternative to filtration in the case of systems having uninhabited, undeveloped watersheds in consolidated ownership, and having control over access to, and activities in, those watersheds, if the State determines (and the Administrator concurs) that the quality of the source water and the alternative treatment requirements established by the State ensure greater removal or inactivation efficiencies of pathogenic organisms for which national primary drinking water regulations have been promulgated or that are of public health concern than would be achieved by the combination of filtration and chlorine disinfection (in compliance with this section).

(8) DISINFECTION.—At any time after the end of the 3-year period that begins on August 6, 1996, but not later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts (as described in paragraph (2)(C)), the Administrator shall also promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems. After consultation with the States, the Administrator shall (as part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g–2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water. The Administrator shall simultaneously promulgate a rule specifying criteria that will be used by the Administrator (or delegated State authorities) to grant variances from this requirement according to the provisions of sections 300g–4(a)(1)(B) and 300g–4(a)(3) of this title. In implementing section 300j–1(e) of this title the Administrator or the delegated State authority shall, where appropriate, give special consideration to providing technical assistance to small public water systems in complying with the regulations promulgated under this paragraph.

(9) REVIEW AND REVISION.—The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this subchapter. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.

(10) EFFECTIVE DATE.—A national primary drinking water regulation promulgated under this section (and any amendment thereto) shall take effect on the date that is 3 years after the date on which the regulation is promulgated unless the Administrator determines that an earlier date is practicable, except that the Administrator, or a State (in the case of an individual system), may allow up to 2 additional years to comply with a maximum contaminant level or treatment technique if the Administrator or State (in the case of an individual system) determines that additional time is necessary for capital improvements.

(11) No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

(12) CERTAIN CONTAMINANTS.—

(A) ARSENIC.—

(i) SCHEDULE AND STANDARD.—Notwithstanding the deadlines set forth in paragraph (1), the Administrator shall promulgate a national primary drinking water regulation for arsenic pursuant to this subsection, in accordance with the schedule established by this paragraph.

(ii) STUDY PLAN.—Not later than 180 days after August 6, 1996, the Administrator shall develop a comprehensive plan for study in support of drinking water rulemaking to reduce the uncertainty in assessing health risks associated with exposure to low levels of arsenic. In conducting such study, the Administrator shall consult with the National Academy of Sciences, other Federal agencies, and interested public and private entities.

(iii) COOPERATIVE AGREEMENTS.—In carrying out the study plan, the Administrator may enter into cooperative agreements with other Federal agencies, State and local governments, and other interested public and private entities.

(iv) PROPOSED REGULATIONS.—The Administrator shall propose a national primary drinking water regulation for arsenic not later than January 1, 2000.

(v) FINAL REGULATIONS.—Not later than January 1, 2001, after notice and opportunity for public comment, the Administrator shall promulgate a national primary drinking water regulation for arsenic.

(vi) AUTHORIZATION.—There are authorized to be appropriated $2,500,000 for each of fiscal years 1997 through 2000 for the studies required by this paragraph.

(B) SULFATE.—

(i) ADDITIONAL STUDY.—Prior to promulgating a national primary drinking water regulation for sulfate, the Administrator and the Director of the Centers for Disease Control and Prevention shall jointly conduct an additional study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to sulfate in drinking water, including the health effects that may be experienced by groups within the general population (including infants and travelers) that are potentially at greater risk of adverse health effects as the result of such exposure. The study shall be conducted in consultation with interested States, shall be based on the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, and shall be completed not later than 30 months after August 6, 1996.

(ii) DETERMINATION.—The Administrator shall include sulfate among the 5 or more contaminants for which a determination is made pursuant to paragraph (3)(B) not later than 5 years after August 6, 1996.

(iii) PROPOSED AND FINAL RULE.—Notwithstanding the deadlines set forth in paragraph (2), the Administrator may, pursuant to the authorities of this subsection and after notice and opportunity for public comment, promulgate a final national primary drinking water regulation for sulfate. Any such regulation shall include requirements for public notification and options for the provision of alternative water supplies to populations at risk as a means of complying with the regulation in lieu of a best available treatment technology or other means.

(13) RADON IN DRINKING WATER.—

(A) NATIONAL PRIMARY DRINKING WATER REGULATION.—Notwithstanding paragraph (2), the Administrator shall withdraw any national primary drinking water regulation for radon proposed prior to August 6, 1996, and shall propose and promulgate a regulation for radon under this section, as amended by the Safe Drinking Water Act Amendments of 1996.

(B) RISK ASSESSMENT AND STUDIES.—

(i) ASSESSMENT BY NAS.—Prior to proposing a national primary drinking water regulation for radon, the Administrator shall arrange for the National Academy of Sciences to prepare a risk assessment for radon in drinking water using the best available science in accordance with the requirements of paragraph (3). The risk assessment shall consider each of the risks associated with exposure to radon from drinking water and consider studies on the health effects of radon at levels and under conditions likely to be experienced through residential exposure. The risk assessment shall be peer-reviewed.

(ii) STUDY OF OTHER MEASURES.—The Administrator shall arrange for the National Academy of Sciences to prepare an assessment of the health risk reduction benefits associated with various mitigation measures to reduce radon levels in indoor air. The assessment may be conducted as part of the risk assessment authorized by clause (i) and shall be used by the Administrator to prepare the guidance and approve State programs under subparagraph (G).

(iii) OTHER ORGANIZATION.—If the National Academy of Sciences declines to prepare the risk assessment or studies required by this subparagraph, the Administrator shall enter into a contract or cooperative agreement with another independent, scientific organization to prepare such assessments or studies.

(C) HEALTH RISK REDUCTION AND COST ANALYSIS.—Not later than 30 months after August 6, 1996, the Administrator shall publish, and seek public comment on, a health risk reduction and cost analysis meeting the requirements of paragraph (3)(C) for potential maximum contaminant levels that are being considered for radon in drinking water. The Administrator shall include a response to all significant public comments received on the analysis with the preamble for the proposed rule published under subparagraph (D).

(D) PROPOSED REGULATION.—Not later than 36 months after August 6, 1996, the Administrator shall propose a maximum contaminant level goal and a national primary drinking water regulation for radon pursuant to this section.

(E) FINAL REGULATION.—Not later than 12 months after the date of the proposal under subparagraph (D), the Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for radon pursuant to this section based on the risk assessment prepared pursuant to subparagraph (B) and the health risk reduction and cost analysis published pursuant to subparagraph (C). In considering the risk assessment and the health risk reduction and cost analysis in connection with the promulgation of such a standard, the Administrator shall take into account the costs and benefits of control programs for radon from other sources.

(F) ALTERNATIVE MAXIMUM CONTAMINANT LEVEL.—If the maximum contaminant level for radon in drinking water promulgated pursuant to subparagraph (E) is more stringent than necessary to reduce the contribution to radon in indoor air from drinking water to a concentration that is equivalent to the national average concentration of radon in outdoor air, the Administrator shall, simultaneously with the promulgation of such level, promulgate an alternative maximum contaminant level for radon that would result in a contribution of radon from drinking water to radon levels in indoor air equivalent to the national average concentration of radon in outdoor air. If the Administrator promulgates an alternative maximum contaminant level under this subparagraph, the Administrator shall, after notice and opportunity for public comment and in consultation with the States, publish guidelines for State programs, including criteria for multimedia measures to mitigate radon levels in indoor air, to be used by the States in preparing programs under subparagraph (G). The guidelines shall take into account data from existing radon mitigation programs and the assessment of mitigation measures prepared under subparagraph (B).

(G) MULTIMEDIA RADON MITIGATION PROGRAMS.—

(i) IN GENERAL.—A State may develop and submit a multimedia program to mitigate radon levels in indoor air for approval by the Administrator under this subparagraph. If, after notice and the opportunity for public comment, such program is approved by the Administrator, public water systems in the State may comply with the alternative maximum contaminant level promulgated under subparagraph (F) in lieu of the maximum contaminant level in the national primary drinking water regulation promulgated under subparagraph (E).

(ii) ELEMENTS OF PROGRAMS.—State programs may rely on a variety of mitigation measures including public education, testing, training, technical assistance, remediation grant and loan or incentive programs, or other regulatory or nonregulatory measures. The effectiveness of elements in State programs shall be evaluated by the Administrator based on the assessment prepared by the National Academy of Sciences under subparagraph (B) and the guidelines published by the Administrator under subparagraph (F).

(iii) APPROVAL.—The Administrator shall approve a State program submitted under this paragraph if the health risk reduction benefits expected to be achieved by the program are equal to or greater than the health risk reduction benefits that would be achieved if each public water system in the State complied with the maximum contaminant level promulgated under subparagraph (E). The Administrator shall approve or disapprove a program submitted under this paragraph within 180 days of receipt. A program that is not disapproved during such period shall be deemed approved. A program that is disapproved may be modified to address the objections of the Administrator and be resubmitted for approval.

(iv) REVIEW.—The Administrator shall periodically, but not less often than every 5 years, review each multimedia mitigation program approved under this subparagraph to determine whether it continues to meet the requirements of clause (iii) and shall, after written notice to the State and an opportunity for the State to correct any deficiency in the program, withdraw approval of programs that no longer comply with such requirements.

(v) EXTENSION.—If, within 90 days after the promulgation of an alternative maximum contaminant level under subparagraph (F), the Governor of a State submits a letter to the Administrator committing to develop a multimedia mitigation program under this subparagraph, the effective date of the national primary drinking water regulation for radon in the State that would be applicable under paragraph (10) shall be extended for a period of 18 months.

(vi) LOCAL PROGRAMS.—In the event that a State chooses not to submit a multimedia mitigation program for approval under this subparagraph or has submitted a program that has been disapproved, any public water system in the State may submit a program for approval by the Administrator according to the same criteria, conditions, and approval process that would apply to a State program. The Administrator shall approve a multimedia mitigation program if the health risk reduction benefits expected to be achieved by the program are equal to or greater than the health risk reduction benefits that would result from compliance by the public water system with the maximum contaminant level for radon promulgated under subparagraph (E).

(14) RECYCLING OF FILTER BACKWASH.—The Administrator shall promulgate a regulation to govern the recycling of filter backwash water within the treatment process of a public water system. The Administrator shall promulgate such regulation not later than 4 years after August 6, 1996, unless such recycling has been addressed by the Administrator's Enhanced Surface Water Treatment Rule prior to such date.

(15) VARIANCE TECHNOLOGIES.—

(A) IN GENERAL.—At the same time as the Administrator promulgates a national primary drinking water regulation for a contaminant pursuant to this section, the Adminis-

trator shall issue guidance or regulations describing the best treatment technologies, treatment techniques, or other means (referred to in this paragraph as ''variance technology'') for the contaminant that the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available and affordable, as determined by the Administrator in consultation with the States, for public water systems of varying size, considering the quality of the source water to be treated. The Administrator shall identify such variance technologies for public water systems serving—

(i) a population of 10,000 or fewer but more than 3,300;

(ii) a population of 3,300 or fewer but more than 500; and

(iii) a population of 500 or fewer but more than 25,

if, considering the quality of the source water to be treated, no treatment technology is listed for public water systems of that size under paragraph (4)(E). Variance technologies identified by the Administrator pursuant to this paragraph may not achieve compliance with the maximum contaminant level or treatment technique requirement of such regulation, but shall achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. The guidance or regulations shall not require the use of a technology from a specific manufacturer or brand.

(B) LIMITATION.—The Administrator shall not identify any variance technology under this paragraph, unless the Administrator has determined, considering the quality of the source water to be treated and the expected useful life of the technology, that the variance technology is protective of public health.

(C) ADDITIONAL INFORMATION.—The Administrator shall include in the guidance or regulations identifying variance technologies under this paragraph any assumptions supporting the public health determination referred to in subparagraph (B), where such assumptions concern the public water system to which the technology may be applied, or its source waters. The Administrator shall provide any assumptions used in determining affordability, taking into consideration the number of persons served by such systems. The Administrator shall provide as much reliable information as practicable on performance, effectiveness, limitations, costs, and other relevant factors including the applicability of variance technology to waters from surface and underground sources.

(D) REGULATIONS AND GUIDANCE.—Not later than 2 years after August 6, 1996, and after consultation with the States, the Administrator shall issue guidance or regulations under subparagraph (A) for each national primary drinking water regulation promulgated prior to August 6, 1996, for which a variance may be granted under section 300g–4(e) of this title. The Administrator may, at any time after a national primary drinking water regulation has been promulgated, issue guidance or regulations describing additional variance technologies. The Administrator shall, not less often than every 7 years, or upon receipt of a petition supported by substantial information, review variance technologies identified under this paragraph. The Administrator shall issue revised guidance or regulations if new or innovative variance technologies become available that meet the requirements of this paragraph and achieve an equal or greater reduction or inactivation efficiency than the variance technologies previously identified under this subparagraph. No public water system shall be required to replace a variance technology during the useful life of the technology for the sole reason that a more efficient variance technology has been listed under this subparagraph.

(c) Secondary regulations; publication of proposed regulations; promulgation; amendments

The Administrator shall publish proposed national secondary drinking water regulations within 270 days after December 16, 1974. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

(d) Regulations; public hearings; administrative consultations

Regulations under this section shall be prescribed in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

(e) Science Advisory Board comments

The Administrator shall request comments from the Science Advisory Board (established under the Environmental Research, Development, and Demonstration Act of 1978) prior to proposal of a maximum contaminant level goal and national primary drinking water regulation. The Board shall respond, as it deems appropriate, within the time period applicable for promulgation of the national primary drinking water standard concerned. This subsection shall, under no circumstances, be used to delay final promulgation of any national primary drinking water standard.

(July 1, 1944, ch. 373, title XIV, § 1412, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1662; amended Pub. L. 95–190, §§ 3(c), 12(a), Nov. 16, 1977, 91 Stat. 1394, 1398; Pub. L. 99–339, title I, § 101(a)–(c)(1), (d), (e), June 19, 1986, 100 Stat. 642–646; Pub. L. 104–182, title I, §§ 102(a), (c)(2), 103, 104(a), (c), 105–111(a), title V, § 501(a)(1), (2), Aug. 6, 1996, 110 Stat. 1617, 1621–1623, 1625–1631, 1691.)

REFERENCES IN TEXT

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b)(1)(B)(i)(II), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally

to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Safe Drinking Water Act Amendments of 1996, referred to in subsec. (b)(13)(A), is Pub. L. 104–182, Aug. 6, 1996, 110 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 201 of this title and Tables.

The Environmental Research, Development, and Demonstration Act of 1978, referred to in subsec. (e), probably means the Environmental Research, Development, and Demonstration Authorization Act of 1978 which is Pub. L. 95–155, Nov. 8, 1977, 91 Stat. 1257, as amended. Provisions of the Act establishing the Science Advisory Board are classified to section 4365 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–182, § 102(c)(2), struck out ''paragraph (1), (2), or (3) of'' before ''subsection (b)'' in two places.

Subsec. (b). Pub. L. 104–182, § 102(a), inserted heading.

Subsec. (b)(1), (2). Pub. L. 104–182, § 102(a), added pars. (1) and (2) and struck out former pars. (1) and (2) which related to publication of maximum contaminant level goals and promulgation of national primary drinking water regulations for certain listed contaminants or substituted contaminants.

Subsec. (b)(3). Pub. L. 104–182, § 103, added par. (3).

Pub. L. 104–182, § 102(a), struck out par. (3) which related to publication of maximum contaminant level goals and promulgation of national primary drinking water regulations for contaminants, other than those referred to in pars. (1) or (2), which may have an adverse effect on human health and are known to occur in public water systems.

Subsec. (b)(4). Pub. L. 104–182, § 104(a)(1), designated first sentence as subpar. (A), inserted par. and subpar. (A) headings, designated second sentence as subpar. (B), inserted subpar. (B) heading, substituted ''Except as provided in paragraphs (5) and (6), each national'' for ''Each national'' and ''specify a maximum contaminant level'' for ''specify a maximum level'', and added subpar. (C).

Subsec. (b)(4)(D). Pub. L. 104–182, § 104(a)(2), (3), redesignated par. (5) as subpar. (D) of par. (4), inserted subpar. heading, and substituted ''this paragraph'' for ''paragraph (4)''.

Subsec. (b)(4)(E). Pub. L. 104–182, §§ 104(a)(4), (5), 105, redesignated par. (6) as subpar. (E)(i) of par. (4), inserted subpar. and cl. headings, substituted ''this subsection'' for ''this paragraph'', and added cls. (ii) to (v).

Subsec. (b)(5), (6). Pub. L. 104–182, § 104(a)(6), added pars. (5) and (6). Former pars. (5) and (6) redesignated subpars. (D) and (E)(i), respectively, of par. (4).

Subsec. (b)(7)(C)(v). Pub. L. 104–182, § 106, added cl. (v).

Subsec. (b)(8). Pub. L. 104–182, § 501(a)(2), substituted ''section 300j–1(e)'' for ''section 300j–1(g)''.

Pub. L. 104–182, § 107, inserted heading, realigned margins, and substituted ''At any time after the end of the 3-year period that begins on August 6, 1996, but not later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts (as described in paragraph (2)(C)), the Administrator shall also promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems. After consultation with the States, the Administrator shall (as part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g–2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water.'' for ''Not later than 36 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems.''

Subsec. (b)(9). Pub. L. 104–182, § 104(c), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''National primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years. Such review shall include an analysis of innovations or changes in technology, treatment techniques or other activities that have occurred over the previous 3-year period and that may provide for greater protection of the health of persons. The findings of such review shall be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that the technology, treatment techniques, or other means resulting from such innovations or changes are not feasible within the meaning of paragraph (5), an explanation of such conclusion shall be published in the Federal Register.''

Subsec. (b)(10). Pub. L. 104–182, § 108, amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''National primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect eighteen months after the date of their promulgation. Regulations under subsection (a) of this section shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection.''

Subsec. (b)(11). Pub. L. 104–182, § 501(a)(1), realigned margins.

Subsec. (b)(12). Pub. L. 104–182, § 109(a), added par. (12).

Subsec. (b)(13). Pub. L. 104–182, § 109(b), added par. (13).

Subsec. (b)(14). Pub. L. 104–182, § 110, added par. (14).

Subsec. (b)(15). Pub. L. 104–182, § 111(a), added par. (15).

1986—Subsec. (a). Pub. L. 99–339, § 101(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after December 16, 1974. Within 180 days after December 16, 1974, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

''(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on December 16, 1974.

''(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.''

Subsec. (b)(1). Pub. L. 99–339, § 101(b), substituted provisions establishing standard setting schedules and deadlines for provisions relating to establishment of maximum contaminant levels and a list of contaminants with adverse effect but of undetermined levels.

Subsec. (b)(2). Pub. L. 99–339, § 101(b), substituted provisions authorizing the Administrator to substitute contaminants for those referred to in par. (1) and to supply a list of the contaminants proposed for substitution, with the decision of the Administrator to regulate such contaminant not subject to judicial review, for provisions which authorized the Administrator to publish in the Federal Register proposed revised national interim primary drinking water regulations and 180 days after the date of such proposed regulations to promulgate such revised regulations with modification as deemed appropriate.

Subsec. (b)(3). Pub. L. 99–339, § 101(b), substituted provisions directing the Administrator to publish maximum contaminant level goals and promulgate national primary drinking water regulations for contaminants, other than specified in par. (1) or (2), which may have an adverse effect on health and are known or anticipated to occur in public water systems, to establish an advisory working group to aid in establishing a list of

such contaminants, and to publish, within a specified time, both proposed and final goals and regulations for provisions which required that revised national primary drinking water regulations specify a maximum contaminant level or require the use of treatment techniques for each contaminant, which level or technique was to be as close to the recommended level or technique as feasible, and defined the term ''feasible''.

Subsec. (b)(4) to (11). Pub. L. 99–339, § 101(b), (c)(1), (d), added pars. (4) to (8), redesignated former pars. (4) to (6) as pars. (9) to (11), respectively, in par. (9) substituted ''National'' for ''Revised National'' and inserted provision that review include analysis, and publication in Federal Register, of innovations in technology, treatment techniques or other activities occurring during previous three years and their feasibility, and in par. (10) substituted ''National'' for ''Revised National''.

Subsec. (e). Pub. L. 99–339, § 101(e), amended subsec. (e) generally, substituting provisions which relate to the request by the Administrator of comments by the Science Advisory Board prior to proposal of a maximum contaminant level goal and national primary drinking water regulation for provisions which related to study by the National Academy of Sciences to determine the maximum contaminant levels, report to Congress, and funding therefor.

1977—Subsec. (e)(2). Pub. L. 95–190 inserted provisions relating to revisions of the required report and cl. (G).

NATIONAL PRIMARY DRINKING WATER REGULATION FOR ARSENIC

Pub. L. 106–377, § 1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–41, provided in part: ''That notwithstanding section 1412(b)(12)(A)(v) of the Safe Drinking Water Act, as amended [subsec. (b)(12)(A)(v) of this section], the Administrator shall promulgate a national primary drinking water regulation for arsenic not later than June 22, 2001.''

APPLICABILITY OF PRIOR REQUIREMENTS

Section 102(b) of Pub. L. 104–182 provided that: ''The requirements of subparagraphs (C) and (D) of section 1412(b)(3) of the Safe Drinking Water Act [subsec. (b)(3)(C), (D) of this section] as in effect before the date of enactment of this Act [Aug. 6, 1996], and any obligation to promulgate regulations pursuant to such subparagraphs not promulgated as of the date of enactment of this Act, are superseded by the amendments made by subsection (a) [amending this section].''

DISINFECTANTS AND DISINFECTION BYPRODUCTS

Section 104(b) of Pub. L. 104–182 provided that: ''The Administrator of the Environmental Protection Agency may use the authority of section 1412(b)(5) of the Safe Drinking Water Act [subsec. (b)(5) of this section] (as amended by this Act) to promulgate the Stage I and Stage II Disinfectants and Disinfection Byproducts Rules as proposed in volume 59, Federal Register, page 38668 (July 29, 1994). The considerations used in the development of the July 29, 1994, proposed national primary drinking water regulation on disinfectants and disinfection byproducts shall be treated as consistent with such section 1412(b)(5) for purposes of such Stage I and Stage II rules.''

§ 300g–2. State primary enforcement responsibility

(a) In general

For purposes of this subchapter, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b) of this section) that such State—

(1) has adopted drinking water regulations that are no less stringent than the national primary drinking water regulations promulgated by the Administrator under subsections (a) and (b) of section 300g–1 of this title not later than 2 years after the date on which the regulations are promulgated by the Administrator, except that the Administrator may provide for an extension of not more than 2 years if, after submission and review of appropriate, adequate documentation from the State, the Administrator determines that the extension is necessary and justified;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title;

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances including earthquakes, floods, hurricanes, and other natural disasters, as appropriate; and

(6) has adopted authority for administrative penalties (unless the constitution of the State prohibits the adoption of the authority) in a maximum amount—

(A) in the case of a system serving a population of more than 10,000, that is not less than $1,000 per day per violation; and

(B) in the case of any other system, that is adequate to ensure compliance (as determined by the State);

except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation.

(b) Regulations

(1) The Administrator shall, by regulation (proposed within 180 days of December 16, 1974), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) of this section are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the

Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

(c) Interim primary enforcement authority

A State that has primary enforcement authority under this section with respect to each existing national primary drinking water regulation shall be considered to have primary enforcement authority with respect to each new or revised national primary drinking water regulation during the period beginning on the effective date of a regulation adopted and submitted by the State with respect to the new or revised national primary drinking water regulation in accordance with subsection (b)(1) of this section and ending at such time as the Administrator makes a determination under subsection (b)(2)(B) of this section with respect to the regulation.

(July 1, 1944, ch. 373, title XIV, § 1413, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1665; amended Pub. L. 99–339, title I, § 101(c)(2), June 19, 1986, 100 Stat. 646; Pub. L. 104–182, title I, §§ 112, 113(b), Aug. 6, 1996, 110 Stat. 1633, 1635.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–182, § 112(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 300g–1(a) and 300g–1(b) of this title;''.

Subsec. (a)(5). Pub. L. 104–182, § 112(b), inserted ''including earthquakes, floods, hurricanes, and other natural disasters, as appropriate'' after ''emergency circumstances''.

Subsec. (a)(6). Pub. L. 104–182, § 113(b), added par. (6).

Subsec. (c). Pub. L. 104–182, § 112(a)(2), added subsec. (c).

1986—Subsec. (a)(1). Pub. L. 99–339 substituted ''are no less stringent than the national primary drinking water regulations in effect under sections 300g–1(a) and 300g–1(b) of this title'' for subpars. (A) and (B) which related to stringency of State drinking water regulations between period of promulgation and effective date of national interim drinking water regulations and during the period after such effective date.

§ 300g–3. Enforcement of drinking water regulations

(a) Notice to State and public water system; issuance of administrative order; civil action

(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 300g–2(a) of this title) that any public water system—

(i) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is not in effect, does not comply with any applicable requirement, or

(ii) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he shall so notify the State and such public water system and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time.

(B) If, beyond the thirtieth day after the Administrator's notification under subparagraph (A), the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such applicable requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) ENFORCEMENT IN NONPRIMACY STATES.—

(A) IN GENERAL.—If, on the basis of information available to the Administrator, the Administrator finds, with respect to a period in which a State does not have primary enforcement responsibility for public water systems, that a public water system in the State—

(i) for which a variance under section 300g–4 of this title or an exemption under section 300g–5 of this title is not in effect, does not comply with any applicable requirement; or

(ii) for which a variance under section 300g–4 of this title or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant to the variance or exemption;

the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with the requirement, or commence a civil action under subsection (b) of this section.

(B) NOTICE.—If the Administrator takes any action pursuant to this paragraph, the Administrator shall notify an appropriate local elected official, if any, with jurisdiction over the public water system of the action prior to the time that the action is taken.

(b) Judicial determinations in appropriate Federal district courts; civil penalties, separate violations

The Administrator may bring a civil action in the appropriate United States district court to require compliance with any applicable requirement with an order issued under subsection (g) of this section, or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 300g–4 or 300g–5 of this title if—

(1) authorized under paragraph (1) or (2) of subsection (a) of this section, or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdic-

tion over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgement as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed $25,000 for each day in which such violation occurs.

(c) Notice to persons served

(1) In general

Each owner or operator of a public water system shall give notice of each of the following to the persons served by the system:

(A) Notice of any failure on the part of the public water system to—

(i) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation; or

(ii) perform monitoring required by section 300j–4(a) of this title.

(B) If the public water system is subject to a variance granted under subsection (a)(1)(A), (a)(2), or (e) of section 300g–4 of this title for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 300g–5 of this title, notice of—

(i) the existence of the variance or exemption; and

(ii) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

(C) Notice of the concentration level of any unregulated contaminant for which the Administrator has required public notice pursuant to paragraph (2)(E).

(2) Form, manner, and frequency of notice

(A) In general

The Administrator shall, by regulation, and after consultation with the States, prescribe the manner, frequency, form, and content for giving notice under this subsection. The regulations shall—

(i) provide for different frequencies of notice based on the differences between violations that are intermittent or infrequent and violations that are continuous or frequent; and

(ii) take into account the seriousness of any potential adverse health effects that may be involved.

(B) State requirements

(i) In general

A State may, by rule, establish alternative notification requirements—

(I) with respect to the form and content of notice given under and in a manner in accordance with subparagraph (C); and

(II) with respect to the form and content of notice given under subparagraph (D).

(ii) Contents

The alternative requirements shall provide the same type and amount of information as required pursuant to this subsection and regulations issued under subparagraph (A).

(iii) Relationship to section 300g–2

Nothing in this subparagraph shall be construed or applied to modify the requirements of section 300g–2 of this title.

(C) Violations with potential to have serious adverse effects on human health

Regulations issued under subparagraph (A) shall specify notification procedures for each violation by a public water system that has the potential to have serious adverse effects on human health as a result of short-term exposure. Each notice of violation provided under this subparagraph shall—

(i) be distributed as soon as practicable after the occurrence of the violation, but not later than 24 hours after the occurrence of the violation;

(ii) provide a clear and readily understandable explanation of—

(I) the violation;

(II) the potential adverse effects on human health;

(III) the steps that the public water system is taking to correct the violation; and

(IV) the necessity of seeking alternative water supplies until the violation is corrected;

(iii) be provided to the Administrator or the head of the State agency that has primary enforcement responsibility under section 300g–2 of this title as soon as practicable, but not later than 24 hours after the occurrence of the violation; and

(iv) as required by the State agency in general regulations of the State agency, or on a case-by-case basis after the consultation referred to in clause (iii), considering the health risks involved—

(I) be provided to appropriate broadcast media;

(II) be prominently published in a newspaper of general circulation serving the area not later than 1 day after distribution of a notice pursuant to clause (i) or the date of publication of the next issue of the newspaper; or

(III) be provided by posting or door-to-door notification in lieu of notification by means of broadcast media or newspaper.

(D) Written notice

(i) In general

Regulations issued under subparagraph (A) shall specify notification procedures

for violations other than the violations covered by subparagraph (C). The procedures shall specify that a public water system shall provide written notice to each person served by the system by notice (I) in the first bill (if any) prepared after the date of occurrence of the violation, (II) in an annual report issued not later than 1 year after the date of occurrence of the violation, or (III) by mail or direct delivery as soon as practicable, but not later than 1 year after the date of occurrence of the violation.

(ii) Form and manner of notice

The Administrator shall prescribe the form and manner of the notice to provide a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps that the system is taking to seek alternative water supplies, if any, until the violation is corrected.

(E) Unregulated contaminants

The Administrator may require the owner or operator of a public water system to give notice to the persons served by the system of the concentration levels of an unregulated contaminant required to be monitored under section 300j–4(a) of this title.

(3) Reports

(A) Annual report by State

(i) In general

Not later than January 1, 1998, and annually thereafter, each State that has primary enforcement responsibility under section 300g–2 of this title shall prepare, make readily available to the public, and submit to the Administrator an annual report on violations of national primary drinking water regulations by public water systems in the State, including violations with respect to (I) maximum contaminant levels, (II) treatment requirements, (III) variances and exemptions, and (IV) monitoring requirements determined to be significant by the Administrator after consultation with the States.

(ii) Distribution

The State shall publish and distribute summaries of the report and indicate where the full report is available for review.

(B) Annual report by Administrator

Not later than July 1, 1998, and annually thereafter, the Administrator shall prepare and make available to the public an annual report summarizing and evaluating reports submitted by States pursuant to subparagraph (A) and notices submitted by public water systems serving Indian Tribes provided to the Administrator pursuant to subparagraph (C) or (D) of paragraph (2) and making recommendations concerning the resources needed to improve compliance with this subchapter. The report shall include information about public water system compliance on Indian reservations and about enforcement activities undertaken and financial assistance provided by the Administrator on Indian reservations, and shall make specific recommendations concerning the resources needed to improve compliance with this subchapter on Indian reservations.

(4) Consumer confidence reports by community water systems

(A) Annual reports to consumers

The Administrator, in consultation with public water systems, environmental groups, public interest groups, risk communication experts, and the States, and other interested parties, shall issue regulations within 24 months after August 6, 1996, to require each community water system to mail to each customer of the system at least once annually a report on the level of contaminants in the drinking water purveyed by that system (referred to in this paragraph as a ''consumer confidence report''). Such regulations shall provide a brief and plainly worded definition of the terms ''maximum contaminant level goal'', ''maximum contaminant level'', ''variances'', and ''exemptions'' and brief statements in plain language regarding the health concerns that resulted in regulation of each regulated contaminant. The regulations shall also include a brief and plainly worded explanation regarding contaminants that may reasonably be expected to be present in drinking water, including bottled water. The regulations shall also provide for an Environmental Protection Agency toll-free hotline that consumers can call for more information and explanation.

(B) Contents of report

The consumer confidence reports under this paragraph shall include, but not be limited to, each of the following:

(i) Information on the source of the water purveyed.

(ii) A brief and plainly worded definition of the terms ''maximum contaminant level goal'', ''maximum contaminant level'', ''variances'', and ''exemptions'' as provided in the regulations of the Administrator.

(iii) If any regulated contaminant is detected in the water purveyed by the public water system, a statement setting forth (I) the maximum contaminant level goal, (II) the maximum contaminant level, (III) the level of such contaminant in such water system, and (IV) for any regulated contaminant for which there has been a violation of the maximum contaminant level during the year concerned, the brief statement in plain language regarding the health concerns that resulted in regulation of such contaminant, as provided by the Administrator in regulations under subparagraph (A).

(iv) Information on compliance with national primary drinking water regulations, as required by the Administrator, and notice if the system is operating under a variance or exemption and the basis on which the variance or exemption was granted.

(v) Information on the levels of unregulated contaminants for which monitoring is required under section 300j–4(a)(2) of this title (including levels of cryptosporidium and radon where States determine they may be found).

(vi) A statement that the presence of contaminants in drinking water does not necessarily indicate that the drinking water poses a health risk and that more information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency hotline.

A public water system may include such additional information as it deems appropriate for public education. The Administrator may, for not more than 3 regulated contaminants other than those referred to in subclause (IV) of clause (iii), require a consumer confidence report under this paragraph to include the brief statement in plain language regarding the health concerns that resulted in regulation of the contaminant or contaminants concerned, as provided by the Administrator in regulations under subparagraph (A).

(C) Coverage

The Governor of a State may determine not to apply the mailing requirement of subparagraph (A) to a community water system serving fewer than 10,000 persons. Any such system shall—

(i) inform, in the newspaper notice required by clause (iii) or by other means, its customers that the system will not be mailing the report as required by subparagraph (A);

(ii) make the consumer confidence report available upon request to the public; and

(iii) publish the report referred to in subparagraph (A) annually in one or more local newspapers serving the area in which customers of the system are located.

(D) Alternative to publication

For any community water system which, pursuant to subparagraph (C), is not required to meet the mailing requirement of subparagraph (A) and which serves 500 persons or fewer, the community water system may elect not to comply with clause (i) or (iii) of subparagraph (C). If the community water system so elects, the system shall, at a minimum—

(i) prepare an annual consumer confidence report pursuant to subparagraph (B); and

(ii) provide notice at least once per year to each of its customers by mail, by door-to-door delivery, by posting or by other means authorized by the regulations of the Administrator that the consumer confidence report is available upon request.

(E) Alternative form and content

A State exercising primary enforcement responsibility may establish, by rule, after notice and public comment, alternative requirements with respect to the form and content of consumer confidence reports under this paragraph.

(d) Notice of noncompliance with secondary drinking water regulations

Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

(e) State authority to adopt or enforce laws or regulations respecting drinking water regulations or public water systems unaffected

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

(f) Notice and public hearing; availability of recommendations transmitted to State and public water system

If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1) of this section) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

(g) Administrative order requiring compliance; notice and hearing; civil penalty; civil actions

(1) In any case in which the Administrator is authorized to bring a civil action under this section or under section 300j–4 of this title with respect to any applicable requirement, the Administrator also may issue an order to require compliance with such applicable requirement.

(2) An order issued under this subsection shall not take effect, in the case of a State having pri-

mary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the order. A copy of any order issued under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(3)(A) Any person who violates, or fails or refuses to comply with, an order under this subsection shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation.

(B) In a case in which a civil penalty sought by the Administrator under this paragraph does not exceed $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a public hearing (unless the person against whom the penalty is assessed requests a hearing on the record in accordance with section 554 of title 5). In a case in which a civil penalty sought by the Administrator under this paragraph exceeds $5,000, but does not exceed $25,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.

(C) Whenever any civil penalty sought by the Administrator under this subsection for a violation of an applicable requirement exceeds $25,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28).

(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(h) Consolidation incentive

(1) In general

An owner or operator of a public water system may submit to the State in which the system is located (if the State has primary enforcement responsibility under section 300g–2 of this title) or to the Administrator (if the State does not have primary enforcement responsibility) a plan (including specific measures and schedules) for—

(A) the physical consolidation of the system with 1 or more other systems;

(B) the consolidation of significant management and administrative functions of the system with 1 or more other systems; or

(C) the transfer of ownership of the system that may reasonably be expected to improve drinking water quality.

(2) Consequences of approval

If the State or the Administrator approves a plan pursuant to paragraph (1), no enforcement action shall be taken pursuant to this part with respect to a specific violation identified in the approved plan prior to the date that is the earlier of the date on which consolidation is completed according to the plan or the date that is 2 years after the plan is approved.

(i) "Applicable requirement" defined

In this section, the term ''applicable requirement'' means—

(1) a requirement of section 300g–1, 300g–3, 300g–4, 300g–5, 300g–6[1] 300i–2, 300j, or 300j–4 of this title;

(2) a regulation promulgated pursuant to a section referred to in paragraph (1);

(3) a schedule or requirement imposed pursuant to a section referred to in paragraph (1); and

(4) a requirement of, or permit issued under, an applicable State program for which the Administrator has made a determination that the requirements of section 300g–2 of this title have been satisfied, or an applicable State program approved pursuant to this part.

(July 1, 1944, ch. 373, title XIV, § 1414, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1666; amended Pub. L. 95–190, § 12(b), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 99–339, title I, §§ 102, 103, June 19, 1986, 100 Stat. 647, 648; Pub. L. 104–182, title I, §§ 113(a), 114(a), Aug. 6, 1996, 110 Stat. 1634, 1636; Pub. L. 107–188, title IV, § 403(1), June 12, 2002, 116 Stat. 687.)

AMENDMENTS

2002—Subsec. (i)(1). Pub. L. 107–188 inserted ''300i–2'' after ''300g–6''.

1996—Subsec. (a)(1)(A). Pub. L. 104–182, § 113(a)(1)(A)(i)(II), substituted ''with the requirement'' for ''with such regulation or requirement'' in concluding provisions.

Subsec. (a)(1)(A)(i). Pub. L. 104–182, § 113(a)(1)(A)(i)(I), substituted ''any applicable requirement'' for ''any national primary drinking water regulation in effect under section 300g–1 of this title''.

Subsec. (a)(1)(B). Pub. L. 104–182, § 113(a)(1)(A)(ii), substituted ''such applicable requirement'' for ''such regulation or requirement''.

Subsec. (a)(2). Pub. L. 104–182, § 113(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: ''Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—

''(A) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is not in effect, does not comply with any national primary drinking water regulation in effect under section 300g–1 of this title, or

''(B) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section.''

Subsec. (b). Pub. L. 104–182, § 113(a)(2), substituted ''any applicable requirement'' for ''a national primary drinking water regulation'' in introductory provisions.

[1] So in original. There probably should be a comma.

Subsec. (c). Pub. L. 104–182, § 114(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to notice of owner or operator of public water system to persons served, regulations for form, manner, and frequency of notice, amendment of regulations to provide different types and frequencies of notice, and penalties.

Subsec. (g)(1). Pub. L. 104–182, § 113(a)(3)(A), substituted ''applicable requirement'' for ''regulation, schedule, or other requirement'' in two places.

Subsec. (g)(2). Pub. L. 104–182, § 113(a)(3)(B), substituted ''effect, in the case'' for ''effect until after notice and opportunity for public hearing and, in the case'' and ''regarding the order'' for ''regarding the proposed order'' and struck out ''proposed to be'' after ''A copy of any order''.

Subsec. (g)(3)(B). Pub. L. 104–182, § 113(a)(3)(C)(i), added subpar. (B) and struck out former subpar. (B) which read as follows: ''Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.''

Subsec. (g)(3)(C). Pub. L. 104–182, § 113(a)(3)(C)(ii), substituted ''subsection for a violation of an applicable requirement exceeds $25,000'' for ''paragraph exceeds $5,000''.

Subsecs. (h), (i). Pub. L. 104–182, § 113(a)(4), added subsecs. (h) and (i).

1986—Pub. L. 99–339, § 102(d)(2), substituted ''Enforcement'' for ''Failure of State to assure enforcement'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 99–339, § 102(a), inserted ''and such public water system'' after ''notify the State'' in provisions following cl. (ii).

Subsec. (a)(1)(B). Pub. L. 99–339, § 102(b)(1), amended subpar. (B) generally, substituting provisions which relate to issuance of an order to public water system to comply with regulations, or commencement of civil action if the State has not commenced appropriate enforcement action for provisions which related to public notice of noncompliance and commencement of civil action by Administrator if State failed to take steps to obtain compliance by public water system.

Subsec. (a)(2). Pub. L. 99–339, § 102(b)(2), substituted ''the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section'' for ''he may commence a civil action under subsection (b) of this section''.

Subsec. (b). Pub. L. 99–339, § 102(c), inserted '', with an order issued under subsection (g) of this section,'' before ''or with any schedule'' and substituted ''there has been a violation'' for ''there has been a willful violation'' and ''$25,000'' for ''$5,000''.

Subsec. (c). Pub. L. 99–339, § 103, substituted provisions relating to amendment of regulations within fifteen months after June 19, 1986, to provide different types and frequencies of notice based on the differences between violations which are intermittent or continuous, manner and content of notices, notice required to public served by owner or operator of public water system, and civil penalty of $25,000, for provisions relating to form, manner, and frequency of notice based on three month billing period for water bills, notice required to public served by owner or operator of public water system, and civil penalty of $5,000.

Subsec. (g). Pub. L. 99–339, § 102(d), added subsec. (g).

1977—Subsec. (c). Pub. L. 95–190 inserted provisions relating to frequency of required notice, and notice respecting contaminant levels, and substituted ''issued under this subsection'' for ''thereunder''.

§ 300g–4. Variances

(a) Characteristics of raw water sources; specific treatment technique; notice to Administrator, reasons for variance; compliance, enforcement; approval or revision of schedules and revocation of variances; review of variances and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting variances or failing to prescribe schedules; State corrective action; authority of Administrator in a State without primary enforcement responsibility; alternative treatment techniques

Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system. The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator's finding of best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator. Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe at the the[1] time the variance is granted, a schedule for—

(i) compliance (including increments of progress) by the public water system with each containment level requirement with respect to which the variance was granted, and

(ii) implementation by the public water system of such additional control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

[1] So in original.

Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of the national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

(D) Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 300g–3 of this title as if such requirement was part of a national primary drinking water regulation.

(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the variance for which it was prescribed is revoked by the Administrator under subparagraph (G) or the schedule is revised by the Administrator under such subparagraph.

(F) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances granted under subparagraph (A) (and schedules prescribed pursuant thereto) and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (i) provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and (ii) advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

(G)(i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall—

(I) identify each public water system with respect to which the finding was made,

(II) specify the reasons for the finding, and

(III) as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Adminis-

trator made with respect to a variance granted a public water system within that State or to a schedule or other requirement for a variance and if, before a revocation of such variance or a revision of such schedule or other requirement promulgated by the Administrator takes effect, the State takes corrective action with respect to such variance or schedule or other requirement which the Administrator determines makes his finding inapplicable to such variance or schedule or other requirement, the Administrator shall rescind the application of his finding to that variance on schedule or other requirement. No variance revocation or revised schedule or other requirement may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3) The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

(b) Enforcement of schedule or other requirement

Any schedule or other requirement on which a variance granted under paragraph (1)(B) or (2) of subsection (a) of this section is conditioned may be enforced under section 300g–3 of this title as if such schedule or other requirement was part of a national primary drinking water regulation.

(c) Applications for variances; regulations: reasonable time for acting

If an application for a variance under subsection (a) of this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(d) "Treatment technique requirement" defined

For purposes of this section, the term ''treatment technique requirement'' means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1(b) of this title.

(e) Small system variances

(1) In general

A State exercising primary enforcement responsibility for public water systems under section 300g–2 of this title (or the Administrator in nonprimacy States) may grant a variance under this subsection for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a national primary drinking water regulation to—

(A) public water systems serving 3,300 or fewer persons; and

(B) with the approval of the Administrator pursuant to paragraph (9), public water systems serving more than 3,300 persons but fewer than 10,000 persons,

if the variance meets each requirement of this subsection.

(2) Availability of variances

A public water system may receive a variance pursuant to paragraph (1), if—

(A) the Administrator has identified a variance technology under section 300g–1(b)(15) of this title that is applicable to the size and source water quality conditions of the public water system;

(B) the public water system installs, operates, and maintains, in accordance with guidance or regulations issued by the Administrator, such treatment technology, treatment technique, or other means; and

(C) the State in which the system is located determines that the conditions of paragraph (3) are met.

(3) Conditions for granting variances

A variance under this subsection shall be available only to a system—

(A) that cannot afford to comply, in accordance with affordability criteria established by the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title), with a national primary drinking water regulation, including compliance through—

(i) treatment;

(ii) alternative source of water supply; or

(iii) restructuring or consolidation (unless the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) makes a written determination that restructuring or consolidation is not practicable); and

(B) for which the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) determines that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

(4) Compliance schedules

A variance granted under this subsection shall require compliance with the conditions of the variance not later than 3 years after the date on which the variance is granted, except that the Administrator (or the State in the case of a State that has primary enforcement

responsibility under section 300g–2 of this title) may allow up to 2 additional years to comply with a variance technology, secure an alternative source of water, restructure or consolidate if the Administrator (or the State) determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to section 300j–12 of this title or any other Federal or State program.

(5) Duration of variances

The Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) shall review each variance granted under this subsection not less often than every 5 years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

(6) Ineligibility for variances

A variance shall not be available under this subsection for—

(A) any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drinking water regulation was promulgated prior to January 1, 1986; or

(B) a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

(7) Regulations and guidance

(A) In general

Not later than 2 years after August 6, 1996, and in consultation with the States, the Administrator shall promulgate regulations for variances to be granted under this subsection. The regulations shall, at a minimum, specify—

(i) procedures to be used by the Administrator or a State to grant or deny variances, including requirements for notifying the Administrator and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;

(ii) requirements for the installation and proper operation of variance technology that is identified (pursuant to section 300g–1(b)(15) of this title) for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;

(iii) eligibility criteria for a variance for each national primary drinking water regulation, including requirements for the quality of the source water (pursuant to section 300g–1(b)(15)(A) of this title); and

(iv) information requirements for variance applications.

(B) Affordability criteria

Not later than 18 months after August 6, 1996, the Administrator, in consultation with the States and the Rural Utilities Service of the Department of Agriculture, shall publish information to assist the States in developing affordability criteria. The affordability criteria shall be reviewed by the States not less often than every 5 years to determine if changes are needed to the criteria.

(8) Review by the Administrator

(A) In general

The Administrator shall periodically review the program of each State that has primary enforcement responsibility for public water systems under section 300g–2 of this title with respect to variances to determine whether the variances granted by the State comply with the requirements of this subsection. With respect to affordability, the determination of the Administrator shall be limited to whether the variances granted by the State comply with the affordability criteria developed by the State.

(B) Notice and publication

If the Administrator determines that variances granted by a State are not in compliance with affordability criteria developed by the State and the requirements of this subsection, the Administrator shall notify the State in writing of the deficiencies and make public the determination.

(9) Approval of variances

A State proposing to grant a variance under this subsection to a public water system serving more than 3,300 and fewer than 10,000 persons shall submit the variance to the Administrator for review and approval prior to the issuance of the variance. The Administrator shall approve the variance if it meets each of the requirements of this subsection. The Administrator shall approve or disapprove the variance within 90 days. If the Administrator disapproves a variance under this paragraph, the Administrator shall notify the State in writing of the reasons for disapproval and the variance may be resubmitted with modifications to address the objections stated by the Administrator.

(10) Objections to variances

(A) By the Administrator

The Administrator may review and object to any variance proposed to be granted by a State, if the objection is communicated to the State not later than 90 days after the State proposes to grant the variance. If the Administrator objects to the granting of a variance, the Administrator shall notify the State in writing of each basis for the objection and propose a modification to the variance to resolve the concerns of the Administrator. The State shall make the recommended modification or respond in writing to each objection. If the State issues the variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with this subsection.

(B) Petition by consumers

Not later than 30 days after a State exercising primary enforcement responsibility for public water systems under section 300g–2 of this title proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance. The Administrator shall respond to the petition and determine whether to object to the variance under subparagraph (A) not later than 60 days after the receipt of the petition.

(C) Timing

No variance shall be granted by a State until the later of the following:

(i) 90 days after the State proposes to grant a variance.

(ii) If the Administrator objects to the variance, the date on which the State makes the recommended modifications or responds in writing to each objection.

(July 1, 1944, ch. 373, title XIV, § 1415, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1669; amended Pub. L. 99–339, title I, § 104, June 19, 1986, 100 Stat. 649; Pub. L. 104–182, title I, §§ 102(c)(1), 115, 116, title V, § 501(a)(3), Aug. 6, 1996, 110 Stat. 1621, 1641, 1691.)

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104–182, § 501(a)(3), inserted ''the'' before ''time the variance is granted,'' in introductory provisions.

Pub. L. 104–182, § 115, in second sentence, substituted ''be issued to a system on condition that the system install'' for ''only be issued to a system after the system's application of'' and inserted '', and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system'' after ''(taking costs into consideration)''.

Subsec. (d). Pub. L. 104–182, § 102(c)(1), substituted ''section 300g–1(b)'' for ''section 300g–1(b)(3)''.

Subsec. (e). Pub. L. 104–182, § 116, added subsec. (e).

1986—Subsec. (a)(1)(A). Pub. L. 99–339, § 104(1)–(3), substituted ''such drinking water regulation. A variance may only be issued to a system after the system's application'' for ''such drinking water regulation despite application'', struck out ''generally'' after ''finds are'', inserted provisions relating to proposal and promulgation by Administrator of a finding on best available technology, treatment techniques or other means available for each contaminant at time of proposal and promulgation of maximum contaminant levels, and substituted ''at the time'' for ''within one year of the date''.

Subsec. (a)(1)(A)(ii). Pub. L. 99–339, § 104(4), substituted ''water system of such additional control'' for ''water system of such control''.

§ 300g–5. Exemptions

(a) Requisite findings

A State which has primary enforcement responsibility may exempt any public water system within the State's jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

(1) due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to section 300j–12(d) of this title), the public water system is unable to comply with such contaminant level or treatment technique requirement, or to implement measures to develop an alternative source of water supply,

(2) the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system,

(3) the granting of the exemption will not result in an unreasonable risk to health;[1] and

(4) management or restructuring changes (or both) cannot reasonably be made that will result in compliance with this subchapter or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; compliance, enforcement; approval or revision of schedules and revocation of exemptions

(1) If a State grants a public water system an exemption under subsection (a) of this section, the State shall prescribe, at the time the exemption is granted, a schedule for—

(A) compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) of this section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but not later than 3 years after the otherwise applicable compliance date established in section 300g–1(b)(10) of this title.

(B) No exemption shall be granted unless the public water system establishes that—

(i) the system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to section 300g–1(b)(10) of this title;

[1] So in original. The semicolon probably should be a comma.

(ii) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to section 300j–12 of this title, or any other Federal or State program is reasonably likely to be available within the period of the exemption; or

(iii) the system has entered into an enforceable agreement to become a part of a regional public water system; and

the system is taking all practicable steps to meet the standard.

(C) In the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under clause (i) or (ii) of subparagraph (B) may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements of subparagraph (B).

(D) LIMITATION.—A public water system may not receive an exemption under this section if the system was granted a variance under section 300g–4(e) of this title.

(3) Each public water system's exemption granted by a State under subsection (a) of this section shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 300g–3 of this title as if such requirement was part of a national primary drinking water regulation.

(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d)(2) of this section or the schedule is revised by the Administrator under such subsection.

(c) Notice to Administrator; reasons for exemption

Each State which grants an exemption under subsection (a) of this section shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) of this section before the exemption may be granted) and document the need for the exemption.

(d) Review of exemptions and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting exemptions or failing to prescribe schedules; State corrective action

(1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the exemptions reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review, together with findings responsive to comments submitted in connection with such review.

(2)(A) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) of this section or failed to prescribe schedules in accordance with subsection (b) of this section, the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall—

(i) identify each exempt public water system with respect to which the finding was made,

(ii) specify the reasons for the finding, and

(iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on notice pursuant to subparagraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall re-

scind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

(e) "Treatment technique requirement" defined

For purposes of this section, the term ''treatment technique requirement'' means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1(b) of this title.

(f) Authority of Administrator in a State without primary enforcement responsibility

If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(g) Applications for exemptions; regulations; reasonable time for acting

If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(July 1, 1944, ch. 373, title XIV, § 1416, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1672; amended Pub. L. 95–190, § 10(a), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 96–502, §§ 1, 4(b), Dec. 5, 1980, 94 Stat. 2737, 2738; Pub. L. 99–339, title I, §§ 101(c)(4), 105, June 19, 1986, 100 Stat. 646, 649; Pub. L. 104–182, title I, § 117(a), Aug. 6, 1996, 110 Stat. 1644.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–182, § 117(a)(1), inserted '', including qualification of the public water system as a system serving a disadvantaged community pursuant to section 300j–12(d) of this title'' after ''(which may include economic factors'' and ''or to implement measures to develop an alternative source of water supply,'' after ''treatment technique requirement,''.

Subsec. (a)(4). Pub. L. 104–182, § 117(a)(2), added par. (4).

Subsec. (b)(1)(A). Pub. L. 104–182, § 117(a)(3), substituted ''(including increments of progress or measures to develop an alternative source of water supply)'' for ''(including increments of progress)'' and ''requirement or treatment'' for ''requirement and treatment''.

Subsec. (b)(2)(A). Pub. L. 104–182, § 117(a)(4)(A), substituted ''not later than 3 years after the otherwise applicable compliance date established in section 300g–1(b)(10) of this title.'' for ''(except as provided in subparagraph (B))—

''(i) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations promulgated under section 300g–1(a) of this title, not later than 12 months after June 19, 1986; and

''(ii) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by national primary drinking water regulations, other than a regulation referred to in section 300g–1(a) of this title, 12 months after the date of the issuance of the exemption.''

Subsec. (b)(2)(B). Pub. L. 104–182, § 117(a)(4)(A), substituted ''No exemption shall be granted unless'' for ''The final date for compliance provided in any schedule in the case of any exemption may be extended by the State (in the case of a State which has primary enforcement responsibility) or by the Administrator (in any other case) for a period not to exceed 3 years after the date of the issuance of the exemption if'' in introductory provisions.

Subsec. (b)(2)(B)(i). Pub. L. 104–182, § 117(a)(4)(B), substituted ''prior to the date established pursuant to section 300g–1(b)(10) of this title'' for ''within the period of such exemption''.

Subsec. (b)(2)(B)(ii). Pub. L. 104–182, § 117(a)(4)(C), inserted ''or assistance pursuant to section 300j–12 of this title, or any other Federal or State program is reasonably likely to be available within the period of the exemption'' after ''such financial assistance''.

Subsec. (b)(2)(C). Pub. L. 104–182, § 117(a)(4)(D), substituted ''a population of 3,300'' for ''500 service connections'' and inserted '', but not to exceed a total of 6 years,'' after ''for one or more additional 2-year periods''.

Subsec. (b)(2)(D). Pub. L. 104–182, § 117(a)(4)(E), added subpar. (D).

1986—Subsec. (b)(1). Pub. L. 99–339, § 105(a)(1), substituted ''at the time'' for ''within one year of the date''.

Subsec. (b)(2)(A)(i). Pub. L. 99–339, § 105(a)(2), struck out ''interim'' before ''national primary'' and substituted ''not later than 12 months after June 19, 1986'' for ''not later than January 1, 1984''.

Subsec. (b)(2)(A)(ii). Pub. L. 99–339, § 105(a)(3), struck out ''revised'' before ''national primary'' and substituted ''other than a regulation referred to in section 300g–1(a) of this title, 12 months after the date of the issuance of the exemption'' for ''not later than seven years after the date such requirement takes effect''.

Subsec. (b)(2)(B). Pub. L. 99–339, § 105(a)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for a public water system which (as determined by the State granting the exemption) has entered into an enforceable agreement to become a part of a regional public water system shall—

''(i) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by interim national primary drinking water regulations, be not later than January 1, 1986; and

''(ii) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, be not later than nine years after such requirement takes effect.''

Subsec. (b)(2)(C). Pub. L. 99–339, § 105(a)(4), added subpar. (C).

Subsec. (e). Pub. L. 99–339, § 101(c)(4), substituted ''300g–1(b)'' for ''300g–1(b)(3)''.

1980—Subsec. (a)(2). Pub. L. 96–502, § 4(b), substituted ''treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system, and'' for ''treatment technique requirement, and''.

Subsec. (b)(2)(A)(i). Pub. L. 96–502, § 1, substituted ''January 1, 1984'' for ''January 1, 1981''.

Subsec. (b)(2)(B)(i). Pub. L. 96–502, § 1, substituted ''January 1, 1986'' for ''January 1, 1983''.

1977—Subsec. (b)(1). Pub. L. 95–190 substituted ''contaminant'' for ''containment'' wherever appearing.

§ 300g–6. Prohibition on use of lead pipes, solder, and flux

(a) In general

(1) Prohibitions

(A) In general

No person may use any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux, after June 19, 1986, in the installation or repair of—

(i) any public water system; or

(ii) any plumbing in a residential or nonresidential facility providing water for human consumption,

that is not lead free (within the meaning of subsection (d) of this section).

(B) Leaded joints

Subparagraph (A) shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Public notice requirements

(A) In general

Each owner or operator of a public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

The notice shall be provided in such manner and form as may be reasonably required by the Administrator. Notice under this paragraph shall be provided notwithstanding the absence of a violation of any national drinking water standard.

(B) Contents of notice

Notice under this paragraph shall provide a clear and readily understandable explanation of—

(i) the potential sources of lead in the drinking water,

(ii) potential adverse health effects,

(iii) reasonably available methods of mitigating known or potential lead content in drinking water,

(iv) any steps the system is taking to mitigate lead content in drinking water, and

(v) the necessity for seeking alternative water supplies, if any.

(3) Unlawful acts

Effective 2 years after August 6, 1996, it shall be unlawful—

(A) for any person to introduce into commerce any pipe, or any pipe or plumbing fitting or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(B) for any person engaged in the business of selling plumbing supplies, except manufacturers, to sell solder or flux that is not lead free; or

(C) for any person to introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(b) State enforcement

(1) Enforcement of prohibition

The requirements of subsection (a)(1) of this section shall be enforced in all States effective 24 months after June 19, 1986. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

(2) Enforcement of public notice requirements

The requirements of subsection (a)(2) of this section shall apply in all States effective 24 months after June 19, 1986.

(c) Penalties

If the Administrator determines that a State is not enforcing the requirements of subsection (a) of this section as required pursuant to subsection (b) of this section, the Administrator may withhold up to 5 percent of Federal funds available to that State for State program grants under section 300j–2(a) of this title.

(d) "Lead free" defined

For purposes of this section, the term ''lead free''—

(1) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead;

(2) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead; and

(3) when used with respect to plumbing fittings and fixtures, refers to plumbing fittings and fixtures in compliance with standards established in accordance with subsection (e) of this section.

(e) Plumbing fittings and fixtures

(1) In general

The Administrator shall provide accurate and timely technical information and assistance to qualified third-party certifiers in the development of voluntary standards and testing protocols for the leaching of lead from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion.

(2) Standards

(A) In general

If a voluntary standard for the leaching of lead is not established by the date that is 1 year after August 6, 1996, the Administrator shall, not later than 2 years after August 6, 1996, promulgate regulations setting a health-effects-based performance standard establishing maximum leaching levels from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion. The standard

shall become effective on the date that is 5 years after the date of promulgation of the standard.

(B) Alternative requirement

If regulations are required to be promulgated under subparagraph (A) and have not been promulgated by the date that is 5 years after August 6, 1996, no person may import, manufacture, process, or distribute in commerce a new plumbing fitting or fixture, intended by the manufacturer to dispense water for human ingestion, that contains more than 4 percent lead by dry weight.

(July 1, 1944, ch. 373, title XIV, § 1417, as added Pub. L. 99–339, title I, § 109(a), June 19, 1986, 100 Stat. 651; amended Pub. L. 104–182, title I, § 118, title V, § 501(f)(1), Aug. 6, 1996, 110 Stat. 1645, 1691.)

AMENDMENTS

1996—Pub. L. 104–182, § 501(f)(1), made technical amendment to section catchline and subsec. (a) designation.

Subsec. (a)(1). Pub. L. 104–182, § 118(1), substituted ''Prohibitions'' for ''Prohibition'' in heading and amended text generally. Prior to amendment, text read as follows: ''Any pipe, solder, or flux, which is used after June 19, 1986, in the installation or repair of—

''(A) any public water system, or

''(B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system,

shall be lead free (within the meaning of subsection (d) of this section). This paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes.''

Subsec. (a)(2)(A). Pub. L. 104–182, § 118(2), inserted ''owner or operator of a'' after ''Each'' in introductory provisions.

Subsec. (a)(3). Pub. L. 104–182, § 118(3), added par. (3).

Subsec. (d)(3). Pub. L. 104–182, § 118(4), added par. (3).

Subsec. (e). Pub. L. 104–182, § 118(5), added subsec. (e).

NOTIFICATION TO STATES

Section 109(b) of Pub. L. 99–339 provided that: ''The Administrator of the Environmental Protection Agency shall notify all States with respect to the requirements of section 1417 of the Public Health Service Act [this section] within 90 days after the enactment of this Act [June 19, 1986].''

BAN ON LEAD WATER PIPES, SOLDER, AND FLUX IN VA AND HUD INSURED OR ASSISTED PROPERTY

Section 109(c) of Pub. L. 99–339, as amended by Pub. L. 102–54, § 13(q)(2), June 13, 1991, 105 Stat. 279, provided that:

''(1) PROHIBITION.—The Secretary of Housing and Urban Development and the Secretary of Veterans Affairs may not insure or guarantee a mortgage or furnish assistance with respect to newly constructed residential property which contains a potable water system unless such system uses only lead free pipe, solder, and flux.

''(2) DEFINITION OF LEAD FREE.—For purposes of paragraph (1) the term 'lead free'—

''(A) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

''(B) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

''(3) EFFECTIVE DATE.—Paragraph (1) shall become effective 24 months after the enactment of this Act [June 19, 1986].''

§ 300g–7. Monitoring of contaminants

(a) Interim monitoring relief authority

(1) In general

A State exercising primary enforcement responsibility for public water systems may modify the monitoring requirements for any regulated or unregulated contaminants for which monitoring is required other than microbial contaminants (or indicators thereof), disinfectants and disinfection byproducts or corrosion byproducts for an interim period to provide that any public water system serving 10,000 persons or fewer shall not be required to conduct additional quarterly monitoring during an interim relief period for such contaminants if—

(A) monitoring, conducted at the beginning of the period for the contaminant concerned and certified to the State by the public water system, fails to detect the presence of the contaminant in the ground or surface water supplying the public water system; and

(B) the State, considering the hydrogeology of the area and other relevant factors, determines in writing that the contaminant is unlikely to be detected by further monitoring during such period.

(2) Termination; timing of monitoring

The interim relief period referred to in paragraph (1) shall terminate when permanent monitoring relief is adopted and approved for such State, or at the end of 36 months after August 6, 1996, whichever comes first. In order to serve as a basis for interim relief, the monitoring conducted at the beginning of the period must occur at the time determined by the State to be the time of the public water system's greatest vulnerability to the contaminant concerned in the relevant ground or surface water, taking into account in the case of pesticides the time of application of the pesticide for the source water area and the travel time for the pesticide to reach such waters and taking into account, in the case of other contaminants, seasonality of precipitation and contaminant travel time.

(b) Permanent monitoring relief authority

(1) In general

Each State exercising primary enforcement responsibility for public water systems under this subchapter and having an approved source water assessment program may adopt, in accordance with guidance published by the Administrator, tailored alternative monitoring requirements for public water systems in such State (as an alternative to the monitoring requirements for chemical contaminants set forth in the applicable national primary drinking water regulations) where the State concludes that (based on data available at the time of adoption concerning susceptibility, use, occurrence, or wellhead protection, or from the State's drinking water source water assessment program) such alternative monitoring would provide assurance that it complies with the Administrator's guidelines. The State program must be adequate to assure

compliance with, and enforcement of, applicable national primary drinking water regulations. Alternative monitoring shall not apply to regulated microbiological contaminants (or indicators thereof), disinfectants and disinfection byproducts, or corrosion byproducts. The preceding sentence is not intended to limit other authority of the Administrator under other provisions of this subchapter to grant monitoring flexibility.

(2) Guidelines

(A) In general

The Administrator shall issue, after notice and comment and at the same time as guidelines are issued for source water assessment under section 300j–13 of this title, guidelines for States to follow in proposing alternative monitoring requirements under paragraph (1) for chemical contaminants. The Administrator shall publish such guidelines in the Federal Register. The guidelines shall assure that the public health will be protected from drinking water contamination. The guidelines shall require that a State alternative monitoring program apply on a contaminant-by-contaminant basis and that, to be eligible for such alternative monitoring program, a public water system must show the State that the contaminant is not present in the drinking water supply or, if present, it is reliably and consistently below the maximum contaminant level.

(B) Definition

For purposes of subparagraph (A), the phrase ''reliably and consistently below the maximum contaminant level'' means that, although contaminants have been detected in a water supply, the State has sufficient knowledge of the contamination source and extent of contamination to predict that the maximum contaminant level will not be exceeded. In determining that a contaminant is reliably and consistently below the maximum contaminant level, States shall consider the quality and completeness of data, the length of time covered and the volatility or stability of monitoring results during that time, and the proximity of such results to the maximum contaminant level. Wide variations in the analytical results, or analytical results close to the maximum contaminant level, shall not be considered to be reliably and consistently below the maximum contaminant level.

(3) Effect of detection of contaminants

The guidelines issued by the Administrator under paragraph (2) shall require that if, after the monitoring program is in effect and operating, a contaminant covered by the alternative monitoring program is detected at levels at or above the maximum contaminant level or is no longer reliably or consistently below the maximum contaminant level, the public water system must either—

(A) demonstrate that the contamination source has been removed or that other action has been taken to eliminate the contamination problem; or

(B) test for the detected contaminant pursuant to the applicable national primary drinking water regulation.

(4) States not exercising primary enforcement responsibility

The Governor of any State not exercising primary enforcement responsibility under section 300g–2 of this title on August 6, 1996, may submit to the Administrator a request that the Administrator modify the monitoring requirements established by the Administrator and applicable to public water systems in that State. After consultation with the Governor, the Administrator shall modify the requirements for public water systems in that State if the request of the Governor is in accordance with each of the requirements of this subsection that apply to alternative monitoring requirements established by States that have primary enforcement responsibility. A decision by the Administrator to approve a request under this clause shall be for a period of 3 years and may subsequently be extended for periods of 5 years.

(c) Treatment as NPDWR

All monitoring relief granted by a State to a public water system for a regulated contaminant under subsection (a) or (b) of this section shall be treated as part of the national primary drinking water regulation for that contaminant.

(d) Other monitoring relief

Nothing in this section shall be construed to affect the authority of the States under applicable national primary drinking water regulations to alter monitoring requirements through waivers or other existing authorities. The Administrator shall periodically review and, as appropriate, revise such authorities.

(July 1, 1944, ch. 373, title XIV, § 1418, as added Pub. L. 104–182, title I, § 125(b), Aug. 6, 1996, 110 Stat. 1654.)

§ 300g–8. Operator certification

(a) Guidelines

Not later than 30 months after August 6, 1996, and in cooperation with the States, the Administrator shall publish guidelines in the Federal Register, after notice and opportunity for comment from interested persons, including States and public water systems, specifying minimum standards for certification (and recertification) of the operators of community and nontransient noncommunity public water systems. Such guidelines shall take into account existing State programs, the complexity of the system, and other factors aimed at providing an effective program at reasonable cost to States and public water systems, taking into account the size of the system.

(b) State programs

Beginning 2 years after the date on which the Administrator publishes guidelines under subsection (a) of this section, the Administrator shall withhold 20 percent of the funds a State is otherwise entitled to receive under section 300j–12 of this title unless the State has adopted and is implementing a program for the certifi-

cation of operators of community and nontransient noncommunity public water systems that meets the requirements of the guidelines published pursuant to subsection (a) of this section or that has been submitted in compliance with subsection (c) of this section and that has not been disapproved.

(c) Existing programs

For any State exercising primary enforcement responsibility for public water systems or any other State which has an operator certification program, the guidelines under subsection (a) of this section shall allow the State to enforce such program in lieu of the guidelines under subsection (a) of this section if the State submits the program to the Administrator within 18 months after the publication of the guidelines unless the Administrator determines (within 9 months after the State submits the program to the Administrator) that such program is not substantially equivalent to such guidelines. In making this determination, an existing State program shall be presumed to be substantially equivalent to the guidelines, notwithstanding program differences, based on the size of systems or the quality of source water, providing the State program meets the overall public health objectives of the guidelines. If disapproved, the program may be resubmitted within 6 months after receipt of notice of disapproval.

(d) Expense reimbursement

(1) In general

The Administrator shall provide reimbursement for the costs of training, including an appropriate per diem for unsalaried operators, and certification for persons operating systems serving 3,300 persons or fewer that are required to undergo training pursuant to this section.

(2) State grants

The reimbursement shall be provided through grants to States with each State receiving an amount sufficient to cover the reasonable costs for training all such operators in the State, as determined by the Administrator, to the extent required by this section. Grants received by a State pursuant to this paragraph shall first be used to provide reimbursement for training and certification costs of persons operating systems serving 3,300 persons or fewer. If a State has reimbursed all such costs, the State may, after notice to the Administrator, use any remaining funds from the grant for any of the other purposes authorized for grants under section 300j–12 of this title.

(3) Authorization

There are authorized to be appropriated to the Administrator to provide grants for reimbursement under this section $30,000,000 for each of fiscal years 1997 through 2003.

(4) Reservation

If the appropriation made pursuant to paragraph (3) for any fiscal year is not sufficient to satisfy the requirements of paragraph (1), the Administrator shall, prior to any other allocation or reservation, reserve such sums as necessary from the funds appropriated pursuant to section 300j–12(m) of this title to provide reimbursement for the training and certification costs mandated by this subsection.

(July 1, 1944, ch. 373, title XIV, § 1419, as added Pub. L. 104–182, title I, § 123, Aug. 6, 1996, 110 Stat. 1652.)

§ 300g–9. Capacity development

(a) State authority for new systems

A State shall receive only 80 percent of the allotment that the State is otherwise entitled to receive under section 300j–12 of this title (relating to State loan funds) unless the State has obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

(b) Systems in significant noncompliance

(1) List

Beginning not later than 1 year after August 6, 1996, each State shall prepare, periodically update, and submit to the Administrator a list of community water systems and nontransient, noncommunity water systems that have a history of significant noncompliance with this subchapter (as defined in guidelines issued prior to August 6, 1996, or any revisions of the guidelines that have been made in consultation with the States) and, to the extent practicable, the reasons for noncompliance.

(2) Report

Not later than 5 years after August 6, 1996, and as part of the capacity development strategy of the State, each State shall report to the Administrator on the success of enforcement mechanisms and initial capacity development efforts in assisting the public water systems listed under paragraph (1) to improve technical, managerial, and financial capacity.

(3) Withholding

The list and report under this subsection shall be considered part of the capacity development strategy of the State required under subsection (c) of this section for purposes of the withholding requirements of section 300j–12(a)(1)(G)(i) of this title (relating to State loan funds).

(c) Capacity development strategy

(1) In general

Beginning 4 years after August 6, 1996, a State shall receive only—

(A) 90 percent in fiscal year 2001;

(B) 85 percent in fiscal year 2002; and

(C) 80 percent in each subsequent fiscal year,

of the allotment that the State is otherwise entitled to receive under section 300j–12 of this title (relating to State loan funds), unless the State is developing and implementing a strat-

egy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity.

(2) Content

In preparing the capacity development strategy, the State shall consider, solicit public comment on, and include as appropriate—

(A) the methods or criteria that the State will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;

(B) a description of the institutional, regulatory, financial, tax, or legal factors at the Federal, State, or local level that encourage or impair capacity development;

(C) a description of how the State will use the authorities and resources of this subchapter or other means to—

(i) assist public water systems in complying with national primary drinking water regulations;

(ii) encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and

(iii) assist public water systems in the training and certification of operators;

(D) a description of how the State will establish a baseline and measure improvements in capacity with respect to national primary drinking water regulations and State drinking water law; and

(E) an identification of the persons that have an interest in and are involved in the development and implementation of the capacity development strategy (including all appropriate agencies of Federal, State, and local governments, private and nonprofit public water systems, and public water system customers).

(3) Report

Not later than 2 years after the date on which a State first adopts a capacity development strategy under this subsection, and every 3 years thereafter, the head of the State agency that has primary responsibility to carry out this subchapter in the State shall submit to the Governor a report that shall also be available to the public on the efficacy of the strategy and progress made toward improving the technical, managerial, and financial capacity of public water systems in the State.

(4) Review

The decisions of the State under this section regarding any particular public water system are not subject to review by the Administrator and may not serve as the basis for withholding funds under section 300j–12 of this title.

(d) Federal assistance

(1) In general

The Administrator shall support the States in developing capacity development strategies.

(2) Informational assistance

(A) In general

Not later than 180 days after August 6, 1996, the Administrator shall—

(i) conduct a review of State capacity development efforts in existence on August 6, 1996, and publish information to assist States and public water systems in capacity development efforts; and

(ii) initiate a partnership with States, public water systems, and the public to develop information for States on recommended operator certification requirements.

(B) Publication of information

The Administrator shall publish the information developed through the partnership under subparagraph (A)(ii) not later than 18 months after August 6, 1996.

(3) Promulgation of drinking water regulations

In promulgating a national primary drinking water regulation, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems.

(4) Guidance for new systems

Not later than 2 years after August 6, 1996, the Administrator shall publish guidance developed in consultation with the States describing legal authorities and other means to ensure that all new community water systems and new nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity with respect to national primary drinking water regulations.

(e) Variances and exemptions

Based on information obtained under subsection (c)(3) of this section, the Administrator shall, as appropriate, modify regulations concerning variances and exemptions for small public water systems to ensure flexibility in the use of the variances and exemptions. Nothing in this subsection shall be interpreted, construed, or applied to affect or alter the requirements of section 300g–4 or 300g–5 of this title.

(f) Small public water systems technology assistance centers

(1) Grant program

The Administrator is authorized to make grants to institutions of higher learning to establish and operate small public water system technology assistance centers in the United States.

(2) Responsibilities of the centers

The responsibilities of the small public water system technology assistance centers established under this subsection shall include the conduct of training and technical assistance relating to the information, performance, and technical needs of small public water systems or public water systems that serve Indian Tribes.

(3) Applications

Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) Selection criteria

The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The small public water system technology assistance center shall be located in a State that is representative of the needs of the region in which the State is located for addressing the drinking water needs of small and rural communities or Indian Tribes.

(B) The grant recipient shall be located in a region that has experienced problems, or may reasonably be foreseen to experience problems, with small and rural public water systems.

(C) The grant recipient shall have access to expertise in small public water system technology management.

(D) The grant recipient shall have the capability to disseminate the results of small public water system technology and training programs.

(E) The projects that the grant recipient proposes to carry out under the grant are necessary and appropriate.

(F) The grant recipient has regional support beyond the host institution.

(5) Consortia of States

At least 2 of the grants under this subsection shall be made to consortia of States with low population densities.

(6) Authorization of appropriations

There are authorized to be appropriated to make grants under this subsection $2,000,000 for each of the fiscal years 1997 through 1999, and $5,000,000 for each of the fiscal years 2000 through 2003.

(g) Environmental finance centers

(1) In general

The Administrator shall provide initial funding for one or more university-based environmental finance centers for activities that provide technical assistance to State and local officials in developing the capacity of public water systems. Any such funds shall be used only for activities that are directly related to this subchapter.

(2) National capacity development clearinghouse

The Administrator shall establish a national public water system capacity development clearinghouse to receive and disseminate information with respect to developing, improving, and maintaining financial and managerial capacity at public water systems. The Administrator shall ensure that the clearinghouse does not duplicate other federally supported clearinghouse activities.

(3) Capacity development techniques

The Administrator may request an environmental finance center funded under paragraph (1) to develop and test managerial, financial, and institutional techniques for capacity development. The techniques may include capacity assessment methodologies, manual and computer based public water system rate models and capital planning models, public water system consolidation procedures, and regionalization models.

(4) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $1,500,000 for each of the fiscal years 1997 through 2003.

(5) Limitation

No portion of any funds made available under this subsection may be used for lobbying expenses.

(July 1, 1944, ch. 373, title XIV, § 1420, as added Pub. L. 104–182, title I, § 119, Aug. 6, 1996, 110 Stat. 1647.)

PART C—PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

§ 300h. Regulations for State programs

(a) Publication of proposed regulations; promulgation; amendments; public hearings; administrative consultations

(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after December 16, 1974. Within 180 days after publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

(2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b) Minimum requirements; restrictions

(1) Regulations under subsection (a) of this section for State underground injection programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2) of this section. Such regulations shall require that a State program, in order to be approved under section 300h–1 of this title—

(A) shall prohibit, effective on the date on which the applicable underground injection control program takes effect, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

(B) shall require (i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and (ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers drinking water sources;

(C) shall include inspection, monitoring, recordkeeping, and reporting requirements; and

(D) shall apply (i) as prescribed by section 300j–6(b)[1] of this title, to underground injections by Federal agencies, and (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

(2) Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

(3)(A) The regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.

(B)(i) In prescribing regulations under this section the Administrator shall, to the extent feasible, avoid promulgation of requirements which would unnecessarily disrupt State underground injection control programs which are in effect and being enforced in a substantial number of States.

(ii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed to disrupt a State underground injection control program only if it would be infeasible to comply with both such regulation and the State underground injection control program.

(iii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed unnecessary only if, without such regulation, underground sources of drinking water will not be endangered by an underground injection.

(C) Nothing in this section shall be construed to alter or affect the duty to assure that underground sources of drinking water will not be endangered by any underground injection.

(c) Temporary permits; notice and hearing

(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section) temporary permits for underground injection which may be effective until the, expiration of four years after December 16, 1974, if—

(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;

(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

(C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State's permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

(D) the Administrator determines the temporary permits require the use of adequate safeguards established by rules adopted by him.

(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section), but after reasonable notice and hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after December 16, 1974, if the State finds, on the record of such hearing—

(A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);

(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.

(d) "Underground injection" defined; underground injection endangerment of drinking water sources

For purposes of this part:

(1) UNDERGROUND INJECTION.—The term ''underground injection''—

(A) means the subsurface emplacement of fluids by well injection; and

(B) excludes—

(i) the underground injection of natural gas for purposes of storage; and

(ii) the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

(July 1, 1944, ch. 373, title XIV, § 1421, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1674; amended Pub. L. 95–190, § 6(b), Nov. 16, 1977, 91 Stat. 1396; Pub. L. 96–502, §§ 3, 4(c), Dec. 5, 1980, 94 Stat. 2738; Pub. L. 99–339, title II, § 201(a), June 19, 1986, 100 Stat. 653; Pub. L. 104–182, title V, § 501(b)(1), Aug. 6, 1996, 110 Stat. 1691; Pub. L. 109–58, title III, § 322, Aug. 8, 2005, 119 Stat. 694.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 300j–6(b) of this title, referred to in subsec. (b)(1)(D), was repealed, and a new section 300j–6(b) relating to administrative penalty orders was added, by Pub. L. 104–182, title I, § 129(a), Aug. 6, 1996, 110 Stat. 1660.

AMENDMENTS

2005—Subsec. (d)(1). Pub. L. 109–58 inserted heading and amended text of par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'underground injection' means the subsurface emplacement of fluids by well injection. Such term does not include the underground injection of natural gas for purposes of storage.''

1996—Subsec. (b)(3)(B)(i). Pub. L. 104–182 substituted ''number of States'' for ''number or States''.

1986—Subsec. (b)(2)(A). Pub. L. 99–339 inserted ''or natural gas storage operations'' after ''production''.

1980—Subsec. (b)(1)(A). Pub. L. 96–502, § 4(c), substituted ''effective on the date on which the applicable underground injection control program takes effect'' for ''effective three years after December 16, 1974''.

Subsec. (d)(1). Pub. L. 96–502, § 3, inserted provision that such term does not include the underground injection of natural gas for purposes of storage.

1977—Subsec. (b)(3). Pub. L. 95–190 added par. (3).

§ 300h–1. State primary enforcement responsibility

(a) List of States in need of a control program; amendment of list

Within 180 days after December 16, 1974, the Administrator shall list in the Federal Register each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

(b) State applications; notice to Administrator of compliance with revised or added requirements; approval or disapproval by Administrator; duration of State primary enforcement responsibility; public hearing

(1)(A) Each State listed under subsection (a) of this section shall within 270 days after the date of promulgation of any regulation under section 300h of this title (or, if later, within 270 days after such State is first listed under subsection (a) of this section) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 300h of this title; and

(ii) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

The Administrator may, for good cause, extend the date for submission of an application by any State under this subparagraph for a period not to exceed an additional 270 days.

(B) Within 270 days of any amendment of a regulation under section 300h of this title revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) of this section shall submit (in such form and manner as the Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(2) Within ninety days after the State's application under paragraph (1)(A) or notice under paragraph (1)(B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program.

(3) If the Administrator approves the State's program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1)(A) of this subsection.

(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

(c) Program by Administrator for State without primary enforcement responsibility; restrictions

If the Administrator disapproves a State's program (or part thereof) under subsection (b)(2) of this section, if the Administrator determines under subsection (b)(3) of this section that a State no longer meets the requirements of clause (i) or (ii) of subsection (b)(1)(A) of this section, or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1) of this section, the Administrator shall by regulation within 90 days after the date of such disapproval, determination, or expiration (as the case may be) prescribe (and may from time to time by regulation revise) a program applicable to such State meeting the requirements of section 300h(b) of this title. Such program may not include requirements which interfere with or impede—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meets such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

(d) "Applicable underground injection control program" defined

For purposes of this subchapter, the term ''applicable underground injection control program'' with respect to a State means the program (or most recent amendment thereof) (1) which has been adopted by the State and which has been approved under subsection (b) of this section, or (2) which has been prescribed by the

Administrator under subsection (c) of this section.

(e) Primary enforcement responsibility by Indian Tribe

An Indian Tribe may assume primary enforcement responsibility for underground injection control under this section consistent with such regulations as the Administrator has prescribed pursuant to this part and section 300j–11 of this title. The area over which such Indian Tribe exercises governmental jurisdiction need not have been listed under subsection (a) of this section, and such Tribe need not submit an application to assume primary enforcement responsibility within the 270-day deadline noted in subsection (b)(1)(A) of this section. Until an Indian Tribe assumes primary enforcement responsibility, the currently applicable underground injection control program shall continue to apply. If an applicable underground injection control program does not exist for an Indian Tribe, the Administrator shall prescribe such a program pursuant to subsection (c) of this section, and consistent with section 300h(b) of this title, within 270 days after June 19, 1986, unless an Indian Tribe first obtains approval to assume primary enforcement responsibility for underground injection control.

(July 1, 1944, ch. 373, title XIV, § 1422, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1676; amended Pub. L. 95–190, § 6(a), Nov. 16, 1977, 91 Stat. 1396; Pub. L. 99–339, title II, § 201(a), title III, § 302(c), June 19, 1986, 100 Stat. 653, 666.)

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–339, § 201(a), inserted ''or natural gas storage operations, or'' after ''production''.

Subsec. (e). Pub. L. 99–339, § 302(c), added subsec. (e).

1977—Subsec. (b)(1)(A). Pub. L. 95–190 inserted provisions relating to extension of date for submission of applications by any State.

§ 300h–2. Enforcement of program

(a) Notice to State and violator; issuance of administrative order; civil action

(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 300h–1(b)(3) of this title or section 300h–4(c) of this title) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) Whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(b) Civil and criminal actions

Civil actions referred to in paragraphs (1) and (2) of subsection (a) of this section shall be brought in the appropriate United States district court. Such court shall have jurisdiction to require compliance with any requirement of an applicable underground injection program or with an order issued under subsection (c) of this section. The court may enter such judgment as protection of public health may require. Any person who violates any requirement of an applicable underground injection control program or an order requiring compliance under subsection (c) of this section—

(1) shall be subject to a civil penalty of not more than $25,000 for each day of such violation, and

(2) if such violation is willful, such person may, in addition to or in lieu of the civil penalty authorized by paragraph (1), be imprisoned for not more than 3 years, or fined in accordance with title 18, or both.

(c) Administrative orders

(1) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation or other requirement of this part other than those relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $10,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(2) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation, or other requirement of this part relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $5,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(3)(A) An order under this subsection shall be issued by the Administrator after opportunity (provided in accordance with this subparagraph)

for a hearing. Before issuing the order, the Administrator shall give to the person to whom it is directed written notice of the Administrator's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the order. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) The Administrator shall provide public notice of, and reasonable opportunity to comment on, any proposed order.

(C) Any citizen who comments on any proposed order under subparagraph (B) shall be given notice of any hearing under this subsection and of any order. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence.

(D) Any order issued under this subsection shall become effective 30 days following its issuance unless an appeal is taken pursuant to paragraph (6).

(4)(A) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and may specify a reasonable time for compliance.

(B) In assessing any civil penalty under this subsection, the Administrator shall take into account appropriate factors, including (i) the seriousness of the violation; (ii) the economic benefit (if any) resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require.

(5) Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action, or has issued an order under this subsection assessing a penalty, shall not be subject to an action under subsection (b) of this section or section 300h–3(c) or 300j–8 of this title, except that the foregoing limitation on civil actions under section 300j–8 of this title shall not apply with respect to any violation for which—

(A) a civil action under section 300j–8(a)(1) of this title has been filed prior to commencement of an action under this subsection, or

(B) a notice of violation under section 300j–8(b)(1) of this title has been given before commencement of an action under this subsection and an action under section 300j–8(a)(1) of this title is filed before 120 days after such notice is given.

(6) Any person against whom an order is issued or who commented on a proposed order pursuant to paragraph (3) may file an appeal of such order with the United States District Court for the District of Columbia or the district in which the violation is alleged to have occurred. Such an appeal may only be filed within the 30-day period beginning on the date the order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which such order was imposed. The district court shall not set aside or remand such order unless there is not substantial evidence on the record, taken as a whole, to support the finding of a violation or, unless the Administrator's assessment of penalty or requirement for compliance constitutes an abuse of discretion. The district court shall not impose additional civil penalties for the same violation unless the Administrator's assessment of a penalty constitutes an abuse of discretion. Notwithstanding section 300j–7(a)(2) of this title, any order issued under paragraph (3) shall be subject to judicial review exclusively under this paragraph.

(7) If any person fails to pay an assessment of a civil penalty—

(A) after the order becomes effective under paragraph (3), or

(B) after a court, in an action brought under paragraph (6), has entered a final judgment in favor of the Administrator,

the Administrator may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date the order is effective or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(8) The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanction.

(d) State authority to adopt or enforce laws or regulations respecting underground injection unaffected

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

(July 1, 1944, ch. 373, title XIV, § 1423, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1677; amended Pub. L. 96–502, § 2(b), Dec. 5, 1980, 94 Stat. 2738; Pub. L. 99–339, title II, § 202, June 19, 1986, 100 Stat. 654.)

AMENDMENTS

1986—Pub. L. 99–339, § 202(d), substituted ''Enforcement'' for ''Failure of State to assure enforcement'' in section catchline.

Subsec. (a)(1). Pub. L. 99–339, § 202(a)(1), substituted provisions which related to issuance of an order of compliance or commencement of a civil action by the Administrator if the State has not commenced enforcement against the violator for provisions directing the Administrator to give public notice and request that the State report within 15 days thereafter as to steps taken to enforce compliance and authorizing the Administrator to commence a civil action upon failure by the State to comply timely.

Subsec. (a)(2). Pub. L. 99–339, § 202(a)(2), substituted provision that the Administrator issue an order under subsec. (c) of this section or commence a civil action

under subsec. (b) of this section for provision that he commence a civil action under subsec. (b)(1) of this section.

Subsec. (b). Pub. L. 99–339, § 202(b), amended subsec. (b) generally, substituting provisions relating to jurisdiction of the appropriate Federal district court, entry of judgment, civil penalty of $25,000 per day, criminal liability and fine for willful violation for provisions which related to judicial determinations in appropriate Federal district courts, civil penalties of $5,000 per day, and fines of $10,000 per day for willful violations.

Subsecs. (c), (d). Pub. L. 99–339, § 202(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1980—Subsec. (a)(1). Pub. L. 96–502 inserted reference to section 300h–4(c) of this title.

§ 300h–3. Interim regulation of underground injections

(a) Necessity for well operation permit; designation of one aquifer areas

(1) Any person may petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator under subsection (b) of this section. The Administrator may so designate an area within a State if he finds that the area has one aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

(2) Upon receipt of a petition under paragraph (1) of this subsection, the Administrator shall publish it in the Federal Register and shall provide an opportunity to interested persons to submit written data, views, or arguments thereon. Not later than the 30th day following the date of the publication of a petition under this paragraph in the Federal Register, the Administrator shall either make the designation for which the petition is submitted or deny the petition.

(b) Well operation permits; publication in Federal Register; notice and hearing; issuance or denial; conditions for issuance

(1) During the period beginning on the date an area is designated under subsection (a) of this section and ending on the date the applicable underground injection control program covering such area takes effect, no new underground injection well may be operated in such area unless the Administrator has issued a permit for such operation.

(2) Any person may petition the Administrator for the issuance of a permit for the operation of such a well in such an area. A petition submitted under this paragraph shall be submitted in such manner and contain such information as the Administrator may require by regulation. Upon receipt of such a petition, the Administrator shall publish it in the Federal Register. The Administrator shall give notice of any proceeding on a petition and shall provide opportunity for agency hearing. The Administrator shall act upon such petition on the record of any hearing held pursuant to the preceding sentence respecting such petition. Within 120 days of the publication in the Federal Register of a petition submitted under this paragraph, the Administrator shall either issue the permit for which the petition was submitted or shall deny its issuance.

(3) The Administrator may issue a permit for the operation of a new underground injection well in an area designated under subsection (a) of this section only, if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

(c) Civil penalties; separate violations; penalties for willful violations; temporary restraining order or injunction

Any person who operates a new underground injection well in violation of subsection (b) of this section, (1) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs, or (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (1), be fined not more than $10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b) of this section, he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

(d) "New underground injection well" defined

For purposes of this section, the term ''new underground injection well'' means an underground injection well whose operation was not approved by appropriate State and Federal agencies before December 16, 1974.

(e) Areas with one aquifer; publication in Federal Register; commitments for Federal financial assistance

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

(July 1, 1944, ch. 373, title XIV, § 1424, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1678.)

§ 300h–4. Optional demonstration by States relating to oil or natural gas

(a) Approval of State underground injection control program; alternative showing of effectiveness of program by State

For purposes of the Administrator's approval or disapproval under section 300h–1 of this title of that portion of any State underground injection control program which relates to—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

in lieu of the showing required under subparagraph (A) of section 300h–1(b)(1) of this title the State may demonstrate that such portion of the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(b) Revision or amendment of requirements of regulation; showing of effectiveness of program by State

If the Administrator revises or amends any requirement of a regulation under section 300h of this title relating to any aspect of the underground injection referred to in subsection (a) of this section, in the case of that portion of a State underground injection control program for which the demonstration referred to in subsection (a) of this section has been made, in lieu of the showing required under section 300h–1(b)(1)(B) of this title the State may demonstrate that, with respect to that aspect of such underground injection, the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(c) Primary enforcement responsibility of State; voiding by Administrator under duly promulgated rule

(1) Section 300h–1(b)(3) of this title shall not apply to that portion of any State underground injection control program approved by the Administrator pursuant to a demonstration under subsection (a) of this section (and under subsection (b) of this section where applicable).

(2) If pursuant to such a demonstration, the Administrator approves such portion of the State program, the State shall have primary enforcement responsibility with respect to that portion until such time as the Administrator determines, by rule, that such demonstration is no longer valid. Following such a determination, the Administrator may exercise the authority of subsection (c) of section 300h–1 of this title in the same manner as provided in such subsection with respect to a determination described in such subsection.

(3) Before promulgating any rule under paragraph (2), the Administrator shall provide opportunity for public hearing respecting such rule.

(July 1, 1944, ch. 373, title XIV, § 1425, as added Pub. L. 96–502, § 2(a), Dec. 5, 1980, 94 Stat. 2737; amended Pub. L. 99–339, title II, § 201(a), June 19, 1986, 100 Stat. 653.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–339 inserted ''or natural gas storage operations, or'' after ''production''.

§ 300h–5. Regulation of State programs

Not later than 18 months after June 19, 1986, the Administrator shall modify regulations issued under this chapter for Class I injection wells to identify monitoring methods, in addition to those in effect on November 1, 1985, including groundwater monitoring. In accordance with such regulations, the Administrator, or delegated State authority, shall determine the applicability of such monitoring methods, wherever appropriate, at locations and in such a manner as to provide the earliest possible detection of fluid migration into, or in the direction of, underground sources of drinking water from such wells, based on its assessment of the potential for fluid migration from the injection zone that may be harmful to human health or the environment. For purposes of this subsection, a class I injection well is defined in accordance with 40 CFR 146.05 as in effect on November 1, 1985.

(July 1, 1944, ch. 373, title XIV, § 1426, as added Pub. L. 99–339, title II, § 201(b), June 19, 1986, 100 Stat. 653; amended Pub. L. 104–66, title II, § 2021(f), Dec. 21, 1995, 109 Stat. 727; Pub. L. 104–182, title V, § 501(f)(2), Aug. 6, 1996, 110 Stat. 1691.)

AMENDMENTS

1996—Pub. L. 104–182 directed technical amendment of section catchline and subsec. (a) designation. The provision directing amendment of subsec. (a) designation could not be executed because section does not contain a subsec. (a).

1995—Pub. L. 104–66 struck out subsec. (a) designation and heading before ''Not later than'' and struck out heading and text of subsec. (b). Text read as follows: ''The Administrator shall submit a report to Congress, no later than September 1987, summarizing the results of State surveys required by the Administrator under this section. The report shall include each of the following items of information:

''(1) The numbers and categories of class V wells which discharge nonhazardous waste into or above an underground source of drinking water.

''(2) The primary contamination problems associated with different categories of these disposal wells.

''(3) Recommendations for minimum design, construction, installation, and siting requirements that should be applied to protect underground sources of drinking water from such contamination wherever necessary.''

§ 300h–6. Sole source aquifer demonstration program

(a) Purpose

The purpose of this section is to establish procedures for development, implementation, and assessment of demonstration programs designed to protect critical aquifer protection areas located within areas designated as sole or principal source aquifers under section 300h–3(e) of this title.

(b) "Critical aquifer protection area" defined

For purposes of this section, the term ''critical aquifer protection area'' means either of the following:

(1) All or part of an area located within an area for which an application or designation as a sole or principal source aquifer pursuant to section 300h–3(e) of this title, has been submitted and approved by the Administrator and which satisfies the criteria established by the Administrator under subsection (d) of this section.

(2) All or part of an area which is within an aquifer designated as a sole source aquifer as of June 19, 1986, and for which an areawide ground water quality protection plan has been approved under section 208 of the Clean Water Act [33 U.S.C. 1288] prior to June 19, 1986.

(c) Application

Any State, municipal or local government or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identifies a critical aquifer protection area over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program under this section. Any applicant shall consult with other government or planning entities with authority or jurisdiction in such area prior to application. Applicants, other than the Governor, shall submit the application for a demonstration program jointly with the Governor.

(d) Criteria

Not later than 1 year after June 19, 1986, the Administrator shall, by rule, establish criteria for identifying critical aquifer protection areas under this section. In establishing such criteria, the Administrator shall consider each of the following:

(1) The vulnerability of the aquifer to contamination due to hydrogeologic characteristics.

(2) The number of persons or the proportion of population using the ground water as a drinking water source.

(3) The economic, social and environmental benefits that would result to the area from maintenance of ground water of high quality.

(4) The economic, social and environmental costs that would result from degradation of the quality of the ground water.

(e) Contents of application

An application submitted to the Administrator by any applicant for a demonstration program under this section shall meet each of the following requirements:

(1) The application shall propose boundaries for the critical aquifer protection area within its jurisdiction.

(2) The application shall designate or, if necessary, establish a planning entity (which shall be a public agency and which shall include representation of elected local and State governmental officials) to develop a comprehensive management plan (hereinafter in this section referred to as the ''plan'') for the critical protection area. Where a local government planning agency exists with adequate authority to carry out this section with respect to any proposed critical protection area, such agency shall be designated as the planning entity.

(3) The application shall establish procedures for public participation in the development of the plan, for review, approval, and adoption of the plan, and for assistance to municipalities and other public agencies with authority under State law to implement the plan.

(4) The application shall include a hydrogeologic assessment of surface and ground water resources within the critical protection area.

(5) The application shall include a comprehensive management plan for the proposed protection area.

(6) The application shall include the measures and schedule proposed for implementation of such plan.

(f) Comprehensive plan

(1) The objective of a comprehensive management plan submitted by an applicant under this section shall be to maintain the quality of the ground water in the critical protection area in a manner reasonably expected to protect human health, the environment and ground water resources. In order to achieve such objective, the plan may be designed to maintain, to the maximum extent possible, the natural vegetative and hydrogeological conditions. Each of the following elements shall be included in such a protection plan:

(A) A map showing the detailed boundary of the critical protection area.

(B) An identification of existing and potential point and nonpoint sources of ground water degradation.

(C) An assessment of the relationship between activities on the land surface and ground water quality.

(D) Specific actions and management practices to be implemented in the critical protection area to prevent adverse impacts on ground water quality.

(E) Identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

(2) Such plan may also include the following:

(A) A determination of the quality of the existing ground water recharged through the special protection area and the natural recharge capabilities of the special protection area watershed.

(B) Requirements designed to maintain existing underground drinking water quality or improve underground drinking water quality if prevailing conditions fail to meet drinking water standards, pursuant to this chapter and State law.

(C) Limits on Federal, State, and local government, financially assisted activities and projects which may contribute to degradation of such ground water or any loss of natural surface and subsurface infiltration of purification capability of the special protection watershed.

(D) A comprehensive statement of land use management including emergency contin-

gency planning as it pertains to the maintenance of the quality of underground sources of drinking water or to the improvement of such sources if necessary to meet drinking water standards pursuant to this chapter and State law.

(E) Actions in the special protection area which would avoid adverse impacts on water quality, recharge capabilities, or both.

(F) Consideration of specific techniques, which may include clustering, transfer of development rights, and other innovative measures sufficient to achieve the objectives of this section.

(G) Consideration of the establishment of a State institution to facilitate and assist funding a development transfer credit system.

(H) A program for State and local implementation of the plan described in this subsection in a manner that will insure the continued, uniform, consistent protection of the critical protection area in accord with the purposes of this section.

(I) Pollution abatement measures, if appropriate.

(g) Plans under section 208 of Clean Water Act

A plan approved before June 19, 1986, under section 208 of the Clean Water Act [33 U.S.C. 1288] to protect a sole source aquifer designated under section 300h–3(e) of this title shall be considered a comprehensive management plan for the purposes of this section.

(h) Consultation and hearings

During the development of a comprehensive management plan under this section, the planning entity shall consult with, and consider the comments of, appropriate officials of any municipality and State or Federal agency which has jurisdiction over lands and waters within the special protection area, other concerned organizations and technical and citizen advisory committees. The planning entity shall conduct public hearings at places within the special protection area for the purpose of providing the opportunity to comment on any aspect of the plan.

(i) Approval or disapproval

Within 120 days after receipt of an application under this section, the Administrator shall approve or disapprove the application. The approval or disapproval shall be based on a determination that the critical protection area satisfies the criteria established under subsection (d) of this section and that a demonstration program for the area would provide protection for ground water quality consistent with the objectives stated in subsection (f) of this section. The Administrator shall provide to the Governor a written explanation of the reasons for the disapproval of any such application. Any petitioner may modify and resubmit any application which is not approved. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to establish a demonstration program under this section.

(j) Grants and reimbursement

Upon entering a cooperative agreement under subsection (i) of this section, the Administrator may provide to the applicant, on a matching basis, a grant of 50 per centum of the costs of implementing the plan established under this section. The Administrator may also reimburse the applicant of an approved plan up to 50 per centum of the costs of developing such plan, except for plans approved under section 208 of the Clean Water Act [33 U.S.C. 1288]. The total amount of grants under this section for any one aquifer, designated under section 300h–3(e) of this title, shall not exceed $4,000,000 in any one fiscal year.

(k) Activities funded under other law

No funds authorized under this section may be used to fund activities funded under other sections of this chapter or the Clean Water Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.] or other environmental laws.

(*l*) Savings provision

Nothing under this section shall be construed to amend, supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws; or any requirement imposed or right provided under any Federal or State environmental or public health statute.

(m) Authorization of appropriations

There are authorized to be appropriated to carry out this section not more than the following amounts:

Fiscal year:	*Amount*
1987	$10,000,000
1988	15,000,000
1989	17,500,000
1990	17,500,000
1991	17,500,000
1992–2003	15,000,000.

Matching grants under this section may also be used to implement or update any water quality management plan for a sole or principal source aquifer approved (before June 19, 1986) by the Administrator under section 208 of the Federal Water Pollution Control Act [33 U.S.C. 1288].

(July 1, 1944, ch. 373, title XIV, § 1427, as added and amended Pub. L. 99–339, title II, § 203, title III, § 301(f), June 19, 1986, 100 Stat. 657, 664; Pub. L. 104–66, title II, § 2021(g), Dec. 21, 1995, 109 Stat. 727; Pub. L. 104–182, title I, § 120(a), title V, § 501(b)(2), (f)(3), Aug. 6, 1996, 110 Stat. 1650, 1691.)

REFERENCES IN TEXT

The Clean Water Act, referred to in subsec. (k), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (k), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in sub-

sec. (k), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104–182, § 501(f)(3), made technical amendment to section catchline and subsec. (a) designation.

Subsec. (b)(1). Pub. L. 104–182, § 120(a)(1), struck out ''not later than 24 months after June 19, 1986,'' after ''by the Administrator''.

Subsec. (k). Pub. L. 104–182, § 501(b)(2), substituted ''this section'' for ''this subsection''.

Subsec. (m). Pub. L. 104–182, § 120(a)(2), inserted table item relating to fiscal years 1992 through 2003.

1995—Subsecs. (*l*) to (n). Pub. L. 104–66 redesignated subsecs. (m) and (n) as (*l*) and (m), respectively, and struck out heading and text of former subsec. (*l*). Text read as follows: ''Not later than December 31, 1989, each State shall submit to the Administrator a report assessing the impact of the program on ground water quality and identifying those measures found to be effective in protecting ground water resources. No later than September 30, 1990, the Administrator shall submit to Congress a report summarizing the State reports, and assessing the accomplishments of the sole source aquifer demonstration program including an identification of protection methods found to be most effective and recommendations for their application to protect ground water resources from contamination whenever necessary.''

1986—Subsec. (n). Pub. L. 99–339 added subsec. (n).

§ 300h–7. State programs to establish wellhead protection areas

(a) State programs

The Governor or Governor's designee of each State shall, within 3 years of June 19, 1986, adopt and submit to the Administrator a State program to protect wellhead areas within their jurisdiction from contaminants which may have any adverse effect on the health of persons. Each State program under this section shall, at a minimum—

(1) specify the duties of State agencies, local governmental entities, and public water supply systems with respect to the development and implementation of programs required by this section;

(2) for each wellhead, determine the wellhead protection area as defined in subsection (e) of this section based on all reasonably available hydrogeologic information on ground water flow, recharge and discharge and other information the State deems necessary to adequately determine the wellhead protection area;

(3) identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have any adverse effect on the health of persons;

(4) describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within wellhead protection areas from such contaminants;

(5) include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants; and

(6) include a requirement that consideration be given to all potential sources of such contaminants within the expected wellhead area of a new water well which serves a public water supply system.

(b) Public participation

To the maximum extent possible, each State shall establish procedures, including but not limited to the establishment of technical and citizens' advisory committees, to encourage the public to participate in developing the protection program for wellhead areas and source water assessment programs under section 300j–13 of this title. Such procedures shall include notice and opportunity for public hearing on the State program before it is submitted to the Administrator.

(c) Disapproval

(1) In general

If, in the judgment of the Administrator, a State program or portion thereof under subsection (a) of this section is not adequate to protect public water systems as required by subsection (a) of this section or a State program under section 300j–13 of this title or section 300g–7(b) of this title does not meet the applicable requirements of section 300j–13 of this title or section 300g–7(b) of this title, the Administrator shall disapprove such program or portion thereof. A State program developed pursuant to subsection (a) of this section shall be deemed to be adequate unless the Administrator determines, within 9 months of the receipt of a State program, that such program (or portion thereof) is inadequate for the purpose of protecting public water systems as required by this section from contaminants that may have any adverse effect on the health of persons. A State program developed pursuant to section 300j–13 of this title or section 300g–7(b) of this title shall be deemed to meet the applicable requirements of section 300j–13 of this title or section 300g–7(b) of this title unless the Administrator determines within 9 months of the receipt of the program that such program (or portion thereof) does not meet such requirements. If the Administrator determines that a proposed State program (or any portion thereof) is disapproved, the Administrator shall submit a written statement of the reasons for such determination to the Governor of the State.

(2) Modification and resubmission

Within 6 months after receipt of the Administrator's written notice under paragraph (1) that any proposed State program (or portion thereof) is disapproved, the Governor or Governor's designee, shall modify the program based upon the recommendations of the Administrator and resubmit the modified program to the Administrator.

(d) Federal assistance

After the date 3 years after June 19, 1986, no State shall receive funds authorized to be appropriated under this section except for the purpose of implementing the program and requirements of paragraphs (4) and (6) of subsection (a) of this section.

(e) "Wellhead protection area" defined

As used in this section, the term ''wellhead protection area'' means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. The extent of a wellhead protection area, within a State, necessary to provide protection from contaminants which may have any adverse effect on the health of persons is to be determined by the State in the program submitted under subsection (a) of this section. Not later than one year after June 19, 1986, the Administrator shall issue technical guidance which States may use in making such determinations. Such guidance may reflect such factors as the radius of influence around a well or wellfield, the depth of drawdown of the water table by such well or wellfield at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or wellfield, or other factors affecting the likelihood of contaminants reaching the well or wellfield, taking into account available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well or wellfield is located.

(f) Prohibitions

(1) Activities under other laws

No funds authorized to be appropriated under this section may be used to support activities authorized by the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.], or other sections of this chapter.

(2) Individual sources

No funds authorized to be appropriated under this section may be used to bring individual sources of contamination into compliance.

(g) Implementation

Each State shall make every reasonable effort to implement the State wellhead area protection program under this section within 2 years of submitting the program to the Administrator. Each State shall submit to the Administrator a biennial status report describing the State's progress in implementing the program. Such report shall include amendments to the State program for water wells sited during the biennial period.

(h) Federal agencies

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any potential source of contaminants identified by a State program pursuant to the provisions of subsection (a)(3) of this section shall be subject to and comply with all requirements of the State program developed according to subsection (a)(4) of this section applicable to such potential source of contaminants, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable charges and fees. The President may exempt any potential source under the jurisdiction of any department, agency, or instrumentality in the executive branch if the President determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to the lack of an appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress shall have failed to make available such requested appropriations.

(i) Additional requirement

(1) In general

In addition to the provisions of subsection (a) of this section, States in which there are more than 2,500 active wells at which annular injection is used as of January 1, 1986, shall include in their State program a certification that a State program exists and is being adequately enforced that provides protection from contaminants which may have any adverse effect on the health of persons and which are associated with the annular injection or surface disposal of brines associated with oil and gas production.

(2) "Annular injection" defined

For purposes of this subsection, the term ''annular injection'' means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

(3) Review

The Administrator shall conduct a review of each program certified under this subsection.

(4) Disapproval

If a State fails to include the certification required by this subsection or if in the judgment of the Administrator the State program certified under this subsection is not being adequately enforced, the Administrator shall disapprove the State program submitted under subsection (a) of this section.

(j) Coordination with other laws

Nothing in this section shall authorize or require any department, agency, or other instrumentality of the Federal Government or State or local government to apportion, allocate or otherwise regulate the withdrawal or beneficial use of ground or surface waters, so as to abrogate or modify any existing rights to water established pursuant to State or Federal law, including interstate compacts.

(k) Authorization of appropriations

Unless the State program is disapproved under this section, the Administrator shall make grants to the State for not less than 50 or more than 90 percent of the costs incurred by a State (as determined by the Administrator) in developing and implementing each State program under this section. For purposes of making such grants there is authorized to be appropriated not more than the following amounts:

Fiscal year:	*Amount*
1987	$20,000,000

Fiscal year:	*Amount*
1988	20,000,000
1989	35,000,000
1990	35,000,000
1991	35,000,000
1992–2003	30,000,000.

(July 1, 1944, ch. 373, title XIV, § 1428, as added and amended Pub. L. 99–339, title II, § 205, title III, § 301(e), June 19, 1986, 100 Stat. 660, 664; Pub. L. 104–182, title I, §§ 120(b), 132(b), title V, § 501(f)(4), Aug. 6, 1996, 110 Stat. 1650, 1674, 1692.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (f)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (f)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (f)(1), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104–182, § 501(f)(4), made technical amendment to section catchline and subsec. (a) designation.

Subsec. (b). Pub. L. 104–182, § 132(b)(4), inserted before period at end of first sentence ''and source water assessment programs under section 300j–13 of this title''.

Subsec. (c)(1). Pub. L. 104–182, § 132(b)(3), which directed substitution of ''is disapproved'' for ''is inadequate'' in third sentence, was executed by making the substitution in fourth sentence to reflect the probable intent of Congress and the amendment by Pub. L. 104–182, § 132(b)(2). See below.

Pub. L. 104–182, § 132(b)(2), inserted after second sentence ''A State program developed pursuant to section 300j–13 of this title or section 300g–7(b) of this title shall be deemed to meet the applicable requirements of section 300j–13 of this title or section 300g–7(b) of this title unless the Administrator determines within 9 months of the receipt of the program that such program (or portion thereof) does not meet such requirements.''

Pub. L. 104–182, § 132(b)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''If, in the judgment of the Administrator, a State program (or portion thereof, including the definition of a wellhead protection area), is not adequate to protect public water systems as required by this section, the Administrator shall disapprove such program (or portion thereof).''

Subsec. (c)(2). Pub. L. 104–182, § 132(b)(3), substituted ''is disapproved'' for ''is inadequate''.

Subsec. (k). Pub. L. 104–182, § 120(b), inserted table item relating to fiscal years 1992 through 2003.

1986—Subsec. (k). Pub. L. 99–339, § 301(e), added subsec. (k).

§ 300h–8. State ground water protection grants

(a) In general

The Administrator may make a grant to a State for the development and implementation of a State program to ensure the coordinated and comprehensive protection of ground water resources within the State.

(b) Guidance

Not later than 1 year after August 6, 1996, and annually thereafter, the Administrator shall publish guidance that establishes procedures for application for State ground water protection program assistance and that identifies key elements of State ground water protection programs.

(c) Conditions of grants

(1) In general

The Administrator shall award grants to States that submit an application that is approved by the Administrator. The Administrator shall determine the amount of a grant awarded pursuant to this paragraph on the basis of an assessment of the extent of ground water resources in the State and the likelihood that awarding the grant will result in sustained and reliable protection of ground water quality.

(2) Innovative program grants

The Administrator may also award a grant pursuant to this subsection for innovative programs proposed by a State for the prevention of ground water contamination.

(3) Allocation of funds

The Administrator shall, at a minimum, ensure that, for each fiscal year, not less than 1 percent of funds made available to the Administrator by appropriations to carry out this section are allocated to each State that submits an application that is approved by the Administrator pursuant to this section.

(4) Limitation on grants

No grant awarded by the Administrator may be used for a project to remediate ground water contamination.

(d) Amount of grants

The amount of a grant awarded pursuant to paragraph (1) shall not exceed 50 percent of the eligible costs of carrying out the ground water protection program that is the subject of the grant (as determined by the Administrator) for the 1-year period beginning on the date that the grant is awarded. The State shall pay a State share to cover the costs of the ground water protection program from State funds in an amount that is not less than 50 percent of the cost of conducting the program.

(e) Evaluations and reports

Not later than 3 years after August 6, 1996, and every 3 years thereafter, the Administrator shall evaluate the State ground water protection programs that are the subject of grants awarded pursuant to this section and report to the Congress on the status of ground water quality in the United States and the effectiveness of State programs for ground water protection.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 1997 through 2003.

(July 1, 1944, ch. 373, title XIV, § 1429, as added Pub. L. 104–182, title I, § 131, Aug. 6, 1996, 110 Stat. 1672.)

PART D—EMERGENCY POWERS

§ 300i. Emergency powers

(a) Actions authorized against imminent and substantial endangerment to health

Notwithstanding any other provision of this subchapter the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Penalties for violations; separate offenses

Any person who violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) of this section may, in an action brought in the appropriate United States district court to enforce such order, be subject to a civil penalty of not to exceed $15,000 for each day in which such violation occurs or failure to comply continues.

(July 1, 1944, ch. 373, title XIV, § 1431, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1680; amended Pub. L. 99–339, title II, § 204, June 19, 1986, 100 Stat. 660; Pub. L. 104–182, title I, § 113(d), Aug. 6, 1996, 110 Stat. 1636; Pub. L. 107–188, title IV, § 403(2), June 12, 2002, 116 Stat. 687.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–188, in first sentence, inserted ", or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which" after "drinking water".

1996—Subsec. (b). Pub. L. 104–182 substituted "$15,000" for "$5,000".

1986—Subsec. (a). Pub. L. 99–339, § 204(1), (2), inserted "or an underground source of drinking water" after "to enter a public water system" and "including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment," after "including travelers),".

Subsec. (b). Pub. L. 99–339, § 204(3), struck out "willfully" after "person who" and substituted "subject to a civil penalty of not to exceed" for "fined not more than".

§ 300i–1. Tampering with public water systems

(a) Tampering

Any person who tampers with a public water system shall be imprisoned for not more than 20 years, or fined in accordance with title 18, or both.

(b) Attempt or threat

Any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system be imprisoned for not more than 10 years, or fined in accordance with title 18, or both.

(c) Civil penalty

The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system. The court may impose on such person a civil penalty of not more than $1,000,000 for such tampering or not more than $100,000 for such attempt or threat.

(d) "Tamper" defined

For purposes of this section, the term "tamper" means—

(1) to introduce a contaminant into a public water system with the intention of harming persons; or

(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

(July 1, 1944, ch. 373, title XIV, § 1432, as added Pub. L. 99–339, title I, § 108, June 19, 1986, 100 Stat. 651; amended Pub. L. 104–182, title V, § 501(f)(5), Aug. 6, 1996, 110 Stat. 1692; Pub. L. 107–188, title IV, § 403(3), June 12, 2002, 116 Stat. 687.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–188, § 403(3)(A), substituted "20 years" for "5 years".

Subsec. (b). Pub. L. 107–188, § 403(3)(B), substituted "10 years" for "3 years".

Subsec. (c). Pub. L. 107–188, § 403(3)(C), (D), substituted "$1,000,000" for "$50,000" and "$100,000" for "$20,000".

1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300i–2. Terrorist and other intentional acts

(a) Vulnerability assessments

(1) Each community water system serving a population of greater than 3,300 persons shall conduct an assessment of the vulnerability of its system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water. The vulnerability assessment shall include, but not be limited to, a review of pipes and constructed conveyances, physical barriers, water collection, pre-

treatment, treatment, storage and distribution facilities, electronic, computer or other automated systems which are utilized by the public water system, the use, storage, or handling of various chemicals, and the operation and maintenance of such system. The Administrator, not later than August 1, 2002, after consultation with appropriate departments and agencies of the Federal Government and with State and local governments, shall provide baseline information to community water systems required to conduct vulnerability assessments regarding which kinds of terrorist attacks or other intentional acts are the probable threats to—

(A) substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water; or

(B) otherwise present significant public health concerns.

(2) Each community water system referred to in paragraph (1) shall certify to the Administrator that the system has conducted an assessment complying with paragraph (1) and shall submit to the Administrator a written copy of the assessment. Such certification and submission shall be made prior to:

(A) March 31, 2003, in the case of systems serving a population of 100,000 or more.

(B) December 31, 2003, in the case of systems serving a population of 50,000 or more but less than 100,000.

(C) June 30, 2004, in the case of systems serving a population greater than 3,300 but less than 50,000.

(3) Except for information contained in a certification under this subsection identifying the system submitting the certification and the date of the certification, all information provided to the Administrator under this subsection and all information derived therefrom shall be exempt from disclosure under section 552 of title 5.

(4) No community water system shall be required under State or local law to provide an assessment described in this section to any State, regional, or local governmental entity solely by reason of the requirement set forth in paragraph (2) that the system submit such assessment to the Administrator.

(5) Not later than November 30, 2002, the Administrator, in consultation with appropriate Federal law enforcement and intelligence officials, shall develop such protocols as may be necessary to protect the copies of the assessments required to be submitted under this subsection (and the information contained therein) from unauthorized disclosure. Such protocols shall ensure that—

(A) each copy of such assessment, and all information contained in or derived from the assessment, is kept in a secure location;

(B) only individuals designated by the Administrator may have access to the copies of the assessments; and

(C) no copy of an assessment, or part of an assessment, or information contained in or derived from an assessment shall be available to anyone other than an individual designated by the Administrator.

At the earliest possible time prior to November 30, 2002, the Administrator shall complete the development of such protocols for the purpose of having them in place prior to receiving any vulnerability assessments from community water systems under this subsection.

(6)(A) Except as provided in subparagraph (B), any individual referred to in paragraph (5)(B) who acquires the assessment submitted under paragraph (2), or any reproduction of such assessment, or any information derived from such assessment, and who knowingly or recklessly reveals such assessment, reproduction, or information other than—

(i) to an individual designated by the Administrator under paragraph (5),

(ii) for purposes of section 300j–4 of this title or for actions under section 300i of this title, or

(iii) for use in any administrative or judicial proceeding to impose a penalty for failure to comply with this section,

shall upon conviction be imprisoned for not more than one year or fined in accordance with the provisions of chapter 227 of title 18 applicable to class A misdemeanors, or both, and shall be removed from Federal office or employment.

(B) Notwithstanding subparagraph (A), an individual referred to in paragraph (5)(B) who is an officer or employee of the United States may discuss the contents of a vulnerability assessment submitted under this section with a State or local official.

(7) Nothing in this section authorizes any person to withhold any information from Congress or from any committee or subcommittee of Congress.

(b) Emergency response plan

Each community water system serving a population greater than 3,300 shall prepare or revise, where necessary, an emergency response plan that incorporates the results of vulnerability assessments that have been completed. Each such community water system shall certify to the Administrator, as soon as reasonably possible after the enactment of this section, but not later than 6 months after the completion of the vulnerability assessment under subsection (a) of this section, that the system has completed such plan. The emergency response plan shall include, but not be limited to, plans, procedures, and identification of equipment that can be implemented or utilized in the event of a terrorist or other intentional attack on the public water system. The emergency response plan shall also include actions, procedures, and identification of equipment which can obviate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water provided to communities and individuals. Community water systems shall, to the extent possible, coordinate with existing Local Emergency Planning Committees established under the Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001 et seq.) when preparing or revising an emergency response plan under this subsection.

(c) Record maintenance

Each community water system shall maintain a copy of the emergency response plan com-

pleted pursuant to subsection (b) of this section for 5 years after such plan has been certified to the Administrator under this section.

(d) Guidance to small public water systems

The Administrator shall provide guidance to community water systems serving a population of less than 3,300 persons on how to conduct vulnerability assessments, prepare emergency response plans, and address threats from terrorist attacks or other intentional actions designed to disrupt the provision of safe drinking water or significantly affect the public health or significantly affect the safety or supply of drinking water provided to communities and individuals.

(e) Funding

(1) There are authorized to be appropriated to carry out this section not more than $160,000,000 for the fiscal year 2002 and such sums as may be necessary for the fiscal years 2003 through 2005.

(2) The Administrator, in coordination with State and local governments, may use funds made available under paragraph (1) to provide financial assistance to community water systems for purposes of compliance with the requirements of subsections (a) and (b) of this section and to community water systems for expenses and contracts designed to address basic security enhancements of critical importance and significant threats to public health and the supply of drinking water as determined by a vulnerability assessment conducted under subsection (a) of this section. Such basic security enhancements may include, but shall not be limited to the following:

(A) the purchase and installation of equipment for detection of intruders;

(B) the purchase and installation of fencing, gating, lighting, or security cameras;

(C) the tamper-proofing of manhole covers, fire hydrants, and valve boxes;

(D) the rekeying of doors and locks;

(E) improvements to electronic, computer, or other automated systems and remote security systems;

(F) participation in training programs, and the purchase of training manuals and guidance materials, relating to security against terrorist attacks;

(G) improvements in the use, storage, or handling of various chemicals; and

(H) security screening of employees or contractor support services.

Funding under this subsection for basic security enhancements shall not include expenditures for personnel costs, or monitoring, operation, or maintenance of facilities, equipment, or systems.

(3) The Administrator may use not more than $5,000,000 from the funds made available under paragraph (1) to make grants to community water systems to assist in responding to and alleviating any vulnerability to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water (including sources of water for such systems) which the Administrator determines to present an immediate and urgent security need.

(4) The Administrator may use not more than $5,000,000 from the funds made available under paragraph (1) to make grants to community water systems serving a population of less than 3,300 persons for activities and projects undertaken in accordance with the guidance provided to such systems under subsection (d) of this section.

(July 1, 1944, ch. 373, title XIV, § 1433, as added Pub. L. 107–188, title IV, § 401, June 12, 2002, 116 Stat. 682.)

REFERENCES IN TEXT

The Emergency Planning and Community Right-to-Know Act, referred to in subsec. (b), probably means the Emergency Planning and Community Right-to-Know Act of 1986, Pub. L. 99–499, title III, Oct. 17, 1986, 100 Stat. 1728, which is classified generally to chapter 116 (§ 11001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11001 of this title and Tables.

§ 300i–3. Contaminant prevention, detection and response

(a) In general

The Administrator, in consultation with the Centers for Disease Control and, after consultation with appropriate departments and agencies of the Federal Government and with State and local governments, shall review (or enter into contracts or cooperative agreements to provide for a review of) current and future methods to prevent, detect and respond to the intentional introduction of chemical, biological or radiological contaminants into community water systems and source water for community water systems, including each of the following:

(1) Methods, means and equipment, including real time monitoring systems, designed to monitor and detect various levels of chemical, biological, and radiological contaminants or indicators of contaminants and reduce the likelihood that such contaminants can be successfully introduced into public water systems and source water intended to be used for drinking water.

(2) Methods and means to provide sufficient notice to operators of public water systems, and individuals served by such systems, of the introduction of chemical, biological or radiological contaminants and the possible effect of such introduction on public health and the safety and supply of drinking water.

(3) Methods and means for developing educational and awareness programs for community water systems.

(4) Procedures and equipment necessary to prevent the flow of contaminated drinking water to individuals served by public water systems.

(5) Methods, means, and equipment which could negate or mitigate deleterious effects on public health and the safety and supply caused by the introduction of contaminants into water intended to be used for drinking water, including an examination of the effectiveness of various drinking water technologies in removing, inactivating, or neutralizing biological, chemical, and radiological contaminants.

(6) Biomedical research into the short-term and long-term impact on public health of various chemical, biological and radiological contaminants that may be introduced into public

water systems through terrorist or other intentional acts.

(b) Funding

For the authorization of appropriations to carry out this section, see section 300i–4(e) of this title.

(July 1, 1944, ch. 373, title XIV, § 1434, as added Pub. L. 107–188, title IV, § 402, June 12, 2002, 116 Stat. 685.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 300i–4. Supply disruption prevention, detection and response

(a) Disruption of supply or safety

The Administrator, in coordination with the appropriate departments and agencies of the Federal Government, shall review (or enter into contracts or cooperative agreements to provide for a review of) methods and means by which terrorists or other individuals or groups could disrupt the supply of safe drinking water or take other actions against water collection, pretreatment, treatment, storage and distribution facilities which could render such water significantly less safe for human consumption, including each of the following:

(1) Methods and means by which pipes and other constructed conveyances utilized in public water systems could be destroyed or otherwise prevented from providing adequate supplies of drinking water meeting applicable public health standards.

(2) Methods and means by which collection, pretreatment, treatment, storage and distribution facilities utilized or used in connection with public water systems and collection and pretreatment storage facilities used in connection with public water systems could be destroyed or otherwise prevented from providing adequate supplies of drinking water meeting applicable public health standards.

(3) Methods and means by which pipes, constructed conveyances, collection, pretreatment, treatment, storage and distribution systems that are utilized in connection with public water systems could be altered or affected so as to be subject to cross-contamination of drinking water supplies.

(4) Methods and means by which pipes, constructed conveyances, collection, pretreatment, treatment, storage and distribution systems that are utilized in connection with public water systems could be reasonably protected from terrorist attacks or other acts intended to disrupt the supply or affect the safety of drinking water.

(5) Methods and means by which information systems, including process controls and supervisory control and data acquisition and cyber systems at community water systems could be disrupted by terrorists or other groups.

(b) Alternative sources

The review under this section shall also include a review of the methods and means by which alternative supplies of drinking water could be provided in the event of the destruction, impairment or contamination of public water systems.

(c) Requirements and considerations

In carrying out this section and section 300i–3 of this title—

(1) the Administrator shall ensure that reviews carried out under this section reflect the needs of community water systems of various sizes and various geographic areas of the United States; and

(2) the Administrator may consider the vulnerability of, or potential for forced interruption of service for, a region or service area, including community water systems that provide service to the National Capital area.

(d) Information sharing

As soon as practicable after reviews carried out under this section or section 300i–3 of this title have been evaluated, the Administrator shall disseminate, as appropriate as determined by the Administrator, to community water systems information on the results of the project through the Information Sharing and Analysis Center, or other appropriate means.

(e) Funding

There are authorized to be appropriated to carry out this section and section 300i–3 of this title not more than $15,000,000 for the fiscal year 2002 and such sums as may be necessary for the fiscal years 2003 through 2005.

(July 1, 1944, ch. 373, title XIV, § 1435, as added Pub. L. 107–188, title IV, § 402, June 12, 2002, 116 Stat. 686.)

PART E—GENERAL PROVISIONS

§ 300j. Assurances of availability of adequate supplies of chemicals necessary for treatment of water

(a) Certification of need application

If any person who uses chlorine, activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to effectively treat such water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, such person may apply to the Administrator for a certification (hereinafter in this section referred to as a ''certification of need'') that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

(b) Application requirements; publication in Federal Register; waiver; certification, issuance or denial

(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require and shall (A) specify the persons the applicant determines are able to provide the chemical or sub-

stance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued) that waiver of such requirements is necessary in order to protect the public health.

(3) Within 30 days after—

(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or

(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application,

the Administrator shall take action either to issue or deny the issuance of a certification of need.

(c) Certification of need; issuance; executive orders; implementation of orders; equitable apportionment of orders; factors considered

(1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision to such person of such amounts of such chemical or substance as the Administrator deems necessary in the certification of need issued for such person. Such order shall apply to such manufactures, producers, processors, distributors, and repackagers of such chemical or substance as the President or his delegate deems necessary and appropriate, except that such order may not apply to any manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use. Persons subject to an order issued under this section shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributors and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, processors, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider—

(A) the geographical relationships and established commercial relationships between such manufacturers, producers, processors, distributors, and repackagers and the persons for whom the orders are issued;

(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and

(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.

(3) Subject to subsection (f) of this section, any person for whom a certification of need has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.

(d) Breach of contracts; defense

There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1) of this section, that such delay or failure was caused solely by compliance with such order.

(e) Penalties for noncompliance with orders; temporary restraining orders and preliminary or permanent injunctions

(1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be fined not more than $5,000 for each such failure to comply.

(2) Whoever fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be subject to a civil penalty of not more than $2,500 for each such failure to comply.

(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c)(1) of this section, he may petition a United States district court to issue a temporary restraining order or preliminary or permanent injunction (including a mandatory injunction) to enforce the provision of such order.

(f) Termination date

No certification of need or order issued under this section may remain in effect for more than one year.

(July 1, 1944, ch. 373, title XIV, § 1441, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1680; amended Pub. L. 95–190, § 7, Nov. 16, 1977, 91 Stat. 1396; Pub. L. 96–63, § 3, Sept. 6, 1979, 93 Stat. 411; Pub. L. 99–339, title III, § 301(d), June 19, 1986, 100 Stat. 664; Pub. L. 104–182, title V, § 501(c), Aug. 6, 1996, 110 Stat. 1691.)

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–182 inserted a period after ''year''.

1986—Subsec. (f). Pub. L. 99–339 substituted ''in effect for more than one year'' for ''in effect— (1) for more than one year, or (2) September 30, 1982, whichever occurs first.''

1979—Subsec. (f)(2). Pub. L. 96–63 substituted ''September 30, 1982'' for ''September 30, 1979''.

1977—Subsec. (f). Pub. L. 95–190 substituted ''September 30, 1979'' for ''June 30, 1977''.

EX. ORD. NO. 11879. DELEGATION OF FUNCTIONS TO SECRETARY OF COMMERCE RELATING TO ORDERS FOR PROVISION OF CHEMICALS OR SUBSTANCES NECESSARY FOR TREATMENT OF WATER

Ex. Ord. No. 11879, Sept. 17, 1975, 40 F.R. 43197, provided:

By virtue of the authority vested in me by Section 1441 of the Public Health Service Act, as amended by the Safe Drinking Water Act [now Safe Drinking Water Act of 1974] (88 Stat. 1680, 42 U.S.C. 300j), and as President of the United States, the Secretary of Commerce is hereby delegated, with power to redelegate to agencies, officers and employees of the Government, the functions of the President contained in said section 1441 [this section]. Those functions shall be administered under regulations or agreements which are identical or compatible with other regulations and agreements, including those provided pursuant to Executive Order No. 10480, as amended [formerly set out as a note under section 2153 of Title 50, Appendix, War and National Defense], for the allocation of similar chemicals or substances.

GERALD R. FORD.

§ 300j–1. Research, technical assistance, information, training of personnel

(a) Specific powers and duties of Administrator

(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—

(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;

(B) improved methods to identify and measure the health effects of contaminants in drinking water;

(C) new methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove contaminants from water;

(D) improved methods for providing a dependably safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing the health related hazards of drinking water; and

(E) improved methods of protecting underground water sources of public water systems from contamination.

(2) INFORMATION AND RESEARCH FACILITIES.—In carrying out this subchapter, the Administrator is authorized to—

(A) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water, together with appropriate recommendations in connection with the information; and

(B) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to this subchapter.

(3) The Administrator shall carry out a study of polychlorinated biphenyl contamination of actual or potential sources of drinking water, contamination of such sources by other substances known or suspected to be harmful to public health, the effects of such contamination, and means of removing, treating, or otherwise controlling such contamination. To assist in carrying out this paragraph, the Administrator is authorized to make grants to public agencies and private nonprofit institutions.

(4) The Administrator shall conduct a survey and study of—

(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply, any public water systems, and

(B) means of control of such waste disposal.

Not later than one year after December 16, 1974, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems.

(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies or can reasonably be expected to supply public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

(9) The Administrator shall conduct a comprehensive study of public water supplies and drinking water sources to determine the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic. Not later than six months after December 16, 1974, he shall transmit to the Congress the initial results of such study, together with such recommendations for further review and corrective action as he deems appropriate.

(10) The Administrator shall carry out a study of the reaction of chlorine and humic acids and the effects of the contaminants which result from such reaction on public health and on the safety of drinking water, including any carcinogenic effect.

(b) Emergency situations

The Administrator is authorized to provide technical assistance and to make grants to States, or publicly owned water systems to assist in responding to and alleviating any emergency situation affecting public water systems (including sources of water for such systems) which the Administrator determines to present substantial danger to the public health. Grants provided under this subsection shall be used only to support those actions which (i) are necessary for preventing, limiting or mitigating danger to the public health in such emergency situation and (ii) would not, in the judgment of the Administrator, be taken without such emergency assistance. The Administrator may carry out the program authorized under this subsection as part of, and in accordance with the terms and conditions of, any other program of assistance for environmental emergencies which the Administrator is authorized to carry out under any other provision of law. No limitation on appropriations for any such other program shall apply to amounts appropriated under this subsection.

(c) Establishment of training programs and grants for training; training fees

The Administrator shall—

(1) provide training for, and make grants for training (including postgraduate training) of (A) personnel of State agencies which have primary enforcement responsibility and of agencies or units of local government to which enforcement responsibilities have been delegated by the State, and (B) personnel who manage or operate public water systems, and

(2) make grants for postgraduate training of individuals (including grants to educational institutions for traineeships) for purposes of qualifying such individuals to work as personnel referred to in paragraph (1).

(3) make grants to, and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or part of the costs (as may be determined by the Administrator) of any project or activity which is designed—

(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for occupations involving the public health aspects of providing safe drinking water;

(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water; or

(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this subchapter (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 300j–2(c) of this title)).

Reasonable fees may be charged for training provided under paragraph (1)(B) to persons other than personnel of State or local agencies but such training shall be provided to personnel of State or local agencies without charge.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out subsection (b) of this section not more than $35,000,000 for the fiscal year 2002 and such sums as may be necessary for each fiscal year thereafter.

(e) Technical assistance

The Administrator may provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water regulations. Such assistance may include circuit-rider and multi-State regional technical assistance programs, training, and preliminary engineering evaluations. The Administrator shall ensure that technical assistance pursuant to this subsection is available in each State. Each nonprofit organization receiving assistance under this subsection shall consult with the State in which the assistance is to be expended or otherwise made available before using assistance to undertake activities to carry out this subsection. There are authorized to be appropriated to the Administrator to be used for such technical assistance $15,000,000 for each of the fiscal years 1997 through 2003. No portion of any State loan fund established under section 300j–12 of this title (relating to State loan funds) and no portion of any funds made available under this subsection may be used for lobbying expenses. Of the total amount appropriated under this subsection, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.

(July 1, 1944, ch. 373, title XIV, § 1442, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1682; amended Pub. L. 95–190, §§ 2(a), 3(a), (b), (e)(1), 4, 9, 10(b), 13, Nov. 16, 1977, 91 Stat. 1393–1395, 1397–1399; Pub. L. 96–63, § 1, Sept. 6, 1979, 93 Stat. 411; Pub. L. 96–502, § 5, Dec. 5, 1980, 94 Stat. 2738; Pub. L. 99–339, title I, § 107, title III, §§ 301(a), (g), 304(a), June 19, 1986, 100 Stat. 651, 663, 665, 667; Pub. L. 104–66, title II, § 2021(h), Dec. 21, 1995, 109 Stat. 727; Pub. L. 104–182, title I, §§ 121, 122, Aug. 6, 1996, 110 Stat. 1651; Pub. L. 107–188, title IV, § 403(4), June 12, 2002, 116 Stat. 687.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–188, § 403(4)(A), which directed substitution of ''this subsection'' for ''this subparagraph'', was executed by making the substitution in three places to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 107–188, § 403(4)(B), amended subsec. (d) generally, substituting provisions relating to authorization of appropriations to carry out subsec. (b) in fiscal year 2002 and subsequent fiscal years for provisions relating to authorization of appropriations to carry out this section in fiscal year 1991 and earlier.

1996—Subsec. (a)(2). Pub. L. 104–182, § 121(4)(A), added heading and text of par. (2) and struck out former par. (2) which read as follows: ''(2)(A) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the establishment and administration of public water system supervision programs (as defined in section 300j–2(c)(1) of this title).''

Subsec. (a)(2)(B). Pub. L. 104–182, § 121(3), redesignated subpar. (B) as subsec. (b) and transferred that subsec. to appear after subsec. (a).

Subsec. (a)(3), (11). Pub. L. 104–182, § 121(4)(B), (C), redesignated par. (11) as (3), transferred that par. to appear before par. (4), and struck out former par. (3) which provided that the Administrator was to conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 300g–1 of this title.

Subsec. (b). Pub. L. 104–182, § 121(2), (3), redesignated subsec. (a)(2)(B) as subsec. (b), transferred that subsec. to appear after subsec. (a), and struck out former subsec. (b) which read as follows: ''In carrying out this subchapter, the Administrator is authorized to—

''(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

''(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this subchapter;''.

Subsecs. (b)(3), (c)(3). Pub. L. 104–182, § 121(1), which directed redesignation of subsec. (b)(3) as par. (3) of subsec. (d) and transfer of that par. to follow par. (2) of subsec. (d), was executed by redesignating subsec. (b)(3) as par. (3) of subsec. (c) and transferring that par. to follow par. (2) of subsec. (c) to reflect the probable intent of Congress and the redesignation of subsec. (d) as (c) by Pub. L. 104–66. See 1995 Amendment note below. Moreover, subsec. (d) does not have any pars.

Subsec. (e). Pub. L. 104–182, § 122, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Administrator is authorized to provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with national drinking water regulations. Such assistance may include 'circuit-rider' programs, training, and preliminary engineering studies. There are authorized to be appropriated to carry out this subsection $10,000,000 for each of the fiscal years 1987 through 1991. Not less than the greater of—

''(1) 3 percent of the amounts appropriated under this subsection, or

''(2) $280,000

shall be utilized for technical assistance to public water systems owned or operated by Indian tribes.''

1995—Subsecs. (c) to (g). Pub. L. 104–66 redesignated subsecs. (d), (f), and (g) as (c), (d), and (e), respectively, and struck out former subsec. (c) which read as follows: ''Not later than eighteen months after November 16, 1977, the Administrator shall submit a report to Congress on the present and projected future availability of an adequate and dependable supply of safe drinking water to meet present and projected future need. Such report shall include an analysis of the future demand for drinking water and other competing uses of water, the availability and use of methods to conserve water or reduce demand, the adequacy of present measures to assure adequate and dependable supplies of safe drinking water, and the problems (financial, legal, or other) which need to be resolved in order to assure the availability of such supplies for the future. Existing information and data complied by the National Water Commission and others shall be utilized to the extent possible.''

1986—Subsec. (e). Pub. L. 99–339, § 304(a), struck out subsec. (e) which authorized the Administrator to make grants to public water systems which are required, under State or local law, to meet standards relating to drinking turbidity which are more stringent than the standards in effect under this subchapter.

Subsec. (f). Pub. L. 99–339, § 301(a), authorized appropriations to carry out subsec. (a)(2)(B) of this section for fiscal years 1987 to 1991 and to carry out provisions of this section other than subsecs. (a)(2)(B) and (g) and provisions relating to research for fiscal years 1987 to 1991.

Subsec. (g). Pub. L. 99–339, § 301(g), authorized appropriations to carry out this subsection of $10,000,000 for each of fiscal years 1987 through 1991 and specified amount to be utilized for public water systems owned or operated by Indian tribes.

Pub. L. 99–339, § 107 added subsec. (g).

1980—Subsecs. (e), (f). Pub. L. 96–502 added subsec. (e) and redesignated former subsec. (e) as (f).

1979—Subsec. (e). Pub. L. 96–63 authorized appropriations of $21,405,000 for fiscal year ending Sept. 30, 1980, $30,000,000 for fiscal year ending Sept. 30, 1981, and $35,000,000 for fiscal year ending Sept. 30, 1982 for purposes other than those of subsec. (a)(2)(B) of this section and for purposes of subsec. (a)(2)(B) of this section, $8,000,000 for fiscal years 1980 through 1982.

1977—Subsec. (a)(2). Pub. L. 95–190, §§ 9, 13, designated existing provisions as subpar. (A), added subpar. (B) and, in subpar. (B) as added, substituted provisions authorizing Administrator to make grants and provide technical assistance for any emergency situation affecting public water systems and criteria for such grants and assistance for provisions authorizing Administrator to make grants and provide technical assistance for any emergency situation respecting drinking water and criteria for determination of such situations.

Subsec. (a)(3). Pub. L. 95–190, § 3(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10), (11). Pub. L. 95–190, § 3(e)(1), added pars. (10) and (11).

Subsec. (b)(3)(C). Pub. L. 95–190, § 10(b), substituted ''300j–2(c)'' for ''300j–2(d)''.

Subsecs. (c), (d). Pub. L. 95–190, §§ 3(b), 4, added subsecs. (c) and (d). Former subsec. (c) redesignated (e).

Subsec. (e). Pub. L. 95–190, §§ 2(a), 3(b), redesignated former subsec. (c) as (e) and inserted provisions authorizing appropriations for fiscal years 1978 and 1979, and provisions relating to appropriations for subsec. (a)(2)(B) of this section and for research.

SCIENTIFIC RESEARCH REVIEW

Section 202 of Pub. L. 104–182 provided that:

''(a) IN GENERAL.—The Administrator shall—

''(1) develop a strategic plan for drinking water research activities throughout the Environmental Protection Agency (in this section referred to as the 'Agency');

''(2) integrate that strategic plan into ongoing Agency planning activities; and

''(3) review all Agency drinking water research to ensure the research—

''(A) is of high quality; and

''(B) does not duplicate any other research being conducted by the Agency.

''(b) PLAN.—The Administrator shall transmit the plan to the Committees on Commerce and Science of the House of Representatives and the Committee on Environment and Public Works of the Senate and the plan shall be made available to the public.''

NATIONAL CENTER FOR GROUND WATER RESEARCH

Section 203 of Pub. L. 104–182 provided that: ''The Administrator of the Environmental Protection Agency, acting through the Robert S. Kerr Environmental Research Laboratory, is authorized to reestablish a partnership between the Laboratory and the National Center for Ground Water Research, a university consortium, to conduct research, training, and technology transfer for ground water quality protection and restoration. No funds are authorized by this section.''

COMPARATIVE HEALTH EFFECTS ASSESSMENT

Section 304(b) of Pub. L. 99–339 provided that: ''The Administrator of the Environmental Protection Agency shall conduct a comparative health effects assessment, using available data, to compare the public health effects (both positive and negative) associated with water treatment chemicals and their byproducts to the public health effects associated with contami-

nants found in public water supplies. Not later than 18 months after the date of the enactment of this Act [June 19, 1986], the Administrator shall submit a report to the Congress setting forth the results of such assessment.''

§ 300j–2. Grants for State programs

(a) Public water systems supervision programs; applications for grants; allotment of sums; waiver of grant restrictions; notice of approval or disapproval of application; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary enforcement responsibility for public water systems within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State. The prohibitions contained in the preceding two sentences shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance, with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1): *Provided*, That the Administrator may, by regulation, reduce such percentage in accordance with the criteria specified in this paragraph: *And provided further*, That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

(5) The prohibition contained in the last sentence of paragraph (2) may be waived by the Administrator with respect to a grant to a State through fiscal year 1979 but such prohibition may only be waived if, in the judgment of the Administrator—

(A) the State is making a diligent effort to assume and maintain primary enforcement responsibility for public water systems within the State;

(B) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility; and

(C) there is reason to believe the State will assume such primary enforcement responsibility by October 1, 1979.

The amount of any grant awarded for the fiscal years 1978 and 1979 pursuant to a waiver under this paragraph may not exceed 75 per centum of the allotment which the State would have received for such fiscal year if it had assumed and maintained such primary enforcement responsibility. The remaining 25 per centum of the amount allotted to such State for such fiscal year shall be retained by the Administrator, and the Administrator may award such amount to such State at such time as the State assumes such responsibility before the beginning of fiscal year 1980. At the beginning of each fiscal years 1979 and 1980 the amounts retained by the Administrator for any preceding fiscal year and not awarded by the beginning of fiscal year 1979 or 1980 to the States to which such amounts were originally allotted may be removed from the original allotment and reallotted for fiscal year 1979 or 1980 (as the case may be) to States which have assumed primary enforcement responsibility by the beginning of such fiscal year.

(6) The Administrator shall notify the State of the approval or disapproval of any application for a grant under this section—

(A) within ninety days after receipt of such application, or

(B) not later than the first day of the fiscal year for which the grant application is made,

whichever is later.

(7) AUTHORIZATION.—For the purpose of making grants under paragraph (1), there are authorized to be appropriated $100,000,000 for each of fiscal years 1997 through 2003.

(8) RESERVATION OF FUNDS BY THE ADMINISTRATOR.—If the Administrator assumes the primary enforcement responsibility of a State public water system supervision program, the Administrator may reserve from funds made available pursuant to this subsection an amount equal to the amount that would otherwise have been provided to the State pursuant to this subsection. The Administrator shall use the funds reserved pursuant to this paragraph to ensure the full and effective administration of a public water system supervision program in the State.

(9) STATE LOAN FUNDS.—

(A) RESERVATION OF FUNDS.—For any fiscal year for which the amount made available to the Administrator by appropriations to carry out this subsection is less than the amount that the Administrator determines is necessary to supplement funds made available pursuant to paragraph (8) to ensure the full and effective administration of a public water system supervision program in a State, the Administrator may reserve from the funds made available to the State under section 300j–12 of this title (relating to State loan funds) an amount that is equal to the amount of the shortfall. This paragraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of August 6, 1996.

(B) DUTY OF ADMINISTRATOR.—If the Administrator reserves funds from the allocation of a State under subparagraph (A), the Adminis-

trator shall carry out in the State each of the activities that would be required of the State if the State had primary enforcement authority under section 300g–2 of this title.

(b) Underground water source protection programs; applications for grants; allotment of sums; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. No grant may be made to any State under paragraph (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title. The prohibition contained in the preceding sentence shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's cost (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, and underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, $7,500,000 for the fiscal year ending June 30, 1977, $10,000,000 for each of the fiscal years 1978 and 1979, $7,795,000 for the fiscal year ending September 30, 1980, $18,000,000 for the fiscal year ending September 30, 1981, and $21,000,000 for the fiscal year ending September 30, 1982. For the purpose of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

Fiscal year:	*Amount*
1987	$19,700,000
1988	19,700,000
1989	20,850,000
1990	20,850,000
1991	20,850,000
1992–2003	15,000,000.

(c) Definitions

For purposes of this section:

(1) The term ''public water system supervision program'' means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title) which are no less stringent than the national primary drinking water regulations under section 300g–1 of this title, and for keeping records and making reports required by section 300g–2(a)(3) of this title.

(2) The term ''underground water source protection program'' means a program for the adoption and enforcement of a program which meets the requirements of regulations under section 300h of this title, and for keeping records and making reports required by section 300h–1(b)(1)(A)(ii) of this title. Such term includes, where applicable, a program which meets the requirements of section 300h–4 of this title.

(d) New York City watershed protection program

(1) In general

The Administrator is authorized to provide financial assistance to the State of New York for demonstration projects implemented as part of the watershed program for the protection and enhancement of the quality of source waters of the New York City water supply system, including projects that demonstrate, assess, or provide for comprehensive monitoring and surveillance and projects necessary to comply with the criteria for avoiding filtration contained in 40 CFR 141.71. Demonstration projects which shall be eligible for financial assistance shall be certified to the Administrator by the State of New York as satisfying the purposes of this subsection. In certifying projects to the Administrator, the State of New York shall give priority to monitoring projects that have undergone peer review.

(2) Report

Not later than 5 years after the date on which the Administrator first provides assistance pursuant to this paragraph, the Governor of the State of New York shall submit a report to the Administrator on the results of projects assisted.

(3) Matching requirements

Federal assistance provided under this subsection shall not exceed 50 percent of the total cost of the protection program being carried out for any particular watershed or ground water recharge area.

(4) Authorization

There are authorized to be appropriated to the Administrator to carry out this subsection for each of fiscal years 2003 through 2010, $15,000,000 for the purpose of providing assistance to the State of New York to carry out paragraph (1).

(July 1, 1944, ch. 373, title XIV, § 1443, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1684; amended Pub. L. 95–190, §§ 2(b), (c), 5(a), Nov. 16, 1977, 91 Stat. 1393, 1395; Pub. L. 96–63, § 2, Sept. 6, 1979, 93 Stat. 411; Pub. L. 96–502, §§ 2(c), 4(d), Dec. 5, 1980, 94 Stat. 2738; Pub. L. 99–339, title III, §§ 301(b), (c), 302(d), June 19, 1986, 100 Stat. 664, 666; Pub. L. 104–182, title I, §§ 120(c), 124, 128, Aug. 6, 1996, 110 Stat. 1651, 1653, 1659; Pub. L. 108–328, § 1, Oct. 16, 2004, 118 Stat. 1273.)

AMENDMENTS

2004—Subsec. (d)(4). Pub. L. 108–328 substituted ''2003 through 2010'' for ''1997 through 2003''.

1996—Subsec. (a)(7). Pub. L. 104–182, § 124(1), inserted heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of making grants under paragraph (1) there are authorized to be

appropriated $15,000,000 for the fiscal year ending June 30, 1976, $25,000,000 for the fiscal year ending June 30, 1977, $35,000,000 for fiscal year 1978, $45,000,000 for fiscal year 1979, $29,450,000 for the fiscal year ending September 30, 1980, $32,000,000 for the fiscal year ending September 30, 1981, and $34,000,000 for the fiscal year ending September 30, 1982. For the purposes of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

''Fiscal year:	*Amount*
1987	$37,200,000
1988	37,200,000
1989	40,150,000
1990	40,150,000
1991	40,150,000''.

Subsec. (a)(8), (9). Pub. L. 104–182, § 124(2), added pars. (8) and (9).

Subsec. (b)(5). Pub. L. 104–182, § 120(c), inserted table item relating to fiscal years 1992 through 2003.

Subsec. (d). Pub. L. 104–182, § 128, added subsec. (d).

1986—Subsec. (a)(2). Pub. L. 99–339, § 302(d)(1), inserted provision that prohibitions contained in preceding two sentences not apply to such grants when made to Indian Tribes.

Subsec. (a)(7). Pub. L. 99–339, § 301(b), authorized appropriations for grants under par. (1) of not more than $37,200,000 for fiscal years 1987 and 1988 and of not more than $40,150,000 for fiscal years 1989 to 1991.

Subsec. (b)(2). Pub. L. 99–339, § 302(d)(2), inserted provision that prohibition contained in preceding sentence not apply to such grants when made to Indian Tribes.

Subsec. (b)(5). Pub. L. 99–339, § 301(c), authorized appropriations for grants under par. (1) of not more than $19,700,000 for fiscal years 1987 and 1988 and of not more than $20,850,000 for fiscal years 1989 to 1991.

1980—Subsec. (b)(2). Pub. L. 96–502, § 4(d), substituted provisions that no grant may be made to any State under par. (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title for provisions that the Administrator may not approve an application of a State for its first grant under par. (1) unless he determines that the State has established or will establish within two years from the date of such grant an underground water source protection, and will, within such two years, assume primary enforcement responsibility for underground water sources within the State and that no grant may be made to a State under par. (1) for any period beginning more than two years after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for underground water sources within the State.

Subsec. (c)(2). Pub. L. 96–502, § 2(c), inserted provision that such term includes, where applicable, a program which meets requirements of section 300h–4 of this title.

1979—Subsec. (a)(7). Pub. L. 96–63, § 2(a), authorized appropriation of $29,450,000, $32,000,000, and $34,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

Subsec. (b)(5). Pub. L. 96–63, § 2(b), authorized appropriation of $7,795,000, $18,000,000, and $21,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

1977—Subsec. (a)(5), (6). Pub. L. 95–190, § 5(a), added pars. (5) and (6). Former par. (5) redesignated (7).

Subsec. (a)(7). Pub. L. 95–190, §§ 2(b), 5(a), redesignated former par. (5) as (7) and authorized appropriations for fiscal years 1978 and 1979.

Subsec. (b)(5). Pub. L. 95–190, § 2(c), inserted provisions authorizing appropriations for fiscal years 1978 and 1979.

§ 300j–3. Special project grants and guaranteed loans

(a) Special study and demonstration project grants

The Administrator may make grants to any person for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology, for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) Authorization of appropriations

For the purposes of making grants under subsections (a) and (b) of this section there are authorized to be appropriated $7,500,000 for the fiscal year ending June 30, 1975; and $7,500,000 for the fiscal year ending June 30, 1976; and $10,000,000 for the fiscal year ending June 30, 1977.

(d) Loan guarantees to public water systems; conditions; indebtedness limitation; regulations

The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to meet national primary drinking water regulations prescribed under section 300g–1 of this title. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines

that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed $50,000. The aggregate amount of indebtedness guaranteed under this subsection may not exceed $50,000,000. The Administrator shall prescribe regulations to carry out this subsection.

(July 1, 1944, ch. 373, title XIV, § 1444, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1685; amended Pub. L. 99–339, title I, § 101(c)(3), June 19, 1986, 100 Stat. 646.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99–339 struck out ''(including interim regulations)'' before ''prescribed'' in first sentence.

§ 300j–3a. Grants to public sector agencies

(a) Assistance for development and demonstration projects

The Administrator of the Environmental Protection Agency shall offer grants to public sector agencies for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health and conservation implications involved in the reclamation, recycling, and reuse of wastewaters for drinking and agricultural use or the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consultation, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(c) Authorization of appropriations

There are authorized to be appropriated for the purposes of this section $25,000,000 for fiscal year 1978.

(Pub. L. 95–155, § 5, Nov. 8, 1977, 91 Stat. 1258; Pub. L. 95–477, § 7(a)(1), Oct. 18, 1978, 92 Stat. 1511.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95–477 inserted ''agricultural use or'' after ''drinking and''.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 7(a)(2) of Pub. L. 95–477 provided that: ''This subsection [amending this section] shall become effective October 1, 1978.''

§ 300j–3b. Contaminant standards or treatment technique guidelines

(1) Not later than nine months after October 18, 1978, the Administrator shall promulgate guidelines establishing supplemental standards or treatment technique requirements for microbiological, viral, radiological, organic, and inorganic contaminants, which guidelines shall be conditions, as provided in paragraph (2), of any grant for a demonstration project for water reclamation, recycling, and reuse funded under section 300j–3a of this title or under section 300j–3(a)(2) of this title, where such project involves direct human consumption of treated wastewater. Such guidelines shall provide for sufficient control of each such contaminant, such that in the Administrator's judgement, no adverse effects on the health of persons may reasonably be anticipated to occur, allowing an adequate margin of safety.

(2) A grant referred to in paragraph (1) for a project which involves direct human consumption of treated wastewater may be awarded on or after the date of promulgation of guidelines under this section only if the applicant demonstrates to the satisfaction of the Administrator that the project—

(A) will comply with all national primary drinking water regulations under section 300g–1 of this title;

(B) will comply with all guidelines under this section; and

(C) will in other respects provide safe drinking water.

Any such grant awarded before the date of promulgation of such guidelines shall be conditioned on the applicant's agreement to comply to the maximum feasible extent with such guidelines as expeditiously as practicable following the date of promulgation thereof.

(3) Guidelines under this section may, in the discretion of the Administrator—

(A) be nationally and uniformly applicable to all projects funded under section 300j–3a of this title or section 300j–1(a)(2)[1] of this title;

(B) vary for different classes or categories of such projects (as determined by the Administrator);

(C) be established and applicable on a project-by-project basis; or

[1] See References in Text note below.

(D) any combination of the above.

(4) Nothing in this section shall be construed to prohibit or delay the award of any grant referred to in paragraph (1) prior to the date of promulgation of such guidelines.

(Pub. L. 95–477, § 7(b), Oct. 18, 1978, 92 Stat. 1511.)

REFERENCES IN TEXT

Section 300j–1(a)(2) of this title, referred to in par. (3)(A), was amended by Pub. L. 104–182, title I, § 121(3), (4)(A), Aug. 6, 1996, 110 Stat. 1651, to redesignate par. (2)(B) as subsec. (b) of section 300j–1, strike par. (2)(A), and add a new par. (2) relating to information and research facilities.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the Public Health Service Act which comprises this chapter.

§ 300j–3c. National assistance program for water infrastructure and watersheds

(a) Technical and financial assistance

The Administrator of the Environmental Protection Agency may provide technical and financial assistance in the form of grants to States (1) for the construction, rehabilitation, and improvement of water supply systems, and (2) consistent with nonpoint source management programs established under section 1329 of title 33, for source water quality protection programs to address pollutants in navigable waters for the purpose of making such waters usable by water supply systems.

(b) Limitation

Not more than 30 percent of the amounts appropriated to carry out this section in a fiscal year may be used for source water quality protection programs described in subsection (a)(2) of this section.

(c) Condition

As a condition to receiving assistance under this section, a State shall ensure that such assistance is carried out in the most cost-effective manner, as determined by the State.

(d) Authorization of appropriations

(1) Unconditional authorization

There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 1997 through 2003. Such sums shall remain available until expended.

(2) Conditional authorization

In addition to amounts authorized under paragraph (1), there are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 1997 through 2003, provided that such authorization shall be in effect for a fiscal year only if at least 75 percent of the total amount of funds authorized to be appropriated for such fiscal year by section 300j–12(m) of this title are appropriated.

(e) Acquisition of lands

Assistance provided with funds made available under this section may be used for the acquisition of lands and other interests in lands; however, nothing in this section authorizes the acquisition of lands or other interests in lands from other than willing sellers.

(f) Federal share

The Federal share of the cost of activities for which grants are made under this section shall be 50 percent.

(g) Definitions

In this section, the following definitions apply:

(1) State

The term ''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(2) Water supply system

The term ''water supply system'' means a system for the provision to the public of piped water for human consumption if such system has at least 15 service connections or regularly serves at least 25 individuals and a draw and fill system for the provision to the public of water for human consumption. Such term does not include a system owned by a Federal agency. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (B) any collection or pretreatment facilities not under such control that are used primarily in connection with such system.

(Pub. L. 104–182, title IV, § 401, Aug. 6, 1996, 110 Stat. 1690.)

CODIFICATION

Section was enacted as part of the Safe Drinking Water Act Amendments of 1996, and not as part of the Public Health Service Act which comprises this chapter.

§ 300j–4. Records and inspections

(a) Provision of information to Administrator; monitoring program for unregulated contaminants

(1)(A) Every person who is subject to any requirement of this subchapter or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter, in administering any program of financial assistance under this subchapter, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks. In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.

(B) Every person who is subject to a national primary drinking water regulation under section 300g–1 of this title shall provide such information as the Administrator may reasonably require, after consultation with the State in which

such person is located if such State has primary enforcement responsibility for public water systems, on a case-by-case basis, to determine whether such person has acted or is acting in compliance with this subchapter.

(C) Every person who is subject to a national primary drinking water regulation under section 300g–1 of this title shall provide such information as the Administrator may reasonably require to assist the Administrator in establishing regulations under section 300g–1 of this title, after consultation with States and suppliers of water. The Administrator may not require under this subparagraph the installation of treatment equipment or process changes, the testing of treatment technology, or the analysis or processing of monitoring samples, except where the Administrator provides the funding for such activities. Before exercising this authority, the Administrator shall first seek to obtain the information by voluntary submission.

(D) The Administrator shall not later than 2 years after August 6, 1996, after consultation with public health experts, representatives of the general public, and officials of State and local governments, review the monitoring requirements for not fewer than 12 contaminants identified by the Administrator, and promulgate any necessary modifications.

(2) MONITORING PROGRAM FOR UNREGULATED CONTAMINANTS.—

(A) ESTABLISHMENT.—The Administrator shall promulgate regulations establishing the criteria for a monitoring program for unregulated contaminants. The regulations shall require monitoring of drinking water supplied by public water systems and shall vary the frequency and schedule for monitoring requirements for systems based on the number of persons served by the system, the source of supply, and the contaminants likely to be found, ensuring that only a representative sample of systems serving 10,000 persons or fewer are required to monitor.

(B) MONITORING PROGRAM FOR CERTAIN UNREGULATED CONTAMINANTS.—

(i) INITIAL LIST.—Not later than 3 years after August 6, 1996, and every 5 years thereafter, the Administrator shall issue a list pursuant to subparagraph (A) of not more than 30 unregulated contaminants to be monitored by public water systems and to be included in the national drinking water occurrence data base maintained pursuant to subsection (g) of this section.

(ii) GOVERNORS' PETITION.—The Administrator shall include among the list of contaminants for which monitoring is required under this paragraph each contaminant recommended in a petition signed by the Governor of each of 7 or more States, unless the Administrator determines that the action would prevent the listing of other contaminants of a higher public health concern.

(C) MONITORING PLAN FOR SMALL AND MEDIUM SYSTEMS.—

(i) IN GENERAL.—Based on the regulations promulgated by the Administrator, each State may develop a representative monitoring plan to assess the occurrence of unregulated contaminants in public water systems that serve a population of 10,000 or fewer in that State. The plan shall require monitoring for systems representative of different sizes, types, and geographic locations in the State.

(ii) GRANTS FOR SMALL SYSTEM COSTS.—From funds reserved under section 300j–12(*o*) of this title or appropriated under subparagraph (H), the Administrator shall pay the reasonable cost of such testing and laboratory analysis as are necessary to carry out monitoring under the plan.

(D) MONITORING RESULTS.—Each public water system that conducts monitoring of unregulated contaminants pursuant to this paragraph shall provide the results of the monitoring to the primary enforcement authority for the system.

(E) NOTIFICATION.—Notification of the availability of the results of monitoring programs required under paragraph (2)(A) shall be given to the persons served by the system.

(F) WAIVER OF MONITORING REQUIREMENT.—The Administrator shall waive the requirement for monitoring for a contaminant under this paragraph in a State, if the State demonstrates that the criteria for listing the contaminant do not apply in that State.

(G) ANALYTICAL METHODS.—The State may use screening methods approved by the Administrator under subsection (i) of this section in lieu of monitoring for particular contaminants under this paragraph.

(H) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $10,000,000 for each of the fiscal years 1997 through 2003.

(b) Entry of establishments, facilities, or other property; inspections; conduct of certain tests; audit and examination of records; entry restrictions; prohibition against informing of a proposed entry

(1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to (A) a national primary drinking water regulation prescribed under section 300g–1 of this title, (B) an applicable underground injection control program, or (C) any requirement to monitor an unregulated contaminant pursuant to subsection (a) of this section, or person in charge of any of the property of such supplier or other person referred to in clause (A), (B), or (C), is authorized to enter any establishment, facility, or other property of such supplier or other person in order to determine whether such supplier or other person has acted or is acting in compliance with this subchapter, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection (a) of this section or

which are pertinent to any financial assistance under this subchapter.

(2) No entry may be made under the first sentence of paragraph (1) in an establishment, facility, or other property of a supplier of water or other person subject to a national primary drinking water regulation if the establishment, facility, or other property is located in a State which has primary enforcement responsibility for public water systems unless, before written notice of such entry is made, the Administrator (or his representative) notifies the State agency charged with responsibility for safe drinking water of the reasons for such entry. The Administrator shall, upon a showing by the State agency that such an entry will be detrimental to the administration of the State's program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. No State agency which receives notice under this paragraph of an entry proposed to be made under paragraph (1) may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; and if a State agency so uses such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency has provided him satisfactory assurances that it will no longer so use information contained in a notice under this paragraph.

(c) Penalty

Whoever fails or refuses to comply with any requirement of subsection (a) of this section or to allow the Administrator, the Comptroller General, or representatives of either, to enter and conduct any audit or inspection authorized by subsection (b) of this section shall be subject to a civil penalty of not to exceed $25,000.

(d) Confidential information; trade secrets and secret processes; information disclosure; "information required under this section" defined

(1) Subject to paragraph (2), upon a showing satisfactory to the Administrator by any person that any information required under this section from such person, if made public, would divulge trade secrets or secret processes of such person, the Administrator shall consider such information confidential in accordance with the purposes of section 1905 of title 18. If the applicant fails to make a showing satisfactory to the Administrator, the Administrator shall give such applicant thirty days' notice before releasing the information to which the application relates (unless the public health or safety requires an earlier release of such information).

(2) Any information required under this section (A) may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this subchapter or to committees of the Congress, or when relevant in any proceeding under this subchapter, and (B) shall be disclosed to the extent it deals with the level of contaminants in drinking water. For purposes of this subsection the term ''information required under this section'' means any papers, books, documents, or information, or any particular part thereof, reported to or otherwise obtained by the Administrator under this section.

(e) "Grantee" and "person" defined

For purposes of this section, (1) the term ''grantee'' means any person who applies for or receives financial assistance, by grant, contract, or loan guarantee under this subchapter, and (2) the term ''person'' includes a Federal agency.

(f) Information regarding drinking water coolers

The Administrator may utilize the authorities of this section for purposes of part F of this subchapter. Any person who manufactures, imports, sells, or distributes drinking water coolers in interstate commerce shall be treated as a supplier of water for purposes of applying the provisions of this section in the case of persons subject to part F of this subchapter.

(g) Occurrence data base

(1) In general

Not later than 3 years after August 6, 1996, the Administrator shall assemble and maintain a national drinking water contaminant occurrence data base, using information on the occurrence of both regulated and unregulated contaminants in public water systems obtained under subsection (a)(1)(A) of this section or subsection (a)(2) of this section and reliable information from other public and private sources.

(2) Public input

In establishing the occurrence data base, the Administrator shall solicit recommendations from the Science Advisory Board, the States, and other interested parties concerning the development and maintenance of a national drinking water contaminant occurrence data base, including such issues as the structure and design of the data base, data input parameters and requirements, and the use and interpretation of data.

(3) Use

The data shall be used by the Administrator in making determinations under section 300g–1(b)(1) of this title with respect to the occurrence of a contaminant in drinking water at a level of public health concern.

(4) Public recommendations

The Administrator shall periodically solicit recommendations from the appropriate officials of the National Academy of Sciences and the States, and any person may submit recommendations to the Administrator, with respect to contaminants that should be included in the national drinking water contaminant occurrence data base, including recommendations with respect to additional unregulated contaminants that should be listed under subsection (a)(2) of this section. Any recommendation submitted under this clause shall be accompanied by reasonable documentation that—

(A) the contaminant occurs or is likely to occur in drinking water; and

(B) the contaminant poses a risk to public health.

(5) Public availability

The information from the data base shall be available to the public in readily accessible form.

(6) Regulated contaminants

With respect to each contaminant for which a national primary drinking water regulation has been established, the data base shall include information on the detection of the contaminant at a quantifiable level in public water systems (including detection of the contaminant at levels not constituting a violation of the maximum contaminant level for the contaminant).

(7) Unregulated contaminants

With respect to contaminants for which a national primary drinking water regulation has not been established, the data base shall include—

(A) monitoring information collected by public water systems that serve a population of more than 10,000, as required by the Administrator under subsection (a) of this section;

(B) monitoring information collected from a representative sampling of public water systems that serve a population of 10,000 or fewer; and

(C) other reliable and appropriate monitoring information on the occurrence of the contaminants in public water systems that is available to the Administrator.

(h) Availability of information on small system technologies

For purposes of sections 300g–1(b)(4)(E) and 300g–4(e) of this title (relating to small system variance program), the Administrator may request information on the characteristics of commercially available treatment systems and technologies, including the effectiveness and performance of the systems and technologies under various operating conditions. The Administrator may specify the form, content, and submission date of information to be submitted by manufacturers, States, and other interested persons for the purpose of considering the systems and technologies in the development of regulations or guidance under sections 300g–1(b)(4)(E) and 300g–4(e) of this title.

(i) Screening methods

The Administrator shall review new analytical methods to screen for regulated contaminants and may approve such methods as are more accurate or cost-effective than established reference methods for use in compliance monitoring.

(July 1, 1944, ch. 373, title XIV, § 1445, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1686; amended Pub. L. 95–190, § 12(c), (d), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 99–339, title I, § 106, title III, § 301(h), June 19, 1986, 100 Stat. 650, 665; Pub. L. 100–572, § 5, Oct. 31, 1988, 102 Stat. 2889; Pub. L. 104–182, title I, §§ 111(b), 125(a), (c), (d), 126, Aug. 6, 1996, 110 Stat. 1633, 1653, 1656–1658.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–182, § 125(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 300g–1 of this title or to an applicable underground injection control program (as defined in section 300h–1(c) of this title), who is or may be subject to the permit requirement of section 300h–3 of this title, or to an order issued under section 300j of this title, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter in administering any program of financial assistance under this subchapter, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks. In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.''

Subsec. (a)(2) to (8). Pub. L. 104–182, § 125(c), added heading and text of par. (2) and struck out former pars. (2) to (8) which directed Administrator, not later than 18 months after June 19, 1986, to promulgate regulations requiring every public water system to conduct a monitoring program for unregulated contaminants, specified contents of regulations, provided for reporting and notification of availability of results of monitoring, waiver of monitoring requirements, and compliance by small systems, and authorized appropriations for fiscal year ending Sept. 30, 1987.

Subsec. (g). Pub. L. 104–182, § 126, added subsec. (g).

Subsec. (h). Pub. L. 104–182, § 111(b), added subsec. (h).

Subsec. (i). Pub. L. 104–182, § 125(d), added subsec. (i).

1988—Subsec. (f). Pub. L. 100–572 added subsec. (f).

1986—Subsec. (a)(1). Pub. L. 99–339, § 106(a), (b), designated existing provisions as par. (1) and inserted provisions permitting Administrator to consider size of system and contaminants likely to be found.

Subsec. (a)(2) to (7). Pub. L. 99–339, § 106(b), added pars. (2) to (7).

Subsec. (a)(8). Pub. L. 99–339, § 301(h), added par. (8).

Subsec. (c). Pub. L. 99–339, § 106(c), substituted ''shall be subject to a civil penalty of not to exceed $25,000'' for ''may be fined not more than $5,000''.

1977—Subsec. (a). Pub. L. 95–190, § 12(c), inserted provisions relating to evaluating and advising of health risks of unregulated contaminants.

Subsec. (b)(1). Pub. L. 95–190, § 12(d), designated existing provisions as cls. (A) and (B) and added cl. (C) and reference to such cls. (A) to (C).

§ 300j–5. National Drinking Water Advisory Council

(a) Establishment; membership; representation of interests; term of office, vacancies; reappointment

There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned with water hygiene and public water supply; and five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply, of which two such members shall be associated with small, rural public water systems. Each member of the Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(2) the terms of the members first taking office shall expire as follows: Five shall expire

three years after December 16, 1974, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.

The members of the Council shall be eligible for reappointment.

(b) Functions

The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this subchapter.

(c) Compensation and allowances; travel expenses

Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b)[1] of title 5.

(d) Advisory committee termination provision inapplicable

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

(July 1, 1944, ch. 373, title XIV, § 1446, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1688; amended Pub. L. 104–182, title I, § 127, Aug. 6, 1996, 110 Stat. 1659.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (c), was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14(a) of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–182 inserted ‘‘, of which two such members shall be associated with small, rural public water systems’’ before period at end of second sentence.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

[1] See References in Text note below.

§ 300j–6. Federal agencies

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(1) owning or operating any facility in a wellhead protection area;

(2) engaged in any activity at such facility resulting, or which may result, in the contamination of water supplies in any such area;

(3) owning or operating any public water system; or

(4) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water (within the meaning of section 300h(d)(2) of this title),

shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting the protection of such wellhead areas, respecting such public water systems, and respecting any underground injection in the same manner and to the same extent as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local regulatory program respecting the protection of wellhead areas or public water systems or respecting any underground injection. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court[1] with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty

[1] So in original. Probably should not be capitalized.

under any Federal, State, interstate, or local law concerning the protection of wellhead areas or public water systems or concerning underground injection with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State requirement adopted pursuant to this subchapter, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to exceed 1 year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative penalty orders

(1) In general

If the Administrator finds that a Federal agency has violated an applicable requirement under this subchapter, the Administrator may issue a penalty order assessing a penalty against the Federal agency.

(2) Penalties

The Administrator may, after notice to the agency, assess a civil penalty against the agency in an amount not to exceed $25,000 per day per violation.

(3) Procedure

Before an administrative penalty order issued under this subsection becomes final, the Administrator shall provide the agency an opportunity to confer with the Administrator and shall provide the agency notice and an opportunity for a hearing on the record in accordance with chapters 5 and 7 of title 5.

(4) Public review

(A) In general

Any interested person may obtain review of an administrative penalty order issued under this subsection. The review may be obtained in the United States District Court for the District of Columbia or in the United States District Court for the district in which the violation is alleged to have occurred by the filing of a complaint with the court within the 30-day period beginning on the date the penalty order becomes final. The person filing the complaint shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General.

(B) Record

The Administrator shall promptly file in the court a certified copy of the record on which the order was issued.

(C) Standard of review

The court shall not set aside or remand the order unless the court finds that there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.

(D) Prohibition on additional penalties

The court may not impose an additional civil penalty for a violation that is subject to the order unless the court finds that the assessment constitutes an abuse of discretion by the Administrator.

(c) Limitation on State use of funds collected from Federal Government

Unless a State law in effect on August 6, 1996, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(d) Indian rights and sovereignty as unaffected; "Federal agency" defined

(1) Nothing in the Safe Drinking Water Amendments of 1977 shall be construed to alter or affect the status of American Indian lands or water rights nor to waive any sovereignty over Indian lands guaranteed by treaty or statute.

(2) For the purposes of this chapter, the term ''Federal agency'' shall not be construed to refer to or include any American Indian tribe, nor to the Secretary of the Interior in his capacity as trustee of Indian lands.

(e) Washington Aqueduct

The Secretary of the Army shall not pass the cost of any penalty assessed under this subchapter on to any customer, user, or other purchaser of drinking water from the Washington Aqueduct system, including finished water from the Dalecarlia or McMillan treatment plant.

(July 1, 1944, ch. 373, title XIV, § 1447, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1688; amended Pub. L. 95–190, § 8(a), (d), Nov. 16, 1977, 91 Stat. 1396, 1397; Pub. L. 104–182, title I, § 129(a), (c), Aug. 6, 1996, 110 Stat. 1660, 1662.)

REFERENCES IN TEXT

The Safe Drinking Water Amendments of 1977, referred to in subsec. (d)(1), is Pub. L. 95–190, Nov. 16, 1977, 91 Stat. 1393. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

1996—Subsecs. (a) to (d). Pub. L. 104–182, § 129(a), added subsecs. (a) to (c), redesignated former subsec. (c) as

(d), and struck out former subsecs. (a) and (b) which related to compliance by Federal agencies with Federal, State, and local requirements respecting provision of safe drinking water and respecting underground injection programs, liability for civil penalties, and waiver of compliance requirements when necessary in interest of national security.

Subsec. (e). Pub. L. 104–182, § 129(c), added subsec. (e).

1977—Subsec. (a). Pub. L. 95–190, § 8(a), substituted provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems, or engaged in underground injection activities with Federal, State, and local requirements, etc., for provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems with national primary drinking water regulations.

Subsec. (c). Pub. L. 95–190, § 8(d), added subsec. (c).

§ 300j–7. Judicial review

(a) Courts of appeals; petition for review: actions respecting regulations; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

A petition for review of—

(1) actions pertaining to the establishment of national primary drinking water regulations (including maximum contaminant level goals) may be filed only in the United States Court of Appeals for the District of Columbia circuit; and

(2) any other final action of the Administrator under this chapter may be filed in the circuit in which the petitioner resides or transacts business which is directly affected by the action.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or any other final Agency action with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement. In any petition concerning the assessment of a civil penalty pursuant to section 300g–3(g)(3)(B) of this title, the petitioner shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General. The court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in the record to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.

(b) District courts; petition for review: actions respecting variances or exemptions; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 300g–4 or 300g–5 of this title or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) Judicial order for additional evidence before Administrator; modified or new findings; recommendation for modification or setting aside of original determination

In any judicial proceeding in which review is sought of a determination under this subchapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such term and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(July 1, 1944, ch. 373, title XIV, § 1448, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1689; amended Pub. L. 99–339, title III, § 303, June 19, 1986, 100 Stat. 667; Pub. L. 104–182, title I, § 113(c), Aug. 6, 1996, 110 Stat. 1636.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–182, § 113(c)(2), (3), in concluding provisions, substituted ''or any other final Agency action'' for ''or issuance of the order'' and inserted at end ''In any petition concerning the assessment of a civil penalty pursuant to section 300g–3(g)(3)(B) of this title, the petitioner shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General. The court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in the record to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.''

Subsec. (a)(2). Pub. L. 104–182, § 113(c)(1), substituted ''any other final action'' for ''any other action''.

1986—Subsec. (a)(1). Pub. L. 99–339, § 303(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''action of the Administrator in promulgating any national primary drinking water regulation under section 300g–1 of this title, any regulation under section 300g–2(b)(1) of this title, any regulation under sec-

tion 300g–3(c) of this title, any regulation for State underground injection control programs under section 300h of this title, or any general regulation for the administration of this subchapter may be filed only in the United States Court of Appeals for the District of Columbia Circuit; and''.

Subsec. (a)(2). Pub. L. 99–339, § 303(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''action of the Administrator in promulgating any other regulation under this subchapter, issuing any order under this subchapter, or making any determination under this subchapter may be filed only in the United States court of appeals for the appropriate circuit.''

§ 300j–8. Citizen's civil action

(a) Persons subject to civil action; jurisdiction of enforcement proceedings

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this subchapter;

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this subchapter which is not discretionary with the Administrator; or

(3) for the collection of a penalty by the United States Government (and associated costs and interest) against any Federal agency that fails, by the date that is 18 months after the effective date of a final order to pay a penalty assessed by the Administrator under section 300h–8(b)[1] of this title, to pay the penalty.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this subchapter which occurred within the 27-month period beginning on the first day of the month in which this subchapter is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this subchapter or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

(b) Conditions for commencement of civil action; notice

No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this subchapter—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator; or

(3) under subsection (a)(3) of this section prior to 60 days after the plaintiff has given notice of such action to the Attorney General and to the Federal agency.

Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation. No person may commence a civil action under subsection (a) of this section to require a State to prescribe a schedule under section 300g–4 or 300g–5 of this title for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

(c) Intervention of right

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) Costs; attorney fees; expert witness fees; filing of bond

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Availability of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this subchapter or to seek any other relief. Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from—

(1) bringing any action or obtaining any remedy or sanction in any State or local court, or

(2) bringing any administrative action or obtaining any administrative remedy or sanction,

against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this subchapter, except as provided in section 300j–7 of this title. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, see section 300j–6 of this title.

(July 1, 1944, ch. 373, title XIV, § 1449, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1690;

[1] So in original. Probably should be section ''300j–6(b)''.

amended Pub. L. 95–190, § 8(c), Nov. 16, 1977, 91 Stat. 1397; Pub. L. 104–182, title I, § 129(b), Aug. 6, 1996, 110 Stat. 1662.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–182, § 129(b)(1), added par. (3).

Subsec. (b)(3). Pub. L. 104–182, § 129(b)(2), added par. (3).

1977—Subsec. (e). Pub. L. 95–190 inserted provisions relating to suits by State or local governments for enforcement of safe drinking water, etc., requirements.

§ 300j–9. General provisions

(a) Regulations; delegation of functions

(1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this subchapter.

(2) The Administrator may delegate any of his functions under this subchapter (other than prescribing regulations) to any officer or employee of the Agency.

(b) Utilization of officers and employees of Federal agencies

The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as he deems necessary to assist him in carrying out the purposes of this subchapter.

(c) Assignment of Agency personnel to State or interstate agencies

Upon the request of a State or interstate agency, the Administrator may assign personnel of the Agency to such State or interstate agency for the purposes of carrying out the provisions of this subchapter.

(d) Payments of grants; adjustments; advances; reimbursement; installments; conditions; eligibility for grants; "nonprofit agency or institution" defined

(1) The Administrator may make payments of grants under this subchapter (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as he may determine.

(2) Financial assistance may be made available in the form of grants only to individuals and nonprofit agencies or institutions. For purposes of this paragraph, the term ''nonprofit agency or institution'' means an agency or institution no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

(e) Labor standards

The Administrator shall take such action as may be necessary to assure compliance with provisions of sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(f) Appearance and representation of Administrator through Attorney General or attorney appointees

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this subchapter to which the Administrator is a party. Unless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him.

(g) Authority of Administrator under other provisions unaffected

The provisions of this subchapter shall not be construed as affecting any authority of the Administrator under part G of subchapter II of this chapter.

(h) Reports to Congressional committees; review by Office of Management and Budget: submittal of comments to Congressional committees

Not later than April 1 of each year, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report respecting the activities of the Agency under this subchapter and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this subchapter. The Office of Management and Budget may review any report required by this subsection before its submission to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to such committees of Congress its comments respecting any such report.

(i) Discrimination prohibition; filing of complaint; investigation; orders of Secretary; notice and hearing; settlements; attorneys' fees; judicial review; filing of petition; procedural requirements; stay of orders; exclusiveness of remedy; civil actions for enforcement of orders; appropriate relief; mandamus proceedings; prohibition inapplicable to undirected but deliberate violations

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,

(B) testified or is about to testify in any such proceeding, or

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this subchapter.

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the ''Secretary'') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of title 28.

(6) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this subchapter.

(July 1, 1944, ch. 373, title XIV, § 1450, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1691; amended Pub. L. 98–620, title IV, § 402(38), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 103–437, § 15(a)(2), Nov. 2, 1994, 108 Stat. 4591.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), referred to in subsec. (e), is set out in the Appendix to Title 5, Government Organization and Employees.

Part G of subchapter II of this chapter, referred to in subsec. (g), is classified to section 264 of this title.

CODIFICATION

In subsec. (e), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a—276a(5))'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1994—Subsec. (h). Pub. L. 103–437 substituted ''Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House'' for ''Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House''.

1984—Subsec. (i)(4). Pub. L. 98–620 struck out provision which required civil actions filed under par. (4) to be heard and decided expeditiously.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 300j–10. Appointment of scientific, etc., personnel by Administrator of Environmental Protection Agency for implementation of responsibilities; compensation

To the extent that the Administrator of the Environmental Protection Agency deems such action necessary to the discharge of his functions under title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.] (relating to safe drinking water) and under other provisions of law, he may appoint personnel to fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5332 of title 5.

(Pub. L. 95–190, § 11(b), Nov. 16, 1977, 91 Stat. 1398.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XIV of the Public Health Service Act is classified generally to this subchapter (§ 300f et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The civil service laws, referred to in text, are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

Section was enacted as part of the Safe Drinking Water Amendments of 1977, and not as part of the Public Health Service Act which comprises this chapter.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 300j–11. Indian Tribes

(a) In general

Subject to the provisions of subsection (b) of this section, the Administrator—

(1) is authorized to treat Indian Tribes as States under this subchapter,

(2) may delegate to such Tribes primary enforcement responsibility for public water systems and for underground injection control, and

(3) may provide such Tribes grant and contract assistance to carry out functions provided by this subchapter.

(b) EPA regulations

(1) Specific provisions

The Administrator shall, within 18 months after June 19, 1986, promulgate final regulations specifying those provisions of this subchapter for which it is appropriate to treat Indian Tribes as States. Such treatment shall be authorized only if:

(A) the Indian Tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;

(B) the functions to be exercised by the Indian Tribe are within the area of the Tribal Government's jurisdiction; and

(C) the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this subchapter and of all applicable regulations.

(2) Provisions where treatment as State inappropriate

For any provision of this subchapter where treatment of Indian Tribes as identical to States is inappropriate, administratively infeasible or otherwise inconsistent with the purposes of this subchapter, the Administrator may include in the regulations promulgated under this section, other means for administering such provision in a manner that will achieve the purpose of the provision. Nothing in this section shall be construed to allow Indian Tribes to assume or maintain primary enforcement responsibility for public water systems or for underground injection control in a manner less protective of the health of persons than such responsibility may be assumed or maintained by a State. An Indian tribe[1] shall not be required to exercise criminal enforcement jurisdiction for purposes of complying with the preceding sentence.

(July 1, 1944, ch. 373, title XIV, § 1451, as added Pub. L. 99–339, title III, § 302(a), June 19, 1986, 100 Stat. 665; amended Pub. L. 104–182, title V, § 501(f)(6), Aug. 6, 1996, 110 Stat. 1692.)

AMENDMENTS

1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300j–12. State revolving loan funds

(a) General authority

(1) Grants to States to establish State loan funds

(A) In general

The Administrator shall offer to enter into agreements with eligible States to make capitalization grants, including letters of credit, to the States under this subsection to further the health protection objectives of this subchapter, promote the efficient use of fund resources, and for other purposes as are specified in this subchapter.

(B) Establishment of fund

To be eligible to receive a capitalization grant under this section, a State shall establish a drinking water treatment revolving loan fund (referred to in this section as a "State loan fund") and comply with the other requirements of this section. Each grant to a State under this section shall be deposited in the State loan fund established by the State, except as otherwise provided in this section and in other provisions of this subchapter. No funds authorized by other provisions of this subchapter to be used for other purposes specified in this subchapter shall be deposited in any State loan fund.

[1] So in original. Probably should be capitalized.

(C) Extended period

The grant to a State shall be available to the State for obligation during the fiscal year for which the funds are authorized and during the following fiscal year, except that grants made available from funds provided prior to fiscal year 1997 shall be available for obligation during each of the fiscal years 1997 and 1998.

(D) Allotment formula

Except as otherwise provided in this section, funds made available to carry out this section shall be allotted to States that have entered into an agreement pursuant to this section (other than the District of Columbia) in accordance with—

(i) for each of fiscal years 1995 through 1997, a formula that is the same as the formula used to distribute public water system supervision grant funds under section 300j–2 of this title in fiscal year 1995, except that the minimum proportionate share established in the formula shall be 1 percent of available funds and the formula shall be adjusted to include a minimum proportionate share for the State of Wyoming and the District of Columbia; and

(ii) for fiscal year 1998 and each subsequent fiscal year, a formula that allocates to each State the proportional share of the State needs identified in the most recent survey conducted pursuant to subsection (h) of this section, except that the minimum proportionate share provided to each State shall be the same as the minimum proportionate share provided under clause (i).

(E) Reallotment

The grants not obligated by the last day of the period for which the grants are available shall be reallotted according to the appropriate criteria set forth in subparagraph (D), except that the Administrator may reserve and allocate 10 percent of the remaining amount for financial assistance to Indian Tribes in addition to the amount allotted under subsection (i) of this section and none of the funds reallotted by the Administrator shall be reallotted to any State that has not obligated all sums allotted to the State pursuant to this section during the period in which the sums were available for obligation.

(F) Nonprimacy States

The State allotment for a State not exercising primary enforcement responsibility for public water systems shall not be deposited in any such fund but shall be allotted by the Administrator under this subparagraph. Pursuant to section 300j–2(a)(9)(A) of this title such sums allotted under this subparagraph shall be reserved as needed by the Administrator to exercise primary enforcement responsibility under this subchapter in such State and the remainder shall be reallotted to States exercising primary enforcement responsibility for public water systems for deposit in such funds. Whenever the Administrator makes a final determination pursuant to section 300g–2(b) of this title that the requirements of section 300g–2(a) of this title are no longer being met by a State, additional grants for such State under this subchapter shall be immediately terminated by the Administrator. This subparagraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of August 6, 1996.

(G) Other programs

(i) New system capacity

Beginning in fiscal year 1999, the Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section to a State unless the State has met the requirements of section 300g–9(a) of this title (relating to capacity development) and shall withhold 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for fiscal year 2003 if the State has not complied with the provisions of section 300g–9(c) of this title (relating to capacity development strategies). Not more than a total of 20 percent of the capitalization grants made to a State in any fiscal year may be withheld under the preceding provisions of this clause. All funds withheld by the Administrator pursuant to this clause shall be reallotted by the Administrator on the basis of the same ratio as is applicable to funds allotted under subparagraph (D). None of the funds reallotted by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g–9 of this title (relating to capacity development).

(ii) Operator certification

The Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section unless the State has met the requirements of 300g–8[1] of this title (relating to operator certification). All funds withheld by the Administrator pursuant to this clause shall be reallotted by the Administrator on the basis of the same ratio as applicable to funds allotted under subparagraph (D). None of the funds reallotted by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g–8 of this title (relating to operator certification).

(2) Use of funds

Except as otherwise authorized by this subchapter, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies. Financial assistance under this sec-

[1] So in original. Probably should be preceded by ''section''.

tion may be used by a public water system only for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 300g–1 of this title or otherwise significantly further the health protection objectives of this subchapter. The funds may also be used to provide loans to a system referred to in section 300f(4)(B) of this title for the purpose of providing the treatment described in section 300f(4)(B)(i)(III) of this title. The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller. Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

(3) Limitation

(A) In general

Except as provided in subparagraph (B), no assistance under this section shall be provided to a public water system that—

(i) does not have the technical, managerial, and financial capability to ensure compliance with the requirements of this subchapter; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.

(B) Restructuring

A public water system described in subparagraph (A) may receive assistance under this section if—

(i) the use of the assistance will ensure compliance; and

(ii) if subparagraph (A)(i) applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) if the State determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of this subchapter over the long term.

(C) Review

Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance, the State shall conduct a review to determine whether subparagraph (A)(i) applies to the system.

(b) Intended use plans

(1) In general

After providing for public review and comment, each State that has entered into a capitalization agreement pursuant to this section shall annually prepare a plan that identifies the intended uses of the amounts available to the State loan fund of the State.

(2) Contents

An intended use plan shall include—

(A) a list of the projects to be assisted in the first fiscal year that begins after the date of the plan, including a description of the project, the expected terms of financial assistance, and the size of the community served;

(B) the criteria and methods established for the distribution of funds; and

(C) a description of the financial status of the State loan fund and the short-term and long-term goals of the State loan fund.

(3) Use of funds

(A) In general

An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—

(i) address the most serious risk to human health;

(ii) are necessary to ensure compliance with the requirements of this subchapter (including requirements for filtration); and

(iii) assist systems most in need on a per household basis according to State affordability criteria.

(B) List of projects

Each State shall, after notice and opportunity for public comment, publish and periodically update a list of projects in the State that are eligible for assistance under this section, including the priority assigned to each project and, to the extent known, the expected funding schedule for each project.

(c) Fund management

Each State loan fund under this section shall be established, maintained, and credited with repayments and interest. The fund corpus shall be available in perpetuity for providing financial assistance under this section. To the extent amounts in the fund are not required for current obligation or expenditure, such amounts shall be invested in interest bearing obligations.

(d) Assistance for disadvantaged communities

(1) Loan subsidy

Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) of this section to a disadvantaged community or to a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal).

(2) Total amount of subsidies

For each fiscal year, the total amount of loan subsidies made by a State pursuant to paragraph (1) may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.

(3) "Disadvantaged community" defined

In this subsection, the term ''disadvantaged community'' means the service area of a pub-

lic water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.

(e) State contribution

Each agreement under subsection (a) of this section shall require that the State deposit in the State loan fund from State moneys an amount equal to at least 20 percent of the total amount of the grant to be made to the State on or before the date on which the grant payment is made to the State, except that a State shall not be required to deposit such amount into the fund prior to the date on which each grant payment is made for fiscal years 1994, 1995, 1996, and 1997 if the State deposits the State contribution amount into the State loan fund prior to September 30, 1999.

(f) Types of assistance

Except as otherwise limited by State law, the amounts deposited into a State loan fund under this section may be used only—

(1) to make loans, on the condition that—

(A) the interest rate for each loan is less than or equal to the market interest rate, including an interest free loan;

(B) principal and interest payments on each loan will commence not later than 1 year after completion of the project for which the loan was made, and each loan will be fully amortized not later than 20 years after the completion of the project, except that in the case of a disadvantaged community (as defined in subsection (d)(3) of this section), a State may provide an extended term for a loan, if the extended term—

(i) terminates not later than the date that is 30 years after the date of project completion; and

(ii) does not exceed the expected design life of the project;

(C) the recipient of each loan will establish a dedicated source of revenue (or, in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loan; and

(D) the State loan fund will be credited with all payments of principal and interest on each loan;

(2) to buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the State at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(3) to guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the State loan fund; and

(5) to earn interest on the amounts deposited into the State loan fund.

(g) Administration of State loan funds

(1) Combined financial administration

Notwithstanding subsection (c) of this section, a State may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with State law, the financial administration of a State loan fund established under this section with the financial administration of any other revolving fund established by the State if otherwise not prohibited by the law under which the State loan fund was established and if the Administrator determines that—

(A) the grants under this section, together with loan repayments and interest, will be separately accounted for and used solely for the purposes specified in subsection (a) of this section; and

(B) the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with the State agency having primary responsibility for administration of the State program under section 300g–2 of this title, after consultation with other appropriate State agencies (as determined by the State): *Provided*, That in nonprimacy States eligible to receive assistance under this section, the Governor shall determine which State agency will have authority to establish priorities for financial assistance from the State loan fund.

(2) Cost of administering fund

Each State may annually use up to 4 percent of the funds allotted to the State under this section to cover the reasonable costs of administration of the programs under this section, including the recovery of reasonable costs expended to establish a State loan fund which are incurred after August 6, 1996, and to provide technical assistance to public water systems within the State. For fiscal year 1995 and each fiscal year thereafter, each State may use up to an additional 10 percent of the funds allotted to the State under this section—

(A) for public water system supervision programs under section 300j–2(a) of this title;

(B) to administer or provide technical assistance through source water protection programs;

(C) to develop and implement a capacity development strategy under section 300g–9(c) of this title; and

(D) for an operator certification program for purposes of meeting the requirements of section 300g–8 of this title,

if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993. An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

(3) Guidance and regulations

The Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

(A) provisions to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible in accordance with this subchapter and applicable State laws;

(B) guidance to prevent waste, fraud, and abuse; and

(C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth.

The guidance and regulations shall also ensure that the States, and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

(4) State report

Each State administering a loan fund and assistance program under this subsection shall publish and submit to the Administrator a report every 2 years on its activities under this section, including the findings of the most recent audit of the fund and the entire State allotment. The Administrator shall periodically audit all State loan funds established by, and all other amounts allotted to, the States pursuant to this section in accordance with procedures established by the Comptroller General.

(h) Needs survey

The Administrator shall conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States and submit a report to the Congress containing the results of the assessment within 180 days after August 6, 1996, and every 4 years thereafter.

(i) Indian Tribes

(1) In general

1½ percent of the amounts appropriated annually to carry out this section may be used by the Administrator to make grants to Indian Tribes and Alaska Native villages that have not otherwise received either grants from the Administrator under this section or assistance from State loan funds established under this section. The grants may only be used for expenditures by tribes and villages for public water system expenditures referred to in subsection (a)(2) of this section.

(2) Use of funds

Funds reserved pursuant to paragraph (1) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as determined by the Administrator in consultation with the Director of the Indian Health Service and Indian Tribes.

(3) Alaska Native villages

In the case of a grant for a project under this subsection in an Alaska Native village, the Administrator is also authorized to make grants to the State of Alaska for the benefit of Native villages. An amount not to exceed 4 percent of the grant amount may be used by the State of Alaska for project management.

(4) Needs assessment

The Administrator, in consultation with the Director of the Indian Health Service and Indian Tribes, shall, in accordance with a schedule that is consistent with the needs surveys conducted pursuant to subsection (h) of this section, prepare surveys and assess the needs of drinking water treatment facilities to serve Indian Tribes, including an evaluation of the public water systems that pose the most significant threats to public health.

(j) Other areas

Of the funds annually available under this section for grants to States, the Administrator shall make allotments in accordance with section 300j–2(a)(4) of this title for the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. The grants allotted as provided in this subsection may be provided by the Administrator to the governments of such areas, to public water systems in such areas, or to both, to be used for the public water system expenditures referred to in subsection (a)(2) of this section. The grants, and grants for the District of Columbia, shall not be deposited in State loan funds. The total allotment of grants under this section for all areas described in this subsection in any fiscal year shall not exceed 0.33 percent of the aggregate amount made available to carry out this section in that fiscal year.

(k) Other authorized activities

(1) In general

Notwithstanding subsection (a)(2) of this section, a State may take each of the following actions:

(A) Provide assistance, only in the form of a loan, to one or more of the following:

(i) Any public water system described in subsection (a)(2) of this section to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations.

(ii) Any community water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 300j–13 of this title, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 300g–1 of this title or otherwise significantly further the health protection objectives of this subchapter. Funds authorized under this clause may be used to fund only voluntary, incentive-based mechanisms.

(iii) Any community water system to provide funding in accordance with section 300j–14(a)(1)(B)(i) of this title.

(B) Provide assistance, including technical and financial assistance, to any public water

system as part of a capacity development strategy developed and implemented in accordance with section 300g–9(c) of this title.

(C) Make expenditures from the capitalization grant of the State for fiscal years 1996 and 1997 to delineate and assess source water protection areas in accordance with section 300j–13 of this title, except that funds set aside for such expenditure shall be obligated within 4 fiscal years.

(D) Make expenditures from the fund for the establishment and implementation of wellhead protection programs under section 300h–7 of this title.

(2) Limitation

For each fiscal year, the total amount of assistance provided and expenditures made by a State under this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

(A) To acquire land or conservation easements pursuant to paragraph (1)(A)(i).

(B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).

(C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).

(D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C).

(E) To make expenditures to establish and implement wellhead protection programs pursuant to paragraph (1)(D).

(3) Statutory construction

Nothing in this section creates or conveys any new authority to a State, political subdivision of a State, or community water system for any new regulatory measure, or limits any authority of a State, political subdivision of a State or community water system.

(*l*) Savings

The failure or inability of any public water system to receive funds under this section or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of this subchapter.

(m) Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this section $599,000,000 for the fiscal year 1994 and $1,000,000,000 for each of the fiscal years 1995 through 2003. To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsequent fiscal year (prior to the fiscal year 2004). Such sums shall remain available until expended.

(n) Health effects studies

From funds appropriated pursuant to this section for each fiscal year, the Administrator shall reserve $10,000,000 for health effects studies on drinking water contaminants authorized by the Safe Drinking Water Act Amendments of 1996. In allocating funds made available under this subsection, the Administrator shall give priority to studies concerning the health effects of cryptosporidium (as authorized by section 300j–18(c) of this title), disinfection byproducts (as authorized by section 300j–18(c) of this title), and arsenic (as authorized by section 300g–1(b)(12)(A) of this title), and the implementation of a plan for studies of subpopulations at greater risk of adverse effects (as authorized by section 300j–18(a) of this title).

(*o*) Monitoring for unregulated contaminants

From funds appropriated pursuant to this section for each fiscal year beginning with fiscal year 1998, the Administrator shall reserve $2,000,000 to pay the costs of monitoring for unregulated contaminants under section 300j–4(a)(2)(C) of this title.

(p) Demonstration project for State of Virginia

Notwithstanding the other provisions of this section limiting the use of funds deposited in a State loan fund from any State allotment, the State of Virginia may, as a single demonstration and with the approval of the Virginia General Assembly and the Administrator, conduct a program to demonstrate alternative approaches to intergovernmental coordination to assist in the financing of new drinking water facilities in the following rural communities in southwestern Virginia where none exists on August 6, 1996, and where such communities are experiencing economic hardship: Lee County, Wise County, Scott County, Dickenson County, Russell County, Buchanan County, Tazewell County, and the city of Norton, Virginia. The funds allotted to that State and deposited in the State loan fund may be loaned to a regional endowment fund for the purpose set forth in this subsection under a plan to be approved by the Administrator. The plan may include an advisory group that includes representatives of such counties.

(q) Small system technical assistance

The Administrator may reserve up to 2 percent of the total funds appropriated pursuant to subsection (m) of this section for each of the fiscal years 1997 through 2003 to carry out the provisions of section 300j–1(e) of this title (relating to technical assistance for small systems), except that the total amount of funds made available for such purpose in any fiscal year through appropriations (as authorized by section 300j–1(e) of this title) and reservations made pursuant to this subsection shall not exceed the amount authorized by section 300j–1(e) of this title.

(r) Evaluation

The Administrator shall conduct an evaluation of the effectiveness of the State loan funds through fiscal year 2001. The evaluation shall be submitted to the Congress at the same time as the President submits to the Congress, pursuant to section 1108 of title 31, an appropriations request for fiscal year 2003 relating to the budget of the Environmental Protection Agency.

(July 1, 1944, ch. 373, title XIV, § 1452, as added Pub. L. 104–182, title I, § 130, Aug. 6, 1996, 110 Stat. 1662.)

REFERENCES IN TEXT

The Safe Drinking Water Act Amendments of 1996, referred to in subsec. (n), is Pub. L. 104–182, Aug. 6, 1996, 110 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 201 of this title and Tables.

COMBINING FUND ASSETS FOR ENHANCEMENT OF LENDING CAPACITY

Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2498, provided in part: ''That, consistent with section 1452(g) of the Safe Drinking Water Act (42 U.S.C. 300j–12(g)), section 302 of the Safe Drinking Water Act Amendments of 1996 (Public Law 104–182) [set out as a note below] and the accompanying joint explanatory statement of the committee of conference (H. Rept. No. 104–741 to accompany S. 1316, the Safe Drinking Water Act Amendments of 1996), and notwithstanding any other provision of law, beginning in fiscal year 1999 and thereafter, States may combine the assets of State Revolving Funds (SRFs) established under section 1452 of the Safe Drinking Water Act, as amended, and title VI of the Federal Water Pollution Control Act [33 U.S.C. 1381 et seq.], as amended, as security for bond issues to enhance the lending capacity of one or both SRFs, but not to acquire the state match for either program, provided that revenues from the bonds are allocated to the purposes of the Safe Drinking Water Act [this subchapter] and the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] in the same portion as the funds are used as security for the bonds''.

TRANSFER OF FUNDS

Pub. L. 109–54, title II, Aug. 2, 2005, 119 Stat. 530, provided in part: ''That for fiscal year 2006 and thereafter, State authority under section 302(a) of Public Law 104–182 [set out as a note below] shall remain in effect''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. I, title III, Dec. 8, 2004, 118 Stat. 3330.

Pub. L. 108–199, div. G, title III, Jan. 23, 2004, 118 Stat. 406.

Pub. L. 108–7, div. K, title III, Feb. 20, 2003, 117 Stat. 512.

Pub. L. 107–73, title III, Nov. 26, 2001, 115 Stat. 685.

Section 302 of Pub. L. 104–182 provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, at any time after the date 1 year after a State establishes a State loan fund pursuant to section 1452 of the Safe Drinking Water Act [this section] but prior to fiscal year 2002, a Governor of the State may—

''(1) reserve up to 33 percent of a capitalization grant made pursuant to such section 1452 and add the funds reserved to any funds provided to the State pursuant to section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381); and

''(2) reserve in any year a dollar amount up to the dollar amount that may be reserved under paragraph (1) for that year from capitalization grants made pursuant to section 601 of such Act (33 U.S.C. 1381) and add the reserved funds to any funds provided to the State pursuant to section 1452 of the Safe Drinking Water Act.

''(b) REPORT.—Not later than 4 years after the date of enactment of this Act [Aug. 6, 1996], the Administrator shall submit a report to the Congress regarding the implementation of this section, together with the Administrator's recommendations, if any, for modifications or improvement.

''(c) STATE MATCH.—Funds reserved pursuant to this section shall not be considered to be a State match of a capitalization grant required pursuant to section 1452 of the Safe Drinking Water Act or the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).''

§ 300j–13. Source water quality assessment

(a) Source water assessment

(1) Guidance

Within 12 months after August 6, 1996, after notice and comment, the Administrator shall publish guidance for States exercising primary enforcement responsibility for public water systems to carry out directly or through delegation (for the protection and benefit of public water systems and for the support of monitoring flexibility) a source water assessment program within the State's boundaries. Each State adopting modifications to monitoring requirements pursuant to section 300g–7(b) of this title shall, prior to adopting such modifications, have an approved source water assessment program under this section and shall carry out the program either directly or through delegation.

(2) Program requirements

A source water assessment program under this subsection shall—

(A) delineate the boundaries of the assessment areas in such State from which one or more public water systems in the State receive supplies of drinking water, using all reasonably available hydrogeologic information on the sources of the supply of drinking water in the State and the water flow, recharge, and discharge and any other reliable information as the State deems necessary to adequately determine such areas; and

(B) identify for contaminants regulated under this subchapter for which monitoring is required under this subchapter (or any unregulated contaminants selected by the State, in its discretion, which the State, for the purposes of this subsection, has determined may present a threat to public health), to the extent practical, the origins within each delineated area of such contaminants to determine the susceptibility of the public water systems in the delineated area to such contaminants.

(3) Approval, implementation, and monitoring relief

A State source water assessment program under this subsection shall be submitted to the Administrator within 18 months after the Administrator's guidance is issued under this subsection and shall be deemed approved 9 months after the date of such submittal unless the Administrator disapproves the program as provided in section 300h–7(c) of this title. States shall begin implementation of the program immediately after its approval. The Administrator's approval of a State program under this subsection shall include a timetable, established in consultation with the State, allowing not more than 2 years for completion after approval of the program. Public water systems seeking monitoring relief in addition to the interim relief provided under section 300g–7(a) of this title shall be eligible for monitoring relief, consistent with section 300g–7(b) of this title, upon completion of the assessment in the delineated source water assessment area or areas concerned.

(4) Timetable

The timetable referred to in paragraph (3) shall take into consideration the availability to the State of funds under section 300j–12 of this title (relating to State loan funds) for assessments and other relevant factors. The Administrator may extend any timetable included in a State program approved under paragraph (3) to extend the period for completion by an additional 18 months.

(5) Demonstration project

The Administrator shall, as soon as practicable, conduct a demonstration project, in consultation with other Federal agencies, to demonstrate the most effective and protective means of assessing and protecting source waters serving large metropolitan areas and located on Federal lands.

(6) Use of other programs

To avoid duplication and to encourage efficiency, the program under this section may make use of any of the following:

(A) Vulnerability assessments, sanitary surveys, and monitoring programs.

(B) Delineations or assessments of ground water sources under a State wellhead protection program developed pursuant to this section.

(C) Delineations or assessments of surface or ground water sources under a State pesticide management plan developed pursuant to the Pesticide and Ground Water State Management Plan Regulation (subparts I and J of part 152 of title 40, Code of Federal Regulations), promulgated under section 136a(d) of title 7.

(D) Delineations or assessments of surface water sources under a State watershed initiative or to satisfy the watershed criterion for determining if filtration is required under the Surface Water Treatment Rule (section 141.70 of title 40, Code of Federal Regulations).

(E) Delineations or assessments of surface or ground water sources under programs or plans pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

(7) Public availability

The State shall make the results of the source water assessments conducted under this subsection available to the public.

(b) Approval and disapproval

For provisions relating to program approval and disapproval, see section 300h–7(c) of this title.

(July 1, 1944, ch. 373, title XIV, § 1453, as added Pub. L. 104–182, title I, § 132(a), Aug. 6, 1996, 110 Stat. 1673.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a)(6)(E), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

§ 300j–14. Source water petition program

(a) Petition program

(1) In general

(A) Establishment

A State may establish a program under which an owner or operator of a community water system in the State, or a municipal or local government or political subdivision of a State, may submit a source water quality protection partnership petition to the State requesting that the State assist in the local development of a voluntary, incentive-based partnership, among the owner, operator, or government and other persons likely to be affected by the recommendations of the partnership, to—

(i) reduce the presence in drinking water of contaminants that may be addressed by a petition by considering the origins of the contaminants, including to the maximum extent practicable the specific activities that affect the drinking water supply of a community;

(ii) obtain financial or technical assistance necessary to facilitate establishment of a partnership, or to develop and implement recommendations of a partnership for the protection of source water to assist in the provision of drinking water that complies with national primary drinking water regulations with respect to contaminants addressed by a petition; and

(iii) develop recommendations regarding voluntary and incentive-based strategies for the long-term protection of the source water of community water systems.

(B) Funding

Each State may—

(i) use funds set aside pursuant to section 300j–12(k)(1)(A)(iii) of this title by the State to carry out a program described in subparagraph (A), including assistance to voluntary local partnerships for the development and implementation of partnership recommendations for the protection of source water such as source water quality assessment, contingency plans, and demonstration projects for partners within a source water area delineated under section 300j–13(a) of this title; and

(ii) provide assistance in response to a petition submitted under this subsection using funds referred to in subsection (b)(2)(B) of this section.

(2) Objectives

The objectives of a petition submitted under this subsection shall be to—

(A) facilitate the local development of voluntary, incentive-based partnerships among owners and operators of community water systems, governments, and other persons in source water areas; and

(B) obtain assistance from the State in identifying resources which are available to implement the recommendations of the partnerships to address the origins of drinking water contaminants that may be addressed by a petition (including to the maximum ex-

tent practicable the specific activities contributing to the presence of the contaminants) that affect the drinking water supply of a community.

(3) Contaminants addressed by a petition

A petition submitted to a State under this subsection may address only those contaminants—

(A) that are pathogenic organisms for which a national primary drinking water regulation has been established or is required under section 300g–1 of this title; or

(B) for which a national primary drinking water regulation has been promulgated or proposed and that are detected by adequate monitoring methods in the source water at the intake structure or in any collection, treatment, storage, or distribution facilities by the community water systems at levels—

(i) above the maximum contaminant level; or

(ii) that are not reliably and consistently below the maximum contaminant level.

(4) Contents

A petition submitted under this subsection shall, at a minimum—

(A) include a delineation of the source water area in the State that is the subject of the petition;

(B) identify, to the maximum extent practicable, the origins of the drinking water contaminants that may be addressed by a petition (including to the maximum extent practicable the specific activities contributing to the presence of the contaminants) in the source water area delineated under section 300j–13 of this title;

(C) identify any deficiencies in information that will impair the development of recommendations by the voluntary local partnership to address drinking water contaminants that may be addressed by a petition;

(D) specify the efforts made to establish the voluntary local partnership and obtain the participation of—

(i) the municipal or local government or other political subdivision of the State with jurisdiction over the source water area delineated under section 300j–13 of this title; and

(ii) each person in the source water area delineated under section 300j–13 of this title—

(I) who is likely to be affected by recommendations of the voluntary local partnership; and

(II) whose participation is essential to the success of the partnership;

(E) outline how the voluntary local partnership has or will, during development and implementation of recommendations of the voluntary local partnership, identify, recognize and take into account any voluntary or other activities already being undertaken by persons in the source water area delineated under section 300j–13 of this title under Federal or State law to reduce the likelihood that contaminants will occur in drinking water at levels of public health concern; and

(F) specify the technical, financial, or other assistance that the voluntary local partnership requests of the State to develop the partnership or to implement recommendations of the partnership.

(b) Approval or disapproval of petitions

(1) In general

After providing notice and an opportunity for public comment on a petition submitted under subsection (a) of this section, the State shall approve or disapprove the petition, in whole or in part, not later than 120 days after the date of submission of the petition.

(2) Approval

The State may approve a petition if the petition meets the requirements established under subsection (a) of this section. The notice of approval shall, at a minimum, include for informational purposes—

(A) an identification of technical, financial, or other assistance that the State will provide to assist in addressing the drinking water contaminants that may be addressed by a petition based on—

(i) the relative priority of the public health concern identified in the petition with respect to the other water quality needs identified by the State;

(ii) any necessary coordination that the State will perform of the program established under this section with programs implemented or planned by other States under this section; and

(iii) funds available (including funds available from a State revolving loan fund established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.)) or section 300j–12 of this title;

(B) a description of technical or financial assistance pursuant to Federal and State programs that is available to assist in implementing recommendations of the partnership in the petition, including—

(i) any program established under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(ii) the program established under section 1455b of title 16;

(iii) the agricultural water quality protection program established under chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838 et seq.);

(iv) the sole source aquifer protection program established under section 300h–6 of this title;

(v) the community wellhead protection program established under section 300h–7 of this title;

(vi) any pesticide or ground water management plan;

(vii) any voluntary agricultural resource management plan or voluntary whole farm or whole ranch management plan developed and implemented under a process established by the Secretary of Agriculture; and

(viii) any abandoned well closure program; and

(C) a description of activities that will be undertaken to coordinate Federal and State programs to respond to the petition.

(3) Disapproval

If the State disapproves a petition submitted under subsection (a) of this section, the State shall notify the entity submitting the petition in writing of the reasons for disapproval. A petition may be resubmitted at any time if—

(A) new information becomes available;

(B) conditions affecting the source water that is the subject of the petition change; or

(C) modifications are made in the type of assistance being requested.

(c) Grants to support State programs

(1) In general

The Administrator may make a grant to each State that establishes a program under this section that is approved under paragraph (2). The amount of each grant shall not exceed 50 percent of the cost of administering the program for the year in which the grant is available.

(2) Approval

In order to receive grant assistance under this subsection, a State shall submit to the Administrator for approval a plan for a source water quality protection partnership program that is consistent with the guidance published under subsection (d) of this section. The Administrator shall approve the plan if the plan is consistent with the guidance published under subsection (d) of this section.

(d) Guidance

(1) In general

Not later than 1 year after August 6, 1996, the Administrator, in consultation with the States, shall publish guidance to assist—

(A) States in the development of a source water quality protection partnership program; and

(B) municipal or local governments or political subdivisions of a State and community water systems in the development of source water quality protection partnerships and in the assessment of source water quality.

(2) Contents of the guidance

The guidance shall, at a minimum—

(A) recommend procedures for the approval or disapproval by a State of a petition submitted under subsection (a) of this section;

(B) recommend procedures for the submission of petitions developed under subsection (a) of this section;

(C) recommend criteria for the assessment of source water areas within a State; and

(D) describe technical or financial assistance pursuant to Federal and State programs that is available to address the contamination of sources of drinking water and to develop and respond to petitions submitted under subsection (a) of this section.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for each of the fiscal years 1997 through 2003. Each State with a plan for a program approved under subsection (b) of this section shall receive an equitable portion of the funds available for any fiscal year.

(f) Statutory construction

Nothing in this section—

(1)(A) creates or conveys new authority to a State, political subdivision of a State, or community water system for any new regulatory measure; or

(B) limits any authority of a State, political subdivision, or community water system; or

(2) precludes a community water system, municipal or local government, or political subdivision of a government from locally developing and carrying out a voluntary, incentive-based, source water quality protection partnership to address the origins of drinking water contaminants of public health concern.

(July 1, 1944, ch. 373, title XIV, § 1454, as added Pub. L. 104–182, title I, § 133(a), Aug. 6, 1996, 110 Stat. 1675.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (b)(2)(A)(iii), (B)(i), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. Title VI of the Act is classified generally to subchapter VI (§ 1381 et seq.) of chapter 26 of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Food Security Act of 1985, referred to in subsec. (b)(2)(B)(iii), is Pub. L. 99–198, Dec. 23, 1985, 99 Stat. 1354, as amended. Chapter 2 of subtitle D of title XII of the Act was classified generally to part II (§ 3838 et seq.) of subchapter IV of chapter 58 of Title 16, Conservation, prior to repeal by Pub. L. 104–127, title III, § 336(h), Apr. 4, 1996, 110 Stat. 1007. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7, Agriculture, and Tables.

§ 300j–15. Water conservation plan

(a) Guidelines

Not later than 2 years after August 6, 1996, the Administrator shall publish in the Federal Register guidelines for water conservation plans for public water systems serving fewer than 3,300 persons, public water systems serving between 3,300 and 10,000 persons, and public water systems serving more than 10,000 persons, taking into consideration such factors as water availability and climate.

(b) Loans or grants

Within 1 year after publication of the guidelines under subsection (a) of this section, a State exercising primary enforcement responsibility for public water systems may require a public water system, as a condition of receiving a loan or grant from a State loan fund under section 300j–12 of this title, to submit with its application for such loan or grant a water conservation plan consistent with such guidelines.

(July 1, 1944, ch. 373, title XIV, § 1455, as added Pub. L. 104–182, title I, § 134, Aug. 6, 1996, 110 Stat. 1679.)

§ 300j–16. Assistance to colonias

(a) Definitions

As used in this section:

(1) Border State

The term ''border State'' means Arizona, California, New Mexico, and Texas.

(2) Eligible community

The term ''eligible community'' means a low-income community with economic hardship that—

(A) is commonly referred to as a colonia;

(B) is located along the United States-Mexico border (generally in an unincorporated area); and

(C) lacks a safe drinking water supply or adequate facilities for the provision of safe drinking water for human consumption.

(b) Grants to alleviate health risks

The Administrator of the Environmental Protection Agency and the heads of other appropriate Federal agencies are authorized to award grants to a border State to provide assistance to eligible communities to facilitate compliance with national primary drinking water regulations or otherwise significantly further the health protection objectives of this subchapter.

(c) Use of funds

Each grant awarded pursuant to subsection (b) of this section shall be used to provide assistance to one or more eligible communities with respect to which the residents are subject to a significant health risk (as determined by the Administrator or the head of the Federal agency making the grant) attributable to the lack of access to an adequate and affordable drinking water supply system.

(d) Cost sharing

The amount of a grant awarded pursuant to this section shall not exceed 50 percent of the costs of carrying out the project that is the subject of the grant.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1997 through 1999.

(July 1, 1944, ch. 373, title XIV, § 1456, as added Pub. L. 104–182, title I, § 135, Aug. 6, 1996, 110 Stat. 1679.)

§ 300j–17. Estrogenic substances screening program

In addition to the substances referred to in section 346a(p)(3)(B) of title 21 the Administrator may provide for testing under the screening program authorized by section 346a(p) of title 21, in accordance with the provisions of section 346a(p) of title 21, of any other substance that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.

(July 1, 1944, ch. 373, title XIV, § 1457, as added Pub. L. 104–182, title I, § 136, Aug. 6, 1996, 110 Stat. 1680.)

§ 300j–18. Drinking water studies

(a) Subpopulations at greater risk

(1) In general

The Administrator shall conduct a continuing program of studies to identify groups within the general population that may be at greater risk than the general population of adverse health effects from exposure to contaminants in drinking water. The study shall examine whether and to what degree infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that can be identified and characterized are likely to experience elevated health risks, including risks of cancer, from contaminants in drinking water.

(2) Report

Not later than 4 years after August 6, 1996, and periodically thereafter as new and significant information becomes available, the Administrator shall report to the Congress on the results of the studies.

(b) Biological mechanisms

The Administrator shall conduct biomedical studies to—

(1) understand the mechanisms by which chemical contaminants are absorbed, distributed, metabolized, and eliminated from the human body, so as to develop more accurate physiologically based models of the phenomena;

(2) understand the effects of contaminants and the mechanisms by which the contaminants cause adverse effects (especially noncancer and infectious effects) and the variations in the effects among humans, especially subpopulations at greater risk of adverse effects, and between test animals and humans; and

(3) develop new approaches to the study of complex mixtures, such as mixtures found in drinking water, especially to determine the prospects for synergistic or antagonistic interactions that may affect the shape of the dose-response relationship of the individual chemicals and microbes, and to examine noncancer endpoints and infectious diseases, and susceptible individuals and subpopulations.

(c) Studies on harmful substances in drinking water

(1) Development of studies

The Administrator shall, not later than 180 days after August 6, 1996, and after consultation with the Secretary of Health and Human Services, the Secretary of Agriculture, and, as appropriate, the heads of other Federal agencies, conduct the studies described in paragraph (2) to support the development and implementation of the most current version of each of the following:

(A) Enhanced Surface Water Treatment Rule (59 Fed. Reg. 38832 (July 29, 1994)).

(B) Disinfectant and Disinfection Byproducts Rule (59 Fed. Reg. 38668 (July 29, 1994)).

(C) Ground Water Disinfection Rule (availability of draft summary announced at (57 Fed. Reg. 33960; July 31, 1992)).

(2) Contents of studies

The studies required by paragraph (1) shall include, at a minimum, each of the following:

(A) Toxicological studies and, if warranted, epidemiological studies to determine what levels of exposure from disinfectants and disinfection byproducts, if any, may be associated with developmental and birth defects and other potential toxic end points.

(B) Toxicological studies and, if warranted, epidemiological studies to quantify the carcinogenic potential from exposure to disinfection byproducts resulting from different disinfectants.

(C) The development of dose-response curves for pathogens, including cryptosporidium and the Norwalk virus.

(3) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $12,500,000 for each of fiscal years 1997 through 2003.

(d) Waterborne disease occurrence study

(1) System

The Director of the Centers for Disease Control and Prevention, and the Administrator shall jointly—

(A) within 2 years after August 6, 1996, conduct pilot waterborne disease occurrence studies for at least 5 major United States communities or public water systems; and

(B) within 5 years after August 6, 1996, prepare a report on the findings of the pilot studies, and a national estimate of waterborne disease occurrence.

(2) Training and education

The Director and Administrator shall jointly establish a national health care provider training and public education campaign to inform both the professional health care provider community and the general public about waterborne disease and the symptoms that may be caused by infectious agents, including microbial contaminants. In developing such a campaign, they shall seek comment from interested groups and individuals, including scientists, physicians, State and local governments, environmental groups, public water systems, and vulnerable populations.

(3) Funding

There are authorized to be appropriated for each of the fiscal years 1997 through 2001, $3,000,000 to carry out this subsection. To the extent funds under this subsection are not fully appropriated, the Administrator may use not more than $2,000,000 of the funds from amounts reserved under section 300j–12(n) of this title for health effects studies for purposes of this subsection. The Administrator may transfer a portion of such funds to the Centers for Disease Control and Prevention for such purposes.

(July 1, 1944, ch. 373, title XIV, § 1458, as added Pub. L. 104–182, title I, § 137, Aug. 6, 1996, 110 Stat. 1680.)

PUBLIC HEALTH ASSESSMENT OF EXPOSURE TO PERCHLORATE

Pub. L. 108–136, div. A, title III, § 323, Nov. 24, 2003, 117 Stat. 1440, provided that:

''(a) EPIDEMIOLOGICAL STUDY OF EXPOSURE TO PERCHLORATE.—The Secretary of Defense shall provide for an independent epidemiological study of exposure to perchlorate in drinking water. The entity conducting the study shall—

''(1) assess the incidence of thyroid disease and measurable effects of thyroid function in relation to exposure to perchlorate;

''(2) ensure that the study is of sufficient scope and scale to permit the making of meaningful conclusions of the measurable public health threat associated with exposure to perchlorate, especially the threat to sensitive subpopulations; and

''(3) examine thyroid function, including measurements of urinary iodine and thyroid hormone levels, in a sufficient number of pregnant women, neonates, and infants exposed to perchlorate in drinking water and match measurements of perchlorate levels in the drinking water of each study participant in order to permit the development of meaningful conclusions on the public health threat to individuals exposed to perchlorate.

''(b) REVIEW OF EFFECTS OF PERCHLORATE ON ENDOCRINE SYSTEM.—The Secretary shall provide for an independent review of the effects of perchlorate on the human endocrine system. The entity conducting the review shall assess—

''(1) available data on human exposure to perchlorate, including clinical data and data on exposure of sensitive subpopulations, and the levels at which health effects were observed; and

''(2) available data on other substances that have endocrine effects similar to perchlorate to which the public is frequently exposed.

''(c) PERFORMANCE OF STUDY AND REVIEW.—(1) The Secretary shall provide for the performance of the study under subsection (a) through the Centers for Disease Control and Prevention, the National Institutes of Health, or another Federal entity with experience in environmental toxicology selected by the Secretary.

''(2) The Secretary shall provide for the performance of the review under subsection (b) through the Centers for Disease Control and Prevention, the National Institutes of Health, or another appropriate Federal research entity with experience in human endocrinology selected by the Secretary. The Secretary shall ensure that the panel conducting the review is composed of individuals with expertise in human endocrinology.

''(d) REPORTING REQUIREMENTS.—Not later than June 1, 2005, the Federal entities conducting the study and review under this section shall submit to the Secretary reports containing the results of the study and review.''

PART F—ADDITIONAL REQUIREMENTS TO REGULATE SAFETY OF DRINKING WATER

§ 300j–21. Definitions

As used in this part—

(1) Drinking water cooler

The term ''drinking water cooler'' means any mechanical device affixed to drinking water supply plumbing which actively cools water for human consumption.

(2) Lead free

The term ''lead free'' means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water contains not more than 8 percent lead, except that no drinking water cooler which contains any solder, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. The Administrator may establish more stringent requirements for treating any part or component of a drinking water cooler as lead free for purposes of this part whenever he determines that any such part may constitute an important source of lead in drinking water.

(3) Local educational agency

The term ''local educational agency'' means—

(A) any local educational agency as defined in section 7801 of title 20,

(B) the owner of any private, nonprofit elementary or secondary school building, and

(C) the governing authority of any school operating under the defense dependent's education system provided for under the Defense Dependent's Education Act of 1978 (20 U.S.C. 921 and following).

(4) Repair

The term ''repair'' means, with respect to a drinking water cooler, to take such corrective action as is necessary to ensure that water cooler is lead free.

(5) Replacement

The term ''replacement'', when used with respect to a drinking water cooler, means the permanent removal of the water cooler and the installation of a lead free water cooler.

(6) School

The term ''school'' means any elementary school or secondary school as defined in section 7801 of title 20 and any kindergarten or day care facility.

(7) Lead-lined tank

The term ''lead-lined tank'' means a water reservoir container in a drinking water cooler which container is constructed of lead or which has an interior surface which is not lead free.

(July 1, 1944, ch. 373, title XIV, § 1461, as added Pub. L. 100–572, § 2(a), Oct. 31, 1988, 102 Stat. 2884; amended Pub. L. 103–382, title III, § 391(p), Oct. 20, 1994, 108 Stat. 4024; Pub. L. 104–182, title V, § 501(f)(7), Aug. 6, 1996, 110 Stat. 1692; Pub. L. 107–110, title X, § 1076(x), Jan. 8, 2002, 115 Stat. 2093.)

REFERENCES IN TEXT

The Defense Dependent's Education Act of 1978, referred to in par. (3)(C), probably means the Defense Dependents' Education Act of 1978, title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§ 921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

2002—Pars. (3)(A), (6). Pub. L. 107–110 substituted ''section 7801 of title 20'' for ''section 8801 of title 20''.

1996—Pub. L. 104–182 made technical amendment to section catchline and first word of text.

1994—Par. (3)(A). Pub. L. 103–382, § 391(p)(1), substituted ''section 8801 of title 20'' for ''section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381)''.

Par. (6). Pub. L. 103–382, § 391(p)(2), substituted ''section 8801 of title 20'' for ''section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

§ 300j–22. Recall of drinking water coolers with lead-lined tanks

For purposes of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.], all drinking water coolers identified by the Administrator on the list under section 300j–23 of this title as having a lead-lined tank shall be considered to be imminently hazardous consumer products within the meaning of section 12 of such Act (15 U.S.C. 2061). After notice and opportunity for comment, including a public hearing, the Consumer Product Safety Commission shall issue an order requiring the manufacturers and importers of such coolers to repair, replace, or recall and provide a refund for such coolers within 1 year after October 31, 1988. For purposes of enforcement, such order shall be treated as an order under section 15(d) of that Act (15 U.S.C. 2064(d)).

(July 1, 1944, ch. 373, title XIV, § 1462, as added Pub. L. 100–572, § 2(a), Oct. 31, 1988, 102 Stat. 2885; amended Pub. L. 104–182, title V, § 501(f)(8), Aug. 6, 1996, 110 Stat. 1692.)

REFERENCES IN TEXT

The Consumer Product Safety Act, referred to in text, is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, as amended, which is classified generally to chapter 47 (§ 2051 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of Title 15 and Tables.

AMENDMENTS

1996—Pub. L. 104–182 made technical amendment to section catchline and first word of text.

§ 300j–23. Drinking water coolers containing lead

(a) Publication of lists

The Administrator shall, after notice and opportunity for public comment, identify each brand and model of drinking water cooler which is not lead free, including each brand and model of drinking water cooler which has a lead-lined tank. For purposes of identifying the brand and model of drinking water coolers under this subsection, the Administrator shall use the best information available to the Environmental Protection Agency. Within 100 days after October 31, 1988, the Administrator shall publish a list of each brand and model of drinking water cooler identified under this subsection. Such list shall separately identify each brand and model of cooler which has a lead-lined tank. The Administrator shall continue to gather information regarding lead in drinking water coolers and shall revise and republish the list from time to time as may be appropriate as new information or analysis becomes available regarding lead contamination in drinking water coolers.

(b) Prohibition

No person may sell in interstate commerce, or manufacture for sale in interstate commerce, any drinking water cooler listed under subsection (a) of this section or any other drinking water cooler which is not lead free, including a lead-lined drinking water cooler.

(c) Criminal penalty

Any person who knowingly violates the prohibition contained in subsection (b) of this section shall be imprisoned for not more than 5 years, or fined in accordance with title 18, or both.

(d) Civil penalty

The Administrator may bring a civil action in the appropriate United States District Court (as

determined under the provisions of title 28) to impose a civil penalty on any person who violates subsection (b) of this section. In any such action the court may impose on such person a civil penalty of not more than $5,000 ($50,000 in the case of a second or subsequent violation).

(July 1, 1944, ch. 373, title XIV, § 1463, as added Pub. L. 100–572, § 2(a), Oct. 31, 1988, 102 Stat. 2885; amended Pub. L. 104–182, title V, § 501(f)(9), Aug. 6, 1996, 110 Stat. 1692.)

AMENDMENTS

1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300j–24. Lead contamination in school drinking water

(a) Distribution of drinking water cooler list

Within 100 days after October 31, 1988, the Administrator shall distribute to the States a list of each brand and model of drinking water cooler identified and listed by the Administrator under section 300j–23(a) of this title.

(b) Guidance document and testing protocol

The Administrator shall publish a guidance document and a testing protocol to assist schools in determining the source and degree of lead contamination in school drinking water supplies and in remedying such contamination. The guidance document shall include guidelines for sample preservation. The guidance document shall also include guidance to assist States, schools, and the general public in ascertaining the levels of lead contamination in drinking water coolers and in taking appropriate action to reduce or eliminate such contamination. The guidance document shall contain a testing protocol for the identification of drinking water coolers which contribute to lead contamination in drinking water. Such document and protocol may be revised, republished and redistributed as the Administrator deems necessary. The Administrator shall distribute the guidance document and testing protocol to the States within 100 days after October 31, 1988.

(c) Dissemination to schools, etc.

Each State shall provide for the dissemination to local educational agencies, private nonprofit elementary or secondary schools and to day care centers of the guidance document and testing protocol published under subsection (b) of this section, together with the list of drinking water coolers published under section 300j–23(a) of this title.

(d) Remedial action program

(1) Testing and remedying lead contamination

Within 9 months after October 31, 1988, each State shall establish a program, consistent with this section, to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

(2) Public availability

A copy of the results of any testing under paragraph (1) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such testing results.

(3) Coolers

In the case of drinking water coolers, such program shall include measures for the reduction or elimination of lead contamination from those water coolers which are not lead free and which are located in schools. Such measures shall be adequate to ensure that within 15 months after October 31, 1988, all such water coolers in schools under the jurisdiction of such agencies are repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute lead to drinking water.

(July 1, 1944, ch. 373, title XIV, § 1464, as added Pub. L. 100–572, § 2(a), Oct. 31, 1988, 102 Stat. 2886; amended Pub. L. 104–182, title V, § 501(f)(10), Aug. 6, 1996, 110 Stat. 1692.)

AMENDMENTS

1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300j–25. Federal assistance for State programs regarding lead contamination in school drinking water

(a) School drinking water programs

The Administrator shall make grants to States to establish and carry out State programs under section 300j–24 of this title to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from drinking water coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies. Such grants may be used by States to reimburse local educational agencies for expenses incurred after October 31, 1988, for such testing and remedial action.

(b) Limits

Each grant under this section shall be used by the State for testing water coolers in accordance with section 300j–24 of this title, for testing for lead contamination in other drinking water supplies under section 300j–24 of this title, or for remedial action under State programs under section 300j–24 of this title. Not more than 5 percent of the grant may be used for program administration.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section not more than $30,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991.

(July 1, 1944, ch. 373, title XIV, § 1465, as added Pub. L. 100–572, § 2(a), Oct. 31, 1988, 102 Stat. 2887; amended Pub. L. 104–182, title V, § 501(d), (f)(11), Aug. 6, 1996, 110 Stat. 1691, 1692.)

AMENDMENTS

1996—Pub. L. 104–182, § 501(f)(11), made technical amendment to section catchline and subsec. (a) designation.

Subsec. (b). Pub. L. 104–182, § 501(d), substituted ''by the State'' for ''as by the State''.

§ 300j–26. Certification of testing laboratories

The Administrator of the Environmental Protection Agency shall assure that programs for the certification of testing laboratories which test drinking water supplies for lead contamination certify only those laboratories which provide reliable accurate testing. The Administrator (or the State in the case of a State to which certification authority is delegated under this subsection) shall publish and make available to the public upon request the list of laboratories certified under this subsection.[1]

(Pub. L. 100–572, § 4, Oct. 31, 1988, 102 Stat. 2889.)

CODIFICATION

Section enacted as part of the Lead Contamination Control Act of 1988, and not as part of the Public Health Service Act which comprises this chapter.

SUBCHAPTER XIII—PREVENTIVE HEALTH MEASURES WITH RESPECT TO BREAST AND CERVICAL CANCERS

§ 300k. Establishment of program of grants to States

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States on the basis of an established competitive review process for the purpose of carrying out programs—

(1) to screen women for breast and cervical cancer as a preventive health measure;

(2) to provide appropriate referrals for medical treatment of women screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services and support services such as case management;

(3) to develop and disseminate public information and education programs for the detection and control of breast and cervical cancer;

(4) to improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of breast and cervical cancer;

(5) to establish mechanisms through which the States can monitor the quality of screening procedures for breast and cervical cancer, including the interpretation of such procedures; and

(6) to evaluate activities conducted under paragraphs (1) through (5) through appropriate surveillance or program-monitoring activities.

(b) Grant and contract authority of States

(1) In general

A State receiving a grant under subsection (a) of this section may, subject to paragraphs (2) and (3), expend the grant to carry out the purpose described in such subsection through grants to public and nonprofit private entities and through contracts with public and private entities.

(2) Certain applications

If a nonprofit private entity and a private entity that is not a nonprofit entity both submit applications to a State to receive an award of a grant or contract pursuant to paragraph (1), the State may give priority to the application submitted by the nonprofit private entity in any case in which the State determines that the quality of such application is equivalent to the quality of the application submitted by the other private entity.

(3) Payments for screenings

The amount paid by a State to an entity under this subsection for a screening procedure under subsection (a)(1) of this section may not exceed the amount that would be paid under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] if payment were made under such part for furnishing the procedure to a woman enrolled under such part.

(c) Special consideration for certain States

In making grants under subsection (a) of this section to States whose initial grants under such subsection are made for fiscal year 1995 or any subsequent fiscal year, the Secretary shall give special consideration to any State whose proposal for carrying out programs under such subsection—

(1) has been approved through a process of peer review; and

(2) is made with respect to geographic areas in which there is—

(A) a substantial rate of mortality from breast or cervical cancer; or

(B) a substantial incidence of either of such cancers.

(d) Coordinating committee regarding year 2000 health objectives

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish a committee to coordinate the activities of the agencies of the Public Health Service (and other appropriate Federal agencies) that are carried out toward achieving the objectives established by the Secretary for reductions in the rate of mortality from breast and cervical cancer in the United States by the year 2000. Such committee shall be comprised of Federal officers or employees designated by the heads of the agencies involved to serve on the committee as representatives of the agencies, and such representatives from other public or private entities as the Secretary determines to be appropriate.

(July 1, 1944, ch. 373, title XV, § 1501, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 409; amended Pub. L. 103–43, title XX, § 2008(c)(1), June 10, 1993, 107 Stat. 211; Pub. L. 103–183, title I, § 101(a), (b), (f), (g)(1), Dec. 14, 1993, 107 Stat. 2227–2229; Pub. L. 105–340, title II, § 203(a), (b), Oct. 31, 1998, 112 Stat. 3194; Pub. L. 105–392, title IV, § 401(b)(5), Nov. 13, 1998, 112 Stat. 3587.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title XVIII of the Act is classified generally to part B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

[1] So in original. Probably should be ''section.''

PRIOR PROVISIONS

A prior section 300k, Pub. L. 93–641, § 2, Jan. 4, 1975, 88 Stat. 2226, set forth Congressional findings relating to national health planning and development, prior to omission in connection with repeal of former section 300k–1 et seq. of this title.

A prior section 1501 of act July 1, 1944, ch. 373, title XV, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2227; amended Oct. 4, 1979, Pub. L. 96–79, title I, § 101(a)(1)(A), (2), (3), 93 Stat. 593; Dec. 17, 1980, Pub. L. 96–538, title III, § 301, 94 Stat. 3190, which related to guidelines for national health policy, was classified to section 300k–1 of this title, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Prior sections 300k–2 and 300k–3 were repealed by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300k–2, act July 1, 1944, ch. 373, title XV, § 1502, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2227; amended Nov. 9, 1978, Pub. L. 95–619, title III, § 303(a), 92 Stat. 3248; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 102(a), 103(a), (b), 93 Stat. 594, 595, related to national health priorities and strengthening competition in supply of services.

Section 300k–3, act July 1, 1944, ch. 373, title XV, § 1503, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2228; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(a), 91 Stat. 384; July 10, 1979, Pub. L. 96–32, § 7(g), 93 Stat. 84; Oct. 4, 1979, Pub. L. 96–79, title I, § 102(b), 93 Stat. 594; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, related to National Council on Health Planning and Development.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–340, § 203(a), inserted ''and support services such as case management'' before semicolon at end.

Subsec. (b)(1). Pub. L. 105–340, § 203(b)(1), substituted ''through grants to public and nonprofit private entities and through contracts with public and private entities.'' for ''through grants to, and contracts with, public or nonprofit private entities.''

Subsec. (b)(2). Pub. L. 105–340, § 203(b)(2), added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''In addition to the authority established in paragraph (1) for a State with respect to grants and contracts, the State may provide for screenings under subsection (a)(1) of this section through entering into contracts with private entities that are not nonprofit entities.''

Subsecs. (c), (d). Pub. L. 105–392 redesignated subsec. (c), relating to coordinating committee regarding year 2000 health objectives, as (d).

1993—Subsec. (a). Pub. L. 103–183, § 101(g)(1), substituted ''Control and Prevention'' for ''Control'' in introductory provisions.

Subsec. (b). Pub. L. 103–183, § 101(a), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)'' in par. (1), added pars. (2) and (3), and struck out heading and text of former par. (2). Text read as follows: ''In addition to the authority established in paragraph (1) for a State with respect to grants and contracts, the State may provide for screenings under subsection (a)(1) of this section through entering into contracts with private entities. The amount paid by a State to a private entity under the preceding sentence for a screening procedure may not exceed the amount that would be paid under part B of title XVIII of the Social Security Act if payment were made under such part for furnishing the procedure to a woman enrolled under such part.''

Pub. L. 103–43, § 2008(c)(1), designated existing provisions as par. (1), inserted par. heading, substituted ''may, subject to paragraph (2), expend'' for ''may expend'', and added par. (2).

Subsec. (c). Pub. L. 103–183, § 101(f), added subsec. (c) relating to coordinating committee regarding year 2000 health objectives.

Pub. L. 103–183, § 101(b), added subsec. (c) relating to special consideration for certain States.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

§ 300*l*. Requirement of matching funds

(a) In general

The Secretary may not make a grant under section 300k of this title unless the State involved agrees, with respect to the costs to be incurred by the State in carrying out the purpose described in such section, to make available non-Federal contributions (in cash or in kind under subsection (b) of this section) toward such costs in an amount equal to not less than $1 for each $3 of Federal funds provided in the grant. Such contributions may be made directly or through donations from public or private entities.

(b) Determination of amount of non-Federal contribution

(1) In general

Non-Federal contributions required in subsection (a) of this section may be in cash or in kind, fairly evaluated, including equipment or services (and excluding indirect or overhead costs). Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(2) Maintenance of effort

In making a determination of the amount of non-Federal contributions for purposes of subsection (a) of this section, the Secretary may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the State involved toward the purpose described in section 300k of this title for the 2-year period preceding the first fiscal year for which the State is applying to receive a grant under such section.

(3) Inclusion of relevant non-Federal contributions for medicaid

In making a determination of the amount of non-Federal contributions for purposes of subsection (a) of this section, the Secretary shall, subject to paragraphs (1) and (2) of this subsection, include any non-Federal amounts expended pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] by the State involved toward the purpose described in paragraphs (1) and (2) of section 300k(a) of this title.

(July 1, 1944, ch. 373, title XV, § 1502, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 410.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 300*l*, act July 1, 1944, ch. 373, title XV, § 1511, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat.

2229; amended Apr. 22, 1976, Pub. L. 94–278, title XI, § 1106(a), 90 Stat. 416; Aug. 1, 1977, Pub. L. 95–83, title I, § 106(b), 91 Stat. 384; Oct. 4, 1979, Pub. L. 96–79, title I, § 104(a)(1), (b), 93 Stat. 595, 596, related to establishment of health service areas, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

A prior section 1502 of act July 1, 1944, ch. 373, title XV, was classified to section 300k–2 of this title prior to repeal by Pub. L. 99–660.

§ 300*l*–1. Requirement regarding medicaid

The Secretary may not make a grant under section 300k of this title for a program in a State unless the State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State includes the screening procedures specified in subparagraphs (A) and (B) of section 300m(a)(2) of this title as medical assistance provided under the plan.

(July 1, 1944, ch. 373, title XV, § 1502A, as added Pub. L. 102–531, title III, § 307, Oct. 27, 1992, 106 Stat. 3495.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

Prior sections 300*l*–1 to 300*l*–5 were repealed by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300*l*–1, act July 1, 1944, ch. 373, title XV, § 1512, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2232; amended Mar. 19, 1976, Pub. L. 94–237, § 14(b), 90 Stat. 249; Oct. 12, 1976, Pub. L. 94–484, title IX, § 902(a), 90 Stat. 2324; Aug. 1, 1977, Pub. L. 95–83, title I, § 106(c), (d), 91 Stat. 384; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 108(a)–(d)(1), (e), 109, 110(a)–(d)(1), (e)(1), (2)(A), (3), 111(a), (b), 112, 113(a), 114, 93 Stat. 601–607; Aug. 13, 1981, Pub. L. 97–35, title IX, § 935(d), 95 Stat. 571; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, related to composition and operation of health systems agencies.

Section 300*l*–2, act July 1, 1944, ch. 373, title XV, § 1513, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2235; amended Mar. 19, 1976, Pub. L. 94–237, § 14(a), 90 Stat. 249; Aug. 1, 1977, Pub. L. 95–83, title I, § 106(e)–(i), 91 Stat. 384, 385; July 10, 1979, Pub. L. 96–32, § 7(m), 93 Stat. 84; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 101(b)(1), 103(c), 107(a), 110(e)(4), (f), 115(b)(1), (2), (c)(2), (d)(1), (2), (e), (f), (h), (i)(1), 118(a)(1), (b)(1), (c), 119(b), 120(a), 121, 122(a), 123(c)(1)(B), 93 Stat. 593, 595, 600, 604, 607–610, 620–625; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Jan. 2, 1980, Pub. L. 96–181, § 15(b), 93 Stat. 1316; Oct. 7, 1980, Pub. L. 96–398, title VIII, § 804(d), 94 Stat. 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(4), 95 Stat. 561, related to functions of health systems agencies.

Section 300*l*–3, act July 1, 1944, ch. 373, title XV, § 1514, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2239; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(j), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96–79, title I, § 105(f), 93 Stat. 598, provided for assistance to entities desiring to be designated as health systems agencies.

Section 300*l*–4, act July 1, 1944, ch. 373, title XV, § 1515, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2239; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(k), 91 Stat. 385; Dec. 19, 1977, Pub. L. 95–215, § 6(a)(1), 91 Stat. 1507; Oct. 4, 1979, Pub. L. 96–79, title I, § 105(a)–(d)(1)(A), (2), (e), (g), (h), 93 Stat. 596–598; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided for designation of health systems agencies.

Section 300*l*–5, act July 1, 1944, ch. 373, title XV, § 1516, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2241; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 102(a), 91 Stat. 383; Dec. 19, 1977, Pub. L. 95–215, § 6(a)(2), 91 Stat. 1507; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 106, 107(b), 127(a), 93 Stat. 598, 600, 629; Dec. 17, 1980, Pub. L. 96–538, title III, § 302, 94 Stat. 3190; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 933(a)(1), 934(a), 95 Stat. 570, 571, provided for planning grants to health systems agencies.

§ 300m. Requirements with respect to type and quality of services

(a) Requirement of provision of all services by date certain

The Secretary may not make a grant under section 300k of this title unless the State involved agrees—

(1) to ensure that, initially and throughout the period during which amounts are received pursuant to the grant, not less than 60 percent of the grant is expended to provide each of the services or activities described in paragraphs (1) and (2) of section 300k(a) of this title, including making available screening procedures for both breast and cervical cancers;

(2) subject to subsection (b) of this section, to ensure that—

(A) in the case of breast cancer, both a physical examination of the breasts and the screening procedure known as a mammography are conducted; and

(B) in the case of cervical cancer, both a pelvic examination and the screening procedure known as a pap smear are conducted;

(3) to ensure that, by the end of any second fiscal year of payments pursuant to the grant, each of the services or activities described in section 300k(a) of this title is provided; and

(4) to ensure that not more than 40 percent of the grant is expended to provide the services or activities described in paragraphs (3) through (6) of such section.

(b) Use of improved screening procedures

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that, if any screening procedure superior to a procedure described in subsection (a)(2) of this section becomes commonly available and is recommended for use, any entity providing screening procedures pursuant to the grant will utilize the superior procedure rather than the procedure described in such subsection.

(c) Quality assurance regarding screening procedures

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the State will, in accordance with applicable law, assure the quality of screening procedures conducted pursuant to such section.

(July 1, 1944, ch. 373, title XV, § 1503, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 410; amended Pub. L. 103–183, title I, § 101(c)(1), Dec. 14, 1993, 107 Stat. 2227.)

PRIOR PROVISIONS

Prior sections 300m to 300m–6 were repealed by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300m, act July 1, 1944, ch. 373, title XV, § 1521, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2242;

amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(*l*), (m), 91 Stat. 385; Dec. 19, 1977, Pub. L. 95–215, § 6(b), 91 Stat. 1507; July 16, 1979, Pub. L. 96–33, 93 Stat. 86; Oct. 4, 1979, Pub. L. 96–79, title I, § 123(a), (b)(1)(A), (2), (d), (f), (g)(2), 93 Stat. 624–627; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Jan. 2, 1980, Pub. L. 96–181, § 15(b), 93 Stat. 1316; Dec. 17, 1980, Pub. L. 96–538, title III, § 303(b), 94 Stat. 3190; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 902(g)(5), 936(b), 95 Stat. 561, 572; Jan. 4, 1983, Pub. L. 97–414, § 9(b), 96 Stat. 2064, provided for designation of State health planning and development agencies.

A prior section 1503 of act July 1, 1944, ch. 373, title XV, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2228; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(a), 91 Stat. 384; July 10, 1979, Pub. L. 96–32, § 7(g), 93 Stat. 84; Oct. 4, 1979, Pub. L. 96–79, title I, § 102(b), 93 Stat. 594; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, which related to National Council on Health Planning and Development, was classified to section 300k–3 of this title.

Section 300m–1, act July 1, 1944, ch. 373, title XV, § 1522, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2244; amended 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 101(b)(2), 111(c), 115(b)(3), 117(b)(4), 120(b), 122(b), 123(c)(1)(A), (e)(1), 93 Stat. 594, 605, 607, 620, 622, 624, 625, 626; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, related to State administrative programs.

Section 300m–2, act July 1, 1944, ch. 373, title XV, § 1523, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2246; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(n), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 115(c)(1)(A)–(C), (i)(2), 117(b)(1), (2), 118(a)(2), (b)(2), 123(c)(2), (3), (e)(2), (g)(1), 93 Stat. 607, 608, 610, 618, 619, 621, 625–627; Oct. 7, 1980, Pub. L. 96–398, title III, § 303, 94 Stat. 1588, related to State health planning and development functions.

Section 300m–3, act July 1, 1944, ch. 373, title XV, § 1524, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2247; amended Oct. 4, 1979, Pub. L. 96–79, title I, §§ 110(d)(2), 113(b), 115(a), (c)(1)(D), (d)(3), (g), (i)(2)–(4), 119(a), 124, 93 Stat. 604, 606–610, 621, 627; Jan. 2, 1980, Pub. L. 96–181, § 15(b), 93 Stat. 1316; Dec. 17, 1980, Pub. L. 96–538, title III, §§ 304, 305, 94 Stat. 3191; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(6), 95 Stat. 561, related to composition and functions of Statewide Health Coordinating Councils.

Section 300m–4, act July 1, 1944, ch. 373, title XV, § 1525, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2249; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 102(b), 91 Stat. 383; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 107(c), 127(b), 93 Stat. 600, 629; Aug. 13, 1981, Pub. L. 97–35, title IX, § 933(a)(2), 95 Stat. 570, provided for grants for State health planning and development.

Section 300m–5, act July 1, 1944, ch. 373, title XV, § 1526, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2249; amended Aug. 1, 1977, Pub. L. 95–83, title I, §§ 102(c), 106(*o*), 91 Stat. 383, 385; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 107(d), 120(c), 127(c), 93 Stat. 600, 622, 629, provided for grants for rate regulation.

Section 300m–6, act July 1, 1944, ch. 373, title XV, § 1527, as added Oct. 4, 1979, Pub. L. 96–79, title I, § 117(a), 93 Stat. 614; amended Dec. 17, 1980, Pub. L. 96–538, title III, §§ 306, 307, 94 Stat. 3191; Aug. 13, 1981, Pub. L. 97–35, title IX, § 949(c), 95 Stat. 578, related to certificate of need program.

AMENDMENTS

1993—Subsecs. (c) to (e). Pub. L. 103–183 added subsec. (c) and struck out former subsecs. (c) which related to quality assurance regarding screening for breast cancer, (d) which related to quality assurance regarding screening for cervical cancer, and (e) which related to issuance by Secretary of guidelines with respect to quality of mammography and cytological services.

TRANSITION RULE REGARDING MAMMOGRAPHIES

Section 101(c)(2) of Pub. L. 103–183 provided that: ''With respect to the screening procedure for breast cancer known as a mammography, the requirements in effect on the day before the date of the enactment of this Act [Dec. 14, 1993] under section 1503(c) of the Public Health Service Act [subsec. (c) of this section] remain in effect (for an individual or facility conducting such procedures pursuant to a grant to a State under section 1501 of such Act [section 300k of this title]) until there is in effect for the facility a certificate (or provisional certificate) issued under section 354 of such Act [section 263b of this title].''

§ 300n. Additional required agreements

(a) Priority for low-income women

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that low-income women will be given priority in the provision of services and activities pursuant to paragraphs (1) and (2) of section 300k(a) of this title.

(b) Limitation on imposition of fees for services

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that, if a charge is imposed for the provision of services or activities under the grant, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the woman involved; and

(3) will not be imposed on any woman with an income of less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(c) Statewide provision of services

(1) In general

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that services and activities under the grant will be made available throughout the State, including availability to members of any Indian tribe or tribal organization (as such terms are defined in section 450b of title 25).

(2) Waiver

The Secretary may waive the requirement established in paragraph (1) for a State if the Secretary determines that compliance by the State with the requirement would result in an inefficient allocation of resources with respect to carrying out the purpose described in section 300k(a) of this title.

(3) Grants to tribes and tribal organizations

(A) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to tribes and tribal organizations (as such terms are used in paragraph (1)) for the purpose of carrying out programs described in section 300k(a) of this title. This subchapter applies to such a grant (in relation to the jurisdiction of the tribe or organization) to the same extent and in the same manner as such subchapter applies to a grant to a State under section 300k of this title (in relation to the jurisdiction of the State).

(B) If a tribe or tribal organization is receiving a grant under subparagraph (A) and the

State in which the tribe or organization is located is receiving a grant under section 300k of this title, the requirement established in paragraph (1) for the State regarding the tribe or organization is deemed to have been waived under paragraph (2).

(d) Relationship to items and services under other programs

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the grant will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(e) Coordination with other breast and cervical cancer programs

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the services and activities funded through the grant shall be coordinated with other Federal, State, and local breast and cervical cancer programs.

(f) Limitation on administrative expenses

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(g) Restrictions on use of grant

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the grant will not be expended to provide inpatient hospital services for any individual.

(h) Records and audits

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that—

(1) the State will establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the State under such section; and

(2) upon request, the State will provide records maintained pursuant to paragraph (1) to the Secretary or the Comptroller of the United States for purposes of auditing the expenditures by the State of the grant.

(i) Reports to Secretary

The Secretary may not make a grant under section 300k of this title unless the State involved agrees to submit to the Secretary such reports as the Secretary may require with respect to the grant.

(July 1, 1944, ch. 373, title XV, § 1504, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 412; amended Pub. L. 103–183, title I, § 101(d), Dec. 14, 1993, 107 Stat. 2228.)

PRIOR PROVISIONS

A prior section 300n, act July 1, 1944, ch. 373, title XV, § 1531, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2250; amended Mar. 19, 1976, Pub. L. 94–237, § 14(c), 90 Stat. 249; Oct. 12, 1976, Pub. L. 94–484, title IX, § 902(b), 90 Stat. 2324; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 104(c)(2), 108(d)(2), 117(b)(3), 126(a)(1), (b), 93 Stat. 596, 602, 619, 628; Dec. 17, 1980, Pub. L. 96–538, title III, §§ 308, 309, 94 Stat. 3192; Aug. 13, 1981, Pub. L. 97–35, title IX, § 936(a), 95 Stat. 572, defined terms applicable to this subchapter, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

AMENDMENTS

1993—Subsec. (c)(3). Pub. L. 103–183 added par. (3).

§ 300n–1. Description of intended uses of grant

The Secretary may not make a grant under section 300k of this title unless—

(1) the State involved submits to the Secretary a description of the purposes for which the State intends to expend the grant;

(2) the description identifies the populations, areas, and localities in the State with a need for the services or activities described in section 300k(a) of this title;

(3) the description provides information relating to the services and activities to be provided, including a description of the manner in which the services and activities will be coordinated with any similar services or activities of public and private entities; and

(4) the description provides assurances that the grant funds will be used in the most cost-effective manner.

(July 1, 1944, ch. 373, title XV, § 1505, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 414; amended Pub. L. 103–43, title XX, § 2008(c)(2), June 10, 1993, 107 Stat. 211; Pub. L. 103–183, title I, § 101(g)(2), Dec. 14, 1993, 107 Stat. 2229; Pub. L. 105–392, title IV, § 401(b)(6), Nov. 13, 1998, 112 Stat. 3587.)

PRIOR PROVISIONS

A prior section 300n–1, act July 1, 1944, ch. 373, title XV, § 1532, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2251; amended Oct. 8, 1976, Pub. L. 94–460, title I, § 117(a), 90 Stat. 1954; Nov. 9, 1978, Pub. L. 95–619, title III, § 303(b), (c), 92 Stat. 3248; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 103(d), 116, 117(b)(5), 93 Stat. 595, 610, 620; Dec. 17, 1980, Pub. L. 96–538, title III, § 310, 94 Stat. 3192, provided for procedures and criteria for review of proposed health system changes, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

AMENDMENTS

1998—Par. (3). Pub. L. 105–392 struck out ''nonprofit'' before ''private entities''.

1993—Par. (3). Pub. L. 103–183, § 101(g)(2)(A), substituted ''public and nonprofit private entities; and'' for ''public or nonprivate entities (and additionally, in the case of services and activities under section 300k(a)(1) of this title, with any similar services or activities of private entities); and''.

Pub. L. 103–43 inserted before semicolon ''(and additionally, in the case of services and activities under section 300k(a)(1) of this title, with any similar services or activities of private entities)''.

Par. (4). Pub. L. 103–183, § 101(g)(2)(B), inserted ''will'' after ''grant funds''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

§ 300n–2. Requirement of submission of application

The Secretary may not make a grant under section 300k of this title unless an application for the grant is submitted to the Secretary, the application contains the description of intended uses required in section 300n–1 of this title, and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subchapter.

(July 1, 1944, ch. 373, title XV, § 1506, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 414.)

PRIOR PROVISIONS

A prior section 300n–2, act July 1, 1944, ch. 373, title XV, § 1533, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2253, provided for technical assistance to health systems agencies and State agencies, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

§ 300n–3. Technical assistance and provision of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary may provide training and technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to section 300k of this title. The Secretary may provide such technical assistance directly or through grants to, or contracts with, public and private entities.

(b) Provision of supplies and services in lieu of grant funds

(1) In general

Upon the request of a State receiving a grant under section 300k of this title, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out such section and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the grant under section 300k of this title to the State involved by an amount equal to the costs of detailing personnel (including pay, allowances, and travel expenses) and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XV, § 1507, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 414.)

PRIOR PROVISIONS

A prior section 300n–3, act July 1, 1944, ch. 373, title XV, § 1534, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2255; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 102(d), 91 Stat. 383; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 125, 127(d), 93 Stat. 628, 629; Aug. 13, 1981, Pub. L. 97–35, title IX, § 933(a)(3), 95 Stat. 570, provided for developing new centers for health planning, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

§ 300n–4. Evaluations and reports

(a) Evaluations

The Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out pursuant to section 300k of this title. Such evaluations shall include evaluations of the extent to which States carrying out such programs are in compliance with section 300k(a)(2) of this title and with section 300n(c) of this title.

(b) Report to Congress

The Secretary shall, not later than 1 year after the date on which amounts are first appropriated pursuant to section 300n–5(a)[1] of this title, and annually thereafter, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report summarizing evaluations carried out pursuant to subsection (a) of this section during the preceding fiscal year and making such recommendations for administrative and legislative initiatives with respect to this subchapter as the Secretary determines to be appropriate, including recommendations regarding compliance by the States with section 300k(a)(2) of this title and with section 300n(c) of this title.

(July 1, 1944, ch. 373, title XV, § 1508, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 415; amended Pub. L. 103–183, title I, § 101(e), Dec. 14, 1993, 107 Stat. 2228.)

REFERENCES IN TEXT

Section 300n–5(a) of this title, referred to in subsec. (b), was in the original a reference to section 1509(a), meaning section 1509(a) of act July 1, 1944. Section 1509 was renumbered section 1510 by Pub. L. 103–183, title I, § 102(a)(1), Dec. 14, 1993, 107 Stat. 2229.

PRIOR PROVISIONS

A prior section 300n–4, act July 1, 1944, ch. 373, title XV, § 1535, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2256, provided for review by Secretary of operations of designated health systems agencies and State agencies, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183, § 101(e)(1), inserted at end "Such evaluations shall include evaluations of the extent to which States carrying out such programs are in compliance with section 300k(a)(2) of this title and with section 300n(c) of this title."

Subsec. (b). Pub. L. 103–183, § 101(e)(2), inserted before period at end ", including recommendations regarding compliance by the States with section 300k(a)(2) of this title and with section 300n(c) of this title".

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on En-

[1] See References in Text note below.

ergy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300n–4a. Supplemental grants for additional preventive health services

(a) Demonstration projects

In the case of States receiving grants under section 300k of this title, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to not more than 3 such States to carry out demonstration projects for the purpose of—

(1) providing preventive health services in addition to the services authorized in such section, including screenings regarding blood pressure and cholesterol, and including health education;

(2) providing appropriate referrals for medical treatment of women receiving services pursuant to paragraph (1) and ensuring, to the extent practicable, the provision of appropriate follow-up services; and

(3) evaluating activities conducted under paragraphs (1) and (2) through appropriate surveillance or program-monitoring activities.

(b) Status as participant in program regarding breast and cervical cancer

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that services under the grant will be provided only through entities that are screening women for breast or cervical cancer pursuant to a grant under section 300k of this title.

(c) Applicability of provisions of general program

This subchapter applies to a grant under subsection (a) of this section to the same extent and in the same manner as such subchapter applies to a grant under section 300k of this title.

(d) Funding

(1) In general

Subject to paragraph (2), for the purpose of carrying out this section, there are authorized to be appropriated $3,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2003.

(2) Limitation regarding funding with respect to breast and cervical cancer

The authorization of appropriations established in paragraph (1) is not effective for a fiscal year unless the amount appropriated under section 300n–5(a) of this title for the fiscal year is equal to or greater than $100,000,000.

(July 1, 1944, ch. 373, title XV, § 1509, as added Pub. L. 103–183, title I, § 102(a)(2), Dec. 14, 1993, 107 Stat. 2229; amended Pub. L. 105–340, title II, § 203(c)(1), Oct. 31, 1998, 112 Stat. 3194.)

PRIOR PROVISIONS

A prior section 1509 of act July 1, 1944, was renumbered section 1510 and is classified to section 300n–5 of this title.

AMENDMENTS

1998—Subsec. (d)(1). Pub. L. 105–340 substituted ''2003'' for ''1998''.

§ 300n–5. Funding for general program

(a) Authorization of appropriations

For the purpose of carrying out this subchapter, there are authorized to be appropriated $50,000,000 for fiscal year 1991, such sums as may be necessary for each of the fiscal years 1992 and 1993, $150,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2003.

(b) Set-aside for technical assistance and provision of supplies and services

Of the amounts appropriated under subsection (a) of this section for a fiscal year, the Secretary shall reserve not more than 20 percent for carrying out section 300n–3 of this title.

(July 1, 1944, ch. 373, title XV, § 1510, formerly § 1509, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 415; renumbered § 1510 and amended Pub. L. 103–183, title I, §§ 102(a)(1), (b), 103, Dec. 14, 1993, 107 Stat. 2229, 2230; Pub. L. 105–340, title II, § 203(c)(2), Oct. 31, 1998, 112 Stat. 3194.)

PRIOR PROVISIONS

Prior sections 300n–5 and 300n–6 were repealed by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300n–5, act July 1, 1944, ch. 373, title XV, § 1536, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2257; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(p), (q), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96–79, title I, § 104(c)(1), 93 Stat. 596; Aug. 13, 1981, Pub. L. 97–35, title IX, § 935(a), 95 Stat. 571; Jan. 4, 1983, Pub. L. 97–414, § 8(p), 96 Stat. 2062, made special provisions for certain States and territories.

Section 300n–6, act July 1, 1944, ch. 373, title XV, § 1537, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 933(b), 95 Stat. 570, authorized appropriations for grants and contracts under former sections 300*l*–5(a), 300m–4(a), and 300n–3(a) of this title.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–340 substituted ''2003'' for ''1998''.

1993—Pub. L. 103–183, § 102(b), inserted ''for general program'' after ''Funding'' in section catchline.

Subsec. (a). Pub. L. 103–183, § 103, struck out ''and'' after ''1991,'' and inserted before period at end '', $150,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998''.

SUBCHAPTER XIV—HEALTH RESOURCES DEVELOPMENT

§§ 300*o* to 300*o*–3. Repealed. Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632

Sections 300*o* to 300*o*–3, act July 1, 1944, ch. 373, title XVI, §§ 1601–1604, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2258–2260; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(r)–(v), 91 Stat. 385, were repealed by Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632.

Section 300*o* related to statement of purpose.

Section 300*o*–1 provided for promulgation of regulations and required provisions.

Section 300*o*–2 related to State medical facilities plans, submission and approval of plans as prerequisite for approval of project assistance applications, required provisions, and procedure upon disapproval of plans.

Section 300*o*–3 provided for medical facility project applications, covering in submission of applications, required provisions, waivers, and projects subject to requirements, criteria for approval, procedure for disapproval, amendment of approved applications, and review by health systems agencies.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§§ 300p to 300p–3. Repealed. Pub. L. 96–79, title II, § 201(a), Oct. 4, 1979, 93 Stat. 630

Sections 300p to 300p–3, act July 1, 1944, ch. 373, title XVI, §§ 1610–1613, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2262–2264; amended Apr. 22, 1976, Pub. L. 94–278, title XI, § 1106(b), 90 Stat. 416; Aug. 1, 1977, Pub. L. 95–83, title I, §§ 103(a), 106(w), 91 Stat. 383, 385, were repealed by Pub. L. 96–79, title II, § 201(a), Oct. 4, 1979, 93 Stat. 632.

Section 300p related to allotments to States for health resources development.

Section 300p–1 related to payments to States for approved medical facility projects.

Section 300p–2 related to compliance provisions and withholding of payments for noncompliance.

Section 300p–3 authorized appropriations for allotments to States.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

PART A—LOANS AND LOAN GUARANTEES

AMENDMENTS

1979—Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632, repealed part A relating to purpose, State plan, and project approval, and comprising former sections 300*o* to 300*o*–3 of this title, and redesignated former part C as part A relating to loans and loan guarantees.

§ 300q. Loan and loan guarantee authority

(a) Covered projects: duration; payment of principal and interest on loans for covered projects: duration; payments for reduction of interest rate

(1) The Secretary, during the period ending September 30, 1982, may, in accordance with this part, make loans from the fund established under section 300q–2(d) of this title to any public or nonprofit private entity for projects for—

(A) the discontinuance of unneeded hospital services or facilities,[1]

(B) the conversion of unneeded hospital services and facilities to needed health services and medical facilities, including outpatient medical facilities and facilities for long-term care;

(C) the renovation and modernization of medical facilities, particularly projects for the prevention or elimination of safety hazards, projects to avoid noncompliance with licensure or accreditation standards, or projects to replace obsolete facilities;

(D) the construction of new outpatient medical facilities; and

(E) the construction of new inpatient medical facilities in areas which have experienced (as determined by the Secretary) recent rapid population growth.

(2)(A) The Secretary, during the period ending September 30, 1982, may, in accordance with this part, guarantee to—

(i) non-Federal lenders for their loans to public and nonprofit private entities for medical facilities projects described in paragraph (1), and

(ii) the Federal Financing Bank for its loans to public and nonprofit private entities for such projects,

payment of principal and interest on such loans.

(B) In the case of a guarantee of any loan to a public or nonprofit private entity under subparagraph (A)(i) which is located in an urban or rural poverty area, the Secretary may pay, to the holder of such loan and for and on behalf of the project for which the loan was made, amounts sufficient to reduce by not more than one half the net effective interest rate otherwise payable on such loan if the Secretary finds that without such assistance the project could not be undertaken.

(b) Amount of loans for medical facilities projects and such projects in urban or rural poverty areas

The principal amount of a loan directly made or guaranteed under subsection (a) of this section for a medical facilities project, when added to any other assistance provided such project under part B, may not exceed 90 per centum of the cost of such project unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the principal amount, when added to other assistance under part B, may cover up to 100 per centum of such costs.

(c) Limitation on cumulative total of principal of outstanding loans

The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued, or which have been directly made, may not exceed such limitations as may be specified in appropriation Acts.

(d) Administrative assistance of Department of Housing and Urban Development

The Secretary, with the consent of the Secretary of Housing and Urban Development, shall obtain from the Department of Housing and Urban Development such assistance with respect to the administration of this part as will promote efficiency and economy thereof.

(July 1, 1944, ch. 373, title XVI, § 1601, formerly § 1620, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2264; amended Pub. L. 94–273, § 2(21), Apr. 21, 1976, 90 Stat. 376; Pub. L. 95–83, title I, § 106(x)(1), Aug. 1, 1977, 91 Stat. 385; renumbered § 1601 and amended Pub. L. 96–79, title II, §§ 201(b)(1), 203(a)(1), (2), Oct. 4, 1979, 93 Stat. 630, 635.)

PRIOR PROVISIONS

A prior section 1601 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2258, was classified to section 300*o* of this title, prior to repeal by Pub. L. 96–79, § 202(a).

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–79, §§ 201(b)(1), 203(a)(2), added par. (1); substituted reference to section 1602(d) for 1622(d), set out in text as ''section 300q–2(d) of this title''; incorporated in par. (2) former subsec. (b) provi-

[1] So in original. The comma probably should be a semicolon.

sions made applicable for period ending Sept. 30, 1982, previously covering period beginning July 1, 1974, and ending Sept. 30, 1978, extended provisions to public entities, struck out existing condition that applications for assistance under subchapter be approved under former section 300*o*–3 of this title, substituted in subpar. (2)(B) provision for payment of amounts sufficient to reduce by not more than one half net effective interest otherwise payable on the loan for prior provision for amounts sufficient to reduce by 3 per centum per annum net effective interest rate on the loan, and struck out provision granting contractual right of holder of a guaranteed loan to receive from the United States such interest payments.

Subsec. (b). Pub. L. 96–79, § 201(b)(1), added subsec. (b) and incorporated existing provisions of subsec. (b) relating to loan guarantee authority for payment of principal and interest on loans for approved projects, their duration, and payments for reduction of interest rate in subsec. (a)(2) of this section.

1977—Subsecs. (a), (b)(1). Pub. L. 95–83 substituted ''September 30, 1978'' for ''September 30, 1977''.

1976—Subsecs. (a), (b)(1). Pub. L. 94–273 substituted ''September'' for ''June''.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 204 of Pub. L. 96–79 provided that: ''The amendments made by this title [enacting sections 300s, 300s–1, and 300s–6, amending this section and sections 201, 300q–2, 300r, 300s–1a, 300s–3, and 300s–5, and repealing sections 300*o* to 300*o*–3, 300p to 300p–3, 300q–1, and 300s of this title] shall take effect October 1, 1979, except that the amendments made by section 201(b) [amending this section and section 300q–2 of this title] respecting the payment of an interest subsidy for a loan or loan guarantee made under part A of title XVI of the Public Health Service Act [this part] shall apply only with respect to loans and loan guarantees made after October 1, 1979, and with respect to loans and loan guarantees made under such part before such date the Secretary shall continue to pay the interest subsidy authorized for such loans and loan guarantees before such date.''

§ 300q–1. Repealed. Pub. L. 96–79, title II, § 203(a)(1), Oct. 4, 1979, 93 Stat. 635

Section, act July 1, 1944, ch. 373, title XVI, § 1621, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2265, related to allocation among States of total amount of principal, criteria, availability of unobligated amounts, and reallotments.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§ 300q–2. General provisions

(a) Loan guarantees; criteria for approval; recovery of payments by United States; modification, etc., of terms and conditions; incontestability

(1) The Secretary may not approve a loan guarantee for a project under this part unless he determines that (A) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States, and (B) the loan would not be available on reasonable terms and conditions without the guarantee under this part.

(2)(A) The United States shall be entitled to recover from the applicant for a loan guarantee under this part the amount of any payment made pursuant to such guarantee, unless the Secretary for good cause waives such right of recovery; and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

(B) To the extent permitted by subparagraph (C), any terms and conditions applicable to a loan guarantee under this part (including terms and conditions imposed under subparagraph (D)) may be modified by the Secretary to the extent he determines it to be consistent with the financial interest of the United States.

(C) Any loan guarantee made by the Secretary under this part shall be incontestable (i) in the hands of an applicant on whose behalf such guarantee is made unless the applicant engaged in fraud or misrepresentation in securing such guarantee, and (ii) as to any person (or his successor in interest) who makes or contracts to make a loan to such applicant in reliance thereon unless such person (or his successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(D) Guarantees of loans under this part shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this subchapter will be achieved.

(b) Loans; criteria for approval; terms and conditions; waiver of recovery of payments by United States

(1) The Secretary may not approve a loan under this part unless—

(A) the Secretary is reasonably satisfied that the applicant under the project for which the loan would be made will be able to make payments of principal and interest thereon when due, and

(B) the applicant provides the Secretary with reasonable assurances that there will be available to it such additional funds as may be necessary to complete the project or undertaking with respect to which such loan is requested.

(2) Any loan made under this part shall (A) have such security, (B) have such maturity date, (C) be repayable in such installments, (D) bear interest at a rate comparable to the current rate of interest prevailing, on the date the loan is made, with respect to loans guaranteed under this part, minus any interest subsidy made in accordance with section 300q(a)(2)(B) of this title with respect to a loan made for a project located in an urban or rural poverty area, and (E) be subject to such other terms and conditions (including provisions for recovery in case of default), as the Secretary determines to be necessary to carry out the purposes of this subchapter while adequately protecting the financial interests of the United States.

(3) The Secretary may, for good cause but with due regard to the financial interests of the United States, waive any right of recovery

which he has by reasons of the failure of a borrower to make payments of principal of and interest on a loan made under this part, except that if such loan is sold and guaranteed, any such waiver shall have no effect upon the Secretary's guarantee of timely payment of principal and interest.

(c) Sale of loans; authority; amount; agreements with purchasers; deposit of proceeds

(1) The Secretary shall from time to time, but with due regard to the financial interests of the United States, sell loans made under this part either on the private market or to the Federal National Mortgage Association in accordance with section 1717 of title 12 or to the Federal Financing Bank.

(2) Any loan so sold shall be sold for an amount which is equal (or approximately equal) to the amount of the unpaid principal of such loans as of time of sale.

(3)(A) The Secretary is authorized to enter into an agreement with the purchaser of any loan sold under this part under which the Secretary agrees—

(i) to guarantee to such purchaser (and any successor in interest to such purchaser) payments of the principal and interest payable under such loan, and

(ii) to pay as an interest subsidy to such purchaser (and any successor in interest of such purchaser) amounts which, when added to the amount of interest payable on such loan, are equivalent to a reasonable rate of interest on such loan as determined by the Secretary after taking into account the range of prevailing interest rates in the private market on similar loans and the risks assumed by the United States.

(B) Any agreement under subparagraph (A)—

(i) may provide that the Secretary shall act as agent of any such purchaser, for the purpose of collecting from the entity to which such loan was made and paying over to such purchaser any payments of principal and interest payable by such entity under such loan;

(ii) may provide for the repurchase by the Secretary of any such loan on such terms and conditions as may be specified in the agreement;

(iii) shall provide that, in the event of any default by the entity to which such loan was made in payment of principal or interest due on such loan, the Secretary shall, upon notification to the purchaser (or to the successor in interest of such purchaser), have the option to close out such loan (and any obligations of the Secretary with respect thereto) by paying to the purchaser (or his successor in interest) the total amount of outstanding principal and interest due thereon at the time of such notification; and

(iv) shall provide that, in the event such loan is closed out as provided in clause (iii), or in the event of any other loss incurred by the Secretary by reason of the failure of such entity to make payments of principal or interest on such loan, the Secretary shall be subrogated to all rights of such purchaser for recovery of such loss from such entity.

(4) Amounts received by the Secretary as proceeds from the sale of loans under this subsection shall be deposited in the fund established under subsection (d) of this section.

(5) If any loan to a public entity under this part is sold and guaranteed by the Secretary under this subsection, interest paid on such loan after its sale and any interest subsidy paid, under paragraph (3)(A)(ii), by the Secretary with respect to such loan which is received by the purchaser of the loan (or the purchaser's successor in interest) shall be included in the gross income of the purchaser or successor for the purpose of chapter 1 of title 26.

(d) Loan and loan guarantee fund; establishment; amounts authorized to be appropriated; issuance, purchase, and sale of notes, obligations, etc.; interest rates; public debt transactions

(1) There is established in the Treasury a loan and loan guarantee fund (hereinafter in this subsection referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriations Acts—

(A) to enable him to make loans under this part,

(B) to enable him to discharge his responsibilities under loan guarantees issued by him under this part,

(C) for payment of interest under section 300q(a)(2)(B) of this title on loans guaranteed under this part,

(D) for repurchase of loans under subsection (c)(3)(B) of this section,

(E) for payment of interest on loans which are sold and guaranteed, and

(F) to enable the Secretary to take the action authorized by subsection (f) of this section.

There are authorized to be appropriated from time to time such amounts as may be necessary to provide the sums required for the fund. There shall also be deposited in the fund amounts received by the Secretary in connection with loans and loan guarantees under this part and other property or assets derived by him from his operations respecting such loans and loan guarantees, including any money derived from the sale of assets.

(2) If at any time the sums in the funds are insufficient to enable the Secretary—

(A) to make payments of interest under section 300q(a)(2)(B) of this title,

(B) to otherwise comply with guarantees under this part of loans to nonprofit private entities,

(C) in the case of a loan which was made, sold, and guaranteed under this part, to make to the purchaser of such loan payments of principal and interest on such loan after default by the entity to which the loan was made, or

(D) to repurchase loans under subsection (c)(3)(B) of this section,

(E) to make payments of interest on loans which are sold and guaranteed, and

(F) to enable the Secretary to take the action authorized by subsection (f) of this section,

he is authorized to issue to the Secretary of the Treasury notes or other obligations in such

forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued under this paragraph and for that purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which the securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this paragraph shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from the fund.

(e) Transfers to and additional capitalization of loan and loan guarantee fund

(1) The assets, commitments, obligations, and outstanding balances of the loan guarantee and loan fund established in the Treasury by section 291j–6 of this title shall be transferred to the fund established by subsection (d) of this section.

(2) To provide additional capitalization for the fund established under subsection (d) of this section there are authorized to be appropriated to the fund, such sums as may be necessary for the fiscal years ending June 30, 1975, June 30, 1976, September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982.

(f) Default prevention measures; terms and conditions; implementation of reforms; foreclosures; protection of Federal interest on default

(1) The Secretary may take such action as may be necessary to prevent a default on a loan made or guaranteed under this part or under subchapter IV of this chapter, including the waiver of regulatory conditions, deferral of loan payments, renegotiation of loans, and the expenditure of funds for technical and consultative assistance, for the temporary payment of the interest and principal on such a loan, and for other purposes. Any such expenditure made under the preceding sentence on behalf of a medical facility shall be made under such terms and conditions as the Secretary shall prescribe, including the implementation of such organizational, operational, and financial reforms as the Secretary determines are appropriate and the disclosure of such financial or other information as the Secretary may require to determine the extent of the implementation of such reforms.

(2) The Secretary may take such action, consistent with State law respecting foreclosure procedures, as he deems appropriate to protect the interest of the United States in the event of a default on a loan made or guaranteed under this part or under subchapter IV of this chapter, including selling real property pledged as security for such a loan or loan guarantee and for a reasonable period of time taking possession of, holding, and using real property pledged as security for such a loan or loan guarantee.

(July 1, 1944, ch. 373, title XVI, § 1602, formerly § 1622, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2265; amended Pub. L. 95–83, title I, § 106(x)(2), (y), Aug. 1, 1977, 91 Stat. 385; renumbered § 1602 and amended Pub. L. 96–79, title II, §§ 201(b)(2), (3), 203(a)(1), (3), (g), Oct. 4, 1979, 93 Stat. 631, 635; Pub. L. 97–414, § 8(q), Jan. 4, 1983, 96 Stat. 2062; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

CODIFICATION

In subsec. (d), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act'' and ''that Act'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 1602 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2258; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(r), (s), 91 Stat. 385, was classified to section 300*o*–1 of this title, prior to repeal by Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632.

AMENDMENTS

1986—Subsec. (c)(5). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1983—Subsec. (f)(2). Pub. L. 97–414 inserted ''selling real property pledged as security for such a loan or loan guarantee and'' after ''including''.

1979—Subsec. (b)(2)(D). Pub. L. 96–79, § 201(b)(2), substituted ''minus any interest subsidy made in accordance with section 300q(a)(2)(B) of this title (with respect to a loan made for a project located in an urban or rural poverty area'' for ''minus 3 per centum per annum''.

Subsec. (d)(1). Pub. L. 96–79, § 203(a)(3), (g)(2), substituted in subpar. (C) reference to section ''300q(a)(2)(B)'' for ''300q(b)(2)'' of this title, and added subpar. (F).

Subsec. (d)(2). Pub. L. 96–79, § 203(a)(3), (g)(3), substituted in subpar. (A) reference to section ''300q(a)(2)(B)'' for ''300q(b)(2)'' of this title, and added subpar. (F).

Subsec. (e)(2). Pub. L. 96–79, § 201(b)(3), authorized appropriations for fiscal years ending Sept. 30, 1979 through 1982.

Subsec. (f). Pub. L. 96–79, § 203(g)(1), added subsec. (f).

1977—Subsec. (c)(5). Pub. L. 95–83, § 106(y), added subsec. (c)(5).

Subsec. (e)(2). Pub. L. 95–83, § 106(x)(2), substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year ending June 30, 1977.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, except that amendment of subsec. (b)(2)(D) respecting interest subsidy payments for loans or loan guarantees applicable only with respect to loans and loan guarantees made after Oct. 1, 1979, and that subsidies for such commitments made before Oct. 1, 1979, payable as authorized before Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

PART B—PROJECT GRANTS

AMENDMENTS

1979—Pub. L. 96–79, title II, §§ 201(a), 202(a), Oct. 4, 1979, 93 Stat. 630, 632, repealed part B relating to allotments, and comprising former sections 300p to 300p–3 of this title, and redesignated former part D as part B relating to project grants.

§ 300r. Grants for construction or modernization projects

(a) Authority; objectives; eligible grantees; maximum amounts; authorization of appropriations; availability of unobligated funds

(1)(A) The Secretary may make grants for construction or modernization projects designed to—

(i) eliminate or prevent in medical facilities imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or

(ii) avoid noncompliance by medical facilities with State or voluntary licensure or accreditation standards.

(B) A grant under subparagraph (A) may only be made to—

(i) a State or political subdivision of a State, including any city, town, county, borough, hospital district authority, or public or quasi-public corporation, for any medical facility owned or operated by the State or political subdivision; and

(ii) a nonprofit private entity for any medical facility owned or operated by the entity but only if the Secretary determines—

(I) the level of community service provided by the facility and the proportion of its patients who are unable to pay for services rendered in the facility is similar to such level and proportion in a medical facility of a State or political subdivision, and

(II) that without a grant under subparagraph (A) there would be a disruption of the provision of health care to low-income individuals.

(2) The amount of any grant under paragraph (1) may not exceed 75 per centum of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 per centum of such costs.

(3) There are authorized to be appropriated for grants under paragraph (1) $40,000,000 for the fiscal year ending September 30, 1980, $50,000,000 for the fiscal year ending September 30, 1981, and $50,000,000 for the fiscal year ending September 30, 1982. Funds available for obligation under this subsection (as in effect before October 4, 1979) in the fiscal year ending September 30, 1979, shall remain available for obligation under this subsection in the succeeding fiscal year.

(b) Projects for medically underserved populations; eligible grantees; maximum amounts; authorization of appropriations

(1) The Secretary may make grants to public and nonprofit private entities for projects for (A) construction or modernization of outpatient medical facilities which are located apart from hospitals and which will provide services for medically underserved populations, and (B) conversion of existing facilities into outpatient medical facilities or facilities for long-term care to provide services for such populations.

(2) The amount of any grant under paragraph (1) may not exceed 80 per centum of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 per centum of such costs.

(3) There are authorized to be appropriated for grants under paragraph (1) $15,000,000 for the fiscal year ending September 30, 1981, and $15,000,000 for the fiscal year ending September 30, 1982.

(July 1, 1944, ch. 373, title XVI, § 1610, formerly § 1625, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2268; amended Pub. L. 95–83, title I, § 103(b), Aug. 1, 1977, 91 Stat. 383; renumbered § 1610 and amended Pub. L. 96–79, title II, §§ 201(c), 203(b), Oct. 4, 1979, 93 Stat. 631, 635.)

PRIOR PROVISIONS

A prior section 1610 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2262; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(w), 91 Stat. 385, was classified to section 300p of this title, prior to repeal by Pub. L. 96–79, title II, § 201(a), Oct. 4, 1979, 93 Stat. 630.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–79, § 201(c), incorporated existing provisions in par. (1); inserted in subpar. (A) in cls. (i) and (ii) the phrases "in medical facilities" and "by medical facilities"; substituted in subpar. (B)(i) "for any medical facility owned or operated by the State or political subdivision" for "for a project described in the preceding sentence for any medical facility owned or operated by it"; added cl. (a)(1)(B)(ii); redesignated former subsec. (c) as par. (2); and added par. (3).

Subsec. (b). Pub. L. 96–79, § 201(c), inserted provisions respecting projects for medically underserved populations and struck out provisions respecting criteria for approval of applications under former section 300*o*–3 of this title.

Subsec. (c). Pub. L. 96–79, § 201(c), redesignated subsec. (c) as par. (2) of subsec. (a).

Subsec. (d). Pub. L. 96–79, § 201(c), struck out subsec. (d) which related to provisions making available 22 per centum of sums appropriated under former section 300p–3 of this title for subsec. (a) grants, including an additional appropriations authorization of $67,500,000 for such grants for fiscal year ending Sept. 30, 1978.

1977—Subsec. (d). Pub. L. 95–83 authorized additional grant appropriations of $67,500,000 for fiscal year ending Sept. 30, 1978.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

PART C—GENERAL PROVISIONS

AMENDMENTS

1979—Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632, redesignated former part E as part C relating to general provisions and former part C as part A.

§ 300s. General regulations

The Secretary shall by regulation—

(1) prescribe the manner in which he shall determine the priority among projects for

which assistance is available under part A or B, based on the relative need of different areas for such projects and giving special consideration—

(A) to projects for medical facilities serving areas with relatively small financial resources and for medical facilities serving rural communities,

(B) in the case of projects for modernization of medical facilities, to projects for facilities serving densely populated areas,

(C) in the case of projects for construction of outpatient medical facilities, to projects that will be located in, and provide services for residents of, areas determined by the Secretary to be rural or urban poverty areas,

(D) to projects designed to (i) eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or (ii) avoid noncompliance with State or voluntary licensure or accreditation standards, and

(E) to projects for medical facilities which, alone or in conjunction with other facilities, will provide comprehensive health care, including outpatient and preventive care as well as hospitalization;

(2) prescribe for medical facilities projects assisted under part A or B general standards of construction, modernization, and equipment, which standards may vary on the basis of the class of facilities and their location; and

(3) prescribe the general manner in which each entity which receives financial assistance under part A or B or has received financial assistance under part A or B or subchapter IV of this chapter shall be required to comply with the assurances required to be made at the time such assistance was received and the means by which such entity shall be required to demonstrate compliance with such assurances.

An entity subject to the requirements prescribed pursuant to paragraph (3) respecting compliance with assurances made in connection with receipt of financial assistance shall submit periodically to the Secretary data and information which reasonably supports the entity's compliance with such assurances. The Secretary may not waive the requirement of the preceding sentence.

(July 1, 1944, ch. 373, title XVI, § 1620, as added Pub. L. 96–79, title II, § 202(b), Oct. 4, 1979, 93 Stat. 632.)

PRIOR PROVISIONS

A prior section 300s, act July 1, 1944, ch. 373, title XVI, § 1630, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2269, provided for judicial review by the United States Court of Appeals, prior to repeal by Pub. L. 96–79, § 202(b), eff. Oct. 1, 1979.

A prior section 1620 of act July 1, 1944, was renumbered section 1601 by Pub. L. 96–79, title II, § 203(a)(1), Oct. 4, 1979, 93 Stat. 635, and is classified to section 300q of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§ 300s–1. Medical facility project applications

(a) Submissions

No loan, loan guarantee, or grant may be made under part A or B for a medical facilities project unless an application for such project has been submitted to and approved by the Secretary. If two or more entities join in a project, an application for such project may be filed by any of such entities or by all of them.

(b) Form; required provisions; waiver; projects subject to requirements

(1) An application for a medical facilities project shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall, except as provided in paragraph (2), set forth—

(A) in the case of a modernization project for a medical facility for continuation of existing health services, a finding by the State Agency of a continued need for such services, and, in the case of any other project for a medical facility, a finding by the State Agency of the need for the new health services to be provided through the medical facility upon completion of the project;

(B) in the case of an application for a grant, assurances satisfactory to the Secretary that (i) the applicant making the application would not be able to complete the project for which the application is submitted without the grant applied for, and (ii) in the case of a project to construct a new medical facility, it would be inappropriate to convert an existing medical facility to provide the services to be provided through the new medical facility;

(C) in the case of a project for the discontinuance of a service or facility or the conversion of a service or a facility, an evaluation of the impact of such discontinuance or conversion on the provision of health care in the health service area in which such service was provided or facility located;

(D) a description of the site of such project;

(E) plans and specifications therefor which meet the requirements of the regulations prescribed under section 300s(2) of this title;

(F) reasonable assurance that title to such site is or will be vested in one or more of the entities filing the application or in a public or other nonprofit entity which is to operate the facility on completion of the project;

(G) reasonable assurance that adequate financial support will be available for the completion of the project and for its maintenance and operation when completed, and, for the purpose of determining if the requirements of this subparagraph are met, Federal assistance provided directly to a medical facility which is located in an area determined by the Secretary to be an urban or rural poverty area or through benefits provided individuals served at such facility shall be considered as financial support;

(H) the type of assistance being sought under part A or B for the project;

(I) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on a project will be paid wages at rates not less

than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40, and the Secretary of Labor shall have with respect to such labor standards the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. Appendix) and section 3145 of title 40;

(J) in the case of a project for the construction or modernization of an outpatient facility, reasonable assurance that the services of a general hospital will be available to patients at such facility who are in need of hospital care; and

(K) reasonable assurance that at all times after such application is approved (i) the facility or portion thereof to be constructed, modernized, or converted will be made available to all persons residing or employed in the area served by the facility, and (ii) there will be made available in the facility or portion thereof to be constructed, modernized, or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint.

(2)(A) The Secretary may waive—

(i) the requirements of subparagraph (D) of paragraph (1) for compliance with modernization and equipment standards prescribed pursuant to section 300s(2) of this title, and

(ii) the requirement of subparagraph (E) of paragraph (1) respecting title to a project site,

in the case of an application for a project described in subparagraph (B) of this paragraph.

(B) A project referred to in subparagraph (A) is a project—

(i) for the modernization of an outpatient medical facility which will provide general purpose health services, which is not part of a hospital, and which will serve a medically underserved population as defined in section 300s–3 of this title or as designated by a health systems agency, and

(ii) for which the applicant seeks a loan under part A the principal amount of which does not exceed $20,000.

(July 1, 1944, ch. 373, title XVI, § 1621, as added Pub. L. 96–79, title II, § 202(b), Oct. 4, 1979, 93 Stat. 633.)

CODIFICATION

In subsec. (b)(1)(I), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 300s–1 was redesignated 300s–1a and amended as part of the general revision of this subchapter by Pub. L. 96–79.

A prior section 1621 of act July 1, 1944, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2265, which related to the allocation among States of the total amount of principal of loans and loan guarantees, was classified to section 300q–1 of this title, prior to repeal as part of the general revision of this subchapter by Pub. L. 96–79.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§ 300s–1a. Recovery of expenditures under certain conditions

(a) Persons liable

If any facility with respect to which funds have been paid under this subchapter shall, at any time within 20 years after the completion of construction or modernization—

(1) be sold or transferred to any entity (A) which is not qualified to file an application under section 300s–1 or 300t–12 of this title or (B) which is not approved as a transferee by the State Agency of the State in which such facility is located, or its successor, or

(2) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility,

the United States shall be entitled to recover, whether from the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount determined under subsection (c) of this section.

(b) Notice to Secretary

The transferor of a facility which is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which is changed as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change not later than the expiration of 10 days from the date on which such sale, transfer, or change occurs.

(c) Amount of recovery; interest; interest period

(1) Except as provided in paragraph (2), the amount the United States shall be entitled to recover under subsection (a) of this section is an amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district for which the facility involved is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the construction or modernization of such project or projects.

(2)(A) After the expiration of—

(i) 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section in the case of a facility which is sold or transferred or the use of which changes after July 18, 1984, or

(ii) thirty days after July 18, 1984, or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984,

the amount which the United States is entitled to recover under paragraph (1) with respect to a

facility shall be the amount prescribed by paragraph (1) plus interest, during the period described in subparagraph (B), at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rate.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984, thirty days after such date or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section.[1]

(ii) in the case of a facility with respect to which notice is provided in accordance with subsection (b) of this section, upon the expiration of 180 days after the receipt of such notice, or

(iii) in the case of a facility with respect to which such notice is not provided as prescribed by subsection (b) of this section, on the date of the sale, transfer, or changes of use for which such notice was to be provided,

and ending on the date the amount the United States is entitled to under paragraph (1) is collected.

(d) Waiver

(1) The Secretary may waive the recovery rights of the United States under subsection (a)(1) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that the entity to which the facility was sold or transferred—

(A) has established an irrevocable trust—

(i) in an amount equal to the greater of twice the cost of the remaining obligation of the facility under clause (ii) of section 300s–1(b)(1)(K) of this title or the amount, determined under subsection (c) of this section, that the United States is entitled to recover, and

(ii) which will only be used by the entity to provide the care required by clause (ii) of section 300s–1(b)(1)(K) of this title; and

(B) will meet the obligation of the facility under clause (i) of section 300s–1(b)(1)(K) of this title.

(2) The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that there is good cause for waiving such rights with respect to such facility.

(e) Lien

The right of recovery of the United States under subsection (a) of this section shall not constitute a lien on any facility with respect to which funds have been paid under this subchapter.

(July 1, 1944, ch. 373, title XVI, § 1622, formerly § 1631, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2269; amended Pub. L. 94–278, title XI, § 1106(c), Apr. 22, 1976, 90 Stat. 416; renumbered § 1622 and amended Pub. L. 96–79, title II, §§ 202(b), 203(c), Oct. 4, 1979, 93 Stat. 632, 635; Pub. L. 98–369, div. B. title III, § 2381(b), July 18, 1984, 98 Stat. 1114.)

[1] So in original. The period probably should be a comma.

CODIFICATION

Section was formerly classified to section 300s–1 of this title prior to the general revision of this subchapter by Pub. L. 96–79.

PRIOR PROVISIONS

A prior section 1622 of act July 1, 1944, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2265, was renumbered section 1602 as part of the general revision of this subchapter by Pub. L. 96–79 and is classified to section 300q–2 of this title.

AMENDMENTS

1984—Pub. L. 98–369 amended section generally. Prior to the amendment, section read as follows:

''(a) If any facility constructed, modernized, or converted with funds provided under this subchapter is, at any time within twenty years after the completion of such construction, modernization, or conversion with such funds—

''(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 300s–1 or 300t–12 of this title or (B) which is not approved as a transferee by the State Agency of the State in which such facility is located, or its successor; or

''(2) not used as a medical facility, and the Secretary has not determined that there is good cause for termination of such use,

the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction, modernization, or conversion of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment.

''(b) The Secretary may waive the recovery rights of the United States under subsection (a) of this section with respect to a facility in any State—

''(1) if (as determined under regulations prescribed by the Secretary) the amount which could be recovered under subsection (a) of this section with respect to such facility is applied to the development, expansion, or support of another medical facility located in such State which has been approved by the Statewide Health Coordinating Council for such State as consistent with the State health plan established pursuant to section 300m–3(c) of this title; or

''(2) if the Secretary determines, in accordance with regulations, that there is good cause for waiving such requirement with respect to such facility.

If the amount which the United States is entitled to recover under subsection (a) of this section exceeds 90 per centum of the total cost of the construction or modernization project for a facility, a waiver under this subsection shall only apply with respect to an amount which is not more than 90 per centum of such total cost.''

1979—Subsec. (a)(1)(A). Pub. L. 96–79, § 203(c), substituted ''section 300s–1 or 300t–12 of this title'' for ''section 300*o*–3 of this title''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

REGULATIONS AND PERSONNEL

Requirements for regulations and personnel to implement this section, see section 2381(c) of Pub. L. 98–369, set out as a note under section 291i of this title.

§ 300s–2. State supervision or control of operations of facilities receiving funds

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee, the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility with respect to which any funds have been or may be expended under this subchapter.

(July 1, 1944, ch. 373, title XVI, § 1623, formerly § 1632, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2270; renumbered § 1623, Pub. L. 96–79, title II, § 202(b), Oct. 4, 1979, 93 Stat. 632.)

§ 300s–3. Definitions

Except as provided in section 300t–12(e) of this title, for purposes of this subchapter—

(1) The term ''hospital'' includes general, tuberculosis, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities, operated in connection with hospitals, and also includes education or training facilities for health professonal[1] personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.

(2) The term ''public health center'' means a publicly owned facility for the provision of public health services, including related publicly owned facilities such as laboratories, clinics, and administrative offices operated in connection with such a facility.

(3) The term ''nonprofit'' as applied to any facility means a facility which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(4) The term ''outpatient medical facility'' means a medical facility (located in or apart from a hospital) for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients)—

(A) which is operated in connection with a hospital,

(B) in which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State, or in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State; or

(C) which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which provides to its patients a reasonably full-range of diagnostic and treatment services.

(5) The term ''rehabilitation facility'' means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of—

(A) medical evaluation and services, and

(B) psychological, social, or vocational evaluation and services,

under competent professional supervision, and in the case of which the major portion of the required evaluation and services is furnished within the facility; and either the facility is operated in connection with a hospital, or all medical and related health services are prescribed by, or are under the general direction of, persons licensed to practice medicine or surgery in the State.

(6) The term ''facility for long-term care'' means a facility (including a skilled nursing or intermediate care facility) providing in-patient care for convalescent or chronic disease patients who required skilled nursing or intermediate care and related medical services—

(A) which is a hospital (other than a hospital primarily for the care and treatment of mentally ill or tuberculous patients) or is operated in connection with a hospital, or

(B) in which such care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State.

(7) The term ''construction'' means construction of new buildings and initial equipment of such buildings and, in any case in which it will help to provide a service not previously provided in the community, equipment of any buildings; including architects' fees, but excluding the cost of off-site improvements and, except with respect to public health centers, the cost of the acquisition of land.

(8) The term ''cost'' as applied to construction, modernization, or conversion means the amount found by the Secretary to be necessary for construction, modernization, or conversion, respectively, under a project, except that, in the case of a modernization project or a project assisted under part B of this subchapter, such term does not include any amount found by the Secretary to be attributable to expansion of the bed capacity of any facility.

(9) The term ''modernization'' includes the alteration, expansion, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings.

(10) The term ''title,''[2] when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than twenty-five years' undisturbed use and possession for the purposes of construction, modernization, or conversion and operation of the project for a period of not less than (A) twenty years in the case of a project assisted under an allotment or grant under this subchapter, or (B) the term of repayment of a loan made or guaranteed under this subchapter in the case of a project assisted by a loan or loan guarantee.

(11) The term ''medical facility'' means a hospital, public health center, outpatient medical facility, rehabilitation facility, facility for long-

[1] So in original. Probably should be ''professional''.

[2] So in original. The comma probably should follow the ending quotations.

term care, or other facility (as may be designated by the Secretary) for the provision of health care to ambulatory patients.

(12) The term ''State Agency'' means the State health planning and development agency of a State designated under subchapter XIII of this chapter.[3]

(13) The term ''urban or rural poverty area'' means an urban or rural geographical area (as defined by the Secretary) in which a percentage (as defined by the Secretary in accordance with the next sentence) of the residents of the area have incomes below the poverty level (as defined by the Secretary of Commerce). The percentage referred to in the preceding sentence shall be defined so that the percentage of the population of the United States residing in urban and rural poverty areas is—

(A) not more than the percentage of the total population of the United States with incomes below the poverty level (as so defined) plus five per centum, and

(B) not less than such percentage minus five per centum.

(14) The term ''medically underserved population'' means the population of an urban or rural area designated by the Secretary as an area with a shortage of health facilities or a population group designated by the Secretary as having a shortage of such facilities.

(July 1, 1944, ch. 373, title XVI, § 1624, formerly § 1633, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2270; amended Pub. L. 94–484, title IX, § 905(b)(1), Oct. 12, 1976, 90 Stat. 2325; Pub. L. 95–83, title I, § 106(z), Aug. 1, 1977, 91 Stat. 386; renumbered § 1624 and amended Pub. L. 96–79, title II, §§ 202(b), 203(e)(1), title III, § 301(b), Oct. 4, 1979, 93 Stat. 632, 635, 640.)

REFERENCES IN TEXT

Subchapter XIII of this chapter, referred to in par. (12), was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

CODIFICATION

''Part B of this subchapter'' substituted for ''Part D of this subchapter'' in par. (8) pursuant to the redesignation of former part D of this subchapter as B by Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632.

AMENDMENTS

1979—Pub. L. 96–79, § 301(b), inserted ''Except as provided in section 300t–12(e) of this title''.

Pars. (1) to (16). Pub. L. 96–79, § 203(e)(1), struck out pars. (1) and (2) which defined ''State'' and ''Federal share'' and redesignated pars. (3) through (16) as pars. (1) through (14), respectively.

1977—Par. (14). Pub. L. 95–83 substituted ''subchapter XIII'' for ''subchapter XII''.

1976—Par. (1). Pub. L. 94–484 defined ''State'' to include Northern Mariana Islands.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

[3] See References in Text note below.

§ 300s–4. Reporting and audit requirements for recipients

(a) Filing of financial statement with appropriate State Agency; form and contents

In the case of any facility for which an allotment payment, grant, loan, or loan guarantee has been made under this subchapter, the applicant for such payment, grant, loan, or loan guarantee (or, if appropriate, such other person as the Secretary may prescribe) shall file at least annually with the State Agency for the State in which the facility is located a statement which shall be in such form, and contain such information, as the Secretary may require to accurately show—

(1) the financial operations of the facility, and

(2) the costs of the facility of providing health services in the facility and the charges made by the facility for providing such services,

during the period with respect to which the statement is filed.

(b) Maintenance of records; access to books, etc., for audit and examination

(1) Each entity receiving Federal assistance under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such entity of the proceeds of such assistance, the total cost of the project in connection with which such assistance is given or used, the amount of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such entities which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the assistance referred to in paragraph (1).

(c) Filing of financial statement with Secretary; form and contents

Each such entity shall file at least annually with the Secretary a statement which shall be in such form, and contain such information, as the Secretary may require to accurately show—

(1) the financial operations of the facility constructed or modernized with such assistance, and

(2) the costs to such facility of providing health services in such facility, and the charges made for such services, during the period with respect to which the statement is filed.

(July 1, 1944, ch. 373, title XVI, § 1625, formerly § 1634, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2273; renumbered § 1625, Pub. L. 96–79, title II, § 202(b), Oct. 4, 1979, 93 Stat. 632.)

PRIOR PROVISIONS

A prior section 1625 of act July 1, 1944, was renumbered section 1610 by Pub. L. 96–79, title II, § 203(b), Oct. 4, 1979, 93 Stat. 635, and is classified to section 300r of this title.

§ 300s–5. Availability of technical and other nonfinancial assistance to eligible applicants

The Secretary shall provide (either through the Department of Health and Human Services or by contract) all necessary technical and other nonfinancial assistance to any public or other entity which is eligible to apply for assistance under this subchapter to assist such entity in developing applications to be submitted to the Secretary under section 300s–1 or 300t–12 of this title. The Secretary shall make every effort to inform eligible applicants of the availability of assistance under this subchapter.

(July 1, 1944, ch. 373, title XVI, § 1626, formerly § 1635, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2273; renumbered § 1626 and amended Pub. L. 96–79, title II, §§ 202(b), 203(f), Oct. 4, 1979, 93 Stat. 632, 635; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1979—Pub. L. 96–79, § 203(f), substituted ''other entity'' for ''other nonprofit entity'' and ''section 300s–1 or 300t–12 of this title'' for ''section 300*o*–3 of this title.''

CHANGE OF NAME

''Department of Health and Human Services'' substituted in text for ''Department of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

§ 300s–6. Enforcement of assurances

The Secretary shall investigate and ascertain, on a periodic basis, with respect to each entity which is receiving financial assistance under this subchapter or which has received financial assistance under subchapter IV of this chapter or this subchapter, the extent of compliance by such entity with the assurances required to be made at the time such assistance was received. If the Secretary finds that such an entity has failed to comply with any such assurance, the Secretary shall report such noncompliance to the health systems agency for the health service area in which such entity is located and the State health planning and development agency of the State in which the entity is located and shall take any action authorized by law (including an action for specific performance brought by the Attorney General upon request of the Secretary) which will effect compliance by the entity with such assurances. An action to effectuate compliance with any such assurance may be brought by a person other than the Secretary only if a complaint has been filed by such person with the Secretary and the Secretary has dismissed such complaint or the Attorney General has not brought a civil action for compliance with such assurance within six months after the date on which the complaint was filed with the Secretary.

(July 1, 1944, ch. 373, title XVI, § 1627, as added Pub. L. 96–79, title II, § 202(c), Oct. 4, 1979, 93 Stat. 634.)

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

PART D—AREA HEALTH SERVICES DEVELOPMENT FUNDS

AMENDMENTS

1979—Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632, redesignated former part F as part D relating to area health services development funds and former part D as part B.

§ 300t. Development grants for health systems agencies

(a) Eligible recipients; purpose of grants

The Secretary shall make in each fiscal year a grant to each health system agency—

(1) with which there is in effect a designation agreement under section 300*l*–4(c)[1] of this title,

(2) which has in effect an HSP and AIP reviewed by the Statewide Health Coordinating Council, and

(3) which, as determined under the review made under section 300n–4(c)[1] of this title, is organized and operated in the manner prescribed by section 300*l*–1(b)[1] of this title and is performing its functions under section 300*l*–2[1] of this title in a manner satisfactory to the Secretary,

to enable the agency to establish and maintain an Area Health Service Development Fund from which it may make grants and enter into contracts in accordance with section 300*l*–2(c)(3)[1] of this title.

(b) Determination of amounts; maximum amounts

(1) Except as provided in paragraph (2), the amount of any grant under subsection (a) of this section shall be determined by the Secretary after taking into consideration the population of the health service area for which the health systems agency is designated, the average family income of the area, and the supply of health services in the area.

(2) The amount of any grant under subsection (a) of this section to a health systems agency for any fiscal year may not exceed the product of $1 and the population of the health service area for which such agency is designated.

(c) Applications; submission and approval as prerequisite; form and contents

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may require.

(d) Authorization of appropriations

For the purpose of making payments pursuant to grants under subsection (a) of this section, there are authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1975, $75,000,000 for the fiscal year ending June

[1] See References in Text note below.

30, 1976, $120,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $20,000,000 for the fiscal year ending September 30, 1981, and $30,000,000 for the fiscal year ending September 30, 1982.

(July 1, 1944, ch. 373, title XVI, § 1640, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2273; amended Pub. L. 95–83, title I, § 103(c), Aug. 1, 1977, 91 Stat. 383; Pub. L. 96–79, title I, § 127(e), Oct. 4, 1979, 93 Stat. 629.)

REFERENCES IN TEXT

Sections 300*l*–2, 300*l*–4, and 300n–4 of this title, referred to in subsec. (a), were repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 300*l*–1 of this title, referred to in subsec. (a)(3), was in the original a reference to section 1512 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 102–531, title III, § 307, Oct. 27, 1992, 106 Stat. 3495, enacted section 1502A of act July 1, 1944, which is classified to section 300*l*–1 of this title.

AMENDMENTS

1979—Subsec. (d). Pub. L. 96–79 authorized appropriations of $20,000,000 for fiscal year ending Sept. 30, 1981, and $30,000,000 for fiscal year ending Sept. 30, 1982.

1977—Subsec. (d). Pub. L. 95–83 substituted ''each for the fiscal years ending September 30, 1977, and September 30, 1978'' for ''for the fiscal year ending June 30, 1977''.

PART E—PROGRAM TO ASSIST AND ENCOURAGE VOLUNTARY DISCONTINUANCE OF UNNEEDED HOSPITAL SERVICES AND CONVERSION OF UNNEEDED HOSPITAL SERVICES TO OTHER HEALTH SERVICES NEEDED BY COMMUNITY

AMENDMENTS

1979—Pub. L. 96–79, title II, § 202(a), title III, § 301(a), Oct. 4, 1979, 93 Stat. 632, 636, added part E relating to program to assist and encourage voluntary discontinuance of unneeded hospital services and conversion of unneeded hospital services to other health services needed by the community and redesignated former part E as part C.

§ 300t–11. Grants and assistance for establishment of program

The Secretary shall, by April 1, 1980, establish a program under which—

(1) grants and technical assistance may be provided to hospitals in operation on October 4, 1979, (A) for the discontinuance of unneeded hospital services, and (B) for the conversion of unneeded hospital services to other health services needed by the community; and

(2) grants may be provided to State Agencies designated under section 300m(b)(3)[1] of this title for reducing excesses in resources and facilities of hospitals.

(July 1, 1944, ch. 373, title XVI, § 1641, as added Pub. L. 96–79, title III, § 301(a), Oct. 4, 1979, 93 Stat. 636.)

REFERENCES IN TEXT

Section 300m of this title, referred to in par. (2), was in the original a reference to section 1521 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

UNNEEDED HOSPITAL SERVICES; STUDY AND REPORT OF EFFECT OF ELIMINATION

Section 302 of Pub. L. 96–79, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which provided that the Secretary of Health and Human Services conduct a study of the effect on the elimination of unneeded hospital services made during the two fiscal year period ending Sept. 30, 1981, by the program authorized by this part, and not later than Jan. 1, 1982, report the results of the study to Congress, was repealed by Pub. L. 97–414, § 9(h), Jan. 4, 1983, 96 Stat. 2064.

§ 300t–12. Grants for discontinuance and conversion

(a) Terms and conditions; determination of amount; authorized uses

(1) A grant to a hospital under the program shall be subject to such terms and conditions as the Secretary may by regulation prescribe to assure that the grant is used for the purpose for which it was made.

(2) The amount of any such grant shall be determined by the Secretary. The recipient of such a grant may use the grant—

(A) in the case of a grantee which discontinues the provision of all hospital services or all inpatient hospital services or an identifiable part of a hospital facility which provides inpatient hospital services, for the liquidation of the outstanding debt on the facilities of the grantee used for the provision of the services or for the liquidation of the outstanding debt of the grantee on such identifiable part;

(B) in the case of a grantee which in discontinuing the provision of an inpatient hospital service converts or proposes to convert an identifiable part of a hospital facility used in the provision of the discontinued service to the delivery of other health services, for the planning, development (including construction and acquisition of equipment), and delivery of the health service;

(C) to provide reasonable termination pay for personnel of the grantee who will lose employment because of the discontinuance of hospital services made by the grantee, retraining of such personnel, assisting such personnel in securing employment, and other costs of implementing arrangements described in subsection (c) of this section; and

(D) for such other costs which the Secretary determines may need to be incurred by the grantee in discontinuing hospital services.

(b) Application; submission and approval; form; required provisions; review by health systems agency; basis of State Agency's recommendations; urban or rural poverty population considerations; approval by Secretary; restrictions and special considerations

(1) No grant may be made to a hospital unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form and submitted in such manner as the Secretary may prescribe and shall include—

(A) a description of each service to be discontinued and, if a part of a hospital is to be

[1] See References in Text note below.

discontinued or converted to another use in connection with such discontinuance, a description of such part;

(B) an evaluation of the impact of such discontinuance and conversion on the provision of health care in the health service area in which such service is provided;

(C) an estimate of the change in the applicant's costs which will result from such discontinuance and conversion; and

(D) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on a project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40, and the Secretary of Labor shall have with respect to such labor standards the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. Appendix) and section 3145 of title 40;

(E) such other information as the Secretary may require.

(2)(A) The health systems agency for the health service area in which is located a hospital applying for a grant under the program shall (i) in making the review of the applicant's application under section 300*l*–2(e)[1] of this title, determine the need for each service or part proposed to be discontinued by the applicant, (ii) in the case of an application for the conversion of a facility, determine the need for each service which will be provided as a result of the conversion, and (iii) make a recommendation to the State Agency for the State in which the applicant is located respecting approval by the Secretary of the applicant's application.

(B) A State Agency which has received a recommendation from a health systems agency under subparagraph (A) respecting an application shall, after consideration of such recommendation, make a recommendation to the Secretary respecting the approval by the Secretary of the application. A State Agency's recommendation under this subparagraph respecting the approval of an application (i) shall be based upon (I) the need for each service or part proposed to be discontinued by the applicant, (II) in the case of an application for the conversion of a facility, the need for each service which will be provided as a result of the conversion, and (III) such other criteria as the Secretary may prescribe, and (ii) shall be accompanied by the health systems agency's recommendation made with respect to the approval of the application.

(C) In determining, under subparagraphs (A) and (B), the need for the service (or services) or part proposed to be discontinued or converted by an applicant for a grant, a health systems agency and State Agency shall give special consideration to the unmet needs and existing access patterns of urban or rural poverty populations.

(3)(A) The Secretary may not approve an application of a hospital for a grant—

(i) if a State Agency recommended that the application not be approved, or

(ii) if the Secretary is unable to determine that the cost of providing inpatient health services in the health service area in which the applicant is located will be less than if the inpatient health services proposed to be discontinued were not discontinued.

(B) In considering applications of hospitals for grants the Secretary shall consider the recommendations of health systems agencies and State Agencies and shall give special consideration to applications (i) which will assist health systems agencies and State Agencies to meet the goals in their health systems plans and State health plans, or (ii) which will result in the greatest reduction in hospital costs within a health service area.

(c) Certification of protective arrangements for employment benefits and interests; guidelines; satisfactory arrangement determinations

(1) Except as provided in paragraph (3), the Secretary may not approve an application submitted under subsection (b) of this section unless the Secretary of Labor has certified that fair and equitable arrangements have been made to protect the interests of employees affected by the discontinuance of services against a worsening of their positions with respect to their employment, including arrangements to preserve the rights of employees under collective-bargaining agreements, continuation of collective-bargaining rights consistent with the provisions of the National Labor Relations Act [29 U.S.C. 151 et seq.], reassignment of affected employees to other jobs, retraining programs, protecting pension, health benefits, and other fringe benefits of affected employees, and arranging adequate severance pay, if necessary.

(2) The Secretary of Labor shall by regulation prescribe guidelines for arrangements for the protection of the interests of employees affected by the discontinuance of hospital services. The Secretary of Labor shall consult with the Secretary of Health and Human Services in the promulgation of such guidelines. Such guidelines shall first be promulgated not later than the promulgation of regulations by the Secretary for the administration of the grants authorized by section 300t–11 of this title.

(3) The Secretary of Labor shall review each application submitted under subsection (b) of this section to determine if the arrangements described in paragraph (1) have been made and if they are satisfactory and shall notify the Secretary respecting his determination. Such review shall be completed within—

(A) ninety days from the date of the receipt of the application from the Secretary of Health and Human Services, or

(B) one hundred and twenty days from such date if the Secretary of Labor has by regulation prescribed the circumstances under which the review will require at least one hundred and twenty days.

If within the applicable period, the Secretary of Labor does not notify the Secretary of Health and Human Services respecting his determination, the Secretary of Health and Human Services shall review the application to determine if

[1] See References in Text note below.

the applicant has made the arrangements described in paragraph (1) and if such arrangements are satisfactory. The Secretary may not approve the application unless he determines that such arrangements have been made and that they are satisfactory.

(d) Records and audits requirements

The records and audits requirements of section 292e[2] of this title shall apply with respect to grants made under subsection (a) of this section.

(e) "Hospital" defined

For purposes of this part, the term ''hospital'' means, with respect to any fiscal year, an institution (including a distinct part of an institution participating in the programs established under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.])—

(1) which satisfies paragraphs (1) and (7) of section 1861(e) of such Act [42 U.S.C. 1395x(e)],

(2) imposes charges or accepts payments for services provided to patients, and

(3) the average duration of a patient's stay in which was thirty days or less in the preceding fiscal year,

but such term does not include a Federal hospital or a psychiatric hospital (as described in section 1861(f)(1) of the Social Security Act [42 U.S.C. 1395x(f)(1)]).

(July 1, 1944, ch. 373, title XVI, § 1642, as added Pub. L. 96–79, title III, § 301(a), Oct. 4, 1979, 93 Stat. 637; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Section 300*l*–2, of this title, referred to in subsec. (b)(2)(A), was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

The National Labor Relations Act, referred to in subsec. (c)(1), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

Section 292e of this title, referred to in subsec. (d), was in the original a reference to section 705 of act July 1, 1944. Section 705 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 705 of act July 1, 1944, relating to eligibility of borrowers and terms of insured loans, and a new section 706, relating to certificates of loan insurance, which are classified to sections 292d and 292e, respectively, of this title.

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In subsec. (b)(1)(D), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (c)(2) and (3), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

[2] See References in Text note below.

§ 300t–13. Grants to States for reduction of excess hospital capacity

(a) "Excess hospital capacity" defined; particular activities

For the purpose of demonstrating the effectiveness of various means for reducing excesses in resources and facilities of hospitals (referred to in this section as ''excess hospital capacity''), the Secretary may make grants to State Agencies designated under section 300m(b)(3)[1] of this title to assist such Agencies in—

(1) identifying (by geographic region or by health service) excess hospital capacity,

(2) developing programs to inform the public of the costs associated with excess hospital capacity,

(3) developing programs to reduce excess hospital capacity in a manner which will produce the greatest savings in the cost of health care delivery,

(4) developing means to overcome barriers to the reduction of excess hospital capacity,

(5) in planning, evaluating, and carrying out programs to decertify health care facilities providing health services that are not appropriate, and

(6) any other activity related to the reduction of excess hospital capacity.

(b) Terms and conditions

Grants under subsection (a) of this section shall be made on such terms and conditions as the Secretary may prescribe.

(July 1, 1944, ch. 373, title XVI, § 1643, as added Pub. L. 96–79, title III, § 301(a), Oct. 4, 1979, 93 Stat. 639.)

REFERENCES IN TEXT

Section 300m of this title, referred to in subsec. (a), was in the original a reference to section 1521 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

§ 300t–14. Authorization of appropriations

To make payments under grants under sections 300t–12 and 300t–13 of this title there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1980, $50,000,000 for the fiscal year ending September 30, 1981, and $75,000,000 for the fiscal year ending September 30, 1982, except that in any fiscal year not more than 10 percent of the amount appropriated under this section may be obligated for grants under section 300t–13 of this title.

(July 1, 1944, ch. 373, title XVI, § 1644, as added Pub. L. 96–79, title III, § 301(a), Oct. 4, 1979, 93 Stat. 640.)

[1] See References in Text note below.

SUBCHAPTER XV—HEALTH INFORMATION AND HEALTH PROMOTION

§ 300u. General authority of Secretary

(a) Development, support, and implementation of programs, activities, etc.

The Secretary shall—

(1) formulate national goals, and a strategy to achieve such goals, with respect to health information and health promotion, preventive health services, and education in the appropriate use of health care;

(2) analyze the necessary and available resources for implementing the goals and strategy formulated pursuant to paragraph (1), and recommend appropriate educational and quality assurance policies for the needed manpower resources identified by such analysis;

(3) undertake and support necessary activities and programs to—

(A) incorporate appropriate health education components into our society, especially into all aspects of education and health care,

(B) increase the application and use of health knowledge, skills, and practices by the general population in its patterns of daily living, and

(C) establish systematic processes for the exploration, development, demonstration, and evaluation of innovative health promotion concepts;

(4) undertake and support research and demonstrations respecting health information and health promotion, preventive health services, and education in the appropriate use of health care;

(5) undertake and support appropriate training in, and undertake and support appropriate training in the operation of programs concerned with, health information and health promotion, preventive health services, and education in the appropriate use of health care;

(6) undertake and support, through improved planning and implementation of tested models and evaluation of results, effective and efficient programs respecting health information and health promotion, preventive health services, and education in the appropriate use of health care;

(7)(A) develop model programs through which employers in the public sector, and employers that are small businesses (as defined in section 632 of title 15), can provide for their employees a program to promote healthy behaviors and to discourage participation in unhealthy behaviors;

(B) provide technical assistance to public and private employers in implementing such programs (including private employers that are not small businesses and that will implement programs other than the programs developed by the Secretary pursuant to subparagraph (A)); and

(C) in providing such technical assistance, give preference to small businesses;

(8) foster the exchange of information respecting, and foster cooperation in the conduct of, research, demonstration, and training programs respecting health information and health promotion, preventive health services, and education in the appropriate use of health care;

(9) provide technical assistance in the programs referred to in paragraph (8);

(10) use such other authorities for programs respecting health information and health promotion, preventive health services, and education in the appropriate use of health care as are available and coordinate such use with programs conducted under this subchapter; and

(11) establish in the Office of the Assistant Secretary for Health an Office of Disease Prevention and Health Promotion, which shall—

(A) coordinate all activities within the Department which relate to disease prevention, health promotion, preventive health services, and health information and education with respect to the appropriate use of health care;

(B) coordinate such activities with similar activities in the private sector;

(C) establish a national information clearinghouse to facilitate the exchange of information concerning matters relating to health information and health promotion, preventive health services (which may include information concerning models and standards for insurance coverage of such services), and education in the appropriate use of health care, to facilitate access to such information, and to assist in the analysis of issues and problems relating to such matters; and

(D) support projects, conduct research, and disseminate information relating to preventive medicine, health promotion, and physical fitness and sports medicine.

The Secretary shall appoint a Director for the Office of Disease Prevention and Health Promotion established pursuant to paragraph (11) of this subsection. The Secretary shall administer this subchapter in cooperation with health care providers, educators, voluntary organizations, businesses, and State and local health agencies in order to encourage the dissemination of health information and health promotion activities.

(b) Authorization of appropriations

For the purpose of carrying out this section and sections 300u–1 through 300u–4 of this title, there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 2002.

(c) Application; submission and approval as prerequisite; form and content

No grant may be made or contract entered into under this subchapter unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may prescribe. Contracts may be entered into under this subchapter without regard to section 3324(a) and (b) of title 31 and section 5 of title 41.

(July 1, 1944, ch. 373, title XVII, § 1701, as added Pub. L. 94–317, title I, § 102, June 23, 1976, 90 Stat.

695; amended Pub. L. 96–32, §7(n), July 10, 1979, 93 Stat. 85; Pub. L. 96–76, title II, §209, Sept. 29, 1979, 93 Stat. 584; Pub. L. 98–551, §2(a), Oct. 30, 1984, 98 Stat. 2815; Pub. L. 100–607, title III, §312(a)(1), (b)(1), (c), Nov. 4, 1988, 102 Stat. 3113, 3114; Pub. L. 102–168, title I, §101, Nov. 26, 1991, 105 Stat. 1102; Pub. L. 102–531, title III, §311(b)(1), Oct. 27, 1992, 106 Stat. 3503; Pub. L. 105–392, title IV, §414, Nov. 13, 1998, 112 Stat. 3590.)

CODIFICATION

In subsec. (c), ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes (31 U.S.C. 529)'' on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–392 substituted ''2002'' for ''1996''.

1992—Subsec. (a)(11)(C). Pub. L. 102–531 substituted ''preventive health services (which may include information concerning models and standards for insurance coverage of such services),'' for ''preventive health services,''.

1991—Subsec. (b). Pub. L. 102–168 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''To carry out sections 300u through 300u–4 of this title, there are authorized to be appropriated $9,000,000 for the fiscal year ending September 30, 1985, $9,500,000 for the fiscal year ending September 30, 1986, $10,000,000 for the fiscal year ending September 30, 1987, and $10,000,000 for each of the fiscal years 1989 through 1991.''

1988—Subsec. (a). Pub. L. 100–607, §312(c)(2), in concluding provisions, struck out ''The Secretary shall administer this subchapter in a manner consistent with the national health priorities set forth in section 300k–2 of this title.'' before ''The Secretary shall appoint'', and substituted ''paragraph (11)'' for ''paragraph (10)''.

Subsec. (a)(7), (8). Pub. L. 100–607, §312(b)(1), added par. (7) and redesignated former par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (a)(9). Pub. L. 100–607, §312(c)(1), substituted ''paragraph (8)'' for ''paragraph (7)''.

Pub. L. 100–607, §312(b)(1)(A), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Subsec. (a)(10), (11). Pub. L. 100–607, §312(b)(1)(A), redesignated pars. (9) and (10) as (10) and (11), respectively.

Subsec. (b). Pub. L. 100–607, §312(a)(1), substituted ''sections 300u through 300u–4 of this title'' for ''this subchapter'', struck out ''and'' after ''September 30, 1986,'', and inserted '', and $10,000,000 for each of the fiscal years 1989 through 1991''.

1984—Subsec. (a). Pub. L. 98–551, §2(a)(1), added par. (10), and in provisions following par. (10) struck out ''and with health planning and resource development activities undertaken under subchapters XIII and XIV of this chapter'' after ''section 300k–2 of this title'' and inserted provisions for appointment of a Director for Office of Disease Prevention and Health Promotion and cooperation in administration of this subchapter.

Subsec. (b). Pub. L. 98–551, §2(a)(2), substituted ''To carry out this subchapter, there are authorized to be appropriated $9,000,000 for the fiscal year ending September 30, 1985, $9,500,000 for the fiscal year ending September 30, 1986, and $10,000,000 for the fiscal year ending September 30, 1987'' for ''For payments under grants and contracts under this subchapter (other than grants and contracts under sections 300u–6, 300u–7, and 300u–8 of this title) there are authorized to be appropriated $7,000,000 for the fiscal year ending September 30, 1977, $10,000,000 for the fiscal year ending September 30, 1978, $14,000,000 for the fiscal year ending September 30, 1979, $14,000,000 for the fiscal year ending September 30, 1980, $15,000,000 for the fiscal year ending September 30, 1981, and $16,000,000 for the fiscal year ending September 30, 1982.''

1979—Subsec. (b). Pub. L. 96–76 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1980, Sept. 30, 1981, and Sept. 30, 1982.

Pub. L. 96–32 inserted ''(other than grants and contracts under sections 300u–6, 300u–7, and 300u–8 of this title)'' after ''grants and contracts under this subchapter''.

SHORT TITLE

For short title of title I of Pub. L. 94–317, which enacted this subchapter as the ''National Consumer Health Information and Health Promotion Act of 1976'', see section 101 of Pub. L. 94–317, set out as a Short Title of 1976 Amendments note under section 201 of this title.

MODEL PROGRAMS FOR EMPLOYEE HEALTH PROMOTION AND DISEASE PREVENTION; DEVELOPMENT COMPLETION

Section 312(b)(2) of Pub. L. 100–607 required Secretary of Health and Human Services, not later than 18 months after Nov. 4, 1988, to complete development of model programs required in section 1701(a)(7)(A) of the Public Health Service Act (subsec. (a)(7)(A) of this section).

EXECUTIVE ORDER NO. 12345

Ex. Ord. No. 12345, Feb. 2, 1982, 47 F.R. 5189, as amended by Ex. Ord. No. 12539, Dec. 3, 1985, 50 F.R. 49829; Ex. Ord. No. 12694, Oct. 11, 1989, 54 F.R. 42285; Ex. Ord. No. 12709, Apr. 4, 1990, 55 F.R. 13097; Ex. Ord. No. 13138, §8, Sept. 30, 1999, 64 F.R. 53881, which provided for the Secretary of Health and Human Services to develop and coordinate a national program for physical fitness and sports, continued the President's Council on Physical Fitness and Sports, and provided for termination of the Council on Dec. 31, 1982, was revoked by Ex. Ord. No. 13265, §5(c), June 6, 2002, 67 F.R. 39842, set out below.

EX. ORD. NO. 13265. PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

Ex. Ord. No. 13265, June 6, 2002, 67 F.R. 39841, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to expand the executive branch's program for physical fitness and sports and establish the President's Council on Physical Fitness and Sports (the ''Council''), it is hereby ordered as follows:

SECTION 1. *Purpose*. The Secretary of Health and Human Services (Secretary) shall, in carrying out his responsibilities for public health and human services, develop and coordinate a national program to enhance physical activity and sports participation. Through this program, the Secretary shall seek to:

(a) expand national interest in and awareness of the benefits of regular physical activity and active sports participation;

(b) stimulate and enhance coordination of programs within and among the private and public sectors that promote participation in, and safe and easy access to, physical activity and sports;

(c) expand availability of quality information and guidance regarding physical activity and sports participation;

(d) integrate physical activity into a broader health-promotion and disease-prevention effort through Federal agencies and the private sector; and

(e) target all Americans, with particular emphasis on children and adolescents, as well as populations or communities in which specific risks or disparities in participation in, access to, or knowledge about the benefits of physical activity have been identified.

SEC. 2. *The President's Council on Physical Fitness and Sports*.

(a) There is hereby established the President's Council on Physical Fitness and Sports.

(b) The Council shall be composed of up to 20 members appointed by the President. The President may designate one or more members to be Chair or Vice Chair. Each member shall serve for a term of 2 years and may continue to serve after the expiration of that term until a successor is appointed.

SEC. 3. *Functions of the Council.*

(a) The Council shall advise the President, through the Secretary, concerning progress made in carrying out the provisions of this order and shall recommend to the President, through the Secretary, actions to accelerate progress.

(b) The Council shall advise the Secretary on ways to enhance opportunities for participation in physical fitness and sports. Recommendations may address, but are not necessarily limited to, public awareness campaigns, Federal, State, and local physical activity initiatives, and partnership opportunities between public- and private-sector health-promotion entities.

(c) The Council shall function as a liaison to relevant State, local, and private entities in order to advise the Secretary regarding opportunities to extend and improve physical activity programs and services at both the local and national levels.

(d) The Council shall monitor the need for the enhancement of programs and educational and promotional materials sponsored, overseen, or disseminated by the Council, and shall advise the Secretary as necessary concerning such need.

SEC. 4. *Administration.*

(a) Each Federal agency shall, to the extent permitted by law and subject to available funds, furnish such information and assistance to the Secretary and the Council as they may request.

(b) The members of the Council shall serve without compensation for their work on the Council. Members of the Council may, however, receive travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701–5707).

(c) To the extent permitted by law, the Secretary shall furnish the Council with necessary staff, supplies, facilities, and other administrative services. The expenses of the Council shall be paid from funds available to the Secretary.

(d) The Secretary shall appoint an Executive Director of the Council who shall serve as a liaison to the Secretary and the White House on matters and activities pertaining to the Council.

(e) The Council may establish subcommittees as appropriate to aid in its work. Such subcommittees shall meet on a voluntary basis and be defined by objectives established in coordination with and agreed upon by the Secretary and the President.

(f) The seal prescribed by Executive Order 10830 of July 24, 1959, as amended, shall be the seal of the President's Council on Physical Fitness and Sports established by this order.

SEC. 5. *General Provisions.*

(a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the Administration of any portion of this order, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Secretary in accordance with the guidelines and procedures issued by the Administrator of General Services.

(b) In accordance with the Act, the Council shall terminate 2 years from the date of this order, unless extended by the President.

(c) Executive Order 12345 of February 2, 1982, as amended, is revoked.

GEORGE W. BUSH.

EXTENSION OF TERM OF PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1993, by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1999, by Ex. Ord. No. 13062, Sept. 29, 1997, 62 F.R. 51755, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

EX. ORD. NO. 13266. ACTIVITIES TO PROMOTE PERSONAL FITNESS

Ex. Ord. No. 13266, June 20, 2002, 67 F.R. 42467, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the efficiency and coordination of Federal policies related to personal fitness of the general public, it is hereby ordered as follows:

SECTION 1. *Policy.* This order is issued consistent with the following findings and principles:

(a) Growing scientific evidence indicates that an increasing number of Americans are suffering from negligible physical activity, poor dietary habits, insufficient utilization of preventive health screenings, and engaging in risky behaviors such as abuse of alcohol, tobacco, and drugs.

(b) Existing information on the importance of appropriate physical activity, diet, preventive health screenings, and avoiding harmful substances is often not received by the public, or, if received, is not acted on sufficiently.

(c) Individuals of all ages, locations, and levels of personal fitness can benefit from some level of appropriate

physical activity, dietary guidance, preventive health screening, and making healthy choices.

(d) While personal fitness is an individual responsibility, the Federal Government may, within the authority and funds otherwise available, expand the opportunities for individuals to empower themselves to improve their general health. Such opportunities may include improving the flow of information about personal fitness, assisting in the utilization of that information, increasing the accessibility of resources for physical activity, and reducing barriers to achieving good personal fitness.

SEC. 2. *Agency Responsibilities in Promoting Personal Fitness.*

(a) The Secretaries of Agriculture, Education, Health and Human Services (HHS), Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs, and the Director of the Office of National Drug Policy shall review and evaluate the policies, programs, and regulations of their respective departments and offices that in any way relate to the personal fitness of the general public. Based on that review, the Secretaries and the Director shall determine whether existing policies, programs, and regulations of their respective departments and offices should be modified or whether new policies or programs could be implemented. These new policies and programs shall be consistent with otherwise available authority and appropriated funds, and shall improve the Federal Government's assistance of individuals, private organizations, and State and local governments to (i) increase physical activity; (ii) promote responsible dietary habits; (iii) increase utilization of preventive health screenings; and (iv) encourage healthy choices concerning alcohol, tobacco, drugs, and safety among the general public.

(b) Each department and office included in section 2(a) shall report to the President, through the Secretary of Health and Human Services, its proposed actions within 90 days of the date of this order.

(c) There shall be a Personal Fitness Interagency Working Group (Working Group), composed of the Secretaries or Director of the departments and office included in section 2(a) (or their designees) and chaired by the Secretary of HHS or his designee. In order to improve efficiency through information sharing and to eliminate waste and overlap, the Working Group shall work to ensure the cooperation of Federal agencies in coordinating Federal personal fitness activities. The Working Group shall meet subject to the call of the Chair, but not less than twice a year. The Department of Health and Human Services shall provide such administrative support to the Working Group as the Secretary of HHS deems necessary. Each member of the Working Group shall be a full-time or permanent part-time officer or employee of the Federal Government.

SEC. 3. *General Provisions.* This order is intended only to improve the internal management of the executive branch and it is not intended to, and does not, create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies or entities, its officers or employees, or any person.

GEORGE W. BUSH.

EX. ORD. NO. 13335. INCENTIVES FOR THE USE OF HEALTH INFORMATION TECHNOLOGY AND ESTABLISHING THE POSITION OF THE NATIONAL HEALTH INFORMATION TECHNOLOGY COORDINATOR

Ex. Ord. No. 13335, Apr. 27, 2004, 69 F.R. 24059, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to provide leadership for the development and nationwide implementation of an interoperable health information technology infrastructure to improve the quality and efficiency of health care, it is hereby ordered as follows:

SECTION 1. *Establishment.* (a) The Secretary of Health and Human Services (Secretary) shall establish within the Office of the Secretary the position of National Health Information Technology Coordinator.

(b) The National Health Information Technology Coordinator (National Coordinator), appointed by the Secretary in consultation with the President or his designee, will report directly to the Secretary.

(c) The Secretary shall provide the National Coordinator with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) The Secretary shall ensure that the National Coordinator begins operations within 90 days of the date of this order.

SEC. 2. *Policy.* In fulfilling its responsibilities, the work of the National Coordinator shall be consistent with a vision of developing a nationwide interoperable health information technology infrastructure that:

(a) Ensures that appropriate information to guide medical decisions is available at the time and place of care;

(b) Improves health care quality, reduces medical errors, and advances the delivery of appropriate, evidence-based medical care;

(c) Reduces health care costs resulting from inefficiency, medical errors, inappropriate care, and incomplete information;

(d) Promotes a more effective marketplace, greater competition, and increased choice through the wider availability of accurate information on health care costs, quality, and outcomes;

(e) Improves the coordination of care and information among hospitals, laboratories, physician offices, and other ambulatory care providers through an effective infrastructure for the secure and authorized exchange of health care information; and

(f) Ensures that patients' individually identifiable health information is secure and protected.

SEC. 3. *Responsibilities of the National Health Information Technology Coordinator.* (a) The National Coordinator shall, to the extent permitted by law, develop, maintain, and direct the implementation of a strategic plan to guide the nationwide implementation of interoperable health information technology in both the public and private health care sectors that will reduce medical errors, improve quality, and produce greater value for health care expenditures. The National Coordinator shall report to the Secretary regarding progress on the development and implementation of the strategic plan within 90 days after the National Coordinator begins operations and periodically thereafter. The plan shall:

(i) Advance the development, adoption, and implementation of health care information technology standards nationally through collaboration among public and private interests, and consistent with current efforts to set health information technology standards for use by the Federal Government;

(ii) Ensure that key technical, scientific, economic, and other issues affecting the public and private adoption of health information technology are addressed;

(iii) Evaluate evidence on the benefits and costs of interoperable health information technology and assess to whom these benefits and costs accrue;

(iv) Address privacy and security issues related to interoperable health information technology and recommend methods to ensure appropriate authorization, authentication, and encryption of data for transmission over the Internet;

(v) Not assume or rely upon additional Federal resources or spending to accomplish adoption of interoperable health information technology; and

(vi) Include measurable outcome goals.

(b) The National Coordinator shall:

(i) Serve as the Secretary's principal advisor on the development, application, and use of health information technology, and direct the Department of Health and Human Service's health information technology programs;

(ii) Ensure that health information technology policy and programs of the Department of Health and

Human Services (HHS) are coordinated with those of relevant executive branch agencies (including Federal commissions) with a goal of avoiding duplication of efforts and of helping to ensure that each agency undertakes activities primarily within the areas of its greatest expertise and technical capability;

(iii) To the extent permitted by law, coordinate outreach and consultation by the relevant executive branch agencies (including Federal commissions) with public and private parties of interest, including consumers, providers, payers, and administrators; and

(iv) At the request of the Office of Management and Budget, provide comments and advice regarding specific Federal health information technology programs.

SEC. 4. *Reports*. To facilitate the development of interoperable health information technologies, the Secretary of Health and Human Services shall report to the President within 90 days of this order on options to provide incentives in HHS programs that will promote the adoption of interoperable health information technology. In addition, the following reports shall be submitted to the President through the Secretary:

(a) The Director of the Office of Personnel Management shall report within 90 days of this order on options to provide incentives in the Federal Employee Health Benefit Program that will promote the adoption of interoperable health information technology; and

(b) Within 90 days, the Secretary of Veterans Affairs and the Secretary of Defense shall jointly report on the approaches the Departments could take to work more actively with the private sector to make their health information systems available as an affordable option for providers in rural and medically underserved communities.

SEC. 5. *Administration and Judicial Review*. (a) The actions directed by this order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its agencies, its entities or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13410. PROMOTING QUALITY AND EFFICIENT HEALTH CARE IN FEDERAL GOVERNMENT ADMINISTERED OR SPONSORED HEALTH CARE PROGRAMS

Ex. Ord. No. 13410, Aug. 22, 2006, 71 F.R. 51089, provided:

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to promote federally led efforts to implement more transparent and high-quality health care, it is hereby ordered as follows:

SECTION 1. *Purpose*. It is the purpose of this order to ensure that health care programs administered or sponsored by the Federal Government promote quality and efficient delivery of health care through the use of health information technology, transparency regarding health care quality and price, and better incentives for program beneficiaries, enrollees, and providers. It is the further purpose of this order to make relevant information available to these beneficiaries, enrollees, and providers in a readily useable manner and in collaboration with similar initiatives in the private sector and non-Federal public sector. Consistent with the purpose of improving the quality and efficiency of health care, the actions and steps taken by Federal Government agencies should not incur additional costs for the Federal Government.

SEC. 2. *Definitions*. For purposes of this order:

(a) ''Agency'' means an agency of the Federal Government that administers or sponsors a Federal health care program.

(b) ''Federal health care program'' means the Federal Employees Health Benefit Program, the Medicare program, programs operated directly by the Indian Health Service, the TRICARE program for the Department of Defense and other uniformed services, and the health care program operated by the Department of Veterans Affairs. For purposes of this order, ''Federal health care program'' does not include State operated or funded federally subsidized programs such as Medicaid, the State Children's Health Insurance Program, or services provided to Department of Veterans' Affairs beneficiaries under 38 U.S.C. 1703.

(c) ''Interoperability'' means the ability to communicate and exchange data accurately, effectively, securely, and consistently with different information technology systems, software applications, and networks in various settings, and exchange data such that clinical or operational purpose and meaning of the data are preserved and unaltered.

(d) ''Recognized interoperability standards'' means interoperability standards recognized by the Secretary of Health and Human Services (the ''Secretary''), in accordance with guidance developed by the Secretary, as existing on the date of the implementation, acquisition, or upgrade of health information technology systems under subsections (1) or (2) of section 3(a) of this order.

SEC. 3. *Directives for Agencies*. Agencies shall perform the following functions:

(a) Health Information Technology.

(1) For Federal Agencies. As each agency implements, acquires, or upgrades health information technology systems used for the direct exchange of health information between agencies and with non-Federal entities, it shall utilize, where available, health information technology systems and products that meet recognized interoperability standards.

(2) For Contracting Purposes. Each agency shall require in contracts or agreements with health care providers, health plans, or health insurance issuers that as each provider, plan, or issuer implements, acquires, or upgrades health information technology systems, it shall utilize, where available, health information technology systems and products that meet recognized interoperability standards.

(b) Transparency of Quality Measurements.

(1) In General. Each agency shall implement programs measuring the quality of services supplied by health care providers to the beneficiaries or enrollees of a Federal health care program. Such programs shall be based upon standards established by multi-stakeholder entities identified by the Secretary or by another agency subject to this order. Each agency shall develop its quality measurements in collaboration with similar initiatives in the private and non-Federal public sectors.

(2) Facilitation. An agency satisfies the requirements of this subsection if it participates in the aggregation of claims and other appropriate data for the purposes of quality measurement. Such aggregation shall be based upon standards established by multi-stakeholder entities identified by the Secretary or by another agency subject to this order.

(c) Transparency of Pricing Information. Each agency shall make available (or provide for the availability) to the beneficiaries or enrollees of a Federal health care program (and, at the option of the agency, to the public) the prices that it, its health insurance issuers, or its health insurance plans pay for procedures to providers in the health care program with which the agency, issuer, or plan contracts. Each agency shall also, in collaboration with multi-stakeholder groups such as those described in subsection (b)(1), participate in the development of information regarding the overall costs of services for common episodes of care and the treatment of common chronic diseases.

(d) Promoting Quality and Efficiency of Care. Each agency shall develop and identify, for beneficiaries, enrollees, and providers, approaches that encourage and facilitate the provision and receipt of high-quality and efficient health care. Such approaches may include pay-for-performance models of reimbursement consist-

ent with current law. An agency will satisfy the requirements of this subsection if it makes available to beneficiaries or enrollees consumer-directed health care insurance products.

SEC. 4. *Implementation Date*. Agencies shall comply with the requirements of this order by January 1, 2007.

SEC. 5. *Administration and Judicial Review*.

(a) This order does not assume or rely upon additional Federal resources or spending to promote quality and efficient health care. Further, the actions directed by this order shall be carried out subject to the availability of appropriations and to the maximum extent permitted by law.

(b) This order shall be implemented in new contracts or new contract cycles as they may be renewed from time to time. Renegotiation outside of the normal contract cycle processes should be avoided.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

§ 300u–1. Grants and contracts for research programs; authority of Secretary; review of applications; additional functions; periodic public survey

(a) The Secretary is authorized to conduct and support by grant or contract (and encourage others to support) research in health information and health promotion, preventive health services, and education in the appropriate use of health care. Applications for grants and contracts under this section shall be subject to appropriate peer review. The Secretary shall also—

(1) provide consultation and technical assistance to persons who need help in preparing research proposals or in actually conducting research;

(2) determine the best methods of disseminating information concerning personal health behavior, preventive health services and the appropriate use of health care and of affecting behavior so that such information is applied to maintain and improve health, and prevent disease, reduce its risk, or modify its course or severity;

(3) determine and study environmental, occupational, social, and behavioral factors which affect and determine health and ascertain those programs and areas for which educational and preventive measures could be implemented to improve health as it is affected by such factors;

(4) develop (A) methods by which the cost and effectiveness of activities respecting health information and health promotion, preventive health services, and education in the appropriate use of health care, can be measured, including methods for evaluating the effectiveness of various settings for such activities and the various types of persons engaged in such activities, (B) methods for reimbursement or payment for such activities, and (C) models and standards for the conduct of such activities, including models and standards for the education, by providers of institutional health services, of individuals receiving such services respecting the nature of the institutional health services provided the individuals and the symptoms, signs, or diagnoses which led to provision of such services;

(5) develop a method for assessing the cost and effectiveness of specific medical services and procedures under various conditions of use, including the assessment of the sensitivity and specificity of screening and diagnostic procedures; and

(6) enumerate and assess, using methods developed under paragraph (5), preventive health measures and services with respect to their cost and effectiveness under various conditions of use (which measures and services may include blood pressure screening, cholesterol screening and control, smoking cessation programs, substance abuse programs, cancer screening, dietary and nutritional counseling, diabetes screening and education, intraocular pressure screening, and stress management).

(b) The Secretary shall make a periodic survey of the needs, interest, attitudes, knowledge, and behavior of the American public regarding health and health care. The Secretary shall take into consideration the findings of such surveys and the findings of similar surveys conducted by national and community health education organizations, and other organizations and agencies for formulating policy respecting health information and health promotion, preventive health services, and education in the appropriate use of health care.

(July 1, 1944, ch. 373, title XVII, § 1702, as added Pub. L. 94–317, title I, § 102, June 23, 1976, 90 Stat. 696; amended Pub. L. 102–531, title III, § 311(b)(2), Oct. 27, 1992, 106 Stat. 3504.)

AMENDMENTS

1992—Subsec. (a)(6). Pub. L. 102–531 inserted before period ''(which measures and services may include blood pressure screening, cholesterol screening and control, smoking cessation programs, substance abuse programs, cancer screening, dietary and nutritional counseling, diabetes screening and education, intraocular pressure screening, and stress management)''.

§ 300u–2. Grants and contracts for community health programs

(a) Authority of Secretary; particular activities

The Secretary is authorized to conduct and support by grant or contract (and encourage others to support) new and innovative programs in health information and health promotion, preventive health services, and education in the appropriate use of health care, and may specifically—

(1) support demonstration and training programs in such matters which programs (A) are in hospitals, ambulatory care settings, home care settings, schools, day care programs for children, and other appropriate settings representative of broad cross sections of the population, and include public education activities of voluntary health agencies, professional medical societies, and other private nonprofit health organizations, (B) focus on objectives that are measurable, and (C) emphasize the prevention or moderation of illness or accidents that appear controllable through individual knowledge and behavior;

(2) provide consultation and technical assistance to organizations that request help in planning, operating, or evaluating programs in such matters;

(3) develop health information and health promotion materials and teaching programs including (A) model curriculums for the training of educational and health professionals and paraprofessionals in health education by medical, dental, and nursing schools, schools of public health, and other institutions engaged in training of educational or health professionals, (B) model curriculums to be used in elementary and secondary schools and institutions of higher learning, (C) materials and programs for the continuing education of health professionals and paraprofessionals in the health education of their patients, (D) materials for public service use by the printed and broadcast media, and (E) materials and programs to assist providers of health care in providing health education to their patients; and

(4) support demonstration and evaluation programs for individual and group self-help programs designed to assist the participant in using his individual capacities to deal with health problems, including programs concerned with obesity, hypertension, and diabetes.

(b) Grants to States and other public and nonprofit private entities; costs of demonstrating and evaluating programs; development of models

The Secretary is authorized to make grants to States and other public and nonprofit private entities to assist them in meeting the costs of demonstrating and evaluating programs which provide information respecting the costs and quality of health care or information respecting health insurance policies and prepaid health plans, or information respecting both. After the development of models pursuant to section 300u–3(4) and 300u–3(5) of this title for such information, no grant may be made under this subsection for a program unless the information to be provided under the program is provided in accordance with one of such models applicable to the information.

(c) Private nonprofit entities; limitation on amount of grant or contract

The Secretary is authorized to support by grant or contract (and to encourage others to support) private nonprofit entities working in health information and health promotion, preventive health services, and education in the appropriate use of health care. The amount of any grant or contract for a fiscal year beginning after September 30, 1978, for an entity may not exceed 25 per centum of the expenses of the entity for such fiscal year for health information and health promotion, preventive health services, and education in the appropriate use of health care.

(July 1, 1944, ch. 373, title XVII, § 1703, as added Pub. L. 94–317, title I, § 102, June 23, 1976, 90 Stat. 697.)

§ 300u–3. Grants and contracts for information programs; authority of Secretary; particular activities

The Secretary is authorized to conduct and support by grant or contract (and encourage others to support) such activities as may be required to make information respecting health information and health promotion, preventive health services, and education in the appropriate use of health care available to the consumers of medical care, providers of such care, schools, and others who are or should be informed respecting such matters. Such activities may include at least the following:

(1) The publication of information, pamphlets, and other reports which are specially suited to interest and instruct the health consumer, which information, pamphlets, and other reports shall be updated annually, shall pertain to the individual's ability to improve and safeguard his own health; shall include material, accompanied by suitable illustrations, on child care, family life and human development, disease prevention (particularly prevention of pulmonary disease, cardiovascular disease, and cancer), physical fitness, dental health, environmental health, nutrition, safety and accident prevention, drug abuse and alcoholism, mental health, management of chronic diseases (including diabetes and arthritis), and venereal diseases; and shall be designed to reach populations of different languages and of different social and economic backgrounds.

(2) Securing the cooperation of the communications media, providers of health care, schools, and others in activities designed to promote and encourage the use of health maintaining information and behavior.

(3) The study of health information and promotion in advertising and the making to concerned Federal agencies and others such recommendations respecting such advertising as are appropriate.

(4) The development of models and standards for the publication by States, insurance carriers, prepaid health plans, and others (except individual health practitioners) of information for use by the public respecting the cost and quality of health care, including information to enable the public to make comparisons of the cost and quality of health care.

(5) The development of models and standards for the publication by States, insurance carriers, prepaid health plans, and others of information for use by the public respecting health insurance policies and prepaid health plans, including information on the benefits provided by the various types of such policies and plans, the premium charges for such policies and plans, exclusions from coverage or eligibility for coverage, cost sharing requirements, and the ratio of the amounts paid as benefits to the amounts received as premiums and information to enable the public to make relevant comparisons of the costs and benefits of such policies and plans.

(July 1, 1944, ch. 373, title XVII, § 1704, as added Pub. L. 94–317, title I, § 102, June 23, 1976, 90 Stat. 698; amended Pub. L. 98–551, § 2(b), Oct. 30, 1984, 98 Stat. 2816.)

AMENDMENTS

1984—Par. (6). Pub. L. 98–551 struck out par. (6) which provided grant authority to the Secretary to assess, with respect to the effectiveness, safety, cost, and required training for and conditions of use, of new as-

pects of health care, and new activities, programs, and services designed to improve human health and publish in readily understandable language for public and professional use such assessments and, in the case of controversial aspects of health care, activities, programs, or services, publish differing views or opinions respecting the effectiveness, safety, cost, and required training for and conditions of use, of such aspects of health care, activities, programs, or services.

§ 300u–4. Status reports to President and Congress; study of health education and preventive health services with respect to insurance coverage

(a) The Secretary shall, not later than two years after June 23, 1976, and biannually thereafter, submit to the President for transmittal to Congress a report on the status of health information and health promotion, preventive health services, and education in the appropriate use of health care. Each such report shall include—

(1) a statement of the activities carried out under this subchapter since the last report and the extent to which each such activity achieves the purposes of this subchapter;

(2) an assessment of the manpower resources needed to carry out programs relating to health information and health promotion, preventive health services, and education in the appropriate use of health care, and a statement describing the activities currently being carried out under this subchapter designed to prepare teachers and other manpower for such programs;

(3) the goals and strategy formulated pursuant to section 300u(a)(1) of this title, the models and standards developed under this subchapter, and the results of the study required by subsection (b) of this section; and

(4) such recommendations as the Secretary considers appropriate for legislation respecting health information and health promotion, preventive health services, and education in the appropriate use of health care, including recommendations for revisions to and extension of this subchapter.

(b) The Secretary shall conduct a study of health education services and preventive health services to determine the coverage of such services under public and private health insurance programs, including the extent and nature of such coverage and the cost sharing requirements required by such programs for coverage of such services.

(July 1, 1944, ch. 373, title XVII, § 1705, as added Pub. L. 94–317, title I, § 102, June 23, 1976, 90 Stat. 699; amended Pub. L. 104–66, title I, § 1062(d), Dec. 21, 1995, 109 Stat. 720.)

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–66 substituted ''biannually'' for ''annually'' in introductory provisions.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 4 on page 96 identifies a reporting provision which, as subsequently amended, is contained in subsec. (a) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 300u–5. Centers for research and demonstration of health promotion and disease prevention

(a) Establishment; grants; contracts; research and demonstration projects

The Secretary shall make grants or enter into contracts with academic health centers for the establishment, maintenance, and operation of centers for research and demonstration with respect to health promotion and disease prevention. Centers established, maintained, or operated under this section shall undertake research and demonstration projects in health promotion, disease prevention, and improved methods of appraising health hazards and risk factors, and shall serve as demonstration sites for the use of new and innovative research in public health techniques to prevent chronic diseases.

(b) Location; types of research and projects

Each center established, maintained, or operated under this section shall—

(1) be located in an academic health center with—

(A) a multidisciplinary faculty with expertise in public health and which has working relationships with relevant groups in such fields as medicine, psychology, nursing, social work, education and business;

(B) graduate training programs relevant to disease prevention;

(C) a core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental health sciences, and health administration;

(D) a demonstrated curriculum in disease prevention;

(E) a capability for residency training in public health or preventive medicine; and

(F) such other qualifications as the Secretary may prescribe;

(2) conduct—

(A) health promotion and disease prevention research, including retrospective studies and longitudinal prospective studies in population groups and communities;

(B) demonstration projects for the delivery of services relating to health promotion and disease prevention to defined population groups using, as appropriate, community outreach and organization techniques and other methods of educating and motivating communities; and

(C) evaluation studies on the efficacy of demonstration projects conducted under subparagraph (B) of this paragraph.

The design of any evaluation study conducted under subparagraph (C) shall be established prior to the commencement of the demonstration project under subparagraph (B) for which the evaluation will be conducted.

(c) Equitable geographic distribution of centers; procedures

(1) In making grants and entering into contracts under this section, the Secretary shall provide for an equitable geographical distribution of centers established, maintained, and operated under this section and for the distribution of such centers among areas containing a wide range of population groups which exhibit

incidences of diseases which are most amenable to preventive intervention.

(2) The Secretary, through the Director of the Centers for Disease Control and Prevention and in consultation with the Director of the National Institutes of Health, shall establish procedures for the appropriate peer review of applications for grants and contracts under this section by peer review groups composed principally of non-Federal experts.

(d) "Academic health center" defined

For purposes of this section, the term ''academic health center'' means a school of medicine, a school of osteopathy, or a school of public health, as such terms are defined in section 292a(4)[1] of this title.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 2003.

(July 1, 1944, ch. 373, title XVII, § 1706, as added Pub. L. 98–551, § 2(d), Oct. 30, 1984, 98 Stat. 2816; amended Pub. L. 100–607, title III, § 312(a)(2), Nov. 4, 1988, 102 Stat. 3113; Pub. L. 102–168, title I, § 102, Nov. 26, 1991, 105 Stat. 1102; Pub. L. 102–531, title III, § 312(d)(12), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–183, title VII, § 705(d), Dec. 14, 1993, 107 Stat. 2241; Pub. L. 105–340, title II, § 204, Oct. 31, 1998, 112 Stat. 3195.)

REFERENCES IN TEXT

Section 292a of this title, referred to in subsec. (d), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see section 295p of this title.

PRIOR PROVISIONS

A prior section 300u–5, act July 1, 1944, ch. 373, title XVII, § 1706, as added June 23, 1976, Pub. L. 94–317, title I, § 102, 90 Stat. 700; amended Nov. 10, 1978, Pub. L. 95–626, title V, § 501, 92 Stat. 3592; Jan. 4, 1983, Pub. L. 97–414, § 8(r), 96 Stat. 2062, related to establishment of the Office of Health Promotion, prior to repeal by Pub. L. 98–551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–340 substituted ''2003'' for ''1998''.

1993—Subsec. (e). Pub. L. 103–183 substituted ''through 1998'' for ''through 1996''.

1992—Subsec. (c)(2). Pub. L. 102–531, which directed amendment of subsec. (c)(2)(B) by substituting ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'', was executed by making the substitution in subsec. (c)(2) to reflect the probable intent of Congress and the redesignation of subsec. (c)(2)(B) as subsec. (c)(2) by Pub. L. 102–168. See 1991 Amendment note below.

1991—Subsec. (c). Pub. L. 102–168, § 102(b), redesignated subpars. (A) and (B) of par. (2) as pars. (1) and (2), respectively, and struck out former par. (1), which read as follows: ''During fiscal year 1985, the Secretary shall make grants or enter into contracts for the establishment of three centers under this section. During fiscal year 1986, the Secretary shall make grants and enter into contracts for the establishment of five centers under this section and the maintenance and operation of the three centers established under this section in fiscal year 1985. During fiscal year 1987, the Secretary shall make grants and enter into contracts for the establishment of five centers under this section and the operation and maintenance of the eight centers established under this section in fiscal years 1985 and 1986.''

Subsec. (e). Pub. L. 102–168, § 102(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''To carry out this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1985, $8,000,000 for the fiscal year ending September 30, 1986, $13,000,000 for the fiscal year ending September 30, 1987, $6,000,000 for fiscal year 1989, $8,000,000 for fiscal year 1990, and $10,000,000 for fiscal year 1991.''

1988—Subsec. (e). Pub. L. 100–607 struck out ''and'' after ''1986,'' and inserted '', $6,000,000 for fiscal year 1989, $8,000,000 for fiscal year 1990, and $10,000,000 for fiscal year 1991'' before period at end.

[1] See References in Text note below.

§ 300u–6. Office of Minority Health

(a) In general

There is established an Office of Minority Health within the Office of Public Health and Science. There shall be in the Department of Health and Human Services a Deputy Assistant Secretary for Minority Health, who shall be the head of the Office of Minority Health. The Secretary, acting through such Deputy Assistant Secretary, shall carry out this section.

(b) Duties

With respect to improving the health of racial and ethnic minority groups, the Secretary, acting through the Deputy Assistant Secretary for Minority Health (in this section referred to as the ''Deputy Assistant Secretary''), shall carry out the following:

(1) Establish short-range and long-range goals and objectives and coordinate all other activities within the Public Health Service that relate to disease prevention, health promotion, service delivery, and research concerning such individuals. The heads of each of the agencies of the Service shall consult with the Deputy Assistant Secretary to ensure the coordination of such activities.

(2) Enter into interagency agreements with other agencies of the Public Health Service.

(3) Support research, demonstrations and evaluations to test new and innovative models.

(4) Increase knowledge and understanding of health risk factors.

(5) Develop mechanisms that support better information dissemination, education, prevention, and service delivery to individuals from disadvantaged backgrounds, including individuals who are members of racial or ethnic minority groups.

(6) Ensure that the National Center for Health Statistics collects data on the health status of each minority group.

(7) With respect to individuals who lack proficiency in speaking the English language, enter into contracts with public and nonprofit private providers of primary health services for the purpose of increasing the access of the

individuals to such services by developing and carrying out programs to provide bilingual or interpretive services.

(8) Support a national minority health resource center to carry out the following:

(A) Facilitate the exchange of information regarding matters relating to health information and health promotion, preventive health services, and education in the appropriate use of health care.

(B) Facilitate access to such information.

(C) Assist in the analysis of issues and problems relating to such matters.

(D) Provide technical assistance with respect to the exchange of such information (including facilitating the development of materials for such technical assistance).

(9) Carry out programs to improve access to health care services for individuals with limited proficiency in speaking the English language. Activities under the preceding sentence shall include developing and evaluating model projects.

(10) Advise in matters related to the development, implementation, and evaluation of health professions education in decreasing disparities in health care outcomes, including cultural competency as a method of eliminating health disparities.

(c) Advisory Committee

(1) In general

The Secretary shall establish an advisory committee to be known as the Advisory Committee on Minority Health (in this subsection referred to as the ''Committee'').

(2) Duties

The Committee shall provide advice to the Deputy Assistant Secretary carrying out this section, including advice on the development of goals and specific program activities under paragraphs (1) through (10) of subsection (b) of this section for each racial and ethnic minority group.

(3) Chair

The chairperson of the Committee shall be selected by the Secretary from among the members of the voting members of the Committee. The term of office of the chairperson shall be 2 years.

(4) Composition

(A) The Committee shall be composed of 12 voting members appointed in accordance with subparagraph (B), and nonvoting, ex officio members designated in subparagraph (C).

(B) The voting members of the Committee shall be appointed by the Secretary from among individuals who are not officers or employees of the Federal Government and who have expertise regarding issues of minority health. The racial and ethnic minority groups shall be equally represented among such members.

(C) The nonvoting, ex officio members of the Committee shall be such officials of the Department of Health and Human Services as the Secretary determines to be appropriate.

(5) Terms

Each member of the Committee shall serve for a term of 4 years, except that the Secretary shall initially appoint a portion of the members to terms of 1 year, 2 years, and 3 years.

(6) Vacancies

If a vacancy occurs on the Committee, a new member shall be appointed by the Secretary within 90 days from the date that the vacancy occurs, and serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy shall not affect the power of the remaining members to execute the duties of the Committee.

(7) Compensation

Members of the Committee who are officers or employees of the United States shall serve without compensation. Members of the Committee who are not officers or employees of the United States shall receive compensation, for each day (including travel time) they are engaged in the performance of the functions of the Committee. Such compensation may not be in an amount in excess of the daily equivalent of the annual maximum rate of basic pay payable under the General Schedule (under title 5) for positions above GS–15.

(d) Certain requirements regarding duties

(1) Recommendations regarding language

(A) Proficiency in speaking English

The Deputy Assistant Secretary shall consult with the Director of the Office of International and Refugee Health, the Director of the Office of Civil Rights, and the Directors of other appropriate departmental entities regarding recommendations for carrying out activities under subsection (b)(9) of this section.

(B) Health professions education regarding health disparities

The Deputy Assistant Secretary shall carry out the duties under subsection (b)(10) of this section in collaboration with appropriate personnel of the Department of Health and Human Services, other Federal agencies, and other offices, centers, and institutions, as appropriate, that have responsibilities under the Minority Health and Health Disparities Research and Education Act of 2000.

(2) Equitable allocation regarding activities

In carrying out subsection (b) of this section, the Secretary shall ensure that services provided under such subsection are equitably allocated among all groups served under this section by the Secretary.

(3) Cultural competency of services

The Secretary shall ensure that information and services provided pursuant to subsection (b) of this section are provided in the language, educational, and cultural context that is most appropriate for the individuals for whom the information and services are intended.

(e) Grants and contracts regarding duties

(1) In general

In carrying out subsection (b) of this section, the Secretary acting through the Deputy

Assistant Secretary may make awards of grants, cooperative agreements, and contracts to public and nonprofit private entities.

(2) Process for making awards

The Deputy Assistant Secretary shall ensure that awards under paragraph (1) are made, to the extent practical, only on a competitive basis, and that a grant is awarded for a proposal only if the proposal has been recommended for such an award through a process of peer review.

(3) Evaluation and dissemination

The Deputy Assistant Secretary, directly or through contracts with public and private entities, shall provide for evaluations of projects carried out with awards made under paragraph (1) during the preceding 2 fiscal years. The report shall be included in the report required under subsection (f) of this section for the fiscal year involved.

(f) Reports

(1) In general

Not later than February 1 of fiscal year 1999 and of each second year thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities carried out under this section during the preceding 2 fiscal years and evaluating the extent to which such activities have been effective in improving the health of racial and ethnic minority groups. Each such report shall include the biennial reports submitted under subsections (e)(3) and (f)(2)[1] of this section for such years by the heads of the Public Health Service agencies.

(2) Agency reports

Not later than February 1, 1999, and biennially thereafter, the heads of the Public Health Service agencies shall submit to the Deputy Assistant Secretary a report summarizing the minority health activities of each of the respective agencies.

(g) Definitions

For purposes of this section:

(1) The term ''racial and ethnic minority group'' means American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian Americans; Native Hawaiians and other Pacific Islanders; Blacks; and Hispanics.

(2) The term ''Hispanic'' means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country.

(h) Funding

(1)[2] AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $30,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(July 1, 1944, ch. 373, title XVII, § 1707, as added Pub. L. 101–527, § 2, Nov. 6, 1990, 104 Stat. 2312; amended Pub. L. 101–557, title IV, § 401(a)(1), Nov. 15, 1990, 104 Stat. 2770; Pub. L. 105–392, title II, § 201(a), (c), Nov. 13, 1998, 112 Stat. 3582, 3585; Pub. L. 106–525, title IV, § 403, title VI, § 601, Nov. 22, 2000, 114 Stat. 2509, 2511.)

[1] See References in Text note below.

[2] So in original. No par. (2) has been enacted.

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (c)(7), is set out under section 5332 of Title 5, Government Organization and Employees.

The Minority Health and Health Disparities Research and Education Act of 2000, referred to in subsec. (d)(1)(B), is Pub. L. 106–525, Nov. 22, 2000, 114 Stat. 2495. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 201 of this title and Tables.

Subsections (e)(3) and (f)(2) of this section, referred to in subsec. (f)(1), was in the original ''sections 201(e)(3) and 201(f)(2)'', and was translated to reflect the probable intent of Congress, because section 201 of act July 1, 1944, which is classified to section 202 of this title, does not contain subsections, and subsections (e)(3) and (f)(2) of this section require biennial reporting.

PRIOR PROVISIONS

A prior section 300u–6, act July 1, 1944, ch. 373, title XVII, § 1707, as added Nov. 10, 1978, Pub. L. 95–626, title V, § 502, 92 Stat. 3593; amended July 10, 1979, Pub. L. 96–32, § 6(k), 93 Stat. 84, related to project grants to State Councils on Physical Fitness for physical fitness improvement, prior to repeal by Pub. L. 98–551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

AMENDMENTS

2000—Subsec. (b)(10). Pub. L. 106–525, § 403(1), added par. (10).

Subsec. (c)(2). Pub. L. 106–525, § 403(2), substituted ''paragraphs (1) through (10)'' for ''paragraphs (1) through (9)''.

Subsec. (d)(1). Pub. L. 106–525, § 403(3), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The Deputy Assistant Secretary for Minority Health shall consult with the Director of the Office of International and Refugee Health, the Director of the Office of Civil Rights, and the Directors of other appropriate departmental entities regarding recommendations for carrying out activities under subsection (b)(9) of this section.''

Subsec. (g)(1). Pub. L. 106–525, § 601, substituted ''Asian Americans;'' for ''Asian Americans and'' and inserted ''Native Hawaiians and other'' before ''Pacific Islanders;''.

1998—Pub. L. 105–392, § 201(c)(1), struck out ''Establishment of'' before ''Office'' in section catchline.

Subsec. (a). Pub. L. 105–392, § 201(c)(2), substituted ''Public Health and Science'' for ''the Assistant Secretary for Health''.

Subsecs. (b) to (h). Pub. L. 105–392, § 201(a), added subsecs. (b) to (h) and struck out former subsecs. (b) to (f), which related, respectively, to duties of Secretary, certain requirements regarding duties, grants and contracts regarding duties, reports, and funding.

1990—Subsec. (b)(8). Pub. L. 101–557 added par. (8).

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Com-

mittee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 401(a)(2) of Pub. L. 101–557 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of the Disadvantaged Minority Health Improvement Act of 1990 [Nov. 6, 1990].''

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

CONGRESSIONAL FINDINGS

Section 1(b) of Pub. L. 101–527 provided that: ''The Congress finds that—

''(1) racial and ethnic minorities are disproportionately represented among individuals from disadvantaged backgrounds;

''(2) the health status of individuals from disadvantaged backgrounds, including racial and ethnic minorities, in the United States is significantly lower than the health status of the general population of the United States;

''(3) minorities suffer disproportionately high rates of cancer, stroke, heart diseases, diabetes, substance abuse, acquired immune deficiency syndrome, and other diseases and disorders;

''(4) the incidence of infant mortality among minorities is almost double that for the general population;

''(5) Blacks, Hispanics, and Native Americans constitute approximately 12 percent, 7.9 percent, and 0.01 percent, respectively, of the population of the United States;

''(6) Blacks, Hispanics, and Native Americans in the United States constitute approximately 3 percent, 4 percent, and less than 0.01 percent, respectively, of physicians, 2.7 percent, 1.7 percent, and less than 0.01 percent, respectively, of dentists, and 4.5 percent, 1.6 percent, and less than 0.01 percent, respectively, of nurses;

''(7) the number of individuals who are from disadvantaged backgrounds in health professions should be increased for the purpose of improving the access of other such individuals to health services;

''(8) minority health professionals have historically tended to practice in low-income areas and to serve minorities;

''(9) minority health professionals have historically tended to engage in the general practice of medicine and specialties providing primary care;

''(10) reports published in leading medical journals indicate that access to health care among minorities can be substantially improved by increasing the number of minority health professionals;

''(11) increasing the number of minorities serving on the faculties of health professions schools can be an important factor in attracting minorities to pursue a career in the health professions;

''(12) diversity in the faculty and student body of health professions schools enhances the quality of education for all students attending the schools;

''(13) the Report of the Secretary's Task Force on Black and Minority Health (prepared for the Secretary of Health and Human Services and issued in 1985) described the health status problems of minorities, and made recommendations concerning measures that should be implemented by the Secretary with respect to improving the health status of minorities through programs for providing health information and education; and

''(14) the Office of Minority Health, created in 1985 by the Secretary of Health and Human Services, should be authorized pursuant to statute and should receive increased funding to support efforts to improve the health of individuals from disadvantaged backgrounds, including minorities, including the implementation of the recommendations made by the Secretary's Task Force on Black and Minority Health.''

§ 300u–7. Office of Adolescent Health

(a) In general

There is established an Office of Adolescent Health within the Office of the Assistant Secretary for Health, which office[1] shall be headed by a director[1] appointed by the Secretary. The Secretary shall carry out this section acting through the Director of such Office.

(b) Duties

With respect to adolescent health, the Secretary shall—

(1) coordinate all activities within the Department of Health and Human Services that relate to disease prevention, health promotion, preventive health services, and health information and education with respect to the appropriate use of health care, including coordinating—

(A) the design of programs, support for programs, and the evaluation of programs;

(B) the monitoring of trends;

(C) projects of research (including multidisciplinary projects) on adolescent health; and

(D) the training of health providers who work with adolescents, particularly nurse practitioners, physician assistants, and social workers;

(2) coordinate the activities described in paragraph (1) with similar activities in the private sector; and

(3) support projects, conduct research, and disseminate information relating to preventive medicine, health promotion, and physical fitness and sports medicine.

(c) Certain demonstration projects

(1) In general

In carrying out subsection (b)(3) of this section, the Secretary may make grants to carry out demonstration projects for the purpose of improving adolescent health, including projects to train health care providers in providing services to adolescents and projects to reduce the incidence of violence among adolescents, particularly among minority males.

(2) Authorization of appropriations

For the purpose of carrying out paragraph (1), there are authorized to be appropriated

[1] So in original. Probably should be capitalized.

$5,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1997.

(d) Information clearinghouse

In carrying out subsection (b) of this section, the Secretary shall establish and maintain a National Information Clearinghouse on Adolescent Health to collect and disseminate to health professionals and the general public information on adolescent health.

(e) National plan

In carrying out subsection (b) of this section, the Secretary shall develop a national plan for improving adolescent health. The plan shall be consistent with the applicable objectives established by the Secretary for the health status of the people of the United States for the year 2000, and shall be periodically reviewed, and as appropriate, revised. The plan, and any revisions in the plan, shall be submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(f) Adolescent health

For purposes of this section, the term ''adolescent health'', with respect to adolescents of all ethnic and racial groups, means all diseases, disorders, and conditions (including with respect to mental health)—

(1) unique to adolescents, or more serious or more prevalent in adolescents;

(2) for which the factors of medical risk or types of medical intervention are different for adolescents, or for which it is unknown whether such factors or types are different for adolescents; or

(3) with respect to which there has been insufficient clinical research involving adolescents as subjects or insufficient clinical data on adolescents.

(July 1, 1944, ch. 373, title XVII, § 1708, as added Pub. L. 102–531, title III, § 302, Oct. 27, 1992, 106 Stat. 3483.)

PRIOR PROVISIONS

A prior section 300u–7, act July 1, 1944, ch. 373, title XVII, § 1708, as added Nov. 10, 1978, Pub. L. 95–626, title V, § 502, 92 Stat. 3594; amended July 10, 1979, Pub. L. 96–32, § 6(*l*), 93 Stat. 84, related to project grants for physical fitness improvement and research projects, prior to repeal by Pub. L. 98–551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300u–8. Biennial report regarding nutrition and health

(a) Biennial report

The Secretary shall require the Surgeon General of the Public Health Service to prepare biennial reports on the relationship between nutrition and health. Such reports may, with respect to such relationship, include any recommendations of the Secretary and the Surgeon General.

(b) Submission to Congress

The Secretary shall ensure that, not later than February 1 of 1995 and of every second year thereafter, a report under subsection (a) of this section is submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(July 1, 1944, ch. 373, title XVII, § 1709, as added Pub. L. 103–183, title VII, § 704, Dec. 14, 1993, 107 Stat. 2240.)

PRIOR PROVISIONS

A prior section 300u–8, act July 1, 1944, ch. 373, title XVII, § 1709, as added Nov. 10, 1978, Pub. L. 95–626, title V, § 502, 92 Stat. 3594, related to establishment of national program on sports medicine research, prior to repeal by Pub. L. 98–551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300u–9. Education regarding DES

(a) In general

The Secretary, acting through the heads of the appropriate agencies of the Public Health Service, shall carry out a national program for the education of health professionals and the public with respect to the drug diethylstilbestrol (commonly known as DES). To the extent appropriate, such national program shall use methodologies developed through the education demonstration program carried out under section 283a–3[1] of this title. In developing and carrying out the national program, the Secretary shall consult closely with representatives of nonprofit private entities that represent individuals who have been exposed to DES and that have expertise in community-based information campaigns for the public and for health care providers. The implementation of the national program shall begin during fiscal year 1999.

(b) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such

[1] See References in Text note below.

sums as may be necessary for each of the fiscal years 1999 through 2003. The authorization of appropriations established in the preceding sentence is in addition to any other authorization of appropriation that is available for such purpose.

(July 1, 1944, ch. 373, title XVII, § 1710, as added Pub. L. 105–340, title I, § 101(b), Oct. 31, 1998, 112 Stat. 3191; amended Pub. L. 109–482, title I, § 104(a)(2), Jan. 15, 2007, 120 Stat. 3689.)

REFERENCES IN TEXT

Section 283a–3 of this title, referred to in subsec. (a), was in the original ''section 403C'', and was translated as meaning section 403C of act July 1, 1944, ch. 373, as renumbered by section 104(a)(1) of Pub. L. 109–482. Another section 403C of act July 1, 1944, ch. 373, as added by section 104(a)(3) of Pub. L. 109–482, is classified to section 283a–2 of this title.

PRIOR PROVISIONS

A prior section 300u–9, act July 1, 1944, ch. 373, title XVII, § 1710, as added Nov. 10, 1978, Pub. L. 95–626, title V, § 502, 92 Stat. 3594; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(b)(2), title V, § 507, 93 Stat. 678, 692, related to Conference on Education in Lifetime Sports, prior to repeal by Pub. L. 98–551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

AMENDMENTS

2007—Subsec. (a). Pub. L. 109–482 substituted ''section 283a–3'' for ''section 283a''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

SUBCHAPTER XVI—PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIOR RESEARCH

§ 300v. Commission

(a) Establishment; composition; appointment of members; vacancies

(1) There is established the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (hereinafter in this subchapter referred to as the ''Commission'') which shall be composed of eleven members appointed by the President. The members of the Commission shall be appointed as follows:

(A) Three of the members shall be appointed from individuals who are distinguished in biomedical or behavioral research.

(B) Three of the members shall be appointed from individuals who are distinguished in the practice of medicine or otherwise distinguished in the provision of health care.

(C) Five of the members shall be appointed from individuals who are distinguished in one or more of the fields of ethics, theology, law, the natural sciences (other than a biomedical or behavioral science), the social sciences, the humanities, health administration, government, and public affairs.

(2) No individual who is a full–time officer or employee of the United States may be appointed as a member of the Commission. The Secretary of Health and Human Services, the Secretary of Defense, the Director of Central Intelligence, the Director of the Office of Science and Technology Policy, the Secretary of Veterans Affairs, and the Director of the National Science Foundation shall each designate an individual to provide liaison with the Commission.

(3) No individual may be appointed to serve as a member of the Commission if the individual has served for two terms of four years each as such a member.

(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(b) Terms of members

(1) Except as provided in paragraphs (2) and (3), members shall be appointed for terms of four years.

(2) Of the members first appointed—

(A) four shall be appointed for terms of three years, and

(B) three shall be appointed for terms of two years,

as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(c) Chairman

The Chairman of the Commission shall be appointed by the President, by and with the advice and consent of the Senate, from members of the Commission.

(d) Meetings

(1) Seven members of the Commission shall constitute a quorum for business, but a lesser number may conduct hearings.

(2) The Commission shall meet at the call of the Chairman or at the call of a majority of its members.

(e) Compensation; travel expenses, etc.

(1) Members of the Commission shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

(July 1, 1944, ch. 373, title XVIII, § 1801, as added Pub. L. 95–622, title III, § 301, Nov. 9, 1978, 92 Stat. 3437; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–527, § 10(1), Oct. 25, 1988, 102 Stat. 2640.)

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–527 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(2) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

APPOINTMENT OF INITIAL MEMBERS

Section 302(a) of Pub. L. 95–622 directed President to initially appoint members to President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (established under the amendment made by section 301) [enacting this subchapter] not later than 90 days after Nov. 9, 1978.

EXECUTIVE ORDER NO. 12184

Ex. Ord. No. 12184, Dec. 17, 1979, 44 F.R. 75091, which established the President's Special Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 300v–1. Duties of Commission

(a) Studies and investigations; priority and order; report to President and Congress

(1) The Commission shall undertake studies of the ethical and legal implications of—

(A) the requirements for informed consent to participation in research projects and to otherwise undergo medical procedures;

(B) the matter of defining death, including the advisability of developing a uniform definition of death;

(C) voluntary testing, counseling, and information and education programs with respect to genetic diseases and conditions, taking into account the essential equality of all human beings, born and unborn;

(D) the differences in the availability of health services as determined by the income or residence of the persons receiving the services;

(E) current procedures and mechanisms designed (i) to safeguard the privacy of human subjects of behavioral and biomedical research, (ii) to ensure the confidentiality of individually identifiable patient records, and (iii) to ensure appropriate access of patients to information continued[1] in such records,[2] and

(F) such other matters relating to medicine or biomedical or behavioral research as the President may designate for study by the Commission.

The Commission shall determine the priority and order of the studies required under this paragraph.

(2) The Commission may undertake an investigation or study of any other appropriate matter which relates to medicine or biomedical or behavioral research (including the protection of human subjects of biomedical or behavioral research) and which is consistent with the purposes of this subchapter on its own initiative or at the request of the head of a Federal agency.

(3) In order to avoid duplication of effort, the Commission may, in lieu of, or as part of, any study or investigation required or otherwise conducted under this subsection, use a study or investigation conducted by another entity if the Commission sets forth its reasons for such use.

(4) Upon the completion of each investigation or study undertaken by the Commission under this subsection (including a study or investigation which merely uses another study or investigation), it shall report its findings (including any recommendations for legislation or administrative action) to the President and the Congress and to each Federal agency to which a recommendation in the report applies.

(b) Recommendations to agencies; subsequent administrative requirements

(1) Within 60 days of the date a Federal agency receives a recommendation from the Commission that the agency take any action with respect to its rules, policies, guidelines, or regulations, the agency shall publish such recommendation in the Federal Register and shall provide opportunity for interested persons to submit written data, views, and arguments with respect to adoption of the recommendation.

(2) Within the 180-day period beginning on the date of such publication, the agency shall determine whether the action proposed by such recommendation is appropriate, and, to the extent that it determines that—

(A) such action is not appropriate, the agency shall, within such time period, provide the Commission with, and publish in the Federal Register, a notice of such determination (including an adequate statement of the reasons for the determination), or

(B) such action is appropriate, the agency shall undertake such action as expeditiously as feasible and shall notify the Commission of the determination and the action undertaken.

(c) Report on protection of human subjects; scope; submission to President, etc.

The Commission shall biennially report to the President, the Congress, and appropriate Federal agencies on the protection of human subjects of biomedical and behavioral research. Each such report shall include a review of the

[1] So in original. Probably should be ''contained''.

[2] So in original. The comma probably should be a semicolon.

adequacy and uniformity (1) of the rules, policies, guidelines, and regulations of all Federal agencies regarding the protection of human subjects of biomedical or behavioral research which such agencies conduct or support, and (2) of the implementation of such rules, policies, guidelines, and regulations by such agencies, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

(d) Annual report; scope; submission to President, etc.

Not later than December 15 of each year (beginning with 1979) the Commission shall report to the President, the Congress, and appropriate Federal agencies on the activities of the Commission during the fiscal year ending in such year. Each such report shall include a complete list of all recommendations described in subsection (b)(1) of this section made to Federal agencies by the Commission during the fiscal year and the actions taken, pursant[3] to subsection (b)(2) of this section, by the agencies upon such recommendations, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

(e) Publication and dissemination of reports

The Commission may at any time publish and disseminate to the public reports respecting its activities.

(f) Definitions

For purposes of this section:

(1) The term ''Federal agency'' means an authority of the government of the United States, but does not include (A) the Congress, (B) the courts of the United States, and (C) the government of the Commonwealth of Puerto Rico, the government of the District of Columbia, or the government of any territory or possession of the United States.

(2) The term ''protection of human subjects'' includes the protection of the health, safety, and privacy of individuals.

(July 1, 1944, ch. 373, title XVIII, § 1802, as added Pub. L. 95–622, title III, § 301, Nov. 9, 1978, 92 Stat. 3439; amended Pub. L. 96–32, § 4, July 10, 1979, 93 Stat. 82.)

AMENDMENTS

1979—Subsec. (f). Pub. L. 96–32 redesignated definitions subsection following subsec. (e) as (f), which in original was designated as ''(b)''.

§ 300v–2. Administrative provisions

(a) Hearings

The Commission may for the purpose of carrying out this subchapter hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem advisable.

(b) Appointment and compensation of staff personnel; procurement and compensation of temporary and intermittent services; detail of personnel from other Federal agencies

(1) The Commission may appoint and fix the pay of such staff personnel as it deems desirable. Such personnel shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

(3) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this subchapter.

(c) Contracting authority

The Commission, in performing its duties and functions under this subchapter, may enter into contracts with appropriate public or nonprofit private entities. The authority of the Commission to enter into such contracts is effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(d) Informational requirements and prohibitions

(1) The Commission may secure directly from any Federal agency information necessary to enable it to carry out this subchapter. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(2) The Commission shall promptly arrange for such security clearances for its members and appropriate staff as are necessary to obtain access to classified information needed to carry out its duties under this subchapter.

(3) The Commission shall not disclose any information reported to or otherwise obtained by the Commission which is exempt from disclosure under subsection (a) of section 552 of title 5 by reason of paragraphs (4) and (6) of subsection (b) of such section.

(e) Support services from Administrator of General Services

The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(July 1, 1944, ch. 373, title XVIII, § 1803, as added Pub. L. 95–622, title III, § 301, Nov. 9, 1978, 92 Stat. 3440.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b)(1), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

[3] So in original. Probably should be ''pursuant''.

§ 300v–3. Authorization of appropriations; termination of Commission

(a) To carry out this subchapter there are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, $5,000,000 for the fiscal year ending September 30, 1981, and $5,000,000 for the fiscal year ending September 30, 1982.

(b) The Commission shall be subject to the Federal Advisory Committee Act, except that, under section 14(a)(1)(B) of such Act, the Commission shall terminate on December 31, 1982.

(July 1, 1944, ch. 373, title XVIII, § 1804, as added Pub. L. 95–622, title III, § 301, Nov. 9, 1978, 92 Stat. 3441.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER XVII—BLOCK GRANTS

PART A—PREVENTIVE HEALTH AND HEALTH SERVICES BLOCK GRANTS

§ 300w. Authorization of appropriations

(a) For the purpose of allotments under section 300w–1 of this title, there are authorized to be appropriated $205,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1998.

(b) Of the amount appropriated for any fiscal year under subsection (a) of this section, at least $7,000,000 shall be made available for allotments under section 300w–1(b) of this title.

(July 1, 1944, ch. 373, title XIX, § 1901, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 535; amended Pub. L. 98–555, § 4, Oct. 30, 1984, 98 Stat. 2855; Pub. L. 100–607, title III, § 301(a), Nov. 4, 1988, 102 Stat. 3111; Pub. L. 102–531, title I, § 101, Oct. 27, 1992, 106 Stat. 3469; Pub. L. 103–183, title VII, § 705(e), Dec. 14, 1993, 107 Stat. 2241.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183 substituted "through 1998" for "through 1997".

1992—Subsec. (a). Pub. L. 102–531, § 101(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "For the purpose of allotments under section 300w–1 of this title, there is authorized to be appropriated $95,000,000 for fiscal year 1982, $96,500,000 for fiscal year 1983, $98,500,000 for fiscal year 1984, $98,500,000 for the fiscal year ending September 30, 1985, $98,500,000 for the fiscal year ending September 30, 1986, $98,500,000 for the fiscal year ending September 30, 1987, $110,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991."

Subsec. (b). Pub. L. 102–531, § 101(b), substituted "$7,000,000" for "$3,500,000".

1988—Subsec. (a). Pub. L. 100–607 struck out "and" after "1986," and inserted ", $110,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991" before period at end.

1984—Subsec. (a). Pub. L. 98–555, § 4(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

Subsec. (b). Pub. L. 98–555, § 4(b), substituted "$3,500,000" for "$3,000,000".

EFFECTIVE DATE

Section 901 of Pub. L. 97–35 provided in part that this subchapter is effective Oct. 1, 1981.

§ 300w–1. Allotments

(a) Availability based upon prior year distributions

(1) From the amounts appropriated under section 300w of this title for any fiscal year and available for allotment under this subsection, the Secretary shall allot to each State an amount which bears the same ratio to the available amounts for that fiscal year as the amounts provided by the Secretary under the provisions of law listed in paragraph (2) to the State and entities in the State for fiscal year 1981 bore to the total amount appropriated for such provisions of law for fiscal year 1981.

(2) The provisions of law referred to in paragraph (1) are the following provisions of law as in effect on September 30, 1981:

(A) The authority for grants under section 247b of this title for preventive health service programs for the control of rodents.

(B) The authority for grants under section 247b of this title for establishing and maintaining community and school-based fluoridation programs.

(C) The authority for grants under section 247b of this title for preventive health service programs for hypertension.

(D) Sections 247b–1[1] and 247b–2 of this title.

(E) Section 246(d)[1] of this title.

(F) Section 255(a)[1] of this title.

(G) Sections 300d–1,[1] 300d–2,[1] and 300d–3[1] of this title.

(b) Population

From the amount required to be made available under section 300w(b) of this title for allotments under this subsection for any fiscal year, the Secretary shall make allotments to each State on the basis of the population of the State.

(c) Distribution of appropriated funds not allotted

To the extent that all the funds appropriated under section 300w of this title for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

(1) one or more States have not submitted an application or description of activities in accordance with section 300w–4 of this title for the fiscal year;

(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

(3) some State allotments are offset or repaid under section 300w–5(b)(3) of this title;

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subsection.

(d) Distributions to Indian tribes

(1) If the Secretary—

(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this part be provided directly by the Secretary to such tribe or organization, and

(B) determines that the members of such tribe or tribal organization would be better

[1] See References in Text note below.

served by means of grants made directly by the Secretary under this part,

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) of this section for the fiscal year the amount determined under paragraph (2).

(2) The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) of this section an amount equal to the amount which bears the same ratio to the State's allotment for the fiscal year involved as the total amount provided or allotted for fiscal year 1981 by the Secretary to such tribe or tribal organization under the provisions of law referred to in subsection (a) of this section bore to the total amount provided or allotted for such fiscal year by the Secretary to the State and entities (including Indian tribes and tribal organizations) in the State under such provisions of law.

(3) The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(4) In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

(5) The terms ''Indian tribe'' and ''tribal organization'' have the same meaning given such terms in section 450b(b) and (c)[2] of title 25.

(e) Report on equitable distribution of available funds

The Secretary shall conduct a study for the purpose of devising a formula for the equitable distribution of funds available for allotment to the States under this section. In conducting the study, the Secretary shall take into account—

(1) the financial resources of the various States,

(2) the populations of the States, and

(3) any other factor which the Secretary may consider appropriate.

Before June 30, 1982, the Secretary shall submit a report to the Congress respecting the development of a formula and make such recommendations as the Secretary may deem appropriate in order to ensure the most equitable distribution of funds under allotments under this section.

(July 1, 1944, ch. 373, title XIX, § 1902, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 535.)

REFERENCES IN TEXT

Section 247b–1 of this title, referred to in subsec. (a)(2)(D), was in the original a reference to section 401 of the Health Services and Centers Amendments of 1978, Pub. L. 95–626, which was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(a), (h), Aug. 13, 1981, 95 Stat. 559, 561. Pub. L. 100–572, § 3, Oct. 31, 1988, 102 Stat. 2887, enacted section 317A of act July 1, 1944, which is classified to section 247b–1 of this title.

Section 247b–2 of this title, referred to in subsec. (a)(2)(D), was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(a), (h), Aug. 13, 1981, 95 Stat. 559, 561.

Section 246(d) of this title, referred to in subsec. (a)(2)(E), was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(b), (h), Aug. 13, 1981, 95 Stat. 559, 561.

Section 255 of this title, referred to in subsec. (a)(2)(F), was in the original a reference to section 339 of act July 1, 1944, which was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(b), (h), Aug. 13, 1981, 95 Stat. 559, 561. Pub. L. 97–414, § 6(a), Jan. 4, 1983, 96 Stat. 2057, added a new section 339 of act July 1, 1944, which is classified to section 255 of this title.

Sections 300d–1, 300d–2, and 300d–3 of this title, referred to in subsec. (a)(2)(G), were in the original references to sections 1202, 1203, and 1204, respectively, of act July 1, 1944, which were repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561. Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2916–2918, enacted new sections 1202, 1203, and 1204 of act July 1, 1944, which were classified to sections 300d–1, 300d–2, and 300d–3, respectively, of this title. Pub. L. 103–183, title VI, § 601(b), Dec. 14, 1983, 107 Stat. 2238, repealed section 1202 and renumbered sections 1203 and 1204 as 1202 and 1203, respectively.

Section 450b of title 25, referred to in subsec. (d)(5), has been amended, and subsecs. (b) and (c) of section 450b no longer define the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in that section.

[2] See References in Text note below.

§ 300w–2. Payments under allotments to States

(a)(1) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, to each State from its allotment under section 300w–1 of this title (other than any amount reserved under section 300w–1(d) of this title) from amounts appropriated for that fiscal year.

(2) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

(b) The Secretary, at the request of a State, may reduce the amount of payments under subsection (a) of this section by—

(1) the fair market value of any supplies or equipment furnished the State, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of supplies or equipment or the detail of an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 300w–3 of this title. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which the reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

(July 1, 1944, ch. 373, title XIX, § 1903, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 537.)

CODIFICATION

In subsec. (a)(1), ''section 6503(a) of title 31'' substituted for ''section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)'' on authority of

Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 300w–3. Use of allotments

(a) Preventive health services, comprehensive public health services, emergency medical services, etc.

(1) Except as provided in subsections (b) and (c) of this section, payments made to a State under section 300w–2 of this title may be used for the following:

(A) Activities consistent with making progress toward achieving the objectives established by the Secretary for the health status of the population of the United States for the year 2000 (in this part referred to as ''year 2000 health objectives'').

(B) Preventive health service programs for the control of rodents and for community and school-based fluoridation programs.

(C) Feasibility studies and planning for emergency medical services systems and the establishment, expansion, and improvement of such systems. Amounts for such systems may not be used for the costs of the operation of the systems or the purchase of equipment for the systems, except that such amounts may be used for the payment of not more than 50 percent of the costs of purchasing communications equipment for the systems. Amounts may be expended for feasibility studies or planning for the trauma-care components of such systems only if the studies or planning, respectively, is consistent with the requirements of section 300d–13(a) of this title.

(D) Providing services to victims of sex offenses and for prevention of sex offenses.

(E) The establishment, operation, and coordination of effective and cost-efficient systems to reduce the prevalence of illness due to asthma and asthma-related illnesses, especially among children, by reducing the level of exposure to cockroach allergen or other known asthma triggers through the use of integrated pest management, as applied to cockroaches or other known allergens. Amounts expended for such systems may include the costs of building maintenance and the costs of programs to promote community participation in the carrying out at such sites of integrated pest management, as applied to cockroaches or other known allergens. For purposes of this subparagraph, the term ''integrated pest management'' means an approach to the management of pests in public facilities that combines biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

(F) With respect to activities described in any of subparagraphs (A) through (E), related planning, administration, and educational activities.

(G) Monitoring and evaluation of activities carried out under any of subparagraphs (A) through (F).

(2) Except as provided in subsection (b) of this section, amounts paid to a State under section 300w–2 of this title from its allotment under section 300w–1(b) of this title may only be used for providing services to rape victims and for rape prevention.

(3) The Secretary may provide technical assistance to States in planning and operating activities to be carried out under this part.

(b) Prohibited uses

A State may not use amounts paid to it under section 300w–2 of this title to—

(1) provide inpatient services,

(2) make cash payments to intended recipients of health services,

(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment,

(4) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds, or

(5) provide financial assistance to any entity other than a public or nonprofit private entity.

Except as provided in subsection (a)(1)(E) of this section, the Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this part.

(c) Transfer of funds

A State may transfer not more than 7 percent of the amount allotted to the State under section 300w–1(a) of this title for any fiscal year for use by the State under part B of this subchapter and title V of the Social Security Act [42 U.S.C. 701 et seq.] in such fiscal year as follows: At any time in the first three quarters of the fiscal year a State may transfer not more than 3 percent of the allotment of the State for the fiscal year for such use, and in the last quarter of a fiscal year a State may transfer for such use not more than the remainder of the amount of its allotment which may be transferred.

(d) Limitation on administrative costs

Of the amount paid to any State under section 300w–2 of this title, not more than 10 percent paid from each of its allotments under subsections (a) and (b) of section 300w–1 of this title may be used for administering the funds made available under section 300w–2 of this title. The State will pay from non-Federal sources the remaining costs of administering such funds.

(July 1, 1944, ch. 373, title XIX, § 1904, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 537; amended Pub. L. 97–414, § 8(s), Jan. 4, 1983, 96 Stat. 2062; Pub. L. 99–646, § 87(d)(1)(A), Nov. 10, 1986, 100 Stat. 3623; Pub. L. 99–654, § 3(b)(1)(A), Nov. 14, 1986, 100 Stat. 3663; Pub. L. 100–607, title III, § 301(b), Nov. 4, 1988, 102 Stat. 3111; Pub. L. 102–531, title I, § 102, Oct. 27, 1992, 106 Stat. 3470; Pub. L. 106–310, div. A, title V, § 511, Oct. 17, 2000, 114 Stat. 1116.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title V of the Social Security Act is classified generally to subchapter V (§ 701 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(1)(E). Pub. L. 106–310, § 511(3), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (a)(1)(F). Pub. L. 106–310, § 511(1), (4), redesignated subpar. (E) as (F) and substituted ''subparagraphs (A) through (E)'' for ''subparagraphs (A) through (D)''. Former subpar. (F) redesignated (G).

Subsec. (a)(1)(G). Pub. L. 106–310, § 511(1), (2), (5), redesignated subpar. (F) as (G) and substituted ''subparagraphs (A) through (F).'' for ''subparagraphs (A) through (E)''.

1992—Subsec. (a)(1). Pub. L. 102–531, § 102(a), amended par. (1) generally, substituting present provisions for provisions authorizing, except as provided in subsecs. (b) and (c), use of the amounts paid to a State under section 300w–2 of this title from its allotment under section 300w–1(a) of this title and amounts transferred by the State, for use in preventive health service programs, including hypertension and high cholesterol services, health-risk reduction programs, immunization services, home health agencies, emergency medical services, services to victims of sex offenses, and uterine cancer and breast cancer services.

Subsec. (c). Pub. L. 102–531, § 102(b), substituted ''part B'' for ''parts B and C''.

1988—Subsec. (a)(1)(B). Pub. L. 100–607, § 301(b)(1), inserted ''and elevated serum cholesterol'' before period at end.

Subsec. (a)(1)(C). Pub. L. 100–607, § 301(b)(2), inserted '', including programs designed to reduce the incidence of chronic diseases'' before period at end.

Subsec. (a)(1)(D). Pub. L. 100–607, § 301(b)(3), inserted '', including immunization services'' before period at end.

Subsec. (a)(1)(F). Pub. L. 100–607, § 301(b)(4), substituted ''systems, except that such amounts may be used for the payment of not more than 50 percent of the costs of purchasing communications equipment for the systems'' for ''systems (other than systems with respect to which grants were made as prescribed by section 300w–4(c)(2) of this title)''.

Subsec. (a)(1)(H). Pub. L. 100–607, § 301(b)(5), added subpar. (H).

1986—Subsec. (a)(1)(G). Pub. L. 99–646 and Pub. L. 99–654 amended subpar. (G) identically, substituting ''victims of sex offenses and for prevention of sex offenses'' for ''rape victims and for rape prevention''.

1983—Subsec. (a)(1)(F). Pub. L. 97–414 inserted ''(other than systems with respect to which grants were made as prescribed by section 300w–4(c)(2) of this title)'' after ''equipment for the systems''.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, respectively, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of Title 18, Crimes and Criminal Procedure.

§ 300w–4. Application for payments; State plan

(a) In general

The Secretary may make payments under section 300w–2 of this title to a State for a fiscal year only if—

(1) the State submits to the Secretary an application for the payments;

(2) the application contains a State plan in accordance with subsection (b) of this section;

(3) the application contains the certification described in subsection (c) of this section;

(4) the application contains such assurances as the Secretary may require regarding the compliance of the State with the requirements of this part (including assurances regarding compliance with the agreements described in subsection (c) of this section); and

(5) the application is in such form and is submitted by such date as the Secretary may require.

(b) State plan

A State plan required in subsection (a)(2) of this section for a fiscal year is in accordance with this subsection if the plan meets the following conditions:

(1) The plan is developed by the State agency with principal responsibility for public health programs, in consultation with the advisory committee established pursuant to subsection (c)(2) of this section.

(2) The plan specifies the activities authorized in section 300w–3 of this title that are to be carried out with payments made to the State under section 300w–2 of this title, including a specification of the year 2000 health objectives for which the State will expend the payments.

(3) The plan specifies the populations in the State for which such activities are to be carried out.

(4) The plan specifies any populations in the State that have a disparate need for such activities.

(5) With respect to each population specified under paragraph (3), the plan contains a strategy for expending such payments to carry out such activities to make progress toward improving the health status of the population, which strategy includes—

(A) a description of the programs and projects to be carried out;

(B) an estimate of the number of individuals to be served by the programs and projects; and

(C) an estimate of the number of public health personnel needed to carry out the strategy.

(6) The plan specifies the amount of such payments to be expended for each of such activities and, with respect to the activity involved—

(A) the amount to be expended for each population specified under paragraph (3); and

(B) the amount to be expended for each population specified under paragraph (4).

(c) State certification

The certification referred to in subsection (a)(3) of this section for a fiscal year is a certification to the Secretary by the chief executive officer of the State involved as follows:

(1)(A) In the development of the State plan required in subsection (a)(2) of this section—

(i) the chief health officer of the State held public hearings on the plan; and

(ii) proposals for the plan were made public in a manner that facilitated comments from public and private entities (including Federal and other public agencies).

(B) The State agrees that, if any revisions are made in such plan during the fiscal year, the State will, with respect to the revisions, hold hearings and make proposals public in accordance with subparagraph (A), and will submit to the Secretary a description of the revisions.

(2) The State has established an advisory committee in accordance with subsection (d) of this section.

(3) The State agrees to expend payments under section 300w–2 of this title only for the activities authorized in section 300w–3 of this title.

(4) The State agrees to expend such payments in accordance with the State plan submitted under subsection (a)(2) of this section (with any revisions submitted to the Secretary under paragraph (1)(B)), including making expenditures to carry out the strategy contained in the plan pursuant to subsection (b)(5) of this section.

(5)(A) The State agrees that, in the case of each population for which such strategy is carried out, the State will measure the extent of progress being made toward improving the health status of the population.

(B) The State agrees that—

(i) the State will collect and report data in accordance with section 300w–5(a) of this title; and

(ii) for purposes of subparagraph (A), progress will be measured through use of each of the applicable uniform data items developed by the Secretary under paragraph (2) of such section, or if no such items are applicable, through use of the uniform criteria developed by the Secretary under paragraph (3) of such section.

(6) With respect to the activities authorized in section 300w–3 of this title, the State agrees to maintain State expenditures for such activities at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments under section 300w–2 of this title.

(7) The State agrees to establish reasonable criteria to evaluate the effective performance of entities that receive funds from such payments and procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity.

(8) The State agrees to permit and cooperate with Federal investigations undertaken in accordance with section 300w–6 of this title.

(9) The State has in effect a system to protect from inappropriate disclosure patient and sex offense victim records maintained by the State in connection with an activity funded under this part or by any entity which is receiving payments from the allotment of the State under this part.

(10) The State agrees to provide the officer of the State government responsible for the administration of the State highway safety program with an opportunity to—

(A) participate in the development of any plan by the State relating to emergency medical services, as such plan relates to highway safety; and

(B) review and comment on any proposal by any State agency to use any Federal grant or Federal payment received by the State for the provision of emergency medical services as such proposal relates to highway safety.

(d) State Advisory Committee

(1) In general

For purposes of subsection (c)(2) of this section, an advisory committee is in accordance with this subsection if such committee is known as the State Preventive Health Advisory Committee (in this subsection referred to as the ''Committee'') and the Committee meets the conditions described in the subsequent paragraphs of this subsection.

(2) Duties

A condition under paragraph (1) for a State is that the duties of the Committee are—

(A) to hold public hearings on the State plan required in subsection (a)(2) of this section; and

(B) to make recommendations pursuant to subsection (b)(1) of this section regarding the development and implementation of such plan, including recommendations on—

(i) the conduct of assessments of the public health;

(ii) which of the activities authorized in section 300w–3 of this title should be carried out in the State;

(iii) the allocation of payments made to the State under section 300w–2 of this title;

(iv) the coordination of activities carried out under such plan with relevant programs of other entities; and

(v) the collection and reporting of data in accordance with section 300w–5(a) of this title.

(3) Composition

(A) A condition under paragraph (1) for a State is that the Committee is composed of such members of the general public, and such officials of the health departments of political subdivisions of the State, as may be necessary to provide adequate representation of the general public and of such health departments.

(B) With respect to compliance with subparagraph (A), the membership of advisory committees established pursuant to subsection (c)(2) of this section may include representatives of community-based organizations (including minority community-based organizations), schools of public health, and entities to which the State involved awards grants or contracts to carry out activities authorized in section 300w–3 of this title.

(4) Chair; meetings

A condition under paragraph (1) for a State is that the State public health officer serves as the chair of the Committee, and that the Committee meets not less than twice each fiscal year.

(July 1, 1944, ch. 373, title XIX, § 1905, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 538; amended Pub. L. 98–555, § 5(a), (d), Oct. 30, 1984, 98 Stat. 2855, 2856; Pub. L. 99–646, § 87(d)(1)(B), Nov. 10, 1986, 100 Stat. 3624; Pub. L. 99–654, § 3(b)(1)(B), Nov. 14, 1986, 100 Stat. 3663; Pub. L. 100–607, title III, § 301(c), Nov. 4, 1988, 102 Stat. 3112; Pub. L. 101–590, § 4, Nov. 16, 1990, 104 Stat. 2928; Pub. L. 102–531, title I, § 103(a), Oct. 27, 1992, 106 Stat. 3470.)

AMENDMENTS

1992—Pub. L. 102–531 amended section generally, substituting present provisions for provisions relating to submission and form of application for assistance under this part as well as required assurances, public hearings on proposed use and distribution of funds, certifications by chief executive officer of State, and a description of intended use of funds as well as public access to and revision of such description.

1990—Subsec. (c). Pub. L. 101–590, which directed amendment of subsec. (c) by adding at the end thereof a new par. (7), was executed by adding par. (7) after par. (6) and before the last sentence to reflect the probable intent of Congress.

1988—Subsec. (d). Pub. L. 100–607 inserted at end ''The description shall include a statement of the public health objectives expected to be achieved by the State through the use of the payments the State will receive under section 300w–2 of this title.''

1986—Subsec. (c)(6). Pub. L. 99–646 and Pub. L. 99–654 amended par. (6) identically, substituting ''sex offense'' for ''rape''.

1984—Subsec. (c)(2). Pub. L. 98–555, § 5(a), redesignated par. (3) as (2). Former par. (2), which related to grants for fiscal year 1982, was struck out.

Subsec. (c)(3). Pub. L. 98–555, § 5(a), redesignated par. (5) as (3). Former par. (3) redesignated (2).

Subsec. (c)(4). Pub. L. 98–555, § 5(a), redesignated par. (6) as (4). Former par. (4), which related to grants for preventive health service programs for hypertension, was struck out.

Subsec. (c)(5) to (8). Pub. L. 98–555, § 5(a), redesignated pars. (7) and (8) as (5) and (6), respectively. Former pars. (5) and (6) redesignated (3) and (4), respectively.

Subsec. (e). Pub. L. 98–555, § 5(d), struck out subsec. (e) which related to grants by States.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, respectively, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of Title 18, Crimes and Criminal Procedure.

DELAYED APPLICABILITY OF REQUIREMENT REGARDING ADVISORY COMMITTEES

Section 103(b) of Pub. L. 102–531 provided that: ''With respect to compliance with the requirement established in subsection (c)(2) of section 1905 of the Public Health Service Act [subsec. (c)(2) of this section] (as amended by subsection (a) of this section), a State is deemed, notwithstanding such section, to be in compliance with such requirement if the State establishes an advisory committee in accordance with subsection (d) of such section not later than 180 days after the date of the enactment of this Act [Oct. 27, 1992].''

§ 300w–5. Reports, data, and audits

(a) Annual reports; contents; data collection; copies

(1) For purposes of section 300w–4(c)(5)(B)(i) of this title, a State is collecting and reporting data for a fiscal year in accordance with this subsection if the State submits to the Secretary, not later than February 1 of the succeeding fiscal year, a report that—

(A) describes the purposes for which the State expended payments made to the State under section 300w–2 of this title;

(B) pursuant to section 300w–4(c)(5)(A) of this title, describes the extent of progress made by the State for purposes of such section;

(C) meets the conditions described in the subsequent paragraphs of this subsection; and

(D) contains such additional information regarding activities authorized in section 300w–3 of this title, and is submitted in such form, as the Secretary may require.

(2)(A) The Secretary, in consultation with the States, shall develop sets of data for uniformly defining health status for purposes of the year 2000 health objectives (which sets are in this subsection referred to as ''uniform data sets''). Each of such sets shall consist of one or more categories of information (in this subsection individually referred to as a ''uniform data item''). The Secretary shall develop formats for the uniform collecting and reporting of information on such items.

(B) A condition under paragraph (1)(C) for a fiscal year is that the State involved will, in accordance with the applicable format under subparagraph (A), collect during such year, and include in the report under paragraph (1), the necessary information for one uniform data item from each of the uniform data sets, which items are selected for the State by the Secretary.

(C) In the case of fiscal year 1995 and each subsequent fiscal year, a condition under paragraph (1) for a State is that the State will, in accordance with the applicable format under subparagraph (A), collect during such year, and include in the report under paragraph (1), the necessary information for each of the uniform data sets appropriate to the year 2000 health objectives that the State has, in the State plan submitted under section 300w–4 of this title for the fiscal year, specified as a purpose for which payments under section 300w–2 of this title are to be expended.

(3) The Secretary, in consultation with the States, shall establish criteria for the uniform collection and reporting of data on activities authorized in section 300w–3 of this title with respect to which no uniform data items exist.

(4) A condition under paragraph (1) for a fiscal year is that the State involved will make copies of the report submitted under such paragraph for the fiscal year available for public inspection, and will upon request provide a copy of the report to any individual for a charge not exceeding the cost of providing the copy.

(b) Fiscal control; accounting procedures; annual audits; repayments and offsets; public inspection; Comptroller General evaluations; report to Congress

(1) Each State shall establish fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under section 300w–2 of this title and funds transferred under section 300w–3(c) of this title for use under this part.

(2) Each State shall annually audit its expenditures from payments received under section 300w–2 of this title. Such State audits shall be conducted by an entity independent of any agency administering a program funded under this part and, in so far as practical, in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions. Within 30 days following the date each audit is completed, the chief executive officer of the State shall transmit a copy of that audit to the Secretary.

(3) Each State shall, after being provided by the Secretary with adequate notice and opportunity for a hearing within the State, repay to the United States amounts found not to have been expended in accordance with the requirements of this part or the certification provided by the State under section 300w–4 of this title. If such repayment is not made, the Secretary shall, after providing the State with adequate notice and opportunity for a hearing within the State, offset such amounts against the amount of any allotment to which the State is or may become entitled under this part.

(4) The State shall make copies of the reports and audits required by this section available for public inspection within the State.

(5) The Comptroller General of the United States shall, from time to time, evaluate the expenditures by States of grants under this part in order to assure that expenditures are consistent with the provisions of this part and the certification provided by the State under section 300w–4 of this title.

(6) Not later than October 1, 1990, the Secretary shall report to the Congress on the activities of the States that have received funds under this part and may include in the report any recommendations for appropriate changes in legislation.

(c) Inapplicability of title XVII of Omnibus Budget Reconciliation Act of 1981

Title XVII of the Omnibus Budget Reconciliation Act of 1981 shall not apply with respect to audits of funds allotted under this part.

(July 1, 1944, ch. 373, title XIX, § 1906, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 540; amended Pub. L. 98–555, § 5(b), (c), Oct. 30, 1984, 98 Stat. 2855, 2856; Pub. L. 100–607, title III, § 301(d), Nov. 4, 1988, 102 Stat. 3112; Pub. L. 102–531, title I, § 104, Oct. 27, 1992, 106 Stat. 3473.)

REFERENCES IN TEXT

The Omnibus Budget Reconciliation Act of 1981, referred to in subsec. (c), is Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 357, as amended. Title XVII of the Omnibus Budget Reconciliation Act of 1981 enacted sections 3595, and 4511 to 4514 of Title 5, Government Organization and Employees, amended sections 3393, 3593, 3596, 4501, 4502, 4505, 4506, 7542, 7543, 8340, and 8345 of Title 5, and sections 2003 and 2401 of Title 39, Postal Service, and enacted provisions set out as notes under sections 3595, 4501, 5303, 5343, 8340, and 8345 of Title 5, section 1243 of former Title 31, Money and Finance, and sections 403, 2003, 2004, and 2401 of Title 39. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1992—Pub. L. 102–531, § 104(b)(1), substituted ''Reports, data, and audits'' for ''Reports and audits'' in section catchline.

Subsec. (a). Pub. L. 102–531, § 104(a), amended subsec. (a) generally, substituting present provisions for provisions requiring an annual report by each State of its activities under this part, outlining the contents of such report, and for providing copies of the report to interested persons.

Subsec. (d). Pub. L. 102–531, § 104(b)(2), struck out subsec. (d) which provided for development of model criteria and forms for collection of data and information on services provided under this part.

1988—Subsec. (a)(3). Pub. L. 100–607, § 301(d)(1), added par. (3).

Subsec. (b)(6). Pub. L. 100–607, § 301(d)(2), substituted ''1990'' for ''1983''.

1984—Subsec. (a)(1)(B). Pub. L. 98–555, § 5(b), substituted ''preventive health and preventive health services programs in the State assisted by funds from allotments under this part, including a summary of the services which were provided, the providers of such services, and the individuals who received such services'' for ''activities of the State under this part''.

Subsec. (d). Pub. L. 98–555, § 5(c), added subsec. (d).

§ 300w–6. Withholding of funds

(a) Prerequisites

(1) The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not use its allotment in accordance with the requirements of this part or the certification provided under section 300w–4 of this title. The Secretary shall withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(2) The Secretary may not institute proceedings to withhold funds under paragraph (1) unless the Secretary has conducted an investigation concerning whether the State has used its allotment in accordance with the requirements of this part or the certification provided under section 300w–4 of this title. Investigations required by this paragraph shall be conducted within the affected State by qualified investigators.

(3) The Secretary shall respond in an expeditious manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the requirements of this part or certifications provided under section 300w–4 of this title.

(4) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the requirements of this part or certifications provided under section 300w–4 of this title.

(b) Investigations

(1) The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this part in order to evaluate compliance with the requirements of this part and certifications provided under section 300w–4 of this title.

(2) The Comptroller General of the United States may conduct investigations of the use of funds received under this part by a State in order to insure compliance with the requirements of this part and certifications provided under section 300w–4 of this title.

(c) Availability of books, documents, papers, and records

Each State, and each entity which has received funds from an allotment made to a State under this part, shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(d) Information not readily available

(1) In conducting any investigation in a State, the Secretary or the Comptroller General of the

United States may not make a request for any information not readily available to such State or an entity which has received funds from an allotment made to the State under this part or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

(2) Paragraph (1) does not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

(July 1, 1944, ch. 373, title XIX, § 1907, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 541.)

§ 300w–7. Nondiscrimination provisions

(a) Programs and activities receiving Federal financial assistance

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this part are considered to be programs and activities receiving Federal financial assistance.

(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this part.

(b) Failure to comply

Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under section 300w–1 of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], as may be applicable, or

(3) take such other action as may be provided by law.

(c) Civil actions by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever he has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(July 1, 1944, ch. 373, title XIX, § 1908, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 542.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(2), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 300w–8. Criminal penalty for false statements

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from funds allotted to the State under this part, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(July 1, 1944, ch. 373, title XIX, § 1909, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 542.)

§ 300w–9. Emergency medical services for children

(a) Grant authority

For activities in addition to the activities which may be carried out by States under section 300w–3(a)(1)(F)[1] of this title, the Secretary may make grants to States or accredited schools of medicine in States to support a program of demonstration projects for the expansion and improvement of emergency medical services for children who need treatment for trauma or critical care. Any grant made under this subsection shall be for not more than a 3-year period (with an optional 4th year based on

[1] See References in Text note below.

performance), subject to annual evaluation by the Secretary. Only 3 grants under this subsection may be made in a State (to a State or to a school of medicine in such State) in any fiscal year.

(b) Renewals

The Secretary may renew a grant made under subsection (a) of this section for one additional one-year period only if the Secretary determines that renewal of such grant will provide significant benefits through the collection, analysis, and dissemination of information or data which will be useful to States in which grants under such subsection have not been made.

(c) Definitions

For purposes of this section—

(1) the term ''school of medicine'' has the same meaning as in section 292a(4)[1] of this title; and

(2) the term ''accredited'' has the same meaning as in section 292a(5)[1] of this title.

(d) Authorization of appropriations

To carry out this section, there are authorized to be appropriated $2,000,000 for fiscal year 1985 and for each of the two succeeding fiscal years, $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, $5,000,000 for each of the fiscal years 1991 and 1992, and such sums as may be necessary for each of the fiscal years 1993 through 2005.

(July 1, 1944, ch. 373, title XIX, § 1910, as added Pub. L. 98–555, § 7, Oct. 30, 1984, 98 Stat. 2856; amended Pub. L. 99–272, title XVII, § 17004, Apr. 7, 1986, 100 Stat. 360; Pub. L. 100–607, title III, § 302, Nov. 4, 1988, 102 Stat. 3112; Pub. L. 101–590, § 5, Nov. 16, 1990, 104 Stat. 2928; Pub. L. 102–410, § 11, Oct. 13, 1992, 106 Stat. 2101; Pub. L. 105–392, title IV, § 415, Nov. 13, 1998, 112 Stat. 3590.)

REFERENCES IN TEXT

Section 300w–3(a)(1) of this title, referred to in subsec. (a), was amended generally by Pub. L. 102–531, title I, § 102(a), Oct. 27, 1992, 106 Stat. 3470, and, as so amended, provisions formerly appearing in subpar. (F) are contained in subpar. (C).

Section 292a of this title, referred to in subsec. (c), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see section 295p of this title.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392, § 415(1), substituted ''3-year period (with an optional 4th year based on performance)'' for ''two-year period'' and ''3 grants'' for ''one grant''.

Subsec. (d). Pub. L. 105–392, § 415(2), substituted ''2005'' for ''1997''.

1992—Subsec. (a). Pub. L. 102–410, § 11(1), substituted ''grants'' for ''not more than four grants in any fiscal year'' after ''Secretary may make'' in first sentence.

Subsec. (d). Pub. L. 102–410, § 11(2), substituted ''$5,000,000'' for ''and $5,000,000'' and inserted before period '', and such sums as may be necessary for each of the fiscal years 1993 through 1997''.

1990—Subsec. (a). Pub. L. 101–590, § 5(1)(A), which directed the substitution of ''grants'' for ''not more that four grants in any fiscal year'' could not be executed because the language to be stricken did not appear in text.

Pub. L. 101–590, § 5(1)(B), struck out ''in such States'' after ''demonstration projects'' in first sentence.

Subsec. (d). Pub. L. 101–590, § 5(2), substituted ''each of the fiscal years 1991 and 1992'' for ''fiscal year 1991''.

1988—Subsec. (a). Pub. L. 100–607, § 302(a), substituted ''shall be for not more than a two-year period, subject to annual evaluation by the Secretary'' for ''shall be for a one-year period''.

Subsec. (d). Pub. L. 100–607, § 302(b), inserted '', $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991'' before period at end.

1986—Subsec. (a). Pub. L. 99–272, § 17004(1), which directed substitution of ''not more than four grants in any fiscal year to States or accredited schools of medicine in States'' for ''grant to not more than four States in any fiscal year'' was made by substituting former phrase for ''grants to not more than four States in any fiscal year'', as the probable intent of Congress.

Pub. L. 99–272, § 17004(2), inserted at end ''Only one grant under this subsection may be made in a State (to a State or to a school of medicine in such State) in any fiscal year.''

Subsec. (b). Pub. L. 99–272, § 17004(3), substituted ''States in which grants under such subsection have not been made'' for ''other States''.

Subsecs. (c), (d). Pub. L. 99–272, § 17004(4), (5), added subsec. (c) and redesignated former subsec. (c) as (d).

§ 300w–10. Repealed. Pub. L. 106–386, div. B, title IV, § 1401(b), Oct. 28, 2000, 114 Stat. 1513

Section, act July 1, 1944, ch. 373, title XIX, § 1910A, as added Pub. L. 103–322, title IV, § 40151, Sept. 13, 1994, 108 Stat. 1920, related to use of allotments for rape prevention education. See section 280b–1c of this title.

A prior section 300w–10, act July 1, 1944, ch. 373, title XIX, § 1910A, as added Oct. 30, 1984, Pub. L. 98–555, § 8, 98 Stat. 2856, related to State planning grants, prior to repeal by Pub. L. 100–607, title III, § 303, Nov. 4, 1988, 102 Stat. 3112.

PART B—BLOCK GRANTS REGARDING MENTAL HEALTH AND SUBSTANCE ABUSE

SUBPART I—BLOCK GRANTS FOR COMMUNITY MENTAL HEALTH SERVICES

§ 300x. Formula grants to States

(a) In general

For the purpose described in subsection (b) of this section, the Secretary, acting through the Director of the Center for Mental Health Services, shall make an allotment each fiscal year for each State in an amount determined in accordance with section 300x–7 of this title. The Secretary shall make a grant to the State of the allotment made for the State for the fiscal year if the State submits to the Secretary an application in accordance with section 300x–6 of this title.

(b) Purpose of grants

A funding agreement for a grant under subsection (a) of this section is that, subject to section 300x–5 of this title, the State involved will expend the grant only for the purpose of—

(1) carrying out the plan submitted under section 300x–1(a) of this title by the State for the fiscal year involved;

(2) evaluating programs and services carried out under the plan; and

(3) planning, administration, and educational activities related to providing services under the plan.

(July 1, 1944, ch. 373, title XIX, § 1911, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.)

PRIOR PROVISIONS

A prior section 300x, act July 1, 1944, ch. 373, title XIX, § 1911, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 543; amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 101, 106(a), 98 Stat. 2353, 2358; Nov. 18, 1988, Pub. L. 100–690, title II, § 2021, 102 Stat. 4194, authorized appropriations in fiscal years 1990 and 1991 for purpose of carrying out this subpart and section 290aa–11 of this title, prior to repeal by Pub. L. 102–321, § 201(2).

EFFECTIVE DATE

Part effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, and with provision that section 205(a) of Pub. L. 102–321, set out below, regarding allotments made for fiscal year 1992 under this part as in effect on the day before July 10, 1992, applies with respect to the program established in this part, see section 801(b), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

TEMPORARY PROVISIONS REGARDING FUNDING

Section 205 of Pub. L. 102–321, as amended by Pub. L. 102–352, § 2(c), Aug. 26, 1992, 106 Stat. 939; Pub. L. 102–408, title III, § 312, Oct. 13, 1992, 106 Stat. 2091, provided that, with respect to allotments made for fiscal year 1992 under this part, as in effect on the day before July 10, 1992, any portion of the total of such allotments that has not been paid to the States as of the first day of the fourth quarter of such fiscal year be reallotted with the result that the total allotment made for a State for fiscal year 1992 be the amount indicated for the State in a specified table, authorized Secretary of Health and Human Services to make a grant to a State of the reallotment if the State agrees that the grant be subject to all conditions upon which allotments and payments under this part, as in effect on the day before July 10, 1992, are made for fiscal 1992, with specified exceptions, permitted transfers of allotments made in fiscal years 1993 and 1994 between this part and subpart II, section 300x–21 of this title, under certain circumstances, defined terms as used, and directed funding, subject to a limitation, of a program for pregnant and postpartum women for fiscal year 1993.

REPORT ON ALLOTMENT FORMULA

Section 707 of Pub. L. 102–321 directed Secretary of Health and Human Services to enter into a contract with National Academy of Sciences, or if such Academy declines, with another public or nonprofit private agency, for purpose of conducting a study or studies concerning statutory formulae under which funds made available under this section and section 300x–21 of this title are allocated among States and territories, specified findings to be made by the study or studies, directed Secretary to ensure that not later than 6 months after July 10, 1992, the study was completed and a report submitted to Committee on Energy and Commerce of House of Representatives and Committee on Labor and Human Resources of Senate, and directed entity preparing the report to consult with Comptroller General with Comptroller General to review the study after its submittal and within three months make appropriate recommendations concerning such report to such committees.

§ 300x–1. State plan for comprehensive community mental health services for certain individuals

(a) In general

The Secretary may make a grant under section 300x of this title only if—

(1) the State involved submits to the Secretary a plan for providing comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance;

(2) the plan meets the criteria specified in subsection (b) of this section; and

(3) the plan is approved by the Secretary.

(b) Criteria for plan

With respect to the provision of comprehensive community mental health services to individuals who are either adults with a serious mental illness or children with a serious emotional disturbance, the criteria referred to in subsection (a) of this section regarding a plan are as follows:

(1) Comprehensive community-based mental health systems

The plan provides for an organized community-based system of care for individuals with mental illness and describes available services and resources in a comprehensive system of care, including services for dually diagnosed individuals. The description of the system of care shall include health and mental health services, rehabilitation services, employment services, housing services, educational services, substance abuse services, medical and dental care, and other support services to be provided to individuals with Federal, State and local public and private resources to enable such individuals to function outside of inpatient or residential institutions to the maximum extent of their capabilities, including services to be provided by local school systems under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]. The plan shall include a separate description of case management services and provide for activities leading to reduction of hospitalization.

(2) Mental health system data and epidemiology

The plan contains an estimate of the incidence and prevalence in the State of serious mental illness among adults and serious emotional disturbance among children and presents quantitative targets to be achieved in the implementation of the system described in paragraph (1).

(3) Children's services

In the case of children with serious emotional disturbance, the plan—

(A) subject to subparagraph (B), provides for a system of integrated social services, educational services, juvenile services, and substance abuse services that, together with health and mental health services, will be provided in order for such children to receive care appropriate for their multiple needs (such system to include services provided under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]);

(B) provides that the grant under section 300x of this title for the fiscal year involved will not be expended to provide any service under such system other than comprehensive community mental health services; and

(C) provides for the establishment of a defined geographic area for the provision of the services of such system.

(4) Targeted services to rural and homeless populations

The plan describes the State's outreach to and services for individuals who are homeless and how community-based services will be provided to individuals residing in rural areas.

(5) Management systems

The plan describes the financial resources, staffing and training for mental health providers that is necessary to implement the plan, and provides for the training of providers of emergency health services regarding mental health. The plan further describes the manner in which the State intends to expend the grant under section 300x of this title for the fiscal year involved.

Except as provided for in paragraph (3), the State plan shall contain the information required under this subsection with respect to both adults with serious mental illness and children with serious emotional disturbance.

(c) Definitions regarding mental illness and emotional disturbance; methods for estimate of incidence and prevalence

(1) Establishment by Secretary of definitions; dissemination

For purposes of this subpart, the Secretary shall establish definitions for the terms ''adults with a serious mental illness'' and ''children with a serious emotional disturbance''. The Secretary shall disseminate the definitions to the States.

(2) Standardized methods

The Secretary shall establish standardized methods for making the estimates required in subsection (b)(11)[1] of this section with respect to a State. A funding agreement for a grant under section 300x of this title for the State is that the State will utilize such methods in making the estimates.

(3) Date certain for compliance by Secretary

Not later than 90 days after July 10, 1992, the Secretary shall establish the definitions described in paragraph (1), shall begin dissemination of the definitions to the States, and shall establish the standardized methods described in paragraph (2).

(d) Requirement of implementation of plan

(1) Complete implementation

Except as provided in paragraph (2), in making a grant under section 300x of this title to a State for a fiscal year, the Secretary shall make a determination of the extent to which the State has implemented the plan required in subsection (a) of this section. If the Secretary determines that a State has not completely implemented the plan, the Secretary shall reduce the amount of the allotment under section 300x of this title for the State for the fiscal year involved by an amount equal to 10 percent of the amount determined under section 300x–7 of this title for the State for the fiscal year.

[1] See References in Text note below.

(2) Substantial implementation and good faith effort regarding fiscal year 1993

(A) In making a grant under section 300x of this title to a State for fiscal year 1993, the Secretary shall make a determination of the extent to which the State has implemented the plan required in subsection (a) of this section. If the Secretary determines that the State has not substantially implemented the plan, the Secretary shall, subject to subparagraph (B), reduce the amount of the allotment under section 300x of this title for the State for such fiscal year by an amount equal to 10 percent of the amount determined under section 300x–7 of this title for the State for the fiscal year.

(B) In carrying out subparagraph (A), if the Secretary determines that the State is making a good faith effort to implement the plan required in subsection (a) of this section, the Secretary may make a reduction under such subparagraph in an amount that is less than the amount specified in such subparagraph, except that the reduction may not be made in an amount that is less than 5 percent of the amount determined under section 300x–7 of this title for the State for fiscal year 1993.

(July 1, 1944, ch. 373, title XIX, § 1912, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 379; amended Pub. L. 106–310, div. B, title XXXII, § 3204(a), Oct. 17, 2000, 114 Stat. 1192.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(1), (3)(A), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

Subsection (b)(11) of this section, referred to in subsec. (c)(2), was repealed by Pub. L. 106–310, div. B, title XXXII, § 3204(a), Oct. 17, 2000, 114 Stat. 1192. Provisions relating to estimates formerly contained in subsec. (b)(11) are now contained in subsec. (b)(2) of this section.

PRIOR PROVISIONS

Prior sections 300x–1 to 300x–1b were repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–1, act July 1, 1944, ch. 373, title XIX, § 1912, as added Oct. 19, 1984, Pub. L. 98–509, title I, § 102(a), 98 Stat. 2353, authorized grants for training of employees adversely affected by changes in delivery of mental health services and for providing assistance in securing employment.

Another prior section 300x–1, act July 1, 1944, ch. 373, title XIX, § 1912, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 543; amended Jan. 4, 1983, Pub. L. 97–414, § 8(t), 96 Stat. 2062; Oct. 19, 1984, Pub. L. 98–509, title I, § 106(e), 98 Stat. 2358, contained provisions relating to grants and allotment of grants for alcohol, drug abuse, and mental health services, prior to repeal by section 102(a) of Pub. L. 98–509.

Section 300x–1a, act July 1, 1944, ch. 373, title XIX, § 1912A, as added and amended Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2022(a)–(c), 2023, 102 Stat. 4194, 4196, 4197; Aug. 16, 1989, Pub. L. 101–93, § 2(a), 103 Stat. 603, related to allotments of grants for alcohol, drug abuse, and mental health services.

Another prior section 300x–1a, act July 1, 1944, ch. 373, title XIX, § 1913, as added Oct. 19, 1984, Pub. L. 98–509, title I, § 102(a), 98 Stat. 2353, was transferred to section 300x–1b of this title.

Section 300x–1b, act July 1, 1944, ch. 373, title XIX, § 1913, as added Oct. 19, 1984, Pub. L. 98–509, title I,

§ 102(a), 98 Stat. 2353; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2022(d), 102 Stat. 4197; Aug. 16, 1989, Pub. L. 101–93, § 2(b), 103 Stat. 605, related to allotments to States and Indian tribes or tribal organizations for alcohol, drug abuse, and mental health services.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310 added pars. (1) to (5) and concluding provisions and struck out former pars. (1) to (12) relating to criteria for plan.

§ 300x–2. Certain agreements

(a) Allocation for systems of integrated services for children

(1) In general

With respect to children with a serious emotional disturbance, a funding agreement for a grant under section 300x of this title is that—

(A) in the case of a grant for fiscal year 1993, the State involved will expend not less than 10 percent of the grant to increase (relative to fiscal year 1992) funding for the system of integrated services described in section 300x–1(b)(9)[1] of this title;

(B) in the case of a grant for fiscal year 1994, the State will expend not less than 10 percent of the grant to increase (relative to fiscal year 1993) funding for such system; and

(C) in the case of a grant for any subsequent fiscal year, the State will expend for such system not less than an amount equal to the amount expended by the State for fiscal year 1994.

(2) Waiver

(A) Upon the request of a State, the Secretary may provide to the State a waiver of all or part of the requirement established in paragraph (1) if the Secretary determines that the State is providing an adequate level of comprehensive community mental health services for children with a serious emotional distrubance,[2] as indicated by a comparison of the number of such children for which such services are sought with the availability in the State of the services.

(B) The Secretary shall approve or deny a request for a waiver under subparagraph (A) not later than 120 days after the date on which the request is made.

(C) Any waiver provided by the Secretary under subparagraph (A) shall be applicable only to the fiscal year involved.

(b) Providers of services

A funding agreement for a grant under section 300x of this title for a State is that, with respect to the plan submitted under section 300x–1(a) of this title for the fiscal year involved—

(1) services under the plan will be provided only through appropriate, qualified community programs (which may include community mental health centers, child mental-health programs, psychosocial rehabilitation programs, mental health peer-support programs, and mental-health primary consumer-directed programs); and

(2) services under the plan will be provided through community mental health centers only if the centers meet the criteria specified in subsection (c) of this section.

(c) Criteria for mental health centers

The criteria referred to in subsection (b)(2) of this section regarding community mental health centers are as follows:

(1) With respect to mental health services, the centers provide services as follows:

(A) Services principally to individuals residing in a defined geographic area (hereafter in this subsection referred to as a ''service area'').

(B) Outpatient services, including specialized outpatient services for children, the elderly, individuals with a serious mental illness, and residents of the service areas of the centers who have been discharged from inpatient treatment at a mental health facility.

(C) 24-hour-a-day emergency care services.

(D) Day treatment or other partial hospitalization services, or psychosocial rehabilitation services.

(E) Screening for patients being considered for admission to State mental health facilities to determine the appropriateness of such admission.

(2) The mental health services of the centers are provided, within the limits of the capacities of the centers, to any individual residing or employed in the service area of the center regardless of ability to pay for such services.

(3) The mental health services of the centers are available and accessible promptly, as appropriate and in a manner which preserves human dignity and assures continuity and high quality care.

(July 1, 1944, ch. 373, title XIX, § 1913, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 381.)

REFERENCES IN TEXT

Section 300x–1(b)(9) of this title, referred to in subsec. (a)(1)(A), was repealed by Pub. L. 106–310, div. B, title XXXII, § 3204(a), Oct. 17, 2000, 114 Stat. 1192. Provisions relating to a system of integrated social services formerly contained in section 300x–1(b)(9) are now contained in section 300x–1(b)(3) of this title.

PRIOR PROVISIONS

A prior section 300x–2, act July 1, 1944, ch. 373, title XIX, § 1914, formerly § 1913, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 545; renumbered § 1914 and amended Oct. 19, 1984, Pub. L. 98–509, title I, § 106(a), (c)–(e), (g), 98 Stat. 2358, 2359; Nov. 18, 1988, Pub. L. 100–690, title II, § 2022(e), 102 Stat. 4197; Aug. 16, 1989, Pub. L. 101–93, § 2(c)(1), 103 Stat. 605, related to payment to States of allotments of grants for alcohol, drug abuse, and mental health services, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1913 of act July 1, 1944, was classified to section 300x–1b of this title and repealed by Pub. L. 102–321.

§ 300x–3. State mental health planning council

(a) In general

A funding agreement for a grant under section 300x of this title is that the State involved will establish and maintain a State mental health planning council in accordance with the conditions described in this section.

[1] See References in Text note below.

[2] So in original. Probably should be ''disturbance,''.

(b) Duties

A condition under subsection (a) of this section for a Council is that the duties of the Council are—

(1) to review plans provided to the Council pursuant to section 300x–4(a) of this title by the State involved and to submit to the State any recommendations of the Council for modifications to the plans;

(2) to serve as an advocate for adults with a serious mental illness, children with a severe emotional disturbance, and other individuals with mental illnesses or emotional problems; and

(3) to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

(c) Membership

(1) In general

A condition under subsection (a) of this section for a Council is that the Council be composed of residents of the State, including representatives of—

(A) the principal State agencies with respect to—

(i) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(ii) the development of the plan submitted pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.];

(B) public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

(C) adults with serious mental illnesses who are receiving (or have received) mental health services; and

(D) the families of such adults or families of children with emotional disturbance.

(2) Certain requirements

A condition under subsection (a) of this section for a Council is that—

(A) with respect to the membership of the Council, the ratio of parents of children with a serious emotional disturbance to other members of the Council is sufficient to provide adequate representation of such children in the deliberations of the Council; and

(B) not less than 50 percent of the members of the Council are individuals who are not State employees or providers of mental health services.

(d) "Council" defined

For purposes of this section, the term ''Council'' means a State mental health planning council.

(July 1, 1944, ch. 373, title XIX, § 1914, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 382.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(1)(A)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 300x–3, act July 1, 1944, ch. 373, title XIX, § 1915, formerly § 1914, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 545; renumbered § 1915 and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 105(b), 106(a), (b), (d), (g), 98 Stat. 2358, 2359; Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2024–2026, 102 Stat. 4198, 4199; Aug. 16, 1989, Pub. L. 101–93, § 2(d), 103 Stat. 606; Nov. 28, 1990, Pub. L. 101–639, § 3(a)(2), 104 Stat. 4601, related to the use of grant allotments for alcohol, drug abuse, and mental health services, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1914 of act July 1, 1944, was classified to section 300x–2 of this title prior to repeal by Pub. L. 102–321.

§ 300x–4. Additional provisions

(a) Review of State plan by mental health planning council

The Secretary may make a grant under section 300x of this title to a State only if—

(1) the plan submitted under section 300x–1(a) of this title with respect to the grant and the report of the State under section 300x–52(a) of this title concerning the preceding fiscal year has been reviewed by the State mental health planning council under section 300x–3 of this title; and

(2) the State submits to the Secretary any recommendations received by the State from such council for modifications to the plan (without regard to whether the State has made the recommended modifications) and any comments concerning the annual report.

(b) Maintenance of effort regarding State expenditures for mental health

(1) In general

A funding agreement for a grant under section 300x of this title is that the State involved will maintain State expenditures for community mental health services at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying for the grant.

(2) Exclusion of certain funds

The Secretary may exclude from the aggregate State expenditures under subsection (a) of this section, funds appropriated to the principle agency for authorized activities which are of a non-recurring nature and for a specific purpose.

(3) Waiver

The Secretary may, upon the request of a State, waive the requirement established in paragraph (1) if the Secretary determines that extraordinary economic conditions in the State justify the waiver.

(4) Noncompliance by State

(A) In making a grant under section 300x of this title to a State for a fiscal year, the Secretary shall make a determination of whether, for the previous fiscal year, the State maintained material compliance with the agreement made under paragraph (1). If the Secretary determines that a State has failed to maintain such compliance, the Secretary shall reduce the amount of the allotment under section 300x of this title for the State for the fis-

cal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

(B) The Secretary may make a grant under section 300x of this title for a fiscal year only if the State involved submits to the Secretary information sufficient for the Secretary to make the determination required in subparagraph (A).

(July 1, 1944, ch. 373, title XIX, § 1915, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 383; amended Pub. L. 106–310, div. B, title XXXII, § 3204(b), (c), Oct. 17, 2000, 114 Stat. 1193.)

PRIOR PROVISIONS

Prior sections 300x–4 and 300x–4a were repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–4, act July 1, 1944, ch. 373, title XIX, § 1916, formerly § 1915, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 546; amended Jan. 4, 1983, Pub. L. 97–414, § 8(u), 96 Stat. 2063; renumbered § 1916 and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 103, 106(a)–(c), (f), (g), 98 Stat. 2355, 2358, 2359; Oct. 7, 1985, Pub. L. 99–117, § 7(a), 99 Stat. 492; Nov. 14, 1986, Pub. L. 99–660, title V, § 503, 100 Stat. 3797; Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2027–2035, 2037(a)(2), 102 Stat. 4199–4201, 4203; Aug. 16, 1989, Pub. L. 101–93, § 2(e)–(*l*), (p)(1), (q)(1), 103 Stat. 606–609; Aug. 15, 1990, Pub. L. 101–374, § 4(b), 104 Stat. 459, required States to make application and describe their activities in relation to allotments for grants for alcohol, drug abuse, and mental health services.

A prior section 1915 of act July 1, 1944, was classified to section 300x–3 of this title prior to repeal by Pub. L. 102–321.

Section 300x–4a, act July 1, 1944, ch. 373, title XIX, § 1916A, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2036, 102 Stat. 4202; amended Aug. 16, 1989, Pub. L. 101–93, § 2(m), 103 Stat. 608, related to group homes for recovering substance abusers.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–310, § 3204(b)(1), inserted "and the report of the State under section 300x–52(a) of this title concerning the preceding fiscal year" after "to the grant".

Subsec. (a)(2). Pub. L. 106–310, § 3204(b)(2), inserted "and any comments concerning the annual report" before period at end.

Subsec. (b)(2) to (4). Pub. L. 106–310, § 3204(c), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

§ 300x–5. Restrictions on use of payments

(a) In general

A funding agreement for a grant under section 300x of this title is that the State involved will not expend the grant—

(1) to provide inpatient services;

(2) to make cash payments to intended recipients of health services;

(3) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(b) Limitation on administrative expenses

A funding agreement for a grant under section 300x of this title is that the State involved will not expend more than 5 percent of the grant for administrative expenses with respect to the grant.

(July 1, 1944, ch. 373, title XIX, § 1916, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 384.)

PRIOR PROVISIONS

A prior section 300x–5, act July 1, 1944, ch. 373, title XIX, § 1917, formerly § 1916, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 549; renumbered § 1917 and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 104, 106(a), (b), (d), (g), 98 Stat. 2357–2359; Oct. 7, 1985, Pub. L. 99–117, § 7(b), 99 Stat. 493; Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2037(a)(1), (b), 2052(b), 102 Stat. 4203, 4208; Aug. 16, 1989, Pub. L. 101–93, § 2(p)(2), 103 Stat. 609, related to reports and audits relative to grants for alcohol, drug abuse, and mental health services, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1916 of act July 1, 1944, was classified to section 300x–4 of this title prior to repeal by Pub. L. 102–321.

§ 300x–6. Application for grant

(a) In general

For purposes of section 300x of this title, an application for a grant under such section for a fiscal year in accordance with this section if, subject to subsection (b) of this section—

(1) the plan is received by the Secretary not later than September 1 of the fiscal year prior to the fiscal year for which a State is seeking funds, and the report from the previous fiscal year as required under section 300x–51 of this title is received by December 1 of the fiscal year of the grant;

(2) the application contains each funding agreement that is described in this subpart or subpart III for such a grant (other than any such agreement that is not applicable to the State);

(3) the agreements are made through certification from the chief executive officer of the State;

(4) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(5) the application contains the plan required in section 300x–1(a) of this title, the information required in section 300x–4(b)(3)(B)[1] of this title, and the report required in section 300x–52(a) of this title;

(6) the application contains recommendations in compliance with section 300x–4(a) of this title, or if no such recommendations are received by the State, the application otherwise demonstrates compliance with such section; and

(7) the application (including the plan under section 300x–1(a) of this title) is otherwise in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subpart.

(b) Waivers regarding certain territories

In the case of any territory of the United States except Puerto Rico, the Secretary may waive such provisions of this subpart and subpart III as the Secretary determines to be appro-

[1] See References in Text note below.

priate, other than the provisions of section 300x–5 of this title.

(July 1, 1944, ch. 373, title XIX, § 1917, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 384; amended Pub. L. 106–310, div. B, title XXXII, § 3204(d), (e), Oct. 17, 2000, 114 Stat. 1193.)

REFERENCES IN TEXT

Section 300x–4(b)(3)(B) of this title, referred to in subsec. (a)(5), was redesignated section 300x–4(b)(4)(B) by Pub. L. 106–310, div. B, title XXXII, § 3204(c)(1), Oct. 17, 2000, 114 Stat. 1193.

PRIOR PROVISIONS

A prior section 300x–6, act July 1, 1944, ch. 373, title XIX, § 1918, formerly § 1917, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 550; renumbered § 1918 and amended Oct. 19, 1984, Pub. L. 98–509, title I, § 106(d), (g), 98 Stat. 2358, 2359, authorized withholding funds from States which did not use allotments of grants for alcohol, drug abuse, and mental health services in accordance with requirements, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1917 of act July 1, 1944, was classified to section 300x–5 of this title prior to repeal by Pub. L. 102–321.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–310, § 3204(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the State involved submits the application not later than the date specified by the Secretary as being the date after which applications for such a grant will not be considered (in any case in which the Secretary specifies such a date);''.

Subsec. (b). Pub. L. 106–310, § 3204(e), substituted ''except Puerto Rico'' for ''whose allotment under section 300x of this title for the fiscal year is the amount specified in section 300x–7(c)(2)(B) of this title''.

§ 300x–7. Determination of amount of allotment

(a) States

(1) Determination under formula

Subject to subsection (b) of this section, the Secretary shall determine the amount of the allotment required in section 300x of this title for a State for a fiscal year in accordance with the following formula:

$$A\left(\frac{X}{U}\right)$$

(2) Determination of term "A"

For purposes of paragraph (1), the term ''A'' means the difference between—

(A) the amount appropriated under section 300x–9(a) of this title for allotments under section 300x of this title for the fiscal year involved; and

(B) an amount equal to 1.5 percent of the amount referred to in subparagraph (A).

(3) Determination of term "U"

For purposes of paragraph (1), the term ''U'' means the sum of the respective terms ''X'' determined for the States under paragraph (4).

(4) Determination of term "X"

For purposes of paragraph (1), the term ''X'' means the product of—

(A) an amount equal to the product of—

(i) the term ''P'', as determined for the State involved under paragraph (5); and

(ii) the factor determined under paragraph (8) for the State; and

(B) the greater of—

(i) 0.4; and

(ii) an amount equal to an amount determined for the State in accordance with the following formula:

$$1-.35\left(\frac{R\%}{P\%}\right)$$

(5) Determination of term "P"

(A) For purposes of paragraph (4), the term ''P'' means the sum of—

(i) an amount equal to the product of 0.107 and the number of individuals in the State who are between 18 and 24 years of age (inclusive);

(ii) an amount equal to the product of 0.166 and the number of individuals in the State who are between 25 and 44 years of age (inclusive);

(iii) an amount equal to the product of 0.099 and the number of individuals in the State who are between 45 and 64 years of age (inclusive); and

(iv) an amount equal to the product of 0.082 and the number of individuals in the State who are 65 years of age or older.

(B) With respect to data on population that is necessary for purposes of making a determination under subparagraph (A), the Secretary shall use the most recent data that is available from the Secretary of Commerce pursuant to the decennial census and pursuant to reasonable estimates by such Secretary of changes occurring in the data in the ensuing period.

(6) Determination of term "R%"

(A) For purposes of paragraph (4), the term ''R%'', except as provided in subparagraph (D), means the percentage constituted by the ratio of the amount determined under subparagraph (B) for the State involved to the amount determined under subparagraph (C).

(B) The amount determined under this subparagraph for the State involved is the quotient of—

(i) the most recent 3-year arithmetic mean of the total taxable resources of the State, as determined by the Secretary of the Treasury; divided by

(ii) the factor determined under paragraph (8) for the State.

(C) The amount determined under this subparagraph is the sum of the respective amounts determined for the States under subparagraph (B) (including the District of Columbia).

(D)(i) In the case of the District of Columbia, for purposes of paragraph (4), the term ''R%'' means the percentage constituted by the ratio of the amount determined under clause (ii) for such District to the amount determined under clause (iii).

(ii) The amount determined under this clause for the District of Columbia is the quotient of—

(I) the most recent 3-year arithmetic mean of total personal income in such District, as

determined by the Secretary of Commerce; divided by

(II) the factor determined under paragraph (8) for the District.

(iii) The amount determined under this clause is the sum of the respective amounts determined for the States (including the District of Columbia) by making, for each State, the same determination as is described in clause (ii) for the District of Columbia.

(7) Determination of term "P%"

For purposes of paragraph (4), the term ''P%'' means the percentage constituted by the ratio of the term ''P'' determined under paragraph (5) for the State involved to the sum of the respective terms ''P'' determined for the States.

(8) Determination of certain factor

(A) The factor determined under this paragraph for the State involved is a factor whose purpose is to adjust the amount determined under clause (i) of paragraph (4)(A), and the amounts determined under each of subparagraphs (B)(i) and (D)(ii)(I) of paragraph (6), to reflect the differences that exist between the State and other States in the costs of providing comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance.

(B) Subject to subparagraph (C), the factor determined under this paragraph and in effect for the fiscal year involved shall be determined according to the methodology described in the report entitled ''Adjusting the Alcohol, Drug Abuse and Mental Health Services Block Grant Allocations for Poverty Populations and Cost of Service'', dated March 30, 1990, and prepared by Health Economics Research, a corporation, pursuant to a contract with the National Institute on Drug Abuse.

(C) The factor determined under this paragraph for the State involved may not for any fiscal year be greater than 1.1 or less than 0.9.

(D)(i) Not later than October 1, 1992, the Secretary, after consultation with the Comptroller General, shall in accordance with this section make a determination for each State of the factor that is to be in effect for the State under this paragraph. The factor so determined shall remain in effect through fiscal year 1994, and shall be recalculated every third fiscal year thereafter.

(ii) After consultation with the Comptroller General, the Secretary shall, through publication in the Federal Register, periodically make such refinements in the methodology referred to in subparagraph (B) as are consistent with the purpose described in subparagraph (A).

(b) Minimum allotments for States

With respect to fiscal year 2000, and subsequent fiscal years, the amount of the allotment of a State under section 300x of this title shall not be less than the amount the State received under such section for fiscal year 1998.

(c) Territories

(1) Determination under formula

Subject to paragraphs (2) and (4), the amount of an allotment under section 300x of this title for a territory of the United States for a fiscal year shall be the product of—

(A) an amount equal to the amounts reserved under paragraph (3) for the fiscal year; and

(B) a percentage equal to the quotient of—

(i) the civilian population of the territory, as indicated by the most recently available data; divided by

(ii) the aggregate civilian population of the territories of the United States, as indicated by such data.

(2) Minimum allotment for territories

The amount of an allotment under section 300x of this title for a territory of the United States for a fiscal year shall be the greater of—

(A) the amount determined under paragraph (1) for the territory for the fiscal year;

(B) $50,000; and

(C) with respect to fiscal years 1993 and 1994, an amount equal to 20.6 percent of the amount received by the territory from allotments made pursuant to this part for fiscal year 1992.

(3) Reservation of amounts

The Secretary shall each fiscal year reserve for the territories of the United States 1.5 percent of the amounts appropriated under section 300x–9(a) of this title for allotments under section 300x of this title for the fiscal year.

(4) Availability of data on population

With respect to data on the civilian population of the territories of the United States, if the Secretary determines for a fiscal year that recent such data for purposes of paragraph (1)(B) do not exist regarding a territory, the Secretary shall for such purposes estimate the civilian population of the territory by modifying the data on the territory to reflect the average extent of change occurring during the ensuing period in the population of all territories with respect to which recent such data do exist.

(5) Applicability of certain provisions

For purposes of subsection (a) of this section, the term ''State'' does not include the territories of the United States.

(July 1, 1944, ch. 373, title XIX, § 1918, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 385; amended Pub. L. 102–352, § 2(a)(8), (9), Aug. 26, 1992, 106 Stat. 938; Pub. L. 105–277, div. A, § 101(f) [title II, § 218(a)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–362; Pub. L. 106–113, div. B, § 1000(a)(4) [title II, § 212(a)], Nov. 29, 1999, 113 Stat. 1535, 1501A–239; Pub. L. 106–310, div. B, title XXXII, § 3205, Oct. 17, 2000, 114 Stat. 1193.)

PRIOR PROVISIONS

A prior section 300x–7, act July 1, 1944, ch. 373, title XIX, § 1919, formerly § 1918, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 551; renumbered § 1919 and amended Oct. 19, 1984, Pub. L. 98–509, title I, § 106(a), (g), 98 Stat. 2358, 2359, related to nondiscrimination provisions with respect to alcohol, drug abuse, and mental health programs, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1918 of act July 1, 1944, was classified to section 300x–6 of this title prior to repeal by Pub. L. 102–321.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''With respect to fiscal year 2000, the amount of the allotment of a State under section 300x of this title shall not be less than the amount the State received under section 300x of this title for fiscal year 1998.''

1999—Subsec. (b). Pub. L. 106–113 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''For each of the fiscal years 1993 and 1994, the amount of the allotment required in section 300x of this title for a State for the fiscal year involved shall be the greater of—

''(1) the amount determined under subsection (a) of this section for the State for the fiscal year; and

''(2) an amount equal to 20.6 percent of the amount received by the State from allotments made pursuant to this part for fiscal year 1992 (including reallotments under section 205(a) of the ADAMHA Reorganization Act).''

1998—Subsec. (b). Pub. L. 105–277, temporarily amended subsec. (b) to read as follows: ''(b) MINIMUM ALLOTMENTS FOR STATES.—

''(1) IN GENERAL.—With respect to fiscal year 1999, the amount of the allotment of a State under section 300x of this title shall not be less than the amount the State received under section 300x of this title for fiscal year 1998.''

See Effective and Termination Dates of 1998 Amendment note below.

1992—Subsec. (a)(5)(A)(iii). Pub. L. 102–352, § 2(a)(8), substituted ''45'' for ''25''.

Subsec. (c)(2)(C). Pub. L. 102–352, § 2(a)(9), added subpar. (C).

EFFECTIVE AND TERMINATION DATES OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(f) [title II, § 218(c)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–363, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and section 300x–33 of this title] shall become effective as if enacted on October 1, 1998 and shall only apply during fiscal year 1999.

''(2) APPLICATION.—Upon the expiration of the fiscal year described in paragraph (1), the provisions of sections 1918(b) and 1933(b) of the Public Health Service Act (42 U.S.C. 300x–7(b) and 300x–33(b)), as in effect on September 30, 1998, shall be applied as if the amendments made by this section had not been enacted.''

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

§ 300x–8. Definitions

For purposes of this subpart:

(1) The terms ''adults with a serious mental illness'' and ''children with a serious emotional disturbance'' have the meanings given such terms under section 300x–1(c)(1) of this title.

(2) The term ''funding agreement'', with respect to a grant under section 300x of this title to a State, means that the Secretary may make such a grant only if the State makes the agreement involved.

(July 1, 1944, ch. 373, title XIX, § 1919, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 388.)

PRIOR PROVISIONS

A prior section 300x–8, act July 1, 1944, ch. 373, title XIX, § 1920, formerly § 1919, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552; renumbered § 1920, Oct. 19, 1984, Pub. L. 98–509, title I, § 106(g), 98 Stat. 2359, authorized criminal penalty for false statements in connection with services furnished relative to alcohol, drug abuse, and mental health services block grant, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1919 of act July 1, 1944, was classified to section 300x–7 of this title prior to repeal by Pub. L. 102–321.

§ 300x–9. Funding

(a) Authorization of appropriations

For the purpose of carrying out this subpart, and subpart III and section 290aa–4 of this title with respect to mental health, there are authorized to be appropriated $450,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(b) Allocations for technical assistance, data collection, and program evaluation

(1) In general

For the purpose of carrying out section 300x–58(a) of this title with respect to mental health and the purposes specified in paragraphs (2) and (3), the Secretary shall obligate 5 percent of the amounts appropriated under subsection (a) of this section for a fiscal year.

(2) Data collection

The purpose specified in this paragraph is carrying out sections 290aa–4 and 300y of this title with respect to mental health.

(3) Program evaluation

The purpose specified in this paragraph is the conduct of evaluations of prevention and treatment programs and services with respect to mental health to determine methods for improving the availability and quality of such programs and services.

(July 1, 1944, ch. 373, title XIX, § 1920, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 388; amended Pub. L. 106–310, div. B, title XXXII, § 3204(f), Oct. 17, 2000, 114 Stat. 1193.)

PRIOR PROVISIONS

Prior sections 300x–9 to 300x–13 were repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–9, act July 1, 1944, ch. 373, title XIX, § 1921, formerly § 1920, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552; renumbered § 1920A and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 105(a), 106(g), 98 Stat. 2358, 2359; Oct. 7, 1985, Pub. L. 99–117, § 7(c), 99 Stat. 493; renumbered § 1921 and amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(2), (6), 102 Stat. 4203, authorized technical assistance with respect to development of services under alcohol, drug abuse, and mental health services block grants.

A prior section 1920 of act July 1, 1944, was classified to section 300x–8 of this title and repealed by Pub. L. 102–321.

Section 300x–9a, act July 1, 1944, ch. 373, title XIX, § 1922, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2039(a), 102 Stat. 4204; amended Aug. 16, 1989, Pub. L. 101–93, § 2(n)(1), 103 Stat. 608, related to service research on community-based alcohol and drug abuse treatment programs.

Section 300x–9b, act July 1, 1944, ch. 373, title XIX, § 1923, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2040, 102 Stat. 4204; amended Aug. 16, 1989, Pub. L. 101–93, § 2(q)(2), 103 Stat. 609, related to service research on community-based mental health treatment programs.

Section 300x–10, act July 1, 1944, ch. 373, title XIX, § 1924, formerly § 1920B, as added Nov. 14, 1986, Pub. L.

99–660, title V, § 502(2), 100 Stat. 3795; renumbered § 1924 and amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(3), (4), 102 Stat. 4203; Nov. 28, 1990, Pub. L. 101–639, § 3(a)(1), 104 Stat. 4601, related to development grants for State comprehensive mental health services plans.

Section 300x–11, act July 1, 1944, ch. 373, title XIX, § 1925, formerly § 1920C, as added Nov. 14, 1986, Pub. L. 99–660, title V, § 502(2), 100 Stat. 3795; renumbered § 1925 and amended Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2038(3), 2041(a), 102 Stat. 4203, 4205; Aug. 16, 1989, Pub. L. 101–93, § 2(*o*)(1), 103 Stat. 608; Nov. 28, 1990, Pub. L. 101–639, § 3(b), 104 Stat. 4601, related to State comprehensive mental health services plans.

Section 300x–12, act July 1, 1944, ch. 373, title XIX, § 1926, formerly § 1920D, as added Nov. 14, 1986, Pub. L. 99–660, title V, § 502(2), 100 Stat. 3796; renumbered § 1926 and amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(3), (5), 102 Stat. 4203; Aug. 16, 1989, Pub. L. 101–93, § 2(*o*)(2), 103 Stat. 609; Nov. 28, 1990, Pub. L. 101–639, § 3(c), 104 Stat. 4602, related to enforcement of requirement of developing State comprehensive mental health services plans.

Section 300x–13, act July 1, 1944, ch. 373, title XIX, § 1927, formerly § 1920E, as added Nov. 14, 1986, Pub. L. 99–660, title V, § 502(2), 100 Stat. 3797; renumbered § 1927, Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(3), 102 Stat. 4203, related to development of model standards for provision of care to chronically mentally ill persons.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, § 3204(f)(1), substituted "$450,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003" for "$450,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994".

Subsec. (b)(2). Pub. L. 106–310, § 3204(f)(2), substituted "sections 290aa–4 and 300y of this title" for "section 290aa–4 of this title".

SUBPART II—BLOCK GRANTS FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

§ 300x–21. Formula grants to States

(a) In general

For the purpose described in subsection (b) of this section, the Secretary, acting through the Center for Substance Abuse Treatment, shall make an allotment each fiscal year for each State in an amount determined in accordance with section 300x–33 of this title. The Secretary shall make a grant to the State of the allotment made for the State for the fiscal year if the State submits to the Secretary an application in accordance with section 300x–32 of this title.

(b) Authorized activities

A funding agreement for a grant under subsection (a) of this section is that, subject to section 300x–31 of this title, the State involved will expend the grant only for the purpose of planning, carrying out, and evaluating activities to prevent and treat substance abuse and for related activities authorized in section 300x–24 of this title.

(July 1, 1944, ch. 373, title XIX, § 1921, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 388.)

PRIOR PROVISIONS

A prior section 1921 of act July 1, 1944, was classified to section 300x–9 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1921 of act July 1, 1944, was classified to section 300y of this title prior to repeal by Pub. L. 100–690.

§ 300x–22. Certain allocations

(a) Allocation regarding primary prevention programs

A funding agreement for a grant under section 300x–21 of this title is that, in expending the grant, the State involved—

(1) will expend not less than 20 percent for programs for individuals who do not require treatment for substance abuse, which programs—

(A) educate and counsel the individuals on such abuse; and

(B) provide for activities to reduce the risk of such abuse by the individuals;

(2) will, in carrying out paragraph (1)—

(A) give priority to programs for populations that are at risk of developing a pattern of such abuse; and

(B) ensure that programs receiving priority under subparagraph (A) develop community-based strategies for the prevention of such abuse, including strategies to discourage the use of alcoholic beverages and tobacco products by individuals to whom it is unlawful to sell or distribute such beverages or products.

(b) Allocations regarding women

(1) In general

Subject to paragraph (2), a funding agreement for a grant under section 300x–21 of this title for a fiscal year is that—

(A) in the case of a grant for fiscal year 1993, the State involved will expend not less than 5 percent of the grant to increase (relative to fiscal year 1992) the availability of treatment services designed for pregnant women and women with dependent children (either by establishing new programs or expanding the capacity of existing programs);

(B) in the case of a grant for fiscal year 1994, the State will expend not less than 5 percent of the grant to so increase (relative to fiscal year 1993) the availability of such services for such women; and

(C) in the case of a grant for any subsequent fiscal year, the State will expend for such services for such women not less than an amount equal to the amount expended by the State for fiscal year 1994.

(2) Waiver

(A) Upon the request of a State, the Secretary may provide to the State a waiver of all or part of the requirement established in paragraph (1) if the Secretary determines that the State is providing an adequate level of treatments services for women described in such paragraph, as indicated by a comparison of the number of such women seeking the services with the availability in the State of the services.

(B) The Secretary shall approve or deny a request for a waiver under subparagraph (A) not later than 120 days after the date on which the request is made.

(C) Any waiver provided by the Secretary under subparagraph (A) shall be applicable only to the fiscal year involved.

(3) Childcare and prenatal care

A funding agreement for a grant under section 300x–21 of this title for a State is that

each entity providing treatment services with amounts reserved under paragraph (1) by the State will, directly or through arrangements with other public or nonprofit private entities, make available prenatal care to women receiving such services and, while the women are receiving the services, childcare.

(July 1, 1944, ch. 373, title XIX, § 1922, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 389; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(a), (f)(2)(A), Oct. 17, 2000, 114 Stat. 1210, 1211.)

AMENDMENT OF SUBSECTION (b)(2), (3)

Pub. L. 106–310, div. B, title XXXIII, § 3303(f)(2), Oct. 17, 2000, 114 Stat. 1211, provided that, effective upon publication of regulations developed in accordance with section 300x–32(e)(1) of this title, subsection (c) of this section [now subsection (b)] is amended by striking out paragraph (2) and redesignating paragraph (3) as paragraph (2).

PRIOR PROVISIONS

A prior section 1922 of act July 1, 1944, was classified to section 300x–9a of this title prior to repeal by Pub. L. 102–321.

Another prior section 1922 of act July 1, 1944, was classified to section 300y–1 of this title prior to repeal by Pub. L. 100–690.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, § 3303(a), redesignated subsec. (b) as (a) and struck out heading and text of former subsec. (a). Text read as follows: ''A funding agreement for a grant under section 300x–21 of this title is that, in expending the grant, the State involved will expend—

''(1) not less than 35 percent for prevention and treatment activities regarding alcohol; and

''(2) not less than 35 percent for prevention and treatment activities regarding other drugs.''

Subsec. (b). Pub. L. 106–310, § 3303(a)(2), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 106–310, § 3303(a)(2), redesignated subsec. (c) as (b).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–310, div. B, title XXXIII, § 3303(f)(2), Oct. 17, 2000, 114 Stat. 1211, provided that the amendment made by section 3303(f)(2) is effective upon the publication of the regulations developed in accordance with section 300x–32(e)(1) of this title.

§ 300x–23. Intravenous substance abuse

(a) Capacity of treatment programs

(1) Notification of reaching capacity

A funding agreement for a grant under section 300x–21 of this title is that the State involved will, in the case of programs of treatment for intravenous drug abuse, require that any such program receiving amounts from the grant, upon reaching 90 percent of its capacity to admit individuals to the program, provide to the State a notification of such fact.

(2) Provision of treatment

A funding agreement for a grant under section 300x–21 of this title is that the State involved will, with respect to notifications under paragraph (1), ensure that each individual who requests and is in need of treatment for intravenous drug abuse is admitted to a program of such treatment not later than—

(A) 14 days after making the request for admission to such a program; or

(B) 120 days after the date of such request, if no such program has the capacity to admit the individual on the date of such request and if interim services are made available to the individual not later than 48 hours after such request.

(b) Outreach regarding intravenous substance abuse

A funding agreement for a grant under section 300x–21 of this title is that the State involved, in providing amounts from the grant to any entity for treatment services for intravenous drug abuse, will require the entity to carry out activities to encourage individuals in need of such treatment to undergo treatment.

(July 1, 1944, ch. 373, title XIX, § 1923, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 390.)

PRIOR PROVISIONS

A prior section 1923 of act July 1, 1944, was classified to section 300x–9b of this title prior to repeal by Pub. L. 102–321.

Another prior section 1923 of act July 1, 1944, was classified to section 300y–2 of this title prior to repeal by Pub. L. 100–690.

§ 300x–24. Requirements regarding tuberculosis and human immunodeficiency virus

(a) Tuberculosis

(1) In general

A funding agreement for a grant under section 300x–21 of this title is that the State involved will require that any entity receiving amounts from the grant for operating a program of treatment for substance abuse—

(A) will, directly or through arrangements with other public or nonprofit private entities, routinely make available tuberculosis services to each individual receiving treatment for such abuse; and

(B) in the case of an individual in need of such treatment who is denied admission to the program on the basis of the lack of the capacity of the program to admit the individual, will refer the individual to another provider of tuberculosis services.

(2) Tuberculosis services

For purposes of paragraph (1), the term ''tuberculosis services'', with respect to an individual, means—

(A) counseling the individual with respect to tuberculosis;

(B) testing to determine whether the individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the individual; and

(C) providing such treatment to the individual.

(b) Human immunodeficiency virus

(1) Requirement for certain States

In the case of a State described in paragraph (2), a funding agreement for a grant under section 300x–21 of this title is that—

(A) with respect to individuals undergoing treatment for substance abuse, the State

will, subject to paragraph (3), carry out 1 or more projects to make available to the individuals early intervention services for HIV disease at the sites at which the individuals are undergoing such treatment;

(B) for the purpose of providing such early intervention services through such projects, the State will make available from the grant the percentage that is applicable for the State under paragraph (4); and

(C) the State will, subject to paragraph (5), carry out such projects only in geographic areas of the State that have the greatest need for the projects.

(2) Designated States

For purposes of this subsection, a State described in this paragraph is any State whose rate of cases of acquired immune deficiency syndrome is 10 or more such cases per 100,000 individuals (as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control for the most recent calendar year for which such data are available).

(3) Use of existing programs regarding substance abuse

With respect to programs that provide treatment services for substance abuse, a funding agreement for a grant under section 300x–21 of this title for a designated State is that each such program participating in a project under paragraph (1) will be a program that began operation prior to the fiscal year for which the State is applying to receive the grant. A program that so began operation may participate in a project under paragraph (1) without regard to whether the program has been providing early intervention services for HIV disease.

(4) Applicable percentage regarding expenditures for services

(A)(i) For purposes of paragraph (1)(B), the percentage that is applicable under this paragraph for a designated State is, subject to subparagraph (B), the percentage by which the amount of the grant under section 300x–21 of this title for the State for the fiscal year involved is an increase over the amount specified in clause (ii).

(ii) The amount specified in this clause is the amount that was reserved by the designated State involved from the allotment of the State under section 300x–1a[1] of this title for fiscal year 1991 in compliance with section 300x–4(c)(6)(A)(ii)[1] of this title (as such sections were in effect for such fiscal year).

(B) If the percentage determined under subparagraph (A) for a designated State for a fiscal year is less than 2 percent (including a negative percentage, in the case of a State for which there is no increase for purposes of such subparagraph), the percentage applicable under this paragraph for the State is 2 percent. If the percentage so determined is 2 percent or more, the percentage applicable under this paragraph for the State is the percentage determined under subparagraph (A), subject to not exceeding 5 percent.

[1] See References in Text note below.

(5) Requirement regarding rural areas

(A) A funding agreement for a grant under section 300x–21 of this title for a designated State is that, if the State will carry out 2 or more projects under paragraph (1), the State will carry out 1 such project in a rural area of the State, subject to subparagraph (B).

(B) The Secretary shall waive the requirement established in subparagraph (A) if the State involved certifies to the Secretary that—

(i) there is insufficient demand in the State to carry out a project under paragraph (1) in any rural area of the State; or

(ii) there are no rural areas in the State.

(6) Manner of providing services

With respect to the provision of early intervention services for HIV disease to an individual, a funding agreement for a grant under section 300x–21 of this title for a designated State is that—

(A) such services will be undertaken voluntarily by, and with the informed consent of, the individual; and

(B) undergoing such services will not be required as a condition of receiving treatment services for substance abuse or any other services.

(7) Definitions

For purposes of this subsection:

(A) The term ''designated State'' means a State described in paragraph (2).

(B) The term ''early intervention services'', with respect to HIV disease, means—

(i) appropriate pretest counseling;

(ii) testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

(iii) appropriate post-test counseling; and

(iv) providing the therapeutic measures described in clause (ii).

(C) The term ''HIV disease'' means infection with the etiologic agent for acquired immune deficiency syndrome.

(c) Expenditure of grant for compliance with agreements

(1) In general

A grant under section 300x–21 of this title may be expended for purposes of compliance with the agreements required in this section, subject to paragraph (2).

(2) Limitation

A funding agreement for a grant under section 300x–21 of this title for a State is that the grant will not be expended to make payment for any service provided for purposes of compliance with this section to the extent that payment has been made, or can reasonably be expected to be made, with respect to such service—

(A) under any State compensation program, under any insurance policy, or under any Federal or State health benefits program (including the program established in title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] and the program established in title XIX of such Act [42 U.S.C. 1396 et seq.]); or

(B) by an entity that provides health services on a prepaid basis.

(d) Maintenance of effort

With respect to services provided for by a State for purposes of compliance with this section, a funding agreement for a grant under section 300x–21 of this title is that the State will maintain expenditures of non-Federal amounts for such services at a level that is not less than average level of such expenditures maintained by the State for 2-year period preceding the first fiscal year for which the State receives such a grant.

(e) Applicability of certain provision

Section 300x–31 of this title applies to this section (and to each other provision of this subpart).

(July 1, 1944, ch. 373, title XIX, § 1924, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 391.)

REFERENCES IN TEXT

Section 300x–1a of this title, referred to in subsec. (b)(4)(A)(ii), was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–4 of this title, referred to in subsec. (b)(4)(A)(ii), was in the original a reference to section 1916 of act July 1, 1944, which was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378. Section 201(2) of Pub. L. 102–321 enacted new sections 1915 and 1916 of act July 1, 1944, which are classified to sections 300x–4 and 300x–5, respectively, of this title.

The Social Security Act, referred to in subsec. (c)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 1924 of act July 1, 1944, was classified to section 300x–10 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1924 of act July 1, 1944, was classified to section 300y–3 of this title prior to repeal by Pub. L. 99–280.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 300x–25. Group homes for recovering substance abusers

(a) State revolving funds for establishment of homes

A State, using funds available under section 300x–21 of this title, may establish and maintain the ongoing operation of a revolving fund in accordance with this section to support group homes for recovering substance abusers as follows:

(1) The purpose of the fund is to make loans for the costs of establishing programs for the provision of housing in which individuals recovering from alcohol or drug abuse may reside in groups of not less than 6 individuals. The fund is established directly by the State or through the provision of a grant or contract to a nonprofit private entity.

(2) The programs are carried out in accordance with guidelines issued under subsection (b) of this section.

(3) Not less than $100,000 is available for the fund.

(4) Loans made from the revolving fund do not exceed $4,000 and each such loan is repaid to the revolving fund by the residents of the housing involved not later than 2 years after the date on which the loan is made.

(5) Each such loan is repaid by such residents through monthly installments, and a reasonable penalty is assessed for each failure to pay such periodic installments by the date specified in the loan agreement involved.

(6) Such loans are made only to nonprofit private entities agreeing that, in the operation of the program established pursuant to the loan—

(A) the use of alcohol or any illegal drug in the housing provided by the program will be prohibited;

(B) any resident of the housing who violates such prohibition will be expelled from the housing;

(C) the costs of the housing, including fees for rent and utilities, will be paid by the residents of the housing; and

(D) the residents of the housing will, through a majority vote of the residents, otherwise establish policies governing residence in the housing, including the manner in which applications for residence in the housing are approved.

(b) Issuance by Secretary of guidelines

The Secretary shall ensure that there are in effect guidelines under this subpart for the operation of programs described in subsection (a) of this section.

(c) Applicability to territories

The requirements established in subsection (a) of this section shall not apply to any territory of the United States other than the Commonwealth of Puerto Rico.

(July 1, 1944, ch. 373, title XIX, § 1925, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 393; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(b), Oct. 17, 2000, 114 Stat. 1210.)

PRIOR PROVISIONS

A prior section 1925 of act July 1, 1944, was classified to section 300x–11 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1925 of act July 1, 1944, was classified to section 300y–4 of this title prior to repeal by Pub. L. 99–280.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, in introductory provisions, substituted ''A State, using funds available under section 300x–21 of this title, may establish and maintain the ongoing operation of a revolving fund in

accordance with this section to support group homes for recovering substance abusers as follows:'' for ''For fiscal year 1993 and subsequent fiscal years, the Secretary may make a grant under section 300x–21 of this title only if the State involved has established, and is providing for the ongoing operation of, a revolving fund as follows:''.

§ 300x–26. State law regarding sale of tobacco products to individuals under age of 18

(a) Relevant law

(1) In general

Subject to paragraph (2), for fiscal year 1994 and subsequent fiscal years, the Secretary may make a grant under section 300x–21 of this title only if the State involved has in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18.

(2) Delayed applicability for certain States

In the case of a State whose legislature does not convene a regular session in fiscal year 1993, and in the case of a State whose legislature does not convene a regular session in fiscal year 1994, the requirement described in paragraph (1) as a condition of a receipt of a grant under section 300x–21 of this title shall apply only for fiscal year 1995 and subsequent fiscal years.

(b) Enforcement

(1) In general

For the first applicable fiscal year and for subsequent fiscal years, a funding agreement for a grant under section 300x–21 of this title is that the State involved will enforce the law described in subsection (a) of this section in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18.

(2) Activities and reports regarding enforcement

For the first applicable fiscal year and for subsequent fiscal years, a funding agreement for a grant under section 300x–21 of this title is that the State involved will—

(A) annually conduct random, unannounced inspections to ensure compliance with the law described in subsection (a) of this section; and

(B) annually submit to the Secretary a report describing—

(i) the activities carried out by the State to enforce such law during the fiscal year preceding the fiscal year for which the State is seeking the grant;

(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18; and

(iii) the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

(c) Noncompliance of State

Before making a grant under section 300x–21 of this title to a State for the first applicable fiscal year or any subsequent fiscal year, the Secretary shall make a determination of whether the State has maintained compliance with subsections (a) and (b) of this section. If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State is not in compliance with such subsections, the Secretary shall reduce the amount of the allotment under such section for the State for the fiscal year involved by an amount equal to—

(1) in the case of the first applicable fiscal year, 10 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year;

(2) in the case of the first fiscal year following such applicable fiscal year, 20 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year;

(3) in the case of the second such fiscal year, 30 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year; and

(4) in the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year.

(d) "First applicable fiscal year" defined

For purposes of this section, the term ''first applicable fiscal year'' means—

(1) fiscal year 1995, in the case of any State described in subsection (a)(2) of this section; and

(2) fiscal year 1994, in the case of any other State.

(July 1, 1944, ch. 373, title XIX, § 1926, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 394.)

PRIOR PROVISIONS

A prior section 1926 of act July 1, 1944, was classified to section 300x–12 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1926 of act July 1, 1944, was classified to section 300y–5 of this title prior to repeal by Pub. L. 99–280.

§ 300x–27. Treatment services for pregnant women

(a) In general

A funding agreement for a grant under section 300x–21 of this title is that the State involved—

(1) will ensure that each pregnant woman in the State who seeks or is referred for and would benefit from such services is given preference in admissions to treatment facilities receiving funds pursuant to the grant; and

(2) will, in carrying out paragraph (1), publicize the availability to such women of services from the facilities and the fact that the women receive such preference.

(b) Referrals regarding States

A funding agreement for a grant under section 300x–21 of this title is that, in carrying out subsection (a)(1) of this section—

(1) the State involved will require that, in the event that a treatment facility has insufficient capacity to provide treatment services to any woman described in such subsection who seeks the services from the facility, the facility refer the woman to the State; and

(2) the State, in the case of each woman for whom a referral under paragraph (1) is made to the State—

(A) will refer the woman to a treatment facility that has the capacity to provide treatment services to the woman; or

(B) will, if no treatment facility has the capacity to admit the woman, make interim services available to the woman not later than 48 hours after the women[1] seeks the treatment services.

(July 1, 1944, ch. 373, title XIX, § 1927, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 395; amended Pub. L. 102–352, § 2(a)(10), Aug. 26, 1992, 106 Stat. 938.)

PRIOR PROVISIONS

A prior section 1927 of act July 1, 1944, was classified to section 300x–12 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1927 of act July 1, 1944, was classified to section 300y–6 of this title prior to repeal by Pub. L. 99–280.

AMENDMENTS

1992—Subsec. (b)(2)(B). Pub. L. 102–352 struck out ''available'' before ''interim services available''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

§ 300x–28. Additional agreements

(a) Improvement of process for appropriate referrals for treatment

With respect to individuals seeking treatment services, a funding agreement for a grant under section 300x–21 of this title is that the State involved will improve (relative to fiscal year 1992) the process in the State for referring the individuals to treatment facilities that can provide to the individuals the treatment modality that is most appropriate for the individuals.

(b) Continuing education

With respect to any facility for treatment services or prevention actitivities[1] that is receiving amounts from a grant under section 300x–21 of this title, a funding agreement for a State for a grant under such section is that continuing education in such services or activities (or both, as the case may be) will be made available to employees of the facility who provide the services or activities.

(c) Coordination of various activities and services

A funding agreement for a grant under section 300x–21 of this title is that the State involved will coordinate prevention and treatment activities with the provision of other appropriate services (including health, social, correctional and criminal justice, educational, vocational rehabilitation, and employment services).

(d) Waiver of requirement

(1) In general

Upon the request of a State, the Secretary may provide to a State a waiver of any or all of the requirements established in this section if the Secretary determines that, with respect to services for the prevention and treatment of substance abuse, the requirement involved is unnecessary for maintaining quality in the provision of such services in the State.

(2) Date certain for acting upon request

The Secretary shall approve or deny a request for a waiver under paragraph (1) not later than 120 days after the date on which the request is made.

(3) Applicability of waiver

Any waiver provided by the Secretary under paragraph (1) shall be applicable only to the fiscal year involved.

(July 1, 1944, ch. 373, title XIX, § 1928, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 396; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(f)(2)(B), Oct. 17, 2000, 114 Stat. 1211.)

REPEAL OF SUBSECTION (d)

Pub. L. 106–310, div. B, title XXXIII, § 3303(f)(2), Oct. 17, 2000, 114 Stat. 1211, provided that, effective upon publication of regulations developed in accordance with section 300x–32(e)(1) of this title, subsection (d) of this section is repealed.

PRIOR PROVISIONS

A prior section 1928 of act July 1, 1944, was classified to section 300y–7 of this title prior to repeal by Pub. L. 99–280.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–310, div. B, title XXXIII, § 3303(f)(2), Oct. 17, 2000, 114 Stat. 1211, provided that the amendment made by section 3303(f)(2) is effective upon the publication of the regulations developed in accordance with section 300x–32(e)(1) of this title.

§ 300x–29. Submission to Secretary of statewide assessment of needs

The Secretary may make a grant under section 300x–21 of this title only if the State submits to the Secretary an assessment of the need in the State for authorized activities (which assessment is conducted in accordance with criteria issued by the Secretary), both by locality and by the State in general, which assessment includes a description of—

(1) the incidence and prevalence in the State of drug abuse and the incidence and prevalence in the State of alcohol abuse and alcoholism;

(2) current prevention and treatment activities in the State;

(3) the need of the State for technical assistance to carry out such activities;

(4) efforts by the State to improve such activities; and

(5) the extent to which the availability of such activities is insufficient to meet the need for the activities, the interim services to be made available under sections 300x–23(a) and 300x–27(b) of this title, and the manner in which such services are to be so available.

(July 1, 1944, ch. 373, title XIX, § 1929, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 396.)

[1] So in original. Probably should be ''woman''.

[1] So in original. Probably should be ''activities''.

PRIOR PROVISIONS

A prior section 1929 of act July 1, 1944, was classified to section 300y–8 of this title prior to repeal by Pub. L. 99–280.

§ 300x–30. Maintenance of effort regarding State expenditures

(a) In general

With respect to the principal agency of a State for carrying out authorized activities, a funding agreement for a grant under section 300x–21 of this title for the State for a fiscal year is that such agency will for such year maintain aggregate State expenditures for authorized activities at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying for the grant.

(b) Exclusion of certain funds

The Secretary may exclude from the aggregate State expenditures under subsection (a) of this section, funds appropriated to the principle agency for authorized activities which are of a non-recurring nature and for a specific purpose.

(c) Waiver

(1) In general

Upon the request of a State, the Secretary may waive all or part of the requirement established in subsection (a) of this section if the Secretary determines that extraordinary economic conditions in the State justify the waiver.

(2) Date certain for acting upon request

The Secretary shall approve or deny a request for a waiver under paragraph (1) not later than 120 days after the date on which the request is made.

(3) Applicability of waiver

Any waiver provided by the Secretary under paragraph (1) shall be applicable only to the fiscal year involved.

(d) Noncompliance by State

(1) In general

In making a grant under section 300x–21 of this title to a State for a fiscal year, the Secretary shall make a determination of whether, for the previous fiscal year, the State maintained material compliance with any agreement made under subsection (a) of this section. If the Secretary determines that a State has failed to maintain such compliance, the Secretary shall reduce the amount of the allotment under section 300x–21 of this title for the State for the fiscal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

(2) Submission of information to Secretary

The Secretary may make a grant under section 300x–21 of this title for a fiscal year only if the State involved submits to the Secretary information sufficient for the Secretary to make the determination required in paragraph (1).

(July 1, 1944, ch. 373, title XIX, § 1930, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 397; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(c), Oct. 17, 2000, 114 Stat. 1210.)

PRIOR PROVISIONS

A prior section 1930 of act July 1, 1944, was classified to section 300y–9 of this title prior to repeal by Pub. L. 99–280.

AMENDMENTS

2000—Subsecs. (b) to (d). Pub. L. 106–310 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

§ 300x–31. Restrictions on expenditure of grant

(a) In general

(1) Certain restrictions

A funding agreement for a grant under section 300x–21 of this title is that the State involved will not expend the grant—

(A) to provide inpatient hospital services, except as provided in subsection (b) of this section;

(B) to make cash payments to intended recipients of health services;

(C) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(D) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;

(E) to provide financial assistance to any entity other than a public or nonprofit private entity; or

(F) to carry out any program prohibited by section 300ee–5 of this title.

(2) Limitation on administrative expenses

A funding agreement for a grant under section 300x–21 of this title is that the State involved will not expend more than 5 percent of the grant to pay the costs of administering the grant.

(3) Limitation regarding penal and correctional institutions

A funding agreement for a State for a grant under section 300x–21 of this title is that, in expending the grant for the purpose of providing treatment services in penal or correctional institutions of the State, the State will not expend more than an amount equal to the amount expended for such purpose by the State from the grant made under section 300x–1a[1] of this title to the State for fiscal year 1991 (as section 300x–1a[1] of this title was in effect for such fiscal year).

(b) Exception regarding inpatient hospital services

(1) Medical necessity as precondition

With respect to compliance with the agreement made under subsection (a) of this section, a State may expend a grant under section 300x–21 of this title to provide inpatient hospital services as treatment for substance abuse only if it has been determined, in accordance with guidelines issued by the Sec-

[1] See References in Text note below.

retary, that such treatment is a medical necessity for the individual involved, and that the individual cannot be effectively treated in a community-based, nonhospital, residential program of treatment.

(2) Rate of payment

In the case of an individual for whom a grant under section 300x–21 of this title is expended to provide inpatient hospital services described in paragraph (1), a funding agreement for the grant for the State involved is that the daily rate of payment provided to the hospital for providing the services to the individual will not exceed the comparable daily rate provided for community-based, nonhospital, residential programs of treatment for substance abuse.

(c) Waiver regarding construction of facilities

(1) In general

The Secretary may provide to any State a waiver of the restriction established in subsection (a)(1)(C) of this section for the purpose of authorizing the State to expend a grant under section 300x–21 of this title for the construction of a new facility or rehabilitation of an existing facility, but not for land acquisition.

(2) Standard regarding need for waiver

The Secretary may approve a waiver under paragraph (1) only if the State demonstrates to the Secretary that adequate treatment cannot be provided through the use of existing facilities and that alternative facilities in existing suitable buildings are not available.

(3) Amount

In granting a waiver under paragraph (1), the Secretary shall allow the use of a specified amount of funds to construct or rehabilitate a specified number of beds for residential treatment and a specified number of slots for outpatient treatment, based on reasonable estimates by the State of the costs of construction or rehabilitation. In considering waiver applications, the Secretary shall ensure that the State has carefully designed a program that will minimize the costs of additional beds.

(4) Matching funds

The Secretary may grant a waiver under paragraph (1) only if the State agrees, with respect to the costs to be incurred by the State in carrying out the purpose of the waiver, to make available non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $1 of Federal funds provided under section 300x–21 of this title.

(5) Date certain for acting upon request

The Secretary shall act upon a request for a waiver under paragraph (1) not later than 120 days after the date on which the request is made.

(July 1, 1944, ch. 373, title XIX, § 1931, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 397.)

REFERENCES IN TEXT

Section 300x–1a of this title, referred to in subsec. (a)(3), was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

PRIOR PROVISIONS

A prior section 1931 of act July 1, 1944, was classified to section 300y–21 of this title and subsequently omitted from the Code.

Another prior section 1931 of act July 1, 1944, was classified to section 300y–10 of this title prior to repeal by Pub. L. 99–280.

§ 300x–32. Application for grant; approval of State plan

(a) In general

For purposes of section 300x–21 of this title, an application for a grant under such section for a fiscal year is in accordance with this section if, subject to subsections (c) and (d)(2) of this section—

(1) the application is received by the Secretary not later than October 1 of the fiscal year for which the State is seeking funds;

(2) the application contains each funding agreement that is described in this subpart or subpart III for such a grant (other than any such agreement that is not applicable to the State);

(3) the agreements are made through certification from the chief executive officer of the State;

(4) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(5) the application contains the information required in section 300x–29 of this title, the information required in section 300x–30(c)(2)[1] of this title, and the report required in section 300x–52(a) of this title;

(6)(A) the application contains a plan in accordance with subsection (b) of this section and the plan is approved by the Secretary; and

(B) the State provides assurances satisfactory to the Secretary that the State complied with the provisions of the plan under subparagraph (A) that was approved by the Secretary for the most recent fiscal year for which the State received a grant under section 300x–21 of this title; and

(7) the application (including the plan under paragraph (6)) is otherwise in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subpart.

(b) State plan

(1) In general

A plan submitted by a State under subsection (a)(6) of this section is in accordance with this subsection if the plan contains detailed provisions for complying with each funding agreement for a grant under section 300x–21 of this title that is applicable to the State, including a description of the manner in which the State intends to expend the grant.

(2) Authority of Secretary regarding modifications

As a condition of making a grant under section 300x–21 of this title to a State for a fiscal year, the Secretary may require that the

[1] See References in Text note below.

State modify any provision of the plan submitted by the State under subsection (a)(6) of this section (including provisions on priorities in carrying out authorized activities). If the Secretary approves the plan and makes the grant to the State for the fiscal year, the Secretary may not during such year require the State to modify the plan.

(3) Authority of Center for Substance Abuse Prevention

With respect to plans submitted by the States under subsection (a)(6) of this section, the Secretary, acting through the Director of the Center for Substance Abuse Prevention, shall review and approve or disapprove the provisions of the plans that relate to prevention activities.

(c) Waivers regarding certain territories

In the case of any territory of the United States except Puerto Rico, the Secretary may waive such provisions of this subpart and subpart III as the Secretary determines to be appropriate, other than the provisions of section 300x–31 of this title.

(d) Issuance of regulations; precondition to making grants

(1) Regulations

Not later than August 25, 1992, the Secretary, acting as appropriate through the Director of the Center for Treatment Improvement or the Director of the Center for Substance Abuse Prevention, shall by regulation establish standards specifying the circumstances in which the Secretary will consider an application for a grant under section 300x–21 of this title to be in accordance with this section.

(2) Issuance as precondition to making grants

The Secretary may not make payments under any grant under section 300x–21 of this title for fiscal year 1993 on or after January 1, 1993, unless the Secretary has issued standards under paragraph (1).

(e) Waiver authority for certain requirements

(1) In general

Upon the request of a State, the Secretary may waive the requirements of all or part of the sections described in paragraph (2) using objective criteria established by the Secretary by regulation after consultation with the States and other interested parties including consumers and providers.

(2) Sections

The sections described in paragraph (1) are sections 300x–22(c)[1], 300x–23, 300x–24 and 300x–28 of this title.

(3) Date certain for acting upon request

The Secretary shall approve or deny a request for a waiver under paragraph (1) and inform the State of that decision not later than 120 days after the date on which the request and all the information needed to support the request are submitted.

(4) Annual reporting requirement

The Secretary shall annually report to the general public on the States that receive a waiver under this subsection.

(July 1, 1944, ch. 373, title XIX, § 1932, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 399; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(d)–(f)(1), Oct. 17, 2000, 114 Stat. 1211.)

REFERENCES IN TEXT

Section 300x–30(c) of this title, referred to in subsec. (a)(5), was redesignated section 300x–30(d) of this title by Pub. L. 106–310, div. B, title XXXIII, § 3303(c)(1), Oct. 17, 2000, 114 Stat. 1211.

Section 300x–22(c) of this title, referred to in subsec. (e)(2), was redesignated section 300x–22(b) of this title by Pub. L. 106–310, div. B, title XXXIII, § 3303(a)(2), Oct. 17, 2000, 114 Stat. 1210.

PRIOR PROVISIONS

A prior section 1932 of act July 1, 1944, was classified to section 300y–22 of this title and subsequently omitted from the Code.

Another prior section 1932 of act July 1, 1944, was classified to section 300y–11 of this title prior to repeal by Pub. L. 99–280.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–310, § 3303(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the State involved submits the application not later than the date specified by the Secretary;''.

Subsec. (c). Pub. L. 106–310, § 3303(e), substituted ''except Puerto Rico'' for ''whose allotment under section 300x–21 of this title for the fiscal year is the amount specified in section 300x–33(c)(2)(B) of this title''.

Subsec. (e). Pub. L. 106–310, § 3303(f)(1), added subsec. (e).

§ 300x–33. Determination of amount of allotment

(a) States

(1) In general

Subject to subsection (b) of this section, the Secretary shall determine the amount of the allotment required in section 300x–21 of this title for a State for a fiscal year as follows:

(A) The formula established in paragraph (1) of section 300x–7(a) of this title shall apply to this subsection to the same extent and in the same manner as the formula applies for purposes of section 300x–7(a) of this title, except that, in the application of such formula for purposes of this subsection, the modifications described in subparagraph (B) shall apply.

(B) For purposes of subparagraph (A), the modifications described in this subparagraph are as follows:

(i) The amount specified in paragraph (2)(A) of section 300x–7(a) of this title is deemed to be the amount appropriated under section 300x–35(a) of this title for allotments under section 300x–21 of this title for the fiscal year involved.

(ii) The term ''P'' is deemed to have the meaning given in paragraph (2) of this subsection. Section 300x–7(a)(5)(B) of this title applies to the data used in determining such term for the States.

(iii) The factor determined under paragraph (8) of section 300x–7(a) of this title is deemed to have the purpose of reflecting the differences that exist between the State involved and other States in the costs of providing authorized services.

(2) Determination of term "P"

For purposes of this subsection, the term ''P'' means the percentage that is the arith-

metic mean of the percentage determined under subparagraph (A) and the percentage determined under subparagraph (B), as follows:

(A) The percentage constituted by the ratio of—

(i) an amount equal to the sum of the total number of individuals who reside in the State involved and are between 18 and 24 years of age (inclusive) and the number of individuals in the State who reside in urbanized areas of the State and are between such years of age; to

(ii) an amount equal to the total of the respective sums determined for the States under clause (i).

(B) The percentage constituted by the ratio of—

(i) the total number of individuals in the State who are between 25 and 64 years of age (inclusive); to

(ii) an amount equal to the sum of the respective amounts determined for the States under clause (i).

(b) Minimum allotments for States

(1) In general

With respect to fiscal year 2000, and each subsequent fiscal year, the amount of the allotment of a State under section 300x–21 of this title shall not be less than the amount the State received under such section for the previous fiscal year increased by an amount equal to 30.65 percent of the percentage by which the aggregate amount allotted to all States for such fiscal year exceeds the aggregate amount allotted to all States for the previous fiscal year.

(2) Limitations

(A) In general

Except as provided in subparagraph (B), a State shall not receive an allotment under section 300x–21 of this title for a fiscal year in an amount that is less than an amount equal to 0.375 percent of the amount appropriated under section 300x–35(a) of this title for such fiscal year.

(B) Exception

In applying subparagraph (A), the Secretary shall ensure that no State receives an increase in its allotment under section 300x–21 of this title for a fiscal year (as compared to the amount allotted to the State in the prior fiscal year) that is in excess of an amount equal to 300 percent of the percentage by which the amount appropriated under section 300x–35(a) of this title for such fiscal year exceeds the amount appropriated for the prior fiscal year.

(3) Decrease in or equal appropriations

If the amount appropriated under section 300x–35(a) of this title for a fiscal year is equal to or less than the amount appropriated under such section for the prior fiscal year, the amount of the State allotment under section 300x–21 of this title shall be equal to the amount that the State received under section 300x–21 of this title in the prior fiscal year decreased by the percentage by which the amount appropriated for such fiscal year is less than the amount appropriated or[1] such section for the prior fiscal year.

(c) Territories

(1) Determination under formula

Subject to paragraphs (2) and (4), the amount of an allotment under section 300x–21 of this title for a territory of the United States for a fiscal year shall be the product of—

(A) an amount equal to the amounts reserved under paragraph (3) for the fiscal year; and

(B) a percentage equal to the quotient of—

(i) the civilian population of the territory, as indicated by the most recently available data; divided by

(ii) the aggregate civilian population of the territories of the United States, as indicated by such data.

(2) Minimum allotment for territories

The amount of an allotment under section 300x–21 of this title for a territory of the United States for a fiscal year shall be the greater of—

(A) the amount determined under paragraph (1) for the territory for the fiscal year;

(B) $50,000; and

(C) with respect to fiscal years 1993 and 1994, an amount equal to 79.4 percent of the amount received by the territory from allotments made pursuant to this part for fiscal year 1992.

(3) Reservation of amounts

The Secretary shall each fiscal year reserve for the territories of the United States 1.5 percent of the amounts appropriated under section 300x–35(a) of this title for allotments under section 300x–21 of this title for the fiscal year.

(4) Availability of data on population

With respect to data on the civilian population of the territories of the United States, if the Secretary determines for a fiscal year that recent such data for purposes of paragraph (1)(B) do not exist regarding a territory, the Secretary shall for such purposes estimate the civilian population of the territory by modifying the data on the territory to reflect the average extent of change occurring during the ensuing period in the population of all territories with respect to which recent such data do exist.

(5) Applicability of certain provisions

For purposes of subsections (a) and (b) of this section, the term ''State'' does not include the territories of the United States.

(d) Indian tribes and tribal organizations

(1) In general

If the Secretary—

(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this subpart be provided directly by the Secretary to such tribe or organization; and

[1] So in original. Probably should be ''for''.

(B) makes a determination that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this;[2]

the Secretary shall reserve from the allotment under section 300x–21 of this title for the State for the fiscal year involved an amount that bears the same ratio to the allotment as the amount provided under this subpart to the tribe or tribal organization for fiscal year 1991 for activities relating to the prevention and treatment of the abuse of alcohol and other drugs bore to the amount of the portion of the allotment under this subpart for the State for such fiscal year that was expended for such activities.

(2) Tribe or tribal organization as grantee

The amount reserved by the Secretary on the basis of a determination under this paragraph[3] shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(3) Application

In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this paragraph,[3] it shall submit to the Secretary a plan for such fiscal year that meets such criteria as the Secretary may prescribe.

(4) Definitions

The terms ''Indian tribe'' and ''tribal organization'' have the same meaning given such terms in subsections (b) and (c)[4] of section 450b of title 25.

(July 1, 1944, ch. 373, title XIX, § 1933, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 400; amended Pub. L. 102–352, § 2(a)(11), Aug. 26, 1992, 106 Stat. 938; Pub. L. 105–277, div. A, § 101(f) [title II, § 218(b)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–362; Pub. L. 106–113, div. B, § 1000(a)(4) [title II, § 212(b)], Nov. 29, 1999, 113 Stat. 1535, 1501A–239; Pub. L. 106–310, div. B, title XXXIII, § 3304, Oct. 17, 2000, 114 Stat. 1212.)

REFERENCES IN TEXT

Section 450b of title 25, referred to in subsec. (d)(4), was amended, and subsecs. (b) and (c) of section 450 no longer define the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in that section.

PRIOR PROVISIONS

A prior section 1933 of act July 1, 1944, was classified to section 300y–23 of this title and subsequently omitted from the Code.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Each State's allotment for fiscal year 2000 for programs under this subpart shall be equal to such State's allotment for such programs for fiscal year 1999, except that, if the amount appropriated in fiscal year 2000 is less than the amount appropriated in fiscal year 1999, then the amount of a State's allotment under section 300x–21 of this title shall be equal to the amount that the State received under section 300x–21 of this title in fiscal year 1999 decreased by the percentage by which the amount appropriated for fiscal year 2000 is less than the amount appropriated for such section for fiscal year 1999.''

1999—Subsec. (b). Pub. L. 106–113 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''For each of the fiscal years 1993 and 1994, the amount of the allotment required in section 300x–21 of this title for a State for the fiscal year involved shall be the greater of—

''(1) the amount determined under subsection (a) of this section for the State for the fiscal year; and

''(2) an amount equal to 79.4 percent of the amount received by the State from allotments made pursuant to this part for fiscal year 1992 (including reallotments under section 205(a) of the ADAMHA Reorganization Act).''

1998—Subsec. (b). Pub. L. 105–277, temporarily amended subsec. (b) to read as follows: ''(b) MINIMUM ALLOTMENTS FOR STATES.—

''(1) IN GENERAL.—With respect to fiscal year 1999, the amount of the allotment of a State under section 300x–21 of this title shall not be less than the amount the State received under section 300x–21 of this title for fiscal year 1998 increased by 30.65 percent of the percentage by which the amount allotted to the States for fiscal year 1999 exceeds the amount allotted to the States for fiscal year 1998.

''(2) LIMITATION

''(A) IN GENERAL.—Except as provided in subparagraph (B), a State shall not receive an allotment under section 300x–21 of this title for fiscal year 1999 in an amount that is less than an amount equal to 0.375 percent of the amount appropriated under section 300x–35(a) of this title for such fiscal year.

''(B) EXCEPTION.—In applying subparagraph (A), the Secretary shall ensure that no State receives an increase in its allotment under section 300x–21 of this title for fiscal year 1999 (as compared to the amount allotted to the State in the fiscal year 1998) that is in excess of an amount equal to 300 percent of the percentage by which the amount appropriated under section 300x–35(a) of this title for fiscal year 1999 exceeds the amount appropriated for the prior fiscal year.

''(3) Only for the purposes of calculating minimum allotments under this subsection, any reference to the amount appropriated under section 300x–35(a) of this title for fiscal year 1998, allotments to States under section 300x–21 of this title and any references to amounts received by States in fiscal year 1998 shall include amounts appropriated or received under the amendments made by section 105 of the Contract with America Advancement Act of 1996 (Public Law 104–121).''

See Effective and Termination Dates of 1998 Amendment note below.

1992—Subsec. (c)(2)(C). Pub. L. 102–352 added subpar. (C).

EFFECTIVE AND TERMINATION DATES OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if enacted on Oct. 1, 1998, and applicable only during fiscal year 1999, and upon expiration of fiscal year 1999, subsec. (b) of this section, as in effect on Sept. 30, 1998, to be applied as if such amendment had not been enacted, see section 101(f) [title II, § 218(c)] of Pub. L. 105–277, set out as a note under section 300x–7 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

§ 300x–34. Definitions

For purposes of this subpart:

[2] So in original. Probably should be ''this subpart;''.

[3] So in original. Probably should be ''subsection''.

[4] See References in Text note below.

(1) The term ''authorized activities'', subject to section 300x–31 of this title, means the activities described in section 300x–21(b) of this title.

(2) The term ''funding agreement'', with respect to a grant under section 300x–21 of this title to a State, means that the Secretary may make such a grant only if the State makes the agreement involved.

(3) The term ''prevention activities'', subject to section 300x–31 of this title, means activities to prevent substance abuse.

(4) The term ''substance abuse'' means the abuse of alcohol or other drugs.

(5) The term ''treatment activities'' means treatment services and, subject to section 300x–31 of this title, authorized activities that are related to treatment services.

(6) The term ''treatment facility'' means an entity that provides treatment services.

(7) The term ''treatment services'', subject to section 300x–31 of this title, means treatment for substance abuse.

(July 1, 1944, ch. 373, title XIX, § 1934, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 402.)

PRIOR PROVISIONS

A prior section 1934 of act July 1, 1944, was classified to section 300y–24 of this title and subsequently omitted from the Code.

§ 300x–35. Funding

(a) Authorization of appropriations

For the purpose of carrying out this subpart, subpart III and section 290aa–4 of this title with respect to substance abuse, and section 290bb–21(d) of this title, there are authorized to be appropriated $2,000,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(b) Allocations for technical assistance, national data base, data collection, and program evaluations

(1) In general

(A) For the purpose of carrying out section 300x–58(a) of this title with respect to substance abuse, section 290bb–21(d) of this title, and the purposes specified in subparagraphs (B) and (C), the Secretary shall obligate 5 percent of the amounts appropriated under subsection (a) of this section each fiscal year.

(B) The purpose specified in this subparagraph is the collection of data in this paragraph[1] is carrying out sections 290aa–4 and 300y of this title with respect to substance abuse.

(C) The purpose specified in this subparagraph is the conduct of evaluations of authorized activities to determine methods for improving the availability and quality of such activities.

(2) Activities of Center for Substance Abuse Prevention

Of the amounts reserved under paragraph (1) for a fiscal year, the Secretary, acting through the Director of the Center for Substance Abuse Prevention, shall obligate 20 percent for carrying out paragraph (1)(C), section 300x–58(a) of this title with respect to prevention activities, and section 290bb–21(d) of this title.

(3) Core data set

A State that receives a new grant, contract, or cooperative agreement from amounts available to the Secretary under paragraph (1), for the purposes of improving the data collection, analysis and reporting capabilities of the State, shall be required, as a condition of receipt of funds, to collect, analyze, and report to the Secretary for each fiscal year subsequent to receiving such funds a core data set to be determined by the Secretary in conjunction with the States.

(July 1, 1944, ch. 373, title XIX, § 1935, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 403; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(g), Oct. 17, 2000, 114 Stat. 1211.)

PRIOR PROVISIONS

A prior section 1935 of act July 1, 1944, was classified to section 300y–25 of this title and subsequently omitted from the Code.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, § 3303(g)(1), substituted ''$2,000,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003'' for ''$1,500,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994''.

Subsec. (b)(1)(B). Pub. L. 106–310, § 3303(g)(2), substituted ''sections 290aa–4 and 300y of this title'' for ''section 290aa–4 of this title''.

Subsec. (b)(2). Pub. L. 106–310, § 3303(g)(3), made technical amendment to reference in original act which appears in text as reference to section 300x–58(a) of this title.

Subsec. (b)(3). Pub. L. 106–310, § 3303(g)(4), added par. (3).

SUBPART III—GENERAL PROVISIONS

§ 300x–51. Opportunity for public comment on State plans

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will make the plan required in section 300x–1 of this title, and the plan required in section 300x–32 of this title, respectively, public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during the development of the plan (including any revisions) and after the submission of the plan to the Secretary.

(July 1, 1944, ch. 373, title XIX, § 1941, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 403.)

§ 300x–52. Requirement of reports and audits by States

(a) Report

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will submit to the Secretary a report in such form and containing such information as the Secretary determines (after consultation with the States) to be necessary for securing a record and a description of—

[1] So in original. The words ''is the collection of data in this paragraph'' probably should not appear.

(1) the purposes for which the grant received by the State for the preceding fiscal year under the program involved were expended and a description of the activities of the State under the program; and

(2) the recipients of amounts provided in the grant.

(b) Audits

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State will, with respect to the grant, comply with chapter 75 of title 31.

(c) Availability to public

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will—

(1) make copies of the reports and audits described in this section available for public inspection within the State; and

(2) provide copies of the report under subsection (a) of this section, upon request, to any interested person (including any public agency).

(July 1, 1944, ch. 373, title XIX, § 1942, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 403; amended Pub. L. 104–316, title I, § 122(e), Oct. 19, 1996, 110 Stat. 3837.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–316 struck out ''and the Comptroller General'' after ''with the States'' in introductory provisions.

§ 300x–53. Additional requirements

(a) In general

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will—

(1)(A) for the fiscal year for which the grant involved is provided, provide for independent peer review to assess the quality, appropriateness, and efficacy of treatment services provided in the State to individuals under the program involved; and

(B) ensure that, in the conduct of such peer review, not fewer than 5 percent of the entities providing services in the State under such program are reviewed (which 5 percent is representative of the total population of such entities);

(2) permit and cooperate with Federal investigations undertaken in accordance with section 300x–55 of this title; and

(3) provide to the Secretary any data required by the Secretary pursuant to section 290aa–4 of this title and will cooperate with the Secretary in the development of uniform criteria for the collection of data pursuant to such section.

(b) Patient records

The Secretary may make a grant under section 300x or 300x–21 of this title only if the State involved has in effect a system to protect from inappropriate disclosure patient records maintained by the State in connection with an activity funded under the program involved or by any entity which is receiving amounts from the grant.

(July 1, 1944, ch. 373, title XIX, § 1943, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 404; amended Pub. L. 102–352, § 2(a)(12), Aug. 26, 1992, 106 Stat. 939.)

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–352 substituted ''section 290aa–4 of this title'' for ''section 290bb–21 of this title''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

§ 300x–54. Disposition of certain funds appropriated for allotments

(a) In general

Amounts described in subsection (b) of this section and available for a fiscal year pursuant to section 300x or 300x–21 of this title, as the case may be, shall be allotted by the Secretary and paid to the States receiving a grant under the program involved, other than any State referred to in subsection (b) of this section with respect to such program. Such amounts shall be allotted in a manner equivalent to the manner in which the allotment under the program involved was determined.

(b) Specification of amounts

The amounts referred to in subsection (a) of this section are any amounts that—

(1) are not paid to States under the program involved as a result of—

(A) the failure of any State to submit an application in accordance with the program;

(B) the failure of any State to prepare such application in compliance with the program; or

(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State under the program;

(2) are terminated, repaid, or offset under section 300x–55 of this title;

(3) in the case of the program established in section 300x of this title, are available as a result of reductions in allotments under such section pursuant to section 300x–1(d) or 300x–4(b) of this title; or

(4) in the case of the program established in section 300x–21 of this title, are available as a result of reductions in allotments under such section pursuant to section 300x–26 or 300x–30 of this title.

(July 1, 1944, ch. 373, title XIX, § 1944, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 404.)

§ 300x–55. Failure to comply with agreements

(a) Suspension or termination of payments

Subject to subsection (e) of this section, if the Secretary determines that a State has materially failed to comply with the agreements or other conditions required for the receipt of a grant under the program involved, the Secretary may in whole or in part suspend payments under the grant, terminate the grant for cause, or em-

ploy such other remedies (including the remedies provided for in subsections (b) and (c) of this section) as may be legally available and appropriate in the circumstances involved.

(b) Repayment of payments

(1) In general

Subject to subsection (e) of this section, the Secretary may require a State to repay with interest any payments received by the State under section 300x or 300x–21 of this title that the Secretary determines were not expended by the State in accordance with the agreements required under the program involved.

(2) Offset against payments

If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under the program involved.

(c) Withholding of payments

(1) In general

Subject to subsections (e) and (g)(3) of this section, the Secretary may withhold payments due under section 300x or 300x–21 of this title if the Secretary determines that the State involved is not expending amounts received under the program involved in accordance with the agreements required under the program.

(2) Termination of withholding

The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under the program involved in accordance with the agreements required under the program.

(d) Applicability of remedies to certain violations

(1) In general

With respect to agreements or other conditions for receiving a grant under the program involved, in the case of the failure of a State to maintain material compliance with a condition referred to in paragraph (2), the provisions for noncompliance with the condition that are provided in the section establishing the condition shall apply in lieu of subsections (a) through (c) of this section.

(2) Relevant conditions

For purposes of paragraph (1):

(A) In the case of the program established in section 300x of this title, a condition referred to in this paragraph is the condition established in section 300x–1(d) of this title and the condition established in section 300x–4(b) of this title.

(B) In the case of the program established in section 300x–21 of this title, a condition referred to in this paragraph is the condition established in section 300x–26 of this title and the condition established in section 300x–30 of this title.

(e) Opportunity for hearing

Before taking action against a State under any of subsections (a) through (c) of this section (or under a section referred to in subsection (d)(2) of this section, as the case may be), the Secretary shall provide to the State involved adequate notice and an opportunity for a hearing.

(f) Requirement of hearing in certain circumstances

(1) In general

If the Secretary receives a complaint that a State has failed to maintain material compliance with the agreements or other conditions required for receiving a grant under the program involved (including any condition referred to for purposes of subsection (d) of this section), and there appears to be reasonable evidence to support the complaint, the Secretary shall promptly conduct a hearing with respect to the complaint.

(2) Finding of material noncompliance

If in a hearing under paragraph (1) the Secretary finds that the State involved has failed to maintain material compliance with the agreement or other condition involved, the Secretary shall take such action under this section as may be appropriate to ensure that material compliance is so maintained, or such action as may be required in a section referred to in subsection (d)(2) of this section, as the case may be.

(g) Certain investigations

(1) Requirement regarding Secretary

The Secretary shall in fiscal year 1994 and each subsequent fiscal year conduct in not less than 10 States investigations of the expenditure of grants received by the States under section 300x or 300x–21 of this title in order to evaluate compliance with the agreements required under the program involved.

(2) Provision of records, etc., upon request

Each State receiving a grant under section 300x or 300x–21 of this title, and each entity receiving funds from the grant, shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(3) Limitations on authority

The Secretary may not institute proceedings under subsection (c) of this section unless the Secretary has conducted an investigation concerning whether the State has expended payments under the program involved in accordance with the agreements required under the program. Any such investigation shall be conducted within the State by qualified investigators.

(July 1, 1944, ch. 373, title XIX, § 1945, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 405.)

§ 300x–56. Prohibitions regarding receipt of funds

(a) Establishment

(1) Certain false statements and representations

A person shall not knowingly and willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payments may be made by a State from a grant made to the State under section 300x or 300x–21 of this title.

(2) Concealing or failing to disclose certain events

A person with knowledge of the occurrence of any event affecting the initial or continued right of the person to receive any payments from a grant made to a State under section 300x or 300x–21 of this title shall not conceal or fail to disclose any such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such amount is due.

(b) Criminal penalty for violation of prohibition

Any person who violates any prohibition established in subsection (a) of this section shall for each violation be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title XIX, § 1946, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 406.)

§ 300x–57. Nondiscrimination

(a) In general

(1) Rule of construction regarding certain civil rights laws

For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under section 300x or 300x–21 of this title shall be considered to be programs and activities receiving Federal financial assistance.

(2) Prohibition

No person shall on the ground of sex (including, in the case of a woman, on the ground that the woman is pregnant), or on the ground of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under section 300x or 300x–21 of this title.

(b) Enforcement

(1) Referrals to Attorney General after notice

Whenever the Secretary finds that a State, or an entity that has received a payment pursuant to section 300x or 300x–21 of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as may be applicable; or

(C) take such other actions as may be authorized by law.

(2) Authority of Attorney General

When a matter is referred to the Attorney General pursuant to paragraph (1)(A), or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(July 1, 1944, ch. 373, title XIX, § 1947, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 407.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(1)(B), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 300x–58. Technical assistance and provision of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary shall, without charge to a State receiving a grant under section 300x or 300x–21 of this title, provide to the State (or to any public

or nonprofit private entity within the State) technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to the program involved. The Secretary may provide such technical assistance directly, through contract, or through grants.

(b) Provision of supplies and services in lieu of grant funds

(1) In general

Upon the request of a State receiving a grant under section 300x or 300x–21 of this title, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out the program involved and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the program involved to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XIX, § 1948, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 408.)

§ 300x–59. Plans for performance partnerships

(a) Development

The Secretary in conjunction with States and other interested groups shall develop separate plans for the programs authorized under subparts I and II for creating more flexibility for States and accountability based on outcome and other performance measures. The plans shall each include—

(1) a description of the flexibility that would be given to the States under the plan;

(2) the common set of performance measures that would be used for accountability, including measures that would be used for the program under subpart II for pregnant addicts, HIV transmission, tuberculosis, and those with a co-occurring substance abuse and mental disorders, and for programs under subpart I for children with serious emotional disturbance and adults with serious mental illness and for individuals with co-occurring mental health and substance abuse disorders;

(3) the definitions for the data elements to be used under the plan;

(4) the obstacles to implementation of the plan and the manner in which such obstacles would be resolved;

(5) the resources needed to implement the performance partnerships under the plan; and

(6) an implementation strategy complete with recommendations for any necessary legislation.

(b) Submission

Not later than 2 years after October 17, 2000, the plans developed under subsection (a) of this section shall be submitted to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Commerce of the House of Representatives.

(c) Information

As the elements of the plans described in subsection (a) of this section are developed, States are encouraged to provide information to the Secretary on a voluntary basis.

(d) Participants

The Secretary shall include among those interested groups that participate in the development of the plan consumers of mental health or substance abuse services, providers, representatives of political divisions of States, and representatives of racial and ethnic groups including Native Americans.

(July 1, 1944, ch. 373, title XIX, § 1949, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 408; amended Pub. L. 106–310, div. B, title XXXIV, § 3403(a), Oct. 17, 2000, 114 Stat. 1219.)

CODIFICATION

October 17, 2000, referred to in subsec. (b), was in the original ''the date of the enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 106–310, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2000—Pub. L. 106–310 amended section catchline and text generally. Prior to amendment, text read as follows: ''Not later than January 24, 1994, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report on the activities of the States carried out pursuant to the programs established in sections 300x and 300x–21 of this title. Such report may include any recommendations of the Secretary for appropriate changes in legislation.''

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300x–60. Rule of construction regarding delegation of authority to States

With respect to States receiving grants under section 300x or 300x–21 of this title, this part may not be construed to authorize the Secretary to delegate to the States the primary responsibility for interpreting the governing provisions of this part.

(July 1, 1944, ch. 373, title XIX, § 1950, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 408.)

§ 300x–61. Solicitation of views of certain entities

In carrying out this part, the Secretary, as appropriate, shall solicit the views of the States and other appropriate entities.

(July 1, 1944, ch. 373, title XIX, § 1951, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 408.)

§ 300x–62. Availability to States of grant payments

Any amounts paid to a State for a fiscal year under section 300x or 300x–21 of this title shall be available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts were paid.

(July 1, 1944, ch. 373, title XIX, § 1952, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 409; amended Pub. L. 106–310, div. B, title XXXIV, § 3403(b), Oct. 17, 2000, 114 Stat. 1220.)

AMENDMENTS

2000—Pub. L. 106–310 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

''(a) IN GENERAL.—Subject to subsection (b) of this section, any amounts paid to a State under the program involved shall be available for obligation until the end of the fiscal year for which the amounts were paid, and if obligated by the end of such year, shall remain available for expenditure until the end of the succeeding fiscal year.

''(b) EXCEPTION REGARDING NONCOMPLIANCE OF SUBGRANTEES.—If a State has in accordance with subsection (a) of this section obligated amounts paid to the State under the program involved, in any case in which the Secretary determines that the obligation consists of a grant or contract awarded by the State, and that the State has terminated or reduced the amount of such financial assistance on the basis of the failure of the recipient of the assistance to comply with the terms upon which the assistance was conditioned—

''(1) the amounts involved shall be available for reobligation by the State through September 30 of the fiscal year following the fiscal year for which the amounts were paid to the State; and

''(2) any of such amounts that are obligated by the State in accordance with paragraph (1) shall be available for expenditure through such date.''

§ 300x–63. Continuation of certain programs

(a) In general

Of the amount allotted to the State of Hawaii under section 300x of this title, and the amount allotted to such State under section 300x–21 of this title, an amount equal to the proportion of Native Hawaiians residing in the State to the total population of the State shall be available, respectively, for carrying out the program involved for Native Hawaiians.

(b) Expenditure of amounts

The amount made available under subsection (a) of this section may be expended only through contracts entered into by the State of Hawaii with public and private nonprofit organizations to enable such organizations to plan, conduct, and administer comprehensive substance abuse and treatment programs for the benefit of Native Hawaiians. In entering into contracts under this section, the State of Hawaii shall give preference to Native Hawaiian organizations and Native Hawaiian health centers.

(c) Definitions

For the purposes of this subsection,[1] the terms ''Native Hawaiian'', ''Native Hawaiian organization'', and ''Native Hawaiian health center'' have the meaning given such terms in section 11707 of this title.

(July 1, 1944, ch. 373, title XIX, § 1953, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 409.)

§ 300x–64. Definitions

(a) Definitions for this subpart

For purposes of this subpart:

(1) The term ''program involved'' means the program of grants established in section 300x or 300x–21 of this title, or both, as indicated by whether the State involved is receiving or is applying to receive a grant under section 300x or 300x–21 of this title, or both.

(2)(A) The term ''funding agreement'', with respect to a grant under section 300x of this title, has the meaning given such term in section 300x–8 of this title.

(B) The term ''funding agreement'', with respect to a grant under section 300x–21 of this title, has the meaning given such term in section 300x–34 of this title.

(b) Definitions for this part

For purposes of this part:

(1) The term ''Comptroller General'' means the Comptroller General of the United States.

(2) The term ''State'', except as provided in sections 300x–7(c)(5) of this title and 300x–33(c)(5) of this title, means each of the several States, the District of Columbia, and each of the territories of the United States.

(3) The term ''territories of the United States'' means each of the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Palau, the Marshall Islands, and Micronesia.

(4) The term ''interim services'', in the case of an individual in need of treatment for substance abuse who has been denied admission to a program of such treatment on the basis of the lack of the capacity of the program to admit the individual, means services for reducing the adverse health effects of such abuse, for promoting the health of the individual, and for reducing the risk of transmission of disease, which services are provided until the individual is admitted to such a program.

(July 1, 1944, ch. 373, title XIX, § 1954, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 409.)

§ 300x–65. Services provided by nongovernmental organizations

(a) Purposes

The purposes of this section are—

(1) to prohibit discrimination against nongovernmental organizations and certain individuals on the basis of religion in the distribution of government funds to provide substance abuse services under this subchapter and subchapter III–A of this chapter, and the receipt of services under such subchapters; and

(2) to allow the organizations to accept the funds to provide the services to the individuals without impairing the religious character of the organizations or the religious freedom of the individuals.

[1] So in original. Probably should be ''section,''.

(b) Religious organizations included as nongovernmental providers

(1) In general

A State may administer and provide substance abuse services under any program under this subchapter or subchapter III–A of this chapter through grants, contracts, or cooperative agreements to provide assistance to beneficiaries under such subchapters with nongovernmental organizations.

(2) Requirement

A State that elects to utilize nongovernmental organizations as provided for under paragraph (1) shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide services under substance abuse programs under this subchapter or subchapter III–A of this chapter, so long as the programs under such subchapters are implemented in a manner consistent with the Establishment Clause of the first amendment to the Constitution. Neither the Federal Government nor a State or local government receiving funds under such programs shall discriminate against an organization that provides services under, or applies to provide services under, such programs, on the basis that the organization has a religious character.

(c) Religious character and independence

(1) In general

A religious organization that provides services under any substance abuse program under this subchapter or subchapter III–A of this chapter shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State or local government shall require a religious organization—

(A) to alter its form of internal governance; or

(B) to remove religious art, icons, scripture, or other symbols,

in order to be eligible to provide services under any substance abuse program under this subchapter or subchapter III–A of this chapter.

(d) Employment practices

(1) Substance abuse

A religious organization that provides services under any substance abuse program under this subchapter or subchapter III–A of this chapter may require that its employees providing services under such program adhere to rules forbidding the use of drugs or alcohol.

(2) Title VII exemption

The exemption of a religious organization provided under section 702 or 703(e)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1, 2000e–2(e)(2)) regarding employment practices shall not be affected by the religious organization's provision of services under, or receipt of funds from, any substance abuse program under this subchapter or subchapter III–A of this chapter.

(e) Rights of beneficiaries of assistance

(1) In general

If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive, services funded under any substance abuse program under this subchapter or subchapter III–A of this chapter, the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such services) within a reasonable period of time after the date of such objection, services that—

(A) are from an alternative provider that is accessible to the individual; and

(B) have a value that is not less than the value of the services that the individual would have received from such organization.

(2) Notice

The appropriate Federal, State, or local governmental entity shall ensure that notice is provided to individuals described in paragraph (3) of the rights of such individuals under this section.

(3) Individual described

An individual described in this paragraph is an individual who receives or applies for services under any substance abuse program under this subchapter or subchapter III–A of this chapter.

(f) Nondiscrimination against beneficiaries

A religious organization providing services through a grant, contract, or cooperative agreement under any substance abuse program under this subchapter or subchapter III–A of this chapter shall not discriminate, in carrying out such program, against an individual described in subsection (e)(3) of this section on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

(g) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization providing services under any substance abuse program under this subchapter or subchapter III–A of this chapter shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds provided under such program.

(2) Limited audit

Such organization shall segregate government funds provided under such substance abuse program into a separate account. Only the government funds shall be subject to audit by the government.

(h) Compliance

Any party that seeks to enforce such party's rights under this section may assert a civil action for injunctive relief exclusively in an appropriate Federal or State court against the entity, agency or official that allegedly commits such violation.

(i) Limitations on use of funds for certain purposes

No funds provided through a grant or contract to a religious organization to provide services under any substance abuse program under this subchapter or subchapter III–A of this chapter shall be expended for sectarian worship, instruction, or proselytization.

(j) Effect on State and local funds

If a State or local government contributes State or local funds to carry out any substance abuse program under this subchapter or subchapter III–A of this chapter, the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(k) Treatment of intermediate contractors

If a nongovernmental organization (referred to in this subsection as an ''intermediate organization''), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any substance abuse program under this subchapter or subchapter III–A of this chapter, the intermediate organization shall have the same duties under this section as the government but shall retain all other rights of a nongovernmental organization under this section.

(July 1, 1944, ch. 373, title XIX, § 1955, as added Pub. L. 106–310, div. B, title XXXIII, § 3305, Oct. 17, 2000, 114 Stat. 1212.)

§ 300x–66. Services for individuals with co-occurring disorders

States may use funds available for treatment under sections 300x and 300x–21 of this title to treat persons with co-occurring substance abuse and mental disorders as long as funds available under such sections are used for the purposes for which they were authorized by law and can be tracked for accounting purposes.

(July 1, 1944, ch. 373, title XIX, § 1956, as added Pub. L. 106–310, div. B, title XXXIV, § 3407, Oct. 17, 2000, 114 Stat. 1222.)

PART C—CERTAIN PROGRAMS REGARDING MENTAL HEALTH AND SUBSTANCE ABUSE

AMENDMENTS

2000—Pub. L. 106–310, div. B, title XXXIV, § 3404(1), Oct. 17, 2000, 114 Stat. 1220, added part C heading and struck out former part C heading ''Certain Programs Regarding Substance Abuse''.

SUBPART I—DATA INFRASTRUCTURE DEVELOPMENT

AMENDMENTS

2000—Pub. L. 106–310, div. B, title XXXIV, § 3404(1), Oct. 17, 2000, 114 Stat. 1220, added subpart I heading and struck out former subpart I heading ''Expansion of Capacity for Providing Treatment''.

§ 300y. Data infrastructure development

(a) In general

The Secretary may make grants to, and enter into contracts or cooperative agreements with States for the purpose of developing and operating mental health or substance abuse data collection, analysis, and reporting systems with regard to performance measures including capacity, process, and outcomes measures.

(b) Projects

The Secretary shall establish criteria to ensure that services will be available under this section to States that have a fundamental basis for the collection, analysis, and reporting of mental health and substance abuse performance measures and States that do not have such basis. The Secretary will establish criteria for determining whether a State has a fundamental basis for the collection, analysis, and reporting of data.

(c) Condition of receipt of funds

As a condition of the receipt of an award under this section a State shall agree to collect, analyze, and report to the Secretary within 2 years of the date of the award on a core set of performance measures to be determined by the Secretary in conjunction with the States.

(d) Matching requirement

(1) In general

With respect to the costs of the program to be carried out under subsection (a) of this section by a State, the Secretary may make an award under such subsection only if the applicant agrees to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 50 percent of such costs.

(2) Determination of amount contributed

Non-Federal contributions under paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

(e) Duration of support

The period during which payments may be made for a project under subsection (a) of this section may be not less than 3 years nor more than 5 years.

(f) Authorization of appropriation

(1) In general

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001, 2002 and 2003.

(2) Allocation

Of the amounts appropriated under paragraph (1) for a fiscal year, 50 percent shall be expended to support data infrastructure development for mental health and 50 percent shall be expended to support data infrastructure development for substance abuse.

(July 1, 1944, ch. 373, title XIX, § 1971, as added Pub. L. 106–310, div. B, title XXXIV, § 3404(2), Oct. 17, 2000, 114 Stat. 1220.)

PRIOR PROVISIONS

A prior section 300y, act July 1, 1944, ch. 373, title XIX, § 1971, as added Pub. L. 102–321, title II, § 204, July 10, 1992, 106 Stat. 410; amended Pub. L. 102–352, § 2(a)(13), Aug. 26, 1992, 106 Stat. 939, related to categorical grants to States for programs regarding substance abuse, prior to repeal by Pub. L. 106–310, div. B, title XXXIV, § 3404(2), Oct. 17, 2000, 114 Stat. 1220.

Another prior section 300y, act July 1, 1944, ch. 373, title XIX, § 1921, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4002, 100 Stat. 3207–103, related to establishment of special alcohol abuse and drug abuse programs, prior to repeal by Pub. L. 100–690, title II, § 2038(1), Nov. 18, 1988, 102 Stat. 4203.

Another prior section 300y, act July 1, 1944, ch. 373, title XIX, § 1921, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552, related to planning grants, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Prior sections 300y–1 and 300y–2 were repealed by Pub. L. 100–690, title II, § 2038(1), Nov. 18, 1988, 102 Stat. 4203.

Section 300y–1, act July 1, 1944, ch. 373, title XIX, § 1922, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4002, 100 Stat. 3207–106, related to transfer of funds to Administrator of Veterans' Affairs.

Another prior section 300y–1, act July 1, 1944, ch. 373, title XIX, § 1922, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552, authorized appropriations, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–2, act July 1, 1944, ch. 373, title XIX, § 1923, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4002, 100 Stat. 3207–106, related to evaluation of treatment programs.

Another prior section 300y–2, act July 1, 1944, ch. 373, title XIX, § 1923, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552, provided for grants under section 254c of this title, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Prior sections 300y–3 to 300y–10 were repealed by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–3, act July 1, 1944, ch. 373, title XIX, § 1924, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 553, provided that allotments be based upon prior year distributions and provided for direct distributions to Indian tribes.

Section 300y–4, act July 1, 1944, ch. 373, title XIX, § 1925, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 553, related to payments under allotments to States.

Section 300y–5, act July 1, 1944, ch. 373, title XIX, § 1926, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 554, related to State grants to community health centers from allotments.

Section 300y–6, act July 1, 1944, ch. 373, title XIX, § 1927, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 556, related to application requirements and submittal, availability for public comment, and revision of a description of intended use of funds.

Section 300y–7, act July 1, 1944, ch. 373, title XIX, § 1928, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 557, related to reporting and auditing requirements.

Section 300y–8, act July 1, 1944, ch. 373, title XIX, § 1929, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 558, related to withholding of funds from a State not in compliance.

Section 300y–9, act July 1, 1944, ch. 373, title XIX, § 1930, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 558, related to nondiscrimination requirements.

Section 300y–10, act July 1, 1944, ch. 373, title XIX, § 1931, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 559, provided criminal penalty for false statements.

SUBPART II—INTERIM MAINTENANCE TREATMENT OF NARCOTICS DEPENDENCE

§ 300y–11. Interim maintenance treatment

(a) Requirement regarding Secretary

Subject to the following subsections of this section, for the purpose of reducing the incidence of the transmission of HIV disease pursuant to the intravenous abuse of heroin or other morphine-like drugs, the Secretary, in establishing conditions for the use of methadone in public or nonprofit private programs of treatment for dependence on such drugs, shall authorize such programs—

(1) to dispense methadone for treatment purposes to individuals who—

(A) meet the conditions for admission to such programs that dispense methadone as part of comprehensive treatment for such dependence; and

(B) are seeking admission to such programs that so dispense methadone, but as a result of the limited capacity of the programs, will not gain such admission until 14 or more days after seeking admission to the programs; and

(2) in dispensing methadone to such individuals, to provide only minimum ancillary services during the period in which the individuals are waiting for admission to programs of comprehensive treatment.

(b) Inapplicability of requirement in certain circumstances

(1) In general

The requirement established in subsection (a) of this section for the Secretary does not apply if any or all of the following conditions are met:

(A) The preponderance of scientific research indicates that the risk of the transmission of HIV disease pursuant to the intravenous abuse of drugs is minimal.

(B) The preponderance of scientific research indicates that the medically supervised dispensing of methadone is not an effective method of reducing the extent of dependence on heroin and other morphine-like drugs.

(C) The preponderance of available data indicates that, of treatment programs that dispense methadone as part of comprehensive treatment, a substantial majority admit all individuals seeking services to the programs not later than 14 days after the individuals seek admission to the programs.

(2) Evaluation by Secretary

In evaluating whether any or all of the conditions described in paragraph (1) have been met, the Secretary shall consult with the National Commission on Acquired Immune Deficiency Syndrome.

(c) Conditions for obtaining authorization from Secretary

(1) In general

In carrying out the requirement established in subsection (a) of this section, the Secretary shall, after consultation with the National

Commission on Acquired Immune Deficiency Syndrome, by regulation issue such conditions for treatment programs to obtain authorization from the Secretary to provide interim maintenance treatment as may be necessary to carry out the purpose described in such subsection. Such conditions shall include conditions for preventing the unauthorized use of methadone.

(2) Counseling on HIV disease

The regulations issued under paragraph (1) shall provide that an authorization described in such paragraph may not be issued to a treatment program unless the program provides to recipients of the treatment counseling on preventing exposure to and the transmission of HIV disease.

(3) Permission of relevant State as condition of authorization

The regulations issued under paragraph (1) shall provide that the Secretary may not provide an authorization described in such paragraph to any treatment program in a State unless the chief public health officer of the State has certified to the Secretary that—

(A) such officer does not object to the provision of such authorizations to treatment programs in the State; and

(B) the provision of interim maintenance services in the State will not reduce the capacity of comprehensive treatment programs in the State to admit individuals to the programs (relative to the date on which such officer so certifies).

(4) Date certain for issuance of regulations; failure of Secretary

The Secretary shall issue the final rule for purposes of the regulations required in paragraph (1), and such rule shall be effective, not later than the expiration of the 180-day period beginning on July 10, 1992. If the Secretary fails to meet the requirement of the preceding sentence, the proposed rule issued on March 2, 1989, with respect to part 291 of title 21, Code of Federal Regulations (docket numbered 88N–0444; 54 Fed. Reg. 8973 et seq.) is deemed to take effect as a final rule upon the expiration of such period, and the provisions of paragraph (3) of this subsection are deemed to be incorporated into such rule.

(d) Definitions

For purposes of this section:

(1) The term ''interim maintenance services'' means the provision of methadone in a treatment program under the circumstances described in paragraphs (1) and (2) of subsection (a) of this section.

(2) The term ''HIV disease'' means infection with the etiologic agent for acquired immune deficiency syndrome.

(3) The term ''treatment program'' means a public or nonprofit private program of treatment for dependence on heroin or other morphine-like drugs.

(July 1, 1944, ch. 373, title XIX, § 1976, as added Pub. L. 102–321, title II, § 204, July 10, 1992, 106 Stat. 412.)

PRIOR PROVISIONS

A prior section 300y–11, act July 1, 1944, ch. 373, title XIX, § 1932, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 559; amended Jan. 4, 1983, Pub. L. 97–414, § 8(v), 96 Stat. 2063, related to applicability of other provisions and promulgation of regulations, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Sections 300y–21 to 300y–27 terminated Jan. 1, 1991, pursuant to section 300y–27 and were omitted from the Code.

Section 300y–21, act July 1, 1944, ch. 373, title XIX, § 1931, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3117, provided definitions for this part.

A prior section 1931 of act July 1, 1944, ch. 373, title XIX, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 559, provided criminal penalty for false statements and was classified to former section 300y–10 of this title, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–22, act July 1, 1944, ch. 373, title XIX, § 1932, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3117, authorized appropriations for this part.

A prior section 1932 of act July 1, 1944, ch. 373, title XIX, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 559; amended Jan. 4, 1983, Pub. L. 97–414, § 8(v), 96 Stat. 2063, related to applicability of other provisions and promulgation of regulations and was classified to former section 300y–11 of this title, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–23, act July 1, 1944, ch. 373, title XIX, § 1933, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3117, provided for allotments under this part.

Section 300y–24, act July 1, 1944, ch. 373, title XIX, § 1934, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3118, provided for payments under allotments to States.

Section 300y–25, act July 1, 1944, ch. 373, title XIX, § 1935, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3118, specified use of allotments.

Section 300y–26, act July 1, 1944, ch. 373, title XIX, § 1936, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3119, provided for applications, requirements of the application, and description of activities.

Section 300y–27, act July 1, 1944, ch. 373, title XIX, § 1937, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3120; amended Aug. 16, 1989, Pub. L. 101–93, § 5(f)(1)(B), 103 Stat. 612, provided for termination of this part effective Jan. 1, 1991.

EFFECTIVE DATE

Section effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SUBCHAPTER XVIII—ADOLESCENT FAMILY LIFE DEMONSTRATION PROJECTS

§ 300z. Findings and purposes

(a) The Congress finds that—

(1) in 1978, an estimated one million one hundred thousand teenagers became pregnant, more than five hundred thousand teenagers carried their babies to term, and over one-half of the babies born to such teenagers were born out of wedlock;

(2) adolescents aged seventeen and younger accounted for more than one-half of the out of wedlock births to teenagers;

(3) in a high proportion of cases, the pregnant adolescent is herself the product of an unmarried parenthood during adolescence and is continuing the pattern in her own lifestyle;

(4) it is estimated that approximately 80 per centum of unmarried teenagers who carry their pregnancies to term live with their families before and during their pregnancy and remain with their families after the birth of the child;

(5) pregnancy and childbirth among unmarried adolescents, particularly young adolescents, often results in severe adverse health, social, and economic consequences including: a higher percentage of pregnancy and childbirth complications; a higher incidence of low birth weight babies; a higher infant mortality and morbidity; a greater likelihood that an adolescent marriage will end in divorce; a decreased likelihood of completing schooling; and higher risks of unemployment and welfare dependency; and therefore, education, training, and job research services are important for adolescent parents;

(6)(A) adoption is a positive option for unmarried pregnant adolescents who are unwilling or unable to care for their children since adoption is a means of providing permanent families for such children from available approved couples who are unable or have difficulty in conceiving or carrying children of their own to term; and

(B) at present, only 4 per centum of unmarried pregnant adolescents who carry their babies to term enter into an adoption plan or arrange for their babies to be cared for by relatives or friends;

(7) an unmarried adolescent who becomes pregnant once is likely to experience recurrent pregnancies and childbearing, with increased risks;

(8)(A) the problems of adolescent premarital sexual relations, pregnancy, and parenthood are multiple and complex and are frequently associated with or are a cause of other troublesome situations in the family; and

(B) such problems are best approached through a variety of integrated and essential services provided to adolescents and their families by other family members, religious and charitable organizations, voluntary associations, and other groups in the private sector as well as services provided by publicly sponsored initiatives;

(9) a wide array of educational, health, and supportive services are not available to adolescents with such problems or to their families, or when available frequently are fragmented and thus are of limited effectiveness in discouraging adolescent premarital sexual relations and the consequences of such relations;

(10)(A) prevention of adolescent sexual activity and adolescent pregnancy depends primarily upon developing strong family values and close family ties, and since the family is the basic social unit in which the values and attitudes of adolescents concerning sexuality and pregnancy are formed, programs designed to deal with issues of sexuality and pregnancy will be successful to the extent that such programs encourage and sustain the role of the family in dealing with adolescent sexual activity and adolescent pregnancy;

(B) Federal policy therefore should encourage the development of appropriate health, educational, and social services where such services are now lacking or inadequate, and the better coordination of existing services where they are available; and

(C) services encouraged by the Federal Government should promote the involvement of parents with their adolescent children, and should emphasize the provision of support by other family members, religious and charitable organizations, voluntary associations, and other groups in the private sector in order to help adolescents and their families deal with complex issues of adolescent premarital sexual relations and the consequences of such relations; and

(11)(A) there has been limited research concerning the societal causes and consequences of adolescent pregnancy;

(B) there is limited knowledge concerning which means of intervention are effective in mediating or eliminating adolescent premarital sexual relations and adolescent pregnancy; and

(C) it is necessary to expand and strengthen such knowledge in order to develop an array of approaches to solving the problems of adolescent premarital sexual relations and adolescent pregnancy in both urban and rural settings.

(b) Therefore, the purposes of this subchapter are—

(1) to find effective means, within the context of the family, of reaching adolescents before they become sexually active in order to maximize the guidance and support available to adolescents from parents and other family members, and to promote self discipline and other prudent approaches to the problem of adolescent premarital sexual relations, including adolescent pregnancy;

(2) to promote adoption as an alternative for adolescent parents;

(3) to establish innovative, comprehensive, and integrated approaches to the delivery of care services both for pregnant adolescents, with primary emphasis on unmarried adolescents who are seventeen years of age or under, and for adolescent parents, which shall be based upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration, and linkages among such existing programs in order to—

(A) enable pregnant adolescents to obtain proper care and assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life; and

(B) assist families of adolescents to understand and resolve the societal causes which are associated with adolescent pregnancy;

(4) to encourage and support research projects and demonstration projects concerning the societal causes and consequences of adolescent premarital sexual relations, contraceptive use, pregnancy, and child rearing;

(5) to support evaluative research to identify effective services which alleviate, eliminate, or resolve any negative consequences of adolescent premarital sexual relations and adoles-

cent childbearing for the parents, the child, and their families; and

(6) to encourage and provide for the dissemination of results, findings, and information from programs and research projects relating to adolescent premarital sexual relations, pregnancy, and parenthood.

(July 1, 1944, ch. 373, title XX, § 2001, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 578; amended Pub. L. 98–512, § 2(b), (c), Oct. 19, 1984, 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (a)(5). Pub. L. 98–512, § 2(b), struck out reference relating to developmental disabilities and inserted provision relating to importance of education, training, and job research services for adolescent parents.

Subsec. (b)(3). Pub. L. 98–512, § 2(c), inserted ''both'' before ''for pregnant adolescents''.

§ 300z–1. Definitions; regulations applicable

(a) For the purposes of this subchapter, the term—

(1) ''Secretary'' means the Secretary of Health and Human Services;

(2) ''eligible person'' means—

(A) with regard to the provision of care services, a pregnant adolescent, an adolescent parent, or the family of a pregnant adolescent or an adolescent parent; or

(B) with regard to the provision of prevention services and referral to such other services which may be appropriate, a nonpregnant adolescent;

(3) ''eligible grant recipient'' means a public or nonprofit private organization or agency which demonstrates, to the satisfaction of the Secretary—

(A) in the case of an organization which will provide care services, the capability of providing all core services in a single setting or the capability of creating a network through which all core services would be provided; or

(B) in the case of an organization which will provide prevention services, the capability of providing such services;

(4) ''necessary services'' means services which may be provided by grantees which are—

(A) pregnancy testing and maternity counseling;

(B) adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(C) primary and preventive health services including prenatal and postnatal care;

(D) nutrition information and counseling;

(E) referral for screening and treatment of venereal disease;

(F) referral to appropriate pediatric care;

(G) educational services relating to family life and problems associated with adolescent premarital sexual relations, including—

(i) information about adoption;

(ii) education on the responsibilities of sexuality and parenting;

(iii) the development of material to support the role of parents as the provider of sex education; and

(iv) assistance to parents, schools, youth agencies, and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(H) appropriate educational and vocational services;

(I) referral to licensed residential care or maternity home services; and

(J) mental health services and referral to mental health services and to other appropriate physical health services;

(K) child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(L) consumer education and homemaking;

(M) counseling for the immediate and extended family members of the eligible person;

(N) transportation;

(O) outreach services to families of adolescents to discourage sexual relations among unemancipated minors;

(P) family planning services; and

(Q) such other services consistent with the purposes of this subchapter as the Secretary may approve in accordance with regulations promulgated by the Secretary;

(5) ''core services'' means those services which shall be provided by a grantee, as determined by the Secretary by regulation;

(6) ''supplemental services'' means those services which may be provided by a grantee, as determined by the Secretary by regulation;

(7) ''care services'' means necessary services for the provision of care to pregnant adolescents and adolescent parents and includes all core services with respect to the provision of such care prescribed by the Secretary by regulation;

(8) ''prevention services'' means necessary services to prevent adolescent sexual relations, including the services described in subparagraphs (A), (D), (E), (G), (H), (M), (N), (O), and (Q) of paragraph (4);

(9) ''adolescent'' means an individual under the age of nineteen; and

(10) ''unemancipated minor'' means a minor who is subject to the control, authority, and supervision of his or her parents or guardians, as determined under State law.

(b) Until such time as the Secretary promulgates regulations pursuant to the second sentence of this subsection, the Secretary shall use the regulations promulgated under title VI of the Health Services and Centers Amendments of 1978 [42 U.S.C. 300a–21 et seq.] which were in effect on August 13, 1981, to determine which necessary services are core services for purposes of this subchapter. The Secretary may promulgate regulations to determine which necessary services are core services for purposes of this subchapter based upon an evaluation of and information concerning which necessary services are essential to carry out the purposes of this subchapter and taking into account (1) factors such as whether services are to be provided in urban

or rural areas, the ethnic groups to be served, and the nature of the populations to be served, and (2) the results of the evaluations required under section 300z–5(b) of this title. The Secretary may from time to time revise such regulations.

(July 1, 1944, ch. 373, title XX, § 2002, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 580; amended Pub. L. 98–512, § 2(d), Oct. 19, 1984, 98 Stat. 2409.)

REFERENCES IN TEXT

The Health Services and Centers Amendments of 1978, referred to in subsec. (b), is Pub. L. 95–626, Nov. 10, 1978, 92 Stat. 3551, as amended. Title VI of the Health Services and Centers Amendments of 1978 was classified generally to part A (§ 300a–21 et seq.) of subchapter VIII–A of this chapter prior to its repeal by Pub. L. 97–35, title IX, § 955(b), title XXI, § 2193(f), Aug. 13, 1981, 95 Stat. 592, 828. For complete classification of this Act to the Code, see Short Title of 1978 Amendments note set out under section 201 of this title and Tables.

AMENDMENTS

1984—Subsec. (a)(4)(H). Pub. L. 98–512 struck out ''and referral to such services'' after ''vocational services''.

§ 300z–2. Demonstration projects; grant authorization, etc.

(a) The Secretary may make grants to further the purposes of this subchapter to eligible grant recipients which have submitted an application which the Secretary finds meets the requirements of section 300z–5 of this title for demonstration projects which the Secretary determines will help communities provide appropriate care and prevention services in easily accessible locations. Demonstration projects shall, as appropriate, provide, supplement, or improve the quality of such services. Demonstration projects shall use such methods as will strengthen the capacity of families to deal with the sexual behavior, pregnancy, or parenthood of adolescents and to make use of support systems such as other family members, friends, religious and charitable organizations, and voluntary associations.

(b) Grants under this subchapter for demonstration projects may be for the provision of—

(1) care services;

(2) prevention services; or

(3) a combination of care services and prevention services.

(July 1, 1944, ch. 373, title XX, § 2003, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 582.)

§ 300z–3. Uses of grants for demonstration projects for services

(a) Covered projects

Except as provided in subsection (b) of this section, funds provided for demonstration projects for services under this subchapter may be used by grantees only to—

(1) provide to eligible persons—

(A) care services;

(B) prevention services; or

(C) care and prevention services (in the case of a grantee who is providing a combination of care and prevention services);

(2) coordinate, integrate, and provide linkages among providers of care, prevention, and other services for eligible persons in furtherance of the purposes of this subchapter;

(3) provide supplemental services where such services are not adequate or not available to eligible persons in the community and which are essential to the care of pregnant adolescents and to the prevention of adolescent premarital sexual relations and adolescent pregnancy;

(4) plan for the administration and coordination of pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents which will further the objectives of this subchapter; and

(5) fulfill assurances required for grant approval by section 300z–5 of this title.

(b) Family planning services; availability in community

(1) No funds provided for a demonstration project for services under this subchapter may be used for the provision of family planning services (other than counseling and referral services) to adolescents unless appropriate family planning services are not otherwise available in the community.

(2) Any grantee who receives funds for a demonstration project for services under this subchapter and who, after determining under paragraph (1) that appropriate family planning services are not otherwise available in the community, provides family planning services (other than counseling and referral services) to adolescents may only use funds provided under this subchapter for such family planning services if all funds received by such grantee from all other sources to support such family planning services are insufficient to support such family planning services.

(c) Fees for services: criteria

Grantees who receive funds for a demonstration project for services under this subchapter shall charge fees for services pursuant to a fee schedule approved by the Secretary as a part of the application described in section 300z–5 of this title which bases fees charged by the grantee on the income of the eligible person or the parents or legal guardians of the eligible person and takes into account the difficulty adolescents face in obtaining resources to pay for services. A grantee who receives funds for a demonstration project for services under this subchapter may not, in any case, discriminate with regard to the provision of services to any individual because of that individual's inability to provide payment for such services, except that in determining the ability of an unemancipated minor to provide payment for services, the income of the family of an unemancipated minor shall be considered in determining the ability of such minor to make such payments unless the parents or guardians of the unemancipated minor refuse to make such payments.

(July 1, 1944, ch. 373, title XX, § 2004, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 583.)

§ 300z–4. Grants for demonstration projects for services

(a) Priorities

In approving applications for grants for demonstration projects for services under this subchapter, the Secretary shall give priority to applicants who—

(1) serve an area where there is a high incidence of adolescent pregnancy;

(2) serve an area with a high proportion of low-income families and where the availability of programs of care for pregnant adolescents and adolescent parents is low;

(3) show evidence—

(A) in the case of an applicant who will provide care services, of having the ability to bring together a wide range of needed core services and, as appropriate, supplemental services in comprehensive single-site projects, or to establish a well-integrated network of such services (appropriate for the target population and geographic area to be served including the special needs of rural areas) for pregnant adolescents or adolescent parents; or

(B) in the case of an applicant who will provide prevention services, of having the ability to provide prevention services for adolescents and their families which are appropriate for the target population and the geographic area to be served, including the special needs of rural areas;

(4) will utilize to the maximum extent feasible existing available programs and facilities such as neighborhood and primary health care centers, maternity homes which provide or can be equipped to provide services to pregnant adolescents, agencies serving families, youth, and children with established programs of service to pregnant adolescents and vulnerable families, licensed adoption agencies, children and youth centers, maternal and infant health centers, regional rural health facilities, school and other educational programs, mental health programs, nutrition programs, recreation programs, and other ongoing pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents;

(5) make use, to the maximum extent feasible, of other Federal, State, and local funds, programs, contributions, and other third-party reimbursements;

(6) can demonstrate a community commitment to the program by making available to the demonstration project non-Federal funds, personnel, and facilities;

(7) have involved the community to be served, including public and private agencies, adolescents, and families, in the planning and implementation of the demonstration project; and

(8) will demonstrate innovative and effective approaches in addressing the problems of adolescent premarital sexual relations, pregnancy, or parenthood, including approaches to provide pregnant adolescents with adequate information about adoption.

(b) Factors to be considered in making grants; special needs of rural areas

(1) The amount of a grant for a demonstration project for services under this subchapter shall be determined by the Secretary, based on factors such as the incidence of adolescent pregnancy in the geographic area to be served, and the adequacy of pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents in such area.

(2) In making grants for demonstration projects for services under this subchapter, the Secretary shall consider the special needs of rural areas and, to the maximum extent practicable, shall distribute funds taking into consideration the relative number of adolescents in such areas in need of such services.

(c) Duration; Federal share

(1) A grantee may not receive funds for a demonstration project for services under this subchapter for a period in excess of 5 years.

(2)(A) Subject to paragraph (3), a grant for a demonstration project for services under this subchapter may not exceed—

(i) 70 per centum of the costs of the project for the first and second years of the project;

(ii) 60 per centum of such costs for the third year of the project;

(iii) 50 per centum of such costs for the fourth year of the project; and

(iv) 40 per centum of such costs for the fifth year of the project.

(B) Non-Federal contributions required by subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(3) The Secretary may waive the limitation specified in paragraph (2)(A) for any year in accordance with criteria established by regulation.

(July 1, 1944, ch. 373, title XX, § 2005, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 584.)

§ 300z–5. Requirements for applications

(a) Form, content, and assurances

An application for a grant for a demonstration project for services under this subchapter shall be in such form and contain such information as the Secretary may require, and shall include—

(1) an identification of the incidence of adolescent pregnancy and related problems;

(2) a description of the economic conditions and income levels in the geographic area to be served;

(3) a description of existing pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents (including adoption services), and including where, how, by whom, and to which population groups such services are provided, and the extent to which they are coordinated in the geographic area to be served;

(4) a description of the major unmet needs for services for adolescents at risk of initial or recurrent pregnancies and an estimate of the number of adolescents not being served in the area;

(5)(A) in the case of an applicant who will provide care services, a description of how all

core services will be provided in the demonstration project using funds under this subchapter or will otherwise be provided by the grantee in the area to be served, the population to which such services will be provided, how such services will be coordinated, integrated, and linked with other related programs and services and the source or sources of funding of such core services in the public and private sectors; or

(B) in the case of an applicant who will provide prevention services, a description of the necessary services to be provided and how the applicant will provide such services;

(6) a description of the manner in which adolescents needing services other than the services provided directly by the applicant will be identified and how access and appropriate referral to such other services (such as medicaid; licensed adoption agencies; maternity home services; public assistance; employment services; child care services for adolescent parents; and other city, county, and State programs related to adolescent pregnancy) will be provided, including a description of a plan to coordinate such other services with the services supported under this subchapter;

(7) a description of the applicant's capacity to continue services as Federal funds decrease and in the absence of Federal assistance;

(8) a description of the results expected from the provision of services, and the procedures to be used for evaluating those results;

(9) a summary of the views of public agencies, providers of services, and the general public in the geographic area to be served, concerning the proposed use of funds provided for a demonstration project for services under this subchapter and a description of procedures used to obtain those views, and, in the case of applicants who propose to coordinate services administered by a State, the written comments of the appropriate State officials responsible for such services;

(10) assurances that the applicant will have an ongoing quality assurance program;

(11) assurances that, where appropriate, the applicant shall have a system for maintaining the confidentiality of patient records in accordance with regulations promulgated by the Secretary;

(12) assurances that the applicant will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(13) assurances that the applicant (A) has or will have a contractual or other arrangement with the agency of the State (in which the applicant provides services) that administers or supervises the administration of a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the payment of all or a part of the applicant's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (B) has made or will make every reasonable effort to enter into such an arrangement;

(14) assurances that the applicant has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to benefits under title V of the Social Security Act [42 U.S.C. 701 et seq.], to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.], or to assistance for medical expenses under any other public assistance program or private health insurance program;

(15) assurances that the applicant has or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing services to persons entitled to services under parts B and E of title IV [42 U.S.C. 620 et seq., 670 et seq.] and title XX of the Social Security Act [42 U.S.C. 1397 et seq.];

(16)(A) a description of—

(i) the schedule of fees to be used in the provision of services, which shall comply with section 300z–3(c) of this title and which shall be designed to cover all reasonable direct and indirect costs incurred by the applicant in providing services; and

(ii) a corresponding schedule of discounts to be applied to the payment of such fees, which shall comply with section 300z–3(c) of this title and which shall be adjusted on the basis of the ability of the eligible person to pay;

(B) assurances that the applicant has made and will continue to make every reasonable effort—

(i) to secure from eligible persons payment for services in accordance with such schedules;

(ii) to collect reimbursement for health or other services provided to persons who are entitled to have payment made on their behalf for such services under any Federal or other government program or private insurance program; and

(iii) to seek such reimbursement on the basis of the full amount of fees for services without application of any discount; and

(C) assurances that the applicant has submitted or will submit to the Secretary such reports as the Secretary may require to determine compliance with this paragraph;

(17) assurances that the applicant will make maximum use of funds available under subchapter VIII of this chapter;

(18) assurances that the acceptance by any individual of family planning services or family planning information (including educational materials) provided through financial assistance under this subchapter shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other service furnished by the applicant;

(19) assurances that fees collected by the applicant for services rendered in accordance with this subchapter shall be used by the applicant to further the purposes of this subchapter;

(20) assurances that the applicant, if providing both prevention and care services will not exclude or discriminate against any adolescent who receives prevention services and sub-

sequently requires care services as a pregnant adolescent;

(21) a description of how the applicant will, as appropriate in the provision of services—

(A) involve families of adolescents in a manner which will maximize the role of the family in the solution of problems relating to the parenthood or pregnancy of the adolescent;

(B) involve religious and charitable organizations, voluntary associations, and other groups in the private sector as well as services provided by publicly sponsored initiatives;

(22)(A) assurances that—

(i) except as provided in subparagraph (B) and subject to clause (ii), the applicant will notify the parents or guardians of any unemancipated minor requesting services from the applicant and, except as provided in subparagraph (C), will obtain the permission of such parents or guardians with respect to the provision of such services; and

(ii) in the case of a pregnant unemancipated minor requesting services from the applicant, the applicant will notify the parents or guardians of such minor under clause (i) within a reasonable period of time;

(B) assurances that the applicant will not notify or request the permission of the parents or guardian of any unemancipated minor without the consent of the minor—

(i) who solely is requesting from the applicant pregnancy testing or testing or treatment for venereal disease;

(ii) who is the victim of incest involving a parent; or

(iii) if an adult sibling of the minor or an adult aunt, uncle, or grandparent who is related to the minor by blood certifies to the grantee that notification of the parents or guardians of such minor would result in physical injury to such minor; and

(C) assurances that the applicant will not require, with respect to the provision of services, the permission of the parents or guardians of any pregnant unemancipated minor if such parents or guardians are attempting to compel such minor to have an abortion;

(23) assurances that primary emphasis for services supported under this subchapter shall be given to adolescents seventeen and under who are not able to obtain needed assistance through other means;

(24) assurances that funds received under this subchapter shall supplement and not supplant funds received from any other Federal, State, or local program or any private sources of funds; and

(25) a plan for the conduct of, and assurances that the applicant will conduct, evaluations of the effectiveness of the services supported under this subchapter in accordance with subsection (b) of this section.

(b) Evaluations: amount, conduct, and technical assistance

(1) Each grantee which receives funds for a demonstration project for services under this subchapter shall expend at least 1 per centum but not in excess of 5 per centum of the amounts received under this subchapter for the conduct of evaluations of the services supported under this subchapter. The Secretary may, for a particular grantee upon good cause shown, waive the provisions of the preceding sentence with respect to the amounts to be expended on evaluations, but may not waive the requirement that such evaluations be conducted.

(2) Evaluations required by paragraph (1) shall be conducted by an organization or entity which is independent of the grantee providing services supported under this subchapter. To assist in conducting the evaluations required by paragraph (1), each grantee shall develop a working relationship with a college or university located in the grantee's State which will provide or assist in providing monitoring and evaluation of services supported under this subchapter unless no college or university in the grantee's State is willing or has the capacity to provide or assist in providing such monitoring and assistance.

(3) The Secretary may provide technical assistance with respect to the conduct of evaluations required under this subsection to any grantee which is unable to develop a working relationship with a college or university in the applicant's State for the reasons described in paragraph (2).

(c) Reports

Each grantee which receives funds for a demonstration project for services under this subchapter shall make such reports concerning its use of Federal funds as the Secretary may require. Reports shall include, at such times as are considered appropriate by the Secretary, the results of the evaluations of the services supported under this subchapter.

(d) Notification of parents; "adult" defined

(1) A grantee shall periodically notify the Secretary of the exact number of instances in which a grantee does not notify the parents or guardians of a pregnant unemancipated minor under subsection (a)(22)(B)(iii) of this section.

(2) For purposes of subsection (a)(22)(B)(iii) of this section, the term ''adult'' means an adult as defined by State law.

(e) Submission of applications to Governor; comments by Governor

Each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to the Secretary for a grant for a demonstration project for services under this subchapter. The Governor shall submit to the applicant comments on any such application within the period of sixty days beginning on the day when the Governor receives such copy. The applicant shall include the comments of the Governor with such application.

(f) Availability of core services

No application submitted for a grant for a demonstration project for care services under this subchapter may be approved unless the Secretary is satisfied that core services shall be available through the applicant within a reasonable time after such grant is received.

(July 1, 1944, ch. 373, title XX, § 2006, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 585.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(13) to (15), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts B and E of title IV of the Social Security Act are classified generally to part B (§ 620 et seq.) and part E (§ 670 et seq.) of subchapter IV of chapter 7 of this title. Titles V, XIX, and XX of the Social Security Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 300z–6. Coordination of programs

(a) The Secretary shall coordinate Federal policies and programs providing services relating to the prevention of adolescent sexual relations and initial and recurrent adolescent pregnancies and providing care services for pregnant adolescents. In achieving such coordination, the Secretary shall—

(1) require grantees who receive funds for demonstration projects for services under this subchapter to report periodically to the Secretary concerning Federal, State, and local policies and programs that interfere with the delivery of and coordination of pregnancy prevention services and other programs of care for pregnant adolescents and adolescent parents;

(2) provide technical assistance to facilitate coordination by State and local recipients of Federal assistance;

(3) review all programs administered by the Department of Health and Human Services which provide prevention services or care services to determine if the policies of such programs are consistent with the policies of this subchapter, consult with other departments and agencies of the Federal Government who administer programs that provide such services, and encourage such other departments and agencies to make recommendations, as appropriate, for legislation to modify such programs in order to facilitate the use of all Government programs which provide such services as a basis for delivery of more comprehensive prevention services and more comprehensive programs of care for pregnant adolescents and adolescent parents;

(4) give priority in the provision of funds, where appropriate, to applicants using single or coordinated grant applications for multiple programs; and

(5) give priority, where appropriate, to the provision of funds under Federal programs administered by the Secretary (other than the program established by this subchapter) to projects providing comprehensive prevention services and comprehensive programs of care for pregnant adolescents and adolescent parents.

(b) Any recipient of a grant for a demonstration project for services under this subchapter shall coordinate its activities with any other recipient of such a grant which is located in the same locality.

(July 1, 1944, ch. 373, title XX, § 2007, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 589.)

§ 300z–7. Research

(a) Grants and contracts; duration; renewal; amount

(1) The Secretary may make grants and enter into contracts with public agencies or private organizations or institutions of higher education to support the research and dissemination activities described in paragraphs (4), (5), and (6) of section 300z(b) of this title.

(2) The Secretary may make grants or enter into contracts under this section for a period of one year. A grant or contract under this section for a project may be renewed for four additional one-year periods, which need not be consecutive.

(3) A grant or contract for any one-year period under this section may not exceed $100,000 for the direct costs of conducting research or disemination[1] activities under this section and may include such additional amounts for the indirect costs of conducting such activities as the Secretary determines appropriate. The Secretary may waive the preceding sentence with respect to a specific project if he determines that—

(A) exceptional circumstances warrant such waiver and that the project will have national impact; or

(B) additional amounts are necessary for the direct costs of conducting limited demonstration projects for the provision of necessary services in order to provide data for research carried out under this subchapter.

(4) The amount of any grant or contract made under this section may remain available for obligation or expenditure after the close of the one-year period for which such grant or contract is made in order to assist the recipient in preparing the report required by subsection (f)(1) of this section.

(b) Scope of permissible activities

(1) Funds provided for research under this section may be used for descriptive or explanatory surveys, longitudinal studies, or limited demonstration projects for services that are for the purpose of increasing knowledge and understanding of the matters described in paragraphs (4) and (5) of section 300z(b) of this title.

(2) Funds provided under this section may not be used for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

(c) Applications

The Secretary may not make any grant or enter into any contract to support research or dissemination activities under this section unless—

(1) the Secretary has received an application for such grant or contract which is in such form and which contains such information as the Secretary may by regulation require;

(2) the applicant has demonstrated that the applicant is capable of conducting one or more of the types of research or dissemination activities described in paragraph (4), (5), or (6) of section 300z(b) of this title; and

[1] So in original. Probably should be ''dissemination''.

(3) in the case of an application for a research project, the panel established by subsection (e)(2) of this section has determined that the project is of scientific merit.

(d) Coordination with National Institutes of Health

The Secretary shall, where appropriate, coordinate research and dissemination activities carried out under this section with research and dissemination activities carried out by the National Institutes of Health.

(e) Review of applications for grants and contracts; establishment of review panel

(1) The Secretary shall establish a system for the review of applications for grants and contracts under this section. Such system shall be substantially similar to the system for scientific peer review of the National Institutes of Health and shall meet the requirements of paragraphs (2) and (3).

(2) In establishing the system required by paragraph (1), the Secretary shall establish a panel to review applications under this section. Not more than 25 per centum of the members of the panel shall be physicians. The panel shall meet as often as may be necessary to facilitate the expeditious review of applications under this section, but not less than once each year. The panel shall review each project for which an application is made under this section, evaluate the scientific merit of the project, determine whether the project is of scientific merit, and make recommendations to the Secretary concerning whether the application for the project should be approved.

(3) The Secretary shall make grants under this section from among the projects which the panel established by paragraph (2) has determined to be of scientific merit and may only approve an application for a project if the panel has made such determination with respect to such a project. The Secretary shall make a determination with respect to an application within one month after receiving the determinations and recommendations of such panel with respect to the application.

(f) Reports

(1)(A) The recipient of a grant or contract for a research project under this section shall prepare and transmit to the Secretary a report describing the results and conclusions of such research. Except as provided in subparagraph (B), such report shall be transmitted to the Secretary not later than eighteen months after the end of the year for which funds are provided under this section. The recipient may utilize reprints of articles published or accepted for publication in professional journals to supplement or replace such report if the research contained in such articles was supported under this section during the year for which the report is required.

(B) In the case of any research project for which assistance is provided under this section for two or more consecutive one-year periods, the recipient of such assistance shall prepare and transmit the report required by subparagraph (A) to the Secretary not later than twelve months after the end of each one-year period for which such funding is provided.

(2) Recipients of grants and contracts for dissemination under this section shall submit to the Secretary such reports as the Secretary determines appropriate.

(July 1, 1944, ch. 373, title XX, § 2008, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 589; amended Pub. L. 98–512, § 2(e), Oct. 19, 1984, 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98–512 struck out subsec. (g) which provided for collection of survey data used primarily for generation of national population estimates.

§ 300z–8. Evaluation and administration

(a) Of the funds appropriated under this subchapter, the Secretary shall reserve not less than 1 per centum and not more than 3 per centum for the evaluation of activities carried out under this subchapter. The Secretary shall submit to the appropriate committees of the Congress a summary of each evaluation conducted under this section.

(b) The officer or employee of the Department of Health and Human Services designated by the Secretary to carry out the provisions of this subchapter shall report directly to the Assistant Secretary for Health with respect to the activities of such officer or employee in carrying out such provisions.

(July 1, 1944, ch. 373, title XX, § 2009, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 591.)

§ 300z–9. Authorization of appropriations

(a) For the purpose of carrying out this subchapter, there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1982, $30,000,000 for the fiscal year ending September 30, 1983, $30,000,000 for the fiscal year ending September 30, 1984, and $30,000,000 for the fiscal year ending September 30, 1985.

(b) At least two-thirds of the amounts appropriated to carry out this subchapter shall be used to make grants for demonstration projects for services.

(c) Not more than one-third of the amounts specified under subsection (b) of this section for use for grants for demonstration projects for services shall be used for grants for demonstration projects for prevention services.

(July 1, 1944, ch. 373, title XX, § 2010, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 591; amended Pub. L. 98–512, § 2(a), Oct. 19, 1984, 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–509 inserted provisions authorizing appropriations for fiscal year ending Sept. 30, 1985.

§ 300z–10. Restrictions

(a) Grants or payments may be made only to programs or projects which do not provide abortions or abortion counseling or referral, or which do not subcontract with or make any payment to any person who provides abortions or abortion counseling or referral, except that any such program or project may provide referral for

abortion counseling to a pregnant adolescent if such adolescent and the parents or guardians of such adolescent request such referral; and grants may be made only to projects or programs which do not advocate, promote, or encourage abortion.

(b) The Secretary shall ascertain whether programs or projects comply with subsection (a) of this section and take appropriate action if programs or projects do not comply with such subsection, including withholding of funds.

(July 1, 1944, ch. 373, title XX, § 2011, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 592.)

SUBCHAPTER XIX—VACCINES

PRIOR PROVISIONS

A prior subchapter XIX (§ 300aa et seq.), comprised of title XXI of the Public Health Service Act, act July 1, 1944, ch. 373, §§ 2101 to 2116, was renumbered title XXIII, §§ 2301 to 2316, of the Public Health Service Act, and transferred to subchapter XXI (§ 300cc et seq.) of this chapter, renumbered title XXV, §§ 2501 to 2514, of the Public Health Service Act, and transferred to subchapter XXV (§ 300aaa et seq.) of this chapter, renumbered title XXVI, §§ 2601 to 2614, of the Public Health Service Act, renumbered title XXVII, §§ 2701 to 2714, of the Public Health Service Act, and renumbered title II, part B, §§ 231 to 244, of the Public Health Service Act, and transferred to part B (§ 238 et seq.) of subchapter I of this chapter.

PART 1—NATIONAL VACCINE PROGRAM

§ 300aa–1. Establishment

The Secretary shall establish in the Department of Health and Human Services a National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The Program shall be administered by a Director selected by the Secretary.

(July 1, 1944, ch. 373, title XXI, § 2101, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3756.)

PRIOR PROVISIONS

A prior section 300aa–1, act July 1, 1944, § 2102, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

A prior section 2101 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

EFFECTIVE DATE

Section 323 of title III of Pub. L. 99–660, as amended by Pub. L. 100–203, title IV, § 4302(a), Dec. 22, 1987, 101 Stat. 1330–221; Pub. L. 102–168, title II, § 201(a), Nov. 26, 1991, 105 Stat. 1102, provided that: ''Subtitle 1 of title XXI of the Public Health Service Act [part 1 of this subchapter (42 U.S.C. 300aa–1 to 300aa–6)] shall take effect on the date of the enactment of this Act [Nov. 14, 1986] and parts A and B of subtitle 2 of such title [subparts A and B of part 2 of this subchapter (42 U.S.C. 300aa–10 to 300aa–23)] shall take effect on October 1, 1988 and parts C and D of such title [subparts C and D of part 2 of this subchapter (42 U.S.C. 300aa–25 to 300aa–33)] and this title [probably means provisions of title III of Pub. L. 99–660 other than those that enacted this subchapter and redesignated former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title; these other provisions amended sections 218, 242c, 262, 286, and 289f of this title and enacted provisions set out as notes under sections 201, 300aa–1, and 300aa–4 of this title] shall take effect on the date of the enactment of the Vaccine Compensation Amendments of 1987 [Dec. 22, 1987].''

SEVERABILITY

Section 322 of title III of Pub. L. 99–660, as amended by Pub. L. 101–239, title VI, § 6602, Dec. 19, 1989, 103 Stat. 2293; Pub. L. 101–502, § 5(g)(1), Nov. 3, 1990, 104 Stat. 1288, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), if any provision [of] part A or B of subtitle 2 of title XXI of the Public Health Service Act [subparts A and B of part 2 of this subchapter], as added by section 311(a), or the application of such a provision to any person or circumstance is held invalid by reason of a violation of the Constitution, both such parts shall be considered invalid.

''(b) SPECIAL RULE.—If any amendment made by section 6601 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, amending sections 300aa–10 to 300aa–17, 300aa–21, 300aa–23, 300aa–26, and 300aa–27 of this title] to title XXI of the Public Health Service Act [this subchapter] or the application of such a provision to any person or circumstance is held invalid by reason of the Constitution, subsection (a) shall not apply and such title XXI of the Public Health Service Act without such amendment shall continue in effect.''

[Amendment by section 5(g)(1) of Pub. L. 101–502 to section 322(a) of Pub. L. 99–660, set out above, effective Nov. 14, 1986, see section 5(h) of Pub. L. 101–502, set out as an Effective Date of 1990 Amendment note under section 300aa–11 of this title.]

EVALUATION OF PROGRAM; STUDY AND REPORT TO CONGRESS

Pub. L. 101–239, title VI, § 6601(t), Dec. 19, 1989, 103 Stat. 2293, as amended by Pub. L. 102–168, title II, § 201(b), Nov. 26, 1991, 105 Stat. 1103, directed the Secretary of Health and Human Services to evaluate the National Vaccine Injury Compensation Program under this subchapter and report results of such study to Committee on Energy and Commerce of House of Representatives and Committee on Labor and Human Resources of Senate not later than Jan. 1, 1993.

RELATED STUDIES

Section 312 of title III of Pub. L. 99–660 directed Secretary of Health and Human Services, not later than 3 years after the effective date of this title (see Effective Date note above), to conduct, through studies by the Institute of Medicine of the National Academy of Sciences or other appropriate nonprofit private groups or associations, a review of pertussis vaccines and related illnesses and conditions and MMR vaccines, vaccines containing material intended to prevent or confer immunity against measles, mumps, and rubella disease, and related illnesses and conditions, make specific findings and report these findings in the Federal Register not later than 3 years after the effective date of this title, and at the same time these findings are published in the Federal Register, propose regulations as a result of such findings, and not later than 42 months after the effective date of this title, promulgate such proposed regulations with such modifications as may be necessary after opportunity for public hearing.

STUDY OF OTHER VACCINE RISKS

Section 313 of title III of Pub. L. 99–660 provided that: ''(a) STUDY.—

''(1) Not later than 3 years after the effective date of this title [see Effective Date note above], the Secretary shall, after consultation with the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act [section 300aa–19 of this title]—

''(A) arrange for a broad study of the risks (other than the risks considered under section 102 [21

U.S.C. 382]) to children associated with each vaccine set forth in the Vaccine Injury Table under section 2114 of such Act [section 300aa–14 of this title], and

''(B) establish guidelines, after notice and opportunity for public hearing and consideration of all relevant medical and scientific information, respecting the administration of such vaccines which shall include—

''(i) the circumstances under which any such vaccine should not be administered,

''(ii) the circumstances under which administration of any such vaccine should be delayed beyond its usual time of administration, and

''(iii) the groups, categories, or characteristics of potential recipients of such vaccine who may be at significantly higher risk of major adverse reactions to such vaccine than the general population of potential recipients.

''(2)(A) The Secretary shall request the Institute of Medicine of the National Academy of Sciences to conduct the study required by paragraph (1) under an arrangement by which the actual expenses incurred by such Academy in conducting such study will be paid by the Secretary.

''(B) If the Institute of Medicine is unwilling to conduct such study under such an arrangement, the Secretary shall enter into a similar arrangement with other appropriate nonprofit private groups or associations under which such groups or associations will conduct such study.

''(C) The Institute of Medicine or other group or association conducting the study required by paragraph (1) shall conduct such studies in consultation with the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act [section 300aa–19 of this title].

''(b) REVISION OF GUIDELINES.—The Secretary shall periodically, but at least every 3 years after establishing guidelines under subsection (a), review and revise such guidelines after notice and opportunity for public hearing and consideration of all relevant medical and scientific information, unless the Secretary finds that on the basis of all relevant information no revision of such guidelines is warranted and publishes such finding in the Federal Register.

''(c) FACTORS AFFECTING GUIDELINES.—Guidelines under subsection (a) shall take into account—

''(1) the risk to potential recipients of the vaccines with respect to which the guidelines are established,

''(2) the medical and other characteristics of such potential recipients, and

''(3) the risks to the public of not having such vaccines administered.

''(d) DISSEMINATION.—The Secretary shall widely disseminate the guidelines established under subsection (a) to—

''(1) physicians and other health care providers,

''(2) professional health associations,

''(3) State and local governments and agencies, and

''(4) other relevant entities.''

REVIEW OF WARNINGS, USE INSTRUCTIONS, AND PRECAUTIONARY INFORMATION

Section 314 of title III of Pub. L. 99–660 directed Secretary of Health and Human Services, not later than 1 year after the effective date of this title (see Effective Date note above) and after consultation with Advisory Commission on Childhood Vaccines and with other appropriate entities, to review the warnings, use instructions, and precautionary information presently issued by manufacturers of vaccines set forth in the Vaccine Injury Table set out in section 300aa–14 of this title and by rule determine whether such warnings, instructions, and information adequately warn health care providers of the nature and extent of dangers posed by such vaccines, and, if any such warning, instruction, or information is determined to be inadequate for such purpose in any respect, require at the same time that the manufacturers revise and reissue such warning, instruction, or information as expeditiously as practical, but not later than 18 months after the effective date of this title.

STUDY OF IMPACT ON SUPPLY OF VACCINES

Pub. L. 99–660, title III, § 316, Nov. 14, 1986, 100 Stat. 3786, provided that: ''On June 30, 1987, and on June 30 of each second year thereafter, the Secretary of Health and Human Services shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate—

''(1) an assessment of the impact of the amendments made by this title [enacting this subchapter, amending sections 218, 242c, 262, 286, and 289f of this title, redesignating former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title, and enacting provisions set out as notes under this section and sections 201 and 300aa–1 of this title] on the supply of vaccines listed in the Vaccine Injury Table under section 2114 of the Public Health Service Act [section 300aa–14 of this title], and

''(2) an assessment of the ability of the administrators of vaccines (including public clinics and private administrators) to provide such vaccines to children.''

WAIVER OF PAPERWORK REDUCTION

Section 321 of title III of Pub. L. 99–660 provided that: ''Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this title and implementing the amendments made by this title [enacting this subchapter, amending sections 218, 242c, 262, 286, and 289f of this title, redesignating former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title, and enacting provisions set out as notes under sections 201, 300aa–1, and 300aa–4 of this title].''

§ 300aa–2. Program responsibilities

(a) The Director of the Program shall have the following responsibilities:

(1) Vaccine research

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for research carried out in or through the National Institutes of Health, the Centers for Disease Control and Prevention, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development on means to induce human immunity against naturally occurring infectious diseases and to prevent adverse reactions to vaccines.

(2) Vaccine development

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for activities carried out in or through the National Institutes of Health, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development to develop the techniques needed to produce safe and effective vaccines.

(3) Safety and efficacy testing of vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for safety and efficacy testing of vaccines carried out in or through the National Institutes of

Health, the Centers for Disease Control and Prevention, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development.

(4) Licensing of vaccine manufacturers and vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for the allocation of resources in the implementation of the licensing program under section 263a of this title.

(5) Production and procurement of vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, ensure that the governmental and non-governmental production and procurement of safe and effective vaccines by the Public Health Service, the Department of Defense, and the Agency for International Development meet the needs of the United States population and fulfill commitments of the United States to prevent human infectious diseases in other countries.

(6) Distribution and use of vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction to the Centers for Disease Control and Prevention and assistance to States, localities, and health practitioners in the distribution and use of vaccines, including efforts to encourage public acceptance of immunizations and to make health practitioners and the public aware of potential adverse reactions and contraindications to vaccines.

(7) Evaluating the need for and the effectiveness and adverse effects of vaccines and immunization activities

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction to the National Institutes of Health, the Centers for Disease Control and Prevention, the Office of Biologics Research and Review of the Food and Drug Administration, the National Center for Health Statistics, the National Center for Health Services Research and Health Care Technology Assessment, and the Centers for Medicare & Medicaid Services in monitoring the need for and the effectiveness and adverse effects of vaccines and immunization activities.

(8) Coordinating governmental and non-governmental activities

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, provide for the exchange of information between Federal agencies involved in the implementation of the Program and non-governmental entities engaged in the development and production of vaccines and in vaccine research and encourage the investment of non-governmental resources complementary to the governmental activities under the Program.

(9) Funding of Federal agencies

The Director of the Program shall make available to Federal agencies involved in the implementation of the plan issued under section 300aa–3 of this title funds appropriated under section 300aa–6 of this title to supplement the funds otherwise available to such agencies for activities under the plan.

(b) In carrying out subsection (a) of this section and in preparing the plan under section 300aa–3 of this title, the Director shall consult with all Federal agencies involved in research on and development, testing, licensing, production, procurement, distribution, and use of vaccines.

(July 1, 1944, ch. 373, title XXI, § 2102, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3756; amended Pub. L. 102–531, title III, § 312(d)(13), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 108–173, title IX, § 900(e)(2)(F), Dec. 8, 2003, 117 Stat. 2372.)

PRIOR PROVISIONS

A prior section 300aa–2, act July 1, 1944, § 2103, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

A prior section 2102 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

AMENDMENTS

2003—Subsec. (a)(7). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

1992—Subsec. (a)(1), (3), (6), (7). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

GRANTS FOR RESEARCH ON VACCINE AGAINST VALLEY FEVER

Pub. L. 109–432, div. B, title IV, § 402, Dec. 20, 2006, 120 Stat. 2994, provided that:

''(a) IN GENERAL.—In supporting research on the development of vaccines against human diseases, the Secretary of Health and Human Services shall make grants for the purpose of conducting research toward the development of a vaccine against coccidioidomycosis (commonly known as Valley Fever).

''(b) SUNSET.—No grant may be made under subsection (a) on or after October 1, 2012. The preceding sentence does not have any legal effect on payments under grants for which amounts appropriated under subsection (c) were obligated prior to such date.

''(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants under subsection (a), there are authorized to be appropriated $40,000,000 for the period of fiscal years 2007 through 2012.''

DEMONSTRATION PROJECTS FOR OUTREACH PROGRAMS

Pub. L. 101–502, § 2(b), Nov. 3, 1990, 104 Stat. 1285, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, may make grants to public and nonprofit private entities for the purpose of carrying out demonstration projects—

''(A) to provide, without charge, immunizations against vaccine-preventable diseases to children not more than 2 years of age who reside in communities whose population includes a significant number of low-income individuals; and

''(B) to provide outreach services to identify such children and to inform the parents (or other guardians) of the children of the availability from the entities of the immunizations specified in subparagraph (A).

''(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1993.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.]

SUPPLY OF VACCINES

Pub. L. 101–502, § 3, Nov. 3, 1990, 104 Stat. 1285, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall acquire and maintain a supply of vaccines sufficient to provide vaccinations throughout a 6-month period. Any proceeds received by the Secretary from the sale of vaccines from such supply shall be available to the Secretary for the purpose of purchasing vaccines for the supply. Such proceeds shall remain available for such purpose until expended.

''(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out subsection (a), there are authorized to be appropriated $5,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.]

Pub. L. 100–177, title I, § 110(b), Dec. 1, 1987, 101 Stat. 991, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall acquire and maintain a supply of vaccines sufficient to provide vaccinations throughout a 6-month period.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out paragraph (1) $5,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.]

§ 300aa–3. Plan

The Director of the Program shall prepare and issue a plan for the implementation of the responsibilities of the Director under section 300aa–2 of this title. The plan shall establish priorities in research and the development, testing, licensing, production, procurement, distribution, and effective use of vaccines, describe an optimal use of resources to carry out such priorities, and describe how each of the various departments and agencies will carry out their vaccine functions in consultation and coordination with the Program and in conformity with such priorities. The first plan under this section shall be prepared not later than January 1, 1987, and shall be revised not later than January 1 of each succeeding year.

(July 1, 1944, ch. 373, title XXI, § 2103, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3757.)

PRIOR PROVISIONS

A prior section 300aa–3, act July 1, 1944, § 2104, which was renumbered section 2304 by Pub. L. 99–660, was transferred to section 300cc–3 of this title, prior to repeal by Pub. L. 98–621, § 10(s), Nov. 8, 1984, 98 Stat. 3381.

A prior section 2103 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

§ 300aa–4. Repealed. Pub. L. 105–362, title VI, § 601(a)(1)(H), Nov. 10, 1998, 112 Stat. 3285

Section, act July 1, 1944, ch. 373, title XXI, § 2104, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3757, related to national vaccine program report.

A prior section 300aa–4, act July 1, 1944, § 2105, was repealed by Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495. See section 300cc–4 of this title.

A prior section 2104 of act July 1, 1944, was renumbered section 2304 by Pub. L. 99–660 and classified to section 300cc–3 of this title, and was repealed by Pub. L. 98–621, § 10(s), Nov. 8, 1984, 98 Stat. 3381.

§ 300aa–5. National Vaccine Advisory Committee

(a) There is established the National Vaccine Advisory Committee. The members of the Committee shall be appointed by the Director of the Program, in consultation with the National Academy of Sciences, from among individuals who are engaged in vaccine research or the manufacture of vaccines or who are physicians, members of parent organizations concerned with immunizations, or representatives of State or local health agencies or public health organizations.

(b) The Committee shall—

(1) study and recommend ways to encourage the availability of an adequate supply of safe and effective vaccination products in the States,

(2) recommend research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines,

(3) advise the Director of the Program in the implementation of sections 300aa–2, 300aa–3, and 300aa–4[1] of this title, and

(4) identify annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing sections 300aa–2, 300aa–3, and 300aa–4[1] of this title.

(July 1, 1944, ch. 373, title XXI, § 2105, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3758.)

REFERENCES IN TEXT

Section 300aa–4 of this title, referred to in subsec. (b)(3), (4), was repealed by Pub. L. 105–362, title VI, § 601(a)(1)(H), Nov. 10, 1998, 112 Stat. 3285.

PRIOR PROVISIONS

A prior section 300aa–5, act July 1, 1944, § 2106, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

A prior section 2105 of act July 1, 1944, was repealed by Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495. See section 300cc–4 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 300aa–6. Authorization of appropriations

(a) To carry out this part other than section 300aa–2(9) of this title there are authorized to be

[1] See References in Text note below.

appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.

(b) To carry out section 300aa–2(9) of this title there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.

(July 1, 1944, ch. 373, title XXI, § 2106, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3758; amended Pub. L. 101–502, § 4, Nov. 3, 1990, 104 Stat. 1286; Pub. L. 108–276, § 2(c), July 21, 2004, 118 Stat. 842.)

PRIOR PROVISIONS

A prior section 300aa–6, act July 1, 1944, § 2107, was successively renumbered by subsequent acts and transferred, see section 238d of this title.

A prior section 2106 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

Prior sections 300aa–7 to 300aa–9, act July 1, 1944, §§ 2108–2110, respectively, were successively renumbered by subsequent acts and transferred, see sections 238e to 238g, respectively, of this title.

AMENDMENTS

2004—Pub. L. 108–276 substituted provisions authorizing appropriations for fiscal years 2004 and 2005 for provisions authorizing appropriations for fiscal years 1991 through 1995 in subsecs. (a) and (b).

1990—Pub. L. 101–502 substituted provisions authorizing appropriations for fiscal years 1991 through 1995 for provisions authorizing appropriations for fiscal years 1987 through 1991 in subsecs. (a) and (b).

PART 2—NATIONAL VACCINE INJURY COMPENSATION PROGRAM

SUBPART A—PROGRAM REQUIREMENTS

§ 300aa–10. Establishment of program

(a) Program established

There is established the National Vaccine Injury Compensation Program to be administered by the Secretary under which compensation may be paid for a vaccine-related injury or death.

(b) Attorney's obligation

It shall be the ethical obligation of any attorney who is consulted by an individual with respect to a vaccine-related injury or death to advise such individual that compensation may be available under the program[1] for such injury or death.

(c) Publicity

The Secretary shall undertake reasonable efforts to inform the public of the availability of the Program.

(July 1, 1944, ch. 373, title XXI, § 2110, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3758; amended Pub. L. 101–239, title VI, § 6601(b), Dec. 19, 1989, 103 Stat. 2285.)

PRIOR PROVISIONS

A prior section 300aa–10, act July 1, 1944, § 2111, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

A prior section 2110 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238g of this title.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–239 added subsec. (c).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6601(s) of Pub. L. 101–239, as amended by Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 300aa–11 to 300aa–17, 300aa–21, 300aa–23, 300aa–26, and 300aa–27 of this title] shall apply as follows:

"(A) Petitions filed after the date of enactment of this section [Dec. 19, 1989] shall proceed under the National Vaccine Injury Compensation Program under title XXI of the Public Health Service Act [this subchapter] as amended by this section.

"(B) Petitions currently pending in which the evidentiary record is closed shall continue to proceed under the Program in accordance with the law in effect before the date of the enactment of this section, except that if the United States Court of Federal Claims is to review the findings of fact and conclusions of law of a special master on such a petition, the court may receive further evidence in conducting such review.

"(C) Petitions currently pending in which the evidentiary record is not closed shall proceed under the Program in accordance with the law as amended by this section.

All pending cases which will proceed under the Program as amended by this section shall be immediately suspended for 30 days to enable the special masters and parties to prepare for proceeding under the Program as amended by this section. In determining the 240-day period prescribed by section 2112(d) of the Public Health Service Act [42 U.S.C. 300aa–12(d)], as amended by this section, or the 420-day period prescribed by section 2121(b) of such Act [42 U.S.C. 300aa–21(b)], as so amended, any period of suspension under the preceding sentence shall be excluded.

"(2) The amendments to section 2115 of the Public Health Service Act [42 U.S.C. 300aa–15] shall apply to all pending and subsequently filed petitions."

EFFECTIVE DATE

Subpart effective Oct. 1, 1988, see section 323 of Pub. L. 99–660, as amended, set out as a note under section 300aa–1 of this title.

§ 300aa–11. Petitions for compensation

(a) General rule

(1) A proceeding for compensation under the Program for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition containing the matter prescribed by subsection (c) of this section with the United States Court of Federal Claims. The clerk of the United States Court of Federal Claims shall immediately forward the filed petition to the chief special master for assignment to a special master under section 300aa–12(d)(1) of this title.

(2)(A) No person may bring a civil action for damages in an amount greater than $1,000 or in an unspecified amount against a vaccine administrator or manufacturer in a State or Federal court for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, and no such court may award damages in an amount greater than $1,000 in a civil action for damages for such a vaccine-related injury or death, unless a petition has been filed, in accordance with section 300aa–16 of this title, for compensation

[1] So in original. Probably should be capitalized.

under the Program for such injury or death and—

(i)(I) the United States Court of Federal Claims has issued a judgment under section 300aa–12 of this title on such petition, and

(II) such person elects under section 300aa–21(a) of this title to file such an action, or

(ii) such person elects to withdraw such petition under section 300aa–21(b) of this title or such petition is considered withdrawn under such section.

(B) If a civil action which is barred under subparagraph (A) is filed in a State or Federal court, the court shall dismiss the action. If a petition is filed under this section with respect to the injury or death for which such civil action was brought, the date such dismissed action was filed shall, for purposes of the limitations of actions prescribed by section 300aa–16 of this title, be considered the date the petition was filed if the petition was filed within one year of the date of the dismissal of the civil action.

(3) No vaccine administrator or manufacturer may be made a party to a civil action (other than a civil action which may be brought under paragraph (2)) for damages for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988.

(4) If in a civil action brought against a vaccine administrator or manufacturer before October 1, 1988, damages were denied for a vaccine-related injury or death or if such civil action was dismissed with prejudice, the person who brought such action may file a petition under subsection (b) of this section for such injury or death.

(5)(A) A plaintiff who on October 1, 1988, has pending a civil action for damages for a vaccine-related injury or death may, at any time within 2 years after October 1, 1988, or before judgment, whichever occurs first, petition to have such action dismissed without prejudice or costs and file a petition under subsection (b) of this section for such injury or death.

(B) If a plaintiff has pending a civil action for damages for a vaccine-related injury or death, such person may not file a petition under subsection (b) of this section for such injury or death.

(6) If a person brings a civil action after November 15, 1988[1] for damages for a vaccine-related injury or death associated with the administration of a vaccine before November 15, 1988, such person may not file a petition under subsection (b) of this section for such injury or death.

(7) If in a civil action brought against a vaccine administrator or manufacturer for a vaccine-related injury or death damages are awarded under a judgment of a court or a settlement of such action, the person who brought such action may not file a petition under subsection (b) of this section for such injury or death.

(8) If on October 1, 1988, there was pending an appeal or rehearing with respect to a civil action brought against a vaccine administrator or manufacturer and if the outcome of the last appellate review of such action or the last rehearing of such action is the denial of damages for a vaccine-related injury or death, the person who brought such action may file a petition under subsection (b) of this section for such injury or death.

(9) This subsection applies only to a person who has sustained a vaccine-related injury or death and who is qualified to file a petition for compensation under the Program.

(10) The Clerk of the United States Claims Court[2] is authorized to continue to receive, and forward, petitions for compensation for a vaccine-related injury or death associated with the administration of a vaccine on or after October 1, 1992.

(b) Petitioners

(1)(A) Except as provided in subparagraph (B), any person who has sustained a vaccine-related injury, the legal representative of such person if such person is a minor or is disabled, or the legal representative of any person who died as the result of the administration of a vaccine set forth in the Vaccine Injury Table may, if the person meets the requirements of subsection (c)(1) of this section, file a petition for compensation under the Program.

(B) No person may file a petition for a vaccine-related injury or death associated with a vaccine administered before October 1, 1988, if compensation has been paid under this part for 3500 petitions for such injuries or deaths.

(2) Only one petition may be filed with respect to each administration of a vaccine.

(c) Petition content

A petition for compensation under the Program for a vaccine-related injury or death shall contain—

(1) except as provided in paragraph (3), an affidavit, and supporting documentation, demonstrating that the person who suffered such injury or who died—

(A) received a vaccine set forth in the Vaccine Injury Table or, if such person did not receive such a vaccine, contracted polio, directly or indirectly, from another person who received an oral polio vaccine,

(B)(i) if such person received a vaccine set forth in the Vaccine Injury Table—

(I) received the vaccine in the United States or in its trust territories,

(II) received the vaccine outside the United States or a trust territory and at the time of the vaccination such person was a citizen of the United States serving abroad as a member of the Armed Forces or otherwise as an employee of the United States or a dependent of such a citizen, or

(III) received the vaccine outside the United States or a trust territory and the vaccine was manufactured by a vaccine manufacturer located in the United States and such person returned to the United States not later than 6 months after the date of the vaccination,

(ii) if such person did not receive such a vaccine but contracted polio from another

[1] So in original. Probably should be followed by a comma.

[2] See Change of Name note below.

person who received an oral polio vaccine, was a citizen of the United States or a dependent of such a citizen,

(C)(i) sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table in association with the vaccine referred to in subparagraph (A) or died from the administration of such vaccine, and the first symptom or manifestation of the onset or of the significant aggravation of any such illness, disability, injury, or condition or the death occurred within the time period after vaccine administration set forth in the Vaccine Injury Table, or

(ii)(I) sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by a vaccine referred to in subparagraph (A), or

(II) sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine referred to in subparagraph (A),

(D)(i) suffered the residual effects or complications of such illness, disability, injury, or condition for more than 6 months after the administration of the vaccine, or (ii) died from the administration of the vaccine, or (iii) suffered such illness, disability, injury, or condition from the vaccine which resulted in inpatient hospitalization and surgical intervention, and

(E) has not previously collected an award or settlement of a civil action for damages for such vaccine-related injury or death,

(2) except as provided in paragraph (3), maternal prenatal and delivery records, newborn hospital records (including all physicians' and nurses' notes and test results), vaccination records associated with the vaccine allegedly causing the injury, pre- and post-injury physician or clinic records (including all relevant growth charts and test results), all post-injury inpatient and outpatient records (including all provider notes, test results, and medication records), if applicable, a death certificate, and if applicable, autopsy results, and

(3) an identification of any records of the type described in paragraph (1) or (2) which are unavailable to the petitioner and the reasons for their unavailability.

(d) Additional information

A petition may also include other available relevant medical records relating to the person who suffered such injury or who died from the administration of the vaccine.

(e) Schedule

The petitioner shall submit in accordance with a schedule set by the special master assigned to the petition assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the person who suffered such injury or who died from the administration of the vaccine.

(July 1, 1944, ch. 373, title XXI, § 2111, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3758; amended Pub. L. 100–203, title IV, §§ 4302(b), 4304(a), (b), 4306, 4307(1), (2), Dec. 22, 1987, 101 Stat. 1330–221, 1330–223, 1330–224; Pub. L. 101–239, title VI, § 6601(c)(1)–(7), Dec. 19, 1989, 103 Stat. 2285, 2286; Pub. L. 101–502, § 5(a), Nov. 3, 1990, 104 Stat. 1286; Pub. L. 102–168, title II, § 201(h)(1), Nov. 26, 1991, 105 Stat. 1104; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–43, title XX, § 2012, June 10, 1993, 107 Stat. 214; Pub. L. 105–277, div. C, title XV, § 1502, Oct. 21, 1998, 112 Stat. 2681–741; Pub. L. 106–310, div. A, title XVII, § 1701(a), Oct. 17, 2000, 114 Stat. 1151.)

CODIFICATION

In subsecs. (a)(2)(A), (3), (4), (5)(A), (8), and (b)(1)(B), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

PRIOR PROVISIONS

A prior section 300aa–11, act July 1, 1944, § 2112, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

A prior section 2111 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

AMENDMENTS

2000—Subsec. (c)(1)(D)(iii). Pub. L. 106–310 added cl. (iii).

1998—Subsec. (c)(1)(D)(i). Pub. L. 105–277 struck out ''and incurred unreimbursable expenses due in whole or in part to such illness, disability, injury, or condition in an amount greater than $1,000'' before '', or (ii) died''.

1993—Subsec. (a)(10). Pub. L. 103–43 added par. (10).

1992—Subsec. (a)(1), (2)(A)(i)(I). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' wherever appearing.

1991—Subsec. (a)(2)(A)(i), (ii). Pub. L. 102–168 realigned margins of cls. (i) and (ii).

1990—Subsec. (a)(2)(A). Pub. L. 101–502, § 5(a)(1), substituted ''unless a petition has been filed, in accordance with section 300aa–16 of this title, for compensation under the Program for such injury or death and—'' and cls. (i) and (ii) for ''unless—

''(i) a petition has been filed, in accordance with section 300aa–16 of this title, for compensation under the Program for such injury or death,

''(ii) the United States Claims Court has issued a judgment under section 300aa–12 of this title on such petition, and

''(iii) such person elects under section 300aa–21(a) of this title to file such an action.''

Subsec. (a)(5)(A). Pub. L. 101–502, § 5(a)(2), struck out ''without prejudice'' after ''without prejudice or costs''.

Subsec. (a)(5)(B). Pub. L. 101–502, § 5(a)(3), substituted ''plaintiff'' for ''plaintiff who''.

Subsec. (d). Pub. L. 101–502, § 5(a)(4), struck out ''(d) except as provided in paragraph (3),'' before ''(d) Additional information''.

Subsec. (e). Pub. L. 101–502, § 5(a)(5), substituted ''(e) Schedule'' for ''(e)(e) Schedule''.

1989—Subsec. (a)(1). Pub. L. 101–239, § 6601(c)(1), substituted ''filing of a petition containing the matter prescribed in subsection (c) of this section'' for ''filing of a petition'' and inserted at end ''The clerk of the United States Claims Court shall immediately forward the filed petition to the chief special master for assignment to a special master under section 300aa–12(d)(1) of this title.''

Subsec. (a)(2)(A)(i). Pub. L. 101–239, §6601(c)(2), struck out ''under subsection (b) of this section'' after ''section 300aa–16 of this title,''.

Subsec. (a)(5)(A). Pub. L. 101–239, §6601(c)(3)(A), substituted ''petition to have such action dismissed without prejudice or costs'' for ''elect to withdraw such action''.

Subsec. (a)(5)(B). Pub. L. 101–239, §6601(c)(3)(B), substituted ''has pending'' for ''on October 1, 1988, had pending'' and struck out ''does not withdraw the action under subparagraph (A)'' after ''vaccine-related injury or death''.

Subsec. (a)(6). Pub. L. 101–239, §6601(c)(4), substituted ''November 15, 1988'' for ''the effective date of this subpart'' in two places.

Subsec. (a)(8). Pub. L. 101–239, §6601(c)(5), added par. (8). Former par. (8) redesignated (9).

Subsec. (a)(9). Pub. L. 101–239, §6601(c)(5), (7), redesignated par. (8) as (9) and realigned margin.

Subsec. (c)(1). Pub. L. 101–239, §6601(c)(6)(A), inserted ''except as provided in paragraph (3),'' after ''(1)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 101–239, §6601(c)(6)(B), (C), added par. (2) and redesignated former par. (2) as subsec. (d).

Pub. L. 101–239, §6601(c)(6)(A), inserted ''except as provided in paragraph (3),'' after ''(2)''.

Subsec. (c)(3). Pub. L. 101–239, §6601(c)(6)(C), (D), added par. (3). Former par. (3) redesignated subsec. (e).

Subsec. (d). Pub. L. 101–239, §6601(c)(6)(B), redesignated former subsec. (c)(2) as subsec. (d), expanded margin to full measure, inserted subsec. designation and heading, substituted ''A petition may also include other available'' for ''all available'', struck out ''(including autopsy reports, if any)'' after ''relevant medical records'', and substituted ''administration of the vaccine.'' for ''administration of the vaccine and an identification of any unavailable records known to the petitioner and the reasons for their unavailability, and''.

Subsec. (e). Pub. L. 101–239, §6601(c)(6)(D), redesignated former subsec. (c)(3) as subsec. (e), expanded margin to full measure, inserted subsec. designation and heading, and substituted ''The petitioner shall submit in accordance with a schedule set by the special master assigned to the petition'' for ''appropriate''.

1987—Subsec. (a)(1). Pub. L. 100–203, §4307(1), which directed that par. (1) be amended by substituting ''with the United States Claims Court'' for ''with the United States district court for the district in which the petitioner resides or the injury or death occurred'', was executed making the substitution for ''with the United States district court for the district in which the petitioner resides or in which the injury or death occurred'', as the probable intent of Congress.

Subsec. (a)(2)(A). Pub. L. 100–203, §4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(2)(A)(ii). Pub. L. 100–203, §4307(2), substituted ''the United States Claims Court'' for ''a district court of the United States''.

Subsec. (a)(3). Pub. L. 100–203, §4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(4). Pub. L. 100–203, §4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(5)(A). Pub. L. 100–203, §4302(b)(2), substituted ''after the effective date of this subpart'' for ''after the effective date of this subchapter''.

Pub. L. 100–203, §4302(b)(1), substituted ''who on the effective date of this subpart'' for ''who on the effective date of this part''.

Subsec. (a)(5)(B). Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(6). Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part'' in two places.

Subsec. (a)(7). Pub. L. 100–203, §4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Subsec. (a)(8). Pub. L. 100–203, §4304(a), added par. (8).

Subsec. (b)(1)(A). Pub. L. 100–203, §4304(b)(1), substituted ''may, if the person meets the requirements of subsection (c)(1) of this section, file'' for ''may file''.

Subsec. (b)(1)(B). Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (c)(1)(D). Pub. L. 100–203, §4304(b)(2), substituted ''for more than 6 months'' for ''for more than 1 year'', ''and incurred'' for '', (ii) incurred'', and ''(ii)'' for ''(iii)''.

CHANGE OF NAME

References to United States Claims Court deemed to refer to United States Court of Federal Claims, see section 902(b) of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–310, div. A, title XVII, §1701(b), Oct. 17, 2000, 114 Stat. 1151, provided that: ''The amendment made by subsection (a) [amending this section] takes effect upon the date of the enactment of this Act [Oct. 17, 2000], including with respect to petitions under section 2111 of the Public Health Service Act [this section] that are pending on such date.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 201(i) of Pub. L. 102–168 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 300aa–12, 300aa–15, 300aa–16, 300aa–19, and 300aa–21 of this title and provisions set out as a note under section 300aa–1 of this title] shall take effect on the date of the enactment of this Act [Nov. 26, 1991].

''(2) The amendments made by subsections (d) and (f) [amending sections 300aa–12, 300aa–15, 300aa–16, and 300aa–21 of this title] shall take effect as if the amendments had been in effect on and after October 1, 1988.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5(h) of Pub. L. 101–502 provided that: ''The amendments made by subsections (f)(1) and (g) [amending section 300aa–21 of this title and provisions set out as a note under section 300aa–1 of this title and enacting provisions set out as a note under section 300aa–12 of this title] shall take effect as of November 14, 1986, and the amendments made by subsections (a) through (e) and subsection (f)(2) [amending this section and sections 300aa–12, 300aa–13, 300aa–15, 300aa–16, and 300aa–21 of this title] shall take effect as of September 30, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§300aa–12. Court jurisdiction

(a) General rule

The United States Court of Federal Claims and the United States Court of Federal Claims

special masters shall, in accordance with this section, have jurisdiction over proceedings to determine if a petitioner under section 300aa–11 of this title is entitled to compensation under the Program and the amount of such compensation. The United States Court of Federal Claims may issue and enforce such orders as the court deems necessary to assure the prompt payment of any compensation awarded.

(b) Parties

(1) In all proceedings brought by the filing of a petition under section 300aa–11(b) of this title, the Secretary shall be named as the respondent, shall participate, and shall be represented in accordance with section 518(a) of title 28.

(2) Within 30 days after the Secretary receives service of any petition filed under section 300aa–11 of this title the Secretary shall publish notice of such petition in the Federal Register. The special master designated with respect to such petition under subsection (c) of this section shall afford all interested persons an opportunity to submit relevant, written information—

(A) relating to the existence of the evidence described in section 300aa–13(a)(1)(B) of this title, or

(B) relating to any allegation in a petition with respect to the matters described in section 300aa–11(c)(1)(C)(ii) of this title.

(c) United States Court of Federal Claims special masters

(1) There is established within the United States Court of Federal Claims an office of special masters which shall consist of not more than 8 special masters. The judges of the United States Court of Federal Claims shall appoint the special masters, 1 of whom, by designation of the judges of the United States Court of Federal Claims, shall serve as chief special master. The appointment and reappointment of the special masters shall be by the concurrence of a majority of the judges of the court.

(2) The chief special master and other special masters shall be subject to removal by the judges of the United States Court of Federal Claims for incompetency, misconduct, or neglect of duty or for physical or mental disability or for other good cause shown.

(3) A special master's office shall be terminated if the judges of the United States Court of Federal Claims determine, upon advice of the chief special master, that the services performed by that office are no longer needed.

(4) The appointment of any individual as a special master shall be for a term of 4 years, subject to termination under paragraphs (2) and (3). Individuals serving as special masters on December 19, 1989, shall serve for 4 years from the date of their original appointment, subject to termination under paragraphs (2) and (3). The chief special master in office on December 19, 1989, shall continue to serve as chief special master for the balance of the master's term, subject to termination under paragraphs (2) and (3).

(5) The compensation of the special masters shall be determined by the judges of the United States Court of Federal Claims, upon advice of the chief special master. The salary of the chief special master shall be the annual rate of basic pay for level IV of the Executive Schedule, as prescribed by section 5315, title 5. The salaries of the other special masters shall not exceed the annual rate of basic pay of level V of the Executive Schedule, as prescribed by section 5316, title 5.

(6) The chief special master shall be responsible for the following:

(A) Administering the office of special masters and their staff, providing for the efficient, expeditious, and effective handling of petitions, and performing such other duties related to the Program as may be assigned to the chief special master by a concurrence of a majority of the United States Claims Courts[1] judges.

(B) Appointing and fixing the salary and duties of such administrative staff as are necessary. Such staff shall be subject to removal for good cause by the chief special master.

(C) Managing and executing all aspects of budgetary and administrative affairs affecting the special masters and their staff, subject to the rules and regulations of the Judicial Conference of the United States. The Conference rules and regulations pertaining to United States magistrate judges shall be applied to the special masters.

(D) Coordinating with the United States Court of Federal Claims the use of services, equipment, personnel, information, and facilities of the United States Court of Federal Claims without reimbursement.

(E) Reporting annually to the Congress and the judges of the United States Court of Federal Claims on the number of petitions filed under section 300aa–11 of this title and their disposition, the dates on which the vaccine-related injuries and deaths for which the petitions were filed occurred, the types and amounts of awards, the length of time for the disposition of petitions, the cost of administering the Program, and recommendations for changes in the Program.

(d) Special masters

(1) Following the receipt and filing of a petition under section 300aa–11 of this title, the clerk of the United States Court of Federal Claims shall forward the petition to the chief special master who shall designate a special master to carry out the functions authorized by paragraph (3).

(2) The special masters shall recommend rules to the Court of Federal Claims and, taking into account such recommended rules, the Court of Federal Claims shall promulgate rules pursuant to section 2071 of title 28. Such rules shall—

(A) provide for a less-adversarial, expeditious, and informal proceeding for the resolution of petitions,

(B) include flexible and informal standards of admissibility of evidence,

(C) include the opportunity for summary judgment,

(D) include the opportunity for parties to submit arguments and evidence on the record

[1] So in original. Probably should be a reference to the United States Court of Federal Claims.

without requiring routine use of oral presentations, cross examinations, or hearings, and

(E) provide for limitations on discovery and allow the special masters to replace the usual rules of discovery in civil actions in the United States Court of Federal Claims.

(3)(A) A special master to whom a petition has been assigned shall issue a decision on such petition with respect to whether compensation is to be provided under the Program and the amount of such compensation. The decision of the special master shall—

(i) include findings of fact and conclusions of law, and

(ii) be issued as expeditiously as practicable but not later than 240 days, exclusive of suspended time under subparagraph (C), after the date the petition was filed.

The decision of the special master may be reviewed by the United States Court of Federal Claims in accordance with subsection (e) of this section.

(B) In conducting a proceeding on a petition a special master—

(i) may require such evidence as may be reasonable and necessary,

(ii) may require the submission of such information as may be reasonable and necessary,

(iii) may require the testimony of any person and the production of any documents as may be reasonable and necessary,

(iv) shall afford all interested persons an opportunity to submit relevant written information—

(I) relating to the existence of the evidence described in section 300aa–13(a)(1)(B) of this title, or

(II) relating to any allegation in a petition with respect to the matters described in section 300aa–11(c)(1)(C)(ii) of this title, and

(v) may conduct such hearings as may be reasonable and necessary.

There may be no discovery in a proceeding on a petition other than the discovery required by the special master.

(C) In conducting a proceeding on a petition a special master shall suspend the proceedings one time for 30 days on the motion of either party. After a motion for suspension is granted, further motions for suspension by either party may be granted by the special master, if the special master determines the suspension is reasonable and necessary, for an aggregate period not to exceed 150 days.

(D) If, in reviewing proceedings on petitions for vaccine-related injuries or deaths associated with the administration of vaccines before October 1, 1988, the chief special master determines that the number of filings and resultant workload place an undue burden on the parties or the special master involved in such proceedings, the chief special master may, in the interest of justice, suspend proceedings on any petition for up to 30 months (but for not more than 6 months at a time) in addition to the suspension time under subparagraph (C).

(4)(A) Except as provided in subparagraph (B), information submitted to a special master or the court in a proceeding on a petition may not be disclosed to a person who is not a party to the proceeding without the express written consent of the person who submitted the information.

(B) A decision of a special master or the court in a proceeding shall be disclosed, except that if the decision is to include information—

(i) which is trade secret or commercial or financial information which is privileged and confidential, or

(ii) which are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy,

and if the person who submitted such information objects to the inclusion of such information in the decision, the decision shall be disclosed without such information.

(e) Action by United States Court of Federal Claims

(1) Upon issuance of the special master's decision, the parties shall have 30 days to file with the clerk of the United States Court of Federal Claims a motion to have the court review the decision. If such a motion is filed, the other party shall file a response with the clerk of the United States Court of Federal Claims no later than 30 days after the filing of such motion.

(2) Upon the filing of a motion under paragraph (1) with respect to a petition, the United States Court of Federal Claims shall have jurisdiction to undertake a review of the record of the proceedings and may thereafter—

(A) uphold the findings of fact and conclusions of law of the special master and sustain the special master's decision,

(B) set aside any findings of fact or conclusion of law of the special master found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and issue its own findings of fact and conclusions of law, or

(C) remand the petition to the special master for further action in accordance with the court's direction.

The court shall complete its action on a petition within 120 days of the filing of a response under paragraph (1) excluding any days the petition is before a special master as a result of a remand under subparagraph (C). The court may allow not more than 90 days for remands under subparagraph (C).

(3) In the absence of a motion under paragraph (1) respecting the special master's decision or if the United States Court of Federal Claims takes the action described in paragraph (2)(A) with respect to the special master's decision, the clerk of the United States Court of Federal Claims shall immediately enter judgment in accordance with the special master's decision.

(f) Appeals

The findings of fact and conclusions of law of the United States Court of Federal Claims on a petition shall be final determinations of the matters involved, except that the Secretary or any petitioner aggrieved by the findings or conclusions of the court may obtain review of the judgment of the court in the United States court of appeals for the Federal Circuit upon petition

filed within 60 days of the date of the judgment with such court of appeals within 60 days of the date of entry of the United States Claims Court's[2] judgment with such court of appeals.

(g) Notice

If—

(1) a special master fails to make a decision on a petition within the 240 days prescribed by subsection (d)(3)(A)(ii) of this section (excluding (A) any period of suspension under subsection (d)(3)(C) or (d)(3)(D) of this section, and (B) any days the petition is before a special master as a result of a remand under subsection (e)(2)(C) of this section), or

(2) the United States Court of Federal Claims fails to enter a judgment under this section on a petition within 420 days (excluding (A) any period of suspension under subsection (d)(3)(C) or (d)(3)(D) of this section, and (B) any days the petition is before a special master as a result of a remand under subsection (e)(2)(C) of this section) after the date on which the petition was filed,

the special master or court shall notify the petitioner under such petition that the petitioner may withdraw the petition under section 300aa–21(b) of this title or the petitioner may choose under section 300aa–21(b) of this title to have the petition remain before the special master or court, as the case may be.

(July 1, 1944, ch. 373, title XXI, § 2112, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3761; amended Pub. L. 100–203, title IV, §§ 4303(d)(2)(A), 4307(3), 4308(a), (b), Dec. 22, 1987, 101 Stat. 1330–222, 1330–224; Pub. L. 100–360, title IV, § 411(*o*)(2), (3)(A), July 1, 1988, 102 Stat. 808; Pub. L. 101–239, title VI, § 6601(d)–(i), Dec. 19, 1989, 103 Stat. 2286–2290; Pub. L. 101–502, § 5(b), Nov. 3, 1990, 104 Stat. 1286; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–168, title II, § 201(c), (d)(1), (h)(2), (3), Nov. 26, 1991, 105 Stat. 1103, 1104; Pub. L. 102–572, title IX, § 902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–66, title XIII, § 13632(c), Aug. 10, 1993, 107 Stat. 646.)

CODIFICATION

In subsec. (c)(4), ''on December 19, 1989,'' substituted for ''upon the date of the enactment of this subsection'' and ''on the date of the enactment of this subsection''.

In subsec. (d)(3)(D), ''October 1, 1988,'' substituted for ''the effective date of this part''.

PRIOR PROVISIONS

A prior section 300aa–12, act July 1, 1944, § 2113, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

A prior section 2112 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

AMENDMENTS

1993—Subsec. (d)(3)(D). Pub. L. 103–66 substituted ''30 months (but for not more than 6 months at a time)'' for ''540 days''.

1992—Subsecs. (a), (c) to (g). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' and ''Court of Federal Claims'' for ''Claims Court'', wherever appearing.

1991—Subsec. (d)(3)(D). Pub. L. 102–168, § 201(c), (h)(2), realigned margin and substituted ''540 days'' for ''180 days''.

Subsec. (g). Pub. L. 102–168, § 201(h)(3), made technical amendment to underlying provisions of original Act.

Pub. L. 102–168, § 201(d)(1), substituted ''or the petitioner may choose under section 300aa–21(b) of this title to have the petition remain before the special master or court, as the case may be'' for ''and the petition will be considered withdrawn under such section if the petitioner, the special master, or the court do not take certain actions'' before period at end.

1990—Subsec. (d)(3)(D). Pub. L. 101–502, § 5(b)(1), added subpar. (D).

Subsec. (g). Pub. L. 101–502, § 5(b)(2), added subsec. (g).

1989—Subsec. (a). Pub. L. 101–239, § 6601(d), substituted ''and the United States Claims Court special masters shall, in accordance with this section, have jurisdiction'' for ''shall have jurisdiction (1)'', ''. The United States Claims Court may issue'' for '', and (2) to issue'', and ''deems'' for ''deem''.

Subsec. (b)(1). Pub. L. 101–239, § 6601(f), substituted ''In all proceedings brought by the filing of a petition under section 300aa–11(b) of this title, the Secretary shall be named as the respondent, shall participate, and shall be represented in accordance with section 518(a) of title 28.'' for ''The Secretary shall be named as the respondent in all proceedings brought by the filing of a petition under section 300aa–11(b) of this title. Except as provided in paragraph (2), no other person may intervene in any such proceeding.''

Subsec. (c). Pub. L. 101–239, § 6601(e)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 101–239, § 6601(e)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 101–239, § 6601(g)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Following receipt of a petition under subsection (a) of this section, the United States Claims Court shall designate a special master to carry out the functions authorized by paragraph (2).''

Subsec. (d)(2) to (4). Pub. L. 101–239, § 6601(g)(2), added pars. (2) to (4) and struck out former par. (2) which prescribed functions of special masters.

Subsec. (e). Pub. L. 101–239, § 6601(h), substituted ''Action by United States Claims Court'' for ''Action by court'' as heading and amended text generally. Prior to amendment, text read as follows:

''(1) Upon objection by the petitioner or respondent to the proposed findings of fact or conclusions of law prepared by the special master or upon the court's own motion, the court shall undertake a review of the record of the proceedings and may thereafter make a de novo determination of any matter and issue its judgment accordingly, including findings of fact and conclusions of law, or remand for further proceedings.

''(2) If no objection is filed under paragraph (1) or if the court does not choose to review the proceeding, the court shall adopt the proposed findings of fact and conclusions of law of the special master as its own and render judgment thereon.

''(3) The court shall render its judgment on any petition filed under the Program as expeditiously as practicable but not later than 365 days after the date on which the petition was filed.''

Pub. L. 101–239, § 6601(e)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101–239, § 6601(i), inserted ''within 60 days of the date of entry of the United States Claims Court's judgment with such court of appeals'' after ''with such court of appeals''.

Pub. L. 101–239, § 6601(e)(1), redesignated subsec. (e) as (f).

1988—Subsec. (c)(2). Pub. L. 100–360, § 411(*o*)(3)(A), added Pub. L. 100–203, § 4308(a), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100–360, § 411(*o*)(2), made technical amendment to directory language of Pub. L. 100–203, § 4307(3)(C), see 1987 Amendment note below.

Pub. L. 100–360, § 411(*o*)(3)(A), added Pub. L. 100–203, § 4308(b), see 1987 Amendment note below.

[2] So in original. Probably should be a reference to the United States Court of Federal Claims.

1987—Subsec. (a). Pub. L. 100–203, § 4307(3)(A), substituted ''United States Claims Court'' for ''district courts of the United States'' and ''the court'' for ''the courts''.

Subsec. (c)(1). Pub. L. 100–203, § 4307(3)(B), substituted ''the United States Claims Court'' for ''the district court of the United States in which the petition is filed''.

Subsec. (c)(2). Pub. L. 100–203, § 4308(a), as added by Pub. L. 100–360, § 411(*o*)(3)(A), inserted '', shall prepare and submit to the court proposed findings of fact and conclusions of law,'' in introductory provisions and struck out subpar. (E) which read as follows: ''prepare and submit to the court proposed findings of fact and conclusions of law.''

Subsec. (e). Pub. L. 100–203, § 4308(b), as added by Pub. L. 100–360, § 411(*o*)(3)(A), inserted ''within 60 days of the date of the judgment'' after ''petition filed''.

Pub. L. 100–203, § 4307(3)(C), as amended by Pub. L. 100–360, § 411(*o*)(2), substituted ''the United States Claims Court'' for ''a district court of the United States'' and ''for the Federal Circuit'' for ''for the circuit in which the court is located''.

Pub. L. 100–203, § 4303(d)(2)(A), redesignated subsec. (g) as (e) and struck out former subsec. (e) relating to administration of an award.

Subsec. (f). Pub. L. 100–203, § 4303(d)(2)(A), struck out subsec. (f) which related to revision of an award.

Subsec. (g). Pub. L. 100–203, § 4303(d)(2)(A), redesignated subsec. (g) as (e).

CHANGE OF NAME

''United States magistrate judges'' substituted for ''United States magistrates'' in subsec. (c)(6)(C) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 201(d)(1) of Pub. L. 102–168 effective as if in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, except that such suspension be excluded in determining the 240-day period prescribed in subsec. (d) of this section, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(6)(E) of this section relating to reporting annually to the Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 13 of House Document No. 103–7.

REVIEW BY 3-JUDGE PANEL

Section 322(c) of Pub. L. 99–660, as added by Pub. L. 101–502, § 5(g)(2), Nov. 3, 1990, 104 Stat. 1288, and amended by Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, provided that: ''If the review authorized by section 2112(f) [subsec. (f) of this section] is held invalid because the judgment of the United States Court of Federal Claims being reviewed did not arise from a case or controversy under Article III of the Constitution, such judgment shall be reviewed by a 3-judge panel of the United States Court of Federal Claims. Such panel shall not include the judge who participated in such judgment.''

[Enactment of section 322(c) of Pub. L. 99–660 by section 5(g)(2) of Pub. L. 101–502, set out above, effective Nov. 14, 1986, see section 5(h) of Pub. L. 101–502, set out as an Effective Date of 1990 Amendment note under section 300aa–11 of this title.]

§ 300aa–13. Determination of eligibility and compensation

(a) General rule

(1) Compensation shall be awarded under the Program to a petitioner if the special master or court finds on the record as a whole—

(A) that the petitioner has demonstrated by a preponderance of the evidence the matters required in the petition by section 300aa–11(c)(1) of this title, and

(B) that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition.

The special master or court may not make such a finding based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.

(2) For purposes of paragraph (1), the term ''factors unrelated to the administration of the vaccine''—

(A) does not include any idiopathic, unexplained, unknown, hypothetical, or undocumentable cause, factor, injury, illness, or condition, and

(B) may, as documented by the petitioner's evidence or other material in the record, include infection, toxins, trauma (including birth trauma and related anoxia), or metabolic disturbances which have no known relation to the vaccine involved, but which in the particular case are shown to have been the agent or agents principally responsible for causing the petitioner's illness, disability, injury, condition, or death.

(b) Matters to be considered

(1) In determining whether to award compensation to a petitioner under the Program, the special master or court shall consider, in addition to all other relevant medical and scientific evidence contained in the record—

(A) any diagnosis, conclusion, medical judgment, or autopsy or coroner's report which is contained in the record regarding the nature, causation, and aggravation of the petitioner's illness, disability, injury, condition, or death, and

(B) the results of any diagnostic or evaluative test which are contained in the record and the summaries and conclusions.

Any such diagnosis, conclusion, judgment, test result, report, or summary shall not be binding on the special master or court. In evaluating the weight to be afforded to any such diagnosis, conclusion, judgment, test result, report, or summary, the special master or court shall consider the entire record and the course of the injury, disability, illness, or condition until the date of the judgment of the special master or court.

(2) The special master or court may find the first symptom or manifestation of onset or significant aggravation of an injury, disability, illness, condition, or death described in a petition occurred within the time period described in the Vaccine Injury Table even though the occurrence of such symptom or manifestation was not recorded or was incorrectly recorded as having occurred outside such period. Such a finding may be made only upon demonstration by a preponderance of the evidence that the onset or significant aggravation of the injury, disability, illness, condition, or death described in the petition did in fact occur within the time period described in the Vaccine Injury Table.

(c) "Record" defined

For purposes of this section, the term "record" means the record established by the special masters of the United States Court of Federal Claims in a proceeding on a petition filed under section 300aa–11 of this title.

(July 1, 1944, ch. 373, title XXI, § 2113, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3763; amended Pub. L. 100–203, title IV, § 4307(4), Dec. 22, 1987, 101 Stat. 1330–224; Pub. L. 101–239, title VI, § 6601(j), Dec. 19, 1989, 103 Stat. 2290; Pub. L. 101–502, § 5(c), Nov. 3, 1990, 104 Stat. 1287; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

PRIOR PROVISIONS

A prior section 300aa–13, act July 1, 1944, § 2114, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

A prior section 2113 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1990—Subsec. (c). Pub. L. 101–502 inserted "the" after "special masters of".

1989—Subsecs. (a)(1), (b). Pub. L. 101–239, § 6601(j)(1), substituted "special master or court" for "court" wherever appearing.

Subsec. (c). Pub. L. 101–239, § 6601(j)(2), inserted "special masters of" after "established by the".

1987—Subsec. (c). Pub. L. 100–203 substituted "the United States Claims Court" for "a district court of the United States".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–14. Vaccine Injury Table

(a) Initial table

The following is a table of vaccines, the injuries, disabilities, illnesses, conditions, and deaths resulting from the administration of such vaccines, and the time period in which the first symptom or manifestation of onset or of the significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the Program:

VACCINE INJURY TABLE

I.	DTP; P; DTP/Polio Combination; or Any Other Vaccine Containing Whole Cell Pertussis Bacteria, Extracted or Partial Cell Bacteria, or Specific Pertussis Antigen(s).	
	Illness, disability, injury, or condition covered:	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration:
	A. Anaphylaxis or anaphylactic shock	24 hours
	B. Encephalopathy (or encephalitis)	3 days
	C. Shock-collapse or hypotonic-hyporesponsive collapse	3 days
	D. Residual seizure disorder in accordance with subsection (b)(2)	3 days
	E. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable
II.	Measles, mumps, rubella, or any vaccine containing any of the foregoing as a component; DT; Td; or Tetanus Toxoid.	
	A. Anaphylaxis or anaphylactic shock	24 hours
	B. Encephalopathy (or encephalitis)	15 days (for mumps, rubella, measles, or any vaccine containing any of the foregoing as a component). 3 days (for DT, Td, or tetanus toxoid).
	C. Residual seizure disorder in accordance with subsection (b)(2)	15 days (for mumps, rubella, measles, or any vaccine containing any of the foregoing as a component). 3 days (for DT, Td, or tetanus toxoid).
	D. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable

VACCINE INJURY TABLE—Continued

III.	Polio Vaccines (other than Inactivated Polio Vaccine).	
	A. Paralytic polio	
	—in a non-immunodeficient recipient	30 days
	—in an immunodeficient recipient	6 months
	—in a vaccine-associated community case	Not applicable
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable
IV.	Inactivated Polio Vaccine.	
	A. Anaphylaxis or anaphylactic shock	24 hours
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable

(b) Qualifications and aids to interpretation

The following qualifications and aids to interpretation shall apply to the Vaccine Injury Table in subsection (a) of this section:

(1) A shock-collapse or a hypotonic-hyporesponsive collapse may be evidenced by indicia or symptoms such as decrease or loss of muscle tone, paralysis (partial or complete), hemiplegia or hemiparesis, loss of color or turning pale white or blue, unresponsiveness to environmental stimuli, depression of consciousness, loss of consciousness, prolonged sleeping with difficulty arousing, or cardiovascular or respiratory arrest.

(2) A petitioner may be considered to have suffered a residual seizure disorder if the petitioner did not suffer a seizure or convulsion unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit before the first seizure or convulsion after the administration of the vaccine involved and if—

(A) in the case of a measles, mumps, or rubella vaccine or any combination of such vaccines, the first seizure or convulsion occurred within 15 days after administration of the vaccine and 2 or more seizures or convulsions occurred within 1 year after the administration of the vaccine which were unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit, and

(B) in the case of any other vaccine, the first seizure or convulsion occurred within 3 days after administration of the vaccine and 2 or more seizures or convulsions occurred within 1 year after the administration of the vaccine which were unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit.

(3)(A) The term ''encephalopathy'' means any significant acquired abnormality of, or injury to, or impairment of function of the brain. Among the frequent manifestations of encephalopathy are focal and diffuse neurologic signs, increased intracranial pressure, or changes lasting at least 6 hours in level of consciousness, with or without convulsions. The neurological signs and symptoms of encephalopathy may be temporary with complete recovery, or may result in various degrees of permanent impairment. Signs and symptoms such as high pitched and unusual screaming, persistent unconsolable crying, and bulging fontanel are compatible with an encephalopathy, but in and of themselves are not conclusive evidence of encephalopathy. Encephalopathy usually can be documented by slow wave activity on an electroencephalogram.

(B) If in a proceeding on a petition it is shown by a preponderance of the evidence that an encephalopathy was caused by infection, toxins, trauma, or metabolic disturbances the encephalopathy shall not be considered to be a condition set forth in the table. If at the time a judgment is entered on a petition filed under section 300aa–11 of this title for a vaccine-related injury or death it is not possible to determine the cause, by a preponderance of the evidence, of an encephalopathy, the encephalopathy shall be considered to be a condition set forth in the table. In determining whether or not an encephalopathy is a condition set forth in the table, the court shall consider the entire medical record.

(4) For purposes of paragraphs (2) and (3), the terms ''seizure'' and ''convulsion'' include grand mal, petit mal, absence, myoclonic, tonic-clonic, and focal motor seizures and signs. If a provision of the table to which paragraph (1), (2), (3), or (4) applies is revised under subsection (c) or (d) of this section, such paragraph shall not apply to such provision after the effective date of the revision unless the revision specifies that such paragraph is to continue to apply.

(c) Administrative revision of table

(1) The Secretary may promulgate regulations to modify in accordance with paragraph (3) the Vaccine Injury Table. In promulgating such regulations, the Secretary shall provide for notice and opportunity for a public hearing and at least 180 days of public comment.

(2) Any person (including the Advisory Commission on Childhood Vaccines) may petition the Secretary to propose regulations to amend the Vaccine Injury Table. Unless clearly frivolous, or initiated by the Commission, any such petition shall be referred to the Commission for its recommendations. Following—

(A) receipt of any recommendation of the Commission, or

(B) 180 days after the date of the referral to the Commission,

whichever occurs first, the Secretary shall conduct a rulemaking proceeding on the matters proposed in the petition or publish in the Federal Register a statement of reasons for not conducting such proceeding.

(3) A modification of the Vaccine Injury Table under paragraph (1) may add to, or delete from, the list of injuries, disabilities, illnesses, conditions, and deaths for which compensation may be provided or may change the time periods for the first symptom or manifestation of the onset or the significant aggravation of any such injury, disability, illness, condition, or death.

(4) Any modification under paragraph (1) of the Vaccine Injury Table shall apply only with

respect to petitions for compensation under the Program which are filed after the effective date of such regulation.

(d) Role of Commission

Except with respect to a regulation recommended by the Advisory Commission on Childhood Vaccines, the Secretary may not propose a regulation under subsection (c) of this section or any revision thereof, unless the Secretary has first provided to the Commission a copy of the proposed regulation or revision, requested recommendations and comments by the Commission, and afforded the Commission at least 90 days to make such recommendations.

(e) Additional vaccines

(1) Vaccines recommended before August 1, 1993

By August 1, 1995, the Secretary shall revise the Vaccine Injury Table included in subsection (a) of this section to include—

(A) vaccines which are recommended to the Secretary by the Centers for Disease Control and Prevention before August 1, 1993, for routine administration to children,

(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

(2) Vaccines recommended after August 1, 1993

When after August 1, 1993, the Centers for Disease Control and Prevention recommends a vaccine to the Secretary for routine administration to children, the Secretary shall, within 2 years of such recommendation, amend the Vaccine Injury Table included in subsection (a) of this section to include—

(A) vaccines which were recommended for routine administration to children,

(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

(July 1, 1944, ch. 373, title XXI, § 2114, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3764; amended Pub. L. 101–239, title VI, § 6601(k), Dec. 19, 1989, 103 Stat. 2290; Pub. L. 103–66, title XIII, § 13632(a)(2), Aug. 10, 1993, 107 Stat. 645.)

PRIOR PROVISIONS

A prior section 300aa–14, act July 1, 1944, § 2115, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

A prior section 2114 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

AMENDMENTS

1993—Subsec. (e). Pub. L. 103–66 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''The Secretary may recommend to Congress revisions of the table to change the vaccines covered by the table.''

1989—Subsec. (a). Pub. L. 101–239, § 6601(k)(1), substituted ''(b)(2)'' for ''(c)(2)'' in items I.D. and II.C. in table.

Subsec. (b)(3)(B). Pub. L. 101–239, § 6601(k)(2), substituted ''300aa–11 of this title'' for ''300aa–11(b) of this title''.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

REVISIONS OF VACCINE INJURY TABLE

The Vaccine Injury Table as modified by regulations promulgated by the Secretary of Health and Human Services is set out at 42 CFR 100.3.

Section 13632(a)(3) of Pub. L. 103–66 provided that: ''A revision by the Secretary under section 2114(e) of the Public Health Service Act (42 U.S.C. 300aa–14(e)) (as amended by paragraph (2)) shall take effect upon the effective date of a tax enacted to provide funds for compensation paid with respect to the vaccine to be added to the vaccine injury table in section 2114(a) of the Public Health Service Act (42 U.S.C. 300aa–14(a)).''

§ 300aa–15. Compensation

(a) General rule

Compensation awarded under the Program to a petitioner under section 300aa–11 of this title for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, shall include the following:

(1)(A) Actual unreimbursable expenses incurred from the date of the judgment awarding such expenses and reasonable projected unreimbursable expenses which—

(i) result from the vaccine-related injury for which the petitioner seeks compensation,

(ii) have been or will be incurred by or on behalf of the person who suffered such injury, and

(iii)(I) have been or will be for diagnosis and medical or other remedial care determined to be reasonably necessary, or

(II) have been or will be for rehabilitation, developmental evaluation, special education, vocational training and placement, case management services, counseling, emotional or behavioral therapy, residential and custodial care and service expenses, special equipment, related travel expenses, and facilities determined to be reasonably necessary.

(B) Subject to section 300aa–16(a)(2) of this title, actual unreimbursable expenses incurred before the date of the judgment awarding such expenses which—

(i) resulted from the vaccine-related injury for which the petitioner seeks compensation,

(ii) were incurred by or on behalf of the person who suffered such injury, and

(iii) were for diagnosis, medical or other remedial care, rehabilitation, developmental evaluation, special education, vocational training and placement, case management

services, counseling, emotional or behavioral therapy, residential and custodial care and service expenses, special equipment, related travel expenses, and facilities determined to be reasonably necessary.

(2) In the event of a vaccine-related death, an award of $250,000 for the estate of the deceased.

(3)(A) In the case of any person who has sustained a vaccine-related injury after attaining the age of 18 and whose earning capacity is or has been impaired by reason of such person's vaccine-related injury for which compensation is to be awarded, compensation for actual and anticipated loss of earnings determined in accordance with generally recognized actuarial principles and projections.

(B) In the case of any person who has sustained a vaccine-related injury before attaining the age of 18 and whose earning capacity is or has been impaired by reason of such person's vaccine-related injury for which compensation is to be awarded and whose vaccine-related injury is of sufficient severity to permit reasonable anticipation that such person is likely to suffer impaired earning capacity at age 18 and beyond, compensation after attaining the age of 18 for loss of earnings determined on the basis of the average gross weekly earnings of workers in the private, non-farm sector, less appropriate taxes and the average cost of a health insurance policy, as determined by the Secretary.

(4) For actual and projected pain and suffering and emotional distress from the vaccine-related injury, an award not to exceed $250,000.

(b) Vaccines administered before effective date

Compensation awarded under the Program to a petitioner under section 300aa–11 of this title for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, may include the compensation described in paragraphs (1)(A) and (2) of subsection (a) of this section and may also include an amount, not to exceed a combined total of $30,000, for—

(1) lost earnings (as provided in paragraph (3) of subsection (a) of this section),

(2) pain and suffering (as provided in paragraph (4) of subsection (a) of this section), and

(3) reasonable attorneys' fees and costs (as provided in subsection (e) of this section.[1]

(c) Residential and custodial care and service

The amount of any compensation for residential and custodial care and service expenses under subsection (a)(1) of this section shall be sufficient to enable the compensated person to remain living at home.

(d) Types of compensation prohibited

Compensation awarded under the Program may not include the following:

(1) Punitive or exemplary damages.

(2) Except with respect to compensation payments under paragraphs (2) and (3) of subsection (a) of this section, compensation for other than the health, education, or welfare of the person who suffered the vaccine-related injury with respect to which the compensation is paid.

(e) Attorneys' fees

(1) In awarding compensation on a petition filed under section 300aa–11 of this title the special master or court shall also award as part of such compensation an amount to cover—

(A) reasonable attorneys' fees, and

(B) other costs,

incurred in any proceeding on such petition. If the judgment of the United States Court of Federal Claims on such a petition does not award compensation, the special master or court may award an amount of compensation to cover petitioner's reasonable attorneys' fees and other costs incurred in any proceeding on such petition if the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition was brought.

(2) If the petitioner, before October 1, 1988, filed a civil action for damages for any vaccine-related injury or death for which compensation may be awarded under the Program, and petitioned under section 300aa–11(a)(5) of this title to have such action dismissed and to file a petition for compensation under the Program, in awarding compensation on such petition the special master or court may include an amount of compensation limited to the costs and expenses incurred by the petitioner and the attorney of the petitioner before October 1, 1988, in preparing, filing, and prosecuting such civil action (including the reasonable value of the attorney's time if the civil action was filed under contingent fee arrangements).

(3) No attorney may charge any fee for services in connection with a petition filed under section 300aa–11 of this title which is in addition to any amount awarded as compensation by the special master or court under paragraph (1).

(f) Payment of compensation

(1) Except as provided in paragraph (2), no compensation may be paid until an election has been made, or has been deemed to have been made, under section 300aa–21(a) of this title to receive compensation.

(2) Compensation described in subsection (a)(1)(A)(iii) of this section shall be paid from the date of the judgment of the United States Court of Federal Claims under section 300aa–12 of this title awarding the compensation. Such compensation may not be paid after an election under section 300aa–21(a) of this title to file a civil action for damages for the vaccine-related injury or death for which such compensation was awarded.

(3) Payments of compensation under the Program and the costs of carrying out the Program shall be exempt from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900 et seq.].

(4)(A) Except as provided in subparagraph (B), payment of compensation under the Program shall be determined on the basis of the net present value of the elements of the compensation and shall be paid from the Vaccine Injury

[1] So in original. Probably should be preceded by a closing parenthesis.

Compensation Trust Fund established under section 9510 of title 26 in a lump sum of which all or a portion may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner.

(B) In the case of a payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, the compensation shall be determined on the basis of the net present value of the elements of compensation and shall be paid from appropriations made available under subsection (j) of this section in a lump sum of which all or a portion may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner. Any reasonable attorneys' fees and costs shall be paid in a lump sum. If the appropriations under subsection (j) of this section are insufficient to make a payment of an annual installment, the limitation on civil actions prescribed by section 300aa–21(a) of this title shall not apply to a civil action for damages brought by the petitioner entitled to the payment.

(C) In purchasing an annuity under subparagraph (A) or (B), the Secretary may purchase a guarantee for the annuity, may enter into agreements regarding the purchase price for and rate of return of the annuity, and may take such other actions as may be necessary to safeguard the financial interests of the United States regarding the annuity. Any payment received by the Secretary pursuant to the preceding sentence shall be paid to the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26, or to the appropriations account from which the funds were derived to purchase the annuity, whichever is appropriate.

(g) Program not primarily liable

Payment of compensation under the Program shall not be made for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program (other than under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]), or (2) by an entity which provides health services on a prepaid basis.

(h) Liability of health insurance carriers, prepaid health plans, and benefit providers

No policy of health insurance may make payment of benefits under the policy secondary to the payment of compensation under the Program and—

(1) no State, and

(2) no entity which provides health services on a prepaid basis or provides health benefits,

may make the provision of health services or health benefits secondary to the payment of compensation under the Program, except that this subsection shall not apply to the provision of services or benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(i) Source of compensation

(1) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, shall be made by the Secretary from appropriations under subsection (j) of this section.

(2) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine on or after October 1, 1988, shall be made from the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26.

(j) Authorization

For the payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, there are authorized to be appropriated to the Department of Health and Human Services $80,000,000 for fiscal year 1989, $80,000,000 for fiscal year 1990, $80,000,000 for fiscal year 1991, $80,000,000 for fiscal year 1992, $110,000,000 for fiscal year 1993, and $110,000,000 for each succeeding fiscal year in which a payment of compensation is required under subsection (f)(4)(B) of this section. Amounts appropriated under this subsection shall remain available until expended.

(July 1, 1944, ch. 373, title XXI, § 2115, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3767; amended Pub. L. 100–203, title IV, §§ 4302(b), 4303(a)–(d)(1), (e), (g), 4307(5), (6), Dec. 22, 1987, 101 Stat. 1330–221 to 1330–223, 1330–225; Pub. L. 100–360, title IV, § 411(*o*)(1), July 1, 1988, 102 Stat. 808; Pub. L. 101–239, title VI, § 6601(c)(8), (*l*), Dec. 19, 1989, 103 Stat. 2286, 2290; Pub. L. 101–502, § 5(d), Nov. 3, 1990, 104 Stat. 1287; Pub. L. 102–168, title II, § 201(e), (f), Nov. 26, 1991, 105 Stat. 1103; Pub. L. 102–531, title III, § 314, Oct. 27, 1992, 106 Stat. 3508; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–66, title XIII, § 13632(b), Aug. 10, 1993, 107 Stat. 646.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (f)(3), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038. Part C of the Act is classified generally to subchapter I (§ 900 et seq.) of chapter 20 of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

The Social Security Act, referred to in subsecs. (g) and (h), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In subsecs. (a), (b), (e)(2), (f)(4)(B), (i), and (j), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

PRIOR PROVISIONS

A prior section 300aa–15, act July 1, 1944, § 2116, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

A prior section 2115 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

AMENDMENTS

1993—Subsec. (j). Pub. L. 103–66 substituted ''$110,000,000 for each succeeding fiscal year'' for ''$80,000,000 for each succeeding fiscal year''.

1992—Subsecs. (e)(1), (f)(2). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (j). Pub. L. 102–531 increased authorization for fiscal year 1993 from $80,000,000 to $110,000,000.

1991—Subsec. (f)(4)(A). Pub. L. 102–168, § 201(e)(1)(A), (2), struck out ''of the proceeds'' after ''portion'' and substituted ''Vaccine Injury Compensation Trust Fund established under section 9510 of title 26'' for ''trust fund''.

Subsec. (f)(4)(B). Pub. L. 102–168, § 201(e)(1)(B), which directed substitution of ''shall be paid from appropriations made available under subsection (j) of this section in a lump sum of which all or a portion'' for ''paid in 4 equal installments of which all or portion of the proceeds'' was executed by making the substitution for ''paid in 4 equal annual installments of which all or a portion of the proceeds'' to reflect the probable intent of Congress.

Subsec. (f)(4)(C). Pub. L. 102–168, § 201(f), added subpar. (C).

1990—Subsec. (e)(2). Pub. L. 101–502, § 5(d)(1), inserted ''of compensation'' before ''limited to the costs''.

Subsec. (f)(2). Pub. L. 101–502, § 5(d)(2)(A), substituted ''section 300aa–21(a)'' for ''section 300aa–21(b)''.

Subsec. (f)(4)(B). Pub. L. 101–502, § 5(d)(2)(B), substituted ''subsection (j)'' for ''subsection (i)'' and ''the limitation on civil actions prescribed by section 300aa–21(a) of this title'' for ''section 300aa–11(a) of this title''.

Subsec. (j). Pub. L. 101–502, § 5(d)(3), inserted before period at end of first sentence '', and $80,000,000 for each succeeding fiscal year in which a payment of compensation is required under subsection (f)(4)(B) of this section''.

1989—Subsec. (b). Pub. L. 101–239, § 6601(*l*)(1), substituted ''may include the compensation described in paragraphs (1)(A) and (2) of subsection (a) of this section and may also include an amount, not to exceed a combined total of $30,000, for—'' and cls. (1) to (3) for ''may not include the compensation described in paragraph (1)(B) of subsection (a) of this section and may include attorneys' fees and other costs included in a judgment under subsection (e) of this section, except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) of this section and included as attorneys' fees and other costs under subsection (e) of this section may not exceed $30,000.''

Subsec. (e)(1). Pub. L. 101–239, § 6601(*l*)(2)(A), substituted ''In awarding compensation on a petition filed under section 300aa–11 of this title the special master or court shall also award as part of such compensation an amount to cover'' for ''The judgment of the United States Claims Court on a petition filed under section 300aa–11 of this title awarding compensation shall include an amount to cover''.

Pub. L. 101–239, § 6601(*l*)(2)(B), (C), substituted ''the special master or court may award an amount of compensation to cover'' for ''the court may include in the judgment an amount to cover'' and ''the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition'' for ''the court determines that the civil action was brought in good faith and there was a reasonable basis for the claim for which the civil action''.

Subsec. (e)(2). Pub. L. 101–239, § 6601(*l*)(2)(D), which directed amendment of par. (2) by substituting ''the special master or court may also award an amount of compensation'' for ''the judgment of the court on such petition may include an amount'', could not be executed because of the prior amendment by Pub. L. 101–239, § 6601(c)(8)(B), see Amendment note below.

Pub. L. 101–239, § 6601(c)(8), substituted ''and petitioned under section 300aa–11(a)(5) of this title to have such action dismissed'' for ''and elected under section 300aa–11(a)(4) of this title to withdraw such action'' and ''in awarding compensation on such petition the special master or court may include'' for ''the judgment of the court on such petition may include''.

Subsec. (e)(3). Pub. L. 101–239, § 6601(*l*)(2)(E), substituted ''awarded as compensation by the special master or court under paragraph (1)'' for ''included under paragraph (1) in a judgment on such petition''.

Subsec. (f)(3). Pub. L. 101–239, § 6601(*l*)(3)(A), inserted ''under the Program and the costs of carrying out the Program'' after ''Payments of compensation''.

Subsec. (f)(4)(A). Pub. L. 101–239, § 6601(*l*)(3)(B), struck out ''made in a lump sum'' after ''the Program shall be'' and inserted ''and shall be paid from the trust fund in a lump sum of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner'' after ''elements of the compensation''.

Subsec. (f)(4)(B). Pub. L. 101–239, § 6601(*l*)(3)(C), substituted ''determined on the basis of the net present value of the elements of compensation and paid in 4 equal annual installments of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner. Any reasonable attorneys' fees and costs shall be paid in a lump sum'' for ''paid in 4 equal annual installments''.

Subsec. (g). Pub. L. 101–239, § 6601(*l*)(4)(A), inserted ''(other than under title XIX of the Social Security Act)'' after ''State health benefits program''.

Subsec. (h). Pub. L. 101–239, § 6601(*l*)(4)(B), inserted before period at end '', except that this subsection shall not apply to the provision of services or benefits under title XIX of the Social Security Act''.

Subsec. (i)(1). Pub. L. 101–239, § 6601(*l*)(5), which directed amendment of par. (1) by substituting ''(j)'' for ''(i)'', could not be executed because ''(i)'' did not appear.

Subsec. (j). Pub. L. 101–239, § 6601(*l*)(6), struck out ''and'' after ''fiscal year 1991,'' and inserted '', $80,000,000 for fiscal year 1993'' after ''fiscal year 1992''.

1988—Subsec. (i)(1). Pub. L. 100–360, § 411(*o*)(1)(A), substituted ''by the Secretary from appropriations under subsection (j)'' for ''from appropriations under subsection (i)''.

Subsec. (j). Pub. L. 100–360, § 411(*o*)(1)(B), inserted ''to the Department of Health and Human Services''.

1987—Subsec. (a). Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Pub. L. 100–203, § 4303(d)(1)(A), struck out last two sentences which read as follows: ''Payments for projected expenses shall be paid on a periodic basis (but no payment may be made for a period in excess of 1 year). Payments for pain and suffering and emotional distress and incurred expenses may be paid in a lump sum.''

Subsec. (a)(1). Pub. L. 100–203, § 4303(c), struck out last sentence of subpars. (A) and (B) each of which read as follows: ''The amount of unreimbursable expenses which may be recovered under this subparagraph shall be limited to the amount in excess of the amount set forth in section 300aa–11(c)(1)(D)(ii) of this title.''

Subsec. (b). Pub. L. 100–203, § 4303(e), substituted ''may not include the compensation described in paragraph (1)(B) of subsection (a) of this section and may include attorneys' fees and other costs included in a judgment under subsection (e) of this section, except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) of this section and included as attorneys' fees and other costs under subsection (e) of this section may not exceed $30,000'' for ''shall only include the compensation described in paragraphs (1)(A) and (2) of subsection (a) of this section''.

Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (e)(1). Pub. L. 100–203, § 4307(5), substituted ''of the United States Claims Court'' for ''of a court'' in two places.

Subsec. (e)(2). Pub. L. 100–203, § 4302(b), substituted ''effective date of this subpart, filed a'' for ''effective date of this subchapter, filed a'' and ''effective date of this subpart in preparing'' for ''effective date of this part in preparing''.

Subsec. (f). Pub. L. 100–203, § 4303(d)(1)(B), (g), added par. (4) and redesignated a second subsec. (f), relating to the Program not being primarily liable, as subsec. (g).

Subsec. (f)(2). Pub. L. 100–203, § 4307(6), substituted ''United States Claims Court'' for ''district court of the United States''.

Subsecs. (g), (h). Pub. L. 100–203, § 4303(g), redesignated a second subsec. (f), relating to the Program not being liable, as (g) and redesignated former subsec. (g) as (h).

Subsecs. (i), (j). Pub. L. 100–203, § 4303(a), (b), added subsecs. (i) and (j).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 201(f) of Pub. L. 102–168 effective as if in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to all pending and subsequently filed petitions, see section 6601(s)(2) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

§ 300aa–16. Limitations of actions

(a) General rule

In the case of—

(1) a vaccine set forth in the Vaccine Injury Table which is administered before October 1, 1988, if a vaccine-related injury or death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury or death after the expiration of 28 months after October 1, 1988, and no such petition may be filed if the first symptom or manifestation of onset or of the significant aggravation of such injury occurred more than 36 months after the date of administration of the vaccine,

(2) a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury, and

(3) a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such death after the expiration of 24 months from the date of the death and no such petition may be filed more than 48 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of the injury from which the death resulted.

(b) Effect of revised table

If at any time the Vaccine Injury Table is revised and the effect of such revision is to permit an individual who was not, before such revision, eligible to seek compensation under the Program, or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 300aa–11(b)(2) of this title, file a petition for such compensation not later than 2 years after the effective date of the revision, except that no compensation may be provided under the Program with respect to a vaccine-related injury or death covered under the revision of the table if—

(1) the vaccine-related death occurred more than 8 years before the date of the revision of the table, or

(2) the vaccine-related injury occurred more than 8 years before the date of the revision of the table.

(c) State limitations of actions

If a petition is filed under section 300aa–11 of this title for a vaccine-related injury or death, limitations of actions under State law shall be stayed with respect to a civil action brought for such injury or death for the period beginning on the date the petition is filed and ending on the date (1) an election is made under section 300aa–21(a) of this title to file the civil action or (2) an election is made under section 300aa–21(b) of this title to withdraw the petition.

(July 1, 1944, ch. 373, title XXI, § 2116, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3769; amended Pub. L. 100–203, title IV, § 4302(b)(2), Dec. 22, 1987, 101 Stat. 1330–221; Pub. L. 101–239, title VI, § 6601(m)(1), Dec. 19, 1989, 103 Stat. 2291; Pub. L. 101–502, § 5(e), Nov. 3, 1990, 104 Stat. 1287; Pub. L. 102–168, title II, § 201(d)(2), Nov. 26, 1991, 105 Stat. 1103; Pub. L. 103–66, title XIII, § 13632(a)(1), Aug. 10, 1993, 107 Stat. 645.)

CODIFICATION

In subsec. (a)(1) to (3), ''October 1, 1988'' and ''October 1, 1988,'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

PRIOR PROVISIONS

A prior section 2116 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–66 substituted ''or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 300aa–11(b)(2) of this title, file'' for ''such person may file''.

1991—Subsec. (c). Pub. L. 102–168 substituted ''or (2)'' for '', (2)'' and struck out '', or (3) the petition is considered withdrawn under section 300aa–21(b) of this title.''

1990—Subsec. (a)(1). Pub. L. 101–502, § 5(e)(1), substituted ''28 months'' for ''24 months'' and inserted before comma at end ''and no such petition may be filed if the first symptom or manifestation of onset or of the significant aggravation of such injury occurred more than 36 months after the date of administration of the vaccine''.

Subsec. (c). Pub. L. 101–502, § 5(e)(2), substituted ''and ending on the date (1) an election is made under section 300aa–21(a) of this title to file the civil action, (2) an election is made under section 300aa–21(b) of this title to withdraw the petition, or (3) the petition is considered withdrawn under section 300aa–21(b) of this title'' for ''and ending on the date a final judgment is entered on the petition''.

1989—Subsec. (c). Pub. L. 101–239 substituted ''300aa–11 of this title'' for ''300aa–11(b) of this title''.

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this subchapter'' in pars. (1) to (3).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–168 effective as if in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–17. Subrogation

(a) General rule

Upon payment of compensation to any petitioner under the Program, the trust fund which has been established to provide such compensation shall be subrograted[1] to all rights of the petitioner with respect to the vaccine-related injury or death for which compensation was paid, except that the trust fund may not recover under such rights an amount greater than the amount of compensation paid to the petitioner.

(b) Disposition of amounts recovered

Amounts recovered under subsection (a) of this section shall be collected on behalf of, and deposited in, the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26.

(July 1, 1944, ch. 373, title XXI, § 2117, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3770; amended Pub. L. 100–203, title IV, § 4307(7), Dec. 22, 1987, 101 Stat. 1330–225; Pub. L. 101–239, title VI, § 6601(m)(2), Dec. 19, 1989, 103 Stat. 2291.)

[1] So in original. Probably should be ''subrogated''.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26'' for ''the trust fund which has been established to provide compensation under the Program''.

1987—Subsec. (a). Pub. L. 100–203 struck out par. (1) designation before ''Upon'' and struck out par. (2) which read as follows: ''In any case in which it deems such action appropriate, a district court of the United States may, after entry of a final judgment providing for compensation to be paid under section 300aa–15 of this title for a vaccine-related injury or death, refer the record of such proceeding to the Secretary and the Attorney General with such recommendation as the court deems appropriate with respect to the investigation or commencement of a civil action by the Secretary under paragraph (1).''

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–18. Repealed. Pub. L. 100–203, title IV, § 4303(d)(2)(B), Dec. 22, 1987, 101 Stat. 1330–222

Section, act July 1, 1944, ch. 373, title XXI, § 2118, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3771, provided for annual increases for inflation of compensation under subsections (a)(2) and (a)(4) of section 300aa–15 of this title and civil penalty under section 300aa–27(b) of this title.

§ 300aa–19. Advisory Commission on Childhood Vaccines

(a) Establishment

There is established the Advisory Commission on Childhood Vaccines. The Commission shall be composed of:

(1) Nine members appointed by the Secretary as follows:

(A) Three members who are health professionals, who are not employees of the United States, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom at least two shall be pediatricians.

(B) Three members from the general public, of whom at least two shall be legal representatives of children who have suffered a vaccine-related injury or death.

(C) Three members who are attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers.

(2) The Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control

and Prevention, and the Commissioner of Food and Drugs (or the designees of such officials), each of whom shall be a nonvoting ex officio member.

The Secretary shall select members of the Commission within 90 days of October 1, 1988. The members of the Commission shall select a Chair from among the members.

(b) Term of office

Appointed members of the Commission shall be appointed for a term of office of 3 years, except that of the members first appointed, 3 shall be appointed for a term of 1 year, 3 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 3 years, as determined by the Secretary.

(c) Meetings

The Commission shall first meet within 60 days after all members of the Commission are appointed, and thereafter shall meet not less often than four times per year and at the call of the chair. A quorum for purposes of a meeting is 5. A decision at a meeting is to be made by a ballot of a majority of the voting members of the Commission present at the meeting.

(d) Compensation

Members of the Commission who are officers or employees of the Federal Government shall serve as members of the Commission without compensation in addition to that received in their regular public employment. Members of the Commission who are not officers or employees of the Federal Government shall be compensated at a rate not to exceed the daily equivalent of the rate in effect for grade GS–18 of the General Schedule for each day (including travel-time) they are engaged in the performance of their duties as members of the Commission. All members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5 for employees serving intermittently.

(e) Staff

The Secretary shall provide the Commission with such professional and clerical staff, such information, and the services of such consultants as may be necessary to assist the Commission in carrying out effectively its functions under this section.

(f) Functions

The Commission shall—

(1) advise the Secretary on the implementation of the Program,

(2) on its own initiative or as the result of the filing of a petition, recommend changes in the Vaccine Injury Table,

(3) advise the Secretary in implementing the Secretary's responsibilities under section 300aa–27 of this title regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions,

(4) survey Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 300aa–25(b) of this title, and advise the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and

(5) recommend to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out this part.

(July 1, 1944, ch. 373, title XXI, § 2119, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3771; amended Pub. L. 100–203, title IV, § 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221; Pub. L. 102–168, title II, § 201(g), Nov. 26, 1991, 105 Stat. 1104; Pub. L. 102–531, title III, § 312(d)(14), Oct. 27, 1992, 106 Stat. 3505.)

CODIFICATION

In subsec. (a), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1991—Subsec. (c). Pub. L. 102–168 inserted ''present at the meeting'' before period at end.

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part'' in last sentence.

TERMINATION OF ADVISORY COMMISSIONS

Advisory commissions established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SUBPART B—ADDITIONAL REMEDIES

§ 300aa–21. Authority to bring actions

(a) Election

After judgment has been entered by the United States Court of Federal Claims or, if an appeal is taken under section 300aa–12(f) of this title, after the appellate court's mandate is issued, the petitioner who filed the petition under section 300aa–11 of this title shall file with the

clerk of the United States Court of Federal Claims—

(1) if the judgment awarded compensation, an election in writing to receive the compensation or to file a civil action for damages for such injury or death, or

(2) if the judgment did not award compensation, an election in writing to accept the judgment or to file a civil action for damages for such injury or death.

An election shall be filed under this subsection not later than 90 days after the date of the court's final judgment with respect to which the election is to be made. If a person required to file an election with the court under this subsection does not file the election within the time prescribed for filing the election, such person shall be deemed to have filed an election to accept the judgment of the court. If a person elects to receive compensation under a judgment of the court in an action for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, or is deemed to have accepted the judgment of the court in such an action, such person may not bring or maintain a civil action for damages against a vaccine administrator or manufacturer for the vaccine-related injury or death for which the judgment was entered. For limitations on the bringing of civil actions for vaccine-related injuries or deaths associated with the administration of a vaccine after October 1, 1988, see section 300aa–11(a)(2) of this title.

(b) Continuance or withdrawal of petition

A petitioner under a petition filed under section 300aa–11 of this title may submit to the United States Court of Federal Claims a notice in writing choosing to continue or to withdraw the petition if—

(1) a special master fails to make a decision on such petition within the 240 days prescribed by section 300aa–12(d)(3)(A)(ii) of this title (excluding (i) any period of suspension under section 300aa–12(d)(3)(C) or 300aa–12(d)(3)(D) of this title, and (ii) any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title), or

(2) the court fails to enter a judgment under section 300aa–12 of this title on the petition within 420 days (excluding (i) any period of suspension under section 300aa–12(d)(3)(C) or 300aa–12(d)(3)(D) of this title, and (ii) any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title) after the date on which the petition was filed.

Such a notice shall be filed within 30 days of the provision of the notice required by section 300aa–12(g) of this title.

(c) Limitations of actions

A civil action for damages arising from a vaccine-related injury or death for which a petition was filed under section 300aa–11 of this title shall, except as provided in section 300aa–16(c) of this title, be brought within the period prescribed by limitations of actions under State law applicable to such civil action.

(July 1, 1944, ch. 373, title XXI, §2121, as added Pub. L. 99–660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3772; amended Pub. L. 100–203, title IV, §§4304(c), 4307(8), 4308(c), Dec. 22, 1987, 101 Stat. 1330–224, 1330–225; Pub. L. 100–360, title IV, §411(*o*)(3)(A), July 1, 1988, 102 Stat. 808; Pub. L. 101–239, title VI, §6601(n), Dec. 19, 1989, 103 Stat. 2291; Pub. L. 101–502, §5(f), Nov. 3, 1990, 104 Stat. 1287; Pub. L. 102–168, title II, §201(d)(3), Nov. 26, 1991, 105 Stat. 1103; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

CODIFICATION

In subsec. (a), ''October 1, 1988,'' and ''October 1, 1988'' substituted for ''the effective date of this part''.

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' wherever appearing.

1991—Subsec. (b). Pub. L. 102–168 substituted ''Continuance or withdrawal of petition'' for ''Withdrawal of petition'' in heading, redesignated introductory provisions of par. (1) as introductory provisions of subsec. (b) and substituted ''a notice in writing choosing to continue or to withdraw the petition'' for ''a notice in writing withdrawing the petition'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned margins, struck out at end of former par. (1) ''If such a notice is not filed before the expiration of such 30 days, the petition with respect to which the notice was to be filed shall be considered withdrawn under this paragraph.'', and struck out par. (2) which read as follows: ''If a special master or the court does not enter a decision or make a judgment on a petition filed under section 300aa–11 of this title within 30 days of the provision of the notice in accordance with section 300aa–12(g) of this title, the special master or court shall no longer have jurisdiction over such petition and such petition shall be considered as withdrawn under paragraph (1).''

1990—Subsec. (a). Pub. L. 101–502, §5(f)(1), in closing provisions, inserted after second sentence ''If a person elects to receive compensation under a judgment of the court in an action for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, or is deemed to have accepted the judgment of the court in such an action, such person may not bring or maintain a civil action for damages against a vaccine administrator or manufacturer for the vaccine-related injury or death for which the judgment was entered.'' and inserted ''for vaccine-related injuries or deaths associated with the administration of a vaccine after October 1, 1988'' after ''actions'' in last sentence.

Subsec. (b). Pub. L. 101–502, §5(f)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''If the United States Claims Court fails to enter a judgment under section 300aa–12 of this title on a petition filed under section 300aa–11 of this title within 420 days (excluding any period of suspension under section 300aa–12(d) of this title and excluding any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title) after the date on which the petition was filed, the petitioner may submit to the court a notice in writing withdrawing the petition. An election shall be filed under this subsection not later than 90 days after the date of the entry of the Claims Court's judgment or the appellate court's mandate with respect to which the election is to be made. A person who has submitted a notice under this subsection may, notwithstanding section 300aa–11(a)(2) of this title, thereafter maintain a civil action for damages in a State or Federal court without regard to this subpart and consistent with otherwise applicable law.''

1989—Subsec. (a). Pub. L. 101–239, §6601(n)(1)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''After the judgment of the United States Claims Court

under section 300aa–11 of this title on a petition filed for compensation under the Program for a vaccine-related injury or death has become final, the person who filed the petition shall file with the court—''.

Pub. L. 101–239, § 6601(n)(1)(B), amended last sentence generally. Prior to amendment, last sentence read as follows: ''If a person elects to receive compensation under a judgment of the court or is deemed to have accepted the judgment of the court, such person may not bring or maintain a civil action for damages against a vaccine manufacturer for the vaccine-related injury or death for which the judgment was entered.''

Subsec. (b). Pub. L. 101–239, § 6601(n)(2), substituted ''within 420 days (excluding any period of suspension under section 300aa–12(d) of this title and excluding any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title)'' for ''within 365 days'' in first sentence and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Such a notice shall be filed not later than 90 days after the expiration of such 365-day period.''

1988—Subsec. (a). Pub. L. 100–360 added Pub. L. 100–203, § 4308(c), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, § 4308(c), as added by Pub. L. 100–360, substituted ''the court's final judgment'' for ''the entry of the court's judgment'' in concluding provisions.

Pub. L. 100–203, § 4307(8), substituted ''the United States Claims Court'' for ''a district court of the United States'' and ''the court'' for ''a court'' in three places.

Subsecs. (b), (c). Pub. L. 100–203, § 4304(c), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–168 effective as in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5(f)(1) of Pub. L. 101–502 effective Nov. 14, 1986, and amendment by section 5(f)(2) of Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, except that such suspension be excluded in determining the 420-day period prescribed in subsec. (b) of this section, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Subpart effective Oct. 1, 1988, see section 323 of Pub. L. 99–660, set out as a note under section 300aa–1 of this title.

§ 300aa–22. Standards of responsibility

(a) General rule

Except as provided in subsections (b), (c), and (e) of this section State law shall apply to a civil action brought for damages for a vaccine-related injury or death.

(b) Unavoidable adverse side effects; warnings

(1) No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings.

(2) For purposes of paragraph (1), a vaccine shall be presumed to be accompanied by proper directions and warnings if the vaccine manufacturer shows that it complied in all material respects with all requirements under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] and section 262 of this title (including regulations issued under such provisions) applicable to the vaccine and related to vaccine-related injury or death for which the civil action was brought unless the plaintiff shows—

(A) that the manufacturer engaged in the conduct set forth in subparagraph (A) or (B) of section 300aa–23(d)(2) of this title, or

(B) by clear and convincing evidence that the manufacturer failed to exercise due care notwithstanding its compliance with such Act and section (and regulations issued under such provisions).

(c) Direct warnings

No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, solely due to the manufacturer's failure to provide direct warnings to the injured party (or the injured party's legal representative) of the potential dangers resulting from the administration of the vaccine manufactured by the manufacturer.

(d) Construction

The standards of responsibility prescribed by this section are not to be construed as authorizing a person who brought a civil action for damages against a vaccine manufacturer for a vaccine-related injury or death in which damages were denied or which was dismissed with prejudice to bring a new civil action against such manufacturer for such injury or death.

(e) Preemption

No State may establish or enforce a law which prohibits an individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if such civil action is not barred by this part.

(July 1, 1944, ch. 373, title XXI, § 2122, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3773; amended Pub. L. 100–203, title IV, § 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(2), is act June 25, 1938, ch. 675, 52 Stat.

1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsecs. (b)(1), (c), ''October 1, 1988'' was substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1987—Subsecs. (b)(1), (c). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

§ 300aa–23. Trial

(a) General rule

A civil action against a vaccine manufacturer for damages for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, which is not barred by section 300aa–11(a)(2) of this title shall be tried in three stages.

(b) Liability

The first stage of such a civil action shall be held to determine if a vaccine manufacturer is liable under section 300aa–22 of this title.

(c) General damages

The second stage of such a civil action shall be held to determine the amount of damages (other than punitive damages) a vaccine manufacturer found to be liable under section 300aa–22 of this title shall be required to pay.

(d) Punitive damages

(1) If sought by the plaintiff, the third stage of such an action shall be held to determine the amount of punitive damages a vaccine manufacturer found to be liable under section 300aa–22 of this title shall be required to pay.

(2) If in such an action the manufacturer shows that it complied, in all material respects, with all requirements under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] and this chapter applicable to the vaccine and related to the vaccine injury or death with respect to which the action was brought, the manufacturer shall not be held liable for punitive damages unless the manufacturer engaged in—

(A) fraud or intentional and wrongful withholding of information from the Secretary during any phase of a proceeding for approval of the vaccine under section 262 of this title,

(B) intentional and wrongful withholding of information relating to the safety or efficacy of the vaccine after its approval, or

(C) other criminal or illegal activity relating to the safety and effectiveness of vaccines,

which activity related to the vaccine-related injury or death for which the civil action was brought.

(e) Evidence

In any stage of a civil action, the Vaccine Injury Table, any finding of fact or conclusion of law of the United States Court of Federal Claims or a special master in a proceeding on a petition filed under section 300aa–11 of this title and the final judgment of the United States Court of Federal Claims and subsequent appellate review on such a petition shall not be admissible.

(July 1, 1944, ch. 373, title XXI, § 2123, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3774; amended Pub. L. 100–203, title IV, §§ 4302(b)(1), 4307(9), Dec. 22, 1987, 101 Stat. 1330–221, 1330–225; Pub. L. 101–239, title VI, § 6601(*o*), Dec. 19, 1989, 103 Stat. 2292; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (d)(2), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (a), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1992—Subsec. (e). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in two places.

1989—Subsec. (e). Pub. L. 101–239 substituted ''finding of fact or conclusion of law'' for ''finding'', ''special master'' for ''master appointed by such court'', and directed substitution of ''the United States Claims Court and subsequent appellate review'' for ''a district court of the United States'' which was executed by inserting ''and subsequent appellate review'' after ''the United States Claims Court'' the second place it appeared to reflect the probable intent of Congress and the amendment by Pub. L. 100–203, § 4307(a), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (e). Pub. L. 100–203, § 4307(9), substituted ''the United States Claims Court'' for ''a district court of the United States'' in two places.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

SUBPART C—ASSURING A SAFER CHILDHOOD VACCINATION PROGRAM IN UNITED STATES

§ 300aa–25. Recording and reporting of information

(a) General rule

Each health care provider who administers a vaccine set forth in the Vaccine Injury Table to any person shall record, or ensure that there is recorded, in such person's permanent medical record (or in a permanent office log or file to which a legal representative shall have access

upon request) with respect to each such vaccine—

(1) the date of administration of the vaccine,

(2) the vaccine manufacturer and lot number of the vaccine,

(3) the name and address and, if appropriate, the title of the health care provider administering the vaccine, and

(4) any other identifying information on the vaccine required pursuant to regulations promulgated by the Secretary.

(b) Reporting

(1) Each health care provider and vaccine manufacturer shall report to the Secretary—

(A) the occurrence of any event set forth in the Vaccine Injury Table, including the events set forth in section 300aa–14(b) of this title which occur within 7 days of the administration of any vaccine set forth in the Table or within such longer period as is specified in the Table or section,

(B) the occurrence of any contraindicating reaction to a vaccine which is specified in the manufacturer's package insert, and

(C) such other matters as the Secretary may by regulation require.

Reports of the matters referred to in subparagraphs (A) and (B) shall be made beginning 90 days after December 22, 1987. The Secretary shall publish in the Federal Register as soon as practicable after such date a notice of the reporting requirement.

(2) A report under paragraph (1) respecting a vaccine shall include the time periods after the administration of such vaccine within which vaccine-related illnesses, disabilities, injuries, or conditions, the symptoms and manifestations of such illnesses, disabilities, injuries, or conditions, or deaths occur, and the manufacturer and lot number of the vaccine.

(3) The Secretary shall issue the regulations referred to in paragraph (1)(C) within 180 days of December 22, 1987.

(c) Release of information

(1) Information which is in the possession of the Federal Government and State and local governments under this section and which may identify an individual shall not be made available under section 552 of title 5, or otherwise, to any person except—

(A) the person who received the vaccine, or

(B) the legal representative of such person.

(2) For purposes of paragraph (1), the term ''information which may identify an individual'' shall be limited to the name, street address, and telephone number of the person who received the vaccine and of that person's legal representative and the medical records of such person relating to the administration of the vaccine, and shall not include the locality and State of vaccine administration, the name of the health care provider who administered the vaccine, the date of the vaccination, or information concerning any reported illness, disability, injury, or condition resulting from the administration of the vaccine, any symptom or manifestation of such illness, disability, injury, or condition, or death resulting from the administration of the vaccine.

(3) Except as provided in paragraph (1), all information reported under this section shall be available to the public.

(July 1, 1944, ch. 373, title XXI, § 2125, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3774; amended Pub. L. 100–203, title IV, § 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221.)

CODIFICATION

In subsec. (b)(1), (3), ''December 22, 1987'' was substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1987—Subsec. (b)(1), (3). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

EFFECTIVE DATE

Subpart effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, set out as a note under section 300aa–1 of this title.

§ 300aa–26. Vaccine information

(a) General rule

Not later than 1 year after December 22, 1987, the Secretary shall develop and disseminate vaccine information materials for distribution by health care providers to the legal representatives of any child or to any other individual receiving a vaccine set forth in the Vaccine Injury Table. Such materials shall be published in the Federal Register and may be revised.

(b) Development and revision of materials

Such materials shall be developed or revised—

(1) after notice to the public and 60 days of comment thereon, and

(2) in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care providers and parent organizations, the Centers for Disease Control and Prevention, and the Food and Drug Administration.

(c) Information requirements

The information in such materials shall be based on available data and information, shall be presented in understandable terms and shall include—

(1) a concise description of the benefits of the vaccine,

(2) a concise description of the risks associated with the vaccine,

(3) a statement of the availability of the National Vaccine Injury Compensation Program, and

(4) such other relevant information as may be determined by the Secretary.

(d) Health care provider duties

On and after a date determined by the Secretary which is—

(1) after the Secretary develops the information materials required by subsection (a) of this section, and

(2) not later than 6 months after the date such materials are published in the Federal Register,

each health care provider who administers a vaccine set forth in the Vaccine Injury Table

shall provide to the legal representatives of any child or to any other individual to whom such provider intends to administer such vaccine a copy of the information materials developed pursuant to subsection (a) of this section, supplemented with visual presentations or oral explanations, in appropriate cases. Such materials shall be provided prior to the administration of such vaccine.

(July 1, 1944, ch. 373, title XXI, § 2126, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3775; amended Pub. L. 100–203, title IV, § 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221; Pub. L. 101–239, title VI, § 6601(p), Dec. 19, 1989, 103 Stat. 2292; Pub. L. 102–531, title III, § 312(d)(15), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–183, title VII, § 708, Dec. 14, 1993, 107 Stat. 2242.)

CODIFICATION

In subsec. (a), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183, § 708(c), inserted ''or to any other individual'' after ''to the legal representatives of any child''.

Subsec. (b). Pub. L. 103–183, § 708(a), struck out ''by rule'' after ''revised'' in introductory provisions and substituted ''and 60'' for '', opportunity for a public hearing, and 90'' in par. (1).

Subsec. (c). Pub. L. 103–183, § 708(b), inserted in introductory provisions ''shall be based on available data and information,'' after ''such materials'', added pars. (1) to (4), and struck out former pars. (1) to (10) which read as follows:

''(1) the frequency, severity, and potential long-term effects of the disease to be prevented by the vaccine,

''(2) the symptoms or reactions to the vaccine which, if they occur, should be brought to the immediate attention of the health care provider,

''(3) precautionary measures legal representatives should take to reduce the risk of any major adverse reactions to the vaccine that may occur,

''(4) early warning signs or symptoms to which legal representatives should be alert as possible precursors to such major adverse reactions,

''(5) a description of the manner in which legal representatives should monitor such major adverse reactions, including a form on which reactions can be recorded to assist legal representatives in reporting information to appropriate authorities,

''(6) a specification of when, how, and to whom legal representatives should report any major adverse reaction,

''(7) the contraindications to (and bases for delay of) the administration of the vaccine,

''(8) an identification of the groups, categories, or characteristics of potential recipients of the vaccine who may be at significantly higher risk of major adverse reaction to the vaccine than the general population,

''(9) a summary of—

''(A) relevant Federal recommendations concerning a complete schedule of childhood immunizations, and

''(B) the availability of the Program, and

''(10) such other relevant information as may be determined by the Secretary.''

Subsec. (d). Pub. L. 103–183, § 708(c), (d), in concluding provisions, inserted ''or to any other individual'' after ''to the legal representatives of any child'', substituted ''supplemented with visual presentations or oral explanations, in appropriate cases'' for ''or other written information which meets the requirements of this section'', and struck out ''or other information'' after ''Such materials''.

1992—Subsec. (b)(2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1989—Subsec. (c)(9). Pub. L. 101–239 amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''a summary of relevant State and Federal laws concerning the vaccine, including information on—

''(A) the number of vaccinations required for school attendance and the schedule recommended for such vaccinations, and

''(B) the availability of the Program, and''.

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–27. Mandate for safer childhood vaccines

(a) General rule

In the administration of this part and other pertinent laws under the jurisdiction of the Secretary, the Secretary shall—

(1) promote the development of childhood vaccines that result in fewer and less serious adverse reactions than those vaccines on the market on December 22, 1987, and promote the refinement of such vaccines, and

(2) make or assure improvements in, and otherwise use the authorities of the Secretary with respect to, the licensing, manufacturing, processing, testing, labeling, warning, use instructions, distribution, storage, administration, field surveillance, adverse reaction reporting, and recall of reactogenic lots or batches, of vaccines, and research on vaccines, in order to reduce the risks of adverse reactions to vaccines.

(b) Task force

(1) The Secretary shall establish a task force on safer childhood vaccines which shall consist of the Director of the National Institutes of Health, the Commissioner of the Food and Drug Administration, and the Director of the Centers for Disease Control.

(2) The Director of the National Institutes of Health shall serve as chairman of the task force.

(3) In consultation with the Advisory Commission on Childhood Vaccines, the task force shall prepare recommendations to the Secretary concerning implementation of the requirements of subsection (a) of this section.

(c) Report

Within 2 years after December 22, 1987, and periodically thereafter, the Secretary shall prepare and transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the actions taken pursuant to subsection (a) of this section during the preceding 2-year period.

(July 1, 1944, ch. 373, title XXI, § 2127, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3777; amended Pub. L. 100–203, title IV,

§ 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221; Pub. L. 101–239, title VI, § 6601(q), Dec. 19, 1989, 103 Stat. 2292.)

CODIFICATION

In subsecs. (a)(1), (c), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1989—Subsecs. (b), (c). Pub. L. 101–239 added subsec. (b) and redesignated former subsec. (b) as (c).

1987—Subsecs. (a)(1), (b). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–28. Manufacturer recordkeeping and reporting

(a) General rule

Each vaccine manufacturer of a vaccine set forth in the Vaccine Injury Table or any other vaccine the administration of which is mandated by the law or regulations of any State, shall, with respect to each batch, lot, or other quantity manufactured or licensed after December 22, 1987—

(1) prepare and maintain records documenting the history of the manufacturing, processing, testing, repooling, and reworking of each batch, lot, or other quantity of such vaccine, including the identification of any significant problems encountered in the production, testing, or handling of such batch, lot, or other quantity,

(2) if a safety test on such batch, lot, or other quantity indicates a potential imminent or substantial public health hazard is presented, report to the Secretary within 24 hours of such safety test which the manufacturer (or manufacturer's representative) conducted, including the date of the test, the type of vaccine tested, the identity of the batch, lot, or other quantity tested, whether the batch, lot, or other quantity tested is the product of repooling or reworking of previous batches, lots, or other quantities (and, if so, the identity of the previous batches, lots, or other quantities which were repooled or reworked), the complete test results, and the name and address of the person responsible for conducting the test,

(3) include with each such report a certification signed by a responsible corporate official that such report is true and complete, and

(4) prepare, maintain, and upon request submit to the Secretary product distribution records for each such vaccine by batch, lot, or other quantity number.

(b) Sanction

Any vaccine manufacturer who intentionally destroys, alters, falsifies, or conceals any record or report required under paragraph (1) or (2) of subsection (a) of this section shall—

(1) be subject to a civil penalty of up to $100,000 per occurrence, or

(2) be fined $50,000 or imprisoned for not more than 1 year, or both.

Such penalty shall apply to the person who intentionally destroyed, altered, falsified, or concealed such record or report, to the person who directed that such record or report be destroyed, altered, falsified, or concealed, and to the vaccine manufacturer for which such person is an agent, employee, or representative. Each act of destruction, alteration, falsification, or concealment shall be treated as a separate occurrence.

(July 1, 1944, ch. 373, title XXI, § 2128, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3777; amended Pub. L. 100–203, title IV, § 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221.)

CODIFICATION

In subsec. (a), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

SUBPART D—GENERAL PROVISIONS

§ 300aa–31. Citizen's actions

(a) General rule

Except as provided in subsection (b) of this section, any person may commence in a district court of the United States a civil action on such person's own behalf against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this part.

(b) Notice

No action may be commenced under subsection (a) of this section before the date which is 60 days after the person bringing the action has given written notice of intent to commence such action to the Secretary.

(c) Costs of litigation

The court, in issuing any final order in any action under this section, may award costs of liti-

gation (including reasonable attorney and expert witness fees) to any plaintiff who substantially prevails on one or more significant issues in the action.

(July 1, 1944, ch. 373, title XXI, § 2131, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3778; amended Pub. L. 100–203, title IV, § 4305, Dec. 22, 1987, 101 Stat. 1330–224.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–203, which directed that subsec. (c) be amended by substituting ''to any plaintiff who substantially prevails on one or more significant issues in the action'' for ''to any party, whenever the court determines that such award is appropriate'', was executed by making the substitution for ''to any party, whenever the court determines such award is appropriate'', to reflect the probable intent of Congress.

EFFECTIVE DATE

Subpart effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, set out as a note under section 300aa–1 of this title.

§ 300aa–32. Judicial review

A petition for review of a regulation under this part may be filed in a court of appeals of the United States within 60 days from the date of the promulgation of the regulation or after such date if such petition is based solely on grounds arising after such 60th day.

(July 1, 1944, ch. 373, title XXI, § 2132, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3778.)

§ 300aa–33. Definitions

For purposes of this part:

(1) The term ''health care provider'' means any licensed health care professional, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities) under whose authority a vaccine set forth in the Vaccine Injury Table is administered.

(2) The term ''legal representative'' means a parent or an individual who qualifies as a legal guardian under State law.

(3) The term ''manufacturer'' means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any vaccine set forth in the Vaccine Injury Table, except that, for purposes of section 300aa–28 of this title, such term shall include the manufacturer of any other vaccine covered by that section. The term ''manufacture'' means to manufacture, import, process, or distribute a vaccine.

(4) The term ''significant aggravation'' means any change for the worse in a preexisting condition which results in markedly greater disability, pain, or illness accompanied by substantial deterioration of health.

(5) The term ''vaccine-related injury or death'' means an illness, injury, condition, or death associated with one or more of the vaccines set forth in the Vaccine Injury Table, except that the term does not include an illness, injury, condition, or death associated with an adulterant or contaminant intentionally added to such a vaccine.

(6)(A) The term ''Advisory Commission on Childhood Vaccines'' means the Commission established under section 300aa–19 of this title.

(B) The term ''Vaccine Injury Table'' means the table set out in section 300aa–14 of this title.

(July 1, 1944, ch. 373, title XXI, § 2133, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3778; amended Pub. L. 107–296, title XVII, §§ 1714–1716, Nov. 25, 2002, 116 Stat. 2320, 2321; Pub. L. 108–7, div. L, § 102(a), Feb. 20, 2003, 117 Stat. 528.)

AMENDMENTS

2003—Pars. (3), (5), (7). Pub. L. 108–7 repealed Pub. L. 107–296, §§ 1714–1717, and provided that this chapter shall be applied as if the sections repealed had never been enacted. See 2002 Amendment notes below.

2002—Par. (3). Pub. L. 107–296, § 1714, which directed amendment of first sentence by substituting ''any vaccine set forth in the Vaccine Injury table, including any component or ingredient of any such vaccine'' for ''under its label any vaccine set forth in the Vaccine Injury Table'' and of second sentence by inserting ''including any component or ingredient of any such vaccine'' before period at end, was repealed by Pub. L. 108–7.

Par. (5). Pub. L. 107–296, § 1715, which directed insertion of ''For purposes of the preceding sentence, an adulterant or contaminant shall not include any component or ingredient listed in a vaccine's product license application or product label.'' at end, was repealed by Pub. L. 108–7.

Par. (7). Pub. L. 107–296, § 1716, which directed addition of par. (7), was repealed by Pub. L. 108–7, § 102(a). Par. (7) read as follows: ''The term 'vaccine' means any preparation or suspension, including but not limited to a preparation or suspension containing an attenuated or inactive microorganism or subunit thereof or toxin, developed or administered to produce or enhance the body's immune response to a disease or diseases and includes all components and ingredients listed in the vaccines's product license application and product label.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–296, title XVII, § 1717, Nov. 25, 2002, 116 Stat. 2321, which provided that the amendments made by sections 1714, 1715, and 1716 (amending this section) shall apply to all actions or proceedings pending on or after Nov. 25, 2002, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding, was repealed by Pub. L. 108–7, div. L, § 102(a), Feb. 20, 2003, 117 Stat. 528.

CONSTRUCTION OF AMENDMENTS

Pub. L. 108–7, div. L, § 102(b), (c), Feb. 20, 2003, 117 Stat. 528, provided that:

''(b) APPLICATION OF THE PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act (42 U.S.C. 201 et seq.) shall be applied and administered as if the sections repealed by subsection (a) [repealing sections 1714 to 1717 of Pub. L. 107–296, which amended this section and enacted provisions set out as a note under this section] had never been enacted.

''(c) RULE OF CONSTRUCTION.—No inference shall be drawn from the enactment of sections 1714 through 1717 of the Homeland Security Act of 2002 (Public Law 107–296), or from this repeal [repealing sections 1714 to 1717 of Pub. L. 107–296], regarding the law prior to enactment of sections 1714 through 1717 of the Homeland Security Act of 2002 (Public Law 107–296) [Nov. 25, 2002]. Further, no inference shall be drawn that subsection (a)

or (b) affects any change in that prior law, or that Leroy v. Secretary of Health and Human Services, Office of Special Master, No. 02–392V (October 11, 2002), was incorrectly decided.''

§ 300aa–34. Termination of program

(a) Reviews

The Secretary shall review the number of awards of compensation made under the program to petitioners under section 300aa–11 of this title for vaccine-related injuries and deaths associated with the administration of vaccines on or after December 22, 1987, as follows:

(1) The Secretary shall review the number of such awards made in the 12-month period beginning on December 22, 1987.

(2) At the end of each 3-month period beginning after the expiration of the 12-month period referred to in paragraph (1) the Secretary shall review the number of such awards made in the 3-month period.

(b) Report

(1) If in conducting a review under subsection (a) of this section the Secretary determines that at the end of the period reviewed the total number of awards made by the end of that period and accepted under section 300aa–21(a) of this title exceeds the number of awards listed next to the period reviewed in the table in paragraph (2)—

(A) the Secretary shall notify the Congress of such determination, and

(B) beginning 180 days after the receipt by Congress of a notification under paragraph (1), no petition for a vaccine-related injury or death associated with the administration of a vaccine on or after December 22, 1987, may be filed under section 300aa–11 of this title.

Section 300aa–11(a) of this title and subpart B of this part shall not apply to civil actions for damages for a vaccine-related injury or death for which a petition may not be filed because of subparagraph (B).

(2) The table referred to in paragraph (1) is as follows:

Period reviewed:	Total number of awards by the end of the period reviewed
12 months after December 22, 1987	150
13th through the 15th month after December 22, 1987	188
16th through the 18th month after December 22, 1987	225
19th through the 21st month after December 22, 1987	263
22nd through the 24th month after December 22, 1987	300
25th through the 27th month after December 22, 1987	338
28th through the 30th month after December 22, 1987	375
31st through the 33rd month after December 22, 1987	413
34th through the 36th month after December 22, 1987	450
37th through the 39th month after December 22, 1987	488
40th through the 42nd month after December 22, 1987	525
43rd through the 45th month after December 22, 1987	563
46th through the 48th month after December 22, 1987	600.

(July 1, 1944, ch. 373, title XXI, § 2134, as added Pub. L. 100–203, title IV, § 4303(f), Dec. 22, 1987, 101 Stat. 1330–222.)

CODIFICATION

In subsecs. (a) and (b), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

SUBCHAPTER XX—REQUIREMENTS FOR CERTAIN GROUP HEALTH PLANS FOR CERTAIN STATE AND LOCAL EMPLOYEES

§ 300bb–1. State and local governmental group health plans must provide continuation coverage to certain individuals

(a) In general

In accordance with regulations which the Secretary shall prescribe, each group health plan that is maintained by any State that receives funds under this chapter, by any political subdivision of such a State, or by any agency or instrumentality of such a State or political subdivision, shall provide, in accordance with this subchapter, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

(b) Exception for certain plans

Subsection (a) of this section shall not apply to—

(1) any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year, or

(2) any group health plan maintained for employees by the government of the District of Columbia or any territory or possession of the United States or any agency or instrumentality.

(July 1, 1944, ch. 373, title XXII, § 2201, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 232; amended Pub. L. 101–239, title VI, § 6801(a)(1), Dec. 19, 1989, 103 Stat. 2296.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 struck out at end ''Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 of title 26 (relating to employers under common control) shall apply for purposes of paragraph (1).''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6801(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to years beginning after December 31, 1986.''

EFFECTIVE DATE

Section 10003(b) of Pub. L. 99–272 provided that:

''(1) GENERAL RULE.—The amendments made by this section [enacting this subchapter] shall apply to plan years beginning on or after July 1, 1986.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enact-

ment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

§ 300bb–2. Continuation coverage

For purposes of section 300bb–1 of this title, the term ''continuation coverage'' means coverage under the plan which meets the following requirements:

(1) Type of benefit coverage

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part[1] in connection with such group.

(2) Period of coverage

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(A) Maximum required period

(i) General rule for terminations and reduced hours

In the case of a qualifying event described in section 300bb–3(2) of this title, except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.

(ii) Special rule for multiple qualifying events

If a qualifying event occurs during the 18 months after the date of a qualifying event described in section 300bb–3(2) of this title, the date which is 36 months after the date of the qualifying event described in section 300bb–3(2) of this title.

(iii) General rule for other qualifying events

In the case of a qualifying event not described in section 300bb–3(2) of this title, the date which is 36 months after the date of the qualifying event.

(iv) Medicare entitlement followed by qualifying event

In the case of a qualifying event described in section 300bb–3(2) of this title that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this subparagraph before the close of the 36-month period beginning on the date the covered employee became so entitled.

In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], to have been disabled at any time during the first 60 days of continuation coverage under this subchapter, any reference in clause (i) or (ii) to 18 months is deemed a reference to 29 months (with respect to all qualified beneficiaries), but only if the qualified beneficiary has provided notice of such determination under section 300bb–6(3) of this title before the end of such 18 months.

(B) End of plan

The date on which the employer ceases to provide any group health plan to any employee.

(C) Failure to pay premium

The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(D) Group health plan coverage or medicare entitlement

The date on which the qualified beneficiary first becomes, after the date of the election—

(i) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary (other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of title 26, part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181 et seq.], or subchapter XXV of this chapter), or

(ii) entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(E) Termination of extended coverage for disability

In the case of a qualified beneficiary who is disabled at any time during the first 60 days of continuation coverage under this subchapter, the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] that the qualified beneficiary is no longer disabled.

[1] So in original. This subchapter is not divided into parts.

(3) Premium requirements

The plan may require payment of a premium for any period of continuation coverage, except that such premium—

(A) shall not exceed 102 percent of the applicable premium for such period, and

(B) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage.[2] In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to ''102 percent'' is deemed a reference to ''150 percent'' for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).

(4) No requirement of insurability

The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(5) Conversion option

In the case of a qualified beneficiary whose period of continuation coverage expires under paragraph (2)(A), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

(July 1, 1944, ch. 373, title XXII, § 2202, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 233; amended Pub. L. 99–514, title XVIII, § 1895(d)(1)(C), (2)(C), (3)(C), (4)(C), Oct. 22, 1986, 100 Stat. 2937–2939; Pub. L. 101–239, title VI, §§ 6702(a), (b), 6801(b)(1)(A), (2)(A), (3)(A), Dec. 19, 1989, 103 Stat. 2295, 2297; Pub. L. 104–188, title I, § 1704(g)(1)(C), Aug. 20, 1996, 110 Stat. 1880; Pub. L. 104–191, title IV, § 421(a)(1), Aug. 21, 1996, 110 Stat. 2087.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2)(A), (D)(ii), and (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II, XVI, and XVIII of the Social Security Act are classified generally to subchapters II (§ 401 et seq.), XVI (§ 1381 et seq.), and XVIII (§ 1395 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in par. (2)(D)(i), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 7 of subtitle B of title I of the Act is classified generally to part 7 (§ 1181 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

1996—Par. (2)(A). Pub. L. 104–191, § 421(a)(1)(A)(ii)(IV), inserted ''(with respect to all qualified beneficiaries)'' after ''29 months'' in concluding provisions.

Pub. L. 104–191, § 421(a)(1)(A)(ii)(III), which directed amendment of concluding provisions by striking ''with respect to such event,'', was executed by striking that phrase, which did not contain a comma at end, before ''is deemed a reference'' to reflect the probable intent of Congress.

Pub. L. 104–191, § 421(a)(1)(A)(ii)(I), (II), in concluding provisions, substituted ''a qualified beneficiary'' for ''an individual'' and ''at any time during the first 60 days of continuation coverage under this subchapter'' for ''at the time of a qualifying event described in section 300bb–3(2) of this title''.

Pub. L. 104–191, § 421(a)(1)(A)(i), transferred sentence following cl. (iii) to appear as concluding provisions following cl. (iv).

Par. (2)(A)(iv). Pub. L. 104–188 amended heading and text of cl. (iv) generally. Prior to amendment, text read as follows: ''In the case of an event described in section 300bb–3(4) of this title (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act.''

Par. (2)(D)(i). Pub. L. 104–191, § 421(a)(1)(B), inserted ''(other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of title 26, part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or subchapter XXV of this chapter)'' before '', or''.

Par. (2)(E). Pub. L. 104–191, § 421(a)(1)(C), substituted ''at any time during the first 60 days of continuation coverage under this subchapter'' for ''at the time of a qualifying event described in section 300bb–3(2) of this title''.

1989—Par. (2)(A). Pub. L. 101–239, § 6702(a)(1), inserted after cl. (iii) ''In the case of an individual who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 300bb–3(2) of this title, any reference in clause (i) or (ii) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under section 300bb–6(3) of this title before the end of such 18 months.''

Par. (2)(A)(iv). Pub. L. 101–239, § 6801(b)(1)(A), added cl. (iv).

Par. (2)(D). Pub. L. 101–239, § 6801(b)(2)(A), substituted ''entitlement'' for ''eligibility'' in heading and inserted ''which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary'' after ''or otherwise)'' in cl. (i).

Par. (2)(E). Pub. L. 101–239, § 6702(a)(2), added subpar. (E).

Par. (3). Pub. L. 101–239, § 6801(b)(3)(A), which directed the general amendment of the concluding provision was executed by amending the first sentence of the concluding provision generally to reflect the probable intent of Congress and amendment of concluding provision by Pub. L. 101–239, § 6702(b). Prior to amendment, first sentence of the concluding provision read as follows: ''If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.''

Pub. L. 101–239, § 6702(b), inserted at end of concluding provision ''In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to '102 percent' is deemed a reference to '150 percent' for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).'' See Amendment note above.

1986—Par. (1). Pub. L. 99–514, § 1895(d)(1)(C), inserted at end ''If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group.''

Par. (2)(A). Pub. L. 99–514, § 1895(d)(2)(C), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''MAXIMUM PERIOD.—In the case of—

''(i) a qualifying event described in section 300bb–3(2) of this title (relating to terminations and

[2] See 1989 Amendment note below.

reduced hours), the date which is 18 months after the date of the qualifying event, and

''(ii) any qualifying event not described in clause (i), the date which is 36 months after the date of the qualifying event.''

Par. (2)(C). Pub. L. 99–514, § 1895(d)(3)(C), inserted at end ''The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.''

Par. (2)(D). Pub. L. 99–514, § 1895(d)(4)(C)(ii), (iii), substituted ''Group health plan coverage'' for ''Reemployment'' in heading, added cl. (i), and struck out former cl. (i) which read as follows: ''a covered employee under any other group health plan, or''.

Par. (2)(E). Pub. L. 99–514, § 1895(d)(4)(C)(i), struck out subpar. (E), remarriage of spouse, which read as follows: ''In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–191 effective Jan. 1, 1997, regardless of whether the qualifying event occurred before, on, or after such date, see section 421(d) of Pub. L. 104–191, set out as a note under section 4980B of Title 26, Internal Revenue Code.

Amendment by Pub. L. 104–188 applicable to plan years beginning after Dec. 31, 1989, see section 1704(g)(2) of Pub. L. 104–188, set out as a note under section 4980B of Title 26.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6702(d) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 300bb–6 of this title] shall apply to plan years beginning on or after the date of the enactment of this Act [Dec. 19, 1989], regardless of whether the qualifying event occurred before, on, or after such date.''

Section 6801(b)(1)(B) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section] shall apply to plan years beginning after December 31, 1989.''

Section 6801(b)(2)(B) of Pub. L. 101–239 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to—

''(i) qualifying events occurring after December 31, 1989, and

''(ii) in the case of qualified beneficiaries who elected continuation coverage after December 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such).''

Section 6801(b)(3)(B) of Pub. L. 101–239 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to plan years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 300bb–3. Qualifying event

For purposes of this subchapter, the term ''qualifying event'' means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subchapter, would result in the loss of coverage of a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(3) The divorce or legal separation of the covered employee from the employee's spouse.

(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(July 1, 1944, ch. 373, title XXII, § 2203, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 234.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 300bb–4. Applicable premium

For purposes of this subchapter—

(1) In general

The term ''applicable premium'' means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(2) Special rule for self-insured plans

To the extent that a plan is a self-insured plan—

(A) In general

Except as provided in subparagraph (B), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

(i) is determined on an actuarial basis, and

(ii) takes into account such factors as the Secretary may prescribe in regulations.

(B) Determination on basis of past cost

If a plan administrator elects to have this subparagraph apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

(i) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under paragraph (3), adjusted by

(ii) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

(C) Subparagraph (B) not to apply where significant change

A plan administrator may not elect to have subparagraph (B) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under paragraph (3).

(3) Determination period

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

(July 1, 1944, ch. 373, title XXII, § 2204, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 234.)

§ 300bb–5. Election

(a) In general

For purposes of this subchapter—

(1) Election period

The term ''election period'' means the period which—

(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

(B) is of at least 60 days' duration, and

(C) ends not earlier than 60 days after the later of—

(i) the date described in subparagraph (A), or

(ii) in the case of any qualified beneficiary who receives notice under section 300bb–6(4) of this title, the date of such notice.

(2) Effect of election on other beneficiaries

Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of section 300bb–8(3) of this title shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

(b) Temporary extension of COBRA election period for certain individuals

(1) In general

In the case of a nonelecting TAA-eligible individual and notwithstanding subsection (a) of this section, such individual may elect continuation coverage under this subchapter during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

(2) Commencement of coverage; no reach-back

Any continuation coverage elected by a TAA-eligible individual under paragraph (1) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

(3) Preexisting conditions

With respect to an individual who elects continuation coverage pursuant to paragraph (1), the period—

(A) beginning on the date of the TAA-related loss of coverage, and

(B) ending on the first day of the 60-day election period described in paragraph (1),

shall be disregarded for purposes of determining the 63-day periods referred to in section 300gg(c)(2) of this title, section 1181(c)(2) of title 29, and section 9801(c)(2) of title 26.

(4) Definitions

For purposes of this subsection:

(A) Nonelecting TAA-eligible individual

The term ''nonelecting TAA-eligible individual'' means a TAA-eligible individual who—

(i) has a TAA-related loss of coverage; and

(ii) did not elect continuation coverage under this part[1] during the TAA-related election period.

(B) TAA-eligible individual

The term ''TAA-eligible individual'' means—

(i) an eligible TAA recipient (as defined in paragraph (2) of section 35(c) of title 26), and

(ii) an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

(C) TAA-related election period

The term ''TAA-related election period'' means, with respect to a TAA-related loss of coverage, the 60-day election period under this part[1] which is a direct consequence of such loss.

(D) TAA-related loss of coverage

The term ''TAA-related loss of coverage'' means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.

(July 1, 1944, ch. 373, title XXII, § 2205, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 235; amended Pub. L. 99–514, title XVIII, § 1895(d)(5)(C), Oct. 22, 1986, 100 Stat. 2939; Pub. L.

[1] So in original. This subchapter is not divided into parts.

107–210, div. A, title II, § 203(e)(2), Aug. 6, 2002, 116 Stat. 970.)

AMENDMENTS

2002—Pub. L. 107–210 designated existing provisions as subsec. (a), inserted subsec. heading, and added subsec. (b).

1986—Par. (2). Pub. L. 99–514 inserted ''of continuation coverage'' after ''any election'' and inserted at end ''If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of Title 19, Customs Duties, on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of Title 19.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

CONSTRUCTION OF 2002 AMENDMENT

Nothing in amendment by Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a note under section 2918 of Title 29, Labor.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 300bb–6. Notice requirements

In accordance with regulations prescribed by the Secretary—

(1) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection,[1]

(2) the employer of an employee under a plan must notify the plan administrator of a qualifying event described in paragraph (1), (2), or (4) of section 300bb–3 of this title within 30 days of the date of the qualifying event,

(3) each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in paragraph (3) or (5) of section 300bb–3 of this title within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], to have been disabled at any time during the first 60 days of continuation coverage under this subchapter is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled, and

(4) the plan administrator shall notify—

(A) in the case of a qualifying event described in paragraph (1), (2), or (4) of section 300bb–3 of this title, any qualified beneficiary with respect to such event, and

(B) in the case of a qualifying event described in paragraph (3) or (5) of section 300bb–3 of this title where the covered employee notifies the plan administrator under paragraph (3), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.[1]

For purposes of paragraph (4), any notification shall be made within 14 days of the date on which the plan administrator is notified under paragraph (2) or (3), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

(July 1, 1944, ch. 373, title XXII, § 2206, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 235; amended Pub. L. 99–514, title XVIII, § 1895(d)(6)(C), Oct. 22, 1986, 100 Stat. 2939; Pub. L. 100–203, title IV, § 4009(j)(8), Dec. 22, 1987, 101 Stat. 1330–59; Pub. L. 101–239, title VI, § 6702(c), Dec. 19, 1989, 103 Stat. 2295; Pub. L. 104–191, title IV, § 421(a)(2), Aug. 21, 1996, 110 Stat. 2088.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Social Security Act are classified generally to subchapters II (§ 401 et seq.) and XVI (§ 1381 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1996—Par. (3). Pub. L. 104–191 substituted ''at any time during the first 60 days of continuation coverage under this subchapter'' for ''at the time of a qualifying event described in section 300bb–3(2) of this title''.

1989—Par. (3). Pub. L. 101–239 inserted ''and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 300bb–3(2) of this title is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled'' after ''date of the qualifying event''.

1987—Par. (3). Pub. L. 100–203 amended directory language of Pub. L. 99–514, see 1986 Amendment note below.

1986—Par. (3). Pub. L. 99–514, as amended by Pub. L. 100–203, inserted ''within 60 days after the date of the qualifying event''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 effective Jan. 1, 1997, regardless of whether the qualifying event occurred be-

[1] So in original. Probably should be ''subchapter''.

fore, on, or after such date, see section 421(d) of Pub. L. 104–191, set out as a note under section 4980B of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to plan years beginning on or after Dec. 19, 1989, regardless of whether the qualifying event occurred before, on, or after such date, see section 6702(d) of Pub. L. 101–239, set out as a note under section 300bb–2 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4009(j)(8) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in Pub. L. 99–514.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable only with respect to qualifying events occurring after Oct. 22, 1986, see section 1895(d)(6)(D) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

NOTIFICATION TO COVERED EMPLOYEES

Section 10003(c) of Pub. L. 99–272 provided that: ''At the time that the amendments made by this section [enacting this subchapter] apply to a group health plan (covered under section 2201 of the Public Health Service Act [section 300bb–1 of this title]), the plan shall notify each covered employee, and spouse of the employee (if any), who is covered under the plan at that time of the continuation coverage required under title XXII of such Act [this subchapter]. The notice furnished under this subsection is in lieu of notice that may otherwise be required under section 2206(1) of such Act [par. (1) of this section] with respect to such individuals.''

§ 300bb–7. Enforcement

Any individual who is aggrieved by the failure of a State, political subdivision, or agency or instrumentality thereof, to comply with the requirements of this subchapter may bring an action for appropriate equitable relief.

(July 1, 1944, ch. 373, title XXII, § 2207, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 236.)

CONTINUED COVERAGE OF COSTS OF PEDIATRIC VACCINE UNDER CERTAIN GROUP HEALTH PLANS

Pub. L. 103–66, title XIII, § 13631(d), Aug. 10, 1993, 107 Stat. 643, provided that:

''(1) REQUIREMENT.—The requirement of this paragraph, with respect to a group health plan for plan years beginning after the date of the enactment of this Act [Aug. 10, 1993], is that the group health plan not reduce its coverage of the costs of pediatric vaccines (as defined under section 1928(h)(6) of the Social Security Act [section 1396s(h)(6) of this title]) below the coverage it provided as of May 1, 1993.

''(2) ENFORCEMENT.—For purposes of section 2207 of the Public Health Service Act [this section], the requirement of paragraph (1) is deemed a requirement of title XXII of such Act [this subchapter].''

§ 300bb–8. Definitions

For purposes of this subchapter—

(1) Group health plan

The term ''group health plan'' has the meaning given such term in 5000(b)[1] of title 26. Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c) of title 26).

(2) Covered employee

The term ''covered employee'' means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of title 26).

(3) Qualified beneficiary

(A) In general

The term ''qualified beneficiary'' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

(i) as the spouse of the covered employee, or

(ii) as the dependent child of the employee.

Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this subchapter.

(B) Special rule for terminations and reduced employment

In the case of a qualifying event described in section 300bb–3(2) of this title, the term ''qualified beneficiary'' includes the covered employee.

(4) Plan administrator

The term ''plan administrator'' has the meaning given the term ''administrator'' by section 1002(16)(A) of title 29.

(July 1, 1944, ch. 373, title XXII, § 2208, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 236; amended Pub. L. 100–647, title III, § 3011(b)(7), Nov. 10, 1988, 102 Stat. 3625; Pub. L. 101–239, title VI, § 6801(c)(1), Dec. 19, 1989, 103 Stat. 2297; Pub. L. 104–191, title I, § 102(d), title III, § 321(d)(3), title IV, § 421(a)(3), Aug. 21, 1996, 110 Stat. 1978, 2059, 2088.)

AMENDMENTS

1996—Par. (1). Pub. L. 104–191, § 321(d)(3), inserted at end ''Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c) of title 26).''

Pub. L. 104–191, § 102(d), substituted ''5000(b)'' for ''section 162(i)(2)''.

Par. (3)(A). Pub. L. 104–191, § 421(a)(3), inserted at end ''Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this subchapter.''

1989—Par. (2). Pub. L. 101–239 substituted ''the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of title 26)'' for ''the individual's employment or previous employment with an employer''.

1988—Par. (1). Pub. L. 100–647 substituted ''section 162(i)(2) of the Internal Revenue Code of 1986'' for ''section 162(i)(3) of the Internal Revenue Code of 1954'', which for purposes of codification was translated as ''section 162(i)(2) of title 26''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 321(d)(3) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see sec-

[1] So in original. Probably should be preceded by ''section''.

tion 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of Title 26, Internal Revenue Code.

Amendment by section 421(a)(3) of Pub. L. 104–191 effective Jan. 1, 1997, regardless of whether the qualifying event occurred before, on, or after such date, see section 421(d) of Pub. L. 104–191, set out as a note under section 4980B of Title 26.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6801(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to plan years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of Title 26, Internal Revenue Code (as in effect on the day before Nov. 10, 1988), did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of Title 26.

SUBCHAPTER XXI—RESEARCH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

PRIOR PROVISIONS

A prior subchapter XXI (§ 300cc et seq.), comprised of title XXIII of the Public Health Service Act, act July 1, 1944, ch. 373, 2301–2316, was renumbered title XXV, §§ 2501–2514, of the Public Health Service Act, and transferred to subchapter XXV (§ 300aaa et seq.) of this chapter, renumbered title XXVI, §§ 2601–2614, of the Public Health Service Act, renumbered title XXVII, §§ 2701–2714, of the Public Health Service Act, and renumbered title II, part B, §§ 231–244, of the Public Health Service Act, and transferred to part B (§ 238 et seq.) of subchapter I of this chapter.

PART A—ADMINISTRATION OF RESEARCH PROGRAMS

§ 300cc. Repealed. Pub. L. 109–482, title I, § 104(b)(2)(C), Jan. 15, 2007, 120 Stat. 3693

Section, act July 1, 1944, ch. 373, title XXIII, § 2301, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3063; amended Pub. L. 102–531, title III, § 312(d)(16), Oct. 27, 1992, 106 Stat. 3505, required an annual comprehensive report on all expenditures by Secretary with respect to AIDS.

A prior section 300cc, act July 1, 1944, § 2301, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as an Effective Date of 2007 Amendment note under section 281 of this title.

§ 300cc–1. Requirement of expediting awards of grants and contracts for research

(a) In general

The Secretary shall expedite the award of grants, contracts, and cooperative agreements for research projects relating to acquired immune deficiency syndrome (including such research projects initiated independently of any solicitation by the Secretary for proposals for such research projects).

(b) Time limitations with respect to certain applications

(1) With respect to programs of grants, contracts, and cooperative agreements described in subsection (a) of this section, any application submitted in response to a solicitation by the Secretary for proposals pursuant to such a program—

(A) may not be approved if the application is submitted after the expiration of the 3-month period beginning on the date on which the solicitation is issued; and

(B) shall be awarded, or otherwise finally acted upon, not later than the expiration of the 6-month period beginning on the expiration of the period described in subparagraph (A).

(2) If the Secretary makes a determination that it is not practicable to administer a program referred to in paragraph (1) in accordance with the time limitations described in such paragraph, the Secretary may adjust the time limitations accordingly.

(c) Requirements with respect to adjustments in time limitations

With respect to any program for which a determination described in subsection (b)(2) of this section is made, the Secretary shall—

(1) if the determination is made before the Secretary issues a solicitation for proposals pursuant to the program, ensure that the solicitation describes the time limitations as adjusted by the determination; and

(2) if the determination is made after the Secretary issues such a solicitation for proposals, issue a statement describing the time limitations as adjusted by the determination and individually notify, with respect to the determination, each applicant whose application is submitted before the expiration of the 3-month period beginning on the date on which the solicitation was issued.

(d) Annual reports to Congress

Except as provided in subsection (e) of this section, the Secretary shall annually prepare, for inclusion in the comprehensive report required in section 300cc[1] of this title, a report—

(A) summarizing programs for which the Secretary has made a determination described in subsection (b)(2) of this section, including a description of the time limitations as adjusted by the determination and including a summary of the solicitation issued by the Secretary for proposals pursuant to the program; and

(B) summarizing applications that—

(i) were submitted pursuant to a program of grants, contracts, or cooperative agreements referred to in paragraph (1) of subsection (b) of this section for which a determination described in paragraph (2) of such subsection has not been made; and

(ii) were not processed in accordance with the time limitations described in such paragraph (1).

(e) Quarterly reports for fiscal year 1989

For fiscal year 1989, the report required in subsection (d) of this section shall, not less than

[1] See References in Text note below.

quarterly, be prepared and submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(July 1, 1944, ch. 373, title XXIII, § 2302, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3063.)

REFERENCES IN TEXT

Section 300cc of this title, referred to in subsec. (d), was repealed by Pub. L. 109–482, title I, § 104(b)(2)(C), Jan. 15, 2007, 120 Stat. 3693.

PRIOR PROVISIONS

A prior section 300cc–1, act July 1, 1944, § 2302, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

DEVELOPMENT OF RAPID HIV TEST

Pub. L. 106–345, title V, § 502, Oct. 20, 2000, 114 Stat. 1353, provided that:

''(a) EXPANSION, INTENSIFICATION, AND COORDINATION OF RESEARCH AND OTHER ACTIVITIES.—

''(1) IN GENERAL.—The Director of NIH shall expand, intensify, and coordinate research and other activities of the National Institutes of Health with respect to the development of reliable and affordable tests for HIV disease that can rapidly be administered and whose results can rapidly be obtained (in this section referred to as 'rapid HIV test').

''(2) REPORT TO CONGRESS.—The Director of NIH shall periodically submit to the appropriate committees of Congress a report describing the research and other activities conducted or supported under paragraph (1).

''(3) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

''(b) PREMARKET REVIEW OF RAPID HIV TESTS.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Oct. 20, 2000], the Secretary, in consultation with the Director of the Centers for Disease Control and Prevention and the Commissioner of Food and Drugs, shall submit to the appropriate committees of the Congress a report describing the progress made towards, and barriers to, the premarket review and commercial distribution of rapid HIV tests. The report shall—

''(A) assess the public health need for and public health benefits of rapid HIV tests, including the minimization of false positive results through the availability of multiple rapid HIV tests;

''(B) make recommendations regarding the need for the expedited review of rapid HIV test applications submitted to the Center for Biologics Evaluation and Research and, if such recommendations are favorable, specify criteria and procedures for such expedited review; and

''(C) specify whether the barriers to the premarket review of rapid HIV tests include the unnecessary application of requirements—

''(i) necessary to ensure the efficacy of devices for donor screening to rapid HIV tests intended for use in other screening situations; or

''(ii) for identifying antibodies to HIV subtypes of rare incidence in the United States to rapid HIV tests intended for use in screening situations other than donor screening.

''(c) GUIDELINES OF CENTERS FOR DISEASE CONTROL AND PREVENTION.—Promptly after commercial distribution of a rapid HIV test begins, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish or update guidelines that include recommendations for States, hospitals, and other appropriate entities regarding the ready availability of such tests for administration to pregnant women who are in labor or in the late stage of pregnancy and whose HIV status is not known to the attending obstetrician.''

LIMITATION ON EXPENDITURES FOR AIDS AND HIV ACTIVITIES

Pub. L. 104–146, § 11, May 20, 1996, 110 Stat. 1373, provided that: ''Notwithstanding any other provision of law, the total amounts of Federal funds expended in any fiscal year for AIDS and HIV activities may not exceed the total amounts expended in such fiscal year for activities related to cancer.''

VACCINES FOR HUMAN IMMUNODEFICIENCY VIRUS

Pub. L. 103–43, title XIX, § 1901(b), June 10, 1993, 107 Stat. 200, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the National Institutes of Health, shall develop a plan for the appropriate inclusion of HIV-infected women, including pregnant women, HIV-infected infants, and HIV-infected children in studies conducted by or through the National Institutes of Health concerning the safety and efficacy of HIV vaccines for the treatment and prevention of HIV infection. Such plan shall ensure the full participation of other Federal agencies currently conducting HIV vaccine studies and require that such studies conform fully to the requirements of part 46 of title 45, Code of Federal Regulations.

''(2) REPORT.—Not later than 180 days after the date of the enactment of this Act [June 10, 1993], the Secretary of Health and Human Services shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate, a report concerning the plan developed under paragraph (1).

''(3) IMPLEMENTATION.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall implement the plan developed under paragraph (1), including measures for the full participation of other Federal agencies currently conducting HIV vaccine studies.

''(4) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 1996.''

EX. ORD. NO. 12963. PRESIDENTIAL ADVISORY COUNCIL ON HIV/AIDS

Ex. Ord. No. 12963, June 14, 1995, 60 F.R. 31905, as amended by Ex. Ord. No. 13009, June 14, 1996, 61 F.R. 39799 [30799], provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the Secretary of Health and Human Services to exercise her discretion as follows:

SECTION 1. *Establishment.* (a) The Secretary of Health and Human Services (the ''Secretary'') shall establish an HIV/AIDS Advisory Council (the ''Advisory Council''

or the ''Council''), to be known as the Presidential Advisory Council on HIV/AIDS. The Advisory Council shall be composed of not more than 35 members to be appointed or designated by the Secretary. The Advisory Council shall comply with the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

(b) The Secretary shall designate a Chairperson from among the members of the Advisory Council.

SEC. 2. *Functions*. The Advisory Council shall provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. The functions of the Advisory Council shall be solely advisory in nature. The Secretary shall provide the President with copies of all written reports provided to the Secretary by the Advisory Council.

SEC. 3. *Administration*. (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide the Advisory Council with such information as it may require for purposes of carrying out its functions.

(b) Any members of the Advisory Council that receive compensation shall be compensated in accordance with Federal law. Committee members may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. section 5701–5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Department of Health and Human Services shall provide the Advisory Council with such funds and support as may be necessary for the performance of its functions.

SEC. 4. *General Provisions*. (a) Notwithstanding the provisions of any other Executive order, any functions of the President under the Federal Advisory Committee Act that are applicable to the Advisory Council, except that of reporting annually to the Congress, shall be performed by the Department of Health and Human Services, in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) This order is intended only to improve the internal management of the executive branch, and it is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, it officers, or any person.

WILLIAM J. CLINTON.

§ 300cc–2. Requirements with respect to processing of requests for personnel and administrative support

(a) In general

The Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, shall respond to any priority request made by the Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health, not later than 21 days after the date on which such request is made. If the Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, does not disapprove a priority request during the 21-day period, the request shall be deemed to be approved.

(b) Notice to Secretary and to Assistant Secretary for Health

The Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, and the Director of the National Institutes of Health, shall, respectively, transmit to the Secretary and the Assistant Secretary for Health a copy of each priority request made under this section by the agency head involved. The copy shall be transmitted on the date on which the priority request involved is made.

(c) "Priority request" defined

For purposes of this section, the term ''priority request'' means any request that—

(1) is designated as a priority request by the Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health; and

(2)(A) is made to the Director of the Office of Personnel Management for the allocation of personnel to carry out activities with respect to acquired immune deficiency syndrome; or

(B) is made to the Administrator of General Services for administrative support or space in carrying out such activities.

(July 1, 1944, ch. 373, title XXIII, § 2303, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3064; amended Pub. L. 102–321, title I, §§ 161, 163(b)(7), July 10, 1992, 106 Stat. 375, 376; Pub. L. 102–531, title III, § 312(d)(17), Oct. 27, 1992, 106 Stat. 3505.)

PRIOR PROVISIONS

A prior section 300cc–2, act July 1, 1944, § 2303, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, § 161, substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Administrator of the Alcohol, Drug Abuse, and Mental Health Administration''.

Subsec. (b). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, § 163(b)(7)(A), substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Administrator of the Alcohol, Drug Abuse, and Mental Health Administration''.

Subsec. (c)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, § 163(b)(7)(B), substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Administrator of the Alcohol, Drug Abuse, and Mental Health Administration''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, see section 801(c) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 300cc–3. Establishment of Research Advisory Committee

(a) In general

After consultation with the Commissioner of Food and Drugs, the Secretary, acting through the Director of the National Institute of Allergy

and Infectious Diseases, shall establish within such Institute an advisory committee to be known as the AIDS Research Advisory Committee (hereafter in this section referred to as the ''Committee'').

(b) Composition

The Committee shall be composed of physicians whose clinical practice includes a significant number of patients with acquired immune deficiency syndrome.

(c) Duties

The Committee shall—

(1) advise the Director of such Institute (and may provide advice to the Directors of other agencies of the National Institutes of Health, as appropriate) on appropriate research activities to be undertaken with respect to clinical treatment of such syndrome, including advice with respect to—

(A) research on drugs for preventing or minimizing the development of symptoms or conditions arising from infection with the etiologic agent for such syndrome, including recommendations on the projects of research with respect to diagnosing immune deficiency and with respect to predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases; and

(B) research on the effectiveness of treating such symptoms or conditions with drugs that—

(i) are not approved by the Commissioner of Food and Drugs for the purpose of treating such symptoms or conditions; and

(ii) are being utilized for such purpose by individuals infected with such etiologic agent;

(2)(A) review ongoing publicly and privately supported research on clinical treatment for acquired immune deficiency syndrome, including research on drugs described in paragraph (1); and

(B) periodically issue, and make available to health care professionals, reports describing and evaluating such research;

(3) conduct studies and convene meetings for the purpose of determining the recommendations among physicians in clinical practice on clinical treatment of acquired immune deficiency syndrome, including treatment with the drugs described in paragraph (1); and

(4) conduct a study for the purpose of developing, with respect to individuals infected with the etiologic agent for acquired immune deficiency syndrome, a consensus among health care professionals on clinical treatments for preventing or minimizing the development of symptoms or conditions arising from infection with such etiologic agent.

(July 1, 1944, ch. 373, title XXIII, § 2304, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3065; amended Pub. L. 100–690, title II, § 2617(a), Nov. 18, 1988, 102 Stat. 4240; Pub. L. 103–43, title XVIII, § 1811(1), title XX, § 2008(d)(1), June 10, 1993, 107 Stat. 199, 212.)

PRIOR PROVISIONS

A prior section 300cc–3, acts July 1, 1944, ch. 373, title XXIII, § 2304, formerly title V, § 504, 58 Stat. 710; June 25, 1948, ch. 654, § 6, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, § 2104, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2304, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755, related to care of Service patients at Saint Elizabeths Hospital, prior to repeal by Pub. L. 98–621, § 10(s), Nov. 8, 1984, 98 Stat. 3381, effective Oct. 1, 1987. Subsequent to repeal, section 2104 of title XXI of act July 1, 1944, was renumbered section 2304 of title XXIII of that act by section 311(a) of Pub. L. 99–660.

A prior section 300cc–4, acts July 1, 1944, ch. 373, title XXI, § 2105, formerly title V, § 505, 58 Stat. 710; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, § 2105, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176, provided procedures under which the Secretary could settle claims for damages from collisions or incident to the operation of vessels within a year of the accrual of such claims and not to exceed $3,000, prior to repeal by Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495. Subsequent to repeal, section 2105 of title XXI of act July 1, 1944, was renumbered section 2305 of title XXIII of that act by Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755.

Prior sections 300cc–5 to 300cc–10, act July 1, 1944, §§ 2306 to 2311, respectively, were successively renumbered by subsequent acts and transferred, see sections 238c to 238h of this title.

AMENDMENTS

1993—Pub. L. 103–43, § 2008(d)(1)(A), substituted ''Research Advisory Committee'' for ''Clinical Research Review Committee'' in section catchline.

Subsec. (a). Pub. L. 103–43, § 2008(d)(1)(B), substituted ''AIDS Research Advisory Committee'' for ''AIDS Clinical Research Review Committee''.

Subsec. (c)(1). Pub. L. 103–43, § 1811(1), in introductory provisions inserted ''(and may provide advice to the Directors of other agencies of the National Institutes of Health, as appropriate)'' after ''Director of such Institute'' and in subpar. (A) inserted before semicolon at end '', including recommendations on the projects of research with respect to diagnosing immune deficiency and with respect to predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases''.

1988—Subsec. (c)(2)(B). Pub. L. 100–690 substituted semicolon for period.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART B—RESEARCH AUTHORITY

§ 300cc–11. Clinical evaluation units at National Institutes of Health

(a) In general

The Secretary, acting through the Director of the National Cancer Institute and the Director of the National Institute of Allergy and Infectious Diseases, shall for each such Institute establish a clinical evaluation unit at the Clinical Center at the National Institutes of Health. Each of the clinical evaluation units—

(1) shall conduct clinical evaluations of experimental treatments for acquired immune deficiency syndrome developed within the preclinical drug development program, including evaluations of methods of diagnosing immune deficiency and evaluations of methods of predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases; and

(2) may conduct clinical evaluations of experimental treatments for such syndrome that are developed by any other national research institute of the National Institutes of Health or by any other entity.

(b) Personnel and administrative support

(1) For the purposes described in subsection (a) of this section, the Secretary, acting through the Director of the National Institutes of Health, shall provide each of the clinical evaluation units required in such subsection—

(A)(i) with not less than 50 beds; or

(ii) with an outpatient clinical capacity equal to not less than twice the outpatient clinical capacity, with respect to acquired immune deficiency syndrome, possessed by the Clinical Center of the National Institutes of Health on June 1, 1988; and

(B) with such personnel, such administrative support, and such other support services as may be necessary.

(2) Facilities, personnel, administrative support, and other support services provided pursuant to paragraph (1) shall be in addition to the number or level of facilities, personnel, administrative support, and other support services that otherwise would be available at the Clinical Center at the National Institutes of Health for the provision of clinical care for individuals with diseases or disorders.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(July 1, 1944, ch. 373, title XXIII, § 2311, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3066; amended Pub. L. 103–43, title XVIII, § 1811(2), June 10, 1993,107 Stat. 199.)

PRIOR PROVISIONS

A prior section 300cc–11, act July 1, 1944, § 2312, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–43 inserted before semicolon at end ", including evaluations of methods of diagnosing immune deficiency and evaluations of methods of predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases".

§ 300cc–12. Use of investigational new drugs with respect to acquired immune deficiency syndrome

(a) Encouragement of applications with respect to clinical trials

(1) If, in the determination of the Secretary, there is preliminary evidence that a new drug has effectiveness in humans with respect to the prevention or treatment of acquired immune deficiency syndrome, the Secretary shall, through statements published in the Federal Register—

(A) announce the fact of such determination; and

(B) with respect to the new drug involved, encourage an application for an exemption for investigational use of the new drug under regulations issued under section 355(i) of title 21.

(2)(A) The AIDS Research Advisory Committee established pursuant to section 300cc–3 of this title shall make recommendations to the Secretary with respect to new drugs appropriate for determinations described in paragraph (1).

(B) The Secretary shall, as soon as is practicable, determine the merits of recommendations received by the Secretary pursuant to subparagraph (A).

(b) Encouragement of applications with respect to treatment use in circumstances other than clinical trials

(1) In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a) of this section and with respect to which an exemption is in effect for purposes of section 355(i) of title 21, the Secretary shall—

(A) as appropriate, encourage the sponsor of the investigation of the new drug to submit to the Secretary, in accordance with regulations issued under such section, an application to use the drug in the treatment of individuals—

(i) who are infected with the etiologic agent for acquired immune deficiency syndrome; and

(ii) who are not participating in the clinical trials conducted pursuant to such exemption; and

(B) if such an application is approved, encourage, as appropriate, licensed medical practitioners to obtain, in accordance with such regulations, the new drug from such sponsor for the purpose of treating such individuals.

(2) If the sponsor of the investigation of a new drug described in paragraph (1) does not submit to the Secretary an application described in such paragraph (relating to treatment use), the Secretary shall, through statements published in the Federal Register, encourage, as appropriate, licensed medical practitioners to submit to the Secretary such applications in accordance with regulations described in such paragraph.

(c) Technical assistance with respect to treatment use

In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a) of this section, the

Secretary may, directly or through grants or contracts, provide technical assistance with respect to the process of—

(1) submitting to the Secretary applications for exemptions described in paragraph (1)(B) of such subsection;

(2) submitting to the Secretary applications described in subsection (b) of this section; and

(3) with respect to sponsors of investigations of new drugs, facilitating the transfer of new drugs from such sponsors to licensed medical practitioners.

(d) "New drug" defined

For purposes of this section, the term ''new drug'' has the meaning given such term in section 321 of title 21.

(July 1, 1944, ch. 373, title XXIII, § 2312, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3066; amended Pub. L. 103–43, title XX, § 2008(d)(2), June 10, 1993, 107 Stat. 212.)

PRIOR PROVISIONS

A prior section 300cc–12, act July 1, 1944, § 2313, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

AMENDMENTS

1993—Subsec. (a)(2)(A). Pub. L. 103–43 substituted ''AIDS Research Advisory Committee'' for ''AIDS Clinical Research Review Committee''.

§ 300cc–13. Terry Beirn Community-Based AIDS Research Initiative

(a) In general

After consultation with the Commissioner of Food and Drugs, the Director of the National Institutes of Health, acting through the Director of the National Institute of Allergy and Infectious Diseases, may make grants to public entities and nonprofit private entities concerned with acquired immune deficiency syndrome, and may enter into contracts with public and private such[1] entities, for the purpose of planning and conducting, in the community involved, clinical trials of experimental treatments for infection with the etiologic agent for such syndrome that are approved by the Commissioner of Food and Drugs for investigational use under regulations issued under section 355 of title 21.

(b) Requirement of certain projects

(1) Financial assistance under subsection (a) of this section shall include such assistance to community-based organizations and community health centers for the purpose of—

(A) retaining appropriate medical supervision;

(B) assisting with administration, data collection and record management; and

(C) conducting training of community physicians, nurse practitioners, physicians' assistants and other health professionals for the purpose of conducting clinical trials.

(2)(A) Financial assistance under subsection (a) of this section shall include such assistance for demonstration projects designed to implement and conduct community-based clinical trials in order to provide access to the entire scope of communities affected by infections with the etiologic agent for acquired immune deficiency syndrome, including minorities, hemophiliacs and transfusion-exposed individuals, women, children, users of intravenous drugs, and individuals who are asymptomatic with respect to such infection.

(B) The Director of the National Institutes of Health may not provide financial assistance under this paragraph unless the application for such assistance is approved—

(i) by the Commissioner of Food and Drugs;

(ii) by a duly constituted Institutional Review Board that meets the requirements of part 56 of title 21, Code of Federal Regulations; and

(iii) by the Director of the National Institute of Allergy and Infectious Diseases.

(c) Participation of private industry, schools of medicine and primary providers

Programs carried out with financial assistance provided under subsection (a) of this section shall be designed to encourage private industry and schools of medicine, osteopathic medicine, and existing consortia of primary care providers organized to conduct clinical research concerning acquired immune deficiency syndrome to participate in, and to support, the clinical trials conducted pursuant to the programs.

(d) Requirement of application

The Secretary may not provide financial assistance under subsection (a) of this section unless—

(1) an application for the assistance is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the assistance is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Authorization of appropriations

(1) For the purpose of carrying out subsection (b)(1) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1996.

(2) For the purpose of carrying out subsection (b)(2) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1996.

(July 1, 1944, ch. 373, title XXIII, § 2313, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3068; amended Pub. L. 100–690, title II, § 2617(b), Nov. 18, 1988, 102 Stat. 4240; Pub. L. 101–93, § 6, Aug. 16, 1989, 103 Stat. 615; Pub. L. 102–96, § 3, Aug. 14, 1991, 105 Stat. 481.)

PRIOR PROVISIONS

A prior section 300cc–13, act July 1, 1944, § 2314, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

AMENDMENTS

1991—Pub. L. 102–96, § 3(1), substituted ''Terry Beirn Community-Based AIDS Research Initiative'' for ''Community-based evaluations of experimental therapies'' in section catchline.

[1] So in original.

Subsec. (c). Pub. L. 102–96, § 3(2), substituted ", schools of medicine and primary providers" for "and schools of medicine" in heading and substituted "schools of medicine, osteopathic medicine, and existing consortia of primary care providers organized to conduct clinical research concerning acquired immune deficiency syndrome" for "schools of medicine and osteopathic medicine".

Subsec. (e). Pub. L. 102–96, § 3(3), substituted "1996" for "1991" in pars. (1) and (2).

1989—Subsec. (c). Pub. L. 101–93 inserted "and osteopathic medicine" after "schools of medicine".

1988—Subsec. (a). Pub. L. 100–690, § 2617(b)(1), which directed substitution of "through the Director of the National Institute of Allergy" for "through the National Institutes of Allergy", was executed by making substitution for "through the National Institute of Allergy" as the probable intent of Congress.

Subsec. (b)(2)(B)(iii). Pub. L. 100–690, § 2617(b)(2), which directed substitution of "Institute" for "Institutes", could not be executed because "Institute" was singular in original.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

FINDINGS AND SENSE OF CONGRESS

Section 2 of Pub. L. 102–96 provided that:

"(a) FINDINGS.—Congress finds that—

"(1) community-based clinical trials complement the National Institute of Allergy and Infectious Diseases' university-based research in order to provide increased access to experimental therapies;

"(2) community-based clinical trials provide an efficient and cost-effective means to develop new HIV-related treatments, benefiting all people living with HIV disease and other illnesses; and

"(3) because the community-based clinical trials model has a proven ability to conduct rapid trials that meet the very highest standards of scientific inquiry, this program should be reauthorized and significantly expanded.

"(b) SENSE OF CONGRESS.—It is the sense of Congress that, because of Terry Beirn's tireless efforts to foster a partnership among all parties invested in AIDS research (including the National Institutes of Health university-based research system, primary care physicians practicing in the community, and patients), the community-based clinical trials program should be renamed as the 'Terry Beirn Community-Based AIDS Research Initiative' in his honor."

§ 300cc–14. Evaluation of certain treatments

(a) Establishment of program

(1) After consultation with the AIDS Research Advisory Committee established pursuant to section 300cc–3 of this title, the Secretary shall establish a program for the evaluation of drugs that—

(A) are not approved by the Commissioner of Food and Drugs for the purpose of treatments with respect to acquired immune deficiency syndrome; and

(B) are being utilized for such purpose by individuals infected with the etiologic agent for such syndrome.

(2) The program established under paragraph (1) shall include evaluations of the effectiveness and the risks of the treatment involved, including the risks of foregoing treatments with respect to acquired immune deficiency syndrome that are approved by the Commissioner of Food and Drugs.

(b) Authority with respect to grants and contracts

(1) For the purpose of conducting evaluations required in subsection (a) of this section, the Secretary may make grants to, and enter into cooperative agreements and contracts with, public and nonprofit private entities.

(2) Nonprofit private entities under paragraph (1) may include nonprofit private organizations that—

(A) are established for the purpose of evaluating treatments with respect to acquired immune deficiency syndrome; and

(B) consist primarily of individuals infected with the etiologic agent for such syndrome.

(c) Scientific and ethical guidelines

(1) The Secretary shall establish appropriate scientific and ethical guidelines for the conduct of evaluations carried out pursuant to this section. The Secretary may not provide financial assistance under subsection (b)(1) of this section unless the applicant for such assistance agrees to comply with such guidelines.

(2) The Secretary may establish the guidelines described in paragraph (1) only after consulting with—

(A) physicians whose clinical practice includes a significant number of individuals with acquired immune deficiency syndrome;

(B) individuals who are infected with the etiologic agent for such syndrome; and

(C) other individuals with appropriate expertise or experience.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(July 1, 1944, ch. 373, title XXIII, § 2314, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3069; amended Pub. L. 103–43, title XX, § 2008(d)(3), June 10, 1993, 107 Stat. 212.)

PRIOR PROVISIONS

A prior section 300cc–14, act July 1, 1944, § 2315, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–43 substituted "AIDS Research Advisory Committee" for "Clinical Research Review Committee" in introductory provisions.

§ 300cc–15. Support of international efforts

(a) Grants and contracts for research

(1) Under section 242*l* of this title, the Secretary, acting through the Director of the National Institutes of Health—

(A) shall, for the purpose described in paragraph (2), make grants to, enter into cooperative agreements and contracts with, and provide technical assistance to, international organizations concerned with public health; and

(B) may, for such purpose, provide technical assistance to foreign governments.

(2) The purpose referred to in paragraph (1) is promoting and expediting international research and training concerning the natural history and pathogenesis of the human immunodeficiency virus and the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome and opportunistic infections.

(b) Grants and contracts for additional purposes

After consultation with the Administrator of the Agency for International Development, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall under section 242*l* of this title make grants to, enter into contracts with, and provide technical assistance to, international organizations concerned with public health and may provide technical assistance to foreign governments, in order to support—

(1) projects for training individuals with respect to developing skills and technical expertise for use in the prevention, diagnosis, and treatment of acquired immune deficiency syndrome; and

(2) epidemiological research relating to acquired immune deficiency syndrome.

(c) Special Programme of World Health Organization

Support provided by the Secretary pursuant to this section shall be in furtherance of the global strategy of the World Health Organization Special Programme on Acquired Immunodeficiency Syndrome.

(d) Preferences

In providing grants, cooperative agreements, contracts, and technical assistance under subsections (a) and (b) of this section, the Secretary shall—

(1) give preference to activities under such subsections conducted by, or in cooperation with, the World Health Organization; and

(2) with respect to activities carried out under such subsections in the Western Hemisphere, give preference to activities conducted by, or in cooperation with, the Pan American Health Organization or the World Health Organization.

(e) Requirement of application

The Secretary may not make a grant or enter into a cooperative agreement or contract under this section unless—

(1) an application for such assistance is submitted to the Secretary;

(2) with respect to carrying out the purpose for which such assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(f) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(July 1, 1944, ch. 373, title XXIII, § 2315, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3070; amended Pub. L. 102–531, title III, § 312(d)(18), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–43, title XVIII, § 1811(3), June 10, 1993, 107 Stat. 199.)

PRIOR PROVISIONS

A prior section 300cc–15, act July 1, 1944, § 2316, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–43, § 1811(3)(A), substituted ''international research and training concerning the natural history and pathogenesis of the human immunodeficiency virus and the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome and opportunistic infections'' for ''international research concerning the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome''.

Subsec. (f). Pub. L. 103–43, § 1811(3)(B), substituted ''such sums as may be necessary for each fiscal year'' for ''there are authorized to be appropriated $40,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991''.

1992—Subsec. (b). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

§ 300cc–16. Research centers

(a) In general

(1) The Secretary, acting through the Director of the National Institute of Allergy and Infectious Diseases, may make grants to, and enter into contracts with, public and nonprofit private entities to assist such entities in planning, establishing, or strengthening, and providing basic operating support for, centers for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immune deficiency syndrome.

(2) A grant or contract under paragraph (1) shall be provided in accordance with policies established by the Secretary, acting through the Director of the National Institutes of Health, and after consultation with the advisory council for the National Institute of Allergy and Infectious Diseases.

(3) The Secretary shall ensure that, as appropriate, clinical research programs carried out under paragraph (1) include as research subjects women, children, hemophiliacs, and minorities.

(b) Use of financial assistance

(1) Financial assistance under subsection (a) of this section may be expended for—

(A) the renovation or leasing of space;

(B) staffing and other basic operating costs, including such patient care costs as are required for clinical research;

(C) clinical training with respect to acquired immune deficiency syndrome (including such training for allied health professionals); and

(D) demonstration purposes, including projects in the long-term monitoring and outpatient treatment of individuals infected with the etiologic agent for such syndrome.

(2) Financial assistance under subsection (a) of this section may not be expended to provide research training for which Ruth L. Kirschstein

National Research Service Awards may be provided under section 288 of this title.

(c) Duration of support

Support of a center under subsection (a) of this section may be for not more than five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(July 1, 1944, ch. 373, title XXIII, §2316, as added Pub. L. 100–607, title II, §201(4), Nov. 4, 1988, 102 Stat. 3071; amended Pub. L. 107–206, title I, §804(c), Aug. 2, 2002, 116 Stat. 874.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards''.

§300cc–17. Information services

(a) Establishment of program

The Secretary shall establish, maintain, and operate a program with respect to information on research, treatment, and prevention activities relating to infection with the etiologic agent for acquired immune deficiency syndrome. The program shall, with respect to the agencies of the Department of Health and Human Services, be integrated and coordinated.

(b) Toll-free telephone communications for health care entities

(1) After consultation with the Director of the Office of AIDS Research, the Administrator of the Health Resources and Services Administration, and the Director of the Centers for Disease Control and Prevention, the Secretary shall provide for toll-free telephone communications to provide medical and technical information with respect to acquired immune deficiency syndrome to health care professionals, allied health care providers, and to professionals providing emergency health services.

(2) Information provided pursuant to paragraph (1) shall include—

(A) information on prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome; and

(B) information contained in the data banks established in subsections (c) and (d) of this section.

(c) Data bank on research information

(1) After consultation with the Director of the Office of AIDS Research, the Director of the Centers for Disease Control and Prevention, and the National Library of Medicine, the Secretary shall establish a data bank of information on the results of research with respect to acquired immune deficiency syndrome conducted in the United States and other countries.

(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. To the extent practicable, the Secretary shall make such information available to researchers, physicians, and other appropriate individuals, of countries other than the United States.

(d) Data bank on clinical trials and treatments

(1) After consultation with the Commissioner of Food and Drugs, the AIDS Research Advisory Committee established under section 300cc–3 of this title, and the Director of the Office of AIDS Research, the Secretary shall, in carrying out subsection (a) of this section, establish a data bank of information on clinical trials and treatments with respect to infection with the etiologic agent for acquired immune deficiency syndrome (hereafter in this section referred to as the ''Data Bank'').

(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. The Secretary shall disseminate such information through information systems available to individuals infected with the etiologic agent for acquired immune deficiency syndrome, to other members of the public, to health care providers, and to researchers.

(e) Requirements with respect to data bank on clinical trials and treatments

The Data Bank shall include the following:

(1) A registry of clinical trials of experimental treatments for acquired immune deficiency syndrome and related illnesses conducted under regulations promulgated pursuant to section 355 of title 21 that provides a description of the purpose of each experimental drug protocol either with the consent of the protocol sponsor, or when a trial to test efficacy begins. Information provided shall include eligibility criteria and the location of trial sites, and must be forwarded to the Data Bank by the sponsor of the trial not later than 21 days after the approval by the Food and Drug Administration.

(2) Information pertaining to experimental treatments for acquired immune deficiency syndrome that may be available under a treatment investigational new drug application that has been submitted to the Food and Drug Administration pursuant to part 312 of title 21, Code of Federal Regulations. The Data Bank shall also include information pertaining to the results of clinical trials of such treatments, with the consent of the sponsor, of such experimental treatments, including information concerning potential toxicities or adverse effects associated with the use or administration of such experimental treatment.

(July 1, 1944, ch. 373, title XXIII, §2317, as added Pub. L. 100–607, title II, §201(4), Nov. 4, 1988, 102 Stat. 3071; amended Pub. L. 100–690, title II, §2617(c), Nov. 18, 1988, 102 Stat. 4240; Pub. L. 102–531, title III, §312(d)(19), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–43, title XX, §2008(d)(4), June 10, 1993, 107 Stat. 212.)

AMENDMENTS

1993—Subsec. (d)(1). Pub. L. 103–43 substituted ''AIDS Research Advisory Committee established under sec-

tion 300cc–3 of this title'' for ''Clinical Research Review Committee''.

1992—Subsecs. (b)(1), (c)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (e). Pub. L. 100–690 substituted ''data bank on clinical trials and treatments'' for ''data bank'' in heading.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300cc–18. Development of model protocols for clinical care of infected individuals

(a) In general

(1) The Secretary, acting through the Director of the National Institutes of Health and after consultation with the Director of the Agency for Healthcare Research and Quality, may make grants to public and nonprofit private entities for the establishment of projects to develop model protocols for the clinical care of individuals infected with the etiologic agent for acquired immune deficiency syndrome, including treatment and prevention of HIV infection and related conditions among women.

(2) The Secretary may not make a grant under paragraph (1) unless—

(A) the applicant for the grant is a provider of comprehensive primary care; or

(B) the applicant for the grant agrees, with respect to the project carried out pursuant to paragraph (1), to enter into a cooperative arrangement with an entity that is a provider of comprehensive primary care.

(b) Requirement of provision of certain services

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees that, with respect to patients participating in the project carried out with the grant, services provided pursuant to the grant will include—

(1) monitoring, in clinical laboratories, of the condition of such patients;

(2) clinical intervention for infection with the etiologic agent for acquired immune deficiency syndrome, including measures for the prevention of conditions arising from the infection;

(3) information and counseling on the availability of treatments for such infection approved by the Commissioner of Food and Drugs, on the availability of treatments for such infection not yet approved by the Commissioner, and on the reports issued by the AIDS Research Advisory Committee under section 300cc–3(c)(2)(B) of this title;

(4) support groups; and

(5) information on, and referrals to, entities providing appropriate social support services.

(c) Limitation on imposition of charges for services

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees that, if the applicant will routinely impose a charge for providing services pursuant to the grant, the applicant will not impose the charge on any individual seeking such services who is unable to pay the charge.

(d) Evaluation and reports

(1) The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees, with respect to the project carried out pursuant to subsection (a) of this section, to submit to the Secretary—

(A) information sufficient to assist in the replication of the model protocol developed pursuant to the project; and

(B) such reports as the Secretary may require.

(2) The Secretary shall provide for evaluations of projects carried out pursuant to subsection (a) of this section and shall annually submit to the Congress a report describing such projects. The report shall include the findings made as a result of such evaluations and may include any recommendations of the Secretary for appropriate administrative and legislative initiatives with respect to the program established in this section.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991, and such sums as may be necessary for each of the fiscal years 1994 through 1996.

(July 1, 1944, ch. 373, title XXIII, § 2318, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3073; amended Pub. L. 103–43, title XVIII, § 1811(4), title XX, § 2008(d)(5), June 10, 1993, 107 Stat. 199, 212; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106–129 substituted ''Director of the Agency for Healthcare Research and Quality'' for ''Administrator for Health Care Policy and Research''.

1993—Subsec. (a)(1). Pub. L. 103–43, § 1811(4)(A), inserted '', acting through the Director of the National Institutes of Health and after consultation with the Administrator for Health Care Policy and Research,'' after ''The Secretary'' and '', including treatment and prevention of HIV infection and related conditions among women'' after ''syndrome''.

Subsec. (b)(3). Pub. L. 103–43, § 2008(d)(5), substituted ''AIDS Research Advisory Committee'' for ''Clinical Research Review Committee''.

Subsec. (e). Pub. L. 103–43, § 1811(4)(B), inserted before period at end '', and such sums as may be necessary for each of the fiscal years 1994 through 1996''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d)(2) of this section relating to annual submission to Congress of reports describing projects carried out pursuant to subsec. (a) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 94 of House Document No. 103–7.

§ 300cc–19. National blood resource education program

After consultation with the Director of the National Heart, Lung, and Blood Institute and the Commissioner of Food and Drugs, the Sec-

retary shall establish a program of research and education regarding blood donations and transfusions to maintain and improve the safety of the blood supply. Education programs shall be directed at health professionals, patients, and the community to—

(1) in the case of the public and patients undergoing treatment—

(A) increase awareness that the process of donating blood is safe;

(B) promote the concept that blood donors are contributors to a national need to maintain an adequate and safe blood supply;

(C) encourage blood donors to donate more than once a year; and

(D) encourage repeat blood donors to recruit new donors;

(2) in the case of health professionals—

(A) improve knowledge, attitudes, and skills of health professionals in the appropriate use of blood and blood components;

(B) increase the awareness and understanding of health professionals regarding the risks versus benefits of blood transfusion; and

(C) encourage health professionals to consider alternatives to the administration of blood or blood components for their patients; and

(3) in the case of the community, increase coordination, communication, and collaboration among community, professional, industry, and government organizations regarding blood donation and transfusion issues.

(July 1, 1944, ch. 373, title XXIII, §2319, as added Pub. L. 100–607, title II, §201(4), Nov. 4, 1988, 102 Stat. 3074.)

§300cc–20. Additional authority with respect to research

(a) Data collection with respect to national prevalence

(1) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may, through representative sampling and other appropriate methodologies, provide for the continuous collection of data on the incidence in the United States of cases of acquired immune deficiency syndrome and of cases of infection with the etiologic agent for such syndrome. The Secretary may carry out the program of data collection directly or through cooperative agreements and contracts with public and nonprofit private entities.

(2) The Secretary shall encourage each State to enter into a cooperative agreement or contract under paragraph (1) with the Secretary in order to facilitate the prompt collection of the most recent accurate data on the incidence of cases described in such paragraph.

(3) The Secretary shall ensure that data collected under paragraph (1) includes data on the demographic characteristics of the population of individuals with cases described in paragraph (1), including data on specific subpopulations at risk of infection with the etiologic agent for acquired immune deficiency syndrome.

(4) In carrying out this subsection, the Secretary shall, for the purpose of assuring the utility of data collected under this section, request entities with expertise in the methodologies of data collection to provide, as soon as is practicable, assistance to the Secretary and to the States with respect to the development and utilization of uniform methodologies of data collection.

(5) The Secretary shall provide for the dissemination of data collected pursuant to this subsection. In carrying out this paragraph, the Secretary may publish such data as frequently as the Secretary determines to be appropriate with respect to the protection of the public health. The Secretary shall publish such data not less than once each year.

(b) Epidemiological and demographic data

(1) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop an epidemiological data base and shall provide for long-term studies for the purposes of—

(A) collecting information on the demographic characteristics of the population of individuals infected with the etiologic agent for acquired immune deficiency syndrome and the natural history of such infection; and

(B) developing models demonstrating the long-term domestic and international patterns of the transmission of such etiologic agent.

(2) The Secretary may carry out paragraph (1) directly or through grants to, or cooperative agreeements[1] or contracts with, public and nonprofit private entities, including Federal agencies.

(c) Long-term research

The Secretary may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting long-term research into treatments for acquired immune deficiency syndrome developed from knowledge of the genetic nature of the etiologic agent for such syndrome.

(d) Social sciences research

The Secretary, acting through the Director of the National Institute of Mental Health, may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

(e) Authorization of appropriations

(1) For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(2) Amounts appropriated pursuant to paragraph (1) to carry out subsection (c) of this section shall remain available until expended.

(July 1, 1944, ch. 373, title XXIII, §2320, as added Pub. L. 100–607, title II, §201(4), Nov. 4, 1988, 102 Stat. 3074; amended Pub. L. 100–690, title II, §2617(d), Nov. 18, 1988, 102 Stat. 4240; Pub. L. 102–531, title III, §312(d)(20), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–43, title XVIII, §1811(5), (6), June 10, 1993, 107 Stat. 200.)

[1] So in original.

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103–43, § 1811(5), inserted ''and the natural history of such infection'' after ''syndrome''.

Subsec. (e)(1). Pub. L. 103–43, § 1811(6), substituted ''fiscal year'' for ''of the fiscal years 1989 through 1991''.

1992—Subsecs. (a)(1), (b)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (a)(5). Pub. L. 100–690 substituted ''subsection'' for ''section''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

PART C—RESEARCH TRAINING

§ 300cc–31. Fellowships and training

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish fellowship and training programs to be conducted by the Centers for Disease Control and Prevention to train individuals to develop skills in epidemiology, surveillance, testing, counseling, education, information, and laboratory analysis relating to acquired immune deficiency syndrome. Such programs shall be designed to enable health professionals and health personnel trained under such programs to work, after receiving such training, in national and international efforts toward the prevention, diagnosis, and treatment of acquired immune deficiency syndrome.

(b) Programs conducted by National Institute of Mental Health

The Secretary, acting through the Director of the National Institute of Mental Health, shall conduct or support fellowship and training programs for individuals pursuing graduate or postgraduate study in order to train such individuals to conduct scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

(c) Relationship to limitation on number of employees

Any individual receiving a fellowship or receiving training under subsection (a) or (b) of this section shall not be included in any determination of the number of full-time equivalent employees of the Department of Health and Human Services for the purpose of any limitation on the number of such employees established by law prior to, on, or after November 4, 1988.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(July 1, 1944, ch. 373, title XXIII, § 2341, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3076; amended Pub. L. 100–690, title II, § 2617(e), Nov. 18, 1988, 102 Stat. 4240; Pub. L. 102–531, title III, § 312(d)(21), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–43, title XVIII, § 1811(7), June 10, 1993, 107 Stat. 200.)

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–43 substituted ''fiscal year'' for ''of the fiscal years 1989 through 1991''.

1992—Subsec. (a). Pub. L. 102–531, which directed the substitution of ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'', was executed by making the substitution in two places to reflect the probable intent of Congress.

1988—Subsec. (c). Pub. L. 100–690 substituted ''date of the enactment of the AIDS Amendments of 1988'' for ''date of the enactment of the AIDS Federal Policy Act of 1988'' which for purposes of codification was translated as ''November 4, 1988''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

PART D—OFFICE OF AIDS RESEARCH

SUBPART I—INTERAGENCY COORDINATION OF ACTIVITIES

AMENDMENTS

1993—Pub. L. 103–43, title XVIII, § 1801(a)(1), (3), June 10, 1993, 107 Stat. 192, added part D designation and heading and subpart I heading and struck out former part D designation and heading ''Special Authorities of the Director of the National Institutes of Health''.

§ 300cc–40. Establishment of Office

(a) In general

There is established within the National Institutes of Health an office to be known as the Office of AIDS Research. The Office shall be headed by a director, who shall be appointed by the Secretary.

(b) Duties

(1) Interagency coordination of AIDS activities

With respect to acquired immune deficiency syndrome, the Director of the Office shall plan, coordinate, and evaluate research and other activities conducted or supported by the agencies of the National Institutes of Health. In carrying out the preceding sentence, the Director of the Office shall evaluate the AIDS activities of each of such agencies and shall provide for the periodic reevaluation of such activities.

(2) Consultations

The Director of the Office shall carry out this subpart (including developing and revising the plan required in section 300cc–40b of this title) in consultation with the heads of the agencies of the National Institutes of Health, with the advisory councils of the agencies, and with the advisory council established under section 300cc–40a of this title.

(3) Coordination

The Director of the Office shall act as the primary Federal official with responsibility for overseeing all AIDS research conducted or supported by the National Institutes of Health, and

(A) shall serve to represent the National Institutes of Health AIDS Research Program at all relevant Executive branch task forces and committees; and

(B) shall maintain communications with all relevant Public Health Service agencies and with various other departments of the Federal Government, to ensure the timely transmission of information concerning advances in AIDS research and the clinical treatment of acquired immune deficiency syndrome and its related conditions, between these various agencies for dissemination to affected communities and health care providers.

(July 1, 1944, ch. 373, title XXIII, § 2351, as added Pub. L. 103–43, title XVIII, § 1801(a)(3), June 10, 1993, 107 Stat. 192.)

§ 300cc–40a. Advisory Council; coordinating committees

(a) Advisory Council

(1) In general

The Secretary shall establish an advisory council for the purpose of providing advice to the Director of the Office on carrying out this part. (Such council is referred to in this subsection as the ''Advisory Council''.)

(2) Composition, compensation, terms, chair, etc.

Subsections (b) through (g) of section 284a of this title apply to the Advisory Council to the same extent and in the same manner as such subsections apply to advisory councils for the national research institutes, except that—

(A) in addition to the ex officio members specified in section 284a(b)(2) of this title, there shall serve as such members of the Advisory Council a representative from the advisory council of each of the National Cancer Institute and the National Institute on Allergy and Infectious Diseases; and

(B) with respect to the other national research institutes, there shall serve as ex officio members of such Council, in addition to such members specified in subparagraph (A), a representative from the advisory council of each of the 2 institutes that receive the greatest funding for AIDS activities.

(b) Individual coordinating committees regarding research disciplines

(1) In general

The Director of the Office shall establish, for each research discipline in which any activity under the plan required in section 300cc–40b of this title is carried out, a committee for the purpose of providing advice to the Director of the Office on carrying out this part with respect to such discipline. (Each such committee is referred to in this subsection as a ''coordinating committee''.)

(2) Composition

Each coordinating committee shall be composed of representatives of the agencies of the National Institutes of Health with significant responsibilities regarding the research discipline involved.

(July 1, 1944, ch. 373, title XXIII, § 2352, as added Pub. L. 103–43, title XVIII, § 1801(a)(3), June 10, 1993, 107 Stat. 193.)

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 300cc–40b. Comprehensive plan for expenditure of appropriations

(a) In general

Subject to the provisions of this section and other applicable law, the Director of the Office, in carrying out section 300cc–40 of this title, shall—

(1) establish a comprehensive plan for the conduct and support of all AIDS activities of the agencies of the National Institutes of Health (which plan shall be first established under this paragraph not later than 12 months after June 10, 1993);

(2) ensure that the Plan establishes priorities among the AIDS activities that such agencies are authorized to carry out;

(3) ensure that the Plan establishes objectives regarding such activities, describes the means for achieving the objectives, and designates the date by which the objectives are expected to be achieved;

(4) ensure that all amounts appropriated for such activities are expended in accordance with the Plan;

(5) review the Plan not less than annually, and revise the Plan as appropriate; and

(6) ensure that the Plan serves as a broad, binding statement of policies regarding AIDS activities of the agencies, but does not remove the responsibility of the heads of the agencies for the approval of specific programs or projects, or for other details of the daily administration of such activities, in accordance with the Plan.

(b) Certain components of Plan

With respect to AIDS activities of the agencies of the National Institutes of Health, the Director of the Office shall ensure that the Plan—

(1) provides for basic research;

(2) provides for applied research;

(3) provides for research that is conducted by the agencies;

(4) provides for research that is supported by the agencies;

(5) provides for proposals developed pursuant to solicitations by the agencies and for proposals developed independently of such solicitations; and

(6) provides for behavioral research and social sciences research.

(c) Budget estimates

(1) Full-funding budget

(A) With respect to a fiscal year, the Director of the Office shall prepare and submit directly to the President, for review and transmittal to the Congress, a budget estimate for carrying out the Plan for the fiscal year, after reasonable opportunity for comment (but without change) by the Secretary, the Director of the National Institutes of Health, and the advisory council established under section 300cc–40a of this title. The budget estimate shall include an estimate of the number and type of personnel needs for the Office.

(B) The budget estimate submitted under subparagraph (A) shall estimate the amounts necessary for the agencies of the National Institutes of Health to carry out all AIDS activities determined by the Director of the Office to be appropriate, without regard to the probability that such amounts will be appropriated.

(2) Alternative budgets

(A) With respect to a fiscal year, the Director of the Office shall prepare and submit to the Secretary and the Director of the National Institutes of Health the budget estimates described in subparagraph (B) for carrying out the Plan for the fiscal year. The Secretary and such Director shall consider each of such estimates in making recommendations to the President regarding a budget for the Plan for such year.

(B) With respect to the fiscal year involved, the budget estimates referred to in subparagraph (A) for the Plan are as follows:

(i) The budget estimate submitted under paragraph (1).

(ii) A budget estimate developed on the assumption that the amounts appropriated will be sufficient only for—

(I) continuing the conduct by the agencies of the National Institutes of Health of existing AIDS activities (if approved for continuation), and continuing the support of such activities by the agencies in the case of projects or programs for which the agencies have made a commitment of continued support; and

(II) carrying out, of activities that are in addition to activities specified in subclause (I), only such activities for which the Director determines there is the most substantial need.

(iii) Such other budget estimates as the Director of the Office determines to be appropriate.

(d) Funding

(1) Authorization of appropriations

For the purpose of carrying out AIDS activities under the Plan, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 1996.

(2) Receipt of funds

For the first fiscal year beginning after the date on which the Plan first established under subsection (a)(1) of this section has been in effect for 12 months, and for each subsequent fiscal year, the Director of the Office shall receive directly from the President and the Director of the Office of Management and Budget all funds available for AIDS activities of the National Institutes of Health.

(3) Allocations for agencies

(A) Each fiscal year the Director of the Office shall, from the amounts received under paragraph (2) for the fiscal year, allocate to the agencies of the National Institutes of Health (in accordance with the Plan) all amounts available for such year for carrying out the AIDS activities specified in subsection (c)(2)(B)(ii)(I) of this section for such year. Such allocation shall, to the extent practicable, be made not later than 15 days after the date on which the Director receives amounts under paragraph (2).

(B) Each fiscal year the Director of the Office shall, from the amounts received under paragraph (2) for the fiscal year, allocate to the agencies of the National Institutes of Health (in accordance with the Plan) all amounts available for such year for carrying out AIDS activities that are not referred to in subparagraph (A). Such allocation shall, to the extent practicable, be made not later than 30 days after the date on which the Director receives amounts under paragraph (2).

(July 1, 1944, ch. 373, title XXIII, § 2353, as added Pub. L. 103–43, title XVIII, § 1801(a)(3), June 10, 1993, 107 Stat. 194.)

§ 300cc–41. Additional authorities

(a) In general

In carrying out AIDS research, the Director of the Office—

(1) shall develop and expand clinical trials of treatments and therapies for infection with the etiologic agent for acquired immune deficiency syndrome, including such clinical trials for women, infants, children, hemophiliacs, and minorities;

(2) may establish or support the large-scale development and preclinical screening, production, or distribution of specialized biological materials and other therapeutic substances for AIDS research and set standards of safety and care for persons using such materials;

(3) may support—

(A) AIDS research conducted outside the United States by qualified foreign professionals if such research can reasonably be expected to benefit the people of the United States;

(B) collaborative research involving American and foreign participants; and

(C) the training of American scientists abroad and foreign scientists in the United States;

(4) may encourage and coordinate AIDS research conducted by any industrial concern that evidences a particular capability for the conduct of such research;

(5)(A) may acquire, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director of the Office determines necessary;

(B) may make grants for the construction or renovation of facilities; and

(C) may acquire, without regard to section 8141 of title 40 by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the National Institutes of Health for a period not to exceed ten years; and

(6) subject to section 284(b)(2) of this title and without regard to section 3324 of title 31 and section 5 of title 41, may enter into such contracts and cooperative agreements with any public agency, or with any person, firm, association, corporation, or educational institution, as may be necessary to expedite and coordinate research relating to acquired immune deficiency syndrome.

(b) Projects for cooperation among public and private health entities

In carrying out subsection (a) of this section, the Director of the Office shall establish projects to promote cooperation among Federal agencies, State, local, and regional public health agencies, and private entities, in research concerning the diagnosis, prevention, and treatment of acquired immune deficiency syndrome.

(July 1, 1944, ch. 373, title XXIII, § 2354, formerly § 2351, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3076; renumbered § 2354 and amended Pub. L. 103–43, title XVIII, § 1801(a)(2), (b), June 10, 1993, 107 Stat. 192, 196; Pub. L. 109–482, title I, § 104(b)(2)(D), Jan. 15, 2007, 120 Stat. 3693.)

CODIFICATION

In subsec. (a)(5)(C), ''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2007—Subsecs. (b), (c). Pub. L. 109–482 redesignated subsec. (c) as (b) and struck out former subsec. (b). Subsec. (b) text read as follows: ''The Director of the Office shall each fiscal year prepare and submit to the Secretary, for inclusion in the comprehensive report required in section 300cc(a) of this title, a report—

''(1) describing and evaluating the progress made in such fiscal year in research, treatment, and training with respect to acquired immune deficiency syndrome conducted or supported by the Institutes;

''(2) summarizing and analyzing expenditures made in such fiscal year for activities with respect to acquired immune deficiency syndrome conducted or supported by the National Institutes of Health; and

''(3) containing such recommendations as the Director considers appropriate.''

1993—Pub. L. 103–43, § 1801(b)(1), substituted ''Additional'' for ''Establishment of'' in section catchline.

Subsec. (a). Pub. L. 103–43, § 1801(b)(2)(A), in introductory provisions substituted ''AIDS research, the Director of the Office'' for ''research with respect to acquired immune deficiency syndrome, the Secretary, acting through the Director of the National Institutes of Health''.

Subsec. (a)(1). Pub. L. 103–43, § 1801(b)(2)(B), redesignated par. (3) as (1) and struck out former par. (1) which read as follows:

''(A) shall establish an office to be known as the Office of AIDS Research, which Office shall be headed by a Director appointed by the Director of the National Institutes of Health; and

''(B) shall provide administrative support and support services to the Director of such Office;''.

Subsec. (a)(2). Pub. L. 103–43, § 1801(b)(2)(B), (E), redesignated par. (4) as (2), substituted ''AIDS research'' for ''research relating to acquired immune deficiency syndrome'', and struck out former par. (2) which read as follows: ''shall coordinate activities relating to acquired immune deficiency syndrome conducted by the national research institutes and the agencies of the National Institutes of Health;''.

Subsec. (a)(3). Pub. L. 103–43, § 1801(b)(2)(B), (C), (E), redesignated par. (5) as (3), struck out '', in consultation with the advisory council for the appropriate national research institute of the National Institutes of Health,'' after ''may'' in introductory provisions, and substituted ''AIDS research'' for ''research relating to acquired immune deficiency syndrome'' in subpar. (A). Former par. (3) redesignated (1).

Subsec. (a)(4). Pub. L. 103–43, § 1801(b)(2)(B), (E), redesignated par. (6) as (4) and substituted ''AIDS research'' for ''research relating to acquired immune deficiency syndrome''. Former par. (4) redesignated (2).

Subsec. (a)(5). Pub. L. 103–43, § 1801(b)(2)(B), (D), redesignated par. (7) as (5), in subpar. (A) struck out '', in consultation with such advisory council,'' after ''may'' and substituted ''Director of the Office determines'' for ''Director of the National Institutes of Health determines'', and in subpars. (B) and (C) struck out '', in consultation with such advisory council,'' after ''may''. Former par. (5) redesignated (3).

Subsec. (a)(6) to (8). Pub. L. 103–43, § 1801(b)(2)(B), redesignated pars. (6) to (8) as (4) to (6), respectively.

Subsec. (b). Pub. L. 103–43, § 1801(b)(3), substituted ''The Director of the Office shall'' for ''The Director of the National Institutes of Health, acting through the Director of the Office of AIDS Research, shall''.

Subsec. (c). Pub. L. 103–43, § 1801(b)(4), substituted ''the Director of the Office shall'' for ''the Director of the National Institutes of Health shall''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

SUBPART II—EMERGENCY DISCRETIONARY FUND

§ 300cc–43. Emergency Discretionary Fund

(a) In general

(1) Establishment

There is established a fund consisting of such amounts as may be appropriated under subsection (g) of this section. Subject to the provisions of this section, the Director of the Office, after consultation with the advisory council established under section 300cc–40a of this title, may expend amounts in the Fund for the purpose of conducting and supporting such AIDS activities, including projects of AIDS research, as may be authorized in this chapter for the National Institutes of Health.

(2) Preconditions to use of Fund

Amounts in the Fund may be expended only if—

(A) the Director identifies the particular set of AIDS activities for which such amounts are to be expended;

(B) the set of activities so identified constitutes either a new project or additional AIDS activities for an existing project;

(C) the Director of the Office has made a determination that there is a significant need for such set of activities; and

(D) as of June 30 of the fiscal year preceding the fiscal year in which the determination is made, such need was not provided for in any appropriations Act passed by the House of Representatives to make appropriations for the Departments of Labor, Health and Human Services (including the National Institutes of Health), Education, and related agencies for the fiscal year in which the determination is made.

(3) Two-year use of Fund for project involved

In the case of an identified set of AIDS activities, obligations of amounts in the Fund may not be made for such set of activities after the expiration of the 2-year period beginning on the date on which the initial obligation of such amounts is made for such set.

(b) Peer review

With respect to an identified set of AIDS activities carried out with amounts in the Fund, this section may not be construed as waiving applicable requirements for peer review.

(c) Limitations on use of Fund

(1) Construction of facilities

Amounts in the Fund may not be used for the construction, renovation, or relocation of facilities, or for the acquisition of land.

(2) Congressional disapproval of projects

(A) Amounts in the Fund may not be expended for the fiscal year involved for an identified set of AIDS activities, or a category of AIDS activities, for which—

(i)(I) amounts were made available in an appropriations Act for the preceding fiscal year; and

(II) amounts are not made available in any appropriations Act for the fiscal year involved; or

(ii) amounts are by law prohibited from being expended.

(B) A determination under subparagraph (A)(i) of whether amounts have been made available in appropriations Acts for a fiscal year shall be made without regard to whether such Acts make available amounts for the Fund.

(3) Investment of Fund amounts

Amounts in the Fund may not be invested.

(d) Applicability of limitation regarding number of employees

The purposes for which amounts in the Fund may be expended include the employment of individuals necessary to carry out identified sets of AIDS activities approved under subsection (a) of this section. Any individual employed under the preceding sentence may not be included in any determination of the number of full-time equivalent employees for the Department of Health and Human Services for the purpose of any limitation on the number of such employees established by law prior to, on, or after June 10, 1993.

(e) Definitions

For purposes of this section:

(1) The term ''Fund'' means the fund established in subsection (a) of this section.

(2) The term ''identified set of AIDS activities'' means a particular set of AIDS activities identified under subsection (a)(2)(A) of this section.

(f) Funding

(1) Authorization of appropriations

For the purpose of providing amounts for the Fund, there is authorized to be appropriated $100,000,000 for each of the fiscal years 1994 through 1996.

(2) Availability

Amounts appropriated for the Fund are available until expended.

(July 1, 1944, ch. 373, title XXIII, § 2356, as added Pub. L. 103–43, title XVIII, § 1802, June 10, 1993, 107 Stat. 196; amended Pub. L. 109–482, title I, § 104(b)(2)(E), Jan. 15, 2007, 120 Stat. 3693.)

AMENDMENTS

2007—Subsecs. (e) to (g). Pub. L. 109–482 redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out heading and text of former subsec. (e). Text read as follows: ''Not later than February 1 of each fiscal year, the Director of the Office shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report on the identified sets of AIDS activities carried out during the preceding fiscal year with amounts in the Fund. The report shall provide a description of each such set of activities and an explanation of the reasons underlying the use of the Fund for the set.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

SUBPART III—GENERAL PROVISIONS

§ 300cc–45. General provisions regarding Office

(a) Administrative support for Office

The Secretary, acting through the Director of the National Institutes of Health, shall provide administrative support and support services to the Director of the Office and shall ensure that such support takes maximum advantage of existing administrative structures at the agencies of the National Institutes of Health.

(b) Evaluation

Not later than 5 years after June 10, 1993, the Secretary shall conduct an evaluation to—

(1) determine the effect of this section on the planning and coordination of the AIDS research programs at the institutes, centers and divisions of the National Institutes of Health;

(2) evaluate the extent to which this part has eliminated the duplication of administrative resources among such Institutes, centers and divisions; and

(3) provide recommendations concerning future alterations with respect to this part.

(c) Definitions

For purposes of this part:

(1) The term ''AIDS activities'' means AIDS research and other activities that relate to acquired immune deficiency syndrome.

(2) The term ''AIDS research'' means research with respect to acquired immune deficiency syndrome.

(3) The term ''Office'' means the Office of AIDS Research.

(4) The term ''Plan'' means the plan required in section 300cc–40b(a)(1) of this title.

(July 1, 1944, ch. 373, title XXIII, § 2359, as added Pub. L. 103–43, title XVIII, § 1803, June 10, 1993, 107 Stat. 198; amended Pub. L. 109–482, title I, § 104(b)(2)(F), Jan. 15, 2007, 120 Stat. 3693.)

AMENDMENTS

2007—Subsec. (b). Pub. L. 109–482 substituted ''Evaluation'' for ''Evaluation and report'' in heading, struck out par. (1) designation before ''Not later than'', redesignated subpars. (A) to (C) as pars. (1) to (3), respectively, and struck out heading and text of former par. (2). Text read as follows: ''Not later than 1 year after the date on which the evaluation is commenced under paragraph (1), the Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives, a report concerning the results of such evaluation.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of this title.

PART E—GENERAL PROVISIONS

§ 300cc–51. Definitions

For purposes of this subchapter:

(1) The term ''infection'', with respect to the etiologic agent for acquired immune deficiency syndrome, includes opportunistic cancers and infectious diseases and any other conditions arising from infection with such etiologic agent.

(2) The term ''treatment'', with respect to the etiologic agent for acquired immune deficiency syndrome, includes primary and secondary prophylaxis.

(July 1, 1944, ch. 373, title XXIII, § 2361, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3078; amended Pub. L. 103–43, title XVIII, § 1811(8), June 10, 1993, 107 Stat. 200.)

AMENDMENTS

1993—Pub. L. 103–43 substituted provisions defining ''infection'' and ''treatment'' for former provisions which read as follows: ''For purposes of this subchapter, the term 'infection with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from infection with such etiologic agent''.

SUBCHAPTER XXII—HEALTH SERVICES WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

PART A—FORMULA GRANTS TO STATES FOR HOME AND COMMUNITY-BASED HEALTH SERVICES

§§ 300dd to 300dd–14. Repealed. July 1, 1944, ch. 373, title XXIV, § 2415, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3088; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(g), 102 Stat. 4241

Section 300dd, act July 1, 1944, ch. 373, title XXIV, § 2401, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3079, established program of formula grants for home and community-based health services.

Section 300dd–1, act July 1, 1944, ch. 373, title XXIV, § 2402, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3080; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(a), 102 Stat. 4240, provided requirements for carrying out purpose of grants.

Section 300dd–2, act July 1, 1944, ch. 373, title XXIV, § 2403, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3081, required submission of description of intended uses of grant.

Section 300dd–3, act July 1, 1944, ch. 373, title XXIV, § 2404, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3081; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(b), 102 Stat. 4240, restricted use of grants.

Section 300dd–4, act July 1, 1944, ch. 373, title XXIV, § 2405, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3082, required reports and audits by States.

Section 300dd–5, act July 1, 1944, ch. 373, title XXIV, § 2406, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3083, required additional agreements.

Section 300dd–6, act July 1, 1944, ch. 373, title XXIV, § 2407, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3084, required submission of application containing certain agreements and assurances.

Section 300dd–7, act July 1, 1944, ch. 373, title XXIV, § 2408, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3084, provided for determination of amount of allotments for States.

Section 300dd–8, act July 1, 1944, ch. 373, title XXIV, § 2409, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3085; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(c), 102 Stat. 4241, related to failure to comply with agreements.

Section 300dd–9, act July 1, 1944, ch. 373, title XXIV, § 2410, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087, prohibited certain false statements.

Section 300dd–10, act July 1, 1944, ch. 373, title XXIV, § 2411, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(d), 102 Stat. 4241, authorized the Secretary to provide technical assistance and supplies and services in lieu of grant funds.

Section 300dd–11, act July 1, 1944, ch. 373, title XXIV, § 2412, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087, required report by Secretary.

Section 300dd–12, act July 1, 1944, ch. 373, title XXIV, § 2413, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(e), 102 Stat. 4241, defined terms for this part.

Section 300dd–13, act July 1, 1944, ch. 373, title XXIV, § 2414, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3088; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(f), 102 Stat. 4241, provided funding.

Section 300dd–14, act July 1, 1944, ch. 373, title XXIV, § 2415, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3088; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(g), 102 Stat. 4241, repealed this part effective with respect to appropriations made for any period after fiscal year 1990.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to appropriations made for any period after fiscal year 1990, see section 2415 of act July 1, 1944, which was classified to former section 300dd–14 of this title.

PART B—SUBACUTE CARE

§ 300dd–21. Demonstration projects

(a) Definitions

As used in this section:

(1) The term ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' means individuals who have a disease, or are recovering from a disease, attributable to the infection of such individuals

with such etiologic agent, and as a result of the effects of such disease, are in need of subacute-care services.

(2) The term ''subacute care'' means medical and health care services that are required for individuals recovering from acute care episodes that are less intensive than the level of care provided in acute-care hospitals, and includes skilled nursing care, hospice care, and other types of health services provided in other long-term-care facilities.

(b) Authorization to conduct three projects

The Secretary shall conduct three demonstration projects to determine the effectiveness and cost of providing the subacute-care services described in subsection (b) of this section to individuals infected with the etiologic agent for acquired immune deficiency syndrome, and the impact of such services on the health status of such individuals.

(c) Services

(1) The services provided under each demonstration project shall be designed to meet the specific needs of individuals infected with the etiologic agent for acquired immune deficiency syndrome, and shall include—

(A) the care and treatment of such individuals by providing—

(i) subacute care;

(ii) emergency medical care and specialized diagnostic and therapeutic services as needed and where appropriate, either directly or through affiliation with a hospital that has experience in treating individuals with acquired immune deficiency syndrome; and

(iii) case management services to ensure, through existing services and programs whenever possible, appropriate discharge planning for such individuals; and

(B) technical assistance, to other facilities in the region served by such facility, that is directed toward education and training of physicians, nurses, and other health-care professionals in the subacute care and treatment of individuals infected with the etiologic agent for acquired immune deficiency syndrome.

(2) Services provided under each demonstration project may also include—

(A) hospice services;

(B) outpatient care; and

(C) outreach activities in the surrounding community to hospitals and other health-care facilities that serve individuals infected with the etiologic agent for acquired immune deficiency syndrome.

(d) Time and place

The demonstration projects shall be conducted—

(1) during a 4-year period beginning not later than 9 months after November 4, 1988; and

(2) at sites that—

(A) are geographically diverse and located in areas that are appropriate for the provision of the required and authorized services; and

(B) have the highest incidence of cases of acquired immune deficiency syndrome and the greatest need for subacute-care services.

(e) Evaluation and report

The Secretary shall evaluate the operations of the demonstration projects and shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate—

(1) not later than 18 months after the beginning of the first project, a preliminary report that contains—

(A) a description of the sites at which the projects are being conducted and of the services being provided in each project; and

(B) a preliminary evaluation of the experience of the projects in the first 12 months of operation; and

(2) not later than 6 months after the completion of the last project, a final report that contains—

(A) an assessment of the costs of subacute care for individuals infected with the etiologic agent for acquired immune deficiency syndrome, including a breakdown of all other sources of funding for the care provided to cover subacute care; and

(B) recommendations for appropriate legislative changes.

(f) Other research

Each demonstration project shall provide for other research to be carried out at the site of such demonstration project including—

(1) clinical research on acquired immune deficiency syndrome, concentrating on research on the neurological manifestations resulting from infection with the etiologic agent for such syndrome; and

(2) the study of the psychological and mental health issues related to such syndrome.

(g) Authorization of appropriations

(1) To carry out this section, there are authorized to be appropriated $10,000,000 for fiscal year 1989 and such sums as are necessary for each of the fiscal years 1990 through 1992.

(2) Amounts appropriated pursuant to paragraph (1) shall remain available until September 10, 1992.

(h) Services to veterans

The Secretary shall enter into an agreement with the Secretary of the Department of Veterans Affairs to ensure that appropriate provision will be made for the furnishing, through demonstration projects, of services to eligible veterans, under contract with the Department of Veterans Affairs pursuant to section 1720 of title 38.

(July 1, 1944, ch. 373, title XXIV, § 2421, as added Pub. L. 100–607, title II, § 211, Nov. 4, 1988, 102 Stat. 3088; amended Pub. L. 100–527, § 10(1), (2), Oct. 25, 1988, 102 Stat. 2640, 2641; Pub. L. 100–690, title II, § 2618(h), Nov. 18, 1988, 102 Stat. 4241; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Subsec. (h). Pub. L. 102–83 substituted ''section 1720 of title 38'' for ''section 620 of title 38''.

1988—Subsec. (a)(1). Pub. L. 100–690, § 2618(h)(1), substituted '' 'individuals infected with the etiologic agent for acquired immune deficiency syndrome' means individuals who'' for '' 'patients infected with the human

immunodeficiency virus' means persons who'' and ''such individuals with such etiologic agent'' for ''such person with the human immunodeficiency virus''.

Subsec. (a)(2). Pub. L. 100–690, § 2618(h)(2), substituted ''individuals'' for ''persons''.

Subsec. (b). Pub. L. 100–690, § 2618(h)(3), substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''patients infected with the human immunodeficiency virus'' and ''such individuals'' for ''such patients''.

Subsec. (c)(1). Pub. L. 100–690, § 2618(h)(4)(A), in introductory provisions substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''patients infected with the human immunodeficiency virus''.

Subsec. (c)(1)(A). Pub. L. 100–690, § 2618(h)(4)(B), substituted in introductory provisions ''such individuals'' for ''such patients'', in cl. (ii) ''individuals with acquired immune deficiency syndrome'' for ''AIDS patients'', and in cl. (iii) ''such individuals'' for ''patients''.

Subsec. (c)(1)(B), (2)(C). Pub. L. 100–690, § 2618(h)(4)(C), (5), substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''patients infected with the human immunodeficiency virus''.

Subsec. (d)(2)(B). Pub. L. 100–690, § 2618(h)(6), substituted ''cases of acquired immune deficiency syndrome'' for ''AIDS cases''.

Subsec. (e)(2)(A). Pub. L. 100–690, § 2618(h)(7), substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''patients infected with the human immunodeficiency virus''.

Subsec. (f)(1). Pub. L. 100–690, § 2618(h)(8), substituted ''acquired immune deficiency syndrome'' for ''the acquired immunodeficiency syndrome'' and ''etiologic agent for such syndrome'' for ''human immunodeficiency virus''.

Subsec. (f)(2). Pub. L. 100–690, § 2618(h)(9), substituted ''such syndrome'' for ''the acquired immunodeficiency syndrome''.

Subsec. (g)(1). Pub. L. 100–690, § 2618(h)(10), substituted ''fiscal year 1989'' for ''fiscal year 1988'' and ''fiscal years 1990 through 1992'' for ''fiscal years 1989 through 1991''.

Subsec. (h). Pub. L. 100–527 substituted ''Secretary of the Department of Veterans Affairs'' and ''Department of Veterans Affairs'' for ''Administrator of the Veterans' Administration'' and ''Veterans' Administration'', respectively.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

PART C—OTHER HEALTH SERVICES

CODIFICATION

Prior to revision by Pub. L. 102–321, this part was comprised of subpart I, consisting of sections 300dd–31 to 300dd–33, and subpart II, consisting of section 300dd–41.

§ 300dd–31. Grants for anonymous testing

The Secretary may make grants to the States for the purpose of providing opportunities for individuals—

(1) to undergo counseling and testing with respect to the etiologic agent for acquired immune deficiency syndrome without being required to provide any information relating to the identity of the individuals; and

(2) to undergo such counseling and testing through the use of a pseudonym.

(July 1, 1944, ch. 373, title XXIV, § 2431, as added Pub. L. 100–607, title II, § 211, Nov. 4, 1988, 102 Stat. 3090.)

§ 300dd–32. Requirement of provision of certain counseling services

(a) Counseling before testing

The Secretary may not make a grant under section 300dd–31 of this title to a State unless the State agrees that, before testing an individual pursuant to such section, the State will provide to the individual appropriate counseling with respect to acquired immune deficiency syndrome (based on the most recent scientific data relating to such syndrome), including—

(1) measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome;

(2) the accuracy and reliability of the results of such testing;

(3) the significance of the results of such testing, including the potential for developing acquired immune deficiency syndrome; and

(4) encouraging individuals, as appropriate, to undergo testing for such etiologic agent and providing information on the benefits of such testing.

(b) Counseling of individuals with negative test results

The Secretary may not make a grant under section 300dd–31 of this title to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that an individual is not infected with the etiologic agent for acquired immune deficiency syndrome, the State will review for the individual the information provided pursuant to subsection (a) of this section with respect to such syndrome, including—

(1) the information described in paragraphs (1) through (3) of such subsection; and

(2) the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome.

(c) Counseling of individuals with positive test results

The Secretary may not make a grant under section 300dd–31 of this title to a State unless the State agrees that, if the results of testing

conducted pursuant to such section indicate that an individual is infected with the etiologic agent for acquired immune deficiency syndrome, the State will provide to the individual appropriate counseling with respect to such syndrome, including—

(1) reviewing the information described in paragraphs (1) through (3) of subsection (a) of this section;

(2) reviewing the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome;

(3) the importance of not exposing others to the etiologic agent for acquired immune deficiency syndrome;

(4) the availability in the geographic area of any appropriate services with respect to health care, including mental health care and social and support services;

(5) the benefits of locating and counseling any individual by whom the infected individual may have been exposed to the etiologic agent for acquired immune deficiency syndrome and any individual whom the infected individual may have exposed to such etiologic agent; and

(6) the availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in paragraph (5).

(d) Rule of construction with respect to counseling without testing

Agreements entered into pursuant to subsections (a) through (c) of this section may not be construed to prohibit any grantee under section 300dd–31 of this title from expending the grant for the purpose of providing counseling services described in such subsections to an individual who will not undergo testing described in such section as a result of the grantee or the individual determining that such testing of the individual is not appropriate.

(e) Use of funds

(1) The purpose of this subpart[1] is to provide for counseling and testing services to prevent and reduce exposure to, and transmission of, the etiologic agent for acquired immune deficiency syndrome.

(2) All individuals receiving counseling pursuant to this subpart[1] are to be counseled about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(3) None of the fund appropriated to carry out this subpart[1] may be used to provide counseling that is designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous drug abuse.

(4) Paragraph (3) may not be construed to prohibit a counselor who has already performed the counseling of an individual required by paragraph (2), to provide accurate information about means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

[1] So in original. Probably should be ''part''.

(July 1, 1944, ch. 373, title XXIV, § 2432, as added Pub. L. 100–607, title II, § 211, Nov. 4, 1988, 102 Stat. 3090; amended Pub. L. 100–690, title II, § 2618(i), Nov. 18, 1988, 102 Stat. 4242; Pub. L. 102–321, title I, § 118(b)(1)(B), July 10, 1992, 106 Stat. 348.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321, which directed the substitution of ''part'' for ''subpart'' wherever appearing in subsec. (a), could not be executed because the word ''subpart'' does not appear in subsec. (a).

1988—Subsec. (c). Pub. L. 100–690, § 2618(i)(1), substituted ''indicate that an individual'' for ''indicate that the individual'' in introductory provisions and ''paragraph (5)'' for ''paragraph (4)'' in par. (6).

Subsec. (e)(1) to (3). Pub. L. 100–690, § 2618(i)(2), substituted ''subpart'' for ''part''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300dd–33. Funding

For the purpose of grants under section 300dd–31 of this title, there are authorized to be appropriated $100,000,000 for each of the fiscal years 1989 and 1990.

(July 1, 1944, ch. 373, title XXIV, § 2433, as added Pub. L. 100–607, title II, § 211, Nov. 4, 1988, 102 Stat. 3091.)

§ 300dd–41. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title XXIV, § 2441, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3092, which related to demonstration projects for individuals with positive AIDS test results, was renumbered section 520B of act July 1, 1944, by Pub. L. 102–321, title I, § 118(a), July 10, 1992, 106 Stat. 348, and was transferred to section 290bb–33 of this title, prior to repeal by Pub. L. 106–310, div. B, title XXXII, § 3201(b)(2), Oct. 17, 2000, 114 Stat. 1190.

SUBCHAPTER XXIII—PREVENTION OF ACQUIRED IMMUNE DEFICIENCY SYNDROME

§ 300ee. Use of funds

(a) In general

The purpose of this subchapter is to provide for the establishment of education and information programs to prevent and reduce exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

(b) Contents of programs

All programs of education and information receiving funds under this subchapter shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(c) Limitation

None of the funds appropriated to carry out this subchapter may be used to provide edu-

cation or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) Construction

Subsection (c) of this section may not be construed to restrict the ability of an education program that includes the information required in subsection (b) of this section to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2500, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3093; amended Pub. L. 100–690, title II, § 2619(a), Nov. 18, 1988, 102 Stat. 4242; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690 substituted ''this subchapter'' for ''this part''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–1. Establishment of office with respect to minority health and acquired immune deficiency syndrome

The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, shall establish an office for the purpose of ensuring that, in carrying out the duties of the Secretary with respect to prevention of acquired immune deficiency syndrome, the Secretary develops and implements prevention programs targeted at minority populations and provides appropriate technical assistance in the implementation of such programs.

(Pub. L. 100–607, title II, § 252, Nov. 4, 1988, 102 Stat. 3108; Pub. L. 102–531, title III, § 312(e)(2), Oct. 27, 1992, 106 Stat. 3506.)

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1992—Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

REQUIREMENT OF STUDY WITH RESPECT TO MINORITY HEALTH AND ACQUIRED IMMUNE DEFICIENCY SYNDROME

Section 251 of Pub. L. 100–607, as amended by Pub. L. 100–690, title II, § 2602(b), Nov. 18, 1988, 102 Stat. 4234, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Office of Minority Health, shall conduct a study for the purpose of determining—

''(1) the level of knowledge within minority communities concerning acquired immune deficiency syndrome, the risks of the transmission of the etiologic agent for such syndrome, and the means of reducing such risk; and

''(2) the effectiveness of Federal, State, and local prevention programs with respect to acquired immune deficiency syndrome in minority communities.

''(b) REPORT.—The Secretary shall, not later than 12 months after the date of the enactment of this title [Nov. 4, 1988], complete the study required in subsection (a) and submit to the Congress a report describing the findings made as a result of the study.''

§ 300ee–2. Information for health and public safety workers

(a) Development and dissemination of guidelines

Not later than 90 days after November 4, 1988, the Secretary of Health and Human Services (hereafter in this section referred to as the ''Secretary''), acting through the Director of the Centers for Disease Control and Prevention, shall develop, issue, and disseminate emergency guidelines to all health workers and public safety workers (including emergency response employees) in the United States concerning—

(1) methods to reduce the risk in the workplace of becoming infected with the etiologic agent for acquired immune deficiency syndrome; and

(2) circumstances under which exposure to such etiologic agent may occur.

(b) Use in occupational standards

The Secretary shall transmit the guidelines issued under subsection (a) of this section to the Secretary of Labor for use by the Secretary of Labor in the development of standards to be issued under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.].

(c) Development and dissemination of model curriculum for emergency response employees

(1) Not later than 90 days after November 4, 1988, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop a model curriculum for emergency response employees with respect to the prevention of exposure to the etiologic agent for acquired immune deficiency syndrome during the process of responding to emergencies.

(2) In carrying out paragraph (1), the Secretary shall consider the guidelines issued by the Secretary under subsection (a) of this section.

(3) The model curriculum developed under paragraph (1) shall, to the extent practicable, include—

(A) information with respect to the manner in which the etiologic agent for acquired immune deficiency syndrome is transmitted; and

(B) information that can assist emergency response employees in distinguishing between conditions in which such employees are at risk with respect to such etiologic agent and conditions in which such employees are not at risk with respect[1] such etiologic agent.

(4) The Secretary shall establish a task force to assist the Secretary in developing the model curriculum required in paragraph (1). The Secretary shall appoint to the task force representatives of the Centers for Disease Control and Prevention, representatives of State governments, and representatives of emergency response employees.

[1] So in original. Probably should be ''respect to''.

(5) The Secretary shall—

(A) transmit to State public health officers copies of the guidelines and the model curriculum developed under paragraph (1) with the request that such officers disseminate such copies as appropriate throughout the State; and

(B) make such copies available to the public.

(Pub. L. 100–607, title II, § 253, Nov. 4, 1988, 102 Stat. 3108; Pub. L. 100–690, title II, § 2602(c), Nov. 18, 1988, 102 Stat. 4234; Pub. L. 102–531, title III, § 312(e)(3), Oct. 27, 1992, 106 Stat. 3506.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (b), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1992—Subsecs. (a), (c)(1), (4). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (a). Pub. L. 100–690 substituted ''health workers and public safety workers'' for ''health workers, public safety workers''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

GUIDELINES FOR PREVENTION OF TRANSMISSION OF HUMAN IMMUNODEFICIENCY AND HEPATITIS B VIRUSES DURING INVASIVE PROCEDURES

Pub. L. 102–141, title VI, § 633, Oct. 28, 1991, 105 Stat. 876, provided that: ''Notwithstanding any other provision of law, each State Public Health Official shall, not later than one year after the date of enactment of this Act [Oct. 28, 1991], certify to the Secretary of Health and Human Services that guidelines issued by the Centers for Disease Control, or guidelines which are equivalent to those promulgated by the Centers for Disease Control concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure prone invasive procedures, except for emergency situations when the patient's life or limb is in danger, have been instituted in the State. State guidelines shall apply to health professionals practicing within the State and shall be consistent with Federal law. Compliance with such guidelines shall be the responsibility of the State Public Health Official. Said responsibilities shall include a process for determining what appropriate disciplinary or other actions shall be taken to ensure compliance. If such certification is not provided under this section within the one-year period, the State shall be ineligible to receive assistance under the Public Health Service Act (42 U.S.C. 301 [201] et seq.) until such certification is provided, except that the Secretary may extend the time period for a State, upon application of such State, that additional time is required for instituting said guidelines.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.]

§ 300ee–3. Continuing education for health care providers

(a) In general

The Secretary of Health and Human Services (hereafter in this section referred to as the ''Secretary'') may make grants to nonprofit organizations composed of, or representing, health care providers to assist in the payment of the costs of projects to train such providers concerning—

(1) appropriate infection control procedures to reduce the transmission of the etiologic agent for acquired immune deficiency syndrome; and

(2) the provision of care and treatment to individuals with such syndrome or related illnesses.

(b) Limitation

The Secretary may make a grant under subsection (a) of this section to an entity only if the entity will provide services under the grant in a geographic area, or to a population of individuals, not served by a program substantially similar to the program described in subsection (a) of this section.

(c) Requirement of matching funds

(1) The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available, directly or through donations from public or private entities, non-Federal contributions (in cash or in kind under paragraph (2)) toward such costs in an amount equal to not less than $2 for each $1 of Federal funds provided in such payments.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(d) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless—

(1) an application for the grant is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

(Pub. L. 100–607, title II, § 254, Nov. 4, 1988, 102 Stat. 3109.)

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Ex-

tension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

§ 300ee–4. Technical assistance

The Secretary of Health and Human Services shall provide technical assistance to public and nonprofit private entities carrying out programs, projects, and activities relating to acquired immune deficiency syndrome.

(Pub. L. 100–607, title II, § 255, Nov. 4, 1988, 102 Stat. 3110.)

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

§ 300ee–5. Use of funds to supply hypodermic needles or syringes for illegal drug use; prohibition

None of the funds provided under this Act or an amendment made by this Act shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquired immune deficiency syndrome.

(Pub. L. 100–607, title II, § 256(b), Nov. 4, 1988, 102 Stat. 3110; Pub. L. 100–690, title II, § 2602(d)(1), Nov. 18, 1988, 102 Stat. 4234.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 100–607, Nov. 4, 1988, 102 Stat. 3048, as amended, known as the ''Health Omnibus Programs Extension of 1988''. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100–690 substituted ''Surgeon General of the Public Health Service'' for ''Surgeon General of the United States''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–6. Transferred

CODIFICATION

Section, Pub. L. 100–607, title IX, § 902, Nov. 4, 1988, 102 Stat. 3171; Pub. L. 100–690, title II, § 2605(a), Nov. 18, 1988, 102 Stat. 4234, which provided for testing of State prisoners, was renumbered section 2648 of the Public Health Service Act by Pub. L. 101–381, title III, § 301(b)(1), Aug. 18, 1990, 104 Stat. 615, and transferred to section 300ff–48 of this title, prior to repeal by Pub. L. 106–345, title III, § 301(a), Oct. 20, 2000, 114 Stat. 1345.

PART A—FORMULA GRANTS TO STATES

§ 300ee–11. Establishment of program

(a) Allotments for States

For the purpose described in subsection (b) of this section, the Secretary shall for each of the fiscal years 1989 through 1991 make an allotment for each State in an amount determined in accordance with section 300ee–17 of this title. The Secretary shall make payments each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 300ee–13 of this title.

(b) Purpose of grants

The Secretary may not make payments under subsection (a) of this section for a fiscal year unless the State involved agrees to expend the payments only for the purpose of carrying out, in accordance with section 300ee–12 of this title, public information activities with respect to acquired immune deficiency syndrome.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2501, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3093; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2501 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238 of this title.

§ 300ee–12. Provisions with respect to carrying out purpose of grants

A State may expend payments received under section 300ee–11(a) of this title—

(1) to develop, establish, and conduct public information activities relating to the prevention and diagnosis of acquired immune deficiency syndrome for those populations or communities in the State in which there are a significant number of individuals at risk of infection with the etiologic agent for such syndrome;

(2) to develop, establish, and conduct such public information activities for the general public relating to the prevention and diagnosis of such syndrome;

(3) to develop, establish, and conduct activities to reduce risks relating to such syndrome, including research into the prevention of such syndrome;

(4) to conduct demonstration projects for the prevention of such syndrome;

(5) to provide technical assistance to public entities, to nonprofit private entities concerned with such syndrome, to schools, and to employers, for the purpose of developing information programs relating to such syndrome;

(6) with respect to education and training programs for the prevention of such syndrome, to conduct such programs for health professionals (including allied health professionals), public safety workers (including emergency response employees), teachers, school administrators, and other appropriate education personnel;

(7) to conduct appropriate programs for educating school-aged children with respect to

such syndrome, after consulting with local school boards;

(8) to make available to physicians and dentists in the State information with respect to acquired immune deficiency syndrome, including measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome (which information is updated not less than annually with the most recently available scientific date[1] relating to such syndrome);

(9) to carry out the initial implementation of recommendations contained in the guidelines and the model curriculum developed under section 300ee–2 of this title; and

(10) to make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of the development, establishment, and expansion of programs for education directed toward individuals at increased risk of infection with the etiologic agent for such syndrome and activities to reduce the risks of exposure to such etiologic agent, with preference to programs directed toward populations in which there is significant evidence of such infection.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2502, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3094; amended Pub. L. 100–690, title II, § 2619(b), Nov. 18, 1988, 102 Stat. 4242; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2502 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238a of this title.

AMENDMENTS

1988—Par. (9). Pub. L. 100–690 made technical amendment to reference to section 300ee–2 of this title to correct reference to corresponding provision of original act.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–13. Requirement of submission of application containing certain agreements and assurances

(a) In general

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless—

(1) the State involved submits to the Secretary a description of the purposes for which the State intends to expend the payments for the fiscal year;

(2) the description identifies the populations, areas, and localities in the State with a need for the services for which amounts may be provided by the State under this part;

(3) the description provides information relating to the programs and activities to be supported and services to be provided, including a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities;

(4) the State submits to the Secretary an application for the payments containing agreements in accordance with this part;

(5) the agreements are made through certification from the chief executive officer of the State;

(6) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary; and

(7) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(b) Opportunity for public comment

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that, in developing and carrying out the description required in subsection (a) of this section, the State will provide public notice with respect to the description (including any revisions) and will facilitate comments from interested persons.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2503, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3095; amended Pub. L. 100–690, title II, § 2619(c), Nov. 18, 1988, 102 Stat. 4242; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2503 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238b of this title.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100–690 struck out ''and'' after semicolon.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–14. Restrictions on use of grant

(a) In general

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that the payments will not be expended—

(1) to provide inpatient services;

(2) to make cash payments to intended recipients of services;

(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment; or

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

(b) Limitation on administrative expenses

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that the State will not expend more than 5 percent of the pay-

[1] So in original. Probably should be ''data''.

ments for administrative expenses with respect to carrying out the purpose described in section 300ee–11(b) of this title.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2504, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3095; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2504 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238c of this title.

§ 300ee–15. Requirement of reports and audits by States

(a) Reports

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees to prepare and submit to the Secretary an annual report in such form and containing such information as the Secretary determines to be necessary for—

(1) securing a record and a description of the purposes for which payments received by the State pursuant to such section were expended and of the recipients of such payments;

(2) determining whether the payments were expended in accordance with the needs within the State required to be identified pursuant to section 300ee–13(a)(2) of this title;

(3) determining whether the payments were expended in accordance with the purpose described in section 300ee–11(b) of this title; and

(4) determining the percentage of payments received pursuant to such section that were expended by the State for administrative expenses during the preceding fiscal year.

(b) Audits

(1) The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees to establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the State under such section.

(2) The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that—

(A) the State will provide for—

(i) a financial and compliance audit of such payments; or

(ii) a single financial and compliance audit of each entity administering such payments;

(B) the audit will be performed biennially and will cover expenditures in each fiscal year; and

(C) the audit will be conducted in accordance with standards established by the Comptroller General of the United States for the audit of governmental organizations, programs, activities, and functions.

(3) The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that, not later than 30 days after the completion of an audit under paragraph (2), the State will provide a copy of the audit report to the State legislature.

(4) For purposes of paragraph (2), the term ''financial and compliance audit'' means an audit to determine whether the financial statements of an audited entity present fairly the financial position, and the results of financial operations, of the entity in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

(c) Availability to public

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees to make copies of the reports and audits described in this section available for public inspection.

(d) Evaluations by Comptroller General

The Comptroller General of the United States shall, from time to time, evaluate the expenditures by States of payments received under section 300ee–11(a) of this title in order to ensure that expenditures are consistent with the provisions of this part.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2505, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3095; amended Pub. L. 100–690, title II, § 2619(d), Nov. 18, 1988, 102 Stat. 4242; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2505 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238d of this title.

AMENDMENTS

1988—Subsec. (b)(1), (2). Pub. L. 100–690 substituted ''make payments'' for ''payments''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–16. Additional required agreements

(a) In general

The Secretary may not, except as provided in subsection (b) of this section, make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that—

(1) all programs conducted or supported by the State with such payments will establish objectives for the program and will determine the extent to which the objectives are met;

(2) information provided under this part will be scientifically accurate and factually correct;

(3) in carrying out section 300ee–11(b) of this title, the State will give priority to programs described in section 300ee–12(10) of this title for individuals described in such section;

(4) with respect to a State in which there is a substantial number of individuals who are intravenous substance abusers, the State will place priority on activities under this part directed at such substance abusers;

(5) with respect to a State in which there is a significant incidence of reported cases of acquired immune deficiency syndrome, the State will—

(A) for the purpose described in subsection (b) of section 300ee–11 of this title, expend not less than 50 percent of payments received under subsection (a) of such section for a fiscal year—

(i) to make grants to public entities, to migrant health centers (as defined in section 254b(a)[1] of this title), to community health centers (as defined in section 254c(a)[1] of this title), and to nonprofit private entities concerned with acquired immune deficiency syndrome; or

(ii) to enter into contracts with public and private entities; and

(B) of the amounts reserved for a fiscal year by the State for expenditures required in subparagraph (A), expend not less than 50 percent to carry out section 300ee–12(10) of this title through grants to nonprofit private entities, including minority entities, concerned with acquired immune deficiency syndrome located in and representative of communities and subpopulations reflecting the local incidence of such syndrome;

(6) with respect to programs carried out pursuant to section 300ee–12(10) of this title, the State will ensure that any applicant for a grant under such section agrees—

(A) that any educational or informational materials developed with a grant pursuant to such section will contain material, and be presented in a manner, that is specifically directed toward the group for which such materials are intended;

(B) to provide a description of the manner in which the applicant has planned the program in consultation with, and of the manner in which such applicant will consult during the conduct of the program with—

(i) appropriate local officials and community groups for the area to be served by the program;

(ii) organizations comprised of, and representing, the specific population to which the education or prevention effort is to be directed; and

(iii) individuals having expertise in health education and in the needs of the population to be served;

(C) to provide information demonstrating that the applicant has continuing relationships, or will establish continuing relationships, with a portion of the population in the service area that is at risk of infection with the etiologic agent for acquired immune deficiency syndrome and with public and private entities in such area that provide health or other support services to individuals with such infection;

(D) to provide a description of—

(i) the objectives established by the applicant for the conduct of the program; and

(ii) the methods the applicant will use to evaluate the activities conducted under the program to determine if such objectives are met; and

(E) such other information as the Secretary may prescribe;

(7) with respect to programs carried out pursuant to section 300ee–12(10) of this title, the State will give preference to any applicant for a grant pursuant to such section that is located in, has a history of service in, and will serve under the program, any geographic area in which—

(A) there is a significant incidence of acquired immune deficiency syndrome;

(B) there has been a significant increase in the incidence of such syndrome; or

(C) there is a significant risk of becoming infected with the etiologic agent for such syndrome;

(8) the State will establish reasonable criteria to evaluate the effective performance of entities that receive funds from payments made to the State under section 300ee–11(a) of this title and will establish procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity;

(9) the State will permit and cooperate with Federal investigations undertaken in accordance with section 300ee–18(e) of this title;

(10) the State will maintain State expenditures for services provided pursuant to section 300ee–11 of this title at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments.

(b) "Significant percentage" defined

For purposes of subsection (a)(5) of this section, the term "significant percentage" means at least a percentage of 1 percent of the number of reported cases of acquired immune deficiency syndrome in the United States.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2506, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3097; amended Pub. L. 100–690, title II, § 2619(d) [(e)], Nov. 18, 1988, 102 Stat. 4243; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

REFERENCES IN TEXT

Sections 254b and 254c of this title, referred to in subsec. (a)(5)(A)(i), were in the original references to sections 329 and 330, meaning sections 329 and 330 of act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

PRIOR PROVISIONS

A prior section 2506 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238e of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690, § 2619(d)(1) [(e)(1)], designated existing provisions as subsec. (a).

Subsec. (a)(5). Pub. L. 100–690, § 2619(d)(2) [(e)(2)], struck out concluding provisions which read as follows: "(For purposes of this section, the term 'significant percentage' means at least a percentage of 1 percent of the number of reported cases of such syndrome in the United States);".

Subsec. (a)(8). Pub. L. 100–690, § 2619(d)(3) [(e)(3)], substituted "funds from payments" for "funds from to payments" and struck out "and" after semicolon.

[1] See References in Text note below.

Subsec. (a)(9). Pub. L. 100–690, §2619(d)(4) [(e)(4)], substituted ''section 300ee–18(e) of this title'' for ''section 300ee–19(e) of this title''.

Subsec. (b). Pub. L. 100–690, §2619(d)(5) [(e)(5)], added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

§300ee–17. Determination of amount of allotments for States

(a) Minimum allotment

Subject to the extent of amounts made available in appropriation Acts, the allotment for a State under section 300ee–11(a) of this title for a fiscal year shall be the greater of—

(1) the applicable amount specified in subsection (b) of this section; or

(2) the amount determined in accordance with subsection (c) of this section.

(b) Determination of minimum allotment

(1) If the total amount appropriated under section 300ee–24(a) of this title for a fiscal year exceeds $100,000,000, the amount referred to in subsection (a)(1) of this section shall be $300,000 for the fiscal year.

(2) If the total amount appropriated under section 300ee–24(a) of this title for a fiscal year equals or exceeds $50,000,000, but is less than $100,000,000, the amount referred to in subsection (a)(1) of this section shall be $200,000 for the fiscal year.

(3) If the total amount appropriated under section 300ee–24(a) of this title for a fiscal year is less than $50,000,000, the amount referred to in subsection (a)(1) of this section shall be $100,000 for the fiscal year.

(c) Determination under formula

(1) The amount referred to in subsection (a)(2) of this section is the sum of—

(A) the amount determined under paragraph (2); and

(B) the amount determined under paragraph (3).

(2) The amount referred to in paragraph (1)(A) is the product of—

(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 300ee–24(a) of this title; and

(B) a percentage equal to the quotient of—

(i) the population of the State involved; divided by

(ii) the population of the United States.

(3) The amount referred to in paragraph (1)(B) is the product of—

(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 300ee–24(a) of this title; and

(B) a percentage equal to the quotient of—

(i) the number of additional cases of acquired immune deficiency syndrome reported to and confirmed by the Secretary for the State involved for the most recent fiscal year for which such data is available; divided by

(ii) the number of additional cases of such syndrome reported to and confirmed by the Secretary for the United States for such fiscal year.

(d) Disposition of certain funds appropriated for allotments

(1) Amounts described in paragraph (2) shall be allotted by the Secretary to States receiving payments under section 300ee–11(a) of this title for the fiscal year (other than any State referred to in paragraph (2)(C)). Such amounts shall be allotted according to a formula established by the Secretary. The formula shall be equivalent to the formula described in this section under which the allotment under section 300ee–11(a) of this title for the State for the fiscal year involved was determined.

(2) The amounts referred to in paragraph (1) are any amounts that are not paid to States under section 300ee–11(a) of this title as a result of—

(A) the failure of any State to submit an application under section 300ee–13 of this title;

(B) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

(July 1, 1944, ch. 373, title XXV, formerly title XV, §2507, as added Pub. L. 100–607, title II, §221, Nov. 4, 1988, 102 Stat. 3098; amended Pub. L. 100–690, title II, §2619(e) [(f)], Nov. 18, 1988, 102 Stat. 4243; renumbered title XXV and amended Pub. L. 101–93, §5(e)(1), (2), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2507 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238f of this title.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–93, §5(e)(2), substituted ''Subject to the extent of amounts made available in appropriation Acts, the allotment'' for ''The allotment''.

1988—Subsec. (a)(1). Pub. L. 100–690, §2619(e)(1) [(f)(1)], substituted ''applicable amount specified'' for ''amount described''.

Subsec. (b)(1). Pub. L. 100–690, §2619(e)(2)(A)(i) [(f)(2)(A)(i)], made technical amendment to reference to section 300ee–24(a) of this title to correct reference to corresponding provision of original act.

Pub. L. 100–690, §2619(e)(2)(A)(ii) [(f)(2)(A)(ii)], substituted ''subsection (a)(1) of this section shall be'' for ''subsection (a)(1) of this section is''.

Subsec. (b)(2), (3). Pub. L. 100–690, §2619(e)(2)(B), (C) [(f)(2)(B), (C)], substituted ''subsection (a)(1) of this section shall be'' for ''subsection (a)(1) of this section is''.

Subsec. (d). Pub. L. 100–690, §2619(e)(3) [(f)(3)], substituted ''allotment under section 300ee–11(a) of this title'' for ''allotment'' in par. (1) and ''section 300ee–13 of this title'' for ''section 300ee–17 of this title'' in par. (2)(A).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–18. Failure to comply with agreements

(a) Repayment of payments

(1) The Secretary may, subject to subsection (c) of this section, require a State to repay any payments received by the State under section 300ee–11(a) of this title that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 300ee–13 of this title.

(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 300ee–11(a) of this title.

(b) Withholding of payments

(1) The Secretary may, subject to subsection (c) of this section, withhold payments due under section 300ee–11(a) of this title if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 300ee–13 of this title.

(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 300ee–11(a) of this title in accordance with the agreements referred to in such paragraph.

(3) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the agreements referred to in such paragraph.

(c) Opportunity for hearing

Before requiring repayment of payments under subsection (a)(1) of this section, or withholding payments under subsection (b)(1) of this section, the Secretary shall provide to the State an opportunity for a hearing conducted within the State.

(d) Prompt response to serious allegations

The Secretary shall promptly respond to any complaint of a substantial or serious nature that a State has failed to expend amounts received under section 300ee–11(a) of this title in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 300ee–13 of this title.

(e) Investigations

(1) The Secretary shall conduct in several States in each fiscal year investigations of the expenditure of payments received by the States under section 300ee–11(a) of this title in order to evaluate compliance with the agreements required to be contained in the applications submitted to the Secretary pursuant to section 300ee–13 of this title.

(2) The Comptroller General of the United States may conduct investigations of the expenditure of funds received under section 300ee–11(a) of this title by a State in order to ensure compliance with the agreements referred to in paragraph (1).

(3) Each State, and each entity receiving funds from payments made to a State under section 300ee–11(a) of this title, shall make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(4)(A) In conducting any investigation in a State, the Secretary and the Comptroller General of the United States may not make a request for any information not readily available to the State, or to an entity receiving funds from payments made to the State under section 300ee–11(a) of this title, or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

(B) Subparagraph (A) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2508, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3099; amended Pub. L. 100–690, title II, § 2619(f) [(g)], Nov. 18, 1988, 102 Stat. 4243; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2508 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238g of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690, § 2619(f)(1) [(g)(1)], substituted ''300ee–13 of this title'' for ''300ee–17 of this title''.

Subsec. (b). Pub. L. 100–690, § 2619(f)(2) [(g)(2)], inserted ''of payments'' after ''Withholding'' in heading and substituted ''300ee–13 of this title'' for ''300ee–17 of this title'' in par. (1).

Subsecs. (d), (e)(1). Pub. L. 100–690, § 2619(f)(3), (4) [(g)(3), (4)], substituted ''300ee–13 of this title'' for ''300ee–17 of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–19. Prohibition against certain false statements

(a) In general

(1) A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 300ee–11(a) of this title.

(2) A person with knowledge of the occurrence of any event affecting the right of the person to receive any amounts from payments made to the State under section 300ee–11(a) of this title may not conceal or fail to disclose any such event with the intent of fraudulently securing such amounts.

(b) Criminal penalty for violation of prohibition

Any person who violates a prohibition established in subsection (a) of this section may for each violation be fined in accordance with title 18, or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2509, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3101; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2509 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238h of this title.

§ 300ee–20. Technical assistance and provision by Secretary of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary may provide training and technical assistance to States with respect to the planning, development, and operation of any program or service carried out pursuant to this part. The Secretary may provide such technical assistance directly or through grants or contracts.

(b) Provision by Secretary of supplies and services in lieu of grant funds

(1) Upon the request of a State receiving payments under this part, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out such part and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under section 300ee–11(a) of this title to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2510, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3101; amended Pub. L. 100–690, title II, § 2619(g) [(h)], Nov. 18, 1988, 102 Stat. 4243; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2510 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238i of this title.

AMENDMENTS

1988—Subsec. (b)(2). Pub. L. 100–690 substituted ''section 300ee–11(a) of this title'' for ''the program involved''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–21. Evaluations

The Secretary shall, directly or through grants or contracts, evaluate the services provided and activities carried out with payments to States under this part.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2511, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3101; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2511 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238j of this title.

§ 300ee–22. Report by Secretary

The Secretary shall annually prepare a report on the activities of the States carried out pursuant to this part. Such report may include any recommendations of the Secretary for appropriate administrative and legislative initiatives. The report shall be submitted to the Congress through inclusion in the comprehensive report required in section 300cc(a)[1] of this title.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2512, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3101; amended Pub. L. 100–690, title II, § 2619(h) [(i)], Nov. 18, 1988, 102 Stat. 4243; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

REFERENCES IN TEXT

Section 300cc of this title, referred to in text, was repealed by Pub. L. 109–482, title I, § 104(b)(2)(C), Jan. 15, 2007, 120 Stat. 3693.

PRIOR PROVISIONS

A prior section 2512 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238k of this title.

AMENDMENTS

1988—Pub. L. 100–690 substituted ''section 300cc(a)'' for ''section 300cc''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–23. Definition

For purposes of this part, the term ''infection with the etiologic agent for acquired immune deficiency syndrome'' includes any condition arising from such etiologic agent.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2513, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3102; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2513 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238*l* of this title.

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[1] See References in Text note below.

§ 300ee–24. Funding

(a) Authorization of appropriations

For the purpose of making allotments under section 300ee–11(a) of this title, there are authorized to be appropriated $165,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

(b) Availability to States

Any amounts paid to a State under section 300ee–11(a) of this title shall remain available to the State until the expiration of the 1-year period beginning on the date on which the State receives such amounts.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2514, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3102; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2514 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238m of this title.

PART B—NATIONAL INFORMATION PROGRAMS

§ 300ee–31. Availability of information to general public

(a) Comprehensive information plan

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall annually prepare a comprehensive plan, including a budget, for a National Acquired Immune Deficiency Syndrome Information Program. The plan shall contain provisions to implement the provisions of this subchapter. The Director shall submit such plan to the Secretary. The authority established in this subsection may not be construed to be the exclusive authority for the Director to carry out information activities with respect to acquired immune deficiency syndrome.

(b) Clearinghouse

(1) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may establish a clearinghouse to make information concerning acquired immune deficiency syndrome available to Federal agencies, States, public and private entities, and the general public.

(2) The clearinghouse may conduct or support programs—

(A) to develop and obtain educational materials, model curricula, and methods directed toward reducing the transmission of the etiologic agent for acquired immune deficiency syndrome;

(B) to provide instruction and support for individuals who provide instruction in methods and techniques of education relating to the prevention of acquired immune deficiency syndrome and instruction in the use of the materials and curricula described in subparagraph (A); and

(C) to conduct, or to provide for the conduct of, the materials, curricula, and methods described in paragraph (1) and the efficacy of such materials, curricula, and methods in preventing infection with the the[1] etiologic agent for acquired immune deficiency syndrome.

(c) Toll-free telephone communications

The Secretary shall provide for the establishment and maintenance of toll-free telephone communications to provide information to, and respond to queries from, the public concerning acquired immune deficiency syndrome. Such communications shall be available on a 24-hour basis.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2521, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3102; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612; amended Pub. L. 102–531, title III, § 312(d)(22), Oct. 27, 1992, 106 Stat. 3505.)

AMENDMENTS

1992—Subsecs. (a), (b)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

§ 300ee–32. Public information campaigns

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, and shall enter into contracts with public and private entities, for the development and delivery of public service announcements and paid advertising messages that warn individuals about activities which place them at risk of infection with the etiologic agent for such syndrome.

(b) Requirement of application

The Secretary may not provide financial assistance under subsection (a) of this section unless—

(1) an application for such assistance is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2522, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3103; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612; amended Pub. L. 102–531, title III, § 312(d)(23), Oct. 27, 1992, 106 Stat. 3505.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

§ 300ee–33. Provision of information to underserved populations

(a) In general

The Secretary may make grants to public entities, to migrant health centers (as defined in

[1] So in original.

section 254b(a)[1] of this title), to community health centers (as defined in section 254c(a)[1] of this title), and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of assisting grantees in providing services to populations of individuals that are underserved with respect to programs providing information on the prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

(b) Preferences in making grants

In making grants under subsection (a) of this section, the Secretary shall give preference to any applicant for such a grant that has the ability to disseminate rapidly the information described in subsection (a) of this section (including any national organization with such ability).

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2523, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3103; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

REFERENCES IN TEXT

Sections 254b and 254c of this title, referred to in subsec. (a), were in the original references to sections 329 and 330, meaning sections 329 and 330 of act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

§ 300ee–34. Authorization of appropriations

(a) In general

For the purpose of carrying out sections 300ee–31 through 300ee–33 of this title, there are authorized to be appropriated $105,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

(b) Allocations

(1) Of the amounts appropriated pursuant to subsection (a) of this section, the Secretary shall make available $45,000,000 to carry out section 300ee–32 of this title and $30,000,000 to carry out this part through financial assistance to minority entities for the provision of services to minority populations.

(2) After consultation with the Director of the Office of Minority Health and with the Indian Health Service, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, not later than 90 days after November 4, 1988, publish guidelines to provide procedures for applications for funding pursuant to paragraph (1) and for public comment.

[1] See References in Text note below.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2524, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3103; amended Pub. L. 100–690, title II, § 2619(i) [(j)], Nov. 18, 1988, 102 Stat. 4244; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612; Pub. L. 102–531, title III, § 312(d)(24), Oct. 27, 1992, 106 Stat. 3505.)

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (b)(2). Pub. L. 100–690 substituted ''the date of the enactment of the AIDS Amendments of 1988'' for ''the date of the enactment of this section'', which for purposes of codification was translated as ''November 4, 1988''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

SUBCHAPTER XXIV—HIV HEALTH CARE SERVICES PROGRAM

REPEAL OF SUBCHAPTER

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this subchapter is repealed.

§ 300ff. Purpose

It is the purpose of this Act to provide emergency assistance to localities that are disproportionately affected by the Human Immunodeficiency Virus epidemic and to make financial assistance available to States and other public or private nonprofit entities to provide for the development, organization, coordination and operation of more effective and cost efficient systems for the delivery of essential services to individuals and families with HIV disease.

(Pub. L. 101–381, § 2, Aug. 18, 1990, 104 Stat. 576.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–381, Aug. 18, 1990, 104 Stat. 576, known as the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, which enacted this subchapter, transferred section 300ee–6 of this title to section 300ff–48 of this title, amended sections 284a, 286, 287a, 287c–2, 289f, 290aa–3a, 299c–5, 300ff–48, and 300aaa to 300aaa–13 [now 238 to 238m] of this title, and enacted provisions set out as notes under sections 201, 300x–4, 300ff–11, 300ff–46, and 300ff–80 of this title. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, and not as part of the Public Health Service Act which comprises this chapter.

§ 300ff–1. Prohibition on use of funds

None of the funds made available under this Act, or an amendment made by this Act, shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs.

(Pub. L. 101–381, title IV, § 422, Aug. 18, 1990, 104 Stat. 628.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–381, Aug. 18, 1990, 104 Stat. 576, known as the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, which enacted this subchapter, transferred section 300ee–6 of this title to section 300ff–48 of this title, amended sections 284a, 286, 287a, 287c–2, 289f, 290aa–3a, 299c–5, 300ff–48, and 300aaa to 300aaa–13 [now 238 to 238m] of this title, and enacted provisions set out as notes under sections 201, 300x–4, 300ff–11, 300ff–46, and 300ff–80 of this title. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, and not as part of the Public Health Service Act which comprises this chapter.

PART A—EMERGENCY RELIEF FOR AREAS WITH SUBSTANTIAL NEED FOR SERVICES

SUBPART I—GENERAL GRANT PROVISIONS

§ 300ff–11. Establishment of program of grants

(a) Eligible areas

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall, subject to subsections (b) through (c) of this section, make grants in accordance with section 300ff–13 of this title for the purpose of assisting in the provision of the services specified in section 300ff–14 of this title in any metropolitan area for which there has been reported to and confirmed by the Director of the Centers for Disease Control and Prevention a cumulative total of more than 2,000 cases of AIDS during the most recent period of 5 calendar years for which such data are available.

(b) Continued status as eligible area

Notwithstanding any other provision of this section, a metropolitan area that is an eligible area for a fiscal year continues to be an eligible area until the metropolitan area fails, for three consecutive fiscal years—

(1) to meet the requirements of subsection (a); and

(2) to have a cumulative total of 3,000 or more living cases of AIDS (reported to and confirmed by the Director of the Centers for Disease Control and Prevention) as of December 31 of the most recent calendar year for which such data is available.

(c) Boundaries

For purposes of determining eligibility under this subpart—

(1) with respect to a metropolitan area that received funding under this subpart in fiscal year 2006, the boundaries of such metropolitan area shall be the boundaries that were in effect for such area for fiscal year 1994; or

(2) with respect to a metropolitan area that becomes eligible to receive funding under this subpart in any fiscal year after fiscal year 2006, the boundaries of such metropolitan area shall be the boundaries that are in effect for such area when such area initially receives funding under this subpart.

(July 1, 1944, ch. 373, title XXVI, § 2601, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 576; amended Pub. L. 102–531, title III, § 312(d)(25), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 104–146, §§ 3(a)(1), (2), 12(c)(1), May 20, 1996, 110 Stat. 1346, 1373; Pub. L. 109–415, title I, §§ 101(a), (b), 106(a), 107(b), title VII, § 702(1), Dec. 19, 2006, 120 Stat. 2768, 2780, 2783, 2819.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 2601 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–415, § 702(1), substituted ''AIDS'' for ''acquired immune deficiency syndrome''.

Pub. L. 109–415, § 106(a), substituted ''during the most recent period'' for ''for the most recent period''.

Pub. L. 109–415, § 101(b), substituted ''through (c)'' for ''through (d)'' and inserted ''and confirmed by'' after ''reported to''.

Subsecs. (b) to (d). Pub. L. 109–415, §§ 101(a), 107(b), added subsecs. (b) and (c), substituted ''this subpart'' for ''this part'' in subsec. (c) wherever appearing, and struck out former subsecs. (b) to (d) which related to requirement regarding confirmation of cases, requirements regarding population, and continued status as eligible area, respectively.

1996—Subsec. (a). Pub. L. 104–146, § 12(c)(1), inserted ''section'' before ''300ff–14''.

Pub. L. 104–146, § 3(a)(1)(B), substituted ''metropolitan area for which there has been reported to the Director of the Centers for Disease Control and Prevention a cumulative total of more than 2,000 cases of acquired immune deficiency syndrome for the most recent period of 5 calendar years for which such data are available.'' for ''metropolitan area for which, as of June 30, 1990, in the case of grants for fiscal year 1991, and as of March 31 of the most recent fiscal year for which such data is available in the case of a grant for any subsequent fiscal year—

''(1) there has been reported to and confirmed by the Director of the Centers for Disease Control and Prevention a cumulative total of more than 2,000 cases of acquired immune deficiency syndrome; or

''(2) the per capita incidence of cumulative cases of such syndrome (computed on the basis of the most recently available data on the population of the area) is not less than 0.0025.''

Pub. L. 104–146, § 3(a)(1)(A), substituted ''subject to subsections (b) through (d)'' for ''subject to subsection (b)''.

Subsecs. (c), (d). Pub. L. 104–146, § 3(a)(2), added subsecs. (c) and (d).

1992—Subsecs. (a)(1), (b). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

EFFECTIVE DATE OF REPEAL

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that the repeal of this subchapter by section 703 is effective Oct. 1, 2009.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 13 of Pub. L. 104–146 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), this Act [enacting sections 300ff–27a, 300ff–31, 300ff–33 to 300ff–37, 300ff–77, 300ff–78, and 300ff–101 of this title, amending this section and sections 294n, 300d, 300ff–12 to 300ff–17, 300ff–21 to 300ff–23, 300ff–26 to 300ff–29, 300ff–47 to 300ff–49, 300ff–51, 300ff–52, 300ff–54, 300ff–55, 300ff–64, 300ff–71, 300ff–74, 300ff–76, and 300ff–84 of this title, transferring section 294n of this title to section 300ff–111 of this title, repealing sections 300ff–18

and 300ff–30 of this title, and enacting provisions set out as notes under sections 201, 300cc, and 300ff–33 of this title and section 4103 of Title 5, Government Organization and Employees], and the amendments made by this Act, shall become effective on October 1, 1996.

''(b) EXCEPTION.—The amendments made by sections 3(a), 5, 6, and 7 of this Act to sections 2601(c), 2601(d), 2603(a), 2618(b), 2626, 2677, and 2691 of the Public Health Service Act [sections 300ff–11(c), (d), 300ff–13(a), 300ff–28(b), 300ff–34, 300ff–77, and 300ff–101 of this title], shall become effective on the date of enactment of this Act [May 20, 1996].''

STUDIES BY INSTITUTE OF MEDICINE

Pub. L. 106–345, title V, § 501, Oct. 20, 2000, 114 Stat. 1352, required the Secretary of Health and Human Services to request the Institute of Medicine or another appropriate entity to conduct a study of State surveillance systems on the prevalence of HIV and a study concerning the relationship between epidemiological measures and health care for certain individuals with HIV and to ensure that the former study be completed and a report submitted to congressional committees not later than 3 years after Oct. 20, 2000, and that the latter study be completed and a report submitted to congressional committees not later than 2 years after Oct. 20, 2000.

STUDY REGARDING HIV DISEASE IN RURAL AREAS

Pub. L. 101–381, title IV, § 403, Aug. 18, 1990, 104 Stat. 622 directed Secretary of Health and Human Services, after consultation with Director of the Office of Rural Health Policy, to conduct study for purpose of estimating incidence and prevalence in rural areas of cases of acquired immune deficiency syndrome and cases of infection with etiologic agent for such syndrome and determine adequacy in rural areas of services for diagnosing and providing treatment for such cases that are in early stages of infection, and provided that, not later than 1 year after Aug. 18, 1990, Secretary was to submit report to Congress.

§ 300ff–12. Administration and planning council

(a) Administration

(1) In general

Assistance made available under grants awarded under this subpart shall be directed to the chief elected official of the city or urban county that administers the public health agency that provides outpatient and ambulatory services to the greatest number of individuals with AIDS, as reported to and confirmed by the Centers for Disease Control and Prevention, in the eligible area that is awarded such a grant.

(2) Requirements

(A) In general

To receive assistance under section 300ff–11(a) of this title, the chief elected official of the eligible area involved shall—

(i) establish, through intergovernmental agreements with the chief elected officials of the political subdivisions described in subparagraph (B), an administrative mechanism to allocate funds and services based on—

(I) the number of AIDS cases in such subdivisions;

(II) the severity of need for outpatient and ambulatory care services in such subdivisions; and

(III) the health and support services personnel needs of such subdivisions; and

(ii) establish an HIV health services planning council in accordance with subsection (b) of this section.

(B) Local political subdivision

The political subdivisions referred to in subparagraph (A) are those political subdivisions in the eligible area—

(i) that provide HIV-related health services; and

(ii) for which the number of cases reported for purposes of section 300ff–11(a) of this title constitutes not less than 10 percent of the number of such cases reported for the eligible area.

(b) HIV health services planning council

(1) Establishment

To be eligible for assistance under this subpart, the chief elected official described in subsection (a)(1) of this section shall establish or designate an HIV health services planning council that shall reflect in its composition the demographics of the population of individuals with HIV/AIDS in the eligible area involved, with particular consideration given to disproportionately affected and historically underserved groups and subpopulations. Nominations for membership on the council shall be identified through an open process and candidates shall be selected based on locally delineated and publicized criteria. Such criteria shall include a conflict-of-interest standard that is in accordance with paragraph (5).

(2) Representation

The HIV health services planning council shall include representatives of—

(A) health care providers, including federally qualified health centers;

(B) community-based organizations serving affected populations and AIDS service organizations;

(C) social service providers, including providers of housing and homeless services;

(D) mental health and substance abuse providers;

(E) local public health agencies;

(F) hospital planning agencies or health care planning agencies;

(G) affected communities, including people with HIV/AIDS, members of a Federally recognized Indian tribe as represented in the population, individuals co-infected with hepatitis B or C and historically underserved groups and subpopulations;

(H) nonelected community leaders;

(I) State government (including the State medicaid agency and the agency administering the program under part B) of this subchapter;

(J) grantees under subpart II[1] of part C of this subchapter;

(K) grantees under section 300ff–71 of this title, or, if none are operating in the area, representatives of organizations with a history of serving children, youth, women, and families living with HIV and operating in the area;

(L) grantees under other Federal HIV programs, including but not limited to providers of HIV prevention services; and

[1] See References in Text note below.

(M) representatives of individuals who formerly were Federal, State, or local prisoners, were released from the custody of the penal system during the preceding 3 years, and had HIV/AIDS as of the date on which the individuals were so released.

(3) Method of providing for council

(A) In general

In providing for a council for purposes of paragraph (1), a chief elected official receiving a grant under section 300ff–11(a) of this title may establish the council directly or designate an existing entity to serve as the council, subject to subparagraph (B).

(B) Consideration regarding designation of council

In making a determination of whether to establish or designate a council under subparagraph (A), a chief elected official receiving a grant under section 300ff–11(a) of this title shall give priority to the designation of an existing entity that has demonstrated experience in planning for the HIV health care service needs within the eligible area and in the implementation of such plans in addressing those needs. Any existing entity so designated shall be expanded to include a broad representation of the full range of entities that provide such services within the geographic area to be served.

(4) Duties

The planning council established or designated under paragraph (1) shall—

(A) determine the size and demographics of the population of individuals with HIV/AIDS;

(B) determine the needs of such population, with particular attention to—

(i) individuals with HIV/AIDS who know their HIV status and are not receiving HIV-related services; and

(ii) disparities in access and services among affected subpopulations and historically underserved communities;

(C) establish priorities for the allocation of funds within the eligible area, including how best to meet each such priority and additional factors that a grantee should consider in allocating funds under a grant based on the—

(i) size and demographics of the population of individuals with HIV/AIDS (as determined under subparagraph (A)) and the needs of such population (as determined under subparagraph (B));

(ii) demonstrated (or probable) cost effectiveness and outcome effectiveness of proposed strategies and interventions, to the extent that data are reasonably available;

(iii) priorities of the communities with HIV/AIDS for whom the services are intended;

(iv) coordination in the provision of services to such individuals with programs for HIV prevention and for the prevention and treatment of substance abuse, including programs that provide comprehensive treatment for such abuse;

(v) availability of other governmental and non-governmental resources, including the State medicaid plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and the State Children's Health Insurance Program under title XXI of such Act [42 U.S.C. 1397aa et seq.] to cover health care costs of eligible individuals and families with HIV/AIDS; and

(vi) capacity development needs resulting from disparities in the availability of HIV-related services in historically underserved communities;

(D) develop a comprehensive plan for the organization and delivery of health and support services described in section 300ff–14 of this title that—

(i) includes a strategy for identifying individuals who know their HIV status and are not receiving such services and for informing the individuals of and enabling the individuals to utilize the services, giving particular attention to eliminating disparities in access and services among affected subpopulations and historically underserved communities, and including discrete goals, a timetable, and an appropriate allocation of funds;

(ii) includes a strategy to coordinate the provision of such services with programs for HIV prevention (including outreach and early intervention) and for the prevention and treatment of substance abuse (including programs that provide comprehensive treatment services for such abuse); and

(iii) is compatible with any State or local plan for the provision of services to individuals with HIV/AIDS;

(E) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area, and at the discretion of the planning council, assess the effectiveness, either directly or through contractual arrangements, of the services offered in meeting the identified needs;

(F) participate in the development of the statewide coordinated statement of need initiated by the State public health agency responsible for administering grants under part B of this subchapter;

(G) establish methods for obtaining input on community needs and priorities which may include public meetings (in accordance with paragraph (7)), conducting focus groups, and convening ad-hoc panels; and

(H) coordinate with Federal grantees that provide HIV-related services within the eligible area.

(5) Conflicts of interest

(A) In general

The planning council under paragraph (1) may not be directly involved in the administration of a grant under section 300ff–11(a) of this title. With respect to compliance with the preceding sentence, the planning council may not designate (or otherwise be involved in the selection of) particular entities as re-

cipients of any of the amounts provided in the grant.

(B) Required agreements

An individual may serve on the planning council under paragraph (1) only if the individual agrees that if the individual has a financial interest in an entity, if the individual is an employee of a public or private entity, or if the individual is a member of a public or private organization, and such entity or organization is seeking amounts from a grant under section 300ff–11(a) of this title, the individual will not, with respect to the purpose for which the entity seeks such amounts, participate (directly or in an advisory capacity) in the process of selecting entities to receive such amounts for such purpose.

(C) Composition of council

The following applies regarding the membership of a planning council under paragraph (1):

(i) Not less than 33 percent of the council shall be individuals who are receiving HIV-related services pursuant to a grant under section 300ff–11(a) of this title, are not officers, employees, or consultants to any entity that receives amounts from such a grant, and do not represent any such entity, and reflect the demographics of the population of individuals with HIV/AIDS as determined under paragraph (4)(A). For purposes of the preceding sentence, an individual shall be considered to be receiving such services if the individual is a parent of, or a caregiver for, a minor child who is receiving such services.

(ii) With respect to membership on the planning council, clause (i) may not be construed as having any effect on entities that receive funds from grants under any of parts B through F of this subchapter but do not receive funds from grants under section 300ff–11(a) of this title, on officers or employees of such entities, or on individuals who represent such entities.

(6) Grievance procedures

A planning council under paragraph (1) shall develop procedures for addressing grievances with respect to funding under this subpart, including procedures for submitting grievances that cannot be resolved to binding arbitration. Such procedures shall be described in the bylaws of the planning council and be consistent with the requirements of subsection (c) of this section.

(7) Public deliberations

With respect to a planning council under paragraph (1), the following applies:

(A) The council may not be chaired solely by an employee of the grantee under section 300ff–11(a) of this title.

(B) In accordance with criteria established by the Secretary:

(i) The meetings of the council shall be open to the public and shall be held only after adequate notice to the public.

(ii) The records, reports, transcripts, minutes, agenda, or other documents which were made available to or prepared for or by the council shall be available for public inspection and copying at a single location.

(iii) Detailed minutes of each meeting of the council shall be kept. The accuracy of all minutes shall be certified to by the chair of the council.

(iv) This subparagraph does not apply to any disclosure of information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy, including any disclosure of medical information or personnel matters.

(c) Grievance procedures

(1) Federal responsibility

(A) Models

The Secretary shall, through a process that includes consultations with grantees under this subpart and public and private experts in grievance procedures, arbitration, and mediation, develop model grievance procedures that may be implemented by the planning council under subsection (b)(1) of this section and grantees under this subpart. Such model procedures shall describe the elements that must be addressed in establishing local grievance procedures and provide grantees with flexibility in the design of such local procedures.

(B) Review

The Secretary shall review grievance procedures established by the planning council and grantees under this subpart to determine if such procedures are adequate. In making such a determination, the Secretary shall assess whether such procedures permit legitimate grievances to be filed, evaluated, and resolved at the local level.

(2) Grantees

To be eligible to receive funds under this subpart, a grantee shall develop grievance procedures that are determined by the Secretary to be consistent with the model procedures developed under paragraph (1)(A). Such procedures shall include a process for submitting grievances to binding arbitration.

(d) Process for establishing allocation priorities

Promptly after the date of the submission of the report required in section 501(b) of the Ryan White CARE Act Amendments of 2000 (relating to the relationship between epidemiological measures and health care for certain individuals with HIV/AIDS), the Secretary, in consultation with planning councils and entities that receive amounts from grants under section 300ff–11(a) or 300ff–21 of this title, shall develop epidemiologic measures—

(1) for establishing the number of individuals living with HIV/AIDS who are not receiving HIV-related health services; and

(2) for carrying out the duties under subsection (b)(4) of this section and section 300ff–27(b) of this title.

(e) Training guidance and materials

The Secretary shall provide to each chief elected official receiving a grant under section

300ff–11(a) of this title guidelines and materials for training members of the planning council under paragraph (1) regarding the duties of the council.

(July 1, 1944, ch. 373, title XXVI, § 2602, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 577; amended Pub. L. 102–531, title III, § 312(d)(26), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 104–146, § 3(b)(1), May 20, 1996, 110 Stat. 1347; Pub. L. 106–345, title I, §§ 101–102(c), 103, Oct. 20, 2000, 114 Stat. 1320–1323; Pub. L. 109–415, title I, §§ 106(b), 107(b), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2780, 2783, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

Subpart II of part C of this subchapter, referred to in subsec. (b)(2)(J), was redesignated subpart I of part C of this subchapter by Pub. L. 106–345, title III, § 301(b)(1), Oct. 20, 2000, 114 Stat. 1345, and is classified to section 300ff–51 et seq. of this title.

The Social Security Act, referred to in subsec. (b)(4)(C)(v), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 501 of the Ryan White CARE Act Amendments of 2000, referred to in subsec. (d), is section 501 of Pub. L. 106–345, which is set out as a note under section 300ff–11 of this title. Provisions relating to a report are contained in section 501(d) of Pub. L. 106–345.

PRIOR PROVISIONS

A prior section 2602 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

AMENDMENTS

2006—Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease'' wherever appearing.

Pub. L. 109–415, § 107(b), substituted ''this subpart'' for ''this part'' wherever appearing.

Subsec. (b)(2)(G). Pub. L. 109–415, § 106(b), inserted '', members of a Federally recognized Indian tribe as represented in the population, individuals co-infected with hepatitis B or C'' before ''and historically underserved groups''.

2000—Subsec. (b)(1). Pub. L. 106–345, § 101(a)(1), substituted ''demographics of the population of individuals with HIV disease in the eligible area involved,'' for ''demographics of the epidemic in the eligible area involved,''.

Subsec. (b)(2)(C). Pub. L. 106–345, § 101(a)(2)(A), inserted before semicolon at end '', including providers of housing and homeless services''.

Subsec. (b)(2)(G). Pub. L. 106–345, § 101(a)(2)(B), struck out ''or AIDS'' after ''HIV disease''.

Subsec. (b)(2)(K). Pub. L. 106–345, § 101(a)(2)(C), struck out ''and'' after semicolon.

Subsec. (b)(2)(L). Pub. L. 106–345, § 101(a)(2)(D), substituted '', including but not limited to providers of HIV prevention services; and'' for period at end.

Subsec. (b)(2)(M). Pub. L. 106–345, § 101(a)(2)(E), added subpar. (M).

Subsec. (b)(3)(C). Pub. L. 106–345, § 103(1), struck out heading and text of subpar. (C). Text read as follows: ''A planning council may not be chaired solely by an employee of the grantee.''

Subsec. (b)(4)(A), (B). Pub. L. 106–345, § 102(a)(2), added subpars. (A) and (B). Former subpars. (A) and (B) redesignated (C) and (D), respectively.

Subsec. (b)(4)(C). Pub. L. 106–345, § 102(a)(1), redesignated subpar. (A) as (C). Former subpar. (C) redesignated (E).

Subsec. (b)(4)(C)(i) to (vi). Pub. L. 106–345, § 102(a)(3), added cls. (i) to (vi) and struck out former cls. (i) to (iv) which read as follows:

''(i) documented needs of the HIV-infected population;

''(ii) cost and outcome effectiveness of proposed strategies and interventions, to the extent that such data are reasonably available (either demonstrated or probable);

''(iii) priorities of the HIV-infected communities for whom the services are intended; and

''(iv) availability of other governmental and nongovernmental resources;''.

Subsec. (b)(4)(D). Pub. L. 106–345, § 102(a)(4), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''develop a comprehensive plan for the organization and delivery of health services described in section 300ff–14 of this title that is compatible with any existing State or local plan regarding the provision of health services to individuals with HIV disease;''.

Pub. L. 106–345, § 102(a)(1), redesignated subpar. (B) as (D). Former subpar. (D) redesignated (F).

Subsec. (b)(4)(E), (F). Pub. L. 106–345, § 102(a)(1), redesignated subpars. (C) and (D) as (E) and (F), respectively. Former subpar. (E) redesignated (G).

Subsec. (b)(4)(G). Pub. L. 106–345, § 102(a)(1), (6)(A), redesignated subpar. (E) as (G) and substituted ''public meetings (in accordance with paragraph (7)),'' for ''public meetings,''.

Subsec. (b)(4)(H). Pub. L. 106–345, § 102(a)(5), (6)(B), (7), added subpar. (H).

Subsec. (b)(5)(C). Pub. L. 106–345, § 101(b), added subpar. (C).

Subsec. (b)(7). Pub. L. 106–345, § 103(2), added par. (7).

Subsec. (d). Pub. L. 106–345, § 102(b), added subsec. (d).

Subsec. (e). Pub. L. 106–345, § 102(c), added subsec. (e).

1996—Subsec. (b)(1). Pub. L. 104–146, § 3(b)(1)(A)(ii), inserted at end ''Nominations for membership on the council shall be identified through an open process and candidates shall be selected based on locally delineated and publicized criteria. Such criteria shall include a conflict-of-interest standard that is in accordance with paragraph (5).''

Pub. L. 104–146, § 3(b)(1)(A)(i), substituted ''reflect in its composition the demographics of the epidemic in the eligible area involved, with particular consideration given to disproportionately affected and historically underserved groups and subpopulations.'' for ''include representatives of—

''(A) health care providers;

''(B) community-based and AIDS service organizations;

''(C) social service providers;

''(D) mental health care providers;

''(E) local public health agencies;

''(F) hospital planning agencies or health care planning agencies;

''(G) affected communities, including individuals with HIV disease;

''(H) non-elected community leaders;

''(I) State government;

''(J) grantees under subpart II of part C of this subchapter; and

''(K) the lead agency of any Health Resources and Services Administration adult and pediatric HIV-related care demonstration project operating in the area to be served.''

Subsec. (b)(2). Pub. L. 104–146, § 3(b)(1)(E), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(2)(C). Pub. L. 104–146, § 3(b)(1)(B), added subpar. (C).

Subsec. (b)(3). Pub. L. 104–146, § 3(b)(1)(D), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(3)(A). Pub. L. 104–146, § 3(b)(1)(C)(i), substituted ''area, including how best to meet each such priority and additional factors that a grantee should consider in allocating funds under a grant based on the—'' for ''area;'' and added cls. (i) to (iv).

Subsec. (b)(3)(B). Pub. L. 104–146, § 3(b)(1)(C)(ii), struck out ''and'' at end.

Subsec. (b)(3)(C). Pub. L. 104–146, § 3(b)(1)(C)(iii), substituted '', and at the discretion of the planning council, assess the effectiveness, either directly or through contractual arrangements, of the services offered in meeting the identified needs;'' for period at end.

Subsec. (b)(3)(D), (E). Pub. L. 104–146, § 3(b)(1)(C)(iv), added subpars. (D) and (E).

Subsec. (b)(4). Pub. L. 104–146, § 3(b)(1)(D), redesignated par. (3) as (4).

Subsec. (b)(5), (6). Pub. L. 104–146, § 3(b)(1)(F), added pars. (5) and (6).

Subsec. (c). Pub. L. 104–146, § 3(b)(1)(F), added subsec. (c).

1992—Subsec. (a)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–345, title VI, § 601, Oct. 20, 2000, 114 Stat. 1355, provided that: ''This Act [see section 1 of Pub. L. 106–345, set out as a Short Title of 2000 Amendments note under section 201 of this title] and the amendments made by this Act take effect October 1, 2000, or upon the date of the enactment of this Act [Oct. 20, 2000], whichever occurs later.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–13. Type and distribution of grants

(a) Grants based on relative need of area

(1) In general

In carrying out section 300ff–11(a) of this title, the Secretary shall make a grant for each eligible area for which an application under section 300ff–15(a) of this title has been approved. Each such grant shall be made in an amount determined in accordance with paragraph (3).

(2) Expedited distribution

Not later than 60 days after an appropriation becomes available to carry out this subpart for a fiscal year, the Secretary shall, except in the case of waivers granted under section 300ff–15(c)[1] of this title, disburse 66⅔ percent of the amount made available under section 300ff–20(b) of this title for carrying out this subpart for such fiscal year through grants to eligible areas under section 300ff–11(a) of this title, in accordance with paragraphs (3) and (4).

(3) Amount of grant

(A) In general

Subject to the extent of amounts made available in appropriations Acts, a grant made for purposes of this paragraph to an eligible area shall be made in an amount equal to the product of—

(i) an amount equal to the amount available for distribution under paragraph (2) for the fiscal year involved; and

(ii) the percentage constituted by the ratio of the distribution factor for the eligible area to the sum of the respective distribution factors for all eligible areas;

which product shall then, as applicable, be increased under paragraph (4).

(B) Distribution factor

For purposes of subparagraph (A)(ii), the term ''distribution factor'' means an amount equal to the living cases of HIV/AIDS (reported to and confirmed by the Director of the Centers for Disease Control and Prevention) in the eligible area involved, as determined under subparagraph (C).

(C) Living cases of HIV/AIDS

(i) Requirement of names-based reporting

Except as provided in clause (ii), the number determined under this subparagraph for an eligible area for a fiscal year for purposes of subparagraph (B) is the number of living names-based cases of HIV/AIDS that, as of December 31 of the most recent calendar year for which such data is available, have been reported to and confirmed by the Director of the Centers for Disease Control and Prevention.

(ii) Transition period; exemption regarding non-AIDS cases

For each of the fiscal years 2007 through 2009, an eligible area is, subject to clauses (iii) through (v), exempt from the requirement under clause (i) that living names-based non-AIDS cases of HIV be reported unless—

(I) a system was in operation as of December 31, 2005, that provides sufficiently accurate and reliable names-based reporting of such cases throughout the State in which the area is located, subject to clause (viii); or

(II) no later than the beginning of fiscal year 2008 or 2009, the Secretary, in consultation with the chief executive of the State in which the area is located, determines that a system has become operational in the State that provides sufficiently accurate and reliable names-based reporting of such cases throughout the State.

(iii) Requirements for exemption for fiscal year 2007

For fiscal year 2007, an exemption under clause (ii) for an eligible area applies only if, by October 1, 2006—

(I)(aa) the State in which the area is located had submitted to the Secretary a plan for making the transition to sufficiently accurate and reliable names-based reporting of living non-AIDS cases of HIV; or

(bb) all statutory changes necessary to provide for sufficiently accurate and reliable reporting of such cases had been made; and

(II) the State had agreed that, by April 1, 2008, the State will begin accurate and reliable names-based reporting of such cases, except that such agreement is not required to provide that, as of such date, the system for such reporting be fully sufficient with respect to accuracy and reliability throughout the area.

[1] See References in Text note below.

(iv) Requirement for exemption as of fiscal year 2008

For each of the fiscal years 2008 through 2010, an exemption under clause (ii) for an eligible area applies only if, as of April 1, 2008, the State in which the area is located is substantially in compliance with the agreement under clause (iii)(II).

(v) Progress toward names-based reporting

For fiscal year 2009, the Secretary may terminate an exemption under clause (ii) for an eligible area if the State in which the area is located submitted a plan under clause (iii)(I)(aa) and the Secretary determines that the State is not substantially following the plan.

(vi) Counting of cases in areas with exemptions

(I) In general

With respect to an eligible area that is under a reporting system for living non-AIDS cases of HIV that is not names-based (referred to in this subparagraph as ''code-based reporting''), the Secretary shall, for purposes of this subparagraph, modify the number of such cases reported for the eligible area in order to adjust for duplicative reporting in and among systems that use code-based reporting.

(II) Adjustment rate

The adjustment rate under subclause (I) for an eligible area shall be a reduction of 5 percent in the number of living non-AIDS cases of HIV reported for the area.

(vii) Multiple political jurisdictions

With respect to living non-AIDS cases of HIV, if an eligible area is not entirely within one political jurisdiction and as a result is subject to more than one reporting system for purposes of this subparagraph:

(I) Names-based reporting under clause (i) applies in a jurisdictional portion of the area, or an exemption under clause (ii) applies in such portion (subject to applicable provisions of this subparagraph), according to whether names-based reporting or code-based reporting is used in such portion.

(II) If under subclause (I) both names-based reporting and code-based reporting apply in the area, the number of code-based cases shall be reduced under clause (vi).

(viii) List of eligible areas meeting standard regarding December 31, 2005

(I) In general

If an eligible area or portion thereof is in a State specified in subclause (II), the eligible area or portion shall be considered to meet the standard described in clause (ii)(I). No other eligible area or portion thereof may be considered to meet such standard.

(II) Relevant States

For purposes of subclause (I), the States specified in this subclause are the following: Alaska, Alabama, Arkansas, Arizona, Colorado, Florida, Indiana, Iowa, Idaho, Kansas, Louisiana, Michigan, Minnesota, Missouri, Mississippi, North Carolina, North Dakota, Nebraska, New Jersey, New Mexico, New York, Nevada, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, West Virginia, Wyoming, Guam, and the Virgin Islands.

(ix) Rules of construction regarding acceptance of reports

(I) Cases of AIDS

With respect to an eligible area that is subject to the requirement under clause (i) and is not in compliance with the requirement for names-based reporting of living non-AIDS cases of HIV, the Secretary shall, notwithstanding such noncompliance, accept reports of living cases of AIDS that are in accordance with such clause.

(II) Applicability of exemption requirements

The provisions of clauses (ii) through (viii) may not be construed as having any legal effect for fiscal year 2010 or any subsequent fiscal year, and accordingly, the status of a State for purposes of such clauses may not be considered after fiscal year 2009.

(x) Program for detecting inaccurate or fraudulent counting

The Secretary shall carry out a program to monitor the reporting of names-based cases for purposes of this subparagraph and to detect instances of inaccurate reporting, including fraudulent reporting.

(D) Code-based areas; limitation on increase in grant

(i) In general

For each of the fiscal years 2007 through 2009, if code-based reporting (within the meaning of subparagraph (C)(vi)) applies in an eligible area or any portion thereof as of the beginning of the fiscal year involved, then notwithstanding any other provision of this paragraph, the amount of the grant pursuant to this paragraph for such area for such fiscal year may not—

(I) for fiscal year 2007, exceed by more than 5 percent the amount of the grant for the area that would have been made pursuant to this paragraph and paragraph (4) for fiscal year 2006 (as such paragraphs were in effect for such fiscal year) if paragraph (2) (as so in effect) had been applied by substituting ''66⅔ percent'' for ''50 percent''; and

(II) for each of the fiscal years 2008 and 2009, exceed by more than 5 percent the amount of the grant pursuant to this paragraph and paragraph (4) for the area for the preceding fiscal year.

(ii) Use of amounts involved

For each of the fiscal years 2007 through 2009, amounts available as a result of the limitation under clause (i) shall be made available by the Secretary as additional amounts for grants pursuant to subsection (b) for the fiscal year involved, subject to paragraph (4) and section 300ff–20(d)(2) of this title.

(4) Increases in grant

(A) In general

For each eligible area that received a grant pursuant to this subsection for fiscal year 2006, the Secretary shall, for each of the fiscal years 2007 through 2009, increase the amount of the grant made pursuant to paragraph (3) for the area to ensure that the amount of the grant for the fiscal year involved is not less than the following amount, as applicable to such fiscal year:

(i) For fiscal year 2007, an amount equal to 95 percent of the amount of the grant that would have been made pursuant to paragraph (3) and this paragraph for fiscal year 2006 (as such paragraphs were in effect for such fiscal year) if paragraph (2) (as so in effect) had been applied by substituting ''66⅔ percent'' for ''50 percent''.

(ii) For each of the fiscal years 2008 and 2009, an amount equal to 100 percent of the amount of the grant made pursuant to paragraph (3) and this paragraph for fiscal year 2007.

(B) Source of funds for increase

(i) In general

From the amounts available for carrying out the single program referred to in section 300ff–19(d)(2)(C) of this title for a fiscal year (relating to supplemental grants), the Secretary shall make available such amounts as may be necessary to comply with subparagraph (A), subject to section 300ff–20(d)(2) of this title.

(ii) Pro rata reduction

If the amounts referred to in clause (i) for a fiscal year are insufficient to fully comply with subparagraph (A) for the year, the Secretary, in order to provide the additional funds necessary for such compliance, shall reduce on a pro rata basis the amount of each grant pursuant to this subsection for the fiscal year, other than grants for eligible areas for which increases under subparagraph (A) apply. A reduction under the preceding sentence may not be made in an amount that would result in the eligible area involved becoming eligible for such an increase.

(C) Limitation

This paragraph may not be construed as having any applicability after fiscal year 2009.

(b) Supplemental grants

(1) In general

Subject to subsection (a)(4)(B)(i) and section 300ff–20(d) of this title, the Secretary shall disburse the remainder of amounts not disbursed under subsection (a)(2) of this section for such fiscal year for the purpose of making grants under section 300ff–11(a) of this title to eligible areas whose application under section 300ff–15(b) of this title—

(A) contains a report concerning the dissemination of emergency relief funds under subsection (a) of this section and the plan for utilization of such funds;

(B) demonstrates the need in such area, on an objective and quantified basis, for supplemental financial assistance to combat the HIV epidemic;

(C) demonstrates the existing commitment of local resources of the area, both financial and in-kind, to combating the HIV epidemic;

(D) demonstrates the ability of the area to utilize such supplemental financial resources in a manner that is immediately responsive and cost effective;

(E) demonstrates that resources will be allocated in accordance with the local demographic incidence of AIDS including appropriate allocations for services for infants, children, youth, women, and families with HIV/AIDS;

(F) demonstrates the inclusiveness of affected communities and individuals with HIV/AIDS;

(G) demonstrates the manner in which the proposed services are consistent with the local needs assessment and the statewide coordinated statement of need; and

(H) demonstrates the ability of the applicant to expend funds efficiently by not having had, for the most recent grant year under subsection (a) for which data is available, more than 2 percent of grant funds under such subsection canceled or covered by any waivers under subsection (c)(3).

(2) Amount of grant

(A) In general

The amount of each grant made for purposes of this subsection shall be determined by the Secretary based on a weighting of factors under paragraph (1), with demonstrated need under subparagraph (B) of such paragraph counting one-third.

(B) Demonstrated need

The factors considered by the Secretary in determining whether an eligible area has a demonstrated need for purposes of paragraph (1)(B) may include any or all of the following:

(i) The unmet need for such services, as determined under section 300ff–12(b)(4) of this title or other community input process as defined under section 300ff–19(d)(1)(A) of this title.

(ii) An increasing need for HIV/AIDS-related services, including relative rates of increase in the number of cases of HIV/AIDS.

(iii) The relative rates of increase in the number of cases of HIV/AIDS within new or emerging subpopulations.

(iv) The current prevalence of HIV/AIDS.

(v) Relevant factors related to the cost and complexity of delivering health care

to individuals with HIV/AIDS in the eligible area.

(vi) The impact of co-morbid factors, including co-occurring conditions, determined relevant by the Secretary.

(vii) The prevalence of homelessness.

(viii) The prevalence of individuals described under section 300ff–12(b)(2)(M) of this title.

(ix) The relevant factors that limit access to health care, including geographic variation, adequacy of health insurance coverage, and language barriers.

(x) The impact of a decline in the amount received pursuant to subsection (a) on services available to all individuals with HIV/AIDS identified and eligible under this subchapter.

(C) Priority in making grants

The Secretary shall provide funds under this subsection to an eligible area to address the decline or disruption of all EMA-provided services related to the decline in the amounts received pursuant to subsection (a) consistent with the grant award for the eligible area for fiscal year 2006, to the extent that the factor under subparagraph (B)(x) (relating to a decline in funding) applies to the eligible area.

(3) Remainder of amounts

In determining the amount of funds to be obligated under paragraph (1), the Secretary shall include amounts that are not paid to the eligible areas under expedited procedures under subsection (a)(2) of this section as a result of—

(A) the failure of any eligible area to submit an application under section 300ff–15(c)[1] of this title; or

(B) any eligible area informing the Secretary that such eligible area does not intend to expend the full amount of its grant under such section.

(4) Failure to submit

(A) In general

The failure of an eligible area to submit an application for an expedited grant under subsection (a)(2) of this section shall not result in such area being ineligible for a grant under this subsection.

(B) Application

The application of an eligible area submitted under section 300ff–15(b) of this title shall contain the assurances required under subsection (a) of such section if such eligible area fails to submit an application for an expedited grant under subsection (a)(2) of this section.

(c) Timeframe for obligation and expenditure of grant funds

(1) Obligation by end of grant year

Effective for fiscal year 2007 and subsequent fiscal years, funds from a grant award made pursuant to subsection (a) or (b) for a fiscal year are available for obligation by the eligible area involved through the end of the one-year period beginning on the date in such fiscal year on which funds from the award first become available to the area (referred to in this subsection as the ''grant year for the award''), except as provided in paragraph (3)(A).

(2) Supplemental grants; cancellation of unobligated balance of grant award

Effective for fiscal year 2007 and subsequent fiscal years, if a grant award made pursuant to subsection (b) for an eligible area for a fiscal year has an unobligated balance as of the end of the grant year for the award—

(A) the Secretary shall cancel that unobligated balance of the award, and shall require the eligible area to return any amounts from such balance that have been disbursed to the area; and

(B) the funds involved shall be made available by the Secretary as additional amounts for grants pursuant to subsection (b) for the first fiscal year beginning after the fiscal year in which the Secretary obtains the information necessary for determining that the balance is required under subparagraph (A) to be canceled, except that the availability of the funds for such grants is subject to subsection (a)(4) and section 300ff–20(d)(2) of this title as applied for such year.

(3) Formula grants; cancellation of unobligated balance of grant award; waiver permitting carryover

(A) In general

Effective for fiscal year 2007 and subsequent fiscal years, if a grant award made pursuant to subsection (a) for an eligible area for a fiscal year has an unobligated balance as of the end of the grant year for the award, the Secretary shall cancel that unobligated balance of the award, and shall require the eligible area to return any amounts from such balance that have been disbursed to the area, unless—

(i) before the end of the grant year, the chief elected official of the area submits to the Secretary a written application for a waiver of the cancellation, which application includes a description of the purposes for which the area intends to expend the funds involved; and

(ii) the Secretary approves the waiver.

(B) Expenditure by end of carryover year

With respect to a waiver under subparagraph (A) that is approved for a balance that is unobligated as of the end of a grant year for an award:

(i) The unobligated funds are available for expenditure by the eligible area involved for the one-year period beginning upon the expiration of the grant year (referred to in this subsection as the ''carryover year'').

(ii) If the funds are not expended by the end of the carryover year, the Secretary shall cancel that unexpended balance of the award, and shall require the eligible area to return any amounts from such balance that have been disbursed to the area.

(C) Use of cancelled balances

In the case of any balance of a grant award that is cancelled under subparagraph (A) or

(B)(ii), the grant funds involved shall be made available by the Secretary as additional amounts for grants pursuant to subsection (b) for the first fiscal year beginning after the fiscal year in which the Secretary obtains the information necessary for determining that the balance is required under such subparagraph to be canceled, except that the availability of the funds for such grants is subject to subsection (a)(4) and section 300ff–20(d)(2) of this title as applied for such year.

(D) Corresponding reduction in future grant

(i) In general

In the case of an eligible area for which a balance from a grant award under subsection (a) is unobligated as of the end of the grant year for the award—

(I) the Secretary shall reduce, by the same amount as such unobligated balance, the amount of the grant under such subsection for the first fiscal year beginning after the fiscal year in which the Secretary obtains the information necessary for determining that such balance was unobligated as of the end of the grant year (which requirement for a reduction applies without regard to whether a waiver under subparagraph (A) has been approved with respect to such balance); and

(II) the grant funds involved in such reduction shall be made available by the Secretary as additional funds for grants pursuant to subsection (b) for such first fiscal year, subject to subsection (a)(4) and section 300ff–20(d)(2) of this title;

except that this clause does not apply to the eligible area if the amount of the unobligated balance was 2 percent or less.

(ii) Relation to increases in grant

A reduction under clause (i) for an eligible area for a fiscal year may not be taken into account in applying subsection (a)(4) with respect to the area for the subsequent fiscal year.

(d) Compliance with priorities of HIV planning council

Notwithstanding any other provision of this subpart, the Secretary, in carrying out section 300ff–11(a) of this title, may not make any grant under subsection (a) or (b) of this section to an eligible area unless the application submitted by such area under section 300ff–15 of this title for the grant involved demonstrates that the grants made under subsections (a) and (b) of this section to the area for the preceding fiscal year (if any) were expended in accordance with the priorities applicable to such year that were established, pursuant to section 300ff–12(b)(4)(C) of this title, by the planning council serving the area.

(e) Report on the awarding of supplemental funds

Not later than 45 days after the awarding of supplemental funds under this section, the Secretary shall submit to Congress a report concerning such funds. Such report shall include information detailing—

(1) the total amount of supplemental funds available under this section for the year involved;

(2) the amount of supplemental funds used in accordance with the hold harmless provisions of subsection (a)(4);

(3) the amount of supplemental funds disbursed pursuant to subsection (b)(2)(C);

(4) the disbursement of the remainder of the supplemental funds after taking into account the uses described in paragraphs (2) and (3); and

(5) the rationale used for the amount of funds disbursed as described under paragraphs (2), (3), and (4).

(July 1, 1944, ch. 373, title XXVI, § 2603, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 578; amended Pub. L. 101–502, § 6(a), Nov. 3, 1990, 104 Stat. 1289; Pub. L. 102–531, title III, § 312(d)(27), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 104–146, §§ 3(b)(2), (3), 4, 6(c)(1), 12(c)(2), May 20, 1996, 110 Stat. 1349, 1350, 1364, 1367, 1373; Pub. L. 106–345, title I, §§ 102(d), 111, 112, Oct. 20, 2000, 114 Stat. 1323, 1326; Pub. L. 109–415, title I, §§ 102–104, 107(b), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2768–2774, 2783, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

Section 300ff–15 of this title, referred to in subsecs. (a)(2) and (b)(3)(A), was amended by Pub. L. 104–146, § 3(b)(5)(C), (D), May 20, 1996, 110 Stat. 1353, to add a new subsec. (c), relating to single application and grant awards, and redesignate former subsec. (c), relating to date for submission of grant applications, as (d).

PRIOR PROVISIONS

A prior section 2603 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–415, § 107(b), substituted ''this subpart'' for ''this part''.

Pub. L. 109–415, § 102(a), substituted ''66⅔ percent of the amount made available under section 300ff–20(b) of this title for carrying out this subpart'' for ''50 percent of the amount appropriated under section 300ff–77 of this title'' and ''paragraphs (3) and (4)'' for ''paragraph (3)'' in first sentence and struck out last sentence which read as follows: ''The Secretary shall reserve an additional percentage of the amount appropriated under section 300ff–77 of this title for a fiscal year for grants under this part to make grants to eligible areas under section 300ff–11(a) of this title in accordance with paragraph (4).''

Subsec. (a)(3)(A). Pub. L. 109–415, § 102(d)(1), inserted concluding provisions.

Subsec. (a)(3)(B). Pub. L. 109–415, § 102(b)(1), which directed the substitution of ''living cases of HIV/AIDS (reported to and confirmed by the Director of the Centers for Disease Control and Prevention)'' for ''estimated living cases of acquired immune deficiency syndrome'', was executed by making the substitution for ''estimated number of living cases of acquired immune deficiency syndrome'', to reflect the probable intent of Congress.

Subsec. (a)(3)(C) to (E). Pub. L. 109–415, § 102(b)(2), (c), added subpars. (C) and (D) and struck out former subpars. (C) to (E) which related to estimate of living cases, determination of Secretary regarding data on HIV cases, and unexpended funds, respectively.

Subsec. (a)(4). Pub. L. 109–415, § 102(d)(2), reenacted heading without change and amended text generally, substituting provisions relating to increases in grant for each of the fiscal years 2007 through 2009 for provisions relating to increases in grant for the first through fifth or subsequent fiscal years in a protection period.

Subsec. (b)(1). Pub. L. 109–415, § 103(1)(A), in introductory provisions, substituted ''Subject to subsection (a)(4)(B)(i) and section 300ff–20(d) of this title, the Secretary shall'' for ''Not later than 150 days after the date on which appropriations are made under section 300ff–77 of this title for a fiscal year, the Secretary shall''.

Subsec. (b)(1)(B). Pub. L. 109–415, § 103(1)(B), substituted ''demonstrates the need in such area, on an objective and quantified basis,'' for ''demonstrates the severe need in such area''.

Subsec. (b)(1)(E). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease''.

Subsec. (b)(1)(F). Pub. L. 109–415, § 103(1)(C), added subpar. (F) and struck out former subpar. (F) which read as follows: ''demonstrates the inclusiveness of the planning council membership, with particular emphasis on affected communities and individuals with HIV disease; and''.

Subsec. (b)(1)(H). Pub. L. 109–415, § 103(1)(D), (E), added subpar. (H).

Subsec. (b)(2)(A). Pub. L. 109–415, § 103(2)(A), substituted ''demonstrated need'' for ''severe need''.

Subsec. (b)(2)(B). Pub. L. 109–415, § 103(2)(B), added subpar. (B) and struck out former subpar. (B) which related to severe need.

Subsec. (b)(2)(C), (D). Pub. L. 109–415, § 103(2)(C), added subpar. (C) and struck out former subpars. (C) and (D) which related to mechanism to utilize data to determine prevalence of HIV disease and the phasing in, over a 3-year period beginning in fiscal year 1998, of the use of such mechanism to determine severe needs, respectively.

Subsec. (c). Pub. L. 109–415, § 104(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 109–415, § 107(b), substituted ''this subpart'' for ''this part''.

Pub. L. 109–415, § 104(1), redesignated subsec. (c) as (d).

Subsec. (e). Pub. L. 109–415, § 104(3), added subsec. (e).

2000—Subsec. (a)(2). Pub. L. 106–345, § 111(a), substituted ''for a fiscal year'' for ''for each of the fiscal years 1996 through 2000'' in first sentence.

Subsec. (a)(3)(C)(i). Pub. L. 106–345, § 111(b)(1)(A), inserted before semicolon '', except that (subject to subparagraph (D)), for grants made pursuant to this paragraph for fiscal year 2005 and subsequent fiscal years, the cases counted for each 12-month period beginning on or after July 1, 2004, shall be cases of HIV disease (as reported to and confirmed by such Director) rather than cases of acquired immune deficiency syndrome''.

Subsec. (a)(3)(C). Pub. L. 106–345, § 111(b)(1)(B), in concluding provisions, inserted before period at end of first sentence '', and shall be reported to the congressional committees of jurisdiction'' and inserted at end ''Updates shall as applicable take into account the counting of cases of HIV disease pursuant to clause (i).''

Subsec. (a)(3)(D), (E). Pub. L. 106–345, § 111(b)(2), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (a)(4). Pub. L. 106–345, § 111(c), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''With respect to an eligible area under section 300ff–11(a) of this title, the Secretary shall increase the amount of a grant under paragraph (2) for a fiscal year to ensure that such eligible area receives not less than—

''(A) with respect to fiscal year 1996, 100 percent;

''(B) with respect to fiscal year 1997, 99 percent;

''(C) with respect to fiscal year 1998, 98 percent;

''(D) with respect to fiscal year 1999, 96.5 percent; and

''(E) with respect to fiscal year 2000, 95 percent;

of the amount allocated for fiscal year 1995 to such entity under this subsection.''

Subsec. (b)(1)(E). Pub. L. 106–345, § 112(b), inserted ''youth,'' after ''children,''.

Subsec. (b)(2). Pub. L. 106–345, § 112(a)(1), substituted ''Amount of grant'' for ''Definition'' in heading.

Subsec. (b)(2)(A). Pub. L. 106–345, § 112(a)(3), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (b)(2)(B). Pub. L. 106–345, § 112(a)(2), (4), redesignated subpar. (A) as (B) and added cls. (iv) to (vi). Former subpar. (B) redesignated (C).

Subsec. (b)(2)(C). Pub. L. 106–345, § 112(a)(5)(C), inserted after second sentence ''Such a mechanism shall be modified to reflect the findings of the study under section 501(b) of the Ryan White CARE Act Amendments of 2000 (relating to the relationship between epidemiological measures and health care for certain individuals with HIV disease).''

Pub. L. 106–345, § 112(a)(5)(B), in second sentence, substituted ''18 months after October 20, 2000'' for ''2 years after May 20, 1996''.

Pub. L. 106–345, § 112(a)(5)(A), substituted ''subparagraph (B)'' for ''subparagraph (A)'' in two places.

Pub. L. 106–345, § 112(a)(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (b)(2)(D). Pub. L. 106–345, § 112(a)(2), (6), redesignated subpar. (C) as (D) and substituted ''subparagraph (C)'' for ''subparagraph (B)''.

Subsec. (b)(4). Pub. L. 106–345, § 112(c)(1), (2), redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: ''The amount of each grant made for purposes of this subsection shall be determined by the Secretary based on the application submitted by the eligible area under section 300ff–15(b) of this title.''

Subsec. (b)(4)(B). Pub. L. 106–345, § 112(c)(3), substituted ''an expedited grant'' for ''an expedited grants''.

Subsec. (b)(5). Pub. L. 106–345, § 112(c)(2), redesignated par. (5) as (4).

Subsec. (c). Pub. L. 106–345, § 102(d), substituted ''section 300ff–12(b)(4)(C) of this title'' for ''section 300ff–12(b)(3)(A) of this title''.

1996—Subsec. (a)(2). Pub. L. 104–146, § 6(c)(1)(A), substituted ''section 300ff–77'' for ''section 300ff–18''.

Pub. L. 104–146, § 3(b)(3)(A), inserted '', in accordance with paragraph (3)'' after ''section 300ff–11(a) of this title'' and ''The Secretary shall reserve an additional percentage of the amount appropriated under section 300ff–77 of this title for a fiscal year for grants under this part to make grants to eligible areas under section 300ff–11(a) of this title in accordance with paragraph (4).'' at end.

Pub. L. 104–146, § 3(b)(2)(A), substituted ''Not later than 60 days after an appropriation becomes available to carry out this part for each of the fiscal years 1996 through 2000, the Secretary shall'' for ''Not later than—

''(A) 90 days after an appropriation becomes available to carry out this part for fiscal year 1991; and

''(B) 60 days after an appropriation becomes available to carry out this part for each of fiscal years 1992 through 1995;

the Secretary shall''.

Subsec. (a)(3). Pub. L. 104–146, § 4, amended par. (3) generally, revising and restating provisions of former subpars. (A) to (C) relating to amount of grants under par. (3) as subpars. (A) to (D).

Subsec. (a)(4). Pub. L. 104–146, § 3(b)(3)(B), added par. (4).

Subsec. (b)(1). Pub. L. 104–146, § 6(c)(1)(B), substituted ''section 300ff–77'' for ''section 300ff–18'' in introductory provisions.

Subsec. (b)(1)(F), (G). Pub. L. 104–146, § 3(b)(2)(B)(i), added subpars. (F) and (G).

Subsec. (b)(2) to (4). Pub. L. 104–146, § 3(b)(2)(B)(ii), (iii), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (b)(4)(B). Pub. L. 104–146, § 12(c)(2), which directed substitution of ''an expedited grant'' for ''an expedited grants'' in par. (4)(B), could not be executed because the words ''an expedited grants'' did not appear in par. (4)(B) subsequent to redesignation of par. (4) as (5) by Pub. L. 104–146, § 3(b)(2)(B)(ii). See above.

Subsec. (b)(5). Pub. L. 104–146, § 3(b)(2)(B)(ii), redesignated par. (4) as (5).

Subsec. (c). Pub. L. 104–146, § 3(b)(3)(C), added subsec. (c).

1992—Subsec. (a)(3)(B)(i). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1990—Subsec. (a)(3). Pub. L. 101–502 amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) IN GENERAL.—Subject to the extent of amounts made available in appropriations Acts, a grant made for purposes of this paragraph for an eligible area shall be made in an amount equal to the sum of—

''(i) an amount determined in accordance with subparagraph (B); and

''(ii) an amount determined in accordance with subparagraph (C).

''(B) AMOUNT RELATING TO CUMULATIVE NUMBER OF CASES.—The amount referred to in clause (i) of subparagraph (A) is an amount equal to the product of—

''(i) an amount equal to 75 percent of the amounts available for distribution under paragraph (2) for the fiscal year involved; and

''(ii) a percentage equal to the quotient of—

''(I) the cumulative number of cases of acquired immune deficiency syndrome in the eligible area involved, as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control on the applicable date described in section 300ff–11(a) of this title; divided by

''(II) the sum of the cumulative number of such cases in all eligible areas for which an application for a grant under paragraph (1) has been approved.

''(C) AMOUNT RELATING TO PER CAPITA INCIDENCE OF CASES.—The amount referred to in clause (ii) of subparagraph (A) is an amount equal to the product of—

''(i) an amount equal to 25 percent of the amounts available for distribution under paragraph (2) for the fiscal year involved; and

''(ii) a percentage developed by the Secretary through consideration of the ratio of—

''(I) the per capita incidence of cumulative cases of acquired immune deficiency syndrome in the eligible area involved (computed on the basis of the most recently available data on the population of the area); to

''(II) the per capita incidence of such cumulative cases in all eligible areas for which an application for a grant under paragraph (1) has been approved (computed on the basis of the most recently available data on the population of such areas).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 3(b)(2), (3), 4, 6(c)(1)(B), and 12(c)(2) of Pub. L. 104–146 effective Oct. 1, 1996, and amendment by section 6(c)(1)(A) of Pub. L. 104–146 effective May 20, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–14. Use of amounts

(a) Requirements

The Secretary may not make a grant under section 300ff–11(a) of this title to the chief elected official of an eligible area unless such political subdivision agrees that—

(1) subject to paragraph (2), the allocation of funds and services within the eligible area will be made in accordance with the priorities established, pursuant to section 300ff–12(b)(4)(C) of this title, by the HIV health services planning council that serves such eligible area;

(2) funds provided under section 300ff–11 of this title will be expended only for—

(A) core medical services described in subsection (c);

(B) support services described in subsection (d); and

(C) administrative expenses described in subsection (h); and

(3) the use of such funds will comply with the requirements of this section.

(b) Direct financial assistance to appropriate entities

(1) In general

The chief elected official of an eligible area shall use amounts from a grant under section 300ff–11 of this title to provide direct financial assistance to entities described in paragraph (2) for the purpose of providing core medical services and support services.

(2) Appropriate entities

Direct financial assistance may be provided under paragraph (1) to public or nonprofit private entities, or private for-profit entities if such entities are the only available provider of quality HIV care in the area.

(c) Required funding for core medical services

(1) In general

With respect to a grant under section 300ff–11 of this title for an eligible area for a grant year, the chief elected official of the area shall, of the portion of the grant remaining after reserving amounts for purposes of paragraphs (1) and (5)(B)(i) of subsection (h), use not less than 75 percent to provide core medical services that are needed in the eligible area for individuals with HIV/AIDS who are identified and eligible under this subchapter (including services regarding the co-occurring conditions of the individuals).

(2) Waiver

(A) In general

The Secretary shall waive the application of paragraph (1) with respect to a chief elected official for a grant year if the Secretary determines that, within the eligible area involved—

(i) there are no waiting lists for AIDS Drug Assistance Program services under section 300ff–26 of this title; and

(ii) core medical services are available to all individuals with HIV/AIDS identified and eligible under this subchapter.

(B) Notification of waiver status

When informing the chief elected official of an eligible area that a grant under section 300ff–11 of this title is being made for the area for a grant year, the Secretary shall inform the official whether a waiver under subparagraph (A) is in effect for such year.

(3) Core medical services

For purposes of this subsection, the term ''core medical services'', with respect to an individual with HIV/AIDS (including the co-occurring conditions of the individual), means the following services:

(A) Outpatient and ambulatory health services.

(B) AIDS Drug Assistance Program treatments in accordance with section 300ff–26 of this title.

(C) AIDS pharmaceutical assistance.

(D) Oral health care.

(E) Early intervention services described in subsection (e).

(F) Health insurance premium and cost sharing assistance for low-income individuals in accordance with section 300ff–25 of this title.

(G) Home health care.

(H) Medical nutrition therapy.

(I) Hospice services.

(J) Home and community-based health services as defined under section 300ff–24(c) of this title.

(K) Mental health services.

(L) Substance abuse outpatient care.

(M) Medical case management, including treatment adherence services.

(d) Support services

(1) In general

For purposes of this section, the term ''support services'' means services, subject to the approval of the Secretary, that are needed for individuals with HIV/AIDS to achieve their medical outcomes (such as respite care for persons caring for individuals with HIV/AIDS, outreach services, medical transportation, linguistic services, and referrals for health care and support services).

(2) Medical outcomes

In this subsection, the term ''medical outcomes'' means those outcomes affecting the HIV-related clinical status of an individual with HIV/AIDS.

(e) Early intervention services

(1) In general

For purposes of this section, the term ''early intervention services'' means HIV/AIDS early intervention services described in section 300ff–51(e) of this title, with follow-up referral provided for the purpose of facilitating the access of individuals receiving the services to HIV-related health services. The entities through which such services may be provided under the grant include public health departments, emergency rooms, substance abuse and mental health treatment programs, detoxification centers, detention facilities, clinics regarding sexually transmitted diseases, homeless shelters, HIV/AIDS counseling and testing sites, health care points of entry specified by eligible areas, federally qualified health centers, and entities described in section 300ff–52(a) of this title that constitute a point of access to services by maintaining referral relationships.

(2) Conditions

With respect to an entity that proposes to provide early intervention services under paragraph (1), such paragraph shall apply only if the entity demonstrates to the satisfaction of the chief elected official for the eligible area involved that—

(A) Federal, State, or local funds are otherwise inadequate for the early intervention services the entity proposes to provide; and

(B) the entity will expend funds pursuant to such paragraph to supplement and not supplant other funds available to the entity for the provision of early intervention services for the fiscal year involved.

(f) Priority for women, infants, children, and youth

(1) In general

For the purpose of providing health and support services to infants, children, youth, and women with HIV/AIDS, including treatment measures to prevent the perinatal transmission of HIV, the chief elected official of an eligible area, in accordance with the established priorities of the planning council, shall for each of such populations in the eligible area use, from the grants made for the area under section 300ff–11(a) of this title for a fiscal year, not less than the percentage constituted by the ratio of the population involved (infants, children, youth, or women in such area) with HIV/AIDS to the general population in such area of individuals with HIV/AIDS.

(2) Waiver

With respect to the population involved, the Secretary may provide to the chief elected official of an eligible area a waiver of the requirement of paragraph (1) if such official demonstrates to the satisfaction of the Secretary that the population is receiving HIV-related health services through the State medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], the State children's health insurance program under title XXI of such Act [42 U.S.C. 1397aa et seq.], or other Federal or State programs.

(g) Requirement of status as medicaid provider

(1) Provision of service

Subject to paragraph (2), the Secretary may not make a grant under section 300ff–11(a) of this title for the provision of services under this section in a State unless, in the case of any such service that is available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State—

(A) the political subdivision involved will provide the service directly, and the political subdivision has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(B) the political subdivision will enter into an agreement with a public or nonprofit private entity under which the entity will provide the service, and the entity has entered into such a participation agreement and is qualified to receive such payments.

(2) Waiver

(A) In general

In the case of an entity making an agreement pursuant to paragraph (1)(B) regarding the provision of services, the requirement established in such paragraph shall be waived by the HIV health services planning council for the eligible area if the entity does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, in-

cluding reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) Determination

A determination by the HIV health services planning council of whether an entity referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the entity accepts voluntary donations for the purpose of providing services to the public.

(h) Administration

(1) Limitation

The chief elected official of an eligible area shall not use in excess of 10 percent of amounts received under a grant under this subpart for administrative expenses.

(2) Allocations by chief elected official

In the case of entities and subcontractors to which the chief elected official of an eligible area allocates amounts received by the official under a grant under this subpart, the official shall ensure that, of the aggregate amount so allocated, the total of the expenditures by such entities for administrative expenses does not exceed 10 percent (without regard to whether particular entities expend more than 10 percent for such expenses).

(3) Administrative activities

For purposes of paragraph (1), amounts may be used for administrative activities that include—

(A) routine grant administration and monitoring activities, including the development of applications for part A funds, the receipt and disbursal of program funds, the development and establishment of reimbursement and accounting systems, the development of a clinical quality management program as described in paragraph (5), the preparation of routine programmatic and financial reports, and compliance with grant conditions and audit requirements; and

(B) all activities associated with the grantee's contract award procedures, including the activities carried out by the HIV health services planning council as established under section 300ff–12(b) of this title, the development of requests for proposals, contract proposal review activities, negotiation and awarding of contracts, monitoring of contracts through telephone consultation, written documentation or onsite visits, reporting on contracts, and funding reallocation activities.

(4) Subcontractor administrative activities

For the purposes of this subsection, subcontractor administrative activities include—

(A) usual and recognized overhead activities, including established indirect rates for agencies;

(B) management oversight of specific programs funded under this subchapter; and

(C) other types of program support such as quality assurance, quality control, and related activities.

(5) Clinical quality management

(A) Requirement

The chief elected official of an eligible area that receives a grant under this subpart shall provide for the establishment of a clinical quality management program to assess the extent to which HIV health services provided to patients under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infection, and as applicable, to develop strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services.

(B) Use of funds

(i) In general

From amounts received under a grant awarded under this subpart for a fiscal year, the chief elected official of an eligible area may use for activities associated with the clinical quality management program required in subparagraph (A) not to exceed the lesser of—

(I) 5 percent of amounts received under the grant; or

(II) $3,000,000.

(ii) Relation to limitation on administrative expenses

The costs of a clinical quality management program under subparagraph (A) may not be considered administrative expenses for purposes of the limitation established in paragraph (1).

(i) Construction

A chief elected official may not use amounts received under a grant awarded under this subpart to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or to make cash payments to intended recipients of services.

(July 1, 1944, ch. 373, title XXVI, § 2604, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 580; amended Pub. L. 103–446, title XII, § 1203(a)(3), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 104–146, § 3(b)(4), May 20, 1996, 110 Stat. 1351; Pub. L. 106–345, title I, § 121, Oct. 20, 2000, 114 Stat. 1326; Pub. L. 109–415, title I, §§ 105, 107(b), Dec. 19, 2006, 120 Stat. 2776, 2783.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (f)(2) and (g)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 2604 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

AMENDMENTS

2006—Pub. L. 109–415, § 105, amended section generally. Prior to amendment, section related to requirements for allocation of funds, purposes for use of amounts, quality management program, expenditures for personnel, status of grantee as medicaid provider, administrative activities and expenses, and prohibited uses of amounts.

Subsecs. (h)(1), (2), (5)(A) and (i). Pub. L. 109–415, § 107(b), substituted ''this subpart'' for ''this part''.

2000—Subsec. (b)(1). Pub. L. 106–345, § 121(a)(1), substituted ''HIV-related services, as follows:'' for ''HIV-related—'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 106–345, § 121(a)(2), substituted ''Outpatient and ambulatory health services, including substance abuse treatment,'' for ''outpatient and ambulatory health and support services, including case management, substance abuse treatment and'' and substituted a period for ''; and'' at end.

Subsec. (b)(1)(B). Pub. L. 106–345, § 121(a)(4), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 106–345, § 121(a)(3), redesignated subpar. (B) as (C) and substituted ''Inpatient'' for ''inpatient''.

Subsec. (b)(1)(D). Pub. L. 106–345, § 121(a)(5), added subpar. (D).

Subsec. (b)(3). Pub. L. 106–345, § 121(b)(2), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 106–345, § 121(b)(1), (c), redesignated par. (3) as (4) and amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''For the purpose of providing health and support services to infants, children, and women with HIV disease, including treatment measures to prevent the perinatal transmission of HIV, the chief elected official of an eligible area, in accordance with the established priorities of the planning council, shall use, from the grants made for the area under section 300ff–11(a) of this title for a fiscal year, not less than the percentage constituted by the ratio of the population in such area of infants, children, and women with acquired immune deficiency syndrome to the general population in such area of individuals with such syndrome.''

Subsecs. (c) to (g). Pub. L. 106–345, § 121(d), added subsec. (c) and redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

1996—Subsec. (b)(1)(A). Pub. L. 104–146, § 3(b)(4)(A), inserted '', substance abuse treatment and mental health treatment,'' after ''case management'' and ''which shall include treatment education and prophylactic treatment for opportunistic infections,'' after ''treatment services,''.

Subsec. (b)(2)(A). Pub. L. 104–146, § 3(b)(4)(B), inserted '', or private for-profit entities if such entities are the only available provider of quality HIV care in the area,'' after ''nonprofit private entities,'' and substituted ''homeless health centers, substance abuse treatment programs, and mental health programs'' for ''and homeless health centers''.

Subsec. (b)(3). Pub. L. 104–146, § 3(b)(4)(C), added par. (3).

Subsec. (e). Pub. L. 104–146, § 3(b)(4)(C), struck out ''and planning'' after ''Administration'' in heading, designated existing provisions as par. (1), inserted par. heading, struck out ''accounting, reporting, and program oversight functions'' after ''for administration,'', inserted at end ''In the case of entities and subcontractors to which such officer allocates amounts received by the officer under the grant, the officer shall ensure that, of the aggregate amount so allocated, the total of the expenditures by such entities for administrative expenses does not exceed 10 percent (without regard to whether particular entities expend more than 10 percent for such expenses).'', and added pars. (2) and (3).

1994—Subsec. (b)(2)(A). Pub. L. 103–446 substituted ''Department of Veterans Affairs facilities'' for ''Veterans Administration facilities''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–15. Application

(a) In general

To be eligible to receive a grant under section 300ff–11 of this title, an eligible area shall prepare and submit to the Secretary an application, in accordance with subsection (c) of this section regarding a single application and grant award, at such time, in such form, and containing such information as the Secretary shall require, including assurances adequate to ensure—

(1)(A) that funds received under a grant awarded under this subpart will be utilized to supplement not supplant State funds made available in the year for which the grant is awarded to provide HIV-related services as described in section 300ff–14(b)(1) of this title;

(B) that the political subdivisions within the eligible area will maintain the level of expenditures by such political subdivisions for HIV-related services as described in section 300ff–14(b)(1) of this title at a level that is equal to the level of such expenditures by such political subdivisions for the preceding fiscal year; and

(C) that political subdivisions within the eligible area will not use funds received under a grant awarded under this subpart in maintaining the level of expenditures for HIV-related services as required in subparagraph (B);

(2) that the eligible area has an HIV health services planning council and has entered into intergovernmental agreements pursuant to section 300ff–12 of this title, and has developed or will develop the comprehensive plan in accordance with section 300ff–12(b)(3)(B)[1] of this title;

(3) that entities within the eligible area that receive funds under a grant under this subpart will maintain appropriate relationships with entities in the eligible area served that constitute key points of access to the health care system for individuals with HIV/AIDS (including emergency rooms, substance abuse treatment programs, detoxification centers, adult and juvenile detention facilities, sexually transmitted disease clinics, HIV counseling and testing sites, mental health programs, and homeless shelters), and other entities under section[2] 300ff–14(b)(3)[1] and 300ff–52(a) of this title, for the purpose of facilitating early intervention for individuals newly diagnosed with HIV/AIDS and individuals knowledgeable of their HIV status but not in care;

(4) that the chief elected official of the eligible area will satisfy all requirements under section 300ff–14(c) of this title;

(5) that entities within the eligible area that will receive funds under a grant provided under section 300ff–11(a) of this title shall participate in an established HIV community-based continuum of care if such continuum exists within the eligible area;

(6) that funds received under a grant awarded under this subpart will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service—

[1] See References in Text note below.

[2] So in original. Probably should be ''sections''.

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program (except for a program administered by or providing the services of the Indian Health Service); or

(B) by an entity that provides health services on a prepaid basis;

(7) to the maximum extent practicable, that—

(A) HIV health care and support services provided with assistance made available under this subpart will be provided without regard—

(i) to the ability of the individual to pay for such services; and

(ii) to the current or past health condition of the individual to be served;

(B) such services will be provided in a setting that is accessible to low-income individuals with HIV/AIDS; and

(C) a program of outreach will be provided to low-income individuals with HIV/AIDS to inform such individuals of such services;

(8) that the applicant has participated, or will agree to participate, in the statewide coordinated statement of need process where it has been initiated by the State public health agency responsible for administering grants under part B of this subchapter, and ensure that the services provided under the comprehensive plan are consistent with the statewide coordinated statement of need;

(9) that the eligible area has procedures in place to ensure that services provided with funds received under this subpart meet the criteria specified in section 300ff–14(b)(1) of this title; and

(10) that the chief elected official will submit to the lead State agency under section 300ff–27(b)(4) of this title, audits, consistent with Office of Management and Budget circular A133, regarding funds expended in accordance with this subpart every 2 years and shall include necessary client-based data to compile unmet need calculations and Statewide coordinated statements of need process.

(b) Application

An eligible area that desires to receive a grant under section 300ff–13(b) of this title shall prepare and submit to the Secretary an application, in accordance with subsection (c) of this section regarding a single application and grant award, at such time, in such form, and containing such information as the Secretary shall require, including the information required under such subsection and information concerning—

(1) the number of individuals to be served within the eligible area with assistance provided under the grant;

(2) demographic data on the population of such individuals;

(3) the average cost of providing each category of HIV-related health services and the extent to which such cost is paid by third-party payors;

(4) the aggregate amounts expended for each such category of services;

(5) the manner in which the expected expenditures are related to the planning process for States that receive funding under part B (including the planning process described in section 300ff–27(b) of this title); and

(6) the expected expenditures and how those expenditures will improve overall client outcomes, as described under the State plan under section 300ff–27(b) of this title, and through additional outcomes measures as identified by the HIV health services planning council under section 300ff–12(b) of this title.

(c) Single application and grant award

(1) Application

The Secretary may phase in the use of a single application that meets the requirements of subsections (a) and (b) of section 300ff–13 of this title with respect to an eligible area that desires to receive grants under section 300ff–13 of this title for a fiscal year.

(2) Grant award

The Secretary may phase in the awarding of a single grant to an eligible area that submits an approved application under paragraph (1) for a fiscal year.

(d) Date certain for submission

(1) Requirement

Except as provided in paragraph (2), to be eligible to receive a grant under section 300ff–11(a) of this title for a fiscal year, an application under subsection (a) of this section shall be submitted not later than 45 days after the date on which appropriations are made under section 300ff–77 of this title for the fiscal year.

(2) Exception

The Secretary may extend the time for the submission of an application under paragraph (1) for a period of not to exceed 60 days if the Secretary determines that the eligible area has made a good faith effort to comply with the requirement of such paragraph but has otherwise been unable to submit its application.

(3) Distribution by Secretary

Not later than 45 days after receiving an application that meets the requirements of subsection (a) of this section from an eligible area, the Secretary shall distribute to such eligible area the amounts awarded under the grant for which the application was submitted.

(4) Redistribution

Any amounts appropriated in any fiscal year under this subpart and not obligated to an eligible entity as a result of the failure of such entity to submit an application shall be redistributed by the Secretary to other eligible entities in proportion to the original grants made to such eligible areas under section 300ff–11(a) of this title.

(e) Requirements regarding imposition of charges for services

(1) In general

The Secretary may not make a grant under section 300ff–11 of this title to an eligible area unless the eligible area provides assurances

that in the provision of services with assistance provided under the grant—

(A) in the case of individuals with an income less than or equal to 100 percent of the official poverty line, the provider will not impose charges on any such individual for the provision of services under the grant;

(B) in the case of individuals with an income greater than 100 percent of the official poverty line, the provider—

(i) will impose a charge on each such individual for the provision of such services; and

(ii) will impose the charge according to a schedule of charges that is made available to the public;

(C) in the case of individuals with an income greater than 100 percent of the official poverty line and not exceeding 200 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 5 percent of the annual gross income of the individual involved;

(D) in the case of individuals with an income greater than 200 percent of the official poverty line and not exceeding 300 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 7 percent of the annual gross income of the individual involved; and

(E) in the case of individuals with an income greater than 300 percent of the official poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

(2) Assessment of charge

With respect to compliance with the assurance made under paragraph (1), a grantee or entity receiving assistance under this subpart may, in the case of individuals subject to a charge for purposes of such paragraph—

(A) assess the amount of the charge in the discretion of the grantee, including imposing only a nominal charge for the provision of services, subject to the provisions of such paragraph regarding public schedules and regarding limitations on the maximum amount of charges; and

(B) take into consideration the medical expenses of individuals in assessing the amount of the charge, subject to such provisions.

(3) Applicability of limitation on amount of charge

The Secretary may not make a grant under section 300ff–11 of this title to an eligible area unless the eligible area agrees that the limitations established in subparagraphs (C), (D) and (E) of paragraph (1) regarding the imposition of charges for services applies to the annual aggregate of charges imposed for such services, without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, copayments, coinsurance, or other charges.

(4) Waiver regarding secondary agreements

The requirements established in paragraphs (1) through (3) shall be waived in accordance with section 300ff–14(d)(2)[1] of this title.

(July 1, 1944, ch. 373, title XXVI, § 2605, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 582; amended Pub. L. 104–146, §§ 3(b)(5), 6(c)(2), May 20, 1996, 110 Stat. 1352, 1368; Pub. L. 106–345, title I, § 122, title V, § 503(a)(1), Oct. 20, 2000, 114 Stat. 1329, 1354; Pub. L. 109–415, title I, §§ 106(c), 107(b), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2781, 2783, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

Section 300ff–12(b) of this title, referred to in subsec. (a)(2), was amended by Pub. L. 104–146, § 3(b)(1)(D), May 20, 1996, 110 Stat. 1348, to redesignate pars. (2) and (3) as (3) and (4), respectively. As so redesignated, par. (3)(B) relates to consideration regarding designation of councils and par. (4)(B) relates to development of a comprehensive plan.

Section 300ff–14 of this title, referred to in subsecs. (a)(3) and (e)(4), was amended generally by Pub. L. 109–415, title I, § 105, Dec. 19, 2006, 120 Stat. 2776, and as so amended, it does not contain a subsec. (b)(3) and subsec. (d)(2) does not relate to waivers.

PRIOR PROVISIONS

A prior section 2605 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238d of this title.

AMENDMENTS

2006—Pub. L. 109–415, § 107(b), substituted ''this subpart'' for ''this part'' wherever appearing.

Subsec. (a)(3). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease'' in two places.

Subsec. (a)(6)(A). Pub. L. 109–415, § 106(c)(1), inserted ''(except for a program administered by or providing the services of the Indian Health Service)'' before semicolon.

Subsec. (a)(7)(B), (C). Pub. L. 109–415, § 702(3), which directed the substitution of ''HIV/AIDS'' for ''HIV disease'', was executed by making the substitution for ''HIV-disease'', to reflect the probable intent of Congress.

Subsec. (a)(10). Pub. L. 109–415, § 106(c)(2), added par. (10).

Subsec. (b)(5), (6). Pub. L. 109–415, § 106(c)(3), added pars. (5) and (6).

2000—Subsec. (a)(1)(A). Pub. L. 106–345, § 122(b)(1)(A), substituted ''services as described in section 300ff–14(b)(1) of this title'' for ''services to individuals with HIV disease''.

Subsec. (a)(1)(B). Pub. L. 106–345, § 122(b)(1)(B), substituted ''services as described in section 300ff–14(b)(1) of this title'' for ''services for individuals with HIV disease''.

Subsec. (a)(3) to (8). Pub. L. 106–345, § 122(a), added pars. (3) and (4) and redesignated former pars. (3) to (6) as (5) to (8), respectively.

Subsec. (a)(9). Pub. L. 106–345, § 122(b)(2)–(4), added par. (9).

Subsec. (d)(1). Pub. L. 106–345, § 503(a)(1)(A), made technical amendment to reference in original act which appears in text as reference to section 300ff–77 of this title.

Subsec. (d)(4). Pub. L. 106–345, § 503(a)(1)(B), inserted ''section'' before ''300ff–11(a) of this title''.

1996—Subsec. (a). Pub. L. 104–146, § 3(b)(5)(A)(i), inserted '', in accordance with subsection (c) of this section regarding a single application and grant award,'' after ''application'' in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 104–146, § 3(b)(5)(A)(ii), substituted ''preceding fiscal year'' for ''1-year period preceding the first fiscal year for which a grant is received by the eligible area''.

Subsec. (a)(6). Pub. L. 104–146, § 3(b)(5)(A)(iii)–(v), added par. (6).

Subsec. (b). Pub. L. 104–146, § 3(b)(5)(B), substituted ''Application'' for ''Additional application'' in heading and substituted ''application, in accordance with subsection (c) of this section regarding a single application and grant award,'' for ''additional application'' in introductory provisions.

Subsec. (c). Pub. L. 104–146, § 3(b)(5)(D), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 104–146, § 6(c)(2), which directed substitution of ''section 300ff–77 of this title'' for ''section 300ff–18 of this title'' in subsec. (c)(1), could not be executed because phrase ''section 300ff–18 of this title'' did not appear in text of subsec. (c)(1) subsequent to redesignation of subsec. (c) as (d) by Pub. L. 104–146, § 3(b)(5)(C). See below.

Subsec. (d). Pub. L. 104–146, § 3(b)(5)(C), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–146, § 3(b)(5)(C), redesignated subsec. (d) as (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–16. Technical assistance

The Administrator of the Health Resources and Services Administration shall, beginning on August 18, 1990, provide technical assistance, including assistance from other grantees, contractors or subcontractors under this subchapter to assist newly eligible metropolitan areas in the establishment of HIV health services planning councils and, to assist entities in complying with the requirements of this subpart in order to make such entities eligible to receive a grant under this subpart. The Administrator may make planning grants available to metropolitan areas, in an amount not to exceed $75,000 for any metropolitan area, projected to be eligible for funding under section 300ff–11 of this title in the following fiscal year. Such grant amounts shall be deducted from the first year formula award to eligible areas accepting such grants. Not to exceed 1 percent of the amount appropriated for a fiscal year under section 300ff–77 of this title for grants under this subpart may be used to carry out this section.

(July 1, 1944, ch. 373, title XXVI, § 2606, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 585; amended Pub. L. 104–146, § 3(b)(6), May 20, 1996, 110 Stat. 1353; Pub. L. 109–415, title I, § 107(b), Dec. 19, 2006, 120 Stat. 2783.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 2606 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238e of this title.

AMENDMENTS

2006—Pub. L. 109–415 substituted ''this subpart'' for ''this part'' wherever appearing.

1996—Pub. L. 104–146 substituted ''Administration shall'' for ''Administration may'', inserted '', including assistance from other grantees, contractors or subcontractors under this subchapter to assist newly eligible metropolitan areas in the establishment of HIV health services planning councils and,'' after ''technical assistance'', and inserted at end ''The Administrator may make planning grants available to metropolitan areas, in an amount not to exceed $75,000 for any metropolitan area, projected to be eligible for funding under section 300ff–11 of this title in the following fiscal year. Such grant amounts shall be deducted from the first year formula award to eligible areas accepting such grants. Not to exceed 1 percent of the amount appropriated for a fiscal year under section 300ff–77 of this title for grants under this part may be used to carry out this section.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–17. Definitions

For purposes of this subpart:

(1) Eligible area

The term ''eligible area'' means a metropolitan area meeting the requirements of section 300ff–11 of this title that are applicable to the area.

(2) Metropolitan area

The term ''metropolitan area'' means an area that is referred to in the HIV/AIDS Surveillance Report of the Centers for Disease Control and Prevention as a metropolitan area, and that has a population of 50,000 or more individuals.

(July 1, 1944, ch. 373, title XXVI, § 2607, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 585; amended Pub. L. 101–557, title IV, § 401(b)(1), Nov. 15, 1990, 104 Stat. 2771; Pub. L. 102–531, title III, § 312(d)(28), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 104–146, § 3(a)(3), May 20, 1996, 110 Stat. 1347; Pub. L. 109–415, title I, §§ 101(c), 107(b), Dec. 19, 2006, 120 Stat. 2768, 2783.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 2607 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238f of this title.

AMENDMENTS

2006—Pub. L. 109–415, § 107(b), substituted ''this subpart'' for ''this part'' in introductory provisions.

Par. (2). Pub. L. 109–415, § 101(c), substituted ''area that is referred'' for ''area referred'' and inserted '', and that has a population of 50,000 or more individuals'' before period at end.

1996—Par. (1). Pub. L. 104–146 substituted ''The term 'eligible area' means a metropolitan area meeting the requirements of section 300ff–11 of this title that are applicable to the area.'' for ''The term 'eligible area' means a metropolitan area described in section 300ff–11(a) of this title.''

1992—Par. (2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1990—Par. (1). Pub. L. 101–557 substituted ''300ff–11(a)'' for ''300ff–11(a)(1)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–18. Repealed. Pub. L. 104–146, § 6(b), May 20, 1996, 110 Stat. 1367

Section, act July 1, 1944, ch. 373, title XXVI, § 2608, as added Aug. 18, 1990, Pub. L. 101–381, title I, § 101(3), 104 Stat. 585, authorized appropriations for fiscal years 1991 through 1995.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

SUBPART II—TRANSITIONAL GRANTS

§ 300ff–19. Establishment of program

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make grants for the purpose of providing services described in section 300ff–14 of this title in transitional areas, subject to the same provisions regarding the allocation of grant funds as apply under subsection (c) of such section.

(b) Transitional areas

For purposes of this section, the term ''transitional area'' means, subject to subsection (c), a metropolitan area for which there has been reported to and confirmed by the Director of the Centers for Disease Control and Prevention a cumulative total of at least 1,000, but fewer than 2,000, cases of AIDS during the most recent period of 5 calendar years for which such data are available.

(c) Certain eligibility rules

(1) Fiscal year 2007

With respect to grants under subsection (a) for fiscal year 2007, a metropolitan area that received funding under subpart I for fiscal year 2006 but does not for fiscal year 2007 qualify under such subpart as an eligible area and does not qualify under subsection (b) as a transitional area shall, notwithstanding subsection (b), be considered a transitional area.

(2) Continued status as transitional area

(A) In general

Notwithstanding subsection (b), a metropolitan area that is a transitional area for a fiscal year continues, except as provided in subparagraph (B), to be a transitional area until the metropolitan area fails, for three consecutive fiscal years—

(i) to qualify under such subsection as a transitional area; and

(ii) to have a cumulative total of 1,500 or more living cases of AIDS (reported to and confirmed by the Director of the Centers for Disease Control and Prevention) as of December 31 of the most recent calendar year for which such data is available.

(B) Exception regarding status as eligible area

Subparagraph (A) does not apply for a fiscal year if the metropolitan area involved qualifies under subpart I as an eligible area.

(d) Application of certain provisions of subpart I

(1) Administration; planning council

(A) In general

The provisions of section 300ff–12 of this title apply with respect to a grant under subsection (a) for a transitional area to the same extent and in the same manner as such provisions apply with respect to a grant under subpart I for an eligible area, except that, subject to subparagraph (B), the chief elected official of the transitional area may elect not to comply with the provisions of section 300ff–12(b) of this title if the official provides documentation to the Secretary that details the process used to obtain community input (particularly from those with HIV) in the transitional area for formulating the overall plan for priority setting and allocating funds from the grant under subsection (a).

(B) Exception

For each of the fiscal years 2007 through 2009, the exception described in subparagraph (A) does not apply if the transitional area involved received funding under subpart I for fiscal year 2006.

(2) Type and distribution of grants; timeframe for obligation and expenditure of grant funds

(A) Formula grants; supplemental grants

The provisions of section 300ff–13 of this title apply with respect to grants under subsection (a) to the same extent and in the same manner as such provisions apply with respect to grants under subpart I, subject to subparagraphs (B) and (C).

(B) Formula grants; increase in grant

For purposes of subparagraph (A), section 300ff–13(a)(4) of this title does not apply.

(C) Supplemental grants; single program with subpart I program

With respect to section 300ff–13(b) of this title as applied for purposes of subparagraph (A):

(i) The Secretary shall combine amounts available pursuant to such subparagraph with amounts available for carrying out section 300ff–13(b) of this title and shall administer the two programs as a single program.

(ii) In the single program, the Secretary has discretion in allocating amounts between eligible areas under subpart I and transitional areas under this section, subject to the eligibility criteria that apply under such section, and subject to section 300ff–13(b)(2)(C) of this title (relating to priority in making grants).

(iii) Pursuant to section 300ff–13(b)(1) of this title, amounts for the single program are subject to use under sections 300ff–13(a)(4) and 300ff–20(d)(1) of this title.

(3) Application; technical assistance; definitions

The provisions of sections 300ff–15, 300ff–16, and 300ff–17 of this title apply with respect to

grants under subsection (a) to the same extent and in the same manner as such provisions apply with respect to grants under subpart I.

(July 1, 1944, ch. 373, title XXVI, § 2609, as added Pub. L. 109–415, title I, § 107(a)(2), Dec. 19, 2006, 120 Stat. 2781.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

SUBPART III—GENERAL PROVISIONS

§ 300ff–20. Authorization of appropriations

(a) In general

For the purpose of carrying out this part, there are authorized to be appropriated $604,000,000 for fiscal year 2007, $626,300,000 for fiscal year 2008, and $649,500,000 for fiscal year 2009. Amounts appropriated under the preceding sentence for a fiscal year are available for obligation by the Secretary until the end of the second succeeding fiscal year.

(b) Reservation of amounts

(1) Fiscal year 2007

Of the amount appropriated under subsection (a) for fiscal year 2007, the Secretary shall reserve—

(A) $458,310,000 for grants under subpart I; and

(B) $145,690,000 for grants under section 300ff–19 of this title.

(2) Subsequent fiscal years

Of the amount appropriated under subsection (a) for fiscal year 2008 and each subsequent fiscal year—

(A) the Secretary shall reserve an amount for grants under subpart I; and

(B) the Secretary shall reserve an amount for grants under section 300ff–19 of this title.

(c) Transfer of certain amounts; change in status as eligible area or transitional area

Notwithstanding subsection (b):

(1) If a metropolitan area is an eligible area under subpart I for a fiscal year, but for a subsequent fiscal year ceases to be an eligible area by reason of section 300ff–11(b) of this title—

(A)(i) the amount reserved under paragraph (1)(A) or (2)(A) of subsection (b) of this section for the first such subsequent year of not being an eligible area is deemed to be reduced by an amount equal to the amount of the grant made pursuant to section 300ff–13(a) of this title for the metropolitan area for the preceding fiscal year; and

(ii)(I) if the metropolitan area qualifies for such first subsequent fiscal year as a transitional area under 300ff–19[1] of this title, the amount reserved under paragraph (1)(B) or (2)(B) of subsection (b) for such fiscal year is deemed to be increased by an amount equal to the amount of the reduction under subparagraph (A) for such year; or

(II) if the metropolitan area does not qualify for such first subsequent fiscal year as a transitional area under 300ff–19[1] of this title, an amount equal to the amount of such reduction is, notwithstanding subsection (a), transferred and made available for grants pursuant to section 300ff–28(a)(1) of this title, in addition to amounts available for such grants under section 300ff–31b of this title; and

(B) if a transfer under subparagraph (A)(ii)(II) is made with respect to the metropolitan area for such first subsequent fiscal year, then—

(i) the amount reserved under paragraph (1)(A) or (2)(A) of subsection (b) of this section for such year is deemed to be reduced by an additional $500,000; and

(ii) an amount equal to the amount of such additional reduction is, notwithstanding subsection (a), transferred and made available for grants pursuant to section 300ff–28(a)(1) of this title, in addition to amounts available for such grants under section 300ff–31b of this title.

(2) If a metropolitan area is a transitional area under section 300ff–19 of this title for a fiscal year, but for a subsequent fiscal year ceases to be a transitional area by reason of section 300ff–19(c)(2) of this title (and does not qualify for such subsequent fiscal year as an eligible area under subpart I)—

(A) the amount reserved under subsection (b)(2)(B) of this section for the first such subsequent fiscal year of not being a transitional area is deemed to be reduced by an amount equal to the total of—

(i) the amount of the grant that, pursuant to section 300ff–13(a) of this title, was made under section 300ff–19(d)(2)(A) of this title for the metropolitan area for the preceding fiscal year; and

(ii) $500,000; and

(B) an amount equal to the amount of the reduction under subparagraph (A) for such year is, notwithstanding subsection (a), transferred and made available for grants pursuant to section 300ff–28(a)(1) of this title, in addition to amounts available for such grants under section 300ff–31b of this title.

(3) If a metropolitan area is a transitional area under section 300ff–19 of this title for a fiscal year, but for a subsequent fiscal year qualifies as an eligible area under subpart I—

(A) the amount reserved under subsection (b)(2)(B) of this section for the first such subsequent fiscal year of becoming an eligible area is deemed to be reduced by an amount equal to the amount of the grant that, pursuant to section 300ff–13(a) of this title, was made under section 300ff–19(d)(2)(A) of this title for the metropolitan area for the preceding fiscal year; and

(B) the amount reserved under subsection (b)(2)(A) for such fiscal year is deemed to be increased by an amount equal to the amount of the reduction under subparagraph (A) for such year.

[1] So in original. Probably should be preceded by "section".

(d) Certain transfers; allocations between programs under subpart I

With respect to paragraphs (1)(B)(i) and (2)(A)(ii) of subsection (c), the Secretary shall administer any reductions under such paragraphs for a fiscal year in accordance with the following:

(1) The reductions shall be made from amounts available for the single program referred to in section 300ff–19(d)(2)(C) of this title (relating to supplemental grants).

(2) The reductions shall be made before the amounts referred to in paragraph (1) are used for purposes of section 300ff–13(a)(4) of this title.

(3) If the amounts referred to in paragraph (1) are not sufficient for making all the reductions, the reductions shall be reduced until the total amount of the reductions equals the total of the amounts referred to in such paragraph.

(e) Rules of construction regarding first subsequent fiscal year

Paragraphs (1) and (2) of subsection (c) apply with respect to each series of fiscal years during which a metropolitan area is an eligible area under subpart I or a transitional area under section 300ff–19 of this title for a fiscal year and then for a subsequent fiscal year ceases to be such an area by reason of section 300ff–11(b) or 300ff–19(c)(2) of this title, respectively, rather than applying to a single such series. Paragraph (3) of subsection (c) applies with respect to each series of fiscal years during which a metropolitan area is a transitional area under section 300ff–19 of this title for a fiscal year and then for a subsequent fiscal year becomes an eligible area under subpart I, rather than applying to a single such series.

(July 1, 1944, ch. 373, title XXVI, § 2610, as added Pub. L. 109–415, title I, § 108, Dec. 19, 2006, 120 Stat. 2783.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PART B—CARE GRANT PROGRAM

SUBPART I—GENERAL GRANT PROVISIONS

AMENDMENTS

1996—Pub. L. 104–146, § 7(b)(1), May 20, 1996, 110 Stat. 1368, added heading ''SUBPART I—GENERAL GRANT PROVISIONS''.

§ 300ff–21. Grants

The Secretary shall, subject to the availability of appropriations, make grants to States to enable such States to improve the quality, availability and organization of health care and support services for individuals and families with HIV/AIDS. The authority of the Secretary to provide grants under this section is subject to section 300ff–34(e)(2)[1] of this title (relating to the decrease in perinatal transmission of HIV/AIDS).

(July 1, 1944, ch. 373, title XXVI, § 2611, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 586; amended Pub. L. 104–146, §§ 3(c)(1), 7(b)(2), May 20, 1996, 110 Stat. 1353, 1368; Pub. L. 106–345, title II, § 201, Oct. 20, 2000, 114 Stat. 1329; Pub. L. 109–415, title II, §§ 201(c)(1), 204(a), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2788, 2796, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

Section 300ff–34(e)(2) of this title, referred to in text, was repealed by Pub. L. 106–345, title II, § 211(1), Oct. 20, 2000, 114 Stat. 1339.

PRIOR PROVISIONS

A prior section 2611 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

AMENDMENTS

2006—Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease'' in two places.

Pub. L. 109–415, § 204(a), substituted ''this section'' for ''this part''.

Pub. L. 109–415, § 201(c)(1), struck out subsec. (a) designation and heading before ''The Secretary'' and struck out subsec. (b) which related to priority for women, infants, and children.

2000—Subsec. (b). Pub. L. 106–345 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''For the purpose of providing health and support services to infants, children, and women with HIV disease, including treatment measures to prevent the perinatal transmission of HIV, a State shall use, of the funds allocated under this part to the State for a fiscal year, not less than the percentage constituted by the ratio of the population in the State of infants, children, and women with acquired immune deficiency syndrome to the general population in the State of individuals with such syndrome.''

1996—Pub. L. 104–146, § 3(c)(1), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Subsec. (a). Pub. L. 104–146, § 7(b)(2), inserted at end ''The authority of the Secretary to provide grants under this part is subject to section 300ff–34(e)(2) of this title (relating to the decrease in perinatal transmission of HIV disease).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–22. General use of grants

(a) In general

A State may use amounts provided under grants made under section 300ff–21 of this title for—

(1) core medical services described in subsection (b);

(2) support services described in subsection (c); and

(3) administrative expenses described in section 300ff–28(b)(3) of this title.

(b) Required funding for core medical services

(1) In general

With respect to a grant under section 300ff–21 of this title for a State for a grant year, the State shall, of the portion of the grant remaining after reserving amounts for

[1] See References in Text note below.

purposes of subparagraphs (A) and (E)(ii)(I) of section 300ff–28(b)(3) of this title, use not less than 75 percent to provide core medical services that are needed in the State for individuals with HIV/AIDS who are identified and eligible under this subchapter (including services regarding the co-occurring conditions of the individuals).

(2) Waiver

(A) In general

The Secretary shall waive the application of paragraph (1) with respect to a State for a grant year if the Secretary determines that, within the State—

(i) there are no waiting lists for AIDS Drug Assistance Program services under section 300ff–26 of this title; and

(ii) core medical services are available to all individuals with HIV/AIDS identified and eligible under this subchapter.

(B) Notification of waiver status

When informing a State that a grant under section 300ff–21 of this title is being made to the State for a fiscal year, the Secretary shall inform the State whether a waiver under subparagraph (A) is in effect for the fiscal year.

(3) Core medical services

For purposes of this subsection, the term ''core medical services'', with respect to an individual infected with HIV/AIDS (including the co-occurring conditions of the individual) means the following services:

(A) Outpatient and ambulatory health services.

(B) AIDS Drug Assistance Program treatments in accordance with section 300ff–26 of this title.

(C) AIDS pharmaceutical assistance.

(D) Oral health care.

(E) Early intervention services described in subsection (d).

(F) Health insurance premium and cost sharing assistance for low-income individuals in accordance with section 300ff–25 of this title.

(G) Home health care.

(H) Medical nutrition therapy.

(I) Hospice services.

(J) Home and community-based health services as defined under section 300ff–24(c) of this title.

(K) Mental health services.

(L) Substance abuse outpatient care.

(M) Medical case management, including treatment adherence services.

(c) Support services

(1) In general

For purposes of this subsection, the term ''support services'' means services, subject to the approval of the Secretary, that are needed for individuals with HIV/AIDS to achieve their medical outcomes (such as respite care for persons caring for individuals with HIV/AIDS, outreach services, medical transportation, linguistic services, and referrals for health care and support services).

(2) Definition of medical outcomes

In this subsection, the term ''medical outcomes'' means those outcomes affecting the HIV-related clinical status of an individual with HIV/AIDS.

(d) Early intervention services

(1) In general

For purposes of this section, the term ''early intervention services'' means HIV/AIDS early intervention services described in section 300ff–51(e) of this title, with follow-up referral provided for the purpose of facilitating the access of individuals receiving the services to HIV-related health services. The entities through which such services may be provided under the grant include public health departments, emergency rooms, substance abuse and mental health treatment programs, detoxification centers, detention facilities, clinics regarding sexually transmitted diseases, homeless shelters, HIV/AIDS counseling and testing sites, health care points of entry specified by States, federally qualified health centers, and entities described in section 300ff–52(a) of this title that constitute a point of access to services by maintaining referral relationships.

(2) Conditions

With respect to an entity that proposes to provide early intervention services under paragraph (1), such paragraph shall apply only if the entity demonstrates to the satisfaction of the chief elected official for the State involved that—

(A) Federal, State, or local funds are otherwise inadequate for the early intervention services the entity proposes to provide; and

(B) the entity will expend funds pursuant to such subparagraph to supplement and not supplant other funds available to the entity for the provision of early intervention services for the fiscal year involved.

(e) Priority for women, infants, children, and youth

(1) In general

For the purpose of providing health and support services to infants, children, youth, and women with HIV/AIDS, including treatment measures to prevent the perinatal transmission of HIV, a State shall for each of such populations in the eligible area use, from the grants made for the area under section 300ff–11(a) of this title for a fiscal year, not less than the percentage constituted by the ratio of the population involved (infants, children, youth, or women in such area) with HIV/AIDS to the general population in such area of individuals with HIV/AIDS.

(2) Waiver

With respect to the population involved, the Secretary may provide to a State a waiver of the requirement of paragraph (1) if such State demonstrates to the satisfaction of the Secretary that the population is receiving HIV-related health services through the State medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], the State children's health insurance program under title XXI of such Act [42 U.S.C. 1397aa et seq.], or other Federal or State programs.

(f) Construction

A State may not use amounts received under a grant awarded under section 300ff–21 of this title to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or to make cash payments to intended recipients of services.

(July 1, 1944, ch. 373, title XXVI, § 2612, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 586; amended Pub. L. 104–146, § 3(c)(2), May 20, 1996, 110 Stat. 1354; Pub. L. 106–345, title II, § 202, title V, § 503(b), Oct. 20, 2000, 114 Stat. 1330, 1355; Pub. L. 109–415, title II, § 201(a), Dec. 19, 2006, 120 Stat. 2785.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Another section 3(c)(2) of Pub. L. 104–146 amended section 300ff–23 of this title.

PRIOR PROVISIONS

A prior section 2612 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

AMENDMENTS

2006—Pub. L. 109–415 reenacted section catchline without change and amended text generally, substituting provisions relating to general use of grants, required funding for core medical services, support and early intervention services, priority for women, infants, children, and youth, and prohibition against use of amounts for real property improvement or to make cash payments, for provisions relating to general use of grants, support services and outreach, early intervention services, and establishment of a quality management program in each State.

2000—Pub. L. 106–345, § 202(1), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (a)(1). Pub. L. 106–345, § 503(b), made technical amendment to directory language of Pub. L. 104–146, § 3(c)(2)(A)(iii). See 1996 Amendment note below.

Subsec. (b) to (d). Pub. L. 106–345, § 202(2), added subsecs. (b) to (d).

1996—Pub. L. 104–146, § 3(c)(2)(A), as amended by Pub. L. 106–345, § 503(b), struck out ''(a) In general'' before ''A State may use amounts'', added par. (1), redesignated former pars. (1) to (4) as (2) to (5), respectively, substituted ''therapeutics to treat HIV disease'' for ''treatments, that have been determined to prolong life or prevent serious deterioration of health,'' in par. (5), and inserted after par. (5) ''Services described in paragraph (1) shall be delivered through consortia designed as described in paragraph (2), where such consortia exist, unless the State demonstrates to the Secretary that delivery of such services would be more effective when other delivery mechanisms are used. In making a determination regarding the delivery of services, the State shall consult with appropriate representatives of service providers and recipients of services who would be affected by such determination, and shall include in its demonstration to the Secretary the findings of the State regarding such consultation.''

Subsec. (b). Pub. L. 104–146, § 3(c)(2)(B), struck out heading and text of subsec. (b). Text read as follows: ''A State shall use not less than 15 percent of funds allocated under this part to provide health and support services to infants, children, women, and families with HIV disease.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–23. Grants to establish HIV care consortia

(a) Consortia

A State may, subject to subsection (f), use amounts provided under a grant awarded under section 300ff–21 of this title to provide assistance under section 300ff–22(a) of this title to an entity that—

(1) is an association of one or more public, and one or more nonprofit private,[1] (or private for-profit providers or organizations if such entities are the only available providers of quality HIV care in the area)[1] health care and support service providers and community based organizations operating within areas determined by the State to be most affected by HIV/AIDS; and

(2) agrees to use such assistance for the planning, development and delivery, through the direct provision of services or through entering into agreements with other entities for the provision of such services, of comprehensive outpatient health and support services for individuals with HIV/AIDS, that may include—

(A) essential health services such as case management services, medical, nursing, substance abuse treatment, mental health treatment, and dental care, diagnostics, monitoring, prophylactic treatment for opportunistic infections, treatment education to take place in the context of health care delivery, and medical follow-up services, mental health, developmental, and rehabilitation services, home health and hospice care; and

(B) essential support services such as transportation services, attendant care, homemaker services, day or respite care, benefits advocacy, advocacy services provided through public and nonprofit private entities, and services that are incidental to the provision of health care services for individuals with HIV/AIDS including nutrition services, housing referral services, and child welfare and family services (including foster care and adoption services).

An entity or entities of the type described in this subsection shall hereinafter be referred to in this subchapter as a ''consortium'' or ''consortia''.

(b) Assurances

(1) Requirement

To receive assistance from a State under subsection (a) of this section, an applicant consortium shall provide the State with assurances that—

[1] So in original. The comma probably should follow parenthetical phrase.

(A) within any locality in which such consortium is to operate, the populations and subpopulations of individuals and families with HIV/AIDS have been identified by the consortium, particularly those experiencing disparities in access and services and those who reside in historically underserved communities;

(B) the service plan established under subsection (c)(2) of this section by such consortium is consistent with the comprehensive plan under section 300ff–27(b)(4) of this title and addresses the special care and service needs of the populations and subpopulations identified under subparagraph (A); and

(C) except as provided in paragraph (2), the consortium will be a single coordinating entity that will integrate the delivery of services among the populations and subpopulations identified under subparagraph (A).

(2) Exception

Subparagraph (C) of paragraph (1) shall not apply to any applicant consortium that the State determines will operate in a community or locality in which it has been demonstrated by the applicant consortium that—

(A) subpopulations exist within the community to be served that have unique service requirements; and

(B) such unique service requirements cannot be adequately and efficiently addressed by a single consortium serving the entire community or locality.

(c) Application

(1) In general

To receive assistance from the State under subsection (a) of this section, a consortium shall prepare and submit to the State, an application that—

(A) demonstrates that the consortium includes agencies and community-based organizations—

(i) with a record of service to populations and subpopulations with HIV/AIDS requiring care within the community to be served; and

(ii) that are representative of populations and subpopulations reflecting the local incidence of HIV and that are located in areas in which such populations reside;

(B) demonstrates that the consortium has carried out an assessment of service needs within the geographic area to be served and, after consultation with the entities described in paragraph (2), has established a plan to ensure the delivery of services to meet such identified needs that shall include—

(i) assurances that service needs will be addressed through the coordination and expansion of existing programs before new programs are created;

(ii) assurances that, in metropolitan areas, the geographic area to be served by the consortium corresponds to the geographic boundaries of local health and support services delivery systems to the extent practicable;

(iii) assurances that, in the case of services for individuals residing in rural areas, the applicant consortium shall deliver case management services that link available community support services to appropriate specialized medical services; and

(iv) assurances that the assessment of service needs and the planning of the delivery of services will include participation by individuals with HIV/AIDS;

(C) demonstrates that adequate planning has occurred to meet the special needs of families with HIV/AIDS, including family centered and youth centered care;

(D) demonstrates that the consortium has created a mechanism to evaluate periodically—

(i) the success of the consortium in responding to identified needs; and

(ii) the cost-effectiveness of the mechanisms employed by the consortium to deliver comprehensive care;

(E) demonstrates that the consortium will report to the State the results of the evaluations described in subparagraph (D) and shall make available to the State or the Secretary, on request, such data and information on the program methodology that may be required to perform an independent evaluation; and

(F) demonstrates that adequate planning occurred to address disparities in access and services and historically underserved communities.

(2) Consultation

In establishing the plan required under paragraph (1)(B), the consortium shall consult with—

(A)(i) the public health agency that provides or supports ambulatory and outpatient HIV-related health care services within the geographic area to be served; or

(ii) in the case of a public health agency that does not directly provide such HIV-related health care services such agency shall consult with an entity or entities that directly provide ambulatory and outpatient HIV-related health care services within the geographic area to be served;

(B) not less than one community-based organization that is organized solely for the purpose of providing HIV-related support services to individuals with HIV/AIDS;

(C) grantees under section 300ff–71 of this title, or, if none are operating in the area, representatives in the area of organizations with a history of serving children, youth, women, and families living with HIV; and

(D) the types of entities described in section 300ff–12(b)(2) of this title.

The organization to be consulted under subparagraph (B) shall be at the discretion of the applicant consortium.

(d) "Family centered care" defined

As used in section 300ff–21 of this title, the term ''family centered care'' means the system of services described in this section that is targeted specifically to the special needs of infants, children, women, and families. Family centered care shall be based on a partnership between

parents, professionals, and the community designed to ensure an integrated, coordinated, culturally sensitive, and community-based continuum of care for children, women, and families with HIV/AIDS.

(e) Priority

In providing assistance under subsection (a) of this section, the State shall, among applicants that meet the requirements of this section, give priority—

(1) first to consortia that are receiving assistance from the Health Resources and Services Administration for adult and pediatric HIV-related care demonstration projects; and then

(2) to any other existing HIV care consortia.

(f) Allocation of funds; treatment as support services

For purposes of the requirement of section 300ff–22(b)(1) of this title, expenditures of grants under section 300ff–21 of this title for or through consortia under this section are deemed to be support services, not core medical services. The preceding sentence may not be construed as having any legal effect on the provisions of subsection (a) that relate to authorized expenditures of the grant.

(July 1, 1944, ch. 373, title XXVI, § 2613, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 586; amended Pub. L. 104–146, § 3(c)(2), May 20, 1996, 110 Stat. 1354; Pub. L. 106–345, title II, § 203, Oct. 20, 2000, 114 Stat. 1331; Pub. L. 109–415, title II, §§ 201(b), 204(a), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2787, 2796, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

CODIFICATION

Another section 3(c)(2) of Pub. L. 104–146 amended section 300ff–22 of this title.

PRIOR PROVISIONS

A prior section 2613 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

AMENDMENTS

2006—Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease'' wherever appearing.

Subsec. (a). Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part'' in introductory provisions.

Pub. L. 109–415, § 201(b)(1), in introductory provisions substituted ''may, subject to subsection (f), use'' for ''may use'' and ''section 300ff–22(a) of this title'' for ''section 300ff–22(a)(1) of this title''.

Subsec. (d). Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part''.

Subsec. (f). Pub. L. 109–415, § 201(b)(2), added subsec. (f).

2000—Subsec. (b)(1)(A). Pub. L. 106–345, § 203(1)(A), inserted '', particularly those experiencing disparities in access and services and those who reside in historically underserved communities'' before semicolon.

Subsec. (b)(1)(B). Pub. L. 106–345, § 203(1)(B), inserted ''is consistent with the comprehensive plan under section 300ff–27(b)(4) of this title and'' after ''by such consortium''.

Subsec. (c)(1)(F). Pub. L. 106–345, § 203(2), added subpar. (F).

Subsec. (c)(2)(D). Pub. L. 106–345, § 203(3), added subpar. (D).

1996—Subsec. (a)(1). Pub. L. 104–146, § 3(c)(2)(A)(i), inserted ''(or private for-profit providers or organizations if such entities are the only available providers of quality HIV care in the area)'' after ''nonprofit private,''.

Subsec. (a)(2)(A). Pub. L. 104–146, § 3(c)(2)(A)(ii), inserted ''substance abuse treatment, mental health treatment,'' after ''nursing,'' and ''prophylactic treatment for opportunistic infections, treatment education to take place in the context of health care delivery,'' after ''monitoring,''.

Subsec. (c)(1)(C). Pub. L. 104–146, § 3(c)(2)(B)(i), inserted ''and youth centered'' after ''family centered''.

Subsec. (c)(2)(C). Pub. L. 104–146, § 3(c)(2)(B)(ii), added subpar. (C).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–24. Grants for home- and community-based care

(a) Uses

A State may use amounts provided under a grant awarded under section 300ff–21 of this title to make grants under section 300ff–22(b)(3)(J) of this title to entities to—

(1) provide home- and community-based health services for individuals with HIV/AIDS pursuant to written plans of care prepared by a case management team, that shall include appropriate health care professionals, in such State for providing such services to such individuals;

(2) provide outreach services to individuals with HIV/AIDS, including those individuals in rural areas; and

(3) provide for the coordination of the provision of services under this section with the provision of HIV-related health services, including specialty care and vaccinations for hepatitis co-infection, provided by public and private entities.

(b) Priority

In awarding grants under subsection (a) of this section, a State shall give priority to entities that provide assurances to the State that—

(1) such entities will participate in HIV care consortia if such consortia exist within the State; and

(2) such entities will utilize amounts provided under such grants for the provision of home- and community-based services to low-income individuals with HIV/AIDS.

(c) "Home- and community-based health services" defined

As used in section 300ff–21 of this title, the term ''home- and community-based health services''—

(1) means, with respect to an individual with HIV/AIDS, skilled health services furnished to the individual in the individual's home pursuant to a written plan of care established by a case management team, that shall include appropriate health care professionals, for the provision of such services and items described in paragraph (2);

(2) includes—

(A) durable medical equipment;

(B) home health aide services and personal care services furnished in the home of the individual;

(C) day treatment or other partial hospitalization services;

(D) home intravenous and aerosolized drug therapy (including prescription drugs administered as part of such therapy);

(E) routine diagnostic testing administered in the home of the individual; and

(F) appropriate mental health, developmental, and rehabilitation services; and

(3) does not include—

(A) inpatient hospital services; and

(B) nursing home and other long term care facilities.

(July 1, 1944, ch. 373, title XXVI, § 2614, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 589; amended Pub. L. 109–415, title II, §§ 201(c)(2), 204(a), (b), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2788, 2796, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 2614 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

AMENDMENTS

2006—Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease'' wherever appearing.

Subsec. (a). Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part'' in introductory provisions.

Pub. L. 109–415, § 201(c)(2)(A), substituted ''section 300ff–22(b)(3)(J) of this title'' for ''section 300ff–22(a)(2) of this title'' in introductory provisions.

Subsec. (a)(3). Pub. L. 109–415, § 204(b), inserted '', including specialty care and vaccinations for hepatitis co-infection,'' after ''health services''.

Subsec. (c). Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part'' in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 109–415, § 201(c)(2)(B), struck out ''homemaker or'' before ''home health''.

§ 300ff–25. Continuum of health insurance coverage

(a) In general

A State may use amounts received under a grant awarded under section 300ff–21 of this title to establish a program of financial assistance under section 300ff–22(b)(3)(F) of this title to assist eligible low-income individuals with HIV/AIDS in—

(1) maintaining a continuity of health insurance; or

(2) receiving medical benefits under a health insurance program, including risk-pools.

(b) Limitations

Assistance shall not be utilized under subsection (a) of this section—

(1) to pay any costs associated with the creation, capitalization, or administration of a liability risk pool (other than those costs paid on behalf of individuals as part of premium contributions to existing liability risk pools); and

(2) to pay any amount expended by a State under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(July 1, 1944, ch. 373, title XXVI, § 2615, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 590; amended Pub. L. 109–415, title II, §§ 201(c)(3), 204(a), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2788, 2796, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–415, in introductory provisions, substituted ''HIV/AIDS'' for ''HIV disease'', ''section 300ff–21 of this title'' for ''this part'', and ''section 300ff–22(b)(3)(F) of this title'' for ''section 300ff–22(a)(3) of this title''.

§ 300ff–26. Provision of treatments

(a) In general

A State shall use a portion of the amounts provided under a grant awarded under section 300ff–21 of this title to establish a program under section 300ff–22(b)(3)(B) of this title to provide therapeutics to treat HIV/AIDS or prevent the serious deterioration of health arising from HIV/AIDS in eligible individuals, including measures for the prevention and treatment of opportunistic infections.

(b) Eligible individual

To be eligible to receive assistance from a State under this section an individual shall—

(1) have a medical diagnosis of HIV/AIDS; and

(2) be a low-income individual, as defined by the State.

(c) State duties

In carrying out this section the State shall—

(1) ensure that the therapeutics included on the list of classes of core antiretroviral therapeutics established by the Secretary under subsection (e) are, at a minimum, the treatments provided by the State pursuant to this section;

(2) provide assistance for the purchase of treatments determined to be eligible under paragraph (1), and the provision of such ancillary devices that are essential to administer such treatments;

(3) provide outreach to individuals with HIV/AIDS, and as appropriate to the families of such individuals;

(4) facilitate access to treatments for such individuals;

(5) document the progress made in making therapeutics described in subsection (a) of this section available to individuals eligible for assistance under this section; and

(6) encourage, support, and enhance adherence to and compliance with treatment regimens, including related medical monitoring.

Of the amount reserved by a State for a fiscal year for use under this section, the State may not use more than 5 percent to carry out services under paragraph (6), except that the percentage applicable with respect to such paragraph is 10 percent if the State demonstrates to the Secretary that such additional services are essential and in no way diminish access to the therapeutics described in subsection (a) of this section.

(d) Duties of Secretary

In carrying out this section, the Secretary shall review the current status of State drug reimbursement programs established under section 300ff–22(2)[1] of this title and assess barriers to the expanded availability of the treatments described in subsection (a) of this section. The Secretary shall also examine the extent to which States coordinate with other grantees under this subchapter to reduce barriers to the expanded availability of the treatments described in subsection (a) of this section.

(e) List of classes of core antiretroviral therapeutics

For purposes of subsection (c)(1), the Secretary shall develop and maintain a list of classes of core antiretroviral therapeutics, which list shall be based on the therapeutics included in the guidelines of the Secretary known as the Clinical Practice Guidelines for Use of HIV/AIDS Drugs, relating to drugs needed to manage symptoms associated with HIV. The preceding sentence does not affect the authority of the Secretary to modify such Guidelines.

(f) Use of health insurance and plans

(1) In general

In carrying out subsection (a) of this section, a State may expend a grant under section 300ff–21 of this title to provide the therapeutics described in such subsection by paying on behalf of individuals with HIV/AIDS the costs of purchasing or maintaining health insurance or plans whose coverage includes a full range of such therapeutics and appropriate primary care services.

(2) Limitation

The authority established in paragraph (1) applies only to the extent that, for the fiscal year involved, the costs of the health insurance or plans to be purchased or maintained under such paragraph do not exceed the costs of otherwise providing therapeutics described in subsection (a) of this section.

(g) Drug rebate program

A State shall ensure that any drug rebates received on drugs purchased from funds provided pursuant to this section are applied to activities supported under this subpart, with priority given to activities described under this section.

(July 1, 1944, ch. 373, title XXVI, § 2616, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 590; amended Pub. L. 104–146, § 3(c)(3), May 20, 1996, 110 Stat. 1355; Pub. L. 106–345, title II, § 204, Oct. 20, 2000, 114 Stat. 1332; Pub. L. 109–415, title II, §§ 201(c)(4), 202, 204(a), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2788, 2796, 2820.)

[1] See References in Text note below.

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

Section 300ff–22 of this title, referred to in subsec. (d), was amended generally by Pub. L. 109–415, title II, § 201(a), Dec. 19, 2006, 120 Stat. 2785, and, as so amended, does not contain a par. (2).

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease'' in two places.

Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part''.

Pub. L. 109–415, § 201(c)(4), substituted ''section 300ff–22(b)(3)(B) of this title'' for ''section 300ff–22(a)(5) of this title''.

Subsec. (b)(1). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease''.

Subsec. (c)(1). Pub. L. 109–415, § 202(a)(1), added par. (1) and struck out former par. (1) which read as follows: ''determine, in accordance with guidelines issued by the Secretary, which treatments are eligible to be included under the program established under this section;''.

Subsec. (c)(3). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease''.

Subsec. (e). Pub. L. 109–415, § 202(a)(3), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109–415, § 202(a)(2), redesignated subsec. (e) as (f).

Subsec. (f)(1). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease''.

Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part''.

Subsec. (g). Pub. L. 109–415, § 202(b), added subsec. (g).

2000—Subsec. (c). Pub. L. 106–345, § 204(a), added par. (6) and concluding provisions.

Subsec. (e). Pub. L. 106–345, § 204(b), added subsec. (e).

1996—Subsec. (a). Pub. L. 104–146, § 3(c)(3)(A), substituted ''shall use a portion of the amounts'' for ''may use amounts'' and ''section 300ff–22(a)(5) of this title to provide therapeutics to treat HIV disease'' for ''section 300ff–22(a)(4) of this title to provide treatments that have been determined to prolong life'' and inserted before period '', including measures for the prevention and treatment of opportunistic infections''.

Subsec. (c)(5). Pub. L. 104–146, § 3(c)(3)(B), added par. (5).

Subsec. (d). Pub. L. 104–146, § 3(c)(3)(C), added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–27. State application

(a) In general

The Secretary shall not make a grant to a State under section 300ff–21 of this title for a fiscal year unless the State prepares and submits, to the Secretary, an application at such time, in such form, and containing such agreements, assurances, and information as the Secretary determines to be necessary to carry out section 300ff–21 of this title.

(b) Description of intended uses and agreements

The application submitted under subsection (a) of this section shall contain—

(1) a detailed description of the HIV-related services provided in the State to individuals and families with HIV/AIDS during the year

preceding the year for which the grant is requested, and the number of individuals and families receiving such services, that shall include—

(A) a description of the types of programs operated or funded by the State for the provision of HIV-related services during the year preceding the year for which the grant is requested and the methods utilized by the State to finance such programs;

(B) an accounting of the amount of funds that the State has expended for such services and programs during the year preceding the year for which the grant is requested; and

(C) information concerning—

(i) the number of individuals to be served with assistance provided under the grant;

(ii) demographic data on the population of the individuals to be served;

(iii) the average cost of providing each category of HIV-related health services and the extent to which such cost is paid by third-party payors; and

(iv) the aggregate amounts expended for each such category of services;

(2) a determination of the size and demographics of the population of individuals with HIV/AIDS in the State;

(3) a determination of the needs of such population, with particular attention to—

(A) individuals with HIV/AIDS who know their HIV status and are not receiving HIV-related services; and

(B) disparities in access and services among affected subpopulations and historically underserved communities;

(4) the designation of a lead State agency that shall—

(A) administer all assistance received under this part;

(B) conduct the needs assessment and prepare the State plan under paragraph (3);

(C) prepare all applications for assistance under this part;

(D) receive notices with respect to programs under this subchapter;

(E) every 2 years, collect and submit to the Secretary all audits, consistent with Office of Management and Budget circular A133, from grantees within the State, including audits regarding funds expended in accordance with this part; and

(F) carry out any other duties determined appropriate by the Secretary to facilitate the coordination of programs under this subchapter.[1]

(5) a comprehensive plan that describes the organization and delivery of HIV health care and support services to be funded with assistance received under section 300ff–21 of this title that shall include a description of the purposes for which the State intends to use such assistance, and that—

(A) establishes priorities for the allocation of funds within the State based on—

(i) size and demographics of the population of individuals with HIV/AIDS (as determined under paragraph (2)) and the needs of such population (as determined under paragraph (3));

(ii) availability of other governmental and non-governmental resources, including the State medicaid plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and the State Children's Health Insurance Program under title XXI of such Act [42 U.S.C. 1397aa et seq.] to cover health care costs of eligible individuals and families with HIV/AIDS;

(iii) capacity development needs resulting from disparities in the availability of HIV-related services in historically underserved communities and rural communities; and

(iv) the efficiency of the administrative mechanism of the State for rapidly allocating funds to the areas of greatest need within the State;

(B) includes a strategy for identifying individuals who know their HIV status and are not receiving such services and for informing the individuals of and enabling the individuals to utilize the services, giving particular attention to eliminating disparities in access and services among affected subpopulations and historically underserved communities, and including discrete goals, a timetable, and an appropriate allocation of funds;

(C) includes a strategy to coordinate the provision of such services with programs for HIV prevention (including outreach and early intervention) and for the prevention and treatment of substance abuse (including programs that provide comprehensive treatment services for such abuse);

(D) describes the services and activities to be provided and an explanation of the manner in which the elements of the program to be implemented by the State with such assistance will maximize the quality of health and support services available to individuals with HIV/AIDS throughout the State;

(E) provides a description of the manner in which services funded with assistance provided under section 300ff–21 of this title will be coordinated with other available related services for individuals with HIV/AIDS;

(F) provides a description of how the allocation and utilization of resources are consistent with the statewide coordinated statement of need (including traditionally underserved populations and subpopulations) developed in partnership with other grantees in the State that receive funding under this subchapter; and

(G) includes key outcomes to be measured by all entities in the State receiving assistance under this subchapter; and[2]

(6) an assurance that the public health agency administering the grant for the State will periodically convene a meeting of individuals with HIV/AIDS, members of a Federally recognized Indian tribe as represented in the State, representatives of grantees under each part

[1] So in original. The period probably should be a semicolon.

[2] So in original. The word ''and'' probably should not appear.

under this subchapter, providers, and public agency representatives for the purpose of developing a statewide coordinated statement of need; and

(7) an assurance by the State that—

(A) the public health agency that is administering the grant for the State engages in a public advisory planning process, including public hearings, that includes the participants under paragraph (6), and the types of entities described in section 300ff–12(b)(2) of this title, in developing the comprehensive plan under paragraph (5) and commenting on the implementation of such plan;

(B) the State will—

(i) to the maximum extent practicable, ensure that HIV-related health care and support services delivered pursuant to a program established with assistance provided under section 300ff–21 of this title will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual with HIV/AIDS;

(ii) ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV/AIDS;

(iii) provide outreach to low-income individuals with HIV/AIDS to inform such individuals of the services available under section 300ff–21 of this title; and

(iv) in the case of a State that intends to use amounts provided under the grant for purposes described in section 300ff–25 of this title, submit a plan to the Secretary that demonstrates that the State has established a program that assures that—

(I) such amounts will be targeted to individuals who would not otherwise be able to afford health insurance coverage; and

(II) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance under such program, and information concerning such criteria shall be made available to the public;

(C) the State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive funds from the State under section 300ff–21 of this title;

(D) the State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under section 300ff–21 of this title;

(E) the State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State is applying to receive a grant under section 300ff–21 of this title;

(F) the State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service—

(i) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(ii) by an entity that provides health services on a prepaid basis (except for a program administered by or providing the services of the Indian Health Service); and

(G) entities within areas in which activities under the grant are carried out will maintain appropriate relationships with entities in the area served that constitute key points of access to the health care system for individuals with HIV/AIDS (including emergency rooms, substance abuse treatment programs, detoxification centers, adult and juvenile detention facilities, sexually transmitted disease clinics, HIV counseling and testing sites, mental health programs, and homeless shelters), and other entities under section[3] 300ff–22(c) and 300ff–52(a) of this title, for the purpose of facilitating early intervention for individuals newly diagnosed with HIV/AIDS and individuals knowledgeable of their HIV status but not in care.

(c) Requirements regarding imposition of charges for services

(1) In general

The Secretary may not make a grant under section 300ff–21 of this title to a State unless the State provides assurances that in the provision of services with assistance provided under the grant—

(A) in the case of individuals with an income less than or equal to 100 percent of the official poverty line, the provider will not impose charges on any such individual for the provision of services under the grant;

(B) in the case of individuals with an income greater than 100 percent of the official poverty line, the provider—

(i) will impose charges on each such individual for the provision of such services; and

(ii) will impose charges according to a schedule of charges that is made available to the public;

(C) in the case of individuals with an income greater than 100 percent of the official poverty line and not exceeding 200 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 5 percent of the annual gross income of the individual involved;

(D) in the case of individuals with an income greater than 200 percent of the official poverty line and not exceeding 300 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 7 percent of the annual gross income of the individual involved; and

(E) in the case of individuals with an income greater than 300 percent of the official poverty line, the provider will not, for any

[3] So in original. Probably should be ''sections''.

calendar year, impose charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

(2) Assessment of charge

With respect to compliance with the assurance made under paragraph (1), a grantee under section 300ff–21 of this title may, in the case of individuals subject to a charge for purposes of such paragraph—

(A) assess the amount of the charge in the discretion of the grantee, including imposing only a nominal charge for the provision of services, subject to the provisions of such paragraph regarding public schedules regarding limitation on the maximum amount of charges; and

(B) take into consideration the medical expenses of individuals in assessing the amount of the charge, subject to such provisions.

(3) Applicability of limitation on amount of charge

The Secretary may not make a grant under section 300ff–21 of this title unless the applicant of the grant agrees that the limitations established in subparagraphs (C), (D), and (E) of paragraph (1) regarding the imposition of charges for services applies to the annual aggregate of charges imposed for such services, without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, copayments, coinsurance, or other charges.

(4) Waiver

(A) In general

The State shall waive the requirements established in paragraphs (1) through (3) in the case of an entity that does not, in providing health care services, impose a charge or accept reimbursement from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) Determination

A determination by the State of whether an entity referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the entity accepts voluntary donations regarding the provision of services to the public.

(d) Requirement of matching funds regarding State allotments

(1) In general

In the case of any State to which the criterion described in paragraph (3) applies, the Secretary may not make a grant under section 300ff–21 of this title unless the State agrees that, with respect to the costs to be incurred by the State in carrying out the program for which the grant was awarded, the State will, subject to subsection (b)(2)[4] of this section, make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount equal to—

(A) for the first fiscal year of payments under the grant, not less than 16⅔ percent of such costs ($1 for each $5 of Federal funds provided in the grant);

(B) for any second fiscal year of such payments, not less than 20 percent of such costs ($1 for each $4 of Federal funds provided in the grant);

(C) for any third fiscal year of such payments, not less than 25 percent of such costs ($1 for each $3 of Federal funds provided in the grant);

(D) for any fourth fiscal year of such payments, not less than 33⅓ percent of such costs ($1 for each $2 of Federal funds provided in the grant); and

(E) for any subsequent fiscal year of such payments, not less than 33⅓ percent of such costs ($1 for each $2 of Federal funds provided in the grant).

(2) Determination of amount of non-Federal contribution

(A) In general

Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, and any portion of any service subsidized by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) Inclusion of certain amounts

(i) In making a determination of the amount of non-Federal contributions made by a State for purposes of paragraph (1), the Secretary shall, subject to clause (ii), include any non-Federal contributions provided by the State for HIV-related services, without regard to whether the contributions are made for programs established pursuant to this subchapter;

(ii) In making a determination for purposes of clause (i), the Secretary may not include any non-Federal contributions provided by the State as a condition of receiving Federal funds under any program under this subchapter (except for the program established in section 300ff–21 of this title) or under other provisions of law.

(3) Applicability of requirement

(A) Number of cases

A State referred to in paragraph (1) is any State for which the number of cases of HIV/AIDS reported to and confirmed by the Director of the Centers for Disease Control and Prevention for the period described in subparagraph (B) constitutes in excess of 1 percent of the aggregate number of such cases reported to and confirmed by the Director for such period for the United States.

(B) Period of time

The period referred to in subparagraph (A) is the 2-year period preceding the fiscal year for which the State involved is applying to receive a grant under subsection (a) of this section.

[4] See References in Text note below.

(C) Puerto Rico

For purposes of paragraph (1), the number of cases of HIV/AIDS reported and confirmed for the Commonwealth of Puerto Rico for any fiscal year shall be deemed to be less than 1 percent.

(4) Diminished State contribution

With respect to a State that does not make available the entire amount of the non-Federal contribution referred to in paragraph (1), the State shall continue to be eligible to receive Federal funds under a grant under section 300ff–21 of this title, except that the Secretary in providing Federal funds under the grant shall provide such funds (in accordance with the ratios prescribed in paragraph (1)) only with respect to the amount of funds contributed by such State.

(July 1, 1944, ch. 373, title XXVI, § 2617, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 590; amended Pub. L. 102–531, title III, § 312(d)(29), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 104–146, §§ 3(c)(4), 12(c)(3), May 20, 1996, 110 Stat. 1355, 1373; Pub. L. 106–345, title II, § 205, Oct. 20, 2000, 114 Stat. 1332; Pub. L. 109–415, title II, § 204(a), (c), (d), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2796, 2797, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(5)(A)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Subsection (b)(2) of this section, referred to in subsec. (d)(1), was redesignated subsec. (b)(4) by Pub. L. 106–345, title II, § 205(a)(1), Oct. 20, 2000, 114 Stat. 1332, and then subsec. (b)(5) by Pub. L. 109–415, title II, § 204(c)(2), Dec. 19, 2006, 120 Stat. 2796.

AMENDMENTS

2006—Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part'' wherever appearing in subsecs. (a), (b), (c)(2), and (d).

Subsec. (b). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease'' wherever appearing.

Subsec. (b)(4). Pub. L. 109–415, § 204(c)(1)(B), added par. (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 109–415, § 204(c)(1)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(5)(G). Pub. L. 109–415, § 204(c)(1)(C), added subpar. (G).

Subsec. (b)(6). Pub. L. 109–415, § 204(c)(2), inserted ''members of a Federally recognized Indian tribe as represented in the State,'' before ''representatives of grantees''.

Pub. L. 109–415, § 204(c)(1)(A), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 109–415, § 204(c)(1)(A), redesignated par. (6) as (7).

Subsec. (b)(7)(A). Pub. L. 109–415, § 204(c)(1)(D), substituted ''paragraph (6)'' for ''paragraph (5)'' and ''paragraph (5)'' for ''paragraph (4)''.

Subsec. (b)(7)(F)(ii). Pub. L. 109–415, § 204(c)(3), inserted ''(except for a program administered by or providing the services of the Indian Health Service)'' before semicolon.

Subsec. (d)(3)(A), (C). Pub. L. 109–415, § 204(d), substituted ''HIV/AIDS'' for ''acquired immune deficiency syndrome''.

2000—Subsec. (b)(2), (3). Pub. L. 106–345, § 205(a)(2), added pars. (2) and (3). Former pars. (2) and (3) redesignated (4) and (5), respectively.

Subsec. (b)(4). Pub. L. 106–345, § 205(a)(3)(A), (B), in introductory provisions substituted ''comprehensive plan that describes the organization'' for ''comprehensive plan for the organization'' and '', and that—'' for '', including—''.

Pub. L. 106–345, § 205(a)(1), redesignated par. (2) as (4). Former par. (4) redesignated (6).

Subsec. (b)(4)(A) to (C). Pub. L. 106–345, § 205(a)(3)(D), which directed the amendment of par. (4) by adding subpars. (A) to (C) ''before subparagraph (C)'', was executed by adding them before subpar. (D), to reflect the probable intent of Congress. Former subpars. (A) to (C) redesignated (D) to (F), respectively.

Subsec. (b)(4)(D). Pub. L. 106–345, § 205(a)(3)(C), (E), redesignated subpar. (A) as (D) and inserted ''describes'' before ''the services and activities''.

Subsec. (b)(4)(E). Pub. L. 106–345, § 205(a)(3)(C), (F), redesignated subpar. (B) as (E) and inserted ''provides'' before ''a description''.

Subsec. (b)(4)(F). Pub. L. 106–345, § 205(a)(3)(C), (G), redesignated subpar. (C) as (F) and inserted ''provides'' before ''a description''.

Subsec. (b)(5). Pub. L. 106–345, § 205(a)(1), (b)(1), redesignated par. (3) as (5) and substituted ''HIV disease'' for ''HIV''.

Subsec. (b)(6). Pub. L. 106–345, § 205(a)(1), redesignated par. (4) as (6).

Subsec. (b)(6)(A). Pub. L. 106–345, § 205(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the assistance to be received under this part;''.

Subsec. (b)(6)(G). Pub. L. 106–345, § 205(c), added subpar. (G).

1996—Subsec. (b)(2)(C). Pub. L. 104–146, § 3(c)(4)(A), added subpar. (C).

Subsec. (b)(3). Pub. L. 104–146, § 3(c)(4)(C), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 104–146, § 3(c)(4)(B), redesignated par. (3) as (4).

Subsec. (b)(4)(B)(iv). Pub. L. 104–146, § 12(c)(3), which directed amendment of par. (3)(B)(iv) by inserting ''section'' before ''300ff–25'', was executed by making the amendment in par. (4)(B)(iv) to reflect the probable intent of Congress and the redesignation of par. (3) as (4) by Pub. L. 104–146, § 3(c)(4)(B). See above.

1992—Subsec. (d)(3)(A). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–27a. Spousal notification

(a) In general

The Secretary of Health and Human Services shall not make a grant under part B of title XXVI of the Public Health Service Act (42 U.S.C. 300ff–21 et seq.) to any State unless such State takes administrative or legislative action to require that a good faith effort be made to notify a spouse of a known HIV-infected patient that such spouse may have been exposed to the human immunodeficiency virus and should seek testing.

(b) Definitions

For purposes of this section:

(1) Spouse

The term ''spouse'' means any individual who is the marriage partner of an HIV-infected patient, or who has been the marriage partner of that patient at any time within the 10-year period prior to the diagnosis of HIV infection.

(2) HIV-infected patient

The term ''HIV-infected patient'' means any individual who has been diagnosed to be infected with the human immunodeficiency virus.

(3) State

The term ''State'' means any of the 50 States, the District of Columbia, or any territory of the United States.

(Pub. L. 104–146, § 8, May 20, 1996, 110 Stat. 1372.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (a), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part B of title XXVI of the Act is classified generally to this part. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Ryan White CARE Act Amendments of 1996, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

§ 300ff–28. Distribution of funds

(a) Amount of grant to State

(1) Minimum allotment

Subject to the extent of amounts made available under section 300ff–31b of this title, the amount of a grant to be made under section 300ff–21 of this title for—

(A) each of the 50 States, the District of Columbia, Guam, and the Virgin Islands (referred to in this paragraph as a ''covered State'') for a fiscal year shall be the greater of—

(i)(I) with respect to a covered State that has less than 90 living cases of AIDS, as determined under paragraph (2)(D), $200,000; or

(II) with respect to a covered State that has 90 or more living cases of AIDS, as determined under paragraph (2)(D), $500,000; and

(ii) an amount determined under paragraph (2) and then, as applicable, increased under paragraph (2)(H); and

(B) each territory other than Guam and the Virgin Islands shall be the greater of $50,000 or an amount determined under paragraph (2).

(2) Determination

(A) Formula

For purposes of paragraph (1), the amount referred to in this paragraph for a State (including a territory) for a fiscal year is, subject to subparagraphs (E) and (F)—

(i) an amount equal to the amount made available under section 300ff–31b of this title for the fiscal year involved for grants pursuant to paragraph (1), subject to subparagraph (G);[1] and

(ii) the percentage constituted by the sum of—

(I) the product of 0.75 and the ratio of the State distribution factor for the State or territory (as determined under subsection (B)) to the sum of the respective State distribution factors for all States or territories;

(II) the product of .20 and the ratio of the non-EMA distribution factor for the State or territory (as determined under subparagraph (C)) to the sum of the respective non-EMA distribution factors for all States or territories; and

(III) if the State does not for such fiscal year contain any area that is an eligible area under subpart I of part A or any area that is a transitional area under section 300ff–19 of this title (referred to in this subclause as a ''no-EMA State''), the product of 0.05 and the ratio of the number of cases that applies for the State under subparagraph (D) to the sum of the respective numbers of cases that so apply for all no-EMA States.

(B) State distribution factor

For purposes of subparagraph (A)(ii)(I), the term ''State distribution factor'' means an amount equal to the number of living cases of HIV/AIDS in the State involved, as determined under subparagraph (D).

(C) Non-EMA distribution factor

For purposes of subparagraph (A)(ii)(II), the term ''non-ema[2] distribution factor'' means an amount equal to the sum of—

(i) the number of living cases of HIV/AIDS in the State involved, as determined under subparagraph (D); less

(ii) a number equal to the sum of—

(I) the total number of living cases of HIV/AIDS that are within areas in such State that are eligible areas under subpart I of part A for the fiscal year involved, which individual number for an area is the number that applies under section 300ff–11 of this title for the area for such fiscal year; and

(II) the total number of such cases that are within areas in such State that are transitional areas under section 300ff–19 of this title for such fiscal year, which individual number for an area is the number that applies under such section for the fiscal year.

(D) Living cases of HIV/AIDS

(i) Requirement of names-based reporting

Except as provided in clause (ii), the number determined under this subparagraph for a State for a fiscal year for purposes of subparagraph (B) is the number of living names-based cases of HIV/AIDS in

[1] So in original. There is no subparagraph (G).

[2] So in original. Probably should be ''non-EMA''.

the State that, as of December 31 of the most recent calendar year for which such data is available, have been reported to and confirmed by the Director of the Centers for Disease Control and Prevention.

(ii) Transition period; exemption regarding non-AIDS cases

For each of the fiscal years 2007 through 2009, a State is, subject to clauses (iii) through (v), exempt from the requirement under clause (i) that living non-AIDS names-based cases of HIV be reported unless—

(I) a system was in operation as of December 31, 2005, that provides sufficiently accurate and reliable names-based reporting of such cases throughout the State, subject to clause (vii); or

(II) no later than the beginning of fiscal year 2008 or 2009, the Secretary, after consultation with the chief executive of the State, determines that a system has become operational in the State that provides sufficiently accurate and reliable names-based reporting of such cases throughout the State.

(iii) Requirements for exemption for fiscal year 2007

For fiscal year 2007, an exemption under clause (ii) for a State applies only if, by October 1, 2006—

(I)(aa) the State had submitted to the Secretary a plan for making the transition to sufficiently accurate and reliable names-based reporting of living non-AIDS cases of HIV; or

(bb) all statutory changes necessary to provide for sufficiently accurate and reliable reporting of such cases had been made; and

(II) the State had agreed that, by April 1, 2008, the State will begin accurate and reliable names-based reporting of such cases, except that such agreement is not required to provide that, as of such date, the system for such reporting be fully sufficient with respect to accuracy and reliability throughout the area.

(iv) Requirement for exemption as of fiscal year 2008

For each of the fiscal years 2008 through 2010, an exemption under clause (ii) for a State applies only if, as of April 1, 2008, the State is substantially in compliance with the agreement under clause (iii)(II).

(v) Progress toward names-based reporting

For fiscal year 2009, the Secretary may terminate an exemption under clause (ii) for a State if the State submitted a plan under clause (iii)(I)(aa) and the Secretary determines that the State is not substantially following the plan.

(vi) Counting of cases in areas with exemptions

(I) In general

With respect to a State that is under a reporting system for living non-AIDS cases of HIV that is not names-based (referred to in this subparagraph as ''code-based reporting''), the Secretary shall, for purposes of this subparagraph, modify the number of such cases reported for the State in order to adjust for duplicative reporting in and among systems that use code-based reporting.

(II) Adjustment rate

The adjustment rate under subclause (I) for a State shall be a reduction of 5 percent in the number of living non-AIDS cases of HIV reported for the State.

(vii) List of States meeting standard regarding December 31, 2005

(I) In general

If a State is specified in subclause (II), the State shall be considered to meet the standard described in clause (ii)(I). No other State may be considered to meet such standard.

(II) Relevant States

For purposes of subclause (I), the States specified in this subclause are the following: Alaska, Alabama, Arkansas, Arizona, Colorado, Florida, Indiana, Iowa, Idaho, Kansas, Louisiana, Michigan, Minnesota, Missouri, Mississippi, North Carolina, North Dakota, Nebraska, New Jersey, New Mexico, New York, Nevada, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, West Virginia, Wyoming, Guam, and the Virgin Islands.

(viii) Rules of construction regarding acceptance of reports

(I) Cases of AIDS

With respect to a State that is subject to the requirement under clause (i) and is not in compliance with the requirement for names-based reporting of living non-AIDS cases of HIV, the Secretary shall, notwithstanding such noncompliance, accept reports of living cases of AIDS that are in accordance with such clause.

(II) Applicability of exemption requirements

The provisions of clauses (ii) through (vii) may not be construed as having any legal effect for fiscal year 2010 or any subsequent fiscal year, and accordingly, the status of a State for purposes of such clauses may not be considered after fiscal year 2009.

(ix) Program for detecting inaccurate or fraudulent counting

The Secretary shall carry out a program to monitor the reporting of names-based cases for purposes of this subparagraph and to detect instances of inaccurate reporting, including fraudulent reporting.

(E) Code-based States; limitation on increase in grant

(i) In general

For each of the fiscal years 2007 through 2009, if code-based reporting (within the meaning of subparagraph (D)(vi)) applies in a State as of the beginning of the fiscal year involved, then notwithstanding any other provision of this paragraph, the amount of the grant pursuant to paragraph (1) for the State may not for the fiscal year involved exceed by more than 5 percent the amount of the grant pursuant to this paragraph for the State for the preceding fiscal year, except that the limitation under this clause may not result in a grant pursuant to paragraph (1) for a fiscal year that is less than the minimum amount that applies to the State under such paragraph for such fiscal year.

(ii) Use of amounts involved

For each of the fiscal years 2007 through 2009, amounts available as a result of the limitation under clause (i) shall be made available by the Secretary as additional amounts for grants pursuant to section 300ff–29a of this title, subject to subparagraph (H).

(F) Appropriations for treatment drug program

(i) Formula grants

With respect to the fiscal year involved, if under section 300ff–31b of this title an appropriations Act provides an amount exclusively for carrying out section 300ff–26 of this title, the portion of such amount allocated to a State shall be the product of—

(I) 100 percent of such amount, less the percentage reserved under clause (ii)(V); and

(II) the percentage constituted by the ratio of the State distribution factor for the State (as determined under subparagraph (B)) to the sum of the State distribution factors for all States;

which product shall then, as applicable, be increased under subparagraph (H).

(ii) Supplemental treatment drug grants

(I) In general

From amounts made available under subclause (V), the Secretary shall award supplemental grants to States described in subclause (II) to enable such States to purchase and distribute to eligible individuals under section 300ff–26(b) of this title pharmaceutical therapeutics described under subsections (c)(2) and (e) of such section.

(II) Eligible States

For purposes of subclause (I), a State shall be an eligible State if the State did not have unobligated funds subject to reallocation under subsection (d) in the previous fiscal year and, in accordance with criteria established by the Secretary, demonstrates a severe need for a grant under this clause. For purposes of determining severe need, the Secretary shall consider eligibility standards, formulary composition, the number of eligible individuals to whom a State is unable to provide therapeutics described in section 300ff–26(a) of this title, and an unanticipated increase of eligible individuals with HIV/AIDS.

(III) State requirements

The Secretary may not make a grant to a State under this clause unless the State agrees that the State will make available (directly or through donations of public or private entities) non-Federal contributions toward the activities to be carried out under the grant in an amount equal to $1 for each $4 of Federal funds provided in the grant, except that the Secretary may waive this subclause if the State has otherwise fully complied with section 300ff–27(d) of this title with respect to the grant year involved. The provisions of this subclause shall apply to States that are not required to comply with such section 300ff–27(d) of this title.

(IV) Use and coordination

Amounts made available under a grant under this clause shall only be used by the State to provide HIV/AIDS-related medications. The State shall coordinate the use of such amounts with the amounts otherwise provided under section 300ff–26(a) of this title in order to maximize drug coverage.

(V) Funding

For the purpose of making grants under this clause, the Secretary shall each fiscal year reserve 5 percent of the amount referred to in clause (i) with respect to section 300ff–26 of this title, subject to subclause (VI).

(iii) Code-based States; limitation on increase in formula grant

The limitation under subparagraph (E)(i) applies to grants pursuant to clause (i) of this subparagraph to the same extent and in the same manner as such limitation applies to grants pursuant to paragraph (1), except that the reference to minimum grants does not apply for purposes of this clause. Amounts available as a result of the limitation under the preceding sentence shall be made available by the Secretary as additional amounts for grants under clause (ii) of this subparagraph.

(G) Repealed. Pub. L. 109–415, title II, § 203(b)(2), Dec. 19, 2006, 120 Stat. 2792

(H) Increase in formula grants

(i) Assurance of amount

(I) General rule

For fiscal year 2007, the Secretary shall ensure, subject to clauses (ii) through (iv), that the total for a State of the grant pursuant to paragraph (1) and

the grant pursuant to subparagraph (G)[3] is not less than 95 percent of such total for the State for fiscal year 2006.

(II) Rule of construction

With respect to the application of subclause (I), the 95 percent requirement under such subclause shall apply with respect to each grant awarded under paragraph (1) and with respect to each grant awarded under subparagraph (G).[3]

(ii) Fiscal year 2007

For purposes of clause (i) as applied for fiscal year 2007, the references in such clause to subparagraph (G)[3] are deemed to be references to subparagraph (I) as such subparagraph was in effect for fiscal year 2006.

(iii) Fiscal years 2008 and 2009

For each of the fiscal years 2008 and 2009, the Secretary shall ensure that the total for a State of the grant pursuant to paragraph (1) and the grant pursuant to subparagraph (G)[3] is not less than 100 percent of such total for the State for fiscal year 2007.

(iv) Source of funds for increase

(I) In general

From the amount reserved under section 300ff–31b(b)(2) of this title for a fiscal year, and from amounts available for such section pursuant to subsection (d) of this section, the Secretary shall make available such amounts as may be necessary to comply with clause (i).

(II) Pro rata reduction

If the amounts referred to in subclause (I) for a fiscal year are insufficient to fully comply with clause (i) for the year, the Secretary, in order to provide the additional funds necessary for such compliance, shall reduce on a pro rata basis the amount of each grant pursuant to paragraph (1) for the fiscal year, other than grants for States for which increases under clause (i) apply and other than States described in paragraph (1)(A)(i)(I). A reduction under the preceding sentence may not be made in an amount that would result in the State involved becoming eligible for such an increase.

(v) Applicability

This paragraph may not be construed as having any applicability after fiscal year 2009.

(b) Allocation of assistance by States

(1) Allowances

Prior to allocating assistance under this subsection, a State shall consider the unmet needs of those areas that have not received financial assistance under part A of this subchapter.

(2) Planning and evaluations

Subject to paragraph (4) and except as provided in paragraph (5), a State may not use more than 10 percent of amounts received under a grant awarded under section 300ff–21 of this title for planning and evaluation activities.

(3) Administration

(A) In general

Subject to paragraph (4), and except as provided in paragraph (5), a State may not use more than 10 percent of amounts received under a grant awarded under section 300ff–21 of this title for administration.

(B) Allocations

In the case of entities and subcontractors to which a State allocates amounts received by the State under a grant under section 300ff–21 of this title, the State shall ensure that, of the aggregate amount so allocated, the total of the expenditures by such entities for administrative expenses does not exceed 10 percent (without regard to whether particular entities expend more than 10 percent for such expenses).

(C) Administrative activities

For the purposes of subparagraph (A), amounts may be used for administrative activities that include routine grant administration and monitoring activities, including a clinical quality management program under subparagraph (E).

(D) Subcontractor administrative costs

For the purposes of this paragraph, subcontractor administrative activities include—

(i) usual and recognized overhead, including established indirect rates for agencies;

(ii) management oversight of specific programs funded under this subchapter; and

(iii) other types of program support such as quality assurance, quality control, and related activities.

(E) Clinical quality management

(i) Requirement

Each State that receives a grant under section 300ff–21 of this title shall provide for the establishment of a clinical quality management program to assess the extent to which HIV health services provided to patients under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infection, and as applicable, to develop strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services.

(ii) Use of funds

(I) In general

From amounts received under a grant awarded under section 300ff–21 of this title for a fiscal year, a State may use for activities associated with the clinical quality management program required in clause (i) not to exceed the lesser of—

[3] So in original. Probably should be a reference to subparagraph (F).

(aa) 5 percent of amounts received under the grant; or

(bb) $3,000,000.

(II) Relation to limitation on administrative expenses

The costs of a clinical quality management program under clause (i) may not be considered administrative expenses for purposes of the limitation established in subparagraph (A).

(4) Limitation on use of funds

Except as provided in paragraph (5), a State may not use more than a total of 15 percent of amounts received under a grant awarded under section 300ff–21 of this title for the purposes described in paragraphs (2) and (3).

(5) Exception

With respect to a State that receives the minimum allotment under subsection (a)(1) of this section for a fiscal year, such State, from the amounts received under a grant awarded under section 300ff–21 of this title for such fiscal year for the activities described in paragraphs (2) and (3), may, notwithstanding paragraphs (2) through (4), use not more than that amount required to support one full-time-equivalent employee.

(6) Construction

A State may not use amounts received under a grant awarded under section 300ff–21 of this title to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or to make cash payments to intended recipients of services.

(c) Expedited distribution

(1) In general

Not less than 75 percent of the amounts received under a grant awarded to a State under section 300ff–21 of this title shall be obligated to specific programs and projects and made available for expenditure not later than—

(A) in the case of the first fiscal year for which amounts are received, 150 days after the receipt of such amounts by the State; and

(B) in the case of succeeding fiscal years, 120 days after the receipt of such amounts by the State.

(2) Public comment

Within the time periods referred to in paragraph (1), the State shall invite and receive public comment concerning methods for the utilization of such amounts.

(d) Reallocation

Any portion of a grant made to a State under section 300ff–21 of this title for a fiscal year that has not been obligated as described in subsection (c) ceases to be available to the State and shall be made available by the Secretary for grants under section 300ff–29a of this title, in addition to amounts made available for such grants under section 300ff–31b(b)(2) of this title.

(July 1, 1944, ch. 373, title XXVI, § 2618, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 595; amended Pub. L. 102–531, title III, § 312(d)(30), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 104–146, §§ 3(c)(5), (g)(2), 5, 6(c)(3), May 20, 1996, 110 Stat. 1355, 1363, 1365, 1368; Pub. L. 105–392, title IV, § 417, Nov. 13, 1998, 112 Stat. 3591; Pub. L. 106–345, title II, § 206, Oct. 20, 2000, 114 Stat. 1334; Pub. L. 109–415, title II, §§ 203, 204(a), title VII, § 702(1), Dec. 19, 2006, 120 Stat. 2789, 2796, 2819.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part'' in introductory provisions.

Pub. L. 109–415, § 203(g)(1), substituted ''section 300ff–31b of this title'' for ''section 300ff–77 of this title'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 109–415, § 203(g)(2)(A), substituted ''each of the 50 States, the District of Columbia, Guam, and the Virgin Islands (referred to in this paragraph as a 'covered State')'' for ''each of the several States and the District of Columbia'' in introductory provisions.

Subsec. (a)(1)(A)(i)(I). Pub. L. 109–415, § 702(1), substituted ''AIDS'' for ''acquired immune deficiency syndrome''.

Pub. L. 109–415, § 203(g)(2)(B)(i), substituted ''covered State'' for ''State or District''.

Subsec. (a)(1)(A)(i)(II). Pub. L. 109–415, § 702(1), substituted ''AIDS'' for ''acquired immune deficiency syndrome''.

Pub. L. 109–415, § 203(g)(2)(B)(ii), substituted ''covered State'' for ''State or District'' and inserted ''and'' at end.

Subsec. (a)(1)(B). Pub. L. 109–415, § 203(g)(3), substituted ''each territory other than Guam and the Virgin Islands'' for ''each territory of the United States, as defined in paragraph (3),''.

Subsec. (a)(2)(A). Pub. L. 109–415, § 203(b)(1)(A), in introductory provisions substituted ''For purposes of paragraph (1), the amount referred to in this paragraph for a State (including a territory) for a fiscal year is, subject to subparagraphs (E) and (F)'' for ''The amount referred to in paragraph (1)(A)(ii) for a State and paragraph (1)(B) for a territory of the United States shall be the product of'', added cl. (i), and struck out former cl. (i) which read as follows:

''(i) an amount equal to the amount appropriated under section 300ff–77 of this title for the fiscal year involved for grants under this part, subject to subparagraphs (H) and (I); and''.

Subsec. (a)(2)(A)(ii)(I). Pub. L. 109–415, § 203(b)(1)(B)(i), substituted ''0.75'' for ''.80'' and struck out ''and'' at end.

Subsec. (a)(2)(A)(ii)(II). Pub. L. 109–415, § 203(b)(1)(B)(ii), inserted ''non-EMA'' after ''respective'' and substituted ''; and'' for period at end.

Subsec. (a)(2)(A)(ii)(III). Pub. L. 109–415, § 203(b)(1)(B)(iii), added subcl. (III).

Subsec. (a)(2)(B). Pub. L. 109–415, § 203(a)(1)(A), substituted ''number of living cases of HIV/AIDS in the State involved'' for ''estimated number of living cases of acquired immune deficiency syndrome in the eligible area involved''.

Subsec. (a)(2)(C)(i). Pub. L. 109–415, § 203(g)(4), struck out ''or territory'' after ''State''.

Pub. L. 109–415, § 203(a)(2)(A), substituted ''number of living cases of HIV/AIDS'' for ''estimated number of living cases of acquired immune deficiency syndrome''.

Subsec. (a)(2)(C)(ii). Pub. L. 109–415, § 203(a)(2)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the estimated number of living cases of acquired immune deficiency syndrome in such State or territory that are within an eligible area (as determined under part A of this subchapter).''

Subsec. (a)(2)(D). Pub. L. 109–415, § 203(a)(1)(B), amended subpar. (D) generally. Prior to amendment, subpar. (D) related to estimating the number of living cases of acquired immune deficiency syndrome in a State or territory.

Subsec. (a)(2)(E). Pub. L. 109–415, § 203(b)(3), added subpar (E).

Pub. L. 109–415, § 203(b)(2), struck out heading and text of subpar. (E). Text read as follows: ''If under section 300ff–13(a)(3)(D)(i) of this title the Secretary determines that data on cases of HIV disease are not sufficiently accurate and reliable, then notwithstanding subparagraph (D) of this paragraph, for any fiscal year prior to fiscal year 2007 the references in such subparagraph to cases of HIV disease do not have any legal effect.''

Subsec. (a)(2)(F). Pub. L. 109–415, § 203(b)(4), redesignated subpar. (I) as (F).

Pub. L. 109–415, § 203(b)(2), struck out heading and text of supar. (F). Text read as follows: ''For purposes of subparagraph (D), the cost index for Puerto Rico, the Virgin Islands, and Guam shall be 1.0.''

Subsec. (a)(2)(F)(i). Pub. L. 109–415, § 203(c)(1), which directed amendment of subsec. (a)(2)(G)(i) by substituting ''section 300ff–31b of this title'' for ''section 300ff–77 of this title'' in introductory provisions, substituting a semicolon for a period at end of subcl. (II), and adding concluding provisions, was executed by making the amendment to subsec. (a)(2)(F)(i), to reflect the probable intent of Congress.

Subsec. (a)(2)(F)(ii). Pub. L. 109–415, § 203(c)(2), which directed amendment of subsec. (a)(2)(G)(ii) by adding subcls. (I) to (III), striking out former subcls. (I) to (III), substituting ''5 percent'' for ''3 percent'' in subcl. (V), striking out subcl. (VI), and realigning margins, was executed by making the amendments to subsec. (a)(2)(F)(ii), to reflect the probable intent of Congress. Prior to amendment, subcls. (I) to (III) and (VI) related to supplemental grants to States to increase access to therapeutics described in section 300ff–26(a), eligibility for grants, requirements for grants, and reservation of amounts, respectively.

Subsec. (a)(2)(F)(iii). Pub. L. 109–415, § 203(c)(3), which directed amendment of subsec. (a)(2)(G) by adding cl. (iii), was executed by making the amendment to subsec. (a)(2)(F), to reflect the probable intent of Congress.

Subsec. (a)(2)(G). Pub. L. 109–415, § 203(b)(2), struck out heading and text of subpar. (G). Text read as follows: ''The Secretary may, in determining the amount of a grant for a fiscal year under this subsection, adjust the grant amount to reflect the amount of unexpended and uncanceled grant funds remaining at the end of the fiscal year preceding the year for which the grant determination is to be made. The amount of any such unexpended funds shall be determined using the financial status report of the grantee.''

Subsec. (a)(2)(H). Pub. L. 109–415, § 203(d), added subpar. (H).

Pub. L. 109–415, § 203(b)(2), struck out subpar. (H) which related to amount of grants in fiscal years 2001 to 2005.

Subsec. (a)(2)(I). Pub. L. 109–415, § 203(b)(4), redesignated subpar. (I) as (F).

Subsec. (a)(3). Pub. L. 109–415, § 203(g)(5), struck out par. (3), which defined ''State'' and ''territory of the United States'' as used in subsec. (a).

Subsec. (b)(1). Pub. L. 109–415, § 203(e)(1), redesignated par. (2) as (1).

Subsec. (b)(2). Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part''.

Pub. L. 109–415, § 203(e)(2), substituted ''paragraph (4)'' for ''paragraph (5)'' and ''paragraph (5)'' for ''paragraph (6)''.

Pub. L. 109–415, § 203(e)(1), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 109–415, § 203(e)(3), added subpars. (B) and (E), redesignated former subpars. (B) and (C) as (C) and (D), respectively, inserted '', including a clinical quality management program under subparagraph (E)'' before period at end of subpar. (C), and, in subpar. (A), reenacted heading without change and amended text generally. Prior to amendment, subpar. (A) text read as follows: ''Subject to paragraph (5) and except as provided in paragraph (6), a State may not use more than 10 percent of amounts received under a grant awarded under this part for administration. In the case of entities and subcontractors to which the State allocates amounts received by the State under the grant (including consortia under section 300ff–23 of this title), the State shall ensure that, of the aggregate amount so allocated, the total of the expenditures by such entities for administrative expenses does not exceed 10 percent (without regard to whether particular entities expend more than 10 percent for such expenses).''

Pub. L. 109–415, § 203(e)(1), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(4). Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part''.

Pub. L. 109–415, § 203(e)(4), substituted ''paragraph (5)'' for ''paragraph (6)'' and ''paragraphs (2) and (3)'' for ''paragraphs (3) and (4)''.

Pub. L. 109–415, § 203(e)(1), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (b)(5). Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part''.

Pub. L. 109–415, § 203(e)(5), substituted ''paragraphs (2) and (3), may, notwithstanding paragraphs (2) through (4),'' for ''paragraphs (3) and (4), may, notwithstanding paragraphs (3), (4), and (5),''.

Pub. L. 109–415, § 203(e)(1), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (b)(6). Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part''.

Pub. L. 109–415, § 203(e)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (b)(7). Pub. L. 109–415, § 203(e)(1), redesignated par. (7) as (6).

Subsec. (c)(1). Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part'' in introductory provisions.

Subsec. (d). Pub. L. 109–415, § 203(f), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Any amounts appropriated in any fiscal year and made available to a State under this part that have not been obligated as described in subsection (d) of this section shall be repaid to the Secretary and reallotted to other States in proportion to the original grants made to such States.''

2000—Subsec. (a). Pub. L. 106–345, § 206(a)(1), redesignated subsec. (b) as (a).

Subsec. (a)(1)(A)(i). Pub. L. 106–345, § 206(a)(2), substituted ''$200,000'' for ''$100,000'' in subcl. (I) and ''$500,000'' for ''$250,000'' in subcl. (II).

Subsec. (a)(1)(A)(ii). Pub. L. 106–345, § 206(c)(1), inserted ''and then, as applicable, increased under paragraph (2)(H)'' before semicolon.

Subsec. (a)(1)(B). Pub. L. 106–345, § 206(d), inserted ''the greater of $50,000 or'' after ''shall be''.

Subsec. (a)(2)(A)(i). Pub. L. 106–345, § 206(c)(2)(A), substituted ''subparagraphs (H) and (I)'' for ''subparagraph (H)''.

Subsec. (a)(2)(D)(i). Pub. L. 106–345, § 206(b)(1), inserted before semicolon '', except that (subject to subparagraph (E)), for grants made pursuant to this paragraph or section 300ff–30 of this title for fiscal year 2005 and subsequent fiscal years, the cases counted for each 12-month period beginning on or after July 1, 2004, shall be cases of HIV disease (as reported to and confirmed by such Director) rather than cases of acquired immune deficiency syndrome''.

Subsec. (a)(2)(E) to (G). Pub. L. 106–345, § 206(b)(2), (3), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively. Former subpar. (G) redesignated (H).

Subsec. (a)(2)(H). Pub. L. 106–345, § 206(c)(2)(B), amended heading and text of subpar. (H) generally. Prior to amendment, text related to limitations on the amount of a grant awarded for fiscal years 1996 to 2000 to a State or territory under this part in relation to the amount received by the State or territory for fiscal year 1995.

Pub. L. 106–345, § 206(b)(2), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).

Subsec. (a)(2)(I). Pub. L. 106–345, § 206(e), reenacted heading without change, designated existing provisions as cl. (i), inserted cl. (i) heading, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, in subcl. (I) inserted ", less the percentage reserved under clause (ii)(V)" before semicolon, and added cl. (ii).

Pub. L. 106–345, § 206(b)(2), redesignated subpar. (H) as (I).

Subsec. (a)(3)(B). Pub. L. 106–345, § 206(f), substituted "the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, and only for purposes of paragraph (1) the Commonwealth of Puerto Rico" for "and the Republic of the Marshall Islands".

Subsecs. (b) to (e). Pub. L. 106–345, § 206(a)(1), redesignated subsecs. (c) to (e) as (b) to (d), respectively.

1998—Subsec. (b)(3)(A). Pub. L. 105–392, § 417(1), substituted ", the Commonwealth of Puerto Rico, the Virgin Islands, and Guam" for "and the Commonwealth of Puerto Rico".

Subsec. (b)(3)(B). Pub. L. 105–392, § 417(2), struck out "the Virgin Islands, Guam" after "means".

1996—Subsec. (a). Pub. L. 104–146, § 3(g)(2), struck out subsec. (a) which related to special projects of national significance.

Subsec. (a)(1). Pub. L. 104–146, § 6(c)(3)(A), which directed amendment of subsec. (a)(1) by substituting "section 300ff–77" for "section 300ff–30", could not be executed because of the repeal of subsec. (a) by Pub. L. 104–146, § 3(g)(2). See above.

Subsec. (b)(1). Pub. L. 104–146, § 6(c)(3)(B), which directed amendment of subsec. (b)(1) by substituting "section 300ff–77 of this title" for "section 300ff–30 of this title", could not be executed because the words "section 300ff–30 of this title" did not appear subsequent to the general amendment of subsec. (b)(1) by Pub. L. 104–146, § 5. See below.

Pub. L. 104–146, § 5, amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "Subject to the extent of amounts made available under section 300ff–30 of this title, the amount of a grant to be made under this part for—

"(A) each of the several States and the District of Columbia for a fiscal year shall be the greater of—

"(i) $100,000, and

"(ii) an amount determined under paragraph (2); and

"(B) each territory of the United States, as defined in paragraph 3, shall be an amount determined under paragraph (2)."

Subsec. (b)(2). Pub. L. 104–146, § 5, amended par. (2) generally, substituting subpars. (A) to (H) for former subpars. (A) and (B) relating to determination of amount of allotments.

Subsec. (c)(1). Pub. L. 104–146, § 3(c)(5)(A), struck out heading and text of par. (1). Text read as follows: "In a State that has reported 1 percent or more of all AIDS cases reported to and confirmed by the Centers for Disease Control and Prevention in all States, not less than 50 percent of the amount received by the State under a grant awarded under this part shall be utilized for the creation and operation of community-based comprehensive care consortia under section 300ff–23 of this title, in those areas within the State in which the largest number of individuals with HIV disease reside."

Subsec. (c)(3), (4). Pub. L. 104–146, § 3(c)(5)(B), amended pars. (3) and (4) generally. Prior to amendment, pars. (3) and (4) read as follows:

"(3) PLANNING AND EVALUATIONS.—A State may not use in excess of 5 percent of amounts received under a grant awarded under this part for planning and evaluation activities.

"(4) ADMINISTRATION.—A State may not use in excess of 5 percent of amounts received under a grant awarded under this part for administration, accounting, reporting, and program oversight functions."

Subsec. (c)(5) to (7). Pub. L. 104–146, § 3(c)(5)(C), (D), added pars. (5) and (6) and redesignated former par. (5) as (7).

1992—Subsec. (c)(1). Pub. L. 102–531 substituted "Centers for Disease Control and Prevention" for "Centers for Disease Control".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 3(c)(5), (g)(2) and 6(c)(3)(A) of Pub. L. 104–146 effective Oct. 1, 1996, and amendment by sections 5 and 6(c)(3)(B) of Pub. L. 104–146 effective May 20, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–29. Technical assistance

The Secretary shall provide technical assistance in administering and coordinating the activities authorized under section 300ff–22 of this title, including technical assistance for the development and implementation of statewide coordinated statements of need.

(July 1, 1944, ch. 373, title XXVI, § 2619, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 597; amended Pub. L. 104–146, § 3(c)(6), May 20, 1996, 110 Stat. 1356.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

1996—Pub. L. 104–146 substituted "shall" for "may" and inserted ", including technical assistance for the development and implementation of statewide coordinated statements of need" before period at end.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, and amendment by section 6(c)(1)(A) of Pub. L. 104–146 effective May 20, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–29a. Supplemental grants

(a) In general

For the purpose of providing services described in section 300ff–22(a) of this title, the Secretary shall make grants to States—

(1) whose applications under section 300ff–27 of this title have demonstrated the need in the State, on an objective and quantified basis, for supplemental financial assistance to provide such services; and

(2) that did not, for the most recent grant year pursuant to section 300ff–28(a)(1) or 300ff–28(a)(2)(G)(i)[1] of this title for which data is available, have more than 2 percent of grant funds under such sections canceled or covered by any waivers under section 300ff–31a(c) of this title.

(b) Demonstrated need

The factors considered by the Secretary in determining whether an eligible area has a demonstrated need for purposes of subsection (a)(1) may include any or all of the following:

(1) The unmet need for such services, as determined under section 300ff–27(b) of this title.

(2) An increasing need for HIV/AIDS-related services, including relative rates of increase in the number of cases of HIV/AIDS.

(3) The relative rates of increase in the number of cases of HIV/AIDS within new or emerging subpopulations.

[1] So in original. Probably should be section "300ff–28(a)(2)(F)(i)".

(4) The current prevalence of HIV/AIDS.

(5) Relevant factors related to the cost and complexity of delivering health care to individuals with HIV/AIDS in the eligible area.

(6) The impact of co-morbid factors, including co-occurring conditions, determined relevant by the Secretary.

(7) The prevalence of homelessness.

(8) The prevalence of individuals described under section 300ff–12(b)(2)(M) of this title.

(9) The relevant factors that limit access to health care, including geographic variation, adequacy of health insurance coverage, and language barriers.

(10) The impact of a decline in the amount received pursuant to section 300ff–28 of this title on services available to all individuals with HIV/AIDS identified and eligible under this subchapter.

(c) Priority in making grants

The Secretary shall provide funds under this section to a State to address the decline in services related to the decline in the amounts received pursuant to section 300ff–28 of this title consistent with the grant award to the State for fiscal year 2006, to the extent that the factor under subsection (b)(10) (relating to a decline in funding) applies to the State.

(d) Report on the awarding of supplemental funds

Not later than 45 days after the awarding of supplemental funds under this section, the Secretary shall submit to Congress a report concerning such funds. Such report shall include information detailing—

(1) the total amount of supplemental funds available under this section for the year involved;

(2) the amount of supplemental funds used in accordance with the hold harmless provisions of section 300ff–28(a)(2) of this title;

(3) the amount of supplemental funds disbursed pursuant to subsection (c);

(4) the disbursement of the remainder of the supplemental funds after taking into account the uses described in paragraphs (2) and (3); and

(5) the rationale used for the amount of funds disbursed as described under paragraphs (2), (3), and (4).

(e) Core medical services

The provisions of section 300ff–22(b) of this title apply with respect to a grant under this section to the same extent and in the same manner as such provisions apply with respect to a grant made pursuant to section 300ff–28(a)(1) of this title.

(f) Applicability of grant authority

The authority to make grants under this section applies beginning with the first fiscal year for which amounts are made available for such grants under section 300ff–31b(b)(1) of this title.

(July 1, 1944, ch. 373, title XXVI, § 2620, as added Pub. L. 109–415, title II, § 205(2), Dec. 19, 2006, 120 Stat. 2797.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 2620 of act July 1, 1944, was renumbered section 2621 and is classified to section 300ff–30 of this title.

Another prior section 2620 of act July 1, 1944, was classified to section 300ff–30 of this title prior to repeal by Pub. L. 104–146.

§ 300ff–30. Emerging communities

(a) In general

The Secretary shall award supplemental grants to States determined to be eligible under subsection (b) of this section to enable such States to provide comprehensive services of the type described in section 300ff–22(a) of this title to supplement the services otherwise provided by the State under a grant under this subpart in emerging communities within the State that are not eligible to receive grants under part A of this subchapter.

(b) Eligibility

To be eligible to receive a supplemental grant under subsection (a) of this section, a State shall—

(1) be eligible to receive a grant under this subpart;

(2) demonstrate the existence in the State of an emerging community as defined in subsection (d)(1) of this section;

(3) agree that the grant will be used to provide funds directly to emerging communities in the State, separately from other funds under this subchapter that are provided by the State to such communities; and

(4) submit the information described in subsection (c) of this section.

(c) Reporting requirements

A State that desires a grant under this section shall, as part of the State application submitted under section 300ff–27 of this title, submit a detailed description of the manner in which the State will use amounts received under the grant and of the severity of need. Such description shall include—

(1) a report concerning the dissemination of supplemental funds under this section and the plan for the utilization of such funds in the emerging community;

(2) a demonstration of the existing commitment of local resources, both financial and in-kind;

(3) a demonstration that the State will maintain HIV-related activities at a level that is equal to not less than the level of such activities in the State for the 1-year period preceding the fiscal year for which the State is applying to receive a grant under section 300ff–21 of this title;

(4) a demonstration of the ability of the State to utilize such supplemental financial resources in a manner that is immediately responsive and cost effective;

(5) a demonstration that the resources will be allocated in accordance with the local demographic incidence of AIDS including appropriate allocations for services for infants, children, women, and families with HIV/AIDS;

(6) a demonstration of the inclusiveness of the planning process, with particular emphasis

on affected communities and individuals with HIV/AIDS; and

(7) a demonstration of the manner in which the proposed services are consistent with local needs assessments and the statewide coordinated statement of need.

(d) Definitions of emerging community

For purposes of this section, the term ''emerging community'' means a metropolitan area (as defined in section 300ff–17 of this title) for which there has been reported to and confirmed by the Director of the Centers for Disease Control and Prevention a cumulative total of at least 500, but fewer than 1,000, cases of AIDS during the most recent period of 5 calendar years for which such data are available.

(e) Continued status as emerging community

Notwithstanding any other provision of this section, a metropolitan area that is an emerging community for a fiscal year continues to be an emerging community until the metropolitan area fails, for three consecutive fiscal years—

(1) to meet the requirements of subsection (d); and

(2) to have a cumulative total of 750 or more living cases of AIDS (reported to and confirmed by the Director of the Centers for Disease Control and Prevention) as of December 31 of the most recent calendar year for which such data is available.

(f) Distribution

The amount of a grant under subsection (a) for a State for a fiscal year shall be an amount equal to the product of—

(1) the amount available under section 300ff–31b(b)(1) of this title for the fiscal year; and

(2) a percentage equal to the ratio constituted by the number of living cases of HIV/AIDS in emerging communities in the State to the sum of the respective numbers of such cases in such communities for all States.

(July 1, 1944, ch. 373, title XXVI, § 2621, formerly § 2620, as added Pub. L. 106–345, title II, § 207(2), Oct. 20, 2000, 114 Stat. 1337; renumbered § 2621 and amended Pub. L. 109–415, title II, §§ 204(a), 205(1), 206, title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2796, 2797, 2799, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 300ff–30, act July 1, 1944, ch. 373, title XXVI, § 2620, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 597, authorized appropriations for fiscal years 1991 through 1995, prior to repeal by Pub. L. 104–146, §§ 6(b), 13, May 20, 1996, 110 Stat. 1367, 1374, effective Oct. 1, 1996.

AMENDMENTS

2006—Pub. L. 109–415, § 206(1), substituted ''Emerging communities'' for ''Supplemental grants'' in section catchline.

Subsec. (b)(3), (4). Pub. L. 109–415, § 206(2), added par. (3) and redesignated former par. (3) as (4).

Subsec. (c)(3). Pub. L. 109–415, § 204(a), substituted ''section 300ff–21 of this title'' for ''this part''.

Subsec. (c)(5), (6). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease''.

Subsecs. (d) to (f). Pub. L. 109–415, § 206(3), added subsecs. (d) to (f) and struck out former subsecs. (d) and (e) defining ''emerging community'' and relating to funding, respectively.

§ 300ff–31. Repealed. Pub. L. 106–345, title II, § 207(1), Oct. 20, 2000, 114 Stat. 1337

Section, act July 1, 1944, ch. 373, title XXVI, § 2621, as added Pub. L. 104–146, § 3(c)(7), May 20, 1996, 110 Stat. 1356, related to coordination of planning and implementation of Federal HIV programs to facilitate the local development of a complete continuum of HIV-related services for individuals with HIV disease and those at risk of such disease and required a biennial report to Congress on coordination efforts.

§ 300ff–31a. Timeframe for obligation and expenditure of grant funds

(a) Obligation by end of grant year

Effective for fiscal year 2007 and subsequent fiscal years, funds from a grant award made to a State for a fiscal year pursuant to section 300ff–28(a)(1) or 300ff–28(a)(2)(G)[1] of this title, or under section 300ff–29a or 300ff–30 of this title, are available for obligation by the State through the end of the one-year period beginning on the date in such fiscal year on which funds from the award first become available to the State (referred to in this section as the ''grant year for the award''), except as provided in subsection (c)(1).

(b) Supplemental grants; cancellation of unobligated balance of grant award

Effective for fiscal year 2007 and subsequent fiscal years, if a grant award made to a State for a fiscal year pursuant to section 300ff–28(a)(2)(G)(ii)[2] of this title, or under section 300ff–29a or 300ff–30 of this title, has an unobligated balance as of the end of the grant year for the award—

(1) the Secretary shall cancel that unobligated balance of the award, and shall require the State to return any amounts from such balance that have been disbursed to the State; and

(2) the funds involved shall be made available by the Secretary as additional amounts for grants pursuant to section 300ff–29a of this title for the first fiscal year beginning after the fiscal year in which the Secretary obtains the information necessary for determining that the balance is required under paragraph (1) to be canceled, except that the availability of the funds for such grants is subject to section 300ff–28(a)(2)(H) of this title as applied for such year.

(c) Formula grants; cancellation of unobligated balance of grant award; waiver permitting carryover

(1) In general

Effective for fiscal year 2007 and subsequent fiscal years, if a grant award made to a State for a fiscal year pursuant to section 300ff–28(a)(1) or 300ff–28(a)(2)(G)(i)[3] of this title

[1] So in original. Probably should be section ''300ff–28(a)(2)(F)''.

[2] So in original. Probably should be section ''300ff–28(a)(2)(F)(ii)''.

[3] So in original. Probably should be section ''300ff–28(a)(2)(F)(i)''.

has an unobligated balance as of the end of the grant year for the award, the Secretary shall cancel that unobligated balance of the award, and shall require the State to return any amounts from such balance that have been disbursed to the State, unless—

(A) before the end of the grant year, the State submits to the Secretary a written application for a waiver of the cancellation, which application includes a description of the purposes for which the State intends to expend the funds involved; and

(B) the Secretary approves the waiver.

(2) Expenditure by end of carryover year

With respect to a waiver under paragraph (1) that is approved for a balance that is unobligated as of the end of a grant year for an award:

(A) The unobligated funds are available for expenditure by the State involved for the one-year period beginning upon the expiration of the grant year (referred to in this section as the ''carryover year'').

(B) If the funds are not expended by the end of the carryover year, the Secretary shall cancel that unexpended balance of the award, and shall require the State to return any amounts from such balance that have been disbursed to the State.

(3) Use of cancelled balances

In the case of any balance of a grant award that is cancelled under paragraph (1) or (2)(B), the grant funds involved shall be made available by the Secretary as additional amounts for grants under section 300ff–29a of this title for the first fiscal year beginning after the fiscal year in which the Secretary obtains the information necessary for determining that the balance is required under such paragraph to be canceled, except that the availability of the funds for such grants is subject to section 300ff–28(a)(2)(H) of this title as applied for such year.

(4) Corresponding reduction in future grant

(A) In general

In the case of a State for which a balance from a grant award made pursuant to section 300ff–28(a)(1) or 300ff–28(a)(2)(G)(i)[3] of this title is unobligated as of the end of the grant year for the award—

(i) the Secretary shall reduce, by the same amount as such unobligated balance, the amount of the grant under such section for the first fiscal year beginning after the fiscal year in which the Secretary obtains the information necessary for determining that such balance was unobligated as of the end of the grant year (which requirement for a reduction applies without regard to whether a waiver under paragraph (1) has been approved with respect to such balance); and

(ii) the grant funds involved in such reduction shall be made available by the Secretary as additional funds for grants under section 300ff–29a of this title for such first fiscal year, subject to section 300ff–28(a)(2)(H) of this title;

except that this subparagraph does not apply to the State if the amount of the unobligated balance was 2 percent or less.

(B) Relation to increases in grant

A reduction under subparagraph (A) for a State for a fiscal year may not be taken into account in applying section 300ff–28(a)(2)(H) of this title with respect to the State for the subsequent fiscal year.

(d) Treatment of drug rebates

For purposes of this section, funds that are drug rebates referred to in section 300ff–26(g) of this title may not be considered part of any grant award referred to in subsection (a).

(July 1, 1944, ch. 373, title XXVI, § 2622, as added Pub. L. 109–415, title II, § 207, Dec. 19, 2006, 120 Stat. 2799.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

§ 300ff–31b. Authorization of appropriations

(a) In general

For the purpose of carrying out this subpart, there are authorized to be appropriated $1,195,500,000 for fiscal year 2007, $1,239,500,000 for fiscal year 2008, and $1,285,200,000 for fiscal year 2009. Amounts appropriated under the preceding sentence for a fiscal year are available for obligation by the Secretary until the end of the second succeeding fiscal year.

(b) Reservation of amounts

(1) Emerging communities

Of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall reserve $5,000,000 for grants under section 300ff–30 of this title.

(2) Supplemental grants

(A) In general

Of the amount appropriated under subsection (a) for a fiscal year in excess of the 2006 adjusted amount, the Secretary shall reserve ⅓ for grants under section 300ff–29a of this title, except that the availability of the reserved funds for such grants is subject to section 300ff–28(a)(2)(H) of this title as applied for such year, and except that any amount appropriated exclusively for carrying out section 300ff–26 of this title (and, accordingly, distributed under section 300ff–28(a)(2)(G)[1] of this title) is not subject to this subparagraph.

(B) 2006 adjusted amount

For purposes of subparagraph (A), the term ''2006 adjusted amount'' means the amount appropriated for fiscal year 2006 under section 300ff–77(b) of this title (as such section was in effect for such fiscal year), excluding any amount appropriated for such year exclusively for carrying out section 300ff–26 of this title (and, accordingly, distributed under section 300ff–28(a)(2)(I) of this title, as so in effect).

[1] So in original. Probably should be section ''300ff–(a)(2)(F)''.

(July 1, 1944, ch. 373, title XXVI, § 2623, as added Pub. L. 109–415, title II, § 208, Dec. 19, 2006, 120 Stat. 2801.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

SUBPART II—PROVISIONS CONCERNING PREGNANCY AND PERINATAL TRANSMISSION OF HIV

§ 300ff–33. Early diagnosis grant program

(a) In general

In the case of States whose laws or regulations are in accordance with subsection (b), the Secretary, acting through the Centers for Disease Control and Prevention, shall make grants to such States for the purposes described in subsection (c).

(b) Description of compliant States

For purposes of subsection (a), the laws or regulations of a State are in accordance with this subsection if, under such laws or regulations (including programs carried out pursuant to the discretion of State officials), both of the policies described in paragraph (1) are in effect, or both of the policies described in paragraph (2) are in effect, as follows:

(1)(A) Voluntary opt-out testing of pregnant women.

(B) Universal testing of newborns.

(2)(A) Voluntary opt-out testing of clients at sexually transmitted disease clinics.

(B) Voluntary opt-out testing of clients at substance abuse treatment centers.

The Secretary shall periodically ensure that the applicable policies are being carried out and recertify compliance.

(c) Use of funds

A State may use funds provided under subsection (a) for HIV/AIDS testing (including rapid testing), prevention counseling, treatment of newborns exposed to HIV/AIDS, treatment of mothers infected with HIV/AIDS, and costs associated with linking those diagnosed with HIV/AIDS to care and treatment for HIV/AIDS.

(d) Application

A State that is eligible for the grant under subsection (a) shall submit an application to the Secretary, in such form, in such manner, and containing such information as the Secretary may require.

(e) Limitation on amount of grant

A grant under subsection (a) to a State for a fiscal year may not be made in an amount exceeding $10,000,000.

(f) Rule of construction

Nothing in this section shall be construed to pre-empt State laws regarding HIV/AIDS counseling and testing.

(g) Definitions

In this section:

(1) The term ''voluntary opt-out testing'' means HIV/AIDS testing—

(A) that is administered to an individual seeking other health care services; and

(B) in which—

(i) pre-test counseling is not required but the individual is informed that the individual will receive an HIV/AIDS test and the individual may opt out of such testing; and

(ii) for those individuals with a positive test result, post-test counseling (including referrals for care) is provided and confidentiality is protected.

(2) The term ''universal testing of newborns'' means HIV/AIDS testing that is administered within 48 hours of delivery to—

(A) all infants born in the State; or

(B) all infants born in the State whose mother's HIV/AIDS status is unknown at the time of delivery.

(h) Authorization of appropriations

Of the funds appropriated annually to the Centers for Disease Control and Prevention for HIV/AIDS prevention activities, $30,000,000 shall be made available for each of the fiscal years 2007 through 2009 for grants under subsection (a), of which $20,000,000 shall be made available for grants to States with the policies described in subsection (b)(1), and $10,000,000 shall be made available for grants to States with the policies described in subsection (b)(2). Funds provided under this section are available until expended.

(July 1, 1944, ch. 373, title XXVI, § 2625, as added Pub. L. 104–146, § 7(b)(3), May 20, 1996, 110 Stat. 1369; amended Pub. L. 106–345, title II, § 212(a), Oct. 20, 2000, 114 Stat. 1339; Pub. L. 109–415, title II, § 209, Dec. 19, 2006, 120 Stat. 2802.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Pub. L. 109–415 amended section catchline and text generally, substituting provisions relating to early diagnosis grant program for provisions requiring State certification of measures to adopt CDC guidelines for pregnant women not later than 120 days after May 20, 1996, and authorizing additional funds if such certification was provided.

2000—Subsec. (c)(1)(F). Pub. L. 106–345, § 212(a)(1), added subpar. (F).

Subsec. (c)(2). Pub. L. 106–345, § 212(a)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''For purposes of carrying out this subsection, there are authorized to be appropriated $10,000,000 for each of the fiscal years 1996 through 2000. Amounts made available under section 300ff–77 of this title for carrying out this part are not available for carrying out this section unless otherwise authorized.''

Subsec. (c)(4). Pub. L. 106–345, § 212(a)(3), added par. (4).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

PERINATAL TRANSMISSION OF HIV DISEASE; CONGRESSIONAL FINDINGS

Section 7(a) of Pub. L. 104–146 provided that: ''The Congress finds as follows:

''(1) Research studies and statewide clinical experiences have demonstrated that administration of antiretroviral medication during pregnancy can signifi-

cantly reduce the transmission of the human immunodeficiency virus (commonly known as HIV) from an infected mother to her baby.

''(2) The Centers for Disease Control and Prevention have recommended that all pregnant women receive HIV counseling; voluntary, confidential HIV testing; and appropriate medical treatment (including antiretroviral therapy) and support services.

''(3) The provision of such testing without access to such counseling, treatment, and services will not improve the health of the woman or the child.

''(4) The provision of such counseling, testing, treatment, and services can reduce the number of pediatric cases of acquired immune deficiency syndrome, can improve access to and provision of medical care for the woman, and can provide opportunities for counseling to reduce transmission among adults, and from mother to child.

''(5) The provision of such counseling, testing, treatment, and services can reduce the overall cost of pediatric cases of acquired immune deficiency syndrome.

''(6) The cancellation or limitation of health insurance or other health coverage on the basis of HIV status should be impermissible under applicable law. Such cancellation or limitation could result in disincentives for appropriate counseling, testing, treatment, and services.

''(7) For the reasons specified in paragraphs (1) through (6)—

''(A) routine HIV counseling and voluntary testing of pregnant women should become the standard of care; and

''(B) the relevant medical organizations as well as public health officials should issue guidelines making such counseling and testing the standard of care.''

§ 300ff–34. Perinatal transmission of HIV/AIDS; contingent requirement regarding State grants under this part

(a) Annual determination of reported cases

A State shall annually determine the rate of reported cases of AIDS as a result of perinatal transmission among residents of the State.

(b) Causes of perinatal transmission

In determining the rate under subsection (a) of this section, a State shall also determine the possible causes of perinatal transmission. Such causes may include—

(1) the inadequate provision within the State of prenatal counseling and testing in accordance with the guidelines issued by the Centers for Disease Control and Prevention;

(2) the inadequate provision or utilization within the State of appropriate therapy or failure of such therapy to reduce perinatal transmission of HIV, including—

(A) that therapy is not available, accessible or offered to mothers; or

(B) that available therapy is offered but not accepted by mothers; or

(3) other factors (which may include the lack of prenatal care) determined relevant by the State.

(c) CDC reporting system

Not later than 4 months after May 20, 1996, the Director of the Centers for Disease Control and Prevention shall develop and implement a system to be used by States to comply with the requirements of subsections (a) and (b) of this section. The Director shall issue guidelines to ensure that the data collected is statistically valid.

(July 1, 1944, ch. 373, title XXVI, § 2626, as added Pub. L. 104–146, § 7(b)(3), May 20, 1996, 110 Stat. 1369; amended Pub. L. 104–166, § 5(1), July 29, 1996, 110 Stat. 1449; Pub. L. 106–345, title II, § 211(1), Oct. 20, 2000, 114 Stat. 1339; Pub. L. 109–415, title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Pub. L. 109–415 substituted ''HIV/AIDS'' for ''HIV disease'' in section catchline.

2000—Subsecs. (d) to (f). Pub. L. 106–345 struck out subsecs. (d) to (f), which related, respectively, to determination by Secretary, contingent applicability, and limitation regarding availability of funds.

1996—Subsec. (d). Pub. L. 104–166, § 5(1)(A), substituted ''(1) through (4)'' for ''(1) through (5)''.

Subsec. (f). Pub. L. 104–166, § 5(1)(B), substituted ''(1) through (4)'' for ''(1) through (5)'' in introductory provisions.

EFFECTIVE DATE

Section effective May 20, 1996, see section 13(b) of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

§§ 300ff–35, 300ff–36. Repealed. Pub. L. 106–345, title II, § 211(2), Oct. 20, 2000, 114 Stat. 1339

Section 300ff–35, act July 1, 1944, ch. 373, title XXVI, § 2627, as added Pub. L. 104–146, § 7(b)(3), May 20, 1996, 110 Stat. 1371, related to testing of pregnant women and newborn infants for HIV disease.

Section 300ff–36, act July 1, 1944, ch. 373, title XXVI, § 2628, as added Pub. L. 104–146, § 7(b)(3), May 20, 1996, 110 Stat. 1372, related to report to Congress by Institute of Medicine.

§ 300ff–37. State HIV testing programs established prior to or after May 20, 1996

Nothing in this subpart shall be construed to disqualify a State from receiving grants under this subchapter if such State has established at any time prior to or after May 20, 1996, a program of mandatory HIV testing.

(July 1, 1944, ch. 373, title XXVI, § 2627, formerly § 2629, as added Pub. L. 104–146, § 7(b)(3), May 20, 1996, 110 Stat. 1372; renumbered § 2627, Pub. L. 106–345, title II, § 211(3), Oct. 20, 2000, 114 Stat. 1339.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 2627 of act July 1, 1944, was classified to section 300ff–35 of this title prior to repeal by Pub. L. 106–345.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

§ 300ff–37a. Recommendations for reducing incidence of perinatal transmission

(a) Study by Institute of Medicine

(1) In general

The Secretary shall request the Institute of Medicine to enter into an agreement with the

Secretary under which such Institute conducts a study to provide the following:

(A) For the most recent fiscal year for which the information is available, a determination of the number of newborn infants with HIV born in the United States with respect to whom the attending obstetrician for the birth did not know the HIV status of the mother.

(B) A determination for each State of any barriers, including legal barriers, that prevent or discourage an obstetrician from making it a routine practice to offer pregnant women an HIV test and a routine practice to test newborn infants for HIV/AIDS in circumstances in which the obstetrician does not know the HIV status of the mother of the infant.

(C) Recommendations for each State for reducing the incidence of cases of the perinatal transmission of HIV, including recommendations on removing the barriers identified under subparagraph (B).

If such Institute declines to conduct the study, the Secretary shall enter into an agreement with another appropriate public or nonprofit private entity to conduct the study.

(2) Report

The Secretary shall ensure that, not later than 18 months after the effective date of this section, the study required in paragraph (1) is completed and a report describing the findings made in the study is submitted to the appropriate committees of the Congress, the Secretary, and the chief public health official of each of the States.

(b) Progress toward recommendations

In fiscal year 2004, the Secretary shall collect information from the States describing the actions taken by the States toward meeting the recommendations specified for the States under subsection (a)(1)(C) of this section.

(c) Submission of reports to Congress

The Secretary shall submit to the appropriate committees of the Congress reports describing the information collected under subsection (b) of this section.

(July 1, 1944, ch. 373, title XXVI, § 2628, as added Pub. L. 106–345, title II, § 213, Oct. 20, 2000, 114 Stat. 1342; amended Pub. L. 109–415, title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (a)(2), is Oct. 20, 2000. See section 601 of Pub. L. 106–345, set out as an Effective Date of 2000 Amendment note under section 300ff–12 of this title.

PRIOR PROVISIONS

A prior section 2628 of act July 1, 1944, was classified to section 300ff–36 of this title prior to repeal by Pub. L. 106–345.

AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109–415 substituted ''HIV/AIDS'' for ''HIV disease''.

SUBPART III—CERTAIN PARTNER NOTIFICATION PROGRAMS

§ 300ff–38. Grants for partner notification programs

(a) In general

In the case of States whose laws or regulations are in accordance with subsection (b) of this section, the Secretary, subject to subsection (c)(2) of this section, may make grants to the States for carrying out programs to provide partner counseling and referral services.

(b) Description of compliant State programs

For purposes of subsection (a) of this section, the laws or regulations of a State are in accordance with this subsection if under such laws or regulations (including programs carried out pursuant to the discretion of State officials) the following policies are in effect:

(1) The State requires that the public health officer of the State carry out a program of partner notification to inform partners of individuals with HIV/AIDS that the partners may have been exposed to the disease.

(2)(A) In the case of a health entity that provides for the performance on an individual of a test for HIV/AIDS, or that treats the individual for the disease, the State requires, subject to subparagraph (B), that the entity confidentially report the positive test results to the State public health officer in a manner recommended and approved by the Director of the Centers for Disease Control and Prevention, together with such additional information as may be necessary for carrying out such program.

(B) The State may provide that the requirement of subparagraph (A) does not apply to the testing of an individual for HIV/AIDS if the individual underwent the testing through a program designed to perform the test and provide the results to the individual without the individual disclosing his or her identity to the program. This subparagraph may not be construed as affecting the requirement of subparagraph (A) with respect to a health entity that treats an individual for HIV/AIDS.

(3) The program under paragraph (1) is carried out in accordance with the following:

(A) Partners are provided with an appropriate opportunity to learn that the partners have been exposed to HIV/AIDS, subject to subparagraph (B).

(B) The State does not inform partners of the identity of the infected individuals involved.

(C) Counseling and testing for HIV/AIDS are made available to the partners and to infected individuals, and such counseling includes information on modes of transmission for the disease, including information on prenatal and perinatal transmission and preventing transmission.

(D) Counseling of infected individuals and their partners includes the provision of information regarding therapeutic measures for preventing and treating the deterioration of the immune system and conditions arising from the disease, and the provision of other prevention-related information.

(E) Referrals for appropriate services are provided to partners and infected individuals, including referrals for support services and legal aid.

(F) Notifications under subparagraph (A) are provided in person, unless doing so is an unreasonable burden on the State.

(G) There is no criminal or civil penalty on, or civil liability for, an infected individual if the individual chooses not to identify the partners of the individual, or the individual does not otherwise cooperate with such program.

(H) The failure of the State to notify partners is not a basis for the civil liability of any health entity who under the program reported to the State the identity of the infected individual involved.

(I) The State provides that the provisions of the program may not be construed as prohibiting the State from providing a notification under subparagraph (A) without the consent of the infected individual involved.

(4) The State annually reports to the Director of the Centers for Disease Control and Prevention the number of individuals from whom the names of partners have been sought under the program under paragraph (1), the number of such individuals who provided the names of partners, and the number of partners so named who were notified under the program.

(5) The State cooperates with such Director in carrying out a national program of partner notification, including the sharing of information between the public health officers of the States.

(c) Reporting system for cases of HIV/AIDS; preference in making grants

In making grants under subsection (a) of this section, the Secretary shall give preference to States whose reporting systems for cases of HIV/AIDS produce data on such cases that is sufficiently accurate and reliable for use for purposes of section 300ff–28(a)(2)(D)(i) of this title.

(d) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $10,000,000 for each of the fiscal years 2007 through 2009.

(July 1, 1944, ch. 373, title XXVI, § 2631, as added Pub. L. 106–345, title II, § 221, Oct. 20, 2000, 114 Stat. 1343; amended Pub. L. 109–415, title II, § 210, title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2803, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Subsecs. (b), (c). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease'' wherever appearing.

Subsec. (d). Pub. L. 109–415, § 210, substituted ''there is authorized to be appropriated $10,000,000 for each of the fiscal years 2007 through 2009.'' for ''there are authorized to be appropriated $30,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 through 2005.''

PART C—EARLY INTERVENTION SERVICES

§§ 300ff–41 to 300ff–50. Repealed. Pub. L. 106–345, title III, § 301(a), Oct. 20, 2000, 114 Stat. 1345

Section 300ff–41, act July 1, 1944, ch. 373, title XXVI, § 2641, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 597; amended Pub. L. 102–531, title III, § 312(d)(31), Oct. 27, 1992, 106 Stat. 3506, established program of formula grants to States.

Section 300ff–42, act July 1, 1944, ch. 373, title XXVI, § 2642, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 599, related to provision of services through medicaid providers.

Section 300ff–43, act July 1, 1944, ch. 373, title XXVI, § 2643, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 600; amended Pub. L. 102–531, title III, § 312(d)(32), Oct. 27, 1992, 106 Stat. 3506, related to requirement of matching funds.

Section 300ff–44, act July 1, 1944, ch. 373, title XXVI, § 2644, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 601, related to the offering and encouraging of early intervention services.

Section 300ff–45, act July 1, 1944, ch. 373, title XXVI, § 2645, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 602, related to notification of certain individuals receiving blood transfusions.

Section 300ff–46, act July 1, 1944, ch. 373, title XXVI, § 2646, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 602, related to reporting and partner notification.

Section 300ff–47, act July 1, 1944, ch. 373, title XXVI, § 2647, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 603; amended Pub. L. 101–502, § 6(c), Nov. 3, 1990, 104 Stat. 1291; Pub. L. 104–146, § 12(c)(4), May 20, 1996, 110 Stat. 1373, related to requirement of State law protection against intentional transmission.

Section 300ff–48, act July 1, 1944, ch. 373, title XXVI, § 2648, formerly Pub. L. 100–607, title IX, § 902, Nov. 4, 1988, 102 Stat. 3171; amended Pub. L. 100–690, title II, § 2605(a), Nov. 18, 1988, 102 Stat. 4234; renumbered § 2648 and amended Pub. L. 101–381, title III, § 301(b), Aug. 18, 1990, 104 Stat. 614; Pub. L. 104–146, § 12(c)(5), May 20, 1996, 110 Stat. 1374, related to testing and other early intervention services for State prisoners.

Section 300ff–49, act July 1, 1944, ch. 373, title XXVI, § 2649, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 604; amended Pub. L. 101–502, § 6(b), Nov. 3, 1990, 104 Stat. 1290; Pub. L. 102–531, title III, § 312(d)(33), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 104–146, § 12(c)(6), May 20, 1996, 110 Stat. 1374, related to determination of amount of allotments.

Section 300ff–49a, act July 1, 1944, ch. 373, title XXVI, § 2649A, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 605, related to miscellaneous prerequisites for the Secretary to make a grant.

Section 300ff–50, act July 1, 1944, ch. 373, title XXVI, § 2650, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 606, authorized appropriations.

SUBPART I—CATEGORICAL GRANTS

AMENDMENTS

Pub. L. 106–345, title III, § 301(b)(1), Oct. 20, 2000, 114 Stat. 1345, redesignated subpart II as subpart I.

PRIOR PROVISIONS

A prior subpart I, consisting of sections 300ff–41 to 300ff–50, related to formula grants for States, prior to repeal by Pub. L. 106–345, title III, § 301(a), Oct. 20, 2000, 114 Stat. 1345.

§ 300ff–51. Establishment of a program

(a) In general

For the purposes described in subsection (b), the Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to public and non-

profit private entities specified in section 300ff–52(a) of this title.

(b) Requirements

(1) In general

The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees to expend the grant only for—

(A) core medical services described in subsection (c);

(B) support services described in subsection (d); and

(C) administrative expenses as described in section 300ff–64(g)(3) of this title.

(2) Early intervention services

An applicant for a grant under subsection (a) shall expend not less than 50 percent of the amount received under the grant for the services described in subparagraphs (B) through (E) of subsection (e)(1) for individuals with HIV/AIDS.

(c) Required funding for core medical services

(1) In general

With respect to a grant under subsection (a) to an applicant for a fiscal year, the applicant shall, of the portion of the grant remaining after reserving amounts for purposes of paragraphs (3) and (5) of section 300ff–64(g) of this title, use not less than 75 percent to provide core medical services that are needed in the area involved for individuals with HIV/AIDS who are identified and eligible under this subchapter (including services regarding the co-occurring conditions of the individuals).

(2) Waiver

(A) The Secretary shall waive the application of paragraph (1) with respect to an applicant for a grant if the Secretary determines that, within the service area of the applicant—

(i) there are no waiting lists for AIDS Drug Assistance Program services under section 300ff–26 of this title; and

(ii) core medical services are available to all individuals with HIV/AIDS identified and eligible under this subchapter.

(B) NOTIFICATION OF WAIVER STATUS.—When informing an applicant that a grant under subsection (a) is being made for a fiscal year, the Secretary shall inform the applicant whether a waiver under subparagraph (A) is in effect for the fiscal year.

(3) Core medical services

For purposes of this subsection, the term ''core medical services'', with respect to an individual with HIV/AIDS (including the co-occurring conditions of the individual) means the following services:

(A) Outpatient and ambulatory health services.

(B) AIDS Drug Assistance Program treatments under section 300ff–26 of this title.

(C) AIDS pharmaceutical assistance.

(D) Oral health care.

(E) Early intervention services described in subsection (e).

(F) Health insurance premium and cost sharing assistance for low-income individuals in accordance with section 300ff–25 of this title.

(G) Home health care.

(H) Medical nutrition therapy.

(I) Hospice services.

(J) Home and community-based health services as defined under section 300ff–24(c) of this title.

(K) Mental health services.

(L) Substance abuse outpatient care.

(M) Medical case management, including treatment adherence services.

(d) Support services

(1) In general

For purposes of this section, the term ''support services'' means services, subject to the approval of the Secretary, that are needed for individuals with HIV/AIDS to achieve their medical outcomes (such as respite care for persons caring for individuals with HIV/AIDS, outreach services, medical transportation, linguistic services, and referrals for health care and support services).

(2) Definition of medical outcomes

In this section, the term ''medical outcomes'' means those outcomes affecting the HIV-related clinical status of an individual with HIV/AIDS.

(e) Specification of early intervention services

(1) In general

The early intervention services referred to in this section are—

(A) counseling individuals with respect to HIV/AIDS in accordance with section 300ff–62 of this title;

(B) testing individuals with respect to HIV/AIDS, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from HIV/AIDS;

(C) referrals described in paragraph (2);

(D) other clinical and diagnostic services regarding HIV/AIDS, and periodic medical evaluations of individuals with HIV/AIDS; and

(E) providing the therapeutic measures described in subparagraph (B).

(2) Referrals

The services referred to in paragraph (1)(C) are referrals of individuals with HIV/AIDS to appropriate providers of health and support services, including, as appropriate—

(A) to entities receiving amounts under part A or B for the provision of such services;

(B) to biomedical research facilities of institutions of higher education that offer experimental treatment for such disease, or to community-based organizations or other entities that provide such treatment; or

(C) to grantees under section 300ff–71 of this title, in the case of a pregnant woman.

(3) Requirement of availability of all early intervention services through each grantee

(A) In general

The Secretary may not make a grant under subsection (a) unless the applicant for

the grant agrees that each of the early intervention services specified in paragraph (2) will be available through the grantee. With respect to compliance with such agreement, such a grantee may expend the grant to provide the early intervention services directly, and may expend the grant to enter into agreements with public or nonprofit private entities, or private for-profit entities if such entities are the only available provider of quality HIV care in the area, under which the entities provide the services.

(B) Other requirements

Grantees described in—

(i) subparagraphs (A), (D), (E), and (F) of section 300ff–52(a)(1) of this title shall use not less than 50 percent of the amount of such a grant to provide the services described in subparagraphs (A), (B), (D), and (E) of paragraph (1) directly and on-site or at sites where other primary care services are rendered; and

(ii) subparagraphs (B) and (C) of section 300ff–52(a)(1) of this title shall ensure the availability of early intervention services through a system of linkages to community-based primary care providers, and to establish mechanisms for the referrals described in paragraph (1)(C), and for follow-up concerning such referrals.

(July 1, 1944, ch. 373, title XXVI, § 2651, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 606; amended Pub. L. 101–557, title IV, § 401(b)(2), Nov. 15, 1990, 104 Stat. 2771; Pub. L. 104–146, §§ 3(d)(1), 12(c)(7), May 20, 1996, 110 Stat. 1357, 1374; Pub. L. 109–415, title III, § 301(a), Dec. 19, 2006, 120 Stat. 2803.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Pub. L. 109–415 amended section catchline and text generally, reenacting subsec. (a) without change and substituting subsecs. (b) to (e) for former subsecs. (b) and (c), which related to purposes of grants and participation in a consortium, respectively.

1996—Subsec. (b)(1). Pub. L. 104–146, § 3(d)(1)(A), inserted before period ", and unless the applicant agrees to expend not less than 50 percent of the grant for such services that are specified in subparagraphs (B) through (E) of such paragraph for individuals with HIV disease".

Subsec. (b)(3)(B). Pub. L. 104–146, § 12(c)(7)(A), substituted "facilities" for "facility".

Subsec. (b)(4). Pub. L. 104–146, § 3(d)(1)(B), designated existing provisions as subpar. (A) and inserted heading, inserted ", or private for-profit entities if such entities are the only available provider of quality HIV care in the area," after "nonprofit private entities", realigned margin, and added subpar. (B).

Subsec. (c). Pub. L. 104–146, § 12(c)(7)(B), substituted "exists" for "exist".

1990—Subsec. (a). Pub. L. 101–557 substituted "section 300ff–52(a)" for "section 300ff–52(a)(1)".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–52. Minimum qualifications of grantees

(a) Eligible entities

(1) In general

The entities referred to in section 300ff–51(a) of this title are public entities and nonprofit private entities that are—

(A) federally-qualified health centers under section 1905(*l*)(2)(B) of the Social Security Act [42 U.S.C. 1396d(*l*)(2)(B)];

(B) grantees under section 300 of this title (regarding family planning) other than States;

(C) comprehensive hemophilia diagnostic and treatment centers;

(D) rural health clinics;

(E) health facilities operated by or pursuant to a contract with the Indian Health Service;

(F) community-based organizations, clinics, hospitals and other health facilities that provide early intervention services to those persons infected with HIV/AIDS through intravenous drug use; or

(G) nonprofit private entities that provide comprehensive primary care services to populations at risk of HIV/AIDS, including faith-based and community-based organizations.

(2) Underserved populations

Entities described in paragraph (1) shall serve underserved populations which may include minority populations and Native American populations, ex-offenders, individuals with comorbidities including hepatitis B or C, mental illness, or substance abuse, low-income populations, inner city populations, and rural populations.

(b) Status as medicaid provider

(1) In general

Subject to paragraph (2), the Secretary may not make a grant under section 300ff–51 of this title for the provision of services described in subsection (b) of such section in a State unless, in the case of any such service that is available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State—

(A) the applicant for the grant will provide the service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(B) the applicant for the grant will enter into an agreement with a public or nonprofit private entity, or a private for-profit entity if such entity is the only available provider of quality HIV care in the area, under which the entity will provide the service, and the entity has entered into such a participation agreement and is qualified to receive such payments.

(2) Waiver regarding certain secondary agreements

(A) In the case of an entity making an agreement pursuant to paragraph (1)(B) regarding the provision of services, the requirement established in such paragraph regarding a par-

ticipation agreement shall be waived by the Secretary if the entity does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) A determination by the Secretary of whether an entity referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the entity accepts voluntary donations regarding the provision of services to the public.

(July 1, 1944, ch. 373, title XXVI, § 2652, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 607; amended Pub. L. 101–557, title IV, § 401(b)(3), Nov. 15, 1990, 104 Stat. 2771; Pub. L. 104–146, § 3(d)(2), May 20, 1996, 110 Stat. 1357; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 108–163, § 2(m)(3), Dec. 6, 2003, 117 Stat. 2023; Pub. L. 109–415, title III, § 302(a), Dec. 19, 2006, 120 Stat. 2806.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–415 amended heading and text of subsec. (a) generally, substituting provisions listing eligible entities and directing that such entities serve underserved populations for provisions listing eligible entities.

2003—Subsec. (a)(2). Pub. L. 108–163 substituted ''254b(h)'' for ''256''.

2002—Pub. L. 107–251, which directed the substitution of ''254b(h)'' for ''256'' in subsec. (2), could not be executed because section does not contain a subsec. (2).

1996—Subsec. (b)(1)(B). Pub. L. 104–146 inserted '', or a private for-profit entity if such entity is the only available provider of quality HIV care in the area,'' after ''nonprofit private entity''.

1990—Subsec. (a). Pub. L. 101–557 substituted ''referred to in section 300ff–51(a) of this title'' for ''referred to in subsection (b) of this section'', redesignated pars. (A) to (F) as (1) to (6), respectively, and substituted ''nonprofit private entities that provide'' for ''a nonprofit private entity that provides'' in par. (6).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

§ 300ff–53. Preferences in making grants

(a) In general

In making grants under section 300ff–51 of this title, the Secretary shall give preference to any qualified applicant experiencing an increase in the burden of providing services regarding HIV/AIDS, as indicated by the factors specified in subsection (b) of this section.

(b) Specification of factors

(1) In general

In the case of the geographic area with respect to which the entity involved is applying for a grant under section 300ff–51 of this title, the factors referred to in subsection (a) of this section, as determined for the period specified in paragraph (2), are—

(A) the number of cases of HIV/AIDS;

(B) the rate of increase in such cases;

(C) the lack of availability of early intervention services;

(D) the number of other cases of sexually transmitted diseases, and[1] the number of cases of tuberculosis and of drug abuse[2] and the number of cases of individuals co-infected with HIV/AIDS and hepatitis B or C;

(E) the rate of increase in each of the cases specified in subparagraph (D);

(F) the lack of availability of primary health services from providers other than such applicant; and

(G) the distance between such area and the nearest community that has an adequate level of availability of appropriate HIV-related services, and the length of time required to travel such distance.

(2) Relevant period of time

The period referred to in paragraph (1) is the 2-year period preceding the fiscal year for which the entity involved is applying to receive a grant under section 300ff–51 of this title.

(c) Equitable allocations

In providing preferences for purposes of subsection (b) of this section, the Secretary shall equitably allocate the preferences among urban and rural areas.

(d) Certain areas

Of the applicants who qualify for preference under this section—

(1) the Secretary shall give preference to applicants that will expend the grant under section 300ff–51 of this title to provide early intervention under such section in rural areas; and

(2) the Secretary shall give preference to areas that are underserved with respect to such services.

(July 1, 1944, ch. 373, title XXVI, § 2653, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 608; amended Pub. L. 106–345, title III, § 311, Oct. 20, 2000, 114 Stat. 1345; Pub. L. 109–415, title

[1] So in original. The word ''and'' probably should not appear.

[2] So in original. A comma probably should appear.

III, § 302(b), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2806, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease''.

Subsec. (b)(1)(A). Pub. L. 109–415, § 302(b)(1)(A), substituted ''HIV/AIDS'' for ''acquired immune deficiency syndrome''.

Subsec. (b)(1)(D). Pub. L. 109–415, § 302(b)(1)(B), inserted ''and the number of cases of individuals co-infected with HIV/AIDS and hepatitis B or C'' before semicolon at end.

Subsec. (d)(2). Pub. L. 109–415, § 302(b)(2), substituted ''preference'' for ''special consideration''.

2000—Subsec. (d). Pub. L. 106–345 added subsec. (d).

§ 300ff–54. Miscellaneous provisions

(a) Services for individuals with hemophilia

In making grants under section 300ff–51 of this title, the Secretary shall ensure that any such grants made regarding the provision of early intervention services to individuals with hemophilia are made through the network of comprehensive hemophilia diagnostic and treatment centers.

(b) Technical assistance

The Secretary may, directly or through grants or contracts, provide technical assistance to nonprofit private entities regarding the process of submitting to the Secretary applications for grants under section 300ff–51 of this title, and may provide technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to such section.

(c) Planning and development grants

(1) In general

The Secretary may provide planning grants to public and nonprofit private entities for purposes of—

(A) enabling such entities to provide early intervention services; and

(B) assisting the entities in expanding their capacity to provide HIV/AIDS-related health services, including early intervention services, in low-income communities and affected subpopulations that are underserved with respect to such services (subject to the condition that a grant pursuant to this subparagraph may not be expended to purchase or improve land, or to purchase, construct, or permanently improve, other than minor remodeling, any building or other facility).

(2) Requirement

The Secretary may only award a grant to an entity under paragraph (1) if the Secretary determines that the entity will use such grant to assist the entity in qualifying for a grant under section 300ff–51 of this title.

(3) Preference

In awarding grants under paragraph (1), the Secretary shall give preference to entities that provide primary care services in rural areas or to underserved populations.

(4) Amount and duration of grants

(A) Early intervention services

A grant under paragraph (1)(A) may be made in an amount not to exceed $50,000.

(B) Capacity development

(i) Amount

A grant under paragraph (1)(B) may be made in an amount not to exceed $150,000.

(ii) Duration

The total duration of a grant under paragraph (1)(B), including any renewal, may not exceed 3 years.

(5) Limitation

Not to exceed 5 percent of the amount appropriated for a fiscal year under section 300ff–55 of this title may be used to carry out this section.

(July 1, 1944, ch. 373, title XXVI, § 2654, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 608; amended Pub. L. 104–146, § 3(d)(3), May 20, 1996, 110 Stat. 1357; Pub. L. 106–345, title III, § 312, Oct. 20, 2000, 114 Stat. 1345; Pub. L. 109–415, title III, § 302(c), Dec. 19, 2006, 120 Stat. 2807.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Subsec. (c)(1)(A). Pub. L. 109–415, § 302(c)(1)(A), struck out ''HIV'' after ''provide''.

Subsec. (c)(1)(B). Pub. L. 109–415, § 302(c)(1)(B), substituted ''HIV/AIDS-related'' for ''HIV-related''.

Subsec. (c)(3). Pub. L. 109–415, § 302(c)(2), substituted ''areas or to underserved populations'' for ''or underserved communities''.

2000—Subsec. (c)(1). Pub. L. 106–345, § 312(a), substituted ''planning grants to public and nonprofit private entities for purposes of—'' and subpars. (A) and (B) for ''planning grants, in an amount not to exceed $50,000 for each such grant, to public and nonprofit private entities for the purpose of enabling such entities to provide HIV early intervention services.''

Subsec. (c)(4). Pub. L. 106–345, § 312(b)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 106–345, § 312(b)(1), (c), redesignated par. (4) as (5) and substituted ''5 percent'' for ''1 percent''.

1996—Subsec. (c). Pub. L. 104–146 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–55. Authorization of appropriations

For the purpose of making grants under section 300ff–51 of this title, there are authorized to be appropriated, $218,600,000 for fiscal year 2007, $226,700,000 for fiscal year 2008, and $235,100,000 for fiscal year 2009.

(July 1, 1944, ch. 373, title XXVI, § 2655, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 609; amended Pub. L. 104–146, § 3(d)(4), May 20, 1996, 110 Stat. 1358; Pub. L. 106–345, title III, § 313, Oct. 20, 2000, 114 Stat. 1346; Pub. L. 109–415, title III, § 303, Dec. 19, 2006, 120 Stat. 2807.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Pub. L. 109–415 substituted ‘‘, $218,600,000 for fiscal year 2007, $226,700,000 for fiscal year 2008, and $235,100,000 for fiscal year 2009’’ for ‘‘such sums as may be necessary for each of the fiscal years 2001 through 2005’’.

2000—Pub. L. 106–345 substituted ‘‘for each of the fiscal years 2001 through 2005’’ for ‘‘in each of the fiscal years 1996, 1997, 1998, 1999, and 2000’’.

1996—Pub. L. 104–146 substituted ‘‘such sums as may be necessary in each of the fiscal years 1996, 1997, 1998, 1999, and 2000.’’ for ‘‘$75,000,000 for fiscal years 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.’’

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

SUBPART II—GENERAL PROVISIONS

PRIOR PROVISIONS

A prior subpart II, consisting of sections 300ff–51 to 300ff–55, was redesignated subpart I of this part by Pub. L. 106–345, title III, § 301(b)(1), Oct. 20, 2000, 114 Stat. 1345.

AMENDMENTS

Pub. L. 106–345, title III, § 301(b)(1), Oct. 20, 2000, 114 Stat. 1345, redesignated subpart III as subpart II.

§ 300ff–61. Confidentiality and informed consent

(a) Confidentiality

The Secretary may not make a grant under this part unless, in the case of any entity applying for a grant under section 300ff–51 of this title, the entity agrees to ensure that information regarding the receipt of early intervention services pursuant to the grant is maintained confidentially in a manner not inconsistent with applicable law.

(b) Informed consent

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, in testing an individual for HIV/AIDS, the applicant will test an individual only after the individual confirms that the decision of the individual with respect to undergoing such testing is voluntarily made.

(July 1, 1944, ch. 373, title XXVI, § 2661, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 609; amended Pub. L. 106–345, title III, § 301(b)(2), Oct. 20, 2000, 114 Stat. 1345; Pub. L. 109–415, title III, § 304, Dec. 19, 2006, 120 Stat. 2807.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Pub. L. 109–415 reenacted section catchline without change and amended text generally, substituting provisions relating to confidentiality and informed consent for provisions relating to confidentiality, informed written consent, and anonymous testing.

2000—Subsec. (a). Pub. L. 106–345 struck out par. (1) and par. (2) designation. Prior to amendment, par. (1) read as follows: ‘‘in the case of any State applying for a grant under section 300ff–41 of this title, the State agrees to ensure that information regarding the receipt of early intervention services is maintained confidentially pursuant to law or regulations in a manner not inconsistent with applicable law; and’’.

§ 300ff–62. Provision of certain counseling services

(a) Counseling of individuals with negative test results

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, if the results of testing conducted for HIV/AIDS indicate that an individual does not have such condition, the applicant will provide the individual information, including—

(1) measures for prevention of, exposure to, and transmission of HIV/AIDS, hepatitis B, hepatitis C, and other sexually transmitted diseases;

(2) the accuracy and reliability of results of testing for HIV/AIDS, hepatitis B, and hepatitis C;

(3) the significance of the results of such testing, including the potential for developing AIDS, hepatitis B, or hepatitis C;

(4) the appropriateness of further counseling, testing, and education of the individual regarding HIV/AIDS and other sexually transmitted diseases;

(5) if diagnosed with chronic hepatitis B or hepatitis C co-infection, the potential of developing hepatitis-related liver disease and its impact on HIV/AIDS; and

(6) information regarding the availability of hepatitis B vaccine and information about hepatitis treatments.

(b) Counseling of individuals with positive test results

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, if the results of testing for HIV/AIDS indicate that the individual has such condition, the applicant will provide to the individual appropriate counseling regarding the condition, including—

(1) information regarding—

(A) measures for prevention of, exposure to, and transmission of HIV/AIDS, hepatitis B, and hepatitis C;

(B) the accuracy and reliability of results of testing for HIV/AIDS, hepatitis B, and hepatitis C; and

(C) the significance of the results of such testing, including the potential for developing AIDS, hepatitis B, or hepatitis C;

(2) reviewing the appropriateness of further counseling, testing, and education of the individual regarding HIV/AIDS and other sexually transmitted diseases; and

(3) providing counseling—

(A) on the availability, through the applicant, of early intervention services;

(B) on the availability in the geographic area of appropriate health care, mental health care, and social and support services, including providing referrals for such services, as appropriate;

(C)(i) that explains the benefits of locating and counseling any individual by whom the infected individual may have been exposed to HIV/AIDS, hepatitis B, or hepatitis C and

any individual whom the infected individual may have exposed to HIV/AIDS, hepatitis B, or hepatitis C; and

(ii) that emphasizes it is the duty of infected individuals to disclose their infected status to their sexual partners and their partners in the sharing of hypodermic needles; that provides advice to infected individuals on the manner in which such disclosures can be made; and that emphasizes that it is the continuing duty of the individuals to avoid any behaviors that will expose others to HIV/AIDS, hepatitis B, or hepatitis C; and

(D) on the availability of the services of public health authorities with respect to locating and counseling any individual described in subparagraph (C);

(4) if diagnosed with chronic hepatitis B or hepatitis C co-infection, the potential of developing hepatitis-related liver disease and its impact on HIV/AIDS; and

(5) information regarding the availability of hepatitis B vaccine.

(c) Additional requirements regarding appropriate counseling

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, in counseling individuals with respect to HIV/AIDS, the applicant will ensure that the counseling is provided under conditions appropriate to the needs of the individuals.

(d) Counseling of emergency response employees

The Secretary may not make a grant under this part to a State unless the State agrees that, in counseling individuals with respect to HIV/AIDS, the State will ensure that, in the case of emergency response employees, the counseling is provided to such employees under conditions appropriate to the needs of the employees regarding the counseling.

(e) Rule of construction regarding counseling without testing

Agreements made pursuant to this section may not be construed to prohibit any grantee under this part from expending the grant for the purpose of providing counseling services described in this section to an individual who does not undergo testing for HIV/AIDS as a result of the grantee or the individual determining that such testing of the individual is not appropriate.

(July 1, 1944, ch. 373, title XXVI, § 2662, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 610; amended Pub. L. 106–345, title III, § 321, Oct. 20, 2000, 114 Stat. 1346; Pub. L. 109–415, title III, § 305, Dec. 19, 2006, 120 Stat. 2807.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Pub. L. 109–415 reenacted heading without change and amended text generally, substituting provisions relating to counseling of individuals after testing for HIV/AIDS, appropriateness of conditions, counseling of emergency response employees, and counseling without testing, for provisions relating to counseling of individuals before and after testing, appropriateness of conditions, counseling of emergency response employees, and counseling without testing.

2000—Subsec. (c)(3). Pub. L. 106–345, § 321(1), in introductory provisions struck out ''on'' after ''counseling''.

Subsec. (c)(3)(A), (B). Pub. L. 106–345, § 321(2), inserted ''on'' before ''the availability''.

Subsec. (c)(3)(C). Pub. L. 106–345, § 321(3), designated existing provisions as cl. (i), inserted ''that explains'' before ''the benefits'', and added cl. (ii).

Subsec. (c)(3)(D). Pub. L. 106–345, § 321(2), inserted ''on'' before ''the availability''.

§ 300ff–63. Applicability of requirements regarding confidentiality, informed consent, and counseling

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, with respect to testing for HIV/AIDS, any such testing carried out by the applicant with funds appropriated through this chapter will be carried out in accordance with conditions described in sections 300ff–61 and 300ff–62 of this title.

(July 1, 1944, ch. 373, title XXVI, § 2663, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 611; amended Pub. L. 109–415, title III, § 306(a), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2809, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease''.

Pub. L. 109–415, § 306(a), substituted ''with funds appropriated through this chapter will be carried'' for ''will, without regard to whether such testing is carried out with Federal funds, be carried''.

§ 300ff–64. Additional required agreements

(a) Reports to Secretary

The Secretary may not make a grant under this part unless—

(1) the applicant submits to the Secretary—

(A) a specification of the expenditures made by the applicant for early intervention services for the fiscal year preceding the fiscal year for which the applicant is applying to receive the grant;

(B) an estimate of the number of individuals to whom the applicant has provided such services for such fiscal year;

(C) information regarding how the expected expenditures of the grant are related to the planning process for localities funded under part A (including the planning process described in section 300ff–12 of this title) and for States funded under part B (including the planning process described in section 300ff–27(b) of this title); and

(D) a specification of the expected expenditures and how those expenditures will improve overall client outcomes, as described in the State plan under section 300ff–27(b) of this title;

(2) the applicant agrees to submit to the Secretary a report providing—

(A) the number of individuals to whom the applicant provides early intervention services pursuant to the grant;

(B) epidemiological and demographic data on the population of such individuals;

(C) the extent to which the costs of HIV-related health care for such individuals are paid by third-party payors;

(D) the average costs of providing each category of early intervention service; and

(E) the aggregate amounts expended for each such category;

(3) the applicant agrees to provide additional documentation to the Secretary regarding the process used to obtain community input into the design and implementation of activities related to such grant; and

(4) the applicant agrees to submit, every 2 years, to the lead State agency under section 300ff–27(b)(4) of this title audits, consistent with Office of Management and Budget circular A133, regarding funds expended in accordance with this subchapter and shall include necessary client level data to complete unmet need calculations and Statewide coordinated statements of need process.

(b) Provision of opportunities for anonymous counseling and testing

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, to the extent permitted under State law, regulation or rule, the applicant will offer substantial opportunities for an individual—

(1) to undergo counseling and testing regarding HIV/AIDS without being required to provide any information relating to the identity of the individual; and

(2) to undergo such counseling and testing through the use of a pseudonym.

(c) Prohibition against requiring testing as condition of receiving other health services

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, with respect to an individual seeking health services from the applicant, the applicant will not require the individual to undergo testing for HIV as a condition of receiving any health services unless such testing is medically indicated in the provision of the health services sought by the individual.

(d) Maintenance of support

The Secretary may not make a grant under this part unless the applicant for the grant agrees to maintain the expenditures of the applicant for early intervention services at a level equal to not less than the level of such expenditures maintained by the State for the fiscal year preceding the fiscal year for which the applicant is applying to receive the grant.

(e) Requirements regarding imposition of charges for services

(1) In general

The Secretary may not make a grant under this part unless, subject to paragraph (5), the applicant for the grant agrees that—

(A) in the case of individuals with an income less than or equal to 100 percent of the official poverty line, the applicant will not impose a charge on any such individual for the provision of early intervention services under the grant;

(B) in the case of individuals with an income greater than 100 percent of the official poverty line, the applicant—

(i) will impose a charge on each such individual for the provision of such services; and

(ii) will impose the charge according to a schedule of charges that is made available to the public.

(2) Limitation on charges regarding individuals subject to charges

With respect to the imposition of a charge for purposes of paragraph (1)(B)(ii), the Secretary may not make a grant under this part unless, subject to paragraph (5), the applicant for the grant agrees that—

(A) in the case of individuals with an income greater than 100 percent of the official poverty line and not exceeding 200 percent of such poverty line, the applicant will not, for any calendar year, impose charges in an amount exceeding 5 percent of the annual gross income of the individual involved;

(B) in the case of individuals with an income greater than 200 percent of the official poverty line and not exceeding 300 percent of such poverty line, the applicant will not, for any calendar year, impose charges in an amount exceeding 7 percent of the annual gross income of the individual involved; and

(C) in the case of individuals with an income greater than 300 percent of the official poverty line, the applicant will not, for any calendar year, impose charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

(3) Assessment of charge

With respect to compliance with the agreement made under paragraph (1), a grantee under this part may, in the case of individuals subject to a charge for purposes of such paragraph—

(A) assess the amount of the charge in the discretion of the grantee, including imposing only a nominal charge for the provision of services, subject to the provisions of such paragraph regarding public schedules and of paragraph (2) regarding limitations on the maximum amount of charges; and

(B) take into consideration the medical expenses of individuals in assessing the amount of the charge, subject to such provisions.

(4) Applicability of limitation on amount of charge

The Secretary may not make a grant under this part unless the applicant for the grant agrees that the limitations established in paragraph (2) regarding the imposition of charges for services applies to the annual aggregate of charges imposed for such services, without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, copayments, coinsurance, or similar charges.

(5) Waiver regarding certain secondary agreements

The requirement established in paragraph (1)(B)(i) shall be waived by the Secretary in the case of any entity for whom the Secretary has granted a waiver under section 300ff–52(b)(2) of this title.

(f) Relationship to items and services under other programs

(1) In general

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, subject to paragraph (2), the grant will not be expended by the applicant, or by any entity receiving amounts from the applicant for the provision of early intervention services, to make payment for any such service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such service—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program (except for a program administered by or providing the services of the Indian Health Service); or

(B) by an entity that provides health services on a prepaid basis.

(2) Applicability to certain secondary agreements for provision of services

An agreement made under paragraph (1) shall not apply in the case of an entity through which a grantee under this part provides early intervention services if the Secretary has provided a waiver under section 300ff–52(b)(2) of this title regarding the entity.

(g) Administration of grant

The Secretary may not make a grant under this part unless the applicant for the grant agrees that—

(1) the applicant will not expend amounts received pursuant to this part for any purpose other than the purposes described in the subpart under which the grant involved is made;

(2) the applicant will establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant;

(3) the applicant will not expend more than 10 percent of the grant for administrative expenses with respect to the grant, including planning and evaluation, except that the costs of a clinical quality management program under paragraph (5) may not be considered administrative expenses for purposes of such limitation;

(4) the applicant will submit evidence that the proposed program is consistent with the statewide coordinated statement of need and agree to participate in the ongoing revision of such statement of need; and

(5) the applicant will provide for the establishment of a clinical quality management program—

(A) to assess the extent to which medical services funded under this subchapter that are provided to patients are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infections, and as applicable, to develop strategies for ensuring that such services are consistent with the guidelines; and

(B) to ensure that improvements in the access to and quality of HIV health services are addressed.

(July 1, 1944, ch. 373, title XXVI, § 2664, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 611; amended Pub. L. 104–146, § 3(d)(5), May 20, 1996, 110 Stat. 1358; Pub. L. 106–345, title III, §§ 301(b)(3), 322, Oct. 20, 2000, 114 Stat. 1345, 1346; Pub. L. 109–415, title III, §§ 301(b), 306(b), (c), title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2806, 2809, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Subsec. (a)(1)(C), (D). Pub. L. 109–415, § 306(b)(1), added subpars. (C) and (D).

Subsec. (a)(3), (4). Pub. L. 109–415, § 306(b)(2), (3), added pars. (3) and (4).

Subsec. (b)(1). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease''.

Subsec. (f)(1)(A). Pub. L. 109–415, § 306(c), inserted ''(except for a program administered by or providing the services of the Indian Health Service)'' before semicolon.

Subsec. (g)(3). Pub. L. 109–415, § 301(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''the applicant will not expend more than 10 percent including planning and evaluation of the grant for administrative expenses with respect to the grant;''.

Subsec. (g)(5). Pub. L. 109–415, § 301(b)(2), inserted ''clinical'' before ''quality management'' in introductory provisions.

Subsec. (g)(5)(A). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease''.

2000—Subsecs. (e)(5), (f)(2). Pub. L. 106–345, § 301(b)(3)(A), (B), struck out ''300ff–42(b) or'' after ''a waiver under section''.

Subsec. (g)(3). Pub. L. 106–345, § 322(1)(A), substituted ''10 percent'' for ''7.5 percent''.

Subsec. (g)(5). Pub. L. 106–345, § 322(1)(B), (2), (3), added par. (5).

Subsec. (h). Pub. L. 106–345, § 301(b)(3)(C), struck out heading and text of subsec. (h). Text read as follows: ''A State may not use amounts received under a grant awarded under section 300ff–41 of this title to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or to make cash payments to intended recipients of services.''

1996—Subsec. (g)(3). Pub. L. 104–146, § 3(d)(5)(B)(i), substituted ''7.5 percent including planning and evaluation'' for ''5 percent''.

Subsec. (g)(4). Pub. L. 104–146, § 3(d)(5)(A), (B)(ii), (C), added par. (4).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–65. Requirement of submission of application containing certain agreements and assurances

The Secretary may not make a grant under this part unless—

(1) an application for the grant is submitted to the Secretary containing agreements and assurances in accordance with this part and containing the information specified in section 300ff–64(a)(1) of this title;

(2) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(July 1, 1944, ch. 373, title XXVI, § 2665, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 614.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

§ 300ff–66. Provision by Secretary of supplies and services in lieu of grant funds

(a) In general

Upon the request of a grantee under this part, the Secretary may, subject to subsection (b) of this section, provide supplies, equipment, and services for the purpose of aiding the grantee in providing early intervention services and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(b) Limitation

With respect to a request described in subsection (a) of this section, the Secretary shall reduce the amount of payments under the grant involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XXVI, § 2666, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 614.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

§ 300ff–67. Use of funds

Counseling programs carried out under this part—

(1) shall not be designed to promote or encourage, directly, intravenous drug abuse or sexual activity, homosexual or heterosexual;

(2) shall be designed to reduce exposure to and transmission of HIV/AIDS by providing accurate information;

(3) shall provide information on the health risks of promiscuous sexual activity and intravenous drug abuse; and

(4) shall provide information on the transmission and prevention of hepatitis A, B, and C, including education about the availability of hepatitis A and B vaccines and assisting patients in identifying vaccination sites.

(July 1, 1944, ch. 373, title XXVI, § 2667, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 614; amended Pub. L. 109–415, title VII, §§ 701, 702(3), Dec. 19, 2006, 120 Stat. 2819, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

AMENDMENTS

2006—Par. (2). Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease''.

Par. (4). Pub. L. 109–415, § 701, added par. (4).

PART D—WOMEN, INFANTS, CHILDREN, AND YOUTH

CODIFICATION

Part D of title XXVI of the Public Health Service Act, comprising this part, was originally added to act July 1, 1944, ch. 373, by Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 617, and amended by Pub. L. 104–146, May 20, 1996, 110 Stat. 1346; Pub. L. 102–531, Oct. 27, 1992, 106 Stat. 3469; Pub. L. 106–345, Oct. 20, 2000, 114 Stat. 1319; Pub. L. 108–173, Dec. 8, 2003, 117 Stat. 2066. Part D is shown herein, however, as having been added by Pub. L. 109–415, title IV, § 401, Dec. 19, 2006, 120 Stat. 2810, without reference to those intervening amendments because of the extensive revision of part D by Pub. L. 109–415.

§ 300ff–71. Grants for coordinated services and access to research for women, infants, children, and youth

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall award grants to public and nonprofit private entities (including a health facility operated by or pursuant to a contract with the Indian Health Service) for the purpose of providing family-centered care involving outpatient or ambulatory care (directly or through contracts) for women, infants, children, and youth with HIV/AIDS.

(b) Additional services for patients and families

Funds provided under grants awarded under subsection (a) may be used for the following support services:

(1) Family-centered care including case management.

(2) Referrals for additional services including—

(A) referrals for inpatient hospital services, treatment for substance abuse, and mental health services; and

(B) referrals for other social and support services, as appropriate.

(3) Additional services necessary to enable the patient and the family to participate in the program established by the applicant pursuant to such subsection including services designed to recruit and retain youth with HIV.

(4) The provision of information and education on opportunities to participate in HIV/AIDS-related clinical research.

(c) Coordination with other entities

A grant awarded under subsection (a) may be made only if the applicant provides an agreement that includes the following:

(1) The applicant will coordinate activities under the grant with other providers of health care services under this chapter, and under title V of the Social Security Act [42 U.S.C. 701 et seq.], including programs promoting the reduction and elimination of risk of HIV/AIDS for youth.

(2) The applicant will participate in the statewide coordinated statement of need under part B (where it has been initiated by the public health agency responsible for administering grants under part B) and in revisions of such statement.

(3) The applicant will every 2 years submit to the lead State agency under section 300ff–27(b)(4) of this title audits regarding funds expended in accordance with this subchapter and shall include necessary client-level data to complete unmet need calculations and Statewide coordinated statements of need process.

(d) Administration; application

A grant may only be awarded to an entity under subsection (a) if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section. Such application shall include the following:

(1) Information regarding how the expected expenditures of the grant are related to the planning process for localities funded under part A (including the planning process outlined in section 300ff–12 of this title) and for States funded under part B (including the planning process outlined in section 300ff–27(b) of this title).

(2) A specification of the expected expenditures and how those expenditures will improve overall patient outcomes, as outlined as part of the State plan (under section 300ff–27(b) of this title) or through additional outcome measures.

(e) Annual review of programs; evaluations

(1) Review regarding access to and participation in programs

With respect to a grant under subsection (a) for an entity for a fiscal year, the Secretary shall, not later than 180 days after the end of the fiscal year, provide for the conduct and completion of a review of the operation during the year of the program carried out under such subsection by the entity. The purpose of such review shall be the development of recommendations, as appropriate, for improvements in the following:

(A) Procedures used by the entity to allocate opportunities and services under subsection (a) among patients of the entity who are women, infants, children, or youth.

(B) Other procedures or policies of the entity regarding the participation of such individuals in such program.

(2) Evaluations

The Secretary shall, directly or through contracts with public and private entities, provide for evaluations of programs carried out pursuant to subsection (a).

(f) Administrative expenses

(1) Limitation

A grantee may not use more than 10 percent of amounts received under a grant awarded under this section for administrative expenses.

(2) Clinical quality management program

A grantee under this section shall implement a clinical quality management program to assess the extent to which HIV health services provided to patients under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infection, and as applicable, to develop strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services.

(g) Training and technical assistance

From the amounts appropriated under subsection (i) for a fiscal year, the Secretary may use not more than 5 percent to provide, directly or through contracts with public and private entities (which may include grantees under subsection (a)), training and technical assistance to assist applicants and grantees under subsection (a) in complying with the requirements of this section.

(h) Definitions

In this section:

(1) Administrative expenses

The term ''administrative expenses'' means funds that are to be used by grantees for grant management and monitoring activities, including costs related to any staff or activity unrelated to services or indirect costs.

(2) Indirect costs

The term ''indirect costs'' means costs included in a Federally negotiated indirect rate.

(3) Services

The term ''services'' means—

(A) services that are provided to clients to meet the goals and objectives of the program under this section, including the provision of professional, diagnostic, and therapeutic services by a primary care provider or a referral to and provision of specialty care; and

(B) services that sustain program activity and contribute to or help improve services under subparagraph (A).

(i) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated, $71,800,000 for each of the fiscal years 2007 through 2009.

(July 1, 1944, ch. 373, title XXVI, § 2671, as added Pub. L. 109–415, title IV, § 401, Dec. 19, 2006, 120 Stat. 2810.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title V of the

Act is classified generally to subchapter V (§ 701 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

Prior sections 300ff–71 to 300ff–78 were omitted in the general amendment of this part by Pub. L. 109–415.

Section 300ff–71, act July 1, 1944, ch. 373, title XXVI, § 2671, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 617; amended Pub. L. 104–146, § 3(e), May 20, 1996, 110 Stat. 1358; Pub. L. 106–345, title IV, § 401, Oct. 20, 2000, 114 Stat. 1347, related to grants for coordinated services and access to research for women, infants, children, and youth.

Section 300ff–72, act July 1, 1944, ch. 373, title XXVI, § 2672, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 618, contained provisions relating to blood banks.

Section 300ff–73, act July 1, 1944, ch. 373, title XXVI, § 2673, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 619; amended Pub. L. 106–345, title V, § 503(a)(2), Oct. 20, 2000, 114 Stat. 1354, related to a research, evaluation, and assessment program.

Section 300ff–74, act July 1, 1944, ch. 373, title XXVI, § 2674, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 620; amended Pub. L. 104–146, § 3(f), May 20, 1996, 110 Stat. 1362; Pub. L. 106–345, title IV, § 411, Oct. 20, 2000, 114 Stat. 1350, related to evaluations and reports.

Section 300ff–75, act July 1, 1944, ch. 373, title XXVI, § 2675, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 620; amended Pub. L. 102–531, title III, § 312(d)(34), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 106–345, title IV, §§ 413, 414, Oct. 20, 2000, 114 Stat. 1350, 1351; Pub. L. 108–173, title IX, § 900(e)(2)(G), Dec. 8, 2003, 117 Stat. 2372, related to coordination of Federal HIV programs. See section 300ff–81 of this title.

Section 300ff–75a, act July 1, 1944, ch. 373, title XXVI, § 2675A, as added Pub. L. 106–345, title IV, § 415, Oct. 20, 2000, 114 Stat. 1351, related to audits. See section 300ff–82 of this title.

Section 300ff–75b, act July 1, 1944, ch. 373, title XXVI, § 2675B, as added Pub. L. 106–345, title IV, § 416, Oct. 20, 2000, 114 Stat. 1351, related to administrative simplification.

Section 300ff–76, act July 1, 1944, ch. 373, title XXVI, § 2676, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 620; amended Pub. L. 104–146, § 12(a), (c)(8), May 20, 1996, 110 Stat. 1373, 1374, defined terms for this subchapter. See section 300ff–88 of this title.

Section 300ff–77, act July 1, 1944, ch. 373, title XXVI, § 2677, as added Pub. L. 104–146, § 6(a), May 20, 1996, 110 Stat. 1367; amended Pub. L. 106–345, title IV, § 417, Oct. 20, 2000, 114 Stat. 1352, authorized appropriations.

Section 300ff–78, act July 1, 1944, ch. 373, title XXVI, § 2678, as added Pub. L. 104–146, § 10, May 20, 1996, 110 Stat. 1373, prohibited promotion of certain activities. See section 300ff–84 of this title.

PART E—GENERAL PROVISIONS

CODIFICATION

Part E of title XXVI of the Public Health Service Act, comprising this part, was originally added to act July 1, 1944, ch. 373, by Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 622, and amended by Pub. L. 104–146, May 20, 1996, 110 Stat. 1346. Part E is shown herein, however, as having been added by Pub. L. 109–415, title IV, § 501, Dec. 19, 2006, 120 Stat. 2812, without reference to the intervening amendments because of the extensive revision of part E by Pub. L. 109–415.

PRIOR PROVISIONS

A prior section 300ff–80, act July 1, 1944, ch. 373, title XXVI, § 2680, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 622, related to grants for implementation of recommendations in guidelines and model curriculum.

§ 300ff–81. Coordination

(a) Requirement

The Secretary shall ensure that the Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Substance Abuse and Mental Health Services Administration, and the Centers for Medicare & Medicaid Services coordinate the planning, funding, and implementation of Federal HIV programs (including all minority AIDS initiatives of the Public Health Service, including under section 300ff–121 of this title) to enhance the continuity of care and prevention services for individuals with HIV/AIDS or those at risk of such disease. The Secretary shall consult with other Federal agencies, including the Department of Veterans Affairs, as needed and utilize planning information submitted to such agencies by the States and entities eligible for assistance under this subchapter.

(b) Report

The Secretary shall biennially prepare and submit to the appropriate committees of the Congress a report concerning the coordination efforts at the Federal, State, and local levels described in this section, including a description of Federal barriers to HIV program integration and a strategy for eliminating such barriers and enhancing the continuity of care and prevention services for individuals with HIV/AIDS or those at risk of such disease.

(c) Integration by State

As a condition of receipt of funds under this subchapter, a State shall provide assurances to the Secretary that health support services funded under this subchapter will be integrated with other such services, that programs will be coordinated with other available programs (including Medicaid), and that the continuity of care and prevention services of individuals with HIV/AIDS is enhanced.

(d) Integration by local or private entities

As a condition of receipt of funds under this subchapter, a local government or private nonprofit entity shall provide assurances to the Secretary that services funded under this subchapter will be integrated with other such services, that programs will be coordinated with other available programs (including Medicaid), and that the continuity of care and prevention services of individuals with HIV is enhanced.

(July 1, 1944, ch. 373, title XXVI, § 2681, as added Pub. L. 109–415, title V, § 501, Dec. 19, 2006, 120 Stat. 2812.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 300ff–81, act July 1, 1944, ch. 373, title XXVI, § 2681, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 623, related to development and dissemination of list of infectious diseases, prior to the general amendment of this part by Pub. L. 109–415.

§ 300ff–82. Audits

(a) In general

For fiscal year 2009, and each subsequent fiscal year, the Secretary may reduce the amounts of grants under this subchapter to a State or political subdivision of a State for a fiscal year if, with respect to such grants for the second preceding fiscal year, the State or subdivision fails to prepare audits in accordance with the procedures of section 7502 of title 31. The Secretary shall annually select representative samples of such audits, prepare summaries of the selected audits, and submit the summaries to the Congress.

(b) Posting on the Internet

All audits that the Secretary receives from the State lead agency under section 300ff–27(b)(4) of this title shall be posted, in their entirety, on the Internet website of the Health Resources and Services Administration.

(July 1, 1944, ch. 373, title XXVI, § 2682, as added Pub. L. 109–415, title V, § 501, Dec. 19, 2006, 120 Stat. 2813.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 300ff–82, July 1, 1944, ch. 373, title XXVI, § 2682, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 623, related to routine notifications with respect to airborne infectious diseases in victims assisted, prior to the general amendment of this part by Pub. L. 109–415.

§ 300ff–83. Public health emergency

(a) In general

In an emergency area and during an emergency period, the Secretary shall have the authority to waive such requirements of this subchapter to improve the health and safety of those receiving care under this subchapter and the general public, except that the Secretary may not expend more than 5 percent of the funds allocated under this subchapter for sections 300ff–29a of this title and section[1] 300ff–13(b) of this title.

(b) Emergency area and emergency period

In this section:

(1) Emergency area

The term ''emergency area'' means a geographic area in which there exists—

(A) an emergency or disaster declared by the President pursuant to the National Emergencies Act [50 U.S.C. 1601 et seq.] or the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.]; or

(B) a public health emergency declared by the Secretary pursuant to section 247d of this title.

(2) Emergency period

The term ''emergency period'' means the period in which there exists—

(A) an emergency or disaster declared by the President pursuant to the National Emergencies Act or the Robert T. Stafford Disaster Relief and Emergency Assistance Act; or

(B) a public health emergency declared by the Secretary pursuant to section 247d of this title.

(c) Unobligated funds

If funds under a grant under this section are not expended for an emergency in the fiscal year in which the emergency is declared, such funds shall be returned to the Secretary for reallocation under sections 300ff–13(b) and 300ff–29a of this title.

(July 1, 1944, ch. 373, title XXVI, § 2683, as added Pub. L. 109–415, title V, § 501, Dec. 19, 2006, 120 Stat. 2813.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (b)(1)(A), (2)(A), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (b)(1)(A), (2)(A), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

PRIOR PROVISIONS

A prior section 300ff–83, act July 1, 1944, ch. 373, title XXVI, § 2683, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 624, related to request for notifications with respect to victims assisted, prior to the general amendment of this part by Pub. L. 109–415.

§ 300ff–84. Prohibition on promotion of certain activities

None of the funds appropriated under this subchapter shall be used to fund AIDS programs, or to develop materials, designed to promote or encourage, directly, intravenous drug use or sexual activity, whether homosexual or heterosexual. Funds authorized under this subchapter may be used to provide medical treatment and support services for individuals with HIV.

(July 1, 1944, ch. 373, title XXVI, § 2684, as added Pub. L. 109–415, title V, § 501, Dec. 19, 2006, 120 Stat. 2814.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 300ff–84, act July 1, 1944, ch. 373, title XXVI, § 2684, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 626; amended Pub. L. 104–146, § 12(c)(10), May 20, 1996, 110 Stat. 1374, related to procedures for notification of exposure, prior to the general amendment of this part by Pub. L. 109–415.

[1] So in original. The word ''section'' probably should not appear.

§ 300ff–85. Privacy protections

(a) In general

The Secretary shall ensure that any information submitted to, or collected by, the Secretary under this subchapter excludes any personally identifiable information.

(b) Definition

In this section, the term ''personally identifiable information'' has the meaning given such term under the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

(July 1, 1944, ch. 373, title XXVI, § 2685, as added Pub. L. 109–415, title V, § 501, Dec. 19, 2006, 120 Stat. 2814.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (b), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

PRIOR PROVISIONS

A prior section 300ff–85, act July 1, 1944, ch. 373, title XXVI, § 2685, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 626, related to notification of emergency response employees, prior to the general amendment of this part by Pub. L. 109–415.

§ 300ff–86. GAO report

The Comptroller General of the Government Accountability Office shall biennially submit to the appropriate committees of Congress a report that includes a description of Federal, State, and local barriers to HIV program integration, particularly for racial and ethnic minorities, including activities carried out under subpart III of part F, and recommendations for enhancing the continuity of care and the provision of prevention services for individuals with HIV/AIDS or those at risk for such disease. Such report shall include a demonstration of the manner in which funds under this subpart[1] are being expended and to what extent the services provided with such funds increase access to prevention and care services for individuals with HIV/AIDS and build stronger community linkages to address HIV prevention and care for racial and ethnic minority communities.

(July 1, 1944, ch. 373, title XXVI, § 2686, as added Pub. L. 109–415, title V, § 501, Dec. 19, 2006, 120 Stat. 2814.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 300ff–86, act July 1, 1944, ch. 373, title XXVI, § 2686, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 627, related to selection of designated officers, prior to the general amendment of this part by Pub. L. 109–415.

[1] So in original. This part does not contain subparts.

§ 300ff–87. Severity of need index

(a) Development of index

Not later than September 30, 2008, the Secretary shall develop and submit to the appropriate committees of Congress a severity of need index in accordance with subsection (c).

(b) Definition of severity of need index

In this section, the term ''severity of need index'' means the index of the relative needs of individuals within a State or area, as identified by a number of different factors, and is a factor or set of factors that is multiplied by the number of living HIV/AIDS cases in a State or area, providing different weights to those cases based on needs. Such factors or set of factors may be different for different components of the provisions under this subchapter.

(c) Requirements for Secretarial submission

When the Secretary submits to the appropriate committees of Congress the severity of need index under subsection (a), the Secretary shall provide the following:

(1) Methodology for and rationale behind developing the severity of need index, including information related to the field testing of the severity of need index.

(2) An independent contractor analysis of activities carried out under paragraph (1).

(3) Information regarding the process by which the Secretary received community input regarding the application and development of the severity of need index.

(d) Annual reports

If the Secretary fails to submit the severity of need index under subsection (a) in either of fiscal years 2007 or 2008, the Secretary shall prepare and submit to the appropriate committees of Congress a report for such fiscal year—

(1) that updates progress toward having client level data;

(2) that updates the progress toward having a severity of need index, including information related to the methodology and process for obtaining community input; and

(3) that, as applicable, states whether the Secretary could develop a severity of need index before fiscal year 2009.

(July 1, 1944, ch. 373, title XXVI, § 2687, as added Pub. L. 109–415, title V, § 501, Dec. 19, 2006, 120 Stat. 2814.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 300ff–87, act July 1, 1944, ch. 373, title XXVI, § 2687, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 627, related to limitations with respect to duties of medical facilities, prior to the general amendment of this part by Pub. L. 109–415.

§ 300ff–88. Definitions

For purposes of this subchapter:

(1) AIDS

The term ''AIDS'' means acquired immune deficiency syndrome.

(2) Co-occurring conditions

The term ''co-occurring conditions'' means one or more adverse health conditions in an individual with HIV/AIDS, without regard to whether the individual has AIDS and without regard to whether the conditions arise from HIV.

(3) Counseling

The term ''counseling'' means such counseling provided by an individual trained to provide such counseling.

(4) Family-centered care

The term ''family-centered care'' means the system of services described in this subchapter that is targeted specifically to the special needs of infants, children, women and families. Family-centered care shall be based on a partnership between parents, professionals, and the community designed to ensure an integrated, coordinated, culturally sensitive, and community-based continuum of care for children, women, and families with HIV/AIDS.

(5) Families with HIV/AIDS

The term ''families with HIV/AIDS'' means families in which one or more members have HIV/AIDS.

(6) HIV

The term ''HIV'' means infection with the human immunodeficiency virus.

(7) HIV/AIDS

(A) In general

The term ''HIV/AIDS'' means HIV, and includes AIDS and any condition arising from AIDS.

(B) Counting of cases

The term ''living cases of HIV/AIDS'', with respect to the counting of cases in a geographic area during a period of time, means the sum of—

(i) the number of living non-AIDS cases of HIV in the area; and

(ii) the number of living cases of AIDS in the area.

(C) Non-AIDS cases

The term ''non-AIDS'', with respect to a case of HIV, means that the individual involved has HIV but does not have AIDS.

(8) Human immunodeficiency virus

The term ''human immunodeficiency virus'' means the etiologic agent for AIDS.

(9) Official poverty line

The term ''official poverty line'' means the poverty line established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(10) Person

The term ''person'' includes one or more individuals, governments (including the Federal Government and the governments of the States), governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, receivers, trustees, and trustees in cases under title 11.

(11) State

(A) In general

The term ''State'' means each of the 50 States, the District of Columbia, and each of the territories.

(B) Territories

The term ''territory'' means each of American Samoa, Guam, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau.

(12) Youth with HIV

The term ''youth with HIV'' means individuals who are 13 through 24 years old and who have HIV/AIDS.

(July 1, 1944, ch. 373, title XXVI, § 2688, as added Pub. L. 109–415, title V, § 501, Dec. 19, 2006, 120 Stat. 2815.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

PRIOR PROVISIONS

A prior section 300ff–88, act July 1, 1944, ch. 373, title XXVI, § 2688, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 627, provided rules of construction for former subpart II of this part, prior to the general amendment of this part by Pub. L. 109–415.

Prior sections 300ff–89 and 300ff–90 were omitted in the general amendment of this part by Pub. L. 109–415.

Section 300ff–89, act July 1, 1944, ch. 373, title XXVI, § 2689, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 628, related to injunctions regarding violations of former subpart II of this part.

Section 300ff–90, act July 1, 1944, ch. 373, title XXVI, § 2690, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 628, related to applicability of former subpart II of this part.

PART F—DEMONSTRATION AND TRAINING

SUBPART I—SPECIAL PROJECTS OF NATIONAL SIGNIFICANCE

§ 300ff–101. Special projects of national significance

(a) In general

Of the amount appropriated under each of parts A, B, C, and D for each fiscal year, the Secretary shall use the greater of $20,000,000 or an amount equal to 3 percent of such amount appropriated under each such part, but not to exceed $25,000,000, to administer special projects of national significance to—

(1) quickly respond to emerging needs of individuals receiving assistance under this subchapter; and

(2) to fund special programs to develop a standard electronic client information data system to improve the ability of grantees under this subchapter to report client-level data to the Secretary.

(b) Grants

The Secretary shall award grants under subsection (a) to entities eligible for funding under parts A, B, C, and D based on—

(1) whether the funding will promote obtaining client level data as it relates to the creation of a severity of need index, including funds to facilitate the purchase and enhance the utilization of qualified health information technology systems;

(2) demonstrated ability to create and maintain a qualified health information technology system;

(3) the potential replicability of the proposed activity in other similar localities or nationally;

(4) the demonstrated reliability of the proposed qualified health information technology system across a variety of providers, geographic regions, and clients; and

(5) the demonstrated ability to maintain a safe and secure qualified health information system; or

(6) newly emerging needs of individuals receiving assistance under this subchapter.

(c) Coordination

The Secretary may not make a grant under this section unless the applicant submits evidence that the proposed program is consistent with the statewide coordinated statement of need, and the applicant agrees to participate in the ongoing revision process of such statement of need.

(d) Privacy protection

The Secretary may not make a grant under this section for the development of a qualified health information technology system unless the applicant provides assurances to the Secretary that the system will, at a minimum, comply with the privacy regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

(e) Replication

The Secretary shall make information concerning successful models or programs developed under this part available to grantees under this subchapter for the purpose of coordination, replication, and integration. To facilitate efforts under this subsection, the Secretary may provide for peer-based technical assistance for grantees funded under this part.

(July 1, 1944, ch. 373, title XXVI, § 2691, as added Pub. L. 104–146, § 3(g)(1), May 20, 1996, 110 Stat. 1362; amended Pub. L. 109–415, title VI, § 601, Dec. 19, 2006, 120 Stat. 2816.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (d), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

AMENDMENTS

2006—Pub. L. 109–415 amended section generally. Prior to amendment, section related to use of funds for special projects of national significance.

SUBPART II—AIDS EDUCATION AND TRAINING CENTERS

§ 300ff–111. HIV/AIDS communities, schools, and centers

(a) Schools; centers

(1) In general

The Secretary may make grants and enter into contracts to assist public and nonprofit private entities and schools and academic health science centers in meeting the costs of projects—

(A) to train health personnel, including practitioners in programs under this subchapter and other community providers, in the diagnosis, treatment, and prevention of HIV/AIDS, including the prevention of the perinatal transmission of the disease, including measures for the prevention and treatment of opportunistic infections, and including (as applicable to the type of health professional involved), prenatal and other gynecological care for women with HIV/AIDS;

(B) to train the faculty of schools of, and graduate departments or programs of, medicine, nursing, osteopathic medicine, dentistry, public health, allied health, and mental health practice to teach health professions students to provide for the health care needs of individuals with HIV/AIDS;

(C) to develop and disseminate curricula and resource materials relating to the care and treatment of individuals with such disease and the prevention of the disease among individuals who are at risk of contracting the disease; and

(D) to develop protocols for the medical care of women with HIV/AIDS, including prenatal and other gynecological care for such women.

(2) Preference in making grants

In making grants under paragraph (1), the Secretary shall give preference to qualified projects which will—

(A) train, or result in the training of, health professionals who will provide treatment for minority individuals and Native Americans with HIV/AIDS and other individuals who are at high risk of contracting such disease;

(B) train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with such disease; and

(C) train or result in the training of health professionals and allied health professionals to provide treatment for hepatitis B or C coinfected individuals.

(3) Application

No grant or contract may be made under paragraph (1) unless an application is submitted to the Secretary in such form, at such time, and containing such information, as the Secretary may prescribe.

(b) Dental schools

(1) In general

(A) Grants

The Secretary may make grants to dental schools and programs described in subpara-

graph (B) to assist such schools and programs with respect to oral health care to patients with HIV/AIDS.

(B) Eligible applicants

For purposes of this subsection, the dental schools and programs referred to in this subparagraph are dental schools and programs that were described in section 294*o*(b)(4)(B) of this title as such section was in effect on the day before November 13, 1998, and in addition dental hygiene programs that are accredited by the Commission on Dental Accreditation.

(2) Application

Each dental school or program described in section[1] the section referred to in paragraph (1)(B) may annually submit an application documenting the unreimbursed costs of oral health care provided to patients with HIV/AIDS by that school or hospital during the prior year.

(3) Distribution

The Secretary shall distribute the available funds among all eligible applicants, taking into account the number of patients with HIV/AIDS served and the unreimbursed oral health care costs incurred by each institution as compared with the total number of patients served and costs incurred by all eligible applicants.

(4) Maintenance of effort

The Secretary shall not make a grant under this subsection if doing so would result in any reduction in State funding allotted for such purposes.

(5) Community-based care

The Secretary may make grants to dental schools and programs described in paragraph (1)(B) that partner with community-based dentists to provide oral health care to patients with HIV/AIDS in unserved areas. Such partnerships shall permit the training of dental students and residents and the participation of community dentists as adjunct faculty.

(c) Authorization of appropriations

(1) Schools; centers

For the purpose of awarding grants under subsection (a), there is authorized to be appropriated $34,700,000 for each of the fiscal years 2007 through 2009.

(2) Dental schools

For the purpose of awarding grants under subsection (b), there is authorized to be appropriated $13,000,000 for each of the fiscal years 2007 through 2009.

(July 1, 1944, ch. 373, title XXVI, § 2692, formerly title VII, § 776, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2050; amended Pub. L. 102–531, title III, § 313(a)(4), Oct. 27, 1992, 106 Stat. 3507; renumbered title XXVI, § 2692, and amended Pub. L. 104–146, § 3(h), May 20, 1996, 110 Stat. 1363; Pub. L. 104–166, § 5(2), July 29, 1996, 110 Stat. 1449; Pub. L. 106–345, title IV, § 402(a)(1), (b), (c), Oct. 20, 2000, 114 Stat. 1348, 1349; Pub. L. 109–415, title VI, § 602, title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2817, 2820.)

[1] So in original.

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

CODIFICATION

Section was formerly classified to section 294n of this title prior to renumbering by Pub. L. 104–146.

AMENDMENTS

2006—Pub. L. 109–415, § 702(3), substituted ''HIV/AIDS'' for ''HIV disease'' wherever appearing in text.

Subsec. (a)(2)(A). Pub. L. 109–415, § 602(a)(1)(A), inserted ''and Native Americans'' after ''minority individuals''.

Subsec. (a)(2)(C). Pub. L. 109–415, § 602(a)(1)(B), (2), (3), added subpar. (C).

Subsec. (c). Pub. L. 109–415, § 602(b), reenacted heading without change and amended text generally, substituting provisions authorizing appropriations for fiscal years 2007 through 2009 for provisions authorizing appropriations for fiscal years 2001 through 2005.

2000—Subsec. (a)(1)(A). Pub. L. 106–345, § 402(a)(1)(A), substituted ''to train'' for ''training'', substituted '', including'' for ''and including'' after ''transmission of the disease'', and inserted '', and including (as applicable to the type of health professional involved), prenatal and other gynecological care for women with HIV disease'' before semicolon at end.

Subsec. (a)(1)(D). Pub. L. 106–345, § 402(a)(1)(B)–(D), added subpar. (D).

Subsec. (b)(1). Pub. L. 106–345, § 402(b)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The Secretary may make grants to assist dental schools and programs described in section 294*o*(b)(4)(B) of this title with respect to oral health care to patients with HIV disease.''

Subsec. (b)(2). Pub. L. 106–345, § 402(b)(2), substituted ''the section referred to in paragraph (1)(B)'' for ''294*o*(b)(4)(B) of this title''.

Subsec. (b)(5). Pub. L. 106–345, § 402(b)(3), added par. (5).

Subsec. (c)(1). Pub. L. 106–345, § 402(c)(1), substituted ''fiscal years 2001 through 2005'' for ''fiscal years 1996 through 2000''.

Subsec. (c)(2). Pub. L. 106–345, § 402(c)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''For the purpose of grants under subsection (b) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1996 through 2000.''

1996—Pub. L. 104–146, § 3(h)(1), (2)(A), substituted ''HIV/AIDS communities, schools, and centers'' for ''Acquired immune deficiency syndrome'' as section catchline.

Subsec. (a)(1)(A). Pub. L. 104–166, § 5(2)(A), substituted ''in programs under this subchapter'' for ''in subchapter XXIV programs'' and struck out ''infection and'' after ''prevention of HIV''.

Pub. L. 104–146, § 3(h)(2)(B)(iii), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (a)(1)(B). Pub. L. 104–146, § 3(h)(2)(B)(iv), inserted ''and'' after semicolon.

Pub. L. 104–146, § 3(h)(2)(B)(i), (ii), redesignated subpar. (A) as (B) and struck out former subpar. (B) which read as follows: ''to train practitioners to provide for the health care needs of such individuals;''.

Subsec. (a)(1)(C), (D). Pub. L. 104–146, § 3(h)(2)(B)(i), (ii), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: ''with respect to improving clinical skills in the diagnosis, treatment, and prevention of such disease, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and''.

Subsec. (c). Pub. L. 104–166, § 5(2)(B), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ''For purposes of this section:

''(1) The term 'HIV disease' means infection with the human immunodeficiency virus, and includes any condition arising from such infection.

''(2) The term 'human immunodeficiency virus' means the etiologic agent for acquired immune deficiency syndrome.''

Subsec. (d). Pub. L. 104–166, § 5(2)(B), struck out heading and text of subsec. (d) relating to authorization of appropriations for fiscal years 1996 through 2000. Text read as follows: ''There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of the fiscal years 1996 through 2000.''

Pub. L. 104–166, § 5(2)(B), struck out heading and text of subsec. (d) relating to authorization of appropriations for fiscal years 1993 through 1995. Text read as follows:

''(1) SCHOOLS; CENTERS.—For the purpose of grants under subsection (a) of this section, there is authorized to be appropriated $23,000,000 for each of the fiscal years 1993 through 1995.

''(2) DENTAL SCHOOLS.—For the purpose of grants under subsection (b) of this section, there is authorized to be appropriated $7,000,000 for each of the fiscal years 1993 through 1995.''

Pub. L. 104–146, § 3(h)(4), added subsec. (d) relating to authorization of appropriations for fiscal years 1996 through 2000.

1992—Subsec. (a)(3). Pub. L. 102–531, which directed the substitution of ''No grant'' for ''no grant'' in par. (3), could not be executed because the words ''no grant'' did not appear in par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

DISSEMINATION OF TREATMENT GUIDELINES; MEDICAL CONSULTATION ACTIVITIES

Pub. L. 106–345, title IV, § 402(a)(2), Oct. 20, 2000, 114 Stat. 1349, provided that: ''Not later than 90 days after the date of the enactment of this Act [Oct. 20, 2000], the Secretary of Health and Human Services shall issue and begin implementation of a strategy for the dissemination of HIV treatment information to health care providers and patients.''

SUBPART III—MINORITY AIDS INITIATIVE

§ 300ff–121. Minority AIDS initiative

(a) In general

For the purpose of carrying out activities under this section to evaluate and address the disproportionate impact of HIV/AIDS on, and the disparities in access, treatment, care, and outcomes for, racial and ethnic minorities (including African Americans, Alaska Natives, Latinos, American Indians, Asian Americans, Native Hawaiians, and Pacific Islanders), there are authorized to be appropriated $131,200,000 for fiscal year 2007, $135,100,000 for fiscal year 2008, and $139,100,000 for fiscal year 2009.

(b) Certain activities

(1) In general

In carrying out the purpose described in subsection (a), the Secretary shall provide for—

(A) emergency assistance under part A;

(B) care grants under part B;

(C) early intervention services under part C;

(D) services through projects for HIV-related care under part D; and

(E) activities through education and training centers under section 300ff–111 of this title.

(2) Allocations among activities

Activities under paragraph (1) shall be carried out by the Secretary in accordance with the following:

(A) For competitive, supplemental grants to improve HIV-related health outcomes to reduce existing racial and ethnic health disparities, the Secretary shall, of the amount appropriated under subsection (a) for a fiscal year, reserve the following, as applicable:

(i) For fiscal year 2007, $43,800,000.

(ii) For fiscal year 2008, $45,400,000.

(iii) For fiscal year 2009, $47,100,000.

(B) For competitive grants used for supplemental support education and outreach services to increase the number of eligible racial and ethnic minorities who have access to treatment through the program under section 300ff–26 of this title for therapeutics, the Secretary shall, of the amount appropriated for a fiscal year under subsection (a), reserve the following, as applicable:

(i) For fiscal year 2007, $7,000,000.

(ii) For fiscal year 2008, $7,300,000.

(iii) For fiscal year 2009, $7,500,000.

(C) For planning grants, capacity-building grants, and services grants to health care providers who have a history of providing culturally and linguistically appropriate care and services to racial and ethnic minorities, the Secretary shall, of the amount appropriated for a fiscal year under subsection (a), reserve the following, as applicable:

(i) For fiscal year 2007, $53,400,000.

(ii) For fiscal year 2008, $55,400,000.

(iii) For fiscal year 2009, $57,400,000.

(D) For eliminating racial and ethnic disparities in the delivery of comprehensive, culturally and linguistically appropriate care services for HIV/AIDS for women, infants, children, and youth, the Secretary shall, of the amount appropriated under subsection (a), reserve $18,500,000 for each of the fiscal years 2007 through 2009.

(E) For increasing the training capacity of centers to expand the number of health care professionals with treatment expertise and knowledge about the most appropriate standards of HIV/AIDS-related treatments and medical care for racial and ethnic minority adults, adolescents, and children with HIV/AIDS, the Secretary shall, of the amount appropriated under subsection (a), reserve $8,500,000 for each of the fiscal years 2007 through 2009.

(c) Consistency with prior program

With respect to the purpose described in subsection (a), the Secretary shall carry out this section consistent with the activities carried out under this subchapter by the Secretary pur-

suant to the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002 (Public Law 107–116).

(July 1, 1944, ch. 373, title XXVI, § 2693, as added and amended Pub. L. 109–415, title VI, § 603, title VII, § 702(3), Dec. 19, 2006, 120 Stat. 2818, 2820.)

REPEAL OF SECTION

Pub. L. 109–415, title VII, § 703, Dec. 19, 2006, 120 Stat. 2820, provided that, effective Oct. 1, 2009, this section is repealed.

REFERENCES IN TEXT

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002, referred to in subsec. (c), is Pub. L. 107–116, Jan. 10, 2002, 115 Stat. 2177. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2006—Subsec. (b)(2)(D), (E). Pub. L. 109–415, substituted ''HIV/AIDS'' for ''HIV disease'' wherever appearing.

SUBCHAPTER XXV—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

AMENDMENTS

1996—Pub. L. 104–204, title VI, § 604(a)(1), Sept. 26, 1996, 110 Stat. 2938, substituted ''REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE'' for ''ASSURING PORTABILITY, AVAILABILITY, AND RENEWABILITY OF HEALTH INSURANCE COVERAGE'' as subchapter heading.

PART A—GROUP MARKET REFORMS

SUBPART 1—PORTABILITY, ACCESS, AND RENEWABILITY REQUIREMENTS

§ 300gg. Increased portability through limitation on preexisting condition exclusions

(a) Limitation on preexisting condition exclusion period; crediting for periods of previous coverage

Subject to subsection (d) of this section, a group health plan, and a health insurance issuer offering group health insurance coverage, may, with respect to a participant or beneficiary, impose a preexisting condition exclusion only if—

(1) such exclusion relates to a condition (whether physical or mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the enrollment date;

(2) such exclusion extends for a period of not more than 12 months (or 18 months in the case of a late enrollee) after the enrollment date; and

(3) the period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage (if any, as defined in subsection (c)(1) of this section) applicable to the participant or beneficiary as of the enrollment date.

(b) Definitions

For purposes of this part—

(1) Preexisting condition exclusion

(A) In general

The term ''preexisting condition exclusion'' means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

(B) Treatment of genetic information

Genetic information shall not be treated as a condition described in subsection (a)(1) of this section in the absence of a diagnosis of the condition related to such information.

(2) Enrollment date

The term ''enrollment date'' means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for such enrollment.

(3) Late enrollee

The term ''late enrollee'' means, with respect to coverage under a group health plan, a participant or beneficiary who enrolls under the plan other than during—

(A) the first period in which the individual is eligible to enroll under the plan, or

(B) a special enrollment period under subsection (f) of this section.

(4) Waiting period

The term ''waiting period'' means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

(c) Rules relating to crediting previous coverage

(1) "Creditable coverage" defined

For purposes of this subchapter, the term ''creditable coverage'' means, with respect to an individual, coverage of the individual under any of the following:

(A) A group health plan.

(B) Health insurance coverage.

(C) Part A or part B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.].

(D) Title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], other than coverage consisting solely of benefits under section 1928 [42 U.S.C. 1396s].

(E) Chapter 55 of title 10.

(F) A medical care program of the Indian Health Service or of a tribal organization.

(G) A State health benefits risk pool.

(H) A health plan offered under chapter 89 of title 5.

(I) A public health plan (as defined in regulations).

(J) A health benefit plan under section 2504(e) of title 22.

Such term does not include coverage consisting solely of coverage of excepted benefits (as defined in section 300gg–91(c) of this title).

(2) Not counting periods before significant breaks in coverage

(A) In general

A period of creditable coverage shall not be counted, with respect to enrollment of an

individual under a group health plan, if, after such period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.

(B) Waiting period not treated as a break in coverage

For purposes of subparagraph (A) and subsection (d)(4) of this section, any period that an individual is in a waiting period for any coverage under a group health plan (or for group health insurance coverage) or is in an affiliation period (as defined in subsection (g)(2) of this section) shall not be taken into account in determining the continuous period under subparagraph (A).

(3) Method of crediting coverage

(A) Standard method

Except as otherwise provided under subparagraph (B), for purposes of applying subsection (a)(3) of this section, a group health plan, and a health insurance issuer offering group health insurance coverage, shall count a period of creditable coverage without regard to the specific benefits covered during the period.

(B) Election of alternative method

A group health plan, or a health insurance issuer offering group health insurance, may elect to apply subsection (a)(3) of this section based on coverage of benefits within each of several classes or categories of benefits specified in regulations rather than as provided under subparagraph (A). Such election shall be made on a uniform basis for all participants and beneficiaries. Under such election a group health plan or issuer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within such class or category.

(C) Plan notice

In the case of an election with respect to a group health plan under subparagraph (B) (whether or not health insurance coverage is provided in connection with such plan), the plan shall—

(i) prominently state in any disclosure statements concerning the plan, and state to each enrollee at the time of enrollment under the plan, that the plan has made such election, and

(ii) include in such statements a description of the effect of this election.

(D) Issuer notice

In the case of an election under subparagraph (B) with respect to health insurance coverage offered by an issuer in the small or large group market, the issuer—

(i) shall prominently state in any disclosure statements concerning the coverage, and to each employer at the time of the offer or sale of the coverage, that the issuer has made such election, and

(ii) shall include in such statements a description of the effect of such election.

(4) Establishment of period

Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in subsection (e) of this section or in such other manner as may be specified in regulations.

(d) Exceptions

(1) Exclusion not applicable to certain newborns

Subject to paragraph (4), a group health plan, and a health insurance issuer offering group health insurance coverage, may not impose any preexisting condition exclusion in the case of an individual who, as of the last day of the 30-day period beginning with the date of birth, is covered under creditable coverage.

(2) Exclusion not applicable to certain adopted children

Subject to paragraph (4), a group health plan, and a health insurance issuer offering group health insurance coverage, may not impose any preexisting condition exclusion in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of such adoption or placement for adoption.

(3) Exclusion not applicable to pregnancy

A group health plan, and health insurance issuer offering group health insurance coverage, may not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition.

(4) Loss if break in coverage

Paragraphs (1) and (2) shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

(e) Certifications and disclosure of coverage

(1) Requirement for certification of period of creditable coverage

(A) In general

A group health plan, and a health insurance issuer offering group health insurance coverage, shall provide the certification described in subparagraph (B)—

(i) at the time an individual ceases to be covered under the plan or otherwise becomes covered under a COBRA continuation provision,

(ii) in the case of an individual becoming covered under such a provision, at the time the individual ceases to be covered under such provision, and

(iii) on the request on behalf of an individual made not later than 24 months after the date of cessation of the coverage described in clause (i) or (ii), whichever is later.

The certification under clause (i) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(B) Certification

The certification described in this subparagraph is a written certification of—

(i) the period of creditable coverage of the individual under such plan and the coverage (if any) under such COBRA continuation provision, and

(ii) the waiting period (if any) (and affiliation period, if applicable) imposed with respect to the individual for any coverage under such plan.

(C) Issuer compliance

To the extent that medical care under a group health plan consists of group health insurance coverage, the plan is deemed to have satisfied the certification requirement under this paragraph if the health insurance issuer offering the coverage provides for such certification in accordance with this paragraph.

(2) Disclosure of information on previous benefits

In the case of an election described in subsection (c)(3)(B) of this section by a group health plan or health insurance issuer, if the plan or issuer enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual under paragraph (1)—

(A) upon request of such plan or issuer, the entity which issued the certification provided by the individual shall promptly disclose to such requesting plan or issuer information on coverage of classes and categories of health benefits available under such entity's plan or coverage, and

(B) such entity may charge the requesting plan or issuer for the reasonable cost of disclosing such information.

(3) Regulations

The Secretary shall establish rules to prevent an entity's failure to provide information under paragraph (1) or (2) with respect to previous coverage of an individual from adversely affecting any subsequent coverage of the individual under another group health plan or health insurance coverage.

(f) Special enrollment periods

(1) Individuals losing other coverage

A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

(A) The employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent.

(B) The employee stated in writing at such time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or issuer (if applicable) required such a statement at such time and provided the employee with notice of such requirement (and the consequences of such requirement) at such time.

(C) The employee's or dependent's coverage described in subparagraph (A)—

(i) was under a COBRA continuation provision and the coverage under such provision was exhausted; or

(ii) was not under such a provision and either the coverage was terminated as a result of loss of eligibility for the coverage (including as a result of legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment) or employer contributions toward such coverage were terminated.

(D) Under the terms of the plan, the employee requests such enrollment not later than 30 days after the date of exhaustion of coverage described in subparagraph (C)(i) or termination of coverage or employer contribution described in subparagraph (C)(ii).

(2) For dependent beneficiaries

(A) In general

If—

(i) a group health plan makes coverage available with respect to a dependent of an individual,

(ii) the individual is a participant under the plan (or has met any waiting period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period), and

(iii) a person becomes such a dependent of the individual through marriage, birth, or adoption or placement for adoption,

the group health plan shall provide for a dependent special enrollment period described in subparagraph (B) during which the person (or, if not otherwise enrolled, the individual) may be enrolled under the plan as a dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if such spouse is otherwise eligible for coverage.

(B) Dependent special enrollment period

A dependent special enrollment period under this subparagraph shall be a period of not less than 30 days and shall begin on the later of—

(i) the date dependent coverage is made available, or

(ii) the date of the marriage, birth, or adoption or placement for adoption (as the case may be) described in subparagraph (A)(iii).

(C) No waiting period

If an individual seeks to enroll a dependent during the first 30 days of such a dependent special enrollment period, the coverage of the dependent shall become effective—

(i) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(ii) in the case of a dependent's birth, as of the date of such birth; or

(iii) in the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

(g) Use of affiliation period by HMOs as alternative to preexisting condition exclusion

(1) In general

A health maintenance organization which offers health insurance coverage in connection with a group health plan and which does not impose any preexisting condition exclusion allowed under subsection (a) of this section with respect to any particular coverage option may impose an affiliation period for such coverage option, but only if—

(A) such period is applied uniformly without regard to any health status-related factors; and

(B) such period does not exceed 2 months (or 3 months in the case of a late enrollee).

(2) Affiliation period

(A) "Affiliation period" defined

For purposes of this subchapter, the term ''affiliation period'' means a period which, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective. The organization is not required to provide health care services or benefits during such period and no premium shall be charged to the participant or beneficiary for any coverage during the period.

(B) Beginning

Such period shall begin on the enrollment date.

(C) Runs concurrently with waiting periods

An affiliation period under a plan shall run concurrently with any waiting period under the plan.

(3) Alternative methods

A health maintenance organization described in paragraph (1) may use alternative methods, from those described in such paragraph, to address adverse selection as approved by the State insurance commissioner or official or officials designated by the State to enforce the requirements of this part for the State involved with respect to such issuer.

(July 1, 1944, ch. 373, title XXVII, § 2701, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1955.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(1)(C), (D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and B of title XVIII of the Act are classified generally to parts A (§ 1395c et seq.) and B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of this title. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 2701 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

EFFECTIVE DATE

Section 102(c) of Pub. L. 104–191 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, part A of title XXVII of the Public Health Service Act [this part] (as added by subsection (a)) shall apply with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997.

''(2) DETERMINATION OF CREDITABLE COVERAGE.—

''(A) PERIOD OF COVERAGE.—

''(i) IN GENERAL.—Subject to clause (ii), no period before July 1, 1996, shall be taken into account under part A of title XXVII of the Public Health Service Act [this part] (as added by this section) in determining creditable coverage.

''(ii) SPECIAL RULE FOR CERTAIN PERIODS.—The Secretary of Health and Human Services, consistent with section 104 [set out as a note under section 300gg–92 of this title], shall provide for a process whereby individuals who need to establish creditable coverage for periods before July 1, 1996, and who would have such coverage credited but for clause (i) may be given credit for creditable coverage for such periods through the presentation of documents or other means.

''(B) CERTIFICATIONS, ETC.—

''(i) IN GENERAL.—Subject to clauses (ii) and (iii), subsection (e) of section 2701 of the Public Health Service Act [subsec. (e) of this section] (as added by this section) shall apply to events occurring after June 30, 1996.

''(ii) NO CERTIFICATION REQUIRED TO BE PROVIDED BEFORE JUNE 1, 1997.—In no case is a certification required to be provided under such subsection before June 1, 1997.

''(iii) CERTIFICATION ONLY ON WRITTEN REQUEST FOR EVENTS OCCURRING BEFORE OCTOBER 1, 1996.—In the case of an event occurring after June 30, 1996, and before October 1, 1996, a certification is not required to be provided under such subsection unless an individual (with respect to whom the certification is otherwise required to be made) requests such certification in writing.

''(C) TRANSITIONAL RULE.—In the case of an individual who seeks to establish creditable coverage for any period for which certification is not required because it relates to an event occurring before June 30, 1996—

''(i) the individual may present other credible evidence of such coverage in order to establish the period of creditable coverage; and

''(ii) a group health plan and a health insurance issuer shall not be subject to any penalty or enforcement action with respect to the plan's or issuer's crediting (or not crediting) such coverage if the plan or issuer has sought to comply in good faith with the applicable requirements under the amendments made by this section [enacting this section and sections 300gg–1, 300gg–11 to 300gg–13, 300gg–21 to 300gg–23, 300gg–91, and 300gg–92 of this title and amending sections 300e and 300bb–8 of this title].

''(3) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—Except as provided in paragraph (2)(B), in the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Aug. 21, 1996], part A of title XXVII of the Public Health Service Act [this part] (other than section 2701(e) thereof [subsec. (e) of this section]) shall not apply to plan years beginning before the later of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) July 1, 1997.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement re-

lating to the plan which amends the plan solely to conform to any requirement of such part shall not be treated as a termination of such collective bargaining agreement.

''(4) TIMELY REGULATIONS.—The Secretary of Health and Human Services, consistent with section 104 [set out as a note under section 300gg–92 of this title], shall first issue by not later than April 1, 1997, such regulations as may be necessary to carry out the amendments made by this section [enacting this section and sections 300gg–1, 300gg–11 to 300gg–13, 300gg–21 to 300gg–23, 300gg–91, and 300gg–92 of this title and amending sections 300e and 300bb–8 of this title] and section 111 [enacting sections 300gg–41 to 300gg–44 and 300gg–61 to 300gg–63 of this title].

''(5) LIMITATION ON ACTIONS.—No enforcement action shall be taken, pursuant to the amendments made by this section, against a group health plan or health insurance issuer with respect to a violation of a requirement imposed by such amendments before January 1, 1998, or, if later, the date of issuance of regulations referred to in paragraph (4), if the plan or issuer has sought to comply in good faith with such requirements.''

CONGRESSIONAL FINDINGS RELATING TO EXERCISE OF COMMERCE CLAUSE AUTHORITY; SEVERABILITY

Section 195 of title I of Pub. L. 104–191 provided that:

''(a) FINDINGS RELATING TO EXERCISE OF COMMERCE CLAUSE AUTHORITY.—Congress finds the following in relation to the provisions of this title [enacting this subchapter and sections 1181 to 1183 and 1191 to 1191c of Title 29, Labor, amending sections 233, 300e, and 300bb–8 of this title and sections 1003, 1021, 1022, 1024, 1132, 1136, and 1144 of Title 29, and enacting provisions set out as notes under this section, section 300gg–92 of this title, and section 1181 of Title 29]:

''(1) Provisions in group health plans and health insurance coverage that impose certain preexisting condition exclusions impact the ability of employees to seek employment in interstate commerce, thereby impeding such commerce.

''(2) Health insurance coverage is commercial in nature and is in and affects interstate commerce.

''(3) It is a necessary and proper exercise of Congressional authority to impose requirements under this title on group health plans and health insurance coverage (including coverage offered to individuals previously covered under group health plans) in order to promote commerce among the States.

''(4) Congress, however, intends to defer to States, to the maximum extent practicable, in carrying out such requirements with respect to insurers and health maintenance organizations that are subject to State regulation, consistent with the provisions of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.].

''(b) SEVERABILITY.—If any provision of this title or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this title and the application of the provisions of such to any person or circumstance shall not be affected thereby.''

HEALTH COVERAGE AVAILABILITY STUDIES

Section 191 of title I of Pub. L. 104–191 provided that:

''(a) STUDIES.—

''(1) STUDY ON EFFECTIVENESS OF REFORMS.—The Secretary of Health and Human Services shall provide for a study on the effectiveness of the provisions of this title [enacting this subchapter and sections 1181 to 1183 and 1191 to 1191c of Title 29, Labor, amending sections 233, 300e, and 300bb–8 of this title and sections 1003, 1021, 1022, 1024, 1132, 1136, and 1144 of Title 29, and enacting provisions set out as notes under this section, section 300gg–92 of this title, and section 1181 of Title 29] and the various State laws, in ensuring the availability of reasonably priced health coverage to employers purchasing group coverage and individuals purchasing coverage on a non-group basis.

''(2) STUDY ON ACCESS AND CHOICE.—The Secretary also shall provide for a study on—

''(A) the extent to which patients have direct access to, and choice of, health care providers, including specialty providers, within a network plan, as well as the opportunity to utilize providers outside of the network plan, under the various types of coverage offered under the provisions of this title; and

''(B) the cost and cost-effectiveness to health insurance issuers of providing access to out-of-network providers, and the potential impact of providing such access on the cost and quality of health insurance coverage offered under provisions of this title.

''(3) CONSULTATION.—The studies under this subsection shall be conducted in consultation with the Secretary of Labor, representatives of State officials, consumers, and other representatives of individuals and entities that have expertise in health insurance and employee benefits.

''(b) REPORTS.—Not later than January 1, 2000, the Secretary shall submit to the appropriate committees of Congress a report on each of the studies under subsection (a).''

§ 300gg–1. Prohibiting discrimination against individual participants and beneficiaries based on health status

(a) In eligibility to enroll

(1) In general

Subject to paragraph (2), a group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

(A) Health status.

(B) Medical condition (including both physical and mental illnesses).

(C) Claims experience.

(D) Receipt of health care.

(E) Medical history.

(F) Genetic information.

(G) Evidence of insurability (including conditions arising out of acts of domestic violence).

(H) Disability.

(2) No application to benefits or exclusions

To the extent consistent with section 300gg[1] of this title, paragraph (1) shall not be construed—

(A) to require a group health plan, or group health insurance coverage, to provide particular benefits other than those provided under the terms of such plan or coverage, or

(B) to prevent such a plan or coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage.

(3) Construction

For purposes of paragraph (1), rules for eligibility to enroll under a plan include rules de-

[1] See References in Text note below.

fining any applicable waiting periods for such enrollment.

(b) In premium contributions

(1) In general

A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution which is greater than such premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status-related factor in relation to the individual or to an individual enrolled under the plan as a dependent of the individual.

(2) Construction

Nothing in paragraph (1) shall be construed—

(A) to restrict the amount that an employer may be charged for coverage under a group health plan; or

(B) to prevent a group health plan, and a health insurance issuer offering group health insurance coverage, from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

(July 1, 1944, ch. 373, title XXVII, § 2702, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1961.)

REFERENCES IN TEXT

Section 300gg of this title, referred to in subsec. (a)(2), was in the original ''section 701'' and was translated as reading ''section 2701'' meaning section 2701 of act July 1, 1944, as added by Pub. L. 104–191, § 102(a), to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 2702 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

SUBPART 2—OTHER REQUIREMENTS

§ 300gg–4. Standards relating to benefits for mothers and newborns

(a) Requirements for minimum hospital stay following birth

(1) In general

A group health plan, and a health insurance issuer offering group health insurance coverage, may not—

(A) except as provided in paragraph (2)—

(i) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a normal vaginal delivery, to less than 48 hours, or

(ii) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a cesarean section, to less than 96 hours, or

(B) require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under subparagraph (A) (without regard to paragraph (2)).

(2) Exception

Paragraph (1)(A) shall not apply in connection with any group health plan or health insurance issuer in any case in which the decision to discharge the mother or her newborn child prior to the expiration of the minimum length of stay otherwise required under paragraph (1)(A) is made by an attending provider in consultation with the mother.

(b) Prohibitions

A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

(1) deny to the mother or her newborn child eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

(2) provide monetary payments or rebates to mothers to encourage such mothers to accept less than the minimum protections available under this section;

(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

(5) subject to subsection (c)(3) of this section, restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) of this section in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

(c) Rules of construction

(1) Nothing in this section shall be construed to require a mother who is a participant or beneficiary—

(A) to give birth in a hospital; or

(B) to stay in the hospital for a fixed period of time following the birth of her child.

(2) This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with childbirth for a mother or her newborn child.

(3) Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with childbirth for a mother or newborn child under the plan (or under health insurance coverage offered in connection with a group health plan), except that

such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) of this section may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

(d) Notice

A group health plan under this part shall comply with the notice requirement under section 1185(d) of title 29 with respect to the requirements of this section as if such section applied to such plan.

(e) Level and type of reimbursements

Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(f) Preemption; exception for health insurance coverage in certain States

(1) In general

The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 300gg–23(d)(1) of this title) for a State that regulates such coverage that is described in any of the following subparagraphs:

(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a normal vaginal delivery and at least a 96-hour hospital length of stay following a cesarean section.

(B) Such State law requires such coverage to provide for maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations.

(C) Such State law requires, in connection with such coverage for maternity care, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the mother.

(2) Construction

Section 300gg–23(a)(1) of this title shall not be construed as superseding a State law described in paragraph (1).

(July 1, 1944, ch. 373, title XXVII, § 2704, as added Pub. L. 104–204, title VI, § 604(a)(3), Sept. 26, 1996, 110 Stat. 2939.)

PRIOR PROVISIONS

A prior section 2704 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

EFFECTIVE DATE

Section 604(c) of Pub. L. 104–204 provided that: ''The amendments made by this section [enacting this section and amending sections 300gg–21 and 300gg–23 of this title] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.''

CONGRESSIONAL FINDINGS

Section 602 of title VI of Pub. L. 104–204 provided that: ''Congress finds that—

''(1) the length of post-delivery hospital stay should be based on the unique characteristics of each mother and her newborn child, taking into consideration the health of the mother, the health and stability of the newborn, the ability and confidence of the mother and the father to care for their newborn, the adequacy of support systems at home, and the access of the mother and her newborn to appropriate follow-up health care; and

''(2) the timing of the discharge of a mother and her newborn child from the hospital should be made by the attending provider in consultation with the mother.''

REPORTS TO CONGRESS CONCERNING CHILDBIRTH

Pub. L. 104–204, title VI, § 606, Sept. 26, 1996, 110 Stat. 2942, directed the Secretary of Health and Human Services to establish an advisory panel and conduct a study of the factors determining the length of hospital stay following childbirth, the diversity of negative or positive outcomes affecting mothers, infants, and families, the manner in which post natal care changed over time and the manner in which that care adapted or related to changes in the length of hospital stay, and the financial incentives that impact the health of newborns and mothers and influence the clinical decision making of health care providers, and to submit a final report to Congress not later than 5 years after Sept. 26, 1996, summarizing the study and the best practices used in the public and private sectors for the care of newborns and mothers, and making recommendations for improvements in prenatal care, post natal care, delivery and follow-up care, and whether the implementation of such improvements should be accomplished by the private health care sector, Federal or State governments, or any combination thereof.

§ 300gg–5. Parity in application of certain limits to mental health benefits

(a) In general

(1) Aggregate lifetime limits

In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits—

(A) No lifetime limit

If the plan or coverage does not include an aggregate lifetime limit on substantially all medical and surgical benefits, the plan or coverage may not impose any aggregate lifetime limit on mental health benefits.

(B) Lifetime limit

If the plan or coverage includes an aggregate lifetime limit on substantially all medical and surgical benefits (in this paragraph referred to as the ''applicable lifetime limit''), the plan or coverage shall either—

(i) apply the applicable lifetime limit both to the medical and surgical benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health benefits; or

(ii) not include any aggregate lifetime limit on mental health benefits that is less than the applicable lifetime limit.

(C) Rule in case of different limits

In the case of a plan or coverage that is not described in subparagraph (A) or (B) and that includes no or different aggregate lifetime limits on different categories of medi-

cal and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to mental health benefits by substituting for the applicable lifetime limit an average aggregate lifetime limit that is computed taking into account the weighted average of the aggregate lifetime limits applicable to such categories.

(2) Annual limits

In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits—

(A) No annual limit

If the plan or coverage does not include an annual limit on substantially all medical and surgical benefits, the plan or coverage may not impose any annual limit on mental health benefits.

(B) Annual limit

If the plan or coverage includes an annual limit on substantially all medical and surgical benefits (in this paragraph referred to as the ''applicable annual limit''), the plan or coverage shall either—

(i) apply the applicable annual limit both to medical and surgical benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health benefits; or

(ii) not include any annual limit on mental health benefits that is less than the applicable annual limit.

(C) Rule in case of different limits

In the case of a plan or coverage that is not described in subparagraph (A) or (B) and that includes no or different annual limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to mental health benefits by substituting for the applicable annual limit an average annual limit that is computed taking into account the weighted average of the annual limits applicable to such categories.

(b) Construction

Nothing in this section shall be construed—

(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any mental health benefits; or

(2) in the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides mental health benefits, as affecting the terms and conditions (including cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits under the plan or coverage, except as specifically provided in subsection (a) of this section (in regard to parity in the imposition of aggregate lifetime limits and annual limits for mental health benefits).

(c) Exemptions

(1) Small employer exemption

This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

(2) Increased cost exemption

This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

(d) Separate application to each option offered

In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

(e) Definitions

For purposes of this section—

(1) Aggregate lifetime limit

The term ''aggregate lifetime limit'' means, with respect to benefits under a group health plan or health insurance coverage, a dollar limitation on the total amount that may be paid with respect to such benefits under the plan or health insurance coverage with respect to an individual or other coverage unit.

(2) Annual limit

The term ''annual limit'' means, with respect to benefits under a group health plan or health insurance coverage, a dollar limitation on the total amount of benefits that may be paid with respect to such benefits in a 12-month period under the plan or health insurance coverage with respect to an individual or other coverage unit.

(3) Medical or surgical benefits

The term ''medical or surgical benefits'' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include mental health benefits.

(4) Mental health benefits

The term ''mental health benefits'' means benefits with respect to mental health services, as defined under the terms of the plan or coverage (as the case may be), but does not include benefits with respect to treatment of substance abuse or chemical dependency.

(f) Sunset

This section shall not apply to benefits for services furnished after December 31, 2007.

(July 1, 1944, ch. 373, title XXVII, § 2705, as added Pub. L. 104–204, title VII, § 703(a), Sept. 26, 1996, 110 Stat. 2947; amended Pub. L. 107–116, title VII, § 701(b), Jan. 10, 2002, 115 Stat. 2228; Pub. L. 107–313, § 2(b), Dec. 2, 2002, 116 Stat. 2457; Pub. L. 108–197, § 2(b), Dec. 19, 2003, 117 Stat. 2898; Pub. L. 108–311, title III, § 302(c), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 109–151, § 1(b), Dec. 30, 2005, 119 Stat. 2886; Pub. L. 109–432, div. A, title I, § 115(c), Dec. 20, 2006, 120 Stat. 2941.)

PRIOR PROVISIONS

A prior section 2705 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238d of this title.

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–432 substituted ''2007'' for ''2006''.

2005—Subsec. (f). Pub. L. 109–151 substituted ''December 31, 2006'' for ''December 31, 2005''.

2004—Subsec. (f). Pub. L. 108–311 substituted ''after December 31, 2005'' for ''on or after December 31, 2004''.

2003—Subsec. (f). Pub. L. 108–197 substituted ''December 31, 2004'' for ''December 31, 2003''.

2002—Subsec. (f). Pub. L. 107–313 substituted ''December 31, 2003'' for ''December 31, 2002''.

Pub. L. 107–116 substituted ''December 31, 2002'' for ''September 30, 2001''.

EFFECTIVE DATE

Section 703(b) of Pub. L. 104–204 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.''

§ 300gg–6. Required coverage for reconstructive surgery following mastectomies

The provisions of section 1185b of title 29 shall apply to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans, as if included in this subpart.

(July 1, 1944, ch. 373, title XXVII, § 2706, as added Pub. L. 105–277, div. A, § 101(f) [title IX, § 903(a)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–438.)

EFFECTIVE DATE

Pub. L. 105–277, div. A, § 101(f) [title IX, § 903(c)(1)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–438, provided that:

''(A) IN GENERAL.—The amendment made by subsection (a) [enacting this section] shall apply to group health plans for plan years beginning on or after the date of enactment of this Act [Oct. 21, 1998].

''(B) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by the amendment made by subsection (a) shall not be treated as a termination of such collective bargaining agreement.''

SUBPART 3—PROVISIONS APPLICABLE ONLY TO HEALTH INSURANCE ISSUERS

AMENDMENTS

1996—Pub. L. 104–204, title VI, § 604(a)(2), Sept. 26, 1996, 110 Stat. 2939, redesignated subpart 2 as 3.

§ 300gg–11. Guaranteed availability of coverage for employers in group market

(a) Issuance of coverage in small group market

(1) In general

Subject to subsections (c) through (f) of this section, each health insurance issuer that offers health insurance coverage in the small group market in a State—

(A) must accept every small employer (as defined in section 300gg–91(e)(4) of this title) in the State that applies for such coverage; and

(B) must accept for enrollment under such coverage every eligible individual (as defined in paragraph (2)) who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the group health plan and may not place any restriction which is inconsistent with section 300gg–1 of this title on an eligible individual being a participant or beneficiary.

(2) "Eligible individual" defined

For purposes of this section, the term ''eligible individual'' means, with respect to a health insurance issuer that offers health insurance coverage to a small employer in connection with a group health plan in the small group market, such an individual in relation to the employer as shall be determined—

(A) in accordance with the terms of such plan,

(B) as provided by the issuer under rules of the issuer which are uniformly applicable in a State to small employers in the small group market, and

(C) in accordance with all applicable State laws governing such issuer and such market.

(b) Assuring access in large group market

(1) Reports to HHS

The Secretary shall request that the chief executive officer of each State submit to the Secretary, by not later December 31, 2000, and every 3 years thereafter a report on—

(A) the access of large employers to health insurance coverage in the State, and

(B) the circumstances for lack of access (if any) of large employers (or one or more classes of such employers) in the State to such coverage.

(2) Triennial reports to Congress

The Secretary, based on the reports submitted under paragraph (1) and such other information as the Secretary may use, shall prepare and submit to Congress, every 3 years, a report describing the extent to which large employers (and classes of such employers) that seek health insurance coverage in the different States are able to obtain access to such coverage. Such report shall include such recommendations as the Secretary determines to be appropriate.

(3) GAO report on large employer access to health insurance coverage

The Comptroller General shall provide for a study of the extent to which classes of large employers in the different States are able to obtain access to health insurance coverage and the circumstances for lack of access (if any) to such coverage. The Comptroller General shall submit to Congress a report on such study not later than 18 months after August 21, 1996.

(c) Special rules for network plans

(1) In general

In the case of a health insurance issuer that offers health insurance coverage in the small group market through a network plan, the issuer may—

(A) limit the employers that may apply for such coverage to those with eligible individuals who live, work, or reside in the service area for such network plan; and

(B) within the service area of such plan, deny such coverage to such employers if the issuer has demonstrated, if required, to the applicable State authority that—

(i) it will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees, and

(ii) it is applying this paragraph uniformly to all employers without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to such employees and dependents.

(2) 180-day suspension upon denial of coverage

An issuer, upon denying health insurance coverage in any service area in accordance with paragraph (1)(B), may not offer coverage in the small group market within such service area for a period of 180 days after the date such coverage is denied.

(d) Application of financial capacity limits

(1) In general

A health insurance issuer may deny health insurance coverage in the small group market if the issuer has demonstrated, if required, to the applicable State authority that—

(A) it does not have the financial reserves necessary to underwrite additional coverage; and

(B) it is applying this paragraph uniformly to all employers in the small group market in the State consistent with applicable State law and without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to such employees and dependents.

(2) 180-day suspension upon denial of coverage

A health insurance issuer upon denying health insurance coverage in connection with group health plans in accordance with paragraph (1) in a State may not offer coverage in connection with group health plans in the small group market in the State for a period of 180 days after the date such coverage is denied or until the issuer has demonstrated to the applicable State authority, if required under applicable State law, that the issuer has sufficient financial reserves to underwrite additional coverage, whichever is later. An applicable State authority may provide for the application of this subsection on a service-area-specific basis.

(e) Exception to requirement for failure to meet certain minimum participation or contribution rules

(1) In general

Subsection (a) of this section shall not be construed to preclude a health insurance issuer from establishing employer contribution rules or group participation rules for the offering of health insurance coverage in connection with a group health plan in the small group market, as allowed under applicable State law.

(2) Rules defined

For purposes of paragraph (1)—

(A) the term ''employer contribution rule'' means a requirement relating to the minimum level or amount of employer contribution toward the premium for enrollment of participants and beneficiaries; and

(B) the term ''group participation rule'' means a requirement relating to the minimum number of participants or beneficiaries that must be enrolled in relation to a specified percentage or number of eligible individuals or employees of an employer.

(f) Exception for coverage offered only to bona fide association members

Subsection (a) of this section shall not apply to health insurance coverage offered by a health insurance issuer if such coverage is made available in the small group market only through one or more bona fide associations (as defined in section 300gg–91(d)(3) of this title).

(July 1, 1944, ch. 373, title XXVII, § 2711, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1962.)

PRIOR PROVISIONS

A prior section 2711 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

§ 300gg–12. Guaranteed renewability of coverage for employers in group market

(a) In general

Except as provided in this section, if a health insurance issuer offers health insurance coverage in the small or large group market in connection with a group health plan, the issuer must renew or continue in force such coverage at the option of the plan sponsor of the plan.

(b) General exceptions

A health insurance issuer may nonrenew or discontinue health insurance coverage offered in connection with a group health plan in the small or large group market based only on one or more of the following:

(1) Nonpayment of premiums

The plan sponsor has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or the issuer has not received timely premium payments.

(2) Fraud

The plan sponsor has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage.

(3) Violation of participation or contribution rules

The plan sponsor has failed to comply with a material plan provision relating to employer

contribution or group participation rules, as permitted under section 300gg–11(e) of this title in the case of the small group market or pursuant to applicable State law in the case of the large group market.

(4) Termination of coverage

The issuer is ceasing to offer coverage in such market in accordance with subsection (c) of this section and applicable State law.

(5) Movement outside service area

In the case of a health insurance issuer that offers health insurance coverage in the market through a network plan, there is no longer any enrollee in connection with such plan who lives, resides, or works in the service area of the issuer (or in the area for which the issuer is authorized to do business) and, in the case of the small group market, the issuer would deny enrollment with respect to such plan under section 300gg–11(c)(1)(A) of this title.

(6) Association membership ceases

In the case of health insurance coverage that is made available in the small or large group market (as the case may be) only through one or more bona fide associations, the membership of an employer in the association (on the basis of which the coverage is provided) ceases but only if such coverage is terminated under this paragraph uniformly without regard to any health status-related factor relating to any covered individual.

(c) Requirements for uniform termination of coverage

(1) Particular type of coverage not offered

In any case in which an issuer decides to discontinue offering a particular type of group health insurance coverage offered in the small or large group market, coverage of such type may be discontinued by the issuer in accordance with applicable State law in such market only if—

(A) the issuer provides notice to each plan sponsor provided coverage of this type in such market (and participants and beneficiaries covered under such coverage) of such discontinuation at least 90 days prior to the date of the discontinuation of such coverage;

(B) the issuer offers to each plan sponsor provided coverage of this type in such market, the option to purchase all (or, in the case of the large group market, any) other health insurance coverage currently being offered by the issuer to a group health plan in such market; and

(C) in exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph (B), the issuer acts uniformly without regard to the claims experience of those sponsors or any health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage.

(2) Discontinuance of all coverage

(A) In general

In any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the small group market or the large group market, or both markets, in a State, health insurance coverage may be discontinued by the issuer only in accordance with applicable State law and if—

(i) the issuer provides notice to the applicable State authority and to each plan sponsor (and participants and beneficiaries covered under such coverage) of such discontinuation at least 180 days prior to the date of the discontinuation of such coverage; and

(ii) all health insurance issued or delivered for issuance in the State in such market (or markets) are discontinued and coverage under such health insurance coverage in such market (or markets) is not renewed.

(B) Prohibition on market reentry

In the case of a discontinuation under subparagraph (A) in a market, the issuer may not provide for the issuance of any health insurance coverage in the market and State involved during the 5-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

(d) Exception for uniform modification of coverage

At the time of coverage renewal, a health insurance issuer may modify the health insurance coverage for a product offered to a group health plan—

(1) in the large group market; or

(2) in the small group market if, for coverage that is available in such market other than only through one or more bona fide associations, such modification is consistent with State law and effective on a uniform basis among group health plans with that product.

(e) Application to coverage offered only through associations

In applying this section in the case of health insurance coverage that is made available by a health insurance issuer in the small or large group market to employers only through one or more associations, a reference to ''plan sponsor'' is deemed, with respect to coverage provided to an employer member of the association, to include a reference to such employer.

(July 1, 1944, ch. 373, title XXVII, § 2712, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1964.)

PRIOR PROVISIONS

A prior section 2712 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

§ 300gg–13. Disclosure of information

(a) Disclosure of information by health plan issuers

In connection with the offering of any health insurance coverage to a small employer, a health insurance issuer—

(1) shall make a reasonable disclosure to such employer, as part of its solicitation and sales materials, of the availability of information described in subsection (b) of this section, and

(2) upon request of such a small employer, provide such information.

(b) Information described

(1) In general

Subject to paragraph (3), with respect to a health insurance issuer offering health insurance coverage to a small employer, information described in this subsection is information concerning—

(A) the provisions of such coverage concerning issuer's right to change premium rates and the factors that may affect changes in premium rates;

(B) the provisions of such coverage relating to renewability of coverage;

(C) the provisions of such coverage relating to any preexisting condition exclusion; and

(D) the benefits and premiums available under all health insurance coverage for which the employer is qualified.

(2) Form of information

Information under this subsection shall be provided to small employers in a manner determined to be understandable by the average small employer, and shall be sufficient to reasonably inform small employers of their rights and obligations under the health insurance coverage.

(3) Exception

An issuer is not required under this section to disclose any information that is proprietary and trade secret information under applicable law.

(July 1, 1944, ch. 373, title XXVII, § 2713, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1966.)

PRIOR PROVISIONS

A prior section 2713 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

SUBPART 4—EXCLUSION OF PLANS; ENFORCEMENT; PREEMPTION

AMENDMENTS

1996—Pub. L. 104–204, title VI, § 604(a)(2), Sept. 26, 1996, 110 Stat. 2939, redesignated subpart 3 as 4.

§ 300gg–21. Exclusion of certain plans

(a) Exception for certain small group health plans

The requirements of subparts 1 and 3 shall not apply to any group health plan (and health insurance coverage offered in connection with a group health plan) for any plan year if, on the first day of such plan year, such plan has less than 2 participants who are current employees.

(b) Limitation on application of provisions relating to group health plans

(1) In general

The requirements of subparts 1 through 3 shall apply with respect to group health plans only—

(A) subject to paragraph (2), in the case of a plan that is a nonfederal[1] governmental plan, and

(B) with respect to health insurance coverage offered in connection with a group health plan (including such a plan that is a church plan or a governmental plan).

(2) Treatment of non-Federal governmental plans

(A) Election to be excluded

If the plan sponsor of a nonfederal[1] governmental plan which is a group health plan to which the provisions of subparts 1 through 3 otherwise apply makes an election under this subparagraph (in such form and manner as the Secretary may by regulations prescribe), then the requirements of such subparts insofar as they apply directly to group health plans (and not merely to group health insurance coverage) shall not apply to such governmental plans for such period except as provided in this paragraph.

(B) Period of election

An election under subparagraph (A) shall apply—

(i) for a single specified plan year, or

(ii) in the case of a plan provided pursuant to a collective bargaining agreement, for the term of such agreement.

An election under clause (i) may be extended through subsequent elections under this paragraph.

(C) Notice to enrollees

Under such an election, the plan shall provide for—

(i) notice to enrollees (on an annual basis and at the time of enrollment under the plan) of the fact and consequences of such election, and

(ii) certification and disclosure of creditable coverage under the plan with respect to enrollees in accordance with section 300gg(e) of this title.

(c) Exception for certain benefits

The requirements of subparts 1 through 3 shall not apply to any group health plan (or group health insurance coverage) in relation to its provision of excepted benefits described in section 300gg–91(c)(1) of this title.

[1] So in original. Probably should be "non-Federal".

(d) Exception for certain benefits if certain conditions met

(1) Limited, excepted benefits

The requirements of subparts 1 through 3 shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) in relation to its provision of excepted benefits described in section 300gg–91(c)(2) of this title if the benefits—

(A) are provided under a separate policy, certificate, or contract of insurance; or

(B) are otherwise not an integral part of the plan.

(2) Noncoordinated, excepted benefits

The requirements of subparts 1 through 3 shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) in relation to its provision of excepted benefits described in section 300gg–91(c)(3) of this title if all of the following conditions are met:

(A) The benefits are provided under a separate policy, certificate, or contract of insurance.

(B) There is no coordination between the provision of such benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor.

(C) Such benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor.

(3) Supplemental excepted benefits

The requirements of this part shall not apply to any group health plan (and group health insurance coverage) in relation to its provision of excepted benefits described in section 300gg–91(c)(4)[2] of this title if the benefits are provided under a separate policy, certificate, or contract of insurance.

(e) Treatment of partnerships

For purposes of this part—

(1) Treatment as a group health plan

Any plan, fund, or program which would not be (but for this subsection) an employee welfare benefit plan and which is established or maintained by a partnership, to the extent that such plan, fund, or program provides medical care (including items and services paid for as medical care) to present or former partners in the partnership or to their dependents (as defined under the terms of the plan, fund, or program), directly or through insurance, reimbursement, or otherwise, shall be treated (subject to paragraph (2)) as an employee welfare benefit plan which is a group health plan.

(2) Employer

In the case of a group health plan, the term ''employer'' also includes the partnership in relation to any partner.

(3) Participants of group health plans

In the case of a group health plan, the term ''participant'' also includes—

(A) in connection with a group health plan maintained by a partnership, an individual who is a partner in relation to the partnership, or

(B) in connection with a group health plan maintained by a self-employed individual (under which one or more employees are participants), the self-employed individual,

if such individual is, or may become, eligible to receive a benefit under the plan or such individual's beneficiaries may be eligible to receive any such benefit.

(July 1, 1944, ch. 373, title XXVII, § 2721, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1967; amended Pub. L. 104–204, title VI, § 604(b)(1), Sept. 26, 1996, 110 Stat. 2940.)

REFERENCES IN TEXT

Section 300gg–91(c)(4) of this title, referred to in subsec. (d)(3), was in the original ''section 27971(c)(4)'' and was translated as reading ''section 2791(c)(4)'', meaning section 2791(c)(4) of act July 1, 1944, as added by Pub. L. 104–191, § 102(a), to reflect the probable intent of Congress. Act July 1, 1944, does not contain a section 27971.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–204, § 604(b)(1)(A), substituted ''subparts 1 and 3'' for ''subparts 1 and 2''.

Subsec. (b) to (d). Pub. L. 104–204, § 604(b)(1)(B), substituted ''subparts 1 through 3'' for ''subparts 1 and 2'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–204 applicable with respect to group health plans for plan years beginning on or after Jan. 1, 1998, see section 604(c) of Pub. L. 104–204 set out as an Effective Date note under section 300gg–4 of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

§ 300gg–22. Enforcement

(a) State enforcement

(1) State authority

Subject to section 300gg–23 of this title, each State may require that health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State in the small or large group markets meet the requirements of this part with respect to such issuers.

(2) Failure to implement provisions

In the case of a determination by the Secretary that a State has failed to substantially enforce a provision (or provisions) in this part with respect to health insurance issuers in the State, the Secretary shall enforce such provision (or provisions) under subsection (b) of this section insofar as they relate to the issuance, sale, renewal, and offering of health insurance coverage in connection with group health plans in such State.

(b) Secretarial enforcement authority

(1) Limitation

The provisions of this subsection shall apply to enforcement of a provision (or provisions) of this part only—

[2] See References in Text note below.

(A) as provided under subsection (a)(2) of this section; and

(B) with respect to group health plans that are non-Federal governmental plans.

(2) Imposition of penalties

In the cases described in paragraph (1)—

(A) In general

Subject to the succeeding provisions of this subsection, any non-Federal governmental plan that is a group health plan and any health insurance issuer that fails to meet a provision of this part applicable to such plan or issuer is subject to a civil money penalty under this subsection.

(B) Liability for penalty

In the case of a failure by—

(i) a health insurance issuer, the issuer is liable for such penalty, or

(ii) a group health plan that is a non-Federal governmental plan which is—

(I) sponsored by 2 or more employers, the plan is liable for such penalty, or

(II) not so sponsored, the employer is liable for such penalty.

(C) Amount of penalty

(i) In general

The maximum amount of penalty imposed under this paragraph is $100 for each day for each individual with respect to which such a failure occurs.

(ii) Considerations in imposition

In determining the amount of any penalty to be assessed under this paragraph, the Secretary shall take into account the previous record of compliance of the entity being assessed with the applicable provisions of this part and the gravity of the violation.

(iii) Limitations

(I) Penalty not to apply where failure not discovered exercising reasonable diligence

No civil money penalty shall be imposed under this paragraph on any failure during any period for which it is established to the satisfaction of the Secretary that none of the entities against whom the penalty would be imposed knew, or exercising reasonable diligence would have known, that such failure existed.

(II) Penalty not to apply to failures corrected within 30 days

No civil money penalty shall be imposed under this paragraph on any failure if such failure was due to reasonable cause and not to willful neglect, and such failure is corrected during the 30-day period beginning on the first day any of the entities against whom the penalty would be imposed knew, or exercising reasonable diligence would have known, that such failure existed.

(D) Administrative review

(i) Opportunity for hearing

The entity assessed shall be afforded an opportunity for hearing by the Secretary upon request made within 30 days after the date of the issuance of a notice of assessment. In such hearing the decision shall be made on the record pursuant to section 554 of title 5. If no hearing is requested, the assessment shall constitute a final and unappealable order.

(ii) Hearing procedure

If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intent to modify or vacate the decision of the administrative law judge shall be issued to the parties within 30 days after the date of the decision of the judge. A final order which takes effect under this paragraph shall be subject to review only as provided under subparagraph (E).

(E) Judicial review

(i) Filing of action for review

Any entity against whom an order imposing a civil money penalty has been entered after an agency hearing under this paragraph may obtain review by the United States district court for any district in which such entity is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within 30 days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secretary.

(ii) Certification of administrative record

The Secretary shall promptly certify and file in such court the record upon which the penalty was imposed.

(iii) Standard for review

The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(iv) Appeal

Any final decision, order, or judgment of the district court concerning such review shall be subject to appeal as provided in chapter 83 of title 28.

(F) Failure to pay assessment; maintenance of action

(i) Failure to pay assessment

If any entity fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General who shall recover the amount assessed by action in the appropriate United States district court.

(ii) Nonreviewability

In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(G) Payment of penalties

Except as otherwise provided, penalties collected under this paragraph shall be paid

to the Secretary (or other officer) imposing the penalty and shall be available without appropriation and until expended for the purpose of enforcing the provisions with respect to which the penalty was imposed.

(July 1, 1944, ch. 373, title XXVII, § 2722, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1968.)

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

§ 300gg–23. Preemption; State flexibility; construction

(a) Continued applicability of State law with respect to health insurance issuers

(1) In general

Subject to paragraph (2) and except as provided in subsection (b) of this section, this part and part C of this subchapter insofar as it relates to this part shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement of this part.

(2) Continued preemption with respect to group health plans

Nothing in this part shall be construed to affect or modify the provisions of section 1144 of title 29 with respect to group health plans.

(b) Special rules in case of portability requirements

(1) In general

Subject to paragraph (2), the provisions of this part relating to health insurance coverage offered by a health insurance issuer supersede any provision of State law which establishes, implements, or continues in effect a standard or requirement applicable to imposition of a preexisting condition exclusion specifically governed by section 300gg of this title[1] which differs from the standards or requirements specified in such section.

(2) Exceptions

Only in relation to health insurance coverage offered by a health insurance issuer, the provisions of this part do not supersede any provision of State law to the extent that such provision—

(i) substitutes for the reference to ''6-month period'' in section 300gg(a)(1) of this title a reference to any shorter period of time;

(ii) substitutes for the reference to ''12 months'' and ''18 months'' in section 300gg(a)(2) of this title a reference to any shorter period of time;

(iii) substitutes for the references to ''63'' days in sections 300gg(c)(2)(A) and 300gg(d)(4)(A)[2] of this title a reference to any greater number of days;

(iv) substitutes for the reference to ''30-day period'' in sections 300gg(b)(2) and 300gg(d)(1) of this title a reference to any greater period;

(v) prohibits the imposition of any preexisting condition exclusion in cases not described in section 300gg(d) of this title or expands the exceptions described in such section;

(vi) requires special enrollment periods in addition to those required under section 300gg(f) of this title; or

(vii) reduces the maximum period permitted in an affiliation period under section 300gg(g)(1)(B) of this title.

(c) Rules of construction

Nothing in this part (other than section 300gg–4 of this title) shall be construed as requiring a group health plan or health insurance coverage to provide specific benefits under the terms of such plan or coverage.

(d) Definitions

For purposes of this section—

(1) State law

The term ''State law'' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) State

The term ''State'' includes a State (including the Northern Mariana Islands), any political subdivisions of a State or such Islands, or any agency or instrumentality of either.

(July 1, 1944, ch. 373, title XXVII, § 2723, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1971; amended Pub. L. 104–204, title VI, § 604(b)(2), Sept. 26, 1996, 110 Stat. 2941.)

REFERENCES IN TEXT

Section 300gg of this title, referred to in subsec. (b)(1), was in the original ''section 701'' and was translated as reading ''section 2701'' meaning section 2701 of act July 1, 1944, as added by Pub. L. 104–191, § 102(a), to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–204 inserted ''(other than section 300gg–4 of this title)'' after ''part''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–204 applicable with respect to group health plans for plan years beginning on or after Jan. 1, 1998, see section 604(c) of Pub. L. 104–204 set out as an Effective Date note under section 300gg–4 of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning

[1] See References in Text note below.

[2] So in original. Probably should be ''300gg(d)(4)''.

after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

PART B—INDIVIDUAL MARKET RULES

SUBPART 1—PORTABILITY, ACCESS, AND RENEWABILITY REQUIREMENTS

§ 300gg–41. Guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage

(a) Guaranteed availability

(1) In general

Subject to the succeeding subsections of this section and section 300gg–44 of this title, each health insurance issuer that offers health insurance coverage (as defined in section 300gg–91(b)(1) of this title) in the individual market in a State may not, with respect to an eligible individual (as defined in subsection (b) of this section) desiring to enroll in individual health insurance coverage—

(A) decline to offer such coverage to, or deny enrollment of, such individual; or

(B) impose any preexisting condition exclusion (as defined in section 300gg(b)(1)(A) of this title) with respect to such coverage.

(2) Substitution by State of acceptable alternative mechanism

The requirement of paragraph (1) shall not apply to health insurance coverage offered in the individual market in a State in which the State is implementing an acceptable alternative mechanism under section 300gg–44 of this title.

(b) "Eligible individual" defined

In this part, the term ''eligible individual'' means an individual—

(1)(A) for whom, as of the date on which the individual seeks coverage under this section, the aggregate of the periods of creditable coverage (as defined in section 300gg(c) of this title) is 18 or more months and (B) whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan (or health insurance coverage offered in connection with any such plan);

(2) who is not eligible for coverage under (A) a group health plan, (B) part A or part B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.], or (C) a State plan under title XIX of such Act [42 U.S.C. 1396 et seq.] (or any successor program), and does not have other health insurance coverage;

(3) with respect to whom the most recent coverage within the coverage period described in paragraph (1)(A) was not terminated based on a factor described in paragraph (1) or (2) of section 300gg–12(b) of this title (relating to nonpayment of premiums or fraud);

(4) if the individual had been offered the option of continuation coverage under a COBRA continuation provision or under a similar State program, who elected such coverage; and

(5) who, if the individual elected such continuation coverage, has exhausted such continuation coverage under such provision or program.

(c) Alternative coverage permitted where no State mechanism

(1) In general

In the case of health insurance coverage offered in the individual market in a State in which the State is not implementing an acceptable alternative mechanism under section 300gg–44 of this title, the health insurance issuer may elect to limit the coverage offered under subsection (a) of this section so long as it offers at least two different policy forms of health insurance coverage both of which—

(A) are designed for, made generally available to, and actively marketed to, and enroll both eligible and other individuals by the issuer; and

(B) meet the requirement of paragraph (2) or (3), as elected by the issuer.

For purposes of this subsection, policy forms which have different cost-sharing arrangements or different riders shall be considered to be different policy forms.

(2) Choice of most popular policy forms

The requirement of this paragraph is met, for health insurance coverage policy forms offered by an issuer in the individual market, if the issuer offers the policy forms for individual health insurance coverage with the largest, and next to largest, premium volume of all such policy forms offered by the issuer in the State or applicable marketing or service area (as may be prescribed in regulation) by the issuer in the individual market in the period involved.

(3) Choice of 2 policy forms with representative coverage

(A) In general

The requirement of this paragraph is met, for health insurance coverage policy forms offered by an issuer in the individual market, if the issuer offers a lower-level coverage policy form (as defined in subparagraph (B)) and a higher-level coverage policy form (as defined in subparagraph (C)) each of which includes benefits substantially similar to other individual health insurance coverage offered by the issuer in that State and each of which is covered under a method described in section 300gg–44(c)(3)(A) of this title (relating to risk adjustment, risk spreading, or financial subsidization).

(B) Lower-level of coverage described

A policy form is described in this subparagraph if the actuarial value of the benefits under the coverage is at least 85 percent but not greater than 100 percent of a weighted average (described in subparagraph (D)).

(C) Higher-level of coverage described

A policy form is described in this subparagraph if—

(i) the actuarial value of the benefits under the coverage is at least 15 percent greater than the actuarial value of the coverage described in subparagraph (B) offered by the issuer in the area involved; and

(ii) the actuarial value of the benefits under the coverage is at least 100 percent

but not greater than 120 percent of a weighted average (described in subparagraph (D)).

(D) Weighted average

For purposes of this paragraph, the weighted average described in this subparagraph is the average actuarial value of the benefits provided by all the health insurance coverage issued (as elected by the issuer) either by that issuer or by all issuers in the State in the individual market during the previous year (not including coverage issued under this section), weighted by enrollment for the different coverage.

(4) Election

The issuer elections under this subsection shall apply uniformly to all eligible individuals in the State for that issuer. Such an election shall be effective for policies offered during a period of not shorter than 2 years.

(5) Assumptions

For purposes of paragraph (3), the actuarial value of benefits provided under individual health insurance coverage shall be calculated based on a standardized population and a set of standardized utilization and cost factors.

(d) Special rules for network plans

(1) In general

In the case of a health insurance issuer that offers health insurance coverage in the individual market through a network plan, the issuer may—

(A) limit the individuals who may be enrolled under such coverage to those who live, reside, or work within the service area for such network plan; and

(B) within the service area of such plan, deny such coverage to such individuals if the issuer has demonstrated, if required, to the applicable State authority that—

(i) it will not have the capacity to deliver services adequately to additional individual enrollees because of its obligations to existing group contract holders and enrollees and individual enrollees, and

(ii) it is applying this paragraph uniformly to individuals without regard to any health status-related factor of such individuals and without regard to whether the individuals are eligible individuals.

(2) 180-day suspension upon denial of coverage

An issuer, upon denying health insurance coverage in any service area in accordance with paragraph (1)(B), may not offer coverage in the individual market within such service area for a period of 180 days after such coverage is denied.

(e)[1] Application of financial capacity limits

(1) In general

A health insurance issuer may deny health insurance coverage in the individual market to an eligible individual if the issuer has demonstrated, if required, to the applicable State authority that—

(A) it does not have the financial reserves necessary to underwrite additional coverage; and

(B) it is applying this paragraph uniformly to all individuals in the individual market in the State consistent with applicable State law and without regard to any health status-related factor of such individuals and without regard to whether the individuals are eligible individuals.

(2) 180-day suspension upon denial of coverage

An issuer upon denying individual health insurance coverage in any service area in accordance with paragraph (1) may not offer such coverage in the individual market within such service area for a period of 180 days after the date such coverage is denied or until the issuer has demonstrated, if required under applicable State law, to the applicable State authority that the issuer has sufficient financial reserves to underwrite additional coverage, whichever is later. A State may provide for the application of this paragraph on a service-area-specific basis.

(e)[1] Market requirements

(1) In general

The provisions of subsection (a) of this section shall not be construed to require that a health insurance issuer offering health insurance coverage only in connection with group health plans or through one or more bona fide associations, or both, offer such health insurance coverage in the individual market.

(2) Conversion policies

A health insurance issuer offering health insurance coverage in connection with group health plans under this subchapter shall not be deemed to be a health insurance issuer offering individual health insurance coverage solely because such issuer offers a conversion policy.

(f) Construction

Nothing in this section shall be construed—

(1) to restrict the amount of the premium rates that an issuer may charge an individual for health insurance coverage provided in the individual market under applicable State law; or

(2) to prevent a health insurance issuer offering health insurance coverage in the individual market from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

(July 1, 1944, ch. 373, title XXVII, § 2741, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1978.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and B of title XVIII of the Act are classified generally to parts A (§ 1395c et seq.) and B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of this title. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

[1] So in original. Two subsecs. (e) have been enacted.

EFFECTIVE DATE

Section 111(b) of Pub. L. 104–191 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, part B of title XXVII of the Public Health Service Act [this part] (as inserted by subsection (a)) shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs.

''(2) APPLICATION OF CERTIFICATION RULES.—The provisions of section 102(d)(2) [102(c)(2)] of this Act [set out as a note under section 300gg of this title] shall apply to section 2743 of the Public Health Service Act [section 300gg–43 of this title] in the same manner as it applies to section 2701(e) of such Act [section 300gg(e) of this title].''

§ 300gg–42. Guaranteed renewability of individual health insurance coverage

(a) In general

Except as provided in this section, a health insurance issuer that provides individual health insurance coverage to an individual shall renew or continue in force such coverage at the option of the individual.

(b) General exceptions

A health insurance issuer may nonrenew or discontinue health insurance coverage of an individual in the individual market based only on one or more of the following:

(1) Nonpayment of premiums

The individual has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or the issuer has not received timely premium payments.

(2) Fraud

The individual has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage.

(3) Termination of plan

The issuer is ceasing to offer coverage in the individual market in accordance with subsection (c) of this section and applicable State law.

(4) Movement outside service area

In the case of a health insurance issuer that offers health insurance coverage in the market through a network plan, the individual no longer resides, lives, or works in the service area (or in an area for which the issuer is authorized to do business) but only if such coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals.

(5) Association membership ceases

In the case of health insurance coverage that is made available in the individual market only through one or more bona fide associations, the membership of the individual in the association (on the basis of which the coverage is provided) ceases but only if such coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals.

(c) Requirements for uniform termination of coverage

(1) Particular type of coverage not offered

In any case in which an issuer decides to discontinue offering a particular type of health insurance coverage offered in the individual market, coverage of such type may be discontinued by the issuer only if—

(A) the issuer provides notice to each covered individual provided coverage of this type in such market of such discontinuation at least 90 days prior to the date of the discontinuation of such coverage;

(B) the issuer offers to each individual in the individual market provided coverage of this type, the option to purchase any other individual health insurance coverage currently being offered by the issuer for individuals in such market; and

(C) in exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph (B), the issuer acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage.

(2) Discontinuance of all coverage

(A) In general

Subject to subparagraph (C), in any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the individual market in a State, health insurance coverage may be discontinued by the issuer only if—

(i) the issuer provides notice to the applicable State authority and to each individual of such discontinuation at least 180 days prior to the date of the expiration of such coverage, and

(ii) all health insurance issued or delivered for issuance in the State in such market are discontinued and coverage under such health insurance coverage in such market is not renewed.

(B) Prohibition on market reentry

In the case of a discontinuation under subparagraph (A) in the individual market, the issuer may not provide for the issuance of any health insurance coverage in the market and State involved during the 5-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

(d) Exception for uniform modification of coverage

At the time of coverage renewal, a health insurance issuer may modify the health insurance coverage for a policy form offered to individuals in the individual market so long as such modification is consistent with State law and effective on a uniform basis among all individuals with that policy form.

(e) Application to coverage offered only through associations

In applying this section in the case of health insurance coverage that is made available by a health insurance issuer in the individual market to individuals only through one or more associations, a reference to an ''individual'' is deemed to include a reference to such an association (of which the individual is a member).

(July 1, 1944, ch. 373, title XXVII, § 2742, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1982.)

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

§ 300gg–43. Certification of coverage

The provisions of section 300gg(e) of this title shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

(July 1, 1944, ch. 373, title XXVII, § 2743, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1983.)

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, and provisions of section 102(c)(2) of Pub. L. 104–191, set out as a note under section 300gg of this title, applicable to this section in the same manner as it applies to section 300gg(e) of this title, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

§ 300gg–44. State flexibility in individual market reforms

(a) Waiver of requirements where implementation of acceptable alternative mechanism

(1) In general

The requirements of section 300gg–41 of this title shall not apply with respect to health insurance coverage offered in the individual market in the State so long as a State is found to be implementing, in accordance with this section and consistent with section 300gg–62(b) of this title, an alternative mechanism (in this section referred to as an ''acceptable alternative mechanism'')—

(A) under which all eligible individuals are provided a choice of health insurance coverage;

(B) under which such coverage does not impose any preexisting condition exclusion with respect to such coverage;

(C) under which such choice of coverage includes at least one policy form of coverage that is comparable to comprehensive health insurance coverage offered in the individual market in such State or that is comparable to a standard option of coverage available under the group or individual health insurance laws of such State; and

(D) in a State which is implementing—

(i) a model act described in subsection (c)(1) of this section,

(ii) a qualified high risk pool described in subsection (c)(2) of this section, or

(iii) a mechanism described in subsection (c)(3) of this section.

(2) Permissible forms of mechanisms

A private or public individual health insurance mechanism (such as a health insurance coverage pool or programs, mandatory group conversion policies, guaranteed issue of one or more plans of individual health insurance coverage, or open enrollment by one or more health insurance issuers), or combination of such mechanisms, that is designed to provide access to health benefits for individuals in the individual market in the State in accordance with this section may constitute an acceptable alternative mechanism.

(b) Application of acceptable alternative mechanisms

(1) Presumption

(A) In general

Subject to the succeeding provisions of this subsection, a State is presumed to be implementing an acceptable alternative mechanism in accordance with this section as of July 1, 1997, if, by not later than April 1, 1997, the chief executive officer of a State—

(i) notifies the Secretary that the State has enacted or intends to enact (by not later than January 1, 1998, or July 1, 1998, in the case of a State described in subparagraph (B)(ii)) any necessary legislation to provide for the implementation of a mechanism reasonably designed to be an acceptable alternative mechanism as of January 1, 1998,[1] (or, in the case of a State described in subparagraph (B)(ii), July 1, 1998); and

(ii) provides the Secretary with such information as the Secretary may require to review the mechanism and its implementation (or proposed implementation) under this subsection.

(B) Delay permitted for certain States

(i) Effect of delay

In the case of a State described in clause (ii) that provides notice under subparagraph (A)(i), for the presumption to continue on and after July 1, 1998, the chief executive officer of the State by April 1, 1998—

(I) must notify the Secretary that the State has enacted any necessary legislation to provide for the implementation of a mechanism reasonably designed to be an acceptable alternative mechanism as of July 1, 1998; and

(II) must provide the Secretary with such information as the Secretary may require to review the mechanism and its implementation (or proposed implementation) under this subsection.

(ii) States described

A State described in this clause is a State that has a legislature that does not meet within the 12-month period beginning on August 21, 1996.

(C) Continued application

In order for a mechanism to continue to be presumed to be an acceptable alternative mechanism, the State shall provide the Secretary every 3 years with information de-

[1] So in original. The comma probably should not appear.

scribed in subparagraph (A)(ii) or (B)(i)(II) (as the case may be).

(2) Notice

If the Secretary finds, after review of information provided under paragraph (1) and in consultation with the chief executive officer of the State and the insurance commissioner or chief insurance regulatory official of the State, that such a mechanism is not an acceptable alternative mechanism or is not (or no longer) being implemented, the Secretary—

(A) shall notify the State of—

(i) such preliminary determination, and

(ii) the consequences under paragraph (3) of a failure to implement such a mechanism; and

(B) shall permit the State a reasonable opportunity in which to modify the mechanism (or to adopt another mechanism) in a manner so that may be an acceptable alternative mechanism or to provide for implementation of such a mechanism.

(3) Final determination

If, after providing notice and opportunity under paragraph (2), the Secretary finds that the mechanism is not an acceptable alternative mechanism or the State is not implementing such a mechanism, the Secretary shall notify the State that the State is no longer considered to be implementing an acceptable alternative mechanism and that the requirements of section 300gg–41 of this title shall apply to health insurance coverage offered in the individual market in the State, effective as of a date specified in the notice.

(4) Limitation on secretarial authority

The Secretary shall not make a determination under paragraph (2) or (3) on any basis other than the basis that a mechanism is not an acceptable alternative mechanism or is not being implemented.

(5) Future adoption of mechanisms

If a State, after January 1, 1997, submits the notice and information described in paragraph (1), unless the Secretary makes a finding described in paragraph (3) within the 90-day period beginning on the date of submission of the notice and information, the mechanism shall be considered to be an acceptable alternative mechanism for purposes of this section, effective 90 days after the end of such period, subject to the second sentence of paragraph (1).

(c) Provision related to risk

(1) Adoption of NAIC models

The model act referred to in subsection (a)(1)(D)(i) of this section is the Small Employer and Individual Health Insurance Availability Model Act (adopted by the National Association of Insurance Commissioners on June 3, 1996) insofar as it applies to individual health insurance coverage or the Individual Health Insurance Portability Model Act (also adopted by such Association on such date).

(2) Qualified high risk pool

For purposes of subsection (a)(1)(D)(ii) of this section, a ''qualified high risk pool'' described in this paragraph is a high risk pool that—

(A) provides to all eligible individuals health insurance coverage (or comparable coverage) that does not impose any preexisting condition exclusion with respect to such coverage for all eligible individuals, and

(B) provides for premium rates and covered benefits for such coverage consistent with standards included in the NAIC Model Health Plan for Uninsurable Individuals Act (as in effect as of August 21, 1996).

(3) Other mechanisms

For purposes of subsection (a)(1)(D)(iii) of this section, a mechanism described in this paragraph—

(A) provides for risk adjustment, risk spreading, or a risk spreading mechanism (among issuers or policies of an issuer) or otherwise provides for some financial subsidization for eligible individuals, including through assistance to participating issuers; or

(B) is a mechanism under which each eligible individual is provided a choice of all individual health insurance coverage otherwise available.

(July 1, 1944, ch. 373, title XXVII, § 2744, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1984; amended Pub. L. 104–204, title VI, § 605(b)(1), Sept. 26, 1996, 110 Stat. 2942.)

CODIFICATION

August 21, 1996, referred to in subsec. (b)(1)(B)(ii), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 104–191, which enacted this subchapter, to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–204 made technical amendment to reference in original act which appears in text as reference to section 300gg–62(b) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 605(c) of Pub. L. 104–204 provided that: ''The amendments made by this section [enacting section 300gg–51 of this title and amending this section and sections 300gg–61 and 300gg–62 of this title] shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after January 1, 1998.''

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

§ 300gg–45. Relief for high risk pools

(a) Seed grants to States

The Secretary shall provide from the funds appropriated under subsection (d)(1)(A) a grant of up to $1,000,000 to each State that has not created a qualified high risk pool as of February 10, 2006, for the State's costs of creation and initial operation of such a pool.

(b) Grants for operational losses

(1) In general

In the case of a State that has established a qualified high risk pool that—

(A) restricts premiums charged under the pool to no more than 200 percent of the premium for applicable standard risk rates;

(B) offers a choice of two or more coverage options through the pool; and

(C) has in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State in connection with operation of the pool after the end of the last fiscal year for which a grant is provided under this paragraph;

the Secretary shall provide, from the funds appropriated under paragraphs (1)(B)(i) and (2)(A) of subsection (d) and allotted to the State under paragraph (2), a grant for the losses incurred by the State in connection with the operation of the pool.

(2) Allotment

Subject to paragraph (4), the amounts appropriated under paragraphs (1)(B)(i) and (2)(A) of subsection (d) for a fiscal year shall be allotted and made available to the States (or the entities that operate the high risk pool under applicable State law) that qualify for a grant under paragraph (1) as follows:

(A) An amount equal to 40 percent of such appropriated amount for the fiscal year shall be allotted in equal amounts to each qualifying State that is one of the 50 States or the District of Columbia and that applies for a grant under this subsection.

(B) An amount equal to 30 percent of such appropriated amount for the fiscal year shall be allotted among qualifying States that apply for such a grant so that the amount allotted to such a State bears the same ratio to such appropriated amount as the number of uninsured individuals in the State bears to the total number of uninsured individuals (as determined by the Secretary) in all qualifying States that so apply.

(C) An amount equal to 30 percent of such appropriated amount for the fiscal year shall be allotted among qualifying States that apply for such a grant so that the amount allotted to a State bears the same ratio to such appropriated amount as the number of individuals enrolled in health care coverage through the qualified high risk pool of the State bears to the total number of individuals so enrolled through qualified high risk pools (as determined by the Secretary) in all qualifying States that so apply.

(3) Special rule for pools charging higher premiums

In the case of a qualified high risk pool of a State which charges premiums that exceed 150 percent of the premium for applicable standard risks, the State shall use at least 50 percent of the amount of the grant provided to the State to carry out this subsection to reduce premiums for enrollees.

(4) Limitation for territories

In no case shall the aggregate amount allotted and made available under paragraph (2) for a fiscal year to States that are not the 50 States or the District of Columbia exceed $1,000,000.

(c) Bonus grants for supplemental consumer benefits

(1) In general

In the case of a State that is one of the 50 States or the District of Columbia, that has established a qualified high risk pool, and that is receiving a grant under subsection (b)(1), the Secretary shall provide, from the funds appropriated under paragraphs (1)(B)(ii) and (2)(B) of subsection (d) and allotted to the State under paragraph (3), a grant to be used to provide supplemental consumer benefits to enrollees or potential enrollees (or defined subsets of such enrollees or potential enrollees) in qualified high risk pools.

(2) Benefits

A State shall use amounts received under a grant under this subsection to provide one or more of the following benefits:

(A) Low-income premium subsidies.

(B) A reduction in premium trends, actual premiums, or other cost-sharing requirements.

(C) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment rules.

(D) Less stringent rules, or additional waiver authority, with respect to coverage of pre-existing conditions.

(E) Increased benefits.

(F) The establishment of disease management programs.

(3) Allotment; limitation

The Secretary shall allot funds appropriated under paragraphs (1)(B)(ii) and (2)(B) of subsection (d) among States qualifying for a grant under paragraph (1) in a manner specified by the Secretary, but in no case shall the amount so allotted to a State for a fiscal year exceed 10 percent of the funds so appropriated for the fiscal year.

(4) Rule of construction

Nothing in this subsection shall be construed to prohibit a State that, on February 10, 2006, is in the process of implementing a program to provide benefits of the type described in paragraph (2), from being eligible for a grant under this subsection.

(d) Funding

(1) Appropriation for fiscal year 2006

There are authorized to be appropriated for fiscal year 2006—

(A) $15,000,000 to carry out subsection (a); and

(B) $75,000,000, of which, subject to paragraph (4)—

(i) two-thirds of the amount appropriated shall be made available for allotments under subsection (b)(2); and

(ii) one-third of the amount appropriated shall be made available for allotments under subsection (c)(3).

(2) Authorization of appropriations for fiscal years 2007 through 2010

There are authorized to be appropriated $75,000,000 for each of fiscal years 2007 through 2010, of which, subject to paragraph (4)—

(A) two-thirds of the amount appropriated for a fiscal year shall be made available for allotments under subsection (b)(2); and

(B) one-third of the amount appropriated for a fiscal year shall be made available for allotments under subsection (c)(3).

(3) Availability

Funds appropriated for purposes of carrying out this section for a fiscal year shall remain available for obligation through the end of the following fiscal year.

(4) Reallotment

If, on June 30 of each fiscal year for which funds are appropriated under paragraph (1)(B) or (2), the Secretary determines that all the amounts so appropriated are not allotted or otherwise made available to States, such remaining amounts shall be allotted and made available under subsection (b) among States receiving grants under subsection (b) for the fiscal year based upon the allotment formula specified in such subsection.

(5) No entitlement

Nothing in this section shall be construed as providing a State with an entitlement to a grant under this section.

(e) Applications

To be eligible for a grant under this section, a State shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(f) Annual report

The Secretary shall submit to Congress an annual report on grants provided under this section. Each such report shall include information on the distribution of such grants among States and the use of grant funds by States.

(g) Definitions

In this section:

(1) Qualified high risk pool

(A)[1] In general

The term ''qualified high risk pool'' has the meaning given such term in section 300gg–44(c)(2) of this title, except that a State may elect to meet the requirement of subparagraph (A) of such section (insofar as it requires the provision of coverage to all eligible individuals) through providing for the enrollment of eligible individuals through an acceptable alternative mechanism (as defined for purposes of section 300gg–44 of this title) that includes a high risk pool as a component.

(2) Standard risk rate

The term ''standard risk rate'' means a rate—

(A) determined under the State high risk pool by considering the premium rates charged by other health insurers offering health insurance coverage to individuals in the insurance market served;

(B) that is established using reasonable actuarial techniques; and

(C) that reflects anticipated claims experience and expenses for the coverage involved.

(3) State

The term ''State'' means any of the 50 States and the District of Columbia and includes Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(July 1, 1944, ch. 373, title XXVII, § 2745, as added Pub. L. 107–210, div. A, title II, § 201(b), Aug. 6, 2002, 116 Stat. 959; amended Pub. L. 109–172, § 2, Feb. 10, 2006, 120 Stat. 185.)

AMENDMENTS

2006—Pub. L. 109–172 amended section generally, substituting provisions relating to relief for high risk pools for provisions relating to promotion of qualified high risk pools.

CONSTRUCTION

Nothing in the amendments made by title II of Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating a new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a Construction of 2002 Amendment note under section 2918 of Title 29, Labor.

SUBPART 2—OTHER REQUIREMENTS

CODIFICATION

This subpart was, in the original, subpart 3 of part B of title XXVII of act July 1, 1944, and has been redesignated as subpart 2 for purposes of codification. Another subpart 3 of part B of title XXVII of act July 1, 1944, is classified to subpart 3 (§ 300gg–61 et seq.) of part B of this subchapter.

§ 300gg–51. Standards relating to benefits for mothers and newborns

(a) In general

The provisions of section 300gg–4 of this title (other than subsections (d) and (f)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

(b) Notice requirement

A health insurance issuer under this part shall comply with the notice requirement under section 1185(d) of title 29 with respect to the requirements referred to in subsection (a) of this section as if such section applied to such issuer and such issuer were a group health plan.

(c) Preemption; exception for health insurance coverage in certain States

(1) In general

The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 300gg–23(d)(1) of this title) for a State that regulates such coverage that is described in any of the following subparagraphs:

(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a normal vaginal delivery and at least a 96-hour hospital length of stay following a cesarean section.

[1] So in original. No subpar. (B) has been enacted.

(B) Such State law requires such coverage to provide for maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations.

(C) Such State law requires, in connection with such coverage for maternity care, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the mother.

(2) Construction

Section 300gg–62(a) of this title shall not be construed as superseding a State law described in paragraph (1).

(July 1, 1944, ch. 373, title XXVII, § 2751, as added Pub. L. 104–204, title VI, § 605(a)(4), Sept. 26, 1996, 110 Stat. 2941.)

EFFECTIVE DATE

Section applicable to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after Jan. 1, 1998, see section 605(c) of Pub. L. 104–204, set out as an Effective Date of 1996 Amendment note under section 300gg–44 of this title.

§ 300gg–52. Required coverage for reconstructive surgery following mastectomies

The provisions of section 300gg–6 of this title shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

(July 1, 1944, ch. 373, title XXVII, § 2752, as added Pub. L. 105–277, div. A, § 101(f) [title IX, § 903(b)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–438.)

EFFECTIVE DATE

Pub. L. 105–277, div. A, § 101(f) [title IX, § 903(c)(2)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–438, provided that: ''The amendment made by subsection (b) [enacting this section] shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the date of enactment of this Act [Oct. 21, 1998].''

SUBPART 3—GENERAL PROVISIONS

CODIFICATION

Another subpart 3 of part B of title XXVII of act July 1, 1944, is classified to subpart 2 (§ 300gg–51) of part B of this subchapter.

§ 300gg–61. Enforcement

(a) State enforcement

(1) State authority

Subject to section 300gg–62 of this title, each State may require that health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State in the individual market meet the requirements established under this part with respect to such issuers.

(2) Failure to implement requirements

In the case of a State that fails to substantially enforce the requirements set forth in this part with respect to health insurance issuers in the State, the Secretary shall enforce the requirements of this part under subsection (b) of this section insofar as they relate to the issuance, sale, renewal, and offering of health insurance coverage in the individual market in such State.

(b) Secretarial enforcement authority

The Secretary shall have the same authority in relation to enforcement of the provisions of this part with respect to issuers of health insurance coverage in the individual market in a State as the Secretary has under section 300gg–22(b)(2) of this title in relation to the enforcement of the provisions of part A of this subchapter with respect to issuers of health insurance coverage in the small group market in the State.

(July 1, 1944, ch. 373, title XXVII, § 2761, formerly § 2745, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1986; renumbered § 2761 and amended Pub. L. 104–204, title VI, § 605(a)(2), (b)(2), Sept. 26, 1996, 110 Stat. 2941, 2942.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–204 made technical amendment to reference in original act which appears in text as reference to section 300gg–62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–204 applicable to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after Jan. 1, 1998, see section 605(c) of Pub. L. 104–204, set out as a note under section 300gg–44 of this title.

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

§ 300gg–62. Preemption

(a) In general

Subject to subsection (b) of this section, nothing in this part (or part C of this subchapter insofar as it applies to this part) shall be construed to prevent a State from establishing, implementing, or continuing in effect standards and requirements unless such standards and requirements prevent the application of a requirement of this part.

(b) Rules of construction

(1) Nothing in this part (or part C of this subchapter insofar as it applies to this part) shall be construed to affect or modify the provisions of section 1144 of title 29.

(2) Nothing in this part (other than section 300gg–51 of this title) shall be construed as requiring health insurance coverage offered in the individual market to provide specific benefits under the terms of such coverage.

(July 1, 1944, ch. 373, title XXVII, § 2762, formerly § 2746, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1987; renumbered § 2762 and amended, Pub. L. 104–204, title VI, § 605(a)(2), (b)(3), Sept. 26, 1996, 110 Stat. 2941, 2942.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–204, § 605(b)(3), designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–204 applicable to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after Jan. 1, 1998, see section 605(c) of Pub. L. 104–204, set out as a note under section 300gg–44 of this title.

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

§ 300gg–63. General exceptions

(a) Exception for certain benefits

The requirements of this part shall not apply to any health insurance coverage in relation to its provision of excepted benefits described in section 300gg–91(c)(1) of this title.

(b) Exception for certain benefits if certain conditions met

The requirements of this part shall not apply to any health insurance coverage in relation to its provision of excepted benefits described in paragraph (2), (3), or (4) of section 300gg–91(c) of this title if the benefits are provided under a separate policy, certificate, or contract of insurance.

(July 1, 1944, ch. 373, title XXVII, § 2763, formerly § 2747, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1987; renumbered § 2763, Pub. L. 104–204, title VI, § 605(a)(2), Sept. 26, 1996, 110 Stat. 2941.)

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

PART C—DEFINITIONS; MISCELLANEOUS PROVISIONS

§ 300gg–91. Definitions

(a) Group health plan

(1) Definition

The term ''group health plan'' means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(1)]) to the extent that the plan provides medical care (as defined in paragraph (2)) and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

(2) Medical care

The term ''medical care'' means amounts paid for—

(A) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body,

(B) amounts paid for transportation primarily for and essential to medical care referred to in subparagraph (A), and

(C) amounts paid for insurance covering medical care referred to in subparagraphs (A) and (B).

(3) Treatment of certain plans as group health plan for notice provision

A program under which creditable coverage described in subparagraph (C), (D), (E), or (F) of section 300gg(c)(1) of this title is provided shall be treated as a group health plan for purposes of applying section 300gg(e) of this title.

(b) Definitions relating to health insurance

(1) Health insurance coverage

The term ''health insurance coverage'' means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

(2) Health insurance issuer

The term ''health insurance issuer'' means an insurance company, insurance service, or insurance organization (including a health maintenance organization, as defined in paragraph (3)) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1144(b)(2)]). Such term does not include a group health plan.

(3) Health maintenance organization

The term ''health maintenance organization'' means—

(A) a Federally qualified health maintenance organization (as defined in section 300e(a) of this title),

(B) an organization recognized under State law as a health maintenance organization, or

(C) a similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

(4) Group health insurance coverage

The term ''group health insurance coverage'' means, in connection with a group health plan, health insurance coverage offered in connection with such plan.

(5) Individual health insurance coverage

The term ''individual health insurance coverage'' means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

(c) Excepted benefits

For purposes of this subchapter, the term ''excepted benefits'' means benefits under one or more (or any combination thereof) of the following:

(1) Benefits not subject to requirements

(A) Coverage only for accident, or disability income insurance, or any combination thereof.

(B) Coverage issued as a supplement to liability insurance.

(C) Liability insurance, including general liability insurance and automobile liability insurance.

(D) Workers' compensation or similar insurance.

(E) Automobile medical payment insurance.

(F) Credit-only insurance.

(G) Coverage for on-site medical clinics.

(H) Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(2) Benefits not subject to requirements if offered separately

(A) Limited scope dental or vision benefits.

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(C) Such other similar, limited benefits as are specified in regulations.

(3) Benefits not subject to requirements if offered as independent, noncoordinated benefits

(A) Coverage only for a specified disease or illness.

(B) Hospital indemnity or other fixed indemnity insurance.

(4) Benefits not subject to requirements if offered as separate insurance policy

Medicare supplemental health insurance (as defined under section 1395ss(g)(1) of this title), coverage supplemental to the coverage provided under chapter 55 of title 10, and similar supplemental coverage provided to coverage under a group health plan.

(d) Other definitions

(1) Applicable State authority

The term ''applicable State authority'' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of this subchapter for the State involved with respect to such issuer.

(2) Beneficiary

The term ''beneficiary'' has the meaning given such term under section 3(8) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(8)].

(3) Bona fide association

The term ''bona fide association'' means, with respect to health insurance coverage offered in a State, an association which—

(A) has been actively in existence for at least 5 years;

(B) has been formed and maintained in good faith for purposes other than obtaining insurance;

(C) does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee);

(D) makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member);

(E) does not make health insurance coverage offered through the association available other than in connection with a member of the association; and

(F) meets such additional requirements as may be imposed under State law.

(4) COBRA continuation provision

The term ''COBRA continuation provision'' means any of the following:

(A) Section 4980B of title 26, other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines.

(B) Part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1161 et seq.], other than section 609 of such Act [29 U.S.C. 1169].

(C) Subchapter XX of this chapter.

(5) Employee

The term ''employee'' has the meaning given such term under section 3(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(6)].

(6) Employer

The term ''employer'' has the meaning given such term under section 3(5) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(5)], except that such term shall include only employers of two or more employees.

(7) Church plan

The term ''church plan'' has the meaning given such term under section 3(33) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(33)].

(8) Governmental plan

(A) The term ''governmental plan'' has the meaning given such term under section 3(32) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(32)] and any Federal governmental plan.

(B) FEDERAL GOVERNMENTAL PLAN.—The term ''Federal governmental plan'' means a governmental plan established or maintained for its employees by the Government of the United States or by any agency or instrumentality of such Government.

(C) NON-FEDERAL GOVERNMENTAL PLAN.—The term ''non-Federal governmental plan'' means a governmental plan that is not a Federal governmental plan.

(9) Health status-related factor

The term ''health status-related factor'' means any of the factors described in section 300gg–1(a)(1) of this title.

(10) Network plan

The term ''network plan'' means health insurance coverage of a health insurance issuer under which the financing and delivery of

medical care (including items and services paid for as medical care) are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(11) Participant

The term ''participant'' has the meaning given such term under section 3(7) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(7)].

(12) Placed for adoption defined

The term ''placement'', or being ''placed'', for adoption, in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation.

(13) Plan sponsor

The term ''plan sponsor'' has the meaning given such term under section 3(16)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(16)(B)].

(14) State

The term ''State'' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(e) Definitions relating to markets and small employers

For purposes of this subchapter:

(1) Individual market

(A) In general

The term ''individual market'' means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(B) Treatment of very small groups

(i) In general

Subject to clause (ii), such terms[1] includes coverage offered in connection with a group health plan that has fewer than two participants as current employees on the first day of the plan year.

(ii) State exception

Clause (i) shall not apply in the case of a State that elects to regulate the coverage described in such clause as coverage in the small group market.

(2) Large employer

The term ''large employer'' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

(3) Large group market

The term ''large group market'' means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a large employer.

(4) Small employer

The term ''small employer'' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

(5) Small group market

The term ''small group market'' means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer.

(6) Application of certain rules in determination of employer size

For purposes of this subsection—

(A) Application of aggregation rule for employers

all[2] persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 of title 26 shall be treated as 1 employer.

(B) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small or large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) Predecessors

Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(July 1, 1944, ch. 373, title XXVII, § 2791, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1972.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(4)(B), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 6 of subtitle B of title I of the Act is classified generally to part 6 (§ 1161 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

§ 300gg–92. Regulations

The Secretary, consistent with section 104 of the Health Care Portability and Accountability Act of 1996, may promulgate such regulations as may be necessary or appropriate to carry out the provisions of this subchapter. The Secretary may promulgate any interim final rules as the

[1] So in original. Probably should be ''term''.

[2] So in original. Probably should be capitalized.

Secretary determines are appropriate to carry out this subchapter.

(July 1, 1944, ch. 373, title XXVII, § 2792, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1976.)

REFERENCES IN TEXT

Section 104 of the Health Care Portability and Accountability Act of 1996, referred to in text, probably means section 104 of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, set out below.

ASSURING COORDINATION AMONG DEPARTMENTS OF TREASURY, HEALTH AND HUMAN SERVICES, AND LABOR

Section 104 of Pub. L. 104–191 provided that: ''The Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

''(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under this subtitle [subtitle A (§§ 101–104) of title I of Pub. L. 104–191, enacting this section, sections 300gg, 300gg–1, 300gg–11 to 300gg–13, 300gg–21 to 300gg–23, and 300gg–91 of this title, and sections 1181 to 1183 and 1191 to 1191c of Title 29, Labor, amending sections 300e and 300bb–8 of this title and sections 1003, 1021, 1022, 1024, 1132, 1136, and 1144 of Title 29, and enacting provisions set out as notes under section 300gg of this title and section 1181 of Title 29] (and the amendments made by this subtitle and section 401 [enacting sections 9801 to 9806 of Title 26, Internal Revenue Code]) are administered so as to have the same effect at all times; and

''(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.''

SUBCHAPTER XXVI—NATIONAL ALL-HAZARDS PREPAREDNESS FOR PUBLIC HEALTH EMERGENCIES

AMENDMENTS

2006—Pub. L. 109–417, title I, § 101(1), Dec. 19, 2006, 120 Stat. 2832, substituted ''NATIONAL ALL-HAZARDS PREPAREDNESS FOR PUBLIC HEALTH EMERGENCIES'' for ''NATIONAL PREPAREDNESS FOR BIOTERRORISM AND OTHER PUBLIC HEALTH EMERGENCIES'' in heading.

PART A—NATIONAL ALL-HAZARDS PREPAREDNESS AND RESPONSE PLANNING, COORDINATING, AND REPORTING

AMENDMENTS

2006—Pub. L. 109–417, title I, § 101(2), Dec. 19, 2006, 120 Stat. 2832, substituted ''National All-Hazards Preparedness'' for ''National Preparedness'' in heading.

§ 300hh. Public health and medical preparedness and response functions

(a) In general

The Secretary of Health and Human Services shall lead all Federal public health and medical response to public health emergencies and incidents covered by the National Response Plan developed pursuant to section 314(6)[1] of title 6, or any successor plan.

[1] See References in Text note below.

(b) Interagency agreement

The Secretary, in collaboration with the Secretary of Veterans Affairs, the Secretary of Transportation, the Secretary of Defense, the Secretary of Homeland Security, and the head of any other relevant Federal agency, shall establish an interagency agreement, consistent with the National Response Plan or any successor plan, under which agreement the Secretary of Health and Human Services shall assume operational control of emergency public health and medical response assets, as necessary, in the event of a public health emergency, except that members of the armed forces under the authority of the Secretary of Defense shall remain under the command and control of the Secretary of Defense, as shall any associated assets of the Department of Defense.

(July 1, 1944, ch. 373, title XXVIII, § 2801, as added Pub. L. 107–188, title I, § 101(a), June 12, 2002, 116 Stat. 596; amended Pub. L. 109–417, title I, § 101(2), Dec. 19, 2006, 120 Stat. 2832.)

REFERENCES IN TEXT

Section 314(6) of title 6, referred to in subsec. (a), was in the original ''section 502(6) of the Homeland Security Act of 2002'', and was translated as meaning section 504(6) of Pub. L. 107–296, to reflect the probable intent of Congress and the renumbering of section 502 as 504 by Pub. L. 109–295, title VI, § 611(8), Oct. 4, 2006, 120 Stat. 1395.

AMENDMENTS

2006—Pub. L. 109–417 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to a national preparedness plan for carrying out health-related activities to prepare for and respond effectively to bioterrorism and other public health emergencies.

GOVERNMENT ACCOUNTABILITY OFFICE REPORT

Pub. L. 107–188, title I, § 157, June 12, 2002, 116 Stat. 633, provided that:

''(a) IN GENERAL [sic].—The Comptroller General shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate, and to the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives, a report that describes—

''(1) Federal activities primarily related to research on, preparedness for, and the management of the public health and medical consequences of a bioterrorist attack against the civilian population;

''(2) the coordination of the activities described in paragraph (1);

''(3) the effectiveness of such efforts in preparing national, State, and local authorities to address the public health and medical consequences of a potential bioterrorist attack against the civilian population;

''(4) the activities and costs of the Civil Support Teams of the National Guard in responding to biological threats or attacks against the civilian population;

''(5) the activities of the working group under subsection (a) and the efforts made by such group to carry out the activities described in such subsection; and

''(6) the ability of private sector contractors to enhance governmental responses to biological threats or attacks.''

§ 300hh–1. National Health Security Strategy

(a) In general

(1) Preparedness and response regarding public health emergencies

Beginning in 2009 and every four years thereafter, the Secretary shall prepare and submit to the relevant committees of Congress a coordinated strategy (to be known as the National Health Security Strategy) and any revisions thereof, and an accompanying implementation plan for public health emergency preparedness and response. Such National Health Security Strategy shall identify the process for achieving the preparedness goals described in subsection (b) and shall be consistent with the National Preparedness Goal, the National Incident Management System, and the National Response Plan developed pursuant to section 314(6)[1] of title 6, or any successor plan.

(2) Evaluation of progress

The National Health Security Strategy shall include an evaluation of the progress made by Federal, State, local, and tribal entities, based on the evidence-based benchmarks and objective standards that measure levels of preparedness established pursuant to section 247d–3a(g) of this title. Such evaluation shall include aggregate and State-specific breakdowns of obligated funding spent by major category (as defined by the Secretary) for activities funded through awards pursuant to sections 247d–3a and 247d–3b of this title.

(3) Public health workforce

In 2009, the National Health Security Strategy shall include a national strategy for establishing an effective and prepared public health workforce, including defining the functions, capabilities, and gaps in such workforce, and identifying strategies to recruit, retain, and protect such workforce from workplace exposures during public health emergencies.

(b) Preparedness goals

The National Health Security Strategy shall include provisions in furtherance of the following:

(1) Integration

Integrating public health and public and private medical capabilities with other first responder systems, including through—

(A) the periodic evaluation of Federal, State, local, and tribal preparedness and response capabilities through drills and exercises; and

(B) integrating public and private sector public health and medical donations and volunteers.

(2) Public health

Developing and sustaining Federal, State, local, and tribal essential public health security capabilities, including the following:

(A) Disease situational awareness domestically and abroad, including detection, identification, and investigation.

(B) Disease containment including capabilities for isolation, quarantine, social distancing, and decontamination.

(C) Risk communication and public preparedness.

(D) Rapid distribution and administration of medical countermeasures.

(3) Medical

Increasing the preparedness, response capabilities, and surge capacity of hospitals, other health care facilities (including mental health facilities), and trauma care and emergency medical service systems, with respect to public health emergencies, which shall include developing plans for the following:

(A) Strengthening public health emergency medical management and treatment capabilities.

(B) Medical evacuation and fatality management.

(C) Rapid distribution and administration of medical countermeasures.

(D) Effective utilization of any available public and private mobile medical assets and integration of other Federal assets.

(E) Protecting health care workers and health care first responders from workplace exposures during a public health emergency.

(4) At-risk individuals

(A) Taking into account the public health and medical needs of at-risk individuals in the event of a public health emergency.

(B) For purpose of this section and sections 247d–3a, 247d–6, and 247d–7e of this title, the term ''at-risk individuals'' means children, pregnant women, senior citizens and other individuals who have special needs in the event of a public health emergency, as determined by the Secretary.

(5) Coordination

Minimizing duplication of, and ensuring coordination between, Federal, State, local, and tribal planning, preparedness, and response activities (including the State Emergency Management Assistance Compact). Such planning shall be consistent with the National Response Plan, or any successor plan, and National Incident Management System and the National Preparedness Goal.

(6) Continuity of operations

Maintaining vital public health and medical services to allow for optimal Federal, State, local, and tribal operations in the event of a public health emergency.

(July 1, 1944, ch. 373, title XXVIII, § 2802, as added Pub. L. 109–417, title I, § 103, Dec. 19, 2006, 120 Stat. 2835.)

REFERENCES IN TEXT

Section 314(6) of title 6, referred to in subsec. (a)(1), was in the original ''section 502(6) of the Homeland Security Act of 2002'', and was translated as meaning section 504(6) of Pub. L. 107–296, to reflect the probable intent of Congress and the renumbering of section 502 as 504 by Pub. L. 109–295, title VI, § 611(8), Oct. 4, 2006, 120 Stat. 1395.

§ 300hh–2. Enhancing medical surge capacity

(a) Study of enhancing medical surge capacity

As part of the joint review described in section 300hh–11(b) of this title, the Secretary shall

[1] See References in Text note below.

evaluate the benefits and feasibility of improving the capacity of the Department of Health and Human Services to provide additional medical surge capacity to local communities in the event of a public health emergency. Such study shall include an assessment of the need for and feasibility of improving surge capacity through—

(1) acquisition and operation of mobile medical assets by the Secretary to be deployed, on a contingency basis, to a community in the event of a public health emergency;

(2) integrating the practice of telemedicine within the National Disaster Medical System; and

(3) other strategies to improve such capacity as determined appropriate by the Secretary.

(b) Authority to acquire and operate mobile medical assets

In addition to any other authority to acquire, deploy, and operate mobile medical assets, the Secretary may acquire, deploy, and operate mobile medical assets if, taking into consideration the evaluation conducted under subsection (a), such acquisition, deployment, and operation is determined to be beneficial and feasible in improving the capacity of the Department of Health and Human Services to provide additional medical surge capacity to local communities in the event of a public health emergency.

(c) Using Federal facilities to enhance medical surge capacity

(1) Analysis

The Secretary shall conduct an analysis of whether there are Federal facilities which, in the event of a public health emergency, could practicably be used as facilities in which to provide health care.

(2) Memoranda of understanding

If, based on the analysis conducted under paragraph (1), the Secretary determines that there are Federal facilities which, in the event of a public health emergency, could be used as facilities in which to provide health care, the Secretary shall, with respect to each such facility, seek to conclude a memorandum of understanding with the head of the Department or agency that operates such facility that permits the use of such facility to provide health care in the event of a public health emergency.

(July 1, 1944, ch. 373, title XXVIII, § 2803, as added Pub. L. 109–417, title III, § 302(a), Dec. 19, 2006, 120 Stat. 2855.)

PART B—ALL-HAZARDS EMERGENCY PREPAREDNESS AND RESPONSE

AMENDMENTS

2006—Pub. L. 109–417, title I, § 102(a)(1), Dec. 19, 2006, 120 Stat. 2832, inserted ''All-Hazards'' before ''Emergency Preparedness'' in heading.

§ 300hh–10. Coordination of preparedness for and response to all-hazards public health emergencies

(a) In general

There is established within the Department of Health and Human Services the position of the Assistant Secretary for Preparedness and Response. The President, with the advice and consent of the Senate, shall appoint an individual to serve in such position. Such Assistant Secretary shall report to the Secretary.

(b) Duties

Subject to the authority of the Secretary, the Assistant Secretary for Preparedness and Response shall carry out the following functions:

(1) Leadership

Serve as the principal advisor to the Secretary on all matters related to Federal public health and medical preparedness and response for public health emergencies.

(2) Personnel

Register, credential, organize, train, equip, and have the authority to deploy Federal public health and medical personnel under the authority of the Secretary, including the National Disaster Medical System, and coordinate such personnel with the Medical Reserve Corps and the Emergency System for Advance Registration of Volunteer Health Professionals.

(3) Countermeasures

Oversee advanced research, development, and procurement of qualified countermeasures (as defined in section 247d–6a of this title) and qualified pandemic or epidemic products (as defined in section 247d–6d of this title).

(4) Coordination

(A) Federal integration

Coordinate with relevant Federal officials to ensure integration of Federal preparedness and response activities for public health emergencies.

(B) State, local, and tribal integration

Coordinate with State, local, and tribal public health officials, the Emergency Management Assistance Compact, health care systems, and emergency medical service systems to ensure effective integration of Federal public health and medical assets during a public health emergency.

(C) Emergency medical services

Promote improved emergency medical services medical direction, system integration, research, and uniformity of data collection, treatment protocols, and policies with regard to public health emergencies.

(5) Logistics

In coordination with the Secretary of Veterans Affairs, the Secretary of Homeland Security, the General Services Administration, and other public and private entities, provide logistical support for medical and public health aspects of Federal responses to public health emergencies.

(6) Leadership

Provide leadership in international programs, initiatives, and policies that deal with public health and medical emergency preparedness and response.

(c) Functions

The Assistant Secretary for Preparedness and Response shall—

(1) have authority over and responsibility for—

(A) the National Disaster Medical System (in accordance with section 301 of the Pandemic and All-Hazards Preparedness Act); and

(B) the Hospital Preparedness Cooperative Agreement Program pursuant to section 247d–3b of this title;

(2) exercise the responsibilities and authorities of the Secretary with respect to the coordination of—

(A) the Medical Reserve Corps pursuant to section 300hh–15 of this title;

(B) the Emergency System for Advance Registration of Volunteer Health Professionals pursuant to section 247d–7b of this title;

(C) the Strategic National Stockpile; and

(D) the Cities Readiness Initiative; and

(3) assume other duties as determined appropriate by the Secretary.

(July 1, 1944, ch. 373, title XXVIII, § 2811, as added Pub. L. 109–417, title I, § 102(a)(3), Dec. 19, 2006, 120 Stat. 2833.)

REFERENCES IN TEXT

Section 301 of the Pandemic and All-Hazards Preparedness Act, referred to in subsec. (c)(1)(A), is section 301 of Pub. L. 109–417, title III, Dec. 19, 2006, 120 Stat. 2853, which amended sections 247d–6 and 300hh–11 of this title and sections 313 and 314 of Title 6, Domestic Security, and enacted provisions set out as notes under section 300hh–11 of this title and section 313 of Title 6.

PRIOR PROVISIONS

A prior section 2811 of act July 1, 1944, was renumbered section 2812 and is classified to section 300hh–11 of this title.

TRANSFER OF FUNCTIONS

Pub. L. 109–417, title I, § 102(b), Dec. 19, 2006, 120 Stat. 2834, provided that:

''(1) TRANSFER OF FUNCTIONS.—There shall be transferred to the Office of the Assistant Secretary for Preparedness and Response the functions, personnel, assets, and liabilities of the Assistant Secretary for Public Health Emergency Preparedness as in effect on the day before the date of enactment of this Act [Dec. 19, 2006].

''(2) REFERENCES.—Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Assistant Secretary for Public Health Emergency Preparedness as in effect the day before the date of enactment of this Act, shall be deemed to be a reference to the Assistant Secretary for Preparedness and Response.''

§ 300hh–11. National Disaster Medical System

(a) National Disaster Medical System

(1) In general

The Secretary shall provide for the operation in accordance with this section of a system to be known as the National Disaster Medical System. The Secretary shall designate the Assistant Secretary for Preparedness and Response as the head of the National Disaster Medical System, subject to the authority of the Secretary.

(2) Federal and State collaborative System

(A) In general

The National Disaster Medical System shall be a coordinated effort by the Federal agencies specified in subparagraph (B), working in collaboration with the States and other appropriate public or private entities, to carry out the purposes described in paragraph (3).

(B) Participating Federal agencies

The Federal agencies referred to in subparagraph (A) are the Department of Health and Human Services, the Department of Homeland Security, the Department of Defense, and the Department of Veterans Affairs.

(3) Purpose of System

(A) In general

The Secretary may activate the National Disaster Medical System to—

(i) provide health services, health-related social services, other appropriate human services, and appropriate auxiliary services to respond to the needs of victims of a public health emergency (whether or not determined to be a public health emergency under section 247d of this title); or

(ii) be present at locations, and for limited periods of time, specified by the Secretary on the basis that the Secretary has determined that a location is at risk of a public health emergency during the time specified.

(B) Ongoing activities

The National Disaster Medical System shall carry out such ongoing activities as may be necessary to prepare for the provision of services described in subparagraph (A) in the event that the Secretary activates the National Disaster Medical System for such purposes.

(C) Test for mobilization of System

During the one-year period beginning on December 19, 2006, the Secretary shall conduct an exercise to test the capability and timeliness of the National Disaster Medical System to mobilize and otherwise respond effectively to a bioterrorist attack or other public health emergency that affects two or more geographic locations concurrently. Thereafter, the Secretary may periodically conduct such exercises regarding the National Disaster Medical System as the Secretary determines to be appropriate.

(b) Modifications

(1) In general

Taking into account the findings from the joint review described under paragraph (2), the Secretary shall modify the policies of the National Disaster Medical System as necessary.

(2) Joint review and medical surge capacity strategic plan

Not later than 180 days after December 19, 2006, the Secretary, in coordination with the Secretary of Homeland Security, the Secretary of Defense, and the Secretary of Veterans Affairs, shall conduct a joint review of the National Disaster Medical System. Such review shall include an evaluation of medical surge capacity, as described by section

300hh–2(a) of this title. As part of the National Health Security Strategy under section 300hh–1 of this title, the Secretary shall update the findings from such review and further modify the policies of the National Disaster Medical System as necessary.

(3) Participation agreements for non-Federal entities

In carrying out paragraph (1), the Secretary shall establish criteria regarding the participation of States and private entities in the National Disaster Medical System, including criteria regarding agreements for such participation. The criteria shall include the following:

(A) Provisions relating to the custody and use of Federal personal property by such entities, which may in the discretion of the Secretary include authorizing the custody and use of such property to respond to emergency situations for which the National Disaster Medical System has not been activated by the Secretary pursuant to subsection (a)(3)(A) of this section. Any such custody and use of Federal personal property shall be on a reimbursable basis.

(B) Provisions relating to circumstances in which an individual or entity has agreements with both the National Disaster Medical System and another entity regarding the provision of emergency services by the individual. Such provisions shall address the issue of priorities among the agreements involved.

(c) Intermittent disaster-response personnel

(1) In general

For the purpose of assisting the National Disaster Medical System in carrying out duties under this section, the Secretary may appoint individuals to serve as intermittent personnel of such System in accordance with applicable civil service laws and regulations.

(2) Liability

For purposes of section 233(a) of this title and the remedies described in such section, an individual appointed under paragraph (1) shall, while acting within the scope of such appointment, be considered to be an employee of the Public Health Service performing medical, surgical, dental, or related functions. With respect to the participation of individuals appointed under paragraph (1) in training programs authorized by the Assistant Secretary for Preparedness and Response or a comparable official of any Federal agency specified in subsection (a)(2)(B) of this section, acts of individuals so appointed that are within the scope of such participation shall be considered within the scope of the appointment under paragraph (1) (regardless of whether the individuals receive compensation for such participation).

(d) Certain employment issues regarding intermittent appointments

(1) Intermittent disaster-response appointee

For purposes of this subsection, the term ''intermittent disaster-response appointee'' means an individual appointed by the Secretary under subsection (c) of this section.

(2) Compensation for work injuries

An intermittent disaster-response appointee shall, while acting in the scope of such appointment, be considered to be an employee of the Public Health Service performing medical, surgical, dental, or related functions, and an injury sustained by such an individual shall be deemed ''in the performance of duty'', for purposes of chapter 81 of title 5 pertaining to compensation for work injuries. With respect to the participation of individuals appointed under subsection (c) of this section in training programs authorized by the Assistant Secretary for Preparedness and Response or a comparable official of any Federal agency specified in subsection (a)(2)(B) of this section, injuries sustained by such an individual, while acting within the scope of such participation, also shall be deemed ''in the performance of duty'' for purposes of chapter 81 of title 5 (regardless of whether the individuals receive compensation for such participation). In the event of an injury to such an intermittent disaster-response appointee, the Secretary of Labor shall be responsible for making determinations as to whether the claimant is entitled to compensation or other benefits in accordance with chapter 81 of title 5.

(3) Employment and reemployment rights

(A) In general

Service as an intermittent disaster-response appointee when the Secretary activates the National Disaster Medical System or when the individual participates in a training program authorized by the Assistant Secretary for Preparedness and Response or a comparable official of any Federal agency specified in subsection (a)(2)(B) of this section shall be deemed ''service in the uniformed services'' for purposes of chapter 43 of title 38 pertaining to employment and reemployment rights of individuals who have performed service in the uniformed services (regardless of whether the individual receives compensation for such participation). All rights and obligations of such persons and procedures for assistance, enforcement, and investigation shall be as provided for in chapter 43 of title 38.

(B) Notice of absence from position of employment

Preclusion of giving notice of service by necessity of Service as an intermittent disaster-response appointee when the Secretary activates the National Disaster Medical System shall be deemed preclusion by ''military necessity'' for purposes of section 4312(b) of title 38 pertaining to giving notice of absence from a position of employment. A determination of such necessity shall be made by the Secretary, in consultation with the Secretary of Defense, and shall not be subject to judicial review.

(4) Limitation

An intermittent disaster-response appointee shall not be deemed an employee of the Department of Health and Human Services for purposes other than those specifically set forth in this section.

(e) Rule of construction regarding use of commissioned corps

If the Secretary assigns commissioned officers of the Regular or Reserve Corps to serve with the National Disaster Medical System, such assignments do not affect the terms and conditions of their appointments as commissioned officers of the Regular or Reserve Corps, respectively (including with respect to pay and allowances, retirement, benefits, rights, privileges, and immunities).

(f) Definition

For purposes of this section, the term ''auxiliary services'' includes mortuary services, veterinary services, and other services that are determined by the Secretary to be appropriate with respect to the needs referred to in subsection (a)(3)(A) of this section.

(g) Authorization of appropriations

For the purpose of providing for the Assistant Secretary for Preparedness and Response and the operations of the National Disaster Medical System, other than purposes for which amounts in the Public Health Emergency Fund under section 247d of this title are available, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2007 through 2011.

(July 1, 1944, ch. 373, title XXVIII, § 2812, formerly § 2811, as added Pub. L. 107–188, title I, § 102(a), June 12, 2002, 116 Stat. 599; renumbered § 2812 and amended Pub. L. 109–417, title I, § 102(a)(2), (4), title III, § 301(a), Dec. 19, 2006, 120 Stat. 2832, 2834, 2853.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (c)(1), are classified generally to Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

AMENDMENTS

2006—Pub. L. 109–417, § 301(a)(1), substituted ''National Disaster Medical System'' for ''Coordination of preparedness for and response to bioterrorism and other public health emergencies'' in section catchline.

Subsec. (a). Pub. L. 109–417, § 301(a)(2), (3), redesignated subsec. (b) as (a) and struck out former subsec. (a) which related to establishment of position and duties of Assistant Secretary for Public Health Emergency Preparedness.

Subsec. (a)(2)(B). Pub. L. 109–417, § 301(a)(4)(A), substituted ''Department of Homeland Security'' for ''Federal Emergency Management Agency''.

Subsec. (a)(3)(C). Pub. L. 109–417, § 301(a)(4)(B), substituted ''December 19, 2006'' for ''June 12, 2002''.

Subsec. (b). Pub. L. 109–417, § 301(a)(5), substituted ''Modifications'' for ''Criteria'' in heading, added pars. (1) and (2), redesignated former par. (2) as (3), and struck out heading and text of former par. (1). Text read as follows: ''The Secretary shall establish criteria for the operation of the National Disaster Medical System.''

Pub. L. 109–417, § 301(a)(3), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (b)(1). Pub. L. 109–417, § 102(a)(4), substituted ''Assistant Secretary for Preparedness and Response'' for ''Assistant Secretary for Public Health Emergency Preparedness''.

Subsec. (b)(3)(A). Pub. L. 109–417, § 301(a)(6), substituted ''subsection (a)(3)(A)'' for ''subsection (b)(3)(A)''.

Subsec. (c). Pub. L. 109–417, § 301(a)(3), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(2). Pub. L. 109–417, § 301(a)(6), substituted ''subsection (a)(2)(B)'' for ''subsection (b)(2)(B)''.

Subsec. (d). Pub. L. 109–417, § 301(a)(7), substituted ''subsection (c)'' for ''subsection (d)'' in pars. (1) and (2).

Pub. L. 109–417, § 301(a)(6), substituted ''subsection (a)(2)(B)'' for ''subsection (b)(2)(B)'' in pars. (2) and (3)(A).

Pub. L. 109–417, § 301(a)(3), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(2). Pub. L. 109–417, § 102(a)(4), substituted ''Assistant Secretary for Preparedness and Response'' for ''Assistant Secretary for Public Health Emergency Preparedness''.

Subsec. (e). Pub. L. 109–417, § 301(a)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(2), (3)(A). Pub. L. 109–417, § 102(a)(4), substituted ''Assistant Secretary for Preparedness and Response'' for ''Assistant Secretary for Public Health Emergency Preparedness''.

Subsec. (f). Pub. L. 109–417, § 301(a)(6), substituted ''subsection (a)(3)(A)'' for ''subsection (b)(3)(A)''.

Pub. L. 109–417, § 301(a)(3), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 109–417, § 301(a)(8), substituted ''2007 through 2011'' for ''2002 through 2006''.

Pub. L. 109–417, § 301(a)(3), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 109–417, § 301(a)(3), redesignated subsec. (h) as (g).

Pub. L. 109–417, § 102(a)(4), substituted ''Assistant Secretary for Preparedness and Response'' for ''Assistant Secretary for Public Health Emergency Preparedness''.

TRANSFER OF FUNCTIONS

Pub. L. 109–417, title III, § 301(b), Dec. 19, 2006, 120 Stat. 2854, provided that: ''There shall be transferred to the Secretary of Health and Human Services the functions, personnel, assets, and liabilities of the National Disaster Medical System of the Department of Homeland Security, including the functions of the Secretary of Homeland Security and the Under Secretary for Emergency Preparedness and Response relating thereto.''

Pub. L. 109–295, title III, Oct. 4, 2006, 120 Stat. 1372, provided in part: ''That the total amount appropriated and, notwithstanding any other provision of law, the functions, personnel, assets, and liabilities of the National Disaster Medical System established under section 2811(b) [now 2812(a)] of the Public Health Service Act (42 U.S.C. 300hh–11(b) [now 300hh–11(a)]), including any functions of the Secretary of Homeland Security relating to such System, shall be permanently transferred to the Secretary of the Department of Health and Human Services effective January 1, 2007.''

For transfer of functions, personnel, assets, and liabilities of the National Disaster Medical System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness (now Assistant Secretary for Preparedness and Response) relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(5) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 300hh–12. Transferred

CODIFICATION

Section, Pub. L. 107–188, title I, § 121, June 12, 2002, 116 Stat. 611, as amended, which related to Strategic National Stockpile, was renumbered section 319F–2 of the Public Health Service Act by Pub. L. 108–276, § 3(a)(1), July 21, 2004, 118 Stat. 842 and is classified to section 247d–6b of this title.

§ 300hh–13. Evaluation of new and emerging technologies regarding bioterrorist attack and other public health emergencies

(a) In general

The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall promptly carry out a program to periodically evaluate new and emerging technologies that, in the determination of the Secretary, are designed to improve or enhance the ability of public health or safety officials to conduct public health surveillance activities relating to a bioterrorist attack or other public health emergency.

(b) Certain activities

In carrying out this subsection, the Secretary shall, to the extent practicable—

(1) survey existing technology programs funded by the Federal Government for potentially useful technologies;

(2) promptly issue a request, as necessary, for information from non-Federal public and private entities for ongoing activities in this area; and

(3) evaluate technologies identified under paragraphs (1) and (2) pursuant to subsection (c) of this section.

(c) Consultation and evaluation

In carrying out subsection (b)(3) of this section, the Secretary shall consult with the working group under section 247d–6(a)[1] of this title, as well as other appropriate public, nonprofit, and private entities, to develop criteria for the evaluation of such technologies and to conduct such evaluations.

(d) Report

Not later than 180 days after June 12, 2002, and periodically thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report on the activities under this section.

(Pub. L. 107–188, title I, § 126, June 12, 2002, 116 Stat. 615.)

REFERENCES IN TEXT

Section 247d–6 of this title, referred to in subsec. (c), was amended by Pub. L. 109–417, title III, § 304, Dec. 19, 2006, 120 Stat. 2859, and as so amended, subsec. (a) of section 247d–6 no longer relates to a working group.

CODIFICATION

Section was enacted as part of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, and not as part of the Public Health Service Act which comprises this chapter.

§ 300hh–14. Protection of health and safety during disasters

(a) Definitions

In this section:

(1) Certified monitoring program

The term ''certified monitoring program'' means a medical monitoring program—

(A) in which a participating responder is a participant as a condition of the employment of such participating responder; and

(B) that the Secretary of Health and Human Services certifies includes an adequate baseline medical screening.

(2) Disaster area

The term ''disaster area'' means an area in which the President has declared a major disaster (as that term is defined in section 5122 of this title), during the period of such declaration.

(3) High exposure level

The term ''high exposure level'' means a level of exposure to a substance of concern that is for such a duration, or of such a magnitude, that adverse effects on human health can be reasonably expected to occur, as determined by the President, acting through the Secretary of Health and Human Services, in accordance with human monitoring or environmental or other appropriate indicators.

(4) Individual

The term ''individual'' includes—

(A) a worker or volunteer who responds to a disaster, either natural or manmade, involving any mode of transportation in the United States or disrupting the transportation system of the United States, including—

(i) a police officer;

(ii) a firefighter;

(iii) an emergency medical technician;

(iv) any participating member of an urban search and rescue team; and

(v) any other relief or rescue worker or volunteer that the President, acting through the Secretary of Health and Human Services, determines to be appropriate;

(B) a worker who responds to a disaster, either natural or manmade, involving any mode of transportation in the United States or disrupting the transportation system of the United States, by assisting in the cleanup or restoration of critical infrastructure in and around a disaster area;

(C) a person whose place of residence is in a disaster area, caused by either a natural or manmade disaster involving any mode of transportation in the United States or disrupting the transportation system of the United States;

(D) a person who is employed in or attends school, child care, or adult day care in a building located in a disaster area, caused by either a natural or manmade disaster involving any mode of transportation in the United States or disrupting the transportation system of the United States, of the United States; and

(E) any other person that the President, acting through the Secretary of Health and Human Services, determines to be appropriate.

(5) Participating responder

The term ''participating responder'' means an individual described in paragraph (4)(A).

[1] See References in Text note below.

(6) Program

The term ''program'' means a program described in subsection (b) that is carried out for a disaster area.

(7) Substance of concern

The term ''substance of concern'' means a chemical or other substance that is associated with potential acute or chronic human health effects, the risk of exposure to which could potentially be increased as the result of a disaster, as determined by the President, acting through the Secretary of Health and Human Services, and in coordination with the Agency for Toxic Substances and Disease Registry, the Environmental Protection Agency, the Centers for Disease Control and Prevention, the National Institutes of Health, the Federal Emergency Management Agency, the Occupational Health and Safety Administration, and other agencies.

(b) Program

(1) In general

If the President, acting through the Secretary of Health and Human Services, determines that 1 or more substances of concern are being, or have been, released in an area declared to be a disaster area and disrupts the transportation system of the United States, the President, acting through the Secretary of Health and Human Services, may carry out a program for the coordination, protection, assessment, monitoring, and study of the health and safety of individuals with high exposure levels to ensure that—

(A) the individuals are adequately informed about and protected against potential health impacts of any substance of concern in a timely manner;

(B) the individuals are monitored and studied over time, including through baseline and followup clinical health examinations, for—

(i) any short- and long-term health impacts of any substance of concern; and

(ii) any mental health impacts;

(C) the individuals receive health care referrals as needed and appropriate; and

(D) information from any such monitoring and studies is used to prevent or protect against similar health impacts from future disasters.

(2) Activities

A program under paragraph (1) may include such activities as—

(A) collecting and analyzing environmental exposure data;

(B) developing and disseminating information and educational materials;

(C) performing baseline and followup clinical health and mental health examinations and taking biological samples;

(D) establishing and maintaining an exposure registry;

(E) studying the short- and long-term human health impacts of any exposures through epidemiological and other health studies; and

(F) providing assistance to individuals in determining eligibility for health coverage and identifying appropriate health services.

(3) Timing

To the maximum extent practicable, activities under any program carried out under paragraph (1) (including baseline health examinations) shall be commenced in a timely manner that will ensure the highest level of public health protection and effective monitoring.

(4) Participation in registries and studies

(A) In general

Participation in any registry or study that is part of a program carried out under paragraph (1) shall be voluntary.

(B) Protection of privacy

The President, acting through the Secretary of Health and Human Services, shall take appropriate measures to protect the privacy of any participant in a registry or study described in subparagraph (A).

(C) Priority

(i) In general

Except as provided in clause (ii), the President, acting through the Secretary of Health and Human Services, shall give priority in any registry or study described in subparagraph (A) to the protection, monitoring and study of the health and safety of individuals with the highest level of exposure to a substance of concern.

(ii) Modifications

Notwithstanding clause (i), the President, acting through the Secretary of Health and Human Services, may modify the priority of a registry or study described in subparagraph (A), if the President, acting through the Secretary of Health and Human Services, determines such modification to be appropriate.

(5) Cooperative agreements

(A) In general

The President, acting through the Secretary of Health and Human Services, may carry out a program under paragraph (1) through a cooperative agreement with a medical institution, including a local health department, or a consortium of medical institutions.

(B) Selection criteria

To the maximum extent practicable, the President, acting through the Secretary of Health and Human Services, shall select, to carry out a program under paragraph (1), a medical institution or a consortium of medical institutions that—

(i) is located near—

(I) the disaster area with respect to which the program is carried out; and

(II) any other area in which there reside groups of individuals that worked or volunteered in response to the disaster; and

(ii) has appropriate experience in the areas of environmental or occupational health, toxicology, and safety, including experience in—

(I) developing clinical protocols and conducting clinical health examinations, including mental health assessments;

(II) conducting long-term health monitoring and epidemiological studies;

(III) conducting long-term mental health studies; and

(IV) establishing and maintaining medical surveillance programs and environmental exposure or disease registries.

(6) Involvement

(A) In general

In carrying out a program under paragraph (1), the President, acting through the Secretary of Health and Human Services, shall involve interested and affected parties, as appropriate, including representatives of—

(i) Federal, State, and local government agencies;

(ii) groups of individuals that worked or volunteered in response to the disaster in the disaster area;

(iii) local residents, businesses, and schools (including parents and teachers);

(iv) health care providers;

(v) faith based organizations; and

(vi) other organizations and persons.

(B) Committees

Involvement under subparagraph (A) may be provided through the establishment of an advisory or oversight committee or board.

(7) Privacy

The President, acting through the Secretary of Health and Human Services, shall carry out each program under paragraph (1) in accordance with regulations relating to privacy promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note; Public Law 104–191).

(8) Existing programs

In carrying out a program under paragraph (1), the President, acting through the Secretary of Health and Human Services, may—

(A) include the baseline clinical health examination of a participating responder under a certified monitoring programs;[1] and

(B) substitute the baseline clinical health examination of a participating responder under a certified monitoring program for a baseline clinical health examination under paragraph (1).

(c) Reports

Not later than 1 year after the establishment of a program under subsection (b)(1), and every 5 years thereafter, the President, acting through the Secretary of Health and Human Services, or the medical institution or consortium of such institutions having entered into a cooperative agreement under subsection (b)(5), may submit a report to the Secretary of Homeland Security, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and appropriate committees of Congress describing the programs and studies carried out under the program.

[1] So in original. Probably should be ''program;''.

(d) National Academy of Sciences report on disaster area health and environmental protection and monitoring

(1) In general

The Secretary of Health and Human Services, the Secretary of Homeland Security, and the Administrator of the Environmental Protection Agency shall jointly enter into a contract with the National Academy of Sciences to conduct a study and prepare a report on disaster area health and environmental protection and monitoring.

(2) Participation of experts

The report under paragraph (1) shall be prepared with the participation of individuals who have expertise in—

(A) environmental health, safety, and medicine;

(B) occupational health, safety, and medicine;

(C) clinical medicine, including pediatrics;

(D) environmental toxicology;

(E) epidemiology;

(F) mental health;

(G) medical monitoring and surveillance;

(H) environmental monitoring and surveillance;

(I) environmental and industrial hygiene;

(J) emergency planning and preparedness;

(K) public outreach and education;

(L) State and local health departments;

(M) State and local environmental protection departments;

(N) functions of workers that respond to disasters, including first responders;

(O) public health; and

(P) family services, such as counseling and other disaster-related services provided to families.

(3) Contents

The report under paragraph (1) shall provide advice and recommendations regarding protecting and monitoring the health and safety of individuals potentially exposed to any chemical or other substance associated with potential acute or chronic human health effects as the result of a disaster, including advice and recommendations regarding—

(A) the establishment of protocols for monitoring and responding to chemical or substance releases in a disaster area to protect public health and safety, including—

(i) chemicals or other substances for which samples should be collected in the event of a disaster, including a terrorist attack;

(ii) chemical- or substance-specific methods of sample collection, including sampling methodologies and locations;

(iii) chemical- or substance-specific methods of sample analysis;

(iv) health-based threshold levels to be used and response actions to be taken in the event that thresholds are exceeded for individual chemicals or other substances;

(v) procedures for providing monitoring results to—

(I) appropriate Federal, State, and local government agencies;

(II) appropriate response personnel; and

(III) the public;

(vi) responsibilities of Federal, State, and local agencies for—

(I) collecting and analyzing samples;

(II) reporting results; and

(III) taking appropriate response actions; and

(vii) capabilities and capacity within the Federal Government to conduct appropriate environmental monitoring and response in the event of a disaster, including a terrorist attack; and

(B) other issues specified by the Secretary of Health and Human Services, the Secretary of Homeland Security, and the Administrator of the Environmental Protection Agency.

(4) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(Pub. L. 109–347, title VII, § 709, Oct. 13, 2006, 120 Stat. 1947.)

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (b)(7), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

CODIFICATION

Section was enacted as part of the Security and Accountability For Every Port Act of 2006, also known as the SAFE Port Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 300hh–15. Volunteer Medical Reserve Corps

(a) In general

Not later than 180 days after December 19, 2006, the Secretary, in collaboration with State, local, and tribal officials, shall build on State, local, and tribal programs in existence on December 19, 2006, to establish and maintain a Medical Reserve Corps (referred to in this section as the ''Corps'') to provide for an adequate supply of volunteers in the case of a Federal, State, local, or tribal public health emergency. The Corps shall be headed by a Director who shall be appointed by the Secretary and shall oversee the activities of the Corps chapters that exist at the State, local, and tribal levels.

(b) State, local, and tribal coordination

The Corps shall be established using existing State, local, and tribal teams and shall not alter such teams.

(c) Composition

The Corps shall be composed of individuals who—

(1)(A) are health professionals who have appropriate professional training and expertise as determined appropriate by the Director of the Corps; or

(B) are non-health professionals who have an interest in serving in an auxiliary or support capacity to facilitate access to health care services in a public health emergency;

(2) are certified in accordance with the certification program developed under subsection (d);

(3) are geographically diverse in residence;

(4) have registered and carry out training exercises with a local chapter of the Medical Reserve Corps; and

(5) indicate whether they are willing to be deployed outside the area in which they reside in the event of a public health emergency.

(d) Certification; drills

(1) Certification

The Director, in collaboration with State, local, and tribal officials, shall establish a process for the periodic certification of individuals who volunteer for the Corps, as determined by the Secretary, which shall include the completion by each individual of the core training programs developed under section 247d–6 of this title, as required by the Director. Such certification shall not supercede State licensing or credentialing requirements.

(2) Drills

In conjunction with the core training programs referred to in paragraph (1), and in order to facilitate the integration of trained volunteers into the health care system at the local level, Corps members shall engage in periodic training exercises to be carried out at the local level.

(e) Deployment

During a public health emergency, the Secretary shall have the authority to activate and deploy willing members of the Corps to areas of need, taking into consideration the public health and medical expertise required, with the concurrence of the State, local, or tribal officials from the area where the members reside.

(f) Expenses and transportation

While engaged in performing duties as a member of the Corps pursuant to an assignment by the Secretary (including periods of travel to facilitate such assignment), members of the Corps who are not otherwise employed by the Federal Government shall be allowed travel or transportation expenses, including per diem in lieu of subsistence.

(g) Identification

The Secretary, in cooperation and consultation with the States, shall develop a Medical Reserve Corps Identification Card that describes the licensure and certification information of Corps members, as well as other identifying information determined necessary by the Secretary.

(h) Intermittent disaster-response personnel

(1) In general

For the purpose of assisting the Corps in carrying out duties under this section, during a public health emergency, the Secretary may appoint selected individuals to serve as intermittent personnel of such Corps in accordance with applicable civil service laws and regulations. In all other cases, members of the Corps are subject to the laws of the State in which the activities of the Corps are undertaken.

(2) Applicable protections

Subsections (c)(2), (d), and (e) of section 300hh–11 of this title shall apply to an individual appointed under paragraph (1) in the same manner as such subsections apply to an individual appointed under section 300hh–11(c) of this title.

(3) Limitation

State, local, and tribal officials shall have no authority to designate a member of the Corps as Federal intermittent disaster-response personnel, but may request the services of such members.

(i) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $22,000,000 for fiscal year 2007, and such sums as may be necessary for each of fiscal years 2008 through 2011.

(July 1, 1944, ch. 373, title XXVIII, § 2813, as added Pub. L. 109–417, title III, § 303(a), Dec. 19, 2006, 120 Stat. 2856.)

§ 300hh–16. At-risk individuals

The Secretary, acting through such employee of the Department of Health and Human Services as determined by the Secretary and designated publicly (which may, at the discretion of the Secretary, involve the appointment or designation of an individual as the Director of At-Risk Individuals), shall—

(1) oversee the implementation of the National Preparedness goal of taking into account the public health and medical needs of at-risk individuals in the event of a public health emergency, as described in section 300hh–1(b)(4) of this title;

(2) assist other Federal agencies responsible for planning for, responding to, and recovering from public health emergencies in addressing the needs of at-risk individuals;

(3) provide guidance to and ensure that recipients of State and local public health grants include preparedness and response strategies and capabilities that take into account the medical and public health needs of at-risk individuals in the event of a public health emergency, as described in section 247d–3a(b)(2)(A)(iii) of this title;

(4) ensure that the contents of the strategic national stockpile take into account at-risk populations as described in section 300hh–10(b)(3)(B)[1] of this title;

(5) oversee the progress of the Advisory Committee on At-Risk Individuals and Public Health Emergencies established under section 247d–6(b)(2) of this title and make recommendations with a focus on opportunities for action based on the work of the Committee;

(6) oversee curriculum development for the public health and medical response training program on medical management of casualties, as it concerns at-risk individuals as described in subparagraphs (A) through (C) of section 247d–6(a)(2) of this title;

(7) disseminate novel and best practices of outreach to and care of at-risk individuals before, during, and following public health emergencies; and

(8) not later than one year after December 19, 2006, prepare and submit to Congress a report describing the progress made on implementing the duties described in this section.

(July 1, 1944, ch. 373, title XXVIII, § 2814, as added Pub. L. 109–417, title I, § 102(d), Dec. 19, 2006, 120 Stat. 2834.)

SUBCHAPTER XXVII—LIFESPAN RESPITE CARE

§ 300ii. Definitions

In this subchapter:

(1) Adult with a special need

The term ''adult with a special need'' means a person 18 years of age or older who requires care or supervision to—

(A) meet the person's basic needs;

(B) prevent physical self-injury or injury to others; or

(C) avoid placement in an institutional facility.

(2) Aging and disability resource center

The term ''aging and disability resource center'' means an entity administering a program established by the State, as part of the State's system of long-term care, to provide a coordinated system for providing—

(A) comprehensive information on available public and private long-term care programs, options, and resources;

(B) personal counseling to assist individuals in assessing their existing or anticipated long-term care needs, and developing and implementing a plan for long-term care designed to meet their specific needs and circumstances; and

(C) consumer access to the range of publicly supported long-term care programs for which consumers may be eligible, by serving as a convenient point of entry for such programs.

(3) Child with a special need

The term ''child with a special need'' means an individual less than 18 years of age who requires care or supervision beyond that required of children generally to—

(A) meet the child's basic needs; or

(B) prevent physical injury, self-injury, or injury to others.

(4) Eligible State agency

The term ''eligible State agency'' means a State agency that—

(A) administers the State's program under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], administers the State's program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], or is designated by the Governor of such State to administer the State's programs under this subchapter;

(B) is an aging and disability resource center;

(C) works in collaboration with a public or private nonprofit statewide respite care coalition or organization; and

(D) demonstrates—

[1] So in original. Section 300hh–10(b)(3) of this title does not contain subpars.

(i) an ability to work with other State and community-based agencies;

(ii) an understanding of respite care and family caregiver issues across all age groups, disabilities, and chronic conditions; and

(iii) the capacity to ensure meaningful involvement of family members, family caregivers, and care recipients.

(5) Family caregiver

The term ''family caregiver'' means an unpaid family member, a foster parent, or another unpaid adult, who provides in-home monitoring, management, supervision, or treatment of a child or adult with a special need.

(6) Lifespan respite care

The term ''lifespan respite care'' means a coordinated system of accessible, community-based respite care services for family caregivers of children or adults with special needs.

(7) Respite care

The term ''respite care'' means planned or emergency care provided to a child or adult with a special need in order to provide temporary relief to the family caregiver of that child or adult.

(8) State

The term ''State'' means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(July 1, 1944, ch. 373, title XXIX, § 2901, as added Pub. L. 109–442, § 2, Dec. 21, 2006, 120 Stat. 3291.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in par. (4)(A), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, which is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Social Security Act, referred to in par. (4)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 300ii–1. Lifespan respite care grants and cooperative agreements

(a) Purposes

The purposes of this section are—

(1) to expand and enhance respite care services to family caregivers;

(2) to improve the statewide dissemination and coordination of respite care; and

(3) to provide, supplement, or improve access and quality of respite care services to family caregivers, thereby reducing family caregiver strain.

(b) Authorization

Subject to subsection (e), the Secretary is authorized to award grants or cooperative agreements for the purposes described in subsection (a) to eligible State agencies for which an application is submitted pursuant to subsection (d).

(c) Federal lifespan approach

In carrying out this section, the Secretary shall work in cooperation with the National Family Caregiver Support Program of the Administration on Aging and other respite care programs within the Department of Health and Human Services to ensure coordination of respite care services for family caregivers of children and adults with special needs.

(d) Application

(1) Submission

Each Governor desiring the eligible State agency of his or her State to receive a grant or cooperative agreement under this section shall submit an application on behalf of such agency to the Secretary at such time, in such manner, and containing such information as the Secretary shall require.

(2) Contents

Each application submitted under this section shall include—

(A) a description of the eligible State agency's—

(i) ability to work with other State and community-based agencies;

(ii) understanding of respite care and family caregiver issues across all age groups, disabilities, and chronic conditions; and

(iii) capacity to ensure meaningful involvement of family members, family caregivers, and care recipients;

(B) with respect to the population of family caregivers to whom respite care information or services will be provided or for whom respite care workers and volunteers will be recruited and trained, a description of—

(i) the population of family caregivers;

(ii) the extent and nature of the respite care needs of that population;

(iii) existing respite care services for that population, including numbers of family caregivers being served and extent of unmet need;

(iv) existing methods or systems to coordinate respite care information and services to the population at the State and local level and extent of unmet need;

(v) how respite care information dissemination and coordination, respite care services, respite care worker and volunteer recruitment and training programs, or training programs for family caregivers that assist such family caregivers in making informed decisions about respite care services will be provided using grant or cooperative agreement funds;

(vi) a plan for administration, collaboration, and coordination of the proposed respite care activities with other related services or programs offered by public or private, nonprofit entities, including area agencies on aging;

(vii) how the population, including family caregivers, care recipients, and relevant public or private agencies, will participate in the planning and implementation of the proposed respite care activities;

(viii) how the proposed respite care activities will make use, to the maximum

extent feasible, of other Federal, State, and local funds, programs, contributions, other forms of reimbursements, personnel, and facilities;

(ix) respite care services available to family caregivers in the eligible State agency's State or locality, including unmet needs and how the eligible State agency's plan for use of funds will improve the coordination and distribution of respite care services for family caregivers of children and adults with special needs;

(x) the criteria used to identify family caregivers eligible for respite care services;

(xi) how the quality and safety of any respite care services provided will be monitored, including methods to ensure that respite care workers and volunteers are appropriately screened and possess the necessary skills to care for the needs of the care recipient in the absence of the family caregiver; and

(xii) the results expected from proposed respite care activities and the procedures to be used for evaluating those results;

(C) assurances that, where appropriate, the eligible State agency will have a system for maintaining the confidentiality of care recipient and family caregiver records; and

(D) a memorandum of agreement regarding the joint responsibility for the eligible State agency's lifespan respite program between—

(i) the eligible State agency; and

(ii) a public or private nonprofit statewide respite coalition or organization.

(e) Priority; considerations

When awarding grants or cooperative agreements under this section, the Secretary shall—

(1) give priority to eligible State agencies that the Secretary determines show the greatest likelihood of implementing or enhancing lifespan respite care statewide; and

(2) give consideration to eligible State agencies that are building or enhancing the capacity of their long-term care systems to respond to the comprehensive needs, including respite care needs, of their residents.

(f) Use of grant or cooperative agreement funds

(1) In general

(A) Required uses of funds

Each eligible State agency awarded a grant or cooperative agreement under this section shall use all or part of the funds—

(i) to develop or enhance lifespan respite care at the State and local levels;

(ii) to provide respite care services for family caregivers caring for children or adults;

(iii) to train and recruit respite care workers and volunteers;

(iv) to provide information to caregivers about available respite and support services; and

(v) to assist caregivers in gaining access to such services.

(B) Optional uses of funds

Each eligible State agency awarded a grant or cooperative agreement under this section may use part of the funds for—

(i) training programs for family caregivers to assist such family caregivers in making informed decisions about respite care services;

(ii) other services essential to the provision of respite care as the Secretary may specify; or

(iii) training and education for new caregivers.

(2) Subcontracts

Each eligible State agency awarded a grant or cooperative agreement under this section may carry out the activities described in paragraph (1) directly or by grant to, or contract with, public or private entities.

(3) Matching funds

(A) In general

With respect to the costs of the activities to be carried out under paragraph (1), a condition for the receipt of a grant or cooperative agreement under this section is that the eligible State agency agrees to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such costs.

(B) Determination of amount contributed

Non-Federal contributions required by subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(g) Term of grants or cooperative agreements

(1) In general

The Secretary shall award grants or cooperative agreements under this section for terms that do not exceed 5 years.

(2) Renewal

The Secretary may renew a grant or cooperative agreement under this section at the end of the term of the grant or cooperative agreement determined under paragraph (1).

(h) Maintenance of effort

Funds made available under this section shall be used to supplement and not supplant other Federal, State, and local funds available for respite care services.

(July 1, 1944, ch. 373, title XXIX, § 2902, as added Pub. L. 109–442, § 2, Dec. 21, 2006, 120 Stat. 3292.)

§ 300ii–2. National lifespan respite resource center

(a) Establishment

The Secretary may award a grant or cooperative agreement to a public or private nonprofit entity to establish a National Resource Center on Lifespan Respite Care (referred to in this section as the ''center'').

(b) Purposes of the center

The center shall—

(1) maintain a national database on lifespan respite care;

(2) provide training and technical assistance to State, community, and nonprofit respite care programs; and

(3) provide information, referral, and educational programs to the public on lifespan respite care.

(July 1, 1944, ch. 373, title XXIX, § 2903, as added Pub. L. 109–442, § 2, Dec. 21, 2006, 120 Stat. 3295.)

§ 300ii–3. Report

Not later than January 1, 2009, the Secretary shall report to the Congress on the activities undertaken under this subchapter. Such report shall evaluate—

(1) the number of States that have lifespan respite care programs;

(2) the demographics of the caregivers receiving respite care services through grants or cooperative agreements under this subchapter; and

(3) the effectiveness of entities receiving grants or cooperative agreements under this subchapter.

(July 1, 1944, ch. 373, title XXIX, § 2904, as added Pub. L. 109–442, § 2, Dec. 21, 2006, 120 Stat. 3295.)

§ 300ii–4. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter—

(1) $30,000,000 for fiscal year 2007;

(2) $40,000,000 for fiscal year 2008;

(3) $53,330,000 for fiscal year 2009;

(4) $71,110,000 for fiscal year 2010; and

(5) $94,810,000 for fiscal year 2011.

(July 1, 1944, ch. 373, title XXIX, § 2905, as added Pub. L. 109–442, § 2, Dec. 21, 2006, 120 Stat. 3296.)

§§ 300aaa to 300aaa–13. Transferred

CODIFICATION

Former title XXVII of the Public Health Service Act was renumbered part B of title II by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and is classified to part B (§ 238 et seq.) of subchapter I of this chapter.

Section 300aaa, act July 1, 1944, ch. 373, title XXVII, § 2701, formerly title V, § 501, 58 Stat. 709, as amended, which related to gifts for benefit of Service, was renumbered section 231 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238 of this title.

Section 300aaa–1, act July 1, 1944, ch. 373, title XXVII, § 2702, formerly title V, § 502, 58 Stat. 710, as amended, which related to use of immigration station hospitals, was renumbered section 232 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238a of this title.

Section 300aaa–2, act July 1, 1944, ch. 373, title XXVII, § 2703, formerly title V, § 503, 58 Stat. 710, as amended, which related to disposition of money collected for care of patients, was renumbered section 233 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238b of this title.

Section 300aaa–3, act July 1, 1944, ch. 373, title XXVII, § 2704, formerly title V, § 506, 58 Stat. 710, as amended, which related to transportation of remains of officers, was renumbered section 234 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238c of this title.

Section 300aaa–4, act July 1, 1944, ch. 373, title XXVII, § 2705, formerly title V, § 507, as added June 24, 1967, Pub. L. 90–31, § 5, 81 Stat. 79, and amended, which related to availability of appropriations for grants to Federal institutions, was renumbered section 235 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238d of this title.

Section 300aaa–5, act July 1, 1944, ch. 373, title XXVII, § 2706, formerly title V, § 508, 58 Stat. 711, as amended, which related to transfer of funds for continuance of transferred functions, was renumbered section 236 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238e of this title.

Section 300aaa–6, act July 1, 1944, ch. 373, title XXVII, § 2707, formerly title V, § 509, 58 Stat. 711, as amended, which related to availability of appropriations, was renumbered section 237 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238f of this title.

Section 300aaa–7, act July 1, 1944, ch. 373, title XXVII, § 2708, formerly title V, § 510, 58 Stat. 711, as amended, which related to wearing of uniforms, was renumbered section 238 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238g of this title.

Section 300aaa–8, act July 1, 1944, ch. 373, title XXVII, § 2709, formerly title V, § 511, 58 Stat. 711, as amended, which related to annual report of Surgeon General, was renumbered section 239 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238h of this title.

Section 300aaa–9, act July 1, 1944, ch. 373, title XXVII, § 2710, formerly title V, § 512, as added Oct. 15, 1968, Pub. L. 90–574, title V, § 503(a), 82 Stat. 1012, and amended, which related to memorials and other acknowledgements for contributions to the health of the Nation, was renumbered section 240 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238i of this title.

Section 300aaa–10, act July 1, 1944, ch. 373, title XXVII, § 2711, formerly title V, § 513, as added June 30, 1970, Pub. L. 91–296, title IV, § 401(a), 84 Stat. 351, and amended, which related to evaluation of programs, was renumbered section 241 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238j of this title.

Section 300aaa–11, act July 1, 1944, ch. 373, title XXVII, § 2712, formerly title V, § 514, as added Nov. 9, 1978, Pub. L. 95–623, § 11(e), 92 Stat. 3456, and amended, which related to contract authority, was renumbered section 242 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238k of this title.

Section 300aaa–12, act July 1, 1944, ch. 373, title XXVII, § 2713, formerly title V, § 515, formerly Pub. L. 88–164, title II, § 225, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 326, and amended, which related to recovery by United States of base amount plus interest in certain circumstances, was renumbered section 243 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238*l* of this title.

Section 300aaa–13, act July 1, 1944, ch. 373, title XXVII, § 2714, formerly title XXI, § 2116, as added Apr. 7, 1986, Pub. L. 99–272, title XVII, § 17003, 100 Stat. 359, and amended, which related to use of fiscal agents, was renumbered section 244 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238m of this title.

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SUBCHAPTER I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

REPEAL OF SUBCHAPTER I OF THIS CHAPTER; INAPPLICABILITY OF REPEAL TO PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this subchapter is repealed effective January 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1960—Pub. L. 86–778, title VI, § 601(a), Sept. 13, 1960, 74 Stat. 987, included medical assistance for the aged in subchapter heading.

§ 301. Authorization of appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to aged needy individuals, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health and Human Services (hereinafter referred to as the ''Secretary''), State plans for old-age assistance.

(Aug. 14, 1935, ch. 531, title I, § 1, 49 Stat. 620; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(a), 64 Stat. 558; Aug. 1, 1956, ch. 836, title III, § 311(a), 70 Stat. 848; Pub. L. 86–778, title VI, § 601(b), Sept. 13, 1960, 74 Stat. 987; Pub. L. 87–543, title I, § 104(c)(1), July 25, 1962, 76 Stat. 185; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, § 2184(a)(2), Aug. 13, 1981, 95 Stat. 816.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 substituted ''purpose of enabling'' for ''purpose (a) of enabling'', struck out provisions designated as cls. (b) and (c) which authorized appropriations for the purpose of enabling each State to furnish medical assistance to aged individuals who are not recipients of old-age assistance but whose income and resources are insufficient to meet the cost of necessary medical care and of encouraging each State to furnish rehabilitation and other services to individuals to attain and retain capability for self-care, and struck out '', or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged'' after ''plans for old-age assistance''.

1962—Pub. L. 87–543 amended first sentence generally, striking from cl. (a) provision relating to the purpose of encouraging each State, as far as practicable under the conditions in the State, to help aged needy individuals attain self-care, and adding cl. (c) incorporating the struck out provision.

1960—Pub. L. 86–778 amended section generally, authorizing appropriations for the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of aged individuals who are not recipients of old-age assistance but whose income and resources are insufficient to meet the costs of necessary medical services.

1956—Act Aug. 1, 1956, struck out specific appropriation for fiscal year ending June 30, 1956, and inserted provisions relating to attainment of self-care by individuals.

1950—Act Aug. 28, 1950, § 361(a), substituted ''Federal Security Administrator (hereinafter referred to as the 'Administrator')'' for ''Social Security Board established by subchapter I of this chapter (hereinafter referred to as the 'Board')''.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 604 of Pub. L. 86–778 provided that: ''The amendments made by section 601 of this Act [amending this section and sections 302, 303, 304, and 306 of this title] shall take effect October 1, 1960, and the amendments made by section 602 [amending section 1308 of this title] shall be effective with respect to fiscal years ending after 1960.''

CHANGE OF NAME

Secretary of Health and Human Services substituted in text for Secretary of Health, Education, and Welfare pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SHORT TITLE

For short title of this chapter and of amendments thereto, see section 1305 of this title and Short Title notes set out thereunder.

DECLARATION OF PURPOSE OF TITLE III OF ACT AUGUST 1, 1956

Section 300 of act Aug. 1, 1956, provided that: ''It is the purpose of this title [enacting sections 906 and 1310 of this title and amending this section and sections 302, 303, 601, 602, 603, 606, 1201, 1202, 1203, 1301, 1308, 1351, 1352, and 1353 of this title] (a) to promote the health of the Nation by assisting States to extend and broaden their provisions for meeting the costs of medical care for persons eligible for public assistance by providing for separate matching of assistance expenditures for medical care, (b) to promote the well-being of the Nation by encouraging the States to place greater emphasis on helping to strengthen family life and helping needy families and individuals attain the maximum economic and personal independence of which they are capable, (c) to assist in improving the administration of public assistance programs (1) through making grants and contracts, and entering into jointly financed cooperative arrangements, for research or demonstration projects and (2) through Federal-State programs of grants to institutions and traineeships and fellowships so as to provide training of public welfare personnel, thereby securing more adequately trained personnel, and (d) to improve aid to dependent children.''

PUERTO RICO, GUAM, AND THE VIRGIN ISLANDS

Pub. L. 92–603, title III, § 303(b), Oct. 30, 1972, 86 Stat. 1484, provided that: ''The amendments made by sections 301 [enacting sections 1381 to 1383c of this title] and 302 [enacting sections 801 to 805 of this title] and the repeals made by subsection (a) [repealing this section and sections 302 to 306, 1201 to 1206, and 1351 to 1355 of this title] shall not be applicable in the case of Puerto Rico, Guam, and the Virgin Islands.''

§ 302. State old-age plans

(a) Contents

A State plan for old-age assistance must—

(1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for assistance under the plan is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes assistance for or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) if the State plan includes old-age assistance—

(A) provide that the State agency shall, in determining need for such assistance, take into consideration any other income and resources of an individual claiming old-age assistance, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (i) the State agency may disregard not more than $7.50 per month of any income and (ii) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder;

(B) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of such assistance; and

(C) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of such assistance to help them attain self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and

(11) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(b) Approval by Secretary

The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for old-age assistance, excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter.

(c) Limitation on number of plans

Nothing in this subchapter shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this subchapter.

(Aug. 14, 1935, ch. 531, title I, § 2, 49 Stat. 620; Aug. 10, 1939, ch. 666, title I, § 101, 53 Stat. 1360; Aug. 28, 1950, ch. 809, title III, pt. 1, § 301(a), (b), pt. 6, § 361(c), (d), 64 Stat. 548, 558; Aug. 1, 1956, ch. 836, title III, § 311(b), 70 Stat. 848; Pub. L. 85–840, title V, § 510, Aug. 28, 1958, 72 Stat. 1051; Pub. L. 86–778, title VI, § 601(b), Sept. 13, 1960, 74 Stat. 987; Pub. L. 87–543, title I, §§ 106(a)(1), 157, July 25, 1962, 76 Stat. 188, 207; Pub. L. 89–97, title II, § 221(a)(3), title IV, § 403(a), July 30, 1965, 79 Stat. 357, 418; Pub. L. 90–248, title II, §§ 210(a)(1), 213(a)(1), Jan. 2, 1968, 81 Stat. 895, 898; Pub. L. 92–603, title IV, §§ 405(a), 406(a), 407(a), 410(a), 413(a), Oct. 30, 1972, 86 Stat. 1488, 1489, 1491, 1492; Pub. L. 97–35, title XXI, § 2184(a)(3), Aug. 13, 1981, 95 Stat. 816; Pub. L. 98–369, div. B, title VI, § 2651(e), July 18, 1984, 98 Stat. 1149.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1984—Subsec. (a)(11). Pub. L. 98–369 added par. (11).

1981—Subsec. (a). Pub. L. 97–35 struck out in provision preceding par. (1) ", or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged" par. (11) which specified the contents the State plan must contain if it includes medical assistance for the aged, par. (12) which specified the contents the State plan must contain if it includes assistance to or in behalf of individuals who are patients in institutions for mental diseases, and par. (13) which provided that if the State plan includes assistance to or in behalf of patients in public institutions for mental diseases, it show that the State is making satisfactory progress towards developing and implementing a comprehensive mental health program.

1972—Subsec. (a)(1). Pub. L. 92–603, § 410(a), inserted "except to the extent permitted by the Secretary with respect to services" before "provide".

Subsec. (a)(4). Pub. L. 92–603, § 407(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(7). Pub. L. 92–603, § 413(a), substituted provisions permitting use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with administration of the State plan, for provisions restricting use or disclosure of such information to purposes directly connected with administration of the State plan.

Subsec. (a)(10)(C). Pub. L. 92–603, § 405(a), inserted provision relating to use of whatever internal organizational arrangement found appropriate.

Subsec. (b). Pub. L. 92–603, § 406(a), inserted provision relating to furnishing of manuals and other policy issuances to persons without charge and at option of the State.

1968—Subsec. (a)(5). Pub. L. 90–248, § 210(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10)(A)(i). Pub. L. 90–248, § 213(a)(1), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965—Subsec. (a)(10)(A). Pub. L. 89–97, § 403(a), placed a ceiling of $5 on amount of any income which the State may disregard in making its determination of need and substituted "$80" and "$20" for "$50" and "$10" respectively.

Subsec. (a)(12), (13). Pub. L. 89–97, § 221(a)(3), added pars. (12) and (13).

1962—Subsec. (a)(10)(A). Pub. L. 87–543 inserted "as well as any expenses reasonably attributable to the earning of any such income" and exception provision.

1960—Subsec. (a). Pub. L. 86–778 amended subsec. (a) generally, inserting provisions relating to plans for medical assistance, and required plans that include old-age assistance to include reasonable standards, consistent with objectives of this subchapter, for determining eligibility for and extent of such assistance.

Subsec. (b). Pub. L. 86–778 amended subsec. (b) generally, substituting "eligibility for assistance under the plan" for "eligibility for old-age assistance under the plan" in opening provisions, struck out provisions from par. (1) which permitted plan to impose an age requirement of as much as 70 years until Jan. 1, 1940, and inserted provisions in par. (2) requiring the Secretary to disapprove any plan, in the case of applicants for medical assistance for the aged, which excludes any individual who resides in the State.

Subsec. (c). Pub. L. 86–778 added subsec. (c).

1958—Subsec. (a)(11). Pub. L. 85–840 inserted provisions in par. (11) requiring the State plan to include a description of the steps taken to assure, in provision of such services, maximum utilization of other agencies providing similar or related services.

1956—Subsec. (a)(11). Act Aug. 1, 1956, added par. (11).

1950—Subsec. (a). Act Aug. 28, 1950, substituted "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for old-age assistance is denied or is not acted upon with reasonable promptness" for "provide for granting to any individual, whose claim for old-age assistance is denied, an opportunity for a fair hearing before such State agency" in par. (4), "Administrator" for "Board" wherever appearing, and "he", "him", or "his" for "it" or "its" wherever appearing, and added pars. (9) and (10).

1939—Subsec. (a). Act Aug. 10, 1939, amended subsec. (a) generally commencing with par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 210(b) of Pub. L. 90–248 provided that: "Each of the amendments made by subsection (a) [amending this section and sections 602, 1202, 1352, 1382, and 1396a of this title] shall become effective July 1, 1969, or, if earlier (with respect to a State's plan approved under title [subchapter] I, X, XIV, XVI, or XIX, or part A of title IV [of this chapter]) on the date as of which the modification of the State plan to comply with such amendment is approved."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 221(e) of Pub. L. 89–97 provided that: "The amendments made by this section [amending this section and sections 303, 306, 1206, 1355, 1382, 1383, and 1385 of this title] shall apply in the case of expenditures made after December 31, 1965, under a State plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter]."

Section 403(a) of Pub. L. 89–97 provided that the amendment made by that section is effective Oct. 1, 1965.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 202(a) of Pub. L. 87–543 provided that: ''The amendments made by sections 102(b)(1), 103, 106, and 134 [amending this section and sections 602, 607, 723, 1202, and 1352 of this title] shall become effective July 1, 1963.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 effective Oct. 1, 1958, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 314 [315] of act Aug. 1, 1956, provided that: ''The amendments made by sections 311(b), 312(b), 313(b), and 314(b) [amending this section and sections 602, 1202, and 1352 of this title] shall become effective July 1, 1957.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 301(c) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect July 1, 1951.''

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary under subsec. (a)(5)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

DISREGARDING OF INCOME OF OASDI RECIPIENTS IN DETERMINING NEED FOR PUBLIC ASSISTANCE

Section 306 of Pub. L. 92–603 provided that: ''In addition to the requirements imposed by law as a condition of approval of a State plan to provide aid or assistance in the form of money payments to individuals under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter], there is hereby imposed the requirement (and the plan shall be deemed to require) that, in the case of any individual receiving aid or assistance for any month after October 1972, or, at the option of the State, September 1972, and before January 1974 who also receives in such month a monthly insurance benefit under title II of such Act [subchapter II of this chapter] which was increased as a result of the enactment of Public Law 92–336, the sum of the aid or assistance received by him for such month, plus the monthly insurance benefit received by him in such month (not including any part of such benefit which is disregarded under such plan), shall exceed the sum of the aid or assistance which would have been received by him for such month under such plan as in effect for October 1972, plus the monthly insurance benefit which would have been received by him in such month, by an amount equal to $4 or (if less) to such increase in his monthly insurance benefit under such title II (whether such excess is brought about by disregarding a portion of such monthly insurance benefit or otherwise).''

§ 303. Payments to States and certain territories; computation of amount; eligibility of State to receive payment

(a) Computation of amounts

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1960—

(1) Repealed. Pub. L. 97–35, title XXI, § 2184(a)(4)(A), Aug. 13, 1981, 95 Stat. 816.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of old-age assistance for such month; plus

(3) Repealed. Pub. L. 97–35, title XXI, § 2184(a)(4)(A), Aug. 13, 1981, 95 Stat. 816.

(4) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Method of computing and paying amounts

The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Secretary of Health and Human Services may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to assistance furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for

the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title I, § 3, 49 Stat. 621; Aug. 10, 1939, ch. 666, title I, § 102, 53 Stat. 1361; 1940 Reorg. Plan No. III, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; Aug. 10, 1946, ch. 951, title V, § 501, 60 Stat. 991; June 14, 1948, ch. 468, § 3(a), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 1, § 302(a), pt. 6, § 361(c), (d), 64 Stat. 548, 558; July 18, 1952, ch. 945, § 8(a), 66 Stat. 778; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 1, 1954, ch. 1206, title III, § 303, 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§ 301, 311(c), 341, 70 Stat. 846, 848, 852; Pub. L. 85–840, title V, § 501, Aug. 28, 1958, 72 Stat. 1047; Pub. L. 86–778, title VI, § 601(c), (d), Sept. 13, 1960, 74 Stat. 989, 990; Pub. L. 87–31, § 5(a), (b), May 8, 1961, 75 Stat. 77; Pub. L. 87–64, title III, § 303(a), June 30, 1961, 75 Stat. 143; Pub. L. 87–543, title I, §§ 101(a)(1), (b)(1), 132(a), July 25, 1962, 76 Stat. 173, 179, 193; Pub. L. 89–97, title I, § 122, title II, § 221(a)(4), title IV, § 401(a), July 30, 1965, 79 Stat. 353, 357, 414; Pub. L. 90–248, title II, § 212(a), Jan. 2, 1968, 81 Stat. 897; Pub. L. 92–512, title III, § 301(b), (d), Oct. 20, 1972, 86 Stat. 946, 947; Pub. L. 93–647, §§ 3(e)(2), 5(a), Jan. 4, 1975, 88 Stat. 2349, 2350; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, § 2184(a)(4), title XXIII, § 2353(a), Aug. 13, 1981, 95 Stat. 816, 871; Pub. L. 99–603, title I, § 121(b)(4), Nov. 6, 1986, 100 Stat. 3391; Pub. L. 103–66, title XIII, § 13741(b), Aug. 10, 1993, 107 Stat. 663; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1993—Subsec. (a)(4). Pub. L. 103–66 substituted ''50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.'' for ''the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

''(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

''(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

''(C) one-half of the remainder of such expenditures.''

1986—Subsec. (a)(4)(B), (C). Pub. L. 99–603 added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (a)(1). Pub. L. 97–35, § 2184(a)(4)(A), struck out par. (1) which provided for computation of amount of payments in case of any State other than Puerto Rico, the Virgin Islands, and Guam.

Subsec. (a)(2). Pub. L. 97–35, § 2184(a)(4)(B), amended par. (2) generally, striking out provisions including as old-age assistance under the State plan expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care and increasing amount payable by larger of two specifically computable amounts.

Subsec. (a)(3). Pub. L. 97–35, § 2184(a)(4)(A), struck out par. (3) which provided for payment, in the case of any State, of an amount equal to the Federal medical percentage of total amounts expended for each quarter as medical assistance for the aged under the State plan, including expenditures for insurance premiums for medical or any other type of remedial care or cost thereof.

Subsec. (a)(4). Pub. L. 97–35, § 2353(a)(1)(A), substituted provision making payments available to any State for provision making payments available to any State whose State plan approved under section 302 of this title meets the requirements of subsec. (c)(1) of this section and ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', inserted provision including within the meaning of training both short and long term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions, and struck out provisions which included in the computation of the amount payable services and provisions which specified what services were includable.

Subsec. (a)(5). Pub. L. 97–35, § 2353(a)(1)(B), struck out par. (5) which provided payment, in the case of any State whose State plan approved under section 302 of this title which did not meet the requirements of subsec. (c)(1) of this section, of an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

Subsec. (c). Pub. L. 97–35, § 2353(a)(2), struck out subsec. (c) which provided for an eligibility requirement in order for a State to qualify for payments under subsec. (a)(4) of this section and prescribed action to be taken by the Secretary upon failure of the State to comply.

Subsec. (d). Pub. L. 97–35, § 2184(a)(4)(C), struck out subsec. (d) which provided that the amount determined for any State for any quarter which is attributable to expenditures with respect to patients in institutions for mental diseases be paid only to the extent that the State makes a satisfactory showing that the total expenditures in the State from Federal, State, and local sources for mental health services under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of fiscal year ending June 30, 1965.

1975—Subsec. (a). Pub. L. 93–647, § 3(e)(2), struck out ''(subject to section 1320b of this title)'' after ''the Secretary of the Treasury shall''.

Subsec. (a)(4)(A)(iv). Pub. L. 93–647, § 5(a), inserted ''(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)'' after ''training''.

1972—Subsec. (a). Pub. L. 92–512, § 301(d), substituted ''shall (subject to section 1320b of this title) pay'' for ''shall pay'' in text preceding par. (1).

Subsec. (a)(4)(E). Pub. L. 92–512, § 301(b), substituted ''under conditions which shall be'' for ''subject to limitations''.

1968—Subsec. (a)(4)(D). Pub. L. 90–248 inserted ", except to the extent specified by the Secretary" after "shall" in introductory text to subpar. (D).

1965—Subsec. (a)(1). Pub. L. 89–97, §§122, 401(a), inserted "premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other" after "expenditures for" in parenthetical phrase appearing in so much of par. (1) as precedes cl. (A); and changed first step of formula for determining Federal payments to States with approved plans for old-age assistance under this subchapter, contained in cl. (A), by providing Federal sharing in 31/37ths of first $37 of the average monthly assistance payment instead of 29/35ths of first $35 of the average monthly assistance payment, extended the application of the Federal percentage in second step of formula to an additional $38 of the State's average payment, restated formula for second and third steps by striking out cl. (C) and combining such steps in cl. (B) and making provision therein to give recognition to the State's expenditures for medical care before applying the Federal percentage to remaining expenditures for which Federal participation is available, respectively.

Subsec. (a)(2)(A). Pub. L. 89–97, §122, inserted "premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other" after "expenditures for" in parenthetical phrase.

Subsec. (d). Pub. L. 89–97, §221(a)(4), added subsec. (d).

1962—Subsec. (a)(1). Pub. L. 87–543, §132(a), substituted "29/35" and "$35" for "four-fifths" and "$31", respectively, in subpar. (A), "$70" for "$66" in subpar. (B), and "$85" and "$70" for "$81" and "$66", respectively, in subpar. (C).

Subsec. (a)(2). Pub. L. 87–543, §132(a), substituted "$37.50" for "$35.50", in subpar. (A) and "$45" and "$37.50" for "$43" and "$35.50", respectively, in subpar. (B).

Subsec. (a)(4). Pub. L. 87–543, §101(a)(1), (b)(1)(A), inserted in opening provisions "whose State plan approved under section 302 of this title meets the requirements of subsection (c) of this section" after "any State", and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services to help attain and retain capability for self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for or recipients of assistance and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff services of State or local public assistance agencies to applicants for and recipients of old-age assistance to help them attain self-care.

Subsec. (a)(5). Pub. L. 87–543, §101(b)(1)(B), added par. (5).

Subsec. (c). Pub. L. 87–543, §101(b)(1)(C), added subsec. (c).

1961—Subsec. (a)(1). Pub. L. 87–64, §303(a)(1), substituted "$31" for "$30" in subpar. (A), "$66" for "$65" in subpar. (B), and "$81" for "$80" and "$66" for "$65" in subpar. (C).

Pub. L. 87–31, §5(a), substituted "$80" and "$15" for "$77" and "$12", respectively, in subpar. (C).

Subsec. (a)(2). Pub. L. 87–64, §303(a)(2), substituted "$35.50" for "$35" in subpar. (A), and "$35.50" for "$35" and "$43" for "$42.50" in subpar. (B).

Pub. L. 87–31, §5(b), substituted "$42.50" and "$7.50" for "$41" and "$6", respectively, in subpar. (B).

1960—Subsec. (a). Pub. L. 86–778, §601(c), added pars. (1)(C), (2)(B), and (3).

Subsec. (b)(2). Pub. L. 86–778, §601(d), substituted "assistance furnished under the State plan" for "old-age assistance furnished under the State plan" in cl. (B).

1958—Subsec. (a). Pub. L. 85–840 increased payments to the States to four-fifths of the first $30 of the average monthly payment per recipient, including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from provisions which authorize an average monthly payment of $65 and included Guam within provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, §301, substituted "during such quarter as old-age assistance in the form of money payments under the State plan" for "during such quarter as old-age assistance under the State plan" in cls. (1) and (2), "who received old-age assistance in the form of money payments for such month" for "who received old-age assistance for such month" in par. (A) of cl. (1), and inserted cl. (4).

Act Aug. 1, 1956, §311(c), struck out ", which shall be used exclusively as old-age assistance," after "the Virgin Islands, an amount" in cls. (1) and (2), and substituted "including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of old-age assistance to help them attain self-care" for "which amount shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose" in cl. (3).

Act Aug. 1, 1956, §341, substituted "October 1, 1956" for "October 1, 1952", struck out ", which shall be used exclusively as old-age assistance," after "the Virgin Islands, an amount", and substituted "$60" for "$55", in cl. (1), substituted "the product of $30" for "the product of $25" in par. (A) of cl. (1), and "including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of old-age assistance to help them attain self-care" for "which amount shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose" in cl. (3).

1954—Subsec. (b). Act Sept. 1, 1954, §303(b), substituted "subsection (a)" for "clause (1) of subsection (a)", wherever appearing, substituted "such subsection" for "such clause" in par. (1), and struck out "increased by five per centum" at end of par. (3).

Subsec. (b)(1). Act Sept. 1, 1954, §303(a), substituted "the State's proportionate share" for "one-half".

1952—Subsec. (a). Act July 18, 1952, increased Federal share of State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing Federal share of public assistance for Puerto Rico and Virgin Islands.

1950—Act Aug. 28, 1950, substituted "Administrator" for "Board", and "he", "him" or "his" for "it", or "its" wherever appearing and in subsec. (a) changed basis for computation of Federal portion of old-age assistance.

1948—Subsec. (a). Act June 14, 1948, substituted $50 for $45 and $20 for $15.

1946—Subsec. (a). Act Aug. 10, 1946, §501(a), temporarily increased maximum monthly State expenditure for an individual to which Federal Government will contribute from $40 to $45, increased Federal contribution for assistance from one-half the State's expendi-

ture to two-thirds the State's expenditure up to $15 monthly per individual plus one-half the State's expenditure over $15 and changed the Federal contribution for administration from 5 percent of Federal contribution for assistance to one-half the State expenditure for administration. See Effective and Termination Date of 1946 Amendment note below.

Subsec. (b). Act Aug. 10, 1946, § 501(b), temporarily changed references to cl. (1) of subsec. (a) to refer to entire subsection, substituted ''the State's proportionate share'' for ''one-half'' in par. (1) and struck out ''increased by 5 per centum'' at end of par. (3). See Effective and Termination Date of 1986 Amendment note below.

1939—Act Aug. 10, 1939, amended section generally, including substitution of $40 for $30 in subsec. (a).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13741(c) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, the amendments made by subsections (a) and (b) [amending this section and sections 603, 1203, and 1353 of this title and provisions set out as a note under section 1383 of this title] shall be effective with respect to calendar quarters beginning on or after April 1, 1994.

''(2) SPECIAL RULE.—In the case of a State whose legislature meets biennially, and does not have a regular session scheduled in calendar year 1994, the amendments made by subsections (a) and (b) shall be effective no later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(a) of Pub. L. 97–35 effective, except as otherwise specifically provided, Oct. 1, 1981, see section 2354 of Pub. L. 97–35, set out as a note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 7 of Pub. L. 93–647, as amended by Pub. L. 94–120, § 3, Oct. 21, 1975, 89 Stat. 609; Pub. L. 94–401, § 2, Sept. 7, 1976, 90 Stat. 1215, eff. Feb. 1, 1976; Pub. L. 95–171, § 1(d), Nov. 12, 1977, 91 Stat. 1353; eff. Oct. 1, 1977, provided that:

''(a)(1) The amendments made by sections 2 and 5 of this Act [enacting sections 1397 to 1397f of this title and amending this section, sections 603, 1203, and 1353 of this title, and provisions set out as a note under section 1383 of this title] shall be effective with respect to payments for quarters commencing after September 30, 1975.

''(2) Notwithstanding the provisions of section 2004 of the Social Security Act, as amended by this Act [section 1397c of this title], the first services program year of each State shall begin on October 1, 1975, and end with the close of, at the option of the State—

''(A) the day in the twelve-month period beginning October 1, 1975, or

''(B) the day in the twelve-month period beginning October 1, 1976,

which is the last day of the twelve-month period established by the State as its services program year under that section. Notwithstanding the provisions of subsection (b) of section 2003 of the Social Security Act, as amended by this Act [section 1397b(b) of this title], the aggregate expenditures required by that subsection with respect to the first services program year of each State shall be the amount which bears the same ratio to the amount that would otherwise be required under that subsection as the number of months in the State's first services program year bears to twelve.

''(3) Notwithstanding paragraph (1) of this subsection or section 3(f) [set out as a note under section 1397a of this title], payments under title IV [subchapter IV of this chapter] or section 2002(a)(1) of the Social Security Act [section 1397a(a)(1) of this title] with respect to expenditures made prior to October 1, 1978, in connection with the provision of child day care services in day care centers and group day care homes, in the case of children between the ages of six weeks and six years, may be made without regard to the requirements relating to staffing standards which are imposed by or under section 2002(a)(9)(A)(ii) of such Act [section 1397a(a)(9)(A)(ii) of this title], so long as the staffing standards actually being applied in the provision of the services involved (A) comply with applicable State law (as in effect at the time the services are provided), (B) are no lower than the corresponding staffing standards which were imposed or required by applicable State law on September 15, 1975, and (C) are no lower, in the case of any day care center or group day care home, than the corresponding standards actually being applied in such center or home on September 15, 1975.

''(b) The amendments made by section 3 of this Act [amending this section and sections 602, 603, 606, 622, 1203, 1308, 1315, 1316, 1320b note, and 1383 note of this title, repealing sections 801 to 805 and 1320b of this title, and enacting provisions set out as notes under section 1320b and 1397a of this title] shall be effective with respect to payments under sections 403 and 603 of the Social Security Act [sections 603 and 803 of this title] for quarters commencing after September 30, 1975, except that the amendments made by section 3(a) [amending sections 602, 603, 606, and 623 of this title] shall not be effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 301(e) of Pub. L. 92–512 provided that: ''The amendments made by this section (other than by subsection (b)) [enacting section 1320b of this title and amending this section and sections 603, 1203, 1253, and 1383] shall be effective July 1, 1972, and the amendments made by subsection (b) [amending this section and sections 603, 1203, 1353, and 1383 of this title] shall be effective January 1, 1973.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 212(e) of Pub. L. 90–248 provided that: ''The amendments made by the preceding subsections of this section [amending this section and sections 1203, 1353, and 1383 of this title] shall take effect January 1, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221 of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 302 of this title.

Section 401(f) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 603, 1203, 1353, and 1383 of this title] shall apply in the case of expenditures made after December 31, 1965, under a State plan approved under title I, IV, X, XIV, or XVI of the Social Security Act [subchapter I, IV, X, XIV, or XVI of this chapter].''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 202(d) of Pub. L. 87–543 provided that: ''The amendments made by sections 109 and 132 (other than subsections (d) and (e) thereof) [amending this section and sections 606, 1203, and 1353 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], as the case may be, made after September 30, 1962.''

Section 202(f) of Pub. L. 87–543 provided that: ''The amendments made by section 101(a) [amending this section and sections 603, 1203, and 1353 of this title] shall be applicable in the case of expenditures, under a State

plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], as the case may be, made after August 31, 1962. The amendments made by section 101(b) [amending this section and sections 603, 608, 609, 1203, and 1353 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, IV, X, or XIV of the Social Security Act, as the case may be, made after June 30, 1963.''

EFFECTIVE DATE OF 1961 AMENDMENTS

Section 303(e) of Pub. L. 87–64, as amended by Pub. L. 87–543, title I, §132(e), provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section and sections 1203 and 1353 of this title] shall apply only in the case of expenditures made after September 30, 1961, and before October 1, 1962, under a State plan approved under title I, X, or XIV, as the case may be, of the Social Security Act [subchapter I, X, or XIV of this chapter].''

Section 5(c) of Pub. L. 87–31 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply in the case of expenditures made after June 30, 1961, under a State plan approved under title I of the Social Security Act [this subchapter].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 512 of Pub. L. 85–840 provided that: ''Notwithstanding the provisions of sections 305 and 345 of the Social Security Amendments of 1956, as amended [set out as notes below], the amendments made by sections 501, 502, 503, 504, 505, and 506 [amending this section and sections 603, 1203, 1301, and 1353 of this title] shall be effective—

''(1) in the case of money payments, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], for months after September 1958, and

''(2) in the case of assistance in the form of medical or any other type of remedial care, under such a plan, with respect to expenditures made after September 1958.

The amendment made by section 506 [amending section 1301 of this title] shall also become effective, for purposes of title V of the Social Security Act [subchapter V of this chapter], for fiscal years ending after June 30, 1959. The amendments made by section 507 [amending section 1308 of this title] shall be effective for fiscal years ending after June 30, 1958. The amendment made by section 508 [amending section 1304 of this title] shall be effective for fiscal years ending after June 30, 1959. The amendment made by section 510 shall become effective October 1, 1958.''

EFFECTIVE AND TERMINATION DATE OF 1956 AMENDMENT

Section 345 of act Aug. 1, 1956, provided that: ''The amendments made by this part [part V (§§341–345) of title III of act Aug. 1, 1956, amending this section and sections 603, 1203, and 1353 of this title] shall be effective for the period beginning October 1, 1956, and ending with the close of June 30, 1959, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this part had not been enacted.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 305 of act Aug. 1, 1956, as amended by Pub. L. 85–110, July 17, 1957, 71 Stat. 308, provided that:

''(a) Except as provided in subsection (b), the amendments made by this part [part I (§§301–305) of title III of act Aug. 1, 1956, amending this section and sections 603, 1203, and 1353 of this title] shall become effective July 1, 1957.

''(b) The amendments made by any section of this part shall not apply to any State (as defined in section 1101 of the Social Security Act [section 1301 of this title] for purposes of title I thereof [subchapter I of this chapter]) for any fiscal year for which there is in effect an election by it not to have the amendments made by such section apply to it. Any such election shall be in effect for a fiscal year only if notice of the election has been filed with the Secretary of Health, Education, and Welfare at some time prior to May 16 of the preceding fiscal year, except that any such election shall be in effect for the fiscal year beginning July 1, 1957, if notice of the election is filed with the Secretary prior to August 1, 1957. An election by a State under this subsection shall continue in effect until the close of any fiscal year designated in a notice of termination of such election which is filed with the Secretary of Health, Education, and Welfare prior to May 16 of such year. Elections hereunder shall be made, and notices thereof and notices of termination shall be filed, on such form or forms and in such manner as the Secretary of Health, Education, and Welfare may prescribe.''

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Section 8(e) of act July 18, 1952, as amended by act Sept. 1, 1954, title III, §301, provided that: ''The amendments made by this section [amending this section and sections 603, 1203, and 1353 of this title] shall be effective for the period beginning October 1, 1952, and ending with the close of September 30, 1956, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this Act [July 18, 1952] had not been enacted.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 302(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950.''

EFFECTIVE DATE OF 1948 AMENDMENT

Section 3(d) of act June 14, 1948, provided that: ''The amendments made by this section [amending this section and sections 603 and 1203 of this title] shall become effective on October 1, 1948.''

EFFECTIVE AND TERMINATION DATE OF 1946 AMENDMENT

Section 504 of act Aug. 10, 1946, as amended by act Aug. 6, 1947, ch. 510, §3, 61 Stat. 794, provided that: ''Sections 501, 502, and 503 [amending this section and sections 603 and 1203 of this title] shall be effective with respect to the period commencing October 1, 1946, and ending on June 30, 1950.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 102 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Fiscal Service'' substituted for ''Division of Disbursement'' in subsec. (b)(3) on authority of section 1(a)(1) of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to

Title 5, Government Organization and Employees, which consolidated such division into Fiscal Service of Treasury Department. See section 306 of Title 31, Money and Finance.

NONDUPLICATION OF PAYMENTS TO STATES: PROHIBITION OF PAYMENTS AFTER DECEMBER 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396b of this title.

§ 304. Stopping payment on deviation from required provisions of plan or failure to comply therewith

In the case of any State plan which has been approved under this subchapter by the Secretary, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 302(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 302(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title I, § 4, 49 Stat. 622; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 86–778, title VI, § 601(e), Sept. 13, 1960, 74 Stat. 991; Pub. L. 90–248, title II, § 245, Jan. 2, 1968, 81 Stat. 918; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1968—Pub. L. 90–248 inserted ''(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)'' after ''further payments will not be made to the State'' and substituted in last sentence ''further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)'' for ''further certification to the Secretary of the Treasury with respect to such State''.

1960—Pub. L. 86–778 substituted ''State plan which has been approved under this subchapter'' for ''State plan for old-age assistance which has been approved''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'', and ''he'', ''him'', or ''his'' for ''it'', or ''its'', wherever appearing.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 305. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title I, § 5, 49 Stat. 622, made an appropriation for the fiscal year ending June 30, 1936.

§ 306. Definitions

(a) For the purposes of this subchapter, the term ''old-age assistance'' means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for assistance) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution). Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 302 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such assistance through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of old-age assistance to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual

and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) of this subsection for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of assistance under such plan.

(b), (c) Repealed. Pub. L. 97–35, title XXI, §2184(a)(5), Aug. 13, 1981, 95 Stat. 817.

(Aug. 14, 1935, ch. 531, title I, §6, 49 Stat. 622; Aug. 10, 1939, ch. 666, title I, §103, 53 Stat. 1362; Aug. 28, 1950, ch. 809, title III, pt. 1, §303(a), 64 Stat. 549; Pub. L. 86–778, title VI, §601(f), Sept. 13, 1960, 74 Stat. 991; Pub. L. 87–543, title I, §156(a), July 25, 1962, 76 Stat. 207; Pub. L. 89–97, title II, §§221(a)(1), (2), 222(a), title IV, §402(a), July 30, 1965, 79 Stat. 356, 360, 415; Pub. L. 92–603, title IV, §§408(a), 409(a), Oct. 30, 1972, 86 Stat. 1489, 1490; Pub. L. 97–35, title XXI, §2184(a)(5), Aug. 13, 1981, 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Subsecs. (b), (c). Pub. L. 97–35 struck out subsecs. (b) and (c) which defined ''medical assistance for the aged'' and ''Federal medical percentage'', respectively.

1972—Subsec. (a). Pub. L. 92–603 authorized the State, at its option, to include within term ''old-age assistance'' provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Subsec. (a). Pub. L. 89–97, §221(a)(1), struck out from definition of ''old-age assistance'' the exclusion of (1) payments to or medical care in behalf of any individual who is a patient in an institution for tuberculosis or mental diseases, or (2) payments to any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof, or (3) medical care in behalf of any individual, who is a patient in a medical institution as a result of a diagnosis that he has tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, as a result of such diagnosis, for forty-two days.

Pub. L. 89–97, §402(a), extended definition of ''old-age assistance'' to include payments made on behalf of the recipient to an individual who (as determined in accordance with the standards prescribed by the Secretary) is interested in or concerned with the welfare of the recipient and inserted an enumeration of the five characteristics required of State plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs, special efforts to protect welfare, periodic review, and opportunity for fair hearing.

Subsec. (b). Pub. L. 89–97, §§221(a)(2), 222(a), struck out from provision at end of cl. (12) excluding certain payments from definition of ''medical assistance for the aged'' payments with respect to care or services for any individual who is a patient in an institution for tuberculosis or mental diseases or for any individual who is a patient in a medical institution as a result of a diagnosis of tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, for forty-two days and inserted in text preceding cl. (1) ''(except, for any month, for recipients of old-age assistance who are admitted to or discharged from a medical institution during such month)'' after ''who are not recipients of old-age assistance'', respectively.

1962—Subsec. (a). Pub. L. 87–543, §156(a)(1), inserted ''(if provided in or after the third month before the month in which the recipient makes application for assistance)'' before ''medical care''.

Subsec. (b). Pub. L. 87–543, §156(a)(2), inserted ''(if provided in or after the third month before the month in which the recipient makes application for assistance)'' after ''care and services''.

1960—Subsec. (a). Pub. L. 86–778, §601(f)(1), (2), designated existing provisions as subsec. (a) and inserted provisions excluding from definition of ''old-age assistance'' any care in behalf of any individual, who is a patient in a medical institution as a result of a diagnosis that he has tuberculosis or psychosis, with respect to any period after the individual has been a patient in an institution, as a result of such diagnosis, for forty-two days.

Subsecs. (b), (c). Pub. L. 86–778, §601(f)(2), added subsecs. (b) and (c).

1950—Act Aug. 28, 1950, redefined ''old-age assistance''.

1939—Act Aug. 10, 1939, inserted ''needy'' before ''individuals who''.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221 of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 302 of this title.

Section 222(c) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 1385 of this title] shall apply in the case of expenditures under a State plan approved under title I or XVI of the Social Security Act [subchapter I or XVI of this chapter] with respect to care and services provided under such plan after June 1965.''

Section 402(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 1206, 1355, and 1385 of this title] shall apply in the case of expenditures made after December 31, 1965, under a State plan approved under title I, X, XIV or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 156(e) of Pub. L. 87–543 provided that: ''The amendments made by this section [amending this sec-

tion and sections 606, 1206, and 1355 of this title] shall apply in the case of applications made after September 30, 1962, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 303(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950, except that the exclusion of money payments to needy individuals described in clause (a) or (b) of section 6 of the Social Security Act as so amended [clauses (a) or (b) of this section] shall, in the case of any of such individuals who are not patients in a public institution, be effective July 1, 1952.''

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

AMENDMENTS

1956—Act Aug. 1, 1956, ch. 836, title I, § 103(i), 70 Stat. 824, included disability insurance benefits in subchapter heading.

§ 401. Trust Funds

(a) Federal Old-Age and Survivors Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Old-Age and Survivors Insurance Trust Fund''. The Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trust Fund as hereinafter provided. There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes (including interest, penalties, and additions to the taxes) received under subchapter A of chapter 9 of the Internal Revenue Code of 1939 (and covered into the Treasury) which are deposited into the Treasury by collectors of internal revenue before January 1, 1951; and

(2) the taxes certified each month by the Commissioner of Internal Revenue as taxes received under subchapter A of chapter 9 of such Code which are deposited into the Treasury by collectors of internal revenue after December 31, 1950, and before January 1, 1953, with respect to assessments of such taxes made before January 1, 1951; and

(3) the taxes imposed by subchapter A of chapter 9 of such Code with respect to wages (as defined in section 1426 of such Code), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 3121 of such Code) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1954 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages, which wages shall be certified by the Commissioner of Social Security on the basis of the records of wages established and maintained by such Commissioner in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section; and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939, with respect to self-employment income (as defined in section 481 of such Code), and by chapter 2 (other than section 1401(b)) of the Internal Revenue Code of 1954 with respect to self-employment income (as defined in section 1402 of such Code) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the Commissioner of Social Security on the basis of the records of self-employment income established and maintained by the Commissioner of Social Security in accordance with such returns, less the amounts specified in clause (2) of subsection (b) of this section.

The amounts appropriated by clauses (3) and (4) of this subsection shall be transferred from time to time from the general fund in the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) of this section shall be transferred from time to time from the general fund in the Treasury to the Federal Disability Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in clauses (3) and (4) of this subsection, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such clauses (3) and (4) of this subsection. All amounts transferred to either Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of such Trust Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would

otherwise be inadequate to meet such Fund's obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund on the first day of such month the amount which would have been transferred to such Fund under this section as in effect on October 1, 1990; and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d) of this section.

(b) Federal Disability Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Disability Insurance Trust Fund''. The Federal Disability Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1)(A) ½ of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and before January 1, 1970, and so reported, (D) 1.10 per centum of the wages (as so defined) paid after December 31, 1969, and before January 1, 1973, and so reported, (E) 1.1 per centum of the wages (as so defined) paid after December 31, 1972, and before January 1, 1974, and so reported, (F) 1.15 per centum of the wages (as so defined) paid after December 31, 1973, and before January 1, 1978, and so reported, (G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1980, and so reported, (I) 1.12 per centum of the wages (as so defined) paid after December 31, 1979, and before January 1, 1981, and so reported, (J) 1.30 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1982, and so reported, (K) 1.65 per centum of the wages (as so defined) paid after December 31, 1981, and before January 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after December 31, 1982, and before January 1, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after December 31, 1983, and before January 1, 1988, and so reported, (N) 1.06 per centum of the wages (as so defined) paid after December 31, 1987, and before January 1, 1990, and so reported, (O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 1994, and so reported, (P) 1.88 per centum of the wages (as so defined) paid after December 31, 1993, and before January 1, 1997, and so reported, (Q) 1.70 per centum of the wages (as so defined) paid after December 31, 1996, and before January 1, 2000, and so reported, and (R) 1.80 per centum of the wages (as so defined) paid after December 31, 1999, and so reported, which wages shall be certified by the Commissioner of Social Security on the basis of the records of wages established and maintained by such Commissioner in accordance with such reports; and

(2)(A) ⅜ of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, and before January 1, 1973, (E) 0.795 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1972, and before January 1, 1974, (F) 0.815 of 1 per centum of the amount of self-employment income (as so defined) as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978, (G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1980, (I) 0.7775 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1979, and before January 1, 1981, (J) 0.9750 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1982, (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1981, and before January 1, 1983, (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1982, and before January 1, 1984, (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported

for any taxable year beginning after December 31, 1983, and before January 1, 1988, (N) 1.06 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1987, and before January 1, 1990, (O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 1994, (P) 1.88 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1993, and before January 1, 1997, (Q) 1.70 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1996, and before January 1, 2000, and (R) 1.80 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999, which self-employment income shall be certified by the Commissioner of Social Security on the basis of the records of self-employment income established and maintained by the Commissioner of Social Security in accordance with such returns.

(c) Board of Trustees; duties; reports to Congress

With respect to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (hereinafter in this subchapter called the ''Trust Funds'') there is hereby created a body to be known as the Board of Trustees of the Trust Funds (hereinafter in this subchapter called the ''Board of Trustees'') which Board of Trustees shall be composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this subchapter called the ''Managing Trustee''). The Deputy Commissioner of Social Security shall serve as Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Funds;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Funds during the preceding fiscal year and on their expected operation and status during the next ensuing five fiscal years;

(3) Report immediately to the Congress whenever the Board of Trustees is of the opinion that the amount of either of the Trust Funds is unduly small;

(4) Recommend improvements in administrative procedures and policies designed to effectuate the proper coordination of the old-age and survivors insurance and Federal-State unemployment compensation program; and

(5) Review the general policies followed in managing the Trust Funds, and recommend changes in such policies, including necessary changes in the provisions of the law which govern the way in which the Trust Funds are to be managed.

The report provided for in paragraph (2) of this subsection shall include a statement of the assets of, and the disbursements made from, the Trust Funds during the preceding fiscal year, an estimate of the expected future income to, and disbursements to be made from, the Trust Funds during each of the next ensuing five fiscal years, and a statement of the actuarial status of the Trust Funds. Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees). Such report shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall also include an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.

(d) Investments

It shall be the duty of the Managing Trustee to invest such portion of the Trust Funds as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Funds. Such obligations issued for purchase by the Trust Funds shall have maturities fixed with due regard for the needs of the Trust Funds and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obliga-

tions of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. Each obligation issued for purchase by the Trust Funds under this subsection shall be evidenced by a paper instrument in the form of a bond, note, or certificate of indebtedness issued by the Secretary of the Treasury setting forth the principal amount, date of maturity, and interest rate of the obligation, and stating on its face that the obligation shall be incontestable in the hands of the Trust Fund to which it is issued, that the obligation is supported by the full faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(e) Sale of acquired obligations

Any obligations acquired by the Trust Funds (except public-debt obligations issued exclusively to the Trust Funds) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(f) Proceeds from sale or redemption of obligations; interest

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall be credited to and form a part of the Federal Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund, respectively. Payment from the general fund of the Treasury to either of the Trust Funds of any such interest or proceeds shall be in the form of paper checks drawn on such general fund to the order of such Trust Fund.

(g) Payments into Treasury

(1)(A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by subchapter XVIII of this chapter) is directed to pay from the Trust Funds into the Treasury—

(i)[1] the amounts estimated by the Managing Trustee, the Commissioner of Social Security, and the Secretary of Health and Human Services which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health and Human Services for the administration of subchapter XVIII of this chapter, and by the Department of the Treasury for the administration of subchapters II and XVIII of this chapter and chapters 2 and 21 of the Internal Revenue Code of 1986, less

(ii)[1] the amounts estimated (pursuant to the applicable method prescribed under paragraph (4) of this subsection) by the Commissioner of Social Security which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee.

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of subchapters II and XVIII of this chapter and chapters 2 and 21 of the Internal Revenue Code of 1986. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this subchapter, subchapter VIII of this chapter, subchapter XVI of this chapter, and subchapter XVIII of this chapter for which the Commissioner of Social Security is responsible, the costs of subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible, and the costs of carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) of the first sentence of this subparagraph and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee. Of the amounts authorized to be made available out of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under the preceding sentence, there are hereby authorized to be made available from either or both of such Trust Funds for continuing disability reviews—

(i)[1] for fiscal year 1996, $260,000,000;
(ii)[1] for fiscal year 1997, $360,000,000;
(iii) for fiscal year 1998, $570,000,000;
(iv) for fiscal year 1999, $720,000,000;
(v) for fiscal year 2000, $720,000,000;
(vi) for fiscal year 2001, $720,000,000; and
(viii)[2] for fiscal year 2002, $720,000,000.

For purposes of this subparagraph, the term ''continuing disability review'' means a review

[1] So in original. Two cls. (i) and (ii) have been enacted.

[2] So in original. Probably should be ''(vii)''.

conducted pursuant to section 421(i) of this title and a review or disability eligibility redetermination conducted to determine the continuing disability and eligibility of a recipient of benefits under the supplemental security income program under subchapter XVI of this chapter, including any review or redetermination conducted pursuant to section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296).

(B) After the close of each fiscal year—

(i) the Commissioner of Social Security shall determine—

(I) the portion of the costs, incurred during such fiscal year, of administration of this subchapter, subchapter VIII of this chapter, subchapter XVI of this chapter, and subchapter XVIII of this chapter for which the Commissioner is responsible and of carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee, which should have been borne by the general fund of the Treasury,

(II) the portion of such costs which should have been borne by the Federal Old-Age and Survivors Insurance Trust Fund,

(III) the portion of such costs which should have been borne by the Federal Disability Insurance Trust Fund,

(IV) the portion of such costs which should have been borne by the Federal Hospital Insurance Trust Fund, and

(V) the portion of such costs which should have been borne by the Federal Supplementary Medical Insurance Trust Fund (and, of such portion, the portion of such costs which should have been borne by the Medicare Prescription Drug Account in such Trust Fund), and

(ii) the Secretary of Health and Human Services shall determine—

(I) the portion of the costs, incurred during such fiscal year, of the administration of subchapter XVIII of this chapter for which the Secretary is responsible, which should have been borne by the general fund of the Treasury,

(II) the portion of such costs which should have been borne by the Federal Hospital Insurance Trust Fund, and

(III) the portion of such costs which should have been borne by the Federal Supplementary Medical Insurance Trust Fund (and, of such portion, the portion of such costs which should have been borne by the Medicare Prescription Drug Account in such Trust Fund).

(C) After the determinations under subparagraph (B) have been made for any fiscal year, the Commisioner[3] of Social Security and the Secretary shall each certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund of the Treasury, in order to ensure that each of the Trust Funds and the general fund of the Treasury have borne their proper share of the costs, incurred during such fiscal year, for—

(i) the parts of the administration of this subchapter, subchapter VIII of this chapter, subchapter XVI of this chapter, and subchapter XVIII of this chapter for which the Commissioner of Social Security is responsible,

(ii) the parts of the administration of subchapter XVIII of this chapter for which the Secretary is responsible, and

(iii) carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee.

The Managing Trustee shall transfer any such amounts in accordance with any certification so made.

(D) The determinations required under subclauses (IV) and (V) of subparagraph (B)(i) shall be made in accordance with the cost allocation methodology in existence on August 15, 1994, until such time as the methodology for making the determinations required under such subclauses is revised by agreement of the Commissioner and the Secretary, except that the determination of the amounts to be borne by the general fund of the Treasury with respect to expenditures incurred in carrying out the functions of the Social Security Administration specified in section 432 of this title and the functions of the Social Security Administration in connection with the withholding of taxes from benefits as described in section 407(c) of this title shall be made pursuant to the applicable method prescribed under paragraph (4).

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) of the Internal Revenue Code of 1986 which are subject to refund under section 6413(c) of such Code with respect to wages (as defined in section 3121 of such Code). Such taxes shall be determined on the basis of the records of wages maintained by the Commissioner of Social Security in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code, and the Commissioner of Social Security shall furnish the Managing Trustee such information as may be required by the

[3] So in original. Probably should be ''Commissioner''.

Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

(3) Repayments made under paragraph (1) or (2) of this subsection shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under either such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(4) The Commissioner of Social Security shall utilize the method prescribed pursuant to this paragraph, as in effect immediately before August 15, 1994, for determining the costs which should be borne by the general fund of the Treasury of carrying out the functions of the Commissioner, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). The Board of Trustees of such Trust Funds shall prescribe the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee. If at any time or times thereafter the Boards of Trustees of such Trust Funds consider such action advisable, they may modify the method of determining such costs.

(h) Benefit payments

Benefit payments required to be made under section 423 of this title, and benefit payments required to be made under subsection (b), (c), or (d) of section 402 of this title to individuals entitled to benefits on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits, shall be made only from the Federal Disability Insurance Trust Fund. All other benefit payments required to be made under this subchapter (other than section 426 of this title) shall be made only from the Federal Old-Age and Survivors Insurance Trust Fund.

(i) Gifts and bequests

(1) The Managing Trustee may accept on behalf of the United States money gifts and bequests made unconditionally to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund (and for the Medicare Prescription Drug Account and the Transitional Assistance Account in such Trust Fund) or to the Social Security Administration, the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.

(2) Any such gift accepted pursuant to the authority granted in paragraph (1) of this subsection shall be deposited in—

(A) the specific trust fund designated by the donor or

(B) if the donor has not so designated, the Federal Old-Age and Survivors Insurance Trust Fund.

(j) Travel expenses

There are authorized to be made available for expenditure, out of the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund (as determined appropriate by the Commissioner of Social Security), such amounts as are required to pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Commissioner of Social Security in connection with disability determinations under this subchapter, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 410(i) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Commissioner of Social Security) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(k) Experiment and demonstration project expenditures

Expenditures made for experiments and demonstration projects under section 434 of this title shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security.

(*l*) Interfund borrowing

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing

Trustee may borrow such amounts as he determines to be appropriate from the other such Trust Fund, or, subject to paragraph (5), from the Federal Hospital Insurance Trust Fund established under section 1395i of this title, for transfer to and deposit in the Trust Fund whose need for financing is involved.

(2) In any case where a loan has been made to a Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from the borrowing Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (d) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to a Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Hospital Insurance Trust Fund to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee determines that the OASDI trust fund ratio exceeds 15 percent, he shall transfer from the borrowing Trust Fund to the Federal Hospital Insurance Trust Fund an amount that—

(I) together with any amounts transferred from another borrowing Trust Fund under this paragraph for such year, will reduce the OASDI trust fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term ''OASDI trust fund ratio'' means, with respect to any calendar year, the ratio of—

(I) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as of the last day of such calendar year, to

(II) the amount estimated by the Commissioner of Social Security to be the total amount to be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the calendar year following such calendar year for all purposes authorized by this section (other than payments of interest on, and repayments of, loans from the Federal Hospital Insurance Trust Fund under paragraph (1), but excluding any transfer payments between such trust funds and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account).

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987, and before January 1, 1990, the Managing Trustee shall transfer each month to the Federal Hospital Insurance Trust Fund from any Trust Fund with any amount outstanding on a loan made from the Federal Hospital Insurance Trust Fund under paragraph (1) an amount not less than an amount equal to (I) the amount owed to the Federal Hospital Insurance Trust Fund by such Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

(4) The Board of Trustees shall make a timely report to the Congress of any amounts transferred (including interest payments) under this subsection.

(5)(A) No amounts may be borrowed from the Federal Hospital Insurance Trust Fund under paragraph (1) during any month if the Hospital Insurance Trust Fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term ''Hospital Insurance Trust Fund ratio'' means, with respect to any month, the ratio of—

(i) the balance in the Federal Hospital Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under this subsection, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Hospital Insurance Trust Fund during the month for which such ratio is to be determined (other than payments of interest on, or repayments of loans from another Trust Fund under this subsection), and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfer into the Hospital Insurance Trust Fund from that Account.

(m) Accounting for unnegotiated benefit checks

(1) The Secretary of the Treasury shall implement procedures to permit the identification of each check issued for benefits under this subchapter that has not been presented for payment by the close of the sixth month following the month of its issuance.

(2) The Secretary of the Treasury shall, on a monthly basis, credit each of the Trust Funds for the amount of all benefit checks (including interest thereon) drawn on such Trust Fund more than 6 months previously but not presented for payment and not previously credited to such Trust Fund, to the extent provided in advance in appropriation Acts.

(3) If a benefit check is presented for payment to the Treasury and the amount thereof has been previously credited pursuant to paragraph

(2) to one of the Trust Funds, the Secretary of the Treasury shall nevertheless pay such check, if otherwise proper, recharge such Trust Fund, and notify the Commissioner of Social Security.

(4) A benefit check bearing a current date may be issued to an individual who did not negotiate the original benefit check and who surrenders such check for cancellation if the Secretary of the Treasury determines it is necessary to effect proper payment of benefits.

(n) Payments to Funds in satisfaction of obligations

Not later than July 1, 2004, the Secretary of the Treasury shall transfer, from amounts in the general fund of the Treasury that are not otherwise appropriated—

(1) $624,971,854 to the Federal Old-Age and Survivors Insurance Trust Fund;

(2) $105,379,671 to the Federal Disability Insurance Trust Fund; and

(3) $173,306,134 to the Federal Hospital Insurance Trust Fund.

Amounts transferred in accordance with this subsection shall be in satisfaction of certain outstanding obligations for deemed wage credits for 2000 and 2001.

(Aug. 14, 1935, ch. 531, title II, §201, 49 Stat. 622; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362; Feb. 25, 1944, ch. 63, title IX, §902, 58 Stat. 93; Aug. 28, 1950, ch. 809, title I, §109(a), 64 Stat. 521; Aug. 1, 1956, ch. 836, title I, §103(e), 70 Stat. 819; Pub. L. 85–840, title II, §205(a), Aug. 28, 1958, 72 Stat. 1021; Pub. L. 86–346, title I, §104(2), Sept. 22, 1959, 73 Stat. 622; Pub. L. 86–778, title VII, §701(a)–(e), Sept. 13, 1960, 74 Stat. 992, 993; Pub. L. 89–97, title I, §108(a), title III, §§305, 327, July 30, 1965, 79 Stat. 338, 370, 400; Pub. L. 90–248, title I, §§110, 169, Jan. 2, 1968, 81 Stat. 837, 875; Pub. L. 91–172, title X, §1005, Dec. 30, 1969, 83 Stat. 741; Pub. L. 92–336, title II, §205, July 1, 1972, 86 Stat. 422; Pub. L. 92–603, title I, §§132(a)–(c), 136, title III, §305(a), Oct. 30, 1972, 86 Stat. 1360, 1364, 1484; Pub. L. 93–233, §7, Dec. 31, 1973, 87 Stat. 955; Pub. L. 94–202, §8(d), Jan. 2, 1976, 89 Stat. 1137; Pub. L. 95–216, title I, §102(a), Dec. 20, 1977, 91 Stat. 1513; Pub. L. 96–265, title III, §310(a), title V, §505(a)(5), June 9, 1980, 94 Stat. 459, 474; Pub. L. 96–403, §1, Oct. 9, 1980, 94 Stat. 1709; Pub. L. 97–123, §1(a), Dec. 29, 1981, 95 Stat. 1659; Pub. L. 98–21, title I, §§126, 141(a), 142(a)(1), (2)(A), (3), (4), 152(a), 154(a), title III, §341(a), Apr. 20, 1983, 97 Stat. 91, 98–100, 105, 107, 135; Pub. L. 98–369, div. B, title VI, §§2661(a), 2663(a)(1), (j)(2)(A)(i), July 18, 1984, 98 Stat. 1156, 1160, 1170; Pub. L. 99–272, title IX, §9213(a), Apr. 7, 1986, 100 Stat. 180; Pub. L. 100–360, title II, §212(c)(1), July 1, 1988, 102 Stat. 741; Pub. L. 100–647, title VIII, §8005(a), Nov. 10, 1988, 102 Stat. 3781; Pub. L. 101–234, title II, §202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–508, title V, §§5106(c), 5115(a), title XIII, §13304, Nov. 5, 1990, 104 Stat. 1388–268, 1388–274, 1388–627; Pub. L. 103–296, title I, §107(b), title III, §§301(a), (b), 321(a)(1), (c)(1)(A)(i), (B)(i), (C), Aug. 15, 1994, 108 Stat. 1478, 1517, 1535, 1537; Pub. L. 103–387, §3(a), (b), Oct. 22, 1994, 108 Stat. 4074, 4075; Pub. L. 104–121, title I, §103(a), Mar. 29, 1996, 110 Stat. 848; Pub. L. 105–277, div. J, title IV, §4005(b), Oct. 21, 1998, 112 Stat. 2681–911; Pub. L. 106–169, title II, §251(b)(1), Dec. 14, 1999, 113 Stat. 1854; Pub. L. 106–170, title III, §301(b)(1)(B), Dec. 17, 1999, 113 Stat. 1902; Pub. L. 108–173, title I, §101(e)(3)(A), (B), Dec. 8, 2003, 117 Stat. 2150, 2151; Pub. L. 108–203, title IV, §420(a), Mar. 2, 2004, 118 Stat. 535.)

REFERENCES IN TEXT

Subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1) to (3), was comprised of sections 1400 to 1432, and was repealed (subject to certain exceptions) by section 7851(a)(3) of the Internal Revenue Code of 1986.

Sections 1426 and 1420(c) of the Internal Revenue Code of 1939, referred to in subsec. (a)(3), were a part of subchapter A of chapter 9 of the 1939 Code. See above.

Internal Revenue Code of 1954, referred to in subsecs. (a)(3), (4) and (b)(1)(A), (2)(A), redesignated Internal Revenue Code of 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.

Subchapter E of chapter 1 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), was comprised of sections 480 to 482, and was repealed (subject to certain exceptions) by section 7851(a)(1)(A) of the Internal Revenue Code of 1986.

Section 481 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), was a part of subchapter E of chapter 1 of the 1939 Code. See above.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provision of the 1986 Code, see section 7852(b) if the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1986, referred to in subsec. (g)(1)(A), (2), are classified to sections 1401 et seq., 3101 et seq., and 6001 et seq., respectively, of Title 26, Internal Revenue Code.

Section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994, referred to in subsec. (g)(1)(A), are sections 207 and 208 of Pub. L. 103–296. Section 208 of Pub. L. 103–296 is set out as a note under section 1382 of this title. Section 207 of Pub. L. 103–296 was set out as a note under section 1382 of this title prior to repeal by Pub. L. 104–193, title II, §212(b)(2), (d), Aug. 22, 1996, 110 Stat. 2193, 2194.

AMENDMENTS

2004—Subsec. (n). Pub. L. 108–203 added subsec. (n).

2003—Subsec. (g)(1)(B)(i)(V), (ii)(III). Pub. L. 108–173, §101(e)(3)(A), inserted ''(and, of such portion, the portion of such costs which should have been borne by the Medicare Prescription Drug Account in such Trust Fund)'' after ''Trust Fund''.

Subsec. (i)(1). Pub. L. 108–173, §101(e)(3)(B), inserted ''(and for the Medicare Prescription Drug Account and the Transitional Assistance Account in such Trust Fund)'' after ''Federal Supplementary Medical Insurance Trust Fund''.

1999—Subsec. (g)(1)(A). Pub. L. 106–169, §251(b)(1)(A), inserted ''subchapter VIII of this chapter,'' after ''this subchapter,'' in fourth sentence.

Subsec. (g)(1)(B)(i)(I). Pub. L. 106–169, §251(b)(1)(B), inserted ''subchapter VIII of this chapter,'' after ''this subchapter,''.

Subsec. (g)(1)(C)(i). Pub. L. 106–169, §251(b)(1)(C), inserted ''subchapter VIII of this chapter,'' after ''this subchapter,''.

Subsec. (k). Pub. L. 106–170 substituted ''section 434 of this title'' for ''section 505(a) of the Social Security Disability Amendments of 1980''.

1998—Subsec. (g)(1)(A). Pub. L. 105–277, §4005(b)(2), which directed the amendment of subsec. (g) by inserting ''and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee'' before period at end of paragraph (1)(A), was executed by insert-

ing this material after ''the first sentence of this subparagraph'' in provisions following cl. (ii) to reflect the probable intent of Congress.

Subsec. (g)(1)(A)(ii). Pub. L. 105–277, § 4005(b)(1), inserted before period at end ''and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee''.

Subsec. (g)(1)(B)(i)(I). Pub. L. 105–277, § 4005(b)(3), substituted ''subparagraph (A)) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee,'' for ''subparagraph (A)),''.

Subsec. (g)(1)(C)(iii). Pub. L. 105–277, § 4005(b)(4), inserted before period at end ''and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee''.

Subsec. (g)(1)(D). Pub. L. 105–277, § 4005(b)(5), inserted ''and the functions of the Social Security Administration in connection with the withholding of taxes from benefits as described in section 407(c) of this title'' after ''section 432 of this title''.

Subsec. (g)(4). Pub. L. 105–277, § 4005(b)(6), inserted after first sentence ''The Board of Trustees of such Trust Funds shall prescribe the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee.''

1996—Subsec. (g)(1)(A). Pub. L. 104–121 inserted at end ''Of the amounts authorized to be made available out of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under the preceding sentence, there are hereby authorized to be made available from either or both of such Trust Funds for continuing disability reviews—

''(i) for fiscal year 1996, $260,000,000;

''(ii) for fiscal year 1997, $360,000,000;

''(iii) for fiscal year 1998, $570,000,000;

''(iv) for fiscal year 1999, $720,000,000;

''(v) for fiscal year 2000, $720,000,000;

''(vi) for fiscal year 2001, $720,000,000; and

''(viii) for fiscal year 2002, $720,000,000.

For purposes of this subparagraph, the term 'continuing disability review' means a review conducted pursuant to section 421(i) of this title and a review or disability eligibility redetermination conducted to determine the continuing disability and eligibility of a recipient of benefits under the supplemental security income program under subchapter XVI of this chapter, including any review or redetermination conducted pursuant to section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296).''

1994—Subsec. (a). Pub. L. 103–296, § 321(a)(1), in closing provisions substituted ''and'' for ''and and'' before ''such Trust Fund shall pay''.

Subsec. (a)(3). Pub. L. 103–296, § 107(b)(1), (2), substituted ''Commissioner of Social Security'' and ''such Commissioner'' for ''Secretary of Health and Human Services'' and ''such Secretary'', respectively.

Subsec. (a)(4). Pub. L. 103–296, § 107(b)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (b)(1). Pub. L. 103–296, § 107(b)(1), (2), substituted ''Commissioner of Social Security'' and ''such Commissioner'' for ''Secretary of Health and Human Services'' and ''such Secretary'', respectively.

Subsec. (b)(1)(O) to (R). Pub. L. 103–387, § 3(a), substituted ''(O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 1994, and so reported, (P) 1.88 per centum of the wages (as so defined) paid after December 31, 1993, and before January 1, 1997, and so reported, (Q) 1.70 per centum of the wages (as so defined) paid after December 31, 1996, and before January 1, 2000, and so reported, and (R) 1.80 per centum of the wages (as so defined) paid after December 31, 1999, and so reported,'' for ''(O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 2000, and so reported, and (P) 1.42 per centum of the wages (as so defined) paid after December 31, 1999, and so reported,''.

Subsec. (b)(2). Pub. L. 103–296, § 107(b)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (b)(2)(O) to (R). Pub. L. 103–387, § 3(b), substituted ''(O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 1994, (P) 1.88 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1993, and before January 1, 1997, (Q) 1.70 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1996, and before January 1, 2000, and (R) 1.80 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999,'' for ''(O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 2000, and (P) 1.42 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999,''.

Subsec. (c). Pub. L. 103–296, § 107(b)(3), in introductory provisions, inserted ''the Commissioner of Social Security,'' after ''shall be composed of'' and inserted ''Deputy'' before ''Commissioner of Social Security shall serve''.

Subsec. (d). Pub. L. 103–296, § 301(a), inserted after fifth sentence ''Each obligation issued for purchase by the Trust Funds under this subsection shall be evidenced by a paper instrument in the form of a bond, note, or certificate of indebtedness issued by the Secretary of the Treasury setting forth the principal amount, date of maturity, and interest rate of the obligation, and stating on its face that the obligation shall be incontestable in the hands of the Trust Fund to which it is issued, that the obligation is supported by the full faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest.''

Subsec. (f). Pub. L. 103–296, § 301(b), inserted at end ''Payment from the general fund of the Treasury to either of the Trust Funds of any such interest or proceeds shall be in the form of paper checks drawn on such general fund to the order of such Trust Fund.''

Subsec. (g)(1)(A). Pub. L. 103–296, § 107(b)(4)(C), in text as amended by Pub. L. 103–296, § 321(c)(1)(A)(i)(III), substituted ''subchapters II and XVIII'' for ''subchapters II, XVI, and XVIII'' in second sentence and amended last sentence generally. Prior to amendment, last sentence read as follows: ''There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) of the first sentence of this subparagraph.''

Pub. L. 103–296, § 321(c)(1)(A)(i)(III), substituted ''chapters 2 and 21 of the Internal Revenue Code of 1986'' for ''subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2

and 21 of the Internal Revenue Code of 1954'' in second sentence and ''1986 other'' for ''1954 other'' in last sentence.

Subsec. (g)(1)(A)(i). Pub. L. 103–296, §321(c)(1)(A)(i)(I), substituted ''and chapters 2 and 21 of the Internal Revenue Code of 1986'' for ''and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954''.

Pub. L. 103–296, §107(b)(4)(A), substituted ''by the Managing Trustee, the Commissioner of Social Security, and the Secretary of Health and Human Services'' for ''by him and the Secretary of Health and Human Services'' and ''by the Department of Health and Human Services for the administration of subchapter XVIII of this chapter, and by the Department of the Treasury for the administration of subchapters II and XVIII of this chapter'' for ''by the Department of Health and Human Services and the Treasury Department for the administration of subchapters II, XVI, and XVIII of this chapter''.

Subsec. (g)(1)(A)(ii). Pub. L. 103–296, §321(c)(1)(A)(i)(II), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Pub. L. 103–296, §107(b)(4)(B), substituted ''applicable method prescribed under paragraph (4)'' for ''method prescribed by the Board of Trustees under paragraph (4)'', ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'', and ''Social Security Administration'' for ''Department of Health and Human Services''.

Subsec. (g)(1)(B). Pub. L. 103–296, §107(b)(4)(A), added subpar. (B) and struck out former subpar. (B), as amended by Pub. L. 103–296, §321(c)(1)(A)(i)(IV), which read as follows: ''After the close of each fiscal year the Secretary of Health and Human Services shall determine the portion of the costs, incurred during such fiscal year, of administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 432 of this title shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been made, the Secretary of Health and Human Services shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, for the part of the administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.''

Pub. L. 103–296, §321(c)(1)(A)(i)(IV), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in two places.

Subsec. (g)(1)(C), (D). Pub. L. 103–296, §107(b)(4)(A), added subpars. (C) and (D).

Subsec. (g)(2). Pub. L. 103–296, §321(c)(1)(B)(i), in first sentence substituted ''section 3101(a) of the Internal Revenue Code of 1986 which are subject to refund under section 6413(c) of such Code with respect to wages (as defined in section 3121 of such Code).'' for ''section 3101(a) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939 and section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1950.'' and in second sentence substituted ''wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code,'' for ''wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954,''.

Pub. L. 103–296, §107(b)(5), in second sentence substituted ''maintained by the Commissioner of Social Security'' for ''established and maintained by the Secretary of Health and Human Services'' and ''Commissioner of Social Security shall furnish'' for ''Secretary shall furnish''.

Subsec. (g)(4). Pub. L. 103–296, §107(b)(6), amended generally par. (4) as amended by Pub. L. 103–296, §321(c)(1)(C). Prior to amendment, par. (4) read as follows: ''If at any time or times the Boards of Trustees of such Trust Funds deem such action advisable, they may modify the method prescribed by such Boards of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)).''

Pub. L. 103–296, §321(c)(1)(C), substituted ''If at any time or times the Boards of Trustees of such Trust Funds deem such action advisable, they may modify the method prescribed by such Boards'' for ''The Board of Trustees shall prescribe before January 1, 1981, the method'' and ''Code of 1986'' for ''Code of 1954'' and struck out at end ''If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined.''

Subsec. (i)(1). Pub. L. 103–296, §107(b)(7), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to any one or more of such Trust Funds or to the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.''

Subsec. (j). Pub. L. 103–296, §107(b)(8), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (k). Pub. L. 103–296, §107(b)(8), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (*l*)(3)(B)(iii)(II). Pub. L. 103–296, §107(b)(9), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (m)(3). Pub. L. 103–296, §107(b)(10), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1990—Subsec. (a). Pub. L. 101–508, §5115(a), in first sentence following cl. (4), substituted ''from time to time'' for ''monthly on the first day of each calendar month'' in two places and ''paid to or deposited into the Treasury'' for ''to be paid to or deposited into the Treasury during such month'', and in last sentence substituted ''Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would otherwise be inadequate to meet such Fund's obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund on the first day of such month

the amount which would have been transferred to such Fund under this section as in effect on October 1, 1990; and'' for ''Fund;''.

Subsec. (c). Pub. L. 101–508, § 13304, inserted after first sentence following cl. (5) ''Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees).''

Subsec. (j). Pub. L. 101–508, § 5106(c), inserted at end ''The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.''

1989—Subsecs. (g)(1)(A), (i)(1). Pub. L. 101–234 repealed Pub. L. 100–360, § 212(c)(1), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (c). Pub. L. 100–647 inserted after first sentence ''A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term.''

Subsec. (g)(1)(A). Pub. L. 100–360, § 212(c)(1)(A), substituted '', Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund'' for ''and the Federal Supplementary Medical Insurance Trust Fund''.

Subsec. (i)(1). Pub. L. 100–360, § 212(c)(1)(B), substituted '', Federal Hospital Insurance Catastrophic Coverage Reserve Fund, Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund'' for ''and the Federal Supplementary Medical Insurance Trust Fund''.

1986—Subsec. (c). Pub. L. 99–272, in provisions following par. (5), substituted ''. Such report shall'' for '': *Provided*, That the certification shall not refer to economic assumptions underlying the Trustee's report, and shall''.

1984—Subsecs. (a)(3), (4), (b)(1), (2). Pub. L. 98–369, § 2663(j)(2)(A)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d). Pub. L. 98–369, § 2663(a)(1)(A), substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'' and ''public-debt obligations'' for ''public-debt obligation''.

Subsec. (g)(1). Pub. L. 98–369, § 2663(j)(2)(A)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (g)(1)(B). Pub. L. 98–369, § 2663(a)(1)(B), substituted ''clause'' for ''clauses'' in first sentence.

Subsecs. (g)(2), (4), (i)(1). Pub. L. 98–369, § 2663(j)(2)(A)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (*l*)(3)(B)(i). Pub. L. 98–369, § 2661(a), inserted ''Insurance'' after ''Survivors''.

1983—Subsec. (a). Pub. L. 98–21, § 141(a), in provisions following par. (4), substituted ''monthly on the first day of each calendar month'' for ''from time to time'', wherever appearing, and ''to be paid or deposited into the Treasury during such month'' for ''paid to or deposited into the Treasury'', and inserted provision that all amounts transferred to either Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of such Trust Fund; and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on Jan. 1, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d) of this section.

Subsec. (b)(1)(K) to (P). Pub. L. 98–21, § 126(a), substituted, in cls. (K), (L), and (M), appropriations equivalent to 100 per centum of (K) 1.65 per centum of the wages (as so defined) paid after Dec. 31, 1981, and before Jan. 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after Dec. 31, 1982, and before Jan. 1, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after Dec. 31, 1983, and before Jan. 1, 1988, and so reported, for such appropriations of (K) 1.65 per centum of the wages (as so defined) paid after Dec. 31, 1981, and before Jan. 1, 1985, and so reported, (L) 1.90 per centum of the wages (as so defined) paid Dec. 31, 1984, and before Jan. 1, 1990, and so reported, and (M) 2.20 per centum of the wages (as so defined) paid after Dec. 31, 1989, and so reported, and added cls. (N) to (P).

Subsec. (b)(2)(K) to (P). Pub. L. 98–21, § 126(b), substituted, in cls. (K), (L), and (M), appropriations equivalent to 100 per centum of (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1981, and before Jan. 1, 1983, (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1982, and before Jan. 1, 1984, (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1983, and before Jan. 1, 1988, for such appropriations of (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1981, and before Jan. 1, 1985, (L) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1984, and before Jan. 1, 1990, and (M) 1.6500 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1989, and added cls. (N) to (P).

Subsec. (c). Pub. L. 98–21, § 341(a), substituted ''Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate'' for ''Secretary of Health, Education, and Welfare, all ex officio'' in provisions preceding par. (1), and inserted provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds, in provisions following par. (5).

Pub. L. 98–21, § 154(a), in provisions following par. (5), inserted provision that the report referred to in par. (2) shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable, and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Subsec. (*l*)(1). Pub. L. 98–21, § 142(a)(1), substituted reference to January 1988 for reference to January 1983, and inserted '', subject to paragraph (5),'' after ''such Trust Fund, or''.

Subsec. (*l*)(2). Pub. L. 98–21, § 142(a)(2)(A), substituted ''on the last day of each month after such loan is made'' for ''from time to time'', substituted ''the total interest accrued to such day'' for ''interest'', and inserted ''(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)''.

Subsec. (*l*)(3). Pub. L. 98–21, §142(a)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (*l*)(5). Pub. L. 98–21, §142(a)(4), added par. (5).

Subsec. (m). Pub. L. 98–21, §152(a), added subsec. (m).

1981—Subsec. (*l*). Pub. L. 97–123 added subsec. (*l*).

1980—Subsec. (b)(1)(H) to (M). Pub. L. 96–403, §1(a), substituted in cl. (H) reference to Jan. 1, 1980, for Jan. 1, 1981; added cls. (I) and (J); redesignated as cl. (K) former cl. (I) substituting reference to Dec. 31, 1981, for Dec. 31, 1980; and redesignated as cls. (L) and (M) former cls. (J) and (K).

Subsec. (b)(2)(H) to (M). Pub. L. 96–403, §1(b), substituted in cl. (H) reference to Jan. 1, 1980, for Jan. 1, 1981; added cls. (I) and (J); redesignated as cl. (K) former cl. (I) substituting reference to Dec. 31, 1981, for Dec. 31, 1980; and redesignated as cls. (L) and (M) former cls. (J) and (K).

Subsec. (j). Pub. L. 96–265, §310(a), added subsec. (j).

Subsec. (k). Pub. L. 96–265, §505(a)(5), added subsec. (k).

1977—Subsec. (b)(1)(G) to (K). Pub. L. 95–216, §102(a)(1), substituted ''(G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1981, and so reported, (I) 1.65 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1985, and so reported, (J) 1.90 per centum of the wages (as so defined) paid after December 31, 1984, and before January 1, 1990, and so reported, and (K) 2.20 per centum of the wages (as so defined) paid after December 31, 1989, and so reported'' for ''(G) 1.2 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1981, and so reported, (H) 1.3 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1986, and so reported, (I) 1.4 per centum of the wages (as so defined) paid after December 31, 1985, and before January 1, 2011, and so reported, and (J) 1.7 per centum of the wages (as so defined) paid after December 31, 2010, and so reported''.

Subsec. (b)(2)(G) to (K). Pub. L. 95–216, §102(a)(2), substituted ''(G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1981, (I) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1985, (J) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1984, and before January 1, 1990, and (K) 1.650 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989'' for ''(G) 0.850 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1981, (H) 0.920 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1986, (I) 0.990 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1985, and before January 1, 2011, and (J) 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 2010''.

1976—Subsec. (g)(1). Pub. L. 94–202, §8(d)(1), incorporated changes in the operations and responsibilities of the Managing Trustee of the Trust Funds and the Secretary of Health, Education, and Welfare occasioned by changes in the annual method of reporting wages for social security purposes, by directing that estimated amounts paid from the Trust Funds into the Treasury, to replace amounts expended from the general fund in the Treasury, be estimated by both the Managing Trustee and the Secretary and that the Secretary determine the portion of costs attributable to the general fund in the Treasury and the portion attributable to the Trust Funds at the close of the fiscal year, by striking out reference to section 1381 of this title, and by inserting reference to par. (4) of this section, section 432 of this title, and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939.

Subsec. (g)(4). Pub. L. 94–202, §8(d)(2), added par. (4).

1973—Subsec. (b)(1)(E) to (J). Pub. L. 93–233, §7(a), substituted in: cl. (E) ''January 1, 1974'' for ''January 1, 1978''; cl. (F) ''December 31, 1973'' and ''January 1, 1978'' for ''December 31, 1977'' and ''January 1, 2011''; cl. (G) ''1.2'' for ''1.5'' per centum and ''paid after December 31, 1977, and before January 1, 1981'' for ''paid after December 31, 2010,'' and added cls. (H) to (J).

Subsec. (b)(2)(E) to (J). Pub. L. 93–233, §7(b), substituted in: cl. (E) ''January 1, 1974'' for ''January 1, 1978''; cl. (F) ''0.815 of 1 per centum'' for ''0.84 per centum'' and ''as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978'' for ''so reported for any taxable year beginning after December 31, 1977, and before January 1, 2011''; cl. (G) ''0.850 of 1 percentum'' for ''0.895 per centum'' and ''taxable year beginning after December 31, 1977, and before January 1, 1981'' for ''taxable year beginning after December 31, 2010''; and added cls. (H) to (J).

1972—Subsec. (a). Pub. L. 92–603, §132(a), inserted ''such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and'' after ''in addition,'' in provisions preceding par. (1).

Subsec. (b). Pub. L. 92–603, §132(b), inserted ''such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and'' after ''consist of'' in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 92–603, §136(a), substituted ''1.1'' for ''1.0'' in cl. (E), ''1.15'' for ''1.1'' in cl. (F), and ''1.5'' for ''1.4'' in cl. (G).

Pub. L. 92–336, §205(a), struck out ''and'' before ''(D)'', inserted reference to wages paid before January 1, 1973, in cl. (D), and added cls. (E), (F), and (G).

Subsec. (b)(2). Pub. L. 92–603, §136(b), substituted ''0.795'' for ''0.75'' in cl. (E), ''0.84'' for ''0.825'' in cl. (F), and ''0.895'' for ''0.915'' in cl. (G).

Pub. L. 92–336, §205(b), struck out ''and'' before ''(D)'', inserted reference to self-employment income before January 1, 1973, in cl. (D), and added cls. (E), (F), and (G).

Subsec. (g)(1)(A). Pub. L. 92–603, §305(a), inserted references to subchapter XVI of this chapter and provisions relating to the general revenues of the United States with respect to subchapter XVI of this chapter and to the appropriations made pursuant to section 1381 of this title.

Subsec. (i). Pub. L. 92–603, §132(c), added subsec. (i).

1969—Subsec. (b)(1). Pub. L. 91–172, §1005(a), inserted reference to wages paid before Jan. 1, 1969, and inserted provision for the appropriation of amounts equal to 1.10 per centum of wages paid after Dec. 31, 1969.

Subsec. (b)(2). Pub. L. 91–172, §1005(b), inserted reference to self-employment income before Jan. 1, 1970, and inserted provision for the appropriation of 0.825 of 1 percent of the amount of self-employment income for taxable years beginning after Dec. 31, 1969.

1968—Subsec. (b)(1). Pub. L. 90–248, §110(a), designated existing provisions as cls. (A) and (B), inserted ''and before January 1, 1968,'' after ''1965,'' in cl. (B), and added cl. (C).

Subsec. (b)(2). Pub. L. 90–248, §110(b), designated existing provisions as cls. (A) and (B), inserted ''and before January 1, 1968, and'' after ''1965,'' in cl. (B), and added cl. (C).

Subsec. (c)(2). Pub. L. 90–248, §169(a), substituted ''April'' for ''March''.

Subsec. (c). Pub. L. 90–248, §169(b), inserted penultimate sentence for inclusion in reports of board of trustees to Congress of an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Sur-

vivors Insurance Trust Fund with respect to disabled beneficiaries.

1965—Subsec. (a)(3). Pub. L. 89–97, § 108(a)(1), inserted ''(other than sections 3101(b) and 3111(b))'' after ''chapter 21'' in two places.

Subsec. (a)(4). Pub. L. 89–97, § 108(a)(2), inserted ''(other than section 1401(b))'' after ''chapter 2'' and ''such subchapter or chapter''.

Subsec. (b)(1). Pub. L. 89–97, § 305(a), inserted ''and before January 1, 1966,'' after ''December 31, 1956,'' and ''and 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and so reported,'' after ''1954,''.

Subsec. (b)(2). Pub. L. 89–97, § 305(b), inserted ''and before January 1, 1966, and 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965,'' after ''December 31, 1956,''.

Subsec. (c). Pub. L. 89–97, § 327, extended from once each six months to once each calendar year the minimum number of times the Board of Trustees must meet.

Subsec. (g)(1). Pub. L. 89–97, § 108(a)(3), included the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund among the Trust Funds available for reimbursement of the Treasury for administrative costs of this subchapter and subchapter XVIII of this chapter, deleted references to administrative costs of subchapter VIII of this chapter and subchapter E of chapter 1 and subchapter 9 of the Internal Revenue Code of 1939, and also provided for adjustment among the Trust Funds during each fiscal year so that the Funds bear the proportionate share of the administration costs.

Subsec. (g)(2). Pub. L. 89–97, § 108(a)(4), inserted ''imposed under section 3101(a)'' after ''the amount estimated by him as taxes''.

Subsec. (h). Pub. L. 89–97, § 108(a)(5), inserted ''(other than section 426 of this title)'' after ''this subchapter''.

1960—Subsec. (c). Pub. L. 86–778, § 701(a)–(c), required the Board of Trustees to meet not less frequently than once each six months, struck out provisions from cl. (3) which required the Board to report immediately to the Congress whenever the Board is of the opinion that during the ensuing five fiscal years either of the Trust Funds will exceed three times the highest annual expenditures from such Trust Fund anticipated during that five-fiscal-year period, and added cl. (5).

Subsec. (d). Pub. L. 86–778, § 701(d), substituted ''shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month'' for ''bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt that are not due or callable until after the expiration of five years from the date of original issue'', and substituted provisions authorizing the purchase of other interest-bearing obligations when the Managing Trustee determines that it is in the public interest for provisions which authorized the issuance of obligations by the Trust Funds only if the Managing Trustee determined that the purchase of other obligations was not in the public interest.

Subsec. (e). Pub. L. 86–778, § 701(e), substituted ''public-debt obligations'' for ''special obligations'' in two places.

1959—Subsec. (d). Pub. L. 86–346 substituted ''on original issue at the issue price'' for ''on original issue at par''.

1958—Subsec. (h). Pub. L. 85–840 provided that benefit payments required to be made under subsection (b), (c), or (d) of section 402 of this title to individuals entitled to benefits on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits be made only from the Federal Disability Insurance Trust Fund.

1956—Act Aug. 1, 1956, amended section generally, inserting references to taxes imposed by the Internal Revenue Code of 1954, substituting ''Secretary of Health, Education, and Welfare'' for ''Federal Security Administrator,'' creating the Federal Disability Insurance Trust Fund, requiring obligations issued for purchase by the Trust Funds to have maturities fixed with due regard for the needs of the Trust Funds, authorizing to be made available for expenditure out of the Trust Funds such amounts as Congress deems necessary to pay costs of administration of subchapter, and requiring the Secretary of Health, Education, and Welfare to analyze costs of administration so that each Trust Fund may be charged with its proper share.

1950—Subsec. (a). Act Aug. 28, 1950, § 109(a)(1)–(3), substituted ''such amounts as may be appropriated to, or deposited in, the Trust Fund'' for ''such amounts as may be appropriated to the Trust Fund'' in second sentence, simplified the accounting and collection processes required for determining the amounts appropriated to the trust fund, as set out in third sentence, and struck out fourth sentence authorizing appropriation of additional funds.

Subsec. (b). Act Aug. 28, 1950, § 109(a)(4)–(8), substituted ''Federal Security Administrator'' for ''Chairman of the Social Security Board'', changed filing date for annual report from first day of each regular session of Congress to March 1 of each year, added par. (4), inserted sentence to require report to be printed as a House document, and made Commissioner of Social Security the Secretary of the Board of Trustees.

Subsec. (f). Act. Aug. 28, 1950, § 109(a)(9), changed reference in text from Title II of the Federal Insurance Contributions Act to subchapter A of chapter 9 and subchapter E of chapter 1 of the Internal Revenue Code of 1939 to avoid confusion and to include the new provisions of such Code relating to the collection of taxes from the self-employed.

1944—Subsec. (a). Act Feb. 25, 1944, inserted sentence authorizing appropriation of additional funds.

1939—Act Aug. 10, 1939, amended section generally.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title IV, § 4005(c), Oct. 21, 1998, 112 Stat. 2681–912, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to benefits paid on or after the first day of the second month beginning after the month in which this Act is enacted [October 1998].''

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 3(c) of Pub. L. 103–387 provided that: ''The amendments made by this section [amending this section] shall apply with respect to wages paid after December 31, 1993, and self-employment income for taxable years beginning after such date.''

Section 110 of title I of Pub. L. 103–296 provided that:

''(a) IN GENERAL.—Except as otherwise provided in this title, this title [see Tables for classification], and the amendments made by such title, shall take effect March 31, 1995.

''(b) TRANSITION RULES.—Section 106 [amending section 5315 of Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 901 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].

''(c) EXCEPTIONS.—The amendments made by section 103 [amending section 903 of this title], subsections (b)(4) and (c) of section 105 [enacting provisions set out in a note under section 901 of this title], and subsections (a)(1), (e)(1), (e)(2), (e)(3), and (*l*)(2) of section 108 [enacting section 913 of this title and amending sections 5312, 5313, and 5315 of Title 5 and section 11 of Pub. L. 95–452, Inspector General Act of 1978, set out in the Appendix to Title 5] shall take effect on the date of the enactment of this Act.''

Section 301(c) of Pub. L. 103–296 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply with respect to obligations issued, and payments made, after 60 days after the date of the enactment of this Act [Aug. 15, 1994].

''(2) TREATMENT OF OUTSTANDING OBLIGATIONS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as applicable, a paper instrument, in the form of a bond, note, or certificate of indebtedness, for each obligation which has been issued to the Trust Fund under section 201(d) of the Social Security Act [subsec. (d) of this section] and which is outstanding as of such date. Each such document shall set forth the principal amount, date of maturity, and interest rate of the obligation, and shall state on its face that the obligation shall be incontestable in the hands of the Trust Fund to which it was issued, that the obligation is supported by the full faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest.''

Section 321(c)(1)(A)(ii) of Pub. L. 103–296 provided that: ''The amendments made by clause (i) [amending this section] shall apply only with respect to periods beginning on or after the date of the enactment of this Act [Aug. 15, 1994].''

Section 321(c)(1)(B)(ii) of Pub. L. 103–296 provided that: ''The amendments made by clause (i) [amending this section] shall apply only with respect to wages paid on or after January 1, 1995.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5106(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 406, 1320a–6, 1383, and 1395i of this title] shall apply with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after April 1, 1991.''

Section 5115(c)[(b)] of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall become effective on the first day of the month following the month in which this Act is enacted [November 1991].''

Amendment by section 13304 of Pub. L. 101–508 effective for annual reports of the Board of Trustees issued in or after calendar year 1991, see section 13306 of Pub. L. 101–508, set out as a note under section 632 of Title 2, The Congress.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 202(b) of Pub. L. 101–234 provided that: ''The provisions of subsection (a) [set out below] shall take effect January 1, 1990, and the repeal of section 211 of MCCA [Pub. L. 100–360, which amended sections 1395r, 1395w, and 1395mm of this title and enacted provisions set out as a note under section 1395r of this title] shall apply to premiums for months beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8005(b) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall apply to members of the Boards of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, of the Federal Hospital Insurance Trust Fund, and of the Federal Supplementary Medical Insurance Trust Fund serving on such Boards of Trustees as members of the public on or after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9213(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2664 of Pub. L. 98–369 provided that:

''(a) Except as otherwise specifically provided, the amendments made by sections 2661 and 2662 [amending this section and sections 402, 403, 405, 409, 410, 415, 416, 423, 428, and 429 of this title and sections 86, 134, 422A, 3121, 3306, and 6334 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 402 and 403 of this title and sections 3121 and 3306 of Title 26, and amending provisions set out as notes under sections 415 and 902 of this title, section 3121 of Title 26, and section 3023 [now 5123] of Title 38, Veterans' Benefits] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98–21).

''(b) Except to the extent otherwise specifically provided in this subtitle [subtitle D (§§ 2661–2664) of Pub. L. 98–369], the amendments made by section 2663 [amending this section and sections 402, 403, 405, 408–410, 411, 413, 415, 416–418, 421–423, 426, 428, 430, 431, 433, 502, 503, 602, 603, 606, 607, 609, 610, 614, 615, 620, 631, 632, 633, 634, 636, 641, 643–645, 652–654, 656, 660, 662, 674, 902, 903, 907, 1101, 1104, 1108, 1301, 1302, 1306, 1307, 1314–1316, 1320, 1320a–5, 1320b–1, 1381a–1382a, 1382c, 1382d, 1382g, 1382j, 1383, 1395i, 1395s–1395u, 1396, 1397a, and 1397e of this title and sections 51, 1402, 3121, 6057, 6103, and 6511 of Title 26, repealing sections 1331–1336 of this title, and enacting provisions set out as notes under sections 1301 and 1307 of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 141(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and section 1395i of this title] shall become effective on the first day of the month following the month in which this Act is enacted [April 1983].''

Section 142(a)(2)(B) of Pub. L. 98–21 provided that: ''The amendment made by this paragraph [amending this section] shall apply with respect to months beginning more than thirty days after the date of enactment of this Act [Apr. 20, 1983].''

Section 152(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to all checks for benefits under title II of the Social Security Act [this subchapter] which are issued on or after the first day of the twenty-fourth month following the month in which this Act is enacted [April 1983].''

Section 154(e) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall take effect on the date of the enactment of this Act [Apr. 20, 1983].''

Section 341(d) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall become effective on the date of enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1(c) of Pub. L. 97–123 provided that: ''The amendments made by this section [amending this section and section 1395i of this title] shall be effective on the date of the enactment of this Act [Dec. 29, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2 of Pub. L. 96–403 provided that: ''The amendments made by the first section of this Act [amending this section] shall apply with respect to remuneration paid, and taxable years beginning after December 31, 1979.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning after 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 132(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall apply with respect to gifts and bequests received after the date of enactment of this Act [Oct. 30, 1972].''

Section 305(c) of Pub. L. 92–603 provided that: ''The provisions of this section [amending this section and enacting provisions set out as a note under this section] shall become effective on the date of enactment of this Act [Oct. 30, 1972].''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 701(f) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the first month beginning after the date of the enactment of this Act [Sept. 13, 1960].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

CONSTRUCTION OF 1994 AMENDMENT

Section 321(d) of Pub. L. 103–296 provided that:

''(1) The preceding provisions of this section [amending this section and sections 402, 403, 405, 408 to 411, 413, 415, 416, 418, 423, 429, 430, and 432 of this title, and enacting provisions set out as notes under this section and sections 402 and 430 of this title] shall be construed only as technical and clerical corrections and as reflecting the original intent of the provisions amended thereby.

''(2) Any reference in title II of the Social Security Act [this subchapter] to the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] shall be construed to include a reference to the Internal Revenue Code of 1954 to the extent necessary to carry out the provisions of paragraph (1).''

NO IMPACT ON SOCIAL SECURITY TRUST FUNDS

Pub. L. 107–147, title V, § 501, Mar. 9, 2002, 116 Stat. 58, provided that:

''(a) IN GENERAL.—Nothing in this Act [see Tables for classification] (or an amendment made by this Act) shall be construed to alter or amend title II of the Social Security Act [this subchapter] (or any regulation promulgated under that Act [this chapter]).

''(b) TRANSFERS.—

''(1) ESTIMATE OF SECRETARY.—The Secretary of the Treasury shall annually estimate the impact that the enactment of this Act has on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401).

''(2) TRANSFER OF FUNDS.—If, under paragraph (1), the Secretary of the Treasury estimates that the enactment of this Act has a negative impact on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401), the Secretary shall transfer, not less frequently than quarterly, from the general revenues of the Federal Government an amount sufficient so as to ensure that the income and balances of such trust funds are not reduced as a result of the enactment of this Act.''

IMPACT OF PUB. L. 107–134 ON SOCIAL SECURITY TRUST FUNDS

Pub. L. 107–134, title III, § 301, Jan. 23, 2002, 115 Stat. 2444, provided that:

''(a) IN GENERAL.—Nothing in this Act [see Short Title of 2002 Amendment note set out under section 1 of Title 26, Internal Revenue Code] (or an amendment made by this Act) shall be construed to alter or amend title II of the Social Security Act [this subchapter] (or any regulation promulgated under that Act [this chapter]).

''(b) TRANSFERS.—

''(1) ESTIMATE OF SECRETARY.—The Secretary of the Treasury shall annually estimate the impact that the enactment of this Act has on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401).

''(2) TRANSFER OF FUNDS.—If, under paragraph (1), the Secretary of the Treasury estimates that the enactment of this Act has a negative impact on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401), the Secretary shall transfer, not less frequently than quarterly, from the general revenues of the Federal Government an amount sufficient so as to ensure that the income and balances of such trust funds are not reduced as a result of the enactment of this Act.''

STUDY BY GENERAL ACCOUNTING OFFICE OF EXISTING COORDINATION OF THE DI AND SSI PROGRAMS AS THEY RELATE TO INDIVIDUALS ENTERING OR LEAVING CONCURRENT ENTITLEMENT

Pub. L. 106–170, title III, § 303(b), Dec. 17, 1999, 113 Stat. 1904, provided that, as soon as practicable after Dec. 17, 1999, the Comptroller General was to undertake a study to evaluate the coordination of the disability insurance program under title II of the Social Security Act (42 U.S.C. 401 et seq.) and the supplemental security income program under title XVI (42 U.S.C. 1381 et seq.) of that Act, as such programs related to individuals entering or leaving concurrent entitlement under such programs, specifically addressing the effectiveness of work incentives under such programs and the effectiveness of coverage of such individuals under titles XVIII and XIX of that Act (42 U.S.C. 1395 et seq., 1396 et seq.), and not later than 3 years after Dec. 17, 1999, was to transmit to the appropriate congressional committees a report presenting the results of the study and any appropriate recommendations for legislative or administrative changes.

USE OF CONTINUING DISABILITY REVIEW FUNDS AND REPORT REQUIREMENT

Section 103(d) of Pub. L. 104–121, as amended by Pub. L. 104–193, title II, § 211(d)(5)(D), Aug. 22, 1996, 110 Stat. 2192, provided that:

''(1) IN GENERAL.—The Commissioner of Social Security shall ensure that funds made available for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section]) are used, to the greatest extent practicable, to maximize the combined savings in the old-age, survivors, and disability insurance, supplemental security income, Medicare, and medicaid programs, except that the amounts appropriated pursuant to the authorization and discretionary spending allowance provisions in section 211(d)(2)(5) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [probably means section 211(d)(5) of Pub. L. 104–193, which amended sections 665e and 901 of Title 2, The Congress, enacted provisions set out as a note under section 1382c of this title, and amended this note] shall be used only for continuing disability reviews and redeterminations under title XVI of the Social Security Act [subchapter XVI of this chapter].

''(2) REPORT.—The Commissioner of Social Security shall provide annually (at the conclusion of each of the

fiscal years 1996 through 2002) to the Congress a report on continuing disability reviews which includes—

''(A) the amount spent on continuing disability reviews in the fiscal year covered by the report, and the number of reviews conducted, by category of review;

''(B) the results of the continuing disability reviews in terms of cessations of benefits or determinations of continuing eligibility, by program; and

''(C) the estimated savings over the short-, medium-, and long-term to the old-age, survivors, and disability insurance, supplemental security income, Medicare, and medicaid programs from continuing disability reviews which result in cessations of benefits and the estimated present value of such savings.''

REPEAL OF CHANGES IN MEDICARE PART B MONTHLY PREMIUM AND FINANCING

Section 202(a) of Pub. L. 101–234 provided that: ''Sections 211 through 213 (other than sections 211(b) and 211(c)(3)(B)) of MCCA [Pub. L. 100–360, which enacted sections 1395t–1 and 1395t–2 of this title, amended this section and sections 1395i, 1395*l*, 1395r, 1395s, 1395t, 1395w, and 1395mm of this title, and enacted provisions set out as a note under section 1395r of this title] are repealed and the provisions of law amended or repealed by such sections are restored or revised as if such sections had not been enacted.''

TRANSFER OF EQUIVALENT OF 1983 TAX INCREASES TO PAYOR FUNDS; REPORTS

Section 121(e) of Pub. L. 98–21, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–66, title XIII, §13215(c), Aug. 10, 1993, 107 Stat. 476; Pub. L. 104–188, title I, §1703(n)(12), Aug. 20, 1996, 110 Stat. 1877, provided that:

''(1) IN GENERAL.—(A) There are hereby appropriated to each payor fund amounts equivalent to (i) the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] which is attributable to the application of sections 86 and 871(a)(3) of such Code (as added by this section) [26 U.S.C. 86, 871(a)(3)] to payments from such payor fund, less (ii) the amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 which is attributable to the amendments to section 86 of such Code made by section 13215 of the Revenue Reconciliation Act of 1993 [Pub. L. 103–66].

''(B) There are hereby appropriated to the hospital insurance trust fund amounts equal to the increase in tax liabilities described in subparagraph (A)(ii). Such appropriated amounts shall be transferred from the general fund of the Treasury on the basis of estimates of such tax liabilities made by the Secretary of the Treasury. Transfers shall be made pursuant to a schedule made by the Secretary of the Treasury that takes into account estimated timing of collection of such liabilities.

''(2) TRANSFERS.—The amounts appropriated by paragraph (1)(A) to any payor fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Any such quarterly payment shall be made on the first day of such quarter and shall take into account social security benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) PAYOR FUND.—The term 'payor fund' means any trust fund or account from which payments of social security benefits are made.

''(B) HOSPITAL INSURANCE TRUST FUND.—The term 'hospital insurance trust fund' means the fund established pursuant to section 1817 of the Social Security Act [section 1395i of this title].

''(C) SOCIAL SECURITY BENEFITS.—The term 'social security benefits' has the meaning given such term by section 86(d)(1) of the Internal Revenue Code of 1986 [26 U.S.C. 86(d)(1)].

''(4) REPORTS.—The Secretary of the Treasury shall submit annual reports to the Congress and to the Secretary of Health and Human Services and the Railroad Retirement Board on—

''(A) the transfers made under this subsection during the year, and the methodology used in determining the amount of such transfers and the funds or account to which made, and

''(B) the anticipated operation of this subsection during the next 5 years.''

[For termination, effective May 15, 2000, of provisions relating to submission of annual reports to Congress in section 121(e)(4) of Pub. L. 98–21, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 17 on page 143 of House Document No. 103–7.]

REIMBURSEMENT TO TRUST FUNDS FOR UNNEGOTIATED BENEFIT CHECKS

Section 152(c) of Pub. L. 98–21 provided that:

''(1) The Secretary of the Treasury shall transfer from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, in the month following the month in which this Act is enacted [April 1983] and in each of the succeeding 30 months, such sums as may be necessary to reimburse such Trust Funds in the total amount of all checks (including interest thereof) which he and the Secretary of Health and Human Services jointly determine to be unnegotiated benefit checks, to the extent provided in advance in appropriation Acts. After any amounts authorized by this subsection have been transferred to a Trust Fund with respect to any benefit check, the provisions of paragraphs (3) and (4) of section 201(m) of the Social Security Act [subsec. (m)(3), (4) of this section] (as added by subsection (a) of this section) shall be applicable to such check.

''(2) As used in paragraph (1), the term 'unnegotiated benefit checks' means checks for benefits under title II of the Social Security Act [this subchapter] which are issued prior to the twenty-fourth month following the month in which this Act is enacted [April 1983], which remain unnegotiated after the sixth month following the date on which they were issued, and with respect to which no transfers have previously been made in accordance with the first sentence of such paragraph.''

STUDY OF FLOAT PERIOD OF MONTHLY INSURANCE BENEFIT CHECKS

Section 153 of Pub. L. 98–21 directed Secretary of Health and Human Services and Secretary of the Treasury jointly to undertake a thorough study with respect to period of time (referred to as ''float period'') between issuance of checks from general fund of Treasury in payment of monthly insurance benefits under title II of the Social Security Act [this subchapter] and transfer to general fund from Federal Old-Age and Survivors Insurance Trust Fund or Federal Disability Insurance Trust Fund, as applicable, of amounts necessary to compensate general fund for issuance of such checks, with Secretaries to submit a report to President an Congress not later than twelve months after Apr. 20, 1983, on their findings as to necessity of making adjustments in procedures governing payment of monthly insurance benefits.

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Section 154(d) of Pub. L. 98–21 provided that notwithstanding sections 401(c)(2), 1395i(b)(2), and 1395t(b)(2) of this title, the annual reports of the Boards of Trustees of the Trust Funds which are required in calendar year

1983 under those sections may be filed at any time not later than forty-five days after Apr. 20, 1983.

STUDY RELATING TO ESTABLISHMENT OF TIME LIMITATIONS FOR DECISIONS ON CLAIMS FOR BENEFITS; REPORT

Section 308 of Pub. L. 96–265 directed Secretary of Health and Human Services to submit to Congress, no later than July 1, 1980, a report recommending establishment of appropriate time limitations governing decisions on claims for benefits under this subchapter, taking into account both need for expeditious processing of claims for benefits and need to assure that all such claims will be thoroughly considered and accurately determined.

EFFECTS OF CERTAIN AMENDMENTS BY PUB. L. 96–265; REPORT

Section 312 of Pub. L. 96–265 directed Secretary of Health and Human Services to submit to Congress, not later than Jan. 1, 1985, a full and complete report as to effects produced by reason of preceding provisions of this Act and amendments made thereby (see Tables for classification).

APPOINTMENT AND COMPENSATION OF INDIVIDUALS NECESSARY TO ASSIST THE BOARD OF TRUSTEES

Section 8(e) of Pub. L. 94–202 provided that: ''Any persons the Board of Trustees finds necessary to employ to assist it in performing its functions under section 201(g)(4) of the Social Security Act [subsec. (g)(4) of this section] may be appointed without regard to the civil service or classification laws, shall be compensated, while so employed at rates fixed by the Board of Trustees, but not exceeding $100 per day, and, while away from their homes or regular places of business, they may be allowed traveling expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.''

METHOD OF DETERMINING COSTS PRESCRIBED BY THE BOARD OF TRUSTEES CERTIFICATION AND TRANSFER OF FUNDS

Section 8(f) of Pub. L. 94–202, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The Secretary shall not make any estimates pursuant to section 201(g)(1)(A)(ii) of the Social Security Act [subsec. (g)(1)(A)(ii) of this section] before the Board of Trustees prescribes the method of determining costs as provided in section 201(g)(4) of such Act [subsec. (g)(4) of this section]. The determinations pursuant to section 201(g)(1)(B) of the Social Security Act [subsec. (g)(1)(B) of this section] with respect to the carrying out of the functions of the Department of Health, Education, and Welfare [now Health and Human Services] specified in section 232 of such Act [section 432 of this title], which relate to the administration of provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (other than those referred to in clause (i) of the first sentence of section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section]), during fiscal years ending before the Board of Trustees prescribes the method of making such determinations, shall be made after the Board of Trustees has prescribed such method. The Secretary of Health, Education, and Welfare [now Health and Human Services] shall certify to the Managing Trustee the amounts that should be transferred from the general fund in the Treasury to the Trust Funds (as referred to in section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section]) to insure that the general fund in the Treasury bears its proper share of the costs of carrying out such functions in such fiscal years. The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.''

ADVANCES FROM TRUST FUNDS FOR ADMINISTRATIVE EXPENSES

Section 305(b) of Pub. L. 92–603 provided that:

''(1) Sums appropriated pursuant to section 1601 of the Social Security Act [section 1381 of this title] shall be utilized from time to time, in amounts certified under the second sentence of section 201(g)(1)(A) of such Act [subsec. (g)(1)(A) of this section], to repay the Trust Funds for expenditures made from such Funds in any fiscal year under section 201(g)(1)(A) of such Act (as amended by subsection (a) of this section) [amending subsec. (g)(1)(A) of this section] on account of the costs of administration of title XVI of such Act [subchapter XVI of this chapter] (as added by section 301 of this Act).

''(2) If the Trust Funds have not theretofore been repaid for expenditures made in any fiscal year (as described in paragraph (1)) to the extent necessary on account of—

''(A) expenditures made from such Funds prior to the end of such fiscal year to the extent that the amount of such expenditures exceeded the amount of the expenditures which would have been made from such Funds if subsection (a) had not been enacted,

''(B) the additional administrative expenses, if any, resulting from the excess expenditures described in subparagraph (A), and

''(C) any loss in interest to such Funds resulting from such excess expenditures and such administrative expenses,

in order to place each such Fund in the same position (at the end of such fiscal year) as it would have been in if such excess expenditures had not been made, the amendments made by subsection (a) shall cease to be effective at the close of the fiscal year following such fiscal year.

''(3) As used in this subsection, the term 'Trust Funds' has the meaning given it in section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section].''

ADVANCES FROM TRUST FUNDS FOR ADMINISTRATIVE PURPOSES; FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976, DEEMED FISCAL YEAR

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed fiscal year for purposes of section 305(b) of Pub. L. 92–603, set out as a note above, relating to advances from trust funds for administrative purposes, see section 201(11) of Pub. L. 94–274, title II, Apr. 21, 1976, 90 Stat. 390, set out as a note under section 343 of Title 7, Agriculture.

GIFTS AND BEQUESTS FOR THE USE OF THE UNITED STATES AND FOR EXCLUSIVELY PUBLIC PURPOSES

Section 132(g) of Pub. L. 92–603 provided that: ''For the purpose of Federal income, estate, and gift taxes, any gift or bequest to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund, or to the Department of Health, Education, and Welfare [now Health and Human Services], or any part or officer thereof, for the benefit of any of such Funds or any activity financed through any of such Funds, which is accepted by the Managing Trustee of such Trust Funds under the authority of section 201(i) of the Social Security Act [subsec. (i) of this section], shall be considered as a gift or bequest to or for the use of the United States and as made for exclusively public purposes.''

TAXES ON SERVICES RENDERED BY EMPLOYEES OF INTERNATIONAL ORGANIZATIONS PRIOR TO JAN. 1, 1946

Section 5(b) of act Dec. 29, 1945, ch. 652, title I, 59 Stat. 671, prohibited collection of tax under title VIII or IX of the Social Security Act or under the Federal Insurance Contributions Act or the Federal Unemployment Tax Act with respect to services rendered prior to January 1, 1946, which were described in paragraph (16) of sections 1426(b) and 1607(c) of the Internal Revenue Code of 1939, and authorized refund of taxes collected.

EXECUTIVE ORDER NO. 12335

Ex. Ord. No. 12335, Dec. 16, 1981, 46 F.R. 61633, as amended by Ex. Ord. No. 12397, Dec. 23, 1982, 47 F.R. 57651; Ex. Ord. No. 12402, Jan. 15, 1983, 48 F.R. 2311, which established the National Commission on Social Security Reform and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 401a. Omitted

CODIFICATION

Section, acts Aug. 1, 1956, ch. 836, title I, § 116, 70 Stat. 833; Sept. 13, 1966, Pub. L. 86–778, title VII, § 704, 74 Stat. 994; July 30, 1965, Pub. L. 89–97, title I, § 109(b), 79 Stat. 340, which established an initial Advisory Council on Social Security Financing to review the status of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in relation to long term commitments to old-age, survivors, and disability insurance programs, appointed personnel and provided for their compensation, required a report of the findings and recommendations of the Council to be submitted to the Secretary of the Board of Trustees of the abovementioned Trust Funds not later than Jan. 1, 1959, at which time the Council terminated, provided for subsequent Advisory Councils to be appointed in 1963, 1966, and every fifth year thereafter and to submit reports to Congress, and required additional information be included in these reports, was omitted in view of the termination of the initial Advisory Council on submission of their report not later than Jan. 1, 1959, the repeal of subsec. (e) by Pub. L. 89–97, title I, § 109(b), July 30, 1965, 79 Stat. 340, which provided for the subsequent Advisory Councils, and the obsolescence of subsec. (f), which provided for additional information in reports to Congress, upon the repeal of subsec. (e).

§ 402. Old-age and survivors insurance benefit payments

(a) Old-age insurance benefits

Every individual who—

(1) is a fully insured individual (as defined in section 414(a) of this title),

(2) has attained age 62, and

(3) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title),

shall be entitled to an old-age insurance benefit for each month, beginning with—

(A) in the case of an individual who has attained retirement age (as defined in section 416(*l*) of this title), the first month in which such individual meets the criteria specified in paragraphs (1), (2), and (3), or

(B) in the case of an individual who has attained age 62, but has not attained retirement age (as defined in section 416(*l*) of this title), the first month throughout which such individual meets the criteria specified in paragraphs (1) and (2) (if in that month he meets the criterion specified in paragraph (3)),

and ending with the month preceding the month in which he dies. Except as provided in subsection (q) and subsection (w) of this section, such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 415(a) of this title) for such month.

(b) Wife's insurance benefits

(1) The wife (as defined in section 416(b) of this title) and every divorced wife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife's insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced wife, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s) of this section) be entitled to a wife's insurance benefit for each month, beginning with—

(i) in the case of a wife or divorced wife (as so defined) of an individual entitled to old-age benefits, if such wife or divorced wife has attained retirement age (as defined in section 416(*l*) of this title), the first month in which she meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a wife or divorced wife (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such wife or divorced wife has not attained retirement age (as defined in section 416(*l*) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which she is such a wife or divorced wife and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month she meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs—

(E) she dies,

(F) such individual dies,

(G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 10 years immediately before the date the divorce became effective,

(H) in the case of a divorced wife, she marries a person other than such individual,

(I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsections (k)(5) and (q) of this section, such wife's insurance benefit for each month shall be equal to one-half of the primary insurance amount of her husband (or, in the case of a divorced wife, her former husband) for such month.

(3) In the case of any divorced wife who marries—

(A) an individual entitled to benefits under subsection (c), (f), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d) of this section,

such divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) (but subject to subsection (s) of this section), not be terminated by reason of such marriage.

(4)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced wife of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced wife—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a wife's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Commissioner of Social Security) in the manner otherwise provided for wife's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced wife first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A wife's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

(c) Husband's insurance benefits

(1) The husband (as defined in section 416(f) of this title) and every divorced husband (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such husband or such divorced husband—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62 or (in the case of a husband) has in his care (individually or jointly with such individual) at the time of filing such application a child entitled to child's insurance benefits on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced husband, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection(s) of this section) be entitled to a husband's insurance benefit for each month, beginning with—

(i) in the case of a husband or divorced husband (as so defined) of an individual who is entitled to an old-age insurance benefit, if such husband or divorced husband has attained retirement age (as defined in section 416(*l*) of this title), the first month in which he meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a husband or divorced husband (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such husband or divorced husband has not attained retirement age (as defined in section 416(*l*) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which he is such a husband or divorced husband and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs:

(E) he dies,

(F) such individual dies,

(G) in the case of a husband, they are divorced and either (i) he has not attained age 62, or (ii) he has attained age 62 but has not been married to such individual for a period of 10 years immediately before the divorce became effective,

(H) in the case of a divorced husband, he marries a person other than such individual,

(I) in the case of a husband who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) he becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsections (k)(5) and (q) of this section, such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife (or, in the case of a divorced husband, his former wife) for such month.

(3) In the case of any divorced husband who marries—

(A) an individual entitled to benefits under subsection (b), (e), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d) of this section, by reason of paragraph (1)(B)(ii) thereof,

such divorced husband's entitlement to benefits under this subsection, notwithstanding the provisions of paragraph (1) (but subject to subsection (s) of this section), shall not be terminated by reason of such marriage.

(4)(A) Notwithstanding the preceding provisions of this subsection, except as provided in

subparagraph (B), the divorced husband of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced husband—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a husband's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Commissioner of Social Security) in the manner otherwise provided for husband's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced husband first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A husband's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

(d) Child's insurance benefits

(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time elementary or secondary school student and had not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with—

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in subparagraphs (B) and (C) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding whichever of the following first occurs—

(D) the month in which such child dies, or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time elementary or secondary school student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month;

(G) if such child was under a disability (as so defined) at the time he attained the age of 18 or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22—

(i) the termination month, subject to section 423(e) of this title (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity),

or (if later) the earlier of—

(ii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month; or

(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such

individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 423(d) of this title except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

(2) Such child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at such time, such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) or section 416(h)(3) of this title shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)(C) of this subsection if, at such time, the child was receiving at least one-half of his support from such stepfather or stepmother.

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (c), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—

(A)(i) is a full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) and has not attained the age of 22, or

(B) is under a disability (as so defined) which began (i) before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability, or (ii) after the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability due to performance of substantial gainful activity,

but only if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1)(D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full-time elementary or secondary school student or (ii) the month in which he attains the age of 19, but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the termination month (as defined in paragraph (1)(G)(i)), subject to section 423(e) of this title, or (if later) the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19.

(7) For the purposes of this subsection—

(A) A ''full-time elementary or secondary school student'' is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner of Social Security (in accordance with regulations prescribed by the Commissioner) in the light of the standards and practices of the schools involved, except that no individual shall be considered a ''full-time elementary or secondary school student'' if he is paid by his employer while attending an elementary or secondary school at the request, or pursuant to a requirement, of his employer. An individual shall not be considered a ''full-time elementary or secondary school student'' for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the effective date of this sentence[1]) which constituted a felony under applicable law. An individual who is determined to be a full-time elementary or secondary school student shall be deemed to be such a student throughout the month with respect to which such determination is made.

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time elementary or secondary school student during any period of nonattendance at an elementary or secondary school at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Commissioner of Social Security that he intends to continue to be in full-time attendance at an elementary or secondary school immediately following such period. An individual who does not meet

[1] See References in Text note below.

the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an elementary or secondary school immediately following such period.

(C)(i) An ''elementary or secondary school'' is a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located.

(ii) For the purpose of determining whether a child is a ''full-time elementary or secondary school student'' or ''intends to continue to be in full-time attendance at an elementary or secondary school'', within the meaning of this subsection, there shall be disregarded any education provided, or to be provided, beyond grade 12.

(D) A child who attains age 19 at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of this paragraph and without application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(i)) shall be deemed (for purposes of determining whether his entitlement to benefits under this subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such benefits under clause (i) of paragraph (1)(B)) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(8) In the case of—

(A) an individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States, and

(ii) in the case of a child who attained the age of 18 prior to the commencement of proceedings for adoption, the child was living with or receiving at least one-half of the child's support from such individual for the year immediately preceding the month in which the adoption is decreed.

(9)(A) A child who is a child of an individual under clause (3) of the first sentence of section 416(e) of this title and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in subparagraph (1)(C) of this subsection unless (i) such child was living with such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began, and (ii) the period during which such child was living with such individual began before the child attained age 18.

(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child's birth.

(10) For purposes of paragraph (1)(H)—

(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).

(e) Widow's insurance benefits

(1) The widow (as defined in section 416(c) of this title) and every surviving divorced wife (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of this title) which began before the end of the period specified in paragraph (4),

(C)(i) has filed application for widow's insurance benefits,

(ii) was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—

(I) has attained retirement age (as defined in section 416(*l*) of this title),

(II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or

(III) has in effect a certificate (described in paragraph (8)) filed by her with the Commissioner of Social Security, in accordance with

regulations prescribed by the Commissioner of Social Security, in which she elects to receive widow's insurance benefits (subject to reduction as provided in subsection (q) of this section), or

(iii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained retirement age (as defined in section 416(*l*) of this title), and

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual,

shall be entitled to a widow's insurance benefit for each month, beginning with—

(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after her waiting period (as defined in paragraph (5)) in which she becomes so entitled to such insurance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual, or, if she became entitled to such benefits before she attained age 60, subject to section 423(e) of this title, the termination month (unless she attains retirement age (as defined in section 416(*l*) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which she engages or is determined able to engage in substantial gainful activity.

(2)(A) Except as provided in subsection (k)(5) of this section, subsection (q) of this section, and subparagraph (D) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had he lived to that age, or

(II) the second year preceding the year in which the widow or surviving divorced wife first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w) of this section) the number of increment months shall include any month in the months of the calendar

year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of such subsection (w) of this section.

(D) If the deceased individual (on the basis of whose wages and self-employment income a widow or surviving divorced wife is entitled to widow's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widow's insurance benefit of such widow or surviving divorced wife for any month shall, if the amount of the widow's insurance benefit of such widow or surviving divorced wife (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual,

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) For purposes of paragraph (1), if—

(A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(4) The period referred to in paragraph (1)(B)(ii), in the case of any widow or surviving divorced wife, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income her benefits are or would be based, or

(B) the last month for which she was entitled to mother's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widow's insurance benefits on the basis of such wages and self-employment income terminated because her disability had ceased,

and ending with the month before the month in which she attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5)(A) The waiting period referred to in paragraph (1)(F), in the case of any widow or surviving divorced wife, is the earliest period of five consecutive calendar months—

(i) throughout which she has been under a disability, and

(ii) which begins not earlier than with whichever of the following is the later: (I) the first day of the seventeenth month before the month in which her application is filed, or (II) the first day of the fifth month before the month in which the period specified in paragraph (4) begins.

(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widow or surviving divorced wife is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.

(6) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(7) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection—

(A) for the month in which it is filed and for any month thereafter, and

(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which she attains age 62.

(8) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.

(f) Widower's insurance benefits

(1) The widower (as defined in section 416(g) of this title) and every surviving divorced husband (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if

such widower or such surviving divorced husband—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of the title) which began before the end of the period specified in paragraph (4),

(C)(i) has filed application for widower's insurance benefits,

(ii) was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—

(I) has attained retirement age (as defined in section 416(*l*) of this title),

(II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or

(III) has in effect a certificate (described in paragraph (8)) filed by him with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which he elects to receive widower's insurance benefits (subject to reduction as provided in subsection (q) of this section), or

(iii) was entitled, on the basis of such wages and self-employment income, to father's insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title), and

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual,

shall be entitled to a widower's insurance benefit for each month, beginning with—

(E) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(F) if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (5)) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3))[1] of such deceased individual, or, if he became entitled to such benefits before he attained age 60, subject to section 423(e) of this title, the termination month (unless he attains retirement age (as defined in section 416(*l*) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

(2)(A) Except as provided in subsection (k)(5) of this section, subsection (q) of this section, and subparagraph (D) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had she lived to that age, or

(II) the second year preceding the year in which the widower or surviving divorced husband first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this

subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of such subsection (w) of this section.

(D) If the deceased individual (on the basis of whose wages and self-employment income a widower or surviving divorced husband is entitled to widower's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widower's insurance benefit of such widower or surviving divorced husband for any month shall, if the amount of the widower's insurance benefit of such widower or surviving divorced husband (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual;

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) For purposes of paragraph (1), if—

(A) a widower or surviving divorced husband marries after attaining age 60 (or after attaining age 50 if he was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widower or surviving divorced husband described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(4) The period referred to in paragraph (1)(B)(ii), in the case of any widower or surviving divorced husband, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income his benefits are or would be based,

(B) the last month for which he was entitled to father's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widower's insurance benefits on the basis of such wages and self-employment income terminated because his disability had ceased,

and ending with the month before the month in which he attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5)(A) The waiting period referred to in paragraph (1)(F), in the case of any widower or surviving divorced husband, is the earliest period of five consecutive calendar months—

(i) throughout which he has been under a disability, and

(ii) which begins not earlier than with whichever of the following is the later: (I) the first day of the seventeenth month before the month in which his application is filed, or (II) the first day of the fifth month before the month in which the period specified in paragraph (4) begins.

(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widower or surviving divorced husband is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.

(6) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(7) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection—

(A) for the month in which it is filed and for any month thereafter, and

(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he attains age 62.

(8) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in such section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.

(g) Mother's and father's insurance benefits

(1) The surviving spouse and every surviving divorced parent (as defined in section 416(d) of this title) of an individual who died a fully or currently insured individual, if such surviving spouse or surviving divorced parent—

(A) is not married,

(B) is not entitled to a surviving spouse's insurance benefit,

(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,

(D) has filed application for mother's or father's insurance benefits, or was entitled to a spouse's insurance benefit on the basis of the wages and self-employment income of such individual for the month preceding the month in which such individual died,

(E) at the time of filing such application has in his or her care a child of such individual entitled to a child's insurance benefit, and

(F) in the case of a surviving divorced parent—

(i) the child referred to in subparagraph (E) is his or her son, daughter, or legally adopted child, and

(ii) the benefits referred to in such subparagraph are payable on the basis of such individual's wages and self-employment income,

shall (subject to subsection (s) of this section) be entitled to a mother's or father's insurance benefit for each month, beginning with the first month in which he or she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such surviving spouse or surviving divorced parent becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, he or she becomes entitled to a surviving spouse's insurance benefit, he or she remarries, or he or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced parent, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced parent is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased individual.

(2) Such mother's or father's insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

(3) In the case of a surviving spouse or surviving divorced parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (a), (b), (c), (e), (f), or (h) of this section, or under section 423(a) of this title, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

the entitlement of such surviving spouse or surviving divorced parent to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(h) Parent's insurance benefits

(1) Every parent (as defined in this subsection) of an individual who died a fully insured individual, if such parent—

(A) has attained age 62,

(B)(i) was receiving at least one-half of his support from such individual at the time of such individual's death or, if such individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and (ii) filed proof of such support within two years after the date of such death, or, if such individual had such a period of disability, within two years after the month in which such individual filed application with respect to such period of disability or two years after the date of such death, as the case may be,

(C) has not married since such individual's death,

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case), and

(E) has filed application for parent's insurance benefits,

shall be entitled to a parent's insurance benefit for each month beginning with the first month after August 1950 in which such parent becomes so entitled to such parent's insurance benefits and ending with the month preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to an old-age insurance benefit equal to or exceeding 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case).

(2)(A) Except as provided in subparagraphs (B) and (C), such parent's insurance benefit for each month shall be equal to 82½ percent of the primary insurance amount of such deceased individual.

(B) For any month for which more than one parent is entitled to parent's insurance benefits on the basis of such deceased individual's wages and self-employment income, such benefit for each such parent for such month shall (except as provided in subparagraph (C)) be equal to 75 percent of the primary insurance amount of such deceased individual.

(C) In any case in which—

(i) any parent is entitled to a parent's insurance benefit for a month on the basis of a deceased individual's wages and self-employment income, and

(ii) another parent of such deceased individual is entitled to a parent's insurance benefit for such month on the basis of such wages and self-employment income, and on the basis of an application filed after such month and after the month in which the application for the parent's benefits referred to in clause (i) was filed,

the amount of the parent's insurance benefit of the parent referred to in clause (i) for the month referred to in such clause shall be determined under subparagraph (A) instead of subparagraph (B) and the amount of the parent's insurance benefit of a parent referred to in clause (ii) for such month shall be equal to 150 percent of the primary insurance amount of the deceased individual minus the amount (before the application of section 403(a) of this title) of the benefit for such month of the parent referred to in clause (i).

(3) As used in this subsection, the term ''parent'' means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

(4) In the case of a parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (b), (c), (e), (f), or (g) of this section, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

such parent's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(i) Lump-sum death payments

Upon the death, after August 1950, of an individual who died a fully or currently insured individual, an amount equal to three times such individual's primary insurance amount (as determined without regard to the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981, relating to the repeal of the minimum benefit provisions), or an amount equal to $255, whichever is the smaller, shall be paid in a lump sum to the person, if any, determined by the Commissioner of Social Security to be the widow or widower of the deceased and to have been living in the same household with the deceased at the time of death. If there is no such person, or if such person dies before receiving payment, then such amount shall be paid—

(1) to a widow (as defined in section 416(c) of this title) or widower (as defined in section 416(g) of this title) who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (e), (f), or (g) of this section for the month in which occurred such individual's death; or

(2) if no person qualifies for payment under paragraph (1), or if such person dies before receiving payment, in equal shares to each person who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (d) of this section for the month in which occurred such individual's death.

No payment shall be made to any person under this subsection unless application therefor shall have been filed, by or on behalf of such person (whether or not legally competent), prior to the expiration of two years after the date of death of such insured individual, or unless such person was entitled to wife's or husband's insurance benefits, on the basis of the wages and self-employment income of such insured individual, for the month preceding the month in which such individual died. In the case of any individual who died outside the forty-eight States and the District of Columbia after December 1953 and before January 1, 1957, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the provisions of the preceding sentence shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment. In the case of any individual who died outside the fifty States and the District of Columbia after December 1956 while he was performing service, as a member of a uniformed service, to which the provisions of section 410(*l*)(1) of this title are applicable, and who is returned to any State, or to any Territory or possession of the United States, for interment or reinterment, the provisions of the third sentence of this subsection shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.

(j) Application for monthly insurance benefits

(1) Subject to the limitations contained in paragraph (4), an individual who would have been entitled to a benefit under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of this section for any month after August 1950 had he filed application therefor prior to the end of such month

shall be entitled to such benefit for such month if he files application therefor prior to—

(A) the end of the twelfth month immediately succeeding such month in any case where the individual (i) is filing application for a benefit under subsection (e) or (f) of this section, and satisfies paragraph (1)(B) of such subsection by reason of clause (ii) thereof, or (ii) is filing application for a benefit under subsection (b), (c), or (d) of this section on the basis of the wages and self-employment income of a person entitled to disability insurance benefits, or

(B) the end of the sixth month immediately succeeding such month in any case where subparagraph (A) does not apply.

Any benefit under this subchapter for a month prior to the month in which application is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such application, the Commissioner of Social Security has certified for payment for such prior month.

(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security).

(3) Notwithstanding the provisions of paragraph (1), an individual may, at his option, waive entitlement to any benefit referred to in paragraph (1) for any one or more consecutive months (beginning with the earliest month for which such individual would otherwise be entitled to such benefit) which occur before the month in which such individual files application for such benefit; and, in such case, such individual shall not be considered as entitled to such benefits for any such month or months before such individual filed such application. An individual shall be deemed to have waived such entitlement for any such month for which such benefit would, under the second sentence of paragraph (1), be reduced to zero.

(4)(A) Except as provided in subparagraph (B), no individual shall be entitled to a monthly benefit under subsection (a), (b), (c), (e), or (f) of this section for any month prior to the month in which he or she files an application for benefits under that subsection if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q) of this section.

(B)(i) If the individual applying for retroactive benefits is a widow, surviving divorced wife, or widower and is under a disability (as defined in section 423(d) of this title), and such individual would, except for subparagraph (A), be entitled to retroactive benefits as a disabled widow or widower or disabled surviving divorced wife for any month before attaining the age of 60, then subparagraph (A) shall not apply with respect to such month or any subsequent month.

(ii) Subparagraph (A) does not apply to a benefit under subsection (e) or (f) of this section for the month immediately preceding the month of application, if the insured individual died in that preceding month.

(iii) As used in this subparagraph, the term ''retroactive benefits'' means benefits to which an individual becomes entitled for a month prior to the month in which application for such benefits is filed.

(5) In any case in which it is determined to the satisfaction of the Commissioner of Social Security that an individual failed as of any date to apply for monthly insurance benefits under this subchapter by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual's eligibility for benefits under this subchapter, such individual shall be deemed to have applied for such benefits on the later of—

(A) the date on which such misinformation was provided to such individual, or

(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).

(k) Simultaneous entitlement to benefits

(1) A child, entitled to child's insurance benefits on the basis of the wages and self-employment income of an insured individual, who would be entitled, on filing application, to child's insurance benefits on the basis of the wages and self-employment income of some other insured individual, shall be deemed entitled, subject to the provisions of paragraph (2) of this subsection, to child's insurance benefits on the basis of the wages and self-employment income of such other individual if an application for child's insurance benefits on the basis of the wages and self-employment income of such other individual has been filed by any other child who would, on filing application, be entitled to child's insurance benefits on the basis of the wages and self-employment income of both such insured individuals.

(2)(A) Any child who under the preceding provisions of this section is entitled for any month to child's insurance benefits on the wages and self-employment income of more than one insured individual shall, notwithstanding such provisions, be entitled to only one of such child's insurance benefits for such month. Such child's insurance benefits for such month shall be the benefit based on the wages and self-employment income of the insured individual who has the greatest primary insurance amount, except that such child's insurance benefits for such month shall be the largest benefit to which such child could be entitled under subsection (d) of this section (without the application of section 403(a) of this title) or subsection (m) of this section if entitlement to such benefit would not, with respect to any person, result in a benefit lower (after the application of section 403(a) of this title) than the benefit which would be applicable if such child were entitled on the wages

and self-employment income of the individual with the greatest primary insurance amount. Where more than one child is entitled to child's insurance benefits pursuant to the preceding provisions of this paragraph, each such child who is entitled on the wages and self-employment income of the same insured individuals shall be entitled on the wages and self-employment income of the same such insured individual.

(B) Any individual (other than an individual to whom subsection (e)(3) or (f)(3) of this section applies) who, under the preceding provisions of this section and under the provisions of section 423 of this title, is entitled for any month to more than one monthly insurance benefit (other than an old-age or disability insurance benefit) under this subchapter shall be entitled to only one such monthly benefit for such month, such benefit to be the largest of the monthly benefits to which he (but for this subparagraph) would otherwise be entitled for such month. Any individual who is entitled for any month to more than one widow's or widower's insurance benefit to which subsection (e)(3) or (f)(3) of this section applies shall be entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

(3)(A) If an individual is entitled to an old-age or disability insurance benefit for any month and to any other monthly insurance benefit for such month, such other insurance benefit for such month, after any reduction under subsection (q), subsection (e)(2) or (f)(2) of this section, and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount equal to such old-age or disability insurance benefit (after reduction under such subsection (q) of this section).

(B) If an individual is entitled for any month to a widow's or widower's insurance benefit to which subsection (e)(3) or (f)(3) of this section applies and to any other monthly insurance benefit under this section (other than an old-age insurance benefit), such other insurance benefit for such month, after any reduction under subparagraph (A) of this paragraph, any reduction under subsection (q) of this section, and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount equal to such widow's or widower's insurance benefit after any reduction or reductions under such subparagraph (A) and such section 403(a).

(4) Any individual who, under this section and section 423 of this title, is entitled for any month to both an old-age insurance benefit and a disability insurance benefit under this subchapter shall be entitled to only the larger of such benefits for such month, except that, if such individual so elects, he shall instead be entitled to only the smaller of such benefits for such month.

(5)(A) The amount of a monthly insurance benefit of any individual for each month under subsection (b), (c), (e), (f), or (g) of this section (as determined after application of the provisions of subsection (q) of this section and the preceding provisions of this subsection) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, during any portion of the last 60 months of such service ending with the last day such individual was employed by such entity—

(i) such service did not constitute ''employment'' as defined in section 410 of this title, or

(ii) such service was being performed while in the service of the Federal Government, and constituted ''employment'' as so defined solely by reason of—

(I) clause (ii) or (iii) of subparagraph (G) of section 410(a)(5) of this title, where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

(II) an election to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 [22 U.S.C. 4071 et seq.] made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title).

(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted ''employment'' as defined in section 410 of this title if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which such individual is eligible for benefits under this subsection and has made a valid application for such benefits.

(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term ''periodic benefit'' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(*l*) Entitlement to survivor benefits under railroad retirement provisions

If any person would be entitled, upon filing application therefor to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], or to a lump-sum payment under section 6(b) of such Act [45 U.S.C. 231e(b)], with respect to the death of an employee (as defined in such

Act) no lump-sum death payment, and no monthly benefit for the month in which such employee died or for any month thereafter, shall be paid under this section to any person on the basis of the wages and self-employment income of such employee.

(m) Repealed. Pub. L. 97–35, title XXII, § 2201(b)(10), Aug. 13, 1981, 95 Stat. 831

(n) Termination of benefits upon removal of primary beneficiary

(1) If any individual is (after September 1, 1954) removed under section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8, then, notwithstanding any other provisions of this subchapter—

(A) no monthly benefit under this section or section 423 of this title shall be paid to such individual, on the basis of his wages and self-employment income, for any month occurring (i) after the month in which the Commissioner of Social Security is notified by the Attorney General or the Secretary of Homeland Security that such individual has been so removed, and (ii) before the month in which such individual is thereafter lawfully admitted to the United States for permanent residence,

(B) if no benefit could be paid to such individual (or if no benefit could be paid to him if he were alive) for any month by reason of subparagraph (A), no monthly benefit under this section shall be paid, on the basis of his wages and self-employment income, for such month to any other person who is not a citizen of the United States and is outside the United States for any part of such month, and

(C) no lump-sum death payment shall be made on the basis of such individual's wages and self-employment income if he dies (i) in or after the month in which such notice is received, and (ii) before the month in which he is thereafter lawfully admitted to the United States for permanent residence.

Section 403(b), (c), and (d) of this title shall not apply with respect to any such individual for any month for which no monthly benefit may be paid to him by reason of this paragraph.

(2) As soon as practicable after the removal of any individual under any of the paragraphs of section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8, the Attorney General or the Secretary of Homeland Security shall notify the Commissioner of Social Security of such removal.

(3) For purposes of paragraphs (1) and (2) of this subsection, an individual against whom a final order of removal has been issued under paragraph (4)(D) of section 1227(a) of title 8 (relating to participating in Nazi persecutions or genocide) shall be considered to have been removed under such paragraph (4)(D) as of the date on which such order became final.

(*o*) Application for benefits by survivors of members and former members of uniformed services

In the case of any individual who would be entitled to benefits under subsection (d), (e), (g), or (h) of this section upon filing proper application therefor, the filing with the Administrator of Veterans' Affairs by or on behalf of such individual of an application for such benefits, on the form described in section 5105 of title 38, shall satisfy the requirement of such subsection (d), (e), (g), or (h) that an application for such benefits be filed.

(p) Extension of period for filing proof of support and applications for lump-sum death payment

In any case in which there is a failure—

(1) to file proof of support under subparagraph (B) of subsection (h)(1) of this section, or under clause (B) of subsection (f)(1) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subparagraph or clause, or

(2) to file, in the case of a death after 1946, application for a lump-sum death payment under subsection (i) of this section, or under subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subsection,

any such proof or application, as the case may be, which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Commissioner of Social Security that there was good cause for failure to file such proof or application within such period. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Commissioner of Social Security.

(q) Reduction of benefit amounts for certain beneficiaries

(1) Subject to paragraph (9), if the first month for which an individual is entitled to an old-age, wife's, husband's, widow's, or widower's insurance benefit is a month before the month in which such individual attains retirement age, the amount of such benefit for such month and for any subsequent month shall, subject to the succeeding paragraphs of this subsection, be reduced by—

(A) $\frac{5}{9}$ of 1 percent of such amount if such benefit is an old-age insurance benefit, $\frac{25}{36}$ of 1 percent of such amount if such benefit is a wife's or husband's insurance benefit, or $\frac{19}{40}$ of 1 percent of such amount if such benefit is a widow's or widower's insurance benefit, multiplied by

(B)(i) the number of months in the reduction period for such benefit (determined under paragraph (6)), if such benefit is for a month before the month in which such individual attains retirement age, or

(ii) if less, the number of such months in the adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is (I) for the month in which such individual attains age 62, or (II) for the month in which such individual attains retirement age.

(2) If an individual is entitled to a disability insurance benefit for a month after a month for which such individual was entitled to an old-age

insurance benefit, such disability insurance benefit for each month shall be reduced by the amount such old-age insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained retirement age (as defined in section 416(*l*) of this title) in the first month for which he most recently became entitled to a disability insurance benefit.

(3)(A) If the first month for which an individual both is entitled to a wife's, husband's, widow's, or widower's insurance benefit and has attained age 62 (in the case of a wife's or husband's insurance benefit) or age 50 (in the case of a widow's or widower's insurance benefit) is a month for which such individual is also entitled to—

(i) an old-age insurance benefit (to which such individual was first entitled for a month before he attains retirement age (as defined in section 416(*l*) of this title)), or

(ii) a disability insurance benefit,

then in lieu of any reduction under paragraph (1) (but subject to the succeeding paragraphs of this subsection) such wife's, husband's, widow's, or widower's insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D).

(B) For any month for which such individual is entitled to an old-age insurance benefit and is not entitled to a disability insurance benefit, such individual's wife's or husband's insurance benefit shall be reduced by the sum of—

(i) the amount by which such old-age insurance benefit is reduced under paragraph (1) for such month, and

(ii) the amount by which such wife's or husband's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's or husband's insurance benefit (before reduction under this subsection) over such old-age insurance benefit (before reduction under this subsection).

(C) For any month for which such individual is entitled to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the sum of—

(i) the amount by which such disability insurance benefit is reduced under paragraph (2) for such month (if such paragraph applied to such benefit), and

(ii) the amount by which such wife's, husband's, widow's, or widower's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's, husband's, widow's, or widower's insurance benefit (before reduction under this subsection) over such disability insurance benefit (before reduction under this subsection).

(D) For any month for which such individual is entitled neither to an old-age insurance benefit nor to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the amount by which it would be reduced under paragraph (1).

(E) Notwithstanding subparagraph (A) of this paragraph, if the first month for which an individual is entitled to a widow's or widower's insurance benefit is a month for which such individual is also entitled to an old-age insurance benefit to which such individual was first entitled for that month or for a month before she or he became entitled to a widow's or widower's benefit, the reduction in such widow's or widower's insurance benefit shall be determined under paragraph (1).

(4) If—

(A) an individual is or was entitled to a benefit subject to reduction under paragraph (1) or (3) of this subsection, and

(B) such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based,

then the amount of the reduction of such benefit (after the application of any adjustment under paragraph (7)) for each month beginning with the month of such increase in the primary insurance amount shall be computed under paragraph (1) or (3), whichever applies, as though the increased primary insurance amount had been in effect for and after the month for which the individual first became entitled to such monthly benefit reduced under such paragraph (1) or (3).

(5)(A) No wife's or husband's insurance benefit shall be reduced under this subsection—

(i) for any month before the first month for which there is in effect a certificate filed by him or her with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which he or she elects to receive wife's or husband's insurance benefits reduced as provided in this subsection, or

(ii) for any month in which he or she has in his or her care (individually or jointly with the person on whose wages and self-employment income the wife's or husband's insurance benefit is based) a child of such person entitled to child's insurance benefits.

(B) Any certificate described in subparagraph (A)(i) shall be effective for purposes of this subsection (and for purposes of preventing deductions under section 403(c)(2) of this title)—

(i) for the month in which it is filed and for any month thereafter, and

(ii) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he or she attains age 62, nor shall it be effective for any month to which subparagraph (A)(ii) applies.

(C) If an individual does not have in his or her care a child described in subparagraph (A)(ii) in the first month for which he or she is entitled to a wife's or husband's insurance benefit, and if such first month is a month before the month in which he or she attains retirement age (as defined in section 416(*l*) of this title), he or she shall be deemed to have filed in such first month the certificate described in subparagraph (A)(i).

(D) No widow's or widower's insurance benefit for a month in which he or she has in his or her care a child of his or her deceased spouse (or deceased former spouse) entitled to child's insurance benefits shall be reduced under this sub-

section below the amount to which he or she would have been entitled had he or she been entitled for such month to mother's or father's insurance benefits on the basis of his or her deceased spouse's (or deceased former spouse's) wages and self-employment income.

(6) For purposes of this subsection, the ''reduction period'' for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the period—

(A) beginning—

(i) in the case of an old-age insurance benefit, with the first day of the first month for which such individual is entitled to such benefit,

(ii) in the case of a wife's or husband's insurance benefit, with the first day of the first month for which a certificate described in paragraph (5)(A)(i) is effective, or

(iii) in the case of a widow's or widower's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit or the first day of the month in which such individual attains age 60, whichever is the later, and

(B) ending with the last day of the month before the month in which such individual attains retirement age.

(7) For purposes of this subsection, the ''adjusted reduction period'' for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6) for such benefit, excluding—

(A) any month in which such benefit was subject to deductions under section 403(b), 403(c)(1), 403(d)(1), or 422(b) of this title,

(B) in the case of wife's or husband's insurance benefits, any month in which such individual had in his or her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child's insurance benefits,

(C) in the case of wife's or husband's insurance benefits, any month for which such individual was not entitled to such benefits because of the occurrence of an event that terminated her or his entitlement to such benefits,

(D) in the case of widow's or widower's insurance benefits, any month in which the reduction in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow's or widower's insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which she or he attained retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitlement to such benefits, and

(F) in the case of old-age insurance benefits, any month for which such individual was entitled to a disability insurance benefit.

(8) This subsection shall be applied after reduction under section 403(a) of this title and before application of section 415(g) of this title. If the amount of any reduction computed under paragraph (1), (2), or (3) is not a multiple of $0.10, it shall be increased to the next higher multiple of $0.10.

(9) The amount of the reduction for early retirement specified in paragraph (1)—

(A) for old-age insurance benefits, wife's insurance benefits, and husband's insurance benefits, shall be the amount specified in such paragraph for the first 36 months of the reduction period (as defined in paragraph (6)) or adjusted reduction period (as defined in paragraph (7)), and five-twelfths of 1 percent for any additional months included in such periods; and

(B) for widow's insurance benefits and widower's insurance benefits, shall be periodically revised by the Commissioner of Social Security such that—

(i) the amount of the reduction at early retirement age as defined in section 416(*l*) of this title shall be 28.5 percent of the full benefit; and

(ii) the amount of the reduction for each month in the reduction period (specified in paragraph (6)) or the adjusted reduction period (specified in paragraph (7)) shall be established by linear interpolation between 28.5 percent at the month of attainment of early retirement age and 0 percent at the month of attainment of retirement age.

(10) For purposes of applying paragraph (4), with respect to monthly benefits payable for any month after December 1977 to an individual who was entitled to a monthly benefit as reduced under paragraph (1) or (3) prior to January 1978, the amount of reduction in such benefit for the first month for which such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based and for all subsequent months (and similarly for all subsequent increases) shall be increased by a percentage equal to the percentage increase in such primary insurance amount (such increase being made in accordance with the provisions of paragraph (8)). In the case of an individual whose reduced benefit under this section is increased as a result of the use of an adjusted reduction period (in accordance with paragraphs (1) and (3) of this subsection), then for the first month for which such increase is effective, and for all subsequent months, the amount of such reduction (after the application of the previous sentence, if applicable) shall be determined—

(A) in the case of old-age, wife's, and husband's insurance benefits, by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period to (ii) the number of months in the reduction period,

(B) in the case of widow's and widower's insurance benefits for the month in which such individual attains age 62, by multiplying such amount by the ratio of (i) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent to (ii) the number of months in the reduction period multiplied by 19/40 of 1 percent, and

(C) in the case of widow's and widower's insurance benefits for the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period multiplied by 19/40 of 1 percent to (ii) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent,

such determination being made in accordance with the provisions of paragraph (8).

(11) When an individual is entitled to more than one monthly benefit under this subchapter and one or more of such benefits are reduced under this subsection, paragraph (10) shall apply separately to each such benefit reduced under this subsection before the application of subsection (k) of this section (pertaining to the method by which monthly benefits are offset when an individual is entitled to more than one kind of benefit) and the application of this paragraph shall operate in conjunction with paragraph (3).

(r) Presumed filing of application by individuals eligible for old-age insurance benefits and for wife's or husband's insurance benefits

(1) If the first month for which an individual is entitled to an old-age insurance benefit is a month before the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), and if such individual is eligible for a wife's or husband's insurance benefit for such first month, such individual shall be deemed to have filed an application in such month for wife's or husband's insurance benefits.

(2) If the first month for which an individual is entitled to a wife's or husband's insurance benefit reduced under subsection (q) of this section is a month before the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), and if such individual is eligible (but for subsection (k)(4) of this section) for an old-age insurance benefit for such first month, such individual shall be deemed to have filed an application for old-age insurance benefits—

(A) in such month, or

(B) if such individual is also entitled to a disability insurance benefit for such month, in the first subsequent month for which such individual is not entitled to a disability insurance benefit.

(3) For purposes of this subsection, an individual shall be deemed eligible for a benefit for a month if, upon filing application therefor in such month, he would be entitled to such benefit for such month.

(s) Child over specified age to be disregarded for certain benefit purposes unless disabled

(1) For the purposes of subsections (b)(1), (c)(1), (g)(1), (q)(5), and (q)(7) of this section and paragraphs (2), (3), and (4) of section 403(c) of this title, a child who is entitled to child's insurance benefits under subsection (d) of this section for any month, and who has attained the age of 16 but is not in such month under a disability (as defined in section 423(d) of this title), shall be deemed not entitled to such benefits for such month, unless he was under such a disability in the third month before such month.

(2) So much of subsections (b)(3), (c)(4),[1] (d)(5), (g)(3), and (h)(4) of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability (as defined in section 423(d) of this title) or had been under such a disability in the third month before the month in which such marriage occurred.

(3) The last sentence of subsection (c) of section 403 of this title, subsection (f)(1)(C) of section 403 of this title, and subsections (b)(3)(B), (c)(6)(B),[1] (f)(3)(B), and (g)(6)(B)[1] of section 416 of this title shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior thereto such child was under a disability (as defined in section 423(d) of this title).

(t) Suspension of benefits of aliens who are outside United States; residency requirements for dependents and survivors

(1) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual who is not a citizen or national of the United States for any month which is—

(A) after the sixth consecutive calendar month during all of which the Commissioner of Social Security finds, on the basis of information furnished to the Commissioner by the Attorney General or information which otherwise comes to the Commissioner's attention, that such individual is outside the United States, and

(B) prior to the first month thereafter for all of which such individual has been in the United States.

For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.

(2) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any individual who is a citizen of a foreign country which the Commissioner of Social Security finds has in effect a social insurance or pension system which is of general application in such country and under which—

(A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and

(B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

(3) Paragraph (1) of this subsection shall not apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 1, 1956.

(4) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any benefit for any month if—

(A) not less than forty of the quarters elapsing before such month are quarters of coverage for the individual on whose wages and self-employment income such benefit is based, or

(B) the individual on whose wages and self-employment income such benefit is based has, before such month, resided in the United States for a period or periods aggregating ten years or more, or

(C) the individual entitled to such benefit is outside the United States while in the active military or naval service of the United States, or

(D) the individual on whose wages and self-employment income such benefit is based died, before such month, either (i) while on active duty or inactive duty training (as those terms are defined in section 410(*l*) (2) and (3) of this title) as a member of a uniformed service (as defined in section 410(m) of this title), or (ii) as the result of a disease or injury which the Secretary of Veterans Affairs determines was incurred or aggravated in line of duty while on active duty (as defined in section 410(*l*)(2) of this title), or an injury which he determines was incurred or aggravated in line of duty while on inactive duty training (as defined in section 410(*l*)(3) of this title), as a member of a uniformed service (as defined in section 410(m) of this title), if the Secretary of Veterans Affairs determines that such individual was discharged or released from the period of such active duty or inactive duty training under conditions other than dishonorable, and if the Secretary of Veterans Affairs certifies to the Commissioner of Social Security his determinations with respect to such individual under this clause, or

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which was treated as employment covered by this chapter pursuant to the provisions of section 5(k)(1) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(k)(1)] or section 18(2) of the Railroad Retirement Act of 1974 [45 U.S.C. 231q(2)];

except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior to the month in which the Social Security Amendments of 1967 are enacted (or the first month thereafter for which his benefits are subject to suspension under paragraph (1)) payments to individuals residing in such country were withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

(5) No person who is, or upon application would be, entitled to a monthly benefit under this section for December 1956 shall be deprived, by reason of paragraph (1) of this subsection, of such benefit or any other benefit based on the wages and self-employment income of the individual on whose wages and self-employment income such monthly benefit for December 1956 is based.

(6) If an individual is outside the United States when he dies and no benefit may, by reason of paragraph (1) or (10) of this subsection, be paid to him for the month preceding the month in which he dies, no lump-sum death payment may be made on the basis of such individual's wages and self-employment income.

(7) Subsections (b), (c), and (d) of section 403 of this title shall not apply with respect to any individual for any month for which no monthly benefit may be paid to him by reason of paragraph (1) of this subsection.

(8) The Attorney General shall certify to the Commissioner of Social Security such information regarding aliens who depart from the United States to any foreign country (other than a foreign country which is territorially contiguous to the continental United States) as may be necessary to enable the Commissioner of Social Security to carry out the purposes of this subsection and shall otherwise aid, assist, and cooperate with the Commissioner of Social Security in obtaining such other information as may be necessary to enable the Commissioner of Social Security to carry out the purposes of this subsection.

(9) No payments shall be made under part A of subchapter XVIII of this chapter with respect to items or services furnished to an individual in any month for which the prohibition in paragraph (1) against payment of benefits to him is applicable (or would be if he were entitled to any such benefits).

(10) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title, for any month beginning after June 30, 1968, to an individual who is not a citizen or national of the United States and who resides during such month in a foreign country if payments for such month to individuals residing in such country are withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

(11)(A) Paragraph (2) and subparagraphs (A), (B), (C), and (E) of paragraph (4) shall apply with respect to an individual's monthly benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of this section only if such individual meets the residency requirements of this paragraph with respect to those benefits.

(B) An individual entitled to benefits under subsection (b), (c), (e), (f), or (g) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing bore a spousal relationship to the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years. For purposes of this subparagraph, a period of time for which an individual bears a spousal relationship to another person consists of a period throughout which the individual has been, with respect to such other

person, a wife, a husband, a widow, a widower, a divorced wife, a divorced husband, a surviving divorced wife, a surviving divorced husband, a surviving divorced mother, a surviving divorced father, or (as applicable in the course of such period) any two or more of the foregoing.

(C) An individual entitled to benefits under subsection (d) of this section meets the residency requirements of this paragraph with respect to those benefits only if—

(i)(I) such individual has resided in the United States (as the child of the person on whose wages and self-employment income such entitlement is based) for a total period of not less than 5 years, or

(II) the person on whose wages and self-employment income such entitlement is based, and the individual's other parent (within the meaning of subsection (h)(3) of this section), if any, have each resided in the United States for a total period of not less than 5 years (or died while residing in the United States), and

(ii) in the case of an individual entitled to such benefits as an adopted child, such individual was adopted within the United States by the person on whose wages and self-employment income such entitlement is based, and has lived in the United States with such person and received at least one-half of his or her support from such person for a period (beginning before such individual attained age 18) consisting of—

(I) the year immediately before the month in which such person became eligible for old-age insurance benefits or disability insurance benefits or died, whichever occurred first, or

(II) if such person had a period of disability which continued until he or she became entitled to old-age insurance benefits or disability insurance benefits or died, the year immediately before the month in which such period of disability began.

(D) An individual entitled to benefits under subsection (h) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing was a parent (within the meaning of subsection (h)(3) of this section) of the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years.

(E) This paragraph shall not apply with respect to any individual who is a citizen or resident of a foreign country with which the United States has an agreement in force concluded pursuant to section 433 of this title, except to the extent provided by such agreement.

(u) Conviction of subversive activities, etc.

(1) If any individual is convicted of any offense (committed after August 1, 1956) under—

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18, or

(B) section 783 of title 50,

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 423 of this title is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is entitled to insurance benefits under part A of subchapter XVIII of this chapter for any such month, there shall not be taken into account—

(C) any wages paid to such individual or to any other individual in the calendar year in which such conviction occurs or in any prior calendar year, and

(D) any net earnings from self-employment derived by such individual or by any other individual during a taxable year in which such conviction occurs or during any prior taxable year.

(2) As soon as practicable after an additional penalty has, pursuant to paragraph (1) of this subsection, been imposed with respect to any individual, the Attorney General shall notify the Commissioner of Social Security of such imposition.

(3) If any individual with respect to whom an additional penalty has been imposed pursuant to paragraph (1) of this subsection is granted a pardon of the offense by the President of the United States, such additional penalty shall not apply for any month beginning after the date on which such pardon is granted.

(v) Waiver of benefits

(1) Notwithstanding any other provisions of this subchapter, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 1402(g) of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this subchapter to him, no payments shall be made on his behalf under part A of subchapter XVIII of this chapter, and no benefits or other payments under this subchapter shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

(2) Notwithstanding any other provision of this subchapter, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 3127 of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this subchapter to him, no payments shall be made on his behalf under part A of subchapter XVIII of this chapter, and no benefits or other payments under this subchapter shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

(3) If, after an exemption referred to in paragraph (1) or (2) is granted to an individual, such exemption ceases to be effective, the waiver referred to in such paragraph shall cease to be applicable in the case of benefits and other payments under this subchapter and part A of subchapter XVIII of this chapter to the extent based on—

(A) his wages for and after the calendar year following the calendar year in which occurs

the failure to meet the requirements of section 1402(g) or 3127 of the Internal Revenue Code of 1986 on which the cessation of such exemption is based, and

(B) his self-employment income for and after the taxable year in which occurs such failure.

(w) Increase in old-age insurance benefit amounts on account of delayed retirement

(1) The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978 or section 415(a)(1)(C)(i) of this title as in effect thereafter) which is payable without regard to this subsection to an individual shall be increased by—

(A) the applicable percentage (as determined under paragraph (6)) of such amount, multiplied by

(B) the number (if any) of the increment months for such individual.

(2) For purposes of this subsection, the number of increment months for any individual shall be a number equal to the total number of the months—

(A) which have elapsed after the month before the month in which such individual attained retirement age (as defined in section 416(*l*) of this title) or (if later) December 1970 and prior to the month in which such individual attained age 70, and

(B) with respect to which—

(i) such individual was a fully insured individual (as defined in section 414(a) of this title),

(ii) such individual either was not entitled to an old-age insurance benefit or, if so entitled, did not receive benefits pursuant to a request by such individual that benefits not be paid, and

(iii) such individual was not subject to a penalty imposed under section 1320a–8a of this title.

(3) For purposes of applying the provisions of paragraph (1), a determination shall be made under paragraph (2) for each year, beginning with 1972, of the total number of an individual's increment months through the year for which the determination is made and the total so determined shall be applicable to such individual's old-age insurance benefits beginning with benefits for January of the year following the year for which such determination is made; except that the total number applicable in the case of an individual who attains age 70 after 1972 shall be determined through the month before the month in which he attains such age and shall be applicable to his old-age insurance benefit beginning with the month in which he attains such age.

(4) This subsection shall be applied after reduction under section 403(a) of this title.

(5) If an individual's primary insurance amount is determined under paragraph (3) of section 415(a) of this title as in effect in December 1978, or section 415(a)(1)(C)(i) of this title as in effect thereafter, and, as a result of this subsection, he would be entitled to a higher old-age insurance benefit if his primary insurance amount were determined under section 415(a) of this title (whether before, in, or after December 1978) without regard to such paragraph, such individual's old-age insurance benefit based upon his primary insurance amount determined under such paragraph shall be increased by an amount equal to the difference between such benefit and the benefit to which he would be entitled if his primary insurance amount were determined under such section without regard to such paragraph.

(6) For purposes of paragraph (1)(A), the ''applicable percentage'' is—

(A) 1/12 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year before 1979;

(B) 1/4 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year after 1978 and before 1987;

(C) in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 1986 and before 2005, a percentage equal to the applicable percentage in effect under this paragraph for persons who first became eligible for an old-age insurance benefit in the preceding calendar year (as increased pursuant to this subparagraph), plus 1/24 of 1 percent if the calendar year in which that particular individual first becomes eligible for such benefit is not evenly divisible by 2; and

(D) 2/3 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 2004.

(x) Limitation on payments to prisoners, certain other inmates of publicly funded institutions, fugitives, probationers, and parolees

(1)(A) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual for any month ending with or during or beginning with or during a period of more than 30 days throughout all of which such individual—

(i) is confined in a jail, prison, or other penal institution or correctional facility pursuant to his conviction of a criminal offense,

(ii) is confined by court order in an institution at public expense in connection with—

(I) a verdict or finding that the individual is guilty but insane, with respect to a criminal offense,

(II) a verdict or finding that the individual is not guilty of such an offense by reason of insanity,

(III) a finding that such individual is incompetent to stand trial under an allegation of such an offense, or

(IV) a similar verdict or finding with respect to such an offense based on similar factors (such as a mental disease, a mental defect, or mental incompetence),

(iii) immediately upon completion of confinement as described in clause (i) pursuant to conviction of a criminal offense an element of which is sexual activity, is confined by court order in an institution at public expense pursuant to a finding that the individual is a sex-

ually dangerous person or a sexual predator or a similar finding,

(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

(v) is violating a condition of probation or parole imposed under Federal or State law.

(B)(i) For purposes of clause (i) of subparagraph (A), an individual shall not be considered confined in an institution comprising a jail, prison, or other penal institution or correctional facility during any month throughout which such individual is residing outside such institution at no expense (other than the cost of monitoring) to such institution or the penal system or to any agency to which the penal system has transferred jurisdiction over the individual.

(ii) For purposes of clauses (ii) and (iii) of subparagraph (A), an individual confined in an institution as described in such clause (ii) shall be treated as remaining so confined until—

(I) he or she is released from the care and supervision of such institution, and

(II) such institution ceases to meet the individual's basic living needs.

(iii) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of subparagraph (A) if the Commissioner determines that—

(I) a court of competent jurisdiction has found the individual not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the individual for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

(II) the individual was erroneously implicated in connection with the criminal offense by reason of identity fraud.

(iv) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of subparagraph (A) if the Commissioner determines that—

(I) the offense described in clause (iv) or underlying the imposition of the probation or parole described in clause (v) was nonviolent and not drug-related, and

(II) in the case of an individual from whom benefits have been withheld or otherwise would be withheld pursuant to subparagraph (A)(v), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.

(2) Benefits which would be payable to any individual (other than a confined individual to whom benefits are not payable by reason of paragraph (1)) under this subchapter on the basis of the wages and self-employment income of such a confined individual but for the provisions of paragraph (1), shall be payable as though such confined individual were receiving such benefits under this section or section 423 of this title.

(3)(A) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Commissioner of Social Security, upon written request, the name and social security account number of any individual who is confined as described in paragraph (1) if the confinement is under the jurisdiction of such agency and the Commissioner of Social Security requires such information to carry out the provisions of this section.

(B)(i) The Commissioner shall enter into an agreement under this subparagraph with any interested State or local institution comprising a jail, prison, penal institution, or correctional facility, or comprising any other institution a purpose of which is to confine individuals as described in paragraph (1)(A)(ii). Under such agreement—

(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the names, Social Security account numbers, dates of birth, confinement commencement dates, and, to the extent available to the institution, such other identifying information concerning the individuals confined in the institution as the Commissioner may require for the purpose of carrying out paragraph (1) and other provisions of this subchapter; and

(II) the Commissioner shall pay to the institution, with respect to information described in subclause (I) concerning each individual who is confined therein as described in paragraph (1)(A), who receives a benefit under this subchapter for the month preceding the first month of such confinement, and whose benefit under this subchapter is determined by the Commissioner to be not payable by reason of confinement based on the information provided by the institution, $400 (subject to reduction under clause (ii)) if the institution furnishes the information to the Commissioner within 30 days after the date such individual's confinement in such institution begins, or $200 (subject to reduction under clause (ii)) if the institution furnishes the information after 30 days after such date but within 90 days after such date.

(ii) The dollar amounts specified in clause (i)(II) shall be reduced by 50 percent if the Commissioner is also required to make a payment to the institution with respect to the same individual under an agreement entered into under section 1382(e)(1)(I) of this title.

(iii) There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate, such sums as may be necessary to enable the Commissioner to make payments to institutions required by clause (i)(II).

(iv) The Commissioner shall maintain, and shall provide on a reimbursable basis, informa-

tion obtained pursuant to agreements entered into under this paragraph to any agency administering a Federal or federally-assisted cash, food, or medical assistance program for eligibility and other administrative purposes under such program.

(C) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this subchapter, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—

(i) the beneficiary is described in clause (iv) or (v) of paragraph (1)(A); and

(ii) the location or apprehension of the beneficiary is within the officer's official duties.

(y) Limitation on payments to aliens

Notwithstanding any other provision of law, no monthly benefit under this subchapter shall be payable to any alien in the United States for any month during which such alien is not lawfully present in the United States as determined by the Attorney General.

(Aug. 14, 1935, ch. 531, title II, § 202, 49 Stat. 623; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1363; Aug. 10, 1946, ch. 951, title IV, §§ 402, 403(a), 404(a), 405(a), 60 Stat. 986, 987; Aug. 28, 1950, ch. 809, title I, § 101(a), 64 Stat. 482; Aug. 14, 1953, ch. 483, § 2, 67 Stat. 580; Sept. 1, 1954, ch. 1206, title I, §§ 102(i), 105(a), 107, 110, 68 Stat. 1073, 1079, 1083, 1085; Aug. 9, 1955, ch. 685, § 2, 69 Stat. 621; Aug. 1, 1956, ch. 836, title I, §§ 101(a)–(c), 102(c), (d)(1)–(10), 103(c)(1)–(3), 113, 114(a), 118(a), 121(a), 70 Stat. 807, 810–814, 818, 831, 832, 835, 838; Aug. 1, 1956, ch. 837, title IV, §§ 403(a), 407, 70 Stat. 871, 876; Pub. L. 85–238, §§ 1, 3(a)–(g), Aug. 30, 1957, 71 Stat. 518; Pub. L. 85–798, § 1, Aug. 28, 1958, 72 Stat. 964; Pub. L. 85–840, title I, § 101(e), title II, § 205(b)–(i), title III, §§ 301(a)(1), (b)(1), (c)(1), 303, 304(a)(1), 305(a), 306(a), 307(a)–(e), Aug. 28, 1958, 72 Stat. 1017, 1021–1024, 1026, 1027, 1029–1032; Pub. L. 85–857, § 13(i)(1), Sept. 2, 1958, 72 Stat. 1265; Pub. L. 85–927, § 301, Sept. 6, 1958, 72 Stat. 1783; Pub. L. 86–70, § 32(c)(1), June 25, 1959, 73 Stat. 149; Pub. L. 86–624, § 30(c)(1), July 12, 1960, 74 Stat. 420; Pub. L. 86–778, title I, § 103(a)(1), (j)(2)(C), (D), title II, §§ 201(a), (b), 202(a), 203(a), 205(a), (b), 208(d), 211(i)–(*l*), title III, § 301(a), title IV, § 403(d), Sept. 13, 1960, 74 Stat. 936, 937, 946, 947, 949, 952, 957–959, 1969; Pub. L. 87–64, title I, §§ 102(a), (b)(1), (2)(A), (3), (e), 104(a)–(d), June 30, 1961, 75 Stat. 131, 134–136, 138, 139; Pub. L. 89–97, title I, § 104(a), title III, §§ 303(d), 304(a)–(j), 306(a), (b), (c)(1)–(9), 307(a), (b), 308(a), (b), (d)(1), (2)(A), (3)–(5), (12), (13), 319(d), 323(a), 324(a), 328(a), 333(a)–(c), 334(e), (f), 339(b), 343(a), July 30, 1965, 79 Stat. 334, 367–379, 392, 397, 398, 400, 403–405, 410, 412; Pub. L. 90–248, title I, §§ 103(a)–(d), 104(a)–(c), 112(a), 151(a)–(d)(1), (2), 157(a), (b), 158(c)(1), (2), 162(a)(1), (b)(1), (c)(1), (2), Jan. 2, 1968, 81 Stat. 828–830, 838, 860, 867, 868, 871; Pub. L. 91–172, title X, § 1004(a)–(c), Dec. 30, 1969, 83 Stat. 741; Pub. L. 92–223, § 1, Dec. 28, 1971, 85 Stat. 802; Pub. L. 92–603, title I, §§ 102(a), (b), (d)–(f), 103(a), (b), 107(a), 108(a)–(e), 109(a), 110(a), 111(a), 112(a), 113(b), 114(a)–(c), 116(b), (c), Oct. 30, 1972, 86 Stat. 1335, 1336, 1338–1340, 1343–1348, 1350; Pub. L. 93–66, title II, § 240(a), July 9, 1973, 87 Stat. 161; Pub. L. 93–233, §§ 1(f), (g), 18(b), Dec. 31, 1973, 87 Stat. 947, 948, 967; Pub. L. 93–445, title III, § 301, Oct. 16, 1974, 88 Stat. 1357; Pub. L. 95–216, title II, §§ 203, 204(a)–(d), 205(a), (b), title III, §§ 331(a)–(c), 332(a)(1), (2), 334(a)–(d)(4)(A), (5), (6), (e), 336(a), (b), 337(b), 353(f)(1), Dec. 20, 1977, 91 Stat. 1527–1529, 1541–1548, 1554; Pub. L. 95–600, title VII, § 703(j)(14)(A), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 96–265, title III, §§ 303(b)(1)(B)–(D), 306(a), June 9, 1980, 94 Stat. 451, 452, 457; Pub. L. 96–473, §§ 5(b), 6(a), Oct. 19, 1980, 94 Stat. 2265; Pub. L. 96–499, title X, § 1011(a), Dec. 5, 1980, 94 Stat. 2655; Pub. L. 97–35, title XXII, §§ 2201(b)(10), (11), (d), (f), 2202(a)(1), 2203(a), (b)(1), (c)(1), (d)(1), (2), 2205(a), 2206(b)(1), 2210(a), Aug. 13, 1981, 95 Stat. 831–838, 841; Pub. L. 97–123, § 2(e), Dec. 29, 1981, 95 Stat. 1660; Pub. L. 97–455, § 7(c), Jan. 12, 1983, 96 Stat. 2501; Pub. L. 98–21, title I, §§ 111(a)(7), 113(d), 114(a)–(c)(1), 131(a)(1)–(3)(G), (b)(1)–(3)(F), (c), 132(a), 133(a), (b), 134(a), (b), title II, § 201(b), (c)(1)(A), title III, §§ 301(a), (b), 302, 306(a), (b), (d)–(h), 307(a), 309(a)–(e), 334(a), 337(a), 339(a), 340(a), (b), Apr. 20, 1983, 97 Stat. 72, 79, 92, 93, 95–98, 108, 111–116, 130, 131, 133–135; Pub. L. 98–369, div. B, title VI, §§ 2661(b)–(f), 2662(c)(1), 2663(a)(2), July 18, 1984, 98 Stat. 1156, 1159, 1160; Pub. L. 99–272, title XII, §§ 12104(a), 12107(a), Apr. 7, 1986, 100 Stat. 285, 286; Pub. L. 99–514, title XVIII, § 1883(a)(1)–(3), Oct. 22, 1986, 100 Stat. 2916; Pub. L. 100–203, title IX, §§ 9007(a)–(e), 9010(b)–(d), Dec. 22, 1987, 101 Stat. 1330–289 to 1330–293; Pub. L. 100–647, title VIII, §§ 8004(a), (b), 8007(b), 8010(a), (b), 8014(a), Nov. 10, 1988, 102 Stat. 3780, 3782, 3788, 3790; Pub. L. 101–239, title X, §§ 10203(a), 10301(a), (b), 10302(a)(1), Dec. 19, 1989, 103 Stat. 2473, 2481; Pub. L. 101–508, title V, §§ 5103(c)(2)(A), (B), (d), 5116(a), Nov. 5, 1990, 104 Stat. 1388–252, 1388–253, 1388–274; Pub. L. 101–649, title VI, § 603(b)(5), Nov. 29, 1990, 104 Stat. 5085; Pub. L. 102–40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–54, § 13(q)(3)(C), June 13, 1991, 105 Stat. 279; Pub. L. 103–296, title I, § 107(a)(4), title III, §§ 308(a), 321(a)(2)–(5), (b)(1), (c)(2), Aug. 15, 1994, 108 Stat. 1478, 1522, 1535–1538; Pub. L. 103–387, § 4(a), Oct. 22, 1994, 108 Stat. 4076; Pub. L. 104–121, title I, § 104(a)(1), (b)(1), (2), Mar. 29, 1996, 110 Stat. 851, 852; Pub. L. 104–208, div. C, title III, § 308(g)(1), title V, § 503(a), Sept. 30, 1996, 110 Stat. 3009–622, 3009–671; Pub. L. 106–169, title II, § 207(b), Dec. 14, 1999, 113 Stat. 1838; Pub. L. 106–170, title IV, § 402(a)(1), (b)(1), (d)(1), (2), 113 Stat. 1907–1909; Pub. L. 106–182, § 4(b), Apr. 7, 2000, 114 Stat. 199; Pub. L. 108–203, title II, § 203(a), title IV, §§ 412(a), (b), 418(a)–(b)(4)(B)(vi), (5), 420A(a), Mar. 2, 2004, 118 Stat. 509, 527, 528, 531–533, 535.)

REFERENCES IN TEXT

The effective date of this sentence, referred to in subsec. (d)(7)(A), is the effective date of section 5 of Pub. L. 96–473, which added such sentence effective with respect to benefits payable for months beginning on or after October 1, 1980. See Effective Date of 1980 Amendments note below.

Section 212 of Public Law 93–66, referred to in subsecs. (e)(5)(B), (8) and (f)(5)(B), (8), is set out as a note under section 1382 of this title.

Section 102(g) of the Social Security Amendments of 1972, referred to in subsecs. (e)(6) and (f)(6), is section 102(g) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a Redetermination of Widow's and Widower's Benefits note under this section.

Paragraph (3) of subsec. (f) of this section, referred to in subsec. (f)(1), was redesignated par. (2) of subsec. (f) by Pub. L. 108–203, §418(b)(4)(A)(i). See 2004 Amendment note below.

Section 2201 of the Omnibus Budget Reconciliation Act of 1981, referred to in subsec. (i), is Pub. L. 97–35, title XXII, §2201, Aug. 13, 1981, 95 Stat. 830, which enacted section 1382k of this title, amended sections 402, 403, 415, 417, and 433 of this title, and enacted provisions set out as notes under sections 415 and 1382k of this title.

The Foreign Service Act of 1980, referred to in subsec. (k)(5)(A)(ii)(II), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapter II of chapter 8 of title I of the Act is classified generally to part II (§4071 et seq.) of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Clause (B) of subsection (f)(1) of this section as in effect prior to the Social Security Act Amendments of 1950, and subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950, referred to in subsec. (p), means such subsections as in effect prior to September 1, 1950, which was the effective date of section 101(a) of act Aug. 28, 1950. See section 101(b), (1), (3) of act Aug. 28, 1950, set out as an Effective Date of 1950 Amendment note below.

Subsection (c)(4) of this section, referred to in subsec. (s)(2), was redesignated subsec. (c)(3) by Pub. L. 108–203, §418(b)(2)(A). See 2004 Amendment note below.

Subsection (c)(6)(B) of section 416 of this title, referred to in subsec. (s)(3), was redesignated subsec. (c)(1)(F)(ii) of section 416 of this title by Pub. L. 108–203, §414(a)(1), (2), (4).

Subsection (g)(6)(B) of section 416 of this title, referred to in subsec. (s)(3), was redesignated subsec. (g)(1)(F)(ii) of section 416 of this title by Pub. L. 108–203, §414(b)(1), (2), (4).

The Railroad Retirement Act of 1937, referred to in subsec. (t)(4)(E), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsec. (t)(4)(E), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Pub. L. 93–445 completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§215 et seq.) and subchapter III (§228a et seq.), respectively, of chapter 9 of Title 45. For further details and complete classification of these Acts to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The month in which the Social Security Amendments of 1967 were enacted, referred to in the provisions following subsec. (t)(4)(E), is Jan. 1968, date of approval of Pub. L. 90–248.

Part A of subchapter XVIII of this chapter, referred to in subsecs. (t)(9), (u)(1), and (v)(2), (3), is classified to section 1395c et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (v) and (x)(3)(C), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

In subsec. (t)(4), (10), ''sections 3329(a) and 3330(a) of title 31'' substituted for ''the first section of the Act of October 9, 1940 (31 U.S.C. 123)'' on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108–203, §418(b)(1)(A), substituted ''subsections (k)(5) and (q) of this section'' for ''subsection (q) of this section and paragraph (4) of this subsection''.

Subsec. (b)(4), (5). Pub. L. 108–203, §418(b)(1)(B), redesignated par. (5) as (4) and struck out former par. (4), which related to reduction of a wife's insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the wife for such month which is based upon her earnings while in the service of the Federal Government or any State or political subdivision thereof.

Subsec. (c)(2). Pub. L. 108–203, §418(b)(2), redesignated par. (3) as (2), substituted ''subsections (k)(5) and (q) of this section'' for ''subsection (q) of this section and paragraph (2) of this subsection'', and struck out former par. (2), which related to reduction of a husband's insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the husband for such month which is based upon his earnings while in the service of the Federal Government or any State or political subdivision thereof.

Subsec. (c)(3) to (5). Pub. L. 108–203, §418(b)(2)(A), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) redesignated (2).

Subsec. (d)(6)(B). Pub. L. 108–203, §420A(a), inserted ''(i)'' after ''began'' and added cl. (ii).

Subsec. (e)(2)(A). Pub. L. 108–203, §418(b)(3)(A), substituted ''subsection (k)(5) of this section, subsection (q) of this section,'' for ''subsection (q) of this section, paragraph (7) of this subsection,''.

Subsec. (e)(7) to (9). Pub. L. 108–203, §418(b)(3)(B), redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7), which related to reduction of a widow's insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widow for such month which is based upon her earnings while in the service of the Federal Government or any State or political subdivision thereof.

Subsec. (f)(1)(B)(ii). Pub. L. 108–203, §418(b)(4)(B)(i), substituted ''paragraph (4)'' for ''paragraph (5)''.

Subsec. (f)(1)(F). Pub. L. 108–203, §418(b)(4)(B)(ii), in cl. (i), substituted ''paragraph (5)'' for ''paragraph (6)'' and, in cl. (ii), substituted ''paragraph (4)'' for ''paragraph (5)''.

Subsec. (f)(2). Pub. L. 108–203, §418(b)(4)(A)(i), redesignated par. (3) as (2) and struck out former par. (2), which related to reduction of a widower's insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widower for such month which is based upon his earnings while in the service of the Federal Government or any State or political subdivision thereof.

Subsec. (f)(2)(A). Pub. L. 108–203, §418(b)(4)(A)(ii), substituted ''subsection (k)(5) of this section, subsection (q) of this section,'' for ''subsection (q) of this section, paragraph (2) of this subsection,''.

Subsec. (f)(3), (4). Pub. L. 108–203, §418(b)(4)(A)(i), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) redesignated (2).

Subsec. (f)(5). Pub. L. 108–203, §418(b)(4)(A)(i), (B)(iii), redesignated par. (6) as (5) and substituted ''paragraph (4)'' for ''paragraph (5)'' in subpar. (A)(ii). Former par. (5) redesignated (4).

Subsec. (f)(6) to (9). Pub. L. 108–203, §418(b)(4)(A)(i), redesignated pars. (7) to (9) as (6) to (8), respectively. Former par. (6) redesignated (5).

Subsec. (g)(2). Pub. L. 108–203, § 418(b)(5)(A), substituted ''Such'' for ''Except as provided in paragraph (4) of this subsection, such''.

Subsec. (g)(4). Pub. L. 108–203, § 418(b)(5)(B), struck out par. (4), which related to reduction of a mother's or father's insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the individual for such month which is based upon the individual's earnings while in the service of the Federal Government or any State or political subdivision thereof.

Subsec. (k)(2)(B). Pub. L. 108–203, § 418(b)(4)(B)(iv), substituted ''or (f)(3)'' for ''or (f)(4)'' in two places.

Subsec. (k)(3)(A). Pub. L. 108–203, § 418(b)(4)(B)(v), substituted ''or (f)(2)'' for ''or (f)(3)''.

Subsec. (k)(3)(B). Pub. L. 108–203, § 418(b)(4)(B)(vi), substituted ''or (f)(3)'' for ''or (f)(4)''.

Subsec. (k)(5). Pub. L. 108–203, § 418(a), added par. (5).

Subsec. (n). Pub. L. 108–203, § 412(b)(1)(C), substituted ''removal'' for ''deportation'' in heading.

Subsec. (n)(1). Pub. L. 108–203, § 412(b)(1)(B), substituted ''removed'' for ''deported'' in introductory provisions.

Pub. L. 108–203, § 412(a)(1), substituted ''section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8'' for ''section 1227(a) of title 8 (other than under paragraph (1)(C) or (1)(E) thereof)'' in introductory provisions.

Subsec. (n)(1)(A). Pub. L. 108–203, § 412(b)(2), inserted ''or the Secretary of Homeland Security'' after ''the Attorney General''.

Pub. L. 108–203, § 412(b)(1)(B), substituted ''removed'' for ''deported''.

Subsec. (n)(2). Pub. L. 108–203, § 412(b)(2), inserted ''or the Secretary of Homeland Security'' after ''the Attorney General''.

Pub. L. 108–203, § 412(b)(1)(A), substituted ''removal'' for ''deportation'' in two places.

Pub. L. 108–203, § 412(a)(2), substituted ''section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8'' for ''section 1227(a) of title 8 (other than under paragraph (1)(C) or (1)(E) thereof)''.

Subsec. (n)(3). Pub. L. 108–203, § 412(a)(4), (b)(1)(A), (B), substituted ''removed'' for ''deported'' and ''removal'' for ''deportation'' and made technical amendment to reference in original act which appears in text as reference to section 1227(a) of title 8.

Pub. L. 108–203, § 412(a)(3), substituted ''paragraph (4)(D) of section 1227(a) of title 8 (relating to participating in Nazi persecutions or genocide) shall be considered to have been deported under such paragraph (4)(D)'' for ''paragraph (19) of section 1227(a) of title 8 (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction of or in association with the Nazi government of Germany or its allies) shall be considered to have been deported under such paragraph (19)''.

Subsec. (x). Pub. L. 108–203, § 203(a)(1), substituted ''prisoners, certain other inmates of publicly funded institutions, fugitives, probationers, and parolees'' for ''prisoners and certain other inmates of publicly funded institutions'' in heading.

Subsec. (x)(1)(A)(iv), (v). Pub. L. 108–203, § 203(a)(2)–(4), added cls. (iv) and (v).

Subsec. (x)(1)(B)(iii), (iv). Pub. L. 108–203, § 203(a)(5), added cls. (iii) and (iv).

Subsec. (x)(3)(C). Pub. L. 108–203, § 203(a)(6), added subpar. (C).

2000—Subsec. (w)(2)(B)(ii). Pub. L. 106–182 substituted ''or, if so entitled, did not receive benefits pursuant to a request by such individual that benefits not be paid'' for ''or suffered deductions under section 403(b) or 403(c) of this title in amounts equal to the amount of such benefit''.

1999—Subsec. (w)(2)(B)(iii). Pub. L. 106–169 added cl. (iii).

Subsec. (x)(1)(A). Pub. L. 106–170, § 402(b)(1)(A), substituted ''ending with or during or beginning with or during a period of more than 30 days throughout all of which'' for ''during which'' in introductory provisions.

Subsec. (x)(1)(A)(i). Pub. L. 106–170, § 402(d)(1)(A), struck out ''or'' at end.

Pub. L. 106–170, § 402(b)(1)(B), substituted ''a criminal offense'' for ''an offense punishable by imprisonment for more than 1 year (regardless of the actual sentence imposed)''.

Subsec. (x)(1)(A)(ii)(I). Pub. L. 106–170, § 402(b)(1)(C), substituted ''a criminal offense'' for ''an offense punishable by imprisonment for more than 1 year''.

Subsec. (x)(1)(A)(ii)(IV). Pub. L. 106–170, § 402(d)(1)(B), substituted '', or'' for period at end.

Subsec. (x)(1)(A)(iii). Pub. L. 106–170, § 402(d)(1)(C), added cl. (iii).

Subsec. (x)(1)(B)(ii). Pub. L. 106–170, § 402(d)(2), substituted ''clauses (ii) and (iii)'' for ''clause (ii)''.

Subsec. (x)(3). Pub. L. 106–170, § 402(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

1996—Subsec. (d)(1)(H). Pub. L. 104–121, § 104(b)(1), added subpar. (H).

Subsec. (d)(4). Pub. L. 104–121, § 104(a)(1), struck out ''was living with or'' before ''was receiving at least one-half of his support''.

Subsec. (d)(10). Pub. L. 104–121, § 104(b)(2), added par. (10).

Subsec. (n). Pub. L. 104–208, § 308(g)(1), substituted ''section 1227(a)'' for ''section 1251(a)'' in pars. (1) to (3).

Subsec. (y). Pub. L. 104–208, § 503(a), added subsec. (y).

1994—Subsec. (b)(4)(A). Pub. L. 103–296, § 308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (b)(4)(B). Pub. L. 103–296, § 308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (b)(4)(C), (5)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(A). Pub. L. 103–296, § 308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (c)(2)(B). Pub. L. 103–296, § 308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (c)(2)(C), (5)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(7)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner'' for ''him''.

Subsec. (d)(7)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(8)(D)(ii). Pub. L. 103–296, § 321(a)(2), inserted period at end and realigned margin.

Subsec. (e)(1)(C)(ii)(III), (5)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e)(7)(A). Pub. L. 103–296, § 308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (e)(7)(B). Pub. L. 103–296, § 308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (e)(7)(C), (9). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (f)(1)(C)(ii)(III). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (f)(2)(A). Pub. L. 103–296, § 308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (f)(2)(B). Pub. L. 103–296, § 308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (f)(2)(C), (6)(B), (9). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (g)(4)(A). Pub. L. 103–296, § 308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless

subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (g)(4)(B). Pub. L. 103–296, §308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (g)(4)(C). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsecs. (i), (j)(1), (2), (5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (n)(1). Pub. L. 103–296, §321(b)(1), made technical amendment to directory language of Pub. L. 101–649, §603(b)(5)(A). See 1990 Amendment note below.

Subsecs. (n)(1)(A), (2), (p). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (q)(1)(A). Pub. L. 103–296, §321(a)(3), struck out dash after ''multiplied by'' at end.

Subsec. (q)(5)(A)(i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (q)(9). Pub. L. 103–296, §321(a)(4), in introductory provisions substituted ''paragraph (1)'' for ''parargaph (1)''.

Subsec. (q)(9)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (t)(1)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'', ''the Commissioner by'' for ''him by'', and ''the Commissioner's attention'' for ''his attention''.

Subsec. (t)(2). Pub. L. 103–296, §107(a)(4), in introductory provisions substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (t)(4)(D). Pub. L. 103–296, §321(a)(5), inserted ''if the'' before ''Secretary of Veterans Affairs determines that such'' and before ''Secretary of Veterans Affairs certifies to the''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' before ''his determinations with''.

Subsecs. (t)(8), (u)(2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (v)(1). Pub. L. 103–296, §321(c)(2)(A), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (v)(3)(A). Pub. L. 103–296, §321(c)(2)(B), inserted ''of the Internal Revenue Code of 1986'' after ''3127''.

Subsec. (x). Pub. L. 103–387, §4(a)(1), inserted ''and certain other inmates of publicly funded institutions'' in heading.

Subsec. (x)(1). Pub. L. 103–387, §4(a)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Commissioner of Social Security, is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonable time.''

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (x)(3). Pub. L. 103–387, §4(a)(3), substituted ''any individual who is confined as described in paragraph (1) if the confinement is under the jurisdiction of such agency and the Commissioner of Social Security requires such information to carry out the provisions of this section'' for ''any individual who is confined in a jail, prison, or other penal institution or correctional facility under the jurisdiction of such agency, pursuant to his conviction of an offense which constituted a felony under applicable law, which the Commissioner of Social Security may require to carry out the provisions of this subsection''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1991—Subsec. (*o*). Pub. L. 102–40 substituted ''section 5105 of title 38'' for ''section 3005 of title 38''.

Subsec. (t)(4)(D). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' before ''determines was'', ''Secretary of Veterans Affairs'' for ''if the Administrator'' before ''determines that'', and ''Secretary of Veterans Affairs'' for ''if the Administrator'' before ''certifies''.

1990—Subsec. (e)(5). Pub. L. 101–508, §5103(c)(2)(A), designated existing provision as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, in cl. (ii) substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively, and added subpar. (B).

Subsec. (e)(9). Pub. L. 101–508, §5103(d)(1), added par. (9).

Subsec. (f)(6). Pub. L. 101–508, §5103(c)(2)(B), designated existing provision as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, in cl. (ii) substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively, and added subpar. (B).

Subsec. (f)(9). Pub. L. 101–508, §5103(d)(2), added par. (9).

Subsec. (j)(4)(A). Pub. L. 101–508, §5116(a)(1), substituted ''if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q) of this section'' for ''if the effect of entitlement to such benefit would be to reduce, pursuant to subsection (q) of this section, the amount of the monthly benefit to which such individual would otherwise be entitled for the month in which such application is filed''.

Subsec. (j)(4)(B)(i). Pub. L. 101–508, §5116(a)(2), redesignated cl. (ii) as (i) and struck out former cl. (i) which read as follows: ''If the individual applying for retroactive benefits is applying for such benefits under subsection (a) of this section, and there are one or more other persons who would (except for subparagraph (A)) be entitled for any month, on the basis of the wages and self-employment income of such individual and because of such individual's entitlement to such retroactive benefits, to retroactive benefits under subsection (b), (c), or (d) of this section not subject to reduction under subsection (q) of this section, then subparagraph (A) shall not apply with respect to such month or any subsequent month.''

Subsec. (j)(4)(B)(ii) to (v). Pub. L. 101–508, §5116(a)(2), redesignated cls. (iii) and (v) as (ii) and (iii), respectively, and struck out cl. (iv) which read as follows: ''If the individual applying for retroactive benefits has excess earnings (as defined in section 403(f) of this title) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible.'' Former cl. (ii) redesignated (i).

Subsec. (n)(1). Pub. L. 101–649, §603(b)(5)(A), as amended by Pub. L. 103–296, §321(b)(1), substituted ''under section 1251(a) of title 8 (other than under paragraph (1)(C) or (1)(E) thereof)'' for ''under paragraph (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), (18), or (19) of section 1251(a) of title 8''.

Subsec. (n)(2). Pub. L. 101–649, §603(b)(5)(B), substituted ''(other than under paragraph (1)(C) or (1)(E) thereof)'' for ''enumerated in paragraph (1) in this subsection''.

1989—Subsec. (d)(8). Pub. L. 101–239, §10301(b), struck out at end ''In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with

such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child.''

Subsec. (d)(8)(D). Pub. L. 101–239, § 10301(a), inserted ''and'' after comma at end of cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which related to children living with such individual in the United States and receiving at least one-half of support from such individual and who had not attained the age of 18 before living with such individual.

Subsec. (j)(5). Pub. L. 101–239, § 10302(a)(1), added par. (5).

Subsec. (q)(3). Pub. L. 101–239, § 10203(a), redesignated subpar. (H) as (E) and struck out former subpars. (E), (F), and (G) which related to reductions in benefits for individuals entitled to both old-age and widow's or widower's insurance, reductions in benefits for individuals age 62 or over who are entitled to both disability insurance and widow's or widower's insurance, and reductions in benefits for individuals under age 62 who are entitled to both disability insurance and widow's or widower's insurance.

1988—Subsecs. (b)(4)(A)(ii)(II), (c)(2)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (e)(1)(C). Pub. L. 100–647, § 8010(a)(1), (2), redesignated former cl. (ii) as (iii), added cls. (i) and (ii), and struck out former cl. (i) which read as follows: ''has filed application for widow's insurance benefits, or was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died, and (I) has attained retirement age (as defined in section 416(*l*) of this title) or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or''.

Subsec. (e)(7)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (e)(8). Pub. L. 100–647, § 8010(a)(3), added par. (8).

Subsec. (f)(1)(C). Pub. L. 100–647, § 8010(b)(1), (2), redesignated former cl. (ii) as (iii), added cls. (i) and (ii), and struck out former cl. (i) which read as follows: ''has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, and (I) has attained retirement age (as defined in section 416(*l*) of this title) or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or''.

Subsec. (f)(2)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (f)(8). Pub. L. 100–647, § 8010(b)(3), added par. (8).

Subsec. (g)(4)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (n)(1). Pub. L. 100–647, § 8004(a), inserted reference to par. (19) of section 1251(a) of title 8 in introductory provisions.

Subsec. (n)(3). Pub. L. 100–647, § 8004(b), added par. (3).

Subsec. (v). Pub. L. 100–647, § 8007(b), designated existing provisions as par. (1), inserted ''and subject to paragraph (3),'' after ''Notwithstanding any other provisions of this subchapter,'', struck out ''; except that, if thereafter such individual's tax exemption under such section 1402(g) ceases to be effective, such waiver shall cease to be applicable in the case of benefits and other payments under this subchapter and part A of subchapter XVIII of this chapter to the extent based on his self-employment income for and after the first taxable year for which such tax exemption ceases to be effective and on his wages for and after the calendar year (if any) which begins in or with the beginning of such taxable year'' after ''the filing of such waiver'', and added pars. (2) and (3).

1987—Subsec. (b)(4). Pub. L. 100–203, § 9007(a), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a wife's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (c)(2). Pub. L. 100–203, § 9007(b), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a husband's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such husband (or divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (d)(1)(G)(i). Pub. L. 100–203, § 9010(b), substituted ''36 months'' for ''15 months''.

Subsec. (e)(1). Pub. L. 100–203, § 9010(c), substituted ''36 months'' for ''15 months'' in subcl. (II) of last sentence.

Subsec. (e)(7). Pub. L. 100–203, § 9007(c), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a widow's insurance benefit for each month as determined (after application of the provisions of subsections (q) and (k) of this section, paragraph (2)(D), and paragraph (3)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (f)(1). Pub. L. 100–203, § 9010(d), substituted ''36 months'' for ''15 months'' in subcl. (II) of last sentence.

Subsec. (f)(2). Pub. L. 100–203, § 9007(d), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a widower's insurance benefit for each

month (as determined after application of the provisions of subsections (k) and (q) of this section, paragraph (3)(D), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widower for such month which is based upon his earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (g)(4). Pub. L. 100–203, §9007(e), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a mother's or father's insurance benefit for each month to which any individual is entitled under this subsection (as determined after application of subsection (k) of this section) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day such individual was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

1986—Subsec. (c)(5)(B). Pub. L. 99–514, §1883(a)(1), substituted ''or (J)'' for ''or (I)''.

Subsec. (d)(6)(E). Pub. L. 99–272, §12107(a), substituted ''the termination month (as defined in paragraph (1)(G)(i)), subject to section 423(e) of this title,'' for ''the third month following the month in which he ceases to be under such disability''.

Subsec. (d)(8)(D)(ii)(III). Pub. L. 99–272, §12104(a), inserted ''or great-grandchild'' after ''grandchild''.

Subsec. (q)(5)(A)(i). Pub. L. 99–514, §1883(a)(2), substituted ''prescribed by the Secretary'' for ''prescribed by him''.

Subsec. (q)(5)(C). Pub. L. 99–514, §1883(a)(3), which directed substitution of ''he or she shall be deemed'' for ''she shall be deemed'' was not executed because of prior amendment substituting ''he or she'' for ''she'' by Pub. L. 98–21, §309(c)(4). See 1983 Amendment note below.

1984—Subsec. (a). Pub. L. 98–369, §2662(c)(1), made a clarifying amendment to Pub. L. 98–21, §201(c)(1)(A). See 1983 Amendment note below.

Subsec. (c)(1). Pub. L. 98–369, §2661(b)(1)(A), (B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' in cls. (i) and (ii)(I) of provisions following subpar. (D) and preceding subpar. (E).

Pub. L. 98–369, §2661(b)(1)(C), substituted ''in which'' for ''to which'' in provisions following cl. (ii) of provisions following subpar. (D) and preceding subpar. (E).

Subsec. (c)(5)(A). Pub. L. 98–369, §2661(b)(2), substituted ''clauses (i) and (ii)'' for ''classes (i) and (ii)''.

Subsec. (d)(1). Pub. L. 98–369, §2663(a)(2)(A)(i), substituted ''subparagraphs'' for ''paragraphs'' and ''subparagraph'' for ''paragraph'' in cl. (ii) of provisions following subpar. (C) and preceding subpar. (D).

Subsec. (d)(1)(G). Pub. L. 98–369, §2663(a)(2)(A)(ii), in restructuring subpar. (G), struck out the comma after ''age of 18'', substituted a dash for a comma after ''the age of 22'', substituted ''(i) the termination month, subject to section 423(e) of this title (and for purposes'' for '', or, subject to section 423(e) of this title, the termination month (and for purposes'', and inserted closing parenthesis after ''activity'' and substituted ''(ii)'' and ''(iii)'' for ''(III)'' and ''(IV)'', respectively.

Subsec. (d)(7)(A). Pub. L. 98–369, §2663(a)(2)(A)(iii), substituted ''the effective date of this sentence'' for ''the date of enactment of this paragraph''.

Subsec. (e)(1). Pub. L. 98–369, §2663(a)(2)(B), in provisions following subpar. (F)(ii), struck out first of two commas following ''age 60'' and substituted ''she engages'' for ''he engages''.

Subsec. (e)(2)(A). Pub. L. 98–369, §2661(c)(1), substituted ''paragraph (7) of this subsection'' for ''paragraph (8) of this subsection''.

Subsec. (e)(2)(C). Pub. L. 98–369, §2661(c)(2), struck out the period after ''If such deceased individual'' and inserted a closing parenthesis after ''paragraph (3) of such subsection (w) of this section''.

Subsec. (e)(7)(A). Pub. L. 98–369, §2661(c)(3), substituted ''paragraph (2)(D)'' for ''paragraph (2)(B)''.

Subsec. (f)(1). Pub. L. 98–369, §2663(a)(2)(C), struck out the first of two commas after ''age 60'' in provisions following subpar. (F).

Subsec. (f)(1)(C)(ii). Pub. L. 98–369, §2661(d)(1), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

Subsec. (f)(2)(A). Pub. L. 98–369, §2661(d)(2), substituted ''paragraph (3)(D)'' for ''paragraph (3)(B)''.

Subsec. (f)(3)(C). Pub. L. 98–369, §2661(d)(3), struck out the period after ''If such deceased individual''.

Subsec. (f)(3)(D)(i). Pub. L. 98–369, §2663(a)(2)(D), struck out the semicolon after ''applicable,''.

Subsec. (i). Pub. L. 98–369, §2663(a)(2)(E), amended language being deleted by Pub. L. 97–35, §2202(a)(1). See 1981 Amendment note below.

Subsec. (q)(3)(E). Pub. L. 98–369, §2662(c)(1), made a clarifying amendment to Pub. L. 98–21, §201(c)(1)(A). See 1983 Amendment note below.

Subsec. (q)(3)(G). Pub. L. 98–369, §2663(a)(2)(F)(i), substituted ''if the period'' for ''as if the period''.

Subsec. (q)(7)(E). Pub. L. 98–369, §2663(a)(2)(F)(ii), substituted ''she or he attained retirement age'' for ''he attained retirement age''.

Subsec. (q)(9)(B)(i). Pub. L. 98–369, §2661(e), substituted ''section 416(*l*) of this title'' for ''section 416(a) of this title''.

Subsec. (t)(4)(E). Pub. L. 98–369, §2663(a)(2)(G), inserted ''of 1937 or 1974'' after ''Railroad Retirement Act'' the first place it appears and substituted references to section 5(k)(1) of the Railroad Retirement Act of 1937 and section 18(2) of the Railroad Retirement Act of 1974 for reference to section 5(k)(1) of the Railroad Retirement Act.

Subsec. (u)(1)(B). Pub. L. 98–369, §2663(a)(2)(H), struck out '', 822, or 823'' after ''section 783''.

1983—Subsec. (a). Pub. L. 98–21, §201(c)(1)(A), as amended by Pub. L. 98–369, §2662(c)(1), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 or the age of 65, wherever appearing.

Subsec. (b)(1). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (b)(3). Pub. L. 98–21, §307(a), struck out exception in provisions following subpar. (B) that, in the case of such a marriage to an individual entitled to benefits under subsection (d) of this section, the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsection (d) of this section unless he ceased to be so entitled by reason of his death.

Subsec. (b)(3)(A). Pub. L. 98–21, §§301(a)(7), 309(a), inserted references to subsecs. (c) and (g), respectively.

Subsec. (b)(4)(A). Pub. L. 98–21, §337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 97–455, §7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (b)(5). Pub. L. 98–21, §132(a), added par. (5).

Subsec. (c)(1). Pub. L. 98–21, §301(a)(1), inserted ''and every divorced husband (as defined in section 416(d) of

this title)'' before ''of an individual'', and ''or such divorced husband'' after ''if such husband'' in provisions preceding subpar. (A).

Pub. L. 98–21, § 306(d), in provisions following subpar. (D) and preceding subpar. (E), inserted ''(subject to subsection (s) of this section)'' after ''be entitled to''.

Pub. L. 98–21, § 201(c)(1)(A), which directed the substitution of ''retirement age (as defined in section 416(*l*) of this title'' for ''age 65'' in provisions following subpar. (D) and preceding subpar. (E) was executed to those provisions after the execution of the amendment by section 301(a)(2)(C) of Pub. L. 98–21 as the probable intent of Congress.

Pub. L. 98–21, § 301(a)(2)(C), amended provisions following subpar. (D) generally, inserting references to a divorced husband and to subpar. (D), designating existing provisions as subpars. (E) to (G) and (I) and (J), adding subpar. (H), and revising subpar. (G).

Subsec. (c)(1)(B). Pub. L. 98–21, § 306(e), inserted alternative provisions relating to the case of a husband.

Subsec. (c)(1)(C). Pub. L. 98–21, § 301(a)(2)(A), (B), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(1)(D). Pub. L. 98–21, § 301(a)(8), substituted ''such individual'' for ''his wife'' after ''amount of''.

Pub. L. 98–21, § 301(a)(2)(B), redesignated former subpar. (C) as (D).

Subsec. (c)(1)(I) to (K). Pub. L. 98–21, § 306(f), added subpar. (I), and redesignated subpars. (I) and (J), as added by section 301(a)(2)(C) of Pub. L. 98–21, as (J) and (K).

Subsec. (c)(2)(A). Pub. L. 98–21, § 337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98–21, § 301(a)(6), inserted ''(or divorced husband)'' after ''payable to such husband''.

Pub. L. 97–455, § 7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (c)(3). Pub. L. 98–21, § 301(a)(3), inserted ''(or, in the case of a divorced husband, his former wife)'' before ''for such month''.

Subsec. (c)(4), (5). Pub. L. 98–21, § 301(a)(4), (5), added pars. (4) and (5).

Subsec. (d)(5). Pub. L. 98–21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to a male individual entitled to benefits under section 423(a) of this title or this subsection, the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under section 423(a) of this title or this subsection unless he ceased to be so entitled by reason of his death, or in the case of an individual entitled to benefits under section 423(a) of this title, he was entitled, for the month following such last month, to benefits under subsection (a) of this section.

Subsec. (d)(5)(A). Pub. L. 98–21, § 301(a)(9), inserted reference to subsec. (c).

Subsec. (d)(8)(D)(ii)(II). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (e)(1). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in provisions following subpar. (F).

Pub. L. 98–21, § 133(a)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (2))'' after ''primary insurance amount'' in provisions following subpar. (F).

Subsec. (e)(1)(B)(ii). Pub. L. 98–21, § 131(a)(3)(B), substituted reference to par. (4) for reference to par. (5).

Subsec. (e)(1)(C). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (e)(1)(D). Pub. L. 98–21, § 133(a)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (2))'' after ''primary insurance amount''.

Subsec. (e)(1)(F)(i). Pub. L. 98–21, § 131(a)(3)(C), substituted reference to par. (5) for reference to par. (6).

Subsec. (e)(1)(F)(ii). Pub. L. 98–21, § 131(a)(3)(C), substituted reference to par. (4) for reference to par. (5).

Subsec. (e)(2)(A). Pub. L. 98–21, § 133(a)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Except as provided in subsection (q) of this section, paragraph (7) of this subsection, and subparagraph (B) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of such deceased individual. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.''

Pub. L. 98–21, § 131(a)(3)(D), substituted reference to par. (7) for reference to par. (8).

Pub. L. 98–21, § 113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)(B)'' for ''section 415(f)(5) or (6)''.

Subsec. (e)(2)(B). Pub. L. 98–21, § 133(a)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (D).

Subsec. (e)(2)(B)(i). Pub. L. 98–21, § 113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)(B)'' for ''section 415(f)(5) or (6)''.

Subsec. (e)(2)(C), (D). Pub. L. 98–21, § 133(a)(1), added subpar. (C) and redesignated former subpar. (B) as (D).

Subsec. (e)(2)(D)(ii). Pub. L. 98–21, § 133(a)(2)(B), inserted ''(as determined without regard to subparagraph (C))'' after ''primary insurance amount''.

Subsec. (e)(3). Pub. L. 98–21, § 131(a)(1)–(3)(A), redesignated par. (4) as (3) and substituted provision that, for purposes of par. (1), if (A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection, or (B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50, such marriage shall be deemed not to have occurred, for provision that if a widow, after attaining age 60, married, such marriage would for purposes of par. (1) be deemed not to have occurred. Former par. (3), which provided that if a widow before attaining age 60, or a surviving divorced wife, married (A) an individual entitled to benefits under subsec. (f) or (h), or (B) an individual who had attained the age of eighteen and was entitled to benefits under subsec. (d), such widow's or surviving divorced wife's entitlement to benefits under this subsection would, notwithstanding the provisions of par. (1) of this subsection, but subject to subsec. (s), not be terminated by reason of such marriage, except that, in the case of such a marriage to an individual entitled to benefits under subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsec. (d) unless he ceased to be so entitled by reason of his death, was struck out.

Subsec. (e)(4). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(5). Pub. L. 98–21, §131(a)(3)(A), (E), redesignated par. (6) as (5) and substituted reference to par. (4) for reference to par. (5). Former par. (5) redesignated (4).

Subsec. (e)(6). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (e)(7). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (e)(7)(A). Pub. L. 98–21, §337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98–21, §131(a)(3)(F), substituted reference to par. (3) for reference to par. (4).

Subsec. (e)(8). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (8) as (7).

Subsec. (e)(8)(A). Pub. L. 97–455, §7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (f)(1). Pub. L. 98–21, §301(b)(1), inserted ''and every surviving divorced husband (as defined in section 416(d) of this title)'' before ''of an individual'', and ''or such surviving divorced husband'' after ''if such widower'' in provisions preceding subpar. (A).

Pub. L. 98–21, §301(b)(2), substituted ''such deceased individual'' for ''his deceased wife'' in provisions following subpar. (F).

Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in provisions following subpar. (F).

Pub. L. 98–21, §133(b)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (3))'' after ''primary insurance amount'' in provisions following subpar. (F).

Subsec. (f)(1)(A). Pub. L. 98–21, §302, substituted ''is not married'' for ''has not remarried''.

Subsec. (f)(1)(B)(ii). Pub. L. 98–21, §131(b)(3)(B), substituted reference to par. (5) for reference to par. (6).

Subsec. (f)(1)(C)(i). Pub. L. 98–21, §306(g), designated existing provisions as cl. (i).

Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (f)(1)(C)(ii). Pub. L. 98–21, §201(c)(1)(A), which directed the substitution of ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' in cl. (ii) was executed to those provisions after the execution of section 306(g) of Pub. L. 98–21 as the probable intent of Congress.

Pub. L. 98–21, §306(g), added cl. (ii).

Subsec. (f)(1)(D). Pub. L. 98–21, §301(b)(2), substituted ''such deceased individual'' for ''his deceased wife''.

Pub. L. 98–21, §133(b)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (3))'' after ''primary insurance amount''.

Subsec. (f)(1)(F)(i). Pub. L. 98–21, §131(b)(3)(C), substituted reference to par. (6) for reference to par. (7).

Subsec. (f)(1)(F)(ii)(I). Pub. L. 98–21, §131(b)(3)(C), substituted reference to par. (5) for reference to par. (6).

Subsec. (f)(2)(A). Pub. L. 98–21, §337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98–21, §131(b)(3)(D), substituted reference to par. (4) for reference to par. (5).

Pub. L. 97–455, §7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (f)(3)(A). Pub. L. 98–21, §133(b)(1)(B), amended subpar. (A) generally. Prior to the amendment subpar. (A) read as follows: ''Except as provided in subsection (q) of this section, paragraph (2) of this subsection, and subparagraph (B) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of his deceased wife. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.''

Pub. L. 98–21, §113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)(B)'' for ''section 415(f)(5) or (6)''.

Subsec. (f)(3)(B). Pub. L. 98–21, §133(b)(1), added subpar. (B) and redesignated former subpar. (B) as (D).

Pub. L. 98–21, §113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)'' for ''section 415(f)(5) or (6)''.

Subsec. (f)(3)(B)(ii)(II). Pub. L. 98–21, §301(b)(3), inserted ''or surviving divorced husband'' after ''widower''.

Subsec. (f)(3)(C). Pub. L. 98–21, §133(b)(1)(B), added subpar. (C).

Subsec. (f)(3)(D). Pub. L. 98–21, §301(b)(4), inserted ''or surviving divorced husband'' after ''widower'' wherever appearing.

Pub. L. 98–21, §301(b)(5), substituted ''individual'' for ''wife'' wherever appearing.

Pub. L. 98–21, §133(b)(1)(A), redesignated former subpar. (B) as (D).

Subsec. (f)(3)(D)(ii). Pub. L. 98–21, §133(b)(2)(B), inserted ''(as determined without regard to subparagraph (C))'' after ''primary insurance amount''.

Subsec. (f)(4). Pub. L. 98–21, §301(b)(4), inserted ''or surviving divorced husband'' after ''widower'' in two places.

Pub. L. 98–21, §131(b)(1)–(3)(A), redesignated par. (5) as (4), and amended par. (4) as so redesignated generally, substituting provision that for purposes of par. (1), if a widower married after attaining age 60 (or after attaining age 50 if entitled before such marriage occurred to benefits based on disability under this subsection), or a disabled widower described in paragraph (1)(B)(ii) married after attaining age 50, such marriage would be deemed not to have occurred, for provision that if a widower married after attaining age 60, such marriage would be deemed not to have occurred for purposes of par. (1). Former par. (4), which had provided that if a widower, before attaining age 60, remarried an individual entitled to benefits under subsec. (b), (e), (g), or (h) or an individual who had attained the age of eighteen and was entitled to benefits under subsec. (d), such widower's entitlement to benefits under this subsection would, notwithstanding the provisions of par. (1) of this subsection but subject to subsec. (s), not be terminated by reason of such marriage, was struck out.

Subsec. (f)(5). Pub. L. 98–21, §301(b)(4), inserted ''or surviving divorced husband'' after ''widower'' in provisions preceding subpar. (A).

Pub. L. 98–21, §131(b)(3)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (f)(5)(B), (C). Pub. L. 98–21, §306(h), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(6). Pub. L. 98–21, §301(b)(4), inserted ''or surviving divorced husband'' after ''widower''.

Pub. L. 98–21, §131(b)(3)(A), (E), redesignated par. (7) as (6) and substituted reference to par. (5) for reference to par. (6). Former par. (6) redesignated (5).

Subsec. (f)(7), (8). Pub. L. 98–21, § 131(b)(3)(A), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (g). Pub. L. 98–21, § 306(a)(7), inserted ''or father's'' after ''mother's'' wherever appearing.

Subsec. (g)(1). Pub. L. 98–21, § 306(a)(8), struck out ''after August 1950'' after ''beginning with the first month'' in provisions following subpar. (F).

Pub. L. 98–21, § 306(a)(1), (2), (5), (6), substituted ''surviving spouse'' for ''widow'', ''surviving spouse's'' for ''widow's'', ''he or she'' for ''she'', and ''parent'' for ''mother'', wherever appearing.

Subsec. (g)(1)(D). Pub. L. 98–21, § 306(a)(3), substituted ''a spouse's insurance benefit'' for ''wife's insurance benefits'' and ''such individual'' for ''he''.

Subsec. (g)(1)(E), (F)(i). Pub. L. 98–21, § 306(a)(4), substituted ''his or her'' for ''her''.

Subsec. (g)(3). Pub. L. 98–21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to an individual entitled to benefits under section 423(a) of this title or subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under section 423(a) of this title or subsec. (d) unless he ceased to be so entitled by reason of his death, or in the case of an individual entitled to benefits under section 423(a) of this title, he was entitled, for the month following such last month, to benefits under subsec. (a).

Pub. L. 98–21, § 306(a)(1), (6), substituted ''surviving spouse'' for ''widow'' and ''parent'' for ''mother'' wherever appearing.

Subsec. (g)(3)(A). Pub. L. 98–21, § 306(a)(9)(B), inserted reference to this subsection and subsecs. (b) and (e).

Pub. L. 98–21, § 301(b)(6), inserted reference to subsec. (c).

Subsec. (g)(4)(A). Pub. L. 98–21, § 337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 97–455, § 7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (h)(4). Pub. L. 98–21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to a male individual entitled to benefits under subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsec. (d) unless he ceased to be so entitled by reason of his death.

Subsec. (h)(4)(A). Pub. L. 98–21, § 301(b)(7), inserted reference to subsec. (c).

Subsec. (j)(4)(B)(iii) to (v). Pub. L. 98–21, § 334(a), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (k)(2)(B), (3)(B). Pub. L. 98–21, § 131(b)(3)(F), (G), substituted references to subsecs. (e)(3) and (f)(4) for references to subsecs. (e)(4) and (f)(5), respectively, wherever appearing.

Subsec. (m). Pub. L. 98–21, §§ 111(a)(7), 134(b), in par. (1) substituted ''November'' for ''May'' and in par. (2)(B) substituted ''subsection (q)(6)(B)'' for ''subsection (q)(6)(A)(ii)'', as subsec. (m) [notwithstanding its repeal by Pub. L. 97–35] continues to apply in certain cases by reason of section 2(j)(2)–(4) of Pub. L. 97–123, set out as an Effective Date of 1981 Amendment note under section 415 of this title. As thus amended subsec. (m) would read as follows:

''(1) In any case in which an individual is entitled to a monthly benefit under this section on the basis of a primary insurance amount computed under section 415(a) or (d) of this title, as in effect after December 1978, on the basis of the wages and self-employment income of a deceased individual for any month and no other person is (without the application of subsection (j)(1) of this section) entitled to a monthly benefit under this section for that month on the basis of such wages and self-employment income, the individual's benefit amount for that month, prior to reduction under subsection (k)(3) of this section, shall not be less than that provided by subparagraph (C)(1)(I) of section 415(a)(1) of this title and increased under section 415(i) of this title for months after November of the year in which the insured individual died as though such benefit were a primary insurance amount.

''(2) In the case of any such individual who is entitled to a monthly benefit under subsection (e) or (f) of this section, such individual's benefit amount, after reduction under subsection (q)(1) of this section, shall be not less than—

''(A) $84.50, if his first month of entitlement to such benefit is the month in which such individual attained age 62 or a subsequent month, or

''(B) $84.50 reduced under subsection (q)(1) of this section as if retirement age as specified in subsection (q)(6)(B) of this section were age 62 instead of the age specified in subsection (q)(9) of this section, if his first month of entitlement to such benefit is before the month in which he attained age 62.

''(3) In the case of any individual whose benefit amount was computed (or recomputed) under the provisions of paragraph (2) and such individual was entitled to benefits under subsection (e) or (f) of this section for a month prior to any month after 1972 for which a general benefit increase under this subchapter (as defined in section 415(i)(3) of this title) or a benefit increase under section 415(i) of this title becomes effective, the benefit amount of such individual as computed under paragraph (2) without regard to the reduction specified in subparagraph (B) thereof shall be increased by the percentage increase applicable for such benefit increase, prior to the application of subsection (q)(1) of this section pursuant to paragraph (2)(B) and subsection (q)(4) of this section.''

Subsec. (q)(1). Pub. L. 98–21, § 201(b)(2), substituted ''Subject to paragraph (9), if'' for ''If'' at beginning of par. (1).

Pub. L. 98–21, § 134(a)(1), struck out provisions following subpar. (B)(ii) which directed that in the case of a widow or widower whose first month of entitlement to a widow's or widower's insurance benefit was a month before the month in which such widow or widower attained age 60, such benefit, reduced pursuant to preceding provisions of this paragraph (and before the application of the second sentence of paragraph (8)), had to be further reduced by 43/240 of 1 percent of the amount of such benefit, multiplied by the number of months in the additional reduction period for such benefit (determined under paragraph (6)(B)), if such benefit was for a month before the month in which such individual attained age 62, or if less, the number of months in the additional adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit was for the month in which such individual attained age 62 or any month thereafter.

Subsec. (q)(1)(B)(i). Pub. L. 98–21, § 134(a)(2)(C), substituted ''paragraph (6)'' for ''paragraph (6)(A)''.

Subsec. (q)(2). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(3)(A)(i). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(3)(E). Pub. L. 98–21, § 309(b), inserted ''or surviving divorced husband'' after ''widower''.

Pub. L. 98–21, § 201(c)(1)(A), as amended by Pub. L. 98–369, § 2662(c)(1), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to the age of 65.

Subsec. (q)(3)(E)(ii). Pub. L. 98–21, § 134(a)(2)(C), substituted ''paragraph (6)'' for ''paragraph (6)(A)''.

Subsec. (q)(3)(F). Pub. L. 98–21, § 309(b), inserted ''or surviving divorced husband'' after ''widower''.

Subsec. (q)(3)(F)(ii)(I). Pub. L. 98–21, § 134(a)(2)(C), substituted ''paragraph (6)'' for ''paragraph (6)(A)''.

Subsec. (q)(3)(G). Pub. L. 98–21, §309(b), inserted ''or surviving divorced husband'' after ''widower''.

Pub. L. 98–21, §134(a)(2)(B), substituted ''paragraph (6)'' for ''paragraph (6)(A) (or, if such paragraph does not apply, the period specified in paragraph (6)(B))''.

Subsec. (q)(5). Pub. L. 98–21, §309(c)(4), substituted ''he or she'' for ''she'' wherever appearing.

Pub. L. 98–21, §309(c)(1), inserted ''or husband's'' after ''wife's'' wherever appearing.

Subsec. (q)(5)(A)(i). Pub. L. 98–21, §309(c)(2), substituted ''him or her'' for ''her''.

Subsec. (q)(5)(A)(ii). Pub. L. 98–21, §309(c)(3), substituted ''the'' for ''her'' after ''income''.

Subsec. (q)(5)(B)(ii). Pub. L. 98–21, §309(c)(6), substituted ''the individual'' for ''the woman''.

Subsec. (q)(5)(C). Pub. L. 98–21, §309(c)(6), substituted ''an individual'' for ''a woman''.

Pub. L. 98–21, §309(c)(5), substituted ''his or her'' for ''her''.

Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 wherever appearing.

Subsec. (q)(5)(D). Pub. L. 98–21, §309(c)(7), inserted ''or widower's'' after ''widow's'', substituted ''spouse'' for ''husband'' wherever appearing, substituted ''spouse's'' for ''husband's'' wherever appearing, and inserted ''or father's'' after ''mother's''.

Pub. L. 98–21, §309(c)(5), substituted ''his or her'' for ''her'' in three places.

Subsec. (q)(6). Pub. L. 98–21, §134(a)(2)(A), amended par. (6) generally, striking out subpar. designation ''(A)'' after ''this subsection'' and redesignated cl. (i) as subpar. (A), in subpar. (A) as so redesignated, redesignated subcls. (I) to (III) as cls. (i) to (iii), respectively, redesignated former cl. (ii) as subpar. (B), and struck out former subpar. (B), which had provided that the ''additional reduction period'' for an individual's widow's or widower's insurance benefit was the period beginning with the first day of the first month for which such individual was entitled to such benefit, but only if such individual had not attained age 60 in such first month, and ending with the last day of the month before the month in which such individual attained age 60.

Subsec. (q)(6)(A)(i). Pub. L. 98–21, §309(d)(1), struck out ''or husband's'' after ''old-age''.

Subsec. (q)(6)(A)(ii). Pub. L. 98–21, §309(d)(1), inserted ''or husband's'' after ''wife's''.

Subsec. (q)(7). Pub. L. 98–21, §134(a)(3), amended provisions preceding subpar. (A) generally, substituting reference to par. (6) for reference to par. (6)(A), and striking out provision that the additional adjusted reduction period for an individual's, widow's, or widower's insurance benefit was the additional reduction period prescribed by par. (6)(B) for such benefit, with the same exclusions as from the adjusted reduction period.

Subsec. (q)(7)(B). Pub. L. 98–21, §309(d)(2)(A), inserted ''or husband's'' after ''wife's'', substituted ''such individual'' for ''she'', and inserted ''his or'' before ''her''.

Subsec. (q)(7)(D). Pub. L. 98–21, §309(d)(2)(B), inserted ''or widower's'' after ''widow's''.

Subsec. (q)(9). Pub. L. 98–21, §201(b)(1), amended par. (9) generally, substituting provisions defining the amount of reduction for early retirement specified in par. (1) for provision that, for purposes of this subsection, the term ''retirement age'' meant age 65.

Subsec. (q)(10). Pub. L. 98–21, §134(a)(4)(A), in that part of second sentence preceding cl. (A) struck out ''or an additional adjusted reduction period'' after ''the use of an adjusted reduction period''.

Subsec. (q)(10)(B)(i). Pub. L. 98–21, §134(a)(4)(B), struck out '', plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent'' before ''to (ii)''.

Subsec. (q)(10)(B)(ii). Pub. L. 98–21, §134(a)(4)(C), struck out ''plus the number of months in the additional reduction period multiplied by 43/240 of 1 percent,'' after ''1 percent''.

Subsec. (q)(10)(C). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(10(C)(i). Pub. L. 98–21, §134(a)(4)(B), struck out '', plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent'' before ''to (ii)''.

Subsec. (q)(10)(C)(ii). Pub. L. 98–21, §134(a)(4)(D), struck out ''plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent.'' after ''1 percent,''.

Subsec. (r)(1), (2). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (s)(1). Pub. L. 98–21, §309(e)(1), inserted reference to subsec. (c)(1).

Subsec. (s)(2). Pub. L. 98–21, §309(e)(2), inserted reference to subsec. (c)(4).

Pub. L. 98–21, §131(c)(1), substituted ''So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4)'' for ''Subsection (f)(4), and so much of subsections (b)(3), (d)(5), (e)(3), (g)(3), and (h)(4)''.

Subsec. (s)(3). Pub. L. 98–21, §309(e)(3), substituted ''The last sentence'' for ''So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4) of this section as follows the semicolon, the last sentence''.

Pub. L. 98–21, §131(c)(2), struck out ''(e)(3),'' after ''(d)(5),''.

Subsec. (t)(2), (4). Pub. L. 98–21, §340(b), substituted ''Subject to paragraph (11), paragraph (1)'' for ''Paragraph (1)''.

Subsec. (t)(11). Pub. L. 98–21, §340(a)(2), added par. (11).

Subsec. (w)(1)(A). Pub. L. 98–21, §114(a), substituted a definition of the multiplicand as the applicable percentage (as determined under paragraph (6)) of such amount for a definition of the multiplicand as 1/12 of 1 percent of such amount, or, in the case of an individual who first becomes eligible for an old-age insurance benefit after December 1978, one-quarter of 1 percent of such amount.

Subsec. (w)(2)(A). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Pub. L. 98–21, §114(c)(1), substituted ''age 70'' for ''age 72''.

Subsec. (w)(3). Pub. L. 98–21, §114(c)(1), substituted ''age 70'' for ''age 72''.

Subsec. (w)(6). Pub. L. 98–21, §114(b), added par. (6).

Subsec. (x). Pub. L. 98–21, §339(a), added subsec. (x).

1981—Subsec. (a). Pub. L. 97–35, §2203(a), substituted in provision following par. (3) provision specifying the beginning month of entitlement in the case of an individual who has attained age 65 and in the case of an individual who has attained the age of 62, but not the age of 65, for provision specifying the beginning month of entitlement as the first month after August 1950 in which the individual becomes entitled.

Subsec. (b)(1). Pub. L. 97–35, §2203(b)(1), substituted in provision following subpar. (D) provision specifying the beginning month of entitlement in the case of a wife or divorced wife who has attained the age of 65 and in the case of a wife or divorced wife who has not attained the age of 65 or of an individual entitled to disability insurance benefits for provision specifying the beginning month of entitlement as the first month the wife or divorced wife becomes so entitled to such benefits.

Subsec. (c)(1). Pub. L. 97–35, §2203(c)(1), substituted in provision following subpar. (C) provision specifying the beginning month of entitlement in the case of a husband who has attained the age of 65 and in the case of a husband who has not attained the age of 65 or of an individual entitled to disability benefits for provision specifying the beginning month of entitlement as the first month after August 1950 in which he becomes entitled to benefits.

Subsec. (d)(1). Pub. L. 97–35, §§2203(d)(1), 2210(a)(1), (5)(A), substituted in subpars. (B)(i), (E)(ii), (F)(i), and (G)(III) ''full-time elementary or secondary school student'' for ''full-time student'', in subpars. (B)(i), (F)(ii), and (G)(IV) ''19'' for ''22'', and in provision following subpar. (C) provision specifying the beginning month of entitlement in the case of a child of an individual who

has died and of a child of an individual entitled to an old-age insurance benefit or a disability insurance benefit for provision specifying the beginning month of entitlement as the first month after August 1950 in which such child becomes entitled to benefits.

Subsec. (d)(6)(A). Pub. L. 97–35, § 2210(a)(5)(B), substituted ''full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) and has not attained the age of 22'' for ''full-time student or is under a disability (as defined in section 423(d) of this title), and (ii) had not attained the age of 22''.

Subsec. (d)(6)(D), (E). Pub. L. 97–35, § 2210(a)(1), (5)(A), substituted in cl. (i) ''full-time elementary or secondary school student'' for ''full-time student'' and in cl. (ii) ''19'' for ''22''.

Subsec. (d)(7)(A). Pub. L. 97–35, §§ 2203(d)(2), 2210(a)(1), (2), substituted ''full-time elementary or secondary school student'' for ''full-time student'' wherever appearing, ''elementary or secondary school'' for ''educational institution'' wherever appearing, and ''schools involved'' for ''institutions involved'' and inserted provision that an individual who is determined to be a full-time elementary or secondary school student be deemed to be such a student throughout the month with respect to which such determination is made.

Subsec. (d)(7)(B). Pub. L. 97–35, § 2210(a)(1), (2)(A), substituted ''full-time elementary or secondary school student'' for ''full-time student'' and ''elementary or secondary school'' for ''educational institution'' wherever appearing.

Subsec. (d)(7)(C). Pub. L. 97–35, § 2210(a)(3), substituted provision defining ''elementary or secondary school'' and provision that for the purpose of determining whether a child is a ''full-time elementary or secondary school student'' or ''intends to continue to be in full-time attendance at an elementary or secondary school'' there be disregarded any education provided, or to be provided, beyond grade 12 for provision defining the term ''educational institution''.

Subsec. (d)(7)(D). Pub. L. 97–35, § 2210(a)(1), (2)(A), (4), (5)(A), substituted ''19'' for ''22'', ''full-time elementary or secondary school student'' for ''full-time student'', ''diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(i))'' for ''degree from a four-year college or university'', and ''elementary or secondary school'' for ''educational institution''.

Subsec. (i). Pub. L. 97–35, § 2201(f), inserted in provision preceding par. (1) ''(as determined without regard to the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981, relating to repeal of the minimum benefit provisions)''.

Pub. L. 97–35, § 2202(a)(1), as amended by Pub. L. 98–369, § 2663(a)(2)(E), substituted in par. (1) provision that a qualifying widow or widower be paid for provision that unpaid burial expenses to a funeral home be paid and in par. (2) provision for payment in the event that no one qualifies or if the person entitled dies before receiving payment for provision for payment if all burial expenses incurred by or through a funeral home were paid, and struck out pars. (3) and (4), which provided for payment if the body of the insured is not available for burial but expenses were incurred for a memorial marker, service, etc., and for distribution of any amounts remaining available after payments under this subsection were made, respectively, and struck out ''(except a payment authorized pursuant to clause (1)(A) of the preceding sentence)'' after ''No payment''.

Subsec. (m). Pub. L. 97–35, § 2201(b)(10), struck out subsec. (m) which related to the minimum survivor's benefit.

Subsec. (q)(4). Pub. L. 97–123, § 2(e)(1), substituted ''increased'' and ''increase'' for ''changed'' and ''change'', respectively, wherever appearing.

Pub. L. 97–35, § 2201(d)(1), substituted ''changed'' and ''change'' for ''increased'' and ''increase'', respectively, wherever appearing.

Subsec. (q)(8). Pub. L. 97–35, § 2206(b)(1), substituted ''before application of'' for ''after application of'' and ''increased to the next higher'' for ''reduced to the next lower''.

Subsec. (q)(10). Pub. L. 97–123, § 2(e)(2), substituted ''increased'', ''increase'', and ''increases'' for ''changed'', ''change'', and ''changes'', respectively, wherever appearing.

Pub. L. 97–35, § 2201(d)(2), substituted ''changed'', ''change'', and ''changes'' for ''increased'', ''increase'' and ''increases'', respectively, wherever appearing.

Subsec. (s)(1). Pub. L. 97–35, § 2205(a)(1), substituted ''the age of 16'' for ''the age of 18''.

Subsec. (w)(1), (5). Pub. L. 97–35, § 2201(b)(11), substituted ''section 415(a)(1)(C)(i) of this title'' for ''section 415(a)(1)(C)(i)(II) of this title''.

1980—Subsec. (d)(1)(G). Pub. L. 96–265, § 303(b)(1)(B), inserted provisions relating to an individual's termination month, including cls. (I) and (II), and redesignated existing cls. (i) and (ii) as cls. (III) and (IV), respectively.

Subsec. (d)(7)(A). Pub. L. 96–473, § 5(b), inserted provisions relating to individuals confined in a jail, prison, or other penal institutional or correctional facility.

Subsec. (e)(1). Pub. L. 96–265, § 303(b)(1)(C), in provisions following subpar. (F)(ii), inserted provisions relating to the termination month.

Subsec. (e)(2)(B)(i). Pub. L. 96–473, § 6(a), struck out second comma after ''where applicable'', which had been inserted by Pub. L. 95–216, § 204(b). See 1977 Amendment note below.

Subsec. (f)(1). Pub. L. 96–265, § 303(b)(1)(D), in provisions following subpar. (F)(ii), inserted provisions relating to the termination month.

Subsec. (j)(1). Pub. L. 96–499 designated existing provisions in part as subpar. (A) and expanded such provisions and added subpar. (B).

Subsec. (j)(2). Pub. L. 96–265, § 306(a), inserted provisions relating to limitations on the prospective effects of applications.

1978—Subsec. (v). Pub. L. 95–600 substituted ''1402(g)'' for ''1402(h)''.

1977—Subsec. (b)(1)(G). Pub. L. 95–216, § 337(b), substituted ''10'' for ''20''.

Subsec. (b)(2). Pub. L. 95–216, § 334(a)(1), inserted reference to par. (4) of this subsection.

Subsec. (b)(4). Pub. L. 95–216, § 334(a)(2), added par. (4).

Subsec. (c)(1). Pub. L. 95–216, § 334(b)(1), in subpar. (B) inserted ''and'' after ''62,'', struck out subpar. (C) which related to support payment requirements for the husband, and redesignated former subpar. (D) as (C).

Subsec. (c)(2). Pub. L. 95–216, § 334(b)(2), substituted provisions relating to reduction of the amount of the husband's insurance benefit for each month as determined after application of the provisions of subsecs. (q) and (k) of this section for provisions relating to applicability of provisions of former subsec. (c)(1)(C) of this section, as subject to subsec. (s) of this section.

Subsec. (c)(3). Pub. L. 95–216, § 334(b)(3), inserted reference to par. (2) of this subsection.

Subsec. (e)(2)(A). Pub. L. 95–216, §§ 204(a), 334(c)(1), 336(a)(1), inserted ''(as determined after application of the following sentence)'' after ''primary insurance amount'', provisions relating to entitlement of the deceased to an old-age insurance benefit which was increased or was to be increased on account of delayed retirement, and reference to par. (8) of this subsection, and struck out reference to par. (4) of this subsection.

Subsec. (e)(2)(B)(i). Pub. L. 95–216, § 204(b), substituted ''living and section 415(f)(5) or (6) of this title were applied, where applicable,, and'' for ''living, and''. See 1980 Amendment note above.

Subsec. (e)(3). Pub. L. 95–216, § 336(a)(2), substituted ''If a widow, before attaining age 60, or a surviving divorced wife,'' for ''In the case of a widow or surviving divorced wife who''.

Subsec. (e)(4). Pub. L. 95–216, § 336(a)(3), struck out reference to an individual (other than one described in subsec. (e)(3)(A) or (B) of this section) as the husband, and provisions relating to benefits during the marriage.

Subsec. (e)(8). Pub. L. 95–216, § 334(c)(2), added par. (8).

Subsec. (f)(1). Pub. L. 95–216, § 334(d)(1), struck out subpar. (D) which related to receipt of support by the

widower in accordance with regulations promulgated by the Secretary, and redesignated former subpars. (E) to (G) as (D) to (F), respectively.

Subsec. (f)(2). Pub. L. 95–216, §334(d)(2), substituted provisions relating to reduction of the amount of the widower's insurance benefit for each month as determined after application of the provisions of subsecs. (k) and (q) of this section and pars. (3)(B) and (5) of this subsec., for provisions relating to applicability of former subsec. (f)(1)(D) of this section, as subject to subsec. (s) of this section.

Subsec. (f)(3)(A). Pub. L. 95–216, §§204(c), 334(d)(3), 336(b)(1), inserted ''(as determined after application of the following sentence)'' after ''primary insurance amount'', inserted provisions relating to entitlement of the deceased to an old-age insurance benefit which was increased or was to be increased on account of delayed retirement, and substituted reference to par. (2) of this subsection for reference to par. (5) of this subsection.

Subsec. (f)(3)(B). Pub. L. 95–216, §204(d), inserted reference to section 415(f)(5) or (6) of this title in cl. (i).

Subsec. (f)(4). Pub. L. 95–216, §336(b)(2), substituted ''If a widower, before attaining age 60,'' for ''In the case of a widower who''.

Subsec. (f)(5). Pub. L. 95–216, §336(b)(3), struck out reference to an individual (other than one described in subsec. (f)(4)(A) or (B) of this section) as the wife, and provisions relating to benefits during the marriage.

Subsec. (f)(7). Pub. L. 95–216, §334(d)(4)(A), substituted ''(F)'' for ''(G)''.

Subsec. (g)(2). Pub. L. 95–216, §334(e)(1), substituted ''Except as provided in paragraph (4) of this subsection, such'' for ''Such''.

Subsec. (g)(4). Pub. L. 95–216, §334(e)(2), added par. (4).

Subsec. (j)(1). Pub. L. 95–216, §332(a)(1), substituted ''Subject to the limitations contained in paragraph (4), an'' for ''An''.

Subsec. (j)(4). Pub. L. 95–216, §332(a)(2), added par. (4).

Subsec. (m)(1). Pub. L. 95–216, §205(a), substituted provisions relating to entitlement to monthly benefits under this section on the basis of primary insurance amounts computed under section 415(a) or (d) of this title as in effect after Dec., 1978, for provisions relating to entitlement to monthly benefits under this section on the basis of wages and self-employment income of deceased individuals for any month.

Subsec. (p)(1). Pub. L. 95–216, §334(d)(5), struck out references to subsecs. (c)(1)(C) and (f)(1)(D)(i) or (ii) of this section.

Subsec. (q)(3)(H). Pub. L. 95–216, §331(c)(2), inserted ''for that month or'' after ''first entitled''.

Subsec. (q)(4). Pub. L. 95–216, §331(a), substituted provisions setting forth factors for the computation of the amount of the reduction of the benefit for each month beginning with the month of the increase in the primary insurance amount, after application of any adjustment under par. (7) of this subsec., for provisions setting forth factors for the computation of the amount of the reduction of the benefit for each month.

Subsec. (q)(7)(C). Pub. L. 95–216, §331(c)(1), substituted ''of the occurrence of an event that terminated her or his entitlement to such benefits'' for ''the spouse on whose wages and self-employment income such benefits were based ceased to be under a disability''.

Subsec. (q)(10), (11). Pub. L. 95–216, §331(b), added pars. (10) and (11).

Subsec. (s)(3). Pub. L. 95–216, §334(d)(6), substituted ''So'' for ''Subsections (c)(2)(B) and (f)(2)(B) of this section, so''.

Subsec. (u)(1)(C). Pub. L. 95–216, §353(f)(1), substituted ''year'' for ''quarter'' wherever appearing.

Subsec. (w)(1). Pub. L. 95–216, §§203(1), 205(b)(1), substituted ''The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978 or section 415(a)(1)(C)(i)(II) of this title as in effect thereafter) which is payable without regard to this subsection to an individual'' for ''If the first month for which an old-age insurance benefit becomes payable to an individual is not earlier than the month in which such individual attains age 65 (or his benefit payable at such age is not reduced under subsection (q) of this section), the amount of the old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title) which is payable without regard to this subsection to such individual''.

Subsec. (w)(1)(A). Pub. L. 95–216, §203(2), inserted provision relating to individuals eligible after Dec., 1978.

Subsec. (w)(5). Pub. L. 95–216, §205(b)(2), (3), inserted ''as in effect in December 1978, or section 415(a)(1)(C)(i)(II) of this title as in effect thereafter,'' after ''(3) of section 415(a) of this title'' and ''(whether before, in, or after December 1978)'' after ''under section 415(a) of this title''.

1974—Subsec. (*l*). Pub. L. 93–445 substituted ''annuity under section 2 of the Railroad Retirement Act of 1974, or to a lump-sum payment under section 6(b) of such Act, with respect to the death of an employee (as defined in such Act)'' for ''annuity under section 5 of the Railroad Retirement Act of 1937 or to a lump-sum payment under subsection (f)(1) of such section with respect to the death of an employee (as defined in such Act)''.

1973—Subsec. (d)(8)(D)(ii). Pub. L. 93–66 added item (III).

Subsec. (e)(7). Pub. L. 93–233, §1(f), added par. (7).

Subsec. (f)(8). Pub. L. 93–233, §1(g), added par. (8).

Subsec. (w)(5). Pub. L. 93–233, §18(b), added par. (5).

1972—Subsec. (a). Pub. L. 92–603, §103(b), inserted reference to subsection (w) of this section.

Subsec. (b)(1). Pub. L. 92–603, §114(a), struck out subpar. (D) which covered support aspects involved with a divorced wife and redesignated subpars. (E) through (L) and subpars. (D) through (K), respectively.

Subsec. (d)(1). Pub. L. 92–603, §§108(a)–(c), 112(a), substituted ''age of 22'' for ''age of eighteen'' in subpar. (B)(ii), struck out provisions covering adoption in subpar. (D), inserted ''but only if he was not under a disability (as so defined) in such earlier month'' in subpar. (F), substituted ''age of 18, or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22'' for ''age of 18'' and inserted ''but only if he was not under a disability (as so defined) in such earlier month'' after ''attains the age of 22'' in subpar. (G), and inserted provision prohibiting payments under par. (1) to a child who would not meet the definition of disability in section 423(d) of this title except for par. (1)(B) thereof for any month in which he engages in substantial gainful activity.

Subsec. (d)(6). Pub. L. 92–603, §108(d), designated existing provisions as subpars. (A), (C), and (D), added subpars. (B) and (E), inserted ''or is under a disability (as defined in section 423(d) of this title)'' in subpar. (A)(i) as so redesignated, and inserted ''but only if he is not under a disability (as so defined) in such earlier month'' in subpar. (D)(ii) as so redesignated.

Subsec. (d)(7). Pub. L. 92–603, §109(a), added subpar. (D).

Subsec. (d)(8). Pub. L. 92–603, §111(a), combined into par. (8) the provisions formerly set out in both pars. (8) and (9) covering adoptions by disability and old-age insurance beneficiaries and struck out provisions covering supervision of an adoption by a public or private child placement agency and provisions covering a special category of adoptions during the 24–month period beginning with the month after the month in which the individual most recently became entitled to disability insurance benefits or became entitled to old-age insurance benefits.

Subsec. (d)(9). Pub. L. 92–603, §113(b), added par. (9). Former par. (9) incorporated, as amended, into par. (8).

Subsec. (e)(1). Pub. L. 92–603, §§102(a)(1), 114(b)(1), struck out subpar. (D) which covered support aspects involved with a surviving divorced wife and redesignated subpars. (E) through (G) as subpars. (D) through (F), respectively, substituted ''the primary insurance amount'' for ''82½ percent of the primary insurance

amount'' in subpar. (D) and in the provisions following subpar. (F), substituted ''entitled to wife's insurance benefits,'' for ''entitled, after attainment of age 62, to wife's insurance benefits,'' in subpar. (C)(i), inserted ''and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title,'' at end of subpar. (C)(i), and substituted ''age 65'' for ''age 62'' in subpar. (C)(ii) and in provisions following subpar. (F).

Subsec. (e)(2). Pub. L. 92–603, § 102(a)(2), designated existing provisions as subpar. (A), added subpar. (B), in subpar. (A) as so designated inserted reference to subpar. (B) of this par., and substituted ''the primary insurance amount'' for ''82½ percent of the primary amount''.

Subsec. (e)(6). Pub. L. 92–603, §§ 114(b)(2), 116(b), substituted ''five'', ''seventeenth'', and ''fifth'' for ''six'', ''eighteenth'', and ''sixth'', respectively, and ''paragraph (1)(F)'' for ''paragraph (1)(G)''.

Subsec. (f)(1). Pub. L. 92–603, §§ 102(b)(1), 107(a)(1), (2), substituted ''age 60'' for ''age 62'' in subpar. (B), substituted ''the primary insurance amount'' for ''82½ percent of the primary insurance amount'' in subpar. (E) and provisions following subpar. (G), inserted ''and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title,'' at end of subpar. (C), and substituted ''age 65'' for ''age 62'' and inserted '', if he became entitled to such benefits before he attained age 60,'' before ''the third month'' in provisions following subpar. (G).

Subsec. (f)(3). Pub. L. 92–603, § 102(b)(2), designated existing provisions as subpar. (A), added subpar. (B), in subpar. (A) as so designated inserted reference to subpar. (B) of this par., and substituted ''the primary insurance amount'' for ''82½ percent of the primary amount''.

Subsec. (f)(5). Pub. L. 92–603, § 107(a)(3), substituted ''the age of 60'' for ''the age of 62''.

Subsec. (f)(6). Pub. L. 92–603, § 107(a)(1), substituted ''age 60'' for ''age 62''.

Subsec. (f)(7). Pub. L. 92–603, § 116(c), substituted ''five'', ''seventeenth'', and ''fifth'' for ''six'', ''eighteenth'', and ''sixth'', respectively.

Subsec. (g)(1)(F). Pub. L. 92–603, § 114(c), struck out cl. (i) covering the support aspects of a surviving divorced mother and redesignated cl. (ii) and (iii) as cl. (i) and (ii), respectively.

Subsec. (k)(2)(A). Pub. L. 92–603, § 110(a), inserted provisions establishing exceptions to rule that a child's benefits in the case where the child is entitled on more than one wage record shall be based on wages and self-employment of the insured individual with greatest primary insurance amount.

Subsec. (k)(3)(A). Pub. L. 92–603, § 102(d), inserted reference to subsection (e)(2) or (f)(3) of this section.

Subsec. (m). Pub. L. 92–603, § 102(f), amended subsec. (m) generally to increase the minimums on survivor's benefits.

Subsec. (q)(1). Pub. L. 92–603, § 102(e)(1), generally provided for an increase in widow's and widower's insurance benefits through the insertion of provisions covering such benefits in subpar. (A), and in provisions preceding subpar. (C), and through the substitution of a $43/240$ fraction in subpar. (C) for a $43/198$ fraction.

Subsec. (q)(3). Pub. L. 92–603, § 102(e)(2), (5), redesignated existing provisions of subpars. (E)(ii) and (F)(ii) as subcls. (I) and (II) and in subcls. (I) of each such subpar. as so redesignated substituted ''would be reduced under paragraph (1) if the period specified in paragraph (6)(A) ended with the month before the month in which she or he attained age 62'' for ''was reduced for the month in which such individual attained retirement age'', substituted in subpar. (G) ''as if the period specified in paragraph (6)(A) (or, if such paragraph does not apply, the period specified in paragraph (6)(B)) ended with the month before'' for ''had such individual attained age 62 in'', and added subpar. (H).

Subsec. (q)(7). Pub. L. 92–603, § 102(e)(3), divided existing source references for ''adjusted reduction period'' and ''additional adjusted reduction period'' into separate references to subpars. (A) and (B) of par. (6) in the provisions preceding subpar. (A) and, in subpar. (E), substituted ''attained age 62, and also for any later month before the month in which he attained retirement age,'' for ''attained retirement age''.

Subsec. (q)(9). Pub. L. 92–603, § 102(e)(4), struck out provisions which had set age 62 as the meaning of ''retirement age'' with respect to a widow's and widower's insurance benefits.

Subsec. (s). Pub. L. 92–603, § 108(e), struck out ''which began before he attained such age'' after ''disability (as defined in section 423(d) of this title)'' in par. (1) and struck out ''which began before such child attained the age of 18'' after ''disability (as defined in section 423(d) of this title)'' in pars. (2) and (3).

Subsec. (w). Pub. L. 92–603, § 103(a), added subsec. (w).

1971—Subsec. (i)(3). Pub. L. 92–223, § 1(a), added cl. (3).

Subsec. (i)(4). Pub. L. 92–223, § 1(a), (b), redesignated former cl. (3) as (4) and included reference to cl. (3) in the second sentence.

1969—Subsec. (b)(2). Pub. L. 91–172, § 1004(a), removed $105 ceiling on insurance benefits of wives.

Subsec. (c)(3). Pub. L. 91–172, § 1004(b), removed $105 ceiling on insurance benefits of husbands.

Subsec. (e)(4). Pub. L. 91–172, § 1004(c), removed $105 ceiling on insurance benefits of widows.

Subsec. (f)(5). Pub. L. 91–172, § 1004(c), removed $105 ceiling on insurance benefits of widowers.

1968—Subsec. (b)(2). Pub. L. 90–248, § 103(a), provided that a wife's insurance benefit may not exceed $105.

Subsec. (c)(1). Pub. L. 90–248, § 157(a)(1), substituted in text preceding subpar. (A) ''an individual'' for ''a currently insured individual (as defined in section 414(b) of this title)''.

Subsec. (c)(2). Pub. L. 90–248, § 157(a)(2), substituted in text preceding subpar. (A) ''The provisions of subparagraph (C) of paragraph (1) of this subsection'' for ''The requirement in paragraph (1) of this subsection that the individual entitled to old-age or disability insurance benefits be a currently insured individual, and the provisions of subparagraph (C) of such paragraph''.

Subsec. (c)(3). Pub. L. 90–248, § 103(b), provided that a husband's insurance benefit may not exceed $105.

Subsec. (d)(1)(B). Pub. L. 90–248, § 158(c)(1), substituted ''section 423(d)'' for ''section 423(c)''.

Subsec. (d)(3). Pub. L. 90–248, § 151(a), inserted in first sentence ''or his mother or adopting mother'' after ''adopting father'', and struck out in second sentence, ''if such individual is the child's father,'' after ''title shall''.

Subsec. (d)(4). Pub. L. 90–248, § 151(b), inserted, ''or stepmother'' after ''stepfather'' in two places.

Subsec. (d)(5) to (8). Pub. L. 90–248, § 151(c), struck out former par. (5) which provided that (1) a child is deemed dependent on his mother or adopting mother if she is currently insured, and (2) a child is deemed dependent on a mother who is not currently insured only if she is contributing one-half of the child's support or, if the child is not living with his father nor being supported by him, only if she is then living with or supporting the child, and redesignated former pars. (6) to (9) as (5) to (8), respectively.

Subsec. (d)(8). Pub. L. 90–248, §§ 112(a), 151(c), added subpar. (E) and redesignated former par. (9) as (8), respectively. Former par. (8) redesignated (7).

Subsec. (d)(9). Pub. L. 90–248, § 151(c), (d)(1), redesignated former par. (10) as (9) and substituted ''paragraph (8)'' for ''paragraph (9)''. Former par. (9) redesignated (8).

Subsec. (d)(10). Pub. L. 90–248, § 151(c), redesignated former par. (10) as (9).

Subsec. (e)(1). Pub. L. 90–248, § 104(a)(2), set out part of text formerly following subpar. (E) after subpar. (G) and inserted therein: ''or, if she became entitled to such benefits before she attained age 60, the third month following the month in which her disability ceases (unless she attains age 62 on or before the last day of such third month)''.

Subsec. (e)(1)(B). Pub. L. 90–248, § 104(a)(1), provided that a widow or surviving divorced wife may become

entitled to widow's insurance benefits if she is disabled and her disability began within the period specified in subsec. (e)(5) even though she has not attained age 60.

Subsec. (e)(1)(F). Pub. L. 90–248, §104(a)(2), designated part of material formerly following subpar. (E) as subpar. (F) and inserted provision requiring satisfaction with subpar. (B) clause (i).

Subsec. (e)(1)(G). Pub. L. 90–248, §104(a)(2), added subpar. (G).

Subsec. (e)(4). Pub. L. 90–248, §103(c), provided that a remarried widow's insurance benefit may not exceed $105.

Subsec. (e)(5), (6). Pub. L. 90–248, §104(a)(3), added pars. (5) and (6).

Subsec. (f)(1). Pub. L. 90–248, §157(b)(1), struck out in text preceding subpar. (A) ''and currently'' before ''insured individual'' and in cl. (ii) of subpar. (D) '', and she was a currently insured individual,'' after ''from such individual''.

Subsec. (f)(1)(B). Pub. L. 90–248, §104(b)(1), provided that a dependent widower may become entitled to widower's insurance benefits if he is disabled and his disability began within the specified period even though such individual has not attained age 62.

Subsec. (f)(1). Pub. L. 90–248, §104(b)(2), set out part of text formerly following subpar. (E) after subpar. (G) and inserted: ''or the third month following the month in which his disability ceases (unless he attains age 62 on or before the last day of such third month)''.

Subsec. (f)(1)(F). Pub. L. 90–248, §104(b)(2), designated part of text formerly following subpar. (F) as subpar. (F) and inserted provision requiring satisfaction with subpar. (B) clause (i).

Subsec. (f)(1)(G). Pub. L. 90–248, §104(b)(2), added subpar. (G).

Subsec. (f)(2). Pub. L. 90–248, §157(b)(2), substituted in text preceding subpar. (A) ''The provisions of subparagraph (D) of paragraph (1) of this subsection'' for ''The requirement in paragraph (1) of this subsection that the deceased fully insured individual also be a currently insured individual, and the provisions of subparagraph (D) of such paragraph,''.

Subsec. (f)(3). Pub. L. 90–248, §104(b)(3), inserted reference to subsec. (q).

Subsec. (f)(5). Pub. L. 90–248, §103(d), provided that a remarried widower's insurance benefit may not exceed $105.

Subsec. (f)(6), (7). Pub. L. 90–248, §104(b)(4), added pars. (6) and (7).

Subsec. (q). Pub. L. 90–248, §104(c)(1), substituted ''Reduction of benefit amounts for certain beneficiaries'' for ''Reduction of old-age, disability, wife's, husband's, or widow's insurance benefit amounts'' in heading.

Subsec. (q)(1). Pub. L. 90–248, §104(c)(2)–(4), substituted ''widow's, or widower's'' for ''or widow's'' in text preceding subpar. (A), '', widow's, or widower's'' for ''or widow's'' in subpar. (A), and added subpar. (C) and (D) provisions for further reduction of a widow's or widower's insurance benefit.

Subsec. (q)(3)(A). Pub. L. 90–248, §104(c)(5), substituted ''widow's, or widower's'' for ''or widow's'' wherever appearing, ''50'' for ''60'', and inserted ''or widower's'' after ''(in the case of a widow's)''.

Subsec. (q)(3)(C). Pub. L. 90–248, §104(c)(6), substituted ''widow's, or widower's'' for ''or widow's'' wherever appearing.

Subsec. (q)(3)(D). Pub. L. 90–248, §104(c)(7), substituted ''widow's, or widower's'' for ''or widow's''.

Subsec. (q)(3)(E). Pub. L. 90–248, §104(c)(8), inserted ''in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower'' after ''(e)(1) of this section'', and ''or he'' after ''she'', and substituted ''widow's or widower's'' for ''widow's'' wherever appearing.

Subsec. (q)(3)(F). Pub. L. 90–248, §104(c)(9), inserted ''in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower'' after ''(e)(1) of this section'', and ''or he'' after ''she'', and substituted ''widow's or widower's'' for ''widow's''.

Subsec. (q)(3)(G). Pub. L. 90–248, §104(c)(10), inserted ''in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower'' before ''(e)(1) of this section'', and ''she or'' before ''he'', and substituted ''widow's or widower's'' for ''widow's'' wherever appearing.

Subsec. (q)(6). Pub. L. 90–248, §104(c)(11), extended definition of ''reduction period'' to apply to widower's insurance benefit, inserted second alternative in subpar. (A)(i)(III) that the reduction period for a widow's or widower's insurance benefit begins with the ''first day of the month in which such individual attains age 60, whichever is the later'', substituted paragraph ''(5)'' for ''(4)'' in item (II) of subpar. (A)(i), and added subpar. (B).

Subsec. (q)(7). Pub. L. 90–248, §104(c)(12), in text preceding subpar. (A), inserted ''or 'additional adjusted reduction period' '' after ''the 'adjusted reduction period' '', ''or additional reduction period (as the case may be)'' after ''the reduction period'', and substituted ''widow's, or widower's'' for ''or widow's'', and in subpar. (E) substituted ''widow's or widower's'', ''she or he'', and ''her or his'' for ''widow's'', ''she'', and ''her'', respectively.

Subsec. (q)(9). Pub. L. 90–248, §104(c)(13), inserted reference to widowers.

Subsec. (s). Pub. L. 90–248, §158(c)(2), substituted ''section 423(d)'' for ''section 423(c)'' in pars. (1) to (3).

Subsec. (s)(2), (3). Pub. L. 90–248, §151(d)(2), substituted ''(d)(5)'' for ''(d)(6)'' in pars. (2), (3).

Subsec. (t)(1). Pub. L. 90–248, §162(a)(1), provided that ''For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.''

Subsec. (t)(4). Pub. L. 90–248, §162(b)(1), provided for exception to application of subpars. (A) and (B) of par. (4).

Subsec. (t)(6). Pub. L. 90–248, §162(c)(2), included reference to par. (10).

Subsec. (t)(10). Pub. L. 90–248, §162(c)(1), added par. (10).

1965—Subsec. (b)(1). Pub. L. 89–97, §308(a), made provisions applicable to divorced wife by inclusion of references to divorced wife in provisions preceding subpar. (A), substituted ''such individual'' for ''her husband'' in subpars. (B), (E), (G), (J) to (L); inserted in subpar. (B) ''(in the case of a wife)'' after ''age 62 or''; added subpars. (C) and (D); redesignated former subpar. (C) as (E); in provisions after subpar. (E), inserted ''(subject to subsection (s) of this section)'' and struck out ''after August 1950'' after ''beginning with the first month''; designated existing provisions as subpars. (F), (G), (J) to (L); and substituted provisions designated as subpars. (H) and (I) for former provisions reading ''they are divorced from vinculo matrimonii''.

Subsec. (b)(2). Pub. L. 89–97, §308(a), inserted ''(or, in the case of a divorced wife, her former husband)''.

Subsec. (b)(3). Pub. L. 89–97, §308(a), added par. (3).

Subsec. (c)(1). Pub. L. 89–97, §308(d)(1), substituted ''divorced'' for ''divorced a vinculo matrimonii'' in provisions following subpar. (D).

Subsec. (c)(2). Pub. L. 89–97, §§306(c)(2), 334(e), inserted in text preceding subpar. (A) ''(subject to subsection (s) of this section)'' after ''shall'', and added subpar. (C).

Subsec. (d)(1). Pub. L. 89–97, §§306(a), (b)(1), (2), 323(a)(1), 343(a), inserted in subpar. (B)(i) and (ii) ''or was a full-time student and had not attained the age of 22'' and ''which began before he attained the age of 22'', respectively, and substituted ''is'' for ''was'' in cl. (ii) substituted ''preceding whichever of the following first occurs'' for ''preceding the first month in which any of the following occurs'' following provisions of subpar. (C), incorporated existing provisions in subpar. (D) and (E), substituting in such subpar. (E) ''but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time student during any part of such month'' for former provision and is not under a disability (as defined in section 423(c) of

this title), which began before he attained such age'', added subpars. (F) and (G), and repealed the second sentence which provided for the termination of entitlement of any child to benefits under this subsection with the month preceding the third month following the month in which he ceases to be under a disability after the month in which he attains age eighteen; struck out the last sentence which related to adoptions by disabled workers; and substituted ''uncle, brother, or sister'' for ''or uncle'' in subpar. (D), respectively.

Subsec. (d)(3). Pub. L. 89–97, § 339(b), inserted ''or section 416(h)(3)'' after ''section 416(h)(2)(B)''.

Subsec. (d)(6). Pub. L. 89–97, § 306(c)(3), inserted in text following subpar. (B) ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1) of this subsection''.

Subsec. (d)(6)(A). Pub. L. 89–97, § 308(d)(2)(A), inserted reference to subsec. (b) of this section.

Subsec. (d)(7), (8). Pub. L. 89–97, § 306(b)(3), added pars. (7) and (8).

Subsec. (d)(9), (10). Pub. L. 89–97, § 323(a)(2), added pars. (9) and (10).

Subsec. (e)(1). Pub. L. 89–97, §§ 307(a)(1), 308(b)(1), substituted ''age 60'' for ''age 62'' in subpar. (B); and inserted references to surviving divorced wife in the provisions preceding subpar. (A), substituted in subpar. (A) ''is not married'' for ''has not remarried'', added subpar. (D), redesignated former subpar. (D) as (E) substituted in subpar. (E) and following provision ''such deceased individual'' ''her deceased husband'', and struck out from provisions following subpar. (E) ''after August 1950'' after ''beginning with the first month'', respectively.

Subsec. (e)(2). Pub. L. 89–97, §§ 307(a)(2), 308(b)(1), 333(a)(2), inserted introductory phrase ''Except as provided in subsection (q) of this section''; substituted ''such deceased individual'' for ''her deceased husband''; and inserted ''and paragraph (4) of this subsection'' before the comma, respectively.

Subsec. (e)(3). Pub. L. 89–97, §§ 306(c)(4), 308(b) (2), (3), inserted ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1)'' following subpar. (B); repealed former par. (3) which provided for reinstatement of benefits to a widow if she married a person who died within one year and was not a fully insured individual; and redesignated former par. (4) as (3), and substituted ''widow or surviving divorced wife'' and ''widow's or surviving divorced wife's'' for ''widow'' and ''widow's'', respectively.

Subsec. (e)(4). Pub. L. 89–97, § 333(a)(1), added par. (4). Former par. (4) redesignated (3).

Subsec. (f)(2). Pub. L. 89–97, §§ 306(c)(5), 334(f), inserted in text preceding subpar. (A) ''(subject to subsection (s) of this section)'' after ''shall'', and added subpar. (C).

Subsec. (f)(3). Pub. L. 89–97, § 333(b)(2), substituted ''Except as provided in paragraph (5), such'' for ''Such''.

Subsec. (f)(4). Pub. L. 89–97, § 306(c)(6), inserted in text following subpar. (B) ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1) of this subsection''.

Subsec. (f)(4)(A). Pub. L. 89–97, § 308(d)(2)(A), inserted reference to subsec. (b) of this section.

Subsec. (f)(5). Pub. L. 89–97, § 333(b)(1), added par. (5).

Subsec. (g)(1). Pub. L. 89–97, §§ 306(c)(7), 308(d) (3)–(5), inserted ''(subject to subsection (s) of this section)'' after ''shall'' in provisions following subpar. (F); substituted in subpar. (A) ''is not married'' for ''has not remarried''; in subpar. (F), substituted ''surviving divorced mother'' for ''former wife divorced'', incorporated existing provisions in cls. (i) (other than (I) to (III)), (ii), and (iii), and substituted provisions of cl. (i)(I) to (III) for receipt of one-half of support under administrative regulations and substantial contributions pursuant to written agreement or court order for former provision for receipt of one-half of support pursuant to agreements or court order; and substituted ''surviving divorced mother'' for ''former wife divorced'' twice in provisions before subpar. (A) and thrice in provisions following subpar. (F), respectively.

Subsec. (g)(3). Pub. L. 89–97, §§ 306(c)(8), 308(d)(5), (13), inserted ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1)'' following subpar. (B), substituted ''surviving divorced mother'' for ''former wife divorced'' in two places, and redesignated former par. (4) as (3), respectively. Pub. L. 89–97, § 308(d)(12), repealed former par. (3) which had provided that:

''In the case of any widow or former wife divorced of an individual—

''(A) who marries another individual, and

''(B) whose marriage to the individual referred to in subparagraph (A) is terminated by his death but she is not, and upon filing application therefor in the month in which he died would not be, entitled to benefits for such month on the basis of his wages and self-employment income,

the marriage to the individual referred to in clause (A) shall, for purpose of paragraph (1), be deemed not to have occurred. No benefits shall be payable under this subsection by reason of the preceding sentence for any month prior to whichever of the following is the latest: (i) the month in which the death referred to in subparagraph (B) of the preceding sentence occurs, (ii) the twelfth month before the month in which such widow or former wife divorced files application for purposes of this paragraph or (ii) September 1958.''

Subsec. (g)(4). Pub. L. 89–97, § 308(d)(13), redesignated former par. (4) as (3).

Subsec. (h)(4). Pub. L. 89–97, § 306(c)(9), inserted in text following subpar. (B) ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1) of this subsection''.

Subsec. (h)(4)(A). Pub. L. 89–97, § 308(d)(2)(A), inserted reference to subsec. (b) of this section.

Subsec. (j)(1). Pub. L. 89–97, § 303(d), inserted ''under this subchapter'' after ''any benefit''.

Subsec. (j)(2). Pub. L. 89–97, § 328(a), provided that an application for monthly benefits filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and that the application shall be deemed to have been filed in the first month if the applicant is found to satisfy the requirements for entitlement.

Subsec. (k)(2)(B). Pub. L. 89–97, § 333(c)(1), inserted ''(other than an individual to whom subsection (e)(4) or (f)(5) of this section applies)'' after ''Any individual'' and inserted provision limiting to the largest of such benefits any individual who is entitled for any month to more than one widow's or widower's benefits to which subsections (e)(4) or (f)(5) of this section applies.

Subsec. (k)(3). Pub. L. 89–97, § 333(c)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (k)(4). Pub. L. 89–97, § 304(a), added par. (4).

Subsec. (p). Pub. L. 89–97, § 324(a), removed the 2-year limit on the allowed extension during which, for good cause shown, applications or proof may be filed and still be deemed filed within the prescribed period for filing applications or proof.

Subsec. (q). Pub. L. 89–97, § 304(b), substituted ''Reduction of old-age, disability, wife's, husband's, or widow's insurance benefit amounts'' for ''Adjustment of old-age, wife's or husband's insurance benefit amounts in accordance with age of beneficiary'' in heading.

Subsec. (q)(1). Pub. L. 89–97, § 307(b)(1), made provisions preceding subpar. (A) and the 5/9 of 1 percent reduction in subpar. (A) applicable to widow's insurance benefit, substituted ''retirement age'' for ''age 65'' in provisions preceding subpar. (A) and subpar. (B)(i) and (ii), substituted ''(6)'' and ''(7)'' for ''(5)'' and ''(6)'' in subpar. (B)(i) and (ii) and ''any month'' for ''any other month'' in subpar. (B)(ii).

Subsec. (q)(2). Pub. L. 89–97, § 304(c), added par. (2) and redesignated former par. (2) as (3).

Subsec. (q)(3)(A). Pub. L. 89–97, §§ 304(c), 307(b)(2), redesignated former par. (2) as (3), and made provisions of subpar. (A) applicable to widow's insurance benefit and inserted ''(in the case of a wife's or husband's insurance benefit) or age 60 (in the case of a widow's insurance

benefit)'' after ''age 62'', respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(B). Pub. L. 89–97, §304(c), (d), redesignated former par. (2) as (3), and substituted ''benefit and is not entitled to a disability insurance benefit'' for ''benefit'' the first time it appeared and inserted in cls. (i) and (ii) ''for such month'' after ''paragraph (1)'', respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(C). Pub. L. 89–97, §304(c), (e), redesignated former par. (2) as (3), and made provisions of subpar. (C) applicable to widow's insurance benefit, inserted cl. (i), incorporated existing provisions in cl. (ii), and inserted in such cl. (ii) ''for such month'' and ''(before reduction under this subsection)'' after ''disability insurance benefit'', respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(D), (E). Pub. L. 89–97, §§304(c), 307(b), (3), (4), redesignated former par. (2) as (3), made provisions of subpar. (D) applicable to widow's insurance benefit, and added subpar. (E), respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(F), (G). Pub. L. 89–97, §304(c), (f), redesignated former par. (2) as (3) and added subpars. (F) and (G), respectively. Former par. (3) redesignated (4).

Subsec. (q)(4). Pub. L. 89–97, §304(c), (g), redesignated former par. (3) as (4) and renumbered in text following subpar. (B) cross references to par. (2) as (3) in three places, and substituted in subpar. (A) ''under paragraph (1) or (3) of this subsection'' for ''under this subsection'', respectively. Former par. (4) redesignated (5).

Subsec. (q)(5)(D). Pub. L. 89–97, §§304(c), 307(b)(5), redesignated former par. (4) as (5) and added subpar. (D), respectively. Former par. (5) redesignated (6).

Subsec. (q)(6). Pub. L. 89–97, §§304(c), 307(b)(6), redesignated former par. (5) as (6) and renumbered in subpar. (A)(ii) cross reference to par. (4) as (5), and made provisions preceding subpar. (A) and provisions of subpar. (A)(i) applicable to widow's insurance benefit and substituted in subpar. (B) ''retirement age'' for ''age 65'', respectively. Former par. (6) redesignated (7).

Subsec. (q)(7). Pub. L. 89–97, §§304(c), (h), 307(b)(7), redesignated former par. (6) as (7) and renumbered in text preceding subpar. (A) cross reference to par. (5) as (6), added subpar. (F), and made provisions preceding subpar. (A) applicable to widow's insurance benefit and added subpars. (D), (E), respectively. Former par. (7), redesignated (8).

Subsec. (q)(8). Pub. L. 89–97, §304(c), (i), redesignated former par. (7) and (8) and renumbered cross reference to par. (2) as (3), and substituted ''(1), (2),'' for ''(1)'', respectively.

Subsec. (q)(9). Pub. L. 89–97, §307(b)(8), added par. (9).

Subsec. (r)(2). Pub. L. 89–97, §304(j), inserted ''(but for subsection (k)(4) of this section)'' after ''eligible''.

Subsec. (s). Pub. L. 89–97, §306(c)(1), added subsec. (s).

Subsec. (t)(9). Pub. L. 89–97, §104(a)(1), added par. (9).

Subsec. (u). Pub. L. 89–97, §104(a)(2), inserted ''in determining whether such individual is entitled to insurance benefits under part A of subchapter XVII of this chapter for any such month,''.

Subsec. (v). Pub. L. 89–97, §319(d), added subsec. (v).

1961—Subsec. (a)(2). Pub. L. 87–64, §102(a), substituted ''has attained age 62'' for ''has attained retirement age (as defined in section 416(a) of this title)''.

Subsec. (b)(1). Pub. L. 87–64, §102(a), (e), (1), (2), substituted ''age 62'' for ''retirement age'' in two places, ''less than one-half of the primary insurance amount of her husband'' for ''less than one-half of an old-age or disability insurance benefit of her husband'', and ''equal to or exceeds one-half of the primary insurance amount of her husband'' for ''equal to or exceeds one-half of an old-age or disability insurance benefit of her husband''.

Subsec. (b)(2). Pub. L. 87–64, §102(e)(3), substituted ''primary insurance amount'' for ''old-age or disability insurance benefit.''

Subsec. (c)(1). Pub. L. 87–64, §102(a), (e), (4), (5), substituted ''has attained age 62'' for ''has attained retirement age'' in cl. (B), ''based on a primary insurance amount which is less than one-half'' for ''each of which is less than one-half'' in cl. (D), and ''based on a primary insurance amount which is equal to or exceeds one-half'' for ''equal to or exceeding one-half'' in closing provisions.

Subsec. (c)(2)(A). Pub. L. 87–64, §102(a), substituted ''attainment of age 62'' for ''attainment of retirement age''.

Subsec. (c)(3). Pub. L. 87–64, §102(e)(6), substituted ''Except as provided in subsection (q) of this section, such'' for ''Such''.

Subsec. (e)(1). Pub. L. 87–64, §§102(a), 104(d)(1), substituted ''has attained age 62'' for ''has attained retirement age'' in subpar. (B), ''attainment of age 62'' for ''attainment of retirement age'' and ''attained age 62'' for ''attained retirement age'' in subpar. (C), and ''82½ percent'' for ''three-fourths'' in subpar. (D) and in closing provisions.

Subsec. (e)(2). Pub. L. 87–64, §104(a), substituted ''82½ percent'' for ''three-fourths''.

Subsec. (f)(1). Pub. L. 87–64, §§102(a), 104(d)(1), substituted ''has attained age 62'' for ''has attained retirement age'' in subpar. (B), and ''82½ percent'' for ''three-fourths'' in subpar. (E) and in closing provisions.

Subsec. (f)(2)(A). Pub. L. 87–64, §102(a), substituted ''attainment of age 62'' for ''attainment of retirement age''.

Subsec. (f)(3). Pub. L. 87–64, §104(b), substituted ''82½ percent'' for ''three-fourths''.

Subsec. (h)(1). Pub. L. 87–64, §§102(a), 104(d)(2), substituted ''has attained age 62'' for ''has attained retirement age'' in subpar. (A), and ''82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case)'' for ''three-fourths of the primary insurance amount of such deceased individual'' in subpar. (D) and in closing provisions.

Subsec. (h)(2). Pub. L. 87–64, §104(c), designated existing provisions as subpar. (A), increased the benefit from three-fourths to 82½ percent of the primary insurance amount, and added subpars. (B) and (C).

Subsec. (j). Pub. L. 87–64, §102(b)(3), extended provisions which formerly authorized waiver of old-age benefits or wife's benefits by a woman to permit waiver of any benefit by any individual.

Subsec. (q). Pub. L. 87–64, §102(b)(1), among other changes, authorized adjustment of the old-age insurance benefits for men and of the husband's insurance benefits for months prior to the month in which the individual attains age 65, simplified the formula for reducing benefits, and, in cases where an individual is entitled to a reduced benefit and such benefit is increased by reason of an increase in the primary insurance amount, required separate computation of the increase for and after the first month for which such increase is effective.

Subsec. (r). Pub. L. 87–64, §102(b)(1), extended application of the subsection to men, and provided in cases where an individual is entitled to a disability insurance benefit for the same month for which an application for a reduced wife's or husband's insurance benefit is effective, that the individual will be deemed to have filed an application for old-age insurance benefit in the first subsequent month for which the individual is not entitled to a disability insurance benefit.

Subsec. (s). Pub. L. 87–64, §102(b)(2)(A), repealed subsec. (s) which related to female disability insurance beneficiaries.

1960—Subsec. (d)(1). Pub. L. 86–778, §§201(a), (b), 205(a), 403(d), among other changes, struck out ''after 1939'' after ''fully or currently insured individual'' in opening clause, substituted ''a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits'' for ''a period of disability which did not end prior to the month in which he became entitled to old-age or disability insurance benefits or (if he has died) prior to

the month in which he died, at the beginning of such period or at the time he became entitled to such benefits or died)'' in subpar. (C), and inserted provisions making subpar. (C)(1) inapplicable, in the case of an individual entitled to disability insurance benefits, to a child of such individual unless he is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual) or was legally adopted by such individual before the end of the 24–month period beginning with the month after the month in which such individual most recently became entitled to disability insurance benefits, and substituted provisions authorizing the payment of benefits until the month preceding the third month following the month in which a child ceases to be under a disability (as so defined) after the month in which he attains age 18 for provisions which authorized payment of benefits until the child ceases to be under a disability (as so defined) on or after the day on which he attains age 18.

Subsec. (d)(2). Pub. L. 86–778, § 301(a), struck out provisions which required each child's insurance benefit, if there is more than one child entitled to benefits on the basis of an individual's wages and self-employment income, to be equal to the sum of (A) one-half of the primary insurance amount of the individual, and (B) one-fourth of the primary insurance amount divided by the number of such children.

Subsec. (d)(3). Pub. L. 86–778, §§ 202(a), 208(d), inserted provisions requiring that for purposes of such paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) of this title, shall, if such individual is the child's father, be deemed to be the legitimate child of such individual, and struck out subpar. (C) which related to a child living with and receiving more than one-half of his support from his stepfather.

Subsec. (e)(1). Pub. L. 86–778, § 205(a), struck out ''after 1939'' after ''died a fully insured individual'' in opening clause.

Subsec. (f)(1). Pub. L. 86–778, § 205(b), struck out ''after August 1950'' after ''died a fully and currently insured individual'' in opening clause.

Subsecs. (g)(1), (h)(1). Pub. L. 86–778, § 205(a), struck out ''after 1939'' after ''died a fully or currently insured individual'' in opening clause.

Subsec. (i). Pub. L. 86–778, §§ 103(a), (j)(2)(C), 203(a), amended second and third sentences to require payment to the funeral home to the extent of the unpaid expenses if all or part of the burial expenses remain unpaid, and to prescribe the manner of payment of any balance that may remain after the funeral home and the persons equitably entitled thereto have received payment, and substituted ''the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa'' for ''Puerto Rico, or the Virgin Islands'', ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title'', and ''is returned to any State'' for ''is returned to any of such States, or the District of Columbia''.

Pub. L. 86–624 substituted ''fifty States'' for ''forty-nine States''.

Subsec. (n). Pub. L. 86–778, § 211(i), substituted ''Section 403(b), (c), and (d) of this title'' for ''Section 403 (b) and (c) of this title'' in last sentence of cl. (1).

Subsec. (q)(5). Pub. L. 86–778, § 211(j), substituted ''under section 403(b) of this title or paragraph (1) of section 403(c) of this title'' for ''under paragraph (1) or (2) of section 403(b) of this title'' in cl. (A), and ''section 403(b), under section 403(c)(1), under section 403(d)(1), or under section 422(b) of this title'' for ''paragraph (1) or (2) of section 403(b) of this title, under section 403(c) of this title, or under section 422(b) of this title'' in cl. (B).

Subsec. (q)(6). Pub. L. 86–778, § 211(k), substituted ''section 403(b), under section 403(c)(1), under section 403(d)(1), or under section 422(b) of this title'' for ''section 403(b) (1) or (2), under section 403(c), or under section 422(b) of this title'' in cl. (A), and ''under section 403(b) of this title or paragraph (1) of section 403(c) of this title'' for ''under paragraph (1) or (2) of section 403(b) of this title'' in cl. (D).

Subsec. (t)(4)(D). Pub. L. 86–778, § 103(j)(2)(D), substituted ''section 410(*l*)(2)'' for ''section 410(m)(2)'', ''section 410(*l*)(3)'' for ''section 410(m)(3)'', and ''section 410(m)'' for ''section 410(n)'', wherever appearing.

Subsec. (t)(7). Pub. L. 86–778, § 211(*l*), substituted ''Subsections (b), (c), and (d) of section 403 of this title'' for ''Subsections (b) and (c) of section 403 of this title''.

1959—Subsec. (i). Pub. L. 86–70 substituted ''forty-nine States'' for ''forty-eight States''.

1958—Subsec. (b). Pub. L. 85–840, § 205(b), substituted ''old-age or disability insurance'' for ''old-age insurance'' in seven places, and inserted provisions terminating the wife's insurance benefit the month preceding the first month in which her husband is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

Subsec. (c)(1). Pub. L. 85–840, § 205(c), substituted ''old-age or disability insurance'' for ''old-age insurance'' wherever appearing, inserted provisions in subpar. (C) entitling the husband to an insurance benefit if he was receiving at least one-half of his support from the individual if she had a period of disability which did not end prior to the month in which she became entitled to old-age or disability insurance benefits, at the beginning of such period or at the time she became entitled to such benefits provided he filed proof of such support within two years after the month in which she filed application with respect to such period of disability or after the month in which she became entitled to such benefits, and inserted provisions terminating the husband's insurance benefit the month preceding the first month in which his wife is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

Subsec. (c)(2), (3). Pub. L. 85–840, § 301(a)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(1). Pub. L. 85–840, § 205(d), inserted provisions entitling the child of an individual entitled to disability insurance benefits to insurance benefits if the child was dependent upon such individual if such individual had a period of disability which did not end prior to the month in which he became entitled to old-age or disability insurance benefits or (if he has died) prior to the month in which he died, at the beginning of such period or at the time he became entitled to such benefits or died, and providing that the benefits to a child of a disability insurance beneficiary shall cease with the month before the first month for which the individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month.

Subsec. (d)(3) to (5). Pub. L. 85–840, § 306(a), struck out ''who has not attained the age of eighteen'' after ''A child'' wherever appearing.

Subsec. (d)(6). Pub. L. 85–840, § 307(a), added par. (6), and Pub. L. 85–840, § 306(a), repealed former par. (6), which related to dependency of a child who has attained the age of eighteen and who is under a disability which began before he attained the age of eighteen.

Subsec. (e)(3)(B). Pub. L. 85–840, § 301(b)(1), substituted ''which occurs within one year after such marriage and he did not die a fully insured individual'' for ''but she is not his widow (as defined in section 416(c) of this title)''.

Subsec. (e)(4). Pub. L. 85–840, § 307(b), added par. (4).

Subsec. (f)(1)(D). Pub. L. 85–840, § 205(e), inserted provisions entitling a widower to an insurance benefit if he was receiving at least one-half of his support from the individual, if the individual had a period of disability which did not end prior to the month in which she died, at the time such period began, or at the time of her death, or at the time she became entitled to old-age or disability insurance benefits, and he filed proof of such support within two years after the month in which she filed application with respect to the period of disability or two years after the date of her entitlement to old-age or disability insurance benefits or her death.

Subsec. (f)(2), (3). Pub. L. 85–840, § 301(c)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(4). Pub. L. 85–840, § 307(c), added par. (4).

Subsec. (g)(1)(F). Pub. L. 85–840, § 205(f), inserted provisions entitling a former wife divorced to an insurance

benefit, if she was receiving at least one-half of her support from an individual, if the individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of his death.

Subsec. (g)(3). Pub. L. 85–840, §303(a), added par. (3). Another par. (3), which was added by Pub. L. 85–798, was repealed by Pub. L. 85–840, §303(b), effective with respect to benefits payable for any month following August 1958.

Subsec. (g)(4). Pub. L. 85–840, §307(d), added par. (4).

Subsec. (h)(1). Pub. L. 85–840, §304(a)(1), struck out from opening clause provisions which prevented payment of a parent's benefit if the deceased individual left a widow who met the conditions in subsec. (e)(1)(D) of this section, a widower who met the conditions in subsec. (f)(1)(D) of this section, an unmarried child under the age of eighteen deemed dependent on such individual under subsec. (d)(3), (4), or (5) of this section, or an unmarried child who had attained the age of eighteen and was under a disability which began before he attained such age and who is deemed dependent on such individual under subsec. (d)(6) of this section.

Subsec. (h)(1)(B). Pub. L. 85–840, §205(g), inserted provisions entitling a parent to an insurance benefit if the parent was receiving at least one-half of his support from the individual, if the individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and the parent filed proof of such support within two years after the month in which the individual filed application with respect to such period of disability or two years after the date of such death.

Subsec. (h)(4). Pub. L. 85–840, §307(e), added par. (4).

Subsec. (i). Pub. L. 85–840, §305(a), required a widow or widower to be living in the same household with the deceased at the time of death in order to receive a lump-sum death payment.

Subsec. (k). Pub. L. 85–840, §205(h), substituted ''old-age or disability insurance'' for ''old-age insurance'' wherever appearing.

Subsec. (m). Pub. L. 85–840, §101(e), substituted ''less than the first figure in column IV of the table in section 415(a) of this title'' for ''less than $30'', and ''increased to the first figure in column IV of the table in section 415(a) of this title'' for ''increased to $30''.

Subsec. (*o*). Pub. L. 85–857 substituted ''described in section 3005 of Title 38'' for ''prescribed under section 601 of the Servicemen's and Veterans' Survivor Benefits Act''.

Subsec. (q)(5). Pub. L. 85–840, §205(i)(1), (2), inserted reference to section 422(b) of this title in subpar. (B), added subpar. (D), and substituted ''clauses (A), (B), (C), and (D)'' for ''clauses (A), (B), and (C)'' in closing provisions.

Subsec. (q)(6). Pub. L. 85–840, §205(i)(3), (4), inserted reference to section 422(b) of this title in subpar. (A), added subpar. (C), redesignated former subpar. (C) as (D), and substituted ''clauses (A), (B), (C), and (D))'' for ''clauses (A), (B), and (C)'' in closing provisions.

Subsec. (t)(4)(E). Pub. L. 85–927 added par. (E).

1957—Subsec. (b)(1). Pub. L. 85–238, §3(a), redesignated subpar. (D) as (C), and repealed former subpar. (C) which required the wife to be living with her husband at the time the application for benefits was filed.

Subsec. (c)(1). Pub. L. 85–238, §3(b), redesignated subpars. (D) and (E) as (C) and (D), respectively, and repealed former subpar. (C) which required the husband to be living with his wife at the time the application for benefits was filed.

Subsec. (e)(1). Pub. L. 85–238, §3(c), redesignated subpar. (E) as (D), and repealed former subpar. (D) which required the widow to be living with her husband at the time of his death.

Subsec. (f)(1). Pub. L. 85–238, §3(d), redesignated subpars. (E) and (F) as (D) and (E), respectively, and repealed former subpar. (D) which required the widower to be living with his wife at the time of her death.

Subsec. (g)(1)(F). Pub. L. 85–238, §3(e), struck out provisions which required the widow to be living with her husband at the time of his death.

Subsec. (h)(1). Pub. L. 85–238, §3(f), struck out references to subpar. (E) of subsec. (e)(1) of this section and to subpar. (F) of subsec. (f)(1) of this section.

Subsec. (p)(1). Pub. L. 85–238, §3(g), substituted ''subparagraph (C) of subsection (c)(1)'' for ''subparagraph (D) of subsection (c)(1)'' and ''subparagraph (D) of subsection (f)(1)'' for ''subparagraph (E) of subsection (f)(1)''.

Subsec. (t)(4)(D). Pub. L. 85–238, §1, added subpar. (D).

1956—Subsec. (a). Act Aug. 1, 1956, ch. 836, §102(d)(1), inserted ''Except as provided in subsection (q) of this section''.

Subsec. (a)(3). Act Aug. 1, 1956, ch. 836, §103(c)(1), included an individual entitled to disability insurance benefits for the month preceding the month in which he attained the age of 65.

Subsec. (b)(1). Act Aug. 1, 1956, ch. 836, §102(d)(2), (3), substituted ''old-age insurance benefits based on a primary insurance amount which'' for ''old-age insurance benefits each of which'' in cl. (D), and ''old-age insurance benefit based on a primary insurance amount which is equal to or exceeds'' for ''old-age insurance benefit equal to or exceeding'' in provisions following cl. (D).

Subsec. (b)(2). Act Aug. 1, 1956, ch. 836, §102(d)(4), inserted ''Except as provided in subsection (q) of this section''.

Subsec. (c)(1). Act. Aug. 1, 1956, ch. 836, §102(d)(5), (6), substituted ''the primary insurance amount of his wife'' for ''an old-age insurance benefit of his wife'' in cl. (E), and in provisions following cl. (E).

Subsec. (c)(2). Act Aug. 1, 1956, ch. 836, §102(d)(7), substituted ''primary insurance amount'' for ''old-age insurance benefit''.

Subsec. (d)(1). Act Aug. 1, 1956, ch. 836, §101(a), authorized child's insurance benefit for children, who at the time of filing application, are under a disability which began before they attained the age of 18, and permitted payment of such benefit until such disability ceases.

Subsec. (d)(2). Act Aug. 1, 1956, ch. 836, §102(d)(7), substituted ''primary insurance amount'' for ''old-age insurance benefit''.

Subsec. (d)(3) to (5). Act Aug. 1, 1956, ch. 836, §101(b)(1), substituted ''A child who has not attained the age of eighteen'' for ''A child'' wherever appearing in such paragraphs.

Subsec. (d)(6). Act Aug. 1, 1956, ch. 836, §101(b)(2), added par. (6).

Subsec. (e)(3). Act Aug. 1, 1956, ch. 836, §113, added par. (3).

Subsec. (h)(1). Act Aug. 1, 1956, ch. 836, §101(c), precluded payment of parent's benefit if an individual dies leaving an unmarried child over 18 who is under a disability which began before the age of 18 and who is deemed dependent on such individual.

Subsec. (i). Act Aug. 1, 1956, ch. 837, §403(a), substituted ''January 1, 1957'' for ''April 1956'', and inserted provisions authorizing payment of lump-sum death payment in the case of any individual who died outside the United States and the District of Columbia after December 1956 while performing service, as a member of a uniformed service, to which the provisions of section 410(m)(1) of this title are applicable.

Subsec. (j)(3). Act Aug. 1, 1956, ch. 836, §102(d)(8), added par. (3).

Subsec. (k)(2)(B). Act Aug. 1, 1956, ch. 836, §103(c)(2), inserted reference to section 423 of this title.

Subsec. (k)(3). Act Aug. 1, 1956, ch. 836, §102(d)(9), inserted provisions requiring reduction under subsection (q) of this section, and provided that the reduction should be not below zero.

Subsec. (m). Act Aug. 1, 1956, ch. 836, §102(d)(10), inserted references to subsection (q) of this section.

Subsec. (n)(1)(A). Act Aug. 1, 1956, ch. 836, §103(c)(3), inserted reference to section 423 of this title.

Subsec. (*o*). Act Aug. 1, 1956, ch. 837, §407, added subsec. (*o*).

Subsec. (p). Act Aug. 1, 1956, ch. 836, §114(a), added subsec. (p).

Subsecs. (q) to (s). Act Aug. 1, 1956, ch. 836, § 102(c), added subsecs. (q) to (s).

Subsecs. (t), (u). Act Aug. 1, 1956, ch. 836, §§ 118(a), 121(a), added subsecs. (t) and (u), respectively.

1955—Subsec. (i). Act Aug. 9, 1955, made subsection applicable to cases of deaths occurring before April 1956.

1954—Subsec. (e)(1)(C). Act Sept. 1, 1954, § 110(a), provided that applications for widow's insurance benefits would not be required if the widow was entitled to a mother's insurance benefit in the month prior to the month in which she attained retirement age.

Subsec. (g)(1)(D). Act Sept. 1, 1954, § 110(b), provided that applications for mother's insurance benefits would not be required if the widow was entitled to a wife's insurance benefit for the month preceding the month in which the insured individual died.

Subsec. (i). Act Sept. 1, 1954, §§ 102(i)(2), 110(c), inserted ", or an amount equal to $255, whichever is the smaller" after "primary insurance amount.", and provided that an application for a lump-sum death payment would not be required from an individual who was entitled to wife's or husband's insurance benefits for the month preceding the month in which the insured individual died.

Subsec. (j)(1). Act Sept. 1, 1954, § 105(a), substituted "twelfth" for "sixth".

Subsecs. (m), (n). Act Sept. 1, 1954, §§ 102(i)(1), 107, added subsecs. (m) and (n), respectively.

1953—Subsec. (i). Act Aug. 14, 1953, made subsec. (i) applicable to cases of deaths occurring before July 1955.

1950—Subsec. (a). Act Aug. 28, 1950, changed the name of the benefit provided by this subsection from "primary insurance benefit" to "old-age insurance benefit", and continued the conditions under which an individual becomes entitled to the benefits.

Subsec. (b). Act Aug. 28, 1950, continued the conditions required for the wife to be entitled to benefits.

Subsec. (c). Act Aug. 28, 1950, provided benefits for the dependent husband of a female old-age insurance beneficiary who was currently insured at the time of her entitlement to the old-age insurance benefit.

Subsec. (d). Act Aug. 28, 1950, increased the total amount of the family benefits in a survivor family in which there is at least one entitled child by one-fourth of the worker's old-age benefit and restates the circumstances under which a child is deemed dependent upon an individual.

Subsec. (e). Act Aug. 28, 1950, permitted a wife entitled to wife's insurance benefits to become entitled to widow's insurance benefits upon the husband's death without filing a new application.

Subsec. (f). Act Aug. 28, 1950, provided benefits for the dependent widower of a woman who is fully and currently insured at the time of her death.

Subsec. (g). Act Aug. 28, 1950, changed title of widow's current insurance benefits to mother's insurance benefits and provided for payment of such benefits to the divorced wife of a deceased insured worker if she had been receiving at least half her support from the worker, and if she is caring for her son, daughter, or legally adopted child who is receiving benefits on the worker's wage record.

Subsec. (h). Act Aug. 28, 1950, changed the requirement that a parent must have been chiefly dependent upon and supported by the wage earner to the requirement that the parent only need have been receiving one-half his support in order for the parent to be found a dependent.

Subsec. (i). Act Aug. 28, 1950, limited the amount of the lump-sum death payment to three times the worker's primary insurance amount instead of six times the amount.

Subsec. (j). Act Aug. 28, 1950, increased from 3 to 6 the number of months for which benefits may be paid retroactively to individuals who failed to file their applications as soon as they were otherwise eligible.

Subsecs. (k), (*l*). Act Aug. 28, 1950, added subsecs. (k) and (*l*).

1946—Subsec. (c). Act Aug. 10, 1946, § 402, changed par. (1) to prevent termination of benefits on adoption by a stepparent, grandparent, aunt or uncle and changed par. (3)(C) to omit qualification as to the time of such individual's death and to require the child to be chiefly supported by the stepfather.

Subsec. (f)(1). Act Aug. 10, 1946, § 403(a), provided that benefit payments to parents are prevented only if the individual leaves a widow or child who could become entitled to benefits and required parents to be chiefly instead of wholly dependent.

Subsec. (g). Act Aug. 10, 1946, § 404(a), required that a widow or widower must have been living with deceased at time of death to be entitled to a lump sum payment and provided that if there was no such spouse, the payment will be made to the person or persons equitably entitled thereto in the proportion and to the extent that he or they have paid the burial expenses.

Subsec. (h). Act Aug. 10, 1946, § 405(a), extended provision for payment of benefits retroactively for three months to the primary beneficiary and provided that retroactive benefits shall be reduced so as not to render erroneous any benefit previously paid.

1939—Act Aug. 10, 1939, amended section generally.

CHANGE OF NAME

Reference to Administrator of Veterans' Affairs deemed to refer to Secretary of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, § 203(d), Mar. 2, 2004, 118 Stat. 511, provided that: "The amendments made by this section [amending this section and sections 1004 and 1382 of this title] shall take effect on the first day of the first month that begins on or after the date that is 9 months after the date of enactment of this Act [Mar. 2, 2004]."

Pub. L. 108–203, title IV, § 412(c), Mar. 2, 2004, 118 Stat. 528, provided that:

"(1) IN GENERAL.—The amendment made by—

"(A) subsection (a)(1) [amending this section] shall apply to individuals with respect to whom the Commissioner of Social Security receives a removal notice after the date of the enactment of this Act [Mar. 2, 2004];

"(B) subsection (a)(2) [amending this section] shall apply with respect to notifications of removals received by the Commissioner of Social Security after the date of enactment of this Act; and

"(C) subsection (a)(3) [amending this section] shall be effective as if enacted on March 1, 1991.

"(2) SUBSEQUENT CORRECTION OF CROSS-REFERENCE AND TERMINOLOGY.—The amendments made by subsections (a)(4) and (b)(1) [amending this section] shall be effective as if enacted on April 1, 1997.

"(3) REFERENCES TO THE SECRETARY OF HOMELAND SECURITY.—The amendment made by subsection (b)(2) [amending this section] shall be effective as if enacted on March 1, 2003."

Pub. L. 108–203, title IV, § 418(c), Mar. 2, 2004, 118 Stat. 533, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 426 of this title] shall apply with respect to applications for benefits under title II of the Social Security Act [this subchapter] filed on or after the first day of the first month that begins after the date of enactment of this Act [Mar. 2, 2004], except that such amendments shall not apply in connection with monthly periodic benefits of any individual based on earnings while in service described in section 202(k)(5)(A) of the Social Security Act [subsec. (k)(5)(A) of this section] (in the matter preceding clause (i) thereof) if the last day of such service occurs before July 1, 2004.

"(2) TRANSITIONAL RULE.—In the case of any individual whose last day of service described in subparagraph (A) of section 202(k)(5) of the Social Security Act (as added by subsection (a) of this section) occurs within 5 years after the date of enactment of this Act—

''(A) the 60-month period described in such subparagraph (A) shall be reduced (but not to less than 1 month) by the number of months of such service (in the aggregate and without regard to whether such months of service were continuous) which—

''(i) were performed by the individual under the same retirement system on or before the date of enactment of this Act, and

''(ii) constituted 'employment' as defined in section 210 of the Social Security Act [section 410 of this title]; and

''(B) months of service necessary to fulfill the 60-month period as reduced by subparagraph (A) of this paragraph must be performed after the date of enactment of this Act.''

Pub. L. 108–203, title IV, §420A(b), Mar. 2, 2004, 118 Stat. 535, provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to benefits payable for months beginning with the 7th month that begins after the date of enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–182, §5, Apr. 7, 2000, 114 Stat. 199, provided that: ''The amendments made by this Act [amending this section and section 403 of this title] shall apply with respect to taxable years ending after December 31, 1999.''

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–170, title IV, §402(a)(4), Dec. 17, 1999, 113 Stat. 1908, provided that: ''The amendments made by this subsection [amending this section, section 1382 of this title, and section 552a of Title 5, Government Organization and Employees] shall apply to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after the month in which this Act is enacted [Dec. 1999].''

Pub. L. 106–170, title IV, §402(b)(2), Dec. 17, 1999, 113 Stat. 1908, provided that: ''The amendments made by this subsection [amending this section] shall apply to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after the month in which this Act is enacted [Dec. 1999].''

Pub. L. 106–170, title IV, §402(d)(3), Dec. 17, 1999, 113 Stat. 1909, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to benefits for months ending after the date of the enactment of this Act [Dec. 17, 1999].''

Pub. L. 106–169, title II, §207(e), Dec. 14, 1999, 113 Stat. 1839, provided that: ''The amendments made by this section [enacting section 1320a–8a of this title, amending this section and section 1382 of this title, and enacting provisions set out as a note under section 1320a–8a of this title] shall apply to statements and representations made on or after the date of the enactment of this Act [Dec. 14, 1999].''

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 308(g)(1) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Section 503(b) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for which applications are filed on or after the first day of the first month that begins at least 60 days after the date of the enactment of this Act [Sept. 30, 1996].''

Section 104(a)(2) of Pub. L. 104–121 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted [March 1996].''

Section 104(b)(3) of Pub. L. 104–121 provided that:

''(A) The amendments made by paragraph (1) [amending this section] shall apply with respect to final divorces occurring after the third month following the month in which this Act is enacted [March 1996].

''(B) The amendment made by paragraph (2) [amending this section] shall take effect on the date of the enactment of this Act [Mar. 29, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 4(b) of Pub. L. 103–387 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits for months commencing after 90 days after the date of the enactment of this Act [Oct. 22, 1994].''

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 308(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply (notwithstanding section 215(f) of the Social Security Act [section 415(f) of this title]) with respect to benefits payable for months after December 1994.''

Section 321(b)(1) of Pub. L. 103–296 provided that the amendment made by that section is effective as if included in section 603(b)(5)(A) of Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1227 of Title 8, Aliens and Nationality.

Section 5103(e) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 416, 423, 426, and 1383c of this title] (other than paragraphs (1) and (2)(C) of subsection (c) [amending sections 426 and 1383c of this title]) shall apply with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The amendments made by subsection (c)(1) [amending section 1383c of this title] shall apply with respect to medical assistance provided after December 1990. The amendments made by subsection (c)(2)(C) [amending section 426 of this title] shall apply with respect to items and services furnished after December 1990.

''(2) APPLICATION REQUIREMENTS FOR CERTAIN INDIVIDUALS ON BENEFIT ROLLS.—In the case of any individual who—

''(A) is entitled to disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] for December 1990 or is eligible for supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter], or State supplementary payments of the type referred to in section 1616(a) of such Act [section 1382e(a) of this title] (or payments of the type described in section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title]) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93–66 [set out as a note under section 1382 of this title]), for January 1991,

''(B) applied for widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act during 1990 [subsec. (e) or (f) of this section], and

''(C) is not entitled to such benefits under such subsection (e) or (f) for any month on the basis of such application by reason of the definition of disability under section 223(d)(2)(B) of the Social Security Act (as in effect immediately before the date of the enactment of this Act [Nov. 5, 1990]), and would have been so entitled for such month on the basis of such application if the amendments made by this section had been applied with respect to such application,

for purposes of determining such individual's entitlement to such benefits under subsection (e) or (f) of section 202 of the Social Security Act for months after December 1990, the requirement of paragraph (1)(C)(i) of such subsection shall be deemed to have been met.''

Section 5116(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply with respect to applications for benefits filed on or after January 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10203(b) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply—

''(1) in the case of any individual's old-age insurance benefit referred to in section 202(q)(3)(E) of the Social Security Act [subsec. (q)(3)(E) of this section] (as in effect before the amendments made by this section), only if such individual attains age 62 on or after January 1, 1990, and

''(2) in the case of any individual's disability insurance benefit referred to in section 202(q)(3)(F) or (G) of such Act (as so in effect), only if such individual both attains age 62 and becomes disabled on or after such date.''

Section 10301(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits payable for months after December 1989, but only on the basis of applications filed on or after January 1, 1990.''

Section 10302(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to misinformation furnished after December 1982 and to benefits for months after December 1982.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8004(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply only in the case of deportations occurring, and final orders of deportation issued, on or after the date of enactment of this Act [Nov. 10, 1988], and only to benefits for months beginning (and deaths occurring) on or after such date.''

Amendment by section 8007(b) of Pub. L. 100–647 applicable to benefits paid for (and items and services furnished in) months after December 1988, see section 8007(d) of Pub. L. 100–647, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Section 8010(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to benefits payable under section 202(e) or section 202(f) of the Social Security Act [subsec. (e) or (f) of this section] on the basis of the wages and self-employment income of an individual who dies after the month in which this Act is enacted [Nov. 10, 1988].''

Section 8014(c) of Pub. L. 100–647 provided that: ''The preceding provisions of this section (including the amendments made by subsection (a)) [amending this section and enacting provisions set out below] shall apply as if they had been included or reflected in the provisions of section 9007 of the Omnibus Budget Reconciliation Act of 1987 (101 Stat. 1330–289) [Pub. L. 100–203, amending this section and enacting provisions set out below] at the time of its enactment [Dec. 22, 1987].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9007(f) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits for months after December 1987; except that nothing in such amendments shall affect any exemption (from the application of the pension offset provisions contained in subsection (b)(4), (c)(2), (e)(7), (f)(2), or (g)(4) of section 202 of the Social Security Act [this section]) which any individual may have by reason of subsection (g) or (h) of section 334 of the Social Security Amendments of 1977 [section 334(g), (h) of Pub. L. 95–216, set out as notes below].''

Section 9010(f) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 416, 423, and 426 of this title] shall take effect January 1, 1988, and shall apply with respect to—

''(1) individuals who are entitled to benefits which are payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 of the Social Security Act [this section] or subsection (a)(1) of section 223 of such Act [section 423 of this title] for any month after December 1987, and

''(2) individuals who are entitled to benefits which are payable under any provision referred to in paragraph (1) for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by this section has not elapsed as of January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1883(f) of Pub. L. 99–514 provided that: ''Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 410, 411, 415, 418, 421, 423, 602, 657, 658, 664, 674, 1301, 1320b–6, 1382a, 1383, and 1397b of this title and sections 1402 and 3121 of Title 26, Internal Revenue Code, repealing section 1397f of this title, enacting provisions set out as notes under sections 602 and 678 of this title, and amending provisions set out as a note under section 410 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].''

Section 12104(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for which application is filed after the date of the enactment of this Act [Apr. 7, 1986].''

Section 12107(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 423 of this title] are effective December 1, 1980, and shall apply with respect to any individual who is under a disability (as defined in section 223(d) of the Social Security Act [section 423(d) of this title]) on or after that date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by sections 2661(b)–(f) and 2662(c)(1) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 111(a)(8) of Pub. L. 98–21 provided that: ''The amendments made by this subsection [amending this section and sections 403, 415, and 430 of this title] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [section 415(i) of this title] for years after 1982.''

Section 114(c)(2) of Pub. L. 98–21 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to increment months in calendar years after 1983.''

Section 131(d) of Pub. L. 98–21 provided that:

''(1) The amendments made by this section [amending this section and section 426 of this title] shall be effective with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1983.

''(2) In the case of an individual who was not entitled to a monthly benefit of the type involved under title II of such Act for December 1983, no benefit shall be paid under such title by reason of such amendments unless proper application for such benefit is made.''

Section 132(c)(1) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly insurance benefits for months after December 1984, but only on the basis of applications filed on or after January 1, 1985.''

Section 133(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly insurance benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under section 202(e) or (f) of the Social Security Act [subsec. (e) or (f) of this section] (other than making application for such benefits) after December 1984.''

Section 134(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits for months after December 1983.''

Section 301(a)(5) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title VI, §2662(d), July 18, 1984, 98 Stat. 1159, provided that the amendment made by that section is effective with respect to monthly insurance benefits for months after December 1984 (but only on the basis of applications filed on or after January 1, 1985).

Section 307(b) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [April 1983], but only in cases in which the 'last month' referred to in the provision amended is a month after the month in which this Act is enacted.''

Section 310 of title III of Pub. L. 98–21 provided that:

''(a) Except as otherwise specifically provided in this title, the amendments made by this part [part A (§§301–310) of title III of Pub. L. 98–21, amending this section and sections 403, 405, 416, 417, 422, 423, 425, 426, 427, and 428 of this title] apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [April 1983].

''(b) Nothing in any amendment made by this part shall be construed as affecting the validity of any benefit which was paid, prior to the effective date of such amendment, as a result of a judicial determination.''

Section 334(b) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to survivors whose applications for monthly benefits are filed after the second month following the month in which this Act is enacted [April 1983].''

Section 337(b) of Pub. L. 98–21, as amended by Pub. L. 98–617, §2(a)(1), Nov. 8, 1984, 98 Stat. 3294, provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply only with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months after June 1983.''

[Section 2(a)(2) of Pub. L. 98–617 provided that: ''The amendments made by this subsection [amending section 337(b) of Pub. L. 98–21, set out above] shall apply to benefits payable under title II of the Social Security Act [this subchapter] for months beginning after the month of enactment of this Act [November 1984].'']

Section 339(c) of Pub. L. 98–21 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 423 of this title] shall apply with respect to monthly benefits payable for months beginning on or after the date of enactment of this Act [Apr. 20, 1983].''

Section 340(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply with respect to any individual who initially becomes eligible for benefits under section 202 or 223 [this section or section 423 of this title] after December 31, 1984.''

Section 7(d) of Pub. L. 97–455 provided that: ''The amendments made by subsections (a) [enacting and amending provisions set out as notes under this section] and (c) [amending this section] of this section shall be effective with respect to monthly insurance benefits for months after November 1982.''

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by section 2201(b)(10), (11), (d)(1), (2) of Pub. L. 97–35 and amendment by section 2(e) of Pub. L. 97–123 applicable with respect to benefits for months after December 1981, and amendment by section 2201(f) of Pub. L. 97–35 applicable with respect to deaths occurring after December 1981, with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

Section 2202(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section and section 416 of this title] shall apply only with respect to deaths occurring after August 1981.''

Section 2203(f)(1), (2) of Pub. L. 97–35 provided that:

''(1) The amendments made by subsections (a), (b), and (c) [amending this section and section 416 of this title] of this section shall apply only to monthly insurance benefits payable to individuals who attain age 62 after August 1981.

''(2) The amendments made by subsection (d) of this section [amending this section and section 416 of this title] shall apply to monthly insurance benefits for months after August 1981, and only in the case of individuals who were not entitled to such insurance benefits for August 1981 or any preceding month.''

Section 2205(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to wife's and mother's insurance benefits for months after the month in which this Act is enacted [August 1981], except that, in the case of an individual who is entitled to such a benefit (on the basis of having a child in her care) for the month in which this Act is enacted [August 1981], such amendments shall not take effect until the first day of the first month which begins 2 years or more after the date of the enactment of this Act [Aug. 13, 1981].''

Section 2206(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 403 and 415 of this title] shall apply only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981.''

Section 2210(b) of Pub. L. 97–35 provided that: ''Except as provided in subsection (c) [section 2210(c) of Pub. L. 97–35, set out below], the amendments made by subsection (a) [amending this section] shall apply to child's insurance benefits under section 202(d) of the Social Security Act [subsec. (d) of this section] for months after July 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1011(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to applications filed on or after the first day of the first month which begins 60 days or more after the date of the enactment of this Act [Dec. 5, 1980].''

Section 5(d) of Pub. L. 96–473 provided that: ''The amendments made by this section [amending this section and sections 416 and 423 of this title] shall be effective with respect to benefits payable for months beginning on or after October 1, 1980.''

Section 303(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 416, 422, 423, 1382, and 1382c of this title] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980], and shall apply with respect to any individual whose disability has not been determined to have ceased prior to such first day.''

Section 306(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 416 and 423 of this title] shall apply to applications filed after the month in which this Act is enacted [June 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 206 of title II of Pub. L. 95–216 provided that: ''The amendments made by the provisions of this title other than sections 201(d), 204, and 205(a) [amending this section and sections 403, 415, 417, 424a, and 1395r of this title] shall be effective with respect to monthly benefits under title II of the Social Security Act [this subchapter] payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after such month. The amendments made by section 201(d) [amending section 415 of this title] shall be effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies, after December 1977. The amendments made by section 204 [amending this section and section 403 of this title] shall be effective with respect to monthly benefits for months after May 1978. The amendment made by section 205(a) [amending this section] shall be effective with respect to monthly benefits payable for months after December 1978 based on the wages and self-employment income of individuals who die after December 1978.''

Section 331(d) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to monthly benefits payable for months after December 1977.''

Section 332(b) of Pub. L. 95–216 provided that: ''The amendments made by subsection (a) [amending this section and section 426 of this title] shall be effective with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] to which an individual becomes entitled on the basis of an application filed on or after January 1, 1978.''

Section 334(f) of Pub. L. 95–216 as amended by section 7(a)(2) of Pub. L. 97–455, provided that: ''Subject to subsections (g) and (h) [section 334(g) and (h) of Pub. L. 95–216, set out as notes below], the amendments made by this section [amending this section and section 426 of this title and enacting provisions set out as notes under this section] shall apply with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [December 1977], on the basis of applications filed in or after the month in which this Act is enacted.''

Section 336(c)(1) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979.''

Section 337(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979.''

Section 353(f)(1) of Pub. L. 95–216 provided that the amendment made by that section is effective with respect to convictions after Dec. 31, 1977.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 603 of Pub. L. 93–445 provided that: ''The provision of title II of this Act [set out as a note under section 231 of Title 45, Railroads] and the amendments made by title III and title IV of this Act [amending this section and sections 405, 410, 416, 426, 1395s, 1395u, 1395v, 1395gg, and 1395kk of this title and sections 352, 354, 360, 361, and 362 of Title 45] shall become effective on January 1, 1975.''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 240(b) of Pub. L. 93–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [July 1973] on the basis of applications for such benefits filed in or after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 102(i) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 403 of this title and enacting provisions set out as notes under this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972.''

Section 103(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall be applicable with respect to old-age insurance benefits payable under title II of the Social Security Act [this subchapter] for months beginning after 1972.''

Section 107(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 403, 422, and 425 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972, except that in the case of an individual who was not entitled to a monthly benefit under title II of such Act for December 1972 such amendments shall apply only on the basis of an application filed in or after the month in which this Act is enacted [October 1972].''

Section 108(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1972 except that in the case of an individual who was not entitled to a monthly benefit under such section 202 for December 1972 such amendments shall apply only on the basis of an application filed after September 30, 1972.''

Section 109(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972.''

Section 110(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972.''

Section 111(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1967 on the basis of an application filed in or after the month in which this Act is enacted [October 1972], except that such amendments shall not apply with respect to benefits for any month before the month in which this Act is enacted unless such application is filed before the close of the sixth month after the month in which this Act is enacted.''

Section 112(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [October 1972].''

Section 113(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to monthly benefits payable under title II of the

Social Security Act [this subchapter] for months after December 1972, but only on the basis of applications filed on or after the date of the enactment of this Act [Oct. 30, 1972].''

Section 114(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972 on the basis of applications filed on or after the date of enactment of this Act [Oct. 30, 1972].''

Amendment by section 116(b), (c) of Pub. L. 92–603 effective with respect to applications for widow's and widower's insurance benefits based on disability under this section filed in or after October 1972 or before October 1972 under specified conditions, see section 116(e) of Pub. L. 92–603, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 92–223 provided that: ''The amendments made by the first section of this Act [amending this section] shall be effective only in the case of lump-sum death payments under title II of the Social Security Act [this subchapter] made with respect to deaths which occur after December 31, 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 1004(d) of Pub. L. 91–172 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1969.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 103(e) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.''

Section 104(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 403, 416, 422, and 425 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after the month in which this Act is enacted [January 1968].''

Section 112(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed after the date of enactment of this Act [Jan. 2, 1968].''

Section 151(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 228e of Title 45, Railroads] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] (and annuities accruing under the Railroad Retirement Act of 1937 [section 228a et seq. of Title 45]) for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968].''

Section 157(d) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968].''

Amendment by section 158(c)(1), (2) of Pub. L. 90–248, applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

Section 162(a)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to six-month periods (within the meaning of section 202(t)(1)(A) of the Social Security Act [subsec. (t)(1)(A) of this section]) which begin after the date of the enactment of this Act [Jan. 2, 1968].''

Section 162(b)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months beginning after June 30, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 303(d) of Pub. L. 89–97 effective with respect to applications for disability insurance benefits under section 423 of this title, and for disability determinations under section 416(i) of this title, filed in or after July 1965 or before July 1965, if the applicant has not died before such month and notice of final administrative decision has not been given to the applicant before such month, see section 303(f)(1), of Pub. L. 89–97, set out as a note under section 423 of this title.

Section 304(*o*) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 415, 416, and 423 of this title] shall apply with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for and after the second month following the month [July 1965] in which this Act is enacted, but only on the basis of applications filed in or after the month in which this Act is enacted.''

Section 306(d) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 403, 416, 422, and 425 of this title] shall apply with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] for months after December 1964; except that—

''(1) in the case of an individual who was not entitled to a child's insurance benefit under subsection (d) of such section [subsec. (d) of this section] for the month in which this Act is enacted [July 1965], such amendments shall apply only on the basis of an application filed in or after the month in which this Act is enacted, and

''(2) no monthly insurance benefit shall be payable for any month before the second month following the month in which this Act is enacted [July 1965] by reason of section 202(d)(1)(B)(ii) of the Social Security Act [subsec. (d)(1)(B)(ii) of this section] as amended by this section.''

Section 307(c) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] for and after the second month following the month [July 1965] in which this Act is enacted, but only on the basis of applications filed in or after the month in which this Act is enacted.''

Section 308(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 403, 405, 416, and 422 of this title] shall be applicable with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] beginning with the second month following the month in which this Act is enacted [July 1965]; but, in the case of an individual who was not entitled to a monthly insurance benefit under section 202 of such Act [this section] for the first month following the month in which this Act is enacted [July 1965], only on the basis of an application filed in or after the month in which this Act is enacted.''

Amendment by section 319(d) of Pub. L. 89–97 applicable with respect to taxable years beginning after December 31, 1950, see section 319(e) of Pub. L. 89–97, set out as a note under section 1402 of Title 26.

Section 323(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall be applicable to persons who file applications, or on whose behalf applications are filed, for benefits under section 202(d) of the Social

Security Act [subsec. (d) of this section] on or after the date this section is enacted [July 30, 1965]. The time limit provided by section 202(d)(10)(B) of such Act [subsec. (d)(10)(B) of this section] as amended by this section for legally adopting a child shall not apply in the case of any child who is adopted before the end of the 12-month period following the month in which this section is enacted.''

Section 324(b) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to (1) applications for lump-sum death payments filed in or after the month [July 1965] in which this Act is enacted, and (2) monthly benefits based on applications filed in or after such month.''

Amendment by section 328(a) of Pub. L. 89–97 applicable with respect to applications filed on or after July 30, 1965, applications as to which the Secretary has not made a final decision before July 30, 1965, and, if a civil action with respect to a final decision of the Secretary has been commenced under section 405(g) of this title before July 30, 1965, applications as to which there has been no final judicial decision before July 30, 1965, see section 328(d) of Pub. L. 89–97, set out as a note under section 416 of this title.

Section 333(d) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] beginning with the second month following the month in which this Act is enacted [July 1965]; but, in the case of an individual who was not entitled to a monthly insurance benefit under section 203(e) or (f) of such Act [subsec. (e) or (f) of this section] for the first month following the month in which this Act is enacted, only on the basis of an application filed in or after the month in which this Act is enacted.''

Section 334(g) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall be applicable only with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] beginning with the second month following the month in which this Act is enacted [July 1965], but only on the basis of applications filed in or after the month in which this Act is enacted.''

Amendment by section 339(b) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under subchapter II of this chapter beginning with September 1965 but only on the basis of an application filed in or after July 1965, see section 339(c) of Pub. L. 89–97, set out as a note under section 416 of this title.

Section 343(b) of Pub. L. 89–97 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [July 1965]; except that, in the case of an individual who was not entitled to child's insurance benefits under section 202(d) of such Act [subsec. (d) of this section] for the month in which this Act was enacted, such amendment shall apply only on the basis of an application filed in or after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 102(f) of title I of Pub. L. 87–64 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above] based on applications filed in or after March 1961.

''(2)(A) Except as provided in subparagraphs (B), (C), and (D), section 202(q) of such Act [subsec. (q) of this section], as amended by subsection (b)(1), shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(B) Section 202(q)(3) of such Act, as amended by subsection (b)(1), shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above], but only if the increase described in such section 202(q)(3)—

''(i) is not effective for any month beginning before the effective date of this title, or

''(ii) is based on an application for a recomputation filed on or after the effective date of this title.

''(C) In the case of any individual who attained age 65 before the effective date of this title, the adjustment in such individual's reduction period provided for in section 202(q)(6) of such Act [subsec. (q)(6) of this section], as amended by subsection (b)(1), shall not apply to such individual unless the total of the months specified in subparagraphs (A), (B), and (C) of such section 202(q)(6) is not less than 3.

''(D) In the case of any individual entitled to a monthly benefit for the last month beginning before the effective date of this title, if the amount of such benefit for any month thereafter is, solely by reason of the change in section 202(q) of such Act [subsec. (q) of this section] made by subsection (b)(1), lower than the amount of such benefit for such last month, then it shall be increased to the amount of such benefit for such last month.

''(3) Section 202(r) of such Act [subsec. (r) of this section], as amended by subsection (b)(1), shall apply only with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above], except that subparagraph (B) of section 202(r)(2) (as so amended) shall apply only if the first subsequent month described in such subparagraph (B) is a month beginning on or after the effective date of this title.

''(4) The amendments made by subsection (b)(2) [amending this section and sections 416 and 423 of this title] shall take effect on the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(5) The amendments made by subsection (b)(3) [amending this section] shall apply with respect to applications for monthly benefits filed on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(6) The amendments made by subsections (c) and (d)(1) and (2) [amending sections 409, 413, 415, 416, and 423 of this title] shall apply with respect to—

''(A) monthly benefits for months beginning on or after the Effective Date of this title [see Effective Date of 1961 Amendment note set out above] based on applications filed in or after March 1961, and

''(B) lump-sum death payments under title II of the Social Security Act [this subchapter] in the case of deaths on or after the effective date of this title.

''(7) The amendment made by subsection (d)(3) [amending section 415 of this title] shall take effect on the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(8) The amendments made by subsection (e) [amending this section] shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(9) For purposes of this subsection, the term 'monthly benefits' means monthly insurance benefits under title II of the Social Security Act [this subchapter].''

Section 104(e) of title I of Pub. L. 87–64 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].''

Section 109 of title I of Pub. L. 87–64 provided that: ''Except as otherwise provided, the effective date of this title [see Tables for classifications] is the first day of the first calendar month which begins on or after the 30th day after the date of the enactment of this Act [June 30, 1961].''

EFFECTIVE DATE OF 1960 AMENDMENTS

Section 103(v) of Pub. L. 86–778, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsection (a) [amending this section and provisions set out as notes under this section] shall apply only with respect to reinterments after the date of the enactment of this Act [Sept. 13, 1960]. The amendments made by subsections (b), (e), and (f) [amending sections 403 and 410 of this title] shall apply only with respect to service performed after 1960; except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, such amendments shall apply only in the case of taxable years beginning after 1960. The amendments made by subsections (d), (i), (*o*), and (p) [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code, and amending section 418 of this title and section 3121 of Title 26] shall apply only with respect to service performed after 1960. The amendments made by subsections (h) and (*l*) [amending section 411 of this title and section 1402 of Title 26] shall apply only in the case of taxable years beginning after 1960. The amendments made by subsections (c), (n), (q), and (r) [enacting section 3125 of Title 26 and amending section 410 of this title and sections 3121, 6205, and 6413 of Title 26] shall apply only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act [this subchapter] extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by such title II extended to the officers and employees of such Government and such political subdivisions and instrumentalities. The amendments made by subsections (g) and (k) [amending section 411 of this title and section 1402 of Title 26] shall apply only in the case of taxable years beginning after 1960, except that, insofar as they involve the nonapplication of section 932 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 932 of Title 26] to the Virgin Islands for purposes of chapter 2 of such Code and section 211 of the Social Security Act [section 411 of this title], such amendments shall be effective in the case of all taxable years with respect to which such chapter 2 (and corresponding provisions of prior law) and such section 211 [section 411 of this title] are applicable. The amendments made by subsections (j), (s), and (t) [amending this section and sections 405, 409, 410, 411, 415, 417, and 418 of this title and sections 7213 and 7701 of Title 26 and repealing section 419 of this title] shall take effect on the date of the enactment of this Act [Sept. 13, 1960]; and there are authorized to be appropriated such sums as may be necessary for the performance by any officer or employee of functions delegated to him by the Secretary of the Treasury in accordance with the amendment made by such subsection (t) [amending section 7701 of Title 26].

''(2) The amendments made by subsections (c) and (n) [amending section 410 of this title and section 3121 of Title 26] shall have application only as expressly provided therein, and determinations as to whether an officer or employee of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, is an employee of the United States or any agency or instrumentality thereof within the meaning of any provision of law not affected by such amendments, shall be made without any inferences drawn from such amendments.

''(3) The repeal (by subsection (j)(1)) of section 219 of the Social Security Act [section 419 of this title], and the elimination (by subsections (e), (f), (h), (j)(2), and (j)(3)) of other provisions of such Act [from sections 410 and 411 of this title] making reference to such section 219 [section 419 of this title], shall not be construed as changing or otherwise affecting the effective date specified in such section for the extension to the Commonwealth of Puerto Rico of the insurance system under title II of such Act [this subchapter], the manner or consequences of such extension, or the status of any individual with respect to whom the provisions so eliminated are applicable.''

Section 201(c) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall apply as though this Act had been enacted on August 28, 1958, and with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after August 1958 based on applications for such benefits filed on or after August 28, 1958.''

Section 202(b) of Pub. L. 86–778 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning with the month in which this Act is enacted [September 1960], but only if an application for such benefits is filed in or after such month.''

Section 203(b) of Pub. L. 86–778 provided that: ''The amendment made by subsection (a) [amending this section] shall apply—

''(1) in the case of the death of an individual occurring on or after the date of the enactment of this Act [Sept. 13, 1960], and

''(2) in the case of the death of an individual occurring prior to such date, but only if no application for a lump-sum death payment under section 202(i) of the Social Security Act [subsec. (i) of this section] is filed on the basis of such individual's wages and self-employment income prior to the third calendar month beginning after such date.''

Section 205(d) of Pub. L. 86–778 provided that: ''The preceding provisions of this section and the amendments made thereby [amending this section] shall apply only in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [September 1960], on the basis of applications filed in or after such month.''

Amendment by section 208(d) of Pub. L. 86–778 applicable (1) with respect to monthly benefits under this subchapter for months beginning with September 1960 on the basis of an application filed in or after such month, and (2) in the case of a lump-sum death payment under this subchapter based on an application filed in or after September 1960, but only if no person, other than the person filing such application, has filed an application for a lump-sum death payment under this subchapter prior to Sept. 13, 1960 with respect to the death of the same individual, see section 208(f) of Pub. L. 86–778, set out as a note under section 416 of this title.

Amendment by section 211(i)–(*l*) of Pub. L. 86–778 effective in the manner provided in section 211(p) and (q) of Pub. L. 86–778, see section 211(p)–(s) of Pub. L. 86–778 set out as a note under section 403 of this title.

Section 301(b) of Pub. L. 86–778 provided that: ''The amendment made by this section [amending this section] shall apply only with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after the second month following the month in which this Act is enacted [September 1960].''

Amendment by section 403(d) of Pub. L. 86–778 applicable only with respect to benefits under subsec. (d) of

this section for months after September 1960, in the case of individuals who, without regard to such amendment, would have been entitled to such benefits for September 1960, or for any succeeding month, see section 403(e) of Pub. L. 86–778, set out as a note under section 422 of this title.

Section 47(e) of Pub. L. 86–624 provided that: ''The amendment made by section 30(c)(1) [amending this section] shall be applicable in the case of deaths occurring on or after August 21, 1959.''

EFFECTIVE DATE OF 1959 AMENDMENT

Section 47(e) of Pub. L. 86–70 provided that: ''The amendment made by paragraph (1) of subsection (c) of section 32 [amending this section] shall apply in the case of deaths occurring on or after January 3, 1959.''

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 302 of Pub. L. 85–927 provided that: ''The amendments made by section 301 of this Act [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1956, and with respect to lump-sum death payments under such section 202 in the case of deaths occurring after December 1956.''

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding section 101 of Title 38, Veterans' Benefits.

Amendment by section 101(e) of Pub. L. 85–840 applicable in the case of monthly benefits under subchapter II of this chapter for months after December 1958, and in the case of lump-sum death payments under subchapter II of this chapter, with respect to deaths occurring after such month, see section 101(g) of Pub. L. 85–840, set out as a note under section 415 of this title.

Amendment by section 205(b)–(i) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

Section 301(f) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Section 304(a)(2) of Pub. L. 85–840 provided that: ''The amendment made by this subsection [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Section 305(c) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply in the case of lump-sum death payments under such section 202(i) [subsec. (i) of this section] on the basis of the wages and self-employment income of any individual who dies after the month in which this Act is enacted [August 1958].''

Section 306(b) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Section 307(h)(1) of Pub. L. 85–840 provided that: ''The amendments made by this section (other than by subsections (f) and (g) [amending this section]) shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months following the month in which this Act is enacted [August 1958]; except that in any case in which benefits were terminated with the close of the month in which this Act is enacted or any prior month and, if the amendments made by this section had been in effect for such month, such benefits would not have been terminated, the amendments made by this section shall apply with respect to monthly benefits under section 202 of the Social Security Act for months beginning after the date of enactment of this Act, but only if an application for such benefits is filed after such date.''

EFFECTIVE DATE OF 1957 AMENDMENT

Section 2 of Pub. L. 85–238 provided that: ''The amendments made by the first section of this Act [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1956, and with respect to lump-sum death payments under such section 202 in the case of deaths occurring after December 1956.''

Section 3(i) of Pub. L. 85–238 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 416 of this title] shall apply in the case of monthly benefits under section 202 of the Social Security Act [this section] for months after the month in which this Act is enacted [August 1957].

''(2) The amendment made by subsection (f) [amending this section] shall not apply in the case of benefits under section 202(h) of the Social Security Act [subsec. (h) of this section], based on the wages and self-employment income of a deceased individual who died in or prior to the month in which this Act is enacted [August 1957] for any parent who files the proof of support, required by such section 202(h), in or prior to the month in which this Act is enacted; and the amendment to section 216(h)(1) of such Act [section 416(h)(1) of this title] made by subsection (h) of this section shall not operate to deprive any such parent of benefits to which he would otherwise be entitled under section 202(h) of such Act.''

EFFECTIVE DATE OF 1956 AMENDMENTS

Section 403(b) of act Aug. 1, 1956, ch. 837, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as though it had been enacted on March 31, 1956.''

Section 101(h) of act Aug. 1, 1956, ch. 836, provided that:

''(1) The amendments made by this section [amending this section and section 403 of this title], other than subsection (c) [amending this section], shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1956, but only, except as provided in paragraph (2), on the basis of an application filed after September 1956. For purposes of title II of the Social Security Act, as amended by this Act [this subchapter], an application for wife's, child's, or mother's insurance benefits under such title II filed, by reason of this paragraph, by an individual who was entitled to benefits prior to, but not for, December 1956 and whose entitlement terminated as a result of a child's attainment of age eighteen shall be treated as the application referred to in subsection (b), (d), and (g), respectively, of section 202 of such Act.

''(2) In the case of an individual who was entitled, without the application of subsection (j)(1) of such section 202 [subsec. (j)(1) of this section], to a child's insurance benefit under subsection (d) of such section [subsec. (d) of this section] for December 1956, such amendments shall apply with respect to benefits under such section 202 [this section] for months after December 1956.

''(3) The amendment made by subsection (c) [amending this section] shall apply in the case of benefits under section 202(h) of the Social Security Act [subsec. (h) of this section] based on the wages and self-employment income of an individual who dies after August 1956.''

Section 114(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of lump-sum death payments under title II of the Social Security Act [this subchapter], and monthly benefits under such title for months after August 1956, based on applications filed after August 1956.''

Section 118(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1956 and in the case of lump-sum death payments under section 202(i) of such Act [subsec. (i) of this section] with respect to deaths occurring after December 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 105(b) of act Sept. 1, 1954, provided that: ''The amendment made by subsection (a) [amending this section] shall be applicable only in the case of applications for monthly benefits under section 202 of the Social Security Act [this section] filed after August 1954; except that no individual shall, by reason of such amendment, be entitled to any benefit for any month prior to February 1954.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 101(b)(1), (3) of act Aug. 28, 1950, provided that:

''(1) Except as provided in paragraph (3), the amendment made by subsection (a) of this section [amending this section] shall take effect September 1, 1950.

''(3) Section 202(j)(2) of the Social Security Act [subsec. (j)(2) of this section], as amended by this Act, shall take effect on the date of enactment of this Act [Aug. 28, 1950].''

EFFECTIVE DATE OF 1946 AMENDMENT

Section 403(b) of act Aug. 10, 1946, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases of applications for benefits under that Act filed after December 31, 1946.''

Section 404(b) of act Aug. 10, 1946, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases where the death of the insured individual occurs after December 31, 1946.''

Subsec. 405(b) of act Aug. 10, 1946, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases of applications for benefits under this title [this subchapter] filed after December 31, 1946.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

CONSTRUCTION OF 1994 AMENDMENTS

Section 7 of Pub. L. 103–387 provided that: ''Until March 31, 1995, any reference in this Act [see Short Title of 1994 Amendments note, set out under section 1 of Title 26, Internal Revenue Code] (other than section 3(d) [108 Stat. 4075]) or any amendment made by this Act to the Commissioner of Social Security shall be deemed a reference to the Secretary of Health and Human Services.''

PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS

Section 106 of Pub. L. 104–121 provided that:

''(a) IN GENERAL.—During a 2-year period beginning as soon as practicable in 1996, the Commissioner of Social Security shall conduct a pilot study of the efficacy of providing certain individualized information to recipients of monthly insurance benefits under section 202 of the Social Security Act [this section], designed to promote better understanding of their contributions and benefits under the social security system. The study shall involve solely beneficiaries whose entitlement to such benefits first occurred in or after 1984 and who have remained entitled to such benefits for a continuous period of not less than 5 years. The number of such recipients involved in the study shall be of sufficient size to generate a statistically valid sample for purposes of the study, but shall not exceed 600,000 beneficiaries.

''(b) ANNUALIZED STATEMENTS.—During the course of the study, the Commissioner shall provide to each of the beneficiaries involved in the study one annualized statement, setting forth the following information:

''(1) an estimate of the aggregate wages and self-employment income earned by the individual on whose wages and self-employment income the benefit is based, as shown on the records of the Commissioner as of the end of the last calendar year ending prior to the beneficiary's first month of entitlement;

''(2) an estimate of the aggregate of the employee and self-employment contributions, and the aggregate of the employer contributions (separately identified), made with respect to the wages and self-employment income on which the benefit is based, as shown on the records of the Commissioner as of the end of the calendar year preceding the beneficiary's first month of entitlement; and

''(3) an estimate of the total amount paid as benefits under section 202 of the Social Security Act [this section] based on such wages and self-employment income, as shown on the records of the Commissioner as of the end of the last calendar year preceding the issuance of the statement for which complete information is available.

''(c) INCLUSION WITH MATTER OTHERWISE DISTRIBUTED TO BENEFICIARIES.—The Commissioner shall ensure that reports provided pursuant to this section are, to the maximum extent practicable, included with other reports currently provided to beneficiaries on an annual basis.

''(d) REPORT TO THE CONGRESS.—The Commissioner shall report to each House of the Congress regarding the results of the pilot study conducted pursuant to this section not later than 60 days after the completion of such study.''

TREATMENT OF EMPLOYEES WHOSE FEDERAL EMPLOYMENT TERMINATED AFTER MAKING ELECTION INTO SOCIAL SECURITY COVERAGE BUT BEFORE EFFECTIVE DATE OF ELECTION

Section 8014(b) of Pub. L. 100–647 provided that: ''Subsections (b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), and (g)(4)(A)(i) of section 202 of the Social Security Act (42 U.S.C. 402(b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), (g)(4)(A)(i)) shall not apply with respect to monthly periodic benefits of any individual based solely on service which was performed while in the service of the Federal Government if—

''(1) such person made, before January 1, 1988, an election pursuant to law to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 [22 U.S.C. 4071 et seq.] (or such person made such an election on or after January 1, 1988, and before July 1, 1988, pursuant to regulations of the Office of Personnel Management relating to belated elections and correction of administrative errors (5 CFR 846.204) as in effect on the date of the enactment of this Act [Nov. 10, 1988]), and

''(2) such service terminated before the date on which such election became effective.''

MONTHLY PAYMENTS TO SURVIVING SPOUSE OF MEMBER OR FORMER MEMBER OF ARMED FORCES WHERE SUCH PERSON HAS IN CARE A CHILD OF SUCH MEMBER; AMOUNT, CRITERIA, ETC.

Pub. L. 97–377, title I, § 156, Dec. 21, 1982, 96 Stat. 1920, as amended by Pub. L. 98–94, title IX, § 943, Sept. 24, 1983, 97 Stat. 654; Pub. L. 100–322, title III, § 314, May 20, 1988, 102 Stat. 535; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that:

''(a)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

''(A) who is the surviving spouse of a member or former member of the Armed Forces described in subsection (c);

''(B) who has in such person's care a child of such member or former member who has attained sixteen years of age but not eighteen years of age and is entitled to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) for such month or who meets the requirements for entitlement to the equivalent of such benefit provided under section 1312(a) of title 38, United States Code; and

''(C) who is not entitled for such month to a mother's insurance benefit under section 202(g) of the Social Security Act (42 U.S.C. 402(g)), or to the equivalent of such benefit based on meeting the requirements of section 1312(a) of title 38, United States Code, by reason of having such child (or any other child of such member or former member) in her care.

''(2) A payment under paragraph (1) for any month shall be in the amount of the mother's insurance benefit, if any, that such person would receive for such month under section 202(g) of the Social Security Act [subsec. (g) of this section] if such child were under sixteen years of age, disregarding any adjustments made under section 215(i) of the Social Security Act [section 415(i) of this title] after August 1981. However, if such person is entitled for such month to a mother's insurance benefit under section 202(g) of such Act by reason of having the child of a person other than such member or former member of the Armed Forces in such person's care, the amount of the payment under the preceding sentence for such month shall be reduced (but not below zero) by the amount of the benefit payable by reason of having such child in such person's care.

''(b)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

''(A) who is the child of a member or former member of the Armed Forces described in subsection (c);

''(B) who has attained eighteen years of age but not twenty-two years of age and is not under a disability as defined in section 223(d) of the Social Security Act (42 U.S.C. 423(d));

''(C) who is a full-time student at a postsecondary school, college, or university that is an educational institution (as such terms were defined in section 202(d)(7)(A) and (C) of the Social Security Act [subsec. (d)(7)(A) and (C) of this section] as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35; 95 Stat. 841)); and

''(D) who is not entitled for such month to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) or is entitled for such month to such benefit only by reason of section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842) [section 2210(c) of Pub. L. 97–35, set out below].

''(2) A payment under paragraph (1) for any month shall be in the amount that the person concerned would have been entitled to receive for such month as a child's insurance benefit under section 202(d) of the Social Security Act [subsec. (d) of this section] (as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 841) [section 2210(a) of Pub. L. 97–35]), disregarding any adjustments made under section 215(i) of the Social Security Act [section 415(i) of this title] after August 1981, but reduced for any month by any amount payable to such person for such month under section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842).

''(c) A member or former member of the Armed Forces referred to in subsection (a) or (b) as described in this subsection is a member or former member of the Armed Forces who died on active duty before August 13, 1981, or died from a service-connected disability incurred or aggravated before such date.

''(d)(1) The Secretary of Health and Human Services shall provide to the head of the agency such information as the head of the agency may require to carry out this section.

''(2) The head of the agency shall carry out this section under regulations which the head of the agency shall prescribe. Such regulations shall be prescribed not later than ninety days after the date of the enactment of this section [Dec. 21, 1982].

''(e)(1) Unless otherwise provided by law—

''(A) each time after December 31, 1981, that an increase is made by law in the dependency and indemnity compensation paid under section 1311 of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (a) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the dependency and indemnity compensation rates under section 1311 of such title are increased above the rates as in effect immediately before such increase; and

''(B) each time after December 31, 1981, that an increase is made by law in the rates of educational assistance allowances provided for under section 3531(b) of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (b) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the educational assistance allowance rates provided for under section 3531(b) of such title are increased above the rates as in effect immediately before such increase.

''(2) The amount of the benefit payable to any person under subsection (a) or (b) and the amount of any increase in any such benefit made pursuant to clause (1) or (2) of this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

''(f) Payments under subsections (a) and (b) shall be made only for months after the month in which this section is enacted.

''(g)(1) During each fiscal year the Secretary of Defense shall transfer from time to time to the head of the agency such amounts as the head of the agency determines to be necessary to pay the benefits provided for under subsections (a) and (b) during such fiscal year and to pay the administrative expenses incurred in paying such benefits during such fiscal year. During fiscal year 1983, transfers under this subsection shall be made from the 'Retired Pay, Defense' account of the Department of Defense. During subsequent fiscal years, such transfers shall be made from such account or from funds otherwise available to the Secretary for the purpose of the payment of such benefits and expenses. The Secretary of Defense may transfer funds under this subsection in advance of the payment of benefits and expenses by the head of the agency.

''(2) The head of the agency shall establish on the books of the agency over which he exercises jurisdiction a new account to be used for the payment of benefits under subsections (a) and (b) and shall credit to such account all funds transferred to him for such purpose by the Secretary of Defense.

''(h) The head of the agency and the Secretary of Health and Human Services may enter into an agree-

ment to provide for the payment by the Secretary or the head of the agency of benefits provided for under subsection (a) and benefits provided for under section 202(g) of the Social Security Act (42 U.S.C. 402(g)) in a single monthly payment and for the payment by the Secretary or the head of the agency of benefits provided for under subsection (b) and benefits provided for under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) in a single monthly payment, if the head of the agency and the Secretary agree that such action would be practicable and cost effective to the Government.

''(i) For the purposes of this section:

''(1) The term 'head of the agency' means the head of such department or agency of the Government as the President shall designate to administer the provisions of this section.

''(2) The terms 'active military, naval, or air service' and 'service-connected' have the meanings given those terms in paragraphs (24) and (16), respectively, of section 101 of title 38, United States Code, except that for the purposes of this section such terms do not apply to any service in the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration.''

CHILD'S INSURANCE BENEFITS; CONTINUED ELIGIBILITY OF CERTAIN INDIVIDUALS; LIMITATIONS

Section 2210(c) of Pub. L. 97–35 provided that:

''(1) Notwithstanding the provisions of section 202(d) of the Social Security Act [subsec. (d) of this section] (as in effect prior to or after the amendments made by subsection (a)), any individual who—

''(A) has attained the age of 18;

''(B) is not under a disability (as defined in section 223(d) of such Act) [section 423(d) of this title];

''(C) is entitled to a child's insurance benefit under such section 202(d) [subsec. (d) of this section] for August 1981; and

''(D) is a full-time student at a postsecondary school, college, or university that is an educational institution (as such terms are defined in section 202(d)(7)(A) and (C) of such Act as in effect prior to the amendments made by subsection (a)) for any month prior to May 1982;

shall be entitled to a child's benefit under section 202(d) of such Act in accordance with the provisions of such section as in effect prior to the amendments made by subsection (a) for any month after July 1981 and prior to August 1985 if such individual would be entitled to such child's benefit for such month under such section 202(d) if subsections (a) and (b) of this section [amending subsec. (d) of this section and enacting a provision set out as a note under this section] had not been enacted, but such benefits shall be subject to the limitations set forth in this subsection.

''(2) No benefit described in paragraph (1) shall be paid to an individual to whom paragraph (1) applies for the months of May, June, July, and August, beginning with benefits otherwise payable for May 1982.

''(3) The amount of the monthly benefit payable under paragraph (1) to an individual to whom paragraph (1) applies for any month after July 1982 (prior to deductions on account of work required by section 203 of such Act) [section 403 of this title] shall not exceed the amount of the benefit to which such individual was entitled for August 1981 (prior to deductions on account of work required by section 203 of such Act), less an amount—

''(A) during the months after July 1982 and before August 1983, equal to 25 percent of such benefit for August 1981;

''(B) during the months after July 1983 and before August 1984, equal to 50 percent of such benefit for August 1981; and

''(C) during the months after July 1984 and before August 1985, equal to 75 percent of such benefit for August 1981.

''(4) Any individual to whom the provisions of paragraph (1) apply and whose entitlement to benefits under paragraph (1) ends after July 1982 shall not subsequently become entitled, or reentitled, to benefits under paragraph (1) or under section 202(d) of the Social Security Act [subsec. (d) of this section] as in effect after the amendments made by subsection (a) unless he meets the requirements of section 202(d)(1)(B)(ii) of that Act as so in effect.''

NONAPPLICABILITY OF AMENDMENTS BY SECTION 334 OF PUB. L. 95–216 TO MONTHLY INSURANCE BENEFITS PAYABLE TO INDIVIDUALS ELIGIBLE FOR MONTHLY PERIODIC BENEFITS; SAVINGS PROVISION

Section 334(g) of Pub. L. 95–216, as amended by Pub. L. 98–617, § 2(b)(1), Nov. 8, 1984, 98 Stat. 3294, provided that:

''(1) The amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [this section], to an individual—

''(A)(i) to whom there is payable for any month within the 60-month period beginning with the month in which this Act [December 1977] is enacted (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act) [section 418(b)(2) of this title], or (ii) who would have been eligible for such a monthly periodic benefit (within the meaning of paragraph (2)) before the close of such 60-month period, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

''(B) who at time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g) meets the requirements of that subsection as it was in effect and being administered in January 1977.

''(2) For purposes of paragraph (1)(A), an individual is eligible for a monthly periodic benefit for any month if such benefit would be payable to such individual for that month if such individual were not employed during that month and had made proper application for such benefit.

''(3) If any provision of this subsection, or the application thereof to any person or circumstance, is held invalid, the remainder of this section shall not be affected thereby, but the application of this subsection to any other persons or circumstances shall also be considered invalid.''

[Section 2(b)(3) of Pub. L. 98–617 provided that: ''The amendments made by this subsection [amending above note and provisions set out as an Offset Against Spouses' Benefits on Account of Public Pensions note below] shall apply with respect to benefits payable under title II of the Social Security Act [this subchapter] for months beginning after the month of enactment of this Act [November 1984].'']

OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS

Section 334(h) of Pub. L. 95–216, as added by Pub. L. 97–455, § 7(a)(1), Jan. 12, 1983, 96 Stat. 2501, and amended by Pub. L. 98–617, § 2(b)(2), Nov. 8, 1984, 98 Stat. 3294, provided that: ''In addition, the amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [this section], to an individual—

''(1)(A) to whom there is payable for any month prior to July 1983 (or who is eligible in any such

month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act [section 418(b)(2) of this title]), or (B) who would have been eligible for such a monthly periodic benefit (within the meaning of subsection (g)(2) [set out as a note above]) before the close of June 1983, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

''(2) who at the time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

''(A) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section [see section 334(f) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note above], or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

''(B) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (e), (f), or (g).''

REDETERMINATION OF WIDOW'S AND WIDOWER'S MONTHLY INSURANCE BENEFITS FOR MONTHS AFTER DECEMBER 1978

Section 336(c)(2) of Pub. L. 95–216 provided that: ''In the case of an individual who was entitled for the month of December 1978 to monthly insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act [subsec. (e) or (f) of this section] to which the provisions of subsection (e)(4) or (f)(5) applied, the Secretary shall, if such benefits would be increased by the amendments made by this section [amending this section] redetermine the amount of such benefits for months after December 1978 as if such amendments had been in effect for the first month for which the provisions of section 202(e)(4) or 202(f)(5) became applicable.''

MINIMUM MONTHLY INSURANCE BENEFITS FOR MONTHS AFTER DECEMBER 1978, FOR WIDOW OR WIDOWER AND OTHER JOINTLY ENTITLED INDIVIDUALS

Section 336(d) of Pub. L. 95–216 provided that: ''Where—

''(1) two or more persons are entitled to monthly benefits under section 202 of the Social Security Act [this section] for December 1978 on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is so entitled under subsection (e) or (f) of such section 202 [subsec. (e) or (f) of this section], and

''(2) one or more of such persons is entitled on the basis of such wages and self-employment income to monthly benefits under subsection (e) or (f) of such section 202 (as amended by this section) for January 1979, and

''(3) the total of benefits to which all persons are entitled under section 202 of such Act on the basis of such wages and self-employment income for January 1979 is reduced by reason of section 203(a) of such Act as amended by this Act [section 403(a) of this title] (or would, but for the first sentence of section 203(a)(4), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after December 1978 shall in no case be less after the application of this section [see section 336(c)(1) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note under this section] and such section 203(a) [section 403(a) of this title] than the amount it would have been without the application of this section.''

TERMINATION OF SPECIAL $50 PAYMENTS UNDER TAX REDUCTION ACT OF 1975

Pub. L. 95–30, title IV, § 406, May 23, 1977, 91 Stat. 156, provided that: ''Notwithstanding the provisions of section 702(a) of the Tax Reduction Act of 1975 [see Pub. L. 94–12, § 702, set out as a note under this section], no payment shall, after the date of the enactment of this Act [May 23, 1977], be made under that section.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Pub. L. 94–12, title VII, § 702, Mar. 29, 1975, 89 Stat. 66, provided that the Secretary of the Treasury, at the earliest practicable date after Mar. 29, 1975, make a $50 payment to each individual, who for the month of March, 1975, was entitled, without regard to section 402(j)(1) or 423(b) of this title or section 231d(a)(ii) of Title 45, Railroads, to a monthly insurance benefit payable under this subchapter, a monthly annuity or pension payment under the Railroad Retirement Act of 1935, the Railroad Retirement Act of 1937, or the Railroad Retirement Act of 1974, or a benefit under the supplemental security income benefits program under subchapter XVI of this title, except that payment be made only to individuals who were paid a benefit for March 1975 in a check issued no later than Aug. 31, 1975, that no payment be made to any individual who is not a resident of the United States as defined in section 410(i) of this title, and if an individual is entitled under two or more programs, this individual receive only one $50 payment, and that this payment received not be considered as income, or for the calendar year 1975, as a resource, for purposes of any Federal or State program which undertakes to furnish aid or assistance to individuals or families, where eligibility for the program is based upon need of the individual or family involved or as income for federal income tax purposes.

MARCH THROUGH MAY 1974 MONTHLY INSURANCE BENEFIT FOR ONLY INDIVIDUAL ENTITLED TO BENEFIT ON BASIS OF WAGES AND SELF-EMPLOYMENT INCOME OF DECEASED INDIVIDUAL

Section 1(i) of Pub. L. 93–233 provided that: ''In the case of an individual to whom monthly benefits are payable under title II of the Social Security Act [this subchapter] for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act [subsec. (j)(1) of this section or section 423(b) of this title]), and to whom section 202(m) of such Act [subsec. (m) of this section] is applicable for such month, such section shall continue to be applicable to such benefits for the months of March through May 1974 for which such individual remains the only individual entitled to a monthly benefit on the basis of the wages and self-employment income of the deceased insured individual.''

COST-OF-LIVING INCREASE IN SOCIAL SECURITY BENEFITS; EFFECTIVE DATE; CONSUMER PRICE INDEX PERCENTAGE

Section 201 of Pub. L. 93–66, as amended by Pub. L. 93–233, § 1(a)–(e), Dec. 30, 1973, 87 Stat. 947, provided that:

''(a)(1) The Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary') shall, in accordance with the provisions of this section, increase the monthly benefits and lump-sum death payments payable under title II of the Social Security Act [this subchapter] by 7 per centum.

''(2) The provisions of this section (and the increase in benefits made hereunder) shall be effective, in the case of monthly benefits under title II of the Social Security Act [this subchapter] only for months after February 1974 and prior to June 1974, and, in the case of lump-sum death payments under such title [this sub-

chapter], only with respect to deaths which occur after February 1974 and prior to June 1974.

''(b) The increase in social security benefits authorized under this section shall be provided, and any determinations by the Secretary in connection with the provision of such increase in benefits shall be made, in the manner prescribed in section 215(i) of the Social Security Act [section 415(i) of this title] for the implementation of cost-of-living increases authorized under title II of such Act [this subchapter] except that—

''(1) the amount of such increase shall be 7 per centum,

''(2) in the case of any individual entitled to monthly insurance benefits payable pursuant to section 202(e) of such Act [subsec. (e) of this section] for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act [subsec. (j)(1) of this section or section 423(f) of this title]), including such benefits based on a primary insurance amount determined under section 215(a)(3) of such Act [section 415(a)(3) of this title] as amended by this section, such increase shall be determined without regard to paragraph (2)(B) of such section 202(e), and

''(3) in the case of any individual entitled to monthly insurance benefits payable pursuant to section 202(f) of such Act for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act), including such benefits based on a primary insurance amount determined under section 215(a)(3) of such Act as amended by this section, such increase shall be determined without regard to paragraph (3)(B) of such section 202(f).

''(c) The increase in social security benefits provided by this section shall—

''(1) not be considered to be an increase in benefits made under or pursuant to section 215(i) of the Social Security Act [section 415(i) of this title], and

''(2) not (except for purposes of section 203(a)(2) of such Act [section 403(a)(2) of this title], as in effect after February 1974) be considered to be a 'general benefit increase under this title' [this subchapter] (as such term is defined in section 215(i)(3) of such Act) [section 415(i)(3) of this title];

and nothing in this section shall be construed as authorizing any increase in the 'contribution and benefit base' (as that term is employed in section 230 of such Act) [section 430 of this title], or any increase in the 'exempt amount' (as such term is used in section 203(f)(8) of such Act [section 403(f)(8) of this title]).

''(d) Nothing in this section shall be construed to authorize (directly or indirectly) any increase in monthly benefits under title II of the Social Security Act [this subchapter] for any month after May 1974, or any increase in lump-sum death payments payable under such title in the case of deaths occurring after May 1974. The recognition of the existence of the increase in benefits authorized by the preceding subsections of this section (during the period it was in effect) in the application, after May 1974, of the provisions of sections 202(q) and 203(a) of such Act [subsec. (q) of this section and section 403(a) of this title] shall not, for purposes of the preceding sentence, be considered to be an increase in a monthly benefit for a month after May 1974.''

REDETERMINATION OF WIDOW'S AND WIDOWER'S BENEFITS FOR DECEMBER 1972 AND AFTER TO PROVIDE FOR 1972 INCREASES

Section 102(g) of Pub. L. 92–603 provided that:

''(1) In the case of an individual who is entitled to widow's or widower's insurance benefits for the month of December 1972 the Secretary shall, if it would increase such benefits, redetermine the amount of such benefits for months after December 1972 under title II of the Social Security Act [this subchapter] as if the amendments made by this section [amending this section and section 403 of this title] had been in effect for the first month of such individual's entitlement to such benefits.

''(2) For purposes of paragraph (1)—

''(A) any deceased individual on whose wages and self-employment income the benefits of an individual referred to in paragraph (1) are based, shall be deemed not to have been entitled to benefits if the record, of insured individuals who were entitled to benefits, that is readily available to the Secretary contains no entry for such deceased individual; and

''(B) any deductions under subsections (b) and (c) of section 203 of such Act [section 403 of this title], applicable to the benefits of an individual referred to in paragraph (1) for any month prior to September 1965, shall be disregarded in applying the provisions of section 202(q)(7) of such Act [subsec. (q)(7) of this section] (as amended by this Act) [Pub. L. 92–603].''

ADJUSTMENT OF BENEFITS BASED ON DISABILITY WHICH BEGAN BETWEEN AGE 18 AND 22

Section 108(g) of Pub. L. 92–603 provided that: ''Where—

''(1) one or more persons are entitled (without the application of sections 202(j)(1) and 223(b) of the Social Security Act) [subsec. (j)(1) of this section and section 423(b) of this title] to monthly benefits under section 202 or 223 of such Act for December 1972 on the basis of the wages and self-employment income of an insured individual, and

''(2) one or more persons (not included in paragraph (1)) are entitled to monthly benefits under such section 202 or 223 [this section or section 423 of this title] for January 1973 solely by reason of the amendments made by this section on the basis of such wages and self-employment income, and

''(3) the total of benefits to which all persons are entitled under such sections 202 and 223 [this section and section 423 of this title] on the basis of such wages and self-employment income for January 1973 is reduced by reason of section 203(a) of such Act [section 403(a) of this title] as amended by this Act, or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled for months after December 1972 shall be adjusted, after the application of such section 203(a) [section 403(a) of this title], to an amount no less than the amount it would have been if the person or persons referred to in paragraph (2) of this subsection were not entitled to a benefit referred to in such paragraph (2).''

TERMINATION OF CHILD'S INSURANCE BENEFITS BY REASON OF ADOPTION

Section 112(c) of Pub. L. 92–603 provided that: ''Any child—

''(1) whose entitlement to child's insurance benefits under section 202(d) of the Social Security Act [subsec. (d) of this section] was terminated by reason of his adoption, prior to the date of the enactment of this Act [Oct. 30, 1972], and

''(2) who, except for such adoption, would be entitled to child's insurance benefits under such section for a month after the month in which this Act is enacted [October 1972],

may, upon filing application for child's insurance benefits under the Social Security Act after the date of enactment of this Act, become reentitled to such benefits; except that no child shall, by reason of the enactment of this section, become reentitled to such benefits for any month prior to the month after the month in which this Act is enacted.''

SAVINGS PROVISION

1972—Section 102(h) of Pub. L. 92–603 provided that: ''Where—

''(1) two or more persons are entitled to monthly benefits under section 202 of the Social Security Act [this section] for December 1972 on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is so entitled under subsection (e) or (f) of such section 202, and

''(2) one or more of such persons is entitled on the basis of such wages and self-employment income to

monthly benefits under subsection (e) or (f) of such section 202 (as amended by this section) for January 1973, and

''(3) the total of benefits to which all persons are entitled under section 202 of such Act [this section] on the basis of such wages and self-employment income for January 1973 is reduced by reason of section 203(a) of such Act [section 403(a) of this title], as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after December 1972 shall in no case be less after the application of this section and such section 203(a) than the amount it would have been without the application of this section.''

Section 114(e) of Pub. L. 92–603 provided that: ''Where—

''(1) one or more persons are entitled (without the application of sections 202(j)(1) and 223(b) of the Social Security Act) [subsec. (j)(1) of this section and section 423(b) of this title] to monthly benefits under section 202 or 223 of such Act for December 1972 on the basis of the wages and self-employment income of an insured individual, and

''(2) one or more persons (not included in paragraph (1)) are entitled to monthly benefits under such section 202(g) as a surviving divorced mother (as defined in section 216(d)(3) [section 416(d)(3) of this title]) for a month after December 1972 on the basis of such wages and self-employment income, and

''(3) the total of benefits to which all persons are entitled under such section 202 and 223 [this section and section 423 of this title] on the basis of such wages and self-employment income for any month after December 1972 is reduced by reason of section 203(a) of such Act [section 403(a) of this title] as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced)

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled beginning with the first month after December 1972 for which any person referred to in paragraph (2) becomes entitled shall be adjusted, after the application of such section 203(a), to an amount no less than the amount it would have been if the person or persons referred to in paragraph (2) of this subsection were not entitled to a benefit referred to in such paragraph (2).''

1961—Section 104(f) of Pub. L. 87–64 provided that: ''Where—

''(1) two or more persons were entitled (without the application of subsection (j)(1) of section 202 of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under such section 202 for the last month beginning before the effective date of this title [see Effective Date of 1961 Amendment note set out above] on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is entitled to a monthly insurance benefit under subsection (e), (f), or (h) of such section 202 for such last month; and

''(2) no person, other than the persons referred to in paragraph (1) of this subsection, is entitled to benefits under such section 202 on the basis of such individual's wages and self-employment income for a subsequent month or for any month after such last month and before such subsequent month; and

''(3) the total of the benefits to which all persons are entitled under such section 202 on the basis of such individual's wages and self-employment income for such subsequent month is reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title],

then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be determined without regard to this Act if, after the application of this Act, such benefit for such month is less than the amount of such benefit for such last month. The preceding provisions of this subsection shall not apply to any monthly benefit of any person for any month beginning after the effective date of this title [see Effective Date note of 1961 Amendment note set out above] unless paragraph (3) also applies to such benefit for the month beginning on such effective date (or would so apply but for the next to the last sentence of section 203(a) of the Social Security Act).''

1960—Section 208(e) of Pub. L. 86–778 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under section 202 of such Act for the month before the month in which this Act is enacted [September 1960] on the basis of the wages and self-employment income of an individual; and

''(2) any person is entitled to benefits under subsection (b), (c), (d), (e), (f), or (g) of section 202 of the Social Security Act for any subsequent month on the basis of such individual's wages and self-employment income and such person would not be entitled to such benefits but for the enactment of this section; and

''(3) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act on the basis of such individual's wages and self-employment income for such subsequent month is reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title],

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall not, after the application of such section 203(a), be less than the amount it would have been (determined without regard to section 301 [section 501 of this title]) if no person referred to in paragraph (2) of this subsection was entitled to a benefit referred to in such paragraph for such subsequent month on the basis of such wages and self-employment income of such individual.''

Section 301(c) of Pub. L. 86–778 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under section 202 of such Act for the second month following the month in which this Act is enacted [September 1960] on the basis of the wages and self-employment income of a deceased individual (but not including any person who became so entitled by reason of section 208 of this Act [section 408 of this title]); and

''(2) no person, other than (i) those persons referred to in paragraph (1) of this subsection (ii) those persons who are entitled to benefits under section 202(d), (e), (f), or (g) of the Social Security Act but would not be so entitled except for the enactment of section 208 of this Act [section 408 of this title], is entitled to benefits under such section 202 [this section] on the basis of such individual's wages and self-employment income for any subsequent month or for any month after the second month following the month in which this Act is enacted [September 1960] and prior to such subsequent month; and

''(3) the total of the benefits to which all persons referred to in paragraph (1) of this subsection are entitled under section 202 of the Social Security Act on the basis of such individual's wages and self-employment income for such subsequent month exceeds the maximum of benefits payable, as provided in section 203(a) of such Act [section 403(a) of this title], on the basis of such wages and self-employment income,

then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be determined—

''(4) in case such person is entitled to benefits under section 202(e), (f), (g), or (h), as though this section and section 208 [section 408 of this title] had not been enacted, or

''(5) in case such person is entitled to benefits under section 202(d), as though (i) no person is entitled to benefits under section 202(e), (f), (g), or (h) for such

subsequent month, and (ii) the maximum of benefits payable, as described in paragraph (3), is such maximum less the amount of each person's benefit for such month determined pursuant to paragraph (4).''

1958—Section 304(b) of Pub. L. 85–840 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under section 202 of such Act for the month in which this Act is enacted [August 1958] on the basis of the wages and self-employment income of an individual; and

''(2) a person is entitled to a parent's insurance benefit under section 202(h) of the Social Security Act for any subsequent month on the basis of such wages and self-employment income and such person would not be entitled to such benefit but for the enactment of this section; and

''(3) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act on the basis of such wages and self-employment income for such subsequent month are reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title].

then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be increased, after the application of such section 203(a), to the amount it would have been if no person referred to in paragraph (2) of this subsection was entitled to a parent's insurance benefit for such subsequent month on the basis of such wages and self-employment income.''

1957—Section 5 of Pub. L. 85–238 provided that: ''Where—

''(a) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to parent's insurance benefits under section 202(h) of such Act for the month in which this Act [August 1957] is enacted on the basis of the wages and self-employment income of an individual;

''(b) a person becomes entitled to a widow's, widower's or mother's insurance benefit under section 202(e), (f), or (g) of the Social Security Act for any subsequent month on the basis of such wages and self-employment income;

''(c) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act, on the basis of such wages and self-employment income for such subsequent month are reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title];

then the amount of the benefit to which each such person referred to in paragraph (a) or (b) is entitled for such subsequent month shall be increased, after the application of such section 203(a), to the amount it would have been—

''(d) if, in the case of a parent's insurance benefit, the person referred to in paragraph (b) was not entitled to the benefit referred to in such paragraph, or

''(e) if, in the case of a benefit referred to in paragraph (b), no person was entitled to a parent's insurance benefit for such subsequent month on the basis of such wages and self-employment income.''

FILING OF PROOF OF SUPPORT

1968—Section 157(c) of Pub. L. 90–248 provided that: ''In the case of any husband who would not be entitled to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section] or any widower who would not be entitled to widower's insurance benefits under section 202(f) of such Act except for the enactment of this section, the requirement in section 202(c)(1)(C) or 202(f)(1)(D) of such Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month following the month in which this Act is enacted [January 1968].''

1961—Section 103(c) of title I of Pub. L. 87–64 provided that: ''In the case of any widower or parent who would not be entitled to widower's insurance benefits under section 202(f) [subsec. (f) of this section], or parent's insurance benefits under section 202(h), of the Social Security Act except for the enactment of this Act (other than this subsection), the requirement in sections 202(f)(1)(D) and 202(h)(1)(B), respectively, of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed before the close of the 2–year period which begins on the effective date of this title [see Effective Date of 1961 Amendment note set out above].''

1958—Section 207(b) of Pub. L. 85–840 provided that: ''In the case of any husband, widower, or parent who would not be entitled to benefits under section 202(c), section 202(f), and section 202(h), respectively, of the Social Security Act [subsecs. (c), (f), and (h) of this section] except for the enactment of section 205 of this Act [amending this section and sections 401, 403, 414, 415, 422, and 425 of this title], the requirement in such section 202(c), section 202(f), or section 202(h), as the case may be, that proof of support be filed within a two-year period shall not apply if such proof is filed within two years after the month in which this Act is enacted [August 1958].''

Section 304(c) of Pub. L. 85–840 provided that: ''In the case of any parent who would not be entitled to parent's benefits under section 202(h) of the Social Security Act [subsec. (h) of this section] except for the enactment of this section, the requirement in such section 202(h) that proof of support be filed within two years of the date of death of the insured individual referred to therein shall not apply if such proof is filed within the two-year period beginning with the first day of the month after the month in which this Act is enacted [August 1958].''

1954—Section 113 of act Sept. 1, 1954, provided that:

''(a) For the purpose of determining the entitlement of any individual to husband's insurance benefits under subsection (c) of section 202 of the Social Security Act [subsec. (c) of this section] on the basis of his wife's wages and self-employment income, the requirements of paragraph (1)(D) of such subsection shall be deemed to be met if—

''(1) such individual was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary of Health, Education, and Welfare, from his wife on the first day of the first month (A) for which she was entitled to a monthly benefit under subsection (a) of such section 202, and (B) in which an event described in paragraph (1) or (2) of section 203(b) of such Act [section 403(b) of this title] (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

''(2) such individual has filed proof of such support within two years after such first month, and

''(3) such wife was, without the application of subsection (j)(1) of such section 202, entitled to a primary insurance benefit under such Act for August 1950.

''(b) For the purpose of determining the entitlement of any individual to widower's insurance benefits under subsection (f) of section 202 of the Social Security Act on the basis of his deceased wife's wages and self-employment income, the requirements of paragraph (1)(E)(ii) of such subsection shall be deemed to be met if—

''(1) such individual was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary of Health, Education, and Welfare, from his wife, and she was a currently insured individual, on the first day of the first month (A) for which she was entitled to a monthly benefit under subsection (a) of such section 202, and (B) in which an event described in paragraph (1) or (2) of section 203(b) of such Act (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

''(2) such individual has filed proof of such support within two years after such first month, and

''(3) such wife was, without the application of subsection (j)(1) of such section 202, entitled to a primary insurance benefit under such Act for August 1950.

''(c) For purposes of subsection (b)(1) of this section, and for purposes of section 202(c)(1) of the Social Security Act in cases to which subsection (a) of this section is applicable, the wife of an individual shall be deemed a currently insured individual if she had not less than six quarters of coverage (as determined under section 213 of the Social Security Act) [section 413 of this title] during the thirteen-quarter period ending with the calendar quarter in which occurs the first month (1) for which such wife was entitled to a monthly benefit under section 202(a) of such Act, and (2) in which an event described in paragraph (1) or (2) of section 203(b) of such Act (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

''(d) This section shall apply only with respect to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section], and widower's insurance benefits under section 202(f) of such Act [subsec. (f) of this section], for months after August 1954, and only with respect to benefits based on applications filed after such month.''

1950—Section 101(c) of act Aug. 28, 1950, provided that:

''(1) Any individual entitled to primary insurance benefits or widow's current insurance benefits under section 202 of the Social Security Act [this section] as in effect prior to its amendment by this Act who would, but for the enactment of this Act, be entitled to such benefits for September 1950 shall be deemed to be entitled to old-age insurance benefits or mother's insurance benefits (as the case may be) under section 202 of the Social Security Act, as amended by this Act, as though such individual became entitled to such benefits in such month.

''(2) Any individual entitled to any other monthly insurance benefits under section 202 of the Social Security Act as in effect prior to its amendment by this Act who would, but for the enactment of this Act, be entitled to such benefits for September 1950 shall be deemed to be entitled to such benefits under section 202 of the Social Security Act, as amended by this Act, as though such individual became entitled to such benefits in such month.

''(3) Any individual who files application after August 1950 for monthly benefits under any subsection of section 202 of the Social Security Act who would, but for the enactment of this Act, be entitled to benefits under such subsection (as in effect prior to such enactment) for any month prior to September 1950 shall be deemed entitled to such benefits for such month prior to September 1950 to the same extent and in the same amounts as though this Act had not been enacted.''

EXTENSION OF FILING PERIOD FOR HUSBAND'S, WIDOWER'S, OR PARENT'S BENEFITS IN CERTAIN CASES

Section 210 of Pub. L. 86–778 provided that:

''(a) In the case of any husband who would not be entitled to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section] except for the enactment of this Act, the requirement in section 202(c)(1)(C) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month in which this Act is enacted [September 1960].

''(b) In the case of any widower who would not be entitled to widower's insurance benefits under section 202(f) of the Social Security Act except for the enactment of this Act, the requirement in section 202(f)(1)(D) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month in which this Act is enacted.

''(c) In the case of any parent who would not be entitled to parent's insurance benefits under section 202(h) of the Social Security Act except for the enactment of this Act, the requirement in section 202(h)(1)(B) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month in which this Act is enacted.''

DISREGARDING OASDI BENEFIT INCREASES AND CHILD'S INSURANCE BENEFIT PAYMENTS BEYOND AGE 18 TO THE EXTENT ATTRIBUTABLE TO RETROACTIVE EFFECTIVE DATE OF 1965 AMENDMENTS

Authorization to disregard, in determining need for aid or assistance under an approved State plan, amounts paid under this subchapter for months occurring after December 1964 and before October 1965 to the extent to which payment is attributable to the payment of child's insurance benefits under the old-age, survivors, and disability insurance system after attainment of age 18, in the case of individuals attending school, resulting from enactment of section 306 of Pub. L. 89–97, see section 406 of Pub. L. 89–97, set out as a note under section 415 of this title.

LUMP-SUM PAYMENTS WHERE DEATH OCCURRED PRIOR TO SEPTEMBER 1, 1950

Section 101(d) of act Aug. 28, 1950, as amended July 18, 1952, ch. 945, § 5(e)(1), 66 Stat. 775; Sept. 13, 1960, Pub. L. 86–778, title I, § 103(a)(2), 74 Stat. 936, provided that: ''Lump-sum death payments shall be made in the case of individuals who died prior to September 1950 as though this Act had not been enacted; except that in the case of any individual who died outside the forty-eight States and the District of Columbia after December 6, 1941, and prior to August 10, 1946, the last sentence of section 202(g) of the Social Security Act [subsec. (g) of this section] as in effect prior to the enactment of this Act shall not be applicable if application for a lump-sum death payment is filed prior to September 1952, and except that in the case of any individual who died outside the forty-eight States and the District of Columbia on or after June 25, 1950, and prior to September 1950, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the last sentence of section 202(g) of the Social Security Act as in effect prior to the enactment of this Act [July 18, 1952] shall not prevent payment to any person under the second sentence thereof if application for a lump-sum death payment under such section with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.''

LUMP-SUM PAYMENTS FOR DEATHS BEFORE 1940; TIME LIMITATION

Lump-sum payments of 3½ percent of total wages paid with respect to employment after Dec. 31, 1936 and before reaching the age of 65 were provided for persons who were not qualified individuals upon reaching that age by section 204 of act Aug. 14, 1935, before amendment in 1939. Such lump-sum payments, except to the estate of an individual who died prior to Jan. 1, 1940, were prohibited after Aug. 10, 1939, by section 902(g) of act Aug. 10, 1939. Section 415 of act Aug. 10, 1946, provided that no lump-sum payments shall be made under section 204 of the 1935 act or section 902(g) of the 1939 act unless application therefor has been filed prior to the expiration of six months after Aug. 10, 1946.

DEATH OUTSIDE U.S.; EXTENSION OF FILING TIME FOR LUMP-SUM PAYMENTS

Section 5(e)(2) of act July 18, 1952, ch. 945, 66 Stat. 775, as amended by Pub. L. 86–778, title I, § 103(a)(2), Sept. 13, 1960, 74 Stat. 936, provided that: ''In the case of any individual who died outside the forty-eight States and the District of Columbia after August 1950 and prior to January 1954, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District

of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the last sentence of section 202(i) of the Social Security Act [subsec. (i) of this section] shall not prevent payment to any person under the second sentence thereof if application for a lump-sum death payment with respect to such deceased individual is filed under such section by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.''

PAYMENT OF ANNUITIES TO OFFICERS AND EMPLOYEES OF THE UNITED STATES CONVICTED OF CERTAIN OFFENSES

Section 121(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall not be construed to restrict or otherwise affect any of the provisions of the Act entitled 'An Act to prohibit payments of annuities to officers and employees of the United States convicted of certain offenses, and for other purposes', approved September 1, 1954 (Public Law 769, Eighty-third Congress) [sections 2281 to 2288 of former Title 5, Executive Departments and Government Officers and Employees, and are covered by section 8311 et seq. of Title 5, Government Organization and Employees].''

APPLICATION FOR BENEFITS BY SURVIVORS OF MEMBERS AND FORMER MEMBERS OF UNIFORMED SERVICES

Forms for use by survivors of members and former members of the uniformed services in filing applications for benefits under this subchapter to be prescribed jointly by the Secretary of Veterans Affairs and the Secretary of Health and Human Services, see section 5105 of Title 38, Veterans' Benefits.

PAYMENTS OF ALIENS' BENEFITS WITHHELD UNDER FOREIGN DELIVERY RESTRICTION OF CHECKS AGAINST FEDERAL FUNDS

Section 162(c)(3) of Pub. L. 90–248 provided that: ''Whenever benefits which an individual who is not a citizen or national of the United States was entitled to receive under title II of the Social Security Act [this subchapter] are, on June 30, 1968, being withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123) [31 U.S.C. 3329(a) and 3330(a)], any such benefits, payable to such individual for months after the month in which the determination by the Treasury Department that the benefits should be so withheld was made, shall not be paid—

''(A) to any person other than such individual, or, if such individual dies before such benefits can be paid, to any person other than an individual who was entitled for the month in which the deceased individual died (with the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to a monthly benefit under title II of such Act [this subchapter] on the basis of the same wages and self-employment income as such deceased individual, or

''(B) in excess of the equivalent of the last twelve months' benefits that would have been payable to such individual.''

STUDY OF RETIREMENT TEST AND OF DRUG STANDARDS AND COVERAGE

Section 405 of Pub. L. 90–248 authorized the Secretary of Health, Education, and Welfare to make a study of the existing retirement test and proposals for the modification of the test, the quality and cost standards for drugs for which payments are made under this chapter, and the coverage of drugs under part B of subchapter XVIII of this chapter, and submit a report to the President and to Congress concerning his findings and recommendations on or before Jan. 1, 1969.

EX. ORD. NO. 12436. PAYMENT OF CERTAIN BENEFITS TO SURVIVORS OF PERSONS WHO DIED IN OR AS A RESULT OF MILITARY SERVICE

Ex. Ord. No. 12436, July 29, 1983, 48 F.R. 34931, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 156 of Public Law 97–377 (96 Stat. 1920; 42 U.S.C. 402 note), in order to provide certain benefits to the surviving spouses and children of certain persons who died in or as a result of military service, it is hereby ordered as follows:

SECTION 1. The Administrator of Veterans' Affairs is designated to administer the provisions of Section 156 of Public Law 97–377.

SEC. 2. The Secretary of Health and Human Services shall provide to the Administrator of Veterans' Affairs such information and such technical assistance as the Administrator may reasonably require to discharge his responsibilities under Section 156. The Administrator of Veterans' Affairs shall reimburse the Department of Health and Human Services for all expenses it incurs in providing such information and technical assistance to the Veterans' Administration. Such expenses shall be paid from the Veterans' Administration account described in Section 3 of this Order.

SEC. 3. During fiscal year 1983 and each succeeding fiscal year, the Secretary of Defense shall transfer, from time to time, from the ''Retired Pay, Defense'' account of the Department of Defense to an account established in the Veterans' Administration, such amounts as the Administrator of Veterans' Affairs determines to be necessary to pay the benefits authorized by Section 156 during fiscal year 1983 and each succeeding fiscal year, and the expenses incurred by the Veterans' Administration in paying such benefits during fiscal year 1983 and each succeeding fiscal year. Such transfers shall, to the extent feasible, be made in advance of the payment of benefits and expenses by the Veterans' Administration.

SEC. 4. This Order shall be effective as of January 1, 1983.

RONALD REAGAN.

§ 403. Reduction of insurance benefits

(a) Maximum benefits

(1) In the case of an individual whose primary insurance amount has been computed or recomputed under section 415(a)(1) or (4) of this title, or section 415(d) of this title, as in effect after December 1978, the total monthly benefits to which beneficiaries may be entitled under section 402 or 423 of this title for a month on the basis of the wages and self-employment income of such individual shall, except as provided by paragraphs (3) and (6) (but prior to any increases resulting from the application of paragraph (2)(A)(ii)(III) of section 415(i) of this title), be reduced as necessary so as not to exceed—

(A) 150 percent of such individual's primary insurance amount to the extent that it does not exceed the amount established with respect to this subparagraph by paragraph (2),

(B) 272 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (A) but does not exceed the amount established with respect to this subparagraph by paragraph (2),

(C) 134 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (B) but does not exceed the amount established with respect to this subparagraph by paragraph (2), and

(D) 175 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (C).

Any such amount that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

(2)(A) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming so eligible for such benefits), in the calendar year 1979, the amounts established with respect to subparagraphs (A), (B), and (C) of paragraph (1) shall be $230, $332, and $433, respectively.

(B) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming so eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established for the calendar year 1979 by subparagraph (A) of this paragraph and the quotient obtained under subparagraph (B)(ii) of section 415(a)(1) of this title, with such product being rounded in the manner prescribed by section 415(a)(1)(B)(iii) of this title.

(C) In each calendar year after 1978 the Commissioner of Social Security shall publish in the Federal Register, on or before November 1, the formula which (except as provided in section 415(i)(2)(D) of this title) is to be applicable under this paragraph to individuals who become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the following calendar year.

(D) A year shall not be counted as the year of an individual's death or eligibility for purposes of this paragraph or paragraph (8) in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefits to which he was entitled during such 12 months).

(3)(A) When an individual who is entitled to benefits on the basis of the wages and self-employment income of any insured individual and to whom this subsection applies would (but for the provisions of section 402(k)(2)(A) of this title) be entitled to child's insurance benefits for a month on the basis of the wages and self-employment income of one or more other insured individuals, the total monthly benefits to which all beneficiaries are entitled on the basis of such wages and self-employment income shall not be reduced under this subsection to less than the smaller of—

(i) the sum of the maximum amounts of benefits payable on the basis of the wages and self-employment income of all such insured individuals, or

(ii) an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title, for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title.

The year established for purposes of clause (ii) shall be 1983 or, if it occurs later with respect to any individual, the year in which occurred the month that the application of the reduction provisions contained in this subparagraph began with respect to benefits payable on the basis of the wages and self-employment income of the insured individual. If for any month subsequent to the first month for which clause (ii) applies (with respect to benefits payable on the basis of the wages and self-employment income of the insured individual) the reduction under this subparagraph ceases to apply, then the year determined under the preceding sentence shall be redetermined (for purposes of any subsequent application of this subparagraph with respect to benefits payable on the basis of such wages and self-employment income) as though this subparagraph had not been previously applicable.

(B) When two or more persons were entitled (without the application of section 402(j)(1) of this title and section 423(b) of this title) to monthly benefits under section 402 or 423 of this title for January 1971 or any prior month on the basis of the wages and self-employment income of such insured individual and the provisions of this subsection as in effect for any such month were applicable in determining the benefit amount of any persons on the basis of such wages and self-employment income, the total of benefits for any month after January 1971 shall not be reduced to less than the largest of—

(i) the amount determined under this subsection without regard to this subparagraph,

(ii) the largest amount which has been determined for any month under this subsection for persons entitled to monthly benefits on the basis of such insured individual's wages and self-employment income, or

(iii) if any persons are entitled to benefits on the basis of such wages and self-employment income for the month before the effective month (after September 1972) of a general benefit increase under this title (as defined in section 415(i)(3) of this title) or a benefit increase under the provisions of section 415(i) of this title, an amount equal to the sum of amounts derived by multiplying the benefit amount determined under this subchapter (excluding any part thereof determined under section 402(w) of this title) for the month before such effective month (including this subsection, but without the application of section 422(b)[1] of this title, section 402(q) of this title, and subsections (b), (c), and (d) of this section), for each such person for such month, by a percentage equal to the percentage of the increase provided under such benefit increase (with any such increased amount which is not a multiple of $0.10 being rounded to the next lower multiple of $0.10);

but in any such case (I) subparagraph (A) of this paragraph shall not be applied to such total of benefits after the application of clause (ii) or (iii), and (II) if section 402(k)(2)(A) of this title was applicable in the case of any such benefits for a month, and ceases to apply for a month after such month, the provisions of clause (ii) or (iii) shall be applied, for and after the month in which section 402(k)(2)(A) of this title ceases to

[1] See References in Text note below.

apply, as though subparagraph (A) of this paragraph had not been applicable to such total of benefits for the last month for which clause (ii) or (iii) was applicable.

(C) When any of such individuals is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title or as a surviving divorced spouse under section 402(e) or (f) of this title for any month, the benefit to which he or she is entitled on the basis of the wages and self-employment income of such insured individual for such month shall be determined without regard to this subsection, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the wages and self-employment income of such insured individual shall be determined as if no such divorced spouse or surviving divorced spouse were entitled to benefits for such month.

(D) In any case in which—

(i) two or more individuals are entitled to monthly benefits for the same month as a spouse under subsection (b) or (c) of section 402 of this title, or as a surviving spouse under subsection (e), (f), or (g) of section 402 of this title,

(ii) at least one of such individuals is entitled by reason of subparagraph (A)(ii) or (B) of section 416(h)(1) of this title, and

(iii) such entitlements are based on the wages and self-employment income of the same insured individual,

the benefit of the entitled individual whose entitlement is based on a valid marriage (as determined without regard to subparagraphs (A)(ii) and (B) of section 416(h)(1) of this title) to such insured individual shall, for such month and all months thereafter, be determined without regard to this subsection, and the benefits of all other individuals who are entitled, for such month or any month thereafter, to monthly benefits under section 402 of this title based on the wages and self-employment income of such insured individual shall be determined as if such entitled individual were not entitled to benefits for such month.

(4) In any case in which benefits are reduced pursuant to the provisions of this subsection, the reduction shall be made after any deductions under this section and after any deductions under section 422(b)[1] of this title. Notwithstanding the preceding sentence, any reduction under this subsection in the case of an individual who is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for any month on the basis of the same wages and self-employment income as another person—

(A) who also is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for such month,

(B) who does not live in the same household as such individual, and

(C) whose benefit for such month is suspended (in whole or in part) pursuant to subsection (h)(3) of this section,

shall be made before the suspension under subsection (h)(3) of this section. Whenever a reduction is made under this subsection in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual, each such benefit other than the old-age or disability insurance benefit shall be proportionately decreased.

(5) Notwithstanding any other provision of law, when—

(A) two or more persons are entitled to monthly benefits for a particular month on the basis of the wages and self-employment income of an insured individual and (for such particular month) the provisions of this subsection are applicable to such monthly benefits, and

(B) such individual's primary insurance amount is increased for the following month under any provision of this subchapter,

then the total of monthly benefits for all persons on the basis of such wages and self-employment income for such particular month, as determined under the provisions of this subsection, shall for purposes of determining the total monthly benefits for all persons on the basis of such wages and self-employment income for months subsequent to such particular month be considered to have been increased by the smallest amount that would have been required in order to assure that the total of monthly benefits payable on the basis of such wages and self-employment income for any such subsequent month will not be less (after the application of the other provisions of this subsection and section 402(q) of this title) than the total of monthly benefits (after the application of the other provisions of this subsection and section 402(q) of this title) payable on the basis of such wages and self-employment income for such particular month.

(6) Notwithstanding any of the preceding provisions of this subsection other than paragraphs (3)(A), (3)(C), (3)(D), (4), and (5) (but subject to section 415(i)(2)(A)(ii) of this title), the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for any month on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall be reduced (before the application of section 424a of this title) to the smaller of—

(A) 85 percent of such individual's average indexed monthly earnings (or 100 percent of his primary insurance amount, if larger), or

(B) 150 percent of such individual's primary insurance amount.

(7) In the case of any individual who is entitled for any month to benefits based upon the primary insurance amounts of two or more insured individuals, one or more of which primary insurance amounts were determined under section 415(a) or (d) of this title as in effect (without regard to the table contained therein) prior to January 1979 and one or more of which primary insurance amounts were determined under section 415(a)(1) or (4) of this title, or section 415(d) of this title, as in effect after December 1978, the total benefits payable to that individual and all other individuals entitled to benefits for that month based upon those primary insurance amounts shall be reduced to an amount

equal to the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7).

(8) Subject to paragraph (7) and except as otherwise provided in paragraph (10)(C), this subsection as in effect in December 1978 shall remain in effect with respect to a primary insurance amount computed under section 415(a) or (d) of this title, as in effect (without regard to the table contained therein) in December 1978 and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990, except that a primary insurance amount so computed with respect to an individual who first becomes eligible for an old-age or disability insurance benefit, or dies (before becoming eligible for such a benefit), after December 1978, shall instead be governed by this section as in effect after December 1978. For purposes of the preceding sentence, the phrase ''rounded to the next higher multiple of $0.10'', as it appeared in subsection (a)(2)(C) of this section as in effect in December 1978, shall be deemed to read ''rounded to the next lower multiple of $0.10''.

(9) When—

(A) one or more persons were entitled (without the application of section 402(j)(1) of this title) to monthly benefits under section 402 of this title for May 1978 on the basis of the wages and self-employment income of an individual,

(B) the benefit of at least one such person for June 1978 is increased by reason of the amendments made by section 204 of the Social Security Amendments of 1977; and

(C) the total amount of benefits to which all such persons are entitled under such section 402 of this title are reduced under the provisions of this subsection (or would be so reduced except for the first sentence of subsection (a)(4) of this section),

then the amount of the benefit to which each such person is entitled for months after May 1978 shall be increased (after such reductions are made under this subsection) to the amount such benefits would have been if the benefit of the person or persons referred to in subparagraph (B) had not been so increased.

(10)(A) Subject to subparagraphs (B) and (C)—

(i) the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for a month on the basis of the wages and self-employment income of an individual whose primary insurance amount is computed under section 415(a)(2)(B)(i) of this title shall equal the total monthly benefits which were authorized by this section with respect to such individual's primary insurance amount for the last month of his prior entitlement to disability insurance benefits, increased for this purpose by the general benefit increases and other increases under section 415(i) of this title that would have applied to such total monthly benefits had the individual remained entitled to disability insurance benefits until the month in which he became entitled to old-age insurance benefits or reentitled to disability insurance benefits or died, and

(ii) the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for a month on the basis of the wages and self-employment income of an individual whose primary insurance amount is computed under section 415(a)(2)(C) of this title shall equal the total monthly benefits which were authorized by this section with respect to such individual's primary insurance amount for the last month of his prior entitlement to disability insurance benefits.

(B) In any case in which—

(i) the total monthly benefits with respect to such individual's primary insurance amount for the last month of his prior entitlement to disability insurance benefits was computed under paragraph (6), and

(ii) the individual's primary insurance amount is computed under subparagraph (B)(i) or (C) of section 415(a)(2) of this title by reason of the individual's entitlement to old-age insurance benefits or death,

the total monthly benefits shall equal the total monthly benefits that would have been authorized with respect to the primary insurance amount for the last month of his prior entitlement to disability insurance benefits if such total monthly benefits had been computed without regard to paragraph (6).

(C) This paragraph shall apply before the application of paragraph (3)(A), and before the application of subsection (a)(1) of this section as in effect in December 1978.

(b) Deductions on account of work

(1) Deductions, in such amounts and at such time or times as the Commissioner of Social Security shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—

(A) such individual's benefit or benefits under section 402 of this title for any month, and

(B) if such individual was entitled to old-age insurance benefits under section 402(a) of this title for such month, the benefit or benefits of all other persons for such month under section 402 of this title based on such individual's wages and self-employment income,

if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (A) and (B). If the excess earnings so charged are less than such total of benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings. If a child who has attained the age of 18 and is entitled to child's insurance benefits, or a person who is entitled to mother's or father's insurance benefits, is married to an individual entitled to old-age insurance benefits under section 402(a) of this title, such child or such person, as the case may be, shall, for the purposes of this subsection and subsection (f) of this section, be deemed to be entitled to such

benefits on the basis of the wages and self-employment income of such individual entitled to old-age insurance benefits. If a deduction has already been made under this subsection with respect to a person's benefit or benefits under section 402 of this title for a month, he shall be deemed entitled to payments under such section for such month for purposes of further deductions under this subsection, and for purposes of charging of each person's excess earnings under subsection (f) of this section, only to the extent of the total of his benefits remaining after such earlier deductions have been made. For purposes of this subsection and subsection (f) of this section—

(i) an individual shall be deemed to be entitled to payments under section 402 of this title equal to the amount of the benefit or benefits to which he is entitled under such section after the application of subsection (a) of this section, but without the application of the first sentence of paragraph (4) thereof; and

(ii) if a deduction is made with respect to an individual's benefit or benefits under section 402 of this title because of the occurrence in any month of an event specified in subsection (c) or (d) of this section or in section 422(b)[1] of this title, such individual shall not be considered to be entitled to any benefits under such section 402 for such month.

(2)(A) Except as provided in subparagraph (B), in any case in which—

(i) any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title for any month, and

(ii) such person has been divorced for not less than 2 years,

the benefit to which he or she is entitled on the basis of the wages and self-employment income of the individual referred to in paragraph (1) for such month shall be determined without regard to deductions under this subsection as a result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in paragraph (1) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(B) Clause (ii) of subparagraph (A) shall not apply with respect to any divorced spouse in any case in which the individual referred to in paragraph (1) became entitled to old-age insurance benefits under section 402(a) of this title before the date of the divorce.

(c) Deductions on account of noncovered work outside United States or failure to have child in care

Deductions, in such amounts and at such time or times as the Commissioner of Social Security shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, until the total of such deductions equals such individual's benefits or benefit under section 402 of this title for any month—

(1) in which such individual is under retirement age (as defined in section 416(*l*) of this title) and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States;

(2) in which such individual, if a wife or husband under retirement age (as defined in section 416(*l*) of this title) entitled to a wife's or husband's insurance benefit, did not have in his or her care (individually or jointly with his or her spouse) a child of such spouse entitled to a child's insurance benefit and such wife's or husband's insurance benefit for such month was not reduced under the provisions of section 402(q) of this title;

(3) in which such individual, if a widow or widower entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased spouse entitled to a child's insurance benefit; or

(4) in which such an individual, if a surviving divorced mother or father entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased former spouse who (A) is his or her son, daughter, or legally adopted child and (B) is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased former spouse.

For purposes of paragraphs (2), (3), and (4) of this subsection, a child shall not be considered to be entitled to a child's insurance benefit for any month in which paragraph (1) of section 402(s) of this title applies or an event specified in section 422(b)[1] of this title occurs with respect to such child. Subject to paragraph (3) of such section 402(s) of this title, no deduction shall be made under this subsection from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of eighteen or any subsequent month; nor shall any deduction be made under this subsection from any widow's or widower's insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60.

(d) Deductions from dependents' benefits on account of noncovered work outside United States by old-age insurance beneficiary

(1)(A) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, to which a wife, divorced wife, husband, divorced husband, or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 402 of this title for any month in which such individual is under retirement age (as defined in section 416(*l*) of this title) and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States.

(B)(i) Except as provided in clause (ii), in any case in which—

(I) a divorced spouse is entitled to monthly benefits under section 402(b) or (c) of this title for any month, and

(II) such divorced spouse has been divorced for not less than 2 years,

the benefit to which he or she is entitled for such month on the basis of the wages and self-

employment income of the individual entitled to old-age insurance benefits referred to in subparagraph (A) shall be determined without regard to deductions under this paragraph as a result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in subparagraph (A) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(ii) Subclause (II) of clause (i) shall not apply with respect to any divorced spouse in any case in which the individual entitled to old-age insurance benefits referred to in subparagraph (A) became entitled to such benefits before the date of the divorce.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled, or from any mother's or father's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or mother's or father's insurance benefit or benefits under section 402 of this title for any month in which such child or person entitled to mother's or father's insurance benefits is married to an individual under retirement age (as defined in section 416(*l*) of this title) who is entitled to old-age insurance benefits and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States.

(e) Occurrence of more than one event

If more than one of the events specified in subsections (c) and (d) of this section and section 422(b)[1] of this title occurs in any one month which would occasion deductions equal to a benefit for such month, only an amount equal to such benefit shall be deducted.

(f) Months to which earnings are charged

For purposes of subsection (b) of this section—

(1) The amount of an individual's excess earnings (as defined in paragraph (3)) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled for such month under section 402 of this title on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the extent, in the case of each such month, of the sum of the payments to which such individual and all such other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 402(a) of this title and other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled to benefits under section 402(b), (c), or (d) of this title on the basis of the wages and self-employment income of such individual, the excess earnings of such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding provisions of this paragraph but subject to section 402(s) of this title, no part of the excess earnings of an individual shall be charged to any month (A) for which such individual was not entitled to a benefit under this subchapter, (B) in which such individual was at or above retirement age (as defined in section 416(*l*) of this title), (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 18, (D) for which such individual is entitled to widow's or widower's insurance benefits if such individual became so entitled prior to attaining age 60, (E) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), if such month is in the taxable year in which occurs the first month after December 1977 that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8), or (F) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), in the case of an individual entitled to benefits under section 402(b) or (c) of this title (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c) of this section, as may be applicable) or under section 402(d) or (g) of this title, if such month is in a year in which such entitlement ends for a reason other than the death of such individual, and such individual is not entitled to any benefits under this subchapter for the month following the month during which such entitlement under section 402(b), (d), or (g) of this title ended.

(2) As used in paragraph (1), the term ''first month of such taxable year'' means the earliest month in such year to which the charging of excess earnings described in such paragraph is not prohibited by the application of clauses (A), (B), (C), (D), (E), and (F) thereof.

(3) For purposes of paragraph (1) and subsection (h) of this section, an individual's excess earnings for a taxable year shall be 33⅓ percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) in the case of an individual who has attained (or, but for the individual's death, would have at-

tained) retirement age (as defined in section 416(*l*) of this title) before the close of such taxable year, or 50 percent of his earnings for such year in excess of such product in the case of any other individual, multiplied by the number of months in such year, except that, in determining an individual's excess earnings for the taxable year in which he attains retirement age (as defined in section 416(*l*) of this title), there shall be excluded any earnings of such individual for the month in which he attains such age and any subsequent month (with any net earnings or net loss from self-employment in such year being prorated in an equitable manner under regulations of the Commissioner of Social Security). For purposes of the preceding sentence, notwithstanding section 411(e) of this title, the number of months in the taxable year in which an individual dies shall be 12. The excess earnings as derived under the first sentence of this paragraph, if not a multiple of $1, shall be reduced to the next lower multiple of $1.

(4) For purposes of clause (E) of paragraph (1)—

(A) An individual will be presumed, with respect to any month, to have been engaged in self-employment in such month until it is shown to the satisfaction of the Commissioner of Social Security that such individual rendered no substantial services in such month with respect to any trade or business the net income or loss of which is includible in computing (as provided in paragraph (5) of this subsection) his net earnings or net loss from self-employment for any taxable year. The Commissioner of Social Security shall by regulations prescribe the methods and criteria for determining whether or not an individual has rendered substantial services with respect to any trade or business.

(B) An individual will be presumed, with respect to any month, to have rendered services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8) until it is shown to the satisfaction of the Commissioner of Social Security that such individual did not render such services in such month for more than such amount.

(5)(A) An individual's earnings for a taxable year shall be (i) the sum of his wages for services rendered in such year and his net earnings from self-employment for such year, minus (ii) any net loss from self-employment for such year.

(B) For purposes of this section—

(i) an individual's net earnings from self-employment for any taxable year shall be determined as provided in section 411 of this title, except that paragraphs (1), (4), and (5) of section 411(c) of this title shall not apply and the gross income shall be computed by excluding the amounts provided by subparagraph (D) of this paragraph, and

(ii) an individual's net loss from self-employment for any taxable year is the excess of the deductions (plus his distributive share of loss described in section 702(a)(8) of the Internal Revenue Code of 1986) taken into account under clause (i) over the gross income (plus his distributive share of income so described) taken into account under clause (i).

(C) For purposes of this subsection, an individual's wages shall be computed without regard to the limitations as to amounts of remuneration specified in paragraphs (1), (6)(B), (6)(C), (7)(B), and (8) of section 409(a) of this title; and in making such computation services which do not constitute employment as defined in section 410 of this title, performed within the United States by the individual as an employee or performed outside the United States in the active military or naval service of the United States, shall be deemed to be employment as so defined if the remuneration for such services is not includible in computing his net earnings or net loss from self-employment. The term ''wages'' does not include—

(i) the amount of any payment made to, or on behalf of, an employee or any of his dependents (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement, or

(ii) any payment or series of payments by an employer to an employee or any of his dependents upon or after the termination of the employee's employment relationship because of retirement after attaining an age specified in a plan referred to in section 409(a)(11)(B) of this title or in a pension plan of the employer.

(D) In the case of—

(i) an individual who has attained retirement age (as defined in section 416(*l*) of this title) on or before the last day of the taxable year, and who shows to the satisfaction of the Commissioner of Social Security that he or she is receiving royalties attributable to a copyright or patent obtained before the taxable year in which he or she attained such age and that the property to which the copyright or patent relates was created by his or her own personal efforts, or

(ii) an individual who has become entitled to insurance benefits under this subchapter, other than benefits under section 423 of this title or benefits payable under section 402(d) of this title by reason of being under a disability, and who shows to the satisfaction of the Commissioner of Social Security that he or she is receiving, in a year after his or her initial year of entitlement to such benefits, any other income not attributable to services performed after the month in which he or she initially became entitled to such benefits,

there shall be excluded from gross income any such royalties or other income.

(E) For purposes of this section, any individual's net earnings from self-employment which result from or are attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regard-

less of when the income, on which the computation of such net earnings from self-employment is based, is actually paid to or received by such individual (unless such income was actually paid and received prior to that year).

(6) For purposes of this subsection, wages (determined as provided in paragraph (5)(C)) which, according to reports received by the Commissioner of Social Security, are paid to an individual during a taxable year shall be presumed to have been paid to him for services performed in such year until it is shown to the satisfaction of the Commissioner of Social Security that they were paid for services performed in another taxable year. If such reports with respect to an individual show his wages for a calendar year, such individual's taxable year shall be presumed to be a calendar year for purposes of this subsection until it is shown to the satisfaction of the Commissioner of Social Security that his taxable year is not a calendar year.

(7) Where an individual's excess earnings are charged to a month and the excess earnings so charged are less than the total of the payments (without regard to such charging) to which all persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled under section 402 of this title for such month on the basis of his wages and self-employment income, the difference between such total and the excess so charged to such month shall be paid (if it is otherwise payable under this subchapter) to such individual and other persons in the proportion that the benefit to which each of them is entitled (without regard to such charging, without the application of section 402(k)(3) of this title, and prior to the application of section 403(a) of this title) bears to the total of the benefits to which all of them are entitled.

(8)(A) Whenever the Commissioner of Social Security pursuant to section 415(i) of this title increases benefits effective with the month of December following a cost-of-living computation quarter[2] the Commissioner shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C)) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death, during such year).

(B) Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals, for each month of a particular taxable year, shall each be whichever of the following is the larger—

(i) the corresponding exempt amount which is in effect with respect to months in the taxable year in which the determination under subparagraph (A) is made, or

(ii) the product of the corresponding exempt amount which is in effect with respect to months in the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals), and the ratio of—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subparagraph (A) is made, to

(II) the national average wage index (as so defined) for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals),

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

Whenever the Commissioner of Social Security determines that an exempt amount is to be increased in any year under this paragraph, the Commissioner shall notify the House Committee on Ways and Means and the Senate Committee on Finance within 30 days after the close of the base quarter (as defined in section 415(i)(1)(A) of this title) in such year of the estimated amount of such increase, indicating the new exempt amount, the actuarial estimates of the effect of the increase, and the actuarial assumptions and methodology used in preparing such estimates.

(C) Notwithstanding the determination of a new exempt amount by the Commissioner of Social Security under subparagraph (A) (and notwithstanding any publication thereof under such subparagraph or any notification thereof under the last sentence of subparagraph (B)), such new exempt amount shall not take effect pursuant thereto if during the calendar year in which such determination is made a law increasing the exempt amount is enacted.

(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 416(*l*) of this title) before the close of the taxable year involved shall be—

(i) for each month of any taxable year ending after 1995 and before 1997, $1,041.66⅔,

(ii) for each month of any taxable year ending after 1996 and before 1998, $1,125.00,

(iii) for each month of any taxable year ending after 1997 and before 1999, $1,208.33⅓,

(iv) for each month of any taxable year ending after 1998 and before 2000, $1,291.66⅔,

(v) for each month of any taxable year ending after 1999 and before 2001, $1,416.66⅔,

(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.

[2] So in original. Probably should be followed by a comma.

(E) Notwithstanding subparagraph (D), no deductions in benefits shall be made under subsection (b) of this section with respect to the earnings of any individual in any month beginning with the month in which the individual attains retirement age (as defined in section 416(*l*) of this title).

(9) For purposes of paragraphs (3), (5)(D)(i), (8)(D), and (8)(E), the term ''retirement age (as defined in section 416(*l*) of this title)'', with respect to any individual entitled to monthly insurance benefits under section 402 of this title, means the retirement age (as so defined) which is applicable in the case of old-age insurance benefits, regardless of whether or not the particular benefits to which the individual is entitled (or the only such benefits) are old-age insurance benefits.

(g) Penalty for failure to report certain events

Any individual in receipt of benefits subject to deduction under subsection (c) of this section, (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event specified therein, who fails to report such occurrence to the Commissioner of Social Security prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred, shall suffer deductions in addition to those imposed under subsection (c) of this section as follows:

(1) if such failure is the first one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than one month;

(2) if such failure is the second one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to two times his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than two months; and

(3) if such failure is the third or a subsequent one for which an additional deduction is imposed under this subsection, such additional deduction shall be equal to three times his benefit or benefits for the first month of the period for which there is a failure to report even though the failure to report is with respect to more than three months;

except that the number of additional deductions required by this subsection shall not exceed the number of months in the period for which there is a failure to report. As used in this subsection, the term ''period for which there is a failure to report'' with respect to any individual means the period for which such individual received and accepted insurance benefits under section 402 of this title without making a timely report and for which deductions are required under subsection (c) of this section.

(h) Report of earnings to Commissioner

(1)(A) If an individual is entitled to any monthly insurance benefit under section 402 of this title during any taxable year in which he has earnings or wages, as computed pursuant to paragraph (5) of subsection (f) of this section, in excess of the product of the applicable exempt amount as determined under subsection (f)(8) of this section times the number of months in such year, such individual (or the individual who is in receipt of such benefit on his behalf) shall make a report to the Commissioner of Social Security of his earnings (or wages) for such taxable year. Such report shall be made on or before the fifteenth day of the fourth month following the close of such year, and shall contain such information and be made in such manner as the Commissioner of Social Security may by regulations prescribe. Such report need not be made for any taxable year—

(i) beginning with or after the month in which such individual attained retirement age (as defined in section 416(*l*) of this title), or

(ii) if benefit payments for all months (in such taxable year) in which such individual is under retirement age (as defined in section 416(*l*) of this title) have been suspended under the provisions of the first sentence of paragraph (3) of this subsection, unless—

(I) such individual is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title,

(II) such benefits are reduced under subsection (a) of this section for any month in such taxable year, and

(III) in any such month there is another person who also is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title on the basis of the same wages and self-employment income and who does not live in the same household as such individual.

The Commissioner of Social Security may grant a reasonable extension of time for making the report of earnings required in this paragraph if the Commissioner finds that there is valid reason for a delay, but in no case may the period be extended more than four months.

(B) If the benefit payments of an individual have been suspended for all months in any taxable year under the provisions of the first sentence of paragraph (3) of this subsection, no benefit payment shall be made to such individual for any such month in such taxable year after the expiration of the period of three years, three months, and fifteen days following the close of such taxable year unless within such period the individual, or some other person entitled to benefits under this subchapter on the basis of the same wages and self-employment income, files with the Commissioner of Social Security information showing that a benefit for such month is payable to such individual.

(2) If an individual fails to make a report required under paragraph (1) of this subsection, within the time prescribed by or in accordance with such paragraph, for any taxable year and any deduction is imposed under subsection (b) of this section by reason of his earnings for such year, he shall suffer additional deductions as follows:

(A) if such failure is the first one with respect to which an additional deduction is imposed under this paragraph, such additional

deduction shall be equal to his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title, except that if the deduction imposed under subsection (b) of this section by reason of his earnings for such year is less than the amount of his benefit (or benefits) for the last month of such year for which he was entitled to a benefit under section 402 of this title, the additional deduction shall be equal to the amount of the deduction imposed under subsection (b) of this section but not less than $10;

(B) if such failure is the second one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to two times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title;

(C) if such failure is the third or a subsequent one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to three times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title;

except that the number of the additional deductions required by this paragraph with respect to a failure to report earnings for a taxable year shall not exceed the number of months in such year for which such individual received and accepted insurance benefits under section 402 of this title and for which deductions are imposed under subsection (b) of this section by reason of his earnings. In determining whether a failure to report earnings is the first or a subsequent failure for any individual, all taxable years ending prior to the imposition of the first additional deduction under this paragraph, other than the latest one of such years, shall be disregarded.

(3) If the Commissioner of Social Security determines, on the basis of information obtained by or submitted to the Commissioner, that it may reasonably be expected that an individual entitled to benefits under section 402 of this title for any taxable year will suffer deductions imposed under subsection (b) of this section by reason of his earnings for such year, the Commissioner of Social Security may, before the close of such taxable year, suspend the total or less than the total payment for each month in such year (or for only such months as the Commissioner of Social Security may specify) of the benefits payable on the basis of such individual's wages and self-employment income; and such suspension shall remain in effect with respect to the benefits for any month until the Commissioner of Social Security has determined whether or not any deduction is imposed for such month under subsection (b) of this section. The Commissioner of Social Security is authorized, before the close of the taxable year of an individual entitled to benefits during such year, to request of such individual that he make, at such time or times as the Commissioner of Social Security may specify, a declaration of his estimated earnings for the taxable year and that he furnish to the Commissioner of Social Security such other information with respect to such earnings as the Commissioner of Social Security may specify. A failure by such individual to comply with any such request shall in itself constitute justification for a determination under this paragraph that it may reasonably be expected that the individual will suffer deductions imposed under subsection (b) of this section by reason of his earnings for such year. If, after the close of a taxable year of an individual entitled to benefits under section 402 of this title for such year, the Commissioner of Social Security requests such individual to furnish a report of his earnings (as computed pursuant to paragraph (5) of subsection (f) of this section) for such taxable year or any other information with respect to such earnings which the Commissioner of Social Security may specify, and the individual fails to comply with such request, such failure shall in itself constitute justification for a determination that such individual's benefits are subject to deductions under subsection (b) of this section for each month in such taxable year (or only for such months thereof as the Commissioner of Social Security may specify) by reason of his earnings for such year.

(4) The Commissioner of Social Security shall develop and implement procedures in accordance with this subsection to avoid paying more than the correct amount of benefits to any individual under this subchapter as a result of such individual's failure to file a correct report or estimate of earnings or wages. Such procedures may include identifying categories of individuals who are likely to be paid more than the correct amount of benefits and requesting that they estimate their earnings or wages more frequently than other persons subject to deductions under this section on account of earnings or wages.

(i) Repealed. Pub. L. 103–296, title III, § 309(a), Aug. 15, 1994, 108 Stat. 1523

(j) Attainment of retirement age

For the purposes of this section, an individual shall be considered as having attained retirement age (as defined in section 416(*l*) of this title) during the entire month in which he attains such age.

(k) Noncovered remunerative activity outside United States

An individual shall be considered to be engaged in noncovered remunerative activity outside the United States if he performs services outside the United States as an employee and such services do not constitute employment as defined in section 410 of this title and are not performed in the active military or naval service of the United States, or if he carries on a trade or business outside the United States (other than the performance of service as an employee) the net income or loss of which (1) is not includible in computing his net earnings from self-employment for a taxable year and (2) would not be excluded from net earnings from self-employment, if carried on in the United States, by any of the numbered paragraphs of section 411(a) of this title. When used in the preceding sentence with respect to a trade or business (other than the performance of service as an em-

ployee), the term ''United States'' does not include the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa in the case of an alien who is not a resident of the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa); and the term ''trade or business'' shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1986.

(*l*) Good cause for failure to make reports required

The failure of an individual to make any report required by subsection (g) or (h)(1)(A) of this section within the time prescribed therein shall not be regarded as such a failure if it is shown to the satisfaction of the Commissioner of Social Security that he had good cause for failing to make such report within such time. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Commissioner of Social Security, except that in making any such determination, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).

(Aug. 14, 1935, ch. 531, title II, §203, 49 Stat. 623; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, 1367; Aug. 10, 1946, ch. 951, title IV, §406, 60 Stat. 988; Aug. 28, 1950, ch. 809, title I, §§102(a), 103(a), 64 Stat. 489; July 18, 1952, ch. 945, §§2(b)(2), 4(a)–(d), 66 Stat. 768, 773; Sept. 1, 1954, ch. 1206, title I, §§102(e)(7), 103(a)–(h), (i)(3), 112(a), 68 Stat. 1070, 1073–1077, 1078, 1085; Aug. 1, 1956, ch. 836, title I, §§101(d)–(g), 102(d)(11), 107(a), 112 (a), (b), 70 Stat. 808, 814, 829, 831; Pub. L. 85–840, title I, §101(f), title II, §205(j), (k), title III, §§307(f), 308(a)–(e), Aug. 28, 1958, 72 Stat. 1017, 1024, 1032, 1033; Pub. L. 86–778, title I, §103(b), title II, §§209(a), 211(a)–(h), title III, §302(a), Sept. 13, 1960, 74 Stat. 936, 953–957, 960; Pub. L. 87–64, title I, §108(a), June 30, 1961, 75 Stat. 140; Pub. L. 89–97, title III, §§301(c), 306(c)(10)–(12), 308(d)(6)–(8), 310(a), 325(a), July 30, 1965, 79 Stat. 363, 373, 378–380, 399; Pub. L. 90–248, title I, §§101(b), 104(d)(1), 107(a), 160, 161(a), (b), 163(a)(1), Jan. 2, 1968, 81 Stat. 826, 832, 834, 870, 872; Pub. L. 91–172, title X, §1002(b)(1), Dec. 30, 1969, 83 Stat. 739; Pub. L. 92–5, title II, §201(b), Mar. 17, 1971, 85 Stat. 8; Pub. L. 92–336, title II, §§201(b), (h)(1), 202(a)(2)(A), (B), July 1, 1972, 86 Stat. 410, 411, 415; Pub. L. 92–603, title I, §§101(b), 102(c), 103(c), 105(a), (b), 106(a), 107(b)(1), (2), 144(a)(2), (3), Oct. 30, 1972, 86 Stat. 1334, 1336, 1340–1343, 1370; Pub. L. 93–66, title II, §202(a)–(c), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §§3(k), 18(a), Dec. 31, 1973, 87 Stat. 953, 967; Pub. L. 94–202, §8(i), Jan. 2, 1976, 89 Stat. 1140; Pub. L. 95–216, title II, §§202, 204(e), title III, §§301(a), (b), (c)(1), (d), 302(a)–(d), 303(a), 353(a), Dec. 20, 1977, 91 Stat. 1524, 1528, 1530, 1531, 1552; Pub. L. 96–265, title I, §101(a)–(b)(2), June 9, 1980, 94 Stat. 442; Pub. L. 96–473, §§1(a), 3(a), 4(a), 6(b), Oct. 19, 1980, 94 Stat. 2263–2265; Pub. L. 97–35, title XXII, §§2201(c)(6), 2206(b)(2)–(4), Aug. 13, 1981, 95 Stat. 831, 838; Pub. L. 97–123, §2(f), Dec. 29, 1981, 95 Stat. 1661; Pub. L. 98–21, title I, §§111(a)(4), 132(b), title II, §201(c)(1)(B), (2), title III, §§306(i), 309(f)–(h), 324(c)(4), 331(a), (b), 347(a), Apr. 20, 1983, 97 Stat. 72, 94, 109, 114, 116, 117, 125, 128, 129, 138; Pub. L. 98–369, div. B, title VI, §§2602(a), 2661(g)(1)(A), (2)(A), 2662(c)(1), 2663(a)(3), July 18, 1984, 98 Stat. 1127, 1157, 1159, 1161; Pub. L. 99–272, title XII, §12108(a), Apr. 7, 1986, 100 Stat. 286; Pub. L. 100–647, title VIII, §8002(a), (b), Nov. 10, 1988, 102 Stat. 3779; Pub. L. 101–239, title X, §§10208(b)(1)(A), (B), (d)(2)(A)(i), (ii), (vi), 10305(a), Dec. 19, 1989, 103 Stat. 2477, 2480, 2481, 2483; Pub. L. 101–508, title V, §§5117(a)(3)(B), 5119(c), (d), 5123(a)(1), (2), 5127(a), (b), Nov. 5, 1990, 104 Stat. 1388–277, 1388–279, 1388–280, 1388–284, 1388–286; Pub. L. 103–296, title I, §107(a)(4), title III, §§309(a)–(c), 310(a), (b), 314(a), 321(a)(6), (c)(6)(A), (g)(2), Aug. 15, 1994, 108 Stat. 1478, 1523, 1524, 1530, 1536, 1538, 1543; Pub. L. 104–121, title I, §102(a), (b)(1), Mar. 29, 1996, 110 Stat. 847, 848; Pub. L. 106–182, §§2–4(a), Apr. 7, 2000, 114 Stat. 198, 199.)

REFERENCES IN TEXT

Section 422(b) of this title, referred to in subsecs. (a)(3)(B)(iii), (4), (b)(1)(ii), (c), (e), was repealed by Pub. L. 106–170, title I, §101(b)(1)(C), Dec. 17, 1999, 113 Stat. 1873.

Section 5117 of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (a)(8), is section 5117 of Pub. L. 101–508, title V, Nov. 5, 1990, 104 Stat. 1388–274.

The amendments made by section 204 of the Social Security Amendments of 1977, referred to in subsec. (a)(9)(B), means the amendments made by section 204 of Pub. L. 95–216, which enacted subsec. (a)(9) of this section and amended section 402(e)(2)(A), (e)(2)(B)(i), (f)(3)(A), and (f)(3)(B)(i) of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (f)(5)(B)(ii) and (k), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–182, §4(a)(1), in last sentence of concluding provisions substituted ''nor shall any deduction be made under this subsection from any widow's or widower's insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60'' for ''nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower or surviving divorced husband is entitled and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if he became so entitled prior to attaining age 60)''.

Subsec. (c)(1). Pub. L. 106–182, §2(1), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''the age of seventy''.

Subsec. (d)(1)(A), (2). Pub. L. 106–182, §2(2), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''the age of seventy''.

Subsec. (f)(1)(B). Pub. L. 106–182, §2(3), substituted ''was at or above retirement age (as defined in section 416(*l*) of this title)'' for ''was age seventy or over''.

Subsec. (f)(1)(D). Pub. L. 106–182, §4(a)(2), added cl. (D) and struck out former cl. (D) which read as follows: ''for which such individual is entitled to widow's insurance benefits and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if he became so entitled prior to attaining age 60),''.

Subsec. (f)(3). Pub. L. 106–182, §2(4), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 70''.

Subsec. (f)(8)(E). Pub. L. 106–182, § 3(a), added subpar. (E).

Subsec. (f)(9). Pub. L. 106–182, § 3(b), substituted ''(8)(D), and (8)(E),'' for ''and (8)(D),''.

Subsec. (h)(1)(A)(i), (ii). Pub. L. 106–182, § 2(5), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 70''.

Subsec. (j). Pub. L. 106–182, § 2(6), substituted ''retirement age'' for ''age seventy'' in heading and ''having attained retirement age (as defined in section 416(*l*) of this title)'' for ''seventy years of age''.

1996—Subsec. (f)(8)(B)(ii). Pub. L. 104–121, § 102(b)(1)(A), substituted ''the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)'' for ''the taxable year ending after 1993 and before 1995''.

Subsec. (f)(8)(B)(ii)(II). Pub. L. 104–121, § 102(b)(1)(B), substituted ''for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)'' for ''for 1992''.

Subsec. (f)(8)(D). Pub. L. 104–121, § 102(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 416(*l*) of this title) before the close of the taxable year involved—

''(i) shall be $333.33⅓ for each month of any taxable year ending after 1977 and before 1979,

''(ii) shall be $375 for each month of any taxable year ending after 1978 and before 1980,

''(iii) shall be $416.66⅔ for each month of any taxable year ending after 1979 and before 1981,

''(iv) shall be $458.33⅓ for each month of any taxable year ending after 1980 and before 1982, and

''(v) shall be $500 for each month of any taxable year ending after 1981 and before 1983.''

1994—Subsec. (a)(2)(C). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(4). Pub. L. 103–296, § 309(b), substituted ''section 422(b) of this title. Notwithstanding the preceding sentence, any reduction under this subsection in the case of an individual who is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for any month on the basis of the same wages and self-employment income as another person—

''(A) who also is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for such month,

''(B) who does not live in the same household as such individual, and

''(C) whose benefit for such month is suspended (in whole or in part) pursuant to subsection (h)(3) of this section,

shall be made before the suspension under subsection (h)(3) of this section. Whenever'' for ''section 422(b) of this title. Whenever''.

Subsec. (a)(8). Pub. L. 103–296, § 310(b), substituted ''Subject to paragraph (7) and except as otherwise provided in paragraph (10)(C)'' for ''Subject to paragraph (7)''.

Subsec. (a)(10). Pub. L. 103–296, § 310(a), added par. (10).

Subsecs. (b)(1), (c), (f)(3), (4). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (f)(5)(B)(ii). Pub. L. 103–296, § 321(c)(6)(A), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (f)(5)(C)(i), (ii). Pub. L. 103–296, § 321(a)(6), realigned margins.

Subsec. (f)(5)(D), (6). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (f)(8)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner'' for ''he''.

Subsec. (f)(8)(B). Pub. L. 103–296, § 107(a)(4), in closing provisions substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner shall'' for ''he shall''.

Subsec. (f)(8)(B)(ii). Pub. L. 103–296, § 321(g)(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the product of the exempt amount described in clause (i) and the ratio of (I) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subparagraph (A) is made to (II) the deemed average total wages (as so defined) for the calendar year before the most recent calendar year in which an increase in the exempt amount was enacted or a determination resulting in such an increase was made under subparagraph (A), with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.''

Subsecs. (f)(8)(C), (g). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (h)(1)(A). Pub. L. 103–296, § 314(a), substituted ''four months'' for ''three months'' in last sentence.

Pub. L. 103–296, § 107(a)(4), in subpar. (A) as amended by Pub. L. 103–296, § 309(c), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner'' for ''he'' before ''finds''.

Pub. L. 103–296, § 309(c), substituted ''Such report need not be made for any taxable year—

''(i) beginning with or after the month in which such individual attained age 70, or

''(ii) if benefit payments for all months (in such taxable year) in which such individual is under age 70 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection, unless—

''(I) such individual is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title,

''(II) such benefits are reduced under subsection (a) of this section for any month in such taxable year, and

''(III) in any such month there is another person who also is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title on the basis of the same wages and self-employment income and who does not live in the same household as such individual.

The Secretary may grant'' for ''Such report need not be made for any taxable year (i) beginning with or after the month in which such individual attained age 70, or (ii) if benefit payments for all months (in such taxable year) in which such individual is under age 70 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection. The Secretary may grant''.

Subsec. (h)(1)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (h)(3). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''submitted to the Commissioner'' for ''submitted to him''.

Subsec. (h)(4). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (i). Pub. L. 103–296, § 309(a), struck out subsec. (i) which read as follows: ''In the case of any individual, deductions by reason of the provisions of subsection (b), (c), (g), or (h) of this section, or the provisions of section 422(b) of this title, shall, notwithstanding such provisions, be made from the benefits to which such individual is entitled only to the extent that such deductions reduce the total amount which would otherwise be paid, on the basis of the same wages and self-employment income, to such individual and the other individuals living in the same household.''

Subsec. (k). Pub. L. 103–296, § 321(c)(6)(A), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (*l*). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1990—Subsec. (a)(3)(D). Pub. L. 101–508, §5119(c), added subpar. (D).

Subsec. (a)(6). Pub. L. 101–508, §5119(d), inserted ''(3)(D),'' after ''(3)(C),''.

Subsec. (a)(8). Pub. L. 101–508, §5117(a)(3)(B), inserted ''and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990,'' after second reference to ''December 1978''.

Subsec. (b)(2). Pub. L. 101–508, §5127(a), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), in any case in which—'' and cls. (i) and (ii) for ''When any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title for any month and such person has been so divorced for not less than 2 years,'', and added subpar. (B).

Subsec. (d)(1)(B). Pub. L. 101–508, §5127(b), designated existing provisions as cl. (i), substituted ''Except as provided in clause (ii), in any case in which—'' and subcls. (I) and (II) for ''When any divorced spouse is entitled to monthly benefits under section 402(b) or (c) of this title for any month and such divorced spouse has been so divorced for not less than 2 years,'', and added cl. (ii).

Subsec. (f)(5)(E). Pub. L. 101–508, §5123(a)(1), (2), redesignated last undesignated par. of section 411(a) of this title as subpar. (E) and substituted ''For purposes of this section, any individual's net earnings from self-employment which result from or are attributable to'' for ''Any income of an individual which results from or is attributable to'', ''the income, on which the computation of such net earnings from self-employment is based, is actually paid'' for ''the income is actually paid'', and ''unless such income was'' for ''unless it was''.

1989—Subsec. (f)(5)(C). Pub. L. 101–239, §10208(d)(2)(A)(ii), (vi), substituted ''paragraphs (1), (6)(B), (6)(C), (7)(B), and (8) of section 409(a)'' for ''subsections (a), (g)(2), (g)(3), (h)(2), and (j) of section 409'' in introductory provisions and ''409(a)(11)(B)'' for ''409(m)(2)'' in cl. (ii).

Subsec. (f)(8)(B)(ii)(I). Pub. L. 101–239, §10208(b)(1)(A), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (f)(8)(B)(ii)(II). Pub. L. 101–239, §10208(b)(1)(B), substituted ''the deemed average total wages (as so defined)'' for ''the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate''.

Subsec. (*l*). Pub. L. 101–239, §10305(a), substituted ''Secretary, except that in making any such determination, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language)'' for ''Secretary'' in last sentence.

1988—Subsec. (f)(3). Pub. L. 100–647 inserted ''(or, but for the individual's death, would have attained)'' after ''who has attained'' in first sentence, inserted after first sentence ''For purposes of the preceding sentence, notwithstanding section 411(e) of this title, the number of months in the taxable year in which an individual dies shall be 12.'', and substituted ''first sentence of this paragraph'' for ''preceding sentence'' in last sentence.

1986—Subsec. (a)(4). Pub. L. 99–272, §12108(a)(1), struck out ''preceding'' after ''pursuant to the'' in first sentence.

Subsec. (a)(6). Pub. L. 99–272, §12108(a)(2), substituted ''(4), and (5)'' for ''and (5)'' and ''shall be reduced'' for ''whether or not such total benefits are otherwise subject to reduction under this subsection but after any reduction under this subsection which would otherwise be applicable, shall be, reduced or further reduced''.

1984—Subsec. (a)(8). Pub. L. 98–369, §2663(a)(3)(A), inserted a period at end of par. (8).

Subsec. (d)(1)(A). Pub. L. 98–369, §2661(g)(1)(A)(i), substituted ''for more than forty-five hours of which such individual engaged'' for ''on seven or more different calendar days of which he engaged''.

Subsec. (d)(2). Pub. L. 98–369, §2663(a)(3)(B), substituted ''an individual under the age of seventy who is entitled'' for ''an individual who is entitled''.

Pub. L. 98–369, §2661(g)(1)(A)(ii), substituted ''for more than forty-five hours'' for ''on seven or more different calendar days''.

Subsec. (f)(5)(B)(ii). Pub. L. 98–369, §2663(a)(3)(C), substituted ''702(a)(8)'' for ''702(a)(9)''.

Subsec. (f)(5)(D)(i). Pub. L. 98–369, §2662(c)(1), made a clarifying amendment to Pub. L. 98–21, §201(c)(1)(B). See 1983 Amendment note below.

Subsec. (f)(8)(B), (C). Pub. L. 98–369, §2663(a)(3)(D), realigned margins of subpars. (B) and (C).

Subsec. (f)(9). Pub. L. 98–369, §2661(g)(2)(A), added par. (9).

Subsec. (h)(4). Pub. L. 98–369, §2602(a), added par. (4).

1983—Subsec. (a)(3)(A). Pub. L. 98–21, §331(a)(1), amended cl. (ii) generally, substituting provisions relating to an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title, for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title, for provisions relating to an amount equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and inserted provisions following cl. (ii).

Subsec. (a)(7). Pub. L. 98–21, §331(a)(2), substituted ''the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7)'' for ''the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined under section 430 of this title for the year in which that month occurs''.

Subsec. (b)(1). Pub. L. 98–21, §309(f), inserted ''or father's'' after ''mother's'' in provisions following subpar. (B).

Pub. L. 98–21, §132(b)(1)(A)(iii), substituted ''clauses (A) and (B)'' for ''clauses (1) and (2)'' in provisions following subpar. (B).

Pub. L. 98–21, §132(b)(1)(A)(i), (ii), (iv), designated existing provisions of subsec. (b) as par. (1), and in par. (1), as so designated, redesignated cls. (1) and (2) as (A) and (B), respectively, and cls. (A) and (B) as (i) and (ii), respectively.

Subsec. (b)(1)(i). Pub. L. 98–21, §331(b), substituted ''first sentence of paragraph (4)'' for ''penultimate sentence''.

Subsec. (b)(2). Pub. L. 98–21, §132(b)(1)(A)(v), added par. (2).

Subsec. (c). Pub. L. 98–21, §201(c)(2), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age sixty-five''.

Pub. L. 98–21, §201(c)(1)(B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' wherever appearing in provisions following par. (4).

Pub. L. 98–21, §309(g), amended subsec. (c) generally, substituting in par. (1) specification of more than forty-five hours of nonrecovered remunerative activity for specification of seven or more different days of such activity, and in pars. (2) to (4) provisions not distinguish-

ing between the sexes for provisions relating only to the entitlements of women, and in provisions following par. (4) inserting ''or surviving divorced husband'' after ''widower''.

Subsec. (d)(1). Pub. L. 98–21, § 309(h), inserted ''divorced husband,'' after ''husband,''.

Pub. L. 98–21, § 132(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(2). Pub. L. 98–21, § 309(h), inserted ''or father's'' after ''mother's'' in three places.

Subsec. (f)(1). Pub. L. 98–21, § 132(b)(1)(B)(i), inserted ''(excluding divorced spouses referred to in subsection (b)(2) of this section)'' after ''and all other persons'' and after ''other persons'' and inserted ''such'' after ''payments to which such individual and all'' in first sentence.

Subsec. (f)(1)(D). Pub. L. 98–21, § 201(c)(1)(B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' in two places.

Subsec. (f)(1)(F). Pub. L. 98–21, § 306(i), substituted ''section 402(b) or (c) of this title (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c) of this section, as may be applicable)'' for ''section 402(b) of this title (but only by reason of having a child in her care within the meaning of paragraph (1)(B) of that subsection)''.

Subsec. (f)(3). Pub. L. 98–21, § 347(a), substituted ''33⅓ percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) in the case of an individual who has attained retirement age (as defined in section 416(*l*) of this title) before the close of such taxable year, or 50 percent of his earnings for such year in excess of such product in the case of any other individual'' for ''50 per centum of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8)''.

Subsec. (f)(5)(C). Pub. L. 98–21, § 324(c)(4), inserted provision excluding from ''wages'' certain payments on account of retirement or under a pension plan of the employer.

Subsec. (f)(5)(D)(i). Pub. L. 98–21, § 201(c)(1)(B), as amended by Pub. L. 98–369, § 2662(c)(1), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''the age of 65''.

Subsec. (f)(7). Pub. L. 98–21, § 132(b)(1)(B)(ii), inserted ''(excluding divorced spouses referred to in subsection (b)(2) of this section)'' after ''all persons''.

Subsec. (f)(8)(A). Pub. L. 98–21, § 111(a)(4), substituted ''December'' for ''June''.

Subsec. (f)(8)(D). Pub. L. 98–21, § 201(c)(1)(B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2206(b)(2), substituted in provisions following subpar. (D) ''decreased to the next lower'' for ''increased to the next higher''.

Subsec. (a)(3)(B)(iii). Pub. L. 97–35, § 2206(b)(3), substituted ''next lower multiple'' for ''next higher multiple''.

Subsec. (a)(8). Pub. L. 97–123, § 2(f), struck out '', modified by the application of section 415(a)(6) of this title''.

Pub. L. 97–35, §§ 2201(c)(6), 2206(b)(4), inserted '', modified by the application of section 415(a)(6) of this title'' and inserted provision that for the purposes of the preceding sentence, the phrase ''rounded to the next higher multiple of $0.10'', as it appeared in subsec. (a)(2)(C) of this section as in effect in December 1978, be deemed to read ''rounded to the next lower multiple of $0.10''.

1980—Subsec. (a). Pub. L. 96–265 added par. (6), redesignated former pars. (6) to (8) as (7) to (9), respectively, and made conforming amendments to pars. (1), (2)(D), and (8).

Subsec. (a)(3)(A). Pub. L. 96–473, § 6(b)(1), substituted ''entitled on the basis'' for ''entitled on the bases''.

Subsec. (a)(7). Pub. L. 96–473, § 6(b)(2), substituted ''benefit base'' for ''benefits base''.

Subsec. (f)(1). Pub. L. 96–473, §§ 1(a)(1), 4(a), inserted reference to December 1977 in cl. (E) and added cl. (F).

Subsec. (f)(2)(F). Pub. L. 96–473, § 1(a)(2), inserted reference to cl. (F).

Subsec. (f)(5)(D). Pub. L. 96–473, § 3(a), revised former cls. (i) and (ii) into cl. (i), inserted reference to women, and added cl. (ii).

1977—Subsec. (a)(1) to (7). Pub. L. 95–216, § 202, generally restated the provisions of existing pars. (1) to (5) with changes to take into account the revised system for computing primary insurance amounts based on wage-indexed earnings and redistributed those existing provisions as thus restated into pars. (1) to (7).

Subsec. (a)(8). Pub. L. 95–216, § 204(e), added par. (8).

Subsecs. (c)(1), (d)(1), (f)(1)(B). Pub. L. 95–216, § 302(a), substituted ''seventy'' for ''seventy-two''.

Subsec. (f)(1)(E). Pub. L. 95–216, §§ 301(d), 303(a), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount'' and inserted '', if such month is in the taxable year in which occurs the first month that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8)'' after ''as determined under paragraph (8)''.

Subsec. (f)(3). Pub. L. 95–216, § 301(d), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount''.

Pub. L. 95–216, § 302(b), substituted ''age 70'' for ''age 72''.

Subsec. (f)(4)(B). Pub. L. 95–216, § 301(d), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount''.

Subsec. (f)(8)(A). Pub. L. 95–216, § 301(a), substituted ''the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year'' for ''a new exempt amount which shall be effective (unless such new exempt amount is prevented from becoming effective by subparagraph (C) of this paragraph) with respect to any individual's taxable year which ends after the calendar year''.

Subsec. (f)(8)(B). Pub. L. 95–216, §§ 301(b), 353(a), applicable with respect to taxable years ending after Dec. 1977, substituted ''Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals for each month of a particular taxable year, shall each be'' for ''The exempt amount for each month of a particular taxable year shall be'' in provisions preceding cl. (i), substituted ''the corresponding exempt amount'' for ''the exempt amount'' in cl. (i), and, in provisions following cl. (ii), substituted ''an exempt amount'' for ''the exempt amount'', and effective Jan. 1, 1979, substituted ''is'' for ''was'' in cl. (i) and, in cl. (ii), substituted ''(I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the determination under subparagraph (A) is made to (II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year'' for ''(I) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year in which the determination under subparagraph (A) was made to (II) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973, or, if later, the calendar year preceding the most recent calendar year'' and struck out reference to wages for calendar year 1978.

Subsec. (f)(8)(D). Pub. L. 95–216, §301(c)(1), added subpar. (D).

Subsec. (h)(1)(A). Pub. L. 95–216, §301(d), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount''.

Pub. L. 95–216, §302(c), substituted ''age 70'' for ''the age of 72'' and for ''age 72''.

Subsec. (j). Pub. L. 95–216, §302(a), (d), substituted ''seventy'' for ''seventy-two'' in heading and in text.

1976—Subsec. (f)(8)(B)(ii). Pub. L. 94–202 substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar year'' in cl. (I), substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973, or, if later, the calendar year preceding'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1973, or, if later, the first calendar quarter of'' in cl. (II), and directed that the average wages for calendar year 1978, or any prior calendar year, be deemed equal to 400% of the average wages reported for the first quarter of that year.

1973—Subsec. (f). Pub. L. 93–66, §202(a), (b), substituted in pars. (1), (3), first sentence, and (4)(B), ''$200'' for ''$175''.

Subsec. (f)(8)(A). Pub. L. 93–233, §3(k)(1), substituted: ''with the month of June following'' for ''with the first month of the calendar year following'', ''which ends after the calendar year in which such benefit increase is effective'' for ''which ends with the close of or after the calendar year with the first month of which such benefit increase is effective'', and ''during the calendar year after the calendar year in which the benefit increase is effective'' for ''during such calendar year''; and struck out after ''such quarter occurs'' and before ''a new exempt amount'' parenthetical ''(along with the publication of such benefit increased as required by section 415(i)(2)(D) of this title)''.

Subsec. (f)(8)(B)(ii). Pub. L. 93–233, §18(a), substituted ''exempt amount'' for ''contribution and benefit base'' and ''subparagraph (A)'' for ''section 430(a) of this title'', respectively.

Subsec. (f)(8)(B) foll. (ii). Pub. L. 93–233, §3(k)(2), substituted ''within 30 days after the close of the base quarter (as defined in section 415(i)(1)(A) of this title) in such year'' for ''no later than August 15 of such year''.

Subsec. (f)(8)(C). Pub. L. 93–233, §3(k)(3), struck out ''or providing a general benefit increase under this subchapter (as defined in section 415(i)(3) of this title)'' after ''law increasing the exempt amount''.

Subsec. (h)(1)(A). Pub. L. 93–66, §202(c), substituted ''$200'' for ''$175''.

1972—Subsec. (a). Pub. L. 92–336, §202(a)(2)(A), inserted ''in or deemed to be'' after ''the table''.

Subsec. (a)(2). Pub. L. 92–336, §202(a)(2)(B), as amended by Pub. L. 92–603, §§103(c), 144(a)(3), substituted provisions relating to the reduction in the total benefits for any month after January 1971 where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for January 1971 or any prior month, for provisions relating to the reduction in the total of benefits for September 1972 or any subsequent month where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for August, 1972.

Pub. L. 92–336, §201(b), substituted provisions relating to the reduction in the total of benefits for September 1972 or any subsequent month where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for August 1972, for provisions relating to the reduction in the total of benefits for January 1971 or any subsequent month where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for January 1971.

Subsec. (a)(2)(B). Pub. L. 92–603, §144(a)(2), inserted ''such'' before ''person''.

Subsec. (a)(4). Pub. L. 92–336, §201(h)(1), added par. (4).

Subsec. (a)(5). Pub. L. 92–603, §101(b), added par. (5).

Subsec. (c). Pub. L. 92–603, §§102(c)(1), 107(b)(1), substituted ''attained age 65 (but only if she became so entitled prior to attaining age (60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 65 (but only if he became so entitled prior to attaining age 60)'' for ''attained age 62 (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 62''.

Subsec. (f)(1). Pub. L. 92–603, §§102(c)(2), 105(a)(1), 107(b)(2), substituted ''attained age 65 (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained age 65 (but only if she became so entitled prior to attaining age 60)'' for ''attained age 62 (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained age 62'' in cl. (D) and substituted ''$175 or the exempt amount as determined under paragraph (8)'' for ''$140'' in cl. (E).

Subsec. (f)(3). Pub. L. 92–603, §§105(a)(3), 106(a), substituted ''shall be 50 per centum of his earnings for such year in excess of the product of $175 or the exempt amount as determined under paragraph (8),'' for ''shall be his earnings for such year in excess of the product of $140'' and struck out '', except that of the first $1,200 of such excess (or all of such excess if it is less than $1,200), an amount equal to one-half thereof shall not be included'' after ''number of months in such year'' and inserted provisions for the exclusion of certain earnings in the year of attaining age 72.

Subsec. (f)(4)(B). Pub. L. 92–603, §105(a)(1), substituted ''$175 or the exempt amount as determined under paragraph (8)'' for ''$140''.

Subsec. (f)(8). Pub. L. 92–603, §105(b), added par. (8).

Subsec. (h)(1)(A). Pub. L. 92–603, §105(a)(2), substituted ''$175 or the exempt amount as determined under subsection (f)(8) of this section'' for ''$140''.

1971—Subsec. (a)(2). Pub. L. 92–5 substituted references to January 1971 for references to January 1970, substituted ''December 1970'' for ''December 1969'', and, in subpar. (B), substituted ''prior to March 17, 1971'' for ''prior to December 30, 1969 (and prior to January 1, 1970)'', and lowered the multiple of the benefit amount from 115 percent to 110 percent.

1969—Subsec. (a)(2). Pub. L. 91–172 substituted references to January 1970 for references to February 1968, and, in subpar. (B), substituted ''prior to December 30, 1969 (and prior to January 1, 1970)'' for ''prior to February 1968'', and raised the multiple of the benefit amount from 113 percent to 115 percent.

1968—Subsec. (a). Pub. L. 90–248, §163(a)(1), provided for reduction of benefits in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual and that where such total of benefits for such month includes any benefit or benefits under section 402(d) of this title which are payable solely by reason of section 416(h)(3) of this title, the reduction shall be first applied to reduce (proportionately where there is more than one benefit so payable) the benefits so payable (but not below zero).

Subsec. (a)(2). Pub. L. 90–248, §101(b), substituted references to February 1968 for former references to December 1964 and for former references to the enactment of the Social Security Amendments of 1965, increased the multiple of the benefit amount from 107 to 113 percent, and struck out former cl. (ii) which provided that the total of monthly benefits shall not be reduced to less than the larger of the amount determined under subpar. (A) or with respect to any month after the month in which the Social Security Amendments of 1965 are enacted, an amount equal to the sum of the amounts derived by multiplying the benefit amount determined under this subchapter (including subsection (a) of this section, but without the application of section 422(b) of this title, section 402(q) of this title, and subsections (b), (c) and (d) of this section), as in effect prior to the enactment of such Amendments, for each

such person (other than a person who would not be entitled to such benefits for such month without the application of the amendments made by section 306 of the Social Security Amendments of 1965) for the month of enactment, by 107 percent and raising each such increased amount, if it is not a multiple of $0.10, to the next higher multiple of $0.10.

Subsec. (c). Pub. L. 90–248, § 104(d)(1)(A), inserted after ''any subsequent month'' in third sentence ''; nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained age 62 (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 62''.

Subsec. (f)(1). Pub. L. 90–248, §§ 104(d)(1)(B), 107(a)(1), inserted in third sentence subpar. (D) and redesignated existing provisions as subpar. (E), and substituted ''$140'' for ''125''.

Subsec. (f)(2). Pub. L. 90–248, § 104(d)(1)(C), substituted ''(D), and (E)'' for ''and (D)''.

Subsec. (f)(3). Pub. L. 90–248, § 107(a)(1), substituted ''$140'' for ''$125''.

Subsec. (f)(4). Pub. L. 90–248, § 104(d)(1)(D), substituted ''(E)'' for ''(D)''.

Subsec. (f)(4)(B). Pub. L. 90–248, § 107(a)(1), substituted ''$140'' for ''$125''.

Subsec. (g). Pub. L. 90–248, § 161(b), substituted provisions that the penalty for the first failure to report will equal one month's benefit, for the second failure to report—two month's benefits, for the third or a subsequent failure to report—three month's benefits but in no case will the penalty exceed the number of months in the period for which there is a failure to report, and defining ''period for which there is a failure to report'' for present provisions that the penalty for the first failure to report is one month's benefit and for subsequent failures, the penalty is an amount equal to the total amount of the benefits for all the months in which the event occurred but was not reported within the prescribed time.

Subsec. (h)(1)(A). Pub. L. 90–248, §§ 107(a)(2), 160(a), inserted last sentence authorizing the Secretary to extend time to report earnings up to three months if there is a valid reason for delay, and substituted ''$140'' for ''$125''.

Subsec. (h)(2). Pub. L. 90–248, § 160(b), substituted in text preceding subpar. (A) ''by or in accordance with such paragraph'' for ''therein''.

Subsec. (h)(2)(A). Pub. L. 90–248, § 161(a), inserted exception provision that if the deduction is less than the amount of his benefits for the last month for which he was entitled to benefits, the additional deduction will be the amount of the deduction under subsec. (b) but not less than ten dollars.

1965—Subsec. (a)(2). Pub. L. 89–97, § 301(c), substituted provisions to assure an increase in the family benefits for families who were on the benefit rolls after December 1964 and whose benefits were determined under former provisions by providing that the maximum family benefit of each month after December 1964 will be the larger of (1) the family maximum specified in column V of the new table or (2) the sum of all family members' benefits after each such benefit has been increased by seven percent (and rounded to the next higher ten cents if it is not already a multiple of ten cents), for former provisions restricting the reduction of total benefits to individuals entitled to monthly benefits under section 402 or 423 of this title for December 1958.

Subsec. (a)(3). Pub. L. 89–97, §§ 301(c), 308(d)(6), struck out par. (3) which was a special saving clause for maximum family benefits of people who became disabled before 1959 since families whose benefits were determined under such par. (3) are now covered by subsec. (a)(2) of this section, and added par. (3), respectively.

Subsec. (c). Pub. L. 89–97, § 306(c)(10), (11), inserted in penultimate sentence ''paragraph (1) of section 402(s) of this title applies or'' after ''for any month in which'' and in last sentence the introductory phrase ''Subject to paragraph (3) of such section 402(s)''.

Subsec. (c)(4). Pub. L. 89–97, § 308(d)(7), substituted ''surviving divorced mother'' for ''former wife divorced''.

Subsec. (d)(1). Pub. L. 89–97, § 308(d)(8), inserted ''divorced wife,'' after ''wife,''.

Subsec. (f)(1). Pub. L. 89–97, §§ 306(c)(12), 310(a)(1), inserted ''but subject to section 402(s) of this title'' after ''Notwithstanding the preceding provisions of this paragraph'' in last sentence and substituted ''$125'' for ''$100''.

Subsec. (f)(3). Pub. L. 89–97, § 310(a)(1), (2), substituted ''$125'' for ''$100'' and ''$1,200'' for ''$500'' in two places.

Subsec. (f)(4)(B). Pub. L. 89–97, § 310(a)(1), substituted ''$125'' for ''$100''.

Subsec. (f)(5)(B). Pub. L. 89–97, § 325(a)(1), broke down existing provisions into cls. (i) and (ii), provided, in cl. (ii), for exclusion from gross income of amounts provided by subpar. (D) of this par., and, in cl. (ii), inserted reference to distributive share of loss described in section 702(a)(9) of Title 26.

Subsec. (f)(5)(D). Pub. L. 89–97, § 325(a)(2), added subpar. (D).

Subsec. (h)(1)(A). Pub. L. 89–97, § 310(a)(3), substituted ''$125'' for ''$100''.

1961—Subsec. (f)(3). Pub. L. 87–64 substituted ''$500'' for ''$300'' in two places.

1960—Subsec. (a)(3). Pub. L. 86–778, § 302(a), substituted '', then such total of benefits shall not be reduced to less than $99.10 if such primary insurance amount is $66, to less than $102.40 if such primary insurance amount is $67, to less than $106.50 if such primary insurance amount is $68, or, if such primary insurance amount is higher than $68, to less than the smaller of'' for ''and is not less than $68, then such total of benefits shall not be reduced to less than the smaller of'' in the provisions following cl. (B), and ''the amount determined under this subsection without regard to this paragraph, or $206.60, whichever is larger'' for ''the last figure in column V of the table appearing in section 415(a) of this title'' in cl. (C).

Subsec. (b). Pub. L. 86–778, § 211(a), amended subsec. (b) generally, and among other changes, authorized deductions from payments to which any other persons are entitled on the basis of an individual's wages and self-employed income, substituted provisions requiring deductions for months in which an individual is charged with excess earnings under the provisions of subsec. (f) of this section for provisions which required deductions for months in which an individual is charged with any earnings under the provisions of subsec. (e) of this section, and inserted the second, third, fourth and fifth sentences. Former cls. (2)–(5) and the closing paragraph of subsec. (b) are covered by subsec. (c) of this section.

Subsec. (c). Pub. L. 86–778, § 211(b), redesignated the opening provisions, cls. (2) to (5) and the closing provisions of former subsec. (b) of this section as the opening provisions, cls. (1) to (4) and the closing provisions of subsec. (c), respectively. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86–778, § 211(c), added subsec. (d) and redesignated former subsec. (d) as (e). Provisions of subsec. (d) were formerly contained in subsec. (c) of this section.

Subsec. (e). Pub. L. 86–778, § 211(c), (d), redesignated former subsec. (d) as (e), substituted ''subsections (c) and (d) of this section'' for ''subsections (b) and (c) of this section'', and struck out provisions which required the charging of any earnings to any month to be treated as an event occurring in such month. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 86–778, § 211(c), (e), redesignated former subsec. (e) as (f), and amended such subsection by inserting pars. (3) and (7), substituting provisions requiring an amount of an individual's excess earnings equal to the sum of the payments to which he and all other persons are entitled for the month under section 402 of this title on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum) to be charged to the first month of the taxable year, and the

balance, if any, of such excess earnings to be charged to each succeeding month in such year to the extent, in the case of each month, of the sum of the payments to which such individual and all other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged, for provisions which required the first $80 of earnings in excess of $1,200 to be charged to the first month of the taxable year, and the balance, if any, at the rate of $80 per month to each succeeding month in such year until all of the balance has been applied, and inserting provisions requiring the excess earnings of an individual for any taxable year, where an individual is entitled to benefits under section 402(a) of this title and other persons are entitled to benefits under section 402 (b), (c), or (d) of this title on the basis of the wages and self-employment income of such individual, to be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 86–778, §§209(a), 211(c), redesignated former subsec. (f) as (g), and substituted therein ''subsection (c) of this section'' for ''subsection (b) or (c) of this section'' in two places, and struck out ''(other than an event specified in subsection (b)(1) or (c)(1) of this section)'' after ''of an event specified therein.'' Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 86–778, §211(c), (f), redesignated former subsec. (g) as (h), and substituted therein ''paragraph (5) of subsection (f) of this section'' for ''paragraph (4) of subsection (e) of this section'' in two places, ''paragraph (3) of this subsection'' for ''paragraph (3) of subsection (g) of this section'', ''subsection (b) of this section'' for ''subsection (b)(1) of this section'' in five places, and ''suspend the total or less than the total payment'' for ''suspend the payment.'' Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 86–778, §211(c), (g), redesignated former subsec. (h) as (i) and substituted therein ''subsection (b), (c), (g), or (h) of this section'' for ''subsection (b), (f), or (g) of this section.'' Former subsec. (i) was repealed by Act Sept. 1, 1954, ch. 1206, title I, §112(a), 68 Stat. 1085.

Subsec. (k). Pub. L. 86–778, §103(b), substituted ''the Commonwealth of Puerto Rico, the Virgin Islands, Guam or American Samoa'' for ''Puerto Rico or the Virgin Islands'', and ''the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa'' for ''Puerto Rico and the Virgin Islands''.

Subsec. (*l*). Pub. L. 86–778, §211(h), substituted ''subsection (g) or (h)(1)(A) of this section'' for ''subsection (f) or (g)(1)(A) of this section''.

1958—Subsec. (a). Pub. L. 85–840, §101(f), substituted provisions limiting the total of monthly benefits under sections 402 and 423 of this title to the amount provided in column V of the table in section 415(a) of this title for provisions which limited the total of monthly benefits under section 402 of this title to $50, or 80% of the average monthly wage, or one and one-half times the primary insurance amount, whichever is greater, with a maximum amount of $200 and inserted provisions limiting the reduction for individuals who were entitled to monthly benefits under section 402 or 423 of this title for December 1958, and for individuals entitled to monthly benefits with respect to whom a period of disability began prior to January 1959 and continued until he became entitled to benefits under section 402 or 423 of this title, or he died, whichever first occurred.

Subsec. (c). Pub. L. 85–840, §205(j), inserted '', based on the wages and self-employment income of an individual entitled to old-age insurance benefits,'' before ''to which a wife'' in opening provisions of par. (1), and Pub. L. 85–840, §307(f), designated existing provisions of subsec. (c) as par. (1), redesignated subpars. (1) and (2) of par. (1) as subpars. (A) and (B), substituted in subpar. (B) of par. (1) ''subparagraph (A)'' for ''paragraph (1)'', and added par. (2).

Subsec. (e)(2). Pub. L. 85–840, §308(a), (c), substituted ''first month'' for ''last month'' and ''succeeding month'' for ''preceding month'' wherever appearing, and ''$100'' for ''$80'' in cl. (D).

Subsec. (e)(3). Pub. L. 85–840, §308(b), (c), substituted ''the term 'first month of such taxable year' means the earliest month'' for ''the term 'last month of such taxable year' means the latest month'' in cl. (A), and ''$100'' for ''$80'' in cl. (B)(ii).

Subsec. (g)(1). Pub. L. 85–840, §308(d), designated existing provisions thereof as subpar. (A) and inserted provisions therein dispensing with the need for a report for any taxable year if benefit payments for all months (in such taxable year) in which such individual is under age 72 have been suspended under the provisions of the first sentence of par. (3) of this subsection, and added subpar. (B).

Subsec. (h). Pub. L. 85–840, §205(k), struck out provisions that related to reductions by reason of the provisions of section 424 of this title.

Subsec. (*l*). Pub. L. 85–840, §308(e), substituted ''(g)(1)(A) of this section'' for ''(g) of this section''.

1956—Subsec. (a). Act Aug. 1, 1956, §101(d), inserted ''after any deductions under section 422(b) of this title, and after any reduction under section 424 of this title'' in two places.

Subsec. (b). Act Aug. 1, 1956, §101(e), inserted paragraph providing that a child should not be considered to be entitled to a child's insurance benefit for any month in which an event specified in section 422(b) of this title occurs with respect to such child, and prohibiting any deduction from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of 18 or any subsequent month.

Subsec. (b)(3). Act Aug. 1, 1956, §102(d)(11), substituted ''age 65'' for ''retirement age'' and inserted ''any such wife's insurance benefit for such month was not reduced under the provisions of section 402(q) of this title''.

Subsec. (d). Act Aug. 1, 1956, §101(f), included events specified in section 422(b) of this title.

Subsec. (e)(4)(C). Act Aug. 1, 1956, §112(a), inserted ''or performed outside the United States in the active military or naval service of the United States'' after ''performed within the United States by the individual as an employee''.

Subsec. (g)(1). Act Aug. 1, 1956, §107(a), permitted reports to be made on or before the fifteenth day of the fourth month following the close of the year.

Subsec. (h). Act Aug. 1, 1956, §101(g), included deductions by reason of the provisions of section 422(b) of this title, and reductions by reason of the provisions of section 424 of this title.

Subsec. (k). Act Aug. 1, 1956, §112(b), inserted ''and are not performed in the active military or naval service of the United States'' after ''section 410 of this title''.

1954—Subsec. (a). Act Sept. 1, 1954, §102(e)(7), increased maximum limitations on the total monthly amount of benefits.

Subsec. (b)(1), (2). Act Sept. 1, 1954, §103(a), (i)(3), put into effect an annual retirement test for beneficiaries whether they have wage or self-employment earnings, or both, inserted provision for making deductions on account of nonrecovered remunerative activity outside the United States, and provided that deductions because of such provisions be made from an individual's benefits only for months in which he is under the age of 72, rather than 75.

Subsec. (c). Act Sept. 1, 1954, §103(b), (i)(3), provided that deductions be made from a dependent's benefits for any month in which the primary beneficiary was under the age of 72, and for which he was charged with any earnings for work deduction purposes under subsec. (e) or on 7 or more different calendar days of which he engaged in noncovered remunerative activity outside the United States.

Subsec. (d). Act Sept. 1, 1954, §103(c), provided that the charging of earnings shall be treated as an event occurring in the month to which such earnings are charged.

Subsec. (e)(1), (2). Act Sept. 1, 1942, §103(d)(1), (2), (i)(3), provided a method for charging earnings to par-

ticular months of the year for purposes of determining the deductions required under subsecs. (b) and (c).

Subsec. (e)(3)(B). Act Sept. 1, 1954, § 103(d)(3), provided authority to presume, for purposes of charging earnings to calendar months, that an individual rendered services for wages of more than $80 in any month.

Subsec. (e)(4), (5). Act Sept. 1, 1954, § 103(d)(4), added pars. (4) and (5).

Subsec. (f). Act Sept. 1, 1954, § 103(e), clarified the penalty provisions.

Subsec. (g). Act Sept. 1, 1954, § 103(f)(1), amended heading.

Subsec. (g)(1). Act Sept. 1, 1954, § 103(f)(2), (3), provided that if an individual entitled to any monthly benefit in a taxable year has earnings or wages in excess of $100 times the number of months in such year, he must make a report to the Secretary of his earnings for such taxable year, and substituted ''seventy-two'' for ''seventy-five''.

Subsec. (g)(2). Act Sept. 1, 1954, § 103(f)(4), provided a schedule of penalty deductions for failure to make required reports within the time prescribed by subsec. (g)(1) if any deduction is imposed because of earnings in such year.

Subsec. (g)(3). Act Sept. 1, 1954, § 103(f)(5), substituted ''subsection (b)(1)'' for ''subsection (b)(2)'', ''earnings'' for ''net earnings from self-employment'', and ''such earnings'' for ''such net earnings'', and added a new sentence at the end.

Subsec. (i). Act Sept. 1, 1954, § 112(a), repealed subsec. (i), effective Sept. 1, 1954, and also provided that no deductions should be made pursuant to such subsec. (i) from any benefits for any month after August 1954.

Subsec. (j). Act Sept. 1, 1954, § 103(f)(6), (i)(3), substituted ''seventy-two'' for ''seventy-five''.

Subsec. (k). Act Sept. 1, 1954, § 103(g), added subsec. (k).

Subsec. (*l*). Act Sept. 1, 1954, § 103(h), added subsec. (*l*).

1952—Subsec. (a). Act July 18, 1952, § 2(b)(2), increased the maximum and minimum monthly benefits payable a family.

Subsecs. (b)(1), (2), (c)(1), (2), (e), (g). Act July 18, 1952, § 4(a)–(d), substituted $75 for $50 wherever appearing.

1950—Subsec. (a). Act Aug. 28, 1950, § 102(a), amended subsec. (a) generally to consolidate provisions of former subsecs. (a) to (c) of this section and to liberalize the maximum amount of monthly benefits payable.

Subsec. (b). Act Aug. 28, 1950, § 103(a), provided that deductions are to be made from benefits for any month in which a beneficiary is under age 75 and either renders services for wages of more than $50, or is charged with net earnings from self-employment of more than $50, and provided that deductions are to be made for any month in which a wife, widow or divorced wife does not have in her care a child or her husband or former husband entitled to a child's insurance benefit.

Subsec. (c). Act Aug. 28, 1950, § 103(a), provided for the making of deductions from dependents benefits for any month in which the old-age beneficiary suffers a reduction in his benefit.

Subsec. (d). Act Aug. 28, 1950, § 103(a), inserted second sentence.

Subsec. (e). Act Aug. 28, 1950, § 103(a), provided the method for charging net earnings from self-employment to the particular months of the taxable year for the purpose of determining deductions under subsecs. (b)(2) and (c)(2) of this section.

Subsec. (f). Act Aug. 28, 1950, § 103(a), continued provisions requiring the reporting of any event which causes a deduction from benefits.

Subsec. (g). Act Aug. 28, 1950, § 103(a), outlined circumstances under which beneficiaries with net earnings from self-employment are required to file report with the Federal Security Administrator.

Subsec. (h). Act Aug. 28, 1950, § 103(a), pointed out circumstances under which deductions otherwise required under subsecs. (b), (f), and (g) of this section will not be made.

Subsecs. (i), (j). Act Aug. 28, 1950, § 103(a), added subsecs. (i) and (j).

1946—Subsec. (g). Act Aug. 10, 1946, § 406(b), inserted exception limiting the first deduction for failure to report to one month's benefit.

Subsec. (d)(2). Act Aug. 10, 1946, § 406(a), struck out par. (2) which related to deductions for failure to attend school.

1939—Act Aug. 10, 1939, amended section generally.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–182 applicable with respect to taxable years ending after Dec. 31, 1999, see section 5 of Pub. L. 106–182, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 102(c) of Pub. L. 104–121 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall apply with respect to taxable years ending after 1995.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 309(e)(1) of Pub. L. 103–296 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section] shall apply with respect to benefits payable for months after December 1995.''

Section 310(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section] shall apply for the purpose of determining the total monthly benefits to which beneficiaries may be entitled under sections 202 and 223 of the Social Security Act [sections 402 and 423 of this title] based on the wages and self-employment income of an individual who—

''(1) becomes entitled to an old-age insurance benefit under section 202(a) of such Act,

''(2) becomes reentitled to a disability insurance benefit under section 223 of such Act, or

''(3) dies,

after December 1995.''

Section 314(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to reports of earnings for taxable years ending on or after December 31, 1994.''

Section 321(g)(3)(B) of Pub. L. 103–296 provided that: ''The amendment made by paragraph (2) [amending this section] shall be effective with respect to the determination of the exempt amounts applicable to any taxable year ending after 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5117(a)(4) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 415 of this title] shall apply with respect to the computation of the primary insurance amount of any insured individual in any case in which a person becomes entitled to benefits under section 202 or 223 [section 402 or 423 of this title] on the basis of such insured individual's wages and self-employment income for months after the 18-month period following the month in which this Act is enacted [November 1990], except that such amendments shall not apply if any person is entitled to benefits based on the wages and self-employment income of such insured individual for the month preceding the initial month of such person's entitlement to such benefits under section 202 or 223.

''(B) RECOMPUTATIONS.—The amendments made by this subsection shall apply with respect to any primary insurance amount upon the recomputation of such primary insurance amount if such recomputation is first effective for monthly benefits for months after the 18-month period following the month in which this Act is enacted.''

Section 5119(e) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 416 of this title]

shall apply with respect to benefits for months after December 1990.

''(2) APPLICATION REQUIREMENT.—

''(A) GENERAL RULE.—Except as provided in subparagraph (B), the amendments made by this section shall apply only with respect to benefits for which application is filed with the Secretary of Health and Human Services after December 31, 1990.

''(B) EXCEPTION FROM APPLICATION REQUIREMENT.—Subparagraph (A) shall not apply with respect to the benefits of any individual if such individual is entitled to a benefit under subsection (b), (c), (e), or (f) of section 202 of the Social Security Act [section 402(b), (c), (e), or (f) of this title] for December 1990 and the individual on whose wages and self-employment income such benefit for December 1990 is based is the same individual on the basis of whose wages and self-employment income application would otherwise be required under subparagraph (A).''

Section 5123(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section, section 411 of this title, and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to income received for services performed in taxable years beginning after December 31, 1990.''

Section 5127(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits for months after December 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(1)(A), (B) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

Section 10305(f) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and sections 404, 423, and 1383 of this title] shall apply with respect to determinations made on or after July 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8002(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to deaths after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12108(b) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, §1895(a), Oct. 22, 1986, 100 Stat. 2931, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits payable for months after December 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2602(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective upon the date of the enactment of this Act [July 18, 1984].''

Section 2661(g)(1)(B) of Pub. L. 98–369 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply only with respect to months beginning with the second month after the month in which this Act is enacted [July 1984].''

Section 2661(g)(2)(B) of Pub. L. 98–369 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as though it had been enacted on April 20, 1983, as a part of section 201 of the Social Security Amendments of 1983 [section 201 of Pub. L. 98–21].''

Amendment by section 2662(c)(1) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(3) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 111(a)(4) of Pub. L. 98–21 applicable with respect to cost-of-living increases determined under section 415(i) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 132(c)(2) of Pub. L. 98–21 provided that: ''The amendments made by subsection (b) [amending this section] shall apply with respect to monthly insurance benefits for months after December 1984.''

Amendment by sections 306(i) and 309(f)–(h) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Amendment by section 324(c)(4) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98–21, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Section 331(c) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to payments made for months after December 1983.''

Section 347(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years beginning after December 1989, and only in the case of individuals who have attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)].''

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by section 2201(c)(6) of Pub. L. 97–35 and by section 2(f) of Pub. L. 97–123, applicable with respect to benefits for months after December 1981 with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

Amendment by section 2206(b)(2)–(4) of Pub. L. 97–35 applicable only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981, see section 2206(c) of Pub. L. 97–35, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1(b) of Pub. L. 96–473 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable for months after December 1977.''

Section 3(b) of Pub. L. 96–473 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1977, but only with respect to benefits payable for months after December 1977.''

Section 4(b) of Pub. L. 96–473 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable for months after December 1977.''

Section 101(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes eligible for benefits (determined under sections 215(a)(3)(B) and 215(a)(2)(A) of the Social Security Act [section 415(a)(3)(B) and (2)(A) of this title], as applied for this purpose) after 1978, and who first becomes entitled to disability insurance benefits after June 30, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 202 of Pub. L. 95–216 effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978 and with respect to lump-sum death payments with respect to deaths occurring after such month, and amendment by section 204(e) of Pub. L. 95–216 effective with respect to monthly benefits for months after May 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

Section 301(e) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall apply with respect to taxable years ending after December 1977.''

Section 302(e) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to taxable years ending after December 31, 1981.''

Section 303(b) of Pub. L. 95–216 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly benefits payable for months after December 1977.''

Amendment by section 353(a) of Pub. L. 95–216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 202(d) of Pub. L. 93–66 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to taxable years beginning after December 31, 1973.''

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by section 101(b) of Pub. L. 92–603 applicable with respect to monthly insurance benefits under this subchapter for months after December 1972 and with respect to lump-sum death payments under this subchapter in the case of deaths occurring after such month, see section 101(g) of Pub. L. 92–603, set out as a note under section 415 of this title.

Section 202(a)(2)(A), (B) of Pub. L. 92–336 provided that the amendments made by that section are effective Jan. 1, 1974.

Amendment by section 201(b) of Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after August 1972 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after such month, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

Section 144(b) of Pub. L. 92–603 provided that: ''The amendments made by each of the paragraphs in subsection (a) [amending this section and sections 415 and 430 of this title] shall be effective in like manner as if such amendment had been included in title II of Public Law 92–336 in the particular provision of such title referred to in such paragraph.''

Amendment by section 201(h)(1) of Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1971, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

Amendment by section 102(c) of Pub. L. 92–603 applicable with respect to monthly benefits under this subchapter for months after December 1972, see section 102(i) of Pub. L. 92–603, set out as a note under section 402 of this title.

Amendment by section 107(b)(1), (2) of Pub. L. 92–603 applicable with respect to monthly benefits under this subchapter for months after December 1972, with specified exceptions, see section 107(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

Section 105(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply with respect to taxable years ending after December 1972.''

Section 106(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section to provide for the exclusion of certain earnings in year of attaining age 72] shall apply with respect to taxable years ending after December 1972.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1970 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring in and after March 1971, see section 201(e) of Pub. L. 92–5, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to monthly benefits under this subchapter for months after December 1969 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after December 1969, see section 1002(e) of Pub. L. 91–172, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 101(b) of Pub. L. 90–248 applicable with respect to monthly benefits and lump-sum death benefits in the case of deaths occurring after January 1968, under this subchapter for months after January 1968, see section 101(e) of Pub. L. 90–248, set out as a note under section 415 of this title.

Amendment by section 104(d)(1) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Section 107(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 1967.''

Section 163(a)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] with respect to individuals who become entitled to benefits under section 202(d) of such Act [section 402(d) of this title] solely by reason of section 216(h)(3) of such Act [section 416(h)(3) of this title] in or after January 1968 (but without regard to section 202(j)(1) of such Act [section 402(j)(1) of this title]). The provisions of section 170 of this Act [set out as Savings Provisions note below] shall not apply with respect to any such individual.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 301(c) of Pub. L. 89–97 applicable with respect to monthly benefits under this subchapter for months after December 1964 and with respect to lump-sum death benefits payments under this subchapter in the case of deaths occurring in or after July 1965, see section 301(d) of Pub. L. 89–97, set out as a note under section 415 of this title.

Amendment by section 308(d)(6)–(8) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

Section 310(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1965.''

Section 325(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the computation of net earnings from self-employment and the net loss from self-employment for taxable years beginning after 1964.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 108(b) of Pub. L. 87–64 provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of taxable years ending after the enactment of this Act [June 30, 1961].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 103(b) of Pub. L. 86–778 applicable only with respect to service performed after 1960, except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, the amendment shall be applicable only in the case of taxable years beginning after 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 211(p)–(s) of Pub. L. 86–778 provided that:

''(p) Section 203(c), (d), (e), (g), and (i) of the Social Security Act [subsecs. (c), (d), (e), (g), and (i) of this section] as amended by this Act shall be effective with respect to monthly benefits for months after December 1960.

''(q) Section 203(b), (f), and (h) of the Social Security Act [subsecs. (b), (f), and (h) of this section] as amended by this Act shall be effective with respect to taxable years beginning after December 1960.

''(r) Section 203(*l*) of the Social Security Act [subsec. (*l*) of this section] as amended by this Act, to the extent that it applies to section 203(g) of the Social Security Act as amended by this Act, shall be effective with respect to monthly benefits for months after December 1960 and, to the extent that it applies to section 203(h)(1)(A) of the Social Security Act as amended by this Act, shall be effective with respect to taxable years beginning after December 1960.

''(s) The amendments made by subsections (i), (j), (k), (*l*), (m), (n), and (*o*) [amending sections 402, 408, and 415 of this title and sections 228c and 228e of Title 45, Railroads], to the extent that they make changes in references to provisions of section 203 of the Social Security Act [this section], shall take effect in the manner provided in subsections (p) and (q) of this section for the provisions of such section 203 to which the respective references so changed relate.''

Section 302(b) of Pub. L. 86–778 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only in the case of monthly benefits under section 202 or section 223 of the Social Security Act [section 402 or section 423 of this title] for months after the month following the month in which this Act is enacted [September 1960], and then only (1) if the insured individual on the basis of whose wages and self-employment income such monthly benefits are payable became entitled (without the application of section 202(j)(1) or section 223(b) of such Act) to benefits under section 202(a) or section 223 of such Act after the month following the month in which this Act is enacted, or (2) if such insured individual died before becoming so entitled and no person was entitled (without the application of section 202(j)(1) or section 223(b) of such Act) on the basis of such wages and self-employment income to monthly benefits under title II of the Social Security Act [this subchapter] for the month following the month in which this Act is enacted [September 1960] or any prior month.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 101(f) of Pub. L. 85–840 applicable in the case of monthly benefits under subchapter II of this chapter for months after December 1958, and in the case of lump-sum death payments under subchapter II of this chapter, with respect to deaths occurring after such month, see section 101(g) of Pub. L. 85–840, set out as a note under section 415 of this title.

Amendment by section 205(j) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, and amendment by section 205(k) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

Section 307(h)(2) of Pub. L. 85–840 provided that: ''The amendments made by subsection (f) [amending this section] shall apply with respect to monthly benefits under subsection (d) or (g) of section 202 of the Social Security Act [section 402 of this title] for months in any taxable year, of the individual to whom the person entitled to such benefits is married, beginning after the month in which this Act is enacted [August 1958].''

Section 308(f) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section] shall be applicable with respect to taxable years beginning after the month in which this Act is enacted [August 1958].''

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by section 101(d)–(g) of act Aug. 1, 1956, applicable with respect to monthly benefits under section 402 of this title for months after December 1956, but only on the basis of an application filed after September 1956, see section 101(h) of act Aug. 1, 1956, set out as a note under section 402 of this title.

Section 107(a) of act Aug. 1, 1956, provided that the amendment made by that section is applicable in the case of monthly benefits under this subchapter for months in any taxable year (of the individual entitled to such benefits) beginning after 1954.

Section 112(c) of act Aug. 1, 1956, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall be applicable with respect to taxable years ending after 1955.''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 103(i)(3) of act Sept. 1, 1954, provided that: ''Subsections (b)(1), (b)(2), (c), (e), and (j) of section 203 of the Social Security Act [this section] as in effect prior to the enactment of this Act, to the extent they are in effect with respect to months after 1954, are each amended by striking out 'seventy-five' and inserting in lieu thereof 'seventy-two', but only with respect to such months after 1954.''

Amendment by section 102(e)(7) of act Sept. 1, 1954, applicable in the case of lump-sum death payments under section 402 of this title with respect to deaths occurring, and in the case of monthly benefits under such section for months after, August 1954, see section 102(f) of act Sept. 1, 1954, as amended, set out as a note under section 415 of this title.

Section 103(i)(1), (2) of act Sept. 1, 1954, provided that:

''(1) The amendments made by subsection (f) and by paragraph (1) of subsection (a) of this section [amending this section] shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months in any taxable year (of the individual entitled to such benefits) beginning after December 1954. The amendments made by paragraph (1) of subsection (b) of this section [amending this section] shall be applicable in the case of monthly benefits under such title II for months in any taxable year (of the individual on the basis of whose wages and self-employment income such benefits are payable) beginning after December 1954. The amendments made by subsections (e) and (g), and by paragraph (2) of subsection (a) and paragraph (2) of subsection (b) [amending this section] shall be applicable in the case of monthly benefits under such title II for months after December 1954. The remaining amendments made by this section (other than subsection (h)) [amending this section] shall be applicable, insofar as they are related to the monthly benefits of an individual which are based on his wages and self-employment income, in the case of monthly benefits under such title II for months in any taxable year (of such individual) beginning after December 1954 and, insofar as they are related to the monthly benefits of an individual which are based on the wages and self-employment income of someone else, in the case of monthly benefits under such title II

for months in any taxable year (of the individual on whose wages and self-employment income such benefits are based) beginning after December 1954.

''(2) No deduction shall be imposed on or after the date of the enactment of this Act [Sept. 1, 1954] under subsection (f) or (g) of section 203 of the Social Security Act [subsec. (f) or (g) of this section], as in effect prior to such date, on account of failure to file a report of an event described in subsection (b)(1), (b)(2), or (c)(1) of such section (as in effect prior to such date); and no such deduction imposed prior to such date shall be collected after such date. In determining whether, under section 203(g)(2) of the Social Security Act, as amended by this Act, a failure to file a report is a first or subsequent failure, any failure with respect to a taxable year which began prior to January 1955 shall be disregarded.''

EFFECTIVE DATE OF 1952 AMENDMENT

For effective date of amendment by section 2(b)(2) of act July 18, 1952, see section 2(c)(2) of act July 18, 1952, set out as a note under section 415 of this title.

Section 4(e) of act July 18, 1952, provided that: ''The amendments made by subsection (a) [amending this section] shall apply in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after August 1952. The amendments made by subsection (b) [amending this section] shall apply in the case of monthly benefits under such title II for months in any taxable year (of the individual entitled to such benefits) ending after August 1952. The amendments made by subsection (c) [amending this section] shall apply in the case of monthly benefits under such title II for months in any taxable year (of the individual on the basis of whose wages and self-employment income such benefits are payable) ending after August 1952. The amendments made by subsection (d) [amending this section] shall apply in the case of taxable years ending after August 1952. As used in this subsection, the term ''taxable year'' shall have the meaning assigned to it by section 211(e) of the Social Security Act [section 411(e) of this title].''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 102(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable with respect to benefits for months after August 1950.''

Section 103(b) of act Aug. 28, 1950, provided that: ''The amendments made by this section [amending this section] shall take effect September 1, 1950, except that the provisions of subsections (d), (e), and (f) of section 203 of the Social Security Act [this section] as in effect prior to the enactment of this Act [Aug. 28, 1950] shall be applicable for months prior to September 1950.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

SAVINGS PROVISION

Section 201(h)(2) of Pub. L. 92–336 provided that: ''In any case in which the provisions of section 1002(b)(2) of the Social Security Amendments of 1969 [set out as a note under this section] were applicable with respect to benefits for any month in 1970, the total of monthly benefits as determined under section 203(a) of the Social Security Act [subsec. (a) of this section] shall, for months after 1970, be increased to the amount that would be required in order to assure that the total of such monthly benefits (after the application of section 202(q) of such Act [section 402(q) of this title]) will not be less than the total of monthly benefits that was applicable (after the application of such sections 203(a) and 202(q)) for the first month for which the provisions of such section 1002(b)(2) applied.''

Section 1002(b)(2) of Pub. L. 91–172 provided that: ''Notwithstanding any other provisions of law, when two or more persons are entitled to monthly insurance benefits under title II of the Social Security Act [this subchapter] for any month after 1969 on the basis of the wages and self-employment income of an insured individual (and at least one of such persons was so entitled for a month before January 1971 on the basis of an application filed before 1971), the total of the benefits to which such persons are entitled under such title of such month (after the application of sections 203(a) and 202(q) of such Act [subsec. (a) of this section and section 402(q) of this title]) shall be not less than the total of the monthly insurance benefits to which such persons would be entitled under such title for such month (after the application of such sections 203(a) and 202(q)) without regard to the amendment made by subsection (a) of this section [amending section 415 of this title].''

Section 170 of Pub. L. 90–248 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under section 202 or 223 of such Act [section 402 or 423 of this title] for January 1968 on the basis of the wages and self-employment income of an individual, and

''(2) one or more persons (not included in paragraph (1)) become entitled to monthly benefits under such section 202 [section 402 of this title] for February 1968 on the basis of such wages and self-employment by reason of the amendments made to such Act [this chapter] by sections 104 [amending this section and sections 402, 416, 422, and 425 of this title], 112 [amending section 402 of this title], 150 [amending section 416 of this title], 151 [amending section 402 of this title and section 228 of Title 45, Railroads], 156 [amending section 416 of this title], and 157 of this Act [amending section 402 and 402 note of this title], and

''(3) the total of benefits to which all persons are entitled under such section 202 or 223 [section 402 or 423 of this title] on the basis of such wages and self-employment for February 1968 are reduced by reason of section 203(a) of such Act, as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after January 1968 shall be increased, after the application of such section 203(a) [subsec. (a) of this section], to the amount it would have been if the person or persons referred to in paragraph (2) were not entitled to a benefit referred to in such paragraph.''

Section 102(h) of act Sept. 1, 1954, provided that:

''(1) Where—

''(A) an individual was entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to an old-age insurance benefit under title II of such Act [this subchapter] for August 1954;

''(B) one or more other persons were entitled (without the application of such section 202(j)(1) [section 402(j)(1) of this title]) to monthly benefits under such title for such month on the basis of the wages and self-employment income of such individual; and

''(C) the total of the benefits to which all persons are entitled under such title on the basis of such individual's wages and self-employment income for any subsequent month for which he is entitled to an old-age insurance benefit under such title, would (but for the provisions of this paragraph) be reduced by reason of the application of section 203(a) of the Social Security Act [subsec. (a) of this section], as amended by this Act,

then the total of benefits referred to in clause (C) for such subsequent month shall be reduced to whichever of the following is the larger—

''(D) the amount determined pursuant to section 203(a) of the Social Security Act [subsec. (a) of this section], as amended by this Act; or

''(E) the amount determined pursuant to such section, as in effect prior to the enactment of this Act [Sept. 1, 1954], for August 1954 plus the excess of (i)

the amount of his old-age insurance benefit for such month computed as if the amendments made by the preceding subsections of this section [amending this section and section 415 of this title] had been applicable in the case of such benefit for such month over (ii) the amount of his old-age insurance benefit for such month, or

''(F) the amount determined pursuant to section 2(d)(1) of the Social Security Act Amendments of 1952 [set out as a note under section 415 of this title] for August 1954 plus the excess of (i) the amount of his old-age insurance benefit for such month computed as if the amendments made by the preceding subsections of this section had been applicable in the case of such benefit for such month over (ii) the amount of his old-age insurance benefit for such month.

''(2) Where—

''(A) two or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under title II of such Act [this subchapter] for August 1954 on the basis of the wages and self-employment income of a deceased individual; and

''(B) to total of the benefits to which all such persons are entitled on the basis of such deceased individual's wages and self-employment income for any subsequent month would (but for the provisions of this paragraph) be reduced by reason of the application of the first sentence of section 203(a) of the Social Security Act [subsec. (a) of this section], as amended by this Act,

then, notwithstanding any other provision in title II of the Social Security Act [this subchapter], such deceased individual's average monthly wage shall, for purposes of such section 203(a), be whichever of the following is the larger:

''(C) his average monthly wage determined pursuant to section 215 of such Act [section 415 of this title], as amended by this Act; or

''(D) his average monthly wage determined under such section 215, as in effect prior to the enactment of this Act [Sept. 1, 1954], plus $7.''

TEMPORARY EXTENSION OF EARNINGS LIMITATIONS TO INCLUDE ALL PERSONS AGED LESS THAN SEVENTY-TWO

Section 2204 of Pub. L. 97–35 provided that:

''(a) Notwithstanding subsection (e) of section 302 of the Social Security Amendments of 1977 (91 Stat. 1531; Public Law 95–216) [set out as an Effective Date of 1977 Amendment note above], the amendments made to section 203 of the Social Security Act [this section] by subsections (a) through (d) of such section 302 shall, except as provided in subsection (b) of this section, apply only with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months after December 1982.

''(b) In the case of any individual whose first taxable year (as in effect on the date of the enactment of this Act [Aug. 13, 1981]) ending after December 31, 1981, begins before January 1, 1982, the amendments made by section 302 of the Social Security Amendments of 1977 [amending this section] shall apply with respect to taxable years beginning with such taxable year.''

INCREASED EXEMPT AMOUNTS FOR INDIVIDUALS DESCRIBED IN SUBSEC. (f)(8)(D); NOTIFICATION IN 1977 TO 1981; INDIVIDUALS OTHER THAN THOSE DESCRIBED IN SUBSEC. (f)(8)(D)

Section 301(c)(2) of Pub. L. 95–216 provided that: ''No notification with respect to an increased exempt amount for individuals described in section 203(f)(8)(D) of the Social Security Act [subsec. (f)(8)(D) of this section] (as added by paragraph (1) of this subsection) shall be required under the last sentence of section 203(f)(8)(B) of such Act in 1977, 1978, 1979, 1980, or 1981; and section 203(f)(8)(C) of such Act shall not prevent the new exempt amount determined and published under section 203(f)(8)(A) in 1977 from becoming effective to the extent that such new exempt amount applies to individuals other than those described in section 203(f)(8)(D) of such Act (as so added).''

RETIREMENT TEST EXEMPT AMOUNT FOR 1976

By notice of the Secretary of Health, Education, and Welfare, Oct. 22, 1975, 40 F.R. 50556, it was determined and announced that, pursuant to authority contained in subsec. (f)(8) of this section, the monthly exempt amount under the retirement test would be $230 with respect to taxable years ending in calendar year 1976.

COST-OF-LIVING INCREASE IN BENEFITS

For purposes of subsec. (f)(8) of this section, the increase in benefits provided by section 2 of Pub. L. 93–233, revising benefits table of section 415(a) of this title and amending sections 427(a), (b) and 428(b)(1), (2), (c)(3)(A), (B) of this title considered an increase under section 415(i) of this title, see section 3(i) of Pub. L. 93–233, set out as a note under section 415 of this title.

PENALTIES FOR FAILURE TO FILE TIMELY REPORTS OF EARNINGS AND OTHER EVENTS

Section 161(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to any deductions imposed on or after the date of the enactment of this Act [Jan. 2, 1968] under subsections (g) and (h) of section 203 of the Social Security Act [this section] on account of failure to make a report required thereby.''

COMPUTATION OF BENEFITS FOR CERTAIN CHILDREN

Section 163(b) of Pub. L. 90–248 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under section 202 or 223 of such Act [section 402 or 423 of this title] for January 1968 on the basis of the wages and self-employment income of an individual, and

''(2) one or more persons became entitled to monthly benefits before January 1968 under section 202(d) of such Act [section 402(d) of this title] by reason of section 216(h)(3) of such Act [section 416(h)(3) of this section] (but without regard to section 202(j)(1)), on the basis of such wages and self-employment income and are so entitled for January 1968, and

''(3) the total of benefits to which all persons are entitled under such section 202 or 223 of such Act [section 402 or 423 of this title] on the basis of such wages and self-employment for January 1968 are reduced by reason of section 203(a) of such Act [subsec. (a) of this section], as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) above (but not including persons referred to in paragraph (2) above) is entitled for months after January 1968 shall be increased, after the application of such section 203(a), to the amount it would have been if the person or persons referred to in paragraph (2) were not entitled to a benefit referred to in such paragraph (2).''

PROHIBITION ON IMPOSITION OF DEDUCTION FOR FAILURE TO FILE CERTAIN REPORTS OF EVENTS

Section 209(b) of Pub. L. 86–778 provided that: ''No deduction shall be imposed on or after the date of the enactment of this Act [Sept. 13, 1960] under section 203(f) of the Social Security Act [subsec. (f) of this section], as in effect prior to such date, on account of failure to file a report of an event described in section 203(c) of such Act, as in effect prior to such date; and no such deduction imposed prior to such date shall be collected after such date.''

PROHIBITION ON PAYMENT OF BENEFITS TO CERTAIN SPOUSES OR CHILDREN

Section 211(t) of Pub. L. 86–778 provided that: ''In any case where—

''(1) an individual has earnings (as defined in section 203(e)(4) of the Social Security Act [subsec. (e)(4) of this section] as in effect prior to the enactment of this Act [Sept. 13, 1960]) in a taxable year which begins before 1961 and ends in 1961 (but not on December 31, 1961), and

''(2) such individual's spouse or child entitled to monthly benefits on the basis of such individual's self-employment income has excess earnings (as defined in section 203(f)(3) of the Social Security Act as amended by this Act) in a taxable year which begins after 1960, and

''(3) one or more months in the taxable year specified in paragraph (2) are included in the taxable year specified in paragraph (1),

then, if a deduction is imposed against the benefits payable to such individual with respect to a month described in paragraph (3), such spouse or child, as the case may be, shall not, for purposes of subsections (b) and (f) of section 203 of the Social Security Act as amended by this Act, be entitled to a payment for such month.''

§ 404. Overpayments and underpayments

(a) Procedure for adjustment or recovery

(1) Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, under regulations prescribed by the Commissioner of Social Security, as follows:

(A) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this subchapter to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this subchapter payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31, or shall apply any combination of the foregoing. A payment made under this subchapter on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 410(m) of this title) on active duty (as defined in section 410(*l*) of this title) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Commissioner of Social Security that such individual is alive.

(B) With respect to payment to a person of less than the correct amount, the Commissioner of Social Security shall make payment of the balance of the amount due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payments, disposition of the amount due shall be made in accordance with subsection (d) of this section.

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person was entitled to a monthly benefit on the basis of the same wages and self-employment income as the deceased individual for the month preceding the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person. If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.

(b) No recovery from persons without fault

In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience. In making for purposes of this subsection any determination of whether any individual is without fault, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).

(c) Nonliability of certifying and disbursing officers

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any person where the adjustment or recovery of such amount is waived under subsection (b) of this section, or where adjustment under subsection (a) of this section is not completed prior to the death of all persons against whose benefits deductions are authorized.

(d) Payment to survivors or heirs when eligible person is deceased

If an individual dies before any payment due him under this subchapter is completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) to the person, if any, who is determined by the Commissioner of Social Security to be the surviving spouse of the deceased individual and who either (i) was living in the same household with the deceased at the time of his death or (ii) was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(2) if there is no person who meets the requirements of paragraph (1), or if the person who meets such requirements dies before the payment due him under this subchapter is completed, to the child or children, if any, of the deceased individual who were, for the

month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person, if any, determined by the Commissioner of Social Security to be the surviving spouse of the deceased individual;

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person or persons, if any, determined by the Commissioner of Social Security to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the legal representative of the estate of the deceased individual, if any.

(e) Adjustments due to supplemental security income payments

For payments which are adjusted by reason of payment of benefits under the supplemental security income program established by subchapter XVI of this chapter, see section 1320a–6 of this title.

(f) Collection of delinquent amounts

(1) With respect to any deliquent[1] amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31 and in section 5514 of title 5, all as in effect immediately after April 26, 1996.

(2) For purposes of paragraph (1), the term ''delinquent amount'' means an amount—

(A) in excess of the correct amount of payment under this subchapter;

(B) paid to a person after such person has attained 18 years of age; and

(C) determined by the Commissioner of Social Security, under regulations, to be otherwise unrecoverable under this section after such person ceases to be a beneficiary under this subchapter.

(g) Cross-program recovery of overpayments

For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b–17 of this title.

(Aug. 14, 1935, ch. 531, title II, §204, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, 1368; Aug. 28, 1950, ch. 809, title I, §109(b)(1), 64 Stat. 523; Sept. 1, 1954, ch. 1206, title I, §111(a), 68 Stat. 1085; Pub. L. 89–97, title III, §329, July 30, 1965, 79 Stat. 401; Pub. L. 90–248, title I, §§152, 153(a), 154(a), Jan. 2, 1968, 81 Stat. 860, 861; Pub. L. 96–265, title V, §501(b), June 9, 1980, 94 Stat. 470; Pub. L. 99–272, title XII, §12113(a), Apr. 7, 1986, 100 Stat. 288; Pub. L. 101–239, title X, §10305(b), Dec. 19, 1989, 103 Stat. 2483; Pub. L. 101–508, title V, §5129(a), Nov. 5, 1990, 104 Stat. 1388–287; Pub. L. 103–296, title I, §107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 103–387, §5(a), Oct. 22, 1994, 108 Stat. 4077; Pub. L. 104–134, title III, §31001(z)(2)(A), Apr. 26, 1996, 110 Stat. 1321–379; Pub. L. 104–316, title I, §115(g)(2)(E), Oct. 19, 1996, 110 Stat. 3835; Pub. L. 105–306, §8(b)(1), Oct. 28, 1998, 112 Stat. 2929; Pub. L. 106–169, title II, §§201(a), 203(c), Dec. 14, 1999, 113 Stat. 1831, 1832; Pub. L. 108–203, title II, §210(b)(1), Mar. 2, 2004, 118 Stat. 517.)

AMENDMENTS

2004—Subsec. (g). Pub. L. 108–203 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''For payments which are adjusted or withheld to recover an overpayment of supplemental security income benefits paid under subchapter XVI of this chapter (including State supplementary payments paid under an agreement pursuant to section 1382e(a) of this title or section 212(b) of Public Law 93–66), see section 1320b–17 of this title.''

1999—Subsec. (a)(2). Pub. L. 106–169, §201(a), inserted at end ''If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.''

Subsec. (f)(1). Pub. L. 106–169, §203(c), substituted ''3711(f)'' for ''3711(e)'' and inserted ''all'' before ''as in effect''.

1998—Subsec. (g). Pub. L. 105–306 added subsec. (g).

1996—Subsec. (f). Pub. L. 104–134, which directed that subsec. (f) be amended to read as follows: ''(f)(1) With respect to any deliquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31 and in section 5514 of title 5, as in effect immediately after April 26, 1996.'', was executed by substituting the new language for par. (1) only to reflect the probable intent of Congress. Prior to amendment, par. (1) read as follows: ''With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, and 3718 of title 31 as in effect on October 1, 1994.''

Subsec. (f)(1). Pub. L. 104–316 substituted ''sections 3711(e)'' for ''sections 3711(f)''.

1994—Subsecs. (a)(1), (b), (d)(1), (4), (5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

[1] So in original. Probably should be ''delinquent''.

Subsec. (f). Pub. L. 103–387 added subsec. (f).

1990—Subsec. (a)(1)(A). Pub. L. 101–508 inserted ''or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31,'' after ''payments to such overpaid person,''.

1989—Subsec. (b). Pub. L. 101–239 inserted at end ''In making for purposes of this subsection any determination of whether any individual is without fault, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).''

1986—Subsec. (a). Pub. L. 99–272 redesignated existing subsec. (a) as (a)(1) and pars. (1) and (2) thereof as subpars. (A) and (B), respectively, and added par. (2).

1980—Subsec. (e). Pub. L. 96–265 added subsec. (e).

1968—Subsec. (a). Pub. L. 90–248, § 152(a), incorporated in text preceding par. (1) part of existing provisions and broadened the Secretary's authority to include recovery of overpayments.

Subsec. (a)(1). Pub. L. 90–248, § 153(a), inserted last sentence which provided that payments made on an erroneous report by the Defense Department of the death, in the line of duty, of a member of the uniformed services on active duty are not to be deemed incorrect payments until the Department notifies the Secretary that he is alive.

Subsec. (a)(2). Pub. L. 90–248, § 152(a), incorporated in par. (2) part of existing provisions and broadened Secretary's authority to provide that in the case of underpayments, the Secretary is to pay the balance due the underpaid person but if he dies before receiving the full amount due him or before negotiating checks representing the correct payments, the balance due or the amount for which the checks were issued but not negotiated are to be paid under subsec. (d) of this section.

Subsec. (b). Pub. L. 90–248, § 152(b), authorized the Secretary to waive adjustment or recovery of overpayments from any person who is without fault, even where he is not the overpaid person and the latter is at fault, whereas heretofore a condition for waiver was that the overpaid person be without fault.

Subsec. (d). Pub. L. 90–248, § 154(a), struck out, in text preceding par. (1), provision excepting subsec. (d) from subsec. (a) and provision that the total amount due at the time of death may not exceed the amount of the monthly insurance benefit to which an individual was entitled for the month preceding the month in which he died, added cl. (ii) in par. (1), added pars. (2) to (6), designated existing provisions as par. (7) and inserted therein references to pars. (1) to (6).

1965—Subsec. (d). Pub. L. 89–97 added subsec. (d).

1954—Subsec. (a). Act Sept. 1, 1954, inserted ''and self-employment income'' after ''wages'' in second sentence.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''board''.

1939—Act Aug. 10, 1939, omitted former provisions relating to payments to aged individuals not qualified for benefits and substituted the present section relating to overpayments and underpayments.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, § 210(c), Mar. 2, 2004, 118 Stat. 517, provided that: ''The amendments and repeal made by this section [amending this section and sections 1008, 1320b–17, and 1383 of this title and repealing section 1320b–18 of this title] shall take effect on the date of enactment of this Act [Mar. 2, 2004], and shall be effective with respect to overpayments under titles II, VIII, and XVI of the Social Security Act [subchapters II, VIII, and XVI of this chapter] that are outstanding on or after such date.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title II, § 201(c), Dec. 14, 1999, 113 Stat. 1831, provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply to overpayments made 12 months or more after the date of the enactment of this Act [Dec. 14, 1999].''

Amendment by section 203(c) of Pub. L. 106–169 applicable to debt outstanding on or after Dec. 14, 1999, see section 203(d) of Pub. L. 106–169, set out as a note under section 3701 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–306, § 8(c), Oct. 28, 1998, 112 Stat. 2930, provided that: ''The amendments made by this section [enacting section 1320b–17 of this title and amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Oct. 28, 1998] and shall apply to amounts incorrectly paid which remain outstanding on or after such date.''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–387 applicable to collection activities begun on or after Oct. 22, 1994, see section 5(c) of Pub. L. 103–387, as amended, set out as a note under section 3701 of Title 31, Money and Finance.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Jan. 1, 1991, and inapplicable to refunds to which the amendments made by section 2653 of the Deficit Reduction Act of 1984, Pub. L. 98–369, do not apply, see section 5129(d) of Pub. L. 101–508, set out as a note under section 6402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12113(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply only in the case of deaths of which the Secretary is first notified on or after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 applicable in the case of payments of monthly insurance benefits under this subchapter, entitlement for which is determined on or after July 1, 1981, see section 501(d) of Pub. L. 96–265, set out as an Effective Date note under section 1320a–6 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 153(b) of Pub. L. 90–248 provided that: ''The amendment made by this section [amending this section] shall apply with respect to benefits under title II of the Social Security Act [this subchapter] if the individual to whom such benefits were paid would have been entitled to such benefits in or after the month in which this Act was enacted [January 1968] if the report mentioned in the amendment made by subsection (a) of this section had been correct (but without regard to the provisions of section 202(j)(1) of such Act [section 402(j)(1) of this title]).''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

§ 405. Evidence, procedure, and certification for payments

(a) Rules and regulations; procedures

The Commissioner of Social Security shall have full power and authority to make rules and

regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

(b) Administrative determination of entitlement to benefits; findings of fact; hearings; investigations; evidentiary hearings in reconsiderations of disability benefit terminations; subsequent applications

(1) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father, husband, divorced husband, widower, surviving divorced husband, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Commissioner of Social Security has rendered, the Commissioner shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the Commissioner's findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. The Commissioner of Social Security is further authorized, on the Commissioner's own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under rules of evidence applicable to court procedure.

(2) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Commissioner of Social Security not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Commissioner of Social Security (before any hearing under paragraph (1) on the issue of such entitlement) of the Commissioner's determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Commissioner of Social Security where the finding was originally made by the State agency, and shall be made by the Commissioner of Social Security where the finding was originally made by the Commissioner of Social Security. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Commissioner of Social Security of a finding described in subparagraph (B) which was originally made by the Commissioner of Social Security, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).

(3)(A) A failure to timely request review of an initial adverse determination with respect to an application for any benefit under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any benefit under this subchapter if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for benefits in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 421 of this title.

(B) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Commissioner of Social Security shall describe in clear and specific language the effect on possible entitlement to benefits under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(c) Wage records

(1) For the purposes of this subsection—

(A) The term ''year'' means a calendar year when used with respect to wages and a taxable year when used with respect to self-employment income.

(B) The term ''time limitation'' means a period of three years, three months, and fifteen days.

(C) The term ''survivor'' means an individual's spouse, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent, who survives such individual.

(D) The term ''period'' when used with respect to self-employment income means a taxable year and when used with respect to wages means—

(i) a quarter if wages were reported or should have been reported on a quarterly basis on tax returns filed with the Secretary of the Treasury or his delegate under section 6011 of the Internal Revenue Code of 1986 or regulations thereunder (or on reports filed by a State under section 418(e)[1] of this title (as in effect prior to December 31, 1986) or regulations thereunder),

(ii) a year if wages were reported or should have been reported on a yearly basis on such tax returns or reports, or

(iii) the half year beginning January 1 or July 1 in the case of wages which were reported or should have been reported for calendar year 1937.

(2)(A) On the basis of information obtained by or submitted to the Commissioner of Social Security, and after such verification thereof as the Commissioner deems necessary, the Commissioner of Social Security shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal representative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

(B)(i) In carrying out the Commissioner's duties under subparagraph (A) and subparagraph (F), the Commissioner of Social Security shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups or categories of individuals by assigning such numbers (or ascertaining that such numbers have already been assigned):

(I) to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment;

(II) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf such benefits are claimed by another person; and

(III) to any other individual when it appears that he could have been but was not assigned an account number under the provisions of subclauses (I) or (II) but only after such investigation as is necessary to establish to the satisfaction of the Commissioner of Social Security, the identity of such individual, the fact that an account number has not already been assigned to such individual, and the fact that such individual is a citizen or a noncitizen who is not, because of his alien status, prohibited from engaging in employment;

and, in carrying out such duties, the Commissioner of Social Security is authorized to take affirmative measures to assure the issuance of social security numbers:

(IV) to or on behalf of children who are below school age at the request of their parents or guardians; and

(V) to children of school age at the time of their first enrollment in school.

(ii) The Commissioner of Social Security shall require of applicants for social security account numbers such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants, and to determine which (if any) social security account number has previously been assigned to such individual. With respect to an application for a social security account number for an individual who has not attained the age of 18 before such application, such evidence shall include the information described in subparagraph (C)(ii).

(iii) In carrying out the requirements of this subparagraph, the Commissioner of Social Security shall enter into such agreements as may be necessary with the Attorney General and other officials and with State and local welfare agencies and school authorities (including nonpublic school authorities).

(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

(ii) In the administration of any law involving the issuance of a birth certificate, each State shall require each parent to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if the parent has more than one such number) issued to the parent unless the State (in accordance with regulations prescribed by the Commissioner of Social Security) finds good cause for not requiring the furnishing of such number. The State shall make numbers furnished under this subclause available to the Commissioner of Social Security and the agency administering the State's plan under part D of subchapter IV of this chapter in accordance with Federal or State law and regulation. Such numbers shall not be recorded on the birth certificate. A State shall not use any social security account number, obtained with respect to the issuance by the State of a birth certificate, for any purpose other than for the enforcement of child support orders in effect

[1] See References in Text note below.

in the State, unless section 7(a) of the Privacy Act of 1974 does not prohibit the State from requiring the disclosure of such number, by reason of the State having adopted, before January 1, 1975, a statute or regulation requiring such disclosure.

(iii)(I) In the administration of section 9 of the Food Stamp Act of 1977 (7 U.S.C. 2018) involving the determination of the qualifications of applicants under such Act [7 U.S.C. 2011 et seq.], the Secretary of Agriculture may require each applicant retail store or wholesale food concern to furnish to the Secretary of Agriculture the social security account number of each individual who is an officer of the store or concern and, in the case of a privately owned applicant, furnish the social security account numbers of the owners of such applicant. No officer or employee of the Department of Agriculture shall have access to any such number for any purpose other than the establishment and maintenance of a list of the names and social security account numbers of such individuals for use in determining those applicants who have been previously sanctioned or convicted under section 12 or 15 of such Act (7 U.S.C. 2021 or 2024).

(II) The Secretary of Agriculture may share any information contained in any list referred to in subclause (I) with any other agency or instrumentality of the United States which otherwise has access to social security account numbers in accordance with this subsection or other applicable Federal law, except that the Secretary of Agriculture may share such information only to the extent that such Secretary determines such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursuant to this subclause may be used by such other agency or instrumentality only for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.] or for the purpose of investigation of violations of other Federal laws or enforcement of such laws.

(III) The Secretary of Agriculture, and the head of any other agency or instrumentality referred to in this subclause, shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States whose duties or responsibilities require access for the purposes described in subclause (II).

(IV) The Secretary of Agriculture, and the head of any agency or instrumentality with which information is shared pursuant to clause[2] (II), shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.

(iv) In the administration of section 506 of the Federal Crop Insurance Act [7 U.S.C. 1506], the Federal Crop Insurance Corporation may require each policyholder and each reinsured company to furnish to the insurer or to the Corporation the social security account number of such policyholder, subject to the requirements of this clause. No officer or employee of the Federal Crop Insurance Corporation shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such Act [7 U.S.C. 1501 et seq.]. The Manager of the Corporation may require each policyholder to provide to the Manager, at such times and in such manner as prescribed by the Manager, the social security account number of each individual that holds or acquires a substantial beneficial interest in the policyholder. For purposes of this clause, the term ''substantial beneficial interest'' means not less than 5 percent of all beneficial interest in the policyholder. The Secretary of Agriculture shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States or authorized persons whose duties or responsibilities require access for the administration of the Federal Crop Insurance Act. The Secretary of Agriculture shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of such social security account numbers. For purposes of this clause the term ''authorized person'' means an officer or employee of an insurer whom the Manager of the Corporation designates by rule, subject to appropriate safeguards including a prohibition against the release of such social security account number (other than to the Corporation) by such person.

(v) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i), such provision shall, on and after October 4, 1976, be null, void, and of no effect. If and to the extent that any such provision is inconsistent with the requirement set forth in clause (ii), such provision shall, on and after October 13, 1988, be null, void, and of no effect.

(vi)(I) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency administering a program funded under part A of subchapter IV of this chapter or an agency operating pursuant to the provisions of part D of such subchapter.

(II) Any State or political subdivision thereof (and any person acting as an agent of such an agency or instrumentality), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, may not display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license, motor vehicle registration, or personal identification card (as defined in section

[2] So in original. Probably should be ''subclause''.

7212(a)(2) of the 9/11 Commission Implementation Act of 2004), or include, on any such license, registration, or personal identification card, a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof).

(vii) For purposes of this subparagraph, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(viii)(I) Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

(II) Paragraphs (1), (2), and (3) of section 7213(a) of the Internal Revenue Code of 1986 shall apply with respect to the unauthorized willful disclosure to any person of social security account numbers and related records obtained or maintained by an authorized person pursuant to a provision of law enacted on or after October 1, 1990, in the same manner and to the same extent as such paragraphs apply with respect to unauthorized disclosures of return and return information described in such paragraphs. Paragraph (4) of section 7213(a) of such Code shall apply with respect to the willful offer of any item of material value in exchange for any such social security account number or related record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(III) For purposes of this clause, the term ''authorized person'' means an officer or employee of the United States, an officer or employee of any State, political subdivision of a State, or agency of a State or political subdivision of a State, and any other person (or officer or employee thereof), who has or had access to social security account numbers or related records pursuant to any provision of law enacted on or after October 1, 1990. For purposes of this subclause, the term ''officer or employee'' includes a former officer or employee.

(IV) For purposes of this clause, the term ''related record'' means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a social security account number or a request for a social security account number is maintained pursuant to this clause.

(ix) In the administration of the provisions of chapter 81 of title 5 and the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.), the Secretary of Labor may require by regulation that any person filing a notice of injury or a claim for benefits under such provisions provide as part of such notice or claim such person's social security account number, subject to the requirements of this clause. No officer or employee of the Department of Labor shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such provisions. The Secretary of Labor shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of such provisions. The Secretary of Labor shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.

(D)(i) It is the policy of the United States that—

(I) any State (or any political subdivision of a State) and any authorized blood donation facility may utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of identifying blood donors, and

(II) any State (or political subdivision of a State) may require any individual who donates blood within such State (or political subdivision) to furnish to such State (or political subdivision), to any agency thereof having related administrative responsibility, or to any authorized blood donation facility the social security account number (or numbers, if the donor has more than one such number) issued to the donor by the Commissioner of Social Security.

(ii) If and to the extent that any provision of Federal law enacted before November 10, 1988, is inconsistent with the policy set forth in clause (i), such provision shall, on and after November 10, 1988, be null, void, and of no effect.

(iii) For purposes of this subparagraph—

(I) the term ''authorized blood donation facility'' means an entity described in section 1320b–11(h)(1)(B) of this title, and

(II) the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(E)(i) It is the policy of the United States that—

(I) any State (or any political subdivision of a State) may utilize the social security account numbers issued by the Commissioner of Social Security for the additional purposes described in clause (ii) if such numbers have been collected and are otherwise utilized by such State (or political subdivision) in accordance with applicable law, and

(II) any district court of the United States may use, for such additional purposes, any such social security account numbers which have been so collected and are so utilized by any State.

(ii) The additional purposes described in this clause are the following:

(I) Identifying duplicate names of individuals on master lists used for jury selection purposes.

(II) Identifying on such master lists those individuals who are ineligible to serve on a jury by reason of their conviction of a felony.

(iii) To the extent that any provision of Federal law enacted before August 15, 1994, is incon-

sistent with the policy set forth in clause (i), such provision shall, on and after August 15, 1994, be null, void, and of no effect.

(iv) For purposes of this subparagraph, the term ''State'' has the meaning such term has in subparagraph (D).

(F) The Commissioner of Social Security shall require, as a condition for receipt of benefits under this subchapter, that an individual furnish satisfactory proof of a social security account number assigned to such individual by the Commissioner of Social Security or, in the case of an individual to whom no such number has been assigned, that such individual make proper application for assignment of such a number.

(G) The Commissioner of Social Security shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be made of banknote paper, and (to the maximum extent practicable) shall be a card which cannot be counterfeited.

(H) The Commissioner of Social Security shall share with the Secretary of the Treasury the information obtained by the Commissioner pursuant to the second sentence of subparagraph (B)(ii) and to subparagraph (C)(ii) for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.

(3) The Commissioner's records shall be evidence for the purpose of proceedings before the Commissioner of Social Security or any court of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.

(4) Prior to the expiration of the time limitation following any year the Commissioner of Social Security may, if it is brought to the Commissioner's attention that any entry of wages or self-employment income in the Commissioner's records for such year is erroneous or that any item of wages or self-employment income for such year has been omitted from such records, correct such entry or include such omitted item in the Commissioner's records, as the case may be. After the expiration of the time limitation following any year—

(A) the Commissioner's records (with changes, if any, made pursuant to paragraph (5) of this subsection) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this subchapter;

(B) the absence of an entry in the Commissioner's records as to the wages alleged to have been paid by an employer to an individual during any period in such year shall be presumptive evidence for the purposes of this subchapter that no such alleged wages were paid to such individual in such period; and

(C) the absence of an entry in the Commissioner's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive for the purposes of this subchapter that no such alleged self-employment income was derived by such individual in such year unless it is shown that he filed a tax return of his self-employment income for such year before the expiration of the time limitation following such year, in which case the Commissioner of Social Security shall include in the Commissioner's records the self-employment income of such individual for such year.

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Commissioner of Social Security may change or delete any entry with respect to wages or self-employment income in the Commissioner's records of such year for such individual or include in the Commissioner's records of such year for such individual any omitted item of wages or self-employment income but only—

(A) if an application for monthly benefits or for a lump-sum death payment was filed within the time limitation following such year; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon the application for monthly benefits or lump-sum death payment;

(B) if within the time limitation following such year an individual or his survivor makes a request for a change or deletion, or for an inclusion of an omitted item, and alleges in writing that the Commissioner's records of the wages paid to, or the self-employment income derived by, such individual in such year are in one or more respects erroneous; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon such request. Written notice of the Commissioner's decision on any such request shall be given to the individual who made the request;

(C) to correct errors apparent on the face of such records;

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this subchapter when they should have been credited under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.], or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act of 1937 or 1974 when they should have been credited under this subchapter;

(E) to delete or reduce the amount of any entry which is erroneous as a result of fraud;

(F) to conform the Commissioner's records to—

(i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act, under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939, under chapter 2 or 21 of the Internal Revenue Code of 1954

or the Internal Revenue Code of 1986, or under regulations made under authority of such title, subchapter, or chapter;

(ii) wage reports filed by a State pursuant to an agreement under section 418 of this title or regulations of the Commissioner of Social Security thereunder; or

(iii) assessments of amounts due under an agreement pursuant to section 418 of this title (as in effect prior to December 31, 1986), if such assessments are made within the period specified in subsection (q)[3] of such section (as so in effect), or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section;

except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed after the expiration of the time limitation following the taxable year) shall be included in the Commissioner's records pursuant to this subparagraph;

(G) to correct errors made in the allocation, to individuals or periods, of wages or self-employment income entered in the records of the Commissioner of Social Security;

(H) to include wages paid during any period in such year to an individual by an employer;

(I) to enter items which constitute remuneration for employment under subsection (o) of this section, such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k)(3) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(k)(3)] or section 7(b)(7) of the Railroad Retirement Act of 1974 [45 U.S.C. 231f(b)(7)]; or

(J) to include self-employment income for any taxable year, up to, but not in excess of, the amount of wages deleted by the Commissioner of Social Security as payments erroneously included in such records as wages paid to such individual, if such income (or net earnings from self-employment), not already included in such records as self-employment income, is included in a return or statement (referred to in subparagraph (F) of this subsection) filed before the expiration of the time limitation following the taxable year in which such deletion of wages is made.

(6) Written notice of any deletion or reduction under paragraph (4) or (5) of this subsection shall be given to the individual whose record is involved or to his survivor, except that (A) in the case of a deletion or reduction with respect to any entry of wages such notice shall be given to such individual only if he has previously been notified by the Commissioner of Social Security of the amount of his wages for the period involved, and (B) such notice shall be given to such survivor only if he or the individual whose record is involved has previously been notified by the Commissioner of Social Security of the amount of such individual's wages and self-employment income for the period involved.

(7) Upon request in writing (within such period, after any change or refusal of a request for a change of the Commissioner's records pursuant to this subsection, as the Commissioner of Social Security may prescribe), opportunity for hearing with respect to such change or refusal shall be afforded to any individual or his survivor. If a hearing is held pursuant to this paragraph the Commissioner of Social Security shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall include any omitted items, or change or delete any entry, in the Commissioner's records as may be required by such findings and decision.

(8) A translation into English by a third party of a statement made in a foreign language by an applicant for or beneficiary of monthly insurance benefits under this subchapter shall not be regarded as reliable for any purpose under this subchapter unless the third party, under penalty of perjury—

(A) certifies that the translation is accurate; and

(B) discloses the nature and scope of the relationship between the third party and the applicant or recipient, as the case may be.

(9) Decisions of the Commissioner of Social Security under this subsection shall be reviewable by commencing a civil action in the United States district court as provided in subsection (g) of this section.

(d) Issuance of subpenas in administrative proceedings

For the purpose of any hearing, investigation, or other proceeding authorized or directed under this subchapter, or relative to any other matter within the Commissioner's jurisdiction hereunder, the Commissioner of Social Security shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Commissioner of Social Security. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be required from any place in the United States or in any Territory or possession thereof. Subpenas of the Commissioner of Social Security shall be served by anyone authorized by the Commissioner (1) by delivering a copy thereof to the individual named therein, or (2) by registered mail or by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(e) Judicial enforcement of subpenas; contempt

In case of contumacy by, or refusal to obey a subpena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Commissioner of Social Security, shall have jurisdiction to issue an order requiring such per-

[3] See References in Text note below.

son to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

(f) Repealed. Pub. L. 91–452, title II, § 236, Oct. 15, 1970, 84 Stat. 930

(g) Judicial review

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm the Commissioner's findings of fact or the Commissioner's decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript of the additional record and testimony upon which the Commissioner's action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.

(h) Finality of Commissioner's decision

The findings and decision of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28 to recover on any claim arising under this subchapter.

(i) Certification for payment

Upon final decision of the Commissioner of Social Security, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this subchapter, the Commissioner of Social Security shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Department of the Treasury, and prior to any action thereon by the Government Accountability Office, shall make payment in accordance with the certification of the Commissioner of Social Security (except that in the case of (A) an individual who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) creditable under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] or the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], (B) the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], and (D) any other person entitled to benefits under section 402 of this title on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974): *Provided*, That where a review of the Commissioner's decision is or may be sought under subsection (g) of this section the Commissioner of Social Security may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or pay-

ments made in accordance with a certification by the Commissioner of Social Security.

(j) Representative payees

(1)(A) If the Commissioner of Social Security determines that the interest of any individual under this subchapter would be served thereby, certification of payment of such individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's ''representative payee''). If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 1007 or 1383(a)(2) of this title, the Commissioner of Social Security shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(2)(A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

(i) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Commissioner of Social Security in regulations).

(B)(i) As part of the investigation referred to in subparagraph (A)(i), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter,

(II) verify such person's social security account number (or employer identification number),

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title,

(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

(V) obtain information concerning whether such person is a person described in section 402(x)(1)(A)(iv) of this title, and

(VI) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection, the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or payment of benefits to such person has been terminated pursuant to section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter.

(ii) The Commissioner of Social Security shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of—

(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked on or after January 1, 1991, pursuant to this subsection, whose designation as a representative payee has been revoked pursuant to section 1007(a) of this title, or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1383(a)(2)(A)(iii) of this title, by reason of misuse of funds paid as benefits under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter, and

(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 408, 1011, or 1383a of this title.

(iii) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this paragraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(I) such person is described in section 402(x)(1)(A)(iv) of this title,

(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

(III) the location or apprehension of such person is within the officer's official duties.

(C)(i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

(I) such person has previously been convicted as described in subparagraph (B)(i)(III),

(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been re-

voked as described in subparagraph (B)(i)(VI)[4] the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or payment of benefits to such person pursuant to section 1383(a)(2)(A)(ii) of this title has previously been terminated as described in section 1383(a)(2)(B)(ii)(VI) of this title,

(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration,

(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

(V) such person is a person described in section 402(x)(1)(A)(iv) of this title.

(ii) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

(iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual,

(II) a legal guardian or legal representative of such individual,

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom such certification of payment would serve the best interests of such individual, or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary,

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

(III) no other more suitable representative payee can be found.

(v) In the case of an individual described in paragraph (1)(B), when selecting such individual's representative payee, preference shall be given to—

(I) a certified community-based nonprofit social service agency (as defined in paragraph (10)),

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities,

(III) a State or local government agency with fiduciary responsibilities, or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate,

unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(D)(i) Subject to clause (ii), if the Commissioner of Social Security makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

(ii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or described in paragraph (1)(B).

(iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interest of the individual entitled to such benefits.

(E)(i) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner of Social Security to the same extent as is provided in subsection (b) of this section, and to judicial review of the Commissioner's final decision as is provided in subsection (g) of this section.

(ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

[4] So in original. Probably should be followed by a comma.

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(3)(A) In any case where payment under this subchapter is made to a person other than the individual entitled to such payment, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(C) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(D) Notwithstanding subparagraphs (A), (B), and (C), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of another, if the Commissioner of Social Security has reason to believe that the person receiving such payments is misusing such payments.

(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.

(F) The Commissioner of Social Security shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection, section 1007 of this title, or section 1383(a)(2) of this title, and

(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection, section 1007 of this title, or section 1383(a)(2) of this title.

(G) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and certified community-based nonprofit social service agencies (as defined in paragraph (10)) which are qualified to serve as representative payees pursuant to this subsection or section 1007 or 1383(a)(2) of this title and which are located in the area served by such servicing office.

(4)(A)(i) Except as provided in the next sentence, a qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which the individual is described in paragraph (1)(B)).

A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00. Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

(ii) In the case of an individual who is no longer currently entitled to monthly insurance benefits under this subchapter but to whom all past-due benefits have not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(B) For purposes of this paragraph, the term ''qualified organization'' means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any certified community-based nonprofit social service agency (as defined in paragraph (10)), if such agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(i) regularly provides services as the representative payee, pursuant to this subsection or section 1007 or 1383(a)(2) of this title, concurrently to 5 or more individuals,[5]

(ii) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, or imprisoned not more than 6 months, or both.

(5) In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. In any case in which a representative payee that—

(A) is not an individual (regardless of whether it is a ''qualified organization'' within the meaning of paragraph (4)(B)); or

(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this subchapter, subchapter VIII of this chapter, subchapter XVI of this chapter, or any combination of such subchapters;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this subchapter (alone or in combination with benefits payable under subchapter VIII of this chapter or subchapter XVI of this chapter) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 1007 of this title, or section 1383(a)(2) of this title in any case in which—

(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (10) of this subsection or section 1383(a)(2)(I) of this title); or

(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this subchapter. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

(i) the number of such reviews;

(ii) the results of such reviews;

(iii) the number of cases in which the representative payee was changed and why;

(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(v) the number of cases discovered in which there was a misuse of funds;

(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(viii) such other information as the Commissioner deems appropriate.

(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(8) For purposes of this subsection, the term ''benefit based on disability'' of an individual

[5] So in original. Probably should be followed by ''and''.

means a disability insurance benefit of such individual under section 423 of this title or a child's, widow's, or widower's insurance benefit of such individual under section 402 of this title based on such individual's disability.

(9) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term ''use and benefit'' for purposes of this paragraph.

(10) For purposes of this subsection, the term ''certified community-based nonprofit social service agency'' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.

(k) Payments to incompetents

Any payment made after December 31, 1939, under conditions set forth in subsection (j) of this section, any payment made before January 1, 1940, to, or on behalf of, a legally incompetent individual, and any payment made after December 31, 1939, to a legally incompetent individual without knowledge by the Commissioner of Social Security of incompetency prior to certification of payment, if otherwise valid under this subchapter, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(*l*) Delegation of powers and duties by Commissioner

The Commissioner of Social Security is authorized to delegate to any member, officer, or employee of the Social Security Administration designated by the Commissioner any of the powers conferred upon the Commissioner by this section, and is authorized to be represented by the Commissioner's own attorneys in any court in any case or proceeding arising under the provisions of subsection (e) of this section.

(m) Repealed. Aug. 28, 1950, ch. 809, title I, § 101(b)(2), 64 Stat. 488

(n) Joint payments

The Commissioner of Social Security may, in the Commissioner's discretion, certify to the Managing Trustee any two or more individuals of the same family for joint payment of the total benefits payable to such individuals for any month, and if one of such individuals dies before a check representing such joint payment is negotiated, payment of the amount of such unnegotiated check to the surviving individual or individuals may be authorized in accordance with regulations of the Secretary of the Treasury; except that appropriate adjustment or recovery shall be made under section 404(a) of this title with respect to so much of the amount of such check as exceeds the amount to which such surviving individual or individuals are entitled under this subchapter for such month.

(*o*) Crediting of compensation under Railroad Retirement Act

If there is no person who would be entitled, upon application therefor, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], or to a lump-sum payment under section 6(b) of such Act [45 U.S.C. 231e(b)], with respect to the death of an employee (as defined in such Act), then, notwithstanding section 410(a)(9) of this title, compensation (as defined in such Railroad Retirement Act, but excluding compensation attributable as having been paid during any month on account of military service creditable under section 3(i) of such Act [45 U.S.C. 231b(i)] if wages are deemed to have been paid to such employee during such month under subsection (a) or (e) of section 417 of this title) of such employee shall constitute remuneration for employment for purposes of determining (A) entitlement to and the amount of any lump-sum death payment under this subchapter on the basis of such employee's wages and self-employment income and (B) entitlement to and the amount of any monthly benefit under this subchapter, for the month in which such employee died or for any month thereafter, on the basis of such wages and self-employment income. For such purposes, compensation (as so defined) paid in a calendar year before 1978 shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee rendered services for such compensation.

(p) Special rules in case of Federal service

(1) With respect to service included as employment under section 410 of this title which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of subsection (*l*)(1) of such section are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(*o*) of this title are applicable, the Commissioner of Social Security shall not make determinations as to the amounts of remuneration for such service, or the periods in which or for which such remuneration was paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section 3122 of the Internal Revenue Code of 1954 and certifications made pursuant to this subsection. Such determinations shall be final and conclusive. Nothing in this paragraph shall be construed to affect the Commissioner's authority to determine under sections 409 and 410 of this title whether any such service constitutes

employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.

(2) The head of any such agency or instrumentality is authorized and directed, upon written request of the Commissioner of Social Security, to make certification to the Commissioner with respect to any matter determinable for the Commissioner of Social Security by such head or his agents under this subsection, which the Commissioner of Social Security finds necessary in administering this subchapter.

(3) The provisions of paragraphs (1) and (2) of this subsection shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of paragraphs (1) and (2) of this subsection the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of paragraphs (1) and (2) shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Homeland Security, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of paragraphs (1) and (2) the Secretary of Homeland Security shall be deemed to be the head of such instrumentality.

(q) Expedited benefit payments

(1) The Commissioner of Social Security shall establish and put into effect procedures under which expedited payment of monthly insurance benefits under this subchapter will, subject to paragraph (4) of this subsection, be made as set forth in paragraphs (2) and (3) of this subsection.

(2) In any case in which—

(A) an individual makes an allegation that a monthly benefit under this subchapter was due him in a particular month but was not paid to him, and

(B) such individual submits a written request for the payment of such benefit—

(i) in the case of an individual who received a regular monthly benefit in the month preceding the month with respect to which such allegation is made, not less than 30 days after the 15th day of the month with respect to which such allegation is made (and in the event that such request is submitted prior to the expiration of such 30-day period, it shall be deemed to have been submitted upon the expiration of such period), and

(ii) in any other case, not less than 90 days after the later of (I) the date on which such benefit is alleged to have been due, or (II) the date on which such individual furnished the last information requested by the Commissioner of Social Security (and such written request will be deemed to be filed on the day on which it was filed, or the ninetieth day after the first day on which the Commissioner of Social Security has evidence that such allegation is true, whichever is later),

the Commissioner of Social Security shall, if the Commissioner finds that benefits are due, certify such benefits for payment, and payment shall be made within 15 days immediately following the date on which the written request is deemed to have been filed.

(3) In any case in which the Commissioner of Social Security determines that there is evidence, although additional evidence might be required for a final decision, that an allegation described in paragraph (2)(A) is true, the Commissioner may make a preliminary certification of such benefit for payment even though the 30-day or 90-day periods described in paragraph (2)(B)(i) and (B)(ii) have not elapsed.

(4) Any payment made pursuant to a certification under paragraph (3) of this subsection shall not be considered an incorrect payment for purposes of determining the liability of the certifying or disbursing officer.

(5) For purposes of this subsection, benefits payable under section 428 of this title shall be treated as monthly insurance benefits payable under this subchapter. However, this subsection shall not apply with respect to any benefit for which a check has been negotiated, or with respect to any benefit alleged to be due under either section 423 of this title, or section 402 of this title to a wife, husband, or child of an individual entitled to or applying for benefits under section 423 of this title, or to a child who has attained age 18 and is under a disability, or to a widow or widower on the basis of being under a disability.

(r) Use of death certificates to correct program information

(1) The Commissioner of Social Security shall undertake to establish a program under which—

(A) States (or political subdivisions thereof) voluntarily contract with the Commissioner of Social Security to furnish the Commissioner of Social Security periodically with information (in a form established by the Commissioner of Social Security in consultation with the States) concerning individuals with respect to whom death certificates (or equivalent documents maintained by the States or subdivisions) have been officially filed with them; and

(B) there will be (i) a comparison of such information on such individuals with information on such individuals in the records being used in the administration of this chapter, (ii) validation of the results of such comparisons, and (iii) corrections in such records to accurately reflect the status of such individuals.

(2) Each State (or political subdivision thereof) which furnishes the Commissioner of Social Security with information on records of deaths in the State or subdivision under this subsection may be paid by the Commissioner of Social Se-

curity from amounts available for administration of this chapter the reasonable costs (established by the Commissioner of Social Security in consultations with the States) for transcribing and transmitting such information to the Commissioner of Social Security.

(3) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a Federal or State agency other than under this chapter, the Commissioner of Social Security shall to the extent feasible provide such information through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals if—

(A) under such arrangement the agency provides reimbursement to the Commissioner of Social Security for the reasonable cost of carrying out such arrangement, and

(B) such arrangement does not conflict with the duties of the Commissioner of Social Security under paragraph (1).

(4) The Commissioner of Social Security may enter into similar agreements with States to provide information for their use in programs wholly funded by the States if the requirements of subparagraphs (A) and (B) of paragraph (3) are met.

(5) The Commissioner of Social Security may use or provide for the use of such records as may be corrected under this section, subject to such safeguards as the Commissioner of Social Security determines are necessary or appropriate to protect the information from unauthorized use or disclosure, for statistical and research activities conducted by Federal and State agencies.

(6) Information furnished to the Commissioner of Social Security under this subsection may not be used for any purpose other than the purpose described in this subsection and is exempt from disclosure under section 552 of title 5 and from the requirements of section 552a of such title.

(7) The Commissioner of Social Security shall include information on the status of the program established under this section and impediments to the effective implementation of the program in the 1984 report required under section 904 of this title.

(8)(A) The Commissioner of Social Security shall, upon the request of the official responsible for a State driver's license agency pursuant to the Help America Vote Act of 2002—

(i) enter into an agreement with such official for the purpose of verifying applicable information, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met; and

(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any applicable information disclosed and procedures to permit such agency to use the applicable information for the purpose of maintaining its records.

(B) Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate.

(C) The Commissioner shall develop methods to verify the accuracy of information provided by the agency with respect to applications for voter registration, for whom the last 4 digits of a social security number are provided instead of a driver's license number.

(D) For purposes of this paragraph—

(i) the term ''applicable information'' means information regarding whether—

(I) the name (including the first name and any family forename or surname), the date of birth (including the month, day, and year), and social security number of an individual provided to the Commissioner match the information contained in the Commissioner's records, and

(II) such individual is shown on the records of the Commissioner as being deceased; and

(ii) the term ''State driver's license agency'' means the State agency which issues driver's licenses to individuals within the State and maintains records relating to such licensure.

(E) Nothing in this paragraph may be construed to require the provision of applicable information with regard to a request for a record of an individual if the Commissioner determines there are exceptional circumstances warranting an exception (such as safety of the individual or interference with an investigation).

(F) Applicable information provided by the Commission pursuant to an agreement under this paragraph or by an individual to any agency that has entered into an agreement under this paragraph shall be considered as strictly confidential and shall be used only for the purposes described in this paragraph and for carrying out an agreement under this paragraph. Any officer or employee or former officer or employee of a State, or any officer or employee or former officer or employee of a contractor of a State who, without the written authority of the Commissioner, publishes or communicates any applicable information in such individual's possession by reason of such employment or position as such an officer, shall be guilty of a felony and upon conviction thereof shall be fined or imprisoned, or both, as described in section 408 of this title.

(s) Notice requirements

The Commissioner of Social Security shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this subchapter by the Commissioner of Social Security or by a State agency—

(1) is written in simple and clear language, and

(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.

(t) Same-day personal interviews at field offices in cases where time is of essence

In any case in which an individual visits a field office of the Social Security Administra-

tion and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by—

(1) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

(2) the theft, loss, or nonreceipt of a benefit payment under this subchapter,

the Commissioner of Social Security shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

(u) Redetermination of entitlement

(1)(A) The Commissioner of Social Security shall immediately redetermine the entitlement of individuals to monthly insurance benefits under this subchapter if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the Commissioner of Social Security with regard to beneficiaries in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

(B) When redetermining the entitlement, or making an initial determination of entitlement, of an individual under this subchapter, the Commissioner of Social Security shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

(2) For purposes of paragraph (1), similar fault is involved with respect to a determination if—

(A) an incorrect or incomplete statement that is material to the determination is knowingly made; or

(B) information that is material to the determination is knowingly concealed.

(3) If, after redetermining pursuant to this subsection the entitlement of an individual to monthly insurance benefits, the Commissioner of Social Security determines that there is insufficient evidence to support such entitlement, the Commissioner of Social Security may terminate such entitlement and may treat benefits paid on the basis of such insufficient evidence as overpayments.

(Aug. 14, 1935, ch. 531, title II, §205, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, 1368; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Aug. 28, 1950, ch. 809, title I, §§101(b)(2), 108(a)–(c), 109(b), 64 Stat. 488, 518, 523; July 18, 1952, ch. 945, §5(b), 66 Stat. 775; Sept. 1, 1954, ch. 1206, title I, §101(a)(5), (c)(3), 68 Stat. 1052, 1054; Aug. 1, 1956, ch. 836, title I, §§107(b), 111(a), 117, 70 Stat. 829, 831, 834; Aug. 1, 1956, ch. 837, title IV, §402(b), 70 Stat. 871; Pub. L. 86–507, §1(35), June 11, 1960, 74 Stat. 202; Pub. L. 86–778, title I, §§102(f)(2), 103(j)(2)(E), title VII, §702(a), Sept. 13, 1960, 74 Stat. 933, 938, 993; Pub. L. 87–293, title II, §202(b)(3), Sept. 21, 1961, 75 Stat. 626; Pub. L. 89–97, title III, §§308(d)(9), (10), 330, July 30, 1965, 79 Stat. 379, 401; Pub. L. 90–248, title I, §171(a), Jan. 2, 1968, 81 Stat. 876; Pub. L. 91–452, title II, §236, Oct. 15, 1970, 84 Stat. 930; Pub. L. 92–603, title I, §137, Oct. 30, 1972, 86 Stat. 1364; Pub. L. 93–445, title III, §§302(a), 303, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 94–202, §4, Jan. 2, 1976, 89 Stat. 1136; Pub. L. 94–455, title XII, §1211(b), Oct. 4, 1976, 90 Stat. 1711; Pub. L. 95–216, title III, §353(f)(2), Dec. 20, 1977, 91 Stat. 1554; Pub. L. 95–600, title VII, §703(j)(14)(B), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 96–265, title III, §§305(a), 307, June 9, 1980, 94 Stat. 457, 458; Pub. L. 97–455, §4(a), Jan. 12, 1983, 96 Stat. 2499; Pub. L. 98–21, title III, §§301(d), 309(i), 336, 345(a), Apr. 20, 1983, 97 Stat. 111, 117, 130, 137; Pub. L. 98–369, div. B, title VI, §§2661(h), 2663(a)(4), (j)(4), July 18, 1984, 98 Stat. 1157, 1162, 1171; Pub. L. 98–460, §16(a), Oct. 9, 1984, 98 Stat. 1809; Pub. L. 99–509, title IX, §9002(c)(2)(A), (B), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 100–485, title I, §125(a), Oct. 13, 1988, 102 Stat. 2353; Pub. L. 100–647, title VIII, §§8008(a), 8009(a), 8015(a)(1), 8016(a)(1), Nov. 10, 1988, 102 Stat. 3783, 3787, 3790, 3792; Pub. L. 101–239, title X, §§10303(a), 10304, Dec. 19, 1989, 103 Stat. 2482, 2483; Pub. L. 101–508, title V, §§5105(a)(1)(A), (2)(A)(i), (3)(A)(i), (b)(1)(A), (c)(1), (d)(1)(A), 5107(a)(1), 5109(a)(1), Nov. 5, 1990, 104 Stat. 1388–254, 1388–255, 1388–260, 1388–263, 1388–265, 1388–269, 1388–271; Pub. L. 101–624, title XVII, §1735(a), (b), title XXII, §2201(b), (c), Nov. 28, 1990, 104 Stat. 3791, 3792, 3951, 3952; Pub. L. 103–296, title I, §107(a)(1), (2), (4), title II, §§201(a)(1)(A), (B), (2)(A)–(C), 206(a)(1), (d)(1), title III, §§304(a), 316(a), 318, 321(a)(7)–(11), (c)(3), (6)(B), (f)(2)(A), Aug. 15, 1994, 108 Stat. 1477, 1478, 1490–1493, 1509, 1514, 1520, 1531, 1533, 1536, 1538, 1541; Pub. L. 104–121, title I, §105(a)(2), Mar. 29, 1996, 110 Stat. 852; Pub. L. 104–193, title I, §108(a)(1), Aug. 22, 1996, 110 Stat. 2164; Pub. L. 105–34, title X, §1090(b)(1), Aug. 5, 1997, 111 Stat. 962; Pub. L. 106–169, title II, §251(b)(2), Dec. 14, 1999, 113 Stat. 1854; Pub. L. 107–90, title I, §103(i)(3), Dec. 21, 2001, 115 Stat. 882; Pub. L. 107–252, title III, §303(a)(5)(C), Oct. 29, 2002, 116 Stat. 1711; Pub. L. 108–203, title I, §§101(a), 102(a)(1), (b)(1), 103(a), 104(a), 105(a), 106(a), title IV, §411(a), Mar. 2, 2004, 118 Stat. 495, 497, 498, 500, 503–505, 527; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108–458, title VII, §7214(a), Dec. 17, 2004, 118 Stat. 3832; Pub. L. 109–241, title IX, §902(n), July 11, 2006, 120 Stat. 568.)

REFERENCES IN TEXT

Subsecs. (e) and (q) of section 418 of this title, referred to in subsec. (c)(1)(D)(i), (5)(F)(iii), which related to payments and reports by States, and to time limitation on assessments, respectively, were repealed, and subsec. (f) of section 418 of this title was redesignated as subsec. (e), by Pub. L. 99–509, title IX, §9002(c)(1), Oct. 21, 1986, 100 Stat. 1971.

Parts A and D of subchapter IV of this chapter, referred to in subsec. (c)(2)(C)(ii), (vi)(I), are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

Section 7(a) of the Privacy Act of 1974, referred to in subsec. (c)(2)(C)(ii), is section 7(a) of Pub. L. 93–579, which is set out as a note under section 552a of Title 5, Government Organization and Employees.

The Food Stamp Act of 1977, referred to in subsec. (c)(2)(C)(iii)(I), (II), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see

Short Title note set out under section 2011 of Title 7 and Tables.

The Federal Crop Insurance Act, referred to in subsec. (c)(2)(C)(iv), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§ 1501 et seq.) of Title 7. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

Section 7212(a)(2) of the 9/11 Commission Implementation Act of 2004, referred to in subsec. (c)(2)(C)(vi)(II), is section 7212(a)(2) of Pub. L. 108–458, which was formerly set out as a note under section 30301 of Title 49, Transportation.

The Internal Revenue Code of 1986, referred to in subsecs. (c)(2)(C)(viii)(II), (H) and (j)(2)(B)(iii), is classified generally to Title 26, Internal Revenue Code.

The Longshore and Harbor Workers' Compensation Act, referred to in subsec. (c)(2)(C)(ix), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

The Railroad Retirement Act of 1937, referred to in subsecs. (c)(5)(D) and (i), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsecs. (c)(5)(D), (i), and (*o*), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Pub. L. 93–445 completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45. For further details and complete classification of these Acts to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Title VIII of the Social Security Act, referred to in subsec. (c)(5)(F)(i), probably means former title VIII of the Social Security Act, which was classified to subchapter VIII (§ 1001 et seq.) of this chapter, and was omitted from the Code as superseded by the provisions of the Internal Revenue Code of 1939 and the Internal Revenue Code of 1986.

Subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (c)(5)(F)(i), were comprised of sections 480 to 482 and 1400 to 1432, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of the Internal Revenue Code of 1986.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 of the Internal Revenue Code of 1954, referred to in subsec. (c)(5)(F)(i), were redesignated chapters 2 and 21 of the Internal Revenue Code of 1986, and are classified to sections 1401 et seq. and 3101 et seq., respectively, of Title 26.

The Peace Corps Act, referred to in subsec. (p)(1), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Section 3122 of the Internal Revenue Code of 1954, referred to in subsec. (p)(1), redesignated section 3122 of the Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, and is classified to section 3122 of Title 26, Internal Revenue Code.

The Help America Vote Act of 2002, referred to in subsec. (r)(8)(A), is Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

CODIFICATION

August 15, 1994, referred to in subsec. (c)(2)(E)(iii), was in the original "the date of the enactment of this subparagraph" and "that date", which were translated as meaning the date of enactment of Pub. L. 103–296, which added subsec. (c)(2)(E) and redesignated former subsec. (c)(2)(E) as (c)(2)(F).

In subsec. (g), act June 25, 1948, as amended by act May 24, 1949, substituted United States District Court for the District of Columbia, for District Court of the United States for the District of Columbia.

AMENDMENTS

2006—Subsec. (p)(3). Pub. L. 109–241 substituted "of Homeland Security" for "of Transportation" in two places.

2004—Subsec. (c)(2)(C)(vi). Pub. L. 108–458 designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (g). Pub. L. 108–203, § 411(a), substituted "and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript of the additional record and testimony" for "and a transcript of the additional record and testimony".

Subsec. (i). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

Subsec. (j)(2)(B)(i)(IV) to (VI). Pub. L. 108–203, § 103(a)(1), added subcls. (IV) and (V) and redesignated former subcl. (IV) as (VI).

Subsec. (j)(2)(B)(iii). Pub. L. 108–203, § 103(a)(2), added cl. (iii).

Subsec. (j)(2)(C)(i)(II). Pub. L. 108–203, § 103(a)(3), substituted "subparagraph (B)(i)(VI)" for "subparagraph (B)(i)(IV),," and "section 1383(a)(2)(B)(ii)(VI)" for "section 1383(a)(2)(B)(ii)(IV)".

Subsec. (j)(2)(C)(i)(IV), (V). Pub. L. 108–203, § 103(a)(4), added subcls. (IV) and (V).

Subsec. (j)(2)(C)(v)(I). Pub. L. 108–203, § 105(a)(2), substituted "paragraph (10)" for "paragraph (9)".

Pub. L. 108–203, § 102(a)(1)(A), substituted "a certified community-based nonprofit social service agency (as defined in paragraph (9))" for "a community-based nonprofit social service agency licensed or bonded by the State".

Subsec. (j)(3)(E). Pub. L. 108–203, § 106(a)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (j)(3)(F). Pub. L. 108–203, § 106(a)(1), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 108–203, § 105(a)(2), substituted "paragraph (10)" for "paragraph (9)".

Pub. L. 108–203, § 102(a)(1)(B), substituted "certified community-based nonprofit social service agencies (as defined in paragraph (9))" for "community-based nonprofit social service agencies".

Subsec. (j)(3)(G). Pub. L. 108–203, § 106(a)(1), redesignated subpar. (F) as (G).

Subsec. (j)(4)(A)(i). Pub. L. 108–203, § 104(a)(2), which directed amendment of cl. (i) in concluding provisions by substituting "A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified

organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner'' for ''The Secretary'', was executed by making the substitution for ''The Commissioner of Social Security'' to reflect the probable intent of Congress. See 1994 Amendment note below.

Pub. L. 108–203, §104(a)(1), substituted ''Except as provided in the next sentence, a'' for ''A'' in introductory provisions.

Subsec. (j)(4)(B). Pub. L. 108–203, §105(a)(2), substituted ''paragraph (10)'' for ''paragraph (9)'' in introductory provisions.

Pub. L. 108–203, §102(a)(1)(C), substituted ''any certified community-based nonprofit social service agency (as defined in paragraph (9))'' for ''any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee'' in introductory provisions.

Subsec. (j)(5). Pub. L. 108–203, §101(a)(1), designated first sentence of existing provisions as introductory provisions and inserted ''In any case in which a representative payee that—'' after ''misused benefits.'', added subpars (A) and (B), and designated second sentence of existing provisions as concluding provisions and inserted ''misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B).'' before ''The Commissioner of Social Security shall make''.

Subsec. (j)(6). Pub. L. 108–203, §102(b)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The Commissioner of Social Security shall include as a part of the annual report required under section 904 of this title information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Commissioner of Social Security, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Commissioner of Social Security determines to be appropriate.''

Subsec. (j)(6)(A)(ii). Pub. L. 108–203, §105(a)(3), substituted ''paragraph (10)'' for ''paragraph (9)''.

Subsec. (j)(7). Pub. L. 108–203, §105(a)(1), (4), added par. (7) and redesignated former par. (7) as (8).

Subsec. (j)(8). Pub. L. 108–203, §105(a)(1), redesignated par. (7) as (8). Former par. (8) redesignated (9).

Pub. L. 108–203, §101(a)(2), added par. (8).

Subsec. (j)(9). Pub. L. 108–203, §105(a)(1), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Pub. L. 108–203, §102(a)(1)(D), added par. (9).

Subsec. (j)(10). Pub. L. 108–203, §105(a)(1), redesignated par. (9) as (10).

2002—Subsec. (r)(8). Pub. L. 107–252 added par. (8).

2001—Subsec. (i). Pub. L. 107–90 inserted ''(or five or more years of service, all of which accrues after December 31, 1995)'' after ''ten years of service''.

1999—Subsec. (j)(1)(A). Pub. L. 106–169, §251(b)(2)(A), inserted ''1007 or'' before ''1383(a)(2)''.

Subsec. (j)(2)(B)(i)(I). Pub. L. 106–169, §251(b)(2)(B), inserted '', subchapter VIII of this chapter,'' before ''or subchapter XVI of this chapter''.

Subsec. (j)(2)(B)(i)(III). Pub. L. 106–169, §251(b)(2)(C), inserted '', 1011,'' before ''or 1383a''.

Subsec. (j)(2)(B)(i)(IV). Pub. L. 106–169, §251(b)(2)(D), inserted '', the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title,'' before ''or payment of benefits'' and '', subchapter VIII of this chapter,'' before ''or subchapter XVI of this chapter''.

Subsec. (j)(2)(B)(ii)(I). Pub. L. 106–169, §251(b)(2)(E), inserted ''whose designation as a representative payee has been revoked pursuant to section 1007(a) of this title,'' before ''or with respect to whom'' and '', subchapter VIII of this chapter,'' before ''or subchapter XVI of this chapter''.

Subsec. (j)(2)(B)(ii)(II). Pub. L. 106–169, §251(b)(2)(F), inserted '', 1011,'' before ''or 1383a''.

Subsec. (j)(2)(C)(i)(II). Pub. L. 106–169, §251(b)(2)(G), inserted '', the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title,'' before ''or payment of benefits''.

Subsec. (j)(3)(E)(i), (ii). Pub. L. 106–169, §251(b)(2)(H), inserted '', section 1007 of this title,'' before ''or section 1383(a)(2) of this title''.

Subsec. (j)(3)(F). Pub. L. 106–169, §251(b)(2)(I), inserted ''1007 or'' before ''1383(a)(2)''.

Subsec. (j)(4)(B)(i). Pub. L. 106–169, §251(b)(2)(J), inserted ''1007 or'' before ''1383(a)(2)''.

1997—Subsec. (c)(2)(B)(ii). Pub. L. 105–34, §1090(b)(1)(A), inserted at end ''With respect to an application for a social security account number for an individual who has not attained the age of 18 before such application, such evidence shall include the information described in subparagraph (C)(ii).''

Subsec. (c)(2)(C)(ii). Pub. L. 105–34, §1090(b)(1)(B), inserted ''the Commissioner of Social Security and'' after ''available to'' in second sentence.

Subsec. (c)(2)(H). Pub. L. 105–34, §1090(b)(1)(C), added subpar. (H).

1996—Subsec. (c)(2)(C)(vi). Pub. L. 104–193 inserted ''an agency administering a program funded under part A of subchapter IV of this chapter or'' before ''an agency operating'' and substituted ''part D of such subchapter'' for ''part A or D of subchapter IV of this chapter''.

Subsec. (j)(1)(B). Pub. L. 104–121, §105(a)(2)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''In the case of an individual entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability, certification of payment of such benefits to a representative payee shall be deemed to serve the interest of such individual under this subchapter. In any case in which such certification is so deemed under this subparagraph to serve the interest of an individual, the Commissioner of Social Security shall include, in such individual's notification of entitlement, a notice that alcoholism or drug addiction is a contributing factor material to the Commissioner's determination of such individual's disability and that the Commissioner of Social Security is therefore required to make a certification of payment of such individual's benefits to a representative payee.''

Subsec. (j)(2)(C)(v). Pub. L. 104–121, §105(a)(2)(B), substituted ''described in paragraph (1)(B)'' for ''entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability''.

Subsec. (j)(2)(D)(ii)(II). Pub. L. 104–121, §105(a)(2)(C), substituted ''described in paragraph (1)(B).'' for ''(if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability) is eligible for benefits under this subchapter by reason of disability..''

Subsec. (j)(4)(A)(i)(II). Pub. L. 104–121, §105(a)(2)(D), substituted ''described in paragraph (1)(B)'' for ''entitled to benefits based on disability and alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability''.

1994—Subsec. (a). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (b)(1), (2). Pub. L. 103–296, §107(a)(4), substituted wherever appearing ''Commissioner of Social Security'' for ''Secretary'', ''Commissioner's'' for ''Secretary's'', ''the Commissioner may'' for ''he may'', ''the Commissioner shall'' for ''he shall'', and ''the Commissioner's'' for ''his'' except in the phrase ''his or her rights''.

Subsec. (b)(3)(A). Pub. L. 103–296, §321(a)(7), realigned margin.

Subsec. (b)(3)(B). Pub. L. 103–296, § 321(a)(7), realigned margin.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(1)(D)(i). Pub. L. 103–296, § 321(c)(6)(B), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (c)(2)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places and ''the Commissioner deems'' for ''he deems''.

Subsec. (c)(2)(B)(i). Pub. L. 103–296, § 304(a)(1), substituted ''(F)'' for ''(E)'' in introductory provisions.

Pub. L. 103–296, § 107(a)(4), substituted ''In carrying out the Commissioner's duties'' for ''In carrying out his duties'' in introductory provisions and ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (c)(2)(B)(ii). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(B)(iii). Pub. L. 103–296, § 321(a)(8), substituted ''nonpublic'' for ''non-public''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(C)(i), (ii). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (c)(2)(C)(iii). Pub. L. 103–296, § 321(a)(9)(B), redesignated the cl. (iii) as added by Pub. L. 101–624, § 2201(b)(3), as cl. (iv).

Pub. L. 103–296, § 316(a), amended cl. (iii) as added by Pub. L. 101–624, § 1735(a)(3), by inserting subcl. (I) designation before ''In the administration'' and by substituting subcls. (II) to (IV) for ''The Secretary of Agriculture shall restrict, to the satisfaction of the Secretary of Health and Human Services, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of the Food Stamp Act of 1977. The Secretary of Agriculture shall provide such other safeguards as the Secretary of Health and Human Services determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.''

Subsec. (c)(2)(C)(iii)(III), (IV). Pub. L. 103–296, § 107(a)(1), in cl. (iii) as amended by Pub. L. 103–296, § 316(a), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

Subsec. (c)(2)(C)(iv). Pub. L. 103–296, § 321(a)(9)(B), redesignated the cl. (iii) as added by Pub. L. 101–624, § 2201(b)(3), as cl. (iv). Former cl. (iv) redesignated (v).

Pub. L. 103–296, § 107(a)(1), in cl. (iv) as redesignated by Pub. L. 103–296, § 321(a)(9)(B), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (c)(2)(C)(v). Pub. L. 103–296, § 321(a)(9)(B), (C), redesignated cl. (iv) as (v), and substituted ''policy set forth in clause (i)'' for ''policy set forth in subclause (I) of clause (i)'' and ''clause (ii)'' for ''subclause (II) of clause (i)''. Former cl. (v) redesignated (vi).

Subsec. (c)(2)(C)(vi). Pub. L. 103–296, § 321(a)(9)(B), redesignated cl. (v) as (vi). Former cl. (vi) redesignated (vii).

Subsec. (c)(2)(C)(vii). Pub. L. 103–296, § 321(a)(9)(B), redesignated cl. (vi) as (vii). Former cl. (vii) added by Pub. L. 101–624, § 1735(b), redesignated (viii).

Pub. L. 103–296, § 321(a)(9)(A), struck out cl. (vii) added by Pub. L. 101–624, § 2201(c), which was substantially identical to the cl. (vii) added by Pub. L. 101–624, § 1735(b).

Subsec. (c)(2)(C)(viii). Pub. L. 103–296, § 321(a)(9)(B), (D), redesignated the cl. (vii) added by Pub. L. 101–624, § 1735(b), as (viii) and inserted ''a social security account number or'' before ''a request for'' in subcl. (IV).

Subsec. (c)(2)(C)(ix). Pub. L. 103–296, § 318, added cl. (ix).

Pub. L. 103–296, § 107(a)(1), amended cl. (ix) as added by Pub. L. 103–296, § 318, by substituting ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (c)(2)(D)(i)(I), (II). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(E). Pub. L. 103–296, § 304(a)(3), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 103–296, § 107(a)(4), in subpar. (E) added by Pub. L. 103–296, § 304(a)(3), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(F), (G). Pub. L. 103–296, § 304(a)(2), redesignated subpars. (E) and (F) as (F) and (G), respectively.

Pub. L. 103–296, § 107(a)(4), in subpars. (F) and (G) as redesignated by Pub. L. 103–296, § 304(a)(2), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (c)(3). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner's'' for ''Secretary's'' and ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(4). Pub. L. 103–296, § 107(a)(4), in introductory provisions, substituted ''Commissioner of Social Security'' for ''Secretary'' and substituted ''the Commissioner's'' for ''his'' wherever appearing, in subpars. (A) and (B), substituted ''Commissioner's'' for ''Secretary's'', and in subpar. (C), substituted ''Commissioner's records as'' for ''Secretary's records as'', ''Commissioner of Social Security'' for ''Secretary'', and ''the Commissioner's records the'' for ''his records the''.

Subsec. (c)(5). Pub. L. 103–296, § 107(a)(4), in introductory provisions substituted ''Commissioner of Social Security'' for ''Secretary'' and substituted ''the Commissioner's'' for ''his'' in two places.

Subsec. (c)(5)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner's'' for ''Secretary's'' in two places.

Subsec. (c)(5)(F). Pub. L. 103–296, § 107(a)(4), substituted ''the Commissioner's'' for ''his'' in introductory provisions, ''Commissioner of Social Security'' for ''Secretary'' in cl. (ii), and ''Commissioner's'' for ''Secretary's'' in closing provisions.

Subsec. (c)(5)(F)(i). Pub. L. 103–296, § 321(c)(3), inserted ''or the Internal Revenue Code of 1986'' after ''Code of 1954''.

Subsec. (c)(5)(G), (J), (6), (7). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner's'' for ''his'' before ''records'' in two places in par. (7).

Subsec. (c)(8). Pub. L. 103–296, § 206(a)(1)(B), added par. (8). Former par. (8) redesignated (9).

Subsec. (c)(9). Pub. L. 103–296, § 206(a)(1)(A), redesignated par. (8) as (9).

Pub. L. 103–296, § 107(a)(4), in par. (9) as redesignated by Pub. L. 103–296, § 206(a)(1)(A), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' before ''jurisdiction'', and ''by the Commissioner'' for ''by him''.

Subsec. (e). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (g). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' wherever appearing except in second sentence, and ''the Commissioner files'' for ''he files''.

Subsec. (h). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (i). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's''.

Subsec. (j). Pub. L. 103–296, § 321(a)(10), made technical amendment to heading.

Subsec. (j)(1). Pub. L. 103–296, § 201(a)(1)(A), designated existing provisions as subpar. (A), in last sentence inserted '', if the interest of the individual under this subchapter would be served thereby,'' after ''payee or'', and added subpar. (B).

Pub. L. 103–296, §107(a)(4), in par. (1) as amended by Pub. L. 103–296, §201(a)(1)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in two places in subpar. (B).

Subsec. (j)(2)(A) to (C)(iv). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(2)(C)(v). Pub. L. 103–296, §201(a)(2)(A), added cl. (v).

Pub. L. 103–296, §107(a)(4), in cl. (v) as added by Pub. L. 103–296, §201(a)(2)(A), substituted ''Commissioner's'' for ''Secretary's'' in introductory provisions and ''Commissioner of Social Security'' for ''Secretary'' in subcl. (IV) and closing provisions.

Subsec. (j)(2)(D)(i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (j)(2)(D)(ii)(II). Pub. L. 103–296, §201(a)(1)(B), substituted '', under the age of 15 years, or (if alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability) is eligible for benefits under this subchapter by reason of disability.'' for ''or under the age of 15''.

Pub. L. 103–296, §107(a)(4), in subcl. (II) as amended by Pub. L. 103–296, §201(a)(1)(B), substituted ''Commissioner's'' for ''Secretary's'' in two places.

Subsec. (j)(2)(D)(iii), (E), (3)(A), (B), (D), (E). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in par. (2)(E)(i) and (ii).

Subsec. (j)(4)(A). Pub. L. 103–296, §201(a)(2)(B)(i), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, added new subcl. (II) and struck out former subcl. (II) (as redesignated) which read ''$25.00 per month.'', inserted ''The Secretary shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00.'' before ''Any agreement'' in concluding provisions, and added cl. (ii).

Pub. L. 103–296, §107(a)(4), in subpar. (A) as amended by Pub. L. 103–296, §201(a)(2)(B)(i), substituted ''Commissioner's'' for ''Secretary's'' and ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (j)(4)(B). Pub. L. 103–296, §201(a)(2)(B)(ii), in introductory provisions, inserted ''State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any'' after ''means any'', substituted ''representative payee, if such agency,'' for ''representative payee and which,'', substituted a period for '', and'' at end of cl. (ii), and struck out cl. (iii) which read as follows: ''was in existence on October 1, 1988.''

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(4)(D). Pub. L. 103–296, §201(a)(2)(B)(iii), struck out subpar. (D) which read as follows: ''This paragraph shall cease to be effective on July 1, 1994.''

Subsec. (j)(5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(6). Pub. L. 103–296, §321(f)(2)(A), made technical correction to Pub. L. 101–508, §5105(d)(1)(A). See 1990 Amendment note below.

Pub. L. 103–296, §107(a)(4), in par. (6) as amended by Pub. L. 103–296, §321(f)(2)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(7). Pub. L. 103–296, §201(a)(2)(C), added par. (7).

Subsec. (k). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (*l*). Pub. L. 103–296, §107(a)(2), (4), substituted ''Commissioner of Social Security'' for ''Secretary'', ''Social Security Administration'' for ''Department of Health and Human Services'', ''by the Commissioner'' for ''by him'', ''upon the Commissioner'' for ''upon him'', and ''the Commissioner's'' for ''his''.

Subsec. (n). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security may, in the Commissioner's discretion'' for ''Secretary may, in his discretion''.

Subsec. (p)(1), (2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''Secretary's'' in par. (1), and ''to the Commissioner'' for ''to him'' in par. (2).

Subsecs. (q), (r). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner finds'' for ''he finds'' in subsec. (q)(2), and ''the Commissioner may'' for ''he may'' in subsec. (q)(3).

Subsec. (s). Pub. L. 103–296, §321(a)(11), made technical amendment to heading.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places in introductory provisions.

Subsec. (t). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in closing provisions.

Subsec. (u). Pub. L. 103–296, §206(d)(1), added subsec. (u).

Pub. L. 103–296, §107(a)(4), in subsec. (u) added by Pub. L. 103–296, §206(d)(1), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1990—Subsec. (b)(3). Pub. L. 101–508, §5107(a)(1), added par. (3).

Subsec. (c)(2)(C). Pub. L. 101–624, §§1735(a), (b), 2201(b), (c), made similar amendments redesignating subcls. (I) and (II) of former cl. (i) as cls. (i) and (ii), respectively, adding two cls. (iii) which are different, redesignating former cls. (ii) to (iv) as (iv) to (vi), respectively, and adding two substantially identical cls. (vii). Cls. (iii) and (vii), as added by §1735 of Pub. L. 101–624, are set out first and cls. (iii) and (vii), as added by §2201 of Pub. L. 101–624, are set out second.

Subsec. (j). Pub. L. 101–508, §5105(a)(1)(A), inserted heading ''Representative payees''.

Subsec. (j)(1). Pub. L. 101–508, §5105(a)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.''

Subsec. (j)(2). Pub. L. 101–508, §5105(a)(2)(A)(i), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.''

Subsec. (j)(3)(B), (C). Pub. L. 101–508, §5105(b)(1)(A)(i), (ii), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: ''Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.''

Subsec. (j)(3)(D). Pub. L. 101–508, § 5105(b)(1)(A)(ii), (iii), redesignated subpar. (E) as (D) and substituted ''(A), (B), and (C)'' for ''(A), (B), (C), and (D)''. Former subpar. (D) redesignated (C).

Subsec. (j)(3)(E), (F). Pub. L. 101–508, § 5105(b)(1)(A)(ii), (iv), added subpars. (E) and (F) and redesignated former subpar. (E) as (D).

Subsec. (j)(4). Pub. L. 101–508, § 5105(a)(3)(A)(i), added par. (4). Former par. (4) redesignated (5).

Subsec. (j)(5). Pub. L. 101–508, § 5105(c)(1), added par. (5) relating to negligent failure of the Secretary to investigate or monitor. Former par. (5), relating to annual report, redesignated (6).

Pub. L. 101–508, § 5105(a)(3)(A)(i), redesignated par. (4), relating to annual report, as (5).

Subsec. (j)(6). Pub. L. 101–508, § 5105(d)(1)(A), as amended by Pub. L. 103–296, § 321(f)(2)(A), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

''(A) The Secretary shall make an initial report to each House of the Congress on the implementation of paragraphs (2) and (3) within 270 days after October 9, 1984.

''(B) The Secretary shall include as a part of the annual report required under section 904 of this title, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.''

Pub. L. 101–508, § 5105(c)(1), redesignated par. (5), relating to annual report, as (6).

Subsec. (s). Pub. L. 101–508, § 5109(a)(1), added subsec. (s).

1989—Subsec. (c)(5)(H). Pub. L. 101–239, § 10304, struck out ''if there is an absence of an entry in the Secretary's records of wages having been paid by such employer to such individual in such period'' before semicolon at end.

Subsec. (t). Pub. L. 101–239, § 10303(a), added subsec. (t).

1988—Subsec. (c)(2)(B)(i). Pub. L. 100–647, § 8009(a)(1), inserted ''and subparagraph (E)'' after ''subparagraph (A)''.

Subsec. (c)(2)(C)(i). Pub. L. 100–485, § 125(a)(1), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (c)(2)(C)(ii). Pub. L. 100–485, § 125(a)(2), substituted ''subclause (I) of clause (i)'' for ''clause (i) of this subparagraph'' and inserted at end ''If and to the extent that any such provision is inconsistent with the requirement set forth in subclause (II) of clause (i), such provision shall, on and after October 13, 1988, be null, void, and of no effect.''

Subsec. (c)(2)(C)(iii). Pub. L. 100–647, § 8016(a)(1), substituted ''of this Act'' for ''of the Social Security Act'', which for purposes of codification was translated as ''of this chapter''.

Subsec. (c)(2)(D). Pub. L. 100–647, § 8008(a)(2), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (c)(2)(E). Pub. L. 100–647, § 8009(a)(3), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 100–647, § 8008(a)(1), redesignated former subpar. (D) as (E).

Subsec. (c)(2)(F). Pub. L. 100–647, § 8009(a)(2), redesignated former subpar. (E) as (F).

Subsec. (p)(1). Pub. L. 100–647, § 8015(a)(1), substituted ''the Secretary shall not make determinations as to the amounts of remuneration for such service, or the periods in which or for which such remuneration was paid'' for ''the Secretary shall not make determinations as to whether an individual has performed such service, the periods of such service, the amounts of remuneration for such service which constitute wages under the provisions of section 409 of this title, or the periods in which or for which such wages were paid'' and inserted at end ''Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under sections 409 and 410 of this title whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.''

1986—Subsec. (c)(1)(D)(i). Pub. L. 99–509, § 9002(c)(2)(A), inserted ''(as in effect prior to December 31, 1986)''.

Subsec. (c)(5)(F)(iii). Pub. L. 99–509, § 9002(c)(2)(B), inserted ''(as in effect prior to December 31, 1986)'' and ''(as so in effect)''.

1984—Subsec. (c)(5)(D). Pub. L. 98–369, § 2663(a)(4)(A), inserted ''of 1937 or 1974'' after ''Railroad Retirement Act'' in two places.

Subsec. (c)(5)(I). Pub. L. 98–369, § 2663(a)(4)(B), inserted ''or section 7(b)(7) of the Railroad Retirement Act of 1974''.

Subsec. (e). Pub. L. 98–369, § 2663(a)(4)(C), substituted ''an order'' for ''on order''.

Subsec. (h). Pub. L. 98–369, § 2663(a)(4)(D), substituted ''section 1331 or 1346 of title 28'' for ''section 24 of the Judicial Code of the United States''.

Subsec. (i). Pub. L. 98–369, § 2663(a)(4)(E), substituted ''the Fiscal Service of the Department of the Treasury'' for ''the Division of Disbursement of the Treasury Department''.

Subsec. (j). Pub. L. 98–460 designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (*l*). Pub. L. 98–369, § 2663(j)(4), substituted ''Department of Health and Human Services'' for ''Federal Security Agency''.

Subsec. (p)(1). Pub. L. 98–369, § 2663(a)(4)(F), substituted ''section 3122 of the Internal Revenue Code of 1954'' for ''section 1420(e) of the Internal Revenue Code of 1939''.

Subsec. (r)(4). Pub. L. 98–369, § 2661(h)(1), substituted ''subparagraphs (A) and (B) of paragraph (3)'' for ''paragraph (3)(A) and (B)''.

Subsec. (r)(7). Pub. L. 98–369, § 2661(h)(2), substituted ''this Act'' for ''the Act'' which was translated as ''this title''.

1983—Subsec. (b). Pub. L. 98–21, §§ 301(d)(1), 309(i)(1), in par. (1) inserted ''divorced husband,'' after ''husband,'', ''surviving divorced husband,'' after ''widower,'', and ''surviving divorced father,'' after ''surviving divorced mother,''.

Pub. L. 97–455 designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1)(C). Pub. L. 98–21, §§ 301(d)(2), 309(i)(2), inserted ''surviving divorced husband,'' after ''wife,'' and ''surviving divorced father,'' after ''surviving divorced mother,''.

Subsec. (c)(2)(D). Pub. L. 98–21, § 345(a), added subpar. (D).

Subsec. (r). Pub. L. 98–21, § 336, added subsec. (r).

1980—Subsec. (b). Pub. L. 96–265, § 305(a), inserted provisions relating to the information that must accompany a decision by the Secretary.

Subsec. (g). Pub. L. 96–265, § 307, substituted ''The court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding;'' for ''The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary,''.

1978—Subsec. (p)(3). Pub. L. 95–600 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'' in two places.

1977—Subsec. (c)(1)(A). Pub. L. 95–216, § 353(f)(2)(A), struck out ''(as defined in section 411(e) of this title)'' after ''taxable year''.

Subsec. (c)(1)(D). Pub. L. 95–216, § 353(f)(2)(B), added subpar. (D).

Subsec. (*o*). Pub. L. 95–216, § 353(f)(2)(C), inserted ''before 1978'' after ''calendar year''.

1976—Subsec. (b). Pub. L. 94–202 substituted provisions that a request for a hearing following the decision of the Secretary be made within sixty days after notice of such decision is received for provisions which authorized the Secretary to prescribe by regulation the period within which to file a request, including the limitation that the period so prescribed be not less than six months after notice of the decision was mailed.

Subsec. (c)(2)(C). Pub. L. 94–455 added subpar. (C).

1974—Subsec. (i). Pub. L. 93–445, §302(a), inserted parenthetical provision covering service under the Railroad Retirement Acts of 1937 and 1974 and certification to the Railroad Retirement Board and payment on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974.

Subsec. (*o*). Pub. L. 93–445, §303, substituted ''annuity under section 2 of the Railroad Retirement Act of 1974'' for ''section 5 of the Railroad Retirement Act of 1937'', ''section 6(b) of such Act'' for ''subsection (f)(1) of such section'', and ''section 3(i) of such Act'' for ''section 4 of such Act''.

1972—Subsec. (c)(2). Pub. L. 92–603 designated existing provisions as par. (A) and added par. (B).

1970—Subsec. (f). Pub. L. 91–452 struck out subsec. (f) which related to the immunity from prosecution of any person compelled to testify or produce evidence after claiming his privilege against self-incrimination.

1968—Subsec. (q). Pub. L. 90–248, §171(a), added subsec. (q).

1965—Subsec. (b). Pub. L. 89–97, §308(d)(9), substituted in second sentence ''wife, divorced wife, widow, surviving divorced wife, surviving divorced mother,'' for ''wife, widow, former wife divorced,''.

Subsec. (c)(1)(C). Pub. L. 89–97, §308(d)(10), substituted ''surviving divorced wife, surviving divorced mother,'' for ''former wife divorced,''.

Subsec. (n). Pub. L. 89–97, §330, provided that Secretary of the Treasury may authorize surviving payee or payees of a combined benefit check to cash one or more such checks which were not negotiated before one of payees died, provided that part of proceeds from each check that represents an overpayment is to be adjusted or recovered as provided in section 404(a) of this title.

1961—Subsec. (p)(1). Pub. L. 87–293 provided that head of Federal agency having control of service or such agents as the head may designate would make determinations with respect to employment and wages in case of service performed by volunteers and volunteer leaders in Peace Corps.

1960—Subsec. (c)(5)(F). Pub. L. 86–778, §102(f)(2), authorized the Secretary to add, change, or delete entries to conform his records to assessments of amounts due under an agreement pursuant to section 418 of this title, if such assessments are made within the period specified in subsection (q) of such section, or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section, and inserted references to chapters 2 and 21 of the Internal Revenue Code of 1954.

Subsec. (d). Pub. L. 86–507 inserted ''or by certified mail'' after ''registered mail'' in two places.

Subsec. (g). Pub. L. 86–778, §702(a), inserted sentence providing that any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

Subsec. (p)(1). Pub. L. 86–778, §103(j)(2)(E), substituted ''subsection (*l*)(1)'' for ''subsection (m)(1)''.

1956—Subsec. (b). Act Aug. 1, 1956, ch. 836, §111(a), required requests with respect to decisions to be filed within such period as the Secretary prescribes by regulation, which period may not be less than six months after notice of the decision is mailed.

Subsec. (c)(1)(B). Act Aug. 1, 1956, ch. 836, §107(b), substituted ''three months'' for ''two months''.

Subsec. (c)(5)(F). Act Aug. 1, 1956, ch. 836, §117, struck out provisions prohibiting inclusion in records of amount of self-employment income in excess of the amount which had been deleted as payments erroneously included in such records as wages paid to such individual in such taxable year, which provisions are now covered by subsec. (c)(5)(J) of this section.

Subsec. (c)(5)(J). Act Aug. 1, 1956, ch. 836, §117, added subpar. (J).

Subsec. (p)(1). Act Aug. 1, 1956, ch. 837, provided for determinations with respect to service performed as a member of a uniformed service to which the provisions of section 410(m)(1) of this title are applicable.

1954—Subsec. (*o*). Act Sept. 1, 1954, §101(a)(5), substituted ''section 410(a)(9)'' for ''section 410(a)(10)''.

Subsec. (p)(3). Act Sept. 1, 1954, §101(c)(3), inserted provisions making subsec. (p)(1) and (2) applicable to services performed by a civilian employee in the Coast Guard Exchanges or certain other activities at Coast Guard installations.

1952—Subsec. (*o*). Act July 18, 1952, substituted ''subsection (a) or (e) of section 417 of this title'' for ''section 417(a) of this title''.

1950—Act Aug. 28, 1950, §109(b)(1), substituted ''Administrator'' for ''Board'', ''Administrator's'' for ''Board's'', ''he'', ''him'', and ''his'' for ''it'', and ''its'', wherever appearing.

Subsec. (b). Act Aug. 28, 1950, §108(a), inserted ''former wife divorced, husband, widower,'' after ''widow''.

Subsec. (c). Act Aug. 28, 1950, §108(b), amended subsec. (c) generally to include definitions, to provide for the maintaining of records of self-employed persons, to allow for the revision of the Administrator's record, to authorize corrections after the times limitations if an application for monthly benefits or a lump-sum death payment is filed within the time limitation and no final decision has been made on it, to continue the requirement that written notice of any deletion or reduction of wages be given to the individual whose record is involved, to give the Administrator discretion to prescribe the period, after any change or refusal to change his records, within which an individual may be granted a hearing, and to provide for judicial review.

Subsec. (*l*). Act Aug. 28, 1950, §109(b)(2), amended subsec. (*l*) generally.

Subsecs. (*o*), (p). Act Aug. 28, 1950, §108(c), added subsecs. (*o*) and (p).

1939—Act Aug. 10, 1939, omitted former section 405 relating to payments of $500 or less to estates, and added subsecs. (a) to (n).

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–458, title VII, §7214(b), Dec. 17, 2004, 118 Stat. 3832, provided that: ''The amendment made by subsection (a)(2) [amending this section] shall apply with respect to licenses, registrations, and identification cards issued or reissued 1 year after the date of enactment of this Act [Dec. 17, 2004].''

Amendment by Pub. L. 108–458 effective Dec. 17, 2004, notwithstanding any other provision of such Act, see section 7219 of Pub. L. 108–458, set out as a note under section 1202 of Title 8, Aliens and Nationality.

Pub. L. 108–203, title I, §101(d), Mar. 2, 2004, 118 Stat. 497, provided that: ''The amendments made by this section [amending this section and sections 1007, 1382b, and 1383 of this title] shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after January 1, 1995.''

Pub. L. 108–203, title I, §102(a)(3), Mar. 2, 2004, 118 Stat. 498, provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title I, §103(d), Mar. 2, 2004, 118 Stat. 503, provided that: ''The amendments made by this section [amending this section and sections 1007 and 1383 of this title] shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title I, §104(c), Mar. 2, 2004, 118 Stat. 504, provided that: ''The amendments made by this section [amending this section and section 1383 of this

title] shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title I, §105(d), Mar. 2, 2004, 118 Stat. 505, provided that: ''The amendments made by this section [amending this section and sections 1007 and 1383 of this title] shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title I, §106(d), Mar. 2, 2004, 118 Stat. 506, provided that: ''The amendments made by this section [amending this section and sections 1007 and 1383 of this title] shall take effect 180 days after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title IV, §411(b), Mar. 2, 2004, 118 Stat. 527, provided that: ''The amendment made by this section [amending this section] shall apply with respect to final determinations issued (upon remand) on or after the date of the enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–90, title I, §103(j), Dec. 21, 2001, 115 Stat. 882, provided that: ''The amendments made by this section [amending this section and sections 231a to 231f, 231q, and 231r of Title 45, Railroads] shall take effect on January 1, 2002.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1090(b)(2) of Pub. L. 105–34 provided that:

''(A) The amendment made by paragraph (1)(A) [amending this section] shall apply to applications made after the date which is 180 days after the date of the enactment of this Act [Aug. 5, 1997].

''(B) The amendments made by subparagraphs (B) and (C) of paragraph (1) [amending this section] shall apply to information obtained on, before, or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Section 105(a)(5) of Pub. L. 104–121, as amended by Pub. L. 106–170, title IV, §401(a), (b), Dec. 17, 1999, 113 Stat. 1906, provided that:

''(A) The amendments made by paragraphs (1) and (4) [amending sections 423 and 425 of this title] shall apply to any individual who applies for, or whose claim is finally adjudicated with respect to, benefits under title II of the Social Security Act [this subchapter] based on disability on or after the date of the enactment of this Act [Mar. 29, 1996], and, in the case of any individual who has applied for, and whose claim has been finally adjudicated with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

''(B) The amendments made by paragraphs (2) and (3) [amending this section and section 422 of this title] shall take effect on July 1, 1996, with respect to any individual—

''(i) whose claim for benefits is finally adjudicated on or after the date of the enactment of this Act [Mar. 29, 1996]; or

''(ii) whose entitlement to benefits is based upon an entitlement redetermination made pursuant to subparagraph (C).

''(C) Within 90 days after the date of the enactment of this Act [Mar. 29, 1996], the Commissioner of Social Security shall notify each individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection [amending this section and sections 422, 423, and 425 of this title]. If such an individual reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

''(D) For purposes of this paragraph, an individual's claim, with respect to benefits under title II based on disability, which has been denied in whole before the date of the enactment of this Act, may not be considered to be finally adjudicated before such date if, on or after such date—

''(i) there is pending a request for either administrative or judicial review with respect to such claim; or

''(ii) there is pending, with respect to such claim, a readjudication by the Commissioner of Social Security pursuant to relief in a class action or implementation by the Commissioner of a court remand order.

''(E) Notwithstanding the provisions of this paragraph, with respect to any individual for whom the Commissioner of Social Security does not perform the entitlement redetermination before the date prescribed in subparagraph (C), the Commissioner shall perform such entitlement redetermination in lieu of a continuing disability review whenever the Commissioner determines that the individual's entitlement is subject to redetermination based on the preceding provisions of this paragraph, and the provisions of section 223(f) [section 423(f) of this title] shall not apply to such redetermination.''

[Pub. L. 106–170, title IV, §401(c), Dec. 17, 1999, 113 Stat. 1907, provided that: ''The amendments made by this section [amending section 105(a)(5) of Pub. L. 104–121, set out above] shall take effect as if included in the enactment of section 105 of the Contract with America Advancement Act of 1996 (Public Law 104–121; 110 Stat. 852 et seq.).''']

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(1), (2), (4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(a)(1)(D) of Pub. L. 103–296 provided that:

''(i) GENERAL RULE.—Except as provided in clause (ii), the amendments made by this paragraph [amending this section] shall apply with respect to benefits paid in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

''(ii) TREATMENT OF CURRENT BENEFICIARIES.—In any case in which—

''(I) an individual is entitled to benefits based on disability (as defined in section 205(j)(7) of the Social Security Act [subsec. (j)(7) of this section], as amended by this section),

''(II) the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act, and

''(III) alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability,

the amendments made by this paragraph shall apply with respect to benefits paid in months after the month in which such individual is notified by the Secretary in writing that alcoholism or drug addiction is a contributing factor material to the Secretary's determination and that the Secretary is therefore required to make a

certification of payment of such individual's benefits to a representative payee.''

Section 201(a)(2)(B)(iii) of Pub. L. 103–296 provided that the amendment made by that section is effective July 1, 1994.

Section 201(a)(2)(D) of Pub. L. 103–296 provided that: ''Except as provided in subparagraph (B)(iii) [set out above], the amendments made by this paragraph [amending this section] shall apply with respect to months beginning after 90 days after the date of the enactment of this Act [Aug. 15, 1994].''

Section 206(a)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall apply to translations made on or after October 1, 1994.''

Section 206(d)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect on October 1, 1994, and shall apply to determinations made before, on, or after such date.''

Section 304(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section and section 1320b–10 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

Section 321(f)(5) of Pub. L. 103–296 provided that: ''Each amendment made by this subsection [amending this section and sections 406, 423, 1320a–6, and 1383 of this title] shall take effect as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508] to which such amendment relates, except that the amendments made by paragraph (3)(B) [amending sections 406 and 1320a–6 of this title] shall apply with respect to favorable judgments made after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 1735(a), (b) of Pub. L. 101–624 effective and implemented first day of month beginning 120 days after publication of implementing regulations to be promulgated not later than Oct. 1, 1991, see section 1781(a) of Pub. L. 101–624, set out as a note under section 2012 of Title 7, Agriculture.

Section 5105(a)(5) of Pub. L. 101–508 provided that:

''(A) USE AND SELECTION OF REPRESENTATIVE PAYEES.—The amendments made by paragraphs (1) and (2) [amending this section and section 1383 of this title] shall take effect July 1, 1991, and shall apply only with respect to—

''(i) certifications of payment of benefits under title II of the Social Security Act [this subchapter] to representative payees made on or after such date; and

''(ii) provisions for payment of benefits under title XVI of such Act [subchapter XVI of this chapter] to representative payees made on or after such date.

''(B) COMPENSATION OF REPRESENTATIVE PAYEES.—The amendments made by paragraph (3) [amending this section and section 1383 of this title] shall take effect July 1, 1991, and the Secretary of Health and Human Services shall prescribe initial regulations necessary to carry out such amendments not later than such date.''

Section 5105(b)(1)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect October 1, 1992, and the Secretary of Health and Human Services shall take such actions as are necessary to ensure that the requirements of section 205(j)(3)(E) of the Social Security Act [subsec. (j)(3)(E) of this section] (as amended by subparagraph (A) of this paragraph) are satisfied as of such date.''

Section 5105(d)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section and section 1383 of this title] shall apply with respect to annual reports issued for years after 1991.''

Section 5107(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply with respect to adverse determinations made on or after July 1, 1991.''

Section 5109(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply with respect to notices issued on or after July 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10303(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply to visits to field offices of the Social Security Administration on or after January 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8009(b) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to benefits entitlement to which commences after the sixth month following the month in which this Act is enacted [November 1988].''

Amendment by section 8015(a)(1) of Pub. L. 100–647 applicable to determinations relating to service commenced in any position on or after Nov. 10, 1988, see section 8015(a)(3) of Pub. L. 100–647, set out as a note under section 3122 of Title 26, Internal Revenue Code.

Amendment by section 8016(a)(1) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of Title 26.

Section 125(b) of Pub. L. 100–485 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the first day of the 25th month which begins on or after the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of this title prior to Oct. 21, 1986, with certain exceptions, see section 9002(d) of Pub. L. 99–509 set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 16(d) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and sections 408, 1383, and 1383a of this title] shall become effective on the date of the enactment of this Act [Oct. 9, 1984], and, in the case of the amendments made by subsection (c) [amending sections 408 and 1383a of this title], shall apply with respect to violations occurring on or after such date.''

Amendment by section 2661(h) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(4), (j)(4) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by sections 301(d) and 309(i) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 345(b) of Pub. L. 98–21 provided that: ''The amendment made by this section [amending this sec-

tion] shall apply with respect to all new and replacement social security cards issued more than 193 days after the date of the enactment of this Act [Apr. 20, 1983].''

Section 4(b) of Pub. L. 97–455 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act [subsec. (b)(2)(B) of this section]) which are requested on or after such date as the Secretary of Health and Human Services may specify, but in any event not later than January 1, 1984.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 305(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply with respect to decisions made on or after the first day of the 13th month following the month in which this Act is enacted [June, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective Jan. 1, 1978, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 5 of Pub. L. 94–202 provided that: ''The amendments made by the first two sections of this Act [amending section 1383 of this title], and the provisions of section 3 [enacting provisions set out as a note under section 1383 of this title], shall take effect on the date of the enactment of this Act [Jan. 2, 1976]. The amendment made by section 4 of this Act [amending this section] shall apply with respect to any decision or determination of which notice is received, by the individual requesting the hearing involved, after February 29, 1976. The amendment made by the first section of this Act [amending section 1383 of this title], to the extent that it changes the period within which hearings must be requested, shall apply with respect to any decision or determination of which notice is received, by the individual requesting the hearing involved, on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 302(b) of Pub. L. 93–445 provided that: ''The amendment made by this section [amending this section] shall apply only with respect to benefits payable to individuals who first become entitled to benefits under title II of the Social Security Act [this subchapter] after 1974.''

Amendment by section 303 of Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 171(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be effective with respect to written requests filed under section 205(q) of the Social Security Act [subsec. (q) of this section] after June 30, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 308(d)(9), (10) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 102(f)(2) of Pub. L. 86–778 effective on first day of second calendar year following 1960, see section 102(f)(3) of Pub. L. 86–778, set out as a note under section 418 of this title.

Amendment by section 103(j)(2)(E) of Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 702(b) of Pub. L. 86–778 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to actions which are pending in court on the date of the enactment of this Act or are commenced after such date.''

EFFECTIVE DATE OF 1956 AMENDMENTS

Section 111(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective upon enactment [Aug. 1, 1956]; except that the period of time prescribed by the Secretary pursuant to the third sentence of section 205(b) of the Social Security Act [subsec. (b) of this section], as amended by subsection (a) of this section, with respect to decisions notice of which has been mailed by him to any individual prior to the enactment of this Act may not terminate for such individual less than six months after the date of enactment of this Act.''

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 101(n) of act Sept. 1, 1954, provided that: ''The amendment made by paragraph (3) of subsection (g) [amending section 411 of this title] shall be applicable only with respect to taxable years beginning after 1950. The amendments made by paragraphs (1), (2), and (4) of such subsection [amending section 411 of this title] and by subsection (d) [amending section 411 of this title] shall, except for purposes of section 203 of the Social Security Act [section 403 of this title], be applicable only with respect to taxable years ending after 1954. The amendments made by paragraphs (1), (2), and (3) of subsection (a) [amending section 409 of this title] shall be applicable only with respect to remuneration paid after 1954. The amendments made by paragraphs (4), (5), and (6) of subsection (a) [amending sections 410 and 418 of this title] shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954. The amendment made by paragraph (3) of subsection (c) [amending this section] shall become effective January 1, 1955. The other amendments made by this section (other than the amendments made by subsections (h), (i), (j) and (m)[)] [amending section 410 of this title] shall be applicable only with respect to services performed after 1954. For purposes of section 203 of the Social Security Act [section 403 of this title], the amend-

ments made by paragraphs (1), (2), and (4) of subsection (g) [amending section 411 of this title] and by subsection (d) [amending section 411 of this title] shall be effective with respect to net earnings from self-employment derived after 1954. The amount of net earnings from self-employment derived during any taxable year ending in, and not with the close of, 1955 shall be credited equally to the calendar quarter in which such taxable year ends and to each of the three or fewer preceding quarters any part of which is in such taxable year; and, for purposes of the preceding sentence of this subsection, net earnings from self-employment so credited to calendar quarters in 1955 shall be deemed to have been derived after 1954.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 108(d) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (a) and (c) of this section [amending this section] shall take effect on September 1, 1950. The amendment made by subsection (b) of this section [amending this section] shall take effect January 1, 1951, except that, effective on September 1, 1950, the husband or former wife divorced of an individual shall be treated the same as a parent of such individual, and the legal representative of an individual or his estate shall be treated the same as the individual, for purposes of section 205(c) of the Social Security Act [subsec. (c) of this section] as in effect prior to the enactment of this Act [Aug. 28, 1950].''

Section 101(b)(2) of act Aug. 28, 1950, provided that: ''Section 205(m) of the Social Security Act [subsec. (m) of this section] is repealed effective with respect to monthly payments under section 202 of the Social Security Act [this section], as amended by this Act, for months after August 1950.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

REPEALS: AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(b)(3) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulation, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SOCIAL SECURITY CARDS AND NUMBERS

Pub. L. 108–458, title VII, §7213, Dec. 17, 2004, 118 Stat. 3830, provided that:

''(a) SECURITY ENHANCEMENTS.—The Commissioner of Social Security shall—

''(1) not later than 1 year after the date of enactment of this Act [Dec. 17, 2004]—

''(A) restrict the issuance of multiple replacement social security cards to any individual to 3 per year and 10 for the life of the individual, except that the Commissioner may allow for reasonable exceptions from the limits under this paragraph on a case-by-case basis in compelling circumstances;

''(B) establish minimum standards for the verification of documents or records submitted by an individual to establish eligibility for an original or replacement social security card, other than for purposes of enumeration at birth; and

''(C) require independent verification of any birth record submitted by an individual to establish eligibility for a social security account number, other than for purposes of enumeration at birth, except that the Commissioner may allow for reasonable exceptions from the requirement for independent verification under this subparagraph on a case by case basis in compelling circumstances; and

''(2) notwithstanding section 205(r) of the Social Security Act (42 U.S.C. 405(r)) and any agreement entered into thereunder, not later than 18 months after the date of enactment of this Act with respect to death indicators and not later than 36 months after the date of enactment of this Act with respect to fraud indicators, add death and fraud indicators to the social security number verification systems for employers, State agencies issuing driver's licenses and identity cards, and other verification routines that the Commissioner determines to be appropriate.

''(b) INTERAGENCY SECURITY TASK FORCE.—The Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall form an interagency task force for the purpose of further improving the security of social security cards and numbers. Not later than 18 months after the date of enactment of this Act [Dec. 17, 2004], the task force shall establish, and the Commissioner shall provide for the implementation of, security requirements, including—

''(1) standards for safeguarding social security cards from counterfeiting, tampering, alteration, and theft;

''(2) requirements for verifying documents submitted for the issuance of replacement cards; and

''(3) actions to increase enforcement against the fraudulent use or issuance of social security numbers and cards.

''(c) ENUMERATION AT BIRTH.—

''(1) IMPROVEMENT OF APPLICATION PROCESS.—As soon as practicable after the date of enactment of this Act [Dec. 17, 2004], the Commissioner of Social Security shall undertake to make improvements to the enumeration at birth program for the issuance of social security account numbers to newborns. Such improvements shall be designed to prevent—

''(A) the assignment of social security account numbers to unnamed children;

''(B) the issuance of more than 1 social security account number to the same child; and

''(C) other opportunities for fraudulently obtaining a social security account number.

''(2) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Commissioner shall transmit to each House of Congress a report specifying in detail the extent to which the improvements required under paragraph (1) have been made.

''(d) STUDY REGARDING PROCESS FOR ENUMERATION AT BIRTH.—

''(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act [Dec. 17, 2004], the Commissioner of Social Security shall conduct a study to determine the most efficient options for ensuring the integrity of the process for enumeration at birth. This study shall include an examination of available methods for reconciling hospital birth records with birth registrations submitted to agencies of States and political subdivisions thereof and with information provided to the Commissioner as part of the process for enumeration at birth.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Commissioner shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study conducted under paragraph (1).

''(B) CONTENTS.—The report submitted under subparagraph (A) shall contain such recommendations for legislative changes as the Commissioner considers necessary to implement needed improvements in the process for enumeration at birth.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commissioner of Social Security for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out this section.''

DEVELOPMENT OF PROTOTYPE OF COUNTERFEIT-RESISTANT SOCIAL SECURITY CARD

Pub. L. 104–208, div. C, title VI, § 657, Sept. 30, 1996, 110 Stat. 3009–719, provided that:

''(a) DEVELOPMENT.—

''(1) IN GENERAL.—The Commissioner of Social Security (in this section referred to as the 'Commissioner') shall, in accordance with the provisions of this section, develop a prototype of a counterfeit-resistant social security card. Such prototype card—

''(A) shall be made of a durable, tamper-resistant material such as plastic or polyester;

''(B) shall employ technologies that provide security features, such as magnetic stripes, holograms, and integrated circuits; and

''(C) shall be developed so as to provide individuals with reliable proof of citizenship or legal resident alien status.

''(2) ASSISTANCE BY ATTORNEY GENERAL.—The Attorney General shall provide such information and assistance as the Commissioner deems necessary to achieve the purposes of this section.

''(b) STUDIES AND REPORTS.—

''(1) IN GENERAL.—The Comptroller General and the Commissioner of Social Security shall each conduct a study, and issue a report to the Congress, that examines different methods of improving the social security card application process.

''(2) ELEMENTS OF STUDIES.—The studies shall include evaluations of the cost and work load implications of issuing a counterfeit-resistant social security card for all individuals over a 3, 5, and 10 year period. The studies shall also evaluate the feasibility and cost implications of imposing a user fee for replacement cards and cards issued to individuals who apply for such a card prior to the scheduled 3, 5, and 10 year phase-in options.

''(3) DISTRIBUTION OF REPORTS.—Copies of the reports described in this subsection, along with facsimiles of the prototype cards as described in subsection (a), shall be submitted to the Committees on Ways and Means and Judiciary of the House of Representatives and the Committees on Finance and Judiciary of the Senate not later than 1 year after the date of the enactment of this Act [Sept. 30, 1996].''

Similar provisions were contained in the following prior act:

Pub. L. 104–193, title I, § 111, Aug. 22, 1996, 110 Stat. 2176.

NINETY-DAY DELAY IN DEFERRAL OR SUSPENSION OF BENEFITS FOR CURRENT BENEFICIARIES

Section 201(a)(1)(C) of Pub. L. 103–296 provided that: ''In the case of an individual who, as of 180 days after the date of the enactment of this Act [Aug. 15, 1994], has been determined to be under a disability, if alcoholism or drug addiction is a contributing factor material to the determination of the Secretary of Health and Human Services that the individual is under a disability, the Secretary may, notwithstanding clauses (i) and (ii) of section 205(j)(2)(D) of the Social Security Act [subsec. (j)(2)(D) of this section], make direct payment of benefits to such individual during the 90-day period commencing with the date on which such individual is provided the notice described in subparagraph (D)(ii) of this paragraph [set out above], until such time during such period as the selection of a representative payee is made pursuant to section 205(j) of such Act [subsec. (j) of this section].''

STUDY REGARDING FEASIBILITY, COST, AND EQUITY OF REQUIRING REPRESENTATIVE PAYEES FOR ALL DISABILITY BENEFICIARIES SUFFERING FROM ALCOHOLISM OR DRUG ADDICTION

Section 201(a)(1)(E) of Pub. L. 103–296 provided that:

''(i) STUDY.—As soon as practicable after the date of the enactment of this Act [Aug. 15, 1994], the Secretary of Health and Human Services shall conduct a study of the representative payee program. In such study, the Secretary shall examine—

''(I) the feasibility, cost, and equity of requiring representative payees for all individuals entitled to benefits based on disability under title II or XVI of the Social Security Act [this subchapter and subchapter XVI of this chapter] who suffer from alcoholism or drug addiction, irrespective of whether the alcoholism or drug addiction was material in any case to the Secretary's determination of disability,

''(II) the feasibility, cost, and equity of providing benefits through non-cash means, including (but not limited to) vouchers, debit cards, and electronic benefits transfer systems,

''(III) the extent to which child beneficiaries are afflicted by drug addition or alcoholism and ways of addressing such affliction, including the feasibility of requiring treatment, and

''(IV) the extent to which children's representative payees are afflicted by drug addiction or alcoholism, and methods to identify children's representative payees afflicted by drug addition or alcoholism and to ensure that benefits continue to be provided to beneficiaries appropriately.

''(ii) REPORT.—Not later than December 31, 1995, the Secretary shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report setting forth the findings of the Secretary based on such study. Such report shall include such recommendations for administrative or legislative changes as the Secretary considers appropriate.''

ANNUAL REPORTS ON REVIEWS OF OASDI AND SSI CASES

Section 206(g) of Pub. L. 103–296, as amended by Pub. L. 103–296, title I, § 108(b)(10)(B), Aug. 15, 1994, 108 Stat. 1483, provided that: ''The Commissioner of Social Security shall annually submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the extent to which the Commissioner has exercised his authority to review cases of entitlement to monthly insurance benefits under title II of the Social Security Act [this subchapter] and supplemental security income cases under title XVI of such Act [subchapter XVI of this chapter], and the extent to which the cases reviewed were those that involved a high likelihood or probability of fraud.''

REPORT ON FEASIBILITY OF OBTAINING READY ACCESS TO CERTAIN CRIMINAL FRAUD RECORDS

Section 5105(a)(2)(B) of Pub. L. 101–508 provided that: ''As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services, in consultation with the Attorney General of the United States and the Secretary of the Treasury, shall study the feasibility of establishing and maintaining a current list, which would be readily available to local offices of the Social Security Administration for use in investigations undertaken pursuant to section 205(j)(2) or 1631(a)(2)(B) of the Social Security Act [subsec. (j)(2) of this section or section 1383(a)(2)(B) of this title], of the names and social security account numbers of individuals who have been convicted of a violation of section 495 of title 18, United States Code. The Secretary of Health and Human Services shall, not later than July 1, 1992, submit the results of such study, together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

REPORTS ON ORGANIZATIONS SERVING AS REPRESENTATIVE PAYEES AND FEES FOR SERVICES

Section 5105(a)(3)(B) of Pub. L. 101–508 provided that:

''(i) REPORT BY SECRETARY OF HEALTH AND HUMAN SERVICES.—Not later than January 1, 1993, the Secretary of Health and Human Services shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the number and types of qualified organizations which have served as representative payees and have collected fees for such service pursuant to any amendment made by subparagraph (A) [amending this section and section 1383 of this title].

''(ii) REPORT BY COMPTROLLER GENERAL.—Not later than July 1, 1992, the Comptroller General of the United States shall conduct a study of the advantages and disadvantages of allowing qualified organizations serving as representative payees to charge fees pursuant to the amendments made by subparagraph (A) and shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of such study.''

STUDY RELATING TO FEASIBILITY OF SCREENING OF INDIVIDUALS WITH CRIMINAL RECORDS

Section 5105(a)(4) of Pub. L. 101–508 provided that: ''As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall conduct a study of the feasibility of determining the type of representative payee applicant most likely to have a felony or misdemeanor conviction, the suitability of individuals with prior convictions to serve as representative payees, and the circumstances under which such applicants could be allowed to serve as representative payees. The Secretary shall transmit the results of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1992.''

STUDY RELATING TO MORE STRINGENT OVERSIGHT OF HIGH-RISK REPRESENTATIVE PAYEES

Section 5105(b)(2) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall conduct a study of the need for a more stringent accounting system for high-risk representative payees than is otherwise generally provided under section 205(j)(3) or 1631(a)(2)(C) of the Social Security Act [subsec. (j)(3) of this section or section 1383(a)(2)(C) of this title], which would include such additional reporting requirements, record maintenance requirements, and other measures as the Secretary considers necessary to determine whether services are being appropriately provided by such payees in accordance with such sections 205(j) and 1631(a)(2).

''(B) SPECIAL PROCEDURES.—In such study, the Secretary shall determine the appropriate means of implementing more stringent, statistically valid procedures for—

''(i) reviewing reports which would be submitted to the Secretary under any system described in subparagraph (A), and

''(ii) periodic, random audits of records which would be kept under such a system,

in order to identify any instances in which high-risk representative payees are misusing payments made pursuant to section 205(j) or 1631(a)(2) of the Social Security Act.

''(C) HIGH-RISK REPRESENTATIVE PAYEE.—For purposes of this paragraph, the term 'high-risk representative payee' means a representative payee under section 205(j) or 1631(a)(2) of the Social Security Act (42 U.S.C. 405(j) and 1383(a)(2), respectively) (other than a Federal or State institution) who—

''(i) regularly provides concurrent services as a representative payee under such section 205(j), such section 1631(a)(2), or both such sections, for 5 or more individuals who are unrelated to such representative payee,

''(ii) is neither related to an individual on whose behalf the payee is being paid benefits nor living in the same household with such individual,

''(iii) is a creditor of such individual, or

''(iv) is in such other category of payees as the Secretary may determine appropriate.

''(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing stricter accounting and review procedures for high-risk representative payees in all servicing offices of the Social Security Administration (together with proposed legislative language).''

DEMONSTRATION PROJECTS RELATING TO PROVISION OF INFORMATION TO LOCAL AGENCIES PROVIDING CHILD AND ADULT PROTECTIVE SERVICES

Section 5105(b)(3) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall implement a demonstration project under this paragraph in all or part of not fewer than 2 States. Under each such project, the Secretary shall enter into an agreement with the State in which the project is located to make readily available, for the duration of the project, to the appropriate State agency, a listing of addresses of multiple benefit recipients.

''(B) LISTING OF ADDRESSES OF MULTIPLE BENEFIT RECIPIENTS.—The list referred to in subparagraph (A) shall consist of a current list setting forth each address within the State at which benefits under title II [this subchapter], benefits under title XVI [subchapter XVI of this chapter], or any combination of such benefits are being received by 5 or more individuals. For purposes of this subparagraph, in the case of benefits under title II, all individuals receiving benefits on the basis of the wages and self-employment income of the same individual shall be counted as 1 individual.

''(C) APPROPRIATE STATE AGENCY.—The appropriate State agency referred to in subparagraph (A) is the agency of the State which the Secretary determines is primarily responsible for regulating care facilities operated in such State or providing for child and adult protective services in such State.

''(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing the programs established pursuant to this paragraph on a permanent basis.

''(E) STATE.—For purposes of this paragraph, the term 'State' means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).''

COUNTERFEITING OF SOCIAL SECURITY ACCOUNT NUMBER CARDS

Pub. L. 99–603, title I, §101(f), Nov. 6, 1986, 100 Stat. 3373, provided that:

''(1) The Comptroller General of the United States, upon consultation with the Attorney General and the Secretary of Health and Human Services as well as private sector representatives (including representatives of the financial, banking, and manufacturing industries), shall inquire into technological alternatives for producing and issuing social security account number cards that are more resistant to counterfeiting than social security account number cards being issued on the date of enactment of this Act [Nov. 6, 1986] by the Social Security Administration, including the use of encoded magnetic, optical, or active electronic media

such as magnetic stripes, holograms, and integrated circuit chips. Such inquiry should focus on technologies that will help ensure the authenticity of the card, rather than the identity of the bearer.

''(2) The Comptroller General of the United States shall explore additional actions that could be taken to reduce the potential for fraudulently obtaining and using social security account number cards.

''(3) Not later than one year after the date of enactment of this Act [Nov. 6, 1986], the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and the Committee on the Judiciary and the Committee on Finance of the Senate a report setting forth his findings and recommendations under this subsection.''

CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES

Section 5 of Pub. L. 97–455 provided that: ''The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act [subsec. (b)(2) of this section] (as added by section 4 of this Act). For this purpose the Secretary shall—

''(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

''(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.''

INCLUSION OF SELF-EMPLOYMENT INCOME IN RECORDS OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Section 331(c) of Pub. L. 89–97 provided that: ''Notwithstanding any provision of section 205(c)(5)(F) of the Social Security Act [subsec. (c)(5)(F) of this section], the Secretary of Health, Education, and Welfare may conform, before April 16, 1970, his records to tax returns or statements of earnings which constitute self-employment income solely by reason of the filing of a certificate which is effective under section 1402(e)(5) of such Code [section 1402(e)(5) of Title 26, Internal Revenue Code].''

Section 101(e) of Pub. L. 86–778, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The provisions of section 205(c)(5)(F) of the Social Security Act [subsec. (c)(5)(F) of this section], insofar as they prohibit inclusion in the records of the Secretary of Health, Education, and Welfare of self-employment income for a taxable year when the return or statement including such income is filed after the time limitation following such taxable year, shall not be applicable to earnings which are derived in any taxable year ending before 1960 and which constitute self-employment income solely by reason of the filing of a certificate which is effective under section 1402(e)(3)(B) or (5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 1402(e)(3)(B) or (5) of Title 26].''

§ 405a. Regulations pertaining to frequency or due dates of payments and reports under voluntary agreements covering State and local employees; effective date

Notwithstanding any other provision of law, no regulation and no modification of any regulation, promulgated by the Secretary of Health and Human Services, after January 2, 1976, shall become effective prior to the end of the eighteen-month period which begins with the first day of the first calendar month which begins after the date on which such regulation or modification of a regulation is published in the Federal Register, if and insofar as such regulation or modification of a regulation pertains, directly or indirectly, to the frequency or due dates for payments and reports required under section 418(e)[1] of this title.

(Pub. L. 94–202, § 7, Jan. 2, 1976, 89 Stat. 1137; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Subsec. (e) of section 418 of this title, referred to in text, which related to payments and reports by States, was repealed, and subsec. (f) of section 418 of this title was redesignated as subsec. (e), by Pub. L. 99–509, title IX, § 9002(c)(1), Oct. 21, 1986, 100 Stat. 1971.

CODIFICATION

Section was not enacted as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in text pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TIME FOR MAKING SOCIAL SECURITY CONTRIBUTIONS WITH RESPECT TO COVERED STATE AND LOCAL EMPLOYEES

Pub. L. 96–265, title V, § 503(c), June 9, 1980, 94 Stat. 471, provided that: ''The provisions of section 7 of Public Law 94–202 [this section] shall not be applicable to any regulation which becomes effective on or after July 1, 1980, and which is designed to carry out the purposes of subsection (a) of this section [amending section 418 of this title].''

§ 406. Representation of claimants before Commissioner

(a) Recognition of representatives; fees for representation before Commissioner

(1) The Commissioner of Social Security may prescribe rules and regulations governing recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Commissioner of Social Security, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Commissioner of Social Security. Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize

[1] See References in Text note below.

as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe. The Commissioner of Social Security may, after due notice and opportunity for hearing, suspend or prohibit from further practice before the Commissioner any such person, agent, or attorney who refuses to comply with the Commissioner's rules and regulations or who violates any provision of this section for which a penalty is prescribed. The Commissioner of Social Security may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Commissioner of Social Security under this subchapter, and any agreement in violation of such rules and regulations shall be void. Except as provided in paragraph (2)(A), whenever the Commissioner of Social Security, in any claim before the Commissioner for benefits under this subchapter, makes a determination favorable to the claimant, the Commissioner shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim.

(2)(A) In the case of a claim of entitlement to past-due benefits under this subchapter, if—

(i) an agreement between the claimant and another person regarding any fee to be recovered by such person to compensate such person for services with respect to the claim is presented in writing to the Commissioner of Social Security prior to the time of the Commissioner's determination regarding the claim,

(ii) the fee specified in the agreement does not exceed the lesser of—

(I) 25 percent of the total amount of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title), or

(II) $4,000, and

(iii) the determination is favorable to the claimant,

then the Commissioner of Social Security shall approve that agreement at the time of the favorable determination, and (subject to paragraph (3)) the fee specified in the agreement shall be the maximum fee. The Commissioner of Social Security may from time to time increase the dollar amount under clause (ii)(II) to the extent that the rate of increase in such amount, as determined over the period since January 1, 1991, does not at any time exceed the rate of increase in primary insurance amounts under section 415(i) of this title since such date. The Commissioner of Social Security shall publish any such increased amount in the Federal Register.

(B) For purposes of this subsection, the term ''past-due benefits'' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 423 of this title.

(C) In any case involving—

(i) an agreement described in subparagraph (A) with any person relating to both a claim of entitlement to past-due benefits under this subchapter and a claim of entitlement to past-due benefits under subchapter XVI of this chapter, and

(ii) a favorable determination made by the Commissioner of Social Security with respect to both such claims,

the Commissioner of Social Security may approve such agreement only if the total fee or fees specified in such agreement does not exceed, in the aggregate, the dollar amount in effect under subparagraph (A)(ii)(II).

(D) In the case of a claim with respect to which the Commissioner of Social Security has approved an agreement pursuant to subparagraph (A), the Commissioner of Social Security shall provide the claimant and the person representing the claimant a written notice of—

(i) the dollar amount of the past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title) and the dollar amount of the past-due benefits payable to the claimant,

(ii) the dollar amount of the maximum fee which may be charged or recovered as determined under this paragraph, and

(iii) a description of the procedures for review under paragraph (3).

(3)(A) The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(D)—

(i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Commissioner of Social Security to reduce the maximum fee, or

(ii) the person representing the claimant submits a written request to the Commissioner of Social Security to increase the maximum fee.

Any such review shall be conducted after providing the claimant, the person representing the claimant, and the adjudicator with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. The adjudicator may request the Commissioner of Social Security to reduce the maximum fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the

claimant's interest or on the basis of evidence that the fee is clearly excessive for services rendered.

(B)(i) In the case of a request for review under subparagraph (A) by the claimant or by the person representing the claimant, such review shall be conducted by the administrative law judge who made the favorable determination or, if the Commissioner of Social Security determines that such administrative law judge is unavailable or if the determination was not made by an administrative law judge, such review shall be conducted by another person designated by the Commissioner of Social Security for such purpose.

(ii) In the case of a request by the adjudicator for review under subparagraph (A), the review shall be conducted by the Commissioner of Social Security or by an administrative law judge or other person (other than such adjudicator) who is designated by the Commissioner of Social Security.

(C) Upon completion of the review, the administrative law judge or other person conducting the review shall affirm or modify the amount which would otherwise be the maximum fee. Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2). The decision of the administrative law judge or other person conducting the review shall not be subject to further review.

(4) Subject to subsection (d) of this section, if the claimant is determined to be entitled to past-due benefits under this subchapter and the person representing the claimant is an attorney, the Commissioner of Social Security shall, notwithstanding section 405(i) of this title, certify for payment out of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title) to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title).

(5) Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this subchapter by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Commissioner of Social Security shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both. The Commissioner of Social Security shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Commissioner of Social Security, of the identity of any person representing such claimant in accordance with this subsection.

(b) Fees for representation before court

(1)(A) Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Commissioner of Social Security may, notwithstanding the provisions of section 405(i) of this title, but subject to subsection (d) of this section, certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.

(B) For purposes of this paragraph—

(i) the term ''past-due benefits'' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 423 of this title, and

(ii) amounts of past-due benefits shall be determined before any applicable reduction under section 1320a–6(a) of this title.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings before a court to which paragraph (1) of this subsection is applicable any amount in excess of that allowed by the court thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500, or imprisonment for not more than one year, or both.

(c) Notification of options for obtaining attorneys

The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

(d) Assessment on attorneys

(1) In general

Whenever a fee for services is required to be certified for payment to an attorney from a claimant's past-due benefits pursuant to subsection (a)(4) or (b)(1) of this section, the Commissioner shall impose on the attorney an assessment calculated in accordance with paragraph (2).

(2) Amount

(A) The amount of an assessment under paragraph (1) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be so certified by subsection (a)(4) or (b)(1) of this section before the application of this subsection, by the percentage specified in subparagraph (B), except that the maximum amount of the assessment may not exceed the greater of $75 or the adjusted amount as provided pursuant to the following two sentences. In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003[1]

[1] See References in Text note below.

take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.

(B) The percentage specified in this subparagraph is—

(i) for calendar years before 2001, 6.3 percent, and

(ii) for calendar years after 2000, such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and certifying fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

(3) Collection

The Commissioner may collect the assessment imposed on an attorney under paragraph (1) by offset from the amount of the fee otherwise required by subsection (a)(4) or (b)(1) of this section to be certified for payment to the attorney from a claimant's past-due benefits.

(4) Prohibition on claimant reimbursement

An attorney subject to an assessment under paragraph (1) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

(5) Disposition of assessments

Assessments on attorneys collected under this subsection shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate.

(6) Authorization of appropriations

The assessments authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this subchapter and related laws.

(Aug. 14, 1935, ch. 531, title II, §206, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, 1372; Aug. 28, 1950, ch. 809, title I, §109(b)(1), 64 Stat. 523; Pub. L. 85–840, title III, §309, Aug. 28, 1958, 72 Stat. 1034; Pub. L. 89–97, title III, §332, July 30, 1965, 79 Stat. 403; Pub. L. 90–248, title I, §173, Jan. 2, 1968, 81 Stat. 877; Pub. L. 101–239, title X, §10307(a)(1), (b)(1), Dec. 19, 1989, 103 Stat. 2484, 2485; Pub. L. 98–369, title VI, §2663(*l*)(1), July 18, 1984, 98 Stat. 1171; Pub. L. 101–508, title V, §5106(a)(1), Nov. 5, 1990, 104 Stat. 1388–266; Pub. L. 103–296, title I, §107(a)(4), title III, §321(f)(3)(B)(i), (4), Aug. 15, 1994, 108 Stat. 1478, 1541, 1542; Pub. L. 106–170, title IV, §406(a), (b), Dec. 17, 1999, 113 Stat. 1911, 1912; Pub. L. 108–203, title II, §205, title III, §301(a), Mar. 2, 2004, 118 Stat. 512, 519.)

REFERENCES IN TEXT

Section 301 of the Social Security Protection Act of 2003, referred to in subsec. (d)(2)(A), probably means section 301 of the Social Security Protection Act of 2004, Pub. L. 108–203, which amended this section and enacted provisions set out as a note below.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–203, §205, inserted "Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe." after "claimants before the Commissioner of Social Security.".

Subsec. (d)(2)(A). Pub. L. 108–203, §301(a), inserted ", except that the maximum amount of the assessment may not exceed the greater of $75 or the adjusted amount as provided pursuant to the following two sentences" after "subparagraph (B)" and inserted at end "In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75."

1999—Subsec. (a)(4). Pub. L. 106–170, §406(a)(2)(A), (b), struck out "(A)" after "(4)", substituted "subsection (d) of this section" for "subparagraph (B)", and struck out subpar. (B) which read as follows: "The Commissioner of Social Security shall not in any case certify any amount for payment to the attorney pursuant to this paragraph before the expiration of the 15-day period referred to in paragraph (3)(A) or, in the case of any review conducted under paragraph (3), before the completion of such review."

Subsec. (b)(1)(A). Pub. L. 106–170, §406(a)(2)(B), inserted ", but subject to subsection (d) of this section" after "section 405(i) of this title".

Subsec. (d). Pub. L. 106–170, §406(a)(1), added subsec. (d).

1994—Subsec. (a)(1), (2)(A). Pub. L. 103–296, §107(a)(4), substituted "Commissioner of Social Security" for "Secretary" wherever appearing, "before the Commissioner" for "before him" in two places, "Commissioner's" for "Secretary's" in two places, and "the Commissioner shall, if the" for "he shall, if the" in par. (1).

Subsec. (a)(2)(C). Pub. L. 103–296, §321(f)(4)(A)(ii), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 103–296, §107(a)(4), in subpar. (C) as added by Pub. L. 103–296, §321(f)(4)(A)(ii), substituted "Commissioner of Social Security" for "Secretary" in two places.

Subsec. (a)(2)(D). Pub. L. 103–296, § 321(f)(4)(A)(i), redesignated subpar. (C) as (D).

Pub. L. 103–296, § 107(a)(4), in subpar. (D) as redesignated by Pub. L. 103–296, § 321(f)(4)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places in introductory provisions.

Subsec. (a)(3)(A). Pub. L. 103–296, § 321(f)(4)(B), substituted ''paragraph (2)(D)'' for ''paragraph (2)(C)'' in introductory provisions.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(3)(B), (4), (5). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (b)(1). Pub. L. 103–296, § 321(f)(3)(B)(i), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(1)(A). Pub. L. 103–296, § 107(a)(4), in subpar. (A) as designated by Pub. L. 103–296, § 321(f)(3)(B)(i), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1990—Subsec. (a). Pub. L. 101–508 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2)(A), whenever'' for ''Whenever'' in fifth sentence, substituted pars. (2) to (4) for ''If as a result of such determination, such claimant is entitled to past-due benefits under this subchapter, the Secretary shall, notwithstanding section 405(i) of this title, certify for payment (out of such past-due benefits) to such attorney an amount equal to whichever of the following is the smaller: (A) 25 per centum of the total amount of such past-due benefits, (B) the amount of the attorney's fee so fixed, or (C) the amount agreed upon between the claimant and such attorney as the fee for such attorney's services.'', and inserted ''(5)'' before ''Any person who''.

1989—Subsec. (a). Pub. L. 101–239, § 10307(a)(1), inserted at end ''The Secretary shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Secretary, of the identity of any person representing such claimant in accordance with this subsection.''

Subsec. (c). Pub. L. 101–239, § 10307(b)(1), added subsec. (c).

1984—Pub. L. 98–369 substituted ''Secretary'' and ''Secretary's'' for ''Administrator'' and ''Administrator's'', respectively, wherever appearing.

1968—Subsec. (a). Pub. L. 90–248 provided for fixing of attorneys fees for claimants and for certification of amount for payment out of past-due benefits.

1965—Pub. L. 89–97 designated existing provisions as subsec. (a) and added subsec. (b).

1958—Pub. L. 85–840 struck out provisions which required attorneys to file a certificate of their right to practice.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''Administrator's'' for ''Board's''.

1939—Act Aug. 10, 1939, substituted the provisions of this section for former provisions relating to overpayments during life, now covered by section 404 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title III, § 301(b), Mar. 2, 2004, 118 Stat. 519, provided that: ''The amendments made by this section [amending this section] shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act [this section] on or after the first day of the first month that begins after 180 days after the date of the enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, § 406(d), Dec. 17, 1999, 113 Stat. 1913, provided that: ''The amendments made by this section [amending this section and enacting provisions set out as a note under this section] shall apply in the case of any attorney with respect to whom a fee for services is required to be certified for payment from a claimant's past-due benefits pursuant to subsection (a)(4) or (b)(1) of section 206 of the Social Security Act [this section] after the later of—

''(1) December 31, 1999, or

''(2) the last day of the first month beginning after the month in which this Act is enacted [Dec. 1999].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 321(f)(3)(B)(i), (4) of Pub. L. 103–296 effective as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, to which such amendment relates, except that amendment by section 321(f)(3)(B)(i) applicable with respect to favorable judgments made after 180 days after Aug. 15, 1994, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10307(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect June 1, 1991.''

Section 10307(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall apply with respect to adverse determinations made on or after January 1, 1991.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

NATIONWIDE DEMONSTRATION PROJECT PROVIDING FOR EXTENSION OF FEE WITHHOLDING PROCEDURES TO NON-ATTORNEY REPRESENTATIVES

Pub. L. 108–203, title III, § 303, Mar. 2, 2004, 118 Stat. 521, provided that:

''(a) IN GENERAL.—The Commissioner of Social Security (hereafter in this section referred to as the 'Commissioner') shall develop and carry out a nationwide demonstration project under this section with respect to agents and other persons, other than attorneys, who represent claimants under titles II and XVI of the Social Security Act [subchapters II and XVI of this chapter] before the Commissioner. The demonstration project shall be designed to determine the potential results of extending to such representatives the fee withholding procedures and assessment procedures that apply under sections 206 and section [sic] 1631(d)(2) of such Act [sections 406 and 1383(d)(2) of this title] to attorneys seeking direct payment out of past due benefits under such titles and shall include an analysis of the effect of such extension on claimants and program administration.

''(b) STANDARDS FOR INCLUSION IN DEMONSTRATION PROJECT.—Fee-withholding procedures may be extended under the demonstration project carried out pursuant to subsection (a) to any non-attorney representative only if such representative meets at least the following prerequisites:

''(1) The representative has been awarded a bachelor's degree from an accredited institution of higher education, or has been determined by the Commissioner to have equivalent qualifications derived from training and work experience.

''(2) The representative has passed an examination, written and administered by the Commissioner, which tests knowledge of the relevant provisions of the Social Security Act [this chapter] and the most recent developments in agency and court decisions affecting titles II and XVI of such Act [subchapters II and XVI of this chapter].

''(3) The representative has secured professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.

''(4) The representative has undergone a criminal background check to ensure the representative's fitness to practice before the Commissioner.

''(5) The representative demonstrates ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under titles II and XVI of such Act. Such continuing education, and the instructors providing such education, shall meet such standards as the Commissioner may prescribe.

''(c) ASSESSMENT OF FEES.—

''(1) IN GENERAL.—The Commissioner may assess representatives reasonable fees to cover the cost to the Social Security Administration of administering the prerequisites described in subsection (b).

''(2) DISPOSITION OF FEES.—Fees collected under paragraph (1) shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, or deposited as miscellaneous receipts in the general fund of the Treasury, based on such allocations as the Commissioner of Social Security determines appropriate.

''(3) AUTHORIZATION OF APPROPRIATIONS.—The fees authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended for administering the prerequisites described in subsection (b).

''(d) NOTICE TO CONGRESS AND APPLICABILITY OF FEE WITHHOLDING PROCEDURES.—Not later than 1 year after the date of enactment of this Act [Mar. 2, 2004], the Commissioner shall complete such actions as are necessary to fully implement the requirements for full operation of the demonstration project and shall submit to each House of Congress a written notice of the completion of such actions [Such notices submitted Feb. 28, 2005.]. The applicability under this section to non-attorney representatives of the fee withholding procedures and assessment procedures under sections 206 and 1631(d)(2) of the Social Security Act [sections 406 and 1383(d)(2) of this title] shall be effective with respect to fees for representation of claimants in the case of claims for benefits with respect to which the agreement for representation is entered into by such non-attorney representatives during the period beginning with the date of the submission of such notice by the Commissioner to Congress and ending with the termination date of the demonstration project.

''(e) REPORTS BY THE COMMISSIONER; TERMINATION.—

''(1) INTERIM REPORTS.—On or before the date which is 1 year after the date of enactment of this Act [Mar. 2, 2004], and annually thereafter, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate an annual interim report on the progress of the demonstration project carried out under this section, together with any related data and materials that the Commissioner may consider appropriate.

''(2) TERMINATION DATE AND FINAL REPORT.—The termination date of the demonstration project under this section is the date which is 5 years after the date of the submission of the notice by the Commissioner to each House of Congress pursuant to subsection (d). The authority under the preceding provisions of this section shall not apply in the case of claims for benefits with respect to which the agreement for representation is entered into after the termination date. Not later than 90 days after the termination date, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a final report with respect to the demonstration project.''

GAO STUDY REGARDING THE FEE PAYMENT PROCESS FOR CLAIMANT REPRESENTATIVES

Pub. L. 108–203, title III, §304, Mar. 2, 2004, 118 Stat. 523, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Comptroller General of the United States shall study and evaluate the appointment and payment of claimant representatives appearing before the Commissioner of Social Security in connection with benefit claims under titles II and XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) in each of the following groups:

''(A) Attorney claimant representatives who elect fee withholding under section 206 or 1631(d)(2) of such Act [sections 406 and 1383(d)(2) of this title].

''(B) Attorney claimant representatives who do not elect such fee withholding.

''(C) Non-attorney claimant representatives who are eligible for, and elect, such fee withholding.

''(D) Non-attorney claimant representatives who are eligible for, but do not elect, such fee withholding.

''(E) Non-attorney claimant representatives who are not eligible for such fee withholding.

''(2) MATTERS TO BE STUDIED.—In conducting the study under this subsection, the Comptroller General shall, for each of group of claimant representatives described in paragraph (1)—

''(A) conduct a survey of the relevant characteristics of such claimant representatives including—

''(i) qualifications and experience;

''(ii) the type of employment of such claimant representatives, such as with an advocacy group, State or local government, or insurance or other company;

''(iii) geographical distribution between urban and rural areas;

''(iv) the nature of claimants' cases, such as whether the cases are for disability insurance benefits only, supplemental security income benefits only, or concurrent benefits;

''(v) the relationship of such claimant representatives to claimants, such as whether the claimant is a friend, family member, or client of the claimant representative; and

''(vi) the amount of compensation (if any) paid to the claimant representatives and the method of payment of such compensation;

''(B) assess the quality and effectiveness of the services provided by such claimant representatives, including a comparison of claimant satisfaction or complaints and benefit outcomes, adjusted for differences in claimant representatives' caseload, claimants' diagnostic group, level of decision, and other relevant factors;

''(C) assess the interactions between fee withholding under sections 206 and 1631(d)(2) of such Act (including under the amendments made by section 302 of this Act [amending section 1383 of this title] and under the demonstration project conducted under section 303 of this Act [set out above]), the windfall offset under section 1127 of such Act [section 1320a–6 of this title], and interim assistance reimbursements under section 1631(g) of such Act;

''(D) assess the potential results of making permanent the fee withholding procedures under sections 206 and 1631(d)(2) of such Act under the amendments made by section 302 of this Act and under the demonstration project conducted under section 303 of this Act with respect to program ad-

ministration and claimant outcomes, and assess whether the rules and procedures employed by the Commissioner of Social Security to evaluate the qualifications and performance of claimant representatives should be revised prior to making such procedures permanent; and

''(E) make such recommendations for administrative and legislative changes as the Comptroller General of the United States considers necessary or appropriate.

''(3) CONSULTATION REQUIRED.—The Comptroller General of the United States shall consult with beneficiaries under title II of such Act, beneficiaries under title XVI of such Act, claimant representatives of beneficiaries under such titles, and other interested parties, in conducting the study and evaluation required under paragraph (1).

''(b) REPORT.—Not later than 3 years after the date of the submission by the Commissioner of Social Security to each House of Congress pursuant to section 303(d) of this Act [set out above] of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of this Act, the Comptroller General of the United States shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of the study and evaluation conducted pursuant to subsection (a).''

GAO STUDY AND REPORT

Pub. L. 106–170, title IV, § 406(c), Dec. 17, 1999, 113 Stat. 1912, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study that—

''(A) examines the costs incurred by the Social Security Administration in administering the provisions of subsection (a)(4) and (b)(1) of section 206 of the Social Security Act (42 U.S.C. 406) and itemizes the components of such costs, including the costs of determining fees to attorneys from the past-due benefits of claimants before the Commissioner of Social Security and of certifying such fees;

''(B) identifies efficiencies that the Social Security Administration could implement to reduce such costs;

''(C) examines the feasibility and advisability of linking the payment of, or the amount of, the assessment under section 206(d) of the Social Security Act (42 U.S.C. 406(d)) to the timeliness of the payment of the fee to the attorney as certified by the Commissioner of Social Security pursuant to subsection (a)(4) or (b)(1) of section 206 of such Act (42 U.S.C. 406);

''(D) determines whether the provisions of subsection (a)(4) and (b)(1) of section 206 of such Act (42 U.S.C. 406) should be applied to claimants under title XVI of such Act (42 U.S.C 1381 et seq.);

''(E) determines the feasibility and advisability of stating fees under section 206(d) of such Act (42 U.S.C. 406(d)) in terms of a fixed dollar amount as opposed to a percentage;

''(F) determines whether the dollar limit specified in section 206(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 406(a)(2)(A)(ii)(II)) should be raised; and

''(G) determines whether the assessment on attorneys required under section 206(d) of such Act (42 U.S.C. 406(d)) (as added by subsection (a)(1) of this section) impairs access to legal representation for claimants.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study conducted under paragraph (1), together with any recommendations for legislation that the Comptroller General determines to be appropriate as a result of such study.''

§ 407. Assignment of benefits

(a) In general

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) Amendment of section

No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Withholding of taxes

Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this subchapter, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 by the person entitled to such benefit or such person's representative payee.

(Aug. 14, 1935, ch. 531, title II, § 207, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1372; Pub. L. 98–21, title III, § 335(a), Apr. 20, 1983, 97 Stat. 130; Pub. L. 105–277, div. J, title IV, § 4005(a), Oct. 21, 1998, 112 Stat. 2681–911.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

In subsec. (b), ''April 20, 1983'' substituted for ''the date of the enactment of this section'', which was translated as meaning the date of enactment of this subsection, as the probable intent of Congress.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–277 added subsec. (c).

1983—Pub. L. 98–21 designated existing provisions as subsec. (a) and added subsec. (b).

1939—Act Aug. 10, 1939, amended section generally, incorporating provisions of former section 408 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 335(c) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to benefits payable or rights existing under the Social Security Act [this chapter] on or after the date of the enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

§ 408. Penalties

(a) In general

Whoever—

(1) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or

cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(A) whether wages were paid or received for employment (as said terms are defined in this subchapter and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(B) whether net earnings from self-employment (as such term is defined in this subchapter and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(C) whether a person entitled to benefits under this subchapter had earnings in or for a particular period (as determined under section 403(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(2) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this subchapter; or

(3) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this subchapter; or

(4) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(5) having made application to receive payment under this subchapter for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(6) willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title; or

(7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

(A) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Commissioner of Social Security (in the exercise of the Commissioner's authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Commissioner of Social Security by him or by any other person; or

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person; or

(C) knowingly alters a social security card issued by the Commissioner of Social Security, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it; or

(8) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;

shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than five years, or both.

(b) Restitution

(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) of this section, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the victims of such offense specified in paragraph (4).

(2) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution to victims of such offense under this subsection.

(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4) For purposes of paragraphs (1) and (2), the victims of an offense under subsection (a) of this section are the following:

(A) Any individual who suffers a financial loss as a result of the defendant's violation of subsection (a) of this section.

(B) The Commissioner of Social Security, to the extent that the defendant's violation of subsection (a) of this section results in—

(i) the Commissioner of Social Security making a benefit payment that should not have been made; or

(ii) an individual suffering a financial loss due to the defendant's violation of subsection (a) of this section in his or her capacity as the individual's representative payee appointed pursuant to section 405(j) of this title.

(5)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Secu-

rity as restitution pursuant to a court order shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund, as appropriate.

(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (4)(B)(ii), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss, except that such amount may be reduced by the amount of any overpayments of benefits owed under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter by the individual.

(c) Violations by certified payees

Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined under title 18 or imprisoned for not more than five years, or both.

(d) Effect upon certification as payee; definitions

Any individual or entity convicted of a felony under this section or under section 1383a(b)[1] of this title may not be certified as a payee under section 405(j) of this title. For the purpose of subsection (a)(7) of this section, the terms ''social security number'' and ''social security account number'' mean such numbers as are assigned by the Commissioner of Social Security under section 405(c)(2) of this title whether or not, in actual use, such numbers are called social security numbers.

(e) Application of subsection (a)(6) and (7) to certain aliens

(1) Except as provided in paragraph (2), an alien—

(A) whose status is adjusted to that of lawful temporary resident under section 1160 or 1255a of title 8 or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

(B) whose status is adjusted to that of permanent resident—

(i) under section 202 of the Immigration Reform and Control Act of 1986, or

(ii) pursuant to section 1259 of title 8, or

(C) who is granted special immigrant status under section 1101(a)(27)(I) of title 8,

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) of this section if such conduct is alleged to have occurred prior to 60 days after November 5, 1990.

(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C) of this section) consisting of—

(A) selling a card that is, or purports to be, a social security card issued by the Commissioner of Social Security,

(B) possessing a social security card with intent to sell it, or

(C) counterfeiting a social security card with intent to sell it.

(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) of this section to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) of this section were not committed.

(Aug. 14, 1935, ch. 531, title II, § 208, 49 Stat. 625; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1372; Aug. 28, 1950, ch. 809, title I, § 109(c), 64 Stat. 523; Sept. 1, 1954, ch. 1206, title I, § 111(b), 68 Stat. 1085; Pub. L. 85–840, title III, § 310, Aug. 28, 1958, 72 Stat. 1034; Pub. L. 86–778, title II, § 211(m), Sept. 13, 1960, 74 Stat. 958; Pub. L. 92–603, title I, § 130(a), Oct. 30, 1972, 86 Stat. 1359; Pub. L. 94–455, title XII, § 1211(a), (d), Oct. 4, 1976, 90 Stat. 1711, 1712; Pub. L. 97–123, § 4(a), (b), Dec. 29, 1981, 95 Stat. 1663, 1664; Pub. L. 98–369, div. B, title VI, § 2663(a)(5), July 18, 1984, 98 Stat. 1162; Pub. L. 98–460, § 16(c)(2), Oct. 9, 1984, 98 Stat. 1811; Pub. L. 100–690, title VII, § 7088, Nov. 18, 1988, 102 Stat. 4409; Pub. L. 101–508, title V, §§ 5121, 5130(a)(1), Nov. 5, 1990, 104 Stat. 1388–283, 1388–289; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(a)(12), Aug. 15, 1994, 108 Stat. 1478, 1536; Pub. L. 106–553, § 1(a)(2) [title VI, § 635(c)(2)(1), (2)], Dec. 21, 2000, 114 Stat. 2762, 2762A–117; Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180; Pub. L. 108–203, title II, § 209(a), Mar. 2, 2004, 118 Stat. 513.)

REFERENCES IN TEXT

Subchapter E of chapter 1 and subchapters A and E of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1), were comprised of sections 480–482, 1400–1432, and 1630–1636, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1954, referred to in subsec. (a)(1), were redesignated chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1986, and are classified to sections 1401 et seq., 3101 et seq., and 6001 et seq., respectively, of Title 26.

Section 1383a(b) of this title, referred to in subsec. (d), was redesignated section 1383a(c) of this title and amended by Pub. L. 108–203, title II, § 209(c), Mar. 2, 2004, 118 Stat. 515.

Section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (e)(1)(A), is section 902 of Pub. L. 100–204, which is set out as a note under section 1255a of Title 8, Aliens and Nationality.

Section 202 of the Immigration Reform and Control Act of 1986, referred to in subsec. (e)(1)(B)(i), is section 202 of Pub. L. 99–603, which is set out as a note under section 1255a of Title 8.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–203, § 209(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

[1] See References in Text note below.

Subsec. (c). Pub. L. 108–203, §209(a)(1), (3), redesignated subsec. (b) as (c) and struck out at end: ''In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.'' Former subsec. (c) redesignated (d).

Subsecs. (d), (e). Pub. L. 108–203, §209(a)(1), redesignated subsecs. (c) and (d) as (d) and (e), respectively.

2000—Subsec. (a)(8) to (10). Pub. L. 106–553, which inserted ''or'' at end of par. (8) and added pars. (9) and (10), was repealed by Pub. L. 106–554, effective as if included in Pub. L. 106–553 on Dec. 21, 2000. Pars. (9) and (10) read as follows:

''(9) except as provided in section 1320b–23(d) of this title, knowingly and willfully displays or sells to the general public (as defined in section 1320b–23(g) of this title) any individual's social security number, or any identifiable derivative of such number, without the affirmatively expressed consent (as defined in section 1320b–23(c) of this title), electronically or in writing, of such individual; or

''(10) obtains any individual's social security number, or any identifiable derivative of such number, for purposes of locating or identifying an individual with the intent to physically injure, harm, or use the identity of the individual for illegal purposes;''.

1994—Subsec. (a)(6), (7). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner's authority'' for ''his authority'' in par. (7)(A).

Subsec. (c). Pub. L. 103–296, §321(a)(12), substituted ''subsection (a)(7)'' for ''subsection (g)''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(2)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Pub. L. 101–508, §5121, inserted ''(a)'' before ''Whoever—'', redesignated former subsecs. (a) to (h) as pars. (1) to (8), respectively, of subsec. (a), in pars. (1) and (7) redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, inserted ''(b)'' before ''Any person or other entity who is convicted'', inserted ''(c)'' before ''Any individual or entity convicted of a felony'', and added subsec. (d).

Pub. L. 101–508, §5130(a)(1), in the last undesignated paragraph substituted ''section 405(c)(2) of this title'' for ''section 605(c)(2) of this title''.

1988—Pub. L. 100–690 substituted ''under title 18'' for ''not more than $5,000'' in first undesignated par., substituted ''under title 18'' for ''not more than $25,000'' in second undesignated par., and inserted provisions at end defining for purposes of subsec. (g) ''social security number'' and ''social security account number''.

1984—Pub. L. 98–460 inserted provisions imposing a penalty of $25,000 or imprisonment for not more than five years, or both, on any person or other entity convicted for a second or subsequent violation of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title, and also granting the court discretion, in any case, including a first offense, involving a willful misuse of funds, to require full or partial restitution, and prohibiting the certification of any individual or entity convicted of a felony under this section or under section 1383a(b) of this title.

Subsecs. (f) to (h). Pub. L. 98–369 realigned margins of subsecs. (f) to (h).

1981—Pub. L. 97–123 substituted provisions making violation of section a felony for provisions making it a misdemeanor, increased the punishment from one to five years and penalty from $1,000 to $5,000, and in subsec. (g), in opening paragraph, substituted ''or for the purpose of obtaining anything of value from any person, or for any other purpose'' for ''or for any other purpose'', and added par. (3).

1976—Subsec. (g). Pub. L. 94–455, §1211(a), inserted '', or for any other purpose'' after ''entitled'' in provisions preceding cl. (1).

Subsec. (h). Pub. L. 94–455, §1211(d)(1), added subsec. (h).

1972—Subsecs. (f), (g). Pub. L. 92–603 added subsecs. (f) and (g).

1960—Subsec. (a)(3). Pub. L. 86–778 substituted ''section 403(f) of this title'' for ''section 403(e) of this title''.

1958—Pub. L. 85–840 amended section generally, by, among other changes, inserting references to the Internal Revenue Code of 1954, and making penalty provisions applicable to cases (1) where false statements or representations as to whether wages were paid or received for employment, or whether net earnings from self-employment were derived, or whether a person entitled to benefits under this subchapter had earnings in or for a particular period, or as to the amount thereof, are made for the purpose of obtaining or increasing benefits; (2) where false statements or representations are made in any application for disability determination; (3) where a person intentionally conceals or fails to disclose knowledge of any event affecting his or another's initial or continued right to payment, and (4) where a person converts a payment that he received for the use and benefit of another.

1954—Act Sept. 1, 1954, made it clear that the penalty provisions of the section extend to cases of false statements or representations as to the amount of net earnings from self-employment derived or the period during which derived.

1950—Act Aug. 28, 1950, substituted ''subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939'' for ''the Federal Insurance Contributions Act''.

1939—Act Aug. 10, 1939, amended section generally, incorporating provisions of section 409 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, §209(d), Mar. 2, 2004, 118 Stat. 516, provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and sections 1011 and 1383a of this title] shall apply with respect to violations occurring on or after the date of enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(4) [div. A, §213(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, provided that: ''The amendments made by this section [amending this section, section 10601 of this title, and section 2709 of Title 22, Foreign Relations and Intercourse, repealing section 1320b–23 of this title, amending provisions set out as notes under sections 4001 and 4013 of Title 18, Crimes and Criminal Procedure, and section 524 of Title 28, Judiciary and Judicial Procedure, and repealing provisions set out as notes under this section and sections 1305 and 1320b–23 of this title] shall take effect as if included in H.R. 4942 of the 106th Congress [Pub. L. 106–553] on the date of its enactment [Dec. 21, 2000].''

Pub. L. 106–553, §1(a)(2) [title VI, §635(c)(2)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A–117, which provided that the amendments made by §1(a)(2) [title VI, §635(c)] of Pub. L. 106–553, enacting section 1320b–23 of this title and amending this section, would apply with respect to violations occurring on and after the date that is 2 years after Dec. 21, 2000, was repealed by Pub. L. 106–554, §1(a)(4) [div. A, §213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, see above.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5130(a)(1) of Pub. L. 101–508 effective as if included in the enactment of Pub. L. 100–690, §7088, see section 5130(b) of Pub. L. 101–508, set

out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98–460, set out as a note under section 405 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 4(c) of Pub. L. 97–123 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall be effective with respect to violations committed after the date of the enactment of this Act [Dec. 29, 1981].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 130(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to information furnished to the Secretary after the date of the enactment of this Act [Oct. 30, 1972].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective in the manner provided in section 211(p), (q) of Pub. L. 86–778, section 211(s) of Pub. L. 86–778, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

§ 409. "Wages" defined

(a) In general

For the purposes of this subchapter, the term ''wages'' means remuneration paid prior to 1951 which was wages for the purposes of this subchapter under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(1)(A) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $3,600 with respect to employment has been paid to an individual during any calendar year prior to 1955, is paid to such individual during such calendar year;

(B) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,200 with respect to employment has been paid to an individual during any calendar year after 1954 and prior to 1959, is paid to such individual during such calendar year;

(C) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,800 with respect to employment has been paid to an individual during any calendar year after 1958 and prior to 1966, is paid to such individual during such calendar year;

(D) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $6,600 with respect to employment has been paid to an individual during any calendar year after 1965 and prior to 1968, is paid to such individual during such calendar year;

(E) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $7,800 with respect to employment has been paid to an individual during any calendar year after 1967 and prior to 1972, is paid to such individual during such calendar year;

(F) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $9,000 with respect to employment has been paid to an individual during any calendar year after 1971 and prior to 1973, is paid to such individual during any such calendar year;

(G) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $10,800 with respect to employment has been paid to an individual during any calendar year after 1972 and prior to 1974, is paid to such individual during such calendar year;

(H) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $13,200 with respect to employment has been paid to an individual during any calendar year after 1973 and prior to 1975, is paid to such individual during such calendar year;

(I) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to the contribution and benefit base (determined under section 430 of this title) with respect to employment has been paid to an individual during any calendar year after 1974 with respect to which such contribution and benefit base is effective, is paid to such individual during such calendar year;

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term ''wages'' only payments which are received under a workmen's compensation law), or (B) medical or hospitalization expenses in connection with sickness or accident disability, or (C) death, except that this subsection does not apply to a payment for group-term life insurance to the extent

that such payment is includible in the gross income of the employee under the Internal Revenue Code of 1986;

(3) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(4) Any payment made to, or on behalf of, an employee or his beneficiary (A) from or to a trust exempt from tax under section 165(a) of the Internal Revenue Code of 1939 at the time of such payment or, in the case of a payment after 1954, under sections 401 and 501(a) of the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1939 or, in the case of a payment after 1954 and prior to 1963, the requirements of section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1954, or (C) under or to an annuity plan which, at the time of any such payment after 1962, is a plan described in section 403(a) of the Internal Revenue Code of 1986, or (D) under or to a bond purchase plan which, at the time of any such payment after 1962, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code of 1954 (as in effect before July 18, 1984), or (E) under or to an annuity contract described in section 403(b) of the Internal Revenue Code of 1986, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise), or (F) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3) of such Code), or (G) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subsection to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(2)(B)(ii)], or (H) under a simplified employee pension (as defined in section 408(k)(1) of such Code), other than any contributions described in section 408(k)(6) of such Code, or (I) under a cafeteria plan (within the meaning of section 125 of the Internal Revenue Code of 1986) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received; or (J) under an arrangement to which section 408(p) of such Code applies, other than any elective contributions under paragraph (2)(A)(i) thereof; or (K) under a plan described in section 457(e)(11)(A)(ii) of the Internal Revenue Code of 1986 and maintained by an eligible employer (as defined in section 457(e)(1) of such Code);

(5) The payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1986, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(6)(A) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(B) Cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service on a farm operated for profit), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in section 3121(x) of the Internal Revenue Code of 1986) for such year;

(C) Cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. As used in this paragraph, the term ''service not in the course of the employer's trade or business'' does not include domestic service in a private home of the employer and does not include service described in section 410(f)(5) of this title;

(7)(A) Remuneration paid in any medium other than cash for agricultural labor;

(B) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

(i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or

(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500,

except that clause (ii) shall not apply in determining whether remuneration paid to an employee constitutes ''wages'' under this section if such employee (I) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (II) commutes daily from his permanent residence to the farm on which he is so employed, and (III) has been employed in agriculture less than 13 weeks during the preceding calendar year;

(8) Remuneration paid by an employer in any year to an employee for service described in section 410(j)(3)(C) of this title (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than $100;

(9) Remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code of 1986 (determined without regard to section 274(n) of such Code);

(10)(A) Tips paid in any medium other than cash;

(B) Cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(11) Any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (A)[1] death, or (B)[1] retirement for disability, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(12) Any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(13) Any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 423(a) of this title and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(14)(A) Remuneration paid by an organization exempt from income tax under section 501 of the Internal Revenue Code of 1986 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100;

(B) Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue Code of 1986 (relating to amounts received under qualified group legal services plans);

(15) Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129 of the Internal Revenue Code of 1986;

(16) The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the Internal Revenue Code of 1986;

(17) Any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132 of the Internal Revenue Code of 1986;

(18) Remuneration consisting of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights); or

(19) Remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b) of the Internal Revenue Code of 1986) or under an employee stock purchase plan (as defined in section 423(b) of such Code), or

(B) any disposition by the individual of such stock.

(b) Regulations providing exclusions from term

Nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1986 (relating to income tax withholding) which provides an exclusion from ''wages'' as used in such chapter shall be construed to require a similar exclusion from ''wages'' in the regulations prescribed for purposes of this subchapter.

(c) Individuals performing domestic services

For purposes of this subchapter, in the case of domestic service described in subsection (a)(6)(B) of this section, any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this subchapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a)(6)(B) of this section.

(d) Members of uniformed services

For purposes of this subchapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(*l*)(1) of this title are applicable, the term ''wages'' shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only (1) his basic pay as described in chapter 3 and section 1009 of title 37 in the case of an individual performing service to which subparagraph (A) of such section 410(*l*)(1) of this title applies, or (2) his compensation for such service as determined under section 206(a) of title 37 in the case of an individual performing service to which subparagraph (B) of such section 410(*l*)(1) of this title applies.

(e) Peace Corps volunteers

For purposes of this subchapter, in the case of an individual performing service, as a volunteer

[1] So in original. Probably should be designated cls. (i) and (ii), respectively.

or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(*o*) of this title are applicable, (1) the term ''wages'' shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only amounts certified as payable pursuant to section 5(c) or 6(1) of the Peace Corps Act [22 U.S.C. 2504(c) or 2505(1)], and (2) any such amount shall be deemed to have been paid to such individual at the time the service, with respect to which it is paid, is performed.

(f) Tips

For purposes of this subchapter, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1986 or (if no statement including such tips is so furnished) at the time received.

(g) Members of religious orders

For purposes of this subchapter, in any case where an individual is a member of a religious order (as defined in section 3121(r)(2) of the Internal Revenue Code of 1986) performing service in the exercise of duties required by such order, and an election of coverage under section 3121(r) of such Code is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term ''wages'' shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.

(h) Retired justices and judges

For purposes of this subchapter, in the case of an individual performing service under the provisions of section 294 of title 28 (relating to assignment of retired justices and judges to active duty), the term ''wages'' shall not include any payment under section 371(b) of such title 28 which is received during the period of such service.

(i) Employer contributions under sections 401(k) and 414(h)(2) of Internal Revenue Code

Nothing in any of the foregoing provisions of this section (other than subsection (a) of this section) shall exclude from the term ''wages''—

(1) Any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) to the extent not included in gross income by reason of section 402(a)(8) of such Code, or

(2) Any amount which is treated as an employer contribution under section 414(h)(2) of such Code where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(j) Amounts deferred under nonqualified deferred compensation plans

Any amount deferred under a nonqualified deferred compensation plan (within the meaning of section 3121(v)(2)(C) of the Internal Revenue Code of 1986) shall be taken into account for purposes of this subchapter as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of the preceding sentence (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this subchapter.

(k) "National average wage index" and "deferred compensation amount" defined

(1) For purposes of sections 403(f)(8)(B)(ii), 413(d)(2)(B), 415(a)(1)(B)(ii), 415(a)(1)(C)(ii), 415(a)(1)(D), 415(b)(3)(A)(ii), 415(i)(1)(E), 415(i)(2)(C)(ii), 424a(f)(2)(B), and 430(b)(2) (and 430(b)(2) of this title as in effect immediately prior to the enactment of the Social Security Amendments of 1977), the term 'national average wage index' for any particular calendar year means, subject to regulations of the Commissioner of Social Security under paragraph (2), the average of the total wages for such particular calendar year.

(2) The Commissioner of Social Security shall prescribe regulations under which the national average wage index for any calendar year shall be computed—

(A) on the basis of amounts reported to the Secretary of the Treasury or his delegate for such year,

(B) by disregarding the limitation on wages specified in subsection (a)(1) of this section,

(C) with respect to calendar years after 1990, by incorporating deferred compensation amounts and factoring in for such years the rate of change from year to year in such amounts, in a manner consistent with the requirements of section 10208 of the Omnibus Budget Reconciliation Act of 1989, and

(D) with respect to calendar years before 1978, in a manner consistent with the manner in which the average of the total wages for each of such calendar years was determined as provided by applicable law as in effect for such years.

(3) For purposes of this subsection, the term ''deferred compensation amount'' means—

(A) any amount excluded from gross income under chapter 1 of the Internal Revenue Code of 1986 by reason of section 402(a)(8),[2] 402(h)(1)(B), or 457(a) of such Code or by reason of a salary reduction agreement under section 403(b) of such Code,

(B) any amount with respect to which a deduction is allowable under chapter 1 of such Code by reason of a contribution to a plan described in section 501(c)(18) of such Code, and

(C) to the extent provided in regulations of the Commissioner of Social Security, deferred compensation provided under any arrangement, agreement, or plan referred to in subsection (i) or (j) of this section.

[2] See References in Text note below.

(Aug. 14, 1935, ch. 531, title II, § 209, 49 Stat. 625; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1373; Mar. 24, 1943, ch. 26, § 1(b)(2), 57 Stat. 47; Apr. 4, 1944, ch. 161, § 2, 58 Stat. 188; Oct. 23, 1945, ch. 433, § 7(b), 59 Stat. 548; Dec. 29, 1945, ch. 652, title I, § 5(a), 59 Stat. 671; Aug. 10, 1946, ch. 951, title IV, §§ 407(a), 408(a), 409(a), 410, 411, 414, 60 Stat. 988, 989, 990; Apr. 20, 1948, ch. 222, § 1(a), 62 Stat. 195; Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492; Sept. 1, 1954, ch. 1206, title I, §§ 101(a)(1)–(3), 104(a), 68 Stat. 1052, 1078; Aug. 1, 1956, ch. 836, title I, § 105(a), 70 Stat. 828; Aug. 1, 1956, ch. 837, title IV, § 401, 70 Stat. 869; Pub. L. 85–786, § 1, Aug. 27, 1958, 72 Stat. 938; Pub. L. 85–840, title I, § 102(a), Aug. 28, 1958, 72 Stat. 1019; Pub. L. 86–778, title I, § 103(j)(2)(C), (F), Sept. 13, 1960, 74 Stat. 937, 938; Pub. L. 87–64, title I, § 102(c)(3)(A), June 30, 1961, 75 Stat. 134; Pub. L. 87–293, title II, § 202(b)(2), Sept. 22, 1961, 75 Stat. 626; Pub. L. 88–272, title II, § 220(c)(3), Feb. 26, 1964, 78 Stat. 63; Pub. L. 88–650, § 4(a), Oct. 13, 1964, 78 Stat. 1077; Pub. L. 89–97, title III, §§ 313(a), 320(a)(1), July 30, 1965, 79 Stat. 382, 393; Pub. L. 90–248, title I, § 108(a)(1), title V, § 504(c), Jan. 2, 1968, 81 Stat. 834, 935; Pub. L. 92–5, title II, § 203(a)(1), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, § 203(a)(1), July 1, 1972, 86 Stat. 417; Pub. L. 92–603, title I, §§ 104(g), 122(a), 123(c)(1), 138(a), Oct. 30, 1972, 86 Stat. 1341, 1354, 1356, 1365; Pub. L. 93–66, title II, § 203(a)(1), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, § 5(a)(1), Dec. 31, 1973, 87 Stat. 953; Pub. L. 95–216, title III, § 351(a)(1)–(3)(A), Dec. 20, 1977, 91 Stat. 1549; Pub. L. 95–472, § 3(c), Oct. 17, 1978, 92 Stat. 1333; Pub. L. 95–600, title I, § 164(b)(4), Nov. 6, 1978, 92 Stat. 2814; Pub. L. 96–499, title XI, § 1141(a)(2), Dec. 5, 1980, 94 Stat. 2693; Pub. L. 97–34, title I, § 124(e)(2)(B), Aug. 13, 1981, 95 Stat. 201; Pub. L. 97–123, § 3(a), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 98–21, title I, § 101(c)(1), title III, §§ 324(c)(1)–(3), 327(a)(2), (b)(2), 328(b), Apr. 20, 1983, 97 Stat. 70, 124, 125, 127, 128; Pub. L. 98–369, div. A, title IV, § 491(d)(39), title V, § 531(d)(1)(B), div. B, title VI, §§ 2661(i), 2663(a)(6), July 18, 1984, 98 Stat. 851, 884, 1157, 1162; Pub. L. 99–272, title XII, § 12112(a), Apr. 7, 1986, 100 Stat. 288; Pub. L. 99–514, title I, § 122(e)(5), title XI, § 1151(d)(2)(C), Oct. 22, 1986, 100 Stat. 2112, 2505; Pub. L. 100–203, title IX, §§ 9001(a)(2), 9002(a), 9003(a)(1), Dec. 22, 1987, 101 Stat. 1330–286, 1330–287; Pub. L. 100–647, title I, §§ 1001(g)(4)(C), 1011(f)(8), 1011B(a)(22)(E), (23)(B), title III, § 3043(a), title VIII, § 8017(a), Nov. 10, 1988, 102 Stat. 3352, 3463, 3486, 3641, 3793; Pub. L. 101–140, title II, § 203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title X, § 10208(a), (d)(1), Dec. 19, 1989, 103 Stat. 2476, 2479; Pub. L. 101–508, title V, § 5130(a)(5), Nov. 5, 1990, 104 Stat. 1388–289; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(c)(4), (e)(1), Aug. 15, 1994, 108 Stat. 1478, 1538, 1539; Pub. L. 103–387, § 2(a)(2)(A), Oct. 22, 1994, 108 Stat. 4072; Pub. L. 104–188, title I, §§ 1421(b)(8)(B), 1458(b)(2), Aug. 20, 1996, 110 Stat. 1798, 1820; Pub. L. 108–203, title IV, § 423(b), Mar. 2, 2004, 118 Stat. 536; Pub. L. 108–357, title II, § 251(a)(1)(B), title III, § 320(b)(5), Oct. 22, 2004, 118 Stat. 1458, 1473.)

References in Text

Section 165 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4)(A), (B), was a part of chapter 1 of the 1939 Code, and was repealed by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). Internal Revenue Code of 1954 redesignated Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

Section 405(a) of the Internal Revenue Code of 1954, referred to in subsec. (a)(4)(D), was repealed by Pub. L. 98–369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Internal Revenue Code of 1954, referred to in text, redesignated Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

Internal Revenue Code of 1986, referred to in text, is classified to Title 26.

The Peace Corps Act, referred to in subsec. (e), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The enactment of the Social Security Amendments of 1977, referred to in subsec. (k)(1), means the enactment of Pub. L. 95–216, which was approved Dec. 20, 1977.

Section 10208 of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (k)(2)(C), is section 10208 of Pub. L. 101–239, title X, Dec. 19, 1989, 103 Stat. 2476, which amended this section, sections 403, 413, 415, 417, 418, 424a, and 430 of this title, section 206 of Title 29, Labor, and section 231 of Title 45, Railroads, and enacted provisions set out as a note under section 430 of this title.

Section 402 of the Internal Revenue Code of 1986, referred to in subsec. (k)(3)(A), was amended by Pub. L. 102–318, § 521, and, as so amended, provisions formerly contained in section 402(a)(8) are contained in section 402(e)(3).

Amendments

2004—Subsec. (a)(6)(B). Pub. L. 108–203 substituted "on a farm operated for profit" for "described in section 410(f)(5) of this title".

Subsec. (a)(17). Pub. L. 108–357, § 320(b)(5), inserted "108(f)(4)," after "74(c),".

Subsec. (a)(19). Pub. L. 108–357, § 251(a)(1)(B), added par. (19).

1996—Subsec. (a)(4)(J). Pub. L. 104–188, § 1421(b)(8)(B), added subpar. (J).

Subsec. (a)(4)(K). Pub. L. 104–188, § 1458(b)(2), added subpar. (K).

1994—Subsec. (a)(4)(A). Pub. L. 103–296, § 321(c)(4)(A), substituted "Internal Revenue Code of 1954 or the Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (a)(4)(C), (E), (5)(A). Pub. L. 103–296, § 321(c)(4)(B)(i), (ii), substituted "1986" for "1954" after "Code of".

Subsec. (a)(6)(B). Pub. L. 103–387 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this paragraph, the term 'domestic service in a private home of the employer' does not include service described in section 410(f)(5) of this title;".

Subsecs. (a)(14)(A), (B), (15) to (17), (b), (f), (g), (i)(1), (j). Pub. L. 103–296, § 321(c)(4)(B)(iii)–(vi), (C), substituted "1986" for "1954" after "Code of".

Subsec. (k). Pub. L. 103–296, § 321(e)(1), added par. (1) and struck out former par. (1) which defined "deemed average total wages", added par. (2), and redesignated former par. (2) as (3) and in introductory provisions of par. (3) substituted "this subsection" for "paragraph (1)".

Pub. L. 103–296, §107(a)(4), in subsec. (k) as amended by Pub. L. 103–296, §321(e)(1), substituted ''Commissioner of Social Security'' for ''Secretary'' in par. (1), in introductory provisions of par. (2), and in par. (3)(C).

1990—Subsec. (a)(7)(B). Pub. L. 101–508 substituted ''clause (ii)'' for ''subparagraph (B)'' in concluding provisions.

1989—Subsec. (a). Pub. L. 101–239, §10208(d)(1)(A)–(K), inserted ''(a)'' at beginning of text and in subsec. (a) as so designated, redesignated, respectively, former subsec. (a)(1) to (9) as par. (1)(A) to (I), former subsec. (b)(1) to (3) as par. (2)(A) to (C), former subsec. (d) as par. (3), former subsec. (e)(1) to (9) as par. (4)(A) to (I), former subsec. (f)(1) and (2) as par. (5)(A) and (B), former subsec. (g)(1) to (3) as par. (6)(A) to (C), former subsec. (h)(1), (2)(A) and (B), and (i) to (iii) as par. (7)(A), (B)(i) and (ii), and (I) to (III), former subsecs. (j) and (k) as pars. (8) and (9), former subsec. (*l*)(1) and (2) as par. (10)(A) and (B), former subsec. (m)(1) and (2) as par. (11)(A) and (B), former subsecs. (n) and (*o*) as pars. (12) and (13), former subsec. (p)(1) and (2) as par. (14)(A) and (B), and former subsecs. (q) to (t) as pars. (15) to (18).

Subsec. (b). Pub. L. 101–239, §10208(d)(1)(L), designated par. beginning with ''Nothing in the regulations'' as subsec. (b). Former subsec. (b) redesignated subsec. (a)(2).

Subsec. (c). Pub. L. 101–239, §10208(d)(1)(M), designated par. beginning with ''For purposes of this subchapter, in the case of domestic service'' as subsec. (c) and substituted ''subsection (a)(6)(B)'' for ''subsection (g)(2)'' in two places.

Subsec. (d). Pub. L. 101–239, §10208(d)(1)(N), designated par. beginning with ''For purposes of this subchapter, in the case of an individual performing service, as a member'' as subsec. (d) and substituted ''subsection (a)(1)'' for ''subsection (a)'' in introductory provisions. Former subsec. (d) redesignated subsec. (a)(3).

Subsecs. (e) to (h). Pub. L. 101–239, §10208(d)(1)(O)–(R), designated pars. beginning with ''For purposes of this subchapter, in the case of an individual performing service, as a volunteer'', ''For purposes of this subchapter, tips received'', ''For purposes of this subchapter, in any case where'', and ''For purposes of this subchapter, in the case of an individual performing service under the provisions'', as subsecs. (e) to (h), respectively. Former subsecs. (e) to (h) redesignated subsec. (a)(4) to (7), respectively.

Subsec. (i). Pub. L. 101–239, §10208(d)(1)(S), designated par. beginning with ''Nothing in any of the foregoing'' as subsec. (i).

Pub. L. 101–140 amended cls. (2) and (3) of next to last indented par. of closing provisions [now subsec. (i)] to read as if amendment by Pub. L. 100–647, §1011B(a)(22)(E), had not been enacted, see 1988 Amendment note below.

Subsec. (j). Pub. L. 101–239, §10208(d)(1)(T), designated par. beginning with ''Any amount deferred'' as subsec. (j). Former subsec. (j) redesignated subsec. (a)(8).

Subsec. (k). Pub. L. 101–239, §10208(a), added subsec. (k).

1988—Pub. L. 100–647, §1011B(a)(22)(E), in next to last indented par. of closing provisions, substituted '', or'' for period at end of cl. (2) and added cl. (3).

Subsec. (e)(8). Pub. L. 100–647, §1011(f)(8), amended cl. (8) generally. Prior to amendment, cl. (8) read as follows: ''under a simplified employee pension (as defined in section 408(k) of the Internal Revenue Code of 1986) if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of such Code for such payment,''.

Subsec. (e)(9). Pub. L. 100–647, §1011B(a)(23)(B), inserted ''if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received'' after ''1986)''.

Subsec. (h)(2). Pub. L. 100–647, §8017(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (A) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or (B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;''.

Subsec. (k). Pub. L. 100–647, §1001(g)(4)(C), substituted ''section 217 of the Internal Revenue Code of 1986 (determined without regard to section 274(n) of such Code)'' for ''section 217 of the Internal Revenue Code of 1954''.

Subsec. (t). Pub. L. 100–647, §3043(a), added subsec. (t).

1987—Pub. L. 100–203, §9001(a)(2), in second indented par. of closing provisions, substituted ''only (1) his basic pay as described in chapter 3 and section 1009 of title 37 in the case of an individual performing service to which subparagraph (A) of such section 410(*l*)(1) of this title applies, or (2) his compensation for such service as determined under section 206(a) of title 37 in the case of an individual performing service to which subparagraph (B) of such section 410(*l*)(1) of this title applies.'' for ''only his basic pay as described in chapter 3 and section 1009 of title 37.''

Subsec. (b)(3). Pub. L. 100–203, §9003(a)(1), substituted ''death, except that this subsection does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee under the Internal Revenue Code of 1986'' for ''death''.

Subsec. (h)(2)(B). Pub. L. 100–203, §9002(a), added cl. (B) and struck out former cl. (B) which read as follows: ''the employee performs agricultural labor for the employer on twenty days or more during such year for cash remuneration computed on a time basis;''.

1986—Subsec. (e). Pub. L. 99–514, §1151(d)(2)(C), added cl. (9).

Subsec. (s). Pub. L. 99–514, §122(e)(5), substituted ''74(c), 117, or'' for ''117 or''.

Pub. L. 99–272 in third to last undesignated paragraph, substituted ''shall not include'' for ''shall, subject to the provisions of subsection (a) of this section, include''.

1984—Pub. L. 98–369, §531(d)(1)(B)(i), inserted in introductory text ''(including benefits)'' before ''paid in any medium''.

Subsec. (a)(5) to (9). Pub. L. 98–369, §2663(a)(6)(A)(i), realigned margins of pars. (5) to (9).

Subsec. (e). Pub. L. 98–369, §2663(a)(6)(A)(v), realigned margin of subsec. (e).

Subsec. (e)(4). Pub. L. 98–369, §491(d)(39), inserted ''(as in effect before July 18, 1984)'' after ''section 405(a) of the Internal Revenue Code of 1954''.

Subsec. (e)(7). Pub. L. 98–369, §2661(i)(1), struck out the semicolon after ''Act of 1974''.

Subsecs. (f), (k) to (p). Pub. L. 98–369, §2663(a)(6)(A)(v), realigned margins of subsecs. (f) and (k) to (p).

Subsec. (p). Pub. L. 98–369, §2663(a)(6)(A)(ii)–(iv), redesignated the subsec. (p) enacted by Pub. L. 95–216 as par. (1) and the subsec. (p) enacted by Pub. L. 95–472 as par. (2), and substituted a semicolon for a period in par. (1) as so redesignated.

Subsecs. (q), (r). Pub. L. 98–369, §2663(a)(6)(A)(v), realigned margins of subsecs. (q) and (r).

Subsec. (s). Pub. L. 98–369, §531(d)(1)(B)(ii), added subsec. (s).

Pub. L. 98–369, §2663(a)(6)(B), in undesignated par. relating to the meaning of ''wages'' in the case of a member of a uniformed service to which section 410(*l*)(1) of this title is applicable, substituted ''chapter 3 and section 1009 of title 37'' for ''section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act''.

Pub. L. 98–369, §2661(i)(2), in undesignated par. relating to employer contributions as not being excluded from ''wages'', inserted ''where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)''.

1983—Subsec. (b). Pub. L. 98–21, §324(c)(3)(A), struck out cl. (1) which read ''retirement'', and redesignated cls. (2) to (4) as (1) to (3), respectively.

Subsec. (c). Pub. L. 98–21, §324(c)(3)(B), struck out subsec. (c) which related to any payment made to an employee (including any amount paid by an employer

for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (e)(5) to (7). Pub. L. 98–21, § 324(c)(2), added cls. (5) to (7).

Subsec. (e)(8). Pub. L. 98–21, § 328(b), added cl. (8).

Subsec. (i). Pub. L. 98–21, § 324(c)(3)(B), struck out subsec. (i) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained age 62, if he did not work for the employer in the period for which such payment was made, and provided for this subsection that ''sick pay'' included remuneration for service in the employ of a State, a political subdivision (as defined in section 418(b)(2) of this title) of a State, or an instrumentality of two or more States, paid to an employee thereof for a period during which he was absent from work because of sickness.

Subsec. (m)(1)(C). Pub. L. 98–21, § 324(c)(3)(C), struck out subpar. (C) which related to retirement after attaining an age specified in the plan referred to in par. (2) or in a pension plan of the employer.

Subsec. (r). Pub. L. 98–21, § 327(a)(2), added subsec. (r).

Pub. L. 98–21, § 327(b)(2), inserted, immediately following subsec. (r), provision that nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1954 (relating to income tax withholding) which provides an exclusion from ''wages'' as used in such chapter shall be construed to require a similar exclusion from ''wages'' in the regulations prescribed for purposes of this subchapter.

Pub. L. 98–21, § 324(c)(1), inserted, at end of section, two undesignated pars. specifying the inclusion of certain employer contributions as ''wages'' and directing that any amount deferred under a nonqualified deferred compensation plan be taken into account under certain conditions but not treated as wages thereafter for purposes of this subchapter.

Pub. L. 98–21, § 101(c)(1), inserted, at end of section, undesignated par. defining ''wages'' for purposes of this subchapter in the case of an individual performing service under provisions of section 294 of title 28 (relating to assignment of retired justices and judges to active duty) to include payments under section 371(b) of title 28 that is received during the period of such service.

1981—Subsec. (b)(2). Pub. L. 97–123 inserted ''(but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term 'wages' only payments which are received under a workmen's compensation law)'' after ''sickness or accident disability''.

Subsec. (q). Pub. L. 97–34 substituted ''section 127 or 129'' for ''section 127''.

1980—Subsec. (f). Pub. L. 96–499 substituted ''section 3101 of the Internal Revenue Code of 1954'' for ''section 1400 of the Internal Revenue Code of 1939'' in subpar. (1) and inserted ''with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor''.

1978—Subsec. (p). Pub. L. 95–472 added a second subsec. (p).

Subsec. (q). Pub. L. 95–600 added subsec. (q).

1977—Subsecs. (g)(3), (j). Pub. L. 95–216, § 351(a)(1), (2), substituted ''year'' for ''quarter'' wherever appearing and ''$100'' for ''$50''.

Subsec. (n). Pub. L. 95–216, § 351(a)(3)(A), struck out ''or'' after ''such employee died''.

Subsec. (*o*). Pub. L. 95–216, § 351(a)(3)(A), substituted ''payment is made; or'' for ''payment is made.''.

Subsec. (p). Pub. L. 95–216, § 351(a)(3)(A), added subsec. (p).

1973—Subsec. (a)(8). Pub. L. 93–233 substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

1972—Subsec. (a)(6). Pub. L. 92–336, § 203(a)(1)(A), inserted ''and prior to 1973'' after ''1971''.

Subsec. (a)(7) to (9). Pub. L. 92–336, § 203(a)(1)(B), added pars. (7) to (9).

Subsec. (i). Pub. L. 92–603, § 104(g), struck out ''(if a woman) and age 65 (if a man)'' after ''attains age 62''.

Subsec. (n). Pub. L. 92–603, § 122(a), added subsec. (n).

Subsec. (*o*). Pub. L. 92–603, § 138(a), added subsec. (*o*).

Pub. L. 92–603, § 123(c)(1), added par. at end defining ''wages'' in the case of members of a religious order when an election under section 3121(r) of the Internal Revenue Code of 1954 is in effect.

1971—Subsec. (a)(5). Pub. L. 92–5, § 203(a)(1)(A), inserted ''and prior to 1972'' after ''1967''.

Subsec. (a)(6). Pub. L. 92–5, § 203(a)(i)(B), added par. (6).

1968—Subsec. (a)(4), (5). Pub. L. 90–248, § 108(a)(1)(A), (B), inserted ''and prior to 1968'' after ''1965'' and added par. (5), respectively.

Subsec. (m). Pub. L. 90–248, § 504(c), added subsec. (m).

1965—Subsec. (a)(3). Pub. L. 89–97, § 320(a)(1)(A), inserted ''and prior to 1966'' after ''1958''.

Subsec. (a)(4). Pub. L. 89–97, § 320(a)(1)(B), added par. (4).

Subsec. (*l*). Pub. L. 89–97, § 313(a)(1), added subsec. (*l*).

Pub. L. 89–97, § 313(a)(2), added paragraph at end providing that tips be considered remuneration and that such remuneration be deemed paid as of the filing of a written statement or as of the time received.

1964—Subsec. (e). Pub. L. 88–272 included as ''wages'' payments after 1954 under or to trust exempt under sections 401 and 501(a), I.R.C. 1954, under annuity plans after 1954 and prior to 1963, under section 401(a)(3), (4), (5), and (6), I.R.C. 1954, under or to annuity plans which at time of payment after 1962, are described in section 403(a), I.R.C. 1954, and under or to a bond purchase plan which at time of any payment after 1962, is a qualified bond purchase plan described in section 405(a), I.R.C. 1954.

Subsec. (k). Pub. L. 88–650 added subsec. (k).

1961—Subsec. (i). Pub. L. 87–64 substituted ''attains age 62 (if a woman) or age 65 (if a man)'' for ''attains retirement age (as defined in section 416(a) of this title)''.

Pub. L. 87–293 added last paragraph providing for computation of wages for Peace Corps volunteer service.

1960—Subsec. (j). Pub. L. 86–778, § 103(j)(2)(F), substituted ''section 410(j)(3)(C)'' for ''section 410(k)(3)(C)''.

Pub. L. 86–778, § 103(j)(2)(C), substituted ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title'' in last par.

1958—Subsec. (a). Pub. L. 85–840 inserted ''and prior to 1959'' after ''any calendar year after 1954'' in cl. (2), and added cl. (3).

Subsec. (i). Pub. L. 85–786 inserted sentence to include remuneration for service in State employment paid to employee for period he was absent for illness in term ''sick pay''.

1956—Subsec. (h)(2). Act Aug. 1, 1956, ch. 836, included within definition of ''wages'' cash remuneration of $150 or more, and cash remuneration computed on a time basis where the employee performs agricultural labor for the employer on 20 days or more during the calendar year.

Act Aug. 1, 1956, ch. 837, added penultimate par. to define ''wages'' in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(m)(1) of this title are applicable.

1954—Subsec. (a). Act Sept. 1, 1954, § 104(a), provided that for years after 1954 ''wages'' would exclude any remuneration in excess of $4,200 paid to an individual with respect to employment during a calendar year.

Subsec. (g)(2). Act Sept. 1, 1954, § 101(a)(1), made coverage of domestic service depend solely on receipt by the employee, in a quarter, of $50 in cash remuneration from one employer for such service.

Subsec. (g)(3). Act Sept. 1, 1954, § 101(a)(2), added par. (3).

Subsec. (h). Act Sept. 1, 1954, § 101(a)(3), redesignated subsection as cl. (1) and added cl. (2).

1950—Act Aug. 28, 1950, amended section generally.

1948—Subsec. (b)(15). Act Apr. 20, 1948, inserted subpar. (B).

1946—Subsec. (a). Act Aug. 10, 1946, § 414, in amending subsec. (a), made pars. (1) and (2) applicable only to

payments before Jan. 1, 1947, added a new par. (3), applicable to payments after that date, and renumbered former pars. (3) to (6) to be pars. (4) to (7), respectively.

Subsec. (h). Act Aug. 10, 1946, § 407(a), in amending subsec. (h), required a currently insured individual to have not less than six quarters of coverage during the period consisting of the quarter in which he died and the twelve preceding quarters.

Subsec. (i). Act Aug. 10, 1946, § 408(a), in amending subsec. (i), required only that a wife be married to the insured individual for 36 months instead of requiring that they be married before Jan. 1, 1939, or before he became 60 years of age, as was formerly the case.

Subsec. (k). Act Aug. 10, 1946, § 409(a), in amending subsec. (k), changed requirement that a stepchild or adopted child must have been such before the individual reached age 60 to require, in the case of a living individual, that the child must have been a stepchild or adopted child for 36 months.

Subsec. (q). Act Aug. 10, 1946, § 410, added subsec. (q).

Subsec. (r). Act Aug. 10, 1946, § 411, added subsec. (r).

1945—Subsec. (b)(16). Act. Dec. 29, 1945, added par. (16).

Subsec. (p). Act Oct. 23, 1945, added subsec. (p).

1944—Subsec. (*o*)(1). Act Apr. 4, 1944, § 2, inserted ''but shall not include any such service performed (1) under a contract entered into without the United States and during the performance of which the vessel does not touch at a port in the United States, or (2) on a vessel documented under the laws of any foreign country and bareboat chartered to the War Shipping Administration''.

1943—Subsec. (*o*). Act Mar. 24, 1943, added subsec. (*o*).

1939—Act Aug. 10, 1939, amended section generally.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 251(a)(1)(B) of Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of Title 26, Internal Revenue Code.

Amendment by section 320(b)(5) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(8)(B) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of Title 26, Internal Revenue Code.

Amendment by section 1458(b)(2) of Pub. L. 104–188 applicable to remuneration paid after Dec. 31, 1996, see section 1458(c)(2) of Pub. L. 104–188, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–387 applicable to remuneration paid after Dec. 31, 1993, see section 2(a)(3) of Pub. L. 103–387, set out as a note under section 3102 of Title 26, Internal Revenue Code.

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the enactment of Pub. L. 101–239, § 10208, see section 5130(b) of Pub. L. 101–508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 10208(a) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1001(g)(4)(C), 1011(f)(8), and 1011B(a)(23)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 1011B(a)(22)(E) of Pub. L. 100–647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

Amendment by section 3043(a) of Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of Title 26.

Amendment by section 8017(a) of Pub. L. 100–647 effective as if included in amendments made by section 9002 of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 8017(c) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9001(a)(2) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9001(d) of Pub. L. 100–203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 9002(a) of Pub. L. 100–203 applicable with respect to remuneration for agricultural labor paid after Dec. 31, 1987, see section 9002(c) of Pub. L. 100–203, set out as a note under section 3121 of Title 26.

Amendment by section 9003(a)(1) of Pub. L. 100–203 applicable with respect to group-term life insurance coverage in effect after Dec. 31, 1987, with exception for employer's group-term life insurance payments for certain former employees, see section 9003(b) of Pub. L. 100–203, as amended, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 122(e)(5) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 1151(d)(2)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1983, see section 1151(k)(5) of Pub. L. 99–514, set out as a note under section 79 of Title 26.

Section 12112(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall be effective with respect to service performed after December 31, 1983.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(39) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of Title 26, Internal Revenue Code.

Amendment by section 531(d)(1)(B) of Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of Title 26.

Amendment by section 2661(i) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(6) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as chang-

ing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(c)(1) of Pub. L. 98–21 effective with respect to services performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 324(c)(1)–(3) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

Amendment by section 327(a)(2) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 327(d)(1) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 327(b)(2) of Pub. L. 98–21 applicable to remuneration (other than amounts excluded under 26 U.S.C. 119) paid after Mar. 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid, see section 327(d)(2) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 328(b) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 328(d)(1) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by Pub. L. 97–123 applicable, except as otherwise provided, to remuneration paid after Dec. 31, 1981, see section 3(g) of Pub. L. 97–123, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 97–34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as a note under section 21 of Title 26.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–499, see section 1141(c) of Pub. L. 96–499, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. 95–600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95–600, set out as an Effective Date note under section 127 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 95–472 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 3(d) of Pub. L. 95–472, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 351(d) of Pub. L. 95–216 provided that: ''The amendments made by subsection (a) [amending this section and section 410 of this title] shall apply with respect to remuneration paid and services rendered after December 31, 1977. The amendments made by subsections (b) and (c) [amending sections 412 and 413 of this title] shall be effective January 1, 1978.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Section 5(e) of Pub. L. 93–233 provided that: ''The amendments made by this section [amending this section and sections 411, 413, and 430 of this title and sections 3121, 3122, 3125, 6413, and 6654 of Title 26, Internal Revenue Code], except subsection (a)(4), shall apply only with respect to remuneration paid after, and taxable years beginning after, 1973. The amendments made by subsection (a)(4) [amending section 415 of this title] shall apply with respect to calendar years after 1973.''

Section 203(e) of Pub. L. 93–66 provided that: ''The amendments made by this section [amending this section and sections 411, 415, and 430 of this title and sections 3121, 3122, 3125, 6413, and 6654 of Title 26] except subsection (a)(4), shall apply only with respect to remuneration paid after, and taxable years beginning after, 1973. The amendments made by subsection (a)(4) [amending section 415 of this title] shall apply with respect to calendar years after 1973.''

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by section 104(g) of Pub. L. 92–603 applicable only with respect to payments after 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Section 122(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply in the case of any payment made after December 1972.''

Section 138(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply in the case of any payment made after December 1972.''

Section 203(c) of Pub. L. 92–336 provided that: ''The amendments made by subsections (a)(1) and (a)(3)(A) [amending this section and section 413 of this title], and the amendments made by subsection (b) [amending sections 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code] (except paragraphs (1) and (7) thereof), shall apply only with respect to remuneration paid after December 1972. The amendments made by subsections (a)(2), (a)(3)(B), (b)(1), and (b)(7) [amending sections 411 and 413 of this title and sections 1402 and 6654 of Title 26] shall apply only with respect to taxable years beginning after 1972. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1972.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 203(c) of Pub. L. 92–5 provided that: ''The amendments made by subsections (a)(1) and (a)(3)(A) [amending this section and section 413 of this title], and the amendments made by subsection (b) (except paragraphs (1) and (7) thereof) [amending sections 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code], shall apply only with respect to remuneration paid after December 1971. The amendments made by subsections (a)(2), (a)(3)(B), (b)(1), and (b)(7) [amending sections 411 and 413 of this title and sections 1402 and 6654 of Title 26] shall apply only with respect to taxable years beginning after 1971. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1971.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 108(c) of Pub. L. 90–248 provided that: ''The amendment made by subsections (a)(1) and (a)(3)(A) [amending this section and section 423 of this title], and the amendments made by subsection (b) (except paragraph (1) thereof) [amending sections 1402, 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code], shall apply only with respect to remuneration paid after December 1967. The amendments made by subsections (a)(2), (a)(3)(B), and (b)(1) [amending sections 411 and 413 of this title and section 1402 of Title 26] shall apply only with respect to taxable years ending after 1967. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1967.''

Amendment by section 504(c) of Pub. L. 90–248 applicable with respect to remuneration paid after Jan. 2, 1968, see section 504(d) of Pub. L. 90–248, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 313(a) of Pub. L. 89–97 applicable only with respect to tips received by employees

after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of Title 26, Internal Revenue Code.

Amendment by section 320(a)(1) of Pub. L. 89–97 applicable with respect to remuneration paid after December 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–650 applicable with respect to remuneration paid on or after the first day of the first calendar month which begins more than ten days after Oct. 13, 1964, see section 4(d) of Pub. L. 88–650, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 88–272 applicable to remuneration paid after Dec. 31, 1962, see section 220(d) of Pub. L. 88–272, set out as an Effective Date note under section 406 of Title 26.

EFFECTIVE DATE OF 1961 AMENDMENTS

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f) and 109 of Pub. L. 87–64, set out as 1961 Increase in Monthly Benefits; Effective Date, and Effective Date of 1961 Amendment notes, respectively, under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2 of Pub. L. 85–786 provided that: ''The amendment made by section 1 [amending this section] shall be applicable to remuneration paid after the enactment of this Act [Aug. 27, 1958], except that, in the case of any coverage group which is included under the agreement of a State under section 218 of the Social Security Act [section 418 of this title], the amendment made by section 1 shall also be applicable to remuneration for any member of such coverage group with respect to services performed after the effective date, specified in such agreement, for such coverage group, if such State has paid or agrees, prior to January 1, 1959, to pay, prior to such date, the amounts which under section 218(e) [section 418(e) of this title] would have been payable with respect to remuneration of all members of such coverage group had the amendment made by section 1 been in effect on and after January 1, 1951. Failure by a State to make such payments prior to January 1, 1959, shall be treated the same as failure to make payments when due under section 218(e).''

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

Section 105(d) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply with respect to remuneration paid after 1956, and the amendment made by subsection (b) of this section [amending section 410 of this title] shall apply with respect to service performed after 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 101(a)(1)–(3) of act Sept. 1, 1954, applicable only with respect to remuneration paid after 1954, see section 101(m) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 104(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect January 1, 1951, except that sections 214, 215, and 216 of the Social Security Act [sections 414 to 416 of this title] shall be applicable (1) in the case of monthly benefits for months after August 1950, and (2) in the case of lump-sum death payments with respect to deaths after August 1950.''

EFFECTIVE DATE OF 1948 AMENDMENT

Section 1(b) of act Apr. 20, 1948, provided in part that: ''The amendment made by subsection (a) [amending this section] shall be applicable with respect to services performed after the date of the enactment of this Act [Apr. 20, 1948].''

EFFECTIVE DATE OF 1946 AMENDMENT

Sections 407(b), 408(b), and 409(b) of act Aug. 10, 1946, each provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases of applications for benefits under this title [this subchapter] filed after December 31, 1946.''

EFFECTIVE DATE OF 1945 AMENDMENT

Section 5(a) of act Dec. 29, 1945, provided that the amendment made by that section is effective Jan. 1, 1946.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

REPEALS: AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(b)(2) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this subchapter, the term ''wages'' shall not include the amount of any refund required under section 421 of Pub. L. 100–360 [42 U.S.C. 1395b note], see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514; MONIES APPROPRIATED FOR FISCAL YEAR 1990 NOT TO BE USED FOR ENFORCEMENT OR IMPLEMENTATION OF AMENDMENT

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of Title 26, Internal Revenue Code.

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

Notwithstanding section 101(d) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note above, the amendment of this section by section 101(c)(1) of

Pub. L. 98–21 is applicable only with respect to remuneration paid after Dec. 31, 1985, with remuneration paid prior to Jan. 1, 1986, under section 371(b) of Title 28, Judiciary and Judicial Procedure, to an individual performing service under section 294 of Title 28 not to be included in the term ''wages'' for purposes of this section or section 3121(a) of Title 26, Internal Revenue Code, see section 4 of Pub. L. 98–118, set out as a note under section 3121 of Title 26.

PAYMENTS UNDER STATE TEMPORARY DISABILITY LAW TO BE TREATED AS REMUNERATION FOR SERVICE

For purposes of applying this section with respect to the parenthetical matter contained in subsec. (b)(2) of this section, payments under a State temporary disability law to be treated as remuneration for service, see section 3(e) of Pub. L. 97–123, set out as a note under section 3121 of Title 26, Internal Revenue Code.

SERVICES FOR COOPERATIVES PRIOR TO 1951

Section 110 of act Aug. 28, 1950, provided that: ''In any case in which—

''(1) an individual has been employed at any time prior to 1951 by organizations enumerated in the first sentence of section 101(12) of the Internal Revenue Code [1939].

''(2) the service performed by such individual during the time he was so employed constituted agricultural labor as defined in section 209(*l*) of the Social Security Act [former subsec. (*l*) of this section] and section 1426(h) of the Internal Revenue Code [1939], as in effect prior to the enactment of this Act [Aug. 28, 1950], and such service would, but for the provisions of such sections, have constituted employment for the purposes of title II of the Social Security Act [this subchapter] and subchapter A of chapter 9 of such Code [1939].

''(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code [1939] have been paid with respect to any part of the remuneration paid to such individual by such organization for such service and the payment of such taxes by such organization has been made in good faith upon the assumption that such service did not constitute agricultural labor as so defined, and

''(4) no refund of such taxes has been obtained,

the amount of such remuneration with respect to which such taxes have been paid shall be deemed to constitute remuneration for employment as defined in section 209(b) of the Social Security Act [former subsec. (b) of this section] as in effect prior to the enactment of this Act [Aug. 28, 1950] (but it shall not constitute wages for purposes of deductions under section 203 of such Act [section 403 of this title] for months for which benefits under title II of such Act [this subchapter] have been certified and paid prior to the enactment of this act.''

REFUNDS OR CREDITS FOR OVERPAYMENTS

Section 3 of act Apr. 20, 1948, provided that: ''If any amount paid prior to the date of the enactment of this Act [Apr. 20, 1948] constitutes an overpayment of tax solely by reason of an amendment made by this Act [amending this section], no refund or credit shall be made or allowed with respect to the amount of such overpayment.''

§ 410. Definitions relating to employment

For the purposes of this subchapter—

(a) Employment

The term ''employment'' means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(*l*)(6) of the Internal Revenue Code of 1986) of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(*l*) of such Code, with respect to such affiliate, or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 433 of this title; except that, in the case of service performed after 1950, such term shall not include—

(1) Service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) Service performed by a child under the age of 18 in the employ of his father or mother;

(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual under the age of 21 in the employ of his father or mother, or performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual

is employed on and in connection with such vessel or aircraft when outside the United States and (B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) Service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) would be excluded from the term ''employment'' for purposes of this subchapter if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who—

(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—

(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5 or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute of Taiwan as provided under section 3310 of title 22, then the service performed for that Institute shall be considered service described in subparagraph (A),

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A), and

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 450i(e)(2) of title 25 applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);

except that this paragraph shall not apply with respect to any such service performed on or after any date on which such individual performs—

(C) service performed as the President or Vice President of the United States,

(D) service performed—

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5,

(ii) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107(a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Court of Federal Claims, a judge of the United States Court of International Trade, a judge or special trial judge of the United States Tax Court, a United States magistrate judge, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress,

(G) any other service in the legislative branch of the Federal Government if such service—

(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5 or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5 or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III

or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), or

(H) service performed by an individual—

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees' Retirement System Act of 1986, section 2157 of title 50, or the Federal Employees' Retirement System Open Enrollment Act of 1997[1] to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, or

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980 [22 U.S.C. 4071i], to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act [22 U.S.C. 4071 et seq.];

(6) Service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service included under an agreement under section 418 of this title,

(B) service which, under subsection (k) of this section, constitutes covered transportation service,

(C) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this subchapter—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an officer or employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States (other than the Federal Employees Retirement System provided in chapter 84 of title 5); except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis,

(E) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (C) shall apply, or

(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of

[1] So in original. Probably should be followed by a comma.

such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

(i) by an individual who is employed to relieve such individual from unemployment;

(ii) in a hospital, home, or other institution by a patient or inmate thereof;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year; or

(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 411(c)(2)(E) of this title as a trade or business for purposes of inclusion of such fees in net earnings from self employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary of the Treasury, the term ''retirement system'' has the meaning given such term by section 418(b)(4) of this title;

(8)(A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1986 is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) Service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under section 3121(w) of the Internal Revenue Code of 1986, other than service in an unrelated trade or business (within the meaning of section 513(a) of such Code);

(9) Service performed by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(10) Service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1986 if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 418(c)(5) of this title are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 418 of this title;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14)(A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669) [22 U.S.C. 288 et seq.], except service which constitutes ''employment'' under subsection (r) of this section;

(16) Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and furbearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) Service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended [50 U.S.C. 781 et seq.], as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) Service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 1101(a)(15)(H)(ii) of title 8;

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 1101(a)(15) of title 8, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q) as the case may be;

(20) Service (other than service described in paragraph (3)(A)) performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) such individual does not receive any additional compensation other than as provided in subparagraph (B) and other than cash remuneration—

(i) which does not exceed $100 per trip;

(ii) which is contingent on a minimum catch; and

(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals; or

(21) Domestic service in a private home of the employer which—

(A) is performed in any year by an individual under the age of 18 during any portion of such year; and

(B) is not the principal occupation of such employee.

For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.

(b) Included and excluded service

If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term ''pay period'' means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (a) of this section.

(c) American vessel

The term ''American vessel'' means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

(d) American aircraft

The term ''American aircraft'' means an aircraft registered under the laws of the United States.

(e) American employer

The term ''American employer'' means an employer which is (1) the United States or any instrumentality thereof, (2) a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, (3) an individual who is a resident of the United States, (4) a partnership, if two-thirds or more of the partners are residents of the United States, (5) a trust, if all of the trustees are residents of the United States, or (6) a corporation organized under the laws of the United States or of any State.

(f) Agricultural labor

The term ''agricultural labor'' includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j(g) of title 12, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(4)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A) of this paragraph, but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar year in which such service is performed.

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business.

The provisions of subparagraphs (A) and (B) of paragraph (4) of this subsection shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(g) Farm

The term ''farm'' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(h) State

The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(i) United States

The term ''United States'' when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(j) Employee

The term ''employee'' means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term ''employee'' under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(k) Covered transportation service

(1) Except as provided in paragraph (2) of this subsection, all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system is, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or politi-

cal subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C) of this paragraph.

(3) All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) For the purposes of this subsection—

(A) The term ''general retirement system'' means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this subchapter, and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term ''political subdivision'' includes an instrumentality of (i) a State, (ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

(*l*) Service in uniformed services

(1) Except as provided in paragraph (4), the term ''employment'' shall, notwithstanding the provisions of subsection (a) of this section, include—

(A) service performed after December 1956 by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

(B) service performed after December 1987 by an individual as a member of a uniformed service on inactive duty training.

(2) The term ''active duty'' means ''active duty'' as described in paragraph (21) of section 101 of title 38, except that it shall also include ''active duty for training'' as described in paragraph (22) of such section.

(3) The term ''inactive duty training'' means ''inactive duty training'' as described in paragraph (23) of such section 101.

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 231b(i) of title 45. The Railroad Retirement Board shall notify the Commissioner of Social Security,[2] with respect to all such service which is so creditable.

(B) In any case where benefits under this subchapter are already payable on the basis of such individual's wages and self-employment income at the time such notification (with respect to such individual) is received by the Commissioner of Social Security, the Commissioner of Social Security shall certify no further benefits for payment under this subchapter on the basis of such individual's wages and self-employment income, or shall recompute the amount of any further benefits payable on the basis of such wages and self-employment income, as may be required as a consequence of subparagraph (A) of this paragraph. No payment of a benefit to any person on the basis of such individual's wages and self-employment income, certified by the Commissioner of Social Security prior to the end of the month in which the Commissioner receives such notification from the Railroad Retirement Board, shall be deemed by reason of this subparagraph to have been an erroneous payment or a payment to which such person was not entitled. The Commissioner of Social Security shall, as soon as possible after the receipt of such notification from the Railroad Retirement Board, advise such Board whether or not any such benefit will be reduced or terminated by reason of subparagraph (A) of this paragraph, and if any such benefit will be so reduced or terminated, specify the first month with respect to which such reduction or termination will be effective.

(m) Member of a uniformed service

The term ''member of a uniformed service'' means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27)

[2] So in original. The comma probably should not appear.

of title 38), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military, naval, or air service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Military Selective Service Act [50 U.S.C. App. 451 et seq.], has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

(n) Crew leader

The term ''crew leader'' means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. A crew leader shall, with respect to services performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

(*o*) Peace Corps volunteer service

The term ''employment'' shall, notwithstanding the provisions of subsection (a) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.].

(p) Medicare qualified government employment

(1) For purposes of sections 426 and 426–1 of this title, the term ''medicare qualified government employment'' means any service which would constitute ''employment'' as defined in subsection (a) of this section but for the application of the provisions of—

(A) subsection (a)(5) of this section, or

(B) subsection (a)(7) of this section, except as provided in paragraphs (2) and (3).

(2) Service shall not be treated as employment by reason of paragraph (1)(B) if the service is performed—

(A) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

(B) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

(C) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency,

(D) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training, or

(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year.

As used in this paragraph, the terms ''State'' and ''political subdivision'' have the meanings given those terms in section 418(b) of this title.

(3) Service performed for an employer shall not be treated as employment by reason of paragraph (1)(B) if—

(A) such service would be excluded from the term ''employment'' for purposes of this section if paragraph (1)(B) did not apply;

(B) such service is performed by an individual—

(i) who was performing substantial and regular service for remuneration for that employer before April 1, 1986,

(ii) who is a bona fide employee of that employer on March 31, 1986, and

(iii) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

(C) the employment relationship with that employer has not been terminated after March 31, 1986.

(4) For purposes of paragraph (3), under regulations (consistent with regulations established under section 3121(u)(2)(D) of the Internal Revenue Code of 1986)—

(A) all agencies and instrumentalities of a State (as defined in section 418(b) of this title) or of the District of Columbia shall be treated as a single employer, and

(B) all agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in subparagraph (A).

(q) Treatment of real estate agents and direct sellers

Notwithstanding any other provision of this subchapter, the rules of section 3508 of the Internal Revenue Code of 1986 shall apply for purposes of this subchapter.

(r) Service in employ of international organizations by certain transferred Federal employees

(1) For purposes of this subchapter, service performed in the employ of an international organization by an individual pursuant to a transfer of such individual to such international organization pursuant to section 3582 of title 5 shall constitute ''employment'' if—

(A) immediately before such transfer, such individual performed service with a Federal agency which constituted ''employment'' as defined in subsection (a) of this section, and

(B) such individual would be entitled, upon separation from such international organization and proper application, to reemployment with such Federal agency under such section 3582.

(2) For purposes of this subsection:

(A) The term ''Federal agency'' means an agency, as defined in section 3581(1) of title 5.

(B) The term ''international organization'' has the meaning provided such term by section 3581(3) of title 5.

(Aug. 14, 1935, ch. 531, title II, § 210, as added Aug. 10, 1946, ch. 951, title II, § 201, 60 Stat. 979; amended, Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 494; Oct. 31, 1949, ch. 792, title V, § 506(a), formerly § 505(a), as added July 12, 1951, ch. 223, 65 Stat. 120, and renumbered Pub. L. 87–345, § 3, Oct. 3, 1961, 75 Stat. 761; Sept. 1, 1954, ch. 1206, title I, § 101(a)(4), (5), (b), (c)(1), (2), (e), (f), (m), 68 Stat. 1052, 1061; Aug. 1, 1956, ch. 836, title I, §§ 104(a), (b), (c)(1), 105(b), 121(c), 70 Stat. 824, 828, 839; Aug. 1, 1956, ch. 837, title IV, § 402(a), 70 Stat. 870; Pub. L. 85–840, title III, § 311(a), 312(a), Aug. 28, 1958, 72 Stat. 1035; Pub. L. 86–70, § 32(c)(2), June 25, 1959, 73 Stat. 149; Pub. L. 86–168, title I, § 104(h), title II, § 202(a), Aug. 18, 1959, 73 Stat. 387, 389; Pub. L. 86–624, § 30(c)(2), July 12, 1960, 74 Stat. 420; Pub. L. 86–778, title I, §§ 103(c)–(f), (j)(2)(A), (B), 104(a), Sept. 13, 1960, 74 Stat. 936, 937, 942; Pub. L. 87–256, § 110(e)(2), Sept. 21, 1961, 75 Stat. 537; Pub. L. 87–293, title II, § 202(b)(1), Sept. 22, 1961, 75 Stat. 626; Pub. L. 89–97, title III, §§ 311(a)(3), (4), 317(a), July 30, 1965, 79 Stat. 380, 381, 388; Pub. L. 90–248, title I, § 123(a), title IV, § 403(a), Jan. 2, 1968, 81 Stat. 844, 931; Pub. L. 92–603, title I, §§ 123(a)(1), 128(a), 129(a)(1), Oct. 30, 1972, 86 Stat. 1354, 1358, 1359; Pub. L. 93–445, title III, § 311, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94–455, title XII, § 1207(e)(2)(A), Oct. 4, 1976, 90 Stat. 1707; Pub. L. 94–563, § 1(a), Oct. 19, 1976, 90 Stat. 2655; Pub. L. 95–216, title III, § 351(a)(1), (3)(B), Dec. 20, 1977, 91 Stat. 1549; Pub. L. 95–600, title VII, § 703(j)(14)(C), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 97–248, title II, §§ 269(b), 278(b)(1), Sept. 3, 1982, 96 Stat. 552, 560; Pub. L. 97–448, title III, § 309(b)(23), Jan. 12, 1983, 96 Stat. 2410; Pub. L. 98–21, title I, §§ 101(a), 102(a), title III, §§ 321(b), 322(a)(1), 323(a)(2), Apr. 20, 1983, 97 Stat. 67, 70, 118, 120, 121; Pub. L. 98–369, div. B, title VI, §§ 2601(a), 2603(a)(1), 2661(j), 2663(a)(7), (j)(3)(A)(i), July 18, 1984, 98 Stat. 1122, 1128, 1157, 1162, 1170; Pub. L. 99–221, § 3(b), Dec. 26, 1985, 99 Stat. 1735; Pub. L. 99–272, title XIII, §§ 13205(b)(1), 13303(c)(2), Apr. 7, 1986, 100 Stat. 316, 327; Pub. L. 99–335, title III, § 304(a), June 6, 1986, 100 Stat. 606; Pub. L. 99–514, title XVIII, §§ 1883(a)(4), 1895(b)(18)(B), (19), Oct. 22, 1986, 100 Stat. 2916, 2935; Pub. L. 100–203, title IX, §§ 9001(a)(1), 9004(a), 9005(a), 9023(a), Dec. 22, 1987, 101 Stat. 1330–286 to 1330–288, 1330–295; Pub. L. 100–647, title I, § 1001(d)(2)(E), title VIII, §§ 8015(b)(1), (c)(1), 8016(a)(4)(B), (C), Nov. 10, 1988, 102 Stat. 3351, 3791–3793; Pub. L. 101–239, title X, § 10201(b)(1), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 101–508, title XI, § 11332(a), Nov. 5, 1990, 104 Stat. 1388–469; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–178, title II, § 204(d), Dec. 3, 1993, 107 Stat. 2033; Pub. L. 103–296, title I, § 107(a)(4), title III, §§ 303(a)(1), (b)(1), 319(b)(1), (3), 320(b), 321(a)(13), (c)(6)(C), (D), Aug. 15, 1994, 108 Stat. 1478, 1518, 1519, 1534–1536, 1538; Pub. L. 103–387, § 2(a)(2)(B), Oct. 22, 1994, 108 Stat. 4072; Pub. L. 104–188, title I, § 1116(a)(2), Aug. 20, 1996, 110 Stat. 1762; Pub. L. 105–61, title VI, § 642(d)(1), Oct. 10, 1997, 111 Stat. 1319; Pub. L. 105–33, title XI, § 11246(b)(2)(B), as added Pub. L. 105–277, div. A, § 101(h) [title VIII, § 802(a)(2)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–532; Pub. L. 108–203, title IV, § 423(c), Mar. 2, 2004, 118 Stat. 536; Pub. L. 109–280, title VIII, § 854(c)(9), Aug. 17, 2006, 120 Stat. 1019.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

The Civil Service Retirement and Disability Fund, referred to in subsec. (a)(5)(B)(ii), (G), is provided for in section 8348 of Title 5, Government Organization and Employees.

Section 301 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (a)(5)(H)(i), is section 301 of Pub. L. 99–335, which is set out as a note under section 8331 of Title 5.

The Federal Employees' Retirement System Open Enrollment Act of 1997, referred to in subsec. (a)(5)(H)(i), is section 642 of Pub. L. 105–61, title VI, Oct. 10, 1997, 111 Stat. 1318, which amended this section and section 3121 of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 8331 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Tables.

The Foreign Service Act of 1980, referred to in subsec. (a)(5)(H)(ii), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapter II of chapter 8 of title I of the Act is classified generally to part II (§ 4071 et seq.) of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The International Organizations Immunities Act, referred to in subsec. (a)(15), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22. For complete classification of that Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

The Internal Security Act of 1950, as amended, referred to in subsec. (a)(17), is act Sept. 23, 1950, ch. 1024, 64 Stat. 987, as amended, which is classified principally

to chapter 23 (§781 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 50 and Tables.

The Military Selective Service Act, referred to in subsec. (m)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

The Peace Corps Act, referred to in subsec. (*o*), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of that Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

2006—Subsec. (a)(5)(E). Pub. L. 109–280 inserted ''or special trial judge'' before ''of the United States Tax Court''.

2004—Subsec. (f)(5). Pub. L. 108–203 struck out ''or is domestic service in a private home of the employer'' before period at end.

1998—Subsec. (a)(7)(D). Pub. L. 105–277 added Pub. L. 105–33, §11246(b)(2)(B). See 1997 Amendment note below.

1997—Subsec. (a)(5)(H)(i). Pub. L. 105–61 substituted ''1986,'' for ''1986 or'' and inserted ''or the Federal Employees' Retirement System Open Enrollment Act of 1997'' after ''section 2157 of title 50,''.

Subsec. (a)(7)(D). Pub. L. 105–33, §11246(b)(2)(B), as added by Pub. L. 105–277, inserted ''(other than the Federal Employees Retirement System provided in chapter 84 of title 5)'' after ''United States'' in introductory provisions.

1996—Subsec. (a). Pub. L. 104–188, §1116(a)(2)(A), inserted at end ''For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.''

Subsec. (a)(20)(A). Pub. L. 104–188, §1116(a)(2)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),''.

1994—Subsec. (a). Pub. L. 103–296, §321(c)(6)(C), substituted ''1986'' for ''1954'' after ''Code of'' in introductory provisions.

Subsec. (a)(5)(B)(i)(V). Pub. L. 103–296, §321(a)(13), made technical amendment to reference to section 450i(e)(2) of title 25 to reflect renumbering of corresponding section of original act.

Subsec. (a)(7)(F)(iv). Pub. L. 103–296, §303(a)(1), substituted ''$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year'' for ''$100''.

Subsec. (a)(8)(A), (B), (9). Pub. L. 103–296, §321(c)(6)(C), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (a)(10)(B). Pub. L. 103–296, §321(c)(6)(C), substituted ''1986'' for ''1954'' after ''Code of''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(15). Pub. L. 103–296, §319(b)(3), inserted before semicolon at end '', except service which constitutes 'employment' under subsection (r) of this section''.

Subsec. (a)(19). Pub. L. 103–296, §320(b), substituted ''(J), (M), or (Q)'' for ''(J), or (M)'' in two places.

Subsec. (a)(21). Pub. L. 103–387 added par. (21).

Subsec. (*l*)(4). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner receives'' for ''he receives'' in subpar. (B).

Subsec. (p)(2)(E). Pub. L. 103–296, §303(b)(1), substituted ''$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year'' for ''$100''.

Subsecs. (p)(4), (q). Pub. L. 103–296, §321(c)(6)(D), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (r). Pub. L. 103–296, §319(b)(1), added subsec. (r).

1993—Subsec. (a)(5)(H)(i). Pub. L. 103–178 substituted ''section 2157 of title 50'' for ''section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees''.

1992—Subsec. (a)(5)(E). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Subsec. (a)(7)(F). Pub. L. 101–508 added subpar. (F).

1989—Subsec. (a). Pub. L. 101–239 substituted ''3121(*l*)(6)'' for ''3121(*l*)(8)'' in introductory provisions.

1988—Subsec. (a)(5). Pub. L. 100–647, §8015(c)(1), in provision following subpar. (B) inserted ''any such service performed on or after any date on which such individual performs'' after ''with respect to''.

Subsec. (a)(5)(H). Pub. L. 100–647, §8015(b)(1), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: ''service performed by an individual on or after the effective date of an election by such individual under section 301(a) of the Federal Employees' Retirement System Act of 1986, or under regulations issued under section 860 of the Foreign Service Act of 1980 or section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, to become subject to chapter 84 of title 5;''.

Subsec. (a)(19). Pub. L. 100–647, §1001(d)(2)(E), substituted ''(F), (J), or (M)'' for ''(F) or (J)'' in two places.

Subsec. (a)(20). Pub. L. 100–647, §8016(a)(4)(B), (C), amended Pub. L. 99–272, §13303(c)(2), see 1986 Amendment note below.

1987—Subsec. (a)(3)(A). Pub. L. 100–203, §9005(a)(1), substituted ''18'' for ''twenty-one''.

Pub. L. 100–203, §9004(a)(1), struck out reference to service performed by an individual in the employ of his spouse.

Subsec. (a)(3)(B). Pub. L. 100–203, §9005(a)(2), inserted reference to an individual under the age of 21 in the employ of his father or mother.

Pub. L. 100–203, §9004(a)(2), substituted introductory provisions for former introductory provisions which read as follows: ''Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—''.

Subsec. (*l*)(1). Pub. L. 100–203, §9001(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (4) of this subsection, the term 'employment' shall, notwithstanding the provisions of subsection (a) of this section, include service performed after December 1956 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.''

Subsec. (p). Pub. L. 100–203, §9023(p), directed that the heading of subsec. (p) be amended to read the same as it was set out in the general amendment of subsec. (p) by Pub. L. 99–272, see 1986 Amendment note below.

1986—Subsec. (a)(5)(G). Pub. L. 99–514, §1883(a)(4), substituted ''any other service'' for ''Any other service''.

Subsec. (a)(5)(H). Pub. L. 99–335 added subpar. (H).

Subsec. (a)(20). Pub. L. 99–272, §13303(c)(2), as amended by Pub. L. 100–647, §8016(a)(4)(B), (C), substituted ''Service (other than service described in paragraph (3)(A)) performed'' for ''Service performed'' in introductory provisions.

Subsec. (p). Pub. L. 99–272, §13205(b)(1), amended subsec. (p) generally. Prior to amendment, subsec. (p) read

as follows: ''For purposes of sections 426 and 426–1 of this title, the term 'medicare qualified Federal employment' means any service which would constitute 'employment' as defined in subsection (a) of this section but for the application of the provisions of subsection (a)(5) of this section.''

Subsec. (p)(2)(E). Pub. L. 99–514, § 1895(b)(18)(B), added subpar. (E).

Subsec. (p)(4)(B). Pub. L. 99–514, § 1895(b)(19), struck out quotation marks before ''(A)''.

1985—Subsec. (a)(5)(B)(i)(V). Pub. L. 99–221 added subcl. (V).

1984—Subsec. (a). Pub. L. 98–369, § 2661(j), struck out the second comma after ''such affiliate''.

Subsec. (a)(1). Pub. L. 98–369, § 2663(a)(7)(A), struck out ''(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (B)''.

Subsec. (a)(5)(B). Pub. L. 98–369, § 2601(a)(1), in amending subpar. (B) generally, substituted ''(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,'' for ''(i) has been continuously in the employ of the United States or an instrumentality thereof since December 31, 1983 (and for this purpose an individual who returns to the performance of such service after being separated therefrom following a previous period of such service shall nevertheless be considered upon such return as having been continuously in the employ of the United States or an instrumentality thereof, regardless of whether the period of such separation began before, on, or after December 31, 1983, if the period of such separation does not exceed 365 consecutive days),'', added subcls. (II) to (IV), and reenacted cl. (ii).

Subsec. (a)(5)(C) to (F). Pub. L. 98–369, § 2601(a)(2)(A), (B), in provisions following ''except that this paragraph shall not apply with respect to—'' redesignated cls. (i), (ii), (iii), and (iv) as subpars. (C), (D), (E), and (F), respectively, and redesignated former subcls. (I), (II), and (III) as cls. (i), (ii), and (iii), respectively, of the redesignated subpar. (D).

Subsec. (a)(5)(G). Pub. L. 98–369, § 2601(a)(2)(A), (C), in provisions following ''except that this paragraph shall not apply with respect to—'' redesignated former cl. (v) as subpar. (G), and in subpar. (G) as so redesignated, designated the existing provisions of subpar. (G) as the introductory language and the first phrase of cl. (i) and added the remainder of cl. (i) following ''chapter 38 of title 5'', cls. (ii) and (iii), and the provisions following cl. (iii).

Subsec. (a)(7)(D). Pub. L. 98–369, § 2663(a)(7)(B), realigned margins of subpar. (D).

Subsec. (a)(8). Pub. L. 98–369, § 2603(a)(1), designated existing provisions as subpar. (A), substituted ''this subparagraph'' for ''this paragraph'', and added subpar. (B).

Subsec. (a)(9). Pub. L. 98–369, § 2663(a)(7)(C), substituted ''section 3231 of the Internal Revenue Code of 1954'' for ''section 1532 of the Internal Revenue Code of 1939''.

Subsec. (a)(10)(B). Pub. L. 98–369, § 2663(j)(3)(A)(i), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (a)(19). Pub. L. 98–369, § 2663(a)(7)(D), struck out the comma after ''; or''.

Subsec. (*l*)(2). Pub. L. 98–369, § 2663(a)(7)(E), substituted ''paragraph (21) of section 101 of title 38'' for ''section 102 of the Servicemen's and Veterans' Survivor Benefits Act'' and ''paragraph (22) of such section'' for ''such section''.

Subsec. (*l*)(3). Pub. L. 98–369, § 2663(a)(7)(F), substituted ''paragraph (23) of such section 101'' for ''such section 102''.

Subsec. (*l*)(4)(A). Pub. L. 98–369, § 2663(j)(3)(A)(i), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (m). Pub. L. 98–369, § 2663(a)(7)(G)(i), (ii), in provisions preceding par. (1), substituted ''a reserve component as defined in section 101(27) of title 38'' for ''a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act'' and inserted reference to the National Oceanic and Atmospheric Administration Corps.

Subsec. (m)(5). Pub. L. 98–369, § 2663(a)(7)(G)(iii), substituted ''military, naval, or air'' for ''military or naval'' wherever appearing.

Subsec. (m)(5)(B). Pub. L. 98–369, § 2663(a)(7)(G)(iv), substituted ''Military Selective Service Act'' for ''Universal Military Training and Service Act''.

1983—Subsec. (a). Pub. L. 98–21, § 322(a)(1), added cl. (C) and struck out ''either'' before ''A'' in provisions preceding par. (1).

Pub. L. 98–21, § 321(b), amended cl. (B) in provisions preceding par. (1) generally, substituting reference to section 3121(*l*)(8) of the Internal Revenue Code of 1954 for reference to section 3121(*l*) of such Code ''an American employer'' for ''a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954)'', and ''affiliate'' for ''subsidiary'' after ''with respect to such''.

Pub. L. 98–21, § 323(a)(2), substituted ''a citizen or resident of the United States'' for ''a citizen of the United States'' in cl. (B) in provisions preceding par. (1).

Subsec. (a)(5). Pub. L. 98–21, § 101(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, by virtue of any provision of law which specifically refers to such section in granting such exemption;''.

Subsec. (a)(6). Pub. L. 98–21, § 101(a)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

''(A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

''(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

''(i) service performed in the employ of a corporation which is wholly owned by the United States;

''(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

''(iii) service performed in the employ of a State, county, or community committee under the Production and Marketing Administration;

''(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

''(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

''(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

''(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

''(ii) in the legislative branch;

''(iii) in a penal institution of the United States by an inmate thereof;

''(iv) by any individual as an employee included under section 5351(2) of title 5, other than as a medical or dental intern or a medical or dental resident in training;

''(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

''(vi) by any individual to whom subchapter III of chapter 83 of title 5 does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);''.

Subsec. (a)(8). Pub. L. 98–21, §102(a), struck out subpar. (A) designation, struck out subpar. (B) which had related to service performed by employees of nonprofit organizations, and substituted ''this paragraph'' for ''this subparagraph''.

Subsec. (p). Pub. L. 98–21, §101(a)(2), struck out designations for pars. (1) and (2) and struck out par. (1) which related to application of the provisions of subparagraph (A), (B), or (C)(i), (ii), or (vi) of subsection (a)(6) of this section.

Subsec. (q). Pub. L. 97–448 redesignated subsec. (p), relating to treatment of real estate agents and direct sellers, as (q).

1982—Subsec. (p). Pub. L. 97–248, §269(b), added subsec. (p) relating to treatment of real estate agents and direct sellers.

Pub. L. 97–248, §278(b)(1), added subsec. (p) relating to medicare qualified Federal employment.

1978—Subsec. (a)(6)(B)(v). Pub. L. 95–600 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1977—Subsec. (a)(10). Pub. L. 95–216, §351(a)(3)(B), struck out subpar. (A) which related to service performed in the employ of any exempt organization under section 101 of the Internal Revenue Code of 1939, and designated existing provisions of subpar. (B) as entire subsec. (a)(10) and, as so designated, redesignated cls. (i) and (ii) as subpars. (A) and (B).

Subsecs. (a)(17)(A), (f)(4)(B). Pub. L. 95–216, §351(a)(1), substituted ''year'' for ''quarter''.

1976—Subsec. (a)(8)(B). Pub. L. 94–563 inserted ''(or deemed to have been so filed under paragraph (4) or (5) of such section 3121(k))'' after ''section 3121(k) of the Internal Revenue Code of 1954'' in provisions preceding cl. (i), inserted ''(or deemed to have been filed)'' after ''filed'' in cls. (i), (ii), and (iii), and substituted ''is (or is deemed to be) in effect'' for ''is in effect'' in provisions following cl. (iii).

Subsec. (a)(20). Pub. L. 94–455 added par. (20).

1974—Subsec. (*l*)(4)(A). Pub. L. 93–445 substituted ''section 231b(i) of title 45'' for ''section 228c–1 of title 45'' and struck out '', as provided in section 228c–1(p)(2) of title 45'' after ''notify the Secretary of Health, Education, and Welfare''.

1972—Subsec. (a)(7)(E). Pub. L. 92–603, §128(a), added subpar. (E).

Subsec. (a)(8)(A). Pub. L. 92–603, §123(a)(1), inserted provisions referring to the election of coverage under section 3121(r) of the Internal Revenue Code of 1954.

Subsec. (a)(10)(B). Pub. L. 92–603, §129(a)(1), designated existing provisions as cl. (i) and added cl. (ii).

1968—Subsec. (a)(3)(B). Pub. L. 90–248, §123(a), inserted exception provision including cls. (i) to (iii).

Subsec. (a)(6)(C)(iv). Pub. L. 90–248, §403(a)(1), substituted reference to section 5351(2) of title 5 for former section 1052 of title 5.

Subsec. (a)(6)(C)(vi). Pub. L. 90–248, §403(a)(2), substituted ''subchapter III of chapter 83 of title 5'' for ''the Civil Service Retirement Act''.

Subsec. (a)(7)(D)(ii). Pub. L. 90–248, §403(a)(3), substituted reference to section 5351(2) of title 5 for former section 1052 of title 5.

1965—Subsec. (a)(6)(C)(iv). Pub. L. 89–97, §311(a)(3), inserted '', other than as a medical or dental intern or a medical or dental resident in training''.

Subsec. (a)(7)(D). Pub. L. 89–97, §317(a)(3), added subpar. (D).

Subsec. (a)(13). Pub. L. 89–97, §311(a)(4), struck out from definition of employment the exclusion of service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law.

1961—Subsec. (a)(19). Pub. L. 87–256 added par. (19).

Subsec. (*o*). Pub. L. 87–293 added subsec. (*o*).

1960—Subsec. (a)(3). Pub. L. 86–778, §104(a), designated existing provisions as cl. (A), struck out provisions which related to service performed by an individual in the employ of his son or daughter, and added cl. (B).

Subsec. (a)(7). Pub. L. 86–778, §103(c), excluded service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof.

Subsec. (a)(18). Pub. L. 86–778, §103(d), added par. (18).

Subsec. (h). Pub. L. 86–778, §103(e), included Guam and American Samoa.

Pub. L. 86–624 substituted ''includes the District of Columbia and'' for ''includes Hawaii, the District of Columbia, and''.

Subsec. (i). Pub. L. 86–778, §103(f), included Guam and American Samoa.

Pub. L. 86–624 struck out ''Hawaii,'' before ''the District of Columbia.''

Subsecs. (j) to (*o*). Pub. L. 86–778, §103(j)(2)(A), (B), repealed subsec. (j) and redesignated subsecs. (*l*) to (*o*) as (k) to (n), respectively.

1959—Subsec. (a)(6)(B)(ii). Pub. L. 86–168 substituted ''Federal land bank association'' for ''national farm loan association'', and included service in the employ of Federal land banks, Federal intermediate credit banks and banks for cooperatives.

Subsecs. (h), (i). Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

1958—Subsec. (a)(1). Pub. L. 85–840, §311(a), struck out provisions which excluded from coverage service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j(g) of title 12.

Subsec. (a)(8)(B). Pub. L. 85–840, §312(a), substituted references to the Internal Revenue Code of 1954 for references to the Internal Revenue Code of 1939, and inserted provisions making subparagraph inapplicable to service performed during the period for which a certificate is in effect if such service is performed by an employee who, after the calendar quarter in which the certificate was filed with respect to a group described in section 3121(k)(1)(E) of the Internal Revenue Code of 1954 became a member of such group, and making subparagraph applicable with respect to service performed by an employee as a member of a group described in section 3121(k)(1)(E) with respect to which no certificate is in effect.

1956—Subsec. (a)(1)(B). Act Aug. 1, 1956, ch. 836, §104(a), excluded from coverage service performed by foreign agricultural workers lawfully admitted on a temporary basis from any foreign country or possession thereof.

Subsec. (a)(6)(B)(ii). Act Aug. 1, 1956, ch. 836, §104(b)(1), included service performed in the employ of a Federal Home Loan Bank.

Subsec. (a)(6)(C)(vi). Act Aug. 1, 1956, ch. 836, §104(b)(2), substituted ''Civil Service Retirement Act'' for ''Civil Service Retirement Act of 1930'', and inserted ''(other than the retirement system of the Tennessee Valley Authority)'' after ''retirement system''.

Subsec. (a)(16), (17). Act Aug. 1, 1956, ch. 836, §§104(c)(1), 121(c), added pars. (16) and (17).

Subsecs. (m), (n). Act Aug. 1, 1956, ch. 837, added subsecs. (m) and (n).

Subsec. (*o*). Act Aug. 1, 1956, ch. 836, § 105(b), added subsec. (*o*).

1954—Subsec. (a)(B). Act Sept. 1, 1954, § 101(m), included within definition of ''employment'' service performed outside the United States by citizens of the United States as employees for foreign subsidiaries of domestic corporations under certain conditions.

Subsec. (a)(1). Act Sept. 1, 1954, § 101(a)(4), removed specific exception from employment of services performed in connection with the ginning of cotton, and added an exception for services performed by West Indian agricultural workers lawfully admitted to the United States on a temporary basis.

Subsec. (a)(3). Act Sept. 1, 1954, § 101(a)(5), redesignated par. (4) as (3) and struck out former par. (3).

Subsec. (a)(4). Act Sept. 1, 1954, § 101(a)(5), (b), redesignated par. (5) as (4), and made the exclusion with respect to services on non-American vessels or aircraft applicable only if the individual is not a United States citizen or the employer is not an American employer. Former par. (4) redesignated (3).

Subsec. (a)(5). Act Sept. 1, 1954, § 101(a)(5), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (a)(6)(B). Act Sept. 1, 1954, § 101(a)(5), (c)(1)(A), redesignated par. (7) as (6), and inserted ''by an individual'' after ''Service performed'' and ''and if such service is covered by a retirement system established by such instrumentality;'' after ''December 31, 1950.''

Subsec. (a)(6)(B)(v). Act Sept. 1, 1954, § 101(a)(5), (c)(1)(A), redesignated par. (7) as (6), and added cl. (v).

Subsec. (a)(6)(C). Act Sept. 1, 1954, § 101(a)(5), (c)(2), redesignated par. (7) as (6), and struck out exception from coverage for services in the following categories; temporary employees in the Post Office Department field service; temporary census-taking employees of the Bureau of the Census; Federal employees paid on a contract or fee basis; Federal employees receiving compensation of $12 a year or less; certain consular agents; individuals employed under Federal unemployment relief programs; and members of State, county, or community committees under the Production and Marketing Administration and similar bodies, unless such bodies are composed exclusively of full-time Federal employee and limited the exclusion of inmates or patients of United States institutions to inmates of penal institutions.

Subsec. (a)(7) to (17). Act Sept. 1, 1954, § 101(a)(5), (e), struck out par. (15) and redesignated pars. (7) to (14), (16), and (17) as (6) to (15), respectively.

Subsec. (k)(3)(C). Act Sept. 1, 1954, § 101(f), struck out requirement that services of homeworkers be subject to State licensing laws in order to constitute covered employment.

1951—Subsec. (a)(1)(C). Act Oct. 31, 1949, § 505(a), as added by act July 12, 1951, added subpar. (C).

1950—Act Aug. 28, 1950, substituted a new section 410 for former section 410.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (a)(5)(E) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Commissioned Officer Corps of the Environmental Science Services Administration changed to Commissioned Officer Corps of National Oceanic and Atmospheric Administration, see Reorg. Plan No. 4 of 1970, § 4(d), eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective, except as otherwise specifically provided, as if included in the enactment of title XI of the Balanced Budget Act of 1997, Pub. L. 105–33, see section 101(h) [title VIII, § 805] of Pub. L. 105–277, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable with respect to all months beginning after the date on which the Director of the Office of Personnel Management issues regulations to carry out section 11–1726, District of Columbia Code, see section 11246(b)(4) of Pub. L. 105–33, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to remuneration paid after Dec. 31, 1994, and, unless payor treated such remuneration (when paid) as being subject to tax under chapter 21 of Title 26, Internal Revenue Code, after Dec. 31, 1984, and before Jan. 1, 1995, see section 1116(a)(3) of Pub. L. 104–188, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–387 applicable to services performed after Dec. 31, 1994, see section 2(a)(3)(B) of Pub. L. 103–387, set out as a note under section 3102 of Title 26, Internal Revenue Code.

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 303(e) of Pub. L. 103–296 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section, section 418 of this title, and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to service performed on or after January 1, 1995.''

Amendment by section 319(b)(1), (3) of Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 320(b) of Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of Title 26.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to service performed after July 1, 1991, see section 11332(d) of Pub. L. 101–508, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable with respect to any agreement in effect under section 3121(*l*) of Title 26, Internal Revenue Code, on or after June 15, 1989, with respect to which no notice of termination is in effect on such date, see section 10201(c) of Pub. L. 101–239, set out as a note under section 406 of Title 26.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(E) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 8015(b)(1) of Pub. L. 100–647 applicable as if such amendment had been included or reflected in section 304 of Federal Employees' Retirement

System Act of 1986, Pub. L. 99–335, at the time of its enactment (June 6, 1986), see section 8015(b)(3) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

Amendment by section 8015(c)(1) of Pub. L. 100–647 applicable to any individual only upon the performance by such individual of service described in subpar. (C), (D), (E), (F), (G), or (H) of subsec. (a)(5) of this section on or after Nov. 10, 1988, see section 8015(c)(3) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

Amendment by section 8016(a)(4)(B), (C) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of Title 26.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9001(a)(1) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9001(d) of Pub. L. 100–203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 9004(a) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9004(c) of Pub. L. 100–203, set out as a note under section 3121 of Title 26.

Amendment by section 9005(a) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9005(c) of Pub. L. 100–203, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(4) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1895(b)(18)(B) of Pub. L. 99–514 applicable to services performed after Mar. 31, 1986, see section 1895(b)(18)(C) of Pub. L. 99–514, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 1895(b)(19) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26.

Section 13205(d)(2) of Pub. L. 99–272 provided that:

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section and sections 426, 426–1, and 1395c of this title] shall be effective after March 31, 1986, and the amendments made by paragraph (3) of that subsection [subsection does not contain a paragraph (3)] shall apply to services performed (for medicare qualified government employment) after that date.

''(B) TREATMENT OF CERTAIN DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act [section 1395c et seq. of this title] pursuant to the amendments made by subsection (b), no individual may be considered to be under a disability for any period beginning before April 1, 1986.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 3(c) of Pub. L. 99–221 provided that: ''The amendments made by subsection (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] apply to any return to the performance of service in the employ of the United States, or of an instrumentality thereof, after 1983.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2601(f) of Pub. L. 98–369 provided that: ''Except as provided in subsection (d) [set out as a Qualification and Requalification of Federal Employees for Benefits note below], the amendments made by subsections (a) and (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] (and provisions of subsection (e) [set out as a Services Performed for Nonprofit Organizations by Federal Employees note below]) shall be effective with respect to service performed after December 31, 1983.''

Section 2603(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 411 of this title and sections 1402 and 3121 of Title 26 and enacting provisions set out as a note under section 3121 of Title 26] shall apply to service performed after December 31, 1983.''

Amendment by section 2661(j) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(7), (j)(3)(A)(i) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(a) of Pub. L. 98–21 effective with respect to service performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 102(a) of Pub. L. 98–21 effective with respect to service performed after Dec. 31, 1983, see section 102(c) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

Amendment by section 321(b) of Pub. L. 98–21 applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21, set out as a note under section 406 of Title 26.

Amendment by section 322(a)(1) of Pub. L. 98–21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

Amendment by section 323(a)(2) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 323(c)(1) of Pub. L. 98–21, set out as a note under 3121 of Title 26.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 269(b) of Pub. L. 97–248 applicable to services performed after Dec. 31, 1982, see section 269(e)(1) of Pub. L. 97–248, set out as an Effective Date note under section 3508 of Title 26, Internal Revenue Code.

Amendment by section 278(b)(1) of Pub. L. 97–248 effective on and after Jan. 1, 1983, see section 278(c)(2)(A) of Pub. L. 97–248, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to remuneration paid and services rendered after Dec. 31, 1977, see section 351(d) of Pub. L. 95–216, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–563 applicable with respect to services performed after 1950, to the extent covered by waiver certificates filed or deemed to have been filed under section 3121(k)(4) or (5) of Title 26, see section

1(d) of Pub. L. 94–563, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 128(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to service performed on and after the first day of the first calendar quarter which begins on or after the date of the enactment of this Act [Oct. 30, 1972].''

Section 129(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section and section 3121 of Title 26] shall apply to services performed after December 31, 1972.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 123(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to services performed after December 31, 1967.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 311(c) of Pub. L. 89–97 provided that: ''The amendments made by paragraphs (1) and (2) of subsection (a) [amending section 411 of this title], and by paragraphs (1), (2), and (3) of subsection (b) [amending section 1402 of Title 26, Internal Revenue Code], shall apply only with respect to taxable years ending on or after December 31, 1965. The amendments made by paragraphs (3) and (4) of subsection (a) [amending this section], and by paragraphs (4) and (5) of subsection (b) [amending section 3121 of Title 26], shall apply only with respect to services performed after 1965.''

Section 317(g) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 3121, 3125, 6205, and 6413 of Title 26, Internal Revenue Code] shall apply with respect to service performed after the calendar quarter in which this section is enacted and after the calendar quarter in which the Secretary of the Treasury receives a certification from the Commissioners of the District of Columbia expressing their desire to have the insurance system established by title II (and part A of title XVIII) of the Social Security Act [this subchapter and part A of subchapter XVIII of this chapter] extended to the officers and employees coming under the provisions of such amendments.''

EFFECTIVE DATE OF 1961 AMENDMENTS

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 87–256 applicable with respect to service performed after Dec. 31, 1961, see section 110(h)(3) of Pub. L. 87–256, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by section 103(c) of Pub. L. 86–778 applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by Title II of the Social Security Act, this subchapter, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by this subchapter extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1), (2) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(d) of Pub. L. 86–778 applicable only with respect to service performed after 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(e), (f) of Pub. L. 86–778 applicable only with respect to service performed after 1960, except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, the amendment shall be applicable only in the case of taxable years beginning after 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(j)(2)(A), (B) of Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 104(c) of Pub. L. 86–778 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply only with respect to services performed after 1960.''

Amendment by Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86–168 effective Jan. 1, 1960, see section 203(c) of Pub. L. 86–168.

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 47(d) of Pub. L. 86–70.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 311(b) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to service performed after 1958.''

Section 312(b) of Pub. L. 85–840, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3121(k)(1) of Title 26, Internal Revenue Code] after the date of enactment of this Act [Aug. 28, 1958].''

EFFECTIVE DATE OF 1956 AMENDMENTS

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

Section 104(i) of act Aug. 1, 1956, ch. 836, as amended by Pub. L. 92–603, title I, § 125(b), Oct. 30, 1972, 86 Stat. 1357, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to service performed after 1956. The amendments made by paragraph (1) of subsection (c) [amending this section] shall apply with respect to service performed after 1954. The amendment made by paragraph (2) of subsection (c) [amending section 411 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by paragraph (3) of subsection (c) [amending section 411 of this title] shall apply with respect to

taxable years ending after 1954. The amendment made by subsection (d) [amending section 411 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by subsection (h) [amending section 411 of this title] shall apply with respect to the same taxable years with respect to which the amendment made by section 201(g) of this Act [amending section 1402 of Title 26, Internal Revenue Code] applies.

''(2)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (b) [amending this section] shall apply only with respect to service performed after June 30, 1957, and only if—

''(i) [Repealed. Pub. L. 92–603, title I, §125(b), Oct. 30, 1972, 86 Stat. 1357.]

''(ii) in the case of the amendment made by paragraph (2) of such subsection [amending this section], the conditions prescribed in subparagraph (C) are met.

''(B) [Repealed. Pub. L. 92–603, title I, §125(b), Oct. 30, 1972, 86 Stat. 1357.]

''(C) The amendment made by paragraph (2) of subsection (b) [amending this section] shall be effective only if—

''(i) the Board of Directors of the Tennessee Valley Authority submits to the Secretary of Health, Education, and Welfare, and the Secretary approves, before July 1, 1957, a plan, with respect to employees of the Tennessee Valley Authority, for the coordination, on an equitable basis, of the benefits provided by the retirement system applicable to such employees with the benefits provided by title II of the Social Security Act [this subchapter]; and

''(ii) such plan specifies, as the effective date of the plan, July 1, 1957, or the first day of a prior calendar quarter beginning not earlier than January 1, 1956. If the plan specifies as the effective date of the plan a day before July 1, 1957, the amendment made by paragraph (2) of subsection (b) [amending this section] shall apply with respect to service performed on or after such effective date; except that, if such effective date is prior to the day on which the Secretary approves the plan, such amendment shall not apply with respect to service performed, prior to the day on which the Secretary approves the plan, by an individual who is not an employee of the Tennessee Valley Authority on such day.

''(D) The Secretary of Health, Education, and Welfare shall, on or before July 31, 1957, submit a report to the Congress setting forth the details of any plan approved by him under subparagraph (B) or (C).''

Amendment by section 105(b) of act Aug. 1, 1956, ch. 836, applicable with respect to service performed after 1956, see section 105(d) of such act Aug. 1, 1956, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 101(a)(4), (5) of act Sept. 1, 1954, applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954, and amendment by section 101(b), (c)(1), (2), (e), and (f) of act Sept. 1, 1954, applicable only with respect to services performed after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section as added by section 104(a) of act Aug. 28, 1950, effective Jan. 1, 1951, see section 104(b) of act Aug. 28, 1950, set out as a note under section 409 of this title. Former section 410 was struck out effective Sept. 1, 1950, by section 105 of act Aug. 28, 1950.

LINE ITEM VETO

Section 642(d)(1) of Pub. L. 105–61, amending this section, was subject to line item veto by the President, Cancellation No. 97–56, signed Oct. 16, 1997, 62 F.R. 54338, Oct. 17, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

REPEALS: AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(b)(1) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

FEDERAL LEGISLATIVE BRANCH EMPLOYEES WHO CONTRIBUTE REDUCED AMOUNTS BY REASON OF THE FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT ACT OF 1983

Section 2601(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of section 210(a)(5)(G) of the Social Security Act [subsec. (a)(5)(G) of this section] and section 3121(b)(5)(G) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)(G)], an individual shall not be considered to be subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), if he is contributing a reduced amount by reason of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98–168, title II, Nov. 29, 1983, 97 Stat. 1106, set out as a note under section 8331 of Title 5, Government Organization and Employees].''

QUALIFICATION AND REQUALIFICATION OF FEDERAL EMPLOYEES FOR BENEFITS

Section 2601(d) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1883(a)(5)(A), Oct. 22, 1986, 100 Stat. 2916, provided that:

''(1) Any individual who—

''(A) was subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983 (as determined for purposes of section 210(a)(5)(G) of the Social Security Act [subsec. (a)(5)(G) of this section]), and

''(B)(i) received a lump-sum payment under section 8342(a) of such title 5, or under the corresponding provision of the law establishing the other retirement system described in subparagraph (A), after Decem-

ber 31, 1983, and prior to June 15, 1984, or received such a payment on or after June 15, 1984, pursuant to an application which was filed in accordance with such section 8342(a) or the corresponding provision of the law establishing such other retirement system prior to that date, or

''(ii) otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code, for a period after December 31, 1983, to which section 210(a)(5)(G)(iii) of the Social Security Act applies,

shall, if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) after the date on which he last ceased to be subject to such subchapter but prior to, or within 30 days after, the date of the enactment of this Act [July 18, 1984], requalify for the exemption from social security coverage and taxes under section 210(a)(5) of the Social Security Act and section 3121(b)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)] as if the cessation of coverage under title 5 had not occurred.

''(2) An individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) who is not in the employ of the United States or an instrumentality thereof on the date of the enactment of this Act [July 18, 1984] may requalify for such exemptions in the same manner as under paragraph (1) if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) within 30 days after the date on which he first returns to service in the legislative branch after such date of enactment, if such date (on which he returns to service) is within 365 days after he was last in the employ of the United States or an instrumentality thereof.

''(3) If an individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) does not again become subject to subchapter III of chapter 83 of title 5 (or effectively apply for coverage under such subchapter) prior to the date of the enactment of this Act or within the relevant 30-day period as provided in paragraph (1) or (2), social security coverage and taxes by reason of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1986 shall, with respect to such individual's service in the legislative branch of the Federal Government, become effective with the first month beginning after such 30-day period.

''(4) The provisions of paragraphs (1) and (2) shall apply only for purposes of reestablishing an exemption from social security coverage and taxes, and do not affect the amount of service to be credited to an individual for purposes of title 5, United States Code.''

[Section 1883(a)(5) of Pub. L. 99–514 provided in part that amendment of above note by section 1883(a)(5)(A) of Pub. L. 99–514 is effective July 18, 1984.]

SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS BY FEDERAL EMPLOYEES

Section 2601(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) For purposes of section 210(a)(5) of the Social Security Act [subsec. (a)(5) of this section] (as in effect in January 1983 and as in effect on and after January 1, 1984) and section 3121(b)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)] (as so in effect), service performed in the employ of a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] by an employee who is required by law to be subject to subchapter III of chapter 83 of title 5, United States Code, with respect to such service, shall be considered to be service performed in the employ of an instrumentality of the United States.

''(2) For purposes of section 203 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [section 203 of Pub. L. 98–168, set out as a note under section 8331 of Title 5, Government Organization and Employees], service described in paragraph (1) which is also 'employment' for purposes of title II of the Social Security Act [this subchapter], shall be considered to be 'covered service'.''

ACCRUED FEDERAL RETIREMENT ENTITLEMENTS; REDUCTION PROHIBITED

Section 101(e) of Pub. L. 98–21 provided that: ''Nothing in this Act [see Short Title of 1983 Amendment note set out under section 1305 of this title] shall reduce the accrued entitlements to future benefits under the Federal Retirement System of current and retired Federal employees and their families.''

COVERAGE OF FEDERAL HOME LOAN BANK EMPLOYEES

Section 125(a) of Pub. L. 92–603, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The provisions of section 210(a)(6)(B)(ii) of the Social Security Act [subsec. (a)(6)(B)(ii) of this section] and section 3121(b)(6)(B)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3121(b)(6)(B)(ii) of Title 26, Internal Revenue Code], insofar as they relate to service performed in the employ of a Federal home loan bank, shall be effective—

''(1) with respect to all service performed in the employ of a Federal home loan bank on and after the first day of the first calendar quarter which begins on or after the date of the enactment of this Act [Oct. 30, 1972]; and

''(2) in the case of individuals who are in the employ of a Federal home loan bank on such first day, with respect to any service performed in the employ of a Federal home loan bank after the last day of the sixth calendar year preceding the year in which this Act is enacted [1972]; but this paragraph shall be effective only if an amount equal to the taxes imposed by sections 3101 and 3111 of such Code [sections 3101 and 3111 of Title 26, Internal Revenue Code] with respect to the services of all such individuals performed in the employ of Federal home loan banks after the last day of the sixth calendar year preceding the year in which this Act is enacted [1972] are paid under the provisions of section 3122 of such Code [section 3122 of Title 26] by July 1, 1973, or by such later date as may be provided in an agreement entered into before such date with the Secretary of the Treasury or his delegate for purposes of this paragraph.''

COVERED EMPLOYMENT NOT COUNTED UNDER OTHER FEDERAL RETIREMENT SYSTEMS

Section 115 of act Sept. 1, 1954, which prohibited counting employment under other Federal retirement systems in determining eligibility for benefits under this subchapter, was repealed by Pub. L. 91–630, § 1, Dec. 31, 1970, 84 Stat. 1875. Section 2 of Pub. L. 91–630 provided that such repeal shall not apply in the case of a person who, on Dec. 31, 1970, is receiving or is entitled to receive benefits under any retirement system established by the United States or any instrumentality thereof unless he requests, in writing, the office which administers his retirement system to apply it in this case, and that any additional benefits payable pursuant to such request shall commence on January 1, 1971.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 410a. Transferred

CODIFICATION

Section, act Aug. 29, 1935, ch. 812, § 17, as added June 24, 1937, ch. 382, Pt. I, § 1, 50 Stat. 317; amended Oct. 30, 1951, ch. 632, § 24, 65 Stat. 690, was transferred to section 228q of Title 45, Railroads, and subsequently superseded. See section 231q of Title 45.

§ 411. Definitions relating to self-employment

For the purposes of this subchapter—

(a) Net earnings from self-employment

The term ''net earnings from self-employment'' means the gross income, as computed under subtitle A of the Internal Revenue Code of 1986, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of such Code, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares), together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity;

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities;

(3) There shall be excluded any gain or loss (A) which is considered under subtitle A of the Internal Revenue Code of 1986 as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1986 applies to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in section 172 of the Internal Revenue Code of 1986 shall not be allowed;

(5)(A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) A resident of the Commonwealth of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions of section 933 of the Internal Revenue Code of 1986;

(7) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) of this section without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), and section 911 (relating to earned income from sources without the United States) of the Internal Revenue Code of 1986, but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires;

(8) The exclusion from gross income provided by section 931 of the Internal Revenue Code of 1986 shall not apply;

(9) There shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary of the Treasury or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) dur-

ing the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(10) The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1986 shall not apply;

(11) In lieu of the deduction provided by section 164(f) of the Internal Revenue Code of 1986 (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer's net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 of such Code for such year;

(12) There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) of the Internal Revenue Code of 1986 to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services;

(13) In the case of church employee income, the special rules of subsection (i)(1) of this section shall apply;

(14) There shall be excluded income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights); and

(15) The deduction under section 162(*l*) of the Internal Revenue Code of 1986 (relating to health insurance costs of self-employed individuals) shall not be allowed.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 410(f) of this title—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than $2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than $2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is not more than $2,400, his distributive share of income described in section 702(a)(8) of such Code derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(8) of such Code derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in such section 702(a)(8) derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second

preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (g) of this section, or by a partnership of which an individual is a member on a regular basis as defined in subsection (g) of this section, but only if such individual's net earnings from self-employment in the taxable year as determined without regard to this sentence are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed $1,600.

(b) Self-employment income

The term ''self-employment income'' means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 433 of this title) during any taxable year beginning after 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of—

(A) For any taxable year ending prior to 1955, (i) $3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) For any taxable year ending after 1954 and prior to 1959, (i) $4,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(C) For any taxable year ending after 1958 and prior to 1966, (i) $4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) For any taxable year ending after 1965 and prior to 1968, (i) $6,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(E) For any taxable year ending after 1967 and beginning prior to 1972, (i) $7,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(F) For any taxable year beginning after 1971 and prior to 1973, (i) $9,000, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(G) For any taxable year beginning after 1972 and prior to 1974, (i) $10,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(H) For any taxable year beginning after 1973 and prior to 1975, (i) $13,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(I) For any taxable year beginning in any calendar year after 1974, (i) an amount equal to the contribution and benefit base (as determined under section 430 of this title) which is effective for such calendar year, minus (ii) the amount of the wages paid to such individual during such taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400.

An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purpose of this subsection, be considered to be a nonresident alien individual. In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).

(c) Trade or business

The term ''trade or business'', when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1986, except that such term shall not include—

(1) The performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 418 of this title;

(2) The performance of service by an individual as an employee, other than—

(A) service described in section 410(a)(14)(B) of this title performed by an individual who has attained the age of eighteen,

(B) service described in section 410(a)(16) of this title,

(C) service described in section 410(a) (11), (12), or (15) of this title performed in the United States by a citizen of the United States, except service which constitutes ''employment'' under section 410(r) of this title,

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 418 of this title,

(F) service described in section 410(a)(20) of this title, and

(G) service described in section 410(a)(8)(B) of this title;

(3) The performance of service by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(4) The performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by

a member of a religious order in the exercise of duties required by such order;

(5) The performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) The performance of service by an individual during the period for which an exemption under section 1402(g) of the Internal Revenue Code of 1986 is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under section 1402(e) of the Internal Revenue Code of 1986 is effective with respect to him.

(d) Partnership and partner

The term ''partnership'' and the term ''partner'' shall have the same meaning as when used in subchapter K of chapter 1 of the Internal Revenue Code of 1986.

(e) Taxable year

The term ''taxable year'' shall have the same meaning as when used in subtitle A of the Internal Revenue Code of 1986; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of subtitle A of such Code, in which case his taxable year for the purposes of this subchapter shall be the same as his taxable year under such subtitle A.

(f) Partner's taxable year ending as result of death

In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term ''deceased partner's distributive share'' includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) Regular basis

An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a) of this section, of not less than $400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

(h) Option dealers and commodity dealers

(1) In determining the net earnings from self-employment of any options dealer or commodities dealer—

(A) notwithstanding subsection (a)(3)(A) of this section, there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

(B) the deduction provided by section 1202 of the Internal Revenue Code of 1986 shall not apply.

(2) For purposes of this subsection—

(A) The term ''options dealer'' has the meaning given such term by section 1256(g)(8) of such Code.

(B) The term ''commodities dealer'' means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) The term ''section 1256 contracts'' has the meaning given to such term by section 1256(b) of such Code.

(i) Church employee income

(1) In applying subsection (a) of this section—

(A) church employee income shall not be reduced by any deduction;

(B) church employee income and deductions attributable to such income shall not be taken into account in determining the amount of other net earnings from self-employment.

(2)(A) Subsection (b)(2) of this section shall be applied separately—

(i) to church employee income, and

(ii) to other net earnings from self-employment.

(B) In applying subsection (b)(2) of this section to church employee income, ''$100'' shall be substituted for ''$400''.

(3) Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(11) of this section, and paragraph (1) shall be applied before determining the amount so allowable.

(4) For purposes of this section, the term ''church employee income'' means gross income for services which are described in section 410(a)(8)(B) of this title (and are not described in section 410(a)(8)(A) of this title).

(j) Codification of treatment of certain termination payments received by former insurance salesmen

Nothing in subsection (a) of this section shall be construed as including in the net earnings from self-employment of an individual any amount received during the taxable year from an insurance company on account of services performed by such individual as an insurance salesman for such company if—

(1) such amount is received after termination of such individual's agreement to perform such services for such company,

(2) such individual performs no services for such company after such termination and before the close of such taxable year,

(3) such individual enters into a covenant not to compete against such company which applies to at least the 1-year period beginning on the date of such termination, and

(4) the amount of such payment—

(A) depends primarily on policies sold by or credited to the account of such individual during the last year of such agreement or the extent to which such policies remain in force for some period after such termination, or both, and

(B) does not depend to any extent on length of service or overall earnings from services performed for such company (without regard to whether eligibility for payment depends on length of service).

(Aug. 14, 1935, ch. 531, title II, §211, as added Aug. 28, 1950, ch. 809, title I, §104(a), 64 Stat. 492, 502; amended Sept. 23, 1950, ch. 994, title II, §221(j)(2), 64 Stat. 947; Sept. 1, 1954, ch. 1206, title I, §§101(d), (g), 104(b), 68 Stat. 1054, 1078; Aug. 1, 1956, ch. 836, title I, §§104(c)(2), (3), (d), (h), 106(a), 70 Stat. 824–826, 828; Pub. L. 85–239, §5(a), Aug. 30, 1957, 71 Stat. 523; Pub. L. 85–840, title I, §102(b), title III, §313(a), Aug. 28, 1958, 72 Stat. 1019, 1036; Pub. L. 86–778, title I, §§103(g), (h), (j)(3), 106(a), Sept. 13, 1960, 74 Stat. 937, 938, 945; Pub. L. 88–272, title II, §227(b)(7), Feb. 26, 1964, 78 Stat. 98; Pub. L. 89–97, title III, §§311(a)(1), (2), 312(a), 319(b), 320(a)(2), July 30, 1965, 79 Stat. 380, 381, 391, 393; Pub. L. 90–248, title I, §§108(a)(2), 115(a), 118(b), 122(a), Jan. 2, 1968, 81 Stat. 834, 839, 841, 843; Pub. L. 92–5, title II, §203(a)(2), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, §203(a)(2), July 1, 1972, 86 Stat. 418; Pub. L. 92–603, title I, §§121(a), 124(a), 140(a), Oct. 30, 1972, 86 Stat. 1353, 1357, 1366; Pub. L. 93–66, title II, §203(a)(2), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(a)(2), Dec. 31, 1973, 87 Stat. 953; Pub. L. 93–368, §10(a), Aug. 7, 1974, 88 Stat. 422; Pub. L. 94–455, title XII, §1207(e)(2)(B), Oct. 4, 1976, 90 Stat. 1707; Pub. L. 95–216, title III, §313(a), Dec. 20, 1977, 91 Stat. 1535; Pub. L. 95–600, title VII, §703(j)(14)(D), (E), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 98–21, title I, §124(c)(3), title III, §§322(b)(1), 323(b)(2), Apr. 20, 1983, 97 Stat. 90, 121; Pub. L. 98–369, div. A, title I, §102(c)(2), div. B, title VI, §§2603(c)(1), (d)(1), 2663(a)(8), July 18, 1984, 98 Stat. 622, 1129, 1163; Pub. L. 99–514, title XVIII, §§1882(b)(2), 1883(a)(6), Oct. 22, 1986, 100 Stat. 2915, 2916; Pub. L. 100–203, title IX, §§9022(a), 9023(b), Dec. 22, 1987, 101 Stat. 1330–295, 1330–296; Pub. L. 100–647, title I, §1011B(b)(4), title III, §3043(b), title VIII, §8016(a)(2), Nov. 10, 1988, 102 Stat. 3488, 3642, 3792; Pub. L. 101–508, title V, §§5123(a)(1), 5130(a)(2), (3), Nov. 5, 1990, 104 Stat. 1388–284, 1388–289; Pub. L. 103–296, title I, §107(a)(4), title III, §§319(b)(2), 321(a)(14), (c)(5), (6)(E)–(G), Aug. 15, 1994, 108 Stat. 1478, 1535, 1536, 1538; Pub. L. 105–34, title IX, §922(b), Aug. 5, 1997, 111 Stat. 880; Pub. L. 108–203, title IV, §§422(a), 424(a), 425(a), Mar. 2, 2004, 118 Stat. 536.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (a)(5)(A). Pub. L. 108–203, §425(a), substituted ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;'' for ''all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;''.

Subsec. (a)(7). Pub. L. 108–203, §422(a), inserted '', but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires'' before semicolon at end.

Subsec. (a)(15). Pub. L. 108–203, §424(a), substituted ''section 162(*l*)'' for ''section 162(m)''.

1997—Subsec. (j). Pub. L. 105–34 added subsec. (j).

1994—Subsec. (a). Pub. L. 103–296, §321(c)(6)(E), substituted ''1986'' for ''1954'' after ''Code of'' wherever appearing in introductory provisions, in pars. (3), (4), (6), (10), (11), and (12), and in cls. (iii) and (iv) of closing provisions.

Subsec. (a)(13) to (15). Pub. L. 103–296, §321(a)(14), (c)(5), struck out ''and'' at end of par. (13), substituted ''; and'' for period at end of par. (14), and inserted ''of the Internal Revenue Code of 1986'' after ''section 162(m)'' in par. (15).

Subsec. (c). Pub. L. 103–296, §321(c)(6)(F), substituted ''1986'' for ''1954'' after ''Code of'' in introductory and closing provisions.

Subsec. (c)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(C). Pub. L. 103–296, §319(b)(2), which directed that subpar. (C) be amended by inserting '', except service which constitutes 'employment' under section 410(r) of this title'' before the semicolon, was executed by making the insertion before the comma at end, to reflect the probable intent of Congress.

Subsec. (c)(2)(E). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(3), (6). Pub. L. 103–296, §321(c)(6)(F), substituted ''1986'' for ''1954'' after ''Code of''.

Subsecs. (d), (e), (h)(1)(B). Pub. L. 103–296, §321(c)(6)(G), substituted ''1986'' for ''1954'' after ''Code of''.

1990—Subsec. (a). Pub. L. 101–508, §5123(a)(1), redesignated last undesignated paragraph, relating to income of an individual which results from or is attributable to performance of services by such individual as a director of a corporation, as subsec. (f)(5) of section 403 of this title.

Subsec. (a)(14), (15). Pub. L. 101–508, §5130(a)(3), redesignated par. (14), relating to nonallowability of deduction under section 162(m) (health insurance costs of self-employed individuals), as (15).

Subsec. (b). Pub. L. 101–508, §5130(a)(2), made technical correction to directory language of Pub. L. 98–21, §322(b)(1). See 1983 Amendment note below.

1988—Subsec. (a)(7). Pub. L. 100–647, §8016(a)(2), inserted ''of the Internal Revenue Code of 1986'' before semicolon at end.

Subsec. (a)(14). Pub. L. 100–647, §3043(b), added par. (14) relating to the exclusion of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (income derived by Indians from exercise of fishing rights).

Pub. L. 100–647, §1011B(b)(4), added par. (14) relating to nonallowability of deduction under section 162(m) (health insurance costs of self-employed individuals).

1987—Subsec. (a). Pub. L. 100–203, §9022(a), inserted par. at end relating to income of an individual which

results from or is attributable to the performance of services by such individual as a director of a corporation.

Subsec. (a)(7). Pub. L. 100–203, § 9023(b)(1), struck out reference to section 931 (relating to income from sources within possessions of the United States) of the Internal Revenue Code of 1954.

Subsec. (a)(8). Pub. L. 100–203, § 9023(b)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''The term 'possession of the United States' as used in sections 931 (relating to income from sources within the possessions of the United States) and 932 (relating to citizens of possessions of the United States) of the Internal Revenue Code of 1986 shall be deemed not to include the Virgin Islands, Guam, or American Samoa;''.

1986—Subsec. (a)(13). Pub. L. 99–514, § 1882(b)(2)(B)(i), amended par. (13) generally. Prior to amendment, par. (13) read as follows: ''With respect to remuneration for service which are treated as services in a trade or business under subsection (c)(2)(G) of this section—

''(A) no deduction for trade or business expenses provided under the Internal Revenue Code of 1954 (other than the deduction under paragraph (11) of this subsection) shall apply;

''(B) the provisions of subsection (b)(2) of this section shall not apply; and

''(C) if the amount of such remuneration from an employer for the taxable year is less than $100, such remuneration from that employer shall not be included in self-employment income.''

Subsec. (b). Pub. L. 99–514, § 1882(b)(2)(B)(ii), inserted at end ''In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).''

Subsec. (c)(2)(G). Pub. L. 99–514, § 1883(a)(6), realigned margins of subpar. (G).

Subsec. (i). Pub. L. 99–514, § 1882(b)(2)(A), added subsec. (i).

1984—Subsec. (a). Pub. L. 98–369, § 2663(a)(8)(A), substituted ''subtitle A of the Internal Revenue Code of 1954'' for ''chapter 1 of the Internal Revenue Code of 1939'', ''such subtitle'' for ''such chapter'', and ''section 702(a)(8) of the Internal Revenue Code of 1954'' for ''section 183 of the Internal Revenue Code of 1939''.

Pub. L. 98–369, § 2663(a)(8)(D), in provisions following numbered pars., substituted ''702(a)(8)'' for ''702(a)(9)'' in cl. (iii) and in two places in cl. (iv).

Subsec. (a)(3). Pub. L. 98–369, § 2663(a)(8)(B), substituted ''subtitle A of the Internal Revenue Code of 1954'' for ''chapter 1 of the Internal Revenue Code of 1939'' and inserted ''or'' before ''(C)''.

Subsec. (a)(4). Pub. L. 98–369, § 2663(a)(8)(C), substituted ''section 172 of the Internal Revenue Code of 1954'' for ''section 23(s) of the Internal Revenue Code of 1939''.

Subsec. (a)(13). Pub. L. 98–369, § 2603(d)(1), added par. (13).

Subsec. (b)(1)(D), (G) to (I). Pub. L. 98–369, § 2663(a)(8)(E), realigned margins of subpars. (D) and (G) to (I).

Subsec. (c). Pub. L. 98–369, § 2663(a)(8)(F), substituted ''section 162 of the Internal Revenue Code of 1954'' for ''section 23 of the Internal Revenue Code of 1939'' in provisions preceding par. (1).

Subsec. (c)(2)(G). Pub. L. 98–369, § 2603(c)(1), added subpar. (G).

Subsec. (c)(3). Pub. L. 98–369, § 2663(a)(8)(G), substituted ''section 3231 of the Internal Revenue Code of 1954'' for ''section 1532 of the Internal Revenue Code of 1939''.

Subsec. (d). Pub. L. 98–369, § 2663(a)(8)(H), substituted ''subchapter K of chapter 1 of the Internal Revenue Code of 1954'' for ''supplement F of chapter 1 of the Internal Revenue Code of 1939''.

Subsec. (e). Pub. L. 98–369, § 2663(a)(8)(I), substituted ''subtitle A of the Internal Revenue Code of 1954'' for ''chapter 1 of the Internal Revenue Code of 1939'' in three places.

Subsec. (h). Pub. L. 98–369, § 102(c)(2), added subsec. (h).

1983—Subsec. (a)(10). Pub. L. 98–21, § 323(b)(2)(A), substituted ''The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1954 shall not apply'' for ''In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply''.

Pub. L. 98–21, § 323(b)(2)(B), temporarily amended par. (10) by substituting ''In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply'' for ''In the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) of the Internal Revenue Code of 1954 shall not apply''. See Effective and Termination Dates of 1983 Amendment note below.

Subsec. (a)(11), (12). Pub. L. 98–21, § 124(c)(3), added par. (11) and redesignated former par. (11) as (12).

Subsec. (b). Pub. L. 98–21, § 322(b)(1), as amended by Pub. L. 101–508, § 5130(a)(2), inserted '', except as provided by an agreement under section 433 of this title'' after ''non-resident alien individual'' in provisions preceding par. (1).

1978—Subsec. (a)(2). Pub. L. 95–600, § 703(j)(14)(D), which directed that ''(other than interest described in section 35 of the Internal Revenue Code of 1954)'' be struck out from subsec. (a)(2) of this section, was executed by striking out ''(other than interest described in section 25(a) of the Internal Revenue Code of 1939)'' as the probable intent of Congress.

Subsec. (c)(6). Pub. L. 95–600, § 703(j)(14)(E), substituted ''section 1402(g)'' for ''section 1402(h)''.

1977—Subsec. (a)(11). Pub. L. 95–216 added par. (11).

1976—Subsec. (c)(2)(F). Pub. L. 94–455 added subpar. (F).

1974—Subsec. (a)(1). Pub. L. 93–368 inserted ''(as determined without regard to any activities of an agent of such owner or tenant)'' after ''material participation by the owner or tenant'' wherever appearing.

1973—Subsec. (b)(1)(H). Pub. L. 93–233 substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

1972—Subsec. (a). Pub. L. 92–603, §§ 121(a)(1), 124(a), 140(a), struck out provisions of par. (7) relating to citizens of the United States performing the specified services as an employee of an American employer (as defined in section 410(e) of this title) or as a minister in a foreign country who has a congregation composed predominantly of United States citizens, inserted provisions in par. (7) relating to the applicability of sections 911 and 931 of title 26, and added par. (10) and provisions for an optional method for determining self-employment earnings.

Subsec. (b)(1)(F). Pub. L. 92–336, § 203(a)(2)(A), inserted ''and prior to 1973'' after ''1971''.

Subsec. (b)(1)(G) to (I). Pub. L. 92–336, § 203(a)(2)(B), added subpars. (G) to (I).

Subsec. (g). Pub. L. 92–603, § 121(a)(2), added subsec. (g).

1971—Subsec. (b)(1)(E). Pub. L. 92–5, § 203(a)(2)(A), inserted ''and beginning prior to 1972'' after ''1967''.

Subsec. (b)(1)(F). Pub. L. 92–5, § 203(a)(2)(B), added subpar. (F).

1968—Subsec. (a)(9). Pub. L. 90–248, § 118(b), added par. (9).

Subsec. (b)(1)(D), (E). Pub. L. 90–248, § 108(a)(2)(A), (B), inserted ''and prior to 1968'' after ''1965'' and added subpar. (E), respectively.

Subsec. (c). Pub. L. 90–248, § 115(a), substituted in last sentence ''unless an exemption under section 1402(e) of the Internal Revenue Code of 1954 is effective with respect to him'' for ''during the period for which a certificate filed by him under section 1402(e) of the Internal Revenue Code of 1954 is in effect''.

Subsec. (c)(1). Pub. L. 90–248, § 122(a)(1), included in term ''trade or business'' functions of a public office of a State or political subdivision thereof with respect to fees received in a position compensated solely on a fee

basis and which position is not covered under a State social security coverage agreement.

Subsec. (c)(2)(E). Pub. L. 90–248, §122(a)(2), added subpar. (E).

1965—Subsec. (a). Pub. L. 89–97, §312(a), substituted ''$2,400'' for ''$1,800'' in cls. (i) to (iv) and ''$1,600'' for ''$1,200'' in cls. (ii) and (iv) of second sentence following par. (8), wherever appearing.

Subsec. (b)(1)(C). Pub. L. 89–97, §320(a)(2)(A), inserted ''and prior to 1966'' after ''1958'' and substituted ''and'' for ''or'' after the semicolon.

Subsec. (b)(1)(D). Pub. L. 89–97, §320(a)(2)(B), added subpar. (D).

Subsec. (c). Pub. L. 89–97, §311(a)(1), (2), struck out from par. (5) ''doctor of medicine or'' before, and ''; or the performance of such service by a partnership'' after ''Christian Science practitioner'' and consolidated into one sentence former last two sentences.

Subsec. (c)(6). Pub. L. 89–97, §319(b), added par. (6).

1964—Subsec. (a)(3)(B), Pub. L. 88–272 amended cl. (B) generally, substituting '', coal, or iron ore, if section 631 of the Internal Revenue Code of 1954 applies'' for ''or coal, if section 117(j) of the Internal Revenue Code of 1954 is applicable''.

1960—Subsec. (a)(6). Pub. L. 86–778, §103(j)(3), substituted ''section 933 of the Internal Revenue Code of 1954'' for ''section 116(1) of the Internal Revenue Code of 1954'', and struck out provisions which defined ''possession of the United States'' in the case of taxable years beginning before the effective date specified in former section 419 of this title.

Subsec. (a)(8). Pub. L. 86–778, §103(g), added par. (8) and inserted a reference to paragraph (8) in cls. (v) and (vi) of last sentence.

Subsec. (b). Pub. L. 86–778, §103(h), provided that individuals who are not citizens of the United States but who are residents of Guam or American Samoa shall not, for the purposes of this subsection, be considered to be nonresident alien individuals, and struck out provisions which related to individuals who were citizens of Puerto Rico prior to the effective date specified in section 419 of this title.

Subsec. (c)(2). Pub. L. 86–778, §106(a), excluded service described in section 410(a)(11), (12), or (15) of this title performed in the United States by a citizen of the United States.

1958—Subsec. (b)(1). Pub. L. 85–840, §102(b), inserted ''and prior to 1959'' after ''year ending after 1954'' in cl. (B), and added cl. (C).

Subsec. (f). Pub. L. 85–840, §313(a), added subsec. (f).

1957—Subsec. (a)(7). Pub. L. 85–239 permitted computation of net earnings without regard to sections 107 and 119 of the Internal Revenue Code of 1954.

1956—Subsec. (a). Act Aug. 1, 1956, §106(a), amended last two sentences generally, to include those businesses in which the income is computed under an accrual method, and partnerships, to change the method of computation of net earnings for individuals by permitting those whose gross income is not more than $1,800 to deem their net earnings to be 66⅔ percent of such gross income, and those whose gross income is more than $1,800 and the net earnings are less than $1,200, to deem the net earnings to be $1,200, and to provide for the computation of net earnings for members of partnerships.

Subsec. (a)(1). Act Aug. 1, 1956, §104(c)(2), struck out from exclusion, income derived by an owner or tenant to land if such income is derived under an arrangement with another individual for the production by such other individual of agricultural or horticultural commodities if such arrangement provides for material participation by the owner or tenant in the production or the management of the production of such commodities, and there is material participation by the owner or tenant with respect to any such commodity.

Subsec. (a)(7)(B). Act Aug. 1, 1956, §104(h), included citizens of the United States who are ministers in foreign countries and have congregations composed predominantly of citizens of the United States.

Subsec. (c)(2). Act Aug. 1, 1956, §104(c)(3), included within term ''trade or business'' service described in section 410(a)(16) of this title.

Subsec. (c)(5). Act Aug. 1, 1956, §104(d), struck out exclusion from coverage in the case of lawyers, dentists, osteopaths, veterinarians, chiropractors, naturopaths, and optometrists.

1954—Subsec. (a)(1). Act Sept. 1, 1954, §101(g)(2), made it clear that rentals paid in crop shares would be excluded as being rentals from real estate.

Subsec. (a)(2). Act Sept. 1, 1954, §101(g)(1), redesignated par. (3) as (2), and struck out former par. (2).

Subsec. (a)(3). Act Sept. 1, 1954, §101(g)(3), redesignated par. (4) as (3), and excluded from ''net earnings from self-employment'' the gain or loss derived from coal royalties under certain conditions. Former par. (3) redesignated (2).

Subsec. (a)(4) to (6). Act Sept. 1, 1954, §101(g)(1), redesignated pars. (5) to (7) as (4) to (6), respectively. Former par. (4) redesignated (3).

Subsec. (a)(7). Act Sept. 1, 1954, §101(d)(3), added par. (7).

Subsec. (a). Act Sept. 1, 1954, §101(g)(1), inserted two sentences at end.

Subsec. (b)(1). Act Sept. 1, 1954, §104(b), excluded from self-employment income, for taxable years after 1954 any amount in excess of $4,200 minus the amount of the wages paid to an individual during the taxable year.

Subsec. (c). Act Sept. 1, 1954, §101(d)(2), inserted two sentences at end making provisions of par. (4) inapplicable to service performed during the period for which a certificate filed under section 1402(e) of title 26 is in effect.

Subsec. (c)(2). Act Sept. 1, 1954, §101(d)(1), inserted ''and other than service described in paragraph (4) of this subsection'' after ''eighteen''.

Subsec. (c)(5). Act Sept. 1, 1954, §101(g)(4), struck out exclusion from coverage in case of architects, certified public accountants, accountants registered or licensed as accountants under State or municipal law, full-time practicing public accountants, funeral directors, or professional engineers.

1950—Subsec. (a)(7). Act Sept. 23, 1950, made provisions applicable to Puerto Rico and provided the basis for computation of net earnings.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, §422(b), Mar. 2, 2004, 118 Stat. 536, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning before, on, or after December 31, 1994.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to payments after Dec. 31, 1997, see section 922(c) of Pub. L. 105–34, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 319(b)(2) of Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5123(a)(1) of Pub. L. 101–508 applicable with respect to income received for services performed in taxable years beginning after Dec. 31, 1990, see section 5123(b) of Pub. L. 101–508, set out as a note under section 403 of this title.

Amendment by section 5130(a)(2) of Pub. L. 101–508 effective as if included in the enactment of Pub. L. 98–21, §322(b)(1), and amendment by section 5130(a)(3) of Pub. L. 101–508 effective as if included in the enactment of Pub. L. 100–647, §1011B(b)(4), see section 5130(b) of Pub. L. 101–508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(b)(4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 3043(b) of Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of Title 26.

Amendment by section 8016(a)(2) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of Title 26.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9022(a) of Pub. L. 100–203 applicable with respect to services performed in taxable years beginning on or after Jan. 1, 1988, see section 9022(c) of Pub. L. 100–203, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1882(b)(2) of Pub. L. 99–514 applicable to remuneration paid or derived in taxable years beginning after Dec. 31, 1985, see section 1882(b)(3) of Pub. L. 99–514, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 1883(a)(6) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(c)(2) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, except as otherwise provided, see section 102(f)(3), (g) of Pub. L. 98–369, set out as a note under section 1256 of Title 26, Internal Revenue Code.

Amendment by section 2603(c)(1), (d)(1) of Pub. L. 98–369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98–369, set out as a note under section 410 of this title.

Amendment by section 2663(a)(8) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 124(c)(3) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 322(b)(2) of Pub. L. 98–21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 3121 of Title 26.

Amendment by section 323(b)(2)(A) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, see section 323(c)(2) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 1402 of Title 26.

Section 323(b)(2)(B) of Pub. L. 98–21 provided that the amendment made by such section 323(b)(2)(B) is effective with respect to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 313(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to taxable years beginning after December 31, 1977.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 10(c) of Pub. L. 93–368 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to taxable years beginning after December 31, 1973.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Section 121(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years beginning after December 31, 1972.''

Section 124(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26] shall apply with respect to taxable years beginning after December 31, 1972.''

Section 140(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26] shall apply with respect to taxable years beginning after December 31, 1972.''

Amendment by Pub. L. 92–336 applicable only with respect to taxable years beginning after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(a)(2) of Pub. L. 90–248 applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Amendment by section 115(a) of Pub. L. 90–248 applicable only with respect to taxable years ending after 1967, see section 115(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 118(b) of Pub. L. 90–248 applicable only with respect to taxable years ending on or after Dec. 31, 1967, see section 118(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26.

Amendment by section 122(a)(1), (2) of Pub. L. 90–248 applicable with respect to fees received after 1967 and with respect to election to exempt fees from coverage

as self-employment income, see section 122(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 311(a)(1), (2) of Pub. L. 89–97 applicable only with respect to taxable years ending on or after Dec. 31, 1965, see section 311(c) of Pub. L. 89–97, set out as a note under section 410 of this title.

Section 312(c) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years beginning after December 31, 1965.''

Amendment by section 319(b) of Pub. L. 89–97 applicable with respect to taxable years beginning after December 31, 1950, see section 319(e) of Pub. L. 89–97, set out as a note under section 1402 of Title 26.

Amendment by section 320(a)(2) of Pub. L. 89–97 applicable with respect to taxable years ending after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 103(g) of Pub. L. 86–778 applicable only in the case of taxable years beginning after 1960, except that, insofar as involves the nonapplication of section 932 of Title 26, Internal Revenue Code, to the Virgin Islands for purposes of sections 1401 et seq. of Title 26 and this section, such amendment shall be effective in the case of all taxable years with respect to which such sections 1401 et seq. (and corresponding provisions of prior law) and this section are applicable, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(h) of Pub. L. 86–778 applicable only in the case of taxable years beginning after 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(j)(3) of Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 106(c) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years ending on or after December 31, 1960; except that for purposes of section 203 of the Social Security Act [section 403 of this title], the amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years (of the individual performing the service involved) beginning after the date of the enactment of this Act [Sept. 13, 1960].''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 313(b) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [amending this section] shall apply—

''(1) with respect to individuals who die after the date of the enactment of this Act [Aug. 28, 1958], and

''(2) with respect to any individual who died after 1955 and on or before the date of the enactment of this Act [Aug. 28, 1958], but only if the requirements of section 403(b)(2) of this Act [section 603(b)(2) of this title] are met.''

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment by Pub. L. 85–239 applicable, except for purposes of section 403 of this title, only with respect to taxable years ending on or after December 31, 1957, see section 5(c) of Pub. L. 85–239, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by section 104(c)(2), (d) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1955, see section 104(i) of such act Aug. 1, 1956, set out as a note under section 410 of this title.

Amendment by section 104(c)(3) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1954, see section 104(i) of act Aug. 1, 1956, set out as a note under section 410 of this title.

Amendment by section 104(h) of act Aug. 1, 1956, applicable with respect to the same taxable years with respect to which the amendment to section 3121(k)(1) of Title 26, Internal Revenue Code, applies, see section 104(i) of act Aug. 1, 1956, set out as a note under section 410 of this title, and section 201(m)(2) of such act Aug. 1, 1956, set out as a note under section 3121 of Title 26.

Section 106(b) of act Aug. 1, 1956, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to taxable years ending on or after December 31, 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Amendments by section 101(d), (g)(1), (2), (4) of act Sept. 1, 1954, applicable only with respect to taxable years ending after 1954, amendment by section 101(g)(3) of act Sept. 1, 1954, applicable only with respect to taxable years beginning after 1950, and, for purposes of section 403 of this title, the amendments made by paragraphs (1), (2), and (4) of subsection (g) and by subsection (d) [of said section 101] effective with respect to net earnings from self-employment derived after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Sept. 23, 1950, applicable with respect to taxable years beginning after Dec. 31, 1950, see section 221(k) of act Sept. 23, 1950.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

TREATY OBLIGATIONS

Section 214 of act Sept. 23, 1950, provided that: ''No amendment made by this Act [see Tables for classification] shall apply in any case where its application would be contrary to any treaty obligation of the United States.''

§ 412. Self-employment income credited to calendar years

(a) For the purposes of determining average monthly wage and quarters of coverage the amount of self-employment income derived during any taxable year which begins before 1978 shall—

(1) in the case of a taxable year which is a calendar year, be credited equally to each quarter of such calendar year; and

(2) in the case of any other taxable year, be credited equally to the calendar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters any part of which is in such taxable year.

(b) For the purposes of determining average indexed monthly earnings, average monthly

wage, and quarters of coverage the amount of self-employment income derived during any taxable year which begins after 1977 shall—

(1) in the case of a taxable year which is a calendar year or which begins with or during a calendar year and ends with or during such year, be credited to such calendar year; and

(2) in the case of any other taxable year, be allocated proportionately to the two calendar years, portions of which are included within such taxable year, on the basis of the number of months in each such calendar year which are included completely within the taxable year.

For purposes of clause (2), the calendar month in which a taxable year ends shall be treated as included completely within that taxable year.

(Aug. 14, 1935, ch. 531, title II, § 212, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 504; amended Pub. L. 95–216, title III, § 351(b), Dec. 20, 1977, 91 Stat. 1549.)

AMENDMENTS

1977—Pub. L. 95–216 designated existing provisions as subsec. (a), substituted provisions relating to crediting of self-employment income to calendar years for provisions relating to crediting of self-employment income to calendar quarters, and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective Jan. 1, 1978, see section 351(d) of Pub. L. 95–216, set out as a note under section 409 of this title.

§ 413. Quarter and quarter of coverage

(a) Definitions

For the purposes of this subchapter—

(1) The term ''quarter'', and the term ''calendar quarter'', mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2)(A) The term ''quarter of coverage'' means—

(i) for calendar years before 1978, and subject to the provisions of subparagraph (B), a quarter in which an individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 412 of this title) with $100 or more of self-employment income; and

(ii) for calendar years after 1977, and subject to the provisions of subparagraph (B), each portion of the total of the wages paid and the self-employment income credited (pursuant to section 412 of this title) to an individual in a calendar year which equals the amount required for a quarter of coverage in that calendar year (as determined under subsection (d) of this section), with such quarter of coverage being assigned to a specific calendar quarter in such calendar year only if necessary in the case of any individual who has attained age 62 or died or is under a disability and the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title would not otherwise be met.

(B) Notwithstanding the provisions of subparagraph (A)—

(i) no quarter after the quarter in which an individual dies shall be a quarter of coverage, and no quarter any part of which is included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage;

(ii) if the wages paid to an individual in any calendar year equal $3,000 in the case of a calendar year before 1951, or $3,600 in the case of a calendar year after 1950 and before 1955, or $4,200 in the case of a calendar year after 1954 and before 1959, or $4,800 in the case of a calendar year after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965 and before 1968, or $7,800 in the case of a calendar year after 1967 and before 1972, or $9,000 in the case of the calendar year 1972, or $10,800 in the case of the calendar year 1973, or $13,200 in the case of the calendar year 1974, or an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 and before 1978 with respect to which such contribution and benefit base is effective, each quarter of such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iii) if an individual has self-employment income for a taxable year, and if the sum of such income and the wages paid to him during such year equals $3,600 in the case of a taxable year beginning after 1950 and ending before 1955, or $4,200 in the case of a taxable year ending after 1954 and before 1959, or $4,800 in the case of a taxable year ending after 1958 and before 1966, or $6,600 in the case of a taxable year ending after 1965 and before 1968, or $7,800 in the case of a taxable year ending after 1967 and before 1972, or $9,000 in the case of a taxable year beginning after 1971 and before 1973, or $10,800 in the case of a taxable year beginning after 1972 and before 1974, or $13,200 in the case of a taxable year beginning after 1973 and before 1975, or an amount equal to the contribution and benefit base (as determined under section 430 of this title) which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1974 and before 1978, each quarter any part of which falls in such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iv) if an individual is paid wages for agricultural labor in a calendar year after 1954 and before 1978, then, subject to clauses (i) and (v), (I) the last quarter of such year which can be but is not otherwise a quarter of coverage shall be a quarter of coverage if such wages equal or exceed $100 but are less than $200; (II) the last two quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $200 but are less than $300; (III) the last three quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $300 but are less than $400; and (IV) each quarter of such year which is not otherwise a quarter of coverage shall be a quarter of coverage if such wages are $400 or more;

(v) no quarter shall be counted as a quarter of coverage prior to the beginning of such quarter;

(vi) not more than one quarter of coverage may be credited to a calendar quarter; and

(vii) no more than four quarters of coverage may be credited to any calendar year after 1977.

If in the case of an individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954 and before 1978, the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title are not met after assignment of quarters of coverage to quarters in such year as provided in clause (iv) of the preceding sentence, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die prior to January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 414(a)(3) of this title are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned.

(b) Crediting of wages paid in 1937

With respect to wages paid to an individual in the six-month periods commencing either January 1, 1937, or July 1, 1937; (A) if wages of not less than $100 were paid in any such period, one-half of the total amount thereof shall be deemed to have been paid in each of the calendar quarters in such period; and (B) if wages of less than $100 were paid in any such period, the total amount thereof shall be deemed to have been paid in the latter quarter of such period, except that if in any such period, the individual attained age sixty-five, all of the wages paid in such period shall be deemed to have been paid before such age was attained.

(c) Alternative method for determining quarters of coverage with respect to wages in period from 1937 to 1950

For purposes of sections 414(a) and 415(d) of this title, an individual shall be deemed to have one quarter of coverage for each $400 of his total wages prior to 1951 (as defined in section 415(d)(1)(C) of this title), except where such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to such individual for periods after 1950.

(d) Amount required for a quarter of coverage

(1) The amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in any year under subsection (a)(2)(A)(ii) of this section shall be $250 in the calendar year 1978 and the amount determined under paragraph (2) of this subsection for years after 1978.

(2) The Commissioner of Social Security shall, on or before November 1 of 1978 and of every year thereafter, determine and publish in the Federal Register the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in the succeeding calendar year. The amount required for a quarter of coverage shall be the larger of—

(A) the amount in effect in the calendar year in which the determination under this subsection is made, or

(B) the product of the amount prescribed in paragraph (1) which is required for a quarter of coverage in 1978 and the ratio of the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the determination under this paragraph is made to the national average wage index (as so defined) for 1976,

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(Aug. 14, 1935, ch. 531, title II, §213, as added Aug. 28, 1950, ch. 809, title I, §104(a), 64 Stat. 492, 504; amended July 18, 1952, ch. 945, §§3(a), 66 Stat. 770; Sept. 1, 1954, ch. 1206, title I, §§104(c), 106(a), 108(b), 68 Stat. 1078, 1084; Aug. 1, 1956, ch. 836, title I, §105(c), 70 Stat. 828; Pub. L. 85–840, title I, §102(c), Aug. 28, 1958, 72 Stat. 1019; Pub. L. 86–442, §3, Apr. 22, 1960, 74 Stat. 82; Pub. L. 86–778, title II, §206(a), Sept. 13, 1960, 74 Stat. 949; Pub. L. 87–64, title I, §102(c)(2)(A), (3)(B), June 30, 1961, 75 Stat. 134, 135; Pub. L. 89–97, title III, §320(a)(3), July 30, 1965, 79 Stat. 393; Pub. L. 90–248, title I, §§108(a)(3), 155(b)(1), Jan. 2, 1968, 81 Stat. 834, 865; Pub. L. 92–5, title II, §203(a)(3), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, §203(a)(3), July 1, 1972, 86 Stat. 418; Pub. L. 93–66, title II, §203(a)(3), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(a)(3), Dec. 31, 1973, 87 Stat. 953; Pub. L. 95–216, title III, §§351(c), 352(a), (b), Dec. 20, 1977, 91 Stat. 1550, 1552; Pub. L. 96–473, §6(c), Oct. 19, 1980, 94 Stat. 2265; Pub. L. 98–369, div. B, title VI, §2663(a)(9), July 18, 1984, 98 Stat. 1164; Pub. L. 101–239, title X, §10208(b)(2)(A), (B), (d)(2)(A)(i), Dec. 19, 1989, 103 Stat. 2477, 2478, 2480; Pub. L. 101–508, title V, §5117(c)(1), Nov. 5, 1990, 104 Stat. 1388–278; Pub. L. 103–296, title I, §107(a)(4), title III, §321(a)(15), (e)(2)(A), Aug. 15, 1994, 108 Stat. 1478, 1536, 1539.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–296, §321(a)(15), substituted ''sections'' for ''section'' before ''414(a) and 415(d) of this title''.

Subsec. (d)(2). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions.

Subsec. (d)(2)(B). Pub. L. 103–296, § 321(e)(2)(A), substituted ''national average wage index'' for ''deemed average total wages'' before ''(as defined in'' and ''the national average wage index (as so defined) for 1976,'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for 1976 (as published in the Federal Register in accordance with section 415(a)(1)(D) of this title),''.

1990—Subsec. (c). Pub. L. 101–508 inserted ''and 415(d)'' after ''section 414(a)'' and substituted ''except where such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to such individual for periods after 1950.'' for ''except where—

''(1) such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to him for periods after 1950, or

''(2) such individual's elapsed years (for purposes of section 414(a)(1) of this title) are less than 7.''

1989—Subsec. (d)(2)(B). Pub. L. 101–239, § 10208(b)(2)(A), (B), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate'' and ''(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title)'' for ''(as so defined and computed)''.

Pub. L. 101–239, § 10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

1984—Subsec. (a)(1). Pub. L. 98–369, § 2663(a)(9)(A), substituted ''mean'' for ''means''.

Subsec. (a)(2)(B)(ii). Pub. L. 98–369, § 2663(a)(9)(B), substituted ''equal $3,000'' for ''equal to $3,000''.

1980—Subsec. (a)(2)(A). Pub. L. 96–473 substituted reference to quarter of coverage, for reference to quarters of coverage.

1977—Subsec. (a)(2). Pub. L. 95–216, §§ 351(c), 352(a), substituted provisions relating to factors respecting definition of ''quarters of coverage'' for calendar years before 1978, subject to the provisions of subpar. (B) of this par., and for calendar years after 1977, subject to the provisions of subpar. (B) of this par., for provisions relating to factors respecting definition of ''quarter of coverage'' as a quarter in which the individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 412 of this title) with $100 or more of self-employment income.

Subsec. (d). Pub. L. 95–216, § 352(b), added subsec. (d).

1973—Subsec. (a)(2)(ii), (iii). Pub. L. 93–233 substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000'', in cls. (ii) and (iii).

1972—Subsec. (a)(2)(ii). Pub. L. 92–336, § 203(a)(3)(A), inserted provisions for determining a quarter of coverage based on amounts earned as wages after 1971 and before 1975, and amounts equal to the contribution and benefit base in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective.

Subsec. (a)(2)(iii). Pub. L. 92–336, § 203(a)(3)(B), inserted provisions for determining a quarter of coverage based on amounts earned as wages after 1971 and before 1975, and amounts equal to the contribution and benefit base which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1974.

1971—Subsec. (a)(2)(ii). Pub. L. 92–5, § 203(a)(3)(A), substituted ''after 1967 and before 1972, or $9,000 in the case of a calendar year after 1971'' for ''after 1967''.

Subsec. (a)(2)(iii). Pub. L. 92–5, § 203(a)(3)(B), substituted ''after 1967 and beginning before 1972, or $9,000 in the case of a taxable year beginning after 1971'' for ''after 1967''.

1968—Subsec. (a)(2)(ii). Pub. L. 90–248, § 108(a)(3)(A), inserted ''and before 1968, or $7,800 in the case of a calendar year after 1967'' after ''1965''.

Subsec. (a)(2)(iii). Pub. L. 90–248, § 108(a)(3)(B), inserted ''and before 1968, or $7,800 in the case of a taxable year ending after 1967'' after ''1965''.

Subsec. (c). Pub. L. 90–248, § 155(b)(1), added subsec. (c).

1965—Subsec. (a)(2)(ii). Pub. L. 89–97, § 320(a)(3)(A), substituted ''after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965'' for ''after 1958''.

Subsec. (a)(2)(iii). Pub. L. 89–97, § 320(a)(3)(B), substituted ''after 1958 and before 1966, or $6,600 in the case of a taxable year ending after 1965'' for ''after 1958''.

1961—Subsec. (a). Pub. L. 87–64 substituted ''has attained age 62'' for ''has attained retirement age'', and ''who attained age 62 (if a woman) or age 65 (if a man)'' for ''who attained retirement age''.

1960—Subsec. (a)(2). Pub. L. 86–778 required each quarter of a calendar year before 1951 to be counted as a quarter of coverage if the individual received wages equal to $3,000 in the calendar year.

Pub. L. 86–442 inserted sentence in cl. (B) to permit the quarters of coverage in a calendar year to be determined on the basis of the periods during which wages were earned in the case of individuals who did not die prior to Jan. 1, 1955, and who attained retirement age or died before July 1, 1957, who did not meet the requirements for insured status because of having too few quarters of coverage but who would meet the requirements if the quarters of coverage in the first calendar year in which they had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid.

1958—Subsec. (a)(2)(B). Pub. L. 85–840 inserted ''and before 1959, or $4,800 in the case of a calendar year after 1958'' after ''after 1954'' in cl. (ii), and ''and before 1959, or $4,800 in the case of a taxable year ending after 1958'' after ''after 1954'' in cl. (iii).

1956—Subsec. (a)(2)(B)(iv). Act Aug. 1, 1956, substituted ''if such wages equal or exceed $100 but are less than $200'' for ''if such wages are less than $200''.

1954—Subsec. (a)(2)(A). Act Sept. 1, 1954, § 106(a)(1), redefined ''quarter of coverage,'' in the case of quarters occurring before 1951, to exclude any quarter any part of which was included in a period of disability, other than the initial quarter of such period, and which provided that any quarter any part of which was included in a period of disability, other than the first quarter of such period, could not be counted as a quarter of coverage in a calendar year in which wages of $3,000 or more were paid.

Subsec. (a)(2)(B). Act Sept. 1, 1954, § 104(c), provided that for calendar years after 1954 an individual shall be credited with a quarter of coverage for each quarter of the year if his wages for the year equal $4,200 and he shall be credited with a quarter of coverage for each quarter of a taxable year ending after 1954 in which the sum of his wages and self-employment income equal $4,200.

Act Sept. 1, 1954, § 108(b), provided for crediting quarters of coverage on basis of annual amounts of wages received for agricultural labor.

Subsec. (a)(2)(B)(i). Act Sept. 1, 1954, § 106(a)(2), redefined ''quarter of coverage'', for quarters occurring after 1950, to exclude any quarter any part of which was included in a period of disability, other than the first and last quarters of such period.

1952—Subsec. (a)(2)(A). Act July 18, 1952, § 3(a)(1), redefined ''quarter of coverage''.

Subsec. (a)(2)(B)(i). Act July 18, 1952, § 3(a)(2), inserted ''and no quarter any part of which was included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage''.

Subsec. (a)(2)(B)(iii). Act July 18, 1952, §3(a)(3), substituted ''shall (subject to clause (i) of this subparagraph) be a quarter of coverage'' for ''shall be a quarter of coverage''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5117(c)(3) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note below] shall apply only with respect to individuals who—

''(A) make application for benefits under section 202 of the Social Security Act [section 402 of this title] after the 18-month period following the month in which this Act is enacted [November 1990], and

''(B) are not entitled to benefits under section 227 or 228 of such Act [section 427 or 428 of this title] for the month in which such application is made.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(2)(A), (B) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 351(c) of Pub. L. 95–216 effective Jan. 1, 1978, see section 351(d) of Pub. L. 95–216, set out as a note under section 409 of this title.

Section 352(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall be effective January 1, 1978.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 203(a)(3)(A) of Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, and amendment by section 203(a)(3)(B) of Pub. L. 92–336 applicable only with respect to taxable years beginning after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by section 203(a)(3)(A) of Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, and amendment by section 203(a)(3)(B) of Pub. L. 92–5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(a)(3)(A) of Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, and amendment by section 108(a)(3)(B) applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Section 155(b)(2) of Pub. L. 90–248, as amended by Pub. L. 101–508, title V, §5117(c)(2), Nov. 5, 1990, 104 Stat. 1388–278, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only in the case of an individual who applies for benefits under section 202(a) of the Social Security Act [section 402(a) of this title] after the date of the enactment of this Act [Jan. 2, 1968], or who dies without being entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of this title].''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 320(a)(3)(A) of Pub. L. 89–97 applicable with respect to remuneration paid after December, 1965, and amendment by section 320(a)(3)(B) of Pub. L. 89–97 applicable with respect to taxable years ending after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961 based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 206(b) of Pub. L. 86–778 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply only in the case of monthly benefits under title II of the Social Security Act [this subchapter], and the lump-sum death payment under section 202 of such Act [section 402 of this title], based on the wages and self-employment income of an individual—

''(A) who becomes entitled to benefits under section 202(a) or 223 of such Act [section 402(a) or 423 of this title] on the basis of an application filed in or after the month in which this Act is enacted [September 1960]; or

''(B) who is (or would, but for the provisions of section 215(f)(6) of the Social Security Act [section 415(f)(6) of this title], be) entitled to a recomputation of his primary insurance amount under section 215(f)(2)(A) of such Act on the basis of an application filed in or after the month in which this Act is enacted [September 1960]; or

''(C) who dies without becoming entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of this title], and (unless he dies a currently insured individual but not a fully insured individual (as those terms are defined in section 214 of such Act [section 414 of this title])) without leaving any individual entitled (on the basis of his wages and self-employment income) to survivor's benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] on the basis of an application filed prior to the month in which this Act is enacted [September 1960]; or

''(D) who dies in or after the month in which this Act is enacted [September 1960] and whose survivors are (or would, but for the provisions of section 215(f)(6) of the Social Security Act [section 415(f)(6) of this title], be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act; or

''(E) who dies prior to the month in which this Act is enacted [September 1960] and (i) whose survivors are (or would, but for the provisions of section 215(f)(6) of the Social Security Act, be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act [section 415(f)(4)(A) of this title], and (ii) on the basis of whose wages and self-employment income no individual was

entitled to survivor's benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] on the basis of an application filed prior to the month in which this Act is enacted [September 1960] (and no individual was entitled to such a benefit, without the filing of an application, for any month prior to the month in which this Act is enacted [September 1960]); or

''(F) who files an application for a recomputation under section 102(f)(2)(B) of the Social Security Amendments of 1954 [set out as a note under section 415 of this title] in or after the month in which this Act is enacted [September 1960] and is (or would, but for the fact that such recomputation would not result in a higher primary insurance amount, be) entitled to have his primary insurance amount recomputed under such subparagraph; or

''(G) who dies and whose survivors are (or would, but for the fact that such recomputation would not result in a higher primary insurance amount for such individual, be) entitled, on the basis of an application filed in or after the month in which this Act [September 1960] is enacted, to have his primary insurance amount recomputed under section 102(f)(2)(B) of the Social Security Amendments of 1954 [set out as a note under section 415 of this title].

''(2) The amendment made by subsection (a) [amending this section] shall also be applicable in the case of applications for disability determination under section 216(i) of the Social Security Act [section 416(i) of this title] filed in or after the month in which this Act is enacted [September 1960].

''(3) Notwithstanding any other provisions of this subsection, in the case of any individual who would not be a fully insured individual under section 214(a) of the Social Security Act [section 414(a) of this title] except for the enactment of this section, no benefits shall be payable on the basis of his wages and self-employment income for any month prior to the month in which this Act is enacted [September 1960].''

Section 3 of Pub. L. 86–442 provided in part that: ''This amendment [amending this section] shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after June 1957, and in the case of the lump-sum death payments under such title, with respect to deaths occurring after such month; the requirements for filing applications for such benefits and payments within certain time limits, as prescribed in sections 202(i) and 202(j) of such title [sections 402(i) and 402(j) of this title], shall not apply if an application is filed within the one-year period beginning with the first day of the month after the month in which this Act is enacted [April 1960].''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 106(h) of act Sept. 1, 1954, provided that: ''Notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f) of this title], the amendments made by subsections (a), (b), (c), (d), (e), and (f) of this section [amending this section and sections 414 to 417 of this title and section 228e of Title 45, Railroads] shall apply with respect to monthly benefits under title II of the Social Security Act [subchapter II of this chapter] for months after June 1955, and with respect to lump-sum death payments under such title in the case of deaths occurring after June 1955; but no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [section 415(f) of this title].''

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Section 3(f) of act July 18, 1952, provided that: ''Notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title], the amendments made by subsections (a), (b), (c), and (d) of this section [amending this section and sections 414 to 416, 420, and 421 of this title] shall apply to monthly benefits under title II of the Social Security Act [subchapter II of this chapter] for months after June 1953, and to lump-sum death payments under such title in the case of deaths occurring after June 1953; but no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [section 415(f) of this title].''

Section 3(g) of act July 18, 1952, provided that: ''Notwithstanding the preceding provisions of this section and the amendments made thereby [amending this section and sections 414 to 416, 420, and 421 of this title], such provisions and amendments shall cease to be in effect at the close of June 30, 1953, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this Act had not been enacted.''

§ 414. Insured status for purposes of old-age and survivors insurance benefits

For the purposes of this subchapter—

(a) "Fully insured individual" defined

The term ''fully insured individual'' means any individual who had not less than—

(1) one quarter of coverage (whenever acquired) for each calendar year elapsing after 1950 (or, if later, the year in which he attained age 21) and before the year in which he died or (if earlier) the year in which he attained age 62, except that in no case shall an individual be a fully insured individual unless he has at least 6 quarters of coverage; or

(2) 40 quarters of coverage; or

(3) in the case of an individual who died before 1951, 6 quarters of coverage;

not counting as an elapsed year for purposes of paragraph (1) any year any part of which was included in a period of disability (as defined in section 416(i) of this title), and who satisfies the criterion specified in subsection (c) of this section.

(b) "Currently insured individual" defined

The term ''currently insured individual'' means any individual who had not less than six quarters of coverage during the thirteen-quarter period ending with (1) the quarter in which he died, (2) the quarter in which he became entitled to old-age insurance benefits, (3) the quarter in which he became entitled to primary insurance benefits under this subchapter as in effect prior to August 28, 1950, or (4) in the case of any individual entitled to disability insurance benefits, the quarter in which he most recently became entitled to disability insurance benefits, not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage, and who satisfies the criterion specified in subsection (c) of this section.

(c) Criterion described

For purposes of subsections (a) and (b) of this section, the criterion specified in this subsection is that the individual, if not a United States citizen or national—

(1) has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 405(c)(2)(B)(i) of this title; or

(2) at the time any such quarters of coverage are earned—

(A) is described in subparagraph (B) or (D) of section 1101(a)(15) of title 8,

(B) is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)), and

(C) the business engaged in or service as a crewman performed is within the scope of the terms of such individual's admission to the United States.

(Aug. 14, 1935, ch. 531, title II, §214, as added Aug. 28, 1950, ch. 809, title I, §104(a), 64 Stat. 492, 505; amended July 18, 1952, ch. 945, §3(b), 66 Stat. 770; Sept. 1, 1954, ch. 1206, title I, §§106(b), 108(a), 68 Stat. 1079, 1083; Aug. 1, 1956, ch. 836, title I, §108, 70 Stat. 830; Pub. L. 85–840, title II, §205(*l*), Aug. 28, 1958, 72 Stat. 1025; Pub. L. 86–778, title II, §204(a), Sept. 13, 1960, 74 Stat. 948; Pub. L. 87–64, title I, §103(a), June 30, 1961, 75 Stat. 137; Pub. L. 92–603, title I, §104(a), Oct. 30, 1972, 86 Stat. 1340; Pub. L. 108–203, title II, §211(a), Mar. 2, 2004, 118 Stat. 518.)

CODIFICATION

Section 211(a) of Pub. L. 108–203, which directed amendment of section 214, was executed to this section, which is section 214 of the Social Security Act, to reflect the probable intent of Congress. See 2004 Amendment notes below.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–203, §211(a)(1), inserted ", and who satisfies the criterion specified in subsection (c) of this section" before period at end. See Codification note above.

Subsec. (b). Pub. L. 108–203, §211(a)(2), inserted ", and who satisfies the criterion specified in subsection (c) of this section" before period at end. See Codification note above.

Subsec. (c). Pub. L. 108–203, §211(a)(3), added subsec. (c). See Codification note above.

1972—Subsec. (a)(1). Pub. L. 92–603 struck out provisions setting a separate age computation point for women and reduced from age 65 to age 62 the age computation point for men.

1961—Subsec. (a). Pub. L. 87–64 required one quarter of coverage for each calendar year elapsing after 1950 (or after the year in which the individual attained age 21, if that was later than 1950) instead of one quarter of coverage for each three of the quarters elapsing after 1950, and struck out "unless such quarter was a quarter of coverage" after "a period of disability (as defined in section 41i(i) of this title)".

1960—Subsec. (a). Pub. L. 86–778 changed provisions which required an individual to have one quarter of coverage for each two quarters to provide that an individual is fully insured if he has not less than one quarter of coverage for each three quarters elapsing after Dec. 31, 1950, or, if later, December 31 of the year in which he attained the age of 21 years, and inserted provisions defining fully insured in the case of an individual who died prior to 1951 as one who had six quarters of coverage.

1958—Subsec. (b). Pub. L. 85–840 included within definition of "currently insured individual" an individual entitled to disability insurance benefits who has not less than six quarters of coverage during the thirteen-quarter period ending with the quarter in which he most recently became entitled to disability insurance benefits.

1956—Subsec. (a)(3). Act Aug. 1, 1956, provided that an individual who had at least six quarters of coverage after 1954 would be fully insured if all but four of the quarters elapsing after 1954 and prior to July 1, 1957, or if later, the quarter in which he attained retirement age or died, whichever first occurred, are quarters of coverage.

1954—Subsec. (a)(2)(B). Act Sept. 1, 1954, §106(b)(1), excluded from the elapsed period under subsec. (a)(2)(A) any quarter any part of which was included in a period of disability, unless such quarter was a quarter of coverage.

Subsec. (a)(3), (4). Act Sept. 1, 1954, §108(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b). Act Sept. 1, 1954, §106(b)(2), inserted ", not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage."

1952—Subsec. (a)(2)(B). Act July 18, 1952, §3(b)(1), inserted "not counting as an elapsed quarter for purposes of subparagraph (A) any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title unless such quarter was a quarter of coverage".

Subsec. (b). Act July 18, 1952, §3(b)(2), inserted "not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage" after "August 28, 1950".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, §211(c), Mar. 2, 2004, 118 Stat. 518, provided that: "The amendments made by this section [amending this section and section 423 of this title] apply to benefit applications based on social security account numbers issued on or after January 1, 2004."

EFFECTIVE DATE OF 1972 AMENDMENT

Section 104(j) of Pub. L. 92–603 provided that:

"(1) The amendments made by this section [amending this section and sections 415, 416, 423, and 427 of this title and provisions set out as a note under section 415 of this title] (except the amendment made by subsection (i), and the amendment made by subsection (g) to section 209(i) of the Social Security Act) shall apply only in the case of a man who attains (or would attain) age 62 after December 1974. The amendment made by subsection (i), and the amendment made by subsection (g) to section 209(i) of the Social Security Act [section 409(i) of this title and section 3121(a)(9) of Title 26, Internal Revenue Code], shall apply only with respect to payments after 1974.

"(2) In the case of a man who attains age 62 prior to 1975, the number of his elapsed years for purposes of section 215(b)(3) of the Social Security Act [section 415(b)(3) of this title] shall be equal to (A) the number determined under such section as in effect on September 1, 1972, or (B) if less, the number determined as though he attained age 65 in 1975, except that monthly benefits under title II of the Social Security Act [this subchapter] for months prior to January 1973 payable on the basis of his wages and self-employment income shall be determined as though this section had not been enacted.

"(3)(A) In the case of a man who attains or will attain age 62 in 1973, the figure '65' in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act [subsec. (a)(1) of this section and sections 423(c)(1)(A) and 416(i)(3)(A) of this title] shall be deemed to read '64'.

"(B) In the case of a man who attains or will attain age 62 in 1974, the figure '65' in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act [subsec. (a)(1) of this section and sections 423(c)(1)(A) and 416(i)(3)(A) of this title] shall be deemed to read '63'."

EFFECTIVE DATE OF 1961 AMENDMENT

Section 103(b) of Pub. L. 87–64 provided that: "The amendment made by subsection (a) [amending this section] shall apply—

''(1) in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months beginning on or after the effective date of this title [see note set out under section 402 of this title], based on applications filed in or after March 1961,

''(2) in the case of lump-sum death payments under such title with respect to deaths on or after the effective date of this title, and

''(3) in the case of an application for a disability determination (with respect to a period of disability, as defined in section 216(i) of such Act [section 416(i) of this title]) filed in or after March 1961.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 204(d)(1) of Pub. L. 86–778 provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section and provisions set out as a note under section 415 of this title] shall be applicable (A) in the case of monthly benefits under title II of the Social Security Act [this subchapter], for months after the month in which this Act is enacted [September 1960], on the basis of applications filed in or after such month, (B) in the case of lump-sum death payments under such title with respect to deaths occurring after such month, and (C) in the case of an application for a disability determination with respect to a period of disability (as defined in section 216(i) of the Social Security Act [section 416(i) of this title]) filed after such month.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 205(*l*) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 106(b) of act Sept. 1, 1954, applicable with respect to monthly benefits under subchapter II of this chapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 415(f) of this title, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

For effective and termination dates of amendment by act July 18, 1952, see section 3(f), (g) of act July 18, 1952, set out as a note under section 413 of this title.

EMPLOYEES OF NONPROFIT ORGANIZATIONS AS FULLY INSURED INDIVIDUALS

Pub. L. 98–21, title I, § 102(e), Apr. 20, 1983, 97 Stat. 71, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) If any individual—

''(A) on January 1, 1984, is age 55 or over, and is an employee of an organization described in section 210(a)(8)(B) of the Social Security Act [42 U.S.C. 410(a)(8)(B)] (A) which does not have in effect (on that date) a waiver certificate under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(k)] and (B) to the employees of which social security coverage is extended on January 1, 1984, solely by reason of the enactment of this section [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under section 3121 of Title 26], and

''(B) after December 31, 1983, acquires the number of quarters of coverage (within the meaning of section 213 of the Social Security Act [section 413 of this title]) which is required for purposes of this subparagraph under paragraph (2),

then such individual shall be deemed to be a fully insured individual (as defined in section 214 of the Social Security Act [this section]) for all of the purposes of title II of such Act [this subchapter].

''(2) The number of quarters of coverage which is required for purposes of subparagraph (B) of paragraph (1) shall be determined as follows:

''In the case of an individual who on January 1, 1984, is—	**The number of quarters of coverage so required shall be—**
age 60 or over	6
age 59 or over but less than age 60	8
age 58 or over but less than age 59	12
age 57 or over but less than age 58	16
age 55 or over but less than age 57	20.''

DETERMINATION OF ENTITLEMENT TO MONTHLY BENEFITS FOR SEPT. 1960 AND PRIOR MONTHS AND INDIVIDUAL'S CLOSING DATE PRIOR TO 1960

Section 204(d)(2) of Pub. L. 86–778 provided that the provisions of subsec. (a) of this section in effect prior to Sept. 13, 1960, and the provisions of section 109 of act Sept. 1, 1954, ch. 1206, 68 Stat. 1084, set out as a note under section 415 of this title, as in effect prior to such date were to apply for purposes of determining entitlement to monthly benefits under this subchapter for Sept. 1960 and prior months with respect to wages and self-employment income of an individual and for purposes of determining an individual's closing date prior to 1960 under section 415(b)(3)(B) of this title.

§ 415. Computation of primary insurance amount

For the purposes of this subchapter—

(a) Primary insurance amount

(1)(A) The primary insurance amount of an individual shall (except as otherwise provided in this section) be equal to the sum of—

(i) 90 percent of the individual's average indexed monthly earnings (determined under subsection (b) of this section) to the extent that such earnings do not exceed the amount established for purposes of this clause by subparagraph (B),

(ii) 32 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (i) but do not exceed the amount established for purposes of this clause by subparagraph (B), and

(iii) 15 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (ii),

rounded, if not a multiple of $0.10, to the next lower multiple of $0.10, and thereafter increased as provided in subsection (i) of this section.

(B)(i) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the calendar year 1979, the amount established for purposes of clause (i) and (ii) of subparagraph (A) shall be $180 and $1,085, respectively.

(ii) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established with respect to the calendar year 1979 under clause (i) of this subparagraph and the quotient obtained by dividing—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the second calendar year preceding the calendar year for which the determination is made, by

(II) the national average wage index (as so defined) for 1977.

(iii) Each amount established under clause (ii) for any calendar year shall be rounded to the nearest $1, except that any amount so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

(C)(i) No primary insurance amount computed under subparagraph (A) may be less than an amount equal to $11.50 multiplied by the individual's years of coverage in excess of 10, or the increased amount determined for purposes of this clause under subsection (i) of this section.

(ii) For purposes of clause (i), the term ''years of coverage'' with respect to any individual means the number (not exceeding 30) equal to the sum of (I) the number (not exceeding 14 and disregarding any fraction) determined by dividing (a) the total of the wages credited to such individual (including wages deemed to be paid prior to 1951 to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] prior to 1951 which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid prior to 1951 to such individual under section 431 of this title) for years after 1936 and before 1951 by (b) $900, plus (II) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(B)(ii) of this section) and in each of which he is credited with wages (including wages deemed to be paid to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid to such individual under section 429 of this title) and self-employment income of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e) of this section) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e) of this section) could be counted for such year if section 430 of this title as in effect immediately prior to December 20, 1977, had remained in effect without change (except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).

(D) In each calendar year the Commissioner of Social Security shall publish in the Federal Register, on or before November 1, the formula for computing benefits under this paragraph and for adjusting wages and self-employment income under subsection (b)(3) of this section in the case of an individual who becomes eligible for an old-age insurance benefit, or (if earlier) becomes eligible for a disability insurance benefit or dies, in the following year, and the national average wage index (as defined in section 409(k)(1) of this title) on which that formula is based.

(2)(A) A year shall not be counted as the year of an individual's death or eligibility for purposes of this subsection or subsection (i) of this section in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit or benefits to which he was entitled during such 12 months).

(B) In the case of an individual who was entitled to a disability insurance benefit for any of the 12 months before the month in which he became entitled to an old-age insurance benefit, became reentitled to a disability insurance benefit, or died, the primary insurance amount for determining any benefit attributable to that entitlement, reentitlement, or death is the greater of—

(i) the primary insurance amount upon which such disability insurance benefit was based, increased by the amount of each general benefit increase (as defined in subsection (i)(3) of this section), and each increase provided under subsection (i)(2) of this section, that would have applied to such primary insurance amount had the individual remained entitled to such disability insurance benefit until the month in which he became so entitled or reentitled or died, or

(ii) the amount computed under paragraph (1)(C).

(C) In the case of an individual who was entitled to a disability insurance benefit for any month, and with respect to whom a primary insurance amount is required to be computed at any time after the close of the period of the individual's disability (whether because of such individual's subsequent entitlement to old-age insurance benefits or to a disability insurance benefit based upon a subsequent period of disability, or because of such individual's death), the primary insurance amount so computed may in no case be less than the primary insurance amount with respect to which such former disability insurance benefit was most recently determined.

(3)(A) Paragraph (1) applies only to an individual who was not eligible for an old-age insurance benefit prior to January 1979 and who in that or any succeeding month—

(i) becomes eligible for such a benefit,

(ii) becomes eligible for a disability insurance benefit, or

(iii) dies,

and (except for subparagraph (C)(i) thereof) it applies to every such individual except to the extent otherwise provided by paragraph (4).

(B) For purposes of this subchapter, an individual is deemed to be eligible—

(i) for old-age insurance benefits, for months beginning with the month in which he attains age 62, or

(ii) for disability insurance benefits, for months beginning with the month in which his period of disability began as provided under section 416(i)(2)(C) of this title,

except as provided in paragraph (2)(A) in cases where fewer than 12 months have elapsed since the termination of a prior period of disability.

(4) Paragraph (1) (except for subparagraph (C)(i) thereof) does not apply to the computation or recomputation of a primary insurance amount for—

(A) an individual who was eligible for a disability insurance benefit for a month prior to January 1979 unless, prior to the month in which occurs the event described in clause (i), (ii), or (iii) of paragraph (3)(A), there occurs a period of at least 12 consecutive months for which he was not entitled to a disability insurance benefit, or

(B) an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit, and did not die, prior to January 1979, if in the year for which the computation or recomputation would be made the individual's primary insurance amount would be greater if computed or recomputed—

(i) under this subsection as in effect in December 1978, for purposes of old-age insurance benefits in the case of an individual who becomes eligible for such benefits prior to 1984, or

(ii) as provided by subsection (d) of this section, in the case of an individual to whom such section applies.

In determining whether an individual's primary insurance amount would be greater if computed or recomputed as provided in subparagraph (B), (I) the table of benefits in effect in December 1978, as modified by paragraph (6), shall be applied without regard to any increases in that table which may become effective (in accordance with subsection (i)(4) of this section) for years after 1978 (subject to clause (iii) of subsection (i)(2)(A) of this section) and (II) such individual's average monthly wage shall be computed as provided by subsection (b)(4) of this section.

(5)(A) Subject to subparagraphs (B), (C), (D) and (E), for purposes of computing the primary insurance amount (after December 1978) of an individual to whom paragraph (1) does not apply (other than an individual described in paragraph (4)(B)), this section as in effect in December 1978 shall remain in effect, except that, effective for January 1979, the dollar amount specified in paragraph (3) of this subsection shall be increased to $11.50.

(B)(i) Subject to clauses (ii), (iii), and (iv), and notwithstanding any other provision of law, the primary insurance amount of any individual described in subparagraph (C) shall be, in lieu of the primary insurance amount as computed pursuant to any of the provisions referred to in subparagraph (D), the primary insurance amount computed under subsection (a) of this section as in effect in December 1978, without regard to subsections (b)(4) and (c) of this section as so in effect.

(ii) The computation of a primary insurance amount under this subparagraph shall be subject to section 104(j)(2) of the Social Security Amendments of 1972 (relating to the number of elapsed years under subsection (b) of this section).

(iii) In computing a primary insurance amount under this subparagraph, the dollar amount specified in paragraph (3) of subsection (a) of this section (as in effect in December 1978) shall be increased to $11.50.

(iv) In the case of an individual to whom subsection (d) of this section applies, the primary insurance amount of such individual shall be the greater of—

(I) the primary insurance amount computed under the preceding clauses of this subparagraph, or

(II) the primary insurance amount computed under subsection (d) of this section.

(C) An individual is described in this subparagraph if—

(i) paragraph (1) does not apply to such individual by reason of such individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, and

(ii) such individual's primary insurance amount computed under this section as in effect immediately before November 5, 1990, would have been computed under the provisions described in subparagraph (D).

(D) The provisions described in this subparagraph are—

(i) the provisions of this subsection as in effect prior to July 30, 1965, if such provisions would preclude the use of wages prior to 1951 in the computation of the primary insurance amount,

(ii) the provisions of section 409 of this title as in effect prior to August 28, 1950, and

(iii) the provisions of subsection (d) of this section as in effect prior to December 20, 1977.

(E) For purposes of this paragraph, the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) of this section for each year after 1978.

(6)(A) In applying the table of benefits in effect in December 1978 under this section for purposes of the last sentence of paragraph (4), such table, revised as provided by subsection (i) of this section, as applicable, shall be extended for average monthly wages of less than $76.00 and primary insurance benefits (as determined under subsection (d) of this section) of less than $16.20.

(B) The Commissioner of Social Security shall determine and promulgate in regulations the methodology for extending the table under subparagraph (A).

(7)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, who—

(i) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(ii) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subparagraph (C), but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C. 231 et seq., 228a et seq.], (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)) which is based in whole or in part upon his or her earnings for service which did not constitute ''employment'' as defined in section 410 of this title for purposes of this subchapter (hereafter in this paragraph and in subsection (d)(3) of this section referred to as ''noncovered service''), the primary insurance amount of that individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be computed or recomputed under subparagraph (B).

(B)(i) If paragraph (1) of this subsection would apply to such an individual (except for subparagraph (A) of this paragraph), there shall first be computed an amount equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that for purposes of such computation the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii). There shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the monthly periodic payment which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which the individual is entitled (or is deemed to be entitled) for the initial month of his or her concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits. The individual's primary insurance amount shall be the larger of the two amounts computed under this subparagraph (before the application of subsection (i) of this section) and shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this subchapter.

(ii) For purposes of clause (i), the percent specified in this clause is—

(I) 80.0 percent with respect to individuals who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62) in 1986;

(II) 70.0 percent with respect to individuals who so become eligible in 1987;

(III) 60.0 percent with respect to individuals who so become eligible in 1988;

(IV) 50.0 percent with respect to individuals who so become eligible in 1989; and

(V) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.

(C)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly payment (as determined by the Commissioner of Social Security), and such equivalent monthly payment shall constitute a monthly periodic payment for purposes of this paragraph.

(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a survivor's benefit to any other individual, the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subsection (d)(3) of this section) by the amount of such reduction.

(iii) For purposes of this paragraph, the term ''periodic payment'' includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(D) This paragraph shall not apply in the case of an individual who has 30 years or more of coverage. In the case of an individual who has more than 20 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (B)(ii) shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table:

If the number of such individual's years of coverage (as so defined) is:	The applicable percent is:
29	85 percent
28	80 percent
27	75 percent
26	70 percent
25	65 percent
24	60 percent
23	55 percent
22	50 percent
21	45 percent.

For purposes of this subparagraph, the term ''year of coverage'' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to ''15 percent'' therein shall be deemed to be a reference to ''25 percent''.

(E) This paragraph shall not apply in the case of an individual whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 433 of this title or an individual who on January 1, 1984—

(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983; or

(ii) is an employee of a nonprofit organization which (on December 31, 1983) did not have

in effect a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act, unless social security coverage had previously extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.

(b) Average indexed monthly earnings; average monthly wage

(1) An individual's average indexed monthly earnings shall be equal to the quotient obtained by dividing—

(A) the total (after adjustment under paragraph (3)) of his wages paid in and self-employment income credited to his benefit computation years (determined under paragraph (2)), by

(B) the number of months in those years.

(2)(A) The number of an individual's benefit computation years equals the number of elapsed years reduced—

(i) in the case of an individual who is entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph), or who has died, by 5 years, and

(ii) in the case of an individual who is entitled to disability insurance benefits, by the number of years equal to one-fifth of such individual's elapsed years (disregarding any resulting fractional part of a year), but not by more than 5 years.

Clause (ii), once applicable with respect to any individual, shall continue to apply for purposes of determining such individual's primary insurance amount for purposes of any subsequent eligibility for disability or old-age insurance benefits unless prior to the month in which such eligibility begins there occurs a period of at least 12 consecutive months for which he was not entitled to a disability or an old-age insurance benefit. If an individual described in clause (ii) is living with a child (of such individual or his or her spouse) under the age of 3 in any calendar year which is included in such individual's computation base years, but which is not disregarded pursuant to clause (ii) or to subparagraph (B) (in determining such individual's benefit computation years) by reason of the reduction in the number of such individual's elapsed years under clause (ii), the number by which such elapsed years are reduced under this subparagraph pursuant to clause (ii) shall be increased by one (up to a combined total not exceeding 3) for each such calendar year; except that (I) no calendar year shall be disregarded by reason of this sentence (in determining such individual's benefit computation years) unless the individual was living with such child substantially throughout the period in which the child was alive and under the age of 3 in such year and the individual had no earnings as described in section 403(f)(5) of this title in such year, (II) the particular calendar years to be disregarded under this sentence (in determining such benefit computation years) shall be those years (not otherwise disregarded under clause (ii)) which, before the application of subsection (f) of this section, meet the conditions of subclause (I), and (III) this sentence shall apply only to the extent that its application would not result in a lower primary insurance amount. The number of an individual's benefit computation years as determined under this subparagraph shall in no case be less than 2.

(B) For purposes of this subsection with respect to any individual—

(i) the term ''benefit computation years'' means those computation base years, equal in number to the number determined under subparagraph (A), for which the total of such individual's wages and self-employment income, after adjustment under paragraph (3), is the largest;

(ii) the term ''computation base years'' means the calendar years after 1950 and before—

(I) in the case of an individual entitled to old-age insurance benefits, the year in which occurred (whether by reason of section 402(j)(1) of this title or otherwise) the first month of that entitlement; or

(II) in the case of an individual who has died (without having become entitled to old-age insurance benefits), the year succeeding the year of his death;

except that such term excludes any calendar year entirely included in a period of disability; and

(iii) the term ''number of elapsed years'' means (except as otherwise provided by section 104(j)(2) of the Social Security Amendments of 1972) the number of calendar years after 1950 (or, if later, the year in which the individual attained age 21) and before the year in which the individual died, or, if it occurred earlier (but after 1960), the year in which he attained age 62; except that such term excludes any calendar year any part of which is included in a period of disability.

(3)(A) Except as provided by subparagraph (B), the wages paid in and self-employment income credited to each of an individual's computation base years for purposes of the selection therefrom of benefit computation years under paragraph (2) shall be deemed to be equal to the product of—

(i) the wages and self-employment income paid in or credited to such year (as determined without regard to this subparagraph), and

(ii) the quotient obtained by dividing—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the second calendar year preceding the earliest of the year of the individual's death, eligibility for an old-age insurance benefit, or eligibility for a disability insurance benefit (except that the year in which the individual dies, or becomes eligible, shall not be considered as such year if the individual was entitled to disability insurance benefits for any month in the 12-month period immediately preceding such death or eligibility, but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit to which he was entitled in such 12-month period), by

(II) the national average wage index (as so defined) for the computation base year for which the determination is made.

(B) Wages paid in or self-employment income credited to an individual's computation base year which—

(i) occurs after the second calendar year specified in subparagraph (A)(ii)(I), or

(ii) is a year treated under subsection (f)(2)(C) of this section as though it were the last year of the period specified in paragraph (2)(B)(ii),

shall be available for use in determining an individual's benefit computation years, but without applying subparagraph (A) of this paragraph.

(4) For purposes of determining the average monthly wage of an individual whose primary insurance amount is computed (after 1978) under subsection (a) or (d) of this section as in effect (except with respect to the table contained therein) in December 1978, by reason of subsection (a)(4)(B) of this section, this subsection as in effect in December 1978 shall remain in effect, except that paragraph (2)(C) (as then in effect) shall be deemed to provide that ''computation base years'' include only calendar years in the period after 1950 (or 1936, if applicable) and prior to the year in which occurred the first month for which the individual was eligible (as defined in subsection (a)(3)(B) of this section as in effect in January 1979) for an old-age or disability insurance benefit, or, if earlier, the year in which he died. Any calendar year all of which is included in a period of disability shall not be included as a computation base year for such purposes.

(c) Application of prior provisions in certain cases

Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990, this subsection as in effect in December 1978 shall remain in effect with respect to an individual to whom subsection (a)(1) of this section does not apply by reason of the individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979.

(d) Primary insurance amount under 1939 Act

(1) For purposes of column I of the table appearing in subsection (a) of this section, as that subsection was in effect in December 1977, an individual's primary insurance benefit shall be computed as follows:

(A) The individual's average monthly wage shall be determined as provided in subsection (b) of this section, as in effect in December 1977 (but without regard to paragraph (4) thereof and subject to section 104(j)(2) of the Social Security Amendments of 1972), except that for purposes of paragraphs (2)(C) and (3) of that subsection (as so in effect) 1936 shall be used instead of 1950.

(B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) of this section (as so in effect)—

(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual—

(I) shall, in the case of an individual who attained age 21 prior to 1950, be divided by the number of years (hereinafter in this subparagraph referred to as the ''divisor'') elapsing after the year in which the individual attained age 20, or 1936 if later, and prior to the earlier of the year of death or 1951, except that such divisor shall not include any calendar year entirely included in a period of disability, and in no case shall the divisor be less than one, and

(II) shall, in the case of an individual who died before 1950 and before attaining age 21, be divided by the number of years (hereinafter in this subparagraph referred to as the ''divisor'') elapsing after the second year prior to the year of death, or 1936 if later, and prior to the year of death, and in no case shall the divisor be less than one; and

(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who either attained age 21 after 1949 or died after 1949 before attaining age 21, shall be divided by the number of years (hereinafter in this subparagraph referred to as the ''divisor'') elapsing after 1949 and prior to 1951.

The quotient so obtained shall be deemed to be the individual's wages credited to each of the years which were used in computing the amount of the divisor, except that—

(iii) if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the computation base year (as defined in subsection (b)(2) of this section as in effect in December 1977) immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the computation base year (as so defined) immediately preceding the earliest year used in computing the amount of the divisor and to each of the computation base years (as so defined) consecutively preceding that year, with any remainder less than $3,000 being credited to the computation base year (as so defined) immediately preceding the earliest year to which a full $3,000 increment was credited; and

(iv) no more than $42,000 may be taken into account, for purposes of this subparagraph, as total wages after 1936 and prior to 1951.

(C) For the purposes of subparagraph (B), ''total wages prior to 1951'' with respect to an individual means the sum of (i) remuneration credited to such individual prior to 1951 on the records of the Commissioner of Social Security, (ii) wages deemed paid prior to 1951 to such individual under section 417 of this title, (iii) compensation under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] prior to 1951 creditable to him pursuant to this subchapter, and (iv) wages deemed paid prior to 1951 to such individual under section 431 of this title.

(D) The individual's primary insurance benefit shall be 40 percent of the first $50 of his average monthly wage as computed under this subsection, plus 10 percent of the next $200 of his average monthly wage, increased by 1 percent for each increment year. The number of increment years is the number, not more than 14 nor less than 4, that is equal to the individual's total wages prior to 1951 divided by $1,650 (disregarding any fraction).

(2) The provisions of this subsection shall be applicable only in the case of an individual—

(A) with respect to whom at least one of the quarters elapsing prior to 1951 is a quarter of coverage;

(B) who attained age 22 after 1950 and with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage, or who attained such age before 1951; and

(C)(i) who becomes entitled to benefits under section 402(a) or 423 of this title or who dies, or

(ii) whose primary insurance amount is required to be recomputed under paragraph (2), (6), or (7) of subsection (f) of this section or under section 431 of this title.

(3) In the case of an individual whose primary insurance amount is not computed under paragraph (1) of subsection (a) of this section by reason of paragraph (4)(B)(ii) of that subsection, who—

(A) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986, and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(B) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subsection (a)(7)(C) of this section, but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C. 231 et seq., 228a et seq.], (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)) which is based (in whole or in part) upon his or her earnings in noncovered service, the primary insurance amount of such individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be the primary insurance amount computed or recomputed under this subsection (without regard to this paragraph and before the application of subsection (i) of this section) reduced by an amount equal to the smaller of—

(i) one-half of the primary insurance amount (computed without regard to this paragraph and before the application of subsection (i) of this section), or

(ii) one-half of the portion of the monthly periodic payment (or payment determined under subsection (a)(7)(C) of this section) which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which that individual is entitled (or is deemed to be entitled) for the initial month of such concurrent entitlement.

This paragraph shall not apply in the case of any individual to whom subsection (a)(7) of this section would not apply by reason of subparagraph (E) or the first sentence of subparagraph (D) thereof.

(e) Certain wages and self-employment income not to be counted

For the purposes of subsections (b) and (d) of this section—

(1) in computing an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, there shall not be counted the excess over $3,600 in the case of any calendar year after 1950 and before 1955, the excess over $4,200 in the case of any calendar year after 1954 and before 1959, the excess over $4,800 in the case of any calendar year after 1958 and before 1966, the excess over $6,600 in the case of any calendar year after 1965 and before 1968, the excess over $7,800 in the case of any calendar year after 1967 and before 1972, the excess over $9,000 in the case of any calendar year after 1971 and before 1973, the excess over $10,800 in the case of any calendar year after 1972 and before 1974, the excess over $13,200 in the case of any calendar year after 1973 and before 1975, and the excess over an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective, (before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A) of this section) of (A) the wages paid to him in such year, plus (B) the self-employment income credited to such year (as determined under section 412 of this title); and

(2) if an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, computed under subsection (b) of this section or for the purposes of subsection (d) of this section is not a multiple of $1, it shall be reduced to the next lower multiple of $1.

(f) Recomputation of benefits

(1) After an individual's primary insurance amount has been determined under this section, there shall be no recomputation of such individual's primary insurance amount except as provided in this subsection or, in the case of a World War II veteran who died prior to July 27, 1954, as provided in section 417(b) of this title.

(2)(A) If an individual has wages or self-employment income for a year after 1978 for any part of which he is entitled to old-age or disability insurance benefits, the Commissioner of Social Security shall, at such time or times and within such period as the Commissioner may by

regulation prescribe, recompute the individual's primary insurance amount for that year.

(B) For the purpose of applying subparagraph (A) of subsection (a)(1) of this section to the average indexed monthly earnings of an individual to whom that subsection applies and who receives a recomputation under this paragraph, there shall be used, in lieu of the amounts established by subsection (a)(1)(B) of this section for purposes of clauses (i) and (ii) of subsection (a)(1)(A) of this section, the amounts so established that were (or, in the case of an individual described in subsection (a)(4)(B) of this section, would have been) used in the computation of such individual's primary insurance amount prior to the application of this subsection.

(C) A recomputation of any individual's primary insurance amount under this paragraph shall be made as provided in subsection (a)(1) of this section as though the year with respect to which it is made is the last year of the period specified in subsection (b)(2)(B)(ii) of this section; and subsection (b)(3)(A) of this section shall apply with respect to any such recomputation as it applied in the computation of such individual's primary insurance amount prior to the application of this subsection.

(D) A recomputation under this paragraph with respect to any year shall be effective—

(i) in the case of an individual who did not die in that year, for monthly benefits beginning with benefits for January of the following year; or

(ii) in the case of an individual who died in that year, for monthly benefits beginning with benefits for the month in which he died.

(3) Repealed. Pub. L. 95–216, title II, §201(f)(2), Dec. 20, 1977, 91 Stat. 1521.

(4) A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1.

(5) In the case of a man who became entitled to old-age insurance benefits and died before the month in which he attained retirement age (as defined in section 416(*l*) of this title), the Commissioner of Social Security shall recompute his primary insurance amount as provided in subsection (a) of this section as though he became entitled to old-age insurance benefits in the month in which he died; except that (i) his computation base years referred to in subsection (b)(2) of this section shall include the year in which he died, and (ii) his elapsed years referred to in subsection (b)(3) of this section shall not include the year in which he died or any year thereafter. Such recomputation of such primary insurance amount shall be effective for and after the month in which he died.

(6) Upon the death after 1967 of an individual entitled to benefits under section 402(a) or section 423 of this title, if any person is entitled to monthly benefits or a lump-sum death payment, on the wages and self-employment income of such individual, the Commissioner of Social Security shall recompute the decedent's primary insurance amount, but only if the decedent during his lifetime was paid compensation which was treated under section 405(*o*) of this title as remuneration for employment.

(7) This subsection as in effect in December 1978 shall continue to apply to the recomputation of a primary insurance amount computed under subsection (a) or (d) of this section as in effect (without regard to the table in subsection (a) of this section) in that month, and, where appropriate, under subsection (d) as in effect in December 1977, including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990. For purposes of recomputing a primary insurance amount determined under subsection (a) or (d) of this section (as so in effect) in the case of an individual to whom those subsections apply by reason of subsection (a)(4)(B) of this section as in effect after December 1978, no remuneration shall be taken into account for the year in which the individual initially became eligible for an old-age or disability insurance benefit or died, or for any year thereafter, and (effective January 1982) the recomputation shall be modified by the application of subsection (a)(6) of this section where applicable.

(8) The Commissioner of Social Security shall recompute the primary insurance amounts applicable to beneficiaries whose benefits are based on a primary insurance amount which was computed under subsection (a)(3) of this section effective prior to January 1979, or would have been so computed if the dollar amount specified therein were $11.50. Such recomputation shall be effective January 1979, and shall include the effect of the increase in the dollar amount provided by subsection (a)(1)(C)(i) of this section. Such primary insurance amount shall be deemed to be provided under such section for purposes of subsection (i) of this section.

(9)(A) In the case of an individual who becomes entitled to a periodic payment determined under subsection (a)(7)(A) of this section (including a payment determined under subsection (a)(7)(C) of this section) in a month subsequent to the first month in which he or she becomes entitled to an old-age or disability insurance benefit, and whose primary insurance amount has been computed without regard to either such subsection or subsection (d)(3) of this section, such individual's primary insurance amount shall be recomputed (notwithstanding paragraph (4) of this subsection), in accordance with either such subsection or subsection (d)(3) of this section, as may be applicable, effective with the first month of his or her concurrent entitlement to such benefit and such periodic payment.

(B) If an individual's primary insurance amount has been computed under subsection (a)(7) or (d)(3) of this section, and it becomes necessary to recompute that primary insurance amount under this subsection—

(i) so as to increase the monthly benefit amount payable with respect to such primary insurance amount (except in the case of the individual's death), such increase shall be determined as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(3) of this section, or

(ii) by reason of the individual's death, such primary insurance amount shall be recomputed without regard to (and as though it had never been computed with regard to) subsection (a)(7) or (d)(3) of this section.

(g) Rounding of benefits

The amount of any monthly benefit computed under section 402 or 423 of this title which (after any reduction under sections 403(a) and 424a of this title and any deduction under section 403(b) of this title, and after any deduction under section 1395s(a)(1) of this title) is not a multiple of $1 shall be rounded to the next lower multiple of $1.

(h) Service of certain Public Health Service Officers

(1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, remuneration paid for service to which the provisions of section 410(*l*)(1) of this title are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this subchapter, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Commissioner of Social Security that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of title 5 on the basis of such service.

(2) In the case of a monthly benefit for a month prior to that in which the individual, on whose wages and self-employment income such benefit is based, dies, the waiver must be filed by such individual; and such waiver shall be irrevocable and shall constitute a waiver on behalf of himself, his wife, and his children. If such individual did not file such a waiver before he died, then in the case of a benefit for the month in which he died or any month thereafter, such waiver must be filed by his widow, if any, and by or on behalf of all his children, if any; and such waivers shall be irrevocable. Such a waiver by a child shall be filed by his legal guardian or guardians, or, in the absence thereof, by the person (or persons) who has the child in his care.

(i) Cost-of-living increases in benefits

(1) For purposes of this subsection—

(A) the term ''base quarter'' means (i) the calendar quarter ending on September 30 in each year after 1982, or (ii) any other calendar quarter in which occurs the effective month of a general benefit increase under this subchapter;

(B) the term ''cost-of-living computation quarter'' means a base quarter, as defined in subparagraph (A)(i), with respect to which the applicable increase percentage is greater than zero; except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective;

(C) the term ''applicable increase percentage'' means—

(i) with respect to a base quarter or cost-of-living computation quarter in any calendar year before 1984, or in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is 15.0 percent or more, or in any calendar year after 1988 for which the OASDI fund ratio is 20.0 percent or more, the CPI increase percentage; and

(ii) with respect to a base quarter or cost-of-living computation quarter in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is less than 15.0 percent, or in any calendar year after 1988 for which the OASDI fund ratio is less than 20.0 percent, the CPI increase percentage or the wage increase percentage, whichever (with respect to that quarter) is the lower;

(D) the term ''CPI increase percentage'', with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the Consumer Price Index for that quarter (as prepared by the Department of Labor) exceeds such index for the most recent prior calendar quarter which was a base quarter under subparagraph (A)(ii) or, if later, the most recent cost-of-living computation quarter under subparagraph (B);

(E) the term ''wage increase percentage'', with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the national average wage index (as defined in section 409(k)(1) of this title) for the year immediately preceding such calendar year exceeds such index for the year immediately preceding the most recent prior calendar year which included a base quarter under subparagraph (A)(ii) or, if later, which included a cost-of-living computation quarter;

(F) the term ''OASDI fund ratio'', with respect to any calendar year, means the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Fund from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title, to

(ii) the total amount which (as estimated by the Commissioner of Social Security) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during such calendar year for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account;[1]

[1] So in original. Probably should be followed by ''and''.

(G) the Consumer Price Index for a base quarter, a cost-of-living computation quarter, or any other calendar quarter shall be the arithmetical mean of such index for the 3 months in such quarter.

(2)(A)(i) The Commissioner of Social Security shall determine each year beginning with 1975 (subject to the limitation in paragraph (1)(B)) whether the base quarter (as defined in paragraph (1)(A)(i)) in such year is a cost-of-living computation quarter.

(ii) If the Commissioner of Social Security determines that the base quarter in any year is a cost-of-living computation quarter, the Commissioner shall, effective with the month of December of that year as provided in subparagraph (B), increase—

(I) the benefit amount to which individuals are entitled for that month under section 427 or 428 of this title,

(II) the primary insurance amount of each other individual on which benefit entitlement is based under this subchapter, and

(III) the amount of total monthly benefits based on any primary insurance amount which is permitted under section 403 of this title (and such total shall be increased, unless otherwise so increased under another provision of this subchapter, at the same time as such primary insurance amount) or, in the case of a primary insurance amount computed under subsection (a) of this section as in effect (without regard to the table contained therein) prior to January 1979, the amount to which the beneficiaries may be entitled under section 403 of this title as in effect in December 1978, except as provided by section 403(a)(7) and (8) of this title as in effect after December 1978.

The increase shall be derived by multiplying each of the amounts described in subdivisions (I), (II), and (III) (including each of those amounts as previously increased under this subparagraph) by the applicable increase percentage; and any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10. Any increase under this subsection in a primary insurance amount determined under subparagraph (C)(i) of subsection (a)(1) of this section shall be applied after the initial determination of such primary insurance amount under that subparagraph (with the amount of such increase, in the case of an individual who becomes eligible for old-age or disability insurance benefits or dies in a calendar year after 1979, being determined from the range of possible primary insurance amounts published by the Commissioner of Social Security under the last sentence of subparagraph (D)).

(iii) In the case of an individual who becomes eligible for an old-age or disability insurance benefit, or who dies prior to becoming so eligible, in a year in which there occurs an increase provided under clause (ii), the individual's primary insurance amount (without regard to the time of entitlement to that benefit) shall be increased (unless otherwise so increased under another provision of this subchapter and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)) by the amount of that increase and subsequent applicable increases, but only with respect to benefits payable for months after November of that year.

(B) The increase provided by subparagraph (A) with respect to a particular cost-of-living computation quarter shall apply in the case of monthly benefits under this subchapter for months after November of the calendar year in which occurred such cost-of-living computation quarter, and in the case of lump-sum death payments with respect to deaths occurring after November of such calendar year.

(C)(i) Whenever the Commissioner of Social Security determines that a base quarter in a calendar year is also a cost-of-living computation quarter, the Commissioner shall notify the House Committee on Ways and Means and the Senate Committee on Finance of such determination within 30 days after the close of such quarter, indicating the amount of the benefit increase to be provided, the Commissioner's estimate of the extent to which the cost of such increase would be met by an increase in the contribution and benefit base under section 430 of this title and the estimated amount of the increase in such base, the actuarial estimates of the effect of such increase, and the actuarial assumptions and methodology used in preparing such estimates.

(ii) The Commissioner of Social Security shall determine and promulgate the OASDI fund ratio for the current calendar year on or before November 1 of the current calendar year, based upon the most recent data then available. The Commissioner of Social Security shall include a statement of the fund ratio and the national average wage index (as defined in section 409(k)(1) of this title) and a statement of the effect such ratio and the level of such index may have upon benefit increases under this subsection in any notification made under clause (i) and any determination published under subparagraph (D).

(D) If the Commissioner of Social Security determines that a base quarter in a calendar year is also a cost-of-living computation quarter, the Commissioner shall publish in the Federal Register within 45 days after the close of such quarter a determination that a benefit increase is resultantly required and the percentage thereof. The Commissioner shall also publish in the Federal Register at that time (i) a revision of the range of the primary insurance amounts which are possible after the application of this subsection based on the dollar amount specified in subparagraph (C)(i) of subsection (a)(1) of this section (with such revised primary insurance amounts constituting the increased amounts determined for purposes of such subparagraph (C)(i) under this subsection), or specified in subsection (a)(3) of this section as in effect prior to 1979, and (ii) a revision of the range of maximum family benefits which correspond to such primary insurance amounts (with such maximum benefits being effective notwithstanding section 403(a) of this title except for paragraph (3)(B) thereof (or paragraph (2) thereof as in effect

prior to 1979)). Notwithstanding the preceding sentence, such revision of maximum family benefits shall be subject to paragraph (6) of section 403(a) of this title (as added by section 101(a)(3) of the Social Security Disability Amendments of 1980).

(3) As used in this subsection, the term ''general benefit increase under this subchapter'' means an increase (other than an increase under this subsection) in all primary insurance amounts on which monthly insurance benefits under this subchapter are based.

(4) This subsection as in effect in December 1978, and as amended by sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983 and by section 9001 of the Omnibus Budget Reconciliation Act of 1986, shall continue to apply to subsections (a) and (d) of this section, as then in effect and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990, for purposes of computing the primary insurance amount of an individual to whom subsection (a) of this section, as in effect after December 1978, does not apply (including an individual to whom subsection (a) of this section does not apply in any year by reason of paragraph (4)(B) of that subsection (but the application of this subsection in such cases shall be modified by the application of subdivision (I) in the last sentence of paragraph (4) of that subsection)), except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase ''increased to the next higher multiple of $0.10'' shall be deemed to read ''decreased to the next lower multiple of $0.10''. For purposes of computing primary insurance amounts and maximum family benefits (other than primary insurance amounts and maximum family benefits for individuals to whom such paragraph (4)(B) applies), the Commissioner of Social Security shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Commissioner of Social Security publish such revision of the table of benefits in the Federal Register shall not apply.

(5)(A) If—

(i) with respect to any calendar year the ''applicable increase percentage'' was determined under clause (ii) of paragraph (1)(C) rather than under clause (i) of such paragraph, and the increase becoming effective under paragraph (2) in such year was accordingly determined on the basis of the wage increase percentage rather than the CPI increase percentage (or there was no such increase becoming effective under paragraph (2) in that year because there was no wage increase percentage greater than zero), and

(ii) for any subsequent calendar year in which an increase under paragraph (2) becomes effective the OASDI fund ratio is greater than 32.0 percent,

then each of the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii), as increased under paragraph (2) effective with the month of December in such subsequent calendar year, shall be further increased (effective with such month) by an additional percentage, which shall be determined under subparagraph (B) and shall apply as provided in subparagraph (C). Any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

(B) The applicable additional percentage by which the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii) are to be further increased under subparagraph (A) in the subsequent calendar year involved shall be the amount derived by—

(i) subtracting (I) the compounded percentage benefit increases that were actually paid under paragraph (2) and this paragraph from (II) the compounded percentage benefit increases that would have been paid if all increases under paragraph (2) had been made on the basis of the CPI increase percentage,

(ii) dividing the difference by the sum of the compounded percentage in clause (i)(I) and 100 percent, and

(iii) multiplying such quotient by 100 so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent),

with the compounded increases referred to in clause (i) being measured—

(iv) in the case of amounts described in subdivision (I) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which monthly benefits described in such subdivision were first increased on the basis of the wage increase percentage and ending with the year before such subsequent calendar year, and

(v) in the case of amounts described in subdivisions (II) and (III) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which the individual whose primary insurance amount is increased under such subdivision (II) became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection, or died before becoming so eligible, and ending with the year before such subsequent calendar year;

except that if the Commissioner of Social Security determines in any case that the application (in accordance with subparagraph (C)) of the additional percentage as computed under the preceding provisions of this subparagraph would cause the OASDI fund ratio to fall below 32.0 percent in the calendar year immediately following such subsequent year, the Commissioner shall reduce such applicable additional percentage to the extent necessary to ensure that the OASDI fund ratio will remain at or above 32.0 percent through the end of such following year.

(C) Any applicable additional percentage increase in an amount described in subdivision (I), (II), or (III) of paragraph (2)(A)(ii), made under this paragraph in any calendar year, shall thereafter be treated for all the purposes of this chapter as a part of the increase made in such amount under paragraph (2) for that year.

(Aug. 14, 1935, ch. 531, title II, § 215, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 506; amended July 18, 1952, ch. 945, §§ 2(a), (b)(1), 3(c), 6(a), (b), 66 Stat. 767, 768, 770, 771, 776; Sept. 1,

1954, ch. 1206, title I, §§102(a)–(d), (e)(1)–(4), 104(d), 106(c), 68 Stat. 1062–1068, 1078, 1079; Aug. 1, 1956, ch. 836, title I, §§103(c)(4), (5), 109(a), 115(a)–(c), 70 Stat. 818, 830, 832, 833; Pub. L. 85–840, title I, §§101(a)–(d), 102(d), title II, §205(m), Aug. 28, 1958, 72 Stat. 1013–1016, 1020, 1025; Pub. L. 86–415, §7, Apr. 8, 1960, 74 Stat. 35; Pub. L. 86–778, title I, §103(j)(2)(C), title II, §211(n), title III, §§303(a)–(e), 304(a), Sept. 13, 1960, 74 Stat. 937, 958, 960–962, 966; Pub. L. 87–64, title I, §§101(a), 102(d), June 30, 1961, 75 Stat. 131, 135; Pub. L. 89–97, title III, §§301(a), (b), 302(a)–(d), 303(e), 304(k), 320(a)(4), July 30, 1965, 79 Stat. 361, 363–365, 367, 370, 393; Pub. L. 90–248, title I, §§101(a), (c), (d), 108(a)(4), 155(a)(1)–(6), title IV, §403(b), Jan. 2, 1968, 81 Stat. 824, 827, 834, 864, 865, 931; Pub. L. 91–172, title X, §1002(a), (c), (d), Dec. 30, 1969, 83 Stat. 737, 740; Pub. L. 92–5, title II, §§201(a), (c), (d), 203(a)(4), Mar. 17, 1971, 85 Stat. 6, 9, 10; Pub. L. 92–336, title II, §§201(a), (c)–(f), 202(a)(1), (3), 203(a)(4), July 1, 1972, 86 Stat. 406, 410–412, 416, 418; Pub. L. 92–603, title I, §§101(a), (c)–(e), 104(b), 134, 142(b), (c), 144(a)(1), Oct. 30, 1972, 86 Stat. 1333, 1334, 1340, 1362, 1368, 1369; Pub. L. 93–66, title II, §203(a)(4), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §§1(h)(1), 2(a), 3(a)–(h), 5(a)(4), Dec. 31, 1973, 87 Stat. 948, 952, 953; Pub. L. 95–216, title I, §103(d), title II, §201, Dec. 20, 1977, 91 Stat. 1514, 1519; Pub. L. 96–265, title I, §§101(b)(3), (4), 102(a), June 9, 1980, 94 Stat. 442, 443; Pub. L. 96–473, §6(d), Oct. 19, 1980, 94 Stat. 2265; Pub. L. 97–35, title XXII, §§2201(a), (b)(1)–(9), (c)(1)–(5), 2206(a), (b)(5)–(7), Aug. 13, 1981, 95 Stat. 830, 831, 838; Pub. L. 97–123, §2(a)–(d), Dec. 29, 1981, 95 Stat. 1660; Pub. L. 98–21, title I, §§111(a)(1)–(3), (6), (b)(1), (2), (c), 112(a)–(d), 113(a)–(c), title II, §201(c)(1)(C), Apr. 20, 1983, 97 Stat. 72–78, 109; Pub. L. 98–369, div. B, title VI, §§2661(k), 2663(a)(10), July 18, 1984, 98 Stat. 1157, 1164; Pub. L. 99–272, title XII, §12105, Apr. 7, 1986, 100 Stat. 286; Pub. L. 99–509, title IX, §9001(a), (b), Oct. 21, 1986, 100 Stat. 1969, 1970; Pub. L. 99–514, title XVIII, §1883(a)(7), Oct. 22, 1986, 100 Stat. 2916; Pub. L. 100–647, title VIII, §§8003(a), 8011(a), (b), Nov. 10, 1988, 102 Stat. 3780, 3789; Pub. L. 101–239, title X, §10208(b)(1), (2)(A), (B), (3), (4), (d)(2)(A)(i), Dec. 19, 1989, 103 Stat. 2477, 2478, 2480; Pub. L. 101–508, title V, §§5117(a)(1)–(3)(A), (C)–(E), 5122, Nov. 5, 1990, 104 Stat. 1388–274 to 1388–277, 1388–283; Pub. L. 103–296, title I, §107(a)(4), title III, §§307(a), (b), 308(b), 321(a)(16), (17), (e)(2)(B)–(G), (g)(1)(C), Aug. 15, 1994, 108 Stat. 1478, 1522, 1536, 1539, 1540, 1543.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in subsecs. (a)(1)(C)(ii), (7)(A), and (d)(1)(C), (3), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsecs. (a)(1)(C)(ii), (7)(A) and (d)(3), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Pub. L. 93–445 completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§215 et seq.) and subchapter III (§228a et seq.), respectively, of chapter 9 of Title 45. For further details and complete classification of these Acts to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Section 104(j)(2) of the Social Security Amendments of 1972, referred to in subsecs. (a)(5)(B)(ii), (b)(2)(B)(iii), and (d)(1)(A), is section 104(j)(2) of Pub. L. 92–603, which is set out as a note under section 414 of this title.

Section 101 of the Social Security Amendments of 1983, referred to in subsec. (a)(7)(E)(i), is section 101 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 67, which amended sections 409 and 410 of this title and section 3121 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under section 410 of this title and section 3121 of Title 26.

Section 3121(k) of the Internal Revenue Code of 1954, referred to in subsec. (a)(7)(E)(ii), was classified to section 3121(k) of Title 26, and was repealed by Pub. L. 98–21, title I, §102(b)(2), Apr. 20, 1983, 97 Stat. 71.

Section 102 of that Act, referred to in subsec. (a)(7)(E)(ii), is section 102 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 70, which amended section 410 of this title and section 3121 of Title 26 and enacted provisions set out as notes under section 414 of this title and section 3121 of Title 26.

Section 5117 of the Omnibus Budget Reconciliation Act of 1990, referred to in subsecs. (c), (f)(7), and (i)(4), is section 5117 of Pub. L. 101–508, title V, Nov. 5, 1990, 104 Stat. 1388–274, which amended this section and sections 403, 413, and 417 of this title, amended provisions set out as a note under section 413 of this title, and enacted provisions set out as notes under sections 403 and 413 of this title.

The 1939 Act, referred to in subsec. (d), probably means act Aug. 10, 1939, ch. 666, 53 Stat. 1360, known as the Social Security Act Amendments of 1939, which enacted sections 901a, 1306 and 1307 of this title, amended sections 302, 303, 306, 401, 402 to 409, 502, 503, 602, 603, 606, 701, 702, 703, 711, 712, 713, 714, 721, 801, 1011, 1202, 1203, 1206, 1301, of this title, section 642 of Title 7, Agriculture, section 1464 of Title 12, Banks and Banking, section 1601 of former Title 26, Internal Revenue Code of 1939, section 45b of Title 29, Labor, and enacted provisions set out as notes under section 363 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

Section 101(a)(3) of the Social Security Disability Amendments of 1980, referred to in subsec. (i)(2)(D), is section 101(a)(3) of Pub. L. 96–265, title I, June 9, 1980, 94 Stat. 442, which enacted section 403(a)(6) of this title.

Sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983, referred to in subsec. (i)(4), are sections 111(a)(6), 111(b)(2), and 112 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 72, 73, which amended subsec. (i) of this section and enacted provisions set out as notes below. See 1983 Amendment notes below.

Section 9001 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (i)(4), is section 9001 of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 1969, which amended sections 415 and 1395r of this title and enacted provisions set out as a note below.

AMENDMENTS

1994—Subsec. (a)(1)(B)(ii). Pub. L. 103–296, §321(e)(2)(B), in subcl. (I) substituted ''national average wage index'' for ''deemed average total wages'' and in subcl. (II) substituted ''the national average wage index (as so defined) for 1977.'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year 1977.''

Subsec. (a)(1)(C)(ii). Pub. L. 103–296, §321(g)(1)(C), substituted ''(except that, for purposes of subsection (b) of

such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).'' for ''(except that, for purposes of subsection (b)(2)(A) of such section 430 of this title as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the national average wage index (within the meaning of section 409(k)(1) of this title) for such calendar year).''

Pub. L. 103–296, § 321(e)(2)(C), substituted ''national average wage index'' for ''deemed average total wages'' before ''(within the meaning''.

Subsec. (a)(1)(D). Pub. L. 103–296, § 321(e)(2)(D), substituted ''In each calendar year'' for ''In each calendar year after 1978'' and ''the national average wage index (as defined in section 409(k)(1) of this title'' for ''the average of the total wages (as described in subparagraph (B)(ii)(I)'' and struck out at end ''With the initial publication required by this subparagraph, the Secretary shall also publish in the Federal Register the average of the total wages (as so described) for each calendar year after 1950.''

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(5)(B)(i). Pub. L. 103–296, § 321(a)(16), substituted ''subsections'' for ''subsection'' before ''(b)(4) and (c)''.

Subsec. (a)(6)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(7)(A). Pub. L. 103–296, § 308(b), in closing provisions struck out ''and'' before ''(II)'' and inserted '', and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)'' after ''section 433 of this title''.

Pub. L. 103–296, § 307(a)(1), in closing provisions substituted ''but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937, and (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title'' for ''but excluding a payment under the Railroad Retirement Act of 1974 or 1937''.

Subsec. (a)(7)(C)(i). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(7)(E). Pub. L. 103–296, § 307(a)(2), in introductory provisions inserted ''whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 433 of this title or an individual'' before ''who on January''.

Subsec. (b)(3)(A)(ii)(I), (II). Pub. L. 103–296, § 321(e)(2)(E), substituted ''national average wage index'' for ''deemed average total wages''.

Subsec. (d)(1)(C). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(3). Pub. L. 103–296, § 308(b), in closing provisions struck out ''and'' before ''(II)'' and inserted '', and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)'' after ''section 433 of this title''.

Pub. L. 103–296, § 307(b), in closing provisions substituted ''but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937, and (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title'' for ''but excluding a payment under the Railroad Retirement Act of 1974 or 1937''.

Subsec. (f)(2)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner may'' for ''he may''.

Subsec. (f)(5), (6). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (f)(7). Pub. L. 103–296, § 321(a)(17), inserted a period after ''1990''.

Subsecs. (f)(8), (h)(1). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (i)(1)(E). Pub. L. 103–296, § 321(e)(2)(F)(i), substituted ''national average wage index (as defined in section 409(k)(1) of this title)'' for ''SSA average wage index''.

Subsec. (i)(1)(F)(ii). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (i)(1)(G), (H). Pub. L. 103–296, § 321(e)(2)(F)(ii), redesignated subpar. (H) as (G) and struck out former subpar. (G) which read as follows: ''the term 'SSA average wage index', with respect to any calendar year, means the amount determined for such calendar year under subsection (b)(3)(A)(ii)(I) of this section; and''.

Subsec. (i)(2)(A)(i), (ii), (C)(i). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner shall'' for ''he shall'' in introductory provisions of par. (2)(A)(ii) and in par. (2)(C)(i), and ''the Commissioner's estimate'' for ''his estimate'' in par. (2)(C)(i).

Subsec. (i)(2)(C)(ii). Pub. L. 103–296, § 321(e)(2)(G), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''The Secretary shall determine and promulgate the OASDI fund ratio for the current calendar year and the SSA wage index for the preceding calendar year before November 1 of the current calendar year, based upon the most recent data then available, and shall include a statement of such fund ratio and wage index (and of the effect such ratio and the level of such index may have upon benefit increases under this subsection) in any notification made under clause (i) and any determination published under subparagraph (D).''

Pub. L. 103–296, § 107(a)(4), in cl. (ii) as amended by Pub. L. 103–296, § 321(e)(2)(G), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (i)(2)(D). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner shall publish'' for ''he shall publish''.

Pub. L. 103–296, § 107(a)(4), which directed that this subchapter be amended by substituting ''the Commissioner'' for ''he'' wherever referring to the Secretary of Health and Human Services, was executed by substituting ''The Commissioner'' for ''He'' before ''shall also publish'', to reflect the probable intent of Congress.

Subsec. (i)(4), (5)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner shall'' for ''he shall'' in closing provisions of par. (5)(B).

1990—Subsec. (a)(1)(C)(ii). Pub. L. 101–508, § 5122(a), substituted ''of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e) of this section) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e) of this section) could be counted for such year if'' for ''of not less than 25 percent of the maximum amount which, pursuant to subsection (e) of this section, may be counted for such year, or of not less than 25 percent of the maximum amount which could be so counted for such year (in the case of a year after 1977) if''.

Subsec. (a)(5). Pub. L. 101–508, § 5117(a)(1), designated existing provision as subpar. (A), substituted ''Subject

to subparagraphs (B), (C), (D), and (E), for purposes of'' for ''For purposes of'', struck out at end ''The table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) of this section for each year after 1978.'', and added subpars. (B) to (E).

Subsec. (a)(7)(A), (C)(ii). Pub. L. 101–508, §5117(a)(3)(E)(ii), substituted ''subsection (d)(3)'' for ''subsection (d)(5)''.

Subsec. (a)(7)(D). Pub. L. 101–508, §5122(b), struck out ''(as defined in paragraph (1)(C)(ii))'' before period at end of first sentence and inserted at end ''For purposes of this subparagraph, the term 'year of coverage' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to '15 percent' therein shall be deemed to be a reference to '25 percent'.''

Subsec. (c). Pub. L. 101–508, §5117(a)(3)(C), substituted ''Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990, this'' for ''This''.

Subsec. (d)(1)(A). Pub. L. 101–508, §5117(a)(2)(A)(i), inserted ''and subject to section 104(j)(2) of the Social Security Amendments of 1972'' after ''thereof''.

Subsec. (d)(1)(B)(i), (ii). Pub. L. 101–508, §5117(a)(2)(A)(ii), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1936 and prior to 1950 shall be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after the year in which the individual attained age 20 and prior to 1951; and

''(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1949 shall be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after 1949 and prior to 1951.''

Subsec. (d)(1)(B)(iii). Pub. L. 101–508, §5117(a)(2)(B), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the year immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the year immediately preceding the earliest year used in computing the amount of the divisor and to each year consecutively preceding that year, with any remainder less than $3,000 being credited to the year immediately preceding the earliest year to which a full $3,000 increment was credited; and''.

Subsec. (d)(2)(B). Pub. L. 101–508, §5117(a)(2)(C)(i), struck out ''except as provided in paragraph (3),'' after ''(B)''.

Subsec. (d)(2)(C). Pub. L. 101–508, §5117(a)(2)(C)(ii), added subpar. (C) and struck out former subpar. (C) which read as follows:

''(C)(i) who becomes entitled to benefits under section 402(a) or 423 of this title after January 2, 1968, or

''(ii) who dies after such date without being entitled to benefits under section 402(a) or 423 of this title, or

''(iii) whose primary insurance amount is required to be recomputed under subsection (f)(2) or (6) of this section or section 431 of this title.''

Subsec. (d)(3) to (5). Pub. L. 101–508, §5117(a)(2)(C)(iii), (3)(E)(i), redesignated par. (5) as (3) and struck out former pars. (3) and (4) which read as follows:

''(3) The provisions of this subsection as in effect prior to January 2, 1968, shall be applicable in the case of an individual who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting therefrom is higher than the primary insurance amount resulting from the application of this section (as amended by the Social Security Amendments of 1967) and section 420 of this title.

''(4) The provisions of this subsection as in effect in December 1977 shall be applicable to individuals who become eligible for old-age or disability insurance benefits or die prior to 1978.''

Subsec. (f)(7). Pub. L. 101–508, §5117(a)(3)(D), substituted '', including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990'' for period at end of first sentence.

Subsec. (f)(9)(A). Pub. L. 101–508, §5117(a)(3)(E)(ii), substituted ''subsection (d)(3)'' for ''subsection (d)(5)'' in two places.

Subsec. (f)(9)(B). Pub. L. 101–508, §5117(a)(3)(E)(iii), substituted ''or (d)(3)'' for ''or (d)(5)'' wherever appearing.

Subsec. (i)(4). Pub. L. 101–508, §5117(a)(3)(A), inserted ''and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990'' after ''as then in effect'' in first sentence.

1989—Subsec. (a)(1)(B)(ii)(I). Pub. L. 101–239, §10208(b)(2)(A), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (a)(1)(B)(ii)(II). Pub. L. 101–239, §10208(b)(2)(B), substituted ''(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title)'' for ''(as so defined and computed)''.

Subsec. (a)(1)(C)(ii). Pub. L. 101–239, §10208(b)(4), substituted ''change (except that, for purposes of subsection (b)(2)(A) of such section 430 of this title as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wages (within the meaning of section 409(k)(1) of this title) for such calendar year)'' for ''change''.

Subsec. (b)(3)(A)(ii)(I). Pub. L. 101–239, §10208(b)(1)(C), struck out ''(after 1976)'' after ''calendar year''.

Pub. L. 101–239, §10208(b)(1)(A), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (b)(3)(A)(ii)(II). Pub. L. 101–239, §10208(b)(1)(B), substituted ''the deemed average total wages (as so defined)'' for ''the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate''.

Subsec. (i)(1)(G). Pub. L. 101–239, §10208(b)(3), substituted ''the amount determined for such calendar year under subsection (b)(3)(A)(ii)(I)'' for ''the average of the total wages reported to the Secretary of the Treasury or his delegate as determined for purposes of subsection (b)(3)(A)(ii)''.

1988—Subsec. (a)(7)(A). Pub. L. 100–647, §8011(a)(1), struck out ''with respect to the initial month in which the individual becomes eligible for such benefits'' before period at end.

Subsec. (a)(7)(B)(i). Pub. L. 100–647, §8011(a)(2), substituted ''concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits'' for ''eligibility for old-age or disability insurance benefits''.

Subsec. (a)(7)(C)(iii), (iv). Pub. L. 100–647, §8011(a)(3), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: ''If an individual to whom subparagraph (A) applies is eligible for a periodic payment beginning with a month that is subsequent to the

month in which he or she becomes eligible for old-age or disability insurance benefits, the amount of that payment (for purposes of subparagraph (B)) shall be deemed to be the amount to which he or she is, or is deemed to be, entitled (subject to clauses (i), (ii), and (iv) of this subparagraph) in such subsequent month.''

Subsec. (a)(7)(D). Pub. L. 100–647, § 8003(a), in introductory provisions, substituted ''20 years'' for ''25 years'' and ''shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table:'' for ''shall (if such percent is smaller than the percent specified in whichever of the following clauses applies) be deemed to be—'', and substituted table for former cls. (i) to (iv) which read as follows:

''(i) 80 percent, in the case of an individual who has 29 of such years of coverage;

''(ii) 70 percent, in the case of an individual who has 28 of such years;

''(iii) 60 percent, in the case of an individual who has 27 of such years; and

''(iv) 50 percent, in the case of an individual who has 26 of such years.''

Subsec. (d)(5)(ii). Pub. L. 100–647, § 8011(b), substituted ''such concurrent entitlement'' for ''his or her eligibility for old-age or disability insurance benefits''.

1986—Subsec. (i)(1)(B). Pub. L. 99–509, § 9001(a), substituted ''percentage is greater than zero'' for ''percentage is 3 percent or more''.

Pub. L. 99–509, § 9001(b)(2)(A), amended subpar. (B), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out '', by not less than 3 per centum,'' after ''Department of Labor exceeds''.

Subsec. (i)(2)(C)(i). Pub. L. 99–509, § 9001(b)(1)(A)(i), redesignated cl. (ii) as (i) and struck out former cl. (i) which read as follows: ''Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.''

Pub. L. 99–509, § 9001(b)(2)(B), amended subpar. (C), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out cl. (i) which read as follows: ''Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.''

Subsec. (i)(2)(C)(ii). Pub. L. 99–509, § 9001(b)(1)(A), redesignated cl. (iii) as (ii) and substituted ''under clause (i)'' for ''under clause (ii)''. Former cl. (ii) redesignated (i).

Pub. L. 99–509, § 9001(b)(2)(B), amended subpar. (C), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out cl. (ii) designation.

Subsec. (i)(2)(C)(iii). Pub. L. 99–509, § 9001(b)(1)(A)(i), redesignated cl. (iii) as (ii).

Subsec. (i)(4). Pub. L. 99–509, § 9001(b)(1)(B), inserted ''and by section 9001 of the Omnibus Budget Reconciliation Act of 1986''.

Pub. L. 99–272 substituted ''the Secretary shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply'' for ''the Secretary shall publish in the Federal Register revisions of the table of benefits contained in subsection (a) of this section, as in effect in December 1978, as required by paragraph (2)(D) of this subsection as then in effect''.

Subsec. (i)(5)(A)(i). Pub. L. 99–509, § 9001(b)(1)(C), substituted ''because there was no wage increase percentage greater than zero'' for ''because the wage increase percentage was less than 3 percent''.

Subsec. (i)(5)(B). Pub. L. 99–514, § 1883(a)(7), substituted ''clause (i)(I)'' for ''subdivision (I)'' in cl. (ii) and ''clause (i)'' for ''subdivisions (I) and (II)'' in provisions between cls. (iii) and (iv).

1984—Subsec. (a)(1)(B)(i). Pub. L. 98–369, § 2663(a)(10)(A)(i), substituted ''for such benefits'' for ''of such benefits''.

Subsec. (a)(1)(B)(iii). Pub. L. 98–369, § 2663(a)(10)(A)(ii), substituted ''amount'' for ''amounts'' after ''except that any''.

Subsec. (a)(1)(C)(ii). Pub. L. 98–369, § 2663(a)(10)(A)(iii), substituted ''section 217'' for ''scetion 217'' after ''deemed to be paid to such individual under''.

Subsec. (a)(4)(B). Pub. L. 98–369, § 2663(a)(10)(B), realigned margins of subpar. (B).

Subsec. (a)(7)(B)(ii)(I). Pub. L. 98–369, § 2661(k)(1), substituted ''who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62)'' for ''who initially become eligible for old-age or disability insurance benefits''.

Subsec. (a)(7)(C)(ii). Pub. L. 98–369, § 2661(k)(2), substituted ''survivor's'' for ''survivors''.

Subsec. (f)(2)(A). Pub. L. 98–369, § 2663(a)(10)(C), substituted ''primary insurance amount'' for ''primary insurance account''.

Subsec. (f)(9)(B)(i). Pub. L. 98–369, § 2661(k)(3), substituted ''as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(5)'' for ''as though such primary insurance amount had initially been computed without regard to subsection (a)(7) or (d)(5)''.

Subsec. (h)(1). Pub. L. 98–369, § 2663(a)(10)(D)(ii), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (i)(5)(A). Pub. L. 98–369, § 2661(k)(4), inserted provision that any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

Subsec. (i)(5)(B)(iii). Pub. L. 98–369, § 2661(k)(5)(A), substituted ''so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent)'' for ''and rounding to the nearest one-tenth of 1 percent''.

Subsec. (i)(5)(B)(iv), (v). Pub. L. 98–369, § 2661(k)(5)(B), (C), substituted ''ending with the year before such subsequent calendar year'' for ''ending with such subsequent calendar year'' in cls. (iv) and (v) and ''became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection'' for ''initially became eligible for an old-age or disability insurance benefit'' in cl. (v).

1983—Subsec. (a)(7). Pub. L. 98–21, § 113(a), added par. (7).

Subsec. (d)(5). Pub. L. 98–21, § 113(b), added par. (5).

Subsec. (f)(5). Pub. L. 98–21, § 201(c)(1)(C), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

Subsec. (f)(9). Pub. L. 98–21, § 113(c), added par. (9).

Subsec. (i)(1)(A). Pub. L. 98–21, § 111(b)(1), substituted ''September 30'' for ''March 31'' and ''1982'' for ''1974''.

Pub. L. 98–21, § 111(b)(2), amended subpar. (A), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting ''September 30'' for ''March 31'' and ''1982'' for ''1974''.

Subsec. (i)(1)(B). Pub. L. 98–21, § 112(a)(1), substituted ''with respect to which the applicable increase percentage is 3 percent or more'' for ''in which the Consumer Price Index prepared by the Department of Labor exceeds, by not less than 3 per centum, such Index in the later of (i) the last prior cost-of-living computation

quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this subchapter''.

Subsec. (i)(1)(C) to (H). Pub. L. 98–21, §112(a)(3), (4), added subpars. (C) to (G) and redesignated former subpar. (C) as (H).

Subsec. (i)(2)(A)(ii). Pub. L. 98–21, §112(b), in provisions immediately following subcl. (iii), substituted ''by the applicable increase percentage'' for ''by the same percentage (rounded to the nearest one-tenth of 1 percent) as the percentage by which the Consumer Price Index for that cost-of-living computation quarter exceeds such index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter under paragraph (1)(B)''.

Pub. L. 98–21, §111(a)(1), substituted ''December'' for ''June'' in provisions preceding subcl. (I).

Pub. L. 98–21, §111(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in the provisions preceding subpar. (A)(ii)(I) ''December'' for ''June''.

Subsec. (i)(2)(A)(iii). Pub. L. 98–21, §111(a)(2), substituted ''November'' for ''May''.

Subsec. (i)(2)(B). Pub. L. 98–21, §111(a)(3), substituted ''November'' for ''May'' in two places.

Pub. L. 98–21, §111(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in subpar. (B) ''November'' for ''May'' in two places.

Subsec. (i)(2)(C)(iii). Pub. L. 98–21, §112(d)(1), added cl. (iii).

Subsec. (i)(4). Pub. L. 98–21, §112(d)(2), inserted reference to amendments made by section 112 of the Social Security Amendments of 1983.

Pub. L. 98–21, §111(c), inserted reference to amendments made by section 111(a)(6) and 111(b)(2) of the Social Security Amendments of 1983.

Subsec. (i)(5). Pub. L. 98–21, §112(c), added par. (5).

1981—Subsec. (a)(1)(A). Pub. L. 97–35, §2206(b)(5), substituted in provision following cl. (iii) ''rounded, if not a multiple of $0.10, to the next lower multiple of $0.10,'' for ''rounded in accordance with subsection (g) of this section''.

Subsec. (a)(1)(C)(i). Pub. L. 97–35, §2201(a), struck out provisions that primary insurance amount computed under subpar. (A) not be less than the dollar amount set forth on first line of column IV in table of benefits contained, or deemed to be contained in, this subsection as in effect in December 1978, rounded, if not a multiple of $1, to next higher multiple of $1 and that no increase under subsec. (i) of this section, except as provided in subsec. (i)(2)(A) of this section, apply to dollar amount so specified.

Subsec. (a)(1)(C)(ii). Pub. L. 97–35, §2201(b)(1), substituted ''For the purposes of clause (i)'' for ''For the purposes of clause (i)(II)''.

Subsec. (a)(3)(A). Pub. L. 97–35, §2201(b)(2), substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)''.

Subsec. (a)(4). Pub. L. 97–35, §2201(b)(3), (c)(2), substituted in provision preceding subpar. (A) ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)'' and in provision following subpar. (B) '', as modified by paragraph (6)'' and struck out ''but without regard to clauses (iv) and (v) thereof'' after ''subsection (i)(2)(A) of this section''.

Subsec. (a)(5). Pub. L. 97–123, §2(a)(1), struck out '', and the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be modified as specified in paragraph (6)'', and substituted ''December 1978 shall be revised'' for ''December 1978, modified by the application of paragraph (6), shall be revised''.

Pub. L. 97–35, §2201(c)(3), inserted '', and the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be modified as specified in paragraph (6)'' and substituted ''December 1978, modified by the application of paragraph (6), shall be revised'' for ''December 1978 shall be revised''.

Subsec. (a)(6). Pub. L. 97–123, §2(a)(2), substituted in subpar. (A) ''In applying the table of benefits in effect in December 1978 under this section for purposes of the last sentence of paragraph (4), such table, revised as provided by subsection (i) of this section, as applicable, shall be extended'' for ''The table of benefits in effect in December 1978 under this section, referred to in paragraph (4) in the matter following subparagraph (B) and in paragraph (5), revised as provided by subsection (i) of this section, as applicable, shall be extended''.

Pub. L. 97–35, §2201(c)(1), added par. (6).

Subsec. (f)(7). Pub. L. 97–123, §2(b), inserted provisions that effective January 1982, the recomputation shall be modified by the application of subsec. (a)(6) of this section where applicable, and struck out provision that the recomputation shall be modified by the application of subsec. (a)(6) of this section, where applicable.

Pub. L. 97–35, §2201(c)(4), inserted provision that the recomputation be modified by the application of subsec. (a)(6) of this section, where applicable.

Subsec. (f)(8). Pub. L. 97–35, §2201(b)(4), substituted ''subsection (a)(1)(C)(i) of this section'' for ''subsection (a)(1)(C)(i)(II) of this section''.

Subsec. (g). Pub. L. 97–35, §2206(a), struck out ''any primary insurance amount and the amount of'' after ''The amount of'' and substituted ''(after any reduction under sections 403(a) and 424 of this title and any deduction under section 403(b) of this title, and after any deduction under section 1395s(a)(1) of this title) is not a multiple of $1 shall be rounded to the next lower multiple of $1'' for ''(after reduction under section 403(a) of this title and deductions under section 403(b) of this title) is not a multiple of $0.10 shall be raised to the next higher multiple of $0.10''.

Subsec. (i)(2)(A)(ii). Pub. L. 97–35, §2201(b)(5), (6), in subcl. (II) struck out ''(including a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, but subject to the provisions of such subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph)'' after ''under this subchapter'' and in provision following subcl. (III) substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)''.

Pub. L. 97–35, §2206(b)(6), substituted in provision following subcl. (III) ''decreased to the next lower'' for ''increased to the next higher''.

Subsec. (i)(2)(A)(iii). Pub. L. 97–123, §2(c), inserted ''and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)'' after ''provision of this subchapter''.

Pub. L. 97–35, §2201(b)(7), struck out ''and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph'' after ''provision of this subchapter''.

Subsec. (i)(2)(A)(iv). Pub. L. 97–35, §2201(b)(8), struck out cl. (iv) which related to increases in the primary insurance amount for individuals entitled to old-age insurance benefits, individuals entitled to insurance benefits under section 402(e) and (f) of this title, increases that would otherwise apply except for provisions of this clause, and increases occurring in a later year not applicable to the primary insurance amount on account of provisions of this clause.

Subsec. (i)(2)(A)(v). Pub. L. 97–35, §2201(b)(8), struck out cl. (v) which provided, that notwithstanding cl. (iv), no primary insurance amount be less than that provided under subsec. (a)(1) of this section without regard to subpar. (C)(i)(I) thereof, as subsequently increased by applicable increases under this section.

Subsec. (i)(2)(D). Pub. L. 97–35, §2201(b)(9), substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)'' in two places.

Subsec. (i)(4). Pub. L. 97–123, § 2(d), struck out ‘‘, modified by the application of subsec. (a)(6) of this section,’’.

Pub. L. 97–35, § 2201(c)(5), inserted ‘‘, modified by the application of subsec. (a)(6) of this section,’’.

Pub. L. 97–35, § 2206(b)(7), inserted ‘‘except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase ‘increased to the next higher multiple of $0.10’ shall be deemed to read ‘decreased to the next lower multiple of $0.10’ ’’.

1980—Subsec. (a)(4)(B). Pub. L. 96–473 substituted ‘‘recomputation’’ for ‘‘recommendation’’.

Subsec. (b)(2)(A). Pub. L. 96–265, § 102(a), designated existing provisions as cl. (i), inserted provision limiting its applicability to individuals who are entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph) or who have died, and added cl. (ii) and provisions following cl. (ii).

Subsec. (i)(2)(A)(ii)(III). Pub. L. 96–265, § 101(b)(3), substituted ‘‘section 403(a)(7) and (8)’’ for ‘‘section 403(a)(6) and (7)’’.

Subsec. (i)(2)(D). Pub. L. 96–265, § 101(b)(4), inserted sentence providing that revision of maximum family benefits shall be subject to paragraph (6) of section 403(a) of this title (as added by section 101(a)(3) of the Social Security Disability Amendments of 1980).

1977—Subsec. (a). Pub. L. 95–216, § 201(a), amended provisions under which primary insurance amount of an individual is determined by substituting provisions which employ a formula using percentages of different portions of the individual’s average indexed monthly earnings for provisions under which the primary insurance amount of an insured individual was determined through references to a five-column table covering primary insurance amounts and maximum family benefits.

Subsec. (b). Pub. L. 95–216, § 201(b), substituted provisions setting up a formula for determining an individual’s average indexed monthly earnings using benefit computation years, computation base years, and elapsed years as factors in the determination, for provisions that had set a formula for determining an individual’s average monthly wage.

Subsec. (c). Pub. L. 95–216, § 201(c), substituted provisions that this subsection as in effect in Dec. 1978, will remain in effect with respect to an individual to whom subsec. (a)(1) of this section does not apply by reason of the individual’s eligibility for an old-age or disability insurance benefit, or the individual’s death, prior to 1979, for provisions under which, for the purposes of column II of the latest table that had appeared in (or was deemed to have appeared in) subsec. (a) of this section, an individual’s primary insurance amount was to be computed on the basis of the law in effect prior to the month in which the latest such table had become effective, but with a limitation that this subsection was to be applicable only in the case of an individual who had become entitled to benefits under section 402(a) or section 423 of this title, or who had died, before such effective month.

Subsec. (d)(1)(A). Pub. L. 95–216, § 201(d)(1), inserted provisions in subsec. (d)(1)(A) and preceding introductory provision directing that existing references to subsecs. (a) and (b) of this section be deemed reference to such subsecs. (a) and (b) as they were in effect in Dec. 1977.

Subsec. (d)(1)(B). Pub. L. 95–216, § 201(d)(1), made a parenthetical insertion which limited the existing references to subpars. (B) and (C) of subsec. (b)(2) of this section to those provisions as they had been in effect in Dec. 1977, and introduced a simplified method, using the concept of a divisor and a quotient, for computing the primary insurance amounts of workers age 21 after 1936 and before 1951 when wages before 1951 are included in the computations.

Subsec. (d)(1)(D). Pub. L. 95–216, § 201(d)(2), substituted ‘‘40 percent’’ for ‘‘45.6 per centum’’ and ‘‘plus 10 percent of the next $200 of his average monthly wage, increased by 1 percent for each increment year’’ for ‘‘plus 11.4 per centum of the next $200 of such average monthly wage’’ in existing provisions and inserted provisions that the number of increment years in the number, not more than 14 nor less than 4, that is equal to the individual’s total wages prior to 1951 divided by $1,650 (disregarding any fraction).

Subsec. (d)(3). Pub. L. 95–216, § 201(d)(3), struck out requirement that when wages prior to 1951 are included in computing the average monthly wages of an individual who attains age 21 after 1936 and prior to 1951, the present law computation provisions in effect before the Social Security Amendments of 1967 must be used.

Subsec. (d)(4). Pub. L. 95–216, § 201(d)(4), added par. (4).

Subsec. (e)(1). Pub. L. 95–216, § 201(e), substituted ‘‘average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage’’ for ‘‘average monthly wage’’ and ‘‘(before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A) of this section) of (A) the wages paid to him in such year’’ for ‘‘of (A) the wages paid to him in such year’’.

Subsec. (e)(2). Pub. L. 95–216, § 201(e), substituted ‘‘average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage’’.

Subsec. (f)(2). Pub. L. 95–216, § 201(f)(1), generally expanded provisions for recomputing primary insurance amounts for individuals with wages or self-employment income for years after 1978 for any part of which the individuals are entitled to old-age or disability insurance benefits.

Subsec. (f)(3). Pub. L. 95–216, § 201(f)(2), struck out par. (3) which had provided for the recomputation of primary insurance amounts for workers who had self-employment income in 1952 and who had applied for benefits or died prior to 1961.

Subsec. (f)(4). Pub. L. 95–216, § 201(f)(3), substituted ‘‘A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1’’ for ‘‘Any recomputation under this subsection shall be effective only if such recomputation results in a higher primary insurance amount’’.

Subsec. (f)(7), (8). Pub. L. 95–216, § 201(f)(4), added pars. (7) and (8).

Subsec. (i)(2)(A)(ii). Pub. L. 95–216, § 201(g)(1), specified that an automatic benefit increase effective for June of a year in which the Secretary determines that a cost-of-living computation quarter, which triggers such an increase, has occurred will apply to benefits of those entitled to special payments under sections 427 and 428 of this title, to the primary insurance amounts on which beneficiaries are entitled including the frozen minimum primary insurance amounts and special minimum primary insurance amounts, and to the maximum family benefits at the same time as the primary insurance amounts on which they are based, where a primary insurance amount was computed under the law in effect in December 1978 will be increased at the same time as the primary insurance amounts, except as provided in section 403(a)(7) and (7) of this title.

Subsec. (i)(2)(A)(iii) to (v). Pub. L. 95–216, § 201(g)(2), added cls. (iii) to (v).

Subsec. (i)(2)(D). Pub. L. 95–216, § 201(g)(3), substituted provisions directing publication in the Federal Register of revisions of the range of primary insurance amounts and of the range of maximum family benefits for provisions that had directed publication of the revision of the table of benefits formerly set out in subsec. (a) and had set out the method of determining the revision of the table.

Subsec. (i)(2)(D)(v). Pub. L. 95–216, § 103(d), substituted in cl. (v) ‘‘is equal to, or exceeds by less than $5, one-twelfth of the new contribution and benefit base’’ for ‘‘is equal to one-twelfth of the new contribution and benefit base’’ and ‘‘plus 20 percent of the excess of the second figure in the last line of column III as extended under the preceding sentence over such second figure

for the calendar year in which the table of benefits is revised'' for ''plus 20 percent of one-twelfth of the excess of the new contribution and benefit base for the calendar year following the calendar year in which such table of benefits is revised (as determined under section 430 of this title) over such base for the calendar year in which the table of benefits is revised'' in third sentence.

Subsec. (i)(4). Pub. L. 95–216, §201(g)(4), added par. (4).

1973—Subsec. (a). Pub. L. 93–233, §2(a), in revising benefits table: in column II, substituted ''Primary insurance amount effective for September 1972'' for ''Primary insurance amount under 1971 Act'' and increased benefit amounts to $84.50–$404.50 from $70.40–$295.40; in column III, increased benefit amounts to $76 to $1,096–$1,100 from $76 to $996–$1,000; in column IV, increased benefit amounts to $93.80–$469.00 from $84.50–$404.50; and in column V, increased benefit amounts to $140.80–$820.80 from $126.80–$707.90.

Subsec. (a)(3). Pub. L. 93–233, §1(h)(1), substituted ''$9.00'' for ''$8.50''.

Subsec. (e)(1). Pub. L. 93–233, §5(a)(4), substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

Subsec. (i)(1)(A)(i). Pub. L. 93–233, §3(a), substituted ''calendar quarter ending on March 31 in each year after 1974'' for ''calendar quarter ending on June 30 in each year after 1972''.

Subsec. (i)(1)(B)(ii). Pub. L. 93–233, §3(b), substituted in exception provision ''if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective'' for ''in which a law has been enacted providing a general benefit increase under this subchapter or in which such a benefit increase becomes effective''.

Subsec. (i)(2)(A)(i). Pub. L. 93–233, §3(c), substituted ''1975'' for ''1974'' and struck out ''and to subparagraph (E) of this paragraph'' after ''paragraph (1)(B)''.

Subsec. (i)(2)(A)(ii). Pub. L. 93–233, §3(d)(1)–(3), substituted ''the base quarter in any year'' and ''June of such year'' for ''such base quarter'' and ''January of the next calendar year'' and struck out ''(subject to subparagraph (E))'' before ''as provided in subparagraph (B)'', respectively.

Subsec. (i)(2)(B). Pub. L. 93–233, §3(e), substituted ''May'' for ''December'' in two places and struck out ''(subject to subparagraph (E))'' after ''shall apply''.

Subsec. (i)(2)(C)(ii). Pub. L. 93–233, §3(f), substituted ''within 30 days after the close of such quarter'' for ''on or before August 15 of such calendar year''.

Subsec. (i)(2)(D). Pub. L. 93–233, §3(g), substituted ''within 45 days after the close of such quarter'' for ''on or before November 1 of such calendar year''.

Subsec. (i)(2)(E). Pub. L. 93–233, §3(h), struck out subpar. (E) providing that ''Notwithstanding a determination by the Secretary under subparagraph (A) that a base quarter in any calendar year is a cost-of-living computation quarter (and notwithstanding any notification or publication thereof under subparagraph (C) or (D)), no increase in benefits shall take effect pursuant thereto, and such quarter shall be deemed not to be a cost-of-living computation quarter, if during the calendar year in which such determination is made a law providing a general benefit increase under this subchapter is enacted or becomes effective.''

1972—Subsec. (a). Pub. L. 92–336, §202(a)(3)(A), inserted ''(or, if larger, the amount in column IV of the latest table deemed to be such table under subsection (i)(2)(D))'' after ''the following table'' in par. (1)(A), and ''(whether enacted by another law or deemed to be such table under subsection (i)(2)(D))'' after ''effective month of a new table'' in par. (2).

Pub. L. 92–336, §201(a), revised benefits table by substituting ''Primary insurance amount under 1971 Act'' for ''Primary insurance amount under 1969 Act'' and $70.40–$295.40 for $64.00 or less—$250.70 in column II, adding $751–$996 under minimum average monthly wage subcolumn of column III, adding $755–$1000 under maximum average monthly wage subcolumn of column III, substituting $84.50–$404.50 for $70.40–$295.40 in column IV, and $126.80–$707.90 for $105.60–$517.00 in column V.

Pub. L. 92–336, §201(c), inserted ''The primary insurance amount of an insured individual shall be determined as follows:'' after ''(a)'', redesignated introductory material and pars. (1) to (3) as par. (1) and subpars. (A) to (C) respectively, and as so redesignated, in par. (1) inserted provision relating to exception in par. (2) and in subpars. (A) to (C) made changes in phraseology, and redesignated par. (4) as par. (2) and as so redesignated, inserted provisions relating to determination of primary insurance amount where individual was entitled to disability insurance benefits under section 423 of this title.

Subsec. (a)(1). Pub. L. 92–603, §101(a)(1), inserted reference to paragraph (3) in provisions preceding subpar. (A).

Subsec. (a)(2). Pub. L. 92–603, §101(c), designated existing provisions as subpar. (A), inserted ''(whether enacted by another law or deemed to be such table under subsection (i)(2)(D) of this section)'', and added subpar. (B).

Subsec. (a)(3). Pub. L. 92–603, §101(a)(2), added par. (3) and provisions following such par. (3) covering the individual's ''years of coverage'' for purposes of par. (3).

Pub. L. 92–603, §144(a)(1), substituted in column II ''254.40'' for ''251.40'' and in column III ''696'' for ''699''.

Subsec. (b)(3). Pub. L. 92–603, §104(b), struck out provisions setting a separate age computation point for women and reduced from age 65 to age 62 the age computation point for men.

Subsec. (b)(4). Pub. L. 92–336, §202(a)(3)(B), substituted provisions relating to an individual who becomes entitled to benefits in or after the month in which a new table that appears in (or is deemed by subsec. (i)(2)(D) to appear in) subsec. (a) becomes effective for provisions relating to an individual who becomes entitled to benefits after August 1972 in subpar. (A), substituted provisions relating to an individual who dies in or after the month in which such table becomes effective for provisions relating to an individual who dies after August 1972 in subpar. (B), and added subpar. (C).

Pub. L. 92–336, §201(d), substituted ''August 1972'' for ''December 1970'' in two places.

Subsec. (c). Pub. L. 92–336, §202(a)(3)(C), substituted provisions relating to the computation of an individual's primary insurance amount based on the law in effect prior to the month in which the latest table appearing in (or is deemed to be appearing in) subsec. (a) of this section becomes effective, for provisions relating to the computation of an individual's primary insurance amount based on the law in effect prior to September 1972 in subpar. (1), and substituted '', or who died, before such effective month'' for ''before September 1972, or who died before such month'' in subpar. (2).

Pub. L. 92–336, §201(e), substituted ''September 1972'' for ''March 17, 1971'' in two places, and ''month'' for ''date''.

Subsec. (d)(1)(C)(iv). Pub. L. 92–603, §142(b), added cl. (iv).

Subsec. (d)(2). Pub. L. 92–603, §§134(b), 142(c), inserted references to subsec. (f)(6) of this section and section 431 of this title.

Subsec. (e)(1). Pub. L. 92–336, §203(a)(4), inserted provisions eliminating from the computation of an individual's average monthly wage excess amounts in calendar years after 1971 and before 1975, and excess over amounts equal to the contribution and benefit base in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective.

Subsec. (f)(2). Pub. L. 92–603, §§101(d), 134(a)(1), inserted reference to subsec. (a)(3) of this section in provisions preceding subpar. (A) and in subpar. (B) struck out provision relating to any individual whose increase in his primary insurance amount is attributable to compensation which, upon his death, is treated as remuneration for employment under section 405(*o*) of this title.

Pub. L. 92–336, §201(f), substituted ''subsection (a)(1) (A) and (C) of this section'' for ''subsection (a) (1) and (3) of this section.''

Subsec. (f)(6). Pub. L. 92–603, § 134(a)(2), added par. (6).

Subsec. (i). Pub. L. 92–336, § 202(a)(1), added subsec. (i).

Subsec. (i)(2)(A)(ii). Pub. L. 92–603, § 101(e), inserted ''(but not including a primary insurance amount determined under subsection (a)(3) of this section)'' after ''under this subchapter''.

1971—Subsec. (a). Pub. L. 92–5, § 201(a), revised benefits table by: substituting ''Primary insurance amount under 1969 Act'' for ''Primary insurance amount under 1967 Act'' and $64.00 or less—$250.70 for $55.40 or less—$218.00 in column II, adding $653–$746 under minimum average monthly wage subcolumn of column III, striking out $650 and adding $652–$750 under maximum average monthly wage subcolumn of column III, substituting $70.40–$295.40 for $64.00–$250.70 in column IV, and $105.60–$517.00 for $96.00–$434.40 in column V.

Subsec. (b)(4). Pub. L. 92–5, § 201(c), substituted ''December 1970'' for ''December 1969'' in two places.

Subsec. (c). Pub. L. 92–5, § 201(d), substituted ''prior to March 17, 1971'' for ''prior to December 30, 1969'' in subpar. 1, and substituted ''before March 17, 1971, or who died before such date'' for ''before January 1970, or who died before such month'' in subpar. 2.

Subsec. (e)(1). Pub. L. 92–5, § 203(a)(4), substituted ''the excess over $7,800 in the case of any calendar year after 1967 and before 1972, and the excess over $9,000 in the case of any calendar year after 1971'' for ''and the excess over $7,800 in the case of any calendar year after 1967''.

1969—Subsec. (a). Pub. L. 91–172, § 1002(a), revised benefits table to increase: the primary insurance amount limits to $64.00–$250.70 for people whose average monthly wage is $76.00 or less for the minimum, and $650.00 for the maximum, the primary insurance amounts of retired workers on the benefit rolls from $48.00 or less to $55.40 at the minimum, and from $168.00 to $218.00 at the maximum, and the family benefits limits to $96.00–$434.40 from $82.50–$434.40.

Subsec. (b)(4). Pub. L. 91–172, § 1002(c), substituted references to December 1969 for references to January 1968.

Subsec. (c). Pub. L. 91–172, § 1002(d), substituted ''December 30, 1969'' for ''January 2, 1968'' in subpar. (1), and ''January 1970'' for ''February 1968'' in subpar. (2).

1968—Subsec. (a). Pub. L. 90–248, § 101(a), revised benefits table to increase: the primary insurance amount limits to $55.00—$218.00 for people whose average monthly wage is $74.00 or less for the minimum and $650.00 for the maximum, the primary insurance amounts of retired workers on the benefit rolls from $48.00 or less to $55.00 at the minimum and from $168.00 to $189.90 at the maximum, and the family benefit limits to $82.50–$434.40 from $66.00–$368.00.

Subsec. (b)(4). Pub. L. 90–248, § 101(c)(1), amended par. (4) generally, substituting ''January 1968'' for ''December 1965'' in subpars. (A) and (B), striking out '', as amended by the Social Security Amendments of 1965;'' at end of subpar. (C), and striking out provision that the subsection would not apply to any individual described therein for purposes of monthly benefits for months before January 1966.

Subsec. (b)(5). Pub. L. 90–248, § 101(c)(2), struck out par. (5) which preserved the method in effect before the enactment of the 1965 amendments of computing average monthly earnings for people who become entitled to benefits or a recomputation of benefits before 1966.

Subsec. (c). Pub. L. 90–248, § 101(d), substituted ''1965 Act'' for ''1958 Act, as modified'' in heading and ''on the basis of the law in effect prior to the enactment of the Social Security Amendments of 1967'' for ''as provided in, and subject to the limitations specified in, (A) this section as in effect prior to July 30, 1965 and (B) the applicable provisions of the Social Security Amendments of 1960'' in par. (1) and ''the month of February 1968, or who died before such month'' for ''July 30, 1965 or who died before such date'' in par. (2).

Subsec. (d)(1). Pub. L. 90–248, § 155(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of column I of the table appearing in subsection (a) of this section. An individual's primary insurance benefit shall be computed as provided in this subchapter as in effect prior to August 28, 1950, except that—

''(A) In the computation of such benefit, such individual's average monthly wage shall (in lieu of being determined under section 409(f) of this title as in effect prior to August 28, 1950) be determined as provided in subsection (b) of this section (but without regard to paragraphs (4) and (5) thereof), except that for the purposes of paragraphs (2)(C) and (3) of subsection (b) of this section, 1936, shall be used instead of 1950.

''(B) For purposes of such computation, the date he became entitled to old-age insurance benefits shall be deemed to be the date he became entitled to primary insurance benefits.

''(C) The 1 per centum addition provided for in section 409(e)(2) of this title as in effect prior to August 28, 1950 shall be applicable only with respect to calendar years prior to 1951, except that any wages paid in any year prior to such year all of which was included in a period of disability shall not be counted.

''(D) The provisions of subsection (e) of this section shall be applicable to such computation.''

Subsec. (d)(2)(B), (C). Pub. L. 90–248, § 155(a)(2), struck out subpar. (B), redesignated subpar. (C) as (B), inserted exception phrase at beginning of subpar. (B), and added subpar. (C).

Subsec. (d)(3). Pub. L. 90–248, § 155(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The provisions of this subsection as in effect prior to September 13, 1960 shall be applicable in the case of an individual who meets the requirements of subsection (b)(5) of this section (as in effect after September 13, 1965).''

Subsec. (e)(1). Pub. L. 90–248, § 108(a)(4), substituted ''the excess over $6,600 in the case of any calendar year after 1965 and before 1968, and the excess over $7,800 in the case of any calendar year after 1967'' for ''and the excess over $6,600 in the case of any calendar year after 1965''.

Subsec. (f)(2). Pub. L. 90–248, § 155(a)(4), (5), struck out subpars. (A) to (D) and text preceding (A) by substituting provisions that if an individual has wages or self-employment income for a year after 1965 for any part of which he is entitled to old-age insurance benefits, the Secretary is to recompute his primary insurance amount with respect to each such year, and that such recomputation shall be made as provided in subsec. (a)(1) and (3) as though the year with respect to which such recomputation is made is the last year of the period specified in subsec. (b)(2)(C) for former provisions for a recomputation with respect to each year after Dec. 31, 1964, and for any part of which an individual was entitled to old-age insurance benefits, that such recomputation was to be made as provided in subsec. (a)(1) and (3) if such year was either the year in which he became entitled to such old-age insurance benefits or the preceding year or as provided in subsec. (a)(1) in any other case, and that in all cases such recomputation was to be made as though the year with respect to which it was to be made was the last year of the period specified in subsec. (b)(2)(C); and redesignated subpars. (E) and (F) as (A) and (B).

Subsec. (f)(5). Pub. L. 90–248, § 155(a)(6), added par. (5).

Subsec. (h)(1). Pub. L. 90–248, § 403(b), substituted ''subchapter III of chapter 83 of title 5'' for ''the Civil Service Retirement Act'' in two places.

1965—Subsec. (a). Pub. L. 89–97, § 301(a), revised the benefits table to increase: the primary insurance amount limits to $44–$168 for people whose average monthly wage is $67 or less for the minimum and $550 for the maximum from $40–$127 for people whose average monthly wage is $67 or less for the minimum and $400 for the maximum (representing an increase of 7-percent for average monthly wages of $400 or less with minimum increase of $4); the primary insurance amounts of retired workers on the benefit rolls from $40 to $44 at the minimum and from $127 to $135.90 at the maximum; and the family benefit limits to $66–$368 from $60–$254 (determined on basis of new formula and representing minimum increase of $6).

Subsec. (a)(4). Pub. L. 89–97, §304(k), substituted ''the primary insurance amount upon which such disability insurance benefit is based'' for ''such disability insurance benefit''.

Pub. L. 89–97, §303(e), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''In the case of—

''(A) a woman who was entitled to a disability insurance benefit for the month before the month in which she died or became entitled to old-age insurance benefits, or

''(B) a man who was entitled to a disability insurance benefit for the month before the month in which he died or attained age 65,''.

Subsec. (b)(2)(C). Pub. L. 89–97, §302(a)(1), excluded from an insured individual's computation base years the year in which he became entitled to benefits and included in his computation base years (for purposes of survivors' benefits) the year in which he died to make an individual's computation base years the calendar years occurring after 1950 and up to the year in which his first month of entitlement to a benefit occurred or the year after the year in which he died.

Subsec. (b)(3)(A) to (C). Pub. L. 89–97, §302(a)(2), substituted in: cl. (A) '', if it occurred earlier but after 1960, the year in which she attained age 62,'' for ''(if earlier) the first year after 1960 in which she both was fully insured and had attained age 62.''; cl. (B) '', if it occurred earlier but after 1960, the year in which he attained age 65'' for ''(if earlier) the first year after 1960 in which he both was fully insured and had attained age 65''; and cl. (C) ''the year occurring after 1960 in which he attained (or would attain) age 65'' for ''the first year after 1960 in which he attained (or would attain) age 65 or (if later) the first year in which he was fully insured''.

Subsec. (b)(4), (5). Pub. L. 89–97, §302(a)(3), amended pars. (4) and (5) generally. Prior to amendment, pars. (4) and (5) read as follows:

''(4) The provisions of this subsection shall be applicable only in the case of an individual with respect to whom not less than six of the quarters elapsing after 1950 are quarters of coverage, and—

''(A) who becomes entitled to benefits after December 1960 under section [section 402(a) or section 423 of this title]; or

''(B) who dies after December 1960 without being entitled to benefits under section [section 402(a) or section 423 of this title]; or

''(C) who files an application for a recomputation under subsection (f)(2)(A) of this section after December 1960 and is (or would, but for the provisions of subsection (f)(6) of this section, be) entitled to have his primary insurance amount recomputed under subsection (f)(2)(A) of this section; or

''(D) who dies after December 1960 and whose survivors are (or would, but for the provisions of subsection (f)(6) of this section, be) entitled to a recomputation of his primary insurance amount under subsection (f)(4) of this section.

''(5) In the case of any individual—

''(A) to whom the provisions of this subsection are not made applicable by paragraph (4), but

''(B)(i) prior to 1961, met the requirements of this paragraph (including subparagraph (E) thereof) as in effect prior to the enactment of the Social Security Amendments of 1960, or (ii) after 1960, meets the conditions of subparagraph (E) of this paragraph as in effect prior to such enactment,

then the provisions of this subsection as in effect prior to such enactment shall apply to such individual for the purposes of column III of the table appearing in subsection (a) of this section.''

Subsec. (c). Pub. L. 89–97, §301(b), substituted in par. (1)(A) ''prior to the enactment of the Social Security Amendments of 1965'' and executed in the Code ''prior to July 30, 1965'' for ''prior to the enactment of the Social Security Amendments of 1958'' and executed in the Code ''prior to August 28, 1958''; in par. (1)(B) ''Social Security Amendments of 1960'' for ''Social Security Amendments of 1954''; in par. (2), formerly designated (2)(A), ''before July 30, 1965 or who died before such date'' for ''or died prior to January 1959''; and deleted par. (2)(B) making the provisions of the subsection applicable only in the case of an individual ''to whom the provisions of neither paragraph (4) nor paragraph (5) of subsection (b) of this section are applicable.''

Subsec. (d)(1)(A). Pub. L. 89–97, §302(b)(1), substituted ''(2)(C) and (3)'' for ''(2)(C)(i) and (3)(A)(i)'', ''1936'' for ''December 31, 1936,'' and ''1950'' for ''December 31, 1950''.

Subsec. (d)(3). Pub. L. 89–97, §302(b)(2), substituted ''1965'' for ''1960'' in two places and struck out at the end ''but without regard to whether such individual has six quarters of coverage after 1950''.

Subsec. (e)(1). Pub. L. 89–97, §320(a)(4), substituted ''the excess over $4,800 in the case of any calendar year after 1958 and before 1966, and the excess over $6,600 in the case of any calendar year after 1965'' for ''and the excess over $4,800 in the case of any calendar year after 1958''.

Subsec. (e)(3). Pub. L. 89–97, §302(c), struck out par. (3) which provided that for the purposes of subsecs. (b) and (d) of this section, if an individual had self-employment income in a taxable year which began prior to the calendar year in which he became entitled to old-age insurance benefits and ended after the last day of the month preceding the month in which he became so entitled, his self-employment income in such taxable year should not be counted in determining his benefit computation years, except as provided in subsection (f)(3)(C) of this section.

Subsec. (f)(2). Pub. L. 89–97, §302(d)(1), substituted provisions for annual automatic recomputation of benefits, taking into account any earnings the person had in or after the year in which he became entitled to benefits, and effective in the case of a living beneficiary with January of the year following the year in which the earnings were received and in death cases for survivors' benefits beginning with the month of death for former provisions which required an application for the recomputation to include earnings in a year after entitlement and that the person have six quarters of coverage after 1950 to qualify for the recomputation and was not available unless the person had earnings of more than $1,200 for the year.

Subsec. (f)(3). Pub. L. 89–97, §302(d)(2), redesignated par. (5) as (3) and repealed former par. (3) which provided for a recomputation of benefits to include earnings in the year of entitlement to benefits or in the year in which an individual's benefits were recomputed on account of additional earnings and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

Subsec. (f)(4). Pub. L. 89–97, §302(d)(2), redesignated par. (6) as (4) and repealed former par. (4) which provided for a recomputation of benefits for the purpose of paying benefits to survivors of an individual who died after 1960 and who had been entitled to old-age insurance benefits and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

Subsec. (f)(5), (6). Pub. L. 89–97, §302(d)(2), redesignated pars. (5) and (6) as (3) and (4), respectively.

Subsec. (f)(7). Pub. L. 89–97, §302(d)(2), repealed par. (7) which provided for recomputation at age 65 of the benefits of an individual who became entitled to benefits before that age and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

1961—Subsec. (a). Pub. L. 87–64, §§101(a), 102(d)(1), increased minimum primary insurance amount from $33 to $40, and minimum family benefit from $53 to $60, and in the case of a man, limited provisions which permit the primary insurance amount to be equal to the disability insurance benefit for the month before the month in which the man became entitled to old-age insurance benefits only if the man first became entitled to old-age insurance benefits at age 65.

Subsec. (b)(3). Pub. L. 87–64, §102(d)(2), substituted ''For purposes of paragraph (2), the number of an indi-

vidual's elapsed years is the number of calendar years after 1950 (or, if later, the year in which he attained age 21) and before—

''(A) in the case of a woman, the year in which she died or (if earlier) the first year after 1960 in which she both was fully insured and had attained age 62,

''(B) in the case of a man who has died, the year in which he died or (if earlier) the first year after 1960 in which he both was fully insured and had attained age 65, or

''(C) in the case of a man who has not died, the first year after 1960 in which he attained (or would attain) age 65 or (if later) the first year in which he was fully insured''

for the following provisions: ''For the purposes of paragraph (2), an individual's 'elapsed years' shall be the number of calendar years—

''(A) after (i) December 31, 1950, or (ii) if later, December 31 of the year in which he attained the age of twenty-one, and

''(B) prior to (i) the year in which he died, or (ii) if earlier, the first year after December 31, 1960, in which he both was fully insured and had attained retirement age.''

Subsec. (f)(7). Pub. L. 87–64, § 102(d)(3), added par. (7).

1960—Subsec. (b)(1). Pub. L. 86–778, § 303(a), substituted provisions defining ''average monthly wage'' as the quotient obtained by dividing (A) the total of an individual's wages paid in and self-employment income credited to his benefit computation years, by (B) the number of months in such years, for provisions which defined the term as the quotient obtained by dividing the total of his wages and self-employment income after his starting date and prior to his closing date by the number of months elapsing after such starting date and prior to such closing date, excluding the months in any year prior to the year in which the individual attained the age of 22 if less than two quarters of such prior years were quarters of coverage and the months in any year any part of which was included in a period of disability except the months in the year in which such period of disability began if their inclusion will result in a higher primary insurance amount.

Subsec. (b)(2). Pub. L. 86–778, § 303(a), substituted provisions relating to benefit computation years and to computation base years for provisions which defined an individual's starting date as December 31, 1950, or if later, the last day of the year in which he attains the age of 21, whichever results in the higher primary insurance amount.

Subsec. (b)(3). Pub. L. 86–778, § 303(a), substituted provisions defining an individual's elapsed years for provisions which defined an individual's closing date as the first day of the year in which he died or became entitled to old-age insurance benefits, whichever first occurred, or the first day of the first year in which he both was fully insured and had attained retirement age, whichever results in the higher primary insurance amount.

Subsec. (b)(4). Pub. L. 86–778, § 303(a), substituted provisions prescribing the applicability of subsec. (f) for provisions which required the Secretary to determine the five or fewer calendar years after an individual's starting date and prior to his closing date which, if the months of such years and his wages and self-employment income for such years were excluded in computing his average monthly wage, would produce the highest primary insurance amount, and which required exclusion of such months and such wages and self-employment income for purposes of computing an individual's average monthly wage.

Subsec. (b)(5). Pub. L. 86–778, § 303(a), substituted provisions making subsec. (f) applicable in the case of an individual to whom the provisions of subsec. (f) are not made applicable by par. (4) but prior to 1961, met the requirements of this paragraph as in effect prior to Sept. 13, 1960, or, after 1960, meets the conditions of subpar. (E) of this paragraph as in effect prior to Sept. 13, 1960, for provisions which prescribed the applicability of subsec. (f) of this section. Former provisions of par. (5) were covered by par. (4) of this section.

Subsec. (c)(2)(B). Pub. L. 86–778, § 303(b), substituted ''to whom the provisions of neither paragraph (4) nor paragraph (5) of subsection (b) of this section are applicable'' for ''to whom the provisions of paragraph (5) of subsection (b) of this section are not applicable''.

Subsec. (d)(1)(A). Pub. L. 86–778, § 303(c)(1), substituted ''be determined as provided in subsection (b) of this section (but without regard to paragraphs (4) and (5) thereof), except that for the purposes of paragraphs (2)(C)(i) and (3)(A)(i) of subsection (b) of this section, December 31, 1936, shall be used instead of December 31, 1950'' for ''be determined as provided in subsection (b) of this section (but without regard to paragraph (5) thereof), except that his starting date shall be December 31, 1936''.

Subsec. (d)(1)(C). Pub. L. 86–778, § 303(c)(2), substituted ''all of which was included'' for ''any part of which was included'', and struck out provisions which required the wages paid in the year in which the period of disability began to be counted if the counting of such wages would result in a higher primary insurance amount.

Subsec. (d)(2)(B). Pub. L. 86–778, § 303(c)(3), substituted ''paragraph (4) of subsection (b) of this section'' for ''paragraph (5) of subsection (b) of this section''.

Subsec. (d)(3). Pub. L. 86–778, § 303(c)(4), added par. (3).

Subsec. (e)(3). Pub. L. 86–778, § 303(d)(1), substituted ''if an individual has self-employment income in a taxable year which begins prior to the calendar year in which he becomes entitled to old-age insurance benefits and ends after the last day of the month preceding the month in which he becomes so entitled, his self-employment income in such taxable year shall not be counted in determining his benefit computation years'' for ''if an individual's closing date is determined under paragraph (3)(A) of subsection (b) of this section and he has self-employment income in a taxable year which begins prior to such closing date and ends after the last day of the month preceding the month in which he becomes entitled to old-age insurance benefits, there shall not be counted, in determining his average monthly wage, his self-employment income in such taxable year''.

Subsec. (e)(4). Pub. L. 86–778, § 303(d)(2), struck out par. (4) which prohibited, in computing an individual's average monthly wage, the counting of any wages paid such individual in any year any part of which was included in a period of disability, or any self-employment income of such individual credited pursuant to section 412 of this title to any year any part of which was included in a period of disability, unless the months of such year are included as elapsed months pursuant to subsec. (b)(1)(B) of this section.

Subsec. (f)(2)(A). Pub. L. 86–778, § 303(e)(1), substituted ''1960'' for ''1954'' in opening provisions, and ''filed such application after such calendar year'' for ''filed such application no earlier than six months after such calendar year'' in cl. (iii).

Subsec. (f)(2)(B). Pub. L. 86–778, § 303(e)(2), substituted provisions requiring a recomputation pursuant to subpar. (A) to be made only as provided in subsec. (a)(1) of this section, if the provisions of subsec. (b) of this section, as amended by Pub. L. 86–778, were applicable to the last previous computation of the individual's primary insurance amount, or as provided in subsec. (a)(1) and (3) of this section in all other cases for provisions which required a recomputation to be made only as provided in subsec. (a) of this section, inserted provisions requiring the computation base years, if cl. (i) of this subparagraph is applicable to such recomputation, to include only calendar years occurring prior to the year in which he filed his application for such recomputation, and struck out provisions which prescribed the method of making the recomputation if subsec. (b)(4) of this section were applicable to the previous computation.

Subsec. (f)(3)(A). Pub. L. 86–778, § 303(e)(3), substituted ''December 1960'' for ''August 1954'' in two places, struck out provisions which related to applications by individuals whose primary insurance amount was re-

computed under section 102(e)(5) or 102(f)(2)(B) of the Social Security Amendments of 1954, and substituted ''except that such individual's computation base years referred to in subsection (b)(2) of this section shall include the calendar year referred to in the preceding sentence'' for ''except that his closing date for purposes of subsection (b) of this section shall be the first day of the year following the year in which he became entitled to old-age insurance benefits or in which he filed his application for the last recomputation (to which he was entitled) of his primary insurance amount under any provision of law referred to in clause (ii) or (iii) of the preceding sentence, whichever is later''.

Subsec. (f)(3)(B). Pub. L. 86–778, §303(e)(3), substituted ''December 1960'' for ''August 1954'' in three places, struck out provisions which related to individuals whose primary insurance amount was recomputed under section 102(e)(5) or section 102(f)(2) of the Social Security Amendments of 1954, and individuals with respect to whom the last previous computation or recomputation of their primary insurance amount was based upon a closing date determined under subpar. (A) or (B) of subsec. (b)(3) of this section, and substituted ''except that such individual's computation base years referred to in subsection (b)(2) of this section shall include the calendar year in which he died in the case of an individual who was not entitled to old-age insurance benefits at the time of death or whose primary insurance amount was recomputed under paragraph (4) of this subsection, or in all other cases, the calendar year in which he filed his application for the last previous computation of his primary insurance amount'' for ''except that his closing date for purposes of subsection (b) of this section shall be the day following the year of death in case he died without becoming entitled to old-age insurance benefits, or in case he was entitled to old-age insurance benefits, the day following the year in which was filed the application for the last previous computation of his primary insurance amount or in which the individual died, whichever first occurred''.

Subsec. (f)(3)(C). Pub. L. 86–778, §303(e)(3), substituted ''In the case of an individual who becomes entitled to old-age insurance benefits in a calendar year after 1960, if such individual has self-employment income in a taxable year which begins prior to such calendar year and ends after the last day of the month preceding the month in which he became so entitled, the Secretary shall recompute such individual's primary insurance amount after the close of such taxable year and shall take into account in determining the individual's benefit computation years only such self-employment income in such taxable year as is credited, pursuant to section 412 of this title, to the year preceding the year in which he became so entitled'' for ''If an individual's closing date is determined under paragraph (3)(A) of subsection (b) of this section and he has self-employment income in a taxable year which begins prior to such closing date and ends after the last day of the month preceding the month in which he became entitled to old-age insurance benefits, the Secretary shall recompute his primary insurance amount after the close of such taxable year, taking into account only such self-employment income in such taxable year as is, pursuant to section 412 of this title, allocated to calendar quarters prior to such closing date.''

Subsec. (f)(4). Pub. L. 86–778, §303(e)(4), struck out ''(without the application of clause (iii) thereof)'' after ''paragraph (2)(A)'' in cl. (A), struck out provisions from the second sentence which required, if the recomputation is permitted by subpar. (A), to include in such recomputation any compensation (described in section 405(*o*) of this title) paid to him prior to the closing date which would have been applicable under such paragraph, and substituted ''which were considered in the last previous computation of his primary insurance amount and the compensation (described in section 405(*o*) of this title) paid to him in the years in which such wages were paid or to which such self-employment income was credited'' for ''which were taken into account in the last previous computation of his primary insurance amount and the compensation (described in section 405(*o*) of this title) paid to him prior to the closing date applicable to such computation'' in third sentence.

Subsec. (f)(5). Pub. L. 86–778, §304(a), substituted ''then upon application filed by such individual after the close of such taxable year and prior to January 1961 or (if he died without filing such application and such death occurred prior to January 1961)'' for ''then upon application filed after the close of such taxable year by such individual (or if he died without filing such application)''.

Subsec. (g). Pub. L. 86–778, §211(n), inserted ''and deductions under section 403(b) of this title''.

Subsec. (h). Pub. L. 86–778, §103(j)(2)(C), substituted ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title'', in par. (1).

Pub. L. 86–415 added subsec. (h).

1958—Subsec. (a). Pub. L. 85–840, §101(a), amended subsec. (a) generally, and, among other changes, substituted a new method for computing the primary insurance amount of an individual for provisions which established the primary insurance amount as either 55% of the first $110 of an individual's average monthly wage, plus 20% of the next $240, or the amount determined by use of the conversion table under former subsec. (c) of this section, whichever was larger.

Subsec. (b)(1). Pub. L. 85–840, §101(b)(1), substituted ''for the purposes of column III of the table appearing in subsection (a) of this section, an'' for ''An''.

Subsec. (b)(5). Public L. 85–840, §101(b)(2), added par. (5).

Subsec. (c). Pub. L. 85–840, §101(c), amended subsec. (c) generally, and, among other changes, substituted provisions for computation of the primary insurance amount of an individual under the 1954 Act for provisions which related to determinations made by use of the conversion table.

Subsec. (d). Pub. L. 85–840, §101(d), substituted provisions for computation of the primary insurance benefit under the 1939 Act for provisions which related to determination of the primary insurance benefit and primary insurance amount for purposes of the conversion table in former subsec. (c) of this section.

Subsec. (e). Pub. L. 85–840, §102(d), substituted ''(d) of this section'' for ''(d)(4) of this section'' in opening provisions and in cl. (2), and inserted ''and before 1959, and the excess over $4,800 in the case of any calendar year after 1958'' after ''after 1954'', in cl. (1).

Subsec. (g). Pub. L. 85–840, §205(m), struck out provisions which related to reduction under section 424 of this title.

1956—Subsec. (a)(3). Act Aug. 1, 1956, §103(c)(4), added par. (3).

Subsec. (b)(1). Act Aug. 1, 1956, §115(a), excluded from computation of an individual's average wage the months in any year any part of which was included in a period of disability, except the months in any year in which a period of disability began if their inclusion would result in a higher primary insurance amount.

Subsec. (b)(4). Act Aug. 1, 1956, §109(a), substituted ''five'' for ''four'', and struck out provisions which required the maximum number of calendar years determined under this clause to be five in the case of any individual who has not less than 20 quarters of coverage.

Subsec. (d)(5). Act Aug. 1, 1956, §115(b), excluded from the computation all quarters in any year prior to 1951 any part of which was included in a period of disability, except the quarters in the year in which a period of disability began if the inclusion of such quarters would result in a higher primary insurance amount.

Subsec. (e)(4). Act Aug. 1, 1956, §115(c), excluded any wages paid to an individual in any year any part of which was included in a period of disability, and any self-employment income credited to such year unless the months of such year are included as elapsed months.

Subsec. (g). Act Aug. 1, 1956, §103(c)(5), inserted references to sections 423 and 424 of this title.

1954—Subsec. (a). Act Sept. 1, 1954, §102(a), provided a new benefit formula, for computing primary insurance

amount for certain individuals, of 55 percent of the first $110 of average monthly wage plus 20 percent of the next $240 and provided that other individuals have their primary insurance amount computed under subsection (c) of this section.

Subsec. (b). Act Sept. 1, 1954, § 102(b), provided standard end-of-the-year starting and beginning-of-the-year closing dates, applicable to both wage earners and self-employed individuals, for computation of the average monthly wage, and provided for the exclusion of up to 5 years in which earnings were lowest (or non-existent) from the average monthly wage computation.

Subsec. (b)(1). Act Sept. 1, 1954, § 106(c)(1), inserted ''and any month in any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title) unless such quarter was a quarter of coverage'' after ''quarters of coverage''.

Subsec. (c). Act Sept. 1, 1954, § 102(c), provided a new conversion table with increased benefits for individuals already on the rolls and computed the primary insurance amount of certain individuals who come on the rolls after the enactment of the act.

Subsec. (d). Act. Sept. 1, 1954, § 102(d), inserted provisions for computation of a primary insurance amount for purposes of the conversion table.

Subsec. (d)(5). Act Sept. 1, 1954, § 106(c)(2), added subsec. (d)(5). Former subsec. (d)(5), which was added by act July 18, 1952, § 3(c)(3), ceased to be in effect at the close of June 30, 1953. See Termination Date of 1952 Amendment note set out under section 413 of this title.

Subsec. (d)(6). Act Sept. 1, 1954, § 102(d)(4), added par. (6).

Subsec. (e). Act Sept. 1, 1954, § 104(d), provided that earnings up to $4,200, in any calendar year after 1954, shall be used in the computation of an individual's average monthly wage.

Subsec. (e)(3). Act Sept. 1, 1954, § 102(e)(1), added par. (3).

Subsec. (e)(4). Act Sept. 1, 1954, § 106(c)(3), added par. (4).

Subsec. (f)(2). Act Sept. 1, 1954, § 102(e)(2), substituted a new test for determining eligibility for a recomputation to take into account additional earnings after entitlement.

Subsec. (f)(3)(A), (B). Act Sept. 1, 1954, § 102(e)(3)(A), amended provisions generally.

Subsec. (f)(3)(C). Act Sept. 1, 1954, § 102(e)(3)(B), added subpar. (C).

Subsec. (f)(4). Act Sept. 1, 1954, § 102(e)(4), provided for recomputation of the primary insurance on the death after 1954 of an old-age insurance beneficiary, if any person is entitled to monthly survivors benefits or to a lump-sum death payment on the basis of his wages and self-employment income.

1952—Subsec. (a)(1). Act July 18, 1952, § 2(b)(1), provided a new benefit formula for the computation of benefits based entirely on wages paid and self-employment income derived after 1950 of 55 percent of the first $100 of average monthly wage and 15 percent of next $200 and increased the primary insurance amount.

Subsec. (b)(1). Act July 18, 1952, § 3(c)(1), inserted ''and any month in any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title) unless such quarter was quarter of coverage'' after ''not a quarter of coverage.''

Subsec. (b)(4). Act July 18, 1952, § 3(c)(2), inserted provisions of subpars. (B) and (C).

Subsec. (c)(1). Act July 18, 1952, § 2(a)(1), inserted a new conversion table and increased amounts.

Subsec. (c)(2). Act July 18, 1952, § 2(a)(2), provided that individuals, whose primary insurance amounts are governed by regulations, shall have the same increase as is provided for individuals governed by the new conversion table.

Subsec. (c)(4). Act July 18, 1952, § 2(a)(3), added par. (4).

Subsec. (d)(5). Act July 18, 1952, § 3(c)(3), added par. (5).

Subsec. (f)(2). Act July 18, 1952, § 6(a), provided that upon application an individual will have his benefit recomputed by the new formula prescribed in subsec. (a)(1) of this section under certain conditions.

Subsec. (f)(5), (6). Act July 18, 1952, § 6(b), added par. (5) and redesignated former par. (5) as (6).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 307(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section] shall apply (notwithstanding section 215(f)(1) of the Social Security Act (42 U.S.C. 415(f)(1))) with respect to benefits payable for months after December 1994.''

Amendment by section 308(b) of Pub. L. 103–296 applicable (notwithstanding subsec. (f) of this section) with respect to benefits payable for months after Dec. 1994, see section 308(c) of Pub. L. 103–296, set out as a note under section 402 of this title.

Section 321(g)(3)(A) of Pub. L. 103–296 provided that: ''The amendments made by paragraph (1) [amending this section and section 430 of this title] shall be effective with respect to the determination of the contribution and benefit base for years after 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5117(a) of Pub. L. 101–508 applicable with respect to computation of primary insurance amount of any insured individual in any case in which a person becomes entitled to benefits under section 402 or 423 of this title on basis of such insured individual's wages and self-employment income for months after 18-month period following November 1990, but inapplicable if any person is entitled to benefits based on wages and self-employment income of such insured individual for month preceding initial month of such person's entitlement to such benefits under section 402 or 423, and amendment also applicable with respect to any primary insurance amount upon recomputation of such amount if recomputation is first effective for monthly benefits for months after 18-month period following November 1990, see section 5117(a)(4) of Pub. L. 101–508, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(1), (2)(A), (B), (3), (4) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8003(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to benefits payable for months after December 1988.''

Section 8011(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to benefits based on applications filed after the month in which this Act is enacted [November 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(7) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 9001(d) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and section 1395r of this title] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [subsec. (i) of this section] (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act [this chapter] in effect after December 1978) in 1986 and subsequent years.

''(2) The amendments made by paragraphs (1)(A) and (2)(B) of subsection (b) [amending this section] shall apply with respect to months after September 1986.

''(3) The amendment made by subsection (c) [amending section 1395r of this title] shall apply with respect to monthly premiums (under section 1839 of the Social Security Act [section 1395r of this title]) for months after December 1986.''

Section 12115 of Pub. L. 99–272 provided that: ''Except as otherwise specifically provided, the preceding provisions of this subtitle [subtitle A (§§12101–12115) of title XII of Pub. L. 99–272, amending this section and sections 402 to 404, 409, 418, 423, 424a, 907, 909, 910, 1310, and 1383 of this title and sections 86, 871, 932, and 3121 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 402 to 404, 409, 418, 424a, 907, and 909 of this title and section 932 of Title 26, amending provisions set out as notes under section 1310 of this title, and repealing provisions set out as a note under section 907 of this title], including the amendments made thereby, shall take effect on the first day of the month following the month in which this Act is enacted [April 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2661(k) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(10) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 111(a)(1)–(3), (6), (b)(1), (2), (c) of Pub. L. 98–21 applicable with respect to cost-of-living increases determined under subsec. (i) of this section for years after 1982, see section 111(a)(8) of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 111(b)(3) of Pub. L. 98–21 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to cost-of-living increases determined under section 2151(i) of the Social Security Act [subsec. (i) of this section] for years after 1983.''

Section 112(e) of Pub. L. 98–21 provided that: ''The amendments made by the preceding provisions of this section [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1983.''

EFFECTIVE DATE OF 1981 AMENDMENTS

Section 2(j)(2)–(4) of Pub. L. 97–123, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided:

''(2) Except as provided in paragraphs (3) and (4), the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981 [enacting section 1382k of this title, amending this section and sections 402, 403, 417, and 433 of this title] (other than subsection (f) thereof [amending section 402 of this title]), together with the amendments made by the preceding subsections of this section [amending this section and sections 402, 403, and 417 of this title and repealing section 1382k of this title and a provision set out as a note under section 1382k of this title], shall apply with respect to benefits for months after December 1981; and the amendment made by subsection (f) of such section 2201 shall apply with respect to deaths occurring after December 1981.

''(3) Such amendments shall not apply—

''(A) in the case of an old-age insurance benefit, if the individual who is entitled to such benefit first became eligible (as defined in section 215(a)(3)(B) of the Social Security Act [subsec. (a)(3)(B) of this section]) for such benefit before January 1982,

''(B) in the case of a disability insurance benefit, if the individual who is entitled to such benefit first became eligible (as so defined) for such benefit before January 1982, or attained age sixty-two before January 1982,

''(C) in the case of a wife's or husband's insurance benefit, or a child's insurance benefit based on the wages and self-employment income of a living individual, if the individual on whose wages and self-employment income such benefit is based is entitled to an old-age or disability insurance benefit with respect to which such amendments do not apply, or

''(D) in the case of a survivors insurance benefit, if the individual on whose wages and self-employment income such benefit is based died before January 1982, or dies in or after January 1982 and at the time of his death is eligible (as so defined) for an old-age or disability insurance benefit with respect to which such amendments do not apply.

''(4) In the case of an individual who is a member of a religious order (within the meaning of section 3121(r)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3121(r)(2) of Title 26, Internal Revenue Code]), or an autonomous subdivision of such order, whose members are required to take a vow of poverty, and which order or subdivision elected coverage under title II of the Social Security Act [this subchapter] before the date of the enactment of this Act [Dec. 29, 1981], or who would be such a member except that such individual is considered retired because of old age or total disability, paragraphs (2) and (3) shall apply, except that each reference therein to 'December 1981' or 'January 1982' shall be considered a reference to 'December 1991' or 'January 1992', respectively.''

Amendment by section 2206(a), (b)(5)–(7) of Pub. L. 97–35 applicable only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981, see section 2206(c) of Pub. L. 97–35, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 102(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes entitled to disability insurance benefits on or after July 1, 1980; except that the third sentence of section 215(b)(2)(A) of the Social Security Act [subsec. (b)(2)(A) of this section] (as added by such amendments) shall apply only with respect to monthly benefits payable for months beginning on or after July 1, 1981.''

For effective date of amendment by section 101(b)(3), (4) of Pub. L. 96–265, see section 101(c) of Pub. L. 96–265, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 103(d) of Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning after 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 201 of Pub. L. 95–216 effective only with respect to monthly benefits under this subchapter payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after December 1978, except that amendment by section 201(d) of Pub. L. 95–216 effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies after December 1977, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Section 1(h)(2) of Pub. L. 93–233 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to benefits payable for months after February 1974.''

Section 2(c) of Pub. L. 93–233 provided that: ''The amendment made by subsections (a) and (b) [amending this section and sections 427 and 428 of this title and repealing section 202(a)(4) of Pub. L. 92–336, title II, July 1, 1972, 86 Stat. 416] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after May 1974, and with respect to lump-sum death payments under section 202(i) of such Act [section 402(i) of this title] in the case of deaths occurring after such month.''

Amendment by section 5(a)(4) of Pub. L. 93–233 applicable with respect to calendar years after 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable with respect to calendar years after 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Section 101(g) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for months after December 1972 (without regard to when the insured individual became entitled to such benefits or when he died) and with respect to lump-sum death payments under such title in the case of deaths occurring after such month.''

Amendment by section 104(b) of Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after Dec. 1974, with provision for the determination of the number of elapsed years for purposes of subsec. (b)(3) of this section in the case of a man who attains age 62 prior to 1975, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Amendment by section 144(a)(1) of Pub. L. 92–603 effective in like manner as if such amendment had been included in title II of Pub. L. 92–336, see section 144(b) of Pub. L. 92–603, set out as a note under section 403 of this title.

Section 201(i) of Pub. L. 92–336 provided that: ''The amendments made by this section [amending this section and section 403 of this title] (other than the amendments made by subsections (g) and (h)) shall apply with respect to monthly benefits under title II of the Social Security Act [this chapter] for months after August 1972 and with respect to lump-sum death payments under such title in the case of deaths occurring after such month. The amendments made by subsection (g) [amending sections 427 and 428 of this title] shall apply with respect to monthly benefits under title II of such Act for months after August 1972. The amendments made by subsection (h)(1) [amending section 403 of this title] shall apply with respect to monthly benefits under title II of such Act for months after December 1971.''

Section 202(a)(3) of Pub. L. 92–336, as amended by Pub. L. 93–233, § 2(d), Dec. 31, 1973, 87 Stat. 952, provided that the amendment made by that section is effective June 1, 1974.

Amendment by section 203(a)(4) of Pub. L. 92–336 applicable only with respect to calendar years after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 201(e) of Pub. L. 92–5 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1970 and with respect to lump-sum death payments under such title in the case of deaths occurring in and after the month in which this Act is enacted [March 1971].''

Amendment by section 203(a)(4) of Pub. L. 92–5 applicable only with respect to calendar years after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 1002(e) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1969 and with respect to lump-sum death payments under such title in the case of deaths occurring after December 1969.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 101(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968 and with respect to lump-sum death payments under such title in the case of deaths occurring after January 1968.''

Amendment by section 108(a)(4) of Pub. L. 90–248 applicable only with respect to calendar years after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Section 155(a)(7), (9) of Pub. L. 90–248 provided that:

''(7)(A) The amendments made by paragraphs (4) and (5) [amending this section] shall apply with respect to recomputations made under section 215(f)(2) of the Social Security Act [subsec. (f)(2) of this section] after the date of the enactment of this Act [Jan. 2, 1968].

''(B) The amendments made by paragraph (6) [amending this section] shall apply with respect to individuals who die after the date of enactment of this Act [Jan. 2, 1968].

''(9) The amendment made by paragraphs (1) and (2) [amending this section] shall not apply with respect to monthly benefits for any month prior to January 1967.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 301(d) of Pub. L. 89–97 provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1964 and with respect to lump-sum death payments under such title in the case of deaths occurring in or after the month in which this Act is enacted [July 1965].''

Section 302(d)(2) of Pub. L. 89–97 provided that the amendment made by that section is effective Jan. 2, 1966.

Section 302(f)(1)–(5) of Pub. L. 89–97 provided as follows:

''(1) The amendments made by subsection (c) [amending this section] shall apply only to individuals who become entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] after 1965.

''(2) Any individual who would, upon filing an application prior to January 2, 1966, be entitled to a recomputation of his monthly benefit amount for purposes of title II of the Social Security Act [this subchapter] shall be deemed to have filed such application on the earliest date on which such application could have been filed, or on the day on which this Act is enacted [July 30, 1965], whichever is the later.

''(3) In the case of an individual who died after 1960 and prior to 1966 and who was entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] at the time of his death, the provisions of sections 215(f)(3)(B) and 215(f)(4) of such Act [subsec. (f)(3)(B) and (f)(4) of this section] as in effect before the enactment of this Act [July 30, 1965] shall apply.

''(4) In the case of a man who attains age 65 prior to 1966, or dies before such year, the provisions of section 215(f)(7) of the Social Security Act as in effect before the enactment of this Act [July 30, 1965] shall apply.

''(5) The amendments made by subsection (e) of this section [amending section 423 of this title] shall apply in the case of individuals who become entitled to disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] after December 1965.''

Section 303(f)(2) of Pub. L. 89–97 provided that: ''The amendment made by subsection (e) [amending this section] shall apply in the case of the primary insurance amounts of individuals who attain age 65 after the date of enactment of this Act [July 30, 1965].''

Amendment by section 304(k) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 304(*o*) of Pub. L. 89–97, set out as a note under section 402 of this title.

Amendment by section 320(a)(4) of Pub. L. 89–97 applicable with respect to calendar years after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 101(b) of Pub. L. 87–64 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only in the case of monthly insurance benefits under title II of the Social Security Act [this subchapter] for months beginning on or after the effective date of this title [see note set out under section 402 of this title], and in the case of lump-sum death payments under such title with respect to deaths on or after such effective date.''

Amendment by section 102(d)(1), (2) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after Aug. 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after Aug. 1, 1961, and amendment by section 102(d)(3) of Pub. L. 87–64 effective Aug. 1, 1961, see sections 102(f)(6), (7) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 103(j)(2)(C) of Pub. L. 86–778 effective on Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 211(n) of Pub. L. 86–778 effective in the manner provided in section 211(p) and (q) of Pub. L. 86–778, see section 211(s) of Pub. L. 86–778, set out as a note under section 403 of this title.

Section 303(d)(1) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to individuals who become entitled to benefits under section 402(a) of this title after 1960.

Section 303(d)(2) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to individuals who meet any of the subparagraphs of paragraph (4) of subsec. (b) of this section, as amended by Pub. L. 86–778.

Section 303(e)(1) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to applications for recomputation under subsec. (f)(2) of this section filed after 1960.

Section 303(e)(4)(B) of Pub. L. 86–778 provided that the amendment made by that section is effective in the case of deaths occurring on or after Sept. 13, 1960.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 101(g) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section and sections 402 and 403 of this title] shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter], for months after December 1958, and in the case of the lump-sum death payments under such title, with respect to deaths occurring after such month.''

Amendment by section 205(m) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 109(b) of act Aug. 1, 1956, provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of monthly benefits under section 202 of the Social Security Act [section 402 of this title], and the lump-sum death payment under such section, based on the wages and self-employment income of an individual—

''(1) who becomes entitled to benefits under subsection (a) of such section on the basis of an application filed on or after the date of enactment of this Act [Aug. 1, 1956]; or

''(2) who is (but for the provisions of subsection (f)(6) of section 215 of the Social Security Act [subsec. (f)(6) of this section]) entitled to a recomputation of his primary insurance amount under subsection (f)(2)(A) of such section 215 based on an application filed on or after the date of enactment of this Act [Aug. 1, 1956]; or

''(3) who dies without becoming entitled to benefits under subsection (a) of such section 202 [section 402(a) of this title] and no individual was entitled to survivor's benefits and no lump-sum death payment was payable under such section 202 on the basis of an application filed prior to such date of enactment [Aug. 1, 1956]; or

''(4) who dies on or after such date of enactment [Aug. 1, 1956] and whose survivors are (but for the provisions of subsection (f)(6) of such section 215 [subsec. (f)(6) of this section]) entitled to a recomputation of his primary insurance amount under subsection (f)(4)(A) of such section 215; or

''(5) who dies prior to such date of enactment [Aug. 1, 1956] and (A) whose survivors are (but for the provisions of subsection (f)(6) of such section 215 [subsec. (f)(6) of this section]) entitled to a recomputation of his primary insurance amount under subsection (f)(4)(A) of such section 215, and (B) on the basis of whose wages and self-employment income no individual was entitled to survivor's benefits under such section 202 [section 402 of this title], and no lump-sum death payment was payable under such section, on the basis of an application filed prior to such date of enactment and no individual was entitled to such a benefit, without the filing of an application for the month in which this Act is enacted [August 1956] or any month prior thereto.''

Section 115(d) of act Aug. 1, 1956, provided that: ''The amendments made by this section [amending this section] shall apply in the case of an individual (1) who becomes entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to benefits under section 202(a) of such Act [section 402(a) of this title] after the date of enactment of this Act [Aug. 1, 1956], or (2) who dies without becoming entitled to benefits under such section 202(a) and on the basis of whose wages and self-employment income an application for benefits or a lump-sum death payment under section 202 of such Act is filed after the date of enactment of this Act, or (3) who becomes entitled to benefits under section 223 of such Act [section 423 of this title], or (4) who files, after the date of enactment of this Act, an application for a disability determination which is accepted as an application for purposes of section 216(i) of such Act [section 416(i) of this title].''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 102(f) of act Sept. 1, 1954, as amended by Pub. L. 86–778, title II, §303(k), Sept. 13, 1960, 74 Stat. 966; Pub. L. 89–97, title III §302(f)(7), July 30, 1965, 79 Stat. 366, provided that:

''(1) The amendments made by the preceding subsections [amending this section and section 403 of this title], other than subsection (b) and paragraphs (1), (2), (3), and (4) of subsection (e), shall (subject to the provi-

sions of paragraph (2) and notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section]) apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after, and in the case of monthly benefits under such section for months after, August 1954.

''(2)(A) The amendment made by subsection (b)(2) [amending this section] shall be applicable only in the case of monthly benefits for months after August 1954, and the lump-sum death payment in the case of death after August 1954, based on the wages and self-employment income of an individual (i) who does not become eligible for benefits under section 202(a) of the Social Security Act [section 402(a) of this title] until after August 1954, or (ii) who dies after August 1954, and without becoming eligible for benefits under such section 202(a), or (iii) who is or has been entitled to have his primary insurance amount recomputed under section 215(f)(2) of the Social Security Act, as amended by subsection (e)(2) of this section, or under subsection (e)(5)(B) of this section [set out as a note under this section], or (iv) with respect to whom not less than six of the quarters elapsing after June 1953 are quarters of coverage (as defined in such Act), or (v) who files an application for a disability determination which is accepted as an application for purposes of section 216(i) of such Act [section 416(i) of this title], or (vi) who dies after August 1954, and whose survivors are (or would, but for the provisions of section 215(f)(6) of such Act, be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act, as amended by this Act. For purposes of the preceding sentence an individual shall be deemed eligible for benefits under section 202(a) of the Social Security Act for any month if he was, or would upon filing application therefor in such month have been, entitled to such benefits for such month.

''(B) [Repealed. Pub. L. 89–97, title III, § 302(f)(7), July 30, 1965, 79 Stat. 366, eff. Jan. 2, 1966.]

''(3) The amendments made by subsections (b)(1), (e)(1), and (e)(3)(B) [amending this section] shall be applicable only in the case of monthly benefits based on the wages and self-employment income of an individual who does not become entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] until after August 1954, or who dies after August 1954 without becoming entitled to such benefits, or who files an application after August 1954 and is entitled to a recomputation under paragraph (2) or (4) of section 215(f) of the Social Security Act, as amended by this Act [subsec. (f)(2) or (4) of this section], or who is entitled to a recomputation under paragraph (2)(B) of this subsection, or who is entitled to a recomputation under paragraph (5) of subsection (e) [set out as a note under this section].

''(4) The amendments made by subsection (e)(2) [amending this section] shall be applicable only in the case of applications for recomputation filed after 1954. The amendment to subsec. (f)(4) made by subsection (e)(4) shall be applicable only in the case of deaths after 1954.

''(5) The amendments made by subparagraph (A) of subsection (e)(3) [amending this section] shall be applicable only in the case of applications for recomputation filed, or deaths occurring, after August 1954.

''(6) No increase in any benefit by reason of the amendments made by this section (other than subsection (e)) or by reason of subparagraph (B) of paragraph (2) of this subsection shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [subsec. (f) of this section].''

Amendment by section 106(c) of act Sept. 1, 1954, applicable with respect to monthly benefits under this subchapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments should be regarded as a recomputation for purposes of subsec. (f) of this section, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENTS

For effective and termination dates of amendment by act July 18, 1952, see section 3(f), (g) of act July 18, 1952, set out as a note under section 413 of this title.

Section 2(c)(1), (3) of act July 18, 1952, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall, subject to the provisions of paragraph (2) of this subsection and notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section], apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after, and in the case of monthly benefits under such section for any month after, August 1952.

''(3) The amendments made by subsection (b) [amending this section and section 403 of this title] shall (notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section]) apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after August 1952, and in the case of monthly benefits under such section for months after August 1952.''

SAVINGS PROVISION

1960—Section 303(i) of Pub. L. 86–778 provided that in the case of an application for recomputation under subsec. (f)(2) of this section, the provisions of subsec. (f)(2) as in effect prior to Sept. 13, 1960, were to apply where the application was filed after 1954 and before 1961, and that in the case of an individual who died after 1954 and before 1961 and who was entitled to an old-age insurance benefit under section 402(a) of this title, the provisions of subsec. (f)(4) as in effect prior to Sept. 13, 1960 were to apply.

1958—Section 101(i) of Pub. L. 85–840 provided that: ''In the case of any individual to whom the provisions of subsection (b)(5) of section 215 of the Social Security Act [subsec. (b)(5) of this section], as amended by this Act, are applicable and on the basis of whose wages and self-employment income benefits are payable for months prior to January 1959, his primary insurance amount for purposes of benefits for such prior months shall, if based on an application for such benefits or for a recomputation of such amount, as the case may be, filed after December 1958, be determined under such section 215 [this section], as in effect prior to the enactment of this Act [Aug. 28, 1958], and, if such individual's primary insurance amount as so determined is larger than the primary insurance amount determined for him under section 215 as amended by this Act, such larger primary insurance amount (increased to the next higher dollar if it is not a multiple of a dollar) shall, for months after December 1958, be his primary insurance amount for purposes of such section 215 (and of the other provisions) of the Social Security Act as amended by this Act in lieu of the amount determined without regard to this subsection.''

1952—Subsec. (d) of section 2 of act July 18, 1952, provided that:

''(1) Where—

''(A) an individual was entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to an old-age insurance benefit under title II of such Act [this subchapter] for August 1952;

''(B) two or more other persons were entitled (without the application of such section 202(j)(1) [section 402(j)(1) of this title]) to monthly benefits under such title for such month on the basis of the wages and self-employment income of such individual; and

''(C) the total of the benefits to which all persons are entitled under such title [this subchapter] on the basis of such individual's wages and self-employment income for any subsequent month for which he is en-

titled to an old-age insurance benefit under such title, would (but for the provisions of this paragraph) be reduced by reason of the application of section 203(a) of the Social Security Act, as amended by this Act [section 403(a) of this title],

then the total of benefits, referred to in clause (C), for such subsequent month shall be reduced to whichever of the following is the larger:

''(D) the amount determined pursuant to section 203(a) of the Social Security Act, as amended by this Act [section 403(a) of this title]; or

''(E) the amount determined pursuant to such section, as in effect prior to the enactment of this Act [July 18, 1952], for August 1952 plus the excess of (i) the amount of his old-age insurance benefit for August 1952 computed as if the amendments made by the preceding subsections of this section had been applicable in the case of such benefit for August 1952, over (ii) the amount of his old-age insurance benefit for August 1952.

''(2) No increase in any benefit by reason of the amendments made by this section or by reason of paragraph (2) of subsection (c) of this section shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [subsec. (f) of this section].''

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

COMMISSION ON THE SOCIAL SECURITY ''NOTCH'' ISSUE

Pub. L. 102–393, title VI, §635, Oct. 6, 1992, 106 Stat. 1777, as amended by Pub. L. 103–123, title VI, §627, Oct. 28, 1993, 107 Stat. 1266, established a Commission on the Social Security ''Notch'' Issue, provided for its composition, directed Commission to conduct a comprehensive study of what had become known as the ''notch'' issue and transmit to Congress, not later than Dec. 31, 1994, a report with a detailed statement of its findings and conclusions, together with any recommendations, and provided the Commission terminate 30 days after transmittal of report.

COST-OF-LIVING INCREASES; COST-OF-LIVING COMPUTATION QUARTER DETERMINATIONS

Pub. L. 98–604, §1, Oct. 30, 1984, 98 Stat. 3161, provided: ''That (a) in determining whether the base quarter ending on September 30, 1984, is a cost-of-living computation quarter for the purposes of the cost-of-living increases under sections 215(i) and 1617 of the Social Security Act [subsec. (i) of this section and section 1382f of this title], the phrase 'is 3 percent or more' appearing in section 215(i)(1)(B) of such Act shall be deemed to read 'is greater than zero' (and the phrase 'exceeds, by not less than 3 per centum, such Index' appearing in section 215(i)(1)(B) of such Act as in effect in December 1978 shall be deemed to read 'exceeds such Index').

''(b) For purposes of section 215(i) of such Act, the provisions of subsection (a) shall not constitute a 'general benefit increase'.''

''BASE QUARTER'' IN CALENDAR YEAR 1983

Section 111(d) of Pub. L. 98–21 provided that: ''Notwithstanding any provision to the contrary in section 215(i) of the Social Security Act [subsec. (i) of this section], the 'base quarter' (as defined in paragraph (1)(A)(i) of such section) in the calendar year 1983 shall be a 'cost-of-living computation quarter' within the meaning of paragraph (1)(B) of such section (and shall be deemed to have been determined by the Secretary of Health and Human Services to be a 'cost-of-living computation quarter' under paragraph (2)(A) of such section) for all of the purposes of such Act [this chapter] as amended by this section and by other provisions of this Act, without regard to the extent by which the Consumer Price Index has increased since the last prior cost-of-living computation quarter which was established under such paragraph (1)(B).''

COMBINED BALANCE IN TRUST FUNDS USED IN DETERMINING OASDI FUND RATIO WITH RESPECT TO CALENDAR YEAR 1984

Section 112(f) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title VI, §2662(b), July 18, 1984, 98 Stat. 1159, provided that: ''Notwithstanding anything to the contrary in section 215(i)(1)(F) of the Social Security Act [subsec. (i)(1)(F) of this section] (as added by subsection (a)(4) of this section), the combined balance in the Trust Funds which is to be used in determining the 'OASDI fund ratio' with respect to the calendar year 1984 under such section shall be the estimated combined balance in such Funds as of the close of that year (rather than as of its beginning), including the taxes transferred under section 201(a) of such Act [section 401(a) of this title] on the first day of the year following that year.''

RECALCULATION OF PRIMARY INSURANCE AMOUNTS APPLICABLE TO CERTAIN BENEFICIARIES

Section 2201(e) of Pub. L. 97–35, which provided for recalculation of primary insurance amounts for certain beneficiaries, was repealed by Pub. L. 97–123, §2(i), Dec. 29, 1981, 95 Stat. 1661.

COST-OF-LIVING INCREASE IN BENEFITS

Section 3(i) of Pub. L. 93–233 provided that: ''For purposes of section 203(f)(8) [section 403(f)(8) of this title], so much of section 215(i)(1)(B) [subsec. (i)(1)(B) of this section] as follows the semicolon, and section 230(a) of the Social Security Act [section 430(a) of this title], the increase in benefits provided by section 2 of this Act [amending this section and sections 427 and 428 of this title] shall be considered an increase under section 215(i) of the Social Security Act.''

INCREASE OF OLD-AGE OR DISABILITY INSURANCE BENEFITS FOLLOWING INCREASE IN PRIMARY INSURANCE AMOUNT OR ENTITLEMENT TO BENEFITS ON A HIGHER AMOUNT

Section 101(f) of Pub. L. 92–603 provided that: ''Whenever an insured individual is entitled to benefits for a month which are based on a primary insurance amount under paragraph (1) or paragraph (3) of section 215(a) of the Social Security Act [subsec. (a)(1) or (3) of this section] and for the following month such primary insurance amount is increased or such individual becomes entitled to benefits on a higher primary insurance amount under a different paragraph of such section 215(a), such individual's old-age or disability insurance benefit (beginning with the effective month of the increased primary insurance amount) shall be increased by an amount equal to the difference between the higher primary insurance amount and the primary insurance amount on which such benefit was based for the month prior to such effective month, after the application of section 202(q) of such Act [section 402(q) of this title] where applicable, to such difference.''

TABLE MODIFICATION AND EXTENSION; EFFECTIVE DATE; PUBLICATION IN FEDERAL REGISTER

Section 203(f) of Pub. L. 93–66 provided that effective June 1, 1974, the Secretary of Health, Education, and Welfare would prescribe and publish in the Federal Register all necessary modifications and extensions in the table formerly contained in subsec. (a) of this section.

CONVERSION OF DISABILITY INSURANCE BENEFITS TO OLD-AGE INSURANCE BENEFITS

Section 201(f) of Pub. L. 92–5 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1970 on the basis of an application filed in or after the month in which this Act is enacted [March 1971], and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1971, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable), the amount in column IV of the table appearing in such section 215(c) [probably means section 215(a) which is subsec. (a) of this section] for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act [subsec. (c) of this section]) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.''

Section 1002(f) of Pub. L. 91–172 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1969 and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1970, or he died in such month, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable), the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.''

Section 101(f) of Pub. L. 90–248 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for the month of January 1968 and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for the month of February 1968, or who died in such month, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable) the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.''

Section 301(e) of Pub. L. 89–97 provided that: ''If an individual is entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1964 on the basis of an application filed after enactment of this Act [July 30, 1965] and is entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1965, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable) the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to his disability insurance benefit.''

Section 101(h) of Pub. L. 85–840 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1958, and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title], or died, in January 1959, then, for purposes of paragraph (4) of section 215(a) of the Social Security Act [subsec. (a)(4) of this section], as amended by this Act, the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under subsection (c) of such section 215) instead of the amount in column IV equal to his disability insurance benefit.''

COMPUTATION OF PRIMARY INSURANCE AMOUNT FOR PERSONS ENTITLED TO BENEFITS AFTER JANUARY 2 AND BEFORE FEBRUARY 1968

Section 155(a)(8) of Pub. L. 90–248 provided that: ''In any case in which—

''(A) any person became entitled to a monthly benefit under section 202 or 223 of the Social Security Act [section 402 or 423 of this title] after the date of enactment of this Act [Jan. 2, 1968] and before February 1968, and

''(B) the primary insurance amount on which the amount of such benefit is based was determined by applying section 215(d) of the Social Security Act [subsec. (d) of this section] as amended by this Act,

such primary insurance amount shall, for purposes of section 215(c) of the Social Security Act [subsec. (c) of this section], as amended by this Act, be deemed to have been computed on the basis of the Social Security Act [this chapter] in effect prior to the enactment of this Act [Jan. 2, 1968].''

COMPUTATION OF PRIMARY INSURANCE AMOUNT FOR CERTAIN INDIVIDUALS WHO WERE FULLY INSURED AND HAD ATTAINED RETIREMENT AGE PRIOR TO 1961

Section 303(g)(1) of Pub. L. 86–778, as amended by Pub. L. 87–64, title I, § 103(d), June 30, 1961, 75 Stat. 138; Pub. L. 89–97, title III, § 302(f)(6), July 30, 1965, 79 Stat. 366; Pub. L. 90–248, title I, § 155(c), Jan. 2, 1968, 81 Stat. 866; Pub. L. 92–603, title I, § 104(h), Oct. 30, 1972, 86 Stat. 1341, provided that: ''In the case of any individual who both was fully insured and had attained retirement age prior to 1961 and (A) who becomes entitled to old-age insurance benefits after 1960, or (B) who dies after 1960 without being entitled to such benefits, then, notwithstanding the amendments made by the preceding subsections of this section [amending this section and section 423 of this title], or the amendments made by the Social Security Amendments of 1965, 1967, 1969, and 1972 (and by Public Law 92–5) [see Tables for classification of Pub. L. 89–97, July 30, 1965, 79 Stat. 286, Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, Pub. L. 91–172, title X, Dec. 30, 1969, 83 Stat. 737, Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, Pub. L. 92–5, Mar. 17, 1971, 85 Stat. 5] the Secretary shall also compute such individual's primary insurance amount on the basis of such individual's average monthly wage determined under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act with a closing date determined under section 215(b)(3)(B) of such Act as then in effect, but only if such closing date would have been applicable to such computation had this section not been enacted. If the primary insurance amount resulting from the use of such an average monthly wage is higher than the primary insurance amount resulting from the use of an average monthly wage determined pursuant to the provisions of section 215 of the Social Security Act, as amended by the Social Security Amendments of 1960 [Pub. L. 86–778], or (if such individual becomes entitled to old-age insurance benefits after the date of enactment of the Social Security Amendments of 1972 [Oct. 30, 1972], or dies after such date without becoming so entitled) as amended by the Social Security Amendments of 1972 [Pub. L. 92–603], such higher primary insurance amount shall be the individual's primary insurance amount for purposes of such section 215. The terms used in this subsection shall have the meaning assigned to them by title II of the Social Security Act [this subchapter]; except that the terms 'fully insured' and 'retirement age' shall have

the meaning assigned to them by such title II as in effect on September 13, 1960.''

DISREGARDING OF INCOME OF OASDI RECIPIENTS AND RAILROAD RETIREMENT RECIPIENTS IN DETERMINING NEED FOR PUBLIC ASSISTANCE

Section 1007 of Pub. L. 91–172, as amended by Pub. L. 91–306, §2(b)(1), July 6, 1970, 84 Stat. 408; Pub. L. 91–669, Jan. 11, 1971, 84 Stat. 2038; Pub. L. 92–223, §5, Dec. 28, 1971, 85 Stat. 810; Pub. L. 92–603, title III, §304, Oct. 30, 1972, 86 Stat. 1484, eff. Oct. 30, 1972, provided a minimum aid requirement in addition to the requirements imposed by law as conditions of approval of State plans for aid to individuals under subchapters I, X, XIV, or XVI of this chapter, in the case of any individual found eligible for aid for any month after Mar. 1970 and before Jan. 1974 who also received a monthly insurance benefit under this subchapter, and in the case of such an individual who also received a monthly annuity or pension under the Railroad Retirement Acts of 1935 or 1937, set out in sections 215 et seq. and 228a et seq., respectively, of Title 45, Railroads.

DISREGARDING OF RETROACTIVE PAYMENT OF OASDI BENEFIT INCREASE AND OF RAILROAD RETIREMENT BENEFIT INCREASE

Section 201(g) of Pub. L. 92–5 provided that: ''Notwithstanding the provisions of sections 2(a)(10), 402(a)(7), 1002(a)(8), 1402(a)(8), and 1602(a)(13) and (14) of the Social Security Act [sections 302(a)(10), 602(a)(7), 1202(a)(8), 1352(a)(8), and 1382(a)(13) and (14) of this title] each State, in determining need for aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV, of such Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter], may disregard (and the plan may be deemed to require the State to disregard), in addition to any other amounts which the State is required or permitted to disregard in determining such need, any amount paid to an individual under title II of such Act [subchapter II of this chapter] (or under the Railroad Retirement Act of 1937 [section 228a et seq. of Title 45, Railroads] by reason of the first proviso in section 3(e) thereof [section 228c(e) of Title 45]), in any month after the month in which this Act is enacted [March 1971], to the extent that (1) such payment is attributable to the increase in monthly benefits under the old-age, survivors, and disability insurance system for January, February, March, or April 1971 resulting from the enactment of this title, and (2) the amount of such increase is paid separately from the rest of the monthly benefit of such individual for January, February, March, or April 1971.''

Section 1006 of title X of Pub. L. 91–172, as amended by Pub. L. 91–306, §2(a)(1), July 6, 1970, 84 Stat. 407, provided that: ''Notwithstanding the provisions of sections 2(a)(10), 402(a)(7), 1002(a)(8), 1402(a)(8), and 1602(a)(13) and (14) of the Social Security Act [sections 302(a)(10), 602(a)(7), 1202(a)(8), 1352(a)(8), and 1382(a)(13) and (14) of this title], each State, in determining need for aid or assistance under a State plan approved under title I, X, XIV, or XVI [subchapters I, X, XIV, or XVI of this chapter], or part A of title IV, of such Act [part A of subchapter IV of this chapter], shall disregard (and the plan shall be deemed to require the State to disregard), in addition to any other amounts which the State is required or permitted to disregard in determining such need, any amount paid to any individual (1) under title II of such Act [this subchapter] (or under the Railroad Retirement Act of 1937 [section 228a et seq. of Title 45, Railroads] by reason of the first proviso in section 3(e) thereof [section 228c(e) of Title 45]), in any month after December 1969, to the extent that (a) such payment is attributable to the increase in monthly benefits under the old-age, survivors, and disability insurance system for January or February 1970 resulting from the enactment of this title, and (b) the amount of such increase is paid separately from the rest of the monthly benefit of such individual for January or February 1970; or (2) as annuity or pension under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935, if such amount is paid in a lump-sum to carry out any retroactive increase in annuities or pensions payable under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935 [section 215 et seq. of Title 45] brought about by reason of the enactment (after May 30, 1970 and prior to December 31, 1970) of any Act which increases, retroactively, the amount of such annuities or pensions.''

DISREGARDING OASDI BENEFIT INCREASES AND CHILD'S INSURANCE BENEFIT PAYMENTS BEYOND AGE 18 TO THE EXTENT ATTRIBUTABLE TO RETROACTIVE EFFECTIVE DATE OF 1965 AMENDMENTS

Section 406 of Pub. L. 89–97 authorized a State to disregard, in determining the need for aid or assistance under State plans approved under subchapter I, IV, X, XIV, or XVI of this chapter, any amount paid to an individual under subchapter II of this chapter or the Railroad Retirement Act of 1937, section 228a et seq. of Title 45, Railroads, by reason of the amendments made by section 326(a) of Pub. L. 89–97 to sections 228a(q) and 228e(1)(9) of Title 45, for months occurring after December 1964 and before the third month following July 1965, in certain instances.

COMPUTATION OF AVERAGE MONTHLY WAGE FOR CERTAIN INDIVIDUALS ENTITLED TO DISABILITY INSURANCE BENEFITS PRIOR TO 1961

Section 303(g)(2) of Pub. L. 86–778 provided that: ''Notwithstanding the amendments made by the preceding subsections of this section [amending this section and section 423 of this title], in the case of any individual who was entitled (without regard to the provisions of section 223(b) of the Social Security Act [section 423(b) of this title]) to a disability insurance benefit under such section 223 for the month before the month in which he became entitled to an old-age insurance benefit under section 202(a) of such Act [section 402(a) of this title], or in which he died, and such disability insurance benefit was based upon a primary insurance amount determined under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act, the Secretary shall, in applying the provisions of such section 215(a) (except paragraph (4) thereof), for purposes of determining benefits payable under section 202 of such Act on the basis of such individual's wages and self-employment income, determine such individual's average monthly wage under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act [Sept. 13, 1960]. The provisions of this paragraph shall not apply with respect to any such individual, entitled to such old-age insurance benefits, (i) who applies, after 1960, for a recomputation (to which he is entitled) of his primary insurance amount under section 215(f)(2) of such Act [subsec. (f)(2) of this section], or (ii) who dies after 1960 and meets the conditions for a recomputation of his primary insurance amount under section 215(f)(4) of such Act.''

AVERAGE MONTHLY WAGE FOR CERTAIN INDIVIDUALS ENTITLED TO MONTHLY BENEFITS OR TO RECOMPUTATION OF PRIMARY INSURANCE AMOUNT FOR MONTHS PRIOR TO JANUARY 1961

Section 303(j) of Pub. L. 86–778 provided that: ''In the case of an individual whose average monthly wage is computed under the provisions of section 215(b) of the Social Security Act [subsec. (b) of this section], as amended by this Act, and—

''(1) who is entitled, by reason of the provisions of section 202(j)(1) or section 223(b) of the Social Security Act [section 402(j)(1) or 423(b) of this title], to a monthly benefit for any month prior to January 1961, or

''(2) who is (or would, but for the fact that such recomputation would not result in a higher primary insurance amount for such individual, be) entitled, by

reason of section 215(f) of the Social Security Act [subsec. (f) of this section], to have his primary insurance amount recomputed effective for a month prior to January 1961,

his average monthly wage as determined under the provisions of such section 215(b) [subsec. (b) of this section] shall be his average monthly wage for the purposes of determining his primary insurance amount for such prior month.''

LAG RECOMPUTATION PRESERVED FOR CERTAIN INDIVIDUALS ELIGIBLE OR DEAD PRIOR TO SEPTEMBER 1954

Section 102(e)(8) of act Sept. 1, 1954, as amended by Pub. L. 86–778, title III, § 304(c), Sept. 13, 1960, 74 Stat. 966, provided that: ''In the case of an individual who became (without the application of section 202(j)(1) [section 402(j)(1) of this title]) entitled to old-age insurance benefits or died prior to September 1954, the provisions of section 215(f)(3) [subsec. (f)(3) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] shall be applicable as though this Act had not been enacted but only if such individual files the application referred to in subparagraph (A) of such section prior to January 1961 or (if he dies without filing such application) his death occurred prior to January 1961.''

RIGHT TO RECOMPUTATION UNDER LAW PRIOR TO ENACTMENT OF ACT SEPTEMBER 1, 1954

Section 102(e)(5) of act Sept. 1, 1954, as amended by Pub. L. 86–778, title III, § 304(b), Sept. 13, 1960, 74 Stat. 966, provided that:

''(A) In the case of any individual who, upon filing application therefor before September 1954, would (but for the provisions of section 215(f)(6) of the Social Security Act [subsec. (f)(6) of this section]) have been entitled to a recomputation under subparagraph (A) or (B) of section 215(f)(2) of such Act as in effect prior to the enactment of this Act [Sept. 1, 1954], the Secretary shall recompute such individual's primary insurance amount, but only if he files an application therefor or, in case he died before filing such application, an application for monthly benefits or a lump-sum death payment on the basis of his wages and self-employment income is filed. Such recomputation shall be made only as provided in subsection (a)(2) of section 215 of the Social Security Act, as amended by this Act, through the use of a primary insurance amount determined under subsection (d)(6) of such section in the same manner as for an individual to whom subsection (a)(1) of such section, as in effect prior to the enactment of this Act [Sept. 1, 1954], is applicable; and such recomputation shall take into account only such wages and self-employment income as would be taken into account under section 215(b) of the Social Security Act if the month in which the application for recomputation is filed, or if the individual died without filing the application for recomputation, the month in which he died, were deemed to be the month in which he became entitled to old-age insurance benefits. In the case of monthly benefits, such recomputation shall be effective for and after the month in which such application for recomputation is filed or, if the individual has died without filing the application, for and after the month in which the person filing the application for monthly survivor benefits becomes entitled to such benefits.

''(B) In the case of—

''(i) any individual who is entitled to a recomputation under subparagraph (A) of section 215(f)(2) of the Social Security Act [subsec. (f)(2)(A) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] on the basis of an application filed after August 1954, or who died after such month leaving any survivors entitled to a recomputation under section 215(f)(4) of the Social Security Act as in effect prior to the enactment of this Act on the basis of his wages and self-employment income, and whose sixth quarter of coverage after 1950 was acquired after August 1954 or with respect to whom the twelfth month referred to in such subparagraph (A) occurred after such month, and

''(ii) any individual who is entitled to a recomputation under section 215(f)(2)(B) of the Social Security Act [subsec. (f)(2)(B) of this section] as is in effect prior to the enactment of this Act [Sept. 1, 1954] on the basis of an application filed after August 1954, or who died after August 1954 leaving any survivors entitled to a recomputation under section 215(f)(4) of the Social Security Act as in effect prior to the enactment of this Act on the basis of his wages and self-employment income, and whose sixth quarter of coverage after 1950 was acquired after August 1954 or who did not attain the age of seventy-five prior to September 1954, the recomputation of his primary insurance amount shall be made in the manner provided in section 215 of the Social Security Act [this section], as amended by this Act, for computation of such amount, except that his closing date, for purposes of subsection (b) of such section 215, shall be determined as though he became entitled to old-age insurance benefits in the month in which he filed such application for or, if he has died, in the month in which he died. In the case of monthly benefits, such recomputation shall be effective for and after the month in which such application for recomputation is filed or, if the individual has died without filing the application, for and after the month in which the person filing the application for monthly survivors benefits becomes entitled to such benefits.

''(C) An individual or, in case of his death, his survivors entitled to a lump-sum death payment or to monthly benefits under section 202 of the Social Security Act on the basis of his wages and self-employment income shall be entitled to a recomputation of his primary insurance amount under section 215(f)(2) or section 215(f)(4) of the Social Security Act [subsec. (f)(2) or (4) of this section] as in effect prior to the date of enactment of this Act [Sept. 1, 1954] only if (i) he had not less than six quarters of coverage in the period after 1950 and prior to January 1, 1955, and (ii) either the twelfth month referred to in subparagraph (A) of such section 215(f)(2) occurred prior to January 1, 1955, or he attained the age of 75 prior to 1955, and (iii) he meets the other conditions of entitlement to such a recomputation. No individual shall be entitled to a computation under subparagraph (A) or (B) of this paragraph if his primary insurance amount has previously been recomputed under either of such subparagraphs.

''(D) Notwithstanding the provisions of subparagraphs (A), (B), and (C), the primary insurance amount of an individual shall not be recomputed under such provisions unless such individual files the application referred to in subparagraph (A) or (B) prior to January 1961 or, if he dies without filing such application, his death occurred prior to January 1961.''

RECOMPUTATION OF PRIMARY INSURANCE AMOUNT IN CERTAIN CASES WHERE APPLICATION FOR RECOMPUTATION IS FILED ON OR AFTER SEPTEMBER 13, 1960

Section 303(h) of Pub. L. 86–778 provided that: ''In any case where application for recomputation under section 215(f)(3) of the Social Security Act [subsec. (f)(3) of this section] is filed on or after the date of the enactment of this Act [Sept. 13, 1960] with respect to an individual for whom the last previous computation of the primary insurance amount was based on an application filed prior to 1961, or who died before 1961, the provisions of section 215 of such Act [this section] as in effect prior to the enactment of this Act shall apply except that—

''(1) such recomputation shall be made as provided in section 215(a) of the Social Security Act [subsec. (a) of this section] (as in effect prior to the enactment of this Act) and as though such individual first became entitled to old-age insurance benefits in the month in which he filed his application for such recomputation or died without filing such an application, and his closing date for such purposes shall be as specified in such section 215(f)(3); and

''(2) the provisions of section 215(b)(4) of the Social Security Act [subsec. (b)(4) of this section] (as in effect prior to the enactment of this Act) shall apply

only if they were applicable to the last previous computation of such individual's primary insurance amount, or would have been applicable to such computation if there had been taken into account—

''(A) his wages and self-employment income in the year in which he became entitled to old-age insurance benefits or filed application for the last previous recomputation of his primary insurance amount, where he is living at the time of the application for recomputation under this subsection, or

''(B) his wages and self-employment income in the year in which he died without becoming entitled to old-age insurance benefits, or (if he was entitled to such benefits) the year in which application was filed for the last previous computation of his primary insurance amount or in which he died, whichever first occurred, where he has died at the time of the application for such recomputation.

If the primary insurance amount of an individual was recomputed under section 215(f)(3) of the Social Security Act [subsec. (f)(3) of this section] as in effect prior to the enactment of this Act, and such amount would have been larger if the recomputation had been made under such section as modified by this subsection, then the Secretary shall recompute such primary insurance amount under such section as so modified, but only if an application for such recomputation is filed on or after the date of the enactment of this Act [Sept. 13, 1960]. A recomputation under the preceding sentence shall be effective for and after the first month for which the last previous recomputation of such individual's primary insurance amount under such section 215 [this section] was effective, but in no event for any month prior to the twenty-fourth month before the month in which the application for a recomputation is filed under the preceding sentence.''

SPECIAL STARTING AND CLOSING DATES FOR CERTAIN INDIVIDUALS FOR COMPUTATION OF 1957 BENEFIT AMOUNTS

Section 110 of act Aug. 1, 1956, provided that: ''In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) entitled to old-age insurance benefits in 1957 and with respect to whom not less than six of the quarters elapsing after 1955 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his primary insurance amount shall be computed under section 215(a)(1)(A) of such Act [subsec. (a)(1)(A) of this section], with a starting date of December 31, 1955, and a closing date of July 1, 1957, but only if it would result in a higher primary insurance amount. For the purposes of section 215(f)(3)(C) of such Act, the determination of an individual's closing date under the preceding sentence shall be considered as a determination of the individual's closing date under section 215(b)(3)(A) of such Act and the recomputation provided for by such section 215(f)(3)(C) shall be made using July 1, 1957, as the closing date, but only if it would result in a higher primary insurance amount. In any such computation on the basis of a July 1, 1957, closing date, the total of his wages and self-employment income after December 31, 1956, shall, if it is in excess of $2,100, be reduced to such amount.''

SPECIAL STARTING AND CLOSING DATES FOR CERTAIN INDIVIDUALS FOR COMPUTATION OF 1966 BENEFIT AMOUNTS

Section 102(e)(6) of act Sept. 1, 1954, provided that: ''In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) entitled to old-age insurance benefits in 1956 and with respect to whom not less than six of the quarters elapsing after 1954 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his primary insurance amount shall be computed under section 215(a)(1)(A) of such Act, as amended by this Act [subsec. (a)(1)(A) of this section], with a starting date of December 31, 1954, and a closing date of July 1, 1956, but only if it would result in a higher primary insurance amount. For the purposes of section 215(f)(3)(C) of such Act, the determination of an individual's closing date under the preceding sentence shall be considered as a determination of the individual's closing date under section 215(b)(3)(A) of such Act, and the recomputation provided for by such section 215(f)(3)(C) shall be made using July 1, 1956, as the closing date, but only if it would result in a higher primary insurance amount. In any such computation on the basis of a July 1, 1956 closing date, the total of his wages and self-employment income after December 31, 1955, shall, if it is in excess of $2,100, be reduced to such amount.''

STUDY OF FEASIBILITY OF INCREASING BENEFITS

Section 404 of act Sept. 1, 1954, authorized the Secretary of Health, Education, and Welfare to conduct a feasibility study with a view toward increasing the minimum old-age insurance benefit under this subchapter to $55, $60, or $75 per month and required him to report the results of his study to the Congress at the earliest practicable date.

CHANGE OF WAGE CLOSING DATE OF CERTAIN INDIVIDUALS DEAD OR ELIGIBLE IN 1952 TO THE FIRST WAY OF THE QUARTER OF DEATH OR ENTITLEMENT

Section 6(c) of act July 18, 1952, provided that: ''In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) entitled to old-age insurance benefits in 1952 and with respect to whom not less than six of the quarters elapsing after 1950 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his wage closing date shall be the first day of such quarter of death or entitlement instead of the day specified in section 215(b)(3) of such Act [subsec. (b)(3) of this section], but only if it would result in a higher primary insurance amount for such individual. The terms used in this paragraph shall have the same meaning as when used in title II of the Social Security Act [this subchapter].''

COMPUTATION OF INCREASED BENEFITS TO INDIVIDUALS ENTITLED THERETO FOR AUGUST 1952

Section 6(e) of act July 18, 1952, provided that: ''In case the benefit of any individual for any month after August 1952 is computed under section 2(c)(2)(A) of this Act [set out as a note under this section] through use of a benefit (after the application of sections 203 and 215(g) of the Social Security Act [section 403 of this title and subsec. (g) of this section] as in effect prior to the enactment of this Act [July 18, 1952]) for August 1952 which could have been derived from either of two (and not more than two) primary insurance amounts, and such primary insurance amounts differ from each other by not more than $0.10, then the benefit of such individual for such month of August 1952 shall, for the purposes of the last sentence of such section 2(c)(2)(A) [set out as a note under this section], be deemed to have been derived from the larger of such two primary insurance amounts.''

COMPUTATION OF INCREASED BENEFITS FOR DEPENDENTS AND SURVIVORS ON BENEFIT ROLLS FOR AUGUST 1952

Section 2(c)(2) of act July 18, 1952, as amended by act Sept. 1, 1954, §102(g), eff. Sept. 1, 1954, provided that:

''(A) In the case of any individual who is (without the application of section 202(j)(1) of the Social Security Act) [section 402(j)(1) of this title] entitled to a monthly benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of such section 202 for August 1952, whose benefit for such month is computed through use of a primary in-

surance amount determined under paragraph (1) or (2) of section 215(c) of such Act [subsec. (c) of this section], and who is entitled to such benefit for any succeeding month on the basis of the same wages and self-employment income, the amendments made by this section shall not (subject to the provisions of subparagraph (B) of this paragraph) apply for purposes of computing the amount of such benefit for such succeeding month. The amount of such benefit for such succeeding month shall instead be equal to the larger of (i) 112½ per centum of the amount of such benefit (after the application of sections 203(a) and 215(g) of the Social Security Act [section 403(a) of this title and subsec. (g) of this section] as in effect prior to the enactment of this Act [July 18, 1952]) for August 1952, increased, if it is not a multiple of $0.10, to the next higher multiple of $0.10, or (ii) the amount of such benefit (after the application of sections 203(a) and 215(g) of the Social Security Act as in effect prior to the enactment of this Act [July 18, 1952]) for August 1952, increased by an amount equal to the product obtained by multiplying $5 by the fraction applied to the primary insurance amount which was used in determining such benefit, and further increased, if such product is not a multiple of $0.10, to the next higher multiple of $0.10. The provisions of section 203(a) of the Social Security Act, as amended by this section (and, for purposes of such section 203(a), the provisions of section 215(c)(4) of the Social Security Act, as amended by this section), shall apply to such benefit as computed under the preceding sentence of this subparagraph, and the resulting amount, if not a multiple of $0.10, shall be increased to the next higher multiple of $0.10.

''(B) The provisions of subparagraph (A) shall cease to apply to the benefit of any individual under title II of the Social Security Act [this subchapter] for any month after August 1954.''

DETERMINATION OF PRIMARY INSURANCE AMOUNT OF INDIVIDUALS WHO DIED AFTER 1939 AND PRIOR TO 1951

Section 204(b) of Pub. L. 86–778 provided that: ''The primary insurance amount (for purposes of title II of the Social Security Act [this subchapter]) of any individual who died after 1939 and prior to 1951 shall be determined as provided in section 215(a)(2) of such Act [subsec. (a)(2) of this section].''

BENEFITS IN CERTAIN CASES OF DEATHS BEFORE SEPTEMBER 1950

Section 109 of act Sept. 1, 1954, as amended by Pub. L. 86–778, title II, § 204(c), Sept. 13, 1960, 74 Stat. 948, provided that in the case of an individual who died prior to Sept. 1, 1950, and was not a fully insured individual when he died and who had at least six quarters of coverage under this subchapter, such individual was generally to be deemed to have died fully insured, his primary insurance amount was to be deemed to be computed under subsec. (a)(2) of this section, the proof of support requirement in section 402(h) of this title was not to be applicable where such proof was filed before Sept. 1956, and that the provisions of this section were to apply to monthly benefits under section 402 of this title for months after Aug. 1954 and in or prior to Sept. 1960.

COMPUTATION OF PRIMARY INSURANCE AMOUNT OF INDIVIDUALS WHO DIED PRIOR TO 1940

Section 205(c) of Pub. L. 86–778 provided that: ''The primary insurance amount (for purposes of title II of the Social Security Act [this subchapter]) of any individual who died prior to 1940, and who had not less than six quarters of coverage (as defined in section 213 of such Act [section 413 of this title]), shall be computed under section 215(a)(2) of such Act [subsec. (a)(2) of this section].''

[Section 205(c) of Pub. L. 86–778 as applicable only in the case of monthly benefits under this subchapter for months after September 1960, on the basis of applications filed in or after such month, see section 205(d) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of this title.]

§ 416. Additional definitions

For the purposes of this subchapter—

(a) Spouse; surviving spouse

(1) The term ''spouse'' means a wife as defined in subsection (b) of this section or a husband as defined in subsection (f) of this section.

(2) The term ''surviving spouse'' means a widow as defined in subsection (c) of this section or a widower as defined in subsection (g) of this section.

(b) Wife

The term ''wife'' means the wife of an individual, but only if she (1) is the mother of his son or daughter, (2) was married to him for a period of not less than one year immediately preceding the day on which her application is filed, or (3) in the month prior to the month of her marriage to him (A) was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 402 of this title, (B) had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (C) was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45. For purposes of clause (2), a wife shall be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of her marriage to such individual. For purposes of subparagraph (C) of section 402(b)(1) of this title, a divorced wife shall be deemed not to be married throughout the month in which she becomes divorced.

(c) Widow

(1) The term ''widow'' (except when used in the first sentence of section 402(i) of this title) means the surviving wife of an individual, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (D) she was married to him at the time both of them legally adopted a child under the age of eighteen, (E) except as provided in paragraph (2), she was married to him for a period of not less than nine months immediately prior to the day on which he died, or (F) in the month prior to the month of her marriage to him (i) she was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 402 of this title, (ii) she had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (iii) she was entitled to, or upon application therefor

and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45.

(2) The requirements of paragraph (1)(E) in connection with the surviving wife of an individual shall be treated as satisfied if—

(A) the individual had been married prior to the individual's marriage to the surviving wife,

(B) the prior wife was institutionalized during the individual's marriage to the prior wife due to mental incompetence or similar incapacity,

(C) during the period of the prior wife's institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not do so because such divorce would have been unlawful, by reason of the prior wife's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

(D) the prior wife continued to remain institutionalized up to the time of her death, and

(E) the individual married the surviving wife within 60 days after the prior wife's death.

(d) Divorced spouses; divorce

(1) The term ''divorced wife'' means a woman divorced from an individual, but only if she had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(2) The term ''surviving divorced wife'' means a woman divorced from an individual who has died, but only if she had been married to the individual for a period of 10 years immediately before the date the divorce became effective.

(3) The term ''surviving divorced mother'' means a woman divorced from an individual who has died, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18, or (D) she was married to him at the time both of them legally adopted a child under the age of 18.

(4) The term ''divorced husband'' means a man divorced from an individual, but only if he had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(5) The term ''surviving divorced husband'' means a man divorced from an individual who has died, but only if he had been married to the individual for a period of 10 years immediately before the divorce became effective.

(6) The term ''surviving divorced father'' means a man divorced from an individual who has died, but only if (A) he is the father of her son or daughter, (B) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of 18, (C) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of 18, or (D) he was married to her at the time both of them legally adopted a child under the age of 18.

(7) The term ''surviving divorced parent'' means a surviving divorced mother as defined in paragraph (3) of this subsection or a surviving divorced father as defined in paragraph (6).

(8) The terms ''divorce'' and ''divorced'' refer to a divorce a vinculo matrimonii.

(e) Child

The term ''child'' means (1) the child or legally adopted child of an individual, (2) a stepchild who has been such stepchild for not less than one year immediately preceding the day on which application for child's insurance benefits is filed or (if the insured individual is deceased) not less than nine months immediately preceding the day on which such individual died, and (3) a person who is the grandchild or stepgrandchild of an individual or his spouse, but only if (A) there was no natural or adoptive parent (other than such a parent who was under a disability, as defined in section 423(d) of this title) of such person living at the time (i) such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (ii) if such individual had a period of disability which continued until such individual became entitled to old-age insurance benefits or disability insurance benefits, or died, at the time such period of disability began, or (B) such person was legally adopted after the death of such individual by such individual's surviving spouse in an adoption that was decreed by a court of competent jurisdiction within the United States and such person's natural or adopting parent or stepparent was not living in such individual's household and making regular contributions toward such person's support at the time such individual died. For purposes of clause (1), a person shall be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if such person was either living with or receiving at least one-half of his support from such individual at the time of such individual's death and was legally adopted by such individual's surviving spouse after such individual's death but only if (A) proceedings for the adoption of the child had been instituted by such individual before his death, or (B) such child was adopted by such individual's surviving spouse before the end of two years after (i) the day on which such individual died or (ii) August 28, 1958. For purposes of clause (2), a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, of such person went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of subsection (h)(1)(B) of this section, would have been a valid marriage. For purposes of clause (2), a child shall be deemed to have been the stepchild of an individual for a period of one year throughout the month in which occurs the expiration of such one year. For purposes of clause (3), a person shall be deemed to have no natural or adoptive parent living (other than a parent who was under a disability)

throughout the most recent month in which a natural or adoptive parent (not under a disability) dies.

(f) Husband

The term ''husband'' means the husband of an individual, but only if (1) he is the father of her son or daughter, (2) he was married to her for a period of not less than one year immediately preceding the day on which his application is filed, or (3) in the month prior to the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 402 of this title, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (C) he was entitled to, or upon application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45. For purposes of clause (2), a husband shall be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of his marriage to her. For purposes of subparagraph (C) of section 402(c)(1) of this title, a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.

(g) Widower

(1) The term ''widower'' (except when used in the first sentence of section 402(i) of this title) means the surviving husband of an individual, but only if (A) he is the father of her son or daughter, (B) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (C) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (D) he was married to her at the time both of them legally adopted a child under the age of eighteen, (E) except as provided in paragraph (2), he was married to her for a period of not less than nine months immediately prior to the day on which she died, or (F) in the month before the month of his marriage to her (i) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 402 of this title, (ii) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (iii) he was entitled to, or on application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45.

(2) The requirements of paragraph (1)(E) in connection with the surviving husband of an individual shall be treated as satisfied if—

(A) the individual had been married prior to the individual's marriage to the surviving husband,

(B) the prior husband was institutionalized during the individual's marriage to the prior husband due to mental incompetence or similar incapacity,

(C) during the period of the prior husband's institutionalization, the individual would have divorced the prior husband and married the surviving husband, but the individual did not do so because such divorce would have been unlawful, by reason of the prior husband's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

(D) the prior husband continued to remain institutionalized up to the time of his death, and

(E) the individual married the surviving husband within 60 days after the prior husband's death.

(h) Determination of family status

(1)(A)(i) An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this subchapter if the courts of the State in which such insured individual is domiciled at the time such applicant files and application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled in any State, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died.

(ii) If such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.

(B)(i) In any case where under subparagraph (A) an applicant is not (and is not deemed to be) the wife, widow, husband, or widower of a fully or currently insured individual, or where under subsection (b), (c), (d), (f), or (g) of this section such applicant is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual, but it is established to the satisfaction of the Commissioner of Social Security that such applicant in good faith went through a marriage ceremony with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, then, for purposes of subparagraph (A) and subsections (b), (c), (d), (f), and (g) of this section, such purported marriage shall be deemed to be a valid marriage. Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be

a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.

(ii) The provisions of clause (i) shall not apply if the Commissioner of Social Security determines, on the basis of information brought to the Commissioner's attention, that such applicant entered into such purported marriage with such insured individual with knowledge that it would not be a valid marriage.

(iii) The entitlement to a monthly benefit under subsection (b) or (c) of section 402 of this title, based on the wages and self-employment income of such insured individual, of a person who would not be deemed to be a wife or husband of such insured individual but for this subparagraph, shall end with the month before the month in which such person enters into a marriage, valid without regard to this subparagraph, with a person other than such insured individual.

(iv) For purposes of this subparagraph, a legal impediment to the validity of a purported marriage includes only an impediment (I) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or (II) resulting from a defect in the procedure followed in connection with such purported marriage.

(2)(A) In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this subchapter, the Commissioner of Social Security shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

(B) If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such insured individual under subparagraph (A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother or father, as the case may be, of such applicant went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of paragraph (1)(B), would have been a valid marriage.

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2) of this subsection, shall nevertheless be deemed to be the child of such insured individual if:

(A) in the case of an insured individual entitled to old-age insurance benefits (who was not, in the month preceding such entitlement, entitled to disability insurance benefits)—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter,

and such acknowledgment, court decree, or court order was made not less than one year before such insured individual became entitled to old-age insurance benefits or attained retirement age (as defined in subsection (*l*) of this section), whichever is earlier; or

(ii) such insured individual is shown by evidence satisfactory to the Commissioner of Social Security to be the mother or father of the applicant and was living with or contributing to the support of the applicant at the time such applicant's application for benefits was filed;

(B) in the case of an insured individual entitled to disability insurance benefits, or who was entitled to such benefits in the month preceding the first month for which he or she was entitled to old-age insurance benefits—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter,

and such acknowledgment, court decree, or court order was made before such insured individual's most recent period of disability began; or

(ii) such insured individual is shown by evidence satisfactory to the Commissioner of Social Security to be the mother or father of the applicant and was living with or contributing to the support of that applicant at the time such applicant's application for benefits was filed;

(C) in the case of a deceased individual—

(i) such insured individual—

(I) had acknowledged in writing that the applicant is his or her son or daughter,

(II) had been decreed by a court to be the mother or father of the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his or her son or daughter,

and such acknowledgment, court decree, or court order was made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Commissioner

of Social Security to have been the mother or father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.

For purposes of subparagraphs (A)(i) and (B)(i), an acknowledgement, court decree, or court order shall be deemed to have occurred on the first day of the month in which it actually occurred.

(i) Disability; period of disability

(1) Except for purposes of sections 402(d), 402(e), 402(f), 423, and 425 of this title, the term ''disability'' means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term ''blindness'' means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (2)(B), (3), (4), (5), and (6) of section 423(d) of this title shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this subchapter shall be construed as authorizing the Commissioner of Social Security or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2)(A) The term ''period of disability'' means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than five full calendar months' duration or such individual was entitled to benefits under section 423 of this title for one or more months in such period.

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains retirement age (as defined in subsection (*l*) of this section). In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.

(C) A period of disability shall begin—

(i) on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii) if such individual does not satisfy the requirements of paragraph (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains retirement age (as defined in subsection (*l*) of this section), or (ii) the month preceding (I) the termination month (as defined in section 423(a)(1) of this title), or, if earlier (II) the first month for which no benefit is payable by reason of section 423(e) of this title, where no benefit is payable for any of the succeeding months during the 36-month period referred to in such section. The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).

(E) Except as is otherwise provided in subparagraph (F), no application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph) shall be accepted as an application for purposes of this paragraph.

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

(i) in the case of an application filed by or on behalf of an individual with respect to a disability which ends after January 1968, such application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Commissioner of Social Security finds in accordance with regulations prescribed by the Commissioner that the failure of such individual to file an application for a disability determination within the time specified in subparagraph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application, and

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before January 1968—

(I) such application is filed not more than 12 months after January 1968,

(II) a previous application for a disability determination has been filed by or on behalf of such individual (1) in or before January 1968, and (2) not more than 36 months after the month in which his disability ended, and

(III) the Commissioner of Social Security finds in accordance with regulations prescribed by the Commissioner, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time such determination is made.

(G) An application for a disability determination filed before the first day on which the applicant satisfies the requirements for a period of disability under this subsection shall be deemed a valid application (and shall be deemed to have been filed on such first day) only if the applicant satisfies the requirements for a period of disability before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security).

(3) The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) of this subsection are satisfied by an individual with respect to any quarter only if—

(A) he would have been a fully insured individual (as defined in section 414 of this title) had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such quarter; and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or

(ii) if such quarter ends before he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of clause (ii), had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with such quarter are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of ''blindness'' as defined in paragraph (1)). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage.

(j) Periods of limitation ending on nonwork days

Where this subchapter, any provision of another law of the United States (other than the Internal Revenue Code of 1986) relating to or changing the effect of this subchapter, or any regulation issued by the Commissioner of Social Security pursuant thereto provides for a period within which an act is required to be done which affects eligibility for or the amount of any benefit or payment under this subchapter or is necessary to establish or protect any rights under this subchapter, and such period ends on a Saturday, Sunday, or legal holiday, or on any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday or any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order. For purposes of this subsection, the day on which a period ends shall include the day on which an extension of such period, as authorized by law or by the Commissioner of Social Security pursuant to law, ends. The provisions of this subsection shall not extend the period during which benefits under this subchapter may (pursuant to section 402(j)(1) or 423(b) of this title) be paid for months prior to the day application for such benefits is filed, or during which an application for benefits under this subchapter may (pursuant to section 402(j)(2) or 423(b) of this title) be accepted as such.

(k) Waiver of nine-month requirement for widow, stepchild, or widower in case of accidental death or in case of serviceman dying in line of duty, or in case of remarriage to same individual

The requirement in clause (E) of subsection (c)(1) of this section or clause (E) of subsection (g)(1) of this section that the surviving spouse of an individual have been married to such individual for a period of not less than nine months immediately prior to the day on which such individual died in order to qualify as such individual's widow or widower, and the requirement in subsection (e) of this section that the stepchild of a deceased individual have been such stepchild for not less than nine months immediately preceding the day on which such individual died in order to qualify as such individual's child, shall be deemed to be satisfied, where such individual dies within the applicable nine-month period, if—

(1) his death—

(A) is accidental, or

(B) occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in section 410(*l*)(2) of this title),

unless the Commissioner of Social Security determines that at the time of the marriage

involved the individual could not have reasonably been expected to live for nine months, or

(2)(A) the widow or widower of such individual had been previously married to such individual and subsequently divorced and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce; or

(B) the stepchild of such individual had been the stepchild of such individual during a previous marriage of such stepchild's parent to such individual which ended in divorce and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce;

except that paragraph (2) of this subsection shall not apply if the Commissioner of Social Security determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months. For purposes of paragraph (1)(A) of this subsection, the death of an individual is accidental if he receives bodily injuries solely through violent, external, and accidental means and, as a direct result of the bodily injuries and independently of all other causes, loses his life not later than three months after the day on which he receives such bodily injuries.

(*l*) Retirement age

(1) The term ''retirement age'' means—

(A) with respect to an individual who attains early retirement age (as defined in paragraph (2)) before January 1, 2000, 65 years of age;

(B) with respect to an individual who attains early retirement age after December 31, 1999, and before January 1, 2005, 65 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age;

(C) with respect to an individual who attains early retirement age after December 31, 2004, and before January 1, 2017, 66 years of age;

(D) with respect to an individual who attains early retirement age after December 31, 2016, and before January 1, 2022, 66 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age; and

(E) with respect to an individual who attains early retirement age after December 31, 2021, 67 years of age.

(2) The term ''early retirement age'' means age 62 in the case of an old-age, wife's, or husband's insurance benefit, and age 60 in the case of a widow's or widower's insurance benefit.

(3) The age increase factor for any individual who attains early retirement age in a calendar year within the period to which subparagraph (B) or (D) of paragraph (1) applies shall be determined as follows:

(A) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2000 through 2004, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2000 and ending with December of the year in which the individual attains early retirement age.

(B) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2017 through 2021, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2017 and ending with December of the year in which the individual attains early retirement age.

(Aug. 14, 1935, ch. 531, title II, § 216, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 510; amended July 18, 1952, ch. 945, § 3(d), 66 Stat. 771; Sept. 1, 1954, ch. 1206, title I, § 106(d), 68 Stat. 1080; Aug. 1, 1956, ch. 836, title I, §§ 102(a), (d)(12), 103(c)(6), 70 Stat. 809, 815, 818; Pub. L. 85–109, § 1, July 17, 1957, 71 Stat. 308; Pub. L. 85–238, § 3(h), Aug. 30, 1957, 71 Stat. 519; Pub. L. 85–840, title II, §§ 201, 203, 204(a), title III, §§ 301(a)(2), (b)(2), (c)(2), (d), (e), 302(a), 305(b), Aug. 28, 1958, 72 Stat. 1020, 1021, 1026–1028, 1030; Pub. L. 86–778, title II, §§ 207(a)–(c), 208(a)–(c), title IV, §§ 402(e), 403(c), title VII, § 703, Sept. 13, 1960, 74 Stat. 950–952, 968, 969, 994; Pub. L. 87–64, title I, §§ 102(b)(2)(D), (c)(1), (2)(B), (3)(C), 105, June 30, 1961, 75 Stat. 134, 135, 139; Pub. L. 88–650, § 1(a)–(c), Oct. 13, 1964, 78 Stat. 1075; Pub. L. 89–97, title III, §§ 303(a)(1), (b)(1), (2), 304(*l*), 306(c)(13), 308(c), (d)(2)(B), 328(b), 334(a)–(d), 339(a), 344(a), July 30, 1965, 79 Stat. 366, 367, 370, 373, 377, 378, 400, 404, 405, 409, 412; Pub. L. 90–248, title I, §§ 104(d)(2), 105(a), 111(a), 150(a), 156(a)–(d), 158(d), 172(a), (b), Jan. 2, 1968, 81 Stat. 832, 833, 837, 860, 866, 869, 877; Pub. L. 92–603, title I, §§ 104(g), 113(a), 115(b), 116(d), 117(a), 118(b), 145(a), Oct. 30, 1972, 86 Stat. 1341, 1347, 1349–1351, 1370; Pub. L. 93–445, title III, § 304, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 95–216, title III, § 337(a), Dec. 20, 1977, 91 Stat. 1548; Pub. L. 96–265, title III, §§ 303(b)(2)(B), 306(b), June 9, 1980, 94 Stat. 453, 457; Pub. L. 96–473, § 5(a)(2), Oct. 19, 1980, 94 Stat. 2265; Pub. L. 97–35, title XXII, §§ 2202(a)(2), 2203(b)(2), (c)(2), (d)(3), (4), Aug. 13, 1981, 95 Stat. 835–837; Pub. L. 98–21, title II, § 201(a), (c)(1)(D), title III, §§ 301(c), 303, 304(c), 306(c), 309(j), (k), 332(a), 333(a), Apr. 20, 1983, 97 Stat. 107, 109, 111, 112, 114, 117, 129; Pub. L. 98–369, div. B, title VI, §§ 2661(*l*), 2662(c)(1), 2663(a)(11), July 18, 1984, 98 Stat. 1158, 1159, 1164; Pub. L. 98–460, §§ 2(b), 4(a)(2), Oct. 9, 1984, 98 Stat. 1796, 1800; Pub. L. 100–203, title IX, § 9010(e)(1), Dec. 22, 1987, 101 Stat. 1330–294; Pub. L. 101–508, title V, §§ 5103(b)(1), 5104(a), 5119(a), (b), Nov. 5, 1990, 104 Stat. 1388–251, 1388–254, 1388–278, 1388–279; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(c)(6)(H), Aug. 15, 1994, 108 Stat. 1478, 1538; Pub. L. 108–203, title IV, § 414(a)–(c), Mar. 2, 2004, 118 Stat. 529, 530.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (j), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–203, § 414(a), designated existing provisions as par. (1), redesignated former cls. (1) to (6) as cls. (A) to (F), respectively, of par. (1), in cl. (E) inserted ''except as provided in paragraph (2),'' before ''she was married'', in cl. (F) redesignated

former subcls. (A) to (C) as subcls. (i) to (iii), respectively, and added par. (2).

Subsec. (g). Pub. L. 108–203, §414(b), designated existing provisions as par. (1), redesignated former cls. (1) to (6) as cls. (A) to (F), respectively, of par. (1), in cl. (E) inserted ''except as provided in paragraph (2),'' before ''he was married'', in cl. (F) redesignated former subcls. (A) to (C) as subcls. (i) to (iii), respectively, and added par. (2).

Subsec. (k). Pub. L. 108–203, §414(c), substituted ''clause (E) of subsection (c)(1) of this section or clause (E) of subsection (g)(1) of this section'' for ''clause (5) of subsection (c) of this section or clause (5) of subsection (g) of this section'' in introductory provisions.

1994—Subsecs. (h), (i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' in subsec. (h)(1)(B)(ii), and ''prescribed by the Commissioner'' for ''prescribed by him'' in subsec. (i)(2)(F)(i), (ii)(III).

Subsec. (j). Pub. L. 103–296, §321(c)(6)(H), substituted ''1986'' for ''1954'' after ''Code of''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (k). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1990—Subsec. (e). Pub. L. 101–508, §5104(a), substituted ''either living with or receiving at least one-half of his support from such individual at the time of such individual's death'' for ''at the time of such individual's death living in such individual's household'' and struck out before period at end of second sentence ''; except that this sentence shall not apply if at the time of such individual's death such person was receiving regular contributions toward his support from someone other than such individual or his spouse, or from any public or private welfare organization which furnishes services or assistance for children''.

Subsec. (h)(1)(A). Pub. L. 101–508, §5119(a)(1), designated first and second sentences as cls. (i) and (ii), respectively.

Subsec. (h)(1)(B)(i). Pub. L. 101–508, §5119(b), substituted ''where under subsection (b), (c), (d), (f), or (g) of this section such applicant is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual'' for ''where under subsection (b), (c), (f), or (g) of this section such applicant is not the wife, widow, husband, or widower of such individual'', struck out ''and such applicant and the insured individual were living in the same household at the time of the death of such insured individual or (if such insured individual is living) at the time such applicant files the application,'' after ''valid marriage,'', substituted ''subsections (b), (c), (d), (f), and (g)'' for ''subsections (b), (c), (f), and (g)'', and inserted at end ''Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.''

Pub. L. 101–508, §5119(a)(2)(A), inserted ''(i)'' after ''(B)''.

Subsec. (h)(1)(B)(ii). Pub. L. 101–508, §5119(a)(2)(B), (C), substituted ''(ii) The provisions of clause (i) shall not apply'' for ''The provisions of the preceding sentence shall not apply (i) if another person is or has been entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 402 of this title on the basis of the wages and self-employment income of such insured individual and such other person is (or is deemed to be) a wife, widow, husband, or widower of such insured individual under subparagraph (A) at the time such applicant files the application, or (ii)''.

Subsec. (h)(1)(B)(iii). Pub. L. 101–508, §5119(a)(2)(D)–(G), substituted ''(iii) The entitlement to a monthly benefit under subsection (b) or (c)'' for ''The entitlement to a monthly benefit under subsection (b), (c), (e), (f), or (g)'', ''a wife or husband'' for ''a wife, widow, husband, or widower'', and ''in which such person enters'' for ''(i) in which the Secretary certifies, pursuant to section 405(i) of this title, that another person is entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 402 of this title on the basis of the wages and self-employment income of such insured individual, if such other person is (or is deemed to be) the wife, widow, husband, or widower of such insured individual under subparagraph (A), or (ii) if the applicant is entitled to a monthly benefit under subsection (b) or (c) of section 402 of this title, in which such applicant entered''.

Subsec. (h)(1)(B)(iv). Pub. L. 101–508, §5119(a)(2)(H), (I), inserted ''(iv)'' before ''For purposes'' and substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively.

Subsec. (i)(1). Pub. L. 101–508, §5103(b)(1), substituted ''(2)(B)'' for ''(2)(C)''.

1987—Subsec. (i)(2)(D)(ii)(II). Pub. L. 100–203 substituted ''36-month period'' for ''15-month period''.

1984—Subsec. (f). Pub. L. 98–369, §2661(*l*)(1), inserted provision that for purposes of subparagraph (C) of section 402(c)(1) of this title, a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.

Subsec. (h)(3). Pub. L. 98–369, §2663(a)(11)(A), made technical amendment to directory language of Pub. L. 97–35, §2203(d)(4). See 1981 Amendment Note below.

Subsec. (h)(3)(A)(i). Pub. L. 98–369, §2661(*l*)(2), substituted ''subsection (*l*) of this section'' for ''section 416(*l*) of this title''.

Subsec. (i)(1). Pub. L. 98–460, §4(a)(2), inserted ''(2)(C),'' after ''(2)(A),''.

Subsec. (i)(2)(B). Pub. L. 98–369, §2661(*l*)(3), substituted ''subsection (*l*) of this section'' for ''section 416(*l*) of this title''.

Pub. L. 98–369, §2662(c)(1), made clarifying amendment to Pub. L. 98–21, §201(c)(1)(D). See 1983 Amendment note below.

Subsec. (i)(2)(D). Pub. L. 98–460, §2(b), inserted ''The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).''

Pub. L. 98–369, §2661(*l*)(3), substituted ''subsection (*l*) of this section'' for ''section 416(*l*) of this title''.

Subsec. (i)(2)(F)(ii). Pub. L. 98–369, §2663(a)(11)(B), substituted a dash for a comma after ''before January 1968'' in provisions preceding subcl. (I).

1983—Subsec. (a). Pub. L. 98–21, §304(c), added subsec. (a).

Subsec. (d)(4), (5). Pub. L. 98–21, §301(c)(1), added pars. (4) and (5). Former par. (4) redesignated (6).

Subsec. (d)(6). Pub. L. 98–21, §306(c), added par. (6) and redesignated former par. (6) as (8).

Pub. L. 98–21, §301(c)(1), redesignated former par. (4) as (6).

Subsec. (d)(7). Pub. L. 98–21, §306(c), added par. (7).

Subsec. (d)(8). Pub. L. 98–21, §306(c), redesignated former par. (6) as (8).

Subsecs. (f)(3)(A), (g)(6)(A). Pub. L. 98–21, §309(j), (k), inserted reference to subsec. (c) of section 402 of this title.

Subsec. (h)(3). Pub. L. 98–21, § 333(a), substituted ''subparagraphs (A)(i) and (B)(i)'' for ''subparagraph (A)(i)'' in provisions following subpar. (C)(ii).

Subsec. (h)(3)(A)(i). Pub. L. 98–21, § 201(c)(1)(D), substituted ''retirement age (as defined in subsection (*l*) of this section)'' for ''age 65''.

Subsec. (h)(3)(A)(i)(I). Pub. L. 98–21, § 303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(A)(i)(II). Pub. L. 98–21, § 303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(A)(i)(III). Pub. L. 98–21, § 303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(A)(ii). Pub. L. 98–21, § 303(a), (b), inserted ''mother or'' before ''father'' and substituted ''such applicant's application for benefits was filed'' for ''such insured individual became entitled to benefits or attained retirement age (as defined in subsection (*l*) of this section), whichever first occurred''.

Pub. L. 98–21, § 201(c)(1)(D), substituted ''retirement age (as defined in subsection (*l*) of this section)'' for ''age 65''.

Subsec. (h)(3)(B). Pub. L. 98–21, § 303(d)(2), substituted ''he or she'' for ''he'' in provisions preceding cl. (i).

Subsec. (h)(3)(B)(i)(I). Pub. L. 98–21, § 303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(B)(i)(II). Pub. L. 98–21, § 303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(B)(i)(III). Pub. L. 98–21, § 303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(B)(ii). Pub. L. 98–21, § 303(c), substituted ''such applicant's application for benefits was filed'' for ''such period of disability began''.

Pub. L. 98–21, § 303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(C)(i)(I). Pub. L. 98–21, § 303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(C)(i)(II). Pub. L. 98–21, § 303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(C)(i)(III). Pub. L. 98–21, § 303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(C)(ii). Pub. L. 98–21, § 303(a), inserted ''mother or'' before ''father''.

Subsec. (i)(2)(B). Pub. L. 98–21, § 201(c)(1)(D), as amended by Pub. L. 98–369, § 2662(c)(1), substituted ''retirement age (as defined in subsection (*l*) of this section)'' for ''the age of 65''.

Subsec. (i)(2)(D). Pub. L. 98–21, § 201(c)(1)(D), substituted ''retirement age (as defined in subsection (*l*) of this section)'' for ''age 65''.

Subsec. (i)(3)(B)(iii). Pub. L. 98–21, § 332(a), added cl. (iii).

Subsec. (*l*). Pub. L. 98–21, § 201(a), added subsec. (*l*).

1981—Subsec. (b). Pub. L. 97–35, § 2203(b)(2), inserted provisions that for purposes of cl. (2), a wife be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of her marriage to such individual and for purposes of section 402(b)(1)(C) of this title, a divorced wife be deemed not to be married throughout the month in which she becomes divorced.

Subsec. (c). Pub. L. 97–35, § 2202(a)(2)(A), inserted ''the first sentence of'' before ''section 402(i) of this title''.

Subsec. (e). Pub. L. 97–35, § 2203(d)(3), inserted provisions that for purposes of cl. (2), a child be deemed to have been a stepchild of an individual for a period of one year throughout the month in which occurs the expiration of such one year and for purposes of cl. (3), a person be deemed to have no natural or adoptive parent living, other than a parent who is under a disability, throughout the most recent month in which a natural or adoptive parent, not under a disability, dies.

Subsec. (f). Pub. L. 97–35, § 2203(c)(2), inserted provision that for purposes of cl. (2), a husband be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of his marriage to her.

Subsec. (g). Pub. L. 97–35, § 2202(a)(2)(B), inserted ''the first sentence of'' before ''section 402(i) of this title''.

Subsec. (h)(3). Pub. L. 97–35, § 2203(d)(4), as amended by Pub. L. 98–369, § 2663(a)(11)(A), inserted provision that for purposes of subpar. (A)(i), an acknowledgement, court decree, or court order be deemed to have occurred on the first day of the month in which it actually occurred.

1980—Subsec. (i)(1). Pub. L. 96–473 inserted reference to section 423(d)(6) of this title.

Subsec. (i)(2)(D)(ii). Pub. L. 96–265, § 303(b)(2)(B), substituted ''(ii) the month preceding (I) the termination month (as defined in section 423(a)(1) of this title), or, if earlier (II) the first month for which no benefit is payable by reason of section 423(e) of this title, where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section'' for ''(ii) the second month following the month in which the disability ceases''.

Subsec. (i)(2)(G). Pub. L. 96–265, § 306(b), inserted provisions placing limitations on the prospective effect of applications.

1977—Subsec. (d)(1), (2). Pub. L. 95–216 substituted ''10'' for ''20'' wherever appearing.

1974—Subsecs. (b), (c), (f), (g). Pub. L. 93–445 substituted ''section 231a of title 45'' for ''section 228e of title 45''.

1972—Subsec. (e). Pub. L. 92–603, § 113(a), extended definition of ''child'' to include grandchildren and stepgrandchildren of an individual or his spouse.

Subsec. (i)(2)(A). Pub. L. 92–603, § 116(d), substituted ''five'' for ''6''.

Subsec. (i)(2)(B). Pub. L. 92–603, § 118(b), provided for the filing of an application for a disability determination after the death of the insured individual.

Subsec. (i)(3). Pub. L. 92–603, §§ 104(g), 117(a), struck out ''(if a woman) or age 65 (if a man)'' after ''attained age 62'' in subpar. (A), and substituted provisions eliminating the disability insured status requirement of substantial recent covered work in the case of individuals who are blind for provisions excepting the provisions of subpar. (A) in the case of an individual with respect to whom a period of disability would, but for such subpar., begin before 1951 in the provisions following subpar. (B).

Subsec. (k). Pub. L. 92–603, §§ 115(b), 145(a), designated existing pars. (1) and (2) as subpars. (A) and (B) of par. (1), added par. (2), in par. (1), as so redesignated, substituted ''unless the Secretary determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months'' for ''and he would satisfy such requirement if a three-month period were substituted for the nine-month period'', and in material following par. (2) substituted ''except that paragraph (2) of this subsection shall not apply'' for ''except that this subsection shall not apply''.

1968—Subsec. (c)(5). Pub. L. 90–248, § 156(a), substituted ''not less than nine months'' for ''not less than one year''.

Subsec. (e). Pub. L. 90–248, §§ 150(a), 156(b), inserted in first sentence ''not less than nine months immediately preceding'' before ''the day on which such individual died'', and added, in second sentence, cl. (A) and incorporated existing provisions in cl. (B).

Subsec. (g)(5). Pub. L. 90–248, § 156(c), substituted ''not less than nine months'' for ''not less than one year''.

Subsec. (i)(1). Pub. L. 90–248, §§ 104(d)(2), 158(d), 172(a), (b), inserted ''402(e), 402(f),'' after ''402(d),'', redefined ''blindness'' to mean central visual acuity of 20/200 rather than 5/200 or less in the better eye and substituted provision deeming an eye accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees as having a central visual acuity of 20/200 or less for former provision deeming an eye in which visual field is reduced to five degrees or less concentric contraction as having a central visual acuity of 5/200 or less, respectively, and deleted former third sentence which provided that an individual was not deemed under a disability unless he furnished proof as required and added third sentence making section 423(d)(2)(A), (3), (4), and (5) of this title applicable to determine if an individual is under a disability.

Subsec. (i)(2)(E) to (G). Pub. L. 90–248, §111(a), inserted introductory exception phrase, added subpar. (F), and redesignated former subpar. (F) as (G).

Subsec. (i)(3)(B)(ii). Pub. L. 90–248, §105(a), struck out ''and he is under a disability by reason of blindness (as defined in paragraph (1) of this subsection)'' after ''age 31''.

Subsec. (k). Pub. L. 90–248, §156(d), added subsec. (k).

1965—Subsec. (b). Pub. L. 89–97, §§306(c)(13), 308(d)(2)(B), 334(a), inserted ''(subject, however, to section 402(s) of this title)'', included reference to subsec. (b) of section 402 of this title, and added cl. (3)(C), respectively.

Subsec. (c). Pub. L. 89–97, §§306(c)(13), 308(d)(2)(B), 334(b), inserted ''(subject, however, to section 402(s) of this title)'', included reference to subsec. (b) of section 402 of this title, and added cl. (6)(C), respectively.

Subsec. (d). Pub. L. 89–97, §308(c), added pars. (1), (2), and (4), defining ''divorced wife'', ''surviving divorced wife'', and ''divorce'' and ''divorced'', and incorporated definition of ''former wife divorced'' in par. (3), inserting ''who has died'' after ''individual'' and redesignating cls. (1) to (4) as (A) to (D), respectively.

Subsec. (f). Pub. L. 89–97, §§306(c)(13), 334(c), inserted ''(subject, however, to section 402(s) of this title)'' and added cl. (3)(C), respectively.

Subsec. (g). Pub. L. 89–97, §§306(c)(13), 334(d), inserted ''(subject, however, to section 402(s) of this title)'' and added cl. (6)(C), respectively.

Subsec. (h). Pub. L. 89–97, §339(a), added par. (3).

Subsec. (i)(1)(A). Pub. L. 89–97, §303(a)(1), substituted ''or has lasted or can be expected to last for a continuous period of not less than 12 months'' for ''or to be of long-continued and indefinite duration''.

Subsec. (i)(2). Pub. L. 89–97, §303(b)(1), struck out sixth sentence providing that: ''Any application for a disability determination which is filed within such three months' period or six months' period shall be deemed to have been filed on such first day or in such first month, as the case may be.''

Subsec. (i)(2)(A). Pub. L. 89–97, §303(b)(1), designated first sentence as subpar. (A).

Subsec. (i)(2)(B). Pub. L. 89–97, §303(b)(1), designated second sentence as subpar. (B), substituted therein ''No period of disability'' for ''No such disability'', and struck out '', while under such disability,'' after ''unless such individual''.

Subsec. (i)(2)(C). Pub. L. 89–97, §§303(b)(1), 304(*l*), designated third sentence as subpar. (C), struck out ''(subject to section 423(a)(3) of this title)'' before ''begin'', and redesignated cls. (A) and (B) thereof as (i) and (ii); and again struck out ''(subject to section 423(a)(3) of this title)'' before ''begin'', respectively.

Subsec. (i)(2)(D). Pub. L. 89–97, §303(b)(1), designated fourth sentence as subpar. (D), substituted ''the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains age 65, or (ii) the second month following the month in which the disability ceases'' for ''the close of the last day of the month preceding which of the following months is the earlier: the month in which the individual attains age sixty-five or the third month following the month in which the disability ceases''.

Subsec. (i)(2)(E). Pub. L. 89–97, §303(b)(1), designated fifth sentence as subpar. (E), substituted ''12 months'' for ''three months'' and ''after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph)'' for ''before the first day on which a period of disability can begin (as determined under this paragraph), or, in any case in which clause (ii) of section 423(a)(1) of this title is applicable, more than six months before the first month for which such applicant becomes entitled to benefits under section 423 of this title,'', and struck out '', and no such application which is filed prior to January 1, 1955, shall be accepted'' after ''for purposes of this paragraph''.

Subsec. (i)(2)(F). Pub. L. 89–97, §328(b), added subpar. (F).

Subsec. (i)(3). Pub. L. 89–97, §§303(b)(2), 344(a), substituted ''clauses (i) and (ii) of paragraph (2)(C)'' for ''clauses (A) and (B) of paragraph (2)'', removed from existing subpar. (B) provision prohibiting the inclusion, as part of such 40-quarter period, of any quarter any part of which was included in a prior period of disability unless such quarter was a quarter of coverage, and designated such subpar., as so amended, as subpar. (B)(i), added subpar. (B)(ii), and, in the material following subpar. (B)(ii), inserted provision prohibiting inclusion of any quarter as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage and calling for reduction by one of the number of quarters in any period whenever such number of quarters is an odd number, respectively.

1964—Subsec. (i)(2). Pub. L. 88–650, §1(a), struck out provisions which directed that a period of disability shall begin if the individual satisfies the requirements of par. (3) of this subsection on such day, on the first day of the eighteen-month period which ends with the day before the day on which the individual files such application.

Subsec. (i)(3). Pub. L. 88–650, §1(b), substituted ''paragraph (2) of this subsection'' for ''paragraphs (2) and (4) of this subsection''.

Subsec. (i)(4). Pub. L. 88–650, §1(c), repealed par. (4) which related to the beginning of the period of disability for individuals who filed an application for a disability determination after Dec. 1954, and before July 1962, with respect to a disability which began before January 1961.

1961—Subsec. (a). Pub. L. 87–64, §102(c)(1), repealed subsec. (a) which defined retirement age.

Subsecs. (b), (c), (f), (g). Pub. L. 87–64, §102(c)(2)(B), substituted ''attainment of age 62'' for ''attainment of retirement age''.

Subsec. (i)(2). Pub. L. 87–64, §102(b)(2)(D), substituted ''a period of disability shall (subject to section 423(a)(3) of this title) begin'' for ''a period of disability shall begin'' in third sentence.

Subsec. (i)(3)(A). Pub. L. 87–64, §102(c)(3)(C), substituted ''attainment age 62 (if a woman) or age 65 (if a man)'' for ''attained retirement age''.

Subsec. (i)(4). Pub. L. 87–64, §105, substituted ''July 1962'' for ''July 1961'', and ''January 1961'' for ''July 1960''.

1960—Subsec. (b). Pub. L. 86–778, §207(a), substituted ''one year'' for ''three years''.

Subsec. (e). Pub. L. 86–778, §§207(b), 208(c), in first sentence, reduced the period for eligibility of a stepchild of a living individual from three years immediately preceding the day on which application for child's benefits is filed to one year immediately preceding the day on which application for child's benefits is filed, and inserted the last sentence requiring, for purposes of clause (2), that a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, of such person went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in last sentence of subsec. (h)(1)(B) of this section, would have been a valid marriage.

Subsec. (f). Pub. L. 86–778, §207(c), substituted ''one year'' for ''three years''.

Subsec. (h)(1). Pub. L. 86–778, §208(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(2). Pub. L. 86–778, §208(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (i)(2). Pub. L. 86–778, §§402(e), 403(c), redefined ''period of disability'' to include a period of less than six full calendar months' duration if the individual was entitled to benefits under section 423 of this title for one or more months in such period, prohibited acceptance of an application, in any case in which clause (ii) of section 423(a) of this title is applicable, filed more than six months before the first month for which the applicant becomes entitled to benefits under section 423

of this title, substituted provisions requiring a period of disability to end with the close of the last day of the month preceding whichever of the following months is the earlier: the month in which the individual attains age 65 or the third month following the month in which the disability ceases, for provisions which required a period of disability to end with the close of the last day of the first month in which either the disability ceases or the individual attains the age of 65, and inserted sentence providing that any application for a disability determination which is filed within such three months' period or six months' period shall be deemed to have been filed on such first day or in such first month, as the case may be.

Subsec. (j). Pub. L. 86–778, § 703, added subsec. (j).

1958—Subsec. (b). Pub. L. 85–840, § 301(d), included within definition of ''wife'' a woman who, in the month prior to the month of her marriage, was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (e) or (h) of section 402 of this title, or had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (c). Pub. L. 85–840, § 301(b)(2) included within definition of ''widow'' a woman whose husband had legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, and a woman who, in the month prior to the month of her marriage, was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (e) or (h) of section 402 of this title, or had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (d). Pub. L. 85–840, § 301(e), included within definition of ''former wife divorced'' a woman whose husband legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen.

Subsec. (e). Pub. L. 85–840, § 302(a), struck out requirement that an adopted child of a living individual must have been adopted for not less than three years immediately preceding the day on which application for child's benefits is filed, and inserted provisions requiring a child to be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if the child was living in the decedent's household at the time of his death and was legally adopted by the surviving spouse after the individual's death but before the end of two years after the day on which the individual died or Aug. 28, 1958, and the child was not receiving regular contributions toward his support from someone other than the individual or his spouse, or from any public or private welfare organization.

Subsec. (f). Pub. L. 85–840, § 301(a)(2), included within definition of ''husband'' a person who in the month prior to the month of his marriage was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 402 of this title, or who had attained age eighteen and was entitled to, or on application therefor would have been entitled to benefits under subsection (d) of section 402 of this title.

Subsec. (g). Pub. L. 85–840, § 301(c)(2), included within definition of ''widower'' a person whose wife had legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, and a person who, in the month before the month of his marriage, was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 402 of this title, or had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (h)(3). Pub. L. 85–840, § 305(b), repealed par. (3) which defined ''living with'' for purposes of section 402(i) of this title.

Subsec. (i)(2). Pub. L. 85–840, § 201, substituted ''while under such disability'' for ''while under a disability'' in opening provisions, and ''eighteen-month period'' for ''one-year period'' in cl. (A)(ii).

Subsec. (i)(3). Pub. L. 85–840, § 204(a), struck out provisions that required, for a period of disability to begin with respect to any quarter, an individual to have not less than six quarters of coverage during the thirteen-quarter period which ends with such quarter, and inserted provisions requiring an individual to be fully insured.

Subsec. (i)(4). Pub. L. 85–840, § 203, substituted ''July 1961'' for ''July 1958'' and ''July 1960'' for ''July 1957'', and struck out provisions which required the applicant to be alive on July 1, 1955.

1957—Subsec. (h). Pub. L. 85–238 amended subsec. (h) generally to provide that the applicant is the wife, husband, widow, or widower if there is a finding that the applicant and the insured individual were validly married at the time the application for benefits is filed, or at the time the insured individual died, and to eliminate provisions which prescribed certain conditions under which a wife or husband would be deemed to have been living with his or her spouse, and which related to determination of status of parent.

Subsec. (i)(4). Pub. L. 85–109, substituted ''July 1958'' for ''July 1957'' and ''July 1957'' for ''July 1956''.

1956—Subsec. (a). Act Aug. 1, 1956, § 102(a), reduced the retirement age in the case of a woman from age sixty-five to age sixty-two.

Subsec. (i)(1). Act Aug. 1, 1956, § 103(c)(6), inserted ''Except for purposes of sections 402(d), 423, and 425 of this title''.

Subsec. (i)(2). Act Aug. 1, 1956, § 102(d)(12), substituted ''the age of sixty-five'' for ''retirement age'' in two places.

1954—Subsec. (i). Act Sept. 1, 1954, § 106(d), added subsec. (i). Former subsec. (i), which was added by act July 18, 1952, § 3(d), ceased to be in effect at the close of June 30, 1953. See Effective and Termination Date of 1952 Amendment note set out under section 413 of this title.

1952—Subsec. (i). Act July 18, 1952, added subsec. (i).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 414(d), Mar. 2, 2004, 118 Stat. 530, provided that: ''The amendments made by this section [amending this section] shall be effective with respect to applications for benefits under title II of the Social Security Act [this subchapter] filed during months ending after the date of the enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5103(b)(1) of Pub. L. 101–508 applicable with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after Jan. 1, 1991, or are pending on such date, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

Section 5104(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits payable for months after December 1990, but only on the basis of applications filed after December 31, 1990.''

Amendment by section 5119(a), (b) of Pub. L. 101–508 applicable with respect to benefits for months after December 1990, and applicable only with respect to benefits for which application is filed with Secretary of Health and Human Services after Dec. 31, 1990, with exception from application requirement, see section 5119(e) of Pub. L. 101–508, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to

benefits under specific provisions of sections 402 and 423 of this title for any month after December 1987, and individuals entitled to benefits payable under specific provisions of sections 402 and 423 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 2(b) of Pub. L. 98–460 applicable to determinations made by the Secretary on or after Oct. 9, 1984, with certain enumerated exceptions and qualifications, see section 2(d) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 4(a)(2) of Pub. L. 98–460 applicable with respect to determinations made on or after the first day of the first month beginning after 30 days after Oct. 9, 1984, see section 4(c) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 2661(*l*) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(11) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 301(c), 303, 304(c), 306(c), and 309(j), (k) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 332(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [section 423 of this title], and for disability determinations under section 216(i) of such Act [subsec. (i) of this section], filed after the date of the enactment of this Act [Apr. 20, 1983], except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for months before the month following the month of enactment of this Act.''

Section 333(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2202(a)(2) of Pub. L. 97–35 applicable only with respect to deaths occurring after August 1981, see section 2202(b) of Pub. L. 97–35, set out as a note under section 402 of this title.

Amendment by section 2203(b)(2), (c)(2) of Pub. L. 97–35 applicable only to monthly insurance benefits payable to individuals who attain age 62 after August 1981, and amendment by section 2203(d)(3), (4) of Pub. L. 97–35 applicable to monthly insurance benefits for months after August 1981, and only in the case of individuals who were not entitled to such insurance benefits for August 1981 or any preceding month, see section 2203(f)(1), (2) of Pub. L. 97–35, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–473 effective with respect to benefits payable for months beginning on or after Oct. 1, 1980, see section 5(d) of Pub. L. 96–473, set out as a note under section 402 of this title.

Amendment by section 303(b)(2)(B) of Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, to apply with respect to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Amendment by section 306(b) of Pub. L. 96–265 applicable to applications filed after June 1980, see section 306(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective with respect to monthly benefits after Dec., 1978, and applications filed on or after Jan. 1, 1979, see section 337(c) of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 104(g) of Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after December 1974, with the figure ''65'' in subsec. (i)(3)(A) of this section to be deemed to read ''64'' in the case of a man who attains age 62 in 1973, and deemed to read ''63'' in the case of a man who attains age 62 in 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Amendment by section 113(a) of Pub. L. 92–603 applicable with respect to monthly benefits payable under this subchapter for months after December 1972, but only on the basis of applications filed on or after October 30, 1972, see section 113(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

Section 115(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972 on the basis of applications filed in or after the month in which this Act is enacted [October 1972].''

Amendment by section 116(d) of Pub. L. 92–603 effective with respect to applications for disability determinations under subsec. (i) of this section filed on or after October 1972 or before October 1972 under specified conditions, see section 116(e) of Pub. L. 92–603, set out as a note under section 423 of this title.

Amendment by section 117(a) of Pub. L. 92–603 effective with respect to applications for disability determinations under subsec. (i) of this section filed in or after October 1972 or before October 1972 under specified conditions, see section 117(c) of Pub. L. 92–603, set out as a note under section 423 of this title.

Section 118(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall apply in the case of deaths occurring after December 31, 1969. For purposes of such amendments (and for purposes of sections 202(j)(1) and 223(b) of the Social Security Act [sections 402(j)(1) and 423(b) of this title], any application with respect to an individual whose death occurred after December 31, 1969, but before the date of the enactment of this Act [Oct. 30, 1972] which is filed in, or within 3 months after the month in which this Act is enacted [October 1972] shall be deemed to have been filed in the month in which such death occurred.''

Section 145(b) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972 on the basis of applications filed in or after the month in which this Act is enacted [October 1972].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 104 of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter

for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Section 105(c) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to applications for disability determinations filed under section 216(i) of the Social Security Act [subsec. (i) of this section] in or after the month in which this Act is enacted [January 1968]. The amendments made by subsection (b) [amending section 423 of this title] shall apply with respect to monthly benefits under title II of such Act [this subchapter] for months after January 1968, but only on the basis of applications for such benefits filed in or after the month in which this Act is enacted.''

Section 111(b) of Pub. L. 90–248 provided that: ''No monthly insurance benefits under title II of the Social Security Act [this subchapter] shall be payable or increased for any month before the month in which this Act is enacted [January 1968] by reason of amendments made by subsection (a) [amending this section].''

Section 150(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of an application filed in or after the month in which this Act is enacted [January 1968].''

Section 156(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968].''

Amendment by section 158(d) of Pub. L. 90–248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under subsec. (i) of this section, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

Section 172(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to benefits under section 223 of the Social Security Act [section 423 of this title] for months after January 1968 based on applications filed after the date of enactment of this Act [Jan. 2, 1968] and with respect to disability determinations under section 216(i) of the Social Security Act [subsec. (i) of this section] based on applications filed after the date of enactment of this Act.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 308(c), (d)(2)(B) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

Amendment by section 334(a)–(d) of Pub. L. 89–97 applicable only with respect to monthly insurance benefits under section 401 et seq. of this title beginning with September 1965 but only on the basis of applications filed in or after July 1965, see section 334(g) of Pub. L. 89–97, set out as a note under section 402 of this title.

Section 339(c) of Pub. L. 89–97 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 402 of this title] shall be applicable with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] beginning with the second month following the month in which this Act is enacted [July 1965] but only on the basis of an application filed in or after the month in which this Act is enacted.''

Amendment by section 303(a)(1), (b)(1), (2) of Pub. L. 89–97 effective with respect to applications for disability insurance benefits under section 423 of this title, and for disability determinations under subsec. (i) of this section, filed in or after July 1965 or before July 1965, if the applicant has not died before such month, and notice of final administrative decision has not been given to the applicant before such month, except that monthly insurance benefits under this subchapter shall not be payable or increased by reason of amendments to subsecs. (i)(1)(A), (2), (3) of this section for months before the second month following July 1965, see section 303(f)(1) of Pub. L. 89–97, set out as a note under section 423 of this title.

Amendment by section 304(*l*) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 304(*o*) of Pub. L. 89–97, set out as a note under section 402 of this title.

Section 328(d) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 402 and 423 of this title] shall apply with respect to (1) applications filed on or after the date of enactment of this Act [July 30, 1965], (2) applications as to which the Secretary has not made a final decision before the date of enactment of this Act, and (3) if a civil action with respect to final decision by the Secretary has been commenced under section 205(g) of the Social Security Act [section 405(g) of this title] before the date of enactment of this Act, applications as to which there has been no final judicial decision before the date of enactment of this Act.''

Section 344(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after the first month following the month in which this Act is enacted [July 1965], on the basis of applications for such benefits filed in or after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 1(d) of Pub. L. 88–650 provided that:

''(1) The amendments made by subsections (a), (b), and (c) [amending this section] shall apply in the case of applications for disability determinations under section 216(i) of the Social Security Act [subsec. (i) of this section] filed after the month following the month in which this Act is enacted [October 1964].

''(2) Except as provided in the succeeding paragraphs, such amendments shall also apply, and as though such amendments had been enacted on July 1, 1962, in the case of applications for disability determinations filed under section 216(i) of the Social Security Act [subsec. (i) of this section] during the period beginning July 1, 1962, and ending with the close of the month following the month in which this Act is enacted [October 1964], by an individual who—

''(A) has been under a disability (as defined in such section 216(i)) continuously since he filed such application and up to (i) the first day of the second month following the month in which this Act is enacted or (ii) if earlier, the first day of the month in which he attained the age of 65, and

''(B) is living on the day specified in subparagraph (A)(i).

''(3) In the case of an individual to whom paragraph (2) applies and who filed an application for disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] during the period specified in such paragraph—

''(A) if such individual was under a disability (as defined in section 223(c) of such Act) throughout such period and was not entitled to disability insurance benefits under such section 223 for any month in such period (except for the amendments made by this section), such application and any application filed during such period for benefits under section 202 of the Social Security Act [section 402 of this title] on the basis of the wages and self-employment income of

such individual shall, notwithstanding section 202(j)(2) and the first sentence of section 223(b), be deemed an effective application, or

''(B) if such individual was entitled (without the application of this section) to disability insurance benefits under section 223 [section 423 of this title] for a continuous period of months immediately preceding—

''(i) the second month following the month in which this Act was enacted [October 1964], or

''(ii) if earlier, the month in which he became entitled to benefits under section 202(a) [section 402(a) of this title],

his primary insurance amount shall be recomputed, but only if such amount would be increased solely by reason of the enactment of this section.

''(4) No monthly insurance benefits, and no increase in monthly insurance benefits, may be paid under title II of the Social Security Act [this subchapter] by reason of the enactment of this section for any month before the eleventh month before the month in which this Act is enacted [October 1964].

''(5) In the case of an individual (A) who is entitled under section 202 of the Social Security Act [section 402 of this title] (but without the application of subsection (j)(1) of such section) to a widow's, widower's, or parent's insurance benefit, or to an old-age, wife's or husband's insurance benefit which is reduced under section 202(q) of such Act, for any month in the period referred to in paragraph (2) of this subsection, (B) who was under a disability (as defined in section 223(c) of the Social Security Act [section 423(c) of this title]) which began prior to the sixth month before the first month for which the benefits referred to in clause (A) are payable and which continued through the month following the month in which this Act is enacted [October 1964], and (C) who files an application for disability insurance benefits under section 223(a)(1) of the Social Security Act—

''(i) subsection (a)(3) of section 223 of the Social Security Act shall not prevent him from being entitled to such disability insurance benefits;

''(ii) the provisions of subsection (a)(1) of such section 223 terminating entitlement to disability insurance benefits by reason of entitlement to old-age insurance benefits shall not apply with respect to him unless and until he again becomes entitled to such old-age insurance benefits under the provisions of section 202 of such Act;

''(iii) such individual shall, for any month for which he is thereby entitled to both old-age insurance benefits and disability insurance benefits, be entitled only to such disability insurance benefits; and

''(iv) in case the benefits reduced under subsection (q) of section 202 of such Act are old-age insurance benefits (I) such old-age insurance benefits for the months in the period referred to in paragraph (2) of this subsection shall not be recomputed solely by reason of the enactment of this section, and, if otherwise recomputed, the provisions of and amendments made by this section shall not apply to such recomputation; and (II) the months for which he received such old-age insurance benefits before or during the period for which he becomes entitled, by reason of such enactment, to disability insurance benefits under such section 223 and the months for which he received such disability insurance benefits shall be excluded from the 'reduction period' and the 'adjusted reduction period', as defined in paragraphs (5) and (6), respectively, of such subsection (q) for purposes of determining the amount of the old-age insurance benefits to which he may subsequently become entitled.

''(6) The entitlement of any individual to benefits under section 202 of the Social Security Act [section 402 of this title] shall not be terminated solely by reason of the enactment of this section, except where such individual is entitled to benefits under section 202(a) or 223 of such Act [section 402(a) or 423 of this title] in an amount which (but for this subsection) would have required termination of such benefits under such section 202.''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by section 102(b)(2)(D) of Pub. L. 87–64 effective Aug. 1, 1961, and amendment by section 102(c)(1), (2)(B), (3)(C) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f)(4), (6) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

Section 105 of Pub. L. 87–64 provided that the amendment made by that section is effective with respect to applications for disability determinations filed on or after July 1, 1961.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 207(d) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months beginning with the month in which this Act is enacted [September 1960], on the basis of applications filed in or after such month.''

Section 208(f) of Pub. L. 86–778 provided that: ''The amendments made by the preceding provisions of this section [amending this section and section 402 of this title] shall be applicable (1) with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [September 1960] on the basis of an application filed in or after such month, and (2) in the case of a lump-sum death payment under such title based on an application filed in or after such month, but only if no person, other than the person filing such application, has filed an application for a lump-sum death payment under such title prior to the date of the enactment of this Act [Sept. 13, 1960] with respect to the death of the same individual.''

Amendment by section 402(e) of Pub. L. 86–778 applicable only in the case of individuals who become entitled to benefits under section 423 of this title in or after September 1960, see section 402(f) of Pub. L. 86–778, set out as a note under section 423 of this title.

Amendment by section 403(c) of Pub. L. 86–778 applicable only in the case of individuals who have a period of disability (as defined in subsec. (i) of this section) beginning on or after Sept. 13, 1960, or beginning before Sept. 13, 1960 and continuing, without regard to such amendment, beyond the end of September 1960, see section 403(e) of Pub. L. 86–778, set out as a note under section 422 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 207(a) of Pub. L. 85–840 provided that: ''The amendments made by section 201 [amending this section] shall apply with respect to applications for a disability determination under section 216(i) of the Social Security Act [subsec. (i) of this section] filed after June 1961. The amendments made by section 202 [amending section 423 of this title] shall apply with respect to applications for disability insurance benefits under section 223 of such Act filed after December 1957. The amendments made by section 203 [amending this section] shall apply with respect to applications for a disability determination under such section 216(i) filed after June 1958. The amendments made by section 204 [amending this section and section 423 of this title] shall apply with respect to (1) applications for disability insurance benefits under such section 223 or for a disability determination under such section 216(i) filed on or after the date of enactment of this Act [Aug. 28, 1958], and (2) applications for such benefits or for such a determination filed after 1957 and prior to such date of enactment if the applicant has not died prior to such date of enactment and if notice to the applicant of the Secretary's decision with respect thereto has not been given to him on or prior to such date, except that (A) no benefits under title II of the Social Security Act

[this subchapter] for the month in which this Act is enacted [August 1958] or any prior month shall be payable or increased by reason of the amendments made by section 204 of this Act, and (B) the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title] shall not prevent recomputation of monthly benefits under section 202 of such Act [section 402 of this title] (but no such recomputation shall be regarded as a recomputation for purposes of section 215(f) of such Act). The amendments made by section 205 (other than by subsections (k) and (m)) [amending sections 401, 402, 403, 414, 422, and 425 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted, but only if an application for such benefits is filed on or after the date of enactment of this Act. The amendments made by section 206 [repealing section 424 of this title] and by subsections (k) and (m) of section 205 [amending sections 403 and 415 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for the month in which this Act is enacted and succeeding months.''

Amendment by section 301(a)(2), (b)(2), (c)(2), (d), (e) of Pub. L. 85–840 applicable with respect to monthly benefits under section 402 of this title for months beginning after Aug. 28, 1958, but only if an application for such benefits is filed on or after such date, see section 301(f) of Pub. L. 85–840, set out as a note under section 402 of this title.

Section 302(b) of Pub. L. 85–840 provided that: ''The amendment made by this section [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Amendment by section 305(b) of Pub. L. 85–840 applicable in the case of lump-sum death payments under section 402(i) of this title on the basis of the wages and self-employment income of any individual who dies after August 1958, see section 305(c) of Pub. L. 85–840, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment by Pub. L. 85–238 applicable to monthly benefits under section 402 of this title for months after August 1957, but not to operate to deprive any such parent of benefits to which he would otherwise be entitled under section 402(h) of this title, see section 3(i) of Pub. L. 85–238, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 102(b) of act Aug. 1, 1956, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply in the case of benefits under subsection (e) of section 202 of the Social Security Act [section 402(e) of this title] for months after October 1956, but only, except in the case of an individual who was entitled to wife's or mother's insurance benefits under such section 202 for October 1956, or any month thereafter, on the basis of applications filed after the date of enactment of this Act [Aug. 1, 1956]. The amendment made by subsection (a) shall apply in the case of benefits under subsection (h) of such section 202 for months after October 1956 on the basis of applications filed after the date of enactment of this Act.

''(2) Except as provided in paragraphs (1) and (4), the amendment made by subsection (a) shall apply in the case of lump-sum death payments under section 202(i) of the Social Security Act with respect to deaths after October 1956, and in the case of monthly benefits under title II of such Act [this subchapter] for months after October 1956 on the basis of applications filed after the date of enactment of this Act.

''(3) For purposes of section 215(b)(3)(B) of the Social Security Act [section 415(b)(3)(B) of this title] (but subject to paragraphs (1) and (2) of this subsection)—

''(A) a woman who attains the age of sixty-two prior to November 1956 and who was not eligible for old-age insurance benefits under section 202 of such Act (as in effect prior to the enactment of this Act) for any month prior to November 1956 shall be deemed to have attained the age of sixty-two in 1956 or, if earlier, the year in which she died;

''(B) a woman shall not, by reason of the amendment made by subsection (a), be deemed to be a fully insured individual before November 1956 or the month in which she died, whichever month is the earlier; and

''(C) the amendment made by subsection (a) shall not be applicable in the case of any woman who was eligible for old-age insurance benefits under such section 202 for any month prior to November 1956.

A woman shall, for purposes of this paragraph, be deemed eligible for old-age insurance benefits under section 202 of the Social Security Act for any month if she was or would have been, upon filing application therefor in such month, entitled to such benefits for such month.

''(4) For purposes of section 209(i) of such Act [section 409(i) of this title], the amendment made by subsection (a) shall apply only with respect to remuneration paid after October 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 106(d) of act Sept. 1, 1954, applicable with respect to monthly benefits under subchapter II of this chapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 415(f) of this title, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

For effective and termination dates of amendment by Act July 18, 1952, see section 3(f), (g) of act July 18, 1952, set out as a note under section 413 of this title.

EFFECTIVE DATE

Section applicable (1) in case of monthly benefits for months after August 1950, and (2) in the case of lump-sum death payments with respect to deaths after August 1950, see section 104(b) of act Aug. 28, 1950, set out as an Effective Date of 1950 Amendment note under section 409 of this title.

RETROACTIVE BENEFITS

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98–460 (which amended subsec. (i)(2)(D) of this section), see section 2(f) of Pub. L. 98–460, set out as a note under section 423 of this title.

PROMULGATION OF REGULATIONS

For provisions requiring the Secretary of Health and Human Services to prescribe regulations necessary to implement amendment to subsec. (i)(2)(D) of this section by section 2(b) of Pub. L. 98–460 not later than 180 days after Oct. 9, 1984, see section 2(g) of Pub. L. 98–460, set out as a note under section 423 of this title.

STUDY OF EFFECT OF RAISING RETIREMENT AGE ON THOSE UNLIKELY TO BENEFIT FROM IMPROVEMENTS IN LONGEVITY

Section 201(d) of Pub. L. 98–21 required the Secretary to conduct a comprehensive study and analysis of the implications of the changes made by this section (amending sections 402, 403, 415, 416, and 423 of this title) in retirement age in the case of certain individuals and submit to Congress no later than January 1, 1986, a full report on the study and analysis, including any recommendations for legislative changes.

SPECIAL INSURED STATUS TEST IN CERTAIN CASES FOR DISABILITY PURPOSES

Section 404 of Pub. L. 86–778 provided that:

''(a) In the case of any individual who does not meet the requirements of section 216(i)(3) of the Social Security Act [subsec. (i)(3) of this section] with respect to any quarter, or who is not insured for disability insurance benefits as determined under section 223(c)(1) of such Act [section 423(c)(1) of this title] with respect to any month in a quarter, such individual shall be deemed to have met such requirements with respect to such quarter or to be so insured with respect to such month of such quarter, as the case may be, if—

''(1) he had a total of not less than twenty quarters of coverage (as defined in section 213 of such Act [section 413 of this title]) during the period ending with the close of such quarter, and

''(2) all of the quarters elapsing after 1950 and up to but excluding such quarter were quarters of coverage with respect to him and there were not fewer than six such quarters of coverage.

''(b) Subsection (a) shall apply only in the case of applications for disability insurance benefits under section 223 of the Social Security Act, or for disability determinations under section 216(i) of such Act, filed in or after the month in which this Act is enacted [September 1960], and then only with respect to an individual who, but for such subsection (a), would not meet the requirements for a period of disability under section 216(i) with respect to the quarter in which this Act is enacted or any prior quarter and would not meet the requirements for benefits under section 223 with respect to the month in which this Act is enacted or any prior month. No benefits under title II of the Social Security Act [this subchapter] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of the amendment made by such subsection.''

§ 417. Benefits for veterans

(a) Determination of benefits

(1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after August 1950, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any World War II veteran, and for purposes of section 416(i)(3) of this title, such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States during World War II. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran during World War II is determined by any agency or wholly owned instrumentality of the United States (other than the Department of Veterans Affairs) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) of this paragraph shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to section 415(f) of this title) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this title.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Commissioner of Social Security shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If the Commissioner has not been so notified, the Commissioner of Social Security shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any veteran, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (2) of this subsection.

(b) Determination of insurance status

(1) Subject to paragraph (3), any World War II veteran who died during the period of three years immediately following his separation from the active military or naval service of the United States shall be deemed to have died a fully insured individual whose primary insurance amount is the amount determined under section 415(c) of this title as in effect in December 1978. Notwithstanding section 415(d) of this title as in effect in December 1978, the primary insurance benefit (for purposes of section 415(c) of this title as in effect in December 1978) of such veteran shall be determined as provided in this subchapter as in effect prior to August 28, 1950, except that the 1 per centum addition provided for in section 409(a)(4)(B) of this title as in effect prior to August 28, 1950, shall be applicable only with respect to calendar years prior to 1951. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application;

(B) any pension or compensation is determined by the Secretary of Veterans Affairs to be payable by him on the basis of the death of such veteran;

(C) the death of the veteran occurred while he was in the active military or naval service of the United States; or

(D) such veteran has been discharged or released from the active military or naval service of the United States subsequent to July 26, 1951.

(2) Upon an application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Commissioner of Social Security shall make a decision without regard to paragraph (1)(B) of this subsection unless the Commissioner has been notified by the Secretary of Veterans Affairs that pension or compensation is determined to be payable by that Secretary by reason of the death of such veteran. The Commissioner of Social Security shall thereupon report such decision to the Secretary of Veterans Affairs. If the Secretary of Veterans Affairs in any such case has made an adjudication or thereafter makes an adjudication that any pension or compensation is payable under any law administered by it, the Secretary of Veterans Affairs shall notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment, or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection. Any payments theretofore certified by the Commissioner of Social Security on the basis of paragraph (1) of this subsection to any individual, not exceeding the amount of any accrued pension or compensation payable to him by the Secretary of Veterans Affairs, shall (notwithstanding the provisions of section 5301 of title 38) be deemed to have been paid to him by that Secretary on account of such accrued pension or compensation. No such payment certified by the Commissioner of Social Security, and no payment certified by the Commissioner for any month prior to the first month for which any pension or compensation is paid by the Secretary of Veterans Affairs shall be deemed by reason of this subsection to have been an erroneous payment.

(3)(A) The preceding provisions of this subsection shall apply for purposes of determining the entitlement to benefits under section 402 of this title, based on the primary insurance amount of the deceased World War II veteran, of any surviving individual only if such surviving individual makes application for such benefits before the end of the 18-month period after November 1990.

(B) Subparagraph (A) shall not apply if any person is entitled to benefits under section 402 of this title based on the primary insurance amount of such veteran for the month preceding the month in which such application is made.

(c) Filing proof of support

In the case of any World War II veteran to whom subsection (a) of this section is applicable, proof of support required under section 402(h) of this title may be filed by a parent at any time prior to July 1951 or prior to the expiration of two years after the date of the death of such veteran, whichever is the later.

(d) Definitions

For the purposes of this section—

(1) The term ''World War II'' means the period beginning with September 16, 1940, and ending at the close of July 24, 1947.

(2) The term ''World War II veteran'' means any individual who served in the active military or naval service of the United States at any time during World War II and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(e) Determination based on wages and self-employment

(1) For purposes of determining entitlement to and the amount of any monthly benefit or lump-sum death payment payable under this subchapter on the basis of wages and self-employment income of any veteran (as defined in paragraph (4) of this subsection), and for purposes of section 416(i)(3) of this title, such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to January 1, 1957. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, is determined by any agency or wholly owned instrumentality of the United States (other than the Department of Veterans Affairs) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) of this paragraph shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to subsection (f) of section 415 of this title) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this

title. In the case of monthly benefits under this subchapter for months after December 1956 (and any lump-sum death payment under this subchapter with respect to a death occurring after December 1956) based on the wages and self-employment income of a veteran who performed service (as a member of a uniformed service) to which the provisions of section 410(*l*)(1) of this title are applicable, wages which would, but for the provisions of clause (B) of this paragraph, be deemed under this subsection to have been paid to such veteran with respect to his active military or naval service performed after December 1950 shall be deemed to have been paid to him with respect to such service notwithstanding the provisions of such clause, but only if the benefits referred to in such clause which are based (in whole or in part) on such service are payable solely by the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, National Oceanic and Atmospheric Administration Corps, or Public Health Service.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Commissioner of Social Security shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If the Commissioner has not been so notified, the Commissioner of Social Security shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service on or after July 25, 1947, and prior to January 1, 1957, shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any veteran, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (2) of this subsection.

(4) For the purposes of this subsection, the term ''veteran'' means any individual who served in the active military or naval service of the United States at any time on or after July 25, 1947, and prior to January 1, 1957, and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(f) Right to annuity; waiver

(1) In any case where a World War II veteran (as defined in subsection (d)(2) of this section) or a veteran (as defined in subsection (e)(4) of this section) has died or shall hereafter die, and his or her surviving spouse or child is entitled under subchapter III of chapter 83 of title 5 to an annuity in the computation of which his or her active military or naval service was included, clause (B) of subsection (a)(1) of this section or clause (B) of subsection (e)(1) of this section shall not operate (solely by reason of such annuity) to make such subsection inapplicable in the case of any monthly benefit under section 402 of this title which is based on his or her wages and self-employment income; except that no such surviving spouse or child shall be entitled under section 402 of this title to any monthly benefit in the computation of which such service is included by reason of this subsection (A) unless such surviving spouse or child after December 1956 waives his or her right to receive such annuity, or (B) for any month prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Commissioner of Social Security that (by reason of such waiver) no further annuity will be paid to such surviving spouse or child under such subchapter III on the basis of such veteran's military or civilian service. Any such waiver shall be irrevocable.

(2) Whenever a surviving spouse waives his or her right to receive such annuity such waiver shall constitute a waiver on his or her own behalf; a waiver by a legal guardian or guardians, or, in the absence of a legal guardian, the person (or persons) who has the child in his or her care, of the child's right to receive such annuity shall constitute a waiver on behalf of such child. Such a waiver with respect to an annuity based on a veteran's service shall be valid only if the surviving spouse and all children, or, if there is no surviving spouse, all the children, waive their rights to receive annuities under subchapter III of chapter 83 of title 5 based on such veteran's military or civilian service.

(g) Appropriation to trust funds

(1) Within thirty days after April 20, 1983, the Commissioner of Social Security shall determine the amount equal to the excess of—

(A) the actuarial present value as of April 20, 1983, of the past and future benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under this subchapter and subchapter XVIII of this chapter, together with associated administrative costs, resulting from the operation of this section (other than this subsection) and section 410 of this title as in effect before the enactment of the Social Security Amendments of 1950, over

(B) any amounts previously transferred from the general fund of the Treasury to such Trust

Funds pursuant to the provisions of this subsection as in effect immediately before April 20, 1983.

Such actuarial present value shall be based on the relevant actuarial assumptions set forth in the report of the Board of Trustees of each such Trust Fund for 1983 under sections 401(c) and 1395i(b) of this title. Within thirty days after April 20, 1983, the Secretary of the Treasury shall transfer the amount determined under this paragraph with respect to each such Trust Fund to such Trust Fund from amounts in the general fund of the Treasury not otherwise appropriated.

(2) The Commissioner of Social Security shall revise the amount determined under paragraph (1) with respect to each such Trust Fund in 1985 and each fifth year thereafter, as determined appropriate by the Commissioner of Social Security from data which becomes available to the Commissioner after the date of the determination under paragraph (1) on the basis of the amount of benefits and administrative expenses actually paid from such Trust Fund under this subchapter or subchapter XVIII of this chapter and the relevant actuarial assumptions set forth in the report of the Board of Trustees of such Trust Fund for such year under section 401(c) or 1395i(b) of this title. Within 30 days after any such revision, the Secretary of the Treasury, to the extent provided in advance in appropriation Acts, shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of the Treasury determines necessary to take into account such revision.

(h) Determination of veterans status

(1) For the purposes of this section, any individual who the Commissioner of Social Security finds—

(A) served during World War II (as defined in subsection (d)(1) of this section) in the active military or naval service of a country which was on September 16, 1940, at war with a country with which the United States was at war during World War II;

(B) entered into such active service on or before December 8, 1941;

(C) was a citizen of the United States throughout such period of service or lost his United States citizenship solely because of his entrance into such service;

(D) had resided in the United States for a period or periods aggregating four years during the five-year period ending on the day of, and was domiciled in the United States on the day of, such entrance into such active service; and

(E)(i) was discharged or released from such service under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty, or

(ii) died while in such service,

shall be considered a World War II veteran (as defined in subsection (d)(2) of this section) and such service shall be considered to have been performed in the active military or naval service of the United States.

(2) In the case of any individual to whom paragraph (1) applies, proof of support required under section 402(f) or (h) of this title may be filed at any time prior to the expiration of two years after the date of such individual's death or August 28, 1958, whichever is the later.

(Aug. 14, 1935, ch. 531, title II, § 217, as added Aug. 28, 1950, ch. 809, title I, § 105, 64 Stat. 512; amended July 18, 1952, ch. 945, § 5(a), (d)(1), 66 Stat. 773, 775; Aug. 14, 1953, ch. 483, § 1, 67 Stat. 580; Sept. 1, 1954, ch. 1206, title I, § 106(e), 68 Stat. 1081; Aug. 9, 1955, ch. 685, § 1, 69 Stat. 621; Aug. 1, 1956, ch. 837, title IV, §§ 404(a), (b), 406, 70 Stat. 872, 873, 875; Pub. L. 85–840, title III, § 314(a), (b), Aug. 28, 1958, 72 Stat. 1036, 1037; Pub. L. 85–857, § 13(i)(2), Sept. 2, 1958, 72 Stat. 1265; Pub. L. 86–778, title I, § 103(j)(2)(C), Sept. 13, 1960, 74 Stat. 937; Pub. L. 89–97, title III, § 322, July 30, 1965, 79 Stat. 396; Pub. L. 90–248, title IV, § 403(c), Jan. 2, 1968, 81 Stat. 932; Pub. L. 94–273, §§ 2(23), 16, Apr. 21, 1976, 90 Stat. 376, 379; Pub. L. 95–216, title II, § 205(c), Dec. 20, 1977, 91 Stat. 1529; Pub. L. 97–35, title XXII, § 2201(c)(7), Aug. 13, 1981, 95 Stat. 832; Pub. L. 97–123, § 2(g), Dec. 29, 1981, 95 Stat. 1661; Pub. L. 98–21, title I, § 151(a), title III, § 308, Apr. 20, 1983, 97 Stat. 103, 115; Pub. L. 98–369, div. B, title VI, § 2663(a)(12), (j)(3)(A)(ii), July 18, 1984, 98 Stat. 1164, 1170; Pub. L. 101–239, title X, § 10208(d)(2)(A)(iv), Dec. 19, 1989, 103 Stat. 2481; Pub. L. 101–508, title V, § 5117(b), Nov. 5, 1990, 104 Stat. 1388–277; Pub. L. 102–40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–54, § 13(q)(3)(A)(i), (D), (E), June 13, 1991, 105 Stat. 279; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

REFERENCES IN TEXT

The Social Security Act Amendments of 1950, referred to in subsec. (g)(1)(A), is act Aug. 28, 1950, ch. 809, 64 Stat. 477, as amended. For complete classification of this Act to the Code, see Short Title of 1950 Amendment note set out under section 1305 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(2), (3). Pub. L. 103–296, § 107(a)(4), substituted "Commissioner of Social Security" for "Secretary" wherever appearing, "unless the Commissioner" for "unless he" and "If the Commissioner" for "If he" in par. (2), and "to the Commissioner" for "to him" and "the Commissioner's functions" for "his functions" in par. (3).

Subsec. (b)(2). Pub. L. 103–296, § 107(a)(4), substituted "Commissioner of Social Security" for "Secretary" wherever appearing except where appearing before "of Veterans Affairs" or after "that" and substituted "unless the Commissioner" for "unless he" and "certified by the Commissioner" for "certified by him".

Subsec. (e)(2), (3). Pub. L. 103–296, § 107(a)(4), substituted "Commissioner of Social Security" for "Secretary" wherever appearing, "the Commissioner has" for "he has" in two places in par. (2), and "certify to the Commissioner" for "certify to him" and "the Commissioner's" for "his" in par. (3).

Subsec. (f)(1). Pub. L. 103–296, § 107(a)(4), substituted "Commissioner of Social Security" for "Secretary".

Subsec. (g). Pub. L. 103–296, § 107(a)(4), substituted "Commissioner of Social Security" for "Secretary" wherever appearing, except where appearing before "of the Treasury" and substituted "the Commissioner after" for "him after" in par. (2).

Subsec. (h)(1). Pub. L. 103–296, § 107(a)(4), substituted "Commissioner of Social Security" for "Secretary" in introductory provisions.

1991—Subsec. (a)(1)(B). Pub. L. 102–54, §13(q)(3)(A)(i), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (b)(1)(B). Pub. L. 102–54, §13(q)(3)(D), substituted ''Secretary of Veterans Affairs to be payable by him'' for ''Veterans' Administration to be payable by it''.

Subsec. (b)(2). Pub. L. 102–54, §13(q)(3)(E), substituted references to Secretary of Veterans Affairs and Secretary for references to Veterans' Administration and Administration, wherever appearing.

Pub. L. 102–40 substituted ''section 5301 of title 38'' for ''section 3101 of title 38''.

Subsec. (e)(1)(B). Pub. L. 102–54, §13(q)(3)(A)(i), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (b)(1). Pub. L. 101–508, §5117(b)(1), substituted ''Subject to paragraph (3), any'' for ''Any''.

Subsec. (b)(3). Pub. L. 101–508, §5117(b)(2), added par. (3).

1989—Subsec. (b)(1). Pub. L. 101–239 substituted ''409(a)(4)(B)'' for ''409(e)(2)'' in introductory provisions.

1984—Subsecs. (a)(2), (3), (b)(2). Pub. L. 98–369, §2663(j)(3)(A)(ii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 98–369, §2663(a)(12)(A), realigned margins of subsec. (d).

Subsec. (e)(1). Pub. L. 98–369, §2663(a)(12)(B), inserted reference to National Oceanic and Atmospheric Administration.

Subsec. (e)(2), (3). Pub. L. 98–369, §2663(j)(3)(A)(ii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsec. (f)(1). Pub. L. 98–369, §2663(a)(12)(C), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

Pub. L. 98–369, §2663(j)(3)(A)(ii), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

1983—Subsec. (f). Pub. L. 98–21, §308(2), substituted ''his or her'' for ''his'' and ''her'' wherever appearing, except in cl. (A) of par. (1).

Pub. L. 98–21, §308(1), substituted ''surviving spouse'' for ''widow'' wherever appearing.

Subsec. (g). Pub. L. 98–21, §151(a), amended subsec. generally, substituting provisions relating to determination of amounts to be appropriated to trust funds and to revisions of such amounts for provisions which had formerly required that, in September of 1965, 1970, and 1975, and in October 1980 and in every fifth October thereafter up to and including October 2010, the Secretary determine the amount which, if paid in equal installments at the beginning of each fiscal year in the period beginning (A) with July 1, 1965, in the case of the first such determination, and (B) with the beginning of the first fiscal year commencing after the determination in the case of all other such determinations, and ending with the close of September 30, 2015, would accumulate, with interest compounded annually, to an amount equal to the amount needed to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of September 30, 2015, as he estimated they would otherwise be in at the close of that date if section 410 of this title as in effect prior to the Social Security Act Amendments of 1950, and this section, had not been enacted, with the interest to be used in determining such amount to be the rate determined under section 401(d) of this title for public-debt obligations which were or could have been issued for purchase by the Trust Funds in the June preceding the September in which the determinations in 1965, 1970, and 1975 were made and in the September preceding the October in which all other determinations were made.

1981—Subsec. (b)(1). Pub. L. 97–123 struck out '', and as modified by the application of section 415(a)(6) of this title''.

Pub. L. 97–35 inserted '', and as modified by the application of section 415(a)(6) of this title''.

1977—Subsec. (b)(1). Pub. L. 95–216 substituted ''section 415(c) of this title as in effect in December 1978'' for ''section 415(c) of this title'' in two places and ''section 415(d) of this title as in effect in December 1978'' for ''section 415(d) of this title''.

1976—Subsec. (g)(1). Pub. L. 94–273, §16, substituted provisions relating to determination of the required amount for payment in September of 1965, 1970, and 1975, and in October 1980 and in every fifth October thereafter up to and including October 2010, and ending with the close of September 30, 2015, for provisions relating to determination of the required amount for payment in September 1965, and in every fifth September thereafter up to and including September 2010, and ending with the close of June 30, 2015, and inserted provisions relating to the rate of interest for the determination of the required amount in the Septembers preceding the Octobers for all the other determinations subsequent to the 1975 determination.

Subsec. (g)(2)(B), (3), (4). Pub. L. 94–273, §2(23), substituted ''September'' for ''June'' wherever appearing.

1968—Subsec. (f)(1). Pub. L. 90–248, §403(c)(1), substituted ''subchapter III of chapter 83 of title 5'' and ''such subchapter III'' for ''the Civil Service Retirement Act of May 29, 1930, as amended,'' and ''such Act of May 29, 1930, as amended,'', respectively.

Subsec. (f)(2). Pub. L. 90–248, §403(c)(2), substituted ''subchapter III of chapter 83 of title 5'' for ''the Civil Service Retirement Act of May 29, 1930, as amended''.

1965—Subsec. (g)(1). Pub. L. 89–97 substituted provisions requiring the Secretary to determine, in September 1965, and every fifth September thereafter, up to and including September 2010, the amount necessary to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of June 30, 2015, as they would otherwise have been in at the close of that date if section 410 of this title, as in effect prior to the Social Security Act Amendments of 1950, and this section had not been enacted and providing for determination of interest in accordance with section 401(d) of this title, for provisions authorizing the appropriation of sums necessary to meet additional costs resulting from payment of benefits after June 1956 under subsecs. (a), (b), and (e), including lump-sum death payments.

Subsec. (g)(2). Pub. L. 89–97 substituted provisions authorizing appropriation to the Trust Funds and the Federal Hospital Insurance Trust Fund in the fiscal years ending with the close of June 30, 2015, for provisions requiring the Secretary to determine before October 1, 1958, the amount necessary to place the Federal Old-Age and Survivors Insurance Trust Fund in the same position it would have been at the close of June 30, 1956, if section 410 of this title, as in effect prior to the Social Security Act Amendments of 1950, and this section had not been enacted and authorizing appropriations during the first ten years beginning after such determination had been made aggregating the sum so determined plus interest.

Subsec. (g)(3), (4). Pub. L. 89–97 added pars. (3) and (4).

1960—Subsec. (e)(1). Pub. L. 86–778 substituted ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title''.

1958—Subsec. (b)(2). Pub. L. 85–857 substituted ''section 3101 of title 38'' for ''section 454a of title 38''.

Subsec. (g). Pub. L. 85–840, §314(b), substituted ''Trust Funds'' for ''Trust Fund'' in par. (1), and ''the Federal Old-Age and Survivors Insurance Trust Fund in'' for ''the Trust Fund in'', ''such Trust Fund annually'', for ''the Trust Fund annually'', and ''such Trust Fund during'' for ''the Trust Fund during'' in par. (2).

Subsec. (h). Pub. L. 85–840, §314(a), added subsec. (h).

1956—Subsec. (e). Act Aug. 1, 1956, §404(a), amended subsec. (e) generally, substituting ''January 1, 1957'' for ''April 1, 1956'' in five places, and inserting provisions in par. (1) relating to monthly benefits for months after December 1956 and any lump-sum death payment under this subchapter with respect to a death occurring after December 1956.

Subsecs. (f), (g). Act Aug. 1, 1956, §§404(b), 406, added subsecs. (f) and (g), respectively.

1955—Subsec. (e). Act Aug. 9, 1955, substituted ''April 1, 1956'' for ''July 1, 1955'' wherever appearing.

1954—Subsec. (a)(1). Act Sept. 1, 1954, § 106(e)(1), (3), inserted ''and for purposes of section 416(i)(3) of this title'' after ''World War II veteran'' in first sentence, and inserted sentence at end.

Subsec. (e)(1). Act Sept. 1, 1954, § 106(e)(2), (3), inserted ''and for purposes of section 416(i)(3) of this title'' after ''veteran (as defined in paragraph (4) of this subsection)'' and inserted sentence at end.

1953—Subsec. (e). Act Aug. 14, 1953, substituted ''July 1, 1955'' for ''January 1, 1954'' wherever appearing.

1952—Act July 18, 1952, § 5(a), struck out reference to World War II veterans in section catchline.

Subsec. (a)(1). Act July 5, 1952, § 5(d)(1), inserted provision following cl. (B) that cl. (B) not apply in the case of any monthly benefits or lump-sum death payments under this subchapter.

Subsec. (e). Act July 18, 1952, § 5(a), added subsec. (e).

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Commerce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 308 of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2201(c)(7) of Pub. L. 97–35 and by section 2(g) of Pub. L. 97–123 applicable with respect to benefits for months after December 1981 with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective with respect to monthly benefits and lump-sum death payments for deaths occurring after December 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding Part I of Title 38, Veterans' Benefits.

Section 314(c)(1) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to (A) monthly benefits under sections 202 and 223 of the Social Security Act [sections 402 and 423 of this title] for months after the month in which this Act is enacted [August 1958], (B) lump-sum death payments under such section 202 in the case of deaths occurring after the month in which this Act is enacted, and (C) periods of disability under section 216(i) [section 416(i) of this title] in the case of applications for a disability determination filed after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 404(d) of act Aug. 1, 1956, provided that: ''Except for the last sentence of section 217(e)(1) of the Social Security Act [subsec. (e)(1) of this section] as amended by subsection (a) of this section, the amendments made by such subsection (a) [amending this section] shall be effective as though they had been enacted on March 31, 1956. Such last sentence of section 217(e)(1) of the Social Security Act shall become effective January 1, 1957.''

Amendment by section 406 of act Aug. 1, 1956, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 106(e) of act Sept. 1, 1954, applicable with respect to monthly benefits under subchapter II of this chapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 415(f) of this title, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 5(c) of act of July 18, 1952, as amended by Pub. L. 86–778, title III, § 304(d), Sept. 13, 1960, 74 Stat. 966, provided that:

''(1) The amendments made by subsections (a) and (b) [amending this section and section 405 of this title] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months after August 1952, and with respect to lump-sum death payments in the case of deaths occurring after August 1952, except that, in the case of any individual who is entitled, on the basis of the wages and self-employment income of any individual to whom section 217(e) of the Social Security Act [subsec. (e) of this section] applies, to monthly benefits under such section 202 for August 1952, such amendments shall apply (A) only if an application for recomputation by reason of such amendments is filed by such individual, or any other individual, entitled to benefits under such section 202 on the basis of such wages and self-employment income, and (B) only with respect to such benefits for months after whichever of the following is the later: August 1952 of the seventh month before the month in which such application was filed. Recomputations of benefits as required to carry out the provisions of this paragraph shall be made notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title]; but no such recomputation shall be regarded as a recomputation for purposes of section 215(f) of such act. Notwithstanding the preceding provisions of this paragraph, the primary insurance amount of an individual shall not be recomputed under such provisions unless such individual files the application referred to in clause (A) of the first sentence of this paragraph prior to January 1961 or, if he dies without filing such application, his death occurred prior to January 1961.

''(2) In the case of any veteran (as defined in section 217(e)(4) of the Social Security Act [subsec. (e)(4) of this section]) who died prior to September 1952, the requirement in subsections (f) and (h) of section 202 of the So-

cial Security Act that proof of support be filed within two years of the date of such death shall not apply if such proof is filed prior to September 1954.''

Section 5(d)(2) of act July 18, 1952, provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall apply only in the case of applications for benefits under section 202 of the Social Security Act [section 402 of this title] filed after August 1952.''

EFFECTIVE DATE

Section 105 of act Aug. 28, 1950, provided that this section is effective Sept. 1, 1950.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard, of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

RECOMPUTATION OF PRIMARY INSURANCE AMOUNT OF CERTAIN INDIVIDUALS

Section 314(c)(2) of Pub. L. 85–840 provided that: ''In the case of any individual—

''(A) who is a World War II veteran (as defined in section 217(d)(2) of the Social Security Act [subsec. (d)(2) of this section]) wholly or partly by reason of service described in section 217(h)(1)(A) of such Act; and

''(B) who (i) became entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] or to disability insurance benefits under section 223 of such Act [section 423 of this title] prior to the first day of the month following the month in which this Act is enacted [August 1958], or (i) died prior to such first day, and whose widow, former wife divorced, widower, child, or parent is entitled for the month in which this Act is enacted, on the basis of his wages and self-employment income, to a monthly benefit under section 202 of such Act; and

''(C) any part of whose service described in section 217(h)(1)(A) of the Social Security Act was not included in the computation of his primary insurance amount under section 215 of such Act [section 415 of this title] but would have been included in such computation if the amendment made by subsection (a) of this section had been effective prior to the date of such computation,

the Secretary of Health, Education, and Welfare [now Health and Human Services] shall, notwithstanding the provisions of section 215(f)(1) of the Social Security Act, recompute the primary insurance amount of such individual upon the filing of an application, after the month in which this Act is enacted [August 1958], by him or (if he has died without filing such an application) by any person entitled to monthly benefits under section 202 of the Social Security Act on the basis of his wages and self-employment income. Such recomputation shall be made only in the manner provided in title II of the Social Security Act [this subchapter] as in effect at the time of the last previous computation or recomputation of such individual's primary insurance amount, and as though application therefor was filed in the month in which application for such last previous computation or recomputation was filed. No recomputation made under this subsection shall be regarded as a recomputation under section 215(f) of the Social Security Act. Any such recomputation shall be effective for and after the twelfth month before the month in which the application is filed, but in no case for the month in which this Act is enacted or any prior month.''

RECOMPUTATION OF SOCIAL SECURITY BENEFITS OF WIDOWS AND CHILDREN WHO WAIVE RIGHT TO ANNUITY UNDER CIVIL SERVICE RETIREMENT ACT

Section 404(c) of act Aug. 1, 1956, provided that: ''In the case of any deceased individual—

''(1) who is a World War II veteran (as defined in section 217(d)(2) of the Social Security Act [subsec. (d)(2) of this section]) or a veteran (as defined in section 217(e)(4) of such Act); and

''(2) whose widow or child is entitled under the Civil Service Retirement Act of May 29, 1930, as amended [see section 8301 et seq. of Title 5, Government Organization and Employees], to an annuity in the computation of which his active military or naval service after September 15, 1940, and before January 1, 1957, was included; and

''(3) whose widow or child is entitled under section 202 of the Social Security Act [section 402 of this title], on the basis of his wages and self-employment income, to a monthly benefit in the computation of which such active military or naval service was excluded (under clause (B) of subsection (a)(1) or (e)(1) of section 217 of such Act) solely by reason of the annuity described in the preceding paragraph; and

''(4) whose widow or child is entitled by reason of section 217(f) of the Social Security Act to have such active military or naval service included in the computation of such monthly benefit,

the Secretary of Health, Education, and Welfare [now Health and Human Services] shall, notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title], recompute the primary insurance amount of such individual upon the filing of an application, after December 1956, by or on behalf of such widow or child. Such recomputation shall be made only in the manner provided in title II of the Social Security Act [this subchapter] as in effect at the time of such individual's death, and as though application therefor was filed in the month in which he died. No recomputation made under this subsection shall be regarded as a recomputation under section 215(f) of the Social Security Act. Any such recomputation shall be effective for and after the twelfth month before the month in which the application is filed, but in no case for any month before the first month with respect to which such widow or child is entitled by reason of section 217(f) of the Social Security Act to have such active military or naval service included in the computation of such monthly benefits. The terms used in this subsection shall have the same meaning as when used in title II of the Social Security Act [this subchapter].''

§418. Voluntary agreements for coverage of State and local employees

(a) Purpose of agreement

(1) The Commissioner of Social Security shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

(2) Notwithstanding section 410(a) of this title, for the purposes of this subchapter the term

''employment'' includes any service included under an agreement entered into under this section.

(b) Definitions

For the purposes of this section—

(1) The term ''State'' does not include the District of Columbia, Guam, or American Samoa.

(2) The term ''political subdivision'' includes an instrumentality of (A) a State, (B) one or more political subdivisions of a State, or (C) a State and one or more of its political subdivisions.

(3) The term ''employee'' includes an officer of a State or political subdivision.

(4) The term ''retirement system'' means a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof.

(5) The term ''coverage group'' means (A) employees of the State other than those engaged in performing service in connection with a proprietary function; (B) employees of a political subdivision of a State other than those engaged in performing service in connection with a proprietary function; (C) employees of a State engaged in performing service in connection with a single proprietary function; or (D) employees of a political subdivision of a State engaged in performing service in connection with a single proprietary function. If under the preceding sentence an employee would be included in more than one coverage group by reason of the fact that he performs service in connection with two or more proprietary functions or in connection with both a proprietary function and a nonproprietary function, he shall be included in only one such coverage group. The determination of the coverage group in which such employee shall be included shall be made in such manner as may be specified in the agreement. Persons employed under section 709 of title 32, who elected under section 6 of the National Guard Technicians Act of 1968 to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall, for the purposes of this chapter, be employees of the State or the Commonwealth of Puerto Rico and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group. For purposes of this section, individuals employed pursuant to an agreement, entered into pursuant to section 1624 of title 7 or section 499n of title 7, between a State and the United States Department of Agriculture to perform services as inspectors of agricultural products may be deemed, at the option of the State, to be employees of the State and (notwithstanding the preceding provisions of this paragraph) shall be deemed to be a separate coverage group.

(c) Services covered

(1) An agreement under this section shall be applicable to any one or more coverage groups designated by the State.

(2) In the case of each coverage group to which the agreement applies, the agreement must include all services (other than services excluded by or pursuant to subsection (d) or paragraph (3), (5), or (6) of this subsection) performed by individuals as members of such group.

(3) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any one or more of the following:

(A) All services in any class or classes of (i) elective positions, (ii) part-time positions, or (iii) positions the compensation for which is on a fee basis;

(B) All services performed by individuals as members of a coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services in such positions have not already been included under such agreement pursuant to subsection (d)(3) of this section.

(4) The Commissioner of Social Security shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) of this subsection is applicable (whether or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3) of this section.

(5) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any agricultural labor, or service performed by a student, designated by the State. This paragraph shall apply only with respect to service which is excluded from employment by any provision of section 410(a) of this title other than paragraph (7) of such section and service the remuneration for which is excluded from wages by subparagraph (B) of section 409(a)(7) of this title.

(6) Such agreement shall exclude—

(A) service performed by an individual who is employed to relieve him from unemployment,

(B) service performed in a hospital, home, or other institution by a patient or inmate thereof,

(C) covered transportation service (as determined under section 410(k) of this title),

(D) service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of section 410(a) of this title other than paragraph (7) of such section,

(E) service performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency, and

(F) service described in section 410(a)(7)(F) of this title which is included as ''employment'' under section 410(a) of this title.

(7) No agreement may be made applicable (either in the original agreement or by any modification thereof) to service performed by any individual to whom paragraph (3)(B) of this subsection is applicable unless such agreement provides (in the case of each coverage group involved) either that the service of any individual to whom such paragraph is applicable and who is a member of such coverage group shall continue to be covered by such agreement in case he thereafter becomes eligible to be a member of a retirement system, or that such service shall cease to be so covered when he becomes eligible to be a member of such a system (but only if the agreement is not already applicable to such system pursuant to subsection (d)(3) of this section), whichever may be desired by the State.

(8)(A) Notwithstanding any other provision of this section, the agreement with any State entered into under this section may at the option of the State be modified at any time to exclude service performed by election officials or election workers if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under subparagraph (B) for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year. Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed in and after the calendar year in which the modification is mailed or delivered by other means to the Commissioner of Social Security.

(B) For each year after 1999, the Commissioner of Social Security shall adjust the amount referred to in subparagraph (A) at the same time and in the same manner as is provided under section 415(a)(1)(B)(ii) of this title with respect to the amounts referred to in section 415(a)(1)(B)(i) of this title, except that—

(i) for purposes of this subparagraph, 1997 shall be substituted for the calendar year referred to in section 415(a)(1)(B)(ii)(II) of this title, and

(ii) such amount as so adjusted, if not a multiple of $100, shall be rounded to the next higher multiple of $100 where such amount is a multiple of $50 and to the nearest multiple of $100 in any other case.

The Commissioner of Social Security shall determine and publish in the Federal Register each adjusted amount determined under this subparagraph not later than November 1 preceding the year for which the adjustment is made.

(d) Positions covered by retirement systems

(1) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system either (A) on the date such agreement is made applicable to such coverage group, or (B) on September 1, 1954 (except in the case of positions which are, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to September 1, 1954, no longer covered by a retirement system on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5)(A) of this subsection). The preceding sentence shall not be applicable to any service performed by an employee as a member of any coverage group in a position (other than a position excluded by paragraph (5)(A) of this subsection) covered by a retirement system on the date an agreement is made applicable to such coverage group if, on such date (or, if later, the date on which such individual first occupies such position), such individual is ineligible to be a member of such system.

(2) It is declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employees in positions covered by a retirement system on the date an agreement under this section is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

(3) Notwithstanding paragraph (1) of this subsection, an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) of this subsection but not including positions excluded by or pursuant to paragraph (5)), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Commissioner of Social Security that the following conditions have been met:

(A) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agreement under this section;

(B) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

(C) Not less than ninety days' notice of such referendum was given to all such employees;

(D) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(E) A majority of the eligible employees voted in favor of including service in such positions under an agreement under this section.

An employee shall be deemed an ''eligible employee'' for purposes of any referendum with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an ''eligible employee'' if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to

paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this subchapter to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

(4) For the purposes of subsection (c) of this section, the following employees shall be deemed to be a separate coverage group—

(A) all employees in positions which were covered by the same retirement system on the date the agreement was made applicable to such system (other than employees to whose services the agreement already applied on such date);

(B) all employees in positions which became covered by such system at any time after such date; and

(C) all employees in positions which were covered by such system at any time before such date and to whose services the insurance system established by this subchapter has not been extended before such date because the positions were covered by such retirement system (including employees to whose services the agreement was not applicable on such date because such services were excluded pursuant to subsection (c)(3)(B) of this section).

(5)(A) Nothing in paragraph (3) of this subsection shall authorize the extension of the insurance system established by this subchapter to service in any policeman's or fireman's position.

(B) At the request of the State, any class or classes of positions covered by a retirement system which may be excluded from the agreement pursuant to paragraph (3) or (5) of subsection (c) of this section, and to which the agreement does not already apply, may be excluded from the agreement at the time it is made applicable to such retirement system; except that, notwithstanding the provisions of paragraph (3)(B) of such subsection, such exclusion may not include any services to which such paragraph (3)(B) is applicable. In the case of any such exclusion, each such class so excluded shall, for purposes of this subsection, constitute a separate retirement system in case of any modification of the agreement thereafter agreed to.

(6)(A) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned. Where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of the State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems pursuant to the preceding sentence or pursuant to subparagraph (C), then the State may, for purposes of subsection (e) of this section only, deem the system to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

(B) If a retirement system covers positions of employees of one or more institutions of higher learning, then, for purposes of such preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of each such institution of higher learning. For the purposes of this subparagraph, the term ''institutions of higher learning'' includes junior colleges and teachers colleges. If a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of the preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of such hospital.

(C) For the purposes of this subsection, any retirement system established by the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii, or any political subdivision of any such State, which, on, before, or after August 1, 1956, is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who do not desire such coverage, shall, if the State so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. If, in the case of a separate retirement system which is deemed to exist by reason of subparagraph (A) and which has been divided into two divisions or parts pursuant to the first sentence of this subparagraph, individuals become members of such system by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, the positions of such individuals who become members of such retirement system by reason of the action so taken shall be included in the division or part of such system composed of positions of members who do not desire such coverage if (i) such individuals, on the day before becoming such members, were in the division or part of another separate retire-

ment system (deemed to exist by reason of subparagraph (A)) composed of positions of members of such system who do not desire coverage under an agreement under this section, and (ii) all of the positions in the separate retirement system of which such individuals so become members and all of the positions in the separate retirement system referred to in clause (i) would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems under this paragraph.

(D)(i) The position of any individual which is covered by any retirement system to which subparagraph (C) is applicable shall, if such individual is ineligible to become a member of such system on August 1, 1956, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this subchapter.

(ii) Notwithstanding clause (i), the State may, pursuant to subsection (c)(4)(B) of this section and subject to the conditions of continuation or termination of coverage provided for in subsection (c)(7) of this section, modify its agreement under this section to include services performed by all individuals described in clause (i) other than those individuals to whose services the agreement already applies. Such individuals shall be deemed (on and after the effective date of the modification) to be in positions covered by the separate retirement system consisting of the positions of members of the division or part who desire coverage under the insurance system established under this subchapter.

(E) An individual who is in a position covered by a retirement system to which subparagraph (C) is applicable and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection (other than paragraph (8) of this subsection), be regarded as a member of such system; except that, in the case of any retirement system a division or part of which is covered under the agreement (either in the original agreement or by a modification thereof), which coverage is agreed to prior to 1960, the preceding provisions of this subparagraph shall apply only if the State so requests and any such individual referred to in such preceding provisions shall, if the State so requests, be treated, after division of the retirement system pursuant to such subparagraph (C), the same as individuals in positions referred to in subparagraph (F).

(F) In the case of any retirement system divided pursuant to subparagraph (C), the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Commissioner of Social Security prior to 1970 or, if later, the expiration of two years after the date on which such agreement, or the modification thereof making the agreement applicable to such separate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer. Notwithstanding subsection (e)(1) of this section, any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subparagraph (C) to the separate retirement system composed of positions of members who desire coverage, shall be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

(G) For the purposes of this subsection, in the case of any retirement system of the State of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or Hawaii which covers positions of employees of such State who are compensated in whole or in part from grants made to such State under subchapter III of this chapter, there shall be deemed to be, if such State so desires, a separate retirement system with respect to any of the following:

(i) the positions of such employees;

(ii) the positions of all employees of such State covered by such retirement system who are employed in the department of such State in which the employees referred to in clause (i) are employed; or

(iii) employees of such State covered by such retirement system who are employed in such department of such State in positions others than those referred to in clause (i).

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) of this subsection shall be deemed to have been made, in the case of a division or part (created under subparagraph (C) of paragraph (6) of this subsection or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Commissioner of Social Security that—

(A) an opportunity to vote by written ballot on the question of whether they wish to be covered under an agreement under this section was given to all individuals who were members of such system at the time the vote was held;

(B) not less than ninety days' notice of such vote was given to all individuals who were members of such system on the date the notice was issued;

(C) the vote was conducted under the supervision of the governor or an agency or individual designated by him; and

(D) such system was divided into two parts or divisions in accordance with the provisions of subparagraphs (C) and (D) of paragraph (6) of this subsection or the corresponding provision of prior law.

For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or pursuant to paragraph (5) of this subsection shall not be considered a member of the retirement system.

(8)(A) Notwithstanding paragraph (1) of this subsection, if under the provisions of this sub-

section an agreement is, after December 31, 1958, made applicable to service performed in positions covered by a retirement system, service performed by an individual in a position covered by such a system may not be excluded from the agreement because such position is also covered under another retirement system.

(B) Subparagraph (A) shall not apply to service performed by an individual in a position covered under a retirement system if such individual, on the day the agreement is made applicable to service performed in positions covered by such retirement system, is not a member of such system and is a member of another system.

(C) If an agreement is made applicable, prior to 1959, to service in positions covered by any retirement system, the preceding provisions of this paragraph shall be applicable in the case of such system if the agreement is modified to so provide.

(D) Except in the case of State agreements modified as provided in subsection (*l*) of this section and agreements with interstate instrumentalities, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

(e) Effective date of agreement; retroactive coverage

(1) Any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that such date may not be earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification, as the case may be, is mailed or delivered by other means to the Commissioner of Social Security.

(2) In the case of service performed by members of any coverage group—

(A) to which an agreement under this section is made applicable, and

(B) with respect to which the agreement, or modification thereof making the agreement so applicable, specifies an effective date earlier than the date of execution of such agreement and such modification, respectively,

the agreement shall, if so requested by the State, be applicable to such services (to the extent the agreement was not already applicable) performed before such date of execution and after such effective date by any individual as a member of such coverage group if he is such a member on a date, specified by the State, which is earlier than such date of execution, except that in no case may the date so specified be earlier than the date such agreement or such modification, as the case may be, is mailed, or delivered by other means, to the Commissioner of Social Security.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, in the case of services performed by individuals as members of any coverage group to which an agreement under this section is made applicable, and with respect to which there were timely paid in good faith to the Secretary of the Treasury amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 had such services constituted employment for purposes of chapter 21 of such Code at the time they were performed, and with respect to which refunds were not obtained, such individuals may, if so requested by the State, be deemed to be members of such coverage group on the date designated pursuant to paragraph (2).

(f) Duration of agreement

No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after April 20, 1983.

(g) Instrumentalities of two or more States

(1) The Commissioner of Social Security may, at the request of any instrumentality of two or more States, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

(2) In the case of any instrumentality of two or more States, if—

(A) employees of such instrumentality are in positions covered by a retirement system of such instrumentality or of any of such States or any of the political subdivisions thereof, and

(B) such retirement system is (on, before, or after August 30, 1957) divided into two divisions or parts, one of which is composed of positions of members of such system who are employees of such instrumentality and who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who are employees of such instrumentality and who do not desire such coverage, and

(C) it is provided that there shall be included in such division or part composed of the positions of members desiring such coverage the positions of employees of such instrumentality who become members of such system after such coverage is extended,

then such retirement system shall, if such instrumentality so desires, be deemed to be a separate retirement system with respect to each such division or part. An individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection, be regarded as a member of such system. Coverage under the agreement of any such individual shall be provided under the same conditions, to the extent practicable, as are applicable in the case of the States to which the provisions of subsection (d)(6)(C) of this section apply. The position of any employee of any such instrumentality which is covered by any retirement system to which the first sentence of this paragraph is applicable shall, if such individual is ineligible to become a member of such system on August 30, 1957, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance

system established under this subchapter. Services in positions covered by a separate retirement system created pursuant to this subsection (and consisting of the positions of members who desire coverage under an agreement under this section) shall be covered under such agreement on compliance, to the extent practicable, with the same conditions as are applicable to coverage under an agreement under this section of services in positions covered by a separate retirement system created pursuant to subparagraph (C) of subsection (d)(6) of this section or the corresponding provision of prior law (and consisting of the positions of members who desire coverage under such agreement).

(3) Any agreement with any instrumentality of two or more States entered into pursuant to this chapter may, notwithstanding the provisions of subsection (d)(5)(A) of this section and the references thereto in subsections (d)(1) and (d)(3) of this section, apply to service performed by employees of such instrumentality in any policeman's or fireman's position covered by a retirement system, but only upon compliance, to the extent practicable, with the requirements of subsection (d)(3) of this section. For the purpose of the preceding sentence, a retirement system which covers positions of policemen or firemen or both, and other positions shall, if the instrumentality concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(h) Delegation of functions

The Commissioner of Social Security is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of the Commissioner's functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

(i) Wisconsin Retirement Fund

(1) Notwithstanding paragraph (1) of subsection (d) of this section, the agreement with the State of Wisconsin may, subject to the provisions of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund or any successor system.

(2) All employees in positions covered by the Wisconsin retirement fund at any time on or after January 1, 1951, shall, for the purposes of subsection (c) only, be deemed to be a separate coverage group; except that there shall be excluded from such separate coverage group all employees in positions to which the agreement applies without regard to this subsection.

(3) The modification pursuant to this subsection shall exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) service performed by any individual during any period before he is included under the Wisconsin retirement fund.

(4) The modification pursuant to this subsection shall, if the State of Wisconsin requests it, exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) all service performed in policemen's positions, all service performed in firemen's positions, or both.

(j) Certain positions no longer covered by retirement systems

Notwithstanding subsection (d) of this section, an agreement with any State entered into under this section prior to September 1, 1954 may, prior to January 1, 1958, be modified pursuant to subsection (c)(4) of this section so as to apply to services performed by employees, as members of any coverage group to which such agreement already applies (and to which such agreement applied on September 1, 1954), in positions (1) to which such agreement does not already apply, (2) which were covered by a retirement system on the date such agreement was made applicable to such coverage group, and (3) which, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to September 1, 1954, are no longer covered by a retirement system on the date such agreement is made applicable to such services.

(k) Certain employees of State of Utah

Notwithstanding the provisions of subsection (d) of this section, the agreement with the State of Utah entered into pursuant to this section may be modified pursuant to subsection (c)(4) of this section so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College, Central Utah Vocational School, Salt Lake Area Vocational School, Center for the Adult Blind, Union High School (Roosevelt, Utah), Utah High School Activities Association, State Industrial School, State Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any of such coverage groups after an effective date specified therein, except that in no case may any such date be earlier than December 31, 1950. Coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

***(l)* Policemen and firemen in certain States**

Any agreement with a State entered into pursuant to this section may, notwithstanding the provisions of subsection (d)(5)(A) of this section and the references thereto in subsections (d)(1) and (d)(3) of this section, be modified pursuant to subsection (c)(4) of this section to apply to service performed by employees of such State or any political subdivision thereof in any policeman's or fireman's position covered by a retirement system in effect on or after August 1, 1956, but only upon compliance with the requirements of subsection (d)(3) of this section. For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(m) Positions compensated solely on a fee basis

(1) Notwithstanding any other provision in this section, an agreement entered into under this section may be made applicable to service performed after 1967 in any class or classes of positions compensated solely on a fee basis to which such agreement did not apply prior to 1968 only if the State specifically requests that its agreement be made applicable to such service in such class or classes of positions.

(2) Notwithstanding any other provision in this section, an agreement entered into under this section may be modified, at the option of the State, at any time after 1967, so as to exclude services performed in any class or classes of positions compensation for which is solely on a fee basis.

(3) Any modification made under this subsection shall be effective with respect to services performed after the last day of the calendar year in which the modification is mailed or delivered by other means to the Commissioner of Social Security.

(4) If any class or classes of positions have been excluded from coverage under the State agreement by a modification agreed to under this subsection, the Commissioner of Social Security and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such class or classes of positions.

(n) Optional medicare coverage of current employees

(1) The Commissioner of Social Security shall, at the request of any State, enter into or modify an agreement with such State under this section for the purpose of extending the provisions of subchapter XVIII of this chapter, and sections 426 and 426–1 of this title, to services performed by employees of such State or any political subdivision thereof who are described in paragraph (2).

(2) This subsection shall apply only with respect to employees—

(A) whose services are not treated as employment as that term applies under section 410(p) of this title by reason of paragraph (3) of such section; and

(B) who are not otherwise covered under the State's agreement under this section.

(3) For purposes of sections 426 and 426–1 of this title, services covered under an agreement pursuant to this subsection shall be treated as ''medicare qualified government employment''.

(4) Except as otherwise provided in this subsection, the provisions of this section shall apply with respect to services covered under the agreement pursuant to this subsection.

(Aug. 14, 1935, ch. 531, title II, § 218, as added Aug. 28, 1950, ch. 809, title I, § 106, 64 Stat. 514; amended June 28, 1952, ch. 483, 66 Stat. 285; Aug. 15, 1953, ch. 504, § 1, 67 Stat. 587; Sept. 1, 1954, ch. 1206, title I, § 101(a)(5), (6), (h)(1)–(8), (i)(1), (2), (j), 68 Stat. 1055–1059; Aug. 1, 1956, ch. 836, title I, §§ 103(f), (g), 104(e), (g), 70 Stat. 823, 825, 826; Pub. L. 85–226, Aug. 30, 1957, 71 Stat. 511; Pub. L. 85–227, § 1, Aug. 30, 1957, 71 Stat. 512; Pub. L. 85–229, Aug. 30, 1957, 71 Stat. 513; Pub. L. 85–787, §§ 1, 2, Aug. 27, 1958, 72 Stat. 939; Pub. L. 85–798, §§ 2, 3, Aug. 28, 1958, 72 Stat. 964, 965; Pub. L. 85–840, title III, § 315(a)–(c)(1), Aug. 28, 1958, 72 Stat. 1038–1040; Pub. L. 86–284, § 2, Sept. 16, 1959, 73 Stat. 566; Pub. L. 86–624, § 30(e), (f), July 12, 1960, 74 Stat. 420; Pub. L. 86–778, title I, §§ 102(a), (b)(1), (c)(1), (2), (d), (e), (f)(1), (g), (*l*), 103(i), (j)(2)(G), Sept. 13, 1960, 74 Stat. 928–930, 934, 936–938; Pub. L. 87–64, title I, §§ 106, 107, June 30, 1961, 75 Stat. 139, 140; Pub. L. 87–878, § 2, Oct. 24, 1962, 76 Stat. 1202; Pub. L. 88–350, § 2, July 2, 1964, 78 Stat. 240; Pub. L. 88–382, July 23, 1964, 78 Stat. 335; Pub. L. 89–97, title I, § 108(b), title III, §§ 314, 315, July 30, 1965, 79 Stat. 338, 385; Pub. L. 90–248, title I, §§ 116(a)–(b)(2), (c), (d), 117, 119(a), 120(a), 121, 122(d), Jan. 2, 1968, 81 Stat. 840–844; Pub. L. 90–486, § 7, Aug. 13, 1968, 82 Stat. 759; Pub. L. 92–603, title I, § 126, Oct. 30, 1972, 86 Stat. 1358; Priv. L. 93–107, § 2, Dec. 31, 1974, 88 Stat. 2386; Pub. L. 95–216, title III, §§ 319–321, 353(b), Dec. 20, 1977, 91 Stat. 1541, 1553; Pub. L. 96–265, title V, § 503(a), June 9, 1980, 94 Stat. 470; Pub. L. 98–21, title I, § 103(a), title III, §§ 325(a), 342(a), Apr. 20, 1983, 97 Stat. 71, 126, 136; Pub. L. 98–369, div. B, title VI, § 2663(a)(13), (j)(2)(A)(ii), (3)(A)(iii), July 18, 1984, 98 Stat. 1164, 1170; Pub. L. 99–272, title XII, § 12110(a), (b), title XIII, § 13205(c), Apr. 7, 1986, 100 Stat. 287, 317; Pub. L. 99–509, title IX, § 9002(c)(1), (2)(C)–(E), Oct. 21, 1986, 100 Stat. 1971, 1972; Pub. L. 99–514, title XVIII, § 1883(a)(8), Oct. 22, 1986, 100 Stat. 2916; Pub. L. 100–203, title IV, § 4009(j)(7), title IX, § 9023(c), Dec. 22, 1987, 101 Stat. 1330–59, 1330–296; Pub. L. 101–239, title X, § 10208(d)(2)(A)(v), Dec. 19, 1989, 103 Stat. 2481; Pub. L. 101–508, title XI, § 11332(c), Nov. 5, 1990, 104 Stat. 1388–470; Pub. L. 103–296, title I, § 107(a)(4), title III, §§ 303(c), (d), 305(a), (b), 321(a)(18), (c)(6)(I), Aug. 15, 1994, 108 Stat. 1478, 1519, 1521, 1537, 1538; Pub. L. 108–203, title IV, § 416(a), Mar. 2, 2004, 118 Stat. 530.)

REFERENCES IN TEXT

Section 6 of the National Guard Technicians Act of 1968, referred to in subsec. (b)(5), is section 6 of Pub. L. 90–486, which is set out as a note under section 709 of Title 32, National Guard.

The Internal Revenue Code of 1986, referred to in subsec. (e)(3), is classified to Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (d)(6)(C). Pub. L. 108–203 inserted ''Kentucky, Louisiana,'' after ''Illinois,''.

1994—Subsecs. (a)(1), (c)(4). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(6)(F). Pub. L. 103–296, § 321(a)(18), realigned margin.

Subsec. (c)(8). Pub. L. 103–296, § 303(c), (d), substituted ''at any time'' for ''on or after January 1, 1968,'', substituted ''$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under subparagraph (B) for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year'' for ''$100'', substituted ''Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed in and after the calendar year in which the modification is mailed or delivered by other means to the Secretary.'' for ''Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed after an effective date, specified in such modification, which shall not be earlier than the last

day of the calendar quarter in which the modification is mailed or delivered by other means to the Secretary.'', inserted subpar. (A) designation, and added subpar. (B).

Pub. L. 103–296, §107(a)(4), in par. (8) as amended by Pub. L. 103–296, §303(c), (d), substituted ''Commissioner of Social Security'' for ''Secretary'' in last sentence of subpar. (A) and in introductory and closing provisions of subpar. (B).

Subsec. (d)(3), (6)(F), (7). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(8)(D). Pub. L. 103–296, §305(b), substituted ''State agreements modified as provided in'' for ''agreements with the States named in''.

Subsec. (e)(1), (2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (e)(3). Pub. L. 103–296, §321(c)(6)(I), substituted ''1986'' for ''1954'' after ''Code of''.

Subsecs. (g)(1), (h). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in subsecs. (g)(1) and (h) and ''the Commissioner's'' for ''his'' in subsec. (h).

Subsec. (*l*). Pub. L. 103–296, §305(a), struck out par. (1) designation before ''Any agreement with'', substituted ''a State entered into pursuant to this section'' for ''the State of Alabama, California, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Mississippi, Montana, New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, or Washington entered into pursuant to this section prior to August 1, 1956,'', and struck out par. (2) which read as follows: ''A State, not otherwise listed by name in paragraph (1), shall be deemed to be a State listed in such paragraph for the purpose of extending coverage under this subchapter to service in firemen's positions covered by a retirement system, if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary that the overall benefit protection of the employees in such positions would be improved by reason of the extension of such coverage to such employees. Notwithstanding the provisions of the second sentence of such paragraph (1), such firemen's positions shall be deemed a separate retirement system and no other positions shall be included in such system.''

Subsecs. (m)(3), (4), (n)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Subsec. (c)(6)(F). Pub. L. 101–508 added subpar. (F).

1989—Subsec. (c)(5). Pub. L. 101–239 substituted ''subparagraph (B) of section 409(a)(7)'' for ''paragraph (2) of section 409(h)''.

1987—Subsec. (n). Pub. L. 100–203, §9023(c), redesignated subsec. (v) as (n), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which had previously been struck out of subsec. (v) by section 4009(j)(7) of Pub. L. 100–203 prior to its redesignation as subsec. (n) by Pub. L. 100–203, §9023(c)(1). See below.

Subsec. (v). Pub. L. 100–203, §9023(c)(1), redesignated subsec. (v) as (n).

Subsec. (v)(3). Pub. L. 100–203, §4009(j)(7), struck out par. (3) which read as follows: ''Payments by the State required under subsection (e) of this section with respect to employees covered under this subsection shall be limited to amounts equivalent to the sum of the taxes which would be imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954 if such services for which wages were paid to such employees constituted 'employment' as defined in section 3121 of such Code.''

1986—Subsec. (d)(6). Pub. L. 99–509, §9002(c)(2)(C), substituted ''subsection (e)'' for ''subsection (f)'' in subpar. (A), and ''subsection (e)(1)'' for ''subsection (f)(1)'' in subpar. (F).

Subsec. (d)(8)(D). Pub. L. 99–509, §9002(c)(2)(D), substituted ''subsection (*l*)'' for ''subsection (p)''.

Subsec. (e). Pub. L. 99–509, §9002(c)(1), (2)(E), redesignated subsec. (f) as (e), substituted ''Any agreement'' for ''Except as provided in subsection (e)(2) of this section, any agreement'', and struck out former subsec. (e) which required that agreements under this section include certain provisions relating to payments and reports by States and allowed inclusion of certain provisions relating to employees employed by two or more political subdivisions of a State.

Subsec. (f). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(1). Pub. L. 99–272, §12110(a), substituted ''is mailed or delivered by other means to the Secretary'' for ''is agreed to by the Secretary and the State''.

Subsec. (g). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (k) as (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (*l*) as (h) and struck out former subsec. (h) which required that amounts received by the Secretary of the Treasury under an agreement made under this section be deposited in the Trust Funds and the Federal Hospital Insurance Trust Fund in certain ratio and provided for adjustment of amount due if more or less than correct amount due is paid.

Subsec. (i). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (m) as (i) and struck out former subsec. (i), relating to regulations of the Secretary.

Subsec. (j). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (n) as (j) and struck out former subsec. (j) which read as follows: ''In case any State does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Secretary may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this chapter. Amounts so deducted shall be deemed to have been paid to the State under such other provision of this chapter. Amounts equal to the amounts deducted under this subsection are hereby appropriated to the Trust Funds in the ratio in which amounts are deposited in such Funds pursuant to subsection (h)(1) of this section.''

Subsec. (k). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (*o*) as (k). Former subsec. (k) redesignated (g).

Subsec. (*l*). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (p) as (*l*). Former subsec. (*l*) redesignated (h).

Subsec. (m). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (u) as (m). Former subsec. (m) redesignated (i).

Pub. L. 99–514 substituted ''Retirement Fund'' for ''retirement fund'' in heading.

Subsec. (n) to (p). Pub. L. 99–509, §9002(c)(1), redesignated subsecs. (n) to (p) as (j) to (*l*), respectively.

Subsec. (q). Pub. L. 99–509, §9002(c)(1), struck out subsec. (q) which provided time limitations on liability of States for amounts due under agreements under this section.

Subsec. (r). Pub. L. 99–509, §9002(c)(1), struck out subsec. (r) which provided time limitations on credits and refunds of overpayments by States under agreements under this section.

Subsec. (s). Pub. L. 99–509, §9002(c)(1), struck out subsec. (s) which related to review by Secretary.

Subsec. (t). Pub. L. 99–509, §9002(c)(1), struck out subsec. (t) which provided for judicial review of decisions by Secretary of Health and Human Services under former subsec. (s) of this section.

Subsec. (u). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (u) as (m).

Subsec. (u)(3). Pub. L. 99–272, §12110(b), substituted ''is mailed or delivered by other means to the Secretary'' for ''is agreed to by the Secretary and the State''.

Subsec. (v). Pub. L. 99–272, §13205(c), added subsec. (v).

Subsec. (w). Pub. L. 99–509, §9002(c)(1), struck out subsec. (w) which read as follows: ''Notwithstanding sections 3125(a), 6205(a)(5), 6413(a)(5), and 6413(c)(2)(G) of the Internal Revenue Code of 1954, any State shall make payments of the taxes imposed with respect to

services of employees of such State and of a political subdivision thereof under sections 3101(b) and 3111(b) of such Code, and reports of such services, under the same procedures as apply to payments and reports under subsection (e) of this section, but only if any employees of such State or of such political subdivision thereof respectively are covered under an agreement pursuant to this section.''

Pub. L. 99–272, § 13205(c), added subsec. (w).

1984—Subsecs. (a)(1), (c)(4), (d)(3), (7), (h)(2), (3). Pub. L. 98–369, § 2663(j)(3)(A)(iii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsec. (i). Pub. L. 98–369, § 2663(j)(3)(A)(iii), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Pub. L. 98–369, § 2663(a)(13), substituted ''chapter 21 and subtitle F of the Internal Revenue Code of 1954'' for ''subchapter A or E of chapter 9 of the Internal Revenue Code of 1939''.

Subsecs. (j), (k)(1), (*l*), (p)(2). Pub. L. 98–369, § 2663(j)(3)(A)(iii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsecs. (q)(4)(B), (6)(B), (r)(1). Pub. L. 98–369, § 2663(j)(2)(A)(ii), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' wherever appearing.

1983—Subsec. (e)(1)(A). Pub. L. 98–21, § 342(a), amended subpar. (A) generally, designating existing provisions as cl. (i), and in (i) as so designated, substituting ''on the last day of each calendar month'' for ''within the thirty-day period immediately following the last day of each calendar month'' and inserting ''with respect to the period which includes the first fifteen days of such calendar month'' before ''if the services'', and adding cl. (ii).

Subsec. (g). Pub. L. 98–21, § 103(a), amended subsec. (g) generally, substituting provision that no agreement under this section may be terminated on or after April 20, 1983, for provision that had authorized the termination of agreements of States with the Secretary conditioned upon the giving of advance notice.

Subsec. (*o*). Pub. L. 98–21, § 325(a), inserted provision that coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

1980—Subsec. (e)(1)(A). Pub. L. 96–265, § 503(a), substituted ''(A) that the State will pay to the Secretary of the Treasury, within the thirty-day period immediately following the last day of each calendar month, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 if the services for which wages were paid in such month to employees covered by the agreement constituted employment as defined in section 3121 of such Code'' for ''(A) that the State will pay to the Secretary of the Treasury, at such time or times as the Secretary of Health, Education, and Welfare may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939, if the services of employees covered by the agreement constituted employment as defined in section 1426 of the Internal Revenue Code of 1939''.

1977—Subsec. (c)(8). Pub. L. 95–216, § 353(b)(1), substituted ''year'' for ''quarter'' and ''$100'' for ''$50''.

Subsec. (d)(6)(C). Pub. L. 95–216, § 320, inserted reference to New Jersey.

Subsec. (g)(1). Pub. L. 95–216, § 353(b)(2), substituted ''year'' for ''quarter''.

Subsec. (m)(1). Pub. L. 95–216, § 321, inserted ''or any successor system'' after ''Wisconsin retirement fund''.

Subsec. (p)(1). Pub. L. 95–216, § 319, inserted reference to Mississippi.

Subsec. (q)(4)(B). Pub. L. 95–216, § 353(b)(3), substituted references to calendar years for references to calendar quarters wherever appearing.

Subsec. (q)(6)(B). Pub. L. 95–216, § 353(b)(4), substituted ''period or periods designated by the State in such wage reports as the period or'' for ''calendar quarters designated by the State in such wage reports as the''.

Subsec. (r)(1). Pub. L. 95–216, § 353(b)(5), in provisions preceding cl. (A) and in cl. (B) substituted ''year'' for ''quarter'', and in cl. (A) struck out ''in which occurred the calendar quarter'' after ''year''.

1974—Subsec. (p)(1). Priv. L. 93–107 inserted ''Montana,'' after ''Maryland,''.

1972—Subsec. (p)(1). Pub. L. 92–603 inserted ''Idaho,'' after ''Hawaii,''.

1968—Subsec. (b)(5). Pub. L. 90–486 substituted provisions pertaining to the coverage of persons employed under section 709 of title 32, who elected under section 6 of the National Guard Technicians Act of 1968 to remain covered by an employee retirement system of, or plan sponsored by, a state or the Commonwealth of Puerto Rico, such persons, for the purposes of this chapter, to be considered employees of the state or the Commonwealth of Puerto Rico, for provisions pertaining to the coverage of civilian employees of National Guard units of a state who are employed pursuant to section 42 of title 32, and who are paid from funds allotted to such units by the Department of the Defense, such persons, for the purposes of this section, to be deemed employees of the state.

Subsec. (c)(3). Pub. L. 90–248, § 116(b)(1)(A), struck out subpar. (A) which provided for the exclusion of any service of an emergency nature and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (c)(4). Pub. L. 90–248, § 116(b)(1)(B), substituted ''(3)(B)'' for ''(3)(C)''.

Subsec. (c)(6)(E). Pub. L. 90–248, § 116(b)(2), added subpar. (E).

Subsec. (c)(7). Pub. L. 90–248, § 116(b)(1)(B), substituted ''(3)(B)'' for ''(3)(C)''.

Subsec. (c)(8). Pub. L. 90–248, § 116(c), added par. (8).

Subsec. (d)(4)(C). Pub. L. 90–248, § 116(b)(1)(C), substituted ''(c)(3)(B)'' for ''(c)(3)(C)''.

Subsec. (d)(5)(B). Pub. L. 90–248, § 116(b)(1)(B), substituted ''(3)(B)'' for ''(3)(C)'' wherever appearing.

Subsec. (d)(6)(C). Pub. L. 90–248, § 117, inserted ''Illinois,'' after ''Georgia,''.

Subsec. (d)(6)(D). Pub. L. 90–248, § 116(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (d)(6)(F). Pub. L. 90–248, § 116(d), substituted ''1970'' for ''1967''.

Subsec. (f)(3). Pub. L. 90–248, § 121, added par. (3).

Subsec. (p). Pub. L. 90–248, §§ 119(a), 120(a), designated existing provisions as par. (1), inserted ''Puerto Rico,'' after ''Oregon,'', and added par. (2).

Subsec. (u). Pub. L. 90–248, § 122(d), added subsec. (u).

1965—Subsec. (d)(6)(C). Pub. L. 89–97, § 314, inserted ''Alaska,'' before ''California''.

Subsec. (d)(6)(F). Pub. L. 89–97, § 315, substituted ''1967'' for ''1963''.

Subsec. (h)(1). Pub. L. 89–97, § 108(b), substituted ''Trust Funds and the Federal Hospital Insurance Trust Fund in the ratio in which amounts are appropriated to such Funds pursuant to subsection (a)(3) of section 401 of this title, subsection (b)(1) of such section, and subsection (a)(1) of section 1395i of this title, respectively'' for ''Trust Funds in the ratio in which amounts are appropriated to such Funds pursuant to subsections (a)(3) and (b)(1) of section 401 of this title''.

1964—Subsec. (d)(6)(C). Pub. L. 88–382 included retirement systems established by Nevada.

Subsec. (p). Pub. L. 88–350 inserted reference to Texas.

1962—Subsec. (p). Pub. L. 87–878 inserted reference to Maine.

1961—Subsec. (d)(6)(C). Pub. L. 87–64, § 107, included retirement system established by the State of New Mexico.

Subsec. (d)(6)(F). Pub. L. 87–64, § 106, substituted ''prior to 1963 or, if later, the expiration of two years after the date'' for ''prior to 1960 or, if later the expiration of one year after the date'', and inserted sentence providing that any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subpar. (C) to the separate retirement system composed of positions of members who desire coverage, shall be effective with respect to services performed

after the same effective date as that which was specified in the case of such previous division.

1960—Subsec. (b)(1). Pub. L. 86–778, §103(i), excluded Guam and American Samoa from definition of ''State''.

Subsec. (c)(6)(C). Pub. L. 86–778, §103(j)(2)(G), substituted ''section 410(k)'' for ''section 410(*l*)''.

Subsec. (d)(3). Pub. L. 86–778, §102(a)(1), authorized certification by an official of the State designated by the Governor for that purpose.

Subsec. (d)(6). Pub. L. 86–624, §30(e), substituted ''Hawaii'' for ''the Territory of Hawaii'' in cl. (C) and (G), and struck out ''or Territory'' after ''State'' in two places in cl. (C) and in seven places in cl. (G).

Subsec. (d)(6)(A). Pub. L. 86–778, §102(c)(2), authorized a State, where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of the State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems, to deem the system, for purposes of subsec. (f) of this section, to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or any one or more of the political subdivisions concerned.

Subsec. (d)(6)(B). Pub. L. 86–778, §102(g), inserted sentences providing that if a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of such hospital.

Subsec. (d)(6)(C). Pub. L. 86–778, §102(b)(1), (*l*), inserted sentence requiring the positions of individuals, who become members of a separate retirement system which has been divided into two divisions or parts by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, to be included in the division or part of such system composed of positions of members who do not desire such coverage if such individuals, on the day before becoming such members, were in the division or part of another separate retirement system composed of positions of members who do not desire coverage under an agreement and all of the positions in the system of which such individuals so become members and all of the positions in the separate retirement system would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems, and included retirement systems established by the State of Texas.

Subsec. (d)(7). Pub. L. 86–778, §102(a)(2), included certifications made by an official of the State designated by the Governor for that purpose.

Subsec. (e). Pub. L. 86–778, §102(e)(1), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), and added par. (2).

Subsec. (f)(1). Pub. L. 86–778, §102(c)(1), (e)(2), inserted exception to subsection (e)(2) of this section, and substituted provisions restricting the effective date of any agreement of modification to a date not earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification is agreed to by the Secretary and the State for provisions which specified the effective date of agreements or modifications entered into prior to 1960 and which limited the effective date of agreements or modifications entered into after 1959 to a date not earlier than the last day of the calendar year preceding the year in which such agreement or modification is agreed to by the Secretary and the State.

Subsec. (p). Pub. L. 86–778, §102(d), inserted reference to Virginia.

Pub. L. 86–624, §30(f), substituted ''Hawaii'' for ''Territory of Hawaii''.

Subsecs. (q) to (t). Pub. L. 86–778, §102(f)(1), added subsecs. (q) to (t).

1959—Subsec. (p). Pub. L. 86–284 inserted reference to California, Kansas, North Dakota, and Vermont.

1958—Subsec. (d)(6). Pub. L. 85–840, §315(a)(1), designated first sentence as subpar. (A), second and third sentences as subpar. (B), fourth sentence as subpar. (C), fifth sentence as subpar. (D), and sixth sentence as subpar. (G), added subpars. (E) and (F), and amended subpar. (C) to include retirement systems established by the States of Massachusetts and Vermont.

Pub. L. 85–787 added Massachusetts and Vermont to States authorized to divide their retirement systems into two parts, and inserted sentence permitting transfer, in cases of divided retirement system, of members not desiring coverage to system of members desiring coverage.

Subsec. (d)(7). Pub. L. 85–840, §315(a)(2), substituted ''(created under subparagraph (C) of paragraph (6) of this subsection or the corresponding provision of prior law)'' for ''(created under the fourth sentence of paragraph (6) of this subsection)'', and ''subparagraphs (C) and (D) of paragraph (6) of this subsection or the corresponding provision of prior law'' for ''the fourth and fifth sentences of paragraph (6) of this subsection''.

Subsec. (d)(8). Pub. L. 85–840, §315(b), added par. (8).

Subsec. (f). Pub. L. 85–840, §315(c)(1), designated existing provisions as par. (1), redesignated cls. (1) to (4) of par. (1) as cls. (A) to (D), and added par. (2).

Subsec. (k)(2). Pub. L. 85–840, §315(a)(3), inserted provisions requiring an individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof to be regarded, for the purposes of this subsection, as a member of such system, and providing for coverage under the agreement of any such individual.

Subsec. (k)(3). Pub. L. 85–798, §2, added par. (3).

Subsec. (p). Pub. L. 85–798, §3, included agreements with the State of Washington.

1957—Subsec. (d)(6). Pub. L. 85–227 authorized the States of California, Connecticut, Minnesota, and Rhode Island, or any political subdivisions thereof, to divide their retirement system into two divisions or parts.

Subsec. (d)(7). Pub. L. 85–229 added par. (7).

Subsec. (f)(3). Pub. L. 85–226, §3, added par. (3). Former par. (3) redesignated (4).

Subsec. (f)(4). Pub. L. 85–226, §3, redesignated former par. (3) as (4), and substituted ''1959'' for ''1957''.

Subsec. (k). Pub. L. 85–226, §1, redesignated existing provisions as par. (1) and added par. (2).

Subsec. (p). Pub. L. 85–226, §2, included agreements with the States of Alabama, Georgia, Maryland, New York, and Tennessee, or the Territory of Hawaii.

1956—Subsec. (d)(6). Act Aug. 1, 1956, §104(e), authorized the State of Florida, Georgia, New York, North Dakota, Pennsylvania, Tennessee, Washington, Wisconsin, or the Territory of Hawaii, or any political subdivision thereof, to divide their retirement system into two divisions or parts, and provided for a separate retirement system with respect to employees of the States of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or the Territory of Hawaii who are compensated in whole or in part from grants under subchapter III of this chapter.

Subsec. (h)(1). Act Aug. 1, 1956, §103(f), required amounts to be deposited in the Trust Funds in the ratio in which amounts are appropriated to such Funds pursuant to section 401(a)(3), (b)(1), of this title.

Subsec. (j). Act Aug. 1, 1956, §103(g), substituted ''Secretary of Health, Education, and Welfare'' for ''Administrator'', and provided for appropriation of amounts in the ratio in which amounts are deposited in the Trust Funds pursuant to subsection (h)(1) of this section.

Subsec. (p). Act Aug. 1, 1956, §104(g), added subsec. (p).

1954—Subsec. (b)(5). Act Sept. 1, 1954, §101(i)(1), (2), inserted sentence at end relating to civilian employees of State National Guard units and a sentence relating to certain State inspectors of agricultural products.

Subsec. (c)(3). Act Sept. 1, 1954, §101(h)(3), inserted an additional optional exclusion with respect to all serv-

ices performed by individuals as members of any coverage group who are in positions covered by a retirement system on the date when the group is brought under the agreement if these individuals are not eligible to become members of the system on that date, or on any later date when they first occupy the positions, and if they have not already been included under the agreement by means of a referendum.

Subsec. (c)(4). Act Sept. 1, 1954, § 101(h)(4), inserted sentence at end.

Subsec. (c)(5). Act Sept. 1, 1954, § 101(a)(5), (6), substituted ''paragraph (7)'' for ''paragraph (8),'' and inserted at end ''and service the remuneration for which is excluded from wages by paragraph (2) of section 209(h)''.

Subsec. (c)(6)(D). Act Sept. 1, 1954, § 101(a)(5), substituted ''paragraph (7)'' for ''paragraph (8)''.

Subsec. (c)(7). Act Sept. 1, 1954, § 101(h)(5), added par. (7).

Subsec. (d). Act Sept. 1, 1954, § 101(h)(1)(A), struck out ''Exclusion of'' in heading, redesignated the subsection as (d)(1), and inserted sentence at end.

Subsec. (d)(1). Act Sept. 1, 1954, § 101(h)(1)(B), inserted provision in first sentence making the prohibition inapplicable to service in positions which though covered by a retirement system on the enactment date, were, by reason of action taken prior to the enactment date by the appropriate governmental unit, no longer covered by a retirement system when the coverage group which included employees in such positions was brought under an agreement.

Subsec. (d)(2) to (6). Act Sept. 1, 1954, § 101(h)(2), added pars. (2) to (6).

Subsec. (f). Act Sept. 1, 1954, § 101(h)(6), permitted agreements or modifications entered into during 1955, 1956, and 1957 to be made retroactive to a date not earlier than December 31, 1954.

Subsec. (m)(1). Act Sept. 1, 1954, § 101(h)(7), substituted ''paragraph (1) of subsection (d)'' for ''subsection (d)''.

Subsec. (n). Act Sept. 1, 1954, § 101(h)(8), added subsec. (n).

Subsec. (*o*). Act Sept. 1, 1954, § 101(j), added subsec. (*l*).

1953—Subsec. (m). Act Aug. 15, 1953, added subsec. (m).

1952—Subsec. (f). Act June 28, 1952, substituted ''January 1, 1954'' for ''January 1, 1953''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 416(b), Mar. 2, 2004, 118 Stat. 530, provided that: ''The amendment made by subsection (a) [amending this section] takes effect on January 1, 2003.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 303(c) of Pub. L. 103–296 applicable with respect to service performed on or after Jan. 1, 1995, see section 303(e) of Pub. L. 103–296, set out as a note under section 410 of this title.

Section 305(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section] shall apply with respect to modifications filed by States after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to service performed after July 1, 1991, see section 11332(d) of Pub. L. 101–508, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(8) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 9002(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [enacting section 3126 of Title 26, Internal Revenue Code, amending this section and sections 405 and 424a of this title and sections 1402, 3121, and 3306 of Title 26, and renumbering former section 3126 of Title 26 as section 3127] are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act [subsec. (e)(2) of this section] prior to the date of the enactment of this Act [Oct. 21, 1986]; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 [26 U.S.C. 3402] if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.''

Section 12110(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply with respect to agreements and modifications of agreements which are mailed or delivered to the Secretary of Health and Human Services (under section 218 of the Social Security Act [this section]) on or after the date of the enactment of this Act [Apr. 7, 1986].''

Section 13205(d)(3) of Pub. L. 99–272 provided that: ''The amendment made by subsection (c) [amending this section] shall apply to services performed after March 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 103(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any agreement in effect under section 218 of the Social Security Act [this section] on the date of the enactment of this Act [Apr. 20, 1983], without regard to whether a notice of termination is in effect on such date, and to any agreement or modification thereof which may become effective under such section 218 after that date.''

Section 325(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to name changes made before, on, or after the date of the enactment of this section [Apr. 20, 1983].''

Section 342(b) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply to calendar months beginning after December 31, 1983.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 503(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to the payment of taxes (referred to in section 218(e)(1)(A) of the Social Security Act [subsec. (e)(1)(A) of this section], as amended by subsection (a)) on account of wages paid on or after July 1, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 353(g) of Pub. L. 95–216 provided that: ''The amendments made by subsection (b) of this section

[amending this section] shall apply with respect to remuneration paid after December 31, 1977, except that the amendment made by subsection (b)(2) shall apply with respect to notices submitted by the States to the Secretary after the date of the enactment of this Act [Dec. 20, 1977]. The amendments made by subsections (d) and (f)(2) [amending sections 405 and 429 of this title] shall be effective January 1, 1978. Except as otherwise specifically provided, the remaining amendments made by this section [amending sections 403, 424a, and 430 of this title] shall be effective January 1, 1979.''

EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment by Pub. L. 90–486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

Section 116(b)(3) of Pub. L. 90–248 provided that: ''The amendments made by this subsection [amending this section] shall be effective with respect to services performed on or after January 1, 1968.''

Section 120(c) of Pub. L. 90–248 provided that: ''The amendment made by this section [amending this section] shall apply in the case of any State with respect to modifications of such State agreement under section 218 of the Social Security Act [this section] made after the date of enactment of this Act [Jan. 2, 1968].''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 effective Aug. 1, 1961, see section 109 of Pub. L. 87–64, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 102(b)(2) of Pub. L. 86–778 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply in the case of transfers of positions (as described therein) which occur on or after the date of enactment of this Act [Sept. 13, 1960]. Such amendment shall also apply in the case of such transfers in any State which occurred prior to such date, but only upon request of the Governor (or other official designated by him for the purpose) filed with the Secretary of Health, Education, and Welfare before July 1, 1961; and, in the case of any such request, such amendment shall apply only with respect to wages paid on and after the date on which such request is filed.''

Section 102(c)(3) of Pub. L. 86–778 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply in the case of any agreement or modification of an agreement under section 218 of the Social Security Act [this section] which is agreed to on or after January 1, 1960; except that in the case of any such agreement or modification agreed to before January 1, 1961, the effective date specified therein shall not be earlier than December 31, 1955. The amendment made by paragraph (2) [amending this section] shall apply in the case of any such agreement or modification which is agreed to on or after the date of the enactment of this Act [Sept. 13, 1960].''

Section 102(f)(3) of Pub. L. 86–778 provided that:

''(A) The amendments made by paragraphs (1) and (2) [amending this section and section 405 of this title] shall become effective on the first day of the second calendar year following the year in which this Act is enacted [1960].

''(B) In any case in which the Secretary of Health, Education, and Welfare has notified a State prior to the beginning of such second calendar year that there is an amount due by such State, that such State's claim for a credit or refund of an overpayment is disallowed, or that such State has been allowed a credit or refund of an overpayment, under an agreement pursuant to section 218 of the Social Security Act [this section], then the Secretary shall be deemed to have made an assessment of such amount due as provided in section 218(q) of such Act or notified the State of such allowance or disallowance, as the case may be, on the first day of such second calendar year. In such a case the 90-day limitation in section 218(s) of such Act shall not be applicable with respect to the assessment so deemed to have been made or the notification of allowance or disallowance so deemed to have been given the State. However, the preceding sentences of this subparagraph shall not apply if the Secretary makes an assessment of such amount due or notifies the State of such allowance or disallowance on or after the first day of the second calendar year following the year in which this Act is enacted [1960] and within the period specified in section 218(q) of the Social Security Act or the period specified in section 218(r) of such Act, as the case may be.''

Amendments by section 103(i) of Pub. L. 86–778 applicable only with respect to service performed after 1960, and amendment by section 103(j)(2)(G) of Pub. L. 86–778 effective on Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 315(c)(2) of Pub. L. 85–840 provided that: ''The amendment made by this subsection [amending this section] shall apply in the case of any agreement, or modification of an agreement, under section 218 of the Social Security Act [this section], which is executed after the date of enactment of this Act [Aug. 28, 1958].''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 101(h)(9) of act Sept. 1, 1954, provided that: ''The amendments made by this subsection, other than paragraph (1)(B) [amending this section], shall take effect January 1, 1955.''

Section 101(i)(1) of act Sept. 1, 1954, provided that the amendment made by that section is effective as of January 1, 1951.

Section 101(i)(2) of act Sept. 1, 1954, provided that the amendment made by that section is effective January 1, 1955.

Section 101(i)(3) of act Sept. 1, 1954, provided that: ''In the case of any coverage group to which the amendment made by paragraph (1) [amending this section] is applicable, any agreement or modification of an agreement agreed to prior to January 1, 1956, may, notwithstanding section 218(f) of the Social Security Act [subsec. (f) of this section], be made effective with respect to services performed by employees as members of such coverage group after any effective date specified therein, but in no case may such effective date be earlier than December 31, 1950.''

Section 101(j) of act Sept. 1, 1954, provided that the amendment made by that section is effective as of January 1, 1951.

Amendment by section 101(a)(5), (6) of act Sept. 1, 1954, shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 2 of act Aug. 15, 1953, provided that: ''For the purposes of section 418(f) of the Social Security Act (relating to effective date of agreements) [subsec. (f) of this section], the amendment made by the first section of this Act [amending this section] shall take effect as of January 1, 1951.''

EXEMPTION FOR STUDENTS EMPLOYED BY STATE SCHOOLS, COLLEGES, OR UNIVERSITIES

Pub. L. 105–277, div. J, title II, §2023, Oct. 21, 1998, 112 Stat. 2681–904, provided that:

''(a) IN GENERAL.—Notwithstanding section 218 of the Social Security Act [this section], any agreement with a State (or any modification thereof) entered into pursuant to such section may, at the option of such State, be modified at any time on or after January 1, 1999, and

on or before March 31, 1999, so as to exclude service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

''(b) EFFECTIVE DATE OF MODIFICATION.—Any modification of an agreement pursuant to subsection (a) shall be effective with respect to services performed after June 30, 2000.

''(c) IRREVOCABILITY OF MODIFICATION.—If any modification of an agreement pursuant to subsection (a) terminates coverage with respect to service performed in the employ of a school, college, or university, by a student who is enrolled and regularly attending classes at such school, college, or university, the Commissioner of Social Security and the State may not thereafter modify such agreement so as to again make the agreement applicable to such service performed in the employ of such school, college, or university.''

TREATMENT OF CERTAIN CREDITS AS AMOUNTS DEPOSITED IN SOCIAL SECURITY TRUST FUNDS PURSUANT TO AGREEMENT

Section 123(b)(4) of Pub. L. 98–21, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of subsection (h) of section 218 of the Social Security Act [subsec. (h) of this section] (relating to deposits in social security trust funds of amounts received under section 218 agreements), amounts allowed as a credit pursuant to subsection (d) of section 3510 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3510(d)] (relating to credit for remuneration paid during 1984 which is covered under an agreement under section 218 of the Social Security Act) shall be treated as amounts received under such an agreement.''

MODIFICATION OF AGREEMENT WITH STATE OF IOWA TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN

Section 9008 of Pub. L. 100–203 provided that:

''(a) IN GENERAL.—Notwithstanding subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of Iowa heretofore entered into pursuant to such section 218 may, at any time prior to January 1, 1989, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions required to be covered by a retirement system pursuant to section 410.1 of the Iowa Code as in effect on July 1, 1953, if the State of Iowa has at any time prior to the date of the enactment of this Act [Dec. 22, 1987] paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date).

''(b) SERVICE TO BE COVERED.—Notwithstanding the provisions of subsection (e) of section 218 of the Social Security Act (as so redesignated by section 9002(c)(1) of the Omnibus Budget Reconciliation Act of 1986)), any modification in the agreement with the State of Iowa under subsection (a) shall be made effective with respect to—

''(1) all services performed in any policemen's or firemen's position to which the modification relates on or after January 1, 1987, and

''(2) all services performed in such a position before January 1, 1987, with respect to which the State of Iowa has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date) at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

''(A) no refund of the sums so paid has been obtained, or

''(B) a refund of part or all of the sums so paid has been obtained but the State of Iowa repays to the Secretary of the Treasury the amount of such refund within 90 days after the date on which the modification is agreed to by the State and the Secretary of Health and Human Services.''

MODIFICATION OF AGREEMENT WITH STATE OF CONNECTICUT TO PROVIDE COVERAGE FOR CONNECTICUT STATE POLICE

Section 12114 of Pub. L. 99–272 provided that: ''Notwithstanding any provision of section 218 of the Social Security Act [this section], the Secretary of Health and Human Services shall, upon the request of the Governor of Connecticut, modify the agreement under such section between the Secretary and the State of Connecticut to provide that service performed after the date of the enactment of this Act [Apr. 7, 1986] by members of the Division of the State Police within the Connecticut Department of Public Safety, who are hired on or after May 8, 1984, and who are members of the tier II plan of the Connecticut State Employees Retirement System, shall be covered under such agreement.''

MODIFICATION OF AGREEMENT WITH STATE OF ILLINOIS TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN

Section 318 of Pub. L. 95–216 provided that the agreement with the State of Illinois entered into pursuant to this section could, at any time prior to Jan. 1, 1979, be modified pursuant to subsec. (c)(4) of this section so as to apply to services performed in the policemen's or firemen's positions covered by the Illinois Municipal Retirement Fund on Dec. 20, 1977, if the State of Illinois had prior to such date paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsec. (e)(1) of this section.

MODIFICATION OF REPORTING PROCEDURES IN EFFECT DECEMBER 1, 1975, UNDER FEDERAL-STATE AGREEMENTS

Pub. L. 94–202, § 8(k), Jan. 2, 1976, 89 Stat. 1140, provided that: ''Notwithstanding the provisions of section 218(i) of the Social Security Act [subsec. (i) of this section], nothing contained in the amendments made by the preceding provisions of this section [enacting section 432 of this title and amending sections 401, 403, 424a, and 430 of this title and section 6103 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 401 and 432 of this title] shall be construed to authorize or require the Secretary, in promulgating regulations or amendments thereto under such section 218(i), substantially to modify the procedures, as in effect on December 1, 1975, for the reporting by States to the Secretary of the wages of individuals covered by social security pursuant to Federal-State agreements entered into pursuant to section 218 of the Social Security Act [this section].''

MODIFICATION OF AGREEMENT WITH STATE OF WEST VIRGINIA WITH RESPECT TO CERTAIN POLICEMEN AND FIREMEN

Pub. L. 94–202, § 6, Jan. 2, 1976, 89 Stat. 1136, provided that:

''(a) Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of West Virginia heretofore entered into pursuant to such section 218 [this section] may, at any time prior to 1977, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions covered by a retirement system on the date of the enactment of this Act [Jan. 2, 1976] by individuals as employees of any class III or class IV municipal corporation (as defined in or under the laws of the State) if the State of West Virginia has at any time prior to the date of the enactment of this Act paid to the Sec-

retary of the Treasury, with respect to any of the services performed in such positions by individuals as employees of such municipal corporation, the sums prescribed pursuant to subsection (e)(1) of such section 218. For purposes of this subsection, a retirement system which covers positions of policemen or firemen, or both, and other positions, shall, if the State of West Virginia so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

''(b) Notwithstanding the provisions of subsection (f) of section 218 of the Social Security Act, any modification in the agreement with the State of West Virginia under subsection (a) of this section, to the extent it involves services performed by individuals as employees of any class III or class IV municipal corporation, may be made effective with respect to—

''(1) all services performed by such individual, in any policemen's or firemen's position to which the modification relates, on or after the date of the enactment of this Act; and

''(2) all services performed by such individual in such a position before such date of enactment with respect to which the State of West Virginia has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 at the time or times established pursuant to such subsection (e)(1) if and to the extent that—

''(A) no refund of the sums so paid has been obtained, or

''(B) a refund of part or all of the sums so paid has been obtained but the State of West Virginia repays to the Secretary of the Treasury the amount of such refund within ninety days after the date that the modification is agreed to by the State and the Secretary of Health, Education, and Welfare.''

Section 143 of Pub. L. 92–603 provided that:

''(a) Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218 the agreement with the State of West Virginia heretofore entered into pursuant to such section 218 [this section] may, at any time prior to 1974, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions covered by a retirement system on the date of the enactment of this Act [Oct. 30, 1972] by individuals as employees of any class III or class IV municipal corporation (as defined in or under the laws of the State) if the State of West Virginia has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions by individuals as employees of such municipal corporation, the sums prescribed pursuant to subsection (e)(1) of such section 218. For purposes of this subsection, a retirement system which covers positions of policemen or firemen, or both, and other positions, shall, if the State of West Virginia so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

''(b) Notwithstanding the provisions of subsection (f) of section 218 of the Social Security Act, any modification in the agreement with the State of West Virginia under subsection (a) of this section, to the extent it involves services performed by individuals as employees of any class III or class IV municipal corporation, may be made effective with respect to—

''(1) all services performed by such individual, in any policeman's or fireman's position to which the modification relates, on or after the date of the enactment of this Act; and

''(2) all services performed by such individual in such a position before such date of enactment with respect to which the State of West Virginia has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

''(A) no refund of the sums so paid has been obtained, or

''(B) a refund of part or all of the sums so paid has been obtained but the State of West Virginia repays to the Secretary of the Treasury the amount of such refund within ninety days after the date that the modification is agreed to by the State and the Secretary of Health, Education, and Welfare.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF NEW MEXICO TO COVER CERTAIN HOSPITAL EMPLOYEES

Section 127 of Pub. L. 92–603 provided that: ''Notwithstanding any provisions of section 218 of the Social Security Act [this section], the Agreement with the State of New Mexico heretofore entered into pursuant to such section may at the option of such State be modified at any time prior to the first day of the fourth month after the month in which this Act is enacted [October 1972], so as to apply to the services of employees of a hospital which is an integral part of a political subdivision to which an agreement under this section has not been made applicable, as a separate coverage group within the meaning of section 218(b)(5) of such Act [subsec. (b)(5) of this section], but only if such hospital has prior to 1966 withdrawn from a retirement system which had been applicable to the employees of such hospital.''

MODIFICATION OF AGREEMENT WITH STATE OF LOUISIANA WITH RESPECT TO VOTER REGISTRARS

Section 139 of Pub. L. 92–603 provided that:

''(a) Notwithstanding the provisions of section 218(g)(1) of the Social Security Act [subsec. (g)(1) of this section], the Secretary may, under such conditions as he deems appropriate, permit the State of Louisiana to modify its agreement entered into under section 218 of such Act [this section] so as to terminate the coverage of all employees who are in positions under the Registrars of Voters Employees' Retirement System, effective after December 1975, but only if such State files with him notice of termination on or before December 31, 1973.

''(b) If the coverage of such employees in positions under such retirement system is terminated pursuant to subsection (a), coverage cannot later be extended to employees in positions under such retirement system.''

MODIFICATION OF AGREEMENTS WITH STATES WITH RESPECT TO CERTAIN STUDENTS AND PART-TIME EMPLOYEES

Section 141 of Pub. L. 92–603 provided that:

''(a) Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with any State (or any modification thereof) entered into pursuant to such section may, at the option of such State, be modified at any time prior to January 1, 1974, so as to exclude either or both of the following;

''(1) service in any class or classes of part-time positions; or

''(2) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

''(b) Any modification of such agreement pursuant to this section shall be effective with respect to services performed after the end of the calendar quarter following the calendar quarter in which such agreement is modified.

''(c) If any such modification terminates coverage with respect to service in any class or classes of part-time positions in any coverage group, the Secretary of Health, Education, and Welfare and the State may not thereafter modify such agreement so as to again make the agreement applicable to service in such positions in such coverage group; if such modification terminates coverage with respect to service performed in the employ of a school, college, or university, by a student who is enrolled and regularly attending classes at such school, college, or university, the Secretary of Health,

Education, and Welfare and the State may not thereafter modify such agreement so as to again make the agreement applicable to such service performed in the employ of such school, college, or university.''

MODIFICATION OF AGREEMENT WITH STATE OF MASSACHUSETTS WITH RESPECT TO EMPLOYEES OF THE MASSACHUSETTS TURNPIKE AUTHORITY

Section 124 of Pub. L. 90–248 provided that:

''(a) Notwithstanding the provisions of section 218(g)(1) of the Social Security Act [subsec. (g)(1) of this section] the Secretary may, under such conditions as he deems appropriate, permit the State of Massachusetts to modify its agreement entered into under section 218 of such Act [this section] so as to terminate the coverage of the employees of the Massachusetts Turnpike Authority effective at the end of any calendar quarter within the two years next following the date on which such agreement is so modified.

''(b) If the coverage of employees of the Massachusetts Turnpike Authority is terminated pursuant to subsection (a), coverage cannot later be extended to the employees of such Authority.''

MODIFICATION OF AGREEMENTS WITH STATES OF NORTH DAKOTA AND IOWA WITH RESPECT TO CERTAIN STUDENTS

Section 338 of Pub. L. 89–97 provided that: ''Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreements with the States of North Dakota and Iowa entered into pursuant to such section may, at the option of the State, be modified so as to exclude service performed in any calendar quarter in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university and if the remuneration for such service is less than $50. Any modification of either of such agreements pursuant to this Act shall be effective with respect to services performed after an effective date specified in such modification, except that such date shall not be earlier than the date of enactment of this Act [July 30, 1965].''

MODIFICATION OF AGREEMENT WITH STATE OF NEBRASKA FOR EXCLUSION OF SERVICES PERFORMED BY JUSTICES OF THE PEACE AND CONSTABLES

Section 102(i) of Pub. L. 86–778 provided that: ''Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with the State of Nebraska entered into pursuant to such section may, at the option of such State, be modified so as to exclude services performed within such State by individuals as justices of the peace or constables, if such individuals are compensated for such services on a fee basis. Any modification of such agreement pursuant to this subsection shall be effective with respect to services performed after an effective date specified in such modification, except that such date shall not be earlier than the date of enactment of this Act [Sept. 13, 1960].''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF CALIFORNIA PRIOR TO FEBRUARY 1966

Section 102(k) of Pub. L. 86–778, as amended by Pub. L. 89–97, title III, § 318, July 30, 1965, 79 Stat. 390; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with the State of California heretofore entered into pursuant to such section may at the option of such State be modified, at any time prior to 1962, pursuant to subsection (c)(4) of such section 218 [subsec. (c)(4) of this section], so as to apply to services performed by any individual who, on or after January 1, 1957, and on or before December 31, 1959, was employed by such State (or any political subdivision thereof) in any hospital employee's position which, on September 1, 1954, was covered by a retirement system, but which, prior to 1960, was removed from coverage by such retirement system if, prior to July 1, 1960, there have been paid in good faith to the Secretary of the Treasury, with respect to any of the services performed by such individual in any such position, amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 3101 and 3111 of Title 26, Internal Revenue Code] if such services had constituted employment for purposes of chapter 21 of such Code [section 3101 et seq. of Title 26] at the time they were performed. Notwithstanding the provisions of subsection (f) of such section 218 such modification shall be effective with respect to (1) all services performed by such individual in any such position on or after January 1, 1960, and (2) all such services, performed before such date, with respect to which amounts equivalent to such taxes have, prior to the date of enactment of this subsection [Sept. 13, 1960], been paid.

''(2) Such agreement, as modified pursuant to paragraph (1), may at the option of such State be further modified, at any time prior to the seventh month after the month [July 1965] in which this paragraph is enacted, so as to apply to services performed for any hospital affected by such earlier modification by any individual who after December 31, 1959, is or was employed by such State (or any political subdivision thereof) in any position described in paragraph (1). Such modification shall be effective with respect to (A) all services performed by such individual in any such position on or after January 1, 1962, and (B) all such services, performed before such date, with respect to which amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [sections 3101 and 3111 of Title 26] if such services had constituted employment for purposes of chapter 21 of such Code at the time they were performed have, prior to the date of the enactment of this paragraph [July 30, 1965], been paid.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF OKLAHOMA PRIOR TO 1962

Section 3 of Pub. L. 86–284 provided that: ''Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of Oklahoma heretofore entered into pursuant to such section 218 [this section] may, at any time prior to 1962, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed by any individual employed by such State (or any political subdivision thereof) in any policeman's position covered by a retirement system in effect on the date of enactment of this Act [Sept. 16, 1959] if (1) in the case of an individual performing such services on such date, such individual is ineligible to become a member of such retirement system, or, in the case of an individual who prior to such date has ceased to perform such services, such individual was, on the last day he did perform such services, ineligible to become a member of such retirement system, and (2) such State has, prior to 1959, paid to the Secretary of the Treasury, with respect to any of the services performed by such individual in any such position, the sums prescribed pursuant to subsection (e)(1) of such section 218. Notwithstanding the provisions of subsection (f) of such section 218, such modification shall be effective with respect to (i) all services performed by such individual in any such position on or after the date of enactment of this Act, and (ii) all such services, performed before such date, with respect to which such State has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e) of such section 218, at the time or times established pursuant to such subsection.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF MAINE PRIOR TO JULY 1, 1967

Section 316 of Pub. L. 85–840, as amended by Pub. L. 86–778, title I, § 102(j), Sept. 13, 1960, 74 Stat. 935; Pub. L.

88–350, §1, July 2, 1964, 78 Stat. 240; Pub. L. 89–97, title III, §337, July 30, 1965, 79 Stat. 409, eff. July 1, 1965, provided that: ''For the purposes of any modification which might be made after the date of enactment of this Act [Aug. 28, 1958] and prior to July 1, 1967, by the State of Maine of its existing agreement made under section 218 of the Social Security Act [this section], any retirement system of such State which covers positions of teachers and positions of other employees shall, if such State so desires, be deemed (notwithstanding the provisions of subsection (d) of such section) to consist of a separate retirement system with respect to the positions of such teachers and a separate retirement system with respect to the positions of such other employees; and for the purposes of this sentence, the term 'teacher' shall mean any teacher, principal, supervisor, school nurse, school dietitian, school secretary or superintendent employed in any public school, including teachers in unorganized territory.''

MODIFICATION OF EXISTING AGREEMENTS WITH STATES OF CALIFORNIA, CONNECTICUT, MINNESOTA, OR RHODE ISLAND PRIOR TO 1960

Section 2 of Pub. L. 85–227 provided that: ''Notwithstanding subsection (f) of section 218 of the Social Security Act [subsec. (f) of this section], any modification of the agreement with the State of California, Connecticut, Minnesota, or Rhode Island under such section which makes such agreement applicable to services performed in positions covered by a separate retirement system created pursuant to the fourth sentence of subsection (d)(6) of such section (and consisting of the positions of members who desire coverage under the agreement) may, if such modification is agreed to prior to 1960, be made effective with respect to services performed in such positions after an effective date specified in such modification, except that in no case may such date be earlier than December 31, 1955.''

MODIFICATION OF EXISTING AGREEMENTS WITH STATES OF FLORIDA, NEVADA, NEW MEXICO, MINNESOTA, OKLAHOMA, PENNSYLVANIA, TEXAS, WASHINGTON, OR HAWAII PRIOR TO JULY 1, 1962

Section 104(f) of act Aug. 1, 1956, as amended by Pub. L. 86–284, §1, provided that: ''Notwithstanding the provisions of subsection (d) of section 218 of the Social Security Act [subsection (d) of this section], any agreement under such section entered into prior to the date of enactment of this Act [Aug. 1, 1956] by the State of Florida, Nevada, New Mexico, Minnesota, Oklahoma, Pennsylvania, Texas, Washington, or the Territory of Hawaii shall if the State or Territory concerned so requests, be modified prior to July 1, 1962, so as to apply to services performed by employees of the respective public school districts of such State or Territory who, on the date such agreement is made applicable to such services, are not in positions the incumbents of which are required by State or Territorial law or regulation to have valid State or Territorial teachers' or administrators' certificates in order to receive pay for their services. The provisions of this subsection shall not apply to services of any such employees to which any such agreement applies without regard to this subsection.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF ARIZONA PRIOR TO JANUARY 1, 1956

Section 101(k) of act Sept. 1, 1954, provided that: ''If, prior to January 1, 1956, the agreement with the State of Arizona entered into pursuant to section 218 of the Social Security Act [this section] is modified pursuant to subsection (d)(3) of such section so as to apply to service performed by employees in positions covered by the Arizona Teachers' Retirement System the modification may, notwithstanding section 218(f) of the Social Security Act, be made effective with respect to service performed in such positions after an effective date specified in the modification, but in no case may such effective date be earlier than December 31, 1950. For the purposes of any such modification, all employees in positions covered by the Arizona Teachers' Retirement System shall be deemed, notwithstanding the provisions of section 218(d)(6) of such Act, to constitute a separate coverage group.''

EXTENSION OF COVERAGE TO SERVICE IN FIREMEN'S POSITION

Section 120(b) of Pub. L. 90–248 provided that: ''Nothing in the amendments made by subsection (a) [amending this section] shall authorize the extension of the insurance system established by title II of the Social Security Act [this subchapter] under the provisions of section 218(d)(6)(C) of such Act [subsec. (d)(6)(C) of this section] to service in any fireman's position.''

VALIDATION OF COVERAGE FOR CERTAIN FIREMEN IN THE STATE OF NEBRASKA

Section 119(b) of Pub. L. 90–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case in which—

''(1) an individual has performed services prior to the enactment of this Act [Jan. 2, 1968] in the employ of a political subdivision of the State of Nebraska in a fireman's position, and

''(2) amounts, equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 3101 and 3111 of Title 26, Internal Revenue Code] had such services constituted employment for purposes of section 21 of such Code [section 21 of Title 26] at the time they were performed, were timely paid in good faith to the Secretary of the Treasury, and

''(3) no refunds of such amounts paid in lieu of taxes have been obtained,

the amount of the remuneration for such services with respect to which such amounts have been paid shall be deemed to constitute remuneration for employment as defined in section 209 of the Social Security Act [section 409 of this title].''

VALIDATION OF COVERAGE FOR CERTAIN EMPLOYEES OF AN INTEGRAL UNIT OF A POLITICAL SUBDIVISION OF ALASKA

Section 342 of Pub. L. 89–97 provided that: ''For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Alaska, or its predecessor the Territory of Alaska, where employees of an integral unit of a political subdivision of the State or Territory of Alaska have in good faith been included under the State or Territory's agreement as a coverage group on the basis that such integral unit of a political subdivision was a political subdivision, then such unit of the political subdivision shall, for purposes of section 218(b)(2) of such Act, be deemed to be a political subdivision, and employees performing services within such unit shall be deemed to be a coverage group, effective with the effective date specified in such agreement or modification of such agreement with respect to such coverage group and ending with the last day of the year in which this Act is enacted [1965].''

VALIDATION OF COVERAGE FOR DISTRICT ENGINEERING AIDES OF SOIL AND WATER CONSERVATION DISTRICTS OF OKLAHOMA

Pub. L. 88–650, §3, Oct. 13, 1964, 78 Stat. 1077, provided that: ''For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Oklahoma, remuneration paid to district engineering aides of soil and water conservation districts of the State of Oklahoma which was reported by the State as amounts paid to such aides as employees of the State for services performed by them during the period beginning January 1, 1951, and ending with the close of June 30, 1962, shall be deemed to have been paid

to such aides for services performed by them in the employ of the State.''

VALIDATION OF COVERAGE FOR CERTAIN EMPLOYEES OF AN INTEGRAL UNIT OF A POLITICAL SUBDIVISION OF ARKANSAS

Section 1 of Pub. L. 87–878 provided: ''That, for purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Arkansas, where employees of an integral unit of a political subdivision of the State of Arkansas have in good faith been included under the State's agreement as a coverage group on the basis that such integral unit of a political subdivision was a political subdivision, then such unit of the political subdivision shall, for purposes of section 218(b)(2) of such Act, be deemed to be a political subdivision, and employees performing services within such unit shall be deemed to be a coverage group, effective with the effective date specified in such agreement or modification of such agreement with respect to such coverage group and ending with the last day of the year in which this Act is enacted [1962].''

VALIDATION OF COVERAGE FOR CERTAIN MISSISSIPPI TEACHERS

Section 102(h) of Pub. L. 86–778 provided that: ''For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Mississippi, services of teachers in such State performed after February 28, 1951, and prior to October 1, 1959, shall be deemed to have been performed by such teachers as employees of the State. The term 'teacher' as used in the preceding sentence means—

''(1) any individual who is licensed to serve in the capacity of teacher, librarian, registrar, supervisor, principal, or superintendent and who is principally engaged in the public elementary or secondary school system of the State in any one or more of such capacities;

''(2) any employee in the office of the county superintendent of education or the county school supervisor, or in the office of the principal of any county or municipal public elementary or secondary school in the State; and

''(3) any individual licensed to serve in the capacity of teacher who is engaged in any educational capacity in any day or night school conducted under the supervision of the State department of education as a part of the adult education program provided for under the laws of Mississippi or under the laws of the United States.''

PRESUMPTION OF WORK DEDUCTIONS FOR SERVICES PERFORMED PRIOR TO 1955 IN CASE OF CERTAIN RETROACTIVE STATE AGREEMENTS; RECOMPUTATION

Section 101(*l*) of act Sept. 1, 1954, provided that:

''(1) In the case of any services performed prior to 1955 to which an agreement under section 218 of the Social Security Act [this section] was made applicable, deductions which—

''(A) were not imposed under section 203 of such Act [section 403 of this title] with respect to such services performed prior to the date the agreement was agreed to or, if the original agreement was not applicable to such services, performed prior to the date the modification making such agreement applicable to such services was agreed to, and

''(B) would have been imposed under such section 203 had such agreement, or modification, as the case may be, been agreed to on the date it became effective,

shall be deemed to have been imposed, but only for purposes of section 215(f)(2)(A) or section 215(f)(4)(A) of such Act [section 415(f)(2)(A) or section 415(f)(4)(A) of this title] as in effect prior to the enactment of this Act [Sept. 1, 1954]. An individual with respect to whose services the preceding sentence is applicable, or in the case of his death, his survivors entitled to monthly benefits under section 202 of the Social Security Act [section 402 of this title] on the basis of his wages and self-employment income, shall be entitled to a recomputation of his primary insurance amount under such section 215(f)(2)(A) or section 215(f)(4)(A), as the case may be, if the conditions specified therein are met and if, with respect to a recomputation under such section 215(f)(2)(A), such individual files the application referred to in such section after August 1954 and prior to January 1956 or, with respect to a recomputation under such section 215(f)(4)(A), such individual died prior to January 1956 and any of such survivors entitled to monthly benefits files an application, in addition to the application filed for such monthly benefits, for a recomputation under such section 215(f)(4)(A).

''(2) For purposes of a recomputation made by reason of paragraph (1) of this subsection, the primary insurance amount of the individual who performed the services referred to in such paragraph shall be computed under subsection (a)(2) of section 215 of the Social Security Act, as amended by this Act (but, for such purposes, without application of subsection (d)(4) of such section, as in effect prior to the enactment of this Act or as amended by this Act) and as though he became entitled to old-age insurance benefits in whichever of the following months yields the highest primary insurance amount:

''(A) the month following the last month for which deductions are deemed, pursuant to paragraph (1) of this subsection, to have been made; or

''(B) the first month after the month determined under subparagraph (A) (and prior to September 1954) in which his benefits under section 202(a) of the Social Security Act [section 402(a) of this title] were no longer subject to deductions under section 203(b) of such Act [section 403(b) of this title]; or

''(C) the first month after the last month (and prior to September 1954) in which his benefits under section 202(a) of the Social Security Act were subject to deductions under section 203(b) of such Act; or

''(D) the month in which such individual filed his application for recomputation referred to in paragraph (1) of this subsection or, if he died without filing such application and prior to January 1, 1956, the month in which he died, and in any such case (but, if the individual is deceased, only if death occurred after August 1954) the amendments made by subsections (b)(1), (e)(1) and (e)(3)(B) of section 102 of this Act [amending section 415 of this title] shall be applicable.

Such recomputation shall be effective for and after the month in which the application required by paragraph (1) of this subsection is filed. The provisions of this subsection shall not be applicable in the case of any individual if his primary insurance amount has been recomputed under section 215(f)(2) of the Social Security Act on the basis of an application filed prior to September 1954.

''(3) If any recomputation under section 215(f) of the Social Security Act is made by reason of deductions deemed pursuant to paragraph (1) of this subsection to have been imposed with respect to benefits based on the wages and self-employment income of any individual, the total of the benefits based on such wages and self-employment income for months for which such deductions are so deemed to have been imposed shall be recovered by making, in addition to any other deductions under section 203 of such Act, deductions from any increase in benefits, based on such wages and self-employment income, resulting from such recomputation.''

§ 419. Repealed. Pub. L. 86–778, title I, § 103(j)(1), Sept. 13, 1960, 74 Stat. 937

Section, act Aug. 14, 1935, ch. 531, title II, § 219, as added Aug. 28, 1950, ch. 809, title I, § 107, 64 Stat. 517, prescribed the effective date of this subchapter in Puerto Rico as January 1 of the first calendar year which begins more than 90 days after the date on which the President received a certification from the Governor of Puerto Rico.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 13, 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of this title.

§ 420. Disability provisions inapplicable if benefit rights impaired

None of the provisions of this subchapter relating to periods of disability shall apply in any case in which their application would result in the denial of monthly benefits or a lump-sum death payment which would otherwise be payable under this subchapter; nor shall they apply in the case of any monthly benefit or lump-sum death payment under this subchapter if such benefit or payment would be greater without their application.

(Aug. 14, 1935, ch. 531, title II, § 220, as added Sept. 1, 1954, ch. 1206, title I, § 106(g), 68 Stat. 1081.)

PRIOR PROVISIONS

A prior section 420, act Aug. 14, 1935, ch. 531, title II, § 220, as added July 18, 1952, ch. 945, § 3(e), 66 Stat. 772, relating to inapplicability of disability provisions if benefits were reduced, ceased to be in effect at the close of June 30, 1953. See Effective and Termination Date of 1952 Amendment note set out under section 413 of this title.

§ 421. Disability determinations

(a) State agencies

(1) In the case of any individual, the determination of whether or not he is under a disability (as defined in section 416(i) or 423(d) of this title) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Commissioner of Social Security in writing that it wishes to make such disability determinations commencing with such month as the Commissioner of Social Security and the State agree upon, but only if (A) the Commissioner of Social Security has not found, under subsection (b)(1) of this section, that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and (B) the State has not notified the Commissioner of Social Security, under subsection (b)(2) of this section, that it does not wish to make such determinations. If the Commissioner of Social Security once makes the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Commissioner of Social Security may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

(2) The disability determinations described in paragraph (1) made by a State agency shall be made in accordance with the pertinent provisions of this subchapter and the standards and criteria contained in regulations or other written guidelines of the Commissioner of Social Security pertaining to matters such as disability determinations, the class or classes of individuals with respect to which a State may make disability determinations (if it does not wish to do so with respect to all individuals in the State), and the conditions under which it may choose not to make all such determinations. In addition, the Commissioner of Social Security shall promulgate regulations specifying, in such detail as the Commissioner deems appropriate, performance standards and administrative requirements and procedures to be followed in performing the disability determination function in order to assure effective and uniform administration of the disability insurance program throughout the United States. The regulations may, for example, specify matters such as—

(A) the administrative structure and the relationship between various units of the State agency responsible for disability determinations,

(B) the physical location of and relationship among agency staff units, and other individuals or organizations performing tasks for the State agency, and standards for the availability to applicants and beneficiaries of facilities for making disability determinations,

(C) State agency performance criteria, including the rate of accuracy of decisions, the time periods within which determinations must be made, the procedures for and the scope of review by the Commissioner of Social Security, and, as the Commissioner finds appropriate, by the State, of its performance in individual cases and in classes of cases, and rules governing access of appropriate Federal officials to State offices and to State records relating to its administration of the disability determination function,

(D) fiscal control procedures that the State agency may be required to adopt, and

(E) the submission of reports and other data, in such form and at such time as the Commissioner of Social Security may require, concerning the State agency's activities relating to the disability determination.

Nothing in this section shall be construed to authorize the Commissioner of Social Security to take any action except pursuant to law or to regulations promulgated pursuant to law.

(b) Determinations by Commissioner

(1) If the Commissioner of Social Security finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with the Commissioner's regulations and other written guidelines, the Commissioner of Social Security shall, not earlier than 180 days following the Commissioner's finding, and after the Commissioner has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section.

(2) If a State, having notified the Commissioner of Social Security of its intent to make disability determinations under subsection (a)(1) of this section, no longer wishes to make such determinations, it shall notify the Commissioner of Social Security in writing of that fact, and, if an agency of the State is making disability determinations at the time such notice is given, it shall continue to do so for not less than

180 days, or (if later) until the Commissioner of Social Security has complied with the requirements of paragraph (3). Thereafter, the Commissioner of Social Security shall make the disability determinations referred to in subsection (a)(1) of this section.

(3)(A) The Commissioner of Social Security shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Commissioner of Social Security of the disability determination function from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process for the Commissioner of Social Security shall, notwithstanding any other provision of law, have a preference over any other individual in filling an appropriate employment position with the Commissioner of Social Security (subject to any system established by the Commissioner of Social Security for determining hiring priority among such employees of the State agency) unless any such employee is the administrator, the deputy administrator, or assistant administrator (or his equivalent) of the State agency, in which case the Commissioner of Social Security may accord such priority to such employee.

(B) The Commissioner of Social Security shall not make such assumption of the disability determination function until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of such assumption by the Commissioner of Social Security and who will not be hired by the Commissioner of Social Security to perform duties in the disability determination process, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State and local statutes including, but not limited to, (i) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (ii) the continuation of collective-bargaining rights; (iii) the assignment of affected employees to other jobs or to retraining programs; (iv) the protection of individual employees against a worsening of their positions with respect to their employment; (v) the protection of health benefits and other fringe benefits; and (vi) the provision of severance pay, as may be necessary.

(c) Review of determination by Commissioner

(1) The Commissioner of Social Security may on the Commissioner's own motion or as required under paragraphs (2) and (3) review a determination, made by a State agency under this section, that an individual is or is not under a disability (as defined in section 416(i) or 423(d) of this title) and, as a result of such review, may modify such agency's determination and determine that such individual either is or is not under a disability (as so defined) or that such individual's disability began on a day earlier or later than that determined by such agency, or that such disability ceased on a day earlier or later than that determined by such agency. A review by the Commissioner of Social Security on the Commissioner's own motion of a State agency determination under this paragraph may be made before or after any action is taken to implement such determination.

(2) The Commissioner of Social Security (in accordance with paragraph (3)) shall review determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title). Any review by the Commissioner of Social Security of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.

(3)(A) In carrying out the provisions of paragraph (2) with respect to the review of determinations made by State agencies pursuant to this section that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title), the Commissioner of Social Security shall review—

(i) at least 50 percent of all such determinations made by State agencies on applications for benefits under this subchapter, and

(ii) other determinations made by State agencies pursuant to this section to the extent necessary to assure a high level of accuracy in such other determinations.

(B) In conducting reviews pursuant to subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review those determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.

(C) Not later than April 1, 1992, and annually thereafter, the Commissioner of Social Security shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report setting forth the number of reviews conducted under subparagraph (A)(ii) during the preceding fiscal year and the findings of the Commissioner of Social Security based on such reviews of the accuracy of the determinations made by State agencies pursuant to this section.

(d) Hearings and judicial review

Any individual dissatisfied with any determination under subsection (a), (b), (c), or (g) of this section shall be entitled to a hearing thereon by the Commissioner of Social Security to the same extent as is provided in section 405(b) of this title with respect to decisions of the Commissioner of Social Security, and to judicial review of the Commissioner's final decision after such hearing as is provided in section 405(g) of this title.

(e) State's right to cost from Trust Funds

Each State which is making disability determinations under subsection (a)(1) of this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Commissioner of Social Security, the cost to the State of making disability determinations under subsection (a)(1) of this section. The Commissioner of Social Security shall from time to time certify such

amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the Government Accountability Office, shall make payment from the Trust Funds at the time or times fixed by the Commissioner of Social Security, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 401 of this title (but taking into account any refunds under subsection (f) of this section) to insure that the Federal Disability Insurance Trust Fund is charged with all expenses incurred which are attributable to the administration of section 423 of this title and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

(f) Use of funds

All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury of the United States for deposit in the Trust Funds.

(g) Regulations governing determinations in certain cases

In the case of individuals in a State which does not undertake to perform disability determinations under subsection (a)(1) of this section, or which has been found by the Commissioner of Social Security to have substantially failed to make disability determinations in a manner consistent with the Commissioner's regulations and guidelines, in the case of individuals outside the United States, and in the case of any class or classes of individuals for whom no State undertakes to make disability determinations, the determinations referred to in subsection (a) of this section shall be made by the Commissioner of Social Security in accordance with regulations prescribed by the Commissioner.

(h) Evaluation of mental impairments by qualified medical professionals

An initial determination under subsection (a), (c), (g), or (i) of this section that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Commissioner of Social Security has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.

(i) Review of disability cases to determine continuing eligibility; permanent disability cases; appropriate number of cases reviewed; reporting requirements

(1) In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Commissioner of Social Security (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years, subject to paragraph (2); except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Commissioner of Social Security determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this subchapter.

(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Commissioner of Social Security determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Commissioner of Social Security shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Commissioner of Social Security shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Commissioner of Social Security under the preceding sentence.

(3) The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d) of this section, or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.

(4) In any case in which the Commissioner of Social Security initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Commissioner of Social Security shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.

(5) For suspension of reviews under this subsection in the case of an individual using a ticket to work and self-sufficiency, see section 1320b–19(i) of this title.

(j) Rules and regulations; consultative examinations

The Commissioner of Social Security shall prescribe regulations which set forth, in detail—

(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

(2) standards for the type of referral to be made; and

(3) procedures by which the Commissioner of Social Security will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.

(k) Establishment of uniform standards for determination of disability

(1) The Commissioner of Social Security shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 416(i) or 423(d) of this title.

(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5.

***(l)* Special notice to blind individuals with respect to hearings and other official actions**

(1) In any case where an individual who is applying for or receiving benefits under this subchapter on the basis of disability by reason of blindness is entitled to receive notice from the Commissioner of Social Security of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this subchapter, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Commissioner of Social Security and agreed to by the individual.

(2) The election under paragraph (1) may be made at any time, but an opportunity to make such an election shall in any event be given, to every individual who is an applicant for benefits under this subchapter on the basis of disability by reason of blindness, at the time of his or her application. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this subchapter until such time as it is revoked or changed.

(m) Work activity as basis for review

(1) In any case where an individual entitled to disability insurance benefits under section 423 of this title or to monthly insurance benefits under section 402 of this title based on such individual's disability (as defined in section 423(d) of this title) has received such benefits for at least 24 months—

(A) no continuing disability review conducted by the Commissioner may be scheduled for the individual solely as a result of the individual's work activity;

(B) no work activity engaged in by the individual may be used as evidence that the individual is no longer disabled; and

(C) no cessation of work activity by the individual may give rise to a presumption that the individual is unable to engage in work.

(2) An individual to which paragraph (1) applies shall continue to be subject to—

(A) continuing disability reviews on a regularly scheduled basis that is not triggered by work; and

(B) termination of benefits under this subchapter in the event that the individual has earnings that exceed the level of earnings established by the Commissioner to represent substantial gainful activity.

(Aug. 14, 1935, ch. 531, title II, § 221, as added Sept. 1, 1954, ch. 1206, title I, § 106(g), 68 Stat. 1081; amended Aug. 1, 1956, ch. 836, title I, § 103(c)(7), (8), (h), 70 Stat. 818, 823; Pub. L. 90–248, title I, § 158(c)(3), (4), Jan. 2, 1968, 81 Stat. 869; Pub. L. 96–265, title III, §§ 304(a)–(f), 311(a), June 9, 1980, 94 Stat. 453–456, 460; Pub. L. 97–455, §§ 3(a), 6, Jan. 12, 1983, 96 Stat. 2499, 2500; Pub. L. 98–369, div. B, title VI, § 2663(a)(14), July 18, 1984, 98 Stat. 1164; Pub. L. 98–460, §§ 6(a), 8(a), 9(a)(1), 10(a), 17(a), Oct. 9, 1984, 98 Stat. 1802, 1804, 1805, 1811; Pub. L. 99–514, title XVIII, § 1883(a)(9), Oct. 22, 1986, 100 Stat. 2916; Pub. L. 100–647, title VIII, § 8012(a), Nov. 10, 1988, 102 Stat. 3789; Pub. L. 101–239, title X, § 10306(a)(1), Dec. 19, 1989, 103 Stat. 2484; Pub. L. 101–508, title V, § 5128(a), Nov. 5, 1990, 104 Stat. 1388–286; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 106–170, title I, §§ 101(b)(1)(A), 111(a), Dec. 17, 1999, 113 Stat. 1873, 1881; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 421, act Aug. 14, 1935, ch. 531, title II, § 221, as added July 18, 1952, ch. 945, § 3(e), 66 Stat. 772; amended by 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, relating to disability determinations, ceased to be in effect at the close of June 30, 1953. See section 3(g) of act July 18, 1952, set out as an Effective and Termination Date of 1952 Amendment note under section 413 of this title.

AMENDMENTS

2004—Subsec. (e). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1999—Subsec. (i)(5). Pub. L. 106–170, § 101(b)(1)(A), added par. (5).

Subsec. (m). Pub. L. 106–170, § 111(a), added subsec. (m).

1994—Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary" wherever appearing except where appearing before "of Labor" in subsec. (b)(3)(B) and substituted "the Commissioner deems" for "he deems" and "the Commissioner finds" for "he finds" in subsec. (a)(2), "the Commissioner's" for "his" wherever appearing in subsecs. (b)(1), (c)(1), and (g), "the Commissioner has complied" for "he has complied" in subsec. (b)(1), "Commissioner's" for "Sec-

retary's'' in subsec. (d), and ''prescribed by the Commissioner'' for ''prescribed by him'' in subsec. (g).

1990—Subsec. (c)(3). Pub. L. 101–508 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In carrying out the provisions of paragraph (2) with respect to the review of determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title), the Secretary shall review—

''(A) at least 15 percent of all such determinations made by State agencies in the fiscal year 1981,

''(B) at least 35 percent of all such determinations made by State agencies in the fiscal year 1982, and

''(C) at least 65 percent of all such determinations made by State agencies in any fiscal year after the fiscal year 1982.''

1989—Subsec. (*l*). Pub. L. 101–239 added subsec. (*l*).

1988—Subsec. (i)(3). Pub. L. 100–647 substituted ''semiannually'' for ''annually''.

1986—Subsec. (e). Pub. L. 99–514 struck out ''under this section'' before ''shall be entitled''.

1984—Subsec. (a)(1)(A). Pub. L. 98–460, §17(a)(2), (b), temporarily substituted ''subsection (b)(1)(C) of this section'' for ''subsection (b)(1) of this section''. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(1). Pub. L. 98–460, §17(a)(1), (b), temporarily amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''If the Secretary finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with his regulations and other written guidelines, the Secretary shall, not earlier than 180 days following his finding, and after he has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section.'' See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(3). Pub. L. 98–460, §17(a)(3), (b), temporarily substituted ''Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary'' for ''The Secretary'' in subpars. (A) and (B). See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (d). Pub. L. 98–460, §17(a)(4), (b), temporarily substituted ''Except as provided in subsection (b)(1)(D) of this section, any individual'' for ''Any individual''. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (e). Pub. L. 98–369 substituted ''Federal Disability Insurance Trust Fund is charged'' for ''Federal Disability Trust Fund is charged''.

Subsec. (h). Pub. L. 98–460, §8(a), added subsec. (h).

Subsec. (i)(4). Pub. L. 98–460, §6(a), added par. (4).

Subsec. (j). Pub. L. 98–460, §9(a)(1), added subsec. (j).

Subsec. (k). Pub. L. 98–460, §10(a), added subsec. (k).

1983—Subsec. (i). Pub. L. 97–455 designated existing provisions as par. (1), inserted '', subject to paragraph (2)'' after ''at least once every 3 years'', and added pars. (2) and (3).

1980—Subsec. (a). Pub. L. 96–265, §304(a), completely revised provisions under which determinations are to be made by State agencies.

Subsec. (b). Pub. L. 96–265, §304(b), substituted provisions covering the making of disability determinations by the Secretary rather than by the State for provisions relating to agreements between the Secretary and the State under which the State would make disability determinations.

Subsec. (c). Pub. L. 96–265, §304(c), designated existing provisions as par. (1), inserted provision that a review by the Secretary on his own motion of a State agency determination may be made before or after any action is taken to implement that determination, and added pars. (2) and (3).

Subsec. (d). Pub. L. 96–265, §304(d), substituted ''subsection (a), (b), (c), or (g) of this section'' for ''subsection (a), (c), or (g) of this section''.

Subsec. (e). Pub. L. 96–265, §304(e), substituted ''which is making disability determinations under subsection (a)(1)'' for ''which has an agreement with the Secretary'', substituted ''as determined by the Secretary'' for ''as may be mutually agreed upon'', and substituted ''making disability determinations under subsection (a)(1)'' for ''carrying out the agreement under this section''.

Subsec. (g). Pub. L. 96–265, §304(f), substituted ''does not undertake to perform disability determinations under subsection (a)(1) of this section, or which has been found by the Secretary to have substantially failed to make disability determinations in a manner consistent with his regulations and guidelines'' for ''has no agreement under subsection (b) of this section'' and ''for whom no State undertakes to make disability determinations'' for ''not included in an agreement under subsection (b) of this section''.

Subsec. (i). Pub. L. 96–265, §311(a), added subsec. (i).

1968—Subsec. (a). Pub. L. 90–248, §158(c)(3), substituted in first sentence reference to ''423(d)'' for ''423(c)''.

Subsec. (c). Pub. L. 90–248, §158(c)(4), substituted reference to ''423(d)'' for ''423(c)''.

1956—Subsec. (a). Act Aug. 1, 1956, §103(c)(7), inserted reference to section 423(c) of this title.

Subsec. (c). Act Aug. 1, 1956, §103(c)(8), restricted disability to definition of such term contained in section 416(i) or 423(c) of this title.

Subsec. (e). Act Aug. 1, 1956, §103(h), substituted ''Trust Funds'' for ''Trust Fund'', and provided for adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to payments made under this subsection.

Subsec. (f). Act Aug. 1, 1956, §103(h), substituted ''Trust Funds'' for ''Trust Fund''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 101(b)(1)(A) of Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

Pub. L. 106–170, title I, §111(b), Dec. 17, 1999, 113 Stat. 1881, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2002.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5128(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to determinations made by State agencies in fiscal years after fiscal year 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10306(a)(3) of Pub. L. 101–239 provided that: ''The amendment made by this section [amending this section] shall apply with respect to notices issued on or after July 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8012(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply to reports required to be submitted after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Section 8(c) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and section 1382c of this title] shall apply to determinations made after 60 days after the date of the enactment of this Act [Oct. 9, 1984].''

Section 17(b) of Pub. L. 98–460 provided that: ''The amendments made by subsection (a) of this section

[amending this section] shall become effective on the date of the enactment of this Act [Oct. 9, 1984] and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987.''

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 3(b) of Pub. L. 97–455 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Jan. 12, 1983].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 304(h) of Pub. L. 96–265 provided that: ''The amendments made by subsections (a), (b), (d), (e), and (f) [amending this section] shall be effective beginning with the twelfth month following the month in which this Act is enacted [June 1980]. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under section 221(a) of the Social Security Act [subsec. (a) of this section] (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in section 221(a)(1) of such Act as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.''

Section 311(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on January 1, 1982.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable with respect to application for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

ELECTION UNDER SUBSECTION (*l*)(1) BY CURRENT RECIPIENTS

Section 10306(a)(2) of Pub. L. 101–239 provided that: ''Not later than July 1, 1990, the Secretary of Health and Human Services shall provide every individual receiving benefits under title II of the Social Security Act [this subchapter] on the basis of disability by reason of blindness an opportunity to make an election under section 221(*l*)(1) of such Act [subsec. (*l*)(1) of this section] (as added by paragraph (1)).''

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

Section 5 of Pub. L. 98–460 provided that:

''(a) The Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall revise the criteria embodied under the category 'Mental Disorders' in the 'Listing of Impairments' in effect on the date of the enactment of this Act [Oct. 9, 1984] under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

''(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act [subsec. (i) of this section], or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act [subchapter XVI of this chapter], with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

''(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

''(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term 'continuing eligibility review', when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

''(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act [section 1382h of this title]) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) and (f) of such Act [section 402(e), (f) of this title]).

''(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act [this subchapter or subchapter XVI of this chapter] after the date of the enactment of this Act [Oct. 9, 1984] and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

''(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

''(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act [Oct. 9, 1984], and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.''

INSTITUTION OF NOTIFICATION SYSTEM

Section 6(c) of Pub. L. 98–460 provided that: ''The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b)

[amending this section and section 1383b of this title] as soon as is practicable after the date of the enactment of this Act [Oct. 9, 1984].''

DEMONSTRATION PROJECTS; OPPORTUNITY FOR PERSONAL APPEARANCE PRIOR TO DISABILITY DETERMINATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Section 6(d), (e) of Pub. L. 98–460 provided that:

''(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act [subsec. (i) of this section] is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act [section 405(b)(2) of this title]. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act [subchapter XVI of this chapter]. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

''(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act, and prior to initial disability determinations on applications for benefits under title XVI of such Act. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.''

PROMULGATION OF REGULATIONS

Section 9(a)(2) of Pub. L. 98–460 provided that: ''The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act [subsec. (j) of this section] not later than 180 days after the date of the enactment of this Act [Oct. 9, 1984].''

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

Section 15 of Pub. L. 98–460 provided that: ''The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act [Oct. 9, 1984], which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act [subsec. (j) of this section]. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.''

TRAVEL EXPENSES FOR MEDICAL EXAMINATIONS, RECONSIDERATION INTERVIEWS, AND PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGES

Provisions authorizing payment of travel expenses either on an actual cost or commuted basis, to an individual for travel incident to medical examinations, and to parties, their representatives and all reasonably necessary witnesses for travel within the United States, Puerto Rico, and the Virgin Islands, to reconsider interviews and to proceedings before administrative law judges under subchapters II, XVI, and XVIII of this chapter were contained in the following appropriation acts:

Oct. 18, 1978, Pub. L. 95–480, title II, 92 Stat. 1582.
Sept. 30, 1976, Pub. L. 94–439, title II, 90 Stat. 1432.
Jan. 28, 1976, Pub. L. 94–206, title II, 90 Stat. 17.
Dec. 7, 1974, Pub. L. 93–517, title II, 88 Stat. 1645.
Dec. 18, 1973, Pub. L. 93–192, title II, 87 Stat. 759.
Aug. 10, 1971, Pub. L. 92–80, title II, 85 Stat. 296.
Jan. 11, 1971, Pub. L. 91–667, title II, 84 Stat. 2013.
Mar. 5, 1970, Pub. L. 91–204, title II, 84 Stat. 41.
Oct. 11, 1968, Pub. L. 90–557, title II, 82 Stat. 988.
Nov. 8, 1967, Pub. L. 90–132, title II, 81 Stat. 402.
Nov. 7, 1966, Pub. L. 89–787, title II, 80 Stat. 1395.
Aug. 31, 1965, Pub. L. 89–156, title II, 79 Stat. 604.
Sept. 19, 1964, Pub. L. 88–605, title II, 78 Stat. 974.
Oct. 11, 1963, Pub. L. 88–136, title II, 77 Stat. 239.
Aug. 14, 1962, Pub. L. 87–582, title II, 76 Stat. 375.
Sept. 22, 1961, Pub. L. 87–290, title II, 75 Stat. 604.
Sept. 2, 1960, Pub. L. 86–703, title II, 74 Stat. 769.
Aug. 14, 1959, Pub. L. 86–158, title II, 73 Stat. 352.
Aug. 1, 1958, Pub. L. 85–580, title II, 72 Stat. 471.
June 29, 1957, Pub. L. 85–67, title II, 71 Stat. 221.
June 29, 1956, ch. 477, title II, 70 Stat. 434.
Aug. 1, 1955, ch. 437, title II, 69 Stat. 408.

REVIEW OF DECISIONS RENDERED BY ADMINISTRATIVE LAW JUDGES AS RESULT OF DISABILITY HEARINGS; REPORT TO CONGRESS

Section 304(g) of Pub. L. 96–265 provided that: ''The Secretary of Health and Human Services shall implement a program of reviewing, on his own motion, decisions rendered by administrative law judges as a result of hearings under section 221(d) of the Social Security Act [subsec. (d) of this section], and shall report to the Congress by January 1, 1982, on his progress.''

ASSUMPTION BY SECRETARY OF FUNCTIONS AND OPERATIONS OF STATE DISABILITY DETERMINATION UNITS

Section 304(i) of Pub. L. 96–265 directed Secretary of Health and Human Services to submit to Congress by July 1, 1980, a detailed plan on how he intended to assume functions and operations of a State disability determination unit when this became necessary under amendments made by this section [amending this section], and how he intended to meet requirements of section 221(b)(3) of Social Security Act [subsec. (b)(3) of this section]. Such plan was to assume the uninterrupted operation of disability determination function and utilization of best qualified personnel to carry out such function, and was to include recommendations for any amendment of Federal law or regulation required to carry out such plan.

§ 422. Rehabilitation services

(a), (b) Repealed. Pub. L. 106–170, title I, § 101(b)(1)(B), (C), Dec. 17, 1999, 113 Stat. 1873

(c) "Period of trial work" defined

(1) The term ''period of trial work'', with respect to an individual entitled to benefits under section 423, 402(d), 402(e), or 402(f) of this title, means a period of months beginning and ending as provided in paragraphs (3) and (4).

(2) For purposes of sections 416(i) and 423 of this title, any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. For purposes of this subsection the term ''services'' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain.

(3) A period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits, or, in the case of an individual entitled to benefits under section 402(d) of this title who has attained the age of eighteen, with the month in which he becomes entitled to such benefits or

the month in which he attains the age of eighteen, whichever is later, or, in the case of an individual entitled to widow's or widower's insurance benefits under section 402(e) or (f) of this title who became entitled to such benefits prior to attaining age 60, with the month in which such individual becomes so entitled. Notwithstanding the preceding sentence, no period of trial work may begin for any individual prior to the beginning of the month following September 1960; and no such period may begin for an individual in a period of disability of such individual in which he had a previous period of trial work.

(4) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(A) the ninth month, in any period of 60 consecutive months, in which the individual renders services (whether or not such nine months are consecutive); or

(B) the month in which his disability (as defined in section 423(d) of this title) ceases (as determined after application of paragraph (2) of this subsection).

(5) Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—

(A) providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;

(B) receiving disability insurance benefits under this subchapter while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number; or

(C) taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized,

no benefit shall be payable to such individual under this subchapter with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this subchapter as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.

(d) Cost of rehabilitation services from trust funds

(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

(A) entitled to disability insurance benefits under section 423 of this title,

(B) entitled to child's insurance benefits under section 402(d) of this title after having attained age 18 (and are under a disability),

(C) entitled to widow's insurance benefits under section 402(e) of this title prior to attaining age 60, or

(D) entitled to widower's insurance benefits under section 402(f) of this title prior to attaining age 60,

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to enable the Commissioner of Social Security to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], (i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 425(b) of this title (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulated by the Commissioner.

(2) In the case of any State which is unwilling to participate or does not have a plan which meets the requirements of paragraph (1), the Commissioner of Social Security may provide such services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals. The provision of such services shall be subject to the same conditions as otherwise apply under paragraph (1).

(3) Payments under this subsection shall be made in advance or by way of reimbursement, with necessary adjustments for overpayments and underpayments.

(4) Money paid from the Trust Funds under this subsection for the reimbursement of the costs of providing services to individuals who are entitled to benefits under section 423 of this title (including services during their waiting periods), or who are entitled to benefits under section 402(d) of this title on the basis of the wages and self-employment income of such individuals, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this subsection shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund. The Commissioner of So-

cial Security shall determine according to such methods and procedures as the Commissioner may deem appropriate—

(A) the total amount to be reimbursed for the cost of services under this subsection, and

(B) subject to the provisions of the preceding sentence, the amount which should be charged to each of the Trust Funds.

(5) For purposes of this subsection the term ''vocational rehabilitation services'' shall have the meaning assigned to it in title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], except that such services may be limited in type, scope, or amount in accordance with regulations of the Commissioner of Social Security designed to achieve the purpose of this subsection.

(e) Treatment referrals for individuals with alcoholism or drug addiction condition

In the case of any individual whose benefits under this subchapter are paid to a representative payee pursuant to section 405(j)(1)(B) of this title, the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).

(Aug. 14, 1935, ch. 531, title II, §222, as added Sept. 1, 1954, ch. 1206, title I, §106(g) 68 Stat. 1081; amended Aug. 1, 1956, ch. 836, title I, §103(b), 70 Stat. 817; Pub. L. 85–840, title II, §205(n), title III, §307(g), Aug. 28, 1958, 72 Stat. 1025, 1032; Pub. L. 86–778, title IV, §403(a), Sept. 13, 1960, 74 Stat. 968; Pub. L. 89–97, title III, §§306(c)(14), 308(d)(11), 336, July 30, 1965, 79 Stat. 373, 379, 408; Pub. L. 90–248, title I, §§104(d)(3), (4), 158(c)(5), Jan. 2, 1968, 81 Stat. 832, 869; Pub. L. 92–603, title I, §§107(b)(3), (4), 131, Oct. 30, 1972, 86 Stat. 1343, 1360; Pub. L. 96–265, title III, §303(a), June 9, 1980, 94 Stat. 451; Pub. L. 97–35, title XXII, §2209(a), Aug. 13, 1981, 95 Stat. 840; Pub. L. 98–21, title III, §309(*l*)–(n), Apr. 20, 1983, 97 Stat. 117; Pub. L. 98–369, div. B, title VI, §2663(a)(15), July 18, 1984, 98 Stat. 1165; Pub. L. 98–460, §11(a), Oct. 9, 1984, 98 Stat. 1805; Pub. L. 101–508, title V, §5112(a), Nov. 5, 1990, 104 Stat. 1388–273; Pub. L. 103–296, title I, §107(a)(4), title II, §201(a)(4)(B), Aug. 15, 1994, 108 Stat. 1478, 1499; Pub. L. 104–121, title I, §105(a)(3), Mar. 29, 1996, 110 Stat. 852; Pub. L. 106–170, title I, §101(b)(1)(B), (C), Dec. 17, 1999, 113 Stat. 1873; Pub. L. 108–203, title II, §208(a), Mar. 2, 2004, 118 Stat. 513.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (d)(1), (5), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended. Title I of the Rehabilitation Act of 1973 is classified generally to subchapter I (§720 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (e), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart II of part B of title XIX of the Act is classified generally to subpart II (§300x–21 et seq.) of part B of subchapter XVII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

2004—Subsec. (c)(5). Pub. L. 108–203 added par. (5).

1999—Subsec. (a). Pub. L. 106–170, §101(b)(1)(B), struck out heading and text of subsec. (a). Text read as follows: ''It is declared to be the policy of the Congress that disabled individuals applying for a determination of disability, and disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits, shall be promptly referred to the State agency or agencies administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.''

Subsec. (b). Pub. L. 106–170, §101(b)(1)(C), struck out heading and text of subsec. (b), which authorized deductions from payments under this subchapter up to amount of benefits on account of refusal without good cause to accept rehabilitation services, and authorized deductions from payments to husbands, wives, or children of individuals who refuse to accept such services with exception for children between 18 and 22 who are full-time students.

1996—Subsec. (e). Pub. L. 104–121 added subsec. (e).

1994—Subsec. (b)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2). Pub. L. 103–296, §201(a)(4)(B), inserted ''(whether legal or illegal)'' after ''activity''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(1). Pub. L. 103–296, §107(a)(4), in closing provisions substituted ''Commissioner of Social Security to reimburse'' for ''Secretary to reimburse''.

Pub. L. 103–296, §107(a)(4), which directed the amendment of this subchapter by substituting ''the Commissioner'' for ''him'' where such word referred to the Secretary of Health and Human Services, was executed in closing provisions by substituting ''the Commissioner'' for ''him'' where referring to the Commissioner of Social Security, to reflect the probable intent of Congress.

Subsec. (d)(4). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner may'' for ''he may''.

Subsec. (d)(5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Subsec. (c)(4)(A). Pub. L. 101–508, §5112(a)(1), substituted ''in any period of 60 consecutive months'' for ''beginning on or after the first day of such period''.

Subsec. (c)(5). Pub. L. 101–508, §5112(a)(2), struck out par. (5) which read as follows: ''In the case of an individual who becomes entitled to benefits under section 423 of this title for any month as provided in clause (ii) of subsection (a)(1) of such section, the preceding provisions of this subsection shall not apply with respect to services in any month beginning with the first month for which he is so entitled and ending with the first month thereafter for which he is not entitled to benefits under section 423 of this title.''

1984—Subsecs. (a), (b)(1). Pub. L. 98–369, §2663(a)(15)(A), substituted ''title I of the Rehabilitation Act of 1973'' for ''the Vocational Rehabilitation Act''.

Subsec. (b)(3). Pub. L. 98–369, §2663(a)(15)(B), substituted ''equals'' for ''equal''.

Subsec. (b)(4). Pub. L. 98–369, §2663(a)(15)(C), substituted ''full-time elementary or secondary school student'' for ''full-time student''.

Subsec. (d)(1). Pub. L. 98–460, §11(a), in provisions following subpar. (D) struck out ''into substantial gainful activity'' after ''rehabilitating such individuals'', designated existing provisions as cl. (i), added cls. (ii) and (iii), and substituted ''of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,'' for ''of such individuals to substantial gainful activity'' after cl. (iii).

1983—Subsec. (b)(1). Pub. L. 98–21, §309(*l*), substituted '', surviving divorced wife, or surviving divorced husband'' for ''or surviving divorced wife''.

Subsec. (b)(2). Pub. L. 98–21, § 309(m), inserted ''or father's'' after ''mother's'' wherever appearing.

Subsec. (b)(3). Pub. L. 98–21, § 309(n), inserted ''divorced husband,'' after ''husband,''.

1981—Subsec. (d). Pub. L. 97–35 substituted provisions authorizing the transfer of funds as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation, under a State plan approved under title I of the Rehabilitation Act of 1973, which results in performance of substantial gainful activity for a continuous period of nine months, with the determination that the vocational rehabilitation services contributed to the successful return to substantial gainful activity and the amount of costs to be reimbursed made by the Commissioner of Social Security for provisions authorizing the transfer of funds as may be necessary to enable the Secretary to pay the cost of vocational rehabilitation services, restricting the amount of such cost that may be expended in any one fiscal year, establishing specific criteria which a State plan must meet, and providing that the selection of individuals to receive services be made in conformance with criteria formulated by the Secretary.

1980—Subsec. (c)(1). Pub. L. 96–265, § 303(a)(1), inserted references to sections 402(e) and 402(f) of this title.

Subsec. (c)(3). Pub. L. 96–265, § 303(a)(2), inserted reference to individuals entitled to widow's or widower's insurance benefits under section 402(e) or (f) of this title who became entitled to such benefits prior to attaining age 60.

1972—Subsec. (b)(1). Pub. L. 92–603, § 107(b)(3), substituted ''a widow, widower or surviving divorced wife who has not attained age 60'' or ''a widow or surviving divorced wife who has not attained age 60, a widower who has not attained age 62''.

Subsec. (d)(1). Pub. L. 92–603, §§ 107(b)(4), 131, substituted ''age 60'' for ''age 62'', and inserted provisions increasing applicable percentages so that the total amount made available pursuant to subsec. (d) may not exceed 1.25 percent, in fiscal year ending June 30, 1973, and 1.5 percent, in fiscal year ending June 30, 1974, and thereafter, of the total of the benefits under section 402(d) of this title for children who have attained age 18 and are under a disability.

1968—Subsec. (a). Pub. L. 90–248, § 104(d)(3)(A), inserted ''widow's insurance benefits, or widower's insurance benefits,'' after ''benefits,''.

Subsec. (b)(1). Pub. L. 90–248, § 104(d)(3)(B), substituted ''child's insurance benefits, a widow or surviving divorced wife who has not attained age 60, a widower who has not attained age 62, or'' for ''child's insurance benefits or if''.

Subsec. (c)(4)(B). Pub. L. 90–248, § 158(c)(5), substituted reference to ''423(d)'' for ''423(c)(2)''.

Subsec. (d)(1). Pub. L. 90–248, § 104(d)(4), added subpars. (C) and (D), and inserted ''the benefits under section 402(e) of this title for widows and surviving divorced wives who have not attained age 60 and are under a disability, the benefits under section 402(f) of this title for widowers who have not attained age 62,'' after ''disability,'' in text following subpar. (D).

1965—Subsec. (b)(3). Pub. L. 89–97, § 308(d)(11), inserted ''divorced wife,'' after ''wife,''.

Subsec. (b)(4). Pub. L. 89–97, § 306(c)(14), added par. (4).

Subsec. (d). Pub. L. 89–97, § 336, added subsec. (d).

1960—Subsec. (c). Pub. L. 86–778 amended subsection generally by substituting provisions relating to period of trial work for provisions which related to services performed pursuant to a State-approved rehabilitation program.

1958—Subsec. (b). Pub. L. 85–840 designated existing provisions thereof as par. (1) and added pars. (2) and (3).

1956—Subsec. (a). Act Aug. 1, 1956, designated existing provisions as subsec. (a), authorized referral of disabled individuals who are entitled to child's insurance benefits, and substituted ''rehabilitated into productive activity'' for ''restored to productive activity''.

Subsecs. (b), (c). Act Aug. 1, 1956, added subsecs. (b) and (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, § 208(b), Mar. 2, 2004, 118 Stat. 513, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to work activity performed after the date of the enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–121 effective July 1, 1996, with respect to any individual whose claim for benefits is finally adjudicated on or after Mar. 29, 1996, or whose entitlement to benefits is based upon an entitlement redetermination made pursuant to section 105(a)(5)(C) of Pub. L. 104–121, see section 105(a)(5) of Pub. L. 104–121, as amended, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(a)(4)(C) of Pub. L. 103–296 provided that: ''The amendments made by this paragraph [amending this section and section 423 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5112(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1992.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 11(c) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and section 1382d of this title] shall apply with respect to individuals who receive benefits as a result of section 225(b) or section 1631(a)(6) of the Social Security Act [section 425(b) or 1383(a)(6) of this title], or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted [October 1984].''

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2209(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services rendered on or after October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to monthly benefits under this subchapter for months after Dec. 1972, with specified exceptions, see section 107(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 104(d)(3), (4) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Amendment by section 158(c)(5) of Pub. L. 90–248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 308(d)(11) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 403(e) of Pub. L. 86–778 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall be effective only with respect to months beginning after the month in which this Act is enacted [September 1960].

''(2) The amendments made by subsections (b) and (d) [amending sections 423 and 402 of this title] shall apply only with respect to benefits under section 223(a) or 202(d) of the Social Security Act [section 423(a) or 402(d) of this title] for months after the month in which this Act is enacted in the case of individuals who, without regard to such amendments, would have been entitled to such benefits for the month in which this Act is enacted or for any succeeding month.

''(3) The amendment made by subsection (c) [amending section 416 of this title] shall apply only in the case of individuals who have a period of disability (as defined in section 216(i) of the Social Security Act [section 416(i) of this title]) beginning on or after the date of the enactment of this Act [Sept. 13, 1960], or beginning before such date and continuing, without regard to such amendment, beyond the end of the month in which this Act is enacted.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 205(n) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after August 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

Section 307(h)(3) of Pub. L. 85–840 provided that: ''The amendments made by subsection (g) [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months, occurring after the month in which this Act is enacted [August 1958], in which a deduction is incurred under paragraph (1) of section 222(b) of the Social Security Act [subsec. (b)(1) of this section].''

§ 423. Disability insurance benefit payments

(a) Disability insurance benefits

(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1) of this section),

(B) has not attained retirement age (as defined in section 416(*l*) of this title),

(C) if not a United States citizen or national—

(i) has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 405(c)(2)(B)(i) of this title; or

(ii) at the time any quarters of coverage are earned—

(I) is described in subparagraph (B) or (D) of section 1101(a)(15) of title 8,

(II) is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)), and

(III) the business engaged in or service as a crewman performed is within the scope of the terms of such individual's admission to the United States.[1]

(D) has filed application for disability insurance benefits, and

(E) is under a disability (as defined in subsection (d) of this section)

shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c)(2) of this section) in which he becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 416(i) of this title) which ceased, within the 60-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains retirement age (as defined in section 416(*l*) of this title), or, subject to subsection (e) of this section, the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined

[1] So in original. The period probably should be a comma.

able to engage in substantial gainful activity. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) of this section except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 402 of this title to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which he died.

(2) Except as provided in section 402(q) of this title and section 415(b)(2)(A)(ii) of this title, such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he had attained age 62 in—

(A) the first month of his waiting period, or

(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes entitled to such disability insurance benefits,

and as though he had become entitled to old-age insurance benefits in the month in which the application for disability insurance benefits was filed and he was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b) of this section) he was entitled to a disability insurance benefit. For the purposes of the preceding sentence, in the case of an individual who attained age 62 in or before the first month referred to in subparagraph (A) or (B) of such sentence, as the case may be, the elapsed years referred to in section 415(b)(3) of this title shall not include the year in which he attained age 62, or any year thereafter.

(b) Filing application

An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(1) of this section) shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made, or if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security). An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month.

(c) Definitions; insured status; waiting period

For purposes of this section—

(1) An individual shall be insured for disability insurance benefits in any month if—

(A) he would have been a fully insured individual (as defined in section 414 of this title) had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such month, and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or

(ii) if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of section 416(i)(3)(B)(ii) of this title, had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with the quarter in which such month occurs are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of ''blindness'' as defined in section 416(i)(1) of this title). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage.

(2) The term ''waiting period'' means, in the case of any application for disability insurance benefits, the earliest period of five consecutive calendar months—

(A) throughout which the individual with respect to whom such application is filed has been under a disability, and

(B)(i) which begins not earlier than with the first day of the seventeenth month before the month in which such application is filed if such individual is insured for disability insurance benefits in such seventeenth month, or (ii) if he is not so insured in such month, which begins not earlier than with the first day of the first month after such seventeenth month in which he is so insured.

Notwithstanding the preceding provisions of this paragraph, no waiting period may begin for any individual before January 1, 1957.

(d) "Disability" defined

(1) The term ''disability'' means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment

which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of ''blindness'' as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)—

(A) An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), ''work which exists in the national economy'' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Commissioner of Social Security shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Commissioner of Social Security does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

(C) An individual shall not be considered to be disabled for purposes of this subchapter if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.

(3) For purposes of this subsection, a ''physical or mental impairment'' is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(4)(A) The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed an amount equal to the exempt amount which would be applicable under section 403(f)(8) of this title, to individuals described in subparagraph (D) thereof, if section 102 of the Senior Citizens' Right to Work Act of 1996 had not been enacted. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 422(c) of this title, be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe.

(B) In determining under subparagraph (A) when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity, the Commissioner of Social Security shall apply the criteria described in subparagraph (A) with respect to services performed by any individual without regard to the legality of such services.

(5)(A) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require. An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability. Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Commissioner of Social Security under this paragraph shall be entitled to payment from the Commissioner of Social Security

for the reasonable cost of providing such evidence.

(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Commissioner of Social Security shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Commissioner of Social Security shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.

(6)(A) Notwithstanding any other provision of this subchapter, any physical or mental impairment which arises in connection with the commission by an individual (after October 19, 1980) of an offense which constitutes a felony under applicable law and for which such individual is subsequently convicted, or which is aggravated in connection with such an offense (but only to the extent so aggravated), shall not be considered in determining whether an individual is under a disability.

(B) Notwithstanding any other provision of this subchapter, any physical or mental impairment which arises in connection with an individual's confinement in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of an offense (committed after October 19, 1980) constituting a felony under applicable law, or which is aggravated in connection with such a confinement (but only to the extent so aggravated), shall not be considered in determining whether such individual is under a disability for purposes of benefits payable for any month during which such individual is so confined.

(e) Engaging in substantial gainful activity

(1) No benefit shall be payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 402 of this title or under subsection (a)(1) of this section to an individual for any month, after the third month, in which he engages in substantial gainful activity during the 36-month period following the end of his trial work period determined by application of section 422(c)(4)(A) of this title.

(2) No benefit shall be payable under section 402 of this title on the basis of the wages and self-employment income of an individual entitled to a benefit under subsection (a)(1) of this section for any month for which the benefit of such individual under subsection (a)(1) of this section is not payable under paragraph (1).

(f) Standard of review for termination of disability benefits

A recipient of benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(1) substantial evidence which demonstrates that—

(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(B) the individual is now able to engage in substantial gainful activity; or

(2) substantial evidence which—

(A) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity, or

(B) demonstrates that—

(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity; or

(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this subchapter or subchapter XVIII of this chapter based on an individual's disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. In making for purposes of the preceding sentence any determination relating to fraudulent behavior by any individual or failure by any individual without good cause to cooperate or to take any required action, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the

English language). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Commissioner of Social Security. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this subchapter is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.

(g) Continued payment of disability benefits during appeal

(1) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(C) a timely request for a hearing under section 421(d) of this title, or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Commissioner of Social Security shall by regulations prescribe) to have the payment of such benefits, the payment of any other benefits under this subchapter based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under subchapter XVIII of this chapter based on such individual's disability, continued for an additional period beginning with the first month beginning after January 12, 1983, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, or (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending.

(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in subparagraph (B).

(B) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 404 of this title. In making for purposes of this subparagraph any determination of whether any individual's appeal is made in good faith, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).

(h) Interim benefits in cases of delayed final decisions

(1) In any case in which an administrative law judge has determined after a hearing as provided under section 405(b) of this title that an individual is entitled to disability insurance benefits or child's, widow's, or widower's insurance benefits based on disability and the Commissioner of Social Security has not issued the Commissioner's final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month preceding the month in which such 110-day period expires and ending with the month preceding the month in which such final decision is issued.

(2) For purposes of paragraph (1), in determining whether the 110-day period referred to in paragraph (1) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Commissioner's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

(3) Any benefits currently paid under this subchapter pursuant to this subsection (for the months described in paragraph (1)) shall not be considered overpayments for any purpose of this subchapter (unless payment of such benefits was fraudulently obtained), and such benefits shall not be treated as past-due benefits for purposes of section 406(b)(1) of this title.

(i) Reinstatement of entitlement

(1)(A) Entitlement to benefits described in subparagraph (B)(i)(I) shall be reinstated in any case where the Commissioner determines that an individual described in subparagraph (B) has filed a request for reinstatement meeting the requirements of paragraph (2)(A) during the period prescribed in subparagraph (C). Reinstatement of such entitlement shall be in accordance with the terms of this subsection.

(B) An individual is described in this subparagraph if—

(i) prior to the month in which the individual files a request for reinstatement—

(I) the individual was entitled to benefits under this section or section 402 of this title on the basis of disability pursuant to an application filed therefor; and

(II) such entitlement terminated due to the performance of substantial gainful activity;

(ii) the individual is under a disability and the physical or mental impairment that is the basis for the finding of disability is the same as (or related to) the physical or mental impairment that was the basis for the finding of disability that gave rise to the entitlement described in clause (i); and

(iii) the individual's disability renders the individual unable to perform substantial gainful activity.

(C)(i) Except as provided in clause (ii), the period prescribed in this subparagraph with respect to an individual is 60 consecutive months beginning with the month following the most recent month for which the individual was entitled to a benefit described in subparagraph (B)(i)(I) prior to the entitlement termination described in subparagraph (B)(i)(II).

(ii) In the case of an individual who fails to file a reinstatement request within the period prescribed in clause (i), the Commissioner may extend the period if the Commissioner determines that the individual had good cause for the failure to so file.

(2)(A)(i) A request for reinstatement shall be filed in such form, and containing such information, as the Commissioner may prescribe.

(ii) A request for reinstatement shall include express declarations by the individual that the individual meets the requirements specified in clauses (ii) and (iii) of paragraph (1)(B).

(B) A request for reinstatement filed in accordance with subparagraph (A) may constitute an application for benefits in the case of any individual who the Commissioner determines is not entitled to reinstated benefits under this subsection.

(3) In determining whether an individual meets the requirements of paragraph (1)(B)(ii), the provisions of subsection (f) of this section shall apply.

(4)(A)(i) Subject to clause (ii), entitlement to benefits reinstated under this subsection shall commence with the benefit payable for the month in which a request for reinstatement is filed.

(ii) An individual whose entitlement to a benefit for any month would have been reinstated under this subsection had the individual filed a request for reinstatement before the end of such month shall be entitled to such benefit for such month if such request for reinstatement is filed before the end of the twelfth month immediately succeeding such month.

(B)(i) Subject to clauses (ii) and (iii), the amount of the benefit payable for any month pursuant to the reinstatement of entitlement under this subsection shall be determined in accordance with the provisions of this subchapter.

(ii) For purposes of computing the primary insurance amount of an individual whose entitlement to benefits under this section is reinstated under this subsection, the date of onset of the individual's disability shall be the date of onset used in determining the individual's most recent period of disability arising in connection with such benefits payable on the basis of an application.

(iii) Benefits under this section or section 402 of this title payable for any month pursuant to a request for reinstatement filed in accordance with paragraph (2) shall be reduced by the amount of any provisional benefit paid to such individual for such month under paragraph (7).

(C) No benefit shall be payable pursuant to an entitlement reinstated under this subsection to an individual for any month in which the individual engages in substantial gainful activity.

(D) The entitlement of any individual that is reinstated under this subsection shall end with the benefits payable for the month preceding whichever of the following months is the earliest:

(i) The month in which the individual dies.

(ii) The month in which the individual attains retirement age.

(iii) The third month following the month in which the individual's disability ceases.

(5) Whenever an individual's entitlement to benefits under this section is reinstated under this subsection, entitlement to benefits payable on the basis of such individual's wages and self-employment income may be reinstated with respect to any person previously entitled to such benefits on the basis of an application if the Commissioner determines that such person satisfies all the requirements for entitlement to such benefits except requirements related to the filing of an application. The provisions of paragraph (4) shall apply to the reinstated entitlement of any such person to the same extent that they apply to the reinstated entitlement of such individual.

(6) An individual to whom benefits are payable under this section or section 402 of this title pursuant to a reinstatement of entitlement under this subsection for 24 months (whether or not consecutive) shall, with respect to benefits so payable after such twenty-fourth month, be deemed for purposes of paragraph (1)(B)(i)(I) and the determination, if appropriate, of the termination month in accordance with subsection (a)(1) of this section, or subsection (d)(1), (e)(1), or (f)(1) of section 402 of this title, to be entitled to such benefits on the basis of an application filed therefor.

(7)(A) An individual described in paragraph (1)(B) who files a request for reinstatement in accordance with the provisions of paragraph (2)(A) shall be entitled to provisional benefits payable in accordance with this paragraph, unless the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration under paragraph (2)(A)(ii) is false. Any such determination by the Commissioner shall be final and not subject to review under subsection (b) or (g) of section 405 of this title.

(B) The amount of a provisional benefit for a month shall equal the amount of the last monthly benefit payable to the individual under this subchapter on the basis of an application increased by an amount equal to the amount, if any, by which such last monthly benefit would have been increased as a result of the operation of section 415(i) of this title.

(C)(i) Provisional benefits shall begin with the month in which a request for reinstatement is filed in accordance with paragraph (2)(A).

(ii) Provisional benefits shall end with the earliest of—

(I) the month in which the Commissioner makes a determination regarding the individual's entitlement to reinstated benefits;

(II) the fifth month following the month described in clause (i);

(III) the month in which the individual performs substantial gainful activity; or

(IV) the month in which the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration made in accordance with paragraph (2)(A)(ii) is false.

(D) In any case in which the Commissioner determines that an individual is not entitled to reinstated benefits, any provisional benefits paid to the individual under this paragraph shall not be subject to recovery as an overpayment unless the Commissioner determines that the individual knew or should have known that the individual did not meet the requirements of paragraph (1)(B).

(j) Limitation on payments to prisoners

For provisions relating to limitation on payments to prisoners, see section 402(x) of this title.

(Aug. 14, 1935, ch. 531, title II, §223, as added Aug. 1, 1956, ch. 836, title I, §103(a), 70 Stat. 815; amended Pub. L. 85–840, title II, §§202, 204(b), Aug. 28, 1958, 72 Stat. 1020, 1021; Pub. L. 86–778, title III, §303(f), title IV, §§401(a), (b), 402(a)–(d), 403(b), Sept. 13, 1960, 74 Stat. 964, 967, 969; Pub. L. 87–64, title I, §102(b)(2)(B), (C), (c)(2)(C), (3)(D), (E), June 30, 1961, 75 Stat. 134, 135; Pub. L. 89–97, title III, §§302(e), 303(a)(2), (b)(3), (4), (c), 304(m), (n), 328(c), 344(b)–(d), July 30, 1965, 79 Stat. 366, 367, 370, 400, 413; Pub. L. 90–248, title I, §§105(b), 158(a), (b), (c)(6)–(8), Jan. 2, 1968, 81 Stat. 833, 867–869; Pub. L. 92–603, title I, §§104(c), (d), 116(a), 117(b), 118(a), Oct. 30, 1972, 86 Stat. 1340, 1350, 1351; Pub. L. 95–216, title III, §335, Dec. 20, 1977, 91 Stat. 1547; Pub. L. 96–265, title I, §102(b), title III, §§302(a)(1), 303(b)(1)(A), (2)(A), 306(c), 309(a), June 9, 1980, 94 Stat. 443, 450, 451, 453, 458, 459; Pub. L. 96–473, §5(a)(1), (c), Oct. 19, 1980, 94 Stat. 2264, 2265; Pub. L. 97–123, §6, Dec. 29, 1981, 95 Stat. 1664; Pub. L. 97–455, §2, Jan. 12, 1983, 96 Stat. 2498; Pub. L. 98–21, title II, §201(c)(1)(E), (3), title III, §§309(*o*), 332(b), 339(b), Apr. 20, 1983, 97 Stat. 109, 117, 129, 134; Pub. L. 98–118, §2, Oct. 11, 1983, 97 Stat. 803; Pub. L. 98–369, div. B, title VI, §§2661(m), 2662(c)(2), (i), 2663(a)(16), July 18, 1984, 98 Stat. 1158–1160, 1165; Pub. L. 98–460, §§2(a), 3(a)(1), 4(a)(1), 7(a), 9(b)(1), Oct. 9, 1984, 98 Stat. 1794, 1799, 1800, 1803, 1805; Pub. L. 99–272, title XII, §12107(b), Apr. 7, 1986, 100 Stat. 286; Pub. L. 99–514, title XVIII, §1883(a)(10), Oct. 22, 1986, 100 Stat. 2916; Pub. L. 100–203, title IX, §§9009, 9010(a), (e)(2), Dec. 22, 1987, 101 Stat. 1330–293, 1330–294; Pub. L. 100–647, title VIII, §§8001(a), 8006, Nov. 10, 1988, 102 Stat. 3778, 3781; Pub. L. 101–239, title X, §§10101, 10305(c), (d), Dec. 19, 1989, 103 Stat. 2471, 2483; Pub. L. 101–508, title V, §§5102, 5103(a), (b)(2)–(5), 5118(a), Nov. 5, 1990, 104 Stat. 1388–250, 1388–251, 1388–278; Pub. L. 103–296, title I, §107(a)(4), title II, §201(a)(4)(A), title III, §321(a)(19), (f)(1), Aug. 15, 1994, 108 Stat. 1478, 1499, 1537, 1540; Pub. L. 104–121, title I, §§102(b)(2), 105(a)(1), Mar. 29, 1996, 110 Stat. 848, 852; Pub. L. 106–170, title I, §112(a), Dec. 17, 1999, 113 Stat. 1881; Pub. L. 108–203, title II, §211(b), Mar. 2, 2004, 118 Stat. 518.)

REFERENCES IN TEXT

Section 102 of the Senior Citizens' Right to Work Act of 1996, referred to in subsec. (d)(4)(A), is section 102 of title I of Pub. L. 104–121, which amended this section and section 403 of this title and enacted provisions set out as a note under section 403 of this title.

AMENDMENTS

2004—Subsec. (a)(1)(C) to (E). Pub. L. 108–203 added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

1999—Subsecs. (i), (j). Pub. L. 106–170 added subsec. (i) and redesignated former subsec. (i) as (j).

1996—Subsec. (d)(2)(C). Pub. L. 104–121, §105(a)(1), added subpar. (C).

Subsec. (d)(4)(A). Pub. L. 104–121, §102(b)(2), substituted "an amount equal to the exempt amount which would be applicable under section 403(f)(8) of this title, to individuals described in subparagraph (D) thereof, if section 102 of the Senior Citizens' Right to Work Act of 1996 had not been enacted" for "the exempt amount under section 403(f)(8) of this title which is applicable to individuals described in subparagraph (D) thereof".

1994—Subsecs. (b), (d)(2)(B). Pub. L. 103–296, §107(a)(4), substituted "Commissioner of Social Security" for "Secretary" wherever appearing.

Subsec. (d)(4). Pub. L. 103–296, §201(a)(4)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 103–296, §107(a)(4), in par. (4) as amended by Pub. L. 103–296, §201(a)(4)(A), substituted "Commissioner of Social Security" for "Secretary" wherever appearing.

Subsec. (d)(5). Pub. L. 103–296, §107(a)(4), substituted "Commissioner of Social Security" for "Secretary" wherever appearing.

Subsec. (f). Pub. L. 103–296, §107(a)(4), substituted "Commissioner of Social Security" for "Secretary" in two places in closing provisions.

Subsec. (f)(2)(A). Pub. L. 103–296, §321(f)(1)(A), struck out "(in a case to which clause (ii)(II) does not apply)" after "new medical evidence and" in introductory provisions.

Subsec. (f)(2)(B)(ii). Pub. L. 103–296, §321(f)(1)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: "the requirements of subclause (I) or (II) of subparagraph (A)(ii) are met; or".

Subsecs. (g), (h). Pub. L. 103–296, §107(a)(4), substituted "Commissioner of Social Security" for "Secretary" wherever appearing, "the Commissioner's" for "his" in subsec. (h)(1), and "Commissioner's" for "Secretary's" in subsec. (h)(2).

Subsec. (i). Pub. L. 103–296, §321(a)(19), inserted heading.

1990—Subsec. (d)(2)(A). Pub. L. 101–508, §5103(a)(1), struck out "(except a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 402(e) or (f) of this title)" after "An individual".

Subsec. (d)(2)(B), (C). Pub. L. 101–508, §5103(a)(2), (3), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "A widow, surviving divorced wife, widower, or surviving divorced husband shall not be determined to be under a disability (for purposes of section 402(e) or (f) of this title) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity."

Subsec. (e). Pub. L. 101–508, §5118(a), designated existing provision as par. (1) and added par. (2).

Subsec. (f). Pub. L. 101–508, §5103(b)(5), struck out "(or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband)," after "gainful activity" in two places in first sentence following par. (4).

Subsec. (f)(1)(B). Pub. L. 101–508, § 5103(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(B)(i) the individual is now able to engage in substantial gainful activity, or

''(ii) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–508, § 5103(b)(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows:

''(ii)(I) the individual is now able to engage in substantial gainful activity, or

''(II) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or''.

Subsec. (f)(3). Pub. L. 101–508, § 5103(b)(4), substituted ''therefore the individual is able to engage in substantial gainful activity; or'' for ''therefore—'' and subpars. (A) and (B) which read as follows:

''(A) the individual is able to engage in substantial gainful activity, or

''(B) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or''.

Subsec. (g)(1). Pub. L. 101–508, § 5102(1), inserted ''or'' before ''(ii)'' and substituted ''pending'' for ''pending, or (iii) June 1991'' before period at end.

Subsec. (g)(3). Pub. L. 101–508, § 5102(2), struck out par. (3) which read as follows: ''The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

''(A) on or after January 12, 1983, or prior to such date but only on the basis of a timely request for a hearing under section 421(d) of this title, or for an administrative review prior to such hearing, and

''(B) prior to January 1, 1991.''

1989—Subsec. (f). Pub. L. 101–239, § 10305(c), inserted after first sentence of concluding provisions ''In making for purposes of the preceding sentence any determination relating to fraudulent behavior by any individual or failure by any individual without good cause to cooperate or to take any required action, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).''

Subsec. (g)(1)(iii). Pub. L. 101–239, § 10101(1), substituted ''1991'' for ''1990''.

Subsec. (g)(2)(B). Pub. L. 101–239, § 10305(d), inserted at end ''In making for purposes of this subparagraph any determination of whether any individual's appeal is made in good faith, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).''

Subsec. (g)(3)(B). Pub. L. 101–239, § 10101(2), substituted ''1991'' for ''1990''.

1988—Subsec. (g)(1)(iii). Pub. L. 100–647, § 8006(1), substituted ''June 1990'' for ''June 1989''.

Subsec. (g)(3)(B). Pub. L. 100–647, § 8006(2), substituted ''January 1, 1990'' for ''January 1, 1989''.

Subsecs. (h), (i). Pub. L. 100–647, § 8001(a), added subsec. (h) and redesignated former subsec. (h) as (i).

1987—Subsec. (a)(1). Pub. L. 100–203, § 9010(a), substituted ''36 months'' for ''15 months''.

Subsec. (e). Pub. L. 100–203, § 9010(e)(2), substituted ''36-month period'' for ''15-month period''.

Subsec. (g)(1). Pub. L. 100–203, § 9009(1), substituted ''June 1989'' for ''June 1988'' in cl. (iii) at end.

Subsec. (g)(3)(B). Pub. L. 100–203, § 9009(2), substituted ''January 1, 1989'' for ''January 1, 1988''.

1986—Subsec. (e). Pub. L. 99–272 inserted ''(d)(6)(A)(ii), (d)(6)(B),'' after ''(d)(1)(B)(ii)''.

Subsec. (g)(1). Pub. L. 99–514 struck out second comma after ''payment of such benefits'' in provisions following subpar. (C).

1984—Subsec. (a)(1)(B). Pub. L. 98–369, § 2662(c)(2), made a clarifying amendment to Pub. L. 98–21, § 201(c)(3). See 1983 Amendment note below.

Subsec. (c)(1)(B). Pub. L. 98–369, § 2661(m), realigned margins of subpar. (B).

Subsec. (d)(2)(A). Pub. L. 98–369, § 2663(a)(16), substituted ''An individual'' for ''an individual''.

Subsec. (d)(2)(C). Pub. L. 98–460, § 4(a)(1), added subpar. (C).

Subsec. (d)(5). Pub. L. 98–460, § 9(b)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 98–460, § 3(a)(1), inserted provisions requiring, in making determinations as to whether an individual is under a disability, that subjective statements as to pain or other symptoms alleged to be disabling be supplemented by, and considered together with, objective medical evidence of those symptoms showing the existence of a medical impairment resulting from anatomical, physiological, or psychological abnormalities.

Subsec. (f). Pub. L. 98–460, § 2(a), amended subsec. (f) generally, substituting provisions relating to the standard of review for termination of disability benefits for provisions relating to suspension of benefits for inmates of penal institutions.

Subsec. (g)(1). Pub. L. 98–460, § 7(a)(1), in provisions following subpar. (C) substituted reference to benefits under this subchapter for reference to benefits under this chapter, inserted references to the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, substituted reference to benefits under subchapter XVIII of this chapter based on such individual's disability for reference to benefits under subchapter XVIII of this chapter, and substituted ''June 1988'' for ''June 1984'' in cl. (iii).

Subsec. (g)(3)(B). Pub. L. 98–460, § 7(a)(2), substituted ''January 1, 1988'' for ''December 7, 1983''.

Subsec. (h). Pub. L. 98–369, § 2662(i), amended Pub. L. 98–21, § 339(b), resulting in addition of subsec. (h) of this section. See 1983 Amendment note below.

1983—Subsec. (a)(1). Pub. L. 98–21, § 201(c)(1)(E), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

Subsec. (a)(1)(B). Pub. L. 98–21, § 201(c)(3), as amended by Pub. L. 98–369, § 2662(c)(2), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''the age of sixty-five''.

Subsec. (c)(1)(B)(iii). Pub. L. 98–21, § 332(b), added cl. (iii).

Subsec. (d)(2). Pub. L. 98–21, § 309(*o*), substituted ''widower, or surviving divorced husband'' for ''or widower'' wherever appearing.

Subsec. (f). Pub. L. 98–21, § 339(b), before amendment by Pub. L. 98–369, § 2662(i), struck out subsec. (f) relating to suspension of benefits for inmates of penal institutions. See note below for subsec. (h).

Subsec. (g). Pub. L. 97–455 added subsec. (g).

Subsec. (g)(3)(B). Pub. L. 98–118 substituted ''December 7, 1983'' for ''October 1, 1983''.

Subsec. (h). Pub. L. 98–21, § 339(b), as amended by Pub. L. 98–369, § 2662(i), added subsec. (h).

1981—Subsec. (f)(3). Pub. L. 97–123 added par. (3).

1980—Subsec. (a)(1). Pub. L. 96–265, § 303(b)(1)(A), inserted reference to subsec. (e) of this section and provisions relating to an individual's termination month.

Subsec. (a)(2). Pub. L. 96–265, § 102(b), substituted ''Except as provided in section 402(q) and section 415(b)(2)(A)(ii) of this title'' for ''Except as provided in section 402(q) of this title''.

Subsec. (b). Pub. L. 96–265, § 306(c), inserted provisions relating to limitations on the prospective effect of applications.

Subsec. (d)(4). Pub. L. 96–265, §302(a)(1), inserted provisions relating to extraordinary work expenses due to severe disability.

Subsec. (d)(5). Pub. L. 96–265, §309(a), inserted provisions relating to payment for existing medical evidence.

Subsec. (d)(6). Pub. L. 96–473, §5(a)(1), added par. (6).

Subsec. (e). Pub. L. 96–265, §303(b)(2)(A), added subsec. (e).

Subsec. (f). Pub. L. 96–473, §5(c), added subsec. (f).

1977—Subsec. (d)(4). Pub. L. 95–216 inserted provisions relating to activities of blind individuals.

1972—Subsec. (a)(1). Pub. L. 92–603, §118(a)(1), inserted provision for filing of an application for disability insurance benefits after death of insured individual.

Subsec. (a)(2). Pub. L. 92–603, §§104(c), 118(a)(2). struck out ''(if a woman) or age 65 (if a man)'' after ''attained age 62'' and substituted ''an individual'' for ''a woman'', ''in which he attained age 62'' for ''in which she attained age 62'', and ''the application for disability insurance benefits was filed and he was'' for ''he filed his application for disability insurance benefits and was''.

Subsec. (b). Pub. L. 92–603, §118(a)(3), substituted ''if such application is filed'' for ''if he files such application''.

Subsec. (c)(1). Pub. L. 92–603, §§104(d), 117(b), struck out ''(if a woman) or age 65 (if a man)'' after ''attained age 62'' in subpar. (A) and in provisions following subpar. (B) inserted provisions eliminating the disability insured status requirement of substantial recent covered work in the case of individuals who are blind.

Subsec. (c)(2). Pub. L. 92–603, §§116(a), 118(a)(4), substituted ''five consecutive calendar months'' for ''six consecutive calendar months'' in provisions preceding subpar. (A), substituted ''with respect to whom such application is filed'' for ''who files such application'' in subpar. (A), and substituted ''seventeenth'' for ''eighteenth'' in subpar. (B).

1968—Subsec. (a)(1). Pub. L. 90–248, §158(c)(6)–(8), substituted in subpar. (D) reference to ''subsection (d)'' for ''subsection (c)(2)'', in text of first sentence following subpar. (D) reference to ''subsection (c)(2)'' for ''subsection (c)(3)'', and in last sentence following subpar. (D) reference to ''subsection (d) except for paragraph (1)(B) thereof'' for ''subsection (c)(2) except for subparagraph (B) thereof'', respectively.

Subsec. (c). Pub. L. 90–248, §158(a), restricted heading to definitions of ''insured status'' and ''waiting period'', struck out former par. (2) defining ''disability'' and requiring medical and other evidence of disability, now incorporated in subsec. (d)(1)(A), (5) of this section, and redesignated former par. (3) as (2).

Subsec. (c)(1)(B)(ii). Pub. L. 90–248, §105(b), substituted in cl. (ii) ''before the quarter in which he attains'' for ''before he attains'' and struck out ''and he is under a disability by reason of blindness (as defined in section 416(i)(1) of this title)'' after ''age 31''.

Subsec. (d). Pub. L. 90–248, §158(b), redesignated former first sentence of former subsec. (c)(2), comprising subpars. (A) and (B), as par. (1)(A), (B), added pars. (2) to (4), and redesignated former second sentence of former subsec. (c)(2) as par. (5).

1965—Subsec. (a)(1). Pub. L. 89–97, §§303(b)(3), 344(c), struck out from subpar. (D) ''at the time such application is filed,'' after parenthetical provision and from provisions following subpar. (D) ''the first month for which he is entitled to old-age insurance benefits'' after ''age 65,''; and prohibit payment to an individual who would not meet the definition of disability in subsec. (c)(2) except for subpar. (B) thereof for any month in which he engages in substantial gainful activity, and payment for such month under subsec. (b), (c), or (d) of section 402 of this title to any person on the basis of the wages and self-employment income of such individual, respectively.

Subsec. (a)(2). Pub. L. 89–97, §§302(e), 304(m), inserted in first sentence ''and was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b) of this section) he was entitled to a disability insurance benefit'' and ''Except as provided in section 402(q) of this title'' and in last sentence substituted ''shall not include the year'' for ''shall not include the first year'' and struck out ''both was fully insured and had'' before ''attained age 62'' in two places, respectively.

Subsec. (a)(3). Pub. L. 89–97, §304(n), repealed par. (3) which prohibited an individual from becoming entitled to disability insurance benefits if he is entitled to a widow's, widower's, or parent's insurance benefit, or an old-age, wife's or husband's insurance benefit.

Subsec. (b). Pub. L. 89–97, §§303(c), 328(c), struck out from last sentence ''after June 1957'' after ''for any months'' and substituted ''before'' for ''prior to'' where first appearing and ''if he files such application before the end of the 12th month immediately succeeding such month'' for ''if he is continuously under a disability after such month and until he files application therefor and he files said application prior to the end of the twelfth month immediately succeeding such month''; and substituted provisions calling for an application for benefits filed before the first month in which the applicant satisfies the requirements for such benefits to be deemed a valid application only if the applicant satisfies the requirements before the Secretary makes a final decision on the application and calling for the application to be deemed filed in the first month if the applicant is found to satisfy the requirements for provisions placing an outer limit on the time prior to entitlement during which an application would be deemed filed during the first month prior to entitlement, respectively.

Subsec. (c)(1). Pub. L. 89–97, §344(b), removed from existing subpar. (B) provision prohibiting the inclusion, as part of such 40-quarter period, of any quarter any part of which was included in a prior period of disability unless such quarter was a quarter of coverage, and designated such subpar., as so amended as subpar. (B)(i), added subpar. (B)(ii), and added the material following subpar. (B)(ii) prohibiting inclusion of any quarter as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage and calling for reduction by one of the number of quarters in any period whenever such number of quarters is an odd number.

Subsec. (c)(2)(A). Pub. L. 89–97, §303(a)(2), designated existing provisions as subpar. (A) and substituted ''which has lasted or can be expected to last for a continuous period of not less than 12 months; or'' for ''to be of long-continued and indefinite duration''.

Subsec. (c)(2)(B). Pub. L. 89–97, §344(d), added subpar. (B).

Subsec. (c)(3)(A). Pub. L. 89–97, §303(b)(4), struck out ''which continues until such application is filed'' after ''disability''.

1961—Subsec. (a)(1). Pub. L. 87–64, §102(b)(2)(C), substituted ''the month in which he attains age 65, the first month for which he is entitled to old-age insurance benefits'' for ''the month in which he attains the age of sixty-five''.

Subsec. (a)(2). Pub. L. 87–64, §102(c)(2)(C), (3)(D), substituted ''as though he had attained age 62 (if a woman) or age 65 (if a man)'' for ''as though he had attained retirement age'', and ''fully insured and had attained age 62'' for ''fully insured and had attained retirement age'', in two places.

Subsec. (a)(3). Pub. L. 87–64, §102(b)(2)(B), added par. (3).

Subsec. (c)(1)(A). Pub. L. 87–64, §102(c)(3)(E), substituted ''attained age 62 (if a woman) or age 65 (if a man)'' for ''attained retirement age''.

1960—Subsec. (a)(1). Pub. L. 86–778, §§401(a), 402(a), 403(b), struck out provisions from cl. (B) which required an individual to have attained the age of 50, inserted provisions authorizing payment of benefits to an individual for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability which ceased, within the 60-month period preceding the first

month in which he is under such disability, and substituted provisions requiring benefits to end with the month preceding whichever of the following is the earliest: the month in which he dies, the month in which he attains the age of 65, or the third month following the month in which his disability ceases for provisions which required the benefits to end with the month preceding the first month in which any of the following occurs: his disability ceases, he dies, or he attains the age of 65.

Subsec. (a)(2). Pub. L. 86–778, § 303(f), amended generally subsec. (a)(2), as amended by section 402(b) of Pub. L. 86–778 which read as follows: ''Such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he became entitled to old-age insurance benefits in—

''(A) the first month of his waiting period, or

''(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes so entitled to such disability insurance benefits.''

Pub. L. 86–778, § 402(b), amended subsec. (a)(2) generally. Prior to amendment, subsec. (a)(2) read as follows: ''Such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he became entitled to old-age insurance benefits in the first month of his waiting period.''

Subsec. (b). Pub. L. 86–778, § 402(c), (d), prohibited acceptance of an application, in any case in which cl. (ii) of par. (1) of subsec. (a) of this section is applicable, if it is filed more than six months before the first month for which the applicant becomes entitled to benefits, inserted provisions requiring any application filed within the nine months' period or six months' period, as the case may be, to be deemed to have been filed in such first month, and substituted ''if he is continuously under a disability after such month and until he files application therefor, and he files such application'' for ''if he files application therefor''.

Subsec. (c)(3). Pub. L. 86–778, § 401(b), struck out provisions which prohibited a waiting period for any individual from beginning before the first day of the sixth month before the month in which he attains the age of 50.

1958—Subsec. (b). Pub. L. 85–840, § 202(a), provided that individuals who would have been entitled to disability insurance benefits for any month after June 1957 had they filed application therefor prior to the end of such month shall be entitled to disability benefits for such month if they file application therefor prior to the end of the twelfth month immediately succeeding such month.

Subsec. (c)(1). Pub. L. 85–840, § 204(b), substituted ''fully insured'' for ''fully and currently insured'' in cl. (A).

Subsec. (c)(3). Pub. L. 85–840, § 202(b), inserted ''which continues until such application is filed'' after ''under a disability'' in cl. (A), and substituted ''eighteenth month'' for ''sixth month'' in three instances in cl. (B).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 applicable to benefit applications based on social security account numbers issued on or after Jan. 1, 2004, see section 211(c) of Pub. L. 108–203, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title I, § 112(c), Dec. 17, 1999, 113 Stat. 1886, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1383 of this title] shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act [Dec. 17, 1999].

''(2) LIMITATION.—No benefit shall be payable under title II or XVI [of the Social Security Act, subchapter II or XVI of this chapter] on the basis of a request for reinstatement filed under section 223(i) or 1631(p) of the Social Security Act (42 U.S.C. 423(i), 1383(p)) before the effective date described in paragraph (1).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 102(b)(2) of Pub. L. 104–121 applicable with respect to taxable years ending after 1995, see section 102(c) of Pub. L. 104–121, set out as a note under section 403 of this title.

Amendment by section 105(a)(1) of Pub. L. 104–121 applicable to individual who applies for, or whose claim is finally adjudicated with respect to, benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule for any individual who applied, and whose claim has been finally adjudicated, before Mar. 29, 1996, see section 105(a)(5) of Pub. L. 104–121, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 321(f)(1) of Pub. L. 103–296 effective as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, to which such amendment relates, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5103(a), (b)(2)–(5) of Pub. L. 101–508 applicable with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after Jan. 1, 1991, or are pending on such date, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

Section 5118(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits for months after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10305(c), (d) of Pub. L. 101–239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8001(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply to determinations by administrative law judges of entitlement to benefits made after 180 days after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9010(a), (e)(2) of Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to benefits under specific provisions of this section and section 402 of this title for any month after December 1987, and individuals entitled to benefits payable under specific provisions of this section and section 402 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Dec. 1, 1980, and applicable with respect to any individual who is under a disability (as defined in subsection (d) of this section) on or after that date, see section 12107(c) of Pub. L. 99–272, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 2(d) of Pub. L. 98–460 provided that:

''(1) The amendments made by this section [amending this section and sections 416 and 1382c of this title and enacting provisions set out as notes under this section] shall apply only as provided in this subsection.

''(2) The amendments made by this section shall apply to—

''(A) determinations made by the Secretary on or after the date of the enactment of this Act [Oct. 9, 1984];

''(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act [Oct. 9, 1984] and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act [section 405 of this title] and regulations of the Secretary;

''(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

''(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act [Oct. 9, 1984].

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

''(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act [this subchapter or subchapter XVI or XVIII of this chapter]—

''(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

''(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

''(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act [section 405 of this title] and regulations issued by the Secretary in conformity with such section.

''(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

''(6) For purposes of this subsection, the term 'action relating to medical improvement' means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act [this subchapter or subchapter XVI or XVIII of this chapter] based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.''

Section 3(a)(3) of Pub. L. 98–460 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1382c of this title] shall apply to determinations made prior to January 1, 1987.''

Section 4(c) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and sections 416 and 1382c of this title] shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act [Oct. 9, 1984].''

Section 9(b)(2) of Pub. L. 98–460 provided that: ''The amendments made by this subsection [amending this section] shall apply to determinations made on or after the date of the enactment of this Act [Oct. 9, 1984].''

Amendment by sections 2661(m) and 2662(c)(2), (i) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(16) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 309(*o*) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Amendment by section 332(b) of Pub. L. 98–21 effective with respect to applications for disability insurance benefits under this section filed after Apr. 20, 1983, except that no monthly benefits under this subchapter shall be payable or increased by reason of such amendment for months before the month following April, 1983, see section 332(c) of Pub. L. 98–21, set out as a note under section 416 of this title.

Amendment by section 339(b) of Pub. L. 98–21 applicable with respect to monthly benefits payable for months beginning on or after April 20, 1983, see section 339(c) of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–473 effective with respect to benefits payable for months beginning on or after Oct. 1, 1980, see section 5(d) of Pub. L. 96–473, set out as a note under section 402 of this title.

For effective date of amendment by section 102(b) of Pub. L. 96–265, see section 102(c) of Pub. L. 96–265, set out as a note under section 415 of this title.

Section 302(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 1382a and 1382c of this title] shall apply with respect to expenses incurred on or after the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980].''

For effective date of amendment by section 303(b)(1)(A), (2)(A) of Pub. L. 96–265, see section 303(d) of

Pub. L. 96–265, set out as a note under section 402 of this title.

Amendment by section 306(c) of Pub. L. 96–265 applicable to applications filed after June 1980, see section 306(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Section 309(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to evidence requested on or after the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 104(c), (d) of Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after Dec. 1974, with the figure ''65'' in subsec. (c)(1)(A) of this section to be deemed to read ''64'' in the case of a man who attains age 62 in 1973, and deemed to read ''63'' in the case of a man who attains age 62 in 1974, see section 104(j) of Pub. L. 92–603, set out as an Effective Date of 1972 Amendment note under section 414 of this title.

Section 116(e) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 402 and 416 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], applications for widow's and widower's insurance benefits based on disability under section 202 of such Act [section 402 of this title], and applications for disability determinations under section 216(i) of such Act [section 416(i) of this title], filed—

''(1) in or after the month in which this Act is enacted [October 1972], or

''(2) before the month in which this Act is enacted, if—

''(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month, or

''(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for any month before January 1973.''

Section 117(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], and for disability determinations under section 216(i) of such Act [section 416(i) of this title], filed—

''(1) in or after the month in which this Act is enacted, or

''(2) before the month in which this Act is enacted if—

''(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

''(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for months before January 1973.''

Amendment by section 118(a) of Pub. L. 92–603 applicable in the case of deaths occurring after Dec. 31, 1969, with any applications with respect to an individual whose death occurred after Dec. 31, 1969, but before Oct. 30, 1972, to be deemed to have been filed in the month in which death occurred if filed in or within three months after Oct. 1972, see section 118(c) of Pub. L. 92–603, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 105(b) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for months after January 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 105(c) of Pub. L. 90–248, set out as a note under section 416 of this title.

Section 158(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 402, 416, 421, 422, and 425 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], and for disability determinations under section 216(i) of such Act [section 416(i) of this title], filed—

''(1) in or after the month in which this Act is enacted [January 1968], or

''(2) before the month in which this Act is enacted if the applicant has not died before such month and if—

''(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

''(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 302(e) of Pub. L. 89–97 applicable in the case of individuals who become entitled to disability insurance benefits under this section after December 1965, see section 302(f)(5) of Pub. L. 89–97, set out as a note under section 415 of this title.

Section 303(f)(1) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section and section 416 of this title], paragraphs (3) and (4) of subsection (b) [amending this section], and subsections (c) and (d) [amending this section and section 402 of this title], and the provisions of subparagraphs (B) and (E) of section 216(i)(2) of the Social Security Act [section 416(i)(2) of this title] (as amended by subsection (b)(1) of this section), shall be effective with respect to applications for disability insurance benefits under section 223 [this section], and for disability determinations under section 216(i), of the Social Security Act filed—

''(A) in or after the month in which this Act is enacted [July 1965], or

''(B) before the month in which this Act is enacted, if the applicant has not died before such month and if—

''(i) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

''(ii) the notice referred to in subparagraph (i) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly insurance benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by subsections (a) and (b) [amending this section and section 416 of this title] for months before the second month following the month in which this Act is enacted [July 1965]. The preceding sentence shall also be applicable in the case of applications for monthly insurance benefits under title II of the Social Security

Act based on the wages and self-employment income of an applicant with respect to whose application for disability insurance benefits under section 223 of such Act [this section] such preceding sentence is applicable.''

Amendment by section 304(m), (n) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 304(*o*) of Pub. L. 89–97, set out as a note under section 402 of this title.

Amendment by section 328(c) of Pub. L. 89–97 applicable with respect to applications filed on or after July 30, 1965, applications as to which the Secretary has not made a final decision before July 30, 1965, and, if a civil action with respect to a final decision of the Secretary has been commenced under section 405(g) of this title before July 30, 1965, applications as to which there has been no final judicial decision before July 30, 1965, see section 328(d) of Pub. L. 89–97, set out as a note under section 416 of this title.

Amendment by section 344(b)–(d) of Pub. L. 89–97 applicable only with respect to monthly benefits under subchapter II of this chapter for months after August 1965 on the basis of applications for such benefits filed in or after July 1965, see section 344(e) of Pub. L. 89–97, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by section 102(b)(2)(B), (C) of Pub. L. 87–64 effective Aug. 1, 1961, and amendment by section 102(c)(2)(C), (3)(D), (E) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f)(4), (6) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 303(f) of Pub. L. 86–778 provided that the amendment made by such section 303(f) is effective with respect to individuals who become entitled to benefits under this section after 1960.

Section 401(c) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits under sections 202 and 223 of the Social Security Act [this section and section 402 of this title] for months after the month following the month in which this Act is enacted [September 1960] which are based on the wages and self-employment income of an individual who did not attain the age of fifty in or prior to the month following the month in which this Act is enacted, but only where applications for such benefits are filed in or after the month in which this Act is enacted.''

Section 402(f) of Pub. L. 86–778 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to benefits under section 223 of the Social Security Act [this section] for the month in which this Act is enacted [September 1960] and subsequent months. The amendment made by subsection (c) [amending this section] shall apply only in the case of applications for benefits under such section 223 filed after the seventh month before the month in which this Act is enacted. The amendment made by subsection (d) [amending this section] shall apply only in the case of applications for benefits under such section 223 filed in or after the month in which this Act is enacted. The amendment made by subsection (e) [amending section 416 of this title] shall apply only in the case of individuals who become entitled to benefits under such section 223 in or after the month in which this Act is enacted.''

Amendment by section 403(b) of Pub. L. 86–778 applicable only with respect to benefits under this section for months after September 1960, in the case of individuals who, without regard to such amendment, would have been entitled to such benefits for September 1960, or for any succeeding month, see section 403(e) of Pub. L. 86–778, set out as a note under section 422 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 202 of Pub. L. 85–840 applicable with respect to applications for disability insurance benefits under this section filed after December 1957, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

For applicability of amendment by section 204(b) of Pub. L. 85–840, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE

Section 103(d) of act Aug. 1, 1956, provided that:

''(1) The amendment made by subsection (a) [enacting this section and sections 424 and 425 of this title] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after June 1957.

''(2) For purposes of determining entitlement to a disability insurance benefit for any month after June 1957 and before December 1957, an application for disability insurance benefits filed by any individual after July 1957 and before January 1958 shall be deemed to have been filed during the first month after June 1957 for which such individual would (without regard to this paragraph) have been entitled to a disability insurance benefit had he filed application before the end of such month.''

ELECTION OF PAYMENTS

Section 2(e) of Pub. L. 98–460 provided that: ''Any individual whose case is remanded to the Secretary pursuant to subsection (d) [set out as a note above] or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act [subsec. (g) of this section or section 1383(a)(7) of this title], to have payments made beginning with the month in which he makes such election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

''(1) shall be made at least until an initial redetermination is made by the Secretary; and

''(2) shall begin with the payment for the month in which such individual makes such election.''

RETROACTIVE BENEFITS

Section 2(f) of Pub. L. 98–460 provided that: ''In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.''

PROMULGATION OF REGULATIONS

Section 2(g) of Pub. L. 98–460 provided that: ''The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this section [amending this section and sections 416 and 1382c of this title and enacting provisions set out as notes under this section] not later than 180 days after the date of the enactment of this Act [Oct. 9, 1984].''

COMMISSION ON EVALUATION OF PAIN

Section 3(b) of Pub. L. 98–460 provided that:

''(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the 'Commission') to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act [sections 401 et seq., 1381 et seq. of

this title] whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Sciences.

''(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

''(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act [Pub. L. 92–463, set out in the Appendix to Title 5, Government Organization and Employees]) within 60 days after the date of the enactment of this Act [Oct. 9, 1984]. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

''(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

''(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted.''

STUDY AND REPORT TO CONGRESSIONAL COMMITTEES ON EFFECT OF CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL ON TRUST FUND EXPENDITURES AND THE RATE OF APPEALS

Section 7(c) of Pub. L. 98–460 provided that:

''(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act [subsec. (g) of this section] is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

''(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

LUMP-SUM PAYMENT OF DISABILITY INSURANCE BENEFITS FOR PERIOD BEGINNING AFTER 1959 AND ENDING PRIOR TO 1964; FILING OF APPLICATION

Section 133 of Pub. L. 92–603 provided that:

''(a) If an individual would (upon the timely filing of an application for a disability determination under section 216(i) of the Social Security Act [section 416(i) of this title]) and of an application for disability insurance benefits under section 223 of such Act [this section]) have been entitled to disability insurance benefits under such section 223 for a period which began after 1959 and ended prior to 1964, such individual shall, upon filing application for disability insurance benefits under such section 223 with respect to such period not later than 6 months after the date of enactment of this section [Oct. 30, 1972], be entitled, notwithstanding any other provision of title II of the Social Security Act [this subchapter], to receive in a lump sum as disability insurance benefits payable under section 223, an amount equal to the total amounts of disability insurance benefits which would have been payable to him for such period if he had timely filed such an application for a disability determination and such an application for disability insurance benefits with respect to such period; but only if—

''(1) prior to the date of enactment of this section and after the date of enactment of the Social Security Amendments of 1967 [Jan. 2, 1968] such period was determined (under section 216(i) of the Social Security Act [section 416(i) of this title]) to be a period of disability as to such individual; and

''(2) the application giving rise to the determination (under such section 216(i)) that such period is a period of disability as to such individual would not have been accepted as an application for such a determination except for the provisions of section 216(i)(2)(F).

''(b) No payment shall be made to any individual by reason of the provisions of subsection (a) except upon the basis of an application filed after the date of enactment of this section.''

SPECIAL INSURED STATUS TEST IN CERTAIN CASES FOR DISABILITY PURPOSES

Individuals not insured for disability benefits as determined under subsec. (c)(1) of this section with respect to any month in a quarter deemed to have met such requirements in certain cases, see section 404 of Pub. L. 86–778, set out as a note under section 416 of this title.

§ 424. Repealed. Pub. L. 85–840, title II, § 206, Aug. 28, 1958, 72 Stat. 1025

Section, act Aug. 14, 1935, ch. 531, title II, § 224, as added Aug. 1, 1956, ch. 836, title I, § 103(a), 70 Stat. 816; amended July 17, 1957, Pub. L. 85–109, § 2(a), 71 Stat. 308, related to reduction of benefits based on disability.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85–840, set out as an Effective Date of 1958 Amendment note under section 416 of this title.

§ 424a. Reduction of disability benefits

(a) Conditions for reduction; computation

If for any month prior to the month in which an individual attains the age of 65—

(1) such individual is entitled to benefits under section 423 of this title, and

(2) such individual is entitled for such month to—

(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or

(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(g) of this title), other than (i) benefits payable under title 38, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Commissioner of Social Security under section 418 of this title, and (iv) benefits under a law or plan of the United States based on service all or substantially all of which is employment as defined in section 410 of this title,

the total of his benefits under section 423 of this title for such month and of any benefits under section 402 of this title for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

(3) such total of benefits under sections 423 and 402 of this title for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under such laws or plans,

exceeds the higher of—

(5) 80 per centum of his ''average current earnings'', or

(6) the total of such individual's disability insurance benefits under section 423 of this title for such month and of any monthly insurance benefits under section 402 of this title for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 423 and 402 of this title for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 423 and 402 of this title, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the largest of (A) the average monthly wage (determined under section 415(b) of this title as in effect prior to January 1979) used for purposes of computing his benefits under section 423 of this title, (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a)(1) and 411(b)(1) of this title) for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest, or (C) one-twelfth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a)(1) and 411(b)(1) of this title) for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 423(d) of this title) and the five years preceding that year.

(b) Reduction where benefits payable on other than monthly basis

If any periodic benefit for a total or partial disability under a law or plan described in subsection (a)(2) of this section is payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under this section shall be made at such time or times and in such amounts as the Commissioner of Social Security finds will approximate as nearly as practicable the reduction prescribed by subsection (a) of this section.

(c) Reductions and deductions under other provisions

Reduction of benefits under this section shall be made after any reduction under subsection (a) of section 403 of this title, but before deductions under such section and under section 422(b)[1] of this title.

(d) Exception

The reduction of benefits required by this section shall not be made if the law or plan described in subsection (a)(2) of this section under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this subchapter on the basis of the wages and self-employment income of an individual entitled to benefits under section 423 of this title, and such law or plan so provided on February 18, 1981.

(e) Conditions for payment

If it appears to the Commissioner of Social Security that an individual may be eligible for periodic benefits under a law or plan which would give rise to reduction under this section, the Commissioner may require, as a condition of certification for payment of any benefits under section 423 of this title to any individual for any month and of any benefits under section 402 of this title for such month based on such individual's wages and self-employment income, that such individual certify (i) whether he has filed or intends to file any claim for such periodic benefits, and (ii) if he has so filed, whether there has been a decision on such claim. The Commissioner of Social Security may, in the absence of evidence to the contrary, rely upon such a cer-

[1] See References in Text note below.

tification by such individual that he has not filed and does not intend to file such a claim, or that he has so filed and no final decision thereon has been made, in certifying benefits for payment pursuant to section 405(i) of this title.

(f) Redetermination of reduction

(1) In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 423 of this title and any benefits under section 402 of this title based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Commissioner of Social Security shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable under this subchapter on the basis of such individual's wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a) of this section) shall be deemed to be the product of—

(A) his average current earnings as initially determined under subsection (a) of this section; and

(B) the ratio of (i) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii) the national average wage index (as so defined) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).

Any amount determined under this paragraph which is not a multiple of $1 shall be reduced to the next lower multiple of $1.

(g) Proportionate reduction; application of excess

Whenever a reduction in the total of benefits for any month based on an individual's wages and self-employment income is made under this section, each benefit, except the disability insurance benefit, shall first be proportionately decreased, and any excess of such reduction over the sum of all such benefits other than the disability insurance benefits shall then be applied to such disability insurance benefit.

(h) Furnishing of information

(1) Notwithstanding any other provision of law, the head of any Federal agency shall provide such information within its possession as the Commissioner of Social Security may require for purposes of making a timely determination of the amount of the reduction, if any, required by this section in benefits payable under this subchapter, or verifying other information necessary in carrying out the provisions of this section.

(2) The Commissioner of Social Security is authorized to enter into agreements with States, political subdivisions, and other organizations that administer a law or plan subject to the provisions of this section, in order to obtain such information as the Commissioner may require to carry out the provisions of this section.

(Aug. 14, 1935, ch. 531, title II, § 224, as added Pub. L. 89–97, title III, § 335, July 30, 1965, 79 Stat. 406; amended Pub. L. 90–248, title I, § 159(a), Jan. 2, 1968, 81 Stat. 869; Pub. L. 92–603, title I, § 119(a), (b), Oct. 30, 1972, 86 Stat. 1352; Pub. L. 94–202, § 8(j), Jan. 2, 1976, 89 Stat. 1140; Pub. L. 95–216, title II, § 205(d), title III, § 353(c), Dec. 20, 1977, 91 Stat. 1529, 1553; Pub. L. 97–35, title XXII, § 2208(a), Aug. 13, 1981, 95 Stat. 839; Pub. L. 99–272, title XII, § 12109(a), Apr. 7, 1986, 100 Stat. 286; Pub. L. 99–509, title IX, § 9002(c)(2)(F), Oct. 21, 1986, 100 Stat. 1972; Pub. L. 101–239, title X, § 10208(b)(2)(A), (C), (d)(2)(A)(i), (iii), Dec. 19, 1989, 103 Stat. 2477, 2478, 2480, 2481; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(e)(2)(H), Aug. 15, 1994, 108 Stat. 1478, 1540.)

REFERENCES IN TEXT

Section 422(b) of this title, referred to in subsec. (c), was repealed by Pub. L. 106–170, title I, § 101(b)(1)(C), Dec. 17, 1999, 113 Stat. 1873.

PRIOR PROVISIONS

A prior section 224 of act Aug. 14, 1935, was classified to section 424 of this title prior to repeal by Pub. L. 85–840, title II, § 206, Aug. 28, 1958, 72 Stat. 1025.

AMENDMENTS

1994—Subsecs. (a)(2)(B), (b), (e), (f)(1). Pub. L. 103–296, § 107(a)(4), substituted "Commissioner of Social Security" for "Secretary" wherever appearing and "the Commissioner may require" for "he may require" in subsec. (e).

Subsec. (f)(2). Pub. L. 103–296, § 321(e)(2)(H), inserted "and" at end of subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows:

"(B) the ratio of (i) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii)(I) the average of the total wages ((as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is before 1991, or (II) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is after 1990; and

"(C) in any case in which the reduction was first computed before 1978, the ratio of (i) the average of the taxable wages reported to the Secretary for the first calendar quarter of 1977 to (ii) the average of the taxable wages reported to the Secretary for the first calendar quarter of the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability)."

Subsec. (h). Pub. L. 103–296, § 107(a)(4), substituted "Commissioner of Social Security" for "Secretary" in pars. (1) and (2) and "the Commissioner may" for "he may" in par. (2).

1989—Subsec. (a). Pub. L. 101–239, § 10208(d)(2)(A)(iii), substituted "409(a)(1)" for "409(a)" in cls. (B) and (C) of last sentence.

Subsec. (f)(2)(B)(i). Pub. L. 101–239, § 10208(b)(2)(A), substituted "the deemed average total wages (as de-

fined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, § 10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (f)(2)(B)(ii). Pub. L. 101–239, § 10208(b)(2)(C), inserted ''(I)'' after ''(ii)'', substituted ''(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title)'' for ''as so defined and computed)'' and inserted '', if such calendar year is before 1991, or (II) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is after 1990'' before ''; and'' at end.

1986—Subsec. (a)(2). Pub. L. 99–272, § 12109(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''such individual is entitled for such month to periodic benefits on account of such individual's total or partial disability (whether or not permanent) under—

''(A) a workmen's compensation law or plan of the United States or a State, or

''(B) any other law or plan of the United States, a State, a political subdivision (as that term is used in section 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(k) of this title),

other than benefits payable under title 38, benefits payable under a program of assistance which is based on need, benefits based on service all, or substantially all, of which was included under an agreement entered into by a State and the Secretary under section 418 of this title, and benefits under a law or plan of the United States based on service all or part of which is employment as defined in section 410 of this title,''.

Subsec. (a)(2)(B). Pub. L. 99–509 substituted ''section 418(g)'' for ''section 418(k)''.

Pub. L. 99–272, § 12109(a)(2), substituted ''all or substantially all of which'' for ''all or part of which'' in cl. (iv).

1981—Subsec. (a). Pub. L. 97–35, § 2208(a)(2)–(4), in provision preceding par. (1) substituted ''age of 65'' for ''age of 62'', in par. (2) inserted provisions including periodic benefits under any other law or plan of the United States, a State, a political subdivision, or an instrumentality of two or more States and excluding specified benefits and struck out provision requiring that the Secretary receive notice, in a prior month, of the entitlement for such month, and in par. (4) substituted ''such laws or plans'' for ''the workmen's compensation law or plan''.

Subsec. (b). Pub. L. 97–35, § 2208(a)(5), substituted ''for a total or partial disability under a law or plan described in subsection (a)(2) of this section'' for ''under a workmen's compensation law or plan''.

Subsec. (d). Pub. L. 97–35, § 2208(a)(6), substituted ''law or plan described in subsection (a)(2) of this section'' for ''workmen's compensation law or plan'' and ''section 423 of this title, and such law or plan so provided on February 18, 1981'' for ''section 423 of this title''.

Subsec. (e). Pub. L. 97–35, § 2208(a)(7), struck out ''workmen's compensation'' after ''periodic benefits under a''.

Subsec. (h). Pub. L. 97–35, § 2208(a)(8), added subsec. (h).

1977—Subsec. (a). Pub. L. 95–216, §§ 205(d), 353(c)(1), struck out provisions following par. (8) under which the Secretary, in cases where an individual's wages and self-employment income reported to the Secretary for a calendar year reached the limitations specified in sections 409(a) and 411(b)(1) of this title, was required to estimate the total of such wages and self-employment income on the basis of such information as might be available to him indicating the extent (if any) by which the wages and self-employment income exceeded limitations, and, effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978, and with respect to lump-sum death payments with respect to death occurring after Dec. 1978, inserted ''(determined under section 415(b) of this title as in effect prior to January 1979)'' after ''(A) the average monthly wage'' in provisions following par. (8).

Subsec. (f)(2). Pub. L. 95–216, § 353(c)(2), divided existing provisions into subpars. (A) and (B), added subpar. (C), and in subpar. (B) as so redesignated substituted ''(i) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which such redetermination is made to (ii) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year'' for ''(i) the average of the taxable wages of all persons for whom taxable wages were reported to the Secretary for the first calendar quarter of the calendar year before the calendar year in which the redetermination is made, to (ii) the average of the taxable wages of such persons reported to the Secretary for the first calendar quarter of the taxable year before the calendar year''.

1976—Subsec. (f)(2). Pub. L. 94–202 substituted ''calendar year before the calendar year'' for ''calendar year'' and ''taxable year before the calendar year'' for ''taxable year''.

1972—Subsec. (a). Pub. L. 92–603 added cl. (C) in provisions for the determination of an individual's average current earnings so as to introduce into the formula a factor of one-twelfth of the total wages and self-employment income for the calendar year in which he had the highest such wages and income during the year in which he became disabled and the five years preceding that year.

1968—Subsec. (a). Pub. L. 90–248 inserted in cl. (B) of first sentence following par. (8) ''(computed without regard to the limitations specified in sections 409(a) and 411(b)(1) of this title)'' before ''for the five'', and inserted last sentence authorizing the Secretary, in certain cases, to estimate the total of wages and self-employment income for purposes of cl. (B) indicating the extent such earnings exceed the limitations in sections 409(a) and 411(b)(1) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(2)(A), (C) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–509 effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of this title prior to Oct. 21, 1986, with certain exceptions, see section 9002(d) of Pub. L. 99–509 set out as a note under section 418 of this title.

Section 12109(b) of Pub. L. 99–272 provided that:

''(1) The amendment made by subsection (a)(1) [amending this section] shall be effective as though it had been included or reflected in the amendment made by section 2208(a)(3) of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35, amending this section].

''(2) The amendment made by subsection (a)(2) [amending this section] shall apply only with respect to monthly benefits payable on the basis of the wages and

self-employment income of individuals who become disabled (within the meaning of section 223(d) of the Social Security Act [section 423(d) of this title]) after the month in which this Act is enacted [April 1986].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2208(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to individuals who first become entitled to benefits under section 223(a) of the Social Security Act [section 423(a) of this title] for months beginning after the month in which this Act is enacted [August 1981], but only in the case of an individual who became disabled within the meaning of section 223(d) of such Act after the sixth month preceding the month in which this Act is enacted.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 205(d) of Pub. L. 95–216 effective with respect to monthly benefits under this subchapter payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after December 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

Section 353(c)(1) of Pub. L. 95–216 provided that the amendment made by that section is effective with respect to the estimates for calendar years beginning after Dec. 31, 1977.

Amendment by section 353(c)(2) of Pub. L. 95–216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 119(c) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972.''

EFFECTIVE DATE OF 1968 AMENDMENTS; DETERMINATION OF AVERAGE CURRENT EARNINGS UPON REDETERMINATION OF BENEFITS SUBJECT TO REDUCTION

Section 159(b) of Pub. L. 90–248 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.

''(2) For purposes of any redetermination which is made under section 224(f) of the Social Security Act [subsec. (f) of this section] in the case of benefits subject to reduction under section 224 of such Act, where such reduction as first computed was effective with respect to benefits for the month in which this Act is enacted [January 1968] or a prior month, the amendments made by subsection (a) of this section [amending subsec. (a) of this section] shall also be deemed to have applied in the initial determination of the 'average current earnings' of the individual whose wages and self-employment income are involved.''

EFFECTIVE DATE

Section 335 of Pub. L. 89–97 provided that this section is effective with respect to benefits under this subchapter for months after December 1965 based on the wages and self-employment income of individuals entitled to benefits under section 423 of this title whose period of disability (as defined in this subchapter) began after June 1, 1965.

§ 425. Additional rules relating to benefits based on disability

(a) Suspension of benefits

If the Commissioner of Social Security, on the basis of information obtained by or submitted to the Commissioner, believes that an individual entitled to benefits under section 423 of this title, or that a child who has attained the age of eighteen and is entitled to benefits under section 402(d) of this title, or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower or surviving divorced husband who has not attained age 60 and is entitled to benefits under section 402(f) of this title, may have ceased to be under a disability, the Commissioner of Social Security may suspend the payment of benefits under such section 402(d), 402(e), 402(f), or 423 of this title until it is determined (as provided in section 421 of this title) whether or not such individual's disability has ceased or until the Commissioner of Social Security believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 421(b) of this title, the Commissioner of Social Security shall promptly notify the appropriate State of the Commissioner's action under this subsection and shall request a prompt determination of whether such individual's disability has ceased. For purposes of this subsection, the term ''disability'' has the meaning assigned to such term in section 423(d) of this title. Whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of this subsection shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 402(d) of this title).

(b) Continued payments during rehabilitation program

Notwithstanding any other provision of this subchapter, payment to an individual of benefits based on disability (as described in the first sentence of subsection (a) of this section) shall not be terminated or suspended because the physical or mental impairment, on which the individual's entitlement to such benefits is based, has or may have ceased, if—

(1) such individual is participating in a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security, and

(2) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.

(Aug. 14, 1935, ch. 531, title II, § 225, as added Aug. 1, 1956, ch. 836, title I, § 103(a), 70 Stat. 817; amended Pub. L. 85–840, title II, § 205(*o*), Aug. 28, 1958, 72 Stat. 1025; Pub. L. 89–97, title III, § 306(c)(15), July 30, 1965, 79 Stat. 373; Pub. L. 90–248, title I, §§ 104(d)(5), 158(c)(9), Jan. 2, 1968, 81

Stat. 833, 869; Pub. L. 92–603, title I, §107(b)(5), Oct. 30, 1972, 86 Stat. 1343; Pub. L. 96–265, title III, §301(a), June 9, 1980, 94 Stat. 449; Pub. L. 98–21, title III, §309(p), Apr. 20, 1983, 97 Stat. 117; Pub. L. 101–508, title V, §5113(a), Nov. 5, 1990, 104 Stat. 1388–273; Pub. L. 103–296, title I, §107(a)(4), title II, §201(a)(3)(A), Aug. 15, 1994, 108 Stat. 1478, 1494; Pub. L. 104–121, title I, §105(a)(4), Mar. 29, 1996, 110 Stat. 853; Pub. L. 106–170, title I, §101(b)(1)(D), Dec. 17, 1999, 113 Stat. 1873.)

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–170 substituted ''a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services'' for ''a program of vocational rehabilitation services''.

1996—Subsec. (c). Pub. L. 104–121 struck out subsec. (c) which related to nonpayment or termination of benefits where entitlement involved alcoholism or drug addiction.

1994—Pub. L. 103–296, §201(a)(3)(A)(i), amended section catchline.

Subsec. (a). Pub. L. 103–296, §201(a)(3)(A)(i), inserted heading.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''to the Commissioner'' for ''to him'', and ''the Commissioner's'' for ''his''.

Subsec. (b). Pub. L. 103–296, §201(a)(3)(A)(ii), inserted heading.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in pars. (1) and (2).

Subsec. (c). Pub. L. 103–296, §201(a)(3)(A)(iii), added subsec. (c).

Pub. L. 103–296, §107(a)(4), in subsec. (c) as added by Pub. L. 103–296, §201(a)(3)(A)(iii), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' wherever appearing.

1990—Subsec. (b)(1). Pub. L. 101–508, §5113(a)(1), added par. (1) and struck out former par. (1) which read as follows: ''such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and''.

Subsec. (b)(2). Pub. L. 101–508, §5113(a)(2), substituted ''Secretary'' for ''Commissioner of Social Security''.

1983—Subsec. (a). Pub. L. 98–21 inserted ''or surviving divorced husband'' after ''widower''.

1980—Pub. L. 96–265 designated existing provisions as subsec. (a), made conforming amendments in subsec. (a) as so designated, and added subsec. (b).

1972—Pub. L. 92–603 substituted ''age 60'' for ''age 62''.

1968—Pub. L. 90–248 in first sentence inserted ''or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower who has not attained age 62 and is entitled to benefits under section 402(f) of this title,'' after ''section 402(d) of this title,'' and substituted ''402(d), 402(e), 402(f), or 423'' for ''423 or 402(d)'', and substituted in third sentence reference to ''423(d)'' for ''423(c)(2)''.

1965—Pub. L. 89–97 inserted ''The first sentence of this section shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 402(d) of this title).''

1958—Pub. L. 85–840 provided that whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–121 applicable to any individual who applies for, or whose claim is finally adjudicated with respect to, benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule for any individual who applied, and whose claim has been finally adjudicated, before Mar. 29, 1996, see section 105(a)(5) of Pub. L. 104–121, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT; SUNSET PROVISION

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(a)(3)(C), (E) of Pub. L. 103–296 provided that:

''(C) SUNSET OF 36-MONTH RULE.—Section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by subparagraph (A)) shall cease to be effective with respect to benefits for months after September 2004.

''(E) EFFECTIVE DATE.—

''(i) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this paragraph [amending this section and sections 426 and 426–1 of this title] shall apply with respect to benefits based on disability (as defined in section 225(c)(9) of the Social Security Act [subsec. (c)(9) of this section], added by this section) which are otherwise payable in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994]. The Secretary of Health and Human Services shall issue regulations necessary to carry out the amendments made by this paragraph not later than 180 days after the date of the enactment of this Act.

''(ii) REFERRAL AND MONITORING AGENCIES.—Section 225(c)(5) of the Social Security Act [subsec. (c)(5) of this section] (added by this subsection) shall take effect 180 days after the date of the enactment of this Act.

''(iii) TERMINATION AFTER 36 MONTHS.—Section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by this subsection) shall apply with respect to benefits based on disability (as so defined) for months beginning after 180 days after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5113(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall be effective with respect to benefits payable for months after the eleventh month following the month in which this Act is enacted [November 1990] and shall apply only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 301(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act [June 9,

1980], and shall apply with respect to individuals whose disability has not been determined to have ceased prior to such first day.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to monthly benefits under this subchapter for months after December 1972, with specified exceptions, see section 107(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 104(d)(5) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Amendment by section 158(c)(9) of Pub. L. 90–248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 205(*o*) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE

Section applicable only with respect to monthly benefits under this subchapter for months after June 1957, see section 103(a) of act Aug. 1, 1956, set out as a note under section 423 of this title.

REPORT ON REFERRAL, MONITORING, TESTING AND TREATMENT OF INDIVIDUALS WHERE ENTITLEMENT TO OR TERMINATION OF BENEFITS INVOLVES ALCOHOLISM OR DRUG ADDICTION

Section 201(a)(3)(B) of Pub. L. 103–296 provided that not later than Dec. 31, 1996, the Secretary was to submit to Congress a full and complete report on the Secretary's activities under former subsec. (c)(5) of this section, which was to include the number and percentage of individuals referred to in such provision who had not received regular drug testing since the effective date of such provision, prior to repeal by Pub. L. 105–33, title V, § 5525(c), Aug. 5, 1997, 111 Stat. 625.

TRANSITION RULES FOR CURRENT BENEFICIARIES

Section 201(a)(3)(F) of Pub. L. 103–296 provided that: ''In any case in which an individual is entitled to benefits based on disability, the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act [Aug. 15, 1994], and alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability—

''(i) TREATMENT REQUIREMENT.—Paragraphs (1) through (4) of section 225(c) of the Social Security Act [subsec. (c)(1) to (4) of this section] (added by this subsection) shall apply only with respect to benefits paid in months after the month in which such individual is notified by the Secretary in writing that alcoholism or drug addiction is a contributing factor material to the Secretary's determination and that such individual is therefore required to comply with the provisions of section 225(c) of such Act.

''(ii) TERMINATION AFTER 36 MONTHS.—

''(I) IN GENERAL.—For purposes of section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by this subsection), the first month of entitlement beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994] shall be treated as the individual's first month of entitlement to such benefits.

''(II) CONCURRENT BENEFICIARIES CURRENTLY UNDER TREATMENT.—In any case in which the individual is also entitled to benefits under title XVI [subchapter XVI of this chapter] and, as of 180 days after the date of the enactment of this Act, such individual is undergoing treatment required under section 1611(e)(3) of the Social Security Act [section 1382(e)(3) of this title] (as in effect immediately before the date of the enactment of this Act), the Secretary of Health and Human Services shall notify such individual of the provisions of section 225(c)(7) of the Social Security Act (added by this subsection) not later than 180 days after the date of the enactment of this Act.

''(III) CONCURRENT BENEFICIARIES NOT CURRENTLY UNDER TREATMENT.—In any case in which the individual is also entitled to benefits under title XVI but, as of 180 days after the date of the enactment of this Act, such individual is not undergoing treatment described in subclause (II), section 225(c)(7) (added by this subsection) shall apply only with respect to benefits for months after the month in which treatment required under section 1611(e)(3) of the Social Security Act (as amended by subsection (b)) is available, as determined under regulations of the Secretary of Health and Human Services, and the Secretary notifies such individual of the availability of such treatment and describes in such notification the provisions of section 225(c)(7) of the Social Security Act (added by this subsection).''

DEMONSTRATION PROJECTS RELATING TO REFERRAL, MONITORING, AND TREATMENT FOR ALCOHOLICS OR DRUG ADDICTS

Section 201(c) of Pub. L. 103–296 related to demonstration projects relating to referral, monitoring, and treatment for alcoholics or drug addicts, prior to repeal by Pub. L. 104–121, title I, § 105(c), Mar. 29, 1996, 110 Stat. 855.

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment of sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1984, see section 11(c) of Pub. L. 98–460, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

§ 426. Entitlement to hospital insurance benefits

(a) Individuals over 65 years

Every individual who—

(1) has attained age 65, and

(2)(A) is entitled to monthly insurance benefits under section 402 of this title, would be entitled to those benefits except that he has not filed an application therefor (or application has not been made for a benefit the entitlement to which for any individual is a condition of entitlement therefor), or would be entitled to such benefits but for the failure of another individual, who meets all the criteria of entitlement to monthly insurance benefits, to meet such criteria throughout a month, and, in conformity with regulations of the Secretary, files an application for hospital insurance benefits under part A of subchapter XVIII of this chapter,

(B) is a qualified railroad retirement beneficiary, or

(C)(i) would meet the requirements of subparagraph (A) upon filing application for the monthly insurance benefits involved if medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and (ii) files an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII of this chapter,

shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month for which he meets the condition specified in paragraph (2), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2).

(b) Individuals under 65 years

Every individual who—

(1) has not attained age 65, and

(2)(A) is entitled to, and has for 24 calendar months been entitled to, (i) disability insurance benefits under section 423 of this title or (ii) child's insurance benefits under section 402(d) of this title by reason of a disability (as defined in section 423(d) of this title) or (iii) widow's insurance benefits under section 402(e) of this title or widower's insurance benefits under section 402(f) of this title by reason of a disability (as defined in section 423(d) of this title), or

(B) is, and has been for not less than 24 months, a disabled qualified railroad retirement beneficiary, within the meaning of section 231f(d) of title 45, or

(C)(i) has filed an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII of this chapter pursuant to this subparagraph, and

(ii) would meet the requirements of subparagraph (A) (as determined under the disability criteria, including reviews, applied under this subchapter), including the requirement that he has been entitled to the specified benefits for 24 months, if—

(I) medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and

(II) the filing of the application under clause (i) of this subparagraph were deemed to be the filing of an application for the disability-related benefits referred to in clause (i), (ii), or (iii) of subparagraph (A),

shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and ending (subject to the last sentence of this subsection) with the month following the month in which notice of termination of such entitlement to benefits or status as a qualified railroad retirement beneficiary described in paragraph (2) is mailed to him, or if earlier, with the month before the month in which he attains age 65. In applying the previous sentence in the case of an individual described in paragraph (2)(C), the ''twenty-fifth month of his entitlement'' refers to the first month after the twenty-fourth month of entitlement to specified benefits referred to in paragraph (2)(C) and ''notice of termination of such entitlement'' refers to a notice that the individual would no longer be determined to be entitled to such specified benefits under the conditions described in that paragraph. For purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 422(c)(4)(A) of this title, and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under this subchapter or as a qualified railroad retirement beneficiary had such individual been unable to engage in substantial gainful activity, but not in excess of 78 such months. In determining when an individual's entitlement or status terminates for purposes of the preceding sentence, the term ''36 months'' in the second sentence of section 423(a)(1) of this title, in section 402(d)(1)(G)(i) of this title, in the last sentence of section 402(e)(1) of this title, and in the last sentence of section 402(f)(1) of this title shall be applied as though it read ''15 months''.

(c) Conditions

For purposes of subsection (a) of this section—

(1) entitlement of an individual to hospital insurance benefits for a month shall consist of entitlement to have payment made under, and subject to the limitations in, part A of subchapter XVIII of this chapter on his behalf for inpatient hospital services, post-hospital extended care services, and home health services (as such terms are defined in part E of subchapter XVIII of this chapter) furnished him in the United States (or outside the United States in the case of inpatient hospital services furnished under the conditions described in section 1395f(f) of this title) during such month; except that (A) no such payment may be made for post-hospital extended care services furnished before January 1967, and (B) no such payment may be made for post-hospital extended care services unless the discharge from the hospital required to qualify such services for payment under part A of subchapter XVIII of this chapter occurred (i) after June 30, 1966, or on or after the first day of the month in which he attains age 65, whichever is later, or (ii) if he was entitled to hospital insurance benefits pursuant to subsection (b) of this section, at a time when he was so entitled; and

(2) an individual shall be deemed entitled to monthly insurance benefits under section 402 or section 423 of this title, or to be a qualified

railroad retirement beneficiary, for the month in which he died if he would have been entitled to such benefits, or would have been a qualified railroad retirement beneficiary, for such month had he died in the next month.

(d) "Qualified railroad retirement beneficiary" defined

For purposes of this section, the term ''qualified railroad retirement beneficiary'' means an individual whose name has been certified to the Secretary by the Railroad Retirement Board under section 231f(d) of title 45. An individual shall cease to be a qualified railroad retirement beneficiary at the close of the month preceding the month which is certified by the Railroad Retirement Board as the month in which he ceased to meet the requirements of section 231f(d) of title 45.

(e) Benefits for widows and widowers

(1)(A) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of widows and widowers described in paragraph (2)(A)(iii) thereof—

(i) the term ''age 60'' in sections 402(e)(1)(B)(ii), 402(e)(4), 402(f)(1)(B)(ii), and 402(f)(4) of this title shall be deemed to read ''age 65''; and

(ii) the phrase ''before she attained age 60'' in the matter following subparagraph (F) of section 402(e)(1) of this title and the phrase ''before he attained age 60'' in the matter following subparagraph (F) of section 402(f)(1) of this title shall each be deemed to read ''based on a disability''.

(B) For purposes of subsection (b)(2)(A)(iii) of this section, each month in the period commencing with the first month for which an individual is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Secretary under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), shall be included as one of the 24 months for which such individual must have been entitled to widow's or widower's insurance benefits on the basis of disability in order to become entitled to hospital insurance benefits on that basis.

(2) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of an individual under age 65 who is entitled to benefits under section 402 of this title, and who was entitled to widow's insurance benefits or widower's insurance benefits based on disability for the month before the first month in which such individual was so entitled to old-age insurance benefits (but ceased to be entitled to such widow's or widower's insurance benefits upon becoming entitled to such old-age insurance benefits), such individual shall be deemed to have continued to be entitled to such widow's insurance benefits or widower's insurance benefits for and after such first month.

(3) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section, any disabled widow aged 50 or older who is entitled to mother's insurance benefits (and who would have been entitled to widow's insurance benefits by reason of disability if she had filed for such widow's benefits), and any disabled widower aged 50 or older who is entitled to father's insurance benefits (and who would have been entitled to widower's insurance benefits by reason of disability if he had filed for such widower's benefits), shall, upon application for such hospital insurance benefits be deemed to have filed for such widow's or widower's insurance benefits.

(4) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of an individual described in clause (iii) of subsection (b)(2)(A) of this section, the entitlement of such individual to widow's or widower's insurance benefits under section 402(e) or (f) of this title by reason of a disability shall be deemed to be the entitlement to such benefits that would result if such entitlement were determined without regard to the provisions of section 402(j)(4) of this title.

(f) Medicare waiting period for recipients of disability benefits

For purposes of subsection (b) of this section (and for purposes of section 1395p(g)(1) of this title and section 231f(d)(2)(ii) of title 45), the 24 months for which an individual has to have been entitled to specified monthly benefits on the basis of disability in order to become entitled to hospital insurance benefits on such basis effective with any particular month (or to be deemed to have enrolled in the supplementary medical insurance program, on the basis of such entitlement, by reason of section 1395p(f) of this title), where such individual had been entitled to specified monthly benefits of the same type during a previous period which terminated—

(1) more than 60 months before the month in which his current disability began in any case where such monthly benefits were of the type specified in clause (A)(i) or (B) of subsection (b)(2) of this section, or

(2) more than 84 months before the month in which his current disability began in any case where such monthly benefits were of the type specified in clause (A)(ii) or (A)(iii) of such subsection,

shall not include any month which occurred during such previous period, unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period.

(g) Information regarding eligibility of Federal employees

The Secretary and Director of the Office of Personnel Management shall jointly prescribe and carry out procedures designed to assure that all individuals who perform medicare qualified government employment by virtue of service described in section 410(a)(5) of this title are fully informed with respect to (1) their eligibility or potential eligibility for hospital insurance benefits (based on such employment) under part A of subchapter XVIII of this chapter, (2) the requirements for and conditions of such eligibility, and (3) the necessity of timely application as a con-

dition of entitlement under subsection (b)(2)(C) of this section, giving particular attention to individuals who apply for an annuity under chapter 83[1] of title 5 or under another similar Federal retirement program, and whose eligibility for such an annuity is or would be based on a disability.

(h) Waiver of waiting period for individuals with ALS

For purposes of applying this section in the case of an individual medically determined to have amyotrophic lateral sclerosis (ALS), the following special rules apply:

(1) Subsection (b) of this section shall be applied as if there were no requirement for any entitlement to benefits, or status, for a period longer than 1 month.

(2) The entitlement under such subsection shall begin with the first month (rather than twenty-fifth month) of entitlement or status.

(3) Subsection (f) of this section shall not be applied.

(i) Continuing eligibility of certain terminated individuals

For purposes of this section, each person whose monthly insurance benefit for any month is terminated or is otherwise not payable solely by reason of paragraph (1) or (7) of section 425(c)[2] of this title shall be treated as entitled to such benefit for such month.

(j) Certain uninsured individuals

For entitlement to hospital insurance benefits in the case of certain uninsured individuals, see section 426a of this title.

(Aug. 14, 1935, ch. 531, title II, §226, as added Pub. L. 89–97, title I, §101, July 30, 1965, 79 Stat. 290; amended Pub. L. 90–248, title I, §129(c)(1), Jan. 2, 1968, 81 Stat. 847; Pub. L. 92–603, title II, §§201(b), 299I, Oct. 30, 1972, 86 Stat. 1371, 1463; Pub. L. 93–58, §3, July 6, 1973, 87 Stat. 142; Pub. L. 93–233, §18(f), Dec. 31, 1973, 87 Stat. 969; Pub. L. 93–445, title III, §305, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 95–216, title III, §§332(a)(3), 334(d)(4)(B), Dec. 20, 1977, 91 Stat. 1543, 1546; Pub. L. 95–292, §§1(b), 3, June 13, 1978, 92 Stat. 308, 315; Pub. L. 96–265, title I, §§103(a)(1), (b), 104(a), June 9, 1980, 94 Stat. 444; Pub. L. 96–473, §2(a), Oct. 19, 1980, 94 Stat. 2263; Pub. L. 96–499, title IX, §930(q), Dec. 5, 1980, 94 Stat. 2633; Pub. L. 97–35, title XXII, §2203(e), Aug. 13, 1981, 95 Stat. 837; Pub. L. 97–248, title II, §278(b)(2)(A), (B), (4), Sept. 3, 1982, 96 Stat. 560, 561; Pub. L. 98–21, title I, §131(a)(3)(H), (b)(3)(G), title III, §309(q)(1), Apr. 20, 1983, 97 Stat. 93, 117; Pub. L. 98–369, div. B, title VI, §2663(a)(17), July 18, 1984, 98 Stat. 1165; Pub. L. 99–272, title XIII, §13205(b)(2)(A), (C)(ii), Apr. 7, 1986, 100 Stat. 317; Pub. L. 100–203, title IV, §4033(a), formerly §4033(a)(1), title IX, §9010(e)(3), Dec. 22, 1987, 101 Stat. 1330–77, 1330–294, renumbered Pub. L. 100–360, title IV, §411(e)(2), July 1, 1988, 102 Stat. 775; Pub. L. 100–360, title IV, §411(n)(1), July 1, 1988, 102 Stat. 807; Pub. L. 100–485, title VI, §608(f)(5), Oct. 13, 1988, 102 Stat. 2424; Pub. L. 101–508, title V, §5103(c)(2)(C), Nov. 5, 1990, 104 Stat. 1388–252; Pub. L. 103–296, title II, §201(a)(3)(D)(i), Aug. 15, 1994, 108 Stat. 1497; Pub. L. 105–33, title IV, §4002(f)(1), Aug. 5, 1997, 111 Stat. 329; Pub. L. 106–170, title II, §202(a), Dec. 17, 1999, 113 Stat. 1894; Pub. L. 106–554, §1(a)(6) [title I, §115(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–474; Pub. L. 108–173, title I, §101(e)(1), Dec. 8, 2003, 117 Stat. 2150; Pub. L. 108–203, title IV, §418(b)(4)(B)(vii), Mar. 2, 2004, 118 Stat. 533.)

[1] So in original. Probably should be ''subchapter III of chapter 83''.

[2] See References in Text note below.

REFERENCES IN TEXT

Parts A and E of subchapter XVIII of this chapter, referred to in text, are classified to section 1395c et seq. and 1395x et seq., respectively, of this title.

Section 212 of Public Law 93–66, referred to in subsec. (e)(1)(B), is section 212 of Pub. L. 93–66 which is set out as a note under section 1382 of this title.

Section 425(c) of this title, referred to in subsec. (i), was repealed by Pub. L. 104–121, title I, §105(a)(4), Mar. 29, 1996, 110 Stat. 853.

AMENDMENTS

2004—Subsec. (e)(1)(A)(i). Pub. L. 108–203 substituted ''402(f)(4)'' for ''402(f)(5)''.

2003—Subsec. (c)(1). Pub. L. 108–173 substituted ''part E'' for ''part D''.

2000—Subsecs. (h), (j). Pub. L. 106–554 added subsec. (h) and redesignated former subsec. (h) as (j) and transferred such subsec. to appear at end of section.

1999—Subsec. (b). Pub. L. 106–170 substituted ''78'' for ''24'' in penultimate sentence.

1997—Subsec. (c)(1). Pub. L. 105–33 substituted ''part D'' for ''part C''.

1994—Subsec. (i). Pub. L. 103–296 added subsec. (i).

1990—Subsec. (e)(1). Pub. L. 101–508 designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

1988—Subsec. (a). Pub. L. 100–485 substituted ''condition specified in paragraph (2)'' for ''condition specified in paragraph (1)'' in concluding provisions.

Subsec. (b). Pub. L. 100–360, §411(n)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''In determining when an individual's entitlement or status terminates for purposes of the preceding sentence, the second sentence of section 423(a) of this title shall be applied as though the term '36 months' (in such second sentence) read '15 months'.''

1987—Subsec. (b). Pub. L. 100–203, §9010(e)(3), inserted sentence at end which related to determining when an individual's entitlement or status terminates for purposes of preceding sentence.

Subsec. (f). Pub. L. 100–203, §4033(a), inserted before period at end '', unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period''.

1986—Subsec. (a)(2)(C)(i). Pub. L. 99–272, §13205(b)(2)(A) substituted ''medicare qualified government employment'' for ''medicare qualified Federal employment''.

Subsec. (b)(2)(C)(ii)(I). Pub. L. 99–272, §13205(b)(2)(A), substituted ''medicare qualified government employment'' for ''medicare qualified Federal employment''.

Subsec. (g). Pub. L. 99–272, §13205(b)(2)(C)(ii), substituted ''medicare qualified government employment by virtue of service described in section 410(a)(5) of this title'' for ''medicare qualified Federal employment''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''part A'' for ''part (A)'' in provisions following par. (2)(C).

1983—Subsec. (e)(1)(A). Pub. L. 98–21, §131(a)(3)(H), (b)(3)(G), substituted reference to section 402(e)(4), (f)(5) of this title for reference to section 405(e)(5), (f)(6) of this title.

Subsec. (e)(3). Pub. L. 98–21, §309(q)(1), amended par. (3) generally, inserting provisions relating to any disabled widower and striking out provision that a disabled widow, upon furnishing proof of such disability

prior to July 1, 1974, under such procedures as the Secretary prescribed, would be deemed to have been entitled to such widow's benefits as of the time she would have been entitled to such widow's benefits if she had filed a timely application therefor.

1982—Subsec. (a)(2). Pub. L. 97–248, § 278(b)(2)(A), redesignated existing provisions as subpar. (A), struck out ''or is a qualified railroad retirement beneficiary,'' after ''of this chapter,'', and added subpars. (B) and (C).

Subsec. (b). Pub. L. 97–248, § 278(b)(2)(B), in par. (2)(B) inserted a comma after ''24 months'' and ''or'' after ''title 45,'', added par. (2)(C), and in provisions following par. (2) inserted provision defining ''twenty-fifth month of his entitlement'' and ''notice of termination of such entitlement'' with regards to applying first sentence of this subsection to individuals described in par. (2)(C).

Subsecs. (g), (h). Pub. L. 97–248, § 278(b)(4), added subsec. (g) and redesignated former subsec. (g) as (h).

1981—Subsec. (a)(2). Pub. L. 97–35 substituted ''would be entitled'' for ''or would be entitled'' and inserted '', or would be entitled to such benefits but for the failure of another individual, who meets all the criteria of entitlement to monthly insurance benefits, to meet such criteria throughout a month,''.

1980—Subsec. (a)(2). Pub. L. 96–473 inserted provisions relating to persons who would be entitled to benefits but for enumerated exceptions.

Subsec. (b). Pub. L. 96–265, § 104(a), in provisions following par. (2), inserted ''(subject to the last sentence of this subsection)'', and inserted provision that, for purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 422(c)(4)(A) of this title, and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under this subchapter.

Pub. L. 96–265, § 103(a)(1), substituted ''24 calendar months'' and ''24 months'' for ''24 consecutive calendar months'' and ''24 consecutive months'', respectively, in par. (2) and, in provisions following par. (2), substituted ''the twenty-fifth month'' for ''the twenty-fifth consecutive month''.

Subsec. (c)(1). Pub. L. 96–499 substituted ''and home health services'' for ''and post-hospital home health services'' and struck out ''or post-hospital home health services'' before ''unless the discharge''.

Subsecs. (f), (g). Pub. L. 96–265, § 103(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1978—Subsec. (a). Pub. L. 95–292, § 3(a), substituted ''condition specified in paragraph (1), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2)'' for ''conditions specified in subparagraph (B), beginning with the first month after June 1966 for which he meets the conditions specified in subparagraphs (A) and (B)''.

Subsec. (e). Pub. L. 95–292, §§ 1(b)(1), (2), 3(b), redesignated subsec. (h) as (e) and, in subsec. (e) as so redesignated, corrected a technical error resulting from the 1973 amendment of pars. (2) and (3) by Pub. L. 93–233 under which a reference to subsec. (b) of this section had been inserted without the required parentheses. Former subsec. (e), relating to Medicare eligibility of persons medically determined to have chronic renal disease requiring hemodialysis or renal transplantation, was struck out. See section 426–1 of this title.

Subsec. (f). Pub. L. 95–292, § 1(b)(1), (2), redesignated subsec. (i) as (f). Former subsec. (f), relating to the duration of Medicare coverage of persons medically determined to have chronic renal disease requiring hemodialysis or renal transplantation, was struck out. See section 426–1 of this title.

Subsec. (g). Pub. L. 95–292, § 1(b)(1), struck out subsec. (g) which related to reimbursement for kidney transplant and kidney treatment. See section 1395rr of this title.

Subsecs. (h), (i). Pub. L. 95–292, § 1(b)(2), redesignated subsecs. (h) and (i) as (e) and (f), respectively.

1977—Subsec. (h)(1)(B). Pub. L. 95–216, § 334(d)(4)(B), substituted ''subparagraph (F) of section 402(f)(1)'' for ''subparagraph (G) of section 402(f)(1)''.

Subsec. (h)(4). Pub. L. 95–216, § 332(a)(3), added par. (4).

1974—Subsec. (b)(2). Pub. L. 93–445, § 305(a), substituted ''section 7(d) of the Railroad Retirement Act of 1974'' for ''section 22 of the Railroad Retirement Act of 1937''.

Subsec. (d). Pub. L. 93–445, § 305(b), substituted ''section 7(d) of the Railroad Retirement Act of 1974'' for ''section 21 or 22 of the Railroad Retirement Act of 1937'', in two places.

Subsec. (e). Pub. L. 93–445, § 305(c), substituted ''Railroad Retirement Act of 1974'' for ''Railroad Retirement Act of 1937'', wherever appearing.

1973—Subsec. (a). Pub. L. 93–233, § 18(f)(1)(A), redesignated subsec. (a)(1) as subsec. (a).

Subsec. (a)(1), (2). Pub. L. 93–233, § 18(f)(1)(B), redesignated cls. (A) and (B) as (1) and (2), respectively.

Subsec. (e)(2). Pub. L. 93–58, inserted in: item (2)(A) ''or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1937) after December 31, 1936, were included in the term 'employment' as defined in this chapter'' after ''(as such terms are defined in section 414 of this title)''; item (2)(B) ''or an annuity under the Railroad Retirement Act of 1937'' after ''this subchapter''; item (2)(C) ''Or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1937) after December 31, 1936, were included in the term 'employment' as defined in this chapter'' after ''fully or currently insured''; and item (2)(D) ''or annuity under the Railroad Retirement Act of 1937'' after ''this subchapter''.

Subsec. (h). Pub. L. 93–233, § 18(f)(1)(C), (2)–(4), redesignated as subsec. (h) provisions originally enacted as subsec. (e) by section 201(b)(5) of Pub. L. 92–603 and redesignated as subsec. (f) by section 299I of Pub. L. 92–603, and in par. (1)(A) substituted '', 402(e)(5),'' for ''and 402(e)(5) of this title, and the term 'age 62' in sections'', in par. (1)(B) substituted ''and the phrase 'before he attained age 60' in the matter following subparagraph (G) of section 402(f)(1) of this title shall each'' for ''shall'', and in pars. (2) and (3) substituted ''(b)'' for ''(a)(2)'', respectively.

Subsec. (i). Pub. L. 93–233, § 18(f)(1)(C), redesignated as subsec. (i) provisions originally enacted as subsec. (d) by section 101 of Pub. L. 89–97 and redesignated as subsec. (f) by section 201(b)(5) of Pub. L. 92–603.

1972—Subsec. (a). Pub. L. 92–603, § 201(b)(1), incorporated provisions of former subsec. (a) and subsec. (a)(1), and redesignated pars. (1) and (2) as subpars. (A) and (B).

Subsec. (b). Pub. L. 92–603, § 201(b)(1), added subsec. (b). Former subsec. (b) redesignated subsec. (c).

Subsec. (c)(1). Pub. L. 92–603, § 201(b)(2), (5), redesignated subsec. (b)(1) as subsec. (c)(1) and, in subsec. (c)(1) as so redesignated, inserted reference to entitlement to hospital insurance benefits pursuant to subsec. (b) of this section. Former subsec. (c) redesignated subsec. (d).

Subsec. (c)(2). Pub. L. 92–603, § 201(b)(3), (5), redesignated subsec. (b)(2) as subsec. (c)(2) and inserted reference to section 423 of this title. Former subsec. (c) redesignated subsec. (d).

Subsec. (d). Pub. L. 92–603, § 201(b)(4), (5), redesignated former subsec. (c) as subsec. (d) and inserted reference to section 22 of the Railroad Retirement Act of 1937. Former subsec. (d) redesignated subsec. (i).

Subsecs. (e) to (h). Pub. L. 92–603, §§ 201(b)(5), 299I, added subsecs. (e) to (h). See 1973 Amendment note above.

Subsec. (i). Pub. L. 92–603, § 201(b)(5), redesignated former subsec. (d) as subsec. (i). See 1973 Amendment note above.

1968—Subsec. (b)(1). Pub. L. 90–248 struck out outpatient hospital diagnostic services from services for which hospital insurance benefits are payable.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 applicable with respect to applications for benefits under this subchapter filed on or after the first day of the first month that begins after Mar. 2, 2004, see section 418(c) of Pub. L. 108–203, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title I, §115(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–474, provided that: ''The amendments made by this section [amending this section and section 1395p of this title] shall apply to benefits for months beginning July 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title II, §202(b), Dec. 17, 1999, 113 Stat. 1894, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective on and after October 1, 2000.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 applicable with respect to benefits based on disability (as defined in section 425(c)(9) of this title) which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(a)(3)(E)(i) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment; Sunset Provision note under section 425 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to items and services furnished after December 1990, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 608(f)(5) of Pub. L. 100–485 provided that the amendment made by such section 608(f)(5) is effective as of the date of enactment of Pub. L. 95–292, which was approved June 13, 1978.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4033(b), formerly section 4033(a)(2) of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, §411(e)(2), July 1, 1988, 102 Stat. 775, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to months beginning after the end of the 60-day period beginning on the date of enactment of this Act [Dec. 22, 1987].

''(2) The amendment made by subsection (a) shall not apply so as to include (for the purposes described in section 226(f) of the Social Security Act [subsec. (f) of this section]) monthly benefits paid for any month in a previous period (described in that section) that terminated before the end of the 60-day period described in paragraph (1).''

Amendment by section 9010(e)(3) of Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to benefits under specific provisions of sections 402 and 423 of this title for any month after December 1987, and individuals entitled to benefits payable under specific provisions of sections 402 and 423 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99–272, set out as a note under section 410 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 131(a)(3)(H), (b)(3)(G) of Pub. L. 98–21 effective with respect to monthly benefits payable under this subchapter for months after December 1983, and in the case of an individual who was not entitled to a monthly benefit of the type involved under this subchapter for December 1983, no benefit shall be paid under this subchapter by reason of such amendments unless proper application for such benefit is made, see section 131(d) of Pub. L. 98–21 set out as a note under section 402 of this title.

Amendment by section 309(q)(1) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Pub. L. 97–448, title III, §309(c)(1), Jan. 12, 1983, 96 Stat. 2410, provided that: ''Any amendment to the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248, Sept. 3, 1982, 96 Stat. 324] made by this section [amending sections 1395x, 1395cc, and 1396a of this title and amending provisions set out as notes under this section and sections 1320c, 1395b–1, 1395f, 1395u, 1395ww, 1395xx, and 1396*o* of this title] shall be effective as if it had been originally included in the provision of such Act to which such amendment relates.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITIONAL PROVISIONS

Section 278(c)(2), (d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, §309(a)(10), (11), Jan. 12, 1983, 96 Stat. 2408, provided that:

''(c) EFFECTIVE DATES.—

''(2) MEDICARE COVERAGE.—

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section and sections 410, 426–1, and 1395c of this title] are effective on and after January 1, 1983, and the amendments made by paragraph (2) of that subsection [amending this section and section 426–1 of this title] apply to remuneration (for medicare qualified Federal employment) paid after December 31, 1982.

''(B) TREATMENT OF CURRENT DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act [section 1395c et seq. of this title] pursuant to the amendments made by subsection (b) or the provisions of subsection (d), no individual may be considered to be under a disability for any period before January 1, 1983.

''(d) TRANSITIONAL PROVISIONS.—

''(1) IN GENERAL.—For purposes of sections 226, 226A, and 1811 of the Social Security Act [this section and sections 426–1 and 1395c of this title], in the case of any individual who performs service both during January 1983, and before January 1, 1983, which constitutes medicare qualified Federal employment (as defined in section 210(p) of such Act [section 410(p) of this title]), the individual's medicare qualified Federal employment (as so defined) performed before January 1, 1983, for which remuneration was paid before such date, shall be considered to be 'employment' (as defined for purposes of title II of such Act

[this subchapter]), but only for the purpose of providing the individual (or another person) with entitlement to hospital insurance benefits under part A of title XVIII of such Act [section 1395c et seq. of this title].

''(2) APPROPRIATIONS.—There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund from time to time such sums as the Secretary of Health and Human Services deems necessary for any fiscal year, on account of—

''(A) payments made or to be made during such fiscal year from such Trust Fund with respect to individuals who are entitled to benefits under title XVIII of the Social Security Act [section 1395 et seq. of this title] solely by reason of paragraph (1) of this subsection,

''(B) the additional administrative expenses resulting or expected to result therefrom, and

''(C) any loss in interest to such Trust Fund resulting from the payment of those amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if this subsection had not been enacted.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2203(f)(3) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, § 128(c)(2), Sept. 3, 1982, 96 Stat. 367, provided that: ''The amendments made by subsection (e) of this section [amending this section] shall apply only to individuals aged 65 and over whose insured spouse attains age 62 after August 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 2(d) of Pub. L. 96–473 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395c of this title] shall be effective after the second month beginning after the date on which this Act is enacted [Oct. 19, 1980].''

Section 103(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 1395c and 1395p of this title and section 231f of Title 45, Railroads] shall apply with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980].''

Section 104(b) of Pub. L. 96–265 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980], and shall apply with respect to any individual whose disability has not been determined to have ceased prior to such first day.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 6 of Pub. L. 95–292 provided that: ''The amendments made by the preceding sections of this Act [enacting sections 426–1 and 1395rr of this title and amending this section and sections 1395c, 1395i, 1395*l*, 1395t, 1395x, 1395cc, and 1395mm of this title] shall become effective with respect to services, supplies, and equipment furnished after the third calendar month which begins after the date of the enactment of this Act [June 13, 1978], except that those amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after the last day of the twelfth month following the month of the enactment of this Act [June 1978], and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 332(a)(3) of Pub. L. 95–216 effective with respect to monthly insurance benefits under this subchapter to which an individual becomes entitled on the basis of an application filed on or after Jan. 1, 1978, see section 332(b) of Pub. L. 95–216, set out as a note under section 402 of this title.

Amendment by section 334(d)(4)(B) of Pub. L. 95–216 applicable with respect to monthly insurance benefits payable under this subchapter for months beginning with December 1977, on the basis of applications filed in or after December 1977, see section 334(f) of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 4(a) of Pub. L. 93–58 provided that: ''The provisions of this Act [amending this section and sections 228c and 228e of Title 45, Railroads], except the provisions of section 1, shall be effective as of the date the corresponding provisions of Public Law 92–603 are effective as follows: clause (xi) [section 228c(e)(xi) of Title 45] effective with respect to services provided on and after July 1, 1973. The provisions of clauses (xi) and (xii), which are added by section 1 of this Act, shall be effective as follows: clause (xi) [section 228c(e)(xi) of Title 45] shall be effective with respect to calendar years after 1971 for annuities accruing after December 1972; and clause (xii) [section 228c(e)(xii) of Title 45 shall be effective as of the date the delayed retirement provision of Public Law 92–603 is effective [section 402(w) of this title applicable with respect to old-age insurance benefits payable under this subchapter for months beginning after 1972].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 299I of Pub. L. 92–603 provided that the amendment made by that section is effective with respect to services provided on and after July 1, 1973.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

APPLICABILITY OF PUB. L. 96–473 TO APPLICATIONS FOR HOSPITAL INSURANCE BENEFITS

Section 2(c) of Pub. L. 96–473 provided that: ''For purposes of section 226 of such Act [this section] as amended by subsection (a) of this section, an individual who filed an application for monthly insurance benefits under section 202 of such Act [section 402 of this title] prior to the effective date of the amendment made by subsection (a) [see section 2(c) of Pub. L. 96–473, set out above as an Effective Date of 1980 Amendment note] shall be deemed to have filed an application for hospital insurance benefits under part A of title XVIII of such Act [part A of subchapter XVIII of this chapter] at the time he applied for such benefits under section 202 regardless of the continuing status or effect of the application for benefits under section 202, if he would have been entitled to benefits under that section had such application remained in effect.''

GAO REPORT

Pub. L. 106–170, title II, § 202(c), Dec. 17, 1999, 113 Stat. 1894, provided that: ''Not later than 5 years after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall submit a report to the Congress that—

''(1) examines the effectiveness and cost of the amendment made by subsection (a) [amending this section];

''(2) examines the necessity and effectiveness of providing continuation of medicare coverage under section 226(b) of the Social Security Act (42 U.S.C.

426(b)) to individuals whose annual income exceeds the contribution and benefit base (as determined under section 230 of such Act (42 U.S.C. 430));

''(3) examines the viability of providing the continuation of medicare coverage under such section 226(b) based on a sliding scale premium for individuals whose annual income exceeds such contribution and benefit base;

''(4) examines the viability of providing the continuation of medicare coverage under such section 226(b) based on a premium buy-in by the beneficiary's employer in lieu of coverage under private health insurance;

''(5) examines the interrelation between the use of the continuation of medicare coverage under such section 226(b) and the use of private health insurance coverage by individuals during the extended period; and

''(6) recommends such legislative or administrative changes relating to the continuation of medicare coverage for recipients of social security disability benefits as the Comptroller General determines are appropriate.''

TIME IN WHICH TO FURNISH PROOF OF DISABILITY FOR HOSPITAL BENEFITS

Section 309(q)(2) of Pub. L. 98–21 provided that: ''For purposes of determining entitlement to hospital insurance benefits under section 226(e)(3) of such Act [subsec. (e)(3) of this section], as amended by paragraph (1), an individual becoming entitled to such hospital insurance benefits as a result of the amendment made by such paragraph shall, upon furnishing proof of his or her disability within twelve months after the month in which this Act is enacted [April 1983], under such procedures as the Secretary of Health and Human Services may prescribe, be deemed to have been entitled to the widow's or widower's benefits referred to in such section 226(e)(3), as so amended, as of the time such individual would have been entitled to such widow's or widower's benefits if he or she had filed a timely application therefor.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

ADOPTED CHILD'S REENLISTMENT TO ANNUITY

Section 4(b) of Pub. L. 93–58 provided that: ''Any child (1) whose entitlement to an annuity under section 5(c) of the Railroad Retirement Act [section 228e(c) of Title 45, Railroads] was terminated by reason of his adoption prior to the enactment of this Act [July 6, 1973], and (2) who, except for such adoption, would be entitled to an annuity under such section for a month after the month in which this Act is enacted [July 1973], may, upon filing application for an annuity under the Railroad Retirement Act [section 228a et seq. of Title 45] after the date of enactment of this Act [July 6, 1973], become reentitled to such annuity; except that no child shall, by reason of the enactment of this Act [amending this section and sections 228c, 228e of Title 45] become reentitled to such annuity for any month prior to the effective date of the relevant amendments made by this Act to section 5(*l*)(1)(ii) of the Railroad Retirement Act [section 228e(*l*)(1)(ii)].''

§ 426–1. End stage renal disease program

(a) Entitlement to benefits

Notwithstanding any provision to the contrary in section 426 of this title or subchapter XVIII of this chapter, every individual who—

(1)(A) is fully or currently insured (as such terms are defined in section 414 of this title), or would be fully or currently insured if (i) his service as an employee (as defined in the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]) after December 31, 1936, were included within the meaning of the term ''employment'' for purposes of this subchapter, and (ii) his medicare qualified government employment (as defined in section 410(p) of this title) were included within the meaning of the term ''employment'' for purposes of this subchapter;

(B)(i) is entitled to monthly insurance benefits under this subchapter, (ii) is entitled to an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], or (iii) would be entitled to a monthly insurance benefit under this subchapter if medicare qualified government employment (as defined in section 410(p) of this title) were included within the meaning of the term ''employment'' for purposes of this subchapter; or

(C) is the spouse or dependent child (as defined in regulations) of an individual described in subparagraph (A) or (B);

(2) is medically determined to have end stage renal disease; and

(3) has filed an application for benefits under this section;

shall, in accordance with the succeeding provisions of this section, be entitled to benefits under part A and eligible to enroll under part B of subchapter XVIII of this chapter, subject to the deductible, premium, and coinsurance provisions of that subchapter.

(b) Duration of period of entitlement

Subject to subsection (c) of this section, entitlement of an individual to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter by reasons of this section on the basis of end stage renal disease—

(1) shall begin with—

(A) the third month after the month in which a regular course of renal dialysis is initiated, or

(B) the month in which such individual receives a kidney transplant, or (if earlier) the first month in which such individual is admitted as an inpatient to an institution which is a hospital meeting the requirements of section 1395x(e) of this title (and such additional requirements as the Secretary may prescribe under section 1395rr(b) of this title for such institutions) in preparation for or anticipation of kidney transplantation, but only if such transplantation occurs in that month or in either of the next two months,

whichever first occurs (but no earlier than one year preceding the month of the filing of an application for benefits under this section); and

(2) shall end, in the case of an individual who receives a kidney transplant, with the thirty-sixth month after the month in which such individual receives such transplant or, in the case of an individual who has not received a kidney transplant and no longer requires a regular course of dialysis, with the twelfth month after the month in which such course of dialysis is terminated.

(c) Individuals participating in self-care dialysis training programs; kidney transplant failures; resumption of previously terminated regular course of dialysis

Notwithstanding the provisions of subsection (b) of this section—

(1) in the case of any individual who participates in a self-care dialysis training program prior to the third month after the month in which such individual initiates a regular course of renal dialysis in a renal dialysis facility or provider of services meeting the requirements of section 1395rr(b) of this title, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is initiated;

(2) in any case in which a kidney transplant fails (whether during or after the thirty-six-month period specified in subsection (b)(2) of this section) and as a result the individual who received such transplant initiates or resumes a regular course of renal dialysis, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such course is initiated or resumed; and

(3) in any case in which a regular course of renal dialysis is resumed subsequent to the termination of an earlier course, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is resumed.

(c)[1] Continuing eligibility of certain terminated individuals

For purposes of this section, each person whose monthly insurance benefit for any month is terminated or is otherwise not payable solely by reason of paragraph (1) or (7) of section 425(c)[2] of this title shall be treated as entitled to such benefit for such month.

(Aug. 14, 1935, ch. 531, title II, § 226A, as added Pub. L. 95–292, § 1(a), June 13, 1978, 92 Stat. 307; amended Pub. L. 97–248, title II, § 278(b)(2)(C), Sept. 3, 1982, 96 Stat. 561; Pub. L. 97–448, title III, § 309(b)(1), Jan. 12, 1983, 96 Stat. 2408; Pub. L. 99–272, title XIII, § 13205(b)(2)(B), Apr. 7, 1986, 100 Stat. 317; Pub. L. 103–296, title II, § 201(a)(3)(D)(ii), Aug. 15, 1994, 108 Stat. 1497.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1)(A), (B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Parts A and B of subchapter XVIII of this chapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 425(c) of this title, referred to in subsec. (c), was repealed by Pub. L. 104–121, title I, § 105(a)(4), Mar. 29, 1996, 110 Stat. 853.

[1] So in original. Probably should be ''(d)''.

[2] See References in Text note below.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–296 added subsec. (c) relating to continuing eligibility of certain terminated individuals.

1986—Subsec. (a)(1)(A)(ii), (B)(iii). Pub. L. 99–272 substituted ''medicare qualified government employment'' for ''medicare qualified Federal employment''.

1983—Subsec. (a)(1)(B)(iii). Pub. L. 97–448 substituted ''section 410(p)'' for ''410(p)'' and struck out ''after December 31, 1982,''.

1982—Subsec. (a)(1)(A). Pub. L. 97–248 designated existing provisions as cl. (i), substituted ''within the meaning of the term 'employment' for purposes of this subchapter'' for ''in the term 'employment' as defined in this chapter'', and added cl. (ii).

Subsec. (a)(1)(B). Pub. L. 97–248 designated ''is entitled to monthly insurance benefits under this subchapter'' as cl. (i), substituted ''(ii) is entitled to an annuity under the Railroad Retirement Act of 1974'' for ''or an annuity under the Railroad Retirement Act of 1974'', and added cl. (iii).

Subsec. (a)(1)(C), (D). Pub. L. 97–248 combined former subpars. (C) and (D) into subpar. (C) and substituted a reference to individuals described in subpar. (A) or (B) for a more detailed definition of such individuals.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 applicable with respect to benefits based on disability (as defined in section 425(c)(9) of this title) which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(a)(3)(E)(i) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment; Sunset Provision note under section 425 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99–272, set out as a note under section 410 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 309(c)(2) of Pub. L. 97–448 provided that: ''Any amendment to the Social Security Act [this chapter] made by this section [amending this section and sections 410, 1320c–2, 1320c–3, 1395d, 1395f, 1395r, 1395y, 1395cc, 1395mm, 1395ww, 1396b, 1396n, 1396*o*, and 1396p of this title] shall be effective as if it had been originally included as a part of that provision of the Social Security Act to which it relates, as such provision of such Act was amended or added by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248, Sept. 3, 1982, 96 Stat. 324].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective on and after Jan. 1, 1983, see section 278(c)(2)(A) of Pub. L. 97–248, set out as a note under section 426 of this title.

EFFECTIVE DATE

Section effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

§ 426a. Transitional provision on eligibility of uninsured individuals for hospital insurance benefits

(a) Entitlement to benefits

Anyone who—

(1) has attained the age of 65,

(2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage (as defined in this subchapter or section 228e(*l*) of title 45), whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age,

(3) is not, and upon filing application for monthly insurance benefits under section 402 of this title would not be, entitled to hospital insurance benefits under section 426 of this title, and is not certifiable as a qualified railroad retirement beneficiary under section 228s–2 of title 45,

(4) is a resident of the United States (as defined in section 410(i) of this title), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as so defined) continuously during the 5 years immediately preceding the month in which he files application under this section, and

(5) has filed an application under this section in such manner and in accordance with such other requirements as may be prescribed in regulations of the Secretary,

shall (subject to the limitations in this section) be deemed, solely for purposes of section 426 of this title, to be entitled to monthly insurance benefits under such section 402 for each month, beginning with the first month in which he meets the requirements of this subsection and ending with the month in which he dies, or, if earlier, the month before the month in which he becomes (or upon filing application for monthly insurance benefits under section 402 of this title would become) entitled to hospital insurance benefits under section 426 of this title or becomes certifiable as a qualified railroad retirement beneficiary. An individual who would have met the preceding requirements of this subsection in any month had he filed application under paragraph (5) hereof before the end of such month shall be deemed to have met such requirements in such month if he files such application before the end of the twelfth month following such month. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), (3), and (4) shall be accepted as an application for purposes of this section.

(b) Persons ineligible

The provisions of subsection (a) of this section shall not apply to any individual who—

(1) is, at the beginning of the first month in which he meets the requirements of subsection (a), a member of any organization referred to in section 410(a)(17) of this title,

(2) has, prior to the beginning of such first month, been convicted of any offense listed in section 402(u) of this title, or

(3)(A) at the beginning of such first month is covered by an enrollment in a health benefits plan under chapter 89 of title 5,

(B) was so covered on February 16, 1965, or

(C) could have been so covered for such first month if he or some other person had availed himself of opportunities to enroll in a health benefits plan under such chapter and to continue such enrollment (but this subparagraph shall not apply unless he or such other person was a Federal employee at any time after February 15, 1965).

Paragraph (3) shall not apply in the case of any individual for the month (or any month thereafter) in which coverage under such a health benefits plan ceases (or would have ceased if he had had such coverage) by reason of his or some other person's separation from Federal service, if he or such other person was not (or would not have been) eligible to continue such coverage after such separation.

(c) Authorization of appropriations

There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1395i of this title) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under part A of subchapter XVIII of this chapter with respect to individuals who are entitled to hospital insurance benefits under section 426 of this title solely by reason of this section,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss in interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the preceding subsections of this section had not been enacted.

(Pub. L. 89–97, title I, § 103, July 30, 1965, 79 Stat. 333; Pub. L. 90–248, title I, § 139, title IV, § 403(h), Jan. 2, 1968, 81 Stat. 854, 932.)

References in Text

Sections 228e(*l*) and 228s–2 of title 45, referred to in subsec. (a)(2), (3), are references to sections 5(*l*) and 21 of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305. That Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Sections 228e and 228s–2 of title 45 are covered by sections 231e and 231f of Title 45, respectively.

Part A of subchapter XVIII of this chapter, referred to in subsec. (c)(1), is classified to section 1395c et seq. of this title.

Codification

Section was not enacted as part of the Social Security Act which comprises this chapter.

Amendments

1968—Subsec. (a)(2)(B). Pub. L. 90–248, § 139, substituted "1966" for "1965".

Subsec. (b)(3)(A), (C). Pub. L. 90–248, § 403(h)(1), (2), substituted "chapter 89 of title 5" and "such chapter" for "the Federal Employees Health Benefits Act of 1959" and "such Act" in subpars. (A) and (C), respectively.

§ 427. Transitional insured status for purposes of old-age and survivors benefits

(a) Determination of entitlement to benefits under section 402(a) to (c) of this title

In the case of any individual who attains the age of 72 before 1969 but who does not meet the requirements of section 414(a) of this title, the 6 quarters of coverage referred to in paragraph (1) of section 414(a) of this title shall, instead, be 3 quarters of coverage for purposes of determining entitlement of such individual to benefits under section 402(a) of this title, and of the spouse to benefits under section 402(b) or section 402(c) of this title, but, in the case of such spouse, only if he or she attains the age of 72 before 1969 and only with respect to spouse's insurance benefits under section 402(b) or section 402(c) of this title for and after the month in which he or she attains such age. For each month before the month in which any such individual meets the requirements of section 414(a) of this title, the amount of the old-age insurance benefit shall, notwithstanding the provisions of section 402(a) of this title, be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title and the amount of the spouse's insurance benefit of the spouse shall, notwithstanding the provisions of section 402(b) or section 402(c) of this title, be the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

(b) Determination of entitlement to surviving spouse's benefits under section 402(e) or (f) of this title

In the case of any individual who has died, who does not meet the requirements of section 414(a) of this title, and whose surviving spouse attains age 72 before 1969, the 6 quarters of coverage referred to in paragraph (3) of section 414(a) of this title and in paragraph (1) thereof shall, for purposes of determining the entitlement to surviving spouse's insurance benefits under section 402(e) or section 402(f) of this title, instead be—

(1) 3 quarters of coverage if such surviving spouse attains the age of 72 in or before 1966,

(2) 4 quarters of coverage if such surviving spouse attains the age of 72 in 1967, or

(3) 5 quarters of coverage if such surviving spouse attains the age of 72 in 1968.

The amount of the surviving spouse's insurance benefit for each month shall, notwithstanding the provisions of section 402(e) or section 402(f) of this title (and section 402(m)[1] of this title), be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Deceased individual entitled to benefits by reason of subsection (a) deemed to meet requirements of subsection (b)

In the case of any individual who becomes, or upon filing application therefor would become, entitled to benefits under section 402(a) of this title by reason of the application of subsection (a) of this section, who dies, and whose surviving spouse attains the age of 72 before 1969, such deceased individual shall be deemed to meet the requirements of subsection (b) of this section for purposes of determining entitlement of such surviving spouse to surviving spouse's insurance benefits under section 402(e) or section 402(f) of this title.

(Aug. 14, 1935, ch. 531, title II, § 227, as added Pub. L. 89–97, title III, § 309(a), July 30, 1965, 79 Stat. 379; amended Pub. L. 90–248, title I, § 102(a), Jan. 2, 1968, 81 Stat. 827; Pub. L. 91–172, title X, § 1003(a), Dec. 30, 1969, 83 Stat. 740; Pub. L. 92–5, title II, § 202(a), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, § 201(g)(1), July 1, 1972, 86 Stat. 411; Pub. L. 92–603, title I, § 104 (e), (f), Oct. 30, 1972, 86 Stat. 1340; Pub. L. 93–233, § 2(b)(1), Dec. 31, 1973, 87 Stat. 952; Pub. L. 98–21, title III, § 304(a), (b), Apr. 20, 1983, 97 Stat. 112.)

REFERENCES IN TEXT

Section 402(m) of this title, referred to in subsec. (b), was repealed by Pub. L. 97–35, title XXII, § 2201(b)(10), Aug. 13, 1981, 95 Stat. 831.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–21, § 304(a), substituted ''spouse'' for ''wife'', ''spouse's'' for ''wife's'', and ''he or she'' for ''she'', wherever appearing, substituted ''the'' for ''his'' after ''402(a) of this title, and of'' and preceding ''spouse'' in two places and preceding ''old-age insurance'', and inserted ''or section 402(c)'' after ''section 402(b)'' wherever appearing.

Subsec. (b). Pub. L. 98–21, § 304(b), substituted ''surviving spouse'' for ''widow'' and ''surviving spouse's'' for ''widow's'' wherever appearing, substituted ''the'' for ''her'' after ''determining'' and ''The amount of'', and inserted ''or section 402(f)'' after ''section 402(e)'' wherever appearing.

Subsec. (c). Pub. L. 98–21, § 304(b)(1), (2), (4), substituted ''surviving spouse'' for ''widow'' wherever appearing and ''surviving spouse's'' for ''widow's'', and inserted ''or section 402(f)'' after ''section 402(e)''.

1973—Subsec. (a). Pub. L. 93–233, § 2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' and ''the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00''.

Subsec. (b). Pub. L. 93–233, § 2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00''.

1972—Subsec. (a). Pub. L. 92–336, § 201(g)(1)(A), substituted ''$58.00'' for ''$48.30'' and ''$29.00'' for ''$24.20''.

Subsec. (a)(1). Pub. L. 92–603, § 104(e), substituted ''paragraph (1) of section 414(a) of this title'' for ''so much of paragraph (1) of section 414(a) of this title as follows clause (C)''.

Subsec. (b). Pub. L. 92–336, § 201(g)(1)(B), substituted ''$58.00'' for ''$48.30''.

Subsec. (b)(1). Pub. L. 92–603, § 104(f), substituted ''paragraph (1) thereof'' for ''so much of paragraph (1) thereof as follows clause (C)''.

1971—Subsec. (a). Pub. L. 92–5, § 202(a)(1), substituted ''$48.30'' for ''$46'' and ''$24.20'' for ''$23''.

Subsec. (b). Pub. L. 92–5, § 202(a)(2), substituted ''$48.30'' for ''$46''.

1969—Subsec. (a). Pub. L. 91–172, § 1003(a)(1), substituted ''$46'' for ''$40'', and ''$23'' for ''$20''.

Subsec. (b). Pub. L. 91–172, § 1003(a)(2), substituted ''$46'' for ''$40''.

1968—Subsec. (a). Pub. L. 90–248, § 102(a)(1), substituted ''$40'' for ''$35'' and ''$20'' for ''$17.50''.

Subsec. (b). Pub. L. 90–248, § 102(a)(2), substituted ''$40'' for ''$35''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this sub-

[1] See References in Text note below.

chapter for months after April 1983, see section 310 of Pub. L. 98–21 set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 2(b)(1) of Pub. L. 93–233 provided that the amendment made by that section is effective June 1, 1974.

Amendment by Pub. L. 93–233 applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title, see section 2(c) of Pub. L. 93–233, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after December 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Amendment by Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after August 1972, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 202(c) of Pub. L. 92–5 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 1003(c) of Pub. L. 91–172 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1969.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 102(c) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.''

EFFECTIVE DATE

Section 309(b) of Pub. L. 89–97 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply in the case of monthly benefits under title II of the Social Security Act [this subchapter] for and after the second month following the month [July 1965] in which this Act is enacted on the basis of applications filed in or after the month in which this Act is enacted.''

REPEAL OF AMENDMENT OF SUBSECS. (a) AND (b) PRIOR TO EFFECTIVE DATE

Section 202(a)(4) of Pub. L. 92–336, title II, July 1, 1972, 86 Stat. 416, which, effective Jan. 1, 1975, substituted ''the larger of $58.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' and ''the larger of $29.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'', was repealed prior to its effective date by Pub. L. 93–233, § 2(b)(2), Dec. 31, 1973, 87 Stat. 952, applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title. See section 2(c) of Pub. L. 93–233, set out as an Effective Date of 1973 Amendment note under section 415 of this title.

§ 428. Benefits at age 72 for certain uninsured individuals

(a) Eligibility

Every individual who—

(1) has attained the age of 72,

(2)(A) attained such age before 1968, or (B)(i) attained such age after 1967 and before 1972, and (ii) has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he or she attained such age,

(3) is a resident of the United States (as defined in subsection (e) of this section), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 410(i) of this title) continuously during the 5 years immediately preceding the month in which he or she files application under this section, and

(4) has filed application for benefits under this section,

shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he or she becomes so entitled to such benefits and ending with the month preceding the month in which he or she dies. No application under this section which is filed by an individual more than 3 months before the first month in which he or she meets the requirements of paragraphs (1), (2), and (3) shall be accepted as an application for purposes of this section.

(b) Amount of benefits

The benefit amount to which an individual is entitled under this section for any month shall be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Reduction for government pension system benefits

(1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefit under a governmental pension system for which he or she is eligible for such month.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) the benefit amount as determined without regard to this subsection.

(3) In the case of a husband or wife both of whom are entitled to benefits under this section for any month, the benefit amount of each spouse, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the other spouse is eligible for such month, over (B) the benefit amount of such other spouse as determined without regard to this subsection.

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental pension system—

(A) such individual shall be deemed to have filed application for such benefits,

(B) to the extent that entitlement depends on an application by such individual's spouse, such spouse shall be deemed to have filed application, and

(C) to the extent that entitlement depends on such individual or his or her spouse having retired, such individual and his or her spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

(5) For purposes of this subsection, if any periodic benefit is payable on any basis other than a calendar month, the Commissioner of Social Security shall allocate the amount of such benefit to the appropriate calendar months.

(6) If, under the foregoing provisions of this section, the amount payable for any month would be less than $1, such amount shall be reduced to zero. In the case of a husband and wife both of whom are entitled to benefits under this section for the month, the preceding sentence shall be applied with respect to the aggregate amount so payable for such month.

(7) If any benefit amount computed under the foregoing provisions of this section is not a multiple of $0.10, it shall be raised to the next higher multiple of $0.10.

(8) Under regulations prescribed by the Commissioner of Social Security, benefit payments under this section to an individual (or aggregate benefit payments under this section in the case of a husband and wife) of less than $5 may be accumulated until they equal or exceed $5.

(d) Suspension for months in which cash payments are made under public assistance or in which supplemental security income benefits are payable

The benefit to which any individual is entitled under this section for any month shall not be paid for such month if—

(1) such individual receives aid or assistance in the form of money payments in such month under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or under a State program funded under part A of subchapter IV of this chapter, or

(2) such individual's husband or wife receives such aid or assistance in such month, and under the State plan the needs of such individual were taken into account in determining eligibility for (or amount of) such aid or assistance,

unless the State agency administering or supervising the administration of such plan notifies the Commissioner of Social Security, at such time and in such manner as may be prescribed in accordance with regulations of the Commissioner of Social Security, that such payments to such individual (or such individual's husband or wife) under such plan are being terminated with the payment or payments made in such month and such individual is not an individual with respect to whom supplemental security income benefits are payable pursuant to subchapter XVI of this chapter or section 211 of Public Law 93–66 for the following month, nor shall such benefit be paid for such month if such individual is an individual with respect to whom supplemental security income benefits are payable pursuant to subchapter XVI of this chapter or section 211 of Public Law 93–66 for such month, unless the Commissioner of Social Security determines that such benefits are not payable with respect to such individual for the month following such month.

(e) Suspension where individual is residing outside United States

The benefit to which any individual is entitled under this section for any month shall not be paid if, during such month, such individual is not a resident of the United States. For purposes of this subsection, the term ''United States'' means the 50 States and the District of Columbia.

(f) Treatment as monthly insurance benefits

For purposes of subsections (t) and (u) of section 402 of this title, and of section 1395s of this title, a monthly benefit under this section shall be treated as a monthly insurance benefit payable under section 402 of this title.

(g) Annual reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the Commissioner of Social Security deems necessary on account of—

(1) payments made under this section during the second preceding fiscal year and all fiscal years prior thereto to individuals who, as of the beginning of the calendar year in which falls the month for which payment was made, had less than 3 quarters of coverage,

(2) the additional administrative expenses resulting from the payments described in paragraph (1), and

(3) any loss in interest to such Trust Fund resulting from such payments and expenses,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

(h) Definitions

For purposes of this section—

(1) The term ''quarter of coverage'' includes a quarter of coverage as defined in section 228e(*l*) of title 45.

(2) The term ''governmental pension system'' means the insurance system established by this subchapter or any other system or fund established by the United States, a State, any political subdivision of a State, or any wholly owned instrumentality of any one or more of the foregoing which provides for payment of (A) pensions, (B) retirement or retired pay, or (C) annuities or similar amounts payable on account of personal services performed by any individual (not including any payment under any workmen's compensation law or any payment by the Secretary of Veterans Af-

fairs as compensation for service-connected disability or death).

(3) The term ''periodic benefit'' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(4) The determination of whether an individual is a husband or wife for any month shall be made under subsection (h) of section 416 of this title without regard to subsections (b) and (f) of section 416 of this title.

(Aug. 14, 1935, ch. 531, title II, §228, as added Pub. L. 89–368, title III, §302(a), Mar. 15, 1966, 80 Stat. 67; amended Pub. L. 90–248, title I, §102(b), title II, §241(a) Jan. 2, 1968, 81 Stat. 827, 916; Pub. L. 91–172, title X, §1003(b), Dec. 30, 1969, 83 Stat. 740; Pub. L. 92–5, title II, §202(b), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, §201(g)(2), July 1, 1972, 86 Stat. 411; Pub. L. 93–233, §§2(b)(1), 18(c), Dec. 31, 1973, 87 Stat. 952, 968; Pub. L. 98–21, title III, §305(a)–(d), Apr. 20, 1983, 97 Stat. 113; Pub. L. 98–369, div. B, title VI, §§2662(e), 2663(j)(3)(A)(iv), July 18, 1984, 98 Stat. 1159, 1170; Pub. L. 101–508, title V, §5114(a), Nov. 5, 1990, 104 Stat. 1388–273; Pub. L. 102–54, §13(q)(3)(B)(i), June 13, 1991, 105 Stat. 279; Pub. L. 103–296, title I, §107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 104–193, title I, §108(a)(2), Aug. 22, 1996, 110 Stat. 2165.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (d)(1), is classified to section 601 et seq. of this title.

Section 211 of Pub. L. 93–66, referred to in subsec. (d), is set out as a note under section 1382 of this title.

Section 228e(*l*) of title 45, referred to in subsec. (h)(1), is a reference to section 5(*l*) of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305. The Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974, and is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Section 228e of title 45 is covered by section 231e of Title 45.

AMENDMENTS

1996—Subsec. (d)(1). Pub. L. 104–193 inserted ''under a State program funded under'' before ''part A of subchapter IV of this chapter''.

1994—Subsecs. (c)(5), (8), (d), (g). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1991—Subsec. (h)(2). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (a)(2). Pub. L. 101–508 substituted ''(B)(i) attained such age after 1967 and before 1972, and (ii)'' for ''(B)''.

1984—Subsec. (c)(4)(C). Pub. L. 98–369, §2662(e), amended directory language of Pub. L. 98–21, §305(d)(2). See 1983 Amendment note below.

Subsec. (g). Pub. L. 98–369, §2663(j)(3)(A)(iv), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

1983—Subsec. (a). Pub. L. 98–21, §305(d)(1), substituted ''he or she'' for ''he'' wherever appearing.

Subsec. (b). Pub. L. 98–21, §305(a), substituted ''The'' for ''(1) Except as provided in paragraph (2), the'' and struck out par. (2), which had provided that if both husband and wife were entitled or would have been entitled upon application to benefits under this section for any month, the amount of the husband's benefit for such month would be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and the amount of the wife's benefit for such month the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(1). Pub. L. 98–21, §305(d)(1), substituted ''he or she'' for ''he''.

Subsec. (c)(2). Pub. L. 98–21, §305(b), substituted ''(B) the benefit amount as determined without regard to this subsection'' for ''(B) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title''.

Subsec. (c)(3). Pub. L. 98–21, §305(c), amended par. (3) generally, substituting provisions relating to either a husband or wife for provision that the benefit amount of the wife, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the husband was eligible for such month, over (ii) the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and that the benefit amount of the husband, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the wife was eligible for such month, over (ii) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(4)(C). Pub. L. 98–21, §305(d)(2), as amended by Pub. L. 98–369, §2662(e), substituted ''his or her'' for ''his'' wherever appearing.

1973—Subsec. (b). Pub. L. 93–233, §2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' in pars. (1) and (2) and ''the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'' in par. (2).

Subsec. (c). Pub. L. 93–233, §2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' in par. (3), subpar. (A) and ''the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'' in par. (2) and par. (3) subpar. (B).

Subsec. (d). Pub. L. 93–233, §18(c) provided for elimination of benefits at age 72 for uninsured individuals receiving supplemental security income benefits.

1972—Subsec. (b)(1). Pub. L. 92–336, §201(g)(2)(A), substituted ''$58.00'' for ''$48.30''.

Subsec. (b)(2). Pub. L. 92–336, §201(g)(2)(B), substituted ''$58.00'' for ''$48.30'' and ''$29.00'' for ''$24.20''.

Subsec. (c)(2). Pub. L. 92–336, §201(g)(2)(C), substituted ''$29.00'' for ''$24.20''.

Subsec. (c)(3)(A). Pub. L. 92–336, §201(g)(2)(D), substituted ''$58.00'' for ''$48.30''.

Subsec. (c)(3)(B). Pub. L. 92–336, §201(g)(2)(E), substituted ''$29.00'' for ''$24.20''.

1971—Subsec. (b)(1). Pub. L. 92–5, §202(b)(1), substituted ''$48.30'' for ''$46''.

Subsec. (b)(2). Pub. L. 92–5, §202(b)(2), substituted ''$48.30'' for ''$46'' and ''$24.20'' for ''$23''.

Subsec. (c)(2). Pub. L. 92–5, §202(b)(3), substituted ''$24.20'' for ''$23''.

Subsec. (c)(3)(A). Pub. L. 92–5, §202(b)(4), substituted ''$48.30'' for ''$46''.

Subsec. (c)(3)(B). Pub. L. 92–5, §202(b)(5), substituted ''$24.20'' for ''$23''.

1969—Subsec. (b)(1). Pub. L. 91–172, §1003(b)(1), substituted ''$46'' for ''$40''.

Subsec. (b)(2). Pub. L. 91–172, §1003(b)(2), substituted ''$46'' for ''$40'' and ''$23'' for ''$20''.

Subsec. (c)(2). Pub. L. 91–172, §1003(b)(3), substituted ''$23'' for ''$20''.

Subsec. (c)(3)(A). Pub. L. 91–172, §1003(b)(4), substituted ''$46'' for ''$40''.

Subsec. (c)(3)(B). Pub. L. 91–172, §1003(b)(5), substituted ''$23'' for ''$20''.

1968—Subsec. (b)(1). Pub. L. 90–248, §102(b)(1), substituted ''$40'' for ''$35''.

Subsec. (b)(2). Pub. L. 90–248, §102(b)(2), substituted ''$40'' for ''$35'' and ''$20'' for $17.50''.

Subsec. (c)(2). Pub. L. 90–248, § 102(b)(3), substituted ''$20'' for ''$17.50''.

Subsec. (c)(3)(A). Pub. L. 90–248, § 102(b)(4), substituted ''$40'' for ''$35''.

Subsec. (c)(3)(B). Pub. L. 90–248, § 102(b)(5), substituted ''$20'' for ''$17.50''.

Subsec. (d)(1). Pub. L. 90–248, § 241(a), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XVI of this chapter,''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5114(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect [to] benefits payable on the basis of applications filed after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2662(e) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(j)(3)(A)(iv) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 2(b)(1) of Pub. L. 93–233 provided that the amendment made by that section is effective June 1, 1974.

Amendment by section 2(b)(1) of Pub. L. 93–233 applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title, see section 2(c) of Pub. L. 93–233, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after August 1972, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1970, see section 202(c) of Pub. L. 92–5, set out as a note under section 427 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable for months after December 1969, see section 1003(c) of Pub. L. 91–172, set out as a note under section 427 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 102(b) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for months after January 1968, see section 102(c) of Pub. L. 90–248, set out as a note under section 427 of this title.

REPEAL OF AMENDMENT OF SUBSECS. (b)(1), (2) AND (c)(3)(A), (B) PRIOR TO EFFECTIVE DATE

Section 202(a)(4) of Pub. L. 92–336, title II, July 1, 1972, 86 Stat. 416, which, effective Jan. 1, 1975, substituted ''the larger of $58.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' and ''the larger of $29.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'', was repealed prior to its effective date by Pub. L. 93–233, § 2(b)(2), Dec. 31, 1973, 87 Stat. 952, applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title. See section 2(c) of Pub. L. 93–233, set out as an Effective Date of 1973 Amendment note under section 415 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 56593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

INCREASES TO TAKE INTO ACCOUNT GENERAL BENEFIT INCREASES

Section 305(e) of Pub. L. 98–21 provided that: ''The Secretary shall increase the amounts specified in section 228 of the Social Security Act [this section], as amended by this section, to take into account any general benefit increases (as referred to in section 215(i)(3) of such Act [section 415(i)(3) of this title]), and any increases under section 215(i) of such Act, which have occurred after June 1974 or may hereafter occur.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by Secretary of the Treasury to each individual who, for month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

APPLICATIONS FOR TRANSITIONAL COVERAGE OF UNINSURED INDIVIDUALS FOR HOSPITAL INSURANCE BENEFITS

Section 302(b) of Pub. L. 89–368 provided that: ''For purposes of paragraph (4) of section 228(a) of the Social Security Act [subsec. (a)(4) of this section] (added by subsection (a) of this section), an application filed under section 103 of the Social Security Amendments of 1965 [set out as a note under section 426 of this title] before July 1966 shall be regarded as an application under such section 228 [this section] and shall, for purposes of such paragraph and of the last sentence of such section 228(a), be deemed to have been filed in July 1966, unless the person by whom or on whose behalf such application was filed notifies the Secretary that he does not want such application so regarded.''

§ 429. Benefits in case of members of uniformed services

For purposes of determining entitlement to and the amount of any monthly benefit for any

month after December 1972, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any individual, and for purposes of section 416(i)(3) of this title, such individual, if he was paid wages for service as a member of a uniformed service (as defined in section 410(m) of this title) which was included in the term ''employment'' as defined in section 410(a) of this title as a result of the provisions of section 410(*l*)(1)(A) of this title, shall be deemed to have been paid—

(1) in each calendar quarter occurring after 1956 and before 1978 in which he was paid such wages, additional wages of $300, and

(2) in each calendar year occurring after 1977 and before 2002 in which he was paid such wages, additional wages of $100 for each $300 of such wages, up to a maximum of $1,200 of additional wages for any calendar year.

(Aug. 14, 1935, ch. 531, title II, § 229, as added Pub. L. 90–428, title I, § 106, Jan. 2, 1968, 81 Stat. 833; amended Pub. L. 92–603, title I, § 120(a), Oct. 30, 1972, 86 Stat. 1352; Pub. L. 95–216, title III, § 353(d), Dec. 20, 1977, 91 Stat. 1554; Pub. L. 98–21, title I, § 151(b)(1), Apr. 20, 1983, 97 Stat. 104; Pub. L. 98–369, div. B, title VI, § 2661(n), July 18, 1984, 98 Stat. 1158; Pub. L. 100–203, title IX, § 9001(c), Dec. 22, 1987, 101 Stat. 1330–286; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(c)(6)(J), Aug. 15, 1994, 108 Stat. 1478, 1538; Pub. L. 108–203, title IV, § 420(b), Mar. 2, 2004, 118 Stat. 535.)

AMENDMENTS

2004—Pub. L. 108–203, § 420(b)(1), struck out subsec. (a) designation before ''For purposes of'' and struck out subsec. (b), which authorized to be appropriated to each of the Trust Funds, for transfer on July 1 of each calendar year to such Fund, an amount equal to the total of the additional amounts which would be appropriated to such Fund for the fiscal year ending Sept. 30 of such calendar year under section 401 or 1395i of this title if the amounts of the additional wages deemed to have been paid for such calendar year constituted remuneration for employment for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 and set forth provisions relating to determination of amounts authorized to be appropriated and adjustments to such amounts.

Par. (2). Pub. L. 108–203, § 420(b)(2), inserted ''and before 2002'' after ''1977''.

1994—Subsec. (b). Pub. L. 103–296, § 321(c)(6)(J), substituted ''1986'' for ''1954'' after ''Code of'' in two places.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1987—Subsec. (a). Pub. L. 100–203 substituted ''section 410(*l*)(1)(A)'' for ''section 410(*l*)''.

1984—Subsec. (b). Pub. L. 98–369 inserted at end ''Additional adjustments may be made in the amounts so authorized to be appropriated to the extent that the amounts transferred in accordance with clauses (i) and (ii) of section 151(b)(3)(B) of the Social Security Amendments of 1983 with respect to wages deemed to have been paid in 1983 were in excess of or were less than the amount which the Secretary, on the basis of appropriate data, determines should have been so transferred.''

1983—Subsec. (b). Pub. L. 98–21 amended subsec. (b) generally, substituting provisions relating to authorization of appropriations to each of the Trust Funds for transfer on July 1 of each calendar year for provision that had authorized appropriations to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund annually, as benefits under this subchapter and part A of subchapter XVIII of this chapter were paid after December 1967, such sums as the Secretary determined to be necessary to meet (1) the additional costs, resulting from subsec. (a), of such benefits (including lump-sum death payments), (2) the additional administrative expenses resulting therefrom, and (3) any loss in interest to such trust funds resulting from the payment of such amounts, and that such additional costs would be determined after any increases in such benefits arising from the application of section 417 of this title had been made.

1977—Subsec. (a). Pub. L. 95–216 substituted provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1956 and before 1978 and provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1977, for provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1956.

1972—Subsec. (a). Pub. L. 92–603 substituted ''December 1972'' for ''December 1967'' and ''after 1956'' for ''after 1967'' and struck out provisions limiting the wages deemed to have been paid an individual in addition to the wages actually paid him for his service to $100 if the wages actually paid to him in a quarter were $100 or less or to $200 if the wages actually paid to him in a quarter were more than $100 but not more than $200.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9001(d) of Pub. L. 100–203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 151(b)(2) of Pub. L. 98–21 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to wages deemed to have been paid for calendar years after 1983.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective Jan. 1, 1978, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 120(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972 and with respect to lump-sum death payments under such title in the case of deaths occurring after December 1972 except that, in the case of any individual who is entitled, on the basis of the wages and self-employment income of any individual to whom section 229 of such Act [this section] applies, to monthly benefits under title II of such Act for the month in which this Act is enacted [October 1972], such amendments shall apply (1) only if a written request for a recalculation of such benefits (by reason of such amendments) under the provisions of section 215(b) and (d) of such Act [section 415(b) and (d) of this title], as in effect at the time such request is

filed, is filed by such individual, or any other individual, entitled to benefits under such title II on the basis of such wages and self-employment income, and (2) only with respect to such benefits for months beginning with whichever of the following is later: January 1973 or the twelfth month before the month in which such request was filed. Recalculations of benefits as required to carry out the provisions of this section shall be made notwithstanding the provisions of section 215(f)(1) of the Social Security Act, and no such recalculation shall be regarded as a recomputation for purposes of section 215(f) of such Act.''

PAYMENT OF WAGES AFTER 2001

Pub. L. 107–117, div. A, title VIII, § 8134, Jan. 10, 2002, 115 Stat. 2278, provided that: ''Notwithstanding section 229(a) of the Social Security Act [subsec. (a) of this section], no wages shall be deemed to have been paid to any individual pursuant to that section in any calendar year after 2001.''

COMPENSATORY PAYMENTS TO TRUST FUNDS

Section 151(b)(3) of Pub. L. 98–21, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of Health and Human Services shall determine the additional amounts which would have been appropriated to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under sections 201 and 1817 of the Social Security Act [sections 401 and 1395i of this title] if the additional wages deemed to have been paid under section 229(a) of the Social Security Act [subsec. (a) of this section] prior to 1984 had constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)]) for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [26 U.S.C. 3101, 3111], and the amount of interest which would have been earned on such amounts if they had been so appropriated.

''(B)(i) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of the Treasury shall transfer to each such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amount determined with respect to such Trust Fund under subparagraph (A), less any amount appropriated to such Trust Fund pursuant to the provisions of section 229(b) of the Social Security Act [subsec. (b) of this section] prior to the date of the determination made under subparagraph (A) with respect to wages deemed to have been paid for calendar years prior to 1984.

''(ii) The Secretary of Health and Human Services shall revise the amount determined under clause (i) with respect to each such Trust Fund within one year after the date of the transfer made to such Trust Fund under clause (i), as determined appropriate by such Secretary from data which becomes available to him after the date of the transfer under clause (i). Within 30 days after any such revision, the Secretary of the Treasury shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of Health and Human Services certifies as necessary to take into account such revision.''

§ 430. Adjustment of contribution and benefit base

(a) Determination and publication by Commissioner in Federal Register subsequent to cost-of-living benefit increase; effective date

Whenever the Commissioner of Social Security pursuant to section 415(i) of this title increases benefits effective with the December following a cost-of-living computation quarter, the Commissioner shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the contribution and benefit base determined under subsection (b) or (c) of this section which shall be effective with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.

(b) Determination of amount

The amount of such contribution and benefit base shall (subject to subsection (c) of this section) be the amount of the contribution and benefit base in effect in the year in which the determination is made or, if larger, the product of—

(1) $60,600, and

(2) the ratio of (A) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subsection (a) of this section is made to (B) the national average wage index (as so defined) for 1992,

with such product, if not a multiple of $300, being rounded to the next higher multiple of $300 where such product is a multiple of $150 but not of $300 and to the nearest multiple of $300 in any other case.

(c) Amount of base for period prior to initial cost-of-living benefit increase

For purposes of this section, and for purposes of determining wages and self-employment income under sections 409, 411, 413, and 415 of this title and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1986, (1) the ''contribution and benefit base'' with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1973 and prior to the calendar year with the June of which the first increase in benefits pursuant to section 415(i) of this title becomes effective shall be $13,200 or (if applicable) such other amount as may be specified in a law enacted subsequent to the law which added this section, and (2) the ''contribution and benefit base'' with respect to remuneration paid (and taxable years beginning)—

(A) in 1978 shall be $17,700,

(B) in 1979 shall be $22,900,

(C) in 1980 shall be $25,900, and

(D) in 1981 shall be $29,700.

For purposes of determining under subsection (b) of this section the ''contribution and benefit base'' with respect to remuneration paid (and taxable years beginning) in 1982 and subsequent years, the dollar amounts specified in clause (2) of the preceding sentence shall be considered to have resulted from the application of such subsection (b) of this section and to be the amount determined (with respect to the years involved) under that subsection.

(d) Determinations for calendar years after 1976 for purposes of retirement benefit plans

Notwithstanding any other provision of law, the contribution and benefit base determined under this section for any calendar year after 1976 for purposes of section 1322(b)(3)(B) of title

29, with respect to any plan, shall be the contribution and benefit base that would have been determined for such year if this section as in effect immediately prior to the enactment of the Social Security Amendments of 1977 had remained in effect without change (except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).

(Aug. 14, 1935, ch. 531, title II, §230, as added Pub. L. 92–336, title II, §202(b)(1), July 1, 1972, 86 Stat. 416; amended Pub. L. 92–603, title I, §144(a)(4), Oct. 30, 1972, 86 Stat. 1370; Pub. L. 93–66, title II, §203(c), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §§3(j), 5(c), Dec. 31, 1973, 87 Stat. 952, 954; Pub. L. 94–202, §8(h), Jan. 2, 1976, 89 Stat. 1139; Pub. L. 95–216, title I, §103(a)–(c)(1), title III, §353(e), Dec. 20, 1977, 91 Stat. 1513, 1514, 1554; Pub. L. 97–34, title VII, §741(d)(1), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98–21, title I, §111(a)(5), Apr. 20, 1983, 97 Stat. 72; Pub. L. 98–76, title II, §§211(d), 225(a)(4), Aug. 12, 1983, 97 Stat. 419, 425; Pub. L. 98–369, div. B, title VI, §2663(a)(18), July 18, 1984, 98 Stat. 1165; Pub. L. 101–239, title X, §10208(b)(1)(A), (B), (5), (d)(2)(A)(i), Dec. 19, 1989, 103 Stat. 2477, 2478, 2480; Pub. L. 103–296, title I, §107(a)(4), title III, §321(b)(2), (c)(6)(K), (g)(1)(A), (B), Aug. 15, 1994, 108 Stat. 1478, 1537, 1538, 1542.)

References in Text

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified generally to Title 26, Internal Revenue Code.

''Subsequent to the law which added this section'', referred to in subsec. (c), means subsequent to the enactment of Pub. L. 92–336, which was approved July 1, 1972.

The enactment of the Social Security Amendments of 1977, referred to in subsec. (d), means the enactment of Pub. L. 95–216, which was approved Dec. 20, 1977.

Amendments

1994—Subsec. (a). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner shall'' for ''he shall''.

Subsec. (b)(1), (2). Pub. L. 103–296, §321(g)(1)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) the contribution and benefit base which is in effect with respect to remuneration paid in (and taxable years beginning in) the calendar year in which the determination under subsection (a) of this section is made, and

''(2) the ratio of (A) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subsection (a) of this section is made to (B) the deemed average total wages (as so defined) for the calendar year before the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a) of this section,''.

Subsec. (b)(2)(A), (B). Pub. L. 103–296, §321(b)(2), made technical correction to directory language of Pub. L. 101–239, §10208(b)(1). See 1989 Amendment note below.

Subsec. (c). Pub. L. 103–296, §321(c)(6)(K), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (d). Pub. L. 103–296, §321(g)(1)(B), at end substituted parenthetical provisions beginning with ''(except that'' and ending with ''reference to 1992).'' for former parenthetical provisions which read as follows: ''(except that, for purposes of subsection (b)(2)(A) of this section as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wage (within the meaning of section 409(k)(1) of this title) for such calendar year).''

1989—Subsec. (b)(2)(A). Pub. L. 101–239, §10208(b)(1)(A), as amended by Pub. L. 103–296, §321(b)(2), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (b)(2)(B). Pub. L. 101–239, §10208(b)(1)(B), as amended by Pub. L. 103–296, §321(b)(2), substituted ''the deemed average total wages (as so defined)'' for ''the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate''.

Subsec. (d). Pub. L. 101–239, §10208(b)(5), substituted ''change (except that, for purposes of subsection (b)(2)(A) of this section as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wage (within the meaning of section 409(k)(1) of this title) for such calendar year)'' for ''change''.

1984—Subsec. (c). Pub. L. 98–369, in last sentence which was repealed by Pub. L. 98–76, substituted ''3(a) or 3(f)(3)'' for ''3(a) or (3)(f)(3)'' in the original, which had been translated as ''section 231b(a) or (f)(3) of title 45''.

1983—Subsec. (a). Pub. L. 98–21 substituted ''December'' for ''June''.

Subsec. (c). Pub. L. 98–76, §225(a)(4), struck out provision that for purposes of determining employee and employer tax liability under sections 3201(a) and 3221(a) of the Internal Revenue Code of 1954, for purposes of determining the portion of the employee representative tax liability under section 3211(a) of such Code which resulted from the application of the 12.75 percent rate specified therein, and for purposes of computing average monthly compensation under section 231b(j) of title 45, except with respect to annuity amounts determined under section 231b(a) or (f)(3) of title 45, clause (2) and the preceding sentence of this subsection shall be disregarded.

Pub. L. 98–76, §211(d), temporarily substituted ''12.75 percent'' for ''11.75 percent''. See Effective and Termination Dates of 1983 Amendments note below.

1981—Subsec. (c). Pub. L. 97–34 substituted in last sentence ''employee and employer'' for ''employer'', ''sections 3201(a) and 3221(a)'' for ''section 3221(a)'', and ''11.75'' for ''9.5''.

1977—Subsec. (a). Pub. L. 95–216, §103(a)(1), substituted ''determined under subsection (b) or (c) of this section'' for ''determined under subsection (b) of this section''.

Subsec. (b). Pub. L. 95–216, §103(a)(2), in provisions preceding par. (1), substituted ''shall (subject to subsection (c) of this section) be the amount'' for ''shall be the amount''.

Subsec. (b)(1). Pub. L. 95–216, § 353(e)(2), substituted ''determination under subsection (a) of this section is made'' for ''determination under subsection (a) of this section with respect to such particular calendar year was made''.

Subsec. (b)(2). Pub. L. 95–216, § 353(e)(3), substituted ''(A) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year in which the determination under subsection (a) of this section is made to (B) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before'' for ''(A) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year in which the determination under subsection (a) of this section with respect to such particular calendar years was made to (B) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973 or, if later, the calendar year preceding''.

Subsec. (b). Pub. L. 95–216, § 353(e)(1), in provisions following par. (2), struck out directive that, for purposes of this subsection, the average of the wages for the calendar year 1978 (or any prior calendar year), in the case of determinations made under subsection (a) of this section prior to December 31, 1979, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year.

Subsec. (c). Pub. L. 95–216, § 103(b), designated existing provisions as introductory material and cl. (1) and added cl. (2) and closing material.

Subsec. (d). Pub. L. 95–216, § 103(c)(1), added subsec. (d).

1976—Subsec. (b). Pub. L. 94–202 substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar year'' and ''made to'' for ''made to the latest of'' in cl. (A) of par. (2), substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973 or, if later, the calendar year preceding'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1973 or the first calendar quarter of'' in cl. (B) of par. (2), and inserted, following par. (2), provision directing that the average wages for the calendar year 1978, or any prior calendar year, be deemed equal to 400% of the average wages reported for the first quarter of that calendar year.

1973—Subsec. (a). Pub. L. 93–233, § 3(j)(1), substituted ''with the June'' for ''with the first month of the calendar year'' and struck out ''(along with the publication of such benefit increase as required by section 415(i)(2)(D) of this title)'' after ''such quarter occurs'' and ''(unless such increase in benefits is prevented from becoming effective by section 415(i)(2)(E) of this title)'' after ''shall be effective'', respectively.

Subsec. (c). Pub. L. 93–233, §§ 3(j)(2), 5(c), substituted ''the June'' for ''the first month'' and ''$13,200'' for ''$12,600'', respectively.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

1972—Subsec. (b)(2)(A). Pub. L. 92–603 substituted ''of'' for ''or''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 321(b)(2) of Pub. L. 103–296 provided that the amendment made by that section is effective as if included in section 10208(b)(1) of Pub. L. 101–239.

Amendment by section 321(g)(1)(A), (B) of Pub. L. 103–296 effective with respect to the determination of the contribution and benefit base for years after 1994, see section 321(g)(3)(A) of Pub. L. 103–296, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10208(c) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and sections 403, 409, 413, 415, and 424a of this title] shall apply with respect to the computation of average total wage amounts (under the amended provisions) for calendar years after 1990.

''(2) TRANSITIONAL RULE.—For purposes of determining the contribution and benefit base for 1990, 1991, and 1992 under section 230(b) of the Social Security Act [subsec. (b) of this section] (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977 [Pub. L. 95–216, approved Dec. 20, 1977])—

''(A) the average of total wages for 1988 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which has been determined to the average of total wages for 1987,

''(B) the average of total wages for 1989 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which would have been determined to be the average of total wages for 1988 without regard to subparagraph (A), and

''(C) the average of total wages reported to the Secretary of the Treasury for 1990 shall be deemed to be equal to the product of—

''(i) the SSA average wage index (as defined in section 215(i)(1)(G) of the Social Security Act [section 415(i)(1)(G) of this title] and promulgated by the Secretary) for 1989, and

''(ii) the quotient obtained by dividing—

''(I) the average of total wages (as defined in regulations of the Secretary and computed without regard to the limitations of section 209(a)(1) of the Social Security Act [section 409(a)(1) of this title] and by including deferred compensation amounts, within the meaning of section 209(k)(2) of such Act as added by this section) reported to the Secretary of the Treasury or his delegate for 1990, by

''(II) the average of total wages (as so defined and computed without regard to the limitations specified in such section 209(a)(1) and by excluding deferred compensation amounts within the meaning of such section 209(k)(2)) reported to the Secretary of the Treasury or his delegate for 1989.

''(3) DETERMINATION OF CONTRIBUTION AND BENEFIT BASE FOR 1993.—For purposes of determining the contribution and benefit base for 1993 under section 230(b) of the Social Security Act (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977), the average of total wages for 1990 shall be determined without regard to subparagraph (C) of paragraph (2).

''(4) REVISED DETERMINATION UNDER SECTION 230 OF THE SOCIAL SECURITY ACT.—As soon as possible after the enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall revise and publish, in accordance with the provisions of this Act [Pub. L. 101–239, see Tables for classification] and the amendments made thereby, the contribution and benefit base under section 230 of the Social Security Act with respect to remuneration paid after 1989 and taxable years beginning after calendar year 1989.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Amendment by section 211(d) of Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98–76, set out as a note under section 3201 of Title 26, Internal Revenue Code.

Amendment by section 225(a)(4) of Pub. L. 98–76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98–76, set out as a note under section 3201 of Title 26.

Amendment by Pub. L. 98–21 applicable with respect to cost-of-living increases determined under section 415(i) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 402 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97–34, set out as a note under section 3201 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 103(a), (b) of Pub. L. 95–216 applicable with respect to remunerations paid or received, and taxable years beginning after, 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

Section 103(c)(2) of Pub. L. 95–216 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to plan terminations occurring after the date of the enactment of this Act [Dec. 20, 1977].''

Amendment by section 353(e) of Pub. L. 95–216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 effective in like manner as if such amendment had been included in title II of Pub. L. 92–336, see section 144(b) of Pub. L. 92–603, set out as a note under section 403 of this title.

SOCIAL SECURITY CONTRIBUTION AND BENEFIT BASE

2007—By notice of the Commissioner of Social Security, Oct. 19, 2006, 71 F.R. 62636, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2007 is $97,500.

2006—By notice of the Commissioner of Social Security, Oct. 18, 2005, 70 F.R. 61677, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2006 is $94,200.

2005—By notice of the Commissioner of Social Security, Oct. 26, 2004, 69 F.R. 62497, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2005 is $90,000.

2004—By notice of the Commissioner of Social Security, Oct. 16, 2003, 68 F.R. 60437, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2004 is $87,900.

2003—By notice of the Commissioner of Social Security, Oct. 18, 2002, 67 F.R. 65620, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2003 is $87,000.

2002—By notice of the Commissioner of Social Security, Oct. 19, 2001, 66 F.R. 54047, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2002 is $84,900.

2001—By notice of the Commissioner of Social Security, Oct. 18, 2000, 65 F.R. 63663, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2001 is $80,400.

2000—By notice of the Commissioner of Social Security, Oct. 20, 1999, 64 F.R. 57506, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2000 is $76,200.

1999—By notice of the Commissioner of Social Security, Oct. 21, 1998, 63 F.R. 58446, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1999 is $72,600.

1998—By notice of the Commissioner of Social Security, Oct. 22, 1997, 62 F.R. 58762, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1998 is $68,400.

1997—By notice of the Commissioner of Social Security, Oct. 18, 1996, 61 F.R. 55346, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1997 is $65,400.

1996—By notice of the Commissioner of Social Security, Oct. 18, 1995, 60 F.R. 54751, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1996 is $62,700.

1995—By notice of the Secretary of Health and Human Services, Oct. 25, 1994, 59 F.R. 54464, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1995 is $61,200.

1994—By notice of the Secretary of Health and Human Services, Oct. 28, 1993, 58 F.R. 58004, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1994 is $60,600.

1993—By notice of the Secretary of Health and Human Services, Oct. 20, 1992, 57 F.R. 48619, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1993 is $57,600.

1992—By notice of the Secretary of Health and Human Services, Oct. 21, 1991, 56 F.R. 55325, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1992 is $55,500.

1991—By notice of the Secretary of Health and Human Services, Oct. 25, 1990, 55 F.R. 45856, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit

base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1991 is $53,400.

1990—By notice of the Secretary of Health and Human Services, Oct. 26, 1989, 54 F.R. 45803, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1990 is $50,400.

1989—By notice of the Secretary of Health and Human Services, Oct. 27, 1988, 53 F.R. 43932, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1989 is $48,000.

1988—By notice of the Secretary of Health and Human Services, Oct. 19, 1987, 52 F.R. 41672, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1988 is $45,000.

1987—By notice of the Secretary of Health and Human Services, Oct. 31, 1986, 51 F.R. 40256, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1987 is $43,800.

1986—By notice of the Secretary of Health and Human Services, Oct. 29, 1985, 50 F.R. 45559, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1986 is $42,000.

1985—By notice of the Secretary of Health and Human Services, Oct. 29, 1984, 49 F.R. 43775, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1985 is $39,600.

1983—By notice of the Secretary of Health and Human Services, Nov. 4, 1982, 47 F.R. 51003, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1983 is $35,700.

1982—By notice of the Secretary of Health and Human Services, Oct. 30, 1981, 46 F.R. 53791, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1982 is $32,400.

1978—By notice of the Secretary of Health, Education, and Welfare, Oct. 31, 1977, 42 F.R. 57754, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1978 is $17,700.

1977—By notice of the Secretary of Health, Education, and Welfare, Oct. 7, 1976, 41 F.R. 44878, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1977 is $16,500.

1976—By notice of the Secretary of Health, Education, and Welfare, Oct. 22, 1975, 40 F.R. 50556, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1976 is $15,300.

COST-OF-LIVING INCREASE IN BENEFITS

For purposes of subsec. (a) of this section, the increase in benefits provided by section 2 of Pub. L. 93–233, revising benefits table of section 415(a) of this title and amending sections 427(a), (b) and 428(b)(1), (2), (c)(3)(A), (B) of this title considered an increase under section 415(i) of this title, see section 3(i) of Pub. L. 93–233, set out as a note under section 415 of this title.

§ 431. Benefits for certain individuals interned by United States during World War II

(a) "Internee" defined

For the purposes of this section the term ''internee'' means an individual who was interned during any period of time from December 7, 1941, through December 31, 1946, at a place within the United States operated by the Government of the United States for the internment of United States citizens of Japanese ancestry.

(b) Applicability in determining entitlement to and amount of monthly benefits and lump-sum death payments, and period of disability; effect of payment of benefits by other agency or instrumentality of United States

(1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in the case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any individual, and for purposes of section 416(i)(3) of this title, such individual shall be deemed to have been paid during any period after he attained age 18 and for which he was an internee, wages (in addition to any wages actually paid to him) at a weekly rate of basic pay during such period as follows—

(A) in the case such individual was not employed prior to the beginning of such period, 40 multiplied by the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, for each full week during such period; and

(B) in the case such individual who was employed prior to the beginning of such period, 40 multiplied by the greater of (i) the highest hourly rate received during any such employment, or (ii) the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, for each full week during such period.

(2) This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump-sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon internment during any period from December 7, 1941, through December 31, 1946, at a place within the United States operated by the Government of the United States for the internment of United States citizens of Japanese ancestry, is determined by any agency or wholly owned instrumentality of the United States to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum

death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 416(i)(3) of this title.

(3) Upon application for benefits, a recalculation of benefits (by reason of this section), or a lump-sum death payment on the basis of the wages and self-employment income of any individual who was an internee, the Commissioner of Social Security shall accept the certification of the Secretary of Defense or his designee concerning any period of time for which an internee is to receive credit under paragraph (1) and shall make a decision without regard to clause (B) of paragraph (2) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the period for which such individual was an internee, a benefit described in clause (B) of paragraph (2) has been determined by such agency or instrumentality to be payable by it. If the Commissioner of Social Security has not been so notified, the Commissioner shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (2) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by this section.

(4) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on any period for which any individual was an internee shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any individual who was an internee, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (3) of this subsection.

(c) Authorization of appropriations

There are authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund for the fiscal year ending June 30, 1978, such sums as the Commissioner of Social Security and the Secretary jointly determine would place the Trust Funds and the Federal Hospital Insurance Trust Fund in the position in which they would have been if the preceding provisions of this section had not been enacted.

(Aug. 14, 1935, ch. 531, title II, § 231, as added Pub. L. 92–603, title I, § 142(a), Oct. 30, 1972, 86 Stat. 1367; amended Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(A)(iii), July 18, 1984, 98 Stat. 1170; Pub. L. 103–296, title I, § 107(a)(1), (4), (c), Aug. 15, 1994, 108 Stat. 1477, 1478, 1481.)

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–296, § 107(a)(1), (4), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' after ''an internee, the'', after ''If the'', and after ''so notify the'', substituted ''the Commissioner'' for ''he'' before ''has been notified'' and before ''shall then ascertain'', and substituted ''Commissioner of Social Security'' for ''Secretary'' before ''shall certify no''.

Subsec. (b)(4). Pub. L. 103–296, § 107(a)(1), (4), substituted ''Commissioner of Social Security, certify to the Commissioner, with respect to any individual who was an internee, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (3) of this subsection'' for ''Secretary of Health and Human Services, certify to him, with respect to any individual who was an internee, such information as the Secretary deems necessary to carry out his functions under paragraph (3) of this subsection''.

Subsec. (c). Pub. L. 103–296, § 107(c), substituted ''Commissioner of Social Security and the Secretary jointly determine'' for ''Secretary determines''.

1984—Subsec. (b)(3), (4). Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

§ 432. Processing of tax data

The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986, to the Commissioner of Social Security for the purposes of this subchapter and subchapter XI of this chapter. The Commissioner of Social Security and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Commissioner of Social Security of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986. Notwithstanding the provisions of section 6103(a) of the Internal Revenue Code of 1986, the Secretary of the Treasury shall make available to the Commissioner of Social Security such documents as may be agreed upon as being necessary for purposes of such processing. The Commissioner of Social Security shall process any withholding tax statements or other documents made available to the Commissioner by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modi-

fied or otherwise changed by mutual agreement of the Commissioner of Social Security and the Secretary of the Treasury.

(Aug. 14, 1935, ch. 531, title II, § 232, as added Pub. L. 94–202, § 8(b), Jan. 2, 1976, 89 Stat. 1137; amended Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(c)(6)(L), Aug. 15, 1994, 108 Stat. 1478, 1538.)

REFERENCES IN TEXT

Part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986, referred to in text, is classified to section 6031 et seq. of Title 26, Internal Revenue Code.

AMENDMENTS

1994—Pub. L. 103–296, § 321(c)(6)(L), substituted ''1986'' for ''1954'' after ''Code of'' wherever appearing.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except where appearing before ''of the Treasury'' and substituted ''available to the Commissioner'' for ''available to him''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 8(c) of Pub. L. 94–202 provided that: ''Section 232 of the Social Security Act [this section], as added by subsection (b) of this section, shall be effective with respect to statements reporting income received after 1977.''

§ 433. International agreements

(a) Purpose of agreement

The President is authorized (subject to the succeeding provisions of this section) to enter into agreements establishing totalization arrangements between the social security system established by this subchapter and the social security system of any foreign country, for the purposes of establishing entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on a combination of an individual's periods of coverage under the social security system established by this subchapter and the social security system of such foreign country.

(b) Definitions

For the purposes of this section—

(1) the term ''social security system'' means, with respect to a foreign country, a social insurance or pension system which is of general application in the country and under which periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, death, or disability; and

(2) the term ''period of coverage'' means a period of payment of contributions or a period of earnings based on wages for employment or on self-employment income, or any similar period recognized as equivalent thereto under this subchapter or under the social security system of a country which is a party to an agreement entered into under this section.

(c) Crediting periods of coverage; conditions of payment of benefits

(1) Any agreement establishing a totalization arrangement pursuant to this section shall provide—

(A) that in the case of an individual who has at least 6 quarters of coverage as defined in section 413 of this title and periods of coverage under the social security system of a foreign country which is a party to such agreement, periods of coverage of such individual under such social security system of such foreign country may be combined with periods of coverage under this subchapter and otherwise considered for the purposes of establishing entitlement to and the amount of old-age, survivors, and disability insurance benefits under this subchapter;

(B)(i) that employment or self-employment, or any service which is recognized as equivalent to employment or self-employment under this subchapter or the social security system of a foreign country which is a party to such agreement, shall, on or after the effective date of such agreement, result in a period of coverage under the system established under this subchapter or under the system established under the laws of such foreign country, but not under both, and (ii) the methods and conditions for determining under which system employment, self-employment, or other service shall result in a period of coverage; and

(C) that where an individual's periods of coverage are combined, the benefit amount payable under this subchapter shall be based on the proportion of such individual's periods of coverage which was completed under this subchapter.

(2) Any such agreement may provide that an individual who is entitled to cash benefits under this subchapter shall, notwithstanding the provisions of section 402(t) of this title, receive such benefits while he resides in a foreign country which is a party to such agreement.

(3) Section 426 of this title shall not apply in the case of any individual to whom it would not be applicable but for this section or any agreement or regulation under this section.

(4) Any such agreement may contain other provisions which are not inconsistent with the other provisions of this subchapter and which the President deems appropriate to carry out the purposes of this section.

(d) Regulations

The Commissioner of Social Security shall make rules and regulations and establish procedures which are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

(e) Reports to Congress; effective date of agreements

(1) Any agreement to establish a totalization arrangement entered into pursuant to this section shall be transmitted by the President to the Congress together with a report on the estimated number of individuals who will be affected by the agreement and the effect of the agreement on the estimated income and expenditures of the programs established by this chapter.

(2) Such an agreement shall become effective on any date, provided in the agreement, which occurs after the expiration of the period (follow-

ing the date on which the agreement is transmitted in accordance with paragraph (1)) during which at least one House of the Congress has been in session on each of 60 days; except that such agreement shall not become effective if, during such period, either House of the Congress adopts a resolution of disapproval of the agreement.

(Aug. 14, 1935, ch. 531, title II, § 233, as added Pub. L. 95–216, title III, § 317(a), Dec. 20, 1977, 91 Stat. 1538; amended Pub. L. 97–35, title XXII, § 2201(b)(12), Aug. 13, 1981, 95 Stat. 831; Pub. L. 98–21, title III, § 326(a), Apr. 20, 1983, 97 Stat. 126; Pub. L. 98–369, div. B, title VI, § 2663(j)(3)(A)(v), July 18, 1984, 98 Stat. 1170; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

1984—Subsec. (d). Pub. L. 98–369 struck out ''of Health, Education, and Welfare'' after ''Secretary''.

1983—Subsec. (e)(2). Pub. L. 98–21 substituted ''during which at least one House of the Congress has been in session on each of 60 days'' for ''during which each House of the Congress has been in session on each of 90 days''.

1981—Subsec. (c)(2). Pub. L. 97–35 struck out provision permitting the agreement to provide that if the benefit paid by the United States to an individual who legally resides in the United States when added to the benefit paid by the foreign country is less than the benefit amount payable to such individual based on the first figure in, or deemed to be in, column IV of the table in section 415(a) of this title in the case of an individual becoming eligible before Jan. 1, 1979, or based on a primary insurance amount determined under section 415(a)(1)(C)(i)(I) of this title in the case of an individual becoming eligible for such benefit on or after such date, the benefit paid by the United States be increased so that the two benefits equal the benefit amount that would be payable.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 326(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to benefits for months after December 1981, with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

§ 434. Demonstration project authority

(a) Authority

(1) In general

The Commissioner of Social Security (in this section referred to as the ''Commissioner'') shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of—

(A) various alternative methods of treating the work activity of individuals entitled to disability insurance benefits under section 423 of this title or to monthly insurance benefits under section 402 of this title based on such individual's disability (as defined in section 423(d) of this title), including such methods as a reduction in benefits based on earnings, designed to encourage the return to work of such individuals;

(B) altering other limitations and conditions applicable to such individuals (including lengthening the trial work period (as defined in section 422(c) of this title), altering the 24-month waiting period for hospital insurance benefits under section 426 of this title, altering the manner in which the program under this subchapter is administered, earlier referral of such individuals for rehabilitation, and greater use of employers and others to develop, perform, and otherwise stimulate new forms of rehabilitation); and

(C) implementing sliding scale benefit offsets using variations in—

(i) the amount of the offset as a proportion of earned income;

(ii) the duration of the offset period; and

(iii) the method of determining the amount of income earned by such individuals,

to the end that savings will accrue to the Trust Funds, or to otherwise promote the objectives or facilitate the administration of this subchapter.

(2) Authority for expansion of scope

The Commissioner may expand the scope of any such experiment or demonstration project to include any group of applicants for benefits under the program established under this subchapter with impairments that reasonably may be presumed to be disabling for purposes of such demonstration project, and may limit any such demonstration project to any such group of applicants, subject to the terms of such demonstration project which shall define the extent of any such presumption.

(b) Requirements

The experiments and demonstration projects developed under subsection (a) of this section shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the disability insurance program under this subchapter without committing such program to the adoption of any particular system either locally or nationally.

(c) Authority to waive compliance with benefits requirements

In the case of any experiment or demonstration project initiated under subsection (a) of this section on or before December 17, 2005, the Commissioner may waive compliance with the benefit requirements of this subchapter and the

requirements of section 1320b–19 of this title as they relate to the program established under this subchapter, and the Secretary may (upon the request of the Commissioner) waive compliance with the benefits requirements of subchapter XVIII of this chapter, insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such experiment or project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Commissioner to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Commissioner to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in subsection (a) of this section.

(d) Reports

(1) Interim reports

On or before June 9 of each year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate an annual interim report on the progress of the experiments and demonstration projects carried out under this subsection[1] together with any related data and materials that the Commissioner may consider appropriate.

(2) Termination and final report

The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2005. Not later than 90 days after the termination of any experiment or demonstration project carried out under this section, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a final report with respect to that experiment or demonstration project.

(Aug. 14, 1935, ch. 531, title II, § 234, as added Pub. L. 106–170, title III, § 301(a), Dec. 17, 1999, 113 Stat. 1900; amended Pub. L. 108–203, title IV, § 401, Mar. 2, 2004, 118 Stat. 525.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–203, § 401(1), substituted ''initiated under subsection (a) of this section on or before December 17, 2005'' for ''conducted under subsection (a) of this section''.

Subsec. (d)(2). Pub. L. 108–203, § 401(2), substituted ''The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2005.'' for ''The authority under the preceding provisions of this section (including any waiver granted pursuant to subsection (c) of this section) shall terminate 5 years after December 17, 1999.''

DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS

Pub. L. 106–170, title III, § 302, Dec. 17, 1999, 113 Stat. 1902, as amended by Pub. L. 108–203, title IV, §§ 402, 403, Mar. 2, 2004, 118 Stat. 525, provided that:

''(a) AUTHORITY.—The Commissioner of Social Security shall conduct demonstration projects for the purpose of evaluating, through the collection of data, a program for title II disability beneficiaries (as defined in section 1148(k)(3) of the Social Security Act [section 1320b–19(k)(3) of this title]) under which benefits payable under section 223 of such Act [section 423 of this title], or under section 202 of such Act [section 402 of this title] based on the beneficiary's disability, are reduced by $1 for each $2 of the beneficiary's earnings that is above a level to be determined by the Commissioner. Such projects shall be conducted at a number of localities which the Commissioner shall determine is sufficient to adequately evaluate the appropriateness of national implementation of such a program. Such projects shall identify reductions in Federal expenditures that may result from the permanent implementation of such a program.

''(b) SCOPE AND SCALE AND MATTERS TO BE DETERMINED.—

''(1) IN GENERAL.—The demonstration projects developed under subsection (a) shall be of sufficient duration, shall be of sufficient scope, and shall be carried out on a wide enough scale to permit a thorough evaluation of the project to determine—

''(A) the effects, if any, of induced entry into the project and reduced exit from the project;

''(B) the extent, if any, to which the project being tested is affected by whether it is in operation in a locality within an area under the administration of the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act [section 1320b–19 of this title]; and

''(C) the savings that accrue to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and other Federal programs under the project being tested.

The Commissioner shall take into account advice provided by the Ticket to Work and Work Incentives Advisory Panel pursuant to section 101(f)(2)(B)(ii) of this Act [set out as a note under section 1320b–19 of this title].

''(2) ADDITIONAL MATTERS.—The Commissioner shall also determine with respect to each project—

''(A) the annual cost (including net cost) of the project and the annual cost (including net cost) that would have been incurred in the absence of the project;

''(B) the determinants of return to work, including the characteristics of the beneficiaries who participate in the project; and

''(C) the employment outcomes, including wages, occupations, benefits, and hours worked, of beneficiaries who return to work as a result of participation in the project.

The Commissioner may include within the matters evaluated under the project the merits of trial work periods and periods of extended eligibility.

''(c) WAIVERS.—The Commissioner may waive compliance with the benefit provisions of title II of the Social Security Act (42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b–19) as they relate to the program established under title II of such Act, and the Secretary of Health and Human Services may waive compliance with the benefit requirements of title XVIII of such Act (42 U.S.C. 1395 et seq.), insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only and

[1] So in original. Probably should be ''section''.

containing a full and complete description thereof, has been transmitted by the Commissioner to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such projects shall be submitted by the Commissioner to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in subsection (a).

''(d) INTERIM REPORTS.—Not later than 2 years after the date of the enactment of this Act [Dec. 17, 1999], and annually thereafter, the Commissioner of Social Security shall submit to the Congress an interim report on the progress of the demonstration projects carried out under this subsection together with any related data and materials that the Commissioner of Social Security may consider appropriate.

''(e) FINAL REPORT.—The Commissioner of Social Security shall submit to the Congress a final report with respect to all demonstration projects carried out under this section not later than 1 year after their completion.

''(f) EXPENDITURES.—Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or XVIII of the Social Security Act [subchapters II and XVIII of this chapter], as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, from funds available for benefits under such title II or XVIII.''

STUDY BY GENERAL ACCOUNTING OFFICE OF THE IMPACT OF THE SUBSTANTIAL GAINFUL ACTIVITY LIMIT ON RETURN TO WORK

Pub. L. 106–170, title III, § 303(c), Dec. 17, 1999, 113 Stat. 1904, provided that, as soon as practicable after Dec. 17, 1999, the Comptroller General was to undertake a study of the substantial gainful activity level applicable as of that date to recipients of benefits under sections 402 and 423 of this title and the effect of such level as a disincentive for those recipients to return to work, to address the merits of increasing the substantial gainful activity level applicable to recipients and the rationale for not yearly indexing that level to inflation, and not later than 2 years after Dec. 17, 1999, to transmit to the appropriate congressional committees a written report presenting the results of the Comptroller General's study conducted pursuant to this subsection and appropriate recommendations for legislative or administrative changes.

STUDY BY THE GOVERNMENT ACCOUNTABILITY OFFICE OF SOCIAL SECURITY ADMINISTRATION'S DISABILITY INSURANCE PROGRAM DEMONSTRATION AUTHORITY

Pub. L. 106–170, title III, § 303(e), Dec. 17, 1999, 113 Stat. 1905, provided that:

''(1) STUDY.—As soon as practicable after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall undertake a study to assess the results of the Social Security Administration's efforts to conduct disability demonstrations authorized under prior law as well as under section 234 of the Social Security Act [this section] (as added by section 301 of this Act).

''(2) REPORT.—Not later than 5 years after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the Comptroller General's study conducted pursuant to this section, together with a recommendation as to whether the demonstration authority authorized under section 234 of the Social Security Act [this section] (as added by section 301 of this Act) should be made permanent.''

SUBCHAPTER III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

§ 501. Use of available funds

The amounts made available pursuant to section 1101(c)(1)(A) of this title for the purpose of assisting the States in the administration of their unemployment compensation laws shall be used as hereinafter provided.

(Aug. 14, 1935, ch. 531, title III, § 301, 49 Stat. 626; Apr. 19, 1939, ch. 73, 53 Stat. 581; Pub. L. 86–778, title V, § 524(a), Sept. 13, 1960, 74 Stat. 982.)

AMENDMENTS

1960—Pub. L. 86–778 struck out provisions prescribing specific sums for fiscal years 1936–1939 and for each fiscal year thereafter and inserted provisions relating to amounts made available pursuant to section 1101(c)(1)(A) of this title.

1939—Act Apr. 19, 1939, provided increased appropriation for fiscal year ending June 30, 1939, and for each fiscal year thereafter.

§ 502. Payments to States; computation of amounts

(a) Certification of amounts

The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made, including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title. The Secretary of Labor's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Payment of amounts

Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a) of this section, pay, through the Fiscal Service of the Department of the Treasury and prior to audit or settlement by the Government Accountability Office, to the State agency charged with the administration of such law the amount so certified.

(c) Mailing costs

No portion of the cost of mailing a statement under section 6050B(b) of the Internal Revenue

Code of 1986 (relating to unemployment compensation) shall be treated as not being a cost for the proper and efficient administration of the State unemployment compensation law by reason of including with such statement information about the earned income credit provided by section 32 of the Internal Revenue Code of 1986. The preceding sentence shall not apply if the inclusion of such information increases the postage required to mail such statement.

(Aug. 14, 1935, ch. 531, title III, § 302, 49 Stat. 626; Aug. 10, 1939, ch. 666, title III, § 301, 53 Stat. 1378; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; Pub. L. 98–369, div. B, title VI, § 2663(b)(1), July 18, 1984, 98 Stat. 1165; Pub. L. 99–603, title I, § 121(b)(3), Nov. 6, 1986, 100 Stat. 3390; Pub. L. 102–318, title III, § 302(a), July 3, 1992, 106 Stat. 297; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsec. (a), comprised subchapter C (§§ 1600 to 1611) of chapter 9 of the Internal Revenue Code of 1939. Chapter 9 of the 1939 Code was repealed (subject to certain exceptions) by section 7851(a)(3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. The Federal Unemployment Tax Act also comprises chapter 23 (§ 3301 et seq.) of the Internal Revenue Code of 1986.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1992—Subsec. (c). Pub. L. 102–318 added subsec. (c).

1986—Subsec. (a). Pub. L. 99–603 inserted at end of first sentence '', including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''the Fiscal Service of the Department of the Treasury'' for ''the Division of Disbursement of the Treasury Department''.

1939—Subsec. (a). Act Aug. 10, 1939, substituted ''Federal Unemployment Tax Act'' for ''sections 1101–1110 of this title,'' and inserted ''efficient'' before ''administration''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 302(b) of Pub. L. 102–318 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 3, 1992].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 121(c)(2) of Pub. L. 99–603 provided that: ''The amendments made by subsection (b) [enacting section 1437r of this title, amending this section and sections 303, 603, 1203, 1353, and 1396b of this title, section 2025 of Title 7, Agriculture, and section 1096 of Title 20, Education, and amending provisions set out as a Puerto Rico, Guam, and Virgin Islands note under section 1383 of this title] take effect on October 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by Reorg. Plan No. 2 of 1949, set out in the Appendix to Title 5.

Section 1 of Reorg. Plan No. 2 of 1949, also provided that functions transferred by this section shall be performed by Secretary of Labor, or subject to his direction and control, by such officers, agencies, and employees of Department of Labor as he shall designate.

''Administrator'' substituted for ''Board'' by section 4 of Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5.

REPORT ON METHOD OF ALLOCATING ADMINISTRATIVE FUNDS AMONG STATES

Pub. L. 102–164, title III, § 304, Nov. 15, 1991, 105 Stat. 1061, as amended by Pub. L. 102–318, title V, § 533, July 3, 1992, 106 Stat. 317, provided that:

''(a) IN GENERAL.—The Secretary of Labor shall submit to the Congress, before December 31, 1994, a comprehensive report setting forth a proposal for revising the method of allocating grants among the States under section 302 of the Social Security Act [this section].

''(b) SPECIFIC REQUIREMENTS.—The report required by subsection (a) shall include an analysis of—

''(1) the use of unemployment insurance workload levels as the primary factor in allocating grants among the States under section 302 of the Social Security Act [this section],

''(2) ways to ensure that each State receive not less than a minimum grant amount for each fiscal year,

''(3) the use of nationally available objective data to determine the unemployment compensation administrative costs of each State, with consideration of legitimate cost differences among the States,

''(4) ways to simplify the method of allocating such grants among the States,

''(5) ways to eliminate the disincentives to productivity and efficiency which exist in the current method of allocating such grants among the States,

''(6) ways to promote innovation and cost-effective practices in the method of allocating such grants among the States, and

''(7) the effect of the proposal set forth in such report on the grant amounts allocated to each State.

''(c) CONGRESSIONAL REVIEW PERIOD.—The Secretary of Labor may not revise the method in effect on the date of the enactment of this Act [Nov. 15, 1991] for allocating grants among the States under section 302 of the Social Security Act [this section], until after the expiration of the 12-month period beginning on the date on which the report required by subsection (a) is submitted to the Congress.''

§ 503. State laws

(a) Provisions required

The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], includes provision for—

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary of Labor may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]), immediately upon such receipt, to the Secretary of the Treasury to the credit of the unemployment trust fund[1] established by section 1104 of this title; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]: *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further*, That the amounts specified by section 1103(c)(2) or 1103(d)(4) of this title may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices: *Provided further*, That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor: *Provided further*, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section: *Provided further*, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor: *Provided further*, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986 [26 U.S.C. 3306(t)]); and

(6) The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 502 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 502 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law; and

(10) A requirement that, as a condition of eligibility for regular compensation for any week, any claimant who has been referred to reemployment services pursuant to the profiling system under subsection (j)(1)(B) of this section participate in such services or in similar services unless the State agency charged with the administration of the State law determines—

(A) such claimant has completed such services; or

(B) there is justifiable cause for such claimant's failure to participate in such services.

(b) Failure to comply; payments stopped

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a) of this section;

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State: *Provided*, That there shall be no finding under clause (1) until the question of entitlement shall have been decided by the highest judicial authority given jurisdiction under such

[1] So in original. Probably should be "Unemployment Trust Fund".

State law: *Provided further*, That any costs may be paid with respect to any claimant by a State and included as costs of administration of its law.

(c) Denial of certification; availability of records to Railroad Retirement Board; cooperation with Federal agencies

The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) that such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes;

(2) that such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law; or

(3) that any interest required to be paid on advances under subchapter XII of this chapter has not been paid by the date on which such interest is required to be paid or has been paid directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund, until such interest is properly paid.

(d) Disclosure of unemployment compensation information; deduction and withholding of amounts owed to State food stamp agencies; reimbursement of administrative costs; noncompliance of State agency

(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, to officers and employees of the Department of Agriculture and to officers or employees of any State food stamp agency any of the following information contained in the records of such State agency—

(i) wage information,

(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual,

(iii) the current (or most recent) home address of such individual, and

(iv) whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.].

(2)(A) For purposes of this paragraph, the term ''unemployment compensation'' means any unemployment compensation payable under the State law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law).

(B) The State agency charged with the administration of the State law—

(i) may require each new applicant for unemployment compensation to disclose whether the applicant owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977 [7 U.S.C. 2022(c)(1)]) of food stamp coupons,

(ii) may notify the State food stamp agency to which the uncollected overissuance is owed that the applicant has been determined to be eligible for unemployment compensation if the applicant discloses under clause (i) that the applicant owes an uncollected overissuance and the applicant is determined to be so eligible,

(iii) may deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977 [7 U.S.C. 2022(c)(3)(A)], or

(III) any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(B) of such Act [7 U.S.C. 2022(c)(3)(B)], and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State food stamp agency.

(C) Any amount deducted and withheld under subparagraph (B)(iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State food stamp agency to which the uncollected overissuance is owed as repayment of the individual's uncollected overissuance.

(D) A State food stamp agency to which an uncollected overissuance is owed shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by the State agency under this paragraph that are attributable to repayment of uncollected overissuance to the State food stamp agency to which the uncollected overissuance is owed.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term ''State food stamp agency'' means any agency

described in section 3(n)(1) of the Food Stamp Act of 1977 [7 U.S.C. 2012(n)(1)] which administers the food stamp program established under such Act.

(e) Disclosure of wage information; non-compliance of State agency

(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, directly to officers or employees of any State or local child support enforcement agency any wage information contained in the records of such State agency, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of establishing and collecting child support obligations from, and locating, individuals owing such obligations.

For purposes of this subsection, the term ''child support obligations'' only includes obligations which are being enforced pursuant to a plan described in section 654 of this title which has been approved by the Secretary of Health and Human Services under part D of subchapter IV of this chapter.

(2)(A) The State agency charged with the administration of the State law—

(i) shall require each new applicant for unemployment compensation to disclose whether or not such applicant owes child support obligations (as defined in the last sentence of paragraph (1)),

(ii) shall notify the State or local child support enforcement agency enforcing such obligations, if any applicant discloses under clause (i) that he owes child support obligations and he is determined to be eligible for unemployment compensation, that such applicant has been so determined to be eligible,

(iii) shall deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State agency under section 654(19)(B)(i) of this title, or

(III) any amount otherwise required to be so deducted and withheld from such unemployment compensation through legal process (as defined in section 662(e)[2] of this title), and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State or local child support enforcement agency.

Any amount deducted and withheld under clause (iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the State or local child support enforcement agency in satisfaction of his child support obligations.

(B) For purposes of this paragraph, the term ''unemployment compensation'' means any compensation payable under the State law (including amounts payable pursuant to agreements under any Federal unemployment compensation law).

(C) Each State or local child support enforcement agency shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by such State agency under this paragraph which are attributable to child support obligations being enforced by the State or local child support enforcement agency.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1) or (2), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term ''State or local child support enforcement agency'' means any agency of a State or political subdivision thereof operating pursuant to a plan described in the last sentence of paragraph (1).

(5) A State or local child support enforcement agency may disclose to any agent of the agency that is under contract with the agency to carry out the purposes described in paragraph (1)(B) wage information that is disclosed to an officer or employee of the agency under paragraph (1)(A). Any agent of a State or local child support agency that receives wage information under this paragraph shall comply with the safeguards established pursuant to paragraph (1)(B).

(f) Income and eligibility verification system

The State agency charged with the administration of the State law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(g) Recovery of unemployment benefit payments

(1) A State may deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

(2) Any State may enter into an agreement with the Secretary of Labor under which—

(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual and not previously recovered, in accordance with paragraph (1), and to pay such amounts recov-

[2] See References in Text note below.

ered to the United States for credit to the appropriate account, and

(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by such State to such individual under a State unemployment benefit program and not previously recovered, in accordance with the same procedures as apply under paragraph (1).

(3) For purposes of this subsection, ''unemployment benefits'' means unemployment compensation, trade adjustment allowances, and other unemployment assistance.

(h) Disclosure to Secretary of Health and Human Services of wage and unemployment compensation claims information; suspension by Secretary of Labor of payments to State for noncompliance

(1) The State agency charged with the administration of the State law shall, on a reimbursable basis—

(A) disclose quarterly, to the Secretary of Health and Human Services, wage and claim information, as required pursuant to section 653(i)(1) of this title, contained in the records of such agency;

(B) ensure that information provided pursuant to subparagraph (A) meets such standards relating to correctness and verification as the Secretary of Health and Human Services, with the concurrence of the Secretary of Labor, may find necessary; and

(C) establish such safeguards as the Secretary of Labor determines are necessary to insure that information disclosed under subparagraph (A) is used only for purposes of subsections (i)(1), (i)(3), and (j) of section 653 of this title.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, the Secretary shall make no future certification to the Secretary of the Treasury with respect to the State.

(3) For purposes of this subsection—

(A) the term ''wage information'' means information regarding wages paid to an individual, the social security account number of such individual, and the name, address, State, and the Federal employer identification number of the employer paying such wages to such individual; and

(B) the term ''claim information'' means information regarding whether an individual is receiving, has received, or has made application for, unemployment compensation, the amount of any such compensation being received (or to be received by such individual), and the individual's current (or most recent) home address.

(i) Access to State employment records

(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, only to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency, any of the following information contained in the records of such State agency with respect to individuals applying for or participating in any housing assistance program administered by the Department who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development—

(i) wage information, and

(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to ensure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under a housing assistance program of the Department of Housing and Urban Development.

(2) The Secretary of Labor shall prescribe regulations governing how often and in what form information may be disclosed under paragraph (1)(A).

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he or she is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he or she shall make no future certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term ''public housing agency'' means any agency described in section 1437a(b)(6) of this title.

(j) Worker profiling

(1) The State agency charged with the administration of the State law shall establish and utilize a system of profiling all new claimants for regular compensation that—

(A) identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;

(B) refers claimants identified pursuant to subparagraph (A) to reemployment services, such as job search assistance services, available under any State or Federal law;

(C) collects follow-up information relating to the services received by such claimants and the employment outcomes for such claimants subsequent to receiving such services and utilizes such information in making identifications pursuant to subparagraph (A); and

(D) meets such other requirements as the Secretary of Labor determines are appropriate.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(k) Transfer of unemployment experience upon transfer of business

(1) For purposes of subsection (a) of this section, the unemployment compensation law of a State must provide—

(A) that if an employer transfers its business to another employer, and both employers are (at the time of transfer) under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred business shall also be transferred to (and combined with the unemployment experience attributable to) the employer to whom such business is so transferred,

(B) that unemployment experience shall not, by virtue of the transfer of a business, be transferred to the person acquiring such business if—

(i) such person is not otherwise an employer at the time of such acquisition, and

(ii) the State agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions,

(C) that unemployment experience shall (or shall not) be transferred in accordance with such regulations as the Secretary of Labor may prescribe to ensure that higher rates of contributions are not avoided through the transfer or acquisition of a business,

(D) that meaningful civil and criminal penalties are imposed with respect to—

(i) persons that knowingly violate or attempt to violate those provisions of the State law which implement subparagraph (A) or (B) or regulations under subparagraph (C), and

(ii) persons that knowingly advise another person to violate those provisions of the State law which implement subparagraph (A) or (B) or regulations under subparagraph (C), and

(E) for the establishment of procedures to identify the transfer or acquisition of a business for purposes of this subsection.

(2) For purposes of this subsection—

(A) the term ''unemployment experience'', with respect to any person, refers to such person's experience with respect to unemployment or other factors bearing a direct relation to such person's unemployment risk;

(B) the term ''employer'' means an employer as defined under the State law;

(C) the term ''business'' means a trade or business (or a part thereof);

(D) the term ''contributions'' has the meaning given such term by section 3306(g) of the Internal Revenue Code of 1986;

(E) the term ''knowingly'' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved; and

(F) the term ''person'' has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986.

(Aug. 14, 1935, ch. 531, title III, § 303, 49 Stat. 626; June 25, 1938, ch. 680, § 13(g), 52 Stat. 1112; June 20, 1939, ch. 227, § 18, 53 Stat. 848; Aug. 10, 1939, ch. 666, title III, § 302, 53 Stat. 1378; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 416(c), 60 Stat. 991; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, ch. 809, title IV, § 405(b), 64 Stat. 560; Aug. 5, 1954, ch. 657, § 5(a)(1), 68 Stat. 673; Pub. L. 96–249, title I, § 127(b)(1), May 26, 1980, 94 Stat. 366; Pub. L. 96–265, title IV, § 408(b)(1), June 9, 1980, 94 Stat. 468; Pub. L. 96–473, § 6(e)(1), Oct. 19, 1980, 94 Stat. 2265; Pub. L. 97–35, title XXIII, § 2335(b), Aug. 13, 1981, 95 Stat. 863; Pub. L. 97–248, title I, §§ 171(b)(3), 175(a)(2), Sept. 3, 1982, 96 Stat. 401, 403; Pub. L. 98–21, title V, §§ 515(a), 523(b), Apr. 20, 1983, 97 Stat. 147, 148; Pub. L. 98–369, div. B, title VI, §§ 2651(d), 2663(b)(2)–(5), July 18, 1984, 98 Stat. 1149, 1165; Pub. L. 99–198, title XV, § 1535(b)(3), Dec. 23, 1985, 99 Stat. 1584; Pub. L. 99–272, title XII, § 12401(a), Apr. 7, 1986, 100 Stat. 297; Pub. L. 100–485, title I, § 124(b)(1), Oct. 13, 1988, 102 Stat. 2353; Pub. L. 100–628, title IX, § 904(c)(1)(A), Nov. 7, 1988, 102 Stat. 3260; Pub. L. 102–318, title IV, § 401(a)(3), July 3, 1992, 106 Stat. 298; Pub. L. 103–152, § 4(a)(1), (b), Nov. 24, 1993, 107 Stat. 1517; Pub. L. 103–182, title V, § 507(b)(3), Dec. 8, 1993, 107 Stat. 2154; Pub. L. 103–465, title VII, § 702(c)(3), Dec. 8, 1994, 108 Stat. 4997; Pub. L. 104–193, title III, §§ 313(d), 316(g)(3), Aug. 22, 1996, 110 Stat. 2212, 2219; Pub. L. 105–33, title V, § 5201, Aug. 5, 1997, 111 Stat. 597; Pub. L. 105–65, title V, § 542(a)(1), Oct. 27, 1997, 111 Stat. 1412; Pub. L. 107–147, title II, § 209(d)(2), Mar. 9, 2002, 116 Stat. 33; Pub. L. 108–295, § 2(a), Aug. 9, 2004, 118 Stat. 1090.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsec. (a), is act Aug. 16, 1954, ch. 736, §§ 3301–3311, 68A Stat. 439, as amended, which is classified generally to chapter 23 (§ 3301 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.

The Food Stamp Act of 1977, referred to in subsec. (d)(1)(B), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Part D of subchapter IV of this chapter, referred to in subsec. (e)(1), is classified to section 651 et seq. of this title.

Section 662 of this title, referred to in subsec. (e)(2)(A)(iii)(III), was repealed by Pub. L. 104–193, title III, § 362(b)(1), Aug. 22, 1996, 110 Stat. 2246.

The Internal Revenue Code of 1986, referred to in subsec. (k)(2)(D), (F), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (k). Pub. L. 108–295 added subsec. (k).

2002—Subsec. (a)(5). Pub. L. 107–147 substituted ''section 1103(c)(2) or 1103(d)(4) of this title'' for ''section 1103(c)(2) of this title''.

1997—Subsec. (h)(1)(C). Pub. L. 105–33 substituted ''subsections (i)(1), (i)(3), and (j) of section 653 of this title'' for ''section 653(i)(1) of this title in carrying out the child support enforcement program under subchapter IV of this chapter''.

Subsec. (i)(5). Pub. L. 105–65 struck out par. (5) which read as follows: ''The provisions of this subsection shall cease to be effective beginning on October 1, 1994.''

1996—Subsec. (e)(5). Pub. L. 104–193, § 313(d), added par. (5).

Subsec. (h). Pub. L. 104–193, § 316(g)(3), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

''(1) The State agency charged with the administration of the State law shall take such actions (in such manner as may be provided in the agreement between the Secretary of Health and Human Services and the Secretary of Labor under section 653(e)(3) of this title) as may be necessary to enable the Secretary of Health and Human Services to obtain prompt access to any wage and unemployment compensation claims information (including any information that might be useful in locating an absent parent or such parent's employer) for use by the Secretary of Health and Human Services, for purposes of section 653 of this title, in carrying out the child support enforcement program under subchapter IV of this chapter.

''(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirement of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until such Secretary is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, such Secretary shall make no further certification to the Secretary of the Treasury with respect to such State.''

1994—Subsec. (a)(5). Pub. L. 103–465 inserted '', or the withholding of Federal, State, or local individual income tax,'' after ''health insurance''.

1993—Subsec. (a)(5). Pub. L. 103–182 substituted '': *Provided further*, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986); and'' for ''; and'' at end.

Subsec. (a)(10). Pub. L. 103–152, § 4(b), added par. (10).

Subsec. (j). Pub. L. 103–152, § 4(a)(1), added subsec. (j).

1992—Subsec. (a)(5). Pub. L. 102–318 inserted '': *Provided further*, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor'' before ''; and'' at end.

1988—Subsec. (h). Pub. L. 100–485 added subsec. (h).

Subsec. (i). Pub. L. 100–628 added subsec. (i).

1986—Subsec. (a)(5). Pub. L. 99–272, § 12401(a)(1), inserted provision at end that amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section.

Subsec. (g). Pub. L. 99–272, § 12401(a)(2), added subsec. (g).

1985—Subsec. (d)(2) to (4). Pub. L. 99–198 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1984—Subsec. (a)(4). Pub. L. 98–369, § 2663(b)(2), substituted ''section 3305(b)'' for ''section 1606(b)''.

Subsec. (a)(5). Pub. L. 98–369, § 2663(b)(3), substituted ''section 3305(b)'' for ''section 1606(b)'' and before last proviso substituted a colon for erroneous punctuation.

Subsec. (c)(1), (2). Pub. L. 98–369, § 2663(b)(4), substituted ''that'' for ''That''.

Subsec. (e)(2)(A)(i). Pub. L. 98–369, § 2663(b)(5), substituted ''child support obligations'' for ''child support obligatons''.

Subsec. (f). Pub. L. 98–369, § 2651(d), added subsec. (f).

1983—Subsec. (a)(5). Pub. L. 98–21, § 523(b), inserted provision that nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor.

Subsec. (c)(3). Pub. L. 98–21, § 515(a), added par. (3).

1982—Subsec. (e)(2)(A)(i). Pub. L. 97–248, § 175(a)(2), substituted ''of paragraph (1)'' for ''of this subsection''.

Subsec. (e)(2)(A)(iii)(II). Pub. L. 97–248, § 171(b)(3), substituted ''(19)'' for ''(20)''.

1981—Subsec. (e)(1). Pub. L. 97–35, § 2335(b)(3), in provision following subpar. (B) substituted ''this subsection'' for ''the preceding sentence''.

Subsec. (e)(2). Pub. L. 97–35, § 2335(b)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e)(3), (4). Pub. L. 97–35, § 2335(b)(1), (2), redesignated former par. (2) as (3) and substituted ''paragraph (1) or (2)'' for ''paragraph (1)''. Former par. (3) redesignated (4).

1980—Subsec. (d). Pub. L. 96–249 added subsec. (d). Another subsec. (d), as added by Pub. L. 96–265, was redesignated (e) by Pub. L. 96–473.

Subsec. (e). Pub. L. 96–473 redesignated former subsec. (d) as added by Pub. L. 96–265 as subsec. (e).

1954—Subsec. (a)(5). Act Aug. 5, 1954, made it clear that the funds credited to the State account may, subject to certain restrictions, be used for administrative expenses of the State in connection with its unemployment compensation law.

1950—Subsec. (b). Act Aug. 28, 1950, inserted provisos.

1946—Subsec. (a)(5). Act Aug. 10, 1946, inserted proviso allowing payment of disability benefits.

1939—Subsec. (a). Act Aug. 10, 1939, substituted ''Federal Unemployment Tax Act'' for ''sections 1101–1110 of this title'', amended pars. (1), (4), and (5) generally, and added pars. (8) and (9).

Subsec. (c)(2). Act June 20, 1939, substituted ''unemployment'' for ''employment''.

1938—Subsec. (c). Act June 25, 1938, added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT; DEFINITIONS

Pub. L. 108–295, § 2(c), (d), Aug. 9, 2004, 118 Stat. 1091, provided that:

''(c) EFFECTIVE DATE.—The amendment made by subsection (a) [amending this section] shall, with respect to a State, apply to certifications for payments (under section 302(a) of the Social Security Act [section 502(a) of this title]) in rate years beginning after the end of the 26-week period beginning on the first day of the first regularly scheduled session of the State legislature beginning on or after the date of the enactment of this Act [Aug. 9, 2004].

''(d) DEFINITIONS.—For purposes of this section—

''(1) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

''(2) the term 'rate year' means the rate year as defined in the applicable State law; and

''(3) the term 'State law' means the unemployment compensation law of the State, approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1986 [26 U.S.C. 3304].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 542(a)(2) of Pub. L. 105–65 provided that: ''The amendment made by this subsection [amending this section] shall apply to any request for information made after the date of the enactment of this Act [Oct. 27, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to payments made after Dec. 31, 1996, see section 702(d) of

Pub. L. 103–465, set out as a note under section 3304 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 4(f) of Pub. L. 103–152 provided that:

''(1) The amendments made by subsections (a) and (b) [amending this section and section 504 of this title] shall take effect on the date one year after the date of the enactment of this Act [Nov. 24, 1993].

''(2) The provisions of subsections (c), (d), and (e) [enacting provisions set out as notes below and repealing provisions set out as a note under section 3304 of Title 26, Internal Revenue Code] shall take effect on the date of enactment of this Act.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Sept. 30, 1989, with provision for optional early implementation and provision for States whose legislatures have not been in session for at least 30 days between Nov. 7, 1988, and Sept. 30, 1989, see section 3544(d) of this title.

Amendment by Pub. L. 100–485 effective on first day of first calendar quarter beginning one year or more after Oct. 13, 1988, see section 124(c)(1) of Pub. L. 100–485, set out as a note under section 653 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12401(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 3304 and 3306 of Title 26, Internal Revenue Code] shall apply to recoveries made on or after the date of the enactment of this Act [Apr. 7, 1986] and shall apply with respect to overpayments made before, on, or after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2651(d) of Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

Amendment by section 2663(b)(2)–(5) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 523(b) of Pub. L. 98–21 effective Apr. 20, 1983, see section 523(c) of Pub. L. 98–21 set out as a note under section 3304 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 171(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 653, 654, and 655 of this title] shall be effective on and after August 13, 1981.''

Section 175(b) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and section 652 of this title] shall be effective as of October 1, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2335(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 654 of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981], except that such amendments shall not be requirements under section 454 or 303 of the Social Security Act [section 654 or 503 of this title] before October 1, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 408(b)(3) of Pub. L. 96–265 provided that: ''The amendments made by this subsection [amending this section and section 504 of this title] shall take effect July 1, 1980.''

Section 127(b)(3) of Pub. L. 96–249 provided that: ''The amendments made by this subsection [amending this section and section 504 of this title] shall take effect on January 1, 1983.''

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Labor under subsec. (a)(1) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(2)(B) of this title.

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by section 1 of Reorg. Plan No. 2 of 1949 set out in the Appendix to Title 5.

Section 1 of Reorg. Plan No. 2 of 1949 also provided that functions transferred by this section shall be performed by Secretary of Labor, or subject to his direction and control, by such officers, agencies, and employees of Department of Labor as he shall designate.

''Administrator'' substituted for ''Board'' by section 2 of Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5.

CLARIFYING PROVISION RELATING TO BASE PERIODS

Section 5401 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—No provision of a State law under which the base period for such State is defined or otherwise determined shall, for purposes of section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)), be considered a provision for a method of administration.

''(b) DEFINITIONS.—For purposes of this section, the terms 'State law', 'base period', and 'State' shall have the meanings given them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note).

''(c) EFFECTIVE DATE.—This section shall apply for purposes of any period beginning before, on, or after the date of the enactment of this Act [Aug. 5, 1997].''

PROFILING SYSTEM TECHNICAL ASSISTANCE

Section 4(c) of Pub. L. 103–152 provided that: ''The Secretary of Labor shall provide technical assistance and advice to assist the States in implementing the profiling system required under the amendments made by subsection (a) [amending this section and section 504 of this title]. Such assistance shall include the development and identification of model profiling systems.''

PROFILING SYSTEM REPORT TO CONGRESS

Section 4(d) of Pub. L. 103–152 provided that: ''Not later than the date 3 years after the date of enactment of this Act [Nov. 24, 1993], the Secretary of Labor shall report to the Congress on the operation and effectiveness of the profiling system required under the amendments made by subsection (a) [amending this section and section 504 of this title] and the participation requirement provided by the amendments made under subsection (b) [amending this section]. Such report shall include such recommendations as the Secretary of Labor determines are appropriate.''

§ 504. Judicial review

(a) Finding by Secretary of Labor; petition for review; filing of record

Whenever the Secretary of Labor—

(1) finds that a State law does not include any provision specified in section 503(a) of this title, or

(2) makes a finding with respect to a State under subsection (b), (c), (d), (e), (h), (i), or (j) of section 503 of this title,

such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28.

(b) Findings of fact by Secretary of Labor; new or modified findings

The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Affirmance or setting aside of Secretary's action; review by Supreme Court

The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(d) Stay of Secretary's action

(1) The Secretary of Labor shall not withhold any certification for payment to any State under section 502 of this title until the expiration of 60 days after the Governor of the State has been notified of the action referred to in paragraph (1) or (2) of subsection (a) of this section or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary's action and including such other relief as may be necessary to preserve status or rights.

(Aug. 14, 1935, ch. 531, title III, § 304, as added Pub. L. 91–373, title I, § 131(a), Aug. 10, 1970, 84 Stat. 703; amended Pub. L. 96–249, title I, § 127(b)(2), May 26, 1980, 94 Stat. 367; Pub. L. 96–265, title IV, § 408(b)(2), June 9, 1980, 94 Stat. 469; Pub. L. 96–473, § 6(e)(2), Oct. 19, 1980, 94 Stat. 2265; Pub. L. 98–620, title IV, § 402(39), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 100–485, title I, § 124(b)(2), Oct. 13, 1988, 102 Stat. 2353; Pub. L. 100–628, title IX, § 904(c)(1)(B), Nov. 7, 1988, 102 Stat. 3261; Pub. L. 103–152, § 4(a)(2), Nov. 24, 1993, 107 Stat. 1517.)

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–152 substituted "(i), or (j)" for "or (i)".

1988—Subsec. (a)(2). Pub. L. 100–628 substituted "(e), (h), or (i)" for "(e), or (h)".

Pub. L. 100–485 substituted "(e), or (h)" for "or (e)".

1984—Subsec. (e). Pub. L. 98–620 struck out subsec. (e) which provided that any judicial proceedings under this section were entitled to, and upon request of the Secretary or the State would receive, a preference and be heard and determined as expeditiously as possible.

1980—Subsec. (a)(2). Pub. L. 96–473 inserted reference to subsec. (e) of section 503 of this title.

Pub. L. 96–249 and Pub. L. 96–265 made identical amendments, substituting "subsection (b), (c), or (d)" for "subsection (b) or (c)".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–152 effective on the date one year after Nov. 24, 1993, see section 4(f)(1) of Pub. L. 103–152, set out as a note under section 503 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Sept. 30, 1989, with provision for optional early implementation and provision for States whose legislatures have not been in session for at least 30 days between Nov. 7, 1988, and Sept. 30, 1989, see section 3544(d) of this title.

Amendment by Pub. L. 100–485 effective on first day of first calendar quarter beginning one year or more after Oct. 13, 1988, see section 124(c)(1) of Pub. L. 100–485, set out as a note under section 653 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–265 effective July 1, 1980, see section 408(b)(3) of Pub. L. 96–265, set out as a note under section 503 of this title.

Amendment by Pub. L. 96–249 effective Jan. 1, 1983, see section 127(b)(3) of Pub. L. 96–249, set out as a note under section 503 of this title.

SUBCHAPTER IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

AMENDMENTS

1968—Pub. L. 90–248, title II, § 240(a), Jan. 2, 1968, 81 Stat. 911, provided for grants for child-welfare services in subchapter heading.

1962—Pub. L. 87–543, title I, § 104(a)(1), July 25, 1962, 76 Stat. 185, substituted "AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN" for "AID TO DEPENDENT CHILDREN" in subchapter heading.

PART A—BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

PRIOR PROVISIONS

A prior part A relating to aid to families with dependent children and consisting of sections 601 to 618 of this title was repealed, except for section 618, by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112.

§ 601. Purpose

(a) In general

The purpose of this part is to increase the flexibility of States in operating a program designed to—

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual

numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

(b) No individual entitlement

This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part.

(Aug. 14, 1935, ch. 531, title IV, §401, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2112; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.)

PRIOR PROVISIONS

A prior section 601, acts Aug. 14, 1935, ch. 531, title IV, §401, 49 Stat. 627; 1946 Reorg. Plan No. 2, §4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, §312(a), 70 Stat. 848; July 25, 1962, Pub. L. 87–543, title I, §104(a)(4), (c)(2), 76 Stat. 185, 186; Jan. 2, 1968, Pub. L. 90–248, title II, §241(b)(1), 81 Stat. 916, related to authorization of appropriations for Aid to Families With Dependent Children program prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section 116 of title I of Pub. L. 104–193, as amended by Pub. L. 104–327, §1(a), (c), Oct. 19, 1996, 110 Stat. 4002, 4003; Pub. L. 105–33, title V, §§5516(b), 5517, Aug. 5, 1997, 111 Stat. 620, 621, provided that:

''(a) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as otherwise provided in this title [see Tables for classification], this title and the amendments made by this title shall take effect on July 1, 1997.

''(2) DELAYED EFFECTIVE DATE FOR CERTAIN PROVISIONS.—Notwithstanding any other provision of this section (but subject to subsection (b)(1)(A)(ii)), paragraphs (2), (3), (4), (5), (8), and (10) of section 409(a) and section 411(a) of the Social Security Act [sections 609(a) and 611(a) of this title] (as added by the amendments made by section 103(a) of this Act) shall not take effect with respect to a State until, and shall apply only with respect to conduct that occurs on or after, the later of—

''(A) July 1, 1997; or

''(B) the date that is 6 months after the date the Secretary of Health and Human Services receives from the State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as added by such amendment).

''(3) GRANTS TO OUTLYING AREAS.—The amendments made by section 103(b) [amending section 1308 of this title] shall take effect on October 1, 1996.

''(4) ELIMINATION OF CHILD CARE PROGRAMS.—The amendments made by section 103(c) [amending sections 602 and 603 of this title] shall take effect on October 1, 1996.

''(5) DEFINITIONS APPLICABLE TO NEW CHILD CARE ENTITLEMENT.—Sections 403(a)(1)(C), 403(a)(1)(D), and 419(4) of the Social Security Act [sections 603(a)(1)(C), (D) and 619(4) of this title], as added by the amendments made by section 103(a) of this Act, shall take effect on October 1, 1996.

''(6) RESEARCH, EVALUATIONS, AND NATIONAL STUDIES.—Section 413 of the Social Security Act [section 613 of this title], as added by the amendment made by section 103(a) of this Act, shall take effect on the date of the enactment of this Act [Aug. 22, 1996].

''(b) TRANSITION RULES.—Effective on the date of the enactment of this Act [Aug. 22, 1996]:

''(1) STATE OPTION TO ACCELERATE EFFECTIVE DATE; LIMITATION ON FISCAL YEARS 1996 AND 1997 PAYMENTS.—

''(A) IN GENERAL.—If the Secretary of Health and Human Services receives from a State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as added by the amendment made by section 103(a)(1) of this Act), then—

''(i) on and after the date of such receipt—

''(I) except as provided in clause (ii), this title and the amendments made by this title (other than by section 103(c) of this Act [amending sections 602 and 603 of this title]) shall apply with respect to the State; and

''(II) the State shall be considered an eligible State for purposes of part A of title IV of the Social Security Act [this part] (as in effect pursuant to the amendments made by such section 103(a)); and

''(ii) during the period that begins on the date of such receipt and ends on the later of June 30, 1997, or the day before the date described in subsection (a)(2)(B) of this section, there shall remain in effect with respect to the State—

''(I) section 403(h) of the Social Security Act [section 603(h) of this title] (as in effect on September 30, 1995); and

''(II) all State reporting requirements under parts A and F of title IV of the Social Security Act [this part and part F of this subchapter] (as in effect on September 30, 1995), modified by the Secretary as appropriate, taking into account the State program under part A of title IV of the Social Security Act (as in effect pursuant to the amendments made by such section 103(a)).

''(B) LIMITATIONS ON FEDERAL OBLIGATIONS.—

''(i) UNDER AFDC PROGRAM.—The total obligations of the Federal Government to a State under part A of title IV of the Social Security Act (as in effect on September 30, 1995) with respect to expenditures in fiscal year 1997 shall not exceed an amount equal to the State family assistance grant.

''(ii) Under temporary family assistance program.—Notwithstanding section 403(a)(1) of the Social Security Act [section 603(a)(1) of this title] (as in effect pursuant to the amendments made by section 103(a) of this Act), the total obligations of the Federal Government to a State under such section 403(a)(1)—

''(I) for fiscal year 1996, shall be an amount equal to—

''(aa) the State family assistance grant; multiplied by

''(bb) 1/366 of the number of days during the period that begins on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as added by the amendment made by section 103(a)(1) of this Act) and ends on September 30, 1996; and

''(II) for fiscal year 1997, shall be an amount equal to the lesser of—

''(aa) the amount (if any) by which the sum of the State family assistance grant and the amount, if any, that the State would have been eligible to be paid under the Contingency Fund for State Welfare Programs established under section 403(b) of the Social Security Act [section 603(b) of this title] (as amended by section 103(a)(1) of this Act), during the period

beginning on October 1, 1996, and ending on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as so amended) if, with respect to such State, the effective date of this Act [title] under subsection (a)(1) were August 22, 1996, exceeds the total obligations of the Federal Government to the State under part A of title IV of the Social Security Act [this part] (as in effect on September 30, 1995) with respect to expenditures in fiscal year 1997; or

''(bb) the sum of the State family assistance grant, multiplied by 1/365 of the number of days during the period that begins on October 1, 1996, or the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as added by the amendment made by section 103(a)(1) of this Act), whichever is later, and ends on September 30, 1997, and the amount, if any, that the State would have been eligible to be paid under the Contingency Fund for State Welfare Programs established under section 403(b) of the Social Security Act (as amended by section 103(a)(1) of this Act), during the period beginning on October 1, 1996, and ending on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as so amended) if, with respect to such State, the effective date of this Act [title] under subsection (a)(1) were August 22, 1996.

''(iii) CHILD CARE OBLIGATIONS EXCLUDED IN DETERMINING FEDERAL AFDC OBLIGATIONS.—As used in this subparagraph, the term 'obligations of the Federal Government to the State under part A of title IV of the Social Security Act' does not include any obligation of the Federal Government with respect to child care expenditures by the State.

''(C) SUBMISSION OF STATE PLAN FOR FISCAL YEAR 1996 OR 1997 DEEMED ACCEPTANCE OF GRANT LIMITATIONS AND FORMULA AND TERMINATION OF AFDC ENTITLEMENT.—The submission of a plan by a State pursuant to subparagraph (A) is deemed to constitute—

''(i) the State's acceptance of the grant reductions under subparagraph (B) (including the formula for computing the amount of the reduction); and

''(ii) the termination of any entitlement of any individual or family to benefits or services under the State AFDC program.

''(D) DEFINITIONS.—As used in this paragraph:

''(i) STATE AFDC PROGRAM.—The term 'State AFDC program' means the State program under parts A and F of title IV of the Social Security Act (as in effect on September 30, 1995).

''(ii) STATE.—The term 'State' means the 50 States and the District of Columbia.

''(iii) STATE FAMILY ASSISTANCE GRANT.—The term 'State family assistance grant' means the State family assistance grant (as defined in section 403(a)(1)(B) of the Social Security Act [section 603(a)(1)(B) of this title], as added by the amendment made by section 103(a)(1) of this Act).

''(2) CLAIMS, ACTIONS, AND PROCEEDINGS.—The amendments made by this title [see Tables for classification] shall not apply with respect to—

''(A) powers, duties, functions, rights, claims, penalties, or obligations applicable to aid, assistance, or services provided before the effective date of this title under the provisions amended; and

''(B) administrative actions and proceedings commenced before such date, or authorized before such date to be commenced, under such provisions.

''(3) CLOSING OUT ACCOUNT FOR THOSE PROGRAMS TERMINATED OR SUBSTANTIALLY MODIFIED BY THIS TITLE.—In closing out accounts, Federal and State officials may use scientifically acceptable statistical sampling techniques. Claims made with respect to State expenditures under a State plan approved under part A of title IV of the Social Security Act [this part] (as in effect on September 30, 1995) with respect to assistance or services provided on or before September 30, 1995, shall be treated as claims with respect to expenditures during fiscal year 1995 for purposes of reimbursement even if payment was made by a State on or after October 1, 1995. Each State shall complete the filing of all claims under the State plan (as so in effect) within 2 years after the date of the enactment of this Act [Aug. 22, 1996]. The head of each Federal department shall—

''(A) use the single audit procedure to review and resolve any claims in connection with the close out of programs under such State plans; and

''(B) reimburse States for any payments made for assistance or services provided during a prior fiscal year from funds for fiscal year 1995, rather than from funds authorized by this title.

''(4) CONTINUANCE IN OFFICE OF ASSISTANT SECRETARY FOR FAMILY SUPPORT.—The individual who, on the day before the effective date of this title, is serving as Assistant Secretary for Family Support within the Department of Health and Human Services shall, until a successor is appointed to such position—

''(A) continue to serve in such position; and

''(B) except as otherwise provided by law—

''(i) continue to perform the functions of the Assistant Secretary for Family Support under section 417 of the Social Security Act [section 617 of this title] (as in effect before such effective date); and

''(ii) have the powers and duties of the Assistant Secretary for Family Support under section 416 of the Social Security Act [section 616 of this title] (as in effect pursuant to the amendment made by section 103(a)(1) of this Act).

''(c) TERMINATION OF ENTITLEMENT UNDER AFDC PROGRAM.—Effective October 1, 1996, no individual or family shall be entitled to any benefits or services under any State plan approved under part A or F of title IV of the Social Security Act [this part or part F of this subchapter] (as in effect on September 30, 1995).''

CONGRESSIONAL FINDINGS

Section 101 of Pub. L. 104–193 provided that: ''The Congress makes the following findings:

''(1) Marriage is the foundation of a successful society.

''(2) Marriage is an essential institution of a successful society which promotes the interests of children.

''(3) Promotion of responsible fatherhood and motherhood is integral to successful child rearing and the well-being of children.

''(4) In 1992, only 54 percent of single-parent families with children had a child support order established and, of that 54 percent, only about one-half received the full amount due. Of the cases enforced through the public child support enforcement system, only 18 percent of the caseload has a collection.

''(5) The number of individuals receiving aid to families with dependent children (in this section referred to as 'AFDC') has more than tripled since 1965. More than two-thirds of these recipients are children. Eighty-nine percent of children receiving AFDC benefits now live in homes in which no father is present.

''(A)(i) The average monthly number of children receiving AFDC benefits—

''(I) was 3,300,000 in 1965;

''(II) was 6,200,000 in 1970;

''(III) was 7,400,000 in 1980; and

''(IV) was 9,300,000 in 1992.

''(ii) While the number of children receiving AFDC benefits increased nearly threefold between 1965 and 1992, the total number of children in the United States aged 0 to 18 has declined by 5.5 percent.

''(B) The Department of Health and Human Services has estimated that 12,000,000 children will receive AFDC benefits within 10 years.

''(C) The increase in the number of children receiving public assistance is closely related to the increase in births to unmarried women. Between 1970 and 1991, the percentage of live births to unmarried women increased nearly threefold, from 10.7 percent to 29.5 percent.

''(6) The increase of out-of-wedlock pregnancies and births is well documented as follows:

''(A) It is estimated that the rate of nonmarital teen pregnancy rose 23 percent from 54 pregnancies per 1,000 unmarried teenagers in 1976 to 66.7 pregnancies in 1991. The overall rate of nonmarital pregnancy rose 14 percent from 90.8 pregnancies per 1,000 unmarried women in 1980 to 103 in both 1991 and 1992. In contrast, the overall pregnancy rate for married couples decreased 7.3 percent between 1980 and 1991, from 126.9 pregnancies per 1,000 married women in 1980 to 117.6 pregnancies in 1991.

''(B) The total of all out-of-wedlock births between 1970 and 1991 has risen from 10.7 percent to 29.5 percent and if the current trend continues, 50 percent of all births by the year 2015 will be out-of-wedlock.

''(7) An effective strategy to combat teenage pregnancy must address the issue of male responsibility, including statutory rape culpability and prevention. The increase of teenage pregnancies among the youngest girls is particularly severe and is linked to predatory sexual practices by men who are significantly older.

''(A) It is estimated that in the late 1980's, the rate for girls age 14 and under giving birth increased 26 percent.

''(B) Data indicates that at least half of the children born to teenage mothers are fathered by adult men. Available data suggests that almost 70 percent of births to teenage girls are fathered by men over age 20.

''(C) Surveys of teen mothers have revealed that a majority of such mothers have histories of sexual and physical abuse, primarily with older adult men.

''(8) The negative consequences of an out-of-wedlock birth on the mother, the child, the family, and society are well documented as follows:

''(A) Young women 17 and under who give birth outside of marriage are more likely to go on public assistance and to spend more years on welfare once enrolled. These combined effects of 'younger and longer' increase total AFDC costs per household by 25 percent to 30 percent for 17-year-olds.

''(B) Children born out-of-wedlock have a substantially higher risk of being born at a very low or moderately low birth weight.

''(C) Children born out-of-wedlock are more likely to experience low verbal cognitive attainment, as well as more child abuse, and neglect.

''(D) Children born out-of-wedlock were more likely to have lower cognitive scores, lower educational aspirations, and a greater likelihood of becoming teenage parents themselves.

''(E) Being born out-of-wedlock significantly reduces the chances of the child growing up to have an intact marriage.

''(F) Children born out-of-wedlock are 3 times more likely to be on welfare when they grow up.

''(9) Currently 35 percent of children in single-parent homes were born out-of-wedlock, nearly the same percentage as that of children in single-parent homes whose parents are divorced (37 percent). While many parents find themselves, through divorce or tragic circumstances beyond their control, facing the difficult task of raising children alone, nevertheless, the negative consequences of raising children in single-parent homes are well documented as follows:

''(A) Only 9 percent of married-couple families with children under 18 years of age have income below the national poverty level. In contrast, 46 percent of female-headed households with children under 18 years of age are below the national poverty level.

''(B) Among single-parent families, nearly ½ of the mothers who never married received AFDC while only ⅕ of divorced mothers received AFDC.

''(C) Children born into families receiving welfare assistance are 3 times more likely to be on welfare when they reach adulthood than children not born into families receiving welfare.

''(D) Mothers under 20 years of age are at the greatest risk of bearing low birth weight babies.

''(E) The younger the single-parent mother, the less likely she is to finish high school.

''(F) Young women who have children before finishing high school are more likely to receive welfare assistance for a longer period of time.

''(G) Between 1985 and 1990, the public cost of births to teenage mothers under the aid to families with dependent children program, the food stamp program, and the medicaid program has been estimated at $120,000,000,000.

''(H) The absence of a father in the life of a child has a negative effect on school performance and peer adjustment.

''(I) Children of teenage single parents have lower cognitive scores, lower educational aspirations, and a greater likelihood of becoming teenage parents themselves.

''(J) Children of single-parent homes are 3 times more likely to fail and repeat a year in grade school than are children from intact 2-parent families.

''(K) Children from single-parent homes are almost 4 times more likely to be expelled or suspended from school.

''(L) Neighborhoods with larger percentages of youth aged 12 through 20 and areas with higher percentages of single-parent households have higher rates of violent crime.

''(M) Of those youth held for criminal offenses within the State juvenile justice system, only 29.8 percent lived primarily in a home with both parents. In contrast to these incarcerated youth, 73.9 percent of the 62,800,000 children in the Nation's resident population were living with both parents.

''(10) Therefore, in light of this demonstration of the crisis in our Nation, it is the sense of the Congress that prevention of out-of-wedlock pregnancy and reduction in out-of-wedlock birth are very important Government interests and the policy contained in part A of title IV of the Social Security Act [this part] (as amended by section 103(a) of this Act) is intended to address the crisis.''

APPROPRIATION BY STATE LEGISLATURES

Section 901 of Pub. L. 104–193 provided that:

''(a) IN GENERAL.—Any funds received by a State under the provisions of law specified in subsection (b) shall be subject to appropriation by the State legislature, consistent with the terms and conditions required under such provisions of law.

''(b) PROVISIONS OF LAW.—The provisions of law specified in this subsection are the following:

''(1) Part A of title IV of the Social Security Act [this part] (relating to block grants for temporary assistance for needy families).

''(2) The Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858 et seq.] (relating to block grants for child care).''

§ 602. Eligible States; State plan

(a) In general

As used in this part, the term ''eligible State'' means, with respect to a fiscal year, a State that, during the 27-month period ending with the close of the 1st quarter of the fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

(1) Outline of family assistance program

(A) General provisions

A written document that outlines how the State intends to do the following:

(i) Conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.

(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier, consistent with section 607(e)(2) of this title.

(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 607 of this title.

(iv) Take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.

(v) Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State (as defined in section 603(a)(2)(C)(iii)[1] of this title) for calendar years 1996 through 2005.

(vi) Conduct a program, designed to reach State and local law enforcement officials, the education system, and relevant counseling services, that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men.

(B) Special provisions

(i) The document shall indicate whether the State intends to treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program.

(ii) The document shall indicate whether the State intends to provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance.

(iii) The document shall set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.

(iv) Not later than 1 year after August 22, 1996, unless the chief executive officer of the State opts out of this provision by notifying the Secretary, a State shall, consistent with the exception provided in section 607(e)(2) of this title, require a parent or caretaker receiving assistance under the program who, after receiving such assistance for 2 months is not exempt from work requirements and is not engaged in work, as determined under section 607(c) of this title, to participate in community service employment, with minimum hours per week and tasks to be determined by the State.

(2) Certification that the State will operate a child support enforcement program

A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D of this subchapter.

(3) Certification that the State will operate a foster care and adoption assistance program

A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a foster care and adoption assistance program under the State plan approved under part E of this subchapter, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under subchapter XIX of this chapter.

(4) Certification of the administration of the program

A certification by the chief executive officer of the State specifying which State agency or agencies will administer and supervise the program referred to in paragraph (1) for the fiscal year, which shall include assurances that local governments and private sector organizations—

(A) have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

(B) have had at least 45 days to submit comments on the plan and the design of such services.

(5) Certification that the State will provide Indians with equitable access to assistance

A certification by the chief executive officer of the State that, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 612 of this title, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.

(6) Certification of standards and procedures to ensure against program fraud and abuse

A certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, includ-

[1] See References in Text note below.

ing standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.

(7) Optional certification of standards and procedures to ensure that the State will screen for and identify domestic violence

(A) In general

At the option of the State, a certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to—

(i) screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;

(ii) refer such individuals to counseling and supportive services; and

(iii) waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

(B) "Domestic violence" defined

For purposes of this paragraph, the term ''domestic violence'' has the same meaning as the term ''battered or subjected to extreme cruelty'', as defined in section 608(a)(7)(C)(iii) of this title.

(b) Plan amendments

Within 30 days after a State amends a plan submitted pursuant to subsection (a) of this section, the State shall notify the Secretary of the amendment.

(c) Public availability of State plan summary

The State shall make available to the public a summary of any plan or plan amendment submitted by the State under this section.

(Aug. 14, 1935, ch. 531, title IV, §402, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2113; amended Pub. L. 105–33, title V, §§5501, 5514(c), Aug. 5, 1997, 111 Stat. 606, 620; Pub. L. 106–169, title IV, §401(a), Dec. 14, 1999, 113 Stat. 1858.)

REFERENCES IN TEXT

Section 603(a)(2) of this title, referred to in subsec. (a)(1)(A)(v), was amended generally by Pub. L. 109–171, title VII, §7103(a), Feb. 8, 2006, 120 Stat. 138, and, as so amended, no longer defines ''illegitimacy ratio''.

Parts D and E of this subchapter, referred to in subsec. (a)(2), (3), are classified to sections 651 et seq. and 670 et seq., respectively, of this title.

PRIOR PROVISIONS

A prior section 602, acts Aug. 14, 1935, ch. 531, title IV, §402, 49 Stat. 627; Aug. 10, 1939, ch. 666, title IV, §401, 53 Stat. 1379; Aug. 28, 1950, ch. 809, title III, pt. 2, §321, pt. 6, §361(c), (d), 64 Stat. 549, 558; Aug. 1, 1956, ch. 836, title III, §312(b), 70 Stat. 849; July 25, 1962, Pub. L. 87–543, title I, §§103, 104(a)(2), (3)(A), (B), (5)(A), 106(b), 76 Stat. 185, 188; July 30, 1965, Pub. L. 89–97, title IV, §§403(b), 410, 79 Stat. 418, 423; Jan. 2, 1968, Pub. L. 90–248, title II, §§201(a), (b), 202(a), (b), 204(b), (e), 205(a), 210(a)(2), 211(a), 213(b), 81 Stat. 877, 879, 881, 890, 892, 895, 896, 898; Dec. 28, 1971, Pub. L. 92–223, §3(a)(1)–(7), 85 Stat. 803, 804; Oct. 30, 1972, Pub. L. 92–603, title II, §299E(c), title IV, §414(a), 86 Stat. 1462, 1492; Jan. 4, 1975, Pub. L. 93–647, §§3(a)(1), (2), (8), 101(c)(2)–(5), (8), 88 Stat. 2348, 2349, 2359, 2360; Aug. 9, 1975, Pub. L. 94–88, title II, §§202, 207, 208(a), 209, 89 Stat. 434, 436, 437; Dec. 20, 1977, Pub. L. 95–216, title IV, §403(c), 91 Stat. 1561; Apr. 1, 1980, Pub. L. 96–222, title I, §101(a)(2)(A), 94 Stat. 195; June 9, 1980, Pub. L. 96–265, title IV, §§401(a)–(f), 403(a), 406(b), 94 Stat. 460–462, 465, 466; June 17, 1980, Pub. L. 96–272, title I, §101(a)(3)(A), title III, §302(a), 94 Stat. 512, 528; Oct. 19, 1980, Pub. L. 96–473, §6(f), 94 Stat. 2266; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §§2301–2306(a), 2310, 2313(b), (c)(1), 2314, 2315(a), 2316, 2318, 2320(a), (b)(1), 2353(b)(1), (c), 95 Stat. 843–846, 852, 854–857, 872; Sept. 3, 1982, Pub. L. 97–248, title I, §§151(a), 152(a), 154(a), 96 Stat. 395, 396; Oct. 13, 1982, Pub. L. 97–300, title VI, §603, formerly title V, §503, 96 Stat. 1398, renumbered title VI, §603, Nov. 7, 1988, Pub. L. 100–628, title VII, §712(a)(1), (2), 102 Stat. 3248; Jan. 6, 1983, Pub. L. 97–424, title V, §545(b), 96 Stat. 2198; Apr. 20, 1983, Pub. L. 98–21, title IV, §404(b), 97 Stat. 140; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§2621–2624(a), 2625(a), 2626, 2628, 2629, 2631–2634, 2636, 2639(a), (c), 2640(a), (c), 2642(a), (b), 2651(b)(1), (2), 2663(c)(1), (3)(B), (*l*)(1), 98 Stat. 1134–1137, 1141, 1142, 1144–1146, 1149, 1165, 1166, 1171; Aug. 16, 1984, Pub. L. 98–378, §9(a)(2), 98 Stat. 1316; Apr. 7, 1986, Pub. L. 99–272, title XII, §§12303(a), 12304(a), 100 Stat. 292; Oct. 22, 1986, Pub. L. 99–514, §2, title XVIII, §1883(a)(5)(B), (b)(1)(A), (2)(A), (B), (3)(A), (4), (5), 100 Stat. 2095, 2916, 2917; Nov. 6, 1986, Pub. L. 99–603, title II, §201(b)(1), title III, §§302(b)(1), 303(e)(1), 100 Stat. 3403, 3422, 3431; Dec. 22, 1987, Pub. L. 100–203, title IX, §§9102(b), 9133(b)(1), 101 Stat. 1330–300, 1330–314; Oct. 13, 1988, Pub. L. 100–485, title I, §§102(a), 123(d), title II, §§201(a), 202(b)(1)–(3), title III, §§301, 302(a), (b)(1), (c), 303(b)(3), (f)(2)(B), (C), 304(b)(2), title IV, §§401(a)(1), (2)(A), (b)(2), (f), (h), 402(a)–(c), 403(a), 404(a), title VI, §§604(a), 605(a), 102 Stat. 2346, 2353, 2356, 2377, 2382–2384, 2392, 2393, 2395–2398, 2409; Dec. 19, 1989, Pub. L. 101–239, title X, §10403(a)(1)(B)(i), (C)(i), 103 Stat. 2487; Nov. 5, 1990, Pub. L. 101–508, title V, §§5051(a), (b), 5053(a), 5054(a), 5055(a), 5060(a), 5081(a), (c), (d), title XI, §11115(a), 104 Stat. 1388–227 to 1388–229, 1388–231, 1388–233, 1388–236, 1388–414; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13742(a), 107 Stat. 663; Oct. 20, 1994, Pub. L. 103–382, title III, §394(k), 108 Stat. 4029; Oct. 31, 1994, Pub. L. 103–432, title II, §§235(a), 264(c), 108 Stat. 4466, 4468; Aug. 22, 1996, Pub. L. 104–193, title I, §103(c)(1), (2)(A), 110 Stat. 2161, related to State plans for aid and services to needy families with children prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620, effective July 1, 1997.

AMENDMENTS

1999—Subsec. (a)(1)(B)(iv). Pub. L. 106–169 made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a). Pub. L. 105–33, §5501(a), substituted ''27-month period ending with the close of the 1st quarter of'' for ''2-year period immediately preceding'' in introductory provisions.

Subsec. (a)(1)(A)(ii). Pub. L. 105–33, §5501(b), inserted '', consistent with section 607(e)(2) of this title'' before period at end.

Subsec. (a)(1)(A)(v). Pub. L. 105–33, §5501(c), substituted ''section 603(a)(2)(C)(iii)'' for ''section 603(a)(2)(B)''.

Subsec. (b). Pub. L. 105–33, §5501(d)(1), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 105–34, §5501(d)(2), inserted ''or plan amendment'' after ''plan''.

Pub. L. 105–33, § 5501(d)(1), redesignated subsec. (b) as (c).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title IV, § 401(q), Dec. 14, 1999, 113 Stat. 1859, provided that: ''Except as provided in subsection (*l*) [amending section 604 of this title and enacting provisions set out as a note under section 604 of this title], the amendments made by this section [amending this section and sections 604, 609, 613, 616, 629a, 652, 654, 655, 657, 666, 671, and 1320b–7 of this title] shall take effect as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105).''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Section 5518(a) of title V of Pub. L. 105–33 provided that: ''The amendments made by this chapter to a provision of part A of title IV of the Social Security Act [chapter 1 (§§ 5501–5518) of subtitle F of title V of Pub. L. 105–33, amending this section and sections 603, 604, 607, 608, 609, 611, 612, 613, and 616 of this title] shall take effect as if the amendments had been included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193] at the time such section became law.''

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM

Section 9121 of Pub. L. 100–203 authorized State of Washington, upon application of State and approval by Secretary of Health and Human Services, to conduct demonstration project for purpose of testing whether operation of its Family Independence Program enacted in May 1987, as alternative to AFDC program under this subchapter, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning, prior to repeal by Pub. L. 104–193, title I, § 110(b), Aug. 22, 1996, 110 Stat. 2171.

CHILD SUPPORT DEMONSTRATION PROGRAM IN NEW YORK STATE

Section 9122 of Pub. L. 100–203 authorized State of New York, upon application by State and approval by Secretary of Health and Human Services, to conduct demonstration program in accordance with this section for purpose of testing State's Child Support Supplemental Program as alternative to the program of Aid to Families with Dependent Children under this subchapter, prior to repeal by Pub. L. 104–193, title I, § 110(c), Aug. 22, 1996, 110 Stat. 2171.

UTILITY PAYMENTS MADE BY TENANTS IN ASSISTED HOUSING

Pub. L. 98–181, title II, § 221, Nov. 30, 1983, 97 Stat. 1188, as amended by Pub. L. 98–479, title I, § 102(g)(3), Oct. 17, 1984, 98 Stat. 2222, provided that notwithstanding any other provision of law, for purposes of determining eligibility, or amount of benefits payable, under this part, any utility payment made in lieu of any rental payment by person living in dwelling unit in lower income housing project assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or section 1715z–1 of Title 12, Banks and Banking, was to be considered to be shelter payment, prior to repeal by Pub. L. 104–193, title I, § 110(d), Aug. 22, 1996, 110 Stat. 2171.

EXCLUSION FROM INCOME

Section 159 of Pub. L. 97–248 provided that payments made under statutorily established State program to meet certain needs of children receiving aid under State's plan approved under this part were to be excluded from income of such children and their families for purposes of section 602(a)(17) of this title and for all other purposes of this part and of such plan, effective Sept. 3, 1982, if the payments were made to such children by State agency administering such plan, but were made without Federal financial participation under section 603(a) of this title or otherwise, and if State program had been continuously in effect since before Jan. 1, 1979, prior to repeal by Pub. L. 104–193, title I, § 110(e), Aug. 22, 1996, 110 Stat. 2171.

STATE PLANS TO DISREGARD EARNED INCOME OF INDIVIDUALS IN DETERMINATION OF NEED FOR AID; EFFECTIVE DATE

Section 202(d) of Pub. L. 90–248 provided that effective with respect to quarters beginning after June 30, 1968, in determining need of individuals claiming aid under State plan approved under this part, State was to apply provisions of this part notwithstanding any provisions of law other than this chapter requiring State to disregard earned income of such individuals in determining need under such State plan, prior to repeal by Pub. L. 104–193, title I, § 110(f), Aug. 22, 1996, 110 Stat. 2171.

§ 603. Grants to States

(a) Grants

(1) Family assistance grant

(A) In general

Each eligible State shall be entitled to receive from the Secretary, for each of fiscal years 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003, a grant in an amount equal to the State family assistance grant.

(B) State family assistance grant

The State family assistance grant payable to a State for a fiscal year shall be the amount that bears the same ratio to the amount specified in subparagraph (C) of this paragraph as the amount required to be paid to the State under this paragraph for fiscal year 2002 (determined without regard to any reduction pursuant to section 609 or 612(a)(1) of this title) bears to the total amount required to be paid under this paragraph for fiscal year 2002 (as so determined).

(C) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal year 2003 $16,566,542,000 for grants under this paragraph.

(2) Healthy marriage promotion and responsible fatherhood grants

(A) In general

(i) Use of funds

Subject to subparagraphs (B) and (C), the Secretary may use the funds made available under subparagraph (D) for the purpose of conducting and supporting research

and demonstration projects by public or private entities, and providing technical assistance to States, Indian tribes and tribal organizations, and such other entities as the Secretary may specify that are receiving a grant under another provision of this part.

(ii) Limitations

The Secretary may not award funds made available under this paragraph on a noncompetitive basis, and may not provide any such funds to an entity for the purpose of carrying out healthy marriage promotion activities or for the purpose of carrying out activities promoting responsible fatherhood unless the entity has submitted to the Secretary an application which—

(I) describes—

(aa) how the programs or activities proposed in the application will address, as appropriate, issues of domestic violence; and

(bb) what the applicant will do, to the extent relevant, to ensure that participation in the programs or activities is voluntary, and to inform potential participants that their participation is voluntary; and

(II) contains a commitment by the entity—

(aa) to not use the funds for any other purpose; and

(bb) to consult with experts in domestic violence or relevant community domestic violence coalitions in developing the programs and activities.

(iii) Healthy marriage promotion activities

In clause (ii), the term ''healthy marriage promotion activities'' means the following:

(I) Public advertising campaigns on the value of marriage and the skills needed to increase marital stability and health.

(II) Education in high schools on the value of marriage, relationship skills, and budgeting.

(III) Marriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement, for non-married pregnant women and non-married expectant fathers.

(IV) Pre-marital education and marriage skills training for engaged couples and for couples or individuals interested in marriage.

(V) Marriage enhancement and marriage skills training programs for married couples.

(VI) Divorce reduction programs that teach relationship skills.

(VII) Marriage mentoring programs which use married couples as role models and mentors in at-risk communities.

(VIII) Programs to reduce the disincentives to marriage in means-tested aid programs, if offered in conjunction with any activity described in this subparagraph.

(B) Limitation on use of funds for demonstration projects for coordination of provision of child welfare and TANF services to tribal families at risk of child abuse or neglect

(i) In general

Of the amounts made available under subparagraph (D) for a fiscal year, the Secretary may not award more than $2,000,000 on a competitive basis to fund demonstration projects designed to test the effectiveness of tribal governments or tribal consortia in coordinating the provision to tribal families at risk of child abuse or neglect of child welfare services and services under tribal programs funded under this part.

(ii) Limitation on use of funds

A grant made pursuant to clause (i) to such a project shall not be used for any purpose other than—

(I) to improve case management for families eligible for assistance from such a tribal program;

(II) for supportive services and assistance to tribal children in out-of-home placements and the tribal families caring for such children, including families who adopt such children; and

(III) for prevention services and assistance to tribal families at risk of child abuse and neglect.

(iii) Reports

The Secretary may require a recipient of funds awarded under this subparagraph to provide the Secretary with such information as the Secretary deems relevant to enable the Secretary to facilitate and oversee the administration of any project for which funds are provided under this subparagraph.

(C) Limitation on use of funds for activities promoting responsible fatherhood

(i) In general

Of the amounts made available under subparagraph (D) for a fiscal year, the Secretary may not award more than $50,000,000 on a competitive basis to States, territories, Indian tribes and tribal organizations, and public and nonprofit community entities, including religious organizations, for activities promoting responsible fatherhood.

(ii) Activities promoting responsible fatherhood

In this paragraph, the term ''activities promoting responsible fatherhood'' means the following:

(I) Activities to promote marriage or sustain marriage through activities such as counseling, mentoring, disseminating information about the benefits of marriage and 2-parent involvement for children, enhancing relationship skills, education regarding how to control aggres-

sive behavior, disseminating information on the causes of domestic violence and child abuse, marriage preparation programs, premarital counseling, marital inventories, skills-based marriage education, financial planning seminars, including improving a family's ability to effectively manage family business affairs by means such as education, counseling, or mentoring on matters related to family finances, including household management, budgeting, banking, and handling of financial transactions and home maintenance, and divorce education and reduction programs, including mediation and counseling.

(II) Activities to promote responsible parenting through activities such as counseling, mentoring, and mediation, disseminating information about good parenting practices, skills-based parenting education, encouraging child support payments, and other methods.

(III) Activities to foster economic stability by helping fathers improve their economic status by providing activities such as work first services, job search, job training, subsidized employment, job retention, job enhancement, and encouraging education, including career-advancing education, dissemination of employment materials, coordination with existing employment services such as welfare-to-work programs, referrals to local employment training initiatives, and other methods.

(IV) Activities to promote responsible fatherhood that are conducted through a contract with a nationally recognized, nonprofit fatherhood promotion organization, such as the development, promotion, and distribution of a media campaign to encourage the appropriate involvement of parents in the life of any child and specifically the issue of responsible fatherhood, and the development of a national clearinghouse to assist States and communities in efforts to promote and support marriage and responsible fatherhood.

(D) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $150,000,000 for each of fiscal years 2006 through 2010, for expenditure in accordance with this paragraph.

(3) Supplemental grant for population increases in certain States

(A) In general

Each qualifying State shall, subject to subparagraph (F), be entitled to receive from the Secretary—

(i) for fiscal year 1998 a grant in an amount equal to 2.5 percent of the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(ii) for each of fiscal years 1999, 2000, and 2001, a grant in an amount equal to the sum of—

(I) the amount (if any) required to be paid to the State under this paragraph for the immediately preceding fiscal year; and

(II) 2.5 percent of the sum of—

(aa) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(bb) the amount (if any) required to be paid to the State under this paragraph for the fiscal year preceding the fiscal year for which the grant is to be made.

(B) Preservation of grant without increases for States failing to remain qualifying States

Each State that is not a qualifying State for a fiscal year specified in subparagraph (A)(ii) but was a qualifying State for a prior fiscal year shall, subject to subparagraph (F), be entitled to receive from the Secretary for the specified fiscal year, a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year for which the State was a qualifying State.

(C) Qualifying State

(i) In general

For purposes of this paragraph, a State is a qualifying State for a fiscal year if—

(I) the level of welfare spending per poor person by the State for the immediately preceding fiscal year is less than the national average level of State welfare spending per poor person for such preceding fiscal year; and

(II) the population growth rate of the State (as determined by the Bureau of the Census) for the most recent fiscal year for which information is available exceeds the average population growth rate for all States (as so determined) for such most recent fiscal year.

(ii) State must qualify in fiscal year 1998

Notwithstanding clause (i), a State shall not be a qualifying State for any fiscal year after 1998 by reason of clause (i) if the State is not a qualifying State for fiscal year 1998 by reason of clause (i).

(iii) Certain States deemed qualifying States

For purposes of this paragraph, a State is deemed to be a qualifying State for fiscal years 1998, 1999, 2000, and 2001 if—

(I) the level of welfare spending per poor person by the State for fiscal year 1994 is less than 35 percent of the national average level of State welfare spending per poor person for fiscal year 1994; or

(II) the population of the State increased by more than 10 percent from April 1, 1990 to July 1, 1994, according to the population estimates in publication CB94–204 of the Bureau of the Census.

(D) Definitions

As used in this paragraph:

(i) Level of welfare spending per poor person

The term ''level of State welfare spending per poor person'' means, with respect to a State and a fiscal year—

(I) the sum of—

(aa) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(bb) the amount (if any) paid to the State under this paragraph for the immediately preceding fiscal year; divided by

(II) the number of individuals, according to the 1990 decennial census, who were residents of the State and whose income was below the poverty line.

(ii) National average level of State welfare spending per poor person

The term ''national average level of State welfare spending per poor person'' means, with respect to a fiscal year, an amount equal to—

(I) the total amount required to be paid to the States under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; divided by

(II) the number of individuals, according to the 1990 decennial census, who were residents of any State and whose income was below the poverty line.

(iii) State

The term ''State'' means each of the 50 States of the United States and the District of Columbia.

(E) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1998, 1999, 2000, and 2001 such sums as are necessary for grants under this paragraph, in a total amount not to exceed $800,000,000.

(F) Grants reduced pro rata if insufficient appropriations

If the amount appropriated pursuant to this paragraph for a fiscal year is less than the total amount of payments otherwise required to be made under this paragraph for the fiscal year, then the amount otherwise payable to any State for the fiscal year under this paragraph shall be reduced by a percentage equal to the amount so appropriated divided by such total amount.

(G) Budget scoring

Notwithstanding section 907(b)(2) of title 2, the baseline shall assume that no grant shall be made under this paragraph after fiscal year 2001.

(H) Reauthorization

Notwithstanding any other provision of this paragraph—

(i) any State that was a qualifying State under this paragraph for fiscal year 2001 or any prior fiscal year shall be entitled to receive from the Secretary for each of fiscal years 2002 and 2003 a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year in which the State was a qualifying State;

(ii) subparagraph (G) shall be applied as if ''fiscal year 2008'' were substituted for ''fiscal year 2001''; and

(iii) out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for each of fiscal years 2002 and 2003 such sums as are necessary for grants under this subparagraph.

(4) Bonus to reward high performance States

(A) In general

The Secretary shall make a grant pursuant to this paragraph to each State for each bonus year for which the State is a high performing State.

(B) Amount of grant

(i) In general

Subject to clause (ii) of this subparagraph, the Secretary shall determine the amount of the grant payable under this paragraph to a high performing State for a bonus year, which shall be based on the score assigned to the State under subparagraph (D)(i) for the fiscal year that immediately precedes the bonus year.

(ii) Limitation

The amount payable to a State under this paragraph for a bonus year shall not exceed 5 percent of the State family assistance grant.

(C) Formula for measuring State performance

Not later than 1 year after August 22, 1996, the Secretary, in consultation with the National Governors' Association and the American Public Welfare Association, shall develop a formula for measuring State performance in operating the State program funded under this part so as to achieve the goals set forth in section 601(a) of this title.

(D) Scoring of State performance; setting of performance thresholds

For each bonus year, the Secretary shall—

(i) use the formula developed under subparagraph (C) to assign a score to each eligible State for the fiscal year that immediately precedes the bonus year; and

(ii) prescribe a performance threshold in such a manner so as to ensure that—

(I) the average annual total amount of grants to be made under this paragraph for each bonus year equals $200,000,000; and

(II) the total amount of grants to be made under this paragraph for all bonus years equals $1,000,000,000.

(E) Definitions

As used in this paragraph:

(i) Bonus year

The term ''bonus year'' means fiscal years 1999, 2000, 2001, 2002, and 2003.

(ii) High performing State

The term ''high performing State'' means, with respect to a bonus year, an eligible State whose score assigned pursuant to subparagraph (D)(i) for the fiscal year immediately preceding the bonus year equals or exceeds the performance threshold prescribed under subparagraph (D)(ii) for such preceding fiscal year.

(F) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1999 through 2003 $1,000,000,000 for grants under this paragraph.

(5) Welfare-to-work grants

(A) Formula grants

(i) Entitlement

A State shall be entitled to receive from the Secretary of Labor a grant for each fiscal year specified in subparagraph (H) of this paragraph for which the State is a welfare-to-work State, in an amount that does not exceed the lesser of—

(I) 2 times the total of the expenditures by the State (excluding qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) and any expenditure described in subclause (I), (II), or (IV) of section 609(a)(7)(B)(iv) of this title) during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant for activities described in subparagraph (C)(i) of this paragraph; or

(II) the allotment of the State under clause (iii) of this subparagraph for the fiscal year.

(ii) Welfare-to-work State

A State shall be considered a welfare-to-work State for a fiscal year for purposes of this paragraph if the Secretary of Labor determines that the State meets the following requirements:

(I) The State has submitted to the Secretary of Labor and the Secretary of Health and Human Services (in the form of an addendum to the State plan submitted under section 602 of this title) a plan which—

(aa) describes how, consistent with this subparagraph, the State will use any funds provided under this subparagraph during the fiscal year;

(bb) specifies the formula to be used pursuant to clause (vi) to distribute funds in the State, and describes the process by which the formula was developed;

(cc) contains evidence that the plan was developed in consultation and coordination with appropriate entitites[1] in sub-State areas;

(dd) contains assurances by the Governor of the State that the private industry council (and any alternate agency designated by the Governor under item (ee)) for a service delivery area in the State will coordinate the expenditure of any funds provided under this subparagraph for the benefit of the service delivery area with the expenditure of the funds provided to the State under paragraph (1);

(ee) if the Governor of the State desires to have an agency other than a private industry council administer the funds provided under this subparagraph for the benefit of 1 or more service delivery areas in the State, contains an application to the Secretary of Labor for a waiver of clause (vii)(I) with respect to the area or areas in order to permit an alternate agency designated by the Governor to so administer the funds; and

(ff) describes how the State will ensure that a private industry council to which information is disclosed pursuant to section 603(a)(5)(K)[2] or 654A(f)(5) of this title has procedures for safeguarding the information and for ensuring that the information is used solely for the purpose described in that section.

(II) The State has provided to the Secretary of Labor an estimate of the amount that the State intends to expend during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant (excluding expenditures described in section 609(a)(7)(B)(iv) of this title (other than subclause (III) thereof)) pursuant to this paragraph.

(III) The State has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation under section 613(j) of this title, and to cooperate with the conduct of any such evaluation.

(IV) The State is an eligible State for the fiscal year.

(V) The State certifies that qualified State expenditures (within the meaning of section 609(a)(7) of this title) for the fiscal year will be not less than the applicable percentage of historic State expenditures (within the meaning of section 609(a)(7) of this title) with respect to the fiscal year.

(iii) Allotments to welfare-to-work States

(I) In general

Subject to this clause, the allotment of a welfare-to-work State for a fiscal year shall be the available amount for the fiscal year, multiplied by the State percentage for the fiscal year.

(II) Minimum allotment

The allotment of a welfare-to-work State (other than Guam, the Virgin Islands, or American Samoa) for a fiscal

[1] So in original. Probably should be ''entities''.

[2] See References in Text note below.

year shall not be less than 0.25 percent of the available amount for the fiscal year.

(III) Pro rata reduction

Subject to subclause (II), the Secretary of Labor shall make pro rata reductions in the allotments to States under this clause for a fiscal year as necessary to ensure that the total of the allotments does not exceed the available amount for the fiscal year.

(iv) Available amount

As used in this subparagraph, the term ''available amount'' means, for a fiscal year, the sum of—

(I) 75 percent of the sum of—

(aa) the amount specified in subparagraph (H) for the fiscal year, minus the total of the amounts reserved pursuant to subparagraphs (E), (F), and (G) for the fiscal year; and

(bb) any amount reserved pursuant to subparagraph (E) for the immediately preceding fiscal year that has not been obligated; and

(II) any available amount for the immediately preceding fiscal year that has not been obligated by a State, other than funds reserved by the State for distribution under clause (vi)(III) and funds distributed pursuant to clause (vi)(I) in any State in which the service delivery area is the State.

(v) State percentage

As used in clause (iii), the term ''State percentage'' means, with respect to a fiscal year, ½ of the sum of—

(I) the percentage represented by the number of individuals in the State whose income is less than the poverty line divided by the number of such individuals in the United States; and

(II) the percentage represented by the number of adults who are recipients of assistance under the State program funded under this part divided by the number of adults in the United States who are recipients of assistance under any State program funded under this part.

(vi) Procedure for distribution of funds within States

(I) Allocation formula

A State to which a grant is made under this subparagraph shall devise a formula for allocating not less than 85 percent of the amount of the grant among the service delivery areas in the State, which—

(aa) determines the amount to be allocated for the benefit of a service delivery area in proportion to the number (if any) by which the population of the area with an income that is less than the poverty line exceeds 7.5 percent of the total population of the area, relative to such number for all such areas in the State with such an excess, and accords a weight of not less than 50 percent to this factor;

(bb) may determine the amount to be allocated for the benefit of such an area in proportion to the number of adults residing in the area who have been recipients of assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 first applied to the State) for at least 30 months (whether or not consecutive) relative to the number of such adults residing in the State; and

(cc) may determine the amount to be allocated for the benefit of such an area in proportion to the number of unemployed individuals residing in the area relative to the number of such individuals residing in the State.

(II) Distribution of funds

(aa) In general

If the amount allocated by the formula to a service delivery area is at least $100,000, the State shall distribute the amount to the entity administering the grant in the area.

(bb) Special rule

If the amount allocated by the formula to a service delivery area is less than $100,000, the sum shall be available for distribution in the State under subclause (III) during the fiscal year.

(III) Projects to help long-term recipients of assistance enter unsubsidized jobs

The Governor of a State to which a grant is made under this subparagraph may distribute not more than 15 percent of the grant funds (plus any amount required to be distributed under this subclause by reason of subclause (II)(bb)) to projects that appear likely to help long-term recipients of assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 first applied to the State) enter unsubsidized employment.

(vii) Administration

(I) Private industry councils

The private industry council for a service delivery area in a State shall have sole authority, in coordination with the chief elected official (as defined in section 101 of the Workforce Investment Act of 1998 [29 U.S.C. 2801]) of the area, to expend the amounts distributed under clause (vi)(II)(aa) for the benefit of the service delivery area, in accordance with the assurances described in clause (ii)(I)(dd) provided by the Governor of the State.

(II) Enforcement of coordination of expenditures with other expenditures under this part

Notwithstanding subclause (I) of this clause, on a determination by the Gov-

ernor of a State that a private industry council (or an alternate agency described in clause (ii)(I)(dd)) has used funds provided under this subparagraph in a manner inconsistent with the assurances described in clause (ii)(I)(dd)—

(aa) the private industry council (or such alternate agency) shall remit the funds to the Governor; and

(bb) the Governor shall apply to the Secretary of Labor for a waiver of subclause (I) of this clause with respect to the service delivery area or areas involved in order to permit an alternate agency designated by the Governor to administer the funds in accordance with the assurances.

(III) Authority to permit use of alternate administering agency

The Secretary of Labor shall approve an application submitted under clause (ii)(I)(ee) or subclause (II)(bb) of this clause to waive subclause (I) of this clause with respect to 1 or more service delivery areas if the Secretary determines that the alternate agency designated in the application would improve the effectiveness or efficiency of the administration of amounts distributed under clause (vi)(II)(aa) for the benefit of the area or areas.

(viii) Data to be used in determining the number of adult TANF recipients

For purposes of this subparagraph, the number of adult recipients of assistance under a State program funded under this part for a fiscal year shall be determined using data for the most recent 12-month period for which such data is available before the beginning of the fiscal year.

(ix) Reversion of unallotted formula funds

If at the end of any fiscal year any funds available under this subparagraph have not been allotted due to a determination by the Secretary that any State has not met the requirements of clause (ii), such funds shall be transferred to the General Fund of the Treasury of the United States.

(B) Competitive grants

(i) In general

The Secretary of Labor shall award grants in accordance with this subparagraph, in fiscal years 1998 and 1999, for projects proposed by eligible applicants, based on the following:

(I) The effectiveness of the proposal in—

(aa) expanding the base of knowledge about programs aimed at moving recipients of assistance under State programs funded under this part who are least job ready into unsubsidized employment.[3]

(bb) moving recipients of assistance under State programs funded under this part who are least job ready into unsubsidized employment; and

(cc) moving recipients of assistance under State programs funded under this part who are least job ready into unsubsidized employment, even in labor markets that have a shortage of low-skill jobs.

(II) At the discretion of the Secretary of Labor, any of the following:

(aa) The history of success of the applicant in moving individuals with multiple barriers into work.

(bb) Evidence of the applicant's ability to leverage private, State, and local resources.

(cc) Use by the applicant of State and local resources beyond those required by subparagraph (A).

(dd) Plans of the applicant to coordinate with other organizations at the local and State level.

(ee) Use by the applicant of current or former recipients of assistance under a State program funded under this part as mentors, case managers, or service providers.

(ii) Eligible applicants

As used in clause (i), the term ''eligible applicant'' means a private industry council for a service delivery area in a State, a political subdivision of a State, or a private entity applying in conjunction with the private industry council for such a service delivery area or with such a political subdivision, that submits a proposal developed in consultation with the Governor of the State.

(iii) Determination of grant amount

In determining the amount of a grant to be made under this subparagraph for a project proposed by an applicant, the Secretary of Labor shall provide the applicant with an amount sufficient to ensure that the project has a reasonable opportunity to be successful, taking into account the number of long-term recipients of assistance under a State program funded under this part, the level of unemployment, the job opportunities and job growth, the poverty rate, and such other factors as the Secretary of Labor deems appropriate, in the area to be served by the project.

(iv) Consideration of needs of rural areas and cities with large concentrations of poverty

In making grants under this subparagraph, the Secretary of Labor shall consider the needs of rural areas and cities with large concentrations of residents with an income that is less than the poverty line.

(v) Funding

For grants under this subparagraph for each fiscal year specified in subparagraph (H), there shall be available to the Secretary of Labor an amount equal to the sum of—

(I) 25 percent of the sum of—

(aa) the amount specified in subparagraph (H) for the fiscal year, minus the

[3] So in original. The period probably should be a semicolon.

total of the amounts reserved pursuant to subparagraphs (E), (F), and (G) for the fiscal year; and

(bb) any amount reserved pursuant to subparagraph (E) for the immediately preceding fiscal year that has not been obligated; and

(II) any amount available for grants under this subparagraph for the immediately preceding fiscal year that has not been obligated.

(C) Limitations on use of funds

(i) Allowable activities

An entity to which funds are provided under this paragraph shall use the funds to move individuals into and keep individuals in lasting unsubsidized employment by means of any of the following:

(I) The conduct and administration of community service or work experience programs.

(II) Job creation through public or private sector employment wage subsidies.

(III) On-the-job training.

(IV) Contracts with public or private providers of readiness, placement, and post-employment services, or if the entity is not a private industry council or workforce investment board, the direct provision of such services.

(V) Job vouchers for placement, readiness, and postemployment services.

(VI) Job retention or support services if such services are not otherwise available.

(VII) Not more than 6 months of vocational educational or job training.

Contracts or vouchers for job placement services supported by such funds must require that at least ½ of the payment occur after an eligible individual placed into the workforce has been in the workforce for 6 months.

(ii) General eligibility

An entity that operates a project with funds provided under this paragraph may expend funds provided to the project for the benefit of recipients of assistance under the program funded under this part of the State in which the entity is located who—

(I) has received assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 first apply to the State) for at least 30 months (whether or not consecutive); or

(II) within 12 months, will become ineligible for assistance under the State program funded under this part by reason of a durational limit on such assistance, without regard to any exemption provided pursuant to section 608(a)(7)(C) of this title that may apply to the individual.

(iii) Noncustodial parents

An entity that operates a project with funds provided under this paragraph may use the funds to provide services in a form described in clause (i) to noncustodial parents with respect to whom the requirements of the following subclauses are met:

(I) The noncustodial parent is unemployed, underemployed, or having difficulty in paying child support obligations.

(II) At least 1 of the following applies to a minor child of the noncustodial parent (with preference in the determination of the noncustodial parents to be provided services under this paragraph to be provided by the entity to those noncustodial parents with minor children who meet, or who have custodial parents who meet, the requirements of item (aa)):

(aa) The minor child or the custodial parent of the minor child meets the requirements of subclause (I) or (II) of clause (ii).

(bb) The minor child is eligible for, or is receiving, benefits under the program funded under this part.

(cc) The minor child received benefits under the program funded under this part in the 12-month period preceding the date of the determination but no longer receives such benefits.

(dd) The minor child is eligible for, or is receiving, assistance under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], benefits under the supplemental security income program under subchapter XVI of this chapter, medical assistance under subchapter XIX of this chapter, or child health assistance under subchapter XXI of this chapter.

(III) In the case of a noncustodial parent who becomes enrolled in the project on or after November 29, 1999, the noncustodial parent is in compliance with the terms of an oral or written personal responsibility contract entered into among the noncustodial parent, the entity, and (unless the entity demonstrates to the Secretary that the entity is not capable of coordinating with such agency) the agency responsible for administering the State plan under part D of this subchapter, which was developed taking into account the employment and child support status of the noncustodial parent, which was entered into not later than 30 (or, at the option of the entity, not later than 90) days after the noncustodial parent was enrolled in the project, and which, at a minimum, includes the following:

(aa) A commitment by the noncustodial parent to cooperate, at the earliest opportunity, in the establishment of the paternity of the minor child, through voluntary acknowledgement or other procedures, and in the establishment of a child support order.

(bb) A commitment by the noncustodial parent to cooperate in the payment of child support for the minor child, which may include a modifica-

tion of an existing support order to take into account the ability of the noncustodial parent to pay such support and the participation of such parent in the project.

(cc) A commitment by the noncustodial parent to participate in employment or related activities that will enable the noncustodial parent to make regular child support payments, and if the noncustodial parent has not attained 20 years of age, such related activities may include completion of high school, a general equivalency degree, or other education directly related to employment.

(dd) A description of the services to be provided under this paragraph, and a commitment by the noncustodial parent to participate in such services, that are designed to assist the noncustodial parent obtain and retain employment, increase earnings, and enhance the financial and emotional contributions to the well-being of the minor child.

In order to protect custodial parents and children who may be at risk of domestic violence, the preceding provisions of this subclause shall not be construed to affect any other provision of law requiring a custodial parent to cooperate in establishing the paternity of a child or establishing or enforcing a support order with respect to a child, or entitling a custodial parent to refuse, for good cause, to provide such cooperation as a condition of assistance or benefit under any program, shall not be construed to require such cooperation by the custodial parent as a condition of participation of either parent in the program authorized under this paragraph, and shall not be construed to require a custodial parent to cooperate with or participate in any activity under this clause. The entity operating a project under this clause with funds provided under this paragraph shall consult with domestic violence prevention and intervention organizations in the development of the project.

(iv) Targeting of hard to employ individuals with characteristics associated with long-term welfare dependence

An entity that operates a project with funds provided under this paragraph may expend not more than 30 percent of all funds provided to the project for programs that provide assistance in a form described in clause (i)—

(I) to recipients of assistance under the program funded under this part of the State in which the entity is located who have characteristics associated with long-term welfare dependence (such as school dropout, teen pregnancy, or poor work history), including, at the option of the State, by providing assistance in such form as a condition of receiving assistance under the State program funded under this part;

(II) to children—

(aa) who have attained 18 years of age but not 25 years of age; and

(bb) who, before attaining 18 years of age, were recipients of foster care maintenance payments (as defined in section 675(4) of this title) under part E of this subchapter or were in foster care under the responsibility of a State;

(III) to recipients of assistance under the State program funded under this part, determined to have significant barriers to self-sufficiency, pursuant to criteria established by the local private industry council; or

(IV) to custodial parents with incomes below 100 percent of the poverty line (as defined in section 9902(2) of this title, including any revision required by such section, applicable to a family of the size involved).

To the extent that the entity does not expend such funds in accordance with the preceding sentence, the entity shall expend such funds in accordance with clauses (ii) and (iii) and, as appropriate, clause (v).

(v) Authority to provide work-related services to individuals who have reached the 5-year limit

An entity that operates a project with funds provided under this paragraph may use the funds to provide assistance in a form described in clause (i) of this subparagraph to, or for the benefit of, individuals who (but for section 608(a)(7) of this title) would be eligible for assistance under the program funded under this part of the State in which the entity is located.

(vi) Relationship to other provisions of this part

(I) Rules governing use of funds

The rules of section 604 of this title, other than subsections (b), (f), and (h) of section 604 of this title, shall not apply to a grant made under this paragraph.

(II) Rules governing payments to States

The Secretary of Labor shall carry out the functions otherwise assigned by section 605 of this title to the Secretary of Health and Human Services with respect to the grants payable under this paragraph.

(III) Administration

Section 616 of this title shall not apply to the programs under this paragraph.

(vii) Prohibition against use of grant funds for any other fund matching requirement

An entity to which funds are provided under this paragraph shall not use any part of the funds, nor any part of State expenditures made to match the funds, to fulfill any obligation of any State, political subdivision, or private industry council to contribute funds under subsection (b) of

this section or section 618 of this title or any other provision of this chapter or other Federal law.

(viii) Deadline for expenditure

An entity to which funds are provided under this paragraph shall remit to the Secretary of Labor any part of the funds that are not expended within 5 years after the date the funds are so provided.

(ix) Regulations

Within 90 days after August 5, 1997, the Secretary of Labor, after consultation with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, shall prescribe such regulations as may be necessary to implement this paragraph.

(x) Reporting requirements

The Secretary of Labor, in consultation with the Secretary of Health and Human Services, States, and organizations that represent State or local governments, shall establish requirements for the collection and maintenance of financial and participant information and the reporting of such information by entities carrying out activities under this paragraph.

(D) Definitions

(i) Individuals with income less than the poverty line

For purposes of this paragraph, the number of individuals with an income that is less than the poverty line shall be determined for a fiscal year—

(I) based on the methodology used by the Bureau of the Census to produce and publish intercensal poverty data for States and counties (or, in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa, other poverty data selected by the Secretary of Labor); and

(II) using data for the most recent year for which such data is available before the beginning of the fiscal year.

(ii) Private industry council

As used in this paragraph, the term ''private industry council'' means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to title I of the Workforce Investment Area[4] of 1998 [29 U.S.C. 2801 et seq.], as appropriate.

(iii) Service delivery area

As used in this paragraph, the term ''service delivery area'' shall have the meaning given such term for purposes of the Job Training Partnership Act or.[5]

(E) Funding for Indian tribes

1 percent of the amount specified in subparagraph (H) for fiscal year 1998 and $15,000,000 of the amount so specified for fiscal year 1999 shall be reserved for grants to Indian tribes under section 612(a)(3) of this title.

(F) Funding for evaluations of welfare-to-work programs

0.6 percent of the amount specified in subparagraph (H) for fiscal year 1998 and $9,000,000 of the amount so specified for fiscal year 1999 shall be reserved for use by the Secretary to carry out section 613(j) of this title.

(G) Funding for evaluation of abstinence education programs

(i) In general

0.2 percent of the amount specified in subparagraph (H) for fiscal year 1998 and $3,000,000 of the amount so specified for fiscal year 1999 shall be reserved for use by the Secretary to evaluate programs under section 710 of this title, directly or through grants, contracts, or interagency agreements.

(ii) Authority to use funds for evaluations of welfare-to-work programs

Any such amount not required for such evaluations shall be available for use by the Secretary to carry out section 613(j) of this title.

(iii) Deadline for outlays

Outlays from funds used pursuant to clause (i) for evaluation of programs under section 710 of this title shall not be made after fiscal year 2005.

(iv) Interim report

Not later than January 1, 2002, the Secretary shall submit to the Congress an interim report on the evaluations referred to in clause (i).

(H) Appropriations

(i) In general

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for grants under this paragraph—

(I) $1,500,000,000 for fiscal year 1998; and

(II) $1,400,000,000 for fiscal year 1999.

(ii) Availability

The amounts made available pursuant to clause (i) shall remain available for such period as is necessary to make the grants provided for in this paragraph.

(I) Worker protections

(i) Nondisplacement in work activities

(I) General prohibition

Subject to this clause, an adult in a family receiving assistance attributable to funds provided under this paragraph may fill a vacant employment position in order to engage in a work activity.

(II) Prohibition against violation of contracts

A work activity engaged in under a program operated with funds provided under this paragraph shall not violate an existing contract for services or a collec-

[4] So in original. Probably should be ''Act''.

[5] So in original.

tive bargaining agreement, and such a work activity that would violate a collective bargaining agreement shall not be undertaken without the written concurrence of the labor organization and employer concerned.

(III) Other prohibitions

An adult participant in a work activity engaged in under a program operated with funds provided under this paragraph shall not be employed or assigned—

(aa) when any other individual is on layoff from the same or any substantially equivalent job;

(bb) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the participant; or

(cc) if the employer has caused an involuntary reduction to less than full time in hours of any employee in the same or a substantially equivalent job.

(ii) Health and safety

Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of other participants engaged in a work activity under a program operated with funds provided under this paragraph.

(iii) Nondiscrimination

In addition to the protections provided under the provisions of law specified in section 608(c) of this title, an individual may not be discriminated against by reason of gender with respect to participation in work activities engaged in under a program operated with funds provided under this paragraph.

(iv) Grievance procedure

(I) In general

Each State to which a grant is made under this paragraph shall establish and maintain a procedure for grievances or complaints from employees alleging violations of clause (i) and participants in work activities alleging violations of clause (i), (ii), or (iii).

(II) Hearing

The procedure shall include an opportunity for a hearing.

(III) Remedies

The procedure shall include remedies for violation of clause (i), (ii), or (iii), which may continue during the pendency of the procedure, and which may include—

(aa) suspension or termination of payments from funds provided under this paragraph;

(bb) prohibition of placement of a participant with an employer that has violated clause (i), (ii), or (iii);

(cc) where applicable, reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions and privileges of employment; and

(dd) where appropriate, other equitable relief.

(IV) Appeals

(aa) Filing

Not later than 30 days after a grievant or complainant receives an adverse decision under the procedure established pursuant to subclause (I), the grievant or complainant may appeal the decision to a State agency designated by the State which shall be independent of the State or local agency that is administering the programs operated with funds provided under this paragraph and the State agency administering, or supervising the administration of, the State program funded under this part.

(bb) Final determination

Not later than 120 days after the State agency designated under item (aa) receives a grievance or complaint made under the procedure established by a State pursuant to subclause (I), the State agency shall make a final determination on the appeal.

(v) Rule of interpretation

This subparagraph shall not be construed to affect the authority of a State to provide or require workers' compensation.

(vi) Nonpreemption of State law

The provisions of this subparagraph shall not be construed to preempt any provision of State law that affords greater protections to employees or to other participants engaged in work activities under a program funded under this part than is afforded by such provisions of this subparagraph.

(J) Information disclosure

If a State to which a grant is made under this section establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing to a private industry council the names, addresses, telephone numbers, and identifying case number information in the State program funded under this part, of noncustodial parents residing in the service delivery area of the private industry council, for the purpose of identifying and contacting noncustodial parents regarding participation in the program under this paragraph.

(b) Contingency Fund

(1) Establishment

There is hereby established in the Treasury of the United States a fund which shall be known as the ''Contingency Fund for State Welfare Programs'' (in this section referred to as the ''Fund'').

(2) Deposits into Fund

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1997, 1998, 1999, 2000, 2001, 2002, and 2003 such sums as are necessary for payment to the Fund in a total amount not to exceed $2,000,000,000, reduced by the sum of the dollar amounts specified in paragraph (6)(C)(ii).

(3) Grants

(A) Provisional payments

If an eligible State submits to the Secretary a request for funds under this paragraph during an eligible month, the Secretary shall, subject to this paragraph, pay to the State, from amounts appropriated pursuant to paragraph (2), an amount equal to the amount of funds so requested.

(B) Payment priority

The Secretary shall make payments under subparagraph (A) in the order in which the Secretary receives requests for such payments.

(C) Limitations

(i) Monthly payment to a State

The total amount paid to a single State under subparagraph (A) during a month shall not exceed 1/12 of 20 percent of the State family assistance grant.

(ii) Payments to all States

The total amount paid to all States under subparagraph (A) during fiscal years 1997 through 2010 shall not exceed the total amount appropriated pursuant to paragraph (2).

(4) "Eligible month" defined

As used in paragraph (3)(A), the term ''eligible month'' means, with respect to a State, a month in the 2-month period that begins with any month for which the State is a needy State.

(5) Needy State

For purposes of paragraph (4), a State is a needy State for a month if—

(A) the average rate of—

(i) total unemployment in such State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published equals or exceeds 6.5 percent; and

(ii) total unemployment in such State (seasonally adjusted) for the 3-month period equals or exceeds 110 percent of such average rate for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years; or

(B) as determined by the Secretary of Agriculture (in the discretion of the Secretary of Agriculture), the monthly average number of individuals (as of the last day of each month) participating in the food stamp program in the State in the then most recently concluded 3-month period for which data are available exceeds by not less than 10 percent the lesser of—

(i) the monthly average number of individuals (as of the last day of each month) in the State that would have participated in the food stamp program in the corresponding 3-month period in fiscal year 1994 if the amendments made by titles IV [8 U.S.C. 1601 et seq.] and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 had been in effect throughout fiscal year 1994; or

(ii) the monthly average number of individuals (as of the last day of each month) in the State that would have participated in the food stamp program in the corresponding 3-month period in fiscal year 1995 if the amendments made by titles IV and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 had been in effect throughout fiscal year 1995.

(6) Annual reconciliation

(A) In general

Notwithstanding paragraph (3), if the Secretary makes a payment to a State under this subsection in a fiscal year, then the State shall remit to the Secretary, within 1 year after the end of the first subsequent period of 3 consecutive months for which the State is not a needy State, an amount equal to the amount (if any) by which—

(i) the total amount paid to the State under paragraph (3) of this subsection in the fiscal year; exceeds

(ii) the product of—

(I) the Federal medical assistance percentage for the State (as defined in section 1396d(b) of this title, as such section was in effect on September 30, 1995);

(II) the State's reimbursable expenditures for the fiscal year; and

(III) 1/12 times the number of months during the fiscal year for which the Secretary made a payment to the State under such paragraph (3).

(B) Definitions

As used in subparagraph (A):

(i) Reimbursable expenditures

The term ''reimbursable expenditures'' means, with respect to a State and a fiscal year, the amount (if any) by which—

(I) countable State expenditures for the fiscal year; exceeds

(II) historic State expenditures (as defined in section 609(a)(7)(B)(iii) of this title), excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994.

(ii) Countable State expenditures

The term ''countable expenditures'' means, with respect to a State and a fiscal year—

(I) the qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title (other than the expenditures described in subclause (I)(bb) of such section)) under the State program funded under this part for the fiscal year; plus

(II) any amount paid to the State under paragraph (3) during the fiscal

year that is expended by the State under the State program funded under this part.

(C) Adjustment of State remittances

(i) In general

The amount otherwise required by subparagraph (A) to be remitted by a State for a fiscal year shall be increased by the lesser of—

(I) the total adjustment for the fiscal year, multiplied by the adjustment percentage for the State for the fiscal year; or

(II) the unadjusted net payment to the State for the fiscal year.

(ii) Total adjustment

As used in clause (i), the term ''total adjustment'' means—

(I) in the case of fiscal year 1998, $2,000,000;

(II) in the case of fiscal year 1999, $9,000,000;

(III) in the case of fiscal year 2000, $16,000,000; and

(IV) in the case of fiscal year 2001, $13,000,000.

(iii) Adjustment percentage

As used in clause (i), the term ''adjustment percentage'' means, with respect to a State and a fiscal year—

(I) the unadjusted net payment to the State for the fiscal year; divided by

(II) the sum of the unadjusted net payments to all States for the fiscal year.

(iv) Unadjusted net payment

As used in this subparagraph, the term, ''unadjusted net payment'' means with respect to a State and a fiscal year—

(I) the total amount paid to the State under paragraph (3) in the fiscal year; minus

(II) the amount that, in the absence of this subparagraph, would be required by subparagraph (A) or by section 609(a)(10) of this title to be remitted by the State in respect of the payment.

(7) "State" defined

As used in this subsection, the term ''State'' means each of the 50 States and the District of Columbia.

(8) Annual reports

The Secretary shall annually report to the Congress on the status of the Fund.

(Aug. 14, 1935, ch. 531, title IV, § 403, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2115; amended Pub. L. 104–327, § 1(b), Oct. 19, 1996, 110 Stat. 4002; Pub. L. 105–33, title V, §§ 5001(a)(1), 5502, 5514(c), Aug. 5, 1997, 111 Stat. 577, 606, 620; Pub. L. 105–78, title VI, § 608, Nov. 13, 1997, 111 Stat. 1522; Pub. L. 105–89, title IV, § 404(a), (b), Nov. 19, 1997, 111 Stat. 2134; Pub. L. 105–200, title IV, § 408, July 16, 1998, 112 Stat. 672; Pub. L. 105–277, div. A, § 101(f) [title I, § 102, title VIII, § 405(d)(30), (f)(22)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–346, 2681–425, 2681–432; Pub. L. 105–306, § 6(a), Oct. 28, 1998, 112 Stat. 2928; Pub. L. 106–113, div. B, § 1000(a)(4) [title VIII, §§ 801(a), (b)(1), (c), 802, 803, 804(b), 805(a)(2), (b), 806], Nov. 29, 1999, 113 Stat. 1535, 1501A–280, 1501A–281, 1501A–283 to 1501A–286; Pub. L. 106–246, div. B, title II, § 2402, July 13, 2000, 114 Stat. 555; Pub. L. 106–554, § 1(a)(1) [title I, §§ 103, 107(a)–(b)(4), (c), title V, § 513], Dec. 21, 2000, 114 Stat. 2763, 2763A–11, 2763A–12, 2763A–71; Pub. L. 107–147, title VI, §§ 616, 617, Mar. 9, 2002, 116 Stat. 62; Pub. L. 108–40, § 3(a), (c)–(e), June 30, 2003, 117 Stat. 836, 837; Pub. L. 108–89, title I, § 101(b)(1), (2), Oct. 1, 2003, 117 Stat. 1131; Pub. L. 108–210, § 2(b), Mar. 31, 2004, 118 Stat. 564; Pub. L. 108–262, § 2(b), June 30, 2004, 118 Stat. 696; Pub. L. 108–308, § 2(b)(1), (2), Sept. 30, 2004, 118 Stat. 1135; Pub. L. 109–4, § 2(b), Mar. 25, 2005, 119 Stat. 17; Pub. L. 109–19, § 2(b), July 1, 2005, 119 Stat. 344; Pub. L. 109–68, § 2(b)(2)(A), (B), Sept. 21, 2005, 119 Stat. 2003; Pub. L. 109–161, § 2(b), Dec. 30, 2005, 119 Stat. 2958; Pub. L. 109–171, title VII, §§ 7101(b)(1), (2), 7103(a), Feb. 8, 2006, 120 Stat. 135, 138.)

REFERENCES IN TEXT

Section 603(a)(5)(K) of this title, referred to in subsec. (a)(5)(A)(ii)(I)(ff), was redesignated as section 603(a)(5)(J) by Pub. L. 106–554, § 1(a)(1) [title I, § 107(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–12.

Section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(5)(A)(vi)(I)(bb), (III), (C)(ii)(I), is section 103 of Pub. L. 104–193, which enacted this part, amended sections 602, 603, and 1308 of this title, and repealed provisions formerly set out as this part. For complete classification of section 103 to the Code, see Tables.

The Food Stamp Act of 1977, referred to in subsec. (a)(5)(C)(iii)(II)(dd), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Parts D and E of this subchapter, referred to in subsec. (a)(5)(C)(iii)(III), (iv)(II)(bb), are classified to sections 651 et seq. and 670 et seq., respectively, of this title.

The Job Training Partnership Act, referred to in subsec. (a)(5)(D)(iii), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which was classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor, prior to repeal by Pub. L. 105–220, title I, § 199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. For complete classification of this Act to the Code, see Tables.

The Workforce Investment Act of 1998, referred to in subsec. (a)(5)(D)(ii), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (b)(5)(B), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. Title IV of the Act is classified principally to chapter 14 (§ 1601 et seq.) of Title 8, Aliens and Nationality. For complete classification of titles IV and VIII of the Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 603, acts Aug. 14, 1935, ch. 531, title IV, § 403, 49 Stat. 628; Aug. 10, 1939, ch. 666, title IV, § 402, 53 Stat. 1380; Aug. 10, 1946, ch. 951, title V, § 502, 60 Stat. 992; June 14, 1948, ch. 468, § 3(b), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 2, § 322(a), pt. 6, § 361(c), (d), 64 Stat. 550, 558; July 18, 1952, ch. 945, § 8(b), 66 Stat. 778; Sept. 1, 1954, ch. 1206, title III, § 303(a), 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§ 302, 312(c), 342, 351(a), 70 Stat. 847, 849, 852, 854; Aug. 28, 1958, Pub. L. 85–840, title

V, §502, 72 Stat. 1048; July 25, 1962, Pub. L. 87–543, title I, §§101(a)(2), (b)(2)(A)–(C), 104(a)(3)(C), 108(b), (c), 76 Stat. 174, 180, 185, 190; July 30, 1965, Pub. L. 89–97, title I, §122, title IV, §401(c), 79 Stat. 353, 415; Jan. 2, 1968, Pub. L. 90–248, title II, §§201(c)–(e)(3), 205(b), 206(a), 207(b), 208, 241(b)(2), (3), 81 Stat. 879, 880, 892–894, 916; June 28, 1968, Pub. L. 90–364, title III, §301, 82 Stat. 273; July 9, 1969, Pub. L. 91–41, §3, 83 Stat. 45; Dec. 28, 1971, Pub. L. 92–223, §3(a)(8), (9), 85 Stat. 805; Oct. 20, 1972, Pub. L. 92–512, title III, §301(b)–(d), 86 Stat. 946, 947; Oct. 30, 1972, Pub. L. 92–603, title II, §§299E(d), 299F, 86 Stat. 1462, 1463; Jan. 4, 1975, Pub. L. 93–647, §§3(a)(3), (4), (e)(2), 5(b), 101(c)(6)(A), 88 Stat. 2348–2350, 2360; Aug. 9, 1975, Pub. L. 94–88, title II, §204, 89 Stat. 435; Nov. 12, 1977, Pub. L. 95–171, §3(a)(1), 91 Stat. 1354; Dec. 20, 1977, Pub. L. 95–216, title IV, §§401, 402(a), 91 Stat. 1559, 1560; June 9, 1980, Pub. L. 96–265, title IV, §§401(g), (h), 406(a), 407(c), 94 Stat. 462, 465, 467; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§2181(a)(1), 2184(b)(1), title XXIII, §§2307(b), 2315(b), 2317(a), 2319(a)–(c), 2353(b)(1), (d), 95 Stat. 815, 817, 848, 855–857, 872; Sept. 3, 1982, Pub. L. 97–248, title I, §§154(b), 156(a)–(c), 157(a), 96 Stat. 397–399; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(c)(2), (j)(2)(B)(i), (3)(B)(i), 98 Stat. 1166, 1170, 1171; Aug. 16, 1984, Pub. L. 98–378, §9(b), 98 Stat. 1316; Nov. 6, 1986, Pub. L. 99–603, title I, §121(b)(1), 100 Stat. 3390; Dec. 22, 1987, Pub. L. 100–203, title IX, §9102(c), 101 Stat. 1330–300; Oct. 13, 1988, Pub. L. 100–485, title II, §§201(c), (d), 202(b)(4)–(6), 204(b)(2), title III, §§302(b)(2), 304(b)(2), title VI, §§601(c)(1), 606, 609(a), 102 Stat. 2372, 2377, 2381, 2384, 2393, 2407, 2410, 2424; Dec. 19, 1989, Pub. L. 101–239, title VIII, §8004(b), 103 Stat. 2460; Nov. 5, 1990, Pub. L. 101–508, title V, §5081(b), 104 Stat. 1388–235; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13741(a), 107 Stat. 663; July 27, 1995, Pub. L. 104–19, title I, 109 Stat. 215; Apr. 26, 1996, Pub. L. 104–134, title III, 110 Stat. 1321–355; Aug. 22, 1996, Pub. L. 104–193, title I, §103(c)(2)(B), 110 Stat. 2161; June 12, 1997, Pub. L. 105–18, title II, 111 Stat. 204, related to payments to States with approved plans for aid and services to needy families with children, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620, effective July 1, 1997.

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–171, §7103(a), amended heading and text of par. (2) generally. Prior to amendment, text related to bonus grant to reward decrease in illegitimacy ratio and defined for purposes of par. (2) terms ''eligible State'', ''bonus year'', and ''illegitimacy ratio''.

Subsec. (a)(3)(H)(ii). Pub. L. 109–171, §7101(b)(1), which directed substitution of ''fiscal year 2008'' for ''December, 31, 2005'', was executed by making the substitution for ''December 31, 2005'' to reflect the probable intent of Congress.

Subsec. (b)(3)(C)(ii). Pub. L. 109–171, §7101(b)(2), substituted ''2010'' for ''2006''.

2005—Subsec. (a)(3)(H)(ii). Pub. L. 109–161, which directed substitution of ''March 31, 2006'' for ''December 31, 2005'', could not be executed due to amendment by Pub. L. 109–171, §7101(b)(1). See 2006 Amendment note above and Effective Date of 2006 Amendment note below.

Pub. L. 109–68, §2(b)(2)(A), substituted ''December 31'' for ''September 30''.

Pub. L. 109–19 substituted ''September 30'' for ''June 30''.

Pub. L. 109–4 substituted ''June 30'' for ''March 31''.

Subsec. (b)(3)(C)(ii). Pub. L. 109–68, §2(b)(2)(B), substituted ''2006'' for ''2005''.

2004—Subsec. (a)(3)(H)(ii). Pub. L. 108–308, §2(b)(1), substituted ''March 31, 2005'' for ''September 30, 2004''.

Pub. L. 108–262 substituted ''September 30'' for ''June 30''.

Pub. L. 108–210 substituted ''June 30'' for ''March 31''.

Subsec. (b)(3)(C)(ii). Pub. L. 108–308, §2(b)(2), substituted ''2005'' for ''2004''.

2003—Subsec. (a)(1)(A). Pub. L. 108–40, §3(a)(1), substituted ''2002, and 2003'' for ''and 2002''.

Subsec. (a)(1)(B) to (E). Pub. L. 108–40, §3(a)(2), added subpars. (B) and (C) and struck out former subpars. (B) to (E) which related to, in subpar. (B), definition of ''State family assistance grant'', in subpar. (C), definition of ''total amount required to be paid to the State under former section 603 of this title'', in subpar. (D), information to be used in determining amounts of grants for fiscal years 1992 to 1995, and, in subpar. (E), appropriations for fiscal years 1996 to 2002.

Subsec. (a)(2)(C)(ii). Pub. L. 108–40, §3(c)(1), substituted ''2002, and 2003'' for ''and 2002''.

Subsec. (a)(2)(D). Pub. L. 108–40, §3(c)(2), substituted ''2003'' for ''2002''.

Subsec. (a)(3)(H). Pub. L. 108–40, §3(d)(1), and Pub. L. 108–89, §101(b)(1)(A), amended subpar. identically, striking out ''of grants for fiscal year 2002'' after ''Reauthorization'' in heading.

Subsec. (a)(3)(H)(i). Pub. L. 108–40, §3(d)(2), substituted ''each of fiscal years 2002 and 2003'' for ''fiscal year 2002''.

Subsec. (a)(3)(H)(ii). Pub. L. 108–89, §101(b)(1)(B), substituted ''March 31, 2004'' for ''2003'' and ''fiscal year 2001'' for ''2001''.

Pub. L. 108–40, §3(d)(3), substituted ''2003'' for ''2002''.

Subsec. (a)(3)(H)(iii). Pub. L. 108–40, §3(d)(4), substituted ''each of fiscal years 2002 and 2003'' for ''fiscal year 2002''.

Subsec. (b)(2). Pub. L. 108–40, §3(e)(1), substituted ''2002, and 2003'' for ''and 2002''.

Subsec. (b)(3)(C)(ii). Pub. L. 108–89, §101(b)(2), substituted ''2004'' for ''2003''.

Pub. L. 108–40, §3(e)(2), substituted ''2003'' for ''2002''.

2002—Subsec. (a)(3)(H). Pub. L. 107–147, §616, added subpar. (H).

Subsec. (b)(2). Pub. L. 107–147, §617(1), substituted ''2001, and 2002'' for ''and 2001''.

Subsec. (b)(3)(C)(ii). Pub. L. 107–147, §617(2), substituted ''2002'' for ''2001''.

2000—Subsec. (a)(5)(A)(i). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(1)], substituted ''subparagraph (H)'' for ''subparagraph (I)'' in introductory provisions.

Subsec. (a)(5)(A)(iv)(I)(aa). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(2)(A)], substituted ''(H)'' for ''(I)'' and ''and (G)'' for ''(G), and (H)''.

Subsec. (a)(5)(A)(iv)(I)(bb). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(2)(B)], substituted ''subparagraph (E)'' for ''subparagraph (F)''.

Subsec. (a)(5)(B)(v). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(3)], substituted ''subparagraph (H)'' for ''subparagraph (I) '' in introductory provisions.

Subsec. (a)(5)(B)(v)(I)(aa). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(2)(A)], substituted ''(H)'' for ''(I)'' and ''and (G)'' for ''(G), and (H)''.

Subsec. (a)(5)(B)(v)(I)(bb). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(2)(B)], substituted ''subparagraph (E)'' for ''subparagraph (F)''.

Subsec. (a)(5)(C)(viii). Pub. L. 106–554, §1(a)(1) [title I, §103)], substituted ''5 years'' for ''3 years''.

Subsec. (a)(5)(E). Pub. L. 106–554, §1(a)(1) [title I, §107(a), (b)(4)], redesignated subpar. (F) as (E), substituted ''subparagraph (H)'' for ''subparagraph (I)'', and struck out former subpar. (E), which established a set-aside for successful performance bonuses.

Subsec. (a)(5)(F). Pub. L. 106–554, §1(a)(1) [title I, §107(a), (b)(4)], redesignated subpar. (G) as (F) and substituted ''subparagraph (H)'' for ''subparagraph (I)''. Former subpar. (F) redesignated (E).

Pub. L. 106–246, §2402(1), substituted ''$15,000,000'' for ''$1,500,000''.

Subsec. (a)(5)(G). Pub. L. 106–554, §1(a)(1) [title V, §513], which directed the amendment of subpar. (H) by substituting ''2005'' for ''2001'' in cl. (iii) and adding cl. (iv), was executed by making amendments to subpar. (G), to reflect the probable intent of Congress and the redesignation of subpar. (H) as (G) by Pub. L. 106–554, §1(a)(1) [title V, §107(a)]. See below.

Pub. L. 106–554, §1(a)(1) [title I, §107(a), (b)(4)], redesignated subpar. (H) as (G) and substituted ''subparagraph (H)'' for ''subparagraph (I)'' in cl. (i). Former subpar. (G) redesignated (F).

Pub. L. 106–246, § 2402(2), substituted ''$9,000,000'' for ''$900,000''.

Subsec. (a)(5)(H). Pub. L. 106–554, § 1(a)(1) [title I, § 107(a), (c)], redesignated subpar. (I) as (H) and substituted ''$1,400,000,000'' for ''$1,450,000,000'' in cl. (i)(II). Former subpar. (H) redesignated (G).

Pub. L. 106–246, § 2402(3), substituted ''$3,000,000'' for ''$300,000'' in cl. (i).

Subsec. (a)(5)(I) to (K). Pub. L. 106–554, § 1(a)(1) [title I, § 107(a)], redesignated subpars. (J) and (K) as (I) and (J), respectively. Former subpar. (I) redesignated (H).

1999—Subsec. (a)(5)(A)(ii)(I)(ff). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 805(b)], added item (ff).

Subsec. (a)(5)(C)(i)(IV). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 803], inserted before period at end '', or if the entity is not a private industry council or workforce investment board, the direct provision of such services''.

Subsec. (a)(5)(C)(i)(VII). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 802], added subcl. (VII).

Subsec. (a)(5)(C)(ii). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 801(a)], amended heading and text of cl. (ii) generally, substituting provisions relating to general eligibility for provisions relating to required beneficiaries.

Subsec. (a)(5)(C)(iii). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 801(b)(1)(B)], added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (a)(5)(C)(iv). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 801(c)], inserted ''hard to employ'' before ''individuals'' in heading, substituted ''clauses (ii) and (iii) and, as appropriate, clause (v)'' for ''clause (ii)'' before period at end of concluding provisions, added subcls. (II) to (IV), and struck out former subcl. (II) which read as follows: ''to individuals—

''(aa) who are noncustodial parents of minors whose custodial parent is such a recipient; and

''(bb) who have such characteristics.''

Pub. L. 106–113, § 1000(a)(4) [title VIII, § 801(b)(1)(A)], redesignated cl. (iii) as (iv). Former cl. (iv) redesignated (v).

Subsec. (a)(5)(C)(v) to (ix). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 801(b)(1)(A)], redesignated cls. (iv) to (viii) as (v) to (ix), respectively.

Subsec. (a)(5)(C)(x). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 804(b)], added cl. (x).

Subsec. (a)(5)(E)(i). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 806(c)], substituted ''award'' for ''make'' and inserted '', but shall not make any outlay to pay any such grant before October 1, 2000'' before period at end.

Subsec. (a)(5)(E)(iv)(I)(bb), (vi). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 806(a)], substituted ''$50,000,000'' for ''$100,000,000''.

Subsec. (a)(5)(F). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 806(b)(1)], inserted ''$1,500,000'' before ''of the amount so specified for fiscal year 1999''.

Subsec. (a)(5)(G). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 806(b)(2)], inserted ''$900,000'' before ''of the amount so specified for fiscal year 1999''.

Subsec. (a)(5)(H)(i). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 806(b)(3)], inserted ''$300,000'' before ''of the amount so specified for fiscal year 1999''.

Subsec. (a)(5)(I)(i). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 806(b)(4)], substituted ''for grants under this paragraph—'' and subcls. (I) and (II) for ''$1,500,000,000 for each of fiscal years 1998 and 1999 for grants under this paragraph.''

Subsec. (a)(5)(K). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 805(a)(2)], added subpar. (K).

1998—Subsec. (a)(5)(A)(iv)(II). Pub. L. 105–306 substituted '', other than funds reserved by the State for distribution under clause (vi)(III) and funds distributed pursuant to clause (vi)(I) in any State in which the service delivery area is the State'' for ''or sub-State entity''.

Subsec. (a)(5)(A)(vii)(I). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(22)(A)], struck out ''described in section 103(c) of the Job Training Partnership Act or'' before ''defined in section 101 of the Workforce''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(30)(A)], substituted ''(as described in section 103(c) of the Job Training Partnership Act or defined in section 101 of the Workforce Investment Act of 1998)'' for ''(as described in section 103(c) of the Job Training Partnership Act)''.

Subsec. (a)(5)(A)(ix). Pub. L. 105–277, § 101(f) [title I, § 102], added cl. (ix).

Subsec. (a)(5)(C)(ii). Pub. L. 105–200, § 408(1), struck out ''of minors whose custodial parent is such a recipient'' after ''noncustodial parents'' in introductory provisions.

Subsec. (a)(5)(C)(ii)(I). Pub. L. 105–200, § 408(2), inserted ''or the noncustodial parent'' after ''recipient'' in introductory provisions.

Subsec. (a)(5)(C)(ii)(II). Pub. L. 105–200, § 408(3), substituted ''The recipient or the minor children of the noncustodial parent—'' for ''The individual—'' in introductory provisions.

Subsec. (a)(5)(D)(ii). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(22)(B)(i)], struck out ''the Job Training Partnership Act or'' before ''title I of the Workforce Investment''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(30)(B)(i)], substituted ''means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to the Job Training Partnership Act or title I of the Workforce Investment Area of 1998, as appropriate'' for ''means, with respect to a service delivery area, the private industry council (or successor entity) established for the service delivery area pursuant to the Job Training Partnership Act''.

Subsec. (a)(5)(D)(iii). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(22)(B)(ii)], struck out before period at end ''shall mean a local area as defined in section 101 of the Workforce Investment Act of 1998, as appropriate''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(30)(B)(ii)], substituted ''shall have the meaning given such term for purposes of the Job Training Partnership Act or shall mean a local area as defined in section 101 of the Workforce Investment Act of 1998, as appropriate'' for ''shall have the meaning given such term (or the successor to such term) for purposes of the Job Training Partnership Act''.

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (a)(2). Pub. L. 105–33, § 5502(b)(1), inserted ''ratio'' after ''illegitimacy'' in heading.

Subsec. (a)(2)(A). Pub. L. 105–33, § 5502(b)(2), struck out ''for which the State demonstrates a net decrease in out-of-wedlock births'' after ''bonus year''.

Subsec. (a)(2)(B). Pub. L. 105–33, § 5502(a)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows:

''(i) IF 5 ELIGIBLE STATES.—If there are 5 eligible States for a bonus year, the amount of the grant shall be $20,000,000.

''(ii) IF FEWER THAN 5 ELIGIBLE STATES.—If there are fewer than 5 eligible States for a bonus year, the amount of the grant shall be $25,000,000.''

Subsec. (a)(2)(C)(i)(I)(aa). Pub. L. 105–33, § 5502(b)(3)(A)(i), substituted ''illegitimacy ratio of the State for'' for ''number of out-of-wedlock births that occurred in the State during'' and ''illegitimacy ratio of the State for'' for ''number of such births that occurred during''.

Pub. L. 105–33, § 5502(a)(2), inserted at end ''In the case of a State that is not a territory specified in subparagraph (B), the comparative magnitude of the decrease for the State shall be determined without regard to the magnitude of the corresponding decrease for any such territory.''

Subsec. (a)(2)(C)(i)(I)(bb). Pub. L. 105–33, § 5502(c)(1)(A), substituted ''the calendar year for which the most recent data are available'' for ''the fiscal year'' and ''calendar year 1995'' for ''fiscal year 1995''.

Subsec. (a)(2)(C)(i)(II). Pub. L. 105–33, § 5502(c)(1)(B), substituted ''calendar'' for ''fiscal'' wherever appearing.

Subsec. (a)(2)(C)(i)(II)(aa). Pub. L. 105–33, § 5502(b)(3)(A)(ii), substituted ''illegitimacy ratio of'' for

''number of out-of-wedlock births that occurred in'' in two places and ''calculate the illegitimacy ratio'' for ''calculate the number of out-of-wedlock births''.

Subsec. (a)(2)(C)(ii). Pub. L. 105–33, §5502(c)(2), substituted ''calendar years'' for ''fiscal years''.

Subsec. (a)(2)(C)(iii). Pub. L. 105–33, §5502(b)(3)(B), added cl. (iii).

Subsec. (a)(3)(C)(ii). Pub. L. 105–33, §5502(d), substituted ''1998'' for ''1997'' in heading.

Subsec. (a)(5). Pub. L. 105–33, §5001(a)(1), added par. (5).

Subsec. (a)(5)(A)(i)(I), (ii)(II). Pub. L. 105–78 substituted ''during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant'' for ''during the fiscal year''.

Subsec. (b)(2). Pub. L. 105–89, §404(a), inserted '', reduced by the sum of the dollar amounts specified in paragraph (6)(C)(ii)'' before period.

Subsec. (b)(4), (5). Pub. L. 105–33, §5502(e)(2), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which required each State to remit to the Secretary at the end of each fiscal year certain excess amounts paid to the State under par. (3) during the fiscal year.

Subsec. (b)(6). Pub. L. 105–33, §5502(e)(3), added par. (6).

Pub. L. 105–33, §5502(e)(2), redesignated par. (6) as (5).

Pub. L. 105–33, §5502(e)(1), substituted ''paragraph (4)'' for ''paragraph (5)'' in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 105–89, §404(b), added subpar. (C).

Subsec. (b)(7). Pub. L. 105–33, §5502(f), amended heading and text of par. (7) generally. Prior to amendment, text read as follows: ''As used in this subsection:

''(A) STATE.—The term 'State' means each of the 50 States of the United States and the District of Columbia.

''(B) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.''

1996—Subsec. (b)(4)(A)(i)(II). Pub. L. 104–327, §1(b)(1), struck out ''minus any Federal payment with respect to such child care expenditures'' after ''for fiscal year 1994''.

Subsec. (b)(4)(A)(ii)(I). Pub. L. 104–327, §1(b)(2), inserted ''the sum of'' before ''the expenditures'' and '', and any additional qualified State expenditures, as defined in section 609(a)(7)(B)(i) of this title, for child care assistance made under the Child Care and Development Block Grant Act of 1990'' before ''; exceeds''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VII, §7701, Feb. 8, 2006, 120 Stat. 155, provided that: ''Except as otherwise provided in this title [amending this section and sections 607, 608, 609, 611, 618, 622, 629f, 629h, 652, 653, 654, 655, 657, 664, 666, 671 to 673, 674, 1383, and 1383b of this title and section 6402 of Title 26, Internal Revenue Code, repealing section 1675c of Title 19, Customs Duties, enacting provisions set out as notes under sections 607, 608, 652, 654, 655, 657, 664, 666, and 1383 of this title and section 1675c of Title 19, and amending provisions set out as a note under section 1169 of Title 29, Labor], this title and the amendments made by this title shall take effect as if enacted on October 1, 2005.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–40, §8, June 30, 2003, 117 Stat. 838, provided that: ''The amendments made by this Act [amending this section and sections 606, 609, 612, 614, 618, 710, 1308, 1320a–9, 1396a, and 1396r–6 of this title] shall take effect on July 1, 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(1) [title I, §107(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–12, provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section and section 612 of this title] shall take effect on October 1, 2000.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §801(e)], Nov. 29, 1999, 113 Stat. 1535, 1501A–283, provided that: ''The amendments made by this section [amending this section and sections 604 and 612 of this title]—

''(1) shall be effective January 1, 2000, with respect to the determination of eligible individuals for purposes of section 403(a)(5)(B) of the Social Security Act [subsec. (a)(5)(B) of this section] (relating to competitive grants);

''(2) shall be effective July 1, 2000, except that expenditures from allotments to the States shall not be made before October 1, 2000—

''(A) with respect to the determination of eligible individuals for purposes of section 403(a)(5)(A) of the Social Security Act [subsec. (a)(5)(A) of this section] (relating to formula grants) in the case of those individuals who may be determined to be so eligible, but would not have been eligible before July 1, 2000; or

''(B) for allowable activities described in section 403(a)(5)(C)(i)(VII) of the Social Security Act [subsec. (a)(5)(C)(i)(VII) of this section] (as added by section 802 of this title) provided to any individuals determined to be eligible for purposes of section 403(a)(5)(A) of the Social Security Act (relating to formula grants).''

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–306, §6(b), Oct. 28, 1998, 112 Stat. 2928, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 5001 of the Balanced Budget Act of 1997 [Pub. L. 105–33].''

Amendment by section 101(f) [title VIII, §405(d)(30)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(22)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Amendment by section 5502 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1(d) of Pub. L. 104–327 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 601 of this title] shall take effect as if included in the provisions of and the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

EFFECTIVE DATE

Subsec. (a)(1)(C), (D) of this section effective Oct. 1, 1996, and remainder of this section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

REGULATIONS

Pub. L. 106–113, div. B, § 1000(a)(4) [title VIII, § 801(f)], Nov. 29, 1999, 113 Stat. 1535, 1501A–284, provided that: ''Interim final regulations shall be prescribed to implement the amendments made by this section [amending this section and sections 604 and 612 of this title] not later than January 1, 2000. Final regulations shall be prescribed within 90 days after the date of the enactment of this Act [Nov. 29, 1999] to implement the amendments made by this Act to section 403(a)(5) of the Social Security Act [subsec. (a)(5) of this section], in the same manner as described in section 403(a)(5)(C)(ix) of the Social Security Act (as so redesignated by subsection (b)(1)(A) of this section).''

§ 603a. Transferred

CODIFICATION

Section, Pub. L. 94–566, title V, § 508(b), Oct. 20, 1976, 90 Stat. 2689; Pub. L. 104–193, title I, § 110(a), Aug. 22, 1996, 110 Stat. 2171, which related to reimbursement to State employment offices for expenses incurred for furnishing information requested of such offices by State or local agency administering this part, was transferred to section 655a of this title.

§ 604. Use of grants

(a) General rules

Subject to this part, a State to which a grant is made under section 603 of this title may use the grant—

(1) in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs; or

(2) in any manner that the State was authorized to use amounts received under part A or F of this subchapter, as such parts were in effect on September 30, 1995, or (at the option of the State) August 21, 1996.

(b) Limitation on use of grant for administrative purposes

(1) Limitation

A State to which a grant is made under section 603 of this title shall not expend more than 15 percent of the grant for administrative purposes.

(2) Exception

Paragraph (1) shall not apply to the use of a grant for information technology and computerization needed for tracking or monitoring required by or under this part.

(c) Authority to treat interstate immigrants under rules of former State

A State operating a program funded under this part may apply to a family the rules (including benefit amounts) of the program funded under this part of another State if the family has moved to the State from the other State and has resided in the State for less than 12 months.

(d) Authority to use portion of grant for other purposes

(1) In general

Subject to paragraph (2), a State may use not more than 30 percent of the amount of any grant made to the State under section 603(a) of this title for a fiscal year to carry out a State program pursuant to any or all of the following provisions of law:

(A) Subchapter XX of this chapter.

(B) The Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858 et seq.].

(2) Limitation on amount transferable to subchapter XX programs

(A) In general

A State may use not more than the applicable percent of the amount of any grant made to the State under section 603(a) of this title for a fiscal year to carry out State programs pursuant to subchapter XX of this chapter.

(B) Applicable percent

For purposes of subparagraph (A), the applicable percent is 4.25 percent in the case of fiscal year 2001 and each succeeding fiscal year.

(3) Applicable rules

(A) In general

Except as provided in subparagraph (B) of this paragraph, any amount paid to a State under this part that is used to carry out a State program pursuant to a provision of law specified in paragraph (1) shall not be subject to the requirements of this part, but shall be subject to the requirements that apply to Federal funds provided directly under the provision of law to carry out the program, and the expenditure of any amount so used shall not be considered to be an expenditure under this part.

(B) Exception relating to subchapter XX programs

All amounts paid to a State under this part that are used to carry out State programs pursuant to subchapter XX of this chapter shall be used only for programs and services to children or their families whose income is less than 200 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(e) Authority to reserve certain amounts for assistance

A State or tribe may reserve amounts paid to the State or tribe under this part for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State or tribal program funded under this part.

(f) Authority to operate employment placement program

A State to which a grant is made under section 603 of this title may use the grant to make payments (or provide job placement vouchers) to State-approved public and private job placement agencies that provide employment placement services to individuals who receive assistance under the State program funded under this part.

(g) Implementation of electronic benefit transfer system

A State to which a grant is made under section 603 of this title is encouraged to implement an electronic benefit transfer system for providing assistance under the State program funded

under this part, and may use the grant for such purpose.

(h) Use of funds for individual development accounts

(1) In general

A State to which a grant is made under section 603 of this title may use the grant to carry out a program to fund individual development accounts (as defined in paragraph (2)) established by individuals eligible for assistance under the State program funded under this part.

(2) Individual development accounts

(A) Establishment

Under a State program carried out under paragraph (1), an individual development account may be established by or on behalf of an individual eligible for assistance under the State program operated under this part for the purpose of enabling the individual to accumulate funds for a qualified purpose described in subparagraph (B).

(B) Qualified purpose

A qualified purpose described in this subparagraph is 1 or more of the following, as provided by the qualified entity providing assistance to the individual under this subsection:

(i) Postsecondary educational expenses

Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution.

(ii) First home purchase

Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due.

(iii) Business capitalization

Amounts paid from an individual development account directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.

(C) Contributions to be from earned income

An individual may only contribute to an individual development account such amounts as are derived from earned income, as defined in section 911(d)(2) of the Internal Revenue Code of 1986.

(D) Withdrawal of funds

The Secretary shall establish such regulations as may be necessary to ensure that funds held in an individual development account are not withdrawn except for 1 or more of the qualified purposes described in subparagraph (B).

(3) Requirements

(A) In general

An individual development account established under this subsection shall be a trust created or organized in the United States and funded through periodic contributions by the establishing individual and matched by or through a qualified entity for a qualified purpose (as described in paragraph (2)(B)).

(B) "Qualified entity" defined

As used in this subsection, the term ''qualified entity'' means—

(i) a not-for-profit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or

(ii) a State or local government agency acting in cooperation with an organization described in clause (i).

(4) No reduction in benefits

Notwithstanding any other provision of Federal law (other than the Internal Revenue Code of 1986) that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in an individual development account under this subsection shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

(5) Definitions

As used in this subsection—

(A) Eligible educational institution

The term ''eligible educational institution'' means the following:

(i) An institution described in section 1088(a)(1) or 1141(a) of title 20, as such sections are in effect on August 22, 1996.

(ii) An area vocational education school (as defined in subparagraph (C) or (D) of section 2471(4) of title 20) which is in any State (as defined in section 2471(33) of title 20), as such sections are in effect on August 22, 1996.

(B) Post-secondary educational expenses

The term ''post-secondary educational expenses'' means—

(i) tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, and

(ii) fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

(C) Qualified acquisition costs

The term ''qualified acquisition costs'' means the costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

(D) Qualified business

The term ''qualified business'' means any business that does not contravene any law or public policy (as determined by the Secretary).

(E) Qualified business capitalization expenses

The term ''qualified business capitalization expenses'' means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

(F) Qualified expenditures

The term ''qualified expenditures'' means expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

(G) Qualified first-time homebuyer

(i) In general

The term ''qualified first-time homebuyer'' means a taxpayer (and, if married, the taxpayer's spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this subsection applies.

(ii) Date of acquisition

The term ''date of acquisition'' means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this subparagraph applies is entered into.

(H) Qualified plan

The term ''qualified plan'' means a business plan which—

(i) is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity,

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(I) Qualified principal residence

The term ''qualified principal residence'' means a principal residence (within the meaning of section 1034 of the Internal Revenue Code of 1986), the qualified acquisition costs of which do not exceed 100 percent of the average area purchase price applicable to such residence (determined in accordance with paragraphs (2) and (3) of section 143(e) of such Code).

(i) Sanction welfare recipients for failing to ensure that minor dependent children attend school

A State to which a grant is made under section 603 of this title shall not be prohibited from sanctioning a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the food stamp program, as defined in section 2012(h) of title 7, if such adult fails to ensure that the minor dependent children of such adult attend school as required by the law of the State in which the minor children reside.

(j) Requirement for high school diploma or equivalent

A State to which a grant is made under section 603 of this title shall not be prohibited from sanctioning a family that includes an adult who is older than age 20 and younger than age 51 and who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the food stamp program, as defined in section 2012(h) of title 7, if such adult does not have, or is not working toward attaining, a secondary school diploma or its recognized equivalent unless such adult has been determined in the judgment of medical, psychiatric, or other appropriate professionals to lack the requisite capacity to complete successfully a course of study that would lead to a secondary school diploma or its recognized equivalent.

(k) Limitations on use of grant for matching under certain Federal transportation program

(1) Use limitations

A State to which a grant is made under section 603 of this title may not use any part of the grant to match funds made available under section 3037 of the Transportation Equity Act for the 21st Century, unless—

(A) the grant is used for new or expanded transportation services (and not for construction) that benefit individuals described in subparagraph (C), and not to subsidize current operating costs;

(B) the grant is used to supplement and not supplant other State expenditures on transportation;

(C) the preponderance of the benefits derived from such use of the grant accrues to individuals who are—

(i) recipients of assistance under the State program funded under this part;

(ii) former recipients of such assistance;

(iii) noncustodial parents who are described in section 603(a)(5)(C)(iii) of this title; and

(iv) low-income individuals who are at risk of qualifying for such assistance; and

(D) the services provided through such use of the grant promote the ability of such recipients to engage in work activities (as defined in section 607(d) of this title).

(2) Amount limitation

From a grant made to a State under section 603(a) of this title, the amount that a State uses to match funds described in paragraph (1) of this subsection shall not exceed the amount (if any) by which 30 percent of the total amount of the grant exceeds the amount (if any) of the grant that is used by the State to carry out any State program described in subsection (d)(1) of this section.

(3) Rule of interpretation

The provision by a State of a transportation benefit under a program conducted under section 3037 of the Transportation Equity Act for the 21st Century, to an individual who is not otherwise a recipient of assistance under the State program funded under this part, using funds from a grant made under section 603(a) of this title, shall not be considered to be the provision of assistance to the individual under the State program funded under this part.

(Aug. 14, 1935, ch. 531, title IV, §404, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2124; amended Pub. L. 105–33, title V, §§5002(a), 5503, 5514(c), Aug. 5, 1997, 111 Stat. 593, 609, 620; Pub. L. 105–178, title VIII, §8401(b), June 9, 1998, 112 Stat. 499; Pub. L. 105–200, title IV, §403(a), July 16, 1998, 112 Stat. 670; Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §801(d)], Nov. 29, 1999, 113 Stat. 1535, 1501A–283; Pub. L. 106–169, title IV, §401(*l*), Dec. 14, 1999, 113 Stat. 1858.)

REFERENCES IN TEXT

Part F of this subchapter, referred to in subsec. (a)(2), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104–193, title I, §108(e), Aug. 22, 1996, 110 Stat. 2167.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (d)(1)(B), is subchapter C (§658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–236, as amended, which is classified generally to subchapter II–B (§9858 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (h)(2)(C), (3)(B)(i), (4), (5)(I), is classified generally to Title 26, Internal Revenue Code.

Section 1088(a) of title 20, referred to in subsec. (h)(5)(A)(i), was repealed and section 1088(d) was redesignated section 1088(a), by Pub. L. 105–244, title I, §101(c), Oct. 7, 1998, 112 Stat. 1617. Provisions similar to those in former section 1088(a)(1) are now contained in section 1002(a)(1) of Title 20, Education.

Section 1141(a) of title 20, referred to in subsec. (h)(5)(A)(i), was repealed by Pub. L. 105–244, §3, title I, §101(b), title VII, §702, Oct. 7, 1998, 112 Stat. 1585, 1616, 1803, effective Oct. 1, 1998.

Section 2471 of title 20, referred to in subsec. (h)(5)(A)(ii), was omitted in the general amendment of chapter 44 (§2301 et seq.) of Title 20, Education, by Pub. L. 105–332, §1(b), Oct. 31, 1998, 112 Stat. 3076.

Section 3037 of the Transportation Equity Act for the 21st Century, referred to in subsec. (k)(1), (3), is section 3037 of Pub. L. 105–178, title III, June 9, 1998, 112 Stat. 387, which is set out as a note under section 5309 of Title 49, Transportation.

PRIOR PROVISIONS

A prior section 604, acts Aug. 14, 1935, ch. 531, title IV, §404, 49 Stat. 628; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(c), (d), 64 Stat. 558; May 8, 1961, Pub. L. 87–31, §4, 75 Stat. 77; July 25, 1962, Pub. L. 87–543, title I, §§104(a)(5)(B), 107(b), 76 Stat. 185, 189; Jan. 2, 1968, Pub. L. 90–248, title II, §§241(b)(4), 245, 81 Stat. 916, 918; Jan. 4, 1975, Pub. L. 93–647, §101(c)(6)(B), 88 Stat. 2360; July 18, 1984, Pub. L. 98–369, title VI, §2663(*l*)(1), 98 Stat. 1171, related to deviation from State plan, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1999—Subsec. (e). Pub. L. 106–169 inserted ''or tribe'' after ''A State'' and ''to the State'' and inserted ''or tribal'' after ''under the State''.

Subsec. (k)(1)(C)(iii). Pub. L. 106–113 substituted ''section 603(a)(5)(C)(iii) of this title'' for ''item (aa) or (bb) of section 603(a)(5)(C)(ii)(II) of this title''.

1998—Subsec. (d)(2). Pub. L. 105–178 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''A State may use not more than 10 percent of the amount of any grant made to the State under section 603(a) of this title for a fiscal year to carry out State programs pursuant to subchapter XX of this chapter.''

Subsec. (k). Pub. L. 105–200 added subsec. (k).

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a)(2). Pub. L. 105–33, §5503, inserted '', or (at the option of the State) August 21, 1996'' before period.

Subsec. (d)(1). Pub. L. 105–33, §5002(a)(1), substituted ''Subject to paragraph (2), a State may'' for ''A State may''.

Subsec. (d)(2). Pub. L. 105–33, §5002(a)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Notwithstanding paragraph (1), not more than ⅓ of the total amount paid to a State under this part for a fiscal year that is used to carry out State programs pursuant to provisions of law specified in paragraph (1) may be used to carry out State programs pursuant to subchapter XX of this chapter.''

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–169, title IV, §401(*l*), Dec. 14, 1999, 113 Stat. 1858, provided that the amendment made by section 401(*l*) is effective Dec. 14, 1999.

For effective date of amendment by Pub. L. 106–113, see section 1000(a)(4) [title VIII, §801(e)] of Pub. L. 106–113, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–178, title VIII, §8401(c), June 9, 1998, 112 Stat. 499, provided that: ''The amendments made by this section [amending this section and section 1397b of this title] take effect on October 1, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5002(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

Amendment by section 5503 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

ASSETS FOR INDEPENDENCE

Pub. L. 105–285, title IV, Oct. 27, 1998, 112 Stat. 2759, as amended by Pub. L. 106–554, §1(a)(1) [title VI, §§602–607(a), 608(a), 609, 610], Dec. 21, 2000, 114 Stat. 2763, 2763A–74 to 2763A–76; Pub. L. 107–110, title VII, §702(h), Jan. 8, 2002, 115 Stat. 1947, provided that:

''SEC. 401. SHORT TITLE.

''This title may be cited as the 'Assets for Independence Act'.

''SEC. 402. FINDINGS.

''Congress makes the following findings:

''(1) Economic well-being does not come solely from income, spending, and consumption, but also requires savings, investment, and accumulation of assets because assets can improve economic independence and stability, connect individuals with a viable and hopeful future, stimulate development of human and other capital, and enhance the welfare of offspring.

''(2) Fully ½ of all Americans have either no, negligible, or negative assets available for investment, just as the price of entry to the economic mainstream, the cost of a house, an adequate education, and starting a business, is increasing. Further, the household savings rate of the United States lags far behind other industrial nations, presenting a barrier to economic growth.

''(3) In the current tight fiscal environment, the United States should invest existing resources in high-yield initiatives. There is reason to believe that the financial returns, including increased income, tax revenue, and decreased welfare cash assistance, resulting from individual development accounts will far exceed the cost of investment in those accounts.

''(4) Traditional public assistance programs concentrating on income and consumption have rarely been successful in promoting and supporting the transition to increased economic self-sufficiency. Income-based domestic policy should be complemented with asset-based policy because, while income-based policies ensure that consumption needs (including food, child care, rent, clothing, and health care) are met, asset-based policies provide the means to achieve greater independence and economic well-being.

''SEC. 403. PURPOSES.

''The purposes of this title are to provide for the establishment of demonstration projects designed to determine—

''(1) the social, civic, psychological, and economic effects of providing to individuals and families with limited means an incentive to accumulate assets by saving a portion of their earned income;

''(2) the extent to which an asset-based policy that promotes saving for postsecondary education, homeownership, and microenterprise development may be used to enable individuals and families with limited means to increase their economic self-sufficiency; and

''(3) the extent to which an asset-based policy stabilizes and improves families and the community in which the families live.

''SEC. 404. DEFINITIONS.

''In this title:

''(1) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to amounts to be paid from a grant made for a project year, the calendar year immediately preceding the calendar year in which the grant is made.

''(2) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means an individual who is selected to participate in a demonstration project by a qualified entity under section 409.

''(3) EMERGENCY WITHDRAWAL.—The term 'emergency withdrawal' means a withdrawal by an eligible individual that—

''(A) is a withdrawal of only those funds, or a portion of those funds, deposited by the individual in the individual development account of the individual;

''(B) is permitted by a qualified entity on a case-by-case basis; and

''(C) is made for—

''(i) expenses for medical care or necessary to obtain medical care, for the individual or a spouse or dependent of the individual described in paragraph (8)(D);

''(ii) payments necessary to prevent the eviction of the individual from the residence of the individual, or foreclosure on the mortgage for the principal residence of the individual, as defined in paragraph (8)(B); or

''(iii) payments necessary to enable the individual to meet necessary living expenses following loss of employment.

''(4) HOUSEHOLD.—The term 'household' means all individuals who share use of a dwelling unit as primary quarters for living and eating separate from other individuals.

''(5) INDIVIDUAL DEVELOPMENT ACCOUNT.—

''(A) IN GENERAL.—The term 'individual development account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified expenses of an eligible individual, or enabling the eligible individual to make an emergency withdrawal, but only if the written governing instrument creating the trust contains the following requirements:

''(i) No contribution will be accepted unless the contribution is in cash or by check.

''(ii) The trustee is a federally insured financial institution, or a State insured financial institution if no federally insured financial institution is available.

''(iii) The assets of the trust will be invested in accordance with the direction of the eligible individual after consultation with the qualified entity providing deposits for the individual under section 410.

''(iv) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

''(v) Except as provided in clause (vi), any amount in the trust that is attributable to a deposit provided under section 410 may be paid or distributed out of the trust only for the purpose of paying the qualified expenses of the eligible individual.

''(vi) Any balance in the trust on the day after the date on which the individual for whose benefit the trust is established dies shall be distributed within 30 days of that date as directed by that individual to another individual development account established for the benefit of an eligible individual.

''(B) CUSTODIAL ACCOUNTS.—For purposes of subparagraph (A), a custodial account shall be treated as a trust if the assets of the custodial account are held by a bank (as defined in section 408(n) of the Internal Revenue Code of 1986 [26 U.S.C. 408(n)]) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which such person will administer the custodial account will be consistent with the requirements of this title, and if the custodial account would, except for the fact that it is not a trust, constitute an individual development account described in subparagraph (A). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of that custodial account shall be treated as the trustee of the account.

''(6) PROJECT YEAR.—The term 'project year' means, with respect to a demonstration project, any of the 5 consecutive 12-month periods beginning on the date the project is originally authorized to be conducted.

''(7) QUALIFIED ENTITY.—

''(A) IN GENERAL.—The term 'qualified entity' means—

''(i) one or more not-for-profit organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and exempt from taxation under section 501(a) of such Code;

''(ii) a State or local government agency, or a tribal government, submitting an application under section 405 jointly with an organization described in clause (i); or

(iii) an entity that—

(I) is—

(aa) a credit union designated as a low-income credit union by the National Credit Union Administration (NCUA); or

(bb) an organization designated as a community development financial institution by the Secretary of the Treasury (or the Community Development Financial Institutions Fund); and

(II) can demonstrate a collaborative relationship with a local community-based organization

whose activities are designed to address poverty in the community and the needs of community members for economic independence and stability.

''(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing an organization described in subparagraph (A)(i) from collaborating with a financial institution or for-profit community development corporation to carry out the purposes of this title.

''(8) QUALIFIED EXPENSES.—The term 'qualified expenses' means one or more of the following, as provided by a qualified entity:

''(A) POSTSECONDARY EDUCATIONAL EXPENSES.—Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution. In this subparagraph:

''(i) POSTSECONDARY EDUCATIONAL EXPENSES.—The term 'postsecondary educational expenses' means the following:

''(I) TUITION AND FEES.—Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution.

''(II) FEES, BOOKS, SUPPLIES, AND EQUIPMENT.—Fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

''(ii) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means the following:

''(I) INSTITUTION OF HIGHER EDUCATION.—An institution described in section 101 or 102 of the Higher Education Act of 1965 [20 U.S.C. 1001, 1002].

''(II) POSTSECONDARY VOCATIONAL EDUCATION SCHOOL.—An area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4))) which is in any State (as defined in section 521(33) of such Act), as such sections are in effect on the date of enactment of this title [Oct. 27, 1998].

''(B) FIRST-HOME PURCHASE.—Qualified acquisition costs with respect to a principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due. In this subparagraph:

''(i) PRINCIPAL RESIDENCE.—The term 'principal residence' means a main residence, the qualified acquisition costs of which do not exceed 120 percent of the average area purchase price applicable to such residence.

''(ii) QUALIFIED ACQUISITION COSTS.—The term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

''(iii) QUALIFIED FIRST-TIME HOMEBUYER.—

''(I) IN GENERAL.—The term 'qualified first-time homebuyer' means an individual participating in the project involved (and, if married, the individual's spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this subparagraph applies.

''(II) DATE OF ACQUISITION.—The term 'date of acquisition' means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this subparagraph applies is entered into.

''(C) BUSINESS CAPITALIZATION.—Amounts paid from an individual development account directly to a business capitalization account that is established in a federally insured financial institution (or in a State insured financial institution if no federally insured financial institution is available) and is restricted to use solely for qualified business capitalization expenses. In this subparagraph:

''(i) QUALIFIED BUSINESS CAPITALIZATION EXPENSES.—The term 'qualified business capitalization expenses' means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

''(ii) QUALIFIED EXPENDITURES.—The term 'qualified expenditures' means expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

''(iii) QUALIFIED BUSINESS.—The term 'qualified business' means any business that does not contravene any law or public policy (as determined by the Secretary).

''(iv) QUALIFIED PLAN.—The term 'qualified plan' means a business plan, or a plan to use a business asset purchased, which—

''(I) is approved by a financial institution, a microenterprise development organization, or a nonprofit loan fund having demonstrated fiduciary integrity;

''(II) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

''(III) may require the eligible individual to obtain the assistance of an experienced entrepreneurial adviser.

''(D) TRANSFERS TO IDAS OF FAMILY MEMBERS.—Amounts paid from an individual development account directly into another such account established for the benefit of an eligible individual who is—

''(i) the individual's spouse; or

''(ii) any dependent of the individual with respect to whom the individual is allowed a deduction under section 151 of the Internal Revenue Code of 1986 [26 U.S.C. 151].

''(9) QUALIFIED SAVINGS OF THE INDIVIDUAL FOR THE PERIOD.—The term 'qualified savings of the individual for the period' means the aggregate of the amounts contributed by an individual to the individual development account of the individual during the period.

''(10) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services, acting through the Director of Community Services.

''(11) TRIBAL GOVERNMENT.—The term 'tribal government' means a tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) or a Native Hawaiian organization, as defined in section 7207 of the Native Hawaiian Education Act [20 U.S.C. 7517].

''SEC. 405. APPLICATIONS.

''(a) ANNOUNCEMENT OF DEMONSTRATION PROJECTS.—Not later than 3 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall publicly announce the availability of funding under this title for demonstration projects and shall ensure that applications to conduct the demonstration projects are widely available to qualified entities.

''(b) SUBMISSION.—Not later than 6 months after the date of enactment of this title, a qualified entity may submit to the Secretary an application to conduct a demonstration project under this title.

''(c) CRITERIA.—In considering whether to approve an application to conduct a demonstration project under this title, the Secretary shall assess the following:

''(1) SUFFICIENCY OF PROJECT.—The degree to which the project described in the application appears likely to aid project participants in achieving economic self-sufficiency through activities requiring one or more qualified expenses.

''(2) ADMINISTRATIVE ABILITY.—The experience and ability of the applicant to responsibly administer the project.

''(3) ABILITY TO ASSIST PARTICIPANTS.—The experience and ability of the applicant in recruiting, educating, and assisting project participants to increase their economic independence and general well-being through the development of assets.

''(4) COMMITMENT OF NON-FEDERAL FUNDS.—The aggregate amount of direct funds from non-Federal public sector and from private sources that are formally committed to the project as matching contributions.

''(5) ADEQUACY OF PLAN FOR PROVIDING INFORMATION FOR EVALUATION.—The adequacy of the plan for providing information relevant to an evaluation of the project.

''(6) OTHER FACTORS.—Such other factors relevant to the purposes of this title as the Secretary may specify.

''(d) PREFERENCES.—In considering an application to conduct a demonstration project under this title, the Secretary shall give preference to an application that—

''(1) demonstrates the willingness and ability to select individuals described in section 408 who are predominantly from households in which a child (or children) is living with the child's biological or adoptive mother or father, or with the child's legal guardian;

''(2) provides a commitment of non-Federal funds with a proportionately greater amount of such funds committed from private sector sources; and

''(3) targets such individuals residing within one or more relatively well-defined neighborhoods or communities (including rural communities) that experience high rates of poverty or unemployment.

''(e) APPROVAL.—Not later than 9 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall, on a competitive basis, approve such applications to conduct demonstration projects under this title as the Secretary considers to be appropriate, taking into account the assessments required by subsections (c) and (d). The Secretary shall ensure, to the maximum extent practicable, that the applications that are approved involve a range of communities (both rural and urban) and diverse populations.

''(f) CONTRACTS WITH NONPROFIT ENTITIES.—The Secretary may contract with an entity described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and exempt from taxation under section 501(a) of such Code to carry out any responsibility of the Secretary under this section or section 412 if—

''(1) such entity demonstrates the ability to carry out such responsibility; and

''(2) the Secretary can demonstrate that such responsibility would not be carried out by the Secretary at a lower cost.

''(g) GRANDFATHERING OF EXISTING STATEWIDE PROGRAMS.—Any statewide individual asset-building program that is carried out in a manner consistent with the purposes of this title, that is established under State law as of the date of enactment of this Act [Oct. 27, 1998], and that as of such date is operating with an annual State appropriation of not less than $1,000,000 in non-Federal funds, shall be deemed to meet the eligibility requirements of this subtitle [title], and the entity carrying out the program shall be deemed to be a qualified entity. The Secretary shall consider funding the statewide program as a demonstration project described in this subtitle [title]. In considering the statewide program for funding, the Secretary shall review an application submitted by the entity carrying out such statewide program under this section, notwithstanding the preference requirements listed in subsection (d). Any program requirements under sections 407 through 411 that are inconsistent with State statutory requirements in effect on the date of enactment of this Act, governing such statewide program, shall not apply to the program.

''SEC. 406. DEMONSTRATION AUTHORITY; ANNUAL GRANTS.

''(a) DEMONSTRATION AUTHORITY.—If the Secretary approves an application to conduct a demonstration project under this title, the Secretary shall, not later than 10 months after the date of enactment of this title [Oct. 27, 1998], authorize the applicant to conduct the project for 5 project years in accordance with the approved application and the requirements of this title.

''(b) GRANT AUTHORITY.—For each project year of a demonstration project conducted under this title, the Secretary may make a grant to the qualified entity authorized to conduct the project. In making such a grant, the Secretary shall make the grant on the first day of the project year in an amount not to exceed the lesser of—

''(1) the aggregate amount of funds committed as matching contributions from non-Federal public or private sector sources; or

''(2) $1,000,000.

''SEC. 407. RESERVE FUND.

''(a) ESTABLISHMENT.—A qualified entity under this title, other than a State or local government agency or a tribal government, shall establish a Reserve Fund that shall be maintained in accordance with this section.

''(b) AMOUNTS IN RESERVE FUND.—

''(1) IN GENERAL.—As soon after receipt as is practicable, a qualified entity shall deposit in the Reserve Fund established under subsection (a)—

''(A) all funds provided to the qualified entity from any public or private source in connection with the demonstration project; and

''(B) the proceeds from any investment made under subsection (c)(2).

''(2) UNIFORM ACCOUNTING REGULATIONS.—The Secretary shall prescribe regulations with respect to accounting for amounts in the Reserve Fund established under subsection (a).

''(c) USE OF AMOUNTS IN THE RESERVE FUND.—

''(1) IN GENERAL.—A qualified entity shall use the amounts in the Reserve Fund established under subsection (a) to—

''(A) assist participants in the demonstration project in obtaining the skills (including economic literacy, budgeting, credit, and counseling skills) and information necessary to achieve economic self-sufficiency through activities requiring qualified expenses;

''(B) provide deposits in accordance with section 410 for individuals selected by the qualified entity to participate in the demonstration project;

''(C) administer the demonstration project; and

''(D) provide the research organization evaluating the demonstration project under section 414 with such information with respect to the demonstration project as may be required for the evaluation.

''(2) AUTHORITY TO INVEST FUNDS.—

''(A) GUIDELINES.—The Secretary shall establish guidelines for investing amounts in the Reserve Fund established under subsection (a) in a manner that provides an appropriate balance between return, liquidity, and risk.

''(B) INVESTMENT.—A qualified entity shall invest the amounts in its Reserve Fund that are not immediately needed to carry out the provisions of paragraph (1), in accordance with the guidelines established under subparagraph (A).

''(3) LIMITATION ON USES.—Not more than 15 percent of the amounts provided to a qualified entity under section 406(b) shall be used by the qualified entity for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1), of which not less than 2 percent of the amounts shall be used by the qualified entity for the purposes described in paragraph (1)(D). Of the total amount specified in this paragraph, not more than 7.5 percent shall be used for administrative functions under paragraph (1)(C), including program management, reporting requirements, recruitment and enrollment of individuals, and monitoring. The remainder of the total amount specified in this paragraph (not including the amount specified for use for the purposes described in paragraph (1)(D)) shall be used for nonadministrative functions described in paragraph (1)(A), including case management, budgeting, economic literacy, and credit counseling. If the cost of nonadministrative functions described in paragraph (1)(A) is less than 5.5 percent of the total amount specified in this paragraph, such excess funds may be used for administrative functions. If two or

more qualified entities are jointly administering a project, no qualified entity shall use more than its proportional share for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1).

''(d) UNUSED FEDERAL GRANT FUNDS TRANSFERRED TO THE SECRETARY WHEN PROJECT TERMINATES.—Notwithstanding subsection (c), upon the termination of any demonstration project authorized under this section, the qualified entity conducting the project shall transfer to the Secretary an amount equal to—

''(1) the amounts in its Reserve Fund at the time of the termination; multiplied by

''(2) a percentage equal to—

''(A) the aggregate amount of grants made to the qualified entity under section 406(b); divided by

''(B) the aggregate amount of all funds provided to the qualified entity from all sources to conduct the project.

''SEC. 408. ELIGIBILITY FOR PARTICIPATION.

''(a) IN GENERAL.—Any individual who is a member of a household that is eligible for assistance under the State temporary assistance for needy families program established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or that meets each of the following requirements shall be eligible to participate in a demonstration project conducted under this title:

''(1) INCOME TEST.—The adjusted gross income of the household is equal to or less than 200 percent of the poverty line (as determined by the Office of Management and Budget) or the earned income amount described in section 32 of the Internal Revenue Code of 1986 [26 U.S.C. 32] (taking into account the size of the household).

''(2) NET WORTH TEST.—

''(A) IN GENERAL.—The net worth of the household, as of the end of the calendar year preceding the determination of eligibility, does not exceed $10,000.

''(B) DETERMINATION OF NET WORTH.—For purposes of subparagraph (A), the net worth of a household is the amount equal to—

''(i) the aggregate market value of all assets that are owned in whole or in part by any member of the household; minus

''(ii) the obligations or debts of any member of the household.

''(C) EXCLUSIONS.—For purposes of determining the net worth of a household, a household's assets shall not be considered to include the primary dwelling unit and one motor vehicle owned by a member of the household.

''(b) INDIVIDUALS UNABLE TO COMPLETE THE PROJECT.—The Secretary shall establish such regulations as are necessary to ensure compliance with this title if an individual participating in the demonstration project moves from the community in which the project is conducted or is otherwise unable to continue participating in that project, including regulations prohibiting future eligibility to participate in any other demonstration project conducted under this title.

''SEC. 409. SELECTION OF INDIVIDUALS TO PARTICIPATE.

''From among the individuals eligible to participate in a demonstration project conducted under this title, each qualified entity shall select the individuals—

''(1) that the qualified entity determines to be best suited to participate; and

''(2) to whom the qualified entity will provide deposits in accordance with section 410.

''SEC. 410. DEPOSITS BY QUALIFIED ENTITIES.

''(a) IN GENERAL.—Not less than once every 3 months during each project year, each qualified entity under this title shall deposit in the individual development account of each individual participating in the project, or into a parallel account maintained by the qualified entity—

''(1) from the non-Federal funds described in section 405(c)(4), a matching contribution of not less than $0.50 and not more than $4 for every $1 of earned income (as defined in section 911(d)(2) of the Internal Revenue Code of 1986 [26 U.S.C. 911(d)(2)]) deposited in the account by a project participant during that period;

''(2) from the grant made under section 406(b), an amount equal to the matching contribution made under paragraph (1); and

''(3) any interest that has accrued on amounts deposited under paragraph (1) or (2) on behalf of that individual into the individual development account of the individual or into a parallel account maintained by the qualified entity.

''(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.—Not more than $2,000 from a grant made under section 406(b) shall be provided to any one individual over the course of the demonstration project.

''(c) LIMITATION ON DEPOSITS FOR A HOUSEHOLD.—Not more than $4,000 from a grant made under section 406(b) shall be provided to any one household over the course of the demonstration project.

''(d) WITHDRAWAL OF FUNDS.—The Secretary shall establish such guidelines as may be necessary to ensure that funds held in an individual development account are not withdrawn, except for one or more qualified expenses, or for an emergency withdrawal. Such guidelines shall include a requirement that a responsible official of the qualified entity conducting a project approve a withdrawal from such an account in writing. The guidelines shall provide that no individual may withdraw funds from an individual development account earlier than 6 months after the date on which the individual first deposits funds in the account.

''(e) REIMBURSEMENT.—An individual shall reimburse an individual development account for any funds withdrawn from the account for an emergency withdrawal, not later than 12 months after the date of the withdrawal. If the individual fails to make the reimbursement, the qualified entity administering the account shall transfer the funds deposited into the account or a parallel account under this section to the Reserve Fund of the qualified entity, and use the funds to benefit other individuals participating in the demonstration project involved.

''SEC. 411. LOCAL CONTROL OVER DEMONSTRATION PROJECTS.

''A qualified entity under this title, other than a State or local government agency or a tribal government, shall, subject to the provisions of section 413, have sole authority over the administration of the project. The Secretary may prescribe only such regulations or guidelines with respect to demonstration projects conducted under this title as are necessary to ensure compliance with the approved applications and the requirements of this title.

''SEC. 412. ANNUAL PROGRESS REPORTS.

''(a) IN GENERAL.—Each qualified entity under this title shall prepare an annual report on the progress of the demonstration project. Each report shall include both program and participant information and shall specify for the period covered by the report the following information:

''(1) The number and characteristics of individuals making a deposit into an individual development account.

''(2) The amounts in the Reserve Fund established with respect to the project.

''(3) The amounts deposited in the individual development accounts.

''(4) The amounts withdrawn from the individual development accounts and the purposes for which such amounts were withdrawn.

''(5) The balances remaining in the individual development accounts.

''(6) The savings account characteristics (such as threshold amounts and match rates) required to stimulate participation in the demonstration project, and how such characteristics vary among different populations or communities.

''(7) What service configurations of the qualified entity (such as configurations relating to peer support, structured planning exercises, mentoring, and case management) increased the rate and consistency of participation in the demonstration project and how such configurations varied among different populations or communities.

''(8) Such other information as the Secretary may require to evaluate the demonstration project.

''(b) SUBMISSION OF REPORTS.—The qualified entity shall submit each report required to be prepared under subsection (a) to—

''(1) the Secretary; and

''(2) the Treasurer (or equivalent official) of the State in which the project is conducted, if the State or a local government or a tribal government committed funds to the demonstration project.

''(c) TIMING.—The first report required by subsection (a) shall be submitted not later than 60 days after the end of the project year in which the Secretary authorized the qualified entity to conduct the demonstration project, and subsequent reports shall be submitted every 12 months thereafter, until the conclusion of the project.

''SEC. 413. SANCTIONS.

''(a) AUTHORITY TO TERMINATE DEMONSTRATION PROJECT.—If the Secretary determines that a qualified entity under this title is not operating a demonstration project in accordance with the entity's approved application under section 405 or the requirements of this title (and has not implemented any corrective recommendations directed by the Secretary), the Secretary shall terminate such entity's authority to conduct the demonstration project.

''(b) ACTIONS REQUIRED UPON TERMINATION.—If the Secretary terminates the authority to conduct a demonstration project, the Secretary—

''(1) shall suspend the demonstration project;

''(2) shall take control of the Reserve Fund established pursuant to section 407;

''(3) shall make every effort to identify another qualified entity (or entities) willing and able to conduct the project in accordance with the approved application (or, if modification is necessary to incorporate the recommendations, the application as modified) and the requirements of this title;

''(4) shall, if the Secretary identifies an entity (or entities) described in paragraph (3)—

''(A) authorize the entity (or entities) to conduct the project in accordance with the approved application (or, if modification is necessary to incorporate the recommendations, the application as modified) and the requirements of this title;

''(B) transfer to the entity (or entities) control over the Reserve Fund established pursuant to section 407; and

''(C) consider, for purposes of this title—

''(i) such other entity (or entities) to be the qualified entity (or entities) originally authorized to conduct the demonstration project; and

''(ii) the date of such authorization to be the date of the original authorization; and

''(5) if, by the end of the 1-year period beginning on the date of the termination, the Secretary has not found a qualified entity (or entities) described in paragraph (3), shall—

''(A) terminate the project; and

''(B) from the amount remaining in the Reserve Fund established as part of the project, remit to each source that provided funds under section 405(c)(4) to the entity originally authorized to conduct the project, an amount that bears the same ratio to the amount so remaining as the amount provided from the source under section 405(c)(4) bears to the amount provided from all such sources under that section.

''SEC. 414. EVALUATIONS.

''(a) IN GENERAL.—Not later than 10 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall enter into a contract with an independent research organization to evaluate the demonstration projects conducted under this title, individually and as a group, including evaluating all qualified entities participating in and sources providing funds for the demonstration projects conducted under this title.

''(b) FACTORS TO EVALUATE.—In evaluating any demonstration project conducted under this title, the research organization shall address the following factors:

''(1) The effects of incentives and organizational or institutional support on savings behavior in the demonstration project.

''(2) The savings rates of individuals in the demonstration project based on demographic characteristics including gender, age, family size, race or ethnic background, and income.

''(3) The economic, civic, psychological, and social effects of asset accumulation, and how such effects vary among different populations or communities.

''(4) The effects of individual development accounts on savings rates, homeownership, level of postsecondary education attained, and self-employment, and how such effects vary among different populations or communities.

''(5) The potential financial returns to the Federal Government and to other public sector and private sector investors in individual development accounts over a 5-year and 10-year period of time.

''(6) The lessons to be learned from the demonstration projects conducted under this title and if a permanent program of individual development accounts should be established.

''(7) Such other factors as may be prescribed by the Secretary.

''(c) METHODOLOGICAL REQUIREMENTS.—In evaluating any demonstration project conducted under this title, the research organization shall—

''(1) for at least one site, use control groups to compare participants with nonparticipants;

''(2) before, during, and after the project, obtain such quantitative data as are necessary to evaluate the project thoroughly; and

''(3) develop a qualitative assessment, derived from sources such as in-depth interviews, of how asset accumulation affects individuals and families.

''(d) REPORTS BY THE SECRETARY.—

''(1) INTERIM REPORTS.—Not later than 90 days after the end of the project year in which the Secretary first authorizes a qualified entity to conduct a demonstration project under this title, and every 12 months thereafter until all demonstration projects conducted under this title are completed, the Secretary shall submit to Congress an interim report setting forth the results of the reports submitted pursuant to section 412(b).

''(2) FINAL REPORTS.—Not later than 12 months after the conclusion of all demonstration projects conducted under this title, the Secretary shall submit to Congress a final report setting forth the results and findings of all reports and evaluations conducted pursuant to this title.

''(e) EVALUATION EXPENSES.—Of the amount appropriated under section 416 for a fiscal year, the Secretary may expend not more than $500,000 for such fiscal year to carry out the objectives of this section.

''SEC. 415. NO REDUCTION IN BENEFITS.

''Notwithstanding any other provision of Federal law (other than the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.]) that requires consideration of one or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in an individual development account under this Act [see Short Title of 1998 Amendment note set out under section 9801 of this title] shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

''SEC. 416. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated to carry out this title, $25,000,000 for each of fiscal years 1999, 2000, 2001, 2002, and 2003, to remain available until expended.''

[Pub. L. 106–554, § 1(a)(1) [title VI, § 607(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–76, provided that: ''Notwithstanding the amendment made by subsection (a) [amending section 412(c) of Pub. L. 105–285, set out above], the submission of the initial report of a qualified entity under section 412(c) [section 412(c) of Pub. L. 105–285, set out above] shall not be required prior to the date that is 90 days after the date of enactment of this title [Dec. 21, 2000].'']

[Pub. L. 106–554, § 1(a)(1) [title VI, § 608(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–76, provided that: ''Notwithstanding the amendment made by subsection (a) [amending section 414(d)(1) of Pub. L. 105–285, set out above], the submission of the initial interim report of the Secretary under section 412(c) [section 412(c) of Pub. L. 105–285, set out above] shall not be required prior to the date that is 90 days after the date of enactment of this title [Dec. 21, 2000].'']

§ 604a. Services provided by charitable, religious, or private organizations

(a) In general

(1) State options

A State may—

(A) administer and provide services under the programs described in subparagraphs (A) and (B)(i) of paragraph (2) through contracts with charitable, religious, or private organizations; and

(B) provide beneficiaries of assistance under the programs described in subparagraphs (A) and (B)(ii) of paragraph (2) with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations.

(2) Programs described

The programs described in this paragraph are the following programs:

(A) A State program funded under this part (as amended by section 103(a) of this Act).

(B) Any other program established or modified under title I or II of this Act, that—

(i) permits contracts with organizations; or

(ii) permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries, as a means of providing assistance.

(b) Religious organizations

The purpose of this section is to allow States to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers, or other forms of disbursement under any program described in subsection (a)(2) of this section, on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

(c) Nondiscrimination against religious organizations

In the event a State exercises its authority under subsection (a) of this section, religious organizations are eligible, on the same basis as any other private organization, as contractors to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, under any program described in subsection (a)(2) of this section so long as the programs are implemented consistent with the Establishment Clause of the United States Constitution. Except as provided in subsection (k) of this section, neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character.

(d) Religious character and freedom

(1) Religious organizations

A religious organization with a contract described in subsection (a)(1)(A) of this section, or which accepts certificates, vouchers, or other forms of disbursement under subsection (a)(1)(B) of this section, shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State shall require a religious organization to—

(A) alter its form of internal governance; or

(B) remove religious art, icons, scripture, or other symbols;

in order to be eligible to contract to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, funded under a program described in subsection (a)(2) of this section.

(e) Rights of beneficiaries of assistance

(1) In general

If an individual described in paragraph (2) has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program described in subsection (a)(2) of this section, the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider that is accessible to the individual and the value of which is not less than the value of the assistance which the individual would have received from such organization.

(2) Individual described

An individual described in this paragraph is an individual who receives, applies for, or requests to apply for, assistance under a program described in subsection (a)(2) of this section.

(f) Employment practices

A religious organization's exemption provided under section 2000e–1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, pro-

grams described in subsection (a)(2) of this section.

(g) Nondiscrimination against beneficiaries

Except as otherwise provided in law, a religious organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in subsection (a)(2) of this section on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.

(h) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization contracting to provide assistance funded under any program described in subsection (a)(2) of this section shall be subject to the same regulations as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.

(2) Limited audit

If such organization segregates Federal funds provided under such programs into separate accounts, then only the financial assistance provided with such funds shall be subject to audit.

(i) Compliance

Any party which seeks to enforce its rights under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.

(j) Limitations on use of funds for certain purposes

No funds provided directly to institutions or organizations to provide services and administer programs under subsection (a)(1)(A) of this section shall be expended for sectarian worship, instruction, or proselytization.

(k) Preemption

Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

(Pub. L. 104–193, title I, § 104, Aug. 22, 1996, 110 Stat. 2161.)

REFERENCES IN TEXT

Section 103(a) of this Act, referred to in subsec. (a)(2)(A), means section 103(a) of Pub. L. 104–193, which enacted this part and struck out former part A of this subchapter, except for section 618. For complete classification of section 103(a) to the Code, see Tables.

Titles I and II of this Act, referred to in subsec. (a)(2)(B), means titles I and II of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2110, 2185. For complete classification of these titles to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Social Security Act which comprises this chapter.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 605. Administrative provisions

(a) Quarterly

The Secretary shall pay each grant payable to a State under section 603 of this title in quarterly installments, subject to this section.

(b) Notification

Not later than 3 months before the payment of any such quarterly installment to a State, the Secretary shall notify the State of the amount of any reduction determined under section 612(a)(1)(B) of this title with respect to the State.

(c) Computation and certification of payments to States

(1) Computation

The Secretary shall estimate the amount to be paid to each eligible State for each quarter under this part, such estimate to be based on a report filed by the State containing an estimate by the State of the total sum to be expended by the State in the quarter under the State program funded under this part and such other information as the Secretary may find necessary.

(2) Certification

The Secretary of Health and Human Services shall certify to the Secretary of the Treasury the amount estimated under paragraph (1) with respect to a State, reduced or increased to the extent of any overpayment or underpayment which the Secretary of Health and Human Services determines was made under this part to the State for any prior quarter and with respect to which adjustment has not been made under this paragraph.

(d) Payment method

Upon receipt of a certification under subsection (c)(2) of this section with respect to a State, the Secretary of the Treasury shall, through the Fiscal Service of the Department of the Treasury and before audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title IV, § 405, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2128; amended Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 605, acts Aug. 14, 1935, ch. 531, title IV, § 405, 49 Stat. 629; July 25, 1962, Pub. L. 87–543, title I, § 107(a), 76 Stat. 188, related to use of payments for benefit of children, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 606. Federal loans for State welfare programs

(a) Loan authority

(1) In general

The Secretary shall make loans to any loan-eligible State, for a period to maturity of not more than 3 years.

(2) Loan-eligible State

As used in paragraph (1), the term ''loan-eligible State'' means a State against which a penalty has not been imposed under section 609(a)(1) of this title.

(b) Rate of interest

The Secretary shall charge and collect interest on any loan made under this section at a rate equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the period to maturity of the loan.

(c) Use of loan

A State shall use a loan made to the State under this section only for any purpose for which grant amounts received by the State under section 603(a) of this title may be used, including—

(1) welfare anti-fraud activities; and

(2) the provision of assistance under the State program to Indian families that have moved from the service area of an Indian tribe with a tribal family assistance plan approved under section 612 of this title.

(d) Limitation on total amount of loans to State

The cumulative dollar amount of all loans made to a State under this section during fiscal years 1997 through 2003 shall not exceed 10 percent of the State family assistance grant.

(e) Limitation on total amount of outstanding loans

The total dollar amount of loans outstanding under this section may not exceed $1,700,000,000.

(f) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary for the cost of loans under this section.

(Aug. 14, 1935, ch. 531, title IV, § 406, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2128; amended Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620; Pub. L. 108–40, § 3(f), June 30, 2003, 117 Stat. 837.)

PRIOR PROVISIONS

A prior section 606, acts Aug. 14, 1935, ch. 531, title IV, § 406, 49 Stat. 629; Aug. 10, 1939, ch. 666, title IV, § 403, 53 Stat. 1380; Aug. 28, 1950, ch. 809, title III, pt. 2, § 323(a), 64 Stat. 551; Aug. 1, 1956, ch. 836, title III, §§ 321, 322, 351(b), 70 Stat. 850, 855; July 25, 1962, Pub. L. 87–543, title I, §§ 104(a)(3)(D), 108(a), 109, 152, 156(b), 76 Stat. 185, 189, 190, 206, 207; Oct. 13, 1964, Pub. L. 88–641, § 2(a), 78 Stat. 1042; July 30, 1965, Pub. L. 89–97, title IV, § 409, 79 Stat. 422; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 201(f), 206(b), 207(a), 241(b)(5), 81 Stat. 880, 893, 916; Jan. 4, 1975, Pub. L. 93–647, §§ 3(a)(5), 101(c)(7), 88 Stat. 2348, 2360; Nov. 12, 1977, Pub. L. 95–171, § 3(a)(2), 91 Stat. 1354; Dec. 28, 1980, Pub. L. 96–611, § 4, 94 Stat. 3567; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(b)(2), title XXIII, §§ 2311, 2312, 2317(b), 2353(b)(1), 95 Stat. 817, 852, 853, 856, 872; Sept. 3, 1982, Pub. L. 97–248, title I, § 153(a), 96 Stat. 396; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2361(c), title VI, § 2663(c)(3)(A), (B)(i), 98 Stat. 1104, 1166; Aug. 16, 1984, Pub. L. 98–378, § 20(a), 98 Stat. 1322, related to definitions used in this part, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–40 substituted ''2003'' for ''2002''.

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 607. Mandatory work requirements

(a) Participation rate requirements

(1) All families

A State to which a grant is made under section 603 of this title for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to all families receiving assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title):

If the fiscal year is:	The minimum participation rate is:
1997	25
1998	30
1999	35
2000	40
2001	45
2002 or thereafter	50.

(2) 2-parent families

A State to which a grant is made under section 603 of this title for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to 2-parent families receiving assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title):

If the fiscal year is:	The minimum participation rate is:
1997	75
1998	75
1999 or thereafter	90.

(b) Calculation of participation rates

(1) All families

(A) Average monthly rate

For purposes of subsection (a)(1) of this section, the participation rate for all families of a State for a fiscal year is the average of the participation rates for all families of the State for each month in the fiscal year.

(B) Monthly participation rates

The participation rate of a State for all families of the State for a month, expressed as a percentage, is—

(i) the number of families receiving assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) that include an adult or a minor child head of household who is engaged in work for the month; divided by

(ii) the amount by which—

(I) the number of families receiving such assistance during the month that include an adult or a minor child head of household receiving such assistance; exceeds

(II) the number of families receiving such assistance that are subject in such month to a penalty described in subsection (e)(1) of this section but have not been subject to such penalty for more than 3 months within the preceding 12-month period (whether or not consecutive).

(2) 2-parent families

(A) Average monthly rate

For purposes of subsection (a)(2) of this section, the participation rate for 2-parent families of a State for a fiscal year is the average of the participation rates for 2-parent families of the State for each month in the fiscal year.

(B) Monthly participation rates

The participation rate of a State for 2-parent families of the State for a month shall be calculated by use of the formula set forth in paragraph (1)(B), except that in the formula the term ''number of 2-parent families'' shall be substituted for the term ''number of families'' each place such latter term appears.

(C) Family with a disabled parent not treated as a 2-parent family

A family that includes a disabled parent shall not be considered a 2-parent family for purposes of subsections (a) and (b) of this section.

(3) Pro rata reduction of participation rate due to caseload reductions not required by Federal law and not resulting from changes in State eligibility criteria

(A) In general

The Secretary shall prescribe regulations for reducing the minimum participation rate otherwise required by this section for a fiscal year by the number of percentage points equal to the number of percentage points (if any) by which—

(i) the average monthly number of families receiving assistance during the immediately preceding fiscal year under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) is less than

(ii) the average monthly number of families that received assistance under any State program referred to in clause (i) during fiscal year 2005.

The minimum participation rate shall not be reduced to the extent that the Secretary determines that the reduction in the number of families receiving such assistance is required by Federal law.

(B) Eligibility changes not counted

The regulations required by subparagraph (A) shall not take into account families that are diverted from a State program funded under this part as a result of differences in eligibility criteria under a State program funded under this part and the eligibility criteria in effect during fiscal year 2005. Such regulations shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.

(4) State option to include individuals receiving assistance under a tribal family assistance plan or tribal work program

For purposes of paragraphs (1)(B) and (2)(B), a State may, at its option, include families in the State that are receiving assistance under a tribal family assistance plan approved under section 612 of this title or under a tribal work program to which funds are provided under this part.

(5) State option for participation requirement exemptions

For any fiscal year, a State may, at its option, not require an individual who is a single custodial parent caring for a child who has not

attained 12 months of age to engage in work, and may disregard such an individual in determining the participation rates under subsection (a) of this section for not more than 12 months.

(c) Engaged in work

(1) General rules

(A) All families

For purposes of subsection (b)(1)(B)(i) of this section, a recipient is engaged in work for a month in a fiscal year if the recipient is participating in work activities for at least the minimum average number of hours per week specified in the following table during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) of this section, subject to this subsection:

If the month is in fiscal year:	The minimum average number of hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30.

(B) 2-parent families

For purposes of subsection (b)(2)(B) of this section, an individual is engaged in work for a month in a fiscal year if—

(i) the individual and the other parent in the family are participating in work activities for a total of at least 35 hours per week during the month, not fewer than 30 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) of this section, subject to this subsection; and

(ii) if the family of the individual receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, the individual and the other parent in the family are participating in work activities for a total of at least 55 hours per week during the month, not fewer than 50 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) of this section.

(2) Limitations and special rules

(A) Number of weeks for which job search counts as work

(i) Limitation

Notwithstanding paragraph (1) of this subsection, an individual shall not be considered to be engaged in work by virtue of participation in an activity described in subsection (d)(6) of this section of a State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title), after the individual has participated in such an activity for 6 weeks (or, if the unemployment rate of the State is at least 50 percent greater than the unemployment rate of the United States or the State is a needy State (within the meaning of section 603(b)(6) of this title), 12 weeks), or if the participation is for a week that immediately follows 4 consecutive weeks of such participation.

(ii) Limited authority to count less than full week of participation

For purposes of clause (i) of this subparagraph, on not more than 1 occasion per individual, the State shall consider participation of the individual in an activity described in subsection (d)(6) of this section for 3 or 4 days during a week as a week of participation in the activity by the individual.

(B) Single parent or relative with child under age 6 deemed to be meeting work participation requirements if parent or relative is engaged in work for 20 hours per week

For purposes of determining monthly participation rates under subsection (b)(1)(B)(i) of this section, a recipient who is the only parent or caretaker relative in the family of a child who has not attained 6 years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.

(C) Single teen head of household or married teen who maintains satisfactory school attendance deemed to be meeting work participation requirements

For purposes of determining monthly participation rates under subsection (b)(1)(B)(i) of this section, a recipient who is married or a head of household and has not attained 20 years of age is deemed to be engaged in work for a month in a fiscal year if the recipient—

(i) maintains satisfactory attendance at secondary school or the equivalent during the month; or

(ii) participates in education directly related to employment for an average of at least 20 hours per week during the month.

(D) Limitation on number of persons who may be treated as engaged in work by reason of participation in educational activities

For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b) of this section, not more than 30 percent of the number of individuals in all families and in 2-parent families, respectively, in a State who are treated as engaged in work for a month may consist of individuals who are determined to be engaged in work for the month by reason of participation in vocational educational training, or (if the month is in fiscal year 2000 or thereafter) deemed to be engaged in work for the month by reason of subparagraph (C) of this paragraph.

(d) "Work activities" defined

As used in this section, the term ''work activities'' means—

(1) unsubsidized employment;

(2) subsidized private sector employment;
(3) subsidized public sector employment;
(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
(5) on-the-job training;
(6) job search and job readiness assistance;
(7) community service programs;
(8) vocational educational training (not to exceed 12 months with respect to any individual);
(9) job skills training directly related to employment;
(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and
(12) the provision of child care services to an individual who is participating in a community service program.

(e) Penalties against individuals

(1) In general

Except as provided in paragraph (2), if an individual in a family receiving assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) refuses to engage in work required in accordance with this section, the State shall—

(A) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the individual so refuses; or
(B) terminate such assistance,

subject to such good cause and other exceptions as the State may establish.

(2) Exception

Notwithstanding paragraph (1), a State may not reduce or terminate assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) based on a refusal of an individual to engage in work required in accordance with this section if the individual is a single custodial parent caring for a child who has not attained 6 years of age, and the individual proves that the individual has a demonstrated inability (as determined by the State) to obtain needed child care, for 1 or more of the following reasons:

(A) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site.
(B) Unavailability or unsuitability of informal child care by a relative or under other arrangements.
(C) Unavailability of appropriate and affordable formal child care arrangements.

(f) Nondisplacement in work activities

(1) In general

Subject to paragraph (2), an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the Federal Government may fill a vacant employment position in order to engage in a work activity described in subsection (d) of this section.

(2) No filling of certain vacancies

No adult in a work activity described in subsection (d) of this section which is funded, in whole or in part, by funds provided by the Federal Government shall be employed or assigned—

(A) when any other individual is on layoff from the same or any substantially equivalent job; or
(B) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult described in paragraph (1).

(3) Grievance procedure

A State with a program funded under this part shall establish and maintain a grievance procedure for resolving complaints of alleged violations of paragraph (2).

(4) No preemption

Nothing in this subsection shall preempt or supersede any provision of State or local law that provides greater protection for employees from displacement.

(g) Sense of Congress

It is the sense of the Congress that in complying with this section, each State that operates a program funded under this part is encouraged to assign the highest priority to requiring adults in 2-parent families and adults in single-parent families that include older preschool or school-age children to be engaged in work activities.

(h) Sense of Congress that States should impose certain requirements on noncustodial, nonsupporting minor parents

It is the sense of the Congress that the States should require noncustodial, nonsupporting parents who have not attained 18 years of age to fulfill community work obligations and attend appropriate parenting or money management classes after school.

(i) Verification of work and work-eligible individuals in order to implement reforms

(1) Secretarial direction and oversight

(A) Regulations for determining whether activities may be counted as "work activities", how to count and verify reported hours of work, and determining who is a work-eligible individual

(i) In general

Not later than June 30, 2006, the Secretary shall promulgate regulations to ensure consistent measurement of work participation rates under State programs funded under this part and State programs funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title), which shall include information with respect to—

(I) determining whether an activity of a recipient of assistance may be treated as a work activity under subsection (d);

(II) uniform methods for reporting hours of work by a recipient of assistance;

(III) the type of documentation needed to verify reported hours of work by a recipient of assistance; and

(IV) the circumstances under which a parent who resides with a child who is a recipient of assistance should be included in the work participation rates.

(ii) Issuance of regulations on an interim final basis

The regulations referred to in clause (i) may be effective and final immediately on an interim basis as of the date of publication of the regulations. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comment on the regulation after the date of publication. The Secretary may change or revise the regulation after the public comment period.

(B) Oversight of State procedures

The Secretary shall review the State procedures established in accordance with paragraph (2) to ensure that such procedures are consistent with the regulations promulgated under subparagraph (A) and are adequate to ensure an accurate measurement of work participation under the State programs funded under this part and any other State programs funded with qualified State expenditures (as so defined).

(2) Requirement for States to establish and maintain work participation verification procedures

Not later than September 30, 2006, a State to which a grant is made under section 603 of this title shall establish procedures for determining, with respect to recipients of assistance under the State program funded under this part or under any State programs funded with qualified State expenditures (as so defined), whether activities may be counted as work activities, how to count and verify reported hours of work, and who is a work-eligible individual, in accordance with the regulations promulgated pursuant to paragraph (1)(A)(i) and shall establish internal controls to ensure compliance with the procedures.

(Aug. 14, 1935, ch. 531, title IV, §407, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2129; amended Pub. L. 105–33, title V, §§5003(a), 5504, 5514(c), Aug. 5, 1997, 111 Stat. 594, 609, 620; Pub. L. 109–171, title VII, §7102(a), (b)(1), (c)(1), Feb. 8, 2006, 120 Stat. 136.)

PRIOR PROVISIONS

A prior section 607, act Aug. 14, 1935, ch. 531, title IV, §407, as added May 8, 1961, Pub. L. 87–31, §1, 75 Stat. 75; amended July 25, 1962, Pub. L. 87–543, title I, §§104(a)(3)(E), 131(a), 134, 76 Stat. 185, 193, 196; Oct. 13, 1964, Pub. L. 88–641, §2(b), 78 Stat. 1042; June 29, 1967, Pub. L. 90–36, §2, 81 Stat. 94; Jan. 2, 1968, Pub. L. 90–248, title II, §203(a), 81 Stat. 882; June 28, 1968, Pub. L. 90–364, title III, §302, 82 Stat. 273; Dec. 28, 1971, Pub. L. 92–223, §3(a)(10), (11), 85 Stat. 805; Oct. 20, 1976, Pub. L. 94–566, title V, §507(a), (b), (d), 90 Stat. 2688; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §§2313(a), (c)(2), 2353(q), 95 Stat. 853, 854, 874; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(c)(4), (j)(3)(B)(ii), 98 Stat. 1166, 1171; Oct. 13, 1988, Pub. L. 100–485, title II, §202(b)(7)–(11), title IV, §401(a)(2)(B), (C), (b)(1), (3), (c), (h), 102 Stat. 2377, 2378, 2394–2396; Nov. 10, 1988, Pub. L. 100–647, title VIII, §8105(1)–(3), (5), 102 Stat. 3797; Dec. 19, 1989, Pub. L. 101–239, title X, §10403(a)(1)(A)(i), (2), 103 Stat. 2487, 2488; Nov. 5, 1990, Pub. L. 101–508, title V, §§5061(a), 5062(a), 104 Stat. 1388–231, 1388–232, related to dependent children of unemployed parents, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

2006—Subsecs. (a)(1), (2), (b)(1)(B)(i). Pub. L. 109–171, §7102(b)(1), inserted "or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)" after "this part".

Subsec. (b)(3)(A)(i). Pub. L. 109–171, §7102(a)(1)(A), inserted "or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)" after "this part".

Subsec. (b)(3)(A)(ii). Pub. L. 109–171, §7102(a)(1)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: "the average monthly number of families that received aid under the State plan approved under part A of this subchapter (as in effect on September 30, 1995) during fiscal year 1995."

Subsec. (b)(3)(B). Pub. L. 109–171, §7102(a)(2), substituted "and the eligibility criteria in effect during fiscal year 2005" for "and eligibility criteria under the State program operated under the State plan approved under part A of this subchapter (as such plan and such part were in effect on September 30, 1995)".

Subsecs. (c)(2)(A)(i), (e)(1), (2). Pub. L. 109–171, §7102(b)(1), inserted "or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)" after "this part".

Subsec. (i). Pub. L. 109–171, §7102(c)(1), amended heading and text generally. Prior to amendment, text read as follows: "During fiscal year 1999, the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate shall hold hearings and engage in other appropriate activities to review the implementation of this section by the States, and shall invite the Governors of the States to testify before them regarding such implementation. Based on such hearings, such Committees may introduce such legislation as may be appropriate to remedy any problems with the State programs operated pursuant to this section."

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (b)(2)(C). Pub. L. 105–33, §5504(a), added subpar. (C).

Subsec. (b)(3). Pub. L. 105–33, §5504(b), inserted "and not resulting from changes in State eligibility criteria" after "Federal law" in heading.

Subsec. (b)(4). Pub. L. 105–33, §5504(c), inserted "or tribal work program" after "assistance plan" in heading and "or under a tribal work program to which funds are provided under this part" before period at end of text.

Subsec. (c)(1)(B). Pub. L. 105–33, §5504(e), substituted "participating" for "making progress" in cls. (i) and (ii).

Subsec. (c)(1)(B)(i). Pub. L. 105–33, §5504(d)(1), substituted "and the other parent in the family are" for "is" and inserted "a total of" before "at least".

Subsec. (c)(1)(B)(ii). Pub. L. 105–33, §5504(d)(2), substituted "individual and the other parent in the family are" for "individual's spouse is", inserted "for a total of at least 55 hours per week" before "during the month", and substituted "50" for "20" and "(6), (7), (8), or (12)" for "or (7)".

Subsec. (c)(2)(A)(i). Pub. L. 105–33, §5504(f), inserted "or the State is a needy State (within the meaning of section 603(b)(6) of this title)" after "United States".

Subsec. (c)(2)(B). Pub. L. 105–33, §5504(g), inserted "or relative" after "parent" in two places in heading and

substituted ''who is the only parent or caretaker relative in the family'' for ''in a 1-parent family who is the parent''.

Subsec. (c)(2)(C). Pub. L. 105–33, § 5504(h), in heading substituted ''Single teen head of household or married teen'' for ''Teen head of household'' and, in introductory provisions, substituted ''married or a'' for ''a single'' and struck out '', subject to subparagraph (D) of this paragraph,'' after ''is deemed''.

Subsec. (c)(2)(C)(ii). Pub. L. 105–33, § 5504(i), substituted ''an average of at least 20 hours per week during the month'' for ''at least the minimum average number of hours per week specified in the table set forth in paragraph (1)(A) of this subsection''.

Subsec. (c)(2)(D). Pub. L. 105–33, § 5003(a), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b) of this section, not more than 20 percent of individuals in all families and in 2-parent families may be determined to be engaged in work in the State for a month by reason of participation in vocational educational training or deemed to be engaged in work by reason of subparagraph (C) of this paragraph.''

Subsec. (e)(2). Pub. L. 105–33, § 5504(j), substituted ''engage in work required in accordance with this section'' for ''work'' in introductory provisions.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 7102(c)(1) of Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

Pub. L. 109–171, title VII, § 7102(d), Feb. 8, 2006, 120 Stat. 137, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 611 of this title] shall take effect on October 1, 2006.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5003(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

Amendment by section 5504 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 608. Prohibitions; requirements

(a) In general

(1) No assistance for families without a minor child

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family, unless the family includes a minor child who resides with the family (consistent with paragraph (10)) or a pregnant individual.

(2) Reduction or elimination of assistance for noncooperation in establishing paternity or obtaining child support

If the agency responsible for administering the State plan approved under part D of this subchapter determines that an individual is not cooperating with the State in establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child of the individual, and the individual does not qualify for any good cause or other exception established by the State pursuant to section 654(29) of this title, then the State—

(A) shall deduct from the assistance that would otherwise be provided to the family of the individual under the State program funded under this part an amount equal to not less than 25 percent of the amount of such assistance; and

(B) may deny the family any assistance under the State program.

(3) No assistance for families not assigning certain support rights to the State

(A) In general

A State to which a grant is made under section 603 of this title shall require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so provided to the family, which accrue (or have accrued) before the date the family ceases to receive assistance under the program, which assignment, on and after such date, shall not apply with respect to any support (other than support collected pursuant to section 664 of this title) which accrued before the family received such assistance and which the State has not collected by—

(i)(I) September 30, 2000, if the assignment is executed on or after October 1, 1997, and before October 1, 2000; or

(II) the date the family ceases to receive assistance under the program, if the assignment is executed on or after October 1, 2000; or

(ii) if the State elects to distribute collections under section 657(a)(6) of this title, the date the family ceases to receive assistance under the program, if the assignment is executed on or after October 1, 1998.

(B) Limitation

A State to which a grant is made under section 603 of this title shall not require, as a condition of providing assistance to any family under the State program funded under this part, that a member of the family assign to the State any rights to support described in subparagraph (A) which accrue

after the date the family ceases to receive assistance under the program.

(4) No assistance for teenage parents who do not attend high school or other equivalent training program

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to an individual who has not attained 18 years of age, is not married, has a minor child at least 12 weeks of age in his or her care, and has not successfully completed a high-school education (or its equivalent), if the individual does not participate in—

(A) educational activities directed toward the attainment of a high school diploma or its equivalent; or

(B) an alternative educational or training program that has been approved by the State.

(5) No assistance for teenage parents not living in adult-supervised settings

(A) In general

(i) Requirement

Except as provided in subparagraph (B), a State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to an individual described in clause (ii) of this subparagraph if the individual and the minor child referred to in clause (ii)(II) do not reside in a place of residence maintained by a parent, legal guardian, or other adult relative of the individual as such parent's, guardian's, or adult relative's own home.

(ii) Individual described

For purposes of clause (i), an individual described in this clause is an individual who—

(I) has not attained 18 years of age; and

(II) is not married, and has a minor child in his or her care.

(B) Exception

(i) Provision of, or assistance in locating, adult-supervised living arrangement

In the case of an individual who is described in clause (ii), the State agency referred to in section 602(a)(4) of this title shall provide, or assist the individual in locating, a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement, taking into consideration the needs and concerns of the individual, unless the State agency determines that the individual's current living arrangement is appropriate, and thereafter shall require that the individual and the minor child referred to in subparagraph (A)(ii)(II) reside in such living arrangement as a condition of the continued receipt of assistance under the State program funded under this part attributable to funds provided by the Federal Government (or in an alternative appropriate arrangement, should circumstances change and the current arrangement cease to be appropriate).

(ii) Individual described

For purposes of clause (i), an individual is described in this clause if the individual is described in subparagraph (A)(ii), and—

(I) the individual has no parent, legal guardian, or other appropriate adult relative described in subclause (II) of his or her own who is living or whose whereabouts are known;

(II) no living parent, legal guardian, or other appropriate adult relative, who would otherwise meet applicable State criteria to act as the individual's legal guardian, of such individual allows the individual to live in the home of such parent, guardian, or relative;

(III) the State agency determines that—

(aa) the individual or the minor child referred to in subparagraph (A)(ii)(II) is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the individual's own parent or legal guardian; or

(bb) substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the individual and the minor child lived in the same residence with the individual's own parent or legal guardian; or

(IV) the State agency otherwise determines that it is in the best interest of the minor child to waive the requirement of subparagraph (A) with respect to the individual or the minor child.

(iii) Second-chance home

For purposes of this subparagraph, the term ''second-chance home'' means an entity that provides individuals described in clause (ii) with a supportive and supervised living arrangement in which such individuals are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and the well-being of their children.

(6) No medical services

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide medical services.

(B) Exception for prepregnancy family planning services

As used in subparagraph (A), the term ''medical services'' does not include prepregnancy family planning services.

(7) No assistance for more than 5 years

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds

provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences, subject to this paragraph.

(B) Minor child exception

In determining the number of months for which an individual who is a parent or pregnant has received assistance under the State program funded under this part, the State shall disregard any month for which such assistance was provided with respect to the individual and during which the individual was—

(i) a minor child; and

(ii) not the head of a household or married to the head of a household.

(C) Hardship exception

(i) In general

The State may exempt a family from the application of subparagraph (A) by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(ii) Limitation

The average monthly number of families with respect to which an exemption made by a State under clause (i) is in effect for a fiscal year shall not exceed 20 percent of the average monthly number of families to which assistance is provided under the State program funded under this part during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect.

(iii) Battered or subject to extreme cruelty defined

For purposes of clause (i), an individual has been battered or subjected to extreme cruelty if the individual has been subjected to—

(I) physical acts that resulted in, or threatened to result in, physical injury to the individual;

(II) sexual abuse;

(III) sexual activity involving a dependent child;

(IV) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(V) threats of, or attempts at, physical or sexual abuse;

(VI) mental abuse; or

(VII) neglect or deprivation of medical care.

(D) Disregard of months of assistance received by adult while living in Indian country or an Alaskan Native village with 50 percent unemployment

(i) In general

In determining the number of months for which an adult has received assistance under a State or tribal program funded under this part, the State or tribe shall disregard any month during which the adult lived in Indian country or an Alaskan Native village if the most reliable data available with respect to the month (or a period including the month) indicate that at least 50 percent of the adults living in Indian country or in the village were not employed.

(ii) "Indian country" defined

As used in clause (i), the term ''Indian country'' has the meaning given such term in section 1151 of title 18.

(E) Rule of interpretation

Subparagraph (A) shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part.

(F) Rule of interpretation

This part shall not be interpreted to prohibit any State from expending State funds not originating with the Federal Government on benefits for children or families that have become ineligible for assistance under the State program funded under this part by reason of subparagraph (A).

(G) Inapplicability to welfare-to-work grants and assistance

For purposes of subparagraph (A) of this paragraph, a grant made under section 603(a)(5) of this title shall not be considered a grant made under section 603 of this title, and noncash assistance from funds provided under section 603(a)(5) of this title shall not be considered assistance.

(8) Denial of assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in 2 or more States

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from 2 or more States under programs that are funded under this subchapter, subchapter XIX of this chapter, or the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], or benefits in 2 or more States under the supplemental security income program under subchapter XVI of this chapter. The preceding sentence shall not apply with respect to a conviction of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct which was the subject of the conviction.

(9) Denial of assistance for fugitive felons and probation and parole violators

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to any individual who is—

(i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt

to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(ii) violating a condition of probation or parole imposed under Federal or State law.

The preceding sentence shall not apply with respect to conduct of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct.

(B) Exchange of information with law enforcement agencies

If a State to which a grant is made under section 603 of this title establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing a Federal, State, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that—

(i) the recipient—

(I) is described in subparagraph (A); or

(II) has information that is necessary for the officer to conduct the official duties of the officer; and

(ii) the location or apprehension of the recipient is within such official duties.

(10) Denial of assistance for minor children who are absent from the home for a significant period

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance for a minor child who has been, or is expected by a parent (or other caretaker relative) of the child to be, absent from the home for a period of 45 consecutive days or, at the option of the State, such period of not less than 30 and not more than 180 consecutive days as the State may provide for in the State plan submitted pursuant to section 602 of this title.

(B) State authority to establish good cause exceptions

The State may establish such good cause exceptions to subparagraph (A) as the State considers appropriate if such exceptions are provided for in the State plan submitted pursuant to section 602 of this title.

(C) Denial of assistance for relative who fails to notify State agency of absence of child

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance for an individual who is a parent (or other caretaker relative) of a minor child and who fails to notify the agency administering the State program funded under this part of the absence of the minor child from the home for the period specified in or provided for pursuant to subparagraph (A), by the end of the 5-day period that begins with the date that it becomes clear to the parent (or relative) that the minor child will be absent for such period so specified or provided for.

(11) Medical assistance required to be provided for certain families having earnings from employment or child support

(A) Earnings from employment

A State to which a grant is made under section 603 of this title and which has a State plan approved under subchapter XIX of this chapter shall provide that in the case of a family that is treated (under section 1396u–1(b)(1)(A) of this title for purposes of subchapter XIX of this chapter) as receiving aid under a State plan approved under this part (as in effect on July 16, 1996), that would become ineligible for such aid because of hours of or income from employment of the caretaker relative (as defined under this part as in effect on such date) or because of section 602(a)(8)(B)(ii)(II) of this title (as so in effect), and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under subchapter XIX of this chapter for an extended period or periods as provided in section 1396r–6 or 1396a(e)(1) of this title (as applicable), and that the family will be appropriately notified of such extension as required by section 1396r–6(a)(2) of this title.

(B) Child support

A State to which a grant is made under section 603 of this title and which has a State plan approved under subchapter XIX of this chapter shall provide that in the case of a family that is treated (under section 1396u–1(b)(1)(A) of this title for purposes of subchapter XIX of this chapter) as receiving aid under a State plan approved under this part (as in effect on July 16, 1996), that would become ineligible for such aid as a result (wholly or partly) of the collection of child or spousal support under part D of this subchapter and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under subchapter XIX of this chapter for an extended period or periods as provided in section 1396u–1(c)(1) of this title.

(b) Individual responsibility plans

(1) Assessment

The State agency responsible for administering the State program funded under this part shall make an initial assessment of the skills, prior work experience, and employability of each recipient of assistance under the program who—

(A) has attained 18 years of age; or

(B) has not completed high school or obtained a certificate of high school equivalency, and is not attending secondary school.

(2) Contents of plans

(A) In general

On the basis of the assessment made under subsection (a) of this section with respect to an individual, the State agency, in consultation with the individual, may develop an individual responsibility plan for the individual, which—

(i) sets forth an employment goal for the individual and a plan for moving the individual immediately into private sector employment;

(ii) sets forth the obligations of the individual, which may include a requirement that the individual attend school, maintain certain grades and attendance, keep school age children of the individual in school, immunize children, attend parenting and money management classes, or do other things that will help the individual become and remain employed in the private sector;

(iii) to the greatest extent possible is designed to move the individual into whatever private sector employment the individual is capable of handling as quickly as possible, and to increase the responsibility and amount of work the individual is to handle over time;

(iv) describes the services the State will provide the individual so that the individual will be able to obtain and keep employment in the private sector, and describe the job counseling and other services that will be provided by the State; and

(v) may require the individual to undergo appropriate substance abuse treatment.

(B) Timing

The State agency may comply with paragraph (1) with respect to an individual—

(i) within 90 days (or, at the option of the State, 180 days) after the effective date of this part, in the case of an individual who, as of such effective date, is a recipient of aid under the State plan approved under part A of this subchapter (as in effect immediately before such effective date); or

(ii) within 30 days (or, at the option of the State, 90 days) after the individual is determined to be eligible for such assistance, in the case of any other individual.

(3) Penalty for noncompliance by individual

In addition to any other penalties required under the State program funded under this part, the State may reduce, by such amount as the State considers appropriate, the amount of assistance otherwise payable under the State program to a family that includes an individual who fails without good cause to comply with an individual responsibility plan signed by the individual.

(4) State discretion

The exercise of the authority of this subsection shall be within the sole discretion of the State.

(c) Sanctions against recipients not considered wage reductions

A penalty imposed by a State against the family of an individual by reason of the failure of the individual to comply with a requirement under the State program funded under this part shall not be construed to be a reduction in any wage paid to the individual.

(d) Nondiscrimination provisions

The following provisions of law shall apply to any program or activity which receives funds provided under this part:

(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

(2) Section 794 of title 29.

(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(e) Special rules relating to treatment of certain aliens

For special rules relating to the treatment of certain aliens, see title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.].

(f) Special rules relating to treatment of non-213A aliens

The following rules shall apply if a State elects to take the income or resources of any sponsor of a non-213A alien into account in determining whether the alien is eligible for assistance under the State program funded under this part, or in determining the amount or types of such assistance to be provided to the alien:

(1) Deeming of sponsor's income and resources

For a period of 3 years after a non-213A alien enters the United States:

(A) Income deeming rule

The income of any sponsor of the alien and of any spouse of the sponsor is deemed to be income of the alien, to the extent that the total amount of the income exceeds the sum of—

(i) the lesser of—

(I) 20 percent of the total of any amounts received by the sponsor or any such spouse in the month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred by the sponsor and any such spouse in producing self-employment income in such month; or

(II) $175;

(ii) the cash needs standard established by the State for purposes of determining eligibility for assistance under the State program funded under this part for a family of the same size and composition as the sponsor and any other individuals living in the same household as the sponsor who are claimed by the sponsor as dependents for purposes of determining the sponsor's Federal personal income tax liability but whose needs are not taken into account in determining whether the sponsor's family has met the cash needs standard;

(iii) any amounts paid by the sponsor or any such spouse to individuals not living in the household who are claimed by the sponsor as dependents for purposes of determining the sponsor's Federal personal income tax liability; and

(iv) any payments of alimony or child support with respect to individuals not living in the household.

(B) Resource deeming rule

The resources of a sponsor of the alien and of any spouse of the sponsor are deemed to be resources of the alien to the extent that the aggregate value of the resources exceeds $1,500.

(C) Sponsors of multiple non-213A aliens

If a person is a sponsor of 2 or more non-213A aliens who are living in the same home, the income and resources of the sponsor and any spouse of the sponsor that would be deemed income and resources of any such alien under subparagraph (A) shall be divided into a number of equal shares equal to the number of such aliens, and the State shall deem the income and resources of each such alien to include 1 such share.

(2) Ineligibility of non-213A aliens sponsored by agencies; exception

A non-213A alien whose sponsor is or was a public or private agency shall be ineligible for assistance under a State program funded under this part, during a period of 3 years after the alien enters the United States, unless the State agency administering the program determines that the sponsor either no longer exists or has become unable to meet the alien's needs.

(3) Information provisions

(A) Duties of non-213A aliens

A non-213A alien, as a condition of eligibility for assistance under a State program funded under this part during the period of 3 years after the alien enters the United States, shall be required to provide to the State agency administering the program—

(i) such information and documentation with respect to the alien's sponsor as may be necessary in order for the State agency to make any determination required under this subsection, and to obtain any cooperation from the sponsor necessary for any such determination; and

(ii) such information and documentation as the State agency may request and which the alien or the alien's sponsor provided in support of the alien's immigration application.

(B) Duties of Federal agencies

The Secretary shall enter into agreements with the Secretary of State and the Attorney General under which any information available to them and required in order to make any determination under this subsection will be provided by them to the Secretary (who may, in turn, make the information available, upon request, to a concerned State agency).

(4) "Non-213A alien" defined

An alien is a non-213A alien for purposes of this subsection if the affidavit of support or similar agreement with respect to the alien that was executed by the sponsor of the alien's entry into the United States was executed other than pursuant to section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a].

(5) Inapplicability to alien minor sponsored by a parent

This subsection shall not apply to an alien who is a minor child if the sponsor of the alien or any spouse of the sponsor is a parent of the alien.

(6) Inapplicability to certain categories of aliens

This subsection shall not apply to an alien who is—

(A) admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157];

(B) paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for a period of at least 1 year; or

(C) granted political asylum by the Attorney General under section 208 of such Act [8 U.S.C. 1158].

(g) State required to provide certain information

Each State to which a grant is made under section 603 of this title shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is not lawfully present in the United States.

(Aug. 14, 1935, ch. 531, title IV, §408, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2134; amended Pub. L. 105–33, title V, §§5001(d), (h)(1), 5505, 5514(c), 5532(b)(2), 5581(a), Aug. 5, 1997, 111 Stat. 591, 593, 610, 620, 626, 642; Pub. L. 109–171, title VII, §7301(a), Feb. 8, 2006, 120 Stat. 141.)

AMENDMENT OF SUBSECTION (a)(3)

Pub. L. 109–171, title VII, §7301(a), (e), Feb. 8, 2006, 120 Stat. 141, 144, provided that, effective Oct. 1, 2009, and applicable to payments under parts A and D of this subchapter, for calendar quarters beginning on or after such date, subject to certain State options, subsection (a)(3) of this section is amended to read as follows:

(3) No assistance for families not assigning certain support rights to the State

A State to which a grant is made under section 603 of this title shall require, as a condition of paying assistance to a family under the State program funded under this part, that a member of the family assign to the State any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so paid to the family, which accrues during the period that the family receives assistance under the program.

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (a)(2), (11)(B), is classified to section 651 et seq. of this title.

The Food Stamp Act of 1977, referred to in subsec. (a)(8), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete

classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

For effective date of this part, referred to in subsec. (b)(2)(B)(i), see Effective Date note set out below.

The Age Discrimination Act of 1975, referred to in subsec. (d)(1), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (d)(3), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (§ 12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(4), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (e), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105, as amended. Title IV of the Act is classified principally to chapter 14 (§ 1601 et seq.) of Title 8, Aliens and Nationality. For complete classification of title IV to the Code, see Tables.

PRIOR PROVISIONS

A prior section 608, act Aug. 14, 1935, ch. 531, title IV, § 408, as added Dec. 19, 1989, Pub. L. 101–239, title VIII, § 8004(a), 103 Stat. 2454; amended Oct. 31, 1994, Pub. L. 103–432, title II, § 265(a), 108 Stat. 4469, related to AFDC quality control system, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

Another prior section 608, act Aug. 14, 1935, ch. 531, title IV, § 408, as added May 8, 1961, Pub. L. 87–31, § 2, 75 Stat. 76; amended July 25, 1962, Pub. L. 87–543, title I, §§ 101(b)(2)(D), 104(a)(3)(F), (G), 131(b), 135(a)–(d), 155(a), 76 Stat. 180, 185, 193, 196, 197, 207; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 201(e)(4), 205(c), 81 Stat. 880, 892; June 17, 1980, Pub. L. 96–272, title I, §§ 101(a)(5)(A), 102(b), 94 Stat. 513, 515, related to payment to States for foster home care of dependent children, prior to repeal by Pub. L. 96–272, title I, § 101(a)(2), June 17, 1980, 94 Stat. 512, effective, with certain exceptions, to expenditures made after Sept. 30, 1980.

AMENDMENTS

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (a)(1). Pub. L. 105–33, § 5505(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family—

''(A) unless the family includes—

''(i) a minor child who resides with a custodial parent or other adult caretaker relative of the child; or

''(ii) a pregnant individual; and

''(B) if the family includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences (unless an exception described in subparagraph (B), (C), or (D) of paragraph (7) applies).''

Subsec. (a)(3). Pub. L. 105–33, § 5505(b), substituted ''ceases to receive assistance under'' for ''leaves'' in introductory provisions and cl. (ii) of subpar. (A) and in subpar. (B) and substituted ''after such date'' for ''after the date the family leaves the program'' in introductory provisions of subpar. (A).

Subsec. (a)(3)(A). Pub. L. 105–33, § 5532(b)(2), redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and added a new cl. (ii).

Subsec. (a)(5)(A)(ii). Pub. L. 105–33, § 5505(c), made technical correction to heading in original.

Subsec. (a)(7)(C)(ii). Pub. L. 105–33, § 5505(d)(1), substituted ''The average monthly number'' for ''The number'' and inserted ''during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect'' before period at end.

Subsec. (a)(7)(D). Pub. L. 105–33, § 5505(d)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''In determining the number of months for which an adult has received assistance under the State program funded under this part, the State shall disregard any month during which the adult lived on an Indian reservation or in an Alaskan Native village if, during the month—

''(i) at least 1,000 individuals were living on the reservation or in the village; and

''(ii) at least 50 percent of the adults living on the reservation or in the village were unemployed.''

Subsec. (a)(7)(G). Pub. L. 105–33, § 5001(d), added subpar. (G).

Subsecs. (c), (d). Pub. L. 105–33, § 5001(h)(1), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105–33, § 5505(e), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows: ''For special rules relating to the treatment of aliens, see section 1612 of title 8.''

Pub. L. 105–33, § 5001(h)(1)(A), redesignated subsec. (d) as (e).

Subsec. (f). Pub. B. 105–33, § 5505(e), added subsec. (f).

Subsec. (g). Pub. L. 105–33, § 5581(a), added subsec. (g).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VII, § 7301(e), Feb. 8, 2006, 120 Stat. 144, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by the preceding provisions of this section [amending this section, sections 654 and 657 of this title, and section 6402 of Title 26, Internal Revenue Code] shall take effect on October 1, 2009, and shall apply to payments under parts A and D of title IV of the Social Security Act [this part and part D of this subchapter] for calendar quarters beginning on or after such date, and without regard to whether regulations to implement the amendments (in the case of State programs operated under such part D) are promulgated by such date.

''(2) STATE OPTION TO ACCELERATE EFFECTIVE DATE.—Notwithstanding paragraph (1), a State may elect to have the amendments made by the preceding provisions of this section apply to the State and to amounts collected by the State (and the payments under parts A and D), on and after such date as the State may select that is not earlier than October 1, 2008, and not later than September 30, 2009.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5001(h)(2) of Pub. L. 105–33 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

Amendment by section 5505 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Pub. L. 105–33, title V, § 5557, Aug. 5, 1997, 111 Stat. 637, as amended by Pub. L. 105–200, title IV, § 410(e)(1), July 16, 1998, 112 Stat. 673, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this chapter [chapter 3 (§§ 5531–5557) of subtitle F of title V of Pub. L. 105–33, amending this section, sections 652 to 654, 654b, 655, 656, 657 to 659, 663, 664, and 666 of this title, section 1738B of Title 28, Judiciary and Judicial Procedure, and provisions set out as a note under section 655 of this title] shall take effect as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105).

''(b) EXCEPTION.—The amendments made by section 5532(b)(2) of this Act [amending this section] shall take effect as if the amendments had been included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2112). The amendment made by section 5536(1)(A) [amending section 666 of this title] shall not take effect with respect to a State until October 1, 2000, or such earlier date as the State may select.''

[Pub. L. 105–200, title IV, § 410(e)(2), July 16, 1998, 112 Stat. 673, provided that: ''The amendment made by paragraph (1) [amending section 5557 of Pub. L. 105–33, set out above] shall take effect as if included in the enactment of section 5557 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 637).'']

Section 5581(a) of Pub. L. 105–33 provided that the amendment made by that section is effective July 1, 1997.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 608a. Fraud under means-tested welfare and public assistance programs

(a) In general

If an individual's benefits under a Federal, State, or local law relating to a means-tested welfare or a public assistance program are reduced because of an act of fraud by the individual under the law or program, the individual may not, for the duration of the reduction, receive an increased benefit under any other means-tested welfare or public assistance program for which Federal funds are appropriated as a result of a decrease in the income of the individual (determined under the applicable program) attributable to such reduction.

(b) Welfare or public assistance programs for which Federal funds are appropriated

For purposes of subsection (a) of this section, the term ''means-tested welfare or public assistance program for which Federal funds are appropriated'' includes the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), any program of public or assisted housing under title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), and any State program funded under this part.

(Pub. L. 104–193, title IX, § 911, Aug. 22, 1996, 110 Stat. 2353.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, referred to in subsec. (b), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The United States Housing Act of 1937, referred to in subsec. (b), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended. Title I of the Act is classified generally to subchapter I (§ 1437 et seq.) of chapter 8 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

CODIFICATION

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Social Security Act which comprises this chapter.

§ 609. Penalties

(a) In general

Subject to this section:

(1) Use of grant in violation of this part

(A) General penalty

If an audit conducted under chapter 75 of title 31 finds that an amount paid to a State under section 603 of this title for a fiscal year has been used in violation of this part, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter by the amount so used.

(B) Enhanced penalty for intentional violations

If the State does not prove to the satisfaction of the Secretary that the State did not intend to use the amount in violation of this part, the Secretary shall further reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter by an amount equal to 5 percent of the State family assistance grant.

(C) Penalty for misuse of competitive welfare-to-work funds

If the Secretary of Labor finds that an amount paid to an entity under section 603(a)(5)(B) of this title has been used in violation of subparagraph (B) or (C) of section 603(a)(5) of this title, the entity shall remit to the Secretary of Labor an amount equal to the amount so used.

(2) Failure to submit required report

(A) In general

If the Secretary determines that a State has not, within 45 days after the end of a fiscal quarter, submitted the report required by section 611(a) of this title for the quarter, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to 4 percent of the State family assistance grant.

(B) Rescission of penalty

The Secretary shall rescind a penalty imposed on a State under subparagraph (A) with respect to a report if the State submits the report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the report was required.

(3) Failure to satisfy minimum participation rates

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title for a fiscal year has failed to comply with section 607(a) of this title for the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to the applicable percentage of the State family assistance grant.

(B) "Applicable percentage" defined

As used in subparagraph (A), the term ''applicable percentage'' means, with respect to a State—

(i) if a penalty was not imposed on the State under subparagraph (A) for the immediately preceding fiscal year, 5 percent; or

(ii) if a penalty was imposed on the State under subparagraph (A) for the immediately preceding fiscal year, the lesser of—

(I) the percentage by which the grant payable to the State under section 603(a)(1) of this title was reduced for such preceding fiscal year, increased by 2 percentage points; or

(II) 21 percent.

(C) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance, and may reduce the penalty if the noncompliance is due to circumstances that caused the State to become a needy State (as defined in section 603(b)(6) of this title) during the fiscal year or if the noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession. The Secretary shall provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances.

(4) Failure to participate in the income and eligibility verification system

If the Secretary determines that a State program funded under this part is not participating during a fiscal year in the income and eligibility verification system required by section 1320b–7 of this title, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant.

(5) Failure to comply with paternity establishment and child support enforcement requirements under part D

Notwithstanding any other provision of this chapter, if the Secretary determines that the State agency that administers a program funded under this part does not enforce the penalties requested by the agency administering part D of this subchapter against recipients of assistance under the State program who fail to cooperate in establishing paternity or in establishing, modifying, or enforcing a child support order in accordance with such part and who do not qualify for any good cause or other exception established by the State under section 654(29) of this title, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year (without regard to this section) by not more than 5 percent.

(6) Failure to timely repay a Federal Loan Fund for State Welfare Programs

If the Secretary determines that a State has failed to repay any amount borrowed from the Federal Loan Fund for State Welfare Programs established under section 606 of this title within the period of maturity applicable to the loan, plus any interest owed on the loan, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter (without regard to this section) by the outstanding loan amount, plus the interest owed on the outstanding amount. The Secretary shall not forgive any outstanding loan amount or interest owed on the outstanding amount.

(7) Failure of any State to maintain certain level of historic effort

(A) In general

The Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for fiscal year 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, or 2011 by the amount (if any) by which qualified State expenditures for the then immediately preceding fiscal year are less than the applicable percentage of historic State expenditures with respect to such preceding fiscal year.

(B) Definitions

As used in this paragraph:

(i) Qualified State expenditures

(I) In general

The term ''qualified State expenditures'' means, with respect to a State and a fiscal year, the total expenditures by the State during the fiscal year, under all State programs, for any of the following with respect to eligible families:

(aa) Cash assistance, including any amount collected by the State as support pursuant to a plan approved under part D of this subchapter, on behalf of a family receiving assistance under the

State program funded under this part, that is distributed to the family under section 657(a)(1)(B) of this title and disregarded in determining the eligibility of the family for, and the amount of, such assistance.

(bb) Child care assistance.

(cc) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family.

(dd) Administrative costs in connection with the matters described in items (aa), (bb), (cc), and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

(ee) Any other use of funds allowable under section 604(a)(1) of this title.

(II) Exclusion of transfers from other State and local programs

Such term does not include expenditures under any State or local program during a fiscal year, except to the extent that—

(aa) the expenditures exceed the amount expended under the State or local program in the fiscal year most recently ending before August 22, 1996; or

(bb) the State is entitled to a payment under former section 603 of this title (as in effect immediately before August 22, 1996) with respect to the expenditures.

(III) Exclusion of amounts expended to replace penalty grant reductions

Such term does not include any amount expended in order to comply with paragraph (12).

(IV) Eligible families

As used in subclause (I), the term ''eligible families'' means families eligible for assistance under the State program funded under this part, families that would be eligible for such assistance but for the application of section 608(a)(7) of this title, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.].

(V) Counting of spending on certain pro-family activities

The term ''qualified State expenditures'' includes the total expenditures by the State during the fiscal year under all State programs for a purpose described in paragraph (3) or (4) of section 601(a) of this title.

(ii) Applicable percentage

The term ''applicable percentage'' means for fiscal years 1997 through 2010, 80 percent (or, if the State meets the requirements of section 607(a) of this title for the fiscal year, 75 percent).

(iii) Historic State expenditures

The term ''historic State expenditures'' means, with respect to a State, the lesser of—

(I) the expenditures by the State under parts A and F of this subchapter (as in effect during fiscal year 1994) for fiscal year 1994; or

(II) the amount which bears the same ratio to the amount described in subclause (I) as—

(aa) the State family assistance grant, plus the total amount required to be paid to the State under former section 603 of this title for fiscal year 1994 with respect to amounts expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994); bears to

(bb) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994.

Such term does not include any expenditures under the State plan approved under part A of this subchapter (as so in effect) on behalf of individuals covered by a tribal family assistance plan approved under section 612 of this title, as determined by the Secretary.

(iv) Expenditures by the State

The term ''expenditures by the State'' does not include—

(I) any expenditure from amounts made available by the Federal Government;

(II) any State funds expended for the medicaid program under subchapter XIX of this chapter;

(III) any State funds which are used to match Federal funds provided under section 603(a)(5) of this title; or

(IV) any State funds which are expended as a condition of receiving Federal funds other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of the expenditures does not exceed the amount of State expenditures in fiscal year 1994 or 1995 (whichever is the greater) that equal the non-Federal share for the programs described in section 618(a)(1)(A) of this title.

(v) Source of data

In determining expenditures by a State for fiscal years 1994 and 1995, the Secretary shall use information which was reported by the State on ACF Form 231 or (in the case of expenditures under part F of this

subchapter) ACF Form 331, available as of the dates specified in clauses (ii) and (iii) of section 603(a)(1)(D)[1] of this title.

(8) Noncompliance of State child support enforcement program with requirements of part D

(A) In general

If the Secretary finds, with respect to a State's program under part D of this subchapter, in a fiscal year beginning on or after October 1, 1997—

(i)(I) on the basis of data submitted by a State pursuant to section 654(15)(B) of this title, or on the basis of the results of a review conducted under section 652(a)(4) of this title, that the State program failed to achieve the paternity establishment percentages (as defined in section 652(g)(2) of this title), or to meet other performance measures that may be established by the Secretary;

(II) on the basis of the results of an audit or audits conducted under section 652(a)(4)(C)(i) of this title that the State data submitted pursuant to section 654(15)(B) of this title is incomplete or unreliable; or

(III) on the basis of the results of an audit or audits conducted under section 652(a)(4)(C) of this title that a State failed to substantially comply with 1 or more of the requirements of part D of this subchapter (other than paragraph (24), or subparagraph (A) or (B)(i) of paragraph (27), of section 654 of this title); and

(ii) that, with respect to the succeeding fiscal year—

(I) the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance as described in subparagraph (A)(i); or

(II) the data submitted by the State pursuant to section 654(15)(B) of this title is incomplete or unreliable;

the amounts otherwise payable to the State under this part for quarters following the end of such succeeding fiscal year, prior to quarters following the end of the first quarter throughout which the State program has achieved the paternity establishment percentages or other performance measures as described in subparagraph (A)(i)(I), or is in substantial compliance with 1 or more of the requirements of part D of this subchapter as described in subparagraph (A)(i)(III), as appropriate, shall be reduced by the percentage specified in subparagraph (B).

(B) Amount of reductions

The reductions required under subparagraph (A) shall be—

(i) not less than 1 nor more than 2 percent;

(ii) not less than 2 nor more than 3 percent, if the finding is the 2nd consecutive finding made pursuant to subparagraph (A); or

(iii) not less than 3 nor more than 5 percent, if the finding is the 3rd or a subsequent consecutive such finding.

(C) Disregard of noncompliance which is of a technical nature

For purposes of this section and section 652(a)(4) of this title, a State determined as a result of an audit—

(i) to have failed to have substantially complied with 1 or more of the requirements of part D of this subchapter shall be determined to have achieved substantial compliance only if the Secretary determines that the extent of the noncompliance is of a technical nature which does not adversely affect the performance of the State's program under part D of this subchapter; or

(ii) to have submitted incomplete or unreliable data pursuant to section 654(15)(B) of this title shall be determined to have submitted adequate data only if the Secretary determines that the extent of the incompleteness or unreliability of the data is of a technical nature which does not adversely affect the determination of the level of the State's paternity establishment percentages (as defined under section 652(g)(2) of this title) or other performance measures that may be established by the Secretary.

(9) Failure to comply with 5-year limit on assistance

If the Secretary determines that a State has not complied with section 608(a)(7) of this title during a fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to 5 percent of the State family assistance grant.

(10) Failure of State receiving amounts from Contingency Fund to maintain 100 percent of historic effort

If, at the end of any fiscal year during which amounts from the Contingency Fund for State Welfare Programs have been paid to a State, the Secretary finds that the qualified State expenditures (as defined in paragraph (7)(B)(i) (other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part for the fiscal year are less than 100 percent of historic State expenditures (as defined in paragraph (7)(B)(iii) of this subsection), excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by the total of the amounts so paid to the State that the State has not remitted under section 603(b)(6) of this title.

(11) Failure to maintain assistance to adult single custodial parent who cannot obtain child care for child under age 6

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title for a fiscal year has violated section 607(e)(2) of this title during the fiscal

[1] See References in Text note below.

year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(12) Requirement to expend additional State funds to replace grant reductions; penalty for failure to do so

If the grant payable to a State under section 603(a)(1) of this title for a fiscal year is reduced by reason of this subsection, the State shall, during the immediately succeeding fiscal year, expend under the State program funded under this part an amount equal to the total amount of such reductions. If the State fails during such succeeding fiscal year to make the expenditure required by the preceding sentence from its own funds, the Secretary may reduce the grant payable to the State under section 603(a)(1) of this title for the fiscal year that follows such succeeding fiscal year by an amount equal to the sum of—

(A) not more than 2 percent of the State family assistance grant; and

(B) the amount of the expenditure required by the preceding sentence.

(13) Penalty for failure of State to maintain historic effort during year in which welfare-to-work grant is received

If a grant is made to a State under section 603(a)(5)(A) of this title for a fiscal year and paragraph (7) of this subsection requires the grant payable to the State under section 603(a)(1) of this title to be reduced for the immediately succeeding fiscal year, then the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for such succeeding fiscal year by the amount of the grant made to the State under section 603(a)(5)(A) of this title for the fiscal year.

(14) Penalty for failure to reduce assistance for recipients refusing without good cause to work

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title in a fiscal year has violated section 607(e) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not less than 1 percent and not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(15) Penalty for failure to establish or comply with work participation verification procedures

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title in a fiscal year has violated section 607(i)(2) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not less than 1 percent and not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(b) Reasonable cause exception

(1) In general

The Secretary may not impose a penalty on a State under subsection (a) of this section with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.

(2) Exception

Paragraph (1) of this subsection shall not apply to any penalty under paragraph (6), (7), (8), (10), (12), or (13) of subsection (a) of this section.

(c) Corrective compliance plan

(1) In general

(A) Notification of violation

Before imposing a penalty against a State under subsection (a) of this section with respect to a violation of this part, the Secretary shall notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan in accordance with this subsection which outlines how the State will correct or discontinue, as appropriate, the violation and how the State will insure continuing compliance with this part.

(B) 60-day period to propose a corrective compliance plan

During the 60-day period that begins on the date the State receives a notice provided under subparagraph (A) with respect to a violation, the State may submit to the Federal Government a corrective compliance plan to correct or discontinue, as appropriate, the violation.

(C) Consultation about modifications

During the 60-day period that begins with the date the Secretary receives a corrective compliance plan submitted by a State in accordance with subparagraph (B), the Secretary may consult with the State on modifications to the plan.

(D) Acceptance of plan

A corrective compliance plan submitted by a State in accordance with subparagraph (B)

is deemed to be accepted by the Secretary if the Secretary does not accept or reject the plan during 60-day period that begins on the date the plan is submitted.

(2) Effect of correcting or discontinuing violation

The Secretary may not impose any penalty under subsection (a) of this section with respect to any violation covered by a State corrective compliance plan accepted by the Secretary if the State corrects or discontinues, as appropriate[2] the violation pursuant to the plan.

(3) Effect of failing to correct or discontinue violation

The Secretary shall assess some or all of a penalty imposed on a State under subsection (a) of this section with respect to a violation if the State does not, in a timely manner, correct or discontinue, as appropriate, the violation pursuant to a State corrective compliance plan accepted by the Secretary.

(4) Inapplicability to certain penalties

This subsection shall not apply to the imposition of a penalty against a State under paragraph (6), (7), (8), (10), (12), or (13) of subsection (a) of this section.

(d) Limitation on amount of penalties

(1) In general

In imposing the penalties described in subsection (a) of this section, the Secretary shall not reduce any quarterly payment to a State by more than 25 percent.

(2) Carryforward of unrecovered penalties

To the extent that paragraph (1) of this subsection prevents the Secretary from recovering during a fiscal year the full amount of penalties imposed on a State under subsection (a) of this section for a prior fiscal year, the Secretary shall apply any remaining amount of such penalties to the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year.

(Aug. 14, 1935, ch. 531, title IV, § 409, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2142; amended Pub. L. 105–33, title V, §§ 5001(a)(2), (g), 5004(a), 5506, 5514(c), Aug. 5, 1997, 111 Stat. 589, 592, 594, 613, 620; Pub. L. 105–200, title I, § 101(b), July 16, 1998, 112 Stat. 647; Pub. L. 106–113, div. B, § 1000(a)(4) [title VIII, § 807(b)], Nov. 29, 1999, 113 Stat. 1535, 1501A–287; Pub. L. 106–169, title IV, § 401(b), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 108–40, § 3(g), June 30, 2003, 117 Stat. 837; Pub. L. 108–89, title I, § 101(b)(3), Oct. 1, 2003, 117 Stat. 1131; Pub. L. 108–308, § 2(b)(3), Sept. 30, 2004, 118 Stat. 1135; Pub. L. 109–68, § 2(b)(2)(C), Sept. 21, 2005, 119 Stat. 2003; Pub. L. 109–171, title VII, §§ 7101(b)(3), 7102(c)(2), 7103(b), Feb. 8, 2006, 120 Stat. 135, 137, 140.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (a)(5), (7)(B)(i)(I)(aa), (8), is classified to section 651 et seq. of this title.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(7)(B)(i)(IV), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105, as amended. Title IV of the Act is classified principally to chapter 14 (§ 1601 et seq.) of Title 8, Aliens and Nationality. For complete classification of title IV to the Code, see Tables.

Part F of this subchapter, referred to in subsec. (a)(7)(B)(iii)(I), (v), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167.

Section 603(a)(1)(D) of this title, referred to in subsec. (a)(7)(B)(v), was repealed by Pub. L. 108–40, § 3(a)(2), June 30, 2003, 117 Stat. 836.

PRIOR PROVISIONS

A prior section 609, act Aug. 14, 1935, ch. 531, title IV, § 409, as added Nov. 5, 1990, Pub. L. 101–508, title V, § 5052(a), 104 Stat. 1388–228, related to exclusion from AFDC unit of child for whom Federal, State, or local foster care maintenance or adoption assistance payments were made, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

Another prior section 609, act Aug. 14, 1935, ch. 531, title IV, § 409, as added and amended July 25, 1962, Pub. L. 87–543, title I, §§ 101(b)(2)(E), 105(a), 76 Stat. 180, 186; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2307(a), 95 Stat. 846; Sept. 3, 1982, Pub. L. 97–248, title I, § 154(c), 96 Stat. 397; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2627, 2641(a), 2663(c)(5), 98 Stat. 1136, 1146, 1166, related to community work experience programs, prior to repeal by Pub. L. 100–485, title II, §§ 202(b)(12), 204(a), (b)(1)(A), Oct. 13, 1988, 102 Stat. 2378, 2381, effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485 at such earlier effective dates.

AMENDMENTS

2006—Subsec. (a)(7)(A). Pub. L. 109–171, § 7101(b)(3)(A), substituted ''2007, 2008, 2009, 2010, or 2011'' for ''or 2007''.

Subsec. (a)(7)(B)(i)(V). Pub. L. 109–171, § 7103(b), added subcl. (V).

Subsec. (a)(7)(B)(ii). Pub. L. 109–171, § 7101(b)(3)(B), substituted ''2010'' for ''2006''.

Subsec. (a)(15). Pub. L. 109–171, § 7102(c)(2), added par. (15).

2005—Subsec. (a)(7)(A). Pub. L. 109–68, § 2(b)(2)(C)(i), substituted ''2006, or 2007'' for ''or 2006''.

Subsec. (a)(7)(B)(ii). Pub. L. 109–68, § 2(b)(2)(C)(ii), substituted ''2006'' for ''2005''.

2004—Subsec. (a)(7)(A). Pub. L. 108–308, § 2(b)(3)(A), substituted ''2005, or 2006'' for ''or 2005''.

Subsec. (a)(7)(B)(ii). Pub. L. 108–308, § 2(b)(3)(B), substituted ''2005'' for ''2004''.

2003—Subsec. (a)(7)(A). Pub. L. 108–89, § 101(b)(3)(A), substituted ''2004, or 2005'' for ''or 2004''.

Pub. L. 108–40, § 3(g)(1), substituted ''2003, or 2004'' for ''or 2003''.

Subsec. (a)(7)(B)(ii). Pub. L. 108–89, § 101(b)(3)(B), substituted ''2004'' for ''2003''.

Pub. L. 108–40, § 3(g)(2), substituted ''2003'' for ''2002''.

1999—Subsec. (a)(7)(B)(i)(II). Pub. L. 106–169 made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

Subsec. (a)(8)(A)(i)(III). Pub. L. 106–113 substituted ''paragraph (24), or subparagraph (A) or (B)(i) of paragraph (27), of section 654 of this title'' for ''section 654(24) of this title''.

1998—Subsec. (a)(8)(A)(i)(III). Pub. L. 105–200 inserted ''(other than section 654(24) of this title)'' before semicolon.

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (a)(1)(C). Pub. L. 105–33, § 5001(g)(2), added subpar. (C).

Subsec. (a)(2)(A). Pub. L. 105–33, § 5506(a), substituted ''45 days'' for ''1 month''.

[2] So in original. Probably should be followed by a comma.

Subsec. (a)(3)(A). Pub. L. 105–33, §5506(n)(1), struck out ''not more than'' after ''an amount equal to''.

Subsec. (a)(3)(C). Pub. L. 105–33, §5506(n)(2), inserted before period at end ''or if the noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession. The Secretary shall provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances''.

Subsec. (a)(7)(B)(i)(I)(aa). Pub. L. 105–33, §5506(b), inserted before period at end '', including any amount collected by the State as support pursuant to a plan approved under part D of this subchapter, on behalf of a family receiving assistance under the State program funded under this part, that is distributed to the family under section 657(a)(1)(B) of this title and disregarded in determining the eligibility of the family for, and the amount of, such assistance''.

Subsec. (a)(7)(B)(i)(III). Pub. L. 105–33, §5506(c), added subcl. (III). Former subcl. (III) redesignated (IV).

Subsec. (a)(7)(B)(i)(IV). Pub. L. 105–33, §5506(d), substituted ''this part, families'' for ''this part, and families'' and ''section 608(a)(7) of this title, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996'' for ''section 608(a)(7) of this title or section 1612 of title 8''.

Pub. L. 105–33, §5506(c), redesignated subcl. (III) as (IV).

Subsec. (a)(7)(B)(ii). Pub. L. 105–33, §5506(e), struck out ''reduced (if appropriate) in accordance with subparagraph (C)(ii)'' after ''75 percent)''.

Subsec. (a)(7)(B)(iv). Pub. L. 105–33, §5001(a)(2), amended heading and text of cl. (iv) generally. Prior to amendment, text read as follows: ''The term 'expenditures by the State' does not include—

''(I) any expenditures from amounts made available by the Federal Government;

''(II) any State funds expended for the medicaid program under subchapter XIX of this chapter;

''(III) any State funds which are used to match Federal funds; or

''(IV) any State funds which are expended as a condition of receiving Federal funds under Federal programs other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of such expenditures does not exceed an amount equal to the amount of State expenditures in fiscal year 1994 or 1995 (whichever is greater) that equal the non-Federal share for the programs described in section 618(a)(1)(A) of this title.''

Subsec. (a)(7)(B)(v). Pub. L. 105–33, §5506(f), added cl. (v).

Subsec. (a)(8). Pub. L. 105–33, §5506(g), amended heading and text of par. (8) generally. Prior to amendment, par. (8) provided that if a State program operated under part D of this subchapter was found to not have complied substantially with the requirements of such part for any quarter, and was not complying substantially with such requirements at the time of the finding, the Secretary was to reduce the grant payable to the State under section 603(a)(1) of this title for certain quarters until the program was found to be in substantial compliance with such requirements.

Subsec. (a)(9). Pub. L. 105–33, §5506(h), substituted ''608(a)(7)'' for ''608(a)(1)(B)''.

Subsec. (a)(10). Pub. L. 105–33, §5506(i), substituted ''the qualified State expenditures (as defined in paragraph (7)(B)(i) (other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part for the fiscal year'' for ''the expenditures under the State program funded under this part for the fiscal year (excluding any amounts made available by the Federal Government)'', inserted ''excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994,'' after ''(as defined in paragraph (7)(B)(iii) of this subsection),'', and inserted before period at end ''that the State has not remitted under section 603(b)(6) of this title''.

Subsec. (a)(12). Pub. L. 105–33, §5506(j), in heading substituted ''Requirement'' for ''Failure'' and ''reductions; penalty for failure to do so'' for ''reductions'' and in text inserted at end ''If the State fails during such succeeding fiscal year to make the expenditure required by the preceding sentence from its own funds, the Secretary may reduce the grant payable to the State under section 603(a)(1) of this title for the fiscal year that follows such succeeding fiscal year by an amount equal to the sum of—

''(A) not more than 2 percent of the State family assistance grant; and

''(B) the amount of the expenditure required by the preceding sentence.''

Subsec. (a)(13). Pub. L. 105–33, §5001(g)(1)(A), added par. (13).

Subsec. (a)(14). Pub. L. 105–33, §5004(a), added par. (14).

Subsec. (b)(2). Pub. L. 105–33, §5506(k), substituted ''(6), (7), (8), (10), or (12)'' for ''(7) or (8)''.

Pub. L. 105–33, §5001(g)(1)(B), substituted ''(12), or (13)'' for ''or (12)''.

Subsec. (c)(1)(A), (B). Pub. L. 105–33, §5506(*l*)(1), inserted ''or discontinue, as appropriate,'' after ''correct''.

Subsec. (c)(2). Pub. L. 105–33, §5506(*l*)(2), inserted ''or discontinuing'' after ''correcting'' in heading and ''or discontinues, as appropriate'' after ''corrects'' in text.

Subsec. (c)(3). Pub. L. 105–33, §5506(*l*)(3), inserted ''or discontinue'' after ''correct'' in heading and ''or discontinue, as appropriate,'' before ''the violation'' in text.

Subsec. (c)(4). Pub. L. 105–33, §5506(m), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''This subsection shall not apply to the imposition of a penalty against a State under subsection (a)(6) of this section.''

Pub. L. 105–33, §5001(g)(1)(C), substituted ''(12), or (13)'' for ''or (12)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §807(c)], Nov. 29, 1999, 113 Stat. 1535, 1501A–287, provided that: ''The amendments made by this section [amending this section and section 655 of this title] shall take effect on October 1, 1999.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5004(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

Amendment by section 5506 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with delayed effective date for subsec. (a)(2)–(5), (8), (10) of this section, and with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 610. Appeal of adverse decision

(a) In general

Within 5 days after the date the Secretary takes any adverse action under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse action, including any action with respect to the State plan submitted under section 602 of this title or the imposition of a penalty under section 609 of this title.

(b) Administrative review

(1) In general

Within 60 days after the date a State receives notice under subsection (a) of this section of an adverse action, the State may appeal the action, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services (in this section referred to as the ''Board'') by filing an appeal with the Board.

(2) Procedural rules

The Board shall consider an appeal filed by a State under paragraph (1) on the basis of such documentation as the State may submit and as the Board may require to support the final decision of the Board. In deciding whether to uphold an adverse action or any portion of such an action, the Board shall conduct a thorough review of the issues and take into account all relevant evidence. The Board shall make a final determination with respect to an appeal filed under paragraph (1) not less than 60 days after the date the appeal is filed.

(c) Judicial review of adverse decision

(1) In general

Within 90 days after the date of a final decision by the Board under this section with respect to an adverse action taken against a State, the State may obtain judicial review of the final decision (and the findings incorporated into the final decision) by filing an action in—

(A) the district court of the United States for the judicial district in which the principal or headquarters office of the State agency is located; or

(B) the United States District Court for the District of Columbia.

(2) Procedural rules

The district court in which an action is filed under paragraph (1) shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) through (E) of section 706(2) of title 5. The review shall be on the basis of the documents and supporting data submitted to the Board.

(Aug. 14, 1935, ch. 531, title IV, § 410, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2148; amended Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.)

PRIOR PROVISIONS

A prior section 610, act Aug. 14, 1935, ch. 531, title IV, § 410, as added Oct. 21, 1976, Pub. L. 94–585, § 1(a), 90 Stat. 2901; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(6), 98 Stat. 1166, related to food stamp program coupons, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

Another prior section 610, act Aug. 14, 1935, ch. 531, title IV, § 410, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 211(b), 81 Stat. 897, provided for furnishing by Secretary to Secretary of the Treasury the names of parents contained in reports from State agencies, for ascertainment of addresses, and authorization for appropriations for such purpose, prior to repeal by Pub. L. 93–647, § 101(c)(8), Jan. 4, 1975, 88 Stat. 2360, eff. July 1, 1975.

AMENDMENTS

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 611. Data collection and reporting

(a) Quarterly reports by States

(1) General reporting requirement

(A) Contents of report

Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, the following disaggregated case record information on the families receiving assistance under the State program funded under this part (except for information relating to activities carried out under section 603(a)(5) of this title) or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title):

(i) The county of residence of the family.

(ii) Whether a child receiving such assistance or an adult in the family is receiving—

(I) Federal disability insurance benefits;

(II) benefits based on Federal disability status;

(III) aid under a State plan approved under subchapter XIV of this chapter (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972));[1]

(IV) aid or assistance under a State plan approved under subchapter XVI of this chapter (as in effect without regard to such amendment) by reason of being permanently and totally disabled; or

(V) supplemental security income benefits under subchapter XVI of this chapter (as in effect pursuant to such amendment) by reason of disability.

(iii) The ages of the members of such families.

(iv) The number of individuals in the family, and the relation of each family member to the head of the family.

(v) The employment status and earnings of the employed adult in the family.

(vi) The marital status of the adults in the family, including whether such adults have never married, are widowed, or are divorced.

(vii) The race and educational level of each adult in the family.

(viii) The race and educational level of each child in the family.

(ix) Whether the family received subsidized housing, medical assistance under the State plan approved under subchapter XIX of this chapter, food stamps, or subsidized child care, and if the latter 2, the amount received.

(x) The number of months that the family has received each type of assistance under the program.

(xi) If the adults participated in, and the number of hours per week of participation in, the following activities:

(I) Education.

(II) Subsidized private sector employment.

(III) Unsubsidized employment.

(IV) Public sector employment, work experience, or community service.

(V) Job search.

(VI) Job skills training or on-the-job training.

(VII) Vocational education.

(xii) Information necessary to calculate participation rates under section 607 of this title.

(xiii) The type and amount of assistance received under the program, including the amount of and reason for any reduction of assistance (including sanctions).

(xiv) Any amount of unearned income received by any member of the family.

(xv) The citizenship of the members of the family.

(xvi) From a sample of closed cases, whether the family left the program, and if so, whether the family left due to—

(I) employment;

(II) marriage;

(III) the prohibition set forth in section 608(a)(7) of this title;

(IV) sanction; or

(V) State policy.

(xvii) With respect to each individual in the family who has not attained 20 years of age, whether the individual is a parent of a child in the family.

(B) Use of samples

(i) Authority

A State may comply with subparagraph (A) by submitting disaggregated case record information on a sample of families selected through the use of scientifically acceptable sampling methods approved by the Secretary.

(ii) Sampling and other methods

The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid estimates of the performance of State programs funded under this part and any other State programs funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title). The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.

(2) Report on use of Federal funds to cover administrative costs and overhead

The report required by paragraph (1) for a fiscal quarter shall include a statement of the percentage of the funds paid to the State under this part for the quarter that are used to cover administrative costs or overhead, with a separate statement of the percentage of such funds that are used to cover administrative costs or overhead incurred for programs operated with funds provided under section 603(a)(5) of this title.

(3) Report on State expenditures on programs for needy families

The report required by paragraph (1) for a fiscal quarter shall include a statement of the total amount expended by the State during the quarter on programs for needy families, with a separate statement of the total amount expended by the State during the quarter on programs operated with funds provided under section 603(a)(5) of this title.

(4) Report on noncustodial parents participating in work activities

The report required by paragraph (1) for a fiscal quarter shall include the number of noncustodial parents in the State who participated in work activities (as defined in section 607(d) of this title) during the quarter, with a separate statement of the number of such parents who participated in programs operated with funds provided under section 603(a)(5) of this title.

(5) Report on transitional services

The report required by paragraph (1) for a fiscal quarter shall include the total amount

[1] So in original. The second parenthesis probably should not appear.

expended by the State during the quarter to provide transitional services to a family that has ceased to receive assistance under this part because of employment, along with a description of such services.

(6) Report on families receiving assistance

The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter—

(A) the number of families and individuals receiving assistance under the State program funded under this part (including the number of 2-parent and 1-parent families);

(B) the total dollar value of such assistance received by all families; and

(C) with respect to families and individuals participating in a program operated with funds provided under section 603(a)(5) of this title—

(i) the total number of such families and individuals; and

(ii) the number of such families and individuals whose participation in such a program was terminated during a month.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary to define the data elements with respect to which reports are required by this subsection, and shall consult with the Secretary of Labor in defining the data elements with respect to programs operated with funds provided under section 603(a)(5) of this title.

(b) Annual reports to Congress by Secretary

Not later than 6 months after the end of fiscal year 1997, and each fiscal year thereafter, the Secretary shall transmit to the Congress a report describing—

(1) whether the States are meeting—

(A) the participation rates described in section 607(a) of this title; and

(B) the objectives of—

(i) increasing employment and earnings of needy families, and child support collections; and

(ii) decreasing out-of-wedlock pregnancies and child poverty;

(2) the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that become ineligible to receive assistance;

(3) the characteristics of each State program funded under this part; and

(4) the trends in employment and earnings of needy families with minor children living at home.

(Aug. 14, 1935, ch. 531, title IV, § 411, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2148; amended Pub. L. 105–33, title V, §§ 5001(e), 5507, 5514(c), Aug. 5, 1997, 111 Stat. 591, 616, 620; Pub. L. 106–113, div. B, § 1000(a)(4) [title VIII, § 804(a)], Nov. 29, 1999, 113 Stat. 1535, 1501A–284; Pub. L. 109–171, title VII, § 7102(b)(2), Feb. 8, 2006, 120 Stat. 136.)

REFERENCES IN TEXT

Section 301 of the Social Security Amendments of 1972, referred to in subsec. (a)(1)(A)(ii)(III), is section 301 of Pub. L. 92–603, title III, Oct. 30, 1972, 86 Stat. 1465, which enacted sections 1381 to 1382e and 1383 to 1383c of this title.

PRIOR PROVISIONS

A prior section 611, act Aug. 14, 1935, ch. 531, title IV, § 411, as added Dec. 20, 1977, Pub. L. 95–216, title IV, § 403(a), 91 Stat. 1561, related to availability of wage information to States and political subdivisions, prior to repeal by Pub. L. 98–369, div. B, title VI, § 2651(b)(3), (*l*)(2), July 18, 1984, 98 Stat. 1149, 1151, effective Apr. 1, 1985, except as otherwise provided. See section 1320b–7 of this title.

AMENDMENTS

2006—Subsec. (a)(1)(A). Pub. L. 109–171, § 7102(b)(2)(A), inserted ''or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)'' before colon at end of introductory provisions.

Subsec. (a)(1)(B)(ii). Pub. L. 109–171, § 7102(b)(2)(B), inserted ''and any other State programs funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)'' after ''this part''.

1999—Subsec. (a)(1)(A). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 804(a)(1)], in introductory provisions, inserted ''(except for information relating to activities carried out under section 603(a)(5) of this title)'' after ''part''.

Subsec. (a)(1)(A)(xviii). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 804(a)(2)], struck out cl. (xviii) which related to families participating in a program operated with funds provided under section 603(a)(5) of this title.

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (a)(1)(A)(ii). Pub. L. 105–33, § 5507(1)(A)(i), added cl. (ii) and struck out former cl. (ii) which read as follows: ''Whether a child receiving such assistance or an adult in the family is disabled.''

Subsec. (a)(1)(A)(iv). Pub. L. 105–33, § 5507(1)(A)(ii), substituted ''head of'' for ''youngest child in''.

Subsec. (a)(1)(A)(vii), (viii). Pub. L. 105–33, § 5507(1)(A)(iii), substituted ''level'' for ''status''.

Subsec. (a)(1)(A)(xvii). Pub. L. 105–33, § 5507(1)(A)(iv), added cl. (xvii).

Subsec. (a)(1)(A)(xviii). Pub. L. 105–33, § 5001(e)(1), added cl. (xviii).

Subsec. (a)(1)(B). Pub. L. 105–33, § 5507(1)(B), substituted ''samples'' for ''estimates'' in heading and ''disaggregated case record information on a sample of families selected'' for ''an estimate which is obtained'' in cl. (i).

Subsec. (a)(2). Pub. L. 105–33, § 5001(e)(2), inserted before period at end '', with a separate statement of the percentage of such funds that are used to cover administrative costs or overhead incurred for programs operated with funds provided under section 603(a)(5) of this title''.

Subsec. (a)(3). Pub. L. 105–33, § 5001(e)(3), inserted before period at end '', with a separate statement of the total amount expended by the State during the quarter on programs operated with funds provided under section 603(a)(5) of this title''.

Subsec. (a)(4). Pub. L. 105–33, § 5001(e)(4), inserted before period at end '', with a separate statement of the number of such parents who participated in programs operated with funds provided under section 603(a)(5) of this title''.

Subsec. (a)(6). Pub. L. 105–33, § 5507(2), added par. (6). Former par. (6) redesignated (7).

Subsec. (a)(6)(C). Pub. L. 105–33, § 5001(e)(5), added subpar. (C).

Subsec. (a)(7). Pub. L. 105–33, § 5507(2), redesignated par. (6) as (7).

Pub. L. 105–33, § 5001(e)(6), inserted before period at end '', and shall consult with the Secretary of Labor in defining the data elements with respect to programs operated with funds provided under section 603(a)(5) of this title''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective Oct. 1, 2006, see section 7102(d) of Pub. L. 109–171, set out as a note under section 607 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5507 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 611a. State required to provide certain information

Each State to which a grant is made under section 603 of this title shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is unlawfully in the United States.

(Aug. 14, 1935, ch. 531, title IV, § 411A, as added Pub. L. 104–193, title IV, § 404(b), Aug. 22, 1996, 110 Stat. 2267.)

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 612. Direct funding and administration by Indian tribes

(a) Grants for Indian tribes

(1) Tribal family assistance grant

(A) In general

For each of fiscal years 1997, 1998, 1999, 2000, 2001, 2002, and 2003, the Secretary shall pay to each Indian tribe that has an approved tribal family assistance plan a tribal family assistance grant for the fiscal year in an amount equal to the amount determined under subparagraph (B), which shall be reduced for a fiscal year, on a pro rata basis for each quarter, in the case of a tribal family assistance plan approved during a fiscal year for which the plan is to be in effect, and shall reduce the grant payable under section 603(a)(1) of this title to any State in which lies the service area or areas of the Indian tribe by that portion of the amount so determined that is attributable to expenditures by the State.

(B) Amount determined

(i) In general

The amount determined under this subparagraph is an amount equal to the total amount of the Federal payments to a State or States under section 603 of this title (as in effect during such fiscal year) for fiscal year 1994 attributable to expenditures (other than child care expenditures) by the State or States under parts A and F of this subchapter (as so in effect) for fiscal year 1994 for Indian families residing in the service area or areas identified by the Indian tribe pursuant to subsection (b)(1)(C) of this section.

(ii) Use of State submitted data

(I) In general

The Secretary shall use State submitted data to make each determination under clause (i).

(II) Disagreement with determination

If an Indian tribe or tribal organization disagrees with State submitted data described under subclause (I), the Indian tribe or tribal organization may submit to the Secretary such additional information as may be relevant to making the determination under clause (i) and the Secretary may consider such information before making such determination.

(2) Grants for Indian tribes that received jobs funds

(A) In general

For each of fiscal years 1997, 1998, 1999, 2000, 2001, 2002, and 2003, the Secretary shall pay to each eligible Indian tribe that proposes to operate a program described in subparagraph (C) a grant in an amount equal to the amount received by the Indian tribe in fiscal year 1994 under section 682(i) of this title (as in effect during fiscal year 1994).

(B) Eligible Indian tribe

For purposes of subparagraph (A), the term ''eligible Indian tribe'' means an Indian tribe or Alaska Native organization that conducted a job opportunities and basic skills training program in fiscal year 1995 under section 682(i) of this title (as in effect during fiscal year 1995).

(C) Use of grant

Each Indian tribe to which a grant is made under this paragraph shall use the grant for the purpose of operating a program to make work activities available to such population and such service area or areas as the tribe specifies.

(D) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $7,633,287 for each fiscal year specified in subparagraph (A) for grants under subparagraph (A).

(3) Welfare-to-work grants

(A) In general

The Secretary of Labor shall award a grant in accordance with this paragraph to

an Indian tribe for each fiscal year specified in section 603(a)(5)(H) of this title for which the Indian tribe is a welfare-to-work tribe, in such amount as the Secretary of Labor deems appropriate, subject to subparagraph (B) of this paragraph.

(B) Welfare-to-work tribe

An Indian tribe shall be considered a welfare-to-work tribe for a fiscal year for purposes of this paragraph if the Indian tribe meets the following requirements:

(i) The Indian tribe has submitted to the Secretary of Labor a plan which describes how, consistent with section 603(a)(5) of this title, the Indian tribe will use any funds provided under this paragraph during the fiscal year. If the Indian tribe has a tribal family assistance plan, the plan referred to in the preceding sentence shall be in the form of an addendum to the tribal family assistance plan.

(ii) The Indian tribe is operating a program under a tribal family assistance plan approved by the Secretary of Health and Human Services, a program described in paragraph (2)(C), or an employment program funded through other sources under which substantial services are provided to recipients of assistance under a program funded under this part.

(iii) The Indian tribe has provided the Secretary of Labor with an estimate of the amount that the Indian tribe intends to expend during the fiscal year (excluding tribal expenditures described in section 609(a)(7)(B)(iv) (other than subclause (III) thereof) of this title) pursuant to this paragraph.

(iv) The Indian tribe has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation under section 613(j) of this title, and to cooperate with the conduct of any such evaluation.

(C) Limitations on use of funds

(i) In general

Section 603(a)(5)(C) of this title shall apply to funds provided to Indian tribes under this paragraph in the same manner in which such section applies to funds provided under section 603(a)(5) of this title.

(ii) Waiver authority

The Secretary of Labor may waive or modify the application of a provision of section 603(a)(5)(C) (other than clause (viii) thereof) of this title with respect to an Indian tribe to the extent necessary to enable the Indian tribe to operate a more efficient or effective program with the funds provided under this paragraph.

(iii) Regulations

Within 90 days after August 5, 1997, the Secretary of Labor, after consultation with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, shall prescribe such regulations as may be necessary to implement this paragraph.

(b) 3-year tribal family assistance plan

(1) In general

Any Indian tribe that desires to receive a tribal family assistance grant shall submit to the Secretary a 3-year tribal family assistance plan that—

(A) outlines the Indian tribe's approach to providing welfare-related services for the 3-year period, consistent with this section;

(B) specifies whether the welfare-related services provided under the plan will be provided by the Indian tribe or through agreements, contracts, or compacts with intertribal consortia, States, or other entities;

(C) identifies the population and service area or areas to be served by such plan;

(D) provides that a family receiving assistance under the plan may not receive duplicative assistance from other State or tribal programs funded under this part;

(E) identifies the employment opportunities in or near the service area or areas of the Indian tribe and the manner in which the Indian tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan consistent with any applicable State standards; and

(F) applies the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31.

(2) Approval

The Secretary shall approve each tribal family assistance plan submitted in accordance with paragraph (1).

(3) Consortium of tribes

Nothing in this section shall preclude the development and submission of a single tribal family assistance plan by the participating Indian tribes of an intertribal consortium.

(c) Minimum work participation requirements and time limits

The Secretary, with the participation of Indian tribes, shall establish for each Indian tribe receiving a grant under this section minimum work participation requirements, appropriate time limits for receipt of welfare-related services under the grant, and penalties against individuals—

(1) consistent with the purposes of this section;

(2) consistent with the economic conditions and resources available to each tribe; and

(3) similar to comparable provisions in section 607(e) of this title.

(d) Emergency assistance

Nothing in this section shall preclude an Indian tribe from seeking emergency assistance from any Federal loan program or emergency fund.

(e) Accountability

Nothing in this section shall be construed to limit the ability of the Secretary to maintain program funding accountability consistent with—

(1) generally accepted accounting principles; and

(2) the requirements of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(f) Eligibility for Federal loans

Section 606 of this title shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such section applies to a State, except that section 606(c) of this title shall be applied by substituting ''section 612(a)'' for ''section 603(a)''.

(g) Penalties

(1) Subsections (a)(1), (a)(6), (b), and (c) of section 609 of this title, shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such subsections apply to a State.

(2) Section 609(a)(3) of this title shall apply to an Indian tribe with an approved tribal assistance plan by substituting ''meet minimum work participation requirements established under section 612(c) of this title'' for ''comply with section 607(a) of this title''.

(h) Data collection and reporting

Section 611 of this title shall apply to an Indian tribe with an approved tribal family assistance plan.

(i) Special rule for Indian tribes in Alaska

(1) In general

Notwithstanding any other provision of this section, and except as provided in paragraph (2), an Indian tribe in the State of Alaska that receives a tribal family assistance grant under this section shall use the grant to operate a program in accordance with requirements comparable to the requirements applicable to the program of the State of Alaska funded under this part. Comparability of programs shall be established on the basis of program criteria developed by the Secretary in consultation with the State of Alaska and such Indian tribes.

(2) Waiver

An Indian tribe described in paragraph (1) may apply to the appropriate State authority to receive a waiver of the requirement of paragraph (1).

(Aug. 14, 1935, ch. 531, title IV, §412, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2150; amended Pub. L. 105–33, title V, §§5001(c), 5508, 5514(c), Aug. 5, 1997, 111 Stat. 589, 617, 620; Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §801(b)(2)], Nov. 29, 1999, 113 Stat. 1535, 1501A–283; Pub. L. 106–554, §1(a)(1) [title I, §107(b)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–12; Pub. L. 108–40, §3(h), June 30, 2003, 117 Stat. 837.)

REFERENCES IN TEXT

Part F of this subchapter, referred to in subsec. (a)(1)(B)(i), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104–193, title I, §108(e), Aug. 22, 1996, 110 Stat. 2167.

Section 682 of this title, referred to in subsec. (a)(2)(A), (B), was repealed by Pub. L. 104–193, title I, §108(e), Aug. 22, 1996, 110 Stat. 2167.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (e)(2), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 612, act Aug. 14, 1935, ch. 531, title IV, §412, as added June 17, 1980, Pub. L. 96–272, title III, §303, 94 Stat. 528; amended Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2306(b), 95 Stat. 846; Sept. 3, 1982, Pub. L. 97–248, title I, §155(a), 96 Stat. 397, related to prorating shelter allowance for AFDC family living with another household, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

2003—Subsec. (a)(1)(A), (2)(A). Pub. L. 108–40 substituted ''2002, and 2003'' for ''and 2002''.

2000—Subsec. (a)(3)(A). Pub. L. 106–554 substituted ''603(a)(5)(H)'' for ''603(a)(5)(I)''.

1999—Subsec. (a)(3)(C)(ii). Pub. L. 106–113 substituted ''clause (viii)'' for ''clause (vii)''.

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a)(1)(A). Pub. L. 105–33, §5508(a), inserted ''which shall be reduced for a fiscal year, on a pro rata basis for each quarter, in the case of a tribal family assistance plan approved during a fiscal year for which the plan is to be in effect,'' before ''and shall''.

Subsec. (a)(2)(A). Pub. L. 105–33, §5508(b), substituted ''For each of fiscal years 1997, 1998, 1999, 2000, 2001, and 2002, the Secretary shall pay to each eligible Indian tribe that proposes to operate a program described in subparagraph (C)'' for ''The Secretary shall pay to each eligible Indian tribe for each of fiscal years 1997, 1998, 1999, 2000, 2001, and 2002''.

Subsec. (a)(2)(C). Pub. L. 105–33, §5508(c), substituted ''such population and such service area or areas as the tribe specifies'' for ''members of the Indian tribe''.

Subsec. (a)(2)(D). Pub. L. 105–33, §5508(d), substituted ''$7,633,287'' for ''$7,638,474''.

Subsec. (a)(3). Pub. L. 105–33, §5001(c), added par. (3).

Subsec. (f). Pub. L. 105–33, §5508(f), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 105–33, §5508(e), substituted ''(b), and (c)'' for ''and (b)''.

Subsecs. (g) to (i). Pub. L. 105–33, §5508(f), redesignated subsecs. (f) to (h) as (g) to (i), respectively.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective Oct. 1, 2000, see section 1(a)(1) [title I, §107(d)] of Pub. L. 106–554, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

For effective date of amendment by Pub. L. 106–113, see section 1000(a)(4) [title VIII, §801(e)] of Pub. L. 106–113, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5508 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 613. Research, evaluations, and national studies

(a) Research

The Secretary, directly or through grants, contracts, or interagency agreements, shall conduct research on the benefits, effects, and costs of operating different State programs funded under this part, including time limits relating to eligibility for assistance. The research shall include studies on the effects of different programs and the operation of such programs on welfare dependency, illegitimacy, teen pregnancy, employment rates, child well-being, and any other area the Secretary deems appropriate. The Secretary shall also conduct research on the costs and benefits of State activities under section 607 of this title.

(b) Development and evaluation of innovative approaches to reducing welfare dependency and increasing child well-being

(1) In general

The Secretary may assist States in developing, and shall evaluate, innovative approaches for reducing welfare dependency and increasing the well-being of minor children living at home with respect to recipients of assistance under programs funded under this part. The Secretary may provide funds for training and technical assistance to carry out the approaches developed pursuant to this paragraph.

(2) Evaluations

In performing the evaluations under paragraph (1), the Secretary shall, to the maximum extent feasible, use random assignment as an evaluation methodology.

(c) Dissemination of information

The Secretary shall develop innovative methods of disseminating information on any research, evaluations, and studies conducted under this section, including the facilitation of the sharing of information and best practices among States and localities through the use of computers and other technologies.

(d) Annual ranking of States and review of most and least successful work programs

(1) Annual ranking of States

The Secretary shall rank annually the States to which grants are paid under section 603 of this title in the order of their success in placing recipients of assistance under the State program funded under this part into long-term private sector jobs, reducing the overall welfare caseload, and, when a practicable method for calculating this information becomes available, diverting individuals from formally applying to the State program and receiving assistance. In ranking States under this subsection, the Secretary shall take into account the average number of minor children living at home in families in the State that have incomes below the poverty line and the amount of funding provided each State for such families.

(2) Annual review of most and least successful work programs

The Secretary shall review the programs of the 3 States most recently ranked highest under paragraph (1) and the 3 States most recently ranked lowest under paragraph (1) that provide parents with work experience, assistance in finding employment, and other work preparation activities and support services to enable the families of such parents to leave the program and become self-sufficient.

(e) Annual ranking of States and review of issues relating to out-of-wedlock births

(1) In general

The Secretary shall annually rank States to which grants are made under section 603 of this title based on the following ranking factors:

(A) Absolute out-of-wedlock ratios

The ratio represented by—

(i) the total number of out-of-wedlock births in families receiving assistance under the State program under this part in the State for the most recent year for which information is available; over

(ii) the total number of births in families receiving assistance under the State program under this part in the State for the year.

(B) Net changes in the out-of-wedlock ratio

The difference between the ratio described in subparagraph (A) with respect to a State for the most recent year for which such information is available and the ratio with respect to the State for the immediately preceding year.

(2) Annual review

The Secretary shall review the programs of the 5 States most recently ranked highest under paragraph (1) and the 5 States most recently ranked the lowest under paragraph (1).

(f) State-initiated evaluations

A State shall be eligible to receive funding to evaluate the State program funded under this part if—

(1) the State submits a proposal to the Secretary for the evaluation;

(2) the Secretary determines that the design and approach of the evaluation is rigorous and is likely to yield information that is credible and will be useful to other States; and

(3) unless otherwise waived by the Secretary, the State contributes to the cost of the evaluation, from non-Federal sources, an amount equal to at least 10 percent of the cost of the evaluation.

(g) Report on circumstances of certain children and families

(1) In general

Beginning 3 years after August 22, 1996, the Secretary of Health and Human Services shall

prepare and submit to the Committees on Ways and Means and on Education and the Workforce of the House of Representatives and to the Committees on Finance and on Labor and Resources of the Senate annual reports that examine in detail the matters described in paragraph (2) with respect to each of the following groups for the period after August 22, 1996:

(A) Individuals who were children in families that have become ineligible for assistance under a State program funded under this part by reason of having reached a time limit on the provision of such assistance.

(B) Children born after August 22, 1996, to parents who, at the time of such birth, had not attained 20 years of age.

(C) Individuals who, after August 22, 1996, became parents before attaining 20 years of age.

(2) Matters described

The matters described in this paragraph are the following:

(A) The percentage of each group that has dropped out of secondary school (or the equivalent), and the percentage of each group at each level of educational attainment.

(B) The percentage of each group that is employed.

(C) The percentage of each group that has been convicted of a crime or has been adjudicated as a delinquent.

(D) The rate at which the members of each group are born, or have children, out-of-wedlock, and the percentage of each group that is married.

(E) The percentage of each group that continues to participate in State programs funded under this part.

(F) The percentage of each group that has health insurance provided by a private entity (broken down by whether the insurance is provided through an employer or otherwise), the percentage that has health insurance provided by an agency of government, and the percentage that does not have health insurance.

(G) The average income of the families of the members of each group.

(H) Such other matters as the Secretary deems appropriate.

(h) Funding of studies and demonstrations

(1) In general

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $15,000,000 for each of fiscal years 1997 through 2002 for the purpose of paying—

(A) the cost of conducting the research described in subsection (a) of this section;

(B) the cost of developing and evaluating innovative approaches for reducing welfare dependency and increasing the well-being of minor children under subsection (b) of this section;

(C) the Federal share of any State-initiated study approved under subsection (f) of this section; and

(D) an amount determined by the Secretary to be necessary to operate and evaluate demonstration projects, relating to this part, that are in effect or approved under section 1315 of this title as of August 22, 1996, and are continued after such date.

(2) Allocation

Of the amount appropriated under paragraph (1) for a fiscal year—

(A) 50 percent shall be allocated for the purposes described in subparagraphs (A) and (B) of paragraph (1), and

(B) 50 percent shall be allocated for the purposes described in subparagraphs (C) and (D) of paragraph (1).

(3) Demonstrations of innovative strategies

The Secretary may implement and evaluate demonstrations of innovative and promising strategies which—

(A) provide one-time capital funds to establish, expand, or replicate programs;

(B) test performance-based grant-to-loan financing in which programs meeting performance targets receive grants while programs not meeting such targets repay funding on a prorated basis; and

(C) test strategies in multiple States and types of communities.

(i) Child poverty rates

(1) In general

Not later than May 31, 1998, and annually thereafter, the chief executive officer of each State shall submit to the Secretary a statement of the child poverty rate in the State as of August 22, 1996, or the date of the most recent prior statement under this paragraph.

(2) Submission of corrective action plan

Not later than 90 days after the date a State submits a statement under paragraph (1) which indicates that, as a result of the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the child poverty rate of the State has increased by 5 percent or more since the most recent prior statement under paragraph (1), the State shall prepare and submit to the Secretary a corrective action plan in accordance with paragraph (3).

(3) Contents of plan

A corrective action plan submitted under paragraph (2) shall outline the manner in which the State will reduce the child poverty rate in the State. The plan shall include a description of the actions to be taken by the State under such plan.

(4) Compliance with plan

A State that submits a corrective action plan that the Secretary has found contains the information required by this subsection shall implement the corrective action plan until the State determines that the child poverty rate in the State is less than the lowest child poverty rate on the basis of which the State was required to submit the corrective action plan.

(5) Methodology

The Secretary shall prescribe regulations establishing the methodology by which a State

shall determine the child poverty rate in the State. The methodology shall take into account factors including the number of children who receive free or reduced-price lunches, the number of food stamp households, and, to the extent available, county-by-county estimates of children in poverty as determined by the Census Bureau.

(j) Evaluation of welfare-to-work programs

(1) Evaluation

The Secretary, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development—

(A) shall develop a plan to evaluate how grants made under sections 603(a)(5) and 612(a)(3) of this title have been used;

(B) may evaluate the use of such grants by such grantees as the Secretary deems appropriate, in accordance with an agreement entered into with the grantees after good-faith negotiations; and

(C) is urged to include the following outcome measures in the plan developed under subparagraph (A):

(i) Placements in unsubsidized employment, and placements in unsubsidized employment that last for at least 6 months.

(ii) Placements in the private and public sectors.

(iii) Earnings of individuals who obtain employment.

(iv) Average expenditures per placement.

(2) Reports to the Congress

(A) In general

Subject to subparagraphs (B) and (C), the Secretary, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development, shall submit to the Congress reports on the projects funded under section[1] 603(a)(5) and 612(a)(3) of this title and on the evaluations of the projects.

(B) Interim report

Not later than January 1, 1999, the Secretary shall submit an interim report on the matter described in subparagraph (A).

(C) Final report

Not later than January 1, 2001,[2] (or at a later date, if the Secretary informs the Committees of the Congress with jurisdiction over the subject matter of the report) the Secretary shall submit a final report on the matter described in subparagraph (A).

(Aug. 14, 1935, ch. 531, title IV, § 413, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2153; amended Pub. L. 105–33, title V, §§ 5001(f), 5509, 5514(c), Aug. 5, 1997, 111 Stat. 592, 618, 620; Pub. L. 105–200, title IV, § 410(a), July 16, 1998, 112 Stat. 673; Pub. L. 106–169, title IV, § 401(c), Dec. 14, 1999, 113 Stat. 1858.)

REFERENCES IN TEXT

Section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (i)(2), is section 103 of Pub. L. 104–193, which enacted this part, amended sections 602, 603, and 1308 of this title, and repealed provisions formerly set out as this part. For complete classification of section 103 to the Code, see Tables.

PRIOR PROVISIONS

A prior section 613, act Aug. 14, 1935, ch. 531, title IV, § 413, as added June 9, 1980, Pub. L. 96–265, title IV, § 406(c), 94 Stat. 467, related to technical assistance for developing management information systems, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1999—Subsec. (g)(1). Pub. L. 106–169 made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

1998—Subsec. (g)(1). Pub. L. 105–200 substituted ''Education and the Workforce'' for ''Economic and Educational Opportunities''.

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (a). Pub. L. 105–33, § 5509(a), inserted '', directly or through grants, contracts, or interagency agreements,'' before ''shall conduct'' and substituted ''section 607'' for ''section 609''.

Subsec. (e)(1). Pub. L. 105–33, § 5509(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—The Secretary shall annually rank States to which grants are made under section 603 of this title based on the following ranking factors:

''(i) ABSOLUTE OUT-OF-WEDLOCK RATIOS.—The ratio represented by—

''(I) the total number of out-of-wedlock births in families receiving assistance under the State program under this part in the State for the most recent fiscal year for which information is available; over

''(II) the total number of births in families receiving assistance under the State program under this part in the State for such year.

''(ii) NET CHANGES IN THE OUT-OF-WEDLOCK RATIO.—The difference between the ratio described in subparagraph (A)(i) with respect to a State for the most recent fiscal year for which such information is available and the ratio with respect to the State for the immediately preceding year.''

Subsec. (h)(1)(D). Pub. L. 105–33, § 5509(c), substituted ''August 22, 1996'' for ''September 30, 1995''.

Subsec. (i)(1). Pub. L. 105–33, § 5509(d)(1), substituted ''May 31, 1998'' for ''90 days after August 22, 1996''.

Subsec. (i)(5). Pub. L. 105–33, § 5509(d)(2), substituted '', to the extent available, county-by-county'' for ''the county-by-county''.

Subsec. (j). Pub. L. 105–33, § 5001(f), added subsec. (j).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5509 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective Aug. 22, 1996, with transition rules relating to State options to accelerate such date, rules

[1] So in original. Probably should be ''sections''.

[2] So in original.

relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

COORDINATION OF SUBSTANCE ABUSE AND CHILD PROTECTION SERVICES

Pub. L. 105–89, title IV, §405, Nov. 19, 1997, 111 Stat. 2135, provided that: ''Within 1 year after the date of the enactment of this Act [Nov. 19, 1997], the Secretary of Health and Human Services, based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families in the Department of Health of [sic] Human Services, shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which describes the extent and scope of the problem of substance abuse in the child welfare population, the types of services provided to such population, and the outcomes resulting from the provision of such services to such population. The report shall include recommendations for any legislation that may be needed to improve coordination in providing such services to such population.''

GAO STUDY OF EFFECT OF FAMILY VIOLENCE ON NEED FOR PUBLIC ASSISTANCE

Section 5001(i) of Pub. L. 105–33 provided that:

''(1) STUDY.—The Comptroller General shall conduct a study of the effect of family violence on the use of public assistance programs, and in particular the extent to which family violence prolongs or increases the need for public assistance.

''(2) REPORT.—Within 1 year after the date of the enactment of this Act [Aug. 5, 1997], the Comptroller General shall submit to the Committees on Ways and Means and Education and the Workforce of the House of Representatives and the Committee on Finance of the Senate a report that contains the findings of the study required by paragraph (1).''

STUDY ON ALTERNATIVE OUTCOMES MEASURES

Section 107 of Pub. L. 104–193, as amended by Pub. L. 105–33, title V, §5511, Aug. 5, 1997, 111 Stat. 619, provided that:

''(a) STUDY.—The Secretary shall, in cooperation with the States, study and analyze outcomes measures for evaluating the success of the States in moving individuals out of the welfare system through employment as an alternative to the minimum participation rates described in section 407 of the Social Security Act [section 607 of this title]. The study shall include a determination as to whether such alternative outcomes measures should be applied on a national or a State-by-State basis and a preliminary assessment of the effects of section 408(a)(7)(C) of such Act [section 608(a)(7)(C) of this title].

''(b) REPORT.—Not later than September 30, 1998, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report containing the findings of the study required by subsection (a).''

§614. Study by Census Bureau

(a) In general

The Bureau of the Census shall continue to collect data on the 1992 and 1993 panels of the Survey of Income and Program Participation as necessary to obtain such information as will enable interested persons to evaluate the impact of the amendments made by title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on a random national sample of recipients of assistance under State programs funded under this part and (as appropriate) other low-income families, and in doing so, shall pay particular attention to the issues of out-of-wedlock birth, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells, and shall obtain information about the status of children participating in such panels.

(b) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for each of fiscal years 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003 for payment to the Bureau of the Census to carry out subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title IV, §414, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2156; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620; Pub. L. 108–40, §3(i), June 30, 2003, 117 Stat. 837.)

REFERENCES IN TEXT

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a), is title I of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2110. For complete classification of this title to the Code, see Tables.

PRIOR PROVISIONS

A prior section 614, act Aug. 14, 1935, ch. 531, title IV, §414, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2308, 95 Stat. 848; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §§2638(a), 2663(c)(7)(A), 98 Stat. 1143, 1166, related to work supplementation program, prior to repeal by Pub. L. 100–485, title II, §§202(b)(13), 204(a), (b)(1)(A), Oct. 13, 1988, 102 Stat. 2378, 2381, effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–40 substituted ''2002, and 2003'' for ''and 2002''.

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 615. Waivers

(a) Continuation of waivers

(1) Waivers in effect on August 22, 1996

(A) In general

Except as provided in subparagraph (B), if any waiver granted to a State under section 1315 of this title or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is in effect as of August 22, 1996, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the waiver.

(B) Financing limitation

Notwithstanding any other provision of law, beginning with fiscal year 1996, a State operating under a waiver described in subparagraph (A) shall be entitled to payment under section 603 of this title for the fiscal year, in lieu of any other payment provided for in the waiver.

(2) Waivers granted subsequently

(A) In general

Except as provided in subparagraph (B), if any waiver granted to a State under section 1315 of this title or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is submitted to the Secretary before August 22, 1996, and approved by the Secretary on or before July 1, 1997, and the State demonstrates to the satisfaction of the Secretary that the waiver will not result in Federal expenditures under subchapter IV of this chapter (as in effect without regard to the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) that are greater than would occur in the absence of the waiver, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are inconsistent with the waiver.

(B) No effect on new work requirements

Notwithstanding subparagraph (A), a waiver granted under section 1315 of this title or otherwise which relates to the provision of assistance under a State program funded under this part (as in effect on September 30, 1996) shall not affect the applicability of section 607 of this title to the State.

(b) State option to terminate waiver

(1) In general

A State may terminate a waiver described in subsection (a) of this section before the expiration of the waiver.

(2) Report

A State which terminates a waiver under paragraph (1) shall submit a report to the Secretary summarizing the waiver and any available information concerning the result or effect of the waiver.

(3) Hold harmless provision

(A) In general

Notwithstanding any other provision of law, a State that, not later than the date described in subparagraph (B) of this paragraph, submits a written request to terminate a waiver described in subsection (a) of this section shall be held harmless for accrued cost neutrality liabilities incurred under the waiver.

(B) Date described

The date described in this subparagraph is 90 days following the adjournment of the first regular session of the State legislature that begins after August 22, 1996.

(c) Secretarial encouragement of current waivers

The Secretary shall encourage any State operating a waiver described in subsection (a) of this section to continue the waiver and to evaluate, using random sampling and other characteristics of accepted scientific evaluations, the result or effect of the waiver.

(d) Continuation of individual waivers

A State may elect to continue 1 or more individual waivers described in subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title IV, § 415, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2157; amended Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.)

REFERENCES IN TEXT

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(1)(A), (2)(A), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. Section 103(c) of the Act amended sections 602 and 603 of this title. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 615, act Aug. 14, 1935, ch. 531, title IV, § 415, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2320(b)(2), 95 Stat. 857; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2635, 2663(c)(7)(B), 98 Stat. 1142, 1166, related to attribution of income and resources of sponsor and spouse to alien, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time

the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§616. Administration

The programs under this part and part D of this subchapter shall be administered by an Assistant Secretary for Family Support within the Department of Health and Human Services, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be in addition to any other Assistant Secretary of Health and Human Services provided for by law, and the Secretary shall reduce the Federal workforce within the Department of Health and Human Services by an amount equal to the sum of 75 percent of the full-time equivalent positions at such Department that relate to any direct spending program, or any program funded through discretionary spending, that has been converted into a block grant program under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the amendments made by such Act, and by an amount equal to 75 percent of that portion of the total full-time equivalent departmental management positions at such Department that bears the same relationship to the amount appropriated for any direct spending program, or any program funded through discretionary spending, that has been converted into a block grant program under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the amendments made by such Act, as such amount relates to the total amount appropriated for use by such Department, and, notwithstanding any other provision of law, the Secretary shall take such actions as may be necessary, including reductions in force actions, consistent with sections 3502 and 3595 of title 5, to reduce the full-time equivalent positions within the Department of Health and Human Services by 245 full-time equivalent positions related to the program converted into a block grant under the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and by 60 full-time equivalent managerial positions in the Department.

(Aug. 14, 1935, ch. 531, title IV, §416, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2158; amended Pub. L. 105–33, title V, §5514(c), (d), Aug. 5, 1997, 111 Stat. 620; Pub. L. 106–169, title IV, §401(d), Dec. 14, 1999, 113 Stat. 1858.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in text, is classified to section 651 et seq. of this title.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in text, is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1305 of this title and Tables.

Section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in text, is section 103 of Pub. L. 104–193, which enacted this part, amended sections 602, 603, and 1308 of this title, and repealed provisions formerly set out as this part. For complete classification of section 103 to the Code, see Tables.

PRIOR PROVISIONS

A prior section 616, act Aug. 14, 1935, ch. 531, title IV, §416, as added Dec. 22, 1987, Pub. L. 100–203, title IX, §9102(a), 101 Stat. 1330–299, related to fraud control, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1999—Pub. L. 106–169 substituted ''Opportunity Reconciliation Act'' for ''Opportunity Act'' the first two places appearing.

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Pub. L. 105–33, §5514(d), substituted ''amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation'' for ''amendment made by section 2103 of the Personal Responsibility and Work Opportunity''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Amendment by section 5514(d) of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§617. Limitation on Federal authority

No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.

(Aug. 14, 1935, ch. 531, title IV, §417, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2159; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.)

PRIOR PROVISIONS

A prior section 617, act Aug. 14, 1935, ch. 531, title IV, §417, formerly §418, as added Oct. 13, 1988, Pub. L.

100–485, title VI, § 603(a), 102 Stat. 2408; renumbered § 417, Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8105(7), 102 Stat. 3798, related to Assistant Secretary for Family Support, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 618. Funding for child care

(a) General child care entitlement

(1) General entitlement

Subject to the amount appropriated under paragraph (3), each State shall, for the purpose of providing child care assistance, be entitled to payments under a grant under this subsection for a fiscal year in an amount equal to the greater of—

(A) the total amount required to be paid to the State under section 603 of this title for fiscal year 1994 or 1995 (whichever is greater) with respect to expenditures for child care under subsections (g) and (i) of section 602 of this title (as in effect before October 1, 1995); or

(B) the average of the total amounts required to be paid to the State for fiscal years 1992 through 1994 under the subsections referred to in subparagraph (A).

(2) Remainder

(A) Grants

The Secretary shall use any amounts appropriated for a fiscal year under paragraph (3), and remaining after the reservation described in paragraph (4) and after grants are awarded under paragraph (1), to make grants to States under this paragraph.

(B) Allotments to States

The total amount available for payments to States under this paragraph, as determined under subparagraph (A), shall be allotted among the States based on the formula used for determining the amount of Federal payments to each State under section 603(n) of this title (as in effect before October 1, 1995).

(C) Federal matching of State expenditures exceeding historical expenditures

The Secretary shall pay to each eligible State for a fiscal year an amount equal to the lesser of the State's allotment under subparagraph (B) or the Federal medical assistance percentage for the State for the fiscal year (as defined in section 1396d(b) of this title, as such section was in effect on September 30, 1995) of so much of the State's expenditures for child care in that fiscal year as exceed the total amount of expenditures by the State (including expenditures from amounts made available from Federal funds) in fiscal year 1994 or 1995 (whichever is greater) for the programs described in paragraph (1)(A).

(D) Redistribution

(i) In general

With respect to any fiscal year, if the Secretary determines (in accordance with clause (ii)) that any amounts allotted to a State under this paragraph for such fiscal year will not be used by such State during such fiscal year for carrying out the purpose for which such amounts are allotted, the Secretary shall make such amounts available in the subsequent fiscal year for carrying out such purpose to one or more States which apply for such funds to the extent the Secretary determines that such States will be able to use such additional amounts for carrying out such purpose. Such available amounts shall be redistributed to a State pursuant to section 603(n) of this title (as such section was in effect before October 1, 1995) by substituting ''the number of children residing in all States applying for such funds'' for ''the number of children residing in the United States in the second preceding fiscal year''.

(ii) Time of determination and distribution

The determination of the Secretary under clause (i) for a fiscal year shall be made not later than the end of the first quarter of the subsequent fiscal year. The redistribution of amounts under clause (i) shall be made as close as practicable to the date on which such determination is made. Any amount made available to a State from an appropriation for a fiscal year in accordance with this subparagraph shall, for purposes of this part, be regarded as part of such State's payment (as determined under this subsection) for the fiscal year in which the redistribution is made.

(3) Appropriation

For grants under this section, there are appropriated—

(A) $1,967,000,000 for fiscal year 1997;

(B) $2,067,000,000 for fiscal year 1998;

(C) $2,167,000,000 for fiscal year 1999;

(D) $2,367,000,000 for fiscal year 2000;

(E) $2,567,000,000 for fiscal year 2001;

(F) $2,717,000,000 for each of fiscal years 2002 and 2003;[1]

(G) $2,917,000,000 for each of fiscal years 2006 through 2010.

(4) Indian tribes

The Secretary shall reserve not less than 1 percent, and not more than 2 percent, of the

[1] So in original. Probably should be followed by ''and''.

aggregate amount appropriated to carry out this section in each fiscal year for payments to Indian tribes and tribal organizations.

(5) Data used to determine State and Federal shares of expenditures

In making the determinations concerning expenditures required under paragraphs (1) and (2)(C), the Secretary shall use information that was reported by the State on ACF Form 231 and available as of the applicable dates specified in clauses (i)(I), (ii), and (iii)(III) of section 603(a)(1)(D)[2] of this title.

(b) Use of funds

(1) In general

Amounts received by a State under this section shall only be used to provide child care assistance. Amounts received by a State under a grant under subsection (a)(1) of this section shall be available for use by the State without fiscal year limitation.

(2) Use for certain populations

A State shall ensure that not less than 70 percent of the total amount of funds received by the State in a fiscal year under this section are used to provide child care assistance to families who are receiving assistance under a State program under this part, families who are attempting through work activities to transition off of such assistance program, and families who are at risk of becoming dependent on such assistance program.

(c) Application of Child Care and Development Block Grant Act of 1990

Notwithstanding any other provision of law, amounts provided to a State under this section shall be transferred to the lead agency under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858 et seq.], integrated by the State into the programs established by the State under such Act, and be subject to requirements and limitations of such Act.

(d) "State" defined

As used in this section, the term ''State'' means each of the 50 States and the District of Columbia.

(Aug. 14, 1935, ch. 531, title IV, §418, as added Pub. L. 104–193, title VI, §603(b), Aug. 22, 1996, 110 Stat. 2279; amended Pub. L. 105–33, title V, §5601, Aug. 5, 1997, 111 Stat. 644; Pub. L. 108–40, §4, June 30, 2003, 117 Stat. 837; Pub. L. 109–171, title VII, §7201, Feb. 8, 2006, 120 Stat. 141.)

REFERENCES IN TEXT

Section 603(a)(1)(D) of this title, referred to in subsec. (a)(5), was repealed by Pub. L. 108–40, §3(a)(2), June 30, 2003, 117 Stat. 836.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (c), is subchapter C (§658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–236, as amended, which is classified generally to subchapter II–B (§9858 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(3)(G). Pub. L. 109–171 added subpar. (G).

2003—Subsec. (a)(3)(F). Pub. L. 108–40 substituted ''each of fiscal years 2002 and 2003'' for ''fiscal year 2002''.

1997—Subsec. (a)(1). Pub. L. 105–33, §5601(a)(1)(A), (D), inserted ''the greater of'' after ''equal to'' in introductory provisions and struck out concluding provisions which read ''whichever is greater.''

Subsec. (a)(1)(A). Pub. L. 105–33, §5601(a)(1)(B), struck out ''the sum of'' before ''the total amount'', substituted ''expenditures'' for ''amounts expended'' and ''subsections (g) and (i) of section 602 of this title (as in effect before October 1, 1995); or'' for ''section—'', and struck out cls. (i) and (ii) which read as follows:

''(i) 602(g) of this title (as such section was in effect before October 1, 1995); and

''(ii) 602(i) of this title (as so in effect); or''.

Subsec. (a)(1)(B). Pub. L. 105–33, §5601(a)(1)(C), substituted ''subsections'' for ''sections'' and a period for the semicolon at end.

Subsec. (a)(2)(B). Pub. L. 105–33, §5601(a)(2)(A), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''Subject to subparagraph (C), the amount of a grant awarded to a State for a fiscal year under this paragraph shall be based on the formula used for determining the amount of Federal payments to the State under section 603(n) of this title (as such section was in effect before October 1, 1995).''

Subsec. (a)(2)(C). Pub. L. 105–33, §5601(a)(2)(B), added subpar. (C) and struck out heading and text of former subpar. (C). Text read as follows: ''The Secretary shall pay to each eligible State in a fiscal year an amount, under a grant under subparagraph (A), equal to the Federal medical assistance percentage for such State for fiscal year 1995 (as defined in section 1396d(b) of this title) of so much of the expenditures by the State for child care in such year as exceed the State set-aside for such State under paragraph (1)(A) for such year and the amount of State expenditures in fiscal year 1994 or 1995 (whichever is greater) that equal the non-Federal share for the programs described in subparagraph (A) of paragraph (1).''

Subsec. (a)(2)(D)(i). Pub. L. 105–33, §5601(a)(2)(C), substituted ''any amounts allotted'' for ''amounts under any grant awarded'' and ''such amounts are allotted'' for ''the grant is made''.

Subsec. (a)(5). Pub. L. 105–33, §5601(b), added par. (5).

Subsec. (d). Pub. L. 105–33, §5601(c), substituted ''and'' for ''or'' before ''the District''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5603 of title V of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), this chapter [chapter 6 (§§5601–5603) of subtitle F of title V of Pub. L. 105–33, amending this section and sections 9858c, 9858i, 9858j, 9858m, and 9858n of this title] and the amendments made by this chapter shall take effect as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2278).

''(b) EXCEPTIONS.—The amendment made by section 5601(a)(2)(B) [amending this section] shall take effect on October 1, 1997.''

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 9858 of this title.

[2] See References in Text note below.

§ 619. Definitions

As used in this part:

(1) Adult

The term ''adult'' means an individual who is not a minor child.

(2) Minor child

The term ''minor child'' means an individual who—

(A) has not attained 18 years of age; or

(B) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

(3) Fiscal year

The term ''fiscal year'' means any 12-month period ending on September 30 of a calendar year.

(4) Indian, Indian tribe, and tribal organization

(A) In general

Except as provided in subparagraph (B), the terms ''Indian'', ''Indian tribe'', and ''tribal organization'' have the meaning given such terms by section 450b of title 25.

(B) Special rule for Indian tribes in Alaska

The term ''Indian tribe'' means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

(i) Arctic Slope Native Association.

(ii) Kawerak, Inc.

(iii) Maniilaq Association.

(iv) Association of Village Council Presidents.

(v) Tanana Chiefs Conference.

(vi) Cook Inlet Tribal Council.

(vii) Bristol Bay Native Association.

(viii) Aleutian and Pribilof Island Association.

(ix) Chugachmuit.

(x) Tlingit Haida Central Council.

(xi) Kodiak Area Native Association.

(xii) Copper River Native Association.

(5) State

Except as otherwise specifically provided, the term ''State'' means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

(Aug. 14, 1935, ch. 531, title IV, § 419, as added Pub. L. 104–193, title I, § 103(a)(2), Aug. 22, 1996, 110 Stat. 2159.)

EFFECTIVE DATE

Par. (4) of this section effective Oct. 1, 1996, with remainder of section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

PART B—CHILD AND FAMILY SERVICES

AMENDMENTS

1993—Pub. L. 103–66, title XIII, § 13711(a)(1), Aug. 10, 1993, 107 Stat. 649, substituted ''Child and Family Services'' for ''Child Welfare Services'' in part B heading.

1968—Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 911, added part B heading.

SUBPART 1—CHILD WELFARE SERVICES

AMENDMENTS

1993—Pub. L. 103–66, title XIII, § 13711(a)(1), Aug. 10, 1993, 107 Stat. 649, added subpart 1 heading.

§ 620. Repealed. Pub. L. 109–288, § 6(a), Sept. 28, 2006, 120 Stat. 1244

Section, act Aug. 14, 1935, ch. 531, title IV, § 420, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 911; amended Pub. L. 92–603, title IV, § 412, Oct. 30, 1972, 86 Stat. 1492; Pub. L. 96–272, title I, § 103(a), June 17, 1980, 94 Stat. 516; Pub. L. 98–369, div. B, title VI, § 2663(c)(8), July 18, 1984, 98 Stat. 1166; Pub. L. 101–239, title X, § 10401(a), Dec. 19, 1989, 103 Stat. 2487, authorized appropriations for child welfare services. See section 625 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, see section 12(a) of Pub. L. 109–288, set out as an Effective Date of 2006 Amendment note under section 621 of this title.

§ 621. Purpose

The purpose of this subpart is to promote State flexibility in the development and expansion of a coordinated child and family services program that utilizes community-based agencies and ensures all children are raised in safe, loving families, by—

(1) protecting and promoting the welfare of all children;

(2) preventing the neglect, abuse, or exploitation of children;

(3) supporting at-risk families through services which allow children, where appropriate, to remain safely with their families or return to their families in a timely manner;

(4) promoting the safety, permanence, and well-being of children in foster care and adoptive families; and

(5) providing training, professional development and support to ensure a well-qualified child welfare workforce.

(Aug. 14, 1935, ch. 531, title IV, § 421, as added Pub. L. 109–288, § 6(b)(3), Sept. 28, 2006, 120 Stat. 1244.)

PRIOR PROVISIONS

A prior section 621, act Aug. 14, 1935, ch. 531, title IV, § 421, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 912, and amended, which related to allotments to States, was renumbered section 423 of act Aug. 14, 1935, by Pub. L. 109–288, § 6(b)(2), Sept. 28, 2006, 120 Stat. 1244, and transferred to section 623 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–288, § 12, Sept. 28, 2006, 120 Stat. 1255, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this Act [see Short Title of 2006 Amendment note set

out under section 1305 of this title], the amendments made by this Act shall take effect on October 1, 2006, and shall apply to payments under parts B and E of title IV of the Social Security Act [this part and part E of this subchapter] for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.

''(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan developed pursuant to subpart 1 of part B [this subpart], or a State plan approved under subpart 2 of part B [subpart 2 of this part] or part E [part E of this subchapter], of title IV of the Social Security Act to meet the additional requirements imposed by the amendments made by this Act, the plan shall not be regarded as failing to meet any of the additional requirements before the 1st day of the 1st calendar quarter beginning after the first regular session of the State legislature that begins after the date of the enactment of this Act [Sept. 28, 2006]. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

''(c) AVAILABILITY OF PROMOTING SAFE AND STABLE FAMILIES RESOURCES FOR FISCAL YEAR 2006.—Section 3(c) [120 Stat. 1235] shall take effect on the date of the enactment of this Act [Sept. 28, 2006].''

EFFECTIVE DATE

Pub. L. 90–248, title II, § 240(e)(2), Jan. 2, 1968, 81 Stat. 915, provided that: ''Part B of title IV of the Social Security Act (as added by subsection (c) of this section) [this part], and the amendments made by subsections (a) and (b) of this section [amending subchapter IV and enacting part A heading] shall become effective on the date this Act is enacted [Jan. 2, 1968].''

FINDINGS

Pub. L. 109–288, § 2, Sept. 28, 2006, 120 Stat. 1233, provided that: ''The Congress finds as follows:

''(1) For Federal fiscal year 2004, child protective services (CPS) staff nationwide reported investigating or assessing an estimated 3,000,000 allegations of child maltreatment, and determined that 872,000 children had been abused or neglected by their parents or other caregivers.

''(2) Combined, the Child Welfare Services (CWS) and Promoting Safe and Stable Families (PSSF) programs provide States about $700,000,000 per year, the largest source of targeted Federal funding in the child protection system for services to ensure that children are not abused or neglected and, whenever possible, help children remain safely with their families.

''(3) A 2003 report by the Government Accountability Office (GAO) reported that little research is available on the effectiveness of activities supported by CWS funds—evaluations of services supported by PSSF funds have generally shown little or no effect.

''(4) Further, the Department of Health and Human Services recently completed initial Child and Family Service Reviews (CFSRs) in each State. No State was in full compliance with all measures of the CFSRs. The CFSRs also revealed that States need to work to prevent repeat abuse and neglect of children, improve services provided to families to reduce the risk of future harm (including by better monitoring the participation of families in services), and strengthen upfront services provided to families to prevent unnecessary family break-up and protect children who remain at home.

''(5) Federal policy should encourage States to invest their CWS and PSSF funds in services that promote and protect the welfare of children, support strong, healthy families, and reduce the reliance on out-of-home care, which will help ensure all children are raised in safe, loving families.

''(6) CFSRs also found a strong correlation between frequent caseworker visits with children and positive outcomes for these children, such as timely achievement of permanency and other indicators of child well-being.

''(7) However, a December 2005 report by the Department of Health and Human Services Office of Inspector General found that only 20 States were able to produce reports to show whether caseworkers actually visited children in foster care on at least a monthly basis, despite the fact that nearly all States had written standards suggesting monthly visits were State policy.

''(8) A 2003 GAO report found that the average tenure for a child welfare caseworker is less than 2 years and this level of turnover negatively affects safety and permanency for children.

''(9) Targeting CWS and PSSF funds to ensure children in foster care are visited on at least a monthly basis will promote better outcomes for vulnerable children, including by preventing further abuse and neglect.

''(10) According to the Office of Applied Studies of the Substance Abuse and Mental Health Services Administration, the annual number of new uses of Methamphetamine, also known as 'meth,' has increased 72 percent over the past decade. According to a study conducted by the National Association of Counties which surveyed 500 county law enforcement agencies in 45 states, 88 percent of the agencies surveyed reported increases in meth related arrests starting 5 years ago.

''(11) According to the 2004 National Survey on Drug Use and Health, nearly 12,000,000 Americans have tried methamphetamine. Meth making operations have been uncovered in all 50 states, but the most wide-spread abuse has been concentrated in the western, southwestern, and Midwestern United States.

''(12) Methamphetamine abuse is on the increase, particularly among women of child-bearing age. This is having an impact on child welfare systems in many States. According to a survey administered by the National Association of Counties ('The Impact of Meth on Children'), conducted in 300 counties in 13 states, meth is a major cause of child abuse and neglect. Forty percent of all the child welfare officials in the survey reported an increase in out-of-home placements because of meth in 2005.

''(13) It is appropriate also to target PSSF funds to address this issue because of the unique strain the meth epidemic puts on child welfare agencies. Outcomes for children affected by meth are enhanced when services provided by law enforcement, child welfare and substance abuse agencies are integrated.''

§ 622. State plans for child welfare services

(a) Joint development

In order to be eligible for payment under this subpart, a State must have a plan for child welfare services which has been developed jointly by the Secretary and the State agency designated pursuant to subsection (b)(1) of this section, and which meets the requirements of subsection (b) of this section.

(b) Requisite features of State plans

Each plan for child welfare services under this subpart shall—

(1) provide that (A) the individual or agency that administers or supervises the administration of the State's services program under subchapter XX of this chapter will administer or supervise the administration of the plan (except as otherwise provided in section 103(d) of the Adoption Assistance and Child Welfare Act of 1980), and (B) to the extent that child welfare services are furnished by the staff of the

State agency or local agency administering the plan, a single organizational unit in such State or local agency, as the case may be, will be responsible for furnishing such child welfare services;

(2) provide for coordination between the services provided for children under the plan and the services and assistance provided under subchapter XX of this chapter, under the State program funded under part A of this subchapter, under the State plan approved under subpart 2 of this part, under the State plan approved under the State plan approved[1] under part E of this subchapter, and under other State programs having a relationship to the program under this subpart, with a view to provision of welfare and related services which will best promote the welfare of such children and their families;

(3) include a description of the services and activities which the State will fund under the State program carried out pursuant to this subpart, and how the services and activities will achieve the purpose of this subpart;

(4) contain a description of—

(A) the steps the State will take to provide child welfare services statewide and to expand and strengthen the range of existing services and develop and implement services to improve child outcomes; and

(B) the child welfare services staff development and training plans of the State;

(5) provide, in the development of services for children, for utilization of the facilities and experience of voluntary agencies in accordance with State and local programs and arrangements, as authorized by the State;

(6) provide that the agency administering or supervising the administration of the plan will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require;

(7) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed;

(8) provide assurances that the State—

(A) is operating, to the satisfaction of the Secretary—

(i) a statewide information system from which can be readily determined the status, demographic characteristics, location, and goals for the placement of every child who is (or, within the immediately preceding 12 months, has been) in foster care;

(ii) a case review system (as defined in section 675(5) of this title) for each child receiving foster care under the supervision of the State;

(iii) a service program designed to help children—

(I) where safe and appropriate, return to families from which they have been removed; or

(II) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement, which may include a residential educational program; and

(iv) a preplacement preventive services program designed to help children at risk of foster care placement remain safely with their families; and

(B) has in effect policies and administrative and judicial procedures for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of the children) which enable permanent decisions to be made expeditiously with respect to the placement of the children;

(9) contain a description, developed after consultation with tribal organizations (as defined in section 450b of title 25) in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act [25 U.S.C. 1901 et seq.];

(10) contain assurances that the State shall make effective use of cross-jurisdictional resources (including through contracts for the purchase of services), and shall eliminate legal barriers, to facilitate timely adoptive or permanent placements for waiting children;

(11) contain a description of the activities that the State has undertaken for children adopted from other countries, including the provision of adoption and post-adoption services;

(12) provide that the State shall collect and report information on children who are adopted from other countries and who enter into State custody as a result of the disruption of a placement for adoption or the dissolution of an adoption, including the number of children, the agencies who handled the placement or adoption, the plans for the child, and the reasons for the disruption or dissolution;

(13) demonstrate substantial, ongoing, and meaningful collaboration with State courts in the development and implementation of the State plan under this subpart, the State plan approved under subpart 2, and the State plan approved under part E, and in the development and implementation of any program improvement plan required under section 1320a–2a of this title;

(14) not later than October 1, 2007, include assurances that not more than 10 percent of the expenditures of the State with respect to activities funded from amounts provided under this subpart will be for administrative costs;

(15) describe how the State actively consults with and involves physicians or other appropriate medical professionals in—

(A) assessing the health and well-being of children in foster care under the responsibility of the State; and

(B) determining appropriate medical treatment for the children;

(16) provide that, not later than 1 year after September 28, 2006, the State shall have in place procedures providing for how the State programs assisted under this subpart, subpart

[1] So in original.

2 of this part, or part E would respond to a disaster, in accordance with criteria established by the Secretary which should include how a State would—

(A) identify, locate, and continue availability of services for children under State care or supervision who are displaced or adversely affected by a disaster;

(B) respond, as appropriate, to new child welfare cases in areas adversely affected by a disaster, and provide services in those cases;

(C) remain in communication with caseworkers and other essential child welfare personnel who are displaced because of a disaster;

(D) preserve essential program records; and

(E) coordinate services and share information with other States; and

(17) not later than October 1, 2007, describe the State standards for the content and frequency of caseworker visits for children who are in foster care under the responsibility of the State, which, at a minimum, ensure that the children are visited on a monthly basis and that the caseworker visits are well-planned and focused on issues pertinent to case planning and service delivery to ensure the safety, permanency, and well-being of the children.

(c) Definitions

In this subpart:

(1) Administrative costs

The term ''administrative costs'' means costs for the following, but only to the extent incurred in administering the State plan developed pursuant to this subpart: procurement, payroll management, personnel functions (other than the portion of the salaries of supervisors attributable to time spent directly supervising the provision of services by caseworkers), management, maintenance and operation of space and property, data processing and computer services, accounting, budgeting, auditing, and travel expenses (except those related to the provision of services by caseworkers or the oversight of programs funded under this subpart).

(2) Other terms

For definitions of other terms used in this part, see section 675 of this title.

(Aug. 14, 1935, ch. 531, title IV, §422, as added and amended Pub. L. 90–248, title II, §240(c), (d), Jan. 2, 1968, 81 Stat. 912, 915; Pub. L. 93–647, §3(a)(6), (7), (h), Jan. 4, 1975, 88 Stat. 2348, 2349; Pub. L. 96–272, title I, §103(a), June 17, 1980, 94 Stat. 517; Pub. L. 101–239, title X, §10403(b)(1), Dec. 19, 1989, 103 Stat. 2488; Pub. L. 103–66, title XIII, §13711(b)(1), Aug. 10, 1993, 107 Stat. 655; Pub. L. 103–382, title V, §554, Oct. 20, 1994, 108 Stat. 4057; Pub. L. 103–432, title II, §§202(a), 204(a), Oct. 31, 1994, 108 Stat. 4453, 4456; Pub. L. 104–193, title I, §108(b), Aug. 22, 1996, 110 Stat. 2165; Pub. L. 105–33, title V, §5592(a)(1)(A), (2), Aug. 5, 1997, 111 Stat. 644; Pub. L. 105–89, title I, §102(1), title II, §202(a), Nov. 19, 1997, 111 Stat. 2117, 2125; Pub. L. 105–200, title IV, §410(b), July 16, 1998, 112 Stat. 673; Pub. L. 106–279, title II, §205, Oct. 6, 2000, 114 Stat. 837; Pub. L. 109–171, title VII, §7401(b), Feb. 8, 2006, 120 Stat. 150; Pub. L. 109–239, §13, July 3, 2006, 120 Stat. 514; Pub. L. 109–288, §§6(c), 7(a), Sept. 28, 2006, 120 Stat. 1244, 1248.)

REFERENCES IN TEXT

Section 103(d) of the Adoption Assistance and Child Welfare Act of 1980, referred to in subsec. (b)(1), is section 103(d) of Pub. L. 96–272, which is set out as a note below.

Parts A and E of this subchapter, referred to in subsec. (b)(2), (13), (16), are classified to sections 601 et seq. and 670 et seq. of this title.

The Indian Child Welfare Act, referred to in subsec. (b)(9), probably means the Indian Child Welfare Act of 1978, Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§1901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 25 and Tables.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–288, §6(c)(1)(A), added par. (3) and struck out former par. (3) which read as follows: ''provide that the standards and requirements imposed with respect to child day care under subchapter XX of this chapter shall apply with respect to day care services under this subpart, except insofar as eligibility for such services is involved;''.

Subsec. (b)(4). Pub. L. 109–288, §6(c)(1)(A), (B), added par. (4) and struck out former par. (4) which read as follows: ''provide for the training and effective use of paid paraprofessional staff, with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan, and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency;''.

Subsec. (b)(5). Pub. L. 109–288, §6(c)(1)(A), (C), redesignated par. (7) as (5) and struck out former par. (5) which read as follows: ''contain a description of the services to be provided and specify the geographic areas where such services will be available;''.

Subsec. (b)(6). Pub. L. 109–288, §6(c)(1)(B), (C), redesignated par. (8) as (6) and struck out former par. (6) which read as follows: ''contain a description of the steps which the State will take to provide child welfare services and to make progress in—

''(A) covering additional political subdivisions,

''(B) reaching additional children in need of services, and

''(C) expanding and strengthening the range of existing services and developing new types of services, along with a description of the State's child welfare services staff development and training plans;''.

Subsec. (b)(7). Pub. L. 109–288, §6(c)(1)(C), redesignated par. (9) as (7). Former par. (7) redesignated (5).

Subsec. (b)(8), (9). Pub. L. 109–288, §6(c)(1)(G), redesignated pars. (10) and (11) as (8) and (9), respectively. Former pars. (8) and (9) redesignated (6) and (7), respectively.

Subsec. (b)(10). Pub. L. 109–288, §6(c)(1)(G), redesignated par. (12) as (10). Former par. (10) redesignated (8).

Subsec. (b)(10)(A). Pub. L. 109–288, §6(c)(1)(D)(i), (iii), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''since June 17, 1980, has completed an inventory of all children who, before the inventory, had been in foster care under the responsibility of the State for 6 months or more, which determined—

''(i) the appropriateness of, and necessity for, the foster care placement;

''(ii) whether the child could or should be returned to the parents of the child or should be freed for adoption or other permanent placement; and

''(iii) the services necessary to facilitate the return of the child or the placement of the child for adoption or legal guardianship;''.

Subsec. (b)(10)(B). Pub. L. 109–288, § 6(c)(1)(D)(iv), added subpar. (B). Former subpar. (B) redesignated (A).

Subsec. (b)(10)(B)(iii)(II). Pub. L. 109–288, § 6(c)(1)(D)(ii), inserted ", which may include a residential educational program" after "in some other planned, permanent living arrangement".

Subsec. (b)(10)(C). Pub. L. 109–288, § 6(c)(1)(D)(iv), struck out subpar. (C) which read as follows:

"(i) has reviewed (or within 12 months after October 31, 1994, will review) State policies and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of such children); and

"(ii) is implementing (or within 24 months after October 31, 1994, will implement) such policies and procedures as the State determines, on the basis of the review described in clause (i), to be necessary to enable permanent decisions to be made expeditiously with respect to the placement of such children;".

Subsec. (b)(11). Pub. L. 109–288, § 6(c)(1)(G), redesignated par. (13) as (11). Former par. (11) redesignated (9).

Subsec. (b)(12). Pub. L. 109–288, § 6(c)(1)(G), redesignated par. (14) as (12). Former par. (12) redesignated (10).

Pub. L. 109–239 substituted "make" for "develop plans for the" and inserted "(including through contracts for the purchase of services), and shall eliminate legal barriers," after "resources".

Subsec. (b)(13). Pub. L. 109–288, § 6(c)(1)(G), redesignated par. (15) as (13). Former par. (13) redesignated (11).

Subsec. (b)(14). Pub. L. 109–288, § 6(c)(1)(E), (F), (H), added par. (14). Former par. (14) redesignated (12).

Subsec. (b)(15). Pub. L. 109–288, § 6(c)(1)(E), (F), (H), added par. (15). Former par. (15) redesignated (13).

Pub. L. 109–171 added par. (15).

Subsec. (b)(16). Pub. L. 109–288, § 6(c)(1)(E), (F), (H), added par. (16).

Subsec. (b)(17). Pub. L. 109–288, § 7(a), added par. (17).

Subsec. (c). Pub. L. 109–288, § 6(c)(2), added subsec. (c).

2000—Subsec. (b)(13), (14). Pub. L. 106–279 added pars. (13) and (14).

1998—Subsec. (b)(2). Pub. L. 105–200 struck out "under" before "the State plan approved under part E of this subchapter".

1997—Subsec. (b)(9). Pub. L. 105–33, § 5592(a)(2), made technical amendment to directory language of Pub. L. 103–432, § 204(a)(2). See 1994 Amendment note below.

Pub. L. 105–33, § 5592(a)(1)(A)(iii), redesignated par. (9), relating to providing assurances that the State has met certain requirements to protect foster children, as (10).

Pub. L. 105–33, § 5592(a)(1)(A)(i), amended par. (9) relating to diligent recruitment of potential foster and adoptive families by substituting a semicolon for period at end.

Subsec. (b)(10). Pub. L. 105–33, § 5592(a)(1)(A)(iii), redesignated par. (9), relating to providing assurances that the State has met certain requirements to protect foster children, as (10). Former par. (10) redesignated (11).

Subsec. (b)(10)(B). Pub. L. 105–89, § 102(1), in cl. (iii)(I) inserted "safe and" after "where" and in cl. (iv) inserted "safely" after "remain".

Subsec. (b)(11). Pub. L. 105–33, § 5592(a)(1)(A)(ii), redesignated par. (10) as (11).

Subsec. (b)(12). Pub. L. 105–89, § 202(a), added par. (12).

1996—Subsec. (b)(2). Pub. L. 104–193 substituted "program funded under part A of this subchapter" for "plan approved under part A of this subchapter" and "under the State plan approved under part E of this subchapter" for "part E of this subchapter".

1994—Subsec. (b)(7). Pub. L. 103–432, § 202(a)(1), which directed amendment of par. (7) by striking out "and" at end, could not be executed because "and" did not appear at end subsequent to amendment by Pub. L. 103–382, § 554(1). See below.

Pub. L. 103–382, § 554(1), struck out "and" at end.

Subsec. (b)(8). Pub. L. 103–432, § 204(a)(1), struck out "and" at end.

Pub. L. 103–432, § 202(a)(2), which directed amendment of par. (8) by substituting "; and" for period at end, could not be executed because there was no period at end subsequent to amendment by Pub. L. 103–382, § 554(2). See below.

Pub. L. 103–382, § 554(2), substituted "; and" for period at end.

Subsec. (b)(9). Pub. L. 103–432, § 204(a)(2), as amended by Pub. L. 105–33, § 5592(a)(2), substituted "; and" for period at end of par. (9) relating to providing assurances that the State has met certain requirements to protect foster children.

Pub. L. 103–432, § 202(a)(3), added par. (9) relating to providing assurances that the State has met certain requirements to protect foster children.

Pub. L. 103–382, § 554(3), added par. (9) relating to diligent recruitment of potential foster and adoptive families.

Subsec. (b)(10). Pub. L. 103–432, § 204(a)(3), added par. (10).

1993—Subsec. (a). Pub. L. 103–66, § 13711(b)(1)(A), substituted "under this subpart" for "under this part".

Subsec. (b). Pub. L. 103–66, § 13711(b)(1)(B), substituted "this subpart" for "this part" in introductory provisions.

Subsec. (b)(2). Pub. L. 103–66, § 13711(b)(1)(B), (C), inserted "under the State plan approved under subpart 2 of this part," after "part A of this subchapter," and substituted "under this subpart" for "under this part".

Subsec. (b)(3). Pub. L. 103–66, § 13711(b)(1)(B), substituted "under this subpart" for "under this part".

1989—Subsec. (b)(1)(A). Pub. L. 101–239 substituted "the individual or agency that administers or supervises the administration of the State's services program under subchapter XX of this chapter" for "the individual or agency designated pursuant to section 1397b(d)(1)(C) of this title to administer or supervise the administration of the State's services program".

1980—Pub. L. 96–272 substituted provisions relating to State plans covering child welfare services for provisions relating to the payments to States and the computation of amounts.

1975—Subsec. (a)(1)(A)(i). Pub. L. 93–647, § 3(a)(6), substituted "the individual or agency designated pursuant to section 1397b(d)(1)(C) of this title to administer or supervise the administration of the State's services program" for "the State agency designated pursuant to section 602(a)(3) of this title to administer or supervise the administration of the plan of the State approved under part A of this subchapter".

Subsec. (a)(i)(A)(ii). Pub. L. 93–647, § 3(a)(7), substituted "a single organizational unit in such State or local agency, as the case may be," for "the organizational unit in such State or local agency established pursuant to section 602(a)(15) of this title".

Subsec. (c). Pub. L. 93–647, § 3(h), added subsec. (c).

1968—Subsec. (a)(1). Pub. L. 90–248, § 240(d), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

Pub. L. 109–239, § 14, July 3, 2006, 120 Stat. 514, provided that:

"(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this Act [enacting section 673c of this title, amending this section and sections 629h, 671, and 675 of this title, and repealing section 673c of this title] shall take effect on October 1, 2006, and shall apply to payments under parts B and E of title IV of the Social Security Act [this part and part E of this subchapter] for calendar quarters beginning on or after such date, without regard to whether

regulations to implement the amendments are promulgated by such date.

''(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under part B or E of title IV of the Social Security Act to meet the additional requirements imposed by the amendments made by a provision of this Act, the plan shall not be regarded as failing to meet any of the additional requirements before the 1st day of the 1st calendar quarter beginning after the first regular session of the State legislature that begins after the date of the enactment of this Act [July 3, 2006]. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.''

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–279 effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 501 of Pub. L. 105–89 provided that:

''(a) IN GENERAL.—Except as otherwise provided in this Act [enacting sections 673b, 678, and 679b of this title, amending this section, sections 603, 629, 629a, 629b, 653, 671 to 673, 674, 675, 677, and 1320a–9 of this title, and sections 645 and 901 of Title 2, The Congress, enacting provisions set out as notes under sections 613, 629a, 671, 673, 675, 679b, 1305, 1320a–9, 5111, and 5113 of this title, and amending provisions set out as a note under section 670 of this title], the amendments made by this Act take effect on the date of enactment of this Act [Nov. 19, 1997].

''(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—In the case of a State plan under part B or E of title IV of the Social Security Act [this part and part E of this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of the plan to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Nov. 19, 1997]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 5593 of title V of Pub. L. 105–33 provided that: ''The amendments made by this chapter [chapter 5 (§§ 5591–5593) of subtitle F of title V of Pub. L. 105–33, amending this section and sections 624, 625, 628b, 671, and 672 of this title] shall take effect as if included in the enactment of title V of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2277).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 202(e) of Pub. L. 103–432 provided that: ''The amendments and repeal made by this section [amending this section and sections 623 to 625 and 672 of this title and repealing section 627 of this title] shall be effective with respect to fiscal years beginning on or after April 1, 1996.''

Section 204(b) of Pub. L. 103–432 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to fiscal years beginning on or after October 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13711(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting sections 629 to 629e of this title and amending this section and sections 623, 628, and 671 of this title] shall be effective with respect to calendar quarters beginning on or after October 1, 1993.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10403(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if such amendment had been included in section 1883(e)(1) of the Tax Reform Act of 1986 [Pub. L. 99–514, amending section 1397b of this title] on the date of the enactment of such Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 3 of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, except that amendment by section 3(a) of Pub. L. 93–647 not effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT; DIFFERENT STATE AGENCIES FOR ADMINISTRATION OF STATE PLANS UNDER PARTS A AND B

Section 240(e)(3) of Pub. L. 90–248 provided that: ''The amendments made by paragraphs (1) and (2) of subsection (d) [amending this section] shall become effective July 1, 1969, except that (A) if on the date of enactment of this Act [Jan. 2, 1968] the agency of a State administering its plan for child-welfare services developed under part B of title IV of the Social Security Act [this part] is different from the agency of the State designated pursuant to section 402(a)(3) of such Act [section 602(a)(3) of this title], so much of paragraph (1) of section 422(a) of such Act [subsec. (a) of this section] as precedes subparagraph (B) (as added by paragraph (2) of such subsection (d)) shall not apply with respect to such agencies but only so long as such agencies of the State are different, and (B) if on such date the local agency administering the plan of a State for child-welfare services developed under part B of title IV of the Social Security Act [this part] is different from the local agency in such subdivision administering the plan of such State under part A of title IV of such Act [part A of this subchapter], so much of such paragraph (1) as precedes such subparagraph (B) shall not apply with respect to such local agencies but only so long as such local agencies are different.''

FINDINGS AND PURPOSE

Section 552 of Pub. L. 103–382 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) nearly 500,000 children are in foster care in the United States;

''(2) tens of thousands of children in foster care are waiting for adoption;

''(3) 2 years and 8 months is the median length of time that children wait to be adopted;

''(4) child welfare agencies should work to eliminate racial, ethnic, and national origin discrimination and bias in adoption and foster care recruitment, selection, and placement procedures; and

''(5) active, creative, and diligent efforts are needed to recruit foster and adoptive parents of every race, ethnicity, and culture in order to facilitate the placement of children in foster and adoptive homes which will best meet each child's needs.

''(b) PURPOSE.—It is the purpose of this subpart [subpart 1 of part E of title V of Pub. L. 103–382, enacting section 5115a of this title, amending this section, and enacting provisions set out as a note under section 1305 of this title] to promote the best interests of children by—

''(1) decreasing the length of time that children wait to be adopted;

''(2) preventing discrimination in the placement of children on the basis of race, color, or national origin; and

''(3) facilitating the identification and recruitment of foster and adoptive families that can meet children's needs.''

GUAM, PUERTO RICO, VIRGIN ISLANDS, AND COMMONWEALTH OF NORTHERN MARIANA ISLANDS

Section 103(c) of Pub. L. 96–272 provided that in the case of Guam, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, subsec. (b)(1) of this section (as otherwise amended by section 103(a) of Pub. L. 96–272), is deemed to read as follows:

''(1) provide that (A) the State agency designated pursuant to section 602(a)(3) of this title to administer or supervise the administration of the plan of the State approved under part A of this subchapter will administer or supervise the administration of such plan for child welfare services, and (B) to the extent that child welfare services are furnished by the staff of the State agency or local agency administering such plan for child welfare services, the organizational unit in such State or local agency established pursuant to section 602(a)(15) of this title will be responsible for furnishing such child welfare services;''.

ADMINISTRATION OF STATE PLAN FOR CHILD WELFARE SERVICES BY NON-DESIGNATED AGENCY

Section 103(d) of Pub. L. 96–272 provided that: ''Notwithstanding section 422(b)(1) of the Social Security Act (as amended by subsection (a) of this section) [subsec. (b)(1) of this section] if on December 1, 1974, the agency of a State administering its plan for child welfare services under part B of title IV of that Act [this part] was not the agency designated pursuant to section 402(a)(3) of that Act [section 602(a)(3) of this title], such section 422(b)(1) shall not apply with respect to such agency, but only so long as such agency is not the agency designated under section 2003(d)(1)(C) of that Act [section 1397b(d)(1)(C) of this title]; and if on December 1, 1974, the local agency administering the plan of a State under part B of title IV of that Act in a subdivision of the State was not the local agency in such subdivision administering the plan of such State under part A of that title [part A of this subchapter], such section 422(b)(1) shall not apply with respect to such local agency, but only so long as such local agency is not the local agency administering the program of the State for the provision of services under title XX of that Act [subchapter XX of this chapter].''

OVERPAYMENTS OR UNDERPAYMENTS

Section 240(f)(3) of Pub. L. 90–248 provided that in the case of any State which has a plan developed as provided in part 3 of this subchapter as in effect prior to Jan. 2, 1968, sections 721 to 728 of this title, ''any overpayment or underpayment which the Secretary determines was made to the State under section 523 of the Social Security Act [section 723 of this title] and with respect to which adjustment has not then already been made under subsection (b) of such section shall, for purposes of section 422 of such Act [this section], be considered an overpayment or underpayment (as the case may be) made under section 422 of such Act.''

§ 623. Allotments to States

(a) In general

The sum appropriated pursuant to section 625 of this title for each fiscal year shall be allotted by the Secretary for use by cooperating State public welfare agencies which have plans developed jointly by the State agency and the Secretary as follows: The Secretary shall first allot $70,000 to each State, and shall then allot to each State an amount which bears the same ratio to the remainder of such sum as the product of (1) the population of the State under the age of twenty-one and (2) the allotment percentage of the State (as determined under this section) bears to the sum of the corresponding products of all the States.

(b) Determination of State allotment percentages

The ''allotment percentage'' for any State shall be 100 percent less the State percentage; and the State percentage shall be the percentage which bears the same ratio to 50 percent as the per capita income of such State bears to the per capita income of the United States; except that (1) the allotment percentage shall in no case be less than 30 percent or more than 70 percent, and (2) the allotment percentage shall be 70 percent in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(c) Promulgation of State allotment percentages

The allotment percentage for each State shall be promulgated by the Secretary between October 1 and November 30 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning October 1 next succeeding such promulgation.

(d) United States defined

For purposes of this section, the term ''United States'' means the 50 States and the District of Columbia.

(e) Reallotment of funds

(1) In general

The amount of any allotment to a State for a fiscal year under the preceding provisions of this section which the State certifies to the Secretary will not be required for carrying out the State plan developed as provided in section 622 of this title shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines—

(A) need sums in excess of the amounts allotted to such other States under the preceding provisions of this section, in carrying out their State plans so developed; and

(B) will be able to so use such excess sums during the fiscal year.

(2) Considerations

The Secretary shall make the reallotments on the basis of the State plans so developed, after taking into consideration—

(A) the population under 21 years of age;

(B) the per capita income of each of such other States as compared with the population under 21 years of age; and

(C) the per capita income of all such other States with respect to which such a determination by the Secretary has been made.

(3) Amounts reallotted to a State deemed part of State allotment

Any amount so reallotted to a State is deemed part of the allotment of the State under this section.

(Aug. 14, 1935, ch. 531, title IV, § 423, formerly § 421, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 912; amended Pub. L. 96–272, title I, § 103(a), June 17, 1980, 94 Stat. 516; Pub. L. 100–203, title IX, § 9135(b)(2), Dec. 22, 1987, 101 Stat. 1330–315; renumbered § 423 and amended Pub. L. 109–288, §§ 6(b)(2), (d), 11(a)(1), Sept. 28, 2006, 120 Stat. 1244, 1246, 1255.)

CODIFICATION

Section was formerly classified to section 621 of this title prior to renumbering by Pub. L. 109–288.

PRIOR PROVISIONS

A prior section 623, act Aug. 14, 1935, ch. 531, title IV, § 423, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 913, and amended, which related to payment to States, was renumbered section 424 of act Aug. 14, 1935, by Pub. L. 109–288, § 6(b)(2), Sept. 28, 2006, 120 Stat. 1244, and transferred to section 624 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–288, § 11(a)(1)(B), substituted ''The Secretary'' for ''He''.

Pub. L. 109–288, § 6(d)(1), inserted heading and substituted ''section 625'' for ''section 620''.

Subsec. (b). Pub. L. 109–288, § 11(a)(1)(A), which directed amendment of section by substituting ''percent'' for ''per centum'', was executed by making the substitution wherever appearing in subsec. (b), to reflect the probable intent of Congress.

Pub. L. 109–288, § 6(d)(2), inserted heading.

Subsec. (c). Pub. L. 109–288, § 6(d)(3), inserted heading.

Subsec. (d). Pub. L. 109–288, § 6(d)(4), inserted heading and substituted ''50'' for ''fifty''.

Subsec. (e). Pub. L. 109–288, § 6(d)(5), added subsec. (e).

1987—Subsec. (b). Pub. L. 100–203 substituted ''Guam, and American Samoa'' for ''and Guam''.

1980—Pub. L. 96–272 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9135(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1301 and 1397b of this title] shall apply with respect to fiscal years beginning on or after October 1, 1988.''

§ 624. Payment to States

(a) Payment schedule

From the sums appropriated therefor and the allotment under this subpart, subject to the conditions set forth in this section, the Secretary shall from time to time pay to each State that has a plan developed in accordance with section 622 of this title an amount equal to 75 percent of the total sum expended under the plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child welfare services.

(b) Computation and method of payment

The method of computing and making payments under this section shall be as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of this section.

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such prior period under this section.

(c) Limitation on use of Federal funds for child care, foster care maintenance payments, or adoption assistance payments

The total amount of Federal payments under this subpart for a fiscal year beginning after September 30, 2007, that may be used by a State for expenditures for child care, foster care maintenance payments, or adoption assistance payments shall not exceed the total amount of such payments for fiscal year 2005 that were so used by the State.

(d) Limitation on use by States of non-Federal funds for foster care maintenance payments to match Federal funds

For any fiscal year beginning after September 30, 2007, State expenditures of non-Federal funds for foster care maintenance payments shall not be considered to be expenditures under the State plan developed under this subpart for the fiscal year to the extent that the total of such expenditures for the fiscal year exceeds the total of such expenditures under the State plan developed under this subpart for fiscal year 2005.

(e)[1] Limitation on reimbursement for administrative costs

A payment may not be made to a State under this section with respect to expenditures during a fiscal year for administrative costs, to the extent that the total amount of the expenditures exceeds 10 percent of the total expenditures of the State during the fiscal year for activities funded from amounts provided under this subpart.

(e)[1] Caseworker visitation standard

(1) The Secretary may not make a payment to a State under this subpart for a period in fiscal

[1] So in original. Two subsecs. (e) have been enacted.

year 2008, unless the State has provided to the Secretary data which shows, for fiscal year 2007—

(A) the percentage of children in foster care under the responsibility of the State who were visited on a monthly basis by the caseworker handling the case of the child; and

(B) the percentage of the visits that occurred in the residence of the child.

(2)(A) Based on the data provided by a State pursuant to paragraph (1), the Secretary, in consultation with the State, shall establish, not later than June 30, 2008, an outline of the steps to be taken to ensure, by October 1, 2011, that at least 90 percent of the children in foster care under the responsibility of the State are visited by their caseworkers on a monthly basis, and that the majority of the visits occur in the residence of the child. The outline shall include target percentages to be reached each fiscal year, and should include a description of how the steps will be implemented. The steps may include activities designed to improve caseworker retention, recruitment, training, and ability to access the benefits of technology.

(B) Beginning October 1, 2008, if the Secretary determines that a State has not made the requisite progress in meeting the goal described in subparagraph (A) of this paragraph, then the percentage that shall apply for purposes of subsection (a) of this section for the period involved shall be the percentage set forth in such subsection (a) reduced by—

(i) 1, if the number of full percentage points by which the State fell short of the target percentage established for the State for the period pursuant to such subparagraph is less than 10;

(ii) 3, if the number of full percentage points by which the State fell short, as described in clause (i), is not less than 10 and less than 20; or

(iii) 5, if the number of full percentage points by which the State fell short, as described in clause (i), is not less than 20.

(Aug. 14, 1935, ch. 531, title IV, § 424, formerly § 423, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 913; amended Pub. L. 94–273, § 22, Apr. 21, 1976, 90 Stat. 379; Pub. L. 96–272, title I, § 103(a), June 17, 1980, 94 Stat. 518; Pub. L. 103–66, title XIII, § 13711(b)(2), Aug. 10, 1993, 107 Stat. 655; Pub. L. 103–432, title II, § 202(d)(1), Oct. 31, 1994, 108 Stat. 4454; renumbered § 424 and amended Pub. L. 109–288, §§ 6(b)(2), (e)(1), (2)(A), 7(b), 11(a)(2), Sept. 28, 2006, 120 Stat. 1244, 1246–1248, 1255.)

CODIFICATION

Section was formerly classified to section 623 of this title prior to renumbering by Pub. L. 109–288.

PRIOR PROVISIONS

A prior section 624, act Aug. 14, 1935, ch. 531, title IV, § 424, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 914; amended Pub. L. 96–272, title I, § 103(a), June 17, 1980, 94 Stat. 519; Pub. L. 103–432, title II, § 202(b), Oct. 31, 1994, 108 Stat. 4454; Pub. L. 105–33, title V, § 5592(a)(1)(B), Aug. 5, 1997, 111 Stat. 644, related to reallotment, prior to repeal by Pub. L. 109–288, §§ 6(b)(1), 12(a), Sept. 28, 2006, 120 Stat. 1244, 1255, effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date. See section 623(e) of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–288, § 11(a)(2), substituted ''percent'' for ''per centum''.

Subsecs. (c), (d). Pub. L. 109–288, § 6(e)(1), added subsecs. (c) and (d) struck out former subsecs. (c) and (d) which related to prohibited payments and minimum State expenditures, respectively.

Subsec. (e). Pub. L. 109–288, § 7(b), added subsec. (e) relating to caseworker visitation standard.

Pub. L. 109–288, § 6(e)(2)(A), added subsec. (e) relating to limitation on reimbursement for administrative costs.

1994—Subsec. (a). Pub. L. 103–432 struck out ''and in section 627 of this title'' after ''set forth in this section''.

1993—Subsec. (a). Pub. L. 103–66 substituted ''under this subpart'' for ''under this part''.

1980—Pub. L. 96–272 substituted provisions covering payments to States for provisions relating to allotment percentages and Federal share.

1976—Subsec. (c). Pub. L. 94–273 substituted ''October'' for ''July'' wherever appearing and ''November 30'' for ''August 31''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–288, § 6(e)(2)(B), Sept. 28, 2006, 120 Stat. 1247, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to expenditures made on or after October 1, 2007.''

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, except as otherwise provided, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 622 of this title.

§ 625. Limitations on authorization of appropriations

To carry out this subpart, there are authorized to be appropriated to the Secretary not more than $325,000,000 for each of fiscal years 2007 through 2011.

(Aug. 14, 1935, ch. 531, title IV, § 425, as added Pub. L. 109–288, § 6(a), Sept. 28, 2006, 120 Stat. 1244.)

PRIOR PROVISIONS

A prior section 625, act Aug. 14, 1935, ch. 531, title IV, § 425, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 914; amended Pub. L. 96–272, title I, § 103(a), June 17, 1980, 94 Stat. 519; Pub. L. 103–432, title II, § 202(d)(2), Oct. 31, 1994, 108 Stat. 4454; Pub. L. 105–33, title V, § 5592(a)(1)(B), Aug. 5, 1997, 111 Stat. 644, defined terms for purposes of this subchapter, prior to repeal by Pub. L. 109–288, §§ 6(a), 12(a), Sept. 28, 2006, 120 Stat. 1244, 1255, effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date.

EFFECTIVE DATE

Section effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as an Effective Date of 2006 Amendment note under section 621 of this title.

§ 626. Research, training, or demonstration projects

(a) Authorization of appropriations

There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) for grants by the Secretary—

(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services; and

(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships described in section 628a[1] of this title with such stipends and allowances as may be permitted by the Secretary; and

(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.

(b) Payments; advances or reimbursements; installments; conditions

Payments of grants or under contracts or cooperative arrangements under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants, contracts, or other arrangements.

(c) Child welfare traineeships

The Secretary may approve an application for a grant to a public or nonprofit institution for higher learning to provide traineeships with stipends under subsection (a)(1)(C) only if the application—

(1) provides assurances that each individual who receives a stipend with such traineeship (in this section referred to as a ''recipient'') will enter into an agreement with the institution under which the recipient agrees—

(A) to participate in training at a public or private nonprofit child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship;

(B) to be employed for a period of years equivalent to the period of the traineeship, in a public or private nonprofit child welfare agency in any State, within a period of time (determined by the Secretary in accordance with regulations) after completing the post-secondary education for which the traineeship was awarded;

(C) to furnish to the institution and the Secretary evidence of compliance with subparagraphs (A) and (B); and

(D) if the recipient fails to comply with subparagraph (A) or (B) and does not qualify for any exception to this subparagraph which the Secretary may prescribe in regulations, to repay to the Secretary all (or an appropriately prorated part) of the amount of the stipend, plus interest, and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary);

(2) provides assurances that the institution will—

(A) enter into agreements with child welfare agencies for onsite training of recipients;

(B) permit an individual who is employed in the field of child welfare services to apply for a traineeship with a stipend if the traineeship furthers the progress of the individual toward the completion of degree requirements; and

(C) develop and implement a system that, for the 3-year period that begins on the date any recipient completes a child welfare services program of study, tracks the employment record of the recipient, for the purpose of determining the percentage of recipients who secure employment in the field of child welfare services and remain employed in the field.

(Aug. 14, 1935, ch. 531, title IV, § 426, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 915; amended Pub. L. 100–203, title IX, § 9137, Dec. 22, 1987, 101 Stat. 1330–319; Pub. L. 103–432, title II, § 205(b), Oct. 31, 1994, 108 Stat. 4457; Pub. L. 109–288, §§ 6(f)(2), 11(b), Sept. 28, 2006, 120 Stat. 1247, 1255.)

REFERENCES IN TEXT

Section 628a of this title, referred to in subsec. (a)(1)(C), was transferred and redesignated as subsec. (c) of this section by Pub. L. 109–288, § 6(f)(2), Sept. 28, 2006, 120 Stat. 1247.

CODIFICATION

Section 628a of this title, which was transferred and redesignated as subsec. (c) of this section by Pub. L. 109–288, was based on act Aug. 14, 1935, ch. 531, title IV, § 429, as added Pub. L. 103–432, title II, § 205(a), Oct. 31, 1994, 108 Stat. 4456.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–288, § 11(b), redesignated subsec. (c) as (b) and struck out former subsec. (b)

[1] See References in Text note below.

which related to appropriations for demonstration projects for development of alternate care arrangements for infants not requiring hospitalization.

Subsec. (c). Pub. L. 109–288, § 6(f)(2), amended section as amended by Pub. L. 109–288, § 11(b), by transferring section 628a of this title and redesignating it as subsec. (c) of this section. See Codification note above.

Pub. L. 109–288, § 11(b), redesignated subsec. (c) as (b).

1994—Subsec. (a)(1)(C). Pub. L. 103–432 inserted ''described in section 628a of this title'' after ''including traineeships''.

1987—Subsecs. (b), (c). Pub. L. 100–203 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 205(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [enacting section 628a of this title and amending this section] shall apply to grants awarded on or after October 1, 1995.''

APPROPRIATIONS OR GRANTS

Section 240(g) of Pub. L. 90–248 provided that any appropriations or grants made pursuant to section 726 of this title, as in effect prior to Jan. 2, 1968, were to be deemed to have been appropriated or made under this section.

§ 627. Repealed. Pub. L. 103–432, title II, § 202(c), Oct. 31, 1994, 108 Stat. 4454

Section, act Aug. 14, 1935, ch. 531, title IV, § 427, as added June 17, 1980, Pub. L. 96–272, title I, § 103(b), 94 Stat. 519; amended Dec. 19, 1989, Pub. L. 101–239, title X, § 10401(a), 103 Stat. 2487, related to foster care protection required for additional payments.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as an Effective Date of 1994 Amendment note under section 622 of this title.

§ 628. Payments to Indian tribal organizations

(a) Amounts

The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this subpart directly to an Indian tribal organization within any State which has a plan for child welfare services approved under this subpart. Such payments shall be made in such manner and in such amounts as the Secretary determines to be appropriate.

(b) Inclusion in State allotment

Amounts paid under subsection (a) of this section shall be deemed to be a part of the allotment (as determined under section 623 of this title) for the State in which such Indian tribal organization is located.

(c) "Indian tribe" and "tribal organization" defined

For purposes of this section, the terms ''Indian tribe'' and ''tribal organization'' shall have the meanings given such terms by subsections (e) and (*l*) of section 450b of title 25, respectively.

(Aug. 14, 1935, ch. 531, title IV, § 428, as added Pub. L. 96–272, title I, § 103(b), June 17, 1980, 94 Stat. 520; amended Pub. L. 103–66, title XIII, § 13711(b)(3), Aug. 10, 1993, 107 Stat. 655; Pub. L. 104–193, title III, § 375(d), Aug. 22, 1996, 110 Stat. 2257; Pub. L. 109–288, § 6(f)(1), Sept. 28, 2006, 120 Stat. 1247.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–288 substituted ''section 623'' for ''section 621''.

1996—Subsec. (c). Pub. L. 104–193 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For purposes of this section—

''(1) the term 'tribal organization' means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body; and

''(2) the term 'Indian tribe' means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92–203; 85 Stat. 688)) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.''

1993—Subsec. (a). Pub. L. 103–66 substituted ''under this subpart'' for ''under this part'' in two places.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 622 of this title.

§ 628a. Transferred

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title IV, § 429, as added Pub. L. 103–432, title II, § 205(a), Oct. 31, 1994, 108 Stat. 4456, which related to child welfare traineeships, was redesignated section 426(c) of act Aug. 14, 1935, by Pub. L. 109–288, § 6(f)(2), Sept. 28, 2006, 120 Stat. 1247, and is classified to section 626(c) of this title.

§ 628b. National random sample study of child welfare

(a) In general

The Secretary shall conduct (directly, or by grant, contract, or interagency agreement) a national study based on random samples of children who are at risk of child abuse or neglect, or are determined by States to have been abused or neglected.

(b) Requirements

The study required by subsection (a) of this section shall—

(1) have a longitudinal component; and

(2) yield data reliable at the State level for as many States as the Secretary determines is feasible.

(c) Preferred contents

In conducting the study required by subsection (a) of this section, the Secretary should—

(1) carefully consider selecting the sample from cases of confirmed abuse or neglect; and

(2) follow each case for several years while obtaining information on, among other things—

(A) the type of abuse or neglect involved;

(B) the frequency of contact with State or local agencies;

(C) whether the child involved has been separated from the family, and, if so, under what circumstances;

(D) the number, type, and characteristics of out-of-home placements of the child; and

(E) the average duration of each placement.

(d) Reports

(1) In general

From time to time, the Secretary shall prepare reports summarizing the results of the study required by subsection (a) of this section.

(2) Availability

The Secretary shall make available to the public any report prepared under paragraph (1), in writing or in the form of an electronic data tape.

(3) Authority to charge fee

The Secretary may charge and collect a fee for the furnishing of reports under paragraph (2).

(e) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary for each of fiscal years 1996 through 2002 $6,000,000 to carry out this section.

(Aug. 14, 1935, ch. 531, title IV, § 429, formerly § 429A, as added Pub. L. 104–193, title V, § 503, Aug. 22, 1996, 110 Stat. 2277; amended Pub. L. 105–33, title V, §§ 5591(a), 5592(a)(1)(C), Aug. 5, 1997, 111 Stat. 643, 644; renumbered § 429, Pub. L. 109–288, § 6(f)(3), Sept. 28, 2006, 120 Stat. 1247.)

PRIOR PROVISIONS

A prior section 429 of act Aug. 14, 1935, was renumbered section 426(c) and is classified to section 626(c) of this title.

AMENDMENTS

1997—Pub. L. 105–33, § 5592(a)(1)(C), transferred section in original to end of this subpart.

Subsec. (a). Pub. L. 105–33, § 5591(a), inserted ''(directly, or by grant, contract, or interagency agreement)'' after ''conduct''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title V of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5593 of Pub. L. 105–33, set out as a note under section 622 of this title.

SUBPART 2—PROMOTING SAFE AND STABLE FAMILIES

§ 629. Purpose

The purpose of this program is to enable States to develop and establish, or expand, and to operate coordinated programs of community-based family support services, family preservation services, time-limited family reunification services, and adoption promotion and support services to accomplish the following objectives:

(1) To prevent child maltreatment among families at risk through the provision of supportive family services.

(2) To assure children's safety within the home and preserve intact families in which children have been maltreated, when the family's problems can be addressed effectively.

(3) To address the problems of families whose children have been placed in foster care so that reunification may occur in a safe and stable manner in accordance with the Adoption and Safe Families Act of 1997.

(4) To support adoptive families by providing support services as necessary so that they can make a lifetime commitment to their children.

(Aug. 14, 1935, ch. 531, title IV, § 430, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 649; amended Pub. L. 105–89, title III, § 305(a)(1), (2), (b)(3)(A), Nov. 19, 1997, 111 Stat. 2130, 2131; Pub. L. 107–133, title I, § 101, Jan. 17, 2002, 115 Stat. 2414; Pub. L. 109–288, § 3(d), Sept. 28, 2006, 120 Stat. 1235.)

REFERENCES IN TEXT

The Adoption and Safe Families Act of 1997, referred to in par. (3), is Pub. L. 105–89, Nov. 19, 1997, 111 Stat. 2115, as amended. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 430 of act Aug. 14, 1935, was classified to section 630 of this title prior to repeal by Pub. L. 100–485, title II, § 202(a), Oct. 13, 1988, 102 Stat. 2377.

AMENDMENTS

2006—Pub. L. 109–288 substituted ''Purpose'' for ''Findings and purpose'' in section catchline, struck out subsec. (a) relating to findings, and struck out subsec. (b) designation and heading before ''The purpose''.

2002—Pub. L. 107–133 amended section generally, substituting subsecs. (a) and (b) relating to findings and purpose for former subsecs. (a) to (d) relating to purposes, limitations on authorizations of appropriations, description of amounts, inflation percentage, and reservation of certain amounts.

1997—Subsec. (a). Pub. L. 105–89, § 305(b)(3)(A), substituted '', community-based family support services, time-limited family reunification services, and adoption promotion and support services'' for ''and community-based family support services''.

Subsec. (b)(6) to (8). Pub. L. 105–89, § 305(a)(1), added pars. (6) to (8).

Subsec. (d). Pub. L. 105–89, § 305(a)(2), substituted ''1998, 1999, 2000, and 2001'' for ''and 1998'' in pars. (1) and (2).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether imple-

menting regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–133, title III, § 301, Jan. 17, 2002, 115 Stat. 2425, provided that:

''(a) IN GENERAL.—Subject to subsection (b), the amendments made by this Act [enacting sections 629f to 629i of this title and amending this section and sections 629a, 629c, 629d, 629e, 674, and 677 of this title] shall take effect on the date of the enactment of this Act [Jan. 17, 2002].

''(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—In the case of a State plan under subpart 2 of part B or part E of the Social Security Act [probably means subpart 2 of part B or part E of title IV of the Social Security Act (this subpart and part E of this subchapter)] that the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments specified in subsection (a) of this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of the plan to meet the additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Jan. 17, 2001]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be deemed to be a separate regular session of the State legislature.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

EFFECTIVE DATE

Subpart effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 622 of this title.

§ 629a. Definitions

(a) In general

As used in this subpart:

(1) Family preservation services

The term ''family preservation services'' means services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including—

(A) service programs designed to help children—

(i) where safe and appropriate, return to families from which they have been removed; or

(ii) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be safe and appropriate for a child, in some other planned, permanent living arrangement;

(B) preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain safely with their families;

(C) service programs designed to provide followup care to families to whom a child has been returned after a foster care placement;

(D) respite care of children to provide temporary relief for parents and other caregivers (including foster parents);

(E) services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition; and

(F) infant safe haven programs to provide a way for a parent to safely relinquish a newborn infant at a safe haven designated pursuant to a State law.

(2) Family support services

The term ''family support services'' means community-based services to promote the safety and well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a safe, stable, and supportive family environment, to strengthen parental relationships and promote healthy marriages, and otherwise to enhance child development.

(3) State agency

The term ''State agency'' means the State agency responsible for administering the program under subpart 1.

(4) State

The term ''State'' includes an Indian tribe or tribal organization, in addition to the meaning given such term for purposes of subpart 1.

(5) Tribal organization

The term ''tribal organization'' means the recognized governing body of any Indian tribe.

(6) Indian tribe

The term ''Indian tribe'' means any Indian tribe (as defined in section 682(i)(5) of this title, as in effect before August 22, 1996) and any Alaska Native organization (as defined in section 682(i)(7)(A) of this title, as so in effect).

(7) Time-limited family reunification services

(A) In general

The term ''time-limited family reunification services'' means the services and activities described in subparagraph (B) that are provided to a child that is removed from the child's home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15-month period that begins on the date that the child, pursuant to section 675(5)(F) of this title, is considered to have entered foster care.

(B) Services and activities described

The services and activities described in this subparagraph are the following:

(i) Individual, group, and family counseling.

(ii) Inpatient, residential, or outpatient substance abuse treatment services.

(iii) Mental health services.

(iv) Assistance to address domestic violence.

(v) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries.

(vi) Transportation to or from any of the services and activities described in this subparagraph.

(8) Adoption promotion and support services

The term ''adoption promotion and support services'' means services and activities designed to encourage more adoptions out of the foster care system, when adoptions promote the best interests of children, including such activities as pre- and post-adoptive services and activities designed to expedite the adoption process and support adoptive families.

(9) Non-Federal funds

The term ''non-Federal funds'' means State funds, or at the option of a State, State and local funds.

(b) Other terms

For other definitions of other terms used in this subpart, see section 675 of this title.

(Aug. 14, 1935, ch. 531, title IV, § 431, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 650; amended Pub. L. 105–89, title III, § 305(b)(2), (c)(2), (d)(1), Nov. 19, 1997, 111 Stat. 2131, 2132; Pub. L. 106–169, title IV, § 401(e), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 107–133, title I, § 102, Jan. 17, 2002, 115 Stat. 2415; Pub. L. 109–288, § 11(c), Sept. 28, 2006, 120 Stat. 1255.)

REFERENCES IN TEXT

Section 682 of this title, referred to in subsec. (a)(6), was repealed by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167.

PRIOR PROVISIONS

A prior section 431 of act Aug. 14, 1935, was classified to section 631 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2006—Subsec. (a)(6). Pub. L. 109–288 substituted ''1996'' for ''1986''.

2002—Subsec. (a)(1)(F). Pub. L. 107–133, § 102(a), added subpar. (F).

Subsec. (a)(2). Pub. L. 107–133, § 102(b), inserted ''to strengthen parental relationships and promote healthy marriages,'' after ''environment,''.

1999—Subsec. (a)(6). Pub. L. 106–169 inserted '', as in effect before August 22, 1986'' after ''682(i)(5) of this title'' and '', as so in effect'' after ''682(i)(7)(A) of this title''.

1997—Subsec. (a)(1)(A). Pub. L. 105–89, § 305(c)(2)(A)(i), inserted ''safe and'' before ''appropriate'' in cls. (i) and (ii).

Subsec. (a)(1)(B). Pub. L. 105–89, § 305(c)(2)(A)(ii), inserted ''safely'' after ''remain''.

Subsec. (a)(2). Pub. L. 105–89, § 305(c)(2)(B), inserted ''safety and'' before ''well-being of children'' and substituted ''safe, stable, and supportive family'' for ''stable and supportive family''.

Subsec. (a)(7), (8). Pub. L. 105–89, § 305(b)(2), added pars. (7) and (8).

Subsec. (a)(9). Pub. L. 105–89, § 305(d)(1), added par. (9).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 305(b)(2), (c)(2) of Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Section 305(d)(2) of Pub. L. 105–89 provided that: ''The amendment made by paragraph (1) [amending this section] takes effect as if included in the enactment of section 13711 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–33 [103–66]; 107 Stat. 649).''

§ 629b. State plans

(a) Plan requirements

A State plan meets the requirements of this subsection if the plan—

(1) provides that the State agency shall administer, or supervise the administration of, the State program under this subpart;

(2)(A)(i) sets forth the goals intended to be accomplished under the plan by the end of the 5th fiscal year in which the plan is in operation in the State, and (ii) is updated periodically to set forth the goals intended to be accomplished under the plan by the end of each 5th fiscal year thereafter;

(B) describes the methods to be used in measuring progress toward accomplishment of the goals;

(C) contains assurances that the State—

(i) after the end of each of the 1st 4 fiscal years covered by a set of goals, will perform an interim review of progress toward accomplishment of the goals, and on the basis of the interim review will revise the statement of goals in the plan, if necessary, to reflect changed circumstances; and

(ii) after the end of the last fiscal year covered by a set of goals, will perform a final review of progress toward accomplishment of the goals, and on the basis of the final review (I) will prepare, transmit to the Secretary, and make available to the public a final report on progress toward accomplishment of the goals, and (II) will develop (in consultation with the entities required to be consulted pursuant to subsection (b) of this section) and add to the plan a statement of the goals intended to be accomplished by the end of the 5th succeeding fiscal year;

(3) provides for coordination, to the extent feasible and appropriate, of the provision of services under the plan and the provision of

services or benefits under other Federal or federally assisted programs serving the same populations;

(4) contains assurances that not more than 10 percent of expenditures under the plan for any fiscal year with respect to which the State is eligible for payment under section 629d of this title for the fiscal year shall be for administrative costs, and that the remaining expenditures shall be for programs of family preservation services, community-based family support services, time-limited family reunification services, and adoption promotion and support services, with significant portions of such expenditures for each such program;

(5) contains assurances that the State will—

(A) annually prepare, furnish to the Secretary, and make available to the public a description (including separate descriptions with respect to family preservation services, community-based family support services, time-limited family reunification services, and adoption promotion and support services) of—

(i) the service programs to be made available under the plan in the immediately succeeding fiscal year;

(ii) the populations which the programs will serve; and

(iii) the geographic areas in the State in which the services will be available; and

(B) perform the activities described in subparagraph (A)—

(i) in the case of the 1st fiscal year under the plan, at the time the State submits its initial plan; and

(ii) in the case of each succeeding fiscal year, by the end of the 3rd quarter of the immediately preceding fiscal year;

(6) provides for such methods of administration as the Secretary finds to be necessary for the proper and efficient operation of the plan;

(7)(A) contains assurances that Federal funds provided to the State under this subpart will not be used to supplant Federal or non-Federal funds for existing services and activities which promote the purposes of this subpart; and

(B) provides that the State will furnish reports to the Secretary, at such times, in such format, and containing such information as the Secretary may require, that demonstrate the State's compliance with the prohibition contained in subparagraph (A);

(8)(A) provides that the State agency will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require; and

(B) provides that, not later than June 30 of each year, the State will submit to the Secretary—

(i) copies of forms CFS 101–Part I and CFS 101–Part II (or any successor forms) that report on planned child and family services expenditures by the agency for the immediately succeeding fiscal year; and

(ii) copies of forms CFS 101–Part I and CFS 101–Part II (or any successor forms) that provide, with respect to the programs authorized under this subpart and subpart 1 and, at State option, other programs included on such forms, for the most recent preceding fiscal year for which reporting of actual expenditures is complete—

(I) the numbers of families and of children served by the State agency;

(II) the population served by the State agency;

(III) the geographic areas served by the State agency; and

(IV) the actual expenditures of funds provided to the State agency; and

(9) contains assurances that in administering and conducting service programs under the plan, the safety of the children to be served shall be of paramount concern.

(b) Approval of plans

(1) In general

The Secretary shall approve a plan that meets the requirements of subsection (a) of this section only if the plan was developed jointly by the Secretary and the State, after consultation by the State agency with appropriate public and nonprofit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation, family support, time-limited family reunification, and adoption promotion and support services).

(2) Plans of Indian tribes or tribal consortia

(A) Exemption from inappropriate requirements

The Secretary may exempt a plan submitted by an Indian tribe or tribal consortium from the requirements of subsection (a)(4) of this section to the extent that the Secretary determines those requirements would be inappropriate to apply to the Indian tribe or tribal consortium, taking into account the resources, needs, and other circumstances of the Indian tribe or tribal consortium.

(B) Special rule

Notwithstanding subparagraph (A) of this paragraph, the Secretary may not approve a plan of an Indian tribe or tribal consortium under this subpart to which (but for this subparagraph) an allotment of less than $10,000 would be made under section 629c(a) of this title if allotments were made under section 629c(a) of this title to all Indian tribes and tribal consortia with plans approved under this subpart with the same or larger numbers of children.

(c) Annual submission of State reports to Congress

The Secretary shall compile the reports required under subsection (a)(8)(B) and, not later than September 30 of each year, submit such compilation to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(Aug. 14, 1935, ch. 531, title IV, § 432, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 651; amended Pub. L. 105–89, title III, § 305(b)(1), (c)(1), Nov. 19, 1997, 111 Stat. 2130, 2131; Pub. L. 105–200, title IV, § 410(c), July 16,

1998, 112 Stat. 673; Pub. L. 109–288, §§ 3(e)(1), (2), 5(b)(3)(A), (c), Sept. 28, 2006, 120 Stat. 1235, 1243, 1244.)

PRIOR PROVISIONS

A prior section 432 of act Aug. 14, 1935, was classified to section 632 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2006—Subsec. (a)(8). Pub. L. 109–288, § 3(e)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(2). Pub. L. 109–288, § 5(b)(3)(A)(i), inserted ''or tribal consortia'' after ''tribes'' in heading.

Subsec. (b)(2)(A). Pub. L. 109–288, § 5(c), substituted ''the requirements of subsection (a)(4) of this section to the extent that the Secretary determines those requirements'' for ''any requirement of this section that the Secretary determines''.

Pub. L. 109–288, § 5(b)(3)(A)(ii), inserted ''or tribal consortium'' after ''Indian tribe'' wherever appearing.

Subsec. (b)(2)(B). Pub. L. 109–288, § 5(b)(3)(A)(iii), inserted ''or tribal consortium'' after ''Indian tribe'' and ''and tribal consortia'' after ''Indian tribes''.

Subsec. (c). Pub. L. 109–288, § 3(e)(2), added subsec. (c).

1998—Subsec. (a)(8). Pub. L. 105–200 inserted ''; and'' at end.

1997—Subsec. (a)(4). Pub. L. 105–89, § 305(b)(1)(A)(i), substituted '', community-based family support services, time-limited family reunification services, and adoption promotion and support services,'' for ''and community-based family support services''.

Subsec. (a)(5)(A). Pub. L. 105–89, § 305(b)(1)(A)(ii), substituted '', community-based family support services, time-limited family reunification services, and adoption promotion and support services'' for ''and community-based family support services''.

Subsec. (a)(9). Pub. L. 105–89, § 305(c)(1), added par. (9).

Subsec. (b)(1). Pub. L. 105–89, § 305(b)(1)(B), substituted '', family support, time-limited family reunification, and adoption promotion and support'' for ''and family support''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–288, § 3(e)(3), Sept. 28, 2006, 120 Stat. 1236, provided that: ''The amendments made by this subsection [amending this section] take effect on the date of enactment of this Act [Sept. 28, 2006]. Each State with an approved plan under subpart 1 or 2 of part B of title IV of the Social Security Act [subpart 1 or 2 of this part] shall make its initial submission of the forms required under section 432(a)(8)(B) of the Social Security Act [subsec. (a)(8)(B) of this section] to the Secretary of Health and Human Services by June 30, 2007, and the Secretary of Health and Human Services shall submit the first compilation required under section 432(c) of the Social Security Act [subsec. (c) of this section] by September 30, 2007.''

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, except as otherwise provided, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

§ 629c. Allotments to States

(a) Indian tribes or tribal consortia

From the amount reserved pursuant to section 629f(b)(3) of this title for any fiscal year, the Secretary shall allot to each Indian tribe with a plan approved under this subpart an amount that bears the same ratio to such reserved amount as the number of children in the Indian tribe bears to the total number of children in all Indian tribes with State plans so approved, as determined by the Secretary on the basis of the most current and reliable information available to the Secretary. If a consortium of Indian tribes submits a plan approved under this subpart, the Secretary shall allot to the consortium an amount equal to the sum of the allotments determined for each Indian tribe that is part of the consortium.

(b) Territories

From the amount described in section 629f(a) of this title for any fiscal year that remains after applying section 629f(b) of this title for the fiscal year, the Secretary shall allot to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 623 of this title.

(c) Other States

(1) In general

From the amount described in section 629f(a) of this title for any fiscal year that remains after applying section 629f(b) of this title and subsection (b) of this section for the fiscal year, the Secretary shall allot to each State (other than an Indian tribe) which is not specified in subsection (b) of this section an amount equal to such remaining amount multiplied by the food stamp percentage of the State for the fiscal year.

(2) "Food stamp percentage" defined

(A) In general

As used in paragraph (1) of this subsection, the term ''food stamp percentage'' means, with respect to a State and a fiscal year, the average monthly number of children receiving food stamp benefits in the State for months in the 3 fiscal years referred to in subparagraph (B) of this paragraph, as determined from sample surveys made under section 2025(c) of title 7, expressed as a percentage of the average monthly number of children receiving food stamp benefits in the States described in such paragraph (1) for months in such 3 fiscal years, as so determined.

(B) Fiscal years used in calculation

For purposes of the calculation pursuant to subparagraph (A), the Secretary shall use data for the 3 most recent fiscal years, preceding the fiscal year for which the State's allotment is calculated under this subsection, for which such data are available to the Secretary.

(d) Reallotments

The amount of any allotment to a State under subsection (a), (b), or (c) of this section for any fiscal year that the State certifies to the Secretary will not be required for carrying out the State plan under section 629b of this title shall

be available for reallotment using the allotment methodology specified in subsection (a), (b), or (c) of this section. Any amount so reallotted to a State is deemed part of the allotment of the State under the preceding provisions of this section.

(e) Allotment of funds reserved to support monthly caseworker visits

(1) Territories

From the amount reserved pursuant to section 629f(b)(4)(A) of this title for any fiscal year, the Secretary shall allot to each jurisdiction specified in subsection (b) of this section, that has provided to the Secretary such documentation as may be necessary to verify that the jurisdiction has complied with section 629f(b)(4)(B)(ii) of this title during the fiscal year, an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 623 of this title (without regard to the initial allotment of $70,000 to each State).

(2) Other States

From the amount reserved pursuant to section 629f(b)(4)(A) of this title for any fiscal year that remains after applying paragraph (1) of this subsection for the fiscal year, the Secretary shall allot to each State (other than an Indian tribe) not specified in subsection (b) of this section, that has provided to the Secretary such documentation as may be necessary to verify that the State has complied with section 629f(b)(4)(B)(ii) of this title during the fiscal year, an amount equal to such remaining amount multiplied by the food stamp percentage of the State (as defined in subsection (c)(2) of this section) for the fiscal year, except that in applying subsection (c)(2)(A) of this section, ''subsection (e)(2)'' shall be substituted for ''such paragraph (1)''.

(Aug. 14, 1935, ch. 531, title IV, § 433, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 653; amended Pub. L. 107–133, title I, §§ 103, 106(a)(2), Jan. 17, 2002, 115 Stat. 2415, 2417; Pub. L. 109–288, §§ 4(a)(2), 5(b)(1)(A), 6(f)(4), Sept. 28, 2006, 120 Stat. 1237, 1242, 1247.)

PRIOR PROVISIONS

A prior section 433 of act Aug. 14, 1935, was classified to section 633 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–288, § 5(b)(1)(A), inserted ''or tribal consortia'' after ''tribes'' in heading and inserted at end of text ''If a consortium of Indian tribes submits a plan approved under this subpart, the Secretary shall allot to the consortium an amount equal to the sum of the allotments determined for each Indian tribe that is part of the consortium.''

Subsec. (b). Pub. L. 109–288, § 6(f)(4), substituted ''section 623'' for ''section 621''.

Subsec. (d). Pub. L. 109–288, § 4(a)(2)(A), inserted ''subsection (a), (b), or (c) of'' after ''to a State under'' and ''specified in''.

Subsec. (e). Pub. L. 109–288, § 4(a)(2)(B), added subsec. (e).

2002—Subsec. (a). Pub. L. 107–133, § 106(a)(2)(A), substituted ''section 629f(b)(3)'' for ''section 629(d)(3)''.

Subsec. (b). Pub. L. 107–133, § 106(a)(2)(B), substituted ''section 629f(a)'' for ''section 629(b)'' and ''section 629f(b)'' for ''section 629(d)''.

Subsec. (c)(1). Pub. L. 107–133, § 106(a)(2)(C), substituted ''section 629f(a)'' for ''section 629(b)'' and ''section 629f(b)'' for ''section 629(d)''.

Subsec. (d). Pub. L. 107–133, § 103, added subsec. (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

§ 629d. Payments to States

(a) Entitlement

Each State that has a plan approved under section 629b of this title shall, subject to subsection (d), be entitled to payment of the sum of—

(1) the lesser of—

(A) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year; or

(B) the allotment of the State under subsection (a), (b), or (c) of section 629c of this title, whichever is applicable, for the fiscal year; and

(2) the lesser of—

(A) 75 percent of the total expenditures by the State in accordance with section 629f(b)(4)(B) of this title during the fiscal year or the immediately succeeding fiscal year; or

(B) the allotment of the State under section 629c(e) of this title for the fiscal year.

(b) Prohibitions

(1) No use of other Federal funds for State match

Each State receiving an amount paid under subsection (a) of this section may not expend any Federal funds to meet the costs of services under the State plan under section 629b of this title not covered by the amount so paid.

(2) Availability of funds

A State may not expend any amount paid under subsection (a) of this section for any fiscal year after the end of the immediately succeeding fiscal year.

(c) Direct payments to tribal organizations of Indian tribes or tribal consortia

The Secretary shall pay any amount to which an Indian tribe or tribal consortium is entitled under this section directly to the tribal organization of the Indian tribe or in the case of a payment to a tribal consortium, such tribal organizations of, or entity established by, the Indian tribes that are part of the consortium as the consortium shall designate.

(d) Limitation on reimbursement for administrative costs

The Secretary shall not make a payment to a State under this section with respect to expendi-

tures for administrative costs during a fiscal year, to the extent that the total amount of the expenditures exceeds 10 percent of the total expenditures of the State during the fiscal year under the State plan approved under section 629b of this title.

(Aug. 14, 1935, ch. 531, title IV, § 434, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 653; amended Pub. L. 107–133, title I, § 104, Jan. 17, 2002, 115 Stat. 2415; Pub. L. 109–288, §§ 3(f)(1), 4(a)(3), 5(b)(3)(B), Sept. 28, 2006, 120 Stat. 1236, 1237, 1243.)

PRIOR PROVISIONS

A prior section 434 of act Aug. 14, 1935, was classified to section 634 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–288, § 4(a)(3), substituted ''the sum of—'' for ''the lesser of—'' in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

''(1) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year; or

''(2) the allotment of the State under section 629c of this title for the fiscal year.''

Pub. L. 109–288, § 3(f)(1)(A), inserted '', subject to subsection (d),'' after ''shall'' in introductory provisions.

Subsec. (c). Pub. L. 109–288, § 5(b)(3)(B), in heading inserted ''or tribal consortia'' after ''tribes'' and in text inserted ''or tribal consortium'' after ''to which an Indian tribe'' and ''or in the case of a payment to a tribal consortium, such tribal organizations of, or entity established by, the Indian tribes that are part of the consortium as the consortium shall designate'' after ''of the Indian tribe''.

Subsec. (d). Pub. L. 109–288, § 3(f)(1)(B), added subsec. (d).

2002—Subsec. (a). Pub. L. 107–133, § 104(a), struck out par. (1) designation and heading after subsec. heading, substituted ''Each State that has a plan approved under section 629b of this title shall be entitled to payment of the lesser of—'' for ''Except as provided in paragraph (2) of this subsection, each State which has a plan approved under this subpart shall be entitled to payment of the lesser of—'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned their margins, and struck out former par. (2) which related to a special rule for fiscal year 1994.

Subsec. (b)(1). Pub. L. 107–133, § 104(b)(1), struck out ''paragraph (1) or (2)(B) of'' after ''amount paid under'' and substituted ''under the State plan under section 629b of this title'' for ''described in this subpart''.

Subsec. (b)(2). Pub. L. 107–133, § 104(b)(2), substituted ''subsection (a)'' for ''subsection (a)(1)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–288, § 3(f)(2), Sept. 28, 2006, 120 Stat. 1236, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to expenditures made on or after October 1, 2007.''

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, except as otherwise provided, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

§ 629e. Evaluations; research; technical assistance

(a) Evaluations

(1) In general

The Secretary shall evaluate and report to the Congress biennially on the effectiveness of the programs carried out pursuant to this subpart in accomplishing the purposes of this subpart, and may evaluate any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the program under this subpart, in accordance with criteria established in accordance with paragraph (2).

(2) Criteria to be used

In developing the criteria to be used in evaluations under paragraph (1), the Secretary shall consult with appropriate parties, such as—

(A) State agencies administering programs under this part and part E of this subchapter;

(B) persons administering child and family services programs (including family preservation and family support programs) for private, nonprofit organizations with an interest in child welfare; and

(C) other persons with recognized expertise in the evaluation of child and family services programs (including family preservation and family support programs) or other related programs.

(3) Timing of report

Beginning in 2003, the Secretary shall submit the biennial report required by this subsection not later than April 1 of every other year, and shall include in each such report the funding level, the status of ongoing evaluations, findings to date, and the nature of any technical assistance provided to States under subsection (d) of this section.

(b) Coordination of evaluations

The Secretary shall develop procedures to coordinate evaluations under this section, to the extent feasible, with evaluations by the States of the effectiveness of programs under this subpart.

(c) Evaluation, research, and technical assistance with respect to targeted program resources

Of the amount reserved under section 629f(b)(1) of this title for a fiscal year, the Secretary shall use not less than—

(1) $1,000,000 for evaluations, research, and providing technical assistance with respect to supporting monthly caseworker visits with children who are in foster care under the responsibility of the State, in accordance with section 629f(b)(4)(B)(i) of this title; and

(2) $1,000,000 for evaluations, research, and providing technical assistance with respect to grants under section 629g(f) of this title.

(d) Technical assistance

To the extent funds are available therefor, the Secretary shall provide technical assistance

that helps States and Indian tribes or tribal consortia to—

(1) develop research-based protocols for identifying families at risk of abuse and neglect of use in the field;

(2) develop treatment models that address the needs of families at risk, particularly families with substance abuse issues;

(3) implement programs with well-articulated theories of how the intervention will result in desired changes among families at risk;

(4) establish mechanisms to ensure that service provision matches the treatment model; and

(5) establish mechanisms to ensure that postadoption services meet the needs of the individual families and develop models to reduce the disruption rates of adoption.

(Aug. 14, 1935, ch. 531, title IV, § 435, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 654; amended Pub. L. 107–133, title I, § 105, Jan. 17, 2002, 115 Stat. 2415; Pub. L. 109–288, §§ 4(c), 5(b)(3)(C), Sept. 28, 2006, 120 Stat. 1242, 1243.)

REFERENCES IN TEXT

Part E of this subchapter, referred to in subsec. (a)(2)(A), is classified to section 670 et seq. of this title.

The enactment of the Adoption and Safe Families Act of 1997, referred to in subsec. (c)(4), is the enactment of Pub. L. 105–89, which was approved Nov. 19, 1997.

PRIOR PROVISIONS

A prior section 435 of act Aug. 14, 1935, was classified to section 635 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–288, § 4(c), amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) related to topics for research and evaluation.

Subsec. (d). Pub. L. 109–288, § 5(b)(3)(C), inserted ''or tribal consortia'' after ''Indian tribes'' in introductory provisions.

2002—Pub. L. 107–133, § 105(1), substituted ''Evaluations; research; technical assistance'' for ''Evaluations'' in section catchline.

Subsec. (a)(1). Pub. L. 107–133, § 105(1), substituted ''The Secretary shall evaluate and report to the Congress biennially on'' for ''The Secretary shall evaluate''.

Subsec. (a)(3). Pub. L. 107–133, § 105(2), added par. (3).

Subsecs. (c), (d). Pub. L. 107–133, § 105(3), added subsecs. (c) and (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

§ 629f. Authorization of appropriations; reservation of certain amounts

(a) Authorization

In addition to any amount otherwise made available to carry out this subpart, there are authorized to be appropriated to carry out this subpart $345,000,000 for each of fiscal years 2007 through 2011 [1]

(b) Reservation of certain amounts

From the amount specified in subsection (a) of this section for a fiscal year, the Secretary shall reserve amounts as follows:

(1) Evaluation, research, training, and technical assistance

The Secretary shall reserve $6,000,000 for expenditure by the Secretary—

(A) for research, training, and technical assistance costs related to the program under this subpart; and

(B) for evaluation of State programs based on the plans approved under section 629b of this title and funded under this subpart, and any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the State programs.

(2) State court improvements

The Secretary shall reserve $10,000,000 for grants under section 629h of this title.

(3) Indian tribes or tribal consortia

After applying paragraphs (4) and (5) (but before applying paragraphs (1) or (2)), the Secretary shall reserve 3 percent for allotment to Indian tribes or tribal consortia in accordance with section 629c(a) of this title.

(4) Support for monthly caseworker visits

(A) Reservation

The Secretary shall reserve for allotment in accordance with section 629c(e) of this title—

(i) $5,000,000 for fiscal year 2008;

(ii) $10,000,000 for fiscal year 2009; and

(iii) $20,000,000 for each of fiscal years 2010 and 2011.

(B) Use of funds

(i) In general

A State to which an amount is paid from amounts reserved under subparagraph (A) shall use the amount to support monthly caseworker visits with children who are in foster care under the responsibility of the State, with a primary emphasis on activities designed to improve caseworker retention, recruitment, training, and ability to access the benefits of technology.

(ii) Nonsupplantation

A State to which an amount is paid from amounts reserved pursuant to subparagraph (A) shall not use the amount to supplant any Federal funds paid to the State under part E that could be used as described in clause (i).

(5) Regional partnership grants

The Secretary shall reserve for awarding grants under section 629g(f) of this title—

[1] So in original. Probably should be followed by a period.

(A) $40,000,000 for fiscal year 2007;
(B) $35,000,000 for fiscal year 2008;
(C) $30,000,000 for fiscal year 2009; and
(D) $20,000,000 for each of fiscal years 2010 and 2011.

(Aug. 14, 1935, ch. 531, title IV, § 436, as added Pub. L. 107–133, title I, § 106(a)(1), Jan. 17, 2002, 115 Stat. 2416; amended Pub. L. 109–171, title VII, § 7402, Feb. 8, 2006, 120 Stat. 150; Pub. L. 109–288, §§ 3(a), 4(a)(1), (b)(1), 5(a)(1), (3), (b)(1)(B), Sept. 28, 2006, 120 Stat. 1234, 1236, 1237, 1242, 1243.)

REFERENCES IN TEXT

Part E, referred to in subsec. (b)(4)(B)(ii), is classified to section 670 et seq. of this title.

PRIOR PROVISIONS

A prior section 436 of act Aug. 14, 1935, was classified to section 636 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–288, § 3(a), substituted ''each of fiscal years 2007 through 2011'' for ''fiscal year 2006. Notwithstanding the preceding sentence, the total amount authorized to be so appropriated for fiscal year 2006 under this subsection and under this subsection (as in effect before February 8, 2006) is $345,000,000.''

Pub. L. 109–171 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out the provisions of this subpart $305,000,000 for each of fiscal years 2002 through 2006.''

Subsec. (b)(3). Pub. L. 109–288, § 5(b)(1)(B), inserted ''or tribal consortia'' after ''tribes'' in heading and text.

Pub. L. 109–288, § 5(a)(1), (3), substituted ''After applying paragraphs (4) and (5) (but before applying paragraphs (1) or (2)), the'' for ''The'' and ''3 percent'' for ''1 percent''.

Subsec. (b)(4). Pub. L. 109–288, § 4(a)(1), added par. (4).

Subsec. (b)(5). Pub. L. 109–288, § 4(b)(1), added par. (5).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–288, § 3(a), Sept. 28, 2006, 120 Stat. 1234, provided that the amendment made by section 3(a) is effective Oct. 1, 2006.

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, except as otherwise provided, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE

Section effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as an Effective Date of 2002 Amendment note under section 629 of this title.

§ 629g. Discretionary and targeted grants

(a) Limitations on authorization of appropriations

In addition to any amount appropriated pursuant to section 629f of this title, there are authorized to be appropriated to carry out this section $200,000,000 for each of fiscal years 2007 through 2011.

(b) Reservation of certain amounts

From the amount (if any) appropriated pursuant to subsection (a) of this section for a fiscal year, the Secretary shall reserve amounts as follows:

(1) Evaluation, research, training, and technical assistance

The Secretary shall reserve 3.3 percent for expenditure by the Secretary for the activities described in section 629f(b)(1) of this title.

(2) State court improvements

The Secretary shall reserve 3.3 percent for grants under section 629h of this title.

(3) Indian tribes or tribal consortia

The Secretary shall reserve 3 percent for allotment to Indian tribes or tribal consortia in accordance with subsection (c)(1) of this section.

(c) Allotments

(1) Indian tribes or tribal consortia

From the amount (if any) reserved pursuant to subsection (b)(3) of this section for any fiscal year, the Secretary shall allot to each Indian tribe with a plan approved under this subpart an amount that bears the same ratio to such reserved amount as the number of children in the Indian tribe bears to the total number of children in all Indian tribes with State plans so approved, as determined by the Secretary on the basis of the most current and reliable information available to the Secretary. If a consortium of Indian tribes applies and is approved for a grant under this section, the Secretary shall allot to the consortium an amount equal to the sum of the allotments determined for each Indian tribe that is part of the consortium.

(2) Territories

From the amount (if any) appropriated pursuant to subsection (a) of this section for any fiscal year that remains after applying subection[1] (b) of this section for the fiscal year, the Secretary shall allot to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 623 of this title.

(3) Other States

From the amount (if any) appropriated pursuant to subsection (a) of this section for any fiscal year that remains after applying subsection (b) of this section and paragraph (2) of this subsection for the fiscal year, the Secretary shall allot to each State (other than an Indian tribe) which is not specified in paragraph (2) of this subsection an amount equal to such remaining amount multiplied by the food stamp percentage (as defined in section 629c(c)(2) of this title) of the State for the fiscal year.

(d) Grants

The Secretary may make a grant to a State which has a plan approved under this subpart in an amount equal to the lesser of—

(1) 75 percent of the total expenditures by the State for activities under the plan during

[1] So in original. Probably should be ''subsection''.

the fiscal year or the immediately succeeding fiscal year; or

(2) the allotment of the State under subsection (c) of this section for the fiscal year.

(e) Applicability of certain rules

The rules of subsections (b) and (c) of section 629d of this title shall apply in like manner to the amounts made available pursuant to subsection (a).

(f) Targeted grants to increase the well-being of, and to improve the permanency outcomes for, children affected by methamphetamine or other substance abuse

(1) Purpose

The purpose of this subsection is to authorize the Secretary to make competitive grants to regional partnerships to provide, through interagency collaboration and integration of programs and services, services and activities that are designed to increase the well-being of, improve permanency outcomes for, and enhance the safety of children who are in an out-of-home placement or are at risk of being placed in an out-of-home placement as a result of a parent's or caretaker's methamphetamine or other substance abuse.

(2) Regional partnership defined

(A) In general

In this subsection, the term ''regional partnership'' means a collaborative agreement (which may be established on an interstate or intrastate basis) entered into by at least 2 of the following:

(i) The State child welfare agency that is responsible for the administration of the State plan under this part and part E.

(ii) The State agency responsible for administering the substance abuse prevention and treatment block grant provided under subpart II of part B of title XIX of the Public Health Service Act [42 U.S.C. 300x–21 et seq.].

(iii) An Indian tribe or tribal consortium.

(iv) Nonprofit child welfare service providers.

(v) For-profit child welfare service providers.

(vi) Community health service providers.

(vii) Community mental health providers.

(viii) Local law enforcement agencies.

(ix) Judges and court personnel.

(x) Juvenile justice officials.

(xi) School personnel.

(xii) Tribal child welfare agencies (or a consortia of such agencies).

(xiii) Any other providers, agencies, personnel, officials, or entities that are related to the provision of child and family services under this subpart.

(B) Requirements

(i) State child welfare agency partner

Subject to clause (ii)(I), a regional partnership entered into for purposes of this subsection shall include the State child welfare agency that is responsible for the administration of the State plan under this part and part E as 1 of the partners.

(ii) Regional partnerships entered into by Indian tribes or tribal consortia

If an Indian tribe or tribal consortium enters into a regional partnership for purposes of this subsection, the Indian tribe or tribal consortium—

(I) may (but is not required to) include such State child welfare agency as a partner in the collaborative agreement; and

(II) may not enter into a collaborative agreement only with tribal child welfare agencies (or a consortium of such agencies).

(iii) No State agency only partnerships

If a State agency described in clause (i) or (ii) of subparagraph (A) enters into a regional partnership for purposes of this subsection, the State agency may not enter into a collaborative agreement only with the other State agency described in such clause (i) or (ii).

(3) Authority to award grants

(A) In general

In addition to amounts authorized to be appropriated to carry out this section, the Secretary shall award grants under this subsection, from the amounts reserved for each of fiscal years 2007 through 2011 under section 629f(b)(5) of this title, to regional partnerships that satisfy the requirements of this subsection, in amounts that are not less than $500,000 and not more than $1,000,000 per grant per fiscal year.

(B) Required minimum period of approval

A grant shall be awarded under this subsection for a period of not less than 2, and not more than 5, fiscal years.

(4) Application requirements

To be eligible for a grant under this subsection, a regional partnership shall submit to the Secretary a written application containing the following:

(A) Recent evidence demonstrating that methamphetamine or other substance abuse has had a substantial impact on the number of out-of-home placements for children, or the number of children who are at risk of being placed in an out-of-home placement, in the partnership region.

(B) A description of the goals and outcomes to be achieved during the funding period for the grant that will—

(i) enhance the well-being of children receiving services or taking part in activities conducted with funds provided under the grant;

(ii) lead to safety and permanence for such children; and

(iii) decrease the number of out-of-home placements for children, or the number of children who are at risk of being placed in an out-of-home placement, in the partnership region.

(C) A description of the joint activities to be funded in whole or in part with the funds

provided under the grant, including the sequencing of the activities proposed to be conducted under the funding period for the grant.

(D) A description of the strategies for integrating programs and services determined to be appropriate for the child and where appropriate, the child's family.

(E) A description of the strategies for—

(i) collaborating with the State child welfare agency described in paragraph (2)(A)(i) (unless that agency is the lead applicant for the regional partnership); and

(ii) consulting, as appropriate, with—

(I) the State agency described in paragraph (2)(A)(ii); and

(II) the State law enforcement and judicial agencies.

To the extent the Secretary determines that the requirement of this subparagraph would be inappropriate to apply to a regional partnership that includes an Indian tribe, tribal consortium, or a tribal child welfare agency or a consortium of such agencies, the Secretary may exempt the regional partnership from the requirement.

(F) Such other information as the Secretary may require.

(5) Use of funds

Funds made available under a grant made under this subsection shall only be used for services or activities that are consistent with the purpose of this subsection and may include the following:

(A) Family-based comprehensive long-term substance abuse treatment services.

(B) Early intervention and preventative services.

(C) Children and family counseling.

(D) Mental health services.

(E) Parenting skills training.

(F) Replication of successful models for providing family-based comprehensive long-term substance abuse treatment services.

(6) Matching requirement

(A) Federal share

A grant awarded under this subsection shall be available to pay a percentage share of the costs of services provided or activities conducted under such grant, not to exceed—

(i) 85 percent for the first and second fiscal years for which the grant is awarded to a recipient;

(ii) 80 percent for the third and fourth such fiscal years; and

(iii) 75 percent for the fifth such fiscal year.

(B) Non-Federal share

The non-Federal share of the cost of services provided or activities conducted under a grant awarded under this subsection may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

(7) Considerations in awarding grants

In awarding grants under this subsection, the Secretary shall—

(A) take into consideration the extent to which applicant regional partnerships—

(i) demonstrate that methamphetamine or other substance abuse by parents or caretakers has had a substantial impact on the number of out-of-home placements for children, or the number of children who are at risk of being placed in an out-of-home placement, in the partnership region;

(ii) have limited resources for addressing the needs of children affected by such abuse;

(iii) have a lack of capacity for, or access to, comprehensive family treatment services; and

(iv) demonstrate a plan for sustaining the services provided by or activities funded under the grant after the conclusion of the grant period; and

(B) after taking such factors into consideration, give greater weight to awarding grants to regional partnerships that propose to address methamphetamine abuse and addiction in the partnership region (alone or in combination with other drug abuse and addiction) and which demonstrate that methamphetamine abuse and addiction (alone or in combination with other drug abuse and addiction) is adversely affecting child welfare in the partnership region.

(8) Performance indicators

(A) In general

Not later than 9 months after September 28, 2006, the Secretary shall establish indicators that will be used to assess periodically the performance of the grant recipients under this subsection in using funds made available under such grants to achieve the purpose of this subsection.

(B) Consultation required

In establishing the performance indicators required by subparagraph (A), the Secretary shall consult with the following:

(i) The Assistant Secretary for the Administration for Children and Families.

(ii) The Administrator of the Substance Abuse and Mental Health Services Administration.

(iii) Representatives of States in which a State agency described in clause (i) or (ii) of paragraph (2)(A) is a member of a regional partnership that is a grant recipient under this subsection.

(iv) Representatives of Indian tribes, tribal consortia, or tribal child welfare agencies that are members of a regional partnership that is a grant recipient under this subsection.

(9) Reports

(A) Grantee reports

(i) Annual report

Not later than September 30 of the first fiscal year in which a recipient of a grant under this subsection is paid funds under the grant, and annually thereafter until September 30 of the last fiscal year in which the recipient is paid funds under the

grant, the recipient shall submit to the Secretary a report on the services provided or activities carried out during that fiscal year with such funds. The report shall contain such information as the Secretary determines is necessary to provide an accurate description of the services provided or activities conducted with such funds.

(ii) Incorporation of information related to performance indicators

Each recipient of a grant under this subsection shall incorporate into the first annual report required by clause (i) that is submitted after the establishment of performance indicators under paragraph (8), information required in relation to such indicators.

(B) Reports to Congress

On the basis of the reports submitted under subparagraph (A), the Secretary annually shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

(i) the services provided and activities conducted with funds provided under grants awarded under this subsection;

(ii) the performance indicators established under paragraph (8); and

(iii) the progress that has been made in addressing the needs of families with methamphetamine or other substance abuse problems who come to the attention of the child welfare system and in achieving the goals of child safety, permanence, and family stability.

(Aug. 14, 1935, ch. 531, title IV, § 437, as added Pub. L. 107–133, title I, § 106(b), Jan. 17, 2002, 115 Stat. 2417; amended Pub. L. 109–288, §§ 3(b), 4(b)(2), 5(a)(2), (b)(2), 6(f)(5), Sept. 28, 2006, 120 Stat. 1234, 1238, 1242, 1243, 1247.)

REFERENCES IN TEXT

Part E, referred to in subsec. (f)(2)(A)(i), (B)(i), is classified to section 670 et seq. of this title.

The Public Health Service Act, referred to in subsec. (f)(2)(A)(ii), is act July 1, 1944, ch. 373, 58 Stat. 682. Subpart II of part B of title XIX of the Act is classified generally to subpart II (§ 300x–21 et seq.) of part B of subchapter XVII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

PRIOR PROVISIONS

A prior section 437 of act Aug. 14, 1935, was classified to section 637 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2006—Pub. L. 109–288, § 4(b)(2)(B)(i), inserted ''and targeted'' after ''Discretionary'' in section catchline.

Subsec. (a). Pub. L. 109–288, § 3(b), substituted ''2007 through 2011'' for ''2002 through 2006''.

Subsec. (b)(3). Pub. L. 109–288, § 5(b)(2)(A), inserted ''or tribal consortia'' after ''Indian tribes'' in heading and text.

Pub. L. 109–288, § 5(a)(2), substituted ''3 percent'' for ''2 percent''.

Subsec. (c)(1). Pub. L. 109–288, § 5(b)(2)(B), inserted ''or tribal consortia'' after ''tribes'' in heading and inserted at end ''If a consortium of Indian tribes applies and is approved for a grant under this section, the Secretary shall allot to the consortium an amount equal to the sum of the allotments determined for each Indian tribe that is part of the consortium.''

Subsec. (c)(2). Pub. L. 109–288, § 6(f)(5), substituted ''section 623'' for ''section 621''.

Subsec. (e). Pub. L. 109–288, § 4(b)(2)(B)(ii), substituted ''subsection (a)'' for ''this section''.

Subsec. (f). Pub. L. 109–288, § 4(b)(2)(A), added subsec. (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE

Section effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as an Effective Date of 2002 Amendment note under section 629 of this title.

§ 629h. Entitlement funding for State courts to assess and improve handling of proceedings relating to foster care and adoption

(a) In general

The Secretary shall make grants, in accordance with this section, to the highest State courts in States participating in the program under part E of this subchapter, for the purpose of enabling such courts—

(1) to conduct assessments, in accordance with such requirements as the Secretary shall publish, of the role, responsibilities, and effectiveness of State courts in carrying out State laws requiring proceedings (conducted by or under the supervision of the courts)—

(A) that implement this part and part E of this subchapter;

(B) that determine the advisability or appropriateness of foster care placement;

(C) that determine whether to terminate parental rights;

(D) that determine whether to approve the adoption or other permanent placement of a child;[1]

(E) that determine the best strategy to use to expedite the interstate placement of children, including—

(i) requiring courts in different States to cooperate in the sharing of information;

(ii) authorizing courts to obtain information and testimony from agencies and parties in other States without requiring interstate travel by the agencies and parties; and

(iii) permitting the participation of parents, children, other necessary parties, and attorneys in cases involving interstate placement without requiring their interstate travel; and[2]

(2) to implement improvements the highest state[3] courts deem necessary as a result of the assessments, including—

[1] So in original. Probably should be followed by ''and''.

[2] So in original. The word ''and'' probably should not appear.

[3] So in original. Probably should be capitalized.

(A) to provide for the safety, well-being, and permanence of children in foster care, as set forth in the Adoption and Safe Families Act of 1997 (Public Law 105–89); and

(B) to implement a corrective action plan, as necessary, resulting from reviews of child and family service programs under section 1320a–2a of this title;

(3) to ensure that the safety, permanence, and well-being needs of children are met in a timely and complete manner; and

(4) to provide for the training of judges, attorneys and other legal personnel in child welfare cases.

(b) Applications

(1) In general

In order to be eligible to receive a grant under this section, a highest State court shall have in effect a rule requiring State courts to ensure that foster parents, pre-adoptive parents, and relative caregivers of a child in foster care under the responsibility of the State are notified of any proceeding to be held with respect to the child, and shall submit to the Secretary an application at such time, in such form, and including such information and assurances as the Secretary may require, including—

(A) in the case of a grant for the purpose described in subsection (a)(3), a description of how courts and child welfare agencies on the local and State levels will collaborate and jointly plan for the collection and sharing of all relevant data and information to demonstrate how improved case tracking and analysis of child abuse and neglect cases will produce safe and timely permanency decisions;

(B) in the case of a grant for the purpose described in subsection (a)(4), a demonstration that a portion of the grant will be used for cross-training initiatives that are jointly planned and executed with the State agency or any other agency under contract with the State to administer the State program under the State plan under subpart 1, the State plan approved under section 629d of this title, or the State plan approved under part E; and

(C) in the case of a grant for any purpose described in subsection (a), a demonstration of meaningful and ongoing collaboration among the courts in the State, the State agency or any other agency under contract with the State who is responsible for administering the State program under this part or part E, and, where applicable, Indian tribes.

(2) Separate applications

A highest State court desiring grants under this section for 2 or more purposes shall submit separate applications for the following grants:

(A) A grant for the purposes described in paragraphs (1) and (2) of subsection (a).

(B) A grant for the purpose described in subsection (a)(3).

(C) A grant for the purpose described in subsection (a)(4).

(c) Allotments

(1) Grants to assess and improve handling of court proceedings relating to foster care and adoption

(A) In general

Each highest State court which has an application approved under subsection (b) of this section for a grant described in subsection (b)(2)(A) of this section, and is conducting assessment and improvement activities in accordance with this section, shall be entitled to payment, for each of fiscal years 2002 through 2011, from the amount reserved pursuant to section 629f(b)(2) of this title (and the amount, if any, reserved pursuant to section 629g(b)(2) of this title), of an amount equal to the sum of $85,000 plus the amount described in subparagraph (B) of this paragraph for the fiscal year.

(B) Formula

The amount described in this subparagraph for any fiscal year is the amount that bears the same ratio to the amount reserved pursuant to section 629f(b)(2) of this title (and the amount, if any, reserved pursuant to section 629g(b)(2) of this title) for the fiscal year (reduced by the dollar amount specified in subparagraph (A) of this paragraph for the fiscal year) as the number of individuals in the State who have not attained 21 years of age bears to the total number of such individuals in all States the highest State courts of which have approved applications under subsection (b) for such a grant.

(2) Grants for improved data collection and training

(A) In general

Each highest State court which has an application approved under subsection (b) of this section for a grant referred to in subparagraph (B) or (C) of subsection (b)(2) shall be entitled to payment, for each of fiscal years 2006 through 2010, from the amount made available under whichever of paragraph (1) or (2) of subsection (e) applies with respect to the grant, of an amount equal to the sum of $85,000 plus the amount described in subparagraph (B) of this paragraph for the fiscal year with respect to the grant.

(B) Formula

The amount described in this subparagraph for any fiscal year with respect to a grant referred to in subparagraph (B) or (C) of subsection (b)(2) is the amount that bears the same ratio to the amount made available under subsection (e) for such a grant (reduced by the dollar amount specified in subparagraph (A) of this paragraph) as the number of individuals in the State who have not attained 21 years of age bears to the total number of such individuals in all States the highest State courts of which have approved applications under subsection (b) for such a grant.

(d) Federal share

Each highest State court which receives funds paid under this section may use such funds to

pay not more than 75 percent of the cost of activities under this section in each of fiscal years 2002 through 2011.

(e) Funding for grants for improved data collection and training

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary, for each of fiscal years 2006 through 2010—

(1) $10,000,000 for grants referred to in subsection (b)(2)(B); and

(2) $10,000,000 for grants referred to in subsection (b)(2)(C).

(Aug. 14, 1935, ch. 531, title IV, § 438, formerly Pub. L. 103–66, title XIII, § 13712, Aug. 10, 1993, 107 Stat. 655, as amended Pub. L. 105–89, title III, § 305(a)(3), Nov. 19, 1997, 111 Stat. 2130; renumbered § 438 of act Aug. 14, 1935, and amended Pub. L. 107–133, title I, § 107, Jan. 17, 2002, 115 Stat. 2418; Pub. L. 109–171, title VII, § 7401(a), Feb. 8, 2006, 120 Stat. 148; Pub. L. 109–239, §§ 8(b), 9, July 3, 2006, 120 Stat. 513; Pub. L. 109–288, § 9, Sept. 28, 2006, 120 Stat. 1255.)

REFERENCES IN TEXT

Part E of this subchapter, referred to in subsecs. (a) and (b)(1)(B), (C), is classified to section 670 et seq. of this title.

The Adoption and Safe Families Act of 1997, referred to in subsec. (a)(2)(A), is Pub. L. 105–89, Nov. 19, 1997, 111 Stat. 2115, as amended. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1305 of this title and Tables.

Subpart 1, referred to in subsec. (b)(1)(B), is classified to section 620 et seq. of this title.

CODIFICATION

Section was formerly set out as a note under section 670 of this title prior to renumbering by Pub. L. 107–133.

PRIOR PROVISIONS

A prior section 438 of act Aug. 14, 1935, was classified to section 638 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2006—Subsec. (a)(1)(E). Pub. L. 109–239, § 9, added subpar. (E).

Subsec. (a)(3), (4). Pub. L. 109–171, § 7401(a)(1), added pars. (3) and (4).

Subsec. (b). Pub. L. 109–239, § 8(b), which directed amendment of subsec. (b) by inserting ''shall have in effect a rule requiring State courts to ensure that foster parents, pre-adoptive parents, and relative caregivers of a child in foster care under the responsibility of the State are notified of any proceeding to be held with respect to the child, and'' after ''highest State court'', was executed by making the insertion after ''highest State court'' in introductory provisions of par. (1), to reflect the probable intent of Congress.

Pub. L. 109–171, § 7401(a)(2), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''In order to be eligible for a grant under this section, a highest State court shall submit to the Secretary an application at such time, in such form, and including such information and assurances as the Secretary shall require.''

Subsec. (c). Pub. L. 109–171, § 7401(a)(3), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), in subpar. (A), inserted ''of this section for a grant described in subsection (b)(2)(A) of this section'' after ''subsection (b)'' and substituted ''subparagraph (B) of this paragraph'' for ''paragraph (2) of this subsection'', in subpar. (B), substituted ''this subparagraph'' for ''this paragraph'' and ''subparagraph (A) of this paragraph'' for ''paragraph (1) of this subsection'' and inserted ''for such a grant'' after ''subsection (b)'', and added par. (2).

Subsec. (c)(1)(A). Pub. L. 109–288 substituted ''2011'' for ''2006''.

Subsec. (d). Pub. L. 109–288 substituted ''2011'' for ''2006''.

Subsec. (e). Pub. L. 109–171, § 7401(a)(4), added subsec. (e).

2002—Subsec. (a). Pub. L. 107–133, § 107(d)(1)(A), made technical amendment to reference in original act which appears in text as reference to part E of this subchapter.

Subsec. (a)(1)(A). Pub. L. 107–133, § 107(d)(1)(B), made technical amendment to reference in original act which appears in text as reference to this part and part E of this subchapter.

Subsec. (a)(2). Pub. L. 107–133, § 107(a)(1), added par. (2) and struck out former par. (2) which read as follows: ''to implement changes deemed necessary as a result of the assessments.''

Subsec. (c)(1). Pub. L. 107–133, § 107(a)(2), (b), inserted ''and improvement'' after ''assessment'' and substituted ''for each of fiscal years 2002 through 2006, from the amount reserved pursuant to section 629f(b)(2) of this title (and the amount, if any, reserved pursuant to section 629g(b)(2) of this title), of an amount equal to the sum of $85,000 plus the amount described in paragraph (2) of this subsection for the fiscal year.'' for ''for each of fiscal years 1995 through 2001, from amounts reserved pursuant to section 629(d)(2) of this title, of an amount equal to the sum of—

''(A) for fiscal year 1995, $75,000 plus the amount described in paragraph (2) for fiscal year 1995; and

''(B) for each of fiscal years 1996 through 2001, $85,000 plus the amount described in paragraph (2) for each of such fiscal years.''

Subsec. (c)(2). Pub. L. 107–133, § 107(d)(2), substituted ''section 629f(b)(2) of this title (and the amount, if any, reserved pursuant to section 629g(b)(2) of this title)'' for ''section 629(d)(2) of this title''.

Subsec. (d). Pub. L. 107–133, § 107(c), in heading substituted ''Federal share'' for ''Use of grant funds'' and in text substituted ''to pay not more than 75 percent of the cost of activities under this section in each of fiscal years 2002 through 2006.'' for ''to pay—

''(1) any or all costs of activities under this section in fiscal year 1995; and

''(2) not more than 75 percent of the cost of activities under this section in each of fiscal years 1996, 1997, 1998, 1999, 2000, and 2001.''

1997—Subsec. (c)(1). Pub. L. 105–89, § 305(a)(3)(A), substituted ''2001'' for ''1998'' in introductory provisions and par. (B).

Subsec. (d)(2). Pub. L. 105–89, § 305(a)(3)(B), substituted ''1998, 1999, 2000, and 2001'' for ''and 1998''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

Amendment by Pub. L. 109–239 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 14 of Pub. L. 109–239, set out as a note under section 622 of this title.

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

§ 629i. Grants for programs for mentoring children of prisoners

(a) Findings and purposes

(1) Findings

(A) In the period between 1991 and 1999, the number of children with a parent incarcerated in a Federal or State correctional facility increased by more than 100 percent, from approximately 900,000 to approximately 2,000,000. In 1999, 2.1 percent of all children in the United States had a parent in Federal or State prison.

(B) Prior to incarceration, 64 percent of female prisoners and 44 percent of male prisoners in State facilities lived with their children.

(C) Nearly 90 percent of the children of incarcerated fathers live with their mothers, and 79 percent of the children of incarcerated mothers live with a grandparent or other relative.

(D) Parental arrest and confinement lead to stress, trauma, stigmatization, and separation problems for children. These problems are coupled with existing problems that include poverty, violence, parental substance abuse, high-crime environments, intrafamilial abuse, child abuse and neglect, multiple care givers, and/or prior separations. As a result, these children often exhibit a broad variety of behavioral, emotional, health, and educational problems that are often compounded by the pain of separation.

(E) Empirical research demonstrates that mentoring is a potent force for improving children's behavior across all risk behaviors affecting health. Quality, one-on-one relationships that provide young people with caring role models for future success have profound, life-changing potential. Done right, mentoring markedly advances youths' life prospects. A widely cited 1995 study by Public/Private Ventures measured the impact of one Big Brothers Big Sisters program and found significant effects in the lives of youth—cutting first-time drug use by almost half and first-time alcohol use by about a third, reducing school absenteeism by half, cutting assaultive behavior by a third, improving parental and peer relationships, giving youth greater confidence in their school work, and improving academic performance.

(2) Purposes

The purposes of this section are to authorize the Secretary—

(A) to make competitive grants to applicants in areas with substantial numbers of children of incarcerated parents, to support the establishment or expansion and operation of programs using a network of public and private community entities to provide mentoring services for children of prisoners; and

(B) to enter into on a competitive basis a cooperative agreement to conduct a service delivery demonstration project in accordance with the requirements of subsection (g).

(b) Definitions

In this section:

(1) Children of prisoners

The term ''children of prisoners'' means children one or both of whose parents are incarcerated in a Federal, State, or local correctional facility. The term is deemed to include children who are in an ongoing mentoring relationship in a program under this section at the time of their parents' release from prison, for purposes of continued participation in the program.

(2) Mentoring

The term ''mentoring'' means a structured, managed program in which children are appropriately matched with screened and trained adult volunteers for one-on-one relationships, involving meetings and activities on a regular basis, intended to meet, in part, the child's need for involvement with a caring and supportive adult who provides a positive role model.

(3) Mentoring services

The term ''mentoring services'' means those services and activities that support a structured, managed program of mentoring, including the management by trained personnel of outreach to, and screening of, eligible children; outreach to, education and training of, and liaison with sponsoring local organizations; screening and training of adult volunteers; matching of children with suitable adult volunteer mentors; support and oversight of the mentoring relationship; and establishment of goals and evaluation of outcomes for mentored children.

(c) Program authorized

From the amounts appropriated under subsection (i) of this section for a fiscal year that remain after applying subsection (i)(2) of this section, the Secretary shall make grants under this section for each of fiscal years 2007 through 2011 to State or local governments, tribal governments or tribal consortia, faith-based organizations, and community-based organizations in areas that have significant numbers of children of prisoners and that submit applications meeting the requirements of this section, in amounts that do not exceed $5,000,000 per grant.

(d) Application requirements

In order to be eligible for a grant under this section, the chief executive officer of the applicant must submit to the Secretary an application containing the following:

(1) Program design

A description of the proposed program, including—

(A) a list of local public and private organizations and entities that will participate in the mentoring network;

(B) the name, description, and qualifications of the entity that will coordinate and oversee the activities of the mentoring network;

(C) the number of mentor-child matches proposed to be established and maintained annually under the program;

(D) such information as the Secretary may require concerning the methods to be used to recruit, screen support, and oversee individuals participating as mentors, (which methods shall include criminal background checks on the individuals), and to evaluate outcomes for participating children, including information necessary to demonstrate compliance with requirements established by the Secretary for the program; and

(E) such other information as the Secretary may require.

(2) Community consultation; coordination with other programs

A demonstration that, in developing and implementing the program, the applicant will, to the extent feasible and appropriate—

(A) consult with public and private community entities, including religious organizations, and including, as appropriate, Indian tribal organizations and urban Indian organizations, and with family members of potential clients;

(B) coordinate the programs and activities under the program with other Federal, State, and local programs serving children and youth; and

(C) consult with appropriate Federal, State, and local corrections, workforce development, and substance abuse and mental health agencies.

(3) Equal access for local service providers

An assurance that public and private entities and community organizations, including religious organizations and Indian organizations, will be eligible to participate on an equal basis.

(4) Records, reports, and audits

An agreement that the applicant will maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

(5) Evaluation

An agreement that the applicant will cooperate fully with the Secretary's ongoing and final evaluation of the program under the plan, by means including providing the Secretary access to the program and program-related records and documents, staff, and grantees receiving funding under the plan.

(e) Federal share

(1) In general

A grant for a program under this section shall be available to pay a percentage share of the costs of the program up to—

(A) 75 percent for the first and second fiscal years for which the grant is awarded; and

(B) 50 percent for the third and each succeeding such fiscal years.

(2) Non-Federal share

The non-Federal share of the cost of projects under this section may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

(f) Considerations in awarding grants

In awarding grants under this section, the Secretary shall take into consideration—

(1) the qualifications and capacity of applicants and networks of organizations to effectively carry out a mentoring program under this section;

(2) the comparative severity of need for mentoring services in local areas, taking into consideration data on the numbers of children (and in particular of low-income children) with an incarcerated parents[1] (or parents) in the areas;

(3) evidence of consultation with existing youth and family service programs, as appropriate; and

(4) any other factors the Secretary may deem significant with respect to the need for or the potential success of carrying out a mentoring program under this section.

(g) Service delivery demonstration project

(1) Purpose; authority to enter into cooperative agreement

The Secretary shall enter into a cooperative agreement with an eligible entity that meets the requirements of paragraph (2) for the purpose of requiring the entity to conduct a demonstration project consistent with this subsection under which the entity shall—

(A) identify children of prisoners in need of mentoring services who have not been matched with a mentor by an applicant awarded a grant under this section, with a priority for identifying children who—

(i) reside in an area not served by a recipient of a grant under this section;

(ii) reside in an area that has a substantial number of children of prisoners;

(iii) reside in a rural area; or

(iv) are Indians;

(B) provide the families of the children so identified with—

(i) a voucher for mentoring services that meets the requirements of paragraph (5); and

(ii) a list of the providers of mentoring services in the area in which the family resides that satisfy the requirements of paragraph (6); and

(C) monitor and oversee the delivery of mentoring services by providers that accept the vouchers.

(2) Eligible entity

(A) In general

Subject to subparagraph (B), an eligible entity under this subsection is an organiza-

[1] So in original. Probably should be ''parent''.

tion that the Secretary determines, on a competitive basis—

(i) has substantial experience—

(I) in working with organizations that provide mentoring services for children of prisoners; and

(II) in developing quality standards for the identification and assessment of mentoring programs for children of prisoners; and

(ii) submits an application that satisfies the requirements of paragraph (3).

(B) Limitation

An organization that provides mentoring services may not be an eligible entity for purposes of being awarded a cooperative agreement under this subsection.

(3) Application requirements

To be eligible to be awarded a cooperative agreement under this subsection, an entity shall submit to the Secretary an application that includes the following:

(A) Qualifications

Evidence that the entity—

(i) meets the experience requirements of paragraph (2)(A)(i); and

(ii) is able to carry out—

(I) the purposes of this subsection identified in paragraph (1); and

(II) the requirements of the cooperative agreement specified in paragraph (4).

(B) Service delivery plan

(i) Distribution requirements

Subject to clause (iii), a description of the plan of the entity to ensure the distribution of not less than—

(I) 3,000 vouchers for mentoring services in the first year in which the cooperative agreement is in effect with that entity;

(II) 8,000 vouchers for mentoring services in the second year in which the agreement is in effect with that entity; and

(III) 13,000 vouchers for mentoring services in any subsequent year in which the agreement is in effect with that entity.

(ii) Satisfaction of priorities

A description of how the plan will ensure the delivery of mentoring services to children identified in accordance with the requirements of paragraph (1)(A).

(iii) Secretarial authority to modify distribution requirement

The Secretary may modify the number of vouchers specified in subclauses (I) through (III) of clause (i) to take into account the availability of appropriations and the need to ensure that the vouchers distributed by the entity are for amounts that are adequate to ensure the provision of mentoring services for a 12-month period.

(C) Collaboration and cooperation

A description of how the entity will ensure collaboration and cooperation with other interested parties, including courts and prisons, with respect to the delivery of mentoring services under the demonstration project.

(D) Other

Any other information that the Secretary may find necessary to demonstrate the capacity of the entity to satisfy the requirements of this subsection.

(4) Cooperative agreement requirements

A cooperative agreement awarded under this subsection shall require the eligible entity to do the following:

(A) Identify quality standards for providers

To work with the Secretary to identify the quality standards that a provider of mentoring services must meet in order to participate in the demonstration project and which, at a minimum, shall include criminal records checks for individuals who are prospective mentors and shall prohibit approving any individual to be a mentor if the criminal records check of the individual reveals a conviction which would prevent the individual from being approved as a foster or adoptive parent under section 671(a)(20)(A) of this title.

(B) Identify eligible providers

To identify and compile a list of those providers of mentoring services in any of the 50 States or the District of Columbia that meet the quality standards identified pursuant to subparagraph (A).

(C) Identify eligible children

To identify children of prisoners who require mentoring services, consistent with the priorities specified in paragraph (1)(A).

(D) Monitor and oversee delivery of mentoring services

To satisfy specific requirements of the Secretary for monitoring and overseeing the delivery of mentoring services under the demonstration project, which shall include a requirement to ensure that providers of mentoring services under the project report data on the children served and the types of mentoring services provided.

(E) Records, reports, and audits

To maintain any records, make any reports, and cooperate with any reviews and audits that the Secretary determines are necessary to oversee the activities of the entity in carrying out the demonstration project under this subsection.

(F) Evaluations

To cooperate fully with any evaluations of the demonstration project, including collecting and monitoring data and providing the Secretary or the Secretary's designee with access to records and staff related to the conduct of the project.

(G) Limitation on administrative expenditures

To ensure that administrative expenditures incurred by the entity in conducting

the demonstration project with respect to a fiscal year do not exceed the amount equal to 10 percent of the amount awarded to carry out the project for that year.

(5) Voucher requirements

A voucher for mentoring services provided to the family of a child identified in accordance with paragraph (1)(A) shall meet the following requirements:

(A) Total payment amount; 12-month service period

The voucher shall specify the total amount to be paid a provider of mentoring services for providing the child on whose behalf the voucher is issued with mentoring services for a 12-month period.

(B) Periodic payments as services provided

(i) In general

The voucher shall specify that it may be redeemed with the eligible entity by the provider accepting the voucher in return for agreeing to provide mentoring services for the child on whose behalf the voucher is issued.

(ii) Demonstration of the provision of services

A provider that redeems a voucher issued by the eligible entity shall receive periodic payments from the eligible entity during the 12-month period that the voucher is in effect upon demonstration of the provision of significant services and activities related to the provision of mentoring services to the child on whose behalf the voucher is issued.

(6) Provider requirements

In order to participate in the demonstration project, a provider of mentoring services shall—

(A) meet the quality standards identified by the eligible entity in accordance with paragraph (1);

(B) agree to accept a voucher meeting the requirements of paragraph (5) as payment for the provision of mentoring services to a child on whose behalf the voucher is issued;

(C) demonstrate that the provider has the capacity, and has or will have nonfederal resources, to continue supporting the provision of mentoring services to the child on whose behalf the voucher is issued, as appropriate, after the conclusion of the 12-month period during which the voucher is in effect; and

(D) if the provider is a recipient of a grant under this section, demonstrate that the provider has exhausted its capacity for providing mentoring services under the grant.

(7) 3-year period; option for renewal

(A) In general

A cooperative agreement awarded under this subsection shall be effective for a 3-year period.

(B) Renewal

The cooperative agreement may be renewed for an additional period, not to exceed 2 years and subject to any conditions that the Secretary may specify that are not inconsistent with the requirements of this subsection or subsection (i)(2)(B), if the Secretary determines that the entity has satisfied the requirements of the agreement and evaluations of the service delivery demonstration project demonstrate that the voucher service delivery method is effective in providing mentoring services to children of prisoners.

(8) Independent evaluation and report

(A) In general

The Secretary shall enter into a contract with an independent, private organization to evaluate and prepare a report on the first 2 fiscal years in which the demonstration project is conducted under this subsection.

(B) Deadline for report

Not later than 90 days after the end of the second fiscal year in which the demonstration project is conducted under this subsection, the Secretary shall submit the report required under subparagraph (A) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The report shall include—

(i) the number of children as of the end of such second fiscal year who received vouchers for mentoring services; and

(ii) any conclusions regarding the use of vouchers for the delivery of mentoring services for children of prisoners.

(9) No effect on eligibility for other Federal assistance

A voucher provided to a family under the demonstration project conducted under this subsection shall be disregarded for purposes of determining the eligibility for, or the amount of, any other Federal or federally-supported assistance for the family.

(h) Independent evaluation; reports

(1) Independent evaluation

The Secretary shall conduct by grant, contract, or cooperative agreement an independent evaluation of the programs authorized under this section, including the service delivery demonstration project authorized under subsection (g).

(2) Reports

Not later than 12 months after September 28, 2006, the Secretary shall submit a report to the Congress that includes the following:

(A) The characteristics of the mentoring programs funded under this section.

(B) The plan for implementation of the service delivery demonstration project authorized under subsection (g).

(C) A description of the outcome-based evaluation of the programs authorized under this section that the Secretary is conducting as of September 28, 2006, and how the evaluation has been expanded to include an evaluation of the demonstration project authorized under subsection (g).

(D) The date on which the Secretary shall submit a final report on the evaluation to the Congress.

(i) Authorization of appropriations; reservations of certain amounts

(1) Limitations on authorization of appropriations

To carry out this section, there are authorized to be appropriated to the Secretary such sums as may be necessary for fiscal years 2007 through 2011.

(2) Reservations

(A) Research, technical assistance, and evaluation

The Secretary shall reserve 4 percent of the amount appropriated for each fiscal year under paragraph (1) for expenditure by the Secretary for research, technical assistance, and evaluation related to programs under this section.

(B) Service delivery demonstration project

(i) In general

Subject to clause (ii), for purposes of awarding a cooperative agreement to conduct the service delivery demonstration project authorized under subsection (g), the Secretary shall reserve not more than—

(I) $5,000,000 of the amount appropriated under paragraph (1) for the first fiscal year in which funds are to be awarded for the agreement;

(II) $10,000,000 of the amount appropriated under paragraph (1) for the second fiscal year in which funds are to be awarded for the agreement; and

(III) $15,000,000 of the amount appropriated under paragraph (1) for the third fiscal year in which funds are to be awarded for the agreement.

(ii) Assurance of funding for general program grants

With respect to any fiscal year, no funds may be awarded for a cooperative agreement under subsection (g), unless at least $25,000,000 of the amount appropriated under paragraph (1) for that fiscal year is used by the Secretary for making grants under this section for that fiscal year.

(Aug. 14, 1935, ch. 531, title IV, § 439, as added Pub. L. 107–133, title I, § 121, Jan. 17, 2002, 115 Stat. 2419; amended Pub. L. 109–288, § 8, Sept. 28, 2006, 120 Stat. 1249.)

CODIFICATION

September 28, 2006, referred to in subsec. (h)(2), was in the original ''the date of enactment of this subsection'' and ''that date of enactment'', which were translated as meaning the date of enactment of Pub. L. 109–288, which amended subsec. (h) of this section generally, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 439 of act Aug. 14, 1935, was classified to section 639 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–288, § 8(b)(2)(A)(i), substituted ''purposes'' for ''purpose'' in heading.

Subsec. (a)(2). Pub. L. 109–288, § 8(b)(2)(A)(ii)–(iv), substituted ''Purposes'' for ''Purpose'' in heading, substituted ''The purposes of this section are to authorize the Secretary—'' for ''The purpose of this section is to authorize the Secretary'', designated the remaining provisions as subpar. (A), and added subpar. (B).

Subsec. (c). Pub. L. 109–288, § 8(b)(2)(B), substituted ''(i)'' for ''(h)'' and ''(i)(2)'' for ''(h)(2)''.

Pub. L. 109–288, § 8(a)(1), substituted ''2007 through 2011'' for ''2002 through 2006''.

Subsec. (g). Pub. L. 109–288, § 8(b)(1)(B), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109–288, § 8(b)(2)(C), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: ''The Secretary shall conduct an evaluation of the programs conducted pursuant to this section, and submit to the Congress not later than April 15, 2005, a report on the findings of the evaluation.''

Pub. L. 109–288, § 8(b)(1)(A), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(1). Pub. L. 109–288, § 8(a)(2)(A), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''There are authorized to be appropriated to carry out this section $67,000,000 for each of fiscal years 2002 and 2003, and such sums as may be necessary for each succeeding fiscal year.''

Subsec. (h)(2). Pub. L. 109–288, § 8(a)(2)(B), substituted ''4 percent'' for ''2.5 percent''.

Subsec. (i). Pub. L. 109–288, § 8(b)(2)(D)(i), substituted ''reservations'' for ''reservation'' in heading.

Pub. L. 109–288, § 8(b)(1)(A), redesignated subsec. (h) as (i).

Subsec. (i)(2). Pub. L. 109–288, § 8(b)(2)(D)(ii), substituted ''Reservations'' for ''Reservation'' in heading, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE

Section effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as an Effective Date of 2002 Amendment note under section 629 of this title.

PART C—WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID UNDER STATE PLAN APPROVED UNDER PART A

§§ 630 to 632. Repealed. Pub. L. 100–485, title II, § 202(a), Oct. 13, 1988, 102 Stat. 2377

Section 630, act Aug. 14, 1935, ch. 531, title IV, § 430, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 884; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(1), 85 Stat. 805, provided statement of purpose for work incentive program for recipients of aid under State plan approved under part A.

Section 631, act Aug. 14, 1935, ch. 531, title IV, § 431, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 884; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(2), 85 Stat. 805; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(ii), 98 Stat. 1170, authorized appropriations.

Section 632, act Aug. 14, 1935, ch. 531, title IV, § 432, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 884; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(3), 85 Stat. 806; Oct. 13, 1982, Pub. L. 97–300, title V, § 502(a), (b)(1), (c)(1), 96 Stat. 1397, 1398; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(k), 98 Stat. 1171, established work incentive programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain

changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204(a), (b)(1)(A), of Pub. L. 100–485, set out as an Effective Date of 1988 Amendment note under section 671 of this title.

§ 632a. Omitted

CODIFICATION

Section, Pub. L. 96–499, title IX, § 966, Dec. 5, 1980, 94 Stat. 2652; Pub. L. 97–35, title XXI, § 2156, Aug. 13, 1981, 95 Stat. 802; Pub. L. 97–123, § 5, Dec. 29, 1981, 95 Stat. 1664; Pub. L. 102–54, § 13(q)(4), June 13, 1991, 105 Stat. 280, required Secretary of Health and Human Services to enter into agreements with 7 to 12 States for the purpose of conducting demonstration projects of up to 4 years duration for the training and employment of eligible participants as homemakers or home health aides and required Secretary to submit to Congress annual reports and a final report 6 months after receiving final reports from all States.

§§ 633 to 645. Repealed. Pub. L. 100–485, title II, § 202(a), Oct. 13, 1988, 102 Stat. 2377

Section 633, act Aug. 14, 1935, ch. 531, title IV, § 433, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 885; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(4)(A)–(F), 85 Stat. 806, 807; Oct. 13, 1982, Pub. L. 97–300, title V, § 502(b)(2), (c)(2), (3), 96 Stat. 1398; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(k), 98 Stat. 1171, related to operation of programs.

Section 634, act Aug. 14, 1935, ch. 531, title IV, § 434, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(4)(G), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(k), 98 Stat. 1171, related to incentive payments and allowances for transportation and other costs.

Section 635, act Aug. 14, 1935, ch. 531, title IV, § 435, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(5), 85 Stat. 808, limited Federal assistance.

Section 636, act Aug. 14, 1935, ch. 531, title IV, § 436, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(6), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(iii), 98 Stat. 1170, related to period of enrollment.

Section 637, act Aug. 14, 1935, ch. 531, title IV, § 437, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 887, related to relocation of participants.

Section 638, act Aug. 14, 1935, ch. 531, title IV, § 438, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(7), 85 Stat. 808, provided that participants in programs were not Federal employees.

Section 639, act Aug. 14, 1935, ch. 531, title IV, § 439, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(8), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(iv), 98 Stat. 1170, related to rules and regulations.

Section 640, act Aug. 14, 1935, ch. 531, title IV, § 440, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888, required annual report.

Section 641, act Aug. 14, 1935, ch. 531, title IV, § 441, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(9), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(9), (j)(2)(B)(v), 98 Stat. 1166, 1170, related to evaluation and research.

Section 642, act Aug. 14, 1935, ch. 531, title IV, § 442, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(10), 85 Stat. 808, related to technical assistance for providers of employment or training.

Section 643, act Aug. 14, 1935, ch. 531, title IV, § 443, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(11), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(vi), 98 Stat. 1170, related to collection of State share.

Section 644, act Aug. 14, 1935, ch. 531, title IV, § 444, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 889; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(12), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(10), (j)(2)(B)(vii), 98 Stat. 1166, 1170, related to agreements with other agencies providing assistance to families of unemployed parents.

Section 645, act Aug. 14, 1935, ch. 531, title IV, § 445, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2309, 95 Stat. 850; amended Sept. 3, 1982, Pub. L. 97–248, title I, § 158(a), (b), 96 Stat. 399; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(11), 98 Stat. 1166; Aug. 22, 1984, Pub. L. 98–396, title I, 98 Stat. 1392, 1393; Oct. 18, 1986, Pub. L. 99–500, § 150, 100 Stat. 1783–352, and Oct. 30, 1986, Pub. L. 99–591, § 150, 100 Stat. 3341–355; July 11, 1988, Pub. L. 100–364, § 2, 102 Stat. 822, related to work incentive demonstration program.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204(a), (b)(1)(A), of Pub. L. 100–485, set out as an Effective Date of 1988 Amendment note under section 671 of this title.

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

§ 651. Authorization of appropriations

For the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for assistance under a State program funded under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

(Aug. 14, 1935, ch. 531, title IV, § 451, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2351; amended Pub. L. 97–35, title XXIII, § 2332(a), Aug. 13, 1981, 95 Stat. 861; Pub. L. 98–378, § 2, Aug. 16, 1984, 98 Stat. 1305; Pub. L. 104–193, title I, § 108(c)(1), title III, § 395(d)(1)(A), Aug. 22, 1996, 110 Stat. 2165, 2259.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1996—Pub. L. 104–193, § 395(d)(1)(A), substituted ''noncustodial'' for ''absent'' in two places.

Pub. L. 104–193, § 108(c)(1), substituted ''assistance under a State program funded under part A of this subchapter'' for ''aid under part A of this subchapter''.

1984—Pub. L. 98–378 substituted ''obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested,'' for ''and obtaining child and spousal support,''.

1981—Pub. L. 97–35 substituted ''children and the spouse (or former spouse) with whom such children are living'' for ''children'' and ''child and spousal support'' for ''child support''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(c)(1) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendment by section 395(d)(1)(A) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2336 of Pub. L. 97–35 provided that:

''(a) Except as otherwise specifically provided in the preceding sections of this chapter [sections 2331–2335 of Pub. L. 97–35] or in subsection (b), the provisions of this chapter and the amendments and repeals made by this chapter [amending this section, sections 652, 653, 654, 657, and 664 of this title, and sections 6305 and 6402 of Title 26, Internal Revenue Code] shall become effective on October 1, 1981.

''(b) If a State agency administering a plan approved under part D of title IV of the Social Security Act [this part] demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by this chapter to which the effective date specified in subsection (a) applies, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or after October 1, 1981. For purposes of the preceding sentence, the term 'session of a State's legislature' includes any regular, special, budget, or other session of a State legislature.''

EFFECTIVE DATE

Section 101(f) of Pub. L. 93–647, as amended by Pub. L. 94–46, §2, June 30, 1975, 89 Stat. 245, provided that: ''The amendments made by this section [enacting this part and section 6305 of Title 26, Internal Revenue Code, amending sections 602, 603, 604, 606, and 1306 of this title, repealing section 610 of this title, and enacting provisions set out as notes under this section and section 602 of this title] shall become effective on August 1, 1975, except that section 459 of the Social Security Act [section 659 of this title], as added by subsection (a) of this section shall become effective on January 1, 1975, and subsection (e) of this section [enacting provisions set out as a note under this section] shall become effective upon the date of the enactment of this Act [Jan. 4, 1975].''

SHORT TITLE

This part is popularly known as the ''Child Support Enforcement Act''.

STUDY ON EFFECTIVENESS OF ENFORCEMENT OF MEDICAL SUPPORT BY STATE AGENCIES

Pub. L. 105–200, title IV, §401(a), July 16, 1998, 112 Stat. 659, provided that:

''(1) MEDICAL CHILD SUPPORT WORKING GROUP.—Within 60 days after the date of the enactment of this Act [July 16, 1998], the Secretary of Health and Human Services and the Secretary of Labor shall jointly establish a Medical Child Support Working Group. The purpose of the Working Group shall be to identify the impediments to the effective enforcement of medical support by State agencies administering the programs operated pursuant to part D of title IV of the Social Security Act [this part].

''(2) MEMBERSHIP.—The Working Group shall consist of not more than 30 members and shall be composed of representatives of—

''(A) the Department of Labor;

''(B) the Department of Health and Human Services;

''(C) State directors of programs under part D of title IV of the Social Security Act [this part];

''(D) State directors of the Medicaid program under title XIX of the Social Security Act [subchapter XIX of this chapter];

''(E) employers, including owners of small businesses and their trade or industry representatives and certified human resource and payroll professionals;

''(F) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1))[)];

''(G) children potentially eligible for medical support, such as child advocacy organizations;

''(H) State medical child support programs; and

''(I) organizations representing State child support programs.

''(3) COMPENSATION.—The members shall serve without compensation.

''(4) ADMINISTRATIVE SUPPORT.—The Department of Health and Human Services and the Department of Labor shall jointly provide appropriate administrative support to the Working Group, including technical assistance. The Working Group may use the services and facilities of either such Department, with or without reimbursement, as jointly determined by such Departments.

''(5) REPORT.—

''(A) REPORT BY WORKING GROUP TO THE SECRETARIES.—Not later than 18 months after the date of the enactment of this Act [July 16, 1998], the Working Group shall submit to the Secretary of Labor and the Secretary of Health and Human Services a report containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical support by State agencies administering the programs operated pursuant to part D of title IV of the Social Security Act [this part] identified by the Working Group, including—

''(i) recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under interim regulations;

''(ii) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677);

''(iii) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs operated pursuant to part D of title IV of the Social Security Act and titles XIX and XXI of such Act [subchapter XIX and XXI of this chapter];

''(iv) appropriate measures to improve the availability of alternate types of medical support that are aside from health coverage offered through the noncustodial parent's health plan and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage;

''(v) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act [section 652(f) of this title]; and

''(vi) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the Working Group deems necessary.

''(B) REPORT BY SECRETARIES TO THE CONGRESS.—Not later than 2 months after receipt of the report pursuant to subparagraph (A), the Secretaries shall jointly submit a report to each House of the Congress regarding the recommendations contained in the report under subparagraph (A).

''(6) TERMINATION.—The Working Group shall terminate 30 days after the date of the issuance of its report under paragraph (5).''

PROMULGATION OF NATIONAL MEDICAL SUPPORT NOTICE

Pub. L. 105–200, title IV, § 401(b), July 16, 1998, 112 Stat. 660, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services and the Secretary of Labor shall jointly develop and promulgate by regulation a National Medical Support Notice, to be issued by States as a means of enforcing the health care coverage provisions in a child support order.

''(2) REQUIREMENTS.—The National Medical Support Notice shall—

''(A) conform with the requirements which apply to medical child support orders under section 609(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169(a)(3)) in connection with group health plans (subject to section 609(a)(4) of such Act), irrespective of whether the group health plan is covered under section 4 of such Act [29 U.S.C. 1003];

''(B) conform with the requirements of part D of title IV of the Social Security Act [this part]; and

''(C) include a separate and easily severable employer withholding notice, informing the employer of—

''(i) applicable provisions of State law requiring the employer to withhold any employee contributions due under any group health plan in connection with coverage required to be provided under such order;

''(ii) the duration of the withholding requirement;

''(iii) the applicability of limitations on any such withholding under title III of the Consumer Credit Protection Act [15 U.S.C. 1671 et seq.];

''(iv) the applicability of any prioritization required under State law between amounts to be withheld for purposes of cash support and amounts to be withheld for purposes of medical support, in cases where available funds are insufficient for full withholding for both purposes; and

''(v) the name and telephone number of the appropriate unit or division to contact at the State agency regarding the National Medical Support Notice.

''(3) PROCEDURES.—The regulations promulgated pursuant to paragraph (1) shall include appropriate procedures for the transmission of the National Medical Support Notice to employers by State agencies administering the programs operated pursuant to part D of title IV of the Social Security Act [this part].

''(4) INTERIM REGULATIONS.—Not later than 10 months after the date of the enactment of this Act [July 16, 1998], the Secretaries shall issue interim regulations providing for the National Medical Support Notice.

''(5) FINAL REGULATIONS.—Not later than 1 year after the issuance of the interim regulations under paragraph (4), the Secretary of Health and Human Services and the Secretary of Labor shall jointly issue final regulations providing for the National Medical Support Notice.''

AUTHORIZATION OF APPROPRIATIONS

Subsec. 101(e) of Pub. L. 93–647 provided that: ''There are authorized to be appropriated to the Secretary of Health, Education, and Welfare such sums as may be necessary to plan and prepare for the implementation of the program established by this section [this part and section 6305 of Title 26, Internal Revenue Code].''

§ 652. Duties of Secretary

(a) Establishment of separate organizational unit; duties

The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

(1) establish such standards for State programs for locating noncustodial parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the noncustodial parent's child is living as he determines to be necessary to assure that such programs will be effective;

(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

(3) review and approve State plans for such programs;

(4)(A) review data and calculations transmitted by State agencies pursuant to section 654(15)(B) of this title on State program accomplishments with respect to performance indicators for purposes of subsection (g) of this section and section 658a of this title;

(B) review annual reports submitted pursuant to section 654(15)(A) of this title and, as appropriate, provide to the State comments, recommendations for additional or alternative corrective actions, and technical assistance; and

(C) conduct audits, in accordance with the Government auditing standards of the Comptroller General of the United States—

(i) at least once every 3 years (or more frequently, in the case of a State which fails to meet the requirements of this part concerning performance standards and reliability of program data) to assess the completeness, reliability, and security of the data and the accuracy of the reporting systems used in calculating performance indicators under subsection (g) of this section and section 658a of this title;

(ii) of the adequacy of financial management of the State program operated under the State plan approved under this part, including assessments of—

(I) whether Federal and other funds made available to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(II) whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(iii) for such other purposes as the Secretary may find necessary;

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State, and establish procedures to be followed by States for collecting and reporting information required to be provided under this part, and establish uniform definitions (including those necessary to

enable the measurement of State compliance with the requirements of this part relating to expedited processes) to be applied in following such procedures;

(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

(7) provide technical assistance to the States to help them establish effective systems for collecting child and spousal support and establishing paternity, and specify the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity which shall include the social security number of each parent and, after consultation with the States, other common elements as determined by such designee;

(8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against noncustodial parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the noncustodial parent within a reasonable time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

(9) operate the Federal Parent Locator Service established by section 653 of this title;

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to the States and the Federal Government, the distribution of collections to families, State and local governmental units, and the Federal Government; and an identification of the financial impact of the provisions of this part, including—

(i) the total amount of child support payments collected as a result of services furnished during the fiscal year to individuals receiving services under this part;

(ii) the cost to the States and to the Federal Government of so furnishing the services; and

(iii) the number of cases involving families—

(I) who became ineligible for assistance under State programs funded under part A of this subchapter during a month in the fiscal year; and

(II) with respect to whom a child support payment was received in the month;

(B) costs and staff associated with the Office of Child Support Enforcement;

(C) the following data, separately stated for cases where the child is receiving assistance under a State program funded under part A of this subchapter (or foster care maintenance payments under part E of this subchapter), or formerly received such assistance or payments and the State is continuing to collect support assigned to it pursuant to section 608(a)(3) of this title or under section 671(a)(17) or 1396k of this title, and for all other cases under this part:

(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted;

(ii) the total number of cases in which a support obligation has been established;

(iii) the number of cases in which support was collected during the fiscal year;

(iv) the total amount of support collected during such fiscal year and distributed as current support;

(v) the total amount of support collected during such fiscal year and distributed as arrearages;

(vi) the total amount of support due and unpaid for all fiscal years; and

(vii) the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;

(D) the status of all State plans under this part as of the end of the fiscal year last ending before the report is submitted, together with an explanation of any problems which are delaying or preventing approval of State plans under this part;

(E) data, by State, on the use of the Federal Parent Locator Service, and the number of locate requests submitted without the noncustodial parent's social security account number;

(F) the number of cases, by State, in which an applicant for or recipient of assistance under a State program funded under part A of this subchapter has refused to cooperate in identifying and locating the noncustodial parent and the number of cases in which refusal so to cooperate is based on good cause (as determined by the State);

(G) data, by State, on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government;

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report; and

(I) compliance, by State, with the standards established pursuant to subsections (h) and (i) of this section; and

(11) not later than October 1, 1996, after consulting with the State directors of programs under this part, promulgate forms to be used by States in interstate cases for—

(A) collection of child support through income withholding;

(B) imposition of liens; and

(C) administrative subpoenas.

(b) Certification of child support obligations to Secretary of the Treasury for collection

The Secretary shall, upon the request of any State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1986 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving assistance under the State program funded under part A of this subchapter) which is assigned to such State or is undertaken to be collected by such State pursuant to section 654(4) of this title. No amount may be certified for collection under this subsection except the amount of the delinquency under a court or administrative order for support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms, and upon an agreement that the State will reimburse the Secretary of the Treasury for any costs involved in making the collection. All reimbursements shall be credited to the appropriation accounts which bore all or part of the costs involved in making the collections. The Secretary after consultation with the Secretary of the Treasury may, by regulation, establish criteria for accepting amounts for collection and for making certification under this subsection including imposing such limitations on the frequency of making such certifications under this subsection.

(c) Payment of child support collections to States

The Secretary of the Treasury shall from time to time pay to each State for distribution in accordance with the provisions of section 657 of this title the amount of each collection made on behalf of such State pursuant to subsection (b) of this section.

(d) Child support management information system

(1) Except as provided in paragraph (3), the Secretary shall not approve the initial and annually updated advance automated data processing planning document, referred to in section 654(16) of this title, unless he finds that such document, when implemented, will generally carry out the objectives of the management system referred to in such subsection, and such document—

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system,

(B) contains a description of the proposed management system referred to in section 654(16) of this title, including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such management system,

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

(E) contains an implementation plan and backup procedures to handle possible failures,

(F) contains a summary of proposed improvement of such management system in terms of qualitative and quantitative benefits, and

(G) provides such other information as the Secretary determines under regulation is necessary.

(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a) of this section, on a continuing basis, review, assess, and inspect the planning, design, and operation of, management information systems referred to in section 654(16) of this title, with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 654(16) of this title.

(B) If the Secretary finds with respect to any statewide management information system referred to in section 654(16) of this title that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automated data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.

(3) The Secretary may waive any requirement of paragraph (1) or any condition specified under section 654(16) of this title, and shall waive the single statewide system requirement under sections 654(16) and 654a of this title, with respect to a State if—

(A) the State demonstrates to the satisfaction of the Secretary that the State has or can develop an alternative system or systems that enable the State—

(i) for purposes of section 609(a)(8) of this title, to achieve the paternity establishment percentages (as defined in subsection (g)(2) of this section) and other performance measures that may be established by the Secretary;

(ii) to submit data under section 654(15)(B) of this title that is complete and reliable;

(iii) to substantially comply with the requirements of this part; and

(iv) in the case of a request to waive the single statewide system requirement, to—

(I) meet all functional requirements of sections 654(16) and 654a of this title;

(II) ensure that calculation of distributions meets the requirements of section 657 of this title and accounts for distributions to children in different families or in different States or sub-State jurisdictions, and for distributions to other States;

(III) ensure that there is only one point of contact in the State which provides seamless case processing for all interstate case processing and coordinated, automated intrastate case management;

(IV) ensure that standardized data elements, forms, and definitions are used throughout the State;

(V) complete the alternative system in no more time than it would take to complete a single statewide system that meets such requirement; and

(VI) process child support cases as quickly, efficiently, and effectively as such cases would be processed through a single statewide system that meets such requirement;

(B)(i) the waiver meets the criteria of paragraphs (1), (2), and (3) of section 1315(c) of this title; or

(ii) the State provides assurances to the Secretary that steps will be taken to otherwise improve the State's child support enforcement program; and

(C) in the case of a request to waive the single statewide system requirement, the State has submitted to the Secretary separate estimates of the total cost of a single statewide system that meets such requirement, and of any such alternative system or systems, which shall include estimates of the cost of developing and completing the system and of operating and maintaining the system for 5 years, and the Secretary has agreed with the estimates.

(e) Technical assistance to States

The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 654(16) of this title.

(f) Regulations

The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part enforce medical support included as part of a child support order whenever health care coverage is available to the noncustodial parent at a reasonable cost. A State agency administering the program under this part may enforce medical support against a custodial parent if health care coverage is available to the custodial parent at a reasonable cost, notwithstanding any other provision of this part. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under subchapter XIX of this chapter with respect to the availability of health insurance coverage. For purposes of this part, the term ''medical support'' may include health care coverage, such as coverage under a health insurance plan (including payment of costs of premiums, co-payments, and deductibles) and payment for medical expenses incurred on behalf of a child.

(g) Performance standards for State paternity establishment programs

(1) A State's program under this part shall be found, for purposes of section 609(a)(8) of this title, not to have complied substantially with the requirements of this part unless, for any fiscal year beginning on or after October 1, 1994, its paternity establishment percentage for such fiscal year is based on reliable data and (rounded to the nearest whole percentage point) equals or exceeds—

(A) 90 percent;

(B) for a State with a paternity establishment percentage of not less than 75 percent but less than 90 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 2 percentage points;

(C) for a State with a paternity establishment percentage of not less than 50 percent but less than 75 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 3 percentage points;

(D) for a State with a paternity establishment percentage of not less than 45 percent but less than 50 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 4 percentage points;

(E) for a State with a paternity establishment percentage of not less than 40 percent but less than 45 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 5 percentage points; or

(F) for a State with a paternity establishment percentage of less than 40 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 6 percentage points.

In determining compliance under this section, a State may use as its paternity establishment percentage either the State's IV–D paternity establishment percentage (as defined in paragraph (2)(A)) or the State's statewide paternity establishment percentage (as defined in paragraph (2)(B)).

(2) For purposes of this section—

(A) the term ''IV–D paternity establishment percentage'' means, with respect to a State for a fiscal year, the ratio (expressed as a percentage) that the total number of children—

(i) who have been born out of wedlock,

(ii)(I) except as provided in the last sentence of this paragraph, with respect to whom assistance is being provided under the State program funded under part A of this subchapter in the fiscal year or, at the option of the State, as of the end of such year, or (II) with respect to whom services are being provided under the State's plan approved under this part in the fiscal year or, at the option of the State, as of the end of such year pursuant to an application submitted under section 654(4)(A)(ii) of this title, and

(iii) the paternity of whom has been established or acknowledged,

bears to the total number of children born out of wedlock and (except as provided in such last sentence) with respect to whom assistance was being provided under the State program funded under part A of this subchapter as of the end of the preceding fiscal year or with respect to whom services were being provided under the State's plan approved under this part as of the end of the preceding fiscal year pursuant to an application submitted under section 654(4)(A)(ii) of this title;

(B) the term ''statewide paternity establishment percentage'' means, with respect to a

State for a fiscal year, the ratio (expressed as a percentage) that the total number of minor children—

(i) who have been born out of wedlock, and

(ii) the paternity of whom has been established or acknowledged during the fiscal year,

bears to the total number of children born out of wedlock during the preceding fiscal year; and

(C) the term ''reliable data'' means the most recent data available which are found by the Secretary to be reliable for purposes of this section.

For purposes of subparagraphs (A) and (B), the total number of children shall not include any child with respect to whom assistance is being provided under the State program funded under part A of this subchapter by reason of the death of a parent unless paternity is established for such child or any child with respect to whom an applicant or recipient is found by the State to qualify for a good cause or other exception to cooperation pursuant to section 654(29) of this title.

(3)(A) The Secretary may modify the requirements of this subsection to take into account such additional variables as the Secretary identifies (including the percentage of children in a State who are born out of wedlock or for whom support has not been established) that affect the ability of a State to meet the requirements of this subsection.

(B) The Secretary shall submit an annual report to the Congress that sets forth the data upon which the paternity establishment percentages for States for a fiscal year are based, lists any additional variables the Secretary has identified under subparagraph (A), and describes State performance in establishing paternity.

(h) Prompt State response to requests for child support assistance

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must accept and respond to requests (from States, jurisdictions thereof, or individuals who apply for services furnished by the State agency under this part or with respect to whom an assignment pursuant to section 608(a)(3) of this title is in effect) for assistance in establishing and enforcing support orders, including requests to locate noncustodial parents, establish paternity, and initiate proceedings to establish and collect child support awards.

(i) Prompt State distribution of amounts collected as child support

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must distribute, in accordance with section 657 of this title, amounts collected as child support pursuant to the State's plan approved under this part.

(j) Training of Federal and State staff, research and demonstration programs, and special projects of regional or national significance

Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated to the Secretary for each fiscal year an amount equal to 1 percent of the total amount paid to the Federal Government pursuant to a plan approved under this part during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the third calendar quarter following the end of such preceding fiscal year) or the amount appropriated under this paragraph[1] for fiscal year 2002, whichever is greater, which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements, for—

(1) information dissemination and technical assistance to States, training of State and Federal staff, staffing studies, and related activities needed to improve programs under this part (including technical assistance concerning State automated systems required by this part); and

(2) research, demonstration, and special projects of regional or national significance relating to the operation of State programs under this part.

The amount appropriated under this subsection shall remain available until expended.

(k) Denial of passports for nonpayment of child support

(1) If the Secretary receives a certification by a State agency in accordance with the requirements of section 654(31) of this title that an individual owes arrearages of child support in an amount exceeding $2,500, the Secretary shall transmit such certification to the Secretary of State for action (with respect to denial, revocation, or limitation of passports) pursuant to paragraph (2).

(2) The Secretary of State shall, upon certification by the Secretary transmitted under paragraph (1), refuse to issue a passport to such individual, and may revoke, restrict, or limit a passport issued previously to such individual.

(3) The Secretary and the Secretary of State shall not be liable to an individual for any action with respect to a certification by a State agency under this section.

***(l)*[2] Facilitation of agreements between State agencies and financial institutions**

The Secretary, through the Federal Parent Locator Service, may aid State agencies providing services under State programs operated pursuant to this part and financial institutions doing business in two or more States in reaching agreements regarding the receipt from such institutions, and the transfer to the State agencies, of information that may be provided pursuant to section 666(a)(17)(A)(i) of this title, except that any State that, as of July 16, 1998, is conducting data matches pursuant to section 666(a)(17)(A)(i) of this title shall have until January 1, 2000, to allow the Secretary to obtain such information from such institutions that are operating in the State. For purposes of section 3413(d) of title 12, a disclosure pursuant to this subsection shall be considered a disclosure pursuant to a Federal statute.

[1] So in original. Probably should be ''subsection''.

[2] So in original. Two subsecs. (*l*) have been enacted.

(*l*)[2] Comparisons with insurance information

(1) In general

The Secretary, through the Federal Parent Locator Service, may—

(A) compare information concerning individuals owing past-due support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments; and

(B) furnish information resulting from the data matches to the State agencies responsible for collecting child support from the individuals.

(2) Liability

An insurer (including any agent of an insurer) shall not be liable under any Federal or State law to any person for any disclosure provided for under this subsection, or for any other action taken in good faith in accordance with this subsection.

(Aug. 14, 1935, ch. 531, title IV, §452, as added Pub. L. 93–647, §101(a), Jan. 4, 1975, 88 Stat. 2351; amended Pub. L. 95–30, title V, §504(a), May 23, 1977, 91 Stat. 163; Pub. L. 96–265, title IV, §§402(a), 405(c), (d), June 9, 1980, 94 Stat. 462, 464, 465; Pub. L. 96–272, title III, §301(b), June 17, 1980, 94 Stat. 527; Pub. L. 97–35, title XXIII, §2332(b), Aug. 13, 1981, 95 Stat. 861; Pub. L. 97–248, title I, §175(a)(1), Sept. 3, 1982, 96 Stat. 403; Pub. L. 98–369, div. B, title VI, §2663(c)(12), (j)(2)(B)(viii), July 18, 1984, 98 Stat. 1166, 1170; Pub. L. 98–378, §§4(b), 9(a)(1), 13(a), (b), 16, Aug. 16, 1984, 98 Stat. 1312, 1316, 1319, 1321; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–203, title IX, §9143(a), Dec. 22, 1987, 101 Stat. 1330–322; Pub. L. 100–485, title I, §§111(a), 121(a), 122(a), 123(b), (d), Oct. 13, 1988, 102 Stat. 2348, 2351–2353; Pub. L. 101–239, title X, §10403(a)(1)(B)(i), Dec. 19, 1989, 103 Stat. 2487; Pub. L. 103–66, title XIII, §13721(a), Aug. 10, 1993, 107 Stat. 658; Pub. L. 103–432, title II, §213, Oct. 31, 1994, 108 Stat. 4461; Pub. L. 104–35, §1(b), Oct. 12, 1995, 109 Stat. 294; Pub. L. 104–193, title I, §108(c)(2)–(9), title III, §§301(c)(1), (2), 316(e)(1), 324(a), 331(b), 341(b), formerly 341(c), 342(b), 343(a), 345(a), 346(a), 370(a)(1), 395(d)(1)(B), Aug. 22, 1996, 110 Stat. 2165, 2200, 2215, 2223, 2230, 2232–2234, 2237, 2238, 2251, 2259; Pub. L. 104–208, div. A, title I, §101(e) [title II, §215], Sept. 30, 1996, 110 Stat. 3009–233, 3009–255; Pub. L. 105–33, title V, §§5513(a)(1), (2), 5540, 5541(a), 5556(c), Aug. 5, 1997, 111 Stat. 619, 630, 637; Pub. L. 105–200, title I, §102(a), title II, §201(e)(1)(A), title IV, §§401(c)(2), 406(b), 407(b), July 16, 1998, 112 Stat. 647, 657, 662, 671, 672; Pub. L. 106–169, title IV, §401(f), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 109–171, title VII, §§7303(a), 7304, 7306(a), 7307(a)(2)(A)(i), (b), (c), Feb. 8, 2006, 120 Stat. 145–147.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in subsecs. (a)(10), (b), and (g)(2), are classified to sections 601 et seq. and 670 et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsec. (b), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–171, §7307(a)(2)(A)(i), (b), (c), substituted ''enforce medical support included as part of a child support order'' for ''include medical support as part of any child support order and enforce medical support'', inserted after first sentence ''A State agency administering the program under this part may enforce medical support against a custodial parent if health care coverage is available to the custodial parent at a reasonable cost, notwithstanding any other provision of this part.'', and inserted at end ''For purposes of this part, the term 'medical support' may include health care coverage, such as coverage under a health insurance plan (including payment of costs of premiums, co-payments, and deductibles) and payment for medical expenses incurred on behalf of a child.''

Subsec. (j). Pub. L. 109–171, §7304, inserted ''or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater'' before '', which shall be available'' in introductory provisions.

Subsec. (k)(1). Pub. L. 109–171, §7303(a), substituted ''$2,500'' for ''$5,000''.

Subsec. (*l*). Pub. L. 109–171, §7306(a), added subsec. (*l*) relating to comparisons with insurance information.

1999—Subsec. (a)(7). Pub. L. 106–169 substituted ''social security'' for ''Social Security''.

1998—Subsec. (a)(10)(H) to (J). Pub. L. 105–200, §407(b), inserted ''and'' at end of subpar. (H), redesignated subpar. (J) as (I), and struck out former subpar. (I) which read as follows: ''the amount of administrative costs which are expended in each functional category of expenditures, including establishment of paternity; and''.

Subsec. (d)(3). Pub. L. 105–200, §102(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary may waive any requirement of paragraph (1) or any condition specified under section 654(16) of this title with respect to a State if—

''(A) the State demonstrates to the satisfaction of the Secretary that the State has an alternative system or systems that enable the State, for purposes of section 609(a)(8) of this title, to achieve the paternity establishment percentages (as defined under subsection (g)(2) of this section) and other performance measures that may be established by the Secretary, and to submit data under section 654(15)(B) of this title that is complete and reliable, and to substantially comply with the requirements of this part; and

''(B)(i) the waiver meets the criteria of paragraphs (1), (2), and (3) of section 1315(b) of this title, or

''(ii) the State provides assurances to the Secretary that steps will be taken to otherwise improve the State's child support enforcement program.''

Subsec. (f). Pub. L. 105–200, §401(c)(2), substituted ''include'' for ''petition for the inclusion of'' and inserted ''and enforce medical support'' before ''whenever''.

Subsec. (g). Pub. L. 105–200, §201(e)(1)(A), amended Pub. L. 104–193, §341. See 1996 Amendment notes below.

Subsec. (*l*). Pub. L. 105–200, §406(b), added subsec. (*l*).

1997—Subsec. (d)(3)(A). Pub. L. 105–33, §5513(a)(1)(A), substituted ''section 609(a)(8) of this title, to achieve the paternity establishment percentages (as defined under subsection (g)(2) of this section) and other performance measures that may be established by the Secretary, and to submit data under section 654(15)(B) of this title that is complete and reliable, and to substantially comply with the requirements of this part; and'' for ''section 603(h) of this title, to be in substantial compliance with other requirements of this part; and''.

Subsec. (g)(1). Pub. L. 105–33, §5513(a)(1)(B), substituted ''section 609(a)(8)'' for ''section 603(h)'' in introductory provisions.

Subsec. (g)(2). Pub. L. 105–33, §5513(a)(2), made technical amendment to directory language of Pub. L. 104–193, §108(c)(8). See 1996 Amendment note below.

Pub. L. 105–33, §5540, substituted ''subparagraphs (A) and (B)'' for ''subparagraph (A)'' in concluding provisions.

Subsec. (j). Pub. L. 105–33, §5556(c), amended Pub. L. 104–208, §101(e) [title II, §215], generally. See 1996 Amendment note below.

Pub. L. 105–33, §5541(a), substituted ''which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements,''

for ''to cover costs incurred by the Secretary'' in introductory provisions.

1996—Subsec. (a)(1). Pub. L. 104–193, § 395(d)(1)(B), substituted ''noncustodial'' for ''absent'' in two places.

Subsec. (a)(4). Pub. L. 104–193, § 342(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title), conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 603(h) of this title whether the actual operation of such programs in each State conforms to the requirements of this part;''.

Subsec. (a)(5). Pub. L. 104–193, § 343(a), inserted before semicolon at end '', and establish procedures to be followed by States for collecting and reporting information required to be provided under this part, and establish uniform definitions (including those necessary to enable the measurement of State compliance with the requirements of this part relating to expedited processes) to be applied in following such procedures''.

Subsec. (a)(7). Pub. L. 104–193, § 331(b), inserted before semicolon at end '', and specify the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity which shall include the Social Security number of each parent and, after consultation with the States, other common elements as determined by such designee''.

Subsec. (a)(8). Pub. L. 104–193, § 395(d)(1)(B), substituted ''noncustodial'' for ''absent'' in two places.

Subsec. (a)(9). Pub. L. 104–193, § 316(e)(1), inserted ''Federal'' before ''Parent''.

Subsec. (a)(10). Pub. L. 104–193, § 346(a)(5), struck out closing provisions which read as follows: ''The information contained in any such report under subparagraph (A) shall specifically include (i) the total amount of child support payments collected as a result of services furnished during the fiscal year involved to individuals under section 654(6) of this title, (ii) the cost to the States and to the Federal Government of furnishing such services to those individuals, and (iii) the extent to which the furnishing of such services was successful in providing sufficient support to those individuals to assure that they did not require assistance under the State plan approved under part A of this subchapter.''

Subsec. (a)(10)(A). Pub. L. 104–193, § 346(a)(1)(A), substituted ''this part, including—'' for ''this part;''.

Subsec. (a)(10)(A)(i) to (iii). Pub. L. 104–193, § 346(a)(1)(B), added cls. (i) to (iii).

Subsec. (a)(10)(C). Pub. L. 104–193, § 346(a)(2)(A), in introductory provisions, substituted ''separately stated for cases'' for ''with the data required under each clause being separately stated for cases'', ''or formerly received'' for ''cases where the child was formerly receiving'', ''671(a)(17) or 1396k of this title'' for ''671(a)(17) of this title'', and ''for all other cases under this part'' for ''all other cases under this part''.

Pub. L. 104–193, § 108(c)(2), in introductory provisions, substituted ''assistance under a State program funded under part A of this subchapter'' for ''aid to families with dependent children'', ''such assistance or payments'' for ''such aid or payments'', and ''pursuant to section 608(a)(3) of this title or under section'' for ''under section 602(a)(26) or''.

Subsec. (a)(10)(C)(i), (ii). Pub. L. 104–193, § 346(a)(2)(B), struck out '', and the total amount of such obligations'' before semicolon at end.

Subsec. (a)(10)(C)(iii). Pub. L. 104–193, § 346(a)(2)(C), substituted ''in which support was collected during the fiscal year'' for ''described in clause (i) in which support was collected during such fiscal year, and the total amount of such collections''.

Subsec. (a)(10)(C)(iv) to (vii). Pub. L. 104–193, § 346(a)(2)(D), (E), added cls. (iv) to (vi), redesignated former cl. (v) as (vii), and struck out former cl. (iv) which read as follows: ''the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and''.

Subsec. (a)(10)(E). Pub. L. 104–193, § 395(d)(1)(B), substituted ''noncustodial'' for ''absent''.

Subsec. (a)(10)(F). Pub. L. 104–193, § 395(d)(1)(B), substituted ''noncustodial'' for ''absent''.

Pub. L. 104–193, § 108(c)(3), substituted ''assistance under a State program funded under part A of this subchapter'' for ''aid under a State plan approved under part A of this subchapter'' and ''(as determined by the State)'' for ''(as determined in accordance with the standards referred to in section 602(a)(26)(B)(ii) of this title)''.

Subsec. (a)(10)(G). Pub. L. 104–193, § 346(a)(3), struck out ''on the use of Federal courts and'' before ''on use of the Internal Revenue Service''.

Subsec. (a)(10)(J). Pub. L. 104–193, § 346(a)(4), added subpar. (J).

Subsec. (a)(11). Pub. L. 104–193, § 324(a), added par. (11).

Subsec. (b). Pub. L. 104–193, § 301(c)(1), substituted ''654(4)'' for ''654(6)''.

Pub. L. 104–193, § 108(c)(4), substituted ''assistance under the State program funded under part A'' for ''aid under the State plan approved under part A''.

Subsec. (d)(3)(B)(i). Pub. L. 104–193, § 108(c)(5), substituted ''1315(b)'' for ''1315(c)''.

Subsec. (f). Pub. L. 104–193, § 395(d)(1)(B), substituted ''noncustodial'' for ''absent''.

Subsec. (g)(1). Pub. L. 104–193, § 341(b)(2)(B), formerly § 341(c)(2)(B), as redesignated by Pub. L. 105–200, § 201(e)(1)(A), inserted as closing provisions ''In determining compliance under this section, a State may use as its paternity establishment percentage either the State's IV–D paternity establishment percentage (as defined in paragraph (2)(A)) or the State's statewide paternity establishment percentage (as defined in paragraph (2)(B)).''

Subsec. (g)(1)(A). Pub. L. 104–193, § 341(b)(1), formerly § 341(c)(1), as redesignated by Pub. L. 105–200, § 201(e)(1)(A), substituted ''90'' for ''75''.

Subsec. (g)(1)(B) to (F). Pub. L. 104–193, § 341(b)(2)(A), formerly § 341(c)(2)(A), as redesignated by Pub. L. 105–200, § 201(e)(1)(A), added subpar. (B) and redesignated former subpars. (B) to (E) as (C) to (F), respectively.

Subsec. (g)(2). Pub. L. 104–193, § 108(c)(8), as amended by Pub. L. 105–33, § 5513(a)(2), in closing provisions, substituted ''with respect to whom assistance is being provided under the State program funded under part A of this subchapter'' for ''who is a dependent child'' and ''found by the State to qualify for a good cause or other exception to cooperation pursuant to section 654(29) of this title'' for ''found to have good cause for refusing to cooperate under section 602(a)(26) of this title or any child with respect to whom the State agency administering the plan under part E of this subchapter determines (as provided in section 654(4)(B) of this title) that it is against the best interests of such child to do so''.

Subsec. (g)(2)(A). Pub. L. 104–193, § 341(b)(3)(A), formerly § 341(c)(3)(A), as redesignated by Pub. L. 105–200, § 201(e)(1)(A), in introductory provisions, substituted ''IV–D paternity establishment percentage'' for ''paternity establishment percentage'' and struck out ''(or all States, as the case may be)'' after ''with respect to a State'', and, in closing provisions, struck out ''and'' at end.

Pub. L. 104–193, § 301(c)(2), substituted ''654(4)(A)(ii)'' for ''654(6)'' in cl. (ii)(I) and in closing provisions.

Pub. L. 104–193, § 108(c)(7), in concluding provisions, substituted ''assistance was being provided under the State program funded under part A'' for ''aid was being paid under the State's plan approved under part A or E''.

Subsec. (g)(2)(A)(ii)(I). Pub. L. 104–193, § 108(c)(6), substituted ''assistance is being provided under the State program funded under part A'' for ''aid is being paid under the State's plan approved under part A or E''.

Subsec. (g)(2)(B), (C). Pub. L. 104–193, §341(b)(3)(B), formerly §341(c)(3)(B), as redesignated by Pub. L. 105–200, §201(e)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (g)(3)(A). Pub. L. 104–193, §341(b)(4)(B), formerly §341(c)(4)(B), as redesignated by Pub. L. 105–200, §201(e)(1)(A), substituted ''the percentage of children in a State who are born out of wedlock or for whom support has not been established'' for ''the percentage of children born out-of-wedlock in a State''.

Pub. L. 104–193, §341(b)(4)(A), formerly §341(c)(4)(A), as redesignated by Pub. L. 105–200, §201(e)(1)(A), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''The requirements of this subsection are in addition to and shall not supplant any other requirement (that is not inconsistent with such requirements) established in regulations by the Secretary for the purpose of determining (for purposes of section 603(h) of this title) whether the program of a State operated under this part shall be treated as complying substantially with the requirements of this part.''

Subsec. (g)(3)(B), (C). Pub. L. 104–193, §341(b)(4)(A), formerly §341(c)(4)(A), as redesignated by Pub. L. 105–200, §201(e)(1)(A), redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (h). Pub. L. 104–193, §395(d)(1)(B), substituted ''noncustodial'' for ''absent''.

Pub. L. 104–193, §108(c)(9), substituted ''pursuant to section 608(a)(3)'' for ''under section 602(a)(26)''.

Subsec. (j). Pub. L. 104–208, title I, §101(e) [title II, §215], as amended by Pub. L. 105–33, §5556(c), substituted ''a plan approved under this part'' for ''section 657(a) of this title''.

Pub. L. 104–193, §345(a), added subsec. (j).

Subsec. (k). Pub. L. 104–193, §370(a)(1), added subsec. (k).

1995—Subsecs. (d)(1)(B), (2)(A), (B), (e). Pub. L. 104–35 substituted ''in section 654(16)'' for ''in section 655(a)(1)(B)''.

1994—Subsec. (g)(2)(A). Pub. L. 103–432, §213(5), in closing provisions, substituted ''born out of wedlock'' for ''who were born out of wedlock during the immediately preceding fiscal year'', substituted ''the preceding fiscal year'' for ''such preceding fiscal year'' in two places, and struck out ''or E'' after ''under this part''.

Subsec. (g)(2)(A)(i). Pub. L. 103–432, §213(1), struck out ''during the fiscal year'' after ''wedlock''.

Subsec. (g)(2)(A)(ii)(I). Pub. L. 103–432, §213(2), substituted ''in the fiscal year or, at the option of the State, as of the end of such year'' for ''as of the end of the fiscal year''.

Subsec. (g)(2)(A)(ii)(II). Pub. L. 103–432, §213(3), substituted ''in the fiscal year or, at the option of the State, as of the end of such year'' for ''or E as of the end of the fiscal year''.

Subsec. (g)(2)(A)(iii). Pub. L. 103–432, §213(4), struck out ''during the fiscal year'' after ''acknowledged''.

1993—Subsec. (g)(1). Pub. L. 103–66, §13721(a)(1)(A)–(C), substituted ''1994'' for ''1991'' and inserted ''is based on reliable data and (rounded to the nearest whole percentage point)'' before ''equals''.

Subsec. (g)(1)(A) to (E). Pub. L. 103–66, §13721(a)(1)(D), added subpars. (A) to (E) and struck out former subpars. (A) to (C) which read as follows:

''(A) 50 percent;

''(B) the paternity establishment percentage of the State for the fiscal year 1988, increased by the applicable number of percentage points; or

''(C) the paternity establishment percentage determined with respect to all States for such fiscal year.''

Subsec. (g)(2). Pub. L. 103–66, §13721(a)(2)(C), (D), in concluding provisions, inserted ''unless paternity is established for such child'' after ''the death of a parent'' and ''or any child with respect to whom the State agency administering the plan under part E of this subchapter determines (as provided in section 654(4)(B) of this title) that it is against the best interests of such child to do so'' after ''cooperate under section 602(a)(26) of this title''.

Subsec. (g)(2)(A). Pub. L. 103–66, §13721(a)(2)(A), in cl. (i), inserted before comma ''during the fiscal year'', in cl. (ii)(I), substituted ''part A or E of this subchapter as of the end of the'' for ''part A of this subchapter (or under all such plans) for such'', in cl. (ii)(II), substituted ''this part or E as of the end of the'' for ''this part (or under all such plans) for the'', in cl. (iii), inserted before comma ''or acknowledged during the fiscal year'', and in concluding provisions, substituted ''children who were born out of wedlock during the immediately preceding fiscal year and'' for ''children who have been born out of wedlock and'', ''aid was being paid'' for ''aid is being paid'', ''part A or E of this subchapter as of the end of such preceding fiscal'' for ''part A of this subchapter (or under all such plans) for such fiscal'', ''services were being'' for ''services are being'', and ''this part or E as of the end of such preceding fiscal'' for ''this part (or under all such plans) for the fiscal''.

Subsec. (g)(2)(B). Pub. L. 103–66, §13721(a)(2)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the applicable number of percentage points means, with respect to a fiscal year (beginning with the fiscal year 1991), 3 percentage points multiplied by the number of fiscal years after the fiscal year 1989 and before the beginning of such fiscal year.''

1989—Subsec. (d)(2)(B). Pub. L. 101–239 substituted ''automated data'' for ''automatic data''.

1988—Subsec. (d)(1). Pub. L. 100–485, §123(b)(1), substituted ''Except as provided in paragraph (3), the'' for ''The''.

Pub. L. 100–485, §123(d), substituted ''automated'' for ''automatic''.

Subsec. (d)(3). Pub. L. 100–485, §123(b)(2), added par. (3).

Subsec. (g). Pub. L. 100–485, §111(a), added subsec. (g).

Subsec. (h). Pub. L. 100–485, §121(a), added subsec. (h).

Subsec. (i). Pub. L. 100–485, §122(a), added subsec. (i).

1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) There is hereby established in the Treasury a revolving fund which shall be available to the Secretary without fiscal year limitation, to enable him to pay to the States for distribution in accordance with the provisions of section 657 of this title such amounts as may be collected and paid (subject to paragraph (2)) into such fund under section 6305 of the Internal Revenue Code of 1986.

''(2) There is hereby appropriated to the fund, out of any moneys in the Treasury not otherwise appropriated, amounts equal to the amounts collected under section 6305 the Internal Revenue Code of 1986, reduced by the amounts credited or refunded as overpayments of the amounts so collected. The amounts appropriated by the preceding sentence shall be transferred at least quarterly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.''

1986—Subsecs. (b), (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

1984—Subsec. (a). Pub. L. 98–369, §2663(j)(2)(B)(viii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in provisions preceding par. (1).

Subsec. (a)(4). Pub. L. 98–378, §9(a)(1), substituted ''not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title)'' for ''not less often than annually''.

Subsec. (a)(10)(C). Pub. L. 98–378, §13(a), amended subpar. (C) generally to include the reporting of additional aspects of child support enforcement. Prior to amendment, subpar. (C) read as follows: ''the number of child

support cases (with separate identification of the number in which collection of spousal support was involved) in each State during each quarter of the fiscal year last ending before the report is submitted and during each quarter of the preceding fiscal year (including the transitional period beginning July 1, 1976, and ending September 30, 1976, in the case of the first report to which this subparagraph applies), and the disposition of such cases;''.

Subsec. (a)(10)(I). Pub. L. 98–378, § 13(b), added subpar. (I).

Subsec. (c)(2). Pub. L. 98–369, § 2663(c)(12), substituted ''preceding sentence'' for ''preceding section''.

Subsecs. (d)(1)(B), (2)(A), (B), (e). Pub. L. 98–378, § 4(b), substituted ''655(a)(1)(B) of this title'' for ''655(a)(3) of this title''.

Subsec. (f). Pub. L. 98–378, § 16, added subsec. (f).

1982—Subsec. (b). Pub. L. 97–248 substituted provisions that the Secretary shall, upon the request of a State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter) which is assigned to such State or is undertaken to be collected by such State pursuant to section 654(6) of this title for provisions that the Secretary would, upon the request of any State having in effect a State plan approved under this part, certify the amount of any child support obligation assigned to such State, including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter (or undertaken to be collected by such State pursuant to section 654(6) of this title) to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2332(b)(1)(A), inserted ''and support for the spouse (or former spouse) with whom the absent parent's child is living''.

Subsec. (a)(7). Pub. L. 97–35, § 2332(b)(1)(B), substituted ''child and spousal support'' for ''child support''.

Subsec. (a)(10)(C). Pub. L. 97–35, § 2332(b)(1)(C), inserted ''(with separate identification of the number in which collection of spousal support was involved)''.

Subsec. (b). Pub. L. 97–35, § 2332(b)(2), inserted '', including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter,'' and provision that all reimbursements be credited to the appropriation accounts which bore all or part of the costs involved in making the collections and substituting ''court or administrative order'' for ''court order'' and ''reimburse the Secretary of the Treasury'' for ''reimburse the United States''.

1980—Subsec. (a)(10). Pub. L. 96–272 inserted provisions following subpar. (H) setting out certain required information to be contained in reports under subpar. (A).

Subsec. (b). Pub. L. 96–265, § 402(a), inserted ''(or undertaken to be collected by such State pursuant to section 654(6) of this title)'' after ''assigned to such State''.

Subsecs. (d), (e). Pub. L. 96–265, § 405(c), (d), added subsecs. (d) and (e).

1977—Subsec. (a)(10). Pub. L. 95–30 substituted ''not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following'' for ''not later than June 30 of each year beginning after December 31, 1975, submit to the Congress a report on all activities undertaken pursuant to the provisions of this part'', substituted a colon for a period at end of provisions thus substituted, and added subpars. (A) to (H).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VII, § 7303(c), Feb. 8, 2006, 120 Stat. 145, provided that: ''The amendments made by this section [amending this section and section 654 of this title] shall take effect on October 1, 2006.''

Amendment by sections 7304, 7306(a) and 7307(a)(2)(A)(i), (b), (c), of Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–200, title II, § 201(e)(2), July 16, 1998, 112 Stat. 657, provided that: ''The amendments made by this subsection [amending this section and section 658 of this title, amending provisions set out as notes under this section and section 658 of this title, and repealing provisions set out as a note under section 658 of this title] shall take effect as if included in the enactment of section 341 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

Pub. L. 105–200, title IV, § 401(c)(3), July 16, 1998, 112 Stat. 662, as amended by Pub. L. 105–306, § 4(b)(1), Oct. 28, 1998, 112 Stat. 2927, provided that: ''The amendments made by this subsection [amending this section and section 666 of this title] shall be effective with respect to periods beginning on or after the later of—

''(A) October 1, 2001; or

''(B) the effective date of laws enacted by the legislature of such State implementing such amendments,

but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date specified in subparagraph (A). For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

[Pub. L. 105–306, § 4(b)(2), Oct. 28, 1998, 112 Stat. 2927, provided that: ''The amendment made by paragraph (1) of this subsection [amending section 401(c)(3) of Pub. L. 105–200, set out above] shall take effect as if included in the enactment of section 401(c)(3) of the Child Support Performance and Incentive Act of 1998 [Pub. L. 105–200].'']

Pub. L. 105–200, title IV, § 407(c), July 16, 1998, 112 Stat. 672, provided that: ''The amendments made by this section [amending this section and section 669 of this title] shall apply to information maintained with respect to fiscal year 1995 or any succeeding fiscal year.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5518(b) of Pub. L. 105–33 provided that: ''The amendments made by section 5513 of this Act [amending this section and sections 656, 664, 672, and 673 of this title] shall take effect as if the amendments had been included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193] at the time such section 108 became law.''

Amendment by sections 5540, 5541(a), and 5556(c) of Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 101(e) [title II, § 215] of div. A of Pub. L. 104–208, as amended by Pub. L. 105–33, title V, § 5556(c),

Aug. 5, 1997, 111 Stat. 637, provided in part that: ''Amounts available under such sections 452(j) [subsec. (j) of this section] and 453(*o*) [section 653(*o*) of this title] shall be calculated as though the amendments made by this section were effective October 1, 1995.''

Amendment by section 108(c)(2)–(9) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Pub. L. 104–193, title III, § 341(c)(2), formerly § 341(d)(2), Aug. 22, 1996, 110 Stat. 2233, as redesignated and amended by Pub. L. 105–200, title II, § 201(e)(1)(A), (B)(ii), July 16, 1998, 112 Stat. 657, provided that: ''The amendments made by subsection (b) [amending this section] shall become effective with respect to calendar quarters beginning on or after the date of the enactment of this Act [Aug. 22, 1996].''

Section 342(c) of Pub. L. 104–193 provided that: ''The amendments made by this section [amending this section and section 654 of this title] shall be effective with respect to calendar quarters beginning 12 months or more after the date of the enactment of this Act [Aug. 22, 1996].''

Section 346(b) of Pub. L. 104–193 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to fiscal year 1997 and succeeding fiscal years.''

Section 370(b) of Pub. L. 104–193 provided that: ''This section [amending this section and section 654 of this title] and the amendments made by this section shall become effective October 1, 1997.''

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13721(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 666 of this title] shall become effective with respect to a State on the later of—

''(1) October 1, 1993 or,

''(2) the date of enactment by the legislature of such State of all laws required by such amendments,

but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10403(a)(1)(B)(ii) of Pub. L. 101–239 provided that: ''The amendments made by clause (i) [amending this section and section 602 of this title] shall take effect as if such amendments had been included in section 123(d) of the Family Support Act of 1988 [Pub. L. 100–485] on the date of the enactment of such Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 111(f)(1) of Pub. L. 100–485 provided that: ''The amendments made by subsections (a), (d), and (e) [enacting section 668 of this title and amending this section and section 666 of this title] shall become effective on the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9143(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to amounts collected after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 4(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and section 655 of this title] shall apply to fiscal years after fiscal year 1983.''

Section 9(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and sections 602 and 603 of this title] shall be effective on and after October 1, 1983.''

Section 13(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section] shall be effective for reports for fiscal year 1986 and each fiscal year thereafter.''

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 1, 1981, see section 175(b) of Pub. L. 97–248, set out as a note under section 503 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 402(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect July 1, 1980.''

Section 405(e) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 654 and 655 of this title] shall take effect on July 1, 1981, and shall be effective only with respect to expenditures, referred to in section 455(a)(3) of the Social Security Act [section 655(a)(3) of this title] (as amended by this Act), made on or after such date.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 504(b) of Pub. L. 95–30 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective in the case of reports, submitted by the Secretary of Health, Education, and Welfare [now Health and Human Services] after 1976.''

REGULATIONS

Section 122(b) of Pub. L. 100–485 provided that: ''Not later than 180 days after the date of the enactment of this Act [Oct. 13, 1988], the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a) [amending this section], and, after allowing not less than 60 days for public comment, shall issue final regulations not later than the first day of the 10th month to begin after such date of enactment.''

IMPLEMENTATION OF PERFORMANCE STANDARDS FOR STATE PATERNITY ESTABLISHMENT PROGRAMS

Section 111(f)(3) of Pub. L. 100–485 provided that: ''The Secretary of Health and Human Services shall collect the data necessary to implement the requirements of section 452(g) of the Social Security Act [subsec. (g) of this section] (as added by subsection (a) of this section) and may, in carrying out the requirement of determining a State's paternity establishment percentage for the fiscal year 1988, compute such percentage on the basis of data collected with respect to the last quarter of such fiscal year (or, if such data are not available, the first quarter of the fiscal year 1989) if the Secretary

determines that data for the full year are not available.''

REQUESTS FOR CHILD SUPPORT ASSISTANCE; ADVISORY COMMITTEE; PROMULGATION OF REGULATIONS

Section 121(b) of Pub. L. 100–485 provided that:

''(1) Not later than 60 days after the date of the enactment of this Act [Oct. 13, 1988], the Secretary of Health and Human Services shall establish an advisory committee. The committee shall include representatives of organizations representing State governors, State welfare administrators, and State directors of programs under part D of title IV of the Social Security Act [this part]. The Secretary shall consult with the advisory committee before issuing any regulations with respect to the standards required by the amendment made by subsection (a) [amending this section] (including regulations regarding what constitutes an adequate response on the part of a State to the request of an individual, State, or jurisdiction).

''(2) Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a), and, after allowing not less than 60 days for public comment, shall issue final regulations not later than the first day of the 10th month beginning after such date of enactment.''

SUPPLEMENTAL REPORT TO BE SUBMITTED TO CONGRESS NOT LATER THAN JUNE 30, 1977

Section 504(c) of Pub. L. 95–30 directed Secretary of Health, Education, and Welfare to submit to Congress, not later than June 30, 1977, a special supplementary report with respect to activities undertaken pursuant to this part.

§ 653. Federal Parent Locator Service

(a) Establishment; purpose

(1) The Secretary shall establish and conduct a Federal Parent Locator Service, under the direction of the designee of the Secretary referred to in section 652(a) of this title, which shall be used for the purposes specified in paragraphs (2) and (3).

(2) For the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations, the Federal Parent Locator Service shall obtain and transmit to any authorized person specified in subsection (c) of this section—

(A) information on, or facilitating the discovery of, the location of any individual—

(i) who is under an obligation to pay child support;

(ii) against whom such an obligation is sought;

(iii) to whom such an obligation is owed; or

(iv) who has or may have parental rights with respect to a child,

including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer;

(B) information on the individual's wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); and

(C) information on the type, status, location, and amount of any assets of, or debts owed by or to, any such individual.

(3) For the purpose of enforcing any Federal or State law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody or visitation determination, as defined in section 663(d)(1) of this title, the Federal Parent Locator Service shall be used to obtain and transmit the information specified in section 663(c) of this title to the authorized persons specified in section 663(d)(2) of this title.

(b) Disclosure of information to authorized persons

(1) Upon request, filed in accordance with subsection (d) of this section, of any authorized person, as defined in subsection (c) of this section for the information described in subsection (a)(2) of this section, or of any authorized person, as defined in section 663(d)(2) of this title for the information described in section 663(c) of this title, the Secretary shall, notwithstanding any other provision of law, provide through the Federal Parent Locator Service such information to such person, if such information—

(A) is contained in any files or records maintained by the Secretary or by the Department of Health and Human Services; or

(B) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e) of this section, from any other department, agency, or instrumentality of the United States or of any State,

and is not prohibited from disclosure under paragraph (2).

(2) No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1) of this section. No information shall be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent, provided that—

(A) in response to a request from an authorized person (as defined in subsection (c) of this section and section 663(d)(2) of this title), the Secretary shall advise the authorized person that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse and that information can only be disclosed to a court or an agent of a court pursuant to subparagraph (B); and

(B) information may be disclosed to a court or an agent of a court described in subsection (c)(2) of this section or section 663(d)(2)(B) of this title, if—

(i) upon receipt of information from the Secretary, the court determines whether disclosure to any other person of that information could be harmful to the parent or the child; and

(ii) if the court determines that disclosure of such information to any other person could be harmful, the court and its agents shall not make any such disclosure.

(3) Information received or transmitted pursuant to this section shall be subject to the

safeguard provisions contained in section 654(26) of this title.

(c) "Authorized person" defined

As used in subsection (a) of this section, the term ''authorized person'' means—

(1) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child and spousal support (including, when authorized under the State plan, any official of a political subdivision);

(2) the court which has authority to issue an order or to serve as the initiating court in an action to seek an order against a noncustodial parent for the support and maintenance of a child, or any agent of such court;

(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving assistance under a State program funded under part A of this subchapter) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against a noncustodial parent who has a duty to support and maintain any such child; and

(4) a State agency that is administering a program operated under a State plan under subpart 1 of part B of this subchapter, or a State plan approved under subpart 2 of part B of this subchapter or under part E of this subchapter.

(d) Form and manner of request for information

A request for information under this section shall be filed in such manner and form as the Secretary shall by regulation prescribe and shall be accompanied or supported by such documents as the Secretary may determine to be necessary.

(e) Compliance with request; search of files and records by head of any department, etc., of United States; transmittal of information to Secretary; reimbursement for cost of search; fees

(1) Whenever the Secretary receives a request submitted under subsection (b) of this section which he is reasonably satisfied meets the criteria established by subsections (a), (b), and (c) of this section, he shall promptly undertake to provide the information requested from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States or of any State.

(2) Notwithstanding any other provision of law, whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the Secretary, except that if any information is obtained the disclosure of which would contravene national policy or security interests of the United States or the confidentiality of census data, such information shall not be transmitted and such individual shall immediately notify the Secretary. If such search fails to disclose the information requested, such individual shall immediately so notify the Secretary. The costs incurred by any such department, agency, or instrumentality of the United States or of any State in providing such information to the Secretary shall be reimbursed by him in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information). Whenever such services are furnished to an individual specified in subsection (c)(3) of this section, a fee shall be charged such individual. The fee so charged shall be used to reimburse the Secretary or his delegate for the expense of providing such services.

(3) The Secretary of Labor shall enter into an agreement with the Secretary to provide prompt access for the Secretary (in accordance with this subsection) to the wage and unemployment compensation claims information and data maintained by or for the Department of Labor or State employment security agencies.

(f) Arrangements and cooperation with State agencies

The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part for such State agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) of this section and to transmit to the Secretary requests for information with regard to the whereabouts of noncustodial parents and otherwise to cooperate with the Secretary in carrying out the purposes of this section.

(g) Reimbursement for reports by State agencies

The Secretary may reimburse Federal and State agencies for the costs incurred by such entities in furnishing information requested by the Secretary under this section in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information).

(h) Federal Case Registry of Child Support Orders

(1) In general

Not later than October 1, 1998, in order to assist States in administering programs under State plans approved under this part and programs funded under part A of this subchapter, and for the other purposes specified in this section, the Secretary shall establish and maintain in the Federal Parent Locator Service an automated registry (which shall be known as the ''Federal Case Registry of Child Support Orders''), which shall contain abstracts of support orders and other information described in paragraph (2) with respect to each case and order in each State case registry maintained pursuant to section 654a(e) of this title, as furnished (and regularly updated),

pursuant to section 654a(f) of this title, by State agencies administering programs under this part.

(2) Case and order information

The information referred to in paragraph (1) with respect to a case or an order shall be such information as the Secretary may specify in regulations (including the names, social security numbers or other uniform identification numbers, and State case identification numbers) to identify the individuals who owe or are owed support (or with respect to or on behalf of whom support obligations are sought to be established), and the State or States which have the case or order. Beginning not later than October 1, 1999, the information referred to in paragraph (1) shall include the names and social security numbers of the children of such individuals.

(3) Administration of Federal tax laws

The Secretary of the Treasury shall have access to the information described in paragraph (2) for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.

(i) National Directory of New Hires

(1) In general

In order to assist States in administering programs under State plans approved under this part and programs funded under part A of this subchapter, and for the other purposes specified in this section, the Secretary shall, not later than October 1, 1997, establish and maintain in the Federal Parent Locator Service an automated directory to be known as the National Directory of New Hires, which shall contain the information supplied pursuant to section 653a(g)(2) of this title.

(2) Data entry and deletion requirements

(A) In general

Information provided pursuant to section 653a(g)(2) of this title shall be entered into the data base maintained by the National Directory of New Hires within two business days after receipt, and shall be deleted from the data base 24 months after the date of entry.

(B) 12-month limit on access to wage and unemployment compensation information

The Secretary shall not have access for child support enforcement purposes to information in the National Directory of New Hires that is provided pursuant to section 653a(g)(2)(B) of this title, if 12 months has elapsed since the date the information is so provided and there has not been a match resulting from the use of such information in any information comparison under this subsection.

(C) Retention of data for research purposes

Notwithstanding subparagraphs (A) and (B), the Secretary may retain such samples of data entered in the National Directory of New Hires as the Secretary may find necessary to assist in carrying out subsection (j)(5) of this section.

(3) Administration of Federal tax laws

The Secretary of the Treasury shall have access to the information in the National Directory of New Hires for purposes of administering section 32 of the Internal Revenue Code of 1986, or the advance payment of the earned income tax credit under section 3507 of such Code, and verifying a claim with respect to employment in a tax return.

(4) List of multistate employers

The Secretary shall maintain within the National Directory of New Hires a list of multistate employers that report information regarding newly hired employees pursuant to section 653a(b)(1)(B) of this title, and the State which each such employer has designated to receive such information.

(j) Information comparisons and other disclosures

(1) Verification by Social Security Administration

(A) In general

The Secretary shall transmit information on individuals and employers maintained under this section to the Social Security Administration to the extent necessary for verification in accordance with subparagraph (B).

(B) Verification by SSA

The Social Security Administration shall verify the accuracy of, correct, or supply to the extent possible, and report to the Secretary, the following information supplied by the Secretary pursuant to subparagraph (A):

(i) The name, social security number, and birth date of each such individual.

(ii) The employer identification number of each such employer.

(2) Information comparisons

For the purpose of locating individuals in a paternity establishment case or a case involving the establishment, modification, or enforcement of a support order, the Secretary shall—

(A) compare information in the National Directory of New Hires against information in the support case abstracts in the Federal Case Registry of Child Support Orders not less often than every 2 business days; and

(B) within 2 business days after such a comparison reveals a match with respect to an individual, report the information to the State agency responsible for the case.

(3) Information comparisons and disclosures of information in all registries for subchapter IV program purposes

To the extent and with the frequency that the Secretary determines to be effective in assisting States to carry out their responsibilities under programs operated under this part and programs funded under part A of this subchapter, the Secretary shall—

(A) compare the information in each component of the Federal Parent Locator Service maintained under this section against the information in each other such compo-

nent (other than the comparison required by paragraph (2)), and report instances in which such a comparison reveals a match with respect to an individual to State agencies operating such programs; and

(B) disclose information in such components to such State agencies.

(4) Provision of new hire information to the Social Security Administration

The National Directory of New Hires shall provide the Commissioner of Social Security with all information in the National Directory.

(5) Research

The Secretary may provide access to data in each component of the Federal Parent Locator Service maintained under this section and to information reported by employers pursuant to section 653a(b) of this title for research purposes found by the Secretary to be likely to contribute to achieving the purposes of part A of this subchapter or this part, but without personal identifiers.

(6) Information comparisons and disclosure for enforcement of obligations on Higher Education Act loans and grants

(A) Furnishing of information by the Secretary of Education

The Secretary of Education shall furnish to the Secretary, on a quarterly basis or at such less frequent intervals as may be determined by the Secretary of Education, information in the custody of the Secretary of Education for comparison with information in the National Directory of New Hires, in order to obtain the information in such directory with respect to individuals who—

(i) are borrowers of loans made under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.] that are in default; or

(ii) owe an obligation to refund an overpayment of a grant awarded under such title.

(B) Requirement to seek minimum information necessary

The Secretary of Education shall seek information pursuant to this section only to the extent essential to improving collection of the debt described in subparagraph (A).

(C) Duties of the Secretary

(i) Information comparison; disclosure to the Secretary of Education

The Secretary, in cooperation with the Secretary of Education, shall compare information in the National Directory of New Hires with information in the custody of the Secretary of Education, and disclose information in that Directory to the Secretary of Education, in accordance with this paragraph, for the purposes specified in this paragraph.

(ii) Condition on disclosure

The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part. Support collection under section 666(b) of this title shall be given priority over collection of any defaulted student loan or grant overpayment against the same income.

(D) Use of information by the Secretary of Education

The Secretary of Education may use information resulting from a data match pursuant to this paragraph only—

(i) for the purpose of collection of the debt described in subparagraph (A) owed by an individual whose annualized wage level (determined by taking into consideration information from the National Directory of New Hires) exceeds $16,000; and

(ii) after removal of personal identifiers, to conduct analyses of student loan defaults.

(E) Disclosure of information by the Secretary of Education

(i) Disclosures permitted

The Secretary of Education may disclose information resulting from a data match pursuant to this paragraph only to—

(I) a guaranty agency holding a loan made under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.] on which the individual is obligated;

(II) a contractor or agent of the guaranty agency described in subclause (I);

(III) a contractor or agent of the Secretary; and

(IV) the Attorney General.

(ii) Purpose of disclosure

The Secretary of Education may make a disclosure under clause (i) only for the purpose of collection of the debts owed on defaulted student loans, or overpayments of grants, made under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.].

(iii) Restriction on redisclosure

An entity to which information is disclosed under clause (i) may use or disclose such information only as needed for the purpose of collecting on defaulted student loans, or overpayments of grants, made under title IV of the Higher Education Act of 1965.

(F) Reimbursement of HHS costs

The Secretary of Education shall reimburse the Secretary, in accordance with subsection (k)(3) of this section, for the additional costs incurred by the Secretary in furnishing the information requested under this subparagraph.

(7) Information comparisons for housing assistance programs

(A) Furnishing of information by HUD

Subject to subparagraph (G), the Secretary of Housing and Urban Development shall furnish to the Secretary, on such periodic

basis as determined by the Secretary of Housing and Urban Development in consultation with the Secretary, information in the custody of the Secretary of Housing and Urban Development for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to individuals who are participating in any program under—

(i) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(ii) section 1701q of title 12;

(iii) section 1715*l*(d)(3), 1715*l*(d)(5), or 1715z–1 of title 12;

(iv) section 8013 of this title; or

(v) section 1701s of title 12.

(B) Requirement to seek minimum information

The Secretary of Housing and Urban Development shall seek information pursuant to this section only to the extent necessary to verify the employment and income of individuals described in subparagraph (A).

(C) Duties of the Secretary

(i) Information disclosure

The Secretary, in cooperation with the Secretary of Housing and Urban Development, shall compare information in the National Directory of New Hires with information provided by the Secretary of Housing and Urban Development with respect to individuals described in subparagraph (A), and shall disclose information in such Directory regarding such individuals to the Secretary of Housing and Urban Development, in accordance with this paragraph, for the purposes specified in this paragraph.

(ii) Condition on disclosure

The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

(D) Use of information by HUD

The Secretary of Housing and Urban Development may use information resulting from a data match pursuant to this paragraph only—

(i) for the purpose of verifying the employment and income of individuals described in subparagraph (A); and

(ii) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals described in subparagraph (A).

(E) Disclosure of information by HUD

(i) Purpose of disclosure

The Secretary of Housing and Urban Development may make a disclosure under this subparagraph only for the purpose of verifying the employment and income of individuals described in subparagraph (A).

(ii) Disclosures permitted

Subject to clause (iii), the Secretary of Housing and Urban Development may disclose information resulting from a data match pursuant to this paragraph only to a public housing agency, the Inspector General of the Department of Housing and Urban Development, and the Attorney General in connection with the administration of a program described in subparagraph (A). Information obtained by the Secretary of Housing and Urban Development pursuant to this paragraph shall not be made available under section 552 of title 5.

(iii) Conditions on disclosure

Disclosures under this paragraph shall be—

(I) made in accordance with data security and control policies established by the Secretary of Housing and Urban Development and approved by the Secretary;

(II) subject to audit in a manner satisfactory to the Secretary; and

(III) subject to the sanctions under subsection (*l*)(2) of this section.

(iv) Additional disclosures

(I) Determination by Secretaries

The Secretary of Housing and Urban Development and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of Housing and Urban Development (in consultation with and approved by the Secretary), of the costs and benefits of disclosures made under clause (ii) and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.

(II) Permitted persons or entities

If the Secretary of Housing and Urban Development and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of Housing and Urban Development to a private owner, a management agent, and a contract administrator in connection with the administration of a program described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(v) Restrictions on redisclosure

A person or entity to which information is disclosed under this subparagraph may use or disclose such information only as needed for verifying the employment and income of individuals described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(F) Reimbursement of HHS costs

The Secretary of Housing and Urban Development shall reimburse the Secretary, in accordance with subsection (k)(3) of this sec-

tion, for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

(G) Consent

The Secretary of Housing and Urban Development shall not seek, use, or disclose information under this paragraph relating to an individual without the prior written consent of such individual (or of a person legally authorized to consent on behalf of such individual).

(8) Information comparisons and disclosure to assist in administration of unemployment compensation programs

(A) In general

If, for purposes of administering an unemployment compensation program under Federal or State law, a State agency responsible for the administration of such program transmits to the Secretary the names and social security account numbers of individuals, the Secretary shall disclose to such State agency information on such individuals and their employers maintained in the National Directory of New Hires, subject to this paragraph.

(B) Condition on disclosure by the Secretary

The Secretary shall make a disclosure under subparagraph (A) only to the extent that the Secretary determines that the disclosure would not interfere with the effective operation of the program under this part.

(C) Use and disclosure of information by State agencies

(i) In general

A State agency may not use or disclose information provided under this paragraph except for purposes of administering a program referred to in subparagraph (A).

(ii) Information security

The State agency shall have in effect data security and control policies that the Secretary finds adequate to ensure the security of information obtained under this paragraph and to ensure that access to such information is restricted to authorized persons for purposes of authorized uses and disclosures.

(iii) Penalty for misuse of information

An officer or employee of the State agency who fails to comply with this subparagraph shall be subject to the sanctions under subsection (*l*)(2) of this section to the same extent as if such officer or employee was an officer or employee of the United States.

(D) Procedural requirements

State agencies requesting information under this paragraph shall adhere to uniform procedures established by the Secretary governing information requests and data matching under this paragraph.

(E) Reimbursement of costs

The State agency shall reimburse the Secretary, in accordance with subsection (k)(3) of this section, for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

(9) Information comparisons and disclosure to assist in Federal debt collection

(A) Furnishing of information by the Secretary of the Treasury

The Secretary of the Treasury shall furnish to the Secretary, on such periodic basis as determined by the Secretary of the Treasury in consultation with the Secretary, information in the custody of the Secretary of the Treasury for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to persons—

(i) who owe delinquent nontax debt to the United States; and

(ii) whose debt has been referred to the Secretary of the Treasury in accordance with section 3711(g) of title 31.

(B) Requirement to seek minimum information

The Secretary of the Treasury shall seek information pursuant to this section only to the extent necessary to improve collection of the debt described in subparagraph (A).

(C) Duties of the Secretary

(i) Information disclosure

The Secretary, in cooperation with the Secretary of the Treasury, shall compare information in the National Directory of New Hires with information provided by the Secretary of the Treasury with respect to persons described in subparagraph (A) and shall disclose information in such Directory regarding such persons to the Secretary of the Treasury in accordance with this paragraph, for the purposes specified in this paragraph. Such comparison of information shall not be considered a matching program as defined in section 552a of title 5.

(ii) Condition on disclosure

The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part. Support collection under section 666(b) of this title shall be given priority over collection of any delinquent Federal nontax debt against the same income.

(D) Use of information by the Secretary of the Treasury

The Secretary of the Treasury may use information provided under this paragraph only for purposes of collecting the debt described in subparagraph (A).

(E) Disclosure of information by the Secretary of the Treasury

(i) Purpose of disclosure

The Secretary of the Treasury may make a disclosure under this subparagraph only for purposes of collecting the debt described in subparagraph (A).

(ii) Disclosures permitted

Subject to clauses (iii) and (iv), the Secretary of the Treasury may disclose information resulting from a data match pursuant to this paragraph only to the Attorney General in connection with collecting the debt described in subparagraph (A).

(iii) Conditions on disclosure

Disclosures under this subparagraph shall be—

(I) made in accordance with data security and control policies established by the Secretary of the Treasury and approved by the Secretary;

(II) subject to audit in a manner satisfactory to the Secretary; and

(III) subject to the sanctions under subsection (*l*)(2) of this section.

(iv) Additional disclosures

(I) Determination by Secretaries

The Secretary of the Treasury and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of the Treasury (in consultation with and approved by the Secretary), of the costs and benefits of such disclosures and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.

(II) Permitted persons or entities

If the Secretary of the Treasury and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of the Treasury, in connection with collecting the debt described in subparagraph (A), to a contractor or agent of either Secretary and to the Federal agency that referred such debt to the Secretary of the Treasury for collection, subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(v) Restrictions on redisclosure

A person or entity to which information is disclosed under this subparagraph may use or disclose such information only as needed for collecting the debt described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(F) Reimbursement of HHS costs

The Secretary of the Treasury shall reimburse the Secretary, in accordance with subsection (k)(3) of this section, for the costs incurred by the Secretary in furnishing the information requested under this paragraph. Any such costs paid by the Secretary of the Treasury shall be considered costs of implementing section 3711(g) of title 31 in accordance with section 3711(g)(6) of title 31 and may be paid from the account established pursuant to section 3711(g)(7) of title 31.

(10) Information comparisons and disclosure to assist in administration of food stamp programs

(A) In general

If, for purposes of administering a food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], a State agency responsible for the administration of the program transmits to the Secretary the names and social security account numbers of individuals, the Secretary shall disclose to the State agency information on the individuals and their employers maintained in the National Directory of New Hires, subject to this paragraph.

(B) Condition on disclosure by the Secretary

The Secretary shall make a disclosure under subparagraph (A) only to the extent that the Secretary determines that the disclosure would not interfere with the effective operation of the program under this part.

(C) Use and disclosure of information by State agencies

(i) In general

A State agency may not use or disclose information provided under this paragraph except for purposes of administering a program referred to in subparagraph (A).

(ii) Information security

The State agency shall have in effect data security and control policies that the Secretary finds adequate to ensure the security of information obtained under this paragraph and to ensure that access to such information is restricted to authorized persons for purposes of authorized uses and disclosures.

(iii) Penalty for misuse of information

An officer or employee of the State agency who fails to comply with this subparagraph shall be subject to the sanctions under subsection (*l*)(2) to the same extent as if the officer or employee were an officer or employee of the United States.

(D) Procedural requirements

State agencies requesting information under this paragraph shall adhere to uniform procedures established by the Secretary governing information requests and data matching under this paragraph.

(E) Reimbursement of costs

The State agency shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

(k) Fees

(1) For SSA verification

The Secretary shall reimburse the Commissioner of Social Security, at a rate negotiated between the Secretary and the Commissioner, for the costs incurred by the Commissioner in performing the verification services described in subsection (j) of this section.

(2) For information from State directories of new hires

The Secretary shall reimburse costs incurred by State directories of new hires in furnishing information as required by section 653a(g)(2) of this title, at rates which the Secretary determines to be reasonable (which rates shall not include payment for the costs of obtaining, compiling, or maintaining such information).

(3) For information furnished to State and Federal agencies

A State or Federal agency that receives information from the Secretary pursuant to this section or section 652(*l*)[1] of this title shall reimburse the Secretary for costs incurred by the Secretary in furnishing the information, at rates which the Secretary determines to be reasonable (which rates shall include payment for the costs of obtaining, verifying, maintaining, and comparing the information).

(*l*) Restriction on disclosure and use

(1) In general

Information in the Federal Parent Locator Service, and information resulting from comparisons using such information, shall not be used or disclosed except as expressly provided in this section, subject to section 6103 of the Internal Revenue Code of 1986.

(2) Penalty for misuse of information in the National Directory of New Hires

The Secretary shall require the imposition of an administrative penalty (up to and including dismissal from employment), and a fine of $1,000, for each act of unauthorized access to, disclosure of, or use of, information in the National Directory of New Hires established under subsection (i) of this section by any officer or employee of the United States or any other person who knowingly and willfully violates this paragraph.

(m) Information integrity and security

The Secretary shall establish and implement safeguards with respect to the entities established under this section designed to—

(1) ensure the accuracy and completeness of information in the Federal Parent Locator Service; and

(2) restrict access to confidential information in the Federal Parent Locator Service to authorized persons, and restrict use of such information to authorized purposes.

(n) Federal Government reporting

Each department, agency, and instrumentality of the United States shall on a quarterly basis report to the Federal Parent Locator Service the name and social security number of each employee and the wages paid to the employee during the previous quarter, except that such a report shall not be filed with respect to an employee of a department, agency, or instrumentality performing intelligence or counterintelligence functions, if the head of such department, agency, or instrumentality has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(*o*) Use of set-aside funds

Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated to the Secretary for each fiscal year an amount equal to 2 percent of the total amount paid to the Federal Government pursuant to a plan approved under this part during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the third calendar quarter following the end of such preceding fiscal year) or the amount appropriated under this paragraph[2] for fiscal year 2002, whichever is greater, which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements, for operation of the Federal Parent Locator Service under this section, to the extent such costs are not recovered through user fees. Amounts appropriated under this subsection shall remain available until expended.

(p) "Support order" defined

As used in this part, the term ''support order'' means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

(Aug. 14, 1935, ch. 531, title IV, § 453, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2353; amended Pub. L. 97–35, title XXIII, § 2332(c), Aug. 13, 1981, 95 Stat. 862; Pub. L. 98–369, div. B, title VI, § 2663(c)(13), (j)(2)(B)(ix), July 18, 1984, 98 Stat. 1166, 1170; Pub. L. 98–378, §§ 17, 19(a), Aug. 16, 1984, 98 Stat. 1321, 1322; Pub. L. 100–485, title I, § 124(a), Oct. 13, 1988, 102 Stat. 2353; Pub. L. 104–193, title I, § 108(c)(10), title III, §§ 316(a)–(f), 345(b), 366, 395(d)(1)(C), (2)(A), Aug. 22, 1996, 110 Stat. 2166, 2214–2216, 2237, 2250, 2259; Pub. L. 104–208, div. A, title I, § 101(e) [title II, § 215], Sept. 30, 1996, 110 Stat. 3009–233, 3009–255; Pub. L. 105–33, title V, §§ 5534(a), 5535, 5541(b), 5543, 5553, 5556(c), Aug. 5, 1997, 111 Stat. 627, 629–631, 636, 637; Pub. L. 105–34, title X, § 1090(a)(2), Aug. 5, 1997, 111 Stat. 961; Pub. L. 105–89, title I, § 105, Nov. 19, 1997, 111 Stat. 2120; Pub. L. 105–200, title IV, §§ 402(a), (b), 410(d), July 16, 1998, 112 Stat. 668, 669, 673; Pub. L. 106–113, div. B, § 1000(a)(5) [title III, § 303(a), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–304, 1501A–306; Pub. L. 108–199, div. G, title II, § 217(a), Jan. 23, 2004, 118 Stat. 394; Pub. L. 108–295, § 3, Aug. 9, 2004, 118 Stat. 1091; Pub. L. 108–447, div. H, title VI, § 643, Dec. 8, 2004, 118 Stat. 3283; Pub. L. 109–171, title VII, §§ 7305, 7306(b), Feb. 8, 2006, 120 Stat. 145, 146; Pub. L. 109–250, § 2, July 27, 2006, 120 Stat. 652.)

REFERENCES IN TEXT

Parts A, B, and E of this subchapter, referred to in subsecs. (c)(3), (4), (h)(1), (i)(1), and (j)(3), (5), are classi-

[1] See References in Text note below.

[2] So in original. Probably should be ''subsection''.

fied to sections 601 et seq., 620 et seq., and 670 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (h)(3), (i)(3), and (*l*), is classified generally to Title 26, Internal Revenue Code.

The Higher Education Act of 1965, referred to in subsec. (j)(6)(A), (E), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of this title. Part B of title IV of the Act is classified generally to part B (§ 1071 et seq.) of subchapter IV of chapter 28 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The United States Housing Act of 1937, referred to in subsec. (j)(7)(A)(i), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (j)(10)(A), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Section 652(*l*) of this title, referred to in subsec. (k)(3), probably means the subsec. (*l*) of section 652 of this title which relates to comparisons with insurance information and was added by Pub. L. 109–171, title VII, § 7306(a), Feb. 8, 2006, 120 Stat. 145.

AMENDMENTS

2006—Subsec. (j)(7), (9). Pub. L. 109–250, § 2(1), redesignated par. (7) relating to information comparisons and disclosure to assist in Federal debt collection as (9).

Subsec. (j)(10). Pub. L. 109–250, § 2(2), added par. (10).

Subsec. (k)(3). Pub. L. 109–171, § 7306(b), inserted ''or section 652(*l*) of this title'' after ''pursuant to this section''.

Subsec. (*o*). Pub. L. 109–171, § 7305, inserted ''or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater'' before '', which shall be available'' in first sentence and struck out ''for each of fiscal years 1997 through 2001'' before ''shall remain available'' in last sentence.

2004—Subsec. (j)(7). Pub. L. 108–447 added par. (7) relating to information comparisons and disclosure to assist in Federal debt collection.

Pub. L. 108–199 added par. (7) relating to information comparisons for housing assistance programs.

Subsec. (j)(8). Pub. L. 108–295 added par. (8).

1999—Subsec. (j)(6). Pub. L. 106–113, § 1000(a)(5) [title III, § 303(a)], added par. (6).

Subsec. (*l*)(2). Pub. L. 106–113, § 1000(a)(5) [title III, § 303(b)], amended Pub. L. 105–200, § 402(a), by inserting ''or any other person'' after ''employee of the United States'' in new par. (2). See 1998 Amendment note below.

1998—Subsec. (a)(2). Pub. L. 105–200, § 410(d)(1), (2), in introductory provisions, substituted ''parentage or'' for ''parentage,'' and struck out ''or making or enforcing child custody or visitation orders,'' after ''obligations,''.

Subsec. (a)(2)(A)(iv). Pub. L. 105–200, § 410(d)(3), realigned margins.

Subsec. (i)(2). Pub. L. 106–200, § 402(b), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Information shall be entered into the data base maintained by the National Directory of New Hires within 2 business days of receipt pursuant to section 653a(g)(2) of this title.''

Subsec. (*l*). Pub. L. 105–200, § 402(a), as amended by Pub. L. 106–113, § 1000(a)(5) [title III, § 303(b)], designated existing provisions as par. (1), inserted heading, and added par. (2).

1997—Subsec. (a). Pub. L. 105–33, § 5534(a)(1), designated existing provisions as par. (1), substituted ''for the purposes specified in paragraphs (2) and (3).'' for ''to obtain and transmit to any authorized person (as defined in subsection (c) of this section), for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders—'', added pars. (2) and (3), and struck out former pars. (1) to (3) which read as follows:

''(1) information on, or facilitating the discovery of, the location of any individual—

''(A) who is under an obligation to pay child support or provide child custody or visitation rights;

''(B) against whom such an obligation is sought;

''(C) to whom such an obligation is owed,

including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer;

''(2) information on the individual's wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); and

''(3) information on the type, status, location, and amount of any assets of, or debts owed by or to, any such individual.''

Subsec. (a)(2). Pub. L. 105–89, § 105(1)(A), inserted ''or making or enforcing child custody or visitation orders,'' after ''obligations,'' in introductory provisions.

Subsec. (a)(2)(A)(iv). Pub. L. 105–89, § 105(1)(B), added cl. (iv).

Subsec. (b). Pub. L. 105–33, § 5534(a)(2), amended subsec. (b) generally, revising and restating former provisions relating to disclosure of information to authorized persons as pars. (1) to (3).

Subsec. (c)(1). Pub. L. 105–33, § 5534(a)(3)(A), struck out ''or to seek to enforce orders providing child custody or visitation rights'' after ''spousal support''.

Subsec. (c)(2). Pub. L. 105–33, § 5534(a)(3)(B), inserted ''or to serve as the initiating court in an action to seek an order'' after ''authority to issue an order'' and struck out ''or to issue an order against a resident parent for child custody or visitation rights'' after ''maintenance of a child''.

Subsec. (c)(4). Pub. L. 105–89, § 105(2), added par. (4).

Subsec. (h)(1). Pub. L. 105–33, § 5553(1), inserted ''and order'' after ''with respect to each case''.

Subsec. (h)(2). Pub. L. 105–34, § 1090(a)(2)(A), inserted at end ''Beginning not later than October 1, 1999, the information referred to in paragraph (1) shall include the names and social security numbers of the children of such individuals.''

Pub. L. 105–33, § 5553(2), inserted ''and order'' after ''case'' in heading and ''or an order'' after ''with respect to a case'' and ''or order'' after ''and the State or States which have the case'' in text.

Subsec. (h)(3). Pub. L. 105–34, § 1090(a)(2)(B), added par. (3).

Subsec. (j)(3)(B). Pub. L. 105–33, § 5535(b)(1), substituted ''components'' for ''registries''.

Subsec. (j)(5). Pub. L. 105–33, § 5535(a), inserted ''data in each component of the Federal Parent Locator Service maintained under this section and to'' before ''information''.

Subsec. (k)(2). Pub. L. 105–33, § 5535(b)(2), substituted ''section 653a(g)(2) of this title'' for ''subsection (j)(3) of this section''.

Subsec. (*o*). Pub. L. 105–33, § 5556(c), amended Pub. L. 104–208, § 101(e) [title II, § 215], generally. See 1996 Amendment note below.

Pub. L. 105–34, § 5541(b), in heading substituted ''Use of set-aside funds'' for ''Recovery of costs'' and in text substituted ''which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements,'' for ''to cover costs incurred by the Secretary'' and inserted at end ''Amounts appropriated under this subsection for each of fiscal years 1997 through 2001 shall remain available until expended.''

Subsec. (p). Pub. L. 105–33, §5543, substituted ''of the parent'' for ''a child and the parent''.

1996—Pub. L. 104–193, §316(e)(2), inserted ''Federal'' before ''Parent Locator Service'' in section catchline.

Subsec. (a). Pub. L. 104–193, §316(a)(1), (e)(1), inserted ''Federal'' before ''Parent Locator Service'', substituted '', for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders—'' for ''information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent.'', and added pars. (1) to (3).

Subsec. (b). Pub. L. 104–193, §316(a)(2), (e)(1), substituted ''information described in subsection (a) of this section'' for ''social security account number (or numbers, if the individual involved has more than one such number) and the most recent address and place of employment of any absent parent'', inserted ''Federal'' before ''Parent Locator Service'', and inserted at end of closing provisions ''No information shall be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent. Information received or transmitted pursuant to this section shall be subject to the safeguard provisions contained in section 654(26) of this title.''

Subsec. (c)(1). Pub. L. 104–193, §316(b)(1), substituted ''support or to seek to enforce orders providing child custody or visitation rights'' for ''support''.

Subsec. (c)(2). Pub. L. 104–193, §§316(b)(2), 395(d)(2)(A), substituted ''a noncustodial parent'' for ''an absent parent'' and ''or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court;'' for '', or any agent of such court; and''.

Subsec. (c)(3). Pub. L. 104–193, §395(d)(2)(A), substituted ''a noncustodial parent'' for ''an absent parent''.

Pub. L. 104–193, §108(c)(10), substituted ''assistance under a State program funded under part A of this subchapter'' for ''aid under part A of this subchapter''.

Subsec. (e)(2). Pub. L. 104–193, §316(c), inserted ''in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information)'' after ''Secretary shall be reimbursed by him''.

Subsec. (f). Pub. L. 104–193, §395(d)(1)(C), substituted ''noncustodial'' for ''absent''.

Subsec. (g). Pub. L. 104–193, §316(d), added subsec. (g).

Subsecs. (h) to (n). Pub. L. 104–193, §316(f), added subsecs. (h) to (n).

Subsec. (*o*). Pub. L. 104–208, title I, §101(e) [title II, §215], as amended by Pub. L. 105–33, §5556(c), substituted ''a plan approved under this part'' for ''section 657(a) of this title''.

Pub. L. 104–193, §345(a), added subsec. (*o*).

Subsec. (p). Pub. L. 104–193, §366, added subsec. (p).

1988—Subsec. (e)(3). Pub. L. 100–485 added par. (3).

1984—Subsec. (b). Pub. L. 98–378, §19(a), inserted ''the social security account number (or numbers, if the individual involved has more than one such number) and''.

Subsec. (b)(1). Pub. L. 98–369, §2663(j)(2)(B)(ix), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (b)(2). Pub. L. 98–369, §2663(c)(13), substituted ''of the United States'' for '', or the United States''.

Subsec. (f). Pub. L. 98–378, §17, struck out '', after determining that the absent parent cannot be located through the procedures under the control of such State agencies,'' before ''to transmit to the Secretary''.

1981—Subsec. (c)(1). Pub. L. 97–35 substituted ''child and spousal support'' for ''child support''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(5) [title III, §303(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–306, provided that: ''The amendments made by this section [amending this section] shall become effective October 1, 1999.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–200, title IV, §402(e), July 16, 1998, 112 Stat. 669, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Section 1090(a)(4) of Pub. L. 105–34 provided that: ''The amendments made by this subsection [amending this section and section 654a of this title] shall take effect on October 1, 1998.''

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amounts available under subsec. (*o*) of this section to be calculated as though amendments made by section 101(e) [title II, §215] of Pub. L. 104–208 were effective Oct. 1, 1995, see section 101(e) [title II, §215] of Pub. L. 104–208, as amended, set out as a note under section 652 of this title.

Amendment by section 108(c)(10) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 124(c) of Pub. L. 100–485 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section and sections 503 and 504 of this title] shall become effective on the first day of the first calendar quarter which begins one year or more after the date of the enactment of this Act [Oct. 13, 1988].

''(2) The Secretary of Health and Human Services and the Secretary of Labor shall enter into the agreement required by the amendment made by subsection (a) [amending this section] not later than 90 days after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

NOTICE OF PURPOSES FOR WHICH WAGE AND SALARY DATA ARE TO BE USED

Pub. L. 105–200, title IV, § 402(c), July 16, 1998, 112 Stat. 669, provided that: ''Within 90 days after the date of the enactment of this Act [July 16, 1998], the Secretary of Health and Human Services shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of the specific purposes for which the new hire and the wage and unemployment compensation information in the National Directory of New Hires is to be used. At least 30 days before such information is to be used for a purpose not specified in the notice provided pursuant to the preceding sentence, the Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such purpose.''

REPORT ON DATA MAINTAINED BY NATIONAL DIRECTORY OF NEW HIRES

Pub. L. 105–200, title IV, § 402(d), July 16, 1998, 112 Stat. 669, provided that: ''Within 3 years after the date of the enactment of this Act [July 16, 1998], the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the accuracy of the data maintained by the National Directory of New Hires pursuant to section 453(i) of the Social Security Act [subsec. (i) of this section], and the effectiveness of the procedures designed to provide for the security of such data.''

COORDINATION BETWEEN SECRETARIES RELATING TO AMENDMENTS BY PUB. L. 105–34

Section 1090(a)(3) of Pub. L. 105–34 provided that: ''The Secretary of the Treasury and the Secretary of Health and Human Services shall consult regarding the implementation issues resulting from the amendments made by this subsection [amending this section and section 654a of this title], including interim deadlines for States that may be able before October 1, 1999, to provide the data required by such amendments. The Secretaries shall report to Congress on the results of such consultation.''

REQUIREMENT FOR COOPERATION

Section 316(h) of title III of Pub. L. 104–193 provided that: ''The Secretary of Labor and the Secretary of Health and Human Services shall work jointly to develop cost-effective and efficient methods of accessing the information in the various State directories of new hires and the National Directory of New Hires as established pursuant to the amendments made by this subtitle [subtitle B (§§ 311–317) of title III of Pub. L. 104–193, enacting sections 653a and 654b of this title and amending this section, sections 503, 654, 654a, 666, 1320b–7 of this title, and sections 3304 and 6103 of Title 26, Internal Revenue Code]. In developing these methods the Secretaries shall take into account the impact, including costs, on the States, and shall also consider the need to insure the proper and authorized use of wage record information.''

EXECUTIVE AGENCIES TO FACILITATE PAYMENT OF CHILD SUPPORT

For provisions requiring Federal agencies to cooperate with Federal Parent Locator Service, see Ex. Ord. No. 12953, § 303, Feb. 27, 1995, 60 F.R. 11014, set out as a note under section 659 of this title.

§ 653a. State Directory of New Hires

(a) Establishment

(1) In general

(A) Requirement for States that have no directory

Except as provided in subparagraph (B), not later than October 1, 1997, each State shall establish an automated directory (to be known as the ''State Directory of New Hires'') which shall contain information supplied in accordance with subsection (b) of this section by employers on each newly hired employee.

(B) States with new hire reporting law in existence

A State which has a new hire reporting law in existence on August 22, 1996, may continue to operate under the State law, but the State must meet the requirements of subsection (g)(2) of this section not later than October 1, 1997, and the requirements of this section (other than subsection (g)(2) of this section) not later than October 1, 1998.

(2) Definitions

As used in this section:

(A) Employee

The term ''employee''—

(i) means an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

(ii) does not include an employee of a Federal or State agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to paragraph (1) with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(B) Employer

(i) In general

The term ''employer'' has the meaning given such term in section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(ii) Labor organization

The term ''labor organization'' shall have the meaning given such term in section 152(5) of title 29, and includes any entity (also known as a ''hiring hall'') which is used by the organization and an employer to carry out requirements described in section 158(f)(3) of title 29 of an agreement between the organization and the employer.

(b) Employer information

(1) Reporting requirement

(A) In general

Except as provided in subparagraphs (B) and (C), each employer shall furnish to the Directory of New Hires of the State in which a newly hired employee works, a report that contains the name, address, and social security number of the employee, and the name and address of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986 to, the employer.

(B) Multistate employers

An employer that has employees who are employed in 2 or more States and that transmits reports magnetically or electronically

may comply with subparagraph (A) by designating 1 State in which such employer has employees to which the employer will transmit the report described in subparagraph (A), and transmitting such report to such State. Any employer that transmits reports pursuant to this subparagraph shall notify the Secretary in writing as to which State such employer designates for the purpose of sending reports.

(C) Federal Government employers

Any department, agency, or instrumentality of the United States shall comply with subparagraph (A) by transmitting the report described in subparagraph (A) to the National Directory of New Hires established pursuant to section 653 of this title.

(2) Timing of report

Each State may provide the time within which the report required by paragraph (1) shall be made with respect to an employee, but such report shall be made—

(A) not later than 20 days after the date the employer hires the employee; or

(B) in the case of an employer transmitting reports magnetically or electronically, by 2 monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

(c) Reporting format and method

Each report required by subsection (b) of this section shall be made on a W–4 form or, at the option of the employer, an equivalent form, and may be transmitted by 1st class mail, magnetically, or electronically.

(d) Civil money penalties on noncomplying employers

The State shall have the option to set a State civil money penalty which shall not exceed—

(1) $25 per failure to meet the requirements of this section with respect to a newly hired employee; or

(2) $500 if, under State law, the failure is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report.

(e) Entry of employer information

Information shall be entered into the data base maintained by the State Directory of New Hires within 5 business days of receipt from an employer pursuant to subsection (b) of this section.

(f) Information comparisons

(1) In general

Not later than May 1, 1998, an agency designated by the State shall, directly or by contract, conduct automated comparisons of the social security numbers reported by employers pursuant to subsection (b) of this section and the social security numbers appearing in the records of the State case registry for cases being enforced under the State plan.

(2) Notice of match

When an information comparison conducted under paragraph (1) reveals a match with respect to the social security number of an individual required to provide support under a support order, the State Directory of New Hires shall provide the agency administering the State plan approved under this part of the appropriate State with the name, address, and social security number of the employee to whom the social security number is assigned, and the name and address of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986 to, the employer.

(g) Transmission of information

(1) Transmission of wage withholding notices to employers

Within 2 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State agency enforcing the employee's child support obligation shall transmit a notice to the employer of the employee directing the employer to withhold from the income of the employee an amount equal to the monthly (or other periodic) child support obligation (including any past due support obligation) of the employee, unless the employee's income is not subject to withholding pursuant to section 666(b)(3) of this title.

(2) Transmissions to the National Directory of New Hires

(A) New hire information

Within 3 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State Directory of New Hires shall furnish the information to the National Directory of New Hires.

(B) Wage and unemployment compensation information

The State Directory of New Hires shall, on a quarterly basis, furnish to the National Directory of New Hires information concerning the wages and unemployment compensation paid to individuals, by such dates, in such format, and containing such information as the Secretary of Health and Human Services shall specify in regulations.

(3) "Business day" defined

As used in this subsection, the term ''business day'' means a day on which State offices are open for regular business.

(h) Other uses of new hire information

(1) Location of child support obligors

The agency administering the State plan approved under this part shall use information received pursuant to subsection (f)(2) of this section to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations, and may disclose such information to any agent of the agency that is under contract with the agency to carry out such purposes.

(2) Verification of eligibility for certain programs

A State agency responsible for administering a program specified in section 1320b–7(b) of this title shall have access to information re-

ported by employers pursuant to subsection (b) of this section for purposes of verifying eligibility for the program.

(3) Administration of employment security and workers' compensation

State agencies operating employment security and workers' compensation programs shall have access to information reported by employers pursuant to subsection (b) of this section for the purposes of administering such programs.

(Aug. 14, 1935, ch. 531, title IV, § 453A, as added Pub. L. 104–193, title III, § 313(b), Aug. 22, 1996, 110 Stat. 2209; amended Pub. L. 105–33, title V, § 5533, Aug. 5, 1997, 111 Stat. 627.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(2), (b)(1)(A), and (f)(2), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1997—Subsec. (d). Pub. L. 105–33, § 5533(1), substituted ''shall not exceed'' for ''shall be less than'' in introductory provisions and ''$25 per failure to meet the requirements of this section with respect to a newly hired employee'' for ''$25'' in par. (1).

Subsec. (g)(2)(B). Pub. L. 105–33, § 5533(2), substituted ''information'' for ''extracts of the reports required under section 503(a)(6) of this title to be made to the Secretary of Labor''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE

For effective date of section, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

§ 654. State plan for child and spousal support

A State plan for child and spousal support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that the State will—

(A) provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to—

(i) each child for whom (I) assistance is provided under the State program funded under part A of this subchapter, (II) benefits or services for foster care maintenance are provided under the State program funded under part E of this subchapter, (III) medical assistance is provided under the State plan approved under subchapter XIX of this chapter, or (IV) cooperation is required pursuant to section 2015(*l*)(1) of title 7, unless, in accordance with paragraph (29), good cause or other exceptions exist;

(ii) any other child, if an individual applies for such services with respect to the child; and

(B) enforce any support obligation established with respect to—

(i) a child with respect to whom the State provides services under the plan; or

(ii) the custodial parent of such a child;

(5) provide that (A) in any case in which support payments are collected for an individual with respect to whom an assignment pursuant to section 608(a)(3) of this title is effective, such payments shall be made to the State for distribution pursuant to section 657 of this title and shall not be paid directly to the family, and the individual will be notified on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden) of the amount of the support payments collected, and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1396k of this title, such payments shall be made to the State for distribution pursuant to section 1396k of this title, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;

(6) provide that—

(A) services under the plan shall be made available to residents of other States on the same terms as to residents of the State submitting the plan;

(B)(i) an application fee for furnishing such services shall be imposed on an individual, other than an individual receiving assistance under a State program funded under part A or E of this subchapter, or under a State plan approved under subchapter XIX of this chapter, or who is required by the State to cooperate with the State agency administering the program under this part pursuant to subsection (*l*) or (m) of section 2015 of title 7, and shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (I) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (II) may vary among such individuals on the basis of ability to pay (as determined by the State); and

(ii) in the case of an individual who has never received assistance under a State program funded under part A and for whom the State has collected at least $500 of support,

the State shall impose an annual fee of $25 for each case in which services are furnished, which shall be retained by the State from support collected on behalf of the individual (but not from the first $500 so collected), paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and the fees shall be considered income to the program);

(C) a fee of not more than $25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 664(a)(2) of this title;

(D) a fee (in accordance with regulations of the Secretary) for performing genetic tests may be imposed on any individual who is not a recipient of assistance under a State program funded under part A of this subchapter; and

(E) any costs in excess of the fees so imposed may be collected—

(i) from the parent who owes the child or spousal support obligation involved; or

(ii) at the option of the State, from the individual to whom such services are made available, but only if such State has in effect a procedure whereby all persons in such State having authority to order child or spousal support are informed that such costs are to be collected from the individual to whom such services were made available;

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials and Indian tribes or tribal organizations (as defined in subsections (e) and (*l*) of section 450b of title 25) (A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

(8) provide that, for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or making or enforcing a child custody or visitation determination, as defined in section 663(d)(1) of this title the agency administering the plan will establish a service to locate parents utilizing—

(A) all sources of information and available records; and

(B) the Federal Parent Locator Service established under section 653 of this title,

and shall, subject to the privacy safeguards required under paragraph (26), disclose only the information described in sections 653 and 663 of this title to the authorized persons specified in such sections for the purposes specified in such sections;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

(A) in establishing paternity, if necessary;

(B) in locating a noncustodial parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State;

(C) in securing compliance by a noncustodial parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State;

(D) in carrying out other functions required under a plan approved under this part; and

(E) not later than March 1, 1997, in using the forms promulgated pursuant to section 652(a)(11) of this title for income withholding, imposition of liens, and issuance of administrative subpoenas in interstate child support cases;

(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

(11)(A) provide that amounts collected as support shall be distributed as provided in section 657 of this title; and

(B) provide that any payment required to be made under section 656 or 657 of this title to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(12) provide for the establishment of procedures to require the State to provide individuals who are applying for or receiving services under the State plan, or who are parties to cases in which services are being provided under the State plan—

(A) with notice of all proceedings in which support obligations might be established or modified; and

(B) with a copy of any order establishing or modifying a child support obligation, or (in the case of a petition for modification) a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan;

(14)(A) comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe;

(B) maintain methods of administration which are designed to assure that persons re-

sponsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary);

(15) provide for—

(A) a process for annual reviews of and reports to the Secretary on the State program operated under the State plan approved under this part, including such information as may be necessary to measure State compliance with Federal requirements for expedited procedures, using such standards and procedures as are required by the Secretary, under which the State agency will determine the extent to which the program is operated in compliance with this part; and

(B) a process of extracting from the automated data processing system required by paragraph (16) and transmitting to the Secretary data and calculations concerning the levels of accomplishment (and rates of improvement) with respect to applicable performance indicators (including paternity establishment percentages) to the extent necessary for purposes of sections 652(g) and 658a of this title;

(16) provide for the establishment and operation by the State agency, in accordance with an (initial and annually updated) advance automated data processing planning document approved under section 652(d) of this title, of a statewide automated data processing and information retrieval system meeting the requirements of section 654a of this title designed effectively and efficiently to assist management in the administration of the State plan, so as to control, account for, and monitor all the factors in the support enforcement collection and paternity determination process under such plan;

(17) provide that the State will have in effect an agreement with the Secretary entered into pursuant to section 663 of this title for the use of the Parent Locator Service established under section 653 of this title, and provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, will impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 of this title, and take all steps necessary to implement and utilize such procedures;

(19) provide that the agency administering the plan—

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976, whether any individuals receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency; and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law; or

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 659(i)(5) of this title) to require the withholding of amounts from such compensation;

(20) provide, to the extent required by section 666 of this title, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws;

(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 666(e) of this title) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the noncustodial parent owing the overdue support; and

(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

(22) in order for the State to be eligible to receive any incentive payments under section 658a of this title, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision;

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and

otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained and will publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support by means the State deems appropriate;

(24) provide that the State will have in effect an automated data processing and information retrieval system—

(A) by October 1, 1997, which meets all requirements of this part which were enacted on or before October 13, 1988; and

(B) by October 1, 2000, which meets all requirements of this part enacted on or before August 22, 1996, except that such deadline shall be extended by 1 day for each day (if any) by which the Secretary fails to meet the deadline imposed by section 344(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(25) provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A of this subchapter, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family and paragraph (6)(B) shall not apply to the family;

(26) have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including—

(A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify, or enforce support, or to make or enforce a child custody determination;

(B) prohibitions against the release of information on the whereabouts of 1 party or the child to another party against whom a protective order with respect to the former party or the child has been entered;

(C) prohibitions against the release of information on the whereabouts of 1 party or the child to another person if the State has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child;

(D) in cases in which the prohibitions under subparagraphs (B) and (C) apply, the requirement to notify the Secretary, for purposes of section 653(b)(2) of this title, that the State has reasonable evidence of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child; and

(E) procedures providing that when the Secretary discloses information about a parent or child to a State court or an agent of a State court described in section 653(c)(2) or 663(d)(2)(B) of this title, and advises that court or agent that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse pursuant to section 653(b)(2) of this title, the court shall determine whether disclosure to any other person of information received from the Secretary could be harmful to the parent or child and, if the court determines that disclosure to any other person could be harmful, the court and its agents shall not make any such disclosure;

(27) provide that, on and after October 1, 1998, the State agency will—

(A) operate a State disbursement unit in accordance with section 654b of this title; and

(B) have sufficient State staff (consisting of State employees) and (at State option) contractors reporting directly to the State agency to—

(i) monitor and enforce support collections through the unit in cases being enforced by the State pursuant to paragraph (4) (including carrying out the automated data processing responsibilities described in section 654a(g) of this title); and

(ii) take the actions described in section 666(c)(1) of this title in appropriate cases;

(28) provide that, on and after October 1, 1997, the State will operate a State Directory of New Hires in accordance with section 653a of this title;

(29) provide that the State agency responsible for administering the State plan—

(A) shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied for or is receiving assistance under the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 2012(h) of title 7, is cooperating in good faith with the State in establishing the paternity of, or in establishing, modifying, or enforcing a support order for, any child of the individual by providing the State agency with the name of, and such other information as the State agency may require with respect to, the noncustodial parent of the child, subject to good cause and other exceptions which—

(i) in the case of the State program funded under part A of this subchapter, the State program under part E of this subchapter, or the State program under subchapter XIX of this chapter shall, at the option of the State, be defined, taking into account the best interests of the child, and applied in each case, by the State agency administering such program; and

(ii) in the case of the food stamp program, as defined under section 2012(h) of title 7, shall be defined and applied in each case under that program in accordance with section 2015(*l*)(2) of title 7;

(B) shall require the individual to supply additional necessary information and appear at interviews, hearings, and legal proceedings;

(C) shall require the individual and the child to submit to genetic tests pursuant to judicial or administrative order;

(D) may request that the individual sign a voluntary acknowledgment of paternity, after notice of the rights and consequences of such an acknowledgment, but may not require the individual to sign an acknowledgment or otherwise relinquish the right to genetic tests as a condition of cooperation and eligibility for assistance under the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 2012(h) of title 7; and

(E) shall promptly notify the individual and the State agency administering the State program funded under part A of this subchapter, the State agency administering the State program under part E of this subchapter, the State agency administering the State program under subchapter XIX of this chapter, or the State agency administering the food stamp program, as defined under section 2012(h) of title 7, of each such determination, and if noncooperation is determined, the basis therefor;

(30) provide that the State shall use the definitions established under section 652(a)(5) of this title in collecting and reporting information as required under this part;

(31) provide that the State agency will have in effect a procedure for certifying to the Secretary, for purposes of the procedure under section 652(k) of this title, determinations that individuals owe arrearages of child support in an amount exceeding $2,500, under which procedure—

(A) each individual concerned is afforded notice of such determination and the consequences thereof, and an opportunity to contest the determination; and

(B) the certification by the State agency is furnished to the Secretary in such format, and accompanied by such supporting documentation, as the Secretary may require;

(32)(A) provide that any request for services under this part by a foreign reciprocating country or a foreign country with which the State has an arrangement described in section 659a(d) of this title shall be treated as a request by a State;

(B) provide, at State option, notwithstanding paragraph (4) or any other provision of this part, for services under the plan for enforcement of a spousal support order not described in paragraph (4)(B) entered by such a country (or subdivision); and

(C) provide that no applications will be required from, and no costs will be assessed for such services against, the foreign reciprocating country or foreign obligee (but costs may at State option be assessed against the obligor); and

(33) provide that a State that receives funding pursuant to section 628 of this title and that has within its borders Indian country (as defined in section 1151 of title 18) may enter into cooperative agreements with an Indian tribe or tribal organization (as defined in subsections (e) and (*l*) of section 450b of title 25), if the Indian tribe or tribal organization demonstrates that such tribe or organization has an established tribal court system or a Court of Indian Offenses with the authority to establish paternity, establish, modify, or enforce support orders, or to enter support orders in accordance with child support guidelines established or adopted by such tribe or organization, under which the State and tribe or organization shall provide for the cooperative delivery of child support enforcement services in Indian country and for the forwarding of all collections pursuant to the functions performed by the tribe or organization to the State agency, or conversely, by the State agency to the tribe or organization, which shall distribute such collections in accordance with such agreement.

The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21). Nothing in paragraph (33) shall void any provision of any cooperative agreement entered into before August 22, 1996, nor shall such paragraph deprive any State of jurisdiction over Indian country (as so defined) that is lawfully exercised under section 1322 of title 25.

(Aug. 14, 1935, ch. 531, title IV, § 454, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2354; amended Pub. L. 94–88, title II, § 208(b), (c), Aug. 9, 1975, 89 Stat. 436; Pub. L. 95–30, title V, § 502(a), May 23, 1977, 91 Stat. 162; Pub. L. 96–265, title IV, § 405(b), June 9, 1980, 94 Stat. 463; Pub. L. 96–611, § 9(a), Dec. 28, 1980, 94 Stat. 3571; Pub. L. 97–35, title XXIII, §§ 2331(b), 2332(d), 2333(a), (b), 2335(a), Aug. 13, 1981, 95 Stat. 860, 862, 863; Pub. L. 97–248, title I, §§ 171(a), (b)(1), 173(a), Sept. 3, 1982, 96 Stat. 401, 403; Pub. L. 98–369, div. B, title VI, § 2663(c)(14), (j)(2)(B)(x), July 18, 1984, 98 Stat. 1166, 1170; Pub. L. 98–378, §§ 3(a), (c)–(f), 5(b), 6(a), 11(b)(1), 12(a), (b), 14(a), 21(d), Aug. 16, 1984, 98 Stat. 1306, 1310, 1311, 1314, 1318, 1319, 1320, 1324; Pub. L. 100–203, title IX, §§ 9141(a)(2), 9142(a), Dec. 22, 1987, 101 Stat. 1330–321; Pub. L. 100–485, title I, §§ 104(a), 111(c), 123(a), (d), Oct. 13, 1988, 102 Stat. 2348, 2349, 2352, 2353; Pub. L. 104–35, § 1(a), Oct. 12, 1995, 109 Stat. 294; Pub. L. 104–193, title I, § 108(c)(11), (12), title III, §§ 301(a), (b), 302(b)(2), 303(a), 304(a), 312(a), 313(a), 316(g)(1), 324(b), 332, 333, 342(a), 343(b), 344(a)(1), (4), 370(a)(2), 371(b), 375(a), (c), 395(d)(1)(D), (2)(B), Aug. 22, 1996, 110 Stat. 2166, 2199, 2204, 2205, 2207, 2209, 2218, 2223, 2230, 2233, 2234, 2236, 2252, 2254, 2256, 2259, 2260; Pub. L. 105–33, title V, §§ 5531(a), 5542(c), 5545, 5546(a), 5548, 5552, 5556(b), Aug. 5, 1997, 111 Stat. 625, 631, 633, 635, 637; Pub. L. 106–169, title IV, § 401(g), (h), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 109–171, title VII, §§ 7301(b)(1)(C), 7303(b), 7310(a), Feb. 8, 2006, 120 Stat. 143, 145, 147.)

AMENDMENT OF SECTION

Pub. L. 109–171, title VII, § 7301(b)(1)(C), (e), Feb. 8, 2006, 120 Stat. 143, 144, provided that, effective Oct. 1, 2009, and applicable to payments under parts A and D of this subchapter for calendar quarters beginning on or after such date,

subject to certain State options, this section is amended by striking ''and'' at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting ''; and'', and by inserting after paragraph (33) the following new paragraph (34):

(34) include an election by the State to apply section 657(a)(2)(B) of this title or former section 657(a)(2)(B) of this title (as in effect for the State immediately before the date this paragraph first applies to the State) to the distribution of the amounts which are the subject of such sections and, for so long as the State elects to so apply such former section, the amendments made by subsection (b)(1) of section 7301 of the Deficit Reduction Act of 2005 shall not apply with respect to the State, notwithstanding subsection (e) of such section 7301.

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in pars. (4)(A)(i), (6)(B), (D), (25), and (29)(A), (D), (E), are classified to section 601 et seq. and 670 et seq., respectively, of this title.

Section 508 of the Unemployment Compensation Amendments of 1976, referred to in par. (19), is section 508 of Pub. L. 94–566, Oct. 20, 1976, 90 Stat. 2689, which enacted section 603a of this title and amended section 49b of Title 29, Labor.

Section 344(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in par. (24), is section 344(a)(3) of Pub. L. 104–193, which is set out as a Regulations note under section 654a of this title.

AMENDMENTS

2006—Par. (6)(B). Pub. L. 109–171, §7310(a), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), and added cl. (ii).

Par. (31). Pub. L. 109–171, §7303(b), substituted ''$2,500'' for ''$5,000'' in introductory provisions.

1999—Par. (6)(E)(i). Pub. L. 106–169, §401(g)(1), substituted ''; or'' for '', or'' at end.

Par. (9)(A) to (C). Pub. L. 106–169, §401(g)(2), substituted semicolon for comma at end.

Par. (19)(A). Pub. L. 106–169, §401(g)(3), substituted ''; and'' for '', and'' at end.

Par. (19)(B)(i). Pub. L. 106–169, §401(g)(1), substituted ''; or'' for '', or'' at end.

Par. (24)(A). Pub. L. 106–169, §401(g)(3), substituted ''; and'' for '', and'' at end.

Par. (24)(B). Pub. L. 106–169, §401(h), made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

1997—Par. (4)(A)(i)(IV). Pub. L. 105–33, §5548(a), added subcl. (IV).

Par. (6)(B). Pub. L. 105–33, §5531(a), substituted ''an individual, other than an individual receiving assistance under a State program funded under part A or E of this subchapter, or under a State plan approved under subchapter XIX of this chapter, or who is required by the State to cooperate with the State agency administering the program under this part pursuant to subsection (*l*) or (m) of section 2015 of title 7, and'' for ''individuals not receiving assistance under any State program funded under part A of this subchapter, which''.

Par. (8). Pub. L. 105–33, §5552(1)(D), inserted concluding provisions.

Pub. L. 105–33, §5552(1)(A), in introductory provisions, inserted '', for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or making or enforcing a child custody or visitation determination, as defined in section 663(d)(1) of this title'' after ''provide that'' and struck out ''noncustodial'' before ''parents''.

Par. (8)(A). Pub. L. 105–33, §5552(1)(B), substituted ''records; and'' for ''records, and''.

Par. (8)(B). Pub. L. 105–33, §5552(1)(C), substituted ''title,'' for ''title;''.

Par. (16). Pub. L. 105–33, §5556(b), made technical amendment to directory language of Pub. L. 104–193, §344(a)(1)(F). See 1996 Amendment note below.

Par. (17). Pub. L. 105–33, §5552(2), substituted ''provide that the State will have'' for ''in the case of a State which has'' and inserted ''and'' after ''section 653 of this title,''.

Par. (19)(B)(ii). Pub. L. 105–33, §5542(c), substituted ''section 659(i)(5)'' for ''section 662(e)''.

Par. (26). Pub. L. 105–33, §5552(3)(A), struck out ''will'' before ''have in effect'' in introductory provisions.

Par. (26)(A). Pub. L. 105–33, §5552(3)(B), inserted '', modify,'' after ''or to establish'' and '', or to make or enforce a child custody determination'' after ''support''.

Par. (26)(B). Pub. L. 105–33, §5552(3)(C)(i), (ii), inserted ''or the child'' after ''1 party'' and after ''former party''.

Par. (26)(C). Pub. L. 105–33, §5552(3)(D), inserted ''or the child'' after ''1 party'', substituted ''another person'' for ''another party'', inserted ''to that person'' after ''release of the information'', and substituted ''party or the child'' for ''former party''.

Par. (26)(D), (E). Pub. L. 105–33, §5552(3)(C)(iii), (E), added subpars. (D) and (E).

Par. (29)(A). Pub. L. 105–33, §5548(b)(1)(B), substituted cls. (i) and (ii) for

''(i) shall be defined, taking into account the best interests of the child, and

''(ii) shall be applied in each case,

by, at the option of the State, the State agency administering the State program under part A of this subchapter, this part, or subchapter XIX of this chapter;''.

Pub. L. 105–33, §5548(b)(1)(A), in introductory provisions, substituted ''part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 2012(h) of title 7,'' for ''part A of this subchapter or the State program under subchapter XIX of this chapter''.

Par. (29)(D). Pub. L. 105–33, §5548(b)(2), substituted ''the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 2012(h) of title 7'' for ''or the State program under subchapter XIX of this chapter''.

Par. (29)(E). Pub. L. 105–33, §5548(b)(3), substituted ''individual and the State agency administering the State program funded under part A of this subchapter, the State agency administering the State program under part E of this subchapter, the State agency administering the State program under subchapter XIX of this chapter, or the State agency administering the food stamp program, as defined under section 2012(h) of title 7,'' for ''individual, the State agency administering the State program funded under part A of this subchapter, and the State agency administering the State program under subchapter XIX of this chapter,''.

Par. (32)(A). Pub. L. 105–33, §5545, substituted ''section 659a(d)'' for ''section 659a(d)(2)''.

Par. (33). Pub. L. 105–33, §5546(a), substituted ''or enforce support orders, or'' for ''and enforce support orders, and'', ''guidelines established or adopted by such tribe or organization'' for ''guidelines established by such tribe or organization'', ''all collections'' for ''all funding collected'', and ''such collections'' for ''such funding''.

1996—Pub. L. 104–193, §375(a)(4), inserted at end of closing provisions ''Nothing in paragraph (33) shall void any provision of any cooperative agreement entered into before August 22, 1996, nor shall such paragraph deprive any State of jurisdiction over Indian country (as so defined) that is lawfully exercised under section 1322 of title 25.''

Par. (4). Pub. L. 104–193, §301(a)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''provide that such State will undertake—

''(A) in the case of a child born out of wedlock with respect to whom an assignment under section 602(a)(26) of this title or section 1396k of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so, or, in the case of such a child with respect to whom an assignment under section 1396k of this title is in effect, the State agency administering the plan approved under subchapter XIX of this chapter determines pursuant to section 1396k(a)(1)(B) of this title that it is against the best interests of the child to do so, and

''(B) in the case of any child with respect to whom such assignment is effective, including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter, to secure support for such child from his parent (or from any other person legally liable for such support), and from such parent for his spouse (or former spouse) receiving aid to families with dependent children or medical assistance under a State plan approved under subchapter XIX of this chapter (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), utilizing any reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A or E of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;''.

Par. (5)(A). Pub. L. 104–193, §108(c)(11), substituted ''pursuant to section 608(a)(3) of this title'' for ''under section 602(a)(26) of this title'' and ''payments collected,'' for ''payments collected; except that this paragraph shall not apply to such payments for any month following the first month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A of this subchapter;''.

Par. (6). Pub. L. 104–193, §301(a)(2)(A), substituted ''provide that—'' for ''provide that'' in introductory provisions.

Par. (6)(A). Pub. L. 104–193, §301(a)(2)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan),''.

Par. (6)(B). Pub. L. 104–193, §301(a)(2)(C), (D), inserted ''on individuals not receiving assistance under any State program funded under part A of this subchapter'' after ''such services shall be imposed'', realigned margins, and substituted semicolon for comma at end.

Par. (6)(C). Pub. L. 104–193, §301(a)(2)(D), realigned margins and substituted semicolon for comma at end.

Par. (6)(D). Pub. L. 104–193, §301(a)(2)(D), realigned margins and substituted semicolon for comma before ''and'' at end.

Pub. L. 104–193, §108(c)(12), substituted ''assistance under a State program funded'' for ''aid under a State plan approved''.

Par. (6)(E). Pub. L. 104–193, §301(a)(2)(D)(i), (E), realigned margins.

Pub. L. 104–193, §301(a)(2)(D)(ii), which directed substitution of a semicolon for the final comma, could not be executed because subpar. (E) already ended in a semicolon and not a comma.

Par. (7). Pub. L. 104–193, §375(c), inserted ''and Indian tribes or tribal organizations (as defined in subsections (e) and (*l*) of section 450b of title 25)'' after ''law enforcement officials''.

Par. (8). Pub. L. 104–193, §395(d)(1)(D), substituted ''noncustodial'' for ''absent'' in introductory provisions.

Par. (8)(B). Pub. L. 104–193, §316(g)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the Parent Locator Service in the Department of Health and Human Services;''.

Par. (9)(B), (C). Pub. L. 104–193, §395(d)(2)(B), substituted ''a noncustodial parent'' for ''an absent parent''.

Par. (9)(E). Pub. L. 104–193, §324(b), added subpar. (E).

Par. (11). Pub. L. 104–193, §302(b)(2), designated existing provisions as subpar. (A), inserted ''and'' after semicolon at end, and redesignated par. (12) as subpar. (B).

Par. (12). Pub. L. 104–193, §304(a), added par. (12). Former par. (12) redesignated (11)(B).

Pub. L. 104–193, §302(b)(2)(B), redesignated par. (12) as (11)(B).

Par. (13). Pub. L. 104–193, §§316(g)(1)(B), 395(d)(1)(D), substituted ''noncustodial parents'' for ''absent parents'' and inserted before semicolon at end ''and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan''.

Par. (14). Pub. L. 104–193, §342(a)(1), (2), designated existing provisions as subpar. (A) and redesignated par. (15) as subpar. (B).

Par. (15). Pub. L. 104–193, §342(a)(3), added par. (15). Former par. (15) redesignated (14)(B).

Pub. L. 104–193, §342(a)(2), redesignated par. (15) as (14)(B).

Par. (16). Pub. L. 104–193, §344(a)(1), as amended by Pub. L. 105–33, §5556(b), struck out '', at the option of the State,'' before ''for the establishment'', inserted ''and operation by the State agency'' after ''for the establishment'' and ''meeting the requirements of section 654a of this title'' after ''information retrieval system'', substituted ''so as to control'' for ''in the State and localities thereof, so as (A) to control'', struck out ''(i)'' before ''all the factors in the support enforcement collection'', and struck out before semicolon at end ''(including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, collection, and distribution of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii) the costs of all services rendered, either directly or by interfacing with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, (D) to facilitate the development and improvement of the income withhold-

ing and other procedures required under section 666(a) of this title through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement''.

Par. (21)(A). Pub. L. 104–193, §395(d)(1)(D), substituted ''noncustodial parent'' for ''absent parent''.

Par. (23). Pub. L. 104–193, §332, inserted ''and will publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support by means the State deems appropriate'' before semicolon.

Par. (24). Pub. L. 104–193, §344(a)(4), amended par. (24) generally. Prior to amendment, par. (24) read as follows: ''provide that if the State, as of October 13, 1988, does not have in effect an automated data processing and information retrieval system meeting all of the requirements of paragraph (16), the State—

''(A) will submit to the Secretary by October 1, 1991, for review and approval by the Secretary within 9 months after submittal an advance automated data processing planning document of the type referred to in such paragraph; and

''(B) will have in effect by October 1, 1997, an operational automated data processing and information retrieval system, meeting all the requirements of that paragraph, which has been approved by the Secretary;''.

Par. (25). Pub. L. 104–193, §301(b), added par. (25).

Par. (26). Pub. L. 104–193, §303(a), added par. (26).

Par. (27). Pub. L. 104–193, §312(a), added par. (27).

Par. (28). Pub. L. 104–193, §313(a), added par. (28).

Par. (29). Pub. L. 104–193, §333, added par. (29).

Par. (30). Pub. L. 104–193, §343(b), added par. (30).

Par. (31). Pub. L. 104–193, §370(a)(2), added par. (31).

Par. (32). Pub. L. 104–193, §371(b), added par. (32).

Par. (33). Pub. L. 104–193, §375(a)(1)–(3), added par. (33).

1995—Par. (24)(B). Pub. L. 104–35 substituted ''1997'' for ''1995''.

1988—Par. (5)(A). Pub. L. 100–485, §104(a), substituted ''on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden)'' for ''at least annually''.

Par. (6)(D), (E). Pub. L. 100–485, §111(c), added cl. (D) and redesignated former cl. (D) as (E).

Par. (16). Pub. L. 100–485, §123(d), substituted ''advance automated'' for ''advance automatic'' in introductory provisions.

Pub. L. 100–485, §123(a)(2), substituted ''a statewide automated'' for ''an automatic''.

Par. (24). Pub. L. 100–485, §123(a)(1), added par. (24).

1987—Par. (4)(A). Pub. L. 100–203, §9142(a)(1)(A), (B), substituted ''an assignment under section 602(a)(26) of this title or section 1396k of this title'' for ''an assignment under section 602(a)(26) of this title'' and '', or, in the case of such a child with respect to whom an assignment under section 1396k of this title is in effect, the State agency administering the plan approved under subchapter XIX of this chapter determines pursuant to section 1396k(a)(1)(B) of this title that it is against the best interests of the child to do so, and'' for '', and''.

Par. (4)(B). Pub. L. 100–203, §9142(a)(1)(C), inserted ''or medical assistance under a State plan approved under subchapter XIX of this chapter'' after ''children''.

Par. (5). Pub. L. 100–203, §9142(a)(2), substituted ''provide that (A)'' for ''provide that,'' and added cl. (B).

Pub. L. 100–203, §9141(a)(2), struck out ''(except as provided in section 657(c) of this title)'' after ''apply to such payments''.

1984—Par. (4)(B). Pub. L. 98–378, §11(b)(1), inserted ''including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter,'' after ''such assignment is effective,'' and inserted ''or E'' after ''part A''.

Par. (4)(B). Pub. L. 98–378, §12(a), substituted '', and'' for ''and, at the option of the State,'' before ''from such parent'' and inserted '', and only if the support obligation established with respect to the child is being enforced under the plan''.

Par. (5). Pub. L. 98–378, §3(e), inserted '', and the individual will be notified at least annually of the amount of the support payments collected;''.

Par. (6)(A). Pub. L. 98–378, §12(b), struck out '', at the option of the State,'' before ''support collection services'' and inserted '', and only if the support obligation established with respect to the child is being enforced under the plan''.

Par. (6)(B). Pub. L. 98–378, §3(c), substituted ''shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), and'' for ''may be imposed, except that the amount of any such application fee shall be reasonable, as determined under regulations of the Secretary,''.

Par. (6)(C). Pub. L. 98–378, §21(d)(1), (3), added cl. (C). Former cl. (C) redesignated (D).

Par. (6)(D). Pub. L. 98–378, §21(d)(1), (2), redesignated former cl. (C) as (D) and substituted ''fees'' for ''fee'' before ''so imposed''.

Par. (8)(B). Pub. L. 98–369, §2663(j)(2)(B)(x), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Par. (9)(C). Pub. L. 98–369, §2663(c)(14)(A), struck out ''of such parent'' before ''with respect to whom aid''.

Par. (16)(A)(ii). Pub. L. 98–369, §2663(c)(14)(B), substituted ''collection, and distribution'' for ''collection and distribution,'' before ''of incentive payments''.

Par. (16)(D), (E). Pub. L. 98–378, §6(a), added cl. (D) and redesignated former cl. (D) as (E).

Par. (17). Pub. L. 98–378, §2663(c)(14)(C), realigned margin, substituted ''provide that the State will accept'' for ''to accept'', ''will impose'' for ''and to impose'', ''will transmit'' for ''to transmit'', and ''will otherwise comply'' for '', otherwise to comply''.

Par. (20). Pub. L. 98–378, §3(a), added par. (20).

Par. (21). Pub. L. 98–378, §3(d), added par. (21).

Par. (22). Pub. L. 98–378, §5(b), added par. (22).

Par. (23). Pub. L. 98–378, §14(a), added par. (23).

Pub. L. 98–378, §3(f), inserted after numbered paragraphs provision that the State may allow the jurisdiction which makes the collection involved to retain any application fee under par. (6)(B) or any late payment fee under par. (21).

1982—Par. (5). Pub. L. 97–248, §173(a), inserted ''following the first month'' after ''for any month''.

Par. (6). Pub. L. 97–248, §171(a), in cl. (A) inserted provisions relating to inclusion of, at the option of the State, support collection services for the spouse or former spouse, in cl. (B) substituted ''such services'' for ''services under the State plan (other than collection of support)'', and in cl. (C) substituted provisions relating to collection of any costs in excess of the fee imposed, for provisions relating to the State retaining any fee imposed under State law as required under former par. (19).

Pars. (18) to (20). Pub. L. 97–248, §171(b)(1), inserted ''and'' at end of par. (18), struck out par. (19) relating to imposition of a fee on an individual who owes child or spousal support obligation, and redesignated par. (20) as (19).

1981—Pub. L. 97–35, §2332(d)(2), substituted in provision preceding par. (1) ''child and spousal support'' for ''child support''.

Par. (4)(B). Pub. L. 97–35, § 2332(d)(3), substituted ''such support) and, at the option of the State, from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obligation has been established with respect to such spouse), utilizing'' for ''such support), utilizing''.

Par. (5). Pub. L. 97–35, § 2332(d)(4), substituted ''support payments'' for ''child support payments'' and ''collected for an individual'' for ''collected for a child''.

Par. (6)(B). Pub. L. 97–35, § 2333(a)(1), substituted ''services under the State plan (other than collection of support)'' for ''such services''.

Par. (6)(C). Pub. L. 97–35, § 2333(a)(2), substituted ''the State will retain, but only if it is the State which makes the collection, the fee imposed under State law as required under paragraph (19)'' for ''any costs in excess of the fee so imposed may be collected from such individual by deducting such costs from the amount of any recovery made''.

Par. (9)(C). Pub. L. 97–35, § 2332(d)(5), substituted ''of the child or children or the parent of such child or children'' for ''of a child or children''.

Par. (11). Pub. L. 97–35, § 2332(d)(6), substituted ''collected as support'' for ''collected as child support''.

Par. (16). Pub. L. 97–35, § 2332(d)(7), substituted ''support enforcement'' for ''child support enforcement'', ''whom support obligations'' for ''whom child support obligations'', and ''obligated to pay support'' for ''obligated to pay child support''.

Par. (18). Pub. L. 97–35, § 2331(b), added par. (18).

Par. (19). Pub. L. 97–35, § 2333(b), added par. (19).

Par. (20). Pub. L. 97–35, § 2335(a), added par. (20).

1980—Par. (16). Pub. L. 96–265 added par. (16).

Par. (17). Pub. L. 96–611 added par. (17).

1977—Pars. (14), (15). Pub. L. 95–30 added pars. (14) and (15).

1975—Par. (4)(A). Pub. L. 94–88, § 208(b), substituted ''to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so'' for ''to establish the paternity of such child''.

Par. (4)(B). Pub. L. 94–88, § 208(c), substituted ''reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so)'' for ''reciprocal arrangements adopted with other States''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 7301(b)(1)(C) of Pub. L. 109–171 effective Oct. 1, 2009, and applicable to payments under parts A and D of this subchapter for calendar quarters beginning on or after such date, subject to certain State options, see section 7301(e) of Pub. L. 109–171, set out as a note under section 608 of this title.

Amendment by section 7303(b) of Pub. L. 109–171 effective Oct. 1, 2006, see section 7303(c) of Pub. L. 109–171, set out as a note under section 652 of this title.

Pub. L. 109–171, title VII, § 7310(c), Feb. 8, 2006, 120 Stat. 148, provided that: ''The amendments made by this section [amending this section and section 657 of this title] shall take effect on October 1, 2006.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(c)(11), (12) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Amendment by section 302(b)(2) of Pub. L. 104–193 effective Aug. 22, 1996, see section 302(c)(2) of Pub. L. 104–193, set out as a note under section 657 of this title.

Section 303(b) of Pub. L. 104–193 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1997.''

Section 304(b) of Pub. L. 104–193 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1997.''

Amendment by section 312(a) of Pub. L. 104–193 effective Oct. 1, 1998, with limited exception for States which, as of Aug. 22, 1996, were processing the receipt of child support payments through local courts, see section 312(d) of Pub. L. 104–193, set out as an Effective Date note under section 654b of this title.

Amendment by section 342(a) of Pub. L. 104–193 effective with respect to calendar quarters beginning 12 months or more after Aug. 22, 1996, see section 342(c) of Pub. L. 104–193, set out as a note under section 652 of this title.

Amendment by section 370(a)(2) of Pub. L. 104–193 effective Oct. 1, 1997, see section 370(b) of Pub. L. 104–193, set out as a note under section 652 of this title.

Section 395(a)–(c) of title III of Pub. L. 104–193 provided that:

''(a) IN GENERAL.—Except as otherwise specifically provided (but subject to subsections (b) and (c))—

''(1) the provisions of this title [see Tables for classification] requiring the enactment or amendment of State laws under section 466 of the Social Security Act [section 666 of this title], or revision of State plans under section 454 of such Act [this section], shall be effective with respect to periods beginning on and after October 1, 1996; and

''(2) all other provisions of this title shall become effective upon the date of the enactment of this Act [Aug. 22, 1996].

''(b) GRACE PERIOD FOR STATE LAW CHANGES.—The provisions of this title shall become effective with respect to a State on the later of—

''(1) the date specified in this title, or

''(2) the effective date of laws enacted by the legislature of such State implementing such provisions,

but in no event later than the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 22, 1996]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

''(c) GRACE PERIOD FOR STATE CONSTITUTIONAL AMENDMENT.—A State shall not be found out of compliance with any requirement enacted by this title if the State is unable to so comply without amending the State constitution until the earlier of—

''(1) 1 year after the effective date of the necessary State constitutional amendment; or

''(2) 5 years after the date of the enactment of this Act [Aug. 22, 1996].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 104(b) of Pub. L. 100–485 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall become effective on the first day of the first calendar quarter which begins 4 or more years after the date of the enactment of this Act [Oct. 13, 1988].''

Section 111(f)(2) of Pub. L. 100–485 provided that: ''The amendments made by subsections (b) and (c) [amending this section and section 666 of this title] shall become effective on the first day of the first month beginning one year or more after the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9141(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section and section 657 of this title] shall become effective upon enactment [Dec. 22, 1987].''

Section 9142(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on July 1, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 3(g) of Pub. L. 98–378 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting section 666 of this title and amending this section] shall become effective on October 1, 1985.

''(2) Section 454(21) of the Social Security Act [par. 21 of this section] (as added by subsection (d) of this section), and section 466(e) of such Act [section 666(e) of this title] (as added by subsection (b) of this section), shall be effective with respect to support owed for any month beginning after the date of the enactment of this Act [Aug. 16, 1984].

''(3) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by any amendment made by this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.''

Section 5(c)(1) of Pub. L. 98–378 provided that: ''The amendments made by the preceding provisions of this section [amending this section and section 658 of this title] shall become effective on October 1, 1985.''

Section 6(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and section 655 of this title] shall apply with respect to quarters beginning on or after October 1, 1984.''

Section 11(e) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and sections 656, 657, 664, and 671 of this title] shall become effective October 1, 1984, and shall apply to collections made on or after that date.''

Section 12(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section] shall become effective October 1, 1985.''

Section 14(b) of Pub. L. 98–378 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective October 1, 1985.''

Amendment by section 21(d) of Pub. L. 98–378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98–378, set out as a note under section 6103 of Title 26.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 171(a), (b)(1) of Pub. L. 97–248 effective on and after Aug. 13, 1981, see section 171(c) of Pub. L. 97–248, set out as a note under section 503 of this title.

Section 173(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendments by sections 2331(b), 2332(d)(2)–(7), and 2333(a), (b) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

Amendment by section 2335(a) of Pub. L. 97–35 effective Aug. 13, 1981, except that such amendment shall not be requirements under this section or section 503 of this title before Oct. 1, 1982, see section 2335(c) of Pub. L. 97–35, set out as a note under section 503 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective July 1, 1981, and to be effective only with respect to expenditures, referred to in section 655(a)(3) of this title, made on or after such date, see section 405(e) of Pub. L. 96–265, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 502(b) of Pub. L. 95–30 provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the first calendar month which begins after the date of enactment of this Act [May 23, 1977].''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 210 of title II of Pub. L. 94–88 provided that: ''The amendments made by this title [amending this section and sections 602, 603, and 655 of this title and enacting provisions set out as notes under sections 602 and 655 of this title] shall, unless otherwise specified therein, become effective August 1, 1975.''

EXCEPTION TO GENERAL EFFECTIVE DATE FOR STATE PLANS REQUIRING STATE LAW AMENDMENTS

Pub. L. 109–171, title VII, §7311, Feb. 8, 2006, 120 Stat. 148, provided that: ''In the case of a State plan under part D of title IV of the Social Security Act [this part] which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this subtitle [subtitle C (§§7301–7311) of title VII of Pub. L. 109–171, amending this section, sections 608, 652, 653, 655, 657, 664, and 666 of this title, section 6402 of Title 26, Internal Revenue Code, and provisions set out as a note under section 1169 of Title 29, Labor], the effective date of the amendments imposing the additional requirements shall be 3 months after the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Feb. 8, 2006]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.''

STATE COMMISSIONS ON CHILD SUPPORT

Section 15 of Pub. L. 98–378 provided that:

''(a) As a condition of the State's eligibility for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] for quarters beginning more than 30 days after the date of the enactment of this Act [Aug. 16, 1984] and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall (subject to subsection (f)) appoint a State Commission on Child Support.

''(b) Each State Commission appointed under subsection (a) shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the agency

or organizational unit administering the State's plan under part D of such title IV [this part], the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

''(c) It shall be the function of each State Commission to examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act [part A of this subchapter] and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

''(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary of Health and Human Services along with the Governor's comments thereon.

''(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under subsections (c) and (d), shall be considered as expenditures qualifying for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] or be otherwise payable or reimbursable by the United States or any agency thereof.

''(f) If the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

''(1) has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations,

''(2) has established within the five years prior to the enactment of this Act [Aug. 16, 1984] a commission or council with substantially the same functions as the State Commissions provided for under this section, or

''(3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so,

then such State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply.''

DELAYED EFFECTIVE DATE IN CASES REQUIRING STATE LEGISLATION

Section 176 of Pub. L. 97–248 provided that: ''In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by any amendment made by this subtitle [subtitle E (§§171–176) of title I of Pub. L. 97–248, see Tables for classification], the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the end of the first session of the State legislature which begins after October 1, 1982, or which began prior to October 1, 1982, and remained in session for at least twenty-five calendar days after such date. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.''

§ 654a. Automated data processing

(a) In general

In order for a State to meet the requirements of this section, the State agency administering the State program under this part shall have in operation a single statewide automated data processing and information retrieval system which has the capability to perform the tasks specified in this section with the frequency and in the manner required by or under this part.

(b) Program management

The automated system required by this section shall perform such functions as the Secretary may specify relating to management of the State program under this part, including—

(1) controlling and accounting for use of Federal, State, and local funds in carrying out the program; and

(2) maintaining the data necessary to meet Federal reporting requirements under this part on a timely basis.

(c) Calculation of performance indicators

In order to enable the Secretary to determine the incentive payments and penalty adjustments required by sections 652(g) and 658a of this title, the State agency shall—

(1) use the automated system—

(A) to maintain the requisite data on State performance with respect to paternity establishment and child support enforcement in the State; and

(B) to calculate the paternity establishment percentage for the State for each fiscal year; and

(2) have in place systems controls to ensure the completeness and reliability of, and ready access to, the data described in paragraph (1)(A), and the accuracy of the calculations described in paragraph (1)(B).

(d) Information integrity and security

The State agency shall have in effect safeguards on the integrity, accuracy, and completeness of, access to, and use of data in the automated system required by this section, which shall include the following (in addition to such other safeguards as the Secretary may specify in regulations):

(1) Policies restricting access

Written policies concerning access to data by State agency personnel, and sharing of data with other persons, which—

(A) permit access to and use of data only to the extent necessary to carry out the State program under this part; and

(B) specify the data which may be used for particular program purposes, and the personnel permitted access to such data.

(2) Systems controls

Systems controls (such as passwords or blocking of fields) to ensure strict adherence to the policies described in paragraph (1).

(3) Monitoring of access

Routine monitoring of access to and use of the automated system, through methods such as audit trails and feedback mechanisms, to guard against and promptly identify unauthorized access or use.

(4) Training and information

Procedures to ensure that all personnel (including State and local agency staff and contractors) who may have access to or be required to use confidential program data are informed of applicable requirements and penalties (including those in section 6103 of the Internal Revenue Code of 1986), and are adequately trained in security procedures.

(5) Penalties

Administrative penalties (up to and including dismissal from employment) for unauthorized access to, or disclosure or use of, confidential data.

(e) State case registry

(1) Contents

The automated system required by this section shall include a registry (which shall be known as the ''State case registry'') that contains records with respect to—

(A) each case in which services are being provided by the State agency under the State plan approved under this part; and

(B) each support order established or modified in the State on or after October 1, 1998.

(2) Linking of local registries

The State case registry may be established by linking local case registries of support orders through an automated information network, subject to this section.

(3) Use of standardized data elements

Such records shall use standardized data elements for both parents (such as names, social security numbers and other uniform identification numbers, dates of birth, and case identification numbers), and contain such other information (such as on case status) as the Secretary may require.

(4) Payment records

Each case record in the State case registry with respect to which services are being provided under the State plan approved under this part and with respect to which a support order has been established shall include a record of—

(A) the amount of monthly (or other periodic) support owed under the order, and other amounts (including arrearages, interest or late payment penalties, and fees) due or overdue under the order;

(B) any amount described in subparagraph (A) that has been collected;

(C) the distribution of such collected amounts;

(D) the birth date and, beginning not later than October 1, 1999, the social security number, of any child for whom the order requires the provision of support; and

(E) the amount of any lien imposed with respect to the order pursuant to section 666(a)(4) of this title.

(5) Updating and monitoring

The State agency operating the automated system required by this section shall promptly establish and update, maintain, and regularly monitor, case records in the State case registry with respect to which services are being provided under the State plan approved under this part, on the basis of—

(A) information on administrative actions and administrative and judicial proceedings and orders relating to paternity and support;

(B) information obtained from comparison with Federal, State, or local sources of information;

(C) information on support collections and distributions; and

(D) any other relevant information.

(f) Information comparisons and other disclosures of information

The State shall use the automated system required by this section to extract information from (at such times, and in such standardized format or formats, as may be required by the Secretary), to share and compare information with, and to receive information from, other data bases and information comparison services, in order to obtain (or provide) information necessary to enable the State agency (or the Secretary or other State or Federal agencies) to carry out this part, subject to section 6103 of the Internal Revenue Code of 1986. Such information comparison activities shall include the following:

(1) Federal Case Registry of Child Support Orders

Furnishing to the Federal Case Registry of Child Support Orders established under section 653(h) of this title (and update as necessary, with information including notice of expiration of orders) the minimum amount of information on child support cases recorded in the State case registry that is necessary to operate the registry (as specified by the Secretary in regulations).

(2) Federal Parent Locator Service

Exchanging information with the Federal Parent Locator Service for the purposes specified in section 653 of this title.

(3) Temporary family assistance and medicaid agencies

Exchanging information with State agencies (of the State and of other States) administering programs funded under part A of this subchapter, programs operated under a State plan approved under subchapter XIX of this chapter, and other programs designated by the Secretary, as necessary to perform State agency responsibilities under this part and under such programs.

(4) Intrastate and interstate information comparisons

Exchanging information with other agencies of the State, agencies of other States, and interstate information networks, as necessary and appropriate to carry out (or assist other States to carry out) the purposes of this part.

(5) Private industry councils receiving welfare-to-work grants

Disclosing to a private industry council (as defined in section 603(a)(5)(D)(ii) of this title) to which funds are provided under section 603(a)(5) of this title the names, addresses, telephone numbers, and identifying case num-

ber information in the State program funded under part A of this subchapter, of noncustodial parents residing in the service delivery area of the private industry council, for the purpose of identifying and contacting noncustodial parents regarding participation in the program under section 603(a)(5) of this title.

(g) Collection and distribution of support payments

(1) In general

The State shall use the automated system required by this section, to the maximum extent feasible, to assist and facilitate the collection and disbursement of support payments through the State disbursement unit operated under section 654b of this title, through the performance of functions, including, at a minimum—

(A) transmission of orders and notices to employers (and other debtors) for the withholding of income—

(i) within 2 business days after receipt of notice of, and the income source subject to, such withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State; and

(ii) using uniform formats prescribed by the Secretary;

(B) ongoing monitoring to promptly identify failures to make timely payment of support; and

(C) automatic use of enforcement procedures (including procedures authorized pursuant to section 666(c) of this title) if payments are not timely made.

(2) "Business day" defined

As used in paragraph (1), the term "business day" means a day on which State offices are open for regular business.

(h) Expedited administrative procedures

The automated system required by this section shall be used, to the maximum extent feasible, to implement the expedited administrative procedures required by section 666(c) of this title.

(Aug. 14, 1935, ch. 531, title IV, § 454A, as added and amended Pub. L. 104–193, title III, §§ 311, 312(c), 325(b), 344(a)(2), Aug. 22, 1996, 110 Stat. 2205, 2208, 2226, 2235; Pub. L. 105–34, title X, § 1090(a)(1), Aug. 5, 1997, 111 Stat. 961; Pub. L. 106–113, div. B, § 1000(a)(4) [title VIII, § 805(a)(1)], Nov. 29, 1999, 113 Stat. 1535, 1501A–285.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (d)(4) and (f), is classified generally to Title 26, Internal Revenue Code.

Part A of this subchapter, referred to in subsec. (f)(3), (5), is classified to section 601 et seq. of this title.

AMENDMENTS

1999—Subsec. (f)(5). Pub. L. 106–113 added par. (5).

1997—Subsec. (e)(4)(D). Pub. L. 105–34 substituted "the birth date and, beginning not later than October 1, 1999, the social security number, of any child" for "the birth date of any child".

1996—Subsecs. (e), (f). Pub. L. 104–193, § 311, added subsecs. (e) and (f).

Subsec. (g). Pub. L. 104–193, § 312(c), added subsec. (g).

Subsec. (h). Pub. L. 104–193, § 325(b), added subsec. (h).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective Oct. 1, 1998, see section 1090(a)(4) of Pub. L. 105–34, set out as a note under section 653 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 312(c) of Pub. L. 104–193 effective Oct. 1, 1998, with limited exception for States which, as of Aug. 22, 1996, were processing the receipt of child support payments through local courts, see section 312(d) of Pub. L. 104–193, set out as an Effective Date note under section 654b of this title.

EFFECTIVE DATE

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

REGULATIONS

Section 344(a)(3) of Pub. L. 104–193 provided that: "The Secretary of Health and Human Services shall prescribe final regulations for implementation of section 454A of the Social Security Act [this section] not later than 2 years after the date of the enactment of this Act [Aug. 22, 1996]."

§ 654b. Collection and disbursement of support payments

(a) State disbursement unit

(1) In general

In order for a State to meet the requirements of this section, the State agency must establish and operate a unit (which shall be known as the "State disbursement unit") for the collection and disbursement of payments under support orders—

(A) in all cases being enforced by the State pursuant to section 654(4) of this title; and

(B) in all cases not being enforced by the State under this part in which the support order is initially issued in the State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to withholding pursuant to section 666(a)(8)(B) of this title.

(2) Operation

The State disbursement unit shall be operated—

(A) directly by the State agency (or 2 or more State agencies under a regional cooperative agreement), or (to the extent appropriate) by a contractor responsible directly to the State agency; and

(B) except in cases described in paragraph (1)(B), in coordination with the automated system established by the State pursuant to section 654a of this title.

(3) Linking of local disbursement units

The State disbursement unit may be established by linking local disbursement units through an automated information network, subject to this section, if the Secretary agrees that the system will not cost more nor take more time to establish or operate than a centralized system. In addition, employers shall be given 1 location to which income withholding is sent.

(b) Required procedures

The State disbursement unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures—

(1) for receipt of payments from parents, employers, and other States, and for disbursements to custodial parents and other obligees, the State agency, and the agencies of other States;

(2) for accurate identification of payments;

(3) to ensure prompt disbursement of the custodial parent's share of any payment; and

(4) to furnish to any parent, upon request, timely information on the current status of support payments under an order requiring payments to be made by or to the parent, except that in cases described in subsection (a)(1)(B) of this section, the State disbursement unit shall not be required to convert and maintain in automated form records of payments kept pursuant to section 666(a)(8)(B)(iii) of this title before the effective date of this section.

(c) Timing of disbursements

(1) In general

Except as provided in paragraph (2), the State disbursement unit shall distribute all amounts payable under section 657(a) of this title within 2 business days after receipt from the employer or other source of periodic income, if sufficient information identifying the payee is provided. The date of collection for amounts collected and distributed under this part is the date of receipt by the State disbursement unit, except that if current support is withheld by an employer in the month when due and is received by the State disbursement unit in a month other than the month when due, the date of withholding may be deemed to be the date of collection.

(2) Permissive retention of arrearages

The State disbursement unit may delay the distribution of collections toward arrearages until the resolution of any timely appeal with respect to such arrearages.

(d) "Business day" defined

As used in this section, the term ''business day'' means a day on which State offices are open for regular business.

(Aug. 14, 1935, ch. 531, title IV, § 454B, as added Pub. L. 104–193, title III, § 312(b), Aug. 22, 1996, 110 Stat. 2207; amended Pub. L. 105–33, title V, § 5549, Aug. 5, 1997, 111 Stat. 633.)

REFERENCES IN TEXT

For effective date of this section, referred to in subsec. (b)(4), see Effective Date note below.

AMENDMENTS

1997—Subsec. (c)(1). Pub. L. 105–33 inserted at end ''The date of collection for amounts collected and distributed under this part is the date of receipt by the State disbursement unit, except that if current support is withheld by an employer in the month when due and is received by the State disbursement unit in a month other than the month when due, the date of withholding may be deemed to be the date of collection.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE

Section 312(d) of Pub. L. 104–193 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 654 and 654a of this title] shall become effective on October 1, 1998.

''(2) LIMITED EXCEPTION TO UNIT HANDLING PAYMENTS.—Notwithstanding section 454B(b)(1) of the Social Security Act [subsec. (b)(1) of this section], as added by this section, any State which, as of the date of the enactment of this Act [Aug. 22, 1996], processes the receipt of child support payments through local courts may, at the option of the State, continue to process through September 30, 1999, such payments through such courts as processed such payments on or before such date of enactment.''

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

§ 655. Payments to States

(a) Amounts payable each quarter

(1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter an amount—

(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 of this title,

(B) equal to the percent specified in paragraph (3) of the sums expended during such quarter that are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (including in such sums the full cost of the hardware components of such system); and[1]

(C) equal to 66 percent of so much of the sums expended during such quarter as are attributable to laboratory costs incurred in determining paternity, and

(D) equal to 66 percent of the sums expended by the State during the quarter for an alternative statewide system for which a waiver has been granted under section 652(d)(3) of this title, but only to the extent that the total of the sums so expended by the State on or after July 16, 1998, does not exceed the least total cost estimate submitted by the State pursuant to section 652(d)(3)(C) of this title in the request for the waiver;

except that no amount shall be paid to any State on account of amounts expended from amounts paid to the State under section 658a of this title or to carry out an agreement which it has entered into pursuant to section 663 of this title. In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services

[1] So in original. The ''; and'' probably should be a comma.

provided under the plan approved under this part.

(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

(B) 68 percent for fiscal years 1988 and 1989, and

(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.

(3)(A) The Secretary shall pay to each State, for each quarter in fiscal years 1996 and 1997, 90 percent of so much of the State expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements specified in section 654(16) of this title (as in effect on September 30, 1995) but limited to the amount approved for States in the advance planning documents of such States submitted on or before September 30, 1995.

(B)(i) The Secretary shall pay to each State or system described in clause (iii), for each quarter in fiscal years 1996 through 2001, the percentage specified in clause (ii) of so much of the State or system expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements of sections 654(16) and 654a of this title.

(ii) The percentage specified in this clause is 80 percent.

(iii) For purposes of clause (i), a system described in this clause is a system that has been approved by the Secretary to receive enhanced funding pursuant to the Family Support Act of 1988 (Public Law 100–485; 102 Stat. 2343) for the purpose of developing a system that meets the requirements of sections 654(16) of this title (as in effect on and after September 30, 1995) and 654a of this title, including systems that have received funding for such purpose pursuant to a waiver under section 1315(a) of this title.

(4)(A)(i) If—

(I) the Secretary determines that a State plan under section 654 of this title would (in the absence of this paragraph) be disapproved for the failure of the State to comply with a particular subparagraph of section 654(24) of this title, and that the State has made and is continuing to make a good faith effort to so comply; and

(II) the State has submitted to the Secretary a corrective compliance plan that describes how, by when, and at what cost the State will achieve such compliance, which has been approved by the Secretary,

then the Secretary shall not disapprove the State plan under section 654 of this title, and the Secretary shall reduce the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the fiscal year by the penalty amount.

(ii) All failures of a State during a fiscal year to comply with any of the requirements referred to in the same subparagraph of section 654(24) of this title shall be considered a single failure of the State to comply with that subparagraph during the fiscal year for purposes of this paragraph.

(B) In this paragraph:

(i) The term ''penalty amount'' means, with respect to a failure of a State to comply with a subparagraph of section 654(24) of this title—

(I) 4 percent of the penalty base, in the case of the first fiscal year in which such a failure by the State occurs (regardless of whether a penalty is imposed under this paragraph with respect to the failure);

(II) 8 percent of the penalty base, in the case of the second such fiscal year;

(III) 16 percent of the penalty base, in the case of the third such fiscal year;

(IV) 25 percent of the penalty base, in the case of the fourth such fiscal year; or

(V) 30 percent of the penalty base, in the case of the fifth or any subsequent such fiscal year.

(ii) The term ''penalty base'' means, with respect to a failure of a State to comply with a subparagraph of section 654(24) of this title during a fiscal year, the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the preceding fiscal year.

(C)(i) The Secretary shall waive a penalty under this paragraph for any failure of a State to comply with section 654(24)(A) of this title during fiscal year 1998 if—

(I) on or before August 1, 1998, the State has submitted to the Secretary a request that the Secretary certify the State as having met the requirements of such section;

(II) the Secretary subsequently provides the certification as a result of a timely review conducted pursuant to the request; and

(III) the State has not failed such a review.

(ii) If a State with respect to which a reduction is made under this paragraph for a fiscal year with respect to a failure to comply with a subparagraph of section 654(24) of this title achieves compliance with such subparagraph by the beginning of the succeeding fiscal year, the Secretary shall increase the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the succeeding fiscal year by an amount equal to 90 percent of the reduction for the fiscal year.

(iii) The Secretary shall reduce the amount of any reduction that, in the absence of this clause, would be required to be made under this paragraph by reason of the failure of a State to achieve compliance with section 654(24)(B) of this title during the fiscal year, by an amount equal to 20 percent of the amount of the otherwise required reduction, for each State performance measure described in section 658a(b)(4) of this title with respect to which the applicable percentage under section 658a(b)(6) of this title for the fiscal year is 100 percent, if the Secretary has made the determination described in section 658a(b)(5)(B) of this title with respect to the State for the fiscal year.

(D) The Secretary may not impose a penalty under this paragraph against a State with respect to a failure to comply with section 654(24)(B) of this title for a fiscal year if the Secretary is required to impose a penalty under this paragraph against the State with respect to a failure to comply with section 654(24)(A) of this title for the fiscal year.

(5)(A)(i) If—

(I) the Secretary determines that a State plan under section 654 of this title would (in the absence of this paragraph) be disapproved

for the failure of the State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title, and that the State has made and is continuing to make a good faith effort to so comply; and

(II) the State has submitted to the Secretary, not later than April 1, 2000, a corrective compliance plan that describes how, by when, and at what cost the State will achieve such compliance, which has been approved by the Secretary,

then the Secretary shall not disapprove the State plan under section 654 of this title, and the Secretary shall reduce the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the fiscal year by the penalty amount.

(ii) All failures of a State during a fiscal year to comply with any of the requirements of section 654B of this title shall be considered a single failure of the State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title during the fiscal year for purposes of this paragraph.

(B) In this paragraph:

(i) The term ''penalty amount'' means, with respect to a failure of a State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title—

(I) 4 percent of the penalty base, in the case of the 1st fiscal year in which such a failure by the State occurs (regardless of whether a penalty is imposed in that fiscal year under this paragraph with respect to the failure), except as provided in subparagraph (C)(ii) of this paragraph;

(II) 8 percent of the penalty base, in the case of the 2nd such fiscal year;

(III) 16 percent of the penalty base, in the case of the 3rd such fiscal year;

(IV) 25 percent of the penalty base, in the case of the 4th such fiscal year; or

(V) 30 percent of the penalty base, in the case of the 5th or any subsequent such fiscal year.

(ii) The term ''penalty base'' means, with respect to a failure of a State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title during a fiscal year, the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the preceding fiscal year.

(C)(i) The Secretary shall waive all penalties imposed against a State under this paragraph for any failure of the State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title if the Secretary determines that, before April 1, 2000, the State has achieved such compliance.

(ii) If a State with respect to which a reduction is required to be made under this paragraph with respect to a failure to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title achieves such compliance on or after April 1, 2000, and on or before September 30, 2000, then the penalty amount applicable to the State shall be 1 percent of the penalty base with respect to the failure involved.

(D) The Secretary may not impose a penalty under this paragraph against a State for a fiscal year for which the amount otherwise payable to the State under paragraph (1)(A) of this subsection is reduced under paragraph (4) of this subsection for failure to comply with section 654(24)(A) of this title.

(b) Estimate of amounts payable; installment payments

(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) Subject to subsection (d) of this section, the Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c) Repealed. Pub. L. 97–248, title I, § 174(b), Sept. 3, 1982, 96 Stat. 403

(d) State reports

Notwithstanding any other provision of law, no amount shall be paid to any State under this section for any quarter, prior to the close of such quarter, unless for the period consisting of all prior quarters for which payment is authorized to be made to such State under subsection (a) of this section, there shall have been submitted by the State to the Secretary, with respect to each quarter in such period (other than the last two quarters in such period), a full and complete report (in such form and manner and containing such information as the Secretary shall prescribe or require) as to the amount of child support collected and disbursed and all expenditures with respect to which payment is authorized under subsection (a) of this section.

(e) Special project grants for interstate enforcement; appropriations

(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their noncustodial parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection

in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 658(b)[2] of this title (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State's plan approved under section 654 of this title.

(5) There is authorized to be appropriated the sum of $7,000,000 for fiscal year 1985, $12,000,000 for fiscal year 1986, and $15,000,000 for each fiscal year thereafter, to be used by the Secretary in making grants under this subsection.

(f) Direct Federal funding to Indian tribes and tribal organizations

The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection.

(Aug. 14, 1935, ch. 531, title IV, § 455, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2355; amended Pub. L. 94–88, title II, §§ 201(c), 205, Aug. 9, 1975, 89 Stat. 433, 435; Pub. L. 94–365, § 3, July 14, 1976, 90 Stat. 990; Pub. L. 95–59, § 4, June 30, 1977, 91 Stat. 255; Pub. L. 96–178, § 2(a), Jan. 2, 1980, 93 Stat. 1295; Pub. L. 96–265, title IV, §§ 404(a), 405(a), 407(a), (b), June 9, 1980, 94 Stat. 463, 467; Pub. L. 96–611, §§ 9(c), 11(c), Dec. 28, 1980, 94 Stat. 3573, 3574; Pub. L. 97–35, title XXIII, § 2333(c), Aug. 13, 1981, 95 Stat. 863; Pub. L. 97–248, title I, §§ 171(b)(2), 174(a), (b), Sept. 3, 1982, 96 Stat. 401, 403; Pub. L. 98–378, §§ 4(a), 6(b), 8, Aug. 16, 1984, 98 Stat. 1311, 1314, 1315; Pub. L. 100–485, title I, §§ 112(a), 123(c), Oct. 13, 1988, 102 Stat. 2350, 2352; Pub. L. 104–193, title III, §§ 344(b)(1), (c), 375(b), 395(d)(1)(E), Aug. 22, 1996, 110 Stat. 2236, 2237, 2256, 2259; Pub. L. 105–33, title V, §§ 5546(b), (c), 5555(a), Aug. 5, 1997, 111 Stat. 631, 632, 636; Pub. L. 105–200, title I, §§ 101(a), 102(b), title II, § 201(f)(2)(B), July 16, 1998, 112 Stat. 646, 648, 658; Pub. L. 105–306, § 4(a)(1), Oct. 28, 1998, 112 Stat. 2926; Pub. L. 106–113, div. B, § 1000(a)(4) [title VIII, § 807(a)], Nov. 29, 1999, 113 Stat. 1535, 1501A–286; Pub. L. 106–169, title IV, § 401(i), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 109–171, title VII, §§ 7308(a), 7309(a), Feb. 8, 2006, 120 Stat. 147.)

[2] See References in Text note below.

REFERENCES IN TEXT

The Family Support Act of 1988, referred to in subsec. (a)(3)(B)(iii), is Pub. L. 100–485, Oct. 13, 1988, 102 Stat. 2343, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 1305 of this title and Tables.

Section 658(b) of this title (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), referred to in subsec. (e)(4), was in the original a reference to "section 458(b)", meaning section 458(b) of act of Aug. 14, 1935, as amended by section 5(a) of Pub. L. 98–378, which was classified to section 658(b) of this title. Pub. L. 105–200, title II, § 201(f)(1), (2)(A), July 16, 1998, 112 Stat. 657, 658, repealed section 458 and renumbered section 458A of the act of Aug. 14, 1935, as section 458, which is classified to section 658a of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–171, § 7309(a), inserted "from amounts paid to the State under section 658a of this title or" before "to carry out an agreement" in concluding provisions.

Subsec. (a)(1)(C). Pub. L. 109–171, § 7308(a), substituted "66 percent" for "90 percent (rather than the percentage specified in subparagraph (A))".

1999—Subsec. (a)(1)(B). Pub. L. 106–169 amended Pub. L. 104–193, § 344(b)(1)(A). See 1996 Amendment note below.

Subsec. (a)(5). Pub. L. 106–113 added par. (5).

1998—Subsec. (a)(1)(D). Pub. L. 105–200, § 102(b), added subpar. (D).

Subsec. (a)(4). Pub. L. 105–200, § 101(a), added par. (4).

Subsec. (a)(4)(C)(iii). Pub. L. 105–306 added cl. (iii).

Pub. L. 105–200, § 201(f)(2)(B), made technical amendments to references in original act which appear in text as references to section 658a(b)(4), section 658a(b)(6), and section 658a(b)(5)(B) of this title.

1997—Subsec. (a)(3)(B)(i). Pub. L. 105–33, § 5555(a)(1), inserted "or system described in clause (iii)" after "each State" and "or system" after "the State".

Subsec. (a)(3)(B)(iii). Pub. L. 105–33, § 5555(a)(2), added cl. (iii).

Subsec. (b). Pub. L. 105–33, § 5546(b), redesignated subsec. (b), relating to direct Federal funding to Indian tribes and tribal organizations, as (f).

Subsec. (f). Pub. L. 105–33, § 5546(c), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: "The Secretary may, in appropriate cases, make direct payments under this part to an Indian tribe or tribal organization which has an approved child support enforcement plan under this subchapter. In determining whether such payments are appropriate, the Secretary shall, at a minimum, consider whether services are being provided to eligible Indian recipients by the State agency through an agreement entered into pursuant to section 654(34) of this title."

Pub. L. 105–33, § 5546(b), redesignated subsec. (b), relating to direct Federal funding to Indian tribes and tribal organizations, as (f).

1996—Subsec. (a)(1). Pub. L. 104–193, § 344(c), which directed repeal of Pub. L. 100–485, § 123(c), was executed by restoring the provisions of this section amended by § 123(c) to read as if § 123(c) had not been enacted, to reflect the probable intent of Congress. See 1988 Amendment note below.

Subsec. (a)(1)(B). Pub. L. 104–193, § 344(b)(1)(A), as amended by Pub. L. 106–169, added subpar. (B) and struck out former subpar. (B) which read as follows:

''equal to 90 percent (rather than the percent specified in subparagraph (A)) of so much of the sums expended during such quarter as are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (including in such sums the full cost of the hardware components of such system) which the Secretary finds meets the requirements specified in section 654(16) of this title, or meets such requirements without regard to clause (D) thereof, and''.

Subsec. (a)(3). Pub. L. 104–193, §344(b)(1)(B), added par. (3).

Subsec. (b). Pub. L. 104–193, §375(b), added subsec. (b) relating to direct Federal funding to Indian tribes and tribal organizations.

Subsec. (e)(1). Pub. L. 104–193, §395(d)(1)(E), substituted ''noncustodial parents'' for ''absent parents''.

1988—Subsec. (a)(1). Pub. L. 100–485, §123(c), which directed striking subpars. (A) and (B), redesignating subpar. (C) as (A), striking ''(rather than the percentage specified in subparagraph (A))'' and inserting ''and'' after the semicolon in subpar. (A), and adding new subpar. (B) which read ''equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 of this title;'', was repealed by Pub. L. 104–193, §344(c).

Subsec. (a)(1)(C). Pub. L. 100–485, §112(a), added subpar. (C).

1984—Subsec. (a)(1). Pub. L. 98–378, §4(a)(1)–(5), designated existing provisions as par. (1) and in par. (1) as so designated, struck out '', beginning with the quarter commencing July 1, 1975,'' after ''for each quarter'', substituted subpar. (A) for former par. (1) which provided for an amount equal to 70 percent of the total amounts expended by the State during the quarter for the operation of the plan approved under section 654 of this title, struck out former par. (2) which provided for an amount equal to 50 percent of the total amounts expended by the State during the quarter for the operation of a plan which met the conditions of section 654 of this title except as was provided by a waiver by the Secretary which was granted pursuant to specific authority set forth in the law, redesignated former par. (3) as subpar. (B) of par. (1), and in subpar. (B) as so redesignated, substituted ''subparagraph (A)'' for ''clause (1) or (2)'', and inserted ''(including in such sums the full cost of the hardware components of such system)'' and '', or meets such requirements without regard to clause (D) thereof''.

Subsec. (a)(2). Pub. L. 98–378, §4(a)(6), added par. (2). Former par. (2) was struck out.

Subsec. (a)(3). Pub. L. 98–378, §4(a)(3), redesignated par. (3) of subsec. (a) as subpar. (B) of subsec. (a)(1).

Subsec. (e). Pub. L. 98–378, §8, added subsec. (e).

1982—Subsec. (a)(1). Pub. L. 97–248, §174(a), substituted ''70 percent'' for ''75 percent''.

Subsec. (c). Pub. L. 97–248, §174(b), struck out subsec. (c) which had provided that expenditures of courts of a State or its political subdivisions in connection with performance of services related to the operation of a plan approved under section 654 of this title, would be included in determining the amounts expended by a State during any quarter for the operation of such plan, that the aggregate amount of such expenditures would be reduced by the total amount of those expenditures made by a State for the 12-month period beginning on Jan. 1, 1978, and that a State agency could, under State law, pay the courts of the State from amounts received under subsec. (a) of this section.

1981—Subsec. (a). Pub. L. 97–35, as amended by Pub. L. 97–248, §171(b)(2), inserted provision that in determining the total amounts expended by any State during a quarter, for purposes of this subsection, there be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

1980—Subsec. (a). Pub. L. 96–611, §9(c), inserted provision following par. (3) that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 663 of this title.

Pub. L. 96–611, §11(c), which was intended to make a technical correction in par. (3) by substituting a period for the semicolon at the end thereof, was not executed in view of the amendment by section 9(c) of Pub. L. 96–611 inserting provision following par. (3).

Pub. L. 96–265, §405(a), added par. (3).

Pub. L. 96–178 struck out provisions following par. (2) prohibiting payment to any State on account of furnishing child support collection or paternity determination services (other than the parent locator services) to individuals under section 654(6) of this title during any period beginning after Sept. 30, 1978.

Subsec. (b)(2). Pub. L. 96–265, §407(a), substituted ''Subject to subsection (d) of this section, the Secretary'' for ''The Secretary''.

Subsecs. (c), (d). Pub. L. 96–265, §§404(a), 407(b), added subsecs. (c) and (d).

1977—Subsec. (a). Pub. L. 95–59 substituted ''September 30, 1978'' for ''June 30, 1977'' in provisions following par. (2).

1976—Subsec. (a). Pub. L. 94–365 substituted ''June 30, 1977'' for ''June 30, 1976''.

1975—Subsec. (a). Pub. L. 94–88, §§201(c), 205, designated existing provisions as subsec. (a), and inserted provisions authorizing Secretary to pay to each State for each quarter beginning with the quarter commencing July 1, 1975, an amount equal to 50 per cent of the total amounts expended by such State during such quarter for the operation of a plan which meets the conditions of section 654 of this title except as is provided by a waiver by the Secretary which is granted pursuant to specific authority set forth in the law.

Subsec. (b). Pub. L. 94–88, §205, added subsec. (b).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VII, §7308(b), Feb. 8, 2006, 120 Stat. 147, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2006, and shall apply to costs incurred on or after that date.''

Pub. L. 109–171, title VII, §7309(b), Feb. 8, 2006, 120 Stat. 147, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2007.''

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

Amendment by Pub. L. 106–113 effective Oct. 1, 1999, see section 1000(a)(4) [title VIII, §807(c)] of Pub. L. 106–113, set out as a note under section 609 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–306, §4(a)(2), Oct. 28, 1998, 112 Stat. 2927, provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect as if included in the enactment of section 101(a) of the Child Support Performance and Incentive Act of 1998 [Pub. L. 105–200, amending this section], and the amendment shall be considered to have been added by section 101(a) of such Act for purposes of section 201(f)(2)(B) of such Act [amending this section].''

Pub. L. 105–200, title II, §201(f)(3), July 16, 1998, 112 Stat. 658, provided that: ''The amendments made by this subsection [amending this section, renumbering section 658a as section 658 of this title, and repealing former section 658 of this title] shall take effect on October 1, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 112(b) of Pub. L. 100–485 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to laboratory costs incurred on or after October 1, 1988.''

Section 123(c) of Pub. L. 100–485 which provided that the amendment made by that section was effective Sept. 30, 1995, was repealed by Pub. L. 104–193, title III, § 344(c), Aug. 22, 1996, 110 Stat. 2237.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 4(a) of Pub. L. 98–378 applicable to fiscal years after fiscal year 1983, see section 4(c) of Pub. L. 98–378, set out as a note under section 652 of this title.

Amendment by section 6(b) of Pub. L. 98–378 applicable with respect to quarters beginning on or after Oct. 1, 1984, see section 6(c) of Pub. L. 98–378, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 171(b)(2) of Pub. L. 97–248 effective on and after Aug. 13, 1981, see section 171(c) of Pub. L. 97–248, set out as a note under section 503 of this title.

Section 174(d) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to quarters beginning on or after October 1, 1982. Subsection (b) [amending this section] shall apply with respect to quarters beginning on or after October 1, 1983; and the amendment made by subsection (c) [amending section 658 of this title] shall apply with respect to amounts collected on or after October 1, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 404(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to expenditures made by States on or after July 1, 1980.''

Amendment by section 405(a) of Pub. L. 96–265 effective July 1, 1981, and to be effective only with respect to expenditures, referred to in subsec. (a)(3) of this section, made on or after such date, see section 405(e) of Pub. L. 96–265, set out as a note under section 652 of this title.

Section 407(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 603 of this title] shall be effective in the case of calendar quarters commencing on or after January 1, 1981.''

Section 2(b) of Pub. L. 96–178, as amended Pub. L. 96–272, title III, § 301(a), June 17, 1980, 94 Stat. 527, provided that: ''This section [amending this section] shall become effective on the date of the enactment of this Act [Jan. 2, 1980], and shall apply with respect to services furnished on or after October 1, 1978.''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–88 effective Aug. 1, 1975, unless otherwise provided, see section 210 of Pub. L. 94–88, set out as a note under section 654 of this title.

TEMPORARY LIMITATION ON PAYMENTS UNDER SPECIAL FEDERAL MATCHING RATE

Section 344(b)(2) of Pub. L. 104–193, as amended by Pub. L. 105–33, title V, § 5555(b), Aug. 5, 1997, 111 Stat. 637, provided that:

''(A) IN GENERAL.—The Secretary of Health and Human Services may not pay more than $400,000,000 in the aggregate under section 455(a)(3)(B) of the Social Security Act [subsec. (a)(3)(B) of this section] for fiscal years 1996 through 2001.

''(B) ALLOCATION OF LIMITATION AMONG STATES.—The total amount payable to a State or a system described in subparagraph (C) under section 455(a)(3)(B) of such Act for fiscal years 1996 through 2001 shall not exceed the limitation determined for the State or system by the Secretary of Health and Human Services in regulations.

''(C) ALLOCATION FORMULA.—The regulations referred to in subparagraph (B) shall prescribe a formula for allocating the amount specified in subparagraph (A) among States with plans approved under part D of title IV of the Social Security Act [this part], and among systems that have been approved by the Secretary to receive enhanced funding pursuant to the Family Support Act of 1988 (Public Law 100–485; 102 Stat. 2343) for the purpose of developing a system that meets the requirements of sections 454(16) (as in effect on and after September 30, 1995) and 454A [probably means sections 454(16) and 454A of the Social Security Act which are classified to sections 654(16) and 654a, respectively, of this title], including systems that have received funding for such purpose pursuant to a waiver under section 1115(a) [probably means section 1115(a) of the Social Security Act which is classified to section 1315(a) of this title], which shall take into account—

''(i) the relative size of such State and system caseloads under part D of title IV of the Social Security Act [this part]; and

''(ii) the level of automation needed to meet the automated data processing requirements of such part.''

PAYMENTS TO STATES FOR CERTAIN EXPENSES INCURRED DURING JULY 1975

Section 206 of Pub. L. 94–88 provided that amounts expended in good faith by any State during July 1975 in certain ways in preparation for or implementation of the child support program under this part were to be considered for purposes of this section, to the extent that payment for the expenses incurred would have been made under the terms of this section, had the amendment by section 101 of Pub. L. 93–647 been effective on July 1, 1975, to have been expended by the State for the operation of the State plan or for the conduct of activities specified in this section.

§ 655a. Provision for reimbursement of expenses

For purposes of section 655 of this title, expenses incurred to reimburse State employment offices for furnishing information requested of such offices—

(1) pursuant to section 49b(b) of title 29, or

(2) by a State or local agency charged with the duty of carrying a State plan for child support approved under this part,

shall be considered to constitute expenses incurred in the administration of such State plan.

(Pub. L. 94–566, title V, § 508(b), Oct. 20, 1976, 90 Stat. 2689; Pub. L. 104–193, title I, § 110(a), Aug. 22, 1996, 110 Stat. 2171; Pub. L. 105–220, title III, § 302(b), Aug. 7, 1998, 112 Stat. 1081.)

CODIFICATION

Section was formerly classified to section 603a of this title.

Section was not enacted as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1998—Par. (1). Pub. L. 105–220 substituted ''section 49b(b) of title 29'' for ''the third sentence of section 49b(a) of title 29''.

1996—Pub. L. 104–193 amended section catchline and text generally. Prior to amendment, text read as follows: ''For purposes of section 603 of this title, expenses incurred to reimburse State employment offices for furnishing information requested of such offices pursuant to the third sentence of section 49b(a) of title 29, by a State or local agency administering a State plan approved under part A of this subchapter shall be considered to constitute expenses incurred in the administration of such State plan; and for purposes of section 655 of this title, expenses incurred to reimburse State employment offices for furnishing information so requested by a State or local agency charged with the duty of carrying out a State plan for child support approved under part D of this subchapter shall be considered to constitute expenses incurred in the administration of such State plan.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–220 effective July 1, 1999, see section 311 of Pub. L. 105–220, set out as a note under section 49a of Title 29, Labor.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

§656. Support obligation as obligation to State; amount; discharge in bankruptcy

(a) Collection processes

(1) The support rights assigned to the State pursuant to section 608(a)(3) of this title or secured on behalf of a child receiving foster care maintenance payments shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(2) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary.

(3) Any amounts collected from a noncustodial parent under the plan shall reduce, dollar for dollar, the amount of his obligation under subparagraphs (A) and (B) of paragraph (2).

(b) Nondischargeability

A debt (as defined in section 101 of title 11) owed under State law to a State (as defined in such section) or municipality (as defined in such section) that is in the nature of support and that is enforceable under this part is not released by a discharge in bankruptcy under title 11.

(Aug. 14, 1935, ch. 531, title IV, §456, as added Pub. L. 93–647, §101(a), Jan. 4, 1975, 88 Stat. 2356; amended Pub. L. 95–598, title III, §328, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 97–35, title XXIII, §2334(a), Aug. 13, 1981, 95 Stat. 863; Pub. L. 98–369, div. B, title VI, §2663(c)(15), July 18, 1984, 98 Stat. 1167; Pub. L. 98–378, §11(b)(2), Aug. 16, 1984, 98 Stat. 1318; Pub. L. 104–193, title I, §108(c)(13), title III, §§374(b), 395(d)(2)(C), Aug. 22, 1996, 110 Stat. 2166, 2255, 2260; Pub. L. 105–33, title V, §§5513(a)(3), 5556(d), Aug. 5, 1997, 111 Stat. 619, 637.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–33, §5513(a)(3), amended Pub. L. 104–193, §108(c)(13). See 1996 Amendment note below.

Subsec. (a)(2)(B). Pub. L. 105–33, §5556(d), substituted ''Secretary.'' for ''Secretary, and''.

1996—Subsec. (a)(1). Pub. L. 104–193, §108(c)(13), as amended by Pub. L. 105–33, §5513(a)(3), substituted ''pursuant to section 608(a)(3) of this title'' for ''under section 602(a)(26) of this title''.

Subsec. (a)(3). Pub. L. 104–193, §395(d)(2)(C), substituted ''a noncustodial parent'' for ''an absent parent''.

Subsec. (b). Pub. L. 104–193, §374(b), inserted heading and amended text generally. Prior to amendment, text read as follows: ''A debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under title 11.''

1984—Subsec. (a)(1). Pub. L. 98–378, §11(b)(2), inserted ''or secured on behalf of a child receiving foster care maintenance payments'' after ''section 602(a)(26) of this title''.

Pub. L. 98–369, §2663(c)(15)(A), designated existing unenumerated provisions as par. (1). Former par. (1) redesignated (2).

Subsec. (a)(2). Pub. L. 98–369, §2663(c)(15)(B), redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 98–369, §2663(c)(15)(C), (D), redesignated former par. (2) as (3) and substituted ''subparagraphs (A) and (B) of paragraph (2)'' for ''paragraphs (1)(A) and (B)''.

1981—Subsec. (b). Pub. L. 97–35 added subsec. (b).

1978—Subsec. (b). Pub. L. 95–598 repealed provision declaring a debt which is a child support obligation assigned to a State under section 602(a)(26) of this title as not released by a discharge in bankruptcy under the Bankruptcy Act.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5513(a)(3) of Pub. L. 105–33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105–33, set out as a note under section 652 of this title.

Amendment by section 5556(d) of Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(c)(13) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Amendment by section 374(b) of Pub. L. 104–193 applicable only with respect to cases commenced under Title 11, Bankruptcy, after Aug. 22, 1996, see section 374(c) of Pub. L. 104–193, set out as a note under section 523 of Title 11.

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2334(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 523 of Title 11, Bankruptcy] shall become effective on the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 657. Distribution of collected support

(a) In general

Subject to subsections (d) and (e) of this section, an amount collected on behalf of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows:

(1) Families receiving assistance

In the case of a family receiving assistance from the State, the State shall—

(A) pay to the Federal Government the Federal share of the amount so collected; and

(B) retain, or distribute to the family, the State share of the amount so collected.

In no event shall the total of the amounts paid to the Federal Government and retained by the State exceed the total of the amounts that have been paid to the family as assistance by the State.

(2) Families that formerly received assistance

In the case of a family that formerly received assistance from the State:

(A) Current support payments

To the extent that the amount so collected does not exceed the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected to the family.

(B) Payments of arrearages

To the extent that the amount so collected exceeds the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected as follows:

(i) Distribution of arrearages that accrued after the family ceased to receive assistance

(I) Pre-October 1997

Except as provided in subclause (II), the provisions of this section as in effect and applied on the day before August 22, 1996 (other than subsection (b)(1) (as so in effect)), shall apply with respect to the distribution of support arrearages that—

(aa) accrued after the family ceased to receive assistance, and

(bb) are collected before October 1, 1997.

(II) Post-September 1997

With respect to the amount so collected on or after October 1, 1997 (or before such date, at the option of the State)—

(aa) In general

The State shall first distribute the amount so collected (other than any amount described in clause (iv)) to the family to the extent necessary to satisfy any support arrearages with respect to the family that accrued after the family ceased to receive assistance from the State.

(bb) Reimbursement of governments for assistance provided to the family

After the application of division (aa) and clause (ii)(II)(aa) with respect to the amount so collected, the State shall retain the State share of the amount so collected, and pay to the Federal Government the Federal share (as defined in subsection (c)(2) of this section) of the amount so collected, but only to the extent necessary to reimburse amounts paid to the family as assistance by the State.

(cc) Distribution of the remainder to the family

To the extent that neither division (aa) nor division (bb) applies to the amount so collected, the State shall distribute the amount to the family.

(ii) Distribution of arrearages that accrued before the family received assistance

(I) Pre-October 2000

Except as provided in subclause (II), the provisions of this section as in effect and applied on the day before August 22, 1996 (other than subsection (b)(1) (as so in effect)), shall apply with respect to the distribution of support arrearages that—

(aa) accrued before the family received assistance, and

(bb) are collected before October 1, 2000.

(II) Post-September 2000

Unless, based on the report required by paragraph (5), the Congress determines otherwise, with respect to the amount so collected on or after October 1, 2000 (or before such date, at the option of the State)—

(aa) In general

The State shall first distribute the amount so collected (other than any amount described in clause (iv)) to the

family to the extent necessary to satisfy any support arrearages with respect to the family that accrued before the family received assistance from the State.

(bb) Reimbursement of governments for assistance provided to the family

After the application of clause (i)(II)(aa) and division (aa) with respect to the amount so collected, the State shall retain the State share of the amount so collected, and pay to the Federal Government the Federal share (as defined in subsection (c)(2) of this section) of the amount so collected, but only to the extent necessary to reimburse amounts paid to the family as assistance by the State.

(cc) Distribution of the remainder to the family

To the extent that neither division (aa) nor division (bb) applies to the amount so collected, the State shall distribute the amount to the family.

(iii) Distribution of arrearages that accrued while the family received assistance

In the case of a family described in this subparagraph, the provisions of paragraph (1) shall apply with respect to the distribution of support arrearages that accrued while the family received assistance.

(iv) Amounts collected pursuant to section 664

Notwithstanding any other provision of this section, any amount of support collected pursuant to section 664 of this title shall be retained by the State to the extent past-due support has been assigned to the State as a condition of receiving assistance from the State, up to the amount necessary to reimburse the State for amounts paid to the family as assistance by the State. The State shall pay to the Federal Government the Federal share of the amounts so retained. To the extent the amount collected pursuant to section 664 of this title exceeds the amount so retained, the State shall distribute the excess to the family.

(v) Ordering rules for distributions

For purposes of this subparagraph, unless an earlier effective date is required by this section, effective October 1, 2000, the State shall treat any support arrearages collected, except for amounts collected pursuant to section 664 of this title, as accruing in the following order:

(I) To the period after the family ceased to receive assistance.

(II) To the period before the family received assistance.

(III) To the period while the family was receiving assistance.

(3) Families that never received assistance

In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 654(6)(B)(ii) of this title.

(4) Families under certain agreements

In the case of an amount collected for a family in accordance with a cooperative agreement under section 654(33) of this title, distribute the amount so collected pursuant to the terms of the agreement.

(5) Study and report

Not later than October 1, 1999, the Secretary shall report to the Congress the Secretary's findings with respect to—

(A) whether the distribution of post-assistance arrearages to families has been effective in moving people off of welfare and keeping them off of welfare;

(B) whether early implementation of a pre-assistance arrearage program by some States has been effective in moving people off of welfare and keeping them off of welfare;

(C) what the overall impact has been of the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 with respect to child support enforcement in moving people off of welfare and keeping them off of welfare; and

(D) based on the information and data the Secretary has obtained, what changes, if any, should be made in the policies related to the distribution of child support arrearages.

(6) State option for applicability

Notwithstanding any other provision of this subsection, a State may elect to apply the rules described in clauses (i)(II), (ii)(II), and (v) of paragraph (2)(B) to support arrearages collected on and after October 1, 1998, and, if the State makes such an election, shall apply the provisions of this section, as in effect and applied on the day before August 22, 1996, other than subsection (b)(1) (as so in effect), to amounts collected before October 1, 1998.

(7) State option to pass through additional support with Federal financial participation

(A) Families that formerly received assistance

Notwithstanding paragraph (2), a State shall not be required to pay to the Federal Government the Federal share of an amount collected on behalf of a family that formerly received assistance from the State to the extent that the State pays the amount to the family.

(B) Families that currently receive assistance

(i) In general

Notwithstanding paragraph (1), in the case of a family that receives assistance from the State, a State shall not be required to pay to the Federal Government the Federal share of the excepted portion (as defined in clause (ii)) of any amount collected on behalf of such family during a month to the extent that—

(I) the State pays the excepted portion to the family; and

(II) the excepted portion is disregarded in determining the amount and type of assistance provided to the family under such program.

(ii) Excepted portion defined

For purposes of this subparagraph, the term ''excepted portion'' means that portion of the amount collected on behalf of a family during a month that does not exceed $100 per month, or in the case of a family that includes 2 or more children, that does not exceed an amount established by the State that is not more than $200 per month.

(b) Continuation of assignments

Any rights to support obligations, assigned to a State as a condition of receiving assistance from the State under part A of this subchapter and in effect on September 30, 1997 (or such earlier date, on or after August 22, 1996, as the State may choose), shall remain assigned after such date.

(c) Definitions

As used in subsection (a) of this section:

(1) Assistance

The term ''assistance from the State'' means—

(A) assistance under the State program funded under part A of this subchapter or under the State plan approved under part A of this subchapter (as in effect on the day before August 22, 1996); and

(B) foster care maintenance payments under the State plan approved under part E of this subchapter.

(2) Federal share

The term ''Federal share'' means that portion of the amount collected resulting from the application of the Federal medical assistance percentage in effect for the fiscal year in which the amount is distributed.

(3) Federal medical assistance percentage

The term ''Federal medical assistance percentage'' means—

(A) 75 percent, in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa; or

(B) the Federal medical assistance percentage (as defined in section 1396d(b) of this title, as such section was in effect on September 30, 1995) in the case of any other State.

(4) State share

The term ''State share'' means 100 percent minus the Federal share.

(d) Gap payments not subject to distribution under this section

At State option, this section shall not apply to any amount collected on behalf of a family as support by the State (and paid to the family in addition to the amount of assistance otherwise payable to the family) pursuant to a plan approved under this part if such amount would have been paid to the family by the State under section 602(a)(28) of this title, as in effect and applied on the day before August 22, 1996.

(e) Amounts collected for child for whom foster care maintenance payments are made

Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E of this subchapter—

(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of assistance under the State program funded under part A of this subchapter) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).

(Aug. 14, 1935, ch. 531, title IV, § 457, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2356; amended Pub. L. 95–171, § 11, Nov. 12, 1977, 91 Stat. 1357; Pub. L. 97–35, title XXIII, § 2332(e), Aug. 13, 1981, 95 Stat. 862; Pub. L. 98–369, div. B, title VI, § 2640(b), July 18, 1984, 98 Stat. 1145; Pub. L. 98–378, §§ 7(a), 11(a), Aug. 16, 1984, 98 Stat. 1315, 1317; Pub. L. 99–514, title XVIII, §§ 1883(b)(6), 1899(a), Oct. 22, 1986, 100 Stat. 2917, 2957; Pub. L. 100–203, title IX, § 9141(a)(1), Dec. 22, 1987, 101 Stat. 1330–321; Pub. L. 100–485, title I, § 102(b), Oct. 13, 1988, 102 Stat. 2346; Pub. L. 104–193, title III, § 302(a), Aug. 22, 1996, 110 Stat. 2200; Pub. L. 105–33, title V, §§ 5532(a), (b)(1), (c)–(h), 5547, Aug. 5, 1997, 111 Stat. 626, 627, 632; Pub. L. 106–169, title III, § 301(a), (c), title IV, § 401(j), (k), Dec. 14, 1999, 113 Stat. 1857, 1858; Pub. L. 109–171, title VII, §§ 7301(b)(1)(A), (B)(i), (iii), (2), (c), 7310(b), Feb. 8, 2006, 120 Stat. 141–143, 147.)

AMENDMENT OF SECTION

Pub. L. 109–171, title VII, § 7301(b)(1)(A), (2), (c), (e), Feb. 8, 2006, 120 Stat. 141, 143, 144, pro-

vided that, effective Oct. 1, 2009, and applicable to payments under parts A and D of this subchapter for calendar quarters beginning on or after such date, subject to certain State options, this section is amended as follows:

(1) by amending subsection (a) to read as follows:

''(a) In general

''Subject to subsections (d) and (e), the amounts collected on behalf of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows:

''(1) Families receiving assistance

''In the case of a family receiving assistance from the State, the State shall—

''(A) pay to the Federal Government the Federal share of the amount collected, subject to paragraph (3)(A);

''(B) retain, or pay to the family, the State share of the amount collected, subject to paragraph (3)(B); and

''(C) pay to the family any remaining amount.

''(2) Families that formerly received assistance

''In the case of a family that formerly received assistance from the State:

''(A) Current support

''To the extent that the amount collected does not exceed the current support amount, the State shall pay the amount to the family.

''(B) Arrearages

''Except as otherwise provided in an election made under section 654(34) of this title, to the extent that the amount collected exceeds the current support amount, the State—

''(i) shall first pay to the family the excess amount, to the extent necessary to satisfy support arrearages not assigned pursuant to section 608(a)(3) of this title;

''(ii) if the amount collected exceeds the amount required to be paid to the family under clause (i), shall—

''(I) pay to the Federal Government the Federal share of the excess amount described in this clause, subject to paragraph (3)(A); and

''(II) retain, or pay to the family, the State share of the excess amount described in this clause, subject to paragraph (3)(B); and

''(iii) shall pay to the family any remaining amount.

''(3) Limitations

''(A) Federal reimbursements

''The total of the amounts paid by the State to the Federal Government under paragraphs (1) and (2) of this subsection with respect to a family shall not exceed the Federal share of the amount assigned with respect to the family pursuant to section 608(a)(3) of this title.

''(B) State reimbursements

''The total of the amounts retained by the State under paragraphs (1) and (2) of this subsection with respect to a family shall not exceed the State share of the amount assigned with respect to the family pursuant to section 608(a)(3) of this title.

''(4) Families that never received assistance

''In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 654(6)(B)(ii) of this title.

''(5) Families under certain agreements

''Notwithstanding paragraphs (1) through (3), in the case of an amount collected for a family in accordance with a cooperative agreement under section 654(33) of this title, the State shall distribute the amount collected pursuant to the terms of the agreement.'';

(2) by amending subsection (b) to read as follows:

''(b) Continuation of assignments

''(1) State option to discontinue pre-1997 support assignments

''(A) In general

''Any rights to support obligations assigned to a State as a condition of receiving assistance from the State under part A and in effect on September 30, 1997 (or such earlier date on or after August 22, 1996, as the State may choose), may remain assigned after such date.

''(B) Distribution of amounts after assignment discontinuation

''If a State chooses to discontinue the assignment of a support obligation described in subparagraph (A), the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned and may distribute the amounts to the family in accordance with subsection (a)(4).

''(2) State option to discontinue post-1997 assignments

''(A) In general

''Any rights to support obligations accruing before the date on which a family first receives assistance under part A that are assigned to a State under that part and in effect before the implementation date of this section may remain assigned after such date.

''(B) Distribution of amounts after assignment discontinuation

''If a State chooses to discontinue the assignment of a support obligation described in subparagraph (A), the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned and may distribute the amounts to the family in accordance with subsection (a)(4).''; and

(3) by amending subsection (c) to add a new paragraph (5) at the end to read as follows:

''(5) Current support amount

''The term 'current support amount' means, with respect to amounts collected as support on behalf of a family, the amount designated as the monthly support obligation of the noncustodial parent in the order requiring the support or calculated by the State based on the order.''

AMENDMENT OF SUBSECTION (a)(7)

Pub. L. 109–171, title VII, § 7301(b)(1)(B)(iii), Feb. 8, 2006, 120 Stat. 143, provided that, effective Oct. 1, 2009, paragraph (7) of subsection (a) of this section is redesignated as paragraph (6).

REFERENCES IN TEXT

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(5)(C), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1305 of this title and Tables.

Parts A and E of this subchapter, referred to in subsecs. (b), (c)(1), and (e), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

AMENDMENTS

2006—Subsec. (a)(3). Pub. L. 109–171, § 7310(b), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In the case of any other family, the State shall distribute the amount so collected to the family.''

Subsec. (a)(7). Pub. L. 109–171, § 7301(b)(1)(B)(i), added par. (7).

1999—Subsec. (a). Pub. L. 106–169, § 301(c)(1), substituted ''subsections (d) and (e)'' for ''subsections (e) and (f)'' in introductory provisions.

Subsec. (a)(2)(B)(i)(I). Pub. L. 106–169, § 401(j), made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

Subsec. (a)(5)(C). Pub. L. 106–169, § 401(k), substituted ''Opportunity Reconciliation Act'' for ''Opportunity Act''.

Subsecs. (a)(6), (c)(1)(A). Pub. L. 106–169, § 401(k), made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

Subsec. (d). Pub. L. 106–169, § 301(c)(2), (4), redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: ''If—

''(1) the State share of amounts collected in the fiscal year which could be retained to reimburse the State for amounts paid to families as assistance by the State is less than the State share of such amounts collected in fiscal year 1995 (determined in accordance with this section as in effect on August 21, 1996); and

''(2)(A) the State has distributed to families that include an adult receiving assistance under the program under part A of this subchapter at least 80 percent of the current support payments collected during the preceding fiscal year on behalf of such families, and the amounts distributed were disregarded in determining the amount or type of assistance provided under the program under part A of this subchapter; or

''(B) the State has distributed to families that formerly received assistance under the program under part A of this subchapter the State share of the amounts collected pursuant to section 664 of this title that could have been retained as reimbursement for assistance paid to such families,

then the State share otherwise determined for the fiscal year shall be increased by an amount equal to one-half of the amount (if any) by which the State share for fiscal year 1995 exceeds the State share for the fiscal year (determined without regard to this subsection).''

Pub. L. 106–169, § 301(a), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: ''If the amounts collected which could be retained by the State in the fiscal year (to the extent necessary to reimburse the State for amounts paid to families as assistance by the State) are less than the State share of the amounts collected in fiscal year 1995 (determined in accordance with this section as in effect on the day before August 22, 1996), the State share for the fiscal year shall be an amount equal to the State share in fiscal year 1995.''

Pub. L. 106–169, § 401(k), made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

Subsec. (e). Pub. L. 106–169, § 301(c)(4), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Pub. L. 106–169, § 301(c)(3), struck out at end ''For purposes of subsection (d) of this section, the State share of such amount paid to the family shall be considered amounts which could be retained by the State if such payments were reported by the State as part of the State share of amounts collected in fiscal year 1995.''

Subsec. (f). Pub. L. 106–169, § 301(c)(4), redesignated subsec. (f) as (e).

1997—Subsec. (a). Pub. L. 105–33, § 5547(1), substituted ''subsections (e) and (f)'' for ''subsection (e)'' in introductory provisions.

Subsec. (a)(1). Pub. L. 105–33, § 5532(c), inserted concluding provisions.

Subsec. (a)(2)(B)(i)(I), (ii)(I). Pub. L. 105–33, § 5532(f)(1), in introductory provisions, struck out ''(other than subsection (b)(1))'' after ''provisions of this section'' and inserted ''(other than subsection (b)(1) (as so in effect))'' after ''1996''.

Subsec. (a)(2)(B)(ii)(II). Pub. L. 105–33, § 5532(f)(2), substituted ''paragraph (5)'' for ''paragraph (4)''.

Subsec. (a)(4). Pub. L. 105–33, § 5532(d), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''In the case of a family receiving assistance from an Indian tribe, distribute the amount so collected pursuant to an agreement entered into pursuant to a State plan under section 654(33) of this title.''

Subsec. (a)(5). Pub. L. 105–33, § 5532(e), substituted ''1999'' for ''1998'' in introductory provisions.

Subsec. (a)(6). Pub. L. 105–33, § 5532(b)(1), added par. (6).

Subsec. (b). Pub. L. 105–33, § 5532(a), substituted ''assigned'' for ''which were assigned'' and ''and in effect on September 30, 1997 (or such earlier date, on or after August 22, 1996, as the State may choose), shall remain assigned after such date.'' for ''and which were in effect on the day before August 22, 1996, shall remain assigned after August 22, 1996.''

Subsec. (c)(2). Pub. L. 105–33, § 5532(h)(1), substituted ''is distributed'' for ''is collected''.

Subsec. (c)(3)(A). Pub. L. 105–33, § 5532(g), substituted ''75 percent'' for ''the Federal medical assistance percentage (as defined in section 1318 of this title)''.

Subsec. (c)(3)(B). Pub. L. 105–33, § 5532(h)(2), substituted ''as such section was in effect on September 30, 1995'' for ''as in effect on September 30, 1996''.

Subsec. (f). Pub. L. 105–33, § 5547(2), added subsec. (f).

1996—Pub. L. 104–193 substituted ''collected support'' for ''proceeds'' in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (d) relating to distribution of amounts collected by States as child support during 15 months beginning July 1, 1975, and during any fiscal year beginning after Sept. 30, 1976, distribution of support collected for families whose assistance under part A of this subchapter has terminated, and distribution of support collected on behalf of children for whom foster care maintenance payments were being made.

1988—Subsec. (b)(1). Pub. L. 100–485 substituted ''of such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month, and the first $50 of payments for each prior month received in that month which were made by the absent parent in the month when due,'' for ''the first $50 of such amounts as are collected periodically which represent monthly support payments''.

1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally, revising and restating as single unnumbered subsection provisions of former pars. (1) and (2).

1986—Subsec. (b)(3). Pub. L. 99–514, § 1899(a), inserted ''or administrative'' after ''court''.

Subsec. (c). Pub. L. 99–514, § 1883(b)(6), substituted ''subsection (b)(4)(A) and (B)'' for ''subsection (b)(3)(A) and (B)''.

1984—Subsec. (b). Pub. L. 98–378, § 11(a)(2), inserted ''(subject to subsection (d) of this section)'' after ''shall'' in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98–369, § 2640(b)(1), added par. (1). Former par. (1) redesignated (2).

Subsec. (b)(2). Pub. L. 98–369, § 2640(b)(1), (2)(A), redesignated former par. (1) as (2), and inserted ''which are

in excess of any amount paid to the family under paragraph (1) and''. Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 98–369, § 2640(b)(1), (2)(B), redesignated former par. (2) as (3), and substituted ''paragraph (2)'' for ''paragraph (1)''. Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 98–369, § 2640(b)(1), (2)(C), redesignated former par. (3) as (4), and substituted ''paragraphs (1), (2), and (3)'' for ''paragraphs (1) and (2)''.

Subsec. (c). Pub. L. 98–378, § 7(a)(1), substituted ''shall'' for ''may'' in provisions preceding par. (1).

Subsec. (c)(2). Pub. L. 98–378, § 7(a)(2), substituted ''any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this subchapter,'' for ''the net amount of any amount so collected, which represents monthly support payments, to the family after deducting any costs incurred in making the collection from the amount of any recovery made,''.

Subsec. (d). Pub. L. 98–378, § 11(a)(1), added subsec. (d).

1981—Subsec. (b). Pub. L. 97–35, § 2332(e)(1), substituted in provision preceding par. (1) ''as support'' for ''as child support''.

Subsec. (c). Pub. L. 97–35, § 2332(e)(2), substituted in provision preceding par. (1) ''whom support payments'' for ''whom child support payments'' and in pars. (1) and (2) ''amounts of support payments'' for ''amounts of child support payments'' in two places and ''amounts of support so'' for ''amounts of child support so''.

1977—Subsec. (c). Pub. L. 95–171, § 11(a)–(c), in par. (1), substituted ''amounts of child support payments which represent monthly support payments'' for ''such support payments'' and inserted '', which represent monthly support payments,'' after ''amounts so collected''; in par. (2), substituted ''amounts of child support payments which represent monthly support payments'' for ''such support payments'' and inserted '', which represents monthly support payments,'' after ''amount so collected''; changed to a comma the period at end of par. (2); and inserted provision for distribution of child support proceeds.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 7301(b)(1)(A), (2), (c) of Pub. L. 109–171 effective Oct. 1, 2009, and applicable to payments under parts A and D of this subchapter for calendar quarters beginning on or after such date, subject to certain State options, see section 7301(e) of Pub. L. 109–171, set out as a note under section 608 of this title.

Pub. L. 109–171, title VII, § 7301(b)(1)(B)(ii), Feb. 8, 2006, 120 Stat. 143, provided that: ''The amendment made by clause (i) [amending this section] shall take effect on October 1, 2008.''

Pub. L. 109–171, title VII, § 7301(b)(1)(B)(iii), Feb. 8, 2006, 120 Stat. 143, provided that the amendment made by section 7301(b)(1)(B)(iii) is effective Oct. 1, 2009.

Amendment by section 7310(b) of Pub. L. 109–171 effective Oct. 1, 2006, see section 7310(c) of Pub. L. 109–171, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title III, § 301(b), Dec. 14, 1999, 113 Stat. 1857, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to calendar quarters occurring during the period that begins on October 1, 1998, and ends on September 30, 2001.''

Pub. L. 106–169, title III, § 301(c), Dec. 14, 1999, 113 Stat. 1857, provided that the amendment made by section 301(c) is effective Oct. 1, 2001.

Amendment by section 401(j), (k) of Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 302(c) of Pub. L. 104–193 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 654 and 664 of this title] shall be effective on October 1, 1996, or earlier at the State's option.

''(2) CONFORMING AMENDMENTS.—The amendments made by subsection (b)(2) [amending section 654 of this title] shall become effective on the date of the enactment of this Act [Aug. 22, 1996].''

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 102(c) of Pub. L. 100–485 provided that: ''The amendments made by this section [amending this section and section 602 of this title] shall become effective on the first day of the first calendar quarter which begins after the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1883(b)(6) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 1899(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 7(b) of Pub. L. 98–378 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective October 1, 1984.''

Amendment by section 11(a) of Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

Section 2646 of Pub. L. 98–369 provided that: ''Except as otherwise specifically provided in this subtitle [subtitle B (§§ 2611–2646) of Pub. L. 98–369], the provisions of parts 1 and 2 [sections 2611 to 2642 of Pub. L. 98–369, enacting section 1320b–6 of this title, amending this section and sections 602, 609, 614, 615, 1320a–6, 1382 to 1382b, 1382j, and 1383 of this title and section 51 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 602, 609, 614, 1320a–6, 1382a, and 1383 of this title and section 51 of Title 26] and the amendments made thereby shall take effect on October 1, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

§ 658. Repealed. Pub. L. 105–200, title II, § 201(f)(1), July 16, 1998, 112 Stat. 657

Section, act Aug. 14, 1935, ch. 531, title IV, § 458, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2357; amended Pub. L. 95–30, title V, § 503(a), May 23, 1977, 91 Stat. 162; Pub. L. 96–272, title III, § 307, June 17, 1980, 94 Stat. 531; Pub. L. 97–248, title I, § 174(c), Sept. 3, 1982, 96 Stat. 403; Pub. L. 98–378, § 5(a), (c)(2)(A), Aug. 16, 1984, 98 Stat. 1312, 1314; Pub. L. 99–514, title XVIII, § 1883(b)(7), Oct. 22, 1986, 100 Stat. 2917; Pub. L. 100–485, title I, § 127, Oct. 13, 1988, 102 Stat. 2355; Pub. L. 104–193, title III, §§ 341(a), formerly 341(b), 395(d)(1)(F), Aug. 22, 1996, 110 Stat. 2231, 2259; Pub. L. 105–33, title V, § 5550(b), Aug. 5, 1997, 111 Stat. 634; Pub. L. 105–200, title II, § 201(e)(1)(A), July 16, 1998, 112 Stat. 657, related to incentive pay-

ments to States for child support enforcement programs.

§ 658a. Incentive payments to States

(a) In general

In addition to any other payment under this part, the Secretary shall, subject to subsection (f) of this section, make an incentive payment to each State for each fiscal year in an amount determined under subsection (b) of this section.

(b) Amount of incentive payment

(1) In general

The incentive payment for a State for a fiscal year is equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year.

(2) Incentive payment pool

(A) In general

In paragraph (1), the term ''incentive payment pool'' means—

(i) $422,000,000 for fiscal year 2000;

(ii) $429,000,000 for fiscal year 2001;

(iii) $450,000,000 for fiscal year 2002;

(iv) $461,000,000 for fiscal year 2003;

(v) $454,000,000 for fiscal year 2004;

(vi) $446,000,000 for fiscal year 2005;

(vii) $458,000,000 for fiscal year 2006;

(viii) $471,000,000 for fiscal year 2007;

(ix) $483,000,000 for fiscal year 2008; and

(x) for any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year, multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year.

(B) CPI

For purposes of subparagraph (A), the CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year. As used in the preceding sentence, the term ''Consumer Price Index'' means the last Consumer Price Index for all-urban consumers published by the Department of Labor.

(3) State incentive payment share

In paragraph (1), the term ''State incentive payment share'' means, with respect to a fiscal year—

(A) the incentive base amount for the State for the fiscal year; divided by

(B) the sum of the incentive base amounts for all of the States for the fiscal year.

(4) Incentive base amount

In paragraph (3), the term ''incentive base amount'' means, with respect to a State and a fiscal year, the sum of the applicable percentages (determined in accordance with paragraph (6)) multiplied by the corresponding maximum incentive base amounts for the State for the fiscal year, with respect to each of the following measures of State performance for the fiscal year:

(A) The paternity establishment performance level.

(B) The support order performance level.

(C) The current payment performance level.

(D) The arrearage payment performance level.

(E) The cost-effectiveness performance level.

(5) Maximum incentive base amount

(A) In general

For purposes of paragraph (4), the maximum incentive base amount for a State for a fiscal year is—

(i) with respect to the performance measures described in subparagraphs (A), (B), and (C) of paragraph (4), the State collections base for the fiscal year; and

(ii) with respect to the performance measures described in subparagraphs (D) and (E) of paragraph (4), 75 percent of the State collections base for the fiscal year.

(B) Data required to be complete and reliable

Notwithstanding subparagraph (A), the maximum incentive base amount for a State for a fiscal year with respect to a performance measure described in paragraph (4) is zero, unless the Secretary determines, on the basis of an audit performed under section 652(a)(4)(C)(i) of this title, that the data which the State submitted pursuant to section 654(15)(B) of this title for the fiscal year and which is used to determine the performance level involved is complete and reliable.

(C) State collections base

For purposes of subparagraph (A), the State collections base for a fiscal year is equal to the sum of—

(i) 2 times the sum of—

(I) the total amount of support collected during the fiscal year under the State plan approved under this part in cases in which the support obligation involved is required to be assigned to the State pursuant to part A or E of this subchapter or subchapter XIX of this chapter; and

(II) the total amount of support collected during the fiscal year under the State plan approved under this part in cases in which the support obligation involved was so assigned but, at the time of collection, is not required to be so assigned; and

(ii) the total amount of support collected during the fiscal year under the State plan approved under this part in all other cases.

(6) Determination of applicable percentages based on performance levels

(A) Paternity establishment

(i) Determination of paternity establishment performance level

The paternity establishment performance level for a State for a fiscal year is, at the option of the State, the IV–D paternity establishment percentage determined under section 652(g)(2)(A) of this title or the statewide paternity establishment percentage determined under section 652(g)(2)(B) of this title.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's paternity establishment performance level is as follows:

If the paternity establishment performance level is:		The applicable percentage is:
At least:	But less than:	
80%		100
79%	80%	98
78%	79%	96
77%	78%	94
76%	77%	92
75%	76%	90
74%	75%	88
73%	74%	86
72%	73%	84
71%	72%	82
70%	71%	80
69%	70%	79
68%	69%	78
67%	68%	77
66%	67%	76
65%	66%	75
64%	65%	74
63%	64%	73
62%	63%	72
61%	62%	71
60%	61%	70
59%	60%	69
58%	59%	68
57%	58%	67
56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
0%	50%	0.

Notwithstanding the preceding sentence, if the paternity establishment performance level of a State for a fiscal year is less than 50 percent but exceeds by at least 10 percentage points the paternity establishment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's paternity establishment performance level is 50 percent.

(B) Establishment of child support orders

(i) Determination of support order performance level

The support order performance level for a State for a fiscal year is the percentage of the total number of cases under the State plan approved under this part in which there is a support order during the fiscal year.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's support order performance level is as follows:

If the support order performance level is:		The applicable percentage is:
At least:	But less than:	
80%		100
79%	80%	98
78%	79%	96
77%	78%	94
76%	77%	92
75%	76%	90
74%	75%	88
73%	74%	86
72%	73%	84
71%	72%	82
70%	71%	80
69%	70%	79
68%	69%	78
67%	68%	77
66%	67%	76
65%	66%	75
64%	65%	74
63%	64%	73
62%	63%	72
61%	62%	71
60%	61%	70
59%	60%	69
58%	59%	68
57%	58%	67
56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
0%	50%	0.

Notwithstanding the preceding sentence, if the support order performance level of a State for a fiscal year is less than 50 percent but exceeds by at least 5 percentage points the support order performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's support order performance level is 50 percent.

(C) Collections on current child support due

(i) Determination of current payment performance level

The current payment performance level for a State for a fiscal year is equal to the total amount of current support collected during the fiscal year under the State plan approved under this part divided by the total amount of current support owed during the fiscal year in all cases under the State plan, expressed as a percentage.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's current payment performance level is as follows:

If the current payment performance level is:		The applicable percentage is:
At least:	But less than:	
80%		100
79%	80%	98
78%	79%	96
77%	78%	94
76%	77%	92
75%	76%	90
74%	75%	88
73%	74%	86
72%	73%	84
71%	72%	82

If the current payment performance level is:		The applicable percentage is:
At least:	But less than:	
70%	71%	80
69%	70%	79
68%	69%	78
67%	68%	77
66%	67%	76
65%	66%	75
64%	65%	74
63%	64%	73
62%	63%	72
61%	62%	71
60%	61%	70
59%	60%	69
58%	59%	68
57%	58%	67
56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
49%	50%	59
48%	49%	58
47%	48%	57
46%	47%	56
45%	46%	55
44%	45%	54
43%	44%	53
42%	43%	52
41%	42%	51
40%	41%	50
0%	40%	0.

Notwithstanding the preceding sentence, if the current payment performance level of a State for a fiscal year is less than 40 percent but exceeds by at least 5 percentage points the current payment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's current payment performance level is 50 percent.

(D) Collections on child support arrearages

(i) Determination of arrearage payment performance level

The arrearage payment performance level for a State for a fiscal year is equal to the total number of cases under the State plan approved under this part in which payments of past-due child support were received during the fiscal year and part or all of the payments were distributed to the family to whom the past-due child support was owed (or, if all past-due child support owed to the family was, at the time of receipt, subject to an assignment to the State, part or all of the payments were retained by the State) divided by the total number of cases under the State plan in which there is past-due child support, expressed as a percentage.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's arrearage payment performance level is as follows:

If the arrearage payment performance level is:		The applicable percentage is:
At least:	But less than:	
80%		100
79%	80%	98
78%	79%	96
77%	78%	94
76%	77%	92
75%	76%	90
74%	75%	88
73%	74%	86
72%	73%	84
71%	72%	82
70%	71%	80
69%	70%	79
68%	69%	78
67%	68%	77
66%	67%	76
65%	66%	75
64%	65%	74
63%	64%	73
62%	63%	72
61%	62%	71
60%	61%	70
59%	60%	69
58%	59%	68
57%	58%	67
56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
49%	50%	59
48%	49%	58
47%	48%	57
46%	47%	56
45%	46%	55
44%	45%	54
43%	44%	53
42%	43%	52
41%	42%	51
40%	41%	50
0%	40%	0.

Notwithstanding the preceding sentence, if the arrearage payment performance level of a State for a fiscal year is less than 40 percent but exceeds by at least 5 percentage points the arrearage payment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's arrearage payment performance level is 50 percent.

(E) Cost-effectiveness

(i) Determination of cost-effectiveness performance level

The cost-effectiveness performance level for a State for a fiscal year is equal to the total amount collected during the fiscal year under the State plan approved under this part divided by the total amount expended during the fiscal year under the State plan, expressed as a ratio.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's cost-effectiveness performance level is as follows:

If the cost-effectiveness performance level is:		The applicable percentage is:
At least:	But less than:	
5.00		100
4.50	4.99	90
4.00	4.50	80
3.50	4.00	70
3.00	3.50	60
2.50	3.00	50
2.00	2.50	40
0.00	2.00	0.

(c) Treatment of interstate collections

In computing incentive payments under this section, support which is collected by a State at the request of another State shall be treated as having been collected in full by both States, and any amounts expended by a State in carrying out a special project assisted under section 655(e) of this title shall be excluded.

(d) Administrative provisions

The amounts of the incentive payments to be made to the States under this section for a fiscal year shall be estimated by the Secretary at/or before the beginning of the fiscal year on the basis of the best information available. The Secretary shall make the payments for the fiscal year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section are deemed obligated.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary governing the calculation of incentive payments under this section, including directions for excluding from the calculations certain closed cases and cases over which the States do not have jurisdiction.

(f) Reinvestment

A State to which a payment is made under this section shall expend the full amount of the payment to supplement, and not supplant, other funds used by the State—

(1) to carry out the State plan approved under this part; or

(2) for any activity (including cost-effective contracts with local agencies) approved by the Secretary, whether or not the expenditures for the activity are eligible for reimbursement under this part, which may contribute to improving the effectiveness or efficiency of the State program operated under this part.

(Aug. 14, 1935, ch. 531, title IV, § 458, formerly § 458A, as added and renumbered § 458, Pub. L. 105–200, title II, § 201(a), (f)(2)(A), July 16, 1998, 112 Stat. 648, 658.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in subsec. (b)(5)(C)(i)(I), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

EFFECTIVE DATE

Pub. L. 105–200, title II, § 201(g), July 16, 1998, 112 Stat. 658, provided that: ''Except as otherwise provided in this section [enacting this section, amending this section and sections 652, 655, and 658 of this title, repealing section 658 of this title, enacting provisions set out as notes under this section and sections 652 and 655 of this title, amending provisions set out as notes under this section and sections 652 and 658 of this title, and repealing provisions set out as a note under section 658 of this title], the amendments made by this section shall take effect on October 1, 1999.''

REGULATIONS

Pub. L. 105–200, title II, § 201(c), July 16, 1998, 112 Stat. 656, provided that: ''Within 9 months after the date of the enactment of this section [July 16, 1998], the Secretary of Health and Human Services shall prescribe regulations governing the implementation of section 458A [now 458] of the Social Security Act [this section] when such section takes effect and the implementation of subsection (b) of this section [formerly set out as a note below].''

TRANSITION RULE

Pub. L. 105–200, title II, § 201(b), July 16, 1998, 112 Stat. 656, provided for reductions by the Secretary of the amount otherwise payable to a State under this section and former section 658 of this title for fiscal years 2000 and 2001.

STUDIES

Pub. L. 105–200, title II, § 201(d), (f)(2)(C), July 16, 1998, 112 Stat. 656, 658, provided that:

''(1) GENERAL REVIEW OF NEW INCENTIVE PAYMENT SYSTEM.—

''(A) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study of the implementation of the incentive payment system established by section 458 of the Social Security Act [this section], in order to identify the problems and successes of the system.

''(B) REPORTS TO THE CONGRESS.—

''(i) REPORT ON VARIATIONS IN STATE PERFORMANCE ATTRIBUTABLE TO DEMOGRAPHIC VARIABLES.—Not later than October 1, 2000, the Secretary shall submit to the Congress a report that identifies any demographic or economic variables that account for differences in the performance levels achieved by the States with respect to the performance measures used in the system, and contains the recommendations of the Secretary for such adjustments to the system as may be necessary to ensure that the relative performance of States is measured from a baseline that takes account of any such variables.

''(ii) INTERIM REPORT.—Not later than March 1, 2001, the Secretary shall submit to the Congress an interim report that contains the findings of the study required by subparagraph (A).

''(iii) FINAL REPORT.—Not later than October 1, 2003, the Secretary shall submit to the Congress a final report that contains the final findings of the study required by subparagraph (A). The report shall include any recommendations for changes in the system that the Secretary determines would improve the operation of the child support enforcement program.

''(2) DEVELOPMENT OF MEDICAL SUPPORT INCENTIVE.—

''(A) IN GENERAL.—The Secretary of Health and Human Services, in consultation with State directors of programs operated under part D of title IV of the Social Security Act [this part] and representatives of children potentially eligible for medical support, shall develop a performance measure based on the effectiveness of States in establishing and enforcing medical support obligations, and shall make recommendations for the incorporation of the measure, in a revenue neutral manner, into the incentive pay-

ment system established by section 458A [now 458] of the Social Security Act [this section].

''(B) REPORT.—Not later than October 1, 1999, the Secretary shall submit to the Congress a report that describes the performance measure and contains the recommendations required by subparagraph (A).''

§ 659. Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations

(a) Consent to support enforcement

Notwithstanding any other provision of law (including section 407 of this title and section 5301 of title 38), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of this title and regulations of the Secretary under such subsections, and to any other legal process brought, by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal obligation of the individual to provide child support or alimony.

(b) Consent to requirements applicable to private person

With respect to notice to withhold income pursuant to subsection (a)(1) or (b) of section 666 of this title, or any other order or process to enforce support obligations against an individual (if the order or process contains or is accompanied by sufficient data to permit prompt identification of the individual and the moneys involved), each governmental entity specified in subsection (a) of this section shall be subject to the same requirements as would apply if the entity were a private person, except as otherwise provided in this section.

(c) Designation of agent; response to notice or process

(1) Designation of agent

The head of each agency subject to this section shall—

(A) designate an agent or agents to receive orders and accept service of process in matters relating to child support or alimony; and

(B) annually publish in the Federal Register the designation of the agent or agents, identified by title or position, mailing address, and telephone number.

(2) Response to notice or process

If an agent designated pursuant to paragraph (1) of this subsection receives notice pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666 of this title, or is effectively served with any order, process, or interrogatory, with respect to an individual's child support or alimony payment obligations, the agent shall—

(A) as soon as possible (but not later than 15 days) thereafter, send written notice of the notice or service (together with a copy of the notice or service) to the individual at the duty station or last-known home address of the individual;

(B) within 30 days (or such longer period as may be prescribed by applicable State law) after receipt of a notice pursuant to such State procedures, comply with all applicable provisions of section 666 of this title; and

(C) within 30 days (or such longer period as may be prescribed by applicable State law) after effective service of any other such order, process, or interrogatory, withhold available sums in response to the order or process, or answer the interrogatory.

(d) Priority of claims

If a governmental entity specified in subsection (a) of this section receives notice or is served with process, as provided in this section, concerning amounts owed by an individual to more than 1 person—

(1) support collection under section 666(b) of this title must be given priority over any other process, as provided in section 666(b)(7) of this title;

(2) allocation of moneys due or payable to an individual among claimants under section 666(b) of this title shall be governed by section 666(b) of this title and the regulations prescribed under such section; and

(3) such moneys as remain after compliance with paragraphs (1) and (2) shall be available to satisfy any other such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(e) No requirement to vary pay cycles

A governmental entity that is affected by legal process served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary its normal pay and disbursement cycle in order to comply with the legal process.

(f) Relief from liability

(1) Neither the United States, nor the government of the District of Columbia, nor any disbursing officer shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if the payment is made in accordance with this section and the regulations issued to carry out this section.

(2) No Federal employee whose duties include taking actions necessary to comply with the requirements of subsection (a) of this section with regard to any individual shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by the employee in connection with the carrying out of such actions.

(g) Regulations

Authority to promulgate regulations for the implementation of this section shall, insofar as

this section applies to moneys due from (or payable by)—

(1) the United States (other than the legislative or judicial branches of the Federal Government) or the government of the District of Columbia, be vested in the President (or the designee of the President);

(2) the legislative branch of the Federal Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees),[1] and

(3) the judicial branch of the Federal Government, be vested in the Chief Justice of the United States (or the designee of the Chief Justice).

(h) Moneys subject to process

(1) In general

Subject to paragraph (2), moneys payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section—

(A) consist of—

(i) compensation payable for personal services of the individual, whether the compensation is denominated as wages, salary, commission, bonus, pay, allowances, or otherwise (including severance pay, sick pay, and incentive pay);

(ii) periodic benefits (including a periodic benefit as defined in section 428(h)(3) of this title) or other payments—

(I) under the insurance system established by subchapter II of this chapter;

(II) under any other system or fund established by the United States which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by the individual or any other individual;

(III) as compensation for death under any Federal program;

(IV) under any Federal program established to provide ''black lung'' benefits; or

(V) by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation;

(iii) worker's compensation benefits paid or payable under Federal or State law;

(iv) benefits paid or payable under the Railroad Retirement System,[1] and

(v) special benefits for certain World War II veterans payable under subchapter VIII of this chapter; but

(B) do not include any payment—

(i) by way of reimbursement or otherwise, to defray expenses incurred by the individual in carrying out duties associated with the employment of the individual;

(ii) as allowances for members of the uniformed services payable pursuant to chapter 7 of title 37, as prescribed by the Secretaries concerned (defined by section 101(5) of title 37) as necessary for the efficient performance of duty; or

(iii) of periodic benefits under title 38, except as provided in subparagraph (A)(ii)(V).

(2) Certain amounts excluded

In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

(A) are owed by the individual to the United States;

(B) are required by law to be, and are, deducted from the remuneration or other payment involved, including Federal employment taxes, and fines and forfeitures ordered by court-martial;

(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1986 may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding);

(D) are deducted as health insurance premiums;

(E) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage); or

(F) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

(i) Definitions

For purposes of this section—

(1) United States

The term ''United States'' includes any department, agency, or instrumentality of the legislative, judicial, or executive branch of the Federal Government, the United States Postal Service, the Postal Regulatory Commission, any Federal corporation created by an Act of Congress that is wholly owned by the Federal Government, and the governments of the territories and possessions of the United States.

(2) Child support

The term ''child support'', when used in reference to the legal obligations of an individual to provide such support, means amounts required to be paid under a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages or reimbursement, and

[1] So in original. The comma probably should be a semicolon.

which may include other related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief.

(3) Alimony

(A) In general

The term ''alimony'', when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of the individual, and (subject to and in accordance with State law) includes separate maintenance, alimony pendente lite, maintenance, and spousal support, and includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(B) Exceptions

Such term does not include—

(i) any child support; or

(ii) any payment or transfer of property or its value by an individual to the spouse or a former spouse of the individual in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(4) Private person

The term ''private person'' means a person who does not have sovereign or other special immunity or privilege which causes the person not to be subject to legal process.

(5) Legal process

The term ''legal process'' means any writ, order, summons, or other similar process in the nature of garnishment—

(A) which is issued by—

(i) a court or an administrative agency of competent jurisdiction in any State, territory, or possession of the United States;

(ii) a court or an administrative agency of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor the process; or

(iii) an authorized official pursuant to an order of such a court or an administrative agency of competent jurisdiction or pursuant to State or local law; and

(B) which is directed to, and the purpose of which is to compel, a governmental entity which holds moneys which are otherwise payable to an individual to make a payment from the moneys to another party in order to satisfy a legal obligation of the individual to provide child support or make alimony payments.

(Aug. 14, 1935, ch. 531, title IV, § 459, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2357; amended Pub. L. 95–30, title V, § 501(a), (b), May 23, 1977, 91 Stat. 157; Pub. L. 98–21, title III, § 335(b)(1), Apr. 20, 1983, 97 Stat. 130; Pub. L. 104–193, title III, § 362(a), Aug. 22, 1996, 110 Stat. 2242; Pub. L. 105–33, title V, § 5542(a), (b), Aug. 5, 1997, 111 Stat. 631; Pub. L. 106–169, title II, § 251(b)(3), Dec. 14, 1999, 113 Stat. 1855; Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (h)(2)(C), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2006—Subsec. (i)(1). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

1999—Subsec. (h)(1)(A)(v). Pub. L. 106–169 added cl. (v).

1997—Subsec. (c)(2)(C). Pub. L. 105–33, § 5542(a), substituted ''withhold available sums in response to the order or process, or answer the interrogatory'' for ''respond to the order, process, or interrogatory''.

Subsec. (h)(1). Pub. L. 105–33, § 5542(b)(1), struck out ''paid or'' after ''moneys'' in introductory provisions.

Subsec. (h)(1)(A)(i). Pub. L. 105–33, § 5542(b)(1), struck out ''paid or'' before ''payable''.

Subsec. (h)(1)(A)(iii). Pub. L. 105–33, § 5542(b)(2)(B)(i), inserted ''or payable'' after ''paid''.

Subsec. (h)(1)(A)(iv). Pub. L. 105–33, § 5542(b)(2)(A), (B)(ii), (C), added cl. (iv).

Subsec. (h)(1)(B)(iii). Pub. L. 105–33, § 5542(b)(3), added cl. (iii).

1996—Pub. L. 104–193 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (f) relating to use of legal process to collect money payable to an individual as remuneration for employment by the United States or the District of Columbia for purpose of enforcing individual's legal obligation to provide child support or make alimony payments.

1983—Subsec. (a). Pub. L. 98–21 inserted reference to section 407 of this title.

1977—Subsec. (a). Pub. L. 95–30, § 501(a), (b)(1), designated existing provisions as subsec. (a) and substituted ''or the District of Columbia (including any agency, subdivision, or instrumentality thereof)'' for ''(including any agency or instrumentality thereof and any wholly owned Federal Corporation)'' and ''as if the United States or the District of Columbia were a private person'' for ''as if the United States were a private person''.

Subsecs. (b) to (f). Pub. L. 95–30, § 501(b)(2), added subsecs. (b) to (f).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 362(d) of Pub. L. 104–193 provided that: ''The amendments made by this section [amending this section, section 5520a of Title 5, Government Organization and Employees, and section 1408 of Title 10, Armed Forces, and repealing sections 661 and 662 of this title] shall become effective 6 months after the date of the enactment of this Act [Aug. 22, 1996].''

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EXECUTIVE ORDER NO. 11881

Ex. Ord. No. 11881, Oct. 3, 1975, 40 F.R. 46291, which related to the delegation of authority to issue regulations for the implementation of the provisions of this section, was revoked by Ex. Ord. No. 12105, Dec. 19, 1978, 43 F.R. 59465, set out as a note below.

EX. ORD. NO. 12105. DELEGATION OF AUTHORITY TO PROMULGATE REGULATIONS

Ex. Ord. No. 12105, Dec. 19, 1978, 43 F.R. 59465, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by Section 461(a)(1) of the Social Security Act, as added by Section 501(c) of the Tax Reduction and Simplification Act of 1977 (Public Law 95–30, 91 Stat. 158, 42 U.S.C. 661(a)(1)), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to provide for the enforcement of legal obligations to provide child support or make alimony payments incurred by employees of the Executive branch, it is hereby ordered as follows:

1–1. DELEGATION OF AUTHORITY

1–101. The Office of Personnel Management, in consultation with the Attorney General, the Secretary of Defense with respect to members of the armed forces, and the Mayor of the District of Columbia with respect to employees of the Government thereof, is authorized to promulgate regulations for the uniform implementation of Section 459 of the Social Security Act, as amended (42 U.S.C. 659), hereinafter referred to as the Act.

1–102. The regulations promulgated by the Office of Personnel Management pursuant to this Order shall:

(a) Be applicable to the Executive branch of the Government as defined in Section 461(a)(1) of the Act (42 U.S.C. 661(a)(1)).

(b) Require the appropriate officials of the Executive branch of the Government to take the actions prescribed by Sections 461(b)(1), 461(b)(3)(A) and 461(c) of the Act (42 U.S.C. 661(b)(1), 661(b)(3)(A) and 661(c)).

(c) Require the appropriate officials of the Executive branch of the Government to issue such rules, regulations and directives as are necessary to implement the regulations of the Office of Personnel Management.

1–2. REVOCATIONS

1–201. Executive Order No. 11881 of October 3, 1975 is revoked.

1–202. All regulations, directives, or actions taken by the Office of Personnel Management pursuant to Executive Order No. 11881 of October 3, 1975 shall remain in effect until modified, superseded or revoked by the Office of Personnel Management pursuant to this Order.

JIMMY CARTER.

EX. ORD. NO. 12953. ACTIONS REQUIRED OF ALL EXECUTIVE AGENCIES TO FACILITATE PAYMENT OF CHILD SUPPORT

Ex. Ord. No. 12953, Feb. 27, 1995, 60 F.R. 11013, provided:

Children need and deserve the emotional and financial support of both their parents.

The Federal Government requires States and, through them, public and private employers to take actions necessary to ensure that monies in payment of child support obligations are withheld and transferred to the child's caretaker in an efficient and expeditious manner.

The Federal Government, through its civilian employees and Uniformed Services members, is the Nation's largest single employer and as such should set an example of leadership and encouragement in ensuring that all children are properly supported.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

PART I—PURPOSE

SECTION 101. This executive order: (a) Establishes the executive branch of the Federal Government, through its civilian employees and Uniformed Services members, as a model employer in promoting and facilitating the establishment and enforcement of child support.

(b) Requires all Federal agencies, including the Uniformed Services, to cooperate fully in efforts to establish paternity and child support orders and to enforce the collection of child and medical support in all situations where such actions may be required.

(c) Requires each Federal agency, including the Uniformed Services, to provide information to its employees and members about actions that they should take and services that are available to ensure that their children are provided the support to which they are legally entitled.

PART 2—DEFINITIONS

For purposes of this order:

SEC. 201. ''Federal agency'' means any authority as defined at 5 U.S.C. 105, including the Uniformed Services, as defined in section 202 of this order.

SEC. 202. ''Uniformed Services'' means the Army, Navy, Marine Corps, Air Force, Coast Guard, and the Commissioned Corps of the National Oceanic and Atmospheric Administration, and the Public Health Service.

SEC. 203. ''Child support enforcement'' means any administrative or judicial action by a court or administrative entity of a State necessary to establish paternity or establish a child support order, including a medical support order, and any actions necessary to enforce a child support or medical support order. Child support actions may be brought under the civil or criminal laws of a State and are not limited to actions brought on behalf of the State or individual by State agencies providing services under title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq*.

SEC. 204. ''State'' means any of the fifty States, the District of Columbia, the territories, the possessions, and the Commonwealths of Puerto Rico and of the Mariana Islands.

PART 3—IMMEDIATE ACTIONS TO ENSURE CHILDREN ARE SUPPORTED BY THEIR PARENTS

SEC. 301. *Wage Withholding*. (a) Within 60 days from the date of this order, every Federal agency shall review its procedures for wage withholding under 42 U.S.C. 659 and implementing regulations to ensure that it is in full compliance with the requirements of that section, and shall endeavor, to the extent feasible, to process wage withholding actions consistent with the requirements of 42 U.S.C. 666(b).

(b) Beginning no later than July 1, 1995, the Director of the Office of Personnel Management (OPM) shall publish annually in the Federal Register the list of agents (and their addresses) designated to receive service of withholding notices for Federal employees.

SEC. 302. *Service of Legal Process*. Every Federal agency shall assist in the service of legal process in civil actions pursuant to orders of courts of States to establish paternity and establish or enforce a support obligation by making Federal employees and members of the Uniformed Services stationed outside the United States available for the service of process. Each agency shall designate an official who shall be responsible for facilitating a Federal employee's or member's availability for service of process, regardless of the location of the employee's workplace or member's duty station. The OPM shall publish a list of these officials annually in the Federal Register, beginning no later than July 1, 1995.

SEC. 303. *Federal Parent Locator*. Every Federal agency shall cooperate with the Federal Parent Locator Service, established under 42 U.S.C. 653, by providing complete, timely and accurate information that will assist in locating noncustodial parents and their employers.

SEC. 304. *Crossmatch for Delinquent Obligors*. (a) The master file of delinquent obligors that each State child support enforcement agency submits to the Internal Revenue Service for Federal income tax refund offset purposes shall be matched at least annually with the payroll or personnel files of Federal agencies in order to determine if there are any Federal employees with

child support delinquencies. The list of matches shall be forwarded to the appropriate State child support enforcement agency to determine, in each instance, whether wage withholding or other enforcement actions should be commenced. All matches will be performed in accordance with 5 U.S.C. 552a(*o*)–(u).

(b) All Federal agencies shall inform current and prospective employees that crossmatches are routinely made between Federal personnel records and State records on individuals who owe child support, and inform employees how to initiate voluntary wage withholding requests.

SEC. 305. *Availability of Service*. All Federal agencies shall advise current and prospective employees of services authorized under title IV-D of the Social Security Act [42 U.S.C. 651 et seq.] that are available through the States. At a minimum, information shall be provided annually to current employees through the Employee Assistance Program, or similar programs, and to new employees during routine orientation.

SEC. 306. *Report on Actions Taken*. Within 90 days of the date of this order, all Federal agencies shall report to the Director of the Office of Management and Budget (OMB) on the actions they have taken to comply with this order and any statutory, regulatory, and administrative barriers that hinder them from complying with the requirements of part 3 of this order.

PART 4—ADDITIONAL ACTIONS

SEC. 401. *Additional Review for the Uniformed Services*. (a) In addition to the requirements outlined above, the Secretary of the Department of Defense (DOD) will chair a task force, with participation by the Department of Health and Human Services (HHS), the Department of Commerce, and the Department of Transportation, that shall conduct a full review of current policies and practices within the Uniformed Services to ensure that children of Uniformed Services personnel are provided financial and medical support in the same manner and within the same time frames as is mandated for all other children due such support. This review shall include, but not be limited to, issues related to withholding non-custodial parents' wages, service of legal process, activities to locate parents and their income and assets, release time to attend civil paternity and support proceedings, and health insurance coverage under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). All relevant existing statutes, including the Soldiers['] and Sailors['] Civil Relief Act of 1940 [now Servicemembers Civil Relief Act] [50 U.S.C. App. 501 et seq.], the Uniformed Services Former Spouses['] Protection Act [see Short Title of 1982 Amendment note set out under section 1401 of Title 10, Armed Forces], and the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248, see Tables for classification], shall be reviewed and appropriate legislative modifications shall be identified.

(b) Within 180 days of the date of this order, DOD shall submit to OMB a report based on this review. The report shall recommend additional policy, regulatory and legislative changes that would improve and enhance the Federal Government's commitment to ensuring parental support for all children.

SEC. 402. *Additional Federal Agency Actions*. (a) OPM and HHS shall jointly study and prepare recommendations concerning additional administrative, regulatory, and legislative improvements in the policies and procedures of Federal agencies affecting child support enforcement. Other agencies shall be included in the development of recommendations for specific items as appropriate. The recommendations shall address, among other things:

(i) any changes that would be needed to ensure that Federal employees comply with child support orders that require them to provide health insurance coverage for their children;

(ii) changes needed to ensure that more accurate and up-to-date data about civilian and uniformed personnel who are being sought in conjunction with State paternity or child support actions can be obtained from Federal agencies and their payroll and personnel records, to improve efforts to locate noncustodial parents and their income and assets;

(iii) changes needed for selecting Federal agencies to test and evaluate new approaches to the establishment and enforcement of child support obligations;

(iv) proposals to improve service of process for civilian employees and members of the Uniformed Services stationed outside the United States, including the possibility of serving process by certified mail in establishment and enforcement cases or of designating an agent for service of process that would have the same effect and bind employees to the same extent as actual service upon the employees;

(v) strategies to facilitate compliance with Federal and State child support requirements by quasi-governmental agencies, advisory groups, and commissions; and

(vi) analysis of whether compliance with support orders should be a factor used in defining suitability for Federal employment.

(b) The recommendations are due within 180 days of the date of this order. The recommendations are to be submitted in writing to the Office of Management and Budget.

SEC. 501. *Internal Management*. This order is intended only to improve the internal management of the executive branch with regard to child support enforcement and shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, or any other person.

SEC. 502. *Sovereignty of the United States Government*. This order is intended only to provide that the Federal Government has elected to require Federal agencies to adhere to the same standards as are applicable to all other employers in the Nation and shall not be interpreted as subjecting the Federal Government to any State law or requirement. This order should not be construed as a waiver of the sovereign immunity of the United States Government or of any existing statutory or regulatory provisions, including 42 U.S.C. 659, 662, and 665; 5 CFR Part 581; 42 CFR Part 21, Subpart C; 32 CFR Part 54; and 32 CFR Part 81.

SEC. 503. *Defense and Security*.

This order is not intended to require any action that would compromise the defense or national security interest of the United States.

WILLIAM J. CLINTON.

§ 659a. International support enforcement

(a) Authority for declarations

(1) Declaration

The Secretary of State, with the concurrence of the Secretary of Health and Human Services, is authorized to declare any foreign country (or a political subdivision thereof) to be a foreign reciprocating country if the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to obligees who are residents of the United States, and such procedures are substantially in conformity with the standards prescribed under subsection (b) of this section.

(2) Revocation

A declaration with respect to a foreign country made pursuant to paragraph (1) may be revoked if the Secretaries of State and Health and Human Services determine that—

(A) the procedures established by the foreign country regarding the establishment and enforcement of duties of support have been so changed, or the foreign country's implementation of such procedures is so un-

satisfactory, that such procedures do not meet the criteria for such a declaration; or

(B) continued operation of the declaration is not consistent with the purposes of this part.

(3) Form of declaration

A declaration under paragraph (1) may be made in the form of an international agreement, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis.

(b) Standards for foreign support enforcement procedures

(1) Mandatory elements

Support enforcement procedures of a foreign country which may be the subject of a declaration pursuant to subsection (a)(1) of this section shall include the following elements:

(A) The foreign country (or political subdivision thereof) has in effect procedures, available to residents of the United States—

(i) for establishment of paternity, and for establishment of orders of support for children and custodial parents; and

(ii) for enforcement of orders to provide support to children and custodial parents, including procedures for collection and appropriate distribution of support payments under such orders.

(B) The procedures described in subparagraph (A), including legal and administrative assistance, are provided to residents of the United States at no cost.

(C) An agency of the foreign country is designated as a Central Authority responsible for—

(i) facilitating support enforcement in cases involving residents of the foreign country and residents of the United States; and

(ii) ensuring compliance with the standards established pursuant to this subsection.

(2) Additional elements

The Secretary of Health and Human Services and the Secretary of State, in consultation with the States, may establish such additional standards as may be considered necessary to further the purposes of this section.

(c) Designation of United States Central Authority

It shall be the responsibility of the Secretary of Health and Human Services to facilitate support enforcement in cases involving residents of the United States and residents of foreign countries that are the subject of a declaration under this section, by activities including—

(1) development of uniform forms and procedures for use in such cases;

(2) notification of foreign reciprocating countries of the State of residence of individuals sought for support enforcement purposes, on the basis of information provided by the Federal Parent Locator Service; and

(3) such other oversight, assistance, and coordination activities as the Secretary may find necessary and appropriate.

(d) Effect on other laws

States may enter into reciprocal arrangements for the establishment and enforcement of support obligations with foreign countries that are not the subject of a declaration pursuant to subsection (a) of this section, to the extent consistent with Federal law.

(Aug. 14, 1935, ch. 531, title IV, § 459A, as added Pub. L. 104–193, title III, § 371(a), Aug. 22, 1996, 110 Stat. 2252.)

EFFECTIVE DATE

For effective date of section, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

§ 660. Civil action to enforce child support obligations; jurisdiction of district courts

The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health and Human Services under section 652(a)(8) of this title. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

(Aug. 14, 1935, ch. 531, title IV, § 460, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2358; amended Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(xi), July 18, 1984, 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§§ 661, 662. Repealed. Pub. L. 104–193, title III, § 362(b)(1), Aug. 22, 1996, 110 Stat. 2246

Section 661, act Aug. 14, 1935, ch. 531, title IV, § 461, as added May 23, 1977, Pub. L. 95–30, title V, § 501(c), 91 Stat. 158, related to regulations pertaining to garnishments.

Section 662, act Aug. 14, 1935, ch. 531, title IV, § 462, as added May 23, 1977, Pub. L. 95–30, title V, § 501(d), 91 Stat. 159; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(17), 98 Stat. 1167; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; June 13, 1991, Pub. L. 102–54, § 13(q)(3)(B)(ii), 105 Stat. 279, related to definitions for purposes of section 659 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 6 months after Aug. 22, 1996, see section 362(d) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 659 of this title.

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

§ 663. Use of Federal Parent Locator Service in connection with enforcement or determination of child custody in cases of parental kidnaping of child

(a) Agreements with States for use of Federal Parent Locator Service

The Secretary shall enter into an agreement with every State under which the services of the Federal Parent Locator Service established under section 653 of this title shall be made available to each State for the purpose of determining the whereabouts of any parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody or visitation determination.

(b) Requests from authorized persons for information

An agreement entered into under subsection (a) of this section shall provide that the State agency described in section 654 of this title will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody or visitation determination.

(c) Information which may be disclosed

Information authorized to be provided by the Secretary under subsection (a), (b), (e), or (f) of this section shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 653 of this title, and a request for information by the Secretary under this section shall be considered to be a request for information under section 653 of this title which is authorized to be provided under such section. Only information as to the most recent address and place of employment of any parent or child shall be provided under this section.

(d) "Custody or visitation determination" and "authorized person" defined

For purposes of this section—

(1) the term ''custody or visitation determination'' means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;

(2) the term ''authorized person'' means—

(A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody or visitation determination;

(B) any court having jurisdiction to make or enforce such a child custody or visitation determination, or any agent of such court; and

(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

(e) Agreement on use of Federal Parent Locator Service with United States Central Authority under Convention on the Civil Aspects of International Child Abduction

The Secretary shall enter into an agreement with the Central Authority designated by the President in accordance with section 11606 of this title, under which the services of the Federal Parent Locator Service established under section 653 of this title shall be made available to such Central Authority upon its request for the purpose of locating any parent or child on behalf of an applicant to such Central Authority within the meaning of section 11602(1) of this title. The Federal Parent Locator Service shall charge no fees for services requested pursuant to this subsection.

(f) Agreement to assist in locating missing children under Federal Parent Locator Service

The Secretary shall enter into an agreement with the Attorney General of the United States, under which the services of the Federal Parent Locator Service established under section 653 of this title shall be made available to the Office of Juvenile Justice and Delinquency Prevention upon its request to locate any parent or child on behalf of such Office for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child, or

(2) making or enforcing a child custody or visitation determination.

The Federal Parent Locator Service shall charge no fees for services requested pursuant to this subsection.

(Aug. 14, 1935, ch. 531, title IV, § 463, as added Pub. L. 96–611, § 9(b), Dec. 28, 1980, 94 Stat. 3572; amended Pub. L. 100–300, § 11, Apr. 29, 1988, 102 Stat. 441; Pub. L. 103–432, title II, § 214(a), (b), Oct. 31, 1994, 108 Stat. 4461; Pub. L. 104–193, title III, §§ 316(e)(1), 395(d)(1)(G), Aug. 22, 1996, 110 Stat. 2215, 2259; Pub. L. 105–33, title V, § 5534(b), Aug. 5, 1997, 111 Stat. 629.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33, § 5534(b)(1)(A), (5), in introductory provisions, substituted ''every State'' for ''any State which is able and willing to do so,'' and ''each State'' for ''such State'' and struck out ''noncustodial'' before ''parent''.

Subsec. (a)(2). Pub. L. 105–33, § 5534(b)(1)(B), inserted ''or visitation'' after ''custody''.

Subsec. (b). Pub. L. 105–33, § 5534(b)(5), struck out ''noncustodial'' before ''parent or child when'' in introductory provisions.

Subsec. (b)(2). Pub. L. 105–33, § 5534(b)(2), inserted ''or visitation'' after ''custody''.

Subsec. (c). Pub. L. 105–33, § 5534(b)(5), struck out ''noncustodial'' before ''parent''.

Subsec. (d)(1). Pub. L. 105–33, § 5534(b)(3)(A), inserted ''or visitation'' before ''determination''.

Subsec. (d)(2)(A), (B). Pub. L. 105–33, § 5534(b)(3)(B), inserted ''or visitation'' after ''custody''.

Subsec. (f)(2). Pub. L. 105–33, § 5534(b)(4), inserted ''or visitation'' after ''custody''.

1996—Subsec. (a). Pub. L. 104–193, §§316(e)(1), 395(d)(1)(G), inserted ''Federal'' before ''Parent Locator Service'' and substituted ''noncustodial parent'' for ''absent parent''.

Subsecs. (b), (c). Pub. L. 104–193, §395(d)(1)(G), substituted ''noncustodial parent'' for ''absent parent''.

Subsecs. (e), (f). Pub. L. 104–193, §316(e)(1), inserted ''Federal'' before ''Parent Locator Service'' wherever appearing.

1994—Subsec. (c). Pub. L. 103–432, §214(b), substituted ''subsection (a), (b), (e), or (f) of this section'' for ''subsection (a), (b), or (e) of this section''.

Subsec. (f). Pub. L. 103–432, §214(a), added subsec. (f).

1988—Subsec. (b). Pub. L. 100–300, §11(1), substituted ''under subsection (a) of this section'' for ''under this section''.

Subsec. (c). Pub. L. 100–300, §11(2), substituted ''under subsection (a), (b), or (e) of this section'' for ''under this section''.

Subsec. (e). Pub. L. 100–300, §11(3), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 214(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1995.''

EFFECTIVE DATE

Section 9(d) of Pub. L. 96–611 provided that: ''No agreement entered into under section 463 of the Social Security Act [this section] shall become effective before the date on which section 1738A of title 28, United States Code (as added by this title [probably should be ''as added by section 8(a) of this Act'']) becomes effective.''

§664. Collection of past-due support from Federal tax refunds

(a) Procedures applicable; distribution

(1) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which has been assigned to such State pursuant to section 608(a)(3) or section 671(a)(17) of this title, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to the past-due support, shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay such amount to the State agency (together with notice of the individual's home address) for distribution in accordance with section 657 of this title. This subsection may be executed by the disbursing official of the Department of the Treasury.

(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which such State has agreed to collect under section 654(4)(A)(ii) of this title, and that the State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed in accordance with section 657 of this title. This subsection may be executed by the Secretary of the Department of the Treasury or his designee.

(B) This paragraph shall apply only with respect to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1985.

(3)(A) Prior to notifying the Secretary of the Treasury under paragraph (1) or (2) that an individual owes past-due support, the State shall send notice to such individual that a withholding will be made from any refund otherwise payable to such individual. The notice shall also (i) instruct the individual owing the past-due support of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support, and (ii) provide information, as may be prescribed by the Secretary of Health and Human Services by regulation in consultation with the Secretary of the Treasury, with respect to procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(B) If the Secretary of the Treasury determines that an amount should be withheld under paragraph (1) or (2), and that the refund from which it should be withheld is based upon a joint return, the Secretary of the Treasury shall notify the State that the withholding is being made from a refund based upon a joint return, and shall furnish to the State the names and addresses of each taxpayer filing such joint return. In the case of a withholding under paragraph (2), the State may delay distribution of the amount withheld until the State has been notified by the Secretary of the Treasury that the other person filing the joint return has received his or her proper share of the refund, but such delay may not exceed six months.

(C) If the other person filing the joint return with the named individual owing the past-due support takes appropriate action to secure his or her proper share of a refund from which a withholding was made under paragraph (1) or (2), the Secretary of the Treasury shall pay such share to such other person. The Secretary of the Treasury shall deduct the amount of such payment from amounts subsequently payable to the State agency to which the amount originally withheld from such refund was paid.

(D) In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).

(b) Regulations; contents, etc.

(1) The Secretary of the Treasury shall issue regulations, approved by the Secretary of Health and Human Services, prescribing the time or times at which States must submit notices of past-due support, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify the minimum amount of past-due support to which the offset procedure established by subsection (a) of this section may be applied, and the fee that a State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure, and shall provide that the Secretary of the Treasury will advise the Secretary of Health and Human Services, not less frequently than annually, of the States which have furnished notices of past-due support under subsection (a) of this section, the number of cases in each State with respect to which such notices have been furnished, the amount of support sought to be collected under this subsection by each State, and the amount of such collections actually made in the case of each State. Any fee paid to the Secretary of the Treasury pursuant to this subsection may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(2) In the case of withholdings made under subsection (a)(2) of this section, the regulations promulgated pursuant to this subsection shall include the following requirements:

(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than $500. The State may limit the $500 threshold amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and may limit the application of the withholding to past-due support accrued since such time.

(B) The fee which the Secretary of the Treasury may impose to cover the costs of the withholding and notification may not exceed $25 per case submitted.

(c) "Past-due support" defined

In this part the term ''past-due support'' means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child (whether or not a minor), or of a child (whether or not a minor) and the parent with whom the child is living.

(Aug. 14, 1935, ch. 531, title IV, § 464, as added Pub. L. 97–35, title XXIII, § 2331(a), Aug. 13, 1981, 95 Stat. 860; amended Pub. L. 98–378, §§ 11(d), 21(a)–(c), Aug. 16, 1984, 98 Stat. 1318, 1322–1324; Pub. L. 99–514, § 2, title XVIII, § 1883(b)(8), Oct. 22, 1986, 100 Stat. 2095, 2917; Pub. L. 101–508, title V, § 5011(a), (b), Nov. 5, 1990, 104 Stat. 1388–220; Pub. L. 104–134, title III, § 31001(v)(2), Apr. 26, 1996, 110 Stat. 1321–375; Pub. L. 104–193, title III, § 302(b)(1), Aug. 22, 1996, 110 Stat. 2204; Pub. L. 105–33, title V, §§ 5513(a)(4), 5531(b), 5532(i)(1), Aug. 5, 1997, 111 Stat. 620, 626, 627; Pub. L. 109–171, title VII, § 7301(f)(1), Feb. 8, 2006, 120 Stat. 144.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2006—Subsec. (a)(2)(A). Pub. L. 109–171, § 7301(f)(1)(A), struck out ''(as that term is defined for purposes of this paragraph under subsection (c) of this section)'' after ''owes past-due support''.

Subsec. (c). Pub. L. 109–171, § 7301(f)(1)(B), substituted ''In this part'' for ''(1) Except as provided in paragraph (2), as used in this part'', inserted ''(whether or not a minor)'' after ''a child'' in two places, and struck out pars. (2) and (3) defining ''past-due support'' and ''qualified child'', respectively.

1997—Subsec. (a)(1). Pub. L. 105–33, § 5513(a)(4), substituted ''section 608(a)(3)'' for ''section 602(a)(26)''.

Subsec. (a)(2)(A). Pub. L. 105–33, § 5531(b), substituted ''section 654(4)(A)(ii)'' for ''section 654(6)'' in first sentence.

Pub. L. 105–33, § 5532(i)(1), inserted ''in accordance with section 657 of this title'' after ''owed'' in penultimate sentence.

1996—Subsec. (a)(1). Pub. L. 104–134, § 31001(v)(2)(1), inserted at end ''This subsection may be executed by the disbursing official of the Department of the Treasury.''

Pub. L. 104–193 substituted ''section 657'' for ''section 657(b)(4) or (d)(3)''.

Subsec. (a)(2)(A). Pub. L. 104–134, § 31001(v)(2)(2), inserted at end ''This subsection may be executed by the Secretary of the Department of the Treasury or his designee.''

1990—Subsec. (a)(2)(B). Pub. L. 101–508, § 5011(a), struck out '', and before January 1, 1991'' after ''1985''.

Subsec. (c)(2). Pub. L. 101–508, § 5011(b)(1), substituted ''qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent)'' for ''minor child''.

Subsec. (c)(3). Pub. L. 101–508, § 5011(b)(2), added par. (3).

1986—Subsec. (a)(2)(B). Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(2)(A). Pub. L. 99–514, § 1883(b)(8), substituted ''threshold'' for ''threshhold''.

1984—Subsec. (a). Pub. L. 98–378, § 21(a), (b)(1), designated existing provisions as par. (1), substituted ''shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay'' for ''and pay'', and added pars. (2) and (3).

Pub. L. 98–378, § 11(d), inserted ''or section 671(a)(17)'' and substituted ''section 657(b)(4) or (d)(3)'' for ''section 657(b)(3)''.

Subsec. (b)(1). Pub. L. 98–378, § 21(b)(2), designated existing provisions as par. (1), substituted ''The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify'' for ''The regulations shall specify'', substituted ''and shall provide'' for ''and provide'', inserted provision that any fee paid to the Secretary of the Treasury pursuant to subsec. (b) may be used to reimburse appropriations which bore all or part of the cost of applying such procedure, and added par. (2).

Subsec. (c)(1). Pub. L. 98–378, § 21(c), designated existing provisions as par. (1), inserted reference to par. (2), and added par. (2).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VII, § 7301(f)(2), Feb. 8, 2006, 120 Stat. 145, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 2007.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5513(a)(4) of Pub. L. 105–33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105–33, set out as a note under section 652 of this title.

Amendment by sections 5531(b) and 5532(i)(1) of Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, or earlier at the State's option, see section 302(c) of Pub. L. 104–193, set out as a note under section 657 of this title.

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5011(c) of Pub. L. 101–508 provided that: ''The amendments made by subsection (b) [amending this section] shall take effect on January 1, 1991.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 11(d) of Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

Amendment by section 21(a)–(c) of Pub. L. 98–378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98–378, set out as a note under section 6103 of Title 26.

EFFECTIVE DATE

Section effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 651 of this title.

§ 665. Allotments from pay for child and spousal support owed by members of uniformed services on active duty

(a) Mandatory allotment; notice upon failure to make; amount of allotment; adjustment or discontinuance; consultation

(1) In any case in which child support payments or child and spousal support payments are owed by a member of one of the uniformed services (as defined in section 101(3) of title 37) on active duty, such member shall be required to make allotments from his pay and allowances (under chapter 13 of title 37) as payment of such support, when he has failed to make periodic payments under a support order that meets the criteria specified in section 1673(b)(1)(A) of title 15 and the resulting delinquency in such payments is in a total amount equal to the support payable for two months or longer. Failure to make such payments shall be established by notice from an authorized person (as defined in subsection (b) of this section) to the designated official in the appropriate uniformed service. Such notice (which shall in turn be given to the affected member) shall also specify the person to whom the allotment is to be payable. The amount of the allotment shall be the amount necessary to comply with the order (which, if the order so provides, may include arrearages as well as amounts for current support), except that the amount of the allotment, together with any other amounts withheld for support from the wages of the member, as a percentage of his pay from the uniformed service, shall not exceed the limits prescribed in sections[1] 1673(b) and (c) of title 15. An allotment under this subsection shall be adjusted or discontinued upon notice from the authorized person.

(2) Notwithstanding the preceding provisions of this subsection, no action shall be taken to require an allotment from the pay and allowances of any member of one of the uniformed services under such provisions (A) until such member has had a consultation with a judge advocate of the service involved (as defined in section 801(13) of title 10), or with a judge advocate (as defined in section 801(11)[2] of such title) in the case of the Coast Guard, or with a legal officer designated by the Secretary concerned (as defined in section 101(5) of title 37) in any other case, in person, to discuss the legal and other factors involved with respect to the member's support obligation and his failure to make payments thereon, or (B) until 30 days have elapsed after the notice described in the second sentence of paragraph (1) is given to the affected member in any case where it has not been possible, despite continuing good faith efforts, to arrange such a consultation.

(b) "Authorized person" defined

For purposes of this section the term ''authorized person'' with respect to any member of the uniformed services means—

(1) any agent or attorney of a State having in effect a plan approved under this part who has the duty or authority under such plan to

[1] So in original. Probably should be ''section''.

[2] See References in Text note below.

seek to recover any amounts owed by such member as child or child and spousal support (including, when authorized under the State plan, any official of a political subdivision); and

(2) the court which has authority to issue an order against such member for the support and maintenance of a child, or any agent of such court.

(c) Regulations

The Secretary of Defense, in the case of the Army, Navy, Air Force, and Marine Corps, and the Secretary concerned (as defined in section 101(5) of title 37) in the case of each of the other uniformed services, shall each issue regulations applicable to allotments to be made under this section, designating the officials to whom notice of failure to make support payments, or notice to discontinue or adjust an allotment, should be given, prescribing the form and content of the notice and specifying any other rules necessary for such Secretary to implement this section.

(Aug. 14, 1935, ch. 531, title IV, § 465, as added Pub. L. 97–248, title I, § 172(a), Sept. 3, 1982, 96 Stat. 401; amended Pub. L. 109–241, title II, § 218(b)(2), July 11, 2006, 120 Stat. 526.)

REFERENCES IN TEXT

Section 801(11) of title 10, referred to in subsec. (a)(2), was repealed by Pub. L. 109–241, title II, § 218(a)(1), July 11, 2006, 120 Stat. 526. However, ''judge advocate'' is defined elsewhere in that section.

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–241 substituted ''judge advocate'' for ''law specialist''.

EFFECTIVE DATE

Section 172(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective on October 1, 1982.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

(1)(A) Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

(B) Procedures under which the income of a person with a support obligation imposed by a support order issued (or modified) in the State before January 1, 1994, if not otherwise subject to withholding under subsection (b) of this section, shall become subject to withholding as provided in subsection (b) of this section if arrearages occur, without the need for a judicial or administrative hearing.

(2) Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement or paternity establishment within the political subdivision (in accordance with the general rule for exemptions under subsection (d) of this section).

(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

(A) any refund of State income tax which would otherwise be payable to a noncustodial parent will be reduced, after notice has been sent to that noncustodial parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such noncustodial parent;

(B) the amount by which such refund is reduced shall be distributed in accordance with section 657 of this title in the case of overdue support assigned to a State pursuant to section 608(a)(3) or 671(a)(17) of this title, or, in any other case, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

(C) notice of the noncustodial parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

(4) LIENS.—Procedures under which—

(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and

(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, when the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

(5) PROCEDURES CONCERNING PATERNITY ESTABLISHMENT.—

(A) ESTABLISHMENT PROCESS AVAILABLE FROM BIRTH UNTIL AGE 18.—

(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) PROCEDURES CONCERNING GENETIC TESTING.—

(i) GENETIC TESTING REQUIRED IN CERTAIN CONTESTED CASES.—Procedures under which the State is required, in a contested paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 654(29) of this title to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party—

(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(ii) OTHER REQUIREMENTS.—Procedures which require the State agency, in any case in which the agency orders genetic testing—

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

(C) VOLUNTARY PATERNITY ACKNOWLEDGMENT.—

(i) SIMPLE CIVIL PROCESS.—Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally, or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

(ii) HOSPITAL-BASED PROGRAM.—Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.

(iii) PATERNITY ESTABLISHMENT SERVICES.—

(I) STATE-OFFERED SERVICES.—Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

(II) REGULATIONS.—

(aa) SERVICES OFFERED BY HOSPITALS AND BIRTH RECORD AGENCIES.—The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies.

(bb) SERVICES OFFERED BY OTHER ENTITIES.—The Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services, which shall include a requirement that such an entity must use the same notice provisions used by, use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as the provision of such services is evaluated by, voluntary paternity establishment programs of hospitals and birth record agencies.

(iv) USE OF PATERNITY ACKNOWLEDGMENT AFFIDAVIT.—Such procedures must require the State to develop and use an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit specified by the Secretary under section 652(a)(7) of this title for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State according to its procedures.

(D) STATUS OF SIGNED PATERNITY ACKNOWLEDGMENT.—

(i) INCLUSION IN BIRTH RECORDS.—Procedures under which the name of the father shall be included on the record of birth of the child of unmarried parents only if—

(I) the father and mother have signed a voluntary acknowledgment of paternity; or

(II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Nothing in this clause shall preclude a State agency from obtaining an admission of paternity from the father for submission in a judicial or administrative proceeding, or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal finding of paternity on an admission of paternity by the father and any other additional showing required by State law.

(ii) LEGAL FINDING OF PATERNITY.—Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of—

(I) 60 days; or

(II) the date of an administrative or judicial proceeding relating to the child

(including a proceeding to establish a support order) in which the signatory is a party.

(iii) CONTEST.—Procedures under which, after the 60-day period referred to in clause (ii), a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

(E) BAR ON ACKNOWLEDGMENT RATIFICATION PROCEEDINGS.—Procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

(F) ADMISSIBILITY OF GENETIC TESTING RESULTS.—Procedures—

(i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is—

(I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and

(II) performed by a laboratory approved by such an accreditation body;

(ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and

(iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

(G) PRESUMPTION OF PATERNITY IN CERTAIN CASES.—Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(H) DEFAULT ORDERS.—Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

(I) NO RIGHT TO JURY TRIAL.—Procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury.

(J) TEMPORARY SUPPORT ORDER BASED ON PROBABLE PATERNITY IN CONTESTED CASES.—Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

(K) PROOF OF CERTAIN SUPPORT AND PATERNITY ESTABLISHMENT COSTS.—Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

(L) STANDING OF PUTATIVE FATHERS.—Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.

(M) FILING OF ACKNOWLEDGMENTS AND ADJUDICATIONS IN STATE REGISTRY OF BIRTH RECORDS.—Procedures under which voluntary acknowledgments and adjudications of paternity by judicial or administrative processes are filed with the State registry of birth records for comparison with information in the State case registry.

(6) Procedures which require that a noncustodial parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such noncustodial parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) REPORTING ARREARAGES TO CREDIT BUREAUS.—

(A) IN GENERAL.—Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

(B) SAFEGUARDS.—Procedures ensuring that, in carrying out subparagraph (A), information with respect to a noncustodial parent is reported—

(i) only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information; and

(ii) only to an entity that has furnished evidence satisfactory to the State that the entity is a consumer reporting agency (as so defined).

(8)(A) Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

(i) The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative

process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(ii) The requirements of subsection (b)(1) of this section (which shall apply in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b) of this section, where applicable.

(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

(10) REVIEW AND ADJUSTMENT OF SUPPORT ORDERS UPON REQUEST.—

(A) 3-YEAR CYCLE.—

(i) IN GENERAL.—Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request of either parent or if there is an assignment under part A of this subchapter, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved—

(I) review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(II) apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(III) use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(ii) OPPORTUNITY TO REQUEST REVIEW OF ADJUSTMENT.—If the State elects to conduct the review under subclause (II) or (III) of clause (i), procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 667(a) of this title.

(iii) NO PROOF OF CHANGE IN CIRCUMSTANCES NECESSARY IN 3-YEAR CYCLE REVIEW.—Procedures which provide that any adjustment under clause (i) shall be made without a requirement for proof or showing of a change in circumstances.

(B) PROOF OF SUBSTANTIAL CHANGE IN CIRCUMSTANCES NECESSARY IN REQUEST FOR REVIEW OUTSIDE 3-YEAR CYCLE.—Procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under clause (i), the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title.

(C) NOTICE OF RIGHT TO REVIEW.—Procedures which require the State to provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The notice may be included in the order.

(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

(12) LOCATOR INFORMATION FROM INTERSTATE NETWORKS.—Procedures to ensure that all Federal and State agencies conducting activities under this part have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.

(13) RECORDING OF SOCIAL SECURITY NUMBERS IN CERTAIN FAMILY MATTERS.—Procedures requiring that the social security number of—

(A) any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application;

(B) any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment be placed in the records relating to the matter; and

(C) any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

For purposes of subparagraph (A), if a State allows the use of a number other than the so-

cial security number to be used on the face of the document while the social security number is kept on file at the agency, the State shall so advise any applicants.

(14) HIGH-VOLUME, AUTOMATED ADMINISTRATIVE ENFORCEMENT IN INTERSTATE CASES.—

(A) IN GENERAL.—Procedures under which—

(i) the State shall use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another State to enforce support orders, and shall promptly report the results of such enforcement procedure to the requesting State;

(ii) the State may, by electronic or other means, transmit to another State a request for assistance in enforcing support orders through high-volume, automated administrative enforcement, which request—

(I) shall include such information as will enable the State to which the request is transmitted to compare the information about the cases to the information in the data bases of the State; and

(II) shall constitute a certification by the requesting State—

(aa) of the amount of support under an order the payment of which is in arrears; and

(bb) that the requesting State has complied with all procedural due process requirements applicable to each case;

(iii) if the State provides assistance to another State pursuant to this paragraph with respect to a case, neither State shall consider the case to be transferred to the caseload of such other State (but the assisting State may establish a corresponding case based on such other State's request for assistance); and

(iv) the State shall maintain records of—

(I) the number of such requests for assistance received by the State;

(II) the number of cases for which the State collected support in response to such a request; and

(III) the amount of such collected support.

(B) HIGH-VOLUME AUTOMATED ADMINISTRATIVE ENFORCEMENT.—In this part, the term ''high-volume automated administrative enforcement'', in interstate cases, means, on request of another State, the identification by a State, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other States, and the seizure of such assets by the State, through levy or other appropriate processes.

(15) PROCEDURES TO ENSURE THAT PERSONS OWING OVERDUE SUPPORT WORK OR HAVE A PLAN FOR PAYMENT OF SUCH SUPPORT.—Procedures under which the State has the authority, in any case in which an individual owes overdue support with respect to a child receiving assistance under a State program funded under part A of this subchapter, to issue an order or to request that a court or an administrative process established pursuant to State law issue an order that requires the individual to—

(A) pay such support in accordance with a plan approved by the court, or, at the option of the State, a plan approved by the State agency administering the State program under this part; or

(B) if the individual is subject to such a plan and is not incapacitated, participate in such work activities (as defined in section 607(d) of this title) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.

(16) AUTHORITY TO WITHHOLD OR SUSPEND LICENSES.—Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

(17) FINANCIAL INSTITUTION DATA MATCHES.—

(A) IN GENERAL.—Procedures under which the State agency shall enter into agreements with financial institutions doing business in the State—

(i) to develop and operate, in coordination with such financial institutions, and the Federal Parent Locator Service in the case of financial institutions doing business in two or more States, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number; and

(ii) in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien pursuant to paragraph (4).

(B) REASONABLE FEES.—The State agency may pay a reasonable fee to a financial institution for conducting the data match provided for in subparagraph (A)(i), not to exceed the actual costs incurred by such financial institution.

(C) LIABILITY.—A financial institution shall not be liable under any Federal or State law to any person—

(i) for any disclosure of information to the State agency under subparagraph (A)(i);

(ii) for encumbering or surrendering any assets held by such financial institution in

response to a notice of lien or levy issued by the State agency as provided for in subparagraph (A)(ii); or

(iii) for any other action taken in good faith to comply with the requirements of subparagraph (A).

(D) DEFINITIONS.—For purposes of this paragraph—

(i) FINANCIAL INSTITUTION.—The term ''financial institution'' has the meaning given to such term by section 669A(d)(1) of this title.

(ii) ACCOUNT.—The term ''account'' means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(18) ENFORCEMENT OF ORDERS AGAINST PATERNAL OR MATERNAL GRANDPARENTS.—Procedures under which, at the State's option, any child support order enforced under this part with respect to a child of minor parents, if the custodial parent of such child is receiving assistance under the State program under part A of this subchapter, shall be enforceable, jointly and severally, against the parents of the noncustodial parent of such child.

(19) HEALTH CARE COVERAGE.—Procedures under which—

(A) effective as provided in section 401(c)(3) of the Child Support Performance and Incentive Act of 1998, all child support orders enforced pursuant to this part shall include a provision for medical support for the child to be provided by either or both parents, and shall be enforced, where appropriate, through the use of the National Medical Support Notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 (and referred to in section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1169(a)(5)(C)] in connection with group health plans covered under title I of such Act [29 U.S.C. 1001 et seq.], in section 401(e) of the Child Support Performance and Incentive Act of 1998 in connection with State or local group health plans, and in section 401(f) of such Act in connection with church group health plans);

(B) unless alternative coverage is allowed for in any order of the court (or other entity issuing the child support order), in any case in which a parent is required under the child support order to provide such health care coverage and the employer of such parent is known to the State agency—

(i) the State agency uses the National Medical Support Notice to transfer notice of the provision for the health care coverage of the child to the employer;

(ii) within 20 business days after the date of the National Medical Support Notice, the employer is required to transfer the Notice, excluding the severable employer withholding notice described in section 401(b)(2)(C) of the Child Support Performance and Incentive Act of 1998, to the appropriate plan providing any such health care coverage for which the child is eligible;

(iii) in any case in which the parent is a newly hired employee entered in the State Directory of New Hires pursuant to section 653a(e) of this title, the State agency provides, where appropriate, the National Medical Support Notice, together with an income withholding notice issued pursuant to subsection (b), within two days after the date of the entry of such employee in such Directory; and

(iv) in any case in which the employment of the parent with any employer who has received a National Medical Support Notice is terminated, such employer is required to notify the State agency of such termination; and

(C) any liability of the obligated parent to such plan for employee contributions which are required under such plan for enrollment of the child is effectively subject to appropriate enforcement, unless the obligated parent contests such enforcement based on a mistake of fact.

Notwithstanding section 654(20)(B) of this title, the procedures which are required under paragraphs (3), (4), (6), (7), and (15) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the noncustodial parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

(b) Withholding from income of amounts payable as support

The procedures referred to in subsection (a)(1)(A) of this section (relating to the withholding from income of amounts payable as support) must provide for the following:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's income must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 1673(b) of title 15. If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for assistance under a State program funded under part A of this subchapter) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services

under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

(3)(A) The income of a noncustodial parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after October 13, 1988, on the effective date of the order; except that such income shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

(B) The income of a noncustodial parent shall become subject to such withholding, in the case of income not subject to withholding under subparagraph (A), on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

(i) the date as of which the noncustodial parent requests that such withholding begin,

(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

(iii) such earlier date as the State may select.

(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent to whom paragraph (1) applies—

(i) that the withholding has commenced; and

(ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact.

(B) The notice under subparagraph (A) of this paragraph shall include the information provided to the employer under paragraph (6)(A).

(5) Such withholding must be administered by the State through the State disbursement unit established pursuant to section 654b of this title, in accordance with the requirements of section 654b of this title.

(6)(A)(i) The employer of any noncustodial parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such noncustodial parent's income the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the State disbursement unit within 7 business days after the date the amount would (but for this subsection) have been paid or credited to the employee, for distribution in accordance with this part. The employer shall withhold funds as directed in the notice, except that when an employer receives an income withholding order issued by another State, the employer shall apply the income withholding law of the State of the obligor's principal place of employment in determining—

(I) the employer's fee for processing an income withholding order;

(II) the maximum amount permitted to be withheld from the obligor's income;

(III) the time periods within which the employer must implement the income withholding order and forward the child support payment;

(IV) the priorities for withholding and allocating income withheld for multiple child support obligees; and

(V) any withholding terms or conditions not specified in the order.

An employer who complies with an income withholding notice that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

(ii) The notice given to the employer shall be in a standard format prescribed by the Secretary, and contain only such information as may be necessary for the employer to comply with the withholding order.

(iii) As used in this subparagraph, the term ''business day'' means a day on which State offices are open for regular business.

(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from income due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against any employer who—

(i) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer; or

(ii) fails to withhold support from income or to pay such amounts to the State dis-

bursement unit in accordance with this subsection.

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same income.

(8) For purposes of subsection (a) of this section and this subsection, the term ''income'' means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest.

(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by noncustodial parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

(10) Provision must be made for terminating withholding.

(11) Procedures under which the agency administering the State plan approved under this part may execute a withholding order without advance notice to the obligor, including issuing the withholding order through electronic means.

(c) Expedited procedures

The procedures specified in this subsection are the following:

(1) Administrative action by State agency

Procedures which give the State agency the authority to take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States to take the following actions:

(A) Genetic testing

To order genetic testing for the purpose of paternity establishment as provided in subsection (a)(5) of this section.

(B) Financial or other information

To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to respond to such a subpoena.

(C) Response to State agency request

To require all entities in the State (including for-profit, nonprofit, and governmental employers) to provide promptly, in response to a request by the State agency of that or any other State administering a program under this part, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, and to sanction failure to respond to any such request.

(D) Access to information contained in certain records

To obtain access, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated data bases):

(i) Records of other State and local government agencies, including—

(I) vital statistics (including records of marriage, birth, and divorce);

(II) State and local tax and revenue records (including information on residence address, employer, income and assets);

(III) records concerning real and titled personal property;

(IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

(V) employment security records;

(VI) records of agencies administering public assistance programs;

(VII) records of the motor vehicle department; and

(VIII) corrections records.

(ii) Certain records held by private entities with respect to individuals who owe or are owed support (or against or with respect to whom a support obligation is sought), consisting of—

(I) the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized by subparagraph (B); and

(II) information (including information on assets and liabilities) on such individuals held by financial institutions.

(E) Change in payee

In cases in which support is subject to an assignment in order to comply with a requirement imposed pursuant to part A of this subchapter, part E of this subchapter, or section 1396k of this title, or to a requirement to pay through the State disbursement unit established pursuant to section 654b of this title, upon providing notice to obligor and obligee, to direct the obligor or other payor to change the payee to the appropriate government entity.

(F) Income withholding

To order income withholding in accordance with subsections (a)(1)(A) and (b) of this section.

(G) Securing assets

In cases in which there is a support arrearage, to secure assets to satisfy any current support obligation and the arrearage by—

(i) intercepting or seizing periodic or lump-sum payments from—

(I) a State or local agency, including unemployment compensation, workers' compensation, and other benefits; and

(II) judgments, settlements, and lotteries;

(ii) attaching and seizing assets of the obligor held in financial institutions;

(iii) attaching public and private retirement funds; and

(iv) imposing liens in accordance with subsection (a)(4) of this section and, in appropriate cases, to force sale of property and distribution of proceeds.

(H) Increase monthly payments

For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts for arrearages, subject to such conditions or limitations as the State may provide.

Such procedures shall be subject to due process safeguards, including (as appropriate) requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.

(2) Substantive and procedural rules

The expedited procedures required under subsection (a)(2) of this section shall include the following rules and authority, applicable with respect to all proceedings to establish paternity or to establish, modify, or enforce support orders:

(A) Locator information; presumptions concerning notice

Procedures under which—

(i) each party to any paternity or child support proceeding is required (subject to privacy safeguards) to file with the State case registry upon entry of an order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of employer; and

(ii) in any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the court or administrative agency of competent jurisdiction shall deem State due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the State case registry pursuant to clause (i).

(B) Statewide jurisdiction

Procedures under which—

(i) the State agency and any administrative or judicial tribunal with authority to hear child support and paternity cases exerts statewide jurisdiction over the parties; and

(ii) in a State in which orders are issued by courts or administrative tribunals, a case may be transferred between local jurisdictions in the State without need for any additional filing by the petitioner, or service of process upon the respondent, to retain jurisdiction over the parties.

(3) Coordination with ERISA

Notwithstanding subsection (d) of section 514 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1144(d)] (relating to effect on other laws), nothing in this subsection shall be construed to alter, amend, modify, invalidate, impair, or supersede subsections (a), (b), and (c) of such section 514 [29 U.S.C. 1144(a)–(c)] as it applies with respect to any procedure referred to in paragraph (1) and any expedited procedure referred to in paragraph (2), except to the extent that such procedure would be consistent with the requirements of section 206(d)(3) of such Act [29 U.S.C. 1056(d)(3)] (relating to qualified domestic relations orders) or the requirements of section 609(a) of such Act [29 U.S.C. 1169(a)] (relating to qualified medical child support orders) if the reference in such section 206(d)(3) to a domestic relations order and the reference in such section 609(a) to a medical child support order were a reference to a support order referred to in paragraphs (1) and (2) relating to the same matters, respectively.

(d) Exemption of States

If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

(e) "Overdue support" defined

For purposes of this section, the term ''overdue support'' means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the noncustodial parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of section 654(4) of this title. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section.

(f) Uniform Interstate Family Support Act

In order to satisfy section 654(20)(A) of this title, on and after January 1, 1998, each State

must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws.

(g) Laws voiding fraudulent transfers

In order to satisfy section 654(20)(A) of this title, each State must have in effect—

(1)(A) the Uniform Fraudulent Conveyance Act of 1981;

(B) the Uniform Fraudulent Transfer Act of 1984; or

(C) another law, specifying indicia of fraud which create a prima facie case that a debtor transferred income or property to avoid payment to a child support creditor, which the Secretary finds affords comparable rights to child support creditors; and

(2) procedures under which, in any case in which the State knows of a transfer by a child support debtor with respect to which such a prima facie case is established, the State must—

(A) seek to void such transfer; or

(B) obtain a settlement in the best interests of the child support creditor.

(Aug. 14, 1935, ch. 531, title IV, § 466, as added Pub. L. 98–378, § 3(b), Aug. 16, 1984, 98 Stat. 1306; amended Pub. L. 99–509, title IX, § 9103(a), Oct. 21, 1986, 100 Stat. 1973; Pub. L. 100–485, title I, §§ 101(a), (b), 103(c), 111(b), (e), Oct. 13, 1988, 102 Stat. 2344–2346, 2349, 2350; Pub. L. 100–647, title VIII, § 8105(4), Nov. 10, 1988, 102 Stat. 3797; Pub. L. 103–66, title XIII, § 13721(b), Aug. 10, 1993, 107 Stat. 659; Pub. L. 103–432, title II, § 212(a), Oct. 31, 1994, 108 Stat. 4460; Pub. L. 104–193, title I, § 108(c)(14), (15), title III, §§ 301(c)(3), (4), 314, 315, 317, 321, 323, 325(a), 331(a), 351, 364, 365, 367–369, 372, 373, 382, 395(d)(1)(H), (2)(D), Aug. 22, 1996, 110 Stat. 2166, 2200, 2212, 2214, 2220–2222, 2224, 2227, 2239, 2249–2251, 2254, 2255, 2257, 2259, 2260; Pub. L. 105–33, title V, §§ 5532(i)(2), 5536–5539, 5544, 5550(a), 5551, 5556(a), (e), Aug. 5, 1997, 111 Stat. 627, 629–631, 633, 634, 637; Pub. L. 105–200, title IV, §§ 401(c)(1), 404(a), 406(a), July 16, 1998, 112 Stat. 661, 671; Pub. L. 106–169, title IV, § 401(f), (m), (n), Dec. 14, 1999, 113 Stat. 1858, 1859; Pub. L. 109–171, title VII, §§ 7301(g), 7302(a), 7307(a)(1), (2)(A)(ii), Feb. 8, 2006, 120 Stat. 145, 146.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in subsecs. (a)(10)(A)(i), (15), (18), (b)(2), and (c)(1)(E), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

Sections 401(b) and 401(c)(3) of the Child Support Performance and Incentive Act of 1998, Pub. L. 105–200, referred to in subsec. (a)(19)(A), (B)(ii), are set out as notes under sections 651 and 652 of this title, respectively. Sections 401(e) and 401(f) of the Act, referred to in subsec. (a)(19)(A), are set out in a note under section 1169 of Title 29, Labor.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(19)(A), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title I of the Act is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

CODIFICATION

October 13, 1988, referred to in subsec. (b)(3)(A), was in the original ''the date of enactment of this paragraph'', which was translated as meaning the date of enactment of Pub. L. 100–485, which amended par. (3) of this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2006—Subsec. (a)(10)(A)(i). Pub. L. 109–171, § 7302(a), in introductory provisions, substituted ''parent or'' for ''parent, or,'' and struck out ''upon the request of the State agency under the State plan or of either parent,'' after ''under part A of this subchapter,''.

Subsec. (a)(14)(A)(iii). Pub. L. 109–171, § 7301(g), inserted ''(but the assisting State may establish a corresponding case based on such other State's request for assistance)'' before semicolon.

Subsec. (a)(19)(A). Pub. L. 109–171, § 7307(a)(1), (2)(A)(ii)(I), substituted ''shall include a provision for medical support for the child to be provided by either or both parents, and shall be enforced'' for ''which include a provision for the health care coverage of the child are enforced'', ''section 401(e)'' for ''section 401(e)(3)(C)'', and ''section 401(f)'' for ''section 401(f)(5)(C)''.

Subsec. (a)(19)(B). Pub. L. 109–171, § 7307(a)(2)(A)(ii)(II)(aa), struck out ''noncustodial'' before ''parent'' in two places in introductory provisions.

Subsec. (a)(19)(B)(iii). Pub. L. 109–171, § 7307(a)(2)(A)(ii)(II)(bb), made technical amendment to reference in original act which appears in text as reference to subsection (b).

Pub. L. 109–171, § 7307(a)(2)(A)(ii)(II)(aa), struck out ''noncustodial'' before ''parent''.

Subsec. (a)(19)(B)(iv). Pub. L. 109–171, § 7307(a)(2)(A)(ii)(II)(aa), struck out ''noncustodial'' before ''parent''.

Subsec. (a)(19)(C). Pub. L. 109–171, § 7307(a)(2)(A)(ii)(III), substituted ''obligated'' for ''noncustodial'' in two places.

1999—Subsec. (a)(7)(A). Pub. L. 106–169, § 401(m), substituted ''1681a(f) of title 15)'' for ''1681a(f) of title 15''.

Subsec. (b)(6)(A)(i). Pub. L. 106–169, § 401(n), substituted ''State of the obligor's'' for ''state of the obligor's'' in introductory provisions.

Subsec. (c)(2)(A)(i). Pub. L. 106–169, § 401(f), substituted ''social security'' for ''Social Security''.

1998—Subsec. (a)(14)(B). Pub. L. 105–200, § 404(a), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''In this part, the term 'high-volume automated administrative enforcement' means the use of automatic data processing to search various State data bases, including license records, employment service data, and State new hire registries, to determine whether information is available regarding a parent who owes a child support obligation.''

Subsec. (a)(17)(A)(i). Pub. L. 105–200, § 406(a), inserted ''and the Federal Parent Locator Service in the case of financial institutions doing business in two or more States,'' before ''a data match system''.

Subsec. (a)(19). Pub. L. 105–200, § 401(c)(1), amended heading and text of par. (19) generally. Prior to amendment, text read as follows: ''Procedures under which all child support orders enforced pursuant to this part shall include a provision for the health care coverage of the child, and in the case in which a noncustodial parent provides such coverage and changes employment, and the new employer provides health care coverage, the State agency shall transfer notice of the provision to the employer, which notice shall operate to enroll the child in the noncustodial parent's health plan, unless the noncustodial parent contests the notice.''

1997—Subsec. (a)(1)(B). Pub. L. 105–33, § 5556(e), substituted ''January 1, 1994'' for ''October 1, 1996''.

Subsec. (a)(3)(B). Pub. L. 105–33, § 5532(i)(2), substituted ''section 657'' for ''section 657(b)(4) or (d)(3)''.

Subsec. (a)(5)(C)(i). Pub. L. 105–33, § 5539, inserted '', or through the use of video or audio equipment,'' after ''orally''.

Subsec. (a)(13). Pub. L. 105–33, § 5536(2), inserted ''to be used on the face of the document while the social security number is kept on file at the agency'' after ''other than the social security number'' in concluding provisions.

Subsec. (a)(13)(A). Pub. L. 105–33, § 5536(1)(B), inserted ''recreational license,'' after ''occupational license,''.

Pub. L. 105–33, § 5536(1)(A), struck out ''commercial'' before ''driver's license''.

Subsec. (a)(14). Pub. L. 105–33, § 5550(a), amended heading and text of par. (14) generally. Prior to amendment, text consisted of subpars. (A) to (D) relating to administrative enforcement in interstate cases.

Subsec. (a)(15). Pub. L. 105–33, § 5551, amended heading and text of par. (15) generally. Prior to amendment, text related to procedures to ensure that persons owning past-due support work or have a plan for payment of such support.

Subsec. (a)(16). Pub. L. 105–33, § 5544, inserted ''and sporting'' after ''recreational''.

Subsec. (c)(1)(E). Pub. L. 105–33, § 5538(1)(A), inserted '', part E of this subchapter,'' after ''part A of this subchapter''.

Subsec. (c)(1)(F). Pub. L. 105–33, § 5556(a), made technical amendment to reference in original act which appears in text as reference to subsections (a)(1)(A) and (b) of this section.

Subsec. (c)(1)(G). Pub. L. 105–33, § 5538(1)(B), inserted ''any current support obligation and'' after ''to satisfy'' in introductory provisions.

Subsec. (c)(2)(A)(i). Pub. L. 105–33, § 5538(2)(A), struck out ''the tribunal and'' after ''to file with''.

Subsec. (c)(2)(A)(ii). Pub. L. 105–33, § 5538(2)(B), substituted ''court or administrative agency of competent jurisdiction shall'' for ''tribunal may'' and ''filed with the State case registry'' for ''filed with the tribunal''.

Subsec. (f). Pub. L. 105–33, § 5537, substituted ''and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws.'' for ''together with any amendments officially adopted before January 1, 1998 by the National Conference of Commissioners on Uniform State Laws.''

1996—Subsec. (a). Pub. L. 104–193, §§ 365(b), 395(d)(1)(H), in closing provisions, substituted ''(7), and (15)'' for ''and (7)'' and ''noncustodial parent'' for ''absent parent''.

Subsec. (a)(1). Pub. L. 104–193, § 314(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support.''

Subsec. (a)(2). Pub. L. 104–193, § 325(a)(1), substituted ''Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations.'' for ''Procedures under which expedited processes (determined in accordance with regulations of the Secretary) are in effect under the State judicial system or under State administrative processes (A) for obtaining and enforcing support orders, and (B) for establishing paternity.''

Subsec. (a)(3)(A). Pub. L. 104–193, § 395(d)(1)(H), (2)(D), substituted ''a noncustodial parent'' for ''an absent parent'' and substituted ''noncustodial parent'' for ''absent parent'' in two places.

Subsec. (a)(3)(B). Pub. L. 104–193, § 301(c)(3), substituted ''in any other case'' for ''in the case of overdue support which a State has agreed to collect under section 654(6) of this title''.

Pub. L. 104–193, § 108(c)(14), substituted ''section 608(a)(3)'' for ''section 602(a)(26)''.

(a)(3)(C). Pub. L. 104–193, § 395(d)(1)(H), substituted ''noncustodial parent's'' for ''absent parent's''.

Subsec. (a)(4). Pub. L. 104–193, § 368, inserted heading and amended text of par. (4) generally. Prior to amendment, text read as follows: ''Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.''

Subsec. (a)(5). Pub. L. 104–193, § 331(a), inserted heading and amended text of par. (5) generally. Prior to amendment, text related to establishment of child's paternity prior to child's eighteenth birthday.

Subsec. (a)(6). Pub. L. 104–193, § 395(d)(1)(H), (2)(D), substituted ''a noncustodial parent give security'' for ''an absent parent give security'' and ''noncustodial parent of the proposed action'' for ''absent parent of the proposed action''.

Subsec. (a)(7). Pub. L. 104–193, § 367, inserted heading and amended text of par. (7) generally. Prior to amendment, text read as follows: ''Procedures which require the State to periodically report to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency; except that (A) if the amount of the overdue support involved in any case is less than $1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) such information shall not be made available to (i) a consumer reporting agency which the State determines does not have sufficient capability to systematically and timely make accurate use of such information, or (ii) an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency.''

Subsec. (a)(8)(A). Pub. L. 104–193, § 314(b)(2)(A), substituted ''income'' for ''wages''.

Subsec. (a)(8)(B)(i). Pub. L. 104–193, §§ 314(b)(2)(A), 395(d)(2)(D), substituted ''income'' for ''wages'' in two places and ''a noncustodial parent'' for ''an absent parent''.

Subsec. (a)(8)(B)(ii). Pub. L. 104–193, § 395(d)(1)(H), substituted ''noncustodial parent'' for ''absent parent''.

Subsec. (a)(10). Pub. L. 104–193, § 351, inserted heading and amended text of par. (10) generally. Prior to amendment, text consisted of subpars. (A) to (C) relating to procedures to ensure review of child support orders and to ensure that States implement a process for periodic review and adjustment of child support orders and provide certain notices to parents subject to child support order of matters relating to the review and adjustment of those orders.

Subsec. (a)(12). Pub. L. 104–193, § 315, added par. (12).

Subsec. (a)(13). Pub. L. 104–193, § 317, added par. (13).

Subsec. (a)(14). Pub. L. 104–193, § 323, added par. (14).

Subsec. (a)(15). Pub. L. 104–193, § 365(a), added par. (15).

Subsec. (a)(16). Pub. L. 104–193, § 369, added par. (16).

Subsec. (a)(17). Pub. L. 104–193, § 372, added par. (17).

Subsec. (a)(18). Pub. L. 104–193, § 373, added par. (18).

Subsec. (a)(19). Pub. L. 104–193, § 382, added par. (19).

Subsec. (b). Pub. L. 104–193, § 314(a)(2)(A), substituted ''subsection (a)(1)(A)'' for ''subsection (a)(1)'' in introductory provisions.

Subsec. (b)(1). Pub. L. 104–193, §§ 314(b)(2)(B), 395(d)(1)(H), substituted ''noncustodial parent'' for ''absent parent'' and ''income'' for ''wages (as defined by the State for purposes of this section)''.

Subsec. (b)(2). Pub. L. 104–193, § 108(c)(15), substituted ''assistance under a State program funded under part A'' for ''aid under part A''.

Subsec. (b)(3)(A). Pub. L. 104–193, §§ 314(b)(2)(A), 395(d)(2)(D), substituted ''income'' for ''wages'' in two places and ''a noncustodial parent'' for ''an absent parent''.

Subsec. (b)(3)(B). Pub. L. 104–193, §§ 314(b)(2)(A), 395(d)(1)(H), (2)(D), in introductory provisions, substituted ''income'' for ''wages'' in two places, ''a noncustodial parent'' for ''an absent parent'', and ''the noncustodial parent'' for ''the absent parent''.

Subsec. (b)(3)(B)(i). Pub. L. 104–193, § 395(d)(1)(H), substituted ''noncustodial parent'' for ''absent parent''.

Subsec. (b)(4). Pub. L. 104–193, §314(a)(2)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

''(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

''(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on August 16, 1984, if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.''

Subsec. (b)(5). Pub. L. 104–193, §314(a)(2)(C), substituted ''the State through the State disbursement unit established pursuant to section 654b of this title, in accordance with the requirements of section 654b of this title.'' for ''a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 657 of this title under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.''

Subsec. (b)(6)(A)(i). Pub. L. 104–193, §§314(a)(2)(D)(i), (b)(2)(A), 395(d)(1)(H), substituted ''The employer of any noncustodial parent'' for ''The employer of any absent parent'', ''withhold from such noncustodial parent's income'' for ''withhold from such absent parent's wages'', and ''to the State disbursement unit within 7 business days after the date the amount would (but for this subsection) have been paid or credited to the employee, for distribution in accordance with this part. The employer shall withhold funds as directed in the notice, except that when an employer receives an income withholding order issued by another State, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining—'' for ''to the appropriate agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (5)) for distribution in accordance with section 657 of this title.'', and added subcls. (I) to (V) and closing provisions.

Subsec. (b)(6)(A)(ii). Pub. L. 104–193, §314(a)(2)(D)(ii), inserted ''be in a standard format prescribed by the Secretary, and'' after ''employer shall''.

Subsec. (b)(6)(A)(iii). Pub. L. 104–193, §314(a)(2)(D)(iii), added cl. (iii).

Subsec. (b)(6)(C). Pub. L. 104–193, §314(b)(2)(A), substituted ''income'' for ''wages''.

Subsec. (b)(6)(D). Pub. L. 104–193, §314(a)(2)(E), substituted ''any employer who—'' for ''any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.'' and added cls. (i) and (ii).

Subsec. (b)(7). Pub. L. 104–193, §314(b)(2)(A), substituted ''income'' for ''wages''.

Subsec. (b)(8). Pub. L. 104–193, §314(b)(1), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such absent parents' income or the nature of their income-producing activities.''

Subsec. (b)(9). Pub. L. 104–193, §395(d)(1)(H), substituted ''noncustodial parents'' for ''absent parents''.

Subsec. (b)(11). Pub. L. 104–193, §314(a)(2)(F), added par. (11).

Subsec. (c). Pub. L. 104–193, §325(a)(2), added subsec. (c).

Pub. L. 104–193, §314(c), struck out subsec. (c) which read as follows: ''Any State may at its option, under its plan approved under section 654 of this title, establish procedures under which support payments under this part will be made through the State agency or other entity which administers the State's income withholding system in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or $25, whichever is less, shall be imposed on the requesting parent by the State.''

Subsec. (e). Pub. L. 104–193, §§301(c)(4), 395(d)(1)(H), substituted ''noncustodial parent's spouse'' for ''absent parent's spouse'' and ''section 654(4)'' for ''paragraph (4) or (6) of section 654''.

Subsec. (f). Pub. L. 104–193, §321, added subsec. (f).

Subsec. (g). Pub. L. 104–193, §364, added subsec. (g).

1994—Subsec. (a)(7). Pub. L. 103–432, §212(a)(1), substituted ''Procedures which require the State to periodically report to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency'' for ''Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 1681a(f) of title 15) upon the request of such agency''.

Subsec. (a)(7)(C). Pub. L. 103–432, §212(a)(2), substituted ''(C) such information shall not be made available to (i) a consumer reporting agency which the State determines does not have sufficient capability to systematically and timely make accurate use of such information, or (ii) an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency'' for ''(C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State''.

1993—Subsec. (a)(2). Pub. L. 103–66, §13721(b)(1), struck out ''at the option of the State,'' after ''and (B)'' and inserted ''or paternity establishment'' after ''support order issuance and enforcement''.

Subsec. (a)(5)(C) to (H). Pub. L. 103–66, §13721(b)(2), added subpars. (C) to (H).

Subsec. (a)(11). Pub. L. 103–66, §13721(b)(3), added par. (11).

1988—Subsec. (a)(5). Pub. L. 100–485, §111(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(5)(A). Pub. L. 100–485, §111(e), as amended by Pub. L. 100–647, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(8). Pub. L. 100–485, § 101(b), designated existing provisions as subpar. (A), substituted ''not described in subparagraph (B)'' for ''which are issued or modified in the State'', and added subpar. (B).

Subsec. (a)(10). Pub. L. 100–485, § 103(c), added par. (10).

Subsec. (b)(3). Pub. L. 100–485, § 101(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''An absent parent shall become subject to such withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of—

''(A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month,

''(B) the date as of which the absent parent requests that such withholding begin, or

''(C) such earlier date as the State may select.''

1986—Subsec. (a)(9). Pub. L. 99–509 added par. (9).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by sections 7301(g) and 7307(a)(1), (2)(A)(ii) of Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

Pub. L. 109–171, title VII, § 7302(b), Feb. 8, 2006, 120 Stat. 145, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2007.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 401(c)(1) of Pub. L. 105–200 effective with respect to periods beginning on or after the later of Oct. 1, 2001, or the effective date of laws enacted by the legislature of such State implementing such amendment, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after Oct. 1, 2001, see section 401(c)(3) of Pub. L. 105–200, as amended, set out as a note under section 652 of this title.

Pub. L. 105–200, title IV, § 404(b), July 16, 1998, 112 Stat. 671, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 5550 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 633).''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, except that amendment made by section 5536(1)(A) of Pub. L. 105–33 not effective with respect to a State until Oct. 1, 2000, or such earlier date as the State may elect, see section 5557 of Pub. L. 105–33, as amended, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(c)(14), (15) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendments by title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 212(b) of Pub. L. 103–432 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to a State on later of Oct. 1, 1993, or date of enactment by legislature of such State of all laws required by such amendments made by section 13721 of Pub. L. 103–66, but in no event later than first day of first calendar quarter beginning after close of first regular session of State legislature that begins after Aug. 10, 1993, and, in case of State that has 2-year legislative session, each year of such session deemed to be separate regular session of State legislature, see section 13721(c) of Pub. L. 103–66, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8105 of Pub. L. 100–647 provided that amendments made by that section, amending sections 607 and 669 of this title and amending provisions of Pub. L. 100–485 which are classified to this section and section 607 of this title, are effective on date of enactment of Family Support Act of 1988, Pub. L. 100–485, which was approved Oct. 13, 1988.

Section 101(d) of Pub. L. 100–485 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall become effective on the first day of the 25th month beginning after the date of the enactment of this Act [Oct. 13, 1988].

''(2) The amendments made by subsection (b) [amending this section] shall become effective on January 1, 1994.

''(3) Subsection (c) [set out below] shall become effective on the date of the enactment of this Act.''

Section 103(f) of Pub. L. 100–485 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and section 667 of this title] shall become effective one year after the date of the enactment of this Act [Oct. 13, 1988].''

Amendment by section 111(b) of Pub. L. 100–485 effective on first day of first month beginning one year or more after Oct. 13, 1988, see section 111(f)(2) of Pub. L. 100–485, set out as a note under section 654 of this title.

Amendment by section 111(e) of Pub. L. 100–485 effective Oct. 13, 1988, see section 111(f)(1) of Pub. L. 100–485, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9103(b) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 21, 1986].

''(2) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by the amendment made by subsection (a) [amending this section], the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after the date of the enactment of this Act [Oct. 21, 1986]. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.''

EFFECTIVE DATE

Section effective Oct. 1, 1985, except that subsec. (e) effective with respect to support owed for any month beginning after Aug. 16, 1984, see section 3(g) of Pub. L. 98–378, set out as an Effective Date of 1984 Amendment note under section 654 of this title.

STUDY ON MAKING IMMEDIATE INCOME WITHHOLDING MANDATORY IN ALL CASES

Section 101(c) of Pub. L. 100–485 directed Secretary of Health and Human Services to conduct a study of administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and report on results of such study not later than 3 years after Oct. 13, 1988.

STUDY OF IMPACT OF EXTENDING PERIODIC REVIEW REQUIREMENTS TO ALL OTHER CASES

Section 103(d) of Pub. L. 100–485 directed Secretary of Health and Human Resources, within 2 years after Oct. 13, 1988, to conduct and complete a study to determine impact on child support awards and the courts of requiring each State to periodically review all child support orders in effect in the State.

DEMONSTRATION PROJECTS FOR EVALUATING MODEL PROCEDURES FOR REVIEWING CHILD SUPPORT AWARDS

Section 103(e) of Pub. L. 100–485 authorized an agreement between Secretary of Health and Human Services and each State submitting an application for purpose of conducting a demonstration project to test and evaluate model procedures for reviewing child support award amounts, directed that such projects be commenced not later than Sept. 30, 1989, and be conducted for a 2-year period, and directed Secretary to report results of such projects to Congress not later than 6 months after all projects are completed.

COMMISSION ON INTERSTATE CHILD SUPPORT

Section 126 of Pub. L. 100–485, as amended by Pub. L. 101–508, title V, § 5012(a), Nov. 5, 1990, 104 Stat. 1388–221; Pub. L. 102–318, title V, § 534(a), July 3, 1992, 106 Stat. 317, established Commission on Interstate Child Support to hold national conferences on interstate child support reform and prepare report to Congress containing recommendations for improving interstate establishment and enforcement of child support awards and for revising Uniform Reciprocal Enforcement of Support Act and provided for powers of the Commission, appropriations, and termination of the Commission on Sept. 30, 1992.

§ 667. State guidelines for child support awards

(a) Establishment of guidelines; method

Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

(b) Availability of guidelines; rebuttable presumption

(1) The guidelines established pursuant to subsection (a) of this section shall be made available to all judges and other officials who have the power to determine child support awards within such State.

(2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

(c) Technical assistance to States; State to furnish Secretary with copies

The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.

(Aug. 14, 1935, ch. 531, title IV, § 467, as added Pub. L. 98–378, § 18(a), Aug. 16, 1984, 98 Stat. 1321; amended Pub. L. 100–485, title I, § 103(a), (b), Oct. 13, 1988, 102 Stat. 2346.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–485, § 103(b), inserted ", and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts" before period at end.

Subsec. (b). Pub. L. 100–485, § 103(a), designated existing provisions as par. (1), struck out ", but need not be binding upon such judges or other officials" after "within such State", and added par. (2).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective one year after Oct. 13, 1988, see section 103(f) of Pub. L. 100–485, set out as a note under section 666 of this title.

EFFECTIVE DATE

Section 18(b) of Pub. L. 98–378 provided that: "The amendment made by subsection (a) [enacting this section] shall become effective on October 1, 1987."

STUDY OF CHILD-REARING COSTS

Section 128 of Pub. L. 100–485 directed Secretary of Health and Human Services, by grant or contract, to conduct a study of patterns of expenditures on children in 2-parent families, in single-parent families following divorce or separation, and in single-parent families in which parents were never married, giving particular attention to the relative standards of living in households in which both parents and all of the children do not live together, and submit to Congress no later than 2 years after Oct. 13, 1988, a full and complete report of results of such study, including recommendations for legislative, administrative, and other actions.

§ 668. Encouragement of States to adopt civil procedure for establishing paternity in contested cases

In the administration of the child support enforcement program under this part, each State is encouraged to establish and implement a civil procedure for establishing paternity in contested cases.

(Aug. 14, 1935, ch. 531, title IV, § 468, as added Pub. L. 100–485, title I, § 111(d), Oct. 13, 1988, 102 Stat. 2350; amended Pub. L. 104–193, title III, § 331(c), Aug. 22, 1996, 110 Stat. 2230.)

AMENDMENTS

1996—Pub. L. 104–193 struck out "a simple civil process for voluntarily acknowledging paternity and" after "implement".

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

§ 669. Collection and reporting of child support enforcement data

(a) In general

With respect to each type of service described in subsection (b) of this section, the Secretary

shall collect and maintain up-to-date statistics, by State, and on a fiscal year basis, on—

(1) the number of cases in the caseload of the State agency administering the plan approved under this part in which the service is needed; and

(2) the number of such cases in which the service has actually been provided.

(b) Types of services

The statistics required by subsection (a) of this section shall be separately stated with respect to paternity establishment services and child support obligation establishment services.

(c) Types of service recipients

The statistics required by subsection (a) of this section shall be separately stated with respect to—

(1) recipients of assistance under a State program funded under part A of this subchapter or of payments or services under a State plan approved under part E of this subchapter; and

(2) individuals who are not such recipients.

(d) Rule of interpretation

For purposes of subsection (a)(2) of this section, a service has actually been provided when the task described by the service has been accomplished.

(Aug. 14, 1935, ch. 531, title IV, § 469, as added Pub. L. 100–485, title I, § 129, Oct. 13, 1988, 102 Stat. 2356; amended Pub. L. 100–647, title VIII, § 8105(6), Nov. 10, 1988, 102 Stat. 3797; Pub. L. 104–193, title I, § 108(c)(16), title III, § 395(d)(2)(E), Aug. 22, 1996, 110 Stat. 2166, 2260; Pub. L. 105–200, title IV, § 407(a), July 16, 1998, 112 Stat. 672.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in subsec. (c)(1), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

AMENDMENTS

1998—Pub. L. 105–200 reenacted section catchline without change, added subsecs. (a) to (c), redesignated former subsec. (c) as (d) and inserted heading, and struck out former subsec. (a) relating to statistics on need for and actual provision of services and subsec. (b) relating to types of services.

1996—Subsec. (a). Pub. L. 104–193, § 108(c)(16), substituted ''assistance under State programs funded under part A of this subchapter and for families not receiving such assistance)'' for ''aid under plans approved under part A of this subchapter and for families not receiving such aid)''.

Subsec. (b)(2), (4). Pub. L. 104–193, § 395(d)(2)(E), substituted ''a noncustodial parent'' for ''an absent parent''.

1988—Subsec. (a). Pub. L. 100–647 made technical amendment to references to part A of this subchapter and to this part involving underlying provisions of original act and requiring no change in text.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–200 applicable to information maintained with respect to fiscal year 1995 or any succeeding fiscal year, see section 407(c) of Pub. L. 105–200, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(c)(16) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendment by section 395(d)(2)(E) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8105 of Pub. L. 100–647 provided that the amendment made by that section is effective on date of enactment of Family Support Act of 1988, Pub. L. 100–485, which was approved Oct. 13, 1988.

§ 669a. Nonliability for financial institutions providing financial records to State child support enforcement agencies in child support cases

(a) In general

Notwithstanding any other provision of Federal or State law, a financial institution shall not be liable under any Federal or State law to any person for disclosing any financial record of an individual to a State child support enforcement agency attempting to establish, modify, or enforce a child support obligation of such individual, or for disclosing any such record to the Federal Parent Locator Service pursuant to section 666(a)(17)(A) of this title.

(b) Prohibition of disclosure of financial record obtained by State child support enforcement agency

A State child support enforcement agency which obtains a financial record of an individual from a financial institution pursuant to subsection (a) of this section may disclose such financial record only for the purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support obligation of such individual.

(c) Civil damages for unauthorized disclosure

(1) Disclosure by State officer or employee

If any person knowingly, or by reason of negligence, discloses a financial record of an individual in violation of subsection (b) of this section, such individual may bring a civil action for damages against such person in a district court of the United States.

(2) No liability for good faith but erroneous interpretation

No liability shall arise under this subsection with respect to any disclosure which results from a good faith, but erroneous, interpretation of subsection (b) of this section.

(3) Damages

In any action brought under paragraph (1), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(A) the greater of—

(i) $1,000 for each act of unauthorized disclosure of a financial record with respect to which such defendant is found liable; or

(ii) the sum of—

(I) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure; plus

(II) in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages; plus

(B) the costs (including attorney's fees) of the action.

(d) Definitions

For purposes of this section—

(1) Financial institution

The term ''financial institution'' means—

(A) a depository institution, as defined in section 1813(c) of title 12;

(B) an institution-affiliated party, as defined in section 1813(u) of title 12;

(C) any Federal credit union or State credit union, as defined in section 1752 of title 12, including an institution-affiliated party of such a credit union, as defined in section 1786(r) of title 12; and

(D) any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in the State.

(2) Financial record

The term ''financial record'' has the meaning given such term in section 3401 of title 12.

(Aug. 14, 1935, ch. 531, title IV, § 469A, as added Pub. L. 104–193, title III, § 353, Aug. 22, 1996, 110 Stat. 2240; amended Pub. L. 105–200, title IV, § 406(c), July 16, 1998, 112 Stat. 672.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–200 inserted '', or for disclosing any such record to the Federal Parent Locator Service pursuant to section 666(a)(17)(A) of this title'' before period at end.

EFFECTIVE DATE

For effective date of section, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

§ 669b. Grants to States for access and visitation programs

(a) In general

The Administration for Children and Families shall make grants under this section to enable States to establish and administer programs to support and facilitate noncustodial parents' access to and visitation of their children, by means of activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements.

(b) Amount of grant

The amount of the grant to be made to a State under this section for a fiscal year shall be an amount equal to the lesser of—

(1) 90 percent of State expenditures during the fiscal year for activities described in subsection (a) of this section; or

(2) the allotment of the State under subsection (c) of this section for the fiscal year.

(c) Allotments to States

(1) In general

The allotment of a State for a fiscal year is the amount that bears the same ratio to $10,000,000 for grants under this section for the fiscal year as the number of children in the State living with only 1 biological parent bears to the total number of such children in all States.

(2) Minimum allotment

The Administration for Children and Families shall adjust allotments to States under paragraph (1) as necessary to ensure that no State is allotted less than—

(A) $50,000 for fiscal year 1997 or 1998; or

(B) $100,000 for any succeeding fiscal year.

(d) No supplantation of State expenditures for similar activities

A State to which a grant is made under this section may not use the grant to supplant expenditures by the State for activities specified in subsection (a) of this section, but shall use the grant to supplement such expenditures at a level at least equal to the level of such expenditures for fiscal year 1995.

(e) State administration

Each State to which a grant is made under this section—

(1) may administer State programs funded with the grant, directly or through grants to or contracts with courts, local public agencies, or nonprofit private entities;

(2) shall not be required to operate such programs on a statewide basis; and

(3) shall monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

(Aug. 14, 1935, ch. 531, title IV, § 469B, as added Pub. L. 104–193, title III, § 391, Aug. 22, 1996, 110 Stat. 2258.)

EFFECTIVE DATE

For effective date of section, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

§ 670. Congressional declaration of purpose; authorization of appropriations

For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would have been eligible for assistance under the State's plan approved under part A of this subchapter (as such plan was in effect on June 1, 1995) and adoption assistance for children with special needs, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

(Aug. 14, 1935, ch. 531, title IV, § 470, as added Pub. L. 96–272, title I, § 101(a)(1), June 17, 1980, 94

Stat. 501; amended Pub. L. 99–272, title XII, § 12307(d), Apr. 7, 1986, 100 Stat. 297; Pub. L. 99–514, title XVII, § 1711(c)(1), Oct. 22, 1986, 100 Stat. 2784; Pub. L. 104–193, title I, § 108(d)(1), Aug. 22, 1996, 110 Stat. 2166.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1996—Pub. L. 104–193 substituted ''would have been eligible'' for ''would be eligible'' and inserted ''(as such plan was in effect on June 1, 1995)'' after ''part A of this subchapter''.

1986—Pub. L. 99–514 substituted ''foster care and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter and adoption assistance for children with special needs'' for ''foster care, adoption assistance, and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter (or, in the case of adoption assistance, would be eligible for benefits under subchapter XVI of this chapter)''.

Pub. L. 99–272 substituted ''foster care, adoption assistance, and transitional independent living programs'' for ''foster care and adoption assistance''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1711(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 671, 673, and 675 of this title] shall apply only with respect to expenditures made after December 31, 1986.''

STRENGTHENING ABUSE AND NEGLECT COURTS

Pub. L. 106–314, Oct. 17, 2000, 114 Stat. 1266, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Strengthening Abuse and Neglect Courts Act of 2000'.

''SEC. 2. FINDINGS.

''Congress finds the following:

''(1) Under both Federal and State law, the courts play a crucial and essential role in the Nation's child welfare system and in ensuring safety, stability, and permanence for abused and neglected children under the supervision of that system.

''(2) The Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115) [see Short Title of 1997 Amendment note set out under section 1305 of this title] establishes explicitly for the first time in Federal law that a child's health and safety must be the paramount consideration when any decision is made regarding a child in the Nation's child welfare system.

''(3) The Adoption and Safe Families Act of 1997 promotes stability and permanence for abused and neglected children by requiring timely decision-making in proceedings to determine whether children can safely return to their families or whether they should be moved into safe and stable adoptive homes or other permanent family arrangements outside the foster care system.

''(4) To avoid unnecessary and lengthy stays in the foster care system, the Adoption and Safe Families Act of 1997 specifically requires, among other things, that States move to terminate the parental rights of the parents of those children who have been in foster care for 15 of the last 22 months.

''(5) While essential to protect children and to carry out the general purposes of the Adoption and Safe Families Act of 1997, the accelerated timelines for the termination of parental rights and the other requirements imposed under that Act increase the pressure on the Nation's already overburdened abuse and neglect courts.

''(6) The administrative efficiency and effectiveness of the Nation's abuse and neglect courts would be substantially improved by the acquisition and implementation of computerized case-tracking systems to identify and eliminate existing backlogs, to move abuse and neglect caseloads forward in a timely manner, and to move children into safe and stable families. Such systems could also be used to evaluate the effectiveness of such courts in meeting the purposes of the amendments made by, and provisions of, the Adoption and Safe Families Act of 1997.

''(7) The administrative efficiency and effectiveness of the Nation's abuse and neglect courts would also be improved by the identification and implementation of projects designed to eliminate the backlog of abuse and neglect cases, including the temporary hiring of additional judges, extension of court hours, and other projects designed to reduce existing caseloads.

''(8) The administrative efficiency and effectiveness of the Nation's abuse and neglect courts would be further strengthened by improving the quality and availability of training for judges, court personnel, agency attorneys, guardians ad litem, volunteers who participate in court-appointed special advocate (CASA) programs, and attorneys who represent the children and the parents of children in abuse and neglect proceedings.

''(9) While recognizing that abuse and neglect courts in this country are already committed to the quality administration of justice, the performance of such courts would be even further enhanced by the development of models and educational opportunities that reinforce court projects that have already been developed, including models for case-flow procedures, case management, representation of children, automated interagency interfaces, and 'best practices' standards.

''(10) Judges, magistrates, commissioners, and other judicial officers play a central and vital role in ensuring that proceedings in our Nation's abuse and neglect courts are run efficiently and effectively. The performance of those individuals in such courts can only be further enhanced by training, seminars, and an ongoing opportunity to exchange ideas with their peers.

''(11) Volunteers who participate in court-appointed special advocate (CASA) programs play a vital role as the eyes and ears of abuse and neglect courts in proceedings conducted by, or under the supervision of, such courts and also bring increased public scrutiny of the abuse and neglect court system. The Nation's abuse and neglect courts would benefit from an expansion of this program to currently underserved communities.

''(12) Improved computerized case-tracking systems, comprehensive training, and development of, and education on, model abuse and neglect court systems, particularly with respect to underserved areas, would significantly further the purposes of the Adoption and Safe Families Act of 1997 by reducing the average length of an abused and neglected child's stay in foster care, improving the quality of decision-making and court services provided to children and families, and increasing the number of adoptions.

''SEC. 3. DEFINITIONS.

''In this Act:

''(1) ABUSE AND NEGLECT COURTS.—The term 'abuse and neglect courts' means the State and local courts that carry out State or local laws requiring proceedings (conducted by or under the supervision of the courts)—

''(A) that implement part B and part E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.) (including preliminary disposition of such proceedings);

''(B) that determine whether a child was abused or neglected;

''(C) that determine the advisability or appropriateness of placement in a family foster home, group home, or a special residential care facility; or

''(D) that determine any other legal disposition of a child in the abuse and neglect court system.

''(2) AGENCY ATTORNEY.—The term 'agency attorney' means an attorney or other individual, including any government attorney, district attorney, attorney general, State attorney, county attorney, city solicitor or attorney, corporation counsel, or privately retained special prosecutor, who represents the State or local agency administrating the programs under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.) in a proceeding conducted by, or under the supervision of, an abuse and neglect court, including a proceeding for termination of parental rights.

''SEC. 4. GRANTS TO STATE COURTS AND LOCAL COURTS TO AUTOMATE THE DATA COLLECTION AND TRACKING OF PROCEEDINGS IN ABUSE AND NEGLECT COURTS.

''(a) AUTHORITY TO AWARD GRANTS.—

''(1) IN GENERAL.—Subject to paragraph (2), the Attorney General, acting through the Office of Juvenile Justice and Delinquency Prevention of the Office of Justice Programs, shall award grants in accordance with this section to State courts and local courts for the purposes of—

''(A) enabling such courts to develop and implement automated data collection and case-tracking systems for proceedings conducted by, or under the supervision of, an abuse and neglect court;

''(B) encouraging the replication of such systems in abuse and neglect courts in other jurisdictions; and

''(C) requiring the use of such systems to evaluate a court's performance in implementing the requirements of parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.).

''(2) LIMITATIONS.—

''(A) NUMBER OF GRANTS.—Not less than 20 nor more than 50 grants may be awarded under this section.

''(B) PER STATE LIMITATION.—Not more than 2 grants authorized under this section may be awarded per State.

''(C) USE OF GRANTS.—Funds provided under a grant made under this section may only be used for the purpose of developing, implementing, or enhancing automated data collection and case-tracking systems for proceedings conducted by, or under the supervision of, an abuse and neglect court.

''(b) APPLICATION.—

''(1) IN GENERAL.—A State court or local court may submit an application for a grant authorized under this section at such time and in such manner as the Attorney General may determine.

''(2) INFORMATION REQUIRED.—An application for a grant authorized under this section shall contain the following:

''(A) A description of a proposed plan for the development, implementation, and maintenance of an automated data collection and case-tracking system for proceedings conducted by, or under the supervision of, an abuse and neglect court, including a proposed budget for the plan and a request for a specific funding amount.

''(B) A description of the extent to which such plan and system are able to be replicated in abuse and neglect courts of other jurisdictions that specifies the common case-tracking data elements of the proposed system, including, at a minimum—

''(i) identification of relevant judges, court, and agency personnel;

''(ii) records of all court proceedings with regard to the abuse and neglect case, including all court findings and orders (oral and written); and

''(iii) relevant information about the subject child, including family information and the reason for court supervision.

''(C) In the case of an application submitted by a local court, a description of how the plan to implement the proposed system was developed in consultation with related State courts, particularly with regard to a State court improvement plan funded under section 13712 of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 670 note) [now 42 U.S.C. 629h] if there is such a plan in the State.

''(D) In the case of an application that is submitted by a State court, a description of how the proposed system will integrate with a State court improvement plan funded under section 13712 of such Act if there is such a plan in the State.

''(E) After consultation with the State agency responsible for the administration of parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.)—

''(i) a description of the coordination of the proposed system with other child welfare data collection systems, including the statewide automated child welfare information system (SACWIS) and the adoption and foster care analysis and reporting system (AFCARS) established pursuant to section 479 of the Social Security Act (42 U.S.C. 679); and

''(ii) an assurance that such coordination will be implemented and maintained.

''(F) Identification of an independent third party that will conduct ongoing evaluations of the feasibility and implementation of the plan and system and a description of the plan for conducting such evaluations.

''(G) A description or identification of a proposed funding source for completion of the plan (if applicable) and maintenance of the system after the conclusion of the period for which the grant is to be awarded.

''(H) An assurance that any contract entered into between the State court or local court and any other entity that is to provide services for the development, implementation, or maintenance of the system under the proposed plan will require the entity to agree to allow for replication of the services provided, the plan, and the system, and to refrain from asserting any proprietary interest in such services for purposes of allowing the plan and system to be replicated in another jurisdiction.

''(I) An assurance that the system established under the plan will provide data that allows for evaluation (at least on an annual basis) of the following information:

''(i) The total number of cases that are filed in the abuse and neglect court.

''(ii) The number of cases assigned to each judge who presides over the abuse and neglect court.

''(iii) The average length of stay of children in foster care.

''(iv) With respect to each child under the jurisdiction of the court—

''(I) the number of episodes of placement in foster care;

''(II) the number of days placed in foster care and the type of placement (foster family home, group home, or special residential care facility);

''(III) the number of days of in-home supervision; and

''(IV) the number of separate foster care placements.

''(v) The number of adoptions, guardianships, or other permanent dispositions finalized.

''(vi) The number of terminations of parental rights.

''(vii) The number of child abuse and neglect proceedings closed that had been pending for 2 or more years.

''(viii) With respect to each proceeding conducted by, or under the supervision of, an abuse and neglect court—

''(I) the timeliness of each stage of the proceeding from initial filing through legal finalization of a permanency plan (for both contested and uncontested hearings);

''(II) the number of adjournments, delays, and continuances occurring during the proceeding, including identification of the party requesting each adjournment, delay, or continuance and the reasons given for the request;

''(III) the number of courts that conduct or supervise the proceeding for the duration of the abuse and neglect case;

''(IV) the number of judges assigned to the proceeding for the duration of the abuse and neglect case; and

''(V) the number of agency attorneys, children's attorneys, parent's attorneys, guardians ad litem, and volunteers participating in a court-appointed special advocate (CASA) program assigned to the proceeding during the duration of the abuse and neglect case.

''(J) A description of how the proposed system will reduce the need for paper files and ensure prompt action so that cases are appropriately listed with national and regional adoption exchanges, and public and private adoption services.

''(K) An assurance that the data collected in accordance with subparagraph (I) will be made available to relevant Federal, State, and local government agencies and to the public.

''(L) An assurance that the proposed system is consistent with other civil and criminal information requirements of the Federal Government.

''(M) An assurance that the proposed system will provide notice of timeframes required under the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115) for individual cases to ensure prompt attention and compliance with such requirements.

''(c) CONDITIONS FOR APPROVAL OF APPLICATIONS.—

''(1) MATCHING REQUIREMENT.—

''(A) IN GENERAL.—A State court or local court awarded a grant under this section shall expend $1 for every $3 awarded under the grant to carry out the development, implementation, and maintenance of the automated data collection and case-tracking system under the proposed plan.

''(B) WAIVER FOR HARDSHIP.—The Attorney General may waive or modify the matching requirement described in subparagraph (A) in the case of any State court or local court that the Attorney General determines would suffer undue hardship as a result of being subject to the requirement.

''(C) NON-FEDERAL EXPENDITURES.—

''(i) CASH OR IN KIND.—State court or local court expenditures required under subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

''(ii) NO CREDIT FOR PRE-AWARD EXPENDITURES.—Only State court or local court expenditures made after a grant has been awarded under this section may be counted for purposes of determining whether the State court or local court has satisfied the matching expenditure requirement under subparagraph (A).

''(2) NOTIFICATION TO STATE OR APPROPRIATE CHILD WELFARE AGENCY.—No application for a grant authorized under this section may be approved unless the State court or local court submitting the application demonstrates to the satisfaction of the Attorney General that the court has provided the State, in the case of a State court, or the appropriate child welfare agency, in the case of a local court, with notice of the contents and submission of the application.

''(3) CONSIDERATIONS.—In evaluating an application for a grant under this section the Attorney General shall consider the following:

''(A) The extent to which the system proposed in the application may be replicated in other jurisdictions.

''(B) The extent to which the proposed system is consistent with the provisions of, and amendments made by, the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115), and parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.).

''(C) The extent to which the proposed system is feasible and likely to achieve the purposes described in subsection (a)(1).

''(4) DIVERSITY OF AWARDS.—The Attorney General shall award grants under this section in a manner that results in a reasonable balance among grants awarded to State courts and grants awarded to local courts, grants awarded to courts located in urban areas and courts located in rural areas, and grants awarded in diverse geographical locations.

''(d) LENGTH OF AWARDS.—No grant may be awarded under this section for a period of more than 5 years.

''(e) AVAILABILITY OF FUNDS.—Funds provided to a State court or local court under a grant awarded under this section shall remain available until expended without fiscal year limitation.

''(f) REPORTS.—

''(1) ANNUAL REPORT FROM GRANTEES.—Each State court or local court that is awarded a grant under this section shall submit an annual report to the Attorney General that contains—

''(A) a description of the ongoing results of the independent evaluation of the plan for, and implementation of, the automated data collection and case-tracking system funded under the grant; and

''(B) the information described in subsection (b)(2)(I).

''(2) INTERIM AND FINAL REPORTS FROM ATTORNEY GENERAL.—

''(A) INTERIM REPORTS.—Beginning 2 years after the date of enactment of this Act [Oct. 17, 2000], and biannually thereafter until a final report is submitted in accordance with subparagraph (B), the Attorney General shall submit to Congress interim reports on the grants made under this section.

''(B) FINAL REPORT.—Not later than 90 days after the termination of all grants awarded under this section, the Attorney General shall submit to Congress a final report evaluating the automated data collection and case-tracking systems funded under such grants and identifying successful models of such systems that are suitable for replication in other jurisdictions. The Attorney General shall ensure that a copy of such final report is transmitted to the highest State court in each State.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $10,000,000 for the period of fiscal years 2001 through 2005.

''SEC. 5. GRANTS TO REDUCE PENDING BACKLOGS OF ABUSE AND NEGLECT CASES TO PROMOTE PERMANENCY FOR ABUSED AND NEGLECTED CHILDREN.

''(a) AUTHORITY TO AWARD GRANTS.—The Attorney General, acting through the Office of Juvenile Justice and Delinquency Prevention of the Office of Justice Programs and in collaboration with the Secretary of Health and Human Services, shall award grants in accordance with this section to State courts and local courts for the purposes of—

''(1) promoting the permanency goals established in the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115); and

''(2) enabling such courts to reduce existing backlogs of cases pending in abuse and neglect courts, es-

pecially with respect to cases to terminate parental rights and cases in which parental rights to a child have been terminated but an adoption of the child has not yet been finalized.

''(b) APPLICATION.—A State court or local court shall submit an application for a grant under this section, in such form and manner as the Attorney General shall require, that contains a description of the following:

''(1) The barriers to achieving the permanency goals established in the Adoption and Safe Families Act of 1997 that have been identified.

''(2) The size and nature of the backlogs of children awaiting termination of parental rights or finalization of adoption.

''(3) The strategies the State court or local court proposes to use to reduce such backlogs and the plan and timetable for doing so.

''(4) How the grant funds requested will be used to assist the implementation of the strategies described in paragraph (3).

''(c) USE OF FUNDS.—Funds provided under a grant awarded under this section may be used for any purpose that the Attorney General determines is likely to successfully achieve the purposes described in subsection (a), including temporarily—

''(1) establishing night court sessions for abuse and neglect courts;

''(2) hiring additional judges, magistrates, commissioners, hearing officers, referees, special masters, and other judicial personnel for such courts;

''(3) hiring personnel such as clerks, administrative support staff, case managers, mediators, and attorneys for such courts; or

''(4) extending the operating hours of such courts.

''(d) NUMBER OF GRANTS.—Not less than 15 nor more than 20 grants shall be awarded under this section.

''(e) AVAILABILITY OF FUNDS.—Funds awarded under a grant made under this section shall remain available for expenditure by a grantee for a period not to exceed 3 years from the date of the grant award.

''(f) REPORT ON USE OF FUNDS.—Not later than the date that is halfway through the period for which a grant is awarded under this section, and 90 days after the end of such period, a State court or local court awarded a grant under this section shall submit a report to the Attorney General that includes the following:

''(1) The barriers to the permanency goals established in the Adoption and Safe Families Act of 1997 that are or have been addressed with grant funds.

''(2) The nature of the backlogs of children that were pursued with grant funds.

''(3) The specific strategies used to reduce such backlogs.

''(4) The progress that has been made in reducing such backlogs, including the number of children in such backlogs—

''(A) whose parental rights have been terminated; and

''(B) whose adoptions have been finalized.

''(5) Any additional information that the Attorney General determines would assist jurisdictions in achieving the permanency goals established in the Adoption and Safe Families Act of 1997.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the period of fiscal years 2001 and 2002 $10,000,000 for the purpose of making grants under this section.

''SEC. 6. GRANTS TO EXPAND THE COURT-APPOINTED SPECIAL ADVOCATE PROGRAM IN UNDERSERVED AREAS.

''(a) GRANTS TO EXPAND CASA PROGRAMS IN UNDERSERVED AREAS.—The Administrator of the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice shall make a grant to the National Court-Appointed Special Advocate Association for the purposes of—

''(1) expanding the recruitment of, and building the capacity of, court-appointed special advocate programs located in the 15 largest urban areas;

''(2) developing regional, multijurisdictional court-appointed special advocate programs serving rural areas; and

''(3) providing training and supervision of volunteers in court-appointed special advocate programs.

''(b) LIMITATION ON ADMINISTRATIVE EXPENDITURES.—Not more than 5 percent of the grant made under this subsection may be used for administrative expenditures.

''(c) DETERMINATION OF URBAN AND RURAL AREAS.—For purposes of administering the grant authorized under this subsection, the Administrator of the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice shall determine whether an area is one of the 15 largest urban areas or a rural area in accordance with the practices of, and statistical information compiled by, the Bureau of the Census.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to make the grant authorized under this section, $5,000,000 for the period of fiscal years 2001 and 2002.''

ENTITLEMENT FUNDING FOR STATE COURTS TO ASSESS AND IMPROVE HANDLING OF PROCEEDINGS RELATING TO FOSTER CARE AND ADOPTION

Pub. L. 103–66, title XIII, § 13712, Aug. 10, 1993, 107 Stat. 655, as amended by Pub. L. 105–89, title III, § 305(a)(3), Nov. 19, 1997, 111 Stat. 2130; Pub. L. 107–133, title I, § 107(a)–(d), Jan. 17, 2002, 115 Stat. 2418, which was formerly set out as a note under this section, was renumbered section 438 of the Social Security Act by Pub. L. 107–133, title I, § 107(e), Jan. 17, 2002, 115 Stat. 2419, and is classified to section 629h of this title.

ABANDONED INFANTS ASSISTANCE

Pub. L. 100–505, Oct. 18, 1988, 102 Stat. 2533, as amended by Pub. L. 102–236, §§ 2–8, Dec. 12, 1991, 105 Stat. 1812–1816; Pub. L. 104–235, title II, §§ 221, 222, Oct. 3, 1996, 110 Stat. 3091, 3092; Pub. L. 108–36, title III, §§ 301–305, June 25, 2003, 117 Stat. 822–824, known as the Abandoned Infants Assistance Act of 1988, and formerly set out as a note under this section, provided temporary authority for the Secretary of Health and Human Services to make grants to public and nonprofit private entities for the purpose of developing, implementing, and operating projects to prevent the abandonment of infants and young children and required the Secretary to provide for evaluations of those projects. As amended by Pub. L. 102–236, § 8, the program became permanent, and Pub. L. 100–505, except title II, was transferred to subchapter IV–A (§ 5117aa et seq.) of chapter 67 of this title.

STUDY OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS; REPORT TO CONGRESS NOT LATER THAN OCTOBER 1, 1983

Section 101(b) of Pub. L. 96–272 directed Secretary of Health, Education, and Welfare to conduct a study of programs of foster care and adoption assistance established under part IV–E of the Social Security Act (this part) and submit to Congress, not later than Oct. 1, 1983, a full and complete report thereon, together with his recommendations as to (A) whether such part IV–E should be continued, and if so, (B) the changes (if any) which should be made in such part IV–E.

§ 671. State plan for foster care and adoption assistance

(a) Requisite features of State plan

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) provides for foster care maintenance payments in accordance with section 672 of this title and for adoption assistance in accordance with section 673 of this title;

(2) provides that the State agency responsible for administering the program author-

ized by subpart 1 of part B of this subchapter shall administer, or supervise the administration of, the program authorized by this part;

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this subchapter, under subchapter XX of this chapter, and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the ''State agency'') will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

(8) subject to subsection (c), provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this subchapter or under subchapter I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that the State agency will—

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B of this subchapter or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;

(10) provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this subchapter;

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this subchapter, which shall be conducted no less frequently than once every three years;

(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;

(15) provides that—

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement), and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would have been an offense under section 1111(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

(i) a permanency hearing (as described in section 675(5)(C) of this title), which considers in-State and out-of-State permanent placement options for the child, shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements[1] may be made concurrently with reasonable efforts of the type described in subparagraph (B);

(16) provides for the development of a case plan (as defined in section 675(1) of this title) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 675(5)(B) of this title with respect to each such child;

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the program funded under part A of this subchapter and plan approved under part D of this subchapter, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part;

(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may—

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved;

(19) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards;

(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A)[2] of title 28), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part, including procedures requiring that—

(i) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

[1] So in original. Probably should be followed by a comma.

[2] See References in Text note below.

(ii) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and[3]

(B) subparagraph (A) shall not apply to a State plan if, on or before September 30, 2005, the Governor of the State has notified the Secretary in writing that the State has elected to make subparagraph (A) inapplicable to the State, or if, on or before such date, the State legislature, by law, has elected to make subparagraph (A) inapplicable to the State;[4]

(C) provides that the State shall—

(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;

(ii) comply with any request described in clause (i) that is received from another State; and

(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases;

(21) provides for health insurance coverage (including, at State option, through the program under the State plan approved under subchapter XIX of this chapter) for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part) between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage—

(A) such coverage may be provided through 1 or more State medical assistance programs;

(B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under subchapter XIX of this chapter;

(C) in the event that the State provides such coverage through a State medical assistance program other than the program under subchapter XIX of this chapter, and the State exceeds its funding for services under such other program, any such child shall be deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1396a(a)(10)(A)(i)(I) of this title; and

(D) in determining cost-sharing requirements, the State shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent, to the extent coverage is provided through a State medical assistance program, with the rules under such program;

(22) provides that, not later than January 1, 1999, the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children;

(23) provides that the State shall not—

(A) deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

(B) fail to grant an opportunity for a fair hearing, as described in paragraph (12), to an individual whose allegation of a violation of subparagraph (A) of this paragraph is denied by the State or not acted upon by the State with reasonable promptness;

(24) include[5] a certification that, before a child in foster care under the responsibility of the State is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child;

(25) provide[6] that the State shall have in effect procedures for the orderly and timely interstate placement of children; and procedures implemented in accordance with an interstate compact, if incorporating with the procedures prescribed by paragraph (26), shall be considered to satisfy the requirement of this paragraph;

(26) provides that—

(A)(i) within 60 days after the State receives from another State a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the State shall, directly or by contract—

(I) conduct and complete the study; and

(II) return to the other State a report on the results of the study, which shall ad-

[3] So in original. The word ''and'' probably should not appear.

[4] So in original. Probably should be followed by ''and''.

[5] So in original. Probably should be ''includes''.

[6] So in original. Probably should be ''provides''.

dress the extent to which placement in the home would meet the needs of the child; and

(ii) in the case of a home study begun on or before September 30, 2008, if the State fails to comply with clause (i) within the 60-day period as a result of circumstances beyond the control of the State (such as a failure by a Federal agency to provide the results of a background check, or the failure by any entity to provide completed medical forms, requested by the State at least 45 days before the end of the 60-day period), the State shall have 75 days to comply with clause (i) if the State documents the circumstances involved and certifies that completing the home study is in the best interests of the child; except that

(iii) this subparagraph shall not be construed to require the State to have completed, within the applicable period, the parts of the home study involving the education and training of the prospective foster or adoptive parents;

(B) the State shall treat any report described in subparagraph (A) that is received from another State or an Indian tribe (or from a private agency under contract with another State) as meeting any requirements imposed by the State for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the State determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child; and

(C) the State shall not impose any restriction on the ability of a State agency administering, or supervising the administration of, a State program operated under a State plan approved under this part to contract with a private agency for the conduct of a home study described in subparagraph (A); and

(27) provides that, with respect to any child in foster care under the responsibility of the State under this part or part B and without regard to whether foster care maintenance payments are made under section 672 of this title on behalf of the child, the State has in effect procedures for verifying the citizenship or immigration status of the child.

(b) Approval of plan by Secretary

The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section.

(c) Use of child welfare records in State court proceedings

Subsection (a)(8) shall not be construed to limit the flexibility of a State in determining State policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to part B or this part, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and family.

(Aug. 14, 1935, ch. 531, title IV, §471, as added Pub. L. 96–272, title I, §101(a)(1), June 17, 1980, 94 Stat. 501; amended Pub. L. 97–35, title XXIII, §2353(r), Aug. 13, 1981, 95 Stat. 874; Pub. L. 97–248, title I, §160(d), Sept. 3, 1982, 96 Stat. 400; Pub. L. 98–378, §11(c), Aug. 16, 1984, 98 Stat. 1318; Pub. L. 99–514, title XVII, §1711(c)(2), Oct. 22, 1986, 100 Stat. 2784; Pub. L. 100–485, title II, §202(c)(1), Oct. 13, 1988, 102 Stat. 2378; Pub. L. 101–508, title V, §5054(b), Nov. 5, 1990, 104 Stat. 1388–229; Pub. L. 103–66, title XIII, §13711(b)(4), Aug. 10, 1993, 107 Stat. 655; Pub. L. 103–432, title II, §203(b), Oct. 31, 1994, 108 Stat. 4456; Pub. L. 104–188, title I, §1808(a), Aug. 20, 1996, 110 Stat. 1903; Pub. L. 104–193, title I, §108(d)(2), title V, §505, Aug. 22, 1996, 110 Stat. 2166, 2278; Pub. L. 105–33, title V, §5591(b), Aug. 5, 1997, 111 Stat. 643; Pub. L. 105–89, title I, §§101(a), 106, title III, §§306, 308, Nov. 19, 1997, 111 Stat. 2116, 2120, 2132, 2133; Pub. L. 105–200, title III, §301(a), July 16, 1998, 112 Stat. 658; Pub. L. 106–169, title I, §112(a), title IV, §401(*o*), Dec. 14, 1999, 113 Stat. 1829, 1859; Pub. L. 109–171, title VII, §7401(c), Feb. 8, 2006, 120 Stat. 150; Pub. L. 109–239, §§3, 4(a)(1), 10, July 3, 2006, 120 Stat. 508, 513; Pub. L. 109–248, title I, §152(a), (b), July 27, 2006, 120 Stat. 608, 609; Pub. L. 109–432, div. B, title IV, §405(c)(1)(B)(i), Dec. 20, 2006, 120 Stat. 2999.)

AMENDMENT OF SUBSECTION (a)(20)

Pub. L. 109–248, title I, §152(b), (c)(2), July 27, 2006, 120 Stat. 609, provided that, effective Oct. 1, 2008, and applicable with respect to payments under this part for calendar quarters beginning on or after Oct. 1, 2008, subsection (a)(20) of this section is amended:

(1) in subparagraph (A), by striking ''unless an election provided for in subparagraph (B) is made with respect to the State,'' in introductory provisions; and

(2) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

REFERENCES IN TEXT

Parts A, B, and D of this subchapter, referred to in subsecs. (a)(2), (4), (8)–(10), (13), (17), (27) and (c), are classified to sections 601 et seq., 620 et seq., and 651 et seq., respectively, of this title.

Section 534(e)(3)(A) of title 28, referred to in subsec. (a)(20)(A), was redesignated section 534(f)(3)(A) of title 28 by Pub. L. 109–248, title I, §153(i), July 27, 2006, 120 Stat. 611.

AMENDMENTS

2006—Subsec. (a)(8). Pub. L. 109–171, §7401(c)(1), inserted ''subject to subsection (c),'' after ''(8)''.

Subsec. (a)(15)(C). Pub. L. 109–239, §10(a), inserted ''(including, if appropriate, through an interstate placement)'' after ''accordance with the permanency plan''.

Subsec. (a)(15)(E)(i). Pub. L. 109–239, §10(b), inserted '', which considers in-State and out-of-State permanent placement options for the child,'' before ''shall''.

Subsec. (a)(15)(F). Pub. L. 109–239, §10(c), inserted '', including identifying appropriate in-State and out-of-State placements'' before ''may''.

Subsec. (a)(20)(A). Pub. L. 109–248, §152(a)(1)(A)(i), which directed amendment of subpar. (A) by inserting '', including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28),'' after ''criminal records checks'' and substituting ''regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child'' for ''on whose behalf foster care maintenance payments or adoption assistance payments are to be made'' in the matter preceding

''clause (I)'', was executed by making the insertion and substitution in the introductory provisions preceding cl. (i), to reflect the probable intent of Congress.

Subsec. (a)(20)(A)(i), (ii). Pub. L. 109–248, § 152(a)(1)(A)(ii), inserted ''involving a child on whose behalf such payments are to be so made'' after ''in any case''.

Subsec. (a)(20)(B). Pub. L. 109–248, § 152(a)(2), inserted '', on or before September 30, 2005,'' after ''plan if'' and '', on or before such date,'' after ''or if''.

Subsec. (a)(20)(C). Pub. L. 109–248, § 152(a)(1)(B), added subpar. (C).

Subsec. (a)(25). Pub. L. 109–239, § 3, added par. (25).

Subsec. (a)(26). Pub. L. 109–239, § 4(a)(1), added par. (26).

Subsec. (a)(27). Pub. L. 109–432 added par. (27).

Subsec. (c). Pub. L. 109–171, § 7401(c)(2), added subsec. (c).

1999—Subsec. (a)(8). Pub. L. 106–169, § 401(*o*), struck out ''(including activities under part F of this subchapter)'' after ''part A, B, or D of this subchapter''.

Subsec. (a)(24). Pub. L. 106–169, § 112(a), added par. (24).

1998—Subsec. (a)(23). Pub. L. 105–200 added par. (23).

1997—Subsec. (a)(15). Pub. L. 105–89, § 101(a), amended par. (15) generally. Prior to amendment, par. (15) read as follows: ''effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home;''.

Subsec. (a)(17). Pub. L. 105–33, § 5591(b)(1), struck out ''and'' at end.

Subsec. (a)(18). Pub. L. 105–33, § 5591(b)(3), redesignated par. (18), relating to preference to adult relatives, as (19).

Pub. L. 105–33, § 5591(b)(2), substituted ''; and'' for period at end of par. (18) relating to denial or delay of adoption or foster care on basis of race, color, or national origin.

Subsec. (a)(19). Pub. L. 105–33, § 5591(b)(3), redesignated par. (18), relating to preference to adult relatives, as (19).

Subsec. (a)(20). Pub. L. 105–89, § 106, added par. (20).

Subsec. (a)(21). Pub. L. 105–89, § 306, added par. (21).

Subsec. (a)(22). Pub. L. 105–89, § 308, added par. (22).

1996—Subsec. (a)(17). Pub. L. 104–193, § 108(d)(2), substituted ''program funded under part A of this subchapter and plan approved under part D of this subchapter'' for ''plans approved under parts A and D of this subchapter''.

Subsec. (a)(18). Pub. L. 104–193, § 505(3), added par. (18) relating to preference to adult relatives.

Pub. L. 104–188, § 1808(a)(3), added par. (18) relating to denial or delay of adoption or foster care on basis of race, color, or national origin.

1994—Subsec. (b). Pub. L. 103–432 struck out after first sentence ''However, in any case in which the Secretary finds, after reasonable notice and opportunity for a hearing, that a State plan which has been approved by the Secretary no longer complies with the provisions of subsection (a) of this section, or that in the administration of the plan there is a substantial failure to comply with the provisions of the plan, the Secretary shall notify the State that further payments will not be made to the State under this part, or that such payments will be made to the State but reduced by an amount which the Secretary determines appropriate, until the Secretary is satisfied that there is no longer any such failure to comply, and until he is so satisfied he shall make no further payments to the State, or shall reduce such payments by the amount specified in his notification to the State.''

1993—Subsec. (a)(2). Pub. L. 103–66 substituted ''subpart 1 of part B'' for ''part B''.

1990—Subsec. (a)(8)(E). Pub. L. 101–508, § 5054(b)(2), added cl. (E).

Subsec. (a)(9). Pub. L. 101–508, § 5054(b)(1), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''provides that where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this subchapter is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency;''.

1988—Subsec. (a)(8)(A). Pub. L. 100–485 substituted ''part A, B, or D of this subchapter (including activities under part F of this subchapter)'' for ''part A, B, C, or D of this subchapter''.

1986—Subsec. (a)(1), (11). Pub. L. 99–514 substituted ''adoption assistance'' for ''adoption assistance payments''.

1984—Subsec. (a)(17). Pub. L. 98–378 added par. (17).

1982—Subsec. (a)(10). Pub. L. 97–248 amended Pub. L. 97–35, § 2353(r), generally. See 1981 Amendment note below.

1981—Subsec. (a)(10). Pub. L. 97–35, § 2353(r), as amended by Pub. L. 97–248, § 160(d), substituted provisions that in order for a State to be eligible for payments under this part a State plan must provide for establishment or designation of a State authority or authorities responsible for standards for foster family homes and child care institutions, such standards to be reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, for provisions that such State plan provide for the application of standards referred to in section 1397b(d)(1) of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. B, title IV, § 405(c)(1)(B)(iii), Dec. 20, 2006, 120 Stat. 2999, provided that: ''The amendments made by this subparagraph [amending this section and section 1320a–2a of this title] shall take effect on the date that is 6 months after the date of the enactment of this Act [Dec. 20, 2006].''

Pub. L. 109–248, title I, § 152(c), July 27, 2006, 120 Stat. 609, provided that:

''(1) GENERAL.—The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2006, and shall apply with respect to payments under part E of title IV of the Social Security Act [this part] for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.

''(2) ELIMINATION OF OPT-OUT.—The amendments made by subsection (b) [amending this section] shall take effect on October 1, 2008, and shall apply with respect to payments under part E of title IV of the Social Security Act for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.

''(3) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under section 471 of the Social Security Act [this section] to meet the additional requirements imposed by the amendments made by a subsection of this section, the plan shall not be regarded as failing to meet any of the additional requirements before the first day of the first calendar quarter beginning after the first regular session of the State legislature that begins after the otherwise applicable effective date of the amendments. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.''

Amendment by Pub. L. 109–239 effective Oct. 1, 2006, except as otherwise provided, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after Oct. 1, 2006, without regard to whether regulations have been promulgated by Oct. 1, 2006, and with delay permitted if State legislation is required, see section 14 of Pub. L. 109–239, set out as a note under section 622 of this title.

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title I, §112(b), Dec. 14, 1999, 113 Stat. 1829, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1999.''

Amendment by section 401(*o*) of Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–200, title III, §301(d), July 16, 1998, 112 Stat. 658, provided that: ''The amendments made by this section [amending this section and section 674 of this title] shall take effect as if included in the enactment of section 202 of the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2125) [see Effective Date of 1997 Amendments note below].''

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Amendment by Pub. L. 105–33 effective as if included in the enactment of title V of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5593 of Pub. L. 105–33, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(d)(2) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 203(c)(2) of Pub. L. 103–432 provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5054(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 602 of this title] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 204 of title II of Pub. L. 100–485 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title [enacting sections 681 to 687 of this title, amending this section, sections 602, 603, 607, 1308, 1396a, and 1396s of this title, and section 51 of Title 26, Internal Revenue Code, repealing sections 609, 614, 630 to 632, and 633 to 645 of this title, and enacting provisions set out as notes under section 681 of this title] shall become effective on October 1, 1990.

''(b) SPECIAL RULES.—(1)(A) If any State makes the changes in its State plan approved under section 402 of the Social Security Act [section 602 of this title] that are required in order to carry out the amendments made by this title and formally notifies the Secretary of Health and Human Services of its desire to become subject to such amendments as of the first day of any calendar quarter beginning on or after the date on which the proposed regulations of the Secretary of Health and Human Services are published under section 203(a) [42 U.S.C. 671 note] (or, if earlier, the date on which such regulations are required to be published under such section) and before October 1, 1990, such amendments shall become effective with respect to that State as of such first day.

''(B) In the case of any State in which the amendments made by this title become effective (in accordance with subparagraph (A)) with respect to any quarter of a fiscal year beginning before October 1, 1990, the limitation applicable to the State for the fiscal year under section 403(k)(2) of the Social Security Act [section 603(k)(2) of this title] (as added by section 201(c)(1) of this Act) shall be an amount that bears the same ratio to such limitation (as otherwise determined with respect to the State for the fiscal year) as the number of quarters in the fiscal year throughout which such amendments apply to the State bears to 4.

''(2) Section 403(*l*)(3) of the Social Security Act [section 603(*l*)(3) of this title] (as added by section 201(c)(2) of this Act) is repealed effective October 1, 1995 (except that subparagraph (A) of such section 403(*l*)(3) shall remain in effect for purposes of applying any reduction in payment rates required by such subparagraph for any of the fiscal years specified therein); and section 403(*l*)(4) of such Act (as so added) is repealed effective October 1, 1998.

''(3) Subsections (a), (c), and (d) of section 203 of this Act [42 U.S.C. 671 note, 681 notes], and section 486 of the Social Security Act [section 686 of this title] (as added by section 201(b) of this Act), shall become effective on the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99–514, set out as a note under section 670 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 1, 1981, see section 160(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

REGULATIONS

Section 203(a) of title II of Pub. L. 100–485 provided that: ''Not later than 6 months after the date of the enactment of this Act [Oct. 13, 1988], the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall issue proposed regulations for the purpose of implementing the amendments made by this title [see Effective Date of 1988 Amendment note above], including regulations establishing uniform data collection requirements. The Secretary shall publish final regulations for such purpose not later than one year after the date of the enactment of this Act. Regulations issued under this subsection shall be developed by the Secretary in consultation with the Secretary of

Labor and with the responsible State agencies described in section 482(a)(2) of the Social Security Act [section 682(a)(2) of this title].''

PRESERVATION OF REASONABLE PARENTING

Section 401 of Pub. L. 105–89 provided that: ''Nothing in this Act [see Short Title of 1997 Amendment note set out under section 1305 of this title] is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting.''

REPORTING REQUIREMENTS

Section 402 of Pub. L. 105–89 provided that: ''Any information required to be reported under this Act [see Short Title of 1997 Amendment note set out under section 1305 of this title] shall be supplied to the Secretary of Health and Human Services through data meeting the requirements of the Adoption and Foster Care Analysis and Reporting System established pursuant to section 479 of the Social Security Act (42 U.S.C. 679), to the extent such data is available under that system. The Secretary shall make such modifications to regulations issued under section 479 of such Act with respect to the Adoption and Foster Care Analysis and Reporting System as may be necessary to allow States to obtain data that meets the requirements of such system in order to satisfy the reporting requirements of this Act.''

PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS

Section 406 of Pub. L. 105–89 provided that:

''(a) IN GENERAL.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Act [see Short Title of 1997 Amendment note set out under section 1305 of this title] should be American-made.

''(b) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available under this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.''

§ 672. Foster care maintenance payments program

(a) In general

(1) Eligibility

Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section 606(a) of this title (as in effect on July 16, 1996) into foster care if—

(A) the removal and foster care placement met, and the placement continues to meet, the requirements of paragraph (2); and

(B) the child, while in the home, would have met the AFDC eligibility requirement of paragraph (3).

(2) Removal and foster care placement requirements

The removal and foster care placement of a child meet the requirements of this paragraph if—

(A) the removal and foster care placement are in accordance with—

(i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or

(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in section 671(a)(15) of this title for a child have been made;

(B) the child's placement and care are the responsibility of—

(i) the State agency administering the State plan approved under section 671 of this title; or

(ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; and

(C) the child has been placed in a foster family home or child-care institution.

(3) AFDC eligibility requirement

(A) In general

A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

(i) would have received aid under the State plan approved under section 602 of this title (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

(ii)(I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

(B) Resources determination

For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section 602 of this title (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 602(a)(7)(B) of this title, as so in effect) have a combined value of not more than $10,000 shall be considered a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of section 602(a)(7)(B) of this title).

(4) Eligibility of certain alien children

Subject to title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.], if the child is an alien disqualified under section 1255a(h) or 1160(f) of title 8 from receiving aid under the State plan approved under section 602 of this title in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to

the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.

(b) Additional qualifications

Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term ''foster care maintenance payments'' (as defined in section 675(4) of this title).

(c) "Foster family home" and "child-care institution" defined

For the purposes of this part, (1) the term ''foster family home'' means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term ''child-care institution'' means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(d) Children removed from their homes pursuant to voluntary placement agreements

Notwithstanding any other provision of this subchapter, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a) of this section, only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 622(b)(8) of this title.

(e) Placements in best interest of child

No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) of this section and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

(f) "Voluntary placement" and "voluntary placement agreement" defined

For the purposes of this part and part B of this subchapter, (1) the term ''voluntary placement'' means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and (2) the term ''voluntary placement agreement'' means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

(g) Revocation of voluntary placement agreement

In any case where—

(1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a) of this section, and

(2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative,

the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.

(h) Aid for dependent children; assistance for minor children in needy families

(1) For purposes of subchapter XIX of this chapter, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this subchapter (as so in effect). For purposes of subchapter XX of this chapter, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a minor child in a needy family under a State program funded under part A of this subchapter and is deemed to be a recipient of assistance under such part.

(2) For purposes of paragraph (1), a child whose costs in a foster family home or child care institution are covered by the foster care maintenance payments being made with respect to the child's minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are made under this section.

(i) Administrative costs associated with otherwise eligible children not in licensed foster care settings

Expenditures by a State that would be considered administrative expenditures for purposes of

section 674(a)(3) of this title if made with respect to a child who was residing in a foster family home or child-care institution shall be so considered with respect to a child not residing in such a home or institution—

(1) in the case of a child who has been removed in accordance with subsection (a) of this section from the home of a relative specified in section 606(a) of this title (as in effect on July 16, 1996), only for expenditures—

(A) with respect to a period of not more than the lesser of 12 months or the average length of time it takes for the State to license or approve a home as a foster home, in which the child is in the home of a relative and an application is pending for licensing or approval of the home as a foster family home; or

(B) with respect to a period of not more than 1 calendar month when a child moves from a facility not eligible for payments under this part into a foster family home or child care institution licensed or approved by the State; and

(2) in the case of any other child who is potentially eligible for benefits under a State plan approved under this part and at imminent risk of removal from the home, only if—

(A) reasonable efforts are being made in accordance with section 671(a)(15) of this title to prevent the need for, or if necessary to pursue, removal of the child from the home; and

(B) the State agency has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home.

(Aug. 14, 1935, ch. 531, title IV, § 472, as added and amended Pub. L. 96–272, title I, §§ 101(a)(1), 102(a)(1), (2), June 17, 1980, 94 Stat. 503, 513, 514; Pub. L. 99–603, title II, § 201(b)(2)(A), title III, §§ 302(b)(2), 303(e)(2), Nov. 6, 1986, 100 Stat. 3403, 3422, 3431; Pub. L. 100–203, title IX, §§ 9133(b)(2), 9139(a), Dec. 22, 1987, 101 Stat. 1330–314, 1330–321; Pub. L. 103–432, title II, § 202(d)(3), Oct. 31, 1994, 108 Stat. 4454; Pub. L. 104–193, title I, § 108(d)(3), (4), title V, § 501, Aug. 22, 1996, 110 Stat. 2166, 2277; Pub. L. 105–33, title V, §§ 5513(b)(1), (2), 5592(b), Aug. 5, 1997, 111 Stat. 620, 644; Pub. L. 105–89, title I, § 101(c), Nov. 19, 1997, 111 Stat. 2117; Pub. L. 106–169, title I, § 111, Dec. 14, 1999, 113 Stat. 1829; Pub. L. 109–113, § 2, Nov. 22, 2005, 119 Stat. 2371; Pub. L. 109–171, title VII, §§ 7403(a), 7404(a), Feb. 8, 2006, 120 Stat. 151; Pub. L. 109–288, § 6(f)(6), Sept. 28, 2006, 120 Stat. 1247.)

REFERENCES IN TEXT

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(4), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. Title IV of the Act is classified principally to chapter 14 (§ 1601 et seq.) of Title 8, Aliens and Nationality. For complete classification of title IV to the Code, see Tables.

Parts A and B of this subchapter, referred to in subsecs. (f) and (h), are classified to sections 601 et seq. and 620 et seq., respectively, of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–171, § 7404(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to qualifying children for foster care maintenance payments.

Subsec. (d). Pub. L. 109–288 substituted ''622(b)(8)'' for ''622(b)(10)''.

Subsec. (i). Pub. L. 109–171, § 7403(a), added subsec. (i).

2005—Subsec. (b). Pub. L. 109–113 struck out ''nonprofit'' before ''private'' in pars. (1) and (2).

1999—Subsec. (a). Pub. L. 106–169 inserted at end ''In determining whether a child would have received aid under a State plan approved under section 602 of this title (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 602(a)(7)(B) of this title, as so in effect) have a combined value of not more than $10,000 shall be considered to be a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of such section 602(a)(7)(B) of this title).

1997—Subsec. (a). Pub. L. 105–33, § 5513(b)(1), substituted ''July 16, 1996'' for ''June 1, 1995'' in introductory provisions.

Subsec. (a)(1). Pub. L. 105–89 inserted ''for a child'' before ''have been made;''.

Subsec. (a)(4). Pub. L. 105–33, § 5513(b)(1), substituted ''July 16, 1996'' for ''June 1, 1995'' in subpars. (A) and (B).

Subsec. (d). Pub. L. 105–33, § 5592(b), substituted ''section 622(b)(10)'' for ''section 622(b)(9)''.

Subsec. (h)(1). Pub. L. 105–33, § 5513(b)(2), substituted ''July 16, 1996'' for ''June 1, 1995''.

1996—Subsec. (a). Pub. L. 104–193, § 108(d)(3)(A), in introductory provisions, substituted ''would have met the requirements'' for ''would meet the requirements'' and inserted ''(as such sections were in effect on June 1, 1995)'' after ''section 607 of this title'' and ''(as so in effect)'' after ''section 606(a) of this title''.

Subsec. (a)(4)(A). Pub. L. 104–193, § 108(d)(3)(B)(i), substituted ''would have received aid'' for ''received aid'' and inserted ''(as in effect on June 1, 1995)'' after ''section 602 of this title''.

Subsec. (a)(4)(B)(ii). Pub. L. 104–193, § 108(d)(3)(B)(ii), inserted ''(as in effect on June 1, 1995)'' after ''section 606(a) of this title''.

Subsec. (c)(2). Pub. L. 104–193, § 501, struck out ''nonprofit'' before ''private child-care institution.''

Subsec. (h). Pub. L. 104–193, § 108(d)(4), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''For purposes of subchapters XIX and XX of this chapter, any child with respect to whom foster care maintenance payments are made under this section shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter. For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are made under this section.''

1994—Subsec. (d). Pub. L. 103–432 substituted ''section 622(b)(9) of this title'' for ''section 627(b) of this title''.

1987—Subsec. (a). Pub. L. 100–203, § 9139(a), substituted ''section 673(a)(2)(B) of this title'' for ''section 673(a)(1)(B) of this title''.

Subsec. (h). Pub. L. 100–203, § 9133(b)(2), inserted sentence at end.

1986—Subsec. (a). Pub. L. 99–603, § 303(e)(2), inserted in closing provisions reference to cases in which a child is an alien disqualified under section 1161(d)(7) of title 8.

Pub. L. 99–603, § 302(b)(2), inserted in closing provisions reference to cases in which a child is an alien disqualified under section 1160(f) of title 8.

Pub. L. 99–603, § 201(b)(2)(A), inserted closing provisions: ''In any case where the child is an alien disqualified under section 1255a(h) of title 8 from receiving aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the re-

moval of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 673(a)(1)(B) of this title), with respect to that month, if he or she would have satisfied such requirements but for such disqualification.''

1980—Subsec. (a). Pub. L. 96–272, § 102(a)(1), inserted provisions relating to voluntary placement agreements entered into by a child's parent or legal guardian.

Subsecs. (d) to (h). Pub. L. 96–272, § 102(a)(2), added subsecs. (d) to (g). Former subsec. (d) was redesignated (h).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Amendment by section 5513(b)(1), (2) of Pub. L. 105–33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105–33, set out as a note under section 652 of this title.

Amendment by section 5592(b) of Pub. L. 105–33 effective as if included in the enactment of title V of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5593 of Pub. L. 105–33, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(d)(3), (4) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9133(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 602, 673, and 675 of this title] shall become effective April 1, 1988.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 102(a)(1) of Pub. L. 96–272, as amended by Pub. L. 98–118, § 3(a), Oct. 11, 1983, 97 Stat. 803; Pub. L. 98–617, § 4(c)(1), Nov. 8, 1984, 98 Stat. 3297; Pub. L. 99–272, title XII, 12306(c)(1), Apr. 7, 1986, 100 Stat. 294; Pub. L. 100–203, title IX, § 9131(a)(1), Dec. 22, 1987, 101 Stat. 1330–313, provided that the amendment made by that section is effective with respect to expenditures made after Sept. 30, 1980.

Section 102(c) of Pub. L. 96–272, as amended by Pub. L. 98–118, § 3(b), Oct. 11, 1983, 97 Stat. 803; Pub. L. 98–617, § 4(c)(2), Nov. 8, 1984, 98 Stat. 3297; Pub. L. 99–272, title XII, § 12306(c)(2), Apr. 7, 1986, 100 Stat. 294; Pub. L. 100–203, title IX, § 9131(a)(2), Dec. 22, 1987, 101 Stat. 1330–313, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 608, 673, and 675 of this title] shall be effective only with respect to expenditures made after September 30, 1979.''

[Section 9131(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending section 102(a)(1), (c), and (e) of Pub. L. 96–272, set out as notes under this section] shall become effective October 1, 1987.'']

CHILDREN VOLUNTARILY REMOVED FROM HOME OF RELATIVE

Section 102(d)(1) of Pub. L. 96–272 provided that: ''For purposes of section 472 of the Social Security Act [this section], a child who was voluntarily removed from the home of a relative and who had a judicial determination prior to October 1, 1978, to the effect that continuation therein would be contrary to the welfare of such child, shall be deemed to have been so removed as a result of such judicial determination if, and from the date that, a case plan and a review meeting the requirements of section 471(a)(16) of such Act [section 671(a)(16) of this title] have been made with respect to such child and such child is determined to be in need of foster care as a result of such review. In the case of any child described in the preceding sentence, for purposes of section 472(a)(4) of such Act [subsec. (a)(4) of this section], the date of the voluntary removal shall be deemed to be the date on which court proceedings are initiated which led to such removal.''

ANNUAL REPORT TO CONGRESS OF NUMBER OF CHILDREN PLACED IN FOSTER CARE PURSUANT TO VOLUNTARY PLACEMENT AGREEMENTS

Pub. L. 96–272, title I, § 102(e), June 17, 1980, 94 Stat. 515, as amended by Pub. L. 100–203, title IX, § 9131(a)(3), Dec. 22, 1987, 101 Stat. 1330–313, which required the Secretary of Health, Education, and Welfare, to submit to Congress a full and complete annual report on the placement of children in foster care pursuant to voluntary placement agreements under this section and section 608 of this title, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 12 on page 99 of House Document No. 103–7.

§ 673. Adoption assistance program

(a) Agreements with adoptive parents of children with special needs; State payments; qualifying children; amount of payments; changes in circumstances; placement period prior to adoption; nonrecurring adoption expenses

(1)(A) Each State having a plan approved under this part shall enter into adoption assistance agreements (as defined in section 675(3) of this title) with the adoptive parents of children with special needs.

(B) Under any adoption assistance agreement entered into by a State with parents who adopt a child with special needs, the State—

(i) shall make payments of nonrecurring adoption expenses incurred by or on behalf of such parents in connection with the adoption of such child, directly through the State agency or through another public or nonprofit private agency, in amounts determined under paragraph (3), and

(ii) in any case where the child meets the requirements of paragraph (2), may make adoption assistance payments to such parents, di-

rectly through the State agency or through another public or nonprofit private agency, in amounts so determined.

(2)(A) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if the child—

(i)(I)(aa) was removed from the home of a relative specified in section 606(a) of this title (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 674 of this title (or section 603 of this title, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

(bb) met the requirements of section 672(a)(3) of this title with respect to the home referred to in item (aa) of this subclause;

(II) meets all of the requirements of subchapter XVI with respect to eligibility for supplemental security income benefits; or

(III) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 675(4)(B) of this title; and

(ii) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

(B) Section 672(a)(4) of this title shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien described in such section.

(C) A child shall be treated as meeting the requirements of this paragraph for the purpose of paragraph (1)(B)(ii) if the child—

(i) meets the requirements of subparagraph (A)(ii);

(ii) was determined eligible for adoption assistance payments under this part with respect to a prior adoption;

(iii) is available for adoption because—

(I) the prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated; or

(II) the child's adoptive parents have died; and

(iv) fails to meet the requirements of subparagraph (A) but would meet such requirements if—

(I) the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and

(II) the prior adoption were treated as never having occurred.

(3) The amount of the payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B) shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment made under clause (ii) of paragraph (1)(B) exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

(4) Notwithstanding the preceding paragraph, (A) no payment may be made to parents with respect to any child who has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one), and (B) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

(5) For purposes of this part, individuals with whom a child (who has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs) is placed for adoption in accordance with applicable State and local law shall be eligible for such payments, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

(6)(A) For purposes of paragraph (1)(B)(i), the term ''nonrecurring adoption expenses'' means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law.

(B) A State's payment of nonrecurring adoption expenses under an adoption assistance agreement shall be treated as an expenditure made for the proper and efficient administration of the State plan for purposes of section 674(a)(3)(E) of this title.

(b) Aid for dependent children; assistance for minor children in needy families

(1) For purposes of subchapter XIX of this chapter, any child who is described in paragraph (3) is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this subchapter (as so in effect) in the State where such child resides.

(2) For purposes of subchapter XX of this chapter, any child who is described in paragraph (3) is deemed to be a minor child in a needy family under a State program funded under part A of this subchapter and deemed to be a recipient of assistance under such part.

(3) A child described in this paragraph is any child—

(A)(i) who is a child described in subsection (a)(2) of this section, and

(ii) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued), or

(B) with respect to whom foster care maintenance payments are being made under section 672 of this title.

(4) For purposes of paragraphs (1) and (2), a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the child's minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are being made under section 672 of this title.

(c) Children with special needs

For purposes of this section, a child shall not be considered a child with special needs unless—

(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

(2) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter.

(Aug. 14, 1935, ch. 531, title IV, §473, as added and amended Pub. L. 96–272, title I, §§101(a)(1), 102(a)(3), June 17, 1980, 94 Stat. 504, 514; Pub. L. 99–272, title XII, §12305(a), (b)(1), Apr. 7, 1986, 100 Stat. 293; Pub. L. 99–514, title XVII, §1711(a), (b), (c)(3)–(5), Oct. 22, 1986, 100 Stat. 2783, 2784; Pub. L. 99–603, title II, §201(b)(2)(B), Nov. 6, 1986, 100 Stat. 3403; Pub. L. 100–203, title IX, §§9133(b)(3), (4), 9139(b), Dec. 22, 1987, 101 Stat. 1330–314, 1330–321; Pub. L. 103–432, title II, §§265(b), 266(a), Oct. 31, 1994, 108 Stat. 4469; Pub. L. 104–193, title I, §108(d)(5), (6), Aug. 22, 1996, 110 Stat. 2167; Pub. L. 105–33, title V, §5513(b)(3), (4), Aug. 5, 1997, 111 Stat. 620; Pub. L. 105–89, title III, §307(a), Nov. 19, 1997, 111 Stat. 2133; Pub. L. 109–171, title VII, §7404(b), Feb. 8, 2006, 120 Stat. 153.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (b)(1), (2), is classified to section 601 et seq. of this title.

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–171 amended par. (2) generally. Prior to amendment, par. (2) contained provisions relating to criteria used for determining whether a child met the requirements of par. (2) for purposes of par. (1)(B)(ii).

1997—Subsec. (a)(2). Pub. L. 105–89 inserted at end "Any child who meets the requirements of subparagraph (C), who was determined eligible for adoption assistance payments under this part with respect to a prior adoption, who is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died, and who fails to meet the requirements of subparagraphs (A) and (B) but would meet such requirements if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part and the prior adoption were treated as never having occurred, shall be treated as meeting the requirements of this paragraph for purposes of paragraph (1)(B)(ii)."

Pub. L. 105–33, §5513(b)(3), substituted "July 16, 1996" for "June 1, 1995" wherever appearing.

Subsec. (b)(1). Pub. L. 105–33, §5513(b)(4), substituted "July 16, 1996" for "June 1, 1995".

1996—Subsec. (a)(2)(A)(i). Pub. L. 104–193, §108(d)(5)(A), inserted "(as such sections were in effect on June 1, 1995)" after "section 607 of this title", "(as so in effect)" after "specified in section 606(a) of this title", and "(as such section was in effect on June 1, 1995)" after "603".

Subsec. (a)(2)(B)(i). Pub. L. 104–193, §108(d)(5)(B), inserted "would have" before "received aid under the State plan" and "(as in effect on June 1, 1995)" after "602 of this title".

Subsec. (a)(2)(B)(ii)(II). Pub. L. 104–193, §108(d)(5)(C), inserted "(as in effect on June 1, 1995)" after "606(a) of this title".

Subsec. (b). Pub. L. 104–193, §108(d)(6), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "For purposes of subchapters XIX and XX of this chapter, any child—

"(1)(A) who is a child described in subsection (a)(2) of this section, and

"(B) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued), or

"(2) with respect to whom foster care maintenance payments are being made under section 672 of this title,

shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter in the State where such child resides. For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are being made under section 672 of this title."

1994—Subsec. (a)(6)(B). Pub. L. 103–432, §266(a), substituted "section 674(a)(3)(E) of this title" for "section 674(a)(3)(C) of this title".

Pub. L. 103–432, §265(b), substituted "section 674(a)(3)(C) of this title" for "section 674(a)(3)(B) of this title".

1987—Subsec. (a)(2). Pub. L. 100–203, §9139(b), made technical amendment to Pub. L. 99–603. See 1986 Amendment note below.

Subsec. (a)(2)(A)(iii). Pub. L. 100–203, §9133(b)(3)(A), added cl. (iii).

Subsec. (a)(2)(B)(iii). Pub. L. 100–203, § 9133(b)(3)(B), inserted ''or (A)(iii)'' after ''(A)(ii)''.

Subsec. (b). Pub. L. 100–203, § 9133(b)(4), inserted sentence at end.

1986—Subsec. (a)(2). Pub. L. 99–603, as amended Pub. L. 100–203, § 9139(b), inserted at end ''The last sentence of section 672(a) of this title shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence.''

Pub. L. 99–514, § 1711(a), substituted par. (1) and introductory text of par. (2) for former introductory text of par. (1) which read as follows: ''Each State with a plan approved under this part shall, directly through the State agency or through another public or nonprofit private agency, make adoption assistance payments pursuant to an adoption assistance agreement in amounts determined under paragraph (2) of this subsection to parents who, after June 17, 1980, adopt a child who—''. Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 99–514, § 1711(a)(1), (c)(3), redesignated par. (2) as (3), substituted ''payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B)'' for ''adoption assistance payments'', and inserted ''made under clause (ii) of paragraph (1)(B)''. Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 99–514, § 1711(a)(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 99–514, § 1711(a)(1), (c)(4), redesignated par. (4) as (5) and substituted ''in accordance with applicable State and local law shall be eligible for such payments'' for '', pursuant to an interlocutory decree, shall be eligible for adoption assistance payments under this subsection''.

Subsec. (a)(6). Pub. L. 99–514, § 1711(b), added par. (6).

Subsec. (b). Pub. L. 99–272, § 12305(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For purposes of subchapters XIX and XX of this chapter, any child with respect to whom adoption assistance payments are made under this section shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter.''

Subsec. (b)(1)(A). Pub. L. 99–514, § 1711(c)(5), substituted ''subsection (a)(2)'' for ''subsection (a)(1)''.

Subsec. (c)(2). Pub. L. 99–272, § 12305(b)(1), substituted ''without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter'' for ''without providing adoption assistance'', and inserted ''or medical assistance under subchapter XIX of this chapter'' after ''appropriate adoptive parents without providing adoption assistance under this section''.

1980—Subsec. (a)(1). Pub. L. 96–272, § 102(a)(3), inserted references to voluntary placement agreements in subpars. (A)(i) and (B)(i), (ii).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 307(b) of Pub. L. 105–89 provided that: ''The amendment made by subsection (a) [amending this section] shall only apply to children who are adopted on or after October 1, 1997.''

Amendment by Pub. L. 105–33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105–33, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 265(d) of Pub. L. 103–432 provided that: ''Each amendment made by this section [amending this section and sections 608 and 675 of this title] shall take effect as if the amendment had been included in the provision of OBRA–1989 [Pub. L. 101–239] to which the amendment relates, at the time the provision became law.''

Section 266(b) of Pub. L. 103–432 provided that: ''The amendment made by this section [amending this section] shall take effect as if the amendment had been included in the provision of OBRA–1993 [Pub. L. 103–66] to which the amendment relates, at the time the provision became law.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9133(b)(3), (4) of Pub. L. 100–203 effective Apr. 1, 1988, see section 9133(c) of Pub. L. 100–203, set out as a note under section 672 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99–514, set out as a note under section 670 of this title.

Section 12305(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 675 and 1396a of this title] shall apply to medical assistance furnished in or after the first calendar quarter beginning more than 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 102(a)(3) of Pub. L. 96–272 effective only with respect to expenditures made after Sept. 30, 1979, see section 102(c) of Pub. L. 96–272, as amended, set out as a note under section 672 of this title.

§ 673a. Interstate compacts

The Secretary of Health and Human Services shall take all possible steps to encourage and assist the various States to enter into interstate compacts (which are hereby approved by the Congress) under which the interests of any adopted child with respect to whom an adoption assistance agreement has been entered into by a State under section 673 of this title will be adequately protected, on a reasonable and equitable basis which is approved by the Secretary, if and when the child and his or her adoptive parent (or parents) move to another State.

(Pub. L. 96–272, title I, § 101(a)(4)(B), June 17, 1980, 94 Stat. 512.)

CODIFICATION

Section was enacted as part of the Adoption Assistance and Child Welfare Act of 1980, and not as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

''Secretary of Health and Human Services'' was substituted for ''Secretary of Health, Education, and Welfare'' in text, pursuant to Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

§ 673b. Adoption incentive payments

(a) Grant authority

Subject to the availability of such amounts as may be provided in advance in appropriations Acts for this purpose, the Secretary shall make a grant to each State that is an incentive-eligible State for a fiscal year in an amount equal to the adoption incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.

(b) Incentive-eligible State

A State is an incentive-eligible State for a fiscal year if—

(1) the State has a plan approved under this part for the fiscal year;

(2)(A) the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year; or

(B) the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year;

(3) the State is in compliance with subsection (c) of this section for the fiscal year;

(4) in the case of fiscal years 2001 through 2007, the State provides health insurance coverage to any child with special needs (as determined under section 673(c) of this title) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents; and

(5) the fiscal year is any of fiscal years 1998 through 2007.

(c) Data requirements

(1) In general

A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2)—

(A) for fiscal years 1995 through 1997 (or, if the first fiscal year for which the State seeks a grant under this section is after fiscal year 1998, the fiscal year that precedes such first fiscal year); and

(B) for each succeeding fiscal year that precedes the fiscal year.

(2) Determination of numbers of adoptions based on AFCARS data

The Secretary shall determine the numbers of foster child adoptions, of special needs adoptions that are not older child adoptions, and of older child adoptions in a State during each of fiscal years 2002 through 2007, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 679 of this title, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

(3) No waiver of AFCARS requirements

This section shall not be construed to alter or affect any requirement of section 679 of this title or of any regulation prescribed under such section with respect to reporting of data by States, or to waive any penalty for failure to comply with such a requirement.

(d) Adoption incentive payment

(1) In general

Except as provided in paragraph (2), the adoption incentive payment payable to a State for a fiscal year under this section shall be equal to the sum of—

(A) $4,000, multiplied by the amount (if any) by which the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;

(B) $2,000, multiplied by the amount (if any) by which the number of special needs adoptions that are not older child adoptions in the State during the fiscal year exceeds the base number of special needs adoptions that are not older child adoptions for the State for the fiscal year; and

(C) $4,000, multiplied by the amount (if any) by which the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year.

(2) Pro rata adjustment if insufficient funds available

For any fiscal year, if the total amount of adoption incentive payments otherwise payable under this section for a fiscal year exceeds the amount appropriated pursuant to subsection (h) of this section for the fiscal year, the amount of the adoption incentive payment payable to each State under this section for the fiscal year shall be—

(A) the amount of the adoption incentive payment that would otherwise be payable to the State under this section for the fiscal year; multiplied by

(B) the percentage represented by the amount so appropriated for the fiscal year, divided by the total amount of adoption incentive payments otherwise payable under this section for the fiscal year.

(e) 2-year availability of incentive payments

Payments to a State under this section in a fiscal year shall remain available for use by the State through the end of the succeeding fiscal year.

(f) Limitations on use of incentive payments

A State shall not expend an amount paid to the State under this section except to provide to children or families any service (including post-adoption services) that may be provided under part B of this subchapter or this part. Amounts expended by a State in accordance with the preceding sentence shall be disregarded in determining State expenditures for purposes of Federal matching payments under sections 624, 629d, and 674 of this title.

(g) Definitions

As used in this section:

(1) Foster child adoption

The term ''foster child adoption'' means the final adoption of a child who, at the time of adoptive placement, was in foster care under the supervision of the State.

(2) Special needs adoption

The term ''special needs adoption'' means the final adoption of a child for whom an adop-

tion assistance agreement is in effect under section 673 of this title.

(3) Base number of foster child adoptions

The term ''base number of foster child adoptions for a State'' means—

(A) with respect to fiscal year 2003, the number of foster child adoptions in the State in fiscal year 2002; and

(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.

(4) Base number of special needs adoptions that are not older child adoptions

The term ''base number of special needs adoptions for a State'' means—

(A) with respect to fiscal year 2003, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2002; and

(B) with respect to any subsequent fiscal year, the number of special needs adoptions that are not older child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.

(5) Base number of older child adoptions

The term ''base number of older child adoptions for a State'' means—

(A) with respect to fiscal year 2003, the number of older child adoptions in the State in fiscal year 2002; and

(B) with respect to any subsequent fiscal year, the number of older child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.

(6) Older child adoptions

The term ''older child adoptions'' means the final adoption of a child who has attained 9 years of age if—

(A) at the time of the adoptive placement, the child was in foster care under the supervision of the State; or

(B) an adoption assistance agreement was in effect under section 673 of this title with respect to the child.

(h) Limitations on authorization of appropriations

(1) In general

For grants under subsection (a) of this section, there are authorized to be appropriated to the Secretary—

(A) $20,000,000 for fiscal year 1999;

(B) $43,000,000 for fiscal year 2000;

(C) $20,000,000 for each of fiscal years 2001 through 2003; and

(D) $43,000,000 for each of fiscal years 2004 through 2008.

(2) Availability

Amounts appropriated under paragraph (1), or under any other law for grants under subsection (a) of this section, are authorized to remain available until expended, but not after fiscal year 2008.

(i) Technical assistance

(1) In general

The Secretary may, directly or through grants or contracts, provide technical assistance to assist States and local communities to reach their targets for increased numbers of adoptions and, to the extent that adoption is not possible, alternative permanent placements, for children in foster care.

(2) Description of the character of the technical assistance

The technical assistance provided under paragraph (1) may support the goal of encouraging more adoptions out of the foster care system, when adoptions promote the best interests of children, and may include the following:

(A) The development of best practice guidelines for expediting termination of parental rights.

(B) Models to encourage the use of concurrent planning.

(C) The development of specialized units and expertise in moving children toward adoption as a permanency goal.

(D) The development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home.

(E) Models to encourage the fast tracking of children who have not attained 1 year of age into pre-adoptive placements.

(F) Development of programs that place children into pre-adoptive families without waiting for termination of parental rights.

(3) Targeting of technical assistance to the courts

Not less than 50 percent of any amount appropriated pursuant to paragraph (4) shall be used to provide technical assistance to the courts.

(4) Limitations on authorization of appropriations

To carry out this subsection, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed $10,000,000 for each of fiscal years 2004 through 2006.

(Aug. 14, 1935, ch. 531, title IV, § 473A, as added Pub. L. 105–89, title II, § 201(a), Nov. 19, 1997, 111 Stat. 2122; Pub. L. 105–200, title IV, § 410(f), July 16, 1998, 112 Stat. 673; Pub. L. 106–169, title I, § 131, Dec. 14, 1999, 113 Stat. 1830; Pub. L. 108–145, § 3(a), Dec. 2, 2003, 117 Stat. 1879; Pub. L. 109–288, § 6(f)(7), Sept. 28, 2006, 120 Stat. 1248.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (f), is classified to section 620 et seq. of this title.

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–288 substituted ''624'' for ''623''.

2003—Subsec. (b)(2). Pub. L. 108–145, § 3(a)(1)(A), added par. (2) and struck out former par. (2) which read as fol-

lows: ''the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;''.

Subsec. (b)(4). Pub. L. 108–145, § 3(a)(1)(B), substituted ''through 2007'' for ''and 2002''.

Subsec. (b)(5). Pub. L. 108–145, § 3(a)(1)(C), substituted ''2007'' for ''2002''.

Subsec. (c)(2). Pub. L. 108–145, § 3(a)(2), added par. (2) and struck out heading and text of former par. (2). Text read as follows:

''(A) DETERMINATIONS BASED ON AFCARS DATA.—Except as provided in subparagraph (B), the Secretary shall determine the numbers of foster child adoptions and of special needs adoptions in a State during each of fiscal years 1995 through 2002, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 679 of this title, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

''(B) ALTERNATIVE DATA SOURCES PERMITTED FOR FISCAL YEARS 1995 THROUGH 1997.—For purposes of the determination described in subparagraph (A) for fiscal years 1995 through 1997, the Secretary may use data from a source or sources other than that specified in subparagraph (A) that the Secretary finds to be of equivalent completeness and reliability, as reported by a State by April 30, 1998, and approved by the Secretary by July 1, 1998.''

Subsec. (d)(1). Pub. L. 108–145, § 3(a)(3), inserted ''that are not older child adoptions'' after ''adoptions'' in two places in subpar. (B) and added subpar. (C).

2003—Subsec. (g)(3)(A), (B). Pub. L. 108–145, § 3(a)(4)(A), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) with respect to fiscal year 1998, the average number of foster child adoptions in the State in fiscal years 1995, 1996, and 1997; and

''(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.''

Subsec. (g)(4). Pub. L. 108–145, § 3(a)(4)(B), inserted ''that are not older child adoptions'' after ''adoptions'' in heading, added subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) with respect to fiscal year 1998, the average number of special needs adoptions in the State in fiscal years 1995, 1996, and 1997; and

''(B) with respect to any subsequent fiscal year, the number of special needs adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.''

Subsec. (g)(5), (6). Pub. L. 108–145, § 3(a)(4)(C), added pars. (5) and (6).

Subsec. (h)(1)(D). Pub. L. 108–145, § 3(a)(5)(A), added subpar. (D).

Subsec. (h)(2). Pub. L. 108–145, § 3(a)(5)(B), inserted '', or under any other law for grants under subsection (a) of this section,'' after ''(1)'' and substituted ''2008'' for ''2003''.

Subsec. (i)(4). Pub. L. 108–145, § 3(a)(6), substituted ''2004 through 2006'' for ''1998 through 2000''.

Subsec. (j). Pub. L. 108–145, § 3(a)(7), struck out subsec. (j) which related to supplemental grants.

1999—Subsec. (h)(1). Pub. L. 106–169, § 131(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''For grants under subsection (a) of this section, there are authorized to be appropriated to the Secretary $20,000,000 for each of fiscal years 1999 through 2003.''

Subsec. (j). Pub. L. 106–169, § 131(a), added subsec. (j).

1998—Subsec. (c)(2)(B). Pub. L. 105–200 substituted ''April 30, 1998'' for ''November 30, 1997'' and ''July 1, 1998'' for ''March 1, 1998''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–145, § 5, Dec. 2, 2003, 117 Stat. 1882, provided that: ''The amendments made by this Act [amending this section and section 674 of this title] shall take effect on October 1, 2003.''

EFFECTIVE DATE

Section effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as an Effective Date of 1997 Amendment note under section 622 of this title.

FINDINGS

Pub. L. 108–145, § 2, Dec. 2, 2003, 117 Stat. 1879, provided that: ''The Congress finds the following:

''(1) In 1997, the Congress passed the Adoption and Safe Families Act of 1997 [Pub. L. 105–89; see Short Title of 1997 Amendment note set out under section 1305 of this title] to promote comprehensive child welfare reform to ensure that consideration of children's safety is paramount in child welfare decisions, and to provide a greater sense of urgency to find every child a safe, permanent home.

''(2) The Adoption and Safe Families Act of 1997 also created the Adoption Incentives program, which authorizes incentive payments to States to promote adoptions, with additional incentives provided for the adoption of foster children with special needs.

''(3) Since 1997, all States, the District of Columbia, and Puerto Rico have qualified for incentive payments for their work in promoting adoption of foster children.

''(4) Between 1997 and 2002, adoptions increased by 64 percent, and adoptions of children with special needs increased by 63 percent; however, 542,000 children remain in foster care, and 126,000 are eligible for adoption.

''(5) Although substantial progress has been made to promote adoptions, attention should be focused on promoting adoption of older children. Recent data suggest that half of the children waiting to be adopted are age 9 or older.''

§ 673c. Timely interstate home study incentive payments

(a) Grant authority

The Secretary shall make a grant to each State that is a home study incentive-eligible State for a fiscal year in an amount equal to the timely interstate home study incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.

(b) Home study incentive-eligible State

A State is a home study incentive-eligible State for a fiscal year if—

(1) the State has a plan approved under this part for the fiscal year;

(2) the State is in compliance with subsection (c) for the fiscal year; and

(3) based on data submitted and verified pursuant to subsection (c), the State has completed a timely interstate home study during the fiscal year.

(c) Data requirements

(1) In general

A State is in compliance with this subsection for a fiscal year if the State has pro-

vided to the Secretary a written report, covering the preceding fiscal year, that specifies—

(A) the total number of interstate home studies requested by the State with respect to children in foster care under the responsibility of the State, and with respect to each such study, the identity of the other State involved;

(B) the total number of timely interstate home studies completed by the State with respect to children in foster care under the responsibility of other States, and with respect to each such study, the identity of the other State involved; and

(C) such other information as the Secretary may require in order to determine whether the State is a home study incentive-eligible State.

(2) Verification of data

In determining the number of timely interstate home studies to be attributed to a State under this section, the Secretary shall check the data provided by the State under paragraph (1) against complementary data so provided by other States.

(d) Timely interstate home study incentive payments

(1) In general

The timely interstate home study incentive payment payable to a State for a fiscal year shall be $1,500, multiplied by the number of timely interstate home studies attributed to the State under this section during the fiscal year, subject to paragraph (2).

(2) Pro rata adjustment if insufficient funds available

If the total amount of timely interstate home study incentive payments otherwise payable under this section for a fiscal year exceeds the total of the amounts made available pursuant to subsection (h) for the fiscal year (reduced (but not below zero) by the total of the amounts (if any) payable under paragraph (3) of this subsection with respect to the preceding fiscal year), the amount of each such otherwise payable incentive payment shall be reduced by a percentage equal to—

(A) the total of the amounts so made available (as so reduced); divided by

(B) the total of such otherwise payable incentive payments.

(3) Appropriations available for unpaid incentive payments for prior fiscal years

(A) In general

If payments under this section are reduced under paragraph (2) or subparagraph (B) of this paragraph for a fiscal year, then, before making any other payment under this section for the next fiscal year, the Secretary shall pay each State whose payment was so reduced an amount equal to the total amount of the reductions which applied to the State, subject to subparagraph (B) of this paragraph.

(B) Pro rata adjustment if insufficient funds available

If the total amount of payments otherwise payable under subparagraph (A) of this paragraph for a fiscal year exceeds the total of the amounts made available pursuant to subsection (h) for the fiscal year, the amount of each such payment shall be reduced by a percentage equal to—

(i) the total of the amounts so made available; divided by

(ii) the total of such otherwise payable payments.

(e) Two-year availability of incentive payments

Payments to a State under this section in a fiscal year shall remain available for use by the State through the end of the next fiscal year.

(f) Limitations on use of incentive payments

A State shall not expend an amount paid to the State under this section except to provide to children or families any service (including post-adoption services) that may be provided under part B or this part. Amounts expended by a State in accordance with the preceding sentence shall be disregarded in determining State expenditures for purposes of Federal matching payments under sections 623, 629d, and 674 of this title.

(g) Definitions

In this section:

(1) Home study

The term ''home study'' means an evaluation of a home environment conducted in accordance with applicable requirements of the State in which the home is located, to determine whether a proposed placement of a child would meet the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional, and physical development.

(2) Interstate home study

The term ''interstate home study'' means a home study conducted by a State at the request of another State, to facilitate an adoptive or foster placement in the State of a child in foster care under the responsibility of the State.

(3) Timely interstate home study

The term ''timely interstate home study'' means an interstate home study completed by a State if the State provides to the State that requested the study, within 30 days after receipt of the request, a report on the results of the study. The preceding sentence shall not be construed to require the State to have completed, within the 30-day period, the parts of the home study involving the education and training of the prospective foster or adoptive parents.

(h) Limitations on authorization of appropriations

(1) In general

For payments under this section, there are authorized to be appropriated to the Secretary—

(A) $10,000,000 for fiscal year 2007;

(B) $10,000,000 for fiscal year 2008;

(C) $10,000,000 for fiscal year 2009; and

(D) $10,000,000 for fiscal year 2010.

(2) Availability

Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(Aug. 14, 1935, ch. 531, title IV, § 473B, as added Pub. L. 109–239, § 4(b), July 3, 2006, 120 Stat. 510.)

REPEAL OF SECTION

Pub. L. 109–239, § 4(c), July 3, 2006, 120 Stat. 512, provided that, effective Oct. 1, 2010, this section is repealed.

REFERENCES IN TEXT

Part B, referred to in subsec. (f), is classified to section 620 et seq. of this title.

EFFECTIVE AND TERMINATION DATES

Pub. L. 109–239, § 4(c), July 3, 2006, 120 Stat. 512, provided that the repeal of this section is effective Oct. 1, 2010.

Section effective Oct. 1, 2006, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after Oct. 1, 2006, without regard to whether regulations have been promulgated by Oct. 1, 2006, and with delay permitted if State legislation is required, see section 14 of Pub. L. 109–239, set out as an Effective Date of 2006 Amendment note under section 622 of this title.

§ 674. Payments to States

(a) Amounts

For each quarter beginning after September 30, 1980, each State which has a plan approved under this part shall be entitled to a payment equal to the sum of—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title) of the total amount expended during such quarter as foster care maintenance payments under section 672 of this title for children in foster family homes or child-care institutions; plus

(2) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title) of the total amount expended during such quarter as adoption assistance payments under section 673 of this title pursuant to adoption assistance agreements; plus

(3) subject to section 672(i) of this title an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision,

(B) 75 percent of so much of such expenditures (including travel and per diem expenses) as are for the short-term training of current or prospective foster or adoptive parents and the members of the staff of State-licensed or State-approved child care institutions providing care to foster and adopted children receiving assistance under this part, in ways that increase the ability of such current or prospective parents, staff members, and institutions to provide support and assistance to foster and adopted children, whether incurred directly by the State or by contract,

(C) 50 percent of so much of such expenditures as are for the planning, design, development, or installation of statewide mechanized data collection and information retrieval systems (including 50 percent of the full amount of expenditures for hardware components for such systems) but only to the extent that such systems—

(i) meet the requirements imposed by regulations promulgated pursuant to section 679(b)(2) of this title;

(ii) to the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

(iii) to the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part A of this subchapter (for the purposes of facilitating verification of eligibility of foster children); and

(iv) are determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under a State plan approved under part B of this subchapter or this part; and

(D) 50 percent of so much of such expenditures as are for the operation of the statewide mechanized data collection and information retrieval systems referred to in subparagraph (C); and

(E) one-half of the remainder of such expenditures; plus

(4) an amount equal to the amount (if any) by which—

(A) the lesser of—

(i) 80 percent of the amounts expended by the State during the fiscal year in which the quarter occurs to carry out programs in accordance with the State application approved under section 677(b) of this title for the period in which the quarter occurs (including any amendment that meets the requirements of section 677(b)(5) of this title); or

(ii) the amount allotted to the State under section 677(c)(1) of this title for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this paragraph for all prior quarters in the fiscal year; exceeds

(B) the total amount of any penalties assessed against the State under section 677(e) of this title during the fiscal year in which the quarter occurs.

(b) Quarterly estimates of State's entitlement for next quarter; payments; United States' pro rata share of amounts recovered as overpayment; allowance, disallowance, or deferral of claim

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with subsection (a) of this section, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to foster care and adoption assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4)(A) Within 60 days after receipt of a State claim for expenditures pursuant to subsection (a) of this section, the Secretary shall allow, disallow, or defer such claim.

(B) Within 15 days after a decision to defer such a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional information necessary to determine the allowability of the claim.

(C) Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall—

(i) disallow the claim, if able to complete the review and determine that the claim is not allowable, or

(ii) in any other case, allow the claim, subject to disallowance (as necessary)—

(I) upon completion of the review, if it is determined that the claim is not allowable; or

(II) on the basis of findings of an audit or financial management review.

(c) Automated data collection expenditures

The Secretary shall treat as necessary for the proper and efficient administration of the State plan all expenditures of a State necessary in order for the State to plan, design, develop, install, and operate data collection and information retrieval systems described in subsection (a)(3)(C) of this section, without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under this part.

(d) Reduction for violation of plan requirement

(1) If, during any quarter of a fiscal year, a State's program operated under this part is found, as a result of a review conducted under section 1320a–2a of this title, or otherwise, to have violated paragraph (18) or (23) of section 671(a) of this title with respect to a person or to have failed to implement a corrective action plan within a period of time not to exceed 6 months with respect to such violation, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1320a–2a(b)(3) of this title, the Secretary shall reduce the amount otherwise payable to the State under this part, for that fiscal year quarter and for any subsequent quarter of such fiscal year, until the State program is found, as a result of a subsequent review under section 1320a–2a of this title, to have implemented a corrective action plan with respect to such violation, by—

(A) 2 percent of such otherwise payable amount, in the case of the 1st such finding for the fiscal year with respect to the State;

(B) 3 percent of such otherwise payable amount, in the case of the 2nd such finding for the fiscal year with respect to the State; or

(C) 5 percent of such otherwise payable amount, in the case of the 3rd or subsequent such finding for the fiscal year with respect to the State.

In imposing the penalties described in this paragraph, the Secretary shall not reduce any fiscal year payment to a State by more than 5 percent.

(2) Any other entity which is in a State that receives funds under this part and which violates paragraph (18) or (23) of section 671(a) of this title during a fiscal year quarter with respect to any person shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds.

(3)(A) Any individual who is aggrieved by a violation of section 671(a)(18) of this title by a State or other entity may bring an action seeking relief from the State or other entity in any United States district court.

(B) An action under this paragraph may not be brought more than 2 years after the date the alleged violation occurred.

(4) This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.].

(e) Discretionary grants for educational and training vouchers for youths aging out of foster care

From amounts appropriated pursuant to section 677(h)(2) of this title, the Secretary may make a grant to a State with a plan approved under this part, for a calendar quarter, in an amount equal to the lesser of—

(1) 80 percent of the amounts expended by the State during the quarter to carry out programs for the purposes described in section 677(a)(6) of this title; or

(2) the amount, if any, allotted to the State under section 677(c)(3) of this title for the fis-

cal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this subsection for such purposes for all prior quarters in the fiscal year.

(f) Reduction for failure to submit required data

(1) If the Secretary finds that a State has failed to submit to the Secretary data, as required by regulation, for the data collection system implemented under section 679 of this title, the Secretary shall, within 30 days after the date by which the data was due to be so submitted, notify the State of the failure and that payments to the State under this part will be reduced if the State fails to submit the data, as so required, within 6 months after the date the data was originally due to be so submitted.

(2) If the Secretary finds that the State has failed to submit the data, as so required, by the end of the 6-month period referred to in paragraph (1) of this subsection, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1320a–2a(b)(3) of this title, the Secretary shall reduce the amounts otherwise payable to the State under this part, for each quarter ending in the 6-month period (and each quarter ending in each subsequent consecutively occurring 6-month period until the Secretary finds that the State has submitted the data, as so required), by—

(A) ⅙ of 1 percent of the total amount expended by the State for administration of foster care activities under the State plan approved under this part in the quarter so ending, in the case of the 1st 6-month period during which the failure continues; or

(B) ¼ of 1 percent of the total amount so expended, in the case of the 2nd or any subsequent such 6-month period.

(Aug. 14, 1935, ch. 531, title IV, §474, as added Pub. L. 96–272, title I, §101(a)(1), June 17, 1980, 94 Stat. 506; amended Pub. L. 96–611, §3, Dec. 28, 1980, 94 Stat. 3567; Pub. L. 98–369, div. B, title VI, §2663(c)(18), July 18, 1984, 98 Stat. 1167; Pub. L. 98–617, §4(a), (b), Nov. 8, 1984, 98 Stat. 3296, 3297; Pub. L. 99–272, title XII, §§12306(a), (b), 12307(c), Apr. 7, 1986, 100 Stat. 294, 296; Pub. L. 99–514, title XVIII, §1883(b)(9), Oct. 22, 1986, 100 Stat. 2917; Pub. L. 100–203, title IX, §9132(a), Dec. 22, 1987, 101 Stat. 1330–313; Pub. L. 101–239, title VIII, §§8001(a), 8002(c), 8006(a), title X, §§10401(a), 10402(a), 10403(c)(1), Dec. 19, 1989, 103 Stat. 2452, 2453, 2461, 2487, 2488; Pub. L. 101–508, title V, §5071(a), Nov. 5, 1990, 104 Stat. 1388–233; Pub. L. 103–66, title XIII, §13713(a)(1), (2), (b)(1), Aug. 10, 1993, 107 Stat. 656, 657; Pub. L. 103–432, title II, §§207(a), (b), 210(a), Oct. 31, 1994, 108 Stat. 4457, 4460; Pub. L. 104–188, title I, §1808(b), Aug. 20, 1996, 110 Stat. 1903; Pub. L. 105–89, title II, §202(b), Nov. 19, 1997, 111 Stat. 2125; Pub. L. 105–200, title III, §301(b), (c), title IV, §410(g), July 16, 1998, 112 Stat. 658, 674; Pub. L. 106–169, title I, §101(c), Dec. 14, 1999, 113 Stat. 1828; Pub. L. 107–133, title II, §201(f), Jan. 17, 2002, 115 Stat. 2424; Pub. L. 108–145, §4, Dec. 2, 2003, 117 Stat. 1881; Pub. L. 109–171, title VII, §7403(b), Feb. 8, 2006, 120 Stat. 151.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (a)(3)(C)(iii), (iv), are classified to sections 601 et seq. and 620 et seq., respectively, of this title.

The Indian Child Welfare Act of 1978, referred to in subsec. (d)(4), is Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§1901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 25 and Tables.

AMENDMENTS

2006—Subsec. (a)(3). Pub. L. 109–171 inserted ''subject to section 672(i) of this title'' before ''an amount equal to'' in introductory provisions.

2003—Subsec. (f). Pub. L. 108–145 added subsec. (f).

2002—Subsec. (a)(4). Pub. L. 107–133, §201(f)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the lesser of—

''(A) 80 percent of the amount (if any) by which—

''(i) the total amount expended by the State during the fiscal year in which the quarter occurs to carry out programs in accordance with the State application approved under section 677(b) of this title for the period in which the quarter occurs (including any amendment that meets the requirements of section 677(b)(5) of this title); exceeds

''(ii) the total amount of any penalties assessed against the State under section 677(e) of this title during the fiscal year in which the quarter occurs; or

''(B) the amount allotted to the State under section 677 of this title for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this paragraph for all prior quarters in the fiscal year.''

Subsec. (e). Pub. L. 107–133, §201(f)(2), added subsec. (e).

1999—Subsec. (a)(4). Pub. L. 106–169 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''an amount equal to the sum of—

''(A) so much of the amounts expended by such State to carry out programs under section 677 of this title as do not exceed the basic amount for such State determined under section 677(e)(1) of this title; and

''(B) the lesser of—

''(i) one-half of any additional amounts expended by such State for such programs; or

''(ii) the maximum additional amount for such State under such section 677(e)(1) of this title.''

1998—Subsec. (a). Pub. L. 105–200, §410(g), struck out ''(subject to the limitations imposed by subsection (b) of this section)'' after ''this part'' in introductory provisions.

Subsec. (d)(1), (2). Pub. L. 105–200, §301(b), substituted ''paragraph (18) or (23) of section 671(a) of this title'' for ''section 671(a)(18) of this title''.

Subsec. (e). Pub. L. 105–200, §301(c), struck out subsec. (e) which read as follows: ''Notwithstanding subsection (a) of this section, a State shall not be eligible for any payment under this section if the Secretary finds that, after November 19, 1997, the State has—

''(1) denied or delayed the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

''(2) failed to grant an opportunity for a fair hearing, as described in section 671(a)(12) of this title, to an individual whose allegation of a violation of paragraph (1) of this subsection is denied by the State or not acted upon by the State with reasonable promptness.''

1997—Subsec. (e). Pub. L. 105–89 added subsec. (e).

1996—Subsec. (d). Pub. L. 104–188 added subsec. (d).

1994—Subsec. (b). Pub. L. 103–432, §207(a), (b)(2), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to maximum aggregate sums payable to any State and State allotments for fiscal years 1981 to 1992.

Subsec. (b)(4). Pub. L. 103–432, §210(a), added par. (4).

Subsec. (c). Pub. L. 103–432, §207(a), (b)(2), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to reimbursement for expenditures.

Subsec. (d). Pub. L. 103–432, § 207(b)(2), redesignated subsec. (d) as (b).

Subsec. (d)(1). Pub. L. 103–432, § 207(b)(1), substituted ''subsection (a) of this section for such quarter'' for ''subsections (a), (b), and (c) of this section for such quarter'' and ''subsection (a) of this section'' for ''the provisions of such subsections''.

Subsec. (e). Pub. L. 103–432, § 207(b)(2), redesignated subsec. (e) as (c).

1993—Subsec. (a)(3)(B). Pub. L. 103–66, § 13713(a)(1)(A), struck out ''and'' at end.

Subsec. (a)(3)(C). Pub. L. 103–66, § 13713(b)(1), substituted ''50 percent'' for ''75 percent'' in two places in introductory provisions.

Pub. L. 103–66, § 13713(a)(1)(C), added subpar. (C). Former subpar. (C) redesignated (E).

Subsec. (a)(3)(D), (E). Pub. L. 103–66, § 13713(a)(1)(B), (C), added subpar. (D) and redesignated former subpar. (C) as (E).

Subsec. (e). Pub. L. 103–66, § 13713(a)(2), added subsec. (e).

1990—Subsec. (a)(3). Pub. L. 101–508 inserted ''provision of child placement services and for the'' before ''proper and efficient''.

1989—Subsec. (a)(3)(B), (C). Pub. L. 101–239, § 8006(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(4). Pub. L. 101–239, § 8002(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''an amount for transitional independent living programs as provided in section 677 of this title.''

Subsec. (b)(1). Pub. L. 101–239, § 10403(c)(1), amended Pub. L. 98–617, § 4(a)(1), see 1984 Amendment note below.

Pub. L. 101–239, § 8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (b)(2)(A)(iv). Pub. L. 101–239, § 10402(a), added cl. (iv).

Subsec. (b)(2)(B). Pub. L. 101–239, § 10403(c)(1), amended Pub. L. 98–617, § 4(a)(1), see 1984 Amendment note below.

Pub. L. 101–239, § 8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (b)(4)(B). Pub. L. 101–239, § 10403(c)(1), amended Pub. L. 98–617, § 4(a)(1), see 1984 Amendment note below.

Pub. L. 101–239, § 8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (b)(5)(A). Pub. L. 101–239, § 8001(a), substituted ''1992'' for ''1989'' in introductory provisions and in cl. (ii).

Subsec. (c)(1), (2). Pub. L. 101–239, § 8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (c)(4)(B), (C). Pub. L. 101–239, § 10401(a), substituted ''$325,000,000'' for ''$266,000,000''.

1987—Subsec. (b)(1), (2)(A)(iii), (B), (4)(B). Pub. L. 100–203, § 9132(a)(1), substituted ''through 1989'' for ''through 1987''.

Subsec. (b)(5)(A). Pub. L. 100–203, § 9132(a)(1), (2), substituted ''October 1, 1989'' for ''October 1, 1987'' in introductory provisions and ''through 1989'' for ''through 1987'' in cl. (ii).

Subsec. (c)(1), (2). Pub. L. 100–203, § 9132(a)(3), substituted ''through 1989'' for ''through 1987''.

1986—Subsec. (a)(3). Pub. L. 99–272, § 12307(c)(1), substituted ''; plus'' for period at end.

Subsec. (a)(4). Pub. L. 99–514 realigned margins of par. (4).

Pub. L. 99–272, § 12307(c)(2), added par. (4).

Subsec. (b)(1). Pub. L. 99–272, § 12306(a)(1), substituted ''1987'' for ''1985''.

Subsec. (b)(2)(A). Pub. L. 99–272, § 12306(a)(2), substituted in cl. (iii) ''each of the fiscal years 1983 through 1987'' for ''fiscal year 1983'', and struck out cls. (iv) and (v) relating to limitations with respect to fiscal years 1984 and 1985, respectively, if the appropriation for each of those years is equal to $266,000,000.

Subsec. (b)(2)(B), (4)(B). Pub. L. 99–272, § 12306(a)(1), substituted ''1987'' for ''1985''.

Subsec. (b)(5)(A). Pub. L. 99–272, § 12306(a)(3), substituted ''October 1, 1987'' for ''October 1, 1985'' in introductory provision, and in cl. (ii) substituted ''1984 through 1987'' for ''1984 and 1985''.

Subsec. (c)(1), (2). Pub. L. 99–272, § 12306(b), substituted ''1987'' for ''1985''.

1984—Subsec. (b)(1). Pub. L. 98–617, § 4(a)(1)(A), formerly § 4(a)(1), as redesignated and amended by Pub. L. 101–239, § 10403(c)(1), substituted ''1985'' for ''1984'' after ''1981 through''.

Subsec. (b)(2)(A)(v). Pub. L. 98–617, § 4(a)(2), added cl. (v).

Subsec. (b)(2)(B). Pub. L. 98–617, § 4(a)(1)(B), formerly § 4(a)(1), as redesignated and amended by Pub. L. 101–239, § 10403(c)(1), substituted ''1981 through 1985'' for ''1982 through 1984''.

Subsec. (b)(4)(A). Pub. L. 98–369, § 2663(c)(18)(A), substituted ''subparagraph (C)'' for ''subparagraph (c)''.

Subsec. (b)(4)(B). Pub. L. 98–617, § 4(a)(1)(A), formerly § 4(a)(1), as redesignated and amended by Pub. L. 101–239, § 10403(c)(1), substituted ''1985'' for ''1984'' after ''1981 through''.

Subsec. (b)(5)(A). Pub. L. 98–617, § 4(a)(3)(A), substituted ''October 1, 1985'' for ''October 1, 1984''.

Subsec. (b)(5)(A)(ii). Pub. L. 98–617, § 4(a)(3)(B), substituted ''each of fiscal years 1984 and 1985'' for ''fiscal year 1984''.

Subsec. (c)(1), (2). Pub. L. 98–617, § 4(b), substituted ''1985'' for ''1984'' after ''1981 through''.

Pub. L. 98–369, § 2663(c)(18)(B), substituted ''relevant'' for ''relvant''.

Subsec. (d)(1). Pub. L. 98–369, § 2663(c)(18)(C), substituted ''and (C) such'' for ''and (c) such'' and ''Secretary may find'' for ''secretary may find''.

1980—Subsec. (d). Pub. L. 96–611 added subsec. (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–145 effective Oct. 1, 2003, see section 5 of Pub. L. 108–145, set out as a note under section 673b of this section.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 301(b), (c) of Pub. L. 105–200 effective as if included in the enactment of section 202 of the Adoption and Safe Families Act of 1997, Pub. L. 105–89, see section 301(d) of Pub. L. 105–200, set out as a note under section 671 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 207(c) of Pub. L. 103–432 provided that: ''The amendments and repeals made by this section [amending this section] shall apply to payments for calendar quarters beginning on or after October 1, 1993.''

Section 210(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to claims made on or after the date of the enactment of this Act [Oct. 31, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13713(a)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall take effect on October 1, 1993.''

Section 13713(b)(2) of Pub. L. 103–66, as amended by Pub. L. 104–193, title V, § 502, Aug. 22, 1996, 110 Stat. 2277, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to expenditures during fiscal years beginning on or after October 1, 1997.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5071(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8001(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1989.''

Section 8002(e) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a), (b) and (c) [amending this section and section 677 of this title] shall take effect October 1, 1989.''

Section 8006(b) of Pub. L. 101–239, as amended by Pub. L. 103–66, title XIII, § 13715, Aug. 10, 1993, 107 Stat. 657, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to expenditures made on or after October 1, 1989, and before October 1, 1992, and to expenditures made on or after October 1, 1993.''

Section 10401(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section and former sections 620 and 627 of this title] shall take effect on October 1, 1989.''

Section 10402(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1989.''

Section 10403(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect as if included in section 4 of Public Law 98-617 at the time such section became law [enacted Nov. 8, 1974].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9132(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective October 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 675. Definitions

As used in this part or part B of this subchapter:

(1) The term ''case plan'' means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672(a)(1)[1] of this title.

(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) The health and education records of the child, including the most recent information available regarding—

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

(v) a record of the child's immunizations;

(vi) the child's known medical problems;

(vii) the child's medications; and

(viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

(D) Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-State and interstate placements.

(2) The term ''parents'' means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term ''adoption assistance agreement'' means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4)(A) The term ''foster care maintenance payments'' means payments to cover the cost

[1] See References in Text note below.

of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where—

(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.

(5) The term ''case review system'' means a procedure for assuring that—

(A) each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, which—

(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and

(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 6 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, of the State in which the child has been placed, or of a private agency under contract with either such State, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship,

(C) with respect to each such child, (i) procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement, in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options, and, in the case of a child described in subparagraph (A)(ii), the hearing shall determine whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; (ii) procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and (iii) procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child;[2]

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and a copy of the record is supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care, and is supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under State law;[2]

(E) in the case of a child who has been in foster care under the responsibility of the

[2] So in original. The semicolon probably should be a comma.

State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

(i) at the option of the State, the child is being cared for by a relative;

(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 671(a)(15)(B)(ii) of this title are required to be made with respect to the child;[2]

(F) a child shall be considered to have entered foster care on the earlier of—

(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(ii) the date that is 60 days after the date on which the child is removed from the home;[2] and

(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a proceeding solely on the basis of such notice and right to be heard.

(6) The term ''administrative review'' means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(7) The term ''legal guardianship'' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term ''legal guardian'' means the caretaker in such a relationship.

(Aug. 14, 1935, ch. 531, title IV, § 475, as added and amended Pub. L. 96–272, title I, §§ 101(a)(1), 102(a)(4), June 17, 1980, 94 Stat. 510, 514; Pub. L. 99–272, title XII, §§ 12305(b)(2), 12307(b), Apr. 7, 1986, 100 Stat. 293, 296; Pub. L. 99–514, title XVII, § 1711(c)(6), Oct. 22, 1986, 100 Stat. 2784; Pub. L. 100–203, title IX, § 9133(a), Dec. 22, 1987, 101 Stat. 1330–314; Pub. L. 100–647, title VIII, § 8104(e), Nov. 10, 1988, 102 Stat. 3797; Pub. L. 101–239, title VIII, § 8007(a), (b), Dec. 19, 1989, 103 Stat. 2462; Pub. L. 103–432, title II, §§ 206(a), (b), 209(a), (b), 265(c), Oct. 31, 1994, 108 Stat. 4457, 4459, 4469; Pub. L. 105–89, title I, §§ 101(b), 102(2), 103(a), (b), 104, 107, title III, § 302, Nov. 19, 1997, 111 Stat. 2117, 2118, 2120, 2121, 2128; Pub. L. 109–239, §§ 6–8(a), 11, 12, July 3, 2006, 120 Stat. 512–514; Pub. L. 109–288, § 10, Sept. 28, 2006, 120 Stat. 1255.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in text, is classified to section 620 et seq. of this title.

Section 672(a) of this title, referred to in par. (1)(A), was amended generally by Pub. L. 109–171, title VII, § 7404(a), Feb. 8, 2006, 120 Stat. 151, and, as so amended, provisions relating to a voluntary placement agreement or judicial determination made with respect to a child, which formerly appeared in subsec. (a)(1), are contained in subsec. (a)(2)(A).

AMENDMENTS

2006—Par. (1)(C). Pub. L. 109–239, § 7(1), in introductory provisions, substituted ''The health'' for ''To the extent available and accessible, the health'' and inserted ''the most recent information available regarding'' after ''including''.

Par. (1)(E). Pub. L. 109–239, § 11, which directed amendment of subpar. (E) by inserting ''to facilitate orderly and timely in-State and interstate placements'' before the period, was executed by making the insertion before period at end of last sentence to reflect the probable intent of Congress.

Par. (5)(A)(ii). Pub. L. 109–239, § 6, substituted ''6 months'' for ''12 months'' and ''of the State in which the child has been placed, or of a private agency under contract with either such State'' for ''or of the State in which the child has been placed''.

Par. (5)(C). Pub. L. 109–288 inserted ''(i)'' after ''with respect to each such child,'', substituted ''(ii) procedural safeguards shall'' for ''and procedural safeguards shall also'', and added cl. (iii) at end.

Pub. L. 109–239, § 12, inserted '', in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options,'' after ''living arrangement'' and ''the hearing shall determine'' after ''described in subparagraph (A)(ii),''.

Par. (5)(D). Pub. L. 109–239, § 7(2), inserted ''a copy of the record is'' before ''supplied to the foster parent'' and '', and is supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under State law'' before semicolon at end.

Par. (5)(G). Pub. L. 109–239, § 8(a), substituted ''a right'' for ''an opportunity'', ''proceeding'' for ''review or hearing'' in two places, and ''and right'' for ''and opportunity''.

1997—Par. (1). Pub. L. 105–89, § 107(1)(A), (B), struck out ''the case plan must also include'' before ''a written description'' in concluding provisions and redesignated those provisions as subpar. (D) of par. (1).

Par. (1)(A). Pub. L. 105–89, § 102(2)(A)(i), inserted ''safety and'' before ''appropriateness of the placement''.

Par. (1)(B). Pub. L. 105–89, § 102(2)(A)(ii), inserted ''safe and'' after ''child receives'' and ''safe'' after ''return of the child to his own''.

Par. (1)(D). Pub. L. 105–89, § 107(1)(B), redesignated concluding provisions of par. (1) as subpar. (D) of par. (1) and realigned margins.

Par. (1)(E). Pub. L. 105–89, § 107(2), added subpar. (E).

Par. (5)(A). Pub. L. 105–89, § 102(2)(B)(i), inserted ''a safe setting that is'' after ''placement in'' in introductory provisions.

Par. (5)(B). Pub. L. 105–89, § 102(2)(B)(ii), inserted ''the safety of the child,'' after ''determine'' and ''and safely maintained in'' before ''the home or placed for adoption''.

Par. (5)(C). Pub. L. 105–89, § 302, substituted ''permanency hearing'' for ''dispositional hearing'' and ''no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F))'' for ''no later than eighteen months after the original placement'', and which directed the substitution of ''permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement'' for ''future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long term basis)'', was executed by making the substitution for text which contained the words ''long-term'' rather than ''long term'' to reflect the probable intent of Congress.

Par. (5)(E). Pub. L. 105–89, § 103(a), added subpar. (E).

Par. (5)(F). Pub. L. 105–89, § 103(b), added subpar. (F).

Par. (5)(G). Pub. L. 105–89, § 104, added subpar. (G).

Par. (7). Pub. L. 105–89, § 101(b), added par. (7).

1994—Par. (5)(A). Pub. L. 103–432, § 209(a), inserted ''which—'' after ''needs of the child,'' and added cls. (i) and (ii).

Pub. L. 103–432, § 206(a), inserted ''and most appropriate'' after ''(most family like)''.

Par. (5)(C). Pub. L. 103–432, § 209(b), inserted ''and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child,'' after ''permanent or long-term basis)''.

Pub. L. 103–432, § 206(b), substituted ''(and not less frequently than every 12 months'' for ''(and periodically''.

Par. (5)(D). Pub. L. 103–432, § 265(c), realigned margins.

1989—Par. (1). Pub. L. 101–239, § 8007(a), inserted ''(A)'' before ''A description'', substituted ''section 672(a)(1) of this title. (B) A plan'' for ''section 672(a)(1) of this title; and a plan'', realigned margins of subpars. (A) and (B), added subpar. (C), and set the last sentence flush with the left margin of par. (1).

Par. (5)(D). Pub. L. 101–239, § 8007(b), added subpar. (D).

1988—Par. (5)(C). Pub. L. 100–647 inserted ''and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living'' after ''long-term basis)''.

1987—Par. (4). Pub. L. 100–203 designated existing provisions as subpar. (A) and added subpar. (B).

1986—Par. (1). Pub. L. 99–272, § 12307(b), inserted at end ''Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.''

Par. (3). Pub. L. 99–514 added cl. (A) and struck out former cl. (A) which read as follows: ''specifies the amounts of any adoption assistance payments and any other services and assistance which are to be provided as part of such agreement, and''.

Pub. L. 99–272, § 12305(b)(2), substituted in cl. (A) ''any adoption assistance payments and any other services and assistance'' for ''the adoption assistance payments and any additional services and assistance''.

1980—Par. (1). Pub. L. 96–272, § 102(a)(4), inserted reference to voluntary placement agreements.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

Amendment by Pub. L. 109–239 effective Oct. 1, 2006, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 14 of Pub. L. 109–239, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 206(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1995.''

Section 209(d) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and section 679 of this title] shall be effective with respect to fiscal years beginning on or after October 1, 1995.''

Amendment by section 265(c) of Pub. L. 103–432 effective as if included in the provision of Pub. L. 101–239 to which the amendment relates, at the time the provision became law, see section 265(d) of Pub. L. 103–432, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8007(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect on April 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective Oct. 1, 1988, see section 8104(g)(1) of Pub. L. 100–647, set out as a note under section 677 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Apr. 1, 1988, see section 9133(c) of Pub. L. 100–203, set out as a note under section 672 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99–514, set out as a note under section 670 of this title.

Amendment by section 12305(b)(2) of Pub. L. 99–272 applicable to medical assistance furnished in or after the first calendar quarter beginning more than 90 days after Apr. 7, 1986, see section 12305(c) of Pub. L. 99–272, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 101(a)(4)(A) of Pub. L. 96–272 provided that: ''Clause (B) of the first sentence of section 475(3) of the Social Security Act [par. (3)(B) of this section] (as added by subsection (a) of this section) shall be effective with respect to adoption assistance agreements entered into on or after October 1, 1983.''

Amendment by section 102(a)(4) of Pub. L. 96–272 effective only with respect to expenditures made after Sept. 30, 1979, see section 102(c) of Pub. L. 96–272, as amended, set out as a note under section 672 of this title.

CONSTRUCTION

Section 103(d) of Pub. L. 105–89 provided that: ''Nothing in this section [amending this section and enacting provisions set out as a note below] or in part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.), as amended by this Act, shall be construed as precluding State courts or State agencies from initiating the termination of parental rights for reasons other than, or for timelines earlier than, those specified in part E of title IV of such Act, when such actions are determined to be in the best interests of the child, including cases where the child has experienced multiple foster care placements of varying durations.''

TRANSITION RULES; NEW AND CURRENT FOSTER CHILDREN

Section 103(c) of Pub. L. 105–89 provided that:

''(1) NEW FOSTER CHILDREN.—In the case of a child who enters foster care (within the meaning of section 475(5)(F) of the Social Security Act [par. (5)(F) of this section]) under the responsibility of a State after the date of the enactment of this Act [Nov. 19, 1997]—

''(A) if the State comes into compliance with the amendments made by subsection (a) of this section [amending this section] before the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with section 475(5)(E) of the Social Security Act [par. (5)(E) of this section] with respect to the child when the child has been in such foster care for 15 of the most recent 22 months; and

''(B) if the State comes into such compliance after the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with such section 475(5)(E) with respect to the child not later than 3 months after the end of the first regular session of the State legislature that begins after such date of enactment.

''(2) CURRENT FOSTER CHILDREN.—In the case of children in foster care under the responsibility of the State on the date of the enactment of this Act, the State shall—

''(A) not later than 6 months after the end of the first regular session of the State legislature that begins after such date of enactment, comply with section 475(5)(E) of the Social Security Act with respect to not less than ⅓ of such children as the State shall select, giving priority to children for whom the permanency plan (within the meaning of part E of title IV of the Social Security Act [this part]) is adoption and children who have been in foster care for the greatest length of time;

''(B) not later than 12 months after the end of such first regular session, comply with such section 475(5)(E) with respect to not less than ⅔ of such children as the State shall select; and

''(C) not later than 18 months after the end of such first regular session, comply with such section 475(5)(E) with respect to all of such children.

''(3) TREATMENT OF 2-YEAR LEGISLATIVE SESSIONS.—For purposes of this subsection, in the case of a State that has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

''(4) REQUIREMENTS TREATED AS STATE PLAN REQUIREMENTS.—For purposes of part E of title IV of the Social Security Act, the requirements of this subsection shall be treated as State plan requirements imposed by section 471(a) of such Act [section 671(a) of this title].''

§ 676. Administration

(a) Technical assistance to States

The Secretary may provide technical assistance to the States to assist them to develop the programs authorized under this part and shall periodically (1) evaluate the programs authorized under this part and part B of this subchapter and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in this country.

(b) Data collection and evaluation

Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care.

(Aug. 14, 1935, ch. 531, title IV, § 476, as added Pub. L. 96–272, title I, § 101(a)(1), June 17, 1980, 94 Stat. 511.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (a), is classified to section 620 et seq. of this title.

§ 677. John H. Chafee Foster Care Independence Program

(a) Purpose

The purpose of this section is to provide States with flexible funding that will enable programs to be designed and conducted—

(1) to identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);

(2) to help children who are likely to remain in foster care until 18 years of age receive the education, training, and services necessary to obtain employment;

(3) to help children who are likely to remain in foster care until 18 years of age prepare for and enter postsecondary training and education institutions;

(4) to provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults;

(5) to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood; and

(6) to make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care.

(b) Applications

(1) In general

A State may apply for funds from its allotment under subsection (c) of this section for a

period of five consecutive fiscal years by submitting to the Secretary, in writing, a plan that meets the requirements of paragraph (2) and the certifications required by paragraph (3) with respect to the plan.

(2) State plan

A plan meets the requirements of this paragraph if the plan specifies which State agency or agencies will administer, supervise, or oversee the programs carried out under the plan, and describes how the State intends to do the following:

(A) Design and deliver programs to achieve the purposes of this section.

(B) Ensure that all political subdivisions in the State are served by the program, though not necessarily in a uniform manner.

(C) Ensure that the programs serve children of various ages and at various stages of achieving independence.

(D) Involve the public and private sectors in helping adolescents in foster care achieve independence.

(E) Use objective criteria for determining eligibility for benefits and services under the programs, and for ensuring fair and equitable treatment of benefit recipients.

(F) Cooperate in national evaluations of the effects of the programs in achieving the purposes of this section.

(3) Certifications

The certifications required by this paragraph with respect to a plan are the following:

(A) A certification by the chief executive officer of the State that the State will provide assistance and services to children who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.

(B) A certification by the chief executive officer of the State that not more than 30 percent of the amounts paid to the State from its allotment under subsection (c) of this section for a fiscal year will be expended for room or board for children who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.

(C) A certification by the chief executive officer of the State that none of the amounts paid to the State from its allotment under subsection (c) of this section will be expended for room or board for any child who has not attained 18 years of age.

(D) A certification by the chief executive officer of the State that the State will use training funds provided under the program of Federal payments for foster care and adoption assistance to provide training to help foster parents, adoptive parents, workers in group homes, and case managers understand and address the issues confronting adolescents preparing for independent living, and will, to the extent possible, coordinate such training with the independent living program conducted for adolescents.

(E) A certification by the chief executive officer of the State that the State has consulted widely with public and private organizations in developing the plan and that the State has given all interested members of the public at least 30 days to submit comments on the plan.

(F) A certification by the chief executive officer of the State that the State will make every effort to coordinate the State programs receiving funds provided from an allotment made to the State under subsection (c) of this section with other Federal and State programs for youth (especially transitional living youth projects funded under part B of title III of the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5714–1 et seq.]), abstinence education programs, local housing programs, programs for disabled youth (especially sheltered workshops), and school-to-work programs offered by high schools or local workforce agencies.

(G) A certification by the chief executive officer of the State that each Indian tribe in the State has been consulted about the programs to be carried out under the plan; that there have been efforts to coordinate the programs with such tribes; and that benefits and services under the programs will be made available to Indian children in the State on the same basis as to other children in the State.

(H) A certification by the chief executive officer of the State that the State will ensure that adolescents participating in the program under this section participate directly in designing their own program activities that prepare them for independent living and that the adolescents accept personal responsibility for living up to their part of the program.

(I) A certification by the chief executive officer of the State that the State has established and will enforce standards and procedures to prevent fraud and abuse in the programs carried out under the plan.

(J) A certification by the chief executive officer of the State that the State educational and training voucher program under this section is in compliance with the conditions specified in subsection (i) of this section, including a statement describing methods the State will use—

(i) to ensure that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs does not exceed the limitation specified in subsection (i)(5) of this section; and

(ii) to avoid duplication of benefits under this and any other Federal or Federally assisted benefit program.

(4) Approval

The Secretary shall approve an application submitted by a State pursuant to paragraph (1) for a period if—

(A) the application is submitted on or before June 30 of the calendar year in which such period begins; and

(B) the Secretary finds that the application contains the material required by paragraph (1).

(5) Authority to implement certain amendments; notification

A State with an application approved under paragraph (4) may implement any amendment to the plan contained in the application if the application, incorporating the amendment, would be approvable under paragraph (4). Within 30 days after a State implements any such amendment, the State shall notify the Secretary of the amendment.

(6) Availability

The State shall make available to the public any application submitted by the State pursuant to paragraph (1), and a brief summary of the plan contained in the application.

(c) Allotments to States

(1) General program allotment

From the amount specified in subsection (h)(1) of this section that remains after applying subsection (g)(2) of this section for a fiscal year, the Secretary shall allot to each State with an application approved under subsection (b) of this section for the fiscal year the amount which bears the ratio to such remaining amount equal to the State foster care ratio, as adjusted in accordance with paragraph (2).

(2) Hold harmless provision

(A) In general

The Secretary shall allot to each State whose allotment for a fiscal year under paragraph (1) is less than the greater of $500,000 or the amount payable to the State under this section for fiscal year 1998, an additional amount equal to the difference between such allotment and such greater amount.

(B) Ratable reduction of certain allotments

In the case of a State not described in subparagraph (A) of this paragraph for a fiscal year, the Secretary shall reduce the amount allotted to the State for the fiscal year under paragraph (1) by the amount that bears the same ratio to the sum of the differences determined under subparagraph (A) of this paragraph for the fiscal year as the excess of the amount so allotted over the greater of $500,000 or the amount payable to the State under this section for fiscal year 1998 bears to the sum of such excess amounts determined for all such States.

(3) Voucher program allotment

From the amount, if any, appropriated pursuant to subsection (h)(2) of this section for a fiscal year, the Secretary may allot to each State with an application approved under subsection (b) of this section for the fiscal year an amount equal to the State foster care ratio multiplied by the amount so specified.

(4) State foster care ratio

In this subsection, the term ''State foster care ratio'' means the ratio of the number of children in foster care under a program of the State in the most recent fiscal year for which the information is available to the total number of children in foster care in all States for the most recent fiscal year.

(d) Use of funds

(1) In general

A State to which an amount is paid from its allotment under subsection (c) of this section may use the amount in any manner that is reasonably calculated to accomplish the purposes of this section.

(2) No supplantation of other funds available for same general purposes

The amounts paid to a State from its allotment under subsection (c) of this section shall be used to supplement and not supplant any other funds which are available for the same general purposes in the State.

(3) Two-year availability of funds

Payments made to a State under this section for a fiscal year shall be expended by the State in the fiscal year or in the succeeding fiscal year.

(4) Reallocation of unused funds

If a State does not apply for funds under this section for a fiscal year within such time as may be provided by the Secretary, the funds to which the State would be entitled for the fiscal year shall be reallocated to 1 or more other States on the basis of their relative need for additional payments under this section, as determined by the Secretary.

(e) Penalties

(1) Use of grant in violation of this part

If the Secretary is made aware, by an audit conducted under chapter 75 of title 31 or by any other means, that a program receiving funds from an allotment made to a State under subsection (c) of this section has been operated in a manner that is inconsistent with, or not disclosed in the State application approved under subsection (b) of this section, the Secretary shall assess a penalty against the State in an amount equal to not less than 1 percent and not more than 5 percent of the amount of the allotment.

(2) Failure to comply with data reporting requirement

The Secretary shall assess a penalty against a State that fails during a fiscal year to comply with an information collection plan implemented under subsection (f) of this section in an amount equal to not less than 1 percent and not more than 5 percent of the amount allotted to the State for the fiscal year.

(3) Penalties based on degree of noncompliance

The Secretary shall assess penalties under this subsection based on the degree of noncompliance.

(f) Data collection and performance measurement

(1) In general

The Secretary, in consultation with State and local public officials responsible for administering independent living and other child welfare programs, child welfare advocates, Members of Congress, youth service providers, and researchers, shall—

(A) develop outcome measures (including measures of educational attainment, high school diploma, employment, avoidance of dependency, homelessness, nonmarital childbirth, incarceration, and high-risk behaviors) that can be used to assess the performance of States in operating independent living programs;

(B) identify data elements needed to track—

(i) the number and characteristics of children receiving services under this section;

(ii) the type and quantity of services being provided; and

(iii) State performance on the outcome measures; and

(C) develop and implement a plan to collect the needed information beginning with the second fiscal year beginning after December 14, 1999.

(2) Report to the Congress

Within 12 months after December 14, 1999, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report detailing the plans and timetable for collecting from the States the information described in paragraph (1) and a proposal to impose penalties consistent with paragraph (e)(2) on States that do not report data.

(g) Evaluations

(1) In general

The Secretary shall conduct evaluations of such State programs funded under this section as the Secretary deems to be innovative or of potential national significance. The evaluation of any such program shall include information on the effects of the program on education, employment, and personal development. To the maximum extent practicable, the evaluations shall be based on rigorous scientific standards including random assignment to treatment and control groups. The Secretary is encouraged to work directly with State and local governments to design methods for conducting the evaluations, directly or by grant, contract, or cooperative agreement.

(2) Funding of evaluations

The Secretary shall reserve 1.5 percent of the amount specified in subsection (h) of this section for a fiscal year to carry out, during the fiscal year, evaluation, technical assistance, performance measurement, and data collection activities related to this section, directly or through grants, contracts, or cooperative agreements with appropriate entities.

(h) Limitations on authorization of appropriations

To carry out this section and for payments to States under section 674(a)(4) of this title, there are authorized to be appropriated to the Secretary for each fiscal year—

(1) $140,000,000, which shall be available for all purposes under this section; and

(2) an additional $60,000,000, which are authorized to be available for payments to States for education and training vouchers for youths who age out of foster care, to assist the youths to develop skills necessary to lead independent and productive lives.

(i) Educational and training vouchers

The following conditions shall apply to a State educational and training voucher program under this section:

(1) Vouchers under the program may be available to youths otherwise eligible for services under the State program under this section.

(2) For purposes of the voucher program, youths adopted from foster care after attaining age 16 may be considered to be youths otherwise eligible for services under the State program under this section.

(3) The State may allow youths participating in the voucher program on the date they attain 21 years of age to remain eligible until they attain 23 years of age, as long as they are enrolled in a postsecondary education or training program and are making satisfactory progress toward completion of that program.

(4) The voucher or vouchers provided for an individual under this section—

(A) may be available for the cost of attendance at an institution of higher education, as defined in section 1002 of title 20; and

(B) shall not exceed the lesser of $5,000 per year or the total cost of attendance, as defined in section 1087*ll* of title 20.

(5) The amount of a voucher under this section may be disregarded for purposes of determining the recipient's eligibility for, or the amount of, any other Federal or Federally supported assistance, except that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs shall not exceed the total cost of attendance, as defined in section 1087*ll* of title 20, and except that the State agency shall take appropriate steps to prevent duplication of benefits under this and other Federal or Federally supported programs.

(6) The program is coordinated with other appropriate education and training programs.

(Aug. 14, 1935, ch. 531, title IV, § 477, as added Pub. L. 99–272, title XII, § 12307(a), Apr. 7, 1986, 100 Stat. 294; amended Pub. L. 100–647, title VIII, § 8104(a)–(d), (f), Nov. 10, 1988, 102 Stat. 3796, 3797; Pub. L. 101–239, title VIII, § 8002(a), (b), Dec. 19, 1989, 103 Stat. 2452; Pub. L. 101–508, title V, § 5073(a), Nov. 5, 1990, 104 Stat. 1388–233; Pub. L. 103–66, title XIII, § 13714(a), Aug. 10, 1993, 107 Stat. 657; Pub. L. 105–89, title III, § 304, Nov. 19, 1997, 111 Stat. 2130; Pub. L. 106–169, title I, § 101(b), Dec. 14, 1999, 113 Stat. 1824; Pub. L. 107–133, title II, §§ 201(a)–(e), 202(a), Jan. 17, 2002, 115 Stat. 2422, 2423, 2425.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (b)(3)(F), is Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended. Part B of title III of the Act is classified generally to Part B (§ 5714–1 et seq.) of subchapter III of chapter 72 of this title. For complete classification of this Act to the Code, see Short Title note under section 5601 of this title and Tables.

CODIFICATION

December 14, 1999, referred to in subsec. (f), was in the original ''the date of the enactment of this section'' which was translated as meaning the date of enactment of Pub. L. 106–169, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2002—Subsec. (a)(6). Pub. L. 107–133, §201(a), added par. (6).

Subsec. (b)(3)(J). Pub. L. 107–133, §201(c), added subpar. (J).

Subsec. (c)(1). Pub. L. 107–133, §201(e)(1), in heading substituted ''General program allotment'' for ''In general'' and in text substituted ''From the amount specified in subsection (h)(1)'' for ''From the amount specified in subsection (h)'', ''which bears the ratio'' for ''which bears the same ratio'', and ''equal to the State foster care ratio, as adjusted in accordance with paragraph (2).'' for ''as the number of children in foster care under a program of the State in the most recent fiscal year for which such information is available bears to the total number of children in foster care in all States for such most recent fiscal year, as adjusted in accordance with paragraph (2).''

Subsec. (c)(3), (4). Pub. L. 107–133, §201(e)(2), added pars. (3) and (4).

Subsec. (d)(4). Pub. L. 107–133, §202(a), added par. (4).

Subsec. (h). Pub. L. 107–133, §201(d), substituted ''there are authorized to be appropriated to the Secretary for each fiscal year—'' and pars. (1) and (2) for ''there are authorized to be appropriated to the Secretary $140,000,000 for each fiscal year.''

Subsec. (i). Pub. L. 107–133, §201(b), added subsec. (i).

1999—Pub. L. 106–169 amended section generally, substituting present provisions for provisions which had authorized payments to States and localities for establishment of programs designed to assist children who have attained age 16 in making transition from foster care to independent living, and set forth provisions relating to administration of programs, assurances, types of programs, amounts of entitlement, and provisions requiring annual report and promulgation of regulations.

1997—Subsec. (a)(2)(A). Pub. L. 105–89 inserted before comma at end ''(including children with respect to whom such payments are no longer being made because the child has accumulated assets, not to exceed $5,000, which are otherwise regarded as resources for purposes of determining eligibility for benefits under this part)''.

1993—Subsec. (a)(1). Pub. L. 103–66, §13714(a)(1), struck out at end ''Such payments shall be made only for the fiscal years 1987 through 1992.''

Subsec. (c). Pub. L. 103–66, §13714(a)(2), substituted ''any succeeding fiscal year'' for ''any of the fiscal years 1988 through 1992''.

Subsec. (e)(1)(A). Pub. L. 103–66, §13714(a)(3), substituted ''fiscal year 1987 and any succeeding fiscal year'' for ''each of the fiscal years 1987 through 1992''.

Subsec. (e)(1)(B). Pub. L. 103–66, §13714(a)(4), substituted ''fiscal year 1991 and any succeeding fiscal year'' for ''fiscal years 1991 and 1992''.

Subsec. (e)(1)(C)(ii)(II). Pub. L. 103–66, §13714(a)(5), substituted ''any succeeding fiscal year'' for ''fiscal year 1992''.

1990—Subsec. (a)(2)(C). Pub. L. 101–508 inserted ''who has not attained age 21'' after ''also include any child'' and struck out before semicolon '', but such child may not be so included after the end of the 6-month period beginning on the date of discontinuance of such payments or care''.

1989—Subsec. (a)(1). Pub. L. 101–239, §8002(a)(1), substituted ''through 1992'' for '', 1988, and 1989''.

Subsec. (c). Pub. L. 101–239, §8002(a)(2), substituted ''any of the fiscal years 1988 through 1992'' for ''the fiscal year 1988 or 1989''.

Subsec. (e)(1). Pub. L. 101–239, §8002(b)(1), (2), (4), (5), designated existing provisions as subpar. (A), substituted ''The basic amount'' for ''The amount'' and ''the basic ceiling for such fiscal year'' for ''$45,000,000'', and added subpars. (B) and (C).

Pub. L. 101–239, §8002(b)(3), which directed amendment of subpar. (A) by substituting ''1989, 1990, 1991, and 1992'' for ''and 1989'' could not be executed because the words ''and 1989'' did not appear after execution of amendment by Pub. L. 101–239, §8002(a)(1), see below.

Pub. L. 101–239, §8002(a)(1), substituted ''through 1992'' for '', 1988, and 1989''.

1988—Subsec. (a). Pub. L. 100–647, §8104(a)(1), substituted ''1987, 1988, and 1989'' for ''1987 and 1988''.

Subsec. (a)(1). Pub. L. 100–647, §8104(c), designated existing provisions as par. (1), substituted ''children described in paragraph (2) who have attained age 16'' for ''children, with respect to whom foster care maintenance payments are being made by the State under this part and who have attained age 16,'' and added par. (2).

Subsec. (a)(2)(C). Pub. L. 100–647, §8104(d), added subpar. (C).

Subsec. (c). Pub. L. 100–647, §8104(a)(2), substituted ''for the fiscal year 1988 or 1989, such description and assurances must be submitted prior to February 1 of such fiscal year'' for ''for fiscal year 1988, such description and assurances must be submitted prior to January 1, 1988''.

Subsec. (e)(1). Pub. L. 100–647, §8104(a)(1), substituted ''1987, 1988, and 1989'' for ''1987 and 1988''.

Subsec. (e)(3). Pub. L. 100–647, §8104(f), inserted at end ''Amounts payable under this section may not be used for the provision of room or board.''

Subsec. (f). Pub. L. 100–647, §8104(b), inserted at end ''Notwithstanding paragraph (3), payments made to a State under this section for the fiscal year 1987 and unobligated may be expended by such State in the fiscal year 1989.''

Subsec. (g)(1). Pub. L. 100–647, §8104(a)(3), (4), substituted ''Not later than the first January 1 following the end of each fiscal year, each State shall submit to the Secretary a report on the programs carried out during such fiscal year'' for ''Not later than March 1, 1988, each State shall submit to the Secretary a report on the programs carried out''.

Subsec. (g)(2). Pub. L. 100–647, §8104(a)(5), (6), substituted:

''(A) Not later than July 1, 1988, the Secretary shall submit an interim report on the activities carried out under this section.

''(B) Not later than March 1, 1989,''

for ''Not later than July 1, 1988,'' and substituted ''fiscal years 1987 and 1988'' for ''fiscal year 1987'' in subpar. (B).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13714(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to activities engaged in, on, or after October 1, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5073(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments made under part E of title IV of the Social Security Act [part E of this subchapter] for fiscal years beginning in or after fiscal year 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective Oct. 1, 1989, see section 8002(e) of Pub. L. 101–239, set out as a note under section 674 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8104(g) of Pub. L. 100–647 provided that:

''(1) The amendments made by subsections (a), (b), and (e) [amending this section and section 675 of this title] shall take effect on October 1, 1988.

''(2) The amendments made by subsections (c), (d), and (f) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].''

REGULATIONS

Pub. L. 106–169, title I, § 101(d), Dec. 14, 1999, 113 Stat. 1828, provided that: ''Not later than 12 months after the date of the enactment of this Act [Dec. 14, 1999], the Secretary of Health and Human Services shall issue such regulations as may be necessary to carry out the amendments made by this section [amending this section and section 674 of this title].''

TEMPORARY EXTENSION OF AVAILABILITY OF INDEPENDENT LIVING FUNDS

Pub. L. 107–133, title II, § 202(b), Jan. 17, 2002, 115 Stat. 2425, provided that: ''Notwithstanding section 477(d)(3) of the Social Security Act [subsec. (d)(3) of this section], payments made to a State under section 477 of such Act for fiscal year 2000 shall remain available for expenditure by the State through fiscal year 2002.''

FINDINGS

Pub. L. 106–169, title I, § 101(a), Dec. 14, 1999, 113 Stat. 1823, provided that: ''The Congress finds the following:

''(1) States are required to make reasonable efforts to find adoptive families for all children, including older children, for whom reunification with their biological family is not in the best interests of the child. However, some older children will continue to live in foster care. These children should be enrolled in an Independent Living program designed and conducted by State and local government to help prepare them for employment, postsecondary education, and successful management of adult responsibilities.

''(2) Older children who continue to be in foster care as adolescents may become eligible for Independent Living programs. These Independent Living programs are not an alternative to adoption for these children. Enrollment in Independent Living programs can occur concurrent with continued efforts to locate and achieve placement in adoptive families for older children in foster care.

''(3) About 20,000 adolescents leave the Nation's foster care system each year because they have reached 18 years of age and are expected to support themselves.

''(4) Congress has received extensive information that adolescents leaving foster care have significant difficulty making a successful transition to adulthood; this information shows that children aging out of foster care show high rates of homelessness, nonmarital childbearing, poverty, and delinquent or criminal behavior; they are also frequently the target of crime and physical assaults.

''(5) The Nation's State and local governments, with financial support from the Federal Government, should offer an extensive program of education, training, employment, and financial support for young adults leaving foster care, with participation in such program beginning several years before high school graduation and continuing, as needed, until the young adults emancipated from foster care establish independence or reach 21 years of age.''

STUDY AND REPORT EVALUATING EFFECTIVENESS OF PROGRAMS

Section 8002(d) of Pub. L. 101–239 provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall study the programs authorized under section 477 of the Social Security Act [this section] for the purposes of evaluating the effectiveness of the programs. The study shall include a comparison of outcomes of children who participated in the programs and a comparable group of children who did not participate in the programs.

''(2) REPORT.—Upon completion of the study, the Secretary shall issue a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

§ 678. Rule of construction

Nothing in this part shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in section 671(a)(15)(D) of this title.

(Aug. 14, 1935, ch. 531, title IV, § 478, as added Pub. L. 105–89, title I, § 101(d), Nov. 19, 1997, 111 Stat. 2117.)

PRIOR PROVISIONS

A prior section 678, act Aug. 14, 1935, ch. 531, title IV, § 478, as added Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1883(b)(10)(A), 100 Stat. 2917, excluded from AFDC unit child for whom foster care maintenance payments are made, prior to repeal by Pub. L. 101–508, title V, § 5052(b), (c), Nov. 5, 1990, 104 Stat. 1388–228, applicable with respect to benefits for months beginning on or after the first day of the sixth calendar month following November 1990.

EFFECTIVE DATE

Section effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as an Effective Date of 1997 Amendments note under section 622 of this title.

§ 679. Collection of data relating to adoption and foster care

(a) Advisory Committee on Adoption and Foster Care Information

(1) Not later than 90 days after October 21, 1986, the Secretary shall establish an Advisory Committee on Adoption and Foster Care Information (in this section referred to as the ''Advisory Committee'') to study the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(2) The study required by paragraph (1) shall—

(A) identify the types of data necessary to—

(i) assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and

(ii) develop appropriate national policies with respect to adoption and foster care;

(B) evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;

(C) assess the validity of various methods of collecting data with respect to adoption and foster care; and

(D) evaluate the financial and administrative impact of implementing each such method.

(3) Not later than October 1, 1987, the Advisory Committee shall submit to the Secretary and the Congress a report setting forth the results of

the study required by paragraph (1) and evaluating and making recommendations with respect to the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(4)(A) Subject to subparagraph (B), the membership and organization of the Advisory Committee shall be determined by the Secretary.

(B) The membership of the Advisory Committee shall include representatives of—

(i) private, nonprofit organizations with an interest in child welfare (including organizations that provide foster care and adoption services),

(ii) organizations representing State and local governmental agencies with responsibility for foster care and adoption services,

(iii) organizations representing State and local governmental agencies with responsibility for the collection of health and social statistics,

(iv) organizations representing State and local judicial bodies with jurisdiction over family law,

(v) Federal agencies responsible for the collection of health and social statistics, and

(vi) organizations and agencies involved with privately arranged or international adoptions.

(5) After the date of the submission of the report required by paragraph (3), the Advisory Committee shall cease to exist.

(b) Report to Congress; regulations

(1)(A) Not later than July 1, 1988, the Secretary shall submit to the Congress a report that—

(i) proposes a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States,

(ii) evaluates the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies, and

(iii) evaluates the impact of the system proposed under clause (i) on the agencies with responsibility for implementing it.

(B) The report required by subparagraph (A) shall—

(i) specify any changes in law that will be necessary to implement the system proposed under subparagraph (A)(i), and

(ii) describe the type of system that will be implemented under paragraph (2) in the absence of such changes.

(2) Not later than December 31, 1988, the Secretary shall promulgate final regulations providing for the implementation of—

(A) the system proposed under paragraph (1)(A)(i), or

(B) if the changes in law specified pursuant to paragraph (1)(B)(i) have not been enacted, the system described in paragraph (1)(B)(ii).

Such regulations shall provide for the full implementation of the system not later than October 1, 1991.

(c) Data collection system

Any data collection system developed and implemented under this section shall—

(1) avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

(2) assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

(3) provide comprehensive national information with respect to—

(A) the demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,

(B) the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),

(C) the number and characteristics of—

(i) children placed in or removed from foster care,

(ii) children adopted or with respect to whom adoptions have been terminated, and

(iii) children placed in foster care outside the State which has placement and care responsibility, and

(D) the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

(4) utilize appropriate requirements and incentives to ensure that the system functions reliably throughout the United States.

(Aug. 14, 1935, ch. 531, title IV, § 479, as added Pub. L. 99–509, title IX, § 9443, Oct. 21, 1986, 100 Stat. 2073; amended Pub. L. 103–432, title II, § 209(c), Oct. 31, 1994, 108 Stat. 4459.)

AMENDMENTS

1994—Subsec. (c)(3)(C)(iii). Pub. L. 103–432 added cl. (iii).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Oct. 1, 1995, see section 209(d) of Pub. L. 103–432, set out as a note under section 675 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 679a. National Adoption Information Clearinghouse

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

(1) collect, compile, and maintain information obtained from available research, studies, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

(A) crisis pregnancy centers,

(B) shelters and residences for pregnant women,

(C) training programs on adoption,

(D) educational programs on adoption,

(E) licensed adoption agencies,

(F) State laws relating to adoption,

(G) intercountry adoption, and

(H) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field;

(3) disseminate the information compiled and maintained pursuant to paragraph (1) and the directories compiled and maintained pursuant to paragraph (2); and

(4) upon the establishment of an adoption and foster care data collection system pursuant to section 679 of this title, disseminate the data and information made available through that system.

(Pub. L. 99–509, title IX, § 9442, Oct. 21, 1986, 100 Stat. 2073.)

CODIFICATION

Section was enacted as part of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and also as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of the Social Security Act which comprises this chapter.

§ 679b. Annual report

The Secretary, in consultation with Governors, State legislatures, State and local public officials responsible for administering child welfare programs, and child welfare advocates, shall—

(1) develop a set of outcome measures (including length of stay in foster care, number of foster care placements, and number of adoptions) that can be used to assess the performance of States in operating child protection and child welfare programs pursuant to part B of this subchapter and this part to ensure the safety of children;

(2) to the maximum extent possible, the outcome measures should be developed from data available from the Adoption and Foster Care Analysis and Reporting System;

(3) develop a system for rating the performance of States with respect to the outcome measures, and provide to the States an explanation of the rating system and how scores are determined under the rating system;

(4) prescribe such regulations as may be necessary to ensure that States provide to the Secretary the data necessary to determine State performance with respect to each outcome measure, as a condition of the State receiving funds under this part;

(5) on May 1, 1999, and annually thereafter, prepare and submit to the Congress a report on the performance of each State on each outcome measure, which shall examine the reasons for high performance and low performance and, where possible, make recommendations as to how State performance could be improved; and

(6) include in the report submitted pursuant to paragraph (5) for fiscal year 2007 or any succeeding fiscal year, State-by-State data on—

(A) the percentage of children in foster care under the responsibility of the State who were visited on a monthly basis by the caseworker handling the case of the child; and

(B) the percentage of the visits that occurred in the residence of the child.

(Aug. 14, 1935, ch. 531, title IV, § 479A, as added Pub. L. 105–89, title II, § 203(a), Nov. 19, 1997, 111 Stat. 2126; amended Pub. L. 109–288, § 7(c)(2), Sept. 28, 2006, 120 Stat. 1249.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in par. (1), is classified to section 620 et seq. of this title.

AMENDMENTS

2006—Par. (6). Pub. L. 109–288 added par. (6).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE

Section effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as an Effective Date of 1997 Amendments note under section 622 of this title.

DEVELOPMENT OF PERFORMANCE-BASED INCENTIVE SYSTEM

Section 203(b) of Pub. L. 105–89 provided that: ''The Secretary of Health and Human Services, in consultation with State and local public officials responsible for administering child welfare programs and child welfare advocates, shall study, develop, and recommend to Congress an incentive system to provide payments under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq., 670 et seq.) to any State based on the State's performance under such a system. Such a system shall, to the extent the Secretary determines feasible and appropriate, be based on the annual report required by section 479A of the Social Security Act [this section] (as added by subsection (a) of this section) or on any proposed modifications of the annual report. Not later than 6 months after the date of the enactment of this Act [Nov. 19, 1997], the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a progress report on the feasibility, timetable, and consultation process for conducting such a study. Not later than 15 months after such date of enactment, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives

and the Committee on Finance of the Senate the final report on a performance-based incentive system. The report may include other recommendations for restructuring the program and payments under parts B and E of title IV of the Social Security Act.''

PART F—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

§§ 681 to 687. Repealed. Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167

Section 681, act Aug. 14, 1935, ch. 531, title IV, § 481, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2360, related to purpose of part and definitions.

Section 682, act Aug. 14, 1935, ch. 531, title IV, § 482, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2360; amended Oct. 31, 1994, Pub. L. 103–432, title II, § 241(a), 108 Stat. 4466, related to establishment and operation of State programs.

Section 683, act Aug. 14, 1935, ch. 531, title IV, § 483, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2369, related to coordination of Federal and State programs.

Section 684, act Aug. 14, 1935, ch. 531, title IV, § 484, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2370, related to provisions generally applicable to provision of services.

Section 685, act Aug. 14, 1935, ch. 531, title IV, § 485, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2371, related to contract authority.

Section 686, act Aug. 14, 1935, ch. 531, title IV, § 486, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2372, related to initial State evaluations.

Section 687, act Aug. 14, 1935, ch. 531, title IV, § 487, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 203(b), 102 Stat. 2378; amended Oct. 31, 1994, Pub. L. 103–432, title II, § 242, 108 Stat. 4466, related to performance standards.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

SUBCHAPTER V—MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT

AMENDMENTS

1981—Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 818, substituted ''MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT'' for ''MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES'' as the heading of title V of the Social Security Act [this subchapter] as part of the general revision of this subchapter.

§ 701. Authorization of appropriations; purposes; definitions

(a) To improve the health of all mothers and children consistent with the applicable health status goals and national health objectives established by the Secretary under the Public Health Service Act [42 U.S.C. 201 et seq.] for the year 2000, there are authorized to be appropriated $850,000,000 for fiscal year 2001 and each fiscal year thereafter—

(1) for the purpose of enabling each State—

(A) to provide and to assure mothers and children (in particular those with low income or with limited availability of health services) access to quality maternal and child health services;

(B) to reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children, to reduce the need for inpatient and long-term care services, to increase the number of children (especially preschool children) appropriately immunized against disease and the number of low income children receiving health assessments and follow-up diagnostic and treatment services, and otherwise to promote the health of mothers and infants by providing prenatal, delivery, and postpartum care for low income, at-risk pregnant women, and to promote the health of children by providing preventive and primary care services for low income children;

(C) to provide rehabilitation services for blind and disabled individuals under the age of 16 receiving benefits under subchapter XVI of this chapter, to the extent medical assistance for such services is not provided under subchapter XIX of this chapter; and

(D) to provide and to promote family-centered, community-based, coordinated care (including care coordination services, as defined in subsection (b)(3) of this section) for children with special health care needs and to facilitate the development of community-based systems of services for such children and their families;

(2) for the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development), for genetic disease testing, counseling, and information development and dissemination programs, for grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age, and for the screening of newborns for sickle cell anemia, and other genetic disorders and follow-up services; and

(3) subject to section 702(b) of this title for the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for developing and expanding the following—

(A) maternal and infant health home visiting programs in which case management services as defined in subparagraphs (A) and (B) of subsection (b)(4) of this section, health education services, and related social support services are provided in the home to pregnant women or families with an infant up to the age one by an appropriate health professional or by a qualified nonprofessional acting under the supervision of a health care professional,

(B) projects designed to increase the participation of obstetricians and pediatricians under the program under this subchapter and under state[1] plans approved under subchapter XIX of this chapter,

[1] So in original. Probably should be capitalized.

(C) integrated maternal and child health service delivery systems (of the type described in section 1320b–6[2] of this title and using, once developed, the model application form developed under section 6506(a) of the Omnibus Budget Reconciliation Act of 1989),

(D) maternal and child health centers which (i) provide prenatal, delivery, and postpartum care for pregnant women and preventive and primary care services for infants up to age one, and (ii) operate under the direction of a not-for-profit hospital,

(E) maternal and child health projects to serve rural populations, and

(F) outpatient and community based services programs (including day care services) for children with special health care needs whose medical services are provided primarily through inpatient institutional care.

Funds appropriated under this section may only be used in a manner consistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(b) For purposes of this subchapter:

(1) The term ''consolidated health programs'' means the programs administered under the provisions of—

(A) this subchapter (relating to maternal and child health and services for children with special health care needs),

(B) section 1382d(c) of this title (relating to supplemental security income for disabled children),

(C) sections 247a of this title (relating to lead-based paint poisoning prevention programs), 300b of this title (relating to genetic disease programs), 300c–11 of this title (relating to sudden infant death syndrome programs) and 300c–21 of this title (relating to hemophilia treatment centers), and

(D) title VI of the Health Services and Centers Amendments of 1978 (Public Law 95–626; relating to adolescent pregnancy grants),

as such provisions were in effect before August 13, 1981.

(2) The term ''low income'' means, with respect to an individual or family, such an individual or family with an income determined to be below the income official poverty line defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title.

(3) The term ''care coordination services'' means services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children with special health care needs and their families.

(4) The term ''case management services'' means—

(A) with respect to pregnant women, services to assure access to quality prenatal, delivery, and postpartum care; and

(B) with respect to infants up to age one, services to assure access to quality preventive and primary care services.

(c)(1)(A) For the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for special projects of regional and national significance for the development and support of family-to-family health information centers described in paragraph (2), there is appropriated to the Secretary, out of any money in the Treasury not otherwise appropriated—

(i) $3,000,000 for fiscal year 2007;

(ii) $4,000,000 for fiscal year 2008; and

(iii) $5,000,000 for fiscal year 2009.

(B) Funds appropriated or authorized to be appropriated under subparagraph (A) shall—

(i) be in addition to amounts appropriated under subsection (a) and retained under section 702(a)(1) of this title for the purpose of carrying out activities described in subsection (a)(2); and

(ii) remain available until expended.

(2) The family-to-family health information centers described in this paragraph are centers that—

(A) assist families of children with disabilities or special health care needs to make informed choices about health care in order to promote good treatment decisions, cost-effectiveness, and improved health outcomes for such children;

(B) provide information regarding the health care needs of, and resources available for, such children;

(C) identify successful health delivery models for such children;

(D) develop with representatives of health care providers, managed care organizations, health care purchasers, and appropriate State agencies, a model for collaboration between families of such children and health professionals;

(E) provide training and guidance regarding caring for such children;

(F) conduct outreach activities to the families of such children, health professionals, schools, and other appropriate entities and individuals; and

(G) are staffed—

(i) by such families who have expertise in Federal and State public and private health care systems; and

(ii) by health professionals.

(3) The Secretary shall develop family-to-family health information centers described in paragraph (2) in accordance with the following:

(A) With respect to fiscal year 2007, such centers shall be developed in not less than 25 States.

(B) With respect to fiscal year 2008, such centers shall be developed in not less than 40 States.

(C) With respect to fiscal year 2009 and each fiscal year thereafter, such centers shall be developed in all States.

(4) The provisions of this subchapter that are applicable to the funds made available to the Secretary under section 702(a)(1) of this title apply in the same manner to funds made available to the Secretary under paragraph (1)(A).

(5) For purposes of this subsection, the term ''State'' means each of the 50 States and the District of Columbia.

(Aug. 14, 1935, ch. 531, title V, § 501, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat.

[2] See References in Text note below.

818; amended Pub. L. 97–248, title I, §137(b)(1), (2), Sept. 3, 1982, 96 Stat. 376; Pub. L. 98–369, div. B, title III, §2372(a), July 18, 1984, 98 Stat. 1110; Pub. L. 99–272, title IX, §9527(a)–(c), Apr. 7, 1986, 100 Stat. 219; Pub. L. 99–509, title IX, §9441(a), Oct. 21, 1986, 100 Stat. 2071; Pub. L. 100–203, title IV, §4118(p)(8), Dec. 22, 1987, 101 Stat. 1330–159; Pub. L. 101–239, title VI, §6501(a), Dec. 19, 1989, 103 Stat. 2273; Pub. L. 103–432, title II, §201, Oct. 31, 1994, 108 Stat. 4453; Pub. L. 105–12, §9(d), Apr. 30, 1997, 111 Stat. 27; Pub. L. 106–554, §1(a)(6) [title IX, §921(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–584; Pub. L. 109–171, title VI, §6064, Feb. 8, 2006, 120 Stat. 100.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (a), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (a), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

Section 1320b–6 of this title, referred to in subsec. (a)(3)(C), was repealed by Pub. L. 104–193, title I, §108(g)(7), Aug. 22, 1996, 110 Stat. 2168.

Section 6506(a) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (a)(3)(C), is section 6506(a) of Pub. L. 101–239 which is set out below.

Sections 247a, 300b, 300c–11, and 300c–21 of this title, referred to in subsec. (b)(1)(C), were repealed by Pub. L. 97–35, §2193(b)(1), Aug. 13, 1981, 95 Stat. 827. See Effective Date, Savings, and Transitional Provisions note set out below.

The Health Services and Centers Amendments of 1978, referred to in subsec. (b)(1)(D), is Pub. L. 95–626, Nov. 10, 1978, 92 Stat. 3551. Title VI of the Health Services and Centers Amendments of 1978 was classified generally to part A (§300a–21 et seq.) of subchapter VIII–A of this chapter prior to its repeal by Pub. L. 97–35, title IX, §955(b), title XXI, §2193(f), Aug. 13, 1981, 95 Stat. 592, 828. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 201 of this title and Tables.

PRIOR PROVISIONS

A prior section 701, act Aug. 14, 1935, ch. 531, title V, §501, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 921; amended Aug. 1, 1977, Pub. L. 95–83, title III, §309(a), 91 Stat. 396; Aug. 13, 1981, Pub. L. 97–35, title XXI, §2193(a)(3), 95 Stat. 827, provided for authorization of appropriations, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out below.

Another prior section 701, acts Aug. 14, 1935, ch. 531, title V, §501, 49 Stat. 629; Aug. 10, 1939, ch. 666, title V, §501, 53 Stat. 1380; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, §401(b)(1), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, §331(a), pt. 6, §361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, §602(a), 72 Stat. 1054; Sept. 13, 1960, Pub. L. 86–778, title VII, §707(a)(1)(A), 74 Stat. 995; Oct. 24, 1963, Pub. L. 88–156, §2(a), 77 Stat. 273; July 30, 1965, Pub. L. 89–97, title II, §201(a), 79 Stat. 353, authorized appropriations, for maternal and child health services, of $25,000,000; $30,000,000; $35,000,000; $45,000,000; $50,000,000; $55,000,000; $55,000,000; and $60,000,000 for fiscal years ending June 30, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970 and each fiscal year thereafter, respectively, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301.

Provisions similar to those comprising former section 701 were contained in section 511 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 631, as amended (formerly classified to section 711 of this title, and sections 531(a), 532(a), and 533(a) (formerly 532(a)) of act Aug. 14, 1935, ch. 531, title V, as added Oct. 24, 1963, Pub. L. 88–156, §4, 77 Stat. 274; amended July 30, 1965, Pub. L. 89–97, title II, §205(3), 79 Stat. 354; Oct. 24, 1963, Pub. L. 88–156, §4, 77 Stat. 274; renumbered July 30, 1965, Pub. L. 89–97, title II, §205(2), 79 Stat. 354 (formerly classified to sections 729(a), 729–1(a), and 729a(a) of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, §301.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–171 added subsec. (c).

2000—Subsec. (a). Pub. L. 106–554 substituted "$850,000,000 for fiscal year 2001" for "$705,000,000 for fiscal year 1994" in introductory provisions.

1997—Subsec. (a). Pub. L. 105–12 inserted concluding provisions.

1994—Subsec. (a). Pub. L. 103–432 substituted "$705,000,000 for fiscal year 1994" for "$686,000,000 for fiscal year 1990" in introductory provisions.

1989—Subsec. (a). Pub. L. 101–239, §6501(a)(1), amended subsec. (a) generally, substituting pars. (1) to (3) for former pars. (1) to (4) and concluding provisions.

Subsec. (b)(3), (4). Pub. L. 101–239, §6501(a)(2), added pars. (3) and (4).

1987—Subsec. (b)(2). Pub. L. 100–203 struck out "nonform" after "below the".

1986—Subsec. (a). Pub. L. 99–509 substituted "$553,000,000 for fiscal year 1987, $557,000,000 for fiscal year 1988, and $561,000,000 for fiscal year 1989" for "$478,000,000 for fiscal year 1984" in concluding provisions.

Pub. L. 99–272, §9527(b), substituted "children with special health care needs" for "crippled children" in concluding provisions.

Subsec. (a)(4). Pub. L. 99–272, §9527(a), substituted "children who are 'children with special health care needs' or who are suffering from conditions leading to such status" for "children who are crippled or who are suffering from conditions leading to crippling".

Subsec. (b)(1)(A). Pub. L. 99–272, §9527(c), substituted "services for children with special health care needs" for "crippled children's services".

1984—Subsec. (a). Pub. L. 98–369 substituted "$478,000,000 for fiscal year 1984 and each fiscal year thereafter" for "$373,000,000 for fiscal year 1982 and for each fiscal year thereafter".

1982—Subsec. (b)(1)(D). Pub. L. 97–248, §137(b)(1), substituted "title VI" for "title IV".

Subsec. (b)(2). Pub. L. 97–248, §137(b)(2), substituted "section 9902(2)" for "section 2971d".

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title IX, §921(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–585, provided that: "The amendment made by subsection (a) [amending this section] takes effect on October 1, 2000."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6510 of Pub. L. 101–239 provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle C (§§6501–6510) of title VI of Pub. L. 101–239, amending this

section and sections 702 to 706, 708, and 709 of this title] shall apply to appropriations for fiscal years beginning with fiscal year 1990.

''(b) APPLICATION AND REPORT.—The amendments made—

''(1) by subsections (b) and (c) of section 6503 [amending sections 702, 704 to 706, and 709 of this title] shall apply to payments for allotments for fiscal years beginning with fiscal year 1991, and

''(2) by section 6504 [amending section 706 of this title] shall apply to annual reports for fiscal years beginning with fiscal year 1991.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2372(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1983.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE, SAVINGS, AND TRANSITIONAL PROVISIONS

Section 2194 of Pub. L. 97–35 provided that:

''(a) Except as otherwise provided in this section, the amendments made by sections 2192 [enacting this subchapter and enacting provisions set out as a note under section 706 of this title] and 2193 [amending this section and sections 247a, 300a–27, 300b, 300c–11, and 300c–21 of this title with respect to fiscal year ending Sept. 30, 1982, amending sections 300b–3, 300b–6, 1301, 1308, 1320a–1, 1320a–8, 1320b–2, 1320b–4, 1320c–21, 1382d, 1395b–1, 1395x, and 1396a of this title, repealing sections 236, 247a, 300a–21 to 300a–28, 300a–41, 300b, 300b–5, 300c–11, and 300c–21 of this title, enacting provisions set out as a note under section 1382d of this title, and amending provisions set out as notes under sections 1320a–8 and 1395b–1 of this title] of this subtitle do not apply to any grant made, or contract entered into, or amounts payable to States under State plans before the earlier of—

''(1) October 1, 1982, or

''(2)(A) in the case of such grants, contracts, or payments under consolidated State programs (as defined in subsection (c)(2)(C)) to a State (or entities in the State), the date the State is first entitled to an allotment under title V of the Social Security Act [this subchapter] (as amended by this subtitle), or

''(B) in the case of grants and contracts under consolidated Federal programs (as defined in subsection (c)(2)(B)), October 1, 1981, or such later date (before October 1, 1982) as the Secretary determines to be appropriate.

''(b)(1) The Secretary of Health and Human Services (hereinafter in this section referred to as the 'Secretary') may not provide for any allotment to a State under title V of the Social Security Act [this subchapter] (as amended by this subtitle) for a calendar quarter in fiscal year 1982 unless the State has notified the Secretary, at least 30 days (or 15 days in the case of the first calendar quarter of the fiscal year) before the beginning of the calendar quarter, that the State requests an allotment for that calendar quarter (and subsequent calendar quarters).

''(2)(A) Any grants or contracts entered into under the authorities of the consolidated State programs (as defined in subsection (c)(2)(C)) after the date of the enactment of this subtitle [Aug. 13, 1981] shall permit the termination of such grant or contract upon three months notice by the State in which the grantee or contractor is located.

''(B) The Secretary shall not make or renew any grants or contracts under the provisions of the consolidated State programs (as defined in subsection (c)(2)(C)) to a State (or an entity in the State) after the date the State becomes entitled to an allotment of funds under title V of the Social Security Act [this subchapter] (as amended by this subtitle).

''(3)(A) In the case of funds appropriated for fiscal year 1982 for consolidated health programs (as defined in subsection (c)(2)(A)), such funds shall (notwithstanding any other provision of law) be available for use under title V of the Social Security Act (as amended by this subtitle) [this subchapter], subject to subparagraphs (B) and (C).

''(B) Notwithstanding any other provision of law—

''(i) the amount that may be made available for expenditures for the consolidated Federal programs for fiscal year 1982 and for projects and programs under section 502(a) of the Social Security Act [section 702(a) of this title] (as amended by this subtitle) may not exceed the amount provided for projects and programs under such section 502(a) for that fiscal year, and

''(ii) the amount that may be made available to a State (or entities in the State) for carrying out the consolidated State programs for fiscal year 1982 and for allotments to the State under section 502(b) of the Social Security Act [section 702(b) of this title] (as amended by this subtitle) may not exceed the amount which is allotted to the State for that fiscal year under such section (without regard to paragraphs (3) and (4) thereof).

''(C) For fiscal year 1982, the Secretary shall reduce the amount which would otherwise be available—

''(i) for expenditures by the Secretary under section 502(a) of the Social Security Act [section 702(a) of this title] (as amended by this subtitle) by the amounts which the Secretary determines or estimates are payable for consolidated Federal programs (as defined in subsection (c)(2)(B)) from funds for fiscal year 1982, and

''(ii) for allotment to each of the States under section 502(b) of such Act [section 702(b) of this title] (as so amended) by the amounts which the Secretary determines or estimates are payable to that State (or entities in the State) under the consolidated State programs (as defined in subsection (c)(2)(C)) from funds for fiscal year 1982.

''(c) For purposes of this section:

''(1) The term 'State' has the meaning given such term for purposes of title V of the Social Security Act [this subchapter].

''(2)(A) The term 'consolidated health programs' has the meaning given such term in section 501(b) of the Social Security Act [subsec. (b) of this section] (as amended by this subtitle).

''(B) The term 'consolidated Federal programs' means the consolidated health programs—

''(i) of special projects grants under sections 503 and 504 [sections 703 and 704 of this title], and training grants under section 511 [section 711 of this title], of the Social Security Act,

''(ii) of grants and contracts for genetic disease projects and programs under section 1101 of the Public Health Service Act [section 300b of this title], and

''(iii) of grants or contracts for comprehensive hemophilia diagnostic and treatment centers under section 1131 of the Public Health Service Act [section 300c–21 of this title],

as such sections are in effect before the date of the enactment of this subtitle [Aug. 13, 1981].

''(C) The term 'consolidated State programs' means the consolidated health programs, other than the consolidated Federal programs.

''(d) The provisions of chapter 2 of subtitle C of title XVII of this Act [sections 1741–1745 of Pub. L. 97–35, which were repealed and reenacted as section 7301–7305 of Title 31, Money and Finance, by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 877] shall not apply to this subtitle (or the programs under the amendments made by this title [probably should be subtitle]) and, specifically, section 1745 of this Act [set out as a note under section 1243 of Title 31] shall not apply to financial and compliance

audits conducted under section 506(b) of the Social Security Act [section 706(b) of this title] (as amended by this subtitle).''

DEVELOPMENT OF MODEL APPLICATIONS FOR MATERNAL AND CHILD ASSISTANCE PROGRAMS

Section 6506(a) of Pub. L. 101–239 directed Secretary of Health and Human Services to develop, not later than one year after Dec. 19, 1989, a model application form for use in applying for assistance for pregnant women and for children less than 6 years old under maternal and child assistance programs and required publication of model form in Federal Register and dissemination of form to State agencies.

RESEARCH ON INFANT MORTALITY AND MEDICAID SERVICES

Section 6507 of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall develop a national data system for linking, for any infant up to age one—

''(1) the infant's birth record,

''(2) any death record for the infant, and

''(3) information on any claims submitted under title XIX of the Social Security Act [subchapter XIX of this chapter] for health care furnished to the infant or with respect to the birth of the infant.''

DEMONSTRATION PROJECT ON HEALTH INSURANCE FOR MEDICALLY UNINSURABLE CHILDREN

Section 6508 of Pub. L. 101–239 authorized Secretary of Health and Human Services to conduct not more than 4 demonstration projects to provide health insurance coverage through eligible plans to medically uninsurable children under 19 years of age, further provided for definition of eligible plan, requirements for demonstration projects, including guarantee of insurance coverage for at least two years, provision of non-Federal funds, as well as further restrictions on insurance plans, and further provided for applications for projects, evaluation of projects by Secretary and report to Congress, and authorization of appropriations for each of fiscal years 1991, 1992, and 1993.

MATERNAL AND CHILD HEALTH HANDBOOK

Section 6509 of Pub. L. 101–239 provided that:

''(a) IN GENERAL.—

''(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a maternal and child health handbook in consultation with the National Commission to Prevent Infant Mortality and public and private organizations interested in the health and welfare of mothers and children.

''(2) FIELD TESTING AND EVALUATION.—The Secretary shall complete publication of the handbook for field testing by July 1, 1990, and shall complete field testing and evaluation by June 1, 1991.

''(3) AVAILABILITY AND DISTRIBUTION.—The Secretary shall make the handbook available to pregnant women and families with young children, and shall provide copies of the handbook to maternal and child health programs (including maternal and child health clinics supported through either title V or title XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter], community and migrant health centers under sections 329 and 330 of the Public Health Service Act [former sections 254b and 254c of this title], the grant program for the homeless under section 340 of the Public Health Service Act [former section 256 of this title], the 'WIC' program under section 17 of the Child Nutrition Act of 1966 [section 1786 of this title], and the head start program under the Head Start Act [section 9831 et seq. of this title]) that serve high-risk women. The Secretary shall coordinate the distribution of the handbook with State maternal and child health departments, State and local public health clinics, private providers of obstetric and pediatric care, and community groups where applicable. The Secretary shall make efforts to involve private entities in the distribution of the handbook under this paragraph.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for each of fiscal years 1991, 1992, and 1993, for carrying out the purposes of this section.''

[Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.]

§ 702. Allotment to States and Federal set-aside

(a) Special projects

(1) Of the amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $600,000,000, the Secretary shall retain an amount equal to 15 percent for the purpose of carrying out activities described in section 701(a)(2) of this title. The authority of the Secretary to enter into any contracts under this subchapter is effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

(2) For purposes of paragraph (1)—

(A) amounts retained by the Secretary for training shall be used to make grants to public or nonprofit private institutions of higher learning for training personnel for health care and related services for mothers and children; and

(B) amounts retained by the Secretary for research shall be used to make grants to, contracts with, or jointly financed cooperative agreements with, public or nonprofit institutions of higher learning and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or programs for children with special health care needs for research projects relating to maternal and child health services or services for children with special health care needs which show promise of substantial contribution to the advancement thereof.

(3) No funds may be made available by the Secretary under this subsection or subsection (b) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, be submitted in such manner, and contain and be accompanied by such information as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under this subchapter.

(b) Excess funds; preference

(1)(A) Of the amounts appropriated under section 701(a) of this title for a fiscal year in excess of $600,000,000 the Secretary shall retain an amount equal to 12¾ percent thereof for the projects described in subparagraphs (A) through (F) of section 701(a)(3) of this title.

(B) Any amount appropriated under section 701(a) of this title for a fiscal year in excess of $600,000,000 that remains after the Secretary has

retained the applicable amount (if any) under subparagraph (A) shall be retained by the Secretary in accordance with subsection (a) of this section and allocated to the States in accordance with subsection (c) of this section.

(2)(A) Of the amounts retained for the purpose of carrying out activities described in section 701(a)(3)(A), (B), (C), (D) and (E) of this title, the Secretary shall provide preference to qualified applicants which demonstrate that the activities to be carried out with such amounts shall be in areas with a high infant mortality rate (relative to the average infant mortality rate in the United States or in the State in which the area is located).

(B) In carrying out activities described in section 701(a)(3)(D) of this title, the Secretary shall not provide for developing or expanding a maternal and child health center unless the Secretary has received satisfactory assurances that there will be applied, towards the costs of such development or expansion, non-Federal funds in an amount at least equal to the amount of funds provided under this subchapter toward such development or expansion.

(c) Allotments to States

From the remaining amounts appropriated under section 701(a) of this title for any fiscal year that are not in excess of $600,000,000, the Secretary shall allot to each State which has transmitted an application for the fiscal year under section 705(a) of this title, an amount determined as follows:

(1) The Secretary shall determine, for each State—

(A)(i) the amount provided or allotted by the Secretary to the State and to entities in the State under the provisions of the consolidated health programs (as defined in section 701(b)(1) of this title), other than for any of the projects or programs described in subsection (a) of this section, from appropriations for fiscal year 1981,

(ii) the proportion that such amount for that State bears to the total of such amounts for all the States, and

(B)(i) the number of low income children in the State, and

(ii) the proportion that such number of children for that State bears to the total of such numbers of children for all the States.

(2) Each such State shall be allotted for each fiscal year an amount equal to the sum of—

(A) the amount of the allotment to the State under this subsection in fiscal year 1983, and

(B) the State's proportion (determined under paragraph (1)(B)(ii)) of the amount by which the allotment available under this subsection for all the States for that fiscal year exceeds the amount that was available under this subsection for allotment for all the States for fiscal year 1983.

(d) Re-allotment of unallotted funds

(1) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 705(a) of this title for the fiscal year or because some States have indicated in their descriptions of activities under section 705(a) of this title that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(2) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 706(b)(2) of this title, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(Aug. 14, 1935, ch. 531, title V, § 502, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 819; amended Pub. L. 99–272, title IX, § 9527(d), Apr. 7, 1986, 100 Stat. 219; Pub. L. 99–509, title IX, § 9441(b), Oct. 21, 1986, 100 Stat. 2071; Pub. L. 101–239, title VI, §§ 6502(a), 6503(c)(1), (4), Dec. 19, 1989, 103 Stat. 2275, 2278.)

PRIOR PROVISIONS

A prior section 702, act Aug. 14, 1935, ch. 531, title V, § 502, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 921; amended July 10, 1972, Pub. L. 92–345, § 1, 86 Stat. 456; July 1, 1973, Pub. L. 93–53, § 4(a)(1), (2), 87 Stat. 135, prescribed purposes for which funds were available, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Another prior section 702, acts Aug. 14, 1935, ch. 531, title V, § 502, 49 Stat. 629; Aug. 10, 1939, ch. 666, title V, § 502, 53 Stat. 1380; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 401(b)(2), (3), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, § 331(b), pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, § 602(b), (c), 72 Stat. 1055; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(a)(1)(B), (C), (b)(1)(A), 74 Stat. 995, 996; Oct. 24, 1963, Pub. L. 88–156, § 2(b), (c), 77 Stat. 273, provided for allotment to States for maternal and child health services, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 703 of this title.

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–239, § 6502(a)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: "Of the amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $478,000,000, the Secretary shall retain an amount equal to 15 percent thereof in the case of fiscal year 1982, and an amount equal to not less than 10, nor more than 15, percent thereof in the case of each fiscal year thereafter, for the purpose of carrying out (through grants, contracts, or otherwise) special projects of regional and national significance, training, and research and for the funding of genetic disease testing, counseling, and information development and dissemination programs and of comprehensive hemophilia diagnostic and treatment centers."

Subsec. (a)(3). Pub. L. 101–239, § 6502(a)(2), inserted "or subsection (b) of this section" after "this subsection".

Subsec. (b). Pub. L. 101–239, § 6502(a)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 101–239, § 6503(c)(4), which directed amendment of subsec. (b) by substituting "705(a)" for "705", was executed to subsec. (c) to reflect the probable intent of Congress and the intervening redesignation of former subsec. (b) as (c) by Pub. L. 101–239, § 6502(a)(3), see below.

Pub. L. 101–239, § 6503(c)(1), substituted ''an application'' for ''a description of intended activities and statement of assurances'' in introductory provisions.

Pub. L. 101–239, § 6502(a)(4)(A), substituted ''$600,000,000'' for ''$478,000,000'' in introductory provisions.

Pub. L. 101–239, § 6502(a)(3), redesignated subsec. (b) as (c) and struck out former subsec. (c) which related to special projects for children.

Subsec. (c)(2). Pub. L. 101–239, § 6502(a)(4)(B), amended par. (2) generally, substituting provisions basing each State's allotment for each fiscal year upon 1983 amounts for former provisions setting forth formulas for allotments for fiscal years 1982 and 1983 and for each year beginning with fiscal year 1984.

Subsec. (d)(1). Pub. L. 101–239, § 6503(c)(4), substituted ''705(a)'' for ''705'' in two places.

1986—Subsec. (a)(1). Pub. L. 99–509, § 9441(b)(1), substituted ''amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $478,000,000'' for ''amount appropriated under section 701(a) of this title''.

Subsec. (a)(2)(B). Pub. L. 99–272 substituted ''programs for children with special health care needs'' for ''crippled children's programs'' and ''services for children with special health care needs'' for ''crippled children's services''.

Subsec. (b). Pub. L. 99–509, § 9441(b)(2), inserted ''that are not in excess of $478,000,000'' in introductory provisions and struck out par. (3) which read as follows:

''(A) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 705 of this title for the fiscal year or because some States have indicated in their descriptions of activities under section 705 of this title that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph.

''(B) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 706(b)(2) of this title, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph.''

Subsecs. (c), (d). Pub. L. 99–509, § 9441(b)(3), added subsecs. (c) and (d).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6502(a) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(c)(1), (4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

§ 703. Payments to States

(a) Statutory provisions applicable

From the sums appropriated therefor and the allotments available under section 702(c) of this title, the Secretary shall make payments as provided by section 6503(a) of title 31 to each State provided such an allotment under section 702(c) of this title, for each quarter, of an amount equal to four-sevenths of the total of the sums expended by the State during such quarter in carrying out the provisions of this subchapter.

(b) Unobligated allotments

Any amount payable to a State under this subchapter from allotments for a fiscal year which remains unobligated at the end of such year shall remain available to such State for obligation during the next fiscal year. No payment may be made to a State under this subchapter from allotments for a fiscal year for expenditures made after the following fiscal year.

(c) Reduction of payments; fair market value of supplies or equipment, value of salaries, travel expenses, etc.

The Secretary, at the request of a State, may reduce the amount of payments under subsection (a) of this section by—

(1) the fair market value of any supplies or equipment furnished the State, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of supplies or equipment or the detail of an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 705(a) of this title on a temporary basis. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which the reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

(Aug. 14, 1935, ch. 531, title V, § 503, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 821; amended Pub. L. 98–369, div. B, title III, § 2373(a)(1), July 18, 1984, 98 Stat. 1111; Pub. L. 101–239, title VI, §§ 6502(b), 6503(c)(4), Dec. 19, 1989, 103 Stat. 2276, 2278.)

PRIOR PROVISIONS

A prior section 703, act Aug. 14, 1935, ch. 531, title V, § 503, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 922, related to allotments to States for maternal and child health services, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 702 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Another prior section 703, acts Aug. 14, 1935, ch. 531, title V, § 503, 49 Stat. 630; Aug. 10, 1939, ch. 666, title V, § 503, 53 Stat. 1380; 1946 Reorg. Plan No. 2, §§ 1, 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809 title III, pt. 6, § 361(e), 64 Stat. 558; July 30, 1965, Pub. L. 89–97, title II, § 204(a), 79 Stat. 354, related to contents of State plans for maternal and child health services and their approval by the Administrator, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 705 of this title.

Provisions similar to those comprising former section 703 were contained in section 502 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 629, as amended (formerly classified to section 702 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 6502(b), substituted ''702(c)'' for ''702(b)'' in two places.

Subsec. (c). Pub. L. 101–239, § 6503(c)(4), substituted ''705(a)'' for ''705'' in penultimate sentence.

1984—Subsec. (a). Pub. L. 98–369 substituted ''section 6503(a) of title 31'' for ''section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6502(b) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(c)(4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

§ 703a. Omitted

CODIFICATION

Section, Pub. L. 90–132, title II, Nov. 8, 1967, 81 Stat. 404, which provided for approval by Secretary of any State plan which provided standards for professional obstetrical services in accordance with the laws of the State, was not repeated in the Department of Health, Education, and Welfare Appropriation Act, 1969. Similar provisions were contained in the following prior appropriation acts:

Nov. 7, 1966, Pub. L. 87–787, title II, 80 Stat. 1397.
Aug. 31, 1965, Pub. L. 89–156, title II, 79 Stat. 605.
Sept. 19, 1964, Pub. L. 88–605, title II, 78 Stat. 976.
Oct. 11, 1963, Pub. L. 88–136, title II, 77 Stat. 240.
Aug. 14, 1962, Pub. L. 87–582, title II, 76 Stat. 376.
Sept. 22, 1961, Pub. L. 87–290, title II, 75 Stat. 605.
Sept. 2, 1960, Pub. L. 86–703, title II, 74 Stat. 770.
Aug. 14, 1959, Pub. L. 86–158, title II, 73 Stat. 353.
Aug. 1, 1958, Pub. L. 85–580, title II, 72 Stat. 472.
June 29, 1957, Pub. L. 85–67, title II, 71 Stat. 222.
June 29, 1956, ch. 477, title II, 70 Stat. 434.
Aug. 1, 1955, ch. 437, title II, 69 Stat. 408.
July 2, 1954, ch. 457, title II, 68 Stat. 444.
July 31, 1953, ch. 296, title II, 67 Stat. 255.
July 5, 1952, ch. 575, title II, 66 Stat. 368.
Aug. 31, 1951, ch. 373, title II, 65 Stat. 219.
Sept. 6, 1950, ch. 896, ch. V, title II, 64 Stat. 653.
June 29, 1949, ch. 275, title II, 63 Stat. 284.
June 16, 1948, ch. 472, title I, 62 Stat. 447.
July 8, 1947, ch. 210, title II, 61 Stat. 273.
July 26, 1946, title I, 60 Stat. 681.
July 3, 1945, ch. 263, title I, 59 Stat. 363.

§ 704. Use of allotment funds

(a) Covered services

Except as otherwise provided under this section, a State may use amounts paid to it under section 703 of this title for the provision of health services and related activities (including planning, administration, education, and evaluation and including payment of salaries and other related expenses of National Health Service Corps personnel) consistent with its application transmitted under section 705(a) of this title.

(b) Restrictions

Amounts described in subsection (a) of this section may not be used for—

(1) inpatient services, other than inpatient services provided to children with special health care needs or to high-risk pregnant women and infants and such other inpatient services as the Secretary may approve;

(2) cash payments to intended recipients of health services;

(3) the purchase or improvement of land, the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility, or the purchase of major medical equipment;

(4) satisfying any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;

(5) providing funds for research or training to any entity other than a public or nonprofit private entity; or

(6) payment for any item or service (other than an emergency item or service) furnished—

(A) by an individual or entity during the period when such individual or entity is excluded under this subchapter or subchapter XVIII, XIX, or XX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title, or

(B) at the medical direction or on the prescription of a physician during the period when the physician is excluded under this subchapter or subchapter XVIII, XIX, or XX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).

The Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this subchapter.

(c) Use of portion of funds

A State may use a portion of the amounts described in subsection (a) of this section for the purpose of purchasing technical assistance from public or private entities if the State determines that such assistance is required in developing, implementing, and administering programs funded under this subchapter.

(d) Limitation on use of funds for administrative costs

Of the amounts paid to a State under section 703 of this title from an allotment for a fiscal year under section 702(c) of this title, not more than 10 percent may be used for administering the funds paid under such section.

(Aug. 14, 1935, ch. 531, title V, § 504, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 821; amended Pub. L. 99–272, title IX, § 9527(e), Apr. 7, 1986, 100 Stat. 219; Pub. L. 100–93, § 8(a), Aug. 18, 1987, 101 Stat. 692; Pub. L. 100–203, title IV, § 4118(e)(12), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(k)(10)(D), July 1, 1988, 102 Stat. 796, and amended Pub. L. 100–485, title VI, § 608(d)(26)(K)(ii), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 101–239, title VI, § 6503(a), (c)(2), (4), Dec. 19, 1989, 103 Stat. 2276, 2278.)

PRIOR PROVISIONS

A prior section 704, act Aug. 14, 1935, ch. 531, title V, § 504, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 922, related to allotments to States for crippled children's services, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 702 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Another prior section 704, acts Aug. 14, 1935, ch. 531, title V, § 504, 49 Stat. 630; 1940 Reorg. Plan No. III, § 1(a), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(e), 64 Stat. 558; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(b)(1)(B), 74 Stat. 996; July 30, 1965, Pub. L. 89–97, title II, § 201(b), 79 Stat. 353, provided for payment to States with an approved plan for maternal and child-health services and

computation of amounts, and prescribed general availability of services by July 1, 1975, as requisite for payments for any period after June 30, 1966, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 706 of this title.

Provisions similar to those comprising former section 704 were contained in section 512 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 631, as amended (formerly classified to section 712 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 6503(c)(2), (4), substituted ''its application'' for ''its description of intended expenditures and statement of assurances'' and ''705(a)'' for ''705''.

Pub. L. 101–239, § 6503(a)(1), inserted ''and including payment of salaries and other related expenses of National Health Service Corps personnel'' after ''education, and evaluation''.

Subsec. (d). Pub. L. 101–239, § 6503(a)(2), added subsec. (d).

1988—Subsec. (b)(6). Pub. L. 100–360, as amended by Pub. L. 100–485, added Pub. L. 100–203, § 4118(e)(12), see 1987 Amendment note below.

1987—Subsec. (b)(6). Pub. L. 100–203, § 4118(e)(12), as added by Pub. L. 100–360 and amended by Pub. L. 100–485, substituted ''under this subchapter or subchapter XVIII, XIX, or XX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title'' for ''pursuant to section 1320a–7 of this title or section 1320a–7a of this title from participation in the program under this subchapter'' in subpars. (A) and (B).

Pub. L. 100–93 added par. (6).

1986—Subsec. (b)(1). Pub. L. 99–272 substituted ''children with special health care needs'' for ''crippled children''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6503(a) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(c)(2), (4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 608(g) of Pub. L. 100–485 provided that:

''(1) The amendments made by subsections (a), (b), and (d) [amending this section and sections 1320a–7, 1320a–7a, 1320b–10, 1320c–3, 1395i–2, 1395i–3, 1395*l*, 1395m, 1395r, 1395s, 1395t–1, 1395t–2, 1395u, 1395v, 1395w–2, 1395w–3, 1395x, 1395y, 1395aa to 1395dd, 1395mm, 1395tt, 1395ww, 1395aaa to 1395ccc, 1396a, 1396b, 1396d, 1396i, 1396n, 1396p, 1396r, 1396r–1, 1396r–4, 1396r–5, 1396s, and 1397d of this title, repealing section 1320a–2 of this title, enacting provisions set out as a note under section 1320a–2 of this title, and amending provisions set out as notes under sections 1320c–5, 1395b, 1395d, 1395e, 1395i–3, 1395u, 1395*ll*, 1395mm, 1395ss, 1395tt, 1395ww, 1396a, 1396d, and 1396r–5 of this title] shall be effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].

''(2) The amendments made by subsection (c) and subsection (f) (other than paragraph (5)) [amending sections 1395cc, 1396b, 1396d, and 1396n of this title, enacting provisions set out as a note under section 1395k of this title, and amending provisions set out as a note under section 1395k of this title] shall take effect on the date of the enactment of this Act [Oct. 13, 1988].''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

§ 704a. Omitted

CODIFICATION

Section, Pub. L. 92–80, title II, Aug. 10, 1971, 85 Stat. 290, which provided that certain allotments to States were not to be included in computing amounts expended or estimated to be expended by the State under subsecs. (a) and (b) of section 706 of this title, was not repeated in the Department of Health, Education, and Welfare Appropriation Act, 1973. Similar provisions were contained in the following prior appropriation acts:

Jan. 11, 1971, Pub. L. 91–667, 84 Stat. 2006.
Mar. 5, 1970, Pub. L. 91–204, title II, 84 Stat. 39.
Oct. 11, 1968, Pub. L. 90–557, title II, 82 Stat. 987.
Nov. 8, 1967, Pub. L. 90–132, title II, 81 Stat. 403.
Nov. 7, 1966, Pub. L. 89–787, title II, 80 Stat. 1396.
Aug. 31, 1965, Pub. L. 89–156, title II, 79 Stat. 605.
Sept. 10, 1964, Pub. L. 88–605, title II, 78 Stat. 975.
Oct. 11, 1963, Pub. L. 88–136, title II, 77 Stat. 240.
Aug. 14, 1962, Pub. L. 87–582, title II, 76 Stat. 376.
Sept. 22, 1961, Pub. L. 87–290, title II, 75 Stat. 605.
Sept. 2, 1960, Pub. L. 86–703, title II, 74 Stat. 770.
Aug. 14, 1959, Pub. L. 86–158, title II, 73 Stat. 353.
Aug. 1, 1958, Pub. L. 85–580, title II, 72 Stat. 472.
June 29, 1957, Pub. L. 85–67, title II, 71 Stat. 222.
June 29, 1956, ch. 477, title II, 70 Stat. 434.
Aug. 1, 1955, ch. 437, title II, 69 Stat. 409.
July 2, 1954, ch. 457, title II, 68 Stat. 444.
July 31, 1953, ch. 296, title II, 67 Stat. 255.
July 5, 1952, ch. 575, title II, 66 Stat. 368.
Aug. 31, 1951, ch. 373, title II, 65 Stat. 219.
Sept. 6, 1950, ch. 896, ch. V, title II, 64 Stat. 653.
June 29, 1949, ch. 275, title II, 63 Stat. 284.
June 16, 1948, ch. 472, title I, 62 Stat. 447.
July 8, 1947, ch. 210, title II, 61 Stat. 273.
July 26, 1946, ch. 672, title I, 60 Stat. 681.
July 3, 1945, ch. 263, title I, 59 Stat. 364.
June 28, 1944, ch. 302, title I, 58 Stat. 550.
July 12, 1943, ch. 221, title I, 57 Stat. 497.
July 2, 1942, ch. 475, title I, 56 Stat. 565.
July 1, 1941, ch. 269, title I, 55 Stat. 469.
June 26, 1940, ch. 428, title I, 54 Stat. 578.
June 29, 1939, ch. 249, 53 Stat. 924.
Aug. 9, 1939, ch. 633, title I, 53 Stat. 1320.
Apr. 27, 1938, ch. 180, title IV, 52 Stat. 288.
June 16, 1937, ch. 359, title IV, 50 Stat. 301.
May 15, 1936, ch. 405, 49 Stat. 1350.

§ 704b. Nonavailability of allotments after close of fiscal year

No allotment for this or any succeeding fiscal year under this subchapter shall be available after the close of such fiscal year except as may be necessary to liquidate obligations incurred during such year.

(July 5, 1952, ch. 575, title II, § 201, 66 Stat. 368.)

CODIFICATION

Section is from act July 5, 1952, popularly known as the Federal Security Agency Appropriation Act, 1953, and is not a part of the Social Security Act which comprises this chapter.

§ 705. Application for block grant funds

(a) In order to be entitled to payments for allotments under section 702 of this title for a fis-

cal year, a State must prepare and transmit to the Secretary an application (in a standardized form specified by the Secretary) that—

(1) contains a statewide needs assessment (to be conducted every 5 years) that shall identify (consistent with the health status goals and national health objectives referred to in section 701(a) of this title) the need for—

(A) preventive and primary care services for pregnant women, mothers, and infants up to age one;

(B) preventive and primary care services for children; and

(C) services for children with special health care needs (as specified in section 701(a)(1)(D) of this title);

(2) includes for each fiscal year—

(A) a plan for meeting the needs identified by the statewide needs assessment under paragraph (1); and

(B) a description of how the funds allotted to the State under section 702(c) of this title will be used for the provision and coordination of services to carry out such plan that shall include—

(i) subject to paragraph (3), a statement of the goals and objectives consistent with the health status goals and national health objectives referred to in section 701(a) of this title for meeting the needs specified in the State plan described in subparagraph (A);

(ii) an identification of the areas and localities in the State in which services are to be provided and coordinated;

(iii) an identification of the types of services to be provided and the categories or characteristics of individuals to be served; and

(iv) information the State will collect in order to prepare reports required under section 706(a) of this title;

(3) except as provided under subsection (b) of this section, provides that the State will use—

(A) at least 30 percent of such payment amounts for preventive and primary care services for children, and

(B) at least 30 percent of such payment amounts for services for children with special health care needs (as specified in section 701(a)(1)(D) of this title);

(4) provides that a State receiving funds for maternal and child health services under this subchapter shall maintain the level of funds being provided solely by such State for maternal and child health programs at a level at least equal to the level that such State provided for such programs in fiscal year 1989; and

(5) provides that—

(A) the State will establish a fair method (as determined by the State) for allocating funds allotted to the State under this subchapter among such individuals, areas, and localities identified under paragraph (1)(A) as needing maternal and child health services, and the State will identify and apply guidelines for the appropriate frequency and content of, and appropriate referral and followup with respect to, health care assessments and services financially assisted by the State under this subchapter and methods for assuring quality assessments and services;

(B) funds allotted to the State under this subchapter will only be used, consistent with section 708 of this title, to carry out the purposes of this subchapter or to continue activities previously conducted under the consolidated health programs (described in section 701(b)(1) of this title);

(C) the State will use—

(i) special consideration (where appropriate) for the continuation of the funding of special projects in the State previously funded under this subchapter (as in effect before August 31, 1981), and

(ii) a reasonable proportion (based upon the State's previous use of funds under this subchapter) of such sums to carry out the purposes described in subparagraphs (A) through (D) of section 701(a)(1) of this title;

(D) if any charges are imposed for the provision of health services assisted by the State under this subchapter, such charges (i) will be pursuant to a public schedule of charges, (ii) will not be imposed with respect to services provided to low income mothers or children, and (iii) will be adjusted to reflect the income, resources, and family size of the individual provided the services;

(E) the State agency (or agencies) administering the State's program under this subchapter will provide for a toll-free telephone number (and other appropriate methods) for the use of parents to access information about health care providers and practitioners who provide health care services under this subchapter and subchapter XIX of this chapter and about other relevant health and health-related providers and practitioners; and

(F) the State agency (or agencies) administering the State's program under this subchapter will—

(i) participate in the coordination of activities between such program and the early and periodic screening, diagnostic, and treatment program under section 1396d(a)(4)(B) of this title (including the establishment of periodicity and content standards for early and periodic screening, diagnostic, and treatment services), to ensure that such programs are carried out without duplication of effort,

(ii) participate in the arrangement and carrying out of coordination agreements described in section 1396a(a)(11) of this title (relating to coordination of care and services available under this subchapter and subchapter XIX of this chapter),

(iii) participate in the coordination of activities within the State with programs carried out under this subchapter and related Federal grant programs (including supplemental food programs for mothers, infants, and children, related education programs, and other health, developmental disability, and family planning programs), and

(iv) provide, directly and through their providers and institutional contractors,

for services to identify pregnant women and infants who are eligible for medical assistance under subparagraph (A) or (B) of section 1396a(*l*)(1) of this title and, once identified, to assist them in applying for such assistance.

The application shall be developed by, or in consultation with, the State maternal and child health agency and shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development and after its transmittal.

(b) The Secretary may waive the requirements under subsection (a)(3) of this section that a State's application for a fiscal year provide for the use of funds for specific activities if for that fiscal year—

(1) the Secretary determines—

(A) on the basis of information provided in the State's most recent annual report submitted under section 706(a)(1) of this title, that the State has demonstrated an extraordinary unmet need for one of the activities described in subsection (a)(3) of this section, and

(B) that the granting of the waiver is justified and will assist in carrying out the purposes of this subchapter; and

(2) the State provides assurances to the Secretary that the State will provide for the use of some amounts paid to it under section 703 of this title for the activities described in subparagraphs (A) and (B) of subsection (a)(3) of this section and specifies the percentages to be substituted in each of such subparagraphs.

(Aug. 14, 1935, ch. 531, title V, §505, as added Pub. L. 97–35, title XXI, §2192(a), Aug. 13, 1981, 95 Stat. 822; amended Pub. L. 97–248, title I, §137(b)(3), (4), Sept. 3, 1982, 96 Stat. 377; Pub. L. 101–239, title VI, §§6501(b), 6503(b), Dec. 19, 1989, 103 Stat. 2275, 2276; Pub. L. 101–508, title IV, §4755(c)(3), Nov. 5, 1990, 104 Stat. 1388–210.)

PRIOR PROVISIONS

A prior section 705, act Aug. 14, 1935, ch. 531, title V, §505, as added and amended Jan. 2, 1968, Pub. L. 90–248, title III, §§301, 304(a), 81 Stat. 923, 929; July 10, 1972, Pub. L. 92–345, §2(a)–(c), 86 Stat. 456, 457; Oct. 30, 1972, Pub. L. 92–603, title II, §§221(c)(1), 232(b), 239(c), 86 Stat. 1389, 1411, 1417; July 1, 1973, Pub. L. 93–53, §4(a)(3)–(5), 87 Stat. 135; Dec. 5, 1980, Pub. L. 96–499, title IX, §914(c)(1), 94 Stat. 2622, related to contents of State plans, approval by Secretary, etc., prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title. For effective dates of prior amendments, see section 304(b) of Pub. L. 90–248, sections 232(c) and 239(d) of Pub. L. 92–603, and section 914(c)(2) of Pub. L. 96–499 as amended by section 137(c)(2) of Pub. L. 97–248.

Another prior section 705, acts Aug. 14, 1935, ch. 531, title V, §505, 49 Stat. 631; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(e), 64 Stat. 558, provided for stopping payment on failure to comply with plan for maternal and child health services, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301, and was covered by former section 707 of this title.

Provisions similar to those comprising former section 705 were contained in sections 503 and 513 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 630, 632, as amended (formerly classified to sections 703 and 713 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, §301.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–508 substituted ''requirements'' for ''requirement'' in introductory provisions.

1989—Pub. L. 101–239, §6503(b)(1), substituted ''Application for block grant funds'' for ''Description of intended expenditures and statement of assurances'' in section catchline.

Subsec. (a). Pub. L. 101–239, §6503(b)(2), (3), inserted ''(a)'' before ''In order to be entitled'' and ''an application (in a standardized form specified by the Secretary) that'' after ''must prepare and transmit to the Secretary''.

Subsec. (a)(1). Pub. L. 101–239, §6503(b)(4), added par. (1) and struck out former par. (1) which read as follows: ''a report describing the intended use of payments the State is to receive under this subchapter for the fiscal year, including (A) a description of those populations, areas, and localities in the State which the State has identified as needing maternal and child health services, (B) a statement of goals and objectives for meeting those needs, (C) information on the types of services to be provided and the categories or characteristics of individuals to be served, and (D) data the State intends to collect respecting activities conducted with such payments; and''.

Subsec. (a)(2) to (4). Pub. L. 101–239, §6503(b)(4), added pars. (2) to (4) and redesignated former par. (2) as (5).

Subsec. (a)(5). Pub. L. 101–239, §6503(b)(5)(A), (6), in introductory provisions, substituted ''provides'' for ''a statement of assurances that represents to the Secretary'', and in concluding provisions, substituted ''The application shall be developed by, or in consultation with, the State maternal and child health agency and shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development and after its transmittal.'' for ''The description and statement shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and statement and after its transmittal. The description and statement shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in any element of such description or statement, and any revision shall be subject to the requirements of the preceding sentence.''

Pub. L. 101–239, §6503(b)(4), redesignated former par. (2) as (5).

Subsec. (a)(5)(A). Pub. L. 101–239, §6503(b)(5)(B), substituted ''will establish'' for ''will provide''.

Subsec. (a)(5)(C)(i). Pub. L. 101–239, §6503(b)(5)(C), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''a substantial proportion of the sums expended by the State for carrying out this subchapter for the provision of health services to mothers and children, with special consideration given (where appropriate) to the continuation of the funding of special projects in the State previously funded under this subchapter (as in effect before August 13, 1981), and''.

Subsec. (a)(5)(C)(ii). Pub. L. 101–239, §6501(b), substituted ''subparagraphs (A) through (D) of section 701(a)(1) of this title'' for ''paragraphs (1) through (3) of section 701(a) of this title''.

Subsec. (a)(5)(E). Pub. L. 101–239, §6503(b)(5)(D), (E), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (a)(5)(F). Pub. L. 101–239, §6503(b)(5)(F)(i), struck out ''participate'' after ''under this subchapter will'' in introductory provisions.

Pub. L. 101–239, §6503(b)(5)(E), redesignated subpar. (E) as (F).

Subsec. (a)(5)(F)(i). Pub. L. 101–239, §6503(b)(5)(F)(ii)–(iv), inserted ''participate'' before ''in the coordination'' and substituted ''diagnostic'' for ''diagnosis'' and ''section 1396d(a)(4)(B) of this title (in-

cluding the establishment of periodicity and content standards for early and periodic screening, diagnostic, and treatment services)'' for ''subchapter XIX of this chapter''.

Subsec. (a)(5)(F)(ii). Pub. L. 101–239, § 6503(b)(5)(F)(iv), inserted ''participate'' before ''in the arrangement''.

Subsec. (a)(5)(F)(iii). Pub. L. 101–239, § 6503(b)(5)(F)(iv), inserted ''participate'' before ''in the coordination''.

Subsec. (a)(5)(F)(iv). Pub. L. 101–239, § 6503(b)(5)(F)(v)–(vii), added cl. (iv).

Subsec. (b). Pub. L. 101–239, § 6503(b)(7), added subsec. (b).

1982—Par. (2)(B). Pub. L. 97–248, § 137(b)(3), substituted ''section 701(b)(1)'' for ''section 702(b)(1)''.

Subsec. (2)(D). Pub. L. 97–248, § 137(b)(4), substituted ''any charges are imposed'' for ''the State imposes any charges''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6501(b) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(b) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 137 of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

§ 706. Administrative and fiscal accountability

(a) Annual reporting requirements; form, etc.

(1) Each State shall prepare and submit to the Secretary annual reports on its activities under this subchapter. Each such report shall be prepared by, or in consultation with, the State maternal and child health agency. In order properly to evaluate and to compare the performance of different States assisted under this subchapter and to assure the proper expenditure of funds under this subchapter, such reports shall be in such standardized form and contain such information (including information described in paragraph (2)) as the Secretary determines (after consultation with the States) to be necessary (A) to secure an accurate description of those activities, (B) to secure a complete record of the purposes for which funds were spent, of the recipients of such funds, (C) to describe the extent to which the State has met the goals and objectives it set forth under section 705(a)(2)(B)(i) of this title and the national health objectives referred to in section 701(a) of this title, and (D) to determine the extent to which funds were expended consistent with the State's application transmitted under section 705(a) of this title. Copies of the report shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(2) Each annual report under paragraph (1) shall include the following information:

(A)(i) The number of individuals served by the State under this subchapter (by class of individuals).

(ii) The proportion of each class of such individuals which has health coverage.

(iii) The types (as defined by the Secretary) of services provided under this subchapter to individuals within each such class.

(iv) The amounts spent under this subchapter on each type of services, by class of individuals served.

(B) Information on the status of maternal and child health in the State, including—

(i) information (by county and by racial and ethnic group) on—

(I) the rate of infant mortality, and

(II) the rate of low-birth-weight births;

(ii) information (on a State-wide basis) on—

(I) the rate of maternal mortality,

(II) the rate of neonatal death,

(III) the rate of perinatal death,

(IV) the number of children with chronic illness and the type of illness,

(V) the proportion of infants born with fetal alcohol syndrome,

(VI) the proportion of infants born with drug dependency,

(VII) the proportion of women who deliver who do not receive prenatal care during the first trimester of pregnancy, and

(VIII) the proportion of children, who at their second birthday, have been vaccinated against each of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitis B; and

(iii) information on such other indicators of maternal, infant, and child health care status as the Secretary may specify.

(C) Information (by racial and ethnic group) on—

(i) the number of deliveries in the State in the year, and

(ii) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under the State plan under subchapter XIX of this chapter in the year.

(D) Information (by racial and ethnic group) on—

(i) the number of infants under one year of age who were in the State in the year, and

(ii) the number of such infants who were provided services under this subchapter or were entitled to benefits under the State plan under subchapter XIX of this chapter or the State plan under subchapter XXI of this chapter at any time during the year.

(E) Information on the number of—

(i) obstetricians,

(ii) family practitioners,

(iii) certified family nurse practitioners,

(iv) certified nurse midwives,

(v) pediatricians, and

(vi) certified pediatric nurse practitioners,

who were licensed in the State in the year.

For purposes of subparagraph (A), each of the following shall be considered to be a separate class of individuals: pregnant women, infants up to age one, children with special health care needs, other children under age 22, and other individuals.

(3) The Secretary shall annually transmit to the Committee on Energy and Commerce of the

House of Representatives and the Committee on Finance of the Senate a report that includes—

(A) a description of each project receiving funding under paragraph (2) or (3) of section 702(a) of this title, including the amount of Federal funds provided, the number of individuals served or trained, as appropriate, under the project, and a summary of any formal evaluation conducted with respect to the project;

(B) a summary of the information described in paragraph (2)(A) reported by States;

(C) based on information described in paragraph (2)(B) supplied by the States under paragraph (1), a compilation of the following measures of maternal and child health in the United States and in each State:

(i) Information on—

(I) the rate of infant mortality, and

(II) the rate of low-birth-weight births.

Information under this clause shall also be compiled by racial and ethnic group.

(ii) Information on—

(I) the rate of maternal mortality,

(II) the rate of neonatal death,

(III) the rate of perinatal death,

(IV) the proportion of infants born with fetal alcohol syndrome,

(V) the proportion of infants born with drug dependency,

(VI) the proportion of women who deliver who do not receive prenatal care during the first trimester of pregnancy, and

(VII) the proportion of children, who at their second birthday, have been vaccinated against each of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitis B.

(iii) Information on such other indicators of maternal, infant, and child health care status as the Secretary has specified under paragraph (2)(B)(iii).

(iv) Information (by racial and ethnic group) on—

(I) the number of deliveries in the State in the year, and

(II) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under the State plan under subchapter XIX of this chapter in the year;

(D) based on information described in subparagraphs (C), (D), and (E) of paragraph (2) supplied by the States under paragraph (1), a compilation of the following information in the United States and in each State:

(i) Information on—

(I) the number of deliveries in the year, and

(II) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under a State plan under subchapter XIX of this chapter in the year.

Information under this clause shall also be compiled by racial and ethnic group.

(ii) Information on—

(I) the number of infants under one year of age in the year, and

(II) the number of such infants who were provided services under this subchapter or were entitled to benefits under a State plan under subchapter XIX of this chapter or the State plan under subchapter XXI of this chapter at any time during the year.

Information under this clause shall also be compiled by racial and ethnic group.

(iii) Information on the number of—

(I) obstetricians,

(II) family practitioners,

(III) certified family nurse practitioners,

(IV) certified nurse midwives,

(V) pediatricians, and

(VI) certified pediatric nurse practitioners,

who were licensed in a State in the year; and

(E) an assessment of the progress being made to meet the health status goals and national health objectives referred to in section 701(a) of this title.

(b) Audits; implementation, standards, etc.

(1) Each State shall, not less often than once every two years, audit its expenditures from amounts received under this subchapter. Such State audits shall be conducted by an entity independent of the State agency administering a program funded under this subchapter in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions and generally accepted auditing standards. Within 30 days following the completion of each audit report, the State shall submit a copy of that audit report to the Secretary.

(2) Each State shall repay to the United States amounts found by the Secretary, after notice and opportunity for a hearing to the State, not to have been expended in accordance with this subchapter and, if such repayment is not made, the Secretary may offset such amounts against the amount of any allotment to which the State is or may become entitled under this subchapter or may otherwise recover such amounts.

(3) The Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this subchapter in accordance with this subchapter. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(c) Public inspection of reports and audits

The State shall make copies of the reports and audits required by this section available for public inspection within the State.

(d) Access to books, records, etc.; creation of new records

(1) For the purpose of evaluating and reviewing the block grant established under this subchapter, the Secretary and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such block grant, and that are in the possession, custody, or control of

States, political subdivisions thereof, or any of their grantees.

(2) In conjunction with an evaluation or review under paragraph (1), no State or political subdivision thereof (or grantee of either) shall be required to create or prepare new records to comply with paragraph (1).

(3) For other provisions relating to deposit, accounting, reports, and auditing with respect to Federal grants to States, see section 6503(b)[1] of title 31.

(Aug. 14, 1935, ch. 531, title V, § 506, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 823; amended Pub. L. 98–369, div. B, title III, § 2373(a)(2), July 18, 1984, 98 Stat. 1111; Pub. L. 101–239, title VI, §§ 6503(c)(3), (4), 6504, Dec. 19, 1989, 103 Stat. 2278; Pub. L. 104–316, title I, § 122(f), Oct. 19, 1996, 110 Stat. 3837; Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, § 703(d)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–402.)

REFERENCES IN TEXT

Section 6503 of title 31, referred to in subsec. (d)(3), was amended generally by Pub. L. 101–453, § 5(b), Oct. 24, 1990, 104 Stat. 1059, and, as so amended, provisions formerly appearing in subsec. (b) are now contained in subsec. (h).

PRIOR PROVISIONS

A prior section 706, act Aug. 14, 1935, ch. 531, title V, § 506, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 924; amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 221(c)(2), 224(d), 229(d), 233(d), 237(b), 86 Stat. 1389, 1395, 1410, 1412, 1416, related to computation of amount of payments to States, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 703 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Provisions similar to those comprising former section 706 were contained in sections 504 and 514 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 630, 632, as amended (formerly classified to sections 704 and 714 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1999—Subsec. (a)(2)(D)(ii), (3)(D)(ii)(II). Pub. L. 106–113 inserted ''or the State plan under subchapter XXI of this chapter'' after ''subchapter XIX of this chapter''.

1996—Subsec. (a)(1). Pub. L. 104–316 struck out ''and the Comptroller General'' after ''with the States''.

1989—Subsec. (a)(1). Pub. L. 101–239, § 6504(a)(1), inserted after first sentence ''Each such report shall be prepared by, or in consultation with, the State maternal and child health agency.'', substituted ''be in such standardized form and contain such information (including information described in paragraph (2))'' for ''be in such form and contain such information'', and substituted '', (C) to describe the extent to which the State has met the goals and objectives it set forth under section 705(a)(2)(B)(i) of this title and the national health objectives referred to in section 701(a) of this title, and (D)'' for ''and of the progress made toward achieving the purposes of this subchapter, and (C)''.

Pub. L. 101–239, § 6503(c)(3), (4), substituted ''application transmitted under section 705(a) of this title'' for ''description and statement transmitted under section 705 of this title'' in subpar. (C).

Subsec. (a)(2). Pub. L. 101–239, § 6504(a)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 101–239, § 6504(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary shall annually report to the Congress on activities funded under section 702(a) of this title and shall provide for transmittal of a copy of such report to each State.''

Pub. L. 101–239, § 6504(a)(2), redesignated former par. (2) as (3).

1984—Subsec. (d)(3). Pub. L. 98–369 substituted ''section 6503(b) of title 31'' for ''section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, § 703(d)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–402, provided that: ''The amendments made by paragraph (1) [amending this section] apply to annual reports submitted under section 506 of the Social Security Act (42 U.S.C. 706) for years beginning after the date of the enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6503(c)(3), (4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, and amendment by section 6504 of Pub. L. 101–239 applicable to annual reports for fiscal years beginning with fiscal year 1991, see section 6510(b) of Pub. L. 101–239, set out as a note under section 701 of this title.

REPORTS TO CONGRESS; ACTIVITIES OF STATES RECEIVING ALLOTMENTS AND STUDY OF ALTERNATIVE FORMULAS FOR ALLOTMENT

Section 2192(b) of Pub. L. 97–35 provided that:

''(1) The Secretary of Health and Human Services shall, no later than October 1, 1984, report to the Congress on the activities of States receiving allotments under title V of the Social Security Act [this subchapter] (as amended by this section) and include in such report any recommendations for appropriate changes in legislation.

''(2) The Secretary of Health and Human Services, in consultation with the Comptroller General, shall examine alternative formulas, for the allotment of funds to States under section 502(b) of the Social Security Act [section 702(b) of this title] (as amended by this section) which might be used as a substitute for the method of allotting funds described in such section, which provide for the equitable distribution of such funds to States (as defined for purposes of such section), and which take into account—

''(A) the populations of the States,

''(B) the number of live births in the States,

''(C) the number of crippled children in the States,

''(D) the number of low income mothers and children in the States,

''(E) the financial resources of the various States, and

''(F) such other factors as the Secretary deems appropriate, and shall report to the Congress thereon not later than June 30, 1982.''

§ 707. Criminal penalty for false statements

(a) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representa-

[1] See References in Text note below.

tion of a material fact in connection with the furnishing of items or services for which payment may be made by a State from funds allotted to the State under this subchapter, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(b) For civil monetary penalties for certain submissions of false claims, see section 1320a–7a of this title.

(Aug. 14, 1935, ch. 531, title V, § 507, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 824.)

PRIOR PROVISIONS

A prior section 707, act Aug. 14, 1935, ch. 531, title V, § 507, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 925, related to failure of State plan to comply with provisions of this subchapter, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 706 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Provisions similar to those comprising former section 707 were contained in sections 505 and 515 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 631, 633, as amended (formerly classified to sections 705 and 715 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

§ 708. Nondiscrimination provisions

(a) Federally funded activities

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this subchapter are considered to be programs and activities receiving Federal financial assistance.

(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this subchapter.

(b) Compliance

Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under section 702(c) of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], as may be applicable, or

(3) take such other action as may be provided by law.

(c) Authority of Attorney General; civil actions

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(Aug. 14, 1935, ch. 531, title V, § 508, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 825; amended Pub. L. 101–239, title VI, § 6502(b), Dec. 19, 1989, 103 Stat. 2276.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(2), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

PRIOR PROVISIONS

A prior section 708, act Aug. 14, 1935, ch. 531, title V, § 508, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 926; amended July 10, 1972, Pub. L. 92–345, § 2(d), 86 Stat. 457; July 1, 1973, Pub. L. 93–53, § 4(a)(6), 87 Stat. 135, related to special project grants for maturity and infant care, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Provisions similar to those comprising former section 708 were contained in section 531 of act Aug. 14, 1935, ch. 531, title V, as added Oct. 24, 1963, Pub. L. 88–156, § 4, 77 Stat. 274 (formerly classified to section 729 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''702(c) of this title'' for ''702(b) of this title'' in introductory provisions.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, see section 6510(a) of Pub. L. 101–239, set out as a note under section 701 of this title.

§ 709. Administration of Federal and State programs

(a) The Secretary shall designate an identifiable administrative unit with expertise in maternal and child health within the Department of Health and Human Services, which unit shall be responsible for—

(1) the Federal program described in section 702(a) of this title;

(2) promoting coordination at the Federal level of the activities authorized under this subchapter and under subchapter XIX of this chapter, especially early and periodic screening, diagnosis and treatment, related activities funded by the Departments of Agriculture and Education, and under health block grants and categorical health programs, such as immunizations, administered by the Secretary;

(3) disseminating information to the States in such areas as preventive health services and advances in the care and treatment of mothers and children;

(4) providing technical assistance, upon request, to the States in such areas as program planning, establishment of goals and objectives, standards of care, and evaluation and in developing consistent and accurate data collection mechanisms in order to report the information required under section 706(a)(2) of this title;

(5) in cooperation with the National Center for Health Statistics and in a manner that avoids duplication of data collection, collection, maintenance, and dissemination of information relating to the health status and health service needs of mothers and children in the United States;

(6) assisting in the preparation of reports to the Congress on the activities funded and accomplishments achieved under this subchapter from the information required to be reported by the States under sections 705(a) and 706 of this title; and[1]

(7) assisting States in the development of care coordination services (as defined in section 701(b)(3) of this title); and

(8) developing and making available to the State agency (or agencies) administering the State's program under this subchapter a national directory listing by State the toll-free numbers described in section 705(a)(5)(E) of this title.

(b) The State health agency of each State shall be responsible for the administration (or supervision of the administration) of programs carried out with allotments made to the State under this subchapter, except that, in the case of a State which on July 1, 1967, provided for administration (or supervision thereof) of the State plan under this subchapter (as in effect on such date) by a State agency other than the State health agency, that State shall be considered to comply[2] the requirement of this subsection if it would otherwise comply but for the fact that such other State agency administers (or supervises the administration of) any such program providing services for children with special health care needs.

(Aug. 14, 1935, ch. 531, title V, § 509, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 825; amended Pub. L. 99–272, title IX, § 9527(e), Apr. 7, 1986, 100 Stat. 219; Pub. L. 101–239, title VI, §§ 6503(c)(4), 6505, Dec. 19, 1989, 103 Stat. 2278, 2281.)

PRIOR PROVISIONS

A prior section 709, act Aug. 14, 1935, ch. 531, title V, § 509, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 926; amended July 10, 1972, Pub. L. 92–345, § 2(e), 86 Stat. 457; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 221(c)(3), 233(e), 86 Stat. 1389, 1412; July 1, 1973, Pub. L. 93–53, § 4(a)(7), 87 Stat. 135, related to special project grants for health of school and preschool children, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Provisions similar to those comprising former section 709, were contained in section 532 of act Aug. 14, 1935, ch. 531, title V, as added July 30, 1965, Pub. L. 89–97, title II, § 205(3), 79 Stat. 354 (formerly classified to section 729–1 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1989—Subsec. (a)(4). Pub. L. 101–239, § 6505(1), inserted before semicolon at end ''and in developing consistent and accurate data collection mechanisms in order to report the information required under section 706(a)(2) of this title''.

Subsec. (a)(6). Pub. L. 101–239, § 6503(c)(4), substituted ''705(a)'' for ''705''.

Subsec. (a)(7), (8). Pub. L. 101–239, § 6505(2)–(4), added pars. (7) and (8).

1986—Subsec. (b). Pub. L. 99–272 substituted ''children with special health care needs'' for ''crippled children''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6503(c)(4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, and amendment by section 6505 of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

REPORT TO CONGRESS; EVALUATION OF PROGRAM

Pub. L. 89–97, title II, § 206, July 30, 1965, 79 Stat. 354, authorized Secretary to submit to President for transmission to Congress before July 1, 1969, a full report of administration of provisions of section 729–1 of this title, which was covered by former sections 701, 702(1)(B), and 709 of this title, together with an evaluation of program established thereby and his recommendations as to continuation of and modifications in that program.

§ 710. Separate program for abstinence education

(a) In general

For the purpose described in subsection (b) of this section, the Secretary shall, for fiscal year

[1] So in original. The word ''and'' probably should not appear.

[2] So in original. Probably should be ''comply with''.

1998 and each subsequent fiscal year, allot to each State which has transmitted an application for the fiscal year under section 705(a) of this title an amount equal to the product of—

(1) the amount appropriated in subsection (d) of this section for the fiscal year; and

(2) the percentage determined for the State under section 702(c)(1)(B)(ii) of this title.

(b) Purpose of allotment

(1) The purpose of an allotment under subsection (a) of this section to a State is to enable the State to provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out-of-wedlock.

(2) For purposes of this section, the term ''abstinence education'' means an educational or motivational program which—

(A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

(B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

(C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

(D) teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

(E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

(G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

(H) teaches the importance of attaining self-sufficiency before engaging in sexual activity.

(c) Applicability of sections 703, 707, and 708

(1) Sections 703, 707, and 708 of this title apply to allotments under subsection (a) of this section to the same extent and in the same manner as such sections apply to allotments under section 702(c) of this title.

(2) Sections 705 and 706 of this title apply to allotments under subsection (a) of this section to the extent determined by the Secretary to be appropriate.

(d) Appropriations

For the purpose of allotments under subsection (a) of this section, there is appropriated, out of any money in the Treasury not otherwise appropriated, an additional $50,000,000 for each of the fiscal years 1998 through 2003. The appropriation under the preceding sentence for a fiscal year is made on October 1 of the fiscal year.

(Aug. 14, 1935, ch. 531, title V, § 510, as added Pub. L. 104–193, title IX, § 912, Aug. 22, 1996, 110 Stat. 2353; amended Pub. L. 108–40, § 6, June 30, 2003, 117 Stat. 837.)

PRIOR PROVISIONS

A prior section 710, act Aug. 14, 1935, ch. 531, title V, § 510, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 927; amended July 10, 1972, Pub. L. 92–345, § 2(f), 86 Stat. 457; July 1, 1973, Pub. L. 93–53, § 4(a)(8), 87 Stat. 136, provided for special project grants for dental health of children, prior to the general revision of this subchapter by Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 818. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–40 substituted ''2003'' for ''2002''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

ESTABLISHING NATIONAL GOALS TO PREVENT TEENAGE PREGNANCIES

Section 905 of Pub. L. 104–193 provided that:

''(a) IN GENERAL.—Not later than January 1, 1997, the Secretary of Health and Human Services shall establish and implement a strategy for—

''(1) preventing out-of-wedlock teenage pregnancies, and

''(2) assuring that at least 25 percent of the communities in the United States have teenage pregnancy prevention programs in place.

''(b) REPORT.—Not later than June 30, 1998, and annually thereafter, the Secretary shall report to the Congress with respect to the progress that has been made in meeting the goals described in paragraphs (1) and (2) of subsection (a).''

§§ 711 to 716. Omitted

CODIFICATION

Sections 711 to 716 were omitted in the general revision of this subchapter by Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 818. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Section 711, act Aug. 14, 1935, ch. 531, title V, § 511, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 927, related to training of personnel for health care and related services for mothers and children.

Another prior section 711, acts Aug. 14, 1935, ch. 531, title V, § 511, 49 Stat. 631; Aug. 10, 1939, ch. 666, title V, § 504, 53 Stat. 1380; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 401(b)(4), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, § 331(c), pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, § 603(a), 72 Stat. 1055; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(a)(2)(A), 74 Stat. 995; Oct. 24, 1963, Pub. L. 88–156, § 3(a), 77 Stat. 273; July 30, 1965, Pub. L. 89–97, title II, § 202(a), 79 Stat. 353, authorized appropriations, for services for crippled children, of $25,000,000; $30,000,000; $35,000,000; $45,000,000; $50,000,000; $55,000,000; and $60,000,000, for fiscal years ending June 30, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970 and thereafter respectively, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 701 of this title.

Provisions similar to those comprising former section 711 were contained in section 516 of act Aug. 14, 1935, ch. 531, title V, as added July 30, 1965, Pub. L. 89–97, title II, § 203(a), 79 Stat. 353 (formerly classified to section 716 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

Section 712, act Aug. 14, 1935, ch. 531, title V, § 512, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 927, provided for research projects relating to maternal and child health services and crippled children's services. See section 702(a) of this title.

Another prior section 712, acts Aug. 14, 1935, ch. 531, title V, § 512, 49 Stat. 631; Aug. 10, 1939, ch. 666, title V,

§ 505, 53 Stat. 1380; 1946 Reorg. Plan. No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 401(b)(5), (6), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, § 331(d), pt. 6, § 361(e), 64 Stat. 552, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, § 603(b), (c), 72 Stat. 1055; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(a)(2)(B), (C), (b)(2)(A), 74 Stat. 996; Oct. 24, 1963, Pub. L. 88–156, § 3(b), (c), 77 Stat. 274, provided for allotment to States for services for crippled children, and was covered by former section 704 of this title.

Provisions similar to those comprising former section 712 were contained in section 533, formerly section 532, of act Aug. 14, 1935, ch. 531, title V, as added Oct. 24, 1963, Pub. L. 88–156, § 4, 77 Stat. 274, and renumbered July 30, 1965, Pub. L. 89–97, title II, § 205(2), 79 Stat. 354 (formerly classified to section 729a of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

Section 713, act Aug. 14, 1935, ch. 531, title V, § 513, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 928, related to administration. See section 709 of this title.

Another prior section 713, acts Aug. 14, 1935, ch. 531, title V, § 513, 49 Stat. 632; Aug. 10, 1939, ch. 666, title V, § 506, 53 Stat. 1381; 1946 Reorg. Plan No. 2, §§ 1, 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(e), 64 Stat. 558; July 30, 1965, Pub. L. 89–97, title II, § 204(b), 79 Stat. 354, related to contents of State plans for services for crippled children and their approval by the Administrator prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 705 of this title.

Provisions similar to those comprising former section 713 were contained in section 541 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 634, as amended (formerly classified to section 731 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

Section 714, act Aug. 14, 1935, ch. 531, title V, § 514, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 928, defined ''crippled child''.

Another prior section 714, acts Aug. 14, 1935, ch. 531, title V, § 514, 49 Stat. 632; Aug. 10, 1939, ch. 666, title V, § 507(a), (b), 53 Stat. 1381; 1940 Reorg. Plan No. III, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(e), 64 Stat. 558; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(b)(2)(B), 74 Stat. 996; July 30, 1965, Pub. L. 89–97, title II, §§ 202(b), 203(b), 79 Stat. 353, 354, provided for payment to States with an approved plan for services for crippled children, computation of amounts, and prescribed general availability of services by July 1, 1975, as requisite for payments for any period after June 30, 1966 prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 706 of this title.

Section 715, act Aug. 14, 1935, ch. 531, title V, § 515, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 928, related to observance of religious beliefs.

Another prior section 715, acts Aug. 14, 1935, ch. 531, title V, § 515, 49 Stat. 633; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(e), 64 Stat. 558, provided for stopping payment on failure to comply with State plan for services for crippled children prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 707 of this title.

Section 716, act Aug. 14, 1935, ch. 531, title V, § 516, as added July 1, 1973, Pub. L. 93–53, § 4(b), 87 Stat. 136, related to supplemental allotments.

Another prior section 716, act Aug. 14, 1935, ch. 531, title V, § 516, as added July 30, 1965, Pub. L. 89–97, title II, § 203(a), 79 Stat. 353, authorized appropriations for training of professional personnel for health and related care of crippled and mentally retarded children of $5,000,000, $10,000,000, and $17,500,000 for fiscal years ending June 30, 1967, 1968, 1969, and thereafter, respectively, and was omitted in the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former sections 702 and 711 of this title.

SUPPLEMENTAL ALLOTMENTS FOR FISCAL YEAR ENDING JUNE 30, 1974

Section 4(c) of Pub. L. 93–53 authorized a State, for fiscal year ending June 30, 1974, to receive an additional supplemental allotment to match excess of amount of allotments which such State would have received under sections 703 and 704 of this title for such year if section 4(a) of Pub. L. 93–53 had not been enacted over aggregate of allotments which such State actually received under such sections plus aggregate of grants received under sections 708, 709, and 710 of this title for fiscal year ending June 30, 1973, and authorized appropriations necessary for supplemental allotments.

§§ 721 to 728. Repealed. Pub. L. 90–248, title II, § 240(e)(1), Jan. 2, 1968, 81 Stat. 915

Section 721, acts Aug. 14, 1935, ch. 531, title V, § 521, 49 Stat. 633; Aug. 10, 1939, ch. 666, title V, § 507(c), 53 Stat. 1381; 1940 Reorg. Plan No. III, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg. Plan. No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 401(b)(7), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, § 331(e), pt. 6, § 361(e), 64 Stat. 552, 558; Aug. 1, 1956, ch. 836, title IV, § 402, 70 Stat. 856; Aug. 28, 1958, Pub. L. 85–840, title VI, § 601, 72 Stat. 1052; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(a)(3)(A), 74 Stat. 996; July 25, 1962, Pub. L. 87–543, title I, § 102(a), (d)(1), 76 Stat. 182, 184; July 30, 1965, Pub. L. 89–97, title II, § 207, 79 Stat. 355, authorized appropriations for child-welfare services.

Section 722, act Aug. 14, 1935, ch. 531, title V, § 522, as added Aug. 28, 1958, Pub. L. 85–840, title VI, § 601, 72 Stat. 1053; amended Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(a)(3)(B), 74 Stat. 996; July 25, 1962, Pub. L. 87–543, title I, § 102(c)(1), 76 Stat. 183; July 30, 1965, Pub. L. 89–97, title II, § 208(b), 79 Stat. 355, provided for allotments to States.

Section 723, act Aug. 14, 1935, ch. 531, title V, § 523, as added Aug. 28, 1958, Pub. L. 85–840, title VI, § 601, 72 Stat. 1053; amended July 25, 1962, Pub. L. 87–543, title I, § 102(b), 76 Stat. 182; July 30, 1965, Pub. L. 89–97, title II, § 208(c), 79 Stat. 356, provided for payment to States and computation of amounts.

Section 724, act Aug. 14, 1935, ch. 531, title V, § 524, as added Aug. 28, 1958, Pub. L. 85–840, title VI, § 601, 72 Stat. 1054; amended June 25, 1959, Pub. L. 86–70, § 32(b), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, § 30(b), 74 Stat. 420, provided for allotment percentage and Federal share.

Section 725, act Aug. 14, 1935, ch. 531, title V, § 525, as added Aug. 28, 1958, Pub. L. 85–840, title VI, § 601, 72 Stat. 1054, provided for reallotment of allotments to States.

Section 726, act Aug. 14, 1935, ch. 531, title V, § 526, as added Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(b)(3), 74 Stat. 997; amended July 25, 1962, Pub. L. 87–543, title I, § 123(d), 76 Stat. 193, provided for research, training, or demonstration projects.

Section 727, act Aug. 14, 1935, ch. 531, title V, § 527, as added July 25, 1962, Pub. L. 87–543, title I, § 102(c)(2), 76 Stat. 183, provided for allotments and reallotment of allotments to States for day care services. Section had been previously repealed by Pub. L. 89–97, title II, § 208(a)(1), July 30, 1965, 79 Stat. 355, effective Jan. 1, 1966, under section 208(d) of Pub. L. 89–97.

Section 728, act Aug. 14, 1935, ch. 531, title V, § 528, as added July 25, 1962, Pub. L. 87–543, title I, § 102(d)(2), 76 Stat. 184, defined ''child-welfare services''.

§§ 729 to 729a, 731. Omitted

CODIFICATION

Section 729, act Aug. 14, 1935, ch. 531, title V, § 531, as added Oct. 24, 1963, Pub. L. 88–156, § 4, 77 Stat. 274;

amended Jan. 2, 1968, Pub. L. 90–248, title III, §303, 81 Stat. 929, related to maternity and infant care projects, authorized appropriations of $5,000,000; $15,000,000; $30,000,000; and $35,000,000 for fiscal years ending June 30, 1964, 1965, 1966 and 1967, and 1968, respectively; provided for grants to State health agencies, limitations on payments, scope of projects, health hazards, low-income families, other reasons for lack of health care; and provided for payments to States, adjustments, advances or reimbursement, installments, and conditions, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301. See sections 701 and 702 of this title. Section 531 of act Aug. 14, 1935, as originally enacted, appropriated funds for vocational rehabilitation, and was classified to section 45b of Title 29, Labor. It was omitted as superseded by section 31 of Title 29.

Section 729–1, act Aug. 14, 1935, ch. 531, title V, §532, as added July 30, 1965, Pub. L. 89–97, title II, §205(3), 79 Stat. 354, provided for projects for health of school and preschool children, authorized appropriations of $15,000,000; $35,000,000; $40,000,000; $45,000,000; and $50,000,000 for fiscal years ending June 30, 1966, 1967, 1968, 1969, and 1970, respectively; provided for grants to State health agencies, medical and dental schools, and teaching hospitals, limitations on payments, eligibility for grants, comprehensive care and services; and provided for payments to States, adjustments, advances or reimbursement, installments, and conditions, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301. See sections 701 and 702 of this title.

Section 729a, act Aug. 14, 1935, ch. 531, title V, §533, formerly §532, as added Oct. 24, 1963, Pub. L. 88–156, §4, 77 Stat. 274; renumbered July 30, 1965, Pub. L. 89–97, title II, §205(2), 79 Stat. 354, provided for research projects relating to maternal and child health services and crippled children's services, authorized appropriations of $8,000,000 for fiscal year ending June 30, 1964, and each subsequent fiscal year; and provided for payments to eligible institutions, agencies, and organizations, adjustments, advances or reimbursements, installments, and conditions, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301. See sections 701 and 702 of this title.

Section 731, acts Aug. 14, 1935, ch. 531, title V, §541, 49 Stat. 634; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, §401(b)(8), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(e), title IV, §402(a), 64 Stat. 558, required the Administrator to make studies and investigations to promote efficient administration of sections 701 to 703, 704, 705, 711 to 715, 721 to 729a, and 731 of this title, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301. See section 713 of this title.

SUBCHAPTER VI—TEMPORARY STATE FISCAL RELIEF

PRIOR PROVISIONS

A prior subchapter VI related to grants to States for services to the aged, blind, or disabled and consisted of sections 801 to 805, prior to repeal by Pub. L. 93–647, §3(b), Jan. 4, 1975, 88 Stat. 2349.

§801. Repealed

Section, act Aug. 14, 1935, ch. 531, title VI, §601, as added Pub. L. 108–27, title IV, §401(b), May 28, 2003, 117 Stat. 766, related to temporary State fiscal relief, prior to repeal by act Aug. 14, 1935, ch. 531, title VI, §601(g), as added Pub. L. 108–27, title IV, §401(b), May 28, 2003, 117 Stat. 768.

PRIOR PROVISIONS

Prior sections 801 to 805 were repealed by Pub. L. 93–647, §§3(b), 7(b), Jan. 4, 1975, 88 Stat. 2349, 2351, effective with respect to payments under section 803 for quarters commencing after Sept. 30, 1975.

Section 801, act Aug. 14, 1935, ch. 531, title VI, §601, as added Oct. 30, 1972, Pub. L. 92–603, title III, §302, 86 Stat. 1478, authorized appropriations for encouraging States to furnish rehabilitation to needy individuals 65 years of age or older, and the blind or disabled.

Another prior section 801, acts Aug. 14, 1935, ch. 531, title VI, §601, 49 Stat. 634; Aug. 10, 1939, ch. 666, title V, §509, 53 Stat. 1381, which provided appropriations for the purpose of assisting States and subdivisions in maintaining adequate public health services, was repealed by act July 1, 1944, ch. 373, title XI, §1113, 58 Stat. 714. See section 246 of this title.

Section 802, act Aug. 14, 1935, ch. 531, title VI, §602, as added Oct. 30, 1972, Pub. L. 92–603, title III, §302, 86 Stat. 1479, set out the necessary provisions for State plans for services to the aged, blind, or disabled.

Another prior section 802, act Aug. 14, 1935, ch. 531, title VI, §602, 49 Stat. 634, which provided for allotments to States by Surgeon General, was repealed by act July 1, 1944, ch. 373, title XI, §1113, 58 Stat. 714. See section 246 of this title.

Section 803, act Aug. 14, 1935, ch. 531, title VI, §603, as added Oct. 30, 1972, Pub. L. 92–603, title III, §302, 86 Stat. 1481, provided for payments to States under approved plans for services to the aged, blind, or disabled.

Another prior section 803, act Aug. 14, 1935, ch. 531, title VI, §603, 49 Stat. 635, which provided for allotments to States by appropriations for investigation of diseases by Public Health Service, was repealed by act July 1, 1944, ch. 373, title XI, §1113, 58 Stat. 714. See section 246 of this title.

Section 804, act Aug. 14, 1935, ch. 531, title VI, §604, as added Oct. 30, 1972, Pub. L. 92–603, title III, §302, 86 Stat. 1484, provided for notification to States and termination of payments in case of noncompliance with laws or State plan.

Section 805, act Aug. 14, 1935, ch. 531, title VI, §605, as added Oct. 30, 1972, Pub. L. 92–603, title III, §302, 86 Stat. 1484, defined ''services to the aged, blind or disabled''.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2004, see section 601(g) of act Aug. 14, 1935, as added by Pub. L. 108–27, title IV, §401(b), May 28, 2003, 117 Stat. 768, which was formerly classified to subsec. (g) of this section.

RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed prior sections 801 to 803, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049, §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47, §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720, §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919, §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931, and §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506.

SUBCHAPTER VII—ADMINISTRATION

AMENDMENTS

1950—Act Aug. 28, 1950, ch. 809, title III, pt. 6, §361(f), 64 Stat. 558, substituted ''ADMINISTRATION'' for ''SOCIAL SECURITY BOARD'' as subchapter heading.

§901. Social Security Administration

(a) There is hereby established, as an independent agency in the executive branch of the Government, a Social Security Administration (in this subchapter referred to as the ''Administration'').

(b) It shall be the duty of the Administration to administer the old-age, survivors, and disability insurance program under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter.

(Aug. 14, 1935, ch. 531, title VII, §701, 49 Stat. 635; Aug. 28, 1950, ch. 809, title IV, §401(a), 64 Stat.

558; Pub. L. 103–296, title I, § 101, Aug. 15, 1994, 108 Stat. 1465.)

AMENDMENTS

1994—Pub. L. 103–296 amended section generally, substituting present provisions for former provisions relating to a Commissioner for Social Security in the Federal Security Agency.

1950—Act Aug. 28, 1950, amended section generally to provide for the appointment of a Commissioner of Social Security.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

TRANSFERS TO NEW SOCIAL SECURITY ADMINISTRATION

Section 105 of title I of Pub. L. 103–296 provided that:

''(a) FUNCTIONS.—

''(1) IN GENERAL.—There are transferred to the Social Security Administration all functions of the Secretary of Health and Human Services with respect to or in support of the programs and activities the administration of which is vested in the Social Security Administration by reason of this title [see Tables for classification] and the amendments made thereby. The Commissioner of Social Security shall allocate such functions in accordance with sections 701, 702, 703, and 704 of the Social Security Act [this section and sections 902 to 904 of this title] (as amended by this title).

''(2) FUNCTIONS OF OTHER AGENCIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Social Security Administration shall also perform—

''(i) the functions of the Department of Health and Human Services, including functions relating to titles XVIII and XIX of the Social Security Act [subchapters XVIII and IX of this chapter] (including adjudications, subject to final decisions by the Secretary of Health and Human Services), that the Social Security Administration in such Department performed as of immediately before the date of the enactment of this Act [Aug. 15, 1994], and

''(ii) the functions of any other agency for which administrative responsibility was vested in the Social Security Administration in the Department of Health and Human Services as of immediately before the date of the enactment of this Act.

''(B) RULES GOVERNING CONTINUATION OF FUNCTIONS IN THE ADMINISTRATION.—The Social Security Administration shall perform, on behalf of the Secretary of Health and Human Services (or the head of any other agency, as applicable), the functions described in subparagraph (A) in accordance with the same financial and other terms in effect on the day before the date of the enactment of this Act, except to the extent that the Commissioner and the Secretary (or other agency head, as applicable) agree to alter such terms pertaining to any such function or to terminate the performance by the Social Security Administration of any such function.

''(b) PERSONNEL, ASSETS, ETC.—

''(1) IN GENERAL.—There are transferred from the Department of Health and Human Services to the Social Security Administration, for appropriate allocation by the Commissioner of Social Security in the Social Security Administration—

''(A) the personnel employed in connection with the functions transferred by this title and the amendments made thereby; and

''(B) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, or used in connection with such functions, arising from such functions, or available, or to be made available, in connection with such functions.

''(2) UNEXPENDED FUNDS.—Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally appropriated.

''(3) EMPLOYMENT PROTECTIONS.—

''(A) IN GENERAL.—During the 1-year period beginning March 31, 1995—

''(i) the transfer pursuant to this section of any full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such personnel to be separated or reduced in grade or compensation solely as a result of such transfer, and

''(ii) except as provided in subparagraph (B), any such personnel who were not employed in the Social Security Administration in the Department of Health and Human Services immediately before the date of the enactment of this Act [Aug. 15, 1994] shall not be subject to directed reassignment to a duty station outside their commuting area.

''(B) SPECIAL RULES.—

''(i) In the case of personnel whose duty station is in the Washington, District of Columbia, commuting area immediately before March 31, 1995, subparagraph (A)(ii) shall not apply with respect to directed reassignment to a duty station in the Baltimore, Maryland, commuting area after September 30, 1995.

''(ii) In the case of personnel whose duty station is in the Baltimore, Maryland, commuting area immediately before March 31, 1995, subparagraph (A)(ii) shall not apply with respect to directed reassignment to a duty station in the Washington, District of Columbia, commuting area after September 30, 1995.

''(4) OFFICE SPACE.—Notwithstanding section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606) [now 40 U.S.C. 3305(b)(2)(B), 3307], and subject to available appropriations, the Administrator of General Services may, after consultation with the Commissioner of Social Security and under such terms and conditions as the Administrator finds to be in the interests of the United States—

''(A) acquire occupiable space in the metropolitan area of Washington, District of Columbia, for housing the Social Security Administration, and

''(B) renovate such space as necessary.

''(c) INTER-AGENCY TRANSFER ARRANGEMENT.—The Secretary of Health and Human Services and the Commissioner of Social Security shall enter into a written inter-agency transfer arrangement (in this subsection referred to as the 'arrangement'), which shall be effective March 31, 1995. Transfers made pursuant to this section shall be in accordance with the arrangement, which shall specify the personnel and resources to be transferred as provided under this section. The terms of such arrangement shall be transmitted not later than January 1, 1995, to the Committee on Ways and Means of the House of Representatives, to the Committee on Finance of the Senate, and to the Comptroller General of the United States. Not later than February 15, 1995, the Comptroller General shall submit a report to each such Committee setting forth an evaluation of such arrangement.''

[Section 105(a)–(b)(3) of Pub. L. 103–296, set out above, effective Mar. 31, 1995, and section 105(b)(4), (c) of Pub. L. 103–296, set out above, effective Aug. 15, 1994, see section 110(a), (c) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

TRANSITION RULES

Section 106 of title I of Pub. L. 103–296 provided that:

''(a) TRANSITION RULES RELATING TO OFFICERS OF THE SOCIAL SECURITY ADMINISTRATION.—

''(1) APPOINTMENT OF INITIAL COMMISSIONER OF SOCIAL SECURITY.—The President shall nominate for appointment the initial Commissioner of Social Security to serve as head of the Social Security Administration established under section 701 of the Social Security Act [this section] (as amended by this Act) not later than 60 days after the date of the enactment of this Act [Aug. 15, 1994].

''(2) ASSUMPTION OF OFFICE OF INITIAL COMMISSIONER BEFORE EFFECTIVE DATE OF NEW AGENCY.—If the appointment of the initial Commissioner of Social Security pursuant to section 702 of the Social Security Act [section 902 of this title] (as amended by this Act) is confirmed by the Senate pursuant to such section 702 before March 31, 1995, the individual shall take office as Commissioner immediately upon confirmation, and, until March 31, 1995, such Commissioner shall perform the functions of the Commissioner of Social Security in the Department of Health and Human Services.

''(3) TREATMENT OF INSPECTOR GENERAL AND OTHER APPOINTMENTS.—At any time on or after the date of the enactment of this Act [Aug. 15, 1994], any of the officers provided for in section 702 of the Social Security Act (as amended by this title) and any of the members of the Social Security Advisory Board provided for in section 703 of such Act [section 903 of this title] (as so amended) may be nominated and take office, under the terms and conditions set out in such sections.

''(4) COMPENSATION FOR INITIAL OFFICERS AND BOARD MEMBERS BEFORE EFFECTIVE DATE OF NEW AGENCY.—Funds available to any official or component of the Department of Health and Human Services, functions of which are transferred to the Commissioner of Social Security or the Social Security Administration by this title [see Tables for classification], may, with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer or employee of the new Social Security Administration and of any member or staff of the Social Security Advisory Board who takes office pursuant to this subsection before March 31, 1995, until such time as funds for that purpose are otherwise available.

''(5) INTERIM ROLE OF CURRENT COMMISSIONER AFTER EFFECTIVE DATE OF NEW AGENCY.—In the event that, as of March 31, 1995, an individual appointed to serve as the initial Commissioner of Social Security has not taken office, until such initial Commissioner has taken office, the officer serving on March 31, 1995, as Commissioner of Social Security (or Acting Commissioner of Social Security, if applicable) in the Department of Health and Human Services shall, while continuing to serve as such Commissioner of Social Security (or Acting Commissioner of Social Security), serve as Commissioner of Social Security (or Acting Commissioner of Social Security, respectively) in the Social Security Administration established under such section 701 and shall assume the powers and duties under such Act [this chapter] (as amended by this Act) of the Commissioner of Social Security in the Social Security Administration as so established under such section 701. In the event that, as of March 31, 1995, the President has not nominated an individual for appointment to the office of Commissioner of Social Security in the Social Security Administration established under such section 701, then the individual serving as Commissioner of Social Security (or Acting Commissioner of Social Security, if applicable) in the Department of Health and Human Services shall become the Acting Commissioner of Social Security in the Social Security Administration as so established under such section 701.

''(6) INTERIM INSPECTOR GENERAL.—The Commissioner of Social Security may appoint an individual to assume the powers and duties under the Inspector General Act of 1978 [Pub. L. 95–452, set out in the Appendix to Title 5, Government Organization and Employees] of Inspector General of the Social Security Administration as established under section 701 of the Social Security Act for a period not to exceed 60 days. The Inspector General of the Department of Health and Human Services may, when so requested by the Commissioner, while continuing to serve as Inspector General in such Department, serve as Inspector General of the Social Security Administration established under such section 701 and shall assume the powers and duties under the Inspector General Act of 1978 of Inspector General of the Social Security Administration as established under such section 701. The Social Security Administration shall reimburse the Office of Inspector General of the Department of Health and Human Services for costs of any functions performed pursuant to this subsection, from funds available to the Administration at the time the functions are performed. The authority under this paragraph to exercise the powers and duties of the Inspector General shall terminate upon the entry upon office of an Inspector General for the Social Security Administration under the Inspector General Act of 1978.

''(7) ABOLISHMENT OF OFFICE OF COMMISSIONER OF SOCIAL SECURITY IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—Effective when the initial Commissioner of Social Security of the Social Security Administration established under section 701 of the Social Security Act (as amended by this title) takes office pursuant to section 702 of such Act (as so amended)—

''(A) the position of Commissioner of Social Security in the Department of Health and Human Services is abolished; and

''(B) [Amended section 5315 of Title 5, Government Organization and Employees.]

''(b) CONTINUATION OF ORDERS, DETERMINATIONS, RULES, REGULATIONS, ETC.—All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements (and ongoing negotiations relating to such collective bargaining agreements), recognitions of labor organizations, certificates, licenses, and privileges—

''(1) which have been issued, made, promulgated, granted, or allowed to become effective, in the exercise of functions (A) which were exercised by the Secretary of Health and Human Services (or the Secretary's delegate), and (B) which relate to functions which, by reason of this title, the amendments made thereby, and regulations prescribed thereunder, are vested in the Commissioner of Social Security; and

''(2) which are in effect immediately before March 31, 1995,

shall (to the extent that they relate to functions described in paragraph (1)(B)) continue in effect according to their terms until modified, terminated, suspended, set aside, or repealed by such Commissioner, except that any collective bargaining agreement shall remain in effect until the date of termination specified in such agreement.

''(c) CONTINUATION OF PROCEEDINGS.—The provisions of this title (including the amendments made thereby) shall not affect any proceeding pending before the Secretary of Health and Human Services immediately before March 31, 1995, with respect to functions vested (by reason of this title, the amendments made thereby, and regulations prescribed thereunder) in the Commissioner of Social Security, except that such proceedings, to the extent that such proceedings relate to such functions, shall continue before such Commissioner. Orders shall be issued under any such proceeding, appeals taken therefrom, and payments shall be made pursuant to such orders, in like manner as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or repealed by such Commissioner, by a court of competent jurisdiction, or by operation of law.

''(d) CONTINUATION OF SUITS.—Except as provided in this subsection—

''(1) the provisions of this title shall not affect suits commenced before March 31, 1995; and

''(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this title had not been enacted.

No cause of action, and no suit, action, or other proceeding commenced by or against any officer in such officer's official capacity as an officer of the Department of Health and Human Services, shall abate by reason of the enactment of this title. In any suit, action, or other proceeding pending immediately before March 31, 1995, the court or hearing officer may at any time, on the motion of the court or hearing officer or that of a party, enter an order which will give effect to the provisions of this subsection (including, where appropriate, an order for substitution of parties).

''(e) CONTINUATION OF PENALTIES.—This title shall not have the effect of releasing or extinguishing any civil or criminal prosecution, penalty, forfeiture, or liability incurred as a result of any function which (by reason of this title, the amendments made thereby, and regulations prescribed thereunder) is vested in the Commissioner of Social Security.

''(f) JUDICIAL REVIEW.—Orders and actions of the Commissioner of Social Security in the exercise of functions vested in such Commissioner under this title and the amendments made thereby (other than functions performed pursuant to 105(a)(2) [set out above]) shall be subject to judicial review to the same extent and in the same manner as if such orders had been made and such actions had been taken by the Secretary of Health and Human Services in the exercise of such functions immediately before March 31, 1995. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function so vested in such Commissioner shall continue to apply to the exercise of such function by such Commissioner.

''(g) EXERCISE OF FUNCTIONS.—In the exercise of the functions vested in the Commissioner of Social Security under this title, the amendments made thereby, and regulations prescribed thereunder, such Commissioner shall have the same authority as that vested in the Secretary of Health and Human Services with respect to the exercise of such functions immediately preceding the vesting of such functions in such Commissioner, and actions of such Commissioner shall have the same force and effect as when exercised by such Secretary.''

RULES OF CONSTRUCTION

Section 109 of title I of Pub. L. 103–296 provided that:

''(a) REFERENCES TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this title [see Tables for classification] or a provision of law amended by this title), regulation, rule, record, or document to the Department of Health and Human Services with respect to such Department's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act [subchapter II of this chapter] or the supplemental security income program under title XVI of such Act [subchapter XVI of this chapter] or other functions performed by the Social Security Administration pursuant to section 105(a)(2) of this Act [set out above], such reference shall be considered a reference to the Social Security Administration.

''(b) REFERENCES TO THE SECRETARY OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this title or a provision of law amended by this title), regulation, rule, record, or document to the Secretary of Health and Human Services with respect to such Secretary's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act or other functions performed by the Commissioner of Social Security pursuant to section 105(a)(2) of this Act, such reference shall be considered a reference to the Commissioner of Social Security.

''(c) REFERENCES TO OTHER OFFICERS AND EMPLOYEES.—Whenever any reference is made in any provision of law (other than this title or a provision of law amended by this title), regulation, rule, record, or document to any other officer or employee of the Department of Health and Human Services with respect to such officer or employee's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act or other functions performed by the officer or employee of the Social Security Administration pursuant to section 105(a)(2) of this Act, such reference shall be considered a reference to the appropriate officer or employee of the Social Security Administration.''

§ 901a. Repealed. Aug. 28, 1950, ch. 809, title IV, § 401(b), 64 Stat. 558

Section, act Aug. 10, 1939, ch. 666, title IX, § 908, 53 Stat. 1402, placed Social Security Board under direction and supervision of Federal Security Administrator.

§ 902. Commissioner; Deputy Commissioner; other officers

(a) Commissioner of Social Security

(1) There shall be in the Administration a Commissioner of Social Security (in this subchapter referred to as the ''Commissioner'') who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Commissioner shall be compensated at the rate provided for level I of the Executive Schedule.

(3) The Commissioner shall be appointed for a term of 6 years, except that the initial term of office for Commissioner shall terminate January 19, 2001. In any case in which a successor does not take office at the end of a Commissioner's term of office, such Commissioner may continue in office until the entry upon office of such a successor. A Commissioner appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term. An individual serving in the office of Commissioner may be removed from office only pursuant to a finding by the President of neglect of duty or malfeasance in office.

(4) The Commissioner shall be responsible for the exercise of all powers and the discharge of all duties of the Administration, and shall have authority and control over all personnel and activities thereof.

(5) The Commissioner may prescribe such rules and regulations as the Commissioner determines necessary or appropriate to carry out the functions of the Administration. The regulations prescribed by the Commissioner shall be subject to the rulemaking procedures established under section 553 of title 5.

(6) The Commissioner may establish, alter, consolidate, or discontinue such organizational units or components within the Administration as the Commissioner considers necessary or appropriate, except that this paragraph shall not apply with respect to any unit, component, or provision provided for by this chapter.

(7) The Commissioner may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees of the Administration as the Commissioner may find necessary.

Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Commissioner.

(8) The Commissioner and the Secretary of Health and Human Services (in this subchapter referred to as the ''Secretary'') shall consult, on an ongoing basis, to ensure—

(A) the coordination of the programs administered by the Commissioner, as described in section 901 of this title, with the programs administered by the Secretary under subchapters XVIII and XIX of this chapter; and

(B) that adequate information concerning benefits under such subchapters XVIII and XIX of this chapter is available to the public.

(b) Deputy Commissioner of Social Security

(1) There shall be in the Administration a Deputy Commissioner of Social Security (in this subchapter referred to as the ''Deputy Commissioner'') who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Deputy Commissioner shall be appointed for a term of 6 years, except that the initial term of office for the Deputy Commissioner shall terminate January 19, 2001. In any case in which a successor does not take office at the end of a Deputy Commissioner's term of office, such Deputy Commissioner may continue in office until the entry upon office of such a successor. A Deputy Commissioner appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term.

(3) The Deputy Commissioner shall be compensated at the rate provided for level II of the Executive Schedule.

(4) The Deputy Commissioner shall perform such duties and exercise such powers as the Commissioner shall from time to time assign or delegate. The Deputy Commissioner shall be Acting Commissioner of the Administration during the absence or disability of the Commissioner and, unless the President designates another officer of the Government as Acting Commissioner, in the event of a vacancy in the office of the Commissioner.

(c) Chief Actuary

(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5.

(d) Chief Financial Officer

There shall be in the Administration a Chief Financial Officer appointed by the Commissioner in accordance with section 901(a)(2) of title 31.

(e) Inspector General

There shall be in the Administration an Inspector General appointed by the President, by and with the advice and consent of the Senate, in accordance with section 3(a) of the Inspector General Act of 1978.

(Aug. 14, 1935, ch. 531, title VII, §702, 49 Stat. 636; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(c), (d), 64 Stat. 558; Pub. L. 98–369, div. B, title VI, §2663(j)(2)(C)(i), (*l*)(1), July 18, 1984, 98 Stat. 1170, 1171; Pub. L. 103–296, title I, §102, Aug. 15, 1994, 108 Stat. 1465; Pub. L. 104–121, title I, §103(e)(1), Mar. 29, 1996, 110 Stat. 851.)

REFERENCES IN TEXT

Levels I and II of the Executive Schedule, referred to in subsecs. (a)(2) and (b)(3), are set out in sections 5312 and 5313, respectively, of Title 5, Government Organization and Employees.

Section 3(a) of the Inspector General Act of 1978, referred to in subsec. (e), is section 3(a) of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsecs. (c) to (e). Pub. L. 104–121 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1994—Pub. L. 103–296 amended section generally. Prior to amendment, section read as follows: ''The Secretary shall perform the duties imposed upon him by this chapter and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.''

1984—Pub. L. 98–369, §2663(*l*)(1), substituted ''Secretary'' for ''Administrator''.

Pub. L. 98–369, §2663(j)(2)(C)(i), which directed the substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'', could not be executed because ''Health, Education, and Welfare'' did not appear in text.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''him'' for ''it''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 103(e)(2) of Pub. L. 104–121 provided that: ''The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Mar. 29, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS OF DISABLED BENEFICIARIES

Pub. L. 108–203, title II, §202, Mar. 2, 2004, 118 Stat. 509, provided that: ''Effective as soon as possible, but

not later than 1 year after the date of the enactment of this Act [Mar. 2, 2004], until such time as the Commissioner of Social Security implements a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status, the Commissioner shall issue a receipt to the disabled beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in such status.''

DEMONSTRATION PROJECTS RELATING TO ACCOUNTABILITY FOR TELEPHONE SERVICE CENTER COMMUNICATIONS

Pub. L. 101–508, title V, § 5108, Nov. 5, 1990, 104 Stat. 1388–269, directed Secretary of Health and Human Services to develop and carry out demonstration projects designed to implement certain accountability procedures in not fewer than 3 telephone service centers operated by the Social Security Administration, provided that such projects commence not later than 180 days after Nov. 5, 1990, and remain in operation for not less than 1 year and not more than 3 years, and directed Secretary to submit to Congress a written report on the progress of the demonstration projects not later than 90 days after the termination of the project.

TELEPHONE ACCESS TO SOCIAL SECURITY ADMINISTRATION

Section 302 of Pub. L. 103–296 directed Comptroller General of the United States to submit to Congress, not later than Jan. 31, 1996, report and study of telephone access to local offices of the Social Security Administration, based on independent assessment of Social Security Administration's use of innovative technology (including attendant call and voice mail) to increase public telephone access to local offices of the Administration.

Pub. L. 101–508, title V, § 5110, Nov. 5, 1990, 104 Stat. 1388–272, provided that:

''(a) REQUIRED MINIMUM LEVEL OF ACCESS TO LOCAL OFFICES.—In addition to such other access by telephone to offices of the Social Security Administration as the Secretary of Health and Human Services may consider appropriate, the Secretary shall maintain access by telephone to local offices of the Social Security Administration at the level of access generally available as of September 30, 1989.

''(b) TELEPHONE LISTINGS.—The Secretary shall make such requests of local telephone utilities in the United States as are necessary to ensure that the listings subsequently maintained and published by such utilities for each locality include the address and telephone number for each local office of the Social Security Administration to which direct telephone access is maintained under subsection (a) in such locality. Such listing may also include information concerning the availability of a toll-free number which may be called for general information.

''(c) REPORT BY SECRETARY.—Not later than January 1, 1993, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which—

''(1) assesses the impact of the requirements established by this section on the Social Security Administration's allocation of resources, workload levels, and service to the public, and

''(2) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices.

''(d) GAO REPORT.—The Comptroller General of the United States shall review the level of telephone access by the public to the local offices of the Social Security Administration. The Comptroller General shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate describing such level of telephone access not later than 120 days after the date of the enactment of this Act [Nov. 5, 1990] and shall file a final report with such Committees describing such level of access not later than 210 days after such date.

''(e) EFFECTIVE DATE.—The Secretary of Health and Human Services shall meet the requirements of subsections (a) and (b) as soon as possible after the date of the enactment of this Act but not later [than] 180 days after such date.''

REPORT REGARDING NOTICES IN LANGUAGES OTHER THAN ENGLISH

Pub. L. 101–239, title X, § 10306(b), Dec. 19, 1989, 103 Stat. 2484, directed Secretary of Health and Human Resources, not later than Jan. 1, 1991, to submit a report to Congress relating to procedures of Social Security Administration for issuing notices in languages other than English.

STUDY CONCERNING ESTABLISHMENT OF SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY

Pub. L. 98–21, title III, § 338, Apr. 20, 1983, 97 Stat. 132, as amended by Pub. L. 98–369, div. B, title VI, § 2662(h)(1), July 18, 1984, 98 Stat. 1160, established, under authority of Committee on Ways and Means of the House of Representatives and Committee on Finance of the Senate, a Joint Study Panel on the Social Security Administration to undertake a study of removing Social Security Administration from Department of Health and Human Services and establishing it as an independent agency in the executive branch with its own independent administrative structure, including possibility of such a structure headed by a board appointed by the President, by and with the advice and consent of the Senate, and to submit, not later than Apr. 1, 1984, a report of the findings of the study, and provided that the Panel would expire 30 days after the date of the submission of the report.

EARNINGS SHARING IMPLEMENTATION REPORT

Pub. L. 98–21, title III, § 343, Apr. 20, 1983, 97 Stat. 136, directed Secretary of Health and Human Services to develop, in consultation with Committee on Finance of the Senate and Committee on Ways and Means of the House of Representatives, proposals for earnings sharing legislation (i.e., proposals that combined earnings of a husband and wife during period of their marriage be divided equally and shared between them for social security benefit purposes) and report such proposals to such committees not later than July 1, 1984.

UNIVERSAL COVERAGE OF SOCIAL SECURITY PROGRAMS; STUDY AND REPORT TO PRESIDENT AND CONGRESS RESPECTING SCOPE, ALTERNATIVES, ETC.; CONSULTATION BY SECRETARY

Pub. L. 95–216, title III, § 311, Dec. 20, 1977, 91 Stat. 1531, as amended by 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783, directed Secretary of Health, Education, and Welfare to undertake as soon as possible after Dec. 20, 1977, a thorough study with respect to extent of coverage under old-age, survivors, and disability insurance programs and under programs established by subchapter XVIII of this chapter and submit a report on findings of such study not later than 2 years after Dec. 20, 1977.

PROPOSALS FOR ELIMINATION OF DEPENDENCY AND SEX DISCRIMINATION UNDER SOCIAL SECURITY PROGRAM; STUDY AND REPORT TO CONGRESS

Pub. L. 95–216, title III, § 341, Dec. 20, 1977, 91 Stat. 1548, directed Secretary of Health, Education, and Welfare, in consultation with the Task Force on Sex Discrimination, to make a detailed study of proposals to eliminate dependency as a factor in the determination of entitlement to spouse's benefits under the program established under subchapter II of this chapter and of proposals to bring about equal treatment for men and women in any and all respects under such program and submit a report to Congress within 6 months of Dec. 20, 1977.

§ 903. Social Security Advisory Board

(a) Establishment of Board

There shall be established a Social Security Advisory Board (in this section referred to as the ''Board'').

(b) Functions of Board

On and after the date the Commissioner takes office, the Board shall advise the Commissioner on policies related to the old-age, survivors, and disability insurance program under subchapter II of this chapter, the program of special benefits for certain World War II veterans under subchapter VIII of this chapter, and the supplemental security income program under subchapter XVI of this chapter. Specific functions of the Board shall include—

(1) analyzing the Nation's retirement and disability systems and making recommendations with respect to how the old-age, survivors, and disability insurance program and the supplemental security income program, supported by other public and private systems, can most effectively assure economic security;

(2) studying and making recommendations relating to the coordination of programs that provide health security with programs described in paragraph (1);

(3) making recommendations to the President and to the Congress with respect to policies that will ensure the solvency of the old-age, survivors, and disability insurance program, both in the short-term and the long-term;

(4) making recommendations with respect to the quality of service that the Administration provides to the public;

(5) making recommendations with respect to policies and regulations regarding the old-age, survivors, and disability insurance program and the supplemental security income program;

(6) increasing public understanding of the social security system;

(7) making recommendations with respect to a long-range research and program evaluation plan for the Administration;

(8) reviewing and assessing any major studies of social security as may come to the attention of the Board; and

(9) making recommendations with respect to such other matters as the Board determines to be appropriate.

(c) Structure and membership of Board

(1) The Board shall be composed of 7 members who shall be appointed as follows:

(A) 3 members shall be appointed by the President, by and with the advice and consent of the Senate. Not more than 2 of such members shall be from the same political party.

(B) 2 members (each member from a different political party) shall be appointed by the President pro tempore of the Senate with the advice of the Chairman and the Ranking Minority Member of the Senate Committee on Finance.

(C) 2 members (each member from a different political party) shall be appointed by the Speaker of the House of Representatives, with the advice of the Chairman and the Ranking Minority Member of the House Committee on Ways and Means.

(2) The members shall be chosen on the basis of their integrity, impartiality, and good judgment, and shall be individuals who are, by reason of their education, experience, and attainments, exceptionally qualified to perform the duties of members of the Board.

(d) Terms of appointment

Each member of the Board shall serve for a term of 6 years, except that—

(1) a member appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term; and

(2) the terms of service of the members initially appointed under this section shall begin on October 1, 1994, and expire as follows:

(A) The terms of service of the members initially appointed by the President shall expire as designated by the President at the time of nomination, 1 each at the end of—

(i) 2 years;
(ii) 4 years; and
(iii) 6 years.

(B) The terms of service of members initially appointed by the President pro tempore of the Senate shall expire as designated by the President pro tempore of the Senate at the time of nomination, 1 each at the end of—

(i) 3 years; and
(ii) 6 years.

(C) The terms of service of members initially appointed by the Speaker of the House of Representatives shall expire as designated by the Speaker of the House of Representatives at the time of nomination, 1 each at the end of—

(i) 4 years; and
(ii) 5 years.

(e) Chairman

A member of the Board shall be designated by the President to serve as Chairman for a term of 4 years, coincident with the term of the President, or until the designation of a successor.

(f) Compensation, expenses, and per diem

A member of the Board shall, for each day (including traveltime) during which the member is attending meetings or conferences of the Board or otherwise engaged in the business of the Board, be compensated at the daily rate of basic pay for level IV of the Executive Schedule. While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government employed intermittently.

(g) Meetings

(1) The Board shall meet at the call of the Chairman (in consultation with the other members of the Board) not less than 4 times each year to consider a specific agenda of issues, as determined by the Chairman in consultation with the other members of the Board.

(2) Four members of the Board (not more than 3 of whom may be of the same political party)

shall constitute a quorum for purposes of conducting business.

(h) Federal Advisory Committee Act

The Board shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(i) Personnel

The Board shall, without regard to the provisions of title 5 relating to the competitive service, appoint a Staff Director who shall be paid at a rate equivalent to a rate established for the Senior Executive Service under section 5382 of title 5. The Board shall appoint such additional personnel as the Board determines to be necessary to provide adequate support for the Board, and may compensate such additional personnel without regard to the provisions of title 5 relating to the competitive service.

(j) Authorization of appropriations

There are authorized to be appropriated, out of the Federal Disability Insurance Trust Fund, the Federal Old-Age and Survivors Insurance Trust Fund, and the general fund of the Treasury, such sums as are necessary to carry out the purposes of this section.

(Aug. 14, 1935, ch. 531, title VII, § 703, 49 Stat. 636; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; Pub. L. 98–369, div. B, title VI, § 2663(*l*)(1), July 18, 1984, 98 Stat. 1171; Pub. L. 103–296, title I, § 103, Aug. 15, 1994, 108 Stat. 1467; Pub. L. 104–121, title I, § 108, Mar. 29, 1996, 110 Stat. 857; Pub. L. 105–33, title V, § 5526, Aug. 5, 1997, 111 Stat. 625; Pub. L. 106–169, title II, § 251(b)(4), Dec. 14, 1999, 113 Stat. 1855; Pub. L. 108–203, title IV, § 417(a), Mar. 2, 2004, 118 Stat. 530.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (f), is set out under section 5315 of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The provisions of title 5 relating to the competitive service, referred to in subsec. (i), are classified generally to section 3301 et seq. of Title 5.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–203 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''Members of the Board shall serve without compensation, except that, while serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government employed intermittently.''

1999—Subsec. (b). Pub. L. 106–169 substituted ''subchapter II of this chapter, the program of special benefits for certain World War II veterans under title VIII of this chapter,'' for ''subchapter II of this chapter'' in introductory provisions.

1997—Subsec. (i). Pub. L. 105–33 struck out '', and three professional staff members one of whom shall be appointed from among individuals approved by the members of the Board who are not members of the political party represented by the majority of the Board,'' after ''Staff Director'' and ''clerical'' after ''provide adequate''.

1996—Subsec. (i). Pub. L. 104–121 inserted '', and three professional staff members one of whom shall be appointed from among individuals approved by the members of the Board who are not members of the political party represented by the majority of the Board,'' after ''Staff Director''.

1994—Pub. L. 103–296 amended section generally. Prior to amendment, section read as follows: ''The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out his functions under this chapter. Appointments of attorneys and experts may be made without regard to the civil-service laws.''

1984—Pub. L. 98–369 substituted ''Secretary'' for ''Administrator''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''his'' for ''its''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 417(b), Mar. 2, 2004, 118 Stat. 531, provided that: ''The amendment made by this section [amending this section] shall be effective as of January 1, 2003.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5528 of title V of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—Except as provided in this section, the amendments made by this chapter [chapter 2 (§§ 5521–5528) of subtitle F of title V of Pub. L. 105–33, amending this section, sections 1310, 1382, 1382c, 1382d, and 1383 of this title, and provisions set out as a note under section 1382 of this title and repealing provisions set out as notes under sections 425 and 1382 of this title] shall take effect as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2185).

''(b) SECTION 5524 AMENDMENTS.—The amendments made by section 5524 of this Act [amending section 1310 of this title] shall take effect as if included in the enactment of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296; 108 Stat. 1464).

''(c) SECTION 5525 AMENDMENTS.—

''(1) IN GENERAL.—The amendments made by subsections (a) and (b) of section 5525 of this Act [amending provisions set out as a note under section 1382 of this title] shall take effect as if included in the enactment of section 105 of the Contract with America Advancement Act of 1996 (Public Law 104–121; 110 Stat. 852 et seq.).

''(2) REPEALS.—The repeals made by section 5525(c) [repealing provisions set out as notes under sections 425 and 1382 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].

''(d) SECTION 5526 AMENDMENTS.—The amendments made by section 5526 of this Act [amending this section] shall take effect as if included in the enactment of section 108 of the Contract with America Advancement Act of 1996 (Public Law 104–121; 110 Stat. 857).

''(e) SECTION 5227.—Section 5227 [probably means section 5527 of this Act which is set out as a note under section 909 of this title] shall take effect on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 904. Administrative duties of Commissioner

(a) Personnel

(1) The Commissioner shall appoint such additional officers and employees as the Commissioner considers necessary to carry out the functions of the Administration under this chapter,

and attorneys and experts may be appointed without regard to the civil service laws. Except as otherwise provided in the preceding sentence or in any other provision of law, such officers and employees shall be appointed, and their compensation shall be fixed, in accordance with title 5.

(2) The Commissioner may procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5.

(3) Notwithstanding any requirements of section 3133 of title 5, the Director of the Office of Personnel Management shall authorize for the Administration a total number of Senior Executive Service positions which is substantially greater than the number of such positions authorized in the Social Security Administration in the Department of Health and Human Services as of immediately before August 15, 1994, to the extent that the greater number of such authorized positions is specified in the comprehensive work force plan as established and revised by the Commissioner under subsection (b)(2) of this section. The total number of such positions authorized for the Administration shall not at any time be less than the number of such authorized positions as of immediately before such date.

(b) Budgetary matters

(1)(A) The Commissioner shall prepare an annual budget for the Administration, which shall be submitted by the President to the Congress without revision, together with the President's annual budget for the Administration.

(B) The Commissioner shall include in the annual budget prepared pursuant to subparagraph (A) an itemization of the amount of funds required by the Social Security Administration for the fiscal year covered by the budget to support efforts to combat fraud committed by applicants and beneficiaries.

(2)(A) Appropriations requests for staffing and personnel of the Administration shall be based upon a comprehensive work force plan, which shall be established and revised from time to time by the Commissioner.

(B) Appropriations for administrative expenses of the Administration are authorized to be provided on a biennial basis.

(c) Employment restriction

The total number of positions in the Administration (other than positions established under section 902 of this title) which—

(1) are held by noncareer appointees (within the meaning of section 3132(a)(7) of title 5) in the Senior Executive Service, or

(2) have been determined by the President or the Office of Personnel Management to be of a confidential, policy-determining, policy-making, or policy-advocating character and have been excepted from the competitive service thereby,

may not exceed at any time the equivalent of 20 full-time positions.

(d) Seal of office

The Commissioner shall cause a seal of office to be made for the Administration of such design as the Commissioner shall approve. Judicial notice shall be taken of such seal.

(e) Data exchanges

(1) Notwithstanding any other provision of law (including subsections (b), (*o*), (p), (q), (r), and (u) of section 552a of title 5—

(A) the Secretary shall disclose to the Commissioner any record or information requested in writing by the Commissioner for the purpose of administering any program administered by the Commissioner, if records or information of such type were disclosed to the Commissioner of Social Security in the Department of Health and Human Services under applicable rules, regulations, and procedures in effect before August 15, 1994; and

(B) the Commissioner shall disclose to the Secretary or to any State any record or information requested in writing by the Secretary to be so disclosed for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations, and procedures in effect before August 15, 1994.

(2) The Commissioner and the Secretary shall enter into an agreement under which the Commissioner provides the Secretary data concerning the quality of the services and information provided to beneficiaries of the programs under subchapters XVIII and XIX of this chapter and the administrative services provided by the Social Security Administration in support of such programs. Such agreement shall stipulate the type of data to be provided and the terms and conditions under which the data are to be provided.

(3) The Commissioner and the Secretary shall periodically review the need for exchanges of information not referred to in paragraph (1) or (2) and shall enter into such agreements as may be necessary and appropriate to provide information to each other or to States in order to meet the programmatic needs of the requesting agencies.

(4)(A) Any disclosure from a system of records (as defined in section 552a(a)(5) of title 5) pursuant to this subsection shall be made as a routine use under subsection (b)(3) of section 552a of such title (unless otherwise authorized under such section 552a).

(B) Any computerized comparison of records, including matching programs, between the Commissioner and the Secretary shall be conducted in accordance with subsections (*o*), (p), (q), (r), and (u) of section 552a of title 5.

(5) The Commissioner and the Secretary shall each ensure that timely action is taken to establish any necessary routine uses for disclosures required under paragraph (1) or agreed to pursuant to paragraph (3).

(Aug. 14, 1935, ch. 531, title VII, §704, 49 Stat. 636; Aug. 28, 1950, ch. 809, title IV, §402(b), 64 Stat. 558; Pub. L. 94–273, §33, Apr. 21, 1976, 90 Stat. 380; Pub. L. 98–369, div. B, title VI, §2663(*l*)(1), July 18, 1984, 98 Stat. 1171; Pub. L. 103–296, title I, §104(a), Aug. 15, 1994, 108 Stat. 1470; Pub. L. 106–169, title II, §211(a), Dec. 14, 1999, 113 Stat. 1842.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(1), are classified generally to Title 5, Government Organiza-

tion and Employees. See, particularly, section 3301 et seq. of Title 5.

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–169 designated existing provisions as subpar. (A) and added subpar. (B).

1994—Pub. L. 103–296 amended section generally. Prior to amendment, section read as follows: ''The Secretary shall make a full report to Congress, within one hundred and twenty days after the beginning of each regular session, of the administration of the functions with which he is charged under this chapter. In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.''

1984—Pub. L. 98–369 substituted ''Secretary'' for ''Administrator''.

1976—Pub. L. 94–273 substituted ''within one hundred and twenty days after the beginning'' for ''at the beginning''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' in first sentence and added second sentence.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title II, § 211(b), Dec. 14, 1999, 113 Stat. 1842, provided that: ''The amendments made by this section [amending this section] shall apply with respect to annual budgets prepared for fiscal years after fiscal year 1999.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 104(c) of Pub. L. 103–296 provided that:

''(1) EFFECTIVE DATE.—Section 704(e)(4) of the Social Security Act [subsec. (e)(4) of this section] (as amended by subsection (a)) shall take effect March 31, 1996.

''(2) TRANSITION RULE.—Notwithstanding any other provision of law (including subsections (b), (*o*), (p), (q), (r), and (u) of section 552a of title 5, United States Code), arrangements for disclosure of records or other information, and arrangements for computer matching of records, which were in effect immediately before the date of the enactment of this Act [Aug. 15, 1994] between the Social Security Administration in the Department of Health and Human Services and other components of such Department may continue between the Social Security Administration established under section 701 of the Social Security Act [section 901 of this title] (as amended by this Act) and such Department during the period beginning on the date of the enactment of this Act and ending March 31, 1996.''

Amendment by section 104(a) of Pub. L. 103–296 effective Mar. 31, 1995, except as otherwise provided, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

REPORT ON SES POSITIONS UNDER COMPREHENSIVE WORK FORCE PLAN

Section 104(b) of Pub. L. 103–296 provided that within 60 days after establishment by Commissioner of Social Security of comprehensive work force plan required under subsec. (b)(2) of this section, Director of Office of Personnel Management was to transmit to Congress a report specifying total number of Senior Executive Services positions authorized for Social Security Administration in connection with such work force plan.

§§ 905, 905a. Transferred

CODIFICATION

Section 905, act July 5, 1952, ch. 575, title II, § 201, 66 Stat. 369, as amended, which related to the working capital fund, was transferred to section 3513 of this title.

Section 905a, act Aug. 10, 1971, Pub. L. 92–80, title II, § 200, 85 Stat. 297, which related to additional use of the working capital fund, was transferred to section 3513b of this title.

§ 906. Training grants for public welfare personnel

(a) Authorization of appropriations

In order to assist in increasing the effectiveness and efficiency of administration of public assistance programs by increasing the number of adequately trained public welfare personnel available for work in public assistance programs, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000.

(b) Allocation for carrying out direct grant programs

Such portion of the sums appropriated pursuant to subsection (a) of this section for any fiscal year as the Secretary may determine, but not in excess of $1,000,000 in the case of the fiscal year ending June 30, 1963, and $2,000,000 in the case of any fiscal year thereafter, shall be available for carrying out subsection (f) of this section. From the remainder of the sums so appropriated for any fiscal year, the Secretary shall make allotments to the States on the basis of (1) population, (2) relative need for trained public welfare personnel, particularly for personnel to provide self-support and self-care services, and (3) financial need.

(c) Payments to States for cost of grant programs to certain agencies and institutions

From each State's allotment under subsection (b) of this section, the Secretary shall from time to time pay to such State its costs of carrying out the purposes of this section through (1) grants to public or other nonprofit institutions of higher learning for training personnel employed or preparing for employment in public assistance programs, (2) special courses of study or seminars of short duration conducted for such personnel by experts hired on a temporary basis for the purpose, and (3) establishing and maintaining, directly or through grants to such institutions, fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted under regulations of the Secretary.

(d) Advance payments to States

Payments pursuant to subsection (c) of this section shall be made in advance on the basis of estimates by the Secretary and adjustments may be made in future payments under this section to take account of overpayments or underpayments in amounts previously paid.

(e) Reallotments

The amount of any allotment to a State under subsection (b) of this section for any fiscal year which the State certifies to the Secretary will

not be required for carrying out the purposes of this section in such State shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines have need in carrying out such purposes for sums in excess of those previously allotted to them under this section and will be able to use such excess amounts during such fiscal year; such reallotments to be made on the basis provided in subsection (b) of this section for the initial allotments to the States. Any amount so reallotted to a State shall be deemed part of its allotment under such subsection.

(f) Direct grants to certain agencies and institutions

(1) The portion of the sums appropriated for any fiscal year which is determined by the Secretary under the first sentence of subsection (b) of this section to be available for carrying out this subsection shall be available to enable him to provide (A) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for training personnel who are employed or preparing for employment in the administration of public assistance programs, (B) directly or through grants to or contracts with public or nonprofit private agencies or institutions, for special courses of study or seminars of short duration (not in excess of one year) for training of such personnel, and (C) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for establishing and maintaining fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted by the Secretary.

(2) Payments under paragraph (1) may be made in advance on the basis of estimates by the Secretary, or may be made by way of reimbursement, and adjustments may be made in future payments under this subsection to take account of overpayments or underpayments in amounts previously paid.

(3) The Secretary may, to the extent he finds such action to be necessary, prescribe requirements to assure that any individual will repay the amount of his fellowship or traineeship received under this subsection to the extent such individual fails to serve, for the period prescribed by the Secretary, with a State or political subdivision thereof, or with the Federal Government, in connection with administration of any State or local public assistance program. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that requirement of such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the public welfare programs established by this chapter.

(Aug. 14, 1935, ch. 531, title VII, § 705, as added Aug. 1, 1956, ch. 836, title III, § 332, 70 Stat. 851; amended Pub. L. 87–31, § 3, May 8, 1961, 75 Stat. 77; Pub. L. 87–543, title I, § 123 (a)–(c), July 25, 1962, 76 Stat. 192.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–543, § 123(a), substituted ''for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000'' for ''for the fiscal year ending June 30, 1958, the sum of $5,000,000, and for each of the five succeeding fiscal years such sums as the Congress may determine''.

Subsec. (b). Pub. L. 87–543, § 123(b), required appropriated moneys to be made available for carrying out subsec. (f) of this section.

Subsec. (f). Pub. L. 87–543, § 123(c), added subsec. (f).

1961—Subsec. (a). Pub. L. 87–31, § 3(a), substituted ''five'' for ''four''.

Subsec. (c). Pub. L. 87–31, § 3(b), substituted ''its costs of carrying out the purposes of this section'' for ''80 per centum of the total of its expenditures in carrying out the purposes of this section''.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 202(b) of Pub. L. 87–543 provided that: ''The amendments made by sections 102(c), 123, and 132(d) [enacting section 727 of this title, amending this section and sections 722 and 726 of this title, and repealing credits to section 1308 of this title and provisions set out as notes under section 1308 of this title] shall be applicable in the case of fiscal years beginning after June 30, 1962.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 3(b) of Pub. L. 87–31 provided that the amendment made by that section is effective with respect to payments from allotments from appropriations made for fiscal years beginning after June 30, 1961.

§ 907. Repealed. Pub. L. 103–296, title I, § 108(a)(2), Aug. 15, 1994, 108 Stat. 1481

Section, act Aug. 14, 1935, ch. 531, title VII, § 706, as added July 30, 1965, Pub. L. 89–97, title I, § 109(a), 79 Stat. 339; amended Jan. 2, 1968, Pub. L. 90–248, title I, § 165, title IV, § 403(d), 81 Stat. 874, 932; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(C)(ii), 98 Stat. 1170; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12102(g)(1), 100 Stat. 285; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, provided for appointment by Secretary every four years of an Advisory Council on Social Security and functions of Council.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.

APPLICABILITY OF REPEAL TO 1994 COUNCIL

Section 108(a)(2) of Pub. L. 103–296 provided in part that: ''This paragraph [repealing this section] shall not apply with respect to the Advisory Council for Social Security appointed in 1994.''

§ 907a. National Commission on Social Security

(a) Establishment; membership; Chairman and Vice Chairman; quorum; terms of office; vacancies; per diem and expense reimbursement; meetings

(1) There is established a commission to be known as the National Commission on Social Security (hereinafter referred to as the ''Commission'').

(2)(A) The Commission shall consist of—

(i) five members to be appointed by the President, by and with the advice and consent of the Senate, one of whom shall, at the time of appointment, be designated as Chairman of the Commission;

(ii) two members to be appointed by the Speaker of the House of Representatives; and

(iii) two members to be appointed by the President pro tempore of the Senate.

(B) At no time shall more than three of the members appointed by the President, one of the members appointed by the Speaker of the House of Representatives, or one of the members appointed by the President pro tempore of the Senate be members of the same political party.

(C) The membership of the Commission shall consist of individuals who are of recognized standing and distinction and who possess the demonstrated capacity to discharge the duties imposed on the Commission, and shall include representatives of the private insurance industry and of recipients and potential recipients of benefits under the programs involved as well as individuals whose capacity is based on a special knowledge or expertise in those programs. No individual who is otherwise an officer or full-time employee of the United States shall serve as a member of the Commission.

(D) The Chairman of the Commission shall designate a member of the Commission to act as Vice Chairman of the Commission.

(E) A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

(F) Members of the Commission shall be appointed for a term which shall end on April 1, 1981.

(G) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as that herein provided for the appointment of the member first appointed to the vacant position.

(3) Members of the Commission shall receive $138 per diem while engaged in the actual performance of the duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(4) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission; but meetings of the Commission shall be held not less frequently than once in each calendar month which begins after a majority of the authorized membership of the Commission has first been appointed.

(b) Continuing study, investigation, and review of social security program; scope of study, etc., and public participation

(1) It shall be the duty and function of the Commission to conduct a continuing study, investigation, and review of—

(A) the Federal old-age, survivors, and disability insurance program established by subchapter II of this chapter; and

(B) the health insurance programs established by subchapter XVIII of this chapter.

(2) Such study, investigation, and review of such programs shall include (but not be limited to)—

(A) the fiscal status of the trust funds established for the financing of such programs and the adequacy of such trust funds to meet the immediate and long-range financing needs of such programs;

(B) the scope of coverage, the adequacy of benefits including the measurement of an adequate retirement income, and the conditions of qualification for benefits provided by such programs including the application of the retirement income test to unearned as well as earned income;

(C) the impact of such programs on, and their relation to, public assistance programs, nongovernmental retirement and annuity programs, medical service delivery systems, and national employment practices;

(D) any inequities (whether attributable to provisions of law relating to the establishment and operation of such programs, to rules and regulations promulgated in connection with the administration of such programs, or to administrative practices and procedures employed in the carrying out of such programs) which affect substantial numbers of individuals who are insured or otherwise eligible for benefits under such programs, including inequities and inequalities arising out of marital status, sex, or similar classifications or categories;

(E) possible alternatives to the current Federal programs or particular aspects thereof, including but not limited to (i) a phasing out of the payroll tax with the financing of such programs being accomplished in some other manner (including general revenue funding and the retirement bond), (ii) the establishment of a system providing for mandatory participation in any or all of the Federal programs, (iii) the integration of such current Federal programs with private retirement programs, and (iv) the establishment of a system permitting covered individuals a choice of public or private programs or both;

(F) the need to develop a special Consumer Price Index for the elderly, including the financial impact that such an index would have on the costs of the programs established under this chapter; and

(G) methods for effectively implementing the recommendations of the Commission.

(3) In order to provide an effective opportunity for the general public to participate fully in the study, investigation, and review under this section, the Commission, in conducting such study, investigation, and review, shall hold public hearings in as many different geographical areas of the country as possible. The residents of each area where such a hearing is to be held shall be given reasonable advance notice of the hearing and an adequate opportunity to appear and express their views on the matters under consideration.

(c) Special, annual, and final reports to President and Congress concerning implementation, etc., of study, investigation, and review responsibilities; termination of Commission

(1) No later than four months after the date on which a majority of the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress a special report describing the Commission's plans for conducting the study, investigation, and review under subsection (b) of this section, with particular reference to the scope of such study, investigation, and review and the methods proposed to be used in conducting it.

(2) At or before the close of each of the first two years after the date on which a majority of

the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress an annual report on the study, investigation, and review under subsection (b) of this section, together with its recommendations with respect to the programs involved. The second such report shall constitute the final report of the Commission on such study, investigation, and review, and shall include its final recommendations; and the Commission shall cease to exist on April 1, 1981.

(d) Executive Director and additional personnel; appointment and compensation

(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule by title 5.

(2) In addition to the Executive Director, the Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5 governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(e) Administrative procedures

In carrying out its duties under this section, the Commission, or any duly authorized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters with respect to which it has a responsibility under this section, as the Commission or such committee may deem advisable. The Chairman of the Commission or any member authorized by him may administer oaths or affirmations to witnesses appearing before the Commission or before any committee thereof.

(f) Data and information from other Federal departments and agencies

The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, any such department or agency shall furnish any such data or information to the Commission.

(g) Administrative support services from General Services Administration; reimbursement

The General Services Administration shall provide to the Commission, on a reimbursable basis such administrative support services as the Commission may request.

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 95–216, title III, § 361, Dec. 20, 1977, 91 Stat. 1556; Pub. L. 96–265, title V, § 502, June 9, 1980, 94 Stat. 470; Pub. L. 98–369, div. B, title III, § 2349(b)(3), July 18, 1984, 98 Stat. 1097.)

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (d)(1), is set out in section 5316 of Title 5, Government Officers and Employees.

The provisions of title 5 governing appointments to the competitive service, referred to in subsec. (d)(2), are classified to section 3301 et seq. of Title 5.

CODIFICATION

Section was enacted as part of the Social Security Amendments of 1977, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1984—Subsec. (i). Pub. L. 98–369 struck out subsec. (i) which provided for notice of and attendance at meetings of the Health Insurance Benefits Advisory Council.

1980—Subsec. (a)(2)(F). Pub. L. 96–265, § 502(a), substituted ''a term which shall end on April 1, 1981'' for ''a term of two years''.

Subsec. (c)(2). Pub. L. 96–265, § 502(b), substituted ''and the Commission shall cease to exist on April 1, 1981'' for ''and upon the submission of such final report the Commission shall cease to exist''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2349(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395z of this title and section 231f of Title 45, Railroads, and repealing section 1395dd of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

§ 908. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title VII, § 707, as added Jan. 2, 1968, Pub. L. 90–248, title IV, § 401, 81 Stat. 930, related to grants for expansion and development of undergraduate and graduate programs in the fiscal year ending June 30, 1969, and each of the three succeeding fiscal years.

§ 909. Delivery of benefit checks

(a) Saturdays, Sundays, and holidays

If the day regularly designated for the delivery of benefit checks under subchapter II, VIII, or XVI of this chapter falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103 of title 5) in any month, the benefit checks which would otherwise be delivered on such day shall be mailed for delivery on the first day preceding such day which is not a Saturday, Sunday, or legal public holiday (as so defined), without regard to whether the delivery of such checks would as a result have to be made before the end of the month for which such checks are issued.

(b) Recovery of overpayments

If more than the correct amount of payment under subchapter II, VIII, or XVI of this chapter is made to any individual as a result of the receipt of a benefit check pursuant to subsection (a) of this section before the end of the month for which such check is issued, no action shall be taken (under section 404 or 1383(b) of this title or otherwise) to recover such payment or the incorrect portion thereof.

(c) Early delivery

For purposes of computing the ''OASDI trust fund ratio'' under section 401(*l*) of this title, the ''OASDI fund ratio'' under section 415(i) of this title, and the ''balance ratio'' under section 910(b) of this title, benefit checks delivered before the end of the month for which they are issued by reason of subsection (a) of this section

shall be deemed to have been delivered on the regularly designated delivery date.

(Aug. 14, 1935, ch. 531, title VII, § 708, as added Pub. L. 95–216, title III, § 333(a), Dec. 20, 1977, 91 Stat. 1543; amended Pub. L. 99–272, title XII, § 12111(a), Apr. 7, 1986, 100 Stat. 287; Pub. L. 106–169, title II, § 251(b)(5), Dec. 14, 1999, 113 Stat. 1855.)

AMENDMENTS

1999—Subsecs. (a), (b). Pub. L. 106–169 substituted ''subchapter II, VIII,'' for ''subchapter II''.

1986—Subsec. (c). Pub. L. 99–272 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12111(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 86 of Title 26, Internal Revenue Code] shall apply with respect to benefit checks issued for months ending after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE

Section 333(b) of Pub. L. 95–216 provided that: ''The amendment made by subsection (a) of this section [enacting this section] shall apply with respect to benefit checks the regularly designated day for delivery of which occurs on or after the thirtieth day after the date of the enactment of this Act [Dec. 20, 1977].''

TIMING OF DELIVERY OF OCTOBER 1, 2000, SSI BENEFIT PAYMENTS

Pub. L. 105–33, title V, § 5527, Aug. 5, 1997, 111 Stat. 625, provided that, notwithstanding the provisions of section 908(a) of this title, the day designated for delivery of benefit payments under subchapter XVI of this chapter for October 2000 would be the second day of that month, prior to repeal by Pub. L. 106–246, div. B, title V, § 5105, July 13, 2000, 114 Stat. 582.

§ 910. Recommendations by Board of Trustees to remedy inadequate balances in Social Security trust funds

(a) Terms and conditions of recommendations

If the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund determines at any time that the balance ratio of any such Trust Fund for any calendar year may become less than 20 percent, the Board shall promptly submit to each House of the Congress a report setting forth its recommendations for statutory adjustments affecting the receipts and disbursements of such Trust Fund necessary to maintain the balance ratio of such Trust Fund at not less than 20 percent, with due regard to the economic conditions which created such inadequacy in the balance ratio and the amount of time necessary to alleviate such inadequacy in a prudent manner. The report shall set forth specifically the extent to which benefits would have to be reduced, taxes under section 1401, 3101, or 3111 of the Internal Revenue Code of 1986 would have to be increased, or a combination thereof, in order to obtain the objectives referred to in the preceding sentence.

(b) "Balance ratio" defined

For purposes of this section, the term ''balance ratio'' means, with respect to any calendar year in connection with any Trust Fund referred to in subsection (a) of this section, the ratio of—

(1) the balance in such Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 401(*l*) or 1395i(j) of this title, to

(2) the total amount which (for amounts which will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as estimated by the Commissioner, and for amounts which will be paid from the Federal Hospital Insurance Trust and the Federal Supplementary Medical Insurance Trust Fund, as estimated by the Secretary) will be paid from such Trust Fund during such calendar year for all purposes authorized by section 401, 1395i, or 1395t of this title (as applicable), other than payments of interest on, or repayments of, loans under section 401(*l*) or 1395i(j) of this title, but excluding any transfer payments between such Trust Fund and any other Trust Fund referred to in subsection (a) of this section and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from that Account.

(Aug. 14, 1935, ch. 531, title VII, § 709, as added Pub. L. 98–21, title I, § 143, Apr. 20, 1983, 97 Stat. 102; amended Pub. L. 99–272, title XII, § 12106, Apr. 7, 1986, 100 Stat. 286; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, § 108(a)(3), Aug. 15, 1994, 108 Stat. 1481.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–296 substituted ''(for amounts which will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as estimated by the Commissioner, and for amounts which will be paid from the Federal Hospital Insurance Trust and the Federal Supplementary Medical Insurance Trust Fund, as estimated by the Secretary)'' for ''(as estimated by the Secretary)''.

1986—Subsec. (a). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(1). Pub. L. 99–272 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the balance in such Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 401(*l*) or 1395i(j) of this title, as of the beginning of such year, to''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective on first day of month following April 1986, see section 12115 of Pub. L. 99–272, set out as a note under section 415 of this title.

§911. Budgetary treatment of trust fund operations

(a) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund and the taxes imposed under sections 1401 and 3101 of the Internal Revenue Code of 1986 shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(b) No provision of law enacted after December 12, 1985 (other than a provision of an appropriation Act that appropriated funds authorized under this chapter as in effect on December 12, 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in subsection (a) of this section or for payments from any such Trust Fund to the general fund of the Treasury.

(Aug. 14, 1935, ch. 531, title VII, §710, as added and amended Pub. L. 98–21, title III, §346(a)(1), (b), Apr. 20, 1983, 97 Stat. 137, 138; Pub. L. 99–177, title II, §261(a)(1), (b), Dec. 12, 1985, 99 Stat. 1093, 1094; Pub. L. 105–33, title X, §10209(c), Aug. 5, 1997, 111 Stat. 711.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1997—Pub. L. 105–33 amended section generally. Prior to amendment, section provided that receipts and disbursements of Federal Old-Age and Survivors Insurance Trust Fund, Federal Disability Insurance Trust Fund, and Federal Hospital Insurance Trust Fund and taxes imposed under sections 1401, 3101, and 3111 of title 26 were not to be included in totals of budget of United States Government, that no law enacted after Dec. 12, 1985, except certain appropriations Act provisions, could provide for payments from general fund of the Treasury to any such Trust Fund or from any such Trust Fund to general fund, and that disbursements of Federal Supplementary Medical Insurance Trust Fund were to be treated as a separate major functional category in budget of the Government.

1985—Subsec. (a). Pub. L. 99–177, §261(b), designated existing provisions as par. (1) and added par. (2).

Pub. L. 99–177, §261(a)(1)(E), temporarily added subsec. (a). See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (b). Pub. L. 99–177, §261(a)(1)(A)–(D), temporarily designated existing provisions as subsec. (b), struck out references to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, and substituted ''sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954'' for ''sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954''. See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (c). Pub. L. 99–177, §261(a)(1)(F), temporarily added subsec. (c). See Effective and Termination Dates of 1985 Amendment note below.

1983—Pub. L. 98–21, §346(b), amended section generally, adding subsec. (a) and designating existing provisions as subsec. (b) and striking out ''Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the'' after ''The disbursements of the'' and substituting ''such Trust Fund'' for ''such Trust Funds'', including the taxes imposed under sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954,'' after ''receipts of such Trust Fund''.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 261(a)(2) of Pub. L. 99–177 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to fiscal years beginning after September 30, 1985, and ending before October 1, 1992.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 346(b) of Pub. L. 98–21 provided that the amendment made by that section is effective for fiscal years beginning on or after Oct. 1, 1992.

EFFECTIVE AND TERMINATION DATES

Section 346(a)(2) of Pub. L. 98–21 provided that: ''The amendment made by paragraph (1) [enacting this section] shall apply with respect to fiscal years beginning on or after October 1, 1984, and ending on or before September 30, 1992, except that such amendment shall apply with respect to the fiscal year beginning on October 1, 1983, to the extent it relates to the congressional budget.''

§912. Office of Rural Health Policy

(a) There shall be established in the Department of Health and Human Services (in this section referred to as the ''Department'') an Office of Rural Health Policy (in this section referred to as the ''Office''). The Office shall be headed by a Director, who shall advise the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under subchapters XVIII and XIX of this chapter on the financial viability of small rural hospitals, the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, and access to (and the quality of) health care in rural areas.

(b) In addition to advising the Secretary with respect to the matters specified in subsection (a) of this section, the Director, through the Office, shall—

(1) oversee compliance with the requirements of section 1302(b) of this title and section 4403 of the Omnibus Budget Reconciliation Act of 1987 (as such section pertains to rural health issues),

(2) establish and maintain a clearinghouse for collecting and disseminating information on—

(A) rural health care issues, including rural mental health, rural infant mortality prevention, and rural occupational safety and preventive health promotion,

(B) research findings relating to rural health care, and

(C) innovative approaches to the delivery of health care in rural areas, including programs providing community-based mental health services, pre-natal and infant care services, and rural occupational safety and preventive health education and promotion,

(3) coordinate the activities within the Department that relate to rural health care,

(4) provide information to the Secretary and others in the Department with respect to the activities, of other Federal departments and

agencies, that relate to rural health care, including activities relating to rural mental health, rural infant mortality, and rural occupational safety and preventive health promotion, and

(5) administer grants, cooperative agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas.

(Aug. 14, 1935, ch. 531, title VII, § 711, as added Pub. L. 100–203, title IV, § 4401, Dec. 22, 1987, 101 Stat. 1330–225; amended Pub. L. 100–360, title IV, § 411(m)(1), July 1, 1988, 102 Stat. 806; Pub. L. 101–239, title VI, § 6213(g), Dec. 19, 1989, 103 Stat. 2251; Pub. L. 108–173, title IV, § 432, Dec. 8, 2003, 117 Stat. 2288.)

REFERENCES IN TEXT

Section 4403 of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (b)(1), is section 4403 of Pub. L. 100–203, which is set out as a note under section 1395b–1 of this title.

AMENDMENTS

2003—Subsec. (b)(5). Pub. L. 108–173 added par. (5).

1989—Subsec. (b)(2)(A). Pub. L. 101–239, § 6213(g)(1), substituted ''health care issues, including rural mental health, rural infant mortality prevention, and rural occupational safety and preventive health promotion'' for ''health care issues''.

Subsec. (b)(2)(C). Pub. L. 101–239, § 6213(g)(2), substituted ''health care in rural areas, including programs providing community-based mental health services, pre-natal and infant care services, and rural occupational safety and preventive health education and promotion'' for ''health care in rural areas''.

Subsec. (b)(4). Pub. L. 101–239, § 6213(g)(3), substituted ''rural health care, including activities relating to rural mental health, rural infant mortality, and rural occupational safety and preventive health promotion'' for ''rural health care''.

1988—Subsec. (b)(1). Pub. L. 100–360 substituted ''section 4403 of the Omnibus Budget Reconciliation Act of 1987 (as such section pertains to rural health issues)'' for ''section 4083 of the Omnibus Budget Reconciliation Act of 1987''.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

§ 913. Duties and authority of Secretary

The Secretary shall perform the duties imposed upon the Secretary by this chapter. The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures as may be necessary for carrying out the functions of the Secretary under this chapter. The Secretary may appoint attorneys and experts without regard to the civil service laws.

(Aug. 14, 1935, ch. 531, title VII, § 712, as added Pub. L. 103–296, title I, § 108(a)(1), Aug. 15, 1994, 108 Stat. 1481.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are classified generally to Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

SUBCHAPTER VIII—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

PRIOR PROVISIONS

A prior subchapter VIII, relating to taxes with respect to employment and consisting of sections 1001 to 1011 of this title, was omitted. See Prior Provisions note set out under section 1001 of this title.

§ 1001. Basic entitlement to benefits

Every individual who is a qualified individual under section 1002 of this title shall, in accordance with and subject to the provisions of this subchapter, be entitled to a monthly benefit paid by the Commissioner of Social Security for each month after September 2000 (or such earlier month, if the Commissioner determines is administratively feasible) the individual resides outside the United States.

(Aug. 14, 1935, ch. 531, title VIII, § 801, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1844.)

PRIOR PROVISIONS

Prior sections 1001 to 1011, act Aug. 14, 1935, ch. 531, title VIII, §§ 801–811, 49 Stat. 636–639, related to taxes with respect to employment. Section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1, which act enacted Title 26, Internal Revenue Code of 1939, provided that all laws and parts of laws codified into the I.R.C. 1939, to the extent that they related exclusively to internal revenue laws, were repealed. Provisions of I.R.C. 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. The omitted sections were formerly and are now covered by certain sections in Title 26, I.R.C. 1939 and I.R.C. 1986, respectively, as follows:

Omitted sections	I.R.C. 1939	I.R.C. 1986
1001	1400	3101.
1002	1402	3102.
1003	1401	3502.
1004	1410	3111.
1005	1411	6205(a), 6413(a).
1006	1421	6205(b), 6413(b).
1007	1420, 1430	3501.
1008	1429	7805(a), (c).
1009	1423, 1424	6801 et seq.
1010	1425	7208(1), 7209.
1011 (as amended Aug. 10, 1939, ch. 666, title IX, § 905(a), 53 Stat. 1400).	1426	3121, 7701(a)(1).

Section 1001 related to income tax on employees.

Section 1002 related to deduction of tax from wages.

Section 1003 related to deductibility from income taxes.

Section 1004 related to excise tax on employers.

Section 1005 related to adjustment of employers' tax.

Section 1006 related to refunds and deficiencies.

Section 1007 related to collection and payment of taxes.

Section 1008 related to rules and regulations.

Section 1009 related to sale by postmasters of stamps or other devices for collection or payment of tax.

Section 1010 related to penalties.

Section 1011 related to definitions.

§ 1002. Qualified individuals

Except as otherwise provided in this subchapter, an individual—

(1) who has attained the age of 65 on or before December 14, 1999;

(2) who is a World War II veteran;

(3) who is eligible for a supplemental security income benefit under subchapter XVI of this chapter for—

(A) the month in which this subchapter is enacted; and

(B) the month in which the individual files an application for benefits under this subchapter;

(4) whose total benefit income is less than 75 percent of the Federal benefit rate under subchapter XVI of this chapter;

(5) who has filed an application for benefits under this subchapter; and

(6) who is in compliance with all requirements imposed by the Commissioner of Social Security under this subchapter,

shall be a qualified individual for purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title VIII, § 802, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1844.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1003. Residence outside the United States

For purposes of section 1001 of this title, with respect to any month, an individual shall be regarded as residing outside the United States if, on the first day of the month, the individual so resides outside the United States.

(Aug. 14, 1935, ch. 531, title VIII, § 803, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1845.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1004. Disqualifications

(a) In general

Notwithstanding section 1002 of this title, an individual may not be a qualified individual for any month—

(1) that begins after the month in which the Commissioner of Social Security is notified by the Attorney General that the individual has been removed from the United States pursuant to section 1227(a) or 1182(a)(6)(A) of title 8 and before the month in which the individual is lawfully admitted to the United States for permanent residence;

(2) during any part of which the individual is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the United States or the jurisdiction within the United States from which the person has fled, for a crime, or an attempt to commit a crime, that is a felony under the laws of the place from which the individual has fled, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed;

(3) during any part of which the individual violates a condition of probation or parole imposed under Federal or State law; or

(4) during which the individual resides in a foreign country and is not a citizen or national of the United States if payments for such month to individuals residing in such country are withheld by the Treasury Department under section 3329 of title 31.

(b) Requirement for Attorney General

For the purpose of carrying out subsection (a)(1) of this section, the Attorney General shall notify the Commissioner of Social Security as soon as practicable after the removal of any individual under section 1227(a) or 1182(a)(6)(A) of title 8.

(Aug. 14, 1935, ch. 531, title VIII, § 804, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1845; amended Pub. L. 108–203, title II, § 203(c), Mar. 2, 2004, 118 Stat. 511.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–203 substituted ''or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed'' for ''or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 effective on the first day of the first month that begins on or after the date that is 9 months after Mar. 2, 2004, see section 203(d) of Pub. L. 108–203, set out as a note under section 402 of this title.

§ 1005. Benefit amount

The benefit under this subchapter payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate under subchapter XVI of this chapter for the month, reduced by the amount of the qualified individual's benefit income for the month.

(Aug. 14, 1935, ch. 531, title VIII, § 805, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1845.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1006. Applications and furnishing of information

(a) In general

The Commissioner of Social Security shall, subject to subsection (b) of this section, prescribe such requirements with respect to the filing of applications, the furnishing of information and other material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this subchapter.

(b) Verification requirement

The requirements prescribed by the Commissioner of Social Security under subsection (a) of this section shall preclude any determination of entitlement to benefits under this subchapter solely on the basis of declarations by the indi-

vidual concerning qualifications or other material facts, and shall provide for verification of material information from independent or collateral sources, and the procurement of additional information as necessary in order to ensure that the benefits are provided only to qualified individuals (or their representative payees) in correct amounts.

(Aug. 14, 1935, ch. 531, title VIII, § 806, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1846.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1007. Representative payees

(a) In general

If the Commissioner of Social Security determines that the interest of any qualified individual under this subchapter would be served thereby, payment of the qualified individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the qualified individual, either directly to the qualified individual, or for his or her use and benefit, to another person (the meaning of which term, for purposes of this section, includes an organization) with respect to whom the requirements of subsection (b) of this section have been met (in this section referred to as the qualified individual's ''representative payee''). If the Commissioner of Social Security determines that a representative payee has misused any benefit paid to the representative payee pursuant to this section, 405(j) of this title, or section 1383(a)(2) of this title, the Commissioner of Social Security shall promptly revoke the person's designation as the qualified individual's representative payee under this subsection, and shall make payment to an alternative representative payee or, if the interest of the qualified individual under this subchapter would be served thereby, to the qualified individual.

(b) Examination of fitness of prospective representative payee

(1) Any determination under subsection (a) of this section to pay the benefits of a qualified individual to a representative payee shall be made on the basis of—

(A) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of the determination and shall, to the extent practicable, include a face-to-face interview with the person (or, in the case of an organization, a representative of the organization); and

(B) adequate evidence that the arrangement is in the interest of the qualified individual.

(2) As part of the investigation referred to in paragraph (1), the Commissioner of Social Security shall—

(A) require the person being investigated to submit documented proof of the identity of the person;

(B) in the case of a person who has a social security account number issued for purposes of the program under subchapter II of this chapter or an employer identification number issued for purposes of the Internal Revenue Code of 1986, verify the number;

(C) determine whether the person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

(E) obtain information concerning whether such person is a person described in section 1004(a)(2) of this title; and

(F) determine whether payment of benefits to the person in the capacity as representative payee has been revoked or terminated pursuant to this section, section 405(j) of this title, or section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter II, or XVI of this chapter, respectively.

(3) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subsection, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(A) such person is described in section 1004(a)(2) of this title,

(B) such person has information that is necessary for the officer to conduct the officer's official duties, and

(C) the location or apprehension of such person is within the officer's official duties.

(c) Requirement for maintaining lists of undesirable payees

The Commissioner of Social Security shall establish and maintain lists which shall be updated periodically and which shall be in a form that renders such lists available to the servicing offices of the Social Security Administration. The lists shall consist of—

(1) the names and (if issued) social security account numbers or employer identification numbers of all persons with respect to whom, in the capacity of representative payee, the payment of benefits has been revoked or terminated under this section, section 405(j) of this title, or section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter II, or XVI of this chapter, respectively; and

(2) the names and (if issued) social security account numbers or employer identification numbers of all persons who have been convicted of a violation of section 408, 1011, or 1383a of this title.

(d) Persons ineligible to serve as representative payees

(1) In general

The benefits of a qualified individual may not be paid to any other person pursuant to this section if—

(A) the person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(B) except as provided in paragraph (2), payment of benefits to the person in the capacity of representative payee has been revoked or terminated under this section, section 405(j) of this title, or section 1383(a)(2)(A)(ii)[1] of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter II, or subchapter XVI of this chapter, respectively;

(C) except as provided in paragraph (2)(B), the person is a creditor of the qualified individual and provides the qualified individual with goods or services for consideration;

(D) such person has previously been convicted as described in subsection (b)(2)(D) of this section, unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or

(E) such person is a person described in section 1004(a)(2) of this title.

(2) Exemptions

(A) The Commissioner of Social Security may prescribe circumstances under which the Commissioner of Social Security may grant an exemption from paragraph (1) to any person on a case-by-case basis if the exemption is in the best interest of the qualified individual whose benefits would be paid to the person pursuant to this section.

(B) Paragraph (1)(C) shall not apply with respect to any person who is a creditor referred to in such paragraph if the creditor is—

(i) a relative of the qualified individual and the relative resides in the same household as the qualified individual;

(ii) a legal guardian or legal representative of the individual;

(iii) a facility that is licensed or certified as a care facility under the law of the political jurisdiction in which the qualified individual resides;

(iv) a person who is an administrator, owner, or employee of a facility referred to in clause (iii), if the qualified individual resides in the facility, and the payment to the facility or the person is made only after the Commissioner of Social Security has made a good faith effort to locate an alternative representative payee to whom payment would serve the best interests of the qualified individual; or

(v) a person who is determined by the Commissioner of Social Security, on the basis of written findings and pursuant to procedures prescribed by the Commissioner of Social Security, to be acceptable to serve as a representative payee.

(C) The procedures referred to in subparagraph (B)(v) shall require the person who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(i) the person poses no risk to the qualified individual;

(ii) the financial relationship of the person to the qualified individual poses no substantial conflict of interest; and

(iii) no other more suitable representative payee can be found.

(e) Deferral of payment pending appointment of representative payee

(1) In general

Subject to paragraph (2), if the Commissioner of Social Security makes a determination described in the first sentence of subsection (a) of this section with respect to any qualified individual's benefit and determines that direct payment of the benefit to the qualified individual would cause substantial harm to the qualified individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of the benefit to the qualified individual, until such time as the selection of a representative payee is made pursuant to this section.

(2) Time limitation

(A) In general

Except as provided in subparagraph (B), any deferral or suspension of direct payment of a benefit pursuant to paragraph (1) shall be for a period of not more than 1 month.

(B) Exception in the case of incompetency

Subparagraph (A) shall not apply in any case in which the qualified individual is, as of the date of the Commissioner of Social Security's determination, legally incompetent under the laws of the jurisdiction in which the individual resides.

(3) Payment of retroactive benefits

Payment of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the qualified individual or the representative payee as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interest of the qualified individual.

(f) Hearing

Any qualified individual who is dissatisfied with a determination by the Commissioner of Social Security to make payment of the qualified individual's benefit to a representative payee under subsection (a) of this section or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner of Social Security to the same extent as is provided in section 1009(a) of this title, and to judicial review of the Commissioner of Social Security's final decision as is provided in section 1009(b) of this title.

(g) Notice requirements

(1) In general

In advance, to the extent practicable, of the payment of a qualified individual's benefit to

[1] So in original. Probably should be "1383(a)(2)(A)(iii)".

a representative payee under subsection (a) of this section, the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to so make the payment. The notice shall be provided to the qualified individual, except that, if the qualified individual is legally incompetent, then the notice shall be provided solely to the legal guardian or legal representative of the qualified individual.

(2) Specific requirements

Any notice required by paragraph (1) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as the qualified individual's representative payee, and shall explain to the reader the right under subsection (f) of this section of the qualified individual or of the qualified individual's legal guardian or legal representative—

(A) to appeal a determination that a representative payee is necessary for the qualified individual;

(B) to appeal the designation of a particular person to serve as the representative payee of the qualified individual; and

(C) to review the evidence upon which the designation is based and to submit additional evidence.

(h) Accountability monitoring

(1) In general

In any case where payment under this subchapter is made to a person other than the qualified individual entitled to the payment, the Commissioner of Social Security shall establish a system of accountability monitoring under which the person shall report not less often than annually with respect to the use of the payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing the reports in order to identify instances in which persons are not properly using the payments.

(2) Special reports

Notwithstanding paragraph (1), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of a qualified individual, if the Commissioner of Social Security has reason to believe that the person receiving the payments is misusing the payments.

(3) Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting

In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.

(4) Maintaining lists of payees

The Commissioner of Social Security shall maintain lists which shall be updated periodically of—

(A) the name, address, and (if issued) the social security account number or employer identification number of each representative payee who is receiving benefit payments pursuant to this section, section 405(j) of this title, or section 1383(a)(2) of this title; and

(B) the name, address, and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this section, section 405(j) of this title, or section 1383(a)(2) of this title.

(5) Maintaining lists of agencies

The Commissioner of Social Security shall maintain lists, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this section and which are located in the jurisdiction in which any qualified individual resides.

(i) Restitution

In any case where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the qualified individual or the individual's alternative representative payee of an amount equal to the misused benefits. In any case in which a representative payee that—

(A) is not an individual; or

(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this subchapter, subchapter II of this chapter, subchapter XVI of this chapter, or any combination of such subchapters;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (*l*)(2) of this section. The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(j) Misuse of benefits

For purposes of this subchapter, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person under this subchapter and converts such payment, or any part thereof, to a use other than for the use and benefit of such person. The Commissioner of Social Security may prescribe by regulation the meaning of the term ''use and benefit'' for purposes of this subsection.

(k) Periodic onsite review

(1) In general

In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this subchapter (alone or in combination with benefits payable under subchapter II of this chapter or subchapter XVI of this chapter) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 405(j) of this title, or section 1383(a)(2) of this title in any case in which—

(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

(2) Report

Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this subchapter. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

(A) the number of such reviews;

(B) the results of such reviews;

(C) the number of cases in which the representative payee was changed and why;

(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(E) the number of cases discovered in which there was a misuse of funds;

(F) how any such cases of misuse of funds were dealt with by the Commissioner;

(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(H) such other information as the Commissioner deems appropriate.

(*l*) Liability for misused amounts

(1) In general

If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual's alternative representative payee.

(2) Limitation

The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) and the amount paid under subsection (i) of this section may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(Aug. 14, 1935, ch. 531, title VIII, §807, as added Pub. L. 106–169, title II, §251(a), Dec. 14, 1999, 113 Stat. 1846; amended Pub. L. 108–203, title I, §§101(b), 102(b)(2), 103(b), 105(b), 106(b), Mar. 2, 2004, 118 Stat. 495, 499, 501, 504, 506.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(2)(B), (3), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–203, §101(b)(3), substituted "for his or her use and benefit" for "for his or her benefit".

Subsec. (b)(2)(D) to (F). Pub. L. 108–203, §103(b)(1), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

Subsec. (b)(3). Pub. L. 108–203, §103(b)(2), added par. (3).

Subsec. (d)(1)(D), (E). Pub. L. 108–203, §103(b)(3), added subpars. (D) and (E).

Subsec. (h)(3) to (5). Pub. L. 108–203, §106(b), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (i). Pub. L. 108–203, §101(b)(1), inserted second and third sentences.

Subsec. (j). Pub. L. 108–203, §101(b)(2), added subsec. (j).

Subsec. (k). Pub. L. 108–203, §102(b)(2), added subsec. (k).

Subsec. (*l*). Pub. L. 108–203, §105(b), added subsec. (*l*).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b) of Pub. L. 108–203 applicable to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1995, see section 101(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 103(b) of Pub. L. 108–203 effective on the first day of the thirteenth month beginning after Mar. 2, 2004, see section 103(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 105(b) of Pub. L. 108–203 applicable to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after Mar. 2, 2004, see section 105(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 106(b) of Pub. L. 108–203 effective 180 days after Mar. 2, 2004, see section 106(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

§ 1008. Overpayments and underpayments

(a) In general

Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, as follows:

(1) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this subchapter to which the overpaid person (if a qualified individual) is entitled, or shall require the overpaid person or his or her estate to refund the amount in excess of the correct amount, or, if recovery is not obtained under these two methods, shall seek or pursue recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury, as authorized under section 3720A of title 31.

(2) With respect to payment of less than the correct amount to a qualified individual who, at the time the Commissioner of Social Security is prepared to take action with respect to the underpayment—

(A) is living, the Commissioner of Social Security shall make payment to the qualified individual (or the qualified individual's representative payee designated under section 1007 of this title) of the balance of the amount due the underpaid qualified individual; or

(B) is deceased, the balance of the amount due shall revert to the general fund of the Treasury.

(b) Waiver of recovery of overpayment

In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if the Commissioner of Social Security determines that the adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) Limited immunity for disbursing officers

A disbursing officer may not be held liable for any amount paid by the officer if the adjustment or recovery of the amount is waived under subsection (b) of this section, or adjustment under subsection (a) of this section is not completed before the death of the qualified individual against whose benefits deductions are authorized.

(d) Authorized collection practices

(1) In general

With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(e), 3716, and 3718 of title 31, as in effect on October 1, 1994.

(2) Definition

For purposes of paragraph (1), the term ''delinquent amount'' means an amount—

(A) in excess of the correct amount of the payment under this subchapter; and

(B) determined by the Commissioner of Social Security to be otherwise unrecoverable under this section from a person who is not a qualified individual under this subchapter.

(e) Cross-program recovery of overpayments

For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b–17 of this title.

(Aug. 14, 1935, ch. 531, title VIII, § 808, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1850; amended Pub. L. 108–203, title II, § 210(b)(2), Mar. 2, 2004, 118 Stat. 517.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–203, § 210(b)(2)(A), substituted ''any payment'' for ''any payment—'', struck out ''(A)'' before ''under this subchapter'', substituted ''section 3720A of title 31.'' for ''section 3720A of title 31; or'', and struck out subpar. (B) which read as follows: ''under subchapter II of this chapter to recover the amount in excess of the correct amount, if the person is not currently eligible for payment under this subchapter.''

Subsec. (b) to (d). Pub. L. 108–203, § 210(b)(2)(B), redesignated subsecs. (c) to (e) as (b) to (d), respectively, and struck out heading and text of subsec. (b). Text read as follows: ''In any case in which the Commissioner of Social Security takes action in accordance with subsection (a)(1)(B) of this section to recover an amount incorrectly paid to an individual, that individual shall not, as a result of such action—

''(1) become qualified for benefits under this subchapter; or

''(2) if such individual is otherwise so qualified, become qualified for increased benefits under this subchapter.''

Subsec. (e). Pub. L. 108–203, § 210(b)(2)(B), (C), added subsec. (e) and redesignated former subsec. (e) as (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as a note under section 404 of this title.

§ 1009. Hearings and review

(a) Hearings

(1) In general

The Commissioner of Social Security shall make findings of fact and decisions as to the rights of any individual applying for payment under this subchapter. The Commissioner of Social Security shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be a qualified individual and is in disagreement with any determination under this subchapter with respect to entitlement to, or the amount of, benefits under this subchapter, if the individual requests a hearing on the matter in disagreement within 60 days after notice of the determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse the Commissioner of Social Security's findings of fact and the decision. The Commissioner of Social Security may, on the Commissioner of Social

Security's own motion, hold such hearings and conduct such investigations and other proceedings as the Commissioner of Social Security deems necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under the rules of evidence applicable to court procedure. The Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation of the individual (including any lack of facility with the English language) in determining, with respect to the entitlement of the individual for benefits under this subchapter, whether the individual acted in good faith or was at fault, and in determining fraud, deception, or intent.

(2) Effect of failure to timely request review

A failure to timely request review of an initial adverse determination with respect to an application for any payment under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this subchapter if the applicant demonstrates that the applicant failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration.

(3) Notice requirements

In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Commissioner of Social Security shall describe in clear and specific language the effect on possible entitlement to benefits under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(b) Judicial review

The final determination of the Commissioner of Social Security after a hearing under subsection (a)(1) of this section shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Commissioner of Social Security's final determinations under section 405 of this title.

(Aug. 14, 1935, ch. 531, title VIII, § 809, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1851.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1010. Other administrative provisions

(a) Regulations and administrative arrangements

The Commissioner of Social Security may prescribe such regulations, and make such administrative and other arrangements, as may be necessary or appropriate to carry out this subchapter.

(b) Payment of benefits

Benefits under this subchapter shall be paid at such time or times and in such installments as the Commissioner of Social Security determines are in the interests of economy and efficiency.

(c) Entitlement redeterminations

An individual's entitlement to benefits under this subchapter, and the amount of the benefits, may be redetermined at such time or times as the Commissioner of Social Security determines to be appropriate.

(d) Suspension and termination of benefits

Regulations prescribed by the Commissioner of Social Security under subsection (a) of this section may provide for the suspension and termination of entitlement to benefits under this subchapter as the Commissioner determines is appropriate.

(Aug. 14, 1935, ch. 531, title VIII, § 810, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1852.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1010a. Optional Federal administration of State recognition payments

(a) In general

The Commissioner of Social Security may enter into an agreement with any State (or political subdivision thereof) that provides cash payments on a regular basis to individuals entitled to benefits under this subchapter under which the Commissioner of Social Security shall make such payments on behalf of such State (or subdivision).

(b) Agreement terms

(1) In general

Such agreement shall include such terms as the Commissioner of Social Security finds necessary to achieve efficient and effective administration of both this subchapter and the State program.

(2) Financial terms

Such agreement shall provide for the State to pay the Commissioner of Social Security, at such times and in such installments as the parties may specify—

(A) an amount equal to the expenditures made by the Commissioner of Social Security pursuant to such agreement as payments to individuals on behalf of such State; and

(B) an administration fee to reimburse the administrative expenses incurred by the Commissioner of Social Security in making payments to individuals on behalf of the State.

(c) Special disposition of administration fees

Administration fees, upon collection, shall be credited to a special fund established in the Treasury of the United States for State recogni-

tion payments for certain World War II veterans. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out this subchapter.

(Aug. 14, 1935, ch. 531, title VIII, § 810A, as added Pub. L. 106–554, § 1(a)(1) [title V, § 518(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–73.)

§ 1011. Penalties for fraud

(a) In general

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in an application for benefits under this subchapter;

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining any right to the benefits;

(3) having knowledge of the occurrence of any event affecting—

(A) his or her initial or continued right to the benefits; or

(B) the initial or continued right to the benefits of any other individual in whose behalf he or she has applied for or is receiving the benefit,

conceals or fails to disclose the event with an intent fraudulently to secure the benefit either in a greater amount or quantity than is due or when no such benefit is authorized; or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts the benefit or any part thereof to a use other than for the use and benefit of the other individual,

shall be fined under title 18, imprisoned not more than 5 years, or both.

(b) Court order for restitution

(1) In general

Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) of this section, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

(B) an individual suffering a financial loss due to the defendant's violation of subsection (a) of this section in his or her capacity as the individual's representative payee appointed pursuant to section 1007(i) of this title.

(2) Related provisions

Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

(3) Stated reasons for not ordering restitution

If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4) Receipt of restitution payments

(A) In general

Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(B) Payment to the individual

In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this subchapter, subchapter II of this chapter, or subchapter XVI of this chapter by the individual.

(Aug. 14, 1935, ch. 531, title VIII, § 811, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1852; amended Pub. L. 108–203, title II, § 209(b), Mar. 2, 2004, 118 Stat. 514.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–203 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "If a person or organization violates subsection (a) of this section in the person's or organization's role as, or in applying to become, a representative payee under section 1007 of this title on behalf of a qualified individual, and the violation includes a willful misuse of funds by the person or entity, the court may also require that full or partial restitution of funds be made to the qualified individual."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 applicable with respect to violations occurring on or after Mar. 2, 2004, see section 209(d) of Pub. L. 108–203, set out as a note under section 408 of this title.

§ 1012. Definitions

In this subchapter:

(1) World War II veteran

The term "World War II veteran" means a person who—

(A) served during World War II—

(i) in the active military, naval, or air service of the United States during World War II; or

(ii) in the organized military forces of the Government of the Commonwealth of the Philippines, while the forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including among the military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other com-

petent authority in the Army of the United States, in any case in which the service was rendered before December 31, 1946; and

(B) was discharged or released therefrom under conditions other than dishonorable—

(i) after service of 90 days or more; or

(ii) because of a disability or injury incurred or aggravated in the line of active duty.

(2) World War II

The term ''World War II'' means the period beginning on September 16, 1940, and ending on July 24, 1947.

(3) Supplemental security income benefit under subchapter XVI

The term ''supplemental security income benefit under subchapter XVI'', except as otherwise provided, includes State supplementary payments which are paid by the Commissioner of Social Security pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66.

(4) Federal benefit rate under subchapter XVI

The term ''Federal benefit rate under subchapter XVI of this chapter'' means, with respect to any month, the amount of the supplemental security income cash benefit (not including any State supplementary payment which is paid by the Commissioner of Social Security pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66) payable under subchapter XVI of this chapter for the month to an eligible individual with no income.

(5) United States

The term ''United States'' means, notwithstanding section 1301(a)(1) of this title, only the 50 States, the District of Columbia, and the Commonwealth of the Northern Mariana Islands.

(6) Benefit income

The term ''benefit income'' means any recurring payment received by a qualified individual as an annuity, pension, retirement, or disability benefit (including any veterans' compensation or pension, workmen's compensation payment, old-age, survivors, or disability insurance benefit, railroad retirement annuity or pension, and unemployment insurance benefit), but only if a similar payment was received by the individual from the same (or a related) source during the 12-month period preceding the month in which the individual files an application for benefits under this subchapter.

(Aug. 14, 1935, ch. 531, title VIII, § 812, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1853.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in pars. (3) and (4), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

§ 1013. Appropriations

There are hereby appropriated for fiscal year 2000 and subsequent fiscal years, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary to carry out this subchapter.

(Aug. 14, 1935, ch. 531, title VIII, § 813, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1854.)

SUBCHAPTER IX—EMPLOYMENT SECURITY ADMINISTRATIVE FINANCING

AMENDMENTS

1954—Act Aug. 5, 1954, ch. 657, § 2, 68 Stat. 668, in amending subchapter generally substituted subchapter heading ''EMPLOYMENT SECURITY ADMINISTRATIVE FINANCING'' for ''TAX ON EMPLOYMENT OF EIGHT OR MORE''.

PRIOR LAW; TAX ON EMPLOYERS OF EIGHT OR MORE

Former subchapter IX, sections 1101–1103, 1105–1110, act Aug. 14, 1935, ch. 531, title IX, §§ 901–903, 905–910, 49 Stat. 639–644, related to taxes on employers of eight or more. Section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1, which act enacted Title 26, Internal Revenue Code of 1939, provided that all laws and parts of laws codified into the I.R.C. 1939, to the extent that they related exclusively to internal revenue laws, were repealed. Provisions of I.R.C. 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. Said prior law sections were formerly and are now covered by certain sections in Title 26, I.R.C. 1939 and I.R.C. 1986, respectively, as follows:

Former sections	I.R.C. 1939	I.R.C. 1986
1101	1600	3301.
1102	1601(a)	3302.
1103	1603	3304.
1105	1604, 1605, 1610	3501, 6011(a), 6065, 6071, 6081(a), 6091(b)(1), (2), 6106, 6152(a)(3), (b), 6161(a)(1), 6313, 6601(a), (f)(1).
1106	1606	3305.
1107 (as amended act June 25, 1938, ch. 680, § 13(a), 52 Stat. 1110).	1607	3306, 7701(a)(1).
1108	1609	7805(a), (c).
1109	1601(b), (c)	3302.
1110	1602	3303.

REPAIR OF 1938 HURRICANE DAMAGE

Act Aug. 11, 1939, ch. 719, § 1, 53 Stat. 1420, provided that no special security taxes should be collected for work done prior to Jan. 1, 1940, in cleaning up debris and damage caused by the 1938 hurricane.

CREDITS AGAINST SOCIAL SECURITY TAX

Act Aug. 10, 1939, ch. 666, title IX, § 902(a)–(d), (h), 53 Stat. 1399, provided for a credit against the social security tax of certain contributions made with respect to employment during calendar years 1936, 1937, or 1938. Said act Aug. 10, 1939, was affected by act Sept. 20, 1941, ch. 412, title VII, § 701(c), 55 Stat. 728.

Act May 28, 1938, ch. 289, § 810, 52 Stat. 576, related to credits against Social Security Tax for 1936. It was affected by act Sept. 20, 1941, ch. 412, title VII, § 701(c), 55 Stat. 728, relating to credit against Federal unemployment taxes.

§ 1101. Employment security administration account

(a) Establishment

There is hereby established in the Unemployment Trust Fund an employment security administration account.

(b) Amount credited to Account; transfer of funds; adjustments; repayment of internal revenue refunds

(1) There is hereby appropriated to the Unemployment Trust Fund for credit to the employment security administration account, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1961, and for each fiscal year thereafter, an amount equal to 100 per centum of the tax (including interest, penalties, and additions to the tax) received during the fiscal year under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] and covered into the Treasury.

(2) The amount appropriated by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Unemployment Trust Fund and credited to the employment security administration account. Each such transfer shall be based on estimates made by the Secretary of the Treasury of the amounts received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred, to the extent prior estimates (including estimates for the fiscal year ending June 30, 1960) were in excess of or were less than the amounts required to be transferred.

(3) The Secretary of the Treasury is directed to pay from time to time from the employment security administration account into the Treasury, as repayments to the account for refunding internal revenue collections, amounts equal to all refunds made after June 30, 1960, of amounts received as tax under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] (including interest on such refunds).

(c) Administrative expenditures; necessary expenses; quarterly transfer of funds; adjustments; limitation; estimate of net receipts

(1) There are hereby authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, 1971, and for each fiscal year thereafter—

(A) such amounts (not in excess of the applicable limit provided by paragraph (3) and, with respect to clause (ii), not in excess of the limit provided by paragraph (4)) as the Congress may deem appropriate for the purpose of—

(i) assisting the States in the administration of their unemployment compensation laws as provided in subchapter III of this chapter (including administration pursuant to agreements under any Federal unemployment compensation law),

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (29 U.S.C., secs. 49–49n), and

(iii) carrying into effect section 4103 of title 38;

(B) such amounts (not in excess of the limit provided by paragraph (4) with respect to clause (iii)) as the Congress may deem appropriate for the necessary expenses of the Department of Labor for the performance of its functions under—

(i) this subchapter and subchapters III and XII of this chapter,

(ii) the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.],

(iii) the provisions of the Act of June 6, 1933, as amended [29 U.S.C. 49 et seq.],

(iv) chapter 41 (except section 4103) of title 38, and

(v) any Federal unemployment compensation law.

The term ''necessary expenses'' as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees for travel expenses, transportation of household goods, and per diem in lieu of subsistence while away from their regular duty stations in the State, at rates authorized by law for civilian employees of the Federal Government.

(2) The Secretary of the Treasury is directed to pay from the employment security administration account into the Treasury as miscellaneous receipts the amount estimated by him which will be expended during a three-month period by the Treasury Department for the performance of its functions under—

(A) this subchapter and subchapters III and XII of this chapter, including the expenses of banks for servicing unemployment benefit payment and clearing accounts which are offset by the maintenance of balances of Treasury funds with such banks,

(B) the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], and

(C) any Federal unemployment compensation law with respect to which responsibility for administration is vested in the Secretary of Labor.

If it subsequently appears that the estimates under this paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Secretary of the Treasury in future payments.

(3)(A) For purposes of paragraph (1)(A), the limitation on the amount authorized to be made available for any fiscal year after June 30, 1970, is, except as provided in subparagraph (B) and in the second sentence of subsection (f)(3)(A) of this section, an amount equal to 95 percent of the amount estimated and set forth in the budget of the United States Government for such fiscal year as the amount by which the net receipts during such year under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] will exceed the amount transferred under section 1105(b) of this title during such year to the extended unemployment compensation account.

(B) The limitation established by subparagraph (A) is increased by any unexpended amount retained in the employment security administration account in accordance with subsection (f)(2)(B) of this section.

(C) Each estimate of net receipts under this paragraph shall be based upon a tax rate of 0.6 percent.

(4) For purposes of paragraphs (1)(A)(ii) and (1)(B)(iii) the amount authorized to be made available out of the employment security administration account for any fiscal year after June 30, 1972, shall reflect the proportion of the total cost of administering the system of public employment offices in accordance with the Act

of June 6, 1933, as amended [29 U.S.C. 49 et seq.], and of the necessary expenses of the Department of Labor for the performance of its functions under the provisions of such Act, as the President determines is an appropriate charge to the employment security administration account, and reflects in his annual budget for such year. The President's determination, after consultation with the Secretary, shall take into account such factors as the relationship between employment subject to State laws and the total labor force in the United States, the number of claimants and the number of job applicants, and such other factors as he finds relevant.

(5)(A) There are authorized to be appropriated out of the employment security administration account to carry out program integrity activities, in addition to any amounts available under paragraph (1)(A)(i)—

(i) $89,000,000 for fiscal year 1998;

(ii) $91,000,000 for fiscal year 1999;

(iii) $93,000,000[1] fiscal year 2000;

(iv) $96,000,000 for fiscal year 2001; and

(v) $98,000,000 for fiscal year 2002.

(B) In any fiscal year in which a State receives funds appropriated pursuant to this paragraph, the State shall expend a proportion of the funds appropriated pursuant to paragraph (1)(A)(i) to carry out program integrity activities that is not less than the proportion of the funds appropriated under such paragraph that was expended by the State to carry out program integrity activities in fiscal year 1997.

(C) For purposes of this paragraph, the term ''program integrity activities'' means initial claims review activities, eligibility review activities, benefit payments control activities, and employer liability auditing activities.

(d) Additional tax attributable to reduced credits; transfer of funds

(1) The Secretary of the Treasury is directed to transfer from the employment security administration account—

(A) To the Federal unemployment account, an amount equal to the amount by which—

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] with respect to any State by reason of the reduced credits provisions of section 3302(c)(3) of such Act [26 U.S.C. 3302(c)(3)] and covered into the Treasury for the repayment of advances made to the State under section 1321 of this title, exceeds

(ii) the amount transferred to the account of such State pursuant to subparagraph (B) of this paragraph.

Any amount transferred pursuant to this subparagraph shall be credited against, and shall operate to reduce, that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which such additional tax received and covered into the Treasury exceeds that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) of this section.

(e) Revolving fund; appropriations; advances to Account; repayment; interest

(1) There is hereby established in the Treasury a revolving fund which shall be available to make the advances authorized by this subsection. There are hereby authorized to be appropriated, without fiscal year limitation, to such revolving fund such amounts as may be necessary for the purposes of this section.

(2) The Secretary of the Treasury is directed to advance from time to time from the revolving fund to the employment security administration account such amounts as may be necessary for the purposes of this section. If the net balance in the employment security administration account as of the beginning of any fiscal year equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the preceding fiscal year, no advance may be made under this subsection during such fiscal year.

(3) Advances to the employment security administration account made under this subsection shall bear interest until repaid at a rate equal to the average rate of interest (computed as of the end of the calendar month next preceding the date of such advance) borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) Advances to the employment security administration account made under this subsection, plus interest accrued thereon, shall be repaid by the transfer from time to time, from the employment security administration account to the revolving fund, of such amounts as the Secretary of the Treasury, in consultation with the Secretary of Labor, determines to be available in the employment security administration account for such repayment. Any amount transferred as a repayment under this paragraph shall be credited against, and shall operate to reduce, any balance of advances (plus accrued interest) repayable under this subsection.

(f) Determination of excess in Account; limitation on amount to be retained; use of balance in Account during certain fiscal years; net balance

(1) The Secretary of the Treasury shall determine as of the close of each fiscal year (beginning with the fiscal year ending June 30, 1961) the excess in the employment security administration account.

(2) The excess in the employment security administration account as of the close of any fis-

[1] So in original. Probably should be followed by ''for''.

cal year is the amount by which the net balance in such account as of such time (after the application of section 1102(b) of this title and paragraph (3)(C) of this subsection) exceeds the net balance in the employment security administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher than as of the beginning of any other such fiscal year.

(3)(A) The excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account until the amount in such account is equal to 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the fiscal year for which the excess is determined. Three-eighths of the amount in the employment security administration account as of the beginning of any fiscal year after June 30, 1972, or $150 million, whichever is the lesser, is authorized to be made available for such fiscal year pursuant to subsection (c)(1) of this section for additional costs of administration due to an increase in the rate of insured unemployment for a calendar quarter of at least 15 percent over the rate of insured unemployment for the corresponding calendar quarter in the immediately preceding year.

(B) If the entire amount of the excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, is not retained in the employment security administration account, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the balance of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to the limit provided in section 1105(b)(2) of this title.

(C) If as of the close of any fiscal year after June 30, 1972, the amount in the extended unemployment compensation account exceeds the limit provided in section 1105(b)(2) of this title, such excess shall be transferred to the employment security administration account as of the close of such fiscal year.

(4) For the purposes of this section, the net balance in the employment security administration account as of any time is the amount in such account as of such time reduced by the sum of—

(A) the amounts then subject to transfer pursuant to subsection (d) of this section, and

(B) the balance of advances (plus interest accrued thereon) then repayable to the revolving fund established by subsection (e) of this section.

The net balance in the employment security administration account as of the beginning of any fiscal year shall be determined after the disposition of the excess in such account as of the close of the preceding fiscal year.

(Aug. 14, 1935, ch. 531, title IX, § 901, as added Aug. 5, 1954, ch. 657, § 2, 68 Stat. 668; amended Pub. L. 86–778, title V, § 521, Sept. 13, 1960, 74 Stat. 970; Pub. L. 87–31, § 7, May 8, 1961, 75 Stat. 78; Pub. L. 88–31, § 1, May 29, 1963, 77 Stat. 51; Pub. L. 91–53, § 3, Aug. 7, 1969, 83 Stat. 93; Pub. L. 91–373, title III, § 303, Aug. 10, 1970, 84 Stat. 713; Pub. L. 94–273, § 39, Apr. 21, 1976, 90 Stat. 381; Pub. L. 94–566, title II, § 211(e)(1) [(c)(1)], Oct. 20, 1976, 90 Stat. 2676; Pub. L. 97–248, title II, § 271(b)(2)(A), (c)(3)(D), Sept. 3, 1982, 96 Stat. 554, 555; Pub. L. 98–369, div. B, title VI, § 2663(d)(1), (2), July 18, 1984, 98 Stat. 1167; Pub. L. 100–203, title IX, § 9154(a), (c)(2), Dec. 22, 1987, 101 Stat. 1330–326; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–318, title V, § 531(d)(1), (2), July 3, 1992, 106 Stat. 316, 317; Pub. L. 105–33, title V, § 5408, Aug. 5, 1997, 111 Stat. 605.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsecs. (b)(1), (3), (c)(1)(B)(ii), (2)(B), (3)(A), and (d)(1)(A)(i), is act Aug. 16, 1954, ch. 736, §§ 3301 to 3311, 68A Stat. 439, as amended, which is classified generally to chapter 23 (§ 3301 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.

Act of June 6, 1933, as amended (29 U.S.C. 49–49n), referred to in subsec. (c)(1)(A)(ii), (B)(iii), and (4), probably means act June 6, 1933, ch. 49, 48 Stat. 113, as amended, known as the Wagner-Peyser Act, which is classified generally to chapter 4B (§ 49 et seq.) of Title 29, Labor. Sections 49m and 49n were not part of act June 6, 1933. For complete classification of this Act to the Code, see Short Title note set out under section 49 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 1101, act Aug. 14, 1935, ch. 531, title IX, § 901, 49 Stat. 639, related to imposition of tax. For further details, see Prior Law note set out preceding this section.

AMENDMENTS

1997—Subsec. (c)(5). Pub. L. 105–33 added par. (5).

1992—Subsec. (f)(2). Pub. L. 102–318, § 531(d)(1), struck out designation for subpar. (A), substituted ''The'' for ''Except as provided in subparagraph (B), the'', and struck out subpar. (B) which read as follows: ''With respect to the fiscal years ending June 30, 1970, June 30, 1971, and June 30, 1972, the balance in the employment security administration account at the close of each such fiscal year shall not be considered excess but shall be retained in the account for use as provided in paragraph (1) of subsection (c) of this section.''

Subsec. (g). Pub. L. 102–318, § 531(d)(2), struck out subsec. (g) which read as follows:

''(1) With respect to calendar years 1988, 1989, and 1990, the Secretary of the Treasury shall transfer from the employment security administration account—

''(A) to the Federal unemployment account an amount equal to 50 percent of the amount of tax received under section 3301(1) of the Federal Unemployment Tax Act which is attributable to the difference in the tax rates between paragraphs (1) and (2) of such section; and

''(B) to the extended unemployment compensation account an amount equal to 50 percent of such amount of tax received.

''(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) of this section with respect to wages paid during such calendar years.''

1991—Subsec. (c)(1)(A)(iii), (B)(iv). Pub. L. 102–83 substituted reference to section 4103 of title 38 for reference to section 2003 of title 38.

1987—Subsec. (c)(3)(C). Pub. L. 100–203, § 9154(c)(2), substituted ''a tax rate of 0.6 percent'' for ''(i) a tax rate of 0.6 percent in the case of any calendar year for which

the rate of tax under section 3301 of the Federal Unemployment Tax Act is 6.0 percent, and (ii) a tax rate of 0.8 percent in the case of any calendar year for which the rate of tax under such section is 6.2 percent''.

Subsec. (g). Pub. L. 100–203, §9154(a), added subsec. (g).

1984—Subsec. (c). Pub. L. 98–369, §2663(d)(1), realigned margins of subsec. (c).

Subsec. (f). Pub. L. 98–369, §2663(d)(2), realigned margins of par. (3).

1982—Subsec. (c)(3)(C). Pub. L. 97–248, §271(c)(3)(D), substituted ''0.6'' for ''0.5'', ''6.0'' for ''3.2'', and ''6.2'' for ''3.5''.

Subsec. (c)(3)(C)(ii). Pub. L. 97–248, §271(b)(2)(A), substituted ''0.8'' for ''0.7'', struck out ''3301'' after ''tax under such section'', and substituted ''3.5'' for ''3.4''.

1976—Subsec. (c)(3)(C). Pub. L. 94–566 limited existing provisions by making them applicable only in the case of calendar years for which the rate of tax under section 3301 of the Federal Unemployment Tax Act is 3.2 percent, designated the existing provisions as so amended as cl. (i) and added cl. (ii).

Subsec. (f)(3)(A). Pub. L. 94–273 struck out ''fiscal'' after ''immediately preceding''.

1970—Subsec. (c)(1). Pub. L. 91–373, §303(a)(1), substituted ''fiscal year ending June 30, 1971'' for ''fiscal year ending June 30, 1964'', inserted reference to par. (4), struck out reference to the Temporary Unemployment Compensation Act of 1958, as amended, and substituted ''section 2003 of title 38'' for ''section 2012 of title 38''.

Subsec. (c)(2). Pub. L. 91–373, §303(a)(2), struck out provision for the exclusion of amounts attributable to the Temporary Unemployment Compensation Act of 1958, as amended.

Subsec. (c)(3). Pub. L. 91–373, §303(a)(3), changed the ceiling on the amount in the employment security administration account authorized for appropriation for State grants by making it 95 percent of the amount set forth in the budget of the United States Government as the amount by which the net receipts during the fiscal year are estimated to exceed the amount transferred to the extended unemployment compensation account under section 1105(b) of this title.

Subsec. (c)(4). Pub. L. 91–373, §303(a)(4), added par. (4).

Subsec. (d). Pub. L. 91–373, §303(b), struck out reference to section 3302(c)(2) of the Federal Unemployment Tax Act in par. (1)(A)(i), struck out provision for separate application of par. (1) in years in which there was both a balance described in sections 3302(c)(2) and 3302(c)(3) of the Federal Unemployment Tax Act, redesignated par. (3) as par. (2), and struck out former par. (2) covering the transfer of funds from the employment security administration account to the general fund of the Treasury and to the State account, with respect to which employers paid additional tax, received by reason of the reduced credit provisions of section 1400c of this title.

Subsec. (e)(2). Pub. L. 91–373, §303(c), substituted ''equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account of the preceding fiscal year'' for ''is $250,000,000''.

Subsec. (f)(2)(A). Pub. L. 91–373, §303(d)(1), inserted reference to par. (3)(C) of this subsection.

Subsec. (f)(3). Pub. L. 91–373, §303(d)(2), revised provisions for the distribution of any excess in the employment security administration account at the end of any fiscal year after June 30, 1972.

1969—Subsec. (c)(3). Pub. L. 91–53, §3(a), struck out subpar. (A) provisions limiting expenditures for fiscal year ending June 30, 1964, to 95 percent of amount estimated by the Secretary of Treasury as the net receipts during such fiscal year under the Federal Unemployment Tax Act, redesignated subpar. (B) provisions as par. (3) without restricting their application to fiscal years ending after June 30, 1964, increased expenditure limitation by unexpended amount retained in the employment security administration account in accordance with subsec. (f)(2)(B) of this section, reenacted provision for estimate of net receipts, and struck out dated provisions requiring the Secretary of Treasury to report to Congress his estimate under subpar. (A) within thirty days after May 29, 1963, the date of enactment of Pub. L. 88–31, and providing for its printing as a House document.

Subsec. (f)(2). Pub. L. 91–53, §3(b), designated existing provisions as subpar. (A), inserted introductory text ''Except as provided in subparagraph (B)'', and added subpar. (B).

1963—Subsec. (c). Pub. L. 88–31 substituted ''June 30, 1964'' for ''June 30, 1961'' in par. (1), ''(not in excess of the limit provided by paragraph (3))'' for ''(not in excess of $350,000,000 for any fiscal year)'' in par. (1)(A), and added par. (3).

1961—Subsec. (c)(1)(B). Pub. L. 87–31 inserted provision relating to necessary expenses.

1960—Subsec. (a). Pub. L. 86–778 substituted provision establishing the employment security administration account for former provision making an appropriation to the Unemployment Trust Fund for fiscal year ending June 30, 1954, and for each fiscal year thereafter, providing for transfer of funds from the general fund in the Treasury to the Unemployment Trust Fund at the close of the fiscal year, and adjustments in the transfers, and requiring the Secretary of the Treasury to consult with the Secretary of Labor with respect to estimates of employment security administrative expenditures.

Subsec. (b). Pub. L. 86–778 substituted provisions crediting the employment security administration with funds, and requiring transfer of funds, adjustments and repayment of internal revenue refunds for former provisions defining ''employment security administrative expenditures'', now incorporated in subsec. (c)(1)(A), (B), (2)(A) of this section.

Subsecs. (c) to (f). Pub. L. 86–778 added subsecs. (c) to (f).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9154(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1102 and 1105 of this title] shall become effective on the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(b)(2)(A) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, and amendment by section 271(c)(3)(D) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1984, see section 271(d)(1), (2) of Pub. L. 97–248, as amended, set out as a note under section 3301 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 211(d)(3) of Pub. L. 94–566 provided that: ''The amendments made by subsection (c) [amending this section, section 1105 of this title, and section 6157 of Title 26, Internal Revenue Code] shall take effect on the date of enactment of this Act [Oct. 20, 1976].''

EFFECTIVE DATE OF 1970 AMENDMENT

Section 303(a) of Pub. L. 91–373 provided that the amendment made by that section is effective with respect to fiscal years after June 30, 1970.

Section 303(c) of Pub. L. 91–373 provided that the amendment made by that section is effective July 1, 1972.

Section 303(d) of Pub. L. 91–373 provided that the amendment made by that section is effective with respect to fiscal years after June 30, 1972.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 4(b) of Pub. L. 91–53 provided that: ''The amendments made by section 3 [amending this section] shall take effect upon enactment of this Act [Aug. 7, 1969].''

INCREASE IN ADMINISTRATIVE EXPENDITURES LIMITATION FOR FISCAL YEAR 1963

Section 4 of Pub. L. 88–31 provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal year ending June 30, 1963, for the purposes specified in subsec. (c)(1)(A), was increased to $407,148,000.

Pub. L. 87–582, title I, § 101, Aug. 14, 1962, 76 Stat. 363, provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal year ending June 30, 1963, for the purposes specified in subsec. (c)(1)(A), was increased to $400,000,000.

INCREASE IN ADMINISTRATIVE EXPENDITURES LIMITATION FOR FISCAL YEARS 1961 AND 1962

Pub. L. 87–6, § 15, Mar. 24, 1961, 75 Stat. 16, provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal years ending June 30, 1961 and June 30, 1962, for the purposes specified in subsec. (c)(1)(A), was increased to $385,000,000 and $415,000,000, respectively.

§ 1102. Transfers between Federal unemployment account and employment security administration account

(a) Determination of excess; amount transferred

Whenever the Secretary of the Treasury determines pursuant to section 1101(f) of this title that there is an excess in the employment security administration account as of the close of any fiscal year and the entire amount of such excess is not retained in the employment security administration account or transferred to the extended unemployment compensation account as provided in section 1101(f)(3) of this title, there shall be transferred (as of the beginning of the succeeding fiscal year) to the Federal unemployment account the balance of such excess or so much thereof as is required to increase the amount in the Federal unemployment account to whichever of the following is the greater:

(1) $550 million, or

(2) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to 0.5 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

(b) Unemployment account excesses

The amount, if any, by which the amount in the Federal unemployment account as of the close of any fiscal year exceeds the greater of the amounts specified in paragraphs (1) and (2) of subsection (a) of this section shall be transferred to the employment security administration account as of the close of such fiscal year.

(c) Report to Congress

Whenever the Secretary of Labor has reason to believe that in the next fiscal year the employment security administration account will reach the limit provided for such account in section 1101(f)(3)(A) of this title, and the Federal unemployment account will reach the limit provided for such account in subsection (a) of this section, and the extended unemployment compensation account will reach the limit provided for such account in section 1105(b)(2) of this title, he shall, after consultation with the Secretary of the Treasury, so report to the Congress with a recommendation for appropriate action by the Congress.

(Aug. 14, 1935, ch. 531, title IX, § 902, as added Aug. 5, 1954, ch. 657, § 2, 68 Stat. 669; amended Pub. L. 86–778, title V, § 521, Sept. 13, 1960, 74 Stat. 974; Pub. L. 91–373, title III, § 304(a), (b), Aug. 10, 1970, 84 Stat. 715, 716; Pub. L. 100–203, title IX, § 9154(b)(1), Dec. 22, 1987, 101 Stat. 1330–326; Pub. L. 102–318, title V, § 531(b), July 3, 1992, 106 Stat. 316; Pub. L. 105–33, title V, § 5402(a), Aug. 5, 1997, 111 Stat. 603.)

PRIOR PROVISIONS

A prior section 1102, act Aug. 14, 1935, ch. 531, title IX, § 902, 49 Stat. 639, related to credit against tax. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

1997—Subsec. (a)(2). Pub. L. 105–33 substituted ''0.5 percent'' for ''0.25 percent''.

1992—Subsec. (a)(2). Pub. L. 102–318 substituted ''0.25 percent'' for ''five-eighths of 1 percent''.

1987—Subsec. (a)(2). Pub. L. 100–203 substituted ''five-eighths'' for ''one-eighth''.

1970—Subsec. (a). Pub. L. 91–373, § 304(a), inserted, in provisions preceding par. (1), reference to the retention of the entire amount of the excess in the employment security administration account or the transfer to the extended unemployment compensation account as provided in section 1101(f)(3) of this title and, in par. (2), substituted ''one-eighth of 1 percent'' for ''four-tenths of 1 per centum''.

Subsec. (c). Pub. L. 91–373, § 304(b), added subsec. (c).

1960—Pub. L. 86–778 substituted provisions for transfers between Federal unemployment account and employment security administration account for former provisions crediting the Federal unemployment account with funds and defining ''adjusted balance''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5402(b) of Pub. L. 105–33 provided that: ''This section [amending this section] and the amendment made by this section—

''(1) shall take effect on October 1, 2001, and

''(2) shall apply to fiscal years beginning on or after that date.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 531(e) of Pub. L. 102–318 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 1110 of this title and amending this section and sections 1101, 1104, and 1105 of this title] shall take effect on the date of the enactment of this Act [July 3, 1992].

''(2) CHANGES IN CEILING AMOUNTS.—The amendments made by subsection[s] (a)(2) and (b) [amending this section and section 1105 of this title] shall apply to fiscal years beginning after September 30, 1993.''

§ 1103. Amounts transferred to State accounts

(a) Determination and certification by Secretary of Labor

(1) If as of the close of any fiscal year after the fiscal year ending June 30, 1972, the amount in

the extended unemployment compensation account has reached the limit provided in section 1105(b)(2) of this title and the amount in the Federal unemployment account has reached the limit provided in section 1102(a) of this title and all advances and interest pursuant to section 1105(d) of this title and section 1323 of this title have been repaid, and there remains in the employment security administration account any amount over the amount provided in section 1101(f)(3)(A) of this title, such excess amount, except as provided in subsection (b) of this section, shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund.

(2) Each State's share of the funds to be transferred under this subsection as of any October 1—

(A) shall be determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury before such date, and

(B) shall bear the same ratio to the total amount to be so transferred as—

(i) the amount of wages subject to tax under section 3301 of the Internal Revenue Code of 1986 during the preceding calendar year which are determined by the Secretary of Labor to be attributable to the State, bears to

(ii) the total amount of wages subject to such tax during such year.

(b) Transfer of funds where State is ineligible

(1) If the Secretary of Labor finds that on October 1 of any fiscal year—

(A) a State is not eligible for certification under section 503 of this title, or

(B) the law of a State is not approvable under section 3304 of the Federal Unemployment Tax Act [26 U.S.C. 3304],

then the amount available for transfer to such State's account shall, in lieu of being so transferred, be transferred to the Federal unemployment account as of the beginning of such October 1. If, during the fiscal year beginning on such October 1, the Secretary of Labor finds and certifies to the Secretary of the Treasury that such State is eligible for certification under section 503 of this title, that the law of such State is approvable under such section 3304, or both, the Secretary of the Treasury shall transfer such amount from the Federal unemployment account to the account of such State. If the Secretary of Labor does not so find and certify to the Secretary of the Treasury before the close of such fiscal year then the amount which was available for transfer to such State's account as of October 1 of such fiscal year shall (as of the close of such fiscal year) become unrestricted as to use as part of the Federal unemployment account.

(2) The amount which, but for this paragraph, would be transferred to the account of a State under subsection (a) of this section or paragraph (1) of this subsection shall be reduced (but not below zero) by the balance of advances made to the State under section 1321 of this title. The sum by which such amount is reduced shall—

(A) be transferred to or retained in (as the case may be) the Federal unemployment account, and

(B) be credited against, and operate to reduce—

(i) first, any balance of advances made before September 13, 1960, to the State under section 1321 of this title, and

(ii) second, any balance of advances made on or after September 13, 1960, to the State under section 1321 of this title.

(c) Use of funds

(1) Except as provided in paragraph (2), amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section shall be used only in the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

(2) A State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it for the administration of its unemployment compensation law and public employment offices if and only if—

(A) the purposes and amounts were specified in the law making the appropriation,

(B) the appropriation law did not authorize the obligation of such money after the close of the two-year period which began on the date of enactment of the appropriation law,

(C) the money is withdrawn and the expenses are incurred after such date of enactment,

(D)(i) the appropriation law limits the total amount which may be obligated under such appropriation at any time to an amount which does not exceed, at any such time, the amount by which—

(I) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b) of this section, exceeds

(II) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State, and

(ii) for purposes of clause (i), amounts used by a State for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into, and

(E) the use of the money is accounted for in accordance with standards established by the Secretary of Labor.

(3)(A) If—

(i) amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section were used in payment of unemployment benefits to individuals; and

(ii) the Governor of such State submits a request to the Secretary of Labor that such amounts be restored under this paragraph,

then the amounts described in clause (i) shall be restored to the status of funds transferred under subsections (a) and (b) of this section which have not been used by eliminating any charge against amounts so transferred for the use of such amounts in the payment of unemployment benefits.

(B) Subparagraph (A) shall apply only to the extent that the amounts described in clause (i) of such subparagraph do not exceed the amount then in the State's account.

(C) Subparagraph (A) shall not apply if the State has a balance of advances made to its account under subchapter XII of this chapter.

(D) If the Secretary of Labor determines that the requirements of this paragraph are met with respect to any request, the Secretary shall notify the Governor of the State that such requirements are met with respect to such request and the amount restored under this paragraph. Such restoration shall be as of the first day of the first month following the month in which the notification is made.

(d) Special transfer in fiscal year 2002

(1) The Secretary of the Treasury shall transfer (as of the date determined under paragraph (5)) from the Federal unemployment account to the account of each State in the Unemployment Trust Fund the amount determined with respect to such State under paragraph (2).

(2)(A) The amount to be transferred under this subsection to a State account shall (as determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury) be equal to—

(i) the amount which would have been required to have been transferred under this section to such account at the beginning of fiscal year 2002 if—

(I) section 209(a)(1) of the Temporary Extended Unemployment Compensation Act of 2002 had been enacted before the close of fiscal year 2001, and

(II) section 5402 of Public Law 105–33 (relating to increase in Federal unemployment account ceiling) had not been enacted,

minus

(ii) the amount which was in fact transferred under this section to such account at the beginning of fiscal year 2002.

(B) Notwithstanding the provisions of subparagraph (A)—

(i) the aggregate amount transferred to the States under this subsection may not exceed a total of $8,000,000,000; and

(ii) all amounts determined under subparagraph (A) shall be reduced ratably, if and to the extent necessary in order to comply with the limitation under clause (i).

(3)(A) Except as provided in paragraph (4), amounts transferred to a State account pursuant to this subsection may be used only in the payment of cash benefits—

(i) to individuals with respect to their unemployment, and

(ii) which are allowable under subparagraph (B) or (C).

(B)(i) At the option of the State, cash benefits under this paragraph may include amounts which shall be payable as—

(I) regular compensation, or

(II) additional compensation, upon the exhaustion of any temporary extended unemployment compensation (if such State has entered into an agreement under the Temporary Extended Unemployment Compensation Act of 2002), for individuals eligible for regular compensation under the unemployment compensation law of such State.

(ii) Any additional compensation under clause (i) may not be taken into account for purposes of any determination relating to the amount of any extended compensation for which an individual might be eligible.

(C)(i) At the option of the State, cash benefits under this paragraph may include amounts which shall be payable to 1 or more categories of individuals not otherwise eligible for regular compensation under the unemployment compensation law of such State, including those described in clause (iii).

(ii) The benefits paid under this subparagraph to any individual may not, for any period of unemployment, exceed the maximum amount of regular compensation authorized under the unemployment compensation law of such State for that same period, plus any additional compensation (described in subparagraph (B)(i)) which could have been paid with respect to that amount.

(iii) The categories of individuals described in this clause include the following:

(I) Individuals who are seeking, or available for, only part-time (and not full-time) work.

(II) Individuals who would be eligible for regular compensation under the unemployment compensation law of such State under an alternative base period.

(D) Amounts transferred to a State account under this subsection may be used in the payment of cash benefits to individuals only for weeks of unemployment beginning after March 9, 2002.

(4) Amounts transferred to a State account under this subsection may be used for the administration of its unemployment compensation law and public employment offices (including in connection with benefits described in paragraph (3) and any recipients thereof), subject to the same conditions as set forth in subsection (c)(2) of this section (excluding subparagraph (B) thereof, and deeming the reference to ''subsections (a) and (b)'' in subparagraph (D) thereof to include this subsection).

(5) Transfers under this subsection shall be made within 10 days after March 9, 2002.

(e) Special transfer in fiscal year 2006

Not later than 10 days after October 20, 2005, the Secretary of the Treasury shall transfer from the Federal unemployment account—

(1) $15,000,000 to the account of Alabama in the Unemployment Trust Fund;

(2) $400,000,000 to the account of Louisiana in the Unemployment Trust Fund; and

(3) $85,000,000 to the account of Mississippi in the Unemployment Trust Fund.

(Aug. 14, 1935, ch. 531, title IX, § 903, as added Aug. 5, 1954, ch. 657, § 2, 68 Stat. 670; amended Pub. L. 86–778, title V, § 521, Sept. 13, 1960, 74 Stat. 974; Pub. L. 88–31, § 3, May 29, 1963, 77 Stat. 51; Pub. L. 90–430, July 26, 1968, 82 Stat. 447; Pub. L. 91–373, title III, § 305(b), Aug. 10, 1970, 84 Stat. 717; Pub. L. 92–224, § 1, title II, § 204(c), Dec. 29, 1971, 85 Stat. 810, 814; Pub. L. 92–329, § 2(d), June 30, 1972, 86 Stat. 398; Pub. L. 93–368, § 4(b), Aug. 7, 1974, 88 Stat. 420; Pub. L. 94–273, §§ 2(20), 3(23), 23, 41, Apr. 21, 1976, 90 Stat. 375, 377, 379, 381; Pub. L. 97–248, title I, § 192, Sept. 3, 1982, 96 Stat. 408; Pub. L. 100–203, title IX, § 9155(c), Dec. 22, 1987, 101 Stat. 1330–327; Pub. L. 101–508, title V,

§ 5021(a), (b), Nov. 5, 1990, 104 Stat. 1388–223; Pub. L. 105–33, title V, § 5403, Aug. 5, 1997, 111 Stat. 603; Pub. L. 107–147, title II, § 209(a)(1), (b), Mar. 9, 2002, 116 Stat. 31; Pub. L. 109–91, title II, § 201, Oct. 20, 2005, 119 Stat. 2093.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B)(i), is classified generally to Title 26, Internal Revenue Code.

The Temporary Extended Unemployment Compensation Act of 2002, referred to in subsec. (d)(2)(A)(i)(I), (3)(B)(i)(II), is title II of Pub. L. 107–147, Mar. 9, 2002, 116 Stat. 26, which is set out as a note under section 3304 of Title 26, Internal Revenue Code. Section 209(a)(1) of the Act amended this section. For complete classification of this Act to the Code, see Tables.

Section 5402 of Public Law 105–33, referred to in subsec. (d)(2)(A)(i)(II), is section 5402 of Pub. L. 105–33, title V, Aug. 5, 1997, 111 Stat. 603, which amended section 1102 of this title and enacted provisions set out as a note under section 1102 of this title.

PRIOR PROVISIONS

A prior section 1103, act Aug. 14, 1935, ch. 531, title IX, § 903, 49 Stat. 640, related to approval and certification of State laws. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–91 added subsec. (e).

2002—Subsec. (a)(3). Pub. L. 107–147, § 209(a)(1)(A), struck out par. (3) which related to disposition of excess amounts remaining in the employment security administration account as of the close of fiscal year 1999, 2000, or 2001.

Subsec. (c)(2). Pub. L. 107–147, § 209(a)(1)(B), struck out concluding provisions which read as follows: ''Any amount allocated to a State under this section for fiscal year 2000, 2001, or 2002 may be used by such State only to pay expenses incurred by it for the administration of its unemployment compensation law, and may be so used by it without regard to any of the conditions prescribed in any of the preceding provisions of this paragraph.''

Subsec. (d). Pub. L. 107–147, § 209(b), added subsec. (d).

1997—Subsec. (a)(3). Pub. L. 105–33, § 5403(a), added par. (3).

Subsec. (c)(2). Pub. L. 105–33, § 5403(b), inserted concluding provisions.

1990—Subsec. (a)(2). Pub. L. 101–508, § 5021(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Each State's share of the funds to be transferred under this subsection as of any October 1—

''(A) shall be determined by the Secretary of Labor and certified by him to the Secretary of the Treasury before that date on the basis of reports furnished by the States to the Secretary of Labor before September 1, and

''(B) shall bear the same ratio to the total amount to be so transferred as the amount of wages subject to contributions under such State's unemployment compensation law during the preceding calendar year which have been reported to the State before August 1 bears to the total of wages subject to contributions under all State unemployment compensation laws during such calendar year which have been reported to the States before August 1.''

Subsec. (c)(2). Pub. L. 101–508, § 5021(b), added subpars. (D) and (E) and struck out former subpar. (D) and last sentence which required a State's appropriation law to limit the total amount which may be obligated during a twelve-month or transitional period from its account.

1987—Subsec. (a)(1). Pub. L. 100–203 inserted ''and interest'' after ''all advances''.

1982—Subsec. (c)(2). Pub. L. 97–248, § 192(a), substituted ''thirty-four'' for ''twenty-four'' wherever appearing, and ''thirty-fourth'' for ''twenty-fourth'' in provisions following subpar. (D).

Subsec. (c)(3). Pub. L. 97–248, § 192(b), added par. (3).

1976—Subsec. (a)(2). Pub. L. 94–273, § 3(23) substituted ''October'' for ''July''.

Subsec. (a)(2)(A). Pub. L. 94–273, § 2(20), substituted ''September'' for ''June''.

Subsec. (a)(2)(B). Pub. L. 94–273, § 23, substituted ''August'' for ''May'' wherever appearing.

Subsec. (b)(1). Pub. L. 94–273, § 3(23), substituted ''October'' for ''July''.

Subsec. (c)(2). Pub. L. 94–273, § 41, in subpar. (D) and provisions following subpar. (D) substituted provisions relating to determination based on a twelve-month period (as prescribed in the law of the State), or during a transitional period of less than twelve months caused by a change in the twelve-month period (as prescribed in the law of the State), for provisions relating to determination based on a fiscal year period.

1974—Subsec. (b)(3). Pub. L. 93–368 struck out par. (3) which related to reductions in the amount transferable to the account of any State by reason of emergency compensation paid to any individual for a week of unemployment ending after June 30, 1972.

1972—Subsec. (b)(3). Pub. L. 92–329 inserted provisions relating to reductions in the amount transferable to the account of any State by reason of emergency compensation paid to any individual for a week of unemployment ending after June 30, 1972.

1971—Subsec. (b)(3). Pub. L. 92–224, § 204(c), added par. (3).

Subsec. (c)(2). Pub. L. 92–224, § 1, substituted ''twenty-four preceding fiscal years'' and ''such twenty-five fiscal years'' for ''fourteen preceding fiscal years'' and ''such fifteen fiscal years'' in subpar. (D) of first sentence and ''twenty-fourth preceding fiscal year'' for ''fourteenth preceding fiscal year'' in second sentence.

1970—Subsec. (a)(1). Pub. L. 91–373 inserted references to the limits provided in sections 1102(a) and 1105(b)(2) of this title, advances pursuant to section 1105(d) of this title, and the amount provided in section 1101(f)(3)(A) of this title.

1968—Subsec. (c). Pub. L. 90–430 substituted in par. (2)(D)(i) ''fourteen'' for ''nine'', in par. (2)(D)(ii) ''fifteen'' for ''ten'', and in provisions following par. (2)(D) ''fourteenth'' for ''ninth''.

1963—Subsec. (c)(2). Pub. L. 88–31 substituted ''nine preceding fiscal years'' for ''four preceding fiscal years'', ''ten fiscal years'' for ''five fiscal years'' in cl. (D), and ''ninth preceding fiscal year'' for ''fourth preceding fiscal year'' in last sentence.

1960—Subsec. (a). Pub. L. 86–778 substituted provisions of par. (1) for first sentence of the section which read ''So much of any amount transferred to the Unemployment Trust Fund at the close of any fiscal year under section 1101(a) of this title as is not credited to the Federal unemployment account under section 1102 of this title shall be credited (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund'' and designated existing provisions of second sentence as part (2), substituting ''transferred'' for ''credited'', and striking out ''on or'' before ''before'' in subpar. (A).

Subsec. (b). Pub. L. 86–778 redesignated existing provisions as par. (1) and cls. (1) and (2) thereof as subpars. (A) and (B), substituted ''section 3304 of title 26'' for ''section 1603 of title 26'', in two places, and ''transfer to such States' account'', ''transferred'', and ''transfer'' for ''crediting to such States' account'', ''credited'' and ''credit'', respectively, except where already reading ''shall transfer'', and added par. (2).

Subsec. (c). Pub. L. 86–778 substituted ''transferred'' for ''credited'', wherever appearing, ''obligation'' for ''expenditure'' in par. (2)(B), ''obligated'' for ''so used'' in par. (2)(D), and ''obligated for administration'' for ''used'' in concluding par., inserted references to subsection (b) in pars. (1) and (2)(D), and struck out ''any of'' before ''such five fiscal years'' in par. (2)(D).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5021(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this sec-

tion] shall apply to fiscal years beginning after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9155(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1105 and 1323 of this title] shall apply to advances made on or after the date of the enactment of this Act [Dec. 22, 1987].''

REGULATIONS

Pub. L. 109–91, title II, § 203, Oct. 20, 2005, 119 Stat. 2094, provided that: ''The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this title [amending this section] and any amendment made by this title.''

§ 1104. Unemployment Trust Fund

(a) Establishment

There is hereby established in the Treasury of the United States a trust fund to be known as the ''Unemployment Trust Fund'', hereinafter in this subchapter called the ''Fund''. The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury, with any depositary designated by him for such purpose, or with any Federal Reserve Bank.

(b) Investments

It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

(c) Sale or redemption of obligations

Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) Treatment of interest and proceeds

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) Separate book accounts

The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, the employment security administration account, the Federal unemployment account, the railroad unemployment insurance account, and the railroad unemployment insurance administration fund and shall credit quarterly (on March 31, June 30, September 30, and December 31, of each year) to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date. For the purpose of this subsection, the average daily balance shall be computed—

(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the balance of advances made to the State under section 1321 of this title, and

(2) in the case of the Federal unemployment account—

(A) by adding to the amount in the account the aggregate of the reductions under paragraph (1), and

(B) by subtracting from the sum so obtained the balance of advances made under section 1323 of this title to the account.

(f) Payment to State agencies and Railroad Retirement Board

The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment. The Secretary of the Treasury is authorized and directed to make such payments out of the railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment.

(g) Federal unemployment account; establishment

There is hereby established in the Unemployment Trust Fund a Federal unemployment account.

(Aug. 14, 1935, ch. 531, title IX, § 904, 49 Stat. 640; June 25, 1938, ch. 680, § 10(e)–(g), 52 Stat. 1104, 1105; Oct. 3, 1944, ch. 480, title IV, § 401, 58 Stat. 789; Aug. 6, 1947, ch. 510, § 5(a), 61 Stat. 794; Aug. 28, 1950, ch. 809, title IV, § 404(b), 64 Stat. 560; Aug. 5, 1954, ch. 657, § 5(b)–(f), 68 Stat. 673; Pub. L. 85–927, pt. II, § 204, Sept. 6, 1958, 72 Stat. 1782;

Pub. L. 86–346, title I, §104(3), Sept. 22, 1959, 73 Stat. 622; Pub. L. 86–778, title V, §521, Sept. 13, 1960, 74 Stat. 976; Pub. L. 98–369, div. B, title VI, §2663(d)(3), July 18, 1984, 98 Stat. 1167; Pub. L. 102–318, title V, §531(d)(3), July 3, 1992, 106 Stat. 317.)

AMENDMENTS

1992—Subsec. (g). Pub. L. 102–318 struck out after the first sentence the following: ''There is hereby authorized to be appropriated to such Federal unemployment account a sum equal to (1) the excess of taxes collected prior to July 1, 1946, under title IX of this Act or under the Federal Unemployment Tax Act, over the total unemployment administrative expenditures made prior to July 1, 1946, plus (2) the excess of taxes collected under the Federal Unemployment Tax Act after June 30, 1946, and prior to July 1, 1953, over the unemployment administrative expenditures made after June 30, 1946, and prior to July 1, 1953. As used in this subsection, the term 'unemployment administrative expenditures' means expenditures for grants under subchapter III of this chapter, expenditures for the administration of that subchapter by the Secretary of Health and Human Services, or the Secretary of Labor, and expenditures for the administration of title IX of this Act, or of the Federal Unemployment Tax Act, by the Department of the Treasury, the Secretary of Health and Human Services, or the Secretary of Labor. For the purposes of this subsection, there shall be deducted from the total amount of taxes collected prior to July 1, 1943, under title IX of this Act, the sum of $40,561,886.43 which was authorized to be appropriated by the Act of August 24, 1937 (50 Stat. 754), and the sum of $18,451,846 which was authorized to be appropriated by section 361(b) of title 45.''

1984—Subsec. (b). Pub. L. 98–369 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended''.

1960—Subsec. (a). Pub. L. 86–778 substituted ''with any depositary designated by him for such purpose, or with any Federal Reserve Bank'' for ''or with any Federal Reserve bank or member bank of the Federal Reserve System designated by him for such purpose''.

Subsec. (b). Pub. L. 86–778 substituted ''Second Liberty Bond Act, as amended'' and ''section 1323'' for ''section 752 of title 31'' and ''section 1322(c)'', respectively, and inserted ''made'' after ''Advances''.

Subsec. (e). Pub. L. 86–778 provided for the maintenance of a separate book account for the employment security administration account and substituted ''balance of advances made to the State under section 1321 of this title'' for ''aggregate of the outstanding advances under section 1321 of this title from the Federal unemployment account'' in par. (1) and ''balance of advances made under section 1323 of this title to the account'' for ''aggregate of the outstanding advances from the Treasury to the account pursuant to section 1322(c) of this title''.

Subsec. (g). Pub. L. 86–778 redesignated former subsec. (h) as (g).

1959—Subsec. (b). Pub. L. 86–346 substituted ''on original issue at the issue price'' for ''on original issue at par''.

1958—Subsec. (a). Pub. L. 85–927, §204(a), inserted ''or the railroad unemployment insurance administration fund''.

Subsec. (e). Pub. L. 85–927, §204(b), substituted ''the railroad unemployment insurance account, and the railroad unemployment insurance administration fund'' for ''and the railroad unemployment insurance account''.

Subsec. (f). Pub. L. 85–927, §204(c), substituted ''railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment'' for ''fund as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the railroad unemployment insurance account at the time of such payment''.

1954—Subsec. (a). Act Aug. 5, 1954, §5(b), substituted ''or otherwise deposited in or credited to the Fund or any account therein'' for ''or deposited pursuant to appropriations to the Federal unemployment account''.

Subsec. (b). Act Aug. 5, 1954, §5(c), inserted provision that advances to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

Subsec. (e). Act Aug. 5, 1954, §5(d), inserted ''For the purposes of this subsection, the average daily balance shall be computed—

''(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the aggregate of the outstanding advances under section 1201 from the Federal unemployment account, and

''(2) in the case of the Federal unemployment account, (A) by adding to the amount in the account the aggregate of the reductions under paragraph (1), and (B) by subtracting from the sum so obtained the aggregate of the outstanding advances from the Treasury to the account pursuant to section 1202(c).''

Subsec. (g). Act Aug. 5, 1954, §5(e), repealed subsec. (g) which authorized Secretary of Treasury to make transfers from Federal unemployment account to account of any State in Unemployment Trust Fund.

Subsec. (h). Act Aug. 5, 1954, §5(f), substituted a new cl. (2) in second sentence and repealed the third sentence: ''Any amounts in the Federal unemployment account on April 1952, and any amounts repaid to such account after such date, shall be covered into the general fund of the Treasury.''

1950—Subsec. (h). Act Aug. 28, 1950, substituted ''prior to July 1, 1951'' for ''prior to July 1, 1949'', ''on July 1, 1951, and ending on December 31, 1951'' for ''on July 1, 1949, and ending on December 31, 1949'' in cl. (2) of second sentence, and ''April 1, 1952'' for ''April 1, 1950'' in third sentence.

1947—Subsec. (h). Act Aug. 6, 1947, amended subsec. (h) generally, and, among other changes, changed the periods for which excess of tax collections over administrative expenditures could be appropriated to the unemployment account, limited authorized appropriations for the unemployment account to the excess collections for the period ending Dec. 31, 1949, provided for amounts in such account on Apr. 1, 1950, and any repayments to the account after such date be covered into the general fund of the Treasury, and provided for an additional deduction of $18,451,846 from the total amount of taxes collected prior to July 1, 1943.

1944—Subsec. (a). Act Oct. 3, 1944, §401(a), inserted '', or deposited pursuant to appropriations to the Federal unemployment account'' after ''unemployment insurance account'' in second sentence.

Subsec. (e). Act Oct. 3, 1944, §401(b), inserted '', the Federal unemployment account'' after ''a separate book account for each State agency''.

Subsecs. (g), (h). Act Oct. 3, 1944, §401(c), added subsecs. (g) and (h).

1938—Subsec. (a). Act June 25, 1938, §10(e), inserted ''or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account''.

Subsec. (e). Act June 25, 1938, §10(f), inserted ''and the railroad unemployment insurance account''.

Subsec. (f). Act June 25, 1938, §10(g), inserted second sentence.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–927 effective Sept. 6, 1958, except as otherwise indicated, see section 207(c) of Pub.

L. 85–927, set out as a note under section 351 of Title 45, Railroads.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 404(c) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section and section 1321 of this title] shall be effective January 1, 1950.''

TERMINATION DATE

Section 4 of act Aug. 6, 1947, provided: ''Section 603 of the War Mobilization and Reconversion Act of 1944 [formerly set out as a note under section 1651 of Appendix to Title 50, War and National Defense] (terminating the provisions of such Act [sections 1651 to 1678 of Appendix to title 50] on June 30, 1947) shall not be applicable in the case of the amendments made by title IV of such Act [amending sections 1666 and 1667 of Appendix to Title 50] to the Social Security Act [this section and section 1321 of this title].''

PAYMENTS TO STATES

Act Aug. 24, 1937, ch. 755, 50 Stat. 754, provided for payments to States of 90 per cent of proceeds of the unemployment tax collected prior to Jan. 31, 1938, where State had enacted an approved unemployment-compensation law during 1937.

§ 1105. Extended unemployment compensation account

(a) Establishment

There is hereby established in the Unemployment Trust Fund an extended unemployment compensation account. For the purposes provided for in section 1104(e) of this title, such account shall be maintained as a separate book account.

(b) Transfers to account

(1) Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month) from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount (determined by such Secretary) equal to 20 percent of the amount by which—

(A) the transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month, exceed

(B) the payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.

(2) Whenever the Secretary of the Treasury determines pursuant to section 1101(f) of this title that there is an excess in the employment security administration account as of the close of any fiscal year beginning after June 30, 1972, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the total amount of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to whichever of the following is the greater:

(A) $750,000,000, or

(B) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to 0.5 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

(3) The Secretary of the Treasury shall make no transfer pursuant to paragraph (1) as of the close of any month if he determines that the amount in the extended unemployment compensation account is equal to (or in excess of) the limitation provided in paragraph (2).

(c) Transfers to State accounts

Amounts in the extended unemployment compensation account shall be available for transfer to the accounts of the States in the Unemployment Trust Fund as provided in section 204(e) of the Federal-State Extended Unemployment Compensation Act of 1970.

(d) Advances to account; repayment

There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, as repayable advances, such sums as may be necessary to carry out the purposes of the Federal-State Extended Unemployment Compensation Act of 1970. Amounts appropriated as repayable advances shall be repaid by transfers from the extended unemployment compensation account to the general fund of the Treasury, at such times as the amount in the extended unemployment compensation account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Repayments under the preceding sentence shall be made whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months. Any amount transferred as a repayment under this subsection shall be credited against, and shall operate to reduce, any balance of advances repayable under this subsection. Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.

(Aug. 14, 1935, ch. 531, title IX, § 905, as added Pub. L. 87–6, § 13, Mar. 24, 1961, 75 Stat. 14; amended Pub. L. 88–31, § 2(c), May 29, 1963, 77 Stat. 51; Pub. L. 91–373, title III, § 305(a), Aug. 10, 1970, 84 Stat. 716; Pub. L. 92–329, § 2(c), June 30, 1972, 86 Stat. 398; Pub. L. 94–566, title II, § 211(e)(2) [(c)(2)], Oct. 20, 1976, 90 Stat. 2677; Pub. L. 97–248, title II, §§ 271(b)(2)(B), 275, Sept. 3, 1982, 96 Stat. 555, 558; Pub. L. 100–203, title IX, §§ 9154(b)(2), (c)(1), 9155(a), Dec. 22, 1987, 101 Stat. 1330–326; Pub. L. 102–318, title V, § 531(a), July 3,

1992, 106 Stat. 315; Pub. L. 103–152, § 5, Nov. 24, 1993, 107 Stat. 1518.)

REFERENCES IN TEXT

The Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsecs. (c) and (d), is Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 708, as amended, which is set out as a note under section 3304 of Title 26, Internal Revenue Code. Section 204(e) of that Act is part of that note. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 1105, act Aug. 14, 1935, ch. 531, title IX, § 905, 49 Stat. 641, related to administration, refunds and penalties. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–152 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month), from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount determined by him to be equal to the sum of—

''(A) 100 percent of the transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month on account of liabilities referred to in section 1101(b)(1)(B) of this title, plus

''(B) 20 percent of the excess of the transfers to such account pursuant to section 1101(b)(2) of this title during such month on account of amounts referred to in section 1101(b)(1)(A) of this title over the payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (B), proper adjustments shall be made in the amounts subsequently transferred.''

1992—Subsec. (b)(1). Pub. L. 102–318, § 531(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided by paragraph (3), the Secretary of the Treasury shall transfer (as of the close of July 1970, and each month thereafter), from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount determined by him to be equal, in the case of any month before April 1972, to one-fifth, and in the case of any month after March 1972, to one-tenth, of the amount by which—

''(A) transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month, exceed

''(B) payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.''

Subsec. (b)(2)(B). Pub. L. 102–318, § 531(a)(2), substituted ''0.5 percent'' for ''three-eighths of 1 percent''.

1987—Subsec. (b)(1). Pub. L. 100–203, § 9154(c)(1), struck out at end ''In the case of any month after March 1983 and before April 1 of the first calendar year to which paragraph (2) of section 3301 of the Federal Unemployment Tax Act applies, the first sentence of this paragraph shall be applied by substituting '40 percent' for 'one-tenth'.''

Subsec. (b)(2)(B). Pub. L. 100–203, § 9154(b)(2), substituted ''three-eighths'' for ''one-eighth''.

Subsec. (d). Pub. L. 100–203, § 9155(a), struck out ''(without interest)'' after ''account, as repayable advances'' and '', without interest,'' after ''shall be repaid'' and inserted sentence at end providing that amounts appropriated as repayable advances for purposes of this subsection shall bear interest.

1982—Subsec. (b)(1). Pub. L. 97–248, § 271(b)(2)(B), substituted ''1983'' for ''1977'', inserted ''1'' after ''April'', and substituted ''40 percent'' for ''five-fourteenths'' in provisions following subpar. (B).

Subsec. (d). Pub. L. 97–248, § 275, inserted provision that repayment shall be made whenever the Secretary of the Treasury determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months.

1976—Subsec. (b)(1). Pub. L. 94–566 substituted ''In the case of any month after March 1977 and before April of the first calendar year to which paragraph (2) of section 3301 of the Federal Unemployment Tax Act applies, the first sentence of this paragraph shall be applied by substituting 'five-fourteenths' for 'one-tenth' '' for ''In the case of any month after March 1973 and before April 1974, the first sentence of this paragraph shall be applied by substituting 'thirteen fifty-eighths' for 'one-tenth' ''.

1972—Subsec. (b)(1). Pub. L. 92–329 inserted provisions for transfers in the case of any month after March 1973 and before April 1974.

1970—Pub. L. 91–373 substituted provisions for an extended unemployment compensation account for provisions for a Federal extended compensation account.

1963—Subsec. (b). Pub. L. 88–31 inserted ''(with respect to the calendar year 1963), or 5/13 (with respect to the calendar year 1964),''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 531(a) of Pub. L. 102–318 effective July 3, 1992, except that amendment by section 531(a)(2) of Pub. L. 102–318 applicable to fiscal years beginning after Sept. 30, 1993, see section 531(e) of Pub. L. 102–318, set out as a note under section 1102 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9155(a) of Pub. L. 100–203 applicable to advances made on or after Dec. 22, 1987, see section 9155(d) of Pub. L. 100–203, set out as a note under section 1103 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(b)(2)(B) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 271(d)(1) of Pub. L. 97–248, as amended, set out as a note under section 3301 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 effective Oct. 20, 1976, see section 211(d)(3) of Pub. L. 94–566, set out as a note under section 1101 of this title.

§ 1106. Unemployment compensation research program

(a) The Secretary of Labor shall—

(1) establish a continuing and comprehensive program of research to evaluate the unemployment compensation system. Such research shall include, but not be limited to, a program of factual studies covering the role of unemployment compensation under varying patterns of unemployment including those in seasonal industries, the relationship between the unemployment compensation and other social insurance programs, the effect of State eligibility and disqualification provisions, the personal characteristics, family situations, employment background and experience of claimants, with the results of such studies to be made public; and

(2) establish a program of research to develop information (which shall be made public) as to the effect and impact of extending coverage to excluded groups with first attention to agricultural labor.

(b) To assist in the establishment and provide for the continuation of the comprehensive research program relating to the unemployment compensation system, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter, such sums, not to exceed $8,000,000, as may be necessary to carry out the purposes of this section. From the sums authorized to be appropriated by this subsection the Secretary may provide for the conduct of such research through grants or contracts.

(Aug. 14, 1935, ch. 531, title IX, § 906, as added Pub. L. 91–373, title I, § 141, Aug. 10, 1970, 84 Stat. 705.)

PRIOR PROVISIONS

A prior section 1106, act Aug. 14, 1935, ch. 531, title IX, § 906, 49 Stat. 642, related to excusing payment of tax by engaging in interstate commerce. For further details, see Prior Law note set out preceding section 1101 of this title.

§ 1107. Personnel training

(a) Creation of program

In order to assist in increasing the effectiveness and efficiency of administration of the unemployment compensation program by increasing the number of adequately trained personnel, the Secretary of Labor shall—

(1) provide directly, through State agencies, or through contracts with institutions of higher education or other qualified agencies, organizations, or institutions, programs and courses designed to train individuals to prepare them, or improve their qualifications, for service in the administration of the unemployment compensation program, including claims determinations and adjudication, with such stipends and allowances as may be permitted under regulations of the Secretary;

(2) develop training materials for and provide technical assistance to the State agencies in the operation of their training programs;

(3) under such regulations as he may prescribe, award fellowships and traineeships to persons in the Federal-State employment security agencies, in order to prepare them or improve their qualifications for service in the administration of the unemployment compensation program.

(b) Repayment of costs

The Secretary may, to the extent that he finds such action to be necessary, prescribe requirements to assure that any person receiving a fellowship, traineeship, stipend or allowance shall repay the costs thereof to the extent that such person fails to serve in the Federal-State employment security program for the period prescribed by the Secretary. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the programs established by this section.

(c) Detail of Federal and State employees

The Secretary, with the concurrence of the State, may detail Federal employees to State unemployment compensation administration and the Secretary may concur in the detailing of State employees to the United States Department of Labor for temporary periods for training or for purposes of unemployment compensation administration, and the provisions of section 869b[1] of title 20 or any more general program of interchange enacted by a law amending, supplementing, or replacing section 869b[1] of title 20 shall apply to any such assignment.

(d) Authorization of appropriations

There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter such sums, not to exceed $5,000,000, as may be necessary to carry out the purposes of this section.

(Aug. 14, 1935, ch. 531, title IX, § 907, as added Pub. L. 91–373, title I, § 141, Aug. 10, 1970, 84 Stat. 705.)

REFERENCES IN TEXT

Section 869b of title 20, referred to in subsec. (c), was repealed by Pub. L. 91–648, title IV, § 403, Jan. 5, 1971, 84 Stat. 1925. Provisions relating to assignment of personnel to and from State and local governments are covered by section 3371 et seq. of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 1107, acts Aug. 14, 1935, ch. 531, title IX, § 907, 49 Stat. 642; June 25, 1938, ch. 680, § 13(a), 52 Stat. 1110, related to definitions. For further details, see Prior Law note set out preceding section 1101 of this title.

§ 1108. Advisory Council on Unemployment Compensation

(a) Establishment

Not later than February 1, 1992, and every 4th year thereafter, the Secretary of Labor shall establish an advisory council to be known as the Advisory Council on Unemployment Compensation (referred to in this section as the ''Council'').

(b) Function

It shall be the function of each Council to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and any other aspects of the program and to make recommendations for improvement.

(c) Members

(1) In general

Each Council shall consist of 11 members as follows:

(A) 5 members appointed by the President, to include representatives of business, labor, State government, and the public.

(B) 3 members appointed by the President pro tempore of the Senate, in consultation

[1] See References in Text note below.

with the Chairman and ranking member of the Committee on Finance of the Senate.

(C) 3 members appointed by the Speaker of the House of Representatives, in consultation with the Chairman and ranking member of the Committee on Ways and Means of the House of Representatives.

(2) Qualifications

In appointing members under subparagraphs (B) and (C) of paragraph (1), the President pro tempore of the Senate and the Speaker of the House of Representatives shall each appoint—

(A) 1 representative of the interests of business,

(B) 1 representative of the interests of labor, and

(C) 1 representative of the interests of State governments.

(3) Vacancies

A vacancy in any Council shall be filled in the manner in which the original appointment was made.

(4) Chairman

The President shall appoint the Chairman of the Council from among its members.

(d) Staff and other assistance

(1) In general

Each Council may engage any technical assistance (including actuarial services) required by the Council to carry out its functions under this section.

(2) Assistance from Secretary of Labor

The Secretary of Labor shall provide each Council with any staff, office facilities, and other assistance, and any data prepared by the Department of Labor, required by the Council to carry out its functions under this section.

(e) Compensation

Each member of any Council—

(1) shall be entitled to receive compensation at the rate of pay for level V of the Executive Schedule under section 5316 of title 5 for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Council, and

(2) while engaged in the performance of such duties away from such member's home or regular place of business, shall be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for persons in the Government employed intermittently.

(f) Report

(1) In general

Not later than February 1 of the third year following the year in which any Council is required to be established under subsection (a) of this section, the Council shall submit to the President and the Congress a report setting forth the findings and recommendations of the Council as a result of its evaluation of the unemployment compensation program under this section.

(2) Report of first Council

The Council shall include in its report required to be submitted by February 1, 1995, the Council's findings and recommendations with respect to determining eligibility for extended unemployment benefits on the basis of unemployment statistics for regions, States, or subdivisions of States.

(Aug. 14, 1935, ch. 531, title IX, §908, as added Pub. L. 91–373, title I, §141, Aug. 10, 1970, 84 Stat. 706; amended Pub. L. 98–369, div. B, title VI, §2663(d)(4), July 18, 1984, 98 Stat. 1167; Pub. L. 102–164, title III, §303, Nov. 15, 1991, 105 Stat. 1059; Pub. L. 103–152, §6, Nov. 24, 1993, 107 Stat. 1518.)

CODIFICATION

Section 9 of Pub. L. 102–107, Aug. 17, 1991, 105 Stat. 547, which contained provisions substantially identical to those of section 303 of Pub. L. 102–164, amending this section, did not become effective pursuant to section 10(b) of Pub. L. 102–107, because the President did not take the action required by that section by Aug. 17, 1991.

PRIOR PROVISIONS

A prior section 1108, act Aug. 14, 1935, ch. 531, title IX, §908, 49 Stat. 643, related to rules and regulations. For further details, see Prior Law note set out preceding section 1101 of this title.

A prior section 1109, act Aug. 14, 1935, ch. 531, title IX, §909, 49 Stat. 643, related to an additional credit against tax. For further details, see Prior Law note set out preceding section 1101 of this title.

A prior section 1110, act Aug. 14, 1935, ch. 531, title IX, §910, 49 Stat. 644, related to conditions of additional credit allowance. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

1993—Subsec. (f). Pub. L. 103–152 substituted ''third year'' for ''2d year'' in par. (1) and ''1995'' for ''1994'' in par. (2).

1991—Pub. L. 102–164 amended section generally, substituting present provisions for provisions which in subsec. (a) established the Federal Advisory Council and its membership, in subsec. (b) prescribed the appointment of its members, in subsec. (c) required that secretarial, clerical, and other assistance be made available to the Council, in subsec. (d) provided for compensation of members, in subsec. (e) encouraged the organization of State advisory councils, and in subsec. (f) authorized certain appropriations for the work of the Council.

1984—Subsec. (d). Pub. L. 98–369 substituted ''5703'' for ''5703(b)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REPORT ON AGRICULTURAL LABOR PERFORMED BY ALIENS

Pub. L. 102–318, title III, §303(b), July 3, 1992, 106 Stat. 297, directed Advisory Council on Unemployment Com-

pensation to submit a report to Congress, not later than Feb. 1, 1994, on its recommendations with respect to the treatment of agricultural labor performed by aliens.

§ 1109. Federal Employees Compensation Account

There is hereby established in the Unemployment Trust Fund a Federal Employees Compensation Account which shall be used for the purposes specified in section 8509 of title 5. For the purposes provided for in section 1104(e) of this title, such account shall be maintained as a separate book account.

(Aug. 14, 1935, ch. 531, title IX, § 909, as added Pub. L. 96–499, title X, § 1023(a), Dec. 5, 1980, 94 Stat. 2657.)

§ 1110. Borrowing between Federal accounts

(a) In general

Whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that—

(1) the amount in the employment security administration account, Federal unemployment account, or extended unemployment compensation account, is insufficient to meet the anticipated payments from the account,

(2) such insufficiency may cause such account to borrow from the general fund of the Treasury, and

(3) the amount in any other such account exceeds the amount necessary to meet the anticipated payments from such other account,

the Secretary shall transfer to the account referred to in paragraph (1) from the account referred to[1] paragraph (3) an amount equal to the insufficiency determined under paragraph (1) (or, if less, the excess determined under paragraph (3)).

(b) Treatment of advance

Any amount transferred under subsection (a) of this section—

(1) shall be treated as a noninterest-bearing repayable advance, and

(2) shall not be considered in computing the amount in any account for purposes of the application of sections 1101(f)(2), 1102(b), and 1105(b) of this title.

(c) Repayment

Whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that the amount in the account to which an advance is made under subsection (a) of this section exceeds the amount necessary to meet the anticipated payments from the account, the Secretary shall transfer from the account to the account from which the advance was made an amount equal to the lesser of the amount so advanced or such excess.

(Aug. 14, 1935, ch. 531, title IX, § 910, as added Pub. L. 102–318, title V, § 531(c), July 3, 1992, 106 Stat. 316.)

[1] So in original. Probably should be ''to in''.

SUBCHAPTER X—GRANTS TO STATES FOR AID TO BLIND

REPEAL OF SUBCHAPTER X OF THIS CHAPTER; INAPPLICABILITY OF REPEAL TO PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this subchapter is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

§ 1201. Authorization of appropriations

For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health and Human Services, State plans for aid to the blind.

(Aug. 14, 1935, ch. 531, title X, § 1001, 49 Stat. 645; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(b), 64 Stat. 558; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, § 313(a), 70 Stat. 849; Pub. L. 87–543, title I, § 104(c)(3), July 25, 1962, 76 Stat. 186; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, § 2184(c)(1), Aug. 13, 1981, 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out ''and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support and self-care'' after ''who are blind''.

1962—Pub. L. 87–543 inserted ''to furnish rehabilitation and other services'' before ''to help such individuals'' and ''or retain capability for'' after ''attain''.

1956—Act Aug. 1, 1956, restated purpose to include assistance to individuals to attain self-support or self-care.

1950—Act Aug. 28, 1950, substituted ''Federal Security Administrator'' for ''Social Security Board''.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 1202. State plans for aid to blind

(a) A State plan for aid to the blind must (1) except to the extent permitted by the Secretary

with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; and[1] (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title or assistance under a State program funded under part A of subchapter IV of this chapter; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency (A) shall disregard the first $85 per month of earned income, plus one-half of earned income in excess of $85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $7.50 of any income; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (13) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (14) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter. In the case of any State (other than Puerto Rico and the Virgin Islands) which did not have on January 1, 1949, a State plan for aid to the blind approved under this subchapter, the Secretary shall approve a plan of such State for aid to the blind for purposes of this subchapter, even though it does not meet the requirements of clause (8) of subsection (a) of this section, if it meets all other requirements of this subchapter for an approved plan for aid to the blind; but payments under section 1203 of

[1] So in original. The word ''and'' probably should not appear.

this title shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1203 of this title under a plan approved under this section without regard to the provisions of this sentence.

(Aug. 14, 1935, ch. 531, title X, § 1002, 49 Stat. 645; Aug. 10, 1939, ch. 666, title VII, § 701, 53 Stat. 1397; Aug. 28, 1950, ch. 809, title III, pt. 4, § 341(a)–(e), pt. 6, § 361(c), (d), 64 Stat. 553, 558; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, § 313(b), 70 Stat. 849; Pub. L. 86–778, title VII, § 710, Sept. 13, 1960, 74 Stat. 997; Pub. L. 87–543, title I, §§ 104(a)(3)(H), 106(a)(2), 136(a), 154, July 25, 1962, 76 Stat. 185, 188, 197, 206; Pub. L. 88–650, § 5(a), Oct. 13, 1964, 78 Stat. 1078; Pub. L. 89–97, title IV, § 403(c), July 30, 1965, 79 Stat. 418; Pub. L. 90–248, title II, §§ 210(a)(3), 213(a)(2), Jan. 2, 1968, 81 Stat. 895, 898; Pub. L. 92–603, title IV, §§ 405(b), 406(b), 407(b), 410(b), 413(b), Oct. 30, 1972, 86 Stat. 1488, 1489, 1491, 1492; Pub. L. 98–369, div. B, title VI, § 2651(f), July 18, 1984, 98 Stat. 1149; Pub. L. 104–193, title I, § 108(f), Aug. 22, 1996, 110 Stat. 2168.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (a)(7), is classified to section 601 et seq. of this title.

AMENDMENTS

1996—Subsec. (a)(7). Pub. L. 104–193 substituted ''assistance under a State program funded under part A of subchapter IV of this chapter'' for ''aid to families with dependent children under the State plan approved under section 602 of this title''.

1984—Subsec. (a)(14). Pub. L. 98–369 added cl. (14).

1972—Subsec. (a)(1). Pub. L. 92–603, § 410(b), inserted ''except to the extent permitted by the Secretary with respect to services,'' before ''provide''.

Subsec. (a)(4). Pub. L. 92–603, § 407(b), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(9). Pub. L. 92–603, § 413(b), substituted provisions permitting the use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with the administration of the State plan, for provisions restricting the use or disclosure of such information to purposes directly connected with the administration of aid to the blind.

Subsec. (a)(13). Pub. L. 92–603, § 405(b), inserted provision relating to the use of whatever internal organizational arrangement found appropriate.

Subsec. (b). Pub. L. 92–603, § 406(b), inserted provision relating to the furnishing of manuals and other policy issuances to persons without charge and at the option of the State.

1968—Subsec. (a)(5). Pub. L. 90–248, § 210(a)(3), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(8)(C). Pub. L. 90–248, § 213(a)(2), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965—Subsec. (a)(8)(C). Pub. L. 89–97 added subcl. (C).

1964—Subsec. (a)(8). Pub. L. 88–650 permitted the State agency, for a period not in excess of thirty-six months to disregard such additional amounts of other income and resources.

1962—Subsec. (a)(7). Pub. L. 87–543, § 104(a)(3)(H), substituted ''aid to families with dependent children'' for ''aid to dependent children''.

Subsec. (a)(8). Pub. L. 87–543, §§ 106(a)(2), 154, inserted '', as well as any expenses reasonably attributable to the earning of any such income'', and amended the exception provision by striking out ''either (i) the first $50 per month of earned income, or'' after ''disregard'', redesignating subcl. (ii) as (A) and adding subcl. (B).

Subsec. (b). Pub. L. 87–543, § 136(a), provided for approval of certain plans of States, without an approved plan on Jan. 1, 1949, meeting all but income and resources requirements, and payment of certain expenditures under such plans.

1960—Subsec. (a)(8). Pub. L. 86–778, § 710(b), struck out provision that required the State agency to disregard, alternatively, the first $50 per month of earned income in considering claimant's income and resources in determining need.

Pub. L. 86–778, § 710(a), inserted provision that required the State agency to disregard, alternatively, the first $85 per month of earned income plus one-half of earned income in excess of $85 per month in considering claimant's income and resources in determining need.

1956—Subsec. (a)(13). Act Aug. 1, 1956, added cl. (13).

1950—Subsec. (a)(4). Act Aug. 28, 1950, § 341(a), substituted ''provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness'' for ''provide for granting to any individual, whose claim for aid is denied, an opportunity for a fair hearing before such State agency''.

Subsec. (a)(7). Act Aug. 28, 1950, § 341(b), inserted ''or aid to dependent children under the State plan approved under section 302 of this title''.

Subsec. (a)(8). Act Aug. 28, 1950, § 341(c)(2), (d), amended cl. (8) generally, effective July 1, 1952, and struck out ''and'' preceding cl. (9).

Act Aug. 28, 1950, § 341(c)(1), amended cl. (8) generally for period beginning Oct. 1, 1950, and ending June 30, 1952.

Subsec. (a)(9). Act Aug. 28, 1950, § 341(d), substituted comma for period at end.

Subsec. (a)(10). Act Aug. 28, 1950, § 341(e), amended cl. (10) generally. Prior to amendment, cl. (10) read as follows: ''provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist;''.

Act Aug. 28, 1950, § 341(d), added cl. (10).

Subsec. (a)(11), (12). Act Aug. 28, 1950, § 341(d), added cls. (11) and (12).

Subsec. (b). Act Aug. 28, 1950, § 361(c), (d), substituted ''Administrator'' for ''Board'' and ''he'' for ''it''.

1939—Subsec. (a)(5). Act Aug. 10, 1939, § 701(a), inserted ''(including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Board shall exercise no authority with respect)'' after ''methods of administration'' and ''proper'' before ''and efficient operation of the plan''.

Subsec. (a)(8), (9). Act Aug. 10, 1939, § 701(b), added cls. (8) and (9).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 210(a)(3) of Pub. L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub. L. 90–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 403(c) of Pub. L. 89–97 provided that the amendment made by that section is effective Oct. 1, 1965.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 106(a)(2) of Pub. L. 87–543 effective July 1, 1963, see section 202(a) of Pub. L. 87–543, set out as a note under section 302 of this title.

Section 154 of Pub. L. 87–543 provided that the amendment made by that section is effective July 1, 1963.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 710(a) of Pub. L. 86–778 provided that the amendment made by that section is effective for the period beginning with first day of calendar quarter which begins after Sept. 13, 1960, and ending with close of June 30, 1962.

Section 710(b) of Pub. L. 86–778 provided that the amendment made by that section is effective July 1, 1962.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective July 1, 1957, see section 314 [315] of act Aug. 1, 1956, set out as a note under section 302 of this title.

EFFECTIVE AND TERMINATION DATES OF 1950 AMENDMENT

Section 341(c)(1) of act Aug. 28, 1950, provided that the amendment made by that section is effective for the period beginning Oct. 1, 1950, and ending June 30, 1952.

Section 341(c)(2) of act Aug. 28, 1950, provided that the amendment made by that section is effective July 1, 1952.

Section 341(e) of act Aug. 28, 1950, provided that the amendment made by that section is effective July 1, 1952.

Section 341(f) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (b) and (d) [amending this section] shall take effect October 1, 1950; and the amendment made by subsection (a) [amending this section] shall take effect July 1, 1951.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 701(b) of act Aug. 10, 1939, provided that the amendment made by that section is effective July 1, 1941.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary under subsec. (a)(5)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

PUBLIC ACCESS TO STATE DISBURSEMENT RECORDS

Public access to State records of disbursements of funds and payments under this subchapter, see note set out under section 302 of this title.

§ 1202a. Repealed. Pub. L. 87–543, title I, § 136(b), July 25, 1962, 76 Stat. 197

Section, act Aug. 28, 1950, ch. 809, title III, pt. 4, § 344(a), 64 Stat. 554, provided, in the case of any State without a plan for aid to the blind approved on Jan. 1, 1949, for approval of the plan of such a State conforming to all requirements except those relating to determination of need and consideration of resources but conditioned payments to the State meeting the excepted requirement.

EFFECTIVE AND TERMINATION DATES

Section 136(b) of Pub. L. 87–543 also repealed section 344(b) of act Aug. 28, 1950, as amended Sept. 1, 1954, ch. 1206, title III, § 302, 68 Stat. 1097; Apr. 25, 1957, Pub. L. 85–26, 71 Stat. 27; Aug. 28, 1958, Pub. L. 85–840, title V, § 509, 72 Stat. 1051; Sept. 13, 1960, Pub. L. 86–778, title VII, § 706, 74 Stat. 995, which provided that this section should become effective Oct. 1, 1950 and terminate June 30, 1964.

§ 1203. Payment to States

(a) Authorization of payments

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) Repealed. Pub. L. 97–35, title XXI, § 2184(c)(2)(A), Aug. 13, 1981, 95 Stat. 817.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the blind for such month; and

(3) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Computation of amounts

The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which

the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the blind furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title X, § 1003, 49 Stat. 646; Aug. 10, 1939, ch. 666, title VII, § 702, 53 Stat. 1397; 1940 Reorg. Plan No. III, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; Aug. 10, 1946, ch. 951, title V, § 503, 60 Stat. 992; June 14, 1948, ch. 468, § 3(c), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 4, § 342(a), pt. 6, § 361(c), (d), 64 Stat. 553, 558; July 18, 1952, ch. 945, § 8(c), 66 Stat. 779; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 1, 1954, ch. 1206, title III, § 303(a), 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§ 303, 313(c), 343, 70 Stat. 847, 849, 853; Pub. L. 85–840, title V, § 503, Aug. 28, 1958, 72 Stat. 1049; Pub. L. 87–64, title III, § 303(b), June 30, 1961, 75 Stat. 143; Pub. L. 87–543, title I, §§ 101(a)(3), (b)(3), 132(b), July 25, 1962, 76 Stat. 176, 180, 195; Pub. L. 89–97, title I, § 122, title IV, § 401(d), July 30, 1965, 79 Stat. 353, 415; Pub. L. 90–248, title II, § 212(b), Jan. 2, 1968, 81 Stat. 897; Pub. L. 92–512, title III, § 301(b), (d), Oct. 20, 1972, 86 Stat. 946, 947; Pub. L. 93–647, §§ 3(e)(2), 5(c), Jan. 4, 1975, 88 Stat. 2349, 2350; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, § 2184(c)(2), title XXIII, § 2353(e), Aug. 13, 1981, 95 Stat. 817, 872; Pub. L. 99–603, title I, § 121(b)(4), Nov. 6, 1986, 100 Stat. 3391; Pub. L. 103–66, title XIII, § 13741(b), Aug. 10, 1993, 107 Stat. 663; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1993—Subsec. (a)(3). Pub. L. 103–66 substituted ''50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.'' for ''the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

''(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

''(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

''(C) one-half of the remainder of such expenditures.''

1986—Subsec. (a)(3)(B), (C). Pub. L. 99–603 added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (a)(1). Pub. L. 97–35, § 2184(c)(2)(A), struck out par. (1) which provided for computation of amounts payable in the case of any State other than Puerto Rico, the Virgin Islands, and Guam.

Subsec. (a)(2). Pub. L. 97–35, § 2184(c)(2)(B), struck out ''(including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)'' after ''under the State plan''.

Subsec. (a)(3). Pub. L. 97–35, § 2353(e)(1)(A), redesignated subpar. (A)(iv) as subpar. (A), struck out former subpars. (A)(i), which included services prescribed pursuant to subsec. (c)(1) of this section and provided to applicants for or recipients of aid to the blind to help them attain self-support, (A)(ii), which included other services, specified by the Secretary as likely to prevent or reduce dependency, and (A)(iii), which included any of the services in subpars. (A)(i) and (ii) deemed appropriate for individuals likely to become applicants for or recipients of aid to the blind, redesignated former subpar. (C) as (B), and struck out former subpar. (B), which included one-half of so much of the expenditures, not included in subpar. (A), as are for services for applicants for or recipients of aid to the blind or individuals likely to become such applicants or recipients, and subpars. (D) and (E) and provision following subpar. (E), which specified what services were includible.

Subsec. (a)(4). Pub. L. 97–35, § 2353(e)(1)(B), struck out par. (4) which provided payment, in the case of any State whose plan approved under section 1202 of this title did not meet the requirements of subsec. (c)(1) of this section, of an amount equal to one-half of the total of the sums expended during the quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

Subsec. (c). Pub. L. 97–35, § 2353(e)(2), struck out subsec. (c) which prescribed eligibility requirements for payments.

1975—Subsec. (a). Pub. L. 93–647, § 3(e)(2), struck out ''(subject to section 1320b of this title)'' after ''the Secretary of the Treasury shall''.

Subsec. (a)(3)(A)(iv). Pub. L. 93–647, §5(c), inserted ''(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)'' after ''training''.

1972—Subsec. (a). Pub. L. 92–512, §301(d), substituted ''shall (subject to section 1320b of this title) pay'' for ''shall pay'' in provisions preceding par. (1).

Subsec. (a)(3)(E). Pub. L. 92–512, §301(b), substituted ''under conditions which shall be'' for ''subject to limitations''.

1968—Subsec. (a)(3)(D). Pub. L. 90–248 inserted '', except to the extent specified by the Secretary'' after ''shall'' in introductory text to subpar. (D).

1965—Subsec. (a)(1). Pub. L. 89–97, §§122, 401(d), inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase appearing in so much of par. (1) as precedes cl. (A); and substituted ''31/37'' and ''$37'' for ''29/35'' and ''$35'' in subpar. (A) and ''$75'' for ''$70'' in subpar. (B), respectively.

Subsec. (a)(2). Pub. L. 89–97, §122, inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase.

1962—Subsec. (a)(1). Pub. L. 87–543, §132(b), substituted ''29/35'' and ''$35'' for ''four-fifths'' and ''$31'', respectively, in subpar. (A) and ''$70'' for ''$66'' in subpar. (B).

Subsec. (a)(2). Pub. L. 87–543, §132(b), substituted ''$37.50'' for ''$35.50''.

Subsec. (a)(3). Pub. L. 87–543, §101(a)(3), (b)(3)(A), inserted in opening provisions ''whose State plan approved under section 1202 of this title meets the requirements of subsection (c)(1) of this section'' after ''any State'', and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services to help attain and retain capability for self-support or self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for or recipients of aid to the blind and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff service of State or local public assistance agencies to applicants for and recipients of aid to the blind to help them attain self-support or self-care.

Subsec. (a)(4). Pub. L. 87–543, §101(b)(3)(B), added par. (4).

Subsec. (c). Pub. L. 87–543, §101(b)(3)(C), added subsec. (c).

1961—Subsec. (a). Pub. L. 87–64 substituted ''$31'' for ''$30'' and ''$66'' for ''$65'' in cl. (1), and ''$35.50'' for ''$35'' in cl. (2).

1958—Subsec. (a). Pub. L. 85–840 increased the payments to the States to four-fifths of the first $30 of the average monthly payment per recipient including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus the Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased the average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from the provisions which authorize an average monthly payment of $65 and included Guam within the provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, §303, substituted ''during such quarter as aid to the blind in the form of money payments under the State plan'' for ''during such quarter as aid to the blind under the State plan'' in cls. (1) and (2), ''who received aid to the blind in the form of money payments for such month'' for ''who received aid to the blind for such month'' in par. (a) of cl. (1), and inserted cl. (4).

Act Aug. 1, 1956, §313(c), struck out '', which shall be used exclusively as aid to the blind,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of aid to the blind to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose'' in cl. (3).

Act Aug. 1, 1956, §343, substituted ''October 1, 1956'' for ''October 1, 1952'', struck out '', which shall be used exclusively as aid to the blind,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), substituted ''$60'' for ''$55,'' ''the product of $30'' for ''the product of $25'', ''Secretary of Health, Education, and Welfare'' for ''Secretary'', and ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of aid to the blind to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose''.

1954—Subsec. (b)(1). Act Sept. 1, 1954, substituted ''the State's proportionate share'' for ''one-half''.

1952—Subsec. (a). Act July 18, 1952, increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.

1950—Subsec. (a). Act Aug. 28, 1950, §342(a), provided a new method of computation of the Federal portion of aid to the blind.

Subsec. (b). Act Aug. 28, 1950, §361(c), (d), substituted ''Administrator'' for ''Board''.

1948—Subsec. (a). Act June 14, 1948, substituted ''$50'' for ''$45'' and ''$20'' for ''$15''.

1946—Subsec. (a). Act Aug. 10, 1946, §503(a), temporarily increased the maximum monthly State expenditure to which the Federal government will contribute from $40 to $45 and increased the Federal contribution for aid to the blind from one-half the State's expenditure to two-thirds such expenditure up to $15 monthly per individual plus one-half the State's expenditure over $15. See Effective and Termination Date of 1946 Amendment note below.

Subsec. (b). Act Aug. 10, 1946, §503(b), temporarily substituted ''the State's proportionate share'' for ''one-half'' in par. (1). See Effective and Termination Date of 1946 Amendment note below.

1939—Act Aug. 10. 1939, amended section generally.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994, with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 13741(c) of Pub. L. 103–66, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(e) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 3(e)(2) of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

Amendment by section 5(c) of Pub. L. 93–647 effective with respect to payments for quarters commencing after Sept. 30, 1975, see section 7(a) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 301(b) of Pub. L. 92–512 effective Jan. 1, 1973, and amendment by section 301(d) of Pub. L. 92–512 effective July 1, 1972, see section 301(e) of Pub. L. 92–512, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Jan. 1, 1968, see section 212(e) of Pub. L. 90–248, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 401(d) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub. L. 89–97, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 101(a)(3) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be made after Aug. 31, 1962, and amendment by section 101(b)(3) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, see section 202(f) of Pub. L. 87–543, set out as a note under section 303 of this title.

Amendment by section 132(b) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Sept. 30, 1962, see section 202(d) of Pub. L. 87–543, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable only in the case of expenditures made after Sept. 30, 1961, and before July 1, 1962, under a State plan approved under subchapters I, X, or XIV of this chapter, see section 303(e) of Pub. L. 87–64, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1956 AMENDMENT

Amendment by section 303 of act Aug. 1, 1956, effective July 1, 1957, see section 305 of act Aug. 1, 1956, set out as a note under section 303 of this title.

Amendment by section 343 of act Aug. 1, 1956, effective only for period beginning Oct. 1, 1956, and ending with close of June 30, 1959, see section 345 of act Aug. 1, 1956, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Amendment by act July 18, 1952, effective for the period beginning Oct. 1, 1952, and ending Sept. 30, 1956, see section 8(e) of act July 18, 1952, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 342(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950.''

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act June 14, 1948, effective Oct. 1, 1948, see section 3(d) of act June 14, 1948, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1946 AMENDMENT

Amendment by section 503 of act Aug. 10, 1946, effective only for period beginning Oct. 1, 1946, and ending with close of June 30, 1950, see section 504 of act Aug. 10, 1946, as amended, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 702 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Fiscal Service'' substituted for ''Division of Disbursement'' in subsec. (b)(3), on authority of section 1(a)(1) of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, which consolidated such division into the Fiscal Service of the Treasury Department. See section 306 of Title 31, Money and Finance.

NONDUPLICATION OF PAYMENTS TO STATES, PROHIBITION OF PAYMENTS AFTER DECEMBER 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396b of this title.

ELECTION OF PAYMENTS UNDER COMBINED STATE PLAN RATHER THAN SEPARATE PLANS

Payments to States under combined State plan under subchapter XVI of this chapter as precluding payment under State plan conforming to this subchapter, see section 141(b) of Pub. L. 87–543.

§ 1204. Operation of State plans

In the case of any State plan for aid to the blind which has been approved by the Secretary of Health and Human Services, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1202(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1202(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title X, § 1004, 49 Stat. 646; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 90–248, title II, § 245, Jan. 2, 1968, 81 Stat. 918; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1968—Pub. L. 90–248 inserted "(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)" after "further payments will not be made to the State" and substituted in last sentence "further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)" for "further certification to the Secretary of the Treasury with respect to such State".

1950—Act Aug. 28, 1950, substituted "Administrator" for "Board" and "his" for "its".

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 1205. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title X, § 1005, 49 Stat. 647, made available $30,000 for the fiscal year ending June 30, 1936, for expenses in administering sections 1201 to 1204 of this title.

REPEALS

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section was repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

§ 1206. "Aid to the blind" defined

For the purposes of this subchapter, the term "aid to the blind" means money payments to blind individuals who are needy, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1202 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the blind to be paid (and in conjunction with other income and resources), meet all the need[1] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) of this subsection for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of

[1] So in original. Probably should be "needs".

any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

(Aug. 14, 1935, ch. 531, title X, § 1006, 49 Stat. 647; Aug. 10, 1939, ch. 666, title VII, § 703, 53 Stat. 1398; Aug. 28, 1950, ch. 809, title III, pt. 4, § 343(a), 64 Stat. 554; Pub. L. 87–543, title I, § 156(c), July 25, 1962, 76 Stat. 207; Pub. L. 89–97, title II, § 221(b), title IV, § 402(c), July 30, 1965, 79 Stat. 358, 416; Pub. L. 92–603, title IV, §§ 408(b), 409(b), Oct. 30, 1972, 86 Stat. 1490; Pub. L. 97–35, title XXI, § 2184(c)(3), Aug. 13, 1981, 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out in provision preceding par. (1) ", or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of," after "money payments to".

1972—Pub. L. 92–603 authorized the State, at its option, to include within term "aid to the blind" provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Pub. L. 89–97 struck out from definition of "aid to the blind" the exclusion of payments to or medical care in behalf of any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof; and extended definition of "aid to the blind" to include payments made on behalf of the needy individual to another individual who (as determined in accordance with standards determined by the Secretary) is interested in or concerned with the welfare of such needy individual and enumerated the five characteristics required of State plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs of the individual, special efforts to protect welfare, periodic review, and opportunity for fair hearing, respectively.

1962—Pub. L. 87–543 inserted "(if provided in or after the third month before the month in which the recipient makes application for aid)" before "medical care".

1950—Act Aug. 28, 1950, redefined "aid to the blind".

1939—Act Aug. 10, 1939, redefined "aid to the blind" to include those individuals who are needy.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221(b) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 302 of this title.

Amendment by section 402(c) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapters I, X, XIV, or XVI of this chapter, see section 402(e) of Pub. L. 89–97, set out as a note under section 306 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 156(c) of Pub. L. 87–543 applicable in the case of applications made after Sept. 30, 1962, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, see section 156(e) of Pub. L. 87–543, set out as a note under section 306 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 343(b) of act Aug. 28, 1950, provided that: "The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950, except that the exclusion of money payments to needy individuals described in clause (a) or (b) of section 1006 of the Social Security Act [this section] as so amended shall, in the case of any of such individuals who are not patients in a public institution, be effective July 1, 1952."

SUBCHAPTER XI—GENERAL PROVISIONS, PEER REVIEW, AND ADMINISTRATIVE SIMPLIFICATION

PART A—GENERAL PROVISIONS

§ 1301. Definitions

(a) When used in this chapter—

(1) The term "State", except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and when used in subchapters IV, V, VII, XI, XIX, and XXI of this chapter includes the Virgin Islands and Guam. Such term when used in subchapters III, IX, and XII of this chapter also includes the Virgin Islands. Such term when used in subchapter V and in part B of this subchapter of this chapter also includes American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. Such term when used in subchapters XIX and XXI of this chapter also includes the Northern Mariana Islands and American Samoa. In the case of Puerto Rico, the Virgin Islands, and Guam, subchapters I, X, and XIV, and subchapter XVI of this chapter (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972) shall continue to apply, and the term "State" when used in such subchapters (but not in subchapter XVI of this chapter as in effect pursuant to such amendment after December 31, 1973) includes Puerto Rico, the Virgin Islands, and Guam. Such term when used in subchapter XX of this chapter also includes the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Such term when used in subchapter IV of this chapter also includes American Samoa.

(2) The term "United States" when used in a geographical sense means, except where otherwise provided, the States.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "Secretary", except when the context otherwise requires, means the Secretary of Health and Human Services.

(7) The terms "physician" and "medical care" and "hospitalization" include osteopathic practitioners or the services of osteopathic practitioners and hospitals within the scope of their practice as defined by State law.

(8)(A) The "Federal percentage" for any State (other than Puerto Rico, the Virgin Islands, and Guam) shall be 100 per centum less

the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the square of the per capita income of such State bears to the square of the per capita income of the United States; except that the Federal percentage shall in no case be less than 50 per centum or more than 65 per centum.

(B) The Federal percentage for each State (other than Puerto Rico, the Virgin Islands, and Guam) shall be promulgated by the Secretary between October 1 and November 30 of each year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the four quarters in the period beginning October 1 next succeeding such promulgation: *Provided*, That the Secretary shall promulgate such percentages as soon as possible after August 28, 1958, which promulgation shall be conclusive for each of the eleven quarters in the period beginning October 1, 1958, and ending with the close of June 30, 1961.

(C) The term ''United States'' means (but only for purposes of subparagraphs (A) and (B) of this paragraph) the fifty States and the District of Columbia.

(D) Promulgations made before satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska shall prescribe a Federal percentage for Alaska of 50 per centum and, for purposes of such promulgations, Alaska shall not be included as part of the ''United States''. Promulgations made thereafter but before per capita income data for Alaska for a full three-year period are available from the Department of Commerce shall be based on satisfactory data available therefrom for Alaska for such one full year or, when such data are available for a two-year period, for such two years.

(9) The term ''shared health facility'' means any arrangement whereby—

(A) two or more health care practitioners practice their professions at a common physical location;

(B) such practitioners share (i) common waiting areas, examining rooms, treatment rooms, or other space, (ii) the services of supporting staff, or (iii) equipment;

(C) such practitioners have a person (who may himself be a practitioner)—

(i) who is in charge of, controls, manages, or supervises substantial aspects of the arrangement or operation for the delivery of health or medical services at such common physical location, other than the direct furnishing of professional health care services by the practitioners to their patients; or

(ii) who makes available to such practitioners the services of supporting staff who are not employees of such practitioners;

and who is compensated in whole or in part, for the use of such common physical location or support services pertaining thereto, on a basis related to amounts charged or collected for the services rendered or ordered at such location or on any basis clearly unrelated to the value of the services provided by the person; and

(D) at least one of such practitioners received payments on a fee-for-service basis under subchapters XVIII and XIX of this chapter in an amount exceeding $5,000 for any one month during the preceding 12 months or in an aggregate amount exceeding $40,000 during the preceding 12 months;

except that such term does not include a provider of services (as defined in section 1395x(u) of this title), a health maintenance organization (as defined in section 300e(a) of this title), a hospital cooperative shared services organization meeting the requirements of section 501(e) of the Internal Revenue Code of 1986, or any public entity.

(10) The term ''Administration'' means the Social Security Administration, except where the context requires otherwise.

(b) The terms ''includes'' and ''including'' when used in a definition contained in this chapter shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this chapter or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this chapter shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this chapter, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

(Aug. 14, 1935, ch. 531, title XI, § 1101, 49 Stat. 647; Aug. 10, 1939, ch. 666, title VIII, § 801, 53 Stat. 1398; Aug. 10, 1946, ch. 951, title IV, § 401(a), 60 Stat. 986; June 14, 1948, ch. 468, § 2(a), 62 Stat. 438; Aug. 28, 1950, ch. 809, title IV, § 403(a)(1), (2), (b), 64 Stat. 559; Aug. 16, 1956, ch. 836, title III, § 333, 70 Stat. 852; Pub. L. 85–840, title V, §§ 505, 506, Aug. 28, 1958, 72 Stat. 1050, 1051; Pub. L. 86–70, § 32(a), (d), June 25, 1959, 73 Stat. 149; Pub. L. 86–624, § 30(a), (d), July 12, 1960, 74 Stat. 419, 420; Pub. L. 86–778, title V, § 541, Sept. 13, 1960, 74 Stat. 985; Pub. L. 87–543, title I, § 153, July 25, 1962, 76 Stat. 206; Pub. L. 89–97, title I, § 121(c)(1), July 30, 1965, 79 Stat. 352; Pub. L. 92–603, title II, § 272(a), Oct. 30, 1972, 86 Stat. 1451; Pub. L. 93–233, § 18(z–2)(1)(A), Dec. 31, 1973, 87 Stat. 973; Pub. L. 94–273, § 22, Apr. 21, 1976, 90 Stat. 379; Pub. L. 94–566, title I, § 116(a), Oct. 20, 1976, 90 Stat. 2672; Pub. L. 95–142, § 5(c)(2), (*l*)(2), Oct. 25, 1977, 91 Stat. 1184, 1191; Pub. L. 97–35, title XXI, §§ 2162(a)(1), 2193(c)(2), title XXIII, § 2352(b), Aug. 13, 1981, 95 Stat. 806, 827, 871; Pub. L. 97–248, title I, §§ 136(a), 160(c), Sept. 3, 1982, 96 Stat. 375, 400; Pub. L. 98–369, div. B, title VI, § 2663(e)(1), (j)(1), July 18, 1984, 98 Stat. 1167, 1170; Pub. L. 99–272, title IX, § 9528(a), Apr. 7, 1986, 100 Stat. 219; Pub. L. 99–514, § 2, title XVIII, §§ 1883(c)(1), 1895(c)(6),

Oct. 22, 1986, 100 Stat. 2095, 2918, 2936; Pub. L. 100–203, title IX, § 9135(a)(1), (b)(1), Dec. 22, 1987, 101 Stat. 1330–315; Pub. L. 100–485, title VI, § 601(a), Oct. 13, 1988, 102 Stat. 2407; Pub. L. 103–296, title I, § 108(b)(1), Aug. 15, 1994, 108 Stat. 1481; Pub. L. 105–33, title IV, § 4901(b)(1), Aug. 5, 1997, 111 Stat. 570.)

REFERENCES IN TEXT

Section 301 of the Social Security Amendments of 1972, referred to in subsec. (a)(1), is section 301 of Pub. L. 92–603, title III, Oct. 30, 1972, 86 Stat. 1465, which enacted sections 1381 to 1382e and 1383 to 1383c of this title.

The Internal Revenue Code of 1986, referred to in subsec. (a)(9), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–33 substituted ''XIX, and XXI'' for ''and XIX'' and ''subchapters XIX and XXI'' for ''subchapter XIX''.

1994—Subsec. (a)(10). Pub. L. 103–296 added par. (10).

1988—Subsec. (a)(1). Pub. L. 100–485 amended last sentence generally. Prior to amendment, last sentence read as follows: ''Such term when used in part B of subchapter IV of this chapter also includes American Samoa.''

1987—Subsec. (a)(1). Pub. L. 100–203, § 9135(a)(1), inserted ''American Samoa,'' after ''Guam,''.

Pub. L. 100–203, § 9135(b)(1), inserted at end ''Such term when used in part B of subchapter IV of this chapter also includes American Samoa.''

1986—Subsec. (a)(3) to (5). Pub. L. 99–514, § 1883(c)(1), realigned margins of pars. (3) to (5).

Subsec. (a)(8)(B). Pub. L. 99–514, § 1895(c)(6), amended directory language of Pub. L. 99–272, § 9528(a), and did not involve any change in text. See note below.

Pub. L. 99–272, § 9528(a), as amended by Pub. L. 99–514, § 1895(c)(6), struck out ''even-numbered'' after ''November 30 of each'' and substituted ''for each of the four quarters'' for ''for each of the eight quarters''.

Subsec. (a)(9). Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in closing provisions.

1984—Subsec. (a)(6). Pub. L. 98–369, § 2663(j)(1), substituted ''means the Secretary of Health and Human Services'' for ''means the Secretary of Health, Education, and Welfare''.

Subsec. (a)(8), (9). Pub. L. 98–369, § 2663(e)(1), realigned margins of pars. (8) and (9).

1982—Subsec. (a)(1). Pub. L. 97–248, § 136(a), inserted ''and American Samoa'' after ''includes the Northern Mariana Islands''.

Pub. L. 97–248, § 160(c), substituted ''Guam, and the Northern Mariana Islands'' for ''American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands''.

1981—Subsec. (a)(1). Pub. L. 97–35, §§ 2162(a)(1), 2352(b), substituted ''American Samoa, the Northern Mariana Islands, and'' for ''American Samoa and'' and inserted provisions that ''State'' when used in subchapter XIX of this chapter also includes the Northern Mariana Islands and when used in subchapter XX of this chapter also includes the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Subsec. (a)(9)(D). Pub. L. 97–35, § 2193(c)(2), substituted ''subchapters XVIII, and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

1977—Subsec. (a)(1). Pub. L. 95–142, § 5(*l*)(2), which directed that second sentence of par. (1) be amended by inserting provision that ''State'' when used in part B of this subchapter also includes American Samoa and the Trust Territory of the Pacific Islands, was executed by inserting that provision to third sentence.

Subsec. (a)(9). Pub. L. 95–142, § 5(c)(2), added par. (9).

1976—Subsec. (a)(1). Pub. L. 94–566 inserted provision that ''State'', when used in subchapters III, IX, and XII of this chapter, also includes the Virgin Islands.

Subsec. (a)(8)(B). Pub. L. 94–273 substituted ''October'' for ''July'' in two places and ''November 30'' for ''August 31''.

1973—Subsec. (a)(1). Pub. L. 93–233 struck out in first sentence references to subchapters I, X, XIV, and XVI of this chapter and inserted third sentence respecting the case of Puerto Rico, the Virgin Islands, and Guam.

1972—Subsec. (a)(1). Pub. L. 92–603 extended benefits of subchapter V of this chapter to American Samoa and the Trust Territory of the Pacific Islands.

1965—Subsec. (a)(1). Pub. L. 89–97 included subchapter XIX of this chapter.

1962—Subsec. (a)(1). Pub. L. 87–543, § 153(a), included in enumeration subchapters XI and XVI of this chapter.

Subsec. (a)(2). Pub. L. 87–543, § 153(b), struck out '', the District of Columbia, and the Commonwealth of Puerto Rico'' after ''the States,''.

1960—Subsec. (a)(1). Pub. L. 86–778 substituted ''The term 'State', except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico'' for ''The term 'State' includes Hawaii, and the District of Columbia'', and ''includes the Virgin Islands and Guam'' for ''includes Puerto Rico, the Virgin Islands, and Guam''.

Pub. L. 86–624, § 30(d)(1), struck out ''Hawaii, and'' before ''the District of Columbia''.

Subsec. (a)(2). Pub. L. 86–778 substituted ''means, except where otherwise provided, the States, the District of Columbia, and the Commonwealth of Puerto Rico'' for ''means the States, Hawaii, and the District of Columbia''.

Pub. L. 86–624, § 30(d)(2), struck out '', Hawaii,'' before ''and the District of Columbia''.

Subsec. (a)(8)(A). Pub. L. 86–624, § 30(a)(1), (2), substituted ''per capita income of the United States'' for ''per capita income of the continental United States (including Alaska)'', and struck out provisions which prescribed the Federal percentage for Hawaii as 50 per centum.

Subsec. (a)(8)(B). Pub. L. 86–624, § 30(a)(1), substituted ''United States'' for ''continental United States (including Alaska)''.

Subsec. (a)(8)(C), (D). Pub. L. 86–624, § 30(a)(3), added subpars. (C) and (D).

1959—Subsec. (a)(1). Pub. L. 86–70, § 32(d)(1), substituted ''Hawaii and'' for ''Alaska, Hawaii, and''.

Subsec. (a)(2). Pub. L. 86–70, § 32(d)(2), struck out ''Alaska,'' before ''Hawaii''.

Subsec. (a)(8). Pub. L. 86–70, § 32(a), substituted ''(including Alaska)'' for ''(excluding Alaska)'' in two places, and ''50 per centum for Hawaii'' for ''50 per centum for Alaska and Hawaii''.

1958—Subsec. (a)(1). Pub. L. 85–840, § 506, included Guam within definition of ''State'' when used in subchapters I, IV, V, VII, X, and XIV of this chapter.

Subsec. (a)(8). Pub. L. 85–840, § 505, added par. (8).

1956—Subsec. (a)(1). Act Aug. 1, 1956, inserted reference to subchapter VII of this chapter.

1950—Subsec. (a)(1). Act Aug. 28, 1950, § 403(a)(1), redefined ''State''.

Subsec. (a)(6). Act Aug. 28, 1950, § 403(a)(2), defined ''Administrator''.

Subsec. (a)(7). Act Aug. 28, 1950, § 403(b), added par. (7).

1948—Subsec. (a)(6). Act June 14, 1948, provided for application of usual common-law rules in determining whether a person is an employee.

1946—Subsec. (a)(1). Act Aug. 10, 1946, struck out exception of section 45b of title 29 and inserted reference to Virgin Islands.

1939—Subsec. (a)(1). Act Aug. 10, 1939, redefined ''State''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 601(d) of Pub. L. 100–485 provided that: ''The amendments made by this section [amending this sec-

tion and sections 603, 1308, and 1318 of this title] shall become effective on October 1, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to fiscal years beginning on or after Oct. 1, 1988, see section 9135(c) of Pub. L. 100–203, set out as a note under section 623 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(c)(1) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1895(c)(6) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9528(b), (c) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §§ 9102, 9421(a), Oct. 21, 1986, 100 Stat. 1972, 2065, provided that:

''(b) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall apply to the Federal percentage (and Federal medical assistance percentage) for fiscal years 1987 and thereafter. Such amendments shall apply without regard to the requirement of section 1101(a)(8)(B) of the Social Security Act [subsec. (a)(8)(B) of this section] relating to the promulgation of the Federal percentage prior to November 30 of the year preceding the year in which the new Federal percentage becomes applicable. The Secretary of Health and Human Services shall promulgate such new percentage for fiscal year 1987 as soon as practicable after the date of the enactment of this Act [Apr. 7, 1986].

''(c) HOLD HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payments to States under sections 403 and 1903 of the Social Security Act [sections 603 and 1396b of this title], the amendments made by subsection (a) [amending this section] shall not apply to a State with respect to either such section if the effect of the [sic] applying the amendments would be to reduce the amount of payment made to the State under that section.''

[Section 9102 of Pub. L. 99–509 provided that the amendment made by that section [amending section 9528(c) of Pub. L. 99–272, set out above] is effective as provided in section 9421(b) of Pub. L. 99–509. See below.]

[Section 9421(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [enacting section 9528(c) of Pub. L. 99–272, set out above] shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272] at the time of its enactment.'']

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 136(e) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 1308, 1396a, and 1396d of this title] shall become effective on October 1, 1982.''

Section 160(e) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 671, 1308, and 1397b of this title] shall be effective as of October 1, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2352(a) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(2) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 effective on the later of Oct. 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of Title 26, Internal Revenue Code, an unemployment compensation law submitted to him by the Virgin Islands for approval, see section 116(f)(1) of Pub. L. 94–566, set out as a note under section 3304 of Title 26.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 18(z–2)(2) of Pub. L. 93–233 provided that: ''The amendments made by this subsection [amending this section and sections 1315 and 1316 of this title] shall be effective on and after January 1, 1974.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 272(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1308 of this title] shall apply with respect to fiscal years beginning after June 30, 1971.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 121(c)(1) of Pub. L. 89–97 provided that the amendment made by that section is effective Jan. 1, 1966.

EFFECTIVE DATE OF 1960 AMENDMENTS

Section 541 of Pub. L. 86–778 provided that the amendment made by that section is effective on and after Jan. 1, 1961.

Amendment by section 30(d) of Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

Amendment by section 30(a)(1) of Pub. L. 86–624 applicable in the case of promulgations or computations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after Aug. 21, 1959, see section 47(a) of Pub. L. 86–624.

Section 47(b) of Pub. L. 86–624 provided that: ''The amendments made by paragraph (2) of section 30(a) [amending this section] shall be effective with the beginning of the calendar quarter in which this Act is enacted. The Secretary of Health, Education, and Welfare shall, as soon as possible after enactment of this Act [July 12, 1960], promulgate a Federal percentage for Hawaii determined in accordance with the provisions of subparagraph (B) of section 1101(a)(8) of the Social Security Act [subsec. (a)(8)(B) of this section], such promulgation to be effective for the period beginning with the beginning of the calendar quarter in which this Act is enacted and ending with the close of June 30, 1961.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by section 32(a) of Pub. L. 86–70 applicable in the case of promulgations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska, and amendment by section 32(d) of Pub. L. 86–70 effective Jan. 3, 1959, see section 47(a), (d) of Pub. L. 86–70.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendments by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 403(a)(3) of act Aug. 28, 1950, provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect October 1, 1950, and the amendment made by paragraph (2) of this subsection [amending this section], insofar as it

repeals the definition of 'employee', shall be effective only with respect to services performed after 1950.''

Section 403(b) of act Aug. 28, 1950, provided that the amendment made by that section is effective Oct. 1, 1950.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 2(b) of act June 14, 1948, provided that: ''The amendment made by subsection (a) [amending this section] shall have the same effect as if included in the Social Security Act [this chapter] on August 14, 1935, the date of its enactment, but shall not have the effect of voiding any (1) wage credits reported to the Bureau of Internal Revenue [now Internal Revenue Service] with respect to services performed prior to the enactment of this Act [June 14, 1948] or (2) wage credits with respect to services performed prior to the close of the first calendar quarter which begins after the date of the enactment of this Act in the case of individuals who have attained age sixty-five or who have died, prior to the close of such quarter, and with respect to whom prior to the date of enactment of this Act wage credits were established which would not have been established had the amendment made by subsection (a) been in effect on and after August 14, 1935.''

EFFECTIVE DATE OF 1946 AMENDMENT

Section 401(a) of act Aug. 10, 1946, provided that the amendment made by that section is effective Jan. 1, 1947.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 801 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

REPEALS

The provisions of subsecs. (a)(1), (3), (6), (c) of this section were incorporated into sections 1426(d) to (f), 1427, 1607(i) to (k), and 1608 of former Title 26, Internal Revenue Code of 1939, by act Feb. 10, 1939, ch. 2, 53 Stat. 1. Section 4 of the act of Feb. 10, 1939, provided that all laws and parts of laws codified into the Internal Revenue Code of 1939, to the extent that they related exclusively to internal revenue, were repealed. See enacting sections preceding section 1 of former Title 26.

Provisions of the Internal Revenue Code of 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. Said repealed sections are covered by sections 3121, 3123, 3306, 3307, 7701 of Title 26.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and Office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PROVISIONS RELATING TO FEDERAL SECURITY ADMINISTRATOR

Section 2663(*l*) of Pub. L. 98–369 provided that: ''Any reference to the Federal Security Administrator which may remain in the provisions of title II, IV, VII, or XI of the Social Security Act [subchapter II, IV, VII, or XI of this chapter] (other than section 1101(a)(6) of such Act [subsec. (a)(6) of this section]) is amended—

''(1) by substituting 'Secretary' or 'Secretary's' for the term 'Administrator' or 'Administrator's', where the reference is to that term alone;

''(2) by substituting 'Secretary of Health, Education, and Welfare' for the term 'Federal Security Administrator', where the reference is to that term, if the provision containing such reference is amended by paragraph (2) or (3) of subsection (j) [Pub. L. 98–369, § 2663(j)(2), (3), see Tables for classification] (in which case the amendment of such provision under this paragraph shall be deemed to have taken effect immediately prior to the amendment of such provision under such paragraph (2) or (3)); and

''(3) by substituting 'Secretary of Health and Human Services' for the term 'Federal Security Administrator' in any other case where the reference is to that term;

and any reference to the Federal Security Agency which may remain in such provisions is amended by substituting 'Department of Health and Human Services' for the term 'Federal Security Agency'; but nothing in this subsection shall affect the exercise under section 402(a)(5) of such Act [section 602(a)(5) of this title] of the functions, powers, and duties relating to the prescription of personnel standards on a merit basis which were transferred from the Secretary of Health, Education, and Welfare by section 208(a)(3)(D) of Public Law 91–648 [42 U.S.C. 4728(a)(3)(D)].''

DEFINITIONS OF ''BIPA'' AND ''SECRETARY''

Pub. L. 108–173, § 1(c), Dec. 8, 2003, 117 Stat. 2066, provided that:

''In this Act [see Short Title of 2003 Amendments note set out under section 1305 of this title]:

''(1) BIPA.—The term 'BIPA' means the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted into law by section 1(a)(6) of Public Law 106–554 [see Tables for classification].

''(2) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.''

DEFINITION OF ''SECRETARY''

Pub. L. 90–248, title IV, § 404, Jan. 2, 1968, 81 Stat. 933, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the amendments made by this Act [see Short Title of 1968 Amendment note set out under section 1305 of this title] (unless the context otherwise requires), the term 'Secretary' means the Secretary of Health and Human Services.''

Section 110 of Pub. L. 89–97, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act, and in the provisions of the Social Security Act amended by this Act [see Short Title of 1965 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 6 of Pub. L. 88–156, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the amendments to the Social Security Act made by this Act [see Short Title of 1963 Amendment note set out under section 1305 of this title], the term 'Secretary' means the Secretary of Health and Human Services.''

Section 201 of Pub. L. 87–543, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act and in the provisions of the Social Security Act amended by this Act [see Short Title of 1962 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 304 of title III of Pub. L. 87–64, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695,

provided that: ''As used in this title and title I, and in the provisions of the Social Security Act amended thereby [see Short Title of 1961 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 709 of Pub. L. 86–778, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act and the provisions of the Social Security Act amended by this Act [see Short Title of 1960 Amendment note set out under section 1305 of this title] the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 702 of Pub. L. 85–840, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the provisions of the Social Security Act amended by this Act [see Short Title of 1958 Amendment note set out under section 1305 of this title], the term ''Secretary'', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 119 of act Aug. 1, 1956, ch. 836, as amended Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided that: ''As used in this Act and in the provisions of the Social Security Act set forth in this Act [see Short Title of 1956 Amendment note set out under section 1305 of this title], the term 'Secretary' means the Secretary of Health and Human Services.''

Section 114 of title I of act Sept. 1, 1954, as amended Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided that: ''As used in the provisions of the Social Security Act amended by this title [sections 402, 403, 415, and 421 of this title], the term 'Secretary' means the Secretary of Health and Human Services.''

§ 1301–1. Omitted

CODIFICATION

Section, act Aug. 10, 1946, ch. 951, title II, § 202, 60 Stat. 981, defined the term ''Administrator'' as used in certain sections of this chapter. See section 1301 of this title.

§ 1301a. Omitted

CODIFICATION

Section, act June 26, 1940, ch. 428, title II, 54 Stat. 588, provided for reimbursement for official travel performed by employees of the Bureau of Old-Age Insurance, was from the Federal Security Agency Appropriation Act, 1941, and was not repeated in subsequent appropriations acts.

§ 1302. Rules and regulations; impact analyses of Medicare and Medicaid rules and regulations on small rural hospitals

(a) The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter.

(b)(1) Whenever the Secretary publishes a general notice of proposed rulemaking for any rule or regulation proposed under subchapter XVIII of this chapter, subchapter XIX of this chapter, or part B of this subchapter that may have a significant impact on the operations of a substantial number of small rural hospitals, the Secretary shall prepare and make available for public comment an initial regulatory impact analysis. Such analysis shall describe the impact of the proposed rule or regulation on such hospitals and shall set forth, with respect to small rural hospitals, the matters required under section 603 of title 5 to be set forth with respect to small entities. The initial regulatory impact analysis (or a summary) shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule or regulation.

(2) Whenever the Secretary promulgates a final version of a rule or regulation with respect to which an initial regulatory impact analysis is required by paragraph (1), the Secretary shall prepare a final regulatory impact analysis with respect to the final version of such rule or regulation. Such analysis shall set forth, with respect to small rural hospitals, the matters required under section 604 of title 5 to be set forth with respect to small entities. The Secretary shall make copies of the final regulatory impact analysis available to the public and shall publish, in the Federal Register at the time of publication of the final version of the rule or regulation, a statement describing how a member of the public may obtain a copy of such analysis.

(3) If a regulatory flexibility analysis is required by chapter 6 of title 5 for a rule or regulation to which this subsection applies, such analysis shall specifically address the impact of the rule or regulation on small rural hospitals.

(Aug. 14, 1935, ch. 531, title XI, § 1102, 49 Stat. 647; Aug. 28, 1950, ch. 809, title IV, § 403(c), 64 Stat. 559; Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(i), (*l*)(2), July 18, 1984, 98 Stat. 1170, 1171; Pub. L. 100–203, title IV, § 4402(a), Dec. 22, 1987, 101 Stat. 1330–226.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (b)(1), is classified to section 1320c et seq. of this title.

AMENDMENTS

1987—Pub. L. 100–203 designated existing provision as subsec. (a) and added subsec. (b).

1984—Pub. L. 98–369, § 2663(*l*)(2), substituted ''Secretary of Health, Education, and Welfare'' for ''Federal Security Administrator'' immediately prior to the substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'' by Pub. L. 98–369, § 2663(j)(2)(D)(i).

1950—Act Aug. 28, 1950, substituted ''Federal Security Administrator'' for ''Social Security Board''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4402(b) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [probably means subsec. (a), amending this section] shall apply to regulations proposed more than 30 days after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

REPEALS

The provisions of this section were incorporated into sections 1429 and 1609 of former Title 26, Internal Revenue Code of 1939, by act Feb. 10, 1939, ch. 2, 53 Stat. 1. Section 4 of the act of Feb. 10, 1939, which enacted Title 26, I.R.C. 1939, provided that all laws and parts of laws codified into the I.R.C. 1939, to the extent that they related exclusively to internal revenue, were repealed.

Provisions of I.R.C. 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954. See also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. The repealed sections are covered by section 7805(a), (c) of Title 26.

ABORTION SERVICES; PROHIBITION ON CERTAIN POLICY CHANGES

Pub. L. 100–517, § 9, Oct. 24, 1988, 102 Stat. 2583, provided that: ''With respect to abortion services, the Secretary of Health and Human Services shall not promulgate or issue any regulations, policy statements, or interpretations or develop any practices concerning the performance of medically necessary procedures if such regulations, policy statements, interpretations, or practices would be inconsistent with regulations, policy statements, interpretations, or practices in effect on the date of the enactment of this Act [Oct. 24, 1988].''

NOTICE ON SOCIAL SECURITY CHECKS

Pub. L. 98–473, title II, § 1212, Oct. 12, 1984, 98 Stat. 2165, provided that:

''(a) The Secretary of the Treasury shall take such steps as may be necessary to provide that all checks issued for payment of benefits under title II of the Social Security Act [subchapter II of this chapter], and the envelopes in which such checks are mailed, contain a printed notice that the commission of forgery in conjunction with the cashing or attempted cashing of such checks constitutes a violation of Federal law. Such notice shall also state the maximum penalties for forgery under the applicable provisions of title 18 of the United States Code.

''(b) Subsection (a) shall apply with respect to checks issued for months after the ninth month after the date of the enactment of this Act [Oct. 12, 1984].''

§ 1303. Separability

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby.

(Aug. 14, 1935, ch. 531, title XI, § 1103, 49 Stat. 648.)

SEPARABILITY

Pub. L. 98–460, § 18, Oct. 9, 1984, 98 Stat. 1813, provided that: ''If any provision of this Act [amending sections 405, 408, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 to 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1305 of this title, and amending provisions set out as a note under section 1382h of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.''

§ 1304. Reservation of right to amend or repeal

The right to alter, amend, or repeal any provision of this chapter is hereby reserved to the Congress.

(Aug. 14, 1935, ch. 531, title XI, § 1104, 49 Stat. 648.)

§ 1305. Short title of chapter

This chapter may be cited as the ''Social Security Act''.

(Aug. 14, 1935, ch. 531, title XI, § 1105, 49 Stat. 648.)

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–432, div. B, § 1, Dec. 20, 2006, 120 Stat. 2975, provided that: ''This division [amending sections 671, 1320a–2a, 1395i, 1395*l*, 1395u, 1395w–3b, 1395w–4, 1395w–21, 1395w–27a, 1395w–101, 1395w–102, 1395rr, 1395ww, 1395ddd, 1396a, 1396b, 1396*o*–1, 1396p, 1396r, 1396r–4, and 1396r–8 of this title, enacting provisions set out as notes under sections 300aa–2, 671, 1395b–1, 1395*l*, 1395u, 1395w–3b, 1395w–4, 1395w–102, 1395ww, 1395ddd, 1396b, 1396*o*–1, 1396p, and 1396r of this title, and amending provisions set out as notes under sections 1395*l*, 1395w–4, 1395eee, 1396a, 1396b, and 1396h of this title] may be cited as the 'Medicare Improvements and Extension Act of 2006'.''

Pub. L. 109–288, § 1, Sept. 28, 2006, 120 Stat. 1233, provided that: ''This Act [enacting sections 621 and 625 of this title, amending sections 622 to 624, 626, 628, 628a, 628b, 629, 629a to 629i, 672, 673b, 675, 679b, 1320a–9, and 14914 of this title, repealing sections 620, 624, and 625 of this title, and enacting provisions set out as notes under sections 621, 624, 629b, 629d, and 629f of this title] may be cited as the 'Child and Family Services Improvement Act of 2006'.''

Pub. L. 109–239, § 1, July 3, 2006, 120 Stat. 508, provided that: ''This Act [enacting section 673c of this title, amending sections 622, 629h, 671, and 675 of this title, repealing section 673c of this title, and enacting provisions set out as notes under sections 622 and 673c of this title] may be cited as the 'Safe and Timely Interstate Placement of Foster Children Act of 2006'.''

Pub. L. 109–171, § 1, Feb. 8, 2006, 120 Stat. 4, provided that: ''This Act [see Tables for classification] may be cited as the 'Deficit Reduction Act of 2005'.''

Pub. L. 109–171, title VI, § 6061, Feb. 8, 2006, 120 Stat. 96, provided that: ''This subchapter [subchapter A (§§ 6061–6065) of chapter 6 of subtitle A of title VI of Pub. L. 109–171, amending sections 701, 1396a, 1396b, 1396d, 1396*o* of this title and enacting provisions set out as notes under section 1396a of this title] may be cited as the 'Family Opportunity Act of 2005' or the 'Dylan Lee James Act'.''

SHORT TITLE OF 2005 AMENDMENTS

Pub. L. 109–161, § 1, Dec. 30, 2005, 119 Stat. 2958, provided that: ''This Act [amending section 603 of this title] may be cited as the 'TANF and Child Care Continuation Act of 2005'.''

Pub. L. 109–113, § 1, Nov. 22, 2005, 119 Stat. 2371, provided that: ''This Act [amending section 672 of this title] may be cited as the 'Fair Access Foster Care Act of 2005'.''

Pub. L. 109–91, § 1, Oct. 20, 2005, 119 Stat. 2091, provided that: ''This Act [amending sections 1103, 1395w–102, 1396a, 1396b, 1396r–8, 1396u–3, and 1396u–5 of this title and enacting provisions set out as notes under sections 1103, 1395w–102, 1396a, and 1396b of this title] may be cited as the 'QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005'.''

Pub. L. 109–68, § 1, Sept. 21, 2005, 119 Stat. 2003, provided that: ''This Act [amending sections 603 and 609 of this title] may be cited as the 'TANF Emergency Response and Recovery Act of 2005'.''

Pub. L. 109–19, § 1, July 1, 2005, 119 Stat. 344, provided that: ''This Act [amending section 603 of this title] may be cited as the 'TANF Extension Act of 2005'.''

Pub. L. 109–4, § 1, Mar. 25, 2005, 119 Stat. 17, provided that: ''This Act [amending section 603 of this title] may be cited as the 'Welfare Reform Extension Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENTS

Pub. L. 108–308, § 1, Sept. 30, 2004, 118 Stat. 1135, provided that: ''This Act [amending sections 603 and 609 of this title] may be cited as the 'Welfare Reform Extension Act, Part VIII'.''

Pub. L. 108–295, § 1, Aug. 9, 2004, 118 Stat. 1090, provided that: ''This Act [amending sections 503 and 653 of this title and enacting provisions set out as a note under section 503 of this title] may be cited as the 'SUTA Dumping Prevention Act of 2004'.''

Pub. L. 108–262, §1, June 30, 2004, 118 Stat. 696, provided that: ''This Act [amending section 603 of this title] may be cited as the 'TANF and Related Programs Continuation Act of 2004'.''

Pub. L. 108–210, §1, Mar. 31, 2004, 118 Stat. 564, provided that: ''This Act [amending section 603 of this title] may be cited as the 'Welfare Reform Extension Act of 2004'.''

Pub. L. 108–203, §1(a), Mar. 2, 2004, 118 Stat. 493, provided that: ''This Act [enacting section 1320a–8b of this title, amending sections 401, 402, 404, 405, 406, 408, 409 to 411, 414, 416, 418, 422, 423, 426, 429, 434, 903, 1004, 1007, 1008, 1011, 1310, 1320a–8, 1320a–8a, 1320b–10, 1320b–13, 1320b–17, 1320b–19 to 1320b–21, 1382 to 1382c, 1383, and 1383a of this title, sections 1401, 1402, 3101, 3102, 3111, and 3121 of Title 26, Internal Revenue Code, and sections 231n and 231n–1 of Title 45, Railroads, repealing section 1320b–18 of this title, enacting provisions set out as notes under sections 402, 404, 405, 406, 408, 411, 414, 416, 418, 422, 902, 903, 1320a–8, 1320b–10, 1320b–13, 1320b–19 to 1320b–21, 1382 to 1382c, and 1383 of this title and section 1113 of Title 31, Money and Finance, and amending provisions set out as a note under section 434 of this title] may be cited as the 'Social Security Protection Act of 2004'.''

SHORT TITLE OF 2003 AMENDMENTS

Pub. L. 108–173, §1(a), Dec. 8, 2003, 117 Stat. 2066, provided that: ''This Act [see Tables for classification] may be cited as the 'Medicare Prescription Drug, Improvement, and Modernization Act of 2003'.''

Pub. L. 108–145, §1, Dec. 2, 2003, 117 Stat. 1879, provided that: ''This Act [amending sections 673b and 674 of this title and enacting provisions set out as notes under section 673b of this title] may be cited as the 'Adoption Promotion Act of 2003'.''

Pub. L. 108–40, §1, June 30, 2003, 117 Stat. 836, provided that: ''This Act [amending sections 603, 606, 609, 612, 614, 618, 710, 1308, 1320a–9, 1396a, and 1396r–6 of this title and enacting provisions set out as a note under section 603 of this title] may be cited as the 'Welfare Reform Extension Act of 2003'.''

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107–133, §1, Jan. 17, 2002, 115 Stat. 2413, provided that: ''This Act [enacting sections 629f to 629i of this title, amending sections 629, 629a, 629c, 629d, 629e, 674, and 677 of this title, and enacting provisions set out as a note under section 677 of this title] may be cited as the 'Promoting Safe and Stable Families Amendments of 2001'.''

Pub. L. 107–121, §1, Jan. 15, 2002, 115 Stat. 2384, provided that: ''This Act [amending sections 1396a and 1396n of this title and enacting provisions set out as a note under section 1396a of this title] may be cited as the 'Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–105, §1, Dec. 27, 2001, 115 Stat. 1003, provided that: ''This Act [amending sections 1320d and 1395y of this title and enacting provisions set out as notes under sections 1320d–4 and 1395y of this title] may be cited as the 'Administrative Simplification Compliance Act'.''

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–554, §1(a)(1) [title VI, §601], Dec. 21, 2000, 114 Stat. 2763, 2763A–74, provided that: ''This title [enacting and amending provisions set out as notes under section 604 of this title] may be cited as the 'Assets for Independence Act Amendments of 2000'.''

Pub. L. 106–554, §1(a)(6) [§1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–463, provided that: ''This Act [H.R. 5661, as enacted by section 1(a)(6) of Pub. L. 106–554, see Tables for classification] may be cited as the 'Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000'.''

Pub. L. 106–553, §1(a)(2) [title VI, §635(a)], Dec. 21, 2000, 114 Stat. 2762, 2762A–114, which provided that section 1(a)(2) [title VI, §635] of Pub. L. 106–553, enacting section 1320b–23 of this title, amending section 408 of this title, and enacting provisions set out as notes under sections 408 and 1320b–23 of this title, could be cited as ''Amy Boyer's Law'', was repealed by Pub. L. 106–554, §1(a)(4) [div. A, §213(a)(6), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, effective as if included in Pub. L. 106–553 on Dec. 21, 2000.

Pub. L. 106–354, §1, Oct. 24, 2000, 114 Stat. 1381, provided that: ''This Act [enacting section 1396r–1b of this title, amending sections 1396a, 1396b, and 1396d of this title, and enacting provisions set out as a note under section 1396a of this title] may be cited as the 'Breast and Cervical Cancer Prevention and Treatment Act of 2000'.''

Pub. L. 106–182, §1, Apr. 7, 2000, 114 Stat. 198, provided that: ''This Act [amending sections 402 and 403 of this title and enacting provisions set out as a note under section 402 of this title] may be cited as the 'Senior Citizens' Freedom to Work Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENTS

Pub. L. 106–170, §1(a), Dec. 17, 1999, 113 Stat. 1860, provided that: ''This Act [see Tables for classification] may be cited as the 'Ticket to Work and Work Incentives Improvement Act of 1999'.''

Pub. L. 106–169, §1(a), Dec. 14, 1999, 113 Stat. 1822, provided that: ''This Act [enacting subchapter VIII of this chapter and sections 1306b, 1320a–8a, 1320b–6, and 1320b–18 of this title, amending sections 401, 402, 404, 405, 602, 604, 609, 613, 616, 629a, 652, 654, 655, 657, 659, 666, 671, 672, 673b, 674, 677, 903, 904, 909, 1320a–8, 1320b–7, 1320b–17, 1382, 1382a, 1382b, 1383, 1396a, and 1396d of this title and sections 3701 and 3716 of Title 31, Money and Finance, and enacting provisions set out as notes under sections 402, 404, 602, 604, 657, 671, 677, 904, 1320a–8, 1320a–8a, 1320b–6, 1382, 1382a, 1382b, 1383, and 1396a of this title and section 3701 of Title 31] may be cited as the 'Foster Care Independence Act of 1999'.''

Pub. L. 106–113, div. B, §1000(a)(6) [§1(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–321, provided that: ''This Act [H.R. 3426, as enacted by section 1000(a)(6) of Pub. L. 106–113, see Tables for classification] may be cited as the 'Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999'.''

Pub. L. 106–4, §1, Mar. 25, 1999, 113 Stat. 7, provided that: ''This Act [amending section 1396r of this title and enacting provisions set out as a note under section 1396r of this title] may be cited as the 'Nursing Home Resident Protection Amendments of 1999'.''

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105–306, §1, Oct. 28, 1998, 112 Stat. 2926, provided that: ''This Act [enacting section 1320b–17 of this title, amending sections 404, 603, 655, 1382a, 1382b, and 1383 of this title and sections 1611 and 1621 of Title 8, Aliens and Nationality, enacting provisions set out as notes under sections 404, 603, 652, 655, and 1382a of this title, and amending provisions set out as notes under section 652 of this title and section 3306 of Title 26, Internal Revenue Code] may be cited as the 'Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998'.''

Pub. L. 105–200, §1, July 16, 1998, 112 Stat. 645, provided that: ''This Act [enacting section 658a of this title, amending sections 603, 604, 609, 613, 622, 629b, 652, 653, 655, 658, 658a, 666, 669, 669a, 671, 673b, 674, and 1314a of this title and sections 1021, 1144, and 1169 of Title 29, Labor, repealing section 658 of this title, enacting provisions set out as notes under sections 608, 651 to 653, 655, 658a, 666, and 671 of this title, sections 1021, 1144, and 1169 of Title 29, and section 5309 of Title 49, Transportation, amending provisions set out as notes under sections 608, 652, 658, and 658a of this title, and repealing provisions set out as a note under section 658 of this title] may be cited as the 'Child Support Performance and Incentive Act of 1998'.''

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–89, §1(a), Nov. 19, 1997, 111 Stat. 2115, provided that: ''This Act [enacting sections 673b, 678, and

679b of this title, amending sections 603, 622, 629 to 629b, 653, 671 to 673, 674, 675, 677, and 1320a–9 of this title and sections 645 and 901 of Title 2, The Congress, enacting provisions set out as notes under sections 613, 622, 629a, 671, 673, 675, 679b, 1320a–9, 5111, and 5113 of this title, and amending provisions set out as a note under section 670 of this title] may be cited as the 'Adoption and Safe Families Act of 1997'.''

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104–193, §1, Aug. 22, 1996, 110 Stat. 2105, provided that: ''This Act [see Tables for classification] may be cited as the 'Personal Responsibility and Work Opportunity Reconciliation Act of 1996'.''

Pub. L. 104–121, title I, §101, Mar. 29, 1996, 110 Stat. 847, provided that: ''This title [enacting sections 1320b–15 and 1383e of this title, amending sections 401 to 403, 405, 422, 423, 425, 902, 903, 1382, 1382c, 1383, and 1383c of this title and sections 665e and 901 of Title 2, The Congress, enacting provisions set out as notes under sections 401 to 403, 405, 902, 1320b–15, and 1382 of this title, and repealing provisions set out as a note under section 425 of this title] may be cited as the 'Senior Citizens' Right to Work Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENTS

Pub. L. 103–432, §1, Oct. 31, 1994, 108 Stat. 4398, provided that: ''This Act [see Tables for classification] may be cited as the 'Social Security Act Amendments of 1994'.''

Pub. L. 103–382, title V, §551, Oct. 20, 1994, 108 Stat. 4056, provided that: ''This subpart [subpart 1 (§§551–554) of part E of title V of Pub. L. 103–382 enacting section 5115a of this title, amending section 622 of this title, and enacting provisions set out as a note under section 622 of this title] may be cited as the 'Howard M. Metzenbaum Multiethnic Placement Act of 1994'.''

Pub. L. 103–296, §1(a), Aug. 15, 1994, 108 Stat. 1464, provided that: ''This Act [see Tables for classification] may be cited as the 'Social Security Independence and Program Improvements Act of 1994'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–234, §1, Dec. 12, 1991, 105 Stat. 1793, provided that: ''This Act [amending sections 1396a, 1396b, and 1396r–4 of this title and enacting provisions set out as notes under sections 1396a, 1396b, and 1396r–4 of this title] may be cited as the 'Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991'.''

SHORT TITLE OF 1989 AMENDMENTS

Pub. L. 101–239, title X, §10000, Dec. 19, 1989, 103 Stat. 2470, provided that: ''This title [see Tables for classification] may be cited as the 'Miscellaneous and Technical Social Security Act Amendments of 1989'.''

Pub. L. 101–234, §1, Dec. 13, 1989, 103 Stat. 1979, provided that: ''This Act [see Tables for classification] may be cited as the 'Medicare Catastrophic Coverage Repeal Act of 1989'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–485, §1(a), Oct. 13, 1988, 102 Stat. 2343, provided that: ''This Act [enacting sections 617, 668, 669, 681 to 687, and 1396r–6 of this title, amending sections 405, 426, 503, 504, 602, 603, 607, 652 to 655, 657, 658, 666, 667, 671, 704, 1301, 1308, 1315, 1318, 1320a–7, 1320a–7a, 1320b–10, 1320c–3, 1395i–2, 1395i–3, 1395*l*, 1395m, 1395r, 1395s, 1395t–1, 1395t–2, 1395u, 1395v, 1395w–2, 1395w–3, 1395x, 1395y, 1395aa to 1395dd, 1395mm, 1395tt, 1395ww, 1395aaa to 1395ccc, 1396a, 1396b, 1396d, 1396i, 1396n, 1396p, 1396r, 1396r–1, 1396r–4, 1396r–5, 1396s, 1397d, and 1397e of this title, section 5315 of Title 5, Government Organization and Employees, and sections 21, 51, 62, 129, 6103, 6109, and 7213 of Title 26, Internal Revenue Code, repealing sections 609, 614, 630 to 632, 633 to 645, and 1320a–2 of this title, enacting provisions set out as notes under sections 405, 426, 602, 603, 607, 618, 652 to 655, 666, 667, 681, 704, 1308, 1315, 1320a–2, 1395k, 1396b, and 1396r–6 of this title and sections 21, 62, 6103, and 6109 of Title 26, and amending provisions set out as notes under sections 603, 606, 1320c–5, 1395b, 1395d, 1395e, 1395i–3, 1395k, 1395u, 1395*ll*, 1395mm, 1395ss, 1395tt, 1395ww, 1396a, 1396d, and 1396r–5 of this title and sections 6402 of Title 26] may be cited as the 'Family Support Act of 1988'.''

Pub. L. 100–364, §1, July 11, 1988, 102 Stat. 822, provided: ''That this Act [amending section 645 of this title] may be cited as the 'WIN Demonstration Program Extension Act of 1988'.''

Pub. L. 100–360, §1(a), July 1, 1988, 102 Stat. 683, provided that: ''This Act [enacting sections 1320b–10, 1395b–2, 1395i–1a, 1395t–1, 1395t–2, 1395w–3, 1396r–4, and 1396r–5 of this title and section 59B of Title 26, Internal Revenue Code, amending sections 254*o*, 294f, 300aa–12, 300aa–15, 300aa–21, 401, 426, 704, 912, 1320a–7, 1320a–7a, 1320a–7b, 1320b–5, 1320b–7, 1320b–8, 1320c–3, 1320c–5, 1320c–9, 1382, 1382b, 1395c to 1395f, 1395h, 1395i, 1395i–2, 1395i–3, 1395k to 1395n, 1395r to 1395t, 1395u to 1395w–2, 1395x to 1395z, 1395aa to 1395dd, 1395gg, 1395mm, 1395ss, 1395tt, 1395ww, 1395aaa to 1395ccc, 1396a, 1396b, 1396d, 1396j, 1396n to 1396p, 1396r, 1396r–1, 1396r–3, 1396r–4, 1396s, and 1397d of this title and section 6050F of Title 26, enacting provisions set out as notes under this section and sections 294f, 1320b–7, 1320b–10, 1320c–3, 1395b, 1395b–1, 1395b–2, 1395d, 1395e, 1395h, 1395i–1a, 1395k, 1395*l*, 1395m, 1395r, 1395u, 1395v, 1395x, 1395y, 1395cc, 1395*ll*, 1395mm, 1395ss, 1395ww, 1396a, 1396b, 1396d, 1396r–1, and 1396r–5 of this title, section 106 of Title 1, General Provisions, section 8902 of Title 5, Government Organization and Employees, and section 59B of Title 26, amending provisions set out as notes under sections 426, 1320a–7a, 1320c–2, 1320c–3, 1395b–1, 1395h, 1395i–3, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–1, 1395x, 1395y, 1395aa, 1395dd, 1395mm, 1395pp, 1395ss, 1395ww, 1395bbb, 1396a, 1396b, and 1396r of this title, and repealing provisions set out as a note under section 1395*l* of this title] may be cited as the 'Medicare Catastrophic Coverage Act of 1988'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–93, §1(a), Aug. 18, 1987, 101 Stat. 680, provided that: ''This Act [enacting sections 1395aaa and 1396r–2 of this title, amending sections 704, 1320a–3, 1320a–5, 1320a–7, 1320a–7a, 1320a–7b, 1320c–5, 1395u, 1395y, 1395cc, 1395ff, 1395nn, 1395rr, 1395ss, 1395ww, 1396a, 1396b, 1396h, 1396n, 1396s, and 1397d of this title and section 824 of Title 21, Food and Drugs, transferring section 1396h of this title to section 1320a–7b of this title, repealing section 1395nn of this title, enacting provisions set out as notes under sections 1320a–7 and 1320a–7b of this title, and amending provisions set out as a note under section 1396a of this title] may be cited as the 'Medicare and Medicaid Patient and Program Protection Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–643, §1, Nov. 10, 1986, 100 Stat. 3574, provided that: ''This Act [amending sections 1382, 1382c, 1382h, 1383, 1383c, 1396a, and 1396s of this title, enacting provisions set out as notes under sections 1382, 1382h, 1383, 1383c, and 1396a of this title, and amending provisions set out as a note under section 1382h of this title] may be cited as the 'Employment Opportunities for Disabled Americans Act'.''

Pub. L. 99–272, title IX, §9000, Apr. 7, 1986, 100 Stat. 151, provided that: ''This title [enacting sections 1320c–13, 1395w–1, 1395dd, 1396r, and 1396s of this title, amending sections 401, 701, 702, 704, 709, 1301, 1320a–2, 1320c–2, 1320c–3, 1395e, 1395f, 1395i, 1395i–2, 1395*l*, 1395p to 1395r, 1395t, 1395u, 1395x, 1395y, 1395cc, 1395mm, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396k, 1396n, and 1396*o* of this title and sections 623, 631, and 1144 of Title 29, Labor, enacting provisions set out as notes under sections 401, 1301, 1320a–2, 1320c–2, 1320c–3, 1320c–13, 1395b, 1395b–1, 1395e, 1395h, 1395i–2, 1395*l*, 1395p, 1395r, 1395u, 1395x, 1395y, 1395cc, 1395dd, 1395mm, 1395rr, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396n, and 1396r of this title and section 1144 of Title 29, and amending provisions set out as

notes under sections 1395c, 1395h, 1395y, and 1395ww of this title] may be cited as the 'Medicare and Medicaid Budget Reconciliation Amendments of 1985'.''

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98–460, § 1, Oct. 9, 1984, 98 Stat. 1794, provided that: ''This Act [amending sections 405, 408, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 to 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1303 of this title, and amending provisions set out as a note under section 1382h of this title] may be cited as the 'Social Security Disability Benefits Reform Act of 1984'.''

Pub. L. 98–378, § 1, Aug. 16, 1984, 98 Stat. 1305, provided that: ''This Act [enacting sections 666 and 667 of this title, amending sections 602, 603, 606, 651 to 658, 664, 671, 1315, and 1396a of this title and sections 6103, 6402, and 7213 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 602, 606, 652, 654, 657, 658, and 667 of this title and section 6103 of Title 26] may be cited as the 'Child Support Enforcement Amendments of 1984'.''

Pub. L. 98–369, div. B, title III, § 2300, July 18, 1984, 98 Stat. 1061, provided that: ''This title [enacting sections 1317, 1395yy, 1395zz, and 1396q of this title, amending sections 291i, 300s–1a, 606, 701, 703, 706, 907a, 1308, 1310, 1316, 1320a–1, 1320a–7 to 1320a–8, 1320c–2, 1395b–1, 1395f, 1395h, 1395i, 1395i–2, 1395k, 1395*l*, 1395n, 1395p to 1395cc, 1395ff, 1395ii, 1395*ll*, 1395mm to 1395*oo*, 1395rr, 1395ww, 1396a, 1396b, 1396d, 1396k, 1396*l*, and 1396n of this title, section 5315 of Title 5, Government Organization and Employees, section 162 of Title 26, Internal Revenue Code, section 623 of Title 29, Labor, and section 231f of Title 45, Railroads, repealing section 1395dd of this title, enacting provisions set out as notes under sections 291i, 701, 907a, 1308, 1310, 1317, 1320a–1, 1320a–7, 1320c–2, 1395b–1, 1395f, 1395h, 1395i, 1395k, 1395*l*, 1395n, 1395p, 1395r, 1395u, 1395x, 1395y, 1395bb, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395uu, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396*l*, and 1396q of this title and section 623 of Title 29, and amending provisions set out as notes under sections 1320c, 1395x, 1395mm, and 1395ww of this title] may be cited as the 'Medicare and Medicaid Budget Reconciliation Amendments of 1984'.''

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–21, § 1, Apr. 20, 1983, 97 Stat. 65, provided in part that Pub. L. 98–21 [enacting sections 910 and 911 of this title and sections 86, 3510, and 6050F of Title 26, Internal Revenue Code, amending sections 401, 402, 403, 405, 407, 409, 410, 411, 415, 416, 417, 418, 422, 423, 425, 426, 427, 428, 429, 430, 433, 503, 602, 659, 1320a–1, 1320c–2, 1322, 1382, 1382a, 1382f, 1382g, 1395f, 1395i, 1395i–2, 1395n, 1395r, 1395t, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395ww, and 1395xx of this title, section 3413 of Title 12, Banks and Banking, and sections 37, 41, 43, 44A, 46, 53, 85, 86, 87, 105, 128, 164, 275, 401, 403, 406, 407, 415, 861, 871, 904, 1401, 1402, 1441, 3101, 3111, 3121, 3302, 3304, 3306, 6103, 6413, and 7871 of Title 26, and enacting provisions set out as notes under sections 401, 402, 403, 405, 407, 410, 411, 414, 415, 416, 418, 426, 428, 429, 433, 602, 902, 911, 1382, 1395b–1, 1395i, 1395r, 1395x, 1395y, 1395cc, and 1395ww of this title, sections 37, 86, 406, 1401, 1402, 3101, 3121, 3302, 3303, 3304, 3306, and 3510 of Title 26, section 5123 of Title 38, Veterans' Benefits, and section 231n of Title 45, Railroads] may be cited as the ''Social Security Amendments of 1983''.

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–248, title I, § 141, Sept. 3, 1982, 96 Stat. 381, provided that: ''This subtitle [subtitle C (§§ 141–150) of Pub. L. 97–248, enacting part B of this subchapter, amending sections 1395b–1, 1395g, 1395k, 1395*l*, 1395x, 1395y, 1395cc, 1395pp, 1396a, and 1396b of this title, and enacting provisions set out as notes under section 1320c of this title] may be cited as the 'Peer Review Improvement Act of 1982'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title XXI, § 2100, Aug. 13, 1981, 95 Stat. 783, provided that: ''Subtitles A [sections 2101–2114 of Pub. L. 97–35, enacting sections 1320a–7a, 1395uu, and 1395vv of this title, amending sections, 1320a–7, 1320c, 1320c–1, 1320c–3, 1320c–4, 1320c–7, 1320c–8, 1320c–9, 1320c–11, 1320c–17, 1320c–21, 1395*l*, 1395n, 1395q, 1395x, 1395y, 1396a, and 1396b of this title, repealing sections 1320c–13 and 1320c–20 of this title, and enacting provisions set out as notes under sections 1320c, 1320c–1, 1320c–3, 1395*l*, 1395x, 1395y, 1395uu, and 1396b of this title], B [sections 2121–2156 of Pub. L. 97–35, amending sections 632a, 1320c–3, 1320c–4, 1320c–7, 1395d, 1395e, 1395f, 1395*l*, 1395n, 1395p, 1395q, 1395r, 1395u, 1395x, 1395y, 1395cc, and 1395rr of this title and section 162 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 1320c–3, 1395e, 1395f, 1395*l*, 1395p, 1395x, 1395y and 1395rr of this title and section 162 of Title 26, and repealing provisions set out as notes under sections 1395b–1, 1395g, and 1395*ll* of this title], and C [sections 2161–2184 of Pub. L. 97–35, enacting sections 1320b–5 and 1396n of this title, amending sections 301, 302, 303, 306, 603, 606, 1201, 1203, 1206, 1301, 1308, 1351, 1353, 1355, 1396a, 1396b, 1396d, and 1396n of this title, and enacting provisions set out as notes under sections 603, 1308, 1381, 1382, 1383, 1385, 1396a, 1396b, 1396d, and 1396n of this title] of this title may be cited as the 'Medicare and Medicaid Amendments of 1981'.''

Pub. L. 97–35, title XXI, § 2191, Aug. 13, 1981, 95 Stat. 818, provided that: ''This subtitle [subtitle D (sections 2191–2194) of title XXI of Pub. L. 97–35, enacting sections 701 to 709 of this title, amending sections 247a, 300a–27, 300b, 300b–3, 300b–6, 300c–11, 300c–21, 701, 1301, 1308, 1320a–1, 1320a–8, 1320b–2, 1320b–4, 1320c–21, 1382d, 1395b–1, 1395x, and 1396a of this title, repealing sections 236, 247a, 300a–21 to 300a–28, 300a–41, 300b, 300b–5, 300c–11, and 300c–21 of this title, enacting provisions set out as notes under sections 701, 706, and 1382d of this title, and amending provisions set out as notes under sections 1320a–8 and 1395b–1 of this title] may be cited as the 'Maternal and Child Health Services Block Grant Act'.''

Pub. L. 97–35, title XXIII, § 2351, Aug. 13, 1981, 95 Stat. 867, provided that: ''This subtitle [subtitle C (§§ 2351–2355) of title XXIII of Pub. L. 97–35, enacting sections 1397 to 1397f of this title, amending sections 303, 602, 603, 607, 671, 1203, 1301, 1308, 1315, 1316, 1320a–3, 1320a–5, 1320a–7, 1353, 1382e, 1382h, and 1382i of this title, enacting provisions set out as notes under sections 602, 603, 1381, 1383, and 1397 of this title, and repealing a provision set out as a note under section 1397a of this title] may be cited as the 'Social Services Block Grant Act'.''

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96–611, § 6, Dec. 28, 1980, 94 Stat. 3568, provided that: ''Sections 6 to 10 of this Act [enacting section 663 of this title, and section 1738A of Title 28, Judiciary and Judicial Procedure, amending sections 654 and 655 of this title, and enacting provisions set out as notes under section 1073 of Title 18, Crimes and Criminal Procedure, section 1738A of Title 28, and section 663 of this title] may be cited as the 'Parental Kidnapping Prevention Act of 1980'.''

Pub. L. 96–499, title IX, § 900, Dec. 5, 1980, 94 Stat. 2609, provided that: ''This title [enacting sections 632a, 1320a–7, 1320a–8, 1320b–4, 1395tt, 1396*l*, and 1396m of this title, amending sections 426, 705, 1320a–2, 1320a–3, 1320c–1, 1320c–3, 1320c–4, 1320c–7, 1320c–11, 1320c–12, 1320c–22, 1395c, 1395d, 1395f, 1395h, 1395k, 1395*l*, 1395n, 1395p, 1395q, 1395r, 1395u, 1395v, 1395x, 1395y, 1395z, 1395aa, 1395cc, 1395gg, 1395nn, 1395*oo*, 1395pp, 1395rr, 1396a, 1396b, 1396d, 1396h, 1396i, and 1397b of this title, and section 231f of Title 45, Railroads, repealing section 1395m of this title, and enacting provisions set out as notes under sections 705, 1320a–8, 1320b–4, 1320c, 1320c–4, 1320c–7, 1320c–11, 1320c–12, 1320c–15, 1395b–1, 1395d, 1395f, 1395g, 1395k, 1395*l*, 1395n, 1395p, 1395u, 1395v, 1395x, 1395y, 1395gg, 1395*ll*, 1395pp, 1395tt, 1396a, and 1396b of this title] may be cited as the 'Medicare and Medicaid Amendments of 1980'.''

Pub. L. 96–272, § 1, June 17, 1980, 94 Stat. 500, provided that: ''This Act [enacting sections 612, 627, 628, 670 to 673a, 674 to 676, 1320b–2, and 1320b–3 of this title, amend-

ing sections 602, 608, 620–625, 652, 658, 672, 673, 675, 1308, 1318, 1382d, 1395y, 1395cc, 1396a, 1397, 1397a, 1397b, 1397c, and 1397d of this title and section 50B of Title 26, Internal Revenue Code, repealing section 608 of this title, enacting provisions set out as notes under sections 602, 603, 608, 620, 622, 670, 672, 675, 1320b–2, 1320b–3, 1396a, and 1397a of this title and section 50B of Title 26, and amending provisions set out as notes under sections 655, 1397a, and 1397e–1 of this title] may be cited as the 'Adoption Assistance and Child Welfare Act of 1980'.''

Pub. L. 96–265, § 1, June 9, 1980, 94 Stat. 441, provided: ''That this Act [enacting sections 613, 1320a–6, 1382h, 1382i, 1382j, and 1395ss of this title, amending sections 401, 402, 403, 404, 405, 415, 416, 418, 421, 422, 423, 425, 426, 503, 504, 602, 603, 652, 654, 655, 907a, 1310, 1382, 1382a, 1382c, 1382e, 1383, 1395c, 1395i, 1395p, and 1397b of this title, sections 6103 and 7213 of Title 26, Internal Revenue Code, and section 231f of Title 45, Railroads, and enacting provisions set out as notes under sections 401, 402, 403, 405, 405a, 415, 418, 421, 423, 425, 426, 503, 602, 603, 613, 652, 655, 1310, 1320a–6, 1382, 1382a, 1382c, 1382h, 1382j, 1395*ll*, and 1395ss of this title and under section 6103 of Title 26] may be cited as the 'Social Security Disability Amendments of 1980'.''

SHORT TITLE OF 1977 AMENDMENTS

Pub. L. 95–216, § 1, Dec. 20, 1977, 91 Stat. 1509, provided in part that Pub. L. 95–216 [enacting sections 433, 611, 907a, and 909 of this title, amending sections 401, 402, 403, 405, 409, 410, 411 to 413, 415 to 418, 423, 424a, 426, 429, 430, 602, 603, 1315, 1395r, 1395u, and 1395x of this title, section 441i of Title 2, The Congress, sections 1401, 1402, 3101, 3102, 3111, 3121, 3304, 3306, and 6051 of Title 26, Internal Revenue Code, and section 231b of Title 45, Railroads, and enacting provisions set out as notes under sections 402, 403, 409, 411, 413, 418, 424a, 430, 602, 603, 902, 907, 909, 1383, and 1395x of this title, section 441i of Title 2, sections 1401, 1402, 3102, 3111, and 3121 of Title 26, and section 231b of Title 45] may be cited as the ''Social Security Amendments of 1977''.

Pub. L. 95–142, § 1, Oct. 25, 1977, 91 Stat. 1175, provided that: ''This Act [enacting sections 1320a, 1320a–3 to 1320a–5, 1320c–20 to 1320c–22, and 1396k of this title, amending sections 254e, 1301, 1320c–1, 1320c–3, 1320c–4, 1320c–6, 1320c–7, 1320c–9, 1320c–12, 1320c–15 to 1320c–17, 1395b–1, 1395f, 1395g, 1395h, 1395*l*, 1395u, 1395x, 1395y, 1395cc, 1395nn, 1396a, 1396b, 1396h, 1397a, 1397b, and 3524 of this title, and enacting provisions set out as notes under sections 254e, 1320a, 1320a–3, 1320a–5, 1320c–6, 1320c–7, 1395f, 1395g, 1395h, 1395*l*, 1395x, 1395cc, 1395*ll*, 1395nn, 1396a, and 1396b of this title] may be cited as the 'Medicare-Medicaid Anti-Fraud and Abuse Amendments'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–202, § 8(a), Jan. 2, 1976, 89 Stat. 1137, provided that: ''This section [enacting section 432 of this title, amending sections 401, 403, 424a, and 430 of this title and section 6103 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 401, 418, and 432 of this title] may be cited as the 'Combined Old-Age, Survivors, and Disability Insurance-Income Tax Reporting Amendments of 1975'.''

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 93–647, § 1, Jan. 4, 1975, 88 Stat. 2337, provided: ''That this Act [enacting subchapter XX of this chapter, sections 651 to 660 of this title, and section 6305 of Title 26, Internal Revenue Code, amending sections 303, 602, 603, 604, 606, 622, 1203, 1306, 1308, 1315, 1316, 1353, and 1383 note of this title, repealing sections 610, 801 to 805, and 1320b of this title, and enacting provisions set out as notes under sections 602, 651, 1320b, 1397, and 1397a of this title] may be cited as the 'Social Services Amendments of 1974'.''

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–603, § 1, Oct. 30, 1972, 86 Stat. 1329, provided in part that Pub. L. 92–603 [enacting sections 431, 801 to 805, 1320a–1, 1320a–2, 1320c to 1320c–19, 1381a, 1382a to 1382e, 1383a to 1383c, 1395i–2, 1395mm, 1395nn, 1395*oo*, 1395pp, 1396h, 1396i, and 3502a of this title, and section 228s–3 of Title 45, Railroads, amending sections 302, 306, 401, 402, 403, 405, 408, 409, 410, 410 note, 411, 414, 415, 416, 418, 422, 423, 424a, 425, 426, 427, 429, 430, 602, 603, 620, 705, 706, 709, 1202, 1206, 1301, 1306, 1308, 1352, 1355, 1381, 1382, 1383, 1385, 1395b–1, 1395c, 1395f, 1395h, 1395i, 1395j, 1395k, 1395*l*, 1395n, 1395*o*, 1395p, 1395q, 1395r, 1395s, 1395t, 1395u, 1395w, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395dd, 1395ff, 1395gg, 1395ii, 1395kk, 1395*ll*, 1395mm, 1395nn, 1396a, 1396b, 1396b–1, 1396d, 1396g, 1396h, and 1396i of this title, sections 5315 and 5316 of Title 5, Government Organization and Employees, sections 1431, 2012, 2019, and 2023 of Title 7, Agriculture, and sections 1401, 1402, 3101, 3111, 3121, 6051, and 6413 of Title 26, Internal Revenue Code, repealing sections 301 to 306, 1201 to 1206, 1351, 1352, 1353, 1354, 1355, and 1396e of this title and section 639 of Title 25, Indians, and enacting provisions set out as notes under sections 301, 302, 401, 402, 403, 408, 409, 410, 411, 414, 415, 416, 418, 423, 424a, 426, 429, 602, 620, 705, 801, 1301, 1306, 1308, 1320a–1, 1320b, 1381, 1382e, 1395f, 1395*l*, 1395n, 1395p, 1395q, 1395s, 1395u, 1395w, 1395x, 1395aa, 1395cc, 1395ff, 1395gg, 1395mm, 1395nn, 1395*oo*, 1395pp, 1396a, 1396b, 2396d, and 1396e of this title, section 5315 of Title 5, sections 1431 and 2012 of Title 7, section 639 of Title 25, and sections 1401, 6051, and 6413 of Title 26,] may be cited as the ''Social Security Amendments of 1972''.

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91–172, title X, § 1001, Dec. 30, 1969, 83 Stat. 737, provided that: ''This title [amending sections 401 to 403, 415, 427, and 428 of this title, and enacting provisions set out as notes under sections 401 to 403, 415 and 427 of this title] may be cited as the 'Social Security Amendments of 1969'.''

SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90–248, § 1, Jan. 2, 1968, 81 Stat. 821, provided that this Act [enacting sections 429, 610, 620 to 626, 630 to 644, 908, 1319–1320a, 1395b–1, and 1396e to 1396g of this title, amending sections 302 to 304, 401 to 406, 409 to 411, 413, 415 to 418, 421 to 423, 424a, 425, 426, 426a, 427, 428, 601 to 604, 606 to 608, 622, 701 to 715, 729, 907, 1202 to 1204, 1306, 1308 to 1311, 1313 to 1318, 1352 to 1354, 1361, 1382, 1383, 1395d to 1395f, 1395i, 1395k, 1395*l*, 1395n, 1395p to 1395y, 1395aa, 1395cc, 1395dd, 1395gg, 1395*ll*, 1396a, 1396b, and 1396d of this title, sections 1401, 1402, 3101, 3111, 3121, 3122, 3125, 3306, 6051, and 6413 of Title 26, Internal Revenue Code, and sections 228e and 228s–2 of Title 45, Railroads, repealing sections 721 to 728, 1317, and 1395ee of this title, enacting provisions set out as notes under sections 242b, 302, 303, 402 to 405, 409, 410, 413, 415, 416, 418, 423, 424a, 427, 601 to 603, 607, 609, 620, 622, 626, 633, 701, 705, 1301, 1308, 1319, 1395c to 1395f, 1395j to 1395*l*, 1395n, 1395p, 1395u, 1395x, 1395aa, 1395dd, 1396a, 1396b, 1396d, and 1396g of this title, and amending provisions set out as notes under sections 603 and 608 of this title and sections 1401, 1402, 3121, and 6051 of Title 26] may be cited as the ''Social Security Amendments of 1967.''

Pub. L. 90–248, title III, § 306, Jan. 2, 1968, 81 Stat. 930, provided that: ''This title [enacting subchapter V of this chapter, amending sections 705, 729, 1396a, and 1396d of this title, enacting provisions set out as notes under section 705 of this title, and amending provisions set out as notes under section 242b of this title] may be cited as the 'Child Health Act of 1967'.''

SHORT TITLE OF 1965 AMENDMENT

Pub. L. 89–97, § 1, July 30, 1965, 79 Stat. 286, provided that this Act [enacting sections 424a, 426, 427, 716, 729–1, 907, 1316, 1317, 1318, 1395 to 1395dd, 1395ee, 1395gg to 1395*ll* and 1396 to 1396d of this title, section 6053 of Title 26, Internal Revenue Code, and section 228s–2 of Title 45, Railroads; amending sections 302, 303, 306, 401 to 406, 409 to 411, 413, 415 to 418, 422, 423, 425, 602, 603, 606, 701, 703, 704, 711, 713, 714, 721 to 723, 1202, 1203, 1206, 1301, 1306, 1308, 1309, 1312, 1315, 1352, 1353, 1355, 1382, 1383, 1385, 1391,

1392, and 1395kk of this title, sections 72, 79, 213, 401, 451, 1401, 1402, 3101, 3102, 3111, 3121, 3122, 3125, 3201, 3211, 3221, 3401, 3402, 6051, 6205, 6413, 6652, and 6674 of Title 26, and sections 228a, 228e, and 228s–2 of title 45, repealing section 727 of this title, enacting provisions set out as notes under sections 242b, 302, 303, 306, 402, 403, 405, 410, 411, 415, 416, 418, 423, 424a, 426, 427, 602, 722, 729–1, 1202, 1301, 1308, 1309, 1315, 1316, 1352, 1382, 1395*l*, 1395*o*, 1395p, 1396b, and 2981 of this title, sections 213, 1401, 1402, 3121, 3201, and 6053 of Title 26, and section 228s–2 of Title 45, and amending provisions set out as notes under sections 415 and 418 of this title and section 3121 of Title 26] may be cited as the ''Social Security Amendments of 1965''.

Pub. L. 89–97, title I, July 30, 1965, 79 Stat. 290, provided that: ''This title [enacting subchapter XVIII of this chapter, sections 426, 907, and 1396 to 1396d of this title, and section 228s–2 of Title 45, Railroads, amending sections 303, 401, 401a, 402, 418, 603, 1203, 1301, 1306, 1309, 1315, 1353, 1383, and 1395kk of this title, sections 72, 79, 213, 401, 405, 1401, 3101, 3111, 3201, 3211, 3221, and 6051 of Title 26, Internal Revenue Code, and sections 228e and 228s–2 of Title 45, and enacting provisions set out as notes under sections 426, 1301, 1309, 1315, 1395*l*, 1395*o*, 1395p, and 1396b of this title, sections 213 and 3201 of Title 26, and section 228s–2 of Title 45] may be cited as the 'Health Insurance for the Aged Act'.''

Pub. L. 89–97, title III, July 30, 1965, 79 Stat. 361, provided that: ''This title [enacting sections 424a and 427 of this title and section 6053 of Title 26, Internal Revenue Code, amending sections 401 to 406, 409 to 411, 413, 415 to 418, 422, 423, 425, and 1306 of this title, sections 451, 1401, 1402, 3101, 3102, 3111, 3121, 3122, 3125, 3401, 3402, 6051, 6205, 6413, 6652, and 6674 of Title 26, and sections 228a and 228e of Title 45, Railroads, enacting provisions set out as notes under sections 402, 403, 405, 410, 411, 415, 416, 418, 424, 424a, and 427 of this title and sections 1401, 1402, 3121, and 6053 of Title 26, and amending provisions set out as notes under sections 415 and 418 of this title and section 3121 of Title 26] may be cited as the 'Old-Age, Survivors, and Disability Insurance Amendments of 1965'.''

SHORT TITLE OF 1963 AMENDMENT

Pub. L. 88–156, § 1, Oct. 24, 1963, 77 Stat. 273, provided: ''That this Act [enacting subchapter XVII of this chapter and sections 729 and 729a of this title, amending sections 701, 702, 711, and 712 of this title, and enacting provisions set out as a note under section 1301 of this title] may be cited as the 'Maternal and Child Health and Mental Retardation Planning Amendments of 1963'.''

SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87–543, § 1, July 25, 1962, 76 Stat. 172, provided in part that this Act [enacting sections 609, 727, 728, 1314, 1315, and 1381 to 1385 of this title, amending sections 301 to 303, 306, 601 to 609, 721 to 723, 726, 906, 1201 to 1203, 1206, 1301, 1308, 1309, 1311, 1313, 1351 to 1353, and 1355 of this title, repealing section 1202a of this title and provisions set out as notes under sections 1202a and 1308 of this title, and enacting provisions set out as notes under sections 302, 303, 306, 601, 603, 606, 608, 609, 722, 1202, 1301, 1308, and 1383 of this title], may be cited as the ''Public Welfare Amendments of 1962.''

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–64, § 1, June 30, 1961, 75 Stat. 131, provided: ''That this Act [enacting section 1313 of this title, amending sections 303, 402, 403, 409, 413, 414, 415, 416, 418, 423, 1203, 1308, and 1353 of this title, sections 1401, 1402, 3101 and 3111 of Title 26, Internal Revenue Code, and section 228a of Title 45, Railroads, and enacting provisions set out as notes under sections 303, 402, 403, 414, 415, 416, 1301, and 1308 of this title and under sections 1401 and 1402 of Title 26] may be cited as the 'Social Security Amendments of 1961.' ''

SHORT TITLE OF 1960 AMENDMENT

Pub. L. 86–778, § 1, Sept. 13, 1960, 74 Stat. 924, provided that this Act [enacting sections 726 and 1312 of this title and sections 3125 and 3308 of Title 26, Internal Revenue Code, amending sections 301 to 304, 306, 401, 401a, 402, 403, 405, 408 to 411, 413 to 416, 418, 422, 423, 501, 701, 702, 704, 711, 712, 714, 721, 722, 1101 to 1104, 1202, 1301, 1308, 1321 to 1324, 1361, 1363, 1364, 1367, 1371, and 1400c of this title, sections 1402, 1403, 3121, 3301, 3302, 3305, 3306, 6205, 6413, 7213, and 7701 of Title 26, section 49d of Title 29, Labor, sections 228a, 228c, and 228e of Title 45, Railroads, and section 1421h of Title 48, Territories and Insular Possessions, repealing section 419 of this title, and enacting provisions set out as notes under sections 301, 302, 401, 402, 403, 405, 410, 411, 413 to 418, 422, 423, 701, 1101, 1202, 1202a, 1301, 1321, 1362, 1363, and 1364 of this title, sections 1402, 3121, 3301, 3304, 3305, and 3306 of Title 26, and section 49d of Title 29] may be cited as the ''Social Security Amendments of 1960.''

Pub. L. 86–778, title V, § 501, Sept. 13, 1960, 74 Stat. 970, provided that: ''This title [enacting section 3308 of Title 26, Internal Revenue Code, amending sections 501, 1101 to 1104, 1301, 1321 to 1324, 1361 to 1364, 1367, 1371, and 1400c of this title, sections 3301, 3302, 3305, 3306, and 3309 of Title 26, and section 49d of Title 29, Labor, and enacting provisions set out as notes under sections 1301, 1321, and 1362 to 1364 of this title, sections 3301, 3304, and 3305 of Title 26, and section 49d of Title 29] may be cited as the 'Employment Security Act of 1960'.''

SHORT TITLE OF 1958 AMENDMENT

Pub. L. 85–840, § 1, Aug. 28, 1958, 72 Stat. 1013, provided that this Act [enacting sections 722 to 725 and 1311 of this title, amending sections 302, 303, 401, 402, 403, 406, 408, 409 to 411, 413 to 418, 422, 423, 425, 603, 701, 702, 711, 712, 1203, 1301, 1306, 1308, and 1353 of this title, sections 1401, 1402, 3101, 3111, 3121, 3122, 6334, and 6413 of Title 26, Internal Revenue Code, and section 228a of Title 45, Railroads, repealing section 424 of this title, and enacting provisions set out as notes under sections 303, 402, 403, 410, 411, 415, 416, 417, 418, 422, 721, 1202a, 1301 of this title and sections 1401, 1402, and 3121 of Title 26] should be popularly known as the ''Social Security Amendments of 1958''.

SHORT TITLE OF 1956 AMENDMENT

Act Aug. 1, 1956, ch. 836, § 1, 70 Stat. 807, provided: ''That this Act [enacting sections 401a, 423, 424, 425, 906, and 1310 of this title and section 3113 of Title 26, Internal Revenue Code, amending sections 301 to 303, 401, 402, 403, 405, 409 to 411, 413 to 416, 418, 421, 422, 601 to 603, 606, 721, 1201 to 1203, 1301, 1308, and 1351 to 1353 of this title, sections 1401, 1402, 3101, 3102, 3111, and 3121 of Title 26, and sections 228 and 228e of Title 45, Railroads, and amending provisions set out as a note under section 3121 of Title 26] may be cited as the 'Social Security Amendments of 1956'.''

SHORT TITLE OF 1954 AMENDMENT

Act Aug. 5, 1954, ch. 657, § 1, 68 Stat. 668, provided that: ''This Act [enacting sections 1101 to 1103, 1322, and 1323 of this title and amending sections 503, 1104, and 1321 of this title and sections 1601, 1603, and 1607 of former Title 26, Internal Revenue Code of 1939] may be cited as the 'Employment Security Administration Financing Act of 1954'.''

SHORT TITLE OF 1952 AMENDMENT

Act July 18, 1952, ch. 945, § 1, 66 Stat. 767, provided that: ''This Act [enacting sections 420, 421, and 1309 of this title, amending sections 303, 403, 405, 413, 414, 415, 416, 417, 603, 1203, and 1353 of this title and sections 228a, 228e of Title 45, Railroads, and enacting provisions set out as notes under sections 303, 402, 403, 413, 415, and 417 of this title] may be cited as the 'Social Security Act Amendments of 1952'.''

SHORT TITLE OF 1950 AMENDMENT

Act Aug. 28, 1950, ch. 809, § 1, 64 Stat. 477, provided in part that act Aug. 28, 1950, may be cited as the ''Social Security Act Amendments of 1950''. For complete classification of this Act to the Code, see Tables.

§ 1306. Disclosure of information in possession of Social Security Administration or Department of Health and Human Services

(a) Disclosure prohibited; exceptions

(1) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code [of 1939], or under regulations made under authority thereof, which has been transmitted to the head of the applicable agency by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the head of the applicable agency or by any officer or employee of the applicable agency in the course of discharging the duties of the head of the applicable agency under this chapter, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the head of the applicable agency or from any officer or employee of the applicable agency, shall be made except as the head of the applicable agency may by regulations prescribe and except as otherwise provided by Federal law. Any person who shall violate any provision of this section shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(2) For purposes of this subsection and subsection (b) of this section, the term ''applicable agency'' means—

(A) the Social Security Administration, with respect to matter transmitted to or obtained by such Administration or matter disclosed by such Administration, or

(B) the Department of Health and Human Services, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department.

(b) Requests for information and services

Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the head of the applicable agency to avoid undue interference with his functions under this chapter, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the head of the applicable agency. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the head of the applicable agency, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the applicable agency which furnished the information or services. Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of subchapter IV of this chapter for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of subchapter IV of this chapter.

(c) Cost reimbursement

Notwithstanding sections 552 and 552a of title 5 or any other provision of law, whenever the Commissioner of Social Security or the Secretary determines that a request for information is made in order to assist a party in interest (as defined in section 1002 of title 29) with respect to the administration of an employee benefit plan (as so defined), or is made for any other purpose not directly related to the administration of the program or programs under this chapter to which such information relates, such Commissioner or Secretary may require the requester to pay the full cost, as determined by such Commissioner or Secretary, of providing such information.

(d) Compliance with requests

Notwithstanding any other provision of this section, in any case in which—

(1) information regarding whether an individual is shown on the records of the Commissioner of Social Security as being alive or deceased is requested from the Commissioner for purposes of epidemiological or similar research which the Commissioner in consultation with the Secretary of Health and Human Services finds may reasonably be expected to contribute to a national health interest, and

(2) the requester agrees to reimburse the Commissioner for providing such information and to comply with limitations on safeguarding and rerelease or redisclosure of such information as may be specified by the Commissioner,

the Commissioner shall comply with such request, except to the extent that compliance with such request would constitute a violation of the terms of any contract entered into under section 405(r) of this title.

(e) Public inspection

Notwithstanding any other provision of this section the Secretary shall make available to each State agency operating a program under subchapter XIX of this chapter and shall, subject to the limitations contained in subsection (e)[1] of this section, make available for public inspection in readily accessible form and fashion, the following official reports (not including, however, references to any internal tolerance rules and practices that may be contained therein, internal working papers or other informal memoranda) dealing with the operation of the health programs established by subchapters XVIII and XIX of this chapter—

(1) individual contractor performance reviews and other formal evaluations of the per-

[1] So in original. Probably should be subsection ''(f)''.

formance of carriers, intermediaries, and State agencies, including the reports of follow-up reviews;

(2) comparative evaluations of the performance of such contractors, including comparisons of either overall performance or of any particular aspect of contractor operation; and

(3) program validation survey reports and other formal evaluations of the performance of providers of services, including the reports of follow-up reviews, except that such reports shall not identify individual patients, individual health care practitioners, or other individuals.

(f) Opportunity for review

No report described in subsection (e) of this section shall be made public by the Secretary or the State subchapter XIX agency until the contractor or provider of services whose performance is being evaluated has had a reasonable opportunity (not exceeding 60 days) to review such report and to offer comments pertinent parts of which may be incorporated in the public report; nor shall the Secretary be required to include in any such report information with respect to any deficiency (or improper practice or procedures) which is known by the Secretary to have been fully corrected, within 60 days of the date such deficiency was first brought to the attention of such contractor or provider of services, as the case may be.

(Aug. 14, 1935, ch. 531, title XI, § 1106, as added Aug. 10, 1939, ch. 666, title VIII, § 802, 53 Stat. 1398; amended Aug. 28, 1950, ch. 809, title IV, § 403(d), 64 Stat. 559; Pub. L. 85–840, title VII, § 701, Aug. 28, 1958, 72 Stat. 1055; Pub. L. 89–97, title I, § 108(c), title III, § 340, July 30, 1965, 79 Stat. 339, 411; Pub. L. 90–248, title I, § 168, title II, § 241(c)(1), Jan. 2, 1968, 81 Stat. 875, 917; Pub. L. 92–603, title II, § 249C(a), Oct. 30, 1972, 86 Stat. 1428; Pub. L. 93–647, § 101(d), Jan. 4, 1975, 88 Stat. 2360; Pub. L. 97–35, title XXII, § 2207, Aug. 13, 1981, 95 Stat. 838; Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(ii), (*l*), July 18, 1984, 98 Stat. 1170, 1171; Pub. L. 103–296, title I, § 108(b)(2)–(5), title III, §§ 311(a), 313(a), Aug. 15, 1994, 108 Stat. 1481, 1482, 1525, 1530.)

REFERENCES IN TEXT

Title VIII of the Social Security Act, referred to in subsec. (a)(1), probably refers to former title VIII of the Act, which was classified to subchapter VIII (§ 1001 et seq.) of this chapter prior to its omission from the Code as superseded by the provisions of the Internal Revenue Code of 1939 and the Internal Revenue Code of 1986.

Subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a), were comprised of sections 480 to 482 and 1400 to 1432, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Part D of subchapter IV of this chapter, referred to in subsec. (b), is classified to section 651 et seq. of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 313(a), in par. (1), substituted ''felony'' for ''misdemeanor'', ''$10,000 for each occurrence of a violation'' for ''$1,000'', and ''5 years'' for ''one year''.

Pub. L. 103–296, § 108(b)(2), designated existing provisions as par. (1), substituted ''head of the applicable agency'' for ''Secretary'' wherever appearing and ''employee of the applicable agency'' for ''employee of the Department of Health and Human Services'' in two places, and added par. (2).

Subsec. (b). Pub. L. 103–296, § 108(b)(3), substituted ''head of the applicable agency'' for ''Secretary'' wherever appearing and ''applicable agency which'' for ''Department of Health and Human Services which''.

Subsec. (c). Pub. L. 103–296, § 108(b)(4), substituted ''the Commissioner of Social Security or the Secretary'' for ''the Secretary'' where first appearing and ''such Commissioner or Secretary'' for ''the Secretary'' where appearing subsequently in two places.

Subsec. (d). Pub. L. 103–296, § 311(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 103–296, § 108(b)(5) in subsec. (d) as added by Pub. L. 103–296, § 311(a)(3), in par. (1) substituted ''Commissioner of Social Security'' for ''Secretary'' after ''records of the'', ''Commissioner'' for ''Secretary'' after ''from the'', ''Commissioner in consultation with the Secretary of Health and Human Services'' for ''Secretary'' after ''which the'', and in par. (2) and closing provisions substituted ''Commissioner'' for ''Secretary'' wherever appearing.

Subsec. (e). Pub. L. 103–296, § 311(a)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 103–296, § 311(a)(1), (2), redesignated subsec. (e) as (f) and substituted ''subsection (e)'' for ''subsection (d)''.

1984—Subsec. (a). Pub. L. 98–369, § 2663(*l*), substituted ''Secretary'' and ''Department of Health and Human Services'' for ''Administrator'' and ''Federal Security Agency'', respectively, wherever appearing.

Subsec. (b). Pub. L. 98–369, § 2663(j)(2)(D)(ii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1981—Subsec. (a). Pub. L. 97–35, § 2207(1), substituted ''as otherwise provided by Federal law'' for ''as provided in part D of subchapter IV of this chapter''.

Subsec. (c). Pub. L. 97–35, § 2207(2), added subsec. (c).

1975—Subsec. (a). Pub. L. 93–647, § 101(d)(1), inserted ''and except as provided in part D of subchapter IV of this chapter'' after ''may by regulations prescribe''.

Subsec. (b). Pub. L. 93–647, § 101(d)(2), inserted provision relating to compliance with requests for information made pursuant to part D of subchapter IV of this chapter for purpose of using Federal records to locate parents.

Subsec. (c). Pub. L. 93–647, § 101(d)(3), repealed subsec. (c) relating to requests by State or local agencies for most recent address of any individual maintained pursuant to section 405 of this title and requirements for release of such information.

1972—Subsecs. (d), (e). Pub. L. 92–603 added subsecs. (d) and (e).

1968—Subsec. (c)(1). Pub. L. 90–248, § 241(c)(1), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

Subsec. (c)(1)(A), (B). Pub. L. 90–248, § 168(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv) thereof, and added subpar. (B).

Subsec. (c)(2). Pub. L. 90–248, § 168(b)(1), substituted ''(and, in the case of a request under paragraph (1)(A), shall be accompanied by a certified copy of the order referred to in clauses (i) and (iv) thereof)'' for '', and shall be accompanied by a certified copy of the order referred to in paragraph (1)(A) of this subsection''.

Subsec. (c)(3). Pub. L. 90–248, § 168(b)(2), substituted ''authorized by subparagraph (A)(iv) or (B)'' for ''authorized by subparagraph (D)''.

1965—Subsec. (b). Pub. L. 89–97, § 108(c), provided for use of special deposit in the Treasury (made up of payments for information and services furnished) to reimburse authorizations to make expenditures from the Federal Hospital Insurance Trust Fund and the Supplementary Medical Insurance Trust Fund.

Subsec. (c). Pub. L. 89–97, § 340, added subsec. (c).

1958—Subsec. (b). Pub. L. 85–840 amended subsec. (b) generally, authorizing compliance with requests for services if the agency, person, or organization making the request agrees to pay for the services.

1950—Act Aug. 28, 1950, amended section generally, designating existing provisions as subsec. (a), substituting ''under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939'' for ''the Federal Insurance Contributions Act,'' reflecting the transfer of functions from the Social Security Board to the Federal Security Administrator and the Federal Security Agency, and adding subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(2)–(5) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 311(a) of Pub. L. 103–296, applicable with respect to requests for information made after Aug. 15, 1994, see section 311(c) of Pub. L. 103–296, set out as a note under section 6103 of Title 26, Internal Revenue Code.

Section 313(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section and section 1307 of this title] shall apply to violations occurring on or after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective Aug. 1, 1975, see section 101(f) of Pub. L. 93–647, set out as an Effective Date note under section 651 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 249C(b) of Pub. L. 92–603 provided that: ''The provisions of subsection (a) [amending this section] shall apply with respect to reports which are completed by the Secretary after the third calendar month following the enactment of this Act [Oct. 30, 1972].''

§ 1306a. Public access to State disbursement records

No State or any agency or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is or has become entitled pursuant to subchapter I (other than section 303(a)(3) thereof), IV, X, XIV, or XVI (other than section 1383(a)(3) thereof) of this chapter, by reason of the enactment or enforcement by such State of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

(Oct. 20, 1951, ch. 521, title VI, § 618, 65 Stat. 569; Pub. L. 86–778, title VI, § 603(a), Sept. 13, 1960, 74 Stat. 992; Pub. L. 87–543, title I, § 141(e), July 25, 1962, 76 Stat. 205.)

REFERENCES IN TEXT

Section 303(a)(3), referred to in text, was repealed by Pub. L. 97–35, title XXI, § 2184(a)(4)(A), Aug. 13, 1981, 95 Stat. 816.

Section 1383(a)(3), referred to in text, was in the original a reference to section 1603(a)(3) of the Social Security Act as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 200, and amended. That section was amended generally by Pub. L. 92–603, § 301, Oct. 30, 1972, 86 Stat. 1478. However, the amendment by Pub. L. 92–603 was inapplicable to Puerto Rico, Guam, and the Virgin Islands, so that the prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

CODIFICATION

Section was enacted as part of act Oct. 20, 1951, popularly known as the Revenue Act of 1951, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1962—Pub. L. 87–543 substituted ''XIV, or XVI (other than section 1383(a)(3) thereof)'' for ''or XIV''.

1960—Pub. L. 86–778 inserted ''(other than section 303(a)(3) thereof)'' after ''pursuant to subchapter I''.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 603(b) of Pub. L. 86–778 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1960.''

§ 1306b. State data exchanges

Whenever the Commissioner of Social Security requests information from a State for the purpose of ascertaining an individual's eligibility for benefits (or the correct amount of such benefits) under subchapter II or XVI of this chapter, the standards of the Commissioner promulgated pursuant to section 1306 of this title or any other Federal law for the use, safeguarding, and disclosure of information are deemed to meet any standards of the State that would otherwise apply to the disclosure of information by the State to the Commissioner.

(Pub. L. 106–169, title II, § 209, Dec. 14, 1999, 113 Stat. 1842.)

CODIFICATION

Section was enacted as part of the Foster Care Independence Act of 1999, and not as part of the Social Security Act which comprises this chapter.

§ 1307. Penalty for fraud

(a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this chapter, of chapter 2, 21, or 23 of the Internal Revenue Code of 1986, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939, or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the social security account number,

date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Commissioner of Social Security or the Secretary that he is such individual, or the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or (2) falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(Aug. 14, 1935, ch. 531, title XI, § 1107, as added Aug. 10, 1939, ch. 666, title VIII, § 802, 53 Stat. 1398; amended Aug. 28, 1950, ch. 809, title IV, § 403(e), (f), 64 Stat. 560; Pub. L. 98–369, div. B, title VI, § 2663(e)(2)(A), (3), (j)(2)(D)(iii), (*l*)(1), July 18, 1984, 98 Stat. 1168, 1170, 1171; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, § 108(b)(6), title III, § 313(b), Aug. 15, 1994, 108 Stat. 1482, 1530.)

REFERENCES IN TEXT

Subchapter E of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 1631 to 1636 of the 1939 Code, and was repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–296, § 313(b), inserted ''social security account number,'' after ''information as to the'' and substituted ''felony'' for ''misdemeanor'', ''$10,000 for each occurrence of a violation'' for ''$1,000'', and ''5 years'' for ''one year''.

Pub. L. 103–296, § 108(b)(6), which directed that subsec. (b) be amended by substituting ''the Commissioner of Social Security or the Secretary'' for ''the Secretary of Health and Human Services'', was executed by making the substitution for ''the Secretary'' to reflect the probable intent of Congress.

1986—Subsec. (a). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (a). Pub. L. 98–369, § 2663(e)(2)(A), substituted ''of chapter 2, 21, or 23 of the Internal Revenue Code of 1954, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939,'' for ''subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code [of 1939]''.

Subsec. (b). Pub. L. 98–369, § 2663(*l*)(1), substituted ''Secretary'' for ''Administrator''.

Pub. L. 98–369, § 2663(j)(2)(D)(iii), which directed the substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'' could not be executed because ''Health, Education, and Welfare'' did not appear in text.

Pub. L. 98–369, § 2663(e)(3), substituted ''divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father,'' for ''former wife divorced,'' in two places.

1950—Subsec. (a). Act Aug. 28, 1950, § 403(e), substituted ''subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code of 1939,'' for ''the Federal Insurance Contributions Act, or the Federal Unemployment Tax Act,''.

Subsec. (b). Act Aug. 28, 1950, § 403(f), substituted ''Administrator'' for ''Board'' and ''wife, husband, widow, widower, former wife divorced, child, or parent'' for ''wife, parent, or child'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(6) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 313(b) of Pub. L. 103–296 applicable to violations occurring on or after Aug. 15, 1994, see section 313(c) of Pub. L. 103–296, set out as a note under section 1306 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section § 2663(e)(2)(B) of Pub. L. 98–369 provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply to returns filed or representations made on or before the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2663(e)(3), (j)(2)(D)(iii), (*l*)(1) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 1308. Additional grants to Puerto Rico, Virgin Islands, Guam, and American Samoa; limitation on total payments

(a) Limitation on total payments to each territory

(1) In general

Notwithstanding any other provision of this chapter (except for paragraph (2) of this subsection), the total amount certified by the Secretary of Health and Human Services under subchapters I, X, XIV, and XVI of this chapter, under parts A and E of subchapter IV of this chapter, and under subsection (b) of this section, for payment to any territory for a fiscal year shall not exceed the ceiling amount for the territory for the fiscal year.

(2) Certain payments disregarded

Paragraph (1) of this subsection shall be applied without regard to any payment made under section 603(a)(2), 603(a)(4), 603(a)(5), 606, or 613(f) of this title.

(b) Entitlement to matching grant

(1) In general

Each territory shall be entitled to receive from the Secretary for each fiscal year a grant in an amount equal to 75 percent of the amount (if any) by which—

(A) the total expenditures of the territory during the fiscal year under the territory programs funded under parts A and E of subchapter IV of this chapter, including any

amount paid to the State under part A of subchapter IV of this chapter that is transferred in accordance with section 604(d) of this title and expended under the program to which transferred; exceeds

(B) the sum of—

(i) the amount of the family assistance grant payable to the territory without regard to section 609 of this title; and

(ii) the total amount expended by the territory during fiscal year 1995 pursuant to parts A and F of subchapter IV of this chapter (as so in effect), other than for child care.

(2) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1997 through 2003, such sums as are necessary for grants under this paragraph.

(c) Definitions

As used in this section:

(1) Territory

The term ''territory'' means Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) Ceiling amount

The term ''ceiling amount'' means, with respect to a territory and a fiscal year, the mandatory ceiling amount with respect to the territory, reduced for the fiscal year in accordance with subsection (e)[1] of this section, and reduced by the amount of any penalty imposed on the territory under any provision of law specified in subsection (a) of this section during the fiscal year.

(3) Family assistance grant

The term ''family assistance grant'' has the meaning given such term by section 603(a)(1)(B) of this title.

(4) Mandatory ceiling amount

The term ''mandatory ceiling amount'' means—

(A) $107,255,000 with respect to Puerto Rico;

(B) $4,686,000 with respect to Guam;

(C) $3,554,000 with respect to the Virgin Islands; and

(D) $1,000,000 with respect to American Samoa.

(5) Total amount expended by the territory

The term ''total amount expended by the territory''—

(A) does not include expenditures during the fiscal year from amounts made available by the Federal Government; and

(B) when used with respect to fiscal year 1995, also does not include—

(i) expenditures during fiscal year 1995 under subsection (g) or (i) of section 602 of this title (as in effect on September 30, 1995); or

(ii) any expenditures during fiscal year 1995 for which the territory (but for this section, as in effect on September 30, 1995) would have received reimbursement from the Federal Government.

(d) Authority to transfer funds to certain programs

A territory to which an amount is paid under subsection (b) of this section may use the amount in accordance with section 604(d) of this title.

(e) Repealed. Pub. L. 105–33, title V, § 5512(c), Aug. 5, 1997, 111 Stat. 619

(f) Total amount certified under subchapter XIX

Subject to subsection (g) of this section and section 1396u–5(e)(1)(B) of this title, the total amount certified by the Secretary under subchapter XIX of this chapter with respect to a fiscal year for payment to—

(1) Puerto Rico shall not exceed (A) $116,500,000 for fiscal year 1994 and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (as published by the Bureau of Labor Statistics) for the twelve-month period ending in March preceding the beginning of the fiscal year, rounded to the nearest $100,000;

(2) the Virgin Islands shall not exceed (A) $3,837,500 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

(3) Guam shall not exceed (A) $3,685,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

(4) Northern Mariana Islands shall not exceed (A) $1,110,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000; and

(5) American Samoa shall not exceed (A) $2,140,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000.

(g) Medicaid payments to territories for fiscal year 1998 and thereafter

(1) Fiscal year 1998

With respect to fiscal year 1998, the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsection (f) of this section for such fiscal year shall be increased by the following amounts:

(A) For Puerto Rico, $30,000,000.

(B) For the Virgin Islands, $750,000.

(C) For Guam, $750,000.

(D) For the Northern Mariana Islands, $500,000.

[1] See References in Text note below.

(E) For American Samoa, $500,000.

(2) Fiscal year 1999 and thereafter

Notwithstanding subsection (f) of this section and subject to paragraph (3), with respect to fiscal year 1999 and any fiscal year thereafter, the total amount certified by the Secretary under subchapter XIX of this chapter for payment to—

(A) Puerto Rico shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase in the medical care component of the Consumer Price Index for all urban consumers (as published by the Bureau of Labor Statistics) for the 12-month period ending in March preceding the beginning of the fiscal year, rounded to the nearest $100,000;

(B) the Virgin Islands shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000;

(C) Guam shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000;

(D) the Northern Mariana Islands shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000; and

(E) American Samoa shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000.

(3) Fiscal years 2006 and 2007 for certain insular areas

The amounts otherwise determined under this subsection for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa for fiscal year 2006 and fiscal year 2007 shall be increased by the following amounts:

(A) For Puerto Rico, $12,000,000 for fiscal year 2006 and $12,000,000 for fiscal year 2007.

(B) For the Virgin Islands, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

(C) For Guam, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

(D) For the Northern Mariana Islands, $1,000,000 for fiscal year 2006 and $2,000,000 for fiscal year 2007.

(E) For American Samoa, $2,000,000 for fiscal year 2006 and $4,000,000 for fiscal year 2007.

Such amounts shall not be taken into account in applying paragraph (2) for fiscal year 2007 but shall be taken into account in applying such paragraph for fiscal year 2008 and subsequent fiscal years.

(Aug. 14, 1935, ch. 531, title XI, § 1108, as added Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(g), 64 Stat. 558; amended Aug. 1, 1956, ch. 836, title III, § 351(c), 70 Stat. 855; Pub. L. 85–840, title V, §§ 507, 508, Aug. 28, 1958, 72 Stat. 1051; Pub. L. 86–778, title VI, § 602, Sept. 13, 1960, 74 Stat. 992; Pub. L. 87–31, § 6(a)(1), (2), (b), May 8, 1961, 75 Stat. 78; Pub. L. 87–64, title III, § 303(d), June 30, 1961, 75 Stat. 143; Pub. L. 87–543, title I, § 151, July 25, 1962, 76 Stat. 206; Pub. L. 89–97, title II, § 208(a)(2), title IV, § 408(a), July 30, 1965, 79 Stat. 355, 422; Pub. L. 90–248, title II, § 248(a)(1), Jan. 2, 1968, 81 Stat. 918; Pub. L. 92–603, title II, §§ 271(a), (b), 272(b), Oct. 30, 1972, 86 Stat. 1451; Pub. L. 93–647, § 3(i), Jan. 4, 1975, 88 Stat. 2350; Pub. L. 95–600, title VIII, § 802(b), Nov. 6, 1978, 92 Stat. 2945; Pub. L. 96–272, title II, § 207(c), title III, §§ 305(a), (b), June 17, 1980, 94 Stat. 526, 529, 530; Pub. L. 97–35, title XXI, §§ 2162(b)(1), 2193(c)(1), title XXIII, § 2353(f), Aug. 13, 1981, 95 Stat. 806, 827, 872; Pub. L. 97–248, title I, §§ 136(b), 160(a), Sept. 3, 1982, 96 Stat. 375, 400; Pub. L. 98–369, div. B, title III, § 2365(a), July 18, 1984, 98 Stat. 1108; Pub. L. 100–203, title IV, § 4111(a), Dec. 22, 1987, 101 Stat. 1330–148; Pub. L. 100–485, title II, § 202(c)(2), (3), title VI, §§ 601(b), (c)(2), 602(a), Oct. 13, 1988, 102 Stat. 2378, 2407, 2408; Pub. L. 103–66, title XIII, § 13641(a), Aug. 10, 1993, 107 Stat. 646; Pub. L. 104–193, title I, § 103(b), Aug. 22, 1996, 110 Stat. 2160; Pub. L. 105–33, title IV, § 4726, title V, §§ 5001(b), 5512, Aug. 5, 1997, 111 Stat. 519, 589, 619; Pub. L. 108–40, § 3(b), June 30, 2003, 117 Stat. 836; Pub. L. 108–173, title I, § 103(d)(2), Dec. 8, 2003, 117 Stat. 2159; Pub. L. 109–171, title VI, § 6055, Feb. 8, 2006, 120 Stat. 96.)

REFERENCES IN TEXT

Parts A and E of subchapter IV of this chapter, referred to in subsecs. (a) and (b)(1), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

Part F of subchapter IV of this chapter, referred to in subsec. (b)(1)(B)(ii), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167.

Subsection (e) of this section, referred to in subsec. (c)(2), was repealed by Pub. L. 105–33, title V, § 5512(c), Aug. 5, 1997, 111 Stat. 619.

AMENDMENTS

2006—Subsec. (g)(2). Pub. L. 109–171, § 6055(1), inserted ''and subject to paragraph (3)'' after ''subsection (f) of this section'' in introductory provisions.

Subsec. (g)(3). Pub. L. 109–171, § 6055(2), added par. (3).

2003—Subsec. (b)(2). Pub. L. 108–40 substituted ''2003'' for ''2002''.

Subsec. (f). Pub. L. 108–173 inserted ''and section 1396u–5(e)(1)(B) of this title'' after ''Subject to subsection (g) of this section'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–33, § 5512(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Notwithstanding any other provision of this chapter, the total amount certified by the Secretary of Health and Human Services under subchapters I, X, XIV, and XVI of this chapter, under parts A and E of subchapter IV of this chapter, and under subsection (b) of this section, for payment to any territory for a fiscal year shall not exceed the ceiling amount for the territory for the fiscal year.''

Subsec. (a)(2). Pub. L. 105–33, § 5001(b), inserted ''603(a)(5),'' after ''603(a)(4),''.

Subsec. (b)(1)(A). Pub. L. 105–33, § 5512(b), inserted '', including any amount paid to the State under part A of subchapter IV of this chapter that is transferred in accordance with section 604(d) of this title and expended under the program to which transferred'' before semicolon.

Subsec. (e). Pub. L. 105–33, § 5512(c), struck out heading and text of subsec. (e). Text read as follows: ''The ceiling amount with respect to a territory shall be reduced for a fiscal year by an amount equal to the amount (if any) by which—

''(1) the total amount expended by the territory under all programs of the territory operated pursuant to the provisions of law specified in subsection (a) of this section (as such provisions were in effect for fiscal year 1995) for fiscal year 1995; exceeds

''(2) the total amount expended by the territory under all programs of the territory that are funded under the provisions of law specified in subsection (a) of this section for the fiscal year that immediately precedes the fiscal year referred to in the matter preceding paragraph (1).''

Subsec. (f). Pub. L. 105–33, § 4726(1), substituted ''Subject to subsection (g) of this section, the'' for ''The'' in introductory provisions.

Subsec. (g). Pub. L. 105–33, § 4726(2), added subsec. (g).

1996—Pub. L. 104–193, § 103(b)(3), added section catchline and struck out former catchline.

Subsecs. (a), (b). Pub. L. 104–193, § 103(b)(3), added subsecs. (a) and (b) and struck out former subsec. (a) which limited total amount certified under subchapters I, X, XIV, XVI of this chapter and parts A and E of subchapter IV of this chapter for payment to Puerto Rico, the Virgin Islands, and Guam and former subsec. (b) which limited total amount certified for family planning services for Puerto Rico, the Virgin Islands, and Guam.

Subsec. (c). Pub. L. 104–193, § 103(b)(3), added subsec. (c). Former subsec. (c) redesignated (f).

Subsecs. (d), (e). Pub. L. 104–193, § 103(b)(1), (3), added subsecs. (d) and (e) and struck out former subsec. (d) which limited payments to American Samoa and former subsec. (e) which related to allotment of smaller amounts.

Subsec. (f). Pub. L. 104–193, § 103(b)(2), redesignated subsec. (c) as (f).

1993—Subsec. (c)(1) to (5). Pub. L. 103–66 amended pars. (1) to (5) generally. Prior to amendment, pars. (1) to (5) read as follows:

''(1) Puerto Rico shall not exceed (A) $73,400,000 for fiscal year 1988, (B) $76,200,000 for fiscal year 1989, and (C) $79,000,000 for fiscal year 1990 (and each succeeding fiscal year);

''(2) the Virgin Islands shall not exceed (A) $2,430,000 for fiscal year 1988, (B) $2,515,000 for fiscal year 1989, and (C) $2,600,000 for fiscal year 1990 (and each succeeding fiscal year);

''(3) Guam shall not exceed (A) $2,320,000 for fiscal year 1988, (B) $2,410,000 for fiscal year 1989, and (C) $2,500,000 for fiscal year 1990 (and each succeeding fiscal year);

''(4) the Northern Mariana Islands shall not exceed (A) $636,700 for fiscal year 1988, (B) $693,350 for fiscal year 1989, and (C) $750,000 for fiscal year 1990 (and each succeeding fiscal year); and

''(5) American Samoa shall not exceed (A) $1,330,000 for fiscal year 1988, (B) $1,390,000 for fiscal year 1989, and (C) $1,450,000 for fiscal year 1990 (and each succeeding fiscal year).''

1988—Pub. L. 100–485, § 601(c)(2), amended section catchline generally.

Subsec. (a). Pub. L. 100–485, § 202(c)(2), inserted ''or, in the case of part A of subchapter IV of this chapter, section 603(k) of this title'' before ''applies'' in introductory provisions.

Subsec. (a)(1)(F), (G). Pub. L. 100–485, § 602(a)(1), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$72,000,000 with respect to the fiscal year 1979 and each fiscal year thereafter;''.

Subsec. (a)(2)(F), (G). Pub. L. 100–485, § 602(a)(2), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$2,400,000 with respect to the fiscal year 1979 and each fiscal year thereafter;''.

Subsec. (a)(3)(F), (G). Pub. L. 100–485, § 602(a)(3), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$3,300,000 with respect to the fiscal year 1979 and each fiscal year thereafter.''

Subsec. (b). Pub. L. 100–485, § 202(c)(3), struck out ''and services provided under section 602(a)(19) of this title'' after ''family planning services'' in introductory provisions.

Subsecs. (d), (e). Pub. L. 100–485, § 601(b), added subsec. (d) and redesignated former subsec. (d) as (e).

1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The total amount certified by the Secretary under subchapter XIX of this chapter with respect to a fiscal year for payment to—

''(1) Puerto Rico shall not exceed $63,400,000;

''(2) the Virgin Islands shall not exceed $2,100,000;

''(3) Guam shall not exceed $2,000,000;

''(4) the Northern Mariana Islands shall not exceed $550,000; and

''(5) American Samoa shall not exceed $1,150,000.''

1984—Subsec. (c). Pub. L. 98–369 substituted ''$63,400,000'' for ''$45,000,000'' in par. (1), ''$2,100,000'' for ''$1,500,000'' in par. (2), ''$2,000,000'' for ''$1,400,000'' in par. (3), ''$550,000'' for ''$350,000'' in par. (4), and ''$1,150,000'' for ''$750,000'' in par. (5).

1982—Subsec. (a). Pub. L. 97–248, § 160(a), inserted provisions following par. (3)(F) that each jurisdiction specified in this subsection may use in its program under subchapter XX of this chapter any sums available to it under this subsection which are not needed to carry out the programs specified in this subsection.

Subsec. (c)(5). Pub. L. 97–248, § 136(b), added par. (5).

1981—Subsec. (a). Pub. L. 97–35, § 2353(f), substituted in provision preceding par. (1) ''The total amount certified by the Secretary of Health and Human Services'' for ''Except as provided in section 1397a(a)(2)(C) of this title, the total amount certified by the Secretary of Health, Education, and Welfare''.

Subsec. (c). Pub. L. 97–35, § 2162(b)(1), in par. (1) increased the amount from not to exceed $2,000,000 to not to exceed $45,000,000, in par. (2) increased the amount from not to exceed $65,000 to not to exceed $1,500,000, in par. (3) increased the amount from not to exceed $90,000 to not to exceed $1,400,000, and added par. (4).

Subsec. (d). Pub. L. 97–35, § 2193(c)(1), substituted ''section 621 of this title'' for ''sections 702(a) and 712(a) of this title, and the provisions of sections 621, 703(1), and 704(1) of this title as amended by the Social Security Amendments of 1967''.

1980—Subsec. (a). Pub. L. 96–272 substituted ''section 1397a(a)(2)(C) of this title'' for ''section 1397a(a)(2)(D) of this title'' and ''under parts A and E'' for ''under part A'' in provisions preceding par. (1), substituted ''with respect to each of the fiscal years 1972 through 1978'' for ''with respect to the fiscal year 1972 and each fiscal year thereafter other than the fiscal year 1979'' in pars. (1)(E), (2)(E), and (3)(E), and substituted ''with respect to the fiscal year 1979 and each fiscal year thereafter'' for ''with respect to the fiscal year 1979'' in pars. (1)(F), (2)(F), and (3)(F).

1978—Subsec. (a)(1)(E). Pub. L. 95–600, § 802(b)(1)(B), inserted ''other than the fiscal year 1979, or''.

Subsec. (a)(1)(F). Pub. L. 95–600, § 802(b)(1)(C), added subpar. (F).

Subsec. (a)(2)(E). Pub. L. 95–600, § 802(b)(2)(B), substituted ''other than the fiscal year 1979, or'' for ''; and''.

Subsec. (a)(2)(F). Pub. L. 95–600, § 802(b)(2)(C), added subpar. (F).

Subsec. (a)(3)(E). Pub. L. 95–600, § 802(b)(3)(B), inserted ''other than the fiscal year 1979, or''.

Subsec. (a)(3)(F). Pub. L. 95–600, § 802(b)(3)(C), added subpar. (F).

1975—Subsec. (a). Pub. L. 93–647 substituted ''Except as provided in section 1397a(a)(2)(D) of this title, the total amount'' for ''The total amount''.

1972—Subsec. (c)(1). Pub. L. 92–603, § 271(a), substituted ''$30,000,000'' for ''$20,000,000''.

Subsec. (c)(2). Pub. L. 92–603, § 271(b), substituted ''$1,000,000'' for ''$650,000''.

Subsec. (d). Pub. L. 92–603, § 272(b), inserted '', American Samoa, and the Trust Territory of the Pacific Islands'' after ''allot such smaller amounts to Guam''.

1968—Pub. L. 90–248 amended section generally and, among other changes, raised the present $9.8 million limit for Federal financial participation in the public assistance programs of Puerto Rico to $12.5 million for fiscal 1968 with further increases in succeeding fiscal years to a maximum of $24 million for fiscal 1972 and each fiscal year thereafter, increased the dollar maximums for the Virgin Islands from $330,000 to $800,000 for fiscal 1972 and thereafter and for Guam from $450,000 to $1.1 million for fiscal 1972 and thereafter, authorized payments for family planning services and services referred to in section 602(a)(19) of this title, with respect to any fiscal year, of not more than $2 million for Puerto Rico, $65,000 for the Virgin Islands, and $90,000 for Guam, imposed a maximum on Federal payments for the medical assistance program under subchapter XIX of this chapter, with respect to any fiscal year, of $20 million for Puerto Rico, $650,000 for the Virgin Islands, and $900,000 for Guam, and provided that notwithstanding sections 702(a) and 712(a) of this title and sections 621, 703(1), and 704(1) of this title, as amended by the Social Security Amendments of 1967, and until Congress otherwise provides, the Secretary shall, in lieu of the initial allotments specified in such sections, allot smaller amounts to Guam as he deems appropriate.

1965—Pub. L. 89–97 substituted ''and 722(a)'' for ''722(a) and 727(a)'' and struck out ''(or, in the case of section 727(a) of this title'' after ''in lieu of the initial'', and removed the litigation requiring that, with respect to any fiscal year, $625,000 of the $9,800,000 certified for payments to Puerto Rico, $18,750 of the $330,000 certified for payments to the Virgin Islands, and $25,000 of the $450,000 certified for payments to Guam, be used only for payments with respect to section 303(a)(2)(B) or 1383(a)(2)(B) of this title.

1962—Pub. L. 87–543 substituted ''$9,800,000'', ''$330,000'', ''$450,000'', and ''initial (or, in the case of section 727(a) of this title, the minimum) allotment'' for ''$9,500,000'', ''$320,000'', ''$430,000'', and ''$60,000, $60,000 $60,000, respectively,'' and inserted references to subchapter ''XVI (other than section 1383(a)(3) thereof)'' of this chapter, section 1383(a)(2) in three places and section 727(a) after section 722(a).

1961—Pub. L. 87–64, substituted ''$9,500,000'', ''$320,000'', and ''$430,000'' for ''$9,425,000'', ''$318,750'', and ''$425,000'', respectively. See Repeals note below.

Pub. L. 87–31 increased the grant to Puerto Rico for fiscal year ending June 30, 1961, from $9,000,000 to $9,075,000 and for fiscal year ending June 30, 1962, to $9,425,000; the grants to Virgin Islands and Guam from $315,000 and $420,000 to $318,750 and $425,000, respectively; and payments under section 303(a)(2)(B) of this title to Puerto Rico, Virgin Islands and Guam from $500,000, $15,000 and $20,000 to $625,000, $18,750 and $25,000, respectively. See also Limitation on Payments note below.

1960—Pub. L. 86–778 substituted ''$9,000,000, of which $500,000 may be used only for payments certified with respect to section 303(a)(2)(B) of this title'' for ''$8,500,000'', ''$315,000, of which $15,000 may be used only for payments certified in respect to section 303(a)(2)(B) of this title'' for ''$300,000'', ''$420,000, of which $20,000 may be used only for payments certified in respect to section 303(a)(2)(B) of this title'' for ''$400,000'', and ''subchapters I (other than section 303(a)(3) thereof)'' for ''subchapters I''.

1958—Pub. L. 85–840, §§ 507, 508, amended section. Section 507(a) substituted ''$8,500,000'' for ''$5,312,500'' and ''$300,000'' for ''$200,000'', and limited the total amount certified for payment to Guam with respect to any fiscal year to not more than $400,000. Section 507(b) amended catchline to include Guam. Section 508 inserted provisions requiring the Secretary, in lieu of the allotments specified in sections 702(a)(2), 712(a)(2) and 722(a) of this title, to allot such smaller amounts as he may deem appropriate to Guam, notwithstanding provisions of such sections and until such time as the Congress may by appropriation or other law otherwise provide.

1956—Act Aug. 1, 1956, substituted ''$5,312,500'' for ''$4,250,000'', and ''$200,000'' for ''$160,000''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 116(a)(3) of Pub. L. 104–193, set out as a note under section 601 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13641(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply beginning with fiscal year 1994.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 202(c)(2), (3) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204 of Pub. L. 100–485, set out as a note under section 671 of this title.

Amendment by section 601(b), (c)(2) of Pub. L. 100–485 effective Oct. 1, 1988, see section 601(d) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 1301 of this title.

Section 602(b) of Pub. L. 100–485 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on October 1, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4111(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments for fiscal years beginning with fiscal year 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2365(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1983.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 136(b) of Pub. L. 97–248 effective Oct. 1, 1982, see section 136(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

Amendment by section 160(a) of Pub. L. 97–248 effective Oct. 1, 1981, see section 160(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2162(b)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to fiscal years beginning with fiscal year 1982.''

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(1) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Amendment by section 2353(f) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 271(c) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to fiscal years beginning after June 30, 1971.''

Amendment by section 272(b) of Pub. L. 92–603 applicable with respect to fiscal years beginning after June 30, 1971, see section 272(c) of Pub. L. 92–603, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 248(a)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to fiscal years beginning after June 30, 1967.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 208(a)(2) Pub. L. 89–97 effective Jan. 1, 1966, see section 208(d) of Pub. L. 89–97.

Section 408(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective in the case of Puerto Rico, the Virgin Islands, or Guam with respect to fiscal years beginning on or after the date on which its plan under title XIX of the Social Security Act [section 1396 et seq. of this title] is approved.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 151 of Pub. L. 87–543 provided that the amendment made by that section is effective for fiscal years ending after June 30, 1962.

EFFECTIVE AND TERMINATION DATES OF 1961 AMENDMENTS

Section 132(d) of Pub. L. 87–543 repealed section 303(d) of Pub. L. 87–64, which had provided that the amendment by section 303(d) of Pub. L. 87–64 shall be effective only for fiscal year ending June 30, 1962, and section 6 of Pub. L. 87–31, which had provided that the amendment by section 6(b) of Pub. L. 87–31 shall be effective for fiscal years ending after June 30, 1961. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective with respect to fiscal years ending after 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendments made by sections 507 and 508 of Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 351(d) of act Aug. 1, 1956, provided that: ''The amendments made by this section [amending this section and sections 603 and 606 of this title] shall be effective with respect to the fiscal year ending June 30, 1957, and all succeeding fiscal years.''

REPEALS: EFFECTIVE DATE

Section 132(d) of Pub. L. 87–543 repealed section 6 of Pub. L. 87–31, May 8, 1961, 75 Stat. 78, and section 303(d) of Pub. L. 87–64, title III, June 30, 1961, 75 Stat. 143, formerly cited as a credit to this section. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

LIMITATION ON PAYMENTS: EFFECTIVE DATE

Section 132(d) of Pub. L. 87–543 repealed section 6(a) of Pub. L. 87–31, May 8, 1961, 75 Stat. 78, which had limited payments to Puerto Rico not to exceed $9,075,000 for fiscal year ending June 30, 1961, $9,425,000 for fiscal year ending June 30, 1962; and $9,125,000 for fiscal years ending after June 30, 1962. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1309. Amounts disregarded not to be taken into account in determining eligibility of other individuals

Any amount which is disregarded (or set aside for future needs) in determining the eligibility of and amount of the aid or assistance for any individual under a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter,[1] shall not be taken into consideration in determining the eligibility of and amount of aid or assistance for any other individual under a State plan approved under any other of such subchapters.

(Aug. 14, 1935, ch. 531, title XI, § 1109, as added July 18, 1952, ch. 945, § 7, 66 Stat. 778; amended Pub. L. 87–543, title I, § 141(c), July 25, 1962, 76 Stat. 205; Pub. L. 89–97, title I, § 121(c)(2), July 30, 1965, 79 Stat. 352; Pub. L. 90–248, title II, § 241(c)(2), Jan. 2, 1968, 81 Stat. 917; Pub. L. 104–193, title I, § 108(g)(1), Aug. 22, 1996, 110 Stat. 2168.)

AMENDMENTS

1996—Pub. L. 104–193 struck out ''or part A of subchapter IV of this chapter,'' after ''subchapter I, X, XIV, XVI, or XIX of this chapter,''.

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

1965—Pub. L. 89–97 substituted requirement that amounts disregarded be not taken into account in determining eligibility of other individuals, for former provisions which had provided that: ''Notwithstanding the provisions of sections 302(a)(10)(A), 602(a)(7), 1202(a)(8), 1352(a)(8), and 1382(a)(14) of this title, a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter may until June 30, 1954, and thereafter shall provide that where earned income has been disregarded in determining the need of an individual receiving aid to the blind under a State plan approved under subchapter X of this chapter, the earned income so disregarded (but not in excess of the amount specified in section 1202(a)(8) of this title) shall not be taken into consideration in determining the need of any other individual for assistance under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter''.

1962—Pub. L. 87–543 substituted reference to section 302(a)(10)(A) for 302(a)(7) and inserted references to section 1382(a)(14) and subchapter XVI.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

[1] So in original. The comma probably should not appear.

§ 1310. Cooperative research or demonstration projects

(a) In general

(1) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1957, $5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (A) making grants to States and public and other organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under this chapter and programs related thereto, and (B) making contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters.

(2) No contract or jointly financed cooperative arrangement shall be entered into, and no grant shall be made, under paragraph (1), until the Secretary (or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapters II or XVI of this chapter) obtains the advice and recommendations of specialists who are competent to evaluate the proposed projects as to soundness of their design, the possibilities of securing productive results, the adequacy of resources to conduct the proposed research or demonstrations, and their relationship to other similar research or demonstrations already completed or in process.

(3) Grants and payments under contracts or cooperative arrangements under paragraph (1) may be made either in advance or by way of reimbursement, as may be determined by the Secretary (or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapter II or XVI of this chapter); and shall be made in such installments and on such conditions as the Secretary (or the Commissioner, as applicable) finds necessary to carry out the purposes of this subsection.

(b) Limitations and costs

(1) The Commissioner is authorized to waive any of the requirements, conditions, or limitations of subchapter XVI of this chapter (or to waive them only for specified purposes, or to impose additional requirements, conditions, or limitations) to such extent and for such period as the Commissioner finds necessary to carry out one or more experimental, pilot, or demonstration projects which, in the Commissioner's judgment, are likely to assist in promoting the objectives or facilitate the administration of such subchapter. Any costs for benefits under or administration of any such project (including planning for the project and the review and evaluation of the project and its results), in excess of those that would have been incurred without regard to the project, shall be met by the Commissioner from amounts available to the Commissioner for this purpose from appropriations made to carry out such subchapter. The costs of any such project which is carried out in coordination with one or more related projects under other subchapters of this chapter shall be allocated among the appropriations available for such projects and any Trust Funds involved, in a manner determined by the Commissioner with respect to the old-age, survivors, and disability insurance programs under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter, and by the Secretary with respect to other subchapters of this chapter, taking into consideration the programs (or types of benefit) to which the project (or part of a project) is most closely related or which the project (or part of a project) is intended to benefit. If, in order to carry out a project under this subsection, the Commissioner requests a State to make supplementary payments (or the Commissioner makes them pursuant to an agreement under section 1382e of this title) to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not make such payments, the Commissioner shall reimburse such State for the non-Federal share of such payments from amounts appropriated to carry out subchapter XVI of this chapter. If, in order to carry out a project under this subsection, the Secretary requests a State to provide medical assistance under its plan approved under subchapter XIX of this chapter to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not provide such medical assistance, the Secretary shall reimburse such State for the non-Federal share of such assistance from amounts appropriated to carry out subchapter XVI of this chapter, which shall be provided by the Commissioner to the Secretary for this purpose.

(2) With respect to the participation of recipients of supplemental security income benefits in experimental, pilot, or demonstration projects under this subsection—

(A) the Commissioner is not authorized to carry out any project that would result in a substantial reduction in any individual's total income and resources as a result of his or her participation in the project;

(B) the Commissioner may not require any individual to participate in a project; and the Commissioner shall assure (i) that the voluntary participation of individuals in any project is obtained through informed written consent which satisfies the requirements for informed consent established by the Commissioner for use in any experimental, pilot, or demonstration project in which human subjects are at risk, and (ii) that any individual's voluntary agreement to participate in any project may be revoked by such individual at any time;

(C) the Commissioner shall, to the extent feasible and appropriate, include recipients who are under age 18 as well as adult recipients; and

(D) the Commissioner shall include in the projects carried out under this section such experimental, pilot, or demonstration projects as may be necessary to ascertain the feasibility of treating alcoholics and drug addicts to

prevent the onset of irreversible medical conditions which may result in permanent disability, including programs in residential care treatment centers.

(c) Survey of use of payments

(1) In addition to the amount otherwise appropriated in any other law to carry out subsection (a) of this section for fiscal year 2004, up to $8,500,000 is authorized and appropriated and shall be used by the Commissioner of Social Security under this subsection for purposes of conducting a statistically valid survey to determine how payments made to individuals, organizations, and State or local government agencies that are representative payees for benefits paid under subchapter II or XVI of this chapter are being managed and used on behalf of the beneficiaries for whom such benefits are paid.

(2) Not later than 18 months after March 2, 2004, the Commissioner of Social Security shall submit a report on the survey conducted in accordance with paragraph (1) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(Aug. 14, 1935, ch. 531, title XI, § 1110, as added Aug. 1, 1956, ch. 836, title III, § 331, 70 Stat. 850; amended Pub. L. 90–248, title II, § 246, Jan. 2, 1968, 81 Stat. 918; Pub. L. 96–265, title V, § 505(b), June 9, 1980, 94 Stat. 474; Pub. L. 98–369, div. B, title III, § 2331(a), July 18, 1984, 98 Stat. 1088; Pub. L. 99–272, title XII, § 12101(d), Apr. 7, 1986, 100 Stat. 283; Pub. L. 103–296, title I, § 108(b)(7), Aug. 15, 1994, 108 Stat. 1482; Pub. L. 105–33, title V, § 5524, Aug. 5, 1997, 111 Stat. 623; Pub. L. 106–170, title IV, § 404(a), Dec. 17, 1999, 113 Stat. 1910; Pub. L. 108–203, title I, § 107(a), Mar. 2, 2004, 118 Stat. 506.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–203 added subsec. (c).

1999—Subsec. (a)(3). Pub. L. 106–170 substituted ''subchapter II or XVI'' for ''subchapter XVI''.

1997—Subsec. (a)(3). Pub. L. 105–33 inserted ''(or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapter XVI of this chapter)'' after ''Secretary'' the first place appearing and ''(or the Commissioner, as applicable)'' after ''Secretary'' the second place appearing.

1994—Subsec. (a)(2). Pub. L. 103–296, § 108(b)(7)(B), inserted ''(or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapters II or XVI of this chapter)'' after ''Secretary''.

Subsec. (b)(1). Pub. L. 103–296, § 108(b)(7)(A), (C), in first sentence substituted ''The Commissioner'' for ''The Secretary'', ''as the Commissioner'' for ''as he'', and ''in the Commissioner's judgment'' for ''in his judgment'', in second sentence substituted ''by the Commissioner'' for ''by the Secretary'' and ''available to the Commissioner'' for ''available to him'', in third sentence substituted ''determined by the Commissioner with respect to the old-age, survivors, and disability insurance programs under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter, and by the Secretary with respect to other subchapters of this chapter,'' for ''determined by the Secretary,'', and substituted fourth and fifth sentences for former fourth sentence which read as follows: ''If, in order to carry out a project under this subsection, the Secretary requests a State to make supplementary payments (or makes them himself pursuant to an agreement under section 1382e of this title), or to provide medical assistance under its plan approved under subchapter XIX of this chapter, to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not make such payments or provide such medical assistance, the Secretary shall reimburse such State for the non-Federal share of such payments or assistance from amounts appropriated to carry out subchapter XVI of this chapter.''

Subsec. (b)(2). Pub. L. 103–296, § 108(b)(7)(A), (D), substituted ''the Commissioner'' for ''the Secretary'' wherever appearing and ''the Commissioner shall'' for ''he shall'' in subpar. (B).

Subsec. (b)(3). Pub. L. 103–296, § 108(b)(7)(E), struck out par. (3) which read as follows: ''All reports of the Secretary with respect to projects carried out under this subsection shall be incorporated into the Secretary's annual report to the Congress required by section 904 of this title.''

1986—Subsec. (b)(3). Pub. L. 99–272 added par. (3).

1984—Subsec. (a)(1)(A). Pub. L. 98–369 struck out ''nonprofit'' before first reference to ''organizations and agencies''.

1980—Pub. L. 96–265 redesignated provisions of subsec. (a) and cls. (1) and (2) thereof as subsec. (a)(1) and cls. (A) and (B) thereof, respectively, redesignated provisions of subsecs. (b) and (c) as subsec. (a)(2) and (3), respectively, added subsec. (b), and made conforming amendments to subsec. (a)(2) and (3) as redesignated.

1968—Subsec. (a). Pub. L. 90–248 struck out ''nonprofit'' before ''organizations'' in cl. (2).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, § 404(b), Dec. 17, 1999, 113 Stat. 1910, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296; 108 Stat. 1464).''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of the Social Security Independence and Program Improvements Act of 1994, Pub. L. 103–296, see section 5528(b) of Pub. L. 105–33, set out as a note under section 903 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective on first day of month following April 1986, see section 12115 of Pub. L. 99–272, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2331(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395b–1 of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

VOCATIONAL REHABILITATION DEMONSTRATION PROJECTS

Pub. L. 101–508, title V, § 5120(a)–(e), Nov. 5, 1990, 104 Stat. 1388–280, directed Secretary of Health and Human Services to develop and carry out under this section demonstration projects in each of not fewer than three States, with such demonstration projects to be designed to assess the advantages and disadvantages of permitting disabled beneficiaries to select from among both public and private qualified vocational rehabilitation providers, providers of vocational rehabilitation services directed at enabling such beneficiaries to engage in substantial gainful activities, with each such demonstration project to commence as soon as practicable after Nov. 5, 1990, and to remain in operation until the end of fiscal year 1993, and with a final writ-

ten report to be submitted to Congress not later than Apr. 1, 1994.

FINAL REPORT COVERING ALL EXPERIMENTS AND DEMONSTRATION PROJECTS

Section 505(c) of Pub. L. 96–265, as amended by Pub. L. 99–272, title XII, § 12101(c), Apr. 7, 1986, 100 Stat. 283; Pub. L. 101–239, title X, § 10103(a)(3), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 101–508, title V, § 5120(f), Nov. 5, 1990, 104 Stat. 1388–282; Pub. L. 103–296, title I, § 108(m)(3), title III, § 315(a)(3), Aug. 15, 1994, 108 Stat. 1489, 1531, which directed Commissioner to submit to Congress final report with respect to all experiments and demonstration projects carried out under section 505 of Pub. L. 96–265, which amended this section and section 401 of this title and enacted provisions formerly set out below (other than demonstration projects conducted under section 5120 of the Omnibus Budget Reconciliation of 1990, Pub. L. 101–508, set out above) no later than Oct. 1, 1996, was repealed by Pub. L. 106–170, title III, § 301(b)(1)(A), Dec. 17, 1999, 113 Stat. 1902.

AUTHORITY FOR DEMONSTRATION PROJECTS; REPORT TO CONGRESS

Section 505(a)(1)–(4) of Pub. L. 96–265, as amended by Pub. L. 99–272, title XII, § 12101(a), (b), Apr. 7, 1986, 100 Stat. 282; Pub. L. 101–239, title X, § 10103(a)(1), (2), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 103–296, title I, § 108(m), title III, § 315(a)(1), (2), Aug. 15, 1994, 108 Stat. 1489, 1531, which authorized Commissioner of Social Security to carry out demonstration projects to determine advantages and disadvantages of alternative methods of treating work activity of disabled beneficiaries under the old age, survivors, and disability insurance program and altering limitations and conditions applicable to such disabled beneficiaries, and required report to Congress on or before June 9, 1986, and in each succeeding year through 1995, was repealed by Pub. L. 106–170, title III, § 301(b)(1)(A), Dec. 17, 1999, 113 Stat. 1902.

Pub. L. 106–170, title III, § 301(b)(2), Dec. 17, 1999, 113 Stat. 1902, provided that: ''With respect to any experiment or demonstration project being conducted under section 505(a) of the Social Security Disability Amendments of 1980 [Pub. L. 96–265, formerly set out above] (42 U.S.C. 1310 note) as of the date of the enactment of this Act [Dec. 17, 1999], the authority to conduct such experiment or demonstration project (including the terms and conditions applicable to the experiment or demonstration project) shall be treated as if that authority (and such terms and conditions) had been established under section 234 of the Social Security Act [section 434 of this title], as added by subsection (a).''

§ 1311. Public assistance payments to legal representatives

For purposes of subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, payments on behalf of an individual, made to another person who has been judicially appointed, under the law of the State in which such individual resides, as legal representative of such individual for the purpose of receiving and managing such payments (whether or not he is such individual's legal representative for other purposes), shall be regarded as money payments to such individual.

(Aug. 14, 1935, ch. 531, title XI, § 1111, as added Pub. L. 85–840, title V, § 511(a), Aug. 28, 1958, 72 Stat. 1051; amended Pub. L. 87–543, title I, § 141(d), July 25, 1962, 76 Stat. 205; Pub. L. 90–248, title II, § 241(c)(3), Jan. 2, 1968, 81 Stat. 917.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted ''and part A of subchapter IV of this chapter,'' after ''XVI of this chapter,''.

1962—Pub. L. 87–543 inserted reference to subchapter XVI.

EFFECTIVE DATE

Section 511(b) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [enacting this section] shall be applicable in the case of payments to legal representatives by any State made after June 30, 1958; and to such payments by any State made after December 31, 1955, and prior to July 1, 1958, if certifications for payment to such State have been made by the Secretary of Health, Education, and Welfare with respect thereto, or such State has presented to the Secretary a claim (and such other data as the Secretary may require) with respect thereto, prior to July 1, 1959.''

§ 1312. Medical care guides and reports for public assistance and medical assistance

In order to assist the States to extend the scope and content, and improve the quality, of medical care and medical services for which payments are made to or on behalf of needy and low-income individuals under this chapter and in order to promote better public understanding about medical care and medical assistance for needy and low-income individuals, the Secretary shall develop and revise from time to time guides or recommended standards as to the level, content, and quality of medical care and medical services for the use of the States in evaluating and improving their public assistance medical care programs and their programs of medical assistance; shall secure periodic reports from the States on items included in, and the quantity of, medical care and medical services for which expenditures under such programs are made; and shall from time to time publish data secured from these reports and other information necessary to carry out the purposes of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1112, as added Pub. L. 86–778, title VII, § 705, Sept. 13, 1960, 74 Stat. 995; amended Pub. L. 89–97, title IV, § 408(c), July 30, 1965, 79 Stat. 422.)

AMENDMENTS

1965—Pub. L. 89–97 struck out ''for the aged'' after ''medical assistance''.

§ 1313. Assistance for United States citizens returned from foreign countries

(a) Authorization; reimbursement; utilization of facilities of public or private agencies and organizations

(1) The Secretary is authorized to provide temporary assistance to citizens of the United States and to dependents of citizens of the United States, if they (A) are identified by the Department of State as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States or the illness of such citizen or any of his dependents or because of war, threat of war, invasion, or similar crisis, and (B) are without available resources.

(2) Except in such cases or classes of cases as are set forth in regulations of the Secretary,

provision shall be made for reimbursement to the United States by the recipients of the temporary assistance to cover the cost thereof.

(3) The Secretary may provide assistance under paragraph (1) directly or through utilization of the services and facilities of appropriate public or private agencies and organizations, in accordance with agreements providing for payment, in advance or by way of reimbursement, as may be determined by the Secretary, of the cost thereof. Such cost shall be determined by such statistical, sampling, or other method as may be provided in the agreement.

(b) Plans and arrangements for assistance; consultations

The Secretary is authorized to develop plans and make arrangements for provision of temporary assistance within the United States to individuals specified in subsection (a)(1) of this section. Such plans shall be developed and such arrangements shall be made after consultation with the Secretary of State, the Attorney General, and the Secretary of Defense. To the extent feasible, assistance provided under subsection (a) of this section shall be provided in accordance with the plans developed pursuant to this subsection, as modified from time to time by the Secretary.

(c) "Temporary assistance" defined

For purposes of this section, the term ''temporary assistance'' means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health or welfare of individuals (including guidance, counseling, and other welfare services) furnished to them within the United States upon their arrival in the United States and for such period after their arrival, not exceeding ninety days, as may be provided in regulations of the Secretary; except that assistance under this section may be furnished beyond such ninety-day period in the case of any citizen or dependent upon a finding by the Secretary that the circumstances involved necessitate or justify the furnishing of assistance beyond such period in that particular case.

(d) Maximum total amount of temporary assistance

The total amount of temporary assistance provided under this section shall not exceed $1,000,000 during any fiscal year beginning after September 30, 2003, except that, in the case of fiscal year 2006, the total amount of such assistance provided during that fiscal year shall not exceed $6,000,000.

(e) Authority of Secretary to accept gifts

(1) The Secretary may accept on behalf of the United States gifts, in cash or in kind, for use in carrying out the program established under this section. Gifts in the form of cash shall be credited to the appropriation account from which this program is funded, in addition to amounts otherwise appropriated, and shall remain available until expended.

(2) Gifts accepted under paragraph (1) shall be available for obligation or other use by the United States only to the extent and in the amounts provided in appropriation Acts.

(Aug. 14, 1935, ch. 531, title XI, § 1113, as added Pub. L. 87–64, title III, § 302, June 30, 1961, 75 Stat. 142; amended Pub. L. 87–543, title I, § 133, July 25, 1962, 76 Stat. 196; Pub. L. 88–347, June 30, 1964, 78 Stat. 236; Pub. L. 90–36, § 2, June 29, 1967, 81 Stat. 94; Pub. L. 90–248, title V, § 503, Jan. 2, 1968, 81 Stat. 934; Pub. L. 91–41, § 4, July 9, 1969, 83 Stat. 45; Pub. L. 92–40, July 1, 1971, 85 Stat. 96; Pub. L. 94–44, §§ 1, 2, June 28, 1975, 89 Stat. 235; Pub. L. 101–382, title I, § 140, Aug. 20, 1990, 104 Stat. 654; Pub. L. 101–508, title V, § 5056(a), Nov. 5, 1990, 104 Stat. 1388–229; Pub. L. 108–11, title I, § 1701, Apr. 16, 2003, 117 Stat. 585; Pub. L. 109–250, § 1(a), July 27, 2006, 120 Stat. 652.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–250 inserted '', except that, in the case of fiscal year 2006, the total amount of such assistance provided during that fiscal year shall not exceed $6,000,000'' after ''2003''.

2003—Subsec. (d). Pub. L. 108–11 substituted ''2003'' for ''1991''.

1990—Subsec. (d). Pub. L. 101–508, § 5056(a)(1), substituted ''after September 30, 1991'' for ''on or after October 1, 1989''.

Pub. L. 101–382 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The total amount of temporary assistance provided under this section shall not exceed—

''(1) $8,000,000 during the fiscal years ending June 30, 1975, and June 30, 1976, and the succeeding calendar quarter, or

''(2) $300,000 during any fiscal year beginning on or after October 1, 1976.''

Subsec. (e). Pub. L. 101–508, § 5056(a)(2), added subsec. (e).

1975—Subsec. (c). Pub. L. 94–44, § 2, set a 90-day limit for assistance following arrival in the United States with provision for furnishing of assistance beyond the 90-day limit upon a finding by the Secretary that the circumstances involved necessitate or justify the furnishing of assistance in that particular case.

Subsec. (d). Pub. L. 94–44, § 1, substituted provisions setting the maximum total amount of temporary assistance provided under this section for provisions prohibiting temporary assistance after June 30, 1973.

1971—Subsec. (d). Pub. L. 92–40 extended termination date from June 30, 1971, to June 30, 1973.

1969—Subsec. (d). Pub. L. 91–41 extended termination date from June 30, 1969, to June 30, 1971.

1968—Subsec. (d). Pub. L. 90–248 extended termination date from June 30, 1968, to June 30, 1969.

1967—Subsec. (d). Pub. L. 90–36 extended termination date from June 30, 1967, to June 30, 1968.

1964—Subsec. (d). Pub. L. 88–347 extended termination date from June 30, 1964, to June 30, 1967.

1962—Subsec. (d). Pub. L. 87–543 extended termination date from June 30, 1962, to June 30, 1964.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5056(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective for fiscal years beginning after September 30, 1989.''

§ 1314. Public advisory groups

(a) Advisory Council on Public Welfare; appointment and functions of initial Council

The Secretary shall, during 1964, appoint an Advisory Council on Public Welfare for the purpose of reviewing the administration of the public assistance and child welfare services programs for which funds are appropriated pursuant to this chapter and making recommendations for improvement of such administration, and re-

viewing the status of and making recommendations with respect to the public assistance programs for which funds are so appropriated, especially in relation to the old-age, survivors, and disability insurance program, with respect to the fiscal capacities of the States and the Federal Government, and with respect to any other matters bearing on the amount and proportion of the Federal and State shares in the public assistance and child welfare services programs.

(b) Membership and representation of interests on initial Council

The Council shall be appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive service and shall consist of twelve persons who shall, to the extent possible, be representatives of employers and employees in equal numbers, representatives of State or Federal agencies concerned with the administration or financing of the public assistance and child welfare services programs, representatives of nonprofit private organizations concerned with social welfare programs, other persons with special knowledge, experience, or qualifications with respect to such programs, and members of the public.

(c) Technical and other assistance for initial Council; availability of data

The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Health and Human Services as it may require to carry out such functions.

(d) Termination of initial Council's existence on submission of report

The Council shall make a report of its findings and recommendations (including recommendations for changes in the provisions of this chapter) to the Secretary, such report to be submitted not later than July 1, 1966, after which date such Council shall cease to exist.

(e) Succeeding Councils; appointment; functions; membership; representation of interests; assistance and data; termination

The Secretary shall also from time to time thereafter appoint an Advisory Council on Public Welfare, with the same functions and constituted in the same manner as prescribed for the Advisory Council in the preceding subsections of this section. Each Council so appointed shall report its findings and recommendations, as prescribed in subsection (d) of this section, not later than July 1 of the second year after the year in which it is appointed, after which date such Council shall cease to exist.

(f) Advisory committees; functions; reports by Secretary

The Secretary may also appoint, without regard to the provisions of title 5 governing appointments in the competitive service, such advisory committees as he may deem advisable to advise and consult with him in carrying out any of his functions under this chapter. The Secretary shall report to the Congress annually on the number of such committees and on the membership and activities of each such committee.

(g) Compensation and travel expenses

Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $75 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(h) Exemption from conflict of interest laws of members of Council or advisory committees; exceptions

(1) Any member of the Council or any advisory committee appointed under this chapter, who is not a regular full-time employee of the United States, is hereby exempted, with respect to such appointment, from the operation of sections 203, 205, and 209 of title 18, except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

(Aug. 14, 1935, ch. 531, title XI, § 1114, as added Pub. L. 87–543, title I, § 121, July 25, 1962, 76 Stat. 190; amended Pub. L. 90–248, title IV, § 403(e), Jan. 2, 1968, 81 Stat. 932; Pub. L. 98–369, div. B, title VI, § 2663(e)(4), (j)(2)(D)(iv), July 18, 1984, 98 Stat. 1168, 1170; Pub. L. 106–554, § 1(a)(6) [title V, § 522(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–546; Pub. L. 108–173, title IX, § 948(a)(1)(A), Dec. 8, 2003, 117 Stat. 2425.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsecs. (b) and (f), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

2003—Subsec. (i). Pub. L. 108–173 redesignated and transferred subsec. (i) of this section to subsec. (j) of section 1395y of this title.

2000—Subsec. (i). Pub. L. 106–554 added subsec. (i).

1984—Subsec. (c). Pub. L. 98–369, § 2663(j)(2)(D)(iv), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (g). Pub. L. 98–369, § 2663(e)(4)(A), made technical correction of typographical error resulting in no change in text.

Subsec. (h)(1). Pub. L. 98–369, § 2663(e)(4)(B), substituted "sections 203, 205, and 209 of title 18" for "sections 281, 283, and 1914 of title 18 and section 190 of the Revised Statutes (5 U.S.C. 99)".

1968—Subsecs. (b), (f). Pub. L. 90–248, § 403(e)(1), (2), substituted ''provisions of title 5, governing appointments in the competitive service'' for ''civil-service laws''.

Subsec. (g). Pub. L. 90–248, § 403(e)(3), substituted ''section 5703 of title 5'' for ''section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b–2)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 948(e), Dec. 8, 2003, 117 Stat. 2426, provided that: ''Except as otherwise provided, the amendments made by this section [amending this section and sections 1320c–3, 1395w–22, 1395y, and 1395ff of this title] shall be effective as if included in the enactment of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted by section 1(a)(6) of Public Law 106–554].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title V, § 522(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–547, provided that: ''The amendments made by this section [amending this section and sections 1395y and 1395ff of this title] shall apply with respect to—

''(1) a review of any national or local coverage determination filed,

''(2) a request to make such a determination made, and

''(3) a national coverage determination made,

on or after October 1, 2001.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1314a. Measurement and reporting of welfare receipt

(a) Congressional policy

The Congress hereby declares that—

(1) it is the policy and responsibility of the Federal Government to reduce the rate at which and the degree to which families depend on income from welfare programs and the duration of welfare receipt, consistent with other essential national goals;

(2) it is the policy of the United States to strengthen families, to ensure that children grow up in families that are economically self-sufficient and that the life prospects of children are improved, and to underscore the responsibility of parents to support their children;

(3) the Federal Government should help welfare recipients as well as individuals at risk of welfare receipt to improve their education and job skills, to obtain child care and other necessary support services, and to take such other steps as may be necessary to assist them to become financially independent; and

(4) it is the purpose of this section to provide the public with generally accepted measures of welfare receipt so that it can track such receipt over time and determine whether progress is being made in reducing the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt.

(b) Development of welfare indicators and predictors

The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') in consultation with the Secretary of Agriculture shall—

(1) develop—

(A) indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt; and

(B) predictors of welfare receipt;

(2) assess the data needed to report annually on the indicators and predictors, including the ability of existing data collection efforts to provide such data and any additional data collection needs; and

(3) not later than 2 years after October 31, 1994, provide an interim report containing conclusions resulting from the development and assessment described in paragraphs (1) and (2), to—

(A) the Committee on Ways and Means of the House of Representatives;

(B) the Committee on Education and Labor of the House of Representatives;

(C) the Committee on Agriculture of the House of Representatives;

(D) the Committee on Commerce of the House of Representatives;

(E) the Committee on Finance of the Senate;

(F) the Committee on Labor and Human Resources of the Senate; and

(G) the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(c) Advisory Board on Welfare Indicators

(1) Establishment

There is established an Advisory Board on Welfare Indicators (in this subsection referred to as the ''Board'').

(2) Composition

The Board shall be composed of 12 members with equal numbers to be appointed by the House of Representatives, the Senate, and the President. The Board shall be composed of experts in the fields of welfare research and welfare statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues.

(3) Vacancies

Any vacancy occurring in the membership of the Board shall be filled in the same manner

as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(4) Duties

Duties of the Board shall include—

(A) providing advice and recommendations to the Secretary on the development of indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt; and

(B) providing advice on the development and presentation of annual reports required under subsection (d) of this section.

(5) Travel expenses

Members of the Board shall not be compensated, but shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(6) Detail of Federal employees

The Secretary shall detail, without reimbursement, any of the personnel of the Department of Health and Human Services to the Board to assist the Board in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(7) Voluntary service

Notwithstanding section 1342 of title 31, the Board may accept the voluntary services provided by a member of the Board.

(8) Termination of Board

The Board shall be terminated at such time as the Secretary determines the duties described in paragraph (4) have been completed, but in any case prior to the submission of the first report required under subsection (d) of this section.

(d) Annual welfare indicators report

(1) Preparation

The Secretary shall prepare annual reports on welfare receipt in the United States.

(2) Coverage

The report shall include analysis of families and individuals receiving assistance under means-tested benefit programs, including the program of aid to families with dependent children under part A of subchapter IV of this chapter, the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), and the Supplemental Security Income program under subchapter XVI of this chapter, or as general assistance under programs administered by State and local governments.

(3) Contents

Each report shall set forth for each of the means-tested benefit programs described in paragraph (2)—

(A) indicators of—

(i) the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs, and

(ii) the duration of welfare receipt;

(B) trends in indicators;

(C) predictors of welfare receipt;

(D) the causes of welfare receipt;

(E) patterns of multiple program receipt;

(F) such other information as the Secretary deems relevant; and

(G) such recommendations for legislation, which shall not include proposals to reduce eligibility levels or impose barriers to program access, as the Secretary may determine to be necessary or desirable to reduce—

(i) the rate at which and the degree to which families depend on income from welfare programs, and

(ii) the duration of welfare receipt.

(4) Submission

The Secretary shall submit such a report not later than 3 years after October 31, 1994, and annually thereafter, to the committees specified in subsection (b)(3) of this section. Each such report shall be transmitted during the first 60 days of each regular session of Congress.

(e) Short title

This section may be cited as the ''Welfare Indicators Act of 1994''.

(Pub. L. 103–432, title II, §232, Oct. 31, 1994, 108 Stat. 4462; Pub. L. 105–200, title IV, §410(h), July 16, 1998, 112 Stat. 674.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter and subchapter XVI of this chapter, referred to in subsec. (d)(2), are classified to section 601 et seq. and section 1381 et seq., respectively, of this title.

The Food Stamp Act of 1977, referred to in subsec. (d)(2), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Section was enacted as part of the Social Security Act Amendments of 1994, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (b)(3)(D). Pub. L. 105–200, §410(h)(1), struck out ''Energy and'' before ''Commerce''.

Subsec. (d)(4). Pub. L. 105–200, §410(h)(2), substituted ''subsection (b)(3) of this section'' for ''subsection (b)(3)(C) of this section''.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Rep-

resentatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

§ 1315. Demonstration projects

(a) Waiver of State plan requirements; costs regarded as State plan expenditures; availability of appropriations

In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of subchapter I, X, XIV, XVI, or XIX of this chapter, or part A or D of subchapter IV of this chapter, in a State or States—

(1) the Secretary may waive compliance with any of the requirements of section 302, 602, 654, 1202, 1352, 1382, or 1396a of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2)(A) costs of such project which would not otherwise be included as expenditures under section 303, 655, 1203, 1353, 1383, or 1396b of this title, as the case may be, and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such subchapter, or for administration of such State plan or plans, as may be appropriate, and

(B) costs of such project which would not otherwise be a permissible use of funds under part A of subchapter IV of this chapter and which are not included as part of the costs of projects under section 1310 of this title, shall to the extent and for the period prescribed by the Secretary, be regarded as a permissible use of funds under such part.

In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such subchapters for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such subchapters and is not included as part of the cost of projects for purposes of section 1310 of this title.

(b) Child support enforcement programs

In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) of this section to assist in promoting the objectives of part D of subchapter IV of this chapter, the project—

(1) must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program;

(2) may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support; and

(3) must not result in increased cost to the Federal Government under part A of such subchapter.

(c) Demonstration projects to test alternative definitions of unemployment

(1)(A) The Secretary shall enter into agreements with up to 8 States submitting applications under this subsection for the purpose of conducting demonstration projects in such States to test and evaluate the use, with respect to individuals who received aid under part A of subchapter IV of this chapter in the preceding month (on the basis of the unemployment of the parent who is the principal earner), of a number greater than 100 for the number of hours per month that such individuals may work and still be considered to be unemployed for purposes of section 607 of this title. If any State submits an application under this subsection for the purpose of conducting a demonstration project to test and evaluate the total elimination of the 100-hour rule, the Secretary shall approve at least one such application.

(B) If any State with an agreement under this subsection so requests, the demonstration project conducted pursuant to such agreement may test and evaluate the complete elimination of the 100-hour rule and of any other durational standard that might be applied in defining unemployment for purposes of determining eligibility under section 607 of this title.

(2) Notwithstanding section 602(a)(1) of this title, a demonstration project conducted under this subsection may be conducted in one or more political subdivisions of the State.

(3) An agreement under this subsection shall be entered into between the Secretary and the State agency designated under section 602(a)(3) of this title. Such agreement shall provide for the payment of aid under the applicable State plan under part A of subchapter IV of this chapter as though section 607 of this title had been modified to reflect the definition of unemployment used in the demonstration project but shall also provide that such project shall otherwise be carried out in accordance with all of the requirements and conditions of section 607 of this title (and, except as provided in paragraph (2), any related requirements and conditions under part A of subchapter IV of this chapter).

(4) A demonstration project under this subsection may be commenced any time after September 30, 1990, and shall be conducted for such period of time as the agreement with the Secretary may provide; except that, in no event may a demonstration project under this section be conducted after September 30, 1995.

(5)(A) Any State with an agreement under this subsection shall evaluate the comparative cost and employment effects of the use of the definition of unemployment in its demonstration project under this section by use of experimental and control groups comprised of a random sample of individuals receiving aid under section 607 of this title and shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of the project conducted by the State.

(B) The Secretary shall report the results of the demonstration projects conducted under this subsection to the Congress not later than 6 months after all such projects are completed.

(e)[1] Extensions of State-wide comprehensive demonstration projects for which waivers granted

(1) The provisions of this subsection shall apply to the extension of any State-wide comprehensive demonstration project (in this subsection referred to as ''waiver project'') for which a waiver of compliance with requirements of subchapter XIX of this chapter is granted under subsection (a) of this section.

(2) During the 6-month period ending 1 year before the date the waiver under subsection (a) of this section with respect to a waiver project would otherwise expire, the chief executive officer of the State which is operating the project may submit to the Secretary a written request for an extension, of up to 3 years, of the project.

(3) If the Secretary fails to respond to the request within 6 months after the date it is submitted, the request is deemed to have been granted.

(4) If such a request is granted, the deadline for submittal of a final report under the waiver project is deemed to have been extended until the date that is 1 year after the date the waiver project would otherwise have expired.

(5) The Secretary shall release an evaluation of each such project not later than 1 year after the date of receipt of the final report.

(6) Subject to paragraphs (4) and (7), the extension of a waiver project under this subsection shall be on the same terms and conditions (including applicable terms and conditions relating to quality and access of services, budget neutrality, data and reporting requirements, and special population protections) that applied to the project before its extension under this subsection.

(7) If an original condition of approval of a waiver project was that Federal expenditures under the project not exceed the Federal expenditures that would otherwise have been made, the Secretary shall take such steps as may be necessary to ensure that, in the extension of the project under this subsection, such condition continues to be met. In applying the previous sentence, the Secretary shall take into account the Secretary's best estimate of rates of change in expenditures at the time of the extension.

(f) Application for extension of waiver project; submission; approval

An application by the chief executive officer of a State for an extension of a waiver project the State is operating under an extension under subsection (e) of this section (in this subsection referred to as the ''waiver project'') shall be submitted and approved or disapproved in accordance with the following:

(1) The application for an extension of the waiver project shall be submitted to the Secretary at least 120 days prior to the expiration of the current period of the waiver project.

(2) Not later than 45 days after the date such application is received by the Secretary, the Secretary shall notify the State if the Secretary intends to review the terms and conditions of the waiver project. A failure to provide such notification shall be deemed to be an approval of the application.

(3) Not later than 45 days after the date a notification is made in accordance with paragraph (2), the Secretary shall inform the State of proposed changes in the terms and conditions of the waiver project. A failure to provide such information shall be deemed to be an approval of the application.

(4) During the 30-day period that begins on the date information described in paragraph (3) is provided to a State, the Secretary shall negotiate revised terms and conditions of the waiver project with the State.

(5)(A) Not later than 120 days after the date an application for an extension of the waiver project is submitted to the Secretary (or such later date agreed to by the chief executive officer of the State), the Secretary shall—

(i) approve the application subject to such modifications in the terms and conditions—

(I) as have been agreed to by the Secretary and the State; or

(II) in the absence of such agreement, as are determined by the Secretary to be reasonable, consistent with the overall objectives of the waiver project, and not in violation of applicable law; or

(ii) disapprove the application.

(B) A failure by the Secretary to approve or disapprove an application submitted under this subsection in accordance with the requirements of subparagraph (A) shall be deemed to be an approval of the application subject to such modifications in the terms and conditions as have been agreed to (if any) by the Secretary and the State.

(6) An approval of an application for an extension of a waiver project under this subsection shall be for a period not to exceed 3 years.

(7) An extension of a waiver project under this subsection shall be subject to the final reporting and evaluation requirements of paragraphs (4) and (5) of subsection (e) of this section (taking into account the extension under this subsection with respect to any timing requirements imposed under those paragraphs).

(Aug. 14, 1935, ch. 531, title XI, § 1115, as added Pub. L. 87–543, title I, § 122, July 25, 1962, 76 Stat. 192; amended Pub. L. 89–97, title I, § 121(c)(3), July 30, 1965, 79 Stat. 352; Pub. L. 90–36, § 2, June 29, 1967, 81 Stat. 94; Pub. L. 90–248, title II, §§ 241(c)(4), 247, Jan. 2, 1968, 81 Stat. 917, 918; Pub. L. 93–233, § 18(z–2)(1)(B), Dec. 31, 1973, 87 Stat. 973; Pub. L. 93–647, § 3(c), Jan. 4, 1975, 88 Stat. 2349; Pub. L. 95–216, title IV, § 404, Dec. 20, 1977, 91 Stat. 1562; Pub. L. 97–35, title XXIII, § 2353(g), Aug. 13, 1981, 95 Stat. 872; Pub. L. 98–369, div. B, title VI, § 2663(e)(5), July 18, 1984, 98 Stat. 1168; Pub. L. 98–378, § 10, Aug. 16, 1984, 98 Stat. 1317; Pub. L. 99–272, title XIV, § 14001(b)(2), Apr. 7, 1986, 100 Stat. 328; Pub. L. 100–485, title V, § 503, Oct. 13, 1988, 102 Stat. 2402; Pub. L. 104–193, title I, § 108(g)(2), Aug. 22, 1996, 110 Stat. 2168; Pub. L. 105–33, title IV, § 4757(a), Aug. 5, 1997, 111 Stat. 527; Pub. L. 106–554, § 1(a)(6) [title VII, § 703(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574.)

REFERENCES IN TEXT

Parts A and D of subchapter IV of this chapter, referred to in text, are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

[1] So in original. No subsec. (d) has been enacted.

Sections 1382 and 1383 of this title, referred to in subsec. (a)(1), (2), respectively, are references to sections 1382 and 1383 of this title as they existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior sections (which are set out as notes under sections 1382 and 1383, respectively, of this title) continue in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106–554 added subsec. (f).

1997—Subsec. (e). Pub. L. 105–33 added subsec. (e).

1996—Subsec. (a)(2). Pub. L. 104–193, § 108(g)(2)(A), designated existing provisions as subpar. (A), struck out ''603,'' before ''655,'', substituted '', and'' for period at end, and added subpar. (B).

Subsec. (b). Pub. L. 104–193, § 108(g)(2)(C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to purposes, criteria and procedures applicable to establishment, participatory effect, duration and termination of demonstration projects.

Subsec. (c). Pub. L. 104–193, § 108(g)(2)(C), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(3). Pub. L. 104–193, § 108(g)(2)(B), substituted ''part A of such subchapter'' for ''the program of aid to families with dependent children''.

Subsec. (d). Pub. L. 104–193, § 108(g)(2)(C), redesignated subsec. (d) as (c).

1988—Subsec. (d). Pub. L. 100–485 added subsec. (d).

1986—Subsec. (b)(2)(C). Pub. L. 99–272 struck out subpar. (C) relating to use of funds as are appropriated for payments to States under chapter 67 of title 31 to cover costs of salaries for individuals in public service employment.

1984—Subsec. (a). Pub. L. 98–378, § 10(a)(1), substituted ''part A or D of subchapter IV'' for ''part A of subchapter IV'' in provisions preceding par. (1).

Pub. L. 98–369, § 2663(e)(5), struck out ''VI,'' after ''I,'' in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98–378, § 10(a)(2), inserted ''654,''.

Pub. L. 98–369, § 2663(e)(5), struck out ''802,'' after ''602,''.

Subsec. (a)(2). Pub. L. 98–378, § 10(a)(3), inserted ''655,''.

Pub. L. 98–369, § 2663(e)(5), struck out ''803,'' after ''603,''.

Subsec. (c). Pub. L. 98–378, § 10(b), added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35 substituted in provision preceding par. (1) ''or XIX of this chapter'' for ''XIX, or XX of this chapter'', in par. (1) ''or 1396a of this title'' for ''1396a, 1397a, 1397b, or 1397c of this title'', and in par. (2) ''or 1396b of this title'' for ''1396b, or 1397a of this title'' and in par. (2) struck out ''or expenditures with respect to which payment shall be made under section 1397a of this title,'' before ''as may be appropriate''.

1977—Pub. L. 95–216 designated existing provisions as subsec. (a) and existing pars. (a) and (b) thereof as pars. (1) and (2), respectively, and added subsec. (b).

1975—Pub. L. 93–647, § 3(c)(1), substituted ''XIX, or XX'' for ''or XIX''.

Subsec. (a). Pub. L. 93–647, § 3(c)(2), inserted references to sections 1397a, 1397b, and 1397c.

Subsec. (b). Pub. L. 93–647, § 3(c)(3), (4), substituted ''1396b, or 1397a'' for ''1396b'', and inserted ''or expenditures with respect to which payment shall be made under section 1397a of this title'' after ''administration of such State plan or plans,''.

1973—Pub. L. 93–233 inserted references in text preceding subsec. (a) to subchapter VI of this chapter, in subsec. (a) to section 802 of this title, and in subsec. (b) to section 803 of this title.

1968—Pub. L. 90–248, § 241(c)(4), in opening phrase struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

Pub. L. 90–248, § 247, substituted in second sentence ''$4,000,000'' for ''$2,000,000'' and ''beginning after June 30, 1967'' for ''ending prior to July 1, 1968''.

1967—Pub. L. 90–36 substituted ''July 1, 1968'' for ''July 1, 1967''.

1965—Pub. L. 89–97 included in enumeration in opening phrase, and cls. (a) and (b), subchapter XIX of this chapter, and sections 1396a and 1396b of this title, respectively.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VII, § 703(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–575, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to requests for extensions of demonstration projects pending or submitted on or after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4757(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to demonstration projects initially approved before, on, or after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99–272.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective on and after Jan. 1, 1974, see section 18(z–2)(2) of Pub. L. 93–233, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 121(c)(3) of Pub. L. 89–97 provided that the amendment made by that section is effective Jan. 1, 1966.

FAMILY SUPPORT DEMONSTRATION PROJECTS

Section 501 of Pub. L. 100–485, as amended by Pub. L. 103–432, title II, § 262, Oct. 31, 1994, 108 Stat. 4467, provided that:

''(a) DEMONSTRATION PROJECTS TO TEST THE EFFECT OF EARLY CHILDHOOD DEVELOPMENT PROGRAMS.—(1) In order to test the effect of in-home early childhood de-

velopment programs and pre-school center-based development programs (emphasizing the use of volunteers and including academic credit for student volunteers) on families receiving aid under State plans approved under section 402 of the Social Security Act [section 602 of this title] and participating in the job opportunities and basic skills training program under part F of title IV of such Act [part F of subchapter IV of this chapter], up to 10 States may undertake and carry out demonstration projects utilizing such development programs to enhance the cognitive skills and linguistic ability of children under the age of 5, to improve the communications skills of such children, and to develop their ability to read, write, and speak the English language effectively. Such projects may include parents along with their eligible children in family-centered education programs that assist children directly in achieving the goals stated in the preceding sentence and also help parents contribute to the proper development and education of their young children. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall prescribe, and no such project shall be conducted for a period of more than 3 years.

''(2) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this subsection, shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this subsection, and shall make grants to the States whose applications are approved to assist them in carrying out such projects.

''(3) The Secretary shall submit to the Congress with respect to each project undertaken by a State under this subsection, after such project has been carried out for one year and again when such project is completed, a detailed evaluation of the project and of its contribution to the achievement of the purpose of this subsection.

''(4) For grants to States to conduct demonstration projects under this subsection, there are authorized to be appropriated not to exceed $3,000,000 for each of the fiscal years 1995 through 1999.

''(b) STATE DEMONSTRATION PROJECTS TO ENCOURAGE INNOVATIVE EDUCATION AND TRAINING PROGRAMS FOR CHILDREN.—In order to encourage States to develop innovative education and training programs for children receiving aid under State plans approved under section 402 of the Social Security Act [section 602 of this title], any State may establish and conduct one or more demonstration projects, targeted to such children, designed to test financial incentives and interdisciplinary approaches to reducing school dropouts, encouraging skill development, and avoiding welfare dependence; and the Secretary may make grants to States to assist in financing such projects. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of less than one year or more than 5 years.

''(c) DEMONSTRATIONS TO ENSURE LONG TERM FAMILY SELF-SUFFICIENCY THROUGH COMMUNITY-BASED SERVICES.—Any State, using funds made available to it from appropriations made pursuant to subsection (d) in conjunction with its other resources, may conduct demonstrations to test more effective methods of providing coordination and services to ensure long term family self-sufficiency through community-based comprehensive family support services involving a partnership between the State agency administering or supervising the administrating of the State's plan under section 402 of the Social Security Act [section 602 of this title] and community-based organizations having experience and demonstrated effectiveness in providing services.

''(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to States to conduct demonstration projects under this section, there is authorized to be appropriated not to exceed $6,000,000 for each of the fiscal years 1990, 1991, and 1992.''

DEMONSTRATION PROJECTS TO ENCOURAGE STATES TO EMPLOY PARENTS RECEIVING AFDC AS PAID CHILD CARE PROVIDERS

Section 502 of Pub. L. 100–485 authorized Secretary of Health and Human Services to permit up to 5 States to undertake and carry out demonstration projects designed to test whether employment of parents of dependent children receiving AFDC as providers of child care for other children receiving AFDC would effectively facilitate the conduct of the job opportunities and basic skills training program under part F of title IV of this chapter by making additional child care services available to meet the requirements of section 602(g)(1)(A) of this title while affording significant numbers of families receiving such aid a realistic opportunity to avoid welfare dependence through employment as a child care provider, and authorized to be appropriated not to exceed $1,000,000 for each of the fiscal years 1990, 1991, and 1992 for grants to States to carry out such demonstration projects.

DEMONSTRATION PROJECTS TO ADDRESS CHILD ACCESS PROBLEMS

Section 504 of Pub. L. 100–485 provided that any State could establish and conduct one or more demonstration projects (in accordance with such terms, conditions, and requirements prescribed by the Secretary of Health and Human Services, except that no such project could include the withholding of aid to families with dependent children pending visitation) to develop, improve, or expand activities designed to increase compliance with child access provisions of court orders, specified activities that could be funded by a grant under this section, authorized to be appropriated not to exceed $4,000,000 for each of the fiscal years 1990 and 1991, and directed Secretary of Health and Human Services, not later than July 1, 1992, to submit to Congress a report on the effectiveness of the demonstration projects established under this section.

DEMONSTRATION PROJECTS TO PROVIDE COUNSELING AND SERVICES TO HIGH-RISK TEENAGERS

Section 506 of Pub. L. 100–485 provided that:

''(a) FINDINGS AND PURPOSE.—(1) The Congress finds that—

''(A) the incidences of teenage pregnancy, suicide, substance abuse, and school dropout are increasing;

''(B) research to date has established a link between low self-esteem, perceived limited life options and the risk of teenage pregnancy, suicide, substance abuse, and school dropout;

''(C) little data currently exists on how to improve the self-image of and expand the life options available to high-risk teenagers; and

''(D) there currently is no Federal program in place to address the unique and significant problems faced by today's teenagers.

''(2) It is the purpose of the demonstration projects conducted under this section to provide programs in which a range of non-academic services (sports, recreation, the arts) and self-image counseling are provided to high-risk teenagers in order to reduce the rates of pregnancy, suicide, substance abuse, and school dropout among such teenagers.

''(b) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into an agreement with each of 4 States submitting applications under this section for the purpose of conducting demonstration projects in accordance with this section to provide counseling and services to certain high-risk teenagers.

''(c) NATURE OF PROJECT.—Under each demonstration project conducted under this section—

''(1) The State shall establish a 'Teen Care Plan' that shall consist of the following:

''(A) A clearing house where high-risk teenagers will be referred to and encouraged to participate in

non-academic activities (arts, recreation, sports) which are already in place in the community.

''(B) A survey of the area to be targeted by the project to determine the need to fund and create new non-academic activities in the area.

''(C) Counseling services utilizing qualified, locally licensed psychologists, social psychologists, or other mental health professionals or related experts to provide individual and group counseling to participating high-risk teenagers.

''(D) A program to provide participants in the project (to the extent practicable) with such transportation, child care, and equipment as is necessary to carry out the purposes of the project.

''(2) The State shall designate two geographical areas within the State to be targeted by the project. One area will serve as the 'home base' for the project, where services will be concentrated and in which a local school system will be selected to receive services and provide facilities for resource referral and counseling. The second geographical area will serve as a 'peripheral' participant, receiving assistance and services from the home base.

''(3) A high-risk teenager is any male or female who has reached the age of 10 years and whose age does not exceed 20 years, and who—

''(A) has a history of academic problems;

''(B) has a history of behavioral problems both in and out of school;

''(C) comes from a one-parent household; or

''(D) is pregnant or is a mother of a child.

''(d) APPLICATIONS; SELECTION CRITERIA.—(1) In selecting States to conduct demonstration projects under this section, the Secretary—

''(A) shall consult with the Consortium on Adolescent Pregnancy;

''(B) shall consider—

''(i) the rate of teenage pregnancy in each State,

''(ii) the teenage school dropout rate in each State,

''(iii) the incidence of teenage substance abuse in each State, and

''(iv) the incidence of teenage suicide in each State; and

''(C) shall give priority to States whose applications—

''(i) demonstrate a current strong State commitment aimed at reducing teenage pregnancy, suicide, drug abuse, and school dropout;

''(ii) contain a 'State support agreement' signed by the Governor, the State School Commissioner, the State Department of Human Services, and the State Department of Education, pledging their commitment to the project;

''(iii) describe facilities and services to be made available by the State to assist in carrying out the project; and

''(iv) indicate a demonstrably high rate of alcoholism among its residents.

''(2) Of the States selected to participate in the demonstration projects conducted under this section—

''(A) one shall be a geographically small State with a population of less than 1,250,000;

''(B) one shall be a State with a population of over 20,000,000; and

''(C) two shall be States with populations of more than 1,000,000 but less than 20,000,000.

''(e) EVALUATION AND REPORT.—(1) Each State conducting a demonstration project under this section shall submit to the Secretary for his approval an evaluation plan that provides for examining the effectiveness of the project in both the home base and peripheral area of the State.

''(2) Not later than October 1, 1992, the Secretary shall submit to the Congress a report containing a summary of the evaluations conducted by States pursuant to the plans described in paragraph (1).

''(f) FUNDING.—(1) Three-fifths of the total amount appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated project home base, and 5 percent of such three-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

''(2) Two-fifths of the total amounts appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated peripheral area, and 5 percent of such two-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

''(g) DURATION.—A demonstration project conducted under this section shall be commenced not later than September 30, 1989, and shall be conducted for a 3-year period; except that the Secretary may terminate a project before the end of such period if he determines that the State conducting the project is not in substantial compliance with the terms of the agreement entered into with the Secretary under this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of funding in equal amounts each State demonstration project conducted under this section, there is authorized to be appropriated not to exceed $1,500,000 for each of the fiscal years 1990, 1991, and 1992.''

CONTINUATION OF FEDERAL FINANCIAL PARTICIPATION IN EXPERIMENTAL, PILOT, OR DEMONSTRATION PROJECTS APPROVED BEFORE OCTOBER 1, 1973, FOR PERIOD ON-AND-AFTER DECEMBER 31, 1973, WITHOUT DENIAL OR REDUCTION ON ACCOUNT OF SUBCHAPTER XVI PROVISIONS FOR SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED; WAIVER OF SUBCHAPTER XVI RESTRICTIONS FOR INDIVIDUALS; FEDERAL PAYMENTS OF NON-FEDERAL SHARE AS SUPPLEMENTARY PAYMENTS

Section 11 of Pub. L. 93–233 provided that:

''(a) If any State (other than the Commonwealth of Puerto Rico, the Virgin Islands, or Guam) has any experimental, pilot, or demonstration project (referred to in section 1115 of the Social Security Act [this section])—

''(1) which (prior to October 1, 1973) has been approved by the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary'), for a period which ends on or after December 31, 1973, as being a project with respect to which the authority conferred upon him by subsection (a) or (b) of such section 1115 [subsec. (a) or (b) of this section] will be exercised, and

''(2) with respect to the costs of which Federal financial participation would (except for the provisions of this section) be denied or reduced on account of the enactment of section 301 of the Social Security Amendments of 1972 [enacting subchapter XVI of this chapter],

then, for any period (after December 31, 1973) with respect to which such project is approved by the Secretary, Federal financial participation in the costs of such project shall be continued in like manner as if—

''(3) such section 301 [enacting subchapter XVI of this chapter] had not been enacted, and

''(4) such State (for the month of January 1974 and any month thereafter) continued to have in effect the State plan (approved under title XVI [subchapter XVI of this chapter]) which was in effect for the month of October 1973, or the State plans (approved under titles I, X, and XIV of the Social Security Act [subchapters I, X, and XIV of this chapter]) which were in effect for such month, as the case may be.

''(b) With respect to individuals—

''(1) who are participants in any project to which the provisions of subsection (a) are applicable, and

''(2) with respect to whom supplemental security income benefits are (or would, except for their participation in such project, be) payable under title XVI of the Social Security Act, or who meet the requirements for aid or assistance under a State plan ap-

proved under title I, X, XIV, or XVI of the Social Security Act of the State in which such project is conducted (as such State plan was in effect for July 1973), the Secretary may waive such requirements of title XVI of such Act (as enacted by section 301 of the Social Security Amendments of 1972) to such extent as he determines to be necessary to the successful operation of such project.

''(c) In the case of any State which has entered into an agreement with the Secretary under section 1616 of the Social Security Act [section 1382e of this title] (or which is deemed, under section 212(d) of Public Law 93–66 [set out as a note under section 1382 of this title], to have entered into such an agreement), then, of the costs of any project of such State with respect to which there is (solely by reason of the provisions of subsection (a)) Federal financial participation, the non-Federal share thereof shall—

''(1) be paid, from time to time, to such State by the Secretary, and

''(2) shall, for purposes of section 1616(d) of the Social Security Act [section 1382e(d) of this title] and section 401 of the Social Security Amendments of 1972 [set out as a note under section 1382e of this title] be treated in like manner as if such non-Federal share were supplementary payments made by the Secretary on behalf of such State pursuant to such agreement.''

§ 1316. Administrative and judicial review of public assistance determinations

(a) Determination of conformity with requirements for approval; petition for reconsideration; hearing; time limitations; review by court of appeals

(1) Whenever a State plan is submitted to the Secretary by a State for approval under subchapter I, X, XIV, XVI, or XIX of this chapter, he shall, not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such subchapter. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) of this subsection with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such subchapter. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 304, 1204, 1354, 1384, or 1396c of this title may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28.

(4) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

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

(b) Amendment of plans

For the purposes of subsection (a) of this section, any amendment of a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter, may, at the option of the State, be treated as the submission of a new State plan.

(c) Restitution when Secretary reverses his determination

Action pursuant to an initial determination of the Secretary described in subsection (a) of this section shall not be stayed pending reconsideration, but in the event that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Items covered under other subchapters; disallowance

Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under subchapter I, X, XIV, XVI, or XIX of this chapter, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

(Aug. 14, 1935, ch. 531, title XI, § 1116, as added Pub. L. 89–97, title IV, § 404(a), July 30, 1965, 79 Stat. 419; amended Pub. L. 90–248, title II, § 241(c)(5), Jan. 2, 1968, 81 Stat. 917; Pub. L. 93–233, § 18(z–2)(1)(C), Dec. 31, 1973, 87 Stat. 974; Pub. L. 93–647, § 3(d), Jan. 4, 1975, 88 Stat. 2349; Pub. L. 97–35, title XXIII, § 2353(h), Aug. 13, 1981, 95 Stat. 872; Pub. L. 98–369, div. B, title III, § 2354(c)(2), title VI, § 2663(e)(6), July 18, 1984, 98 Stat. 1102, 1168; Pub. L. 104–193, title I, § 108(g)(3), Aug. 22, 1996, 110 Stat. 2168.)

REFERENCES IN TEXT

Section 1384 of this title, referred to in subsec. (a)(3), is a reference to section 1384 of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1384 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–193, § 108(g)(3)(A), struck out ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

Subsec. (a)(3). Pub. L. 104–193, § 108(g)(3)(B), struck out ''604,'' before ''1204,''.

Subsecs. (b), (d). Pub. L. 104–193, § 108(g)(3)(A), struck out ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

1984—Subsec. (a)(1). Pub. L. 98–369, § 2663(e)(6)(A), struck out ''VI,'' after ''I,''.

Pub. L. 98–369, § 2354(c)(2), corrected typographical error in directory language of Pub. L. 97–35, § 2353(h)(1). See 1982 Amendment note below.

Subsec. (a)(3). Pub. L. 98–369, § 2663(e)(6)(B), struck out ''804,'' after ''604,''.

Subsec. (b). Pub. L. 98–369, § 2663(e)(6)(A), struck out ''VI,'' after ''I,''.

Pub. L. 98–369, § 2354(c)(2), corrected typographical error in directory language of Pub. L. 97–35, § 2353(h)(1). See 1982 Amendment note below.

Subsec. (d). Pub. L. 98–369, § 2663(e)(6)(A), struck out ''VI,'' after ''I,''.

Pub. L. 98–369, § 2663(e)(6)(C), substituted ''XVI, or XIX of this chapter, or part A'' for ''XVI, or or XIX of this chapter, or part A''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2353(h)(1), as amended by Pub. L. 98–369, § 2354(c)(2), substituted ''or XIX of this chapter'' for ''XIX or XX of this chapter''.

Subsec. (a)(3). Pub. L. 97–35, § 2353(h)(2), substituted ''or 1396c of this title'' for ''1396c, or 1397b of this title''.

Subsec. (b). Pub. L. 97–35, § 2353(h)(1), as amended by Pub. L. 98–369, § 2354(c)(2), substituted ''or XIX of this chapter'' for ''XIX or XX of this chapter''.

Subsec. (d). Pub. L. 97–35, § 2353(h)(3), substituted ''or XIX of this chapter'' for ''XIX, or XX of this chapter''.

1975—Subsec. (a)(1). Pub. L. 93–647, § 3(d)(1), substituted ''XIX or XX'' for ''or XIX''.

Subsec. (a)(3). Pub. L. 93–647, § 3(d)(2), substituted ''1396c, or 1397b'' for ''or 1396c''.

Subsec. (b). Pub. L. 93–647, § 3(d)(1), substituted ''XIX or XX'' for ''or XIX''.

Subsec. (d). Pub. L. 93–647, § 3(d)(3), inserted ''XX,'' after ''XIX,''.

1973—Subsec. (a). Pub. L. 93–233, § 18(z–2)(1)(C)(i), (ii), inserted references in par. (1) to subchapter VI of this chapter and in par. (3) to section 804 of this title.

Subsecs. (b), (d). Pub. L. 93–233, § 18(z–2)(1)(C)(iii), (iv), inserted reference to subchapter VI of this chapter.

1968—Subsec. (a)(1). Pub. L. 90–248, § 241(c)(5)(A), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

Subsecs. (b), (d). Pub. L. 90–248, § 241(c)(5)(B), struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(c)(2) of Pub. L. 98–369 effective as if originally included in Pub. L. 97–35, see section 2354(e)(2) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(e)(6) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective on and after Jan. 1, 1974, see section 18(z–2)(2) of Pub. L. 93–233, set out as a note under section 1301 of this title.

EFFECTIVE DATE

Section 404(b) of Pub. L. 89–97 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to determinations made after December 31, 1965.''

§ 1317. Appointment of the Administrator and Chief Actuary of the Centers for Medicare & Medicaid Services

(a) The Administrator of the Centers for Medicare & Medicaid Services shall be appointed by the President by and with the advice and consent of the Senate.

(b)(1) There is established in the Centers for Medicare & Medicaid Services the position of Chief Actuary. The Chief Actuary shall be appointed by, and in direct line of authority to, the Administrator of such Centers. The Chief Actuary shall be appointed from among individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5.

(3) In the office of the Chief Actuary there shall be an actuary whose duties relate exclusively to the programs under parts C and D of subchapter XVIII of this chapter and related provisions of such subchapter.

(Aug. 14, 1935, ch. 531, title XI, § 1117, as added Pub. L. 98–369, div. B, title III, § 2332(a), July 18, 1984, 98 Stat. 1088; amended Pub. L. 105–33, title IV, § 4643, Aug. 5, 1997, 111 Stat. 487; Pub. L. 108–173, title IX, § 900(c), (e)(1)(A), Dec. 8, 2003, 117 Stat. 2370.)

REFERENCES IN TEXT

Parts C and D of subchapter XVIII of this chapter, referred to in subsec. (b)(3), are classified to sections 1395w–21 et seq. and 1395w–101 et seq., respectively, of this title.

PRIOR PROVISIONS

A prior section 1317, act Aug. 14, 1935, ch. 531, title XI, § 1117, as added July 30, 1965, Pub. L. 89–97, title IV, § 405,

79 Stat. 420; amended Jan. 2, 1968, Pub. L. 90–248, title II, §§221(a)–(c), 241(c)(6), 81 Stat. 899, 917, related to maintenance of State public assistance expenditures, prior to repeal by Pub. L. 90–248, title II, §221(d), Jan. 2, 1968, 81 Stat. 900, eff. July 1, 1968.

AMENDMENTS

2003—Pub. L. 108–173, §900(e)(1)(A)(i), substituted ''Appointment of the Administrator and Chief Actuary of the Centers for Medicare & Medicaid Services'' for ''Appointment of Administrator and Chief Actuary of Health Care Financing Administration'' in section catchline.

Subsec. (a). Pub. L. 108–173, §900(e)(1)(A)(ii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

Subsec. (b)(1). Pub. L. 108–173, §900(e)(1)(A)(iii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' and ''such Centers'' for ''such Administration''.

Subsec. (b)(3). Pub. L. 108–173, §900(c), added par. (3).

1997—Pub. L. 105–33 amended section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE

Section 2332(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [enacting this section and amending section 5315 of Title 5, Government Organization and Employees] shall apply to appointments made after the date of the enactment of this Act [July 18, 1984].''

§ 1318. Alternative Federal payment with respect to public assistance expenditures

In the case of any State which has in effect a plan approved under subchapter XIX of this chapter for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with September 30), under paragraphs (1) and (2) of sections 303(a),[1] 1203(a),[1] 1353(a),[1] and 1383(a)[1] of this title shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1396d of this title), instead of the percentages provided under each such section, to the expenditures under its State plans approved under subchapters I, X, XIV, and XVI of this chapter, which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections. For purposes of the preceding sentence, the term ''Federal medical assistance percentage'' shall, in the case of Puerto Rico, the Virgin Islands, and Guam, mean 75 per centum.

(Aug. 14, 1935, ch. 531, title XI, §1118, as added Pub. L. 89–97, title IV, §411, July 30, 1965, 79 Stat. 423; amended Pub. L. 90–248, title II, §241(c)(7), Jan. 2, 1968, 81 Stat. 917; Pub. L. 94–273, §2(23), Apr. 21, 1976, 90 Stat. 376; Pub. L. 95–600, title VIII, §802(a), Nov. 6, 1978, 92 Stat. 2945; Pub. L. 96–272, title III, §305(c), June 17, 1980, 94 Stat. 530; Pub. L. 100–485, title VI, §601(c)(3), Oct. 13, 1988, 102 Stat. 2408; Pub. L. 104–193, title I, §108(g)(4), Aug. 22, 1996, 110 Stat. 2168.)

[1] See References in Text note below.

REFERENCES IN TEXT

Paragraph (1) of sections 303(a), 1203(a), and 1353(a) of this title, referred to in text, were repealed by Pub. L. 97–35, title XXI, §2184(a)(4)(A), (c)(2)(A), Aug. 13, 1981, 95 Stat. 816, 817.

Section 1383(a) of this title, referred to in text, is a reference to section 1383(a) of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1996—Pub. L. 104–193 struck out ''603(a),'' before ''1203(a),'', ''and part A of subchapter IV of this chapter,'' after ''XVI of this chapter,'', and '', and shall, in the case of American Samoa, mean 75 per centum with respect to part A of subchapter IV of this chapter'' after ''the Virgin Islands, and Guam, mean 75 per centum''.

1988—Pub. L. 100–485 inserted before period at end '', and shall, in the case of American Samoa, mean 75 per centum with respect to part A of subchapter IV of this chapter''.

1980—Pub. L. 96–272 struck out ''when applied to quarters in the fiscal year ending September 30, 1979'' after ''means 75 per centum''.

1978—Pub. L. 95–600, inserted provision relating to definition of ''Federal medical assistance percentage'' in the case of Puerto Rico, the Virgin Islands, and Guam.

1976—Pub. L. 94–273 substituted ''September'' for ''June''.

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted ''and part A of subchapter IV of this chapter,'' after ''XVI of this chapter''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective Oct. 1, 1988, see section 601(d) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 1301 of this title.

§ 1319. Federal participation in payments for repairs to home owned by recipient of aid or assistance

In the case of an expenditure for repairing the home owned by an individual who is receiving aid or assistance, other than medical assistance to the aged, under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, if—

(1) the State agency or local agency administering the plan approved under such subchapter has made a finding (prior to making such expenditure) that (A) such home is so defective that continued occupancy is unwarranted, (B) unless repairs are made to such home, rental quarters will be necessary for such individual, and (C) the cost of rental quarters to take care of the needs of such individual (including his spouse living with him in such home and any other individual whose

needs were taken into account in determining the need of such individual) would exceed (over such time as the Secretary may specify) the cost of repairs needed to make such home habitable together with other costs attributable to continued occupancy of such home, and

(2) no such expenditures were made for repairing such home pursuant to any prior finding under this section,

the amount paid to any such State for any quarter under section 303(a), 1203(a), 1353(a), or 1383(a) of this title shall be increased by 50 per centum of such expenditures, except that the excess above $500 expended with respect to any one home shall not be included in determining such expenditures.

(Aug. 14, 1935, ch. 531, title XI, § 1119, as added Pub. L. 90–248, title II, § 209(a), Jan. 2, 1968, 81 Stat. 894; amended Pub. L. 104–193, title I, § 108(g)(5), Aug. 22, 1996, 110 Stat. 2168.)

REFERENCES IN TEXT

Section 1383(a) of this title, referred to in text, is a reference to section 1383(a) of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1996—Pub. L. 104–193 substituted ''subchapter I, X, XIV, or XVI of this chapter,'' for ''subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter'' in introductory provisions and struck out ''603(a),'' before ''1203(a),'' in closing provisions.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE

Section 209(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply with respect to expenditures made after December 31, 1967.''

§ 1320. Approval of certain projects

No payment shall be made under this chapter with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this chapter (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Deputy Secretary of Health and Human Services.

(Aug. 14, 1935, ch. 531, title XI, § 1120, as added Pub. L. 90–248, title II, § 249, Jan. 2, 1968, 81 Stat. 919; amended Pub. L. 93–608, § 2(5), Jan. 2, 1975, 88 Stat. 1971; Pub. L. 97–375, title I, § 107(a), Dec. 21, 1982, 96 Stat. 1820; Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(v), July 18, 1984, 98 Stat. 1170; Pub. L. 101–509, title V, § 529 [title I, § 112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454.)

AMENDMENTS

1990—Pub. L. 101–509 substituted ''Deputy Secretary of Health and Human Services'' for ''Under Secretary of Health and Human Services''.

1984—Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1982—Pub. L. 97–375 struck out subsec. (b) which directed the Secretary to submit an annual report to Congress describing each project approved under former subsec. (a) of this section during the preceding year, including the purpose, probable cost, and expected duration of each project, and struck out ''(a)'' before ''No payment''.

1975—Subsec. (b). Pub. L. 93–608 substituted provisions relating to an annual submission of the required report to the Congress by the Secretary for each approved project, for provisions relating to submission of the report as soon as possible after approval.

EFFECTIVE DATE OF 1990 AMENDMENT; CONTINUED SERVICE BY INCUMBENTS

Amendment by Pub. L. 101–509 effective on the first day of the first pay period that begins on or after Nov. 5, 1990, with continued service by incumbent Under Secretary of Health and Human Services, see section 529 [title I, § 112(e)] of Pub. L. 101–509, set out as a note under section 3404 of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 1320a. Uniform reporting systems for health services facilities and organizations

(a) Establishment; criteria for regulations; requirements for hospitals

For the purposes of reporting the cost of services provided by, of planning, and of measuring and comparing the efficiency of and effective use of services in, hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, health maintenance organizations, and other types of health services facilities and organizations to which payment may be made under this chapter, the Secretary shall establish by regulation, for each such type of health services facility or organization, a uniform system for the reporting by a facility or organization of that type of the following information:

(1) The aggregate cost of operation and the aggregate volume of services.

(2) The costs and volume of services for various functional accounts and subaccounts.

(3) Rates, by category of patient and class of purchaser.

(4) Capital assets, as defined by the Secretary, including (as appropriate) capital funds, debt service, lease agreements used in lieu of capital funds, and the value of land, facilities, and equipment.

(5) Discharge and bill data.

The uniform reporting system for a type of health services facility or organization shall provide for appropriate variation in the applica-

tion of the system to different classes of facilities or organizations within that type and shall be established, to the extent practicable, consistent with the cooperative system for producing comparable and uniform health information and statistics described in section 242k(e)(1) of this title. In reporting under such a system, hospitals shall employ such chart of accounts, definitions, principles, and statistics as the Secretary may prescribe in order to reach a uniform reconciliation of financial and statistical data for specified uniform reports to be provided to the Secretary.

(b) Monitoring, etc., of systems by Secretary

The Secretary shall—

(1) monitor the operation of the systems established under subsection (a) of this section;

(2) assist with and support demonstrations and evaluations of the effectiveness and cost of the operation of such systems and encourage State adoption of such systems; and

(3) periodically revise such systems to improve their effectiveness and diminish their cost.

(c) Availability of information to appropriate agencies and organizations

The Secretary shall provide information obtained through use of the uniform reporting systems described in subsection (a) of this section in a useful manner and format to appropriate agencies and organizations, including health systems agencies (designated under section 300*l*–4[1] of this title) and State health planning and development agencies (designated under section 300m[1] of this title), as may be necessary to carry out such agencies' and organizations' functions.

(Aug. 14, 1935, ch. 531, title XI, § 1121, as added Pub. L. 95–142, § 19(a), Oct. 25, 1977, 91 Stat. 1203.)

REFERENCES IN TEXT

Section 300*l*–4 of this title, referred to in subsec. (c), was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 300m of this title, referred to in subsec. (c), was in the original a reference to section 1521 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

PRIOR PROVISIONS

A prior section 1320a, act Aug. 14, 1935, ch. 531, title XI, § 1121, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 250(a), 81 Stat. 920, provided for assistance in the form of institutional services in intermediate care facilities, the subsecs. providing as follows: subsec. (a), modification of certain plans to include such benefit; subsec. (b), eligible individuals; subsec. (c), payments and Federal medical assistance percentage; subsec. (d), conditions, limitations, rights, and obligations applicable to modified plans; and subsec. (e), definition of ''intermediate care facility'', which is covered in section 1396d(c) of this title, prior to repeal by Pub. L. 92–223, § 4(c), Dec. 28, 1971, 85 Stat. 810.

Section was additionally amended by Pub. L. 92–603, title II, § 278(a)(24), Oct. 30, 1972, 86 Stat. 1453, without reference to the earlier repeal of this section by Pub. L. 92–223.

TIME PERIODS FOR ESTABLISHMENT OF UNIFORM REPORTING SYSTEMS; CONSULTATIONS WITH INTERESTED PARTIES

Section 19(c)(1) of Pub. L. 95–142 directed Secretary of Health, Education, and Welfare to establish the systems described in subsec. (a) of this section only after consultation with interested parties and for hospitals, skilled nursing facilities, and intermediate care facilities, not later than the end of the one year period beginning on Oct. 25, 1977, and for other types of health services facilities and organizations, not later than the end of the two-year period beginning on Oct. 25, 1977.

[1] See References in Text note below.

§ 1320a–1. Limitation on use of Federal funds for capital expenditures

(a) Use of reimbursement for planning activities for health services and facilities

The purpose of this section is to assure that Federal funds appropriated under subchapters XVIII and XIX of this chapter are not used to support unnecessary capital expenditures made by or on behalf of health care facilities which are reimbursed under any of such subchapters and that, to the extent possible, reimbursement under such subchapters shall support planning activities with respect to health services and facilities in the various States.

(b) Agreement between Secretary and State for submission of proposed capital expenditures related to health care facilities and procedures for appeal from recommendations

The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d)(1)(B) of this section that has a governing body or advisory board at least half of whose members represent consumer interests) will—

(1) make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility in such State within the field of its responsibilities,

(2) receive from other agencies described in clause (ii) of subsection (d)(1)(B) of this section, and submit to the Secretary together with such supporting material as he may find necessary, the findings and recommendations of such other agencies with respect to capital expenditures proposed by or on behalf of health care facilities in such State within the fields of their respective responsibilities, and

(3) establish and maintain procedures pursuant to which a person proposing any such capital expenditure may appeal a recommendation by the designated agency and will be granted an opportunity for a fair hearing by such agency or person other than the designated agency as the Governor (or other chief executive officer) may designate to hold such hearings,

whenever and to the extent that the findings of such designated agency or any such other agen-

cy indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act [42 U.S.C. 201 et seq.] to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

(c) Manner of payment to States for carrying out agreement

The Secretary shall pay any such State from the general fund in the Treasury, in advance or by way of reimbursement as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (b) of this section.

(d) Determination of amount of exclusions from Federal payments

(1) Except as provided in paragraph (2), if the Secretary determines that—

(A) neither the planning agency designated in the agreement described in subsection (b) of this section nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; or

(B)(i) the planning agency so designated or an agency so described had received such timely notice of the intention to make such capital expenditure and had, within a reasonable period after receiving such notice and prior to obligation for such expenditure, notified the person proposing such expenditure that the expenditure would not be in conformity with the standards, criteria, or plans developed by such agency or any other agency described in clause (ii) for adequate health care facilities in such State or in the area for which such other agency has responsibility, and

(ii) the planning agency so designated had, prior to submitting to the Secretary the findings referred to in subsection (b) of this section—

(I) consulted with, and taken into consideration the findings and recommendations of, the State planning agencies established pursuant to sections 314(a) and 604(a) of the Public Health Service Act [42 U.S.C. 246(a), 291d(a)] (to the extent that either such agency is not the agency so designated) as well as the public or nonprofit private agency or organization responsible for the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 314(b) of the Public Health Service Act [42 U.S.C. 246(b)] and covering the area in which the health care facility proposing such capital expenditure is located (where such agency is not the agency designated in the agreement), or, if there is no such agency, such other public or nonprofit private agency or organization (if any) as performs, as determined in accordance with criteria included in regulations, similar functions, and

(II) granted to the person proposing such capital expenditure an opportunity for a fair hearing with respect to such findings;

then, for such period as he finds necessary in any case to effectuate the purpose of this section, he shall, in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure. With respect to any organization which is reimbursed on a per capita or a fixed fee or negotiated rate basis, in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter, the Secretary shall exclude an amount which in his judgment is a reasonable equivalent to the amount which would otherwise be excluded under this subsection if payment were to be made on other than a per capita or a fixed fee or negotiated rate basis.

(2) If the Secretary, after submitting the matters involved to the advisory council established or designated under subsection (i) of this section, determines that an exclusion of expenses related to any capital expenditure of any health care facility would discourage the operation or expansion of such facility which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of subchapter XVIII or XIX of this chapter, he shall not exclude such expenses pursuant to paragraph (1).

(e) Treatment of lease or comparable arrangement of any facility or equipment for a facility in determining amount of exclusions from Federal payments

Where a person obtains under lease or comparable arrangement any facility or part thereof, or equipment for a facility, which would have been subject to an exclusion under subsection (d) of this section if the person had acquired it by purchase, the Secretary shall (1) in computing such person's rental expense in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter with respect to services furnished in such facility, deduct the amount which in his judgment is a reasonable equivalent of the amount that would have been excluded if the person had acquired such facility or such equipment by purchase, and (2) in computing such person's return on equity capital deduct any amount deposited under the terms of the lease or comparable arrangement.

(f) Reconsideration by Secretary of determinations

Any person dissatisfied with a determination by the Secretary under this section may within six months following notification of such determination request the Secretary to reconsider such determination. A determination by the Secretary under this section shall not be subject to administrative or judicial review.

(g) "Capital expenditure" defined

For the purposes of this section, a ''capital expenditure'' is an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds $600,000 (or such lesser amount as the State may establish), (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made. For purposes of clause (1) of the preceding sentence, the cost of the studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment with respect to which such expenditure is made shall be included in determining whether such expenditure exceeds the dollar amount specified in clause (1).

(h) Applicability to Christian Science sanatoriums

The provisions of this section shall not apply to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).

(i) National advisory council; establishment or designation of existing council; functions; consultations with other appropriate national advisory councils; composition; compensation and travel expenses

(1) The Secretary shall establish a national advisory council, or designate an appropriate existing national advisory council, to advise and assist him in the preparation of general regulations to carry out the purposes of this section and on policy matters arising in the administration of this section, including the coordination of activities under this section with those under other parts of this chapter or under other Federal or federally assisted health programs.

(2) The Secretary shall make appropriate provision for consultation between and coordination of the work of the advisory council established or designated under paragraph (1) and the Federal Hospital Council, the National Advisory Health Council, the Health Insurance Benefits Advisory Council, and other appropriate national advisory councils with respect to matters bearing on the purposes and administration of this section and the coordination of activities under this section with related Federal health programs.

(3) If an advisory council is established by the Secretary under paragraph (1), it shall be composed of members who are not otherwise in the regular full-time employ of the United States, and who shall be appointed by the Secretary without regard to the civil service laws from among leaders in the fields of the fundamental sciences, the medical sciences, and the organization, delivery, and financing of health care, and persons who are State or local officials or are active in community affairs or public or civic affairs or who are representative of minority groups. Members of such advisory council, while attending meetings of the council or otherwise serving on business of the council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the maximum rate specified at the time of such service for grade GS–18 in section 5332 of title 5, including traveltime, and while away from their homes or regular places of business they may also be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(j) Capital expenditure review exception for eligible organization health care facilities

A capital expenditure made by or on behalf of a health care facility shall not be subject to review pursuant to this section if 75 percent of the patients who can reasonably be expected to use the service with respect to which the capital expenditure is made will be individuals enrolled in an eligible organization as defined in section 1395mm(b) of this title, and if the Secretary determines that such capital expenditure is for services and facilities which are needed by such organization in order to operate efficiently and economically and which are not otherwise readily accessible to such organization because—

(1) the facilities do not provide common services at the same site (as usually provided by the organization),

(2) the facilities are not available under a contract of reasonable duration,

(3) full and equal medical staff privileges in the facilities are not available,

(4) arrangements with such facilities are not administratively feasible, or

(5) the purchase of such services is more costly than if the organization provided the services directly.

(Aug. 14, 1935, ch. 531, title XI, § 1122, as added Pub. L. 92–603, title II, § 221(a), Oct. 30, 1972, 86 Stat. 1386; amended Pub. L. 93–233, § 18(z), (z–1), Dec. 31, 1973, 87 Stat. 973; Pub. L. 95–559, § 14(b), Nov. 1, 1978, 92 Stat. 2141; Pub. L. 96–32, § 2(c), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title XXI, § 2193(c)(3), Aug. 13, 1981, 95 Stat. 827; Pub. L. 97–248, title I, § 137(a)(5), Sept. 3, 1982, 96 Stat. 376; Pub. L. 98–21, title VI, § 607(a), (b)(1), (c), Apr. 20, 1983, 97 Stat. 171, 172; Pub. L. 98–369, div. B, title III, § 2354(a)(1), (2), July 18, 1984, 98 Stat. 1100; Pub. L. 105–33, title IV, § 4454(c)(1), Aug. 5, 1997, 111 Stat. 431.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (b), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The civil service laws, referred to in subsec. (i)(3), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

AMENDMENTS

1997—Subsec. (h). Pub. L. 105–33 substituted ''a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).'' for ''Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.''

1984—Subsec. (b). Pub. L. 98–369, § 2354(a)(1), substituted a comma for the period at end of par. (1), and struck out ''(or the Mental Retardation Facilities and

Community Mental Health Centers Construction Act of 1963)'' before ''to meet the need'' in provisions following par. (3).

Subsec. (i)(3). Pub. L. 98–369, § 2354(a)(2), substituted ''5703'' for ''5703(b)''.

1983—Subsec. (c). Pub. L. 98–21, § 607(a), substituted ''the general fund in the Treasury'' for ''the Federal Hospital Insurance Trust Fund''.

Subsec. (g). Pub. L. 98–21, § 607(b)(1), substituted ''$600,000 (or such lesser amount as the State may establish)'' for ''$100,000'' and Pub. L. 98–21, § 607(b)(1)(B), substituted ''the dollar amount specified in clause (1)'' for ''$100,000'' the second time it appeared.

Subsec. (j). Pub. L. 98–21, § 607(c), added subsec. (j).

1982—Subsec. (d)(2). Pub. L. 97–248 amended directory language of Pub. L. 97–35, § 2193(c)(3)(B), to correct typographical error, and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (a). Pub. L. 97–35, § 2193(c)(3)(A), substituted ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

Subsec. (d)(1). Pub. L. 97–35, § 2193(c)(3)(A), substituted in provision following subpar. (B)(ii)(II) ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter'' in two places.

Subsec. (d)(2). Pub. L. 97–35, § 2193(c)(3)(B), as amended by Pub. L. 97–248, § 137(a)(5), substituted ''subchapter XVIII or XIX of this chapter'' for ''subchapter V, XVIII, or XIX of this chapter''.

Subsec. (e). Pub. L. 97–35, § 2193(c)(3)(A), substituted ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

1979—Pub. L. 96–32 amended directory language of Pub. L. 95–559 and required no change in text of section. See 1978 Amendment notes below.

1978—Subsecs. (a), (b). Pub. L. 95–559, § 14(b)(1), (2), as amended by Pub. L. 96–32, struck out references to health maintenance organizations wherever appearing.

Subsec. (d). Pub. L. 95–559, § 14(b)(1), (3), as amended by Pub. L. 96–32, struck out references to health maintenance organizations wherever appearing and in par. (2) ''or organization, or of any facility of such organization,'' after ''expansion of such facility''.

1973—Subsec. (d)(1). Pub. L. 93–233, § 18(z), inserted ''or a fixed fee or negotiated rate'' after ''per capita'' wherever appearing in last sentence.

Subsec. (d)(2). Pub. L. 93–233, § 18(z–1), substituted ''exclude'' for ''include'' where last appearing.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2354(e) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1316, 1320a–7a, 1320a–8, 1395f, 1395i, 1395i–2, 1395k, 1395*l*, 1395n, 1395p, 1395s to 1395z, 1395aa, 1395cc, 1395ff, 1395ii, 1395*ll*, 1395mm, 1395*oo*, 1395rr, and 1395ww of this title and section 162 of Title 26, Internal Revenue Code, and amending provisions set out as notes under sections 1320c, 1395x, and 1395mm of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

''(2) The amendments made by paragraphs (1) [amending section 1395f of this title and provisions set out as a note under section 1395x of this title], (2) [amending section 1316 of this title], and (3) [amending provisions set out as notes under sections 1320c and 1395mm of this title] of subsection (c) shall be effective as if they had been originally included in Public Laws 96–499, 97–35, and 97–248, respectively.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Section 221(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to a capital expenditure the obligation for which is incurred by or on behalf of a health care facility or health maintenance organization subsequent to whichever of the following is earlier: (A) December 31, 1972, or (B) with respect to any State or any part thereof specified by such State, the last day of the calendar quarter in which the State requests that the amendment made by subsection (a) of this section [enacting this section] apply in such State or such part thereof.''

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

EXPENDITURES OR OBLIGATIONS OF HEALTH CARE FACILITIES PROVIDING HEALTH CARE SERVICES PRIOR TO DECEMBER 18, 1970; LIMITATIONS ON FEDERAL PARTICIPATION

Section 221(d) of Pub. L. 92–603 provided that: ''In the case of a health care facility providing health care services as of December 18, 1970, which on such date is committed to a formal plan of expansion or replacement, the amendments made by the preceding provisions of this section [enacting this section and amending sections 705, 706, 709, 1395x, 1396a, and 1396b of this title] shall not apply with respect to such expenditures as may be made or obligations incurred for capital items included in such plan where preliminary expenditures toward the plan of expansion or replacement (including payments for studies, surveys, designs, plans,

working drawings, specifications, and site acquisition, essential to the acquisition, improvement, expansion, or replacement of the health care facility or equipment concerned) of $100,000 or more, had been made during the three-year period ended December 17, 1970.''

§ 1320a–1a. Transferred

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XI, § 1123, as added Oct. 31, 1994, Pub. L. 103–432, title II, § 203(a), 108 Stat. 4454, which related to reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with State plan requirements, was renumbered section 1123A of act Aug. 14, 1935, by Pub. L. 104–193, title V, § 504, Aug. 22, 1996, 110 Stat. 2278, and was transferred to section 1320a–2a of this title.

§ 1320a–2. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.

(Aug. 14, 1935, ch. 531, title XI, § 1123, as added Pub. L. 103–382, title V, § 555(a), Oct. 20, 1994, 108 Stat. 4057.)

PRIOR PROVISIONS

A prior section 1320a–2, act Aug. 14, 1935, ch. 531, title XI, § 1123, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 241, 86 Stat. 1418; amended Dec. 5, 1980, Pub. L. 96–499, title IX, § 911, 94 Stat. 2619; Sept. 3, 1982, Pub. L. 97–248, title I, § 126, 96 Stat. 366; Apr. 7, 1986, Pub. L. 99–272, title IX, § 9303(b)(4), 100 Stat. 189, related to qualifications for health care personnel, prior to repeal by Pub. L. 100–360, title IV, § 430(a), as added Pub. L. 100–485, title VI, § 608(b), (g)(1), Oct. 13, 1988, 102 Stat. 2412, 2424, effective as if included in the enactment of Pub. L. 100–360.

Another section 1123 of act Aug. 14, 1935, was renumbered section 1123A, and is classified to section 1320a–2a of this title.

EFFECTIVE DATE

Section 555(b) of Pub. L. 103–382 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to actions pending on the date of the enactment of this Act [Oct. 20, 1994] and to actions brought on or after such date of enactment.''

§ 1320a–2a. Reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with State plan requirements

(a) In general

The Secretary, in consultation with the State agencies administering the State programs under parts B and E of subchapter IV of this chapter, shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity with—

(1) State plan requirements under such parts B and E,

(2) implementing regulations promulgated by the Secretary, and

(3) the relevant approved State plans.

(b) Elements of review system

The regulations referred to in subsection (a) of this section shall—

(1) specify the timetable for conformity reviews of State programs, including—

(A) an initial review of each State program;

(B) a timely review of a State program following a review in which such program was found not to be in substantial conformity; and

(C) less frequent reviews of State programs which have been found to be in substantial conformity, but such regulations shall permit the Secretary to reinstate more frequent reviews based on information which indicates that a State program may not be in conformity;

(2) specify the requirements subject to review (which shall include determining whether the State program is in conformity with the requirement of section 671(a)(27) of this title), and the criteria to be used to measure conformity with such requirements and to determine whether there is a substantial failure to so conform;

(3) specify the method to be used to determine the amount of any Federal matching funds to be withheld (subject to paragraph (4)) due to the State program's failure to so conform, which ensures that—

(A) such funds will not be withheld with respect to a program, unless it is determined that the program fails substantially to so conform;

(B) such funds will not be withheld for a failure to so conform resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary; and

(C) the amount of such funds withheld is related to the extent of the failure to so conform; and

(4) require the Secretary, with respect to any State program found to have failed substantially to so conform—

(A) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to so conform;

(B) to make technical assistance available to the State to the extent feasible to enable the State to develop and implement such a corrective action plan;

(C) to suspend the withholding of any Federal matching funds under this section while such a corrective action plan is in effect; and

(D) to rescind any such withholding if the failure to so conform is ended by successful completion of such a corrective action plan.

(c) Provisions for administrative and judicial review

The regulations referred to in subsection (a) of this section shall—

(1) require the Secretary, not later than 10 days after a final determination that a program of the State is not in conformity, to notify the State of—

(A) the basis for the determination; and

(B) the amount of the Federal matching funds (if any) to be withheld from the State;

(2) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days after receipt of the notice described in paragraph (1) (or, if later, after failure to continue or to complete a corrective action plan); and

(3) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, within 60 days after the State receives notice of the decision of the Board, by appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(Aug. 14, 1935, ch. 531, title XI, § 1123A, formerly § 1123, as added Pub. L. 103–432, title II, § 203(a), Oct. 31, 1994, 108 Stat. 4454; renumbered § 1123A, Pub. L. 104–193, title V, § 504, Aug. 22, 1996, 110 Stat. 2278; amended Pub. L. 109–432, div. B, title IV, § 405(c)(1)(B)(ii), Dec. 20, 2006, 120 Stat. 2999.)

REFERENCES IN TEXT

Parts B and E of subchapter IV of this chapter, referred to in subsec. (a), are classified to sections 620 et seq. and 670 et seq., respectively, of this title.

CODIFICATION

Section was formerly classified to section 1320a–1a of this title prior to renumbering by Pub. L. 104–193.

AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109–432 inserted ''(which shall include determining whether the State program is in conformity with the requirement of section 671(a)(27) of this title)'' after ''review''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 effective on the date that is 6 months after Dec. 20, 2006, see section 405(c)(1)(B)(iii) of Pub. L. 109–432, set out as a note under section 671 of this title.

EFFECTIVE DATE

Section 203(c)(1) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

REGULATIONS

Section 203(c)(3) of Pub. L. 103–432 provided that: ''The Secretary shall promulgate the regulations referred to in section 1123(a) [now 1123A(a)] of the Social Security Act [subsec. (a) of this section] (as added by this section) not later than July 1, 1995, to take effect on April 1, 1996.''

§ 1320a–3. Disclosure of ownership and related information; procedure; definitions; scope of requirements

(a)(1) The Secretary shall by regulation or by contract provision provide that each disclosing entity (as defined in paragraph (2)) shall—

(A) as a condition of the disclosing entity's participation in, or certification or recertification under, any of the programs established by subchapters V, XVIII, and XIX of this chapter, or

(B) as a condition for the approval or renewal of a contract or agreement between the disclosing entity and the Secretary or the appropriate State agency under any of the programs established under subchapters V, XVIII, and XIX of this chapter,

supply the Secretary or the appropriate State agency with full and complete information as to the identity of each person with an ownership or control interest (as defined in paragraph (3)) in the entity or in any subcontractor (as defined by the Secretary in regulations) in which the entity directly or indirectly has a 5 per centum or more ownership interest and supply the Secretary with the[1] both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing entity, each person with an ownership or control interest (as defined in subsection (a)(3) of this section), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest.

(2) As used in this section, the term ''disclosing entity'' means an entity which is—

(A) a provider of services (as defined in section 1395x(u) of this title, other than a fund), an independent clinical laboratory, a renal disease facility, a managed care entity, as defined in section 1396u–2(a)(1)(B) of this title, or a health maintenance organization (as defined in section 300e(a) of this title);

(B) an entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, items or services with respect to which payment may be claimed by the entity under any plan or program established pursuant to subchapter V of this chapter or under a State plan approved under subchapter XIX of this chapter; or

(C) a carrier or other agency or organization that is acting as a fiscal intermediary or agent with respect to one or more providers of services (for purposes of part A or part B of subchapter XVIII of this chapter, or both, or for purposes of a State plan approved under subchapter XIX of this chapter) pursuant to (i) an agreement under section 1395h of this title, (ii) a contract under section 1395u of this title, or (iii) an agreement with a single State agency administering or supervising the administration of a State plan approved under subchapter XIX of this chapter.

(3) As used in this section, the term ''person with an ownership or control interest'' means, with respect to an entity, a person who—

(A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 per centum or more in the entity; or

(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other

[1] So in original. The word ''the'' probably should not appear.

obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 per centum of the total property and assets of the entity; or

(B) is an officer or director of the entity, if the entity is organized as a corporation; or

(C) is a partner in the entity, if the entity is organized as a partnership.

(b) To the extent determined to be feasible under regulations of the Secretary, a disclosing entity shall also include in the information supplied under subsection (a)(1) of this section, with respect to each person with an ownership or control interest in the entity, the name of any other disclosing entity with respect to which the person is a person with an ownership or control interest.

(Aug. 14, 1935, ch. 531, title XI, § 1124, as added Pub. L. 95–142, § 3(a)(1), Oct. 25, 1977, 91 Stat. 1177; amended Pub. L. 96–499, title IX, § 912(a), Dec. 5, 1980, 94 Stat. 2619; Pub. L. 97–35, title XXIII, § 2353(i), Aug. 13, 1981, 95 Stat. 872; Pub. L. 100–93, § 11, Aug. 18, 1987, 101 Stat. 697; Pub. L. 105–33, title IV, §§ 4313(a), 4707(c), Aug. 5, 1997, 111 Stat. 388, 506.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(1), is classified generally to Title 26, Internal Revenue Code.

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (a)(2)(C), are classified to sections 1395c et seq. and 1395j et seq. of this title.

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–33, § 4313(a), inserted before period at end of concluding provisions ''and supply the Secretary with the both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing entity, each person with an ownership or control interest (as defined in subsection (a)(3) of this section), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest.'' The substitution was made to reflect the probable intent of Congress, in the absence of closing quotations designating the provisions to be inserted.

Subsec. (a)(2)(A). Pub. L. 105–33, § 4707(c), inserted ''a managed care entity, as defined in section 1396u–2(a)(1)(B) of this title,'' after ''renal disease facility,''.

1987—Subsec. (a)(3)(A)(ii). Pub. L. 100–93 struck out ''$25,000 or'' after ''exceeds''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2353(i)(1), substituted in subpars. (A) and (B) ''and XIX of this chapter'' for ''XIX, and XX of this chapter''.

Subsec. (a)(2)(D). Pub. L. 97–35, § 2353(i)(2)(C), struck out subpar. (D) which included within term ''disclosing entity'' an entity, other than an individual practitioner or group of practitioners, that furnishes, or arranges for the furnishing of, health related services with respect to which payment may be claimed by the entity under a State plan or program approved under subchapter XX of this chapter.

1980—Subsec. (a)(3)(A)(ii). Pub. L. 96–499 substituted ''of a whole or part interest'' for ''(in whole or in part) of an interest of 5 per centum or more'' and inserted '', which whole or part interest is equal to or exceeds $25,000 or 5 per centum of the total property and assets of the entity''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4313(e) of Pub. L. 105–33 provided that:

''(1) DISCLOSURE REQUIREMENTS.—The amendment made by subsection (a) [amending this section] shall apply to the application of conditions of participation, and entering into and renewal of contracts and agreements, occurring more than 90 days after the date of submission of the report under subsection (d) [set out as a note below].

''(2) OTHER PROVIDERS.—The amendments made by subsection (b) [amending section 1320a–3a of this title] shall apply to payment for items and services furnished more than 90 days after the date of submission of such report.''

Amendment by section 4707(c) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Section 3(e) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a)(1) [enacting this section] shall apply with respect to certifications and recertifications made (and participation in the programs established by titles V, XVIII, XIX, and XX of the Social Security Act [subchapters V, XVIII, XIX, and XX of this chapter] pursuant to certifications and recertifications made), and fiscal intermediary or agent agreements or contracts entered into or renewed, on and after the date of the enactment of this Act [Oct. 25, 1977]. The remaining amendments made by this section [amending sections 1395x and 1395cc of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977]; except that the amendments made by subsections (c) and (d) [amending sections 1396a, 1396b, 1397a, and 1397b of this title] shall become effective January 1, 1978.''

REPORT ON CONFIDENTIALITY OF SOCIAL SECURITY ACCOUNT NUMBERS

Section 4313(d) of Pub. L. 105–33 provided that: ''Before the amendments made by this section [amending this section and section 1320a–3a of this title] may become effective, the Secretary of Health and Human Services shall submit to Congress a report on steps the Secretary has taken to assure the confidentiality of social security account numbers that will be provided to the Secretary under such amendments.''

§ 1320a–3a. Disclosure requirements for other providers under part B of Medicare

(a) Disclosure required to receive payment

No payment may be made under part B of subchapter XVIII of this chapter for items or services furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information—

(1) on the identity of each person with an ownership or control interest in the provider or in any subcontractor (as defined by the Secretary in regulations) in which the provider directly or indirectly has a 5 percent or more ownership interest;

(2) with respect to any person identified under paragraph (1) or any managing employee of the provider—

(A) on the identity of any other entities providing items or services for which payment may be made under subchapter XVIII of this chapter with respect to which such person or managing employee is a person with an ownership or control interest at the time such information is supplied or at any time during the 3-year period ending on the date such information is supplied, and

(B) as to whether any penalties, assessments, or exclusions have been assessed against such person or managing employee under section 1320a–7, 1320a–7a, or 1320a–7b of this title; and

(3) including the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing part B provider and any person, managing employee, or other entity identified or described under paragraph (1) or (2).

(b) Updates to information supplied

A disclosing part B provider shall notify the Secretary of any changes or updates to the information supplied under subsection (a) of this section not later than 180 days after such changes or updates take effect.

(c) Verification

(1) Transmittal by HHS

The Secretary shall transmit—

(A) to the Commissioner of Social Security information concerning each social security account number (assigned under section 405(c)(2)(B) of this title), and

(B) to the Secretary of the Treasury information concerning each employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986),

supplied to the Secretary pursuant to subsection (a)(3) of this section or section 1320a–3(c)[1] of this title to the extent necessary for verification of such information in accordance with paragraph (2).

(2) Verification

The Commissioner of Social Security and the Secretary of the Treasury shall verify the accuracy of, or correct, the information supplied by the Secretary to such official pursuant to paragraph (1), and shall report such verifications or corrections to the Secretary.

(3) Fees for verification

The Secretary shall reimburse the Commissioner and Secretary of the Treasury, at a rate negotiated between the Secretary and such official, for the costs incurred by such official in performing the verification and correction services described in this subsection.

(d) Definitions

For purposes of this section—

(1) the term ''disclosing part B provider'' means any entity receiving payment on an assignment-related basis (or, for purposes of subsection (a)(3) of this section, any entity receiving payment) for furnishing items or services for which payment may be made under part B of subchapter XVIII of this chapter, except that such term does not include an entity described in section 1320a–3(a)(2) of this title;

(2) the term ''managing employee'' means, with respect to a provider, a person described in section 1320a–5(b) of this title; and

(3) the term ''person with an ownership or control interest'' means, with respect to a provider—

(A) a person described in section 1320a–3(a)(3) of this title, or

(B) a person who has one of the 5 largest direct or indirect ownership or control interests in the provider.

(Aug. 14, 1935, ch. 531, title XI, § 1124A, as added Pub. L. 101–508, title IV, § 4164(b)(1), Nov. 5, 1990, 104 Stat. 1388–101; amended Pub. L. 103–432, title I, § 147(f)(7)(A)(i), Oct. 31, 1994, 108 Stat. 4432; Pub. L. 105–33, title IV, § 4313(b), (c), Aug. 5, 1997, 111 Stat. 388.)

REFERENCES IN TEXT

Part B of subchapter XVIII of this chapter, referred to in subsecs. (a) and (d)(1), is classified to section 1395j et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (a)(3) and (c)(1)(B), is classified generally to Title 26, Internal Revenue Code.

Section 1320a–3 of this title, referred to in subsec. (c)(1), does not contain a subsec. (c).

AMENDMENTS

1997—Subsec. (a)(3). Pub. L. 105–33, § 4313(b)(1), added par. (3).

Subsec. (c). Pub. L. 105–33, § 4313(c)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 105–33, § 4313(b)(2), inserted ''(or, for purposes of subsection (a)(3) of this section, any entity receiving payment)'' after ''on an assignment-related basis''.

Subsec. (d). Pub. L. 105–33, § 4313(c)(1), redesignated subsec. (c) as (d).

1994—Subsec. (a)(2)(A). Pub. L. 103–432 made technical amendment to reference to subchapter XVIII of this chapter to correct reference to corresponding provision of original act.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4313(b) of Pub. L. 105–33 applicable to payment for items and services furnished more than 90 days after date of submission of report under section 4313(d) of Pub. L. 105–33, set out as a note under section 1320a–3 of this title, see section 4313(e) of Pub. L. 105–33, set out as a note under section 1320a–3 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 147(g) of Pub. L. 103–432 provided that: ''Except as otherwise provided in this section [amending this section and sections 1320b–5, 1395*l*, 1395p, 1395q, 1395x, 1395y, and 1395cc of this title, enacting provisions set out as notes under sections 1395*l*, 1395p, and 1395y of this title, amending provisions set out as notes under this section and sections 254b, 1395*l*, and 1395u of this title, and repealing provisions set out as a note under section 1395*l* of this title], the amendments made by this section shall take effect as if included in the enactment of OBRA–1990 [Pub L. 101–508].''

EFFECTIVE DATE

Section 4164(b)(4) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 147(f)(7)(A)(ii), Oct. 31, 1994, 108 Stat. 4432, provided that: ''The amendments made by

[1] See References in Text note below.

paragraphs (1), (2), and (3) [enacting this section and amending sections 1320a–7 and 1320a–7b of this title] shall apply with respect to items or services furnished on or after—

''(A) January 1, 1993, in the case of items or services furnished by a provider who, on or before the date of the enactment of this Act [Nov. 5, 1990], has furnished items or services for which payment may be made under part B of title XVIII of the Social Security Act [part B of subchapter XVIII of this chapter]; or

''(B) January 1, 1992, in the case of items or services furnished by any other provider.''

REPORT ON CONFIDENTIALITY OF SOCIAL SECURITY ACCOUNT NUMBERS

Before amendment by Pub. L. 105–33 may become effective, Secretary of Health and Human Services is required to submit to Congress a report on steps Secretary has taken to assure the confidentiality of social security account numbers that will be provided to Secretary, see section 4313(d) of Pub. L. 105–33, set out as a note under section 1320a–3 of this title.

§ 1320a–4. Issuance of subpenas by Comptroller General

(a) Authorization; scope; service and proof of service

For the purpose of any audit, investigation, examination, analysis, review, evaluation, or other function authorized by law with respect to any program authorized under this chapter, the Comptroller General of the United States shall have power to sign and issue subpenas to any person requiring the production of any pertinent books, records, documents, or other information. Subpenas so issued by the Comptroller General shall be served by anyone authorized by him (1) by delivering a copy thereof to the person named therein, or (2) by registered mail or by certified mail addressed to such person at his last dwelling place or principal place of business. A verified return by the person so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post office receipt therefor signed by the person so served, shall be proof of service.

(b) Contumacy or refusal to obey subpena; contempt proceedings

In case of contumacy by, or refusal to obey a subpena issued pursuant to subsection (a) of this section and duly served upon, any person, any district court of the United States for the judicial district in which such person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Comptroller General, shall have jurisdiction to issue an order requiring such person to produce the books, records, documents, or other information sought by the subpena; and any failure to obey such order of the court may be punished by the court as a contempt thereof. In proceedings brought under this subsection, the Comptroller General shall be represented by attorneys employed in the Government Accountability Office or by counsel whom he may employ without regard to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapters III and VI of chapter 53 of such title, relating to classification and General Schedule pay rates.

(c) Nondisclosure of personal medical records by Government Accountability Office

No personal medical record in the possession of the Government Accountability Office shall be subject to subpena or discovery proceedings in a civil action.

(Aug. 14, 1935, ch. 531, title XI, § 1125, as added Pub. L. 95–142, § 6, Oct. 25, 1977, 91 Stat. 1192; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsecs. (b) and (c). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' wherever appearing.

§ 1320a–5. Disclosure by institutions, organizations, and agencies of owners, officers, etc., convicted of offenses related to programs; notification requirements; "managing employee" defined

(a) As a condition of participation in or certification or recertification under the programs established by subchapters XVIII,[1] and XIX of this chapter, any hospital, nursing facility, or other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person that is a person described in subparagraphs (A) and (B) of section 1320a–7(b)(8) of this title. The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of Health and Human Services of the receipt from any entity of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request.

(b) For the purposes of this section, the term ''managing employee'' means, with respect to an entity, an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the entity, or who directly or indirectly conducts the day-to-day operations of the entity.

(Aug. 14, 1935, ch. 531, title XI, § 1126, as added Pub. L. 95–142, § 8(a), Oct. 25, 1977, 91 Stat. 1194; amended Pub. L. 97–35, title XXIII, § 2353(j), Aug. 13, 1981, 95 Stat. 873; Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(vi), July 18, 1984, 98 Stat. 1170; Pub. L. 100–93, § 8(b), Aug. 18, 1987, 101 Stat. 692.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–93, § 8(b)(1), in first sentence substituted ''or other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person that is a person described in subparagraphs (A) and (B) of section 1320a–7(b)(8) of this title.'' for ''or other institu-

[1] So in original. The comma probably should not appear.

tion, organization, or agency shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who—

"(1) has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency or is an officer, director, agent, or managing employee (as defined in subsection (b) of this section) of such institution, organization, or agency, and

"(2) has been convicted (on or after October 25, 1977, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to the involvement of such person in any of such programs.",

and in second sentence substituted "entity" for "institution, organization, or agency".

Subsec. (b). Pub. L. 100–93, § 8(b)(2), substituted "entity" for "institution, organization, or agency" in three places.

1984—Subsec. (a). Pub. L. 98–369 substituted "Health and Human Services" for "Health, Education, and Welfare" in provisions following par. (2).

1981—Subsec. (a). Pub. L. 97–35 substituted in provision preceding par. (1) "and XIX of this chapter" for "XIX, and XX of this chapter".

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Section 8(e) of Pub. L. 95–142 provided that: "The amendments made by this section [enacting this section and amending sections 1395cc, 1396b, and 1397a of this title] shall apply with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on and after the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 25, 1977]."

§ 1320a–6. Adjustments in SSI benefits on account of retroactive benefits under subchapter II

(a) Reduction in benefits

Notwithstanding any other provision of this chapter, in any case where an individual—

(1) is entitled to benefits under subchapter II of this chapter that were not paid in the months in which they were regularly due; and

(2) is an individual or eligible spouse eligible for supplemental security income benefits for one or more months in which the benefits referred to in clause (1) were regularly due,

then any benefits under subchapter II of this chapter that were regularly due in such month or months, or supplemental security income benefits for such month or months, which are due but have not been paid to such individual or eligible spouse shall be reduced by an amount equal to so much of the supplemental security income benefits, whether or not paid retroactively, as would not have been paid or would not be paid with respect to such individual or spouse if he had received such benefits under subchapter II of this chapter in the month or months in which they were regularly due. A benefit under subchapter II of this chapter shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to subsection (a)(4) or (b) of section 406 of this title.

(b) "Supplemental security income benefits" defined

For purposes of this section, the term "supplemental security income benefits" means benefits paid or payable by the Commissioner of Social Security under subchapter XVI of this chapter, including State supplementary payments under an agreement pursuant to section 1382e(a) of this title or an administration agreement under section 212(b) of Public Law 93–66.

(c) Reimbursement of the State

From the amount of the reduction made under subsection (a) of this section, the Commissioner of Social Security shall reimburse the State on behalf of which supplementary payments were made for the amount (if any) by which such State's expenditures on account of such supplementary payments for the month or months involved exceeded the expenditures which the State would have made (for such month or months) if the individual had received the benefits under subchapter II of this chapter at the times they were regularly due. An amount equal to the portion of such reduction remaining after reimbursement of the State under the preceding sentence shall be covered into the general fund of the Treasury.

(Aug. 14, 1935, ch. 531, title XI, § 1127, as added Pub. L. 96–265, title V, § 501(a), June 9, 1980, 94 Stat. 469; amended Pub. L. 98–369, div. B, title VI, § 2615(a), July 18, 1984, 98 Stat. 1132; Pub. L. 101–508, title V, § 5106(b), Nov. 5, 1990, 104 Stat. 1388–268; Pub. L. 103–296, title I, § 108(b)(8), title III, § 321(f)(3)(B)(ii), Aug. 15, 1994, 108 Stat. 1483, 1542.)

REFERENCES IN TEXT

Section 212(b) of Pub. L. 93–66, referred to in subsec. (b), is set out as a note under section 1382 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 321(f)(3)(B)(ii), in last sentence substituted "subsection (a)(4) or (b) of section 406 of this title" for "section 406(a)(4) of this title".

Subsecs. (b), (c). Pub. L. 103–296, § 108(b)(8), substituted "Commissioner of Social Security" for "Secretary".

1990—Subsec. (a). Pub. L. 101–508 inserted at end "A benefit under subchapter II of this chapter shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to section 406(a)(4) of this title."

1984—Pub. L. 98–369 substituted provisions relating to adjustment in supplemental security income benefits

on account of retroactive benefits under subchapter II of this chapter for provisions which related to adjustment of retroactive benefits under subchapter II of this chapter on account of supplemental security income benefits.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(8) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 321(f)(3)(B)(ii) of Pub. L. 103–296 effective as if included in the provisions of the Omnibus Reconciliation Act of 1990, Pub. L. 101–508, to which such amendment relates, except that such amendment applicable with respect to favorable judgments made after 180 days after Aug. 15, 1994, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d), of Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2615(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall apply for purposes of reducing retroactive benefits under title II of the Social Security Act [subchapter II of this chapter] or retroactive supplemental security income benefits payable beginning with the seventh month following the month in which this Act is enacted [July 1984]; except that in the case of retroactive title II benefits other than those which result from a determination of entitlement following an application for benefits under title II or from a reinstatement of benefits under title II following a period of suspension or termination of such benefits, it shall apply when the Secretary of Health and Human Services determines that it is administratively feasible.''

EFFECTIVE DATE

Section 501(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [enacting this section and amending sections 404 and 1383 of this title] shall be applicable in the case of payments of monthly insurance benefits under title II of the Social Security Act [subchapter II of this chapter] entitlement for which is determined on or after the first day of the thirteenth month which begins after the date of the enactment of this Act [June 9, 1980].''

§ 1320a–7. Exclusion of certain individuals and entities from participation in Medicare and State health care programs

(a) Mandatory exclusion

The Secretary shall exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title):

(1) Conviction of program-related crimes

Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under subchapter XVIII of this chapter or under any State health care program.

(2) Conviction relating to patient abuse

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

(3) Felony conviction relating to health care fraud

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

(4) Felony conviction relating to controlled substance

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(b) Permissive exclusion

The Secretary may exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title):

(1) Conviction relating to fraud

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law—

(A) of a criminal offense consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

(i) in connection with the delivery of a health care item or service, or

(ii) with respect to any act or omission in a health care program (other than those specifically described in subsection (a)(1) of this section) operated by or financed in whole or in part by any Federal, State, or local government agency; or

(B) of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any Federal, State, or local government agency.

(2) Conviction relating to obstruction of an investigation

Any individual or entity that has been convicted, under Federal or State law, in connection with the interference with or obstruction of any investigation into any criminal offense described in paragraph (1) or in subsection (a) of this section.

(3) Misdemeanor conviction relating to controlled substance

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense consisting of a misdemeanor relating to the unlawful manufacture, distribution,

prescription, or dispensing of a controlled substance.

(4) License revocation or suspension

Any individual or entity—

(A) whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity, or

(B) who surrendered such a license while a formal disciplinary proceeding was pending before such an authority and the proceeding concerned the individual's or entity's professional competence, professional performance, or financial integrity.

(5) Exclusion or suspension under Federal or State health care program

Any individual or entity which has been suspended or excluded from participation, or otherwise sanctioned, under—

(A) any Federal program, including programs of the Department of Defense or the Department of Veterans Affairs, involving the provision of health care, or

(B) a State health care program,

for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity.

(6) Claims for excessive charges or unnecessary services and failure of certain organizations to furnish medically necessary services

Any individual or entity that the Secretary determines—

(A) has submitted or caused to be submitted bills or requests for payment (where such bills or requests are based on charges or cost) under subchapter XVIII of this chapter or a State health care program containing charges (or, in applicable cases, requests for payment of costs) for items or services furnished substantially in excess of such individual's or entity's usual charges (or, in applicable cases, substantially in excess of such individual's or entity's costs) for such items or services, unless the Secretary finds there is good cause for such bills or requests containing such charges or costs;

(B) has furnished or caused to be furnished items or services to patients (whether or not eligible for benefits under subchapter XVIII of this chapter or under a State health care program) substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care;

(C) is—

(i) a health maintenance organization (as defined in section 1396b(m) of this title) providing items and services under a State plan approved under subchapter XIX of this chapter, or

(ii) an entity furnishing services under a waiver approved under section 1396n(b)(1) of this title,

and has failed substantially to provide medically necessary items and services that are required (under law or the contract with the State under subchapter XIX of this chapter) to be provided to individuals covered under that plan or waiver, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals; or

(D) is an entity providing items and services as an eligible organization under a risk-sharing contract under section 1395mm of this title and has failed substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under the risk-sharing contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals.

(7) Fraud, kickbacks, and other prohibited activities

Any individual or entity that the Secretary determines has committed an act which is described in section 1320a–7a, 1320a–7b, or 1320a–8 of this title.

(8) Entities controlled by a sanctioned individual

Any entity with respect to which the Secretary determines that a person—

(A)(i) who has a direct or indirect ownership or control interest of 5 percent or more in the entity or with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in that entity,

(ii) who is an officer, director, agent, or managing employee (as defined in section 1320a–5(b) of this title) of that entity; or

(iii) who was described in clause (i) but is no longer so described because of a transfer of ownership or control interest, in anticipation of (or following) a conviction, assessment, or exclusion described in subparagraph (B) against the person, to an immediate family member (as defined in subsection (j)(1) of this section) or a member of the household of the person (as defined in subsection (j)(2) of this section) who continues to maintain an interest described in such clause—

is a person—

(B)(i) who has been convicted of any offense described in subsection (a) of this section or in paragraph (1), (2), or (3) of this subsection;

(ii) against whom a civil monetary penalty has been assessed under section 1320a–7a or 1320a–8 of this title; or

(iii) who has been excluded from participation under a program under subchapter XVIII of this chapter or under a State health care program.

(9) Failure to disclose required information

Any entity that did not fully and accurately make any disclosure required by section 1320a–3 of this title, section 1320a–3a of this title, or section 1320a–5 of this title.

(10) Failure to supply requested information on subcontractors and suppliers

Any disclosing entity (as defined in section 1320a–3(a)(2) of this title) that fails to supply

(within such period as may be specified by the Secretary in regulations) upon request specifically addressed to the entity by the Secretary or by the State agency administering or supervising the administration of a State health care program—

(A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom the entity has had, during the previous 12 months, business transactions in an aggregate amount in excess of $25,000, or

(B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between the entity and any wholly owned supplier or between the entity and any subcontractor.

(11) Failure to supply payment information

Any individual or entity furnishing items or services for which payment may be made under subchapter XVIII of this chapter or a State health care program that fails to provide such information as the Secretary or the appropriate State agency finds necessary to determine whether such payments are or were due and the amounts thereof, or has refused to permit such examination of its records by or on behalf of the Secretary or that agency as may be necessary to verify such information.

(12) Failure to grant immediate access

Any individual or entity that fails to grant immediate access, upon reasonable request (as defined by the Secretary in regulations) to any of the following:

(A) To the Secretary, or to the agency used by the Secretary, for the purpose specified in the first sentence of section 1395aa(a) of this title (relating to compliance with conditions of participation or payment).

(B) To the Secretary or the State agency, to perform the reviews and surveys required under State plans under paragraphs (26), (31), and (33) of section 1396a(a) of this title and under section 1396b(g) of this title.

(C) To the Inspector General of the Department of Health and Human Services, for the purpose of reviewing records, documents, and other data necessary to the performance of the statutory functions of the Inspector General.

(D) To a State medicaid fraud control unit (as defined in section 1396b(q) of this title), for the purpose of conducting activities described in that section.

(13) Failure to take corrective action

Any hospital that fails to comply substantially with a corrective action required under section 1395ww(f)(2)(B) of this title.

(14) Default on health education loan or scholarship obligations

Any individual who the Secretary determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans, except that (A) the Secretary shall not exclude pursuant to this paragraph a physician who is the sole community physician or sole source of essential specialized services in a community if a State requests that the physician not be excluded, and (B) the Secretary shall take into account, in determining whether to exclude any other physician pursuant to this paragraph, access of beneficiaries to physician services for which payment may be made under subchapter XVIII or XIX of this chapter.

(15) Individuals controlling a sanctioned entity

(A) Any individual—

(i) who has a direct or indirect ownership or control interest in a sanctioned entity and who knows or should know (as defined in section 1320a–7a(i)(6)[1] of this title) of the action constituting the basis for the conviction or exclusion described in subparagraph (B); or

(ii) who is an officer or managing employee (as defined in section 1320a–5(b) of this title) of such an entity.

(B) For purposes of subparagraph (A), the term ''sanctioned entity'' means an entity—

(i) that has been convicted of any offense described in subsection (a) of this section or in paragraph (1), (2), or (3) of this subsection; or

(ii) that has been excluded from participation under a program under subchapter XVIII of this chapter or under a State health care program.

(c) Notice, effective date, and period of exclusion

(1) An exclusion under this section or under section 1320a–7a of this title shall be effective at such time and upon such reasonable notice to the public and to the individual or entity excluded as may be specified in regulations consistent with paragraph (2).

(2)(A) Except as provided in subparagraph (B), such an exclusion shall be effective with respect to services furnished to an individual on or after the effective date of the exclusion.

(B) Unless the Secretary determines that the health and safety of individuals receiving services warrants the exclusion taking effect earlier, an exclusion shall not apply to payments made under subchapter XVIII of this chapter or under a State health care program for—

(i) inpatient institutional services furnished to an individual who was admitted to such institution before the date of the exclusion, or

(ii) home health services and hospice care furnished to an individual under a plan of care established before the date of the exclusion,

until the passage of 30 days after the effective date of the exclusion.

(3)(A) The Secretary shall specify, in the notice of exclusion under paragraph (1) and the written notice under section 1320a–7a of this title, the minimum period (or, in the case of an exclusion of an individual under subsection (b)(12) of this section or in the case described in subparagraph (G), the period) of the exclusion.

[1] So in original. Probably should be section ''1320a–7a(i)(7)''.

(B) Subject to subparagraph (G), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be not less than five years, except that, upon the request of the administrator of a Federal health care program (as defined in section 1320a–7b(f) of this title) who determines that the exclusion would impose a hardship on individuals entitled to benefits under part A of subchapter XVIII of this chapter or enrolled under part B of such subchapter, or both, the Secretary may, after consulting with the Inspector General of the Department of Health and Human Services, waive the exclusion under subsection (a)(1), (a)(3), or (a)(4) of this section with respect to that program in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community. The Secretary's decision whether to waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual under subsection (b)(12) of this section, the period of the exclusion shall be equal to the sum of—

(i) the length of the period in which the individual failed to grant the immediate access described in that subsection, and

(ii) an additional period, not to exceed 90 days, set by the Secretary.

(D) Subject to subparagraph (G), in the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b) of this section, the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5) of this section, the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B) of this section, the period of the exclusion shall be not less than 1 year.

(G) In the case of an exclusion of an individual under subsection (a) of this section based on a conviction occurring on or after August 5, 1997, if the individual has (before, on, or after August 5, 1997) been convicted—

(i) on one previous occasion of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be not less than 10 years, or

(ii) on 2 or more previous occasions of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be permanent.

(d) Notice to State agencies and exclusion under State health care programs

(1) Subject to paragraph (3), the Secretary shall exercise the authority under this section and section 1320a–7a of this title in a manner that results in an individual's or entity's exclusion from all the programs under subchapter XVIII of this chapter and all the State health care programs in which the individual or entity may otherwise participate.

(2) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) of this section and to which section 824(a)(5) of title 21 may apply, the Attorney General)—

(A) of the fact and circumstances of each exclusion effected against an individual or entity under this section or section 1320a–7a of this title, and

(B) of the period (described in paragraph (3)) for which the State agency is directed to exclude the individual or entity from participation in the State health care program.

(3)(A) Except as provided in subparagraph (B), the period of the exclusion under a State health care program under paragraph (2) shall be the same as any period of exclusion under subchapter XVIII of this chapter.

(B)(i) The Secretary may waive an individual's or entity's exclusion under a State health care program under paragraph (2) if the Secretary receives and approves a request for the waiver with respect to the individual or entity from the State agency administering or supervising the administration of the program.

(ii) A State health care program may provide for a period of exclusion which is longer than the period of exclusion under subchapter XVIII of this chapter.

(e) Notice to State licensing agencies

The Secretary shall—

(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title, of the fact and circumstances of the exclusion,

(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and

(3) request that the State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to the request.

(f) Notice, hearing, and judicial review

(1) Subject to paragraph (2), any individual or entity that is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(2) Unless the Secretary determines that the health or safety of individuals receiving services

warrants the exclusion taking effect earlier, any individual or entity that is the subject of an adverse determination under subsection (b)(7) of this section shall be entitled to a hearing by an administrative law judge (as provided under section 405(b) of this title) on the determination under subsection (b)(7) of this section before any exclusion based upon the determination takes effect.

(3) The provisions of section 405(h) of this title shall apply with respect to this section and sections 1320a–7a, 1320a–8, and 1320c–5 of this title to the same extent as it is applicable with respect to subchapter II of this chapter, except that, in so applying such section and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary.

(g) Application for termination of exclusion

(1) An individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title may apply to the Secretary, in the manner specified by the Secretary in regulations and at the end of the minimum period of exclusion provided under subsection (c)(3) of this section and at such other times as the Secretary may provide, for termination of the exclusion effected under this section or section 1320a–7a of this title.

(2) The Secretary may terminate the exclusion if the Secretary determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Secretary at the time of the exclusion, that—

(A) there is no basis under subsection (a) or (b) of this section or section 1320a–7a(a) of this title for a continuation of the exclusion, and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) of this section and to which section 824(a)(5) of title 21 may apply, the Attorney General) of the fact and circumstances of each termination of exclusion made under this subsection.

(h) "State health care program" defined

For purposes of this section and sections 1320a–7a and 1320a–7b of this title, the term ''State health care program'' means—

(1) a State plan approved under subchapter XIX of this chapter,

(2) any program receiving funds under subchapter V of this chapter or from an allotment to a State under such subchapter,

(3) any program receiving funds under subchapter XX of this chapter or from an allotment to a State under such subchapter, or

(4) a State child health plan approved under subchapter XXI of this chapter.

(i) "Convicted" defined

For purposes of subsections (a) and (b) of this section, an individual or entity is considered to have been ''convicted'' of a criminal offense—

(1) when a judgment of conviction has been entered against the individual or entity by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(2) when there has been a finding of guilt against the individual or entity by a Federal, State, or local court;

(3) when a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court; or

(4) when the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(j) Definition of immediate family member and member of household

For purposes of subsection (b)(8)(A)(iii) of this section:

(1) The term ''immediate family member'' means, with respect to a person—

(A) the husband or wife of the person;

(B) the natural or adoptive parent, child, or sibling of the person;

(C) the stepparent, stepchild, stepbrother, or stepsister of the person;

(D) the father-, mother-, daughter-, son-, brother-, or sister-in-law of the person;

(E) the grandparent or grandchild of the person; and

(F) the spouse of a grandparent or grandchild of the person.

(2) The term ''member of the household'' means, with respect to any person, any individual sharing a common abode as part of a single family unit with the person, including domestic employees and others who live together as a family unit, but not including a roomer or boarder.

(Aug. 14, 1935, ch. 531, title XI, § 1128, as added Pub. L. 96–499, title IX, § 913(a), Dec. 5, 1980, 94 Stat. 2619; amended Pub. L. 97–35, title XXI, § 2105(b), title XXIII, § 2353(k), Aug. 13, 1981, 95 Stat. 791, 873; Pub. L. 98–369, div. B, title III, § 2333(a), (b), July 18, 1984, 98 Stat. 1089; Pub. L. 99–509, title IX, § 9317(c), Oct. 21, 1986, 100 Stat. 2008; Pub. L. 100–93, § 2, Aug. 18, 1987, 101 Stat. 680; Pub. L. 100–203, title IV, § 4118(e)(2)–(5), Dec. 22, 1987, 101 Stat. 1330–155, as amended Pub. L. 100–360, title IV, § 411(k)(10)(D), July 1, 1988, 102 Stat. 795; Pub. L. 100–360, title IV, § 411(k)(10)(C), July 1, 1988, 102 Stat. 795; Pub. L. 101–239, title VI, § 6411(d)(1), Dec. 19, 1989, 103 Stat. 2270; Pub. L. 101–508, title IV, § 4164(b)(3), Nov. 5, 1990, 104 Stat. 1388–102; Pub. L. 102–54, § 13(q)(3)(A)(ii), June 13, 1991, 105 Stat. 279; Pub. L. 103–296, title I, § 108(b)(9), title II, § 206(b)(2), Aug. 15, 1994, 108 Stat. 1483, 1513; Pub. L. 104–191, title II, §§ 211–213, Aug. 21, 1996, 110 Stat. 2003–2005; Pub. L. 105–33, title IV, §§ 4301, 4303(a), 4331(c), 4901(b)(2), Aug. 5, 1997, 111 Stat. 382, 396, 570; Pub. L. 108–173, title IX, § 949, Dec. 8, 2003, 117 Stat. 2426.)

REFERENCES IN TEXT

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (c)(3)(B), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (c)(3)(B). Pub. L. 108–173 amended first sentence generally. Prior to amendment, first sentence read as follows: ''Subject to subparagraph (G), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be not less than five years, except that, upon the request of a State, the Secretary may waive the exclusion under subsection (a)(1) of this section in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community.''

1997—Subsec. (a). Pub. L. 105–33, § 4331(c)(1), substituted ''any Federal health care program (as defined in section 1320a–7b(f) of this title)'' for ''any program under subchapter XVIII of this chapter and shall direct that the following individuals and entities be excluded from participation in any State health care program (as defined in subsection (h) of this section)'' in introductory provisions.

Subsec. (b). Pub. L. 105–33, § 4331(c)(2), substituted ''any Federal health care program (as defined in section 1320a–7b(f) of this title)'' for ''any program under subchapter XVIII of this chapter and may direct that the following individuals and entities be excluded from participation in any State health care program'' in introductory provisions.

Subsec. (b)(8)(A)(iii). Pub. L. 105–33, § 4303(a)(1), added cl. (iii).

Subsec. (c)(3)(A). Pub. L. 105–33, § 4301(1), inserted ''or in the case described in subparagraph (G)'' after ''subsection (b)(12) of this section''.

Subsec. (c)(3)(B), (D). Pub. L. 105–33, § 4301(2), substituted ''Subject to subparagraph (G), in the case'' for ''In the case''.

Subsec. (c)(3)(G). Pub. L. 105–33, § 4301(3), added subpar. (G).

Subsec. (h)(4). Pub. L. 105–33, § 4901(b)(2), added par. (4).

Subsec. (j). Pub. L. 105–33, § 4303(a)(2), added subsec. (j).

1996—Subsec. (a)(3). Pub. L. 104–191, § 211(a)(1), added par. (3).

Subsec. (a)(4). Pub. L. 104–191, § 211(b)(1), added par. (4).

Subsec. (b)(1). Pub. L. 104–191, § 211(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Any individual or entity that has been convicted, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a program operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.''

Subsec. (b)(3). Pub. L. 104–191, § 211(b)(2), substituted ''Misdemeanor conviction'' for ''conviction'' in heading and ''criminal offense consisting of a misdemeanor'' for ''criminal offense'' in text.

Subsec. (b)(15). Pub. L. 104–191, § 213, added par. (15).

Subsec. (c)(3)(D) to (F). Pub. L. 104–191, § 212, added subpars. (D) to (F).

1994—Subsec. (b)(7). Pub. L. 103–296, § 206(b)(2)(A), substituted ''section 1320a–7a, 1320a–7b, or 1230a–8 of this title'' for ''section 1320a–7a of this title or section 1320a–7b of this title''.

Subsec. (b)(8)(B)(ii). Pub. L. 103–296, § 206(b)(2)(B), inserted ''or 1320a–8'' after ''section 1320a–7a''.

Subsec. (f)(1). Pub. L. 103–296, § 108(b)(9)(A), inserted before period at end '', except that, in so applying such sections and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

Subsec. (f)(3). Pub. L. 103–296, § 206(b)(2)(C), inserted '', 1320a–8,'' after ''sections 1320a–7a''.

Pub. L. 103–296, § 108(b)(9)(B), inserted before period at end '', except that, in so applying such section and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary''.

1991—Subsec. (b)(5)(A). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (b)(9). Pub. L. 101–508 substituted ''section 1320a–3 of this title, section 1320a–3a of this title,'' for ''section 1320a–3 of this title''.

1989—Subsec. (b)(4)(A). Pub. L. 101–239 inserted ''or the right to apply for or renew such a license'' after ''lost such a license''.

1988—Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(3)–(5), which amended subsec. (b)(8)(A)(i), (d)(1), (3)(A), and (i). See 1987 Amendment notes below.

Subsec. (d)(3)(B)(ii). Pub. L. 100–360, § 411(k)(10)(C), struck out ''under a program'' after ''longer than the period of exclusion''.

1987—Pub. L. 100–93 amended section generally, substituting subsecs. (a) to (i) for former subsecs. (a) to (f).

Subsec. (b)(8)(A)(i). Pub. L. 100–203, § 4118(e)(3), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted at beginning ''who has a direct or indirect ownership or control interest of 5 percent or more in the entity or''.

Subsec. (d)(1). Pub. L. 100–203, § 4118(e)(4)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''this section and section 1320a–7a of this title'' for ''subsection (b) of this section''.

Subsec. (d)(3)(A). Pub. L. 100–203, § 4118(e)(4)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), struck out ''under a program'' after ''any period of exclusion''.

Subsec. (d)(3)(B). Pub. L. 100–203, § 4118(e)(2), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (i). Pub. L. 100–203, § 4118(e)(5)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''an individual or entity'' for ''a physician or other individual'' in introductory provisions.

Pub. L. 100–203, § 4118(e)(5)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), which directed amendment of pars. (1) to (4) by substituting ''individual or entity'' for ''physician or other individual'' each place it appears, was executed by substituting ''individual or entity'' for ''physician or individual'' in pars. (1) to (4) as the probable intent of Congress.

Subsec. (i)(4). Pub. L. 100–203, § 4118(e)(5)(C), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''first offender, deferred adjudication, or other arrangement or program'' for ''first offender or other program''.

1986—Subsec. (f). Pub. L. 99–509 added subsec. (f).

1984—Subsecs. (b) to (e). Pub. L. 98–369 added subsec. (b), redesignated former subsecs. (b) to (d) as (c) to (e), respectively, and in subsec. (e) substituted ''Any person or entity'' for ''Any person'' and ''(a), (b), or (c)'' for ''(a) or (b)''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2105(b)(1), struck out '', for such period as he may deem appropriate,'' after ''subchapter XVIII of this chapter''.

Subsec. (a)(2). Pub. L. 97–35, § 2353(k), substituted in subpar. (A) ''subchapter XIX of this chapter'' for ''subchapter XIX or subchapter XX of this chapter,'' and in subpar. (B) ''subchapter XIX of this chapter'' for ''subchapter XIX or subchapter XX of this chapter''.

Subsecs. (b) to (d). Pub. L. 97–35, § 2105(b)(2)–(4), added subsec. (b), redesignated former subsecs. (b) and (c) as (c) and (d), respectively, and in subsec. (d) as so redesignated substituted ''subsection (a) or (b)'' for ''subsection (a)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4303(b) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall take effect on the date that is 45 days after the date of the enactment of this Act [Aug. 5, 1997].''

Amendments by section 4331(c) of Pub. L. 105–33 effective Aug. 5, 1997, see section 4331(f)(2) of Pub. L. 105–33, set out as a note under section 1320a–7e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 218 of Pub. L. 104–191 provided that: ''Except as otherwise provided, the amendments made by this

subtitle [subtitle B, §§211–218, of title II of Pub. L. 104–191, amending this section and sections 1320a–7b, 1320c–5, and 1395mm of this title] shall take effect January 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(9) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 206(b)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [enacting section 1320a–8 of this title and amending this section] shall apply to conduct occurring on or after October 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter, or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 4164(b)(4) of Pub. L. 101–508, set out as an Effective Date note under section 1320a–3a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6411(d)(4)[(A)] of Pub. L. 101–239 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and sections 1395y and 1396b of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360 set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 15 of Pub. L. 100–93 provided that:

''(a) IN GENERAL.—Except as provided in subsections (b), (c), (d), and (e), the amendments made by this Act [enacting sections 1395aaa and 1396r–2 of this title, amending this section, sections 704, 1320a–3, 1320a–5, 1320a–7a, 1320a–7b, 1320c–5, 1395u, 1395y, 1395cc, 1395ff, 1395nn, 1395rr, 1395ss, 1395ww, 1396a, 1396b, 1396h, 1396n, 1396s, and 1397d of this title, and section 824 of Title 21, Food and Drugs, transferring section 1396h of this title to section 1320a–7b of this title, repealing section 1395nn of this title, enacting provisions set out as a note under section 1320a–7b of this title, and amending provisions set out as a note under section 1396a of this title] shall become effective at the end of the fourteen-day period beginning on the date of the enactment of this Act [Aug. 18, 1987] and shall not apply to administrative proceedings commenced before the end of such period.

''(b) MANDATORY MINIMUM EXCLUSIONS APPLY PROSPECTIVELY.—Section 1128(c)(3)(B) of the Social Security Act [subsec. (c)(3)(B) of this section] (as amended by this Act), which requires an exclusion of not less than five years in the case of certain exclusions, shall not apply to exclusions based on convictions occurring before the date of the enactment of this Act [Aug. 18, 1987].

''(c) EFFECTIVE DATE FOR CHANGES IN MEDICAID LAW.—(1) The amendments made by sections 5 and 8(f) [enacting section 1396r–2 of this title and amending sections 1396a and 1396s of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [subchapter XIX of this chapter] for calendar quarters beginning more than thirty days after the date of the enactment of this Act [Aug. 18, 1987], without regard to whether or not final regulations to carry out such amendment have been published by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

''(3) Subsection (j) of section 1128A of the Social Security Act [section 1320a–7a(j) of this title] (as added by section 3(f) of this Act) takes effect on the date of the enactment of this Act.

''(d) PHYSICIAN MISREPRESENTATIONS.—Clauses (ii) and (iii) of section 1128A(a)(1)(C) of the Social Security Act [section 1320a–7a(a)(1)(C)(ii), (iii) of this title], as amended by section 3(a)(1) of this Act, apply to claims presented for services performed on or after the effective date specified in subsection (a), without regard to the date the misrepresentation of fact was made.

''(e) CLARIFICATION OF MEDICAID MORATORIUM.—The amendments made by section 9 of this Act [amending provisions set out as a note under section 1396a of this title] shall apply as though they were originally included in the enactment of section 2373(c) of the Deficit Reduction Act of 1984 [set out as a note under section 1396a of this title].

''(f) TREATMENT OF CERTAIN DENIALS OF PAYMENT.—For purposes of section 1128(b)(8)(B)(iii) of the Social Security Act [subsec. (b)(8)(B)(iii) of this section] (as amended by section 2 of this Act), a person shall be considered to have been excluded from participation under a program under title XVIII [subchapter XVIII of this chapter] if payment to the person has been denied under section 1862(d) of the Social Security Act [section 1395y(d) of this title], as in effect before the effective date specified in subsection (a).''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9317(d)(3) of Pub. L. 99–509 provided that: ''The provisions—

''(A) of paragraphs (1), (2), and (3) of section 1128(f) of the Social Security Act [subsec. (f)(1)–(3) of this section] (as added by the amendment made by subsection (c)) shall apply to judgments entered, findings made, and pleas entered, before, on, or after the date of the enactment of this Act [Oct. 21, 1986], and

''(B) of paragraph (4) of such section [subsec. (f)(4) of this section] shall apply to participation in a program entered into on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2333(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] become effective on the date of the enactment of this Act [July 18, 1984] and shall apply to convictions of persons occurring after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(k) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

§ 1320a–7a. Civil monetary penalties

(a) Improperly filed claims

Any person (including an organization, agency, or other entity, but excluding a beneficiary, as defined in subsection (i)(5) of this section) that—

(1) knowingly presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency (as defined in subsection (i)(1) of this section), a claim (as defined in subsection (i)(2) of this section) that the Secretary determines—

(A) is for a medical or other item or service that the person knows or should know was not provided as claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,

(B) is for a medical or other item or service and the person knows or should know the claim is false or fraudulent,

(C) is presented for a physician's service (or an item or service incident to a physician's service) by a person who knows or should know that the individual who furnished (or supervised the furnishing of) the service—

(i) was not licensed as a physician,

(ii) was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing), or

(iii) represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board when the individual was not so certified,

(D) is for a medical or other item or service furnished during a period in which the person was excluded from the program under which the claim was made pursuant to a determination by the Secretary under this section or under section 1320a–7, 1320c–5, 1320c–9(b) (as in effect on September 2, 1982), 1395y(d) (as in effect on August 18, 1987), or 1395cc(b) of this title or as a result of the application of the provisions of section 1395u(j)(2) of this title, or

(E) is for a pattern of medical or other items or services that a person knows or should know are not medically necessary;

(2) knowingly presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1395u(b)(3)(B)(ii) of this title, or (B) an agreement with a State agency (or other requirement of a State plan under subchapter XIX of this chapter) not to charge a person for an item or service in excess of the amount permitted to be charged, or (C) an agreement to be a participating physician or supplier under section 1395u(h)(1) of this title, or (D) an agreement pursuant to section 1395cc(a)(1)(G) of this title;

(3) knowingly gives or causes to be given to any person, with respect to coverage under subchapter XVIII of this chapter of inpatient hospital services subject to the provisions of section 1395ww of this title, information that he knows or should know is false or misleading, and that could reasonably be expected to influence the decision when to discharge such person or another individual from the hospital;

(4) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under subchapter XVIII of this chapter or a State health care program in accordance with this subsection or under section 1320a–7 of this title and who, at the time of a violation of this subsection—

(A) retains a direct or indirect ownership or control interest in an entity that is participating in a program under subchapter XVIII of this chapter or a State health care program, and who knows or should know of the action constituting the basis for the exclusion; or

(B) is an officer or managing employee (as defined in section 1320a–5(b) of this title) of such an entity;

(5) offers to or transfers remuneration to any individual eligible for benefits under subchapter XVIII of this chapter, or under a State health care program (as defined in section 1320a–7(h) of this title) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under subchapter XVIII of this chapter, or a State health care program (as so defined);

(6) arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program (as defined in section 1320a–7b(f) of this title), for the provision of items or services for which payment may be made under such a program; or

(7) commits an act described in paragraph (1) or (2) of section 1320a–7b(b) of this title;

shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $10,000 for each item or service (or, in cases under paragraph (3), $15,000 for each individual with respect to whom false or misleading information was given; in cases under paragraph (4), $10,000 for each day the prohibited relationship occurs; or in cases under paragraph (7), $50,000 for each such act). In addition, such a person shall be subject to an assessment of not more than 3 times the amount claimed for each such item or service in lieu of damages sustained by the United States or a State agency because of such claim (or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose). In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the Federal health care programs (as defined in section 1320a–7b(f)(1) of this title) and to direct the appropriate State agency to exclude the person

from participation in any State health care program.

(b) Payments to induce reduction or limitation of services

(1) If a hospital or a critical access hospital knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

(A) are entitled to benefits under part A or part B of subchapter XVIII of this chapter or to medical assistance under a State plan approved under subchapter XIX of this chapter, and

(B) are under the direct care of the physician,

the hospital or a critical access hospital shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each individual described in such paragraph with respect to whom the payment is made.

(3)(A) Any physician who executes a document described in subparagraph (B) with respect to an individual knowing that all of the requirements referred to in such subparagraph are not met with respect to the individual shall be subject to a civil monetary penalty of not more than the greater of—

(i) $5,000, or

(ii) three times the amount of the payments under subchapter XVIII of this chapter for home health services which are made pursuant to such certification.

(B) A document described in this subparagraph is any document that certifies, for purposes of subchapter XVIII of this chapter, that an individual meets the requirements of section 1395f(a)(2)(C) or 1395n(a)(2)(A) of this title in the case of home health services furnished to the individual.

(c) Initiation of proceeding; authorization by Attorney General, notice, etc., estoppel, failure to comply with order or procedure

(1) The Secretary may initiate a proceeding to determine whether to impose a civil money penalty, assessment, or exclusion under subsection (a) or (b) of this section only as authorized by the Attorney General pursuant to procedures agreed upon by them. The Secretary may not initiate an action under this section with respect to any claim, request for payment, or other occurrence described in this section later than six years after the date the claim was presented, the request for payment was made, or the occurrence took place. The Secretary may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) The Secretary shall not make a determination adverse to any person under subsection (a) or (b) of this section until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under subsection (a) or (b) of this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(B) involves the same transaction as in the criminal action,

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

(C) striking pleadings, in whole or in part,

(D) staying the proceedings,

(E) dismissal of the action,

(F) entering a default judgment,

(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct, and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

(d) Amount or scope of penalty, assessment, or exclusion

In determining the amount or scope of any penalty, assessment, or exclusion imposed pursuant to subsection (a) or (b) of this section, the Secretary shall take into account—

(1) the nature of claims and the circumstances under which they were presented,

(2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims, and

(3) such other matters as justice may require.

(e) Review by courts of appeals

Any person adversely affected by a determination of the Secretary under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the claim was presented, by filing in such court (within sixty days following the date the person is notified of the Secretary's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of

the court to the Secretary, and thereupon the Secretary shall file in the Court[1] the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Secretary and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be made a part of the record. The Secretary may modify his findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and he shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and his recommendations, if any, for the modification or setting aside of his original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(f) Compromise of penalties and assessments; recovery; use of funds recovered

Civil money penalties and assessments imposed under this section may be compromised by the Secretary and may be recovered in a civil action in the name of the United States brought in United States district court for the district where the claim was presented, or where the claimant resides, as determined by the Secretary. Amounts recovered under this section shall be paid to the Secretary and disposed of as follows:

(1)(A) In the case of amounts recovered arising out of a claim under subchapter XIX of this chapter, there shall be paid to the State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(B) In the case of amounts recovered arising out of a claim under an allotment to a State under subchapter V of this chapter, there shall be paid to the State agency an amount equal to three-sevenths of the amount recovered.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1395i and 1395t of this title shall be repaid to such trust funds.

(3) With respect to amounts recovered arising out of a claim under a Federal health care program (as defined in section 1320a–7b(f) of this title), the portion of such amounts as is determined to have been paid by the program shall be repaid to the program, and the portion of such amounts attributable to the amounts recovered under this section by reason of the amendments made by the Health Insurance Portability and Accountability Act of 1996 (as estimated by the Secretary) shall be deposited into the Federal Hospital Insurance Trust Fund pursuant to section 1395i(k)(2)(C) of this title.

(4) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

The amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States or a State agency to the person against whom the penalty or assessment has been assessed.

(g) Finality of determination respecting penalty, assessment, or exclusion

A determination by the Secretary to impose a penalty, assessment, or exclusion under subsection (a) or (b) of this section shall be final upon the expiration of the sixty-day period referred to in subsection (e) of this section. Matters that were raised or that could have been raised in a hearing before the Secretary or in an appeal pursuant to subsection (e) of this section may not be raised as a defense to a civil action by the United States to collect a penalty, assessment, or exclusion assessed under this section.

(h) Notification of appropriate entities of finality of determination

Whenever the Secretary's determination to impose a penalty, assessment, or exclusion under subsection (a) or (b) of this section becomes final, he shall notify the appropriate State or local medical or professional organization, the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title), and the appropriate utilization and quality control peer review organization, and the appropriate State or local licensing agency or organization (including the agency specified in section 1395aa(a) and 1396a(a)(33) of this title) that such a penalty, assessment, or exclusion has become final and the reasons therefor.

(i) Definitions

For the purposes of this section:

(1) The term ''State agency'' means the agency established or designated to administer or supervise the administration of the State plan under subchapter XIX of this chapter or designated to administer the State's program under subchapter V of this chapter or subchapter XX of this chapter.

(2) The term ''claim'' means an application for payments for items and services under a

[1] So in original. Probably should not be capitalized.

Federal health care program (as defined in section 1320a–7b(f) of this title).

(3) The term ''item or service'' includes (A) any particular item, device, medical supply, or service claimed to have been provided to a patient and listed in an itemized claim for payment, and (B) in the case of a claim based on costs, any entry in the cost report, books of account or other documents supporting such claim.

(4) The term ''agency of the United States'' includes any contractor acting as a fiscal intermediary, carrier, or fiscal agent or any other claims processing agent for a Federal health care program (as so defined).

(5) The term ''beneficiary'' means an individual who is eligible to receive items or services for which payment may be made under a Federal health care program (as so defined) but does not include a provider, supplier, or practitioner.

(6) The term ''remuneration'' includes the waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value. The term ''remuneration'' does not include—

(A) the waiver of coinsurance and deductible amounts by a person, if—

(i) the waiver is not offered as part of any advertisement or solicitation;

(ii) the person does not routinely waive coinsurance or deductible amounts; and

(iii) the person—

(I) waives the coinsurance and deductible amounts after determining in good faith that the individual is in financial need; or

(II) fails to collect coinsurance or deductible amounts after making reasonable collection efforts;

(B) subject to subsection (n) of this section, any permissible practice described in any subparagraph of section 1320a–7b(b)(3) of this title or in regulations issued by the Secretary;

(C) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all beneficiaries, third party payers, and providers, to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary not later than 180 days after August 21, 1996; or

(D)[2] incentives given to individuals to promote the delivery of preventive care as determined by the Secretary in regulations so promulgated.

(D)[2] a reduction in the copayment amount for covered OPD services under section 1395*l*(t)(5)(B)[3] of this title.

(7) The term ''should know'' means that a person, with respect to information—

(A) acts in deliberate ignorance of the truth or falsity of the information; or

(B) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

(j) Subpoenas

(1) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II of this chapter. The Secretary may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General of the Department of Health and Human Services for purposes of any investigation under this section.

(2) The Secretary may delegate authority granted under this section and under section 1320a–7 of this title to the Inspector General of the Department of Health and Human Services.

(k) Injunctions

Whenever the Secretary has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Secretary may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty if any such penalty were to be imposed or to seek other appropriate relief.

***(l)* Liability of principal for acts of agent**

A principal is liable for penalties, assessments, and an exclusion under this section for the actions of the principal's agent acting within the scope of the agency.

(m) Claims within jurisdiction of other departments or agencies

(1) For purposes of this section, with respect to a Federal health care program not contained in this chapter, references to the Secretary in this section shall be deemed to be references to the Secretary or Administrator of the department or agency with jurisdiction over such program and references to the Inspector General of the Department of Health and Human Services in this section shall be deemed to be references to the Inspector General of the applicable department or agency.

(2)(A) The Secretary and Administrator of the departments and agencies referred to in paragraph (1) may include in any action pursuant to this section, claims within the jurisdiction of other Federal departments or agencies as long as the following conditions are satisfied:

(i) The case involves primarily claims submitted to the Federal health care programs of the department or agency initiating the action.

(ii) The Secretary or Administrator of the department or agency initiating the action gives notice and an opportunity to participate in the investigation to the Inspector General of the department or agency with primary jurisdiction over the Federal health care programs to which the claims were submitted.

(B) If the conditions specified in subparagraph (A) are fulfilled, the Inspector General of the de-

[2] So in original. Two subpars. (D) have been enacted.

[3] See References in Text note below.

partment or agency initiating the action is authorized to exercise all powers granted under the Inspector General Act of 1978 (5 U.S.C. App.) with respect to the claims submitted to the other departments or agencies to the same manner and extent as provided in that Act with respect to claims submitted to such departments or agencies.

(n) Safe harbor for payment of medigap premiums

(1) Subparagraph (B) of subsection (i)(6) of this section shall not apply to a practice described in paragraph (2) unless—

(A) the Secretary, through the Inspector General of the Department of Health and Human Services, promulgates a rule authorizing such a practice as an exception to remuneration; and

(B) the remuneration is offered or transferred by a person under such rule during the 2-year period beginning on the date the rule is first promulgated.

(2) A practice described in this paragraph is a practice under which a health care provider or facility pays, in whole or in part, premiums for medicare supplemental policies for individuals entitled to benefits under part A of subchapter XVIII of this chapter pursuant to section 426–1 of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1128A, as added Pub. L. 97–35, title XXI, § 2105(a), Aug. 13, 1981, 95 Stat. 789; amended Pub. L. 97–248, title I, § 137(b)(26), Sept. 3, 1982, 96 Stat. 380; Pub. L. 98–369, div. B, title III, §§ 2306(f)(1), 2354(a)(3), July 18, 1984, 98 Stat. 1073, 1100; Pub. L. 99–509, title IX, §§ 9313(c)(1), 9317(a), (b), Oct. 21, 1986, 100 Stat. 2003, 2008; Pub. L. 100–93, § 3, Aug. 18, 1987, 101 Stat. 686; Pub. L. 100–203, title IV, §§ 4039(h)(1), 4118(e)(1), (6)–(10), Dec. 22, 1987, 101 Stat. 1330–155, as amended Pub. L. 100–360, title IV, § 411(e)(3), (k)(10)(B)(ii), (D), July 1, 1988, 102 Stat. 775, 794, 795; Pub. L. 100–360, title II, § 202(c)(2), July 1, 1988, 102 Stat. 715; Pub. L. 100–485, title VI, § 608(d)(26)(H)–(K)(i), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, § 6003(g)(3)(D)(i), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 101–508, title IV, §§ 4204(a)(3), 4207(h), formerly 4027(h), 4731(b)(1), 4753, Nov. 5, 1990, 104 Stat. 1388–109, 1388–123, 1388–195, 1388–208, renumbered § 4207(h), Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 104–191, title II, §§ 231(a)–(e), (h), 232(a), Aug. 21, 1996, 110 Stat. 2012–2015; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4304(a), (b), 4331(e), 4523(c), Aug. 5, 1997, 111 Stat. 373, 383, 396, 449; Pub. L. 105–277, div. J, title V, § 5201(a), (b)(1), Oct. 21, 1998, 112 Stat. 2681–916.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (c)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (f)(3), is Pub. L. 104–191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 201 of this title and Tables.

Section 1395*l*(t)(5)(B) of this title, referred to in subsec. (i)(6)(D), was redesignated section 1395*l*(t)(8)(B) of this title by Pub. L. 106–113, div. B, § 1000(a)(6) [title II, §§ 201(a)(1), 202(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–336, 1501A–342.

The Inspector General Act of 1978, referred to in subsec. (m)(2)(B), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1998—Subsec. (i)(6)(B). Pub. L. 105–277, § 5201(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''any permissible waiver as specified in section 1320a–7b(b)(3) of this title or in regulations issued by the Secretary;''.

Subsec. (n). Pub. L. 105–277, § 5201(b)(1), added subsec. (n).

1997—Subsec. (a). Pub. L. 105–33, § 4304(b)(2), in concluding provisions, substituted ''occurs; or in cases under paragraph (7), $50,000 for each such act).'' for ''occurs).'' and inserted ''(or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose)'' after ''of such claim''.

Subsec. (a)(6). Pub. L. 105–33, § 4304(a), added par. (6).

Subsec. (a)(7). Pub. L. 105–33, § 4304(b)(1), added par. (7).

Subsec. (b)(1). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' in introductory and concluding provisions.

Subsec. (i)(6)(A)(iii). Pub. L. 105–33, § 4331(e)(1), inserted ''or'' at end of subcl. (I), struck out ''or'' at end of subcl. (II), and struck out subcl. (III) which read as follows: ''provides for any permissible waiver as specified in section 1320a–7b(b)(3) of this title or in regulations issued by the Secretary;''.

Subsec. (i)(6)(B). Pub. L. 105–33, § 4523(c)(1), which directed amendment of par. (6) by striking ''or'' at end of subpar. (B), could not be executed because the word ''or'' did not appear at end of subpar. (B) subsequent to amendment by Pub. L. 105–33, § 4331(e)(2), (3). See below.

Pub. L. 105–33, § 4331(e)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (i)(6)(C). Pub. L. 105–33, § 4523(c)(2), which directed amendment of par. (6) by substituting ''; or'' for the period at end of subpar. (C), could not be executed because there was not a period at the end of subpar. (C) subsequent to amendment by Pub. L. 105–33, § 4331(e)(2). See below.

Pub. L. 105–33, § 4331(e)(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (i)(6)(D). Pub. L. 105–33, § 4523(c), added subpar. (D) relating to a reduction in copayment amount for covered OPD services.

Pub. L. 105–33, § 4331(e)(2), redesignated subpar. (C), relating to incentives given to individuals to promote delivery, as (D).

1996—Subsec. (a). Pub. L. 104–191, § 231(c), in concluding provisions, substituted ''$10,000'' for ''$2,000'', inserted ''; in cases under paragraph (4), $10,000 for each day the prohibited relationship occurs'' after ''false or misleading information was given'', and substituted ''3 times the amount'' for ''twice the amount''.

Pub. L. 104–191, § 231(a)(1), in concluding provisions, substituted ''Federal health care programs (as defined in section 1320a–7b(f)(1) of this title)'' for ''programs under subchapter XVIII of this chapter''.

Subsec. (a)(1). Pub. L. 104–191, § 231(d)(1)(A), inserted ''knowingly'' before ''presents'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 104–191, § 231(e)(1), substituted ''claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,'' for ''claimed,''.

Subsec. (a)(1)(E). Pub. L. 104–191, § 231(e)(2)–(4), added subpar. (E).

Subsec. (a)(2). Pub. L. 104–191, § 231(d)(1)(A), inserted ''knowingly'' before ''presents''.

Subsec. (a)(3). Pub. L. 104–191, § 231(d)(1)(B), substituted ''knowingly gives or causes to be given'' for ''gives''.

Subsec. (a)(4). Pub. L. 104–191, § 231(b), added par. (4).

Subsec. (a)(5). Pub. L. 104–191, § 231(h)(1), added par. (5).

Subsec. (b)(3). Pub. L. 104–191, § 232(a), added par. (3).

Subsec. (f)(3), (4). Pub. L. 104–191, § 231(a)(2), added par. (3) and redesignated former par. (3) as (4).

Subsec. (i)(2). Pub. L. 104–191, § 231(a)(3)(A), substituted ''a Federal health care program (as defined in section 1320a–7b(f) of this title)'' for ''subchapter V, XVIII, XIX, or XX of this chapter''.

Subsec. (i)(4). Pub. L. 104–191, § 231(a)(3)(B), substituted ''a Federal health care program (as so defined)'' for ''a health insurance or medical services program under subchapter XVIII or XIX of this chapter''.

Subsec. (i)(5). Pub. L. 104–191, § 231(a)(3)(C), substituted ''a Federal health care program (as so defined)'' for ''subchapter V, XVIII, XIX, or XX of this chapter''.

Subsec. (i)(6). Pub. L. 104–191, § 231(h)(2), added par. (6).

Subsec. (i)(7). Pub. L. 104–191, § 231(d)(2), added par. (7).

Subsec. (m). Pub. L. 104–191, § 231(a)(4), added subsec. (m).

1990—Subsec. (b)(1). Pub. L. 101–508, § 4731(b)(1), struck out ''or an entity with a contract under section 1396b(m) of this title'' before ''knowingly makes a payment'' in introductory provisions.

Pub. L. 101–508, § 4204(a)(3), struck out '', an eligible organization with a risk-sharing contract under section 1395mm of this title,'' after ''primary care hospital'' in introductory provisions, struck out ''or organization'' after ''primary care hospital'' in concluding provisions, redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''in the case of an eligible organization or an entity, are enrolled with the organization or entity, and''.

Subsec. (j). Pub. L. 101–508, § 4753, made an amendment to subsec. (j) identically to that of Pub. L. 101–508, § 4207(h). See below.

Pub. L. 101–508, § 4207(h), formerly § 4027(h), as renumbered by Pub. L. 103–432, designated existing provisions as par. (1) and added par. (2).

1989—Subsec. (a)(1)(D), (2)(C), (4). Pub. L. 101–234 repealed Pub. L. 100–360, § 202(c), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(1). Pub. L. 101–239 substituted ''hospital or a rural primary care hospital'' for ''hospital'' in introductory and concluding provisions.

1988—Subsec. (a). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(10)(A), see 1987 Amendment note below.

Subsec. (a)(1). Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), amended directory language of Pub. L. 100–203, § 4118(e)(1), see 1987 Amendment note below.

Subsec. (a)(1)(D). Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(i), added Pub. L. 100–203, § 4118(e)(6), see 1987 Amendment note below.

Pub. L. 100–360, § 202(c)(2)(A), struck out ''or'' after semicolon.

Subsec. (a)(2)(C). Pub. L. 100–360, § 202(c)(2)(B), inserted ''or to be a participating pharmacy under section 1395u(*o*) of this title'' after ''section 1395u(h)(1) of this title''.

Subsec. (a)(3). Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), made technical amendment to directory language of Pub. L. 100–203, § 4118(e)(1)(A), see 1987 Amendment note below.

Subsec. (a)(4). Pub. L. 100–360, § 202(c)(2)(C)–(E), added par. (4) relating to participating or nonparticipating pharmacies.

Subsec. (b)(1)(A). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(1)(A), see 1987 Amendment note below.

Subsec. (b)(2). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(1)(B), see 1987 Amendment note below.

Subsec. (c)(1). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(7), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(8), see 1987 Amendment note below.

Subsec. (i)(1). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(9), see 1987 Amendment note below.

Subsec. (i)(2). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(10)(B), see 1987 Amendment note below.

Subsec. (i)(5). Pub. L. 100–485, § 608(d)(26)(J), amended directory language of Pub. L. 100–203, § 4118(e)(10)(C), see 1987 Amendment note below.

Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(10)(C), see 1987 Amendment note below.

Subsec. (*l*). Pub. L. 100–485, § 608(d)(26)(I), inserted ''for penalties, assessments, and an exclusion'' after ''liable''.

Pub. L. 100–360, § 411(k)(10)(B)(ii)(III), added Pub. L. 100–203, § 4118(e)(1)(B), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, § 4118(e)(10)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted '', but excluding a beneficiary, as defined in subsection (i)(5) of this section'' in introductory provisions.

Pub. L. 100–93, § 3(a)(3)(B), in concluding provisions, inserted ''(or, in cases under paragraph (3), $15,000 for each individual with respect to whom false or misleading information was given)'' before period at end of first sentence, and inserted at end ''In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the programs under subchapter XVIII of this chapter and to direct the appropriate State agency to exclude the person from participation in any State health care program.''

Subsec. (a)(1). Pub. L. 100–203, § 4118(e)(1)(A), formerly § 4118(e)(1), as amended by Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), substituted ''or should know'' for ''or has reason to know'' in subpars. (A) to (C).

Pub. L. 100–93, § 3(a)(1), substituted ''the Secretary determines'' for ''the Secretary determines is for a medical or other item or service'' in introductory provisions and substituted subpars. (A) to (D) for former subpars. (A) and (B) which read as follows:

''(A) that the person knows or has reason to know was not provided as claimed, or

''(B) payment for which may not be made under the program under which such claim was made, pursuant to a determination by the Secretary under section 1320a–7, 1320c–9(b), or 1395y(d) of this title, or pursuant to a determination by the Secretary under section 1395cc(b)(2) of this title with respect to which the Secretary has initiated termination proceedings; or''.

Subsec. (a)(1)(D). Pub. L. 100–203, § 4118(e)(6), as added by Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(i), substituted ''excluded from'' for ''excluded under'' and inserted ''or as a result of the application of the provisions of section 1395u(j)(2) of this title''.

Subsec. (a)(2). Pub. L. 100–93, § 3(a)(2), inserted ''(or other requirement of a State plan under subchapter XIX of this chapter)'' after ''State agency'' in subpar. (B) and added subpar. (D).

Subsec. (a)(3). Pub. L. 100–203, § 4118(e)(1)(A), as amended by Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), substituted ''or should know'' for ''or has reason to know''.

Pub. L. 100–93, § 3(a)(3)(A), added par. (3).

Subsec. (b)(1)(A). Pub. L. 100–203, § 4039(h)(1)(A), as added by Pub. L. 100–360, § 411(e)(3), substituted ''subchapter XVIII'' for ''subchapter XVII''.

Subsec. (b)(2). Pub. L. 100–203, § 4039(h)(1)(B), as added by Pub. L. 100–360, § 411(e)(3), substituted ''$2,000 for each'' for ''$2,000 for''.

Subsec. (c)(1). Pub. L. 100–203, § 4118(e)(7), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted '', request for

payment, or other occurrence described in this section'' and '', the request for payment was made, or the occurrence took place''.

Pub. L. 100–93, § 3(b), (c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' and inserted provision that the Secretary not initiate an action under this section with respect to a claim later than six years after the claim was presented and that the Secretary initiate an action in the manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

Subsec. (d). Pub. L. 100–93, § 3(c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 100–93, § 3(d), substituted ''bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid'' for ''equal to the State's share of the amount paid by the State agency''.

Subsec. (g). Pub. L. 100–93, § 3(c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in two places.

Subsec. (h). Pub. L. 100–93, § 3(c), (e), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in two places and inserted ''the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title),'' after ''professional organization,''.

Subsec. (i). Pub. L. 100–203, § 4118(e)(8), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''this section'' for ''this subsection'' in introductory provisions.

Subsec. (i)(1). Pub. L. 100–203, § 4118(e)(9), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted ''or subchapter XX of this chapter''.

Subsec. (i)(2). Pub. L. 100–203, § 4118(e)(10)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''for payments for items and services under subchapter V, XVIII, XIX, or XX of this chapter'' for ''submitted by—

''(A) a provider of services or other person, agency, or organization that furnishes an item or service under subchapter XVIII of this chapter, or

''(B) a person, agency, or organization that furnishes an item or service for which medical assistance is provided under subchapter XIX of this chapter, or

''(C) a person, agency, or organization that provides an item or service for which payment is made under subchapter V of this chapter or from an allotment to a State under such subchapter,

to the United States or a State agency, or agent thereof, for payment for health care services under subchapter XVIII or XIX of this chapter or for any item or service under subchapter V of this chapter''.

Subsec. (i)(5). Pub. L. 100–203, § 4118(e)(10)(C), as added by Pub. L. 100–360, § 411(k)(10)(D), and amended by Pub. L. 100–485, § 608(d)(26)(J), added par. (5).

Subsecs. (j), (k). Pub. L. 100–93, § 3(f), added subsecs. (j) and (k).

Subsec. (*l*). Pub. L. 100–203, § 4118(e)(1)(B), as added by Pub. L. 100–360, § 411(k)(10)(B)(ii)(III), added subsec. (*l*).

1986—Subsec. (a)(1). Pub. L. 99–509, § 9313(c)(1)(B), substituted ''(i)(1)'' and ''(i)(2)'' for ''(h)(1)'' and ''(h)(2)'', respectively.

Subsec. (b). Pub. L. 99–509, § 9313(c)(1)(D), (E), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99–509, § 9313(c)(1)(A), (D), redesignated subsec. (b) as (c) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' in pars. (1) and (2). Former subsec. (c) redesignated (d).

Subsec. (c)(3). Pub. L. 99–509, § 9317(a), added par. (3).

Subsec. (c)(4). Pub. L. 99–509, § 9317(b), added par. (4).

Subsec. (d). Pub. L. 99–509, § 9313(c)(1)(A), (D), redesignated subsec. (c) as (d) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' in introductory provisions. Former subsec. (d) redesignated (e).

Subsecs. (e), (f). Pub. L. 99–509, § 9313(c)(1)(D), redesignated subsecs. (d) and (e) as (e) and (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 99–509, § 9313(c)(1)(A), (C), (D), redesignated subsec. (f) as (g) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' and ''subsection (e)'' for ''subsection (d)''. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99–509, § 9313(c)(1)(A), (D), redesignated subsec. (g) as (h) and substituted ''subsection (a) or (b)'' for ''subsection (a)''. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 99–509, § 9313(c)(1)(D), redesignated subsec. (h) as (i).

1984—Subsec. (a)(2)(C). Pub. L. 98–369, § 2306(f)(1), added cl. (C).

Subsec. (g). Pub. L. 98–369, § 2354(a)(3), substituted ''utilization and quality control peer review organization'' for ''Professional Standards Review Organization''.

1982—Subsec. (a). Pub. L. 97–248 redesignated as part of par. (1) preceding subpar. (A) provisions formerly preceding par. (1), in subpar. (B) substituted ''or pursuant to a determination by the Secretary under section 1395cc(b)(2) of this title with respect to which the Secretary has initiated termination proceedings;'' for ''or 1395cc(b)(2) of this title,'', and in par. (2) substituted ''presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1842(b)(3)(B)(ii), or (B) an agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged'' for ''is submitted in violation of an agreement between the person and the United States or a State agency''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title V, § 5201(d), Oct. 21, 1998, 112 Stat. 2681–917, provided that: ''The amendments made by this section [amending this section and section 1320a–7d of this title] shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4304(c) of Pub. L. 105–33 provided that:

''(1) CONTRACTS WITH EXCLUDED PERSONS.—The amendments made by subsection (a) [amending this section] shall apply to arrangements and contracts entered into after the date of the enactment of this Act [Aug. 5, 1997].

''(2) KICKBACKS.—The amendments made by subsection (b) [amending this section] shall apply to acts committed after the date of the enactment of this Act.''

Amendment by section 4331(e) of Pub. L. 105–33 effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, see section 4331(f) of Pub. L. 105–33, set out as a note under section 1320a–7e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 231(i) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section and sections 1320c–5 and 1395mm of this title] shall apply to acts or omissions occurring on or after January 1, 1997.''

Section 232(b) of Pub. L. 104–191 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to certifications made on or after the date of the enactment of this Act [Aug. 21, 1996].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 201(c) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section and sections 1320c–3, 1395h, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–2, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1396a, 1396b, 1396d, and 1396n of this title, repealing section 1395w–3 of this title, and amending or repealing provisions set out as notes under sections 1320c–3, 1395b–1, 1395k, 1395m, 1395u, 1395x, 1395*ll*, and 1395ww of this title] shall take effect January 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(c)(2) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(3), (k)(10)(B)(ii), (D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4118(e)(14), formerly section 4118(e)(3), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(k)(10)(B)(i), (D), July 1, 1988, 102 Stat. 794, 795, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to activities occurring before, on, or after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, except that amendment by section 3(a)(1) of Pub. L. 100–93 applicable to claims presented for services performed on or after date at end of fourteen-day period beginning Aug. 18, 1987, without regard to the date the physician's misrepresentation of fact was made, and amendment by section 3(f) of Pub. L. 100–93 effective Aug. 18, 1987, see section 15(a), (c)(3), and (d) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9313(c)(2) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4016, Dec. 22, 1987, 101 Stat. 1330–64; Pub. L. 101–239, title VI, § 6207(a), Dec. 19, 1989, 103 Stat. 2245, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to—

''(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act [Oct. 21, 1986], and

''(B) payments by eligible organizations or entities occurring on or after April 1, 1991.''

Section 9317(d)(1), (2) of Pub. L. 99–509 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986], without regard to when the criminal conviction was obtained, but shall only apply to a conviction upon a plea of nolo contendere tendered after the date of the enactment of this Act.

''(2) The amendment made by subsection (b) [amending this section] shall apply to failures or misconduct occurring on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(a)(3) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

REGULATIONS

Pub. L. 105–277, div. J, title V, § 5201(e), Oct. 21, 1998, 112 Stat. 2681–917, provided that: ''The Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment, in order to implement the amendments made by this section [amending this section and section 1320a–7d of this title] in a timely manner.''

GAO STUDY AND REPORT ON IMPACT OF SAFE HARBOR ON MEDIGAP POLICIES

Pub. L. 105–277, div. J, title V, § 5201(b)(2), Oct. 21, 1998, 112 Stat. 2681–917, provided that: ''If a permissible practice is promulgated under section 1128A(n)(1)(A) of the Social Security Act [subsec. (n)(1)(A) of this section] (as added by paragraph (1)), the Comptroller General of the United States shall conduct a study that compares any disproportionate impact on specific issuers of medicare supplemental policies (including the impact on premiums for non-ESRD medicare beneficiaries enrolled in such policies) due to adverse selection in enrolling medicare ESRD beneficiaries before the enactment of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191, Aug. 21, 1996] and 1 year after the date of promulgation of such permissible practice under section 1128A(n)(1)(A) of the Social Security Act. Not later than 18 months after the date of promulgation of such practice, the Comptroller General shall submit a report to Congress on such study and shall include in the report recommendations concerning whether the time limitation imposed under section 1128A(n)(1)(B) of such Act [subsec. (n)(1)(B) of this section] should be extended.''

REPEAL OF 1988 EXPANSION OF MEDICARE PART B BENEFITS

Section 201(a) of Pub. L. 101–234 provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), sections 201 through 208 of MCCA [sections 201 to 208 of Pub. L. 100–360, enacting section 1395w–3 of this title, amending this section and sections 1320c–3, 1395h, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–2, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1396a, 1396b, and 1396n of this title, and enacting provisions set out as notes under sections 1320c–3, 1395b–1, 1395k, 1395m, 1395u, 1395x, 1395*ll*, and 1395ww of this title] are repealed and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

''(2) EXCEPTION.—Paragraph (1) shall not apply to subsections (g) and (m)(4) of section 202 of MCCA [amending section 1395u of this title and enacting provisions set out as a note under section 1395u of this title.]''

STUDY AND REPORT ON INCENTIVE ARRANGEMENTS OFFERED TO PHYSICIANS

Section 9313(c)(3) of Pub. L. 99–509 directed Secretary of Health and Human Services to report to Congress, not later than Jan. 1, 1988, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians.

§ 1320a–7b. Criminal penalties for acts involving Federal health care programs

(a) Making or causing to be made false statements or representations

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program (as defined in subsection (f) of this section),

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

(5) presents or causes to be presented a claim for a physician's service for which payment may be made under a Federal health care program and knows that the individual who furnished the service was not licensed as a physician, or

(6) for a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a State plan under subchapter XIX of this chapter, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a Federal health care program is convicted of an offense under the preceding provisions of this subsection, the administrator of such program may at its option (notwithstanding any other provision of such program) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

(b) Illegal remunerations

(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under a Federal health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a Federal health care program;

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services;

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under a Federal health care program if—

(i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

(ii) in the case of an entity that is a provider of services (as defined in section 1395x(u) of this title), the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity;

(D) a waiver of any coinsurance under part B of subchapter XVIII of this chapter by a Feder-

ally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act [42 U.S.C. 201 et seq.];

(E) any payment practice specified by the Secretary in regulations promulgated pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 or in regulations under section 1395w–104(e)(6)[1] of this title;

(F) any remuneration between an organization and an individual or entity providing items or services, or a combination thereof, pursuant to a written agreement between the organization and the individual or entity if the organization is an eligible organization under section 1395mm of this title or if the written agreement, through a risk-sharing arrangement, places the individual or entity at substantial financial risk for the cost or utilization of the items or services, or a combination thereof, which the individual or entity is obligated to provide;

(G) the waiver or reduction by pharmacies (including pharmacies of the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations) of any cost-sharing imposed under part D of subchapter XVIII of this chapter, if the conditions described in clauses (i) through (iii) of section 1320a–7a(i)(6)(A) of this title are met with respect to the waiver or reduction (except that, in the case of such a waiver or reduction on behalf of a subsidy eligible individual (as defined in section 1395w–114(a)(3) of this title), section 1320a–7a(i)(6)(A) of this title shall be applied without regard to clauses (ii) and (iii) of that section); and

(H)[2] any remuneration between a federally qualified health center (or an entity controlled by such a health center) and an MA organization pursuant to a written agreement described in section 1395w–23(a)(4) of this title.

(H)[2] any remuneration between a health center entity described under clause (i) or (ii) of section 1396d(*l*)(2)(B) of this title and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity pursuant to a contract, lease, grant, loan, or other agreement, if such agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center entity.

(c) False statements or representations with respect to condition or operation of institutions

Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or entity in order that such institution, facility, or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity (including an eligible organization under section 1395mm(b) of this title) for which certification is required under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title), or with respect to information required to be provided under section 1320a–3a of this title, shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Illegal patient admittance and retention practices

Whoever knowingly and willfully—

(1) charges, for any service provided to a patient under a State plan approved under subchapter XIX of this chapter, money or other consideration at a rate in excess of the rates established by the State (or, in the case of services provided to an individual enrolled with a medicaid managed care organization under subchapter XIX of this chapter under a contract under section 1396b(m) of this title or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract), or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under subchapter XIX of this chapter, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)—

(A) as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded, or

(B) as a requirement for the patient's continued stay in such a facility,

when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan,

shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(e) Violation of assignment terms

Whoever accepts assignments described in section 1395u(b)(3)(B)(ii) of this title or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title and knowingly, willfully, and repeatedly violates the term of such assignments or agreement, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $2,000 or imprisoned for not more than six months, or both.

(f) "Federal health care program" defined

For purposes of this section, the term ''Federal health care program'' means—

(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of title 5); or

[1] See References in Text note below.

[2] So in original. Two subpars. (H) have been enacted.

(2) any State health care program, as defined in section 1320a–7(h) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1128B, formerly title XVIII, § 1877(d), and title XIX, § 1909, as added and amended Pub. L. 92–603, title II, §§ 242(c), 278(b)(9), Oct. 30, 1972, 86 Stat. 1419, 1454; Pub. L. 95–142, § 4(a), (b), Oct. 25, 1977, 91 Stat. 1179, 1181; Pub. L. 96–499, title IX, § 917, Dec. 5, 1980, 94 Stat. 2625; Pub. L. 98–369, div. B, title III, § 2306(f)(2), July 18, 1984, 98 Stat. 1073; renumbered title XI, § 1128B, and amended Pub. L. 100–93, §§ 4(a)–(d), 14(b), Aug. 18, 1987, 101 Stat. 688, 689, 697; Pub. L. 100–203, title IV, §§ 4039(a), 4211(h)(7), Dec. 22, 1987, 101 Stat. 1330–81, 1330–206; Pub. L. 100–360, title IV, § 411(a)(3)(A), (B)(i), July 1, 1988, 102 Stat. 768; Pub. L. 101–239, title VI, § 6003(g)(3)(D)(ii), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 101–508, title IV, §§ 4161(a)(4), 4164(b)(2), Nov. 5, 1990, 104 Stat. 1388–94, 1388–102; Pub. L. 103–432, title I, § 133(a)(2), Oct. 31, 1994, 108 Stat. 4421; Pub. L. 104–191, title II, §§ 204(a), 216(a), 217, Aug. 21, 1996, 110 Stat. 1999, 2007, 2008; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4704(b), 4734, Aug. 5, 1997, 111 Stat. 373, 498, 522; Pub. L. 108–173, title I, § 101(e)(2), (8)(A), title II, § 237(d), title IV, § 431(a), Dec. 8, 2003, 117 Stat. 2150, 2152, 2213, 2287.)

References in Text

Part B of subchapter XVIII of this chapter, referred to in subsec. (b)(3)(D), is classified to section 1395j et seq. of this title.

The Public Health Service Act, referred to in subsec. (b)(3)(D), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987, referred to in subsec. (b)(3)(E), is section 14(a) of Pub. L. 100–93, which is set out below.

Section 1395w–104(e)(6) of this title, referred to in subsec. (b)(3)(E), was in the original ''section 1860D–3(e)(6)'', and was translated as reading ''section 1860D–4(e)(6)'' to reflect the probable intent of Congress, because section 1860D–3, which is classified to section 1395w–103 of this title, does not contain a subsec. (e), and section 1395w–104(e)(6) relates to regulations.

Part D of subchapter XVIII of this chapter, referred to in subsec. (b)(3)(G), is classified to section 1395w–101 et seq. of this title.

Codification

Prior to redesignation by Pub. L. 100–93, subsecs. (a) to (d) of this section were subsecs. (a) to (d) of section 1909 of act Aug. 14, 1935, which was classified to section 1396h of this title, and subsec. (e) of this section was subsec. (d) of section 1877 of act Aug. 14, 1935, which was classified to section 1395nn of this title.

Amendments

2003—Subsec. (b)(3)(E). Pub. L. 108–173, § 101(e)(8)(A), which directed the amendment of subpar. (C) by inserting ''or in regulations under section 1395w–104(e)(6) of this title'' after ''1987'', was executed by making the insertion in subpar. (E) to reflect the probable intent of Congress because ''1987'' does not appear in subpar. (C).

Subsec. (b)(3)(G). Pub. L. 108–173, § 101(e)(2), added subpar. (G).

Subsec. (b)(3)(H). Pub. L. 108–173, § 431(a), added subpar. (H) relating to remuneration between a health center entity and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity.

Pub. L. 108–173, § 237(d), added subpar. (H) relating to remuneration between a federally qualified health center and an MA organization.

1997—Subsec. (a). Pub. L. 105–33, § 4734(2), in cl. (ii) of concluding provisions, substituted ''failure, conversion, or provision of counsel or assistance by any other person'' for ''failure, or conversion by any other person''.

Subsec. (a)(6). Pub. L. 105–33, § 4734(1), added par. (6) and struck out former par. (6) which read as follows: ''knowingly and willfully disposes of assets (including by any transfer in trust) in order for an individual to become eligible for medical assistance under a State plan under subchapter XIX of this chapter, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title,''.

Subsec. (c). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (d)(1). Pub. L. 105–33, § 4704(b), inserted ''(or, in the case of services provided to an individual enrolled with a medicaid managed care organization under subchapter XIX of this chapter under a contract under section 1396b(m) of this title or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract)'' after ''by the State''.

1996—Pub. L. 104–191, § 204(a)(1), substituted ''Federal'' for ''Medicare or State'' in section catchline.

Subsec. (a). Pub. L. 104–191, § 204(a)(4), in concluding provisions, substituted ''a Federal health care program'' for ''a State plan approved under subchapter XIX of this chapter'' and ''the administrator of such program may at its option (notwithstanding any other provision of such program)'' for ''the State may at its option (notwithstanding any other provision of that subchapter or of such plan)''.

Subsec. (a)(1). Pub. L. 104–191, § 204(a)(2), substituted ''a Federal health care program (as defined in subsection (f) of this section)'' for ''a program under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title)''.

Subsec. (a)(5). Pub. L. 104–191, § 204(a)(3), substituted ''a Federal'' for ''a program under subchapter XVIII of this chapter or a State''.

Subsec. (a)(6). Pub. L. 104–191, § 217, added par. (6).

Subsec. (b). Pub. L. 104–191, § 204(a)(5), substituted ''a Federal health care program'' for ''subchapter XVIII of this chapter or a State health care program'' wherever appearing.

Subsec. (b)(3)(F). Pub. L. 104–191, § 216(a), added subpar. (F).

Subsec. (c). Pub. L. 104–191, § 204(a)(6), inserted ''(as defined in section 1320a–7(h) of this title)'' after ''a State health care program''.

Subsec. (f). Pub. L. 104–191, § 204(a)(7), added subsec. (f).

1994—Subsec. (b)(3)(B). Pub. L. 103–432, which directed substitution of ''1395m(j)(5)'' for ''1395m(j)(4)'' in subpar. (B) as amended by section 134(a) of Pub. L. 103–432, could not be executed because ''1395m(j)(4)'' does not appear in subpar. (B) and section 134(a) of Pub. L. 103–432 did not amend this section.

1990—Subsec. (b)(3)(D), (E). Pub. L. 101–508, § 4161(a)(4), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (c). Pub. L. 101–508, § 4164(b)(2), substituted ''health care program, or with respect to information required to be provided under section 1320a–3a of this title,'' for ''health care program''.

1989—Subsec. (c). Pub. L. 101–239 inserted ''rural primary care hospital,'' after ''hospital,''.

1988—Subsec. (c). Pub. L. 100–360 made technical correction to directory language of Pub. L. 100–203, § 4039(a), see 1987 Amendment note below.

Pub. L. 100–203, § 4211(h)(7)(A), substituted ''nursing facility, intermediate care facility for the mentally retarded'' for ''intermediate care facility''.

Subsec. (d)(2)(A). Pub. L. 100–203, § 4211(h)(7)(B), substituted ''nursing facility, or intermediate care facility for the mentally retarded'' for ''skilled nursing facility, or intermediate care facility''.

1987—Pub. L. 100–93, § 4(a)(1), substituted ''Criminal penalties for acts involving Medicare or State health care programs'' for ''Offenses and penalties'' in section catchline.

Subsec. (a). Pub. L. 100–93, § 4(a)(3), (4), in concluding provisions, substituted ''made under the program'' for ''made under this subchapter'', ''approved under subchapter XIX of this chapter'' for ''approved under this subchapter'', and ''provision of that subchapter'' for ''provision of this subchapter''.

Subsec. (a)(1). Pub. L. 100–93, § 4(a)(2), substituted ''a program under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title)'' for ''a State plan approved under this subchapter''.

Subsec. (a)(5). Pub. L. 100–93, § 4(b), added par. (5).

Subsec. (b)(1)(A), (B), (2)(A), (B). Pub. L. 100–93, § 4(a)(5), substituted ''subchapter XVIII of this chapter or a State health care program'' for ''this subchapter''.

Subsec. (b)(3). Pub. L. 100–93, §§ 4(a)(5), (6), 14(b), substituted ''subchapter XVIII of this chapter or a State health care program'' for ''this subchapter'' in two places in subpar. (A) and added subpars. (C) and (D).

Subsec. (c). Pub. L. 100–203, § 4039(a), as amended by Pub. L. 100–360, substituted ''institution, facility, or entity'' for ''institution or facility'' wherever appearing and inserted ''(including an eligible organization under section 1395mm(b) of this title)'' after ''other entity''.

Pub. L. 100–93, § 4(a)(7), substituted ''home health agency, or other entity for which certification is required under subchapter XVIII of this chapter or a State health care program'' for ''or home health agency (as those terms are employed in this subchapter)''.

Subsec. (d)(1), (2). Pub. L. 100–93, § 4(a)(8), substituted ''subchapter XIX of this chapter'' for ''this subchapter''.

Subsec. (e). Pub. L. 100–93, § 4(c), redesignated subsec. (d) of section 1395nn of this title as subsec. (e) of this section.

1984—Subsec. (e). Pub. L. 98–369 inserted ''or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title'' after ''section 1395u(b)(3)(B)(ii) of this title'', and substituted ''or agreement'' for ''specified in subclause (I) of such section''.

1980—Subsec. (b)(1), (2). Pub. L. 96–499 inserted ''knowingly and willfully'' after ''Whoever''.

1977—Subsec. (a). Pub. L. 95–142, § 4(b), designated existing provisions following par. (4) as cl. (ii) and, as so designated, inserted provisions relating to activities of other persons, and inserted provisions authorizing the State to limit, restrict, or suspend, the eligibility of any convicted persons for benefits, and added cl. (i). See Codification note above.

Subsec. (b). Pub. L. 95–142, § 4(b), redesignated existing provisions as par. (1), substituted provisions relating to solicitation or receiving of any remuneration in return for referring an individual to a person for the furnishing or arranging the furnishing of any item or service, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, etc., as constituting a felony punishable by a fine of not more than $25,000 and/or imprisonment for not more than five years, for provisions relating to furnishing items or services and soliciting, offering or receiving any kickback, bribe, or rebate in connection with furnishing, etc. items or services as constituting a misdemeanor punishable by a fine of not more than $10,000 and/or imprisonment for not more than one year, and added pars. (2) and (3). See Codification note above.

Subsec. (c). Pub. L. 95–142, § 4(b), substituted provisions setting forth felony nature of criminal activities with a fine of not more than $25,000, or imprisonment for not more than five years, or both, for provisions setting forth misdemeanor nature of criminal activities with a fine of not more than $2,000, or imprisonment for not more than six months, or both. See Codification note above.

Subsec. (d). Pub. L. 95–142, § 4(b), added subsec. (d). See Codification note above.

Subsec. (e). Pub. L. 95–142, § 4(a), added subsec. (e). See Codification note above.

1972—Subsec. (c). Pub. L. 92–603, § 278(b)(9), substituted ''skilled nursing facility'' for ''skilled nursing home''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title II, § 237(e), Dec. 8, 2003, 117 Stat. 2213, provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395w–21, 1395w–23, and 1395w–27 of this title] shall apply to services provided on or after January 1, 2006, and contract years beginning on or after such date.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4704(b) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 204(b) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1997.''

Section 216(c) of Pub. L. 104–191 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to written agreements entered into on or after January 1, 1997, without regard to whether regulations have been issued to implement such amendments.''

Amendment by section 217 of Pub. L. 104–191 effective Jan. 1, 1997, except as otherwise provided, see section 218 of Pub. L. 104–191, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 133(a)(2) of Pub. L. 103–432 applicable to items or services furnished on or after Jan. 1, 1995, see section 133(c) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4161(a)(4) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4164(b)(2) of Pub. L. 101–508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 4164(b)(4) of Pub. L. 101–508, set out as an Effective Date note under section 1320a–3a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4211(h)(7) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set

out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 4(d) of Pub. L. 95–142 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to acts occurring and statements or representations made on or after the date of the enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE

Section 242(d) of Pub. L. 92–603 provided that: ''The provisions of amendments made by this section [enacting this section and section 1396h of this title and amending section 1395ii of this title] shall not be applicable to any acts, statements, or representations made or committed prior to the enactment of this Act [Oct. 30, 1972].''

RULEMAKING FOR EXCEPTION FOR HEALTH CENTER ENTITY ARRANGEMENTS

Pub. L. 108–173, title IV, § 431(b), Dec. 8, 2003, 117 Stat. 2287, provided that:

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Secretary [of Health and Human Services] shall establish, on an expedited basis, standards relating to the exception described in section 1128B(b)(3)(H) of the Social Security Act [subsec. (b)(3)(H) of this section], as added by subsection (a), for health center entity arrangements to the antikickback penalties.

''(B) FACTORS TO CONSIDER.—The Secretary shall consider the following factors, among others, in establishing standards relating to the exception for health center entity arrangements under subparagraph (A):

''(i) Whether the arrangement between the health center entity and the other party results in savings of Federal grant funds or increased revenues to the health center entity.

''(ii) Whether the arrangement between the health center entity and the other party restricts or limits an individual's freedom of choice.

''(iii) Whether the arrangement between the health center entity and the other party protects a health care professional's independent medical judgment regarding medically appropriate treatment.

The Secretary may also include other standards and criteria that are consistent with the intent of Congress in enacting the exception established under this section.

''(2) DEADLINE.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003] the Secretary shall publish final regulations establishing the standards described in paragraph (1).''

NEGOTIATED RULEMAKING FOR RISK-SHARING EXCEPTION

Section 216(b) of Pub. L. 104–191 provided that:

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter 3 [III] of chapter 5 of title 5, United States Code, standards relating to the exception for risk-sharing arrangements to the anti-kickback penalties described in section 1128B(b)(3)(F) of the Social Security Act [subsec. (b)(3)(F) of this section], as added by subsection (a).

''(B) FACTORS TO CONSIDER.—In establishing standards relating to the exception for risk-sharing arrangements to the anti-kickback penalties under subparagraph (A), the Secretary—

''(i) shall consult with the Attorney General and representatives of the hospital, physician, other health practitioner, and health plan communities, and other interested parties; and

''(ii) shall take into account—

''(I) the level of risk appropriate to the size and type of arrangement;

''(II) the frequency of assessment and distribution of incentives;

''(III) the level of capital contribution; and

''(IV) the extent to which the risk-sharing arrangement provides incentives to control the cost and quality of health care services.

''(2) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under this subsection, the Secretary shall publish the notice provided for under section 564(a) of title 5, United States Code, by not later than 45 days after the date of the enactment of this Act [Aug. 21, 1996].

''(3) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice under paragraph (2), and for purposes of this subsection, the 'target date for publication' (referred to in section 564(a)(5) of such title) shall be January 1, 1997.

''(4) ABBREVIATED PERIOD FOR SUBMISSION OF COMMENTS.—In applying section 564(c) of such title under this subsection, '15 days' shall be substituted for '30 days'.

''(5) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall provide for—

''(A) the appointment of a negotiated rulemaking committee under section 565(a) of such title by not later than 30 days after the end of the comment period provided for under section 564(c) of such title (as shortened under paragraph (4)), and

''(B) the nomination of a facilitator under section 566(c) of such title by not later than 10 days after the date of appointment of the committee.

''(6) PRELIMINARY COMMITTEE REPORT.—The negotiated rulemaking committee appointed under paragraph (5) shall report to the Secretary, by not later than October 1, 1996, regarding the committee's progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before one month before the target date for publication of the rule. If the committee reports that the committee has failed to make significant progress toward such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this subsection through such other methods as the Secretary may provide.

''(7) FINAL COMMITTEE REPORT.—If the committee is not terminated under paragraph (6), the rulemaking committee shall submit a report containing a proposed rule by not later than one month before the target publication date.

''(8) INTERIM, FINAL EFFECT.—The Secretary shall publish a rule under this subsection in the Federal Register by not later than the target publication date. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 60 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications of entities to be certified as provider-sponsored organizations pursuant to such rules and consistent with this subsection.

''(9) PUBLICATION OF RULE AFTER PUBLIC COMMENT.—The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target publication date.''

ANTI-KICKBACK REGULATIONS

Section 14(a) of Pub. L. 100–93 provided that: ''The Secretary of Health and Human Services, in consultation with the Attorney General, not later than 1 year after the date of the enactment of this Act [Aug. 18,

1987] shall publish proposed regulations, and not later than 2 years after the date of the enactment of this Act shall promulgate final regulations, specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act [subsec. (b) of this section] and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act. Any practices specified in regulations pursuant to the preceding sentence shall be in addition to the practices described in subparagraphs (A) through (C) of section 1128B(b)(3).''

§ 1320a–7c. Fraud and abuse control program

(a) Establishment of program

(1) In general

Not later than January 1, 1997, the Secretary, acting through the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General shall establish a program—

(A) to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to health plans,

(B) to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States,

(C) to facilitate the enforcement of the provisions of sections 1320a–7, 1320a–7a, and 1320a–7b of this title and other statutes applicable to health care fraud and abuse,

(D) to provide for the modification and establishment of safe harbors and to issue advisory opinions and special fraud alerts pursuant to section 1320a–7d of this title, and

(E) to provide for the reporting and disclosure of certain final adverse actions against health care providers, suppliers, or practitioners pursuant to the data collection system established under section 1320a–7e of this title.

(2) Coordination with health plans

In carrying out the program established under paragraph (1), the Secretary and the Attorney General shall consult with, and arrange for the sharing of data with representatives of health plans.

(3) Guidelines

(A) In general

The Secretary and the Attorney General shall issue guidelines to carry out the program under paragraph (1). The provisions of sections 553, 556, and 557 of title 5 shall not apply in the issuance of such guidelines.

(B) Information guidelines

(i) In general

Such guidelines shall include guidelines relating to the furnishing of information by health plans, providers, and others to enable the Secretary and the Attorney General to carry out the program (including coordination with health plans under paragraph (2)).

(ii) Confidentiality

Such guidelines shall include procedures to assure that such information is provided and utilized in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services and items.

(iii) Qualified immunity for providing information

The provisions of section 1320c–6(a) of this title (relating to limitation on liability) shall apply to a person providing information to the Secretary or the Attorney General in conjunction with their performance of duties under this section.

(4) Ensuring access to documentation

The Inspector General of the Department of Health and Human Services is authorized to exercise such authority described in paragraphs (3) through (9) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) as necessary with respect to the activities under the fraud and abuse control program established under this subsection.

(5) Authority of Inspector General

Nothing in this chapter shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

(b) Additional use of funds by Inspector General

(1) Reimbursements for investigations

The Inspector General of the Department of Health and Human Services is authorized to receive and retain for current use reimbursement for the costs of conducting investigations and audits and for monitoring compliance plans when such costs are ordered by a court, voluntarily agreed to by the payor, or otherwise.

(2) Crediting

Funds received by the Inspector General under paragraph (1) as reimbursement for costs of conducting investigations shall be deposited to the credit of the appropriation from which initially paid, or to appropriations for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of the deposit of such funds.

(c) "Health plan" defined

For purposes of this section, the term ''health plan'' means a plan or program that provides health benefits, whether directly, through insurance, or otherwise, and includes—

(1) a policy of health insurance;

(2) a contract of a service benefit organization; and

(3) a membership agreement with a health maintenance organization or other prepaid health plan.

(Aug. 14, 1935, ch. 531, title XI, § 1128C, as added Pub. L. 104–191, title II, § 201(a), Aug. 21, 1996, 110 Stat. 1992.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (a)(4), (5), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 1320a–7d. Guidance regarding application of health care fraud and abuse sanctions

(a) Solicitation and publication of modifications to existing safe harbors and new safe harbors

(1) In general

(A) Solicitation of proposals for safe harbors

Not later than January 1, 1997, and not less than annually thereafter, the Secretary shall publish a notice in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for—

(i) modifications to existing safe harbors issued pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. 1320a–7b note);

(ii) additional safe harbors specifying payment practices that shall not be treated as a criminal offense under section 1320a–7b(b) of this title and shall not serve as the basis for an exclusion under section 1320a–7(b)(7) of this title;

(iii) advisory opinions to be issued pursuant to subsection (b) of this section; and

(iv) special fraud alerts to be issued pursuant to subsection (c) of this section.

(B) Publication of proposed modifications and proposed additional safe harbors

After considering the proposals described in clauses (i) and (ii) of subparagraph (A), the Secretary, in consultation with the Attorney General, shall publish in the Federal Register proposed modifications to existing safe harbors and proposed additional safe harbors, if appropriate, with a 60-day comment period. After considering any public comments received during this period, the Secretary shall issue final rules modifying the existing safe harbors and establishing new safe harbors, as appropriate.

(C) Report

The Inspector General of the Department of Health and Human Services (in this section referred to as the ''Inspector General'') shall, in an annual report to Congress or as part of the year-end semiannual report required by section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), describe the proposals received under clauses (i) and (ii) of subparagraph (A) and explain which proposals were included in the publication described in subparagraph (B), which proposals were not included in that publication, and the reasons for the rejection of the proposals that were not included.

(2) Criteria for modifying and establishing safe harbors

In modifying and establishing safe harbors under paragraph (1)(B), the Secretary may consider the extent to which providing a safe harbor for the specified payment practice may result in any of the following:

(A) An increase or decrease in access to health care services.

(B) An increase or decrease in the quality of health care services.

(C) An increase or decrease in patient freedom of choice among health care providers.

(D) An increase or decrease in competition among health care providers.

(E) An increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

(F) An increase or decrease in the cost to Federal health care programs (as defined in section 1320a–7b(f) of this title).

(G) An increase or decrease in the potential overutilization of health care services.

(H) The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of—

(i) whether to order a health care item or service; or

(ii) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

(I) Any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in Federal health care programs (as so defined).

(b) Advisory opinions

(1) Issuance of advisory opinions

The Secretary, in consultation with the Attorney General, shall issue written advisory opinions as provided in this subsection.

(2) Matters subject to advisory opinions

The Secretary shall issue advisory opinions as to the following matters:

(A) What constitutes prohibited remuneration within the meaning of section 1320a–7b(b) of this title or section 1320a–7a(i)(6) of this title.

(B) Whether an arrangement or proposed arrangement satisfies the criteria set forth in section 1320a–7b(b)(3) of this title for activities which do not result in prohibited remuneration.

(C) Whether an arrangement or proposed arrangement satisfies the criteria which the Secretary has established, or shall establish by regulation for activities which do not result in prohibited remuneration.

(D) What constitutes an inducement to reduce or limit services to individuals entitled to benefits under subchapter XVIII of this chapter or subchapter XIX of this chapter within the meaning of section 1320a–7a(b) of this title.

(E) Whether any activity or proposed activity constitutes grounds for the imposition of a sanction under section 1320a–7, 1320a–7a, or 1320a–7b of this title.

(3) Matters not subject to advisory opinions

Such advisory opinions shall not address the following matters:

(A) Whether the fair market value shall be, or was paid or received for any goods, services or property.

(B) Whether an individual is a bona fide employee within the requirements of section 3121(d)(2) of the Internal Revenue Code of 1986.

(4) Effect of advisory opinions

(A) Binding as to Secretary and parties involved

Each advisory opinion issued by the Secretary shall be binding as to the Secretary and the party or parties requesting the opinion.

(B) Failure to seek opinion

The failure of a party to seek an advisory opinion may not be introduced into evidence to prove that the party intended to violate the provisions of sections[1] 1320a–7, 1320a–7a, or 1320a–7b of this title.

(5) Regulations

(A) In general

Not later than 180 days after August 21, 1996, the Secretary shall issue regulations to carry out this section. Such regulations shall provide for—

(i) the procedure to be followed by a party applying for an advisory opinion;

(ii) the procedure to be followed by the Secretary in responding to a request for an advisory opinion;

(iii) the interval in which the Secretary shall respond;

(iv) the reasonable fee to be charged to the party requesting an advisory opinion; and

(v) the manner in which advisory opinions will be made available to the public.

(B) Specific contents

Under the regulations promulgated pursuant to subparagraph (A)—

(i) the Secretary shall be required to issue to a party requesting an advisory opinion by not later than 60 days after the request is received; and

(ii) the fee charged to the party requesting an advisory opinion shall be equal to the costs incurred by the Secretary in responding to the request.

(6) Application of subsection

This subsection shall apply to requests for advisory opinions made on or after the date which is 6 months after August 21, 1996.

(c) Special fraud alerts

(1) In general

(A) Request for special fraud alerts

Any person may present, at any time, a request to the Inspector General for a notice which informs the public of practices which the Inspector General considers to be suspect or of particular concern under the Medicare program under subchapter XVIII of this chapter or a State health care program, as defined in section 1320a–7(h) of this title (in this subsection referred to as a ''special fraud alert'').

(B) Issuance and publication of special fraud alerts

Upon receipt of a request described in subparagraph (A), the Inspector General shall investigate the subject matter of the request to determine whether a special fraud alert should be issued. If appropriate, the Inspector General shall issue a special fraud alert in response to the request. All special fraud alerts issued pursuant to this subparagraph shall be published in the Federal Register.

(2) Criteria for special fraud alerts

In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider—

(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2) of this section; and

(B) the volume and frequency of the conduct that would be identified in the special fraud alert.

(Aug. 14, 1935, ch. 531, title XI, § 1128D, as added Pub. L. 104–191, title II, § 205, Aug. 21, 1996, 110 Stat. 2000; amended Pub. L. 105–33, title IV, § 4331(a)(1), Aug. 5, 1997, 111 Stat. 395; Pub. L. 105–277, div. J, title V, § 5201(c), Oct. 21, 1998, 112 Stat. 2681–917; Pub. L. 106–554, § 1(a)(6) [title V, § 543], Dec. 21, 2000, 114 Stat. 2763, 2763A–551.)

REFERENCES IN TEXT

Section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987, referred to in subsec. (a)(1)(A)(i), is section 14(a) of Pub. L. 100–93, which is set out as a note under section 1320a–7b of this title.

Section 5 of the Inspector General Act of 1978, referred to in subsec. (a)(1)(C), is section 5 of Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1103, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Internal Revenue Code of 1986, referred to in subsec. (b)(3)(B), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2000—Subsec. (b)(6). Pub. L. 106–554 struck out '', and before the date which is 4 years after August 21, 1996'' before period at end.

1998—Subsec. (b)(2)(A). Pub. L. 105–277 inserted ''or section 1320a–7a(i)(6) of this title'' before period at end.

1997—Subsec. (b)(2)(D). Pub. L. 105–33 substituted ''section 1320a–7a(b)'' for ''section 1320a–7b(b)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, see section 4331(f) of Pub. L. 105–33, set out as a note under section 1320a–7e of this title.

§ 1320a–7e. Health care fraud and abuse data collection program

(a) General purpose

Not later than January 1, 1997, the Secretary shall establish a national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b) of this section, with access as set forth in subsection (c) of this section, and shall maintain a database of the information collected under this section.

[1] So in original. Probably should be ''section''.

(b) Reporting of information

(1) In general

Each Government agency and health plan shall report any final adverse action (not including settlements in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner.

(2) Information to be reported

The information to be reported under paragraph (1) includes:

(A) The name and TIN (as defined in section 7701(a)(41) of the Internal Revenue Code of 1986) of any health care provider, supplier, or practitioner who is the subject of a final adverse action.

(B) The name (if known) of any health care entity with which a health care provider, supplier, or practitioner, who is the subject of a final adverse action, is affiliated or associated.

(C) The nature of the final adverse action and whether such action is on appeal.

(D) A description of the acts or omissions and injuries upon which the final adverse action was based, and such other information as the Secretary determines by regulation is required for appropriate interpretation of information reported under this section.

(3) Confidentiality

In determining what information is required, the Secretary shall include procedures to assure that the privacy of individuals receiving health care services is appropriately protected.

(4) Timing and form of reporting

The information required to be reported under this subsection shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date specified by the Secretary.

(5) To whom reported

The information required to be reported under this subsection shall be reported to the Secretary.

(6) Sanctions for failure to report

(A) Health plans

Any health plan that fails to report information on an adverse action required to be reported under this subsection shall be subject to a civil money penalty of not more than $25,000 for each such adverse action not reported. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(B) Governmental agencies

The Secretary shall provide for a publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this subsection.

(c) Disclosure and correction of information

(1) Disclosure

With respect to the information about final adverse actions (not including settlements in which no findings of liability have been made) reported to the Secretary under this section with respect to a health care provider, supplier, or practitioner, the Secretary shall, by regulation, provide for—

(A) disclosure of the information, upon request, to the health care provider, supplier, or licensed practitioner, and

(B) procedures in the case of disputed accuracy of the information.

(2) Corrections

Each Government agency and health plan shall report corrections of information already reported about any final adverse action taken against a health care provider, supplier, or practitioner, in such form and manner that the Secretary prescribes by regulation.

(d) Access to reported information

(1) Availability

The information in the database maintained under this section shall be available to Federal and State government agencies and health plans pursuant to procedures that the Secretary shall provide by regulation.

(2) Fees for disclosure

The Secretary may establish or approve reasonable fees for the disclosure of information in such database (other than with respect to requests by Federal agencies). The amount of such a fee shall be sufficient to recover the full costs of operating the database. Such fees shall be available to the Secretary or, in the Secretary's discretion to the agency designated under this section to cover such costs.

(e) Protection from liability for reporting

No person or entity, including the agency designated by the Secretary in subsection (b)(5) of this section shall be held liable in any civil action with respect to any report made as required by this section, without knowledge of the falsity of the information contained in the report.

(f) Coordination with National Practitioner Data Bank

The Secretary shall implement this section in such a manner as to avoid duplication with the reporting requirements established for the National Practitioner Data Bank under the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.).

(g) Definitions and special rules

For purposes of this section:

(1) Final adverse action

(A) In general

The term ''final adverse action'' includes:

(i) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service.

(ii) Federal or State criminal convictions related to the delivery of a health care item or service.

(iii) Actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners, including—

(I) formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation,

(II) any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or

(III) any other negative action or finding by such Federal or State agency that is publicly available information.

(iv) Exclusion from participation in Federal or State health care programs (as defined in sections 1320a–7b(f) and 1320a–7(h) of this title, respectively).

(v) Any other adjudicated actions or decisions that the Secretary shall establish by regulation.

(B) Exception

The term does not include any action with respect to a malpractice claim.

(2) Practitioner

The terms ''licensed health care practitioner'', ''licensed practitioner'', and ''practitioner'' mean, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority holds himself or herself out to be so licensed or authorized).

(3) Government agency

The term ''Government agency'' shall include:

(A) The Department of Justice.

(B) The Department of Health and Human Services.

(C) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the Department of Defense and the Department of Veterans Affairs.

(D) State law enforcement agencies.

(E) State medicaid fraud control units.

(F) Federal or State agencies responsible for the licensing and certification of health care providers and licensed health care practitioners.

(4) Health plan

The term ''health plan'' has the meaning given such term by section 1320a–7c(c) of this title.

(5) Determination of conviction

For purposes of paragraph (1), the existence of a conviction shall be determined under paragraphs (1) through (4) of section 1320a–7(i) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1128E, as added Pub. L. 104–191, title II, § 221(a), Aug. 21, 1996, 110 Stat. 2009; amended Pub. L. 105–33, title IV, § 4331(a)(2), (b), (d), Aug. 5, 1997, 111 Stat. 395, 396.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(2)(A), is classified generally to Title 26, Internal Revenue Code.

The Health Care Quality Improvement Act of 1986, referred to in subsec. (f), is title IV of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3784, as amended, which is classified generally to chapter 117 (§ 11101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11101 of this title and Tables.

AMENDMENTS

1997—Subsec. (b)(6). Pub. L. 105–33, § 4331(d), added par. (6).

Subsec. (g)(3)(C). Pub. L. 105–33, § 4331(a)(2), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (g)(5). Pub. L. 105–33, § 4331(b), substituted ''paragraphs (1) through (4)'' for ''paragraph (4)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4331(f) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 1320a–7, 1320a–7a, and 1320a–7d of this title] shall be effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191].

''(2) FEDERAL HEALTH PROGRAM.—The amendments made by subsection (c) [amending section 1320a–7 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].

''(3) SANCTION FOR FAILURE TO REPORT.—The amendment made by subsection (d) [amending this section] shall apply to failures occurring on or after the date of the enactment of this Act.''

§ 1320a–7f. Coordination of medicare and medicaid surety bond provisions

In the case of a home health agency that is subject to a surety bond requirement under subchapter XVIII of this chapter and subchapter XIX of this chapter, the surety bond provided to satisfy the requirement under one such subchapter shall satisfy the requirement under the other such subchapter so long as the bond applies to guarantee return of overpayments under both such subchapters.

(Aug. 14, 1935, ch. 531, title XI, § 1128F, as added Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 304(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–361.)

§ 1320a–8. Civil monetary penalties and assessments for subchapters II, VIII and XVI

(a) False statements or representations of material fact; proceedings to exclude; wrongful conversions by representative payees

(1) Any person (including an organization, agency, or other entity) who—

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter VIII or XVI of this chapter, that the person knows or should know is false or misleading,

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under

subchapter II of this chapter or benefits or payments under subchapter VIII or XVI of this chapter, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such statement or representation or each receipt of such benefits or payments while withholding disclosure of such fact. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation or because of such withholding of disclosure of a material fact, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation or such a withholding of disclosure. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a–7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII of this chapter.

(2) For purposes of this section, a material fact is one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under subchapter II of this chapter or subchapter VIII of this chapter, or eligible for benefits or payments under subchapter XVI of this chapter.

(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 405(j), 1007, or 1383(a)(2) of this title, a payment under subchapter II, VIII, or XVI of this chapter for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.

(b) Initiation of proceedings; hearing; sanctions

(1) The Commissioner of Social Security may initiate a proceeding to determine whether to impose a civil money penalty or assessment, or whether to recommend exclusion under subsection (a) of this section only as authorized by the Attorney General pursuant to procedures agreed upon by the Commissioner of Social Security and the Attorney General. The Commissioner of Social Security may not initiate an action under this section with respect to any violation described in subsection (a) of this section later than 6 years after the date the violation was committed. The Commissioner of Social Security may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) The Commissioner of Social Security shall not make a determination adverse to any person under this section until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal or State crime; and

(B) involves the same transaction as in the criminal action;

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, for failing to defend an action, or for such other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inference or treating such refusal as an admission by deeming the matter, or certain facts, to be established;

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(C) striking pleadings, in whole or in part;

(D) staying the proceedings;

(E) dismissal of the action;

(F) entering a default judgment;

(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct; and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

(c) Amount or scope of penalties, assessments, or exclusions

In determining pursuant to subsection (a) of this section the amount or scope of any penalty or assessment, or whether to recommend an exclusion, the Commissioner of Social Security shall take into account—

(1) the nature of the statements, representations, or actions referred to in subsection (a) of this section and the circumstances under which they occurred;

(2) the degree of culpability, history of prior offenses, and financial condition of the person committing the offense; and

(3) such other matters as justice may require.

(d) Judicial review

(1) Any person adversely affected by a determination of the Commissioner of Social Security under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the statement or representation referred to in subsection (a) of this section

was made, by filing in such court (within 60 days following the date the person is notified of the Commissioner's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner of Social Security, and thereupon the Commissioner of Social Security shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Commissioner of Social Security and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Commissioner of Social Security shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(2) The findings of the Commissioner of Social Security with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive in the review described in paragraph (1). If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commissioner of Social Security, the court may order such additional evidence to be taken before the Commissioner of Social Security and to be made a part of the record. The Commissioner of Social Security may modify such findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and the Commissioner of Social Security shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole shall be conclusive, and the Commissioner's recommendations, if any, for the modification or setting aside of the Commissioner's original order.

(3) Upon the filing of the record and the Commissioner's original or modified order with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(e) Compromise of money penalties and assessments; recovery; use of funds recovered

(1) Civil money penalties and assessments imposed under this section may be compromised by the Commissioner of Social Security and may be recovered—

(A) in a civil action in the name of the United States brought in United States district court for the district where the violation occurred, or where the person resides, as determined by the Commissioner of Social Security;

(B) by means of reduction in tax refunds to which the person is entitled, based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31;

(C)(i) by decrease of any payment of monthly insurance benefits under subchapter II of this chapter, notwithstanding section 407 of this title,

(ii) by decrease of any payment under subchapter VIII of this chapter to which the person is entitled, or

(iii) by decrease of any payment under subchapter XVI of this chapter for which the person is eligible, notwithstanding section 407 of this title, as made applicable to subchapter XVI of this chapter by reason of section 1383(d)(1) of this title;

(D) by authorities provided under the Debt Collection Act of 1982, as amended, to the extent applicable to debts arising under this chapter;

(E) by deduction of the amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, from any sum then or later owing by the United States to the person against whom the penalty or assessment has been assessed; or

(F) by any combination of the foregoing.

(2) Amounts recovered under this section shall be recovered by the Commissioner of Social Security and shall be disposed of as follows:

(A) In the case of amounts recovered arising out of a determination relating to subchapter II of this chapter, the amounts shall be transferred to the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and such amounts shall be deposited by the Managing Trustee into such Trust Fund.

(B) In the case of any other amounts recovered under this section, the amounts shall be deposited by the Commissioner of Social Security into the general fund of the Treasury as miscellaneous receipts.

(f) Finality of determination respecting penalty, assessment, or exclusion

A determination pursuant to subsection (a) of this section by the Commissioner of Social Security to impose a penalty or assessment, or to recommend an exclusion shall be final upon the expiration of the 60-day period referred to in subsection (d) of this section. Matters that were raised or that could have been raised in a hearing before the Commissioner of Social Security or in an appeal pursuant to subsection (d) of this section may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

(g) Notification of appropriate entities of finality of determination

Whenever the Commissioner's determination to impose a penalty or assessment under this section with respect to a medical provider or physician becomes final, the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in sec-

tion 1320a–7a(h) of this title of such final determination.

(h) Injunction

Whenever the Commissioner of Social Security has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Commissioner of Social Security may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty and assessment if any such penalty were to be imposed or to seek other appropriate relief.

(i) Delegation of authority

(1) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II of this chapter. The Commissioner of Social Security may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General for purposes of any investigation under this section.

(2) The Commissioner of Social Security may delegate authority granted under this section to the Inspector General.

(j) "State agency" defined

For purposes of this section, the term ''State agency'' shall have the same meaning as in section 1320a–7a(i)(1) of this title.

(k) Liability of principal for acts of agents

A principal is liable for penalties and assessments under subsection (a) of this section, and for an exclusion under section 1320a–7 of this title based on a recommendation under subsection (a) of this section, for the actions of the principal's agent acting within the scope of the agency.

(*l*) Protection of ongoing criminal investigations

As soon as the Inspector General, Social Security Administration, has reason to believe that fraud was involved in the application of an individual for monthly insurance benefits under subchapter II of this chapter or for benefits under subchapter VIII or XVI of this chapter, the Inspector General shall make available to the Commissioner of Social Security information identifying the individual, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that making the information so available in a particular investigation or redetermining the eligibility of the individual for such benefits would jeopardize the criminal prosecution of any person who is a subject of the investigation from which the information is derived.

(Aug. 14, 1935, ch. 531, title XI, § 1129, as added and amended Pub. L. 103–296, title I, § 108(b)(10)(A), title II, § 206(b)(1), (e)(1), Aug. 15, 1994, 108 Stat. 1483, 1509, 1515; Pub. L. 106–169, title II, § 251(b)(6), Dec. 14, 1999, 113 Stat. 1855; Pub. L. 108–203, title I, § 111(a), title II, § 201(a)(1), (b), (c), Mar. 2, 2004, 118 Stat. 507, 508.)

REFERENCES IN TEXT

Rule 4 of the Federal Rules of Civil Procedure, referred to in subsec. (b)(1), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Debt Collection Act of 1982, referred to in subsec. (e)(1)(D), is Pub. L. 97–365, Oct. 25, 1982, 96 Stat. 1749. For complete classification of this Act to the Code, see Short Title of 1982 Amendment note set out under section 5514 of Title 5, Government Employees and Organization, and Tables.

PRIOR PROVISIONS

A prior section 1320a–8, act Aug. 14, 1935, ch. 531, title XI, § 1129, as added Dec. 5, 1980, Pub. L. 96–499, title IX, § 914(a), 94 Stat. 2621; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(c)(4), 95 Stat. 827; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2354(a)(4), 98 Stat. 1100, related to coordinated audits, prior to repeal by Pub. L. 100–203, title IV, § 4118(m)(1)(A), (2), Dec. 22, 1987, 101 Stat. 1330–157, applicable to audits conducted after Dec. 22, 1987.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–203, § 201(a)(1), substantially rewrote par. (1). Prior to amendment, par. (1) read as follows: ''Any person (including an organization, agency, or other entity) who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

''(A) monthly insurance benefits under subchapter II of this chapter,

''(B) benefits or payments under subchapter VIII of this chapter, or

''(C) benefits or payments under subchapter XVI of this chapter,

that the person knows or should know is false or misleading or knows or should know omits a material fact or makes such a statement with knowing disregard for the truth shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such statement or representation. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a–7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII of this chapter.''

Subsec. (a)(3). Pub. L. 108–203, § 111(a), added par. (3).

Subsec. (b)(3)(A). Pub. L. 108–203, § 201(c)(1), struck out ''charging fraud or false statements'' after ''Federal or State crime''.

Subsec. (c)(1). Pub. L. 108–203, § 201(c)(2), substituted '', representations, or actions'' for ''and representations''.

Subsec. (e)(1)(A). Pub. L. 108–203, § 201(c)(3), substituted ''violation occurred'' for ''statement or representation referred to in subsection (a) of this section was made''.

Subsec. (e)(2)(B). Pub. L. 108–203, § 201(b), substituted ''In the case of any other amounts recovered under this section,'' for ''In the case of amounts recovered arising out of a determination relating to subchapter VIII or XVI of this chapter,''.

1999—Pub. L. 106–169, § 251(b)(6)(A), substituted ''II, VIII'' for ''II'' in section catchline.

Subsec. (a)(1)(B), (C). Pub. L. 106–169, § 251(b)(6)(B), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(2). Pub. L. 106–169, § 251(b)(6)(C), inserted ''or subchapter VIII of this chapter,'' after ''subchapter II of this chapter''.

Subsec. (e)(1)(C)(ii), (iii). Pub. L. 106–169, § 251(b)(6)(D), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (e)(2)(B). Pub. L. 106–169, § 251(b)(6)(E), substituted ''subchapter VIII or XVI'' for ''subchapter XVI''.

Subsec. (*l*). Pub. L. 106–169, § 251(b)(6)(F), substituted ''subchapter VIII or XVI'' for ''subchapter XVI''.

1994—Subsec. (a)(1). Pub. L. 103–296, § 108(b)(10)(A)(i), (ii), in closing provisions substituted ''Commissioner of Social Security'' for ''Secretary'', inserted ''recommend that the Secretary'' before ''exclude, as provided'', and struck out before period at end ''and to direct the appropriate State agency to exclude the person from participation in any State health care program permanently or for such period as the Secretary determines''.

Subsecs. (a)(2), (b)(1), (2), (c). Pub. L. 103–296, § 108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, § 108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Pub. L. 103–296, § 108(b)(10)(A)(i), which directed that this section be amended by substituting ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, was also executed by substituting ''Commissioner's'' for ''Secretary's'' wherever appearing in subsec. (d), to reflect the probable intent of Congress, because Pub. L. 103–296, § 108(b)(10)(A)(i), (iii)(I), substituted ''Commissioner of Social Security'' for ''Secretary'' throughout this section and in subsec. (g) substituted ''Commissioner's'' for ''Secretary's''.

Subsecs. (e), (f). Pub. L. 103–296, § 108(b)(10)(A)(i), which directed amendment of this section by substituting ''Commissioner of Social Security'' for ''Secretary'' each place it appears, was executed in subsecs. (e) and (f) by making the substitution wherever appearing except where appearing before ''of the Treasury'' in subsec. (e)(1)(B) to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 103–296, § 108(b)(10)(A)(iii), substituted ''Commissioner's'' for ''Secretary's'' and ''the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in section 1320a–7a(h) of this title of such final determination.'' for ''the provisions of section 1320a–7a(h) of this title shall apply.''

Subsecs. (h), (i). Pub. L. 103–296, § 108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (k). Pub. L. 103–296, § 108(b)(10)(A)(iv), inserted ''based on a recommendation under subsection (a) of this section'' after ''section 1320a–7 of this title''.

Subsec. (*l*). Pub. L. 103–296, § 206(e)(1), added subsec. (*l*).

Pub. L. 103–296, § 108(b)(10)(A)(i), (v), in subsec. (*l*) as added by Pub. L. 103–296, § 206(e)(1), substituted ''Social Security Administration'' for ''Department of Health and Human Services'' and ''Commissioner of Social Security'' for ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title I, § 111(b), Mar. 2, 2004, 118 Stat. 507, provided that: ''The amendment made by this section [amending this section] shall apply with respect to violations committed after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title II, § 201(d), Mar. 2, 2004, 118 Stat. 508, provided that: ''The amendments made by this section [amending this section and section 1320a–8a of this title] shall apply with respect to violations committed after the date on which the Commissioner of Social Security implements the centralized computer file described in section 202 [set out as a note under section 902 of this title].'' [The centralized computer file was implemented Nov. 27, 2006, see 72 F.R. 27424.]

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(10)(A) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 206(e)(2) of Pub. L. 103–296 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1994.''

EFFECTIVE DATE

Section applicable to conduct occurring on or after Oct. 1, 1994, see section 206(b)(3) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 1320a–7 of this title.

STUDY ON POSSIBLE MEASURES TO IMPROVE FRAUD PREVENTION AND ADMINISTRATIVE PROCESSING

Pub. L. 106–169, title II, § 210, Dec. 14, 1999, 113 Stat. 1842, provided that:

''(a) STUDY.—As soon as practicable after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration and the Attorney General, shall conduct a study of possible measures to improve—

''(1) prevention of fraud on the part of individuals entitled to disability benefits under section 223 of the Social Security Act [section 423 of this title] or benefits under section 202 of such Act [section 402 of this title] based on the beneficiary's disability, individuals eligible for supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter], and applicants for any such benefits; and

''(2) timely processing of reported income changes by individuals receiving such benefits.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report that contains the results of the Commissioner's study under subsection (a). The report shall contain such recommendations for legislative and administrative changes as the Commissioner considers appropriate.''

§ 1320a–8a. Administrative procedure for imposing penalties for false or misleading statements

(a) In general

Any person who—

(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter XVI of this chapter that the person knows or should know is false or misleading,

(2) makes such a statement or representation for such use with knowing disregard for the truth, or

(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter XVI of this chapter, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a penalty

described in subsection (b) of this section to be imposed by the Commissioner of Social Security.

(b) Penalty

The penalty described in this subsection is—

(1) nonpayment of benefits under subchapter II of this chapter that would otherwise be payable to the person; and

(2) ineligibility for cash benefits under subchapter XVI of this chapter,

for each month that begins during the applicable period described in subsection (c) of this section.

(c) Duration of penalty

The duration of the applicable period, with respect to a determination by the Commissioner under subsection (a) of this section that a person has engaged in conduct described in subsection (a) of this section, shall be—

(1) six consecutive months, in the case of the first such determination with respect to the person;

(2) twelve consecutive months, in the case of the second such determination with respect to the person; and

(3) twenty-four consecutive months, in the case of the third or subsequent such determination with respect to the person.

(d) Effect on other assistance

A person subject to a period of nonpayment of benefits under subchapter II of this chapter or ineligibility for subchapter XVI of this chapter benefits by reason of this section nevertheless shall be considered to be eligible for and receiving such benefits, to the extent that the person would be receiving or eligible for such benefits but for the imposition of the penalty, for purposes of—

(1) determination of the eligibility of the person for benefits under subchapters XVIII and XIX of this chapter; and

(2) determination of the eligibility or amount of benefits payable under subchapter II or XVI of this chapter to another person.

(e) Definition

In this section, the term ''benefits under subchapter VIII or XVI of this chapter'' includes State supplementary payments made by the Commissioner pursuant to an agreement under section 1010a or 1382e(a) of this title or section 212(b) of Public Law 93–66, as the case may be.

(f) Consultations

The Commissioner of Social Security shall consult with the Inspector General of the Social Security Administration regarding initiating actions under this section.

(Aug. 14, 1935, ch. 531, title XI, § 1129A, as added Pub. L. 106–169, title II, § 207(a), Dec. 14, 1999, 113 Stat. 1837; amended Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–74; Pub. L. 108–203, title II, § 201(a)(2), Mar. 2, 2004, 118 Stat. 508.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (e), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–203 substantially rewrote text of subsec. (a). Prior to amendment, text read as follows: ''Any person who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

''(1) monthly insurance benefits under subchapter II of this chapter; or

''(2) benefits or payments under subchapter XVI of this chapter,

that the person knows or should know is false or misleading or knows or should know omits a material fact or who makes such a statement with knowing disregard for the truth shall be subject to, in addition to any other penalties that may be prescribed by law, a penalty described in subsection (b) of this section to be imposed by the Commissioner of Social Security.''

2000—Subsec. (e). Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)(B), (D)], inserted ''1010a or'' after ''agreement under section'' and '', as the case may be'' before period at end.

Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)(C)], which directed the amendment of subsec. (e) by inserting ''1010A or'' before ''1382(e)(a)'', could not be executed because ''1382(e)(a)'' does not appear in text.

Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)(A)], which directed the amendment of subsec. (e) by inserting ''VIII or'' after ''benefits under'', was executed by making the insertion after ''benefits under subchapter'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 applicable with respect to violations committed after Nov. 27, 2006, see section 201(d) of Pub. L. 108–203, set out as a note under section 1320a–8 of this title.

EFFECTIVE DATE

Section applicable to statements and representations made on or after Dec. 14, 1999, see section 207(e) of Pub. L. 106–169, set out as an Effective Date of 1999 Amendment note under section 402 of this title.

REGULATIONS

Pub. L. 106–169, title II, § 207(d), Dec. 14, 1999, 113 Stat. 1838, provided that: ''Within 6 months after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner of Social Security shall develop regulations that prescribe the administrative process for making determinations under section 1129A of the Social Security Act [this section] (including when the applicable period in subsection (c) of such section shall commence), and shall provide guidance on the exercise of discretion as to whether the penalty should be imposed in particular cases.''

§ 1320a–8b. Attempts to interfere with administration of this chapter

Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this chapter, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this chapter, shall be fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the per-

son shall be fined not more than $3,000, imprisoned not more than 1 year, or both. In this subsection, the term ''threats of force'' means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.

(Aug. 14, 1935, ch. 531, title XI, § 1129B, as added Pub. L. 108–203, title II, § 206, Mar. 2, 2004, 118 Stat. 512.)

§ 1320a–9. Demonstration projects

(a) Authority to approve demonstration projects

(1) In general

The Secretary may authorize States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of subchapter IV of this chapter.

(2) Limitation

The Secretary may authorize not more than 10 demonstration projects under paragraph (1) in each of fiscal years 1998 through 2003.

(3) Certain types of proposals required to be considered

(A) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to identify and address barriers that result in delays to adoptive placements for children in foster care.

(B) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to identify and address parental substance abuse problems that endanger children and result in the placement of children in foster care, including through the placement of children with their parents in residential treatment facilities (including residential treatment facilities for post-partum depression) that are specifically designed to serve parents and children together in order to promote family reunification and that can ensure the health and safety of the children in such placements.

(C) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to address kinship care.

(4) Limitation on eligibility

The Secretary may not authorize a State to conduct a demonstration project under this section if the State fails to provide health insurance coverage to any child with special needs (as determined under section 673(c) of this title) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents.

(5) Requirement to consider effect of project on terms and conditions of certain court orders

In considering an application to conduct a demonstration project under this section that has been submitted by a State in which there is in effect a court order determining that the State's child welfare program has failed to comply with the provisions of part B or E of subchapter IV of this chapter, or with the Constitution of the United States, the Secretary shall take into consideration the effect of approving the proposed project on the terms and conditions of the court order related to the failure to comply.

(b) Waiver authority

The Secretary may waive compliance with any requirement of part B or E of subchapter IV of this chapter which (if applied) would prevent a State from carrying out a demonstration project under this section or prevent the State from effectively achieving the purpose of such a project, except that the Secretary may not waive—

(1) any provision of section 622(b)(8) of this title,[1] or section 679 of this title; or

(2) any provision of such part E, to the extent that the waiver would impair the entitlement of any qualified child or family to benefits under a State plan approved under such part E.

(c) Treatment as program expenditures

For purposes of parts B and E of subchapter IV of this chapter, the Secretary shall consider the expenditures of any State to conduct a demonstration project under this section to be expenditures under subpart 1 or 2 of such part B, or under such part E, as the State may elect.

(d) Duration of demonstration

A demonstration project under this section may be conducted for not more than 5 years, unless in the judgment of the Secretary, the demonstration project should be allowed to continue.

(e) Application

Any State seeking to conduct a demonstration project under this section shall submit to the Secretary an application, in such form as the Secretary may require, which includes—

(1) a description of the proposed project, the geographic area in which the proposed project would be conducted, the children or families who would be served by the proposed project, and the services which would be provided by the proposed project (which shall provide, where appropriate, for random assignment of children and families to groups served under the project and to control groups);

(2) a statement of the period during which the proposed project would be conducted;

(3) a discussion of the benefits that are expected from the proposed project (compared to a continuation of activities under the approved plan or plans of the State);

(4) an estimate of the costs or savings of the proposed project;

(5) a statement of program requirements for which waivers would be needed to permit the proposed project to be conducted;

(6) a description of the proposed evaluation design; and

(7) such additional information as the Secretary may require.

[1] So in original. The comma probably should not appear.

(f) Evaluations; report

Each State authorized to conduct a demonstration project under this section shall—

(1) obtain an evaluation by an independent contractor of the effectiveness of the project, using an evaluation design approved by the Secretary which provides for—

(A) comparison of methods of service delivery under the project, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management;

(B) comparison of outcomes for children and families (and groups of children and families) under the project, and such outcomes under a State plan or plans, for purposes of assessing the effectiveness of the project in achieving program goals; and

(C) any other information that the Secretary may require; and

(2) provide interim and final evaluation reports to the Secretary, at such times and in such manner as the Secretary may require.

(g) Cost neutrality

The Secretary may not authorize a State to conduct a demonstration project under this section unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the project over its approved term (or such portion thereof or other period as the Secretary may find appropriate) will not exceed the amount of such funds that would be expended by the State under the State plans approved under parts B and E of subchapter IV of this chapter if the project were not conducted.

(Aug. 14, 1935, ch. 531, title XI, § 1130, as added Pub. L. 103–432, title II, § 208, Oct. 31, 1994, 108 Stat. 4457; amended Pub. L. 105–89, title III, § 301(a), (c), Nov. 19, 1997, 111 Stat. 2127, 2128; Pub. L. 108–40, § 5, June 30, 2003, 117 Stat. 837; Pub. L. 109–288, § 6(f)(8), Sept. 28, 2006, 120 Stat. 1248.)

REFERENCES IN TEXT

Parts B and E of subchapter IV of this chapter, referred to in subsecs. (a) to (c) and (g), are classified to sections 620 et seq. and 670 et seq., respectively, of this title.

PRIOR PROVISIONS

A prior section 1130 of act Aug. 14, 1935, was classified to section 1320b of this title prior to repeal by Pub. L. 93–647, § 3(e)(1), Jan. 4, 1975, 88 Stat. 2349.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–288 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''any provision of section 627 of this title (as in effect before April 1, 1996), section 622(b)(9) of this title (as in effect after such date), or section 679 of this title; or''.

2003—Subsec. (a)(2). Pub. L. 108–40 substituted ''2003'' for ''2002''.

1997—Subsec. (a). Pub. L. 105–89, § 301(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary may authorize not more than 10 States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of subchapter IV of this chapter.''

Subsec. (d). Pub. L. 105–89, § 301(c), inserted before period at end '', unless in the judgment of the Secretary, the demonstration project should be allowed to continue''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under parts B and E of subchapter IV of this chapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

CONSTRUCTION OF 1997 AMENDMENT

Section 301(b) of Pub. L. 105–89 provided that: ''Nothing in the amendment made by subsection (a) [amending this section] shall be construed as affecting the terms and conditions of any demonstration project approved under section 1130 of the Social Security Act (42 U.S.C. 1320a–9) before the date of the enactment of this Act [Nov. 19, 1997].''

§ 1320a–10. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability: *Provided, however*, That this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.

(Aug. 14, 1935, ch. 531, title XI, § 1130A, as added Pub. L. 103–432, title II, § 211(a), Oct. 31, 1994, 108 Stat. 4460.)

EFFECTIVE DATE

Section 211(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to actions pending on the date of the enactment of this Act [Oct. 31, 1994] and to actions brought on or after such date of enactment.''

§ 1320b. Repealed. Pub. L. 93–647, § 3(e)(1), Jan. 4, 1975, 88 Stat. 2349

Section, act Aug. 14, 1935, ch. 531, title XI, § 1130, as added Oct. 20, 1972, Pub. L. 92–512, title III, § 301(a), 86 Stat. 945; amended July 9, 1973, Pub. L. 93–66, title II, § 221, 87 Stat. 159; Dec. 31, 1973, Pub. L. 93–233, § 18(j), 87 Stat. 970, set out limitations on funds for certain social services.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as an Effective Date of 1975 Amendment note under section 303 of this title.

SOCIAL SERVICES REGULATIONS POSTPONED

Pub. L. 93–233, § 12, Dec. 31, 1973, 87 Stat. 959, as amended by Pub. L. 93–647, § 3(g), Jan. 4, 1975, 88 Stat. 2349, provided that:

''(a) Subject to subsection (b), no regulation and no modification of any regulation, promulgated by the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter referred to as the 'Secretary') after January 1, 1973, shall be effective for any period which begins prior to October 1, 1975, if (and insofar as) such regulation or modification of a regulation pertains (directly or indirectly) to the provisions of law contained in section 3(a)(4)(A), 402(a)(19)(G), 403(a)(3)(A), 603(a)(1)(A), 1003(a)(3)(A), 1403(a)(3)(A), or 1603(a)(4)(A) of the Social Security Act [section 303(a)(4)(A), 602(a)(19)(G), 603(a)(3)(A), 803(a)(1)(A), 1203(a)(3)(A), 1353(a)(3)(A), or 1383(a)(4)(A) of this title].

''(b)(1) The provisions of subsection (a) shall not be applicable to any regulation relating to 'scope of programs', if such regulation is identical (except as provided in the succeeding sentence) to the provisions of section 221.0 of the regulations (relating to social services) proposed by the Secretary and published in the Federal Register on May 1, 1973. There shall be deleted from the first sentence of subsection (b) of such section 221.0 the phrase 'meets all the applicable requirements of this part and'.

''(2) The provisions of subsection (a) shall not be applicable to any regulation relating to 'limitations on total amount of Federal funds payable to States for services', if such regulation is identical (except as provided in the succeeding sentence) to the provisions of section 221.55 of the regulations so proposed and published on May 1, 1973. There shall be deleted from subsection (d)(1) of such section 221.55 the phrase '(as defined under day care services for children)'; and, in lieu of the sentence contained in subsection (d)(5) of such section 221.55, there shall be inserted the following: 'Services provided to a child who is under foster care in a foster family home (as defined in section 408 of the Social Security Act [section 608 of this title]) or in a childcare institution (as defined in such section [section 608 of this title]), or while awaiting placement in such a home or institution, but only if such services are needed by such child because he is under foster care.'.

''(3) The provisions of subsection (a) shall not be applicable to any regulation relating to 'rates and amounts of Federal financial participation for Puerto Rico, the Virgin Islands, and Guam', if such regulation is identical to the provisions of section 221.56 of the regulations so proposed and published on May 1, 1973.

''(4) The provisions of subsection (a) shall not be construed to preclude the Secretary from making any modification in any regulation (described in subsection (a)) if such modification is technically necessary to take account of the enactment of section 301 or 302 of the Social Security Amendments of 1972 [enacting subchapters XVI and VI of this chapter].

''(c) Notwithstanding the provisions of section 553(d) of title 5, United States Code, any regulation described in subsection (b) may become effective upon the date of its publication in the Federal Register.''

Similar provisions were contained in the following prior act: Pub. L. 93–66, title II, § 220, July 9, 1973, 87 Stat. 158.

MODIFICATION OF SOCIAL SERVICES REGULATIONS

Section 3(g) of Pub. L. 93–647 provided in part that: ''Notwithstanding the provisions of section 12(a) of Public Law 93–233 [set out as a note above], the Secretary may make any modification in any regulation described in that section if the modification is necessary to implement the provisions of this part.''

ADJUSTMENT OF ALLOTMENT TO STATE FOR FISCAL YEAR ENDING JUNE 30, 1973

Pub. L. 92–603, title IV, § 403, Oct. 30, 1972, 86 Stat. 1487, provided for the computation of the allotment of each state for the fiscal year ending June 30, 1973.

§ 1320b–1. Notification of Social Security claimant with respect to deferred vested benefits

(a) Whenever—

(1) the Commissioner of Social Security makes a finding of fact and a decision as to—

(A) the entitlement of any individual to monthly benefits under section 402, 423, or 428 of this title, or

(B) the entitlement of any individual to a lump-sum death payment payable under section 402(i) of this title on account of the death of any person to whom such individual is related by blood, marriage, or adoption,

(2) the Secretary makes a finding of fact and a decision as to the entitlement under section 426 of this title of any individual to hospital insurance benefits under part A of subchapter XVIII of this chapter, or

(3) the Commissioner of Social Security is requested to do so—

(A) by any individual with respect to whom the Commissioner of Social Security holds information obtained under section 6057 of title 26, or

(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 404(d) of this title,

the Commissioner of Social Security shall transmit to the individual referred to in paragraph (1) or (2) or the individual making the request under paragraph (3) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Commissioner of Social Security pursuant to such section 6057 with respect to the individual referred to in paragraph (1), (2), or (3)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

(b)(1) For purposes of section 401(g)(1) of this title, expenses incurred in the administration of subsection (a) of this section shall be deemed to be expenses incurred for the administration of subchapter II of this chapter.

(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Commissioner of Social Security deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1131, as added Pub. L. 93–406, title II, § 1032, Sept. 2, 1974, 88 Stat. 947; amended Pub. L. 98–369, div. B, title VI, § 2663(e)(7), July 18, 1984, 98 Stat. 1168; Pub. L. 103–296, title I, § 108(b)(11), Aug. 15, 1994, 108 Stat. 1484.)

REFERENCES IN TEXT

Part A of subchapter XVIII of this chapter, referred to in subsec. (a)(2), is classified to section 1395c et seq. of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 108(b)(11)(A), (G), in closing provisions substituted ''the Commissioner of Social Security shall transmit'' for ''he shall transmit'', ''paragraph (1) or (2)'' for ''paragraph (1)'', ''para-

graph (3)'' for ''paragraph (2)'', ''Commissioner of Social Security pursuant to'' for ''Secretary pursuant to'', and ''paragraph (1), (2), or (3)(A)'' for ''paragraph (1) or (2)(A)''.

Subsec. (a)(1). Pub. L. 103–296, § 108(b)(11)(A)–(D), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions, inserted ''or'' at end of subpar. (A), struck out ''or'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''the entitlement under section 426 of this title of any individual to hospital insurance benefits under part A of subchapter XVIII of this chapter, or''.

Subsec. (a)(2). Pub. L. 103–296, § 108(b)(11)(F), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 103–296, § 108(b)(11)(A), (E), redesignated par. (2) as (3) and substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions and in subpar. (A).

Subsec. (b)(2). Pub. L. 103–296, § 108(b)(11)(A), substituted ''Commissioner of Social Security'' for ''Secretary''.

1984—Subsec. (a). Pub. L. 98–369, § 2663(e)(7)(B), realigned margin of provisions following par. (2)(B).

Subsec. (a)(2)(B). Pub. L. 98–369, § 2663(e)(7)(A), substituted a comma for the period after ''section 404(d) of this title''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1978, see section 1034 of Pub. L. 93–406, set out as a note under section 6057 of Title 26, Internal Revenue Code.

§ 1320b–2. Period within which certain claims must be filed

(a) Claims

Notwithstanding any other provision of this chapter (but subject to subsection (b) of this section), any claim by a State for payment with respect to an expenditure made during any calendar quarter by the State—

(1) in carrying out a State plan approved under subchapter I, IV, X, XIV, XVI, XIX, or XX of this chapter, or

(2) under any other provision of this chapter which provides (on an entitlement basis) for Federal financial participation in expenditures made under State plans or programs,

shall be filed (in such form and manner as the Secretary shall by regulations prescribe) within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter; and payment shall not be made under this chapter on account of any such expenditure if claim therefor is not made within such two-year period; except that this subsection shall not be applied so as to deny payment with respect to any expenditure involving court-ordered retroactive payments or audit exceptions, or adjustments to prior year costs.

(b) Waiver

The Secretary shall waive the requirement imposed under subsection (a) of this section with respect to the filing of any claim if he determines (in accordance with regulations) that there was good cause for the failure by the State to file such claim within the period prescribed under subsection (a) of this section. Any such waiver shall be only for such additional period of time as may be necessary to provide the State with a reasonable opportunity to file such claim. A failure to file a claim within such time period which is attributable to neglect or administrative inadequacies shall be deemed not to be for good cause.

(Aug. 14, 1935, ch. 531, title XI, § 1132, as added Pub. L. 96–272, title III, § 306(a), June 17, 1980, 94 Stat. 530; amended Pub. L. 97–35, title XXI, § 2193(c)(5), Aug. 13, 1981, 95 Stat. 827.)

AMENDMENTS

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''subchapter I, IV, X'' for ''subchapter I, IV, V, X''.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Section 306(b), (c) of Pub. L. 96–272 provided that:

''(b)(1) The amendment made by subsection (a) [enacting this section] shall be effective only in the case of claims filed on account of expenditures made in calendar quarters commencing on or after October 1, 1979.

''(2) In the case of claims filed prior to the date of enactment of this Act [June 17, 1980] on account of expenditures described in section 1132 of the Social Security Act [this section] made in calendar quarters commencing prior to October 1, 1979, there shall be no time limit for the payment of such claims.

''(3) In the case of such expenditures made in calendar quarters commencing prior to October 1, 1979, for which no claim has been filed on or before the date of enactment of this Act, payment shall not be made under this Act on account of any such expenditure unless claim therefor is filed (in such form and manner as the Secretary shall by regulation prescribe) prior to January 1, 1981.

''(4) The provisions of this subsection shall not be applied so as to deny payment with respect to any expenditure involving adjustments to prior year costs or court-ordered retroactive payments or audit exceptions. The Secretary may waive the requirements of paragraph (3) in the same manner as under section 1132(b) of the Social Security Act [subsec. (b)(3) of this section].

''(c) Notwithstanding any other provision of law, there shall be no time limit for the filing or payment of such claims except as provided in this section, unless such other provision of law, in imposing such a time limitation, specifically exempts such filing or payment from the provisions of this section.''

§ 1320b–3. Applicants or recipients under public assistance programs not to be required to make election respecting certain veterans' benefits

(a) Supplemental Security Income program

Notwithstanding any other provision of law (but subject to subsection (b) of this section), no individual who is an applicant for or recipient of aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or of benefits under the Supplemental Secu-

rity Income program established by subchapter XVI of this chapter shall—

(1) be required, as a condition of eligibility for (or of continuing to receive) such aid, assistance, or benefits, to make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 with respect to pension paid by the Secretary of Veterans Affairs, or

(2) by reason of failure or refusal to make such an election, be denied (or suffer a reduction in the amount of) such aid, assistance, or benefits.

(b) Period of effectiveness

The provisions of subsection (a) of this section shall be applicable only with respect to an individual, who is an applicant for or recipient of aid, assistance, or benefits described in subsection (a) of this section, during a period with respect to which there is in effect—

(1) in case such individual is an applicant for or recipient of aid or assistance under a State plan referred to in subsection (a) of this section, in the State having such plan, or

(2) in case such individual is an applicant for or recipient of benefits under the Supplemental Security Income program established by subchapter XVI of this chapter, in the State in which the individual applies for or receives such benefits,

a State plan for medical assistance, approved under subchapter XIX of this chapter, under which medical assistance is available to such individual only for periods for which such individual is a recipient of aid, assistance, or benefits described in subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1133, as added Pub. L. 96–272, title III, § 310(a)(1), June 17, 1980, 94 Stat. 532; amended Pub. L. 102–54, § 13(q)(3)(B)(iii), June 13, 1991, 105 Stat. 279; Pub. L. 104–193, title I, § 108(g)(6), Aug. 22, 1996, 110 Stat. 2168.)

REFERENCES IN TEXT

Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, referred to in subsec. (a)(1), is section 306 of Pub. L. 95–588, title III, Nov. 4, 1978, 92 Stat. 2508, which is set out as a note under section 1521 of Title 38, Veterans' Benefits.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–193 substituted ''subchapter I, X, XIV, or XVI of this chapter,'' for ''subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter,''.

1991—Subsec. (a)(1). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE

Section 310(a)(2) of Pub. L. 96–272 provided that: ''The amendment made by paragraph (1) [enacting this section] shall be effective on and after January 1, 1979; except that nothing contained in such amendment shall be construed to authorize or require any payment (or increase in payment) of any aid or assistance or benefits referred to in section 1133(a) of the Social Security Act [subsec. (a) of this section] (as added by paragraph (1)) for any benefit period which begins prior to the date of enactment of this Act [June 17, 1980].''

CONTINUING MEDICAID ELIGIBILITY FOR CERTAIN RECIPIENTS OF VETERANS' ADMINISTRATION PENSIONS

Section 310(b)(2) of Pub. L. 96–272 provided that:

''(A) The Administrator shall provide to each individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [this section] applies and who is eligible to make or has made an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38, Veterans' Benefits], a written notice, in clear and understandable language, which (i) describes the consequences to such individual (and possibly to such individual's family), in terms of a determination or possible determination of ineligibility for medical assistance under a State plan approved under title XIX of the Social Security Act [subchapter XIX of this chapter], of making an election with respect to pension under such section 306, (ii) describes the provisions of subparagraph (B) of this paragraph and subsection (a) of this section, (iii) sets forth other relevant information that would be helpful to such individual in making an informed decision concerning such an election or the disaffirmation thereof, and (iv) in the case of any individual who has made such an election, is accompanied by a form prepared for the purpose of enabling such individual to file with the Administrator a written disaffirmation of such an election.

''(B) Notwithstanding any other provision of law—

''(i) any individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [this section] applies may, within the 90-day period beginning with the day that there is mailed to such individual (at such individual's last known mailing address) a notice referred to in subparagraph (A), disaffirm an election previously made by such individual under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38] by completing and mailing to the Administrator the form furnished such individual for such purpose by the Administrator pursuant to subparagraph (A),

''(ii) whenever any such individual files such a disaffirmation with the Administrator, the amount of pension payable to such individual shall be adjusted, beginning with the first calendar month which commences after the receipt by the Administrator of such disaffirmation, to the amount that such pension would have been if such an election by such individual had not been made,

''(iii) any individual who has filed a disaffirmation, pursuant to this subparagraph, of an election made by such individual under such section 306 may again make an election thereunder, but such subsequent election may not be disaffirmed under this subsection, and

''(iv) no indebtedness to the United States, as a result of the disaffirmation by an individual, pursuant to this subparagraph, of an election made by such individual under such section 306 shall be considered to arise from the payment of pension pursuant to such an election.

''(C) The Administrator shall promptly advise the Secretary of Health, Education, and Welfare [now Health and Human Services], and provide identification of the individuals involved and other pertinent information with respect to (i) disaffirmations of elections

made by individuals pursuant to subparagraph (B), (ii) individuals who, by failing to disaffirm within the 90-day period prescribed in subparagraph (B), are deemed to have reaffirmed elections previously made, and (iii) individuals who, after having disaffirmed an election under subparagraph (B), subsequently again make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38]. The Secretary, upon receipt of any such information with respect to an individual, shall promptly notify the appropriate agencies administering State plans approved under title I, X, XIV, XIX, and part A of title IV of the Social Security Act [subchapters I, X, XIV, XIX, and part A of subchapter IV of this chapter], and State agencies making supplemental payments pursuant to section 1616 of such Act [section 1382e of this title] or an agreement entered into pursuant to section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title].''

§ 1320b–4. Nonprofit hospital or critical access hospital philanthropy

For purposes of determining, under subchapters XVIII and XIX of this chapter, the reasonable costs of services provided by nonprofit hospitals or critical access hospitals, the following items shall not be deducted from the operating costs of such hospitals or critical access hospitals:

(1) A grant, gift, or endowment, or income therefrom, which is to or for such a hospital and which has not been designated by the donor for paying any specific operating costs.

(2) A grant or similar payment which is to such a hospital, which was made by a governmental entity, and which is not available under the terms of the grant or payment for use as operating funds.

(3) Those types of donor designated grants and gifts (including grants and similar payments which are made by a governmental entity), and income therefrom, which the Secretary determines, in the best interests of needed health care, should be encouraged.

(4) The proceeds from the sale or mortgage of any real estate or other capital asset of such a hospital, which real estate or asset the hospital acquired through gift or grant, if such proceeds are not available for use as operating funds under the terms of the gift or grant.

Paragraph (4) shall not apply to the recovery of the appropriate share of depreciation when gains or losses are realized from the disposal of depreciable assets.

(Aug. 14, 1935, ch. 531, title XI, § 1134, as added Pub. L. 96–499, title IX, § 901(a), Dec. 5, 1980, 94 Stat. 2611; amended Pub. L. 97–35, title XXI, § 2193(c)(6), Aug. 13, 1981, 95 Stat. 827; Pub. L. 97–248, title I, § 137(b)(5), Sept. 3, 1982, 96 Stat. 377; Pub. L. 101–239, title VI, § 6003(g)(3)(D)(iii), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 105–33, title IV, § 4201(c)(1), Aug. 5, 1997, 111 Stat. 373.)

AMENDMENTS

1997—Pub. L. 105–33 substituted ''critical access'' for ''rural primary care'' in two places in introductory provisions.

1989—Pub. L. 101–239 substituted ''hospitals or rural primary care hospitals'' for ''hospitals'' in two places in introductory provisions.

1982—Par. (4). Pub. L. 97–248 substituted ''sale'' for ''scale''.

1981—Pub. L. 97–35 substituted ''subchapters XVIII and'' for ''subchapters V, XVIII, and'' in provision preceding par. (1).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Section 901(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to grants, gifts, and endowments, and income therefrom, made or established after the date of the enactment of this Act [Dec. 5, 1980].''

§ 1320b–5. Authority to waive requirements during national emergencies

(a) Purpose

The purpose of this section is to enable the Secretary to ensure to the maximum extent feasible, in any emergency area and during an emergency period (as defined in subsection (g)(1) of this section)—

(1) that sufficient health care items and services are available to meet the needs of individuals in such area enrolled in the programs under subchapters XVIII, XIX, and XXI of this chapter; and

(2) that health care providers (as defined in subsection (g)(2) of this section) that furnish such items and services in good faith, but that are unable to comply with one or more requirements described in subsection (b) of this section, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

(b) Secretarial authority

To the extent necessary to accomplish the purpose specified in subsection (a) of this section, the Secretary is authorized, subject to the provisions of this section, to temporarily waive or modify the application of, with respect to health care items and services furnished by a health care provider (or classes of health care providers) in any emergency area (or portion of such an area) during any portion of an emergency period, the requirements of subchapters XVIII, XIX, or XXI of this chapter, or any regulation thereunder (and the requirements of this subchapter other than this section, and regulations thereunder, insofar as they relate to such subchapters), pertaining to—

(1)(A) conditions of participation or other certification requirements for an individual health care provider or types of providers,

(B) program participation and similar requirements for an individual health care provider or types of providers, and

(C) pre-approval requirements;

(2) requirements that physicians and other health care professionals be licensed in the State in which they provide such services, if they have equivalent licensing in another State and are not affirmatively excluded from practice in that State or in any State a part of which is included in the emergency area;

(3) actions under section 1395dd of this title (relating to examination and treatment for emergency medical conditions and women in labor) for—

(A) a transfer of an individual who has not been stabilized in violation of subsection (c) of such section if the transfer is necessitated by the circumstances of the declared emergency in the emergency area during the emergency period; or

(B) the direction or relocation of an individual to receive medical screening in an alternative location—

(i) pursuant to an appropriate State emergency preparedness plan; or

(ii) in the case of a public health emergency described in subsection (g)(1)(B) that involves a pandemic infectious disease, pursuant to a State pandemic preparedness plan or a plan referred to in clause (i), whichever is applicable in the State;

(4) sanctions under section 1395nn(g) of this title (relating to limitations on physician referral);

(5) deadlines and timetables for performance of required activities, except that such deadlines and timetables may only be modified, not waived;

(6) limitations on payments under section 1395w–21(i) of this title for health care items and services furnished to individuals enrolled in a Medicare+Choice plan by health care professionals or facilities not included under such plan; and

(7) sanctions and penalties that arise from noncompliance with the following requirements (as promulgated under the authority of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note)—[1]

(A) section 164.510 of title 45, Code of Federal Regulations, relating to—

(i) requirements to obtain a patient's agreement to speak with family members or friends; and

(ii) the requirement to honor a request to opt out of the facility directory;

(B) section 164.520 of such title, relating to the requirement to distribute a notice; or

(C) section 164.522 of such title, relating to—

(i) the patient's right to request privacy restrictions; and

(ii) the patient's right to request confidential communications.

Insofar as the Secretary exercises authority under paragraph (6) with respect to individuals enrolled in a Medicare+Choice plan, to the extent possible given the circumstances, the Secretary shall reconcile payments made on behalf of such enrollees to ensure that the enrollees do not pay more than would be required had they received services from providers within the network of the plan and may reconcile payments to the organization offering the plan to ensure that such organization pays for services for which payment is included in the capitation payment it receives under part C of subchapter XVIII of this chapter. A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and, except in the case of a waiver or modification to which the fifth sentence of this subsection applies, shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider. If a public health emergency described in subsection (g)(1)(B) involves a pandemic infectious disease (such as pandemic influenza), the duration of a waiver or modification under paragraph (3) shall be determined in accordance with subsection (e) as such subsection applies to public health emergencies.

(c) Authority for retroactive waiver

A waiver or modification of requirements pursuant to this section may, at the Secretary's discretion, be made retroactive to the beginning of the emergency period or any subsequent date in such period specified by the Secretary.

(d) Certification to Congress

The Secretary shall provide a certification and advance written notice to the Congress at least two days before exercising the authority under this section with respect to an emergency area. Such a certification and notice shall include—

(1) a description of—

(A) the specific provisions that will be waived or modified;

(B) the health care providers to whom the waiver or modification will apply;

(C) the geographic area in which the waiver or modification will apply; and

(D) the period of time for which the waiver or modification will be in effect; and

(2) a certification that the waiver or modification is necessary to carry out the purpose specified in subsection (a) of this section.

(e) Duration of waiver

(1) In general

A waiver or modification of requirements pursuant to this section terminates upon—

(A) the termination of the applicable declaration of emergency or disaster described in subsection (g)(1)(A) of this section;

(B) the termination of the applicable declaration of public health emergency described in subsection (g)(1)(B) of this section; or

(C) subject to paragraph (2), the termination of a period of 60 days from the date

[1] So in original. A second closing parenthesis probably should precede the dash.

the waiver or modification is first published (or, if applicable, the date of extension of the waiver or modification under paragraph (2)).

(2) Extension of 60-day periods

The Secretary may, by notice, provide for an extension of a 60-day period described in paragraph (1)(C) (or an additional period provided under this paragraph) for additional period or periods (not to exceed, except as subsequently provided under this paragraph, 60 days each), but any such extension shall not affect or prevent the termination of a waiver or modification under subparagraph (A) or (B) of paragraph (1).

(f) Report to Congress

Within one year after the end of the emergency period in an emergency area in which the Secretary exercised the authority provided under this section, the Secretary shall report to the Congress regarding the approaches used to accomplish the purposes described in subsection (a) of this section, including an evaluation of such approaches and recommendations for improved approaches should the need for such emergency authority arise in the future.

(g) Definitions

For purposes of this section:

(1) Emergency area; emergency period

An ''emergency area'' is a geographical area in which, and an ''emergency period'' is the period during which, there exists—

(A) an emergency or disaster declared by the President pursuant to the National Emergencies Act [50 U.S.C. 1601 et seq.] or the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.]; and

(B) a public health emergency declared by the Secretary pursuant to section 247d of this title.

(2) Health care provider

The term ''health care provider'' means any entity that furnishes health care items or services, and includes a hospital or other provider of services, a physician or other health care practitioner or professional, a health care facility, or a supplier of health care items or services.

(Aug. 14, 1935, ch. 531, title XI, § 1135, as added Pub. L. 107–188, title I, § 143(a), June 12, 2002, 116 Stat. 627; amended Pub. L. 108–276, § 9, July 21, 2004, 118 Stat. 863; Pub. L. 109–417, title III, § 302(b)(1), Dec. 19, 2006, 120 Stat. 2855.)

REFERENCES IN TEXT

Part C of subchapter XVIII of this chapter, referred to in subsec. (b), is classified to section 1395w–21 et seq. of this title.

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (b)(7), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

The National Emergencies Act, referred to in subsec. (g)(1)(A), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (g)(1)(A), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

PRIOR PROVISIONS

A prior section 1320b–5, act Aug. 14, 1935, ch. 531, title XI, § 1135, as added Pub. L. 97–35, title XXI, § 2173(c), Aug. 13, 1981, 95 Stat. 809; amended Pub. L. 97–248, title I, § 101(b)(3), Sept. 3, 1982, 96 Stat. 335; Pub. L. 99–509, title IX, § 9343(f), Oct. 21, 1986, 100 Stat. 2041; Pub. L. 100–203, title IV, § 4068(b), Dec. 22, 1987, 101 Stat. 1330–114; Pub. L. 100–360, title IV, § 411(g)(6), July 1, 1988, 102 Stat. 785; Pub. L. 103–432, title I, § 147(c)(2), Oct. 31, 1994, 108 Stat. 4429, related to development of model prospective rate methodology, prior to repeal by Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(*l*)], Nov. 29, 1999, 113 Stat. 1536, 1501A–368, effective Nov. 29, 1999.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–417, § 302(b)(1)(B), (C), in concluding provisions, substituted ''and, except in the case of a waiver or modification to which the fifth sentence of this subsection applies, shall be limited to'' for ''and shall be limited to'' and inserted at end ''If a public health emergency described in subsection (g)(1)(B) involves a pandemic infectious disease (such as pandemic influenza), the duration of a waiver or modification under paragraph (3) shall be determined in accordance with subsection (e) as such subsection applies to public health emergencies.''

Subsec. (b)(3)(B). Pub. L. 109–417, § 302(b)(1)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the direction or relocation of an individual to receive medical screening in an alternate location pursuant to an appropriate State emergency preparedness plan;''.

2004—Subsec. (b). Pub. L. 108–276, § 9(5), inserted at end of concluding provisions: ''A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider.''

Subsec. (b)(3). Pub. L. 108–276, § 9(1), added par. (3) and struck out former par. (3) which read as follows: ''sanctions under section 1395dd of this title (relating to examination and treatment for emergency medical conditions and women in labor) for a transfer of an individual who has not been stabilized in violation of subsection (c) of this section of such section if the transfer arises out of the circumstances of the emergency;''.

Subsec. (b)(7). Pub. L. 108–276, § 9(2)–(4), added par. (7).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–417, title III, § 302(b)(2), Dec. 19, 2006, 120 Stat. 2856, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 2006] and shall apply to public health emergencies declared pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) on or after such date.''

EFFECTIVE DATE

Pub. L. 107–188, title I, § 143(b), June 12, 2002, 116 Stat. 629, provided that: ''The amendment made by subsection (a) [enacting this section] shall be effective on and after September 11, 2001.''

§ 1320b–6. Exclusion of representatives and health care providers convicted of violations from participation in social security programs

(a) In general

The Commissioner of Social Security shall exclude from participation in the social security programs any representative or health care provider—

(1) who is convicted of a violation of section 408 or 1383a of this title;

(2) who is convicted of any violation under title 18 relating to an initial application for or continuing entitlement to, or amount of, benefits under subchapter II of this chapter, or an initial application for or continuing eligibility for, or amount of, benefits under subchapter XVI of this chapter; or

(3) who the Commissioner determines has committed an offense described in section 1320a–8(a)(1) of this title.

(b) Notice, effective date, and period of exclusion

(1) An exclusion under this section shall be effective at such time, for such period, and upon such reasonable notice to the public and to the individual excluded as may be specified in regulations consistent with paragraph (2).

(2) Such an exclusion shall be effective with respect to services furnished to any individual on or after the effective date of the exclusion. Nothing in this section may be construed to preclude, in determining disability under subchapter II of this chapter or subchapter XVI of this chapter, consideration of any medical evidence derived from services provided by a health care provider before the effective date of the exclusion of the health care provider under this section.

(3)(A) The Commissioner shall specify, in the notice of exclusion under paragraph (1), the period of the exclusion.

(B) Subject to subparagraph (C), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be 5 years, except that the Commissioner may waive the exclusion in the case of an individual who is the sole source of essential services in a community. The Commissioner's decision whether to waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual under subsection (a) of this section based on a conviction or a determination described in subsection (a)(3) of this section occurring on or after December 14, 1999, if the individual has (before, on, or after December 14, 1999) been convicted, or if such a determination has been made with respect to the individual—

(i) on one previous occasion of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be not less than 10 years; or

(ii) on two or more previous occasions of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be permanent.

(c) Notice to State agencies

The Commissioner shall promptly notify each appropriate State agency employed for the purpose of making disability determinations under section 421 or 1383b(a) of this title—

(1) of the fact and circumstances of each exclusion effected against an individual under this section; and

(2) of the period (described in subsection (b)(3) of this section) for which the State agency is directed to exclude the individual from participation in the activities of the State agency in the course of its employment.

(d) Notice to State licensing agencies

The Commissioner shall—

(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual excluded from participation under this section of the fact and circumstances of the exclusion;

(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy; and

(3) request that the State or local agency or authority keep the Commissioner and the Inspector General of the Social Security Administration fully and currently informed with respect to any actions taken in response to the request.

(e) Notice, hearing, and judicial review

(1) Any individual who is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Commissioner to the same extent as is provided in section 405(b) of this title, and to judicial review of the Commissioner's final decision after such hearing as is provided in section 405(g) of this title.

(2) The provisions of section 405(h) of this title shall apply with respect to this section to the same extent as it is applicable with respect to subchapter II of this chapter.

(f) Application for termination of exclusion

(1) An individual excluded from participation under this section may apply to the Commissioner, in the manner specified by the Commissioner in regulations and at the end of the minimum period of exclusion provided under subsection (b)(3) of this section and at such other times as the Commissioner may provide, for termination of the exclusion effected under this section.

(2) The Commissioner may terminate the exclusion if the Commissioner determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Commissioner at the time of the exclusion, that—

(A) there is no basis under subsection (a) of this section for a continuation of the exclusion; and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Commissioner shall promptly notify each State agency employed for the purpose of

making disability determinations under section 421 or 1383b(a) of this title of the fact and circumstances of each termination of exclusion made under this subsection.

(g) Availability of records of excluded representatives and health care providers

Nothing in this section shall be construed to have the effect of limiting access by any applicant or beneficiary under subchapter II or XVI of this chapter, any State agency acting under section 421 or 1383b(a) of this title, or the Commissioner to records maintained by any representative or health care provider in connection with services provided to the applicant or beneficiary prior to the exclusion of such representative or health care provider under this section.

(h) Reporting requirement

Any representative or health care provider participating in, or seeking to participate in, a social security program shall inform the Commissioner, in such form and manner as the Commissioner shall prescribe by regulation, whether such representative or health care provider has been convicted of a violation described in subsection (a) of this section.

(i) Delegation of authority

The Commissioner may delegate authority granted by this section to the Inspector General.

(j) Definitions

For purposes of this section:

(1) Exclude

The term ''exclude'' from participation means—

(A) in connection with a representative, to prohibit from engaging in representation of an applicant for, or recipient of, benefits, as a representative payee under section 405(j) or section 1383(a)(2)(A)(ii) of this title, or otherwise as a representative, in any hearing or other proceeding relating to entitlement to benefits; and

(B) in connection with a health care provider, to prohibit from providing items or services to an applicant for, or recipient of, benefits for the purpose of assisting such applicant or recipient in demonstrating disability.

(2) Social security program

The term ''social security programs'' means the program providing for monthly insurance benefits under subchapter II of this chapter, and the program providing for monthly supplemental security income benefits to individuals under subchapter XVI of this chapter (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66).

(3) Convicted

An individual is considered to have been ''convicted'' of a violation—

(A) when a judgment of conviction has been entered against the individual by a Federal, State, or local court, except if the judgment of conviction has been set aside or expunged;

(B) when there has been a finding of guilt against the individual by a Federal, State, or local court;

(C) when a plea of guilty or nolo contendere by the individual has been accepted by a Federal, State, or local court; or

(D) when the individual has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(Aug. 14, 1935, ch. 531, title XI, § 1136, as added Pub. L. 106–169, title II, § 208(a), Dec. 14, 1999, 113 Stat. 1839.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (j)(2), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

PRIOR PROVISIONS

A prior section 1320b–6, act Aug. 14, 1935, ch. 531, title XI, § 1136, as added Pub. L. 98–369, div. B, title VI, § 2630, July 18, 1984, 98 Stat. 1137; amended Pub. L. 99–514, title XVIII, § 1883(c)(2), Oct. 22, 1986, 100 Stat. 2918, related to pilot projects to demonstrate use of integrated service delivery systems for human services programs, prior to repeal by Pub. L. 104–193, title I, §§ 108(q)(7), 116, Aug. 22, 1996, 110 Stat. 2168, 2181, effective July 1, 1997, with certain transition rules.

EFFECTIVE DATE

Pub. L. 106–169, title II, § 208(b), Dec. 14, 1999, 113 Stat. 1842, provided that: ''The amendment made by this section [enacting this section] shall apply with respect to convictions of violations described in paragraphs (1) and (2) of section 1136(a) of the Social Security Act [subsec. (a) of this section] and determinations described in paragraph (3) of such section occurring on or after the date of the enactment of this Act [Dec. 14, 1999].''

§ 1320b–7. Income and eligibility verification system

(a) Requirements of State eligibility systems

In order to meet the requirements of this section, a State must have in effect an income and eligibility verification system which meets the requirements of subsection (d) of this section and under which—

(1) the State shall require, as a condition of eligibility for benefits under any program listed in subsection (b) of this section, that each applicant for or recipient of benefits under that program furnish to the State his social security account number (or numbers, if he has more than one such number), and the State shall utilize such account numbers in the administration of that program so as to enable the association of the records pertaining to the applicant or recipient with his account number;

(2) wage information from agencies administering State unemployment compensation laws available pursuant to section 3304(a)(16) of the Internal Revenue Code of 1986, wage information reported pursuant to paragraph (3) of this subsection, and wage, income, and other information from the Social Security Administration and the Internal Revenue Service available pursuant to section 6103(*l*)(7)

of such Code, shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of, benefits available under any program listed in subsection (b) of this section, as determined by the Secretary of Health and Human Services (or, in the case of the unemployment compensation program, by the Secretary of Labor, or, in the case of the food stamp program, by the Secretary of Agriculture);

(3) employers (as defined in section 653a(a)(2)(B) of this title) (including State and local governmental entities and labor organizations) in such State are required, effective September 30, 1988, to make quarterly wage reports to a State agency (which may be the agency administering the State's unemployment compensation law) except that the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provisions of this paragraph if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in paragraph (2), and except that no report shall be filed with respect to an employee of a State or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission, and except that in the case of wage reports with respect to domestic service employment, a State may permit employers (as so defined) that make returns with respect to such employment on a calendar year basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis;

(4) the State agencies administering the programs listed in subsection (b) of this section adhere to standardized formats and procedures established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) under which—

(A) the agencies will exchange with each other information in their possession which may be of use in establishing or verifying eligibility or benefit amounts under any other such program;

(B) such information shall be made available to assist in the child support program under part D of subchapter IV of this chapter, and to assist the Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under subchapters II and XVI of this chapter, but subject to the safeguards and restrictions established by the Secretary of the Treasury with respect to information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986; and

(C) the use of such information shall be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility and incorrect payments, and no State shall be required to use such information to verify the eligibility of all recipients;

(5) adequate safeguards are in effect so as to assure that—

(A) the information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and the information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986 is only exchanged with agencies authorized to receive such information under such section 6103(*l*); and

(B) the information is adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Secretary of Health and Human Services, or, in the case of the unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture, or[1] in the case of information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986, the Secretary of the Treasury;

(6) all applicants for and recipients of benefits under any such program shall be notified at the time of application, and periodically thereafter, that information available through the system will be requested and utilized; and

(7) accounting systems are utilized which assure that programs providing data receive appropriate reimbursement from the programs utilizing the data for the costs incurred in providing the data.

(b) Applicable programs

The programs which must participate in the income and eligibility verification system are—

(1) any State program funded under part A of subchapter IV of this chapter;

(2) the medicaid program under subchapter XIX of this chapter;

(3) the unemployment compensation program under section 3304 of the Internal Revenue Code of 1986;

(4) the food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(5) any State program under a plan approved under subchapter I, X, XIV, or XVI of this chapter.

(c) Protection of applicants from improper use of information

(1) In order to protect applicants for and recipients of benefits under the programs identified in subsection (b) of this section, or under the supplemental security income program under subchapter XVI of this chapter, from the improper use of information obtained from the Secretary of the Treasury under section 6103(*l*)(7)(B) of the Internal Revenue Code of 1986, no Federal, State, or local agency receiving such information may terminate, deny, suspend, or reduce any benefits of an individual until such agency has taken appropriate steps to independently verify information relating to—

(A) the amount of the asset or income involved,

(B) whether such individual actually has (or had) access to such asset or income for his own use, and

[1] So in original. Probably should be followed by a comma.

(C) the period or periods when the individual actually had such asset or income.

(2) Such individual shall be informed by the agency of the findings made by the agency on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(d) Citizenship or immigration status requirements; documentation; verification by Immigration and Naturalization Service; denial of benefits; hearing

The requirements of this subsection, with respect to an income and eligibility verification system of a State, are as follows:

(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under a program listed in subsection (b) of this section, a declaration in writing, under penalty of perjury—

(i) by the individual,

(ii) in the case in which eligibility for program benefits is determined on a family or household basis, by any adult member of such individual's family or household (as applicable), or

(iii) in the case of an individual born into a family or household receiving benefits under such program, by any adult member of such family or household no later than the next redetermination of eligibility of such family or household following the birth of such individual,

stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

(B) In this subsection, in the case of the program described in subsection (b)(4) of this section—

(i) any reference to the State shall be considered a reference to the State agency, and

(ii) any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's eligibility to participate in the program as a member of a household, and

(iii) the term ''satisfactory immigration status'' means an immigration status which does not make the individual ineligible for benefits under the applicable program.

(2) If such an individual is not a citizen or national of the United States, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

(3) If the documentation described in paragraph (2)(A) is presented, the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for benefits, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the State—

(i) shall provide a reasonable opportunity to submit to the State evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the State determines constitutes reasonable evidence indicating such status—

(i) the State shall transmit to the Immigration and Naturalization Service either photostatic or other similar copies of such documents, or information from such documents, as specified by the Immigration and Naturalization Service, for official verification,

(ii) pending such verification, the State may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status, and

(iii) the State shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the State determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status under the applicable program—

(A) the State shall deny or terminate the individual's eligibility for benefits under the program, and

(B) the applicable fair hearing process shall be made available with respect to the individual.

(e) Erroneous State citizenship or immigration status determinations; penalties not required

Each Federal agency responsible for administration of a program described in subsection (b) of this section shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to any error in the State's determination to make an individual eligible for benefits based on citizenship or immigration status—

(1) if the State has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the State, under subsection (d)(4)(A)(ii) of this section, was required to provide a reasonable opportunity to submit documentation,

(3) because the State, under subsection (d)(4)(B)(ii) of this section, was required to wait for the response of the Immigration and Naturalization Service to the State's request for official verification of the immigration status of the individual, or

(4) because of a fair hearing process described in subsection (d)(5)(B) of this section.

(f) Medical assistance to aliens for treatment of emergency conditions

Subsections (a)(1) and (d) of this section shall not apply with respect to aliens seeking medical assistance for the treatment of an emergency medical condition under section 1396b(v)(2) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1137, as added Pub. L. 98–369, div. B, title VI, § 2651(a), July 18, 1984, 98 Stat. 1147; amended Pub. L. 99–509, title IX, § 9101, Oct. 21, 1986, 100 Stat. 1972; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–603, title I, § 121(a)(1), Nov. 6, 1986, 100 Stat. 3384; Pub. L. 100–360, title IV, § 411(k)(15)(A), July 1, 1988, 102 Stat. 799; Pub. L. 103–432, title II, § 231, Oct. 31, 1994, 108 Stat. 4462; Pub. L. 104–193, title I, § 108(g)(8), title III, § 313(c), Aug. 22, 1996, 110 Stat. 2168, 2212; Pub. L. 104–208, div. C, title V, § 507(a), Sept. 30, 1996, 110 Stat. 3009–673; Pub. L. 106–169, title IV, § 401(p), Dec. 14, 1999, 113 Stat. 1859; Pub. L. 106–170, title IV, § 405(a), (b), Dec. 17, 1999, 113 Stat. 1911.)

REFERENCES IN TEXT

Parts A and D of subchapter IV of this chapter, referred to in subsecs. (a)(4)(B) and (b)(1), are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (a)(2), (3), (4)(B), (5), (b)(3), and (c)(1), is classified generally to Title 26, Internal Revenue Code.

The Food Stamp Act of 1977, referred to in subsec. (b)(4), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

1999—Subsec. (a)(3). Pub. L. 106–170, § 405(b)(2), inserted "(as defined in section 653a(a)(2)(B) of this title)" after "employers".

Pub. L. 106–170, § 405(b)(1), which directed striking out "(as defined in section 653a(a)(2)(B)(iii) of this title)" after "labor organizations", was executed by striking "(as defined in section 653a(a)(2)(B)(ii) of this title)" to reflect the probable intent of Congress and the amendment by Pub. L. 106–169.

Pub. L. 106–170, § 405(a), inserted before semicolon at end: ", and except that in the case of wage reports with respect to domestic service employment, a State may permit employers (as so defined) that make returns with respect to such employment on a calendar year basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis".

Pub. L. 106–169, substituted "653a(a)(2)(B)(ii) of this title))" for "653a(a)(2)(B)(iii) of this title)". See Effective Date of 1999 Amendment note below.

1996—Subsec. (a)(3). Pub. L. 104–193, § 313(c), inserted "(including State and local governmental entities and labor organizations (as defined in section 653a(a)(2)(B)(iii) of this title)" after "employers" and ", and except that no report shall be filed with respect to an employee of a State or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission" before semicolon at end.

Subsec. (b)(1). Pub. L. 104–193, § 108(g)(8)(A), added par. (1) and struck out former par. (1) which read as follows: "the aid to families with dependent children program under part A of subchapter IV of this chapter;".

Subsec. (d)(1)(B). Pub. L. 104–193, § 108(g)(8)(B), substituted "In this subsection, in" for "In this subsection—", struck out "(ii) in" before "the case of the program described in subsection (b)(4)", redesignated subcls. (I) to (III) as cls. (i) to (iii), respectively, realigned margins, and struck out former cl. (i) which read as follows: "in the case of the program described in subsection (b)(1) of this section, any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's being considered a dependent child or to the individual's being treated as a caretaker relative or other person whose needs are to be taken into account in making the determination under section 602(a)(7) of this title,".

Subsec. (d)(4)(B)(i). Pub. L. 104–208 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the State shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,".

1994—Subsec. (d)(1)(A). Pub. L. 103–432 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b) of this section, a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status."

1988—Subsec. (f). Pub. L. 100–360 added subsec. (f).

1986—Subsec. (a). Pub. L. 99–603, § 121(a)(1)(A), inserted "which meets the requirements of subsection (d) of this section and" after "system" in introductory text.

Subsec. (a)(2), (4)(B). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (a)(4)(C). Pub. L. 99–509 inserted before semicolon at end ", and no State shall be required to use such information to verify the eligibility of all recipients".

Subsec. (a)(5). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

Subsec. (b). Pub. L. 99–603, § 121(a)(1)(B), substituted "income and eligibility verification system" for "income verification system" in introductory text.

Subsecs. (b)(3), (c)(1). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsecs. (d), (e). Pub. L. 99–603, § 121(a)(1)(C), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–170, title IV, § 405(c), Dec. 17, 1999, 113 Stat. 1911, provided that: "The amendments made by this section [amending this section] shall apply to wage reports required to be submitted on and after the date of the enactment of this Act [Dec. 17, 1999]."

Amendment by section 401(p) of Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(g)(8) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendment by section 313(c) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 411(k)(15)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply as if it were included in the enactment of section 9406 of the Omnibus Budget Reconciliation Act of 1986 [see section 9406(c) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1396a of this title].''

EFFECTIVE DATE OF 1986 AMENDMENT; USE OF VERIFICATION SYSTEM

Section 121(c)(3), (4) of Pub. L. 99–603 provided that:

''(3) USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1989.—Except as provided in paragraph (4), the amendments made by subsection (a) [amending this section, section 1436a of this title, and section 1091 of Title 20, Education] take effect on October 1, 1988. States have until that date to begin complying with the requirements imposed by those amendments.

''(4) USE OF VERIFICATION SYSTEM NOT REQUIRED FOR A PROGRAM IN CERTAIN CASES.—

''(A) REPORT TO RESPECTIVE CONGRESSIONAL COMMITTEES.—With respect to each covered program (as defined in subparagraph (D)(i)), each appropriate Secretary shall examine and report to the appropriate Committees of the House of Representatives and of the Senate, by not later than April 1, 1988, concerning whether (and the extent to which)—

''(i) the application of the amendments made by subsection (a) to the program is cost-effective and otherwise appropriate, and

''(ii) there should be a waiver of the application of such amendments under subparagraph (B).

The amendments made by subsection (a) shall not apply with respect to a covered program described in subclause (II), (V), (VI), or (VII) of subparagraph (D)(i) until after the date of receipt of such report with respect to the program.

''(B) WAIVER IN CERTAIN CASES.—If, with respect to a covered program, the appropriate Secretary determines, on the Secretary's own initiative or upon an application by an administering entity and based on such information as the Secretary deems persuasive (which may include the results of the report required under subsection (d)(1) [set out as a note below] and information contained in such an application), that—

''(i) the appropriate Secretary or the administering entity has in effect an alternative system of immigration status verification which—

''(I) is as effective and timely as the system otherwise required under the amendments made by subsection (a) with respect to the program, and

''(II) provides for at least the hearing and appeals rights for beneficiaries that would be provided under the amendments made by subsection (a), or

''(ii) the costs of administration of the system otherwise required under such amendments exceed the estimated savings,

such Secretary may waive the application of such amendments to the covered program to the extent (by State or other geographic area or otherwise) that such determinations apply.

''(C) BASIS FOR DETERMINATION.—A determination under subparagraph (B)(ii) shall be based upon the appropriate Secretary's estimate of—

''(i) the number of aliens claiming benefits under the covered program in relation to the total number of claimants seeking benefits under the program,

''(ii) any savings in benefit expenditures reasonably expected to result from implementation of the verification program, and

''(iii) the labor and nonlabor costs of administration of the verification system,

the degree to which the Immigration and Naturalization Service is capable of providing timely and accurate information to the administering entity in order to permit a reliable determination of immigration status, and such other factors as such Secretary deems relevant.

''(D) DEFINITIONS.—In this paragraph:

''(i) The term 'covered program' means each of the following programs:

''(I) The aid to families with dependent children program under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter].

''(II) The medicaid program under title XIX of the Social Security Act [subchapter XIX of this chapter].

''(III) Any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].

''(IV) The unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 [now 1986; 26 U.S.C. 3304].

''(V) The food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.].

''(VI) The programs of financial assistance for housing subject to section 214 of the Housing and Community Development Act of 1980 [42 U.S.C. 1436a].

''(VII) The program of grants, loans, and work assistance under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.; 42 U.S.C. 2751 et seq.].

''(ii) The term 'appropriate Secretary' means, with respect to the covered program described in—

''(I) subclauses (I) through (III) of clause (i), the Secretary of Health and Human Services;

''(II) clause (i)(IV), the Secretary of Labor;

''(III) clause (i)(V), the Secretary of Agriculture;

''(IV) clause (i)(VI), the Secretary of Housing and Urban Development; and

''(V) clause (i)(VII), the Secretary of Education.

''(iii) The term 'administering entity' means, with respect to the covered program described in—

''(I) subclause (I), (II), (III), (IV), or (V) of clause (i), the State agency responsible for the administration of the program in a State;

''(II) clause (i)(VI), the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance; and

''(III) clause (i)(VII), an institution of higher education involved.''

EFFECTIVE DATE

Section 2651(*l*) of Pub. L. 98–369 provided that:

''(1) The amendments made by subsections (j) and (k) [amending section 1383 of this title and section 6103 of Title 26, Internal Revenue Code] shall become effective on the date of the enactment of this Act [July 18, 1984].

''(2) Except as otherwise specifically provided, the amendments made by subsections (a) through (i) [enacting this section, amending sections 302, 503, 602, 1202, 1352, and 1396a of this title and section 2020 of Title 7, Agriculture, repealing section 611 of this title, and amending provisions set out as a note under section 1382 of this title] shall become effective on April 1, 1985.

In the case of any State which submits a plan describing a good faith effort by such State to come into compliance with the requirements of such subsections, the Secretary of Health and Human Services (or, in the case of the State unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture) may by waiver grant a delay in the effective date of such subsections, except that no such waiver may delay the effective date of section 1137(c) of the Social Security Act [subsec. (c) of this section] (as added by subsection (a) of this section), or delay the effective date of any other provision of or added by this section beyond September 30, 1986.''

CONSTRUCTION OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 to be executed as if Pub. L. 106–169 had been enacted after the enactment of Pub. L. 106–170, see section 121(c)(1) of Pub. L. 106–169, set out as a note under section 1396a of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

IMMIGRATION AND NATURALIZATION SERVICE TO ESTABLISH VERIFICATION SYSTEM BY OCTOBER 1, 1987

Section 121(c)(1) of Pub. L. 99–603 provided that: ''The Commissioner of Immigration and Naturalization shall implement a system for the verification of immigration status under paragraphs (3) and (4)(B)(i) of section 1137(d) of the Social Security Act [subsec. (d)(3) and (4)(B)(i) of this section] (as amended by this section) so that the system is available to all the States by not later than October 1, 1987. Such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved.''

GENERAL ACCOUNTING OFFICE REPORTS

Section 121(d) of Pub. L. 99–603 directed Comptroller General to examine current pilot projects relating to the System for Alien Verification of Eligibility (SAVE) operated by, or through cooperative agreements with, the Immigration and Naturalization Service, and report, not later than Oct. 1, 1987, to Congress and to Commissioner of Immigration and Naturalization Service concerning the effectiveness of such projects and any problems with the implementation of such projects, particularly as they may apply to implementation of the system, with Comptroller General to monitor and analyze the implementation of such system, report to Congress and to the appropriate Secretaries, by not later than Apr. 1, 1989, on such implementation, and include in such report recommendations for appropriate changes in the system.

§ 1320b–8. Hospital protocols for organ procurement and standards for organ procurement agencies

(a)(1) The Secretary shall provide that a hospital or critical access hospital meeting the requirements of subchapter XVIII or XIX of this chapter may participate in the program established under such subchapter only if—

(A) the hospital or critical access hospital establishes written protocols for the identification of potential organ donors that—

(i) assure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline,

(ii) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of such families, and

(iii) require that such hospital's designated organ procurement agency (as defined in paragraph (3)(B)) is notified of potential organ donors;

(B) in the case of a hospital in which organ transplants are performed, the hospital is a member of, and abides by the rules and requirements of, the Organ Procurement and Transplantation Network established pursuant to section 274 of this title (in this section referred to as the ''Network''); and

(C) the hospital or critical access hospital has an agreement (as defined in paragraph (3)(A)) only with such hospital's designated organ procurement agency.

(2)(A) The Secretary shall grant a waiver of the requirements under subparagraphs (A)(iii) and (C) of paragraph (1) to a hospital or critical access hospital desiring to enter into an agreement with an organ procurement agency other than such hospital's designated organ procurement agency if the Secretary determines that—

(i) the waiver is expected to increase organ donation; and

(ii) the waiver will assure equitable treatment of patients referred for transplants within the service area served by such hospital's designated organ procurement agency and within the service area served by the organ procurement agency with which the hospital seeks to enter into an agreement under the waiver.

(B) In making a determination under subparagraph (A), the Secretary may consider factors that would include, but not be limited to—

(i) cost effectiveness;

(ii) improvements in quality;

(iii) whether there has been any change in a hospital's designated organ procurement agency due to a change made on or after December 28, 1992, in the definitions for metropolitan statistical areas (as established by the Office of Management and Budget); and

(iv) the length and continuity of a hospital's relationship with an organ procurement agency other than the hospital's designated organ procurement agency;

except that nothing in this subparagraph shall be construed to permit the Secretary to grant a waiver that does not meet the requirements of subparagraph (A).

(C) Any hospital or critical access hospital seeking a waiver under subparagraph (A) shall submit an application to the Secretary containing such information as the Secretary determines appropriate.

(D) The Secretary shall—

(i) publish a public notice of any waiver application received from a hospital or critical access hospital under this paragraph within 30 days of receiving such application; and

(ii) prior to making a final determination on such application under subparagraph (A), offer interested parties the opportunity to submit written comments to the Secretary during the 60-day period beginning on the date such notice is published.

(3) For purposes of this subsection—

(A) the term ''agreement'' means an agreement described in section 273(b)(3)(A) of this title;

(B) the term ''designated organ procurement agency'' means, with respect to a hospital or critical access hospital, the organ procurement agency designated pursuant to subsection (b) of this section for the service area in which such hospital is located; and

(C) the term ''organ'' means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.

(b)(1) The Secretary shall provide that payment may be made under subchapter XVIII or XIX of this chapter with respect to organ procurement costs attributable to payments made to an organ procurement agency only if the agency—

(A)(i) is a qualified organ procurement organization (as described in section 273(b) of this title) that is operating under a grant made under section 273(a) of this title, or (ii) has been certified or recertified by the Secretary within the previous 2 years (4 years if the Secretary determines appropriate for an organization on the basis of its past practices) as meeting the standards to be a qualified organ procurement organization (as so described);

(B) meets the requirements that are applicable under such subchapter for organ procurement agencies;

(C) meets performance-related standards prescribed by the Secretary;

(D) is a member of, and abides by the rules and requirements of, the Network;

(E) allocates organs, within its service area and nationally, in accordance with medical criteria and the policies of the Network; and

(F) is designated by the Secretary as an organ procurement organization payments to which may be treated as organ procurement costs for purposes of reimbursement under such subchapter.

(2) The Secretary may not designate more than one organ procurement organization for each service area (described in section 273(b)(1)(E)[1] of this title) under paragraph (1)(F).

(Aug. 14, 1935, ch. 531, title XI, § 1138, as added Pub. L. 99–509, title IX, § 9318(a), Oct. 21, 1986, 100 Stat. 2009; amended Pub. L. 100–203, title IV, § 4039(h)(2), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 775; amended Pub. L. 101–239, title VI, § 6003(g)(3)(D)(iv), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 103–432, title I, § 155(a)(1), Oct. 31, 1994, 108 Stat. 4438; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4642, Aug. 5, 1997, 111 Stat. 373, 487.)

REFERENCES IN TEXT

Section 273(b)(1)(E) of this title, referred to in subsec. (b)(2), was redesignated section 273(b)(1)(F) of this title by Pub. L. 106–505, title VII, § 701(c)(1), Nov. 13, 2000, 114 Stat. 2347 and Pub. L. 106–554, § 1(a)(1) [title II, § 219(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–29.

[1] See References in Text note below.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' wherever appearing.

Subsec. (b)(1)(A)(ii). Pub. L. 105–33, § 4642, substituted ''2 years (4 years if the Secretary determines appropriate for an organization on the basis of its past practices)'' for ''two years''.

1994—Subsec. (a)(1)(A)(iii). Pub. L. 103–432, § 155(a)(1)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''require that an organ procurement agency designated by the Secretary pursuant to subsection (b)(1)(F) of this section be notified of potential organ donors; and''.

Subsec. (a)(1)(C). Pub. L. 103–432, § 155(a)(1)(B), added subpar. (C).

Subsec. (a)(2). Pub. L. 103–432, § 155(a)(1)(C)(ii), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 103–432, § 155(a)(1)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this subsection, the term 'organ' means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.''

Pub. L. 103–432, § 155(a)(1)(C)(i), redesignated par. (2) as (3).

1989—Subsec. (a)(1). Pub. L. 101–239 substituted ''hospital or rural primary care hospital'' for ''hospital'' in two places preceding cl. (i) of subpar. (A).

1988—Subsec. (a)(1)(B). Pub. L. 100–360 added Pub. L. 100–203, § 4039(h)(2), see 1987 Amendment note below.

1987—Subsec. (a)(1)(B). Pub. L. 100–203, § 4039(h)(2), as added by Pub. L. 100–360, substituted ''in'' for ''In'' at beginning.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 155(a)(3) of Pub. L. 103–432 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to hospitals and rural primary care hospitals participating in the programs under titles XVIII and XIX of the Social Security Act [subchapters XVIII and XIX of this chapter] beginning January 1, 1996.''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 9318(b) of Pub. L. 99–509, as amended by Pub. L. 100–119, title I, § 107(c), Sept. 29, 1987, 101 Stat. 784; Pub. L. 100–203, title IV, § 4009(g)(1), Dec. 22, 1987, 101 Stat. 1330–58, provided that:

''(1) Section 1138(a) of the Social Security Act [subsec. (a) of this section] shall apply to hospitals participating in the programs under titles XVIII and XIX of such Act [subchapters XVIII and XIX of this chapter] as of November 21, 1987.''

''(2) Section 1138(b) of such Act [subsec. (b) of this section] shall apply to costs of organs procured on or after March 31, 1988.''

[Pub. L. 100–203, title IV, § 4009(g)(2), Dec. 22, 1987, 101 Stat. 1330–58, provided that: ''The amendment made by paragraph (1) [amending this note] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''']

EXISTING AGREEMENTS WITH ORGAN PROCUREMENT AGENCIES

Section 155(a)(2) of Pub. L. 103–432 provided that: ''Any hospital or rural primary care hospital which has an agreement (as defined in section 1138(a)(3)(A) of the Social Security Act [subsec. (a)(3)(A) of this section]) with an organ procurement agency other than such hospital's designated organ procurement agency (as defined in section 1138(a)(3)(B) of such Act) on the date of the enactment of this section [Oct. 31, 1994] shall, if such hospital desires to continue such agreement on and after the effective date of the amendments made by paragraph (1) [see Effective Date of 1994 Amendment note above], submit an application to the Secretary for a waiver under section 1138(a)(2) of such Act not later than January 1, 1996, and such agreement may continue in effect pending the Secretary's determination with respect to such application.''

§ 1320b–9. National Commission on Children

(a) Establishment

(1)[1] There is hereby established a commission to be known as the National Commission on Children (in this section referred to as the ''Commission'').

(b) Membership

(1) The Commission shall consist of—

(A) 12 members to be appointed by the President,

(B) 12 members to be appointed by the Speaker of the House of Representatives, and

(C) 12 members to be appointed by the President pro tempore of the Senate.

(2) The President, the Speaker, and the President pro tempore shall each appoint as members of the Commission—

(A) 4 individuals who—

(i) are representatives of organizations providing services to children,

(ii) are involved in activities on behalf of children, or

(iii) have engaged in academic research with respect to the problems and needs of children,

(B) 4 individuals who are elected or appointed public officials (at the Federal, State, or local level) involved in issues and programs relating to children, and

(C) 4 individuals who are parents or representatives of parents or parents' organizations.

(3) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal programs.

(c) Duties and functions of Commission; public hearings in different geographical areas; broad spectrum of witnesses and testimony

(1) It shall be the duty and function of the Commission to serve as a forum on behalf of the children of the Nation and to conduct the studies and issue the report required by subsection (d) of this section.

(2) The Commission (and any committees that it may form) shall conduct public hearings in different geographic areas of the country, both urban and rural, in order to receive the views of a broad spectrum of the public on the status of the Nation's children and on ways to safeguard and enhance the physical, mental, and emotional well-being of all of the children of the Nation, including those with physical or mental disabilities, and others whose circumstances deny them a full share of the opportunities that parents of the Nation may rightfully expect for their children.

(3) The Commission shall receive testimony from individuals, and from representatives of public and private organizations and institutions with an interest in the welfare of children, including educators, health care professionals, religious leaders, providers of social services, representatives of organizations with children as members, elected and appointed public officials, and from parents and children speaking in their own behalf.

(d) Interim and final report to President and Congress; recommendations

The Commission shall submit to the President, and to the Committees on Finance and Labor and Human Resources of the Senate and the Committees on Ways and Means, Education and Labor, and Energy and Commerce of the House of Representatives, an interim report no later than March 31, 1990, and a final report no later than March 31, 1991, setting forth recommendations with respect to the following subjects:

(1) Questions relating to the health of children that the Commission shall address include—

(A) how to reduce infant mortality,

(B) how to reduce the number of low-birthweight babies,

(C) how to reduce the number of children with chronic illnesses and disabilities,

(D) how to improve the nutrition of children,

(E) how to promote the physical fitness of children,

(F) how to ensure that pregnant women receive adequate prenatal care,

(G) how to ensure that all children have access to both preventive and acute care health services, and

(H) how to improve the quality and availability of health care for children.

(2) Questions relating to social and support services for children and their parents that the Commission shall address include—

(A) how to prevent and treat child neglect and abuse,

(B) how to provide help to parents who seek assistance in meeting the problems of their children,

(C) how to provide counseling services for children,

(D) how to strengthen the family unit,

(E) how children can be assured of adequate care while their parents are working or participating in education or training programs,

(F) how to improve foster care and adoption services,

(G) how to reduce drug and alcohol abuse by children and youths, and

[1] So in original. No par. (2) has been enacted.

(H) how to reduce the incidence of teenage pregnancy.

(3) Questions relating to education that the Commission shall address include—

(A) how to encourage academic excellence for all children at all levels of education,

(B) how to use preschool experiences to enhance educational achievement,

(C) how to improve the qualifications of teachers,

(D) how schools can better prepare the Nation's youth to compete in the labor market,

(E) how parents and schools can work together to help children achieve success at each step of the academic ladder,

(F) how to encourage teenagers to complete high school and remain in school to fulfill their academic potential,

(G) how to address the problems of drug and alcohol abuse by young people,

(H) how schools might lend support to efforts aimed at reducing the incidence of teenage pregnancy, and

(I) how schools might better meet the special needs of children who have physical or mental handicaps.

(4) Questions relating to income security that the Commission shall address include—

(A) how to reduce poverty among children,

(B) how to ensure that parents support their children to the fullest extent possible through improved child support collection services, including services on behalf of children whose parents are unmarried, and

(C) how to ensure that cash assistance to needy children is adequate.

(5) Questions relating to tax policy that the Commission shall address include—

(A) how to assure the equitable tax treatment of families with children,

(B) the effect of existing tax provisions, including the dependent care tax credit, the earned income tax credit, and the targeted jobs tax credit, on children living in poverty,

(C) whether the dependent care tax credit should be refundable and the effect of such a policy,

(D) whether the earned income tax credit should be adjusted for family size and the effect of such a policy, and

(E) whether there are other tax-related policies which would reduce poverty among children.

(6) In addition to addressing the questions specified in paragraphs (1) through (5), the Commission shall—

(A) seek to identify ways in which public and private organizations and institutions can work together at the community level to identify deficiencies in existing services for families and children and to develop recommendations to ensure that the needs of families and children are met, using all available resources, in a coordinated and comprehensive manner, and

(B) assess the existing capacities of agencies to collect and analyze data on the status of children and on relevant programs, identify gaps in the data collection system, and recommend ways to improve the collection of data and the coordination among agencies in the collection and utilization of data.

The reports required by this subsection shall be based upon the testimony received in the hearings conducted pursuant to subsection (c) of this section, and upon other data and findings developed by the Commission.

(e) Time of appointment of members; vacancies; election of Chairman; quorum; calling of meetings; number of meetings; voting; compensation and expenses

(1)(A) Members of the Commission shall first be appointed not later than 60 days after December 22, 1987, for terms ending on March 31, 1991.

(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

(2) The Commission shall elect one of its members to serve as Chairman of the Commission. The Chairman shall be a nonvoting member of the Commission.

(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(4)(A) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission.

(B) The Commission shall meet not less than 4 times during the period beginning with December 22, 1987, and ending with March 31, 1991.

(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

(f) Executive Director and additional personnel; appointment and compensation; consultants

(1) The Commission shall appoint an Executive Director of the Commission. In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable. Such appointments and compensation may be made without regard to the provisions of title 5 that govern appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

(2) The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5 as the Commission determines to be necessary to carry out the duties of the Commission.

(g) Time and place of hearings and nature of testimony authorized

In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

(h) Data and information from other agencies and departments

(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

(i) Support services by General Services Administration

The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(j) Authorization of appropriations

There are authorized to be appropriated through fiscal year 1991, such sums as may be necessary to carry out this section for each of fiscal years 1989 and 1990.

(k) Donations accepted and deposited in Treasury in separate fund; expenditures; gift or bequest to or for use of United States

(1) The Commission is authorized to accept donations of money, property, or personal services. Funds received from donations shall be deposited in the Treasury in a separate fund created for this purpose. Funds appropriated for the Commission and donated funds may be expended for such purposes as official reception and representation expenses, public surveys, public service announcements, preparation of special papers, analyses, and documentaries, and for such other purposes as determined by the Commission to be in furtherance of its mission to review national issues affecting children.

(2) For purposes of Federal income, estate, and gift taxation, money and other property accepted under paragraph (1) of this subsection shall be considered as a gift or bequest to or for the use of the United States.

(3) Expenditure of appropriated and donated funds shall be subject to such rules and regulations as may be adopted by the Commission and shall not be subject to Federal procurement requirements.

***(l)* Public surveys**

The Commission is authorized to conduct such public surveys as it deems necessary in support of its review of national issues affecting children and, in conducting such surveys, the Commission shall not be deemed to be an ''agency'' for the purpose of section 3502 of title 44.

(Aug. 14, 1935, ch. 531, title XI, §1139, as added Pub. L. 100–203, title IX, §9136, Dec. 22, 1987, 101 Stat. 1330–316; amended Pub. L. 100–647, title VIII, §8201, Nov. 10, 1988, 102 Stat. 3798; Pub. L. 101–45, title IV, §409, June 30, 1989, 103 Stat. 130; Pub. L. 101–239, title VI, §6221, Dec. 19, 1989, 103 Stat. 2255; Pub. L. 101–508, title IV, §4207(k)(6), formerly §4027(k)(6), title V, §5057, Nov. 5, 1990, 104 Stat. 1388–125, 1388–230; Pub. L. 103–432, title I, §160(d)(4), title II, §264(d), Oct. 31, 1994, 108 Stat. 4444, 4468.)

REFERENCES IN TEXT

The provisions of title 5 that govern appointments in the competitive services, referred to in subsec. (f)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–432, §264(d), repealed Pub. L. 101–508, §5057. See 1990 Amendment note below.

1990—Subsec. (d). Pub. L. 101–508, §5057, which directed amendment of subsec. (d) by substituting ''an interim report no later than September 30, 1990, and a final report no later than March 31, 1991'' for ''an interim report no later than March 31, 1991, and a final report no later than September 30, 1990'', and could not be executed, was repealed by Pub. L. 103–432, §264(d). See Construction of 1990 Amendment note below.

Pub. L. 101–508, §4207(k)(6), formerly §4027(k)(6), as renumbered by Pub. L. 103–432, §160(d)(4), substituted ''interim report no later than March 31, 1990, and a final report no later than March 31, 1991, setting forth'' for ''interim report no later than March 31, 1991, and a final report no later than September 30, 1990, setting forth''.

1989—Subsec. (d). Pub. L. 101–239, §6221(1), which directed the substitution of ''March 31, 1990'' for ''September 30, 1988'' and ''March 31, 1991'' for ''March 31, 1990 [1989]'', could only be executed in part by substituting ''March 31, 1991'' for ''March 30, 1990'' in view of amendment by Pub. L. 100–647. See 1990 Amendment note above.

Subsec. (e)(1)(A), (4)(B). Pub. L. 101–239, §6221(2), substituted ''March 31, 1991'' for ''September 30, 1990''.

Subsec. (f). Pub. L. 101–45 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

''(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5.

''(2) In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5 governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.''

Subsec. (j). Pub. L. 101–239, §6221(3), substituted ''through fiscal year 1991, such sums'' for ''such sums''.

Subsecs. (k), (*l*). Pub. L. 101–239, §6221(4), added subsecs. (k) and (*l*).

1988—Subsec. (d). Pub. L. 100–647, §8201(1), (2), substituted ''March 31, 1990'' for ''September 30, 1988'' and ''September 30, 1990'' for ''March 31, 1989'' in introductory provisions.

Subsec. (e)(1)(A), (4)(B). Pub. L. 100–647, §8201(3), (4), substituted ''September 30, 1990'' for ''March 31, 1989''.

Subsec. (j). Pub. L. 100–647, §8201(5), inserted ''for each of fiscal years 1989 and 1990'' before period at end.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives and Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by

House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 264(h) of Pub. L. 103–432 provided that: ''Each amendment made by this section [amending this section and sections 602, 1382a, and 1383 of this title] shall take effect as if included in the provision of OBRA–1990 [Pub. L. 101–508] to which the amendment relates at the time such provision became law.''

CONSTRUCTION OF 1990 AMENDMENT

Section 264(d) of Pub. L. 103–432 provided that: ''Section 5057 of OBRA–1990 [Pub. L. 101–508, amending this section], and the amendment made by such section, are hereby repealed, and section 1139(d) of the Social Security Act [subsec. (d) of this section] shall be applied and administered as if such section 5057 had never been enacted.''

TERMINATION OF ADVISORY COMMISSIONS

Advisory commissions established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1320b–10. Prohibitions relating to references to Social Security or Medicare

(a) Prohibited acts

(1) No person may use, in connection with any item constituting an advertisement, solicitation, circular, book, pamphlet, or other communication, or a play, motion picture, broadcast, telecast, or other production, alone or with other words, letters, symbols, or emblems—

(A) the words ''Social Security'', ''Social Security Account'', ''Social Security System'', ''Social Security Administration'', ''Medicare'', ''Centers for Medicare & Medicaid Services'', ''Department of Health and Human Services'', ''Health and Human Services'', ''Supplemental Security Income Program'', ''Medicaid'', ''Death Benefits Update'', ''Federal Benefit Information'', ''Funeral Expenses'', or ''Final Supplemental Plan'', the letters ''SSA'', ''CMS'', ''DHHS'', ''HHS'', or ''SSI'', or any other combination or variation of such words or letters, or

(B) a symbol or emblem of the Social Security Administration, Centers for Medicare & Medicaid Services, or Department of Health and Human Services (including the design of, or a reasonable facsimile of the design of, the social security card issued pursuant to section 405(c)(2)(F) of this title or the Medicare card,,[1] the check used for payment of benefits under subchapter II of this chapter, or envelopes or other stationery used by the Social Security Administration, Centers for Medicare & Medicaid Services, or Department of Health and Human Services), or any other combination or variation of such symbols or emblems,

in a manner which such person knows or should know would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that such item is approved, endorsed, or authorized by the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services or that such person has some connection with, or authorization from, the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services. The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.

(2)(A) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a form, application, or other publication of the Social Security Administration unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Commissioner of Social Security shall prescribe.

(B) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a form, application, or other publication of the Department of Health and Human Services unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Secretary shall prescribe.

(3) Any determination of whether the use of one or more words, letters, symbols, or emblems (or any combination or variation thereof) in connection with an item described in paragraph (1) or the reproduction, reprinting, or distribution of an item described in paragraph (2) is a violation of this subsection shall be made without regard to any inclusion in such item (or any so reproduced, reprinted, or distributed copy thereof) of a disclaimer of affiliation with the United States Government or any particular agency or instrumentality thereof.

(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—

(i) explains that the product or service is available free of charge from the Social Security Administration, and

(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

(B) Subparagraph (A) shall not apply to any offer—

(i) to serve as a claimant representative in connection with a claim arising under subchapter II of this chapter, subchapter VIII of this chapter, or subchapter XVI of this chapter; or

(ii) to prepare, or assist in the preparation of, an individual's plan for achieving self-support under subchapter XVI of this chapter.

[1] So in original.

(b) Civil penalties

The Commissioner or the Secretary (as applicable) may, pursuant to regulations, impose a civil money penalty not to exceed—

(1) except as provided in paragraph (2), $5,000, or

(2) in the case of a violation consisting of a broadcast or telecast, $25,000,

against any person for each violation by such person of subsection (a) of this section. In the case of any items referred to in subsection (a)(1) of this section consisting of pieces of mail, each such piece of mail which contains one or more words, letters, symbols, or emblems in violation of subsection (a) of this section shall represent a separate violation. In the case of any item referred to in subsection (a)(2) of this section, the reproduction, reprinting, or distribution of such item shall be treated as a separate violation with respect to each copy thereof so reproduced, reprinted, or distributed.

(c) Application of other law; compromise, recovery, and deposit into Treasury of civil money penalties

(1) The provisions of section 1320a–7a of this title (other than subsections (a), (b), (f), (h), and (i) and the first sentence of subsection (c)) shall apply to civil money penalties under subsection (b) of this section in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(2) Penalties imposed against a person under subsection (b) of this section may be compromised by the Commissioner or the Secretary (as applicable) and may be recovered in a civil action in the name of the United States brought in the district court of the United States for the district in which the violation occurred or where the person resides, has its principal office, or may be found, as determined by the Commissioner or the Secretary (as applicable). Amounts recovered under this section shall be paid to the Commissioner or the Secretary (as applicable) and shall be deposited as miscellaneous receipts of the Treasury of the United States, except that (A) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Social Security Administration, such amounts shall be deposited into the Federal Old-Age and Survivors Insurance Trust Fund, and (B) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Department of Health and Human Services, such amounts shall be deposited into the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund, as appropriate. The amount of such penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States to the person against whom the penalty has been imposed.

(d) Enforcement

The preceding provisions of this section may be enforced through the Office of the Inspector General of the Social Security Administration or the Office of the Inspector General of the Department of Health and Human Services (as appropriate).

(Aug. 14, 1935, ch. 531, title XI, § 1140, as added Pub. L. 100–360, title IV, § 428(a), July 1, 1988, 102 Stat. 815; amended Pub. L. 100–485, title VI, § 608(d)(30)(A), Oct. 13, 1988, 102 Stat. 2424; Pub. L. 103–296, title I, § 108(b)(12), title III, §§ 304(b), 312(a)–(j), Aug. 15, 1994, 108 Stat. 1484, 1520, 1526, 1527; Pub. L. 108–173, title IX, § 900(e)(1)(B), Dec. 8, 2003, 117 Stat. 2371; Pub. L. 108–203, title II, §§ 204(a), 207(a), Mar. 2, 2004, 118 Stat. 511, 512.)

AMENDMENTS

2004—Pub. L. 108–203, § 204(a)(2), substituted ''Prohibitions relating to references'' for ''Prohibition of misuse of symbols, emblems, or names in reference'' in section catchline.

Subsec. (a)(1). Pub. L. 108–203, § 207(a)(3), which directed the substitution of ''the Centers for Medicare & Medicaid Services,'' for ''the Health Care Financing Administration,'' wherever appearing in concluding provisions, could not be executed because ''the Health Care Financing Administration,'' did not appear subsequent to amendment by Pub. L. 108–173, § 900(e)(1)(B)(i). See 2003 Amendment note below.

Subsec. (a)(1)(A). Pub. L. 108–203, § 207(a)(1), which directed the insertion of '' 'Centers for Medicare & Medicaid Services','' after '' 'Health Care Financing Administration','' and '' 'CMS','' after '' 'HCFA','', could not be executed because of the prior amendment by Pub. L. 108–173, § 900(e)(1)(B)(ii). See 2003 Amendment note below.

Pub. L. 108–203, § 207(a)(1), substituted '' 'Medicaid', 'Death Benefits Update', 'Federal Benefit Information', 'Funeral Expenses', or 'Final Supplemental Plan','' for ''or 'Medicaid',''.

Subsec. (a)(1)(B). Pub. L. 108–203, § 207(a)(2), which directed the insertion of ''Centers for Medicare & Medicaid Services,'' after ''Health Care Financing Administration,'' wherever appearing, could not be executed because ''Health Care Financing Administration,'' did not appear subsequent to amendment by Pub. L. 108–173, § 900(e)(1)(B)(iii). See 2003 Amendment note below.

Subsec. (a)(4). Pub. L. 108–203, § 204(a)(1), added par. (4).

2003—Subsec. (a)(1). Pub. L. 108–173, § 900(e)(1)(B)(i), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in two places in concluding provisions.

Subsec. (a)(1)(A). Pub. L. 108–173, § 900(e)(1)(B)(ii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' and ''CMS'' for ''HCFA''.

Subsec. (a)(1)(B). Pub. L. 108–173, § 900(e)(1)(B)(iii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in two places.

1994—Subsec. (a). Pub. L. 103–296, § 312(a), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (a)(1). Pub. L. 103–296, § 312(c), (d), in closing provisions substituted ''convey, or in a manner which reasonably could be interpreted or construed as conveying,'' for ''convey'' and inserted at end ''The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.''

Subsec. (a)(1)(A). Pub. L. 103–296, § 312(b)(1), substituted ''Administration', 'Department of Health and Human Services', 'Health and Human Services', 'Supplemental Security Income Program', or 'Medicaid',

the letters 'SSA', 'HCFA', 'DHHS', 'HHS', or 'SSI','' for ''Administration', the letters 'SSA' or 'HCFA',''.

Subsec. (a)(1)(B). Pub. L. 103–296, § 312(b)(2), substituted ''Social Security Administration, Health Care Financing Administration, or Department of Health and Human Services'' for ''Social Security Administration'' in two places, struck out ''or of the Health Care Financing Administration'' before '', or any other'', and inserted ''or the Medicare card,'' after ''section 405(c)(2)(F) of this title''.

Subsec. (a)(2). Pub. L. 103–296, § 304(b), substituted ''405(c)(2)(F)'' for ''405(c)(2)(E)''.

Subsec. (a)(2)(A), (B). Pub. L. 103–296, § 108(b)(12)(A), in par. (2) as added by Pub. L. 103–296, § 312(a), designated existing provisions as subpar. (A), struck out ''or of the Department of Health and Human Services'' after ''Social Security Administration'', substituted ''Commissioner of Social Security'' for ''Secretary'', and added subpar. (B).

Subsec. (a)(3). Pub. L. 103–296, § 312(e), added par. (3).

Subsec. (b). Pub. L. 103–296, § 312(g), substituted ''The'' for ''(1) Subject to paragraph (2), the'', redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and in par. (1) substituted ''paragraph (2)'' for ''subparagraph (B)'', and struck out former par. (2) which read as follows: ''The total amount of penalties which may be imposed under paragraph (1) with respect to multiple violations in any one year period consisting of substantially identical communications or productions shall not exceed $100,000.''

Subsec. (b)(1). Pub. L. 103–296, § 312(f) inserted at end ''In the case of any items referred to in subsection (a)(1) of this section consisting of pieces of mail, each such piece of mail which contains one or more words, letters, symbols, or emblems in violation of subsection (a) of this section shall represent a separate violation. In the case of any item referred to in subsection (a)(2) of this section, the reproduction, reprinting, or distribution of such item shall be treated as a separate violation with respect to each copy thereof so reproduced, reprinted, or distributed.''

Pub. L. 103–296, § 108(b)(12)(B), substituted ''the Commissioner or the Secretary (as applicable)'' for ''the Secretary'' in introductory provisions.

Subsec. (c)(1). Pub. L. 103–296, § 312(h), inserted ''and the first sentence of subsection (c)'' after ''and (i)''.

Subsec. (c)(2). Pub. L. 103–296, § 312(i), at end of second sentence substituted comma for period and inserted ''except that (A) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Social Security Administration, such amounts shall be deposited into the Federal Old-Age and Survivors Insurance Trust Fund, and (B) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Department of Health and Human Services, such amounts shall be deposited into the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund, as appropriate.''

Pub. L. 103–296, § 108(b)(12)(C), substituted ''the Commissioner or the Secretary (as applicable)'' for ''the Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, § 312(j), added subsec. (d).

Pub. L. 103–296, § 108(b)(12)(D), which in subsec. (d) as added by Pub. L. 103–296, § 312(j), directed the substitution of ''the Office of the Inspector General of the Social Security Administration or the Office of the Inspector General of the Department of Health and Human Services (as appropriate)'' for ''the Office of Inspector General of the Department of Health and Human Services'', was executed by making the substitution for ''the Office of the Inspector General of the Department of Health and Human Services'' to reflect the probable intent of Congress.

1988—Subsec. (c)(1). Pub. L. 100–485 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subsections (c), (d), (e), (g), (j), and (k) of section 1320a–7a of this title shall apply with respect to violations under subsection (a) of this section and penalties imposed under subsection (b) of this section in the same manner and to the same extent as such subsections apply with respect to claims in violation of section 1320a–7a of this title and penalties imposed under section 1320a–7a(a) of this title.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, § 204(b), Mar. 2, 2004, 118 Stat. 511, provided that: ''The amendments made by this section [amending this section] shall apply to offers of assistance made after the sixth month ending after the Commissioner of Social Security promulgates final regulations prescribing the standards applicable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within 1 year after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title II, § 207(b), Mar. 2, 2004, 118 Stat. 513, provided that: ''The amendments made by this section [amending this section] shall apply to items sent after 180 days after the date of the enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(12) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 312(a)–(j) of Pub. L. 103–296 applicable with respect to violations occurring after Mar. 31, 1995, see section 312(m)(1) of Pub. L. 103–296, set out as an Effective Date note under section 333 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

EFFECTIVE DATE

Section 428(c) of Pub. L. 100–360 provided that: ''The amendments made by this section [enacting this section and amending section 1395ss of this title] shall take effect on the date of the enactment of this Act [July 1, 1988] and shall apply only with respect to violations occurring on or after such date.''

REPORTS ON OPERATION OF THIS SECTION

Section 312(k) of Pub. L. 103–296 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services and the Commissioner of Social Security shall each submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate 3 reports on the operation of section 1140 of the Social Security Act [this section] with respect to the Social Security Administration or the Department of Health and Human Services during the period covered by the report, which shall specify—

''(A) the number of complaints of violations of such section received by the Social Security Administration or the Department of Health and Human Services during the period,

''(B) the number of cases in which the Social Security Administration or the Department, during the period, sent a notice of violation of such section requesting that an individual cease activities in violation of such section,

''(C) the number of cases in which the Social Security Administration or the Department formally proposed a civil money penalty in a demand letter during the period,

''(D) the total amount of civil money penalties assessed by the Social Security Administration or the Department under this section during the period,

''(E) the number of requests for hearings filed during the period by the Social Security Administration

or the Department pursuant to sections 1140(c)(1) [subsec. (c)(1) of this section] and 1128A(c)(2) [section 1320a–7a(c)(2) of this title] of the Social Security Act,

''(F) the disposition during the period of hearings filed pursuant to sections 1140(c)(1) and 1128A(c)(2) of the Social Security Act, and

''(G) the total amount of civil money penalties collected under this section and deposited into the Federal Old-Age and Survivors Insurance Trust Fund or the Health Insurance and Supplementary Medical Insurance Trust Funds, as applicable, during the period.

''(2) WHEN DUE.—The reports required by paragraph (1) shall be submitted not later than December 1, 1995, not later than December 1, 1997, and not later than December 1, 1999, respectively.''

CONSULTATION BY UNITED STATES POSTAL SERVICE REGARDING PREVENTION OF DECEPTIVE MAILINGS

United States Postal Service to consult and coordinate functions of Secretary of Department of Health and Human Services in administration of this section, see section 4 of Pub. L. 101–524, set out as a Coordination of Functions With Department of Health and Human Services note under section 3001 of Title 39, Postal Service.

§ 1320b–11. Blood donor locator service

(a) In general

The Commissioner of Social Security shall establish and conduct a Blood Donor Locator Service, which shall be used to obtain and transmit to any authorized person (as defined in subsection (h)(1) of this section) the most recent mailing address of any blood donor who, as indicated by the donated blood or products derived therefrom or by the history of the subsequent use of such blood or blood products, has or may have the virus for acquired immune deficiency syndrome, in order to inform such donor of the possible need for medical care and treatment.

(b) Provision of address information

Whenever the Commissioner of Social Security receives a request, filed by an authorized person (as defined in subsection (h)(1) of this section), for the mailing address of a donor described in subsection (a) of this section and the Commissioner of Social Security is reasonably satisfied that the requirements of this section have been met with respect to such request, the Commissioner of Social Security shall promptly undertake to provide the requested address information from—

(1) the files and records maintained by the Social Security Administration, and

(2) such files and records obtained pursuant to section 6103(m)(6) of the Internal Revenue Code of 1986 as the Commissioner of Social Security considers necessary to comply with such request.

(c) Manner and form of requests

A request for address information under this section shall be filed in such manner and form as the Commissioner of Social Security shall by regulation prescribe, shall include the blood donor's social security account number, and shall be accompanied or supported by such documents as the Commissioner of Social Security may determine to be necessary.

(d) Procedures and safeguards

Any authorized person shall, as a condition for receiving address information from the Blood Donor Locator Service—

(1) establish and maintain, to the satisfaction of the Commissioner of Social Security, a system for standardizing records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of address information made by or to it,

(2) establish and maintain, to the satisfaction of the Commissioner of Social Security, a secure area or place in which such address information and all related blood donor records shall be stored,

(3) restrict, to the satisfaction of the Commissioner of Social Security, access to the address information and related blood donor records only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this section,

(4) provide such other safeguards which the Commissioner of Social Security determines (and which the Commissioner of Social Security prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the address information and related blood donor records,

(5) furnish a report to the Commissioner of Social Security, at such time and containing such information as the Commissioner of Social Security may prescribe, which describes the procedures established and utilized by the authorized person for ensuring the confidentiality of address information and related blood donor records required under this subsection, and

(6) destroy such address information and related blood donor records, upon completion of their use in providing the notification for which the information was obtained, so as to make such information and records undisclosable.

If the Commissioner of Social Security determines that any authorized person has failed to, or does not, meet the requirements of this subsection, the Commissioner of Social Security may, after any proceedings for review established under subsection (f) of this section, take such actions as are necessary to ensure such requirements are met, including refusing to disclose address information to such authorized person until the Commissioner of Social Security determines that such requirements have been or will be met. In the case of any authorized person who discloses any address information received pursuant to this section or any related blood donor records to any agent, this subsection shall apply to such authorized person and each such agent (except that, in the case of an agent, any report to the Commissioner of Social Security or other action with respect to the Commissioner of Social Security shall be made or taken through such authorized person). The Commissioner of Social Security shall destroy all related blood donor records in the possession of the Social Security Administration upon completion of their use in transmitting mailing addresses as required under subsection (a) of this section, so as to make such records undisclosable.

(e) Arrangements with State agencies and authorized persons

The Commissioner of Social Security, in carrying out the Commissioner's duties and functions under this section, shall enter into arrangements—

(1) with State agencies to accept and to transmit to the Commissioner of Social Security requests for address information under this section and to accept and to transmit such information to authorized persons, and

(2) with State agencies and authorized persons otherwise to cooperate with the Commissioner of Social Security in carrying out the purposes of this section.

(f) Procedures for administrative review

The Commissioner of Social Security shall by regulation prescribe procedures which provide for administrative review of any determination that any authorized person has failed to meet the requirements of this section.

(g) Unauthorized disclosure of information

Paragraphs (1), (2), and (3) of section 7213(a) of the Internal Revenue Code of 1986 shall apply with respect to the unauthorized willful disclosure to any person of address information or related blood donor records acquired or maintained by or under the Commissioner of Social Security, or pursuant to this section by any authorized person, or of information derived from any such address information or related blood donor records, in the same manner and to the same extent as such paragraphs apply with respect to unauthorized disclosures of return and return information described in such paragraphs. Paragraph (4) of section 7213(a) of such Code shall apply with respect to the willful offer of any item of material value in exchange for any such address information or related blood donor record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(h) Definitions

For purposes of this section—

(1) Authorized person

The term ''authorized person'' means—

(A) any agency of a State (or of a political subdivision of a State) which has duties or authority under State law relating to the public health or otherwise has the duty or authority under State law to regulate blood donations, and

(B) any entity engaged in the acceptance of blood donations which is licensed or registered by the Food and Drug Administration in connection with the acceptance of such blood donations, and which, in accordance with such regulations as may be prescribed by the Commissioner of Social Security, provides for—

(i) the confidentiality of any address information received pursuant to this section and related blood donor records,

(ii) blood donor notification procedures for individuals with respect to whom such information is requested and a finding has been made that they have or may have the virus for acquired immune deficiency syndrome, and

(iii) counseling services for such individuals who have been found to have such virus.

(2) Related blood donor record

The term ''related blood donor record'' means any record, list, or compilation which indicates, directly or indirectly, the identity of any individual with respect to whom a request for address information has been made pursuant to this section.

(3) State

The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(Aug. 14, 1935, ch. 531, title XI, § 1141, as added Pub. L. 100–647, title VIII, § 8008(b)(1), Nov. 10, 1988, 102 Stat. 3784; amended Pub. L. 103–296, title I, § 108(b)(13), Aug. 15, 1994, 108 Stat. 1484.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (b)(2) and (g), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 108(b)(13)(A), (C), substituted ''The Commissioner of Social Security'' for ''The Secretary'' and struck out ''under the direction of the Commissioner of Social Security,'' before ''which shall be used''.

Subsec. (b), (c). Pub. L. 103–296, § 108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, § 108(b)(13)(D), which directed amendment of par. (6) by substituting ''Social Security Administration'' for ''Department of Health Services'', was executed by substituting ''Social Security Administration'' for ''Department of Health and Human Services'' in closing provisions to reflect the probable intent of Congress.

Pub. L. 103–296, § 108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e). Pub. L. 103–296, § 108(b)(13)(A), (B), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in introductory provisions.

Subsecs. (f), (g), (h)(1)(B). Pub. L. 103–296, § 108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TIME LIMIT FOR ESTABLISHMENT OF BLOOD DONOR LOCATOR SERVICE

Section 8008(b)(2) of Pub. L. 100–647 provided that: ''The Secretary of Health and Human Services shall establish the Blood Donor Locator Service pursuant to section 1141 of the Social Security Act [this section] not later than 180 days after the date of the enactment of this Act [Nov. 10, 1988].''

§ 1320b–12. Research on outcomes of health care services and procedures

(a) Establishment of program

(1) In general

The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall—

(A) conduct and support research with respect to the outcomes, effectiveness, and appropriateness of health care services and procedures in order to identify the manner in which diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically; and

(B) assure that the needs and priorities of the program under subchapter XVIII of this chapter are appropriately reflected in the development and periodic review and updating (through the process set forth in section 299b–2[1] of this title) of treatment-specific or condition-specific practice guidelines for clinical treatments and conditions in forms appropriate for use in clinical practice, for use in educational programs, and for use in reviewing quality and appropriateness of medical care.

(2) Evaluations of alternative services and procedures

In carrying out paragraph (1), the Secretary shall conduct or support evaluations of the comparative effects, on health and functional capacity, of alternative services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions.

(3) Initial guidelines

(A) In carrying out paragraph (1)(B) of this subsection, and section 299b–1(d)[1] of this title, the Secretary shall, by not later than January 1, 1991, assure the development of an initial set of the guidelines specified in paragraph (1)(B) that shall include not less than 3 clinical treatments or conditions that—

(i)(I) account for a significant portion of expenditures under subchapter XVIII of this chapter; and

(II) have a significant variation in the frequency or the type of treatment provided; or

(ii) otherwise meet the needs and priorities of the program under subchapter XVIII of this chapter, as set forth under subsection (b)(3) of this section.

(B)(i) The Secretary shall provide for the use of guidelines developed under subparagrah[2] (A) to improve the quality, effectiveness, and appropriateness of care provided under subchapter XVIII of this chapter. The Secretary shall determine the impact of such use on the quality, appropriateness, effectiveness, and cost of medical care provided under such subchapter and shall report to the Congress on such determination by not later than January 1, 1993.

(ii) For the purpose of carrying out clause (i), the Secretary shall expend, from the amounts specified in clause (iii), $1,000,000 for fiscal year 1990 and $1,500,000 for each of the fiscal years 1991 and 1992.

(iii) For each fiscal year, for purposes of expenditures required in clause (ii)—

(I) 60 percent of an amount equal to the expenditure involved is appropriated from the Federal Hospital Insurance Trust Fund (established under section 1395i of this title); and

(II) 40 percent of an amount equal to the expenditure involved is appropriated from the Federal Supplementary Medical Insurance Trust Fund (established under section 1395t of this title).

(b) Priorities

(1) In general

The Secretary shall establish priorities with respect to the diseases, disorders, and other health conditions for which research and evaluations are to be conducted or supported under subsection (a) of this section. In establishing such priorities, the Secretary shall, with respect to a disease, disorder, or other health condition, consider the extent to which—

(A) improved methods of prevention, diagnosis, treatment, and clinical management can benefit a significant number of individuals;

(B) there is significant variation among physicians in the particular services and procedures utilized in making diagnoses and providing treatments or there is significant variation in the outcomes of health care services or procedures due to different patterns of diagnosis or treatment;

(C) the services and procedures utilized for diagnosis and treatment result in relatively substantial expenditures; and

(D) the data necessary for such evaluations are readily available or can readily be developed.

(2) Preliminary assessments

For the purpose of establishing priorities under paragraph (1), the Secretary may, with respect to services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions, conduct or support assessments of the extent to which—

(A) rates of utilization vary among similar populations for particular diseases, disorders, and other health conditions;

(B) uncertainties exist on the effect of utilizing a particular service or procedure; or

(C) inappropriate services and procedures are provided.

(3) Relationship with medicare program

In establishing priorities under paragraph (1) for research and evaluation, and under section 299b–3(a)[1] of this title for the agenda under such section, the Secretary shall assure that such priorities appropriately reflect the needs and priorities of the program under subchapter XVIII of this chapter, as set forth by the Administrator of the Centers for Medicare & Medicaid Services.

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[1] See References in Text note below.

[2] So in original. Probably should be ''subparagraph''.

(c) Methodologies and criteria for evaluations

For the purpose of facilitating research under subsection (a) of this section, the Secretary shall—

(1) conduct and support research with respect to the improvement of methodologies and criteria utilized in conducting research with respect to outcomes of health care services and procedures;

(2) conduct and support reviews and evaluations of existing research findings with respect to such treatment or conditions;

(3) conduct and support reviews and evaluations of the existing methodologies that use large data bases in conducting such research and shall develop new research methodologies, including data-based methods of advancing knowledge and methodologies that measure clinical and functional status of patients, with respect to such research;

(4) provide grants and contracts to research centers, and contracts to other entities, to conduct such research on such treatment or conditions, including research on the appropriate use of prescription drugs;

(5) conduct and support research and demonstrations on the use of claims data and data on clinical and functional status of patients in determining the outcomes, effectiveness, and appropriateness of such treatment; and

(6) conduct and support supplementation of existing data bases, including the collection of new information, to enhance data bases for research purposes, and the design and development of new data bases that would be used in outcomes and effectiveness research.

(d) Standards for data bases

In carrying out this section, the Secretary shall develop—

(1) uniform definitions of data to be collected and used in describing a patient's clinical and functional status;

(2) common reporting formats and linkages for such data; and

(3) standards to assure the security, confidentiality, accuracy, and appropriate maintenance of such data.

(e) Dissemination of research findings and guidelines

(1) In general

The Secretary shall provide for the dissemination of the findings of research and the guidelines described in subsection (a) of this section, and for the education of providers and others in the application of such research findings and guidelines.

(2) Cooperative educational activities

In disseminating findings and guidelines under paragraph (1), and in providing for education under such paragraph, the Secretary shall work with professional associations, medical specialty and subspecialty organizations, and other relevant groups to identify and implement effective means to educate physicians, other providers, consumers, and others in using such findings and guidelines, including training for physician managers within provider organizations.

(f) Evaluations

The Secretary shall conduct and support evaluations of the activities carried out under this section to determine the extent to which such activities have had an effect on the practices of physicians in providing medical treatment, the delivery of health care, and the outcomes of health care services and procedures.

(g) Research with respect to dissemination

The Secretary may conduct or support research with respect to improving methods of disseminating information on the effectiveness and appropriateness of health care services and procedures.

(h) Omitted

(i) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section—

(A) $50,000,000 for fiscal year 1990;

(B) $75,000,000 for fiscal year 1991;

(C) $110,000,000 for fiscal year 1992;

(D) $148,000,000 for fiscal year 1993; and

(E) $185,000,000 for fiscal year 1994.

(2) Specifications

For the purpose of carrying out this section, for each of the fiscal years 1990 through 1992 an amount equal to two-thirds of the amounts authorized to be appropriated under paragraph (1), and for each of the fiscal years 1993 and 1994 an amount equal to 70 percent of such amounts, are to be appropriated in the following proportions from the following trust funds:

(A) 60 percent from the Federal Hospital Insurance Trust Fund (established under section 1395i of this title).

(B) 40 percent from the Federal Supplementary Medical Insurance Trust Fund (established under section 1395t of this title).

(3) Allocations

(A) For each fiscal year, of the amounts transferred or otherwise appropriated to carry out this section, the Secretary shall reserve appropriate amounts for each of the purposes specified in clauses (i) through (iv) of subparagraph (B).

(B) The purposes referred to in subparagraph (A) are—

(i) the development of guidelines, standards, performance measures, and review criteria;

(ii) research and evaluation;

(iii) data-base standards and development; and

(iv) education and information dissemination.

(Aug. 14, 1935, ch. 531, title XI, § 1142, as added Pub. L. 101–239, title VI, § 6103(b)(1), Dec. 19, 1989, 103 Stat. 2195; amended Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 108–173, title IX, § 900(e)(1)(C), Dec. 8, 2003, 117 Stat. 2371.)

REFERENCES IN TEXT

Sections 299b–1 to 299b–3 of this title, referred to in subsecs. (a) and (b), were in the original references to sections 912 to 914 of act July 1, 1944, which were omitted in the general amendment of subchapter VII of

chapter 6A of this title by Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1653. Section 2(a) of Pub. L. 106–129 enacted new sections 912 to 914 of act July 1, 1944, which are classified to sections 299b–1 to 299b–3, respectively, of this title.

CODIFICATION

Subsec. (h) of this section, which required the Secretary to report biennially to Congress on the progress of the activities under this section during the preceding 2 fiscal years, including the impact of such activities on medical care (particularly medical care for individuals receiving benefits under subchapter XVIII of this chapter), terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 10 on page 94 of House Document No. 103–7.

Another section 1142 of act Aug. 14, 1935, was renumbered section 1143 by Pub. L. 101–508, title V, § 5111(a)(1), Nov. 5, 1990, 104 Stat. 1388–272, and is classified to section 1320b–13 of this title.

AMENDMENTS

2003—Subsec. (b)(3). Pub. L. 108–173, § 900(e)(1)(C), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

1999—Subsec. (a)(1). Pub. L. 106–129 substituted ''Director of the Agency for Healthcare Research and Quality'' for ''Administrator for Health Care Policy and Research'' in introductory provisions.

AHCPR STUDY ON EFFECT OF CREDENTIALING OF TECHNOLOGISTS AND SONOGRAPHERS ON QUALITY OF ULTRASOUND

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 229(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–357, provided that:

''(1) STUDY.—The Administrator for Health Care Policy and Research shall provide for a study that, with respect to the provision of ultrasound under the medicare and medicaid programs under titles XVIII and XIX of the Social Security Act [subchapters XVIII and XIX of this chapter], compares differences in quality between ultrasound furnished by individuals who are credentialed by private entities or organizations and ultrasound furnished by those who are not so credentialed. Such study shall examine and evaluate differences in error rates, resulting complications, and patient outcomes as a result of the differences in credentialing. In designing the study, the Administrator shall consult with organizations nationally recognized for their expertise in ultrasound.

''(2) REPORT.—Not later than two years after the date of the enactment of this Act [Nov. 29, 1999], the Administrator shall submit a report to Congress on the study conducted under paragraph (1).''

REPORT ON LINKAGE OF PUBLIC AND PRIVATE RESEARCH RELATED DATA

Section 6103(b)(2) of Pub. L. 101–239 provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall report to the Congress on the feasibility of linking research-related data described in section 1142(d) of the Social Security Act [subsec. (d) of this section] (as added by paragraph (1) of this subsection) with similar data collected or maintained by non-Federal entities and by Federal agencies other than the Department of Health and Human Services (including the Departments of Defense and Veterans Affairs and the Office of Personnel Management).''

§ 1320b–13. Social security account statements

(a) Provision upon request

(1) Beginning not later than October 1, 1990, the Commissioner of Social Security shall provide upon the request of an eligible individual a social security account statement (hereinafter referred to as the ''statement'').

(2) Each statement shall contain—

(A) the amount of wages paid to and self-employment income derived by the eligible individual as shown by the records of the Commissioner at the date of the request;

(B) an estimate of the aggregate of the employer, employee, and self-employment contributions of the eligible individual for old-age, survivors, and disability insurance as shown by the records of the Commissioner on the date of the request;

(C) a separate estimate of the aggregate of the employer, employee, and self-employment contributions of the eligible individual for hospital insurance as shown by the records of the Commissioner on the date of the request;

(D) an estimate of the potential monthly retirement, disability, survivor, and auxiliary benefits payable on the eligible individual's account together with a description of the benefits payable under the medicare program of subchapter XVIII of this chapter; and

(E) in the case of an eligible individual described in paragraph (3)(C)(ii), an explanation, in language calculated to be understood by the average eligible individual, of the operation of the provisions under sections 402(k)(5) and 415(a)(7) of this title and an explanation of the maximum potential effects of such provisions on the eligible individual's monthly retirement, survivor, and auxiliary benefits.

(3) For purposes of this section, the term ''eligible individual'' means an individual—

(A) who has a social security account number,

(B) who has attained age 25 or over, and

(C)(i) who has wages or net earnings from self-employment, or (ii) with respect to whom the Commissioner has information that the pattern of wages or self-employment income indicate a likelihood of noncovered employment.

(b) Notice to eligible individuals

The Commissioner shall, to the maximum extent practicable, take such steps as are necessary to assure that eligible individuals are informed of the availability of the statement described in subsection (a) of this section.

(c) Mandatory provision of statements

(1) By not later than September 30, 1995, the Commissioner shall provide a statement to each eligible individual who has attained age 60 by October 1, 1994, and who is not receiving benefits under subchapter II of this chapter and for whom a current mailing address can be determined through such methods as the Commissioner determines to be appropriate. In fiscal years 1995 through 1999 the Commissioner shall provide a statement to each eligible individual who attains age 60 in such fiscal years and who is not receiving benefits under subchapter II of this chapter and for whom a current mailing address can be determined through such methods as the Commissioner determines to be appropriate. The Commissioner shall provide with each statement to an eligible individual notice that such statement is updated annually and is available upon request.

(2) Beginning not later than October 1, 1999, the Commissioner shall provide a statement on an annual basis to each eligible individual who is not receiving benefits under subchapter II of this chapter and for whom a mailing address can be determined through such methods as the Commissioner determines to be appropriate. With respect to statements provided to eligible individuals who have not attained age 50, such statements need not include estimates of monthly retirement benefits. However, if such statements provided to eligible individuals who have not attained age 50 do not include estimates of retirement benefit amounts, such statements shall include a description of the benefits (including auxiliary benefits) that are available upon retirement.

(d) Disclosure to governmental employees of effect of noncovered employment

(1) In the case of any individual commencing employment on or after January 1, 2005, in any agency or instrumentality of any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) in a position in which service performed by the individual does not constitute ''employment'' as defined in section 410 of this title, the head of the agency or instrumentality shall ensure that, prior to the date of the commencement of the individual's employment in the position, the individual is provided a written notice setting forth an explanation, in language calculated to be understood by the average individual, of the maximum effect on computations of primary insurance amounts (under section 415(a)(7) of this title) and the effect on benefit amounts (under section 402(k)(5) of this title) of monthly periodic payments or benefits payable based on earnings derived in such service. Such notice shall be in a form which shall be prescribed by the Commissioner of Social Security.

(2) The written notice provided to an individual pursuant to paragraph (1) shall include a form which, upon completion and signature by the individual, would constitute certification by the individual of receipt of the notice. The agency or instrumentality providing the notice to the individual shall require that the form be completed and signed by the individual and submitted to the agency or instrumentality and to the pension, annuity, retirement, or similar fund or system established by the governmental entity involved responsible for paying the monthly periodic payments or benefits, before commencement of service with the agency or instrumentality.

(Aug. 14, 1935, ch. 531, title XI, § 1143, formerly § 1142, as added Pub. L. 101–239, title X, § 10308, Dec. 19, 1989, 103 Stat. 2485; renumbered § 1143 and amended Pub. L. 101–508, title V, § 5111(a), Nov. 5, 1990, 104 Stat. 1388–272; Pub. L. 105–78, title VI, § 605, Nov. 13, 1997, 111 Stat. 1521; Pub. L. 108–203, title IV, §§ 419(a)–(c), 421, Mar. 2, 2004, 118 Stat. 533–535.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–203, § 421(1), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(2)(A) to (C). Pub. L. 108–203, § 421(2), substituted ''Commissioner'' for ''Secretary''.

Subsec. (a)(2)(E). Pub. L. 108–203, § 419(b), added subpar. (E).

Subsec. (a)(3). Pub. L. 108–203, § 419(a)(1), struck out ''who'' after ''an individual'' in introductory provisions.

Subsec. (a)(3)(A), (B). Pub. L. 108–203, § 419(a)(1), inserted ''who'' before ''has''.

Subsec. (a)(3)(C). Pub. L. 108–203, § 419(a)(2), (3), designated existing provisions as cl. (i), inserted ''who'' before ''has wages'', and inserted '', or'' and cl. (ii) before period.

Subsecs. (b), (c). Pub. L. 108–203, § 421(2), substituted ''Commissioner'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 108–203, § 419(c), added subsec. (d).

1997—Subsec. (a)(2)(B), (C). Pub. L. 105–78 substituted ''employer, employee,'' for ''employee''.

1990—Subsec. (c)(2). Pub. L. 101–508, § 5111(a)(2), substituted ''an annual'' for ''a biennial''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 419(d), Mar. 2, 2004, 118 Stat. 534, provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section] shall apply with respect to social security account statements issued on or after January 1, 2007.''

§ 1320b–14. Outreach efforts to increase awareness of the availability of medicare cost-sharing and subsidies for low-income individuals under subchapter XVIII

(a) Outreach

(1) In general

The Commissioner of Social Security (in this section referred to as the ''Commissioner'') shall conduct outreach efforts to—

(A) identify individuals entitled to benefits under the medicare program under subchapter XVIII of this chapter who may be eligible for medical assistance for payment of the cost of medicare cost-sharing under the medicaid program pursuant to sections 1396a(a)(10)(E) and 1396u–3 of this title[1] for the transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies under section 1395w–114 of this title; and

(B) notify such individuals of the availability of such medical assistance, program, and subsidies under such sections.

(2) Content of notice

Any notice furnished under paragraph (1) shall state that eligibility for medicare cost-sharing assistance, the transitional assistance under section 1395w–141(f) of this title, or premium and cost-sharing subsidies under section 1395w–114 of this title under such sections is conditioned upon—

(A) the individual providing to the State information about income and resources (in the case of an individual residing in a State that imposes an assets test for eligibility for medicare cost-sharing under the medicaid program); and

(B) meeting the applicable eligibility criteria.

(b) Coordination with States

(1) In general

In conducting the outreach efforts under this section, the Commissioner shall—

[1] So in original. Probably should be followed by a comma.

(A) furnish the agency of each State responsible for the administration of the medicaid program and any other appropriate State agency with information consisting of the name and address of individuals residing in the State that the Commissioner determines may be eligible for medical assistance for payment of the cost of medicare cost-sharing under the medicaid program pursuant to sections 1396a(a)(10)(E) and 1396u–3 of this title, for transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies for low-income individuals under section 1395w–114 of this title; and

(B) update any such information not less frequently than once per year.

(2) Information in periodic updates

The periodic updates described in paragraph (1)(B) shall include information on individuals who are or may be eligible for the medical assistance, program, and subsidies described in paragraph (1)(A) because such individuals have experienced reductions in benefits under subchapter II of this chapter.

(Aug. 14, 1935, ch. 531, title XI, § 1144, as added Pub. L. 106–554, § 1(a)(6) [title IX, § 911(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–583; amended Pub. L. 108–173, title I, § 103(g), Dec. 8, 2003, 117 Stat. 2160.)

PRIOR PROVISIONS

A prior section 1320b–14, act Aug. 14, 1935, ch. 531, title XI, § 1144, as added Pub. L. 103–66, title XIII, § 13581(a), Aug. 10, 1993, 107 Stat. 609; Pub. L. 105–34, title XV, § 1503(e), Aug. 5, 1997, 111 Stat. 1063, related to Medicare and Medicaid Coverage Data Bank, prior to repeal by Pub. L. 104–226, § 1(a), Oct. 2, 1996, 110 Stat. 3033.

AMENDMENTS

2003—Pub. L. 108–173, § 103(g)(1), inserted ''and subsidies for low-income individuals under subchapter XVIII'' after ''cost-sharing'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 108–173, § 103(g)(2)(A)(i), inserted ''for the transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies under section 1395w–114 of this title'' before semicolon.

Subsec. (a)(1)(B). Pub. L. 108–173, § 103(g)(2)(A)(ii), inserted '', program, and subsidies'' after ''medical assistance''.

Subsec. (a)(2). Pub. L. 108–173, § 103(g)(2)(B)(i), inserted '', the transitional assistance under section 1395w–141(f) of this title, or premium and cost-sharing subsidies under section 1395w–114 of this title'' after ''assistance'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 108–173, § 103(g)(2)(B)(ii), substituted ''eligibility for medicare cost-sharing under the medicaid program'' for ''such eligibility''.

Subsec. (b)(1)(A). Pub. L. 108–173, § 103(g)(3)(A), inserted '', for transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies for low-income individuals under section 1395w–114 of this title'' after ''1396u–3 of this title''.

Subsec. (b)(2). Pub. L. 108–173, § 103(g)(3)(B), inserted '', program, and subsidies'' after ''medical assistance''.

EFFECTIVE DATE

Pub. L. 106–554, § 1(a)(6) [title IX, § 911(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–584, provided that: ''The amendments made by subsection (a) [enacting this section and amending section 1396d of this title] shall take effect one year after the date of the enactment of this Act [Dec. 21, 2000].''

GAO REPORT

Pub. L. 106–554, § 1(a)(6) [title IX, § 911(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–584, provided that: ''The Comptroller General of the United States shall conduct a study of the impact of section 1144 of the Social Security Act [this section] (as added by subsection (a)(1)) on the enrollment of individuals for medicare cost-sharing under the medicaid program. Not later than 18 months after the date that the Commissioner of Social Security first conducts outreach under section 1144 of such Act, the Comptroller General shall submit to Congress a report on such study. The report shall include such recommendations for legislative changes as the Comptroller General deems appropriate.''

§ 1320b–15. Protection of social security and medicare trust funds

(a) In general

No officer or employee of the United States shall—

(1) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits,

(2) refrain from the investment in public debt obligations of amounts in any Federal fund, or

(3) redeem prior to maturity amounts in any Federal fund which are invested in public debt obligations for any purpose other than the payment of benefits or administrative expenses from such Federal fund.

(b) "Public debt obligation" defined

For purposes of this section, the term ''public debt obligation'' means any obligation subject to the public debt limit established under section 3101 of title 31.

(c) "Federal fund" defined

For purposes of this section, the term ''Federal fund'' means—

(1) the Federal Old-Age and Survivors Insurance Trust Fund;

(2) the Federal Disability Insurance Trust Fund;

(3) the Federal Hospital Insurance Trust Fund; and

(4) the Federal Supplementary Medical Insurance Trust Fund.

(Aug. 14, 1935, ch. 531, title XI, § 1145, as added Pub. L. 104–121, title I, § 107(a), Mar. 29, 1996, 110 Stat. 856.)

EFFECTIVE DATE

Section 107(b) of Pub. L. 104–121 provided that: ''The amendment made by this section [enacting this section] shall take effect on the date of the enactment of this Act [Mar. 29, 1996].''

§ 1320b–16. Public disclosure of certain information on hospital financial interest and referral patterns

The Secretary shall make available to the public, in a form and manner specified by the Secretary, information disclosed to the Secretary pursuant to section 1395cc(a)(1)(S) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1146, as added Pub. L. 105–33, title IV, § 4321(c), Aug. 5, 1997, 111 Stat. 395.)

EFFECTIVE DATE

Section 4321(d)(2) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services shall issue regulations by not later than the date which is 1 year after the date of the enactment of this Act [Aug. 5, 1997] to carry out the amendments made by subsections (b) and (c) [enacting this section and amending section 1395cc of this title] and such amendments shall take effect as of such date (on or after the issuance of such regulations) as the Secretary specifies in such regulations.''

§ 1320b–17. Cross-program recovery of overpayments from benefits

(a) In general

Subject to subsection (b) of this section, whenever the Commissioner of Social Security determines that more than the correct amount of any payment has been made to a person under a program described in subsection (e) of this section, the Commissioner of Social Security may recover the amount incorrectly paid by decreasing any amount which is payable to such person under any other program specified in that subsection.

(b) Limitation applicable to current benefits

(1) In general

In carrying out subsection (a) of this section, the Commissioner of Social Security may not decrease the monthly amount payable to an individual under a program described in subsection (e) of this section that is paid when regularly due—

(A) in the case of benefits under subchapter II or VIII of this chapter, by more than 10 percent of the amount of the benefit payable to the person for that month under such subchapter; and

(B) in the case of benefits under subchapter XVI of this chapter, by an amount greater than the lesser of—

(i) the amount of the benefit payable to the person for that month; or

(ii) an amount equal to 10 percent of the person's income for that month (including such monthly benefit but excluding payments under subchapter II of this chapter when recovery is also made from subchapter II payments and excluding income excluded pursuant to section 1382a(b) of this title).

(2) Exception

Paragraph (1) shall not apply if—

(A) the person or the spouse of the person was involved in willful misrepresentation or concealment of material information in connection with the amount incorrectly paid; or

(B) the person so requests.

(c) No effect on eligibility or benefit amount under subchapter VIII or XVI

In any case in which the Commissioner of Social Security takes action in accordance with subsection (a) of this section to recover an amount incorrectly paid to any person, neither that person, nor (with respect to the program described in subsection (e)(3) of this section) any individual whose eligibility for benefits under such program or whose amount of such benefits, is determined by considering any part of that person's income, shall, as a result of such action—

(1) become eligible for benefits under the program described in paragraph (2) or (3) of subsection (e) of this section; or

(2) if such person or individual is otherwise so eligible, become eligible for increased benefits under such program.

(d) Inapplicability of prohibition against assessment and legal process

Section 407 of this title shall not apply to actions taken under the provisions of this section to decrease amounts payable under subchapters II and XVI of this chapter.

(e) Programs described

The programs described in this subsection are the following:

(1) The old-age, survivors, and disability insurance benefits program under subchapter II of this chapter.

(2) The special benefits for certain World War II veterans program under subchapter VIII of this chapter.

(3) The supplemental security income benefits program under subchapter XVI of this chapter (including, for purposes of this section, State supplementary payments paid by the Commissioner pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66).

(Aug. 14, 1935, ch. 531, title XI, § 1147, as added Pub. L. 105–306, § 8(a), Oct. 28, 1998, 112 Stat. 2928; amended Pub. L. 106–169, title II, § 251(b)(7), Dec. 14, 1999, 113 Stat. 1855; Pub. L. 108–203, title II, § 210(a), Mar. 2, 2004, 118 Stat. 516.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (e)(3), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 156, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

2004—Pub. L. 108–203 amended section catchline and text generally, substituting provisions relating to recovery of overpayments from benefits under subchapters II, VIII, and XVI of this chapter, consisting of subsecs. (a) to (e), for provisions relating to recovery of overpayments from benefits under subchapter XVI of this chapter, consisting of subsecs. (a) and (b).

1999—Pub. L. 106–169, § 251(b)(7)(B), substituted ''other'' for ''social security'' in section catchline.

Subsec. (a)(1). Pub. L. 106–169, § 251(b)(7)(A), inserted ''or VIII'' after ''person under subchapter II'' and substituted ''payable under such subchapter'' for ''payable under subchapter II of this chapter''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as a note under section 404 of this title.

EFFECTIVE DATE

Section effective Oct. 28, 1998, and applicable to amounts incorrectly paid which remain outstanding on or after such date, see section 8(c) of Pub. L. 105–306, set out as an Effective Date of 1998 Amendment note under section 404 of this title.

§ 1320b–18. Repealed. Pub. L. 108–203, title II, § 210(b)(3), Mar. 2, 2004, 118 Stat. 517

Section, act Aug. 14, 1935, ch. 531, title XI, § 1147A, as added Pub. L. 106–169, title II, § 251(b)(8), Dec. 14, 1999, 113 Stat. 1856, related to recovery of social security benefit overpayments from subchapter VIII benefits. See section 1320b–17 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as an Effective Date of 2004 Amendment note under section 404 of this title.

§ 1320b–19. The Ticket to Work and Self-Sufficiency Program

(a) In general

The Commissioner shall establish a Ticket to Work and Self-Sufficiency Program, under which a disabled beneficiary may use a ticket to work and self-sufficiency issued by the Commissioner in accordance with this section to obtain employment services, vocational rehabilitation services, or other support services from an employment network which is of the beneficiary's choice and which is willing to provide such services to such beneficiary.

(b) Ticket system

(1) Distribution of tickets

The Commissioner may issue a ticket to work and self-sufficiency to disabled beneficiaries for participation in the Program.

(2) Assignment of tickets

A disabled beneficiary holding a ticket to work and self-sufficiency may assign the ticket to any employment network of the beneficiary's choice which is serving under the Program and is willing to accept the assignment.

(3) Ticket terms

A ticket issued under paragraph (1) shall consist of a document which evidences the Commissioner's agreement to pay (as provided in paragraph (4)) an employment network, which is serving under the Program and to which such ticket is assigned by the beneficiary, for such employment services, vocational rehabilitation services, and other support services as the employment network may provide to the beneficiary.

(4) Payments to employment networks

The Commissioner shall pay an employment network under the Program in accordance with the outcome payment system under subsection (h)(2) of this section or under the outcome-milestone payment system under subsection (h)(3) of this section (whichever is elected pursuant to subsection (h)(1) of this section). An employment network may not request or receive compensation for such services from the beneficiary.

(c) State participation

(1) In general

Each State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) may elect to participate in the Program as an employment network with respect to a disabled beneficiary. If the State agency does elect to participate in the Program, the State agency also shall elect to be paid under the outcome payment system or the outcome-milestone payment system in accordance with subsection (h)(1) of this section. With respect to a disabled beneficiary that the State agency does not elect to have participate in the Program, the State agency shall be paid for services provided to that beneficiary under the system for payment applicable under section 422(d) of this title and subsections (d) and (e) of section 1382d of this title. The Commissioner shall provide for periodic opportunities for exercising such elections.

(2) Effect of participation by State agency

(A) State agencies participating

In any case in which a State agency described in paragraph (1) elects under that paragraph to participate in the Program, the employment services, vocational rehabilitation services, and other support services which, upon assignment of tickets to work and self-sufficiency, are provided to disabled beneficiaries by the State agency acting as an employment network shall be governed by plans for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.).

(B) State agencies administering maternal and child health services programs

Subparagraph (A) shall not apply with respect to any State agency administering a program under subchapter V of this chapter.

(3) Agreements between State agencies and employment networks

State agencies and employment networks shall enter into agreements regarding the conditions under which services will be provided when an individual is referred by an employment network to a State agency for services. The Commissioner shall establish by regulations the timeframe within which such agreements must be entered into and the mechanisms for dispute resolution between State agencies and employment networks with respect to such agreements.

(d) Responsibilities of the Commissioner

(1) Selection and qualifications of program managers

The Commissioner shall enter into agreements with 1 or more organizations in the private or public sector for service as a program manager to assist the Commissioner in administering the Program. Any such program manager shall be selected by means of a competitive bidding process, from among organizations in the private or public sector with available expertise and experience in the field of vocational rehabilitation or employment services.

(2) Tenure, renewal, and early termination

Each agreement entered into under paragraph (1) shall provide for early termination

upon failure to meet performance standards which shall be specified in the agreement and which shall be weighted to take into account any performance in prior terms. Such performance standards shall include—

(A) measures for ease of access by beneficiaries to services; and

(B) measures for determining the extent to which failures in obtaining services for beneficiaries fall within acceptable parameters, as determined by the Commissioner.

(3) Preclusion from direct participation in delivery of services in own service area

Agreements under paragraph (1) shall preclude—

(A) direct participation by a program manager in the delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries in the service area covered by the program manager's agreement; and

(B) the holding by a program manager of a financial interest in an employment network or service provider which provides services in a geographic area covered under the program manager's agreement.

(4) Selection of employment networks

(A) In general

The Commissioner shall select and enter into agreements with employment networks for service under the Program. Such employment networks shall be in addition to State agencies serving as employment networks pursuant to elections under subsection (c) of this section.

(B) Alternate participants

In any State where the Program is being implemented, the Commissioner shall enter into an agreement with any alternate participant that is operating under the authority of section 422(d)(2) of this title in the State as of December 17, 1999, and chooses to serve as an employment network under the Program.

(5) Termination of agreements with employment networks

The Commissioner shall terminate agreements with employment networks for inadequate performance, as determined by the Commissioner.

(6) Quality assurance

The Commissioner shall provide for such periodic reviews as are necessary to provide for effective quality assurance in the provision of services by employment networks. The Commissioner shall solicit and consider the views of consumers and the program manager under which the employment networks serve and shall consult with providers of services to develop performance measurements. The Commissioner shall ensure that the results of the periodic reviews are made available to beneficiaries who are prospective service recipients as they select employment networks. The Commissioner shall ensure that the periodic surveys of beneficiaries receiving services under the Program are designed to measure customer service satisfaction.

(7) Dispute resolution

The Commissioner shall provide for a mechanism for resolving disputes between beneficiaries and employment networks, between program managers and employment networks, and between program managers and providers of services. The Commissioner shall afford a party to such a dispute a reasonable opportunity for a full and fair review of the matter in dispute.

(e) Program managers

(1) In general

A program manager shall conduct tasks appropriate to assist the Commissioner in carrying out the Commissioner's duties in administering the Program.

(2) Recruitment of employment networks

A program manager shall recruit, and recommend for selection by the Commissioner, employment networks for service under the Program. The program manager shall carry out such recruitment and provide such recommendations, and shall monitor all employment networks serving in the Program in the geographic area covered under the program manager's agreement, to the extent necessary and appropriate to ensure that adequate choices of services are made available to beneficiaries. Employment networks may serve under the Program only pursuant to an agreement entered into with the Commissioner under the Program incorporating the applicable provisions of this section and regulations thereunder, and the program manager shall provide and maintain assurances to the Commissioner that payment by the Commissioner to employment networks pursuant to this section is warranted based on compliance by such employment networks with the terms of such agreement and this section. The program manager shall not impose numerical limits on the number of employment networks to be recommended pursuant to this paragraph.

(3) Facilitation of access by beneficiaries to employment networks

A program manager shall facilitate access by beneficiaries to employment networks. The program manager shall ensure that each beneficiary is allowed changes in employment networks without being deemed to have rejected services under the Program. When such a change occurs, the program manager shall reassign the ticket based on the choice of the beneficiary. Upon the request of the employment network, the program manager shall make a determination of the allocation of the outcome or milestone-outcome payments based on the services provided by each employment network. The program manager shall establish and maintain lists of employment networks available to beneficiaries and shall make such lists generally available to the public. The program manager shall ensure that all information provided to disabled beneficiaries pursuant to this paragraph is provided in accessible formats.

(4) Ensuring availability of adequate services

The program manager shall ensure that employment services, vocational rehabilitation

services, and other support services are provided to beneficiaries throughout the geographic area covered under the program manager's agreement, including rural areas.

(5) Reasonable access to services

The program manager shall take such measures as are necessary to ensure that sufficient employment networks are available and that each beneficiary receiving services under the Program has reasonable access to employment services, vocational rehabilitation services, and other support services. Services provided under the Program may include case management, work incentives planning, supported employment, career planning, career plan development, vocational assessment, job training, placement, follow-up services, and such other services as may be specified by the Commissioner under the Program. The program manager shall ensure that such services are available in each service area.

(f) Employment networks

(1) Qualifications for employment networks

(A) In general

Each employment network serving under the Program shall consist of an agency or instrumentality of a State (or a political subdivision thereof) or a private entity, that assumes responsibility for the coordination and delivery of services under the Program to individuals assigning to the employment network tickets to work and self-sufficiency issued under subsection (b) of this section.

(B) One-stop delivery systems

An employment network serving under the Program may consist of a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.).

(C) Compliance with selection criteria

No employment network may serve under the Program unless it meets and maintains compliance with both general selection criteria (such as professional and educational qualifications, where applicable) and specific selection criteria (such as substantial expertise and experience in providing relevant employment services and supports).

(D) Single or associated providers allowed

An employment network shall consist of either a single provider of such services or of an association of such providers organized so as to combine their resources into a single entity. An employment network may meet the requirements of subsection (e)(4) of this section by providing services directly, or by entering into agreements with other individuals or entities providing appropriate employment services, vocational rehabilitation services, or other support services.

(2) Requirements relating to provision of services

Each employment network serving under the Program shall be required under the terms of its agreement with the Commissioner to—

(A) serve prescribed service areas; and

(B) take such measures as are necessary to ensure that employment services, vocational rehabilitation services, and other support services provided under the Program by, or under agreements entered into with, the employment network are provided under appropriate individual work plans that meet the requirements of subsection (g) of this section.

(3) Annual financial reporting

Each employment network shall meet financial reporting requirements as prescribed by the Commissioner.

(4) Periodic outcomes reporting

Each employment network shall prepare periodic reports, on at least an annual basis, itemizing for the covered period specific outcomes achieved with respect to specific services provided by the employment network. Such reports shall conform to a national model prescribed under this section. Each employment network shall provide a copy of the latest report issued by the employment network pursuant to this paragraph to each beneficiary upon enrollment under the Program for services to be received through such employment network. Upon issuance of each report to each beneficiary, a copy of the report shall be maintained in the files of the employment network. The program manager shall ensure that copies of all such reports issued under this paragraph are made available to the public under reasonable terms.

(g) Individual work plans

(1) Requirements

Each employment network shall—

(A) take such measures as are necessary to ensure that employment services, vocational rehabilitation services, and other support services provided under the Program by, or under agreements entered into with, the employment network are provided under appropriate individual work plans that meet the requirements of subparagraph (C);

(B) develop and implement each such individual work plan, in partnership with each beneficiary receiving such services, in a manner that affords such beneficiary the opportunity to exercise informed choice in selecting an employment goal and specific services needed to achieve that employment goal;

(C) ensure that each individual work plan includes at least—

(i) a statement of the vocational goal developed with the beneficiary, including, as appropriate, goals for earnings and job advancement;

(ii) a statement of the services and supports that have been deemed necessary for the beneficiary to accomplish that goal;

(iii) a statement of any terms and conditions related to the provision of such services and supports; and

(iv) a statement of understanding regarding the beneficiary's rights under the Program (such as the right to retrieve the ticket to work and self-sufficiency if the beneficiary is dissatisfied with the services

being provided by the employment network) and remedies available to the individual, including information on the availability of advocacy services and assistance in resolving disputes through the State grant program authorized under section 1320b–21 of this title;

(D) provide a beneficiary the opportunity to amend the individual work plan if a change in circumstances necessitates a change in the plan; and

(E) make each beneficiary's individual work plan available to the beneficiary in, as appropriate, an accessible format chosen by the beneficiary.

An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.].

(2) Effective upon written approval

A beneficiary's individual work plan shall take effect upon written approval by the beneficiary or a representative of the beneficiary and a representative of the employment network that, in providing such written approval, acknowledges assignment of the beneficiary's ticket to work and self-sufficiency.

(h) Employment network payment systems

(1) Election of payment system by employment networks

(A) In general

The Program shall provide for payment authorized by the Commissioner to employment networks under either an outcome payment system or an outcome-milestone payment system. Each employment network shall elect which payment system will be utilized by the employment network, and, for such period of time as such election remains in effect, the payment system so elected shall be utilized exclusively in connection with such employment network (except as provided in subparagraph (B)).

(B) No change in method of payment for beneficiaries with tickets already assigned to the employment networks

Any election of a payment system by an employment network that would result in a change in the method of payment to the employment network for services provided to a beneficiary who is receiving services from the employment network at the time of the election shall not be effective with respect to payment for services provided to that beneficiary and the method of payment previously selected shall continue to apply with respect to such services.

(2) Outcome payment system

(A) In general

The outcome payment system shall consist of a payment structure governing employment networks electing such system under paragraph (1)(A) which meets the requirements of this paragraph.

(B) Payments made during outcome payment period

The outcome payment system shall provide for a schedule of payments to an employment network, in connection with each individual who is a beneficiary, for each month, during the individual's outcome payment period, for which benefits (described in paragraphs (3) and (4) of subsection (k) of this section) are not payable to such individual because of work or earnings.

(C) Computation of payments to employment network

The payment schedule of the outcome payment system shall be designed so that—

(i) the payment for each month during the outcome payment period for which benefits (described in paragraphs (3) and (4) of subsection (k) of this section) are not payable is equal to a fixed percentage of the payment calculation base for the calendar year in which such month occurs; and

(ii) such fixed percentage is set at a percentage which does not exceed 40 percent.

(3) Outcome-milestone payment system

(A) In general

The outcome-milestone payment system shall consist of a payment structure governing employment networks electing such system under paragraph (1)(A) which meets the requirements of this paragraph.

(B) Early payments upon attainment of milestones in advance of outcome payment periods

The outcome-milestone payment system shall provide for 1 or more milestones, with respect to beneficiaries receiving services from an employment network under the Program, that are directed toward the goal of permanent employment. Such milestones shall form a part of a payment structure that provides, in addition to payments made during outcome payment periods, payments made prior to outcome payment periods in amounts based on the attainment of such milestones.

(C) Limitation on total payments to employment network

The payment schedule of the outcome milestone payment system shall be designed so that the total of the payments to the employment network with respect to each beneficiary is less than, on a net present value basis (using an interest rate determined by the Commissioner that appropriately reflects the cost of funds faced by providers), the total amount to which payments to the employment network with respect to the beneficiary would be limited if the employment network were paid under the outcome payment system.

(4) Definitions

In this subsection:

(A) Payment calculation base

The term ''payment calculation base'' means, for any calendar year—

(i) in connection with a title II disability beneficiary, the average disability insurance benefit payable under section 423 of this title for all beneficiaries for months during the preceding calendar year; and

(ii) in connection with a title XVI disability beneficiary (who is not concurrently a title II disability beneficiary), the average payment of supplemental security income benefits based on disability payable under subchapter XVI of this chapter (excluding State supplementation) for months during the preceding calendar year to all beneficiaries who have attained 18 years of age but have not attained 65 years of age.

(B) Outcome payment period

The term ''outcome payment period'' means, in connection with any individual who had assigned a ticket to work and self-sufficiency to an employment network under the Program, a period—

(i) beginning with the first month, ending after the date on which such ticket was assigned to the employment network, for which benefits (described in paragraphs (3) and (4) of subsection (k) of this section) are not payable to such individual by reason of engagement in substantial gainful activity or by reason of earnings from work activity; and

(ii) ending with the 60th month (consecutive or otherwise), ending after such date, for which such benefits are not payable to such individual by reason of engagement in substantial gainful activity or by reason of earnings from work activity.

(5) Periodic review and alterations of prescribed schedules

(A) Percentages and periods

The Commissioner shall periodically review the percentage specified in paragraph (2)(C), the total payments permissible under paragraph (3)(C), and the period of time specified in paragraph (4)(B) to determine whether such percentages, such permissible payments, and such period provide an adequate incentive for employment networks to assist beneficiaries to enter the workforce, while providing for appropriate economies. The Commissioner may alter such percentage, such total permissible payments, or such period of time to the extent that the Commissioner determines, on the basis of the Commissioner's review under this paragraph, that such an alteration would better provide the incentive and economies described in the preceding sentence.

(B) Number and amounts of milestone payments

The Commissioner shall periodically review the number and amounts of milestone payments established by the Commissioner pursuant to this section to determine whether they provide an adequate incentive for employment networks to assist beneficiaries to enter the workforce, taking into account information provided to the Commissioner by program managers, the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, and other reliable sources. The Commissioner may from time to time alter the number and amounts of milestone payments initially established by the Commissioner pursuant to this section to the extent that the Commissioner determines that such an alteration would allow an adequate incentive for employment networks to assist beneficiaries to enter the workforce. Such alteration shall be based on information provided to the Commissioner by program managers, the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, or other reliable sources.

(C) Report on the adequacy of incentives

The Commissioner shall submit to the Congress not later than 36 months after December 17, 1999, a report with recommendations for a method or methods to adjust payment rates under subparagraphs (A) and (B), that would ensure adequate incentives for the provision of services by employment networks of—

(i) individuals with a need for ongoing support and services;

(ii) individuals with a need for high-cost accommodations;

(iii) individuals who earn a subminimum wage; and

(iv) individuals who work and receive partial cash benefits.

The Commissioner shall consult with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 during the development and evaluation of the study. The Commissioner shall implement the necessary adjusted payment rates prior to full implementation of the Ticket to Work and Self-Sufficiency Program.

(i) Suspension of disability reviews

During any period for which an individual is using, as defined by the Commissioner, a ticket to work and self-sufficiency issued under this section, the Commissioner (and any applicable State agency) may not initiate a continuing disability review or other review under section 421 of this title of whether the individual is or is not under a disability or a review under subchapter XVI of this chapter similar to any such review under section 421 of this title.

(j) Authorizations

(1) Payments to employment networks

(A) Title II disability beneficiaries

There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year

such sums as may be necessary to make payments to employment networks under this section. Money paid from the Trust Funds under this section with respect to title II disability beneficiaries who are entitled to benefits under section 423 of this title or who are entitled to benefits under section 402(d) of this title on the basis of the wages and self-employment income of such beneficiaries, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this section shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund.

(B) Title XVI disability beneficiaries

Amounts authorized to be appropriated to the Social Security Administration under section 1381 of this title shall include amounts necessary to carry out the provisions of this section with respect to title XVI disability beneficiaries.

(2) Administrative expenses

The costs of administering this section (other than payments to employment networks) shall be paid from amounts made available for the administration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and shall be allocated among such amounts as appropriate.

(k) Definitions

In this section:

(1) Commissioner

The term ''Commissioner'' means the Commissioner of Social Security.

(2) Disabled beneficiary

The term ''disabled beneficiary'' means a title II disability beneficiary or a title XVI disability beneficiary.

(3) Title II disability beneficiary

The term ''title II disability beneficiary'' means an individual entitled to disability insurance benefits under section 423 of this title or to monthly insurance benefits under section 402 of this title based on such individual's disability (as defined in section 423(d) of this title). An individual is a title II disability beneficiary for each month for which such individual is entitled to such benefits.

(4) Title XVI disability beneficiary

The term ''title XVI disability beneficiary'' means an individual eligible for supplemental security income benefits under subchapter XVI of this chapter on the basis of blindness (within the meaning of section 1382c(a)(2) of this title) or disability (within the meaning of section 1382c(a)(3) of this title). An individual is a title XVI disability beneficiary for each month for which such individual is eligible for such benefits.

(5) Supplemental security income benefit

The term ''supplemental security income benefit under subchapter XVI of this chapter'' means a cash benefit under section 1382 or 1382h(a) of this title, and does not include a State supplementary payment, administered federally or otherwise.

***(l)* Regulations**

Not later than 1 year after December 17, 1999, the Commissioner shall prescribe such regulations as are necessary to carry out the provisions of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1148, as added Pub. L. 106–170, title I, § 101(a), Dec. 17, 1999, 113 Stat. 1863; amended Pub. L. 108–203, title IV, § 405(a), Mar. 2, 2004, 118 Stat. 526.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsecs. (c)(1), (2)(A) and (g)(1), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. Title I of the Act is classified generally to subchapter I (§ 720 et seq.) of chapter 16 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (f)(1)(B), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Subtitle B of title I of the Act is classified generally to subchapter II (§ 2811 et seq.) of chapter 30 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (g)(1), is classified generally to Title 26, Internal Revenue Code.

Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, referred to in subsec. (h)(5)(B), (C), is section 101(f) of Pub. L. 106–170, which is set out as a note below.

AMENDMENTS

2004—Subsec. (g)(1). Pub. L. 108–203 inserted concluding provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 405(b), Mar. 2, 2004, 118 Stat. 527, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1921).''

EFFECTIVE DATE

Pub. L. 106–170, title I, § 101(c), 113 Stat. 1874, provided that: ''Subject to subsection (d) [set out as a note below], the amendments made by subsections (a) and (b) [enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title] shall take effect with the first month following 1 year after the date of the enactment of this Act [Dec. 17, 1999].''

REGULATIONS

Pub. L. 106–170, title I, § 101(e), Dec. 17, 1999, 113 Stat. 1877, provided that:

''(1) IN GENERAL.—The Commissioner of Social Security shall prescribe such regulations as are necessary to implement the amendments made by this section [enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title].

''(2) SPECIFIC MATTERS TO BE INCLUDED IN REGULATIONS.—The matters which shall be addressed in such regulations shall include—

''(A) the form and manner in which tickets to work and self-sufficiency may be distributed to beneficiaries pursuant to section 1148(b)(1) of the Social Security Act [subsec. (b)(1) of this section];

''(B) the format and wording of such tickets, which shall incorporate by reference any contractual terms governing service by employment networks under the Program;

''(C) the form and manner in which State agencies may elect participation in the Ticket to Work and Self-Sufficiency Program pursuant to section

1148(c)(1) of such Act and provision for periodic opportunities for exercising such elections;

''(D) the status of State agencies under section 1148(c)(1) of such Act at the time that State agencies exercise elections under that section;

''(E) the terms of agreements to be entered into with program managers pursuant to section 1148(d) of such Act, including—

''(i) the terms by which program managers are precluded from direct participation in the delivery of services pursuant to section 1148(d)(3) of such Act;

''(ii) standards which must be met by quality assurance measures referred to in paragraph (6) of section 1148(d) of such Act and methods of recruitment of employment networks utilized pursuant to paragraph (2) of section 1148(e) of such Act; and

''(iii) the format under which dispute resolution will operate under section 1148(d)(7) of such Act;

''(F) the terms of agreements to be entered into with employment networks pursuant to section 1148(d)(4) of such Act, including—

''(i) the manner in which service areas are specified pursuant to section 1148(f)(2)(A) of such Act;

''(ii) the general selection criteria and the specific selection criteria which are applicable to employment networks under section 1148(f)(1)(C) of such Act in selecting service providers;

''(iii) specific requirements relating to annual financial reporting by employment networks pursuant to section 1148(f)(3) of such Act; and

''(iv) the national model to which periodic outcomes reporting by employment networks must conform under section 1148(f)(4) of such Act;

''(G) standards which must be met by individual work plans pursuant to section 1148(g) of such Act;

''(H) standards which must be met by payment systems required under section 1148(h) of such Act, including—

''(i) the form and manner in which elections by employment networks of payment systems are to be exercised pursuant to section 1148(h)(1)(A) of such Act;

''(ii) the terms which must be met by an outcome payment system under section 1148(h)(2) of such Act;

''(iii) the terms which must be met by an outcome-milestone payment system under section 1148(h)(3) of such Act;

''(iv) any revision of the percentage specified in paragraph (2)(C) of section 1148(h) of such Act or the period of time specified in paragraph (4)(B) of such section 1148(h) of such Act; and

''(v) annual oversight procedures for such systems; and

''(I) procedures for effective oversight of the Program by the Commissioner of Social Security, including periodic reviews and reporting requirements.''

GAO STUDY REGARDING THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

Pub. L. 108–203, title IV, § 406, Mar. 2, 2004, 118 Stat. 527, provided that:

''(a) [sic] GAO REPORT.—Not later than 12 months after the date of enactment of this Act [Mar. 2, 2004], the Comptroller General of the United States shall submit a report to Congress regarding the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19) that—

''(1) examines the annual and interim reports issued by States, the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 [Pub. L. 106–170] (42 U.S.C. 1320b–19 note), and the Commissioner of Social Security regarding such program;

''(2) assesses the effectiveness of the activities carried out under such program; and

''(3) recommends such legislative or administrative changes as the Comptroller General determines are appropriate to improve the effectiveness of such program.''

FINDINGS AND PURPOSES

Pub. L. 106–170, § 2, Dec. 17, 1999, 113 Stat. 1862, provided that:

''(a) FINDINGS.—The Congress makes the following findings:

''(1) It is the policy of the United States to provide assistance to individuals with disabilities to lead productive work lives.

''(2) Health care is important to all Americans.

''(3) Health care is particularly important to individuals with disabilities and special health care needs who often cannot afford the insurance available to them through the private market, are uninsurable by the plans available in the private sector, and are at great risk of incurring very high and economically devastating health care costs.

''(4) Americans with significant disabilities often are unable to obtain health care insurance that provides coverage of the services and supports that enable them to live independently and enter or rejoin the workforce. Personal assistance services (such as attendant services, personal assistance with transportation to and from work, reader services, job coaches, and related assistance) remove many of the barriers between significant disability and work. Coverage for such services, as well as for prescription drugs, durable medical equipment, and basic health care are powerful and proven tools for individuals with significant disabilities to obtain and retain employment.

''(5) For individuals with disabilities, the fear of losing health care and related services is one of the greatest barriers keeping the individuals from maximizing their employment, earning potential, and independence.

''(6) Social Security Disability Insurance and Supplemental Security Income beneficiaries risk losing medicare or medicaid coverage that is linked to their cash benefits, a risk that is an equal, or greater, work disincentive than the loss of cash benefits associated with working.

''(7) Individuals with disabilities have greater opportunities for employment than ever before, aided by important public policy initiatives such as the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), advancements in public understanding of disability, and innovations in assistive technology, medical treatment, and rehabilitation.

''(8) Despite such historic opportunities and the desire of millions of disability recipients to work and support themselves, fewer than one-half of one percent of Social Security Disability Insurance and Supplemental Security Income beneficiaries leave the disability rolls and return to work.

''(9) In addition to the fear of loss of health care coverage, beneficiaries cite financial disincentives to work and earn income and lack of adequate employment training and placement services as barriers to employment.

''(10) Eliminating such barriers to work by creating financial incentives to work and by providing individuals with disabilities real choice in obtaining the services and technology they need to find, enter, and maintain employment can greatly improve their short and long-term financial independence and personal well-being.

''(11) In addition to the enormous advantages such changes promise for individuals with disabilities, redesigning government programs to help individuals with disabilities return to work may result in significant savings and extend the life of the Social Security Disability Insurance Trust Fund.

''(12) If only an additional one-half of one percent of the current Social Security Disability Insurance and Supplemental Security Income recipients were to cease receiving benefits as a result of employment, the savings to the Social Security Trust Funds and to

the Treasury in cash assistance would total $3,500,000,000 over the worklife of such individuals, far exceeding the cost of providing incentives and services needed to assist them in entering work and achieving financial independence to the best of their abilities.

''(b) PURPOSES.—The purposes of this Act [see Tables for classification] are as follows:

''(1) To provide health care and employment preparation and placement services to individuals with disabilities that will enable those individuals to reduce their dependency on cash benefit programs.

''(2) To encourage States to adopt the option of allowing individuals with disabilities to purchase medicaid coverage that is necessary to enable such individuals to maintain employment.

''(3) To provide individuals with disabilities the option of maintaining medicare coverage while working.

''(4) To establish a return to work ticket program that will allow individuals with disabilities to seek the services necessary to obtain and retain employment and reduce their dependency on cash benefit programs.''

GRADUATED IMPLEMENTATION OF PROGRAM

Pub. L. 106–170, title I, §101(d), Dec. 17, 1999, 113 Stat. 1874, provided that:

''(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Dec. 17, 1999], the Commissioner of Social Security shall commence implementation of the amendments made by this section [enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title] (other than paragraphs (1)(C) and (2)(B) of subsection (b) [amending sections 422 and 1382d of this title]) in graduated phases at phase-in sites selected by the Commissioner. Such phase-in sites shall be selected so as to ensure, prior to full implementation of the Ticket to Work and Self-Sufficiency Program, the development and refinement of referral processes, payment systems, computer linkages, management information systems, and administrative processes necessary to provide for full implementation of such amendments. Subsection (c) [set out as a note above] shall apply with respect to paragraphs (1)(C) and (2)(B) of subsection (b) without regard to this subsection.

''(2) REQUIREMENTS.—Implementation of the Program at each phase-in site shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration, so as to ensure that the most efficacious methods are determined and in place for full implementation of the Program on a timely basis.

''(3) FULL IMPLEMENTATION.—The Commissioner shall ensure that ability to provide tickets and services to individuals under the Program exists in every State as soon as practicable on or after the effective date specified in subsection (c) but not later than 3 years after such date.

''(4) ONGOING EVALUATION OF PROGRAM.—

''(A) IN GENERAL.—The Commissioner shall provide for independent evaluations to assess the effectiveness of the activities carried out under this section [enacting this section, amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title, and enacting provisions set out as notes under this section] and the amendments made thereby. Such evaluations shall address the cost-effectiveness of such activities, as well as the effects of this section and the amendments made thereby on work outcomes for beneficiaries receiving tickets to work and self-sufficiency under the Program.

''(B) CONSULTATION.—Evaluations shall be conducted under this paragraph after receiving relevant advice from experts in the fields of disability, vocational rehabilitation, and program evaluation and individuals using tickets to work and self-sufficiency under the Program and in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of this Act [set out as a note below], the Comptroller General of the United States, other agencies of the Federal Government, and private organizations with appropriate expertise.

''(C) METHODOLOGY.—

''(i) IMPLEMENTATION.—The Commissioner, in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of this Act, shall ensure that plans for evaluations and data collection methods under the Program are appropriately designed to obtain detailed employment information.

''(ii) SPECIFIC MATTERS TO BE ADDRESSED.—Each such evaluation shall address (but is not limited to)—

''(I) the annual cost (including net cost) of the Program and the annual cost (including net cost) that would have been incurred in the absence of the Program;

''(II) the determinants of return to work, including the characteristics of beneficiaries in receipt of tickets under the Program;

''(III) the types of employment services, vocational rehabilitation services, and other support services furnished to beneficiaries in receipt of tickets under the Program who return to work and to those who do not return to work;

''(IV) the duration of employment services, vocational rehabilitation services, and other support services furnished to beneficiaries in receipt of tickets under the Program who return to work and the duration of such services furnished to those who do not return to work and the cost to employment networks of furnishing such services;

''(V) the employment outcomes, including wages, occupations, benefits, and hours worked, of beneficiaries who return to work after receiving tickets under the Program and those who return to work without receiving such tickets;

''(VI) the characteristics of individuals in possession of tickets under the Program who are not accepted for services and, to the extent reasonably determinable, the reasons for which such beneficiaries were not accepted for services;

''(VII) the characteristics of providers whose services are provided within an employment network under the Program;

''(VIII) the extent (if any) to which employment networks display a greater willingness to provide services to beneficiaries with a range of disabilities;

''(IX) the characteristics (including employment outcomes) of those beneficiaries who receive services under the outcome payment system and of those beneficiaries who receive services under the outcome-milestone payment system;

''(X) measures of satisfaction among beneficiaries in receipt of tickets under the Program; and

''(XI) reasons for (including comments solicited from beneficiaries regarding) their choice not to use their tickets or their inability to return to work despite the use of their tickets.

''(D) PERIODIC EVALUATION REPORTS.—Following the close of the third and fifth fiscal years ending after the effective date under subsection (c), and prior to the close of the seventh fiscal year ending after such date, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the Commissioner's evaluation of the progress of activities conducted under the provisions of this section and the amendments made thereby. Each such report shall set forth the Commissioner's evaluation of the extent to which the Program has been successful and the Commissioner's conclusions on whether or how the Program should be modified. Each such report shall include such data, findings, materials, and recommendations as the Commissioner may consider appropriate.

''(5) EXTENT OF STATE'S RIGHT OF FIRST REFUSAL IN ADVANCE OF FULL IMPLEMENTATION OF AMENDMENTS IN SUCH STATE.—

''(A) IN GENERAL.—In the case of any State in which the amendments made by subsection (a) [enacting this section] have not been fully implemented pursuant to this subsection, the Commissioner shall determine by regulation the extent to which—

''(i) the requirement under section 222(a) of the Social Security Act (42 U.S.C. 422(a)) for prompt referrals to a State agency; and

''(ii) the authority of the Commissioner under section 222(d)(2) of such Act (42 U.S.C. 422(d)(2)) to provide vocational rehabilitation services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals,

shall apply in such State.

''(B) EXISTING AGREEMENTS.—Nothing in subparagraph (A) or the amendments made by subsection (a) [enacting this section] shall be construed to limit, impede, or otherwise affect any agreement entered into pursuant to section 222(d)(2) of the Social Security Act (42 U.S.C. 422(d)(2)) before the date of the enactment of this Act [Dec. 17, 1999] with respect to services provided pursuant to such agreement to beneficiaries receiving services under such agreement as of such date, except with respect to services (if any) to be provided after 3 years after the effective date provided in subsection (c).''

TICKET TO WORK AND WORK INCENTIVES ADVISORY PANEL

Pub. L. 106–170, title I, § 101(f), Dec. 17, 1999, 113 Stat. 1878, provided that:

''(1) ESTABLISHMENT.—There is established within the Social Security Administration a panel to be known as the 'Ticket to Work and Work Incentives Advisory Panel' (in this subsection referred to as the 'Panel').

''(2) DUTIES OF PANEL.—It shall be the duty of the Panel to—

''(A) advise the President, the Congress, and the Commissioner of Social Security on issues related to work incentives programs, planning, and assistance for individuals with disabilities, including work incentive provisions under titles II, XI, XVI, XVIII, and XIX of the Social Security Act (42 U.S.C. 401 et seq., 1301 et seq., 1381 et seq., 1395 et seq., 1396 et seq.); and

''(B) with respect to the Ticket to Work and Self-Sufficiency Program established under section 1148 of such Act [this section]—

''(i) advise the Commissioner of Social Security with respect to establishing phase-in sites for such Program and fully implementing the Program thereafter, the refinement of access of disabled beneficiaries to employment networks, payment systems, and management information systems, and advise the Commissioner whether such measures are being taken to the extent necessary to ensure the success of the Program;

''(ii) advise the Commissioner regarding the most effective designs for research and demonstration projects associated with the Program or conducted pursuant to section 302 of this Act [set out as a note under section 434 of this title];

''(iii) advise the Commissioner on the development of performance measurements relating to quality assurance under section 1148(d)(6) of the Social Security Act [subsec. (d)(6) of this section]; and

''(iv) furnish progress reports on the Program to the Commissioner and each House of Congress.

''(3) MEMBERSHIP.—

''(A) NUMBER AND APPOINTMENT.—The Panel shall be composed of 12 members as follows:

''(i) four members appointed by the President, not more than two of whom may be of the same political party;

''(ii) two members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives;

''(iii) two members appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Committee on Ways and Means of the House of Representatives;

''(iv) two members appointed by the majority leader of the Senate, in consultation with the Chairman of the Committee on Finance of the Senate; and

''(v) two members appointed by the minority leader of the Senate, in consultation with the ranking member of the Committee on Finance of the Senate.

''(B) REPRESENTATION.—

''(i) IN GENERAL.—The members appointed under subparagraph (A) shall have experience or expert knowledge as a recipient, provider, employer, or employee in the fields of, or related to, employment services, vocational rehabilitation services, and other support services.

''(ii) REQUIREMENT.—At least one-half of the members appointed under subparagraph (A) shall be individuals with disabilities, or representatives of individuals with disabilities, with consideration given to current or former title II [subchapter II of this chapter] disability beneficiaries or title XVI [subchapter XVI of this chapter] disability beneficiaries (as such terms are defined in section 1148(k) of the Social Security Act [subsec. (k) of this section] (as added by subsection (a)).

''(C) TERMS.—

''(i) IN GENERAL.—Each member shall be appointed for a term of 4 years (or, if less, for the remaining life of the Panel), except as provided in clauses (ii) and (iii). The initial members shall be appointed not later than 90 days after the date of the enactment of this Act [Dec. 17, 1999].

''(ii) TERMS OF INITIAL APPOINTEES.—Of the members first appointed under each clause of subparagraph (A), as designated by the appointing authority for each such clause—

''(I) one-half of such members shall be appointed for a term of 2 years; and

''(II) the remaining members shall be appointed for a term of 4 years.

''(iii) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Panel shall be filled in the manner in which the original appointment was made.

''(D) BASIC PAY.—Members shall each be paid at a rate, and in a manner, that is consistent with guidelines established under section 7 of the Federal Advisory Committee Act (5 U.S.C. App.).

''(E) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(F) QUORUM.—Eight members of the Panel shall constitute a quorum but a lesser number may hold hearings.

''(G) CHAIRPERSON.—The Chairperson of the Panel shall be designated by the President. The term of office of the Chairperson shall be 4 years.

''(H) MEETINGS.—The Panel shall meet at least quarterly and at other times at the call of the Chairperson or a majority of its members.

''(4) DIRECTOR AND STAFF OF PANEL; EXPERTS AND CONSULTANTS.—

''(A) DIRECTOR.—The Panel shall have a Director who shall be appointed by the Chairperson, and paid at a rate, and in a manner, that is consistent with guidelines established under section 7 of the Federal Advisory Committee Act (5 U.S.C. App.).

''(B) STAFF.—Subject to rules prescribed by the Commissioner of Social Security, the Director may appoint and fix the pay of additional personnel as the Director considers appropriate.

''(C) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commissioner of Social Security, the Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

''(D) STAFF OF FEDERAL AGENCIES.—Upon request of the Panel, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Panel to assist it in carrying out its duties under this Act [see Tables for classification].

''(5) POWERS OF PANEL.—

''(A) HEARINGS AND SESSIONS.—The Panel may, for the purpose of carrying out its duties under this subsection, hold such hearings, sit and act at such times and places, and take such testimony and evidence as the Panel considers appropriate.

''(B) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Panel may, if authorized by the Panel, take any action which the Panel is authorized to take by this section [enacting this section, amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title, and enacting provisions set out as notes above].

''(C) MAILS.—The Panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(6) REPORTS.—

''(A) INTERIM REPORTS.—The Panel shall submit to the President and the Congress interim reports at least annually.

''(B) FINAL REPORT.—The Panel shall transmit a final report to the President and the Congress not later than eight years after the date of the enactment of this Act [Dec. 17, 1999]. The final report shall contain a detailed statement of the findings and conclusions of the Panel, together with its recommendations for legislation and administrative actions which the Panel considers appropriate.

''(7) TERMINATION.—The Panel shall terminate 30 days after the date of the submission of its final report under paragraph (6)(B).

''(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the general fund of the Treasury, as appropriate, such sums as are necessary to carry out this subsection.''

§ 1320b–20. Work incentives outreach program

(a) Establishment

(1) In general

The Commissioner, in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, shall establish a community-based work incentives planning and assistance program for the purpose of disseminating accurate information to disabled beneficiaries on work incentives programs and issues related to such programs.

(2) Grants, cooperative agreements, contracts, and outreach

Under the program established under this section, the Commissioner shall—

(A) establish a competitive program of grants, cooperative agreements, or contracts to provide benefits planning and assistance, including information on the availability of protection and advocacy services, to disabled beneficiaries, including individuals participating in the Ticket to Work and Self-Sufficiency Program established under section 1320b–19 of this title, the program established under section 1382h of this title, and other programs that are designed to encourage disabled beneficiaries to work;

(B) conduct directly, or through grants, cooperative agreements, or contracts, ongoing outreach efforts to disabled beneficiaries (and to the families of such beneficiaries) who are potentially eligible to participate in Federal or State work incentive programs that are designed to assist disabled beneficiaries to work, including—

(i) preparing and disseminating information explaining such programs; and

(ii) working in cooperation with other Federal, State, and private agencies and nonprofit organizations that serve disabled beneficiaries, and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling;

(C) establish a corps of trained, accessible, and responsive work incentives specialists within the Social Security Administration who will specialize in disability work incentives under subchapters II and XVI of this chapter for the purpose of disseminating accurate information with respect to inquiries and issues relating to work incentives to—

(i) disabled beneficiaries;

(ii) benefit applicants under subchapters II and XVI of this chapter; and

(iii) individuals or entities awarded grants under subparagraphs[1] (A) or (B); and

(D) provide—

(i) training for work incentives specialists and individuals providing planning assistance described in subparagraph (C); and

(ii) technical assistance to organizations and entities that are designed to encourage disabled beneficiaries to return to work.

(3) Coordination with other programs

The responsibilities of the Commissioner established under this section shall be coordinated with other public and private programs that provide information and assistance regarding rehabilitation services and independent living supports and benefits planning for disabled beneficiaries including the program under section 1382h of this title, the plans for achieving self-support program (PASS), and any other Federal or State work incentives programs that are designed to assist disabled beneficiaries, including educational agencies that provide information and assistance regarding rehabilitation, school-to-work programs, transition services (as defined in, and provided in accordance with, the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.)), a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.), and other services.

[1] So in original. Probably should be ''subparagraph''.

(b) Conditions

(1) Selection of entities

(A) Application

An entity shall submit an application for a grant, cooperative agreement, or contract to provide benefits planning and assistance to the Commissioner at such time, in such manner, and containing such information as the Commissioner may determine is necessary to meet the requirements of this section.

(B) Statewideness

The Commissioner shall ensure that the planning, assistance, and information described in paragraph (2) shall be available on a statewide basis.

(C) Eligibility of States and private organizations

(i) In general

The Commissioner may award a grant, cooperative agreement, or contract under this section to a State or a private agency or organization (other than Social Security Administration Field Offices and the State agency administering the State medicaid program under subchapter XIX of this chapter, including any agency or entity described in clause (ii), that the Commissioner determines is qualified to provide the planning, assistance, and information described in paragraph (2)).

(ii) Agencies and entities described

The agencies and entities described in this clause are the following:

(I) Any public or private agency or organization (including Centers for Independent Living established under title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796 et seq.), protection and advocacy organizations, client assistance programs established in accordance with section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732), and State Developmental Disabilities Councils established in accordance with section 6024[2] of this title) that the Commissioner determines satisfies the requirements of this section.

(II) The State agency administering the State program funded under part A of subchapter IV of this chapter.

(D) Exclusion for conflict of interest

The Commissioner may not award a grant, cooperative agreement, or contract under this section to any entity that the Commissioner determines would have a conflict of interest if the entity were to receive a grant, cooperative agreement, or contract under this section.

(2) Services provided

A recipient of a grant, cooperative agreement, or contract to provide benefits planning and assistance shall select individuals who will act as planners and provide information, guidance, and planning to disabled beneficiaries on the—

(A) availability and interrelation of any Federal or State work incentives programs designed to assist disabled beneficiaries that the individual may be eligible to participate in;

(B) adequacy of any health benefits coverage that may be offered by an employer of the individual and the extent to which other health benefits coverage may be available to the individual; and

(C) availability of protection and advocacy services for disabled beneficiaries and how to access such services.

(3) Amount of grants, cooperative agreements, or contracts

(A) Based on population of disabled beneficiaries

Subject to subparagraph (B), the Commissioner shall award a grant, cooperative agreement, or contract under this section to an entity based on the percentage of the population of the State where the entity is located who are disabled beneficiaries.

(B) Limitations

(i) Per grant

No entity shall receive a grant, cooperative agreement, or contract under this section for a fiscal year that is less than $50,000 or more than $300,000.

(ii) Total amount for all grants, cooperative agreements, and contracts

The total amount of all grants, cooperative agreements, and contracts awarded under this section for a fiscal year may not exceed $23,000,000.

(4) Allocation of costs

The costs of carrying out this section shall be paid from amounts made available for the administration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and shall be allocated among those amounts as appropriate.

(c) Definitions

In this section:

(1) Commissioner

The term ''Commissioner'' means the Commissioner of Social Security.

(2) Disabled beneficiary

The term ''disabled beneficiary'' means an individual—

(A) who is a disabled beneficiary as defined in section 1320b–19(k)(2) of this title;

(B) who is receiving a cash payment described in section 1382e(a) of this title or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93–66);

(C) who, pursuant to section 1382h(b) of this title, is considered to be receiving benefits under subchapter XVI of this chapter; or

[2] See References in Text note below.

(D) who is entitled to benefits under part A of subchapter XVIII of this chapter by reason of the penultimate sentence of section 426(b) of this title.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $23,000,000 for each of the fiscal years 2000 through 2009.

(Aug. 14, 1935, ch. 531, title XI, § 1149, as added Pub. L. 106–170, title I, § 121, Dec. 17, 1999, 113 Stat. 1887; amended Pub. L. 108–203, title IV, §§ 404(a)(1), 407(a), Mar. 2, 2004, 118 Stat. 525, 527.)

REFERENCES IN TEXT

Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, referred to in subsec. (a)(1), is section 101(f) of Pub. L. 106–170, which is set out as a note under section 1320b–19 of this title.

The Individuals with Disabilities Education Act, referred to in subsec. (a)(3), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (a)(3), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Subtitle B of title I of the Act is classified generally to subchapter II (§ 2811 et seq.) of chapter 30 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b)(1)(C)(ii)(I), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended. Title VII of the Act is classified generally to subchapter VII (§ 796 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Section 6024 of this title, referred to in subsec. (b)(1)(C)(ii)(I), was repealed by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. See section 15025 of this title.

Part A of subchapter IV of this chapter, referred to in subsec. (b)(1)(C)(ii)(II), is classified to section 601 et seq. of this title.

Section 212 of Public Law 93–66, referred to in subsec. (c)(2)(B), is set out as a note under section 1382 of this title.

Part A of subchapter XVIII of this chapter, referred to in subsec. (c)(2)(D), is classified to section 1395c et seq. of this title.

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–203, § 404(a)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'disabled beneficiary' has the meaning given that term in section 1320b–19(k)(2) of this title.''

Subsec. (d). Pub. L. 108–203, § 407(a), substituted ''2009'' for ''2004''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 404(a)(2), Mar. 2, 2004, 118 Stat. 526, provided that: ''The amendment made by this subsection [amending this section] shall apply with respect to grants, cooperative agreements, or contracts entered into on or after the date of the enactment of this Act [Mar. 2, 2004].''

§ 1320b–21. State grants for work incentives assistance to disabled beneficiaries

(a) In general

Subject to subsection (c) of this section, the Commissioner may make payments in each State to the protection and advocacy system established pursuant to part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.)[1] for the purpose of providing services to disabled beneficiaries.

(b) Services provided

Services provided to disabled beneficiaries pursuant to a payment made under this section may include—

(1) information and advice about obtaining vocational rehabilitation and employment services; and

(2) advocacy or other services that a disabled beneficiary may need to secure, maintain, or regain gainful employment.

(c) Application

In order to receive payments under this section, a protection and advocacy system shall submit an application to the Commissioner, at such time, in such form and manner, and accompanied by such information and assurances as the Commissioner may require.

(d) Amount of payments

(1) In general

Subject to the amount appropriated for a fiscal year for making payments under this section, a protection and advocacy system shall not be paid an amount that is less than—

(A) in the case of a protection and advocacy system located in a State (including the District of Columbia and Puerto Rico) other than Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the greater of—

(i) $100,000; or

(ii) ⅓ of 1 percent of the amount available for payments under this section; and

(B) in the case of a protection and advocacy system located in Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, $50,000.

(2) Inflation adjustment

For each fiscal year in which the total amount appropriated to carry out this section exceeds the total amount appropriated to carry out this section in the preceding fiscal year, the Commissioner shall increase each minimum payment under subparagraphs (A) and (B) of paragraph (1) by a percentage equal to the percentage increase in the total amount so appropriated to carry out this section.

(e) Annual report

Each protection and advocacy system that receives a payment under this section shall submit an annual report to the Commissioner and the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 on the services provided to individuals by the system.

(f) Funding

(1) Allocation of payments

Payments under this section shall be made from amounts made available for the adminis-

[1] See References in Text note below.

tration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and shall be allocated among those amounts as appropriate.

(2) Carryover

Any amounts allotted for payment to a protection and advocacy system under this section for a fiscal year shall remain available for payment to or on behalf of the protection and advocacy system until the end of the succeeding fiscal year.

(g) Definitions

In this section:

(1) Commissioner

The term ''Commissioner'' means the Commissioner of Social Security.

(2) Disabled beneficiary

The term ''disabled beneficiary'' means an individual—

(A) who is a disabled beneficiary as defined in section 1320b–19(k)(2) of this title;

(B) who is receiving a cash payment described in section 1382e(a) of this title or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93–66);

(C) who, pursuant to section 1382h(b) of this title, is considered to be receiving benefits under subchapter XVI of this chapter; or

(D) who is entitled to benefits under part A of subchapter XVIII of this chapter by reason of the penultimate sentence of section 426(b) of this title.

(3) Protection and advocacy system

The term ''protection and advocacy system'' means a protection and advocacy system established pursuant to part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.).[1]

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section $7,000,000 for each of the fiscal years 2000 through 2009.

(Aug. 14, 1935, ch. 531, title XI, § 1150, as added Pub. L. 106–170, title I, § 122, Dec. 17, 1999, 113 Stat. 1890; amended Pub. L. 108–203, title IV, §§ 404(b)(1), (2), 407(b), Mar. 2, 2004, 118 Stat. 526, 527.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsecs. (a) and (g)(3), is title I of Pub. L. 88–164, Oct. 31, 1963, 77 Stat. 282, as amended generally by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, and as further amended, which was repealed by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. Part C of the Act was classified generally to subchapter III (§ 6041 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, referred to in subsec. (e), is section 101(f) of Pub. L. 106–170, which is set out as a note under section 1320b–19 of this title.

Section 212 of Public Law 93–66, referred to in subsec. (g)(2)(B), is set out as a note under section 1382 of this title.

Part A of subchapter XVIII of this chapter, referred to in subsec. (g)(2)(D), is classified to section 1395c et seq. of this title.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108–203, § 404(b)(2), substituted ''secure, maintain, or regain'' for ''secure or regain''.

Subsec. (g)(2). Pub. L. 108–203, § 404(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'disabled beneficiary' has the meaning given that term in section 1320b–19(k)(2) of this title.''

Subsec. (h). Pub. L. 108–203, § 407(b), substituted ''2009'' for ''2004''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 404(b)(3), Mar. 2, 2004, 118 Stat. 526, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to payments provided after the date of the enactment of this Act [Mar. 2, 2004].''

§ 1320b–22. Grants to develop and establish State infrastructures to support working individuals with disabilities

(a) Establishment

(1) In general

The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall award grants described in subsection (b) of this section to States to support the design, establishment, and operation of State infrastructures that provide items and services to support working individuals with disabilities.

(2) Application

In order to be eligible for an award of a grant under this section, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall require.

(3) Definition of State

In this section, the term ''State'' means each of the 50 States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) Grants for infrastructure and outreach

(1) In general

Out of the funds appropriated under subsection (e) of this section, the Secretary shall award grants to States to—

(A) support the establishment, implementation, and operation of the State infrastructures described in subsection (a) of this section; and

(B) conduct outreach campaigns regarding the existence of such infrastructures.

(2) Eligibility for grants

(A) In general

No State may receive a grant under this subsection unless the State demonstrates to the satisfaction of the Secretary that the State makes personal assistance services available under the State plan under sub-

chapter XIX of this chapter to the extent necessary to enable individuals with disabilities to remain employed, including individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title if the State has elected to provide medical assistance under such plan to such individuals.

(B) Definitions

In this section:

(i) Employed

The term ''employed'' means—

(I) earning at least the applicable minimum wage requirement under section 206 of title 29 and working at least 40 hours per month; or

(II) being engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined and approved by the Secretary.

(ii) Personal assistance services

The term ''personal assistance services'' means a range of services, provided by 1 or more persons, designed to assist an individual with a disability to perform daily activities on and off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(3) Determination of awards

(A) In general

Subject to subparagraph (B), the Secretary shall develop a methodology for awarding grants to States under this section for a fiscal year in a manner that—

(i) rewards States for their efforts in encouraging individuals described in paragraph (2)(A) to be employed; and

(ii) does not provide a State that has not elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title with proportionally more funds for a fiscal year than a State that has exercised such election.

(B) Award limits

(i) Minimum awards

(I) In general

Subject to subclause (II), no State with an approved application under this section shall receive a grant for a fiscal year that is less than $500,000.

(II) Pro rata reductions

If the funds appropriated under subsection (e) of this section for a fiscal year are not sufficient to pay each State with an application approved under this section the minimum amount described in subclause (I), the Secretary shall pay each such State an amount equal to the pro rata share of the amount made available.

(ii) Maximum awards

(I) States that elected optional medicaid eligibility

No State that has an application that has been approved under this section and that has elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title shall receive a grant for a fiscal year that exceeds 10 percent of the total expenditures by the State (including the reimbursed Federal share of such expenditures) for medical assistance provided under such subchapter for such individuals, as estimated by the State and approved by the Secretary.

(II) Other States

The Secretary shall determine, consistent with the limit described in subclause (I), a maximum award limit for a grant for a fiscal year for a State that has an application that has been approved under this section but that has not elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title.

(c) Availability of funds

(1) Funds awarded to States

Funds awarded to a State under a grant made under this section for a fiscal year shall remain available until expended.

(2) Funds not awarded to States

Funds not awarded to States in the fiscal year for which they are appropriated shall remain available in succeeding fiscal years for awarding by the Secretary.

(d) Annual report

A State that is awarded a grant under this section shall submit an annual report to the Secretary on the use of funds provided under the grant. Each report shall include the percentage increase in the number of title II disability beneficiaries, as defined in section 1320b–19(k)(3) of this title in the State, and title XVI disability beneficiaries, as defined in section 1320b–19(k)(4) of this title in the State who return to work.

(e) Appropriation

(1) In general

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to make grants under this section—

(A) for fiscal year 2001, $20,000,000;

(B) for fiscal year 2002, $25,000,000;

(C) for fiscal year 2003, $30,000,000;

(D) for fiscal year 2004, $35,000,000;

(E) for fiscal year 2005, $40,000,000; and

(F) for each of fiscal years 2006 through 2011, the amount appropriated for the preceding fiscal year increased by the percentage increase (if any) in the Consumer Price Index for All Urban Consumers (United States city average) for the preceding fiscal year.

(2) Budget authority

This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of the amounts appropriated under paragraph (1).

(f) Recommendation

Not later than October 1, 2010, the Secretary, in consultation with the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of this Act, shall submit a recommendation to the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate regarding whether the grant program established under this section should be continued after fiscal year 2011.

(Pub. L. 106–170, title II, § 203, Dec. 17, 1999, 113 Stat. 1894.)

REFERENCES IN TEXT

Section 101(f) of this Act, referred to in subsec. (f), is section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, which is set out as a note under section 1320b–19 of this title.

CODIFICATION

Section was enacted as part of the Ticket to Work and Work Incentives Improvement Act of 1999, and not as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 1320b–23. Repealed. Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180

Section, act Aug. 14, 1935, ch. 531, title XI, § 1150A, as added Pub. L. 106–553, § 1(a)(2) [title VI, § 635(c)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A–115, related to prohibition of certain misuses of social security numbers.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in Pub. L. 106–553 on Dec. 21, 2000, see § 1(a)(4) [div. A, § 213(b)] of Pub. L. 106–554, set out as an Effective Date of 2000 Amendment note under section 408 of this title.

CONGRESSIONAL FINDINGS

Pub. L. 106–553, § 1(a)(2) [title VI, § 635(b)], Dec. 21, 2000, 114 Stat. 2762, 2762A–114, which set forth congressional findings, was repealed by Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(6), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, effective as if included in Pub. L. 106–553 on Dec. 21, 2000.

STUDY AND REPORT ON FEASIBILITY OF ADDITIONAL PROHIBITIONS

Pub. L. 106–553, § 1(a)(2) [title VI, § 635(d)], Dec. 21, 2000, 114 Stat. 2762, 2762A–117, which directed the Comptroller General to conduct a study of the feasibility of imposing additional limitations or prohibitions on the use of social security numbers in public records and to submit a report to Congress, was repealed by Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(6), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, effective as if included in Pub. L. 106–553 on Dec. 21, 2000.

PART B—PEER REVIEW OF UTILIZATION AND QUALITY OF HEALTH CARE SERVICES

§ 1320c. Purpose

The purpose of this part is to establish the contracting process which the Secretary must follow pursuant to the requirements of section 1395y(g) of this title, including the definition of the utilization and quality control peer review organizations with which the Secretary shall contract, the functions such peer review organizations are to perform, the confidentiality of medical records, and related administrative matters to facilitate the carrying out of the purposes of this part.

(Aug. 14, 1935, ch. 531, title XI, § 1151, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382.)

PRIOR PROVISIONS

A prior section 1320c, act Aug. 14, 1935, ch. 531, title XI, § 1151, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1429; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(a), 95 Stat. 794, set out the Congressional declaration of purpose of former part B, in the general revision of this part by Pub. L. 97–248.

EFFECTIVE DATE

Section 149 of Pub. L. 97–248, as amended by Pub. L. 98–369, div. B, title III, § 2354(c)(3)(C), July 18, 1984, 98 Stat. 1102, provided that: ''The amendments made by this subtitle [subtitle C (§§ 141–150) of title I of Pub. L. 97–248, enacting this part, amending sections 1395b–1, 1395g, 1395k, 1395*l*, 1395x, 1395y, 1395cc, 1395pp, 1396a, and 1396b of this title, and enacting provisions set out as notes under sections 1305 and 1320c of this title] shall, subject to section 150 [section 150 of Pub. L. 97–248, set out as a note below], be effective with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Sept. 3, 1982].''

IOM STUDY OF QIOs

Pub. L. 108–173, title I, § 109(d), Dec. 8, 2003, 117 Stat. 2173, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall request the Institute of Medicine of the National Academy of Sciences to conduct an evaluation of the program under part B of title XI of the Social Security Act [this part]. The study shall include a review of the following:

''(A) An overview of the program under such part.

''(B) The duties of organizations with contracts with the Secretary under such part.

''(C) The extent to which quality improvement organizations improve the quality of care for medicare beneficiaries.

''(D) The extent to which other entities could perform such quality improvement functions as well as, or better than, quality improvement organizations.

''(E) The effectiveness of reviews and other actions conducted by such organizations in carrying out those duties.

''(F) The source and amount of funding for such organizations.

''(G) The conduct of oversight of such organizations.

''(2) REPORT TO CONGRESS.—Not later than June 1, 2006, the Secretary shall submit to Congress a report on the results of the study described in paragraph (1), including any recommendations for legislation.

''(3) INCREASED COMPETITION.—If the Secretary finds based on the study conducted under paragraph (1) that other entities could improve quality in the medicare program as well as, or better than, the current quality improvement organizations, then the Secretary shall provide for such increased competition through the ad-

dition of new types of entities which may perform quality improvement functions.''

COORDINATION OF PROs AND CARRIERS

Pub. L. 101–508, title IV, § 4205(c), Nov. 5, 1990, 104 Stat. 1388–113, provided that:

''(1) DEVELOPMENT AND IMPLEMENTATION OF PLAN.—The Secretary of Health and Human Services shall develop and implement a plan to coordinate the physician review activities of peer review organizations and carriers. Such plan shall include—

''(A) the development of common utilization and medical review criteria;

''(B) criteria for the targetting of reviews by peer review organizations and carriers; and

''(C) improved methods for exchange of information among peer review organizations and carriers.

''(2) REPORT.—Not later than January 1, 1992, the Secretary shall submit to Congress a report on the development of the plan described under paragraph (1) and shall include in the report such recommendations for changes in legislation as may be appropriate.''

EVALUATION OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Pub. L. 97–448, title III, § 309(d), Jan. 12, 1983, 96 Stat. 2410, provided that: ''In order to avoid unfairly discriminating against professional standards review organizations whose performance was evaluated during the first and second calendar quarters of 1982, the Secretary of Health and Human Services shall disregard the results of such evaluations and shall carry out such new evaluations of such organizations as may be necessary to select utilization and quality control peer review organizations in accordance with subtitle C of title I of the Tax Equity and Fiscal Responsibility Act of 1982 [sections 141–150 of Pub. L. 97–248] and part B of title XI of the Social Security Act [this part] as amended by such subtitle.''

MAINTENANCE OF CURRENT PROFESSIONAL STANDARDS REVIEW ORGANIZATION AGREEMENTS

Section 150 of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 309(a)(9), Jan. 12, 1983, 96 Stat. 2408, provided that:

''(a) The Secretary of Health and Human Services shall not terminate or fail to renew any agreement in effect with a professional standards review organization under part B of title XI of the Social Security Act [this part] on the earlier of the date of the enactment of this Act [Sept. 3, 1982] or September 30, 1982 until such time as he enters into a contract with a utilization and quality control peer review organization under such part, as amended by this subtitle [subtitle C (§§ 141–150) of title I of Pub. L. 97–248], for the area served by such professional standards review organization. In complying with this subsection, the Secretary may renew any such agreement with a professional standards review organization for a period of less than 12 months.

''(b) The provisions of part B of title XI of the Social Security Act [this part] as in effect prior to the amendments made by this subtitle [subtitle C (§§ 141–150) of title I of Pub. L. 97–248] shall remain in effect with respect to agreements with professional standards review organizations in effect on the earlier of the date of the enactment of this Act [Sept. 3, 1982] or September 30, 1982, until such time as such agreement is terminated or is not renewed, in accordance with subsection (a). Any matters awaiting a determination by a Statewide Professional Standards Review Council on the date of the enactment of this Act shall be transferred to the Secretary of Health and Human Services for a determination unless such determination is made by such Council within 30 days after the date of the enactment of this Act. No payments shall be made under part B of title XI of the Social Security Act to Statewide Professional Standards Review Councils for services performed under section 1162 of such Act [section 1320c–11 of this title] after the end of such 30-day period.''

§ 1320c–1. "Utilization and quality control peer review organization" defined

The term ''utilization and quality control peer review organization'' means an entity which—

(1)(A) is composed of a substantial number of the licensed doctors of medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under section 1320c–2 of this title, with respect to which the entity shall perform services under this part, or (B) has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialties and subspecialties can be assured;

(2) is able, in the judgment of the Secretary, to perform review functions required under section 1320c–3 of this title in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice; and

(3) has at least one individual who is a representative of consumers on its governing body.

(Aug. 14, 1935, ch. 531, title XI, § 1152, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382; amended Pub. L. 99–509, title IX, § 9353(b)(1), Oct. 21, 1986, 100 Stat. 2046.)

PRIOR PROVISIONS

A prior section 1320c–1, act Aug. 14, 1935, ch. 531, title XI, § 1152, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1430; amended Dec. 31, 1975, Pub. L. 94–182, title I, §§ 105, 108(a), 89 Stat. 1052, 1053; Oct. 25, 1977, Pub. L. 95–142, § 5(a), (d)(2)(A), (B), (*o*)(1), 91 Stat. 1183, 1185, 1191; Dec. 5, 1980, Pub. L. 96–499, title IX, § 921, 94 Stat. 2627; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2112(a)(2)(A), (B), 2113(b), (c), 95 Stat. 793, 794, related to the designation of Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1986—Par. (3). Pub. L. 99–509 added par. (3).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9353(b)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987.''

§ 1320c–2. Contracts with utilization and quality control peer review organizations

(a) Establishment and consolidation of geographic areas

(1) The Secretary shall establish throughout the United States geographic areas with respect to which contracts under this part will be made. In establishing such areas, the Secretary shall use the same areas as established under section 1320c–1 of this title as in effect immediately prior to September 3, 1982, but subject to the provisions of paragraph (2).

(2) As soon as practicable after September 3, 1982, the Secretary shall consolidate such geo-

graphic areas, taking into account the following criteria:

(A) Each State shall generally be designated as a geographic area for purposes of paragraph (1).

(B) The Secretary shall establish local or regional areas rather than State areas only where the volume of review activity or other relevant factors (as determined by the Secretary) warrant such an establishment, and the Secretary determines that review activity can be carried out with equal or greater efficiency by establishing such local or regional areas. In applying this subparagraph the Secretary shall take into account the number of hospital admissions within each State for which payment may be made under subchapter XVIII of this chapter or a State plan approved under subchapter XIX of this chapter, with any State having fewer than 180,000 such admissions annually being established as a single statewide area, and no local or regional area being established which has fewer than 60,000 total hospital admissions (including public and private pay patients) under review annually, unless the Secretary determines that other relevant factors warrant otherwise.

(C) No local or regional area shall be designated which is not a self-contained medical service area, having a full spectrum of services, including medical specialists' services.

(b) Organizations entitled to contract with Secretary

(1) The Secretary shall enter into a contract with a utilization and quality control peer review organization for each area established under subsection (a) of this section if a qualified organization is available in such area and such organization and the Secretary have negotiated a proposed contract which the Secretary determines will be carried out by such organization in a manner consistent with the efficient and effective administration of this part. If more than one such qualified organization meets the requirements of the preceding sentence, priority shall be given to any such organization which is described in section 1320c–1(1)(A) of this title.

(2)(A) Prior to November 15, 1984, the Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), an entity (other than a self-insured employer) which directly or indirectly makes payments to any practitioner or provider whose health care services are reviewed by such entity or would be reviewed by such entity if it entered into a contract with the Secretary under this part. For purposes of this paragraph, an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of members of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an ''eligible organization'' as defined in section 1395mm(b) of this title.

(B) If, after November 14, 1984, the Secretary determines that there is no other entity available for an area with which the Secretary can enter into a contract under this part, the Secretary may then enter into a contract under this part with an entity described in subparagraph (A) for such area if such entity otherwise meets the requirements of this part.

(3)(A) The Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), a health care facility, or association of such facilities, within the area served by such entity or which would be served by such entity if it entered into a contract with the Secretary under this part.

(B) For purposes of subparagraph (A), an entity shall not be considered to be affiliated with a health care facility or association of facilities by reason of management, ownership, or common control if the management, ownership, or common control consists only of not more than 20 percent of the members of the governing board of the entity being affiliated (through management, ownership, or common control) with one or more of such facilities or associations.

(c) Terms of contract

Each contract with an organization under this section shall provide that—

(1) the organization shall perform the functions set forth in section 1320c–3(a) of this section, or may subcontract for the performance of all or some of such functions (and for purposes of paragraphs (2) and (3) of subsection (b) of this section, a subcontract under this paragraph shall not constitute an affiliation with the subcontractor);

(2) the Secretary shall have the right to evaluate the quality and effectiveness of the organization in carrying out the functions specified in the contract;

(3) the contract shall be for an initial term of three years and shall be renewable on a triennial basis thereafter;

(4) if the Secretary intends not to renew a contract, he shall notify the organization of his decision at least 90 days prior to the expiration of the contract term, and shall provide the organization an opportunity to present data, interpretations of data, and other information pertinent to its performance under the contract, which shall be reviewed in a timely manner by the Secretary;

(5) the organization may terminate the contract upon 90 days notice to the Secretary;

(6) the Secretary may terminate the contract prior to the expiration of the contract term upon 90 days notice to the organization if the Secretary determines that—

(A) the organization does not substantially meet the requirements of section 1320c–1 of this title; or

(B) the organization has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part, but only after such organization has had an opportunity to submit data and have such data reviewed by the

panel established under subsection (d) of this section;

(7) the Secretary shall include in the contract negotiated objectives against which the organization's performance will be judged, and negotiated specifications for use of regional norms, or modifications thereof based on national norms, for performing review functions under the contract; and

(8) reimbursement shall be made to the organization on a monthly basis, with payments for any month being made not later than 15 days after the close of such month.

In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.

(d) Review prior to termination of contract; modification and termination; reviewing panel

(1) Prior to making any termination under subsection (c)(6)(B) of this section, the Secretary must provide the organization with an opportunity to provide data, interpretations of data, and other information pertinent to its performance under the contract. Such data and other information shall be reviewed in a timely manner by a panel appointed by the Secretary, and the panel shall submit a report of its findings to the Secretary in a timely manner. The Secretary shall make a copy of the report available to the organization.

(2) The Secretary may accept or not accept the findings of the panel. After the panel has submitted a report with respect to an organization, the Secretary may, with the concurrence of the organization, amend the contract to modify the scope of the functions to be carried out by the organization, or in any other manner. The Secretary may terminate a contract under the authority of subsection (c)(6)(B) of this section upon 90 days notice after the panel has submitted a report, or earlier if the organization so agrees.

(3) A panel appointed by the Secretary under this subsection shall consist of not more than five individuals, each of whom shall be a member of a utilization and quality control peer review organization having a contract with the Secretary under this part. While serving on such panel individuals shall be paid at a per diem rate not to exceed the current per diem equivalent at the time that service on the panel is rendered for grade GS–18 under section 5332 of title 5. Appointments shall be made without regard to title 5.

(4) During the period after the Secretary has given notice of intent to terminate a contract, and prior to the time that the Secretary enters into a contract with another utilization and quality control peer review organization, the Secretary may transfer review responsibilities of the organization under the contract being terminated to another utilization and quality control peer review organization, or to an intermediary or carrier having an agreement under section 1395h of this title or a contract under section 1395u of this title.

(e) Authority of Secretary

(1) Except as provided in paragraph (2), contracting authority of the Secretary under this section may be carried out without regard to any provision of law relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the purposes of this part. The Secretary may use different contracting methods with respect to different geographical areas.

(2) If a peer review organization with a contract under this section is required to carry out a review function in addition to any function required to be carried out at the time the Secretary entered into or renewed the contract with the organization, the Secretary shall, before requiring such organization to carry out such additional function, negotiate the necessary contractual modifications, including modifications that provide for an appropriate adjustment (in light of the cost of such additional function) to the amount of reimbursement made to the organization.

(f) Termination not subject to judicial review

Any determination by the Secretary to terminate or not to renew a contract under this section shall not be subject to judicial review.

(g) Timely provision of hospital data to peer review organizations

The Secretary shall provide that fiscal intermediaries furnish to peer review organizations, each month on a timely basis, data necessary to initiate the review process under section 1320c–3(a) of this title on a timely basis. If the Secretary determines that a fiscal intermediary is unable to furnish such data on a timely basis, the Secretary shall require the hospital to do so.

(h) Publication of new policy or procedure and general criteria and standards for evaluation; performance comparison report

(1) The Secretary shall publish in the Federal Register any new policy or procedure adopted by the Secretary that affects substantially the performance of contract obligations under this section not less than 30 days before the date on which such policy or procedure is to take effect. This paragraph shall not apply to the extent it is inconsistent with a statutory deadline.

(2) The Secretary shall publish in the Federal Register the general criteria and standards used for evaluating the efficient and effective performance of contract obligations under this section and shall provide opportunity for public comment with respect to such criteria and standards.

(3) The Secretary shall regularly furnish each peer review organization with a contract under this section with a report that documents the performance of the organization in relation to the performance of other such organizations.

(i) Preference in contracting with in-State organizations

(1) Notwithstanding any other provision of this section, the Secretary shall not renew a

contract with any organization that is not an in-State organization (as defined in paragraph (3)) unless the Secretary has first complied with the requirements of paragraph (2).

(2)(A) Not later than six months before the date on which a contract period ends with respect to an organization that is not an in-State organization, the Secretary shall publish in the Federal Register—

(i) the date on which such period ends; and

(ii) the period of time in which an in-State organization may submit a proposal for the contract ending on such date.

(B) If one or more qualified in-State organizations submits a proposal within the period of time specified under subparagraph (A)(ii), the Secretary shall not automatically renew the current contract on a noncompetitive basis, but shall provide for competition for the contract in the same manner as a new contract under subsection (b) of this section.

(3) For purposes of this subsection, an in-State organization is an organization that has its primary place of business in the State in which review will be conducted (or, which is owned by a parent corporation the headquarters of which is located in such State).

(Aug. 14, 1935, ch. 531, title XI, § 1153, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382; amended Pub. L. 97–448, title III, § 309(b)(2), Jan. 12, 1983, 96 Stat. 2408; Pub. L. 98–21, title VI, § 602(a), Apr. 20, 1983, 97 Stat. 163; Pub. L. 98–369, div. B, title III, §§ 2334(a), (b), 2347(c), July 18, 1984, 98 Stat. 1090, 1097; Pub. L. 99–272, title IX, §§ 9402(b), 9404(a), 9406(a), Apr. 7, 1986, 100 Stat. 200, 201; Pub. L. 99–509, title IX, § 9352(a)(1), Oct. 21, 1986, 100 Stat. 2044; Pub. L. 100–203, title IV, §§ 4091(a)(2)(A), (b)(1), (2), 4092(a), 4094(d)(1), Dec. 22, 1987, 101 Stat. 1330–134, 1330–135, 1330–137.)

PRIOR PROVISIONS

A prior section 1320c–2, act Aug. 14, 1935, ch. 531, title XI, § 1153, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1432, related to review pending designation of a Professional Standards Review Organization in a given area, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–203, § 4094(d)(1), inserted after and below par. (8) the following: ''In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.''

Subsec. (c)(3). Pub. L. 100–203, § 4091(a)(2)(A), substituted ''three'' for ''two'' and ''triennial'' for ''biennial''.

Subsec. (e). Pub. L. 100–203, § 4091(b)(2), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), contracting'' for ''Contracting'', and added par. (2).

Subsec. (h). Pub. L. 100–203, § 4091(b)(1), added subsec. (h).

Subsec. (i). Pub. L. 100–203, § 4092(a), added subsec. (i).

1986—Subsec. (b)(2)(A). Pub. L. 99–272, § 9404(a), substituted ''consists only of members of the governing board'' for ''consists only of one individual member of the governing board''.

Subsec. (c)(8). Pub. L. 99–272, § 9402(b), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''reimbursement shall be made to the organization in accordance with the terms of the contract.''

Subsec. (d)(4). Pub. L. 99–272, § 9406(a), added par. (4).

Subsec. (g). Pub. L. 99–509 added subsec. (g).

1984—Subsec. (b)(2)(A). Pub. L. 98–369, § 2347(c)(1), substituted ''Prior to November 15, 1984'' for ''During the first twelve months in which the Secretary is entering into contracts under this section''.

Pub. L. 98–369, § 2334(b), inserted ''(other than a self-insured employer)'' and provision that for purposes of this paragraph an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of one individual member of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an ''eligible organization'' as defined in section 1395mm(b) of this title.

Subsec. (b)(2)(B). Pub. L. 98–369, § 2347(c)(2), substituted ''after November 14, 1984'' for ''after the expiration of the twelve-month period referred to in subparagraph (A)''.

Subsec. (b)(2)(C). Pub. L. 98–369, § 2347(c)(3), struck out subpar. (C) which provided that the twelve-month period formerly referred to in subpar. (A) would be deemed to have begun not later than October 1983.

Subsec. (b)(3). Pub. L. 98–369, § 2334(a), designated existing provisions as subpar. (A) and added subpar. (B).

1983—Subsec. (b)(2)(C). Pub. L. 98–21 added subpar. (C).

Subsec. (d). Pub. L. 97–448 substituted reference to ''subsection (c)(6)(B)'' for ''subsection (c)(5)(B)'' and ''subsection (c)(5)(C)'' in pars. (1) and (2), respectively.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4091(a)(2)(B) of Pub. L. 100–203 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4091(b)(3) of Pub. L. 100–203 provided that: ''The amendment made by paragraphs (1) and (2) [amending this section] shall become effective on the date of enactment of this Act [Dec. 22, 1987].''

Section 4092(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to contracts scheduled to be renewed on or after the first day of the eighth month to begin after the date of enactment of this Act [Dec. 22, 1987].''

Section 4094(d)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [this part] as of January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9352(c)(1) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall implement the amendment made by subsection (a) [amending this section and section 1395h of this title] not later than 6 months after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9402(c)(2) of Pub. L. 99–272 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Apr. 7, 1986].''

Section 9404(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9406(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2334(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this sec-

tion] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2347(d) of Pub. L. 98–369 provided that: ''The provisions of, and amendments made by, this section [amending this section and section 1395cc of this title and enacting provisions set out as a note under section 1395cc of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

EXTENSIONS OF PEER REVIEW CONTRACT PERIOD; ONE-TIME EXTENSIONS TO PERMIT STAGGERING OF EXPIRATION DATES

Section 4091(a)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(j)(1), July 1, 1988, 102 Stat. 790, provided that:

''(A) IN GENERAL.—In order to permit the Secretary of Health and Human Services an adequate time to complete contract renewal negotiations with utilization and quality control peer review organizations under part B of title XI of the Social Security Act [this part] and to provide for a staggered period of contract expiration dates, notwithstanding section 1153(c) of such Act [subsec. (c) of this section], the Secretary may provide for extensions of existing contracts, but the total of such extensions may not exceed 24 months for any contract.

''(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to contracts expiring on or after the date of the enactment of this Act [Dec. 22, 1987].''

§ 1320c–3. Functions of peer review organizations

(a) Review of professional activities; determination of payment; determination of review authority; consultation with professional health care practitioners; standards of health care; other duties

Any utilization and quality control peer review organization entering into a contract with the Secretary under this part must perform the following functions:

(1) The organization shall review some or all of the professional activities in the area, subject to the terms of the contract and subject to the requirements of subsection (d) of this section, of physicians and other health care practitioners and institutional and noninstitutional providers of health care services in the provision of health care services and items for which payment may be made (in whole or in part) under subchapter XVIII of this chapter (including where payment is made for such services to eligible organizations pursuant to contracts under section 1395mm of this title, to Medicare Advantage organizations pursuant to contracts under part C,[1] and to prescription drug sponsors pursuant to contracts under part D[1]) for the purpose of determining whether—

(A) such services and items are or were reasonable and medically necessary and whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1395y of this title;

(B) the quality of such services meets professionally recognized standards of health care; and

(C) in case such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, such services and items could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.

If the organization performs such reviews with respect to a type of health care practitioner other than medical doctors, the organization shall establish procedures for the involvement of health care practitioners of that type in such reviews.

(2) The organization shall determine, on the basis of the review carried out under subparagraphs (A), (B), and (C) of paragraph (1), whether payment shall be made for services under subchapter XVIII of this chapter. Such determination shall constitute the conclusive determination on those issues for purposes of payment under subchapter XVIII of this chapter, except that payment may be made if—

(A) such payment is allowed by reason of section 1395pp of this title;

(B) in the case of inpatient hospital services or extended care services, the peer review organization determines that additional time is required in order to arrange for postdischarge care, but payment may be continued under this subparagraph for not more than two days, but only in the case where the provider of such services did not know and could not reasonably have been expected to know (as determined under section 1395pp of this title) that payment would not otherwise be made for such services under subchapter XVIII of this chapter prior to notification by the organization under paragraph (3);

(C) such determination is changed as the result of any hearing or review of the determination under section 1320c–4 of this title; or

(D) such payment is authorized under section 1395x(v)(1)(G) of this title.

The organization shall identify cases for which payment should not be made by reason of paragraph (1)(B) only through the use of criteria developed pursuant to guidelines established by the Secretary.

[1] See References in Text note below.

(3)(A) Subject to subparagraphs (B) and (D), whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such patient and the agency or organization responsible for the payment of claims under subchapter XVIII of this chapter of such determination.

(B) The notification under subparagraph (A) with respect to services or items disapproved by reason of subparagraph (A) or (C) of paragraph (1) shall not occur until 20 days after the date that the organization has—

(i) made a preliminary notification to such practitioner or provider of such proposed determination, and

(ii) provided such practitioner or provider an opportunity for discussion and review of the proposed determination.

(C) The discussion and review conducted under subparagraph (B)(ii) shall not affect the rights of a practitioner or provider to a formal reconsideration of a determination under this part (as provided under section 1320c–4 of this title).

(D) The notification under subparagraph (A) with respect to services or items disapproved by reason of paragraph (1)(B) shall not occur until after—

(i) the organization has notified the practitioner or provider involved of the determination and of the practitioner's or provider's right to a formal reconsideration of the determination under section 1320c–4 of this title, and

(ii) if the provider or practitioner requests such a reconsideration, the organization has made such a reconsideration.

If a provider or practitioner is provided a reconsideration, such reconsideration shall be in lieu of any subsequent reconsideration to which the provider or practitioner may be otherwise entitled under section 1320c–4 of this title, but shall not affect the right of a beneficiary from seeking reconsideration under such section of the organization's determination (after any reconsideration requested by the provider or physician under clause (ii)).

(E)(i) In the case of services and items provided by a physician that were disapproved by reason of paragraph (1)(B), the notice to the patient shall state the following: ''In the judgment of the peer review organization, the medical care received was not acceptable under the medicare program. The reasons for the denial have been discussed with your physician.''

(ii) In the case of services or items provided by an entity or practitioner other than a physician, the Secretary may substitute the entity or practitioner which provided the services or items for the term ''physician'' in the notice described in clause (i).

(4)(A) The organization shall, after consultation with the Secretary, determine the types and kinds of cases (whether by type of health care or diagnosis involved, or whether in terms of other relevant criteria relating to the provision of health care services) with respect to which such organization will, in order to most effectively carry out the purposes of this part, exercise review authority under the contract. The organization shall notify the Secretary periodically with respect to such determinations. Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.

(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a risk-sharing contract under section 1395mm of this title (or that is subject to review under section 1395ss(t)(3) of this title) for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1395mm of this title, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization. The previous two sentences shall not apply with respect to a contract year if another entity has been awarded a contract under subparagraph (C). Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.

(C) The Secretary may provide, by contract under competitive procurement procedures on a State-by-State basis in up to 25 States, for the review described in subparagraph (B) by an appropriate entity (which may be a peer review organization described in that subpara-

graph). In selecting among States in which to conduct such competitive procurement procedures, the Secretary may not select States which, as a group, have more than 50 percent of the total number of individuals enrolled with eligible organizations under section 1395mm of this title. Under a contract with an entity under this subparagraph—

(i) the entity must be, or must meet all the requirements under section 1320c–1 of this title to be, a utilization and quality control peer review organization (other than the ability to perform review functions under this section that are not described in subparagraph (B)),

(ii) the contract must meet the requirement of section 1320c–2(b)(3) of this title, and

(iii) the level of effort expended under the contract shall be, to the extent practicable, not less than the level of effort that would otherwise be required under the third sentence of subparagraph (B) if this subparagraph did not apply.

(5) The organization shall consult with nurses and other professional health care practitioners (other than physicians described in section 1395x(r)(1) of this title) and with representatives of institutional and noninstitutional providers of health care services, with respect to the organization's responsibility for the review under paragraph (1) of the professional activities of such practitioners and providers.

(6)(A) The organization shall, consistent with the provisions of its contract under this part, apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice within the geographic area served by the organization as principal points of evaluation and review, taking into consideration national norms where appropriate. Such norms with respect to treatment for particular illnesses or health conditions shall include—

(i) the types and extent of the health care services which, taking into account differing, but acceptable, modes of treatment and methods of organizing and delivering care, are considered within the range of appropriate diagnosis and treatment of such illness or health condition, consistent with professionally recognized and accepted patterns of care; and

(ii) the type of health care facility which is considered, consistent with such standards, to be the type in which health care services which are medically appropriate for such illness or condition can most economically be provided.

As a component of the norms described in clause (i) or (ii), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.

(B) The organization shall—

(i) offer to provide, several times each year, for a physician representing the organization to meet (at a hospital or at a regional meeting) with medical and administrative staff of each hospital (the services of which are reviewed by the organization) respecting the organization's review of the hospital's services for which payment may be made under subchapter XVIII of this chapter, and

(ii) publish (not less often than annually) and distribute to providers and practitioners whose services are subject to review a report that describes the organization's findings with respect to the types of cases in which the organization has frequently determined that (I) inappropriate or unnecessary care has been provided, (II) services were rendered in an inappropriate setting, or (III) services did not meet professionally recognized standards of health care.

(7) The organization, to the extent necessary and appropriate to the performance of the contract, shall—

(A)(i) make arrangements to utilize the services of persons who are practitioners of, or specialists in, the various areas of medicine (including dentistry, optometry, and podiatry), or other types of health care, which persons shall, to the maximum extent practicable, be individuals engaged in the practice of their profession within the area served by such organization; and

(ii) in the case of psychiatric and physical rehabilitation services, make arrangements to ensure that (to the extent possible) initial review of such services be made by a physician who is trained in psychiatry or physical rehabilitation (as appropriate).[2]

(B) undertake such professional inquiries either before or after, or both before and after, the provision of services with respect to which such organization has a responsibility for review which in the judgment of such organization will facilitate its activities;

(C) examine the pertinent records of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1); and

(D) inspect the facilities in which care is rendered or services are provided (which are located in such area) of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1).

(8) The organization shall perform such duties and functions and assume such responsibilities and comply with such other requirements as may be required by this part or under regulations of the Secretary promulgated to carry out the provisions of this part or as may be required to carry out section 1395y(a)(15) of this title.

[2] So in original. The period probably should be a semicolon.

(9)(A) The organization shall collect such information relevant to its functions, and keep and maintain such records, in such form as the Secretary may require to carry out the purposes of this part, and shall permit access to and use of any such information and records as the Secretary may require for such purposes, subject to the provisions of section 1320c–9 of this title.

(B) If the organization finds, after reasonable notice to and opportunity for discussion with the physician or practitioner concerned, that the physician or practitioner has furnished services in violation of section 1320c–5(a) of this title and the organization determines that the physician or practitioner should enter into a corrective action plan under section 1320c–5(b)(1) of this title, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician or practitioner of its finding and of any action taken as a result of the finding.

(10) The organization shall coordinate activities, including information exchanges, which are consistent with economical and efficient operation of programs among appropriate public and private agencies or organizations including—

(A) agencies under contract pursuant to sections 1395h and 1395u of this title;

(B) other peer review organizations having contracts under this part; and

(C) other public or private review organizations as may be appropriate.

(11) The organization shall make available its facilities and resources for contracting with private and public entities paying for health care in its area for review, as feasible and appropriate, of services reimbursed by such entities.

(12) Repealed. Pub. L. 103–432, title I, § 156(a)(2)(A)(i), Oct. 31, 1994, 108 Stat. 4440.

(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an ''early readmission case'' is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge.

(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under subchapter XVIII of this chapter) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such subchapter (or a person acting on the individual's behalf). The organization shall inform the individual (or representative) of the organization's final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.

(15) During each year of the contract entered into under section 1320c–2(b) of this title, the organization shall perform significant on-site review activities, including on-site review in at least 20 percent of the rural hospitals in the organization's area.

(16) The organization shall provide for a review and report to the Secretary when requested by the Secretary under section 1395dd(d)(3) of this title. The organization shall provide reasonable notice of the review to the physician and hospital involved. Within the time period permitted by the Secretary, the organization shall provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary under such section.

(17) The organization shall execute its responsibilities under subparagraphs (A) and (B) of paragraph (1) by offering to providers, practitioners, Medicare Advantage organizations offering Medicare Advantage plans under part C,[3] and prescription drug sponsors offering prescription drug plans under part D[3] quality improvement assistance pertaining to prescription drug therapy. For purposes of this part and subchapter XVIII of this chapter, the functions described in this paragraph shall be treated as a review function.

(b) Review by physicians; physician's family defined

(1) No physician shall be permitted to review—

(A) health care services provided to a patient if he was directly responsible for providing such services; or

(B) health care services provided in or by an institution, organization, or agency, if he or any member of his family has, directly or indirectly, a significant financial interest in such institution, organization, or agency.

(2) For purposes of this subsection, a physician's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents, and grandparents.

(c) Utilization of services of physicians to make final determinations of denial decisions with respect to professional conduct of other physicians

No utilization and quality control peer review organization shall utilize the services of any individual who is not a duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry to make final determinations of denial decisions in accordance with its duties and functions under this part with respect to the professional conduct of any other duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry, or any act performed by any duly licensed doctor of medicine, osteopathy, den-

[3] See References in Text note below.

tistry, optometry, or podiatry in the exercise of his profession.

(d) Review of ambulatory surgical procedures

Each contract under this part shall require that the utilization and quality control peer review organization's review responsibility pursuant to subsection (a)(1) of this section will include review of all ambulatory surgical procedures specified pursuant to section 1395*l*(i)(1)(A) of this title which are performed in the area, or, at the discretion of the Secretary a sample of such procedures.

(e) Review of hospital denial notices

(1) If—

(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1395pp of this title) of the determination.

(2) to (4) Repealed. Pub. L. 106–554, § 1(a)(6) [title V, § 521(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–543.

(f) Identification of methods for identifying cases of substandard care

The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4) of this section) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care.

(Aug. 14, 1935, ch. 531, title XI, § 1154, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 385; amended Pub. L. 97–448, title III, § 309(b)(3), (4), Jan. 12, 1983, 96 Stat. 2408, 2409; Pub. L. 99–272, title IX, §§ 9307(b), 9401(a), 9403(a), 9405(a), Apr. 7, 1986, 100 Stat. 193, 196, 200, 201; Pub. L. 99–509, title IX, §§ 9343(d), 9351(a), 9352(b), 9353(a)(1)–(3), (c)(1), Oct. 21, 1986, 100 Stat. 2040, 2043, 2044–2047; Pub. L. 100–203, title IV, §§ 4039(h)(3), (4), 4093(a), 4094(a)–(c)(1)(A), (2)(A), (B), 4096(c), Dec. 22, 1987, 101 Stat. 1330–135 to 1330–137, 1330–139, as amended Pub. L. 100–360, title IV, § 411(e)(3), (j)(3)(A), July 1, 1988, 102 Stat. 775, 791; Pub. L. 100–360, title II, § 203(d)(2), title IV, § 411(j)(2), (3)(B), (4)(C), July 1, 1988, 102 Stat. 724, 775, 791; Pub. L. 100–485, title VI, § 608(d)(25)(B), Oct. 13, 1988, 102 Stat. 2421; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, § 6224(a)(1), (b)(1), Dec. 19, 1989, 103 Stat. 2257; Pub. L. 101–508, title IV, §§ 4205(b)(1), (d)(1)(A), (g)(1)(A), (2)(A), 4207(a)(1)(B), formerly 4027(a)(1)(B), 4358(b)(3), Nov. 5, 1990, 104 Stat. 1388–113 to 1388–115, 1388–117, 1388–137; Pub. L. 103–432, title I, §§ 156(a)(2)(A), (b)(2)(A), 160(d)(4), 171(h)(2), Oct. 31, 1994, 108 Stat. 4440, 4441, 4444, 4450; Pub. L. 106–554, § 1(a)(6) [title V, § 521(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–543; Pub. L. 108–173, title I, § 109(a), (b), title IX, § 948(d), Dec. 8, 2003, 117 Stat. 2173, 2426.)

REFERENCES IN TEXT

Parts C and D, referred to in subsec. (a)(1), (17), probably means parts C and D of title XVIII of act Aug. 14, 1935, ch. 531, which are classified to parts C (§ 1395w–21 et seq.) and D (§ 1395w–101 et seq.), respectively, of subchapter XVIII of this chapter.

PRIOR PROVISIONS

A prior section 1320c–3, act Aug. 14, 1935, ch. 531, title XI, § 1154, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1432; amended Oct. 25, 1977, Pub. L. 95–142, § 5(b), (d)(2)(C), 91 Stat. 1184, 1186; Dec. 5, 1980, Pub. L. 96–499, title IX, § 924(a), 94 Stat. 2628; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2112(a)(1), (2)(B), (b), 2113(c), 2121(e), 95 Stat. 793, 794, 796, related to trial period for Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–173, § 109(a), inserted ", to Medicare Advantage organizations pursuant to contracts under part C, and to prescription drug sponsors pursuant to contracts under part D" after "under section 1395mm of this title".

Subsec. (a)(17). Pub. L. 108–173, § 109(b), added par. (17).

Subsec. (e)(5). Pub. L. 108–173, § 948(d), struck out par. (5) which read as follows: "In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative)."

2000—Subsec. (e)(2) to (4). Pub. L. 106–554 struck out pars. (2) to (4), which had: in par. (2), authorized peer review organization review of validity of hospital's determination that a patient no longer required inpatient hospital care but attending physician had not agreed with the hospital's determination; in par. (3), authorized review of the determination where patient or patient's representative had received a notice under par. (1) and requested the review; and in par. (4), directed that hospital could not charge patient for inpatient services furnished before noon of the day after the date the patient or representative received notice of the decision where request for review had been made not later than noon of the first working day after notice under par. (1) had been received and section 1395pp(a)(2) conditions had been met.

1994—Subsec. (a)(4)(B). Pub. L. 103–432, § 171(h)(2), substituted "(or that is subject to review under section 1395ss(t)(3) of this title)" for "(or subject to review under section 1395ss(t) of this title)".

Subsec. (a)(9)(B). Pub. L. 103–432, § 156(b)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "If the organization finds, after notice and hearing, that a physician has furnished services in violation of this subsection, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician of its finding and decision."

Subsec. (a)(12). Pub. L. 103–432, § 156(a)(2)(A)(i), struck out par. (12) which read as follows: "The organization shall perform the review, referral, and other functions required under section 1320c–13 of this title."

Subsec. (d). Pub. L. 103–432, § 156(a)(2)(A)(ii), struck out "(and except as provided in section 1320c–13 of this title)" after "discretion of the Secretary".

1990—Subsec. (a)(2). Pub. L. 101–508, § 4205(g)(2)(A), inserted third sentence and struck out former third sentence which read as follows: "Determinations that payment should not be made by reason of subparagraph (B) of paragraph (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary."

Subsec. (a)(3)(E). Pub. L. 101–508, § 4205(g)(1)(A), designated existing provisions as cl. (i), inserted "provided by a physician that were" after "items", substituted "physician." for "physician and hospital.", and added cl. (ii).

Subsec. (a)(4)(B). Pub. L. 101–508, § 4358(b)(3), inserted "(or subject to review under section 1395ss(t) of this title)" after "section 1395mm of this title" in first sentence.

Subsec. (a)(7)(A)(i). Pub. L. 101–508, § 4205(b)(1)(A), inserted ‘‘, optometry, and podiatry’’ after ‘‘dentistry’’.

Subsec. (a)(9). Pub. L. 101–508, § 4205(d)(1)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(16). Pub. L. 101–508, § 4207(a)(1)(B), formerly § 4027(a)(1)(B), as renumbered by Pub. L. 103–432, § 160(d)(4), added par. (16).

Subsec. (c). Pub. L. 101–508, § 4205(b)(1)(B), substituted ‘‘dentistry, optometry, or podiatry’’ for ‘‘or dentistry’’ in three places.

1989—Subsec. (a)(1). Pub. L. 101–239, § 6224(a)(1), inserted at end ‘‘If the organization performs such reviews with respect to a type of health care practitioner other than medical doctors, the organization shall establish procedures for the involvement of health care practitioners of that type in such reviews.’’

Subsec. (a)(3)(A). Pub. L. 101–239, § 6224(b)(1)(A), substituted ‘‘subparagraphs (B) and (D)’’ for ‘‘subparagraph (B)’’.

Subsec. (a)(3)(B). Pub. L. 101–239, § 6224(b)(1)(B), inserted ‘‘with respect to services or items disapproved by reason of subparagraph (A) or (C) of paragraph (1)’’ after ‘‘under subparagraph (A)’’.

Subsec. (a)(3)(D), (E). Pub. L. 101–239, § 6224(b)(1)(C), added subpars. (D) and (E).

Subsec. (a)(16). Pub. L. 101–234, repealed Pub. L. 100–360, § 203(d)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(3)(C). Pub. L. 100–360, § 411(j)(2), designated last sentence of par. (3) as subpar. (C).

Subsec. (a)(4). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(3), see 1987 Amendment note below.

Subsec. (a)(6). Pub. L. 100–360, § 411(j)(3)(A), made technical amendment to directory language of Pub. L. 100–203, § 4094(a), see 1987 Amendment note below.

Subsec. (a)(15). Pub. L. 100–360, § 411(j)(3)(B), substituted ‘‘review in at least’’ for ‘‘review at at least’’.

Subsec. (a)(16). Pub. L. 100–360, § 203(d)(2), added par. (16) which related to review of home intravenous drug therapy services.

Subsec. (d). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(4), see 1987 Amendment note below.

Subsec. (e)(3)(A)(i). Pub. L. 100–360, § 411(j)(4)(C), as amended by Pub. L. 100–485, § 608(d)(25)(B), substituted ‘‘paragraph (1)’’ for ‘‘paragraph (1) or (2)’’.

Subsec. (e)(3)(B). Pub. L. 100–360, § 411(j)(4)(C), as amended by Pub. L. 100–485, § 608(d)(25)(B), substituted ‘‘paragraph (1)’’ for ‘‘paragraph (1) or (2)’’ in introductory provisions.

1987—Subsec. (a)(3). Pub. L. 100–203, § 4093(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ‘‘Whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such practitioner or provider, such patient, and the agency or organization responsible for the payment of claims under subchapter XVIII of this chapter. In the case of practitioners and providers of services, the organization shall provide an opportunity for discussion and review of the determination.’’

Subsec. (a)(4). Pub. L. 100–203, § 4039(h)(3), as added by Pub. L. 100–360, § 411(e)(3), realigned margins for subpars. (B) and (C) and cls. (i) to (iii) of subpar. (C), in subpar. (B), substituted ‘‘risk sharing contract under section 1395mm’’ for ‘‘contract under section 1395mm’’, and in subpar. (C), inserted ‘‘(other than the ability to perform review functions under this section that are not described in subparagraph (B))’’.

Subsec. (a)(4)(B). Pub. L. 100–203, § 4094(c)(2)(A), inserted before period at end of first sentence ‘‘and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1395mm of this title, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization’’ and substituted ‘‘previous two sentences’’ for ‘‘previous sentence’’ in penultimate sentence.

Subsec. (a)(6). Pub. L. 100–203, § 4094(c)(1)(A), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Pub. L. 100–203, § 4094(a), as amended by Pub. L. 100–360, § 411(j)(3)(A), inserted after and below subpar. (A) the following: ‘‘As a component of the norms described in clause (i) or (ii), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient’s residence to the site of care, family support, availability of proximate alternative sites of care, and the patient’s ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.’’

Subsec. (a)(7)(A). Pub. L. 100–203, § 4094(c)(2)(B), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(15). Pub. L. 100–203, § 4094(b), added par. (15).

Subsec. (d). Pub. L. 100–203, § 4039(h)(4), as added by Pub. L. 100–360, § 411(e)(3), substituted ‘‘1320c–13 of this title’’ for ‘‘1320c–13(b)(4) of this title’’.

Subsec. (e)(2). Pub. L. 100–203, § 4096(c)(1), inserted provision at end requiring hospital to notify patient if it has requested a review.

Subsec. (e)(3)(A)(i), (B). Pub. L. 100–203, § 4096(c)(2), inserted ‘‘or (2)’’ after ‘‘paragraph (1)’’.

1986—Subsec. (a)(1). Pub. L. 99–509, § 9343(d)(1), inserted ‘‘and subject to the requirements of subsection (d) of this section’’ after ‘‘subject to the terms of the contract’’ in introductory provisions.

Pub. L. 99–272, § 9405(a), inserted ‘‘(including where payment is made for such services to eligible organizations pursuant to contracts under section 1395mm of this title)’’ after ‘‘subchapter XVIII of this chapter’’ in introductory provisions.

Subsec. (a)(2). Pub. L. 99–272, § 9403(a), in introductory provisions substituted ‘‘subparagraphs (A), (B), and (C)’’ for ‘‘subparagraphs (A) and (C)’’, and following subpar. (D) inserted provision that determinations that payment should not be made by reason of subpar. (B) of par. (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary.

Subsec. (a)(4)(A). Pub. L. 99–509, § 9353(a)(1), inserted at end ‘‘Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.’’

Pub. L. 99–509, § 9353(a)(2)(A), inserted ‘‘(A)’’ after ‘‘(4)’’.

Subsec. (a)(4)(B). Pub. L. 99–509, § 9353(a)(2)(C), inserted at end ‘‘Under the contract the level of effort ex-

pended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.''

Pub. L. 99–509, § 9353(a)(2)(B), added subpar. (B).

Subsec. (a)(4)(C). Pub. L. 99–509, § 9353(a)(2)(D), added subpar. (C).

Subsec. (a)(8). Pub. L. 99–272, § 9307(b), inserted ''or as may be required to carry out section 1395y(a)(15) of this title'' before the period at end.

Subsec. (a)(12). Pub. L. 99–272, § 9401(a), added par. (12).

Subsec. (a)(13). Pub. L. 99–509, § 9352(b), added par. (13).

Subsec. (a)(14). Pub. L. 99–509, § 9353(c)(1), added par. (14).

Subsec. (d). Pub. L. 99–509, § 9343(d)(2), added subsec. (d).

Subsec. (e). Pub. L. 99–509, § 9351(a), added subsec. (e).

Subsec. (f). Pub. L. 99–509, § 9353(a)(3), added subsec. (f).

1983—Subsec. (a)(1)(A). Pub. L. 97–448, § 309(b)(3), substituted ''and whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1395y of this title'' for ''or otherwise allowable under section 1395y(a)(1) of this title''.

Subsec. (a)(2)(B). Pub. L. 97–448, § 309(b)(4), struck out ''posthospital'' before ''extended care services''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title I, § 109(c), Dec. 8, 2003, 117 Stat. 2173, provided that: ''The amendments made by this section [amending this section] shall apply on and after January 1, 2004.''

Pub. L. 108–173, title IX, § 948(d), Dec. 8, 2003, 117 Stat. 2426, provided that the amendment made by section 948(d) is effective as if included in the enactment of section 521(c) of BIPA (the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted by section 1(a)(6) of Pub. L. 106–554).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title V, § 521(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–543, provided that: ''The amendments made by this section [amending this section and sections 1395w–22 and 1395ff of this title] shall apply with respect to initial determinations made on or after October 1, 2002.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 156(a)(3) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section and sections 1395*l*, 1395m, 1395y, and 1395cc of this title and repealing section 1320c–13 of this title] shall apply to services provided on or after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 171(h)(2) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 171(*l*) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4205(b)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4205(d)(1)(C) of Pub. L. 101–508 provided that: ''The amendments made by this paragraph [amending this section and section 1320c–9 of this title] shall apply to notices of proposed sanctions issued more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4205(g)(1)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconiliation [sic] Act of 1989 [Pub. L. 101–239].''

Section 4205(g)(2)(B) of Pub. L. 101–508 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Section 4207(a)(1)(C), formerly 4027(a)(1)(C), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendment made by subparagraph (A) [amending section 1395dd of this title] shall take effect on the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Nov. 5, 1990]. The amendment made by subparagraph (B) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [this part] as of the first day of the first month beginning more than 60 days after the date of the enactment of this Act.''

Section 4358(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 172(a), Oct. 31, 1994, 108 Stat. 4452; Pub. L. 104–18, § 1, July 7, 1995, 109 Stat. 192, provided that:

''(1) The amendments made by this section [amending this section and section 1395ss of this title] shall only apply—

''(A) in 15 States (as determined by the Secretary of Health and Human Services) and such other States as elect such amendments to apply to them, and

''(B) subject to paragraph (2), during the 6½-year period beginning with 1992.

For purposes of this paragraph, the term 'State' has the meaning given such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

''(2)(A) The Secretary of Health and Human Services shall conduct a study that compares the health care costs, quality of care, and access to services under medicare select policies with that under other medicare supplemental policies. The study shall be based on surveys of appropriate age-adjusted sample populations. The study shall be completed by June 30, 1997.

''(B) Not later than December 31, 1997, the Secretary shall determine, based on the results of the study under subparagraph (A), if any of the following findings are true:

''(i) The amendments made by this section have not resulted in savings of premium costs to those enrolled in medicare select policies (in comparison to their enrollment in medicare supplemental policies that are not medicare select policies and that provide comparable coverage).

''(ii) There have been significant additional expenditures under the medicare program as a result of such amendments.

''(iii) Access to and quality of care has been significantly diminished as a result of such amendments.

''(C) The amendments made by this section shall remain in effect beyond the 6½-year period described in paragraph (1)(B) unless the Secretary determines that any of the findings described in clause (i), (ii), or (iii) of subparagraph (B) are true.

''(3) The Comptroller General shall conduct a study to determine the extent to which individuals who are continuously covered under a medicare supplemental policy are subject to medical underwriting if they change the policy under which they are covered, and to identify options, if necessary, for modifying the medicare supplemental insurance market to make sure that continuously insured beneficiaries are able to switch plans without medical underwriting. By not later than June 30, 1996, the Comptroller General shall submit to the Congress a report on the study. The report shall include a description of the potential impact on the cost and availability of medicare supplemental policies of each option identified in the study.''

[Section 172(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending section 4358(c) of Pub. L. 101–508, set out above] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].'']

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6224(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this

section] shall apply to contracts entered into after the date of the enactment of this Act [Dec. 19, 1989].''

Section 6224(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1320c–4 of this title] shall apply to determinations by utilization and quality control peer review organizations with respect to which preliminary notifications were made under section 1154(a)(3)(B) of the Social Security Act [subsec. (a)(3)(B) of this section] more than 30 days after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 203(g) of Pub. L. 100–360, which had provided that the amendments made by section 203 of Pub. L. 100–360 (amending this section and sections 1395h, 1395k to 1395n, 1395w–2, 1395x, 1395z, and 1395aa of this title) were to apply to items and services furnished on or after January 1, 1990, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(3), (j)(2), (3), (4)(C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4093(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to determinations made on or after April 1, 1988.''

Section 4094(c)(1)(B) of Pub. L. 100–203 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] entered into or renewed more than 6 months after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4094(c)(2)(C) of Pub. L. 100–203 provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987].''

Section 4096(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1395u, 1395gg, and 1395pp of this title] shall apply to services furnished on or after January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9343(d) of Pub. L. 99–509 applicable to contracts entered into or renewed after Jan. 1, 1987, see section 9343(h)(4) of Pub. L. 99–509, as amended, set out as a note under section 1395*l* of this title.

Section 9351(b) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act [Oct. 21, 1986].

''(2) Section 1154(e)(4) of the Social Security Act [subsec. (e)(4) of this section] (as added by the amendment made by subsection (a)) shall take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9352(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987, except that in applying such amendment before January 1, 1989, the term 'post-hospital services' does not include physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.''

Section 9353(a)(6) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4039(h)(9)(A), (B), as added Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 776, provided that:

''(A)(i) Except as provided in clause (ii), the amendments made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987.

''(ii) The amendment made by paragraph (1) shall not be construed as requiring, before January 1, 1989, the review of physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.

''(B) The amendments made by paragraphs (2)(B) and (2)(D) [amending this section] shall apply to contracts as of April 1, 1987.

''(C) The amendment made by paragraph (2)(C) [amending this section] shall apply to review activities conducted by organizations on or after January 1, 1988.

''(D) The amendment made by paragraph (3) [amending this section] becomes effective on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9353(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to complaints received on or after the first day of the first month that begins more than 9 months after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9307(e) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395y of this title] shall apply to services performed on or after April 1, 1986.''

Section 9401(d) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to items and services furnished on or after January 1, 1987. The Secretary of Health and Human Services shall provide for such modification of contracts under part B of title XI of the Social Security Act [this part] that are in effect on that date as may be necessary to effect these amendments on a timely basis.''

Section 9403(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 1395cc of this title] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9405(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, § 9353(a)(5), Oct. 21, 1986, 100 Stat. 2046, provided that: ''The amendment made by this section [amending this section] shall apply to items and services furnished on or after April 1, 1987.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

STATE REGULATORY PROGRAMS

For provisions relating to changes required to conform State regulatory programs to amendments by section 171 of Pub. L. 103–432, see section 171(m) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

REVIEW AND ANALYSIS OF VARIATIONS IN UTILIZATION OF HOSPITAL AND OTHER HEALTH CARE SERVICES

Section 9353(a)(4) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall provide, to at least 12 utilization and quality control peer review organizations with contracts under part B of title XI of the Social Security Act [this part], data and data processing assistance to allow each of these

organizations to review and analyze small-area variations, in the service area of the organization, in the utilization of hospital and other health care services for which payment is made under title XVIII of such Act [subchapter XVIII of this chapter].''

§ 1320c–4. Right to hearing and judicial review

Any beneficiary who is entitled to benefits under subchapter XVIII of this chapter, and, subject to section 1320c–3(a)(3)(D) of this title, any practitioner or provider, who is dissatisfied with a determination made by a contracting peer review organization in conducting its review responsibilities under this part, shall be entitled to a reconsideration of such determination by the reviewing organization. Where the reconsideration is adverse to the beneficiary and where the matter in controversy is $200 or more, such beneficiary shall be entitled to a hearing by the Secretary (to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title). For purposes of the preceding sentence, subsection (*l*) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to judicial review of any final decision relating to a reconsideration described in this subsection.

(Aug. 14, 1935, ch. 531, title XI, § 1155, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 388; amended Pub. L. 101–239, title VI, § 6224(b)(2), Dec. 19, 1989, 103 Stat. 2257; Pub. L. 103–296, title I, § 108(b)(14), Aug. 15, 1994, 108 Stat. 1485.)

PRIOR PROVISIONS

A prior section 1320c–4, act Aug. 14, 1935, ch. 531, title XI, § 1155, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1433; amended Oct. 25, 1977, Pub. L. 95–142, § 5(c)(1), (d)(3), (*o*)(2), (p), 91 Stat. 1184, 1188, 1191, 1192; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 924(b)–(d), 925–927(a), 931(g), 94 Stat. 2629, 2630, 2634; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2111, 2113(d), 2121(f), 95 Stat. 793, 794, 796, related to functions and duties of Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1994—Pub. L. 103–296 substituted ''(to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title). For purposes of the preceding sentence, subsection (*l*) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to judicial review of any final decision relating to a reconsideration described in this subsection.'' for ''(to the same extent as is provided in section 405(b) of this title), and, where the amount in controversy is $2,000 or more, to judicial review of the Secretary's final decision.''

1989—Pub. L. 101–239 inserted '', subject to section 1320c–3(a)(3)(D) of this title,'' before ''any practitioner or provider''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to determinations by utilization and quality control peer review organizations with respect to which preliminary notifications were made under section 1320c–3(a)(3)(B) of this title more than 30 days after Dec. 19, 1989, see section 6224(b)(3) of Pub. L. 101–239, set out as a note under section 1320c–3 of this title.

§ 1320c–5. Obligations of health care practitioners and providers of health care services; sanctions and penalties; hearings and review

(a) Assurances regarding services and items ordered or provided by practitioner or provider

It shall be the obligation of any health care practitioner and any other person (including a hospital or other health care facility, organization, or agency) who provides health care services for which payment may be made (in whole or in part) under this chapter, to assure, to the extent of his authority that services or items ordered or provided by such practitioner or person to beneficiaries and recipients under this chapter—

(1) will be provided economically and only when, and to the extent, medically necessary;

(2) will be of a quality which meets professionally recognized standards of health care; and

(3) will be supported by evidence of medical necessity and quality in such form and fashion and at such time as may reasonably be required by a reviewing peer review organization in the exercise of its duties and responsibilities.

(b) Sanctions and penalties; hearings and review

(1) If after reasonable notice and opportunity for discussion with the practitioner or person concerned, and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan, any organization having a contract with the Secretary under this part determines that such practitioner or person has—

(A) failed in a substantial number of cases substantially to comply with any obligation imposed on him under subsection (a) of this section, or

(B) grossly and flagrantly violated any such obligation in one or more instances,

such organization shall submit a report and recommendations to the Secretary. If the Secretary agrees with such determination, the Secretary (in addition to any other sanction provided under law) may exclude (permanently or for such period as the Secretary may prescribe, except that such period may not be less than 1 year) such practitioner or person from eligibility to provide services under this chapter on a reimbursable basis. If the Secretary fails to act upon the recommendations submitted to

him by such organization within 120 days after such submission, such practitioner or person shall be excluded from eligibility to provide services on a reimbursable basis until such time as the Secretary determines otherwise.

(2) A determination made by the Secretary under this subsection to exclude a practitioner or person shall be effective on the same date and in the same manner as an exclusion from participation under the programs under this chapter becomes effective under section 1320a–7(c) of this title, and shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(3) In lieu of the sanction authorized by paragraph (1), the Secretary may require that (as a condition to the continued eligibility of such practitioner or person to provide such health care services on a reimbursable basis) such practitioner or person pays[1] to the United States, in case such acts or conduct involved the provision or ordering by such practitioner or person of health care services which were medically improper or unnecessary, an amount not in excess of up to $10,000 for each instance of the medically improper or unnecessary services so provided. Such amount may be deducted from any sums owing by the United States (or any instrumentality thereof) to the practitioner or person from whom such amount is claimed.

(4) Any practitioner or person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.

(5) Before the Secretary may effect an exclusion under paragraph (2) in the case of a provider or practitioner located in a rural health professional shortage area or in a county with a population of less than 70,000, the provider or practitioner adversely affected by the determination is entitled to a hearing before an administrative law judge (described in section 405(b) of this title) respecting whether the provider or practitioner should be able to continue furnishing services to individuals entitled to benefits under this chapter, pending completion of the administrative review procedure under paragraph (4). If the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to such individuals if permitted to continue furnishing such services, the Secretary shall not effect the exclusion under paragraph (2) until the provider or practitioner has been provided reasonable notice and opportunity for an administrative hearing thereon under paragraph (4).

(6) When the Secretary effects an exclusion of a physician under paragraph (2), the Secretary shall notify the State board responsible for the licensing of the physician of the exclusion.

[1] So in original. Probably should be ''pay''.

(c) Enlistment of support of other organizations to assure practitioner's or provider's compliance with obligations

It shall be the duty of each utilization and quality control peer review organization to use such authority or influence it may possess as a professional organization, and to enlist the support of any other professional or governmental organization having influence or authority over health care practitioners and any other person (including a hospital or other health care facility, organization, or agency) providing health care services in the area served by such review organization, in assuring that each practitioner or person (referred to in subsection (a) of this section) providing health care services in such area shall comply with all obligations imposed on him under subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1156, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 388; amended Pub. L. 100–93, § 6, Aug. 18, 1987, 101 Stat. 691; Pub. L. 100–203, title IV, § 4095(a), Dec. 22, 1987, 101 Stat. 1330–138; Pub. L. 100–203, title IV, § 4039(h)(5), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 775; Pub. L. 101–508, title IV, § 4205(a)(1), (d)(2)(A), Nov. 5, 1990, 104 Stat. 1388–112, 1388–114; Pub. L. 101–597, title IV, § 401(c)(1), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103–432, title I, § 156(b)(1), Oct. 31, 1994, 108 Stat. 4441; Pub. L. 104–191, title II, §§ 214, 231(f), Aug. 21, 1996, 110 Stat. 2005, 2014.)

PRIOR PROVISIONS

A prior section 1320c–5, act Aug. 14, 1935, ch. 531, title XI, § 1156, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1435, provided for development of norms of health care services by Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–191, § 214(b)(2), struck out in concluding provisions ''In determining whether a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.'' after ''chapter on a reimbursable basis.''

Pub. L. 104–191, § 214(b)(1), struck out in concluding provisions ''and determines that such practitioner or person, in providing health care services over which such organization has review responsibility and for which payment (in whole or in part) may be made under this chapter, has demonstrated an unwillingness or a lack of ability substantially to comply with such obligations,'' after ''agrees with such determination,''.

Pub. L. 104–191, § 214(a)(1), substituted ''may prescribe, except that such period may not be less than 1 year)'' for ''may prescribe)'' in concluding provisions.

Subsec. (b)(2). Pub. L. 104–191, § 214(a)(2), substituted ''shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain'' for ''shall remain''.

Subsec. (b)(3). Pub. L. 104–191, § 231(f), substituted ''up to $10,000 for each instance'' for ''the actual or estimated cost''.

1994—Subsec. (b)(1). Pub. L. 103–432 substituted ''whether'' for ''whehter'' in third sentence.

1990—Subsec. (b)(1). Pub. L. 101–508, § 4205(a)(1), inserted ''and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which

may include remedial education) agreed to by the organization, and has failed successfully to complete such plan,'' after ''concerned,'' in introductory provisions and inserted after second sentence ''In determining whehter [sic] a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.''

Subsec. (b)(5). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area (HMSA)''.

Subsec. (b)(6). Pub. L. 101–508, § 4205(d)(2)(A), added par. (6).

1988—Subsec. (b). Pub. L. 100–360 added Pub. L. 100–203, § 4039(h)(5), see 1987 Amendment notes below.

1987—Subsec. (a). Pub. L. 100–93, § 6(1), substituted ''this chapter'' for ''subchapter XVIII of this chapter'' and ''this subchapter''.

Subsec. (b)(1). Pub. L. 100–203, § 4039(h)(5)(A), as added by Pub. L. 100–360, substituted ''services under this chapter'' for ''such services''.

Pub. L. 100–93, § 6(2), substituted ''this chapter'' for ''subchapter XVIII of this chapter''.

Subsec. (b)(2). Pub. L. 100–203, § 4039(h)(5)(B), as added by Pub. L. 100–360, substituted ''on the same date and in the same manner as an exclusion from participation under the programs under this chapter becomes effective under section 1320a–7(c) of this title'' for ''at such time and upon such reasonable notice to the public and to the practitioner or person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of institutional health care services such determination shall be effective in the manner provided in this chapter with respect to terminations of provider agreements)''.

Pub. L. 100–93, § 6(2), substituted ''this chapter'' for ''subchapter XVIII of this chapter''.

Subsec. (b)(5). Pub. L. 100–203 added par. (5).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 214 of Pub. L. 104–191 effective Jan. 1, 1997, except as otherwise provided, see section 218 of Pub. L. 104–191, set out as a note under section 1320a–7 of this title.

Amendment by section 231(f) of Pub. L. 104–191 applicable to acts or omissions occurring on or after Jan. 1, 1997, see section 231(i) of Pub. L. 104–191, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 156(b)(6)(A) of Pub. L. 103–432, set out as a note under section 1320c–9 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4205(a)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to initial determinations made by organizations on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4205(d)(2)(B) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 156(b)(3), Oct. 31, 1994, 108 Stat. 4441, provided that: ''The amendment made by this paragraph [amending this section] shall apply to sanctions effected more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4095(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to determinations made by the Secretary of Health and Human Services under section 1156(b) of the Social Security Act [subsec. (b) of this section] on or after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

TELECOMMUNICATIONS DEMONSTRATION PROJECTS

Section 4094(e) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(j)(3)(C), as added by Pub. L. 100–485, title VI, § 608(d)(25)(A), Oct. 13, 1988, 102 Stat. 2421, provided that: ''The Secretary of Health and Human Services shall enter into agreements with entities submitting applications under this subsection (in such form as the Secretary may provide) to establish demonstration projects to examine the feasibility of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and teaching hospitals under this title [probably means title XI of the Social Security Act which is classified to this subchapter]. Under such demonstration projects, the Secretary may provide for payments to physicians consulted via video communication systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.''

PREEXCLUSION HEARINGS; TRANSITION FOR CURRENT CASES AND REDETERMINATION IN CERTAIN CASES

Section 4095(c), (d) of Pub. L. 100–203 provided that:

''(c) TRANSITION FOR CURRENT CASES.—In the case of a practitioner or person—

''(1) for whom a notice of determination under section 1156(b) of the Social Security Act [subsec. (b) of this section] has been provided within 365 days before the date of the enactment of this Act [Dec. 22, 1987],

''(2) who has not exhausted the administrative remedies available under section 1156(b)(4) of such Act for review of the determination, and

''(3) who requests, within 90 days after the date of the enactment of this Act, a hearing established under this subsection,

the Secretary of Health and Human Services shall provide for a hearing described in section 1156(b)(5) of the Social Security Act (as amended by subsection (a) of this section).

''(d) REDETERMINATIONS IN CERTAIN CASES.—If, in hearing under subsection (c), the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to individuals entitled to benefits under title XVIII of the Social Security Act [subchapter XVIII of this chapter] if permitted to continue or resume furnishing such services, the Secretary shall not effect the exclusion (or shall suspend the exclusion, if previously effected) under paragraph (2) of section 1156(b) of such Act [subsec. (b) of this section] until the provider or practitioner has been provided an administrative hearing thereon under paragraph (4) of such section, notwithstanding any failure by the provider or practitioner to request the hearing on a timely basis.''

§ 1320c–6. Limitation on liability

(a) Providers of information to organizations having a contract with Secretary

Notwithstanding any other provision of law, no person providing information to any organi-

zation having a contract with the Secretary under this part shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) unless—

(1) such information is unrelated to the performance of the contract of such organization; or

(2) such information is false and the person providing it knew, or had reason to believe, that such information was false.

(b) Employees and fiduciaries of organizations having contracts with Secretary

No organization having a contract with the Secretary under this part and no person who is employed by, or who has a fiduciary relationship with, any such organization or who furnishes professional services to such organization, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this part or to a valid contract entered into under this part, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in the performance of such duty, function, or activity.

(c) Physicians and providers

No doctor of medicine or osteopathy and no provider (including directors, trustees, employees, or officials thereof) of health care services shall be civilly liable to any person under any law of the United States or of any State (or political subdivision thereof) on account of any action taken by him in compliance with or reliance upon professionally developed norms of care and treatment applied by an organization under contract pursuant to section 1320c–2 of this title operating in the area where such doctor of medicine or osteopathy or provider took such action; but only if—

(1) he takes such action in the exercise of his profession as a doctor of medicine or osteopathy or in the exercise of his functions as a provider of health care services; and

(2) he exercised due care in all professional conduct taken or directed by him and reasonably related to, and resulting from, the actions taken in compliance with or reliance upon such professionally accepted norms of care and treatment.

(d) Reimbursement by Secretary for expenses incurred in defense of legal proceedings

The Secretary shall make payment to an organization under contract with him pursuant to this part, or to any member or employee thereof, or to any person who furnishes legal counsel or services to such organization, in an amount equal to the reasonable amount of the expenses incurred, as determined by the Secretary, in connection with the defense of any suit, action, or proceeding brought against such organization, member, or employee related to the performance of any duty or function under such contract by such organization, member, or employee.

(Aug. 14, 1935, ch. 531, title XI, § 1157, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 389; amended Pub. L. 101–508, title IV, § 4205(f), Nov. 5, 1990, 104 Stat. 1388–114.)

PRIOR PROVISIONS

A prior section 1320c–6, act Aug. 14, 1935, ch. 531, title XI, § 1157, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1437; amended Oct. 25, 1977, Pub. L. 95–142, § 13(b)(4), 91 Stat. 1198, related to submission of reports by Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–508 inserted ''organization having a contract with the Secretary under this part and no'' after ''No'', struck out ''by him'' after ''the performance'', and substituted ''due care was exercised in the performance of such duty, function, or activity'' for ''he has exercised due care''.

§ 1320c–7. Application of this part to certain State programs receiving Federal financial assistance

(a) State plan provision that functions of peer review organizations may be performed by contract with such organization

A State plan approved under subchapter XIX of this chapter may provide that the functions specified in section 1320c–3 of this title may be performed in an area by contract with a utilization and quality control peer review organization that has entered into a contract with the Secretary in accordance with the provisions of section 1395y(g) of this title.

(b) Federal share of expenditures

In the event a State enters into a contract in accordance with subsection (a) of this section, the Federal share of the expenditures made to the contracting organization for its costs in the performance of its functions under the State plan shall be 75 percent (as provided in section 1396b(a)(3)(C) of this title).

(Aug. 14, 1935, ch. 531, title XI, § 1158, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 390.)

PRIOR PROVISIONS

A prior section 1320c–7, act Aug. 14, 1935, ch. 531, title XI, § 1158, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1437; amended Oct. 25, 1977, Pub. L. 95–142, §§ 5(d)(1), 22(a), 91 Stat. 1185, 1208; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 902(a)(3), 931(h), 94 Stat. 2613, 2634; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2113(e), 2121(g), 95 Stat. 794, 796, related to review approval as a condition of payment of claims, prior to the general revision of this part by Pub. L. 97–248.

§ 1320c–8. Authorization for use of certain funds to administer provisions of this part

Expenses incurred in the administration of the contracts described in section 1395y(g) of this title shall be payable from—

(1) funds in the Federal Hospital Insurance Trust Fund; and

(2) funds in the Federal Supplementary Medical Insurance Trust Fund,

in such amounts from each of such Trust Funds as the Secretary shall deem to be fair and equitable after taking into consideration the expenses attributable to the administration of this part with respect to each of such programs. The

Secretary shall make such transfers of moneys between such Trust Funds as may be appropriate to settle accounts between them in cases where expenses properly payable from one such Trust Fund have been paid from the other such Trust Fund.

(Aug. 14, 1935, ch. 531, title XI, § 1159, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 390.)

PRIOR PROVISIONS

A prior section 1320c–8, act Aug. 14, 1935, ch. 531, title XI, § 1159, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1437; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(f), 95 Stat. 795, related to reconsideration hearing and review, prior to the general revision of this part by Pub. L. 97–248.

§ 1320c–9. Prohibition against disclosure of information

(a) Freedom of Information Act inapplicable; exceptions to nondisclosure

An organization, in carrying out its functions under a contract entered into under this part, shall not be a Federal agency for purposes of the provisions of section 552 of title 5 (commonly referred to as the Freedom of Information Act). Any data or information acquired by any such organization in the exercise of its duties and functions shall be held in confidence and shall not be disclosed to any person except—

(1) to the extent that may be necessary to carry out the purposes of this part,

(2) in such cases and under such circumstances as the Secretary shall by regulations provide to assure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care, or

(3) in accordance with subsection (b) of this section.

(b) Disclosure of information permitted

An organization having a contract with the Secretary under this part shall provide in accordance with procedures and safeguards established by the Secretary, data and information—

(1) which may identify specific providers or practitioners as may be necessary—

(A) to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case or pattern;

(B) to assist appropriate Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health, which data and information shall be provided by the peer review organization to any such agency—

(i) at the discretion of the peer review organization, at the request of such agency relating to a specific case or pattern with respect to which such agency has made a finding, or has a reasonable belief, that there may be a substantial risk to the public health, or

(ii) upon a finding by, or the reasonable belief of, the peer review organization that there may be a substantial risk to the public health;

(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1395bb of this title in accrediting providers for purposes of meeting the conditions described in subchapter XVIII of this chapter, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body to carry out its respective function which is within the jurisdiction of the agency or body under State law or under section 1395bb of this title; and

(D) to provide notice in accordance with section 1320c–3(a)(9)(B) of this title;

(2) to assist the Secretary, and such Federal and State agencies recognized by the Secretary as having health planning or related responsibilities under Federal or State law (including health systems agencies and State health planning and development agencies), in carrying out appropriate health care planning and related activities, which data and information shall be provided in such format and manner as may be prescribed by the Secretary or agreed upon by the responsible Federal and State agencies and such organization, and shall be in the form of aggregate statistical data (without explicitly identifying any individual) on a geographic, institutional, or other basis reflecting the volume and frequency of services furnished, as well as the demographic characteristics of the population subject to review by such organization.

The penalty provided in subsection (c) of this section shall not apply to the disclosure of any information received under this subsection, except that such penalty shall apply to the disclosure (by the agency receiving such information) of any such information described in paragraph (1) unless such disclosure is made in a judicial, administrative, or other formal legal proceeding resulting from an investigation conducted by the agency receiving the information. An organization may require payment of a reasonable fee for providing information under this subsection in response to a request for such information.

(c) Penalties

It shall be unlawful for any person to disclose any such information described in subsection (a) of this section other than for the purposes provided in subsections (a) and (b) of this section, and any person violating the provisions of this section shall, upon conviction, be fined not more than $1,000, and imprisoned for not more than 6 months, or both, and shall be required to pay the costs of prosecution.

(d) Subpoena and discovery proceedings regarding patient records

No patient record in the possession of an organization having a contract with the Secretary

under this part shall be subject to subpoena or discovery proceedings in a civil action. No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1320c–3(a)(1)(B) or 1320c–5(a)(2) of this title shall be subject to subpoena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.

(e) Organizations with contracts

For purposes of this section and section 1320c–6 of this title, the term ''organization with a contract with the Secretary under this part'' includes an entity with a contract with the Secretary under section 1320c–3(a)(4)(C) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1160, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 391; amended Pub. L. 99–509, title IX, § 9353(d)(1), Oct. 21, 1986, 100 Stat. 2047; Pub. L. 100–203, title IV, § 4039(h)(6), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 776; Pub. L. 101–508, title IV, § 4205(d)(1)(B), (e)(1), Nov. 5, 1990, 104 Stat. 1388–113, 1388–114; Pub. L. 103–432, title I, § 156(b)(2)(B), (4), Oct. 31, 1994, 108 Stat. 4441.)

PRIOR PROVISIONS

A prior section 1320c–9, act Aug. 14, 1935, ch. 531, title XI, § 1160, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1438; amended Oct. 25, 1977, Pub. L. 95–142, § 5(e), (*o*)(3), 91 Stat. 1189, 1191; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(g), 95 Stat. 795, enumerated obligations of health care practitioners and providers of health care services, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1994—Subsec. (b)(1)(D). Pub. L. 103–432, § 156(b)(2)(B), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''to provide notice to the State medical board in accordance with section 1320c–3(a)(9)(B) of this title when the organization submits a report and recommendations to the Secretary under section 1320c–5(b)(1) of this title with respect to a physician whom the board is responsible for licensing;''.

Subsec. (d). Pub. L. 103–432, § 156(b)(4), which directed amendment of subsec. (d) by substituting ''subpoena'' for ''subpena'', was executed by making the substitution in two places to reflect the probable intent of Congress.

1990—Subsec. (b)(1)(D). Pub. L. 101–508, § 4205(d)(1)(B), added subpar. (D).

Subsec. (d). Pub. L. 101–508, § 4205(e)(1), inserted at end ''No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1320c–3(a)(1)(B) or 1320c–5(a)(2) of this title shall be subject to subpena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.''

1988—Subsec. (e). Pub. L. 100–360 added Pub. L. 100–203, § 4039(h)(6), see 1987 Amendment note below.

1987—Subsec. (e). Pub. L. 100–203, § 4039(h)(6), as added by Pub. L. 100–360, added subsec. (e).

1986—Subsec. (b)(1)(C). Pub. L. 99–509 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case, but only to the extent that such data and information is required by the agency in carrying out a function which is within the jurisdiction of such agency under State law; and''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 156(b)(6) of Pub. L. 103–432 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, sections 1320c–3 and 1320c–5 of this title, and provisions set out as notes under this section and section 1320c–5 of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].

''(B) The amendments made by paragraph (2) [amending this section and section 1320c–3 of this title] (relating to the requirement on reporting of information to State boards) shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4205(d)(1)(B) of Pub. L. 101–508 applicable to notices of proposed sanctions issued more than 60 days after Nov. 5, 1990, see section 4205(d)(1)(C) of Pub. L. 101–508, set out as a note under section 1320c–3 of this title.

Section 4205(e)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 156(b)(5), Oct. 31, 1994, 108 Stat. 4441, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to proceedings as of the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9353(d)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act [Oct. 21, 1986].''

FREEDOM OF INFORMATION ACT REQUEST

Pub. L. 96–499, title IX, § 928, Dec. 5, 1980, 94 Stat. 2630, provided that: ''No Professional Standards Review Organization designated (conditionally or otherwise) under part B of title XI of the Social Security Act [this part] shall be required to make available any records pursuant to a request made under section 552 of title 5, United States Code, until the later of (1) one year after the date of entry of a final court order requiring that such records be made available, or (2) the last date of the Congress during which the court order was entered.''

§ 1320c–10. Annual reports

The Secretary shall submit to the Congress not later than April 1 of each year, a full and complete report on the administration, impact, and cost of the program under this part during the preceding fiscal year, including data and information on—

(1) the number, status, and service areas of all utilization and quality control peer review organizations participating in the program;

(2) the number of health care institutions and practitioners whose services are subject to review by such organizations, and the number of beneficiaries and recipients who received services subject to such review during such year;

(3) the various methods of reimbursement utilized in contracts under this part, and the relative efficiency of each such method of reimbursement;

(4) the imposition of penalties and sanctions under this title for violations of law and for failure to comply with the obligations imposed by this part;

(5) the total costs incurred under subchapters XVIII and XIX of this chapter in the implementation and operation of all procedures required by such subchapters for the review of services to determine their medical necessity, appropriateness of use, and quality; and

(6) descriptions of the criteria upon which decisions are made, and the selection and relative weights of such criteria.

(Aug. 14, 1935, ch. 531, title XI, § 1161, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 392.)

PRIOR PROVISIONS

A prior section 1320c–10, act Aug. 14, 1935, ch. 531, title XI, § 1161, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1440, related to giving of notice to a practitioner or provider by a Professional Standards Review Organization immediately after taking certain action or making certain determinations, prior to the general revision of this part by Pub. L. 97–248.

PERFORMANCE OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS; REPORT TO CONGRESS

Pub. L. 97–35, title XXI, § 2112(a)(2)(D), Aug. 13, 1981, 95 Stat. 793, provided that the Secretary of Health and Human Services, not later than September 30, 1982, was to report to the Congress on his assessment (under former section 1320c–3(g) of this title) of the relative performance of Professional Standards Review Organizations and on any determinations made not to renew agreements with such Organizations on the basis of such performance.

§ 1320c–11. Exemptions for religious nonmedical health care institutions

The provisions of this part shall not apply with respect to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).

(Aug. 14, 1935, ch. 531, title XI, § 1162, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 393; amended Pub. L. 105–33, title IV, § 4454(c)(2), Aug. 5, 1997, 111 Stat. 431.)

PRIOR PROVISIONS

A prior section 1320c–11, act Aug. 14, 1935, ch. 531, title XI, § 1162, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1440; amended Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 922(a), 927(b), 94 Stat. 2628, 2630; Aug. 13, 1981, 97–35, title XXI, § 2113(h), 95 Stat. 795, related to Statewide Professional Standards Review Councils, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1997—Pub. L. 105–33 substituted ''Exemptions for religious nonmedical health care institutions'' for ''Exemptions of Christian Science sanatoriums'' in section catchline and substituted ''religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title)'' for ''Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts'' in text.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

§ 1320c–12. Medical officers in American Samoa, Northern Mariana Islands, and Trust Territory of Pacific Islands to be included in utilization and quality control peer review program

For purposes of applying this part to American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, individuals licensed to practice medicine in those places shall be considered to be physicians and doctors of medicine.

(Aug. 14, 1935, ch. 531, title XI, § 1163, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 393.)

PRIOR PROVISIONS

A prior section 1320c–12, act Aug. 14, 1935, ch. 531, title XI, § 1163, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1441; amended Oct. 25, 1977, Pub. L. 95–142, § 5(f), (g), 91 Stat. 1189; Dec. 5, 1980, Pub. L. 96–499, title IX, § 923(a)–(d), 94 Stat. 2628, related to establishment and membership of the National Professional Standards Review Council, prior to the general revision of this part by Pub. L. 97–248.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1320c–13. Repealed. Pub. L. 103–432, title I, § 156(a)(1), Oct. 31, 1994, 108 Stat. 4440

Section, act Aug. 14, 1935, ch. 531, title XI, § 1164, as added Apr. 7, 1986, Pub. L. 99–272, title IX, § 9401(b), 100 Stat. 196; amended Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1895(b)(17), 100 Stat. 2934; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6003(g)(3)(D)(v), 103 Stat. 2153, related to 100 percent peer review for certain surgical procedures.

EFFECTIVE DATE OF REPEAL

Repeal applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as an Effective Date of 1994 Amendment note under section 1320c–3 of this title.

§§ 1320c–14 to 1320c–19. Omitted

CODIFICATION

Sections 1320c–14 to 1320c–19 were omitted in the general revision of this part by Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382.

Section 1320c–14, act Aug. 14, 1935, ch. 531, title XI, § 1165, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1443, related to correlation of functions between Professional Standards Review Organizations and administrative instrumentalities.

Section 1320c–15, act Aug. 14, 1935, ch. 531, title XI, § 1166, as added Oct. 30, 1972, Pub. L. 92–603, title II,

§ 249F(b), 86 Stat. 1443; amended Oct. 25, 1977, Pub. L. 95–142, § 5(h), 91 Stat. 1189, related to general prohibition against disclosure of data or information and exceptions to such prohibition. See section 1320c–9 of this title.

Section 1320c–16, act Aug. 14, 1935, ch. 531, title XI, § 1167, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1443; amended Oct. 25, 1977, Pub. L. 95–142, § 5(i), (n), 91 Stat. 1190, 1191, related to limitation of liability of persons providing information to Professional Standards Review Organizations and Statewide Professional Standards Review Councils. See section 1320c–6 of this title.

Section 1320c–17, act Aug. 14, 1935, ch. 531, title XI, § 1168, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1444; amended Dec. 31, 1975, Pub. L. 94–182, title I, § 112(c), 89 Stat. 1055; Oct. 25, 1977, Pub. L. 95–142, § 5(j), 91 Stat. 1190; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(j), 95 Stat. 795, related to authorization for use of funds for administering professional review program, transfer of moneys between funds, and payments for Professional Standards Review Organizations. See section 1320c–8 of this title.

Section 1320c–18, act Aug. 14, 1935, ch. 531, title XI, § 1169, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1444, related to technical assistance given to organizations desiring to be designated as Professional Standards Review Organizations.

Section 1320c–19, act Aug. 14, 1935, ch. 531, title XI, § 1170, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1445, related to exemptions of Christian Science sanatoriums. See section 1320c–11 of this title.

§ 1320c–20. Repealed. Pub. L. 97–35, title XXI, § 2113(k), Aug. 13, 1981, 95 Stat. 795

Section, act Aug. 14, 1935, ch. 531, title XI, § 1171, as added Oct. 25, 1977, Pub. L. 95–142, § 5(d)(2)(D), 91 Stat. 1186, set forth provisions respecting Federal-State relations regarding memorandum of understanding between Organization and State agency.

EFFECTIVE DATE OF REPEAL

Repeal applicable to agreements with Professional Standards Review Organizations entered into on or after Oct. 1, 1981, see section 2113(*o*) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 1396a of this title.

§§ 1320c–21, 1320c–22. Omitted

CODIFICATION

Sections 1320c–21 and 1320c–22 were omitted in the general revision of this part by Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382.

Section 1320c–21, act Aug. 14, 1935, ch. 531, title XI, § 1172, as added Oct. 25, 1977, Pub. L. 95–142, § 5(k), 91 Stat. 1190; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2113(*l*), 2193(c)(7), 95 Stat. 795, 827, related to annual reports submitted to Congress by Secretary. See section 1320c–10 of this title.

Section 1320c–22, act Aug. 14, 1935, ch. 531, title XI, § 1173, as added Oct. 25, 1977, Pub. L. 95–142, § 5(*l*)(1), 91 Stat. 1191; amended Dec. 5, 1980, Pub. L. 96–499, title IX, § 923(e), 94 Stat. 2628, provided that medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands were includable in program under former Part B. See section 1320c–12 of this title.

PART C—ADMINISTRATIVE SIMPLIFICATION

§ 1320d. Definitions

For purposes of this part:

(1) Code set

The term ''code set'' means any set of codes used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

(2) Health care clearinghouse

The term ''health care clearinghouse'' means a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements.

(3) Health care provider

The term ''health care provider'' includes a provider of services (as defined in section 1395x(u) of this title), a provider of medical or other health services (as defined in section 1395x(s) of this title), and any other person furnishing health care services or supplies.

(4) Health information

The term ''health information'' means any information, whether oral or recorded in any form or medium, that—

(A) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

(5) Health plan

The term ''health plan'' means an individual or group plan that provides, or pays the cost of, medical care (as such term is defined in section 300gg–91 of this title). Such term includes the following, and any combination thereof:

(A) A group health plan (as defined in section 300gg–91(a) of this title), but only if the plan—

(i) has 50 or more participants (as defined in section 1002(7) of title 29); or

(ii) is administered by an entity other than the employer who established and maintains the plan.

(B) A health insurance issuer (as defined in section 300gg–91(b) of this title).

(C) A health maintenance organization (as defined in section 300gg–91(b) of this title).

(D) Parts[1] A, B, or C of the Medicare program under subchapter XVIII of this chapter.

(E) The medicaid program under subchapter XIX of this chapter.

(F) A Medicare supplemental policy (as defined in section 1395ss(g)(1) of this title).

(G) A long-term care policy, including a nursing home fixed indemnity policy (unless the Secretary determines that such a policy does not provide sufficiently comprehensive coverage of a benefit so that the policy should be treated as a health plan).

(H) An employee welfare benefit plan or any other arrangement which is established or maintained for the purpose of offering or providing health benefits to the employees of 2 or more employers.

[1] So in original. Probably should be ''Part''.

(I) The health care program for active military personnel under title 10.

(J) The veterans health care program under chapter 17 of title 38.

(K) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in section 1072(4) of title 10.

(L) The Indian health service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

(M) The Federal Employees Health Benefit Plan under chapter 89 of title 5.

(6) Individually identifiable health information

The term ''individually identifiable health information'' means any information, including demographic information collected from an individual, that—

(A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and—

(i) identifies the individual; or

(ii) with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(7) Standard

The term ''standard'', when used with reference to a data element of health information or a transaction referred to in section 1320d–2(a)(1) of this title, means any such data element or transaction that meets each of the standards and implementation specifications adopted or established by the Secretary with respect to the data element or transaction under sections 1320d–1 through 1320d–3 of this title.

(8) Standard setting organization

The term ''standard setting organization'' means a standard setting organization accredited by the American National Standards Institute, including the National Council for Prescription Drug Programs, that develops standards for information transactions, data elements, or any other standard that is necessary to, or will facilitate, the implementation of this part.

(Aug. 14, 1935, ch. 531, title XI, § 1171, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2021; amended Pub. L. 107–105, § 4, Dec. 27, 2001, 115 Stat. 1007.)

REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in par. (5)(L), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§ 1601 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 1171 of act Aug. 14, 1935, was classified to section 1320c–20 of this title prior to repeal by Pub. L. 97–35.

AMENDMENTS

2001—Par. (5)(D). Pub. L. 107–105 substituted ''Parts A, B, or C'' for ''Part A or part B''.

PURPOSE

Section 261 of title II of Pub. L. 104–191 provided that: ''It is the purpose of this subtitle [subtitle F (§§ 261–264) of title II of Pub. L. 104–191, enacting this part, amending sections 242k and 1395cc of this title, and enacting provisions set out as a note under section 1320d–2 of this title] to improve the Medicare program under title XVIII of the Social Security Act [subchapter XVIII of this chapter], the medicaid program under title XIX of such Act [subchapter XIX of this chapter], and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of certain health information.''

§ 1320d–1. General requirements for adoption of standards

(a) Applicability

Any standard adopted under this part shall apply, in whole or in part, to the following persons:

(1) A health plan.

(2) A health care clearinghouse.

(3) A health care provider who transmits any health information in electronic form in connection with a transaction referred to in section 1320d–2(a)(1) of this title.

(b) Reduction of costs

Any standard adopted under this part shall be consistent with the objective of reducing the administrative costs of providing and paying for health care.

(c) Role of standard setting organizations

(1) In general

Except as provided in paragraph (2), any standard adopted under this part shall be a standard that has been developed, adopted, or modified by a standard setting organization.

(2) Special rules

(A) Different standards

The Secretary may adopt a standard that is different from any standard developed, adopted, or modified by a standard setting organization, if—

(i) the different standard will substantially reduce administrative costs to health care providers and health plans compared to the alternatives; and

(ii) the standard is promulgated in accordance with the rulemaking procedures of subchapter III of chapter 5 of title 5.

(B) No standard by standard setting organization

If no standard setting organization has developed, adopted, or modified any standard relating to a standard that the Secretary is authorized or required to adopt under this part—

(i) paragraph (1) shall not apply; and

(ii) subsection (f) of this section shall apply.

(3) Consultation requirement

(A) In general

A standard may not be adopted under this part unless—

(i) in the case of a standard that has been developed, adopted, or modified by a standard setting organization, the organization consulted with each of the organizations described in subparagraph (B) in the course of such development, adoption, or modification; and

(ii) in the case of any other standard, the Secretary, in complying with the requirements of subsection (f) of this section, consulted with each of the organizations described in subparagraph (B) before adopting the standard.

(B) Organizations described

The organizations referred to in subparagraph (A) are the following:

(i) The National Uniform Billing Committee.

(ii) The National Uniform Claim Committee.

(iii) The Workgroup for Electronic Data Interchange.

(iv) The American Dental Association.

(d) Implementation specifications

The Secretary shall establish specifications for implementing each of the standards adopted under this part.

(e) Protection of trade secrets

Except as otherwise required by law, a standard adopted under this part shall not require disclosure of trade secrets or confidential commercial information by a person required to comply with this part.

(f) Assistance to Secretary

In complying with the requirements of this part, the Secretary shall rely on the recommendations of the National Committee on Vital and Health Statistics established under section 242k(k) of this title, and shall consult with appropriate Federal and State agencies and private organizations. The Secretary shall publish in the Federal Register any recommendation of the National Committee on Vital and Health Statistics regarding the adoption of a standard under this part.

(g) Application to modifications of standards

This section shall apply to a modification to a standard (including an addition to a standard) adopted under section 1320d–3(b) of this title in the same manner as it applies to an initial standard adopted under section 1320d–3(a) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1172, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2023.)

PRIOR PROVISIONS

A prior section 1172 of act Aug. 14, 1935, was classified to section 1320c–21 of this title prior to the general amendment of part B of this subchapter by Pub. L. 97–248.

§ 1320d–2. Standards for information transactions and data elements

(a) Standards to enable electronic exchange

(1) In general

The Secretary shall adopt standards for transactions, and data elements for such transactions, to enable health information to be exchanged electronically, that are appropriate for—

(A) the financial and administrative transactions described in paragraph (2); and

(B) other financial and administrative transactions determined appropriate by the Secretary, consistent with the goals of improving the operation of the health care system and reducing administrative costs.

(2) Transactions

The transactions referred to in paragraph (1)(A) are transactions with respect to the following:

(A) Health claims or equivalent encounter information.

(B) Health claims attachments.

(C) Enrollment and disenrollment in a health plan.

(D) Eligibility for a health plan.

(E) Health care payment and remittance advice.

(F) Health plan premium payments.

(G) First report of injury.

(H) Health claim status.

(I) Referral certification and authorization.

(3) Accommodation of specific providers

The standards adopted by the Secretary under paragraph (1) shall accommodate the needs of different types of health care providers.

(b) Unique health identifiers

(1) In general

The Secretary shall adopt standards providing for a standard unique health identifier for each individual, employer, health plan, and health care provider for use in the health care system. In carrying out the preceding sentence for each health plan and health care provider, the Secretary shall take into account multiple uses for identifiers and multiple locations and specialty classifications for health care providers.

(2) Use of identifiers

The standards adopted under paragraph (1) shall specify the purposes for which a unique health identifier may be used.

(c) Code sets

(1) In general

The Secretary shall adopt standards that—

(A) select code sets for appropriate data elements for the transactions referred to in subsection (a)(1) of this section from among the code sets that have been developed by private and public entities; or

(B) establish code sets for such data elements if no code sets for the data elements have been developed.

(2) Distribution

The Secretary shall establish efficient and low-cost procedures for distribution (including electronic distribution) of code sets and modifications made to such code sets under section 1320d–3(b) of this title.

(d) Security standards for health information

(1) Security standards

The Secretary shall adopt security standards that—

(A) take into account—

(i) the technical capabilities of record systems used to maintain health information;

(ii) the costs of security measures;

(iii) the need for training persons who have access to health information;

(iv) the value of audit trails in computerized record systems; and

(v) the needs and capabilities of small health care providers and rural health care providers (as such providers are defined by the Secretary); and

(B) ensure that a health care clearinghouse, if it is part of a larger organization, has policies and security procedures which isolate the activities of the health care clearinghouse with respect to processing information in a manner that prevents unauthorized access to such information by such larger organization.

(2) Safeguards

Each person described in section 1320d–1(a) of this title who maintains or transmits health information shall maintain reasonable and appropriate administrative, technical, and physical safeguards—

(A) to ensure the integrity and confidentiality of the information;

(B) to protect against any reasonably anticipated—

(i) threats or hazards to the security or integrity of the information; and

(ii) unauthorized uses or disclosures of the information; and

(C) otherwise to ensure compliance with this part by the officers and employees of such person.

(e) Electronic signature

(1) Standards

The Secretary, in coordination with the Secretary of Commerce, shall adopt standards specifying procedures for the electronic transmission and authentication of signatures with respect to the transactions referred to in subsection (a)(1) of this section.

(2) Effect of compliance

Compliance with the standards adopted under paragraph (1) shall be deemed to satisfy Federal and State statutory requirements for written signatures with respect to the transactions referred to in subsection (a)(1) of this section.

(f) Transfer of information among health plans

The Secretary shall adopt standards for transferring among health plans appropriate standard data elements needed for the coordination of benefits, the sequential processing of claims, and other data elements for individuals who have more than one health plan.

(Aug. 14, 1935, ch. 531, title XI, § 1173, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2024.)

PRIOR PROVISIONS

A prior section 1173 of act Aug. 14, 1935, was classified to section 1320c–22 of this title prior to the general amendment of part B of this subchapter by Pub. L. 97–248.

RECOMMENDATIONS WITH RESPECT TO PRIVACY OF CERTAIN HEALTH INFORMATION

Pub. L. 104–191, title II, § 264, Aug. 21, 1996, 110 Stat. 2033, provided that:

''(a) IN GENERAL.—Not later than the date that is 12 months after the date of the enactment of this Act [Aug. 21, 1996], the Secretary of Health and Human Services shall submit to the Committee on Labor and Human Resources and the Committee on Finance of the Senate and the Committee on Commerce and the Committee on Ways and Means of the House of Representatives detailed recommendations on standards with respect to the privacy of individually identifiable health information.

''(b) SUBJECTS FOR RECOMMENDATIONS.—The recommendations under subsection (a) shall address at least the following:

''(1) The rights that an individual who is a subject of individually identifiable health information should have.

''(2) The procedures that should be established for the exercise of such rights.

''(3) The uses and disclosures of such information that should be authorized or required.

''(c) REGULATIONS.—

''(1) IN GENERAL.—If legislation governing standards with respect to the privacy of individually identifiable health information transmitted in connection with the transactions described in section 1173(a) of the Social Security Act [subsec. (a) of this section] (as added by section 262) is not enacted by the date that is 36 months after the date of the enactment of this Act [Aug. 21, 1996], the Secretary of Health and Human Services shall promulgate final regulations containing such standards not later than the date that is 42 months after the date of the enactment of this Act. Such regulations shall address at least the subjects described in subsection (b).

''(2) PREEMPTION.—A regulation promulgated under paragraph (1) shall not supercede a contrary provision of State law, if the provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under the regulation.

''(d) CONSULTATION.—In carrying out this section, the Secretary of Health and Human Services shall consult with—

''(1) the National Committee on Vital and Health Statistics established under section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)); and

''(2) the Attorney General.''

EX. ORD. NO. 13181. TO PROTECT THE PRIVACY OF PROTECTED HEALTH INFORMATION IN OVERSIGHT INVESTIGATIONS

Ex. Ord. No. 13181, Dec. 20, 2000, 65 F.R. 81321, provided:

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, it is ordered as follows:

SECTION 1. *Policy*.

It shall be the policy of the Government of the United States that law enforcement may not use protected health information concerning an individual that is discovered during the course of health oversight activities for unrelated civil, administrative, or criminal investigations of a non-health oversight matter, except when the balance of relevant factors weighs clearly in favor of its use. That is, protected health information may not be so used unless the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services. Protecting the privacy of patients' protected health information promotes trust in the health care system. It improves the

quality of health care by fostering an environment in which patients can feel more comfortable in providing health care professionals with accurate and detailed information about their personal health. In order to provide greater protections to patients' privacy, the Department of Health and Human Services is issuing final regulations concerning the confidentiality of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191, see Tables for classification] (HIPAA). HIPAA applies only to ''covered entities,'' such as health care plans, providers, and clearinghouses. HIPAA regulations therefore do not apply to other organizations and individuals that gain access to protected health information, including Federal officials who gain access to health records during health oversight activities.

Under the new HIPAA regulations, health oversight investigators will appropriately have ready access to medical records for oversight purposes. Health oversight investigators generally do not seek access to the medical records of a particular patient, but instead review large numbers of records to determine whether a health care provider or organization is violating the law, such as through fraud against the Medicare system. Access to many health records is often necessary in order to gain enough evidence to detect and bring enforcement actions against fraud in the health care system. Stricter rules apply under the HIPAA regulations, however, when law enforcement officials seek protected health information in order to investigate criminal activity outside of the health oversight realm.

In the course of their efforts to protect the health care system, health oversight investigators may also uncover evidence of wrongdoing unrelated to the health care system, such as evidence of criminal conduct by an individual who has sought health care. For records containing that evidence, the issue thus arises whether the information should be available for law enforcement purposes under the less restrictive oversight rules or the more restrictive rules that apply to non-oversight criminal investigations.

A similar issue has arisen in other circumstances. Under 18 U.S.C. 3486, an individual's health records obtained for health oversight purposes pursuant to an administrative subpoena may not be used against that individual patient in an unrelated investigation by law enforcement unless a judicial officer finds good cause. Under that statute, a judicial officer determines whether there is good cause by weighing the public interest and the need for disclosure against the potential for injury to the patient, to the physician-patient relationship, and to the treatment services. It is appropriate to extend limitations on the use of health information to all situations in which the government obtains medical records for a health oversight purpose. In recognition of the increasing importance of protecting health information as shown in the medical privacy rule, a higher standard than exists in 18 U.S.C. 3486 is necessary. It is, therefore, the policy of the Government of the United States that law enforcement may not use protected health information concerning an individual, discovered during the course of health oversight activities for unrelated civil, administrative, or criminal investigations, against that individual except when the balance of relevant factors weighs clearly in favor of its use. That is, protected health information may not be so used unless the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.

SEC. 2. *Definitions.*

(a) ''Health oversight activities'' shall include the oversight activities enumerated in the regulations concerning the confidentiality of individually identifiable health information promulgated by the Secretary of Health and Human Services pursuant to the ''Health Insurance Portability and Accountability Act of 1996,'' as amended [Pub. L. 104–191, see Tables for classification].

(b) ''Protected health information'' shall have the meaning ascribed to it in the regulations concerning the confidentiality of individually identifiable health information promulgated by the Secretary of Health and Human Services pursuant to the ''Health Insurance Portability and Accountability Act of 1996,'' as amended.

(c) ''Injury to the patient'' includes injury to the privacy interests of the patient.

SEC. 3. *Implementation.*

(a) Protected health information concerning an individual patient discovered during the course of health oversight activities shall not be used against that individual patient in an unrelated civil, administrative, or criminal investigation of a non-health oversight matter unless the Deputy Attorney General of the U.S Department of Justice, or insofar as the protected health information involves members of the Armed Forces, the General Counsel of the U.S. Department of Defense, has authorized such use.

(b) In assessing whether protected health information should be used under subparagraph (a) of this section, the Deputy Attorney General shall permit such use upon concluding that the balance of relevant factors weighs clearly in favor of its use. That is, the Deputy Attorney General shall permit disclosure if the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.

(c) Upon the decision to use protected health information under subparagraph (a) of this section, the Deputy Attorney General, in determining the extent to which this information should be used, shall impose appropriate safeguards against unauthorized use.

(d) On an annual basis, the Department of Justice, in consultation with the Department of Health and Human Services, shall provide to the President of the United States a report that includes the following information:

(i) the number of requests made to the Deputy Attorney General for authorization to use protected health information discovered during health oversight activities in a non-health oversight, unrelated investigation;

(ii) the number of requests that were granted as applied for, granted as modified, or denied;

(iii) the agencies that made the applications, and the number of requests made by each agency; and

(iv) the uses for which the protected health information was authorized.

(e) The General Counsel of the U.S. Department of Defense will comply with the requirements of subparagraphs (b), (c), and (d), above. The General Counsel also will prepare a report, consistent with the requirements of subparagraphs (d)(i) through (d)(iv), above, and will forward it to the Department of Justice where it will be incorporated into the Department's annual report to the President.

SEC. 4. *Exceptions.*

(a) Nothing in this Executive Order shall place a restriction on the derivative use of protected health information that was obtained by a law enforcement agency in a non-health oversight investigation.

(b) Nothing in this Executive Order shall be interpreted to place a restriction on a duty imposed by statute.

(c) Nothing in this Executive Order shall place any additional limitation on the derivative use of health information obtained by the Attorney General pursuant to the provisions of 18 U.S.C. 3486.

(d) This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, the officers and employees, or any other person.

WILLIAM J. CLINTON.

§ 1320d–3. Timetables for adoption of standards

(a) Initial standards

The Secretary shall carry out section 1320d–2 of this title not later than 18 months after Au-

gust 21, 1996, except that standards relating to claims attachments shall be adopted not later than 30 months after August 21, 1996.

(b) Additions and modifications to standards

(1) In general

Except as provided in paragraph (2), the Secretary shall review the standards adopted under section 1320d–2 of this title, and shall adopt modifications to the standards (including additions to the standards), as determined appropriate, but not more frequently than once every 12 months. Any addition or modification to a standard shall be completed in a manner which minimizes the disruption and cost of compliance.

(2) Special rules

(A) First 12-month period

Except with respect to additions and modifications to code sets under subparagraph (B), the Secretary may not adopt any modification to a standard adopted under this part during the 12-month period beginning on the date the standard is initially adopted, unless the Secretary determines that the modification is necessary in order to permit compliance with the standard.

(B) Additions and modifications to code sets

(i) In general

The Secretary shall ensure that procedures exist for the routine maintenance, testing, enhancement, and expansion of code sets.

(ii) Additional rules

If a code set is modified under this subsection, the modified code set shall include instructions on how data elements of health information that were encoded prior to the modification may be converted or translated so as to preserve the informational value of the data elements that existed before the modification. Any modification to a code set under this subsection shall be implemented in a manner that minimizes the disruption and cost of complying with such modification.

(Aug. 14, 1935, ch. 531, title XI, § 1174, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2026.)

§ 1320d–4. Requirements

(a) Conduct of transactions by plans

(1) In general

If a person desires to conduct a transaction referred to in section 1320d–2(a)(1) of this title with a health plan as a standard transaction—

(A) the health plan may not refuse to conduct such transaction as a standard transaction;

(B) the insurance plan may not delay such transaction, or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction; and

(C) the information transmitted and received in connection with the transaction shall be in the form of standard data elements of health information.

(2) Satisfaction of requirements

A health plan may satisfy the requirements under paragraph (1) by—

(A) directly transmitting and receiving standard data elements of health information; or

(B) submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse, and receiving standard data elements through the health care clearinghouse.

(3) Timetable for compliance

Paragraph (1) shall not be construed to require a health plan to comply with any standard, implementation specification, or modification to a standard or specification adopted or established by the Secretary under sections 1320d–1 through 1320d–3 of this title at any time prior to the date on which the plan is required to comply with the standard or specification under subsection (b) of this section.

(b) Compliance with standards

(1) Initial compliance

(A) In general

Not later than 24 months after the date on which an initial standard or implementation specification is adopted or established under sections 1320d–1 and 1320d–2 of this title, each person to whom the standard or implementation specification applies shall comply with the standard or specification.

(B) Special rule for small health plans

In the case of a small health plan, paragraph (1) shall be applied by substituting ''36 months'' for ''24 months''. For purposes of this subsection, the Secretary shall determine the plans that qualify as small health plans.

(2) Compliance with modified standards

If the Secretary adopts a modification to a standard or implementation specification under this part, each person to whom the standard or implementation specification applies shall comply with the modified standard or implementation specification at such time as the Secretary determines appropriate, taking into account the time needed to comply due to the nature and extent of the modification. The time determined appropriate under the preceding sentence may not be earlier than the last day of the 180-day period beginning on the date such modification is adopted. The Secretary may extend the time for compliance for small health plans, if the Secretary determines that such extension is appropriate.

(3) Construction

Nothing in this subsection shall be construed to prohibit any person from complying with a standard or specification by—

(A) submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse; or

(B) receiving standard data elements through a health care clearinghouse.

(Aug. 14, 1935, ch. 531, title XI, § 1175, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2027.)

EXTENSION OF DEADLINE FOR COVERED ENTITIES SUBMITTING COMPLIANCE PLANS

Pub. L. 107–105, § 2, Dec. 27, 2001, 115 Stat. 1003, provided that:

''(a) IN GENERAL.—

''(1) EXTENSION.—Subject to paragraph (2), notwithstanding section 1175(b)(1)(A) of the Social Security Act (42 U.S.C. 1320d–4(b)(1)(A)) and section 162.900 of title 45, Code of Federal Regulations, a health care provider, health plan (other than a small health plan), or a health care clearinghouse shall not be considered to be in noncompliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, before October 16, 2003.

''(2) CONDITION.—Paragraph (1) shall apply to a person described in such paragraph only if, before October 16, 2002, the person submits to the Secretary of Health and Human Services a plan of how the person will come into compliance with the requirements described in such paragraph not later than October 16, 2003. Such plan shall be a summary of the following:

''(A) An analysis reflecting the extent to which, and the reasons why, the person is not in compliance.

''(B) A budget, schedule, work plan, and implementation strategy for achieving compliance.

''(C) Whether the person plans to use or might use a contractor or other vendor to assist the person in achieving compliance.

''(D) A timeframe for testing that begins not later than April 16, 2003.

''(3) ELECTRONIC SUBMISSION.—Plans described in paragraph (2) may be submitted electronically.

''(4) MODEL FORM.—Not later than March 31, 2002, the Secretary of Health and Human Services shall promulgate a model form that persons may use in drafting a plan described in paragraph (2). The promulgation of such form shall be made without regard to chapter 35 of title 44, United States Code (commonly known as the 'Paperwork Reduction Act').

''(5) ANALYSIS OF PLANS; REPORTS ON SOLUTIONS.—

''(A) ANALYSIS OF PLANS.—

''(i) FURNISHING OF PLANS.—Subject to subparagraph (D), the Secretary of Health and Human Services shall furnish the National Committee on Vital and Health Statistics with a sample of the plans submitted under paragraph (2) for analysis by such Committee.

''(ii) ANALYSIS.—The National Committee on Vital and Health Statistics shall analyze the sample of the plans furnished under clause (i).

''(B) REPORTS ON SOLUTIONS.—The National Committee on Vital and Health Statistics shall regularly publish, and widely disseminate to the public, reports containing effective solutions to compliance problems identified in the plans analyzed under subparagraph (A). Such reports shall not relate specifically to any one plan but shall be written for the purpose of assisting the maximum number of persons to come into compliance by addressing the most common or challenging problems encountered by persons submitting such plans.

''(C) CONSULTATION.—In carrying out this paragraph, the National Committee on Vital and Health Statistics shall consult with each organization—

''(i) described in section 1172(c)(3)(B) of the Social Security Act (42 U.S.C. 1320d–1(c)(3)(B)); or

''(ii) designated by the Secretary of Health and Human Services under section 162.910(a) of title 45, Code of Federal Regulations.

''(D) PROTECTION OF CONFIDENTIAL INFORMATION.—

''(i) IN GENERAL.—The Secretary of Health and Human Services shall ensure that any material provided under subparagraph (A) to the National Committee on Vital and Health Statistics or any organization described in subparagraph (C) is redacted so as to prevent the disclosure of any—

''(I) trade secrets;

''(II) commercial or financial information that is privileged or confidential; and

''(III) other information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

''(ii) CONSTRUCTION.—Nothing in clause (i) shall be construed to affect the application of section 552 of title 5, United States Code (commonly known as the 'Freedom of Information Act'), including the exceptions from disclosure provided under subsection (b) of such section.

''(6) ENFORCEMENT THROUGH EXCLUSION FROM PARTICIPATION IN MEDICARE.—

''(A) IN GENERAL.—In the case of a person described in paragraph (1) who fails to submit a plan in accordance with paragraph (2), and who is not in compliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, on or after October 16, 2002, the person may be excluded at the discretion of the Secretary of Health and Human Services from participation (including under part C or as a contractor under sections 1816, 1842, and 1893) [42 U.S.C. 1395h, 1395u, 1395ddd] in title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(B) PROCEDURE.—The provisions of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to an exclusion under this paragraph in the same manner as such provisions apply with respect to an exclusion or proceeding under section 1128A(a) of such Act.

''(C) CONSTRUCTION.—The availability of an exclusion under this paragraph shall not be construed to affect the imposition of penalties under section 1176 of the Social Security Act (42 U.S.C. 1320d–5).

''(D) NONAPPLICABILITY TO COMPLYING PERSONS.—The exclusion under subparagraph (A) shall not apply to a person who—

''(i) submits a plan in accordance with paragraph (2); or

''(ii) who is in compliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, on or before October 16, 2002.

''(b) SPECIAL RULES.—

''(1) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

''(A) as modifying the October 16, 2003, deadline for a small health plan to comply with the requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations; or

''(B) as modifying—

''(i) the April 14, 2003, deadline for a health care provider, a health plan (other than a small health plan), or a health care clearinghouse to comply with the requirements of subpart E of part 164 of title 45, Code of Federal Regulations; or

''(ii) the April 14, 2004, deadline for a small health plan to comply with the requirements of such subpart.

''(2) APPLICABILITY OF PRIVACY STANDARDS BEFORE COMPLIANCE DEADLINE FOR INFORMATION TRANSACTION STANDARDS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, during the period that begins on April 14, 2003, and ends on October 16, 2003, a health care provider or, subject to subparagraph (B), a health care clearinghouse, that transmits any health information in electronic form in connection with a transaction described in subparagraph (C) shall comply with the requirements of subpart E of part 164 of title 45, Code of Federal Regulations, without regard to whether the transmission meets the standards required by part 162 of such title.

''(B) APPLICATION TO HEALTH CARE CLEARINGHOUSES.—For purposes of this paragraph, during the period described in subparagraph (A), an entity that processes or facilitates the processing of information in connection with a transaction described in

subparagraph (C) and that otherwise would be treated as a health care clearinghouse shall be treated as a health care clearinghouse without regard to whether the processing or facilitation produces (or is required to produce) standard data elements or a standard transaction as required by part 162 of title 45, Code of Federal Regulations.

''(C) TRANSACTIONS DESCRIBED.—The transactions described in this subparagraph are the following:

''(i) A health care claims or equivalent encounter information transaction.

''(ii) A health care payment and remittance advice transaction.

''(iii) A coordination of benefits transaction.

''(iv) A health care claim status transaction.

''(v) An enrollment and disenrollment in a health plan transaction.

''(vi) An eligibility for a health plan transaction.

''(vii) A health plan premium payments transaction.

''(viii) A referral certification and authorization transaction.

''(c) DEFINITIONS.—In this section—

''(1) the terms 'health care provider', 'health plan', and 'health care clearinghouse' have the meaning given those terms in section 1171 of the Social Security Act (42 U.S.C. 1320d) and section 160.103 of title 45, Code of Federal Regulations;

''(2) the terms 'small health plan' and 'transaction' have the meaning given those terms in section 160.103 of title 45, Code of Federal Regulations; and

''(3) the terms 'health care claims or equivalent encounter information transaction', 'health care payment and remittance advice transaction', 'coordination of benefits transaction', 'health care claim status transaction', 'enrollment and disenrollment in a health plan transaction', 'eligibility for a health plan transaction', 'health plan premium payments transaction', and 'referral certification and authorization transaction' have the meanings given those terms in sections 162.1101, 162.1601, 162.1801, 162.1401, 162.1501, 162.1201, 162.1701, and 162.1301 of title 45, Code of Federal Regulations, respectively.''

§ 1320d–5. General penalty for failure to comply with requirements and standards

(a) General penalty

(1) In general

Except as provided in subsection (b) of this section, the Secretary shall impose on any person who violates a provision of this part a penalty of not more than $100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

(2) Procedures

The provisions of section 1320a–7a of this title (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to the imposition of a civil money penalty under this subsection in the same manner as such provisions apply to the imposition of a penalty under such section 1320a–7a of this title.

(b) Limitations

(1) Offenses otherwise punishable

A penalty may not be imposed under subsection (a) of this section with respect to an act if the act constitutes an offense punishable under section 1320d–6 of this title.

(2) Noncompliance not discovered

A penalty may not be imposed under subsection (a) of this section with respect to a provision of this part if it is established to the satisfaction of the Secretary that the person liable for the penalty did not know, and by exercising reasonable diligence would not have known, that such person violated the provision.

(3) Failures due to reasonable cause

(A) In general

Except as provided in subparagraph (B), a penalty may not be imposed under subsection (a) of this section if—

(i) the failure to comply was due to reasonable cause and not to willful neglect; and

(ii) the failure to comply is corrected during the 30-day period beginning on the first date the person liable for the penalty knew, or by exercising reasonable diligence would have known, that the failure to comply occurred.

(B) Extension of period

(i) No penalty

The period referred to in subparagraph (A)(ii) may be extended as determined appropriate by the Secretary based on the nature and extent of the failure to comply.

(ii) Assistance

If the Secretary determines that a person failed to comply because the person was unable to comply, the Secretary may provide technical assistance to the person during the period described in subparagraph (A)(ii). Such assistance shall be provided in any manner determined appropriate by the Secretary.

(4) Reduction

In the case of a failure to comply which is due to reasonable cause and not to willful neglect, any penalty under subsection (a) of this section that is not entirely waived under paragraph (3) may be waived to the extent that the payment of such penalty would be excessive relative to the compliance failure involved.

(Aug. 14, 1935, ch. 531, title XI, § 1176, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2028.)

§ 1320d–6. Wrongful disclosure of individually identifiable health information

(a) Offense

A person who knowingly and in violation of this part—

(1) uses or causes to be used a unique health identifier;

(2) obtains individually identifiable health information relating to an individual; or

(3) discloses individually identifiable health information to another person,

shall be punished as provided in subsection (b) of this section.

(b) Penalties

A person described in subsection (a) of this section shall—

(1) be fined not more than $50,000, imprisoned not more than 1 year, or both;

(2) if the offense is committed under false pretenses, be fined not more than $100,000, imprisoned not more than 5 years, or both; and

(3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than $250,000, imprisoned not more than 10 years, or both.

(Aug. 14, 1935, ch. 531, title XI, § 1177, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2029.)

§ 1320d–7. Effect on State law

(a) General effect

(1) General rule

Except as provided in paragraph (2), a provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d–1 through 1320d–3 of this title, shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (including billing information) to be maintained or transmitted in written rather than electronic form.

(2) Exceptions

A provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d–1 through 1320d–3 of this title, shall not supersede a contrary provision of State law, if the provision of State law—

(A) is a provision the Secretary determines—

(i) is necessary—

(I) to prevent fraud and abuse;

(II) to ensure appropriate State regulation of insurance and health plans;

(III) for State reporting on health care delivery or costs; or

(IV) for other purposes; or

(ii) addresses controlled substances; or

(B) subject to section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, relates to the privacy of individually identifiable health information.

(b) Public health

Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.

(c) State regulatory reporting

Nothing in this part shall limit the ability of a State to require a health plan to report, or to provide access to, information for management audits, financial audits, program monitoring and evaluation, facility licensure or certification, or individual licensure or certification.

(Aug. 14, 1935, ch. 531, title XI, § 1178, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2029.)

REFERENCES IN TEXT

Section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (a)(2)(B), is section 264(c)(2) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

§ 1320d–8. Processing payment transactions by financial institutions

To the extent that an entity is engaged in activities of a financial institution (as defined in section 3401 of title 12), or is engaged in authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments, for a financial institution, this part, and any standard adopted under this part, shall not apply to the entity with respect to such activities, including the following:

(1) The use or disclosure of information by the entity for authorizing, processing, clearing, settling, billing, transferring, reconciling or collecting, a payment for, or related to, health plan premiums or health care, where such payment is made by any means, including a credit, debit, or other payment card, an account, check, or electronic funds transfer.

(2) The request for, or the use or disclosure of, information by the entity with respect to a payment described in paragraph (1)—

(A) for transferring receivables;

(B) for auditing;

(C) in connection with—

(i) a customer dispute; or

(ii) an inquiry from, or to, a customer;

(D) in a communication to a customer of the entity regarding the customer's transactions, payment card, account, check, or electronic funds transfer;

(E) for reporting to consumer reporting agencies; or

(F) for complying with—

(i) a civil or criminal subpoena; or

(ii) a Federal or State law regulating the entity.

(Aug. 14, 1935, ch. 531, title XI, § 1179, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2030.)

SUBCHAPTER XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS

§ 1321. Eligibility requirements for transfer of funds; reimbursement by State; application; certification; limitation

(a)(1) Advances shall be made to the States from the Federal unemployment account in the Unemployment Trust Fund as provided in this section, and shall be repayable, with interest to the extent provided in section 1322(b) of this title, in the manner provided in sections 1101(d)(1), 1103(b)(2), and 1322 of this title. An advance to a State for the payment of compensation in any 3-month period may be made if—

(A) the Governor of the State applies therefor no earlier than the first day of the month preceding the first month of such 3-month period, and

(B) he furnishes to the Secretary of Labor his estimate of the amount of an advance which will be required by the State for the payment of compensation in each month of such 3-month period.

(2) In the case of any application for an advance under this section to any State for any 3-month period, the Secretary of Labor shall—

(A) determine the amount (if any) which he finds will be required by such State for the payment of compensation in each month of such 3-month period, and

(B) certify to the Secretary of the Treasury the amount (not greater than the amount estimated by the Governor of the State) determined under subparagraph (A).

The aggregate of the amounts certified by the Secretary of Labor with respect to any 3-month period shall not exceed the amount which the Secretary of the Treasury reports to the Secretary of Labor is available in the Federal unemployment account for advances with respect to each month of such 3-month period.

(3) For purposes of this subsection—

(A) an application for an advance shall be made on such forms, and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law, as the Secretary of Labor deems necessary or relevant to the performance of his duties under this subchapter,

(B) the amount required by any State for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month, and

(C) the term ''compensation'' means cash benefits payable to individuals with respect to their unemployment, exclusive of expenses of administration.

(b) The Secretary of the Treasury shall, prior to audit or settlement by the Government Accountability Office, transfer in monthly installments from the Federal unemployment account to the account of the State in the Unemployment Trust Fund the amount certified under subsection (a) of this section by the Secretary of Labor (but not exceeding that portion of the balance in the Federal unemployment account at the time of the transfer which is not restricted as to use pursuant to section 1103(b)(1) of this title). The amount of any monthly installment so transferred shall not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which such installment is made.

(Aug. 14, 1935, ch. 531, title XII, § 1201, as added Oct. 3, 1944, ch. 480, title IV, § 402, 58 Stat. 790; amended Aug. 6, 1947, ch. 510, § 5(b), 61 Stat. 794; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, ch. 809, title IV, § 404(a), 64 Stat. 560; Aug. 5, 1954, ch. 657, § 3, 68 Stat. 671; Pub. L. 86–778, title V, § 522(a), Sept. 13, 1960, 74 Stat. 978; Pub. L. 94–566, title II, § 213(a)–(c), Oct. 20, 1976, 90 Stat. 2677; Pub. L. 97–35, title XXIV, § 2407(b)(1), Aug. 13, 1981, 95 Stat. 880; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''with interest to the extent provided in section 1322(b) of this title'' for ''without interest''.

1976—Subsec. (a)(1). Pub. L. 94–566, § 213(a), substituted ''any 3-month period'' for ''any month'' in provisions preceding subpar. (A), ''the month preceding the first month of such 3-month period'' for ''the preceding month'' in subpar. (A), and ''each month of such 3-month period'' for ''such month'' in subpar. (B).

Subsec. (a)(2). Pub. L. 94–566, § 213(b), substituted ''any 3-month period'' for ''any month'' in provisions preceding subpar. (A) and following subpar. (B), and ''each month of such 3-month period'' for ''such month'' in subpar. (A) and provisions following subpar. (B).

Subsec. (b). Pub. L. 94–566, § 213(c), provided that the transfer of amounts by the Secretary of the Treasury from the Federal unemployment account to the account of the States in the Unemployment Trust Fund be made in monthly installments and that the amount of any monthly installment so transferred not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which the installment is made.

1960—Subsec. (a). Pub. L. 86–778 amended subsec. (a) generally, substituting provisions relating to advances on a monthly basis upon application of the Governor and the furnishing of an estimate of amount of requisite advance and determination and certification by the Secretary of Labor of the requisite amount limited to a sum which is available in the Federal unemployment account for advances for the month for former provisions relating to advances on a quarterly basis upon application of the Governor for a specified amount not to exceed the highest total compensation paid out under the unemployment compensation law of the State during any one of the four calendar quarters preceding the quarter in which the application is made, where the balance in the unemployment fund of the State in the Unemployment Trust Fund at the close of Sept. 30, 1953, or the last day in any ensuing calendar quarter is less than the total compensation paid out under the unemployment compensation law of the State during the twelve-month period at the close of such day; incorporating former provisions of subsec. (b), relating to repayment of advances, in par. (1), inserting provision for repayment under section 1103(b)(2) of this title, and provisions formerly designated as cl. (A) and (B) in par. (3)(A) and (C); and adding par. (3)(B).

Subsec. (b). Pub. L. 86–778 amended subsec. (b) generally, striking out provision for repayment of advances which is now incorporated in subsec. (a)(1) in the reference to repayment under sections 1101(d)(1) and 1322 of this title.

1954—Act Aug. 5, 1954, amended section generally to provide that: (1) the first condition of eligibility for an advance is that the balance in the State unemployment fund at the close of a calendar quarter be less than the total of cash payments made by the State to individuals during the 12-month period which ends with such quarter; (2) the Governor of the State must apply for an advance during the quarter following the quarter specified in paragraph (1) of this section; and (3) the total amount certified for any one application may not exceed the amount paid out by the State for cash benefits in that particular quarter.

1950—Subsec. (a). Act Aug. 28, 1950, substituted ''January 1, 1952'' for ''January 1, 1950''.

1947—Subsec. (a). Act Aug. 6, 1947, substituted ''June 30, 1947'' for ''June 30, 1945'' and ''January 1, 1950'' for ''July 1, 1947''.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 213(d) of Pub. L. 94–566 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 20, 1976].''

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Aug. 28, 1950, effective Jan. 1, 1950, see section 404(c) of act Aug. 28, 1950, set out as a note under section 1104 of this title.

TERMINATION DATE

Section 4 of act Aug. 6, 1947, provided that: ''Section 603 of the War Mobilization and Reconversion Act of 1944 [section 1651 note of Appendix to Title 50, War and National Defense] (terminating the provisions of such Act [sections 1651 to 1678 of Appendix to Title 50] on June 30, 1947) shall not be applicable in the case of the amendments made by title IV of such Act [sections 1666 and 1667 of Appendix to Title 50] to the Social Security Act [this section and section 1104 of this title].''

APPLICATIONS FOR TRANSFER OF FUNDS UNDER FORMER PROVISIONS OF SECTION 1321(a); LIMITATIONS

Pub. L. 86–778, title V, § 522(b), Sept. 13, 1960, 74 Stat. 979, provided that:

''(1) No amount shall be transferred on or after the date of the enactment of this Act [Sept. 13, 1960] from the Federal unemployment account to the account of any State in the Unemployment Trust Fund pursuant to any application made under section 1201(a) of the Social Security Act [subsec. (a) of this section] as in effect before such date; except that, if—

''(A) some but not all of an amount certified by the Secretary of Labor to the Secretary of the Treasury for transfer to the account of any State was transferred to such account before such date, and

''(B) the Governor of such State, after the date of the enactment of this Act [Sept. 13, 1960], requests the Secretary of the Treasury to transfer all or any part of the remainder to such account,

the Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office [now Government Accountability Office], transfer from the Federal unemployment account to the account of such State in the Unemployment Trust Fund the amount so requested or (if smaller) the amount available in the Federal unemployment account at the time of the transfer. No such amount shall be transferred under this paragraph after the one-year period beginning on the date of the enactment of this Act [Sept. 13, 1960].

''(2) For purposes of section 3302(c) of the Federal Unemployment Tax Act [section 3302(c) of Title 26, Internal Revenue Code] and titles IX and XII of the Social Security Act [subchapter IX and XII of this chapter], if any amount is transferred pursuant to paragraph (1) to the unemployment account of any State, such amount shall be treated as an advance made before the date of the enactment of this Act [Sept. 13, 1960].''

ADVANCES TO ALASKA

Act June 1, 1955, ch. 118, 69 Stat. 81, authorized the Governor of Alaska to obtain from the Federal Unemployment Fund such advances as the Territory of Alaska might qualify for and as might be necessary to obtain for the payment of unemployment compensation benefits to claimants entitled thereto under the Alaska employment security law and provided for the reimbursement of the general fund of the Territory of Alaska from which advances have been made for the payment of unemployment compensation benefits from advances made through the Governor of Alaska from the Federal Unemployment Fund.

§ 1322. Repayment by State; certification; transfer; interest on loan; credit of interest on loan

(a) Repayment by State; certification; transfer

The Governor of any State may at any time request that funds be transferred from the account of such State to the Federal unemployment account in repayment of part or all of that balance of advances, made to such State under section 1321 of this title, specified in the request. The Secretary of Labor shall certify to the Secretary of the Treasury the amount and balance specified in the request; and the Secretary of the Treasury shall promptly transfer such amount in reduction of such balance.

(b) Interest on loan

(1) Except as otherwise provided in this subsection, each State shall pay interest on any advance made to such State under section 1321 of this title. Interest so payable with respect to periods during any calendar year shall be at the rate determined under paragraph (4) for such calendar year.

(2) No interest shall be required to be paid under paragraph (1) with respect to any advance or advances made during any calendar year if—

(A) such advances are repaid in full before the close of September 30 of the calendar year in which the advances were made,

(B) no other advance was made to such State under section 1321 of this title during such calendar year and after the date on which the repayment of the advances was completed, and

(C) such State meets funding goals, established under regulations issued by the Secretary of Labor, relating to the accounts of the States in the Unemployment Trust Fund.

(3)(A) Interest payable under paragraph (1) which was attributable to periods during any fiscal year shall be paid by the State to the Secretary of the Treasury prior to the first day of the following fiscal year. If interest is payable under paragraph (1) on any advance (hereinafter in this subparagraph referred to as the ''first advance'') by reason of another advance made to such State after September 30 of the calendar year in which the first advance was made, interest on such first advance attributable to periods before such September 30 shall be paid not later than the day after the date on which the other advance was made.

(B) Notwithstanding subparagraph (A), in the case of any advance made during the last 5 months of any fiscal year, interest on such advance attributable to periods during such fiscal year shall not be required to be paid before the last day of the succeeding taxable year. Any interest the time for payment of which is deferred by the preceding sentence shall bear interest in the same manner as if it were an advance made on the day on which it would have been required to be paid but for this subparagraph.

(C)(i) In the case of any State which meets the requirements of clause (ii) for any calendar year, any interest otherwise required to be paid under this subsection during such calendar year shall be paid as follows—

(I) 25 percent of the amount otherwise required to be paid on or before any day during such calendar year shall be paid on or before such day; and

(II) 25 percent of the amount otherwise required to be paid on or before such day shall be paid on or before the corresponding day in each of the 3 succeeding calendar years.

No interest shall accrue on such deferred interest.

(ii) A State meets the requirements of this clause for any calendar year if the rate of insured unemployment (as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of

1970) under the State law of the period consisting of the first 6 months of the preceding calendar year equaled or exceeded 7.5 percent.

(4) The interest rate determined under this paragraph with respect to any calendar year is a percentage (but not in excess of 10 percent) determined by dividing—

(A) the aggregate amount credited under section 1104(e) of this title to State accounts on the last day of the last calendar quarter of the immediately preceding calendar year, by

(B) the aggregate of the average daily balances of the State accounts for such quarter as determined under section 1104(e) of this title.

(5) Interest required to be paid under paragraph (1) shall not be paid (directly or indirectly) by a State from amounts in its unemployment fund. If the Secretary of Labor determines that any State action results in the paying of such interest directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) from such unemployment fund, the Secretary of Labor shall not certify such State's unemployment compensation law under section 3304 of the Internal Revenue Code of 1986. Such noncertification shall be made in accordance with section 3304(c) of such Code.

(6)(A) For purposes of paragraph (2), any voluntary repayment shall be applied against advances made under section 1321 of this title on the last made first repaid basis. Any other repayment of such an advance shall be applied against advances on a first made first repaid basis.

(B) For purposes of this paragraph, the term ''voluntary repayment'' means any repayment made under subsection (a) of this section.

(7) This subsection shall only apply to advances made on or after April 1, 1982.

(8)(A) With respect to interest due under this section on September 30 of 1983, 1984, or 1985 (other than interest previously deferred under paragraph (3)(C)), a State may pay 80 percent of such interest in four annual installments of at least 20 percent beginning with the year after the year in which it is otherwise due, if such State meets the criteria of subparagraph (B). No interest shall accrue on such deferred interest.

(B) To meet the criteria of this subparagraph a State must—

(i) have taken no action since October 1, 1982, which would reduce its net unemployment tax effort or the net solvency of its unemployment system (as determined for purposes of section 3302(f) of the Internal Revenue Code of 1986); and

(ii)(I) have taken an action (as certified by the Secretary of Labor) after March 31, 1982, which would have increased revenue liabilities and decreased benefits under the State's unemployment compensation system (hereinafter referred to as a ''solvency effort'') by a combined total of the applicable percentage (as compared to such revenues and benefits as would have been in effect without such State action) for the calendar year for which the deferral is requested; or

(II) have had, for taxable year 1982, an average unemployment tax rate which was equal to or greater than 2.0 percent of the total of the wages (as determined without any limitation on amount) attributable to such State subject to contribution under the State unemployment compensation law with respect to such taxable year.

In the case of the first year for which there is a deferral (over a 4-year period) of the interest otherwise payable for such year, the applicable percentage shall be 25 percent. In the case of the second such year, the applicable percentage shall be 35 percent. In the case of the third such year, the applicable percentage shall be 50 percent.

(C)(i) The base year is the first year for which deferral under this provision is requested and subsequently granted. The Secretary of Labor shall estimate the unemployment rate for the base year. To determine whether a State meets the requirements of subparagraph (B)(ii)(I), the Secretary of Labor shall determine the percentage by which the benefits and taxes in the base year with the application of the action referred to in subparagraph (B)(ii)(I) are lower or greater, as the case may be, than such benefits and taxes would have been without the application of such action. In making this determination, the Secretary shall deem the application of the action referred to in subparagraph (B)(ii)(I) to have been effective for the base year to the same extent as such action is effective for the year following the year for which the deferral is sought. Once a deferral is approved under clause (ii)(I) of subparagraph (B) a State must continue to maintain its solvency effort. Failure to do so shall result in the State being required to make immediate payment of all deferred interest.

(ii) Increases in the taxable wage base from $6,000 to $7,000 or increases after 1984 in the maximum tax rate to 5.4 percent shall not be counted for purposes of meeting the requirement of subparagraph (B).

(D) In the case of a State which produces a solvency effort of 50 percent, 80 percent, and 90 percent rather than the 25 percent, 35 percent, and 50 percent required under subparagraph (B), the interest shall be computed at an interest rate which is 1 percentage point less than the otherwise applicable interest rate.

(9) Any interest otherwise due from a State on September 30 of a calendar year after 1982 may be deferred (and no interest shall accrue on such deferred interest) for a grace period of not to exceed 9 months if, for the most recent 12-month period for which data are available before the date such interest is otherwise due, the State had an average total unemployment rate of 13.5 percent or greater.

(c) Credit of interest on loan

Interest paid by States in accordance with this section shall be credited to the Federal unemployment account established by section 1104(g) of this title in the Unemployment Trust Fund.

(Aug. 14, 1935, ch. 531, title XII, § 1202, as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672; amended Pub. L. 86–778, title V, § 522(a), Sept. 13, 1960, 74 Stat. 979; Pub. L. 97–35, title XXIV, § 2407(a), (b)(2), Aug. 13, 1981, 95 Stat. 879, 880; Pub. L. 97–248, title II, § 274(a), Sept. 3, 1982, 96 Stat. 557; Pub. L. 98–21, title V, §§ 511, 514, Apr. 20, 1983, 97 Stat. 144, 147; Pub. L. 98–118, § 5(a), Oct. 11, 1983,

97 Stat. 804; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–203, title IX, § 9156(a), Dec. 22, 1987, 101 Stat. 1330–327; Pub. L. 105–33, title V, § 5404(a), Aug. 5, 1997, 111 Stat. 604.)

REFERENCES IN TEXT

Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (b)(3)(C)(ii), is section 203 of Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 709, as amended, which is set out as a note under section 3304 of Title 26, Internal Revenue Code.

The Internal Revenue Code of 1986, referred to in subsec. (b)(5), (8)(B)(i), is classified generally to Title 26.

AMENDMENTS

1997—Subsec. (b)(2)(C). Pub. L. 105–33 added subpar. (C).

1987—Subsec. (c). Pub. L. 100–203 added subsec. (c).

1986—Subsec. (b)(5), (8)(B)(i). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1983—Subsec. (b)(2). Pub. L. 98–118, § 5(a)(1), substituted ''advance or advances'' for ''advance'' in provisions preceding subpar. (A).

Subsec. (b)(2)(A). Pub. L. 98–118, § 5(a)(2), (3), substituted ''advances are'' for ''advance is'' and ''advances were'' for ''advance was''.

Subsec. (b)(2)(B). Pub. L. 98–118, § 5(a)(4), substituted ''advances was completed'' for ''advance was completed''.

Subsec. (b)(3)(A). Pub. L. 98–21, § 514, which directed substitution of ''prior to'' for ''not later than'' was executed, as the probable intent of Congress, by making that substitution the first time the phrase appeared following ''Secretary of Treasury'' and not the second time that phrase appeared.

Subsec. (b)(3)(C)(i). Pub. L. 98–21, § 511(c), substituted, after subcl. II, provision that no interest shall accrue on such deferred interest for provision that any interest the time for payment of which was deferred under this subparagraph would bear interest in the same manner as if it had been an advance made on the day on which it would have been required to be paid but for this subparagraph.

Subsec. (b)(7). Pub. L. 98–21, § 511(b), struck out '', and before January 1, 1988'' after ''April 1, 1982''.

Subsec. (b)(8), (9). Pub. L. 98–21, § 511(a), added pars. (8) and (9).

1982—Subsec. (b)(3)(C). Pub. L. 97–248 added subpar. (C).

1981—Subsec. (a). Pub. L. 97–35, § 2407(b)(2), designated existing provision as subsec. (a).

Subsec. (b). Pub. L. 97–35, § 2407(a), added subsec. (b).

1960—Pub. L. 86–778 amended section generally, designating provisions constituting subsec. (a) as entire section, substituting ''that balance of advances, made to such State under section 1321 of this title, specified in the request'' for ''any remaining balance of advances made to such State under section 1321 of this title'' and inserting ''in reduction of such balance'' and omitting subsecs. (b) and (c) pertaining to appropriations and repayable advances which were incorporated in sections 1101(d)(1) and 1323 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5404(b) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9156(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to interest paid on advances made on or after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 5(b) of Pub. L. 98–118 provided that: ''The amendments made by this section [amending this section] shall apply to advances made on or after April 1, 1982.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 274(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to interest required to be paid after December 31, 1982.''

§ 1323. Repayable advances to Federal unemployment account

There are hereby authorized to be appropriated to the Federal unemployment account, as repayable advances, such sums as may be necessary to carry out the purposes of this subchapter. Amounts appropriated as repayable advances shall be repaid by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Any amount transferred as a repayment under this section shall be credited against, and shall operate to reduce, any balance of advances repayable under this section. Whenever, after the application of sections 1101(f)(3) and 1102(a) of this title with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited against, and shall operate to reduce, such balance of advances. Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.

(Aug. 14, 1935, ch. 531, title XII, § 1203, as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672; amended Pub. L. 86–778, title V, § 522(a), Sept. 13, 1960, 74 Stat. 979; Pub. L. 91–373, title III, § 304(c), Aug. 10, 1970, 84 Stat. 716; Pub. L. 98–135, title II, § 205(a), Oct. 24, 1983, 97 Stat. 861; Pub. L. 100–203, title IX, § 9155(b), Dec. 22, 1987, 101 Stat. 1330–327.)

PRIOR PROVISIONS

Provisions similar to those comprising the first sentence of this section were contained in section 1322(c), act Aug. 14, 1935, ch. 531, title XII, § 1202(c), as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672, prior to amendment by Pub. L. 86–778.

AMENDMENTS

1987—Pub. L. 100–203 struck out ''(without interest)'' after ''account, as repayable advances'' and '', without interest,'' after ''shall be repaid'', and inserted sentence at end relating to amounts appropriated as repayable advances for purposes of this subsection.

1983—Pub. L. 98–135 inserted provision requiring that amounts appropriated as repayable advances be repaid, without interest, by transfers from the Federal unem-

ployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose, and that any amount transferred as a repayment under this section be credited against, and operate to reduce, any balance of advances repayable under this section.

1970—Pub. L. 91–373 inserted reference to section 1102(a) of this title.

1960—Pub. L. 86–778 amended section generally, substituting provisions relating to repayable advances to the Federal unemployment account for former provision defining ''Governor'' and now incorporated in section 1324 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to advances made on or after Dec. 22, 1987, see section 9155(d) of Pub. L. 100–203, set out as a note under section 1103 of this title.

RETRANSFER OF AMOUNTS TRANSFERRED FROM FEDERAL UNEMPLOYMENT ACCOUNT TO EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT AS OF SEPTEMBER 30, 1983

Section 205(b) of Pub. L. 98–135 provided that: ''Any amounts transferred from the Federal unemployment account to the employment security administration account as of September 30, 1983, shall be transferred back to the Federal unemployment account.''

§ 1324. "Governor" defined

When used in this subchapter, the term ''Governor'' includes the Mayor of the District of Columbia.

(Aug. 14, 1935, ch. 531, title XII, § 1204, as added Pub. L. 86–778, title V, § 522(a), Sept. 13, 1960, 74 Stat. 979; amended 1967 Reorg. Plan No. 3, § 401, eff. Nov. 3, 1967, 32 F.R. 11669, 81 Stat. 951; Pub. L. 93–198, title IV, § 421, Dec. 24, 1973, 87 Stat. 789.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 1323, act Aug. 14, 1935, ch. 531, title XII, § 1203, as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672, prior to amendment by Pub. L. 86–778.

TRANSFER OF FUNCTIONS

Except as otherwise provided in Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967 (in part), 32 F.R. 11669, 81 Stat. 948, functions of Board of Commissioners of District of Columbia transferred to Commissioner of District of Columbia by section 401 of Reorg. Plan No. 3 of 1967. Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by office of Mayor of District of Columbia by section 421 of Pub. L. 93–198. Accordingly, ''Mayor'' substituted in text for ''Commissioners''.

SUBCHAPTER XIII—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN

§§ 1331 to 1336. Repealed. Pub. L. 98–369, div. B, title VI, § 2663(f), July 18, 1984, 98 Stat. 1168

Section 1331, act Aug. 14, 1935, ch. 531, title XIII, § 1301, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, provided for administration of this chapter by Secretary of Labor.

Section 1332, act Aug. 14, 1935, ch. 531, title XIII, § 1302, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended July 16, 1949, ch. 342, §§ 1–3, 63 Stat. 445, defined ''reconversion period'', ''compensation'', ''Federal maritime service'', and ''Federal maritime wages''.

Section 1333, act Aug. 14, 1935, ch. 531, title XIII, § 1303, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065, related to compensation for seamen, agreements with states, payments in absence of agreements, wage information, and determination of wages.

Section 1334, act Aug. 14, 1935, ch. 531, title XIII, § 1304, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to review of determinations and reports.

Section 1335, act Aug. 14, 1935, ch. 531, title XIII, § 1305, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to payments to States, certification of such payments by Secretary of Labor to Secretary of the Treasury, and return of unused funds.

Section 1336, act Aug. 14, 1935, ch. 531, title XIII, § 1306, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to penalties.

EFFECTIVE DATE OF REPEAL

Repeal effective July 18, 1984, but such repeal shall not be construed as changing or affecting any right, liability, status, or interpretation which existed before that date, see section 2664(b) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

SUBCHAPTER XIV—GRANTS TO STATES FOR AID TO PERMANENTLY AND TOTALLY DISABLED

REPEAL OF SUBCHAPTER; INAPPLICABILITY OF REPEAL TO PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this subchapter is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

§ 1351. Authorization of appropriations

For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals eighteen years of age and older who are permanently and totally disabled, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid to the permanently and totally disabled.

(Aug. 14, 1935, ch. 531, title XIV, § 1401, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 555; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, § 314(a), 70 Stat. 849; Pub. L. 87–543, title I, § 104(c)(4), July 25, 1962, 76 Stat. 186; Pub. L. 97–35, title XXI, § 2184(c)(1), Aug. 13, 1981, 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out ''and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain and retain capability for self-support or self-care'' after ''and totally disabled''.

1962—Pub. L. 87–543 inserted ''to furnish rehabilitation and other services'' before ''to help such individuals'' and ''or retain capability for'' after ''attain''.

1956—Act Aug. 1, 1956, restated purpose to include assistance to individuals to attain self-support of self-care.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 1352. State plans for aid to permanently and totally disabled

(a) A State plan for aid to the permanently and totally disabled must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title, assistance under a State program funded under part A of subchapter IV of this chapter, or aid to the blind under the State plan approved under section 1202 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than $7.50 of any income, (B) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (12) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (13) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condi-

tion of eligibility for aid to the permanently and totally disabled under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the permanently and totally disabled and has resided therein continuously for one year immediately preceding the application;

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter.

(Aug. 14, 1935, ch. 531, title XIV, § 1402, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 555; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, § 314(b), 70 Stat. 850; Pub. L. 87–543, title I, §§ 104(a)(3)(I), 106(a)(3), July 25, 1962, 76 Stat. 185, 188; Pub. L. 89–97, title IV, § 403(d) July 30, 1965, 79 Stat. 418; Pub. L. 90–248, title II, §§ 210(a)(4), 213(a)(3), Jan. 2, 1968, 81 Stat. 896, 898; Pub. L. 92–603, title IV, §§ 405(c), 406(c), 407(c), 410(c), 413(c), Oct. 30, 1972, 86 Stat. 1488, 1489, 1491, 1492; Pub. L. 98–369, div. B, title VI, § 2651(g), July 18, 1984, 98 Stat. 1150; Pub. L. 104–193, title I, § 108(h), Aug. 22, 1996, 110 Stat. 2169.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (a)(7), is classified to section 601 et seq. of this title.

AMENDMENTS

1996—Subsec. (a)(7). Pub. L. 104–193 substituted ''assistance under a State program funded under part A of subchapter IV of this chapter'' for ''aid to families with dependent children under the State plan approved under section 602 of this title''.

1984—Subsec. (a)(13). Pub. L. 98–369 added cl. (13).

1972—Subsec. (a)(1). Pub. L. 92–603, § 410(c), inserted ''except to the extent permitted by the Secretary with respect to services'' before ''provide''.

Subsec. (a)(4). Pub. L. 92–603, § 407(c), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(9). Pub. L. 92–603, § 413(c), substituted provisions permitting the use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with the administration of the State plan, for provisions restricting the use or disclosure of such information to purposes directly connected with the administration of aid to the permanently and totally disabled.

Subsec. (a)(12). Pub. L. 92–603, § 405(c), inserted provision relating to the use of whatever internal organizational arrangement found appropriate.

Subsec. (b). Pub. L. 92–603, § 406(c), inserted provision relating to the furnishing of manuals and other policy issuances to persons without charge and at the option of the State.

1968—Subsec. (a)(5). Pub. L. 90–248, § 210(a)(4), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(8)(A). Pub. L. 90–248 § 213(a)(3), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965—Subsec. (a)(8). Pub. L. 89–97 inserted exception prohibiting disregard by State in making its determination of need of more than $5 of any income or of more than the first $20 of the first $80 per month of additional income which is earned and allowing disregard, for a period not in excess of 36 months, of such additional amounts of other income and resources as may be necessary to the fulfillment of approved plan for achieving self-support but only as to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation.

1962—Subsec. (a)(7). Pub. L. 87–543, § 104(a)(3)(I), substituted ''aid to families with dependent children'' for ''aid to dependent children''.

Subsec. (a)(8). Pub. L. 87–543, § 106(a)(3), inserted '', as well as any expenses reasonably attributable to the earning of any such income''.

1956—Subsec. (a)(12). Act Aug. 1, 1956, added cl. (12).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 210(a)(4) of Pub. L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub. L. 90–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 403(d) of Pub. L. 89–97 provided that the amendment made by that section is effective Oct. 1, 1965.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 106(a)(3) of Pub. L. 87–543 effective July 1, 1963, see section 202(a) of Pub. L. 87–543, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective July 1, 1957, see section 314 [315] of act Aug. 1, 1956, set out as a note under section 302 of this title.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary under subsec. (a)(5)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare

and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

PUBLIC ACCESS TO STATE DISBURSEMENT RECORDS

Public access to State records of disbursements of funds and payments under this subchapter, see note set out under section 302 of this title.

§ 1353. Payments to States

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) Repealed. Pub. L. 97–35, title XXI, § 2184(c)(2)(A), Aug. 13, 1981, 95 Stat. 817.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally disabled under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month; and

(3) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of subsection (a) of this section, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of permanently and totally disabled individuals in the State, and (C) such other investigation as the Secretary of Health and Human Services may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the permanently and totally disabled furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title XIV, § 1403, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 556; amended July 18, 1952, ch. 945, § 8(d), 66 Stat. 779; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, §§ 304, 314(c), 344, 70 Stat. 847, 850, 854; Pub. L. 85–840, title V, § 504, Aug. 28, 1958, 72 Stat. 1049; Pub. L. 87–64, title III, § 303(c), June 30, 1961, 75 Stat. 143; Pub. L. 87–543, title I, §§ 101(a)(4), (b)(4), 132(c), July 25, 1962, 76 Stat. 178, 181, 195; Pub. L. 89–97, title I, § 122, title IV, § 401(e), July 30, 1965, 79 Stat. 353, 415; Pub. L. 90–248, title II, § 212(c), Jan. 2, 1968, 81 Stat. 897; Pub. L. 92–512, title III, § 301(b), (d), Oct. 20, 1972, 86 Stat. 946, 947; Pub. L. 93–647, §§ 3(e)(2), 5(d), Jan. 4, 1975, 88 Stat. 2349, 2350; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, § 2184(c)(2), title XXV, § 2353(*l*), Aug. 13, 1981, 95 Stat. 817, 873; Pub. L. 99–603, title I, § 121(b)(4), Nov. 6, 1986, 100 Stat. 3391; Pub. L. 103–66, title XIII, § 13741(b), Aug. 10, 1993, 107 Stat. 663; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1993—Subsec. (a)(3). Pub. L. 103–66 substituted "50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan." for "the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and official administration of the State plan—

''(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

''(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

''(C) one-half of the remainder of such expenditures.''

1986—Subsec. (a)(3)(B), (C). Pub. L. 99–603 added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (a)(1). Pub. L. 97–35, §2184(c)(2)(A), struck out par. (1) which provided for computation of the amount of payments in the case of any State other than Puerto Rico, the Virgin Islands, and Guam.

Subsec. (a)(2). Pub. L. 97–35, §2184(c)(2)(B), struck out ''(including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)''.

Subsec. (a)(3). Pub. L. 97–35, §2353(*l*)(1)(A), redesignated subpar. (A)(iv) as subpar. (A), struck out former subpars. (A)(i), which included services prescribed pursuant to subsec. (c)(1) of this section and provided to applicants for or recipients of aid to the permanently and totally disabled to help them attain self-support, (A)(ii), which included other services, specified by the Secretary as likely to prevent or reduce dependency, and (A)(iii), which included any of the services in subpars. (A)(i) and (ii) deemed appropriate for individuals likely to become applicants for or recipients of aid to the permanently and totally disabled, redesignated former subpar. (C) as (B), and struck out former subpar. (B), which included one-half of so much of the expenditures, not included in subpar. (A), as are for services for applicants for or recipients of aid to the permanently and totally disabled or individuals likely to become applicants or recipients, and subpars. (D) and (E) and provision following subpar. (E), which specified what services were includible.

Subsec. (a)(4). Pub. L. 97–35, §2353(*l*)(1)(B), struck out par. (4), which provided payment, in the case of any State whose plan approved under section 1352 of this title did not meet the requirements of subsec. (c)(1) of this section, of an amount equal to one-half of the total of the sums expended during the quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

Subsec. (c). Pub. L. 97–35, §2353(*l*)(2), struck out subsec. (c) which prescribed eligibility requirements for payments.

1975—Subsec. (a). Pub. L. 93–647, §3(e)(2), struck out ''(subject to section 1320b of this title)'' after ''the Secretary of the Treasury shall''.

Subsec. (a)(3)(A)(iv). Pub. L. 93–647, §5(d), inserted ''(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)'' after ''training''.

1972—Subsec. (a). Pub. L. 92–512, §301(d), substituted ''shall (subject to section 1320b of this title) pay'' for ''shall pay'' in provisions preceding par. (1).

Subsec. (a)(3)(E). Pub. L. 92–512, §301(b), substituted ''under conditions which shall be'' for ''subject to limitations''.

1968—Subsec. (a)(3)(D). Pub. L. 90–248 inserted, ''except to the extent specified by the Secretary'' after ''shall'' in introductory text to subpar. (D).

1965—Subsec. (a)(1). Pub. L. 89–97, §§122, 401(e), inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase appearing in so much of par. (1) as precedes clause (A); and substituted ''31/37'' and ''$37'' for ''29/35'' and ''$35'' in subpar. (A) and ''$75'' for ''$70'' in subpar. (B), respectively.

Subsec. (a)(2). Pub. L. 89–97, §122, inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase.

1962—Subsec. (a)(1). Pub. L. 87–543, §132(c), substituted ''29/35'' and ''$35'' for ''four-fifths'' and ''$31'', respectively, in subpar. (A) and ''$70'' for ''$66'' in subpar. (B).

Subsec. (a)(2). Pub. L. 87–543, §132(c), substituted ''$37.50'' for ''$35.50''.

Subsec. (a)(3). Pub. L. 87–543, §101(a)(4), (b)(4)(A), inserted in opening provisions ''whose State plan approved under section 1352 of this title meets the requirements of subsection (c)(1) of this section'' after ''any State'', and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services to help attain and retain capability for self-support or self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for or recipients of aid to the permanently and totally disabled and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary, for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff services of State or local public assistance agencies to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care.

Subsec. (a)(4). Pub. L. 87–543, §101(b)(4)(B), added par. (4).

Subsec. (c). Pub. L. 87–543, §101(b)(4)(C), added subsec. (c).

1961—Subsec. (a). Pub. L. 87–64 substituted ''$31'' for ''$30'' and ''$66'' for ''$65'' in cl. (1), and ''$35.50'' for ''$35'' in cl. (2).

1958—Subsec. (a). Pub. L. 85–840 increased the payments to the States to four-fifths of the first $30 of the average monthly payment per recipient, including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus the Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased the average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from the provisions which authorize an average monthly payment of $65 and included Guam within the provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, §304, substituted ''during such quarter as aid to the permanently and totally disabled in the form of money payments under the State plan'' for ''during such quarter as aid to the permanently and totally disabled under the State plan'' in cls. (1) and (2), ''who received aid to the permanently and totally disabled in the form of money payments for each month'' for ''who received aid to the permanently and totally disabled for such month'' in par. (A) of cl. (1), and inserted cl. (4).

Act Aug. 1, 1956, §314(c), struck out '', which shall be used exclusively as aid to the permanently and totally

disabled,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of such aid to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the permanently and totally disabled or both, and for no other purpose'' in cl. (3).

Act Aug. 1, 1956, § 344, substituted ''October 1, 1956'' for ''October 1, 1952'', struck out '', which shall be used exclusively as aid to the permanently and totally disabled,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''$60'' for ''$55'', ''the product of $30'' for ''the product of $25'', ''Secretary of Health, Education, and Welfare'' for ''Secretary'', and ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of such aid to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the permanently and totally disabled, or both, and for no other purpose''.

1952—Subsec. (a). Act July 18, 1952, increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994, with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 13741(c) of Pub. L. 103–66, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(*l*) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 3(e)(2) of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, and amendment by section 5(d) of Pub. L. 93–647 effective with respect to payments for quarters commencing after Sept. 30, 1975, see section 7(a), (b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendments by Pub. L. 92–512 effective July 1, 1972, and Jan. 1, 1973, respectively, see section 301(e) of Pub. L. 92–512, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Jan. 1, 1968, see section 212(e) of Pub. L. 90–248, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 401(e) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub. L. 89–97, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 101(a)(4) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Aug. 31, 1962, amendment by section 101(b)(4) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, and amendment by section 132(c) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Sept. 30, 1962, see section 202(d), (f) of Pub. L. 87–543, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable only in the case of expenditures made after Sept. 30, 1961, and before July 1, 1962, under a State plan approved under subchapters I, X, or XIV of this chapter, see section 303(e) of Pub. L. 87–64, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1956 AMENDMENT

Amendment by section 304 of act Aug. 1, 1956, effective July 1, 1957, see section 305 of act Aug. 1, 1956, set out as a note under section 303 of this title.

Amendment by section 344 of act Aug. 1, 1956, effective only for period beginning Oct. 1, 1956, and ending with close of June 30, 1959, see section 345 of such act Aug. 1, 1956, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Amendment by act July 18, 1952, effective for period beginning Oct. 1, 1952, and ending Sept. 30, 1956, see section 8(e) of act July 18, 1952, set out as a note set out under section 303 of this title.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and Office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

NONDUPLICATION OF PAYMENTS TO STATES: PROHIBITION OF PAYMENTS AFTER DECEMBER 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396b of this title.

ELECTION OF PAYMENTS UNDER COMBINED STATE PLAN RATHER THAN SEPARATE PLANS

Payments to States under combined State plan under subchapter XVI or this chapter as precluding payment under State plan conforming to this subchapter, see section 141(b) of Pub. L. 87–543, set out as a note under section 1382e of this title.

§ 1354. Operation of State plans

In the case of any State plan for aid to the permanently and totally disabled which has been approved by the Secretary of Health and Human Services, if the Secretary after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1352(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1352(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until he is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title XIV, § 1404, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 557; amended 1953 Reorg. Plan No. 1, §§ 5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 90–248, title II, § 245, Jan. 2, 1968, 81 Stat. 918; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1968—Pub. L. 90–248 inserted "(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)" after "further payments will not be made to the State" and substituted in last sentence "further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)" for "further certification to the Secretary of the Treasury with respect to such State".

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 1355. Definitions

For the purposes of this subchapter, the term "aid to the permanently and totally disabled" means money payments to needy individuals eighteen years of age or older who are permanently and totally disabled, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1352 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the permanently and totally disabled to be paid (and in conjunction with other income and resources), meet all the need[1] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual, and (ii)

[1] So in original. Probably should be "needs".

may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

(Aug. 14, 1935, ch. 531, title XIV, § 1405, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 557; amended Pub. L. 87–543, title I, § 156(d), July 25, 1962, 76 Stat. 207; Pub. L. 89–97, title II, § 221(c), title IV, § 402(d), July 30, 1965, 79 Stat. 358, 417; Pub. L. 92–603, title IV, §§ 408(c), 409(c), Oct. 30, 1972, 86 Stat. 1490, 1491; Pub. L. 97–35, title XXI, § 2184(c)(3), Aug. 13, 1981, 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out in provision preceding par. (1) ", or (if provided on or after the third month before the month in which the recipient makes application for aid) medical care in behalf of, or any type of remedial care recognized under State law in behalf of," after "money payments to".

1972—Pub. L. 92–603 authorized the State, at its option, to include within "aid to the permanently and totally disabled" provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Pub. L. 89–97 struck out from definition of "aid to the permanently and totally disabled" the exclusion of payments to or medical care in behalf of any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof; and extended definition of "aid to the permanently and totally disabled" to include payments made on behalf of the needy individual to another individual who (as determined in accordance with standards determined by the Secretary) is interested in or concerned with the welfare of such needy individual and enumerated the five characteristics required of state plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs of the individual, special efforts to protect welfare, periodic review, and opportunity for fair hearing, respectively.

1962—Pub. L. 87–543 inserted "(if provided in or after the third month before the month in which the recipient makes application for aid)" before "medical care".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221(c) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 303 of this title.

Amendment by section 402(d) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a state plan approved under subchapter I, X, XIV, or XVI of this chapter, see section 402(e) of Pub. L. 89–97, set out as a note under section 306 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–543 applicable in the case of applications made after Sept. 30, 1962, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, see section 156(e) of Pub. L. 87–543, set out as a note under section 306 of this title.

SUBCHAPTER XV—UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES

§§ 1361 to 1364. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 658, 660, 661

Section 1361, act Aug. 14, 1935, ch. 531, title XV, § 1501, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1130; amended Aug. 28, 1958, Pub. L. 85–848, § 2, 72 Stat. 1087; July 12, 1960, Pub. L. 86–624, § 30(g), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86–778, title V, §§ 531(e), 542(d), 74 Stat. 984, 986, defined terms used in this subchapter. See section 8501 of Title 5, Government Organization and Employees.

Pub. L. 90–248, title IV, § 403(f), Jan. 2, 1968, 81 Stat. 932, amended section 1361(a)(6), (9), without reference to repeal of such section by Pub. L. 89–554, § 8(a).

Section 1362, act Aug. 14, 1935, ch. 531, title XV, § 1502, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1131; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 543(b)(1)(A), 74 Stat. 985, provided for compensation of Federal employees under State agreements. See section 8502 of Title 5.

Section 1363, act Aug. 14, 1935, ch. 531, title XV, § 1503, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1132; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 543(b)(1)(B), (C), (c)(1), 74 Stat. 986, provided for compensation of Federal employees in absence of State agreement. See section 8503 of Title 5.

Section 1364, act Aug. 14, 1935, ch. 531, title XV, § 1504, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1133; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 542(b)(2), 74 Stat. 986, related to assignment to State of Federal service and wages. See section 8504 of Title 5.

§ 1365. Repealed. Pub. L. 86–442, § 1, Apr. 22, 1960, 74 Stat. 81

Section, act Aug. 14, 1935, ch. 531, title XV, § 1505, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1133, related to status of a Federal employee who was performing Federal service at time of separation from employment by the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective only with respect to benefit years which began more than thirty days after Apr. 22, 1960, see section 1 of Pub. L. 86–442.

§§ 1366 to 1371. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 658, 660, 661

Section 1366, act Aug. 14, 1935, ch. 531, title XV, § 1506, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1133, provided for payments to States. See section 8505 of Title 5, Government Organization and Employees.

Section 1367, act Aug. 14, 1935, ch. 531, title XV, § 1507, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1134; amended Aug. 28, 1958, Pub. L. 85–848, § 4, 72 Stat. 1089; Sept. 13, 1960, Pub. L. 86–778, title V, § 531(f), 74 Stat. 984, provided for dissemination of information by both Federal and State agencies. See section 8506 of Title 5.

Section 1368, act Aug. 14, 1935, ch. 531, title XV, § 1508, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1135, related to penalties. See section 8507 of Title 5 and section 1919 of Title 18, Crimes and Criminal Procedure.

Section 1369, act Aug. 14, 1935, ch. 531, title XV, § 1509, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1135, related to rules and regulations. See section 8508 of Title 5.

Section 1370, act Aug. 14, 1935, ch. 531, title XV, § 1510, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1135, related to authorization of appropriations. See section 5509 of Title 5.

Section 1371, act Aug. 14, 1935, ch. 531, title XV, § 1511, as added Aug. 28, 1958, Pub. L. 85–848, § 3, 72 Stat. 1087; amended Sept. 2, 1958, Pub. L. 85–857, § 13(i)(3), 72 Stat. 1265; Apr. 22, 1960, Pub. L. 86–442, § 2, 74 Stat. 82; Sept. 13, 1960, Pub. L. 86–778, title V, § 542(c), 74 Stat. 986, provided an ex-servicemen's unemployment compensation program. See sections 8521 to 8525 of Title 5.

SUBCHAPTER XVI—SUPPLEMENTAL SECURITY INCOME FOR AGED, BLIND, AND DISABLED

§ 1381. Statement of purpose; authorization of appropriations

For the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this subchapter.

(Aug. 14, 1935, ch. 531, title XVI, § 1601, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465.)

PRIOR PROVISIONS

A prior section 1381, act Aug. 14, 1935, ch. 531, title XVI, § 1601, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 197, authorized appropriations for grants to States for aid to aged, blind, or disabled, and for medical assistance for aged, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301, but is set out as a note below in view of its continued applicability to Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

CONTINUATION OF FEDERAL FINANCIAL PARTICIPATION IN EXPERIMENTAL, PILOT, OR DEMONSTRATION PROJECTS APPROVED BEFORE OCTOBER 1973, FOR PERIOD ON-AND-AFTER DECEMBER 31, 1973, WITHOUT DENIAL OR REDUCTION ON ACCOUNT OF SUBCHAPTER XVI PROVISIONS; WAIVER OF SUBCHAPTER XVI RESTRICTIONS FOR INDIVIDUALS; FEDERAL PAYMENTS OF NON-FEDERAL SHARE AS SUPPLEMENTARY PAYMENTS

Subchapter provisions without effect on Federal Financial Participation in Experimental, Pilot or Demonstration Projects approved before Oct. 1, 1973, for period on-and-after Dec. 31, 1973, see section 11 of Pub. L. 93–233, Dec. 31, 1973, 87 Stat. 958, set out as a note under section 1315 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1601 of the Social Security Act [this section] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1601 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92–603, and as amended, continues to apply and reads as follows:

§ 1381. Authorization of appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to needy individuals who are 65 years of age or over, are blind, or are 18 years of age or over and permanently and totally disabled, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Commissioner of Social Security, State plans for aid to the aged, blind, or disabled.

(Aug. 14, 1935, ch. 531, title XVI, § 1601, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 197; amended Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(d)(3), title XXIII, § 2353(m)(1), 95 Stat. 817, 873; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(1), 108 Stat. 1477.)

[Amendment by section 107(a)(1) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

PAYMENTS UNDER CHAPTER PROVISIONS IN EFFECT BEFORE JANUARY 1, 1974, FOR: ACTIVITIES CARRIED OUT THROUGH DECEMBER 31, 1973, UNDER STATE PLANS APPROVED UNDER SUBCHAPTER I, X, XIV, OR XVI PROVISIONS; AND FOR ADMINISTRATIVE ACTIVITIES AFTER JANUARY 1, 1974, CLOSING OUT SUCH ACTIVITIES

Pub. L. 93–233, § 19(b), Dec. 31, 1973, 87 Stat. 974, provided that: "Notwithstanding the provisions of section 301 of the Social Security Amendments of 1972 [enacting this subchapter], the Secretary of Health, Education, and Welfare shall make payments to the 50 States and the District of Columbia after December 31, 1973, in accordance with the provisions of the Social Security Act [this chapter] as in effect prior to January 1, 1974, for (1) activities carried out through the close of December 31, 1973, under State plans approved under title I, X, XIV, or XVI, of such Act [subchapter I, X, XIV, or XVI of this chapter], and (2) administrative activities carried out after December 31, 1973, which such Secretary determines are necessary to bring to a close activities carried out under such State plans."

§ 1381a. Basic entitlement to benefits

Every aged, blind, or disabled individual who is determined under part A of this subchapter to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Commissioner of Social Security.

(Aug. 14, 1935, ch. 531, title XVI, § 1602, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465; amended Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(E), July 18, 1984, 98 Stat. 1170; Pub. L. 103–296, title I, § 107(a)(1), Aug. 15, 1994, 108 Stat. 1477.)

PRIOR PROVISIONS

A prior section 1602 of act Aug. 14, 1935, ch. 531, title XVI, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 198; amended Oct. 13, 1964, Pub. L. 88–650, § 5(b), 78 Stat. 1078; July 30, 1965, Pub. L. 89–97, title II, § 221(d)(3), title IV, § 403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 210(a)(5), 213(a)(4), 241(d), 81 Stat. 896, 898, 917, formerly classified to section 1382 of this title, set forth the required contents of State plans for aid to the aged, blind, or disabled, and for medical assistance for the aged, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301.

AMENDMENTS

1994—Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

1984—Pub. L. 98–369 substituted "Health and Human Services" for "Health, Education, and Welfare".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

PART A—DETERMINATION OF BENEFITS

§ 1382. Eligibility for benefits

(a) "Eligible individual" defined

(1) Each aged, blind, or disabled individual who does not have an eligible spouse and—

(A) whose income, other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 or any calendar year thereafter, and

(B) whose resources, other than resources excluded pursuant to section 1382b(a) of this title, are not more than (i) in case such individual has a spouse with whom he is living, the applicable amount determined under paragraph (3)(A), or (ii) in case such individual has no spouse with whom he is living, the applicable amount determined under paragraph (3)(B),

shall be an eligible individual for purposes of this subchapter.

(2) Each aged, blind, or disabled individual who has an eligible spouse and—

(A) whose income (together with the income of such spouse), other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $2,628 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974, or any calendar year thereafter, and

(B) whose resources (together with the resources of such spouse), other than resources excluded pursuant to section 1382b(a) of this title, are not more than the applicable amount determined under paragraph (3)(A),

shall be an eligible individual for purposes of this subchapter.

(3)(A) The dollar amount referred to in clause (i) of paragraph (1)(B), and in paragraph (2)(B), shall be $2,250 prior to January 1, 1985, and shall be increased to $2,400 on January 1, 1985, to $2,550 on January 1, 1986, to $2,700 on January 1, 1987, to $2,850 on January 1, 1988, and to $3,000 on January 1, 1989.

(B) The dollar amount referred to in clause (ii) of paragraph (1)(B), shall be $1,500 prior to January 1, 1985, and shall be increased to $1,600 on January 1, 1985, to $1,700 on January 1, 1986, to $1,800 on January 1, 1987, to $1,900 on January 1, 1988, and to $2,000 on January 1, 1989.

(b) Amount of benefits

(1) The benefit under this subchapter for an individual who does not have an eligible spouse shall be payable at the rate of $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1382a(b) of this title, of such individual.

(2) The benefit under this subchapter for an individual who has an eligible spouse shall be payable at the rate of $2,628 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1382a(b) of this title, of such individual and spouse.

(c) Period for determination of benefits

(1) An individual's eligibility for a benefit under this subchapter for a month shall be determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in such month, and, except as provided in paragraphs (2), (3), (4), (5), and (6), the amount of such benefit shall be determined for such month on the basis of income and other characteristics in the first or, if the Commissioner of Social Security so determines, second month preceding such month. Eligibility for and the amount of such benefits shall be redetermined at such time or times as may be provided by the Commissioner of Social Security.

(2) The amount of such benefit for the month in which an application for benefits becomes effective (or, if the Commissioner of Social Security so determines, for such month and the following month) and for any month immediately following a month of ineligibility for such benefits (or, if the Commissioner of Social Security so determines, for such month and the following month) shall—

(A) be determined on the basis of the income of the individual and the eligible spouse, if any, of such individual and other relevant circumstances in such month; and

(B) in the case of the first month following a period of ineligibility in which eligibility is restored after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if eligibility had been restored on the first day of such month as the number of days in such month including and following the date of restoration of eligibility bears to the total number of days in such month.

(3) For purposes of this subsection, an increase in the benefit amount payable under subchapter II of this chapter (over the amount payable in the preceding month, or, at the election of the Commissioner of Social Security, the second preceding month) to an individual receiving ben-

efits under this subchapter shall be included in the income used to determine the benefit under this subchapter of such individual for any month which is—

(A) the first month in which the benefit amount payable to such individual under this title is increased pursuant to section 1382f of this title, or

(B) at the election of the Commissioner of Social Security, the month immediately following such month.

(4)(A) Notwithstanding paragraph (3), if the Commissioner of Social Security determines that reliable information is currently available with respect to the income and other circumstances of an individual for a month (including information with respect to a class of which such individual is a member and information with respect to scheduled cost-of-living adjustments under other benefit programs), the benefit amount of such individual under this subchapter for such month may be determined on the basis of such information.

(B) The Commissioner of Social Security shall prescribe by regulation the circumstances in which information with respect to an event may be taken into account pursuant to subparagraph (A) in determining benefit amounts under this subchapter.

(5) Notwithstanding paragraphs (1) and (2), any income which is paid to or on behalf of an individual in any month pursuant to (A) a State program funded under part A of subchapter IV of this chapter, (B) section 672 of this title (relating to foster care assistance), (C) section 1522(e) of title 8 (relating to assistance for refugees), (D) section 501(a) of Public Law 96-422 (relating to assistance for Cuban and Haitian entrants), or (E) section 13 of title 25 (relating to assistance furnished by the Bureau of Indian Affairs), shall be taken into account in determining the amount of the benefit under this subchapter of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.

(6) The dollar amount in effect under subsection (b) of this section as a result of any increase in benefits under this subchapter by reason of section 1382f of this title shall be used to determine the value of any in-kind support and maintenance required to be taken into account in determining the benefit payable under this subchapter to an individual (and the eligible spouse, if any, of the individual) for the 1st 2 months for which the increase in benefits applies.

(7) For purposes of this subsection, an application of an individual for benefits under this subchapter shall be effective on the later of—

(A) the first day of the month following the date such application is filed, or

(B) the first day of the month following the date such individual becomes eligible for such benefits with respect to such application.

(8) The Commissioner of Social Security may waive the limitations specified in subparagraphs (A) and (B) of subsection (e)(1) of this section on an individual's eligibility and benefit amount for a month (to the extent either such limitation is applicable by reason of such individual's presence throughout such month in a hospital, extended care facility, nursing home, or intermediate care facility) if such waiver would promote the individual's removal from such institution or facility. Upon waiver of such limitations, the Commissioner of Social Security shall apply, to the month preceding the month of removal, or, if the Commissioner of Social Security so determines, the two months preceding the month of removal, the benefit rate that is appropriate to such individual's living arrangement subsequent to his removal from such institution or facility.

(9)(A) Notwithstanding paragraphs (1) and (2), any nonrecurring income which is paid to an individual in the first month of any period of eligibility shall be taken into account in determining the amount of the benefit under this subchapter of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.

(B) For purposes of subparagraph (A), payments to an individual in varying amounts from the same or similar source for the same or similar purpose shall not be considered to be nonrecurring income.

(10) For purposes of this subsection, remuneration for service performed as a member of a uniformed service may be treated as received in the month in which it was earned, if the Commissioner of Social Security determines that such treatment would promote the economical and efficient administration of the program authorized by this subchapter.

(d) Limitation on amount of gross income earned; "gross income" defined

The Commissioner of Social Security may prescribe the circumstances under which, consistently with the purposes of this subchapter, the gross income from a trade or business (including farming) will be considered sufficiently large to make an individual ineligible for benefits under this subchapter. For purposes of this subsection, the term ''gross income'' has the same meaning as when used in chapter 1 of the Internal Revenue Code of 1986.

(e) Limitation on eligibility of certain individuals

(1)(A) Except as provided in subparagraphs (B), (C), (D), (E), and (G), no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month (subject to subparagraph (G)), in a medical treatment facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX of this chapter, or an eligible individual is a child described in section 1382c(f)(2)(B) of this title, or, in the case of an eligible individual who is a child under the age of 18, receiving payments (with respect to such individual) under any health insurance policy issued by a private provider of such insurance the benefit under this subchapter for such individual for such month shall be payable (subject to subparagraph (E))—

(i) at a rate not in excess of $360 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who does not have an eligible spouse;

(ii) in the case of an individual who has an eligible spouse, if only one of them is in such a facility throughout such month, at a rate not in excess of the sum of—

(I) the rate of $360 per year (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the one who is in such facility), and

(II) the applicable rate specified in subsection (b)(1) of this section (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the other); and

(iii) at a rate not in excess of $720 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who has an eligible spouse, if both of them are in such a facility throughout such month.

For purposes of this subsection, a medical treatment facility that provides services described in section 1396p(c)(1)(C) of this title shall be considered to be receiving payments with respect to an individual under a State plan approved under subchapter XIX of this chapter during any period of ineligibility of such individual provided for under the State plan pursuant to section 1396p(c) of this title.

(C) As used in subparagraph (A), the term ''public institution'' does not include a publicly operated community residence which serves no more than 16 residents.

(D) A person may be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month throughout which he is a resident of a public emergency shelter for the homeless (as defined in regulations which shall be prescribed by the Commissioner of Social Security); except that no person shall be an eligible individual or eligible spouse by reason of this subparagraph more than 6 months in any 9-month period.

(E) Notwithstanding subparagraphs (A) and (B), any individual who—

(i)(I) is an inmate of a public institution, the primary purpose of which is the provision of medical or psychiatric care, throughout any month as described in subparagraph (A), or

(II) is in a medical treatment facility throughout any month as described in subparagraph (B),

(ii) was eligible under section 1382h(a) or (b) of this title for the month preceding such month, and

(iii) under an agreement of the public institution or the medical treatment facility is permitted to retain any benefit payable by reason of this subparagraph,

may be an eligible individual or eligible spouse for purposes of this subchapter (and entitled to a benefit determined on the basis of the rate applicable under subsection (b) of this section) for the month referred to in subclause (I) or (II) of clause (i) and, if such subclause still applies, for the succeeding month.

(F) An individual who is an eligible individual or an eligible spouse for a month by reason of subparagraph (E) shall not be treated as being eligible under section 1382h(a) or (b) of this title for such month for purposes of clause (ii) of such subparagraph.

(G) A person may be an eligible individual or eligible spouse for purposes of this subchapter, and subparagraphs (A) and (B) shall not apply, with respect to any particular month throughout which he or she is an inmate of a public institution the primary purpose of which is the provision of medical or psychiatric care, or is in a medical treatment facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX of this chapter or, in the case of an individual who is a child under the age of 18, under any health insurance policy issued by a private provider of such insurance, if it is determined in accordance with subparagraph (H) or (J) that—

(i) such person's stay in that institution or facility (or in that institution or facility and one or more other such institutions or facilities during a continuous period of institutionalization) is likely (as certified by a physician) not to exceed 3 months, and the particular month involved is one of the first 3 months throughout which such person is in such an institution or facility during a continuous period of institutionalization; and

(ii) such person needs to continue to maintain and provide for the expenses of the home or living arrangement to which he or she may return upon leaving the institution or facility.

The benefit of any person under this subchapter (including State supplementation if any) for each month to which this subparagraph applies shall be payable, without interruption of benefit payments and on the date the benefit involved is regularly due, at the rate that was applicable to such person in the month prior to the first month throughout which he or she is in the institution or facility.

(H) The Commissioner of Social Security shall establish procedures for the determinations required by clauses (i) and (ii) of subparagraph (G), and may enter into agreements for making such determinations (or for providing information or assistance in connection with the making of such determinations) with appropriate State and local public and private agencies and organizations. Such procedures and agreements shall include the provision of appropriate assistance to individuals who, because of their physical or mental condition, are limited in their ability to furnish the information needed in connection with the making of such determinations.

(I)(i) The Commissioner shall enter into an agreement, with any interested State or local institution comprising a jail, prison, penal institution, or correctional facility, or with any other interested State or local institution a purpose of which is to confine individuals as described in section 402(x)(1)(A)(ii) of this title, under which—

(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the names, social security account numbers, dates of birth, confinement commencement dates, and, to the

extent available to the institution, such other identifying information concerning the inmates of the institution as the Commissioner may require for the purpose of carrying out this paragraph and the other provisions of this subchapter; and

(II) the Commissioner shall pay to any such institution, with respect to each individual who receives in the month preceding the first month throughout which such individual is an inmate of the jail, prison, penal institution, or correctional facility that furnishes information respecting such individual pursuant to subclause (I), or is confined in the institution (that so furnishes such information) as described in section 402(x)(1)(A)(ii) of this title, a benefit under this subchapter for such preceding month, and who is determined by the Commissioner to be ineligible for benefits under this subchapter by reason of confinement based on the information provided by such institution, $400 (subject to reduction under clause (ii)) if the institution furnishes the information described in subclause (I) to the Commissioner within 30 days after the date such individual becomes an inmate of such institution, or $200 (subject to reduction under clause (ii)) if the institution furnishes such information after 30 days after such date but within 90 days after such date.

(ii) The dollar amounts specified in clause (i)(II) shall be reduced by 50 percent if the Commissioner is also required to make a payment to the institution with respect to the same individual under an agreement entered into under section 402(x)(3)(B) of this title.

(iii) The Commissioner shall maintain, and shall provide on a reimbursable basis, information obtained pursuant to agreements entered into under clause (i) to any Federal or federally-assisted cash, food, or medical assistance program for eligibility and other administrative purposes under such program.

(iv) Payments to institutions required by clause (i)(II) shall be made from funds otherwise available for the payment of benefits under this subchapter and shall be treated as direct spending for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900 et seq.].

(J) For the purpose of carrying out this paragraph, the Commissioner of Social Security shall conduct periodic computer matches with data maintained by the Secretary of Health and Human Services under subchapter XVIII or XIX of this chapter. The Secretary shall furnish to the Commissioner, in such form and manner and under such terms as the Commissioner and the Secretary shall mutually agree, such information as the Commissioner may request for this purpose. Information obtained pursuant to such a match may be substituted for the physician's certification otherwise required under subparagraph (G)(i).

(2) No person shall be an eligible individual or eligible spouse for purposes of this subchapter if, after notice to such person by the Commissioner of Social Security that it is likely that such person is eligible for any payments of the type enumerated in section 1382a(a)(2)(B) of this title, such person fails within 30 days to take all appropriate steps to apply for and (if eligible) obtain any such payments.

(3) Notwithstanding anything to the contrary in the criteria being used by the Commissioner of Social Security in determining when a husband and wife are to be considered two eligible individuals for purposes of this subchapter and when they are to be considered an eligible individual with an eligible spouse, the State agency administering or supervising the administration of a State plan under any other program under this chapter may (in the administration of such plan) treat a husband and wife living in the same medical treatment facility described in paragraph (1)(B) as though they were an eligible individual with his or her eligible spouse for purposes of this subchapter (rather than two eligible individuals), after they have continuously lived in the same such facility for 6 months, if treating such husband and wife as two eligible individuals would prevent either of them from receiving benefits or assistance under such plan or reduce the amount thereof.

(4)(A) No person shall be considered an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if during such month the person is—

(i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed; or

(ii) violating a condition of probation or parole imposed under Federal or State law.

(B) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

(i) a court of competent jurisdiction has found the person not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the person for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

(ii) the person was erroneously implicated in connection with the criminal offense by reason of identity fraud.

(C) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

(i) the offense described in subparagraph (A)(i) or underlying the imposition of the probation or parole described in subparagraph (A)(ii) was nonviolent and not drug-related, and

(ii) in the case of a person who is not considered an eligible individual or eligible spouse pursuant to subparagraph (A)(ii), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.

(5) Notwithstanding any other provision of law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any recipient of benefits under this subchapter, if the officer furnishes the Commissioner with the name of the recipient, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the recipient, and notifies the Commissioner that—

(A) the recipient is described in clause (i) or (ii) of paragraph (4)(A); and

(B) the location or apprehension of the recipient is within the officer's official duties.

(f) Individuals outside United States; determination of status

(1) Notwithstanding any other provision of this subchapter, no individual (other than a child described in section 1382c(a)(1)(B)(ii) of this title) shall be considered an eligible individual for purposes of this subchapter for any month during all of which such individual is outside the United States (and no person shall be considered the eligible spouse of an individual for purposes of this subchapter with respect to any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

(2) For a period of not more than 1 year, the first sentence of paragraph (1) shall not apply to any individual who—

(A) was eligible to receive a benefit under this subchapter for the month immediately preceding the first month during all of which the individual was outside the United States; and

(B) demonstrates to the satisfaction of the Commissioner of Social Security that the absence of the individual from the United States will be—

(i) for not more than 1 year; and

(ii) for the purpose of conducting studies as part of an educational program that is—

(I) designed to substantially enhance the ability of the individual to engage in gainful employment;

(II) sponsored by a school, college, or university in the United States; and

(III) not available to the individual in the United States.

(g) Individuals deemed to meet resources test

In the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under subchapter I, X, XIV, or XVI of this chapter,

(2) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(3) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or eligible spouse with respect to whom supplemental security income benefits are payable,

the resources of such individual or such individual and his spouse (as the case may be) shall be deemed not to exceed the amount specified in subsections (a)(1)(B) and (a)(2)(B) of this section during any period that the resources of such individual or such individual and his spouse (as the case may be) does not exceed the maximum amount of resources specified in the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973.

(h) Individuals deemed to meet income test

In determining eligibility for, and the amount of, benefits payable under this section in the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under subchapter X or XVI of this chapter,

(2) is blind under the definition of that term in the plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973,

(3) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(4) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or an eligible spouse with respect to whom supplemental security income benefits are payable,

there shall be disregarded an amount equal to the greater of (A) the maximum amount of any earned or unearned income which could have been disregarded under the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973, and (B) the amount which would be required to be disregarded under section 1382a of this title without application of this subsection.

(i) Application and review requirements for certain individuals

For application and review requirements affecting the eligibility of certain individuals, see section 1383(j) of this title.

(Aug. 14, 1935, ch. 531, title XVI, § 1611, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1466; amended Pub. L. 93–66, title II, § 210(a), (b), July 9, 1973, 87 Stat. 154; Pub. L. 93–233, §§ 4(b)(1), (2), 18(d), (e), Dec. 31, 1973, 87 Stat. 953, 968; Pub. L. 93–368, § 6(a), Aug. 7, 1974, 88 Stat. 421; Pub. L. 94–566, title V, §§ 502, 505(a), Oct. 20, 1976, 90 Stat. 2685, 2686; Pub. L. 96–265, title III, § 303(c)(2), June 9, 1980, 94 Stat. 453; Pub. L. 97–35, title XXIII, § 2341(a), Aug. 13, 1981, 95 Stat. 865; Pub. L. 97–248, title I, §§ 181(a), 183(a), Sept. 3, 1982, 96 Stat. 404, 405; Pub. L. 98–21, title IV, § 403(a), Apr. 20, 1983, 97 Stat. 140; Pub. L. 98–369, div. B, title VI, §§ 2611(a)–(c), 2663(g)(1), (2), July 18, 1984, 98 Stat. 1130, 1168; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–643, §§ 3(a), 4(c)(3), (d)(1), 9(a), Nov. 10, 1986, 100 Stat. 3574, 3577, 3579; Pub. L. 100–203, title IX,

§§ 9106(a), 9107, 9113(a), 9115(a), 9119(a), Dec. 22, 1987, 101 Stat. 1330–301, 1330–302, 1330–304, 1330–308; Pub. L. 100–360, title III, § 303(c)(2), July 1, 1988, 102 Stat. 762; Pub. L. 101–239, title VIII, §§ 8009(a), 8010(b), Dec. 19, 1989, 103 Stat. 2463, 2464; Pub. L. 103–66, title XIII, § 13735(a), Aug. 10, 1993, 107 Stat. 662; Pub. L. 103–296, title I, § 107(a)(4), title II, §§ 201(b)(3)(A), (B)(i), 204(a), Aug. 15, 1994, 108 Stat. 1478, 1502, 1504, 1508; Pub. L. 104–121, title I, § 105(b)(4)(A), Mar. 29, 1996, 110 Stat. 854; Pub. L. 104–193, title I, § 108(j), title II, §§ 201(a), 202(a), (b), 203(a)(1), 204(a), 214(a), Aug. 22, 1996, 110 Stat. 2169, 2185–2187, 2195; Pub. L. 105–33, title V, §§ 5521, 5522(c), Aug. 5, 1997, 111 Stat. 621, 623; Pub. L. 106–169, title II, §§ 204, 207(c), 212, Dec. 14, 1999, 113 Stat. 1833, 1838, 1843; Pub. L. 106–170, title IV, § 402(a)(3), (c)(1)–(3), Dec. 17, 1999, 113 Stat. 1908, 1909; Pub. L. 108–203, title II, § 203(b), title IV, §§ 433(a), (b), 436(a), Mar. 2, 2004, 118 Stat. 510, 539–541.)

References in Text

Part A of subchapter IV of this chapter, referred to in subsec. (c)(5), is classified to section 601 et seq. of this title.

Section 501(a) of Public Law 96–422, referred to in subsec. (c)(5), is section 501(a) of Pub. L. 96–422, which is set out as a note under section 1522 of Title 8, Aliens and Nationality.

The Internal Revenue Code of 1986, referred to in subsecs. (d) and (e)(5), is classified generally to Title 26, Internal Revenue Code.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (e)(1)(I)(iv), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of this title, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of this title, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

Prior Provisions

A prior section 1382, act Aug. 14, 1935, ch. 531, title XVI, § 1602, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 198; amended Oct. 13, 1964, Pub. L. 88–650, § 5(b), 78 Stat. 1078; July 30, 1965, Pub. L. 89–97, title II, § 221(d)(3), title IV, § 403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 210(a)(5), 213(a)(4), 241(d), 81 Stat. 896, 898, 917; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 405(d), 406(d), 407(d), 410(d), 413(d), 86 Stat. 1488, 1489, 1491, 1492, set forth required contents of State plans for aid to aged, blind, or disabled, and for medical assistance for aged, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301, but is set out as a note below in view of its continued applicability to Puerto Rico, Guam, and the Virgin Islands.

Amendments

2004—Subsec. (c)(2)(B). Pub. L. 108–203, § 433(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in the case of the month in which an application becomes effective or the first month following a period of ineligibility, if such application becomes effective, or eligibility is restored, after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if such application had become effective, or eligibility had been restored, on the first day of such month as the number of days in such month including and following the effective date of such application or restoration of eligibility bears to the total number of days in such month.''

Subsec. (c)(9). Pub. L. 108–203, § 433(a), added par. (9).

Subsec. (c)(10). Pub. L. 108–203, § 436(a), added par. (10).

Subsec. (e)(4). Pub. L. 108–203, § 203(b)(1), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), in cl. (i), substituted ''or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed'' for ''or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State'', and added subpars. (B) and (C).

Subsec. (e)(5)(A), (B). Pub. L. 108–203, § 203(b)(2), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) the recipient—

''(i) is described in subparagraph (A) or (B) of paragraph (4); and

''(ii) has information that is necessary for the officer to conduct the officer's official duties; and

''(B) the location or apprehension of the recipient is within the officer's official duties.''

1999—Subsec. (e)(1)(G). Pub. L. 106–169, § 212(b), substituted ''subparagraph (H) or (J)'' for ''subparagraph (H)'' in introductory provisions.

Subsec. (e)(1)(I)(i). Pub. L. 106–170, § 402(c)(2), substituted ''institution comprising a jail, prison, penal institution, or correctional facility, or with any other interested State or local institution a purpose of which is to confine individuals as described in section 402(x)(1)(A)(ii) of this title,'' for ''institution described in clause (i) or (ii) of section 402(x)(1)(A) of this title the primary purpose of which is to confine individuals as described in section 402(x)(1)(A) of this title,''.

Subsec. (e)(1)(I)(i)(I). Pub. L. 106–170, § 402(a)(3)(A), substituted ''and the other provisions of this subchapter; and'' for ''; and''.

Subsec. (e)(1)(I)(i)(II). Pub. L. 106–170, § 402(c)(1)(A), inserted ''(subject to reduction under clause (ii))'' after ''$400'' and ''$200''.

Subsec. (e)(1)(I)(ii). Pub. L. 106–170, § 402(c)(1)(C), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (e)(1)(I)(ii)(II). Pub. L. 106–170, § 402(a)(3)(B), substituted ''shall maintain, and shall provide on a reimbursable basis,'' for ''is authorized to provide, on a reimbursable basis,''.

Pub. L. 106–169, § 204, which directed substitution of ''shall'' for ''is authorized to'' in cl. (ii)(II), could not be executed in view of the redesignation of cl. (ii) as (iii) by Pub. L. 106–170, § 402(c)(1)(B). See note above and Effective Date of 1999 Amendment note below.

Subsec. (e)(1)(I)(iii). Pub. L. 106–170, § 402(c)(3)(B), substituted ''eligibility and other administrative purposes under such program'' for ''eligibility purposes''.

Pub. L. 106–170, § 402(c)(3)(A), struck out ''(II)'' before ''The Commissioner'' and struck out subcl. (I) which read as follows: ''The provisions of section 552a of title 5 shall not apply to any agreement entered into under clause (i) or to information exchanged pursuant to such agreement.''

Pub. L. 106–170, § 402(c)(1)(B), redesignated cl. (ii) as (iii). Former cl. (iii) redesignated (iv).

Subsec. (e)(1)(I)(iv). Pub. L. 106–170, § 402(c)(1)(B), redesignated cl. (iii) as (iv).

Subsec. (e)(1)(J). Pub. L. 106–169, § 212(a), added subpar. (J).

Subsec. (e)(4). Pub. L. 106–169, § 207(c)(1), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows:

''(4)(A) No person shall be considered an eligible individual or eligible spouse for purposes of this subchapter during the 10-year period that begins on the date the person is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the person in order to receive assistance simultaneously from 2 or more States under programs that are funded under subchapter IV of this chapter, subchapter XIX of this chap-

ter, or the Food Stamp Act of 1977, or benefits in 2 or more States under the supplemental security income program under this subchapter.

''(B) As soon as practicable after the conviction of a person in a Federal or State court as described in subparagraph (A), an official of such court shall notify the Commissioner of such conviction.''

Subsec. (e)(5). Pub. L. 106–169, § 207(c)(3), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (e)(6). Pub. L. 106–169, § 207(c)(2), (3), redesignated par. (6) as (5) and substituted ''(4)'' for ''(5)''.

1997—Subsec. (e)(1)(B). Pub. L. 105–33, § 5522(c)(1)(A), (D), in introductory provisions, substituted ''medical treatment facility'' for ''hospital, extended care facility, nursing home, or intermediate care facility'' and in closing provisions, substituted ''medical treatment facility that provides services described in section 1396p(c)(1)(C) of this title'' for ''hospital, extended care facility, nursing home, or intermediate care facility which is a 'medical institution or nursing facility' within the meaning of section 1396p(c) of this title''.

Subsec. (e)(1)(B)(ii). Pub. L. 105–33, § 5522(c)(1)(B), struck out ''hospital, home or'' before ''facility'' in introductory provisions and ''hospital, home, or'' before ''facility'' in subcl. (I).

Subsec. (e)(1)(B)(iii). Pub. L. 105–33, § 5522(c)(1)(C), struck out ''hospital, home, or'' before ''facility''.

Subsec. (e)(1)(E)(i)(II), (iii). Pub. L. 105–33, § 5522(c)(2), substituted ''medical treatment facility'' for ''hospital, extended care facility, nursing home, or intermediate care facility''.

Subsec. (e)(1)(G). Pub. L. 105–33, § 5522(c)(3), substituted ''or is in a medical treatment'' for ''or which is a hospital, extended care facility, nursing home, or intermediate care'' and inserted ''or, in the case of an individual who is a child under the age of 18, under any health insurance policy issued by a private provider of such insurance'' after ''subchapter XIX of this chapter''.

Subsec. (e)(1)(I)(i)(I). Pub. L. 105–33, § 5521(c), substituted ''this paragraph'' for ''paragraph (1)''.

Subsec. (e)(1)(I)(i)(II). Pub. L. 105–33, § 5521(b), substituted ''individual who receives in the month preceding the first month throughout which such individual is an inmate of the jail, prison, penal institution, or correctional facility that furnishes information respecting such individual pursuant to subclause (I), or is confined in the institution (that so furnishes such information) as described in section 402(x)(1)(A)(ii) of this title, a benefit under this subchapter for such preceding month, and who is determined by the Commissioner to be ineligible for benefits under this subchapter by reason of confinement based on the information provided by such institution'' for ''inmate of the institution who is eligible for a benefit under this subchapter for the month preceding the first month throughout which such inmate is in such institution and becomes ineligible for such benefit as a result of the application of this subparagraph''.

Subsec. (e)(3). Pub. L. 105–33, § 5522(c)(4), substituted ''same medical treatment facility'' for ''same hospital, home, or facility'' and ''same such facility'' for ''same such hospital, home, or facility''.

Subsec. (e)(6). Pub. L. 105–33, § 5521(a), inserted ''and section 1306(c) of this title'' after ''of 1986''.

1996—Subsec. (c)(5)(A). Pub. L. 104–193, § 108(j), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a State plan approved under part A of subchapter IV of this chapter (relating to aid to families with dependent children),''.

Subsec. (c)(7)(A), (B). Pub. L. 104–193, § 204(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) the date such application is filed, or

''(B) the date such individual first becomes eligible for such benefits with respect to such application.''

Subsec. (e)(1)(B). Pub. L. 104–193, § 214(a), inserted ''or, in the case of an eligible individual who is a child under the age of 18, receiving payments (with respect to such individual) under any health insurance policy issued by a private provider of such insurance'' after ''section 1382c(f)(2)(B) of this title,''.

Subsec. (e)(1)(I). Pub. L. 104–193, § 203(a)(1), added subpar. (I).

Subsec. (e)(3). Pub. L. 104–193, § 201(a), redesignated par. (5) as (3).

Pub. L. 104–121 struck out par. (3) which related to limitation on eligibility for benefits by reason of disability based on alcoholism or drug addiction.

Subsec. (e)(4). Pub. L. 104–193, § 201(a), added par. (4).

Subsec. (e)(5). Pub. L. 104–193, §§ 201(a), 202(a), added par. (5) and redesignated former par. (5) as (3).

Subsec. (e)(6). Pub. L. 104–193, § 202(b), added par. (6).

1994—Subsecs. (c), (d), (e)(1)(D), (H), (2). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e)(3)(A). Pub. L. 103–296, § 201(b)(3)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''No person who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1382c(a)(3) of this title) shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if such individual is medically determined to be a drug addict or an alcoholic unless such individual is undergoing any treatment that may be appropriate for his condition as a drug addict or alcoholic (as the case may be) at an institution or facility approved for purposes of this paragraph by the Secretary (so long as such treatment is available) and demonstrates that he is complying with the terms, conditions, and requirements of such treatment and with requirements imposed by the Secretary under subparagraph (B).''

Pub. L. 103–296, § 107(a)(4), in subpar. (A) as amended by Pub. L. 103–296, § 201(b)(3)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''Commissioner's'' for ''Secretary's'' wherever appearing.

Subsec. (e)(3)(B). Pub. L. 103–296, § 201(b)(3)(B)(i), designated existing provisions as cl. (i), struck out ''The Secretary shall annually submit to the Congress a full and complete report on his activities under this paragraph.'' after first sentence, and added cls. (ii) and (iii).

Pub. L. 103–296, § 107(a)(4), in subpar. (B) as amended by Pub. L. 103–296, § 201(b)(3)(B)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in cl. (iii)(II)(aa).

Subsec. (e)(5). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (f). Pub. L. 103–296, § 204(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (f)(2)(B). Pub. L. 103–296, § 107(a)(4), in subpar. (B) as added by Pub. L. 103–296, § 204(a), substituted ''Commissioner of Social Security'' for ''Secretary''.

1993—Subsec. (c)(1). Pub. L. 103–66, § 13735(a)(1), substituted ''(5), and (6)'' for ''and (5)''.

Subsec. (c)(6) to (8). Pub. L. 103–66, § 13735(a)(2), (3), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

1989—Subsec. (e)(1)(B). Pub. L. 101–239, § 8010(b), inserted ''or an eligible individual is a child described in section 1382c(f)(2)(B) of this title,'' before ''the benefit under this subchapter'' in introductory provisions.

Subsec. (f). Pub. L. 101–239, § 8009(a), inserted ''(other than a child described in section 1382c(a)(1)(B)(ii) of this title)'' after ''no individual''.

1988—Subsec. (e)(1)(B). Pub. L. 100–360 inserted at end ''For purposes of this subsection, a hospital, extended care facility, nursing home, or intermediate care facility which is a 'medical institution or nursing facility' within the meaning of section 1396p(c) of this title shall be considered to be receiving payments with respect to an individual under a State plan approved under subchapter XIX of this chapter during any period of ineligibility of such individual provided for under the State plan pursuant to section 1396p(c) of this title.''

1987—Subsec. (c)(1). Pub. L. 100–203, § 9106(a)(1), substituted ''paragraphs (2), (3), (4), and (5)'' for ''paragraphs (2), (3), and (4)''.

Subsec. (c)(5) to (7). Pub. L. 100–203, § 9106(a)(2), (3), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (e)(1)(A). Pub. L. 100–203, § 9115(a)(1), substituted ''(E), and (G)'' for ''and (E)''.

Subsec. (e)(1)(B). Pub. L. 100–203, § 9115(a)(2), inserted ''(subject to subparagraph (G))'' after ''throughout any month''.

Subsec. (e)(1)(B)(i) to (iii). Pub. L. 100–203, § 9119(a), in cls. (i) and (ii)(I) substituted ''$360 per year'' for ''$300 per year'' and in cl. (iii) substituted ''$720 per year'' for ''$600 per year''.

Subsec. (e)(1)(D). Pub. L. 100–203, § 9113(a), substituted ''6 months in any 9-month period'' for ''three months in any 12-month period''.

Subsec. (e)(1)(G), (H). Pub. L. 100–203, § 9115(a)(3), added subpars. (G) and (H).

Subsec. (e)(5). Pub. L. 100–203, § 9107, substituted ''living in the same hospital, home, or facility'' for ''sharing a room or comparable accommodation in a hospital, home, or facility'' and ''lived in the same such hospital, home, or facility'' for ''shared such a room or accommodation''.

1986—Subsec. (d). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (e)(1). Pub. L. 99–643, § 3(a), in subpar. (A) substituted ''(D), and (E)'' for ''and (D)'', in subpar. (B) inserted ''(subject to subparagraph (E))'' after ''shall be payable'', and added subpars. (E) and (F).

Subsec. (e)(4). Pub. L. 99–643, § 4(d)(1), struck out par. (4) which read as follows: ''No benefit shall be payable under this subchapter, except as provided in section 1382h of this title (or section 1382e(c)(3) of this title), with respect to an eligible individual or his eligible spouse who is an aged, blind, or disabled individual solely by application of section 1382c(a)(3)(F) of this title for any month, after the third month, in which he engages in substantial gainful activity during the fifteen-month period following the end of his trial work period determined by application of section 1382c(a)(4)(D)(i) of this title.''

Subsec. (e)(5). Pub. L. 99–643, § 9(a), added par. (5).

Subsec. (i). Pub. L. 99–643, § 4(c)(3), added subsec. (i).

1984—Subsec. (a)(1)(B). Pub. L. 98–369, § 2611(a), substituted ''the applicable amount determined under paragraph (3)(A)'' for ''$2,250'' and ''the applicable amount determined under paragraph (3)(B)'' for ''$1,500''.

Subsec. (a)(2)(B). Pub. L. 98–369, § 2611(b), substituted ''the applicable amount determined under paragraph (3)(A)'' for ''$2,250''.

Subsec. (a)(3). Pub. L. 98–369, § 2611(c), added par. (3).

Subsec. (c). Pub. L. 98–369, § 2663(g)(1), amended heading.

Subsec. (g). Pub. L. 98–369, § 2663(g)(2), substituted ''or such individual'' for ''or individuals'' in provisions following par. (3).

1983—Subsec. (e)(1)(A). Pub. L. 98–21, § 403(a)(1), inserted reference to subpar. (D).

Subsec. (e)(1)(D). Pub. L. 98–21, § 403(a)(2), added subpar. (D).

1982—Subsec. (c)(1). Pub. L. 97–248, § 183(a)(1), inserted reference to pars. (3) and (4).

Subsec. (c)(2). Pub. L. 97–248, § 181(a), in par. (2) redesignated existing provisions as provisions preceding subpar. (A) and subpar. (A), and added subpar. (B).

Subsec. (c)(3) to (6). Pub. L. 97–248, §§ 181(a), 183(a)(2), (3), struck out par. (3) providing that an application shall be effective as of the first day of the month in which it is filed, added par. (3) providing that an application shall be effective on the later of the date it is filed or the date such individual first becomes eligible for such benefits with respect to such application and redesignated such par. (3) as (5), redesignated par. (4) as (6), and added pars. (3) and (4).

1981—Subsec. (c). Pub. L. 97–35 substituted provision that eligibility and benefit amount generally be determined on a one-month retrospective basis, with for the first month of eligibility, the month in which the application is filed, eligibility and benefit amount both determined on a prospective basis for provision that eligibility and benefit amount be determined on a quarterly prospective basis and inserted provision authorizing the Secretary to grant waivers.

1980—Subsec. (e)(4). Pub. L. 96–265 added par. (4).

1976—Subsec. (e)(1)(A). Pub. L. 94–566, § 505(a), inserted reference to subparagraph (C).

Subsec. (e)(1)(B)(ii). Pub. L. 94–566, § 502, inserted ''of the one who is in such hospital, home, or facility'' after ''section 1382a(b) of this title'' in parenthetical provisions that follow ''the rate of $300 per year'' and inserted ''(reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the other)'' after ''the applicable rate specified in subsection (b)(1) of this section''.

Subsec. (e)(1)(C). Pub. L. 94–566, § 505(a), added subpar. (C).

1974—Pub. L. 93–368 inserted ''(or, if greater, the amount determined under section 1382f of this title)'' after ''$1,752'' in subsecs. (a)(1)(A) and (b)(1) and ''$2,628'' in subsecs. (a)(2)(A) and (b)(2).

1973—Subsec. (a)(1)(A). Pub. L. 93–233, § 4(b)(1), substituted ''$1,752'' for ''$1,680''.

Pub. L. 93–66, § 210(a), substituted ''$1,680'' for ''$1,560''.

Subsec. (a)(2)(A). Pub. L. 93–233, § 4(b)(2), substituted ''$2,628'' for ''$2,520''.

Pub. L. 93–66, § 210(b), substituted ''$2,520'' for ''$2,340''.

Subsec. (b)(1). Pub. L. 93–233, § 4(b)(1), substituted ''$1,752'' for ''$1,680''.

Pub. L. 93–66, § 210(a), substituted ''$1,680'' for ''$1,560''.

Subsec. (b)(2). Pub. L. 93–233, § 4(b)(2), substituted ''$2,628'' for ''$2,520''.

Pub. L. 93–66, § 210(b), substituted ''$2,520'' for ''$2,340''.

Subsec. (g). Pub. L. 93–233, § 18(d), incorporated existing provisions in text designated as cl. (1), added cls. (2) and (3), and substituted final December ''1973'' for ''1972''.

Subsec. (h). Pub. L. 93–233, § 18(e), incorporated existing text in provisions designated as cls. (1) and (2), added cls. (3) and (4), redesignated former cls. (1) and (2) as items (A) and (B), and in item (A) inserted ''under which he or they received such aid or assistance for December 1973''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 203(b) of Pub. L. 108–203 effective on the first day of the first month that begins on or after the date that is 9 months after Mar. 2, 2004, see section 203(d) of Pub. L. 108–203, set out as a note under section 402 of this title.

Pub. L. 108–203, title IV, § 433(c), Mar. 2, 2004, 118 Stat. 540, provided that: ''The amendments made by this section [amending this section] shall be effective with respect to benefits payable for months that begin on or after 1 year after the date of enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title IV, § 436(b), Mar. 2, 2004, 118 Stat. 541, provided that: ''The amendments made by this section [amending this section] shall apply to benefits payable for months that begin more than 90 days after the date of enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by section 402(a)(3) of Pub. L. 106–170 applicable to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after December 1999, see section 402(a)(4) of Pub. L. 106–170, set out as a note under section 402 of Title 42, The Public Health and Welfare.

Pub. L. 106–170, title IV, § 402(c)(4), Dec. 17, 1999, 113 Stat. 1909, provided that: ''The amendments made by this subsection [amending this section] shall take effect as if included in the enactment of section 203(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2186). The reference to section 202(x)(1)(A)(ii) of the So-

cial Security Act [section 402(x)(1)(A)(ii) of this title] in section 1611(e)(1)(I)(i) of the Social Security Act [subsec. (e)(1)(I)(i) of this section], as amended by paragraph (2) of this subsection, shall be deemed a reference to such section 202(x)(1)(A)(ii) of such Act as amended by subsection (b)(1)(C) of this section.''

Amendment by section 207(c) of Pub. L. 106–169 applicable to statements and representations made on or after Dec. 14, 1999, see section 207(e) of Pub. L. 106–169, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5528(a) of Pub. L. 105–33, set out as a note under section 903 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 108(j) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Section 201(b) of Pub. L. 104–193 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 22, 1996].''

Section 202(c) of Pub. L. 104–193 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 22, 1996].''

Section 203(a)(2) of Pub. L. 104–193 provided that: ''The amendment made by this subsection [amending this section] shall apply to individuals whose period of confinement in an institution commences on or after the first day of the seventh month beginning after the month in which this Act is enacted [August 1996].''

Section 204(d) of Pub. L. 104–193 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1382c and 1383 of this title] shall apply to applications for benefits under title XVI of the Social Security Act [this subchapter] filed on or after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such amendments.

''(2) BENEFITS UNDER TITLE XVI.—For purposes of this subsection, the term 'benefits under title XVI of the Social Security Act' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [section 1382e(a) of this title], and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66 [set out below].''

Section 214(b) of Pub. L. 104–193 provided that: ''The amendment made by this section [amending this section] shall apply to benefits for months beginning 90 or more days after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such amendments.''

Section 105(b)(5) of Pub. L. 104–121, as amended by Pub. L. 105–33, title V, § 5525(a), (b), Aug. 5, 1997, 111 Stat. 624, provided that:

''(A) The amendments made by paragraphs (1) and (4) [amending this section and sections 1382c and 1383c of this title] shall apply to any individual who applies for, or whose claim is finally adjudicated with respect to, supplemental security income benefits under title XVI of the Social Security Act [this subchapter] based on disability on or after the date of the enactment of this Act [Mar. 29, 1996], and, in the case of any individual who has applied for, and whose claim has been finally adjudicated with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

''(B) The amendments made by paragraphs (2) and (3) [enacting section 1383e of this title and amending section 1383 of this title] shall take effect on July 1, 1996, with respect to any individual—

''(i) whose claim for benefits is finally adjudicated on or after the date of the enactment of this Act [Mar. 29, 1996], or

''(ii) whose eligibility for benefits is based upon an eligibility redetermination made pursuant to subparagraph (C).

''(C) Within 90 days after the date of the enactment of this Act [Mar. 29, 1996], the Commissioner of Social Security shall notify each individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection [enacting section 1383e of this title and amending this section and sections 1382c, 1383, and 1383c of this title]. If such an individual reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

''(D) For purposes of this paragraph, an individual's claim, with respect to supplemental security income benefits under title XVI of the Social Security Act [this subchapter] based on disability, which has been denied in whole before the date of the enactment of this Act [Mar. 29, 1996], may not be considered to be finally adjudicated before such date if, on or after such date—

''(i) there is pending a request for either administrative or judicial review with respect to such claim, or

''(ii) there is pending, with respect to such claim, a readjudication by the Commissioner of Social Security pursuant to relief in a class action or implementation by the Commissioner of a court remand order.

''(E) Notwithstanding the provisions of this paragraph, with respect to any individual for whom the Commissioner does not perform the eligibility redetermination before the date prescribed in subparagraph (C), the Commissioner shall perform such eligibility redetermination in lieu of a continuing disability review whenever the Commissioner determines that the individual's eligibility is subject to redetermination based on the preceding provisions of this paragraph, and the provisions of section 1614(a)(4) of the Social Security Act [section 1382c(a)(4) of this title] shall not apply to such redetermination.

''(F) For purposes of this paragraph, the phrase 'supplemental security income benefits under title XVI of the Social Security Act' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [section 1382e(a) of this title] and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66 [set out below].''

[Amendment by Pub. L. 105–33 to section 105(b)(5) of Pub. L. 104–121, set out above, effective as if included in the enactment of section 105 of Pub. L. 104–121, see section 5528(c)(1) of Pub. L. 105–33, set out as an Effective Date of 1997 Amendment note under section 903 of this title.]

EFFECTIVE DATE OF 1994 AMENDMENT; SUNSET PROVISION

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(b)(3)(C), (E), of Pub. L. 103–296 provided that:

''(C) SUNSET OF 36-MONTH RULE.—Section 1611(e)(3)(A)(v) of the Social Security Act [subsec. (e)(3)(A)(v) of this section] (added by subparagraph (A) of this paragraph) shall cease to be effective with respect to benefits for months after September 2004.

''(E) EFFECTIVE DATE.—

''(i) IN GENERAL.—Except as otherwise provided in this paragraph [amending this section and section 1383c of this title and enacting provisions set out as notes below], the amendments made by this paragraph shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability which are otherwise payable in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994]. The Secretary of Health and Human Services shall issue regulations necessary to carry out the amendments made by this paragraph not later than 180 days after such date of enactment.

''(ii) REFERRAL AND MONITORING AGENCIES.—The amendments made by subparagraph (B) [amending this section] shall take effect 180 days after the date of the enactment of this Act [Aug. 15, 1994].

''(iii) TERMINATION AFTER 36 MONTHS.—Clause (v) of section 1611(e)(3)(A) of the Social Security Act [subsec. (e)(3)(A) of this section] (added by the amendment made by subparagraph (A) of this paragraph) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability for months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

Section 204(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13735(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to benefits paid for months after the calendar year 1994.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8009(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382c of this title] shall apply with respect to benefits for months after March 1990.''

Section 8010(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382c of this title] shall take effect on the 1st day of the 6th calendar month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 applicable to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 303(g)(3) of Pub. L. 100–360, set out as a note under section 1396r–5 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9106(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9107 of Pub. L. 100–203 provided that the amendment made by that section is effective Nov. 10, 1986.

Section 9113(b) of Pub. L. 100–203 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall become effective January 1, 1988.

''(2) In the application of section 1611(e)(1)(D) of the Social Security Act [subsec. (e)(1)(D) of this section] on and after the effective date of such amendment, months before January 1988 in which a person was an eligible individual or eligible spouse by reason of such section shall not be taken into account.''

Section 9115(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 1396a of this title] shall become effective July 1, 1988.''

Section 9119(c) of Pub. L. 100–203 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382g of this title] shall become effective July 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 3(a) and 4(c)(3), (d)(1) of Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Section 9(b) of Pub. L. 99–643 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2611(a)–(c) of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 657 of this title.

Amendment by section 2663(g)(1), (2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 403(b) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to months after the month in which this Act is enacted [April 1983].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 181(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

Section 183(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITIONAL PROVISIONS

Section 2341(c) of Pub. L. 97–35 provided that:

''(1) The amendments made by this section [amending this section and section 1382a of this title] shall be effective with respect to months after the first calendar quarter which ends more than five months after the month in which this Act is enacted [August 1981].

''(2) The Secretary of Health and Human Services may, under conditions determined by him to be necessary and appropriate, make a transitional payment or payments during the first two months for which the amendments made by this section are effective. A transitional payment made under this section shall be deemed to be a payment of supplemental security income benefits.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable with respect to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 505(e) of Pub. L. 94–566 provided that: ''The amendments [amending this section and section 1382a of this title] and repeals [repealing section 1382e(e) of this title] made by this section, unless otherwise specified therein, shall take effect on October 1, 1976.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Section 4(b) of Pub. L. 93–233 provided that the amendments made by section 4(b)(1), (2) of Pub. L.

93–233 are effective with respect to payments for months after June 1974.

Section 210(c) of Pub. L. 93–66, as amended Pub. L. 93–233, § 4(a)(1), Dec. 31, 1973, 87 Stat. 953, provided: ''The amendments made by this section [amending this section] shall apply with respect to payments for months after December 1973.''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

REGULATIONS

Section 215 of title II of Pub. L. 104–193 provided that: ''Within 3 months after the date of the enactment of this Act [Aug. 22, 1996], the Commissioner of Social Security shall prescribe such regulations as may be necessary to implement the amendments made by this subtitle [subtitle B (§§ 211–215) of title II of Pub. L. 104–193, amending this section, sections 1382a to 1382c and 1383 of this title, sections 665e and 901 of Title 2, The Congress, and provisions set out as a note under section 401 of this title, and repealing provisions set out as a note below].''

CONSTRUCTION OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 to be executed as if Pub. L. 106–169 had been enacted after the enactment of Pub. L. 106–170, see section 121(c)(1) of Pub. L. 106–169, set out as a note under section 1396a of this title.

STUDY OF DENIAL OF SSI BENEFITS FOR FAMILY FARMERS

Pub. L. 106–169, title II, § 261, Dec. 14, 1999, 113 Stat. 1856, provided that:

''(a) IN GENERAL.—The Commissioner of Social Security shall conduct a study of the reasons why family farmers with resources of less than $100,000 are denied supplemental security income benefits under title XVI of the Social Security Act [this subchapter], including whether the deeming process unduly burdens and discriminates against family farmers who do not institutionalize a disabled dependent, and shall determine the number of such farmers who have been denied such benefits during each of the preceding 10 years.

''(b) REPORT TO THE CONGRESS.—Within 1 year after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner of Social Security shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that contains the results of the study, and the determination, required by subsection (a).''

STUDY OF OTHER POTENTIAL IMPROVEMENTS IN COLLECTION OF INFORMATION RESPECTING PUBLIC INMATES

Section 203(b) of Pub. L. 104–193 provided that:

''(1) STUDY.—The Commissioner of Social Security shall conduct a study of the desirability, feasibility, and cost of—

''(A) establishing a system under which Federal, State, and local courts would furnish to the Commissioner such information respecting court orders by which individuals are confined in jails, prisons, or other public penal, correctional, or medical facilities as the Commissioner may require for the purpose of carrying out section 1611(e)(1) of the Social Security Act [subsec. (e)(1) of this section]; and

''(B) requiring that State and local jails, prisons, and other institutions that enter into agreements with the Commissioner under section 1611(e)(1)(I) of the Social Security Act [subsec. (e)(1)(I) of this section] furnish the information required by such agreements to the Commissioner by means of an electronic or other sophisticated data exchange system.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Aug. 22, 1996], the Commissioner of Social Security shall submit a report on the results of the study conducted pursuant to this subsection to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

ADDITIONAL REPORT TO CONGRESS

Section 203(c) of Pub. L. 104–193 provided that: ''Not later than October 1, 1998, the Commissioner of Social Security shall provide to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a list of the institutions that are and are not providing information to the Commissioner under section 1611(e)(1)(I) of the Social Security Act (as added by this section) [subsec. (e)(1)(I) of this section].''

STUDY BY GENERAL ACCOUNTING OFFICE

Pub. L. 104–193, title II, § 232, Aug. 22, 1996, 110 Stat. 2198, provided that, not later than Jan. 1, 1999, the Comptroller General was to study and report on the impact of the amendments and provisions of title II of Pub. L. 104–193 on the supplemental security income program under this subchapter and extra expenses incurred by families of children receiving benefits under this subchapter not covered by other Federal, State, or local programs.

REPORT TO CONGRESS ON REFERRAL, MONITORING AND TREATMENT ACTIVITIES RELATING TO ALCOHOLICS AND DRUG ADDICTS

Section 201(b)(3)(B)(ii) of Pub. L. 103–296, which directed Secretary of Health and Human Services to submit to Congress, not later than Dec. 31, 1996, a report on the Secretary's activities under subsec. (e)(3)(B) of this section, was repealed by Pub. L. 105–33, title V, § 5525(c), Aug. 5, 1997, 111 Stat. 625.

TRANSITION RULES FOR CURRENT BENEFICIARIES

Section 201(b)(3)(F) of Pub. L. 103–296 provided that: ''In any case in which an individual is eligible for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability, the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act [Aug. 15, 1994], and alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is disabled, for purposes of section 1611(e)(3)(A)(v) of the Social Security Act [subsec. (e)(3)(A)(v) of this section] (added by the amendment made by subparagraph (A) of this paragraph)—

''(i) the first month of such eligibility beginning after 180 days after the date of the enactment of this Act shall be treated as the individual's first month of such eligibility; and

''(ii) the Secretary shall notify the individual of the requirements of the amendments made by this paragraph [amending this section and section 1383c of this title] no later than 180 days after the date of the enactment of this Act.''

COMMISSION ON CHILDHOOD DISABILITY

Section 202 of Pub. L. 103–296 provided for establishment of a Commission on the Evaluation of Disability to conduct a study, in consultation with the National Academy of Sciences, of effects of definition of ''disability'' under this subchapter in effect on Aug. 15, 1994, as such definition applied to determining whether a child under age of 18 was eligible to receive benefits under this subchapter, the appropriateness of such definition, and the advantages and disadvantages of using any alternative definition of disability in determining whether a child under age 18 was eligible to receive benefits under this subchapter, and further provided for contents of study, appointment of Commission members, administrative provisions, assistance of experts, and for submission of report to Congress not later than Nov. 30, 1995.

DISABILITY REVIEW REQUIRED FOR SSI RECIPIENTS WHO ARE 18 YEARS OF AGE

Section 207 of Pub. L. 103–296, which required applicable State agency or Secretary of Health and Human Services to redetermine eligibility of qualified individual for supplemental security income benefits under this subchapter by reason of disability, by applying criteria used in determining eligibility for such benefits of applicants who have attained 18 years of age during 1-year period beginning on date qualified individual attains 18 years of age, and Secretary to conduct such redeterminations with respect to not less than ⅓ of qualified individuals in each of fiscal years 1996 through 1998, defined term ''qualified individual'', and provided that such redetermination was to be considered substitute for review required under section 1382c(a)(3)(G) of this title, that redetermination requirement was to have no force or effect after Oct. 1, 1998, and that not later than Oct. 1, 1998, Secretary was to submit to House Ways and Means and Senate Finance Committees report on such activities, was repealed by Pub. L. 104–193, title II, § 212(b)(2), Aug. 22, 1996, 110 Stat. 2193.

CONTINUING DISABILITY REVIEWS

Section 208 of Pub. L. 103–296 provided that:

''(a) TEMPORARY ANNUAL MINIMUM NUMBER OF REVIEWS.—During each year of the 3-year period that begins on October 1, 1995, the Secretary of Health and Human Services shall apply section 221(i) of the Social Security Act [section 421(i) of this title] in making disability determinations under title XVI of such Act [this subchapter] with respect to at least 100,000 recipients of supplemental security income benefits under such title.

''(b) REPORT TO THE CONGRESS.—Not later than October 1, 1998, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the activities conducted under subsection (a).''

NOTIFICATION OF POSSIBLE BENEFIT AVAILABILITY TO POTENTIAL SUPPLEMENTAL SECURITY INCOME RECIPIENTS

Section 405 of Pub. L. 98–21 provided that: ''Prior to July 1, 1984, the Secretary of Health and Human Services shall notify all elderly recipients of benefits under title II of the Social Security Act [subchapter II of this chapter] who may be eligible for supplemental security income benefits under title XVI of such Act [this subchapter] of the availability of the supplemental security income program, and shall encourage such recipients to contact the Social Security district office. Such notification shall also be made to all recipients prior to attainment of age 65, with the notification made with respect to eligibility for supplementary medical insurance.''

ASSISTANCE PAID UNDER CERTAIN HOUSING ACTS NOT CONSIDERED IN DETERMINING ELIGIBILITY FOR BENEFITS UNDER THIS SUBCHAPTER; EFFECTIVE DATE

Pub. L. 94–375, § 2(h), Aug. 3, 1976, 90 Stat. 1068, provided that: ''Notwithstanding any other provision of law, the value of any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937 [section 1437 et seq. of this title], the National Housing Act [section 1701 et seq. of Title 12, Banks and Banking], section 101 of the Housing and Urban Development Act of 1965 [section 1701s of Title 12 and sections 1451 and 1465 of this title], or title V of the Housing Act of 1949 [section 1471 et seq. of this title] may not be considered as income or a resource for the purpose of determining the eligibility of, or the amount of the benefits payable to, any person living in such unit for assistance under title XVI of the Social Security Act [this subchapter]. This subsection shall become effective on October 1, 1976.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a benefit under the supplemental security income benefits program established by this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

ADJUSTMENT OF INDIVIDUAL'S MONTHLY SUPPLEMENTAL SECURITY INCOME PAYMENTS; REGULATIONS; LIMITATIONS

Pub. L. 93–335, § 2(b)(2), July 8, 1974, 88 Stat. 291, authorized the Secretary of Health, Education, and Welfare to prescribe regulations for the adjustment of an individual's monthly supplemental security income payment in accordance with any increase to which such individual might be entitled under the amendment made by subsection (a) of this section [amending section 212(a)(3)(B)(i) of Pub. L. 93–66, set out below]; provided that such adjustment in monthly payment, together with the remittance of any prior unpaid increments to which such individual might be entitled under such amendment, was to be made no later than the first day of the first month beginning more than sixty days after July 8, 1974.

MEDICAID ELIGIBILITY FOR INDIVIDUALS RECEIVING MANDATORY STATE SUPPLEMENTARY PAYMENTS; EFFECTIVE DATE

Additional requirement for approval of subchapter XIX State plan for medical assistance respecting medicaid eligibility for individuals receiving mandatory State supplementary payments, see section 13(c) of Pub. L. 93–233, set out as a note under section 1396a of this title.

FEDERAL PROGRAM OF SUPPLEMENTAL SECURITY INCOME; SUPPLEMENTAL SECURITY INCOME BENEFITS FOR ESSENTIAL PERSONS; DEFINITIONS OF QUALIFIED INDIVIDUAL AND ESSENTIAL PERSON

Section 211 of Pub. L. 93–66, as amended by Pub. L. 93–233, § 4(a)(2), (b)(3), Dec. 31, 1973, 87 Stat. 953, provided that:

''(a)(1) In determining (for purposes of title XVI of the Social Security Act [this subchapter], as in effect after December 1973) the eligibility for and the amount of the supplemental security income benefit payable to any qualified individual (as defined in subsection (b)), with respect to any period for which such individual has in his home an essential person (as defined in subsection (c))—

''(A) the dollar amounts specified in subsection (a)(1)(A) and (2)(A), and subsection (b)(1) and (2), of section 1611 of such Act [this section], shall each be increased by $876 for each such essential person, and

''(B) the income and resources of such individual shall (for purposes of such title XVI [this subchapter]) be deemed to include the income and resources of such essential person;

except that the provisions of this subsection shall not, in the case of any individual, be applicable for any period which begins in or after the first month that such individual—

''(C) does not but would (except for the provisions of subparagraph (B)) meet—

''(i) the criteria established with respect to income in section 1611(a) of such Act [subsec. (a) of this section], or

''(ii) the criteria established with respect to resources by such section 1611(a) [subsec. (a) of this section] (or, if applicable, by section 1611(g) of such Act [subsec. (g) of this section]).

''(2) The provisions of section 1611(g) of the Social Security Act [subsec. (g) of this section] (as in effect after December 1973) shall, in the case of any qualified individual (as defined in subsection (b)), be applied so as to include, in the resources of such individual, the re-

sources of any person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for the aid or assistance referred to in subsection (b)(1).

''(b) For purposes of this section, an individual shall be a 'qualified individual' only if—

''(1) for the month of December 1973 such individual was a recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter], and

''(2) in determining the need of such individual for such aid or assistance for such month under such State plan, there were taken into account the needs of a person (other than such individual) who—

''(A) was living in the home of such individual, and

''(B) was not eligible (in his or her own right) for aid or assistance under such State plan for such month.

''(c) The term 'essential person', when used in connection with any qualified individual, means a person who—

''(1) for the month of December 1973 was a person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for aid or assistance under a State plan referred to in subsection (b)(1) as such State plan was in effect for June 1973,

''(2) lives in the home of such individual,

''(3) is not eligible (in his or her own right) for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] (as in effect after December 1973), and

''(4) is not the eligible spouse (as that term is used in such title XVI [this subchapter]) of such individual or any other individual.

If for any month after December 1973 any person fails to meet the criteria specified in paragraph (2), (3), or (4) of the preceding sentence, such person shall not, for such month or any month thereafter be considered to be an essential person.''

[Amendment of section 211(a)(1)(A) of Pub. L. 93–66, set out above, by Pub. L. 93–233 effective with respect to payments for months after June 1974, see section 4(b) of Pub. L. 93–233.]

MANDATORY MINIMUM STATE SUPPLEMENTATION OF SUPPLEMENTAL SECURITY INCOME BENEFITS PROGRAM; DECEMBER 1973 INCOME; TITLE XVI BENEFIT PLUS OTHER INCOME; REDUCTION OF AMOUNT; ADMINISTRATION AGREEMENT; PAYMENTS TO COMMISSIONER; STATE CONSTITUTIONAL RESTRICTION

Section 212 of Pub. L. 93–66, as amended by Pub. L. 93–233, § 10, Dec. 31, 1973, 87 Stat. 957; Pub. L. 93–335, § 2(a), July 8, 1974, 88 Stat. 291; Pub. L. 96–265, title II, § 201(b)(2), June 9, 1980, 94 Stat. 446; Pub. L. 103–66, title XIII, § 13731(a)(2), Aug. 10, 1993, 107 Stat. 661; Pub. L. 105–33, title V, § 5102(a)(2), (b)(1)(B), Aug. 5, 1997, 111 Stat. 595, 596; Pub. L. 105–78, title V, § 516(a)(2), (b)(1)(B), Nov. 13, 1997, 111 Stat. 1518, 1519; Pub. L. 106–170, title IV, § 410(a)(2), Dec. 17, 1999, 113 Stat. 1916, provided that:

''(a)(1) In order for any State (other than the Commonwealth of Puerto Rico, Guam, or the Virgin Islands) to be eligible for payments pursuant to title XIX [subchapter XIX of this chapter], with respect to expenditures for any quarter beginning after December 1973, such State must have in effect an agreement with the Commissioner of Social Security (hereinafter in this section referred to as the 'Commissioner of Social Security') whereby the State will provide to individuals residing in the State supplementary payments as required under paragraph (2).

''(2) Any agreement entered into by a State pursuant to paragraph (1) shall provide that each individual who—

''(A) is an aged, blind, or disabled individual (within the meaning of section 1614(a) of the Social Security Act [section 1382c(a) of this title], as enacted by section 301 of the Social Security Amendments of 1972), and

''(B) for the month of December 1973 was a recipient of (and was eligible to receive) aid or assistance (in the form of money payments) under a State plan of such State (approved under title I, X, XIV, or XVI, of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter])

shall be entitled to receive, from the State, the supplementary payment described in paragraph (3) for each month, beginning with January 1974, and ending with whichever of the following first occurs:

''(C) the month in which such individual dies, or

''(D) the first month in which such individual ceases to meet the condition specified in subparagraph (A);

except that no individual shall be entitled to receive such supplementary payment for any month, if, for such month, such individual was ineligible to receive supplemental income benefits under title XVI of the Social Security Act [this chapter] by reason of the provisions of section 1611(e)(1)(A), (2), or (3) [subsec. (e)(1)(A), (2), or (3) of this section], 1611(f) [subsec. (f) of this section], or 1615(c) of such Act [section 1382d(c) of this title].

''(3)(A) The supplementary payment referred to in paragraph (2) which shall be paid for any month to any individual who is entitled thereto under an agreement entered into pursuant to this subsection shall (except as provided in subparagraphs (D) and (E)) be an amount equal to (i) the amount by which such individual's 'December 1973 income' (as determined under subparagraph (B)) exceeds the amount of such individual's 'title XVI benefit plus other income' (as determined under subparagraph (C)) for such month, or (ii) if greater, such amount as the State may specify.

''(B) For purposes of subparagraph (A), an individual's 'December 1973 income' means an amount equal to the aggregate of—

''(i) the amount of the aid or assistance (in the form of money payments) which such individual would have received (including any part of such amount which is attributable to meeting the needs of any other person whose presence in such individual's home is essential to such individual's well-being) for the month of December 1973 under a plan (approved under title I, X, XIV, or XVI, of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter]) of the State entering into an agreement under this subsection, if the terms and conditions of such plan (relating to eligibility for and amount of such aid or assistance payable thereunder) were, for the month of December 1973, the same as those in effect, under such plan, for the month of June 1973, together with the bonus value of food stamps for January 1972, as defined in section 401(b)(3) of Public Law 92–603 [set out as a note under section 1382e of this title], if, for such month, such individual resides in a State which provides State supplementary payments (I) of the type described in section 1616(a) of the Social Security Act [section 1382e(a) of this title], and (II) the level of which has been found by the Commissioner of Social Security pursuant to section 8 of Public Law 93–233 [set out as notes under section 1382e of this title and sections 612c, 1431 and 2012 of Title 7, Agriculture] to have been specifically increased so as to include the bonus value of food stamps, and

''(ii) the amount of the income of such individual (other than the aid or assistance described in clause (i)) received by such individual in December 1973, minus any such income which did not result, but which if properly reported would have resulted in a reduction in the amount of such aid or assistance.

''(C) For purposes of subparagraph (A), the amount of an individual's 'title XVI benefit plus other income' for any month means an amount equal to the aggregate of—

''(i) the amount (if any) of the supplemental security income benefit to which such individual is entitled for such month under title XVI of the Social Security Act [this subchapter], and

''(ii) the amount of any income of such individual for such month (other than income in the form of a benefit described in clause (i)).

''(D) If the amount determined under subparagraph (B)(i) includes, in the case of any individual, an amount which was payable to such individual solely because of—

''(i) a special need of such individual (including any special allowance for housing, or the rental value of housing furnished in kind to such individual in lieu of a rental allowance) which existed in December 1973, or

''(ii) any special circumstance (such as the recognition of the needs of a person whose presence in such individual's home, in December 1973, was essential to such individual's well-being),

and, if for any month after December 1973 there is a change with respect to such special need or circumstance which, if such change had existed in December 1973, the amount described in subparagraph (B)(i) with respect to such individual would have been reduced on account of such change, then, for such month and for each month thereafter the amount of the supplementary payment payable under the agreement entered into under this subsection to such individual shall (unless the State, at its option, otherwise specifies) be reduced by an amount equal to the amount by which the amount (described in subparagraph (B)(i)) would have been so reduced.

''(E)(i) In the case of an individual who, for December 1973 lived as a member of a family unit other members of which received aid (in the form of money payments) under a State plan of a State approved under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], such State at its option, may (subject to clause (ii)) reduce such individual's December 1973 income (as determined under subparagraph (B)) to such extent as may be necessary to cause the supplementary payment (referred to in paragraph (2)) payable to such individual for January 1974 or any month thereafter to be reduced to a level designed to assure that the total income of such individual (and of the members of such family unit) for any month after December 1973 does not exceed the total income of such individual (and of the members of such family unit) for December 1973.

''(ii) The amount of the reduction (under clause (i)) of any individual's December 1973 income shall not be in an amount which would cause the supplementary payment (referred to in paragraph (2)) payable to such individual to be reduced below the amount of such supplementary payment which would be payable to such individual if he had, for the month of December 1973 not lived in a family, members of which were receiving aid under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], and had had no income for such month other than that received as aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].

''(4) Any State having an agreement with the Commissioner of Social Security under paragraph (1) may, at its option, include individuals receiving benefits under section 1619 of the Social Security Act [section 1382h of this title], or who would be eligible to receive such benefits but for their income, under the agreement as though they are aged, blind, or disabled individuals as specified in paragraph (2)(A).

''(b)(1) Any State having an agreement with the Commissioner of Social Security under subsection (a) may enter into an administration agreement with the Commissioner of Social Security whereby the Commissioner of Social Security will, on behalf of such State, make the supplementary payments required under the agreement entered into under subsection (a).

''(2) Any such administration agreement between the Commissioner of Social Security and a State entered into under this subsection shall provide that the State will (A) certify to the Commissioner of Social Security the names of each individual who, for December 1973, was a recipient of aid or assistance (in the form of money payments) under a plan of such State approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter], together with the amount of such assistance payable to each such individual and the amount of such individual's December 1973 income (as defined in subsection (a)(3)(B)), and (B) provide the Commissioner of Social Security with such additional data at such times as the Commissioner of Social Security may reasonably require in order properly, economically, and efficiently to carry out such administration agreement.

''(3)(A) Any State which has entered into an administration agreement under this subsection shall, in accordance with subparagraph (E), pay to the Commissioner of Social Security an amount equal to the expenditures made by the Commissioner of Social Security as supplementary payments to individuals entitled thereto under the agreement entered into with such State under subsection (a), plus an administration fee assessed in accordance with subparagraph (B) and any additional services fee charged in accordance with subparagraph (C).

''(B)(i) The Commissioner of Social Security shall assess each State an administration fee in an amount equal to—

''(I) the number of supplementary payments made by the Commissioner of Social Security on behalf of the State under this subsection for any month in a fiscal year; multiplied by

''(II) the applicable rate for the fiscal year.

''(ii) As used in clause (i), the term 'applicable rate' means—

''(I) for fiscal year 1994, $1.67;

''(II) for fiscal year 1995, $3.33;

''(III) for fiscal year 1996, $5.00;

''(IV) for fiscal year 1997, $5.00;

''(V) for fiscal year 1998, $6.20;

''(VI) for fiscal year 1999, $7.60;

''(VII) for fiscal year 2000, $7.80;

''(VIII) for fiscal year 2001, $8.10;

''(IX) for fiscal year 2002, $8.50; and

''(X) for fiscal year 2003 and each succeeding fiscal year—

''(aa) the applicable rate in the preceding fiscal year, increased by the percentage, if any, by which the Consumer Price Index for the month of June of the calendar year of the increase exceeds the Consumer Price Index for the month of June of the calendar year preceding the calendar year of the increase, and rounded to the nearest whole cent; or

''(bb) such different rate as the Commissioner determines is appropriate for the State.

''(iii) Upon making a determination under clause (ii)(X)(bb), the Commissioner of Social Security shall promulgate the determination in regulations, which may take into account the complexity of administering the State's supplementary payment program.

''(iv) All fees assessed pursuant to this subparagraph shall be transferred to the Commissioner of Social Security at the same time that amounts for such supplementary payments are required to be so transferred.

''(C)(i) The Commissioner of Social Security may charge a State an additional services fee if, at the request of the State, the Commissioner of Social Security provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this subsection.

''(ii) The additional services fee shall be in an amount that the Commissioner of Social Security determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in clause (i).

''(D)(i) The first $5 of each administration fee assessed pursuant to subparagraph (B), upon collection, shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

''(ii) The portion of each administration fee in excess of $5, and 100 percent of each additional services fee charged pursuant to subparagraph (C), upon collection for fiscal year 1998 and each subsequent fiscal year, shall be credited to a special fund established in the Treasury of the United States for State supplementary

payment fees. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out this section and title XVI of the Social Security Act [this subchapter] and related laws.

''(E)(i) Any State which has entered into an agreement with the Commissioner of Social Security under this section shall remit the payments and fees required under this paragraph with respect to monthly benefits paid to individuals under title XVI of the Social Security Act [this subchapter] no later than—

''(I) the business day preceding the date that the Commissioner pays such monthly benefits; or

''(II) with respect to such monthly benefits paid for the month that is the last month of the State's fiscal year, the fifth business day following such date.

''(ii) The Cash Management Improvement Act of 1990 [see Short Title of 1990 Amendment note set out under section 6501 of Title 31, Money and Finance] shall not apply to any payments or fees required under this paragraph that are paid by a State before the date required by clause (i).

''(iii) Notwithstanding clause (i), the Commissioner may make supplementary payments on behalf of a State with funds appropriated for payment of supplemental security income benefits under title XVI of the Social Security Act [this subchapter], and subsequently to be reimbursed for such payments by the State at such times as the Commissioner and State may agree. Such authority may be exercised only if extraordinary circumstances affecting a State's ability to make payment when required by clause (i) are determined by the Commissioner to exist.

''(c)(1) Supplementary payments made pursuant to an agreement entered into under subsection (a) shall be excluded under section 1612(b)(6) of the Social Security Act [section 1382a(b)(6) of this title] (as in effect after December 1973) in determining income of individuals for purposes of title XVI of such Act [this subchapter] (as so in effect).

''(2) Supplementary payments made by the Commissioner of Social Security (pursuant to an administration agreement entered into under subsection (b)) shall, for purposes of section 401 of the Social Security Amendments of 1972 [set out as a note under section 1382e of this title], be considered to be payments made under an agreement entered into under section 1616 of the Social Security Act [section 1382e of this title] (as enacted by section 301 of the Social Security Amendments of 1972); except that nothing in this paragraph shall be construed to waive, with respect to the payments so made by the Commissioner of Social Security, the provisions of subsection (b) of such section 401 [set out as a note under section 1382e of this title].

''(d) For purposes of subsection (a)(1), a State shall be deemed to have entered into an agreement under subsection (a) of this section if such State has entered into an agreement with the Commissioner of Social Security under section 1616 of the Social Security Act [section 1382e of this title] under which—

''(1) individuals, other than individuals described in subsection (a)(2)(A) and (B), are entitled to receive supplementary payments, and

''(2) supplementary benefits are payable, to individuals described in subsection (a)(2)(A) and (B) at a level and under terms and conditions which meet the minimum requirements specified in subsection (a).

''(e) Except as the Commissioner of Social Security may by regulations otherwise provide, the provisions of title XVI of the Social Security Act [this subchapter] (as enacted by section 301 of the Social Security Amendments of 1972), including the provisions of part B of such title [part B of this subchapter], relating to the terms and conditions under which the benefits authorized by such title [this subchapter] are payable shall, where not inconsistent with the purposes of this section, be applicable to the payments made under an agreement under subsection (b) of this section; and the authority conferred upon the Commissioner of Social Security by such title [this subchapter] may, where appropriate, be exercised by him in the administration of this section.

''(f) The provisions of subsection (a)(1) shall not be applicable in the case of any State—

''(1) the Constitution of which contains provisions which make it impossible for such State to enter into and commence carrying out (on January 1, 1974) an agreement referred to in subsection (a), and

''(2) the Attorney General (or other appropriate State official) of which has, prior to July 1, 1973, made a finding that the State Constitution of such State contains limitations which prevent such State from making supplemental payments of the type described in section 1616 of the Social Security Act [section 1382e of this title].''

[For effective date of amendment to section 212 of Pub. L. 93–66, set out above, by Pub. L. 106–170, see section 410(b) of Pub. L. 106–170, set out as an Effective Date of 1999 Amendment note under section 1382e of this title.]

[For effective date of amendment to section 212 of Pub. L. 93–66, set out above, by Pub. L. 103–66, see section 13731(b) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 1382e of this title.]

[Section 2(b)(1) of Pub. L. 93–335, July 8, 1974, 88 Stat. 291, provided that the amendment of section 212 of Pub. L. 93–66, set out above, by Pub. L. 93–335 is effective Jan. 1, 1974.]

[Amendment of section 212 of Pub. L. 93–66, set out above, by Pub. L. 96–265 effective Jan. 1, 1981, see section 201(d) of Pub. L. 96–265, as amended, set out as an Effective Date note under section 1382h of this title.]

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1602 of the Social Security Act [this section] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1602 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92–603, and as amended, continues to apply and reads as follows:

§ 1382. State plans for aid to aged, blind, or disabled

(a) Contents

A State plan for aid to the aged, blind, or disabled, must—

(1) except to the extent permitted by the Commissioner of Social Security with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid or assistance under the plan is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Commissioner of Social Security shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Commissioner of Social Security to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Commissioner of Social Security may from time to time require, and comply with such provisions as the Commissioner of Social Security may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for aid or assistance under the plan shall have opportunity to do so, and that such aid or assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes aid or assistance to or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for or recipients of aid or assistance under the plan to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under subchapter I of this chapter or assistance under a State program funded under part A of subchapter IV of this chapter or under subchapter X or XIV of this chapter;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of aid or assistance under the plan;

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual—

(A) if such individual is blind, the State agency (i) shall disregard the first $85 per month of earned income plus one-half of earned income in excess of $85 per month, and (ii) shall, for a period not in excess of 12 months, and may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan,

(B) if such individual is not blind but is permanently and totally disabled, (i) of the first $80 per month of earned income, the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (ii) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation,

(C) if such individual has attained age 65 and is neither blind nor permanently and totally disabled, of the first $80 per month of earned income the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and

(D) the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than $7.50 of any income; and

(15) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

Notwithstanding paragraph (3), if on January 1, 1962, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter was different from the State agency which administered or supervised the administration of the plan of such State approved under subchapter I of this chapter and the State agency which administered or supervised the administration of the plan of such State approved under subchapter XIV of this chapter, the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter may be designated to administer or supervise the administration of the portion of the State plan for aid to the aged, blind, or disabled which relates to blind individuals and a separate State agency may be established or designated to administer or supervise the administration of the rest of such plan; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter.

(b) Approval by Commissioner

The Commissioner of Social Security shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that the Commissioner shall not approve any plan which imposes, as a condition of eligibility for aid or assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for such aid and has resided therein continuously for one year immediately preceding the application; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Commissioner of Social Security as a condition for the approval of such plan under this subchapter. In the case of any State to which the provisions of section 344 of the Social Security Act Amendments of 1950 were ap-

plicable on January 1, 1962, and to which the sentence of section 1202(b) of this title following paragraph (2) thereof is applicable on the date on which its State plan for aid to the aged, blind, or disabled was submitted for approval under this subchapter, the Commissioner of Social Security shall approve the plan of such State for aid to the aged, blind, or disabled for purposes of this subchapter, even though it does not meet the requirements of paragraph (14) of subsection (a) of this section, if it meets all other requirements of this subchapter for an approved plan for aid to the aged, blind, or disabled; but payments under section 1383 of this title shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1383 of this title under a plan approved under this section without regard to the provisions of this sentence.

(c) Limitation on number of plans

Subject to the last sentence of subsection (a) of this section, nothing in this subchapter shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this subchapter.

(Aug. 14, 1935, ch. 531, title XVI, § 1602, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 198; amended Oct. 13, 1964, Pub. L. 88–650, § 5(b), 78 Stat. 1078; July 30, 1965, Pub. L. 89–97, title II, § 221(d)(3), title IV, § 403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 210(a)(5), 213(a)(4), 241(d), 81 Stat. 896, 898, 917; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 405(d), 406(d), 407(d), 410(d), 413(d), 86 Stat. 1488, 1489, 1491, 1492; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(d)(4), 95 Stat. 817; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2651(h), 98 Stat. 1150; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478; Aug. 22, 1996, Pub. L. 104–193, title I, § 108(i), 110 Stat. 2169.)

[Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.]

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

§ 1382a. Income; earned and unearned income defined; exclusions from income

(a) For purposes of this subchapter, income means both earned income and unearned income; and—

(1) earned income means only—

(A) wages as determined under section 403(f)(5)(C) of this title but without the application of section 410(j)(3) of this title;

(B) net earnings from self-employment, as defined in section 411 of this title (without the application of the second and third sentences following subsection (a)(11),[1] the last paragraph of subsection (a), and section 410(j)(3) of this title), including earnings for services described in paragraphs (4), (5), and (6) of subsection (c);

(C) remuneration received for services performed in a sheltered workshop or work activities center; and

(D) any royalty earned by an individual in connection with any publication of the work of the individual, and that portion of any honorarium which is received for services rendered; and

(2) unearned income means all other income, including—

(A) support and maintenance furnished in cash or kind; except that (i) in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 1382 of this title shall be reduced by 33⅓ percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph, (ii) in the case of any individual or his eligible spouse who resides in a nonprofit retirement home or similar nonprofit institution, support and maintenance shall not be included to the extent that it is furnished to such individual or such spouse without such institution receiving payment therefor (unless such institution has expressly undertaken an obligation to furnish full support and maintenance to such individual or spouse without any current or future payment therefor) or payment therefor is made by another nonprofit organization, and (iii) support and maintenance shall not be included and the provisions of clause (i) shall not be applicable in the case of any individual (and his eligible spouse, if any) for the period which begins with the month in which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in a residential facility (including a private household) maintained by another person and ends with the close of the month in which such individual (or such individual and his eligible spouse) ceases to receive support and maintenance while living in such a residential facility (or, if earlier, with the close of the seventeenth month following the month in which such period began), if, not more than 30 days prior to the date on which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in such a residential facility, (I) such individual (or such individual and his eligible spouse) were residing in a household maintained by such individual (or by such individual and others) as his or their own home, (II) there occurred within the area in which such household is located (and while such individual, or such individual and his spouse, were residing in the household referred to in subclause (I)) a catastrophe on account of which the President declared a major disaster to exist therein for purposes of the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], and (III) such individual declares that he (or he and his eligible spouse) ceased to continue living in the household referred to in subclause (II) because of such catastrophe;

(B) any payments received as an annuity, pension, retirement, or disability benefit, in-

[1] So in original. Probably should be subsection "(a)(15),".

cluding veterans' compensation and pensions, workmen's compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement annuities and pensions, and unemployment insurance benefits;

(C) prizes and awards;

(D) payments to the individual occasioned by the death of another person, to the extent that the total of such payments exceeds the amount expended by such individual for purposes of the deceased person's last illness and burial;

(E) support and alimony payments, and (subject to the provisions of subparagraph (D) excluding certain amounts expended for purposes of a last illness and burial) gifts (cash or otherwise) and inheritances;

(F) rents, dividends, interest, and royalties not described in paragraph (1)(E); and

(G) any earnings of, and additions to, the corpus of a trust established by an individual (within the meaning of section 1382b(e) of this title), of which the individual is a beneficiary, to which section 1382b(e) of this title applies, and, in the case of an irrevocable trust, with respect to which circumstances exist under which a payment from the earnings or additions could be made to or for the benefit of the individual.

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Commissioner of Social Security, if such individual is under the age of 22 and is, as determined by the Commissioner of Social Security, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2)(A) the first $240 per year (or proportionately smaller amounts for shorter periods) of income (whether earned or unearned) other than income which is paid on the basis of the need of the eligible individual, and

(B) monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973 (or any program established prior to such date but subsequently amended so as to conform to State or Federal constitutional standards), if (i) such payments are made by the State of which the individual receiving such payments is a resident, (ii) eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 or any other age set by the State and residency in such State by such individual, and (iii) on or before September 30, 1985, such individual (I) first becomes an eligible individual or an eligible spouse under this title, and (II) satisfies the twenty-five-year residency requirement of such program as such program was in effect prior to January 1, 1983;

(3) in any calendar quarter, the first—

(A) $60 of unearned income, and

(B) $30 of earned income,

of such individual (and such spouse, if any) which, as determined in accordance with criteria prescribed by the Commissioner of Social Security, is received too infrequently or irregularly to be included;

(4)(A) if such individual (or such spouse) is blind (and has not attained age 65, or received benefits under this subchapter (or aid under a State plan approved under section 1202 or 1382 of this title) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof, (ii) an amount equal to any expenses reasonably attributable to the earning of any income, and (iii) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan,

(B) if such individual (or such spouse) is disabled but not blind (and has not attained age 65, or received benefits under this subchapter (or aid under a State plan approved under section 1352 or 1382 of this title) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, (ii) such additional amounts of earned income of such individual, if such individual's disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, as may be necessary to pay the costs (to such individual) of attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions, except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe, (iii) one-half of the amount of earned income not excluded after the application of the preceding provisions of this subparagraph, and (iv) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan, or

(C) if such individual (or such spouse) has attained age 65 and is not included under subparagraph (A) or (B), the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof;

(5) any amount received from any public agency as a return or refund of taxes paid on real property or on food purchased by such individual (or such spouse);

(6) assistance, furnished to or on behalf of such individual (and spouse), which is based on need and furnished by any State or political subdivision of a State;

(7) any portion of any grant, scholarship, fellowship, or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational (including technical or vocational education) institution;

(8) home produce of such individual (or spouse) utilized by the household for its own consumption;

(9) if such individual is a child, one-third of any payment for his support received from an absent parent;

(10) any amounts received for the foster care of a child who is not an eligible individual but who is living in the same home as such individual and was placed in such home by a public or nonprofit private child-placement or child-care agency;

(11) assistance received under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] or other assistance provided pursuant to a Federal statute on account of a catastrophe which is declared to be a major disaster by the President;

(12) interest income received on assistance funds referred to in paragraph (11) within the 9-month period beginning on the date such funds are received (or such longer periods as the Commissioner of Social Security shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period);

(13) any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Commissioner of Social Security by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy;

(14) assistance paid, with respect to the dwelling unit occupied by such individual (or such individual and spouse), under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)];

(15) the value of any commercial transportation ticket, for travel by such individual (or spouse) among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift by such individual (or such spouse) and is not converted to cash;

(16) interest accrued on the value of an agreement entered into by such individual (or such spouse) representing the purchase of a burial space excluded under section 1382b(a)(2)(B) of this title, and left to accumulate;

(17) any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime;

(18) relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636];

(19) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);

(20) special pay received pursuant to section 310 of title 37;

(21) the interest or other earnings on any account established and maintained in accordance with section 1383(a)(2)(F) of this title;

(22) any gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code—

(A) in the case of an in-kind gift, if the gift is not converted to cash; or

(B) in the case of a cash gift, only to the extent that the total amount excluded from the income of the individual pursuant to this paragraph in the calendar year in which the gift is made does not exceed $2,000; and

(23) interest or dividend income from resources—

(A) not excluded under section 1382b(a) of this title, or

(B) excluded pursuant to Federal law other than section 1382b(a) of this title.

(Aug. 14, 1935, ch. 531, title XVI, § 1612, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1468; amended Pub. L. 93–484, § 4, Oct. 26, 1974, 88 Stat. 1460; Pub. L. 94–202, § 9, Jan. 2, 1976, 89 Stat. 1140; Pub. L. 94–331, §§ 2(a), 4(a), June 30, 1976, 90 Stat. 781, 782; Pub. L. 94–455, title XXI, § 2125, Oct. 4, 1976, 90 Stat. 1920; Pub. L. 94–566, title V, § 505(b), Oct. 20, 1976, 90 Stat. 2686; Pub. L. 95–171, § 8(a), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 96–222, title I, § 101(a)(2)(B), Apr. 1, 1980, 94 Stat. 195; Pub. L. 96–265, title II, § 202(a), title III, § 302(b), June 9, 1980, 94 Stat. 449, 451; Pub. L. 96–473, § 6(g), Oct. 19, 1980, 94 Stat. 2266; Pub. L. 97–35, title XXIII, § 2341(b), Aug. 13, 1981, 95 Stat. 865; Pub. L. 97–424, title V, § 545(a), Jan. 6, 1983, 96 Stat. 2198; Pub. L. 98–21, title IV, § 404(a), Apr. 20, 1983, 97 Stat. 140; Pub. L. 98–369, div. B, title VI, §§ 2616(a), 2639(b), (c), 2663(g)(3), (4), July 18, 1984, 98 Stat. 1133, 1144, 1145, 1168; Pub. L. 99–514, § 2, title XVIII, § 1883(d)(2), (3), Oct. 22, 1986, 100 Stat. 2095, 2918; Pub. L. 100–203, title IX, § 9120(a), Dec. 22, 1987, 101 Stat. 1330–309; Pub. L. 100–647, title VIII, § 8103(a), Nov. 10, 1988, 102 Stat. 3795; Pub. L. 100–707, title I, § 109(p), Nov. 23, 1988, 102

Stat. 4709; Pub. L. 101–239, title VIII, §§ 8011(a), 8013(a), Dec. 19, 1989, 103 Stat. 2464; Pub. L. 101–508, title V, §§ 5031(a), 5033(a), 5034(a), 5035(a), title XI, § 11115(b)(1), Nov. 5, 1990, 104 Stat. 1388–224, 1388–225, 1388–414; Pub. L. 103–66, title XIII, § 13733(b), Aug. 10, 1993, 107 Stat. 662; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 103–432, title II, §§ 264(a), 267(a), Oct. 31, 1994, 108 Stat. 4467, 4469; Pub. L. 104–193, title II, § 213(c), Aug. 22, 1996, 110 Stat. 2195; Pub. L. 105–306, § 7(a), Oct. 28, 1998, 112 Stat. 2928; Pub. L. 106–169, title II, § 205(b), Dec. 14, 1999, 113 Stat. 1834; Pub. L. 106–554, § 1(a)(1) [title V, § 519], Dec. 21, 2000, 114 Stat. 2763, 2763A–74; Pub. L. 108–203, title IV, §§ 430(a), (b), 432(a), 435(a), Mar. 2, 2004, 118 Stat. 538–540.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(19), (22), is classified generally to Title 26, Internal Revenue Code.

The Disaster Relief and Emergency Assistance Act, referred to in subsecs. (a)(2)(A) and (b)(11), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

Section 1382 of this title, referred to in subsec. (b)(4)(A), (B), is a reference to section 1382 of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1382 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

The United States Housing Act of 1937, referred to in subsec. (b)(14), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The National Housing Act, referred to in subsec. (b)(14), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (b)(14), is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, as amended, which enacted section 1701s of Title 12 and amended sections 1451 and 1465 of this title.

The Housing Act of 1949, referred to in subsec. (b)(14), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, referred to in subsec. (b)(18), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended. Title II of the Act enacted subchapter II (§ 4621 et seq.) of chapter 61 of this title, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Tables.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–203, § 432(a), substituted ''under the age of 22 and'' for ''a child who''.

Subsec. (b)(3). Pub. L. 108–203, § 430(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''(A) the total unearned income of such individual (and such spouse, if any) in a month which, as determined in accordance with criteria prescribed by the Commissioner of Social Security, is received too infrequently or irregularly to be included, if such income so received does not exceed $20 in such month, and (B) the total earned income of such individual (and such spouse, if any) in a month which, as determined in accordance with such criteria, is received too infrequently or irregularly to be included, if such income so received does not exceed $10 in such month;''.

Subsec. (b)(7). Pub. L. 108–203, § 435(a), substituted ''fellowship, or gift (or portion of a gift) used to pay'' for ''or fellowship received for use in paying''.

Subsec. (b)(23). Pub. L. 108–203, § 430(b), added par. (23).

2000—Subsec. (a)(1)(A). Pub. L. 106–554, § 1(a)(1) [title V, § 519(1)], inserted ''but without the application of section 410(j)(3) of this title'' before semicolon.

Subsec. (a)(1)(B). Pub. L. 106–554, § 1(a)(1) [title V, § 519(2)], substituted ''the last'' for ''and the last'' and inserted '', and section 410(j)(3) of this title'' after ''subsection (a)''.

1999—Subsec. (a)(2)(G). Pub. L. 106–169 added subpar. (G).

1998—Subsec. (b)(22). Pub. L. 105–306 added par. (22).

1996—Subsec. (b)(21). Pub. L. 104–193 added par. (21).

1994—Subsec. (a)(1)(C) to (E). Pub. L. 103–432, § 267(a), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: ''any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit);''.

Subsec. (b)(1), (3)(A), (4)(A), (B), (12), (13). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (b)(17). Pub. L. 103–432, § 264(a), made technical correction to directory language of Pub. L. 101–508, § 5035(a)(2). See 1990 Amendment note below.

1993—Subsec. (b)(20). Pub. L. 103–66 added par. (20).

1990—Subsec. (a)(1)(E). Pub. L. 101–508, § 5034(a)(1), added subpar. (E).

Subsec. (a)(2)(F). Pub. L. 101–508, § 5034(a)(2), inserted ''not described in paragraph (1)(E)'' after ''royalties''.

Subsec. (b)(4)(B)(ii). Pub. L. 101–508, § 5033(a), struck out ''(for purposes of determining the amount of his or her benefits under this subchapter and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility)'' after ''income of such individual''.

Subsec. (b)(16). Pub. L. 101–508, § 5035(a)(1), struck out ''and'' at end.

Subsec. (b)(17). Pub. L. 101–508, § 5035(a)(2), as amended by Pub. L. 103–432, § 264(a), substituted ''; and'' for period at end.

Pub. L. 101–508, § 5031(a), added par. (17).

Subsec. (b)(18). Pub. L. 101–508, § 5035(a)(3), added par. (18).

Subsec. (b)(19). Pub. L. 101–508, § 11115(b)(1)(C), added par. (19).

1989—Subsec. (b)(15). Pub. L. 101–239, § 8011(a), added par. (15).

Subsec. (b)(16). Pub. L. 101–239, § 8013(a), added par. (16).

1988—Subsecs. (a)(2)(A), (b)(11). Pub. L. 100–707 substituted ''Disaster Relief and Emergency Assistance Act'' for ''Disaster Relief Act of 1974''.

Subsec. (b)(14). Pub. L. 100–647 added par. (14).

1987—Subsec. (a)(2)(D), (E). Pub. L. 100–203 amended subpars. (D) and (E) generally. Prior to amendment, subpars. (D) and (E) read as follows:

''(D) the proceeds of any life insurance policy to the extent that they exceed the amount expended by the

beneficiary for purposes of the insured individual's last illness and burial or $1,500, whichever is less;

''(E) gifts (cash or otherwise), support and alimony payments, and inheritances; and''.

1986—Subsec. (a)(1)(C). Pub. L. 99–514, §1883(d)(2), substituted ''section 32'' for ''section 43''.

Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(2). Pub. L. 99–514, §1883(d)(3)(A), (B), substituted '', and'' for a semicolon in subpar. (A) and a semicolon for a period in subpar. (B).

Subsec. (b)(11) to (13). Pub. L. 99–514, §1883(d)(3)(C), provided for technical corrections relating to concluding punctuation in pars. (11) to (13).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, §2663(g)(3), realigned margin of subpar. (B).

Pub. L. 98–369, §2616(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual;''.

Subsec. (b)(9). Pub. L. 98–369, §2663(g)(4), inserted a comma after ''child''.

Subsec. (b)(13). Pub. L. 98–369, §2639(b), temporarily amended par. (13) generally, redesignating former cls. (i) and (ii) as (A) and (B), respectively. See Effective and Termination Dates of 1984 Amendment note below.

1983—Subsec. (b)(13). Pub. L. 98–21 temporarily substituted ''any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which'' for ''any assistance received to assist in meeting the costs of home energy, including both heating and cooling, which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) (A) is based on need for such assistance, and (B)''. See Effective and Termination Dates of 1983 Amendments note below.

Pub. L. 97–424 temporarily added par. (13). See Effective and Termination Dates of 1983 Amendments note below.

1981—Subsec. (b)(3). Pub. L. 97–35 substituted ''month'' for ''calendar quarter'' wherever appearing, ''such month'' for ''such quarter'' wherever appearing, ''$20'' for ''$60'', and ''$10'' for ''$30''.

1980—Subsec. (a)(1). Pub. L. 96–473, §6(g)(1), (2), in subpar. (B) substituted ''(a)(11)'' for ''(a)(10)'', and redesignated subpar. (C), as added by Pub. L. 96–265, §202(a)(2), as (D).

Pub. L. 96–265, §202(a)(2), added subpar. (C) which was subsequently redesignated (D) by Pub. L. 96–473, §6(g)(2).

Pub. L. 96–222, §101(a)(2)(B)(ii), added subpar. (C).

Subsec. (b)(2)(B). Pub. L. 96–473, §6(g)(3), substituted ''monthly'' for ''Monthly'' and substituted a semicolon for the period at end of subpar. (B).

Subsec. (b)(4)(B). Pub. L. 96–265, §302(b), inserted provisions relating to extraordinary work expenses due to severe disability.

1977—Subsec. (b)(12). Pub. L. 95–171 added par. (12).

1976—Subsec. (a)(2)(A)(iii). Pub. L. 94–455 substituted ''seventeenth month'' for ''fifth month''.

Pub. L. 94–331, §4(a)(2), added cl. (iii).

Subsec. (b)(2). Pub. L. 94–202 designated existing provisions as par. (A) and added par. (B).

Subsec. (b)(6). Pub. L. 94–566 substituted ''assistance, furnished to or on behalf of such individual (and spouse), which'' for ''assistance described in section 1382e(a) of this title which''.

Subsec. (b)(11). Pub. L. 94–331, §2(a)(3), added par. (11).

1974—Subsec. (a)(2)(A). Pub. L. 93–484 designated existing provisions as cl. (i) and added cl. (ii).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, §430(c), Mar. 2, 2004, 118 Stat. 538, provided that: ''The amendments made by this section [amending this section] shall be effective with respect to benefits payable for months in calendar quarters that begin more than 90 days after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title IV, §432(b), Mar. 2, 2004, 118 Stat. 539, provided that: ''The amendment made by this section [amending this section] shall be effective with respect to benefits payable for months that begin on or after 1 year after the date of enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title IV, §435(c), Mar. 2, 2004, 118 Stat. 540, provided that: ''The amendments made by this section [amending this section and section 1382b of this title] shall apply to benefits payable for months that begin more than 90 days after the date of enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title II, §205(d), Dec. 14, 1999, 113 Stat. 1834, provided that: ''The amendments made by this section [amending this section and sections 1382b and 1396a of this title] shall take effect on January 1, 2000, and shall apply to trusts established on or after such date.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–306, §7(c), Oct. 28, 1998, 112 Stat. 2928, provided that: ''The amendments made by this section [amending this section and section 1382b of this title] shall apply to gifts made on or after the date that is 2 years before the date of the enactment of this Act [Oct. 28, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 213(d) of Pub. L. 104–193 provided that: ''The amendments made by this section [amending this section and sections 1382b and 1383 of this title] shall apply to payments made after the date of the enactment of this Act [Aug. 22, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 264(a) of Pub. L. 103–432 effective as if included in the provision of Pub. L. 101–508 to which the amendment relates at the time such provision became law, see section 264(h) of Pub. L. 103–432, set out as a note under section 1320b–9 of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13733(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 1382c of this title] shall take effect on the 1st day of the 2nd month that begins after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5031(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1382b and 1383 of this title] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Section 5033(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to benefits payable for calendar months beginning after the date of the enactment of this Act [Nov. 5, 1990].''

Section 5034(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this

section] shall apply with respect to benefits for months beginning on or after the first day of the 13th calendar month following the month in which this Act is enacted [November 1990].''

Section 5035(c) of Pub. L. 101–508, as amended by Pub. L. 103–66, title XIII, § 13732, Aug. 10, 1993, 107 Stat. 662, provided that: ''The amendments made by this section [amending this section and section 1382b of this title] shall apply with respect to benefits for calendar months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Section 11115(e) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) though [sic] (c) [amending this section and sections 602 and 1382b of this title] shall apply to determinations of income or resources made for any period after December 31, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8011(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the 1st day of the 3rd calendar month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

Section 8013(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382b of this title] shall take effect on the 1st day of the 4th month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8103(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 1382b of this title] shall be effective as though they had been included in section 162 of the Housing and Community Development Act of 1987 [Pub. L. 100–242, see Effective Date of 1988 Amendment note set out under 12 U.S.C. 1701q] at the time of its enactment [Feb. 5, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9120(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2616(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2639(d) of Pub. L. 98–369, as amended by Pub. L. 100–203, title IX, § 9101, Dec. 22, 1987, 101 Stat. 1330–299, provided that: ''The amendments made by this section [amending this section and section 602 of this title and repealing section 545(a)–(c) of Pub. L. 97–424 and section 404 of Pub. L. 98–21, which had previously amended this section and section 602 of this title and had provided effective dates for those prior amendments] shall be effective with respect to months which begin after September 30, 1984.''

[Section 9101 of Pub. L. 100–203 provided that the amendment made by that section to section 2639(d) of Pub. L. 98–369, set out as a note above, is effective as of Oct. 1, 1987.]

Amendment by section 2663(g)(3), (4) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Section 545(c) of Pub. L. 97–424 and section 404(c) of Pub. L. 98–21, which had provided for the effective and termination dates covering the enactment and subsequent amendment of subsec. (b)(13) of this section by section 545(a) of Pub. L. 97–424 and section 404(a) of Pub. L. 98–21, were repealed by section 2639(c), (d) of Pub. L. 98–369, effective with respect to months beginning after Sept. 30, 1984.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective with respect to months after first calendar quarter which ends more than five months after August 1981, with provision for transitional payments, see section 2341(c) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment and Transitional Provisions note under section 1382 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 202(b) of Pub. L. 96–265 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to remuneration received in months after September 1980.''

Amendment by section 302(b) of Pub. L. 96–265 applicable with respect to expenses incurred on or after first day of sixth month which begins after June 9, 1980, see section 302(c) of Pub. L. 96–265, set out as a note under section 423 of this title.

Section 101(b)(1)(B) of Pub. L. 96–222 provided that: ''The amendments made by subparagraphs (A) and (B) of subsection (a)(2) [amending this section and section 602 of this title] shall apply to payments for months beginning after December 31, 1979.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 8(b) of Pub. L. 95–171 provided that: ''The amendment made by this section [amending this section] shall be effective July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976. With respect to catastrophes which occurred on or after December 31, 1976, the amendment made by this section shall be effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977].''

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–566 effective Oct. 1, 1976, see section 505(e) of Pub. L. 94–566, set out as a note under section 1382 of this title.

Section 2(b) of Pub. L. 94–331, as amended by Pub. L. 95–171, § 6(a), Nov. 12, 1977, 91 Stat. 1355, effective the first day of calendar quarter following Nov. 12, 1977, provided that: ''The amendments made by this Act [amending this section and sections 815, 3402, 6153, and 6154 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 815 and 3402 of Title 26] shall be applicable only in the case of catastrophes which occur on or after June 1, 1976.''

Section 4(b) of Pub. L. 94–331, as amended by Pub. L. 95–171, § 7(a), Nov. 12, 1977, 91 Stat. 1355, effective the first day of calendar quarter following Nov. 12, 1977, provided that: ''The amendments made by this Act [see section 2(b) of Pub. L. 94–331, set out above] shall be applicable only in the case of catastrophes which occur on or after June 1, 1976.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 4 of Pub. L. 93–484 provided that the amendment made by that section is effective Jan. 1, 1974.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Vir-

gin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1382b. Resources

(a) Exclusions from resources

In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

(1) the home (including the land that appertains thereto);

(2)(A) household goods, personal effects, and an automobile, to the extent that their total value does not exceed such amount as the Commissioner of Social Security determines to be reasonable; and

(B) the value of any burial space or agreement (including any interest accumulated thereon) representing the purchase of a burial space (subject to such limits as to size or value as the Commissioner of Social Security may by regulation prescribe) held for the purpose of providing a place for the burial of the individual, his spouse, or any other member of his immediate family;

(3) other property which is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion, as determined in accordance with and subject to limitations prescribed by the Commissioner of Social Security, except that the Commissioner of Social Security shall not establish a limitation on property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is used in a trade or business or by such individual as an employee;

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan;

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 1606(h) and section 1607(c) of title 43;

(6) assistance referred to in section 1382a(b)(11) of this title for the 9-month period beginning on the date such funds are received (or for such longer period as the Commissioner of Social Security shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of this paragraph, the term ''assistance'' includes interest thereon which is excluded from income under section 1382a(b)(12) of this title;

(7) any amount received from the United States which is attributable to underpayments of benefits due for one or more prior months, under this subchapter or subchapter II of this chapter, to such individual (or spouse) or to any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this subchapter; but the application of this paragraph in the case of any such individual (and eligible spouse if any), with respect to any amount so received from the United States, shall be limited to the first 9 months following the month in which such amount is received, and written notice of this limitation shall be given to the recipient concurrently with the payment of such amount;

(8) the value of assistance referred to in section 1382a(b)(14) of this title, paid with respect to the dwelling unit occupied by such individual (or such individual and spouse);

(9) for the 9-month period beginning after the month in which received, any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime, to the extent that such individual (or such spouse) demonstrates that such amount was paid as compensation for expenses incurred or losses suffered as a result of a crime;

(10) for the 9-month period beginning after the month in which received, relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636];

(11) for the 9-month period beginning after the month in which received—

(A) notwithstanding section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, any refund of Federal income taxes made to such individual (or such spouse) under section 24 of the Internal Revenue Code of 1986 (relating to child tax credit) by reason of subsection (d) thereof; and

(B) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);

(12) any account, including accrued interest or other earnings thereon, established and maintained in accordance with section 1383(a)(2)(F) of this title;

(13) any gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code—

(A) in the case of an in-kind gift, if the gift is not converted to cash; or

(B) in the case of a cash gift, only to the extent that the total amount excluded from the resources of the individual pursuant to this paragraph in the calendar year in which the gift is made does not exceed $2,000;

(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this subchapter as restitution for benefits under this subchapter, subchapter II of this chapter, or subchapter VIII of this chapter that a representative payee of such individual (or spouse) or such other person under section 405(j), 1007, or 1383(a)(2) of this title has misused; and

(15) for the 9-month period beginning after the month in which received, any grant, scholarship, fellowship, or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational (including technical or vocational education) institution.

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account.

(b) Disposition of resources; grounds for exemption from disposition requirements

(1) The Commissioner of Social Security shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

(2) Notwithstanding the provisions of paragraph (1), the Commissioner of Social Security shall not require the disposition of any real property for so long as it cannot be sold because (A) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (B) its sale is barred by a legal impediment, or (C) as determined under regulations issued by the Commissioner of Social Security, the owner's reasonable efforts to sell it have been unsuccessful.

(c) Disposal of resources for less than fair market value

(1)(A)(i) If an individual or the spouse of an individual disposes of resources for less than fair market value on or after the look-back date described in clause (ii)(I), the individual is ineligible for benefits under this subchapter for months during the period beginning on the date described in clause (iii) and equal to the number of months calculated as provided in clause (iv).

(ii)(I) The look-back date described in this subclause is a date that is 36 months before the date described in subclause (II).

(II) The date described in this subclause is the date on which the individual applies for benefits under this subchapter or, if later, the date on which the individual (or the spouse of the individual) disposes of resources for less than fair market value.

(iii) The date described in this clause is the first day of the first month in or after which resources were disposed of for less than fair market value and which does not occur in any other period of ineligibility under this paragraph.

(iv) The number of months calculated under this clause shall be equal to—

(I) the total, cumulative uncompensated value of all resources so disposed of by the individual (or the spouse of the individual) on or after the look-back date described in clause (ii)(I); divided by

(II) the amount of the maximum monthly benefit payable under section 1382(b) of this title, plus the amount (if any) of the maximum State supplementary payment corresponding to the State's payment level applicable to the individual's living arrangement and eligibility category that would otherwise be payable to the individual by the Commissioner pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66, for the month in which occurs the date described in clause (ii)(II),

rounded, in the case of any fraction, to the nearest whole number, but shall not in any case exceed 36 months.

(B)(i) Notwithstanding subparagraph (A), this subsection shall not apply to a transfer of a resource to a trust if the portion of the trust attributable to the resource is considered a resource available to the individual pursuant to subsection (e)(3) of this section (or would be so considered but for the application of subsection (e)(4) of this section).

(ii) In the case of a trust established by an individual or an individual's spouse (within the meaning of subsection (e) of this section), if from such portion of the trust, if any, that is considered a resource available to the individual pursuant to subsection (e)(3) of this section (or would be so considered but for the application of subsection (e)(4) of this section) or the residue of the portion on the termination of the trust—

(I) there is made a payment other than to or for the benefit of the individual; or

(II) no payment could under any circumstance be made to the individual,

then, for purposes of this subsection, the payment described in clause (I) or the foreclosure of payment described in clause (II) shall be considered a transfer of resources by the individual or the individual's spouse as of the date of the payment or foreclosure, as the case may be.

(C) An individual shall not be ineligible for benefits under this subchapter by reason of the application of this paragraph to a disposal of resources by the individual or the spouse of the individual, to the extent that—

(i) the resources are a home and title to the home was transferred to—

(I) the spouse of the transferor;

(II) a child of the transferor who has not attained 21 years of age, or is blind or disabled;

(III) a sibling of the transferor who has an equity interest in such home and who was residing in the transferor's home for a period of at least 1 year immediately before the date the transferor becomes an institutionalized individual; or

(IV) a son or daughter of the transferor (other than a child described in subclause (II)) who was residing in the transferor's home for a period of at least 2 years immediately before the date the transferor becomes an institutionalized individual, and who provided care to the transferor which permitted the transferor to reside at home rather than in such an institution or facility;

(ii) the resources—

(I) were transferred to the transferor's spouse or to another for the sole benefit of the transferor's spouse;

(II) were transferred from the transferor's spouse to another for the sole benefit of the transferor's spouse;

(III) were transferred to, or to a trust (including a trust described in section 1396p(d)(4) of this title) established solely for the benefit of, the transferor's child who is blind or disabled; or

(IV) were transferred to a trust (including a trust described in section 1396p(d)(4) of this title) established solely for the benefit of an individual who has not attained 65 years of age and who is disabled;

(iii) a satisfactory showing is made to the Commissioner of Social Security (in accordance with regulations promulgated by the Commissioner) that—

(I) the individual who disposed of the resources intended to dispose of the resources either at fair market value, or for other valuable consideration;

(II) the resources were transferred exclusively for a purpose other than to qualify for benefits under this subchapter; or

(III) all resources transferred for less than fair market value have been returned to the transferor; or

(iv) the Commissioner determines, under procedures established by the Commissioner, that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Commissioner.

(D) For purposes of this subsection, in the case of a resource held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the resource (or the affected portion of such resource) shall be considered to be disposed of by the individual when any action is taken, either by the individual or by any other person, that reduces or eliminates the individual's ownership or control of such resource.

(E) In the case of a transfer by the spouse of an individual that results in a period of ineligibility for the individual under this subsection, the Commissioner shall apportion the period (or any portion of the period) among the individual and the individual's spouse if the spouse becomes eligible for benefits under this subchapter.

(F) For purposes of this paragraph—

(i) the term ''benefits under this subchapter'' includes payments of the type described in section 1382e(a) of this title and of the type described in section 212(b) of Public Law 93–66;

(ii) the term ''institutionalized individual'' has the meaning given such term in section 1396p(e)(3)[1] of this title; and

(iii) the term ''trust'' has the meaning given such term in subsection (e)(6)(A) of this section.

(2)(A) At the time an individual (and the individual's eligible spouse, if any) applies for benefits under this subchapter, and at the time the eligibility of an individual (and such spouse, if any) for such benefits is redetermined, the Commissioner of Social Security shall—

(i) inform such individual of the provisions of paragraph (1) and section 1396p(c) of this title providing for a period of ineligibility for benefits under this subchapter and subchapter XIX of this chapter, respectively, for individuals who make certain dispositions of resources for less than fair market value, and inform such individual that information obtained pursuant to clause (ii) will be made available to the State agency administering a State plan under subchapter XIX of this chapter (as provided in subparagraph (B)); and

(ii) obtain from such individual information which may be used in determining whether or not a period of ineligibility for such benefits would be required by reason of paragraph (1) or section 1396p(c) of this title.

(B) The Commissioner of Social Security shall make the information obtained under subparagraph (A)(ii) available, on request, to any State agency administering a State plan approved under subchapter XIX of this chapter.

(d) Funds set aside for burial expenses

(1) In determining the resources of an individual, there shall be excluded an amount, not in excess of $1,500 each with respect to such individual and his spouse (if any), that is separately identifiable and has been set aside to meet the burial and related expenses of such individual or spouse.

(2) The amount of $1,500, referred to in paragraph (1), with respect to an individual shall be reduced by an amount equal to (A) the total face value of all insurance policies on his life which are owned by him or his spouse and the cash surrender value of which has been excluded in determining the resources of such individual or of such individual and his spouse, and (B) the total of any amounts in an irrevocable trust (or other irrevocable arrangement) available to meet the burial and related expenses of such individual or his spouse.

(3) If the Commissioner of Social Security finds that any part of the amount excluded under paragraph (1) was used for purposes other than those for which it was set aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title, the Commissioner shall reduce any future benefits payable to the eligible individual (or to such individual and his spouse) by an amount equal to such part.

(4) The Commissioner of Social Security may provide by regulations that whenever an amount set aside to meet burial and related expenses is excluded under paragraph (1) in determining the resources of an individual, any interest earned or accrued on such amount (and left to accumulate), and any appreciation in the value of prepaid burial arrangements for which such amount was set aside, shall also be excluded (to such extent and subject to such conditions or limitations as such regulations may prescribe) in de-

[1] See References in Text note below.

termining the resources (and the income) of such individual.

(e) Trusts

(1) In determining the resources of an individual, paragraph (3) shall apply to a trust (other than a trust described in paragraph (5)) established by the individual.

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if any assets of the individual (or of the individual's spouse) are transferred to the trust other than by will.

(B) In the case of an irrevocable trust to which are transferred the assets of an individual (or of the individual's spouse) and the assets of any other person, this subsection shall apply to the portion of the trust attributable to the assets of the individual (or of the individual's spouse).

(C) This subsection shall apply to a trust without regard to—

(i) the purposes for which the trust is established;

(ii) whether the trustees have or exercise any discretion under the trust;

(iii) any restrictions on when or whether distributions may be made from the trust; or

(iv) any restrictions on the use of distributions from the trust.

(3)(A) In the case of a revocable trust established by an individual, the corpus of the trust shall be considered a resource available to the individual.

(B) In the case of an irrevocable trust established by an individual, if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual (or of the individual's spouse), the portion of the corpus from which payment to or for the benefit of the individual (or of the individual's spouse) could be made shall be considered a resource available to the individual.

(4) The Commissioner of Social Security may waive the application of this subsection with respect to an individual if the Commissioner determines that such application would work an undue hardship (as determined on the basis of criteria established by the Commissioner) on the individual.

(5) This subsection shall not apply to a trust described in subparagraph (A) or (C) of section 1396p(d)(4) of this title.

(6) For purposes of this subsection—

(A) the term ''trust'' includes any legal instrument or device that is similar to a trust;

(B) the term ''corpus'' means, with respect to a trust, all property and other interests held by the trust, including accumulated earnings and any other addition to the trust after its establishment (except that such term does not include any such earnings or addition in the month in which the earnings or addition is credited or otherwise transferred to the trust); and

(C) the term ''asset'' includes any income or resource of the individual (or of the individual's spouse), including—

(i) any income excluded by section 1382a(b) of this title;

(ii) any resource otherwise excluded by this section; and

(iii) any other payment or property to which the individual (or of the individual's spouse) is entitled but does not receive or have access to because of action by—

(I) the individual or spouse;

(II) a person or entity (including a court) with legal authority to act in place of, or on behalf of, the individual or spouse; or

(III) a person or entity (including a court) acting at the direction of, or on the request of, the individual or spouse.

(Aug. 14, 1935, ch. 531, title XVI, § 1613, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1470; amended Pub. L. 94–569, § 5, Oct. 20, 1976, 90 Stat. 2700; Pub. L. 95–171, § 9(a), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 96–611, § 5(a), Dec. 28, 1980, 94 Stat. 3567; Pub. L. 97–248, title I, § 185(a), (b), Sept. 3, 1982, 96 Stat. 406; Pub. L. 98–369, div. B, title VI, §§ 2614, 2663(g)(5), July 18, 1984, 98 Stat. 1132, 1168; Pub. L. 100–203, title IX, §§ 9103(a), 9104(a), 9105(a), 9114(a), Dec. 22, 1987, 101 Stat. 1330–301, 1330–304; Pub. L. 100–360, title III, § 303(c)(1), July 1, 1988, 102 Stat. 762; Pub. L. 100–647, title VIII, § 8103(b), Nov. 10, 1988, 102 Stat. 3795; Pub. L. 101–239, title VIII, §§ 8013(b), 8014(a), Dec. 19, 1989, 103 Stat. 2465; Pub. L. 101–508, title V, §§ 5031(b), 5035(b), title XI, § 11115(b)(2), Nov. 5, 1990, 104 Stat. 1388–224, 1388–225, 1388–414; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(h)(2), Aug. 15, 1994, 108 Stat. 1478, 1544; Pub. L. 104–193, title II, § 213(b), Aug. 22, 1996, 110 Stat. 2195; Pub. L. 105–306, § 7(b), Oct. 28, 1998, 112 Stat. 2928; Pub. L. 106–169, title II, §§ 205(a), 206(a), Dec. 14, 1999, 113 Stat. 1833, 1834; Pub. L. 108–203, title I, § 101(c)(2), title IV, §§ 431(a), (b), 435(b), Mar. 2, 2004, 118 Stat. 496, 539, 540.)

REFERENCES IN TEXT

The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, referred to in subsec. (a)(10), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended. Title II of the Act enacted subchapter II (§ 4621 et seq.) of chapter 61 of this title, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Tables.

The Internal Revenue Code of 1986, referred to in subsec. (a)(11), (13), is classified generally to Title 26, Internal Revenue Code.

Section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, referred to in subsec. (a)(11)(A), is section 203 of Pub. L. 107–16, which is set out as a note under section 24 of Title 26, Internal Revenue Code.

Section 212(b) of Public Law 93–66, referred to in subsec. (c)(1)(A)(iv)(II), (F)(i), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

Section 1396p(e)(3) of this title, referred to in subsec. (c)(1)(F)(ii), was redesignated section 1396p(h)(3) of this title by Pub. L. 109–171, title VI, §§ 6012(a), 6014(a), 6015(b), Feb. 8, 2006, 120 Stat. 62, 64, 65.

AMENDMENTS

2004—Subsec. (a)(7). Pub. L. 108–203, § 431(a), substituted ''limited to the first 9 months'' for ''limited to

the first 6 months'' and struck out ''(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)'' after ''month in which such amount is received''.

Subsec. (a)(11). Pub. L. 108–203, § 431(b), amended par. (11) generally. Prior to amendment, par. (11) read as follows: ''for the month of receipt and the following month, any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);''.

Subsec. (a)(14). Pub. L. 108–203, § 101(c)(2), added par. (14).

Subsec. (a)(15). Pub. L. 108–203, § 435(b), added par. (15).

1999—Subsec. (c). Pub. L. 106–169, § 206(a)(1), struck out ''Notification of medicaid policy restricting eligibility of institutionalized individuals for benefits based on'' before ''Disposal'' in subsec. heading.

Subsec. (c)(1). Pub. L. 106–169, § 206(a)(5), added par. (1). Former par. (1) redesignated (2)(A).

Subsec. (c)(2)(A). Pub. L. 106–169, § 206(a)(4), redesignated par. (1) as (2)(A).

Subsec. (c)(2)(A)(i). Pub. L. 106–169, § 206(a)(2)(A), (C), redesignated par. (1)(A) as (2)(A)(i), inserted ''paragraph (1) and'' after ''provisions of'', and substituted ''benefits under this subchapter and subchapter XIX of this chapter, respectively,'' for ''benefits under subchapter XIX of this chapter'', ''clause (ii)'' for ''subparagraph (B)'', and ''subparagraph (B)'' for ''paragraph (2)''.

Subsec. (c)(2)(A)(ii). Pub. L. 106–169, § 206(a)(2)(B), (C), redesignated par. (1)(B) as (2)(A)(ii), struck out ''by the State agency'' after ''which may be used'', and substituted ''paragraph (1) or section 1396p(c) of this title.'' for ''section 1396p(c) of this title if such individual (or such spouse, if any) enters a medical institution or nursing facility.''

Subsec. (c)(2)(B). Pub. L. 106–169, § 206(a)(3), redesignated par. (2) as (2)(B) and substituted ''subparagraph (A)(ii)'' for ''paragraph (1)(B)''.

Subsec. (e). Pub. L. 106–169, § 205(a), added subsec. (e).

1998—Subsec. (a)(13). Pub. L. 105–306 added par. (13).

1996—Subsec. (a)(12). Pub. L. 104–193 added par. (12).

1994—Subsec. (a)(2) to (4), (6). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(9) to (11). Pub. L. 103–296, § 321(h)(2), struck out ''and'' at end of par. (9), substituted ''; and'' for period at end of par. (10) relating to relocation assistance, and redesignated par. (10) relating to refunds of Federal income taxes as (11).

Subsecs. (b) to (d). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner shall'' for ''he shall'' in subsec. (d)(3).

1990—Subsec. (a)(9). Pub. L. 101–508, § 5031(b), added par. (9).

Subsec. (a)(10). Pub. L. 101–508, § 11115(b)(2), added par. (10) relating to refunds of Federal income taxes.

Pub. L. 101–508, § 5053(b), added par. (10) relating to relocation assistance.

1989—Subsec. (a)(2)(B). Pub. L. 101–239, § 8013(b), inserted ''or agreement (including any interest accumulated thereon) representing the purchase of a burial space''.

Subsec. (a)(3). Pub. L. 101–239, § 8014(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion;''.

1988—Subsec. (a)(8). Pub. L. 100–647 added par. (8).

Subsec. (c). Pub. L. 100–360 substituted ''Notification of medicaid policy restricting eligibility of institutionalized individuals for benefits based on disposal of resources for less than fair market value'' for ''Disposal of resources for less than fair market value'' in heading and amended text generally, substituting pars. (1) and (2) for former pars. (1) to (4).

1987—Subsec. (a)(7). Pub. L. 100–203, § 9114(a), inserted ''(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)'' after ''such amount is received''.

Subsec. (b). Pub. L. 100–203, § 9103, designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 100–203, § 9104(a)(1), inserted '', and subject to paragraph (4) of this subsection'' after ''subsection (a) of this section''.

Subsec. (c)(4). Pub. L. 100–203, § 9104(a)(2), added par. (4).

Subsec. (d)(1). Pub. L. 100–203, § 9105(a)(1), struck out ''if the inclusion of any portion of such amount or amounts would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title'' after ''individual or spouse''.

Subsec. (d)(3). Pub. L. 100–203, § 9105(a)(2), substituted ''aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title'' for ''aside''.

1984—Subsec. (a)(7). Pub. L. 98–369, § 2614, added par. (7).

Subsec. (c). Pub. L. 98–369, § 2663(g)(5), amended heading.

1982—Subsec. (a)(2). Pub. L. 97–248, § 185(a), redesignated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d). Pub. L. 97–248, § 185(b), added subsec. (d).

1980—Subsec. (c). Pub. L. 96–611 added subsec. (c).

1977—Subsec. (a)(6). Pub. L. 95–171 added par. (6).

1976—Subsec. (a)(1). Pub. L. 94–569 struck out '', to the extent that its value does not exceed such amount as the Secretary determines to be reasonable'' after ''the home (including the land that appertains thereto)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(c)(2) of Pub. L. 108–203 applicable to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1995, see section 101(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Pub. L. 108–203, title IV, § 431(c), Mar. 2, 2004, 118 Stat. 539, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Mar. 2, 2004], and shall apply to amounts described in paragraph (7) of section 1613(a) of the Social Security Act [subsec. (a)(7) of this section] and refunds of Federal income taxes described in paragraph (11) of such section, that are received by an eligible individual or eligible spouse on or after such date.''

Amendment by section 435(b) of Pub. L. 108–203 applicable to benefits payable for months that begin more than 90 days after Mar. 2, 2004, see section 435(c) of Pub. L. 108–203, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 205(a) of Pub. L. 106–169 effective Jan. 1, 2000, and applicable to trusts established on or after such date, see section 205(d) of Pub. L. 106–169, set out as a note under section 1382a of this title.

Pub. L. 106–169, title II, § 206(c), Dec. 14, 1999, 113 Stat. 1837, provided that: ''The amendments made by this section [amending this section and section 1396a of this title] shall be effective with respect to disposals made on or after the date of the enactment of this Act [Dec. 14, 1999].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–306 applicable to gifts made on or after the date that is 2 years before Oct. 28,

1998, see section 7(c) of Pub. L. 105–306, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 213(b) of Pub. L. 104–193 applicable to payments made after Aug. 22, 1996, see section 213(d) of Pub. L. 104–193, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 321(h)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5031(b) of Pub. L. 101–508 applicable with respect to benefits for months beginning on or after the first day of the 6th calendar month following November 1990, see section 5031(d) of Pub. L. 101–508, set out as a note under section 1382a of this title.

Amendment by section 5035(b) of Pub. L. 101–508 applicable with respect to benefits for calendar months beginning on or after the first day of the 6th calendar month following November 1990, see section 5035(c) of Pub. L. 101–508, as amended, set out as a note under section 1382a of this title.

Amendment by section 11115(b)(2) of Pub. L. 101–508 applicable to determinations of income or resources made for any period after Dec. 31, 1990, see section 11115(e) of Pub. L. 101–508, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 8013(b) of Pub. L. 101–239 effective on 1st day of 4th month beginning after Dec. 19, 1989, see section 8013(c) of Pub. L. 101–239, set out as a note under section 1382a of this title.

Section 8014(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 5th calendar month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 effective as though included in section 162 of Housing and Community Development Act of 1987, Pub. L. 100–242, at the time of its enactment, on Feb. 5, 1988, see section 8103(c) of Pub. L. 100–647, set out as a note under section 1382a of this title.

Amendment by Pub. L. 100–360 applicable to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 303(g)(3) of Pub. L. 100–360, set out as a note under section 1396r–5 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9103(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9104(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9105(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9114(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective January 1, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2614 of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 657 of this title.

Amendment by section 2663(g)(5) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 185(c) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall take effect on the first day of the second month after the month in which this Act is enacted [September 1982].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(c) of Pub. L. 96–611 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to applications for benefits under title XVI of the Social Security Act [this subchapter] filed on or after the first day of the first month which begins at least 60 days after the date of enactment of this Act [Dec. 28, 1980].''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 9(b) of Pub. L. 95–171 provided that: ''The amendment made by this section [amending this section] shall be effective July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976. With respect to catastrophes which occurred on or after December 1, 1976, the amendment made by this section shall be effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977].''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1382c. Definitions

(a)(1) For purposes of this subchapter, the term ''aged, blind, or disabled individual'' means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 1182(d)(5) of title 8), or

(ii) is a child who is a citizen of the United States, and who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

(2) An individual shall be considered to be blind for purposes of this subchapter if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this subchapter if he is blind as defined under a State plan approved under subchapter X or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this subchapter if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), ''work which exists in the national economy'' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C)(i) An individual under the age of 18 shall be considered disabled for the purposes of this subchapter if that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(ii) Notwithstanding clause (i), no individual under the age of 18 who engages in substantial gainful activity (determined in accordance with regulations prescribed pursuant to subparagraph (E)) may be considered to be disabled.

(D) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(E) The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe. Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria shall be found not to be disabled. The Commissioner of Social Security shall make determinations under this subchapter with respect to substantial gainful activity, without regard to the legality of the activity.

(F) Notwithstanding the provisions of subparagraphs (A) through (E), an individual shall also be considered to be disabled for purposes of this subchapter if he is permanently and totally disabled as defined under a State plan approved under subchapter XIV or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.

(G) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Commissioner of Social Security shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Commissioner of Social Security does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

(H)(i) In making determinations with respect to disability under this subchapter, the provisions of sections 421(h), 421(k), and 423(d)(5) of this title shall apply in the same manner as they apply to determinations of disability under subchapter II of this chapter.

(ii)(I) Not less frequently than once every 3 years, the Commissioner shall review in accordance with paragraph (4) the continued eligibility for benefits under this subchapter of each individual who has not attained 18 years of age and is eligible for such benefits by reason of an impairment (or combination of impairments) which is likely to improve (or, at the option of the Commissioner, which is unlikely to improve).

(II) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving treatment, to the extent considered

medically necessary and available, of the condition which was the basis for providing benefits under this subchapter.

(III) If the representative payee refuses to comply without good cause with the requirements of subclause (II), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly suspend payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(IV) Subclause (II) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such determination, the Commissioner shall take into consideration the nature of the individual's impairment (or combination of impairments). Section 1383(c) of this title shall not apply to a finding by the Commissioner that the requirements of subclause (II) should not apply to an individual's representative payee.

(iii) If an individual is eligible for benefits under this subchapter by reason of disability for the month preceding the month in which the individual attains the age of 18 years, the Commissioner shall redetermine such eligibility—

(I) by applying the criteria used in determining initial eligibility for individuals who are age 18 or older; and

(II) either during the 1-year period beginning on the individual's 18th birthday or, in lieu of a continuing disability review, whenever the Commissioner determines that an individual's case is subject to a redetermination under this clause.

With respect to any redetermination under this clause, paragraph (4) shall not apply.

(iv)(I) Except as provided in subclause (VI), not later than 12 months after the birth of an individual, the Commissioner shall review in accordance with paragraph (4) the continuing eligibility for benefits under this subchapter by reason of disability of such individual whose low birth weight is a contributing factor material to the Commissioner's determination that the individual is disabled.

(II) A review under subclause (I) shall be considered a substitute for a review otherwise required under any other provision of this subparagraph during that 12-month period.

(III) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving treatment, to the extent considered medically necessary and available, of the condition which was the basis for providing benefits under this subchapter.

(IV) If the representative payee refuses to comply without good cause with the requirements of subclause (III), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly suspend payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(V) Subclause (III) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such determination, the Commissioner shall take into consideration the nature of the individual's impairment (or combination of impairments). Section 1383(c) of this title shall not apply to a finding by the Commissioner that the requirements of subclause (III) should not apply to an individual's representative payee.

(VI) Subclause (I) shall not apply in the case of an individual described in that subclause who, at the time of the individual's initial disability determination, the Commissioner determines has an impairment that is not expected to improve within 12 months after the birth of that individual, and who the Commissioner schedules for a continuing disability review at a date that is after the individual attains 1 year of age.

(I) In making any determination under this subchapter with respect to the disability of an individual who has not attained the age of 18 years and to whom section 421(h) of this title does not apply, the Commissioner of Social Security shall make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the individual (as determined by the Commissioner of Social Security) evaluates the case of such individual.

(J) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this subchapter if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.

(4) A recipient of benefits based on disability under this subchapter may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(A) in the case of an individual who is age 18 or older—

(i) substantial evidence which demonstrates that—

(I) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(II) the individual is now able to engage in substantial gainful activity; or

(ii) substantial evidence (except in the case of an individual eligible to receive benefits under section 1382h of this title) which—

(I) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(aa) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology

(related to the individual's ability to work), and

(bb) the individual is now able to engage in substantial gainful activity, or

(II) demonstrates that—

(aa) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(bb) the individual is now able to engage in substantial gainful activity; or

(iii) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(B) in the case of an individual who is under the age of 18—

(i) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments, and that such impairment or combination of impairments no longer results in marked and severe functional limitations; or

(ii) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments, is not as disabling as it was considered to be at the time of the most recent prior decision that the individual was under a disability or continued to be under a disability, and such impairment or combination of impairments does not result in marked and severe functional limitations; or

(C) in the case of any individual, substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability under this subchapter is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected (i) to restore his or her ability to engage in substantial gainful activity, or (ii) in the case of an individual under the age of 18, to eliminate or improve the individual's impairment or combination of impairments so that it no longer results in marked and severe functional limitations. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Commissioner of Social Security. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.

(b) For purposes of this subchapter, the term ''eligible spouse'' means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual, and who, in a month, is living with such aged, blind, or disabled individual on the first day of the month or, in any case in which either spouse files an application for benefits, on the first day of the month following the date the application is filed, or, in any case in which either spouse requests restoration of eligibility under this subchapter during the month, at the time the request is filed. If two aged, blind, or disabled individuals are husband and wife as described in the preceding sentence, only one of them may be an ''eligible individual'' within the meaning of section 1382(a) of this title.

(c) For purposes of this subchapter, the term ''child'' means an individual who is neither married nor (as determined by the Commissioner of Social Security) the head of a household, and who is (1) under the age of eighteen, or (2) under the age of twenty-two and (as determined by the Commissioner of Social Security) a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment.

(d) In determining whether two individuals are husband and wife for purposes of this subchapter, appropriate State law shall be applied; except that—

(1) if a man and woman have been determined to be husband and wife under section 416(h)(1) of this title for purposes of subchapter II of this chapter they shall be considered (from and after the date of such determination or the date of their application for benefits under this subchapter, whichever is later) to be husband and wife for purposes of this subchapter, or

(2) if a man and woman are found to be holding themselves out to the community in which they reside as husband and wife, they shall be so considered for purposes of this subchapter notwithstanding any other provision of this section.

(e) For purposes of this subchapter, the term ''United States'', when used in a geographical sense, means the 50 States and the District of Columbia.

(f)(1) For purposes of determining eligibility for and the amount of benefits for any individual who is married and whose spouse is living with him in the same household but is not an eligible spouse, such individual's income and resources shall be deemed to include any income and resources of such spouse, whether or not available to such individual, except to the extent determined by the Commissioner of Social

Security to be inequitable under the circumstances.

(2)(A) For purposes of determining eligibility for and the amount of benefits for any individual who is a child under age 18, such individual's income and resources shall be deemed to include any income and resources of a parent of such individual (or the spouse of such a parent) who is living in the same household as such individual, whether or not available to such individual, except to the extent determined by the Commissioner of Social Security to be inequitable under the circumstances.

(B) Subparagraph (A) shall not apply in the case of any child who has not attained the age of 18 years who—

(i) is disabled;

(ii) received benefits under this subchapter, pursuant to section 1382(e)(1)(B) of this title, while in an institution described in section 1382(e)(1)(B) of this title;

(iii) is eligible for medical assistance under a State home care plan approved by the Secretary under the provisions of section 1396n(c) of this title relating to waivers, or authorized under section 1396a(e)(3) of this title; and

(iv) but for this subparagraph, would not be eligible for benefits under this subchapter.

(3) For purposes of determining eligibility for and the amount of benefits for any individual who is an alien, such individual's income and resources shall be deemed to include the income and resources of his sponsor and such sponsor's spouse (if such alien has a sponsor) as provided in section 1382j of this title. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

(4) For purposes of paragraphs (1) and (2), a spouse or parent (or spouse of such a parent) who is absent from the household in which the individual lives due solely to a duty assignment as a member of the Armed Forces on active duty shall, in the absence of evidence to the contrary, be deemed to be living in the same household as the individual.

(Aug. 14, 1935, ch. 531, title XVI, § 1614, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1471; amended Pub. L. 93–233, § 9, Dec. 31, 1973, 87 Stat. 957; Pub. L. 96–265, title II, § 203(a), title III, §§ 302(a)(2), 303(c)(1), title V, § 504(a), June 9, 1980, 94 Stat. 449, 450, 453, 471; Pub. L. 98–369, div. B, title VI, § 2663(g)(6), (7), July 18, 1984, 98 Stat. 1168, 1169; Pub. L. 98–460, §§ 2(c), 3(a)(2), 4(b), 8(b), 10(b), Oct. 9, 1984, 98 Stat. 1796, 1799, 1800, 1804, 1805; Pub. L. 99–643, § 4(d)(2), (3)(A), Nov. 10, 1986, 100 Stat. 3577; Pub. L. 101–239, title VIII, §§ 8009(b), 8010(a), 8012(a), Dec. 19, 1989, 103 Stat. 2463, 2464; Pub. L. 101–508, title V, § 5036(a), Nov. 5, 1990, 104 Stat. 1388–225; Pub. L. 101–649, title I, § 162(e)(5), Nov. 29, 1990, 104 Stat. 5011; Pub. L. 103–66, title XIII, §§ 13733(a), 13734(a), Aug. 10, 1993, 107 Stat. 662; Pub. L. 103–296, title I, § 107(a)(4), title II, § 201(b)(4)(A), Aug. 15, 1994, 108 Stat. 1478, 1505; Pub. L. 103–432, title II, § 221(a), Oct. 31, 1994, 108 Stat. 4462; Pub. L. 104–121, title I, § 105(b)(1), Mar. 29, 1996, 110 Stat. 853; Pub. L. 104–193, title II, §§ 204(c)(1), 211(a), (c), 212(a), (b)(1), (c), Aug. 22, 1996, 110 Stat. 2188, 2189, 2192, 2193; Pub. L. 105–33, title V, § 5522(a), (d), Aug. 5, 1997, 111 Stat. 622, 623; Pub. L. 108–203, title IV, § 434(a), Mar. 2, 2004, 118 Stat. 540.)

AMENDMENTS

2004—Subsec. (a)(1)(B)(ii). Pub. L. 108–203 inserted "and" after "citizen of the United States," and struck out ", and who, for the month before the parent reported for such assignment, received a benefit under this subchapter" before period at end.

1997—Subsec. (a)(3)(H)(iii). Pub. L. 105–33, § 5522(a)(1), added subcls. (I) and (II) and concluding provisions and struck out former subcls. (I) and (II) and concluding provisions which read as follows:

"(I) during the 1-year period beginning on the individual's 18th birthday; and

"(II) by applying the criteria used in determining the initial eligibility for applicants who are age 18 or older.

With respect to a redetermination under this clause, paragraph (4) shall not apply and such redetermination shall be considered a substitute for a review or redetermination otherwise required under any other provision of this subparagraph during that 1-year period."

Subsec. (a)(3)(H)(iv). Pub. L. 105–33, § 5522(a)(2), substituted "Except as provided in subclause (VI), not" for "Not" in subcl. (I) and added subcl. (VI).

Subsec. (a)(4). Pub. L. 105–33, § 5522(d), made technical correction to directory language of Pub. L. 104–193, § 211(c). See 1996 Amendment notes below.

1996—Subsec. (a)(3)(A). Pub. L. 104–193, § 211(a)(1), (2), substituted "Except as provided in subparagraph (C), an individual" for "An individual" and struck out "(or, in the case of an individual under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity)" before period at end.

Subsec. (a)(3)(C). Pub. L. 104–193, § 211(a)(4), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (a)(3)(D), (E). Pub. L. 104–193, § 211(a)(3), redesignated pars. (C) and (D) as (D) and (E), respectively. Former par. (E) redesignated (F).

Subsec. (a)(3)(F). Pub. L. 104–193, § 211(a)(3), (5), redesignated subpar. (E) as (F) and substituted "subparagraphs (A) through (E)" for "subparagraphs (A) through (D)". Former subpar. (F) redesignated (G).

Subsec. (a)(3)(G). Pub. L. 104–193, § 211(a)(3), redesignated subpar. (F) as (G). Former subpar. (G) redesignated (H).

Subsec. (a)(3)(H). Pub. L. 104–193, § 212(a), (b)(1), (c), designated existing provisions as cl. (i) and added cls. (ii) to (iv).

Pub. L. 104–193, § 211(a)(3), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).

Subsec. (a)(3)(I). Pub. L. 104–193, § 211(a)(3), redesignated subpar. (H) as (I). Former subpar. (I) redesignated (J).

Pub. L. 104–121 added subpar. (I).

Subsec. (a)(3)(J). Pub. L. 104–193, § 211(a)(3), redesignated subpar. (I) as (J).

Subsec. (a)(4). Pub. L. 104–193, § 211(c)(7), as amended by Pub. L. 105–33, § 5522(d), in first sentence of concluding provisions inserted "(i)" before "to restore" and ", or" before "(ii)" and added cl. (ii).

Pub. L. 104–193, § 211(c)(1)–(6), as amended by Pub. L. 105–33, § 5522(d), inserted "(A) in the case of an individual who is age 18 or older—" after "if such finding is supported by—", redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, in cl. (i) redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, in cl. (ii) redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, in subcls. (I) and (II) of cl. (ii) redesignated former subcls. (I) and (II) as items (aa) and (bb), respectively, added subpar. (B), redesignated former subpar. (D) as (C), and inserted "in the case of any individual," before "substantial evidence" in that subpar.

Subsec. (b). Pub. L. 104–193, § 204(c)(1), substituted ", on the first day of the month following the date the application is filed, or, in any case in which either

spouse requests'' for ''or requests'' and struck out ''application or'' before ''request is filed.''

1994—Subsec. (a)(3)(A). Pub. L. 103–432, § 221(a)(1), substituted ''an individual'' for ''a child'' before ''under the age of 18''.

Subsec. (a)(3)(D). Pub. L. 103–296, § 201(b)(4)(A), inserted at end ''The Secretary shall make determinations under this subchapter with respect to substantial gainful activity, without regard to the legality of the activity.''

Pub. L. 103–296, § 107(a)(4), in subpar. (D) as amended by Pub. L. 103–296, § 201(b)(4)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(3)(F). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (a)(3)(H). Pub. L. 103–432, § 221(a), substituted ''an individual'' for ''a child'', ''the individual'' for ''the child'', and ''such individual'' for ''such child''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsecs. (a)(4), (c), (f)(1), (2)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1993—Subsec. (a)(1)(B)(ii). Pub. L. 103–66, § 13734(a), substituted ''and who, for the month before the parent reported for such assignment, received a benefit under this subchapter'' for ''the District of Columbia, Puerto Rico, and the territories and possessions of the United States, and who, during the month before the parent reported for such assignment, was receiving benefits under this subchapter''.

Subsec. (f)(4). Pub. L. 103–66, § 13733(a), added par. (4).

1990—Subsec. (a)(1)(B)(i). Pub. L. 101–649 struck out ''section 1153(a)(7) or'' after ''the provisions of''.

Subsec. (a)(3)(H). Pub. L. 101–508 added subpar. (H).

1989—Subsec. (a)(1)(B). Pub. L. 101–239, § 8009(b), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, substituted '', or'' for period at end, and added cl. (ii).

Subsec. (b). Pub. L. 101–239, § 8012(a), amended first sentence generally. Prior to amendment, first sentence read as follows: ''For purposes of this subchapter, the term 'eligible spouse' means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than six months.''

Subsec. (f)(2). Pub. L. 101–239, § 8010(a), designated existing provisions as subpar. (A) and added subpar. (B).

1986—Subsec. (a)(3)(D). Pub. L. 99–643, § 4(d)(2)(A), struck out '', except for purposes of subparagraph (F) or paragraph (4),'' after ''such criteria''.

Subsec. (a)(3)(F) to (H). Pub. L. 99–643, § 4(d)(2)(B), redesignated subpars. (G) and (H) as (F) and (G), respectively, and struck out former subpar. (F) which read as follows: ''For purposes of this subchapter, an individual whose trial work period has ended by application of paragraph (4)(D)(i) shall, subject to section 1382(e)(4) of this title, nonetheless be considered (except for purposes of section 1383(a)(5) of this title) to be disabled through the end of the month preceding the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the earlier of (i) the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (ii) the first month, after the period of 15 consecutive months following the end of such period of trial work, in which such individual engages in or is determined to be able to engage in substantial gainful activity.''

Subsec. (a)(4), (5). Pub. L. 99–643, § 4(d)(3)(A), redesignated par. (5) as (4) and struck out former par. (4) which read as follows:

''(A) For purposes of this subchapter, any services rendered during a period of trial work (as defined in subparagraph (B)) by an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. As used in this paragraph, the term 'services' means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.

''(B) The term 'period of trial work', with respect to an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection), means a period of months beginning and ending as provided in subparagraphs (C) and (D).

''(C) A period of trial work for any individual shall begin with the month in which he becomes eligible for benefits under this subchapter on the basis of his disability; but no such period may begin for an individual who is eligible for benefits under this subchapter on the basis of a disability if he has had a previous period of trial work while eligible for benefits on the basis of the same disability.

''(D) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

''(i) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or

''(ii) the month in which his disability (as determined under paragraph (3) of this subsection) ceases (as determined after the application of subparagraph (A) of this paragraph).''

1984—Subsec. (a)(3)(E). Pub. L. 98–369, § 2663(g)(6), realigned margin of subpar. (E).

Subsec. (a)(3)(G). Pub. L. 98–460, § 4(b), added subpar. (G).

Subsec. (a)(3)(H). Pub. L. 98–460, § 8(b), added subpar. (H).

Pub. L. 98–460, § 3(a)(2), inserted reference to section 423(d)(5) of this title.

Pub. L. 98–460, § 10(b), inserted reference to section 421(k) of this title.

Subsec. (a)(5). Pub. L. 98–460, § 2(c), added par. (5).

Subsec. (d)(1). Pub. L. 98–369, § 2663(g)(7), substituted ''man and woman'' for ''man and women''.

1980—Subsec. (a)(3)(D). Pub. L. 96–265, § 302(a)(2), inserted provisions relating to extraordinary work expenses due to severe disability.

Pub. L. 96–265, § 303(c)(1)(B), substituted reference to subparagraph (F) or paragraph (4) for reference to paragraph (4).

Subsec. (a)(3)(F). Pub. L. 96–265, § 303(c)(1)(A), added subpar. (F).

Subsec. (f)(2). Pub. L. 96–265, § 203(a), substituted ''under age 18'' for ''under age 21''.

Subsec. (f)(3). Pub. L. 96–265, § 504(a), added par. (3).

1973—Subsec. (a)(3)(A). Pub. L. 93–233, § 9(1), struck out last sentence defining a disabled individual as one permanently and totally disabled as defined under a State plan approved under subchapter XIV or XVI of this chapter as in effect for 1972 and receiving aid under such plan (on the basis of disability for December 1973, so long as the individual is continuously disabled as so defined, which provisions were covered in subsec. (a)(3)(E) of this section.

Subsec. (a)(3)(E). Pub. L. 93–233, § 9(2), incorporated provisions of last sentence of subpar. (A) in provisions designated as subpar. (E) and inserted introductory text ''Notwithstanding the provisions of subparagraphs (A) through (D)'' and parenthetical phrase ''(and for at least one month prior to July 1973)'' after ''December 1973''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 434(b), Mar. 2, 2004, 118 Stat. 540, provided that: ''The amendments made by this section [amending this section] shall be effective with respect to benefits payable for months beginning after

the date of enactment of this Act [Mar. 2, 2004], but only on the basis of an application filed after such date.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5528(a) of Pub. L. 105–33, set out as a note under section 903 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 204(c)(1) of Pub. L. 104–193 applicable to applications for benefits under this subchapter filed on or after Aug. 22, 1996, without regard to whether regulations have been issued to implement amendments by section 204 of Pub. L. 104–193, see section 204(d) of Pub. L. 104–193, set out as a note under section 1382 of this title.

Section 211(d) of Pub. L. 104–193, as amended by Pub. L. 105–33, title V, § 5101, Aug. 5, 1997, 111 Stat. 595, provided that:

''(1) EFFECTIVE DATES.—

''(A) SUBSECTIONS (a) AND (b).—

''(i) IN GENERAL.—The provisions of, and amendments made by, subsections (a) [amending this section] and (b) [110 Stat. 2189] of this section shall apply to any individual who applies for, or whose claim is finally adjudicated with respect to, benefits under title XVI of the Social Security Act [this subchapter] on or after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such provisions and amendments.

''(ii) DETERMINATION OF FINAL ADJUDICATION.—For purposes of clause (i), no individual's claim with respect to such benefits may be considered to be finally adjudicated before such date of enactment if, on or after such date, there is pending a request for either administrative or judicial review with respect to such claim that has been denied in whole, or there is pending, with respect to such claim, readjudication by the Commissioner of Social Security pursuant to relief in a class action or implementation by the Commissioner of a court remand order.

''(B) SUBSECTION (c).—The amendments made by subsection (c) of this section [amending this section] shall apply with respect to benefits under title XVI of the Social Security Act for months beginning on or after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such amendments.

''(2) APPLICATION TO CURRENT RECIPIENTS.—

''(A) ELIGIBILITY REDETERMINATIONS.—During the period beginning on the date of the enactment of this Act [Aug. 22, 1996] and ending on the date which is 18 months after such date of enactment, the Commissioner of Social Security shall redetermine the eligibility of any individual under age 18 who is eligible for supplemental security income benefits by reason of disability under title XVI of the Social Security Act [this subchapter] as of the date of the enactment of this Act and whose eligibility for such benefits may terminate by reason of the provisions of, or amendments made by, subsections (a) and (b) of this section. Any redetermination required by the preceding sentence that is not performed before the end of the period described in the preceding sentence shall be performed as soon as is practicable thereafter. With respect to any redetermination under this subparagraph—

''(i) section 1614(a)(4) of the Social Security Act (42 U.S.C. 1382c(a)(4)) shall not apply;

''(ii) the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under title XVI of such Act;

''(iii) the Commissioner shall give such redetermination priority over all continuing eligibility reviews and other reviews under such title; and

''(iv) such redetermination shall be counted as a review or redetermination otherwise required to be made under section 208 of the Social Security Independence and Program Improvements Act of 1994 [Pub. L. 103–296, set out as a note under section 1382 of this title] or any other provision of title XVI of the Social Security Act.

''(B) GRANDFATHER PROVISION.—The provisions of, and amendments made by, subsections (a) [amending this section] and (b) [110 Stat. 2189] of this section, and the redetermination under subparagraph (A), shall only apply with respect to the benefits of an individual described in subparagraph (A) for months beginning on or after the later of July 1, 1997, or the date of the redetermination with respect to such individual.

''(C) NOTICE.—Not later than January 1, 1997, the Commissioner of Social Security shall notify an individual described in subparagraph (A) of the provisions of this paragraph. Before commencing a redetermination under the 2nd sentence of subparagraph (A), in any case in which the individual involved has not already been notified of the provisions of this paragraph, the Commissioner of Social Security shall notify the individual involved of the provisions of this paragraph.

''(3) REPORT.—The Commissioner of Social Security shall report to the Congress regarding the progress made in implementing the provisions of, and amendments made by, this section [amending this section, sections 665e and 901 of Title 2, The Congress, and provisions set out as a note under section 401 of this title] on child disability evaluations not later than 180 days after the date of the enactment of this Act [Aug. 22, 1996].

''(4) REGULATIONS.—Notwithstanding any other provision of law, the Commissioner of Social Security shall submit for review to the committees of jurisdiction in the Congress any final regulation pertaining to the eligibility of individuals under age 18 for benefits under title XVI of the Social Security Act [this subchapter] at least 45 days before the effective date of such regulation. The submission under this paragraph shall include supporting documentation providing a cost analysis, workload impact, and projections as to how the regulation will effect the future number of recipients under such title.

''(5) CAP ADJUSTMENT FOR SSI ADMINISTRATIVE WORK REQUIRED BY WELFARE REFORM.—

''(A) AUTHORIZATION.—For the additional costs of continuing disability reviews and redeterminations under title XVI of the Social Security Act, there is hereby authorized to be appropriated to the Social Security Administration, in addition to amounts authorized under section 201(g)(1)(A) of the Social Security Act [section 401(g)(1)(A) of this title], $150,000,000 in fiscal year 1997 and $100,000,000 in fiscal year 1998.

''(B) CAP ADJUSTMENT.—[Amended section 901 of Title 2, The Congress.]

''(C) ADJUSTMENTS.—[Amended section 665e of Title 2.]

''(D) CONFORMING AMENDMENT.—[Amended section 103(d)(1) of Pub. L. 104–121, set out as a note under section 401 of this title.]

''(6) BENEFITS UNDER TITLE XVI.—For purposes of this subsection, the term 'benefits under title XVI of the Social Security Act' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [section 1382e(a) of this title], and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66 [set out as a note under section 1382 of this title].''

Section 212(d) of Pub. L. 104–193 provided that: ''The amendments made by this section [amending this section and repealing provisions set out as a note under section 1383 of this title] shall apply to benefits for months beginning on or after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such amendments.''

Amendment by Pub. L. 104–121 applicable to individual who applies for, or whose claim is finally adjudicated with respect to, supplemental security income benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule in case of individual who has applied for, and whose claim has been finally adjudicated with respect to, such benefits before Mar. 29, 1996, see section 105(b)(5) of Pub. L. 104–121, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 221(b) of Pub. L. 103–432 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to determinations made on or after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(b)(4)(B) of Pub. L. 103–296 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13733(a) of Pub. L. 103–66 effective on first day of second month that begins after Aug. 10, 1993, see section 13733(c) of Pub. L. 103–66, set out as a note under section 1382a of this title.

Section 13734(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 3rd month that begins after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Section 5036(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to determinations made 6 or more months after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 8009(b) of Pub. L. 101–239 applicable with respect to benefits for months after March 1990, see section 8009(c) of Pub. L. 101–239, set out as a note under section 1382 of this title.

Amendment by section 8010(a) of Pub. L. 101–239 effective on 1st day of 6th calendar month beginning after Dec. 19, 1989, see section 8010(c) of Pub. L. 101–239, set out as a note under section 1382 of this title.

Section 8012(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 2(c) of Pub. L. 98–460 applicable to determinations made by the Secretary on or after Oct. 9, 1984, with certain enumerated exceptions and qualifications, see section 2(d) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 3(a)(2) of Pub. L. 98–460 applicable to determinations made prior to Jan. 1, 1987, see section 3(a)(3) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 4(b) of Pub. L. 98–460 applicable with respect to determinations made on or after the first day of the first month beginning after 30 days after Oct. 9, 1984, see section 4(c) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 8(b) of Pub. L. 98–460 applicable to determinations made after 60 days after Oct. 9, 1984, see section 8(c) of Pub. L. 98–460, set out as a note under section 421 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 203(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1980; except that the amendment made by such subsection shall not apply, in the case of any child who, in September 1980, was 18 or over and received a supplemental security income benefit for such month, during any period for which such benefit would be greater without the application of such amendment.''

Amendment by section 302(a)(2) of Pub. L. 96–265 applicable with respect to expenses incurred on or after the first day of the sixth month which begins after June 9, 1980, see section 302(c) of Pub. L. 96–265, set out as a note under section 423 of this title.

Amendment by section 303(c)(1) of Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable with respect to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Amendment by section 504(a) of Pub. L. 96–265 effective with respect to individuals applying for supplemental security income benefits under this subchapter for the first time after Sept. 30, 1980, see section 504(c) of Pub. L. 96–265, set out as an Effective Date note under section 1382j of this title.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

REGULATIONS

For provisions requiring Secretary of Health and Human Services to prescribe regulations necessary to implement amendment to this section [adding subsec. (a)(5)] by section 2(c) of Pub. L. 98–460 not later than 180 days after Oct. 9, 1984, see section 2(g) of Pub. L. 98–460, set out as a note under section 423 of this title.

RETROACTIVE BENEFITS

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98–460, which added subsec. (a)(5) of this section, see section 2(f) of Pub. L. 98–460, set out as a note under section 423 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1382d. Rehabilitation services for blind and disabled individuals

(a) Referral by Commissioner of eligible individuals to appropriate State agency

In the case of any blind or disabled individual who—

(1) has not attained age 16; and

(2) with respect to whom benefits are paid under this subchapter,

the Commissioner of Social Security shall make provision for referral of such individual to the appropriate State agency administering the State program under subchapter V of this chapter.

(b) Repealed. Pub. L. 97–35, title XXI, § 2193(c)(8)(B), Aug. 13, 1981, 95 Stat. 828

(c) Repealed. Pub. L. 106–170, title I, § 101(b)(2)(B), Dec. 17, 1999, 113 Stat. 1874

(d) Reimbursement by Commissioner to State agency of costs of providing services to referred individuals

The Commissioner of Social Security is authorized to reimburse the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.] for the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) of this section, (1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1383(a)(6) of this title (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by the Commissioner in the same manner as under section 422(d)(1) of this title.

(e) Reimbursement for vocational rehabilitation services furnished during certain months of nonpayment of insurance benefits

The Commissioner of Social Security may reimburse the State agency described in subsection (d) of this section for the costs described therein incurred in the provision of rehabilitation services—

(1) for any month for which an individual received—

(A) benefits under section 1382 or 1382h(a) of this title;

(B) assistance under section 1382h(b) of this title; or

(C) a federally administered State supplementary payment under section 1382e of this title or section 212(b) of Public Law 93–66; and

(2) for any month before the 13th consecutive month for which an individual, for a reason other than cessation of disability or blindness, was ineligible for—

(A) benefits under section 1382 or 1382h(a) of this title;

(B) assistance under section 1382h(b) of this title; or

(C) a federally administered State supplementary payment under section 1382e of this title or section 212(b) of Public Law 93–66.

(Aug. 14, 1935, ch. 531, title XVI, § 1615, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1474; amended Pub. L. 94–566, title V, § 501(a), Oct. 20, 1976, 90 Stat. 2683; Pub. L. 96–272, title III, § 304, June 17, 1980, 94 Stat. 529; Pub. L. 97–35, title XXI, § 2193(a)(4), (c)(8), title XXIII, § 2344, Aug. 13, 1981, 95 Stat. 827, 828, 867; Pub. L. 98–369, div. B, title VI, § 2663(g)(8), July 18, 1984, 98 Stat. 1169; Pub. L. 98–460, § 11(b), Oct. 9, 1984, 98 Stat. 1806; Pub. L. 101–508, title V, § 5037(a), Nov. 5, 1990, 104 Stat. 1388–226; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 105–33, title V, § 5523, Aug. 5, 1997, 111 Stat. 623; Pub. L. 106–170, title I, § 101(b)(2)(A), (B), Dec. 17, 1999, 113 Stat. 1874.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (d), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended. Title I of the Rehabilitation Act of 1973 is classified generally to subchapter I (§ 720 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Section 212(b) of Public Law 93–66, referred to in subsec. (e)(1)(C), (2)(C), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–170, § 101(b)(2)(A), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''In the case of any blind or disabled individual who—

''(1) has not attained age 65, and

''(2) is receiving benefits (or with respect to whom benefits are paid) under this subchapter,

the Commissioner of Social Security shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973, or, in the case of any such individual who has not attained age 16, to the State agency administering the State program under subchapter V of this chapter, and (except for individuals who have not attained age 16 and except in such other cases as the Commissioner may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the services made available to him under such plan.''

Subsec. (c). Pub. L. 106–170, § 101(b)(2)(B), struck out subsec. (c) which read as follows: ''Every individual age 16 or over with respect to whom the Commissioner of Social Security is required to make provision for referral under subsection (a) of this section shall accept such services as are made available to him under the State plan for vocational and rehabilitation services approved under title I of the Rehabilitation Act of 1973; and no such individual shall be an eligible individual or

eligible spouse for purposes of this subchapter if he refuses without good cause to accept services for which he is referred under subsection (a) of this section.''

1997—Subsec. (d). Pub. L. 105–33, § 5523(2), substituted ''the Commissioner'' for ''him'' after ''determined by'' in last sentence.

Pub. L. 105–33, § 5523(1), which directed insertion of comma after ''subsection (a)(1)'' in first sentence, was executed by making the insertion after ''subsection (a) of this section'' to reflect the probable intent of Congress.

1994—Subsec. (a). Pub. L. 103–296 in closing provisions substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner may'' for ''he may''.

Subsec. (c). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d). Pub. L. 103–296 substituted ''The Commissioner of Social Security is'' for ''The Secretary is''.

Subsec. (e). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions.

1990—Subsec. (e). Pub. L. 101–508 added subsec. (e).

1984—Subsecs. (a), (c). Pub. L. 98–369, § 2663(g)(8), substituted ''title I of the Rehabilitation Act of 1973'' for ''the Vocational Rehabilitation Act''.

Subsec. (d). Pub. L. 98–460, § 11(b), designated existing provisions of first sentence as cl. (1), added cls. (2) and (3), and inserted requirement that the determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity and the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 422(d)(1) of this title.

Pub. L. 98–369, § 2663(g)(8), substituted ''title I of the Rehabilitation Act of 1973'' for ''the Vocational Rehabilitation Act''.

1981—Subsec. (a). Pub. L. 97–35, § 2193(c)(8)(A), substituted ''State agency administering the State program under subchapter V of this chapter (except for individuals who have not attained age 16 and except in such other cases'' for ''appropriate State agency administering the State plan under subsection (b) of this section, and (except in such cases''.

Subsec. (b). Pub. L. 97–35, § 2193(c)(8)(B), struck out subsec. (b) which provided criteria for approval of State plans.

Subsec. (d). Pub. L. 97–35, § 2344, substituted ''is authorized to reimburse'' for ''is authorized to pay to'', ''for the costs incurred'' for ''the costs incurred'', and ''individuals who are referred for such services pursuant to subsection (a) of this section if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months'' for ''individuals referred for such services pursuant to subsection (a) of this section'' and inserted provision that determination of the amount to be reimbursed be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 422(d)(1) of this title.

Subsec. (e). Pub. L. 97–35, § 2193(c)(8)(B), struck out subsec. (e) which provided for payment by the Secretary to a State agency charged with administering a State plan under subsec. (b), of the costs incurred each fiscal year from Sept. 30, 1976, to Oct. 1, 1982, in carrying out such State plan.

Subsec. (e)(1). Pub. L. 97–35, § 2193(a)(4)(A), inserted ''and subject to section 2194(b)(3) of the Maternal and Child Health Services Block Grant Act''.

Subsec. (e)(3). Pub. L. 97–35, § 2193(a)(4)(B), substituted ''$24,070,000'' for ''$30,000,000''.

1980—Subsec. (e). Pub. L. 96–272 corrected the error under which subsec. (e) had been added as (c) by Pub. L. 94–566 and, in subsec. (e)(1) as so designated, substituted ''October 1, 1982'' for ''October 1, 1979''.

1976—Subsec. (a). Pub. L. 94–566 inserted ''or, in the case of any such individual who has not attained age 16, to the appropriate State agency administering the State plan under subsection (b) of this section,'' after ''Vocational Rehabilitation Act,'' and substituted ''need for and utilization of the services'' for ''need for and utilization of the rehabilitation services''.

Subsec. (b). Pub. L. 94–566 added subsec. (b). Former subsec. (b) was split up and its parts were redistributed into subsecs. (c) and (d), respectively, and amended.

Subsec. (c). Pub. L. 94–566 combined into subsec. (c) the existing provisions of subsec. (c) covering the refusal by referred individuals to accept services and added thereto a part of former subsec. (b) covering the required acceptance of vocational and rehabilitation services by the referred individual, and in that provision substituted ''Every individual age 16 or over'' for ''Every individual''.

Subsec. (d). Pub. L. 94–566 redesignated as subsec. (d) the part of former subsec. (b) covering the payment by the Secretary to the State agency administering a State plan and in the provisions so redesignated substituted ''administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act'' for ''administration of such State plan''.

Subsec. (e). Pub. L. 94–566 added subsec. (e). See 1980 Amendment note above.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5528(a) of Pub. L. 105–33, set out as a note under section 903 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5037(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990] and shall apply to claims for reimbursement pending on or after such date.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after November 1984, see section 11(c) of Pub. L. 98–460, set out as a note under section 422 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1981 AMENDMENT

Section 2193(a)(4)(B) of Pub. L. 97–35 provided that the amendment made by that section is effective for fiscal year 1982.

For effective date, savings, and transitional provisions relating to amendments by section 2193(a)(4)(A) and (c)(8) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Section 2344 of Pub. L. 97–35 provided that the amendment made by that section is effective Oct. 1, 1981.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

PUBLICATION OF CRITERIA

Section 501(b) of Pub. L. 94–566 directed Secretary, within 120 days after Oct. 20, 1976, to publish criteria to be employed to determine disability (as defined in subsec. (a)(3) of this section) in the case of persons who have not attained the age of 18.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1382e. Supplementary assistance by State or subdivision to needy individuals

(a) Exclusion of cash payments in determination of income of individuals for purposes of eligibility for benefits; agreement by Commissioner and State for Commissioner to make supplementary payments on behalf of State or subdivision

Any cash payments which are made by a State (or political subdivision thereof) on a regular basis to individuals who are receiving benefits under this subchapter or who would but for their income be eligible to receive benefits under this subchapter, as assistance based on need in supplementation of such benefits (as determined by the Commissioner of Social Security), shall be excluded under section 1382a(b)(6) of this title in determining the income of such individuals for purposes of this subchapter and the Commissioner of Social Security and such State may enter into an agreement which satisfies subsection (b) of this section under which the Commissioner of Social Security will, on behalf of such State (or subdivision) make such supplementary payments to all such individuals.

(b) Agreement between Commissioner and State; contents

Any agreement between the Commissioner of Social Security and a State entered into under subsection (a) of this section shall provide—

(1) that such payments will be made (subject to subsection (c) of this section) to all individuals residing in such State (or subdivision) who are receiving benefits under this subchapter, and

(2) such other rules with respect to eligibility for or amount of the supplementary payments, and such procedural or other general administrative provisions, as the Commissioner of Social Security finds necessary (subject to subsection (c) of this section) to achieve efficient and effective administration of both the program which the Commissioner conducts under this subchapter and the optional State supplementation.

At the option of the State (but subject to paragraph (2) of this subsection), the agreement between the Commissioner of Social Security and such State entered into under subsection (a) of this section shall be modified to provide that the Commissioner of Social Security will make supplementary payments, on and after an effective date to be specified in the agreement as so modified, to individuals receiving benefits determined under section 1382(e)(1)(B) of this title.

(c) Residence requirement by State or subdivision for supplementary payments; disregarding amounts of certain income by State or subdivision in determining eligibility for supplementary payments

(1) Any State (or political subdivision) making supplementary payments described in subsection (a) of this section may at its option impose as a condition of eligibility for such payments, and include in the State's agreement with the Commissioner of Social Security under such subsection, a residence requirement which excludes individuals who have resided in the State (or political subdivision) for less than a minimum period prior to application for such payments.

(2) Any State (or political subdivision), in determining the eligibility of any individual for supplementary payments described in subsection (a) of this section, may disregard amounts of earned and unearned income in addition to other amounts which it is required or permitted to disregard under this section in determining such eligibility, and shall include a provision specifying the amount of any such income that will be disregarded, if any.

(3) Any State (or political subdivision) making supplementary payments described in subsection (a) of this section shall have the option of making such payments to individuals who receive benefits under this subchapter under the provisions of section 1382h of this title, or who would be eligible to receive such benefits but for their income.

(d) Payment to Commissioner by State of amount equal to expenditures by Commissioner as supplementary payments; time and manner of payment by State; fees for Federal administration of State supplementary payments

(1) Any State which has entered into an agreement with the Commissioner of Social Security under this section which provides that the Commissioner of Social Security will, on behalf of the State (or political subdivision), make the supplementary payments to individuals who are receiving benefits under this subchapter (or who would but for their income be eligible to receive such benefits), shall, in accordance with paragraph (5), pay to the Commissioner of Social Security an amount equal to the expenditures made by the Commissioner of Social Security as such supplementary payments, plus an administration fee assessed in accordance with paragraph (2) and any additional services fee charged in accordance with paragraph (3).

(2)(A) The Commissioner of Social Security shall assess each State an administration fee in an amount equal to—

(i) the number of supplementary payments made by the Commissioner of Social Security on behalf of the State under this section for any month in a fiscal year; multiplied by

(ii) the applicable rate for the fiscal year.

(B) As used in subparagraph (A), the term ''applicable rate'' means—

(i) for fiscal year 1994, $1.67;

(ii) for fiscal year 1995, $3.33;

(iii) for fiscal year 1996, $5.00;

(iv) for fiscal year 1997, $5.00;

(v) for fiscal year 1998, $6.20;

(vi) for fiscal year 1999, $7.60;

(vii) for fiscal year 2000, $7.80;

(viii) for fiscal year 2001, $8.10;

(ix) for fiscal year 2002, $8.50; and

(x) for fiscal year 2003 and each succeeding fiscal year—

(I) the applicable rate in the preceding fiscal year, increased by the percentage, if any, by which the Consumer Price Index for the month of June of the calendar year of the increase exceeds the Consumer Price Index for the month of June of the calendar year preceding the calendar year of the increase, and rounded to the nearest whole cent; or

(II) such different rate as the Commissioner determines is appropriate for the State.

(C) Upon making a determination under subparagraph (B)(x)(II), the Commissioner of Social Security shall promulgate the determination in regulations, which may take into account the complexity of administering the State's supplementary payment program.

(D) All fees assessed pursuant to this paragraph shall be transferred to the Commissioner of Social Security at the same time that amounts for such supplementary payments are required to be so transferred.

(3)(A) The Commissioner of Social Security may charge a State an additional services fee if, at the request of the State, the Commissioner of Social Security provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this section.

(B) The additional services fee shall be in an amount that the Commissioner of Social Security determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in subparagraph (A).

(4)(A) The first $5 of each administration fee assessed pursuant to paragraph (2), upon collection, shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(B) That portion of each administration fee in excess of $5, and 100 percent of each additional services fee charged pursuant to paragraph (3), upon collection for fiscal year 1998 and each subsequent fiscal year, shall be credited to a special fund established in the Treasury of the United States for State supplementary payment fees. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out this subchapter and related laws.

(5)(A)(i) Any State which has entered into an agreement with the Commissioner of Social Security under this section shall remit the payments and fees required under this subsection with respect to monthly benefits paid to individuals under this subchapter no later than—

(I) the business day preceding the date that the Commissioner pays such monthly benefits; or

(II) with respect to such monthly benefits paid for the month that is the last month of the State's fiscal year, the fifth business day following such date.

(ii) The Commissioner may charge States a penalty in an amount equal to 5 percent of the payment and the fees due if the remittance is received after the date required by clause (i).

(B) The Cash Management Improvement Act of 1990 shall not apply to any payments or fees required under this subsection that are paid by a State before the date required by subparagraph (A)(i).

(C) Notwithstanding subparagraph (A)(i), the Commissioner may make supplementary payments on behalf of a State with funds appropriated for payment of benefits under this subchapter, and subsequently to be reimbursed for such payments by the State at such times as the Commissioner and State may agree. Such authority may be exercised only if extraordinary circumstances affecting a State's ability to make payment when required by subparagraph (A)(i) are determined by the Commissioner to exist.

(e) State standards; establishment; annual public review; annual certification; payments to individuals

(1) Each State shall establish or designate one or more State or local authorities which shall establish, maintain, and insure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which (as determined by the State) a significant number of recipients of supplemental security income benefits is residing or is likely to reside. Such standards shall be appropriate to the needs of such recipients and the character of the facilities involved, and shall govern such matters as admission policies, safety, sanitation, and protection of civil rights.

(2) Each State shall annually make available for public review a summary of the standards established pursuant to paragraph (1), and shall make available to any interested individual a copy of such standards, along with the procedures available in the State to insure the enforcement of such standards and a list of any waivers of such standards and any violations of such standards which have come to the attention of the authority responsible for their enforcement.

(3) Each State shall certify annually to the Commissioner of Social Security that it is in compliance with the requirements of this subsection.

(4) Payments made under this subchapter with respect to an individual shall be reduced by an amount equal to the amount of any supplementary payment (as described in subsection (a) of this section) or other payment made by a

State (or political subdivision thereof) which is made for or on account of any medical or any other type of remedical care provided by an institution of the type described in paragraph (1) to such individual as a resident or an inpatient of such institution if such institution is not approved as meeting the standards described in such paragraph by the appropriate State or local authorities.

(Aug. 14, 1935, ch. 531, title XVI, § 1616, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1474; amended Pub. L. 93–233, § 14, Dec. 31, 1973, 87 Stat. 965; Pub. L. 94–566, title V, § 505(c), (d), Oct. 20, 1976, 90 Stat. 2687; Pub. L. 96–265, title II, § 201(b)(1), June 9, 1980, 94 Stat. 446; Pub. L. 97–35, title XXIII, § 2353(n), Aug. 13, 1981, 95 Stat. 873; Pub. L. 99–272, title XII, § 12201(b), Apr. 7, 1986, 100 Stat. 290; Pub. L. 103–66, title XIII, § 13731(a)(1), Aug. 10, 1993, 107 Stat. 660; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 105–33, title V, § 5102(a)(1), (b)(1)(A), Aug. 5, 1997, 111 Stat. 595, 596; Pub. L. 105–78, title V, § 516(a)(1), (b)(1)(A), Nov. 13, 1997, 111 Stat. 1517, 1518; Pub. L. 106–170, title IV, § 410(a)(1), Dec. 17, 1999, 113 Stat. 1916.)

REFERENCES IN TEXT

The Cash Management Improvement Act of 1990, referred to in subsec. (d)(5)(B), is Pub. L. 101–453, Oct. 24, 1990, 104 Stat. 1058, as amended. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 6501 of Title 31, Money and Finance, and Tables.

AMENDMENTS

1999—Subsec. (d)(1). Pub. L. 106–170, § 410(a)(1)(A), substituted ''in accordance with paragraph (5)'' for ''at such times and in such installments as may be agreed upon between the Commissioner of Social Security and such State''.

Subsec. (d)(5). Pub. L. 106–170, § 410(a)(1)(B), added par. (5).

1997—Subsec. (d)(2)(B)(iii) to (x). Pub. L. 105–33, § 5102(a)(1)(A), and Pub. L. 105–78, § 516(a)(1)(A), amended subpar. (B) identically, striking out ''and'' at end of cl. (iii), adding cls. (iv) to (x) and striking out former cl. (iv) which read as follows: ''for fiscal year 1997 and each succeeding fiscal year, $5.00, or such different rate as the Commissioner of Social Security determines is appropriate for the State.''

Subsec. (d)(2)(C). Pub. L. 105–33, § 5102(a)(1)(B), and Pub. L. 105–78, § 516(a)(1)(B), amended subpar. (C) identically, substituting ''subparagraph (B)(x)(II)'' for ''subparagraph (B)(iv)''.

Subsec. (d)(4). Pub. L. 105–78, § 516(b)(1)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

''(4)(A) The first $5 of each administration fee assessed pursuant to paragraph (2), upon collection, shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

''(B) That portion of each administration fee in excess of $5, and 100 percent of each additional services fee charged pursuant to paragraph (3), upon collection for fiscal year 1998 and each subsequent fiscal year, shall be credited to a special fund established in the Treasury of the United States for State supplementary payment fees. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out this subchapter and related laws. The amounts so credited shall not be scored as receipts under section 902 of title 2, and the amounts so credited shall be credited as a discretionary offset to discretionary spending to the extent that the amounts so credited are made available for expenditure in appropriations Acts.''

Pub. L. 105–33, § 5102(b)(1)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''All administration fees and additional services fees collected pursuant to this subsection shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.''

1994—Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner conducts'' for ''he conducts'' in subsec. (b)(2).

1993—Subsec. (d). Pub. L. 103–66 designated existing provisions as par. (1), inserted before period at end '', plus an administration fee assessed in accordance with paragraph (2) and any additional services fee charged in accordance with paragraph (3)'', and added pars. (2) to (4).

1986—Subsec. (b). Pub. L. 99–272 inserted provision at end relating to modification of the agreement at the option of the State to provide for supplementary payments on and after an effective date specified in the agreement.

1981—Subsec. (e)(2). Pub. L. 97–35 struck out '', as a part of the services program planning procedures established pursuant to section 1397c of this title'' after ''available for public review''.

1980—Subsec. (c)(3). Pub. L. 96–265 added par. (3).

1976—Subsec. (e). Pub. L. 94–566, § 505(d), added subsec. (e), effective Oct. 1, 1977. Pub. L. 94–566, § 505(c), repealed former subsec. (e) which provided for reduction of supplemental security income payments to individuals provided institutional medical or other remedial care, State financed under Federal grants for medical assistance, effective Oct. 1, 1976. See Effective Date of 1976 Amendment note below.

1973—Subsec. (e). Pub. L. 93–233 added subsec. (e).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, § 410(b), Dec. 17, 1999, 113 Stat. 1917, as amended by Pub. L. 106–554, § 1(a)(1) [title V, § 515], Dec. 21, 2000, 114 Stat. 2763, 2763A–72, provided that: ''The amendments made by subsection (a) [amending this section and provisions set out as a note under section 1382 of this title] shall apply to payments and fees arising under an agreement between a State and the Commissioner of Social Security under section 1616 of the Social Security Act (42 U.S.C. 1382e) or under section 212 of Public Law 93-66 (42 U.S.C. 1382 note) with respect to monthly benefits paid to individuals under title XVI of the Social Security Act [this subchapter] for months after September 2001 (October 2001 in the case of a State with a fiscal year that coincides with the Federal fiscal year), without regard to whether the agreement has been modified to reflect such amendments or the Commissioner has promulgated regulations implementing such amendments.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13731(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 1382 of this title] shall apply to supplementary payments made pursuant to section 1616(a) of the Social Security Act [subsec. (a) of this section] or section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title] for any calendar month beginning after September 30, 1993, and to services furnished after such date, regardless of whether regulations to implement such amendments have been promulgated by such date, or whether any agreement entered into under such section 1616(a) or such section 212(a) has been modified.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of

Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective Jan. 1, 1981, see section 201(d) of Pub. L. 96–265, as amended, set out as an Effective Date note under section 1382h of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 505(c) of Pub. L. 94–566 effective Oct. 1, 1976, see section 505(e) of Pub. L. 94–566, set out as a note under section 1382 of this title.

Section 505(d) of Pub. L. 94–566 provided that the amendment made by that section is effective Oct. 1, 1977.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS

Section 516(b)(2) of Pub. L. 105–78 provided that: ''From amounts credited pursuant to section 1616(d)(4)(B) of the Social Security Act [subsec. (d)(4)(B) of this section] and section 212(b)(3)(D)(ii) of Public Law 93–66 [set out as a note under section 1382 of this title] to the special fund established in the Treasury of the United States for State supplementary payment fees, there is authorized to be appropriated an amount not to exceed $35,000,000 for fiscal year 1998, and such sums as may be necessary for each fiscal year thereafter, for administrative expenses in carrying out the supplemental security income program under title XVI of the Social Security Act [this subchapter] and related laws.''

Section 5102(b)(2) of Pub. L. 105–33 provided that: ''From amounts credited pursuant to section 1616(d)(4)(B) of the Social Security Act [subsec. (d)(4)(B) of this section] and section 212(b)(3)(D)(ii) of Public Law 93–66 [set out as a note under section 1382 of this title] to the special fund established in the Treasury of the United States for State supplementary payment fees, there is authorized to be appropriated an amount not to exceed $35,000,000 for fiscal year 1998, and such sums as may be necessary for each fiscal year thereafter.''

PERIOD WITHIN WHICH CALIFORNIA MAY MAKE CASH PAYMENTS IN LIEU OF FOOD STAMPS TO RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME BENEFITS

Pub. L. 95–458, § 5(b), Oct. 14, 1978, 92 Stat. 1261, provided that: ''No additional cash payment under title XVI of the Social Security Act [this subchapter] may be made pursuant to the third sentence of section 8(d) of Public Law 93–233 (as added by subsection (a) of this section) [amending a note under this section] for any month beginning before October 1, 1978, or ending after September 30, 1979.''

ELIGIBILITY OF SUPPLEMENTAL SECURITY INCOME RECIPIENTS FOR FOOD STAMPS

Section 8(c) of Pub. L. 93–233, as amended by Pub. L. 95–113, title XIII, § 1302(a)(3), Sept. 29, 1977, 91 Stat. 979, provided that: ''For purposes of section 6(g) of the Food Stamp Act of 1977 [section 2015(g) of Title 7, Agriculture] and subsections (b)(3) [set out as a note under section 612c of Title 7] and (f) [set out below] of this section, the level of State supplementary payment under section 1616(a) [subsec. (a) of this section] shall be found by the Secretary to have been specifically increased so as to include the bonus value of food stamps (1) only if, prior to October 1, 1973, the State has entered into an agreement with the Secretary or taken other positive steps which demonstrate its intention to provide supplementary payments under section 1616(a) [subsec. (a) of this section] at a level which is at least equal to the maximum level which can be determined under section 401(b)(1) of the Social Security Amendments of 1972 [set out as a note under this section] and which is such that the limitation on State fiscal liability under section 401 [set out as a note under this section] does result in a reduction in the amount which would otherwise be payable to the Secretary by the State, and (2) only with respect to such months as the State may, at its option, elect.''

[Section 1302(b) of Pub. L. 95–113 provided that the amendment of section 8(c) of Pub. L. 93–233 by section 1302(a)(3) of Pub. L. 95–113 is effective Oct. 1, 1977.]

Section 8(d) of Pub. L. 93–233, as added by Pub. L. 94–379, § 1(a), Aug. 10, 1976, 90 Stat. 1111, and amended by Pub. L. 95–458, § 5(a), Oct. 14, 1978, 92 Stat. 1260; Pub. L. 97–18, § 2, June 30, 1981, 95 Stat. 102; Pub. L. 97–35, title XXIII, § 2342(a), Aug. 13, 1981, 95 Stat. 866, provided that: ''Upon the request of a State, the Secretary shall find, for purposes of the provisions specified in subsection (c) [set out above], that the level of such State's supplementary payments of the type described in section 1616(a) of the Social Security Act [subsec. (a) of this section] has been specifically increased for any month so as to include the bonus value of food stamps (and that such State meets the applicable requirements of subsection (c)(1)) if—

''(1) the Secretary has found (under this subsection or subsection (c), as in effect in December 1980) that such State's supplementary payments in December 1980 were increased to include the bonus value of food stamps; and

''(2) such State continues without interruption to meet the requirements of section 1618 of such Act [section 1382g of this title] for each month after the month referred to in paragraph (1) and up to and including the month for which the Secretary is making the determination.''

[Section 2 of Pub. L. 97–18 provided that the amendment of section 8(d) of Pub. L. 93–233, set out above, by Pub. L. 97–18 is effective for the period July 1, 1981, to Aug. 31, 1981.]

[Section 2342(b) of Pub. L. 97–35 provided that the amendment of section 8(d) of Pub. L. 93–233, set out above, by section 2342(a) of Pub. L. 97–35 is effective July 1, 1981.]

ADJUSTED PAYMENT LEVEL; PAYMENT LEVEL MODIFICATION

Section 8(e), formerly § 8(d) of Pub. L. 93–233, as renumbered § 8(e) by Pub. L. 94–379, § 1(a), Aug. 10, 1976, 90 Stat. 1111, provided that: ''Section 401(b)(1) of the Social Security Amendments of 1972 [set out below] is amended by striking out everything after the word 'exceed' and inserting in lieu thereof: 'a payment level modification (as defined in paragraph (2) of this subsection) with respect to such plans'.''

Section 8(f), formerly § 8(e), of Pub. L. 93–233, as amended by Pub. L. 93–335, § 1(b), July 8, 1974, 88 Stat. 291; Pub. L. 94–44, § 3(b), June 28, 1975, 89 Stat. 235; Pub. L. 94–365, § 2(2), July 14, 1976, 90 Stat. 990, and renumbered § 8(f) and amended by Pub. L. 94–379, § 1(a), (b), Aug. 10, 1976, 90 Stat. 1111; Pub. L. 95–59, § 3(2), June 30, 1977, 91 Stat. 255; Pub. L. 95–113, title XIII, § 1302(a)(4), Sept. 29, 1977, 91 Stat. 979, provided that: ''The amendment made by subsection (e) [set out above] shall not be effective in any State which provides supplementary payments of the type described in section 1616(a) of the Social Security Act [subsec. (a) of this section] the level of which has been found by the Secretary to have been specifically increased so as to include the bonus value of food stamps.''

[Amendment of section 8(e) [now § 8(f)] of Pub. L. 93–233 by section 1(b) of Pub. L. 93–335, effective July 1, 1974, see section 1(c) of Pub. L. 93–335, set out as a note below.]

[Section 1(c) of Pub. L. 93–335, July 8, 1974, 88 Stat. 291, provided that amendments by section 1(a), (b) of Pub. L. 93–335 to section 8(a)(1), (2), (b)(1)–(3), and (e) of Pub. L. 93–233, Dec. 31, 1973, 87 Stat. 956, set out as notes under this section and sections 612c, 1431 and 2012 of Title 7, Agriculture, is effective as of July 1, 1974.]

[Section 3 of Pub. L. 95–59 provided that the amendment of section 8(f) of Pub. L. 93–233, set out above, by section 3(2) of Pub. L. 95–59 is effective July 1, 1977.]

[Section 1302(b) of Pub. L. 95–113 provided that the amendment of section 8(f) of Pub. L. 93–233, set out above, by section 1302(a)(4) of Pub. L. 95–113 is effective Oct. 1, 1977.]

COMMODITY DISTRIBUTION PROGRAM: INDIVIDUAL RECEIVING SUPPLEMENTAL SECURITY INCOME BENEFITS AS MEMBER OF HOUSEHOLD FOR ANY PURPOSE OF PROGRAM

Individual receiving supplemental security income benefits or payments as part of benefits or payments described in subsec. (a) of this section as member of a household for any purpose of the food distribution program, see section 4(c) of Pub. L. 93–86, set out as a note under section 612c of Title 7, Agriculture.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

LIMITATION ON FISCAL LIABILITY OF STATES FOR PAYMENT TO SECRETARY OF SUPPLEMENTARY PAYMENTS MADE BY SECRETARY PURSUANT TO AGREEMENT

Section 401 of Pub. L. 92–603, as amended by Pub. L. 93–233, § 18(h), Dec. 31, 1973, 87 Stat. 969; Pub. L. 94–566, title V, § 504(a), Oct. 20, 1976, 90 Stat. 2686; Pub. L. 94–585 § 2(b), Oct. 21, 1976, 90 Stat. 2902; Pub. L. 97–248, title I, § 184(a), Sept. 3, 1982, 96 Stat. 406, provided that:

''(a)(1) The amount payable to the Secretary by a State for any fiscal year, other than fiscal year 1974, pursuant to its agreement or agreements under section 1616 of the Social Security Act [this section] shall not exceed the non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of the State approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter] (as defined in subsection (c) of this section), and the amount payable for fiscal year 1974 pursuant to such agreement or agreements shall not exceed one-half of the non-Federal share of such expenditures.

''(2) Paragraph (1) of this subsection shall only apply with respect to that portion of the supplementary payments made by the Secretary on behalf of the State under such agreements in any fiscal year which does not exceed in the case of any individual the difference between—

''(A) the adjusted payment level under the appropriate approved plan of such State as in effect for January 1972 (as defined in subsection (b) of this section), and

''(B) the benefits under title XVI of the Social Security Act [this subchapter] (subject to the second sentence of this paragraph), plus income not excluded under section 1612(b) of such Act [section 1382a(b) of this title] in determining such benefits, paid to such individual in such fiscal year,

and shall not apply with respect to supplementary payments to any individual who (i) is not required by section 1616 of such Act [this section] to be included in any such agreement administered by the Secretary and (ii) would have been ineligible (for reasons other than income) for payments under the appropriate approved State plan as in effect for January 1972. In determining the difference between the level specified in subparagraph (A) and the benefits and income described in subparagraph (B) there shall be excluded any part of any such benefit which results from (and would not be payable but for) any cost-of-living increase in such benefits under section 1617 of such Act [section 1382f of this title] (or any general increase enacted by law in the dollar amounts referred to in such section) becoming effective after June 30, 1977.

''(b)(1) For purposes of subsection (a), the term 'adjusted payment level under the appropriate approved plan of a State as in effect for January 1972' means the amount of the money payment which an individual with no other income would have received under the plan of such State approved under title I, X, XIV, or XVI of the Social Security Act [subchapters I, X, XIV, or XVI of this chapter], as may be appropriate, and in effect for January 1972; except that the State may, at its option, increase such payment level with respect to any such plan by an amount which does not exceed the sum of—

''(A) a payment level modification (as defined in paragraph (2) of this subsection) with respect to such plan, and

''(B) the bonus value of food stamps in such State for January 1972 (as defined in paragraph (3) of this subsection).

''(2) For purposes of paragraph (1), the term 'payment level modification' with respect to any State plan means that amount by which a State which for January 1972 made money payments under such plan to individuals with no other income which were less than 100 per centum of its standard of need could have increased such money payments without increasing (if it reduced its standard of need under such plan so that such increased money payments equaled 100 per centum of such standard of need) the non-Federal share of expenditures as aid or assistance for quarters in calendar year 1972 under the plans of such State approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter].

''(3) For purposes of paragraph (1), the term 'bonus value of food stamps in a State for January 1972' (with respect to an individual) means—

''(A) the face value of the coupon allotment which would have been provided to such an individual under the Food Stamp Act of 1964 [section 2011 et seq. of Title 7, Agriculture] for January 1972, reduced by

''(B) the charge which such an individual would have paid for such coupon allotment,

if the income of such individual, for purposes of determining the charge it would have paid for its coupon allotment, had been equal to the adjusted payment level under the State plan (including any payment level modification with respect to the plan adopted pursuant to paragraph (2) (but not including any amount under this paragraph)). The total face value of food stamps and the cost thereof in January 1972 shall be determined in accordance with rules prescribed by the Secretary of Agriculture in effect in such month.

''(c) For purposes of this section, the term 'non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of a State approved under titles I, X, XIV, and XVI of the Social Security Act' [subchapters I, X, XIV, and XVI of this chapter] means the difference between—

''(1) the total expenditures in such quarters under such plans for aid or assistance (excluding expenditures authorized under section 1119 of such Act [section 1319 of this title] for repairing the home of an individual who was receiving aid or assistance under one of such plans (as such section was in effect prior to the enactment of this Act)), and

''(2) the total of the amounts determined under sections 3, 1003, 1403, and 1603 of the Social Security Act [sections 303, 1203, 1353, and 1383 note of this title], under section 1118 of such Act [section 1318 of this title], and under section 9 of the Act of April 19, 1950 [section 639 of Title 25, Indians], for such State with respect to such expenditures in such quarters.

''(d) In addition to the amount which a State must pay to the Secretary for the fiscal year 1983 or the fis-

cal year 1984, as determined under subsection (a), the State shall also pay, for the fiscal year 1983, 60 percent of the further amount that would be payable but for the limit specified in subsection (a), and, for the fiscal year 1984, 80 percent of such further amount. For each fiscal year thereafter, the limit prescribed in subsection (a) shall be inapplicable and a State shall pay to the Secretary the full amount of any supplementary payments he makes on behalf of such State.''

[Amendment of section 401(a)(2) of Pub. L. 92–603, set out above, by Pub. L. 94–585 inserting parenthetical text in subpar. (B) and enacting last sentence, such amendments being identical to amendments by Pub. L. 94–566 less the words ''and before July 1, 1979'' following ''June 30, 1977'', effective with respect to benefits payable for months after June 1977, see section 2(c) of Pub. L. 94–585, set out as a note under section 1382g of this title.]

[Amendment of section 401(a)(2) of Pub. L. 92–603, set out above, by Pub. L. 94–566 inserting parenthetical text in subpar. (B) and enacting last sentence effective under provisions of Pub. L. 94–566, title V, § 504(b), Oct. 20, 1976, 90 Stat. 2686, with respect to benefits payable for months after June 1977.]

[Amendment of section 401 of Pub. L. 92–603, set out above, by section 18(h) of Pub. L. 93–233 effective Jan. 1, 1974, see section 18(z–3)(1) of Pub. L. 93–233.]

[Section 184(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending section 401 of Pub. L. 92–603, set out above] shall become effective on the date of the enactment of this Act [Sept. 3, 1982].'']

TRANSITIONAL ADMINISTRATION OF PROGRAMS BY STATE PURSUANT TO AGREEMENT BETWEEN STATE AND SECRETARY

Section 402 of Pub. L. 92–603, as amended by Pub. L. 93–233, § 18(i), Dec. 31, 1973, 87 Stat. 970, provided that: ''In order for a State to be eligible for any payments pursuant to title IV, V, XVI, or XIX of the Social Security Act [subchapter IV, V, XVI, or XIX of this chapter] with respect to expenditures for the third and fourth quarters in the fiscal year ending June 30, 1974, and any quarter in the fiscal year ending June 30, 1975, and for the purpose of providing an orderly transition from State to Federal administration of the Supplemental Security Income Program, such State shall enter into an agreement with the Secretary of Health, Education, and Welfare under which the State agencies responsible for administering or for supervising the administration of the plans approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter] will, on behalf of the Secretary, administer all or such part or parts of the program established by section 301 of this Act [enacting this subchapter], during such portion of the third and fourth quarters of the fiscal year ending June 30, 1974, and any quarter of the fiscal year ending June 30, 1975, as may be provided in such agreement.''

ELECTION OF PAYMENTS UNDER COMBINED STATE PLAN RATHER THAN SEPARATE PLANS

Pub. L. 87–543, § 141(b), July 25, 1962, 76 Stat. 205, provided that: ''No payment may be made to a State under title I, X, or XIV of the Social Security Act [subchapter I, X, or XIV of this chapter] for any period for which such State receives any payments under title XVI of such Act or any period thereafter.''

OVERPAYMENT OR UNDERPAYMENT ADJUSTMENTS

Pub. L. 87–543, § 141(f), July 25, 1962, 76 Stat. 205, provided that: ''In the case of any State which has a State plan approved under title XVI of the Social Security Act [this subchapter], any overpayment or underpayment which the Secretary determines was made to such State under section 3, 1003, or 1403 of such Act [section 303, 1203, or 1353 of this title] with respect to a period before the approval of the plan under such title XVI, and with respect to which adjustment has not been already made under subsection (b) of such section 3, 1003, or 1403 [section 303(b), 1203, or 1353 of this title], shall, for purposes of section 1603(b) of such Act [section 1383(b) of this title prior to its omission on Oct. 30, 1972], be considered an overpayment or underpayment (as the case may be) made under section 1603 of such Act [section 1383 of this title as it existed prior to Oct. 30, 1972].''

§ 1382f. Cost-of-living adjustments in benefits

(a) Increase of dollar amounts

Whenever benefit amounts under subchapter II of this chapter are increased by any percentage effective with any month as a result of a determination made under section 415(i) of this title—

(1) each of the dollar amounts in effect for such month under subsections (a)(1)(A), (a)(2)(A), (b)(1), and (b)(2) of section 1382 of this title, and subsection (a)(1)(A) of section 211 of Public Law 93–66, as specified in such subsections or as previously increased under this section, shall be increased by the amount (if any) by which—

(A) the amount which would have been in effect for such month under such subsection but for the rounding of such amount pursuant to paragraph (2), exceeds

(B) the amount in effect for such month under such subsection; and

(2) the amount obtained under paragraph (1) with respect to each subsection shall be further increased by the same percentage by which benefit amounts under subchapter II of this chapter are increased for such month, or, if greater (in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage), the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, (and rounded, when not a multiple of $12, to the next lower multiple of $12), effective with respect to benefits for months after such month.

(b) Publication in Federal Register of new dollar amounts

The new dollar amounts to be in effect under section 1382 of this title and under section 211 of Public Law 93–66 by reason of subsection (a) of this section shall be published in the Federal Register together with, and at the same time as, the material required by section 415(i)(2)(D) of this title to be published therein by reason of the determination involved.

(c) Additional increases

Effective July 1, 1983—

(1) each of the dollar amounts in effect under subsections (a)(1)(A) and (b)(1) of section 1382 of this title, as previously increased under this section, shall be increased by $240 (and the dollar amount in effect under subsection (a)(1)(A) of section 211 of Public Law 93-66, as previously so increased, shall be increased by $120); and

(2) each of the dollar amounts in effect under subsections (a)(2)(A) and (b)(2) of section 1382

of this title, as previously increased under this section, shall be increased by $360.

(Aug. 14, 1935, ch. 531, title XVI, § 1617, as added Pub. L. 93–368, § 6(b), Aug. 7, 1974, 88 Stat. 421; amended Pub. L. 97–248, title I, § 182(a), Sept. 3, 1982, 96 Stat. 404; Pub. L. 98–21, title IV, § 401, Apr. 20, 1983, 97 Stat. 138.)

REFERENCES IN TEXT

Section 211 of Public Law 93–66, referred to in subsecs. (a)(1), (b), and (c)(1), is section 211 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 154, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1983—Subsec. (a)(2). Pub. L. 98–21, § 401(b), inserted provision that the amount obtained under par. (1) with respect to each subsection shall be further increased by the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, if greater, in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage.

Subsec. (b). Pub. L. 98–21, § 401(a)(2), substituted ''subsection (a) of this subsection'' for ''this section''.

Subsec. (c). Pub. L. 98–21, § 401(a)(1), added subsec. (c).

1982—Pub. L. 97–248 redesignated existing provisions as subsec. (a), revised method of computation into pars. (1) and (2) and among other changes increased base for rounding-off from a multiple of $1.20 to a multiple of $12.00, and struck out provisions relating to publication of increased dollar amounts in the Federal Register, and added subsec. (b).

EFFECTIVE DATE OF 1982 AMENDMENT

Section 182(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

COST-OF-LIVING INCREASES; COST-OF-LIVING COMPUTATION QUARTER DETERMINATIONS

Payment of increased benefits under program covered in subchapter II of this chapter, see section 1 of Pub. L. 98–604, set out as a note under section 415 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

§ 1382g. Payments to State for operation of supplementation program

(a) Eligibility; agreement with Commissioner

In order for any State which makes supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), on or after June 30, 1977, to be eligible for payments pursuant to subchapter XIX of this chapter with respect to expenditures for any calendar quarter which begins—

(1) after June 30, 1977, or, if later,

(2) after the calendar quarter in which it first makes such supplementary payments,

such State must have in effect an agreement with the Commissioner of Social Security whereby the State will—

(3) continue to make such supplementary payments, and

(4) maintain such supplementary payments at levels which are not lower than the levels of such payments in effect in December 1976, or, if no such payments were made in that month, the levels for the first subsequent month in which such payments were made.

(b) Levels of supplementary payments

(1) The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for a particular month or months if the State's expenditures for such payments in the twelve-month period (within which such month or months fall) beginning on the effective date of any increase in the level of supplemental security income benefits pursuant to section 1382f of this title are not less than its expenditures for such payments in the preceding twelve-month period.

(2) For purposes of determining under paragraph (1) whether a State's expenditures for supplementary payments in the 12-month period beginning on the effective date of any increase in the level of supplemental security income benefits are not less than the State's expenditures for such payments in the preceding 12-month period, the Commissioner of Social Security, in computing the State's expenditures, shall disregard, pursuant to a 1-time election of the State, all expenditures by the State for retroactive supplementary payments that are required to be made in connection with the retroactive supplemental security income benefits referred to in section 5041 of the Omnibus Budget Reconciliation Act of 1990.

(c) Election to apply subsection (a)(4)

Any State which satisfies the requirements of this section solely by reason of subsection (b) of this section for a particular month or months in any 12-month period (described in such subsection) ending on or after June 30, 1982, may elect, with respect to any month in any subsequent 12-month period (so described), to apply subsection (a)(4) of this section as though the reference to December 1976 in such subsection were a reference to the month of December which occurred in the 12-month period immediately preceding such subsequent period.

(d) Determinations respecting any portion of period July 1, 1980, through June 30, 1981

The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for any portion of the period July 1, 1980, through June 30, 1981, if the State's expenditures for such payments in that twelve-month period were not less than its expenditures for such payments for the period July 1, 1976, through June 30, 1977 (or, if the State made no supplementary payments in the period July 1, 1976, through June 30, 1977, the expenditures for the first twelve-month period extending from July 1 through June 30 in which the State made such payments).

(e) Meeting subsection (a)(4) requirements for any month after March 1983

(1) For any particular month after March 1983, a State which is not treated as meeting the requirements imposed by paragraph (4) of subsection (a) of this section by reason of subsection (b) of this section shall be treated as meeting such requirements if and only if—

(A) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66, for that particular month,

is not less than—

(B) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66, for March 1983, increased by the amount of all cost-of-living adjustments under section 1382f of this title (and any other benefit increases under this subchapter) which have occurred after March 1983 and before that particular month.

(2) In determining the amount of any increase in the combined level involved under paragraph (1)(B) of this subsection, any portion of such amount which would otherwise be attributable to the increase under section 1382f(c) of this title shall be deemed instead to be equal to the amount of the cost-of-living adjustment which would have occurred in July 1983 (without regard to the 3-percent limitation contained in section 415(i)(1)(B) of this title) if section 111 of the Social Security Amendments of 1983 had not been enacted.

(f) Passthrough relating to optional State supplementation

The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by subsection (a) of this section with respect to the levels of its supplementary payments for the period January 1, 1984, through December 31, 1985, if in the period January 1, 1986, through December 31, 1986, its supplementary payment levels (other than to recipients of benefits determined under section 1382(e)(1)(B) of this title) are not less than those in effect in December 1976, increased by a percentage equal to the percentage by which payments under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66 have been increased as a result of all adjustments under section 1382f(a) and (c) of this title which have occurred after December 1976 and before February 1986.

(g) Mandatory pass-through of increased personal needs allowance

In order for any State which makes supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66) to recipients of benefits determined under section 1382(e)(1)(B) of this title, on or after October 1, 1987, to be eligible for payments pursuant to subchapter XIX of this chapter with respect to any calendar quarter which begins—

(1) after October 1, 1987, or, if later

(2) after the calendar quarter in which it first makes such supplementary payments to recipients of benefits so determined,

such State must have in effect an agreement with the Commissioner of Social Security whereby the State will—

(3) continue to make such supplementary payments to recipients of benefits so determined, and

(4) maintain such supplementary payments to recipients of benefits so determined at levels which assure (with respect to any particular month beginning with July 1988) that—

(A) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1382(e)(1)(B) of this title for that particular month,

is not less than—

(B) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1382(e)(1)(B) of this title for October 1987 (or, if no such supplementary payments were made for that month, the combined level for the first subsequent month for which such payments were made), increased—

(i) in a case to which clause (i) of such section 1382(e)(1)(B) of this title applies or (with respect to the individual or spouse who is in the hospital, home, or facility involved) to which clause (ii) of such section applies, by $5, and

(ii) in a case to which clause (iii) of such section 1382(e)(1)(B) of this title applies, by $10.

(Aug. 14, 1935, ch. 531, title XVI, §1618, as added Pub. L. 94–585, §2(a), Oct. 21, 1976, 90 Stat. 2901; amended Pub. L. 97–248, title I, §186, Sept. 3, 1982, 96 Stat. 407; Pub. L. 97–377, title I, §147, Dec. 21, 1982, 96 Stat. 1917; Pub. L. 98–21, title IV, §402, Apr. 20, 1983, 97 Stat. 139; Pub. L. 98–369, div. B, title VI, §2663(g)(9), July 18, 1984, 98 Stat. 1169; Pub. L. 99–272, title XII, §12201(a), Apr. 7, 1986, 100 Stat. 289; Pub. L. 100–203, title IX, §9119(b), Dec. 22, 1987, 101 Stat. 1330–309; Pub. L. 103–296, title I, §107(a)(4), title II, §209(a), Aug. 15, 1994, 108 Stat. 1478, 1517.)

REFERENCES IN TEXT

Sections 211(a)(1)(A) and 212(a) of Public Law 93–66, referred to in subsecs. (a), (e)(1), (f), and (g), are sections 211(a)(1)(A) and 212(a) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 154, 155, as amended, which are set out as notes under section 1382 of this title.

Section 5041 of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (b)(2), is section 5041 of Pub. L. 101–508, title V, Nov. 5, 1990, 104 Stat. 1388–227, which is not classified to the Code.

Section 111 of the Social Security Amendments of 1983, referred to in subsec. (e)(2), is section 111 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 72, which amended sections 402, 403, 415, and 430 of this title and enacted provisions set out as notes under sections 402 and 415 of this title and section 5123 of Title 38, Veterans' Benefits.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (b). Pub. L. 103–296, § 209(a), designated existing provisions as par. (1) and added par. (2).

Pub. L. 103–296, § 107(a)(4), in subsec. (b) as amended by Pub. L. 103–296, § 209(a), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsecs. (d), (f), (g). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1987—Subsec. (g). Pub. L. 100–203 added subsec. (g).

1986—Subsec. (f). Pub. L. 99–272 added subsec. (f).

1984—Subsec. (d). Pub. L. 98–369, § 2663(g)(9)(A), realigned margin of subsec. (d).

Pub. L. 98–369, § 2663(g)(9)(B), (C), struck out the comma after ''levels of its'', and inserted a comma after ''1980'' and after ''1976'', wherever appearing.

1983—Subsecs. (c), (d). Pub. L. 98–21 redesignated subsec. (c), added by Pub. L. 97–377, as (d).

Subsec. (e). Pub. L. 98–21 added subsec. (e).

1982—Subsec. (c). Pub. L. 97–377 added subsec. (c) relating to conditions under which the Secretary shall not find that a State has failed to meet the requirements of subsec. (a)(4) of this section concerning levels of supplementary payments.

Pub. L. 97–248 added subsec. (c) relating to conditions under which a State may elect to apply subsec. (a)(4) of this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 209(b) of Pub. L. 103–296 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to increases in the level of supplemental security income benefits under title XVI of the Social Security Act [this subchapter] whether occurring before, on, or after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective July 1, 1988, see section 9119(c) of Pub. L. 100–203, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 2(c) of Pub. L. 94–585 provided that: ''The provisions of this section [enacting this section and provisions set out as a note under section 1382e of this title] shall be effective with respect to benefits payable for months after June 1977.''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

§ 1382h. Benefits for individuals who perform substantial gainful activity despite severe medical impairment

(a) Eligible individuals

(1) Except as provided in section 1383(j) of this title, any individual who was determined to be an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382 of this title (or a federally administered State supplementary payment) for a month and whose earnings in a subsequent month exceed the amount designated by the Commissioner of Social Security ordinarily to represent substantial gainful activity shall qualify for a monthly benefit under this subsection for such subsequent month (which shall be in lieu of any benefit under section 1382 of this title) equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered to be receiving supplemental security income benefits under this subchapter, for so long as—

(A) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability; and

(B) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382 of this title and such individual meets all other non-disability-related requirements for eligibility for benefits under this subchapter.

(2) The Commissioner of Social Security shall make a determination under paragraph (1)(A) with respect to an individual not later than 12 months after the first month for which the individual qualifies for a benefit under this subsection.

(b) Blind or disabled individuals receiving supplemental security income benefits

(1) Except as provided in section 1383(j) of this title, for purposes of subchapter XIX of this chapter, any individual who was determined to be a blind or disabled individual eligible to receive a benefit under section 1382 of this title or any federally administered State supplementary payment for a month and who in a subsequent month is ineligible for benefits under this subchapter (and for any federally administered State supplementary payments) because of his or her income shall, nevertheless, be considered to be receiving supplemental security income benefits for such subsequent month provided that the Commissioner of Social Security determines under regulations that—

(A) such individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, meets all non-disability-related requirements for eligibility for benefits under this subchapter;

(B) the income of such individual would not, except for his earnings and increases pursuant to section 415(i) of this title in the level of monthly insurance benefits to which the individual is entitled under subchapter II of this chapter that occur while such individual is considered to be receiving supplemental security income benefits by reason of this subsection, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments);

(C) the termination of eligibility for benefits under subchapter XIX of this chapter would seriously inhibit his ability to continue his employment; and

(D) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under this subchapter (including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance), which would be available to him in the absence of such earnings.

(2)(A) Determinations made under paragraph (1)(D) shall be based on information and data updated no less frequently than annually.

(B) In determining an individual's earnings for purposes of paragraph (1)(D), there shall be excluded from such earnings an amount equal to the sum of any amounts which are or would be excluded under clauses (ii) and (iv) of section 1382a(b)(4)(B) of this title (or under clauses (ii) and (iii) of section 1382a(b)(4)(A) of this title) in determining his or her income.

(3) In the case of a State that exercises the option under section 1396a(f) of this title, any individual who—

(A)(i) qualifies for a benefit under subsection (a) of this section, or

(ii) meets the requirements of paragraph (1); and

(B) was eligible for medical assistance under the State plan approved under subchapter XIX of this chapter in the month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such requirements,

shall remain eligible for medical assistance under such plan for so long as the individual qualifies for a benefit under such subsection or meets such requirements.

(c) Continuing disability or blindness reviews; limitation

Subsection (a)(2) of this section and section 1383(j)(2)(A) of this title shall not be construed, singly or jointly, to require more than 1 determination during any 12-month period with respect to the continuing disability or blindness of an individual.

(d) Information and training programs

The Commissioner of Social Security and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Commissioner of Social Security shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this subchapter and shall conduct such programs for the staffs of the district offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.

(Aug. 14, 1935, ch. 531, title XVI, § 1619, as added Pub. L. 96–265, title II, § 201(a), June 9, 1980, 94 Stat. 445; amended Pub. L. 97–35, title XXIII, § 2353(*o*), Aug. 13, 1981, 95 Stat. 873; Pub. L. 98–460, § 14(b), Oct. 9, 1984, 98 Stat. 1808; Pub. L. 99–643, §§ 4(a), (b), (c)(2), 7(a), Nov. 10, 1986, 100 Stat. 3575, 3577, 3579; Pub. L. 101–508, title V, §§ 5032(a), 5039(a), Nov. 5, 1990, 104 Stat. 1388–224, 1388–226; Pub. L. 103–296, title I, § 107(a)(1), (4), title II, § 205(a), Aug. 15, 1994, 108 Stat. 1477, 1478, 1509.)

AMENDMENTS

1994—Subsecs. (a)(1), (2), (b)(1). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (b)(1)(B). Pub. L. 103–296, § 205(a), inserted ''and increases pursuant to section 415(i) of this title in the level of monthly insurance benefits to which the individual is entitled under subchapter II of this chapter that occur while such individual is considered to be receiving supplemental security income benefits by reason of this subsection'' after ''earnings''.

Subsec. (d). Pub. L. 103–296, § 107(a)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

1990—Subsec. (b)(1). Pub. L. 101–508, § 5032(a), struck out ''under age 65'' after ''any individual'' in introductory provisions.

Subsecs. (c), (d). Pub. L. 101–508, § 5039(a), added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Subsec. (a). Pub. L. 99–643, § 4(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Any individual who is an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382(b) of this title or under this section for the month preceding the month for which eligibility for benefits under this section is now being determined, and who would otherwise be denied benefits by reason of section 1382(e)(4) of this title or ceases to be an eligible individual (or eligible spouse) because his earnings have demonstrated a capacity to engage in substantial gainful activity, shall nevertheless qualify for a monthly benefit equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered a disabled individual receiving supplemental security income benefits under this subchapter, for so long as the Secretary determines that—

''(1) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability, and continues to meet all non-disability-related requirements for eligibility for benefits under this subchapter; and

''(2) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments).''

Subsec. (a)(1). Pub. L. 99–643, § 4(c)(2)(A), substituted ''Except as provided in section 1383(j) of this section, any individual'' for ''Any individual''.

Subsec. (b). Pub. L. 99–643, § 4(b)(1)–(4), substituted ''meets'' for ''continues to meet'' in former par. (1) and ''(including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance),'' for ''and subchapter XIX of this chapter'' in former par. (4), redesignated former pars. (1) to (4) as subpars. (A) to (D), re-

spectively, of par. (1), and substituted introductory provisions of such par. (1) for former undesignated introductory provisions which read as follows: ''For purposes of subchapter XIX of this chapter, any individual under age 65 who, for the month preceding the first month in the period to which this subsection applies, received—

''(i) a payment of supplemental security income benefits under section 1382(b) of this title on the basis of blindness or disability,

''(ii) a supplementary payment under section 1382e of this title or under section 212 of Public Law 93–66 on such basis,

''(iii) a payment of monthly benefits under subsection (a) of this section, or

''(iv) a supplementary payment under section 1382e(c)(3) of this title,

shall be considered to be a blind or disabled individual receiving supplemental security income benefits for so long as the Secretary determines under regulations that—''.

Subsec. (b)(1). Pub. L. 99–643, § 4(c)(2)(B), substituted ''Except as provided in section 1383(j) of this title, for purposes of'' for ''For purposes of''.

Subsec. (b)(2). Pub. L. 99–643, § 4(b)(5), added par. (2).

Subsec. (b)(3). Pub. L. 99–643, § 7(a), added par. (3).

1984—Subsec. (c). Pub. L. 98–460 added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35, § 2353(*o*)(1), substituted in provision preceding par. (1) ''subchapter XIX of this chapter'' for ''subchapters XIX and XX of this chapter''.

Subsec. (b). Pub. L. 97–35, § 2353(*o*), substituted in provision preceding cl. (i) and in par. (4) ''subchapter XIX of this chapter'' for ''subchapters XIX and XX of this chapter'' and in par. (3) ''subchapter XIX of this chapter'' for ''subchapter XIX or XX of this chapter''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(1), (4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 205(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to eligibility determinations for months after December 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5032(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Section 5039(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Section 201(d) of Pub. L. 96–265, as amended by Pub. L. 98–460, § 14(a), Oct. 9, 1984, 98 Stat. 1808; Pub. L. 99–643, § 2, Nov. 10, 1986, 100 Stat. 3574, provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] shall become effective on January 1, 1981.''

[Section 10(a) of Pub. L. 99–643 provided that: ''The amendment made by section 2 [amending section 201(d) of Pub. L. 96–265, set out above] shall become effective on the date of the enactment of this Act [Nov. 10, 1986].'']

SEPARATE ACCOUNTS WITH RESPECT TO BENEFITS PAYABLE; EVALUATION OF PROGRAM

Section 201(e) of Pub. L. 96–265 provided that: ''The Secretary shall provide for separate accounts with respect to the benefits payable by reason of the amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] so as to provide for evaluation of the effects of such amendments on the programs established by titles II, XVI, XIX, and XX of the Social Security Act [subchapters II, XVI, XIX, and XX of this chapter].''

§ 1382i. Medical and social services for certain handicapped persons

(a) Authorization of appropriations for pilot program

There are authorized to be appropriated such sums as may be necessary to establish and carry out a 3-year Federal-State pilot program to provide medical and social services for certain handicapped individuals in accordance with this section.

(b) State allotments

(1) The total sum of $18,000,000 shall be allotted to the States for such program by the Commissioner of Social Security, during the period beginning September 1, 1981, and ending September 30, 1984, as follows:

(A) The total sum of $6,000,000 shall be allotted to the States for the fiscal year ending September 30, 1982 (which for purposes of this section shall include the month of September 1981).

(B) The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotment made under subparagraph (A), shall be allotted to the States for the fiscal year ending September 30, 1983.

(C) The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotments made under subparagraphs (A) and (B), shall be allotted to the States for the fiscal year ending September 30, 1984.

(2) The allotment to each State from the total sum allotted under paragraph (1) for any fiscal year shall bear the same ratio to such total sum as the number of individuals in such State who are over age 17 and under age 65 and are receiving supplemental security income benefits as disabled individuals in such year (as determined by the Commissioner of Social Security on the basis of the most recent data available) bears to the total number of such individuals in all the States. For purposes of the preceding sentence, the term ''supplemental security income benefits'' includes payments made pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93–66.

(3) At the beginning of each fiscal year in which the pilot program under this section is in effect, each State that does not intend to use the allotment to which it is entitled for such year (or any allotment which was made to it for a prior fiscal year), or that does not intend to

use the full amount of any such allotment, shall certify to the Commissioner of Social Security the amount of such allotment which it does not intend to use, and the State's allotment for the fiscal year (or years) involved shall thereupon be reduced by the amount so certified.

(4) The portion of the total amount available for allotment for any particular fiscal year under paragraph (1) which is not allotted to States for that year by reason of paragraph (3) (plus the amount of any reductions made at the beginning of such year in the allotments of States for prior fiscal years under paragraph (3)) shall be reallocated in such manner as the Commissioner of Social Security may determine to be appropriate to States which need, and will use, additional assistance in providing services to severely handicapped individuals in that particular year under their approved plans. Any amount reallocated to a State under this paragraph for use in a particular fiscal year shall be treated for purposes of this section as increasing such State's allotment for that year by an equivalent amount.

(c) Requisite features of State plans

In order to participate in the pilot program and be eligible to receive payments for any period under subsection (d) of this section, a State (during such period) must have a plan, approved by the Commissioner of Social Security as meeting the requirements of this section, which provides medical and social services for severely handicapped individuals whose earnings are above the level which ordinarily demonstrates an ability to engage in substantial gainful activity and who are not receiving benefits under section 1382 or 1382h of this title or assistance under a State plan approved under section 1396a of this title, and which—

(1) declares the intent of the State to participate in the pilot program;

(2) designates an appropriate State agency to administer or supervise the administration of the program in the State;

(3) describes the criteria to be applied by the State in determining the eligibility of any individual for assistance under the plan and in any event requires a determination by the State agency to the effect that (A) such individual's ability to continue his employment would be significantly inhibited without such assistance and (B) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the cash and other benefits that would be available to him under this subchapter and subchapters XIX and XX of this chapter in the absence of those earnings;

(4) describes the process by which the eligibility of individuals for such assistance is to be determined (and such process may not involve the performance of functions by any State agency or entity which is engaged in making determinations of disability for purposes of disability insurance or supplemental security income benefits except when the use of a different agency or entity to perform those functions would not be feasible);

(5) describes the medical and social services to be provided under the plan;

(6) describes the manner in which the medical and social services involved are to be provided and, if they are not to be provided through the State's medical assistance and social services programs under subchapters XIX and XX of this chapter (with the Federal payments being made under subsection (d) of this section rather than under those subchapters), specifies the particular mechanisms and procedures to be used in providing such services; and

(7) contains such other provisions as the Commissioner of Social Security may find to be necessary or appropriate to meet the requirements of this section or otherwise carry out its purpose.

(d) Payments to States; computation of payments

(1) From its allotment under subsection (b) of this section for any fiscal year (and any amounts remaining available from allotments made to it for prior fiscal years), the Commissioner of Social Security shall from time to time pay to each State which has a plan approved under subsection (c) of this section an amount equal to 75 per centum of the total sum expended under such plan (including the cost of administration of such plan) in providing medical and social services to severely handicapped individuals who are eligible for such services under the plan.

(2) The method of computing and making payments under this section shall be as follows:

(A) The Commissioner of Social Security shall, prior to each period for which a payment is to be made to a State, estimate the amount to be paid to the State for such period under the provisions of this section.

(B) From the allotment available therefor, the Commissioner of Social Security shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this subsection) by which the Commissioner finds that the Commissioner's estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such period under this section.

(e) Rules and regulations

Within nine months after June 9, 1980, the Commissioner of Social Security shall prescribe and publish such regulations as may be necessary or appropriate to carry out the pilot program and otherwise implement this section.

(f) Reports

Each State participating in the pilot program under this section shall from time to time report to the Commissioner of Social Security on the operation and results of such program in that State, with particular emphasis upon the work incentive effects of the program. On or before October 1, 1983, the Commissioner of Social Security shall submit to the Congress a report on the program, incorporating the information contained in the State reports along with the Commissioner's findings and recommendations.

(Aug. 14, 1935, ch. 531, title XVI, § 1620, as added Pub. L. 96–265, title II, § 201(c), June 9, 1980, 94 Stat. 446; amended Pub. L. 97–35, title XXIII,

§ 2353(p), Aug. 13, 1981, 95 Stat. 874; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (b)(2), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1994—Subsecs. (b) to (f). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner finds that the Commissioner's'' for ''he finds that his'' in subsec. (d)(2)(B), and ''the Commissioner's'' for ''his'' in subsec. (f).

1981—Subsec. (c). Pub. L. 97–35 struck out provision following par. (7) that the plan under this section may be developed and submitted as a separate State plan or may be submitted in the form of an amendment to the State's plan under section 1397b(d) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

§ 1382j. Attribution of sponsor's income and resources to aliens

(a) Attribution as unearned income

For purposes of determining eligibility for and the amount of benefits under this subchapter for an individual who is an alien, the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse, shall be deemed to be the income and resources of such individual (in accordance with subsections (b) and (c) of this section) for a period of 3 years after the individual's entry into the United States. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

(b) Determination of amount and resources

(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the unearned income of an alien for any year shall be determined as follows:

(A) The total yearly rate of earned and unearned income (as determined under section 1382a(a) of this title) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined for such year.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the maximum amount of the Federal benefit under this subchapter for such year which would be payable to an eligible individual who has no other income and who does not have an eligible spouse (as determined under section 1382(b)(1) of this title), plus (ii) one-half of the amount determined under clause (i) multiplied by the number of individuals who are dependents of such sponsor (or such sponsor's spouse if such spouse is living with the sponsor), other than such alien and such alien's spouse.

(C) The amount of income which shall be deemed to be unearned income of such alien shall be at a yearly rate equal to the amount determined under subparagraph (B). The period for determination of such amount shall be the same as the period for determination of benefits under section 1382(c) of this title.

(2) The amount of resources of a sponsor (and his spouse) which shall be deemed to be the resources of an alien for any year shall be determined as follows:

(A) The total amount of the resources (as determined under section 1382b of this title) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the applicable amount determined under section 1382(a)(3)(B) of this title in the case of a sponsor who has no spouse with whom he is living, or (ii) the applicable amount determined under section 1382(a)(3)(A) of this title in the case of a sponsor who has a spouse with whom he is living.

(C) The resources of such sponsor (and spouse) as determined under subparagraphs (A) and (B) shall be deemed to be resources of such alien in addition to any resources of such alien.

(c) Support and maintenance

In determining the amount of income of an alien during the period of 3 years after such alien's entry into the United States, the reduction in dollar amounts otherwise required under section 1382a(a)(2)(A)(i) of this title shall not be applicable if such alien is living in the household of a person who is a sponsor (or such sponsor's spouse) of such alien, and is receiving support and maintenance in kind from such sponsor (or spouse), nor shall support or maintenance furnished in cash or kind to an alien by such alien's sponsor (to the extent that it reflects income or resources which were taken into account in determining the amount of income and resources to be deemed to the alien under subsection (a) or (b) of this section) be considered to be income of such alien under section 1382a(a)(2)(A) of this title.

(d) Information and documentation; agreements with Secretary of State and Attorney General

(1) Any individual who is an alien shall, during the period of 3 years after entry into the United States, in order to be an eligible individual or eligible spouse for purposes of this subchapter, be required to provide to the Commissioner of Social Security such information and documentation with respect to his sponsor as may be necessary in order for the Commissioner of Social Security to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be required to provide to the Commissioner of Social Security such information and documentation

as the Commissioner of Social Security may request and which such alien or his sponsor provided in support of such alien's immigration application.

(2) The Commissioner of Social Security shall enter into agreements with the Secretary of State and the Attorney General whereby any information available to such persons and required in order to make any determination under this section will be provided by such persons to the Commissioner of Social Security, and whereby such persons shall inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by this section.

(e) Joint and several liability of alien and sponsor for overpayments

Any sponsor of an alien, and such alien, shall be jointly and severally liable for an amount equal to any overpayment made to such alien during the period of 3 years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid to the Commissioner of Social Security or recovered in accordance with section 1383(b) of this title shall be withheld from any subsequent payment to which such alien or such sponsor is entitled under any provision of this chapter.

(f) Exemptions

(1) The provisions of this section shall not apply with respect to any individual who is an ''aged, blind, or disabled individual'' for purposes of this subchapter by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), from and after the onset of the impairment, if such blindness or disability commenced after the date of such individual's admission into the United States for permanent residence.

(2) The provisions of this section shall not apply with respect to any alien who is—

(A) admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 1153(a)(7) of title 8;

(B) admitted to the United States as a result of the application, after March 31, 1980, of the provisions of section 1157(c)(1) of title 8;

(C) paroled into the United States as a refugee under section 1182(d)(5) of title 8; or

(D) granted political asylum by the Attorney General.

(Aug. 14, 1935, ch. 531, title XVI, § 1621, as added Pub. L. 96–265, title V, § 504(b), June 9, 1980, 94 Stat. 471; amended Pub. L. 98–369, div. B, title VI, §§ 2611(d), 2663(g)(10), July 18, 1984, 98 Stat. 1131, 1169; Pub. L. 103–152, § 7(a)(1), (b)(1), Nov. 24, 1993, 107 Stat. 1519; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

REFERENCES IN TEXT

Section 1153(a)(7) of title 8, referred to in subsec. (f)(2)(A), to be deemed a reference to such section as in effect prior to Apr. 1, 1980, and to sections 1157 and 1158 of Title 8, Aliens and Nationality. See section 203(h) of Pub. L. 96–212, set out as a note under section 1153 of Title 8.

AMENDMENTS

1994—Subsecs. (d), (e). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except where appearing before ''of State'' in subsec. (d)(2).

1993—Pub. L. 103–152, § 7(b)(1), substituted ''3 years'' for ''5 years'' in subsecs. (a), (c), (d)(1), and (e).

Pub. L. 103–152, § 7(a)(1), substituted ''5 years'' for ''three years'' in subsecs. (a), (c), (d)(1), and (e).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, § 2611(d), substituted ''the applicable amount determined under section 1382(a)(3)(B) of this title'' for ''$1,500'' and ''the applicable amount determined under section 1382(a)(3)(A) of this title'' for ''$2,250''.

Subsec. (e). Pub. L. 98–369, § 2663(g)(10), substituted ''severally'' for ''severably''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 7(a)(2) of Pub. L. 103–152 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 1994.''

Section 7(b)(2) of Pub. L. 103–152 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 1996.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2611(d) of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 657 of this title.

Amendment by section 2663(g)(10) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 504(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [enacting this section and amending section 1382c of this title] shall be effective with respect to individuals applying for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] for the first time after September 30, 1980.''

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 1382k. Repealed. Pub. L. 97–123, § 2(h), Dec. 29, 1981, 95 Stat. 1661

Section, act Aug. 14, 1935, ch. 531, title XVI, § 1622, as added Aug. 13, 1981, Pub. L. 97–35, title XXII, § 2201(g), 95 Stat. 833, related to benefits for individuals formerly receiving minimum benefits.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to benefits for months after December 1981, see section 2(j)(2) of Pub. L. 97–123, set out as an Effective Date of 1981 Amendment note under section 415 of this title.

Pub. L. 97–35, title XXII, § 2201(h), Aug. 13, 1981, 95 Stat. 834, which provided for the effective date of this section and the other enactments and amendments made by section 2201 of Pub. L. 97–35, was repealed by Pub. L. 97–123, § 2(j)(1), Dec. 29, 1981, 95 Stat. 1661.

PART B—PROCEDURAL AND GENERAL PROVISIONS

§ 1383. Procedure for payment of benefits

(a) Time, manner, form, and duration of payments; representative payees; promulgation of regulations

(1) Benefits under this subchapter shall be paid at such time or times and (subject to paragraph (10)) in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2)(A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

(ii)(I) Upon a determination by the Commissioner of Social Security that the interest of such individual would be served thereby, such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's ''representative payee'') for the use and benefit of the individual or eligible spouse.

(II) In the case of an individual eligible for benefits under this subchapter by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(iii) If the Commissioner of Social Security or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 405(j)(1) or 1007 of this title, the Commissioner of Social Security shall promptly terminate payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment of benefits to an alternative representative payee of the individual or eligible spouse or, if the interest of the individual under this subchapter would be served thereby, to the individual or eligible spouse.

(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term ''use and benefit'' for purposes of this clause.

(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

(I) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Commissioner of Social Security in regulations).

(ii) As part of the investigation referred to in clause (i)(I), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under subchapter II of this chapter, subchapter VIII of this chapter, or this subchapter;

(II) verify the social security account number (or employer identification number) of such person;

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

(V) obtain information concerning whether such person is a person described in section 1382(e)(4)(A) of this title; and

(VI) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), whether the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, and whether certification of payment of benefits to such person has been revoked pursuant to section 405(j) of this title, by reason of misuse of funds paid as benefits under subchapter II of this chapter, subchapter VIII of this chapter, or this subchapter.

(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

(I) such person has previously been convicted as described in clause (ii)(III);

(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(VI), the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or certification of payment of benefits to such person under section 405(j) of this title has previously been revoked as described in section 405(j)(2)(B)(i)(VI) of this title;

(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration;

(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or

(V) such person is a person described in section 1382(e)(4)(A) of this title.

(iv) The Commissioner of Social Security shall prescribe regulations under which the Commis-

sioner of Social Security may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this subchapter would be paid to such person pursuant to subparagraph (A)(ii).

(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual;

(II) a legal guardian or legal representative of such individual;

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the payment of benefits under this subchapter to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary;

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

(III) no other more suitable representative payee can be found.

(vii) In the case of an individual described in subparagraph (A)(ii)(II), when selecting such individual's representative payee, preference shall be given to—

(I) a certified community-based nonprofit social service agency (as defined in subparagraph (I));

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(III) a State or local government agency with fiduciary responsibilities; or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate,

unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(viii) Subject to clause (ix), if the Commissioner of Social Security makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

(ix)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (viii) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or described in subparagraph (A)(ii)(II).

(x) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interests of the individual entitled to such benefits.

(xi) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to pay such individual's benefits to a representative payee under this subchapter, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Commissioner of Social Security, and to judicial review of the Commissioner's final decision, to the same extent as is provided in subsection (c) of this section.

(xii) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(xiii) Any notice described in clause (xii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (xi) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(xiv) Notwithstanding the provisions of section 552a of title 5 or any other provision of Fed-

eral or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subparagraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(I) such person is described in section 1382(e)(4)(A) of this title,

(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

(III) the location or apprehension of such person is within the officer's official duties.

(C)(i) In any case where payment is made under this subchapter to a representative payee of an individual or spouse, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(ii) Clause (i) shall not apply in any case where the representative payee is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(iii) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the representative payee is the institution.

(iv) Notwithstanding clauses (i), (ii), and (iii), the Commissioner of Social Security may require a report at any time from any representative payee, if the Commissioner of Social Security has reason to believe that the representative payee is misusing such payments.

(v) In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.

(D)(i) Except as provided in the next sentence, a qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which an individual is described in subparagraph (A)(ii)(II)).

A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner of Social Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00. Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

(ii) For purposes of this subparagraph, the term ''qualified organization'' means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(I) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 405(j)(4) or 1007 of this title concurrently to 5 or more individuals; and

(II) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from subclause (II) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, or imprisoned not more than 6 months, or both.

(iv) In the case of an individual who is no longer eligible for benefits under this subchapter but to whom any amount of past-due benefits under this subchapter has not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(E) RESTITUTION.—In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. In any case in which a representative payee that—

(i) is not an individual (regardless of whether it is a ''qualified organization'' within the meaning of subparagraph (D)(ii)); or

(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this subchapter, subchapter II of this chapter, subchapter VIII of this chapter, or any combination of such subchapters;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(F)(i)(I) Each representative payee of an eligible individual under the age of 18 who is eligible for the payment of benefits described in subclause (II) shall establish on behalf of such individual an account in a financial institution into which such benefits shall be paid, and shall thereafter maintain such account for use in accordance with clause (ii).

(II) Benefits described in this subclause are past-due monthly benefits under this subchapter (which, for purposes of this subclause, include State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93–66) in an amount (after any withholding by the Commissioner for reimbursement to a State for interim assistance under subsection (g) of this section and payment of attorney fees under subsection (d)(2)(B) of this section) that exceeds the product of—

(aa) 6, and

(bb) the maximum monthly benefit payable under this subchapter to an eligible individual.

(ii)(I) A representative payee shall use funds in the account established under clause (i) to pay for allowable expenses described in subclause (II).

(II) An allowable expense described in this subclause is an expense for—

(aa) education or job skills training;

(bb) personal needs assistance;

(cc) special equipment;

(dd) housing modification;

(ee) medical treatment;

(ff) therapy or rehabilitation; or

(gg) any other item or service that the Commissioner determines to be appropriate;

provided that such expense benefits such individual and, in the case of an expense described in item (bb), (cc), (dd), (ff), or (gg), is related to the impairment (or combination of impairments) of such individual.

(III) The use of funds from an account established under clause (i) in any manner not authorized by this clause—

(aa) by a representative payee shall be considered a misapplication of benefits for all purposes of this paragraph, and any representative payee who knowingly misapplies benefits from such an account shall be liable to the Commissioner in an amount equal to the total amount of such benefits; and

(bb) by an eligible individual who is his or her own payee shall be considered a misapplication of benefits for all purposes of this paragraph and in any case in which the individual knowingly misapplies benefits from such an account, the Commissioner shall reduce future benefits payable to such individual (or to such individual and his spouse) by an amount equal to the total amount of such benefits so misapplied.

(IV) This clause shall continue to apply to funds in the account after the child has reached age 18, regardless of whether benefits are paid directly to the beneficiary or through a representative payee.

(iii) The representative payee may deposit into the account established under clause (i) any other funds representing past due benefits under this subchapter to the eligible individual, provided that the amount of such past due benefits is equal to or exceeds the maximum monthly benefit payable under this subchapter to an eligible individual (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93–66).

(iv) The Commissioner of Social Security shall establish a system for accountability monitoring whereby such representative payee shall report, at such time and in such manner as the Commissioner shall require, on activity respecting funds in the account established pursuant to clause (i).

(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this subchapter (alone or in combination with benefits payable under subchapter II of this chapter or subchapter VIII of this chapter) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 405(j) of this title, or section 1007 of this title in any case in which—

(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 405(j)(10) of this title); or

(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this subchapter. Each such report shall describe

in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

(I) the number of the reviews;

(II) the results of such reviews;

(III) the number of cases in which the representative payee was changed and why;

(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(V) the number of cases discovered in which there was a misuse of funds;

(VI) how any such cases of misuse of funds were dealt with by the Commissioner;

(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(VIII) such other information as the Commissioner deems appropriate.

(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

(ii) The total of the amount paid to such individual or such individual's alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(I) For purposes of this paragraph, the term ''certified community-based nonprofit social service agency'' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.

(3) The Commissioner of Social Security may by regulation establish ranges of incomes within which a single amount of benefits under this subchapter shall apply.

(4) The Commissioner of Social Security—

(A) may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits for the month following the date the application is filed and who is faced with financial emergency a cash advance against such benefits, including any federally-administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility, which shall be repaid through proportionate reductions in such benefits over a period of not more than 6 months; and

(B) may pay benefits under this subchapter to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 6 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) of this section solely because such individual is determined not to be disabled or blind.

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

(6) Notwithstanding any other provision of this subchapter, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title) shall not be terminated or suspended because the blindness or other physical or mental impairment, on which the individual's eligibility for such benefit is based, has or may have ceased, if—

(A) such individual is participating in a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security, and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the blindness and disability benefit rolls.

(7)(A) In any case where—

(i) an individual is a recipient of benefits based on disability or blindness under this subchapter,

(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Commissioner of Social Security shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after October 9, 1984, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(8)(A) In any case in which an administrative law judge has determined after a hearing as provided in subsection (c) of this section that an individual is entitled to benefits based on disability or blindness under this subchapter and the Commissioner of Social Security has not issued the Commissioner's final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month in which such 110-day period expires and ending with the month in which such final decision is issued.

(B) For purposes of subparagraph (A), in determining whether the 110-day period referred to in subparagraph (A) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Commissioner's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

(C) Any benefits currently paid under this subchapter pursuant to this paragraph (for the months described in subparagraph (A)) shall not be considered overpayments for any purposes of this subchapter, unless payment of such benefits was fraudulently obtained.

(9) Benefits under this subchapter shall not be denied to any individual solely by reason of the refusal of the individual to accept an amount offered as compensation for a crime of which the individual was a victim.

(10)(A) If an individual is eligible for past-due monthly benefits under this subchapter in an amount that (after any withholding for reimbursement to a State for interim assistance under subsection (g) of this section and payment of attorney fees under subsection (d)(2)(B) of this section) equals or exceeds the product of—

(i) 3, and

(ii) the maximum monthly benefit payable under this subchapter to an eligible individual (or, if appropriate, to an eligible individual and eligible spouse),

then the payment of such past-due benefits (after any such reimbursement to a State and payment of attorney fees under subsection (d)(2)(B) of this section) shall be made in installments as provided in subparagraph (B).

(B)(i) The payment of past-due benefits subject to this subparagraph shall be made in not to exceed 3 installments that are made at 6-month intervals.

(ii) Except as provided in clause (iii), the amount of each of the first and second installments may not exceed an amount equal to the product of clauses (i) and (ii) of subparagraph (A).

(iii) In the case of an individual who has—

(I) outstanding debt attributable to—

(aa) food,

(bb) clothing,

(cc) shelter, or

(dd) medically necessary services, supplies or equipment, or medicine; or

(II) current expenses or expenses anticipated in the near term attributable to—

(aa) medically necessary services, supplies or equipment, or medicine, or

(bb) the purchase of a home, and

such debt or expenses are not subject to reimbursement by a public assistance program, the Secretary under subchapter XVIII of this chapter, a State plan approved under subchapter XIX of this chapter, or any private entity legally liable to provide payment pursuant to an insurance policy, pre-paid plan, or other arrangement, the limitation specified in clause (ii) may be exceeded by an amount equal to the total of such debt and expenses.

(C) This paragraph shall not apply to any individual who, at the time of the Commissioner's determination that such individual is eligible for the payment of past-due monthly benefits under this subchapter—

(i) is afflicted with a medically determinable impairment that is expected to result in death within 12 months; or

(ii) is ineligible for benefits under this subchapter and the Commissioner determines that such individual is likely to remain ineligible for the next 12 months.

(D) For purposes of this paragraph, the term ''benefits under this subchapter'' includes supplementary payments pursuant to an agreement for Federal administration under section 1382e(a) of this title, and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(b) Overpayments and underpayments; adjustment, recovery, or payment of amounts by Commissioner

(1)(A) Whenever the Commissioner of Social Security finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—

(i) to any surviving spouse of such individual, whether or not the individual's eligible spouse, if (within the meaning of the first sentence of section 402(i) of this title) such surviving husband or wife was living in the same household with the individual at the time of his death or within the 6 months immediately preceding the month of such death, or

(ii) if such individual was a disabled or blind child who was living with his parent or parents at the time of his death or within the 6 months immediately preceding the month of such death, to such parent or parents.

(B) The Commissioner of Social Security (i) shall make such provision as the Commissioner finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity and good conscience, or (because of the small amount involved) impede efficient or effective administration of this subchapter, and (ii) shall in any event make the adjustment or recovery (in the case of payment of more than the correct amount of benefits), in the case of an individual or eligible spouse receiving monthly benefit payments under this subchapter (including supplementary payments of the type described in section 1382e(a) of this title and payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), in amounts which in the aggregate do not exceed (for any month) the lesser of (I) the amount of his or their benefit under this subchapter for that month or (II) an amount equal to 10 percent of his or their income for that month (including such benefit but excluding payments under subchapter II of this chapter when recovery is made from subchapter II payments pursuant to section 1320b–17 of this title and excluding income excluded pursuant to section 1382a(b) of this title), and in the case of an individual or eligible spouse to whom a lump sum is payable under this subchapter (including under section 1382e(a) of this title or under an agreement entered into under section 212(a) of Public Law 93–66) shall, as at least one means of recovering such overpayment, make the adjustment or recovery from the lump sum payment in an amount equal to not less than the lesser of the amount of the overpayment or the lump sum payment, unless fraud, willful misrepresentation, or concealment of material information was involved on the part of the individual or spouse in connection with the overpayment, or unless the individual requests that such adjustment or recovery be made at a higher or lower rate and the Commissioner of Social Security determines that adjustment or recovery at such rate is justified and appropriate. The availability (in the case of an individual who has been paid more than the correct amount of benefits) of procedures for adjustment or recovery at a limited rate under clause (ii) of the preceding sentence shall not, in and of itself, prevent or restrict the provision (in such case) of more substantial relief under clause (i) of such sentence.

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person is the surviving spouse of the deceased individual, and was eligible for a payment under this subchapter (including any State supplementation payment paid by the Commissioner of Social Security) as an eligible spouse (or as either member of an eligible couple) for the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person. If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.

(3) If any overpayment with respect to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by such individual (and spouse if any) of resources having a value which exceeds the applicable dollar figure specified in paragraph (1)(B) or (2)(B) of section 1382(a) of this title by $50 or less, such individual (and spouse if any) shall be deemed for purposes of the second sentence of paragraph (1) to have been without fault in connection with the overpayment, and no adjustment or recovery shall be made under the first sentence of such paragraph, unless the Commissioner of Social Security finds that the failure of such individual (and spouse if any) to report such value correctly and in a timely manner was knowing and willful.

(4)(A) With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31 and in section 5514 of title 5, all as in effect immediately after April 26, 1996.

(B) For purposes of subparagraph (A), the term ''delinquent amount'' means an amount—

(i) in excess of the correct amount of payment under this subchapter;

(ii) paid to a person after such person has attained 18 years of age; and

(iii) determined by the Commissioner of Social Security, under regulations, to be otherwise unrecoverable under this section after such person ceases to be a beneficiary under this subchapter.

(5) For payments for which adjustments are made by reason of a retroactive payment of benefits under subchapter II of this chapter, see section 1320a–6 of this title.

(6) For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b–17 of this title.

(c) Hearing to determine eligibility or amount of benefits; subsequent application; time within which to request hearing; time for determinations of Commissioner pursuant to hearing; judicial review

(1)(A) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this subchapter. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. The Commissioner of Social Security shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this subchapter with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse the Commissioner's findings of fact and such decision. The Commissioner of Social Security is further authorized, on the Commissioner's own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under the rules of evidence applicable to court procedure. The Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation of such individual (including any lack of facility with the English language) in determining, with respect to the eligibility of such individual for benefits under this subchapter, whether such individual acted in good faith or was at fault, and in determining fraud, deception, or intent.

(B)(i) A failure to timely request review of an initial adverse determination with respect to an application for any payment under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this subchapter if the applicant demonstrates that the applicant, or any other individual referred to in subparagraph (A), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 421 of this title.

(ii) In any notice of an adverse determination with respect to which a review may be requested under subparagraph (A), the Commissioner of Social Security shall describe in clear and specific language the effect on possible eligibility to receive payments under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves a disability (within the meaning of section 1382c(a)(3) of this title), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Commissioner of Social Security after a hearing under paragraph (1) shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Commissioner's final determinations under section 405 of this title.

(d) Procedures applicable; prohibition on assignment of payments; representation of claimants; maximum fees; penalties for violations

(1) The provisions of section 407 of this title and subsections (a), (d), and (e) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter.

(2)(A) The provisions of section 406 of this title (other than subsections (a)(4) and (d) thereof) shall apply to this part to the same extent as they apply in the case of subchapter II of this chapter, except that such section shall be applied—

(i) by substituting, in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2)[1] the phrase "(as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II of this chapter made pursuant to section 1320a–6(a) of this title)" for the parenthetical phrase contained therein;

(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase "paragraph (7)(A) or (8)(A) of section 1383(a) of this title or the requirements of due process of law" for the phrase "subsection (g) or (h) of section 423 of this title";

(iii) by substituting, in subsection (a)(2)(C)(i), the phrase "under subchapter II of this chapter" for the phrase "under subchapter XVI of this chapter";

[1] So in original. Probably should be followed by a comma.

(iv) by substituting, in subsection (b)(1)(A), the phrase ''pay the amount of such fee'' for the phrase ''certify the amount of such fee for payment'' and by striking, in subsection (b)(1)(A), the phrase ''or certified for payment''; and

(v) by substituting, in subsection (b)(1)(B)(ii), the phrase ''deemed to be such amounts as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II of this chapter made pursuant to section 1320a–6(a) of this title'' for the phrase ''determined before any applicable reduction under section 1320a–6(a) of this title)''.[2]

(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this subchapter and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of such past-due benefits to such attorney an amount equal to the lesser of—

(i) so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under subsection (g) of this section and reduced by the amount of any reduction in benefits under this subchapter or subchapter II of this chapter pursuant to section 1320a–6(a) of this title), or

(ii) the amount of past-due benefits available after any applicable reductions under subsection (g) of this section and section 1320a–6(a) of this title.

(C)(i) Whenever a fee for services is required to be paid to an attorney from a claimant's past-due benefits pursuant to subparagraph (B), the Commissioner shall impose on the attorney an assessment calculated in accordance with clause (ii).

(ii)(I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed $75. In the case of any calendar year beginning after the amendments made by section 302 of the Social Security Protection Act of 2003[3] take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.

(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant's past-due benefits.

(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

(v) Assessments on attorneys collected under this subparagraph shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this subchapter and related laws.

(D) The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

(e) Administrative requirements prescribed by Commissioner; criteria; reduction of benefits to individual for noncompliance with requirements; payment to homeless

(1)(A) The Commissioner of Social Security shall, subject to subparagraph (B) and subsection (j) of this section, prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this subchapter.

(B)(i) The requirements prescribed by the Commissioner of Social Security pursuant to subparagraph (A) shall require that eligibility for benefits under this subchapter will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct. For this purpose and for purposes of federally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), the Commissioner of Social Security shall, as may be necessary, request and utilize information available

[2] So in original. Closing parenthesis after ''title'' probably should not appear.

[3] See References in Text note below.

pursuant to section 6103(*l*)(7) of the Internal Revenue Code of 1986, and any information which may be available from State systems under section 1320b–7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(*l*)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b–7 of this title.

(ii)(I) The Commissioner of Social Security may require each applicant for, or recipient of, benefits under this subchapter to provide authorization by the applicant or recipient (or by any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient for such benefits) for the Commissioner to obtain (subject to the cost reimbursement requirements of section 1115(a) of the Right to Financial Privacy Act [12 U.S.C. 3415]) from any financial institution (within the meaning of section 1101(1) of such Act [12 U.S.C. 3401(1)]) any financial record (within the meaning of section 1101(2) of such Act [12 U.S.C. 3401(2)]) held by the institution with respect to the applicant or recipient (or any such other person) whenever the Commissioner determines the record is needed in connection with a determination with respect to such eligibility or the amount of such benefits.

(II) Notwithstanding section 1104(a)(1) of the Right to Financial Privacy Act [12 U.S.C. 3404(a)(1)], an authorization provided by an applicant or recipient (or any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient) pursuant to subclause (I) of this clause shall remain effective until the earliest of—

(aa) the rendering of a final adverse decision on the applicant's application for eligibility for benefits under this subchapter;

(bb) the cessation of the recipient's eligibility for benefits under this subchapter; or

(cc) the express revocation by the applicant or recipient (or such other person referred to in subclause (I)) of the authorization, in a written notification to the Commissioner.

(III)(aa) An authorization obtained by the Commissioner of Social Security pursuant to this clause shall be considered to meet the requirements of the Right to Financial Privacy Act [12 U.S.C. 3401 et seq.] for purposes of section 1103(a) of such Act [12 U.S.C. 3403(a)], and need not be furnished to the financial institution, notwithstanding section 1104(a) of such Act [12 U.S.C. 3404(a)].

(bb) The certification requirements of section 1103(b) of the Right to Financial Privacy Act [12 U.S.C. 3403(b)] shall not apply to requests by the Commissioner of Social Security pursuant to an authorization provided under this clause.

(cc) A request by the Commissioner pursuant to an authorization provided under this clause is deemed to meet the requirements of section 1104(a)(3) of the Right to Financial Privacy Act [12 U.S.C. 3404(a)(3)] and the flush language of section 1102 of such Act [12 U.S.C. 3402].

(IV) The Commissioner shall inform any person who provides authorization pursuant to this clause of the duration and scope of the authorization.

(V) If an applicant for, or recipient of, benefits under this subchapter (or any such other person referred to in subclause (I)) refuses to provide, or revokes, any authorization made by the applicant or recipient for the Commissioner of Social Security to obtain from any financial institution any financial record, the Commissioner may, on that basis, determine that the applicant or recipient is ineligible for benefits under this subchapter.

(C) For purposes of making determinations under section 1382(e) of this title, the requirements prescribed by the Commissioner of Social Security pursuant to subparagraph (A) of this paragraph shall require each administrator of a nursing home, extended care facility, or intermediate care facility, within 2 weeks after the admission of any eligible individual or eligible spouse receiving benefits under this subchapter, to transmit to the Commissioner a report of the admission.

(2) In case of the failure by any individual to submit a report of events and changes in circumstances relevant to eligibility for or amount of benefits under this subchapter as required by the Commissioner of Social Security under paragraph (1), or delay by any individual in submitting a report as so required, the Commissioner of Social Security (in addition to taking any other action the Commissioner may consider appropriate under paragraph (1)) shall reduce any benefits which may subsequently become payable to such individual under this subchapter by—

(A) $25 in the case of the first such failure or delay,

(B) $50 in the case of the second such failure or delay, and

(C) $100 in the case of the third or a subsequent such failure or delay,

except where the individual was without fault or good cause for such failure or delay existed.

(3) The Commissioner of Social Security shall provide a method of making payments under this subchapter to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

(4) A translation into English by a third party of a statement made in a foreign language by an applicant for or recipient of benefits under this subchapter shall not be regarded as reliable for any purpose under this subchapter unless the third party, under penalty of perjury—

(A) certifies that the translation is accurate; and

(B) discloses the nature and scope of the relationship between the third party and the applicant or recipient, as the case may be.

(5) In any case in which it is determined to the satisfaction of the Commissioner of Social Security that an individual failed as of any date to apply for benefits under this subchapter by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual's eligibility for benefits under this subchapter, such individual shall be deemed to have applied for such benefits on the later of—

(A) the date on which such misinformation was provided to such individual, or

(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).

(6) In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by—

(A) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

(B) the theft, loss, or nonreceipt of a benefit payment under this subchapter,

the Commissioner of Social Security shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

(7)(A)(i) The Commissioner of Social Security shall immediately redetermine the eligibility of an individual for benefits under this subchapter if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the Commissioner of Social Security with regard to recipients in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

(ii) When redetermining the eligibility, or making an initial determination of eligibility, of an individual for benefits under this subchapter, the Commissioner of Social Security shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

(B) For purposes of subparagraph (A), similar fault is involved with respect to a determination if—

(i) an incorrect or incomplete statement that is material to the determination is knowingly made; or

(ii) information that is material to the determination is knowingly concealed.

(C) If, after redetermining the eligibility of an individual for benefits under this subchapter, the Commissioner of Social Security determines that there is insufficient evidence to support such eligibility, the Commissioner of Social Security may terminate such eligibility and may treat benefits paid on the basis of such insufficient evidence as overpayments.

(8)(A) The Commissioner of Social Security shall request the Immigration and Naturalization Service or the Centers for Disease Control to provide the Commissioner of Social Security with whatever medical information, identification information, and employment history either such entity has with respect to any alien who has applied for benefits under this subchapter to the extent that the information is relevant to any determination relating to eligibility for such benefits under this subchapter.

(B) Subparagraph (A) shall not be construed to prevent the Commissioner of Social Security from adjudicating the case before receiving such information.

(9) Notwithstanding any other provision of law, the Commissioner shall, at least 4 times annually and upon request of the Immigration and Naturalization Service (hereafter in this paragraph referred to as the ''Service''), furnish the Service with the name and address of, and other identifying information on, any individual who the Commissioner knows is not lawfully present in the United States, and shall ensure that each agreement entered into under section 1382e(a) of this title with a State provides that the State shall furnish such information at such times with respect to any individual who the State knows is not lawfully present in the United States.

(f) Furnishing of information by Federal agencies

The head of any Federal agency shall provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

(g) Reimbursement to States for interim assistance payments

(1) Notwithstanding subsection (d)(1) of this section and subsection (b) of this section as it relates to the payment of less than the correct amount of benefits, the Commissioner of Social Security may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the Commissioner of Social Security and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished on behalf of the individual by the State (or political subdivision).

(2) For purposes of this subsection, the term ''benefits'' with respect to any individual means supplemental security income benefits under this subchapter, and any State supplementary payments under section 1382e of this title or under section 212 of Public Law 93–66 which the Commissioner of Social Security makes on behalf of a State (or political subdivision thereof), that the Commissioner of Social Security has determined to be due with respect to the individual at the time the Commissioner of Social Security makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3). A cash advance made pursuant to subsection (a)(4)(A) of this section shall not be considered as the first payment of benefits for purposes of the preceding sentence.

(3) For purposes of this subsection, the term ''interim assistance'' with respect to any individual means assistance financed from State or local funds and furnished for meeting basic needs (A) during the period, beginning with the month following the month in which the individual filed an application for benefits (as defined in paragraph (2)), for which he was eligible for such benefits, or (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits.

(4) In order for a State to receive reimbursement under the provisions of paragraph (1), the State shall have in effect an agreement with the

Commissioner of Social Security which shall provide—

(A) that if the Commissioner of Social Security makes payment to the State (or a political subdivision of the State as provided for under the agreement) in reimbursement for interim assistance (as defined in paragraph (3)) for any individual in an amount greater than the reimbursable amount authorized by paragraph (1), the State (or political subdivision) shall pay to the individual the balance of such payment in excess of the reimbursable amount as expeditiously as possible, but in any event within ten working days or a shorter period specified in the agreement; and

(B) that the State will comply with such other rules as the Commissioner of Social Security finds necessary to achieve efficient and effective administration of this subsection and to carry out the purposes of the program established by this subchapter, including protection of hearing rights for any individual aggrieved by action taken by the State (or political subdivision) pursuant to this subsection.

(5) The provisions of subsection (c) of this section shall not be applicable to any disagreement concerning payment by the Commissioner of Social Security to a State pursuant to the preceding provisions of this subsection nor the amount retained by the State (or political subdivision).

(h) Payment of certain travel expenses

The Commissioner of Social Security shall pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Commissioner of Social Security in connection with disability determinations under this subchapter, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 1382c(e) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Commissioner of Social Security) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(i) Unnegotiated checks; notice to Commissioner; payment to States; notice to States; investigation of payees

(1) The Secretary of the Treasury shall, on a monthly basis, notify the Commissioner of Social Security of all benefit checks issued under this subchapter which include amounts representing State supplementary payments as described in paragraph (2) and which have not been presented for payment within one hundred and eighty days after the day on which they were issued.

(2) The Commissioner of Social Security shall from time to time determine the amount representing the total of the State supplementary payments made pursuant to agreements under section 1382e(a) of this title and under section 212(b) of Public Law 93–66 which is included in all such benefit checks not presented for payment within one hundred and eighty days after the day on which they were issued, and shall pay each State (or credit each State with) an amount equal to that State's share of all such amount. Amounts not paid to the States shall be returned to the appropriation from which they were originally paid.

(3) The Commissioner of Social Security, upon notice from the Secretary of the Treasury under paragraph (1), shall notify any State having an agreement described in paragraph (2) of all such benefit checks issued under that State's agreement which were not presented for payment within one hundred and eighty days after the day on which they were issued.

(4) The Commissioner of Social Security shall, to the maximum extent feasible, investigate the whereabouts and eligibility of the individuals whose benefit checks were not presented for payment within one hundred and eighty days after the day on which they were issued.

(j) Application and review requirements for certain individuals

(1) Notwithstanding any provision of section 1382 or 1382h of this title, any individual who—

(A) was an eligible individual (or eligible spouse) under section 1382 of this title or was eligible for benefits under or pursuant to section 1382h of this title, and

(B) who, after such eligibility, is ineligible for benefits under or pursuant to both such sections for a period of 12 consecutive months (or 24 consecutive months, in the case of such an individual whose ineligibility for benefits under or pursuant to both such sections is a result of being called to active duty pursuant to section 12301(d) or 12302 of title 10 or section 502(f) of title 32),

may not thereafter become eligible for benefits under or pursuant to either such section until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section, or has filed a request for reinstatement of eligibility under subsection (p)(2) of this section and been determined to be eligible for reinstatement.

(2)(A) Notwithstanding any provision of section 1382 of this title or section 1382h of this title (other than subsection (c) thereof), any individual who was eligible for benefits pursuant to section 1382h(b) of this title, and who—

(i)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible (other than pursuant to a request for reinstatement under subsection (p) of this section) for benefits under section 1382 or 1382h(a) of this title for a month that follows a period during which the individual was ineligible for benefits under sections 1382 and 1382h(a) of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments); or

(ii)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible under section 1382h(b) of this title for a month that follows a period during which the individual was ineligible under section 1382 of this title and section 1382h of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for such month or for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments);

shall, upon becoming eligible (as described in clause (i)(I) or (ii)(I)), be subject to a prompt review of the type described in section 1382c(a)(4) of this title.

(B) If the Commissioner of Social Security determines pursuant to a review required by subparagraph (A) that the impairment upon which the eligibility of an individual is based has ceased, does not exist, or is not disabling, such individual may not thereafter become eligible for a benefit under or pursuant to section 1382 of this title or section 1382h of this title until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section.

(k) Notifications to applicants and recipients

The Commissioner of Social Security shall notify an individual receiving benefits under section 1382 of this title on the basis of disability or blindness of his or her potential eligibility for benefits under or pursuant to section 1382h of this title—

(1) at the time of the initial award of benefits to the individual under section 1382 of this title (if the individual has attained the age of 18 at the time of such initial award), and

(2) at the earliest time after an initial award of benefits to an individual under section 1382 of this title that the individual's earned income for a month (other than income excluded pursuant to section 1382a(b) of this title) is $200 or more, and periodically thereafter so long as such individual has earned income (other than income so excluded) of $200 or more per month.

***(l)* Special notice to blind individuals with respect to hearings and other official actions**

(1) In any case where an individual who is applying for or receiving benefits under this subchapter on the basis of blindness is entitled (under subsection (c) of this section or otherwise) to receive notice from the Commissioner of Social Security of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this subchapter, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Commissioner of Social Security and agreed to by the individual.

(2) The election under paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this subchapter on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this subchapter until such time as it is revoked or changed.

(m) Pre-release procedures for institutionalized persons

The Commissioner of Social Security shall develop a system under which an individual can apply for supplemental security income benefits under this subchapter prior to the discharge or release of the individual from a public institution.

(n) Concurrent SSI and food stamp applications by institutionalized individuals

The Commissioner of Social Security and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subchapter shall also be permitted to apply at the same time for participation in the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

***(o)* Notice requirements**

The Commissioner of Social Security shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this subchapter by the Commissioner of Social Security or by a State agency—

(1) is written in simple and clear language, and

(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as sat-

isfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.

(p) Reinstatement of eligibility on the basis of blindness or disability

(1)(A) Eligibility for benefits under this subchapter shall be reinstated in any case where the Commissioner determines that an individual described in subparagraph (B) has filed a request for reinstatement meeting the requirements of paragraph (2)(A) during the period prescribed in subparagraph (C). Reinstatement of eligibility shall be in accordance with the terms of this subsection.

(B) An individual is described in this subparagraph if—

(i) prior to the month in which the individual files a request for reinstatement—

(I) the individual was eligible for benefits under this subchapter on the basis of blindness or disability pursuant to an application filed therefor; and

(II) the individual thereafter was ineligible for such benefits due to earned income (or earned and unearned income) for a period of 12 or more consecutive months;

(ii) the individual is blind or disabled and the physical or mental impairment that is the basis for the finding of blindness or disability is the same as (or related to) the physical or mental impairment that was the basis for the finding of blindness or disability that gave rise to the eligibility described in clause (i);

(iii) the individual's blindness or disability renders the individual unable to perform substantial gainful activity; and

(iv) the individual satisfies the nonmedical requirements for eligibility for benefits under this subchapter.

(C)(i) Except as provided in clause (ii), the period prescribed in this subparagraph with respect to an individual is 60 consecutive months beginning with the month following the most recent month for which the individual was eligible for a benefit under this subchapter (including section 1382h of this title) prior to the period of ineligibility described in subparagraph (B)(i)(II).

(ii) In the case of an individual who fails to file a reinstatement request within the period prescribed in clause (i), the Commissioner may extend the period if the Commissioner determines that the individual had good cause for the failure to so file.

(2)(A)(i) A request for reinstatement shall be filed in such form, and containing such information, as the Commissioner may prescribe.

(ii) A request for reinstatement shall include express declarations by the individual that the individual meets the requirements specified in clauses (ii) through (iv) of paragraph (1)(B).

(B) A request for reinstatement filed in accordance with subparagraph (A) may constitute an application for benefits in the case of any individual who the Commissioner determines is not eligible for reinstated benefits under this subsection.

(3) In determining whether an individual meets the requirements of paragraph (1)(B)(ii), the provisions of section 1382c(a)(4) of this title shall apply.

(4)(A) Eligibility for benefits reinstated under this subsection shall commence with the benefit payable for the month following the month in which a request for reinstatement is filed.

(B)(i) Subject to clause (ii), the amount of the benefit payable for any month pursuant to the reinstatement of eligibility under this subsection shall be determined in accordance with the provisions of this subchapter.

(ii) The benefit under this subchapter payable for any month pursuant to a request for reinstatement filed in accordance with paragraph (2) shall be reduced by the amount of any provisional benefit paid to such individual for such month under paragraph (7).

(C) Except as otherwise provided in this subsection, eligibility for benefits under this subchapter reinstated pursuant to a request filed under paragraph (2) shall be subject to the same terms and conditions as eligibility established pursuant to an application filed therefor.

(5) Whenever an individual's eligibility for benefits under this subchapter is reinstated under this subsection, eligibility for such benefits shall be reinstated with respect to the individual's spouse if such spouse was previously an eligible spouse of the individual under this subchapter and the Commissioner determines that such spouse satisfies all the requirements for eligibility for such benefits except requirements related to the filing of an application. The provisions of paragraph (4) shall apply to the reinstated eligibility of the spouse to the same extent that they apply to the reinstated eligibility of such individual.

(6) An individual to whom benefits are payable under this subchapter pursuant to a reinstatement of eligibility under this subsection for twenty-four months (whether or not consecutive) shall, with respect to benefits so payable after such twenty-fourth month, be deemed for purposes of paragraph (1)(B)(i)(I) to be eligible for such benefits on the basis of an application filed therefor.

(7)(A) An individual described in paragraph (1)(B) who files a request for reinstatement in accordance with the provisions of paragraph (2)(A) shall be eligible for provisional benefits payable in accordance with this paragraph, unless the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration under paragraph (2)(A)(ii) is false. Any such determination by the Commissioner shall be final and not subject to review under paragraph (1) or (3) of subsection (c) of this section.

(B)(i) Except as otherwise provided in clause (ii), the amount of a provisional benefit for a month shall equal the amount of the monthly benefit that would be payable to an eligible individual under this subchapter with the same kind and amount of income.

(ii) If the individual has a spouse who was previously an eligible spouse of the individual under this subchapter and the Commissioner determines that such spouse satisfies all the requirements of section 1382c(b) of this title except requirements related to the filing of an application, the amount of a provisional benefit

for a month shall equal the amount of the monthly benefit that would be payable to an eligible individual and eligible spouse under this subchapter with the same kind and amount of income.

(C)(i) Provisional benefits shall begin with the month following the month in which a request for reinstatement is filed in accordance with paragraph (2)(A).

(ii) Provisional benefits shall end with the earliest of—

(I) the month in which the Commissioner makes a determination regarding the individual's eligibility for reinstated benefits;

(II) the fifth month following the month for which provisional benefits are first payable under clause (i); or

(III) the month in which the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration made in accordance with paragraph (2)(A)(ii) is false.

(D) In any case in which the Commissioner determines that an individual is not eligible for reinstated benefits, any provisional benefits paid to the individual under this paragraph shall not be subject to recovery as an overpayment unless the Commissioner determines that the individual knew or should have known that the individual did not meet the requirements of paragraph (1)(B).

(8) For purposes of this subsection other than paragraph (7), the term ''benefits under this subchapter'' includes State supplementary payments made pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66.

(Aug. 14, 1935, ch. 531, title XVI, § 1631, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1475; amended Pub. L. 93–233, § 18(g), Dec. 31, 1973, 87 Stat. 969; Pub. L. 93–368, § 5, Aug. 7, 1974, 88 Stat. 420; Pub. L. 94–202, §§ 1, 2, Jan. 2, 1976, 89 Stat. 1135; Pub. L. 94–365, § 1, July 14, 1976, 90 Stat. 990; Pub. L. 94–569, § 4(a), Oct. 20, 1976, 90 Stat. 2700; Pub. L. 96–222, title I, § 101(a)(2)(C), Apr. 1, 1980, 94 Stat. 195; Pub. L. 96–265, title III, §§ 301(b), 305(b), 310(b), title V, § 501(c), June 9, 1980, 94 Stat. 450, 457, 459, 470; Pub. L. 96–473, § 6(h), Oct. 19, 1980, 94 Stat. 2266; Pub. L. 97–35, title XXIII, § 2343(a), Aug. 13, 1981, 95 Stat. 866; Pub. L. 97–248, title I, § 187(a), Sept. 3, 1982, 96 Stat. 407; Pub. L. 98–369, div. B, title VI, §§ 2612(a), 2613, 2651(j), 2663(g)(11), (12), July 18, 1984, 98 Stat. 1131, 1150, 1169; Pub. L. 98–460, §§ 7(b), 16(b), Oct. 9, 1984, 98 Stat. 1803, 1809; Pub. L. 99–272, title XII, § 12113(b), Apr. 7, 1986, 100 Stat. 288; Pub. L. 99–514, § 2, title XVIII, § 1883(d)(1), Oct. 22, 1986, 100 Stat. 2095, 2918; Pub. L. 99–570, title XI, §§ 11005(a), 11006, Oct. 27, 1986, 100 Stat. 3207–169; Pub. L. 99–643, §§ 4(c)(1), (d)(3)(B), 5, 8(a), Nov. 10, 1986, 100 Stat. 3576–3579; Pub. L. 100–203, title IX, §§ 9109(a), 9110(a), (b), 9111(a)(1), 9112(a), 9123, Dec. 22, 1987, 101 Stat. 1330–302 to 1330–304, 1330–313; Pub. L. 100–647, title VIII, § 8001(b), Nov. 10, 1988, 102 Stat. 3779; Pub. L. 101–239, title X, §§ 10302(b)(1), 10303(b), 10305(e), 10307(a)(2), (b)(2), Dec. 19, 1989, 103 Stat. 2482, 2483, 2485; Pub. L. 101–508, title V, §§ 5031(c), 5038(a), 5039(b), 5040, 5105(a)(1)(B), (2)(A)(ii), (3)(A)(ii), (c)(2), (d)(1)(B), 5106(a)(2), (c), 5107(a)(2), 5109(a)(2), 5113(b), Nov. 5, 1990, 104 Stat. 1388–224, 1388–226, 1388–227, 1388–255, 1388–258, 1388–261, 1388–265, 1388–266, 1388–268, 1388–269, 1388–271, 1388–273; Pub. L. 103–296, title I, § 107(a)(4), title II, §§ 201(b)(1)(A), (B), (2)(A), (B), 206(a)(2), (d)(2), (f)(1), title III, § 321(f)(2)(B), (3)(A), (h)(1), Aug. 15, 1994, 108 Stat. 1478, 1499–1501, 1509, 1514, 1515, 1541, 1544; Pub. L. 103–387, § 6(a), Oct. 22, 1994, 108 Stat. 4077; Pub. L. 103–432, title II, §§ 264(b), (e)–(g), 267(b), 268, Oct. 31, 1994, 108 Stat. 4468–4470; Pub. L. 104–121, title I, § 105(b)(2), Mar. 29, 1996, 110 Stat. 853; Pub. L. 104–193, title II, §§ 204(b), (c)(2), 213(a), 221(a), (b), title IV, § 404(c), Aug. 22, 1996, 110 Stat. 2188, 2194, 2196, 2197, 2267; Pub. L. 105–33, title V, §§ 5522(b), 5564, Aug. 5, 1997, 111 Stat. 622, 639; Pub. L. 105–306, § 8(b)(2), Oct. 28, 1998, 112 Stat. 2929; Pub. L. 106–169, title II, §§ 201(b), 202(a), 203(a), 213, 251(b)(9), Dec. 14, 1999, 113 Stat. 1831, 1832, 1843, 1856; Pub. L. 106–170, title I, §§ 101(b)(2)(C), 112(b), Dec. 17, 1999, 113 Stat. 1874, 1884; Pub. L. 108–203, title I, §§ 101(c)(1), (3), 102(a)(2), (b)(3), 103(c), 104(b), 105(c), 106(c), title II, § 210(b)(4), title III, § 302(a), (b), Mar. 2, 2004, 118 Stat. 496, 497, 500, 502, 503, 505, 506, 517, 519, 521; Pub. L. 109–163, div. A, title VI, § 689, Jan. 6, 2006, 119 Stat. 3337; Pub. L. 109–171, title VII, § 7502(a), Feb. 8, 2006, 120 Stat. 154.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(2)(B)(xiv) and (e)(1)(B)(i), is classified generally to Title 26, Internal Revenue Code.

Section 212 of Public Law 93–66, referred to in subsecs. (a)(2)(F)(i)(II), (iii), (10)(D), (b)(1)(B), (e)(1)(B)(i), (g)(2), (i)(2), and (p)(8), is section 212 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out in a note under section 1382 of this title.

Section 302 of the Social Security Protection Act of 2003, referred to in subsec. (d)(2)(C)(ii)(I), probably means section 302 of the Social Security Protection Act of 2004, Pub. L. 108–203, which amended this section and enacted provisions set out as a note under this section.

The Right to Financial Privacy Act, referred to in subsec. (e)(1)(B)(ii)(III)(aa), probably means the Right to Financial Privacy Act of 1978, title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, as amended, which is classified generally to chapter 35 (§ 3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

The Food Stamp Act of 1977, referred to in subsec. (n), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 1383, act Aug. 14, 1935, ch. 531, title XVI, § 1603, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 200; amended July 30, 1965, Pub. L. 89–97, title I, § 122, title II, § 221(d)(4), title IV, § 401(b), 79 Stat. 353, 359, 414; Jan. 2, 1968, Pub. L. 90–248, title II, § 212(d), 81 Stat. 898; Oct. 20, 1972, Pub. L. 92–512, title III, § 301(b), (d), (e), 86 Stat. 946, 947, related to determination of amounts payable to States, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301, but is set out below in view of its continued applicability to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2006—Subsec. (a)(10)(A)(i). Pub. L. 109–171 substituted ''3'' for ''12''.

Subsec. (j)(1)(B). Pub. L. 109–163 inserted ''(or 24 consecutive months, in the case of such an individual

whose ineligibility for benefits under or pursuant to both such sections is a result of being called to active duty pursuant to section 12301(d) or 12302 of title 10 or section 502(f) of title 32)'' after ''for a period of 12 consecutive months''.

2004—Subsec. (a)(2)(A)(iv). Pub. L. 108–203, § 101(c)(3), added cl. (iv).

Subsec. (a)(2)(B)(ii)(IV) to (VI). Pub. L. 108–203, § 103(c)(1), added subcls. (IV) and (V) and redesignated former subcl. (IV) as (VI).

Subsec. (a)(2)(B)(iii)(II). Pub. L. 108–203, § 103(c)(2), substituted ''clause (ii)(VI)'' for ''clause (ii)(IV)'' and ''section 405(j)(2)(B)(i)(VI)'' for ''section 405(j)(2)(B)(i)(IV)''.

Subsec. (a)(2)(B)(iii)(IV), (V). Pub. L. 108–203, § 103(c)(3), added subcls. (IV) and (V).

Subsec. (a)(2)(B)(vii)(I). Pub. L. 108–203, § 102(a)(2)(A), substituted ''a certified community-based nonprofit social service agency (as defined in subparagraph (I))'' for ''a community-based nonprofit social service agency licensed or bonded by the State''.

Subsec. (a)(2)(B)(xiv). Pub. L. 108–203, § 103(c)(4), added cl. (xiv).

Subsec. (a)(2)(C)(v). Pub. L. 108–203, § 106(c), added cl. (v).

Subsec. (a)(2)(D)(i). Pub. L. 108–203, § 104(b), in introductory provisions, substituted ''Except as provided in the next sentence, a'' for ''A'' and, in concluding provisions, substituted ''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner'' for ''The Commissioner''.

Subsec. (a)(2)(D)(ii). Pub. L. 108–203, § 102(a)(2)(B), substituted ''or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance'' for ''or any community-based nonprofit social service agency, which—

''(I) is bonded or licensed in each State in which the agency serves as a representative payee; and

''(II) in accordance'',

redesignated items (aa) and (bb) as subclauses (I) and (II), respectively, realigned margins, and substituted ''subclause (II)'' for ''subclause (II)(bb)'' in concluding provisions.

Subsec. (a)(2)(E). Pub. L. 108–203, § 101(c)(1), inserted second and third sentences.

Subsec. (a)(2)(F)(i)(II). Pub. L. 108–203, § 302(b)(1), inserted ''and payment of attorney fees under subsection (d)(2)(B) of this section'' after ''subsection (g) of this section'' in introductory provisions.

Subsec. (a)(2)(G). Pub. L. 108–203, § 102(b)(3), amended subpar. (G) generally, substituting provisions relating to periodic onsite reviews and annual report on the results of such reviews for provisions directing the Commissioner of Social Security to include as part of the annual report required under former section 904 of this title certain information with respect to the implementation of the preceding provisions of this par.

Subsec. (a)(2)(G)(i)(II). Pub. L. 108–203, § 105(c)(1), substituted ''section 405(j)(10)'' for ''section 405(j)(9)''.

Subsec. (a)(2)(H). Pub. L. 108–203, § 105(c)(2), added subpar. (H) and struck out former subpar. (H) which read as follows: ''The Commissioner of Social Security shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after October 9, 1984. The Commissioner of Social Security shall include in the annual report required under section 904 of this title, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Commissioner's report under section 405(j)(4)(B) of this title.''

Subsec. (a)(2)(I). Pub. L. 108–203, § 102(a)(2)(C), added subpar. (I).

Subsec. (a)(10)(A). Pub. L. 108–203, § 302(b)(2), inserted ''and payment of attorney fees under subsection (d)(2)(B) of this section'' after ''subsection (g) of this section'' in introductory provisions and after ''State'' in concluding provisions.

Subsec. (b)(1)(B). Pub. L. 108–203, § 210(b)(4)(A), substituted ''excluding payments under subchapter II of this chapter when recovery is made from subchapter II payments pursuant to section 1320b–17 of this title and excluding'' for ''excluding any other'' and struck out ''50 percent of'' before ''the lump sum payment,''.

Subsec. (b)(6). Pub. L. 108–203, § 210(b)(4)(B), added par. (6) and struck out former par. (6) which read as follows: ''For provisions relating to the recovery of benefits incorrectly paid under this subchapter from benefits payable under subchapter II of this chapter, see section 1320b–17 of this title.''

Subsec. (d)(2)(A). Pub. L. 108–203, § 302(a)(1), in introductory provisions, substituted ''section 406'' for ''section 406(a)'', ''(other than subsections (a)(4) and (d) thereof)'' for ''(other than paragraph (4) thereof)'', and ''such section'' for ''paragraph (2) thereof''.

Subsec. (d)(2)(A)(i). Pub. L. 108–203, § 302(a)(2), substituted ''in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2)'' for ''in subparagraphs (A)(ii)(I) and (C)(i),'' and struck out ''and'' at end.

Subsec. (d)(2)(A)(ii) to (v). Pub. L. 108–203, § 302(a)(3), added cls. (ii) to (v) and struck out former cl. (ii) which read as follows: ''by substituting 'section 1383(a)(7)(A) of this title or the requirements of due process of law' for 'subsection (g) or (h) of section 423 of this title'.''

Subsec. (d)(2)(B) to (D). Pub. L. 108–203, § 302(a)(4), added subpars. (B) and (C) and redesignated former subpar. (B) as (D).

1999—Subsec. (a)(2)(A)(iii). Pub. L. 106–169, § 251(b)(9)(A), inserted ''or 1007'' after ''405(j)(1)''.

Subsec. (a)(2)(B)(ii)(I). Pub. L. 106–169, § 251(b)(9)(B), inserted '', subchapter VIII of this chapter,'' before ''or this subchapter''.

Subsec. (a)(2)(B)(ii)(III). Pub. L. 106–169, § 251(b)(9)(C), inserted '', 1011,'' before ''or 1383a''.

Subsec. (a)(2)(B)(ii)(IV). Pub. L. 106–169, § 251(b)(9)(D), inserted ''whether the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title,'' before ''and whether certification'' and '', subchapter VIII of this chapter,'' before ''or this subchapter''.

Subsec. (a)(2)(B)(iii)(II). Pub. L. 106–169, § 251(b)(9)(E), inserted ''the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title,'' before ''or certification''.

Subsec. (a)(2)(D)(ii)(II)(aa). Pub. L. 106–169, § 251(b)(9)(F), inserted ''or 1007'' after ''405(j)(4)''.

Subsec. (a)(6)(A). Pub. L. 106–170, § 101(b)(2)(C), substituted ''a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services'' for ''a program of vocational rehabilitation services''.

Subsec. (b)(1)(B)(ii). Pub. L. 106–169, § 202(a), inserted ''monthly'' before ''benefit payments'' and ''and in the case of an individual or eligible spouse to whom a lump sum is payable under this subchapter (including under section 1382e(a) of this title or under an agreement entered into under section 212(a) of Public Law 93–66) shall, as at least one means of recovering such overpayment, make the adjustment or recovery from the lump sum payment in an amount equal to not less than the lesser of the amount of the overpayment or 50 percent of the lump sum payment,'' before ''unless fraud''.

Subsec. (b)(2). Pub. L. 106–169, § 201(b), inserted at end ''If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.''

Subsec. (b)(4) to (6). Pub. L. 106–169, § 203(a), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (e)(1)(B). Pub. L. 106–169, § 213, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (j)(1). Pub. L. 106–170, § 112(b)(2)(A), inserted before period at end ", or has filed a request for reinstatement of eligibility under subsection (p)(2) of this section and been determined to be eligible for reinstatement".

Subsec. (j)(2)(A)(i)(I). Pub. L. 106–170, § 112(b)(2)(B), inserted "(other than pursuant to a request for reinstatement under subsection (p) of this section)" after "eligible".

Subsec. (p). Pub. L. 106–170, § 112(b)(1), added subsec. (p).

1998—Subsec. (b)(5). Pub. L. 105–306 added par. (5).

1997—Subsec. (a)(2)(F)(ii)(III)(bb). Pub. L. 105–33, § 5522(b)(1), substituted "in any case in which the individual knowingly misapplies benefits from such an account, the Commissioner shall reduce future benefits payable to such individual (or to such individual and his spouse) by an amount equal to the total amount of such benefits so misapplied" for "the total amount of such benefits so used shall be considered to be the uncompensated value of a disposed resource and shall be subject to the provisions of section 1382b(c) of this title".

Subsec. (a)(2)(F)(iii). Pub. L. 105–33, § 5522(b)(2), added cl. (iii) and struck out former cl. (iii) which read as follows: "The representative payee may deposit into the account established pursuant to clause (i)—

"(I) past-due benefits payable to the eligible individual in an amount less than that specified in clause (i)(II), and

"(II) any other funds representing an underpayment under this subchapter to such individual, provided that the amount of such underpayment is equal to or exceeds the maximum monthly benefit payable under this subchapter to an eligible individual."

Subsec. (e)(9). Pub. L. 105–33, § 5564, substituted "not lawfully present in the United States" for "unlawfully in the United States" in two places.

1996—Subsec. (a)(1). Pub. L. 104–193, § 221(b), inserted "(subject to paragraph (10))" before "in such installments".

Subsec. (a)(2)(A)(ii)(II). Pub. L. 104–121, § 105(b)(2)(A), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "In the case of an individual eligible for benefits under this subchapter by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled, the payment of such benefits to a representative payee shall be deemed to serve the interest of the individual under this subchapter. In any case in which such payment is so deemed under this subclause to serve the interest of an individual, the Commissioner of Social Security shall include, in the individual's notification of such eligibility, a notice that alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled and that the Commissioner of Social Security is therefore required to pay the individual's benefits to a representative payee."

Subsec. (a)(2)(B)(vii). Pub. L. 104–121, § 105(b)(2)(B), substituted "described in subparagraph (A)(ii)(II)" for "eligible for benefits under this subchapter by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled".

Subsec. (a)(2)(B)(ix)(II). Pub. L. 104–121, § 105(b)(2)(C), substituted "described in subparagraph (A)(ii)(II)." for "(if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled) is eligible for benefits under this subchapter by reason of disability."

Subsec. (a)(2)(D)(i)(II). Pub. L. 104–121, § 105(b)(2)(D), substituted "described in subparagraph (A)(ii)(II)" for "eligible for benefits under this subchapter by reason of disability and alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled".

Subsec. (a)(2)(F) to (H). Pub. L. 104–193, § 213(a), added subpar. (F) and redesignated former subpars. (F) and (G) as (G) and (H), respectively.

Subsec. (a)(4)(A). Pub. L. 104–193, § 204(b), inserted "for the month following the date the application is filed" after "is presumptively eligible for such benefits" and ", which shall be repaid through proportionate reductions in such benefits over a period of not more than 6 months" before semicolon.

Subsec. (a)(10). Pub. L. 104–193, § 221(a), added par. (10).

Subsec. (e)(6) to (8). Pub. L. 104–193, § 404(c)(1), redesignated pars. (6), relating to suspicion of fraud or similar fault, and (7) as (7) and (8), respectively.

Subsec. (e)(9). Pub. L. 104–193, § 404(c)(2), added par. (9).

Subsec. (g)(3). Pub. L. 104–193, § 204(c)(2), inserted "following the month" after "beginning with the month".

1994—Subsec. (a)(2). Pub. L. 103–432, § 264(e), inserted par. (2) designation.

Subsec. (a)(2)(A)(ii). Pub. L. 103–296, § 201(b)(1)(A)(i), designated existing provisions as subcl. (I), struck out "or in the case of any individual or eligible spouse referred to in section 1382(e)(3)(A) of this title," after "served thereby,", and added subcl. (II).

Pub. L. 103–296, § 107(a)(4), in cl. (ii) as amended by Pub. L. 103–296, § 201(b)(1)(A)(i), substituted "Commissioner of Social Security" for "Secretary" wherever appearing and "Commissioner's" for "Secretary's" in two places in subcl. (II).

Subsec. (a)(2)(A)(iii). Pub. L. 103–296, § 201(b)(1)(A)(ii), substituted "to an alternative representative payee of the individual or eligible spouse or, if the interest of the individual under this subchapter would be served thereby, to the individual or eligible spouse" for "to the individual or eligible spouse or to an alternative representative payee of the individual or eligible spouse".

Pub. L. 103–296, § 107(a)(4), substituted "Commissioner of Social Security" for "Secretary" in two places.

Subsec. (a)(2)(B)(i)(I), (ii), (iv) to (vi). Pub. L. 103–296, § 107(a)(4), substituted "Commissioner of Social Security" for "Secretary" wherever appearing.

Subsec. (a)(2)(B)(vii). Pub. L. 103–296, § 201(b)(2)(A)(ii), added cl. (vii). Former cl. (vii) redesignated (viii).

Pub. L. 103–296, § 107(a)(4), in cl. (vii) as added by Pub. L. 103–296, § 201(b)(2)(A)(ii), substituted "Commissioner of Social Security" for "Secretary" in two places and "Commissioner's" for "Secretary's".

Subsec. (a)(2)(B)(viii). Pub. L. 103–296, § 201(b)(2)(A)(i), (iii), redesignated cl. (vii) as (viii) and substituted "clause (ix)" for "clause (viii)". Former cl. (viii) redesignated (ix).

Pub. L. 103–296, § 201(b)(1)(B), in subcl. (II) substituted "of 15 years, or (if alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is disabled) is eligible for benefits under this subchapter by reason of disability." for "15 years, or a drug addict or alcoholic referred to in section 1382(e)(3)(A) of this title."

Pub. L. 103–296, § 107(a)(4), in cl. (viii) as redesignated by Pub. L. 103–296, § 201(b)(2)(A)(i), substituted "Commissioner of Social Security" for "Secretary" in two places.

Subsec. (a)(2)(B)(ix). Pub. L. 103–296, § 201(b)(2)(A)(i), (iv), redesignated cl. (viii) as (ix) and in subcl. (I) substituted "clause (viii)" for "clause (vii)". Former cl. (ix) redesignated (x).

Pub. L. 103–296, § 107(a)(4), in cl. (ix) as redesignated and amended by Pub. L. 103–296, § 201(b)(1)(B), (2)(A)(i), substituted "Commissioner's" for "Secretary's" in two places in subcl. (II).

Subsec. (a)(2)(B)(x) to (xii). Pub. L. 103–296, § 201(b)(2)(A)(i), redesignated cls. (ix) to (xi) as (x) to (xii), respectively. Former cl. (xii) redesignated (xiii).

Pub. L. 103–296, § 107(a)(4), in cls. (x) to (xii) as redesignated by Pub. L. 103–296, § 201(b)(2)(A)(i), substituted "Commissioner of Social Security" for "Secretary"

and ''Commissioner's'' for ''Secretary's'' wherever appearing.

Subsec. (a)(2)(B)(xiii). Pub. L. 103–296, §201(b)(2)(A)(i), (v), redesignated cl. (xii) as (xiii) and substituted ''clause (xii)'' for ''clause (xi)'' and ''clause (xi)'' for ''clause (x)''.

Subsec. (a)(2)(C). Pub. L. 103–296, §107(a)(4), in subpar. (C) as amended by Pub. L. 103–432, §264(f), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(2)(C)(i). Pub. L. 103–432, §264(f)(1), substituted ''to a representative payee'' for ''to representative payee''.

Subsec. (a)(2)(C)(ii). Pub. L. 103–432, §264(f)(2), (3), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: ''Clause (i) shall not apply in any case where the representative payee is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.''

Subsec. (a)(2)(C)(iii). Pub. L. 103–432, §264(f)(3), redesignated cl. (iv) as (iii). Former cl. (iii) redesignated (ii).

Subsec. (a)(2)(C)(iv). Pub. L. 103–432, §264(f)(4), substituted ''Notwithstanding clauses (i), (ii), and (iii)'' for ''Notwithstanding clauses (i), (ii), (iii), and (iv)''.

Pub. L. 103–432, §264(f)(3), redesignated cl. (v) as (iv). Former cl. (iv) redesignated (iii).

Subsec. (a)(2)(C)(v). Pub. L. 103–432, §264(f)(3), redesignated cl. (v) as (iv).

Subsec. (a)(2)(D)(i). Pub. L. 103–296, §201(b)(2)(B)(i)(I)(bb), inserted in closing provisions ''The Secretary shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00.''

Pub. L. 103–296, §107(a)(4), in cl. (i) as amended by Pub. L. 103–296, §201(b)(2)(B)(i)(I)(bb), substituted ''Commissioner of Social Security'' for ''Secretary'' in closing provisions.

Subsec. (a)(2)(D)(i)(II). Pub. L. 103–296, §201(b)(2)(B)(i)(I)(aa), added subcl. (II) and struck out former subcl. (II) which read as follows: ''$25.00 per month.''

Pub. L. 103–296, §104(a)(7), in subcl. (II) as added by Pub. L. 103–296, §201(b)(2)(B)(i)(I)(aa), substituted ''Commissioner's'' for ''Secretary's''.

Subsec. (a)(2)(D)(ii). Pub. L. 103–296, §201(b)(2)(B)(ii), in introductory provisions inserted ''State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any'' after ''means any'' and a comma after ''service agency'', at end of subcl. (I) inserted ''and'', and in subcl. (II) inserted ''and'' at end of item (aa), substituted a period for ''; and'' at end of item (bb), and struck out item (cc) which read as follows: ''was in existence on October 1, 1988.''

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(2)(D)(iv). Pub. L. 103–296, §201(b)(2)(B)(iii)(II), redesignated cl. (v) as (iv).

Pub. L. 103–296, §201(b)(2)(B)(iii)(I), struck out cl. (iv) which read as follows: ''This subparagraph shall cease to be effective on July 1, 1994.''

Subsec. (a)(2)(D)(v). Pub. L. 103–296, §201(b)(2)(B)(iii)(II), redesignated cl. (v) as (iv).

Pub. L. 103–296, §201(b)(2)(B)(i)(II), added cl. (v).

Subsec. (a)(2)(E). Pub. L. 103–296, §321(f)(2)(B)(ii), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 103–296, §107(a)(4), in subpar. (E) as added by Pub. L. 103–296, §321(f)(2)(B)(ii), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(2)(F), (G). Pub. L. 103–296, §321(f)(2)(B)(i), redesignated subpars. (E) and (F) as (F) and (G), respectively.

Pub. L. 103–296, §107(a)(4), in subpars. (F) and (G) as redesignated by Pub. L. 103–296, §321(f)(2)(B)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in subpar. (G).

Subsec. (a)(3), (4), (6) to (8). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' in par. (8)(A), and ''Commissioner's'' for ''Secretary's'' in par. (8)(B).

Subsec. (b). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner finds'' for ''he finds'' in par. (1)(B).

Subsec. (b)(3) to (5). Pub. L. 103–432, §267(b), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ''In any case in which advance payments for a taxable year made by all employers to an individual under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit) exceed the amount of such individual's earned income credit allowable under section 32 of such Code for such year, so that such individual is liable under section 32(g) of such Code for a tax equal to such excess, the Secretary shall provide for an appropriate adjustment of such individual's benefit amount under this subchapter so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such excess advance payments.''

Subsec. (c)(1)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''Commissioner's determination'' for ''Secretary's determination'', ''the Commissioner's findings'' for ''his findings'', ''the Commissioner's own motion'' for ''his own motion'', ''the Commissioner may deem'' for ''he may deem'', and ''the Commissioner may administer'' for ''he may administer''.

Subsec. (c)(1)(B). Pub. L. 103–432, §264(g), substituted ''subparagraph (A)'' for ''paragraph (1)'' in cls. (i) and (ii).

Subsec. (c)(1)(B)(ii). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''Commissioner's'' for ''Secretary's''.

Subsec. (d)(2)(A)(i). Pub. L. 103–296, §321(f)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''by substituting 'section 1320a–6(a) or 1383(g) of this title' for 'section 1320a–6(a) of this title'; and''.

Subsec. (d)(2)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (e)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e)(1)(C). Pub. L. 103–387 added subpar. (C).

Subsec. (e)(2), (3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner may'' for ''he may'' in par. (2).

Subsec. (e)(4). Pub. L. 103–296, §206(a)(2), added par. (4).

Subsec. (e)(5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions.

Subsec. (e)(6). Pub. L. 103–432, §268, redesignated subpars. (1) and (2) of par. (6), relating to face-to-face interviews in field offices, as subpars. (A) and (B), respectively.

Pub. L. 103–296, §206(d)(2), added par. (6) relating to suspicion of fraud or similar fault.

Pub. L. 103–296, §107(a)(4), in par. (6), relating to suspicion of fraud or similar fault, as added by Pub. L.

103–296, § 206(d)(2), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in closing provisions of par. (6) relating to face-to-face interviews in field offices.

Subsec. (e)(7). Pub. L. 103–296, § 206(f)(1), added par. (7).

Pub. L. 103–296, § 107(a)(4), in par. (7) as added by Pub. L. 103–296, § 206(f)(1), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsecs. (f) to (m). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except where appearing before ''of the Treasury'' in subsec. (i)(1) and (3).

Subsec. (n). Pub. L. 103–432, § 264(b), which directed substitution of ''section'' for ''subsection'', could not be executed because of amendment by Pub. L. 103–296, § 321(h)(1)(A), which substituted ''subchapter'' for ''subsection''. See below.

Pub. L. 103–296, § 321(h)(1)(B), redesignated subsec. (n) relating to notice requirements as (*o*).

Pub. L. 103–296, § 321(h)(1)(A), substituted ''subchapter'' for ''subsection'' in subsec. (n) relating to concurrent SSI and food stamp applications by institutionalized individuals.

Pub. L. 103–296, § 107(a)(4), substituted ''The Commissioner of Social Security and'' for ''The Secretary and'' in subsec. (n) relating to concurrent SSI and food stamp applications by institutionalized individuals.

Subsec. (*o*). Pub. L. 103–296, § 321(h)(1)(B), redesignated subsec. (n) relating to notice requirements as (*o*).

Pub. L. 103–296, § 107(a)(4), in subsec. (*o*) as redesignated by Pub. L. 103–296, § 321(h)(1)(B), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places in introductory provisions.

1990—Subsec. (a)(2)(A). Pub. L. 101–508, § 5105(a)(1)(B)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1382(e)(3)(A) of this title, the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).''

Subsec. (a)(2)(B). Pub. L. 101–508, § 5105(a)(2)(A)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.''

Subsec. (a)(2)(C)(i). Pub. L. 101–508, § 5105(a)(1)(B)(ii)(I), substituted ''representative payee of an individual or spouse'' for ''a person other than the individual or spouse entitled to such payment''.

Subsec. (a)(2)(C)(ii) to (iv). Pub. L. 101–508, § 5105(a)(1)(B)(ii)(II), substituted ''representative payee'' for ''other person to whom such payment is made''.

Subsec. (a)(2)(C)(v). Pub. L. 101–508, § 5105(a)(1)(B)(ii)(III), substituted ''representative payee'' for ''person receiving payments on behalf of another'' and for ''person receiving such payments''.

Subsec. (a)(2)(D). Pub. L. 101–508, § 5105(a)(3)(A)(ii)(III)[(II)], added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(2)(E). Pub. L. 101–508, § 5105(c)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 101–508, § 5105(a)(3)(A)(ii)(I), redesignated subpar. (D) as (E).

Subsec. (a)(2)(F). Pub. L. 101–508, § 5105(d)(1)(B), which directed amendment of subsec. (a)(2)(E), as redesignated by section 5105(c)(2) of Pub. L. 101–508, by redesignating it as subpar. (E) and amending it generally, was executed to subpar. (E), as added by section 5105(c)(2) of Pub. L. 101–508, as the probable intent of Congress. Prior to amendment, subpar. (E) read as follows: ''In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.''

Pub. L. 101–508, § 5105(c)(2), redesignated subpar. (E) as (F).

Subsec. (a)(4)(B). Pub. L. 101–508, § 5038(a), substituted ''6 months'' for ''3 months''.

Subsec. (a)(6)(A). Pub. L. 101–508, § 5113(b)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: ''such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and''.

Subsec. (a)(6)(B). Pub. L. 101–508, § 5113(b)(2), substituted ''Secretary'' for ''Commissioner of Social Security''.

Subsec. (a)(9). Pub. L. 101–508, § 5031(c), added par. (9).

Subsec. (c)(1). Pub. L. 101–508, § 5107(a)(2), designated existing provision as subpar. (A) and added subpar. (B).

Subsec. (d)(2)(A). Pub. L. 101–508, § 5106(a)(2), amended subpar. (A) generally, substituting cls. (i) and (ii) for former single par. which authorized Secretary to prescribe regulations relating to representation of claimants before the Secretary, representation by attorneys, suspension of representatives, and maximum fees for representation, provided penalties for deceiving claimants and exceeding maximum fees, and required Secretary to maintain in the electronic information retrieval system of the Social Security Administration the identity of representatives of claimants.

Subsec. (h). Pub. L. 101–508, § 5106(c), inserted at end ''The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.''

Subsec. (j)(2)(A). Pub. L. 101–508, § 5039(b), inserted ''(other than subsection (c) thereof)'' after first reference to ''section 1382h of this title''.

Subsec. (m). Pub. L. 101–508, § 5040(1), struck out at end ''The Secretary and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subchapter shall also be permitted to apply for participation in the food stamp program by executing a single application.''

Subsec. (n). Pub. L. 101–508, § 5109(a)(2), added subsec. (n) relating to notice requirements.

Pub. L. 101–508, § 5040(2), added subsec. (n) relating to concurrent SSI and food stamp applications by institutionalized individuals.

1989—Subsec. (c)(1). Pub. L. 101–239, § 10305(e), inserted at end ''The Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation of such individual (including any lack of facility with the English language) in determining, with respect to the eligibility of such individual for benefits under this subchapter, whether such individual acted in good faith or was at fault, and in determining fraud, deception, or intent.''

Subsec. (d)(2). Pub. L. 101–239, § 10307(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 101–239, § 10307(a)(2), inserted at end ''The Secretary shall maintain in the electronic information re-

trieval system used by the Social Security Administration a current record, with respect to any claimant before the Secretary, of the identity of any person representing such claimant in accordance with this paragraph.''

Subsec. (e)(5). Pub. L. 101–239, §10302(b)(1), added par. (5).

Subsec. (e)(6). Pub. L. 101–239, §10303(b), added par. (6).

1988—Subsec. (a)(8). Pub. L. 100–647 added par. (8).

1987—Subsec. (a)(4)(A). Pub. L. 100–203, §9109(a), substituted ''a cash advance against such benefits, including any federally-administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility'' for ''a cash advance against such benefits in an amount not exceeding $100''.

Subsec. (a)(6). Pub. L. 100–203, §9112(a), in introductory provision inserted ''blindness (as determined under section 1382c(a)(2) of this title) or'' before ''disability'' and ''blindness or other'' before ''physical'', and in subpar. (B) inserted ''blindness and'' before ''disability''.

Subsec. (g)(2). Pub. L. 100–203, §9110(a), substituted ''at the time the Secretary makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3)'' for ''at the time the Secretary makes the first payment of benefits''.

Subsec. (g)(3). Pub. L. 100–203, §9110(b), inserted cl. (A) designation after ''basic needs'' and added cl. (B).

Subsec. (j). Pub. L. 100–203, §9123, redesignated subsec. (j), relating to pre-release procedures for institutionalized persons, as (m).

Subsec. (*l*). Pub. L. 100–203, §9111(a)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 100–203, §9123, redesignated subsec. (j), relating to pre-release procedures for institutionalized persons, as (m) and reenacted heading without change.

1986—Subsec. (b)(1). Pub. L. 99–643, §8(a), substituted ''(A) Whenever the Secretary'' for ''Whenever the Secretary'', ''by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—'' for ''by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary (A) shall make'', added subpar. (A)(i) and (ii), substituted ''(B) the Secretary (i) shall make such provision'' for ''such provision'', ''and (ii) shall in any event'' for ''and (B) shall in any event'', ''(I) the amount'' for ''(i) the amount'', ''(II) an amount'' for ''(ii) an amount'', ''clause (ii)'' for ''clause (B)'', and ''clause (i)'' for ''clause (A)''.

Subsec. (b)(2). Pub. L. 99–272 added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Pub. L. 99–272 redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 99–272 redesignated pars. (3) and (4) as (4) and (5), respectively.

Subsec. (e)(1)(A). Pub. L. 99–643, §4(c)(1)(A), substituted ''subparagraph (B) and subsection (j) of this section'' for ''subparagraph (B)''.

Subsec. (e)(1)(B). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (e)(3). Pub. L. 99–570, §11005(a), added par. (3).

Subsec. (g). Pub. L. 99–514, §1883(d)(1), amended heading generally.

Subsec. (j). Pub. L. 99–570, §11006, added subsec. (j) relating to pre-release procedures for institutionalized persons.

Pub. L. 99–643, §4(c)(1)(B), added subsec. (j) relating to application and review requirements for certain individuals.

Subsec. (j)(2)(A). Pub. L. 99–643, §4(d)(3)(B), in subsec. (j) relating to application and review requirements, substituted ''section 1382c(a)(4) of this title'' for ''section 1382c(a)(5) of this title'' in closing provisions.

Subsec. (k). Pub. L. 99–643, §5, added subsec. (k).

1984—Subsec. (a)(2). Pub. L. 98–460, §16(b), redesignated existing provisions as subpar. (A) and added subpars. (B) to (D).

Subsec. (a)(7). Pub. L. 98–460, §7(b), added par. (7).

Pub. L. 98–369, §2612(a), inserted ''(A)'' before ''shall make such provision'' in second sentence, and added cl. (B).

Subsec. (b)(1). Pub. L. 98–369, §2663(g)(11)(A), substituted ''equity and good conscience'' for ''equity or good conscience''.

Subsec. (b)(2). Pub. L. 98–369, §2663(g)(11)(B), substituted ''section 32'' and ''section 32(g)'' for ''section 43'' and ''section 43(g)'', respectively.

Subsec. (b)(3), (4). Pub. L. 98–369, §2613, added par. (3) and redesignated former par. (3) as (4).

Subsec. (d)(1). Pub. L. 98–369, §2663(g)(12), substituted ''and (e)'' for ''(e), and (f)''.

Subsec. (e)(1)(B). Pub. L. 98–369, §2651(j), inserted provision that for this purpose and for purposes of federally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), the Secretary shall, as may be necessary, request and utilize information available pursuant to section 6103(*l*)(7) of the Internal Revenue Code of 1954, and any information which may be available from State systems under section 1320b–7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(*l*)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b–7 of this title.

1982—Subsec. (i)(2). Pub. L. 97–248 substituted ''such benefit checks'' for ''checks payable to individuals entitled to benefits under this subchapter but''.

1981—Subsec. (i). Pub. L. 97–35 added subsec. (i).

1980—Subsec. (a)(6). Pub. L. 96–265, §301(b), added par. (6).

Subsec. (b). Pub. L. 96–473 redesignated par. (2) as added by Pub. L. 96–265, §501(c), as (3).

Pub. L. 96–265, §501(c), designated existing provisions as par. (1) and added par. (2), without reference to identical amendment made by Pub. L. 96–222. Such par. (2) was subsequently redesignated par. (3) by Pub. L. 96–473.

Pub. L. 96–222 designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 96–265, §305(b), inserted provisions relating to information that must accompany a decision of Secretary.

Subsec. (h). Pub. L. 96–265, §310(b), added subsec. (h).

1976—Subsec. (a)(4)(B). Pub. L. 94–569 inserted ''or blindness'' after ''disability'' and ''or blind'' after ''disabled'' wherever appearing.

Subsec. (c)(1). Pub. L. 94–202, §1, increased authority of Secretary by permitting him to hold hearings on his own motion, to administer oaths, examine witnesses, and receive evidence at hearings, and increased time within which a request for a hearing be made after notice of Secretary's determination is received from thirty to sixty days.

Subsec. (c)(2). Pub. L. 94–202, §1, reenacted par. (2) without change.

Subsec. (c)(3). Pub. L. 94–202, §1, struck out exception to judicial review which made factual determinations by the Secretary, after a hearing as provided by subsec. (c)(1), final and conclusive.

Subsec. (d)(2), (3). Pub. L. 94–202, §2, struck out par. (2) which related to appointment of individuals to serve as hearing examiners without meeting specific standards prescribed for hearing examiners, and redesignated par. (3) as par. (2).

Subsec. (g). Pub. L. 94–365 struck out par. (6) which provided that provisions of this subsection were to expire on June 30, 1976, at least sixty days prior to which, the Secretary was to submit to Congress a report assessing effects of actions taken pursuant to this subsection and including whatever recommendations the Secretary deemed appropriate.

1974—Subsec. (g). Pub. L. 93–368 added subsec. (g).

1973—Subsec. (a)(4)(B). Pub. L. 93–233 inserted ''solely because such individual is determined not to be disabled.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VII, §7502(b), Feb. 8, 2006, 120 Stat. 154, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect 3 months after the date of the enactment of this Act [Feb. 8, 2006].''

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by section 101(c)(1), (3) of Pub. L. 108–203 applicable to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1995, see section 101(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 102(a)(2) of Pub. L. 108–203 effective on the first day of the thirteenth month beginning after Mar. 2, 2004, see section 102(a)(3) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 103(c) of Pub. L. 108–203 effective on the first day of the thirteenth month beginning after Mar. 2, 2004, see section 103(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 104(b) of Pub. L. 108–203 applicable to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after Mar. 2, 2004, see section 104(c) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 105(c) of Pub. L. 108–203 applicable to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after Mar. 2, 2004, see section 105(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 106(c) of Pub. L. 108–203 effective 180 days after Mar. 2, 2004, see section 106(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 210(b)(4) of Pub. L. 108–203 effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as a note under section 404 of this title.

Pub. L. 108–203, title III, §302(c), Mar. 2, 2004, 118 Stat. 521, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply with respect to fees for representation of claimants which are first required to be paid under section 1631(d)(2) of the Social Security Act [subsec. (d)(2) of this section] on or after the date of the submission by the Commissioner of Social Security to each House of Congress pursuant to section 303(d) of this Act [set out as a note under section 406 of this title] of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of this Act [set out as a note under section 406 of this title].

''(2) SUNSET.—Such amendments shall not apply with respect to fees for representation of claimants in the case of any claim for benefits with respect to which the agreement for representation is entered into after 5 years after the date described in paragraph (1).''

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by section 101(b)(2)(C) of Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

Amendment by section 112(b) of Pub. L. 106–170 effective on the first day of the thirteenth month beginning after Dec. 17, 1999, and no benefit to be payable under this subchapter on the basis of a request for reinstatement filed under subsec. (p) of this section before such date, see section 112(c) of Pub. L. 106–170, set out as a note under section 423 of this title.

Amendment by section 201(b) of Pub. L. 106–169 applicable to overpayments made 12 months or more after Dec. 14, 1999, see section 201(c) of Pub. L. 106–169, set out as a note under section 404 of this title.

Pub. L. 106–169, title II, §202(b), Dec. 14, 1999, 113 Stat. 1832, provided that: ''The amendments made by this section [amending this section] shall take effect 12 months after the date of the enactment of this Act [Dec. 14, 1999] and shall apply to amounts incorrectly paid which remain outstanding on or after such date.''

Amendment by section 203(a) of Pub. L. 106–169 applicable to debt outstanding on or after Dec. 14, 1999, see section 203(d) of Pub. L. 106–169, set out as a note under section 3701 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–306 effective Oct. 28, 1998, and applicable to amounts incorrectly paid which remain outstanding on or after such date, see section 8(c) of Pub. L. 105–306, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5522(b) of Pub. L. 105–33 effective as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5528(a) of Pub. L. 105–33, set out as a note under section 903 of this title.

Amendment by section 5564 of Pub. L. 105–33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5582 of Pub. L. 105–33, set out as a note under section 1367 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 204(b), (c)(2) of Pub. L. 104–193 applicable to applications for benefits under this subchapter filed on or after Aug. 22, 1996, without regard to whether regulations have been issued to implement amendments by section 204 of Pub. L. 104–193, see section 204(d) of Pub. L. 104–193, set out as a note under section 1382 of this title.

Amendment by section 213(a) of Pub. L. 104–193 applicable to payments made after Aug. 22, 1996, see section 213(d) of Pub. L. 104–193, set out as a note under section 1382a of this title.

Section 221(c) of Pub. L. 104–193 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] are effective with respect to past-due benefits payable under title XVI of the Social Security Act [this subchapter] after the third month following the month in which this Act is enacted [August 1996].

''(2) BENEFITS PAYABLE UNDER TITLE XVI.—For purposes of this subsection, the term 'benefits payable under title XVI of the Social Security Act' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [section 1382e(a) of this title], and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66 [set out as a note under section 1382 of this title].''

Amendment by Pub. L. 104–121 effective July 1, 1996, with respect to any individual whose claim for benefits is finally adjudicated on or after Mar. 29, 1996, or whose eligibility for benefits is based upon eligibility redetermination made pursuant to section 105(b)(5)(C) of Pub. L. 104–121, see section 105(b)(5) of Pub. L. 104–121, as amended, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 264(b) and (e)–(g) of Pub. L. 103–432 effective as if included in the provision of Pub. L. 101–508 to which the amendment relates at the time such provision became law, see section 264(h) of Pub. L. 103–432, set out as a note under section 1320b–9 of this title.

Section 6(b) of Pub. L. 103–387 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to admissions occurring on or after October 1, 1995.''

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(b)(1)(C) of Pub. L. 103–296 provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

Section 201(b)(2)(B)(iii)(I) of Pub. L. 103–296 provided that the amendment made by that section is effective July 1, 1994.

Section 201(b)(2)(C) of Pub. L. 103–296 provided that: ''Except as provided in subparagraph (B)(iii)(I) [amending this section and enacting provisions set out as a note above], the amendments made by this paragraph [amending this section] shall apply with respect to months beginning after 90 days after the date of the enactment of this Act [Aug. 15, 1994].''

Amendment by section 206(a)(2) of Pub. L. 103–296 applicable to translations made on or after Oct. 1, 1994, see section 206(a)(3) of Pub. L. 103–296, set out as a note under section 405 of this title.

Amendment by section 206(d)(2) of Pub. L. 103–296 effective Oct. 1, 1994, and applicable to determinations made before, on, or after such date, see section 206(d)(3) of Pub. L. 103–296, set out as a note under section 405 of this title.

Section 206(f)(2) of Pub. L. 103–296 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1994.''

Amendment by section 321(f)(2)(B), (3)(A) of Pub. L. 103–296 effective as if included in the provisions of Pub. L. 101–508 to which such amendment relates, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5031(c) of Pub. L. 101–508 applicable with respect to benefits for months beginning on or after the first day of the 6th calendar month following November 1990, see section 5031(d) of Pub. L. 101–508, set out as a note under section 1382a of this title.

Section 5038(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Amendment by section 5105(a)(1)(B), (2)(A)(ii) of Pub. L. 101–508 effective July 1, 1991, and applicable only with respect to (i) certifications of payment of benefits under subchapter II of this chapter to representative payees made on or after such date; and (ii) provisions for payment of benefits under this subchapter to representative payees made on or after such date, and amendment by section 5105(a)(3)(A)(ii) of Pub. L. 101–508 effective July 1, 1991, see section 5105(a)(5) of Pub. L. 101–508 set out as a note under section 405 of this title.

Amendment by section 5105(d)(1)(B) of Pub. L. 101–508 applicable with respect to annual reports issued for years after 1991, see section 5105(d)(2) of Pub. L. 101–508, set out as a note under section 405 of this title.

Amendment by section 5106(a)(2), (c) of Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101–508, set out as a note under section 401 of this title.

Amendment by section 5107(a)(2) of Pub. L. 101–508 applicable with respect to adverse determinations made on or after July 1, 1991, see section 5107(b) of Pub. L. 101–508, set out as a note under section 405 of this title.

Amendment by section 5109(a)(2) of Pub. L. 101–508 applicable with respect to notices issued on or after July 1, 1991, see section 5109(b) of Pub. L. 101–508, set out as a note under section 405 of this title.

Amendment by section 5113(b) of Pub. L. 101–508 effective with respect to benefits payable for months after the eleventh month following November 1990, and applicable only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month, see section 5113(c) of Pub. L. 101–508, set out as a note under section 425 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10302(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to misinformation furnished on or after the date of the enactment of this Act [Dec. 19, 1989] and to benefits for months after the month in which this Act is enacted [December 1989].''

Amendment by section 10303(b) of Pub. L. 101–239 applicable to visits to field offices of Social Security Administration on or after Jan. 1, 1990, see section 10303(c) of Pub. L. 101–239, set out as a note under section 405 of this title.

Amendment by section 10305(e) of Pub. L. 101–239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

Amendment by section 10307(a)(2) of Pub. L. 101–239 effective June 1, 1991, see section 10307(a)(3) of Pub. L. 101–239, set out as a note under section 406 of this title.

Amendment by section 10307(b)(2) of Pub. L. 101–239 applicable with respect to adverse determinations made on or after Jan. 1, 1991, see section 10307(b)(3) of Pub. L. 101–239, set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to determinations by administrative law judges of entitlement to benefits made after 180 days after Nov. 10, 1988, see section 8001(c) of Pub. L. 100–647, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9109(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Dec. 22, 1987].''

Section 9110(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall become effective with the 13th month following the month in which this Act is enacted [December 1987], or, if sooner, with the first month for which the Secretary of Health and Human Services determines that it is administratively feasible.''

Section 9111(c) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective July 1, 1988.''

Section 9112(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by sections 4(c)(1), (d)(3)(B) and 5 of Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Section 8(b) of Pub. L. 99–643 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits payable for months after May 1986.''

Section 11005(c)(1) of Pub. L. 99–570 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 27, 1986].''

Amendment by Pub. L. 99–272 applicable only in the case of deaths of which the Secretary is first notified on or after Apr. 7, 1986, see section 12113(c) of Pub. L. 99–272, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 16(b) of Pub. L. 98–460 effective Oct. 9, 1984, see section 16(d) of Pub. L. 98–460, set out as a note under section 405 of this title.

Amendment by sections 2612(a) and 2613 of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 657 of this title.

Amendment by section 2651(j) of Pub. L. 98–369 effective July 18, 1984, see section 2651(*l*)(1) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

Amendment by section 2663(g)(11), (12) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 187(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2343(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 301(b) of Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable with respect to individuals whose disability has not been determined to have ceased prior to such first day, see section 301(c) of Pub. L. 96–265, set out as a note under section 425 of this title.

Amendment by section 305(b) of Pub. L. 96–265 applicable with respect to decisions made on or after the first day of the 13th month following June, 1980, see section 305(c) of Pub. L. 96–265, set out as a note under section 405 of this title.

Amendment by section 501(c) of Pub. L. 96–265 applicable in the case of payments of monthly insurance benefits under subchapter II of this chapter, entitlement for which is determined on or after July 1, 1981, see section 501(d) of Pub. L. 96–265, set out as an Effective Date note under section 1320a–6 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 4(b) of Pub. L. 94–569 provided that: ''The amendments made by this section [amending this section] shall apply with respect to months after the month following the month in which this Act is enacted [October 1976].''

Amendment by sections 1 and 2 of Pub. L. 94–202 effective Jan. 2, 1976, with the amendment by section 2 of Pub. L. 94–202, to the extent that it changes the period within which a hearing must be requested, applicable to any decision or determination which is received on or after Jan. 2, 1976, see section 5 of Pub. L. 94–202, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective Jan. 1, 1974, see section 18(z–3)(1) of Pub. L. 93–233.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

REGULATIONS

Section 222 of title II of Pub. L. 104–193 provided that: ''Within 3 months after the date of the enactment of this Act [Aug. 22, 1996], the Commissioner of Social Security shall prescribe such regulations as may be necessary to implement the amendments made by this subtitle [subtitle C (§§ 221, 222) of title II of Pub. L. 104–193, amending this section].''

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

PAYMENT OF TRAVEL EXPENSES

Pub. L. 102–394, title II, Oct. 6, 1992, 106 Stat. 1807, provided in part: ''That for fiscal year 1993 and thereafter, travel expense payments under section 1631(h) of such Act [subsec. (h) of this section] for travel to hearings may be made only when travel of more than seventy-five miles is required''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, Nov. 26, 1991, 105 Stat. 1122.

Pub. L. 101–517, title II, Nov. 5, 1990, 104 Stat. 2204.

Pub. L. 101–166, title II, Nov. 21, 1989, 103 Stat. 1173.

Pub. L. 100–436, title II, Sept. 20, 1988, 102 Stat. 1695.

Pub. L. 100–202, § 101(h) [title II], Dec. 22, 1987, 101 Stat. 1329–256, 1329–270.

Pub. L. 99–500, § 101(i) [H.R. 5233, title II], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title II], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, Dec. 12, 1985, 99 Stat. 1116.

Pub. L. 98–619, title II, Nov. 8, 1984, 98 Stat. 3318.

Pub. L. 98–139, title II, Oct. 31, 1983, 97 Stat. 884.

Pub. L. 97–377, title I, § 101(e)(1), Dec. 21, 1982, 96 Stat. 1891.

Pub. L. 97–92, § 101(a) [H.R. 4560, title II], Dec. 15, 1981, 95 Stat. 1183.

DEPOSIT OF OVERPAYMENTS IN GENERAL FUND OF TREASURY

Pub. L. 102–170, title II, Nov. 26, 1991, 105 Stat. 1122, provided: ''That for fiscal year 1992 and thereafter, all collections from repayments of overpayments shall be deposited in the general fund of the Treasury.''

OPPORTUNITY FOR INDIVIDUALS RECEIVING BENEFITS TO MAKE ELECTION FOR TYPE OF NOTICE OF HEARING OR OTHER OFFICIAL ACTION

Section 9111(a)(2) of Pub. L. 100–203 directed Secretary of Health and Human Services, not later than one year after July 1, 1988, to provide every individual receiving benefits under this subchapter on the basis of blindness an opportunity to make an election under subsec. (*l*)(1) of this section.

STUDY OF DESIRABILITY AND FEASIBILITY OF SPECIAL NOTICES OF HEARINGS AND OTHER ACTIONS TO OTHER INDIVIDUALS UNABLE TO READ

Section 9111(b) of Pub. L. 100–203 directed Secretary of Health and Human Services to study desirability and feasibility of extending special or supplementary notices of the type provided to blind individuals by subsec. (*l*) of this section to other individuals who may lack the ability to read and comprehend regular written notices, and report the results of such study to Congress, along with recommendations, within 12 months after Dec. 22, 1987.

DEMONSTRATION PROGRAM TO ASSIST HOMELESS INDIVIDUALS

Section 9117 of Pub. L. 100–203, as amended by Pub. L. 104–66, title I, § 1061(e), Dec. 21, 1995, 109 Stat. 720, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') is authorized to make grants to States for projects designed to demonstrate and test the feasibil-

ity of special procedures and services to ensure that homeless individuals are provided SSI and other benefits under the Social Security Act [this chapter] to which they are entitled and receive assistance in using such benefits to obtain permanent housing, food, and health care. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary shall prescribe.

''(b) SCOPE OF PROJECTS.—Projects for which grants are made under this section shall include, more specifically, procedures and services to overcome barriers which prevent homeless individuals (particularly the chronically mentally ill) from receiving and appropriately using benefits, including—

''(1) the creation of cooperative approaches between the Social Security Administration, State and local governments, shelters for the homeless, and other providers of services to the homeless;

''(2) the establishment, where appropriate, of multi-agency SSI Outreach Teams (as described in subsection (c)), to facilitate communication between the agencies and staff involved in taking and processing claims for SSI and other benefits by the homeless who use shelters;

''(3) special efforts to identify homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act [this chapter];

''(4) the provision of special assistance to the homeless in applying for benefits, including assistance in obtaining and developing evidence of disability and supporting documentation for nondisability-related eligibility requirements;

''(5) the provision of special training and assistance to public and private agency staff, including shelter employees, on disability eligibility procedures and evidentiary requirements;

''(6) the provision of ongoing assistance to formerly homeless individuals to ensure their responding to information requests related to periodic redeterminations of eligibility for SSI and other benefits;

''(7) the provision of assistance in ensuring appropriate use of benefit funds for the purpose of enabling homeless individuals to obtain permanent housing, nutrition, and physical and mental health care, including the use, where appropriate, of the disabled individual's representative payee for case management services; and

''(8) such other procedures and services as the Secretary may approve.

''(c) SSI OUTREACH TEAM PROJECTS.—(1) If a State applies for funds under this section for the purpose of establishing a multi-agency SSI Outreach Team, the membership and functions of such Team shall be as follows (except as provided in paragraph (2)):

''(A) The membership of the Team shall include a social services case worker (or case workers, if necessary); a consultative medical examiner who is qualified to provide consultative examinations for the Disability Determination Service of the State; a disability examiner, from the State Disability Determination Service; and a claims representative from an office of the Social Security Administration.

''(B) The Team shall have designated members responsible for—

''(i) identification of homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act [this chapter];

''(ii) ensuring that such individuals understand their rights under the programs;

''(iii) assisting such individuals in applying for benefits, including assistance in obtaining and developing evidence and supporting documentation relating to disability- and nondisability-related eligibility requirements;

''(iv) arranging transportation and accompanying applicants to necessary examinations, if needed; and

''(v) providing for the tracking and monitoring of all claims for benefits by individuals under the project.

''(2) If the Secretary determines that an application by a State for an SSI Outreach Team Project under this section which proposes a membership and functions for such Team different from those prescribed in paragraph (1) but which is expected to be as effective, the Secretary may waive the requirements of such paragraph.

[(d) Repealed. Pub. L. 104–66, title I, § 1061(e), Dec. 21, 1995, 109 Stat. 720.]

''(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

''(A) the sum of $1,250,000 for the fiscal year 1988;

''(B) the sum of $2,500,000 for the fiscal year 1989; and

''(C) such sums as may be necessary for each fiscal year thereafter.''

NOTIFICATION OF ADJUSTMENT OF BENEFITS BY SECRETARY

Section 2612(b) of Pub. L. 98–369 provided that: ''If an adjustment referred to in section 1631(b)(1) of the Social Security Act [subsec. (b)(1) of this section] is in effect with respect to an individual or eligible spouse on the effective date of this subsection [Oct. 1, 1984], and the amount of such adjustment for a month is greater than the amount described in section 1631(b)(1)(B)(ii) of such Act [subsec. (b)(1)(B)(ii) of this section], as added by subsection (a), the Secretary shall notify the individual whose benefits are being adjusted, in writing, of his or her right to have the adjustment reduced to the amount described in such section 1631(b)(1)(B)(ii).''

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment to sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1984, see section 11(c) of Pub. L. 98–460, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

HEARING EXAMINERS APPOINTED PRIOR TO JANUARY 2, 1976

Pub. L. 95–216, title III, § 371, Dec. 20, 1977, 91 Stat. 1559, provided that: ''The persons who were appointed to serve as hearing examiners under section 1631(d)(2) of the Social Security Act [subsec. (d)(2) of this section] (as in effect prior to January 2, 1976), and who by section 3 of Public Law 94–202 [set out as a note under this section] were deemed to be appointed under section 3105 of title 5, United States Code (with such appointments terminating no later than at the close of the period ending December 31, 1978), shall be deemed appointed to career-absolute positions as hearing examiners under and in accordance with section 3105 of title 5, United States Code, with the same authority and tenure (without regard to the expiration of such period) as hearing examiners appointed directly under such section 3105, and shall receive compensation at the same rate as hearing examiners appointed by the Secretary of Health, Education, and Welfare [now Health and Human Services] directly under such section 3105. All of the provisions of title 5, United States Code and the regulations promulgated pursuant thereto, which are applicable to hearing examiners appointed under such section 3105, shall apply to the persons described in the preceding sentence.''

Section 3 of Pub. L. 94–202 provided that: ''The persons appointed under section 1631(d)(2) of the Social Security Act [subsec. (d)(2) of this section] (as in effect prior to the enactment of this Act) to serve as hearing examiners in hearings under section 1631(c) of such Act [subsec. (c) of this section] may conduct hearings under titles II, XVI, and XVIII of the Social Security Act [subchapters II, XVI, and XVIII of this chapter] if the

Secretary of Health, Education, and Welfare [now Health and Human Services] finds it will promote the achievement of the objectives of such titles [subchapters], notwithstanding the fact that their appointments were made without meeting the requirements for hearing examiners appointed under section 3105 of title 5, United States Code but their appointments shall terminate not later than at the close of the period ending December 31, 1978, and during that period they shall be deemed to be hearing examiners appointed under such section 3105 and subject as such to subchapter II of chapter 5 of title 5, United States Code, to the second sentence of such section 3105, and to all of the other provisions of such title 5 which apply to hearing examiners appointed under such section 3105.''

PRESUMPTIVE DISABILITY BENEFITS; TIME EXTENSION

Pub. L. 93–256, §1, Mar. 28, 1974, 88 Stat. 52, provided: ''That any individual who would be considered disabled under section 1614(a)(3)(E) of the Social Security Act [section 1382c(a)(3)(E) of this title] except that he did not receive aid under the appropriate State plan for at least one month prior to July 1973 may be considered to be presumptively disabled under section 1631(a)(4)(B) of that Act [subsec. (a)(4)(B) of this section] and may be paid supplemental security income benefits under title XVI of that Act [this subchapter] on the basis of such presumptive disability, and State supplementary payments under section 212 of Public Law 93–66 [set out as a note under section 1382 of this title] as though he had been determined to be disabled within the meaning of section 1614(a)(3) of the Social Security Act [section 1382c(a)(3) of this title], for any month in calendar year 1974 for which it has been determined that he is otherwise eligible for such benefits, without regard to the three-month limitation in section 1631(a)(4)(B) of that Act [subsec. (a)(4)(B) of this section] on the period for which benefits may be paid to presumptively disabled individuals, except that no such benefits may be paid on the basis of such presumptive disability for any month after the month in which the Secretary of Health, Education, and Welfare [now Health and Human Services] has made a determination as to whether such individual is disabled, as defined in section 1614(a)(3)(A) of that Act [section 1382c(a)(3)(A) of this title].''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1603 of the Social Security Act [this section] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1603 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92–603, and as amended, continues to apply and reads as follows:

§ 1383. Payments to States; quarterly expenditures to exceed average of total expenditures for each quarter of fiscal year ending June 30, 1965

(a) From the sums appropriated therefor, the Commissioner of Social Security shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1962—

(1) Repealed. Pub. L. 97–35, title XXI, § 2184(d)(5)(A), Aug. 13, 1981, 95 Stat. 818.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

(A) one-half of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus

(B) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $45 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month; and

(3) Repealed. Pub. L. 97–35, title XXI, § 2184(d)(5)(A), Aug. 13, 1981, 95 Stat. 818.

(4) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Commissioner of Social Security for the proper and efficient administration of the State plan.

(b)(1) Prior to the beginning of each quarter, the Commissioner of Social Security shall estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Commissioner of Social Security may find necessary.

(2) The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Commissioner of Social Security, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to aid or assistance furnished under the State plan, but excluding any amount of such aid or assistance recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased, shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(Aug. 14, 1935, ch. 531, title XVI, § 1603, as added Pub. L. 87–543, title I, § 141(a), July 25, 1962, 76 Stat. 200; amended Pub. L. 89–97, title I, § 122, title II, § 221(d)(4), title IV, § 401(b), July 30, 1965, 79 Stat. 353, 359, 414; Pub. L. 90–248, title II, § 212(d), Jan. 2, 1968, 81 Stat. 898; Pub. L. 92–512, title III, § 301(b), (d), Oct. 20, 1972, 86 Stat. 946, 947; Pub. L. 93–647, §§ 3(e)(2), 5(e), Jan. 4, 1975, 88 Stat. 2349, 2350; Pub. L. 97–35, title XXI, § 2184(d)(5), title XXIII, § 2353(m)(2), (3), Aug. 13, 1981, 95 Stat. 818, 873; Pub. L. 99–603, title I, § 121(b)(4), Nov. 6, 1986, 100 Stat. 3391; Pub. L. 103–66, title XIII, § 13741(b), Aug. 10, 1993, 107 Stat. 663; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

[Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994,

with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 13741(c) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 303 of this title.]

[Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as an Effective Date of 1986 Amendment note under section 502 of this title.]

REIMBURSEMENT FOR ERRONEOUS STATE SUPPLEMENTARY PAYMENTS; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 95–216, title IV, § 405, Dec. 20, 1977, 91 Stat. 1564, provided that:

''(a) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare [now Health and Human Services] is authorized and directed to pay to each State an amount equal to the amount expended by such State for erroneous supplementary payments to aged, blind, or disabled individuals whenever, and to the extent to which, the Secretary through an audit by the Department of Health, Education, and Welfare [now Health and Human Services] which has been reviewed and concurred in by the Inspector General of such department determines that—

''(1) such amount was paid by such State as a supplementary payment during the calendar year 1974 pursuant to an agreement between the State and the Secretary required by section 212 of the Act entitled 'An Act to extend the Renegotiation Act of 1951 for one year, and for other purposes', approved July 9, 1973, [set out as a note under section 1382 of this title], or such amount was paid by such State as an optional State supplementation, as defined in section 1616 of the Social Security Act [section 1382 of this title], during the calendar year 1974,

''(2) the erroneous payments were the result of good faith reliance by such State upon erroneous or incomplete information supplied by the Department of Health, Education, and Welfare [now Health and Human Services], through the State data exchange, or good faith reliance upon incorrect supplemental security income benefit payments made by such department, and

''(3) recovery of the erroneous payments by such State would be impossible or unreasonable.

''(b) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section.''

§ 1383a. Penalties for fraud

(a) In general

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit under this subchapter,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized, or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person,

shall be fined under title 18, imprisoned not more than 5 years, or both.

(b) Restitution

(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) of this section, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

(B) an individual suffering a financial loss due to the defendant's violation of subsection (a) of this section in his or her capacity as the individual's representative payee appointed pursuant to section 1383(a)(2) of this title.

(2) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this subchapter, subchapter II of this chapter, or subchapter VIII of this chapter by the individual.

(c) Prohibition on certification as representative payee

Any person or entity convicted of a violation of subsection (a) of this section or of section 408 of this title may not be certified as a representative payee under section 1383(a)(2) of this title.

(Aug. 14, 1935, ch. 531, title XVI, § 1632, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1478; amended Pub. L. 98–460, § 16(c)(1), Oct. 9, 1984, 98 Stat. 1810; Pub. L. 103–296, title II, § 206(c)(1), (2), Aug. 15, 1994, 108 Stat. 1513; Pub. L. 108–203, title II, § 209(c), Mar. 2, 2004, 118 Stat. 515.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–203, § 209(c)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108–203, § 209(c)(1), (3), redesignated subsec. (b) as (c), struck out ''(2)'' before ''Any person'', and struck out par (1) which read as follows: ''If a person or entity violates subsection (a) of this section in the person's or entity's role as, or in applying to become, a representative payee under section 1383(a)(2) of this title on behalf of another individual (other than the person's eligible spouse), and the viola-

tion includes a willful misuse of funds by the person or entity, the court may also require that full or partial restitution of funds be made to such other individual.''

1994—Subsec. (a). Pub. L. 103–296, § 206(c)(1), inserted closing provisions and struck out former closing provisions which read as follows: ''shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.''

Subsec. (b). Pub. L. 103–296, § 206(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a) of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1383(a)(2) of this title on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a) of this section—

''(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

''(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

''(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

''(3) Any person or entity convicted of a felony under this section or under section 408 of this title may not be certified as a payee under section 1383(a)(2) of this title.''

1984—Pub. L. 98–460 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 applicable with respect to violations occurring on or after Mar. 2, 2004, see section 209(d) of Pub. L. 108–203, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 206(c)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section] shall apply to conduct occurring on or after October 1, 1994.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98–460, set out as a note under section 405 of this title.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1383b. Administration

(a) Authority of Commissioner

Subject to subsection (b) of this section, the Commissioner of Social Security may make such administrative and other arrangements (including arrangements for the determination of blindness and disability under section 1382c(a)(2) and (3) of this title in the same manner and subject to the same conditions as provided with respect to disability determinations under section 421 of this title) as may be necessary or appropriate to carry out the Commissioner's functions under this subchapter.

(b) Examination to determine blindness

In determining, for purposes of this subchapter, whether an individual is blind, there shall be an examination of such individual by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.

(c) Notification of review

(1) In any case in which the Commissioner of Social Security initiates a review under this subchapter, similar to the continuing disability reviews authorized for purposes of subchapter II of this chapter under section 421(i) of this title, the Commissioner of Social Security shall notify the individual whose case is to be reviewed in the same manner as required under section 421(i)(4) of this title.

(2) For suspension of continuing disability reviews and other reviews under this subchapter similar to reviews under section 421 of this title in the case of an individual using a ticket to work and self-sufficiency, see section 1320b–19(i) of this title.

(d) Regulations regarding completion of plans for achieving self-support

The Commissioner of Social Security shall establish by regulation criteria for time limits and other criteria related to individuals' plans for achieving self-support, that take into account—

(1) the length of time that the individual will need to achieve the individual's employment goal (within such reasonable period as the Commissioner of Social Security may establish); and

(2) other factors determined by the Commissioner of Social Security to be appropriate.

(e) Review of State agency blindness and disability determinations

(1) The Commissioner of Social Security shall review determinations, made by State agencies pursuant to subsection (a) in connection with applications for benefits under this subchapter on the basis of blindness or disability, that individuals who have attained 18 years of age are blind or disabled as of a specified onset date. The Commissioner of Social Security shall review such a determination before any action is taken to implement the determination.

(2)(A) In carrying out paragraph (1), the Commissioner of Social Security shall review—

(i) at least 20 percent of all determinations referred to in paragraph (1) that are made in fiscal year 2006;

(ii) at least 40 percent of all such determinations that are made in fiscal year 2007; and

(iii) at least 50 percent of all such determinations that are made in fiscal year 2008 or thereafter.

(B) In carrying out subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review the determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.

(Aug. 14, 1935, ch. 531, title XVI, § 1633, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1478; amended Pub. L. 93–66, title II, § 214, July 9, 1973, 87 Stat. 158; Pub. L. 98–460, § 6(b), Oct. 9, 1984, 98 Stat. 1802; Pub. L. 103–296, title I, § 107(a)(4), title II, § 203(a), Aug. 15, 1994, 108 Stat. 1478, 1508; Pub. L. 106–170, title I, § 101(b)(2)(D), Dec. 17, 1999, 113 Stat. 1874; Pub. L. 109–171, title VII, § 7501, Feb. 8, 2006, 120 Stat. 154.)

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–171 added subsec. (e).

1999—Subsec. (c). Pub. L. 106–170 designated existing provisions as par. (1) and added par. (2).

1994—Subsec. (a). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner's'' for ''his''.

Subsec. (c). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (d). Pub. L. 103–296, § 203(a), added subsec. (d).

Pub. L. 103–296, § 107(a)(4), in subsec. (d) as added by Pub. L. 103–296, § 203(a), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1984—Subsec. (c). Pub. L. 98–460 added subsec. (c).

1973—Subsec. (a). Pub. L. 93–66, § 214(1), (2), designated existing provisions as subsec. (a) and made the authority of the Secretary subject to subsec. (b) of this section.

Subsec. (b). Pub. L. 93–66, § 214(3), added subsec. (b).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 203(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1995.''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

INSTITUTION OF NOTIFICATION SYSTEM

For provisions requiring the Secretary to institute the system of notification required by subsec. (c) of this section as soon as practicable after Oct. 9, 1984, see section 6(c) of Pub. L. 98–460, set out as a note under section 421 of this title.

FEDERAL PROGRAM OF SUPPLEMENTAL SECURITY INCOME; PREFERENCE FOR PRESENT STATE AND LOCAL EMPLOYEES

Section 213 of Pub. L. 93–66 provided that: ''The Secretary of Health, Education, and Welfare [now Health and Human Services] in the recruitment and selection for employment of personnel whose services will be utilized in the administration of the Federal program of supplemental security income for the aged, blind, and disabled (established by title XVI of the Social Security Act [this subchapter]), shall give a preference, as among applicants whose qualifications are reasonably equal (subject to any preferences conferred by law or regulation on individuals who have been Federal employees and have been displaced from such employment), to applicants for employment who are or were employed in the administration of any State program approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter] and are or were involuntarily displaced from their employment as a result of the displacement of such State program by such Federal program.''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1383c. Eligibility for medical assistance of aged, blind, or disabled individuals under State's medical assistance plan

(a) Determination by Commissioner pursuant to agreement between Commissioner and State; costs

The Commissioner of Social Security may enter into an agreement with any State which wishes to do so under which the Commissioner will determine eligibility for medical assistance in the case of aged, blind, or disabled individuals under such State's plan approved under subchapter XIX of this chapter. Any such agreement shall provide for payments by the State, for use by the Commissioner of Social Security in carrying out the agreement, of an amount equal to one-half of the cost of carrying out the agreement, but in computing such cost with respect to individuals eligible for benefits under this subchapter, the Commissioner of Social Security shall include only those costs which are additional to the costs incurred in carrying out this subchapter.

(b) Preservation of benefit status for certain disabled widows and widowers

(1) An eligible disabled widow or widower (described in paragraph (2)) who is entitled to a widow's or widower's insurance benefit based on a disability for any month under section 402(e) or (f) of this title but is not eligible for benefits under this subchapter in that month, and who applies for the protection of this subsection

under paragraph (3), shall be deemed for purposes of subchapter XIX of this chapter to be an individual with respect to whom benefits under this subchapter are paid in that month if he or she—

(A) has been continuously entitled to such widow's or widower's insurance benefits from the first month for which the increase described in paragraph (2)(C) was reflected in such benefits through the month involved, and

(B) would be eligible for benefits under this subchapter in the month involved if the amount of the increase described in paragraph (2)(C) in his or her widow's or widower's insurance benefits, and any subsequent cost-of-living adjustments in such benefits under section 415(i) of this title, were disregarded.

(2) For purposes of paragraph (1), the term ''eligible disabled widow or widower'' means an individual who—

(A) was entitled to a monthly insurance benefit under subchapter II of this chapter for December 1983,

(B) was entitled to a widow's or widower's insurance benefit based on a disability under section 402(e) or (f) of this title for January 1984 and with respect to whom a benefit under this subchapter was paid in that month, and

(C) because of the increase in the amount of his or her widow's or widower's insurance benefits which resulted from the amendments made by section 134 of the Social Security Amendments of 1983 (Public Law 98–21) (eliminating the additional reduction factor for disabled widows and widowers under age 60), was ineligible for benefits under this subchapter in the first month in which such increase was paid to him or her (and in which a retroactive payment of such increase for prior months was not made).

(3) This subsection shall only apply to an individual who files a written application for protection under this subsection, in such manner and form as the Commissioner of Social Security may prescribe, no later than July 1, 1988.

(4) For purposes of this subsection, the term ''benefits under this subchapter'' includes payments of the type described in section 1382e(a) of this title or of the type described in section 212(a) of Public Law 93–66.

(c) Loss of benefits upon entitlement to child's insurance benefits based on disability

If any individual who has attained the age of 18 and is receiving benefits under this subchapter on the basis of blindness or a disability which began before he or she attained the age of 22—

(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 402(d) of this title on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

(2) ceases to be eligible for benefits under this subchapter because of such child's insurance benefits or because of the increase in such child's insurance benefits,

such individual shall be treated for purposes of subchapter XIX of this chapter as receiving benefits under this subchapter so long as he or she would be eligible for benefits under this subchapter in the absence of such child's insurance benefits or such increase.

(d) Retention of medicaid when SSI benefits are lost upon entitlement to early widow's or widower's insurance benefits

(1) This subsection applies with respect to any person who—

(A) applies for and obtains benefits under subsection (e) or (f) of section 402 of this title (or under any other subsection of section 402 of this title if such person is also eligible for benefits under such subsection (e) or (f) of this section) being then not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter, and

(B) is determined to be ineligible (by reason of the receipt of such benefits under section 402 of this title) for supplemental security income benefits under this subchapter or for State supplementary payments of the type described in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66).

(2) For purposes of subchapter XIX of this chapter, each person with respect to whom this subsection applies—

(A) shall be deemed to be a recipient of supplemental security income benefits under this subchapter if such person received such a benefit for the month before the month in which such person began to receive a benefit described in paragraph (1)(A), and

(B) shall be deemed to be a recipient of State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) if such person received such a payment for the month before the month in which such person began to receive a benefit described in paragraph (1)(A),

for so long as such person (i) would be eligible for such supplemental security income benefits, or such State supplementary payments (or payments of the type described in section 212(a) of Public Law 93–66), in the absence of benefits described in paragraph (1)(A), and (ii) is not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter.

(Aug. 14, 1935, ch. 531, title XVI, § 1634, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1478; amended Pub. L. 99–272, title XII, § 12202(a), Apr. 7, 1986, 100 Stat. 290; Pub. L. 99–643, § 6(a), Nov. 10, 1986, 100 Stat. 3578; Pub. L. 100–203, title IX, §§ 9108, 9116(a), Dec. 22, 1987, 101 Stat. 1330–302, 1330–305; Pub. L. 101–508, title V, § 5103(c)(1), Nov. 5, 1990, 104 Stat. 1388–251; Pub. L. 103–296, title I, § 107(a)(4), title II, § 201(b)(3)(D), Aug. 15, 1994, 108 Stat. 1478, 1504; Pub. L. 104–121, title I, § 105(b)(4)(B), Mar. 29, 1996, 110 Stat. 854.)

REFERENCES IN TEXT

Section 134 of the Social Security Amendments of 1983 (Public Law 98–21), referred to in subsec. (b)(2)(C), is section 134 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 97, which amended section 402 of this title and enacted provisions set out as a note under section 402 of this title.

Section 212(a) of Public Law 93–66, referred to in subsecs. (b)(4) and (d)(1)(B), (2), is section 212(a) of Pub. L.

93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

The effective date of this subsection, referred to in subsec. (c)(1), is July 1, 1987, except as otherwise provided. See section 10(b) of Pub. L. 99–643, set out as an Effective Date of 1986 Amendments note under section 1396a of this title.

Part A of subchapter XVIII of this chapter, referred to in subsec. (d)(2), is classified to section 1395c et seq. of this title.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–121 struck out subsec. (e) which read as follows: ''Each person to whom benefits under this subchapter by reason of disability are not payable for any month solely by reason of clause (i) or (v) of section 1382(e)(3)(A) of this title shall be treated, for purposes of subchapter XIX of this chapter, as receiving benefits under this subchapter for the month.''

1994—Subsecs. (a), (b)(3). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner will'' for ''he will'' in subsec. (a).

Subsec. (e). Pub. L. 103–296, § 201(b)(3)(D), added subsec. (e).

1990—Subsec. (d). Pub. L. 101–508 designated existing provisions as par. (1), substituted ''This subsection applies with respect to any person who—'' for ''If any person—'' in introductory provisions, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, in subpar. (A) substituted ''being then not entitled'' for ''as required by section 1382(e)(2) of this title, being then at least 60 years of age but not entitled'', in subpar. (B) substituted ''section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66).'' for ''section 1382e(a) of this title,'' and substituted par. (2) for former concluding provisions which read as follows: ''such person shall nevertheless be deemed to be a recipient of supplemental security income benefits under this subchapter for purposes of subchapter XIX of this chapter, so long as he or she (A) would be eligible for such supplemental security income benefits, or such State supplementary payments, in the absence of such benefits under section 402 of this title, and (B) is not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter.''

1987—Subsec. (b)(3). Pub. L. 100–203, § 9108, substituted ''no later than July 1, 1988'' for ''during the 15-month period beginning with the month in which this subsection is enacted [April 1986]''.

Subsec. (d). Pub. L. 100–203, § 9116(a), added subsec. (d).

1986—Subsec. (a). Pub. L. 99–272, § 12202(a)(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 99–272, § 12202(a)(2), added subsec. (b).

Subsec. (c). Pub. L. 99–643 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–121 applicable to any individual who applies for, or whose claim is finally adjudicated with respect to, supplemental security income benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule in case of any individual who has applied for, and whose claim has been finally adjudicated with respect to, such benefits before Mar. 29, 1996, see section 105(b)(5) of Pub. L. 104–121, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 201(b)(3)(D) of Pub. L. 103–296 applicable with respect to supplemental security income benefits under this subchapter by reason of disability which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(b)(3)(E)(i) of Pub. L. 103–296, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to medical assistance provided after December 1990, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9108 of Pub. L. 100–203 provided that the amendment made by that section is effective July 1, 1987.

Section 9116(e) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to any individual without regard to whether the determination of his or her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security Act [section 402 of this title] (as described in section 1634(d)(2) of such Act [subsec. (d)(2) of this section]) occurred before, on, or after the date of the enactment of this Act [Dec. 22, 1987]; but no individual shall be eligible for assistance under title XIX of such Act [subchapter XIX of this chapter] by reason of such amendments for any period before July 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Section 12202(c) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall not have the effect of deeming an individual eligible for medical assistance for any month which begins less than two months after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

NOTICE OF POSSIBLE ELIGIBILITY FOR MEDICAID ASSISTANCE

Section 9116(b) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act [Dec. 22, 1987]) issue a notice to all individuals who will have attained age 60 but not age 65 as of April 1, 1988, and who received supplemental security income benefits under title XVI of the Social Security Act [this subchapter] prior to attaining age 60 but lost those benefits by reason of the receipt of widow's or widower's insurance benefits (or other benefits as described in section 1634(d)(1) of that Act [subsec. (d)(1) of this section] as added by subsection (a) of this section) under title II of that Act [subchapter II of this chapter]. Each such notice shall set forth and explain the provisions of section 1634(d) of the Social Security Act (as so added), and shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title XIX [subchapter XIX of this chapter].''

STATE DETERMINATIONS

Section 9116(c) of Pub. L. 100–203 provided that: ''Any determination required under section 1634(d) of the Social Security Act [subsec. (d) of this section] with respect to whether an individual would be eligible for benefits under title XVI of such Act [this subchapter] (or State supplementary payments) in the absence of

benefits under section 202 [section 402 of this title] shall be made by the appropriate State agency.''

Section 6(b) of Pub. L. 99–643 provided that: ''Any determination required under section 1634(c) of the Social Security Act [subsec. (c) of this section] with respect to whether an individual would be eligible for benefits under title XVI of such Act [this subchapter] in the absence of children's benefits (or an increase thereof) shall be made by the appropriate State agency.''

IDENTIFICATION OF POTENTIAL BENEFICIARIES UNDER SUBSECTION (b) OF THIS SECTION

Section 12202(b) of Pub. L. 99–272 provided that:

''(1) As soon as possible after the date of the enactment of this Act [Apr. 7, 1986], the Secretary of Health and Human Services shall provide each State with the names of all individuals receiving widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act [section 402(e) or (f) of this title] based on a disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act [subchapter XIX of this chapter] by reason of the application of section 1634(b) of the Social Security Act [subsec. (b) of this section].

''(2) Each State shall—

''(A) using the information so provided and any other information it may have, promptly notify all individuals who may qualify for medical assistance under its plan by reason of such section 1634(b) of their right to make application for such assistance,

''(B) solicit their applications for such assistance, and

''(C) make the necessary determination of such individuals' eligibility for such assistance under such section and under such title XIX.''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1383d. Outreach program for children

(a) Establishment

The Commissioner of Social Security shall establish and conduct an ongoing program of outreach to children who are potentially eligible for benefits under this subchapter by reason of disability or blindness.

(b) Requirements

Under this program, the Commissioner of Social Security shall—

(1) aim outreach efforts at populations for whom such efforts would be most effective; and

(2) work in cooperation with other Federal, State, and private agencies, and nonprofit organizations, which serve blind or disabled individuals and have knowledge of potential recipients of supplemental security income benefits, and with agencies and organizations (including school systems and public and private social service agencies) which focus on the needs of children.

(Aug. 14, 1935, ch. 531, title XVI, § 1635, as added Pub. L. 101–239, title VIII, § 8008(a), Dec. 19, 1989, 103 Stat. 2463; amended Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 8008(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect 3 months after the date of the enactment of this Act [Dec. 19, 1989].''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

§ 1383e. Treatment referrals for individuals with alcoholism or drug addiction condition

In the case of any individual whose benefits under this subchapter are paid to a representative payee pursuant to section 1383(a)(2)(A)(ii)(II) of this title, the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).

(Aug. 14, 1935, ch. 531, title XVI, § 1636, as added Pub. L. 104–121, title I, § 105(b)(3), Mar. 29, 1996, 110 Stat. 854.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart II of part B of title XIX of the Act is classified generally to subpart II (§ 300x–21 et seq.) of part B of subchapter XVII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

EFFECTIVE DATE

Section effective July 1, 1996, with respect to any individual whose claim for benefits is finally adjudicated on or after Mar. 29, 1996, or whose eligibility for benefits is based upon eligibility redetermination made pursuant to section 105(b)(5)(C) of Pub. L. 104–121, see section 105(b)(5) of Pub. L. 104–121, as amended, set out as an Effective Date of 1996 Amendment note under section 1382 of this title.

§ 1383f. Annual report on program

(a) In general

Not later than May 30 of each year, the Commissioner of Social Security shall prepare and deliver a report annually to the President and the Congress regarding the program under this subchapter, including—

(1) a comprehensive description of the program;

(2) historical and current data on allowances and denials, including number of applications

and allowance rates for initial determinations, reconsideration determinations, administrative law judge hearings, appeals council reviews, and Federal court decisions;

(3) historical and current data on characteristics of recipients and program costs, by recipient group (aged, blind, disabled adults, and disabled children);

(4) historical and current data on prior enrollment by recipients in public benefit programs, including State programs funded under part A of subchapter IV of this chapter and State general assistance programs;

(5) projections of future number of recipients and program costs, through at least 25 years;

(6) number of redeterminations and continuing disability reviews, and the outcomes of such redeterminations and reviews;

(7) data on the utilization of work incentives;

(8) detailed information on administrative and other program operation costs;

(9) summaries of relevant research undertaken by the Social Security Administration, or by other researchers;

(10) State supplementation program operations;

(11) a historical summary of statutory changes to this subchapter; and

(12) such other information as the Commissioner deems useful.

(b) Views of individual members of Social Security Advisory Board

Each member of the Social Security Advisory Board shall be permitted to provide an individual report, or a joint report if agreed, of views of the program under this subchapter, to be included in the annual report required under this section.

(Aug. 14, 1935, ch. 531, title XVI, § 1637, as added Pub. L. 104–193, title II, § 231, Aug. 22, 1996, 110 Stat. 2197.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (a)(4), is classified to section 601 et seq. of this title.

§ 1384. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XVI, § 1604, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 204, related to operation of State plans, prior to the general revision of this subchapter by Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of subchapter XVI of the Social Security Act [this subchapter] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1604 of the Social Security Act [this section] as it existed prior to reenactment of this subchapter by Pub. L. 92–603 continues to apply and reads as follows:

§ 1384. Operation of State plans

If the Commissioner of Social Security, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this subchapter, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1332 of this title; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Commissioner of Social Security shall notify such State agency that further payments will not be made to the State (or, in the Commissioner's discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Commissioner of Social Security is satisfied that there will no longer be any such failure to comply. Until the Commissioner is so satisfied the Commissioner shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title XVI, § 1604, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 204; amended Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

§ 1385. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XVI, § 1605, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 204; amended July 30, 1965, Pub. L. 89–97, title II, §§ 221(d)(1), (2), 222(b), title IV, § 402(b), 79 Stat. 358, 360, 416, defined ''aid to the aged, blind, or disabled'' and ''medical assistance for the aged'', prior to the general revision of this subchapter by Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of subchapter XVI of the Social Security Act [this subchapter] by section 301 of Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1605 of the Social Security Act [this section] as it existed prior to reenactment of this subchapter by Pub. L. 92–603, and as amended, continues to apply and to read as follows:

§ 1385. Definitions

(a) For purposes of this subchapter, the term ''aid to the aged, blind, or disabled'' means money payments to needy individuals who are 65 years of age or older, are blind, or are 18 years of age or over and permanently and totally disabled, but such term does not include—

(1) any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(2) any such payments to or care in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Commissioner of Social Security) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1382 of this title includes provision for—

(A) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the aged, blind, or disabled to be paid (and in conjunction with other income and resources), meet all the need [sic] of the individuals with respect to whom such payments are made;

(C) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(D) periodic review by such State agency of the determination under clause (A) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) of this subsection for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

(b) Repealed. Pub. L. 97–35, title XXI, § 2184(d)(6)(B), Aug. 13, 1981, 95 Stat. 818.

(Aug. 14, 1935, ch. 531, title XVI, § 1605, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 204; amended July 30, 1965, Pub. L. 89–97, title II, §§ 221(d)(1), (2), 222(b), title IV, § 402(b), 79 Stat. 358, 360, 416; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 408(d), 409(d), 86 Stat. 1490, 1491; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(d)(6), 95 Stat. 818; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

SUBCHAPTER XVII—GRANTS FOR PLANNING COMPREHENSIVE ACTION TO COMBAT MENTAL RETARDATION

§ 1391. Authorization of appropriations

For the purpose of assisting the States (including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) to plan for and take other steps leading to comprehensive State and community action to combat mental retardation, there is authorized to be appropriated the sum of $2,200,000. There are also authorized to be appropriated, for assisting such States in initiating the implementation and carrying out of planning and other steps to combat mental retardation, $2,750,000 for the fiscal year ending June 30, 1966, and $2,750,000 for the fiscal year ending June 30, 1967.

(Aug. 14, 1935, ch. 531, title XVII, § 1701, as added Pub. L. 88–156, § 5, Oct. 24, 1963, 77 Stat. 275; amended Pub. L. 89–97, title II, § 211(a), July 30, 1965, 79 Stat. 356.)

AMENDMENTS

1965—Pub. L. 89–97 authorized appropriations of $2,750,000 for fiscal years ending June 30, 1966 and 1967 for implementation of mental retardation planning.

SHORT TITLE

For short title of Pub. L. 88–156, which enacted this subchapter, as the ''Maternal and Child Health and Mental Retardation Planning Amendments of 1963'', see section 1 of Pub. L. 88–156, set out as a Short Title of 1963 Amendment note under section 1305 of this title.

§ 1392. Availability of funds during certain fiscal years; limitation on amount; utilization of grant

The sums appropriated pursuant to the first sentence of section 1391 of this title shall be available for grants to States by the Secretary during the fiscal year ending June 30, 1964, and the succeeding fiscal year; and the sums appropriated pursuant to the second sentence of such section for the fiscal year ending June 30, 1966, shall be available for such grants during such year and the next two fiscal years, and sums appropriated pursuant thereto for the fiscal year ending June 30, 1967, shall be available for such grants during such year and the succeeding fiscal year. Any such grant to a State, which shall not exceed 75 per centum of the cost of the planning and related activities involved, may be used by it to determine what action is needed to combat mental retardation in the State and the resources available for this purpose, to develop public awareness of the mental retardation problem and of the need for combating it, to coordinate State and local activities relating to the various aspects of mental retardation and its prevention, treatment, or amelioration, and to plan other activities leading to comprehensive State and community action to combat mental retardation.

(Aug. 14, 1935, ch. 531, title XVII, § 1702, as added Pub. L. 88–156, § 5, Oct. 24, 1963, 77 Stat. 275; amended Pub. L. 89–97, title II, § 211(b), July 30, 1965, 79 Stat. 356.)

AMENDMENTS

1965—Pub. L. 89–97 inserted provision making appropriations for fiscal year ending June 30, 1966, available for grants during such fiscal year and the next two fiscal years and the appropriation for fiscal year ending June 30, 1967, available for grants during such fiscal year and the succeeding fiscal year.

§ 1393. Applications; single State agency designation; essential planning services; plans for expenditure; final activities report and other necessary reports; records; accounting

In order to be eligible for a grant under section 1392 of this title, a State must submit an application therefor which—

(1) designates or establishes a single State agency, which may be an interdepartmental agency, as the sole agency for carrying out the purposes of this subchapter;

(2) indicates the manner in which provision will be made to assure full consideration of all aspects of services essential to planning for comprehensive State and community action to combat mental retardation, including services in the fields of education, employment, reha-

bilitation, welfare, health, and the law, and services provided through community programs for and institutions for the mentally retarded;

(3) sets forth its plans for expenditure of such grant, which plans provide reasonable assurance of carrying out the purposes of this subchapter;

(4) provides for submission of a final report of the activities of the State agency in carrying out the purposes of this subchapter, and for submission of such other reports, in such form and containing such information, as the Secretary may from time to time find necessary for carrying out the purposes of this subchapter and for keeping such records and affording such access thereto as he may find necessary to assure the correctness and verification of such reports; and

(5) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subchapter.

(Aug. 14, 1935, ch. 531, title XVII, § 1703, as added Pub. L. 88–156, § 5, Oct. 24, 1963, 77 Stat. 275.)

§ 1394. Payments to States; adjustments; advances or reimbursement; installments; conditions

Payment of grants under this subchapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may determine.

(Aug. 14, 1935, ch. 531, title XVII, § 1704, as added Pub. L. 88–156, § 5, Oct. 24, 1963, 77 Stat. 276.)

SUBCHAPTER XVIII—HEALTH INSURANCE FOR AGED AND DISABLED

§ 1395. Prohibition against any Federal interference

Nothing in this subchapter shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or over the selection, tenure, or compensation of any officer or employee of any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person.

(Aug. 14, 1935, ch. 531, title XVIII, § 1801, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 291.)

SHORT TITLE

For short title of title I of Pub. L. 89–97, which enacted this subchapter as the ''Health Insurance for the Aged Act'', see section 100 of Pub. L. 89–97, set out as a Short Title of 1965 Amendment note under section 1305 of this title.

§ 1395a. Free choice by patient guaranteed

(a) Basic freedom of choice

Any individual entitled to insurance benefits under this subchapter may obtain health services from any institution, agency, or person qualified to participate under this subchapter if such institution, agency, or person undertakes to provide him such services.

(b) Use of private contracts by medicare beneficiaries

(1) In general

Subject to the provisions of this subsection, nothing in this subchapter shall prohibit a physician or practitioner from entering into a private contract with a medicare beneficiary for any item or service—

(A) for which no claim for payment is to be submitted under this subchapter, and

(B) for which the physician or practitioner receives—

(i) no reimbursement under this subchapter directly or on a capitated basis, and

(ii) receives no amount for such item or service from an organization which receives reimbursement for such item or service under this subchapter directly or on a capitated basis.

(2) Beneficiary protections

(A) In general

Paragraph (1) shall not apply to any contract unless—

(i) the contract is in writing and is signed by the medicare beneficiary before any item or service is provided pursuant to the contract;

(ii) the contract contains the items described in subparagraph (B); and

(iii) the contract is not entered into at a time when the medicare beneficiary is facing an emergency or urgent health care situation.

(B) Items required to be included in contract

Any contract to provide items and services to which paragraph (1) applies shall clearly indicate to the medicare beneficiary that by signing such contract the beneficiary—

(i) agrees not to submit a claim (or to request that the physician or practitioner submit a claim) under this subchapter for such items or services even if such items or services are otherwise covered by this subchapter;

(ii) agrees to be responsible, whether through insurance or otherwise, for payment of such items or services and understands that no reimbursement will be provided under this subchapter for such items or services;

(iii) acknowledges that no limits under this subchapter (including the limits under section 1395w–4(g) of this title) apply to amounts that may be charged for such items or services;

(iv) acknowledges that Medigap plans under section 1395ss of this title do not, and other supplemental insurance plans may elect not to, make payments for such items and services because payment is not made under this subchapter; and

(v) acknowledges that the medicare beneficiary has the right to have such items

or services provided by other physicians or practitioners for whom payment would be made under this subchapter.

Such contract shall also clearly indicate whether the physician or practitioner is excluded from participation under the medicare program under section 1320a–7 of this title.

(3) Physician or practitioner requirements

(A) In general

Paragraph (1) shall not apply to any contract entered into by a physician or practitioner unless an affidavit described in subparagraph (B) is in effect during the period any item or service is to be provided pursuant to the contract.

(B) Affidavit

An affidavit is described in this subparagraph if—

(i) the affidavit identifies the physician or practitioner and is in writing and is signed by the physician or practitioner;

(ii) the affidavit provides that the physician or practitioner will not submit any claim under this subchapter for any item or service provided to any medicare beneficiary (and will not receive any reimbursement or amount described in paragraph (1)(B) for any such item or service) during the 2-year period beginning on the date the affidavit is signed; and

(iii) a copy of the affidavit is filed with the Secretary no later than 10 days after the first contract to which such affidavit applies is entered into.

(C) Enforcement

If a physician or practitioner signing an affidavit under subparagraph (B) knowingly and willfully submits a claim under this subchapter for any item or service provided during the 2-year period described in subparagraph (B)(ii) (or receives any reimbursement or amount described in paragraph (1)(B) for any such item or service) with respect to such affidavit—

(i) this subsection shall not apply with respect to any items and services provided by the physician or practitioner pursuant to any contract on and after the date of such submission and before the end of such period; and

(ii) no payment shall be made under this subchapter for any item or service furnished by the physician or practitioner during the period described in clause (i) (and no reimbursement or payment of any amount described in paragraph (1)(B) shall be made for any such item or service).

(4) Limitation on actual charge and claim submission requirement not applicable

Section 1395w–4(g) of this title shall not apply with respect to any item or service provided to a medicare beneficiary under a contract described in paragraph (1).

(5) Definitions

In this subsection:

(A) Medicare beneficiary

The term ''medicare beneficiary'' means an individual who is entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter.

(B) Physician

The term ''physician'' has the meaning given such term by paragraphs (1), (2), (3), and (4) of section 1395x(r) of this title.

(C) Practitioner

The term ''practitioner'' has the meaning given such term by section 1395u(b)(18)(C) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1802, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 291; amended Pub. L. 105–33, title IV, § 4507(a)(1), (2)(A), Aug. 5, 1997, 111 Stat. 439, 441; Pub. L. 108–173, title VI, § 603, Dec. 8, 2003, 117 Stat. 2301.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (b)(5)(A), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (b)(5)(B). Pub. L. 108–173 substituted ''paragraphs (1), (2), (3), and (4) of section 1395x(r)'' for ''section 1395x(r)(1)''.

1997—Pub. L. 105–33 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4507(c) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section and section 1395y of this title] shall apply with respect to contracts entered into on and after January 1, 1998.''

REPORT TO CONGRESS ON EFFECT OF PRIVATE CONTRACTS

Section 4507(b) of title IV of Pub. L. 105–33 provided that: ''Not later than October 1, 2001, the Secretary of Health and Human Services shall submit a report to Congress on the effect on the program under this title [see Tables for classification] of private contracts entered into under the amendment made by subsection (a) [amending this section and section 1395y of this title]. Such report shall include—

''(1) analyses regarding—

''(A) the fiscal impact of such contracts on total Federal expenditures under title XVIII of the Social Security Act [this subchapter] and on out-of-pocket expenditures by medicare beneficiaries for health services under such title; and

''(B) the quality of the health services provided under such contracts; and

''(2) recommendations as to whether medicare beneficiaries should continue to be able to enter private contracts under section 1802(b) of such Act [subsec. (b) of this section] (as added by subsection (a)) and if so, what legislative changes, if any should be made to improve such contracts.''

§ 1395b. Option to individuals to obtain other health insurance protection

Nothing contained in this subchapter shall be construed to preclude any State from providing, or any individual from purchasing or otherwise securing, protection against the cost of any health services.

(Aug. 14, 1935, ch. 531, title XVIII, § 1803, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 291.)

IMPACT OF INCREASED INVESTMENTS IN HEALTH RESEARCH ON FUTURE MEDICARE COSTS

Pub. L. 105–78, title II, Nov. 13, 1997, 111 Stat. 1484, provided in part: ''That in carrying out its legislative

mandate, the National Bipartisan Commission on the Future of Medicare shall examine the impact of increased investments in health research on future Medicare costs, and the potential for coordinating Medicare with cost-effective long-term care services''.

NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

Pub. L. 105–33, title IV, § 4021, Aug. 5, 1997, 111 Stat. 347, established National Bipartisan Commission on the Future of Medicare which was directed to review and analyze long-term financial condition of medicare program, identify problems that threaten financial integrity of Federal Hospital Insurance Trust Fund and Federal Supplementary Medical Insurance Trust Fund, analyze potential solutions that will ensure both financial integrity of medicare program and provision of appropriate benefits under such program, and make recommendations for, among other things, restoring solvency of Federal Hospital Insurance Trust Fund and financial integrity of Federal Supplementary Medical Insurance Trust Fund, establishing appropriate financial structure of medicare program as a whole, and establishing appropriate balance of benefits covered and beneficiary contributions to medicare program, further provided for membership of Commission, meetings, personnel and staff matters, powers of Commission, appropriations, submission of final report to Congress not later than Mar. 1, 1999, and termination of Commission 30 days after submission of final report.

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

Pub. L. 101–239, title X, § 10202, Dec. 19, 1989, 103 Stat. 2473, provided that:

''(a) OLD-AGE, SURVIVORS, AND DISABILITY, AND HOSPITAL INSURANCE PROGRAMS.—For purposes of title II of the Social Security Act [subchapter II of this chapter] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.], the term 'wages' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988 [section 421 of Pub. L. 100–360, formerly set out as a note below].

''(b) RAILROAD RETIREMENT PROGRAM.—For purposes of chapter 22 of the Internal Revenue Code of 1986 [26 U.S.C. 3201 et seq.], the term 'compensation' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(c) FEDERAL UNEMPLOYMENT PROGRAMS.—

''(1) FEDERAL UNEMPLOYMENT TAX.—For purposes of chapter 23 of the Internal Revenue Code of 1986 [26 U.S.C. 3301 et seq.], the term 'wages' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(2) RAILROAD UNEMPLOYMENT CONTRIBUTIONS.—For purposes of the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.], the term 'compensation' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(3) RAILROAD UNEMPLOYMENT REPAYMENT TAX.—For purposes of chapter 23A of the Internal Revenue Code of 1986 [26 U.S.C. 3321 et seq.], the term 'rail wages' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(d) REPORTING REQUIREMENTS.—Any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988 shall be reported to the Secretary of the Treasury or his delegate and to the person to whom such refund is made in such manner as the Secretary of the Treasury or his delegate shall prescribe.

''(e) EFFECTIVE DATE.—This section shall apply with respect to refunds provided on or after January 1, 1989.''

UNITED STATES BIPARTISAN COMMISSION ON COMPREHENSIVE HEALTH CARE

Pub. L. 100–360, title IV, subtitle A, §§ 401–408, July 1, 1988, 102 Stat. 765–768, as amended by Pub. L. 100–647, title VIII, § 8414, Nov. 10, 1988, 102 Stat. 3801; Pub. L. 101–239, title VI, § 6220, Dec. 19, 1989, 103 Stat. 2254, established the United States Bipartisan Commission on Comprehensive Health Care, also known as the ''Claude Pepper Commission'' or the ''Pepper Commission'', and directed Commission to examine shortcomings in health care delivery and financing mechanisms that limit or prevent access of all individuals in United States to comprehensive health care, and make specific recommendations respecting Federal programs, policies, and financing needed to assure the availability of comprehensive long-term care services for elderly and disabled, as well as comprehensive health care services for all individuals in the United States, and further provided for membership of Commission, staff and consultants, powers, authorization of appropriations, submission of findings and recommendations to Congress not later than Nov. 9, 1989, and for termination of Commission 30 days after submissions to Congress.

MAINTENANCE OF EFFORT REGARDING DUPLICATIVE BENEFITS

Pub. L. 100–360, title IV, § 421, July 1, 1988, 102 Stat. 808, as amended by Pub. L. 100–485, title VI, § 608(a), Oct. 13, 1988, 102 Stat. 2411, which required employers who had been providing health care benefits to employees that were duplicative part A and part B benefits to provide the employees with additional benefits equal to the total actuarial value of such duplicative benefits, was repealed by Pub. L. 101–234, title III, § 301(a), Dec. 13, 1989, 103 Stat. 1985. [Repeal not applicable to duplicative part A benefits for periods before Jan. 1, 1990, see section 301(e)(1) of Pub. L. 101–234, set out as an Effective Date of 1989 Amendment note under section 1395u of this title.]

TASK FORCE ON LONG-TERM HEALTH CARE POLICIES

Pub. L. 99–272, title IX, § 9601, Apr. 7, 1986, 100 Stat. 221, as amended by Pub. L. 105–362, title VI, § 601(b)(3), Nov. 10, 1998, 112 Stat. 3286, directed Secretary of Health and Human Services, in consultation with National Association of Insurance Commissioners, to establish Task Force on Long-Term Health Care Policies to develop recommendations for long-term health care policies designed to limit marketing and agent abuse for those policies, to assure dissemination of such information to consumers as is necessary to permit informed choice in purchasing policies and to reduce purchase of unnecessary or duplicative coverage, to assure that benefits provided under policies are reasonable in relationship to premiums charged, and to promote development and availability of long-term health care policies which meet these recommendations, and further provided for composition of Task Force, definition of long-term health care policy, assurance of States' jurisdiction, submission of recommendations to Secretary and Congress not later than 18 months after Apr. 7, 1986, and termination of Task Force 90 days after submission of recommendations.

§ 1395b–1. Incentives for economy while maintaining or improving quality in provision of health services

(a) Grants and contracts to develop and engage in experiments and demonstration projects

(1) The Secretary of Health and Human Services is authorized, either directly or through grants to public or private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations, to develop and engage in experiments and demonstration projects for the following purposes:

(A) to determine whether, and if so which, changes in methods of payment or reimbursement (other than those dealt with in section 222(a) of the Social Security Amendments of 1972) for health care and services under health programs established by this chapter, including a change to methods based on negotiated rates, would have the effect of increasing the efficiency and economy of health services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services;

(B) to determine whether payments for services other than those for which payment may be made under such programs (and which are incidental to services for which payment may be made under such programs) would, in the judgment of the Secretary, result in more economical provision and more effective utilization of services for which payment may be made under such program, where such services are furnished by organizations and institutions which have the capability of providing—

(i) comprehensive health care services,

(ii) mental health care services (as defined by section 2691(c)[1] of this title),

(iii) ambulatory health care services (including surgical services provided on an outpatient basis), or

(iv) institutional services which may substitute, at lower cost, for hospital care;

(C) to determine whether the rates of payment or reimbursement for health care services, approved by a State for purposes of the administration of one or more of its laws, when utilized to determine the amount to be paid for services furnished in such State under the health programs established by this chapter, would have the effect of reducing the costs of such programs without adversely affecting the quality of such services;

(D) to determine whether payments under such programs based on a single combined rate of reimbursement or charge for the teaching activities and patient care which residents, interns, and supervising physicians render in connection with a graduate medical education program in a patient facility would result in more equitable and economical patient care arrangements without adversely affecting the quality of such care;

(E) to determine whether coverage of intermediate care facility services and homemaker services would provide suitable alternatives to posthospital benefits presently provided under this subchapter; such experiment and demonstration projects may include:

(i) counting each day of care in an intermediate care facility as one day of care in a skilled nursing facility, if such care was for a condition for which the individual was hospitalized,

(ii) covering the services of homemakers for a maximum of 21 days, if institutional services are not medically appropriate,

(iii) determining whether such coverage would reduce long-range costs by reducing the lengths of stay in hospitals and skilled nursing facilities, and

(iv) establishing alternative eligibility requirements and determining the probable cost of applying each alternative, if the project suggests that such extension of coverage would be desirable;

(F) to determine whether, and if so which type of, fixed price or performance incentive contract would have the effect of inducing to the greatest degree effective, efficient, and economical performance of agencies and organizations making payment under agreements or contracts with the Secretary for health care and services under health programs established by this chapter;

(G) to determine under what circumstances payment for services would be appropriate and the most appropriate, equitable, and noninflationary methods and amounts of reimbursement under health care programs established by this chapter for services, which are performed independently by an assistant to a physician, including a nurse practitioner (whether or not performed in the office of or at a place at which such physician is physically present), and—

(i) which such assistant is legally authorized to perform by the State or political subdivision wherein such services are performed, and

(ii) for which such physician assumes full legal and ethical responsibility as to the necessity, propriety, and quality thereof;

(H) to establish an experimental program to provide day-care services, which consist of such personal care, supervision, and services as the Secretary shall by regulation prescribe, for individuals eligible to enroll in the supplemental medical insurance program established under part B of this subchapter and subchapter XIX of this chapter, in day-care centers which meet such standards as the Secretary shall by regulation establish;

(I) to determine whether the services of clinical psychologists may be made more generally available to persons eligible for services under this subchapter and subchapter XIX of this chapter in a manner consistent with quality of care and equitable and efficient administration;

(J) to develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by this chapter; and

(K) to determine whether the use of competitive bidding in the awarding of contracts, or the use of other methods of reimbursement, under part B of subchapter XI of this chapter would be efficient and effective methods of furthering the purposes of that part.

For purposes of this subsection, ''health programs established by this chapter'' means the program established by this subchapter and a program established by a plan of a State approved under subchapter XIX of this chapter.

(2) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under paragraph (1)

[1] See References in Text note below.

shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1395i of this title) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1395t of this title) and from funds appropriated under subchapter XIX of this chapter. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such subchapter XIX of this chapter) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

(b) Waiver of certain payment or reimbursement requirements; advice and recommendations of specialists preceding experiments and demonstration projects

In the case of any experiment or demonstration project under subsection (a) of this section, the Secretary may waive compliance with the requirements of this subchapter and subchapter XIX of this chapter insofar as such requirements relate to reimbursement or payment on the basis of reasonable cost, or (in the case of physicians) on the basis of reasonable charge, or to reimbursement or payment only for such services or items as may be specified in the experiment; and costs incurred in such experiment or demonstration project in excess of the costs which would otherwise be reimbursed or paid under such subchapters may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be engaged in or developed under subsection (a) of this section until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or demonstration project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct the proposed experiment or demonstration project, and its relationship to other similar experiments and projects already completed or in process.

(Pub. L. 90–248, title IV, § 402(a), (b), Jan. 2, 1968, 81 Stat. 930, 931; Pub. L. 92–603, title II, §§ 222(b), 278(b)(2), Oct. 30, 1972, 86 Stat. 1391, 1453; Pub. L. 95–142, § 17(d), Oct. 25, 1977, 91 Stat. 1202; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, § 2193(d), Aug. 13, 1981, 95 Stat. 828; Pub. L. 97–248, title I, § 147, Sept. 3, 1982, 96 Stat. 394; Pub. L. 98–369, div. B, title III, § 2331(b), July 18, 1984, 98 Stat. 1088.)

REFERENCES IN TEXT

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (a)(1)(A), is section 222(a) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note below.

Section 2691(c) of this title, referred to in subsec. (a)(1)(B)(ii), was repealed by Pub. L. 94–103, title III, § 302(c), Oct. 4, 1975, 89 Stat. 507.

Part B of this subchapter, referred to in subsec. (a)(1)(H), is classified to section 1395j et seq. of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (a)(1)(K), is classified to section 1320c et seq. of this title.

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 402 of Pub. L. 90–248. Subsec. (c) of such section 402 amended section 1395*ll*(b) of this title.

Section was enacted as a part of the Social Security Amendments of 1967, and not as a part of the Social Security Act which comprises this chapter.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369 substituted ''grants to public or private agencies'' for ''grants to public or nonprofit private agencies'' in provisions preceding subpar. (A).

1982—Subsec. (a)(1)(K). Pub. L. 97–248 added subpar. (K).

1981—Subsec. (a)(1). Pub. L. 97–35, § 2193(d)(1), substituted ''this subchapter and a program established by a plan of a State approved under subchapter XIX of this chapter'' for ''this subchapter, a program established by a plan of a State approved under subchapter XIX of this chapter, and a program established by a plan of a State approved under subchapter V of this chapter''.

Subsec. (a)(2). Pub. L. 97–35, § 2193(d)(2), substituted reference to subchapter XIX of this chapter for reference to subchapters V and XIX of this chapter in two places.

Subsec. (b). Pub. L. 97–35, § 2193(d)(3), substituted reference to subchapter XIX of this chapter for reference to subchapters V and XIX of this chapter.

1977—Subsec. (a)(1)(J). Pub. L. 95–142 added subpar. (J).

1972—Subsec. (a). Pub. L. 92–603, §§ 222(b)(1), 278(b)(2), substituted provisions spelling out in detail the purposes for which experiments and demonstration projects may be carried out for a general statement setting out the increase in efficiency and economy of health services as the purpose of experiments selected by the Secretary, inserted references to demonstration projects, and inserted references to the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund.

Subsec. (b). Pub. L. 92–603, § 222(b)(2), inserted references to demonstration projects and inserted '', or to reimbursement or payment only for such services or items as may be specified in the experiment''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(1) pursuant to section 509(b) Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, see section 2331(c) of Pub. L. 98–369, set out as a note under section 1310 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

MEDICARE MEDICAL HOME DEMONSTRATION PROJECT

Pub. L. 109–432, div. B, title II, § 204, Dec. 20, 2006, 120 Stat. 2987, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall establish under title XVIII of the Social Security Act [this subchapter] a medical home demonstration project (in this section referred to as the 'project') to redesign the health care delivery system to provide targeted, accessible, continuous and coordinated, family-centered care to high-need populations and under which—

''(1) care management fees are paid to persons performing services as personal physicians; and

''(2) incentive payments are paid to physicians participating in practices that provide services as a medical home under subsection (d).

For purposes of this subsection, the term 'high-need population' means individuals with multiple chronic illnesses that require regular medical monitoring, advising, or treatment.

''(b) DETAILS.—

''(1) DURATION; SCOPE.—The project shall operate during a period of three years and shall include urban, rural, and underserved areas in a total of no more than 8 States.

''(2) ENCOURAGING PARTICIPATION OF SMALL PHYSICIAN PRACTICES.—The project shall be designed to include the participation of physicians in practices with fewer than three full-time equivalent physicians, as well as physicians in larger practices particularly in rural and underserved areas.

''(c) PERSONAL PHYSICIAN DEFINED.—

''(1) IN GENERAL.—For purposes of this section, the term 'personal physician' means a physician (as defined in section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)(1))[)] who—

''(A) meets the requirements described in paragraph (2); and

''(B) performs the services described in paragraph (3).

Nothing in this paragraph shall be construed as preventing such a physician from being a specialist or subspecialist for an individual requiring ongoing care for a specific chronic condition or multiple chronic conditions (such as severe asthma, complex diabetes, cardiovascular disease, rheumatologic disorder) or for an individual with a prolonged illness.

''(2) REQUIREMENTS.—The requirements described in this paragraph for a personal physician are as follows:

''(A) The physician is a board certified physician who provides first contact and continuous care for individuals under the physician's care.

''(B) The physician has the staff and resources to manage the comprehensive and coordinated health care of each such individual.

''(3) SERVICES PERFORMED.—A personal physician shall perform or provide for the performance of at least the following services:

''(A) Advocates for and provides ongoing support, oversight, and guidance to implement a plan of care that provides an integrated, coherent, cross-discipline plan for ongoing medical care developed in partnership with patients and including all other physicians furnishing care to the patient involved and other appropriate medical personnel or agencies (such as home health agencies).

''(B) Uses evidence-based medicine and clinical decision support tools to guide decision-making at the point-of-care based on patient-specific factors.

''(C) Uses health information technology, that may include remote monitoring and patient registries, to monitor and track the health status of patients and to provide patients with enhanced and convenient access to health care services.

''(D) Encourages patients to engage in the management of their own health through education and support systems.

''(d) MEDICAL HOME DEFINED.—For purposes of this section, the term 'medical home' means a physician practice that—

''(1) is in charge of targeting beneficiaries for participation in the project; and

''(2) is responsible for—

''(A) providing safe and secure technology to promote patient access to personal health information;

''(B) developing a health assessment tool for the individuals targeted; and

''(C) providing training programs for personnel involved in the coordination of care.

''(e) PAYMENT MECHANISMS.—

''(1) PERSONAL PHYSICIAN CARE MANAGEMENT FEE.—Under the project, the Secretary shall provide for payment under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) of a care management fee to personal physicians providing care management under the project. Under such section and using the relative value scale update committee (RUC) process under such section, the Secretary shall develop a care management fee code for such payments and a value for such code.

''(2) MEDICAL HOME SHARING IN SAVINGS.—The Secretary shall provide for payment under the project of a medical home based on the payment methodology applied to physician group practices under section 1866A of the Social Security Act (42 U.S.C. 1395cc–1). Under such methodology, 80 percent of the reductions in expenditures under title XVIII of the Social Security Act [this subchapter] resulting from participation of individuals that are attributable to the medical home (as reduced by the total care managements fees paid to the medical home under the project) shall be paid to the medical home. The amount of such reductions in expenditures shall be determined by using assumptions with respect to reductions in the occurrence of health complications, hospitalization rates, medical errors, and adverse drug reactions.

''(3) SOURCE.—Payments paid under the project shall be made from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t).

''(f) EVALUATIONS AND REPORTS.—

''(1) ANNUAL INTERIM EVALUATIONS AND REPORTS.—For each year of the project, the Secretary shall provide for an evaluation of the project and shall submit to Congress, by a date specified by the Secretary, a report on the project and on the evaluation of the project for each such year.

''(2) FINAL EVALUATION AND REPORT.—The Secretary shall provide for an evaluation of the project and shall submit to Congress, not later than one year after completion of the project, a report on the project and on the evaluation of the project.''

POST-ACUTE CARE PAYMENT REFORM DEMONSTRATION PROGRAM

Pub. L. 109–171, title V, § 5008, Feb. 8, 2006, 120 Stat. 36, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—By not later than January 1, 2008, the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall establish a demonstration program for purposes of understanding costs and outcomes across different post-acute care sites. Under such program, with respect to diagnoses specified by the Secretary, an individual who receives treatment from a provider for such a diagnosis shall receive a single comprehensive assessment on the date of discharge from a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) of the needs of the patient and the clinical characteristics of the diagnosis to determine the appropriate placement of such patient in a post-acute care site. The Secretary shall use a standardized patient assessment instrument across all post-acute care sites to measure functional status and other factors during the treatment and at discharge from each provider. Participants in the program shall provide information on the fixed and variable costs for each individual. An additional comprehensive assessment shall be provided at the end of the episode of care.

''(2) NUMBER OF SITES.—The Secretary shall conduct the demonstration program under this section with

sufficient numbers to determine statistically reliable results.

''(3) DURATION.—The Secretary shall conduct the demonstration program under this section for a 3-year period.

''(b) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq.; 42 U.S.C. 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

''(c) REPORT.—Not later than 6 months after the completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, that includes the results of the program and recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

''(d) FUNDING.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i), $6,000,000 for the costs of carrying out the demonstration program under this section.''

MEDICARE CARE MANAGEMENT PERFORMANCE DEMONSTRATION

Pub. L. 108–173, title VI, § 649, Dec. 8, 2003, 117 Stat. 2329, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a pay-for-performance demonstration program with physicians to meet the needs of eligible beneficiaries through the adoption and use of health information technology and evidence-based outcomes measures for—

''(A) promoting continuity of care;

''(B) helping stabilize medical conditions;

''(C) preventing or minimizing acute exacerbations of chronic conditions; and

''(D) reducing adverse health outcomes, such as adverse drug interactions related to polypharmacy.

''(2) SITES.—The Secretary shall designate no more than 4 sites at which to conduct the demonstration program under this section, of which—

''(A) two shall be in an urban area;

''(B) one shall be in a rural area; and

''(C) one shall be in a State with a medical school with a Department of Geriatrics that manages rural outreach sites and is capable of managing patients with multiple chronic conditions, one of which is dementia.

''(3) DURATION.—The Secretary shall conduct the demonstration program under this section for a 3-year period.

''(4) CONSULTATION.—In carrying out the demonstration program under this section, the Secretary shall consult with private sector and non-profit groups that are undertaking similar efforts to improve quality and reduce avoidable hospitalizations for chronically ill patients.

''(b) PARTICIPATION.—

''(1) IN GENERAL.—A physician who provides care for a minimum number of eligible beneficiaries (as specified by the Secretary) may participate in the demonstration program under this section if such physician agrees, to phase-in over the course of the 3-year demonstration period and with the assistance provided under subsection (d)(2)—

''(A) the use of health information technology to manage the clinical care of eligible beneficiaries consistent with paragraph (3); and

''(B) the electronic reporting of clinical quality and outcomes measures in accordance with requirements established by the Secretary under the demonstration program.

''(2) SPECIAL RULE.—In the case of the sites referred to in subparagraphs (B) and (C) of subsection (a)(2), a physician who provides care for a minimum number of beneficiaries with two or more chronic conditions, including dementia (as specified by the Secretary), may participate in the program under this section if such physician agrees to the requirements in subparagraphs (A) and (B) of paragraph (1).

''(3) PRACTICE STANDARDS.—Each physician participating in the demonstration program under this section must demonstrate the ability—

''(A) to assess each eligible beneficiary for conditions other than chronic conditions, such as impaired cognitive ability and co-morbidities, for the purposes of developing care management requirements;

''(B) to serve as the primary contact of eligible beneficiaries in accessing items and services for which payment may be made under the medicare program;

''(C) to establish and maintain health care information system for such beneficiaries;

''(D) to promote continuity of care across providers and settings;

''(E) to use evidence-based guidelines and meet such clinical quality and outcome measures as the Secretary shall require;

''(F) to promote self-care through the provision of patient education and support for patients or, where appropriate, family caregivers;

''(G) when appropriate, to refer such beneficiaries to community service organizations; and

''(H) to meet such other complex care management requirements as the Secretary may specify.

The guidelines and measures required under subparagraph (E) shall be designed to take into account beneficiaries with multiple chronic conditions.

''(c) PAYMENT METHODOLOGY.—Under the demonstration program under this section the Secretary shall pay a per beneficiary amount to each participating physician who meets or exceeds specific performance standards established by the Secretary with respect to the clinical quality and outcome measures reported under subsection (b)(1)(B). Such amount may vary based on different levels of performance or improvement.

''(d) ADMINISTRATION.—

''(1) USE OF QUALITY IMPROVEMENT ORGANIZATIONS.—The Secretary shall contract with quality improvement organizations or such other entities as the Secretary deems appropriate to enroll physicians and evaluate their performance under the demonstration program under this section.

''(2) TECHNICAL ASSISTANCE.—The Secretary shall require in such contracts that the contractor be responsible for technical assistance and education as needed to physicians enrolled in the demonstration program under this section for the purpose of aiding their adoption of health information technology, meeting practice standards, and implementing required clinical and outcomes measures.

''(e) FUNDING.—

''(1) IN GENERAL.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act (42 U.S.C. 1395t) of such funds as are necessary for the costs of carrying out the demonstration program under this section.

''(2) BUDGET NEUTRALITY.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary estimates would have been paid if the demonstration program under this section was not implemented.

''(f) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq. and 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

''(g) REPORT.—Not later than 12 months after the date of completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, together with recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

''(h) DEFINITIONS.—In this section:

''(1) ELIGIBLE BENEFICIARY.—The term 'eligible beneficiary' means any individual who—

''(A) is entitled to benefits under part A and enrolled for benefits under part B of title XVIII of the Social Security Act [parts A and B of this subchapter] and is not enrolled in a plan under part C of such title [part C of this subchapter]; and

''(B) has one or more chronic medical conditions specified by the Secretary (one of which may be cognitive impairment).

''(2) HEALTH INFORMATION TECHNOLOGY.—The term 'health information technology' means email communication, clinical alerts and reminders, and other information technology that meets such functionality, interoperability, and other standards as prescribed by the Secretary.''

DEMONSTRATION PROJECT FOR DISEASE MANAGEMENT FOR SEVERELY CHRONICALLY ILL MEDICARE BENEFICIARIES

Pub. L. 106–554, § 1(a)(6) [title I, § 121], Dec. 21, 2000, 114 Stat. 2763, 2763A–474, provided that the Secretary of Health and Human Services was to conduct a demonstration project under this section to demonstrate the impact on costs and health outcomes of applying disease management to medicare beneficiaries with diagnosed, advanced-stage congestive heart failure, diabetes, or coronary heart disease, that the project was to last for not longer than 3 years, and that the Secretary was to submit a final report to Congress not later than 6 months after the project's completion.

CANCER PREVENTION AND TREATMENT DEMONSTRATION FOR ETHNIC AND RACIAL MINORITIES

Pub. L. 106–554, § 1(a)(6) [title I, § 122], Dec. 21, 2000, 114 Stat. 2763, 2763A–476, provided that:

''(a) DEMONSTRATION.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct demonstration projects (in this section referred to as 'demonstration projects') for the purpose of developing models and evaluating methods that—

''(A) improve the quality of items and services provided to target individuals in order to facilitate reduced disparities in early detection and treatment of cancer;

''(B) improve clinical outcomes, satisfaction, quality of life, and appropriate use of medicare-covered services and referral patterns among those target individuals with cancer;

''(C) eliminate disparities in the rate of preventive cancer screening measures, such as pap smears and prostate cancer screenings, among target individuals; and

''(D) promote collaboration with community-based organizations to ensure cultural competency of health care professionals and linguistic access for persons with limited English proficiency.

''(2) TARGET INDIVIDUAL DEFINED.—In this section, the term 'target individual' means an individual of a racial and ethnic minority group, as defined by section 1707 of the Public Health Service Act [section 300u–6 of this title], who is entitled to benefits under part A, and enrolled under part B, of title XVIII of the Social Security Act [parts A and B of this subchapter].

''(b) PROGRAM DESIGN.—

''(1) INITIAL DESIGN.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary shall evaluate best practices in the private sector, community programs, and academic research of methods that reduce disparities among individuals of racial and ethnic minority groups in the prevention and treatment of cancer and shall design the demonstration projects based on such evaluation.

''(2) NUMBER AND PROJECT AREAS.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall implement at least nine demonstration projects, including the following:

''(A) Two projects for each of the four following major racial and ethnic minority groups:

''(i) American Indians, including Alaska Natives, Eskimos, and Aleuts.

''(ii) Asian Americans and Pacific Islanders.

''(iii) Blacks.

''(iv) Hispanics.

The two projects must target different ethnic subpopulations.

''(B) One project within the Pacific Islands.

''(C) At least one project each in a rural area and inner-city area.

''(3) EXPANSION OF PROJECTS; IMPLEMENTATION OF DEMONSTRATION PROJECT RESULTS.—If the initial report under subsection (c) contains an evaluation that demonstration projects—

''(A) reduce expenditures under the medicare program under title XVIII of the Social Security Act [this subchapter]; or

''(B) do not increase expenditures under the medicare program and reduce racial and ethnic health disparities in the quality of health care services provided to target individuals and increase satisfaction of beneficiaries and health care providers;

the Secretary shall continue the existing demonstration projects and may expand the number of demonstration projects.

''(c) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 2 years after the date the Secretary implements the initial demonstration projects, and biannually thereafter, the Secretary shall submit to Congress a report regarding the demonstration projects.

''(2) CONTENTS OF REPORT.—Each report under paragraph (1) shall include the following:

''(A) A description of the demonstration projects.

''(B) An evaluation of—

''(i) the cost-effectiveness of the demonstration projects;

''(ii) the quality of the health care services provided to target individuals under the demonstration projects; and

''(iii) beneficiary and health care provider satisfaction under the demonstration projects.

''(C) Any other information regarding the demonstration projects that the Secretary determines to be appropriate.

''(d) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act [this subchapter] to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

''(e) FUNDING.—

''(1) DEMONSTRATION PROJECTS.—

''(A) STATE PROJECTS.—Except as provided in subparagraph (B), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary [Medical] Insurance Trust Fund under title XVIII of the Social Security Act [this subchapter], in such proportions as the Secretary determines to be appropriate, of such funds as are necessary for the costs of carrying out the demonstration projects.

''(B) TERRITORY PROJECTS.—In the case of a demonstration project described in subsection (b)(2)(B), amounts shall be available only as provided in any Federal law making appropriations for the territories.

''(2) LIMITATION.—In conducting demonstration projects, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the sum of the amount which the Secretary would have paid under the program for the prevention and treatment of cancer if the demonstration projects were not implemented, plus $25,000,000.''

LIFESTYLE MODIFICATION PROGRAM DEMONSTRATION

Pub. L. 106–554, § 1(a)(6) [title I, § 128], Dec. 21, 2000, 114 Stat. 2763, 2763A–480, as amended by Pub. L. 108–173,

title VII, § 736(b)(13), Dec. 8, 2003, 117 Stat. 2356, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall carry out the demonstration project known as the Lifestyle Modification Program Demonstration, as described in the Health Care Financing Administration Memorandum of Understanding entered into on November 13, 2000, and as subsequently modified, (in this section referred to as the 'project') in accordance with the following requirements:

''(1) The project shall include no fewer than 1,800 medicare beneficiaries who complete under the project the entire course of treatment under the Lifestyle Modification Program.

''(2) The project shall be conducted over a course of 4 years.

''(b) STUDY ON COST-EFFECTIVENESS.—

''(1) STUDY.—The Secretary shall conduct a study on the cost-effectiveness of the Lifestyle Modification Program as conducted under the project. In determining whether such Program is cost-effective, the Secretary shall determine (using a control group under a matched paired experimental design) whether expenditures incurred for medicare beneficiaries enrolled under the project exceed expenditures for the control group of medicare beneficiaries with similar health conditions who are not enrolled under the project.

''(2) REPORTS.—

''(A) INITIAL REPORT.—Not later than 1 year after the date on which 900 medicare beneficiaries have completed the entire course of treatment under the Lifestyle Modification Program under the project, the Secretary shall submit to Congress an initial report on the study conducted under paragraph (1).

''(B) FINAL REPORT.—Not later than 1 year after the date on which 1,800 medicare beneficiaries have completed the entire course of treatment under such Program under the project, the Secretary shall submit to Congress a final report on the study conducted under paragraph (1).''

MEDICARE COORDINATED CARE DEMONSTRATION PROJECT

Pub. L. 105–33, title IV, § 4016, Aug. 5, 1997, 111 Stat. 343, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 535], Nov. 29, 1999, 113 Stat. 1536, 1501A–390, provided that:

''(a) DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct demonstration projects for the purpose of evaluating methods, such as case management and other models of coordinated care, that—

''(A) improve the quality of items and services provided to target individuals; and

''(B) reduce expenditures under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for items and services provided to target individuals.

''(2) TARGET INDIVIDUAL DEFINED.—In this section, the term 'target individual' means an individual that has a chronic illness, as defined and identified by the Secretary, and is enrolled under the fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.; 1395j et seq.).

''(b) PROGRAM DESIGN.—

''(1) INITIAL DESIGN.—The Secretary shall evaluate best practices in the private sector of methods of coordinated care for a period of 1 year and design the demonstration project based on such evaluation.

''(2) NUMBER AND PROJECT AREAS.—Not later than 2 years after the date of enactment of this Act [Aug. 5, 1997], the Secretary shall implement at least 9 demonstration projects, including—

''(A) 5 projects in urban areas;

''(B) 3 projects in rural areas; and

''(C) 1 project within the District of Columbia which is operated by a nonprofit academic medical center that maintains a National Cancer Institute certified comprehensive cancer center.

''(3) EXPANSION OF PROJECTS; IMPLEMENTATION OF DEMONSTRATION PROJECT RESULTS.—

''(A) EXPANSION OF PROJECTS.—If the initial report under subsection (c) contains an evaluation that demonstration projects—

''(i) reduce expenditures under the medicare program; or

''(ii) do not increase expenditures under the medicare program and increase the quality of health care services provided to target individuals and satisfaction of beneficiaries and health care providers;

the Secretary shall continue the existing demonstration projects and may expand the number of demonstration projects.

''(B) IMPLEMENTATION OF DEMONSTRATION PROJECT RESULTS.—If a report under subsection (c) contains an evaluation as described in subparagraph (A), the Secretary may issue regulations to implement, on a permanent basis, the components of the demonstration project that are beneficial to the medicare program.

''(c) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 2 years after the Secretary implements the initial demonstration projects under this section, and biannually thereafter, the Secretary shall submit to Congress a report regarding the demonstration projects conducted under this section.

''(2) CONTENTS OF REPORT.—The report in paragraph (1) shall include the following:

''(A) A description of the demonstration projects conducted under this section.

''(B) An evaluation of—

''(i) the cost-effectiveness of the demonstration projects;

''(ii) the quality of the health care services provided to target individuals under the demonstration projects; and

''(iii) beneficiary and health care provider satisfaction under the demonstration project.

''(C) Any other information regarding the demonstration projects conducted under this section that the Secretary determines to be appropriate.

''(d) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

''(e) FUNDING.—

''(1) DEMONSTRATION PROJECTS.—

''(A) IN GENERAL.—

''(i) STATE PROJECTS.—Except as provided in clause (ii), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary [Medical] Insurance Trust Fund under title XVIII of the Social Security Act (42 U.S.C. 1395i, 1395t), in such proportions as the Secretary determines to be appropriate, of such funds as are necessary for the costs of carrying out the demonstration projects under this section.

''(ii) CANCER HOSPITAL.—In the case of the project described in subsection (b)(2)(C), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Insurance Trust Fund [Medical] under title XVIII of the Social Security Act (42 U.S.C. 1395i, 1395t), in such proportions as the Secretary determines to be appropriate, of such funds as are necessary to cover costs of the project, including costs for information infrastructure and recurring costs of case management services, flexible benefits, and program management.

''(B) LIMITATION.—In conducting the demonstration project under this section, the Secretary shall ensure that the aggregate payments made by the

Secretary do not exceed the amount which the Secretary would have paid if the demonstration projects under this section were not implemented.

''(2) EVALUATION AND REPORT.—There are authorized to be appropriated such sums as are necessary for the purpose of developing and submitting the report to Congress under subsection (c).''

INFORMATICS, TELEMEDICINE, AND EDUCATION DEMONSTRATION PROJECT

Pub. L. 105–33, title IV, § 4207, Aug. 5, 1997, 111 Stat. 379, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 413], Nov. 29, 1999, 113 Stat. 1536, 1501A–377; Pub. L. 108–173, title IV, § 417, Dec. 8, 2003, 117 Stat. 2282, provided that:

''(a) PURPOSE AND AUTHORIZATION.—

''(1) IN GENERAL.—Not later than 9 months after the date of enactment of this section [Aug. 5, 1997], the Secretary of Health and Human Services shall provide for a demonstration project described in paragraph (2). The Secretary shall make an award for such project not later than 3 months after the date of the enactment of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 [Nov. 29, 1999]. The Secretary shall accept the proposal adjudged to be the best technical proposal as of such date of enactment without the need for additional review or resubmission of proposals.

''(2) DESCRIPTION OF PROJECT.—

''(A) IN GENERAL.—The demonstration project described in this paragraph is a single demonstration project to use eligible health care provider telemedicine networks to apply high-capacity computing and advanced networks to improve primary care (and prevent health care complications) to medicare beneficiaries with diabetes mellitus who are residents of medically underserved rural areas or residents of medically underserved inner-city areas that qualify as Federally designated medically underserved areas or health professional shortage areas at the time of enrollment of beneficiaries under the project.

''(B) MEDICALLY UNDERSERVED DEFINED.—As used in this paragraph, the term 'medically underserved' has the meaning given such term in section 330(b)(3) of the Public Health Service Act (42 U.S.C. 254b(b)(3)).

''(3) WAIVER.—The Secretary shall waive such provisions of title XVIII of the Social Security Act [this subchapter] as may be necessary to provide for payment for services under the project in accordance with subsection (d).

''(4) DURATION OF PROJECT.—The project shall be conducted over a 8-year period.

''(b) OBJECTIVES OF PROJECT.—The objectives of the project include the following:

''(1) Improving patient access to and compliance with appropriate care guidelines for individuals with diabetes mellitus through direct telecommunications link with information networks in order to improve patient quality-of-life and reduce overall health care costs.

''(2) Developing a curriculum to train health professionals (particularly primary care health professionals) in the use of medical informatics and telecommunications.

''(3) Demonstrating the application of advanced technologies, such as video-conferencing from a patient's home, remote monitoring of a patient's medical condition, interventional informatics, and applying individualized, automated care guidelines, to assist primary care providers in assisting patients with diabetes in a home setting.

''(4) Application of medical informatics to residents with limited English language skills.

''(5) Developing standards in the application of telemedicine and medical informatics.

''(6) Developing a model for the cost-effective delivery of primary and related care both in a managed care environment and in a fee-for-service environment.

''(c) ELIGIBLE HEALTH CARE PROVIDER TELEMEDICINE NETWORK DEFINED.—For purposes of this section, the term 'eligible health care provider telemedicine network' means a consortium that includes at least one tertiary care hospital (but no more than 2 such hospitals), at least one medical school, no more than 4 facilities in rural or urban areas, and at least one regional telecommunications provider and that meets the following requirements:

''(1) The consortium is located in an area with a high concentration of medical schools and tertiary care facilities in the United States and has appropriate arrangements (within or outside the consortium) with such schools and facilities, universities, and telecommunications providers, in order to conduct the project.

''(2) The consortium submits to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the use to which the consortium would apply any amounts received under the project.

''(3) The consortium guarantees that it will be responsible for payment for all costs of the project that are not paid under this section and that the maximum amount of payment that may be made to the consortium under this section shall not exceed the amount specified in subsection (d)(3).

''(d) COVERAGE AS MEDICARE PART B SERVICES.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, services related to the treatment or management of (including prevention of complications from) diabetes for medicare beneficiaries furnished under the project shall be considered to be services covered under part B of title XVIII of the Social Security Act [part B of this subchapter].

''(2) PAYMENTS.—

''(A) IN GENERAL.—Subject to paragraph (3), payment for such services shall be made for the costs that are related to the provision of such services. In computing such costs, the Secretary shall include costs described in subparagraph (B), but may not include costs described in subparagraph (C).

''(B) COSTS THAT MAY BE INCLUDED.—The costs described in this subparagraph are the permissible costs (as recognized by the Secretary) for the following:

''(i) The acquisition of telemedicine equipment for use in patients' homes or at sites providing health care to patients located in medically underserved areas.

''(ii) Curriculum development and training of health professionals in medical informatics and telemedicine.

''(iii) Payment of telecommunications costs (including salaries and maintenance of equipment), including costs of telecommunications between patients' homes and the eligible network and between the network and other entities under the arrangements described in subsection (c)(1).

''(iv) Payments to practitioners and providers under the medicare programs.

''(C) COSTS NOT INCLUDED.—The costs described in this subparagraph are costs for any of the following:

''(i) The purchase or installation of transmission equipment (other than such equipment used by health professionals for activities related to the project).

''(ii) The establishment or operation of a telecommunications common carrier network.

''(iii) Construction (except for minor renovations related to the installation of reimbursable equipment) or the acquisition or building of real property.

''(3) LIMITATION.—The total amount of the payments that may be made under this section shall not exceed $60,000,000 for the period of the project (described in subsection (a)(4)).

''(4) COST-SHARING.—The project may not impose cost-sharing on a medicare beneficiary for the receipt

of services under the project. Project costs will cover all costs to medicare beneficiaries and providers related to participation in the project.

''(e) REPORTS.—The Secretary shall submit to the Committee on Ways and Means and the Committee [on] Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate interim reports on the project and a final report on the project within 6 months after the conclusion of the project. The final report shall include an evaluation of the impact of the use of telemedicine and medical informatics on improving access of medicare beneficiaries to health care services, on reducing the costs of such services, and on improving the quality of life of such beneficiaries.

''(f) DEFINITIONS.—For purposes of this section:

''(1) INTERVENTIONAL INFORMATICS.—The term 'interventional informatics' means using information technology and virtual reality technology to intervene in patient care.

''(2) MEDICAL INFORMATICS.—The term 'medical informatics' means the storage, retrieval, and use of biomedical and related information for problem solving and decision-making through computing and communications technologies.

''(3) PROJECT.—The term 'project' means the demonstration project under this section.''

CLARIFICATION OF SECRETARIAL WAIVER AUTHORITY FOR RURAL HOSPITAL DEMONSTRATIONS

Pub. L. 101–508, title IV, § 4008(i)(1), Nov. 5, 1990, 104 Stat. 1388–50, as amended by Pub. L. 103–66, title XIII, § 13507, Aug. 10, 1993, 107 Stat. 579, provided that: ''The Secretary of Health and Human Services is authorized to waive such provisions of title XVIII of the Social Security Act [this subchapter] as are necessary to conduct any demonstration project for limited-service rural hospitals with respect to which the Secretary has entered into an agreement before the date of the enactment of the Omnibus Budget Reconciliation Act of 1989 [Dec. 19, 1989]. The Secretary shall continue any such demonstration project until at least July 1, 1997.''

VOLUNTEER SENIOR AIDES DEMONSTRATION PROJECTS FOR BASIC MEDICAL ASSISTANCE AND SUPPORT TO FAMILIES WITH DISABLED OR ILL CHILDREN

Pub. L. 101–239, title X, § 10404, Dec. 19, 1989, 103 Stat. 2488, provided that:

''(a) NUMBER OF PROJECTS.—In order to determine whether, and if so, the extent to which, the use of volunteer senior aides to provide basic medical assistance and support to families with moderately or severely disabled or chronically ill children contributes to reducing the costs of care for such children, not more than 10 communities may conduct demonstration projects under this section.

''(b) DUTIES OF THE SECRETARY.—

''(1) CONSIDERATION OF APPLICATIONS.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall consider all applications received from communities desiring to conduct demonstration projects under this section.

''(2) APPROVAL OF CERTAIN APPLICATIONS.—The Secretary shall approve not more than 10 applications to conduct projects which appear likely to contribute significantly to the achievement of the purpose of this section.

''(3) GRANTS.—The Secretary shall make grants to each community the application of which to conduct a demonstration project under this section is approved by the Secretary to assist the community in carrying out the project.

''(c) REQUIREMENTS.—Each community receiving a grant with respect to a demonstration project under this section shall conduct the project in accordance with such requirements as the Secretary may prescribe.

''(d) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—For grants under this section, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed—

''(1) $1,000,000 for each of the fiscal years 1990 and 1991; and

''(2) $2,000,000 for each of the fiscal years 1992, 1993, and 1994.

''(e) EFFECTIVE DATE.—This section shall take effect on October 1, 1989.''

TREATMENT OF CERTAIN NURSING EDUCATION PROGRAMS

Pub. L. 100–647, title VIII, § 8411, Nov. 10, 1988, 102 Stat. 3800, as amended by Pub. L. 101–239, title VI, § 6205(a)(1)(B), Dec. 19, 1989, 103 Stat. 2243, provided that:

''(a) DEMONSTRATION OF JOINT NURSING GRADUATE EDUCATION PROGRAMS.—

''(1) The Secretary of Health and Human Services shall provide for demonstration programs under this subsection in each of 5 hospitals for cost reporting periods beginning on or after July 1, 1989, and before July 1, 1994.

''(2) Under each demonstration project, subject to paragraph (4), the reasonable costs incurred by a hospital pursuant to a written agreement with an educational institution for the activities described in paragraph (3) conducted as part of an approved educational program that—

''(A) involves a substantial clinical component (as determined by the Secretary), and

''(B) leads to a master's or doctoral degree in nursing,

shall be allowable as reasonable costs under title XVIII of the Social Security Act [this subchapter] and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program).

''(3) The activities described in this paragraph are the activities for which the reasonable costs of conducting such activities are allowable under title XVIII of the Social Security Act if conducted under a hospital-operated approved educational program (other than an approved graduate medical education program), but only to the extent such activities are directly related to the operation of the educational program conducted pursuant to the written agreement between the hospital and the educational institution.

''(4) The amount paid under a demonstration program under this subsection to a hospital for a cost reporting period may not exceed $200,000.

''(5) The Secretary shall report to Congress, by not later than January 1, 1995, on the demonstration programs conducted under this subsection and on the supply and characteristics of nurses trained under such programs.

''(b) JOINT UNDERGRADUATE EDUCATION PROGRAM.—In the case of a hospital which (1) was paid under a waiver under section 402 of the Social Security Amendments of 1967 [section 402 of Pub. L. 90–248, enacting this section and amending section 1395*ll* of this title] and section 222 of the Social Security Amendments of 1972 [section 222 of Pub. L. 92–603, amending this section and section 1395*ll* of this title and enacting provisions set out below], which waiver expired on September 30, 1985, and (2) during its cost reporting period beginning in fiscal year 1985 and for each subsequent cost reporting period, has been and is associated with, and has incurred and incurs substantial costs with respect to, a nursing college with which it has shared and shares common directors, educational activities of the nursing college shall be considered to be educational activities operated directly by such hospital for purposes of title XVIII of the Social Security Act [this subchapter], and shall be allowable as reasonable costs under such title and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program), for hospital cost reporting periods beginning in fiscal years 1986 though 1991.''

RESEARCH ON LONG-TERM CARE SERVICES FOR MEDICARE BENEFICIARIES

Pub. L. 100–360, title II, § 207, July 1, 1988, 102 Stat. 732, which provided for research on issues relating to the delivery and financing of long-term care services for medicare beneficiaries, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

For requirement that Secretary of Health and Human Services modify contracts with health maintenance organizations under subsec. (a) of this section and section 222(a) of Pub. L. 92–603, set out below, so as to apply to such organizations and contracts the requirements imposed by the amendments made by Pub. L. 100–360, see section 222 of Pub. L. 100–360, set out as a note under section 1395mm of this title.

CASE MANAGEMENT DEMONSTRATION PROJECTS

Pub. L. 101–508, title IV, § 4207(f), formerly § 4027(f), Nov. 5, 1990, 104 Stat. 1388–123, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that:

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall resume the 3 case management demonstration projects described in paragraph (2) and approved under section 425 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360, formerly set out below] (in this subsection referred to as 'MCCA').

''(2) PROJECT DESCRIPTIONS.—The demonstration projects referred to in paragraph (1) are—

''(A) the project proposed to be conducted by Providence Hospital for case management of the elderly at risk for acute hospitalization as described in Project No. 18–P–99379/5–01;

''(B) the project proposed to be conducted by the Iowa Foundation for Medical Care to study patients with chronic congestive conditions to reduce repeated hospitalizations of such patients as described in Project No. P–99399/4–01; and

''(C) the project proposed to be conducted by Key Care Health Resources, Inc., to examine the effects of case management on 2,500 high cost medicare beneficiaries as described in Project No. 18–P–99396/5.

''(3) TERMS AND CONDITIONS.—Except as provided in paragraph (4), the demonstration projects resumed pursuant to paragraph (1) shall be subject to the same terms and conditions established under section 425 of MCCA. In determining the 2-year duration period of a project resumed pursuant to paragraph (1), the Secretary may not take into account any period of time for which the project was in effect under section 425 of MCCA.

''(4) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 425(g) of MCCA, there are authorized to be appropriated for administrative costs in carrying out the demonstration projects resumed pursuant to paragraph (1) $2,000,000 in each of fiscal years 1991 and 1992.''

Pub. L. 100–360, title IV, § 425, July 1, 1988, 102 Stat. 813, which directed Secretary of Health and Human Services to establish 4 demonstration projects under which an appropriate entity agreed to provide case management services, was repealed by Pub. L. 101–234, title III, § 301(a), Dec. 13, 1989, 103 Stat. 1985.

DEMONSTRATION PROJECTS WITH RESPECT TO CHRONIC VENTILATOR-DEPENDENT UNITS IN HOSPITALS

Pub. L. 100–360, title IV, § 429, July 1, 1988, 102 Stat. 817, as amended by Pub. L. 100–647, title VIII, § 8404(a), Nov. 10, 1988, 102 Stat. 3800, directed Secretary of Health and Human Services, in consultation with the Prospective Payment Assessment Commission, to provide for at least 5 demonstration projects, for at least 3 years each, to review appropriateness of classifying chronic ventilator-dependent units in hospitals as rehabilitation units.

RESEARCH AND DEMONSTRATION PROJECTS ON RURAL AND INNER-CITY HEALTH ISSUES

Pub. L. 100–203, title IV, § 4403, Dec. 22, 1987, 1330–226, as amended by Pub. L. 100–360, title IV, § 411(m)(2)(A), July 1, 1988, 102 Stat. 806, provided that:

''(a) SET ASIDES FOR ISSUES OF HEALTH CARE IN RURAL AREAS AND IN INNER-CITY AREAS.—(1) Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990 shall be expended for research and demonstration projects relating exclusively or substantially to rural health issues, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act [section 1395ww(d) of this title] on the financial viability of small rural hospitals, the effect of medicare payment policies on the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, the appropriateness of medicare conditions of participation and staffing requirements for small rural hospitals, and the impact of medicare policies on access to (and the quality of) health care in rural areas.

''(2) Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990 shall be expended for research and demonstration projects relating exclusively or substantially to issues of providing health care in inner-city areas, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act on the financial viability of inner-city hospitals and the impact of medicare policies on access to (and the quality of) health care in inner-city areas.

''(b) AGENDA.—The Secretary of Health and Human Services shall establish an agenda of research and demonstration projects, relating exclusively or substantially to rural health issues or to inner-city health issues, that are in progress or have been proposed, and shall include such agenda in the annual report submitted pursuant to section 1875(b) of the Social Security Act [section 1395*ll*(b) of this title]. The agenda shall be accompanied by a statement setting forth the amounts that have been obligated and expended with respect to such projects in the current and most recently completed fiscal years.''

ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS

Pub. L. 99–509, title IX, § 9342, Oct. 21, 1986, 100 Stat. 2038, as amended by Pub. L. 101–508, title IV, § 4164(a)(2), Nov. 5, 1990, 104 Stat. 1388–101; Pub. L. 103–66, title XIII, § 13552, Aug. 10, 1993, 107 Stat. 591, required Secretary of Health and Human Services to conduct at least 5 (and not more than 10) demonstration projects, each over a period of 5 years, to determine effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under this subchapter who are victims of Alzheimer's disease or related disorders and to report to Congress upon completion of the projects.

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

For treatment of hospitals in States which have had a waiver approved under this section, upon termination of waiver, see section 9202(j) of Pub. L. 99–272, as amended, set out as a note under section 1395ww of this title.

EXTENSION OF CERTAIN MEDICARE MUNICIPAL HEALTH SERVICES DEMONSTRATION PROJECTS

Pub. L. 99–272, title IX, § 9215, Apr. 7, 1986, 100 Stat. 180, as amended by Pub. L. 101–239, title VI, § 6135, Dec. 19, 1989, 103 Stat. 2222; Pub. L. 103–66, title XIII, § 13557, Aug. 10, 1993, 107 Stat. 592; Pub. L. 105–33, title IV, § 4017, Aug. 5, 1997, 111 Stat. 345; Pub. L. 106–113, div. B,

§ 1000(a)(6) [title V, § 534], Nov. 29, 1999, 113 Stat. 1536, 1501A–390; Pub. L. 106–554, § 1(a)(6) [title VI, § 633], Dec. 21, 2000, 114 Stat. 2763, 2763A–568; Pub. L. 108–173, title II, § 235, Dec. 8, 2003, 117 Stat. 2210, provided that:

''(a) The Secretary of Health and Human Services shall extend through December 31, 1997, approval of four municipal health services demonstration projects (located in Baltimore, Cincinnati, Milwaukee, and San Jose) authorized under section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section]. The Secretary shall submit a report to Congress on the waiver program with respect to the quality of health care, beneficiary costs, costs to the medicaid program and other payers, access to care, outcomes, beneficiary satisfaction, utilization differences among the different populations served by the projects, and such other factors as may be appropriate. Subject to subsection (c), the Secretary may further extend such demonstration projects through December 31, 2006, but only with respect to individuals who received at least one service during the period beginning on January 1, 1996, and ending on the date of the enactment of the Balanced Budget Act of 1997 [Aug. 5, 1997].

''(b) The Secretary shall work with each such demonstration project to develop a plan, to be submitted to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate by March 31, 1998, for the orderly transition of demonstration projects and the project participants to a non-demonstration project health care delivery system, such as through integration with a private or public health plan, including a medicaid managed care or Medicare+Choice plan.

''(c) A demonstration project under subsection (a) which does not develop and submit a transition plan under subsection (b) by March 31, 1998, or, if later, 6 months after the date of the enactment of the Balanced Budget Act of 1997 [Aug. 5, 1997], shall be discontinued as of December 31, 1998. The Secretary shall provide appropriate technical assistance to assist in the transition so that disruption of medical services to project participants may be minimized.''

[References to Medicare+Choice deemed to refer to Medicare Advantage, see section 201(b) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.]

DEMONSTRATION PROGRAM FOR REDUCTION OF DISABILITY AND DEPENDENCY THROUGH PROVISION OF PREVENTIVE HEALTH SERVICES UNDER MEDICARE

Pub. L. 99–272, title IX, § 9314, Apr. 7, 1986, 100 Stat. 194, as amended by Pub. L. 99–509, title IX, § 9344(d), Oct. 21, 1986, 100 Stat. 2042; Pub. L. 101–508, title IV, § 4164(a)(1), Nov. 5, 1990, 104 Stat. 1388–100, required Secretary of Health and Human Services to establish a 5-year demonstration program designed to reduce disability and dependency through the provision of preventive health services to individuals entitled to benefits under this subchapter and to submit reports to Congress including a final report on the project not later than April 1, 1995.

PAYMENT FOR COSTS OF HOSPITAL-BASED MOBILE INTENSIVE CARE UNITS

Section 2320 of Pub. L. 98–369 provided that:

''(a)(1) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall provide, except as provided in paragraph (2), that the amount of payments to hospitals covered under the project during the period described in paragraph (3) shall include payments for their operation of hospital-based mobile intensive care units (as defined by State statute) if the State provides satisfactory assurances that the total amount of payments to such hospitals under titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] under the demonstration project (including any such additional amount of payment) would not exceed the total amount of payments which would have been paid under such titles if the demonstration project were not in effect.

''(2) Paragraph (1) shall not apply if the State in which the project is located notifies the Secretary, within 30 days after the date of the enactment of this section [July 18, 1984], that the State does not want paragraph (1) to apply to that project.

''(3) The period referred to in paragraph (1) begins on the date of the enactment of this section and continues so long as the Secretary continues the Statewide waiver referred to in subsection (b), but in no case ends earlier than 90 days after the date final regulations to implement section 1886(c) of the Social Security Act [section 1395ww(c) of this title] are published.

''(b) The project referred to in subsection (a) is the statewide demonstration project established in the State of New Jersey under section 402 of the Social Security Amendments of 1967, as amended by section 222(b) of the Social Security Amendments of 1972 (Public Law 92–603) [this section], which project provides for payments to hospitals in the State on a prospective basis and related to a classification of patients by diagnosis-related groups.

''(c) Payment for services described in this section shall be considered to be payments for services under part A of title XVIII of the Social Security Act [part A of this subchapter].''

CONTINUATION OF SECRETARY'S AUTHORITY REGARDING EXPERIMENTS AND DEMONSTRATION PROJECTS

Pub. L. 98–21, title VI, § 603(b), Apr. 20, 1983, 97 Stat. 167, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this title [amending sections 1320a–1, 1320c–2, 1395f, 1395i–2, 1395n, 1395r, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395ww, and 1395xx of this title, enacting provisions set out as notes under this section and sections 1395r, 1395x, 1395y, 1395cc, and 1395ww of this title, and amending provisions set out as a note under section 1395x of this title] shall not affect the authority of the Secretary to develop, carry out, or continue experiments and demonstration projects.

''(2) The Secretary shall provide that, upon the request of a State which has a demonstration project, for payment of hospitals under title XVIII of the Social Security Act [this subchapter] approved under section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section] or section 222(a) of the Social Security Amendments of 1972 [set out as a note below], which (A) is in effect as of March 1, 1983, and (B) was entered into after August 1982 (or upon the request of another party to demonstration project agreement), the terms of the demonstration agreement shall be modified so that the demonstration project is not required to maintain the rate of increase in medicare hospital costs in that State below the national rate of increase in medicare hospital costs.''

ALTERNATIVE CARE DEMONSTRATION PROJECTS IN HOSPITALS SHORT OF SKILLED NURSING FACILITIES

Pub. L. 98–21, title VI, § 603(d), Apr. 20, 1983, 97 Stat. 168, provided that: ''The Secretary shall conduct demonstrations with hospitals in areas with critical shortages of skilled nursing facilities to study the feasibility of providing alternative systems of care or methods of payment.''

CONTINUATION OF HOSPICE DEMONSTRATION PROJECTS; REPORT TO CONGRESS

Section 122(i), formerly § 122(h), of Pub. L. 97–248, as redesignated and amended by Pub. L. 97–448, title III, § 309(a)(6), (e), Jan. 12, 1983, 96 Stat. 2408, 2410, provided that:

''(1) Notwithstanding any provision of law which has the effect of restricting the time period of a hospice demonstration project in effect on July 15, 1982, pursuant to section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section], the Secretary of Health and Human Services, upon request of the hos-

pice involved, shall permit continuation of the project until November 1, 1983, or, if later, the date on which payments can first be made to any hospice program under the amendments made by this section.

''(2) Prior to September 30, 1983, the Secretary shall submit to Congress a report on the effectiveness of demonstration projects referred to in paragraph (1), including an evaluation of the cost-effectiveness of hospice care, the reasonableness of the 40-percent cap amount for hospice care as provided in section 1814(i) of the Social Security Act [section 1395f(i) of this title] (as added by this section), proposed methodology for determining such cap amount, proposed standards for requiring and measuring the maintenance of effort for utilizing volunteers as required under section 1861(dd) of such Act [section 1395x(dd) of this title], an evaluation of physician reimbursement for services furnished as a part of hospice care and for services furnished to individuals receiving hospice care but which are not reimbursed as a part of the hospice care, and any proposed legislative changes in the hospice care provisions of title XVIII of such Act [this subchapter].

''(3)(A) Notwithstanding the provisions of paragraph (1), the Secretary of Health and Human Services, upon request of the hospice involved, shall permit continuation of a hospice demonstration project described in paragraph (1) until September 30, 1986, if the hospice involved in such demonstration project does not provide hospice care directly but acts as a channeling agency for the provision of hospice care.

''(B) During the period after the date on which a hospice demonstration project described in subparagraph (A) would otherwise have terminated under the provisions of paragraph (1), and prior to September 30, 1986, any such hospice demonstration project shall be subject to the same requirements as are imposed under the hospice program provided for under the amendments made by this section [amending sections 1395c to 1395f, 1395h, and 1395x to 1395cc of this title and section 231f of Title 45, Railroads, and enacting provisions set out as notes under sections 1395c and 1395f of this title] with respect to reimbursement and benefits, other than the requirement that certain benefits be provided directly by the hospice involved.''

STATE MEDICARE HOSPITAL REIMBURSEMENT DEMONSTRATION PROJECT LIMITATION

Pub. L. 96–499, title IX, § 903(c), Dec. 5, 1980, 94 Stat. 2615, which provided for a maximum number of six Statewide medicare hospital reimbursement demonstration projects, was repealed by Pub. L. 97–35, title XXI, § 2154, Aug. 13, 1981, 95 Stat. 802.

STUDY OF NEED FOR DUAL PARTICIPATION OF SKILLED NURSING FACILITIES

Pub. L. 96–499, title IX, § 919, Dec. 5, 1980, 94 Stat. 2627, required study of need for dual participation of skilled nursing facilities and submission of a report and recommendations to Congress within one year after Dec. 5, 1980.

DEMONSTRATION PROJECTS FOR PHYSICIAN-DIRECTED CLINICS IN URBAN MEDICALLY UNDERSERVED AREAS; REPORT SUBMITTED NO LATER THAN JANUARY 1, 1981

Pub. L. 95–210, § 3, Dec. 13, 1977, 91 Stat. 1489, required the Secretary to provide, through demonstration projects, reimbursement on a cost basis for services provided by physician-directed clinics in urban medically underserved areas for which payment may be made under this subchapter and, notwithstanding any other provision of this subchapter, for services provided by a physician assistant or nurse practitioner employed by such clinics which would otherwise be covered under this subchapter if provided by a physician. The Secretary was to evaluate the relative advantages and disadvantages of reimbursement on the basis of costs and fee-for-service for physician-directed clinics employing a physician assistant or nurse practitioner, the appropriate method of determining the compensation for physician services on a cost basis for the purposes of reimbursement of services provided in such clinics, the appropriate definition for such clinics, the appropriate criteria to use for the purposes of designating urban medically underserved areas, and such other possible changes in the provisions of this subchapter as might be appropriate for the efficient and cost-effective reimbursement of services provided in such clinics. Grants, payments under contracts, and other expenditures made for demonstration projects were to be made in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The Secretary was to submit to the Congress, no later than Jan. 1, 1981, a complete detailed report on the demonstration projects.

SCOPE OF GRANTS FOR EXPERIMENTS AND DEMONSTRATION PROJECTS TO DETERMINE METHODS FOR PROSPECTIVE PAYMENTS TO HOSPITALS, SKILLED NURSING FACILITIES, AND OTHER PROVIDERS OF SERVICES

Pub. L. 94–182, title I, § 107, Dec. 31, 1975, 89 Stat. 1053, provided that: ''Nothing contained in section 222(a) of Public Law 92–603 [set out below] shall be construed to preclude or prohibit the Secretary of Health, Education, and Welfare [now Health and Human Services] from including in any grant otherwise authorized to be made under such section moneys which are to be used for payments, to a participant in a demonstration or experiment with respect to which the grant is made, for or on account of costs incurred or services performed by such participant for a period prior to the date that the project of such participant is placed in operation, if—

''(1) the applicant for such grant is a State or an agency thereof,

''(2) such participant is an individual practice association which has been in existence for at least 3 years prior to the date of enactment of this section [Dec. 31, 1975] and which has in effect a contract with such State (or an agency thereof), entered into prior to the date on which the grant is approved by the Secretary, under which such association will, for a period which begins before and ends after the date such grant is so approved, provide health care services for individuals entitled to care and services under the State plan of such State which is approved under title XIX of the Social Security Act [subchapter XIX of this chapter],

''(3) the purpose of the inclusion of the project of such association is to test the utility of a particular rate-setting methodology, designed to be employed in prepaid health plans, in an individual practice association operation, and

''(4) the applicant for such grant affirms that the use of moneys from such grant to make such payments to such individual practice association is necessary or useful in assuring that such association will be able to continue in operation and carry out the project described in clause (3).''

EXPERIMENTS AND DEMONSTRATION PROJECTS TO DETERMINE METHODS FOR PROSPECTIVE PAYMENTS TO HOSPITALS, SKILLED NURSING FACILITIES, AND OTHER PROVIDERS OF SERVICES FOR CARE AND SERVICES FURNISHED; SCOPE; WAIVER OF PAYMENT REQUIREMENTS; SOURCE AND MANNER OF PAYMENTS FOR GRANTS, ETC.; REPORTS TO CONGRESS

Section 222(a) of Pub. L. 92–603, as amended by Pub. L. 97–35, title XXI, § 2193(e), Aug. 13, 1981, 95 Stat. 828, provided that:

''(1) The Secretary of Health, Education, and Welfare [now Health and Human Services], directly or through contracts with, or grants to, public or private agencies or organizations, shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of making payment on a prospective basis to hospitals, skilled nursing facilities, and other providers of services for care and services

provided by them under title XVIII of the Social Security Act [this subchapter] and under State plans approved under title XIX of such Act [subchapter XIX of this chapter], including alternative methods for classifying providers, for establishing prospective rates of payment, and for implementing on a gradual, selective, or other basis the establishment of a prospective payment system, in order to stimulate such providers through positive (or negative) financial incentives to use their facilities and personnel more efficiently and thereby to reduce the total costs of the health programs involved without adversely affecting the quality of services by containing or lowering the rate of increase in provider costs that has been and is being experienced under the existing system of retroactive cost reimbursement.

''(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods of prospective payment under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the programs involved (without committing such programs to the adoption of any prospective payment system either locally or nationally).

''(3) In the case of any experiment or demonstration project under paragraph (1), the Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] insofar as such requirements relate to methods of payment for services provided; and costs incurred in such experiment or project in excess of those which would otherwise be reimbursed or paid under such titles [subchapters] may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be developed or carried out under paragraph (1) until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct it, and its relationship to other similar experiments or projects already completed or in process; and no such experiment or project shall be actually placed in operation unless at least 30 days prior thereto a written report, prepared for purposes of notification and information only, containing a full and complete description thereof has been transmitted to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

''(4) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under this subsection shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act [section 1395i of this title]) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act [section 1395t of this title]) and from funds appropriated under title XIX of such Act [subchapter XIX of this chapter]. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such title XIX) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

''(5) The Secretary shall submit to the Congress no later than July 1, 1974, a full report on the experiments and demonstration projects carried out under this subsection and on the experience of other programs with respect to prospective reimbursement together with any related data and materials which he may consider appropriate. Such report shall include detailed recommendations with respect to the specific methods which could be used in the full implementation of a system of prospective payment to providers of services under the programs involved.''

§ 1395b–2. Notice of medicare benefits; medicare and medigap information

(a) Notice of medicare benefits

The Secretary shall prepare (in consultation with groups representing the elderly and with health insurers) and provide for distribution of a notice containing—

(1) a clear, simple explanation of the benefits available under this subchapter and the major categories of health care for which benefits are not available under this subchapter,

(2) the limitations on payment (including deductibles and coinsurance amounts) that are imposed under this subchapter, and

(3) a description of the limited benefits for long-term care services available under this subchapter and generally available under State plans approved under subchapter XIX of this chapter.

Such notice shall be mailed annually to individuals entitled to benefits under part A or part B of this subchapter and when an individual applies for benefits under part A of this subchapter or enrolls under part B of this subchapter.

(b) Medicare and medigap information

The Secretary shall provide information via a toll-free telephone number on the programs under this subchapter. The Secretary shall provide, through the toll-free telephone number 1–800–MEDICARE, for a means by which individuals seeking information about, or assistance with, such programs who phone such toll-free number are transferred (without charge) to appropriate entities for the provision of such information or assistance. Such toll-free number shall be the toll-free number listed for general information and assistance in the annual notice under subsection (a) of this section instead of the listing of numbers of individual contractors.

(c) Contents of notice

The notice provided under subsection (a) of this section shall include—

(1) a statement which indicates that because errors do occur and because medicare fraud, waste, and abuse is a significant problem, beneficiaries should carefully check any explanation of benefits or itemized statement furnished pursuant to section 1395b–7 of this title for accuracy and report any errors or questionable charges by calling the toll-free phone number described in paragraph (4);

(2) a statement of the beneficiary's right to request an itemized statement for medicare items and services (as provided in section 1395b–7(b) of this title);

(3) a description of the program to collect information on medicare fraud and abuse established under section 1395b–5(b) of this title; and

(4) a toll-free telephone number maintained by the Inspector General in the Department of Health and Human Services for the receipt of complaints and information about waste,

fraud, and abuse in the provision or billing of services under this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1804, as added Pub. L. 100–360, title II, § 223(a), July 1, 1988, 102 Stat. 747; amended Pub. L. 103–432, title I, § 171(j)(1), Oct. 31, 1994, 108 Stat. 4450; Pub. L. 105–33, title IV, § 4311(a)(1), Aug. 5, 1997, 111 Stat. 384; Pub. L. 108–173, title IX, § 923(d)(1), Dec. 8, 2003, 117 Stat. 2394.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (a), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–173 inserted at end ''The Secretary shall provide, through the toll-free telephone number 1–800–MEDICARE, for a means by which individuals seeking information about, or assistance with, such programs who phone such toll-free number are transferred (without charge) to appropriate entities for the provision of such information or assistance. Such toll-free number shall be the toll-free number listed for general information and assistance in the annual notice under subsection (a) of this section instead of the listing of numbers of individual contractors.''

1997—Subsec. (c). Pub. L. 105–33 added subsec. (c).

1994—Pub. L. 103–432 inserted ''; medicare and medigap information'' in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4311(a)(2) of Pub. L. 105–33 provided that: ''The amendment made by this subsection [amending this section] shall apply to notices provided on or after January 1, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 171(*l*) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

EFFECTIVE DATE

Section 223(d)(1) of Pub. L. 100–360 provided that: ''The Secretary of Health and Human Services shall first distribute the notice required by the amendment made by subsection (a) [enacting this section] not later than January 31, 1989.''

MONITORING ACCURACY

Pub. L. 108–173, title IX, § 923(d)(2), Dec. 8, 2003, 117 Stat. 2395, provided that:

''(A) STUDY.—The Comptroller General of the United States shall conduct a study to monitor the accuracy and consistency of information provided to individuals entitled to benefits under part A [probably means part A of title XVIII of the Social Security Act which is classified to part A of this subchapter] or enrolled under part B [probably means part B of title XVIII of the Social Security Act which is classified to part B of this subchapter], or both, through the toll-free telephone number 1–800–MEDICARE, including an assessment of whether the information provided is sufficient to answer questions of such individuals. In conducting the study, the Comptroller General shall examine the education and training of the individuals providing information through such number.

''(B) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on the study conducted under subparagraph (A).''

STATE REGULATORY PROGRAMS

For provisions relating to changes required to conform State regulatory programs to amendments by section 171 of Pub. L. 103–432, see section 171(m) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

DEMONSTRATION PROJECTS

Section 4361(b) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services is authorized to conduct demonstration projects in up to 5 States for the purpose of establishing statewide toll-free telephone numbers for providing information on medicare benefits, medicare supplemental policies available in the State, and benefits under the State medicaid program.''

NOTICE OF CHANGES UNDER REPEAL OF MEDICARE CATASTROPHIC COVERAGE

Pub. L. 101–234, title II, § 203(c), Dec. 13, 1989, 103 Stat. 1984, provided that: ''The Secretary of Health and Human Services shall provide, in the notice of medicare benefits provided under section 1804 of the Social Security Act [this section] for 1990, for a description of the changes in benefits under title XVIII of such Act [this subchapter] made by the amendments made by this Act [see Tables for classification].''

BENEFITS COUNSELING AND ASSISTANCE DEMONSTRATION PROJECT FOR CERTAIN MEDICARE AND MEDICAID BENEFICIARIES

Section 424 of Pub. L. 100–360, which directed Secretary of Health and Human Services to establish a demonstration project to demonstrate that its volunteers were adequately trained and competent to render effective benefits counseling and assistance to the elderly, was repealed by Pub. L. 101–234, title III, § 301(a), Dec. 13, 1989, 103 Stat. 1985.

§ 1395b–3. Health insurance advisory service for medicare beneficiaries

(a) In general

The Secretary of Health and Human Services shall establish a health insurance advisory service program (in this section referred to as the ''beneficiary assistance program'') to assist medicare-eligible individuals with the receipt of services under the medicare and medicaid programs and other health insurance programs.

(b) Outreach elements

The beneficiary assistance program shall provide assistance—

(1) through operation using local Federal offices that provide information on the medicare program,

(2) using community outreach programs, and

(3) using a toll-free telephone information service.

(c) Assistance provided

The beneficiary assistance program shall provide for information, counseling, and assistance for medicare-eligible individuals with respect to at least the following:

(1) With respect to the medicare program—

(A) eligibility,

(B) benefits (both covered and not covered),

(C) the process of payment for services,

(D) rights and process for appeals of determinations,

(E) other medicare-related entities (such as peer review organizations, fiscal intermediaries, and carriers), and

(F) recent legislative and administrative changes in the medicare program.

(2) With respect to the medicaid program—

(A) eligibility, benefits, and the application process,

(B) linkages between the medicaid and medicare programs, and

(C) referral to appropriate State and local agencies involved in the medicaid program.

(3) With respect to medicare supplemental policies—

(A) the program under section 1395ss of this title and standards required under such program,

(B) how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies,

(C) appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies, and

(D) other issues deemed appropriate by the Secretary.

The beneficiary assistance program also shall provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the medicare program and to improve the relationship between beneficiaries and the program.

(d) Educational material

The Secretary, through the Administrator of the Centers for Medicare & Medicaid Services, shall develop appropriate educational materials and other appropriate techniques to assist employees in carrying out this section.

(e) Notice to beneficiaries

The Secretary shall take such steps as are necessary to assure that medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.

(f) Report

The Secretary shall include, in an annual report transmitted to the Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to medicare-eligible individuals. The Secretary shall include in the report recommendations for such changes as may be desirable to improve the relationship between the medicare program and medicare-eligible individuals.

(Pub. L. 101–508, title IV, § 4359, Nov. 5, 1990, 104 Stat. 1388–137; Pub. L. 108–173, title IX, § 900(e)(6)(G), Dec. 8, 2003, 117 Stat. 2374.)

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

BENEFICIARY OUTREACH DEMONSTRATION PROGRAM

Pub. L. 108–173, title IX, § 924, Dec. 8, 2003, 117 Stat. 2395, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a demonstration program (in this section referred to as the 'demonstration program') under which medicare specialists employed by the Department of Health and Human Services provide advice and assistance to individuals entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter], or enrolled under part B of such title [part B of this subchapter], or both, regarding the medicare program at the location of existing local offices of the Social Security Administration.

''(b) LOCATIONS.—

''(1) IN GENERAL.—The demonstration program shall be conducted in at least 6 offices or areas. Subject to paragraph (2), in selecting such offices and areas, the Secretary shall provide preference for offices with a high volume of visits by individuals referred to in subsection (a).

''(2) ASSISTANCE FOR RURAL BENEFICIARIES.—The Secretary shall provide for the selection of at least 2 rural areas to participate in the demonstration program. In conducting the demonstration program in such rural areas, the Secretary shall provide for medicare specialists to travel among local offices in a rural area on a scheduled basis.

''(c) DURATION.—The demonstration program shall be conducted over a 3-year period.

''(d) EVALUATION AND REPORT.—

''(1) EVALUATION.—The Secretary shall provide for an evaluation of the demonstration program. Such evaluation shall include an analysis of—

''(A) utilization of, and satisfaction of those individuals referred to in subsection (a) with, the assistance provided under the program; and

''(B) the cost-effectiveness of providing beneficiary assistance through out-stationing medicare specialists at local offices of the Social Security Administration.

''(2) REPORT.—The Secretary shall submit to Congress a report on such evaluation and shall include in such report recommendations regarding the feasibility of permanently out-stationing medicare specialists at local offices of the Social Security Administration.''

QUALIFIED MEDICARE BENEFICIARY OUTREACH

Pub. L. 103–432, title I, § 154, Oct. 31, 1994, 108 Stat. 4437, provided that: ''Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall establish and implement a method for obtaining information from newly eligible medicare beneficiaries that may be used to determine whether such beneficiaries may be eligible for medical assistance for medicare cost-sharing under State medicaid plans as qualified medicare beneficiaries, and for transmitting such information to the State in which such a beneficiary resides.''

§ 1395b–4. Health insurance information, counseling, and assistance grants

(a) Grants

The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall make grants to States, with approved State regulatory programs under section 1395ss of this title, that submit applications to the Secretary that meet the requirements of this section for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under this subchapter (in this section referred to as ''eligible individuals''). The Secretary shall prescribe regulations to establish a minimum level of funding for a grant issued under this section.

(b) Grant applications

(1) In submitting an application under this section, a State may consolidate and coordinate

an application that consists of parts prepared by more than one agency or department of such State.

(2) As part of an application for a grant under this section, a State shall submit a plan for a State-wide health insurance information, counseling, and assistance program. Such program shall—

(A) establish or improve upon a health insurance information, counseling, and assistance program that provides counseling and assistance to eligible individuals in need of health insurance information, including—

(i) information that may assist individuals in obtaining benefits and filing claims under this subchapter and subchapter XIX of this chapter;

(ii) policy comparison information for medicare supplemental policies (as described in section 1395ss(g)(1) of this title) and information that may assist individuals in filing claims under such medicare supplemental policies;

(iii) information regarding long-term care insurance; and

(iv) information regarding other types of health insurance benefits that the Secretary determines to be appropriate;

(B) in conjunction with the health insurance information, counseling, and assistance program described in subparagraph (A), establish a system of referral to appropriate Federal or State departments or agencies for assistance with problems related to health insurance coverage (including legal problems), as determined by the Secretary;

(C) provide for a sufficient number of staff positions (including volunteer positions) necessary to provide the services of the health insurance information, counseling, and assistance program;

(D) provide assurances that staff members (including volunteer staff members) of the health insurance information, counseling, and assistance program have no conflict of interest in providing the counseling described in subparagraph (A);

(E) provide for the collection and dissemination of timely and accurate health care information to staff members;

(F) provide for training programs for staff members (including volunteer staff members);

(G) provide for the coordination of the exchange of health insurance information between the staff of departments and agencies of the State government and the staff of the health insurance information, counseling, and assistance program;

(H) make recommendations concerning consumer issues and complaints related to the provision of health care to agencies and departments of the State government and the Federal Government responsible for providing or regulating health insurance;

(I) establish an outreach program to provide the health insurance information and counseling described in subparagraph (A) and the referrals described in subparagraph (B) to eligible individuals; and

(J) demonstrate, to the satisfaction of the Secretary, an ability to provide the counseling and assistance required under this section.

(c) Special grants

(1) A State that is conducting a health insurance information, counseling, and assistance program that is substantially similar to a program described in subsection (b)(2) of this section shall, as a requirement for eligibility for a grant under this section, demonstrate, to the satisfaction of the Secretary, that such State shall maintain the activities of such program at least at the level that such activities were conducted immediately preceding the date of the issuance of any grant during the period of time covered by such grant under this section.

(2) If the Secretary determines that the existing health insurance information, counseling, and assistance program is substantially similar to a program described in subsection (b)(2) of this section, the Secretary may waive some or all of the requirements described in such subsection and issue a grant to the State for the purpose of increasing the number of services offered by the health insurance information, counseling, and assistance program, experimenting with new methods of outreach in conducting such program, or expanding such program to geographic areas of the State not previously served by the program.

(d) Criteria for issuing grants

In issuing a grant under this section, the Secretary shall consider—

(1) the commitment of the State to carrying out the health insurance information, counseling, and assistance program described in subsection (b)(2) of this section, including the level of cooperation demonstrated—

(A) by the office of the chief insurance regulator of the State, or the equivalent State entity;

(B) other officials of the State responsible for overseeing insurance plans issued by nonprofit hospital and medical service associations; and

(C) departments and agencies of such State responsible for—

(i) administering funds under subchapter XIX of this chapter, and

(ii) administering funds appropriated under the Older Americans Act [42 U.S.C. 3001 et seq.];

(2) the population of eligible individuals in such State as a percentage of the population of such State; and

(3) in order to ensure the needs of rural areas in such State, the relative costs and special problems associated with addressing the special problems of providing health care information, counseling, and assistance eligible[1] individuals residing in rural areas of such State.

(e) Annual State report

A State that receives a grant under this section shall, not later than 180 days after receiving such grant, and annually thereafter during the period of the grant, issue a report to the Secretary that includes information concerning—

(1) the number of individuals served by the health insurance information, counseling and assistance program of such State;

[1] So in original. Probably should be preceded by ''to''.

(2) an estimate of the amount of funds saved by the State, and by eligible individuals in the State, in the implementation of such program; and

(3) the problems that eligible individuals in such State encounter in procuring adequate and appropriate health care coverage.

(f) Report to Congress

Beginning with 1992, and annually thereafter, the Secretary shall issue a report to the Committee on Finance of the Senate, the Special Committee on Aging of the Senate, the Committee on Ways and Means of the House of Representatives, and the Committee on Energy and Commerce of the House of Representatives that—

(1) summarizes the allocation of funds authorized for grants under this section and the expenditure of such funds;

(2) outlines the problems that eligible individuals encounter in procuring adequate and appropriate health care coverage;

(3) makes recommendations that the Secretary determines to be appropriate to address the problems described in paragraph (3);[2] and

(4) in the case of the report issued 2 years after November 5, 1990, evaluates the effectiveness of counseling programs established under this program, and makes recommendations regarding continued authorization of funds for these purposes.

(g) Authorization of appropriations for grants

There are authorized to be appropriated, in equal parts from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, $10,000,000 for each of fiscal years 1991, 1992, 1993, 1994, 1995, and 1996, to fund the grant programs described in this section.

(Pub. L. 101–508, title IV, § 4360, Nov. 5, 1990, 104 Stat. 1388–138; Pub. L. 103–432, title I, § 171(i), Oct. 31, 1994, 108 Stat. 4450; Pub. L. 103–437, § 15(b), Nov. 2, 1994, 108 Stat. 4591; Pub. L. 105–362, title VI, § 602(b)(2), Nov. 10, 1998, 112 Stat. 3286.)

REFERENCES IN TEXT

The Older Americans Act, referred to in subsec. (d)(1)(C)(ii), probably means the Older Americans Act of 1965, which is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, and is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (f). Pub. L. 105–362 substituted ''Beginning with 1992'' for ''Not later than 180 days after November 5, 1990''.

1994—Subsec. (b)(2)(A)(ii). Pub. L. 103–432, § 171(i)(1), inserted closing parenthesis after ''of this title''.

Subsec. (b)(2)(D). Pub. L. 103–432, § 171(i)(2), substituted ''counseling'' for ''services'' before ''described in subparagraph (A)''.

Subsec. (b)(2)(I). Pub. L. 103–432, § 171(i)(3), substituted ''referrals'' for ''assistance''.

Subsec. (c)(1). Pub. L. 103–432, § 171(i)(4), struck out ''and that such activities will continue to be maintained at such level'' after ''covered by such grant under this section''.

Subsec. (d)(3). Pub. L. 103–432, § 171(i)(5), substituted ''eligible individuals residing in rural areas'' for ''to the rural areas''.

Subsec. (e). Pub. L. 103–432, § 171(i)(6)(A), (B), in introductory provisions, substituted ''this section'' for ''subsection (c) or (d) of this section'' and ''and annually thereafter during the period of the grant, issue a report'' for ''and annually thereafter, issue an annual report''.

Subsec. (e)(1). Pub. L. 103–432, § 171(i)(6)(C), struck out ''State-wide'' before ''health insurance information''.

Subsec. (f). Pub. L. 103–437, § 15(b)(1), in introductory provisions, substituted ''and the Committee on Energy and Commerce'' for ''the Committee on Energy and Commerce of the House of Representatives, and the Select Committee on Aging''.

Pub. L. 103–432, § 171(i)(8)(B), and Pub. L. 103–437, § 15(b)(2), made identical amendments, redesignating subsec. (f), relating to authorization of appropriations for grants, as (g).

Pub. L. 103–432, § 171(i)(8)(A), in subsec. (f), relating to authorization of appropriations for grants, substituted ''1993, 1994, 1995, and 1996'' for ''and 1993''.

Subsec. (f)(2) to (5). Pub. L. 103–432, § 171(i)(7), in subsec. (f), relating to report to Congress, redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''summarizes the scope and content of training conferences convened under this section;''.

Subsec. (g). Pub. L. 103–432, § 171(i)(8)(B), and Pub. L. 103–437, § 15(b)(2), made identical amendments, redesignating subsec. (f), relating to authorization of appropriations for grants, as (g).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 171(*l*) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

STATE REGULATORY PROGRAMS

For provisions relating to changes required to conform State regulatory programs to amendments by section 171 of Pub. L. 103–432, see section 171(m) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

§ 1395b–5. Beneficiary incentive programs

(a) Repealed. Pub. L. 105–33, title IV, § 4311(b)(2), Aug. 5, 1997, 111 Stat. 386

(b) Program to collect information on fraud and abuse

(1) Establishment of program

Not later than 3 months after August 21, 1996, the Secretary shall establish a program under which the Secretary shall encourage individuals to report to the Secretary information on individuals and entities who are en-

[2] So in original. Probably should be paragraph ''(2)''.

gaging in or who have engaged in acts or omissions which constitute grounds for the imposition of a sanction under section 1320a–7, 1320a–7a, or 1320a–7b of this title, or who have otherwise engaged in fraud and abuse against the Medicare program under this subchapter for which there is a sanction provided under law. The program shall discourage provision of, and not consider, information which is frivolous or otherwise not relevant or material to the imposition of such a sanction.

(2) Payment of portion of amounts collected

If an individual reports information to the Secretary under the program established under paragraph (1) which serves as the basis for the collection by the Secretary or the Attorney General of any amount of at least $100 (other than any amount paid as a penalty under section 1320a–7b of this title), the Secretary may pay a portion of the amount collected to the individual (under procedures similar to those applicable under section 7623 of the Internal Revenue Code of 1986 to payments to individuals providing information on violations of such Code).

(c) Program to collect information on program efficiency

(1) Establishment of program

Not later than 3 months after August 21, 1996, the Secretary shall establish a program under which the Secretary shall encourage individuals to submit to the Secretary suggestions on methods to improve the efficiency of the Medicare program.

(2) Payment of portion of program savings

If an individual submits a suggestion to the Secretary under the program established under paragraph (1) which is adopted by the Secretary and which results in savings to the program, the Secretary may make a payment to the individual of such amount as the Secretary considers appropriate.

(Pub. L. 104–191, title II, § 203, Aug. 21, 1996, 110 Stat. 1998; Pub. L. 105–33, title IV, § 4311(b)(2), Aug. 5, 1997, 111 Stat. 386.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(2), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

Section was enacted as part of the Health Insurance Portability and Accountability Act of 1996, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33 struck out heading and text of subsec. (a). Text read as follows: ''The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall provide an explanation of benefits under the Medicare program under this subchapter with respect to each item or service for which payment may be made under the program which is furnished to an individual, without regard to whether or not a deductible or coinsurance may be imposed against the individual with respect to the item or service.''

§ 1395b–6. Medicare Payment Advisory Commission

(a) Establishment

There is hereby established the Medicare Payment Advisory Commission (in this section referred to as the ''Commission'').

(b) Duties

(1) Review of payment policies and annual reports

The Commission shall—

(A) review payment policies under this subchapter, including the topics described in paragraph (2);

(B) make recommendations to Congress concerning such payment policies;

(C) by not later than March 1 of each year (beginning with 1998), submit a report to Congress containing the results of such reviews and its recommendations concerning such policies; and

(D) by not later than June 15 of each year, submit a report to Congress containing an examination of issues affecting the medicare program, including the implications of changes in health care delivery in the United States and in the market for health care services on the medicare program and including a review of the estimate of the conversion factor submitted under section 1395w–4(d)(1)(E)(ii) of this title.

(2) Specific topics to be reviewed

(A) Medicare+Choice program

Specifically, the Commission shall review, with respect to the Medicare+Choice program under part C of this subchapter, the following:

(i) The methodology for making payment to plans under such program, including the making of differential payments and the distribution of differential updates among different payment areas.

(ii) The mechanisms used to adjust payments for risk and the need to adjust such mechanisms to take into account health status of beneficiaries.

(iii) The implications of risk selection both among Medicare+Choice organizations and between the Medicare+Choice option and the original medicare fee-for-service option.

(iv) The development and implementation of mechanisms to assure the quality of care for those enrolled with Medicare+Choice organizations.

(v) The impact of the Medicare+Choice program on access to care for medicare beneficiaries.

(vi) Other major issues in implementation and further development of the Medicare+Choice program.

(B) Original medicare fee-for-service system

Specifically, the Commission shall review payment policies under parts A and B of this subchapter, including—

(i) the factors affecting expenditures for the efficient provision of services in different sectors, including the process for

updating hospital, skilled nursing facility, physician, and other fees,

(ii) payment methodologies, and

(iii) their relationship to access and quality of care for medicare beneficiaries.

(C) Interaction of medicare payment policies with health care delivery generally

Specifically, the Commission shall review the effect of payment policies under this subchapter on the delivery of health care services other than under this subchapter and assess the implications of changes in health care delivery in the United States and in the general market for health care services on the medicare program.

(3) Comments on certain secretarial reports

If the Secretary submits to Congress (or a committee of Congress) a report that is required by law and that relates to payment policies under this subchapter, the Secretary shall transmit a copy of the report to the Commission. The Commission shall review the report and, not later than 6 months after the date of submittal of the Secretary's report to Congress, shall submit to the appropriate committees of Congress written comments on such report. Such comments may include such recommendations as the Commission deems appropriate.

(4) Agenda and additional reviews

The Commission shall consult periodically with the chairmen and ranking minority members of the appropriate committees of Congress regarding the Commission's agenda and progress towards achieving the agenda. The Commission may conduct additional reviews, and submit additional reports to the appropriate committees of Congress, from time to time on such topics relating to the program under this subchapter as may be requested by such chairmen and members and as the Commission deems appropriate.

(5) Availability of reports

The Commission shall transmit to the Secretary a copy of each report submitted under this subsection and shall make such reports available to the public.

(6) Appropriate committees of Congress

For purposes of this section, the term ''appropriate committees of Congress'' means the Committees on Ways and Means and Commerce of the House of Representatives and the Committee on Finance of the Senate.

(7) Voting and reporting requirements

With respect to each recommendation contained in a report submitted under paragraph (1), each member of the Commission shall vote on the recommendation, and the Commission shall include, by member, the results of that vote in the report containing the recommendation.

(8) Examination of budget consequences

Before making any recommendations, the Commission shall examine the budget consequences of such recommendations, directly or through consultation with appropriate expert entities.

(c) Membership

(1) Number and appointment

The Commission shall be composed of 17 members appointed by the Comptroller General.

(2) Qualifications

(A) In general

The membership of the Commission shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, allopathic and osteopathic physicians, and other providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

(B) Inclusion

The membership of the Commission shall include (but not be limited to) physicians and other health professionals, experts in the area of pharmaco-economics or prescription drug benefit programs, employers, third-party payers, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research and expertise in outcomes and effectiveness research and technology assessment. Such membership shall also include representatives of consumers and the elderly.

(C) Majority nonproviders

Individuals who are directly involved in the provision, or management of the delivery, of items and services covered under this subchapter shall not constitute a majority of the membership of the Commission.

(D) Ethical disclosure

The Comptroller General shall establish a system for public disclosure by members of the Commission of financial and other potential conflicts of interest relating to such members. Members of the Commission shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95–521).

(3) Terms

(A) In general

The terms of members of the Commission shall be for 3 years except that the Comptroller General shall designate staggered terms for the members first appointed.

(B) Vacancies

Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(4) Compensation

While serving on the business of the Commission (including traveltime), a member of

the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5; and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, and for such purpose subsection (i) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority. For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.

(5) Chairman; Vice Chairman

The Comptroller General shall designate a member of the Commission, at the time of appointment of the member as Chairman and a member as Vice Chairman for that term of appointment, except that in the case of vacancy of the Chairmanship or Vice Chairmanship, the Comptroller General may designate another member for the remainder of that member's term.

(6) Meetings

The Commission shall meet at the call of the Chairman.

(d) Director and staff; experts and consultants

Subject to such review as the Comptroller General deems necessary to assure the efficient administration of the Commission, the Commission may—

(1) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5 governing appointments in the competitive service);

(2) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 5 of title 41);

(4) make advance, progress, and other payments which relate to the work of the Commission;

(5) provide transportation and subsistence for persons serving without compensation; and

(6) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

(e) Powers

(1) Obtaining official data

The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of that department or agency shall furnish that information to the Commission on an agreed upon schedule.

(2) Data collection

In order to carry out its functions, the Commission shall—

(A) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section,

(B) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate, and

(C) adopt procedures allowing any interested party to submit information for the Commission's use in making reports and recommendations.

(3) Access of GAO to information

The Comptroller General shall have unrestricted access to all deliberations, records, and nonproprietary data of the Commission, immediately upon request.

(4) Periodic audit

The Commission shall be subject to periodic audit by the Comptroller General.

(f) Authorization of appropriations

(1) Request for appropriations

The Commission shall submit requests for appropriations in the same manner as the Comptroller General submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Comptroller General.

(2) Authorization

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Sixty percent of such appropriation shall be payable from the Federal Hospital Insurance Trust Fund, and 40 percent of such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

(Aug. 14, 1935, ch. 531, title XVIII, § 1805, as added Pub. L. 105–33, title IV, § 4022(a), Aug. 5, 1997, 111 Stat. 350; amended Pub. L. 105–277, div. J, title V, § 5202(a), Oct. 21, 1998, 112 Stat. 2681–917; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 211(a)(2)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–347; Pub. L. 106–554, § 1(a)(6) [title V, § 544(a)(1), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–551; Pub. L. 108–173, title VII, § 735(a)–(c)(1), (e)(1), Dec. 8, 2003, 117 Stat. 2353, 2354.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in subsec. (b)(2)(A), (B), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

The Ethics in Government Act of 1978, referred to in subsec. (c)(2)(D), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title I of the Act is set out in the Appendix to Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (d)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

2003—Subsec. (b)(2)(B)(i). Pub. L. 108–173, § 735(b), inserted ''the efficient provision of'' after ''expenditures for''.

Subsec. (b)(8). Pub. L. 108–173, § 735(a), added par. (8).

Subsec. (c)(2)(B). Pub. L. 108–173, § 735(e)(1), inserted ''experts in the area of pharmaco-economics or prescription drug benefit programs,'' after ''other health professionals,''.

Subsec. (c)(2)(D). Pub. L. 108–173, § 735(c)(1), inserted at end ''Members of the Commission shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95–521).''

2000—Subsec. (b)(1)(D). Pub. L. 106–554, § 1(a)(6) [title V, § 544(a)(1)], substituted ''June 15 of each year,'' for ''June 1 of each year (beginning with 1998),''.

Subsec. (b)(7). Pub. L. 106–554, § 1(a)(6) [title V, § 544(b)], added par. (7).

1999—Subsec. (b)(1)(D). Pub. L. 106–113 inserted ''and including a review of the estimate of the conversion factor submitted under section 1395w–4(d)(1)(E)(ii) of this title'' before period at end.

1998—Subsec. (c)(1). Pub. L. 105–277 substituted ''17'' for ''15''.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title VII, § 735(c)(2), Dec. 8, 2003, 117 Stat. 2354, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title V, § 544(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–551, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply beginning with 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective in determining conversion factor under section 1395w–4(d) of this title for years beginning with 2001 and not applicable to or affecting any update (or any update adjustment factor) for any year before 2001, see section 1000(a)(6) [title II, § 211(d)] of Pub. L. 106–113, set out as a note under section 1395w–4 of this title.

EFFECTIVE DATE; TRANSITION; TRANSFER OF FUNCTIONS

Section 4022(c) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—The Comptroller General shall first provide for appointment of members to the Medicare Payment Advisory Commission (in this subsection referred to as 'MedPAC') by not later than September 30, 1997.

''(2) TRANSITION.—As quickly as possible after the date a majority of members of MedPAC are first appointed [Oct. 1, 1997, see 62 FR 52131], the Comptroller General, in consultation with the Prospective Payment Assessment Commission (in this subsection referred to as 'ProPAC') and the Physician Payment Review Commission (in this subsection referred to as 'PPRC'), shall provide for the termination of the ProPAC and the PPRC. As of the date of termination of the respective Commissions [Nov. 1, 1997, see 62 FR 59356], the amendments made by paragraphs (1) and (2), respectively, of subsection (b) [amending sections 1395w–4, 1395y, and 1395ww of this title and repealing section 1395w–1 of this title] become effective. The Comptroller General, to the extent feasible, shall provide for the transfer to the MedPAC of assets and staff of the ProPAC and the PPRC, without any loss of benefits or seniority by virtue of such transfers. Fund balances available to the ProPAC or the PPRC for any period shall be available to the MedPAC for such period for like purposes.

''(3) CONTINUING RESPONSIBILITY FOR REPORTS.—The MedPAC shall be responsible for the preparation and submission of reports required by law to be submitted (and which have not been submitted by the date of establishment of the MedPAC) by the ProPAC and the PPRC, and, for this purpose, any reference in law to either such Commission is deemed, after the appointment of the MedPAC, to refer to the MedPAC.''

APPOINTMENT OF EXPERTS IN PRESCRIPTION DRUGS

Pub. L. 108–173, title VII, § 735(e)(2), Dec. 8, 2003, 117 Stat. 2354, provided that: ''The Comptroller General of the United States shall ensure that the membership of the Commission [Medicare Payment Advisory Commission] complies with the amendment made by paragraph (1) [amending this section] with respect to appointments made on or after the date of the enactment of this Act [Dec. 8, 2003].''

MEDPAC ANALYSIS OF IMPACT OF VOLUME ON PER UNIT COST OF RURAL HOSPITALS WITH PSYCHIATRIC UNITS

Pub. L. 106–554, § 1(a)(6) [title II, § 214], Dec. 21, 2000, 114 Stat. 2763, 2763A–486, provided that: ''The Medicare Payment Advisory Commission, in its study conducted pursuant to subsection (a) of section 411 of BBRA [Pub. L. 106–113, § 1000(a)(6) [title IV, § 411], set out as a note below] (113 Stat. 1501A–377), shall include—

''(1) in such study an analysis of the impact of volume on the per unit cost of rural hospitals with psychiatric units; and

''(2) in its report under subsection (b) of such section a recommendation on whether special treatment for such hospitals may be warranted.''

MEDPAC STUDY ON COMPLEXITY OF MEDICARE PROGRAM AND LEVELS OF BURDENS PLACED ON PROVIDERS THROUGH FEDERAL REGULATIONS

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 229(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–357, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall undertake a comprehensive study to review the regulatory burdens placed on all classes of health care providers under parts A and B of the medicare program under title XVIII of the Social Security Act [this subchapter] and to determine the costs these burdens impose on the nation's health care system. The study shall also examine the complexity of the current regulatory system and its impact on providers.

''(2) REPORT.—Not later than December 31, 2001, the Commission shall submit to Congress one or more reports on the study conducted under paragraph (1). The report shall include recommendations regarding—

''(A) how the Health Care Financing Administration can reduce the regulatory burdens placed on patients and providers; and

''(B) legislation that may be appropriate to reduce the complexity of the medicare program, including improvement of the rules regarding billing, compliance, and fraud and abuse.''

MEDPAC REPORT

Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 312(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–365, provided that: ''The Medicare Payment Advisory Commission shall include in its report submitted to Congress in March of 2001 recommendations regarding the appropriateness of the initial residency period used under section 1886(h)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)) for other residency training programs

in a specialty that require preliminary years of study in another specialty.''

MEDPAC STUDY OF RURAL PROVIDERS

Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 411], Nov. 29, 1999, 113 Stat. 1536, 1501A–377, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study of rural providers furnishing items and services for which payment is made under title XVIII of the Social Security Act [this subchapter]. Such study shall examine and evaluate the adequacy and appropriateness of the categories of special payments (and payment methodologies) established for rural hospitals under the medicare program, and the impact of such categories on beneficiary access and quality of health care services.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Nov. 29, 1999], the Medicare Payment Advisory Commission shall submit to Congress a report on the study conducted under subsection (a).''

QUALITY IMPROVEMENT STANDARDS

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 520(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–386, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the appropriate quality improvement standards that should apply to—

''(A) each type of Medicare+Choice plan described in section 1851(a)(2) of the Social Security Act (42 U.S.C. 1395w–21(a)(2)), including each type of Medicare+Choice plan that is a coordinated care plan (as described in subparagraph (A) of such section); and

''(B) the original medicare fee-for-service program under parts A and B [sic] title XVIII of such Act (42 U.S.C. 1395 et seq.) [parts A and B of this subchapter].

''(2) CONSIDERATIONS.—Such study shall specifically examine the effects, costs, and feasibility of requiring entities, physicians, and other health care providers that provide items and services under the original medicare fee-for-service program to comply with quality standards and related reporting requirements that are comparable to the quality standards and related reporting requirements that are applicable to Medicare+Choice organizations.

''(3) REPORT.—Not later than 2 years after the date of the enactment of this Act [Nov. 29, 1999], such Commission shall submit a report to Congress on the study conducted under this subsection, together with any recommendations for legislation that it determines to be appropriate as a result of such study.''

INITIAL TERMS OF ADDITIONAL MEMBERS

Pub. L. 105–277, div. J, title V, § 5202(b), Oct. 21, 1998, 112 Stat. 2681–917, provided that:

''(1) IN GENERAL.—For purposes of staggering the initial terms of members of the Medicare Payment Advisory Commission (under section 1805(c)(3) of such Act (42 U.S.C. 1395b–6(c)(3))[)], the initial terms of the two additional members of the Commission provided for by the amendment under subsection (a) [amending this section] are as follows:

''(A) One member shall be appointed for one year.

''(B) One member shall be appointed for two years.

''(2) COMMENCEMENT OF TERMS.—Such terms shall begin on May 1, 1999.''

INFORMATION INCLUDED IN ANNUAL RECOMMENDATIONS

Section 4804(c) of Pub. L. 105–33 provided that: ''The Medicare Payment Advisory Commission shall include in its annual report under section 1805(b)(1)(B) of the Social Security Act [subsec. (b)(1)(B) of this section] recommendations on the methodology and level of payments made to PACE providers under sections 1894(d) and 1934(d) of such Act [sections 1395eee(d) and 1396u–4(d) of this title] and on the treatment of private, for-profit entities as PACE providers.''

§ 1395b–7. Explanation of medicare benefits

(a) In general

The Secretary shall furnish to each individual for whom payment has been made under this subchapter (or would be made without regard to any deductible) a statement which—

(1) lists the item or service for which payment has been made and the amount of such payment for each item or service; and

(2) includes a notice of the individual's right to request an itemized statement (as provided in subsection (b) of this section).

(b) Request for itemized statement for medicare items and services

(1) In general

An individual may submit a written request to any physician, provider, supplier, or any other person (including an organization, agency, or other entity) for an itemized statement for any item or service provided to such individual by such person with respect to which payment has been made under this subchapter.

(2) 30-day period to furnish statement

(A) In general

Not later than 30 days after the date on which a request under paragraph (1) has been made, a person described in such paragraph shall furnish an itemized statement describing each item or service provided to the individual requesting the itemized statement.

(B) Penalty

Whoever knowingly fails to furnish an itemized statement in accordance with subparagraph (A) shall be subject to a civil money penalty of not more than $100 for each such failure. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(3) Review of itemized statement

(A) In general

Not later than 90 days after the receipt of an itemized statement furnished under paragraph (1), an individual may submit a written request for a review of the itemized statement to the Secretary.

(B) Specific allegations

A request for a review of the itemized statement shall identify—

(i) specific items or services that the individual believes were not provided as claimed, or

(ii) any other billing irregularity (including duplicate billing).

(4) Findings of Secretary

The Secretary shall, with respect to each written request submitted under paragraph (3), determine whether the itemized statement identifies specific items or services that were not provided as claimed or any other billing irregularity (including duplicate billing) that has resulted in unnecessary payments under this subchapter.

(5) Recovery of amounts

The Secretary shall take all appropriate measures to recover amounts unnecessarily

paid under this subchapter with respect to a statement described in paragraph (4).

(Aug. 14, 1935, ch. 531, title XVIII, § 1806, as added Pub. L. 105–33, title IV, § 4311(b)(1), Aug. 5, 1997, 111 Stat. 385.)

EFFECTIVE DATE

Section 4311(b)(3) of Pub. L. 105–33 provided that:

''(A) STATEMENT BY SECRETARY.—Paragraph (1) of section 1806(a) of the Social Security Act [subsec. (a)(1) of this section], as added by paragraph (1), and the repeal made by paragraph (2) [amending section 1395b–5 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].

''(B) ITEMIZED STATEMENT.—Paragraph (2) of section 1806(a) and section 1806(b) of the Social Security Act [subsecs. (a)(2) and (b) of this section], as so added, shall take effect not later than January 1, 1999.''

INCLUSION OF ADDITIONAL INFORMATION IN NOTICES TO BENEFICIARIES ABOUT SKILLED NURSING FACILITY BENEFITS

Pub. L. 108–173, title IX, § 925, Dec. 8, 2003, 117 Stat. 2396, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] shall provide that in medicare beneficiary notices provided (under section 1806(a) of the Social Security Act, 42 U.S.C. 1395b–7(a)) with respect to the provision of post-hospital extended care services under part A of title XVIII of the Social Security Act [part A of this subchapter], there shall be included information on the number of days of coverage of such services remaining under such part for the medicare beneficiary and spell of illness involved.

''(b) EFFECTIVE DATE.—Subsection (a) shall apply to notices provided during calendar quarters beginning more than 6 months after the date of the enactment of this Act [Dec. 8, 2003].''

§ 1395b–8. Chronic care improvement

(a) Implementation of chronic care improvement programs

(1) In general

The Secretary shall provide for the phased-in development, testing, evaluation, and implementation of chronic care improvement programs in accordance with this section. Each such program shall be designed to improve clinical quality and beneficiary satisfaction and achieve spending targets with respect to expenditures under this subchapter for targeted beneficiaries with one or more threshold conditions.

(2) Definitions

For purposes of this section:

(A) Chronic care improvement program

The term ''chronic care improvement program'' means a program described in paragraph (1) that is offered under an agreement under subsection (b) or (c) of this section.

(B) Chronic care improvement organization

The term ''chronic care improvement organization'' means an entity that has entered into an agreement under subsection (b) or (c) of this section to provide, directly or through contracts with subcontractors, a chronic care improvement program under this section. Such an entity may be a disease management organization, health insurer, integrated delivery system, physician group practice, a consortium of such entities, or any other legal entity that the Secretary determines appropriate to carry out a chronic care improvement program under this section.

(C) Care management plan

The term ''care management plan'' means a plan established under subsection (d) of this section for a participant in a chronic care improvement program.

(D) Threshold condition

The term ''threshold condition'' means a chronic condition, such as congestive heart failure, diabetes, chronic obstructive pulmonary disease (COPD), or other diseases or conditions, as selected by the Secretary as appropriate for the establishment of a chronic care improvement program.

(E) Targeted beneficiary

The term ''targeted beneficiary'' means, with respect to a chronic care improvement program, an individual who—

(i) is entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, but not enrolled in a plan under part C of this subchapter;

(ii) has one or more threshold conditions covered under such program; and

(iii) has been identified under subsection (d)(1) of this section as a potential participant in such program.

(3) Construction

Nothing in this section shall be construed as—

(A) expanding the amount, duration, or scope of benefits under this subchapter;

(B) providing an entitlement to participate in a chronic care improvement program under this section;

(C) providing for any hearing or appeal rights under section 1395ff, 1395*oo* of this title, or otherwise, with respect to a chronic care improvement program under this section; or

(D) providing benefits under a chronic care improvement program for which a claim may be submitted to the Secretary by any provider of services or supplier (as defined in section 1395x(d) of this title).

(b) Developmental phase (Phase I)

(1) In general

In carrying out this section, the Secretary shall enter into agreements consistent with subsection (f) of this section with chronic care improvement organizations for the development, testing, and evaluation of chronic care improvement programs using randomized controlled trials. The first such agreement shall be entered into not later than 12 months after December 8, 2003.

(2) Agreement period

The period of an agreement under this subsection shall be for 3 years.

(3) Minimum participation

(A) In general

The Secretary shall enter into agreements under this subsection in a manner so that

chronic care improvement programs offered under this section are offered in geographic areas that, in the aggregate, consist of areas in which at least 10 percent of the aggregate number of medicare beneficiaries reside.

(B) Medicare beneficiary defined

In this paragraph, the term ''medicare beneficiary'' means an individual who is entitled to benefits under part A of this subchapter, enrolled under part B of this subchapter, or both, and who resides in the United States.

(4) Site selection

In selecting geographic areas in which agreements are entered into under this subsection, the Secretary shall ensure that each chronic care improvement program is conducted in a geographic area in which at least 10,000 targeted beneficiaries reside among other individuals entitled to benefits under part A of this subchapter, enrolled under part B of this subchapter, or both to serve as a control population.

(5) Independent evaluations of Phase I programs

The Secretary shall contract for an independent evaluation of the programs conducted under this subsection. Such evaluation shall be done by a contractor with knowledge of chronic care management programs and demonstrated experience in the evaluation of such programs. Each evaluation shall include an assessment of the following factors of the programs:

(A) Quality improvement measures, such as adherence to evidence-based guidelines and rehospitalization rates.

(B) Beneficiary and provider satisfaction.

(C) Health outcomes.

(D) Financial outcomes, including any cost savings to the program under this subchapter.

(c) Expanded implementation phase (Phase II)

(1) In general

With respect to chronic care improvement programs conducted under subsection (b) of this section, if the Secretary finds that the results of the independent evaluation conducted under subsection (b)(6) of this section indicate that the conditions specified in paragraph (2) have been met by a program (or components of such program), the Secretary shall enter into agreements consistent with subsection (f) of this section to expand the implementation of the program (or components) to additional geographic areas not covered under the program as conducted under subsection (b) of this section, which may include the implementation of the program on a national basis. Such expansion shall begin not earlier than 2 years after the program is implemented under subsection (b) of this section and not later than 6 months after the date of completion of such program.

(2) Conditions for expansion of programs

The conditions specified in this paragraph are, with respect to a chronic care improvement program conducted under subsection (b) of this section for a threshold condition, that the program is expected to—

(A) improve the clinical quality of care;

(B) improve beneficiary satisfaction; and

(C) achieve targets for savings to the program under this subchapter specified by the Secretary in the agreement within a range determined to be appropriate by the Secretary, subject to the application of budget neutrality with respect to the program and not taking into account any payments by the organization under the agreement under the program for risk under subsection (f)(3)(B) of this section.

(3) Independent evaluations of Phase II programs

The Secretary shall carry out evaluations of programs expanded under this subsection as the Secretary determines appropriate. Such evaluations shall be carried out in the similar manner as is provided under subsection (b)(5) of this section.

(d) Identification and enrollment of prospective program participants

(1) Identification of prospective program participants

The Secretary shall establish a method for identifying targeted beneficiaries who may benefit from participation in a chronic care improvement program.

(2) Initial contact by Secretary

The Secretary shall communicate with each targeted beneficiary concerning participation in a chronic care improvement program. Such communication may be made by the Secretary and shall include information on the following:

(A) A description of the advantages to the beneficiary in participating in a program.

(B) Notification that the organization offering a program may contact the beneficiary directly concerning such participation.

(C) Notification that participation in a program is voluntary.

(D) A description of the method for the beneficiary to participate or for declining to participate and the method for obtaining additional information concerning such participation.

(3) Voluntary participation

A targeted beneficiary may participate in a chronic care improvement program on a voluntary basis and may terminate participation at any time.

(e) Chronic care improvement programs

(1) In general

Each chronic care improvement program shall—

(A) have a process to screen each targeted beneficiary for conditions other than threshold conditions, such as impaired cognitive ability and co-morbidities, for the purposes of developing an individualized, goal-oriented care management plan under paragraph (2);

(B) provide each targeted beneficiary participating in the program with such plan; and

(C) carry out such plan and other chronic care improvement activities in accordance with paragraph (3).

(2) Elements of care management plans

A care management plan for a targeted beneficiary shall be developed with the beneficiary and shall, to the extent appropriate, include the following:

(A) A designated point of contact responsible for communications with the beneficiary and for facilitating communications with other health care providers under the plan.

(B) Self-care education for the beneficiary (through approaches such as disease management or medical nutrition therapy) and education for primary caregivers and family members.

(C) Education for physicians and other providers and collaboration to enhance communication of relevant clinical information.

(D) The use of monitoring technologies that enable patient guidance through the exchange of pertinent clinical information, such as vital signs, symptomatic information, and health self-assessment.

(E) The provision of information about hospice care, pain and palliative care, and end-of-life care.

(3) Conduct of programs

In carrying out paragraph (1)(C) with respect to a participant, the chronic care improvement organization shall—

(A) guide the participant in managing the participant's health (including all comorbidities, relevant health care services, and pharmaceutical needs) and in performing activities as specified under the elements of the care management plan of the participant;

(B) use decision-support tools such as evidence-based practice guidelines or other criteria as determined by the Secretary; and

(C) develop a clinical information database to track and monitor each participant across settings and to evaluate outcomes.

(4) Additional responsibilities

(A) Outcomes report

Each chronic care improvement organization offering a chronic care improvement program shall monitor and report to the Secretary, in a manner specified by the Secretary, on health care quality, cost, and outcomes.

(B) Additional requirements

Each such organization and program shall comply with such additional requirements as the Secretary may specify.

(5) Accreditation

The Secretary may provide that chronic care improvement programs and chronic care improvement organizations that are accredited by qualified organizations (as defined by the Secretary) may be deemed to meet such requirements under this section as the Secretary may specify.

(f) Terms of agreements

(1) Terms and conditions

(A) In general

An agreement under this section with a chronic care improvement organization shall contain such terms and conditions as the Secretary may specify consistent with this section.

(B) Clinical, quality improvement, and financial requirements

The Secretary may not enter into an agreement with such an organization under this section for the operation of a chronic care improvement program unless—

(i) the program and organization meet the requirements of subsection (e) of this section and such clinical, quality improvement, financial, and other requirements as the Secretary deems to be appropriate for the targeted beneficiaries to be served; and

(ii) the organization demonstrates to the satisfaction of the Secretary that the organization is able to assume financial risk for performance under the agreement (as applied under paragraph (3)(B)) with respect to payments made to the organization under such agreement through available reserves, reinsurance, withholds, or such other means as the Secretary determines appropriate.

(2) Manner of payment

Subject to paragraph (3)(B), the payment under an agreement under—

(A) subsection (b) of this section shall be computed on a per-member per-month basis; or

(B) subsection (c) of this section may be on a per-member per-month basis or such other basis as the Secretary and organization may agree.

(3) Application of performance standards

(A) Specification of performance standards

Each agreement under this section with a chronic care improvement organization shall specify performance standards for each of the factors specified in subsection (c)(2) of this section, including clinical quality and spending targets under this subchapter, against which the performance of the chronic care improvement organization under the agreement is measured.

(B) Adjustment of payment based on performance

(i) In general

Each such agreement shall provide for adjustments in payment rates to an organization under the agreement insofar as the Secretary determines that the organization failed to meet the performance standards specified in the agreement under subparagraph (A).

(ii) Financial risk for performance

In the case of an agreement under subsection (b) or (c) of this section, the agree-

ment shall provide for a full recovery for any amount by which the fees paid to the organization under the agreement exceed the estimated savings to the programs under this subchapter attributable to implementation of such agreement.

(4) Budget neutral payment condition

Under this section, the Secretary shall ensure that the aggregate sum of medicare program benefit expenditures for beneficiaries participating in chronic care improvement programs and funds paid to chronic care improvement organizations under this section, shall not exceed the medicare program benefit expenditures that the Secretary estimates would have been made for such targeted beneficiaries in the absence of such programs.

(g) Funding

(1) Subject to paragraph (2), there are appropriated to the Secretary, in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, such sums as may be necessary to provide for agreements with chronic care improvement programs under this section.

(2) In no case shall the funding under this section exceed $100,000,000 in aggregate increased expenditures under this subchapter (after taking into account any savings attributable to the operation of this section) over the 3-fiscal-year period beginning on October 1, 2003.

(Aug. 14, 1935, ch. 531, title XVIII, § 1807, as added Pub. L. 108–173, title VII, § 721(a), Dec. 8, 2003, 117 Stat. 2341.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in subsecs. (a)(2)(E)(i) and (b)(3)(B), (4), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

DEMONSTRATION PROJECT FOR CONSUMER-DIRECTED CHRONIC OUTPATIENT SERVICES

Pub. L. 108–173, title VI, § 648, Dec. 8, 2003, 117 Stat. 2327, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this section, the Secretary [of Health and Human Services] shall establish demonstration projects (in this section referred to as 'demonstration projects') under which the Secretary shall evaluate methods that improve the quality of care provided to individuals with chronic conditions and that reduce expenditures that would otherwise be made under the medicare program on behalf of such individuals for such chronic conditions, such methods to include permitting those beneficiaries to direct their own health care needs and services.

''(2) INDIVIDUALS WITH CHRONIC CONDITIONS DEFINED.—In this section, the term 'individuals with chronic conditions' means an individual entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter], and enrolled under part B of such title [part B of this subchapter], but who is not enrolled under part C of such title [part C of this subchapter] who is diagnosed as having one or more chronic conditions (as defined by the Secretary), such as diabetes.

''(b) DESIGN OF PROJECTS.—

''(1) EVALUATION BEFORE IMPLEMENTATION OF PROJECT.—

''(A) IN GENERAL.—In establishing the demonstration projects under this section, the Secretary shall evaluate best practices employed by group health plans and practices under State plans for medical assistance under the medicaid program under title XIX of the Social Security Act [subchapter XIX of this chapter], as well as best practices in the private sector or other areas, of methods that permit patients to self-direct the provision of personal care services. The Secretary shall evaluate such practices for a 1-year period and, based on such evaluation, shall design the demonstration project.

''(B) REQUIREMENT FOR ESTIMATE OF BUDGET NEUTRAL COSTS.—As part of the evaluation under subparagraph (A), the Secretary shall evaluate the costs of furnishing care under the projects. The Secretary may not implement the demonstration projects under this section unless the Secretary determines that the costs of providing care to individuals with chronic conditions under the project will not exceed the costs, in the aggregate, of furnishing care to such individuals under title XVIII of the Social Security Act [this subchapter], that would otherwise be paid without regard to the demonstration projects for the period of the project.

''(2) SCOPE OF SERVICES.—The Secretary shall determine the appropriate scope of personal care services that would apply under the demonstration projects.

''(c) VOLUNTARY PARTICIPATION.—Participation of providers of services and suppliers, and of individuals with chronic conditions, in the demonstration projects shall be voluntary.

''(d) DEMONSTRATION PROJECTS SITES.—Not later than 2 years after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall conduct a demonstration project in at least one area that the Secretary determines has a population of individuals entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter], and enrolled under part B of such title [part B of this subchapter], with a rate of incidence of diabetes that significantly exceeds the national average rate of all areas.

''(e) EVALUATION AND REPORT.—

''(1) EVALUATIONS.—The Secretary shall conduct evaluations of the clinical and cost effectiveness of the demonstration projects.

''(2) REPORTS.—Not later than 2 years after the commencement of the demonstration projects, and biannually thereafter, the Secretary shall submit to Congress a report on the evaluation, and shall include in the report the following:

''(A) An analysis of the patient outcomes and costs of furnishing care to the individuals with chronic conditions participating in the projects as compared to such outcomes and costs to other individuals for the same health conditions.

''(B) Evaluation of patient satisfaction under the demonstration projects.

''(C) Such recommendations regarding the extension, expansion, or termination of the projects as the Secretary determines appropriate.

''(f) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

''(g) AUTHORIZATION OF APPROPRIATIONS.—(1) Payments for the costs of carrying out the demonstration project under this section shall be made from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t).

''(2) There are authorized to be appropriated from such Trust Fund such sums as may be necessary for the Secretary to enter into contracts with appropriate organizations for the deign [sic], implementation, and evaluation of the demonstration project.

''(3) In no case may expenditures under this section exceed the aggregate expenditures that would otherwise have been made for the provision of personal care services.''

REPORTS

Pub. L. 108–173, title VII, § 721(b), Dec. 8, 2003, 117 Stat. 2346, provided that: ''The Secretary [of Health and

Human Services] shall submit to Congress reports on the operation of section 1807 of the Social Security Act [this section], as added by subsection (a), as follows:

''(1) Not later than 2 years after the date of the implementation of such section, the Secretary shall submit to Congress an interim report on the scope of implementation of the programs under subsection (b) of such section, the design of the programs, and preliminary cost and quality findings with respect to those programs based on the following measures of the programs:

''(A) Quality improvement measures, such as adherence to evidence-based guidelines and rehospitalization rates.

''(B) Beneficiary and provider satisfaction.

''(C) Health outcomes.

''(D) Financial outcomes.

''(2) Not later than 3 years and 6 months after the date of the implementation of such section the Secretary shall submit to Congress an update to the report required under paragraph (1) on the results of such programs.

''(3) The Secretary shall submit to Congress 2 additional biennial reports on the chronic care improvement programs conducted under such section. The first such report shall be submitted not later than 2 years after the report is submitted under paragraph (2). Each such report shall include information on—

''(A) the scope of implementation (in terms of both regions and chronic conditions) of the chronic care improvement programs;

''(B) the design of the programs; and

''(C) the improvements in health outcomes and financial efficiencies that result from such implementation.''

CHRONICALLY ILL MEDICARE BENEFICIARY RESEARCH, DATA, DEMONSTRATION STRATEGY

Pub. L. 108–173, title VII, § 723, Dec. 8, 2003, 117 Stat. 2348, provided that:

''(a) DEVELOPMENT OF PLAN.—Not later than 6 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall develop a plan to improve quality of care and reduce the cost of care for chronically ill medicare beneficiaries.

''(b) PLAN REQUIREMENTS.—The plan will utilize existing data and identify data gaps, develop research initiatives, and propose intervention demonstration programs to provide better health care for chronically ill medicare beneficiaries. The plan shall—

''(1) integrate existing data sets including, the Medicare Current Beneficiary Survey (MCBS), Minimum Data Set (MDS), Outcome and Assessment Information Set (OASIS), data from Quality Improvement Organizations (QIO), and claims data;

''(2) identify any new data needs and a methodology to address new data needs;

''(3) plan for the collection of such data in a data warehouse; and

''(4) develop a research agenda using such data.

''(c) CONSULTATION.—In developing the plan under this section, the Secretary shall consult with experts in the fields of care for the chronically ill (including clinicians).

''(d) IMPLEMENTATION.—Not later than 2 years after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall implement the plan developed under this section. The Secretary may contract with appropriate entities to implement such plan.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary in fiscal years 2004 and 2005 to carry out this section.''

§ 1395b–9. Provisions relating to administration

(a) Coordinated administration of medicare prescription drug and Medicare Advantage programs

(1) In general

There is within the Centers for Medicare & Medicaid Services a center to carry out the duties described in paragraph (3).

(2) Director

Such center shall be headed by a director who shall report directly to the Administrator of the Centers for Medicare & Medicaid Services.

(3) Duties

The duties described in this paragraph are the following:

(A) The administration of parts C and D of this subchapter.

(B) The provision of notice and information under section 1395b–2 of this title.

(C) Such other duties as the Secretary may specify.

(4) Deadline

The Secretary shall ensure that the center is carrying out the duties described in paragraph (3) by not later than January 1, 2008.

(b) Employment of management staff

(1) In general

The Secretary may employ, within the Centers for Medicare & Medicaid Services, such individuals as management staff as the Secretary determines to be appropriate. With respect to the administration of parts C and D of this subchapter, such individuals shall include individuals with private sector expertise in negotiations with health benefits plans.

(2) Eligibility

To be eligible for employment under paragraph (1) an individual shall be required to have demonstrated, by their education and experience (either in the public or private sector), superior expertise in at least one of the following areas:

(A) The review, negotiation, and administration of health care contracts.

(B) The design of health care benefit plans.

(C) Actuarial sciences.

(D) Compliance with health plan contracts.

(E) Consumer education and decision making.

(F) Any other area specified by the Secretary that requires specialized management or other expertise.

(3) Rates of payment

(A) Performance-related pay

Subject to subparagraph (B), the Secretary shall establish the rate of pay for an individual employed under paragraph (1). Such rate shall take into account expertise, experience, and performance.

(B) Limitation

In no case may the rate of compensation determined under subparagraph (A) exceed

the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5.

(c) Medicare Beneficiary Ombudsman

(1) In general

The Secretary shall appoint within the Department of Health and Human Services a Medicare Beneficiary Ombudsman who shall have expertise and experience in the fields of health care and education of (and assistance to) individuals entitled to benefits under this subchapter.

(2) Duties

The Medicare Beneficiary Ombudsman shall—

(A) receive complaints, grievances, and requests for information submitted by individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, with respect to any aspect of the medicare program;

(B) provide assistance with respect to complaints, grievances, and requests referred to in subparagraph (A), including—

(i) assistance in collecting relevant information for such individuals, to seek an appeal of a decision or determination made by a fiscal intermediary, carrier, MA organization, or the Secretary;

(ii) assistance to such individuals with any problems arising from disenrollment from an MA plan under part C of this subchapter; and

(iii) assistance to such individuals in presenting information under section 1395r(i)(4)(C) of this title (relating to income-related premium adjustment;[1] and

(C) submit annual reports to Congress and the Secretary that describe the activities of the Office and that include such recommendations for improvement in the administration of this subchapter as the Ombudsman determines appropriate.

The Ombudsman shall not serve as an advocate for any increases in payments or new coverage of services, but may identify issues and problems in payment or coverage policies.

(3) Working with health insurance counseling programs

To the extent possible, the Ombudsman shall work with health insurance counseling programs (receiving funding under section 1395b–4 of this title) to facilitate the provision of information to individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both regarding MA plans and changes to those plans. Nothing in this paragraph shall preclude further collaboration between the Ombudsman and such programs.

(Aug. 14, 1935, ch. 531, title XVIII, § 1808, as added and amended Pub. L. 108–173, title IX, §§ 900(a), (b), 923(a), Dec. 8, 2003, 117 Stat. 2369, 2393.)

REFERENCES IN TEXT

Parts A, B, C, and D of this subchapter, referred to in text, are classified to sections 1395c et seq., 1395j et seq., 1395w–21 et seq., and 1395w–101 et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–173, § 900(b), added subsec. (b).

Subsec. (c). Pub. L. 108–173, § 923(a), added subsec. (c).

DEADLINE FOR APPOINTMENT

Pub. L. 108–173, title IX, § 923(b), Dec. 8, 2003, 117 Stat. 2394, provided that: ''By not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall appoint the Medicare Beneficiary Ombudsman under section 1808(c) of the Social Security Act [subsec. (c) of this section], as added by subsection (a).''

PART A—HOSPITAL INSURANCE BENEFITS FOR AGED AND DISABLED

§ 1395c. Description of program

The insurance program for which entitlement is established by sections 426 and 426–1 of this title provides basic protection against the costs of hospital, related post-hospital, home health services, and hospice care in accordance with this part for (1) individuals who are age 65 or over and are eligible for retirement benefits under subchapter II of this chapter (or would be eligible for such benefits if certain government employment were covered employment under such subchapter) or under the railroad retirement system, (2) individuals under age 65 who have been entitled for not less than 24 months to benefits under subchapter II of this chapter (or would have been so entitled to such benefits if certain government employment were covered employment under such subchapter) or under the railroad retirement system on the basis of a disability, and (3) certain individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.

(Aug. 14, 1935, ch. 531, title XVIII, § 1811, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 291; amended Pub. L. 92–603, title II, § 201(a)(2), Oct. 30, 1972, 86 Stat. 1371; Pub. L. 95–292, § 4(a), June 13, 1978, 92 Stat. 315; Pub. L. 96–265, title I, § 103(a)(2), June 9, 1980, 94 Stat. 444; Pub. L. 96–473, § 2(b), Oct. 19, 1980, 94 Stat. 2263; Pub. L. 96–499, title IX, § 930(a), Dec. 5, 1980, 94 Stat. 2631; Pub. L. 97–248, title I, § 122(a)(1), title II, § 278(b)(3), Sept. 3, 1982, 96 Stat. 356, 561; Pub. L. 99–272, title XIII, § 13205(b)(2)(C)(i), Apr. 7, 1986, 100 Stat. 317; Pub. L. 100–360, title I, § 104(d)(1), July 1, 1988, 102 Stat. 688; Pub. L. 101–234, title I, § 101(a), Dec. 13, 1989, 103 Stat. 1979.)

AMENDMENTS

1989—Pub. L. 101–234 repealed Pub. L. 100–360, § 104(d)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Pub. L. 100–360 substituted ''inpatient hospital services, extended care services'' for ''hospital, related post-hospital''.

1986—Pub. L. 99–272 substituted ''government employment'' for ''Federal employment'' in cls. (1) and (2).

1982—Pub. L. 97–248, § 122(a)(1), substituted ''home health services, and hospice care'' for ''and home health services''.

[1] So in original. A closing parenthesis probably should precede the semicolon.

Pub. L. 97–248, § 278(b)(3), inserted ''(or would be eligible for such benefits if certain Federal employment were covered employment under such subchapter)'' after ''subchapter II of this chapter'' in cl. (1), and inserted ''(or would have been so entitled to such benefits if certain Federal employment were covered employment under such subchapter)'' after ''subchapter II of this chapter'' in cl. (2).

1980—Pub. L. 96–499 substituted '', related post-hospital, and home health services'' for ''and related post-hospital services''.

Pub. L. 96–473 substituted ''are eligible for'' for ''are entitled to''.

Pub. L. 96–265 substituted ''not less than 24 months'' for ''not less than 24 consecutive months''.

1978—Pub. L. 95–292 inserted references to section 426–1 of this title and to individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.

1972—Pub. L. 92–603 designated existing provisions as cl. (1) and added cl. (2).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 101(d) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section and sections 1395d, 1395e, 1395f, 1395k, 1395x, 1395cc, and 1395tt of this title, enacting provisions set out as notes under sections 1395e and 1395ww of this title, and amending provisions set out as notes under sections 1395e and 1395ww of this title] shall take effect January 1, 1990, except that the amendments made by subsection (c) [amending provisions set out as a note under section 1395ww of this title] shall be effective as if included in the enactment of MCCA [Pub. L. 100–360].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99–272, set out as a note under section 410 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 122(h)(1) of Pub. L. 97–248, as amended by Pub. L. 99–272, title IX, § 9123(a), Apr. 7, 1986, 100 Stat. 168, provided that: ''The amendments made by this section [amending this section and sections 1395d to 1395f, 1395h, and 1395x to 1395cc of this title and section 231f of Title 45, Railroads, and enacting provisions set out as notes under sections 1395b–1 and 1395f of this title] apply to hospice care provided on or after November 1, 1983.''

Amendment by section 278(b)(3) of Pub. L. 97–248 effective on and after Jan. 1, 1983, and applicable to remuneration (for medicare qualified Federal employment) paid after Dec. 31, 1982, see section 278(c)(2)(A) of Pub. L. 97–248, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Amendment by Pub. L. 96–473 effective after second month beginning after Oct. 19, 1980, see section 2(d) of Pub. L. 96–473, set out as a note under section 426 of this title.

Amendment by Pub. L. 96–265 applicable with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after first day of sixth month which begins after June 9, 1980, see section 103(c) of Pub. L. 96–265, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

ADVISORY COUNCIL TO STUDY COVERAGE OF DISABLED UNDER THIS SUBCHAPTER

Pub. L. 90–248, title I, § 140, Jan. 2, 1968, 81 Stat. 854, directed Secretary of Health, Education, and Welfare to appoint an Advisory Council to study need for coverage of disabled under the health insurance programs of this subchapter, directed Council to submit a report on such study to Secretary by Jan. 1, 1969, and directed Secretary in turn to transmit such report to Congress, resulting in termination of Council's existence.

REIMBURSEMENT OF CHARGES UNDER PART A FOR SERVICES TO PATIENTS ADMITTED PRIOR TO 1968 TO CERTAIN HOSPITALS

Pub. L. 90–248, title I, § 142, Jan. 2, 1968, 81 Stat. 855, provided that:

''(a) Notwithstanding any provision of title XVIII of the Social Security Act [this subchapter] an individual who is entitled to hospital insurance benefits under section 226 of such Act [section 426 of this title] may, subject to subsections (b) and (c), receive, on the basis of an itemized bill, reimbursement for charges to him for inpatient hospital services (as defined in section 1861 of such Act [section 1395x of this title], but without regard to subsection (e) of such section) furnished by, or under arrangements (as defined in section 1861(w) of such Act [section 1395x(w) of this title] with, a hospital if—

''(1) the hospital did not have an agreement in effect under section 1866 of such Act [section 1395cc of this title] but would have been eligible for payment under part A of title XVIII of such Act [this part] with respect to such services if at the time such services were furnished the hospital had such an agreement in effect;

''(2) the hospital (A) meets the requirements of paragraphs (5) and (7) of section 1861(e) of such Act [section 1395x(e) of this title], (B) is not primarily engaged in providing the services described in section 1961(j)(1)(A) of such Act [section 1395x(j)(1)(A) of this title], and (C) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of section 1861(r) of such Act [section 1395x(r) of this title], to inpatients (i) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (ii) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

''(3) the hospital did not meet the requirements that must be met to permit payment to the hospital under part A of title XVIII of such Act [this part]; and

''(4) an application is filed (submitted in such form and manner and by such person, and containing and supported by such information, as the Secretary shall by regulations prescribe) for reimbursement before January 1, 1969.

''(b) Payments under this section may not be made for inpatient hospital services (as described in subsection (a)) furnished to an individual—

''(1) prior to July 1, 1966,

''(2) after December 31, 1967, unless furnished with respect to an admission to the hospital prior to January 1, 1968, and

''(3) for more than—

''(A) 90 days in any spell of illness, but only if (i) prior to January 1, 1969, the hospital furnishing such services entered into an agreement under section 1866 of the Social Security Act [section 1395cc of this title] and (ii) the hospital's plan for utilization review, as provided for in section 1861(k) of such Act [section 1395x(k) of this title], has, in accordance with section 1814 of such Act [section 1395f of this title], been applied to the services furnished such individual, or

''(B) 20 days in any spell of illness, if the hospital did not meet the conditions of clauses (i) and (ii) of subparagraph (A).

''(c)(1) The amounts payable in accordance with subsection (a) with respect to inpatient hospital services shall, subject to paragraph (2) of this subsection, be paid from the Federal Hospital Insurance Trust Fund in amounts equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semiprivate accommodations (as defined in section 1861(v)(4) of the Social Security Act [section 1395x(v)(4) of this title]) whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semiprivate accommodations (as so defined). For purposes of the preceding provisions of this paragraph, the term 'routine services' shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term 'ancillary services' shall mean those special services for which charges are customarily made in addition to routine services.

''(2) Before applying paragraph (1), payments made under this section shall be reduced to the extent provided for under section 1813 of the Social Security Act [section 1395e of this title] in the case of benefits payable to providers of services under part A of title XVIII of such Act [this part].

''(d) For the purposes of this section—

''(1) the 90-day period, referred to in subsection (b)(3)(A), shall be reduced by the number of days of inpatient hospital services furnished to such individual during the spell of illness, referred to therein, and with respect to which he was entitled to have payment made under part A of title XVIII of the Social Security Act [this part];

''(2) the 20-day period, referred to in subsection (b)(3)(B) shall be reduced by the number of days in excess of 70 days of inpatient hospital services furnished during the spell of illness, referred to therein, and with respect to which such individual was entitled to have payment made under such part A [this part];

''(3) the term 'spell of illness' shall have the meaning assigned to it by subsection (a) of section 1861 of such Act [section 1395x(a) of this title] except that the term 'inpatient hospital services' as it appears in such subsection shall have the meaning assigned to it by subsection (a) of this section.''

§ 1395d. Scope of benefits

(a) Entitlement to payment for inpatient hospital services, post-hospital extended care services, home health services, and hospice care

The benefits provided to an individual by the insurance program under this part shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1395f(d)(2) of this title to him (subject to the provisions of this part) for—

(1) inpatient hospital services or inpatient critical access hospital services for up to 150 days during any spell of illness minus 1 day for each day of such services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2)(A) post-hospital extended care services for up to 100 days during any spell of illness, and (B) to the extent provided in subsection (f) of this section, extended care services that are not post-hospital extended care services;

(3) in the case of individuals not enrolled in part B of this subchapter, home health services, and in the case of individuals so enrolled, post-institutional home health services furnished during a home health spell of illness for up to 100 visits during such spell of illness;

(4) in lieu of certain other benefits, hospice care with respect to the individual during up to two periods of 90 days each and an unlimited number of subsequent periods of 60 days each with respect to which the individual makes an election under subsection (d)(1) of this section; and

(5) for individuals who are terminally ill, have not made an election under subsection (d)(1) of this section, and have not previously received services under this paragraph, services that are furnished by a physician (as defined in section 1395x(r)(1) of this title) who is either the medical director or an employee of a hospice program and that—

(A) consist of—

(i) an evaluation of the individual's need for pain and symptom management, including the individual's need for hospice care; and

(ii) counseling the individual with respect to hospice care and other care options; and

(B) may include advising the individual regarding advanced care planning.

(b) Services not covered

Payment under this part for services furnished an individual during a spell of illness may not (subject to subsection (c) of this section) be made for—

(1) inpatient hospital services furnished to him during such spell after such services have been furnished to him for 150 days during such spell minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services furnished to him during such spell after such services have been furnished to him for 100 days during such spell; or

(3) inpatient psychiatric hospital services furnished to him after such services have been furnished to him for a total of 190 days during his lifetime.

Payment under this part for post-institutional home health services furnished an individual during a home health spell of illness may not be made for such services beginning after such services have been furnished for a total of 100 visits during such spell.

(c) Inpatients of psychiatric hospitals

If an individual is an inpatient of a psychiatric hospital on the first day of the first month for which he is entitled to benefits under this part, the days on which he was an inpatient of such a hospital in the 150-day period immediately before such first day shall be included in determining the number of days limit under subsection (b)(1) of this section insofar as such limit applies to (1) inpatient psychiatric hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness (but shall not be included in determining such number of days limit insofar as it applies to other inpatient hospital services or in determining the 190-day limit under subsection (b)(3) of this section).

(d) Hospice care; election; waiver of rights; revocation; change of election

(1) Payment under this part may be made for hospice care provided with respect to an individual only during two periods of 90 days each and an unlimited number of subsequent periods of 60 days each during the individual's lifetime and only, with respect to each such period, if the individual makes an election under this paragraph to receive hospice care under this part provided by, or under arrangements made by, a particular hospice program instead of certain other benefits under this subchapter.

(2)(A) Except as provided in subparagraphs (B) and (C) and except in such exceptional and unusual circumstances as the Secretary may provide, if an individual makes such an election for a period with respect to a particular hospice program, the individual shall be deemed to have waived all rights to have payment made under this subchapter with respect to—

(i) hospice care provided by another hospice program (other than under arrangements made by the particular hospice program) during the period, and

(ii) services furnished during the period that are determined (in accordance with guidelines of the Secretary) to be—

(I) related to the treatment of the individual's condition with respect to which a diagnosis of terminal illness has been made or

(II) equivalent to (or duplicative of) hospice care;

except that clause (ii) shall not apply to physicians' services furnished by the individual's attending physician (if not an employee of the hospice program) or to services provided by (or under arrangements made by) the hospice program.

(B) After an individual makes such an election with respect to a 90-day period or a subsequent 60-day period, the individual may revoke the election during the period, in which case—

(i) the revocation shall act as a waiver of the right to have payment made under this part for any hospice care benefits for the remaining time in such period and (for purposes of subsection (a)(4) of this section and subparagraph (A)) the individual shall be deemed to have been provided such benefits during such entire period, and

(ii) the individual may at any time after the revocation execute a new election for a subsequent period, if the individual otherwise is entitled to hospice care benefits with respect to such a period.

(C) An individual may, once in each such period, change the hospice program with respect to which the election is made and such change shall not be considered a revocation of an election under subparagraph (B).

(D) For purposes of this subchapter, an individual's election with respect to a hospice program shall no longer be considered to be in effect with respect to that hospice program after the date the individual's revocation or change of election with respect to that election takes effect.

(e) Services taken into account

For purposes of subsections (b) and (c) of this section, inpatient hospital services, inpatient psychiatric hospital services, and post-hospital extended care services shall be taken into account only if payment is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1395f(a) of this title, made with respect to such services under this part.

(f) Coverage of extended care services without regard to three-day prior hospitalization requirement

(1) The Secretary shall provide for coverage, under clause (B) of subsection (a)(2) of this section, of extended care services which are not post-hospital extended care services at such time and for so long as the Secretary determines, and under such terms and conditions (described in paragraph (2)) as the Secretary finds appropriate, that the inclusion of such services will not result in any increase in the total of payments made under this subchapter and will not alter the acute care nature of the benefit described in subsection (a)(2) of this section.

(2) The Secretary may provide—

(A) for such limitations on the scope and extent of services described in subsection (a)(2)(B) of this section and on the categories of individuals who may be eligible to receive such services, and

(B) notwithstanding sections 1395f, 1395x(v), and 1395ww of this title, for such restrictions and alternatives on the amounts and methods of payment for services described in such subsection,

as may be necessary to carry out paragraph (1).

(g) "Spell of illness" defined

For definitions of ''spell of illness'', and for definitions of other terms used in this part, see section 1395x of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1812, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79

Stat. 291; amended Pub. L. 90–248, title I, §§ 129(c)(2), 137(a), 138(a), 143(b), 146(a), Jan. 2, 1968, 81 Stat. 847, 853, 854, 857, 859; Pub. L. 96–499, title IX, §§ 930(b)–(d), 931(a), Dec. 5, 1980, 94 Stat. 2631, 2633; Pub. L. 97–35, title XXI, § 2121(a), Aug. 13, 1981, 95 Stat. 796; Pub. L. 97–248, title I, §§ 122(b), 123, Sept. 3, 1982, 96 Stat. 356, 364; Pub. L. 97–448, title III, § 309(b)(5), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 100–360, title I, § 101, July 1, 1988, 102 Stat. 684; Pub. L. 101–234, title I, § 101(a), Dec. 13, 1989, 103 Stat. 1979; Pub. L. 101–239, title VI, § 6003(g)(3)(B)(i), Dec. 19, 1989, 103 Stat. 2152; Pub. L. 101–508, title IV, § 4006(a), Nov. 5, 1990, 104 Stat. 1388–43; Pub. L. 103–432, title I, § 102(g)(1), Oct. 31, 1994, 108 Stat. 4404; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4443(a), (b)(1), 4611(a), Aug. 5, 1997, 111 Stat. 373, 423, 472; Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(k)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366; Pub. L. 108–173, title V, § 512(a), title VII, § 736(c)(1), Dec. 8, 2003, 117 Stat. 2299, 2356.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (a)(3), is classified to section 1395j et seq. of this title.

AMENDMENTS

2003—Subsec. (a)(3). Pub. L. 108–173, § 736(c)(1), substituted ''in the case of individuals not'' for ''for individuals not'' and ''in the case of individuals so'' for ''for individuals so''.

Subsec. (a)(5). Pub. L. 108–173, § 512(a), added par. (5).

1999—Subsec. (b). Pub. L. 106–113 inserted ''during'' after ''100 visits'' in concluding provisions.

1997—Subsec. (a)(1). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (a)(3). Pub. L. 105–33, § 4611(a)(1), substituted ''for individuals not enrolled in part B of this subchapter, home health services, and for individuals so enrolled, post-institutional home health services furnished during a home health spell of illness for up to 100 visits during such spell of illness'' for ''home health services''.

Subsec. (a)(4). Pub. L. 105–33, § 4443(a), substituted ''and an unlimited number of subsequent periods of 60 days each'' for '', a subsequent period of 30 days, and a subsequent extension period''.

Subsec. (b). Pub. L. 105–33, § 4611(a)(2), inserted closing provisions.

Subsec. (d)(1). Pub. L. 105–33, § 4443(a), substituted ''and an unlimited number of subsequent periods of 60 days each'' for '', a subsequent period of 30 days, and a subsequent extension period''.

Subsec. (d)(2)(B). Pub. L. 105–33, § 4443(b)(1), substituted ''90-day period or a subsequent 60-day period'' for ''90- or 30-day period or a subsequent extension period''.

1994—Subsec. (a)(1). Pub. L. 103–432 substituted ''inpatient hospital services or inpatient rural primary care hospital services'' for ''inpatient hospital services'' before ''for up to 150 days'' and ''such services'' for ''inpatient hospital services'' before ''in excess of 90'' and struck out ''and inpatient rural primary care hospital services'' after ''such payment made)''.

1990—Subsec. (a)(4). Pub. L. 101–508, § 4006(a)(1), substituted ''90 days each, a subsequent period of 30 days, and a subsequent extension period'' for ''90 days each and one subsequent period of 30 days''.

Subsec. (d)(1). Pub. L. 101–508, § 4006(a)(2)(A), substituted ''90 days each, a subsequent period of 30 days, and a subsequent extension period during the individual's lifetime'' for ''90 days each and one subsequent period of 30 days during the individual's lifetime''.

Subsec. (d)(2)(B). Pub. L. 101–508, § 4006(a)(2)(B), substituted ''a 90- or 30-day period or a subsequent extension period'' for ''a 90- or 30-day period''.

1989—Subsec. (a). Pub. L. 101–234 repealed Pub. L. 100–360, § 101(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1). Pub. L. 101–239 inserted ''and inpatient rural primary care hospital services'' before semicolon at end.

Subsecs. (b) to (d)(1), (2)(B), (e) to (g). Pub. L. 101–234 repealed Pub. L. 100–360, § 101(2)–(6), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (a). Pub. L. 100–360, § 101(1), struck out former pars. (1) to (4) and added new pars. (1) to (4) which read as follows:

''(1) inpatient hospital services;

''(2) extended care services for up to 150 days during any calendar year;

''(3) home health services; and

''(4) in lieu of certain other benefits, hospice care with respect to the individual during up to two periods of 90 days each, a subsequent period of 30 days, and a subsequent extension period with respect to which the individual makes an election under subsection (d)(1) of this section.''

Subsec. (b). Pub. L. 100–360, § 101(2), amended subsec. (b) generally, striking out par. (1) and renumbering and amending pars. (2) and (3) as (1) and (2), respectively.

Subsec. (c). Pub. L. 100–360, § 101(3), amended subsec. (c) generally, substituting pars. (1) to (4) limiting periods for inpatients of psychiatric hospitals for former single paragraph.

Subsec. (d)(1). Pub. L. 100–360, § 101(4)(A), substituted '', a subsequent period of 30 days, and a subsequent extension period'' for ''and one subsequent period of 30 days''.

Subsec. (d)(2)(B). Pub. L. 100–360, § 101(4)(B), inserted ''or a subsequent extension period'' after ''30-day period'' in introductory provisions.

Subsec. (e). Pub. L. 100–360, § 101(5), struck out ''post-hospital'' before ''extended care services''.

Subsec. (f). Pub. L. 100–360, § 101(6), struck out subsec. (f) which provided coverage of extended care services without regard to three-day prior hospitalization requirement.

Subsec. (g). Pub. L. 100–360, § 101(6), struck out subsec. (g) which cross-referenced section 1395x of this title for definitions of ''spell of illness'' and other terms used in this part.

1983—Subsec. (d)(2)(A). Pub. L. 97–448 substituted ''or to services'' for ''or to other than services'' after ''(if not an employee of the hospice program)''.

1982—Subsec. (a)(2). Pub. L. 97–248, § 123(a), redesignated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(4). Pub. L. 97–248, § 122(b)(1), added par. (4).

Subsec. (d). Pub. L. 97–248, § 122(b)(2), added subsec. (d).

Subsecs. (f), (g). Pub. L. 97–248, § 123(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1981—Subsec. (a). Pub. L. 97–35 struck out par. (4) which related to alcohol detoxification facility services.

1980—Subsec. (a)(3). Pub. L. 96–499, § 930(b), substituted ''home health services'' for ''post-hospital home health services for up to 100 visits (during the one-year period described in section 1395x(n) of this title) after the beginning of one spell of illness and before the beginning of the next''.

Subsec. (a)(4). Pub. L. 96–499, § 931(a), added par. (4).

Subsec. (d). Pub. L. 96–499, § 930(c), struck out subsec. (d) which authorized payment for post-hospital home health services furnished an individual only during the one year period described in section 1395x(n) of this title following his most recent hospital discharge which met the requirements of such section and only for the first 100 visits in such period.

Subsec. (e). Pub. L. 96–499, § 930(d), substituted ''subsections (b) and (c)'' for ''subsections (b), (c), and (d)'' and ''and post-hospital extended care services'' for ''post-hospital extended care services, and post-hospital home health services''.

1968—Subsec. (a). Pub. L. 90–248, § 143(b), inserted ''or, in the case of payments referred to in section 1395f(d)(2) of this title to him'' after ''on his behalf'' in text preceding par. (1).

Subsec. (a)(1). Pub. L. 90–248, § 137(a)(1), increased the maximum duration of benefits from 90 to 150 days minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies that he does not desire to have such payment made).

Subsec. (a)(4). Pub. L. 90–248, § 129(c)(2), struck out par. (4) which provided for payment for outpatient hospital diagnostic services.

Subsec. (b)(1). Pub. L. 90–248, § 137(a)(2), changed the limitation on payments from 90 to 150 days minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies that he does not desire to have such payment made).

Subsec. (c). Pub. L. 90–248, § 138(a), increased the limit from 90 to 150 days so that if an individual was an inpatient of a psychiatric or tuberculosis hospital on the first day of the first month for which he is entitled to benefits, the days he was an inpatient in the 150-day period immediately before such first day are included in determining the limit under subsec. (b)(1) insofar as such limit applies to (1) inpatient psychiatric hospital services and inpatient tuberculosis hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness or tuberculosis (but are not included in determining such limit as it applies to other inpatient hospital services or in determining the 190-day limit under subsec. (b)(3)).

Pub. L. 90–248, § 146(a), provided that the limitation of allowable days of inpatient hospital services will not apply to services provided to an inpatient of a tuberculosis hospital.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title V, § 512(d), Dec. 8, 2003, 117 Stat. 2300, provided that: ''The amendments made by this section [amending this section and sections 1395f and 1395x of this title] shall apply to services provided by a hospice program on or after January 1, 2005.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(m)], Nov. 29, 1999, 113 Stat. 1536, 1501A–368, provided that: ''Except as otherwise provided, the amendments made by this section [amending this section and sections 1395i, 1395i–4, 1395*l*, 1395m, 1395u, 1395w–3, 1395w–4, 1395w–21, 1395w–22, 1395w–24, 1395x, 1395y, 1395cc, 1395ss, 1395ww, 1395yy, and 1395fff of this title, repealing section 1320b–5 of this title, and amending provisions set out as notes under sections 1395f and 1395ww of this title] shall take effect as if included in the enactment of BBA [Balanced Budget Act of 1997, Pub. L. 105–33].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4449 of title IV of Pub. L. 105–33 provided that: ''Except as otherwise provided in this chapter [chapter 4 (§§ 4441–4449) of subtitle E of title IV of Pub. L. 105–33, amending this section and sections 1395f, 1395x, and 1395pp of this title and enacting provisions set out as notes under section 1395f and 1395x of this title], the amendments made by this chapter apply to benefits provided on or after the date of the enactment of this chapter [Aug. 5, 1997], regardless of whether or not an individual has made an election under section 1812(d) of the Social Security Act (42 U.S.C. 1395d(d)) before such date.''

Section 4611(f) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395u, 1395x, and 1395ff of this title] apply to services furnished on or after January 1, 1998. For purpose of applying such amendments, any home health spell of illness that began, but not [sic] did not end, before such date shall be considered to have begun as of such date.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 102(i) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1395e, 1395f, 1395i–4, 1395m, 1395x, and 1395ww of this title] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4006(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1395f of this title] shall apply with respect to care and services furnished on or after January 1, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 104(a) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(3)(A), Oct. 13, 1988, 102 Stat. 2413, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), the amendments made by this subtitle [subtitle A (§§ 101–104) of title I of Pub. L. 100–360, amending this section and sections 1395c, 1395e, 1395f, 1395i–2, 1395k, 1395x, 1395cc, and 1395tt of this title] shall take effect on January 1, 1989, and shall apply—

''(A) to the inpatient hospital deductible for 1989 and succeeding years,

''(B) to care and services furnished on or after January 1, 1989,

''(C) to premiums for January 1989 and succeeding months, and

''(D) to blood or blood cells furnished on or after January 1, 1989.

''(2) ELIMINATION OF POST-HOSPITAL REQUIREMENT FOR EXTENDED CARE SERVICES.—The amendments made by this subtitle, insofar as they eliminate the requirement (under section 1812(a)(2) of the Social Security Act [subsec. (a)(2) of this section]) that extended care services are only covered under title XVIII of such Act [this subchapter] if they are post-hospital extended care services, shall only apply to extended care services furnished pursuant to an admission to a skilled nursing facility occurring on or after January 1, 1989.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(b) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2121(i) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 1320c–3, 1320c–4, 1320c–7, 1395f, and 1395x of this title] (other than by subsection (h) [repealing provisions set out as a note under section 1395*ll* of this title]) shall apply to services furnished in detoxi-

fication facilities for inpatient stays beginning on or after the tenth day after the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(b)–(d) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 931(e) of Pub. L. 96–499 provided that: ''The amendments made by subsections (a) through (d) of this section [amending this section and sections 1395f and 1395x of this title] shall become effective on April 1, 1981.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 129(d) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 426, 1395e, 1395f, 1395k, 1395*l*, 1395n, 1395x, and 1395cc of this title and section 228s–2 of Title 45, Railroads] shall apply with respect to services furnished after March 31, 1968, except that subsection (c)(5) of such section [amending section 1395f of this title] shall become effective with respect to services furnished after the date of enactment of this Act [Jan. 2, 1968].''

Section 137(c) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395e of this title] shall apply with respect to services furnished after December 31, 1967.''

Section 138(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to payment for services furnished after December 31, 1967.''

Section 143(d) of Pub. L. 90–248 provided that: ''The provisions made by subsection (a) of this section [amending section 1395x of this title] shall become effective as of July 1, 1966, and the provisions made by subsections (b) and (c) of this section [amending this section and section 1395f of this title] shall apply to services furnished with respect to admissions occurring after December 31, 1967, and to outpatient hospital diagnostic services furnished after December 31, 1967, and before April 1, 1968.''

Section 146(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to payment for services furnished after December 31, 1967.''

RURAL HOSPICE DEMONSTRATION PROJECT

Pub. L. 108–173, title IV, § 409, Dec. 8, 2003, 117 Stat. 2271, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] shall conduct a demonstration project for the delivery of hospice care to medicare beneficiaries in rural areas. Under the project medicare beneficiaries who are unable to receive hospice care in the facility for lack of an appropriate caregiver are provided such care in a facility of 20 or fewer beds which offers, within its walls, the full range of services provided by hospice programs under section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)).

''(b) SCOPE OF PROJECT.—The Secretary shall conduct the project under this section with respect to no more than 3 hospice programs over a period of not longer than 5 years each.

''(c) COMPLIANCE WITH CONDITIONS.—Under the demonstration project—

''(1) the hospice program shall comply with otherwise applicable requirements, except that it shall not be required to offer services outside of the home or to meet the requirements of section 1861(dd)(2)(A)(iii) of the Social Security Act [section 1395x(dd)(2)(A)(iii) of this title]; and

''(2) payments for hospice care shall be made at the rates otherwise applicable to such care under title XVIII of such Act [this subchapter].

The Secretary may require the program to comply with such additional quality assurance standards for its provision of services in its facility as the Secretary deems appropriate.

''(d) REPORT.—Upon completion of the project, the Secretary shall submit a report to Congress on the project and shall include in the report recommendations regarding extension of such project to hospice programs serving rural areas.''

OIG REPORT ON NOTICES RELATING TO USE OF HOSPITAL LIFETIME RESERVE DAYS

Pub. L. 108–173, title IX, § 953(d), Dec. 8, 2003, 117 Stat. 2428, provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Inspector General of the Department of Health and Human Services shall submit a report to Congress on—

''(1) the extent to which hospitals provide notice to medicare beneficiaries in accordance with applicable requirements before they use the 60 lifetime reserve days described in section 1812(a)(1) of the Social Security Act (42 U.S.C. 1395d(a)(1)); and

''(2) the appropriateness and feasibility of hospitals providing a notice to such beneficiaries before they completely exhaust such lifetime reserve days.''

MEDPAC REPORT ON ACCESS TO, AND USE OF, HOSPICE BENEFIT

Pub. L. 106–554, § 1(a)(6) [title III, § 323], Dec. 21, 2000, 114 Stat. 2763, 2763A–501, provided that:

''(a) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study to examine the factors affecting the use of hospice benefits under the medicare program under title XVIII of the Social Security Act [this subchapter], including a delay in the time (relative to death) of entry into a hospice program, and differences in such use between urban and rural hospice programs and based upon the presenting condition of the patient.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Commission deems appropriate.''

TRANSITION

Section 4611(e) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—Notwithstanding any provision of title XVIII of the Social Security Act [this subchapter], the Secretary of Health and Human Services shall establish a transition for the aggregate amount of expenditures that are transferred from part A, to part B, of title XVIII of the Social Security Act [this part and part B of this subchapter], as a result of the amendments made by this section [amending this section and sections 1395u, 1395x, and 1395ff of this title], during each of the years during the period beginning with 1998 and ending with 2002 according to this subsection. Under the transition for each such year, the Secretary shall effect such transfer, between the trust funds under such parts, as will result in only the proportion (specified in paragraph (2)) of such aggregate expenditures for the year being transferred from such part A to such part B.

''(2) PROPORTION SPECIFIED.—The proportion specified in this paragraph for—

''(A) 1998 is 1/6,

''(B) 1999 is 1/3,

''(C) 2000 is 1/2,

''(D) 2001 is 2/3, and

''(E) 2002 is 5/6.

''(3) APPLICATION IN ESTABLISHING MONTHLY PREMIUMS FOR 1998 THROUGH 2003.—

''(A) IN GENERAL.—For purposes only of computing the monthly premium under section 1839 of the Social Security Act (42 U.S.C. 1395r), the monthly actuarial rate for enrollees age 65 and over shall be computed as though any reference in paragraph (1) of this subsection to 2002 were a reference to 2003 and as if the following proportions were substituted for the proportions specified in paragraph (2):

''(i) For 1998, 1/7.
''(ii) For 1999, 2/7.
''(iii) For 2000, 3/7.
''(iv) For 2001, 4/7.
''(v) For 2002, 5/7.
''(vi) For 2003, 6/7.

''(B) NO IMPACT ON GOVERNMENT CONTRIBUTION.—Subparagraph (A) does not apply in determining the amount of the Government contribution under section 1844 of the Social Security Act (42 U.S.C. 1395w).''

REPEAL OF 1988 EXPANSION OF MEDICARE PART A BENEFITS

For provisions repealing amendment by section 101 of Pub. L. 100–360, restoring or reviving this section as if section 101 of Pub. L. 100–360 had not been enacted, and providing a transition period for medicare beneficiaries with respect to inpatient hospital services and extended care services provided on or after Jan. 1, 1990, and providing an exception to such restoration for certain hospice care, see section 101(a)–(b)(2) of Pub. L. 101–234, set out as a note under section 1395e of this title.

§ 1395e. Deductibles and coinsurance

(a) Inpatient hospital services; outpatient hospital diagnostic services; blood; post-hospital extended care services

(1) The amount payable for inpatient hospital services or inpatient critical access hospital services furnished an individual during any spell of illness shall be reduced by a deduction equal to the inpatient hospital deductible or, if less, the charges imposed with respect to such individual for such services, except that, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed. Such amount shall be further reduced by a coinsurance amount equal to—

(A) one-fourth of the inpatient hospital deductible for each day (before the 91st day) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 60 days during such spell; and

(B) one-half of the inpatient hospital deductible for each day (before the day following the last day for which such individual is entitled under section 1395d(a)(1) of this title to have payment made on his behalf for inpatient hospital services or inpatient critical access hospital services during such spell of illness) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 90 days during such spell;

except that the reduction under this sentence for any day shall not exceed the charges imposed for that day with respect to such individual for such services (and for this purpose, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed).

(2)(A) The amount payable to any provider of services under this part for services furnished an individual shall be further reduced by a deduction equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during each calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.

(B) The deductible under subparagraph (A) for blood or blood cells furnished an individual in a year shall be reduced to the extent that a deductible has been imposed under section 1395*l*(b) of this title to blood or blood cells furnished the individual in the year.

(3) The amount payable for post-hospital extended care services furnished an individual during any spell of illness shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which he is furnished such services after such services have been furnished to him for 20 days during such spell.

(4)(A) The amount payable for hospice care shall be reduced—

(i) in the case of drugs and biologicals provided on an outpatient basis by (or under arrangements made by) the hospice program, by a coinsurance amount equal to an amount (not to exceed $5 per prescription) determined in accordance with a drug copayment schedule (established by the hospice program) which is related to, and approximates 5 percent of, the cost of the drug or biological to the program, and

(ii) in the case of respite care provided by (or under arrangements made by) the hospice program, by a coinsurance amount equal to 5 percent of the amount estimated by the hospice program (in accordance with regulations of the Secretary) to be equal to the amount of payment under section 1395f(i) of this title to that program for respite care;

except that the total of the coinsurance required under clause (ii) for an individual may not exceed for a hospice coinsurance period the inpatient hospital deductible applicable for the year in which the period began. For purposes of this subparagraph, the term ''hospice coinsurance period'' means, for an individual, a period of consecutive days beginning with the first day for which an election under section 1395d(d) of this title is in effect for the individual and ending with the close of the first period of 14 consecutive days on each of which such an election is not in effect for the individual.

(B) During the period of an election by an individual under section 1395d(d)(1) of this title, no copayments or deductibles other than those under subparagraph (A) shall apply with respect to services furnished to such individual which constitute hospice care, regardless of the setting in which such services are furnished.

(b) Inpatient hospital deductible; application

(1) The inpatient hospital deductible for 1987 shall be $520. The inpatient hospital deductible for any succeeding year shall be an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the Secretary's best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1395ww(b)(3)(B) of this title) which are applied under section 1395ww(d)(3)(A) of this title for discharges in the fiscal year that begins on October 1 of such preceding calendar year, and adjusted to reflect changes in real case mix (determined on the basis of the most recent case mix data available). Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4).

(2) The Secretary shall promulgate the inpatient hospital deductible and all coinsurance amounts under this section between September 1 and September 15 of the year preceding the year to which they will apply.

(3) The inpatient hospital deductible for a year shall apply to—

(A) the deduction under the first sentence of subsection (a)(1) of this section for the year in which the first day of inpatient hospital services or inpatient critical access hospital services occurs in a spell of illness, and

(B) to the coinsurance amounts under subsection (a) of this section for inpatient hospital services, inpatient critical access hospital services and post-hospital extended care services furnished in that year.

(Aug. 14, 1935, ch. 531, title XVIII, § 1813, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 292; amended Pub. L. 90–248, title I, §§ 129(c)(3), (4), 135(a), 137(b), Jan. 2, 1968, 81 Stat. 847, 848, 852, 854; Pub. L. 97–35, title XXI, §§ 2131(a), 2132(a), Aug. 13, 1981, 95 Stat. 797; Pub. L. 97–248, title I, § 122(e), Sept. 3, 1982, 96 Stat. 361; Pub. L. 99–272, title IX, § 9125(a), Apr. 7, 1986, 100 Stat. 168; Pub. L. 99–509, title IX, § 9301(a), Oct. 21, 1986, 100 Stat. 1981; Pub. L. 100–203, title IV, § 4002(f)(3), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(b)(1)(H)(ii), July 1, 1988, 102 Stat. 769; Pub. L. 100–360, title I, § 102, July 1, 1988, 102 Stat. 685; Pub. L. 101–234, title I, § 101(a), Dec. 13, 1989, 103 Stat. 1979; Pub. L. 103–432, title I, § 102(g)(2), (3), Oct. 31, 1994, 108 Stat. 4404; Pub. L. 105–33, title IV, § 4201(c)(1), Aug. 5, 1997, 111 Stat. 373.)

AMENDMENTS

1997—Pub. L. 105–33 substituted "critical access" for "rural primary care" wherever appearing.

1994—Subsec. (a)(1). Pub. L. 103–432, § 102(g)(2), substituted "inpatient hospital services or inpatient rural primary care hospital services" for "inpatient hospital services" in introductory provisions and in subpar. (B).

Subsec. (b)(3)(A). Pub. L. 103–432, § 102(g)(2), substituted "inpatient hospital services or inpatient rural primary care hospital services" for "inpatient hospital services".

Subsec. (b)(3)(B). Pub. L. 103–432, § 102(g)(3), substituted "inpatient hospital services, inpatient rural primary care hospital services" for "inpatient hospital services".

1989—Subsecs. (a)(1) to (3), (b)(3). Pub. L. 101–234 repealed Pub. L. 100–360, § 102, subject to an exception for blood deduction, and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (a)(1) to (3). Pub. L. 100–360, § 102(1), amended pars. (1) to (3) generally, revising and reorganizing former pars. (1)(A), (B), (2), and (3), as par. (1), consisting of subpars. (A) to (D), and pars. (2) and (3), each consisting of subpars. (A) and (B).

Subsec. (b)(1). Pub. L. 100–360, § 411(b)(1)(H)(ii), added Pub. L. 100–203, § 4002(f)(3), see 1987 Amendment note below.

Subsec. (b)(3). Pub. L. 100–360, § 102(2), struck out par. (3) which related to application of deductible.

1987—Subsec. (b)(1). Pub. L. 100–203, § 4002(f)(3), as added by Pub. L. 100–360, § 411(b)(1)(H)(ii), substituted "Secretary's best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1395ww(b)(3)(B) of this title) which are applied" for "applicable percentage increase (as defined in section 1395ww(b)(3)(B) of this title) which is applied".

1986—Subsec. (b). Pub. L. 99–509 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(1) The inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section shall be $40 in the case of any spell of illness beginning before 1969.

"(2) The Secretary shall, between July 1 and September 15 of 1968, and of each year thereafter, determine and promulgate the inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section in the case of any inpatient hospital services or post-hospital extended care services furnished during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $45 multiplied by the ratio of (A) the current average per diem rate for inpatient hospital services for the calendar year preceding the promulgation, to (B) the current average per diem rate for such services for 1966. Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiplies of $4, to the next higher multiple of $4). The current average per diem rate for any year shall be determined by the Secretary on the basis of the best information available to him (at the time the determination is made) as to the amounts paid under this part on account of inpatient hospital services furnished during such year, by hospitals which have agreements in effect under section 1395cc of this title, to individuals who are entitled to hospital insurance benefits under section 426 of this title, plus the amount which would have been so paid but for subsection (a)(1) of this section."

Subsec. (b)(2). Pub. L. 99–272 substituted "September 15" for "October 1".

1982—Subsec. (a)(4). Pub. L. 97–248 added par. (4).

1981—Subsec. (b)(2). Pub. L. 97–35 substituted "any inpatient hospital services or post-hospital extended care services furnished during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $45" for "any spell of illness beginning during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $40".

1968—Subsec. (a)(1). Pub. L. 90–248, § 137(b), designated existing provisions as subpar. (A) and added subpar. (B) and the exception provision that the reduction for any day shall not exceed the charges for that day.

Subsec. (a)(2). Pub. L. 90–248, § 135(a), made the three pint deductible applicable also to equivalent quantities of packed red blood cells, as defined by the Secretary under regulations.

Subsec. (a)(2) to (4). Pub. L. 90–248, § 129(c)(3), struck out par. (2) which provided for reduction of amount payable for outpatient hospital diagnostic services furnished an individual during a diagnostic study, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (b)(1), (2). Pub. L. 90–248, § 129(c)(4)(A), (B), struck out diagnostic studies from application of inpatient hospital deductible.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 102 of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Section 411(b)(1)(H)(iii) of Pub. L. 100–360 provided that: ''The amendment made by clause (ii) [amending Pub. L. 100–203] shall apply to the inpatient hospital deductible for years beginning with 1989.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9301(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to inpatient hospital services and post-hospital extended care services furnished on or after January 1, 1987, and to the monthly premium (under part A of title XVIII of the Social Security Act [this part]) for months beginning with January 1987.''

Section 9125(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall apply to calendar years after 1985.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2131(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] is effective for inpatient hospital services or post-hospital extended care services furnished on or after January 1, 1982.''

Section 2132(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services and post-hospital extended care services furnished in calendar years beginning with calendar year 1982.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(3), (4) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 135(d) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 1395*l* and 1395cc of this title] shall apply with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967.''

Amendment by section 137(b) of Pub. L. 90–248 applicable with respect to services furnished after Dec. 31, 1967, see section 137(c) of Pub. L. 90–248, set out as a note under section 1395d of this title.

REPEAL OF 1988 EXPANSION OF MEDICARE PART A BENEFITS

Section 101(a)–(b)(2) of Pub. L. 101–234, as amended by Pub. L. 101–508, title IV, § 4008(m)(1), Nov. 5, 1990, 104 Stat. 1388–53, provided that:

''(a) IN GENERAL.—

''(1) GENERAL RULE.—Except as provided in paragraph (2), sections 101, 102, and 104(d) (other than paragraph (7)) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360) [amending this section and sections 1395c, 1395d, 1395f, 1395k, 1395x, 1395cc, and 1395tt of this title] (in this Act referred to as 'MCCA') are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such section had not been enacted.

''(2) EXCEPTION FOR BLOOD DEDUCTION.—The repeal of section 102(1) of MCCA [amending this section] (relating to deductibles and coinsurance under part A) shall not apply, but only insofar as such section amended paragraph (2) of section 1813(a) of the Social Security Act [subsec. (a)(2) of this section] (relating to a deduction for blood).

''(b) TRANSITION PROVISIONS FOR MEDICARE BENEFICIARIES.—

''(1) INPATIENT HOSPITAL SERVICES AND POST-HOSPITAL EXTENDED CARE SERVICES.—In applying sections 1812 and 1813 of the Social Security Act [section 1395d of this title and this section], as restored by subsection (a)(1), with respect to inpatient hospital services and extended care services provided on or after January 1, 1990—

''(A) no day before January 1, 1990, shall be counted in determining the beginning (or period) of a spell of illness;

''(B) with respect to the limitation (other than the limitation under section 1812(c) of such Act [section 1395d(c) of this title]) on such services provided in a spell of illness, days of such services before January 1, 1990, shall not be counted, except that days of inpatient hospital services before January 1, 1989, which were applied with respect to an individual after receiving 90 days of services in a spell of illness (commonly known as 'lifetime reserve days') shall be counted;

''(C) the limitation of coverage of extended care services to post-hospital extended care services shall not apply to an individual receiving such services from a skilled nursing facility during a continuous period beginning before (and including) January 1, 1990, until the end of the period of 30 consecutive days in which the individual is not provided inpatient hospital services or extended care services; and

''(D) the inpatient hospital deductible under section 1813(a)(1) of such Act [subsec. (a)(1) of this section] shall not apply—

''(i) in the case of an individual who is receiving inpatient hospital services during a continuous period beginning before (and including) January 1, 1990, with respect to the spell of illness beginning on such date, if such a deductible was imposed on the individual for a period of hospitalization during 1989;

''(ii) for a spell of illness beginning during January 1990, if such a deductible was imposed on the individual for a period of hospitalization that began in December 1989; and

''(iii) in the case of a spell of illness of an individual that began before January 1, 1990.

''(2) HOSPICE CARE.—The restoration of section 1812(a)(4) of the Social Security Act [section 1395d(a)(4) of this title], effected by subsection (a)(1), shall not apply to hospice care provided during the subsequent period (described in such section as in effect on December 31, 1989) with respect to which an election has been made before January 1, 1990.''

[Section 4008(m)(1) of Pub. L. 101–508 provided that amendment by that section to section 101(b)(1)(B) of Pub. L. 101–234, set out above, is effective as if included in enactment of Medicare Catastrophic Coverage Repeal Act of 1989, Pub. L. 101–234.]

HOLD HARMLESS PROVISIONS; APPLICATION OF SUBSECTION (a)(1) AND (2)

Section 104(b) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(3)(B), Oct. 13, 1988, 102 Stat. 2413; Pub. L. 101–234, title I, § 101(b)(3), Dec. 13, 1989, 103 Stat. 1980, provided that: ''In the case of an individual

for whom a spell of illness (as defined in section 1861(a) of the Social Security Act [section 1395x(a) of this title], as in effect on December 31, 1988) began before January 1, 1989, and had not yet ended as of such date—

''(1)(A) section 1813(a)(1) of such Act [subsec. (a)(1) of this section] (as amended by this subtitle [subtitle A (§§101–104) of title I of Pub. L. 100–360]) shall not apply to services furnished during that spell of illness during 1989, and

''(B) if that individual begins a period of hospitalization (as defined in such section) during 1989 after the end of that spell of illness, the first period of hospitalization during 1989 that begins after that spell of illness shall be considered to be (for purposes of such section) the first period of hospitalization that begins during that year; and

''(2) the amount of any deductible under section 1813(a)(2) of such Act (as amended by this subtitle) shall be reduced during that spell of illness during 1989 to the extent the deductible under such section was applied during the spell of illness.''

PROMULGATION OF NEW DEDUCTIBLE

Section 9301(c) of Pub. L. 99–509 directed Secretary of Health and Human Services to provide, within 30 days after Oct. 21, 1986, for publication of inpatient hospital deductible, coinsurance amounts for inpatient hospital services and post-hospital extended care services, and monthly part A premiums for 1987, as modified under the amendment of this section made by subsection (a).

§ 1395f. Conditions of and limitations on payment for services

(a) Requirement of requests and certifications

Except as provided in subsections (d) and (g) of this section and in section 1395mm of this title, payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc of this title and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year;

(2) a physician, or, in the case of services described in subparagraph (B), a physician, or a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility but is working in collaboration with a physician, certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifications shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

(A) in the case of inpatient psychiatric hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the psychiatric treatment of an individual; and (i) such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary or (ii) inpatient diagnostic study is or was medically required and such services are or were necessary for such purposes;

(B) in the case of post-hospital extended care services, such services are or were required to be given because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services;

(C) in the case of home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m)(7) of this title) and needs or needed skilled nursing care (other than solely venipuncture for the purpose of obtaining a blood sample) on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician; or

(D) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases

involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period;

(4) in the case of inpatient psychiatric hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving (A) intensive treatment services, (B) admission and related services necessary for a diagnostic study, or (C) equivalent services;

(5) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services, there was not in effect, at the time of admission of such individual to the hospital, a decision under section 1395cc(d) of this title (based on a finding that utilization review of long-stay cases is not being made in such hospital);

(6) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1395x(k)(4) of this title, including any finding made in the course of a sample or other review of admissions to the institution) pursuant to the system of utilization review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or skilled nursing facility, as the case may be, received notice of such finding;

(7) in the case of hospice care provided an individual—

(A)(i) in the first 90-day period—

(I) the individual's attending physician (as defined in section 1395x(dd)(3)(B) of this title) (which for purposes of this subparagraph does not include a nurse practitioner), and

(II) the medical director (or physician member of the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program providing (or arranging for) the care,

each certify in writing at the beginning of the period, that the individual is terminally ill (as defined in section 1395x(dd)(3)(A) of this title) based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness, and

(ii) in a subsequent 90- or 60-day period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill based on such clinical judgment;

(B) a written plan for providing hospice care with respect to such individual has been established (before such care is provided by, or under arrangements made by, that hospice program) and is periodically reviewed by the individual's attending physician and by the medical director (and the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program; and

(C) such care is being or was provided pursuant to such plan of care; and

(8) in the case of inpatient critical access hospital services, a physician certifies that the individual may reasonably be expected to be discharged or transferred to a hospital within 96 hours after admission to the critical access hospital.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician, nurse practitioner, or clinical nurse specialist (as the case may be) makes certification of the kind provided in subparagraph (A), (B), (C), or (D) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency. For purposes of paragraph (2)(C), an individual shall be considered to be ''confined to his home'' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered ''confined to his home'', the condition of the individual should be such that there exists a normal inability to leave home and that leaving home requires a considerable and taxing effort by the individual. Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish adult day-care services in the State shall not disqualify an individual from being considered to be ''confined to his home''. Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for

the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration.

(b) Amount paid to provider of services

The amount paid to any provider of services (other than a hospice program providing hospice care, other than a critical access hospital providing inpatient critical access hospital services, and other than a home health agency with respect to durable medical equipment) with respect to services for which payment may be made under this part shall, subject to the provisions of sections 1395e, 1395ww, and 1395fff of this title, be—

(1) except as provided in paragraph (3), the lesser of (A) the reasonable cost of such services, as determined under section 1395x(v) of this title and as further limited by section 1395rr(b)(2)(B) of this title, or (B) the customary charges with respect to such services;

(2) if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), free of charge or at nominal charges to the public, the amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such reasonable cost which the Secretary finds will provide fair compensation to such provider for such services; or

(3) if some or all of the hospitals in a State have been reimbursed for services (for which payment may be made under this part) pursuant to a reimbursement system approved as a demonstration project under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972, if the rate of increase in such hospitals in their costs per hospital inpatient admission of individuals entitled to benefits under this part over the duration of such project was equal to or less than such rate of increase for admissions of such individuals with respect to all hospitals in the United States during such period, and if either the State has legislative authority to operate such system and the State elects to have reimbursement to such hospitals made in accordance with this paragraph or the system is operated through a voluntary agreement of hospitals and such hospitals elect to have reimbursement to those hospitals made in accordance with this paragraph, then the Secretary may provide for continuation of reimbursement to such hospitals under such system until the Secretary determines that—

(A) a third-party payor reimburses such a hospital on a basis other than under such system, or

(B) the aggregate rate of increase from January 1, 1981, to the most recent date for which annual data are available in such hospitals in costs per hospital inpatient admission of individuals entitled to benefits under this part is greater than such rate of increase for admissions of such individuals with respect to all hospitals in the United States for such period.

In the case of any State which has had such a demonstration project reimbursement system in continuous operation since July 1, 1977, the Secretary shall provide under paragraph (3) for continuation of reimbursement to hospitals in the State under such system until the first day of the 37th month beginning after the date the Secretary determines and notifies the Governor of the State that either of the conditions described in subparagraph (A) or (B) of such paragraph has occurred. If, by the end of such 36-month period, the Secretary determines, based on evidence submitted by the Governor of the State, that neither of the conditions described in subparagraph (A) or (B) of paragraph (3) continues to apply, the Secretary shall continue without interruption payment to hospitals in the State under the State's system. If, by the end of such 36-month period, the Secretary determines, based on such evidence, that either of the conditions described in subparagraph (A) or (B) of such paragraph continues to apply, the Secretary shall (i) collect any net excess reimbursement to hospitals in the State during such 36-month period (basing such net excess reimbursement on the net difference, if any, in the rate of increase in costs per hospital inpatient admission under the State system compared to the rate of increase in such costs with respect to all hospitals in the United States over the 36-month period, as measured by including the cumulative savings under the State system based on the difference in the rate of increase in costs per hospital inpatient admission under the State system as compared to the rate of increase in such costs with respect to all hospitals in the United States between January 1, 1981, and the date of the Secretary's initial notice), and (ii) provide a reasonable period, not to exceed 2 years, for transition from the State system to the national payment system.

(c) No payments to Federal providers of services

Subject to section 1395qq of this title, no payment may be made under this part (except under subsection (d) or subsection (h) of this section) to any Federal provider of services, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services for any item or service which such provider is obligated by a law of, or a contract with, the United States to render at public expense.

(d) Payments for emergency hospital services

(1) Payments shall also be made to any hospital for inpatient hospital services furnished in a calendar year, by the hospital or under arrangements (as defined in section 1395x(w) of this title) with it, to an individual entitled to hospital insurance benefits under section 426 of this title even though such hospital does not have an agreement in effect under this subchapter if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has elected to claim payments for all such inpatient emergency services and for the emergency outpatient services referred to in section

1395n(b) of this title furnished during such year. Such payments shall be made only in the amounts provided under subsection (b) of this section and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1395cc(a) of this title.

(2) Payment may be made on the basis of an itemized bill to an individual entitled to hospital insurance benefits under section 426 of this title for services described in paragraph (1) which are emergency services if (A) payment cannot be made under paragraph (1) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement.

(3) The amounts payable under the preceding paragraph with respect to services described therein shall, subject to the provisions of section 1395e of this title, be equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semiprivate accommodations (as defined in section 1395x(v)(4) of this title), whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semiprivate accommodations. For purposes of the preceding provisions of this paragraph, the term ''routine services'' shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term ''ancillary services'' shall mean those special services for which charges are customarily made in addition to routine services.

(e) Payment for inpatient hospital services prior to notification of noneligibility

Notwithstanding that an individual is not entitled to have payment made under this part for inpatient hospital services furnished by any hospital, payment shall be made to such hospital (unless it elects not to receive such payment or, if payment has already been made by or on behalf of such individual, fails to refund such payment within the time specified by the Secretary) for such services which are furnished to the individual prior to notification to such hospital from the Secretary of his lack of entitlement, if such payments are precluded only by reason of section 1395d of this title and if such hospital complies with the requirements of and regulations under this subchapter with respect to such payments, has acted in good faith and without knowledge of such lack of entitlement, and has acted reasonably in assuming entitlement existed. Payment under the preceding sentence may not be made for services furnished an individual pursuant to any admission after the 6th elapsed day (not including as an elapsed day Saturday, Sunday, or a legal holiday) after the day on which such admission occurred.

(f) Payment for certain inpatient hospital services furnished outside United States

(1) Payment shall be made for inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 426 of this title by a hospital located outside the United States, or under arrangements (as defined in section 1395x(w) of this title) with it, if—

(A) such individual is a resident of the United States, and

(B) such hospital was closer to, or substantially more accessible from, the residence of such individual than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

(2) Payment may also be made for emergency inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 426 of this title by a hospital located outside the United States if—

(A) such individual was physically present—

(i) in a place within the United States; or

(ii) at a place within Canada while traveling without unreasonable delay by the most direct route (as determined by the Secretary) between Alaska and another State;

at the time the emergency which necessitated such inpatient hospital services occurred, and

(B) such hospital was closer to, or substantially more accessible from, such place than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

(3) Payment shall be made in the amount provided under subsection (b) of this section to any hospital for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual by the hospital or under arrangements (as defined in section 1395x(w) of this title) with it if (A) the Secretary would be required to make such payment if the hospital had an agreement in effect under this subchapter and otherwise met the conditions of payment hereunder, (B) such hospital elects to claim such payment, and (C) such hospital agrees to comply, with respect to such services, with the provisions of section 1395cc(a) of this title.

(4) Payment for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual entitled to hospital insurance benefits under section 426 of this title may be made on the basis of an itemized bill to such individual if (A) payment for such services cannot be made under paragraph (3) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and continuing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amount payable with respect to such services shall, subject to the provisions of section 1395e of this title, be equal to the amount

which would be payable under subsection (d)(3) of this section.

(g) Payments to physicians for services rendered in teaching hospitals

For purposes of services for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(1) such hospital has an agreement with the Secretary under section 1395cc of this title, and

(2) the Secretary has received written assurances that (A) such payment will be used by such fund solely for the improvement of care of hospital patients or for educational or charitable purposes and (B) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged, provision will be made for return of any moneys incorrectly collected).

(h) Payment for specified hospital services provided in Department of Veterans Affairs hospitals; amount of payment

(1) Payments shall also be made to any hospital operated by the Department of Veterans Affairs for inpatient hospital services furnished in a calendar year by the hospital, or under arrangements (as defined in section 1395x(w) of this title) with it, to an individual entitled to hospital benefits under section 426 of this title even though the hospital is a Federal provider of services if (A) the individual was not entitled to have the services furnished to him free of charge by the hospital, (B) the individual was admitted to the hospital in the reasonable belief on the part of the admitting authorities that the individual was a person who was entitled to have the services furnished to him free of charge, (C) the authorities of the hospital, in admitting the individual, and the individual, acted in good faith, and (D) the services were furnished during a period ending with the close of the day on which the authorities operating the hospital first became aware of the fact that the individual was not entitled to have the services furnished to him by the hospital free of charge, or (if later) ending with the first day on which it was medically feasible to remove the individual from the hospital by discharging him therefrom or transferring him to a hospital which has in effect an agreement under this subchapter.

(2) Payment for services described in paragraph (1) shall be in an amount equal to the charge imposed by the Secretary of Veterans Affairs for such services, or (if less) the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title (as estimated by the Secretary). Any such payment shall be made to the entity to which payment for the services involved would have been payable, if payment for such services had been made by the individual receiving the services involved (or by another private person acting on behalf of such individual).

(i) Payment for hospice care

(1)(A) Subject to the limitation under paragraph (2) and the provisions of section 1395e(a)(4) of this title and except as otherwise provided in this paragraph, the amount paid to a hospice program with respect to hospice care for which payment may be made under this part shall be an amount equal to the costs which are reasonable and related to the cost of providing hospice care or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations (including those authorized under section 1395x(v)(1)(A) of this title), except that no payment may be made for bereavement counseling and no reimbursement may be made for other counseling services (including nutritional and dietary counseling) as separate services.

(B) Notwithstanding subparagraph (A), for hospice care furnished on or after April 1, 1986, the daily rate of payment per day for routine home care shall be $63.17 and the daily rate of payment for other services included in hospice care shall be the daily rate of payment recognized under subparagraph (A) as of July 1, 1985, increased by $10.

(C)(i) With respect to routine home care and other services included in hospice care furnished on or after January 1, 1990, and on or before September 30, 1990, the payment rates for such care and services shall be 120 percent of such rates in effect as of September 30, 1989.

(ii) With respect to routine home care and other services included in hospice care furnished during a subsequent fiscal year, the payment rates for such care and services shall be the payment rates in effect under this subparagraph during the previous fiscal year increased by—

(I) for a fiscal year ending on or before September 30, 1993, the market basket percentage increase (as defined in section 1395ww(b)(3)(B)(iii) of this title) for the fiscal year;

(II) for fiscal year 1994, the market basket percentage increase for the fiscal year minus 2.0 percentage points;

(III) for fiscal year 1995, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

(IV) for fiscal year 1996, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

(V) for fiscal year 1997, the market basket percentage increase for the fiscal year minus 0.5 percentage point;

(VI) for each of fiscal years 1998 through 2002, the market basket percentage increase for the fiscal year involved minus 1.0 percentage points, plus, in the case of fiscal year 2001, 5.0 percentage points; and

(VII) for a subsequent fiscal year, the market basket percentage increase for the fiscal year.

(2)(A) The amount of payment made under this part for hospice care provided by (or under arrangements made by) a hospice program for an accounting year may not exceed the ''cap amount'' for the year (computed under subparagraph (B)) multiplied by the number of medicare beneficiaries in the hospice program in that year (determined under subparagraph (C)).

(B) For purposes of subparagraph (A), the ''cap amount'' for a year is $6,500, increased or decreased, for accounting years that end after October 1, 1984, by the same percentage as the percentage increase or decrease, respectively, in the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, from March 1984 to the fifth month of the accounting year.

(C) For purposes of subparagraph (A), the ''number of medicare beneficiaries'' in a hospice program in an accounting year is equal to the number of individuals who have made an election under subsection (d) of this section with respect to the hospice program and have been provided hospice care by (or under arrangements made by) the hospice program under this part in the accounting year, such number reduced to reflect the proportion of hospice care that each such individual was provided in a previous or subsequent accounting year or under a plan of care established by another hospice program.

(D) A hospice program shall submit claims for payment for hospice care furnished in an individual's home under this subchapter only on the basis of the geographic location at which the service is furnished, as determined by the Secretary.

(3) Hospice programs providing hospice care for which payment is made under this subsection shall submit to the Secretary such data with respect to the costs for providing such care for each fiscal year, beginning with fiscal year 1999, as the Secretary determines necessary.

(4) The amount paid to a hospice program with respect to the services under section 1395d(a)(5) of this title for which payment may be made under this part shall be equal to an amount established for an office or other outpatient visit for evaluation and management associated with presenting problems of moderate severity and requiring medical decisionmaking of low complexity under the fee schedule established under section 1395w–4(b) of this title, other than the portion of such amount attributable to the practice expense component.

(5) In the case of hospice care provided by a hospice program under arrangements under section 1395x(dd)(5)(D) of this title made by another hospice program, the hospice program that made the arrangements shall bill and be paid for the hospice care.

(j) Elimination of lesser-of-cost-or-charges provision

(1) The lesser-of-cost-or-charges provisions (described in paragraph (2)) will not apply in the case of services provided by a class of provider of services if the Secretary determines and certifies to Congress that the failure of such provisions to apply to the services provided by that class of providers will not result in any increase in the amount of payments made for those services under this subchapter. Such change will take effect with respect to services furnished, or cost reporting periods of providers, on or after such date as the Secretary shall provide in the certification. Such change for a class of provider shall be discontinued if the Secretary determines and notifies Congress that such change has resulted in an increase in the amount of payments made under this subchapter for services provided by that class of provider.

(2) The lesser-of-cost-or-charges provisions referred to in paragraph (1) are as follows:

(A) Clause (B) of paragraph (1) and paragraph (2) of subsection (b) of this section.

(B) Section 1395m(a)(1)(B) of this title.

(C) So much of subparagraph (A) of section 1395*l*(a)(2) of this title as provides for payment other than of the reasonable cost of such services, as determined under section 1395x(v) of this title.

(D) Subclause (II) of clause (i) and clause (ii) of section 1395*l*(a)(2)(B) of this title.

(k) Payments to home health agencies for durable medical equipment

The amount paid to any home health agency with respect to durable medical equipment for which payment may be made under this part shall be the amount described in section 1395m(a)(1) of this title.

(*l*) Payment for inpatient critical access hospital services

(1) Except as provided in paragraph (2), the amount of payment under this part for inpatient critical access hospital services is equal to 101 percent of the reasonable costs of the critical access hospital in providing such services.

(2) In the case of a distinct part psychiatric or rehabilitation unit of a critical access hospital described in section 1395i–4(c)(2)(E) of this title, the amount of payment for inpatient critical access hospital services of such unit shall be equal to the amount of the payment that would otherwise be made if such services were inpatient hospital services of a distinct part psychiatric or rehabilitation unit, respectively, described in the matter following clause (v) of section 1395ww(d)(1)(B) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1814, as added Pub. L. 89–87, title I, § 102(a), July 30, 1965, 79 Stat. 294; amended Pub. L. 90–248, title I, §§ 126(a), 129(c)(5), (6)(A), 143(c), Jan. 2, 1968, 81 Stat. 846, 848, 857; Pub. L. 92–603, title II, §§ 211(a), 226(c)(1), 227(b), 228(a), 233(a), 234(g)(1), 238(a), 247(a), 256(a), 278(a)(1)–(3), (b)(4), (17), 281(e), Oct. 30, 1972, 86 Stat. 1382, 1404, 1405, 1407, 1411, 1413, 1416, 1425, 1447, 1453, 1454, 1456; Pub. L. 93–233, § 18(k)(1), (2), Dec. 31, 1973, 87 Stat. 970; Pub. L. 94–437, title IV, § 401(a), Sept. 30, 1976, 90 Stat. 1408; Pub. L. 95–142, § 23(a), (b), Oct. 25, 1977, 91 Stat. 1208; Pub. L. 95–292, § 4(f), June 13, 1978, 92 Stat. 315; Pub. L. 96–499, title IX, §§ 903(a), 930(e), (f), 931(b), 936(b), 941(a), (b), Dec. 5, 1980, 94 Stat. 2614, 2631, 2633, 2640, 2641; Pub. L. 97–35, title XXI, §§ 2121(b), 2122(a)(1), Aug. 13, 1981, 95 Stat. 796; Pub. L. 97–248, title I, §§ 101(c)(1), 122(c)(1), (2), Sept. 3, 1982, 96 Stat. 335, 357, 358; Pub. L. 97–448, title III, § 309(b)(7), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–21, title VI, §§ 601(d), 602(b), (c), Apr. 20, 1983, 97 Stat. 152, 163; Pub. L. 98–90, Aug. 29, 1983, 97 Stat. 606; Pub. L. 98–369, div. B, title III, §§ 2308(b)(2)(A), 2321(a), (f), 2335(a), 2336(a), (b), 2354(b)(1), (c)(1)(A), July 18, 1984, 98 Stat. 1074, 1084, 1085, 1090, 1091, 1100, 1102; Pub. L. 98–617, §§ 1(a), 3(a)(3), (b)(1), Nov. 8, 1984, 98 Stat. 3294, 3295; Pub. L. 99–272, title IX, § 9123(b), Apr. 7, 1986, 100 Stat. 168; Pub. L. 100–203, title IV,

§§ 4008(b)(1), 4024(a), 4062(d)(1), Dec. 22, 1987, 101 Stat. 1330–55, 1330–73, 1330–108; Pub. L. 100–360, title I, § 104(d)(2), July 1, 1988, 102 Stat. 688; Pub. L. 101–234, title I, § 101(a), Dec. 13, 1989, 103 Stat. 1979; Pub. L. 101–239, title VI, §§ 6003(g)(3)(B)(ii), (iii), 6005(a), (b), 6028, Dec. 19, 1989, 103 Stat. 2152, 2160, 2161, 2168; Pub. L. 101–508, title IV, §§ 4006(b), 4008(i)(3), (m)(3)(A), Nov. 5, 1990, 104 Stat. 1388–43, 1388–51, 1388–53; Pub. L. 102–54, § 13(q)(3)(A)(iii), (iv), (B)(iv), June 13, 1991, 105 Stat. 279; Pub. L. 103–66, title XIII, § 13504, Aug. 10, 1993, 107 Stat. 579; Pub. L. 103–432, title I, §§ 102(a)(3), (d), 106(b)(1)(A), 110(d)(1), Oct. 31, 1994, 108 Stat. 4402, 4403, 4405, 4408; Pub. L. 105–33, title IV, §§ 4201(c)(1), (3), 4441, 4442(a), 4443(b)(2), 4448, 4603(c)(1), 4615(a), Aug. 5, 1997, 111 Stat. 373, 422–424, 470, 475; Pub. L. 106–554, § 1(a)(6) [title III, §§ 321(a), (e), 322(a)(1), title V, § 507(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–500, 2763A–501, 2763A–532; Pub. L. 108–173, title IV, §§ 405(a)(1), (g)(2), 408(b), title V, § 512(b), title VII, § 736(a)(1), (2), (c)(2)(A), title IX, § 946(b), Dec. 8, 2003, 117 Stat. 2266, 2269, 2270, 2299, 2354, 2356, 2425.)

REFERENCES IN TEXT

Section 402 of the Social Security Amendments of 1967, referred to in subsec. (b)(3), means section 402 of Pub. L. 90–248, which amended sections 1395b–1 and 1395*ll* of this title.

Section 222 of the Social Security Amendments of 1972, referred to in subsec. (b)(3), means section 222 of Pub. L. 92–603, which amended sections 1395b–1 and 1395*ll* of this title and enacted a provision set out as a note under section 1395b–1 of this title.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, § 736(a)(1)(A), (c)(2)(A), in concluding provisions, substituted ''leave home and'' for ''leave home,'' in sixth sentence and struck out ''The certification regarding terminal illness of an individual under paragraph (7) shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.'' after ''taxing effort by the individual.''

Subsec. (a)(7)(A)(i). Pub. L. 108–173, § 736(a)(1)(B)(i), inserted ''based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness'' before '', and'' in concluding provisions.

Subsec. (a)(7)(A)(i)(I). Pub. L. 108–173, § 408(b), inserted ''(which for purposes of this subparagraph does not include a nurse practitioner)'' after ''attending physician (as defined in section 1395x(dd)(3)(B) of this title)''.

Subsec. (a)(7)(A)(ii). Pub. L. 108–173, § 736(a)(1)(B)(ii), inserted ''based on such clinical judgment'' before semicolon at end.

Subsec. (b). Pub. L. 108–173, § 736(a)(2), inserted comma after ''1395e'' in introductory provisions.

Subsec. (i)(4). Pub. L. 108–173, § 512(b), added par. (4).

Subsec. (i)(5). Pub. L. 108–173, § 946(b), added par. (5).

Subsec. (*l*). Pub. L. 108–173, § 405(g)(2), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the amount'' for ''The amount'', and added par. (2).

Pub. L. 108–173, § 405(a)(1), inserted ''equal to 101 percent of'' before ''the reasonable costs''.

2000—Subsec. (a). Pub. L. 106–554, § 1(a)(6) [title V, § 507(a)(1)(B)], inserted at end ''Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish adult day-care services in the State shall not disqualify an individual from being considered to be 'confined to his home'. Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration.''

Pub. L. 106–554, § 1(a)(6) [title V, § 507(a)(1)(A)], which directed amendment of subsec. (a) by striking out in the last sentence '', and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment'', was executed by striking out that language after ''taxing effort by the individual'' in the penultimate sentence, to reflect the probable intent of Congress and the amendment by Pub. L. 106–554, § 1(a)(6) [title III, § 322(a)(1)]. See note below.

Pub. L. 106–554, § 1(a)(6) [title III, § 322(a)(1)], inserted at end ''The certification regarding terminal illness of an individual under paragraph (7) shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.''

Subsec. (a)(7)(A)(ii). Pub. L. 106–554, § 1(a)(6) [title III, § 321(e)], substituted a semicolon for period at end.

Subsec. (i)(1)(C)(ii)(VI). Pub. L. 106–554, § 1(a)(6) [title III, § 321(a)], inserted '', plus, in the case of fiscal year 2001, 5.0 percentage points'' before semicolon.

1997—Subsec. (a)(2)(C). Pub. L. 105–33, § 4615(a), inserted ''(other than solely venipuncture for the purpose of obtaining a blood sample)'' after ''skilled nursing care''.

Subsec. (a)(7)(A)(i). Pub. L. 105–33, §§ 4443(b)(2)(A), 4448, in concluding provisions, substituted ''at the beginning of the period'' for '' not later than 2 days after hospice care is initiated (or, if each certify verbally not later than 2 days after hospice care is initiated, not later than 8 days after such care is initiated)'' and inserted ''and'' at end.

Subsec. (a)(7)(A)(ii). Pub. L. 105–33, § 4443(b)(2)(B), substituted ''60-day'' for ''30-day'' and substituted a period for '', and'' at end.

Subsec. (a)(7)(A)(iii). Pub. L. 105–33, § 4443(b)(2)(C), struck out cl. (iii) which read as follows: ''in a subsequent extension period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;''.

Subsec. (a)(8). Pub. L. 105–33, § 4201(c)(1), (3)(A), substituted ''critical access'' for ''rural primary care'' in two places and ''96 hours'' for ''72 hours''.

Subsec. (b). Pub. L. 105–33, § 4603(c)(1), substituted ''1395ww, and 1395fff of this title'' for ''and 1395ww of this title'' in introductory provisions.

Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' in two places in introductory provisions.

Subsec. (i)(1)(C)(ii)(V) to (VII). Pub. L. 105–33, § 4441(a), struck out ''and'' at end of subcl. (V), added subcl. (VI), and redesignated former subcl. (VI) as (VII).

Subsec. (i)(2)(D). Pub. L. 105–33, § 4442(a), added subpar. (D).

Subsec. (i)(3). Pub. L. 105–33, § 4441(b), added par. (3).

Subsec. (*l*). Pub. L. 105–33, § 4201(c)(3)(B), amended heading and text of subsec. (*l*) generally. Prior to amendment, text read as follows:

''(1) The amount of payment under this part for inpatient rural primary care hospital services—

''(A) in the case of the first 12-month cost reporting period for which the facility operates as such a hospital, is the reasonable costs of the facility in providing inpatient rural primary care hospital services during such period, as such costs are determined on a per diem basis, and

''(B) in the case of a later reporting period, is the per diem payment amount established under this paragraph for the preceding 12-month cost reporting period, increased by the applicable percentage increase under section 1395ww(b)(3)(B)(i) of this title for that particular cost reporting period applicable to hospitals located in a rural area.

The payment amounts otherwise determined under this paragraph shall be reduced, to the extent necessary, to

avoid duplication of any payment made under section 1395i–4(a)(2) of this title (or under section 4005(e) of the Omnibus Budget Reconciliation Act of 1987) to cover the provision of inpatient rural primary care hospital services.

''(2) The Secretary shall develop a prospective payment system for determining payment amounts for inpatient rural primary care hospital services under this part furnished on or after January 1, 1996.''

1994—Subsec. (a)(5). Pub. L. 103–432, § 106(b)(1)(A), struck out ''and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations'' after ''continuous period of such services'', ''or skilled nursing facility, as the case may be'' after ''such individual to the hospital'', and ''or facility'' after ''made in such hospital''.

Subsec. (a)(8). Pub. L. 103–432, § 102(a)(3), substituted ''the individual may reasonably be expected to be discharged or transferred to a hospital within 72 hours after admission to the rural primary care hospital.'' for ''such services were required to be immediately furnished on a temporary, inpatient basis.''

Subsec. (i)(1)(C)(i). Pub. L. 103–432, § 110(d)(1), substituted ''September 30, 1990,'' for ''September 30, 1990,,''.

Subsec. (*l*)(2). Pub. L. 103–432, § 102(d), substituted ''January 1, 1996'' for ''January 1, 1993''.

1993—Subsec. (i)(1)(C)(ii). Pub. L. 103–66 substituted ''increased by—'' and subcls. (I) to (VI) for ''increased by the market basket percentage increase (as defined in section 1395ww(b)(3)(B)(iii) of this title) otherwise applicable to discharges occurring in the fiscal year.''

1991—Subsec. (h). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in heading and par. (1) and ''Secretary of Veterans Affairs'' for ''Veterans' Administration'' in par. (2).

1990—Subsec. (a)(7)(A)(iii). Pub. L. 101–508, § 4006(b), added cl. (iii).

Subsec. (b)(3). Pub. L. 101–508, § 4008(i)(3), substituted ''January 1, 1981'' for ''October 1, 1983'' in subpar. (B) substituted ''37th month'' for ''seventh month'' in sentence following subpar. (B), and inserted at end provisions setting forth procedures to be followed by Secretary at end of 36-month period.

Subsec. (i)(1)(C)(i). Pub. L. 101–508, § 4008(m)(3)(A), substituted ''on or after January 1, 1990, and on or before September 30, 1990,'' for ''during fiscal year 1990''.

1989—Subsec. (a). Pub. L. 101–239, § 6028(2), substituted ''a physician, nurse practitioner, or clinical nurse specialist (as the case may be) makes'' for ''a physician makes'' in first sentence of concluding provisions.

Subsec. (a)(2). Pub. L. 101–239, § 6028(1), substituted ''a physician, or, in the case of services described in subparagraph (B), a physician, or a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility but is working in collaboration with a physician,'' for ''a physician'' after ''(2)''.

Subsec. (a)(2)(B), (6). Pub. L. 101–234 repealed Pub. L. 100–360, § 104(d)(2)(A), (B), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(7)(A)(i). Pub. L. 101–239, § 6005(b), substituted ''certify in writing, not later than 2 days after hospice care is initiated (or, if each certify verbally not later than 2 days after hospice care is initiated, not later than 8 days after such care is initiated),'' for ''certify, not later than two days after hospice care is initiated,'' in concluding provisions.

Subsec. (a)(7)(A)(iii). Pub. L. 101–234 repealed Pub. L. 100–360, § 104(d)(2)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(8). Pub. L. 101–239, § 6003(g)(3)(B)(ii), added par. (8).

Subsec. (b). Pub. L. 101–239, § 6003(g)(3)(B)(iii)(I), inserted '', other than a rural primary care hospital providing inpatient rural primary care hospital services,'' after ''providing hospice care'' in introductory provisions.

Subsec. (d)(3). Pub. L. 101–234 repealed Pub. L. 100–360, § 104(d)(2)(D), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (i)(1)(A). Pub. L. 101–239, § 6005(a)(1), inserted ''and except as otherwise provided in this paragraph'' after ''section 1395e(a)(4) of this title''.

Subsec. (i)(1)(C). Pub. L. 101–239, § 6005(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''With respect to care and services furnished on or after October 1, 1986, the Secretary shall, not less often than annually, review and make appropriate adjustments to the payment rate for routine home care and the payment rates for other services included in hospice care based on the costs that are reasonable and related to the costs of furnishing such care and services. The Secretary shall report to Congress on October 1 each year on such review and such adjustments and on the adequacy of the rates under this paragraph to ensure participation by an adequate number of hospice programs under this subchapter.''

Subsec. (*l*). Pub. L. 101–239, § 6003(g)(3)(B)(iii)(II), added subsec. (*l*).

1988—Subsec. (a)(2)(B). Pub. L. 100–360, § 104(d)(2)(A), (B), struck out ''post-hospital'' after ''in the case of'' and '', for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services'' before semicolon at end.

Subsec. (a)(6). Pub. L. 100–360, § 104(d)(2)(A), struck out ''post-hospital'' before ''extended care services'' in two places.

Subsec. (a)(7)(A)(iii). Pub. L. 100–360, § 104(d)(2)(C), added cl. (iii) which read as follows: ''in a subsequent extension period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;''.

Subsec. (d)(3). Pub. L. 100–360, § 104(d)(2)(D), substituted ''equal to 100 percent'' for ''equal to 60 percent'' and ''plus 100 percent'' for ''plus 80 percent'' and struck out ''two-thirds of'' after ''based on''.

1987—Subsec. (a). Pub. L. 100–203, § 4024(a), inserted two sentences at end clarifying ''confined to his home'' for purposes of par. (2)(C).

Subsec. (b)(3)(B). Pub. L. 100–203, § 4008(b)(1), substituted ''aggregate rate of increase from October 1, 1983, to the most recent date for which annual data are available'' for ''rate of increase for the previous three-year period''.

Subsec. (j)(2)(B). Pub. L. 100–203, § 4062(d)(1)(A), substituted ''Section 1395m(a)(1)(B) of this title'' for ''Subsection (k)(1)(B) of this section''.

Subsec. (k). Pub. L. 100–203, § 4062(d)(1)(B), substituted ''the amount described in section 1395m(a)(1) of this title.'' for a dash and former pars. (1) and (2) which read as follows:

''(1) the lesser of—

''(A) the reasonable cost of such equipment, as determined under section 1395x(v) of this title, or

''(B) the customary charges with respect to such equipment,

less the amount the home health agency may charge as described in section 1395cc(a)(2)(A)(ii) of this title, but in no case may the payment for such equipment exceed 80 percent of such reasonable cost, or

''(2) if such equipment is furnished by a public home health agency, or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-

income (and requests that payment be made under this paragraph), free of charge or at nominal charge to the public, 80 percent of the amount which the Secretary finds will provide fair compensation to the home health agency.''

1986—Subsec. (i)(1)(B). Pub. L. 99–272, §9123(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Notwithstanding subparagraph (A), the rate of payment per day for routine home care furnished during fiscal year 1985 shall be $53.17.''

Subsec. (i)(1)(C). Pub. L. 99–272, §9123(b)(2), substituted ''1986'' for ''1985''.

1984—Subsec. (a). Pub. L. 98–369, §2354(b)(1), as amended by Pub. L. 98–617, §3(a)(3), in concluding provisions, substituted ''contractual'' for ''contractural''.

Pub. L. 98–369, §2336(b), inserted before period at end of third sentence '', except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary)''.

Pub. L. 98–369, §2336(a), inserted sentence at end that for purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

Pub. L. 98–369, §2335(a)(4), in concluding provisions, substituted ''or (D)'' for ''(D), or (E)''.

Subsec. (a)(2)(B) to (E). Pub. L. 98–369, §2335(a)(1), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that payment could be made only if a physician certified, in the case of inpatient tuberculosis hospital services, that such services were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and that such treatment could reasonably be expected to improve the condition for which such treatment was necessary or render the condition noncommunicable.

Subsec. (a)(3). Pub. L. 98–369, §2335(a)(2), struck out ''and inpatient tuberculosis hospital services'' after ''psychiatric hospital services''.

Subsec. (a)(5) to (8). Pub. L. 98–369, §2335(a)(3), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out former par. (5) which had provided that payment would be made only if, in the case of inpatient tuberculosis hospital services, the services were those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to improve his condition or render it noncommunicable.

Subsec. (b). Pub. L. 98–369, §2321(a)(1), inserted in provisions preceding par. (1) ''and other than a home health agency with respect to durable medical equipment'' after ''hospice care''.

Subsec. (b)(2). Pub. L. 98–369, §2308(b)(2)(A), inserted '', or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph),''.

Subsec. (b)(3). Pub. L. 98–369, §2354(c)(1)(A), amended directory language of Pub. L. 96–449, §903(a)(4), resulting in no change in text. See 1980 Amendment note below.

Subsec. (i)(1). Pub. L. 98–617, §1(a), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j)(2)(B) to (D). Pub. L. 98–369, §2321(f), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (k). Pub. L. 98–369, §2321(a)(2), added subsec. (k).

Subsec. (k)(2). Pub. L. 98–617, §3(b)(1), inserted '', or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph),'' after ''public home health agency'' and ''80 percent of'' before ''the amount''.

1983—Subsec. (g). Pub. L. 98–21, §602(b), inserted ''(or would be if section 1395ww of this title did not apply)'' after ''section 1395x(v)(1)(D) of this title''.

Subsec. (h)(2). Pub. L. 98–21, §602(c), substituted ''the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title'' for ''the reasonable costs for such services''.

Subsec. (i)(1). Pub. L. 97–448 inserted ''made'' before ''for bereavement counseling''.

Subsec. (i)(2)(A). Pub. L. 98–90, §1(1), struck out ''located in a region (as defined by the Secretary)'' after ''a hospice program'' and ''for the region'' after '' 'the cap amount' ''.

Subsec. (i)(2)(B). Pub. L. 98–90, §1(2), amended subpar. (B) generally, substituting provisions establishing a hospice reimbursement cap amount of $6,500, indexed by the medical care component of the Consumer Price Index, for provisions which had established a cap of 40% of the estimated regional average medicare expenditure per beneficiary in the regular medicare program during the six months of life for persons dying of cancer.

Subsec. (j). Pub. L. 98–21, §601(d)(2), added subsec. (j) by transferring and redesignating provisions formerly classified to subsec. (d) of section 1395ww of this title.

Subsec. (j)(2)(A). Pub. L. 98–21, §601(d)(1), substituted ''subsection (b) of this section'' for ''section 1395f(b) of this title''.

1982—Subsec. (a)(8). Pub. L. 97–248, §122(c)(1), added par. (8).

Subsec. (b). Pub. L. 97–248, §101(c)(1), substituted ''sections 1395e and 1395ww'' for ''section 1395e'' in provisions preceding par. (1), and substituted ''until the first day of the seventh month beginning after the date the Secretary determines and notifies the Governor of the State'' for ''until the Secretary determines'' in provisions following par. (3).

Pub. L. 97–248, §122(c)(2)(A), inserted ''(other than a hospice program providing hospice care)'' after ''The amount paid to any provider of services''.

Subsec. (i). Pub. L. 97–248, §122(c)(2)(B), added subsec. (i).

1981—Subsec. (a)(2)(D). Pub. L. 97–35, §2122(a)(1), substituted ''needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy'' for ''needed skilled nursing care on an intermittent basis, or physical, occupational, or speech therapy''.

Subsec. (a)(2)(F). Pub. L. 97–35, §2121(b), struck out subpar. (F) which provided that in the case of alcohol detoxification facility services, such services were required on an inpatient basis (based upon an examination by such certifying physician made prior to initiation of alcohol detoxification).

1980—Subsec. (a). Pub. L. 96–499, §930(e), inserted provision at end of subsec. (a) authorizing the Secretary to prescribe regulations to prohibit significantly interested physicians from performing the physician certification required by par. (2) for home health services.

Subsec. (a)(2)(D). Pub. L. 96–499, §930(f), substituted ''home health services'' for ''post-hospital home health services'' and ''physical, occupational, or speech'' for ''physical or speech'' and deleted '', for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) or post-hospital extended care services'' after ''therapy''.

Subsec. (a)(2)(E). Pub. L. 96–499, §936(b), inserted ''or because of the severity of the dental procedure'' and substituted ''such services'' for ''such dental services''.

Subsec. (a)(2)(F). Pub. L. 96–499, §931(b), added subpar. (F).

Subsec. (b)(1). Pub. L. 96–499, §903(a)(1), inserted ''except as provided in paragraph (3),''.

Subsec. (b)(3). Pub. L. 96–499, § 903(a)(4), as amended by Pub. L. 98–369, § 2354(c)(1)(A), added par. (3).

Subsec. (c). Pub. L. 96–499, § 941(b), substituted ''subsection (h)'' for ''subsection (j)''.

Subsecs. (h) to (j). Pub. L. 96–499, § 941(a), struck out subsecs. (h) and (i) and redesignated subsec. (j) as (h).

1978—Subsec. (b)(1). Pub. L. 95–292 inserted ''and as further limited by section 1395rr(b)(2)(B) of this title'' after ''section 1395x(v) of this title''.

1977—Subsec. (c). Pub. L. 95–142, § 23(a), inserted reference to subsec. (j) of this section.

Subsec. (j). Pub. L. 95–142, § 23(b), added subsec. (j).

1976—Subsec. (c). Pub. L. 94–437 substituted ''Subject to section 1395qq of this title, no payment'' for ''No payment''.

1973—Subsec. (a)(2)(E). Pub. L. 93–233, § 18(k)(1), substituted ''the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status, requires hospitalization in connection with the provision of such dental services'' for ''a dental procedure, the individual suffers from impairments of such severity as to require hospitalization''.

Subsec. (a), last sentence. Pub. L. 93–233, § 18(k)(2), inserted reference to subpar. (E) of par. (2).

1972—Subsec. (a). Pub. L. 92–603, §§ 226(c)(1), 227(b)(1), inserted reference to subsec. (g) of this section and section 1395mm of this title in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 92–603, § 281(e), placed a 3-year time limitation on the time within which a written request for payment is filed, with provision for reduction of the limit to 1 year.

Subsec. (a)(2)(C). Pub. L. 92–603, §§ 234(g)(1), 247(a), 278(a)(1), substituted ''because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis,'' for ''on an inpatient basis because the individual needs or needed skilled nursing care on a continuing basis'', ''skilled nursing facility'' for ''extended care facility'', and ''paragraphs (6) and (9) of section 1395x(e) of this title'' for ''paragraphs (6) and (8) of section 1395x(e) of this title''.

Subsec. (a)(2)(D). Pub. L. 92–603, § 234(g)(1), substituted reference to par. (9) of section 1395x(e) of this title for reference to par. (8) of section 1395x(e) of this title.

Subsec. (a)(2)(E). Pub. L. 92–603, § 256(a), added subpar. (E).

Subsec. (a)(6). Pub. L. 92–603, § 278(a)(2), substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (a)(7). Pub. L. 92–603, §§ 238(a), 278(a)(3), inserted '', including any finding made in the course of a sample or other review of admissions to the institution'' after ''as described in section 1395x(k)(4) of this title'' in the parenthetical provisions covering the finding not made by the committee or group, and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (b). Pub. L. 92–603, § 233(a), substituted pars. (1) and (2) for provisions describing the amount payable as the reasonable cost determined under section 1395x(v) of this title.

Subsec. (f). Pub. L. 92–603, § 211(a), designated existing provisions as par. (2), added pars. (1) and (3), and in par. (2) as so redesignated inserted provisions covering individuals physically present at a place within Canada while traveling without unreasonable delay by the most direct route between Alaska and another State.

Subsec. (g). Pub. L. 92–603, § 227(b)(2), added subsec. (g).

Subsec. (h). Pub. L. 92–603, §§ 228(a), 278(b)(4), (17), added subsec. (h) and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (i). Pub. L. 92–603, § 228(a), added subsec. (i).

1968—Subsec. (a). Pub. L. 90–248, §§ 126(a)(5), 129(c)(5)(B), struck out references to former subpars. (E) and (F) in last sentence.

Subsec. (a)(2)(A) to (E). Pub. L. 90–248, § 126(a)(1), (2), struck out subpar. (A) which provided that there be a physician's certification of medical necessity for admissions to hospitals other than psychiatric or tuberculosis institutions, and redesignated subpars. (B) to (E) as (A) to (D), respectively.

Subsec. (a)(2)(F). Pub. L. 90–248, § 129(c)(5)(A), struck out subpar. (F) which provided that there be a physician's certification for services furnished to outpatients.

Subsec. (a)(3) to (7). Pub. L. 90–248, § 126(a)(3), (4), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (d). Pub. L. 90–248, § 129(c)(6)(A), struck out reference to outpatient hospital diagnostic services from provisions requiring payment for emergency hospital services.

Subsec. (d)(1) to (3). Pub. L. 90–248, § 143(c), designated existing provisions as par. (1), inserted ''in a calendar year'' after ''furnished'' in first sentence of par. (1), added subpar. (C) to par. (1), and added pars. (2) and (3).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IV, § 405(a)(2), Dec. 8, 2003, 117 Stat. 2266, provided that: ''The amendments made by paragraph (1) [amending this section and sections 1395m and 1395tt of this title] shall apply to payments for services furnished during cost reporting periods beginning on or after January 1, 2004.''

Pub. L. 108–173, title IV, § 405(g)(3), Dec. 8, 2003, 117 Stat. 2269, provided that: ''The amendments made by this subsection [amending this section and section 1395i–4 of this title] shall apply to cost reporting periods beginning on or after October 1, 2004.''

Amendment by section 512(b) of Pub. L. 108–173 applicable to services provided by a hospice program on or after Jan. 1, 2005, see section 512(d) of Pub. L. 108–173, set out as a note under section 1395d of this title.

Pub. L. 108–173, title IX, § 946(c), Dec. 8, 2003, 117 Stat. 2425, provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply to hospice care provided on or after the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title III, § 321(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–500, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to hospice care furnished on or after April 1, 2001. In applying clause (ii) of section 1814(i)(1)(C) of the Social Security Act (42 U.S.C. 1395f(i)(1)(C)) beginning with fiscal year 2002, the payment rates in effect under such section during the period beginning on April 1, 2001, and ending on September 30, shall be treated as the payment rates in effect during fiscal year 2001.''

Pub. L. 106–554, § 1(a)(6) [title III, § 322(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–501, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to certifications made on or after the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, § 1(a)(6) [title V, § 507(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–532, provided that: ''The amendments made by paragraph (1) [amending this section and section 1395n of this title] shall apply to home health services furnished on or after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4201(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1320a–7a, 1320a–7b, 1320b–4, 1320b–8, 1395d, 1395e, 1395h, 1395i–4, 1395k to 1395n, 1395u, 1395x, 1395y, 1395aa, 1395cc, 1395dd, and 1395ww of this title] shall apply to services furnished on or after October 1, 1997.''

Pub. L. 105–33, title IV, § 4442(b), Aug. 5, 1997, 111 Stat. 423, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(i)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366,

provided that: ''The amendment made by subsection (a) [amending this section] applies to items and services furnished on or after October 1, 1997.''

Amendment by sections 4441, 4443(b)(2), and 4448 of Pub. L. 105–33 applicable to benefits provided on or after Aug. 5, 1997, except as otherwise provided, see section 4449 of Pub. L. 105–33, set out as a note under section 1395d of this title.

Amendment by section 4603(c)(1) of Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

Section 4615(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section and section 1395n of this title] apply to home health services furnished after the 6-month period beginning after the date of enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 106(b)(1)(A) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 100–203, see section 106(b)(2) of Pub. L. 103–432, set out as a note under section 1395cc of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4006(b) of Pub. L. 101–508 applicable with respect to care and services furnished on or after Jan. 1, 1990, see section 4006(c) of Pub. L. 101–508, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6005(c) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4008(m)(3)(B), Nov. 5, 1990, 104 Stat. 1388–54, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective with respect to care and services furnished on or after January 1, 1990.''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4008(b)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].''

Section 4024(c) of Pub. L. 100–203 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395n of this title] shall apply to items and services provided on or after January 1, 1988.''

Section 4062(e) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, § 4152(h), Nov. 5, 1990, 104 Stat. 1388–80, provided that: ''The amendments made by this section [enacting section 1395m of this title, amending this section and sections 1395k, 1395*l*, and 1395cc of this title, and repealing section 1395zz of this title] shall apply to covered items (other than oxygen and oxygen equipment) furnished on or after January 1, 1989 and to oxygen and oxygen equipment furnished on or after June 1, 1989.''

[Section 4152(h) of Pub. L. 101–508 provided that amendment by that section to section 4062(e) of Pub. L. 100–203, set out above, is effective as if included in enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.]

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 1(b) of Pub. L. 98–617 provided that: ''The amendments made by this Act [probably means section 1 of Pub. L. 98–617, amending this section] shall apply to routine home care and other services included in hospice care furnished on or after October 1, 1984.''

Section 3(c) of Pub. L. 98–617 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395n, 1395r, 1395u, 1395x, 1395rr, 1395ww, 1396a, and 1396b of this title and amending provisions set out as notes under sections 1395h and 1395mm of this title] shall be effective as if they had been originally included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

Section 2321(g) of Pub. L. 98–369 provided that: ''The amendments made by this section [enacting section 1395zz of this title and amending this section and sections 1395*l*, 1395x, and 1395cc of this title] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Section 2335(g) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1395x, 1395z, 1395cc, 1396a, and 1396d of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2336(c)(1) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section and section 1395n of this title] shall apply to certifications and plans of care made or established on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(1) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2354(c)(1)(A) of Pub. L. 98–369 effective as if originally included in Pub. L. 96–499, see section 2354(e)(2) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(c)(1), (2) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2121(b) of Pub. L. 97–35 applicable to services furnished in detoxification facilities for inpatient stays beginning on or after the tenth day after Aug. 13, 1981, see section 2121(i) of Pub. L. 97–35, set out as a note under section 1395d of this title.

Section 2122(b) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1395n of this title] shall apply to services furnished pursuant to plans of treatment implemented after the third month beginning after the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(e), (f) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Amendment by section 931(b) of Pub. L. 96–499 effective Apr. 1, 1981, see section 931(e) of Pub. L. 96–499, set out as a note under section 1395d of this title.

Section 936(d) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and sections 1395x and 1395y of this title] shall apply with respect to services provided on or after July 1, 1981.''

Section 941(c) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 23(c) of Pub. L. 95–142 provided that: ''The amendments made by this section [amending this section] shall apply to inpatient hospital services furnished on and after July 1, 1974.''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 18(z–3)(2) of Pub. L. 93–233 provided that: ''The amendments made by subsection (k) [amending this section and section 1395y of this title] shall be effective with respect to admissions subject to the provisions of section 1814(a)(2) of the Social Security Act [subsec. (a)(2) of this section] which occur after December 31, 1972.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 211(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395u, 1395x, and 1395y of this title] shall apply to services furnished with respect to admissions occurring after December 31, 1972.''

Amendment by section 226(c)(1) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 227(b) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 228(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] and any regulations adopted pursuant to such amendment shall apply with respect to plans of care initiated on or after January 1, 1973, and with respect to admission to skilled nursing facilities and home health plans initiated on or after such date.''

Section 233(f) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395*l* of this title] shall apply to services furnished by hospitals, extended care facilities, and home health agencies in accounting periods beginning after December 31, 1972. The amendments made by subsections (c), (d), and (e) [amending sections 706, 709, and 1396b of this title] shall apply with respect to services furnished by hospitals in accounting periods beginning after December 31, 1972.'' See, also, section 16 of Pub. L. 93–233, set out below.

Amendment by section 234(g)(1) of Pub. L. 92–603 applicable with respect to providers of services for fiscal years beginning after fifth month following October 1972, see section 234(i) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 238(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services furnished after the second month following the month in which this Act is enacted [October 1972].''

Section 247(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall be effective with respect to services furnished after December 31, 1972.''

Section 256(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395x and 1395y of this title] shall apply with respect to admissions occurring after the second month following the month in which this Act is enacted [October 1972].''

Amendment by section 281(e) of Pub. L. 92–603 applicable in the case of services furnished (or deemed to have been furnished) after 1970, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 126(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 1395n of this title] shall apply with respect to services furnished after the date of the enactment of this Act [Jan. 2, 1968].''

Amendment by section 129(c)(5), (6)(A) of Pub. L. 90–248 applicable with respect to services furnished after Jan. 2, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 143(c) of Pub. L. 90–248 applicable with respect to services furnished with respect to admissions occurring after Dec. 31, 1967, and to outpatient hospital diagnostic services furnished after Dec. 31, 1967, and before Apr. 1, 1968, see section 143(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

STUDY AND REPORT ON EFFECT OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title V, § 507(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–532, provided that:

''(1) IN GENERAL.—The Comptroller General of the United States shall conduct an evaluation of the effect of the amendment [amending this section and section 1395n of this title] on the cost of and access to home health services under the medicare program under title XVIII of the Social Security Act [this subchapter].

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).''

STUDY AND REPORT ON PHYSICIAN CERTIFICATION REQUIREMENT FOR HOSPICE BENEFITS

Pub. L. 106–554, § 1(a)(6) [title III, § 322(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–501, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study to examine the appropriateness of the certification regarding terminal illness of an individual under section 1814(a)(7) of the Social Security Act (42 U.S.C. 1395f(a)(7)) that is required in order for such individual to receive hospice benefits under the medicare program under title XVIII of such Act [this subchapter]. In conducting such study, the Secretary shall take into account the effect of the amendment made by subsection (a) [amending this section].

''(2) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall submit to Congress

a report on the study conducted under paragraph (1), together with any recommendations for legislation that the Secretary deems appropriate.''

TEMPORARY INCREASE IN PAYMENT FOR HOSPICE CARE

Pub. L. 106–554, §1(a)(6) [title III, §321(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–501, provided that: ''The provisions of this section [amending this section and enacting provisions set out as a note under this section] shall have no effect on the application of section 131 of BBRA [Pub. L. 106–113, §1000(a)(6) [title I, §131], set out as a note below].''

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §131], Nov. 29, 1999, 113 Stat. 1536, 1501A–333, provided that:

''(a) INCREASE FOR FISCAL YEARS 2001 AND 2002.—For purposes of payments under section 1814(i)(1)(C) of the Social Security Act (42 U.S.C. 1395f(i)(1)(C)) for hospice care furnished during fiscal years 2001 and 2002, the Secretary of Health and Human Services shall increase the payment rate in effect (but for this section) for—

''(1) fiscal year 2001, by 0.5 percent, and

''(2) fiscal year 2002, by 0.75 percent.

''(b) ADDITIONAL PAYMENT NOT BUILT INTO THE BASE.—The Secretary of Health and Human Services shall not include any additional payment made under this subsection (a) in updating the payment rate, as increased by the applicable market basket percentage increase for the fiscal year involved under section 1814(i)(1)(C)(ii) of that Act (42 U.S.C. 1395f(i)(1)(C)(ii)).''

STUDY AND REPORT TO CONGRESS REGARDING MODIFICATION OF PAYMENT RATES FOR HOSPICE CARE

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §132], Nov. 29, 1999, 113 Stat. 1536, 1501A–333, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study to determine the feasibility and advisability of updating the payment rates and the cap amount determined with respect to a fiscal year under section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) for routine home care and other services included in hospice care. Such study shall examine the cost factors used to determine such rates and such amount and shall evaluate whether such factors should be modified, eliminated, or supplemented with additional cost factors.

''(b) REPORT.—Not later than one year after the date of enactment of this Act [Nov. 29, 1999], the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Comptroller General determines to be appropriate as a result of such study.''

STUDY OF METHODS TO COMPENSATE HOSPICES FOR HIGH-COST CARE

Section 6016 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study of high-cost hospice care provided to medicare beneficiaries under the medicare program, evaluate the ability of hospice programs participating in the medicare program to provide such high-cost care to such patients, develop methods to compensate such programs for providing such high-cost care, and submit, not later than Apr. 1, 1991, a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study, including in the report any recommendations developed by the Secretary to compensate hospice programs for providing high-cost hospice care to medicare beneficiaries.

CONTINUATION OF BAD DEBT RECOGNITION FOR HOSPITAL SERVICES

Section 4008(c) of Pub. L. 100–203, as amended by Pub. L. 100–647, title VIII, §8402, Nov. 10, 1987, 102 Stat. 3798; Pub. L. 101–239, title VI, §6023(a), Dec. 19, 1989, 103 Stat. 2167, provided that: ''In making payments to hospitals under title XVIII of the Social Security Act [this subchapter], the Secretary of Health and Human Services shall not make any change in the policy in effect on August 1, 1987, with respect to payment under title XVIII of the Social Security Act to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title (including criteria for what constitutes a reasonable collection effort, including criteria for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency). The Secretary may not require a hospital to change its bad debt collection policy if a fiscal intermediary, in accordance with the rules in effect as of August 1, 1987, with respect to criteria for indigency determination procedures, record keeping, and determining whether to refer a claim to an external collection agency, has accepted such policy before that date, and the Secretary may not collect from the hospital on the basis of an expectation of a change in the hospital's collection policy.''

[Section 6023(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending section 4008(c) of Pub. L. 100–203, set out above] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].'']

[Pub. L. 100–647, title VIII, §8402, Nov. 10, 1988, 102 Stat. 3798, provided that amendment of section 4008(c) of Pub. L. 100–203, set out above, by section 8402 of Pub. L. 100–647 is effective as of date of enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, which was approved Dec. 22, 1987.]

PROVIDERS OF SERVICES TO CALCULATE AND REPORT LESSER-OF-COST-OR-CHARGES DETERMINATIONS SEPARATELY WITH RESPECT TO PAYMENTS UNDER PARTS A AND B OF THIS SUBCHAPTER; ISSUANCE OF REGULATIONS

Section 2308(a) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall issue regulations which require, for purposes of title XVIII of the Social Security Act [this subchapter], that providers of services calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h) [section 1395*l*(h) of this title]), and that payment under such title be based upon such separate determinations. Such regulations shall apply to cost reporting periods beginning on or after October 1, 1984.''

DETERMINATION OF NOMINAL CHARGES FOR APPLYING NOMINALITY TEST

Section 2308(b)(1) of Pub. L. 98–369 provided that: ''For purposes of applying the nominality test under sections 1814(b)(2) [subsec. (b)(2) of this section] and 1833(a)(2)(B)(ii) [section 1395*l*(a)(2)(B)(ii) of this title] of the Social Security Act, the Secretary shall, in addition to those rules for establishing nominality which the Secretary determines to be appropriate, provide that charges representing 60 percent or less of costs shall be considered nominal. The charges used in making such determinations shall be the charges actually billed to charge-paying patients who are not entitled to benefits under either part of such title [sections 1395c et seq., 1395j et seq. of this title]. Such determination shall be made separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h)), or on the basis of inpatient and outpatient services, except that the determination need not be made separately for home health services if the Secretary finds that such separation is not appropriate.''

REVISION OF REGULATIONS REGARDING ACCESS TO HOME HEALTH SERVICES

Section 2336(c)(2) of Pub. L. 98–369 provided that: ''The Secretary shall provide, not later than 90 days after the date of the enactment of this Act [July 18,

1984], for such revision of regulations as may be required to reflect the amendments made by subsection (b) [amending this section and section 1395n of this title].''

PROMULGATION OF REGULATIONS

Section 122(h)(2) of Pub. L. 97–248 provided that: ''In order to provide for the timely implementation of the amendments made by this Act [probably means section 122 of Pub. L. 97–248, which amended this section and sections 1395c to 1395e, 1395h, and 1395x to 1395cc of this title and section 231f of Title 45, Railroads, and enacted provisions set out as notes under this section and sections 1395b–1 and 1395c of this title], the Secretary of Health and Human Services shall, not later than September 1, 1983, promulgate such final regulations as may be necessary to set forth—

''(A) a description of the care included in 'hospice care' and the standards for qualification of a 'hospice program', under section 1861(dd) of the Social Security Act [section 1395x(dd) of this title], and

''(B) the standards for payment for hospice care under part A of title XVIII of such Act [this part], pursuant to section 1814(i) of such Act [subsec. (i) of this section].''

STUDY AND REPORT RELATING TO THE REIMBURSEMENT METHOD AND BENEFIT STRUCTURE FOR HOSPICE CARE; SUPERVISION OF REPORT BY COMPTROLLER GENERAL

Section 122(j), formerly § 122(i), of Pub. L. 97–248, redesignated § 122(i), by Pub. L. 97–448, title III, § 309(a)(6), Jan. 12, 1983, 96 Stat. 2408, provided that:

''(1) The Secretary of Health and Human Services shall conduct a study and, prior to January 1, 1986, report to the Congress on whether or not the reimbursement method and benefit structure (including copayments) for hospice care under title XVIII of the Social Security Act [this subchapter] are fair and equitable and promote the most efficient provision of hospice care. Such report shall include the feasibility and advisability of providing for prospective reimbursement for hospice care, an evaluation of the inclusion of payment for outpatient drugs, an evaluation of the need to alter the method of reimbursement for nutritional, dietary, and bereavement counseling as hospice care, and any recommendations for legislative changes in the hospice care reimbursement or benefit structure.

''(2) The Comptroller General shall monitor and evaluate the study and the preparation of the report under paragraph (1).''

WAIVER OF LIMITATIONS TO ALLOW PRE-EXISTING HOSPICES TO PARTICIPATE AS A HOSPICE PROGRAM

Section 122(k), formerly § 122(j), of Pub. L. 97–248, as redesignated and amended by Pub. L. 97–448, title III, § 309(a)(6), (7), Jan. 12, 1983, 96 Stat. 2408, provided that: ''The Secretary of Health and Human Services shall grant waivers of the limitations imposed by section 1814(i)(2) of the Social Security Act [subsec. (i)(2) of this section] (relating to the cap amount), section 1861(dd)(1)(G) of such Act [section 1395x(dd)(1)(G) of this title] (relating to the limitations on the frequency and number of respite care days), and section 1861(dd)(2)(A)(iii) of such Act [section 1395x(dd)(2)(A)(iii) of this title] (relating to the aggregate limit on the number of days of inpatient care), as may be necessary to allow any institution which commenced operations as a hospice prior to January 1, 1975, to participate until October 1, 1986, in a viable manner as a hospice program under title XVIII of the Social Security Act [this subchapter].''

MEDICARE PAYMENT BASIS FOR SERVICES PROVIDED BY AGENCIES AND PROVIDERS; EFFECTIVE DATE

Section 16 of Pub. L. 93–233 provided that: ''In the administration of titles V, XVIII, and XIX of the Social Security Act [subchapters V, XVIII, and XIX of this chapter], the amount payable under such title to any provider of services on account of services provided by such hospital, skilled nursing facility, or home health agency shall be determined (for any period with respect to which the amendments made by section 233 of Public Law 92–603 [this section and sections 706, 709, 1395*l*, and 1396b of this title] would, except for the provisions of this section, be applicable) in like manner as if the date contained in the first and second sentences of subsection (f) of such section 233 [set out as an Effective Date of 1972 Amendment note above] were December 31, 1973, rather than December 31, 1972.''

§ 1395g. Payments to providers of services

(a) Determination of amount

The Secretary shall periodically determine the amount which should be paid under this part to each provider of services with respect to the services furnished by it, and the provider of services shall be paid, at such time or times as the Secretary believes appropriate (but not less often than monthly) and prior to audit or settlement by the Government Accountability Office, from the Federal Hospital Insurance Trust Fund, the amounts so determined, with necessary adjustments on account of previously made overpayments or underpayments; except that no such payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part for the period with respect to which the amounts are being paid or any prior period.

(b) Conditions

No payment shall be made to a provider of services which is a hospital for or with respect to services furnished by it for any period with respect to which it is deemed, under section 1395x(w)(2) of this title, to have in effect an arrangement with a quality control and peer review organization for the conduct of utilization review activities by such organization unless such hospital has paid to such organization the amount due (as determined pursuant to such section) to such organization for the review activities conducted by it pursuant to such arrangements or such hospital has provided assurances satisfactory to the Secretary that such organization will promptly be paid the amount so due to it from the proceeds of the payment claimed by the hospital. Payment under this subchapter for utilization review activities provided by a quality control and peer review organization pursuant to an arrangement or deemed arrangement with a hospital under section 1395x(w)(2) of this title shall be calculated without any requirement that the reasonable cost of such activities be apportioned among the patients of such hospital, if any, to whom such activities were not applicable.

(c) Payments under assignment or power of attorney

No payment which may be made to a provider of services under this subchapter for any service furnished to an individual shall be made to any other person under an assignment or power of attorney; but nothing in this subsection shall be construed (1) to prevent the making of such a payment in accordance with an assignment from the provider if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of com-

petent jurisdiction, or (2) to preclude an agent of the provider of services from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such provider under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

(d) Accrual of interest on balance of excess or deficit not paid

Whenever a final determination is made that the amount of payment made under this part to a provider of services was in excess of or less than the amount of payment that is due, and payment of such excess or deficit is not made (or effected by offset) within 30 days of the date of the determination, interest shall accrue on the balance of such excess or deficit not paid or offset (to the extent that the balance is owed by or owing to the provider) at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments.

(e) Periodic interim payments

(1) The Secretary shall provide payment under this part for inpatient hospital services furnished by a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title, and including a distinct psychiatric or rehabilitation unit of such a hospital) and a subsection (d) Puerto Rico hospital (as defined in section 1395ww(d)(9)(A) of this title) on a periodic interim payment basis (rather than on the basis of bills actually submitted) in the following cases:

(A) Upon the request of a hospital which is paid through an agency or organization with an agreement with the Secretary under section 1395h of this title, if the agency or organization, for three consecutive calendar months, fails to meet the requirements of subsection (c)(2) of such section and if the hospital meets the requirements (in effect as of October 1, 1986) applicable to payment on such a basis, until such time as the agency or organization meets such requirements for three consecutive calendar months.

(B) In the case of a hospital that—

(i) has a disproportionate share adjustment percentage (as established in clause (iv) of such section) of at least 5.1 percent (as computed for purposes of establishing the average standardized amounts for discharges occurring during fiscal year 1987), and

(ii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(C) In the case of a hospital that—

(i) is located in a rural area,

(ii) has 100 or fewer beds, and

(iii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(2) The Secretary shall provide (or continue to provide) for payment on a periodic interim payment basis (under the standards established under section 405.454(j) of title 42, Code of Federal Regulations, as in effect on October 1, 1986, in the cases described in subparagraphs (A) through (D)) with respect to—

(A) inpatient hospital services of a hospital that is not a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title);

(B) a hospital which is receiving payment under a State hospital reimbursement system under section 1395f(b)(3) or 1395ww(c) of this title, if payment on a periodic interim payment basis is an integral part of such reimbursement system;

(C) extended care services;

(D) hospice care; and

(E) inpatient critical access hospital services;

if the provider of such services elects to receive, and qualifies for, such payments.

(3) In the case of a subsection (d) hospital or a subsection (d) Puerto Rico hospital (as defined for purposes of section 1395ww of this title) which has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary may make available appropriate accelerated payments.

(4) A hospital created by the merger or consolidation of 2 or more hospitals or hospital campuses shall be eligible to receive periodic interim payment on the basis described in paragraph (1)(B) if—

(A) at least one of the hospitals or campuses received periodic interim payment on such basis prior to the merger or consolidation; and

(B) the merging or consolidating hospitals or campuses would each meet the requirement of paragraph (1)(B)(i) if such hospitals or campuses were treated as independent hospitals for purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1815, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 297; amended Pub. L. 94–182, title I, § 112(a)(2), Dec. 31, 1975, 89 Stat. 1055; Pub. L. 95–142, § 2(a)(2), Oct. 25, 1977, 91 Stat. 1175; Pub. L. 96–473, § 6(i), Oct. 19, 1980, 94 Stat. 2266; Pub. L. 97–248, title I, §§ 117(a)(1), 148(b), Sept. 3, 1982, 96 Stat. 354, 394; Pub. L. 99–509, title IX, § 9311(a)(1), Oct. 21, 1986, 100 Stat. 1996; Pub. L. 101–239, title VI, § 6021(a), Dec. 19, 1989, 103 Stat. 2166; Pub. L. 105–33, title IV, § 4603(b), Aug. 5, 1997, 111 Stat. 470; Pub. L. 108–173, title IV, § 405(c)(1), title VII, § 736(a)(3), Dec. 8, 2003, 117 Stat. 2266, 2354; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2003—Subsec. (e)(1)(B). Pub. L. 108–173, § 736(a)(3), substituted ''of a hospital'' for ''of hospital'' in introductory provisions.

Subsec. (e)(2). Pub. L. 108–173, § 405(c)(1)(A), inserted '', in the cases described in subparagraphs (A) through (D)'' after ''1986'' in introductory provisions.

Subsec. (e)(2)(E). Pub. L. 108–173, § 405(c)(1)(B)–(D), added subpar. (E).

1997—Subsec. (e)(2)(C) to (E). Pub. L. 105–33 inserted ''and'' at end of subpar. (C), redesignated subpar. (E) as (D), and struck out former subpar. (D) which read as follows: ''home health services; and''.

1989—Subsec. (e)(4). Pub. L. 101–239 added par. (4).

1986—Subsec. (e). Pub. L. 99–509 added subsec. (e).

1982—Subsec. (b). Pub. L. 97–248, § 148(b), substituted ''quality control and peer review organization'' for ''Professional Standards Review Organization'' wherever appearing.

Subsec. (d). Pub. L. 97–248, § 117(a)(1), added subsec. (d).

1980—Subsec. (c). Pub. L. 96–473 substituted ''for or in connection with'' for ''for on in connection with''.

1977—Subsec. (c). Pub. L. 95–142 added subsec. (c).

1975—Pub. L. 94–182 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IV, § 405(c)(3), Dec. 8, 2003, 117 Stat. 2267, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to payments made on or after July 1, 2004.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6021(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments made for discharges occurring on or after the expiration of the 30-day period that begins on the date of the enactment of this Act [Dec. 19, 1989], regardless of the date of the merger or consolidation involved.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9311(a)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to claims received on or after July 1, 1987.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 117(b) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [amending this section and section 1395*l* of this title] apply to final determinations made on or after the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 148(b) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 2(a)(4) of Pub. L. 95–142 provided that: ''The amendments made by this subsection [amending this section and sections 1395u and 1396a of this title] shall apply with respect to care and services furnished on or after the date of the enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–182 effective with respect to utilization review activities conducted on and after the first day of the first month which begins more than 30 days after Dec. 31, 1975, see section 112(d) of Pub. L. 94–182, set out as a note under section 1395x of this title.

DEVELOPMENT OF ALTERNATIVE TIMING METHODS OF PERIODIC INTERIM PAYMENTS

Pub. L. 108–173, title IV, § 405(c)(2), Dec. 8, 2003, 117 Stat. 2267, provided that: ''With respect to periodic interim payments to critical access hospitals for inpatient critical access hospital services under section 1815(e)(2)(E) of the Social Security Act [subsec. (e)(2)(E) of this section], as added by paragraph (1), the Secretary [of Health and Human Services] shall develop alternative methods for the timing of such payments.''

TRANSITION

Section 9311(a)(3) of Pub. L. 99–509 provided that: ''Upon the request of a hospital which—

''(A) as of June 30, 1987, is receiving payments under part A of title XVIII of such Act [this part] for inpatient hospital services on a periodic interim payment basis,

''(B) requests continuation of payment on such basis, and

''(C) is paid through an agency or organization with an agreement under section 1816 of such Act [section 1395h of this title],

the Secretary of Health and Human Services shall continue payment on such a basis until not earlier than the end of the first period of three consecutive calendar months (beginning no earlier than April 1987) during all of which the agency or organization has met the requirements of section 1816(c)(2) of such Act (relating to prompt payment of claims).''

DELAY IN PERIODIC INTERIM PAYMENTS

Section 120 of Pub. L. 97–248 provided that: ''Notwithstanding section 1815(a) of the Social Security Act [subsec. (a) of this section], in the case of a hospital which is paid periodic interim payments under such section, the Secretary of Health and Human Services shall provide that—

''(1) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1983, such payments shall be deferred until fiscal year 1984; and

''(2) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1984, such payments shall be deferred until fiscal year 1985.''

Pub. L. 96–499, title IX, § 959, Dec. 5, 1980, 94 Stat. 2650, provided for deferral of interim payments to be made during last twenty-one days of fiscal year 1981 until fiscal year 1982, prior to repeal by Pub. L. 97–35, title XXI, § 2155, Aug. 13, 1981, 95 Stat. 802.

§ 1395h. Provisions relating to the administration of part A

(a) In general

The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1395kk–1 of this title.

(b) Repealed. Pub. L. 108–173, title IX, § 911(b)(3), Dec. 8, 2003, 117 Stat. 2383

(c) Prompt payment of claims

(1) Repealed. Pub. L. 108–173, title IX, § 911(b)(4)(A), Dec. 8, 2003, 117 Stat. 2383.

(2)(A) Each contract under section 1395kk–1 of this title that provides for making payments under this part shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this subchapter—

(i) which are clean claims, and

(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph:

(i) The term ''clean claim'' means a claim that has no defect or impropriety (including

any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this subchapter.

(ii) The term ''applicable number of calendar days'' means—

(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days,

(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period ending on or before September 30, 1993, 24 calendar days, and

(V) with respect to claims received in the 12-month period beginning October 1, 1993, and claims received in any succeeding 12-month period, 30 calendar days.

(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received from a hospital, critical access hospital, skilled nursing facility, home health agency, hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency that is not receiving payments on a periodic interim payment basis with respect to such services, interest shall be paid at the rate used for purposes of section 3902(a) of title 31 (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(3)(A) Each contract under section 1395kk–1 of this title that provides for making payments under this part shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this subchapter within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph, the term ''applicable number of calendar days'' means—

(i) with respect to claims submitted electronically as prescribed by the Secretary, 13 days, and

(ii) with respect to claims submitted otherwise, 28 days.

(d) to (i). Repealed. Pub. L. 108–173, title IX, § 911(b)(5), Dec. 8, 2003, 117 Stat. 2383

(j) Denial of claim; notification and reconsideration

A contract with a medicare administrative contractor under section 1395kk–1 of this title with respect to the administration of this part shall require that, with respect to a claim for home health services, extended care services, or post-hospital extended care services submitted by a provider to such medicare administrative contractor that is denied, such medicare administrative contractor—

(1) furnish the provider and the individual with respect to whom the claim is made with a written explanation of the denial and of the statutory or regulatory basis for the denial; and

(2) in the case of a request for reconsideration of a denial, promptly notify such individual and the provider of the disposition of such reconsideration.

(k) Annual reporting requirement on erroneous payment recovery

A contract with a medicare administrative contractor under section 1395kk–1 of this title with respect to the administration of this part shall require that such medicare administrative contractor submit an annual report to the Secretary describing the steps taken to recover payments made for items or services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title).

(*l*) Repealed. Pub. L. 108–173, title IX, § 911(b)(7), Dec. 8, 2003, 117 Stat. 2383

(Aug. 14, 1935, ch. 531, title XVIII, § 1816, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 297; amended Pub. L. 92–603, title II, § 243(b), Oct. 30, 1972, 86 Stat. 1422; Pub. L. 95–142, § 14(a), Oct. 25, 1977, 91 Stat. 1198; Pub. L. 96–499, title IX, § 930(*o*), Dec. 5, 1980, 94 Stat. 2632; Pub. L. 97–248, title I, § 122(c)(3), Sept. 3, 1982, 96 Stat. 359; Pub. L. 98–369, div. B, title III, § 2326(b), (c)(1), (d)(1), July 18, 1984, 98 Stat. 1087; Pub. L. 99–509, title IX, §§ 9311(b), 9352(a)(2), Oct. 21, 1986, 100 Stat. 1997, 2044; Pub. L. 100–203, title IV, §§ 4031(a)(1), 4032(a), (b), 4035(a)(1), 4085(d)(1), Dec. 22, 1987, 101 Stat. 1330–75 to 1330–78, 1330–130; Pub. L. 100–360, title II, § 203(f), title IV, § 411(e)(1)(B), July 1, 1988, 102 Stat. 725, 775; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6003(g)(3)(D)(vi), 6202(d)(1), Dec. 19, 1989, 103 Stat. 2153, 2234; Pub. L. 101–508, title IV, § 4005(c)(1)(A), Nov. 5, 1990, 104 Stat. 1388–41; Pub. L. 103–66, title XIII, § 13568(a), (b), Aug. 10, 1993, 107 Stat. 608; Pub. L. 103–432, title I, §§ 110(d)(2), 151(b)(1)(A), (2)(A), Oct. 31, 1994, 108 Stat. 4408, 4433, 4434; Pub. L. 104–191, title II, § 202(b)(1), Aug. 21, 1996, 110 Stat. 1998; Pub. L. 105–33, title IV, § 4201(c)(1), Aug. 5, 1997, 111 Stat. 373; Pub. L. 108–173, title VII, § 736(a)(4), title IX, § 911(b), Dec. 8, 2003, 117 Stat. 2355, 2383; Pub. L. 109–171, title V, § 5202(a)(1), Feb. 8, 2006, 120 Stat. 47.)

AMENDMENTS

2006—Subsec. (c)(3)(B)(ii). Pub. L. 109–171 substituted ''28 days'' for ''26 days''.

2003—Pub. L. 108–173, § 911(b)(1), substituted ''Provisions relating to the administration of part A'' for ''Use of public or private agencies or organizations to facilitate payment to providers of services'' in section catchline.

Subsec. (a). Pub. L. 108–173, § 911(b)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized Secretary to enter into agreements with agencies or organizations to determine and pay amounts under this part.

Subsec. (b). Pub. L. 108–173, § 911(b)(3), struck out subsec. (b), which set forth prerequisites for agreement or renewal of agreement.

Subsec. (c)(1). Pub. L. 108–173, § 911(b)(4)(A), struck out par. (1), which related to terms and conditions of agreements.

Subsec. (c)(2)(A). Pub. L. 108–173, § 911(b)(4)(B), substituted ''contract under section 1395kk–1 of this title that provides for making payments under this part'' for ''agreement under this section'' in introductory provisions.

Subsec. (c)(2)(B)(ii)(III). Pub. L. 108–173, § 736(a)(4)(A), struck out ''and'' at end.

Subsec. (c)(2)(B)(ii)(IV). Pub. L. 108–173, § 736(a)(4)(B), substituted '', and'' for period at end.

Subsec. (c)(3)(A). Pub. L. 108–173, § 911(b)(4)(B), substituted ''contract under section 1395kk–1 of this title that provides for making payments under this part'' for ''agreement under this section''.

Subsecs. (d) to (i). Pub. L. 108–173, § 911(b)(5), struck out subsecs. (d) to (i), which related to nomination of agency or organization, designation of agency or organization to perform provider services, standards, criteria, and procedures for evaluation of agency or organization performance, termination of agreement, bonding requirement for officers and employees, and liability of certifying and disbursing officers.

Subsec. (j). Pub. L. 108–173, § 911(b)(6), in introductory provisions, substituted ''A contract with a medicare administrative contractor under section 1395kk–1 of this title with respect to the administration of this part'' for ''An agreement with an agency or organization under this section'' and ''such medicare administrative contractor'' for ''such agency or organization'' in two places.

Subsec. (k). Pub. L. 108–173, § 911(b)(6), substituted ''A contract with a medicare administrative contractor under section 1395kk–1 of this title with respect to the administration of this part'' for ''An agreement with an agency or organization under this section'' and ''such medicare administrative contractor'' for ''such agency or organization''.

Subsec. (*l*). Pub. L. 108–173, § 911(b)(7), struck out subsec. (*l*), which prohibited any activity pursuant to an agreement under this section that is carried out pursuant to a contract under the Medicare Integrity Program.

1997—Subsec. (c)(2)(C). Pub. L. 105–33 substituted ''critical access'' for ''rural primary care''.

1996—Subsec. (*l*). Pub. L. 104–191 added subsec. (*l*).

1994—Subsec. (f)(1)(A). Pub. L. 103–432, § 151(b)(2)(A), inserted ''(including the agency's or organization's success in recovering payments made under this subchapter for services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title))'' after ''processing''.

Subsec. (f)(2)(A)(ii). Pub. L. 103–432, § 110(d)(2), substituted ''such agency's'' for ''such agency''.

Subsec. (k). Pub. L. 103–432, § 151(b)(1)(A), added subsec. (k).

1993—Subsec. (c)(2)(B)(ii)(IV), (V). Pub. L. 103–66, § 13568(b), substituted ''period ending on or before September 30, 1993'' for ''period'' in subcl. (IV) and added subcl. (V).

Subsec. (c)(3)(B). Pub. L. 103–66, § 13568(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

''(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.''

1990—Subsec. (f). Pub. L. 101–508 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, struck out ''Such standards and criteria'' and all that follows, which was executed by striking out ''Such standards and criteria shall be published in the Federal Register, and opportunity shall be provided for public comment prior to implementation. Such standards and criteria shall include with respect to claims for services furnished under this part by any provider of services other than a hospital whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.'', and added par. (2).

1989—Subsec. (c)(1). Pub. L. 101–239, § 6202(d)(1), inserted at end ''The Secretary may not require, as a condition of entering into or renewing an agreement under this section or under section 1395hh of this title, that a fiscal intermediary match data obtained other than in its activities under this part with data used in the administration of this part for purposes of identifying situations in which the provisions of section 1395y(b) of this title may apply.''

Subsec. (c)(2)(C). Pub. L. 101–239, § 6003(g)(3)(D)(vi), inserted ''rural primary care hospital,'' after ''hospital,''.

Subsec. (k). Pub. L. 101–234 repealed Pub. L. 100–360, § 203(f), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (j)(2). Pub. L. 100–360, § 411(e)(1)(B), inserted ''in the case of a request for reconsideration of a denial,'' and substituted ''the disposition'' for ''disposition''.

Subsec. (k). Pub. L. 100–360, § 203(f), added subsec. (k) relating to use of regional intermediaries in administration of benefits.

1987—Subsec. (c)(1). Pub. L. 100–203, § 4035(a)(1), inserted at end ''The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for fiscal intermediaries under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.''

Subsec. (c)(2)(C). Pub. L. 100–203, § 4085(d)(1), substituted ''hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency'' for ''or hospice program''.

Subsec. (c)(3). Pub. L. 100–203, § 4031(a)(1), added par. (3).

Subsec. (f). Pub. L. 100–203, § 4023(b), inserted at end ''Such standards and criteria shall include with respect to claims for services furnished under this part by any provider of services other than a hospital whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.''

Subsec. (j). Pub. L. 100–203, § 4032(a), added subsec. (j).

1986—Subsec. (a). Pub. L. 99–509, § 9352(a)(2), inserted at end ''As used in this subchapter and part B of subchapter XI of this chapter, the term 'fiscal intermediary' means an agency or organization with a contract under this section.''

Subsec. (c). Pub. L. 99–509, § 9311(b), designated existing provisions as par. (1) and added par. (2).

1984—Subsec. (c). Pub. L. 98–369, § 2326(d)(1), inserted provision that the Secretary, in determining the necessary and proper cost of administration with respect to each agreement, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated agency or organization in carrying out the terms of its agreement.

Subsec. (e)(4). Pub. L. 98–369, § 2326(b), inserted provision that not later than July 1, 1987, the Secretary limit the number of regional agencies or organizations to not more than ten.

Subsec. (f). Pub. L. 98–369, § 2326(c)(1), struck out in cl. (2) '', by regulation,'' after ''Secretary shall establish'' and inserted provision that the standards and criteria be published in the Federal Register and an opportunity be provided for public comment prior to implementation.

1982—Subsec. (e)(5). Pub. L. 97–248 added par. (5).

1980—Subsec. (e)(2). Pub. L. 96–499, § 930(*o*)(1), inserted ''(subject to the provisions of paragraph (4))''.

Subsec. (e)(4). Pub. L. 96–499, § 930(*o*)(2), added par. (4).

1977—Subsec. (a). Pub. L. 95–142, § 14(a)(1), inserted provisions relating to applicability to providers as-

signed to the agency or organization under subsec. (e) of this section.

Subsec. (b). Pub. L. 95–142, § 14(a)(2), substituted provisions setting forth criteria for agreements by the Secretary or renewal of such agreements with agencies or organizations, for provisions setting forth criteria for agreements by the Secretary with agencies or organizations.

Subsecs. (e), (f). Pub. L. 95–142, § 14(a)(4), (5), added subsecs. (e) and (f). Former subsecs. (e) and (f) redesignated (g) and (h), respectively.

Subsec. (g). Pub. L. 95–142, § 14(a)(3), (4), redesignated former subsec. (e) as (g) and inserted provisions relating to applicability of standards, etc., developed under subsec. (f) of this section. Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 95–142, § 14(a)(4), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1972—Subsec. (a). Pub. L. 92–603 inserted reference to provisions of section 1395*oo* of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title V, § 5202(b), Feb. 8, 2006, 120 Stat. 47, provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall apply to claims submitted on or after January 1, 2006.''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 911(b) of Pub. L. 108–173 effective Oct. 1, 2005, except as otherwise provided, with transition rules authorizing Secretary of Health and Human Services to continue to enter into agreements under this section prior to such date, and provisions authorizing continuation of Medicare Integrity Program functions during the period that begins on Dec. 8, 2003, and ends on Oct. 1, 2011, see section 911(d) of Pub. L. 108–173, set out as an Effective Date; Transition Rule note under section 1395kk–1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 151(b)(4) of Pub. L. 103–432 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395u of this title] shall apply to contracts with fiscal intermediaries and carriers under title XVIII of the Social Security Act [this subchapter] for contract years beginning with 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13568(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall apply to claims received on or after October 1, 1993.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6202(d)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1395u of this title] shall apply to agreements and contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 203(f) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(1)(B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4031(a)(3)(A) of Pub. L. 100–203 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395u of this title] shall apply to claims received on or after July 1, 1988.''

Section 4032(c)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(e)(1)(C), July 1, 1988, 102 Stat. 775, provided that:

''(A) The amendment made by subsection (a) [amending this section] shall apply with respect to claims received on or after January 1, 1988.

''(B) The amendment made by subsection (b) [amending this section] shall apply with respect to reconsiderations requested on or after October 1, 1988.''

Section 4035(a)(3) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395hh of this title] shall take effect on the date of the enactment of this Act [Dec. 22, 1987] and shall apply to budgets for fiscal years beginning with fiscal year 1989.''

Section 4085(d)(2) of Pub. L. 100–203 provided that:

''(A) The amendment made by paragraph (1) [amending this section] shall apply to claims received on or after the date of enactment of this Act [Dec. 22, 1987].

''(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 [this section], and regulations, to such extent as may be necessary to implement the amendment made by paragraph (1).''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9311(d) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) [amending this section and section 1395u of this title] shall apply to claims received on or after November 1, 1986.

''(2) Sections 1816(c)(2)(C)) [sic] and 1842(c)(2)(C) of the Social Security Act [subsec. (c)(2)(C) of this section and section 1395u(c)(2)(C) of this title], as added by such amendments, shall apply to claims received on or after April 1, 1987.

''(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act [this section] and contracts under section 1842 of such Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis.''

Amendment by section 9352(a)(2) of Pub. L. 99–509 to be implemented by Secretary of Health and Human Services not later than 6 months after Oct. 21, 1986, see section 9352(c)(1) of Pub. L. 99–509, set out as a note under section 1320c–2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2326(d)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section and section 1395u of this title] shall apply to agreements and contracts entered into or renewed after September 30, 1984.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–499 effective Dec. 5, 1980, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 14(c), (d) of Pub. L. 95–142 provided that:

''(c) The amendment made by paragraphs (2) and (3) of subsection (a) [amending this section] to the extent that they require application of standards, criteria, and procedures developed under section 1816(f) of the Social Security Act [subsec. (f) of this section] shall apply to the entering into, renewal, or termination of agreements on and after October 1, 1978.

''(d) Except as provided in subsection (c), the amendment made by subsection (a)(2) [amending this section] shall apply to agreements entered into or renewed on or after the date of enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to cost reports of providers of services for accounting periods ending on or after June 30, 1973, see section 243(c) of Pub. L. 92–603, set out as an Effective Date note under section 1395*oo* of this title.

ADVISORY COMMITTEE ON MEDICARE HOME HEALTH CLAIMS

Section 427 of Pub. L. 100–360, which provided that the Administrator of the Health Care Financing Administration was to establish an advisory committee to be known as the Advisory Committee on Medicare Home Health Claims to study the reasons for the increase in the denial of claims for home health services during 1986 and 1987, the ramifications of such increase, and the need to reform the process involved in such denials, was repealed by Pub. L. 101–234, title III, § 301(a), Dec. 13, 1989, 103 Stat. 1985.

AMENDMENTS TO AGREEMENTS AND CONTRACTS NECESSARY TO IMPLEMENT SECTION 4031(a) OF PUB. L. 100–203

Section 4031(a)(3)(B) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act [this section] and contracts under section 1842 of such Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the provisions of this subsection [amending this section and section 1395u of this title] on a timely basis.''

PROHIBITION OF POLICIES OTHER THAN AS PROVIDED BY SECTION 4031 OF PUB. L. 100–203 INTENDED TO SLOW DOWN MEDICARE PAYMENTS; BUDGET CONSIDERATIONS

Section 4031(b), (c) of Pub. L. 100–203 provided that, notwithstanding any other provision of law, the Secretary of Health and Human Services was not authorized to issue, after Dec. 22, 1987, and before Oct. 1, 1990, any final regulation, instruction, or other policy change which was primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under this subchapter, and that section 4031 of Pub. L. 100–203, amending this section and section 1395u of this title and enacting provisions set out as notes under this section, was a necessary (but secondary) result of a significant policy change.

AMENDMENTS TO AGREEMENTS AND CONTRACTS NECESSARY TO IMPLEMENT SECTION 4032(a), (b) OF PUB. L. 100–203

Section 4032(c)(2) provided that: ''The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 [this section] and contracts under section 1842 of the Social Security Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the amendments made by subsections (a) and (b) [amending this section] on a timely basis.''

REPLACEMENT OF AGENCY, ORGANIZATION, OR CARRIER PROCESSING MEDICARE CLAIMS; NUMBER OF AGREEMENTS AND CONTRACTS AUTHORIZED FOR FISCAL YEARS 1985 THROUGH 1993

Section 2326(a) of Pub. L. 98–369, as amended by Pub. L. 98–617, § 3(a)(2), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–509, title IX, § 9321(b), Oct. 21, 1986, 100 Stat. 2016; Pub. L. 101–239, title VI, § 6215(a), Dec. 19, 1989, 103 Stat. 2252; Pub. L. 103–432, title I, § 159(a), Oct. 31, 1994, 108 Stat. 4443, provided that: ''During each fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1993), the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act [this section], and not more than two contracts under section 1842 of such Act [section 1395u of this title], on the basis of competitive bidding, without regard to the nominating process under section 1816(a) of such Act or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act during the term of the agreement. Such procedure may be used only for the purpose of replacing an agency or organization or carrier which over a 2-year period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary's cost and performance criteria. In addition, beginning with fiscal year 1990 and any subsequent fiscal year the Secretary may enter into such additional agreements and contracts without regard to such cost reimbursement provisions if the fiscal intermediary or carrier involved and the Secretary agree to waive such provisions, but the Secretary may not take any action that has the effect of requiring that the intermediary or carrier agree to waive such provisions, including requiring such a waiver as a condition for entering into or renewing such an agreement or contract. Any agency or organization or carrier selected on the basis of competitive bidding must perform all of the duties listed in section 1816(a) of such Act, or the duties listed in paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insuring organization (as determined by the Secretary).''

[Section 159(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending section 2326(a) of Pub. L. 98–369, set out above] shall apply beginning with fiscal year 1994.'']

[Section 6215(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending section 2326(a) of Pub. L. 98–369, set out above] shall apply beginning with fiscal year 1990.'']

AUDIT AND MEDICAL CLAIMS REVIEW

Pub. L. 97–248, title I, § 118, Sept. 3, 1982, 96 Stat. 355, as amended by Pub. L. 99–272, title IX, § 9216(a), Apr. 7, 1986, 100 Stat. 180, provided that, in addition to any funds otherwise provided for payments to intermediaries and carriers under agreements entered into under this section and section 1395u of this title, there were transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Fund an additional $45,000,000 for each of fiscal years 1983, 1984, and 1985, and $105,000,000 for each of fiscal years 1986, 1987, and 1988 for payments to such intermediaries and carriers under such agreements to be used exclusively for purposes of carrying out provider cost audits, of reviewing medical necessity, and of recovering third-party liability payments.

DEVELOPMENTAL DATE FOR STANDARDS, CRITERIA, AND PROCEDURES PURSUANT TO SUBSEC. (f) OF THIS SECTION

Section 14(b) of Pub. L. 95–142 directed the Secretary of Health, Education, and Welfare to develop the standards, criteria, and procedures described in subsection (f) of section 1816 of the Social Security Act [subsec. (f) of this section] (as added by subsection (a)(5)) not later than Oct. 1, 1978.

§ 1395i. Federal Hospital Insurance Trust Fund

(a) Creation; deposits; transfers from Treasury

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Hospital Insurance Trust

Fund'' (hereinafter in this section referred to as the ''Trust Fund''). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1986 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Commissioner of Social Security on the basis of records of wages established and maintained by the Commissioner of Social Security in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1986 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Commissioner of Social Security on the basis of records of self-employment established and maintained by the Commissioner of Social Security in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the ''Board of Trustees'') composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the ''Managing Trustee''). The Administrator of the Centers for Medicare & Medicaid Services shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years; Each report provided under paragraph (2) beginning with the report in 2005 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.[1]

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the

[1] So in original. See 2003 Amendment note below.

market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Authority of Managing Trustee to sell obligations

Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) Interest on and proceeds from sale or redemption of obligations

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) Payment of estimated taxes

(1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1986 with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of the records of wages established and maintained by the Commissioner of Social Security in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1986, and the Commissioner of Social Security shall furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.

(2) Repayments made under paragraph (1) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(g) Transfers from other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(h) Payments from Trust Fund amounts certified by Secretary

The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(1) of this title.

(i) Payment of travel expenses for travel within United States; reconsideration interviews and proceedings before administrative law judges

There are authorized to be made available for expenditure out of the Trust Fund such amounts as are required to pay travel expenses, either on an actual cost or commuted basis, to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 410(i) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Secretary) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(j) Loans from other Funds; interest; repayment; report to Congress

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing

authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Hospital Insurance Trust Fund, the Managing Trustee may, subject to paragraph (5), borrow such amounts as he determines to be appropriate from either the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund for transfer to and deposit in the Federal Hospital Insurance Trust Fund.

(2) In any case where a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from such Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (c) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Hospital Insurance Trust Fund, the Managing Trustee determines that the Hospital Insurance Trust Fund ratio exceeds 15 percent, he shall transfer from such Trust Fund to the lending trust fund an amount that—

(I) together with any amounts transferred to another lending trust fund under this paragraph for such year, will reduce the Hospital Insurance Trust Fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term ''Hospital Insurance Trust Fund ratio'' means, with respect to any calendar year, the ratio of—

(I) the balance in the Federal Hospital Insurance Trust Fund, as of the last day of such calendar year; to

(II) the amount estimated by the Secretary to be the total amount to be paid from the Federal Hospital Insurance Trust Fund during the calendar year following such calendar year (other than payments of interest on, and repayments of, loans from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under paragraph (1)), and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from the Railroad Retirement Account.

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987 and before January 1, 1990, the Managing Trustee shall transfer each month from the Federal Hospital Insurance Trust Fund to any Trust Fund that is owed any amount by the Federal Hospital Insurance Trust Fund on a loan made under paragraph (1), an amount not less than an amount equal to (I) the amount owed to such Trust Fund by the Federal Hospital Insurance Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

(4) The Board of Trustees shall make a timely report to the Congress of any amounts transferred (including interest payments) under this subsection.

(5)(A) No amounts may be loaned by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund under paragraph (1) during any month if the OASDI trust fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term ''OASDI trust fund ratio'' means, with respect to any month, the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Trust Fund from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the month for which such ratio is to be determined for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account.

(k) Health Care Fraud and Abuse Control Account

(1) Establishment

There is hereby established in the Trust Fund an expenditure account to be known as the ''Health Care Fraud and Abuse Control Account'' (in this subsection referred to as the ''Account'').

(2) Appropriated amounts to Trust Fund

(A) In general

There are hereby appropriated to the Trust Fund—

(i) such gifts and bequests as may be made as provided in subparagraph (B);

(ii) such amounts as may be deposited in the Trust Fund as provided in sections 242(b) and 249(c) of the Health Insurance Portability and Accountability Act of 1996, and subchapter XI of this chapter; and

(iii) such amounts as are transferred to the Trust Fund under subparagraph (C).

(B) Authorization to accept gifts

The Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Trust Fund, for the benefit of the Account or any activity financed through the Account.

(C) Transfer of amounts

The Managing Trustee shall transfer to the Trust Fund, under rules similar to the rules in section 9601 of the Internal Revenue Code of 1986, an amount equal to the sum of the following:

(i) Criminal fines recovered in cases involving a Federal health care offense (as defined in section 24(a) of title 18).

(ii) Civil monetary penalties and assessments imposed in health care cases, including amounts recovered under this subchapter and subchapters XI and XIX of this chapter, and chapter 38 of title 31 (except as otherwise provided by law).

(iii) Amounts resulting from the forfeiture of property by reason of a Federal health care offense.

(iv) Penalties and damages obtained and otherwise creditable to miscellaneous receipts of the general fund of the Treasury obtained under sections 3729 through 3733 of title 31 (known as the False Claims Act), in cases involving claims related to the provision of health care items and services (other than funds awarded to a relator, for restitution or otherwise authorized by law).

(D) Application

Nothing in subparagraph (C)(iii) shall be construed to limit the availability of recoveries and forfeitures obtained under title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] for the purpose of providing equitable or remedial relief for employee welfare benefit plans, and for participants and beneficiaries under such plans, as authorized under such title.

(3) Appropriated amounts to Account for fraud and abuse control program, etc.

(A) Departments of Health and Human Services and Justice

(i) In general

There are hereby appropriated to the Account from the Trust Fund such sums as the Secretary and the Attorney General certify are necessary to carry out the purposes described in subparagraph (C), to be available without further appropriation until expended, in an amount not to exceed—

(I) for fiscal year 1997, $104,000,000;

(II) for each of the fiscal years 1998 through 2003, the limit for the preceding fiscal year, increased by 15 percent;

(III) for each of fiscal years 2004, 2005, and 2006, the limit for fiscal year 2003;

(IV) for each of fiscal years 2007, 2008, 2009, and 2010, the limit under this clause for the preceding fiscal year, increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year; and

(V) for each fiscal year after fiscal year 2010, the limit under this clause for fiscal year 2010.

(ii) Medicare and medicaid activities

For each fiscal year, of the amount appropriated in clause (i), the following amounts shall be available only for the purposes of the activities of the Office of the Inspector General of the Department of Health and Human Services with respect to the programs under this subchapter and subchapter XIX of this chapter—

(I) for fiscal year 1997, not less than $60,000,000 and not more than $70,000,000;

(II) for fiscal year 1998, not less than $80,000,000 and not more than $90,000,000;

(III) for fiscal year 1999, not less than $90,000,000 and not more than $100,000,000;

(IV) for fiscal year 2000, not less than $110,000,000 and not more than $120,000,000;

(V) for fiscal year 2001, not less than $120,000,000 and not more than $130,000,000;

(VI) for fiscal year 2002, not less than $140,000,000 and not more than $150,000,000;

(VII) for each of fiscal years 2003, 2004, 2005, and 2006, not less than $150,000,000 and not more than $160,000,000;

(VIII) for fiscal year 2007, not less than $160,000,000, increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year;

(IX) for each of fiscal years 2008, 2009, and 2010, not less than the amount required under this clause for the preceding fiscal year, increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year; and

(X) for each fiscal year after fiscal year 2010, not less than the amount required under this clause for fiscal year 2010.

(B) Federal Bureau of Investigation

There are hereby appropriated from the general fund of the United States Treasury and hereby appropriated to the Account for transfer to the Federal Bureau of Investigation to carry out the purposes described in subparagraph (C), to be available without further appropriation until expended—

(i) for fiscal year 1997, $47,000,000;
(ii) for fiscal year 1998, $56,000,000;
(iii) for fiscal year 1999, $66,000,000;
(iv) for fiscal year 2000, $76,000,000;
(v) for fiscal year 2001, $88,000,000;
(vi) for fiscal year 2002, $101,000,000;
(vii) for each of fiscal years 2003, 2004, 2005, and 2006, $114,000,000;
(viii) for each of fiscal years 2007, 2008, 2009, and 2010, the amount to be appropriated under this subparagraph for the preceding fiscal year, increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year; and
(ix) for each fiscal year after fiscal year 2010, the amount to be appropriated under this subparagraph for fiscal year 2010.

(C) Use of funds

The purposes described in this subparagraph are to cover the costs (including equipment, salaries and benefits, and travel and training) of the administration and operation of the health care fraud and abuse control program established under section 1320a–7c(a) of this title, including the costs of—

(i) prosecuting health care matters (through criminal, civil, and administrative proceedings);
(ii) investigations;
(iii) financial and performance audits of health care programs and operations;
(iv) inspections and other evaluations; and
(v) provider and consumer education regarding compliance with the provisions of subchapter XI of this chapter.

(4) Appropriated amounts to Account for Medicare Integrity Program

(A) In general

There are hereby appropriated to the Account from the Trust Fund for each fiscal year such amounts as are necessary to carry out the Medicare Integrity Program under section 1395ddd of this title, subject to subparagraphs (B), (C), and (D) and to be available without further appropriation.

(B) Amounts specified

Subject to subparagraph (C), the amount appropriated under subparagraph (A) for a fiscal year is as follows:

(i) For fiscal year 1997, such amount shall be not less than $430,000,000 and not more than $440,000,000.
(ii) For fiscal year 1998, such amount shall be not less than $490,000,000 and not more than $500,000,000.
(iii) For fiscal year 1999, such amount shall be not less than $550,000,000 and not more than $560,000,000.
(iv) For fiscal year 2000, such amount shall be not less than $620,000,000 and not more than $630,000,000.
(v) For fiscal year 2001, such amount shall be not less than $670,000,000 and not more than $680,000,000.
(vi) For fiscal year 2002, such amount shall be not less than $690,000,000 and not more than $700,000,000.
(vii) For each fiscal year after fiscal year 2002, such amount shall be not less than $710,000,000 and not more than $720,000,000.

(C) Adjustments

The amount appropriated under subparagraph (A) for a fiscal year is increased as follows:

(i)[2] For fiscal year 2006, $100,000,000.

(D) Expansion of the Medicare-Medicaid Data Match Program

The amount appropriated under subparagraph (A) for a fiscal year is further increased as follows for purposes of carrying out section 1395ddd(b)(6) of this title for the respective fiscal year:

(i) $12,000,000 for fiscal year 2006.
(ii) $24,000,000 for fiscal year 2007.
(iii) $36,000,000 for fiscal year 2008.
(iv) $48,000,000 for fiscal year 2009.
(v) $60,000,000 for fiscal year 2010 and each fiscal year thereafter.

(5) Annual report

Not later than January 1, the Secretary and the Attorney General shall submit jointly a report to Congress which identifies—

(A) the amounts appropriated to the Trust Fund for the previous fiscal year under paragraph (2)(A) and the source of such amounts; and
(B) the amounts appropriated from the Trust Fund for such year under paragraph (3) and the justification for the expenditure of such amounts.

(6) GAO report

Not later than June 1, 1998, and January 1 of 2000, 2002, and 2004, the Comptroller General of the United States shall submit a report to Congress which—

(A) identifies—
(i) the amounts appropriated to the Trust Fund for the previous two fiscal years under paragraph (2)(A) and the source of such amounts; and
(ii) the amounts appropriated from the Trust Fund for such fiscal years under paragraph (3) and the justification for the expenditure of such amounts;

(B) identifies any expenditures from the Trust Fund with respect to activities not involving the program under this subchapter;
(C) identifies any savings to the Trust Fund, and any other savings, resulting from expenditures from the Trust Fund; and
(D) analyzes such other aspects of the operation of the Trust Fund as the Comptroller General of the United States considers appropriate.

(Aug. 14, 1935, ch. 531, title XVIII, § 1817, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 299; amended Pub. L. 90–248, title I, § 169(a), Jan. 2, 1968, 81 Stat. 875; Pub. L. 92–603, title I, § 132(d), Oct. 30, 1972, 86 Stat. 1361; Pub. L. 95–292, § 5, June 13, 1978, 92 Stat. 315; Pub. L. 96–265, title III, § 310(c), June 9, 1980, 94 Stat. 460; Pub. L. 97–123, § 1(b), Dec. 29, 1981, 95 Stat. 1659; Pub. L.

[2] So in original. No cl. (ii) has been enacted.

98–21, title I, §§ 141(b), 142(b)(1), (2)(A), (3), (4), 154(b), title III, § 341(b), Apr. 20, 1983, 97 Stat. 98, 100, 101, 107, 135; Pub. L. 98–369, div. B, title III, §§ 2337(a), 2354(b)(2), title VI, § 2663(j)(2)(F)(i), July 18, 1984, 98 Stat. 1091, 1100, 1170; Pub. L. 99–272, title IX, § 9213(b), Apr. 7, 1986, 100 Stat. 180; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–360, title II, § 212(c)(3), July 1, 1988, 102 Stat. 741; Pub. L. 100–647, title VIII, § 8005(a), Nov. 10, 1988, 102 Stat. 3781; Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–508, title V, § 5106(c), Nov. 5, 1990, 104 Stat. 1388–268; Pub. L. 103–296, title I, § 108(c)(1), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 104–191, title II, § 201(b), Aug. 21, 1996, 110 Stat. 1993; Pub. L. 105–33, title IV, § 4318, Aug. 5, 1997, 111 Stat. 392; Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(j)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366; Pub. L. 108–173, title VII, § 736(a)(5), (6), title VIII, § 801(d)(1), title IX, § 900(e)(1)(D), Dec. 8, 2003, 117 Stat. 2355, 2359, 2371; Pub. L. 109–171, title V, § 5204, title VI, § 6034(d)(2), Feb. 8, 2006, 120 Stat. 48, 78; Pub. L. 109–432, div. B, title III, § 303, Dec. 20, 2006, 120 Stat. 2992.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(1), (2), (f)(1), and (k)(2)(C), is classified generally to Title 26, Internal Revenue Code. Subtitle F of such Code appears at section 6001 et seq. of Title 26.

Section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (b)(2), is section 801(a) of Pub. L. 108–173, which is set out as a note under this section.

Sections 242(b) and 249(b) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (k)(2)(A)(ii), are sections 242(b) and 249(b) of Pub. L. 104–191, which are set out as notes under this section.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (k)(2)(D), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended. Title I of the Act is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2006—Subsec. (k)(3)(A)(i). Pub. L. 109–432, § 303(a)(1), in introductory provisions inserted ''until expended'' after ''without further appropriation'', in subcl. (II) struck out ''and'' at end, in subcl. (III) substituted ''for each of fiscal years 2004, 2005, and 2006'' for ''for each fiscal year after fiscal year 2003'' and semicolon for period at end, and added subcls. (IV) and (V).

Subsec. (k)(3)(A)(ii)(VI) to (X). Pub. L. 109–432, § 303(a)(2), in subcl. (VI) struck out ''and'' at end, in subcl. (VII) substituted ''for each of fiscal years 2003, 2004, 2005, and 2006'' for ''for each fiscal year after fiscal year 2002'' and semicolon for period at end, and added subcls. (VIII) to (X).

Subsec. (k)(3)(B). Pub. L. 109–432, § 303(b), in introductory provisions inserted ''until expended'' after ''without further appropriation'', in cl. (vi) struck out ''and'' at end, in cl. (vii) substituted ''for each of fiscal years 2003, 2004, 2005, and 2006'' for ''for each fiscal year after fiscal year 2002'' and semicolon for period at end, and added cls. (viii) and (ix).

Subsec. (k)(4)(A). Pub. L. 109–171, § 6034(d)(2)(A), substituted ''subparagraphs (B), (C), and (D)'' for ''subparagraph (B)''.

Subsec. (k)(4)(B). Pub. L. 109–171, § 5204(1), substituted ''Subject to subparagraph (C), the amount'' for ''The amount'' in introductory provisions.

Subsec. (k)(4)(C). Pub. L. 109–171, § 5204(2), added subpar. (C).

Subsec. (k)(4)(D). Pub. L. 109–171, § 6034(d)(2)(B), added subpar. (D).

2003—Subsec. (b). Pub. L. 108–173, § 900(e)(1)(D), in fifth sentence of introductory provisions, substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'', and, in second sentence of concluding provisions, substituted ''Chief Actuary of the Centers for Medicare & Medicaid Services'' for ''Chief Actuarial Officer of the Health Care Financing Administration''.

Subsec. (b)(2). Pub. L. 108–173, § 801(d)(1), inserted at end ''Each report provided under paragraph (2) beginning with the report in 2005 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.''

Subsec. (k)(3)(A)(i)(I). Pub. L. 108–173, § 736(a)(5)(A), substituted semicolon for comma at end.

Subsec. (k)(3)(A)(ii). Pub. L. 108–173, § 736(a)(5)(B), substituted ''the programs under this subchapter and subchapter XIX of this chapter'' for ''the Medicare and medicaid programs'' in introductory provisions.

Subsec. (k)(6)(B). Pub. L. 108–173, § 736(a)(6), substituted ''program under this subchapter'' for ''Medicare program under this subchapter''.

1999—Subsec. (k)(2)(C)(i). Pub. L. 106–113 substituted ''section 24(a)'' for ''section 982(a)(6)(B)''.

1997—Subsec. (k)(6). Pub. L. 105–33 inserted ''June 1, 1998, and'' after ''Not later than'' in introductory provisions.

1996—Subsec. (k). Pub. L. 104–191 added subsec. (k).

1994—Subsec. (a). Pub. L. 103–296, § 108(c)(1)(A), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' wherever appearing.

Subsec. (b). Pub. L. 103–296, § 108(c)(1)(B), inserted ''the Commissioner of Social Security,'' after ''composed of'' in introductory provisions.

Subsec. (f)(1). Pub. L. 103–296, § 108(c)(1)(C), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

1990—Subsec. (i). Pub. L. 101–508 inserted at end ''The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.''

1989—Subsec. (b). Pub. L. 101–234 repealed Pub. L. 100–360, § 212(c)(3), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b). Pub. L. 100–647 inserted after first sentence ''A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term.''

Pub. L. 100–360 inserted after sixth sentence ''Such report shall also identify (and treat separately) those outlays from the Trust Fund which are also outlays from the Medicare Catastrophic Coverage Account created under section 1395t–2 of this title and those outlays for which there are amounts transferred into the Federal Hospital Insurance Catastrophic Coverage Reserve Fund.''

1986—Subsec. (a)(1), (2). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b). Pub. L. 99–272 struck out provision at end of penultimate sentence that certification shall not refer to economic assumptions underlying Trustee's report.

Subsec. (f)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

1984—Subsec. (a). Pub. L. 98–369, § 2337(a), in provisions following par. (2) substituted ''from time to time'' for ''monthly on the first day of each calendar month'', ''paid to or deposited into the Treasury'' for ''to be paid to or deposited into the Treasury during such month'', and struck out provision that all amounts transferred to the Trust Fund under the preceding sentence had to be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund, and the Trust Fund had to pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsec. (c).

Subsec. (a)(1), (2). Pub. L. 98–369, § 2663(j)(2)(F)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

Subsec. (c). Pub. L. 98–369, § 2354(b)(2), substituted ''under chapter 31 of title 31'' for ''under the Second Liberty Bond Act, as amended''.

Subsecs. (f)(1), (g), (h). Pub. L. 98–369, § 2663(j)(2)(F)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

1983—Subsec. (a). Pub. L. 98–21, § 141(b)(1)(A), in provisions following par. (2) substituted ''monthly on the first day of each calendar month'' for ''from time to time'', substituted ''to be paid to or deposited into the Treasury during such month'' for ''paid to or deposited into the Treasury'', and inserted provision that all amounts transferred to the Trust Fund under existing provisions shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund; and the Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on Jan. 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsection (c).

Subsec. (b). Pub. L. 98–21, § 341(b)(1), substituted in provisions preceding par. (1) ''Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate'' for ''Secretary of Health, Education, and Welfare, all ex officio''.

Pub. L. 98–21, § 154(b), inserted at end provision that the report referred to in par. (2) shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Pub. L. 98–21, § 341(b)(2), inserted at end provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

Subsec. (j)(1). Pub. L. 98–21, § 142(b)(1), substituted reference to January 1988 for reference to January 1983 and inserted '', subject to paragraph (5),'' after ''may''.

Subsec. (j)(2). Pub. L. 98–21, § 142(b)(2)(A), substituted ''on the last day of each month after such loan is made'' for ''from time to time'', substituted ''the total interest accrued to such day'' for ''interest'', and inserted ''(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)''.

Subsec. (j)(3)(A). Pub. L. 98–21, § 142(b)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j)(5). Pub. L. 98–21, § 142(b)(4), added par. (5).

1981—Subsec. (j). Pub. L. 97–123 added subsec. (j).

1980—Subsec. (i). Pub. L. 96–265 added subsec. (i).

1978—Subsec. (b). Pub. L. 95–292 substituted ''Administrator of the Health Care Financing Administration'' for ''Commissioner of Social Security'' in provisions preceding par. (1).

1972—Subsec. (a). Pub. L. 92–603 inserted ''such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and'' after ''consist of'' and before ''such amounts'' in provisions preceding par. (1).

1968—Subsec. (b)(2). Pub. L. 90–248 substituted ''April'' for ''March''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(j)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366, provided that: ''The amendment made by this subsection [amending this section] shall take effect as if included in the amendment made by section 201 of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 1992).''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 100–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to members of Board of Trustees of Federal Hospital Insurance Trust Fund serving on such Board as members of the public on or after Nov. 10, 1988, see section 8005(b) of Pub. L. 100–647, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2337(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the first day of the month following the month in which this Act is enacted [July 1984].''

Amendment by section 2354(b)(2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(i) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 141(b) of Pub. L. 98–21 effective on first day of month following April 1983, see sec-

tion 141(c) of Pub. L. 98–21, set out as a note under section 401 of this title.

Section 142(b)(2)(B) of Pub. L. 98–21 provided that: ''The amendment made by this paragraph [amending this section] shall apply with respect to months beginning more than 30 days after the date of enactment of this Act [Apr. 20, 1983].''

Amendment by sections 154(b) and 341(b) of Pub. L. 98–21 effective Apr. 20, 1983, see sections 154(e) and 341(d) of Pub. L. 98–21, set out as notes under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–123 effective Dec. 29, 1981, see section 1(c) of Pub. L. 97–123, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to gifts and bequests received after Oct. 30, 1972, see section 132(f) of Pub. L. 92–603, set out as a note under section 401 of this title.

RESTORATION OF MEDICARE TRUST FUNDS

Pub. L. 108–173, title VII, § 734, Dec. 8, 2003, 117 Stat. 2352, provided that:

''(a) DEFINITIONS.—In this section:

''(1) CLERICAL ERROR.—The term 'clerical error' means a failure that occurs on or after April 15, 2001, to have transferred the correct amount from the general fund of the Treasury to a Trust Fund.

''(2) TRUST FUND.—The term 'Trust Fund' means the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t).

''(b) CORRECTION OF TRUST FUND HOLDINGS.—

''(1) IN GENERAL.—The Secretary of the Treasury shall take the actions described in paragraph (2) with respect to the Trust Fund with the goal being that, after such actions are taken, the holdings of the Trust Fund will replicate, to the extent practicable in the judgment of the Secretary of the Treasury, in consultation with the Secretary [of Health and Human Services], the holdings that would have been held by the Trust Fund if the clerical error involved had not occurred.

''(2) OBLIGATIONS ISSUED AND REDEEMED.—The Secretary of the Treasury shall—

''(A) issue to the Trust Fund obligations under chapter 31 of title 31, United States Code, that bear issue dates, interest rates, and maturity dates that are the same as those for the obligations that—

''(i) would have been issued to the Trust Fund if the clerical error involved had not occurred; or

''(ii) were issued to the Trust Fund and were redeemed by reason of the clerical error involved; and

''(B) redeem from the Trust Fund obligations that would have been redeemed from the Trust Fund if the clerical error involved had not occurred.

''(c) APPROPRIATION.—There is appropriated to the Trust Fund, out of any money in the Treasury not otherwise appropriated, an amount determined by the Secretary of the Treasury, in consultation with the Secretary, to be equal to the interest income lost by the Trust Fund through the date on which the appropriation is being made as a result of the clerical error involved.

''(d) CONGRESSIONAL NOTICE.—In the case of a clerical error that occurs after April 15, 2001, the Secretary of the Treasury, before taking action to correct the error under this section, shall notify the appropriate committees of Congress concerning such error and the actions to be taken under this section in response to such error.

''(e) DEADLINE.—With respect to the clerical error that occurred on April 15, 2001, not later than 120 days after the date of the enactment of this Act [Dec. 8, 2003]—

''(1) the Secretary of the Treasury shall take the actions under subsection (b)(1); and

''(2) the appropriation under subsection (c) shall be made.''

INCLUSION IN ANNUAL REPORT OF MEDICARE TRUSTEES OF INFORMATION ON STATUS OF MEDICARE TRUST FUNDS

Pub. L. 108–173, title VIII, § 801, Dec. 8, 2003, 117 Stat. 2357, provided that:

''(a) DETERMINATIONS OF EXCESS GENERAL REVENUE MEDICARE FUNDING.—

''(1) IN GENERAL.—The Board of Trustees of each medicare trust fund shall include in the annual reports submitted under subsection (b)(2) of sections 1817 and 1841 of the Social Security Act (42 U.S.C. 1395i and 1395t)—

''(A) the information described in subsection (b); and

''(B) a determination as to whether there is projected to be excess general revenue medicare funding (as defined in subsection (c)) for the fiscal year in which the report is submitted or for any of the succeeding 6 fiscal years.

''(2) MEDICARE FUNDING WARNING.—For purposes of section 1105(h) of title 31, United States Code, and this subtitle [subtitle A (§§ 801–804) of title VIII of Pub. L. 108–173, amending this section, section 1395t of this title, and section 1105 of Title 31, Money and Finance, and enacting provisions set out as a note under section 1105 of Title 31], an affirmative determination under paragraph (1)(B) in 2 consecutive annual reports shall be treated as a medicare funding warning in the year in which the second such report is made.

''(3) 7-FISCAL-YEAR REPORTING PERIOD.—For purposes of this subtitle, the term '7-fiscal-year reporting period' means, with respect to a year in which an annual report described in paragraph (1) is made, the period of 7 consecutive fiscal years beginning with the fiscal year in which the report is submitted.

''(b) INFORMATION.—The information described in this subsection for an annual report in a year is as follows:

''(1) PROJECTIONS OF GROWTH OF GENERAL REVENUE SPENDING.—A statement of the general revenue medicare funding as a percentage of the total medicare outlays for each of the following:

''(A) Each fiscal year within the 7-fiscal-year reporting period.

''(B) Previous fiscal years and as of 10, 50, and 75 years after such year.

''(2) COMPARISON WITH OTHER GROWTH TRENDS.—A comparison of the trend of such percentages with the annual growth rate in the following:

''(A) The gross domestic product.

''(B) Private health costs.

''(C) National health expenditures.

''(D) Other appropriate measures.

''(3) PART D SPENDING.—Expenditures, including trends in expenditures, under part D of title XVIII of the Social Security Act [part D of this subchapter], as added by section 101.

''(4) COMBINED MEDICARE TRUST FUND ANALYSIS.—A financial analysis of the combined medicare trust

funds if general revenue medicare funding were limited to the percentage specified in subsection (c)(1)(B) of total medicare outlays.

''(c) DEFINITIONS.—For purposes of this section:

''(1) EXCESS GENERAL REVENUE MEDICARE FUNDING.—The term 'excess general revenue medicare funding' means, with respect to a fiscal year, that—

''(A) general revenue medicare funding (as defined in paragraph (2)), expressed as a percentage of total medicare outlays (as defined in paragraph (4)) for the fiscal year; exceeds

''(B) 45 percent.

''(2) GENERAL REVENUE MEDICARE FUNDING.—The term 'general revenue medicare funding' means for a year—

''(A) the total medicare outlays (as defined in paragraph (4)) for the year; minus

''(B) the dedicated medicare financing sources (as defined in paragraph (3)) for the year.

''(3) DEDICATED MEDICARE FINANCING SOURCES.—The term 'dedicated medicare financing sources' means the following:

''(A) HOSPITAL INSURANCE TAX.—Amounts appropriated to the Hospital Insurance Trust Fund under the third sentence of section 1817(a) of the Social Security Act (42 U.S.C. 1395i(a)) and amounts transferred to such Trust Fund under section 7(c)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(c)(2)).

''(B) TAXATION OF CERTAIN OASDI BENEFITS.—Amounts appropriated to the Hospital Insurance Trust Fund under section 121(e)(1)(B) of the Social Security Amendments of 1983 (Public Law 98–21) [set out as a note under section 401 of this title], as inserted by section 13215(c) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66).

''(C) STATE TRANSFERS.—The State share of amounts paid to the Federal Government by a State under section 1843 of the Social Security Act (42 U.S.C. 1395v) or pursuant to section 1935(c) of such Act [section 1396u–5(c) of this title].

''(D) PREMIUMS.—The following premiums:

''(i) PART A.—Premiums paid by non-Federal sources under sections 1818 and section [sic] 1818A (42 U.S.C. 1395i–2 and 1395i–2a) of such Act.

''(ii) PART B.—Premiums paid by non-Federal sources under section 1839 of such Act (42 U.S.C. 1395r), including any adjustments in premiums under such section.

''(iii) PART D.—Monthly beneficiary premiums paid under part D of title XVIII of such Act [part D of this subchapter], as added by section 101, and MA monthly prescription drug beneficiary premiums paid under part C of such title [part C of this subchapter] insofar as they are attributable to basic prescription drug coverage.

Premiums under clauses (ii) and (iii) shall be determined without regard to any reduction in such premiums attributable to a beneficiary rebate under section 1854(b)(1)(C) of such title [section 1395w–24(b)(1)(C) of this title], as amended by section 222(b)(1), and premiums under clause (iii) are deemed to include any amounts paid under section 1860D–13(b) of such title [section 1395w–113(b) of this title], as added by section 101.

''(E) GIFTS.—Amounts received by the medicare trust funds under section 201(i) of the Social Security Act (42 U.S.C. 401(i)).

''(4) TOTAL MEDICARE OUTLAYS.—The term 'total medicare outlays' means total outlays from the medicare trust funds and shall—

''(A) include payments made to plans under part C of title XVIII of the Social Security Act [part C of this subchapter] that are attributable to any rebates under section 1854(b)(1)(C) of such Act (42 U.S.C. 1395w–24(b)(1)(C)), as amended by section 222(b)(1);

''(B) include administrative expenditures made in carrying out title XVIII of such Act [this subchapter] and Federal outlays under section 1935(b) of such Act [section 1396u–5(b) of this title], as added by section 103(a)(2); and

''(C) offset outlays by the amount of fraud and abuse collections insofar as they are applied or deposited into a medicare trust fund.

''(5) MEDICARE TRUST FUND.—The term 'medicare trust fund' means—

''(A) the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i); and

''(B) the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t), including the Medicare Prescription Drug Account under such Trust Fund.

''(d) CONFORMING AMENDMENTS.—

''(1) FEDERAL HOSPITAL INSURANCE TRUST FUND [Amended section 1395i of this title].

''(2) FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND [Amended section 1395t of this title].

''(e) NOTICE OF MEDICARE FUNDING WARNING.—Whenever any report described in subsection (a) contains a determination that for any fiscal year within the 7-fiscal-year reporting period there will be excess general revenue medicare funding, Congress and the President should address the matter under existing rules and procedures.''

CRIMINAL FINES DEPOSITED IN FEDERAL HOSPITAL INSURANCE TRUST FUND

Section 242(b) of Pub. L. 104–191 provided that: ''The Secretary of the Treasury shall deposit into the Federal Hospital Insurance Trust Fund pursuant to section 1817(k)(2)(C) of the Social Security Act (42 U.S.C. 1395i) an amount equal to the criminal fines imposed under section 1347 of title 18, United States Code (relating to health care fraud).''

PROPERTY FORFEITED DEPOSITED IN FEDERAL HOSPITAL INSURANCE TRUST FUND

Section 249(c) of Pub. L. 104–191 provided that:

''(1) IN GENERAL.—After the payment of the costs of asset forfeiture has been made and after all restoration payments (if any) have been made, and notwithstanding any other provision of law, the Secretary of the Treasury shall deposit into the Federal Hospital Insurance Trust Fund pursuant to section 1817(k)(2)(C) of the Social Security Act [subsec. (k)(2)(C) of this section], as added by section 301(b), an amount equal to the net amount realized from the forfeiture of property by reason of a Federal health care offense pursuant to section 982(a)(6) of title 18, United States Code.

''(2) COSTS OF ASSET FORFEITURE.—For purposes of paragraph (1), the term 'payment of the costs of asset forfeiture' means—

''(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell, or dispose of property under seizure, detention, or forfeited, or of any other necessary expenses incident to the seizure, detention, forfeiture, or disposal of such property, including payment for—

''(i) contract services;

''(ii) the employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

''(iii) reimbursement of any Federal, State, or local agency for any expenditures made to perform the functions described in this subparagraph;

''(B) at the discretion of the Attorney General, the payment of awards for information or assistance leading to a civil or criminal forfeiture involving any Federal agency participating in the Health Care Fraud and Abuse Control Account;

''(C) the compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage

and the amount of payment to be made, and the employment of attorneys and other personnel skilled in State real estate law as necessary;

''(D) payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

''(E) the payment of State and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

''(3) RESTORATION PAYMENT.—Notwithstanding any other provision of law, if the Federal health care offense referred to in paragraph (1) resulted in a loss to an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(1)], the Secretary of the Treasury shall transfer to such employee welfare benefit plan, from the amount realized from the forfeiture of property referred to in paragraph (1), an amount equal to such loss. For purposes of paragraph (1), the term 'restoration payment' means the amount transferred to an employee welfare benefit plan pursuant to this paragraph.''

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Notwithstanding subsec. (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98–21, set out as a note under section 401 of this title.

§ 1395i–1. Authorization of appropriations

There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1395i of this title) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under this part with respect to individuals who are qualified railroad retirement beneficiaries (as defined in section 426(c) of this title) and who are not, and upon filing application for monthly insurance benefits under section 402 of this title would not be, entitled to such benefits if service as an employee (as defined in the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.]) after December 31, 1936, had been included in the term ''employment'' as defined in this chapter,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss of interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the individuals described in paragraph (1) had not been entitled to benefits under this part.

(Pub. L. 89–97, title I, § 111(d), July 30, 1965, 79 Stat. 343.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in text, is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and which was classified principally to subchapter III (§ 228a et seq.) of chapter 9 of Title 45, Railroads. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of title 45. For complete classification of these Acts to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Social Security Amendments of 1965 and also as part of the Health Insurance for the Aged Act, and not as part of the Social Security Act which comprises this chapter.

EFFECTIVE DATE

Section 111(e) of Pub. L. 89–97 provided that:

''(1) The amendments made by the preceding provisions of this section [enacting this section and section 228s–2 of Title 45, Railroads, and amending section 1395kk of this title and sections 1401, 3101, 3111, 3201, 3211, and 3221 of Title 26, Internal Revenue Code, and section 228e of Title 45] shall apply to the calendar year 1966 or to any subsequent calendar year, but only if the requirement in paragraph (2) has been met with respect to such calendar year.

''(2) The requirement referred to in paragraph (1) shall be deemed to have been met with respect to any calendar year if, as of the October 1 immediately preceding such calendar year, the Railroad Retirement Tax Act [section 3101 et seq. of Title 26] provides that the maximum amount of monthly compensation taxable under such Act during all months of such calendar year will be an amount equal to one-twelfth of the maximum wages which the Federal Insurance Contributions Act [section 3201 et seq. of Title 26] provides may be counted for such calendar year.''

§ 1395i–1a. Repealed. Pub. L. 101–234, title I, § 102(a), Dec. 13, 1989, 103 Stat. 1980

Section, act Aug. 14, 1935, ch. 531, title XVIII, § 1817A, as added July 1, 1988, Pub. L. 100–360, title I, § 112(a), 102 Stat. 698, provided for establishment and operation of Federal Hospital Insurance Catastrophic Coverage Reserve Fund.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1990, see section 102(d)(1) of Pub. L. 101–234, set out as a note under section 59B of Title 26, Internal Revenue Code.

ADJUSTMENTS FOR INTEREST LOST DUE TO DELAY OF TRANSFERS TO RESERVE FUND DURING 1989

Section 112(b) of Pub. L. 100–360, which directed Secretary of the Treasury, in July of 1990, to calculate interest lost to Federal Hospital Insurance Catastrophic Coverage Reserve Fund due to lag between outlays (attributable to amendments made by Pub. L. 100–360) from Federal Hospital Insurance Trust Fund during 1989 and transfers made to such Reserve Fund to cover such outlays, and provided that appropriations under subsection (a)(2) of this section include amount so calculated, was repealed by Pub. L. 101–234, title I, § 102(a), Dec. 13, 1989, 103 Stat. 1980.

§ 1395i–2. Hospital insurance benefits for uninsured elderly individuals not otherwise eligible

(a) Individuals eligible to enroll

Every individual who—

(1) has attained the age of 65,

(2) is enrolled under part B of this subchapter,

(3) is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this section, and

(4) is not otherwise entitled to benefits under this part,

shall be eligible to enroll in the insurance program established by this part. Except as otherwise provided, any reference to an individual entitled to benefits under this part includes an individual entitled to benefits under this part pursuant to an enrollment under this section or section 1395i–2a of this title.

(b) Time, manner, and form of enrollment

An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.

(c) Period of enrollment; scope of coverage

The provisions of section 1395p of this title (except subsection (f) thereof), section 1395q of this title, subsection (b) of section 1395r of this title, and subsections (f) and (h) of section 1395s of this title shall apply to persons authorized to enroll under this section except that—

(1) individuals who meet the conditions of subsection (a)(1), (3), and (4) of this section on or before the last day of the seventh month after October 1972 may enroll under this part and (if not already so enrolled) may also enroll under part B of this subchapter during an initial general enrollment period which shall begin on the first day of the second month which begins after October 30, 1972, and shall end on the last day of the tenth month after October 1972;

(2) in the case of an individual who first meets the conditions of eligibility under this section on or after the first day of the eighth month after October 1972, the initial enrollment period shall begin on the first day of the third month before the month in which he first becomes eligible and shall end 7 months later;

(3) in the case of an individual who enrolls pursuant to paragraph (1) of this subsection, entitlement to benefits shall begin on—

(A) the first day of the second month after the month in which he enrolls,

(B) July 1, 1973, or

(C) the first day of the first month in which he meets the requirements of subsection (a) of this section,

whichever is the latest;

(4) an individual's entitlement under this section shall terminate with the month before the first month in which he becomes eligible for hospital insurance benefits under section 426 of this title or section 426a of this title; and upon such termination, such individual shall be deemed, solely for purposes of hospital insurance entitlement, to have filed in such first month the application required to establish such entitlement;

(5) termination of coverage for supplementary medical insurance shall result in simultaneous termination of hospital insurance benefits for uninsured individuals who are not otherwise entitled to benefits under this chapter;

(6) any percent increase effected under section 1395r(b) of this title in an individual's monthly premium may not exceed 10 percent and shall only apply to premiums paid during a period equal to twice the number of months in the full 12-month periods described in that section and shall be subject to reduction in accordance with subsection (d)(6) of this section;

(7) an individual who meets the conditions of subsection (a) of this section may enroll under this part during a special enrollment period that includes any month during any part of which the individual is enrolled under section 1395mm of this title with an eligible organization and ending with the last day of the 8th consecutive month in which the individual is at no time so enrolled;

(8) in the case of an individual who enrolls during a special enrollment period under paragraph (7)—

(A) in any month of the special enrollment period in which the individual is at any time enrolled under section 1395mm of this title with an eligible organization or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

(B) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls; and

(9) in applying the provisions of section 1395r(b) of this title, there shall not be taken into account months for which the individual can demonstrate that the individual was enrolled under section 1395mm of this title with an eligible organization.

(d) Monthly premiums

(1) The Secretary shall, during September of each year (beginning with 1988), estimate the monthly actuarial rate for months in the succeeding year. Such actuarial rate shall be one-twelfth of the amount which the Secretary estimates (on an average, per capita basis) is equal to 100 percent of the benefits and administrative costs which will be payable from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in the succeeding year with respect to individuals age 65 and over who will be entitled to benefits under this part during that year.

(2) The Secretary shall, during September of each year[1] determine and promulgate the dollar amount which shall be applicable for premiums for months occurring in the following year. Subject to paragraphs (4) and (5), the amount of an individual's monthly premium under this section shall be equal to the monthly actuarial rate determined under paragraph (1) for that following year. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not a multiple of $1, to the next higher multiple of $1).

(3) Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium under this section, he shall,

[1] So in original. Probably should be followed by a comma.

at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for individuals 65 and older as provided in paragraph (1).

(4)(A) In the case of an individual described in subparagraph (B), the monthly premium for a month shall be reduced by the applicable reduction percent specified in the following table:

For a month in:	The applicable reduction percent is:
1994	25 percent
1995	30 percent
1996	35 percent
1997	40 percent
1998 or subsequent year	45 percent.

(B) An individual described in this subparagraph with respect to a month is an individual who establishes to the satisfaction of the Secretary that, as of the last day of the previous month, the individual—

(i) had at least 30 quarters of coverage under subchapter II of this chapter;

(ii) was married (and had been married for the previous 1-year period) to an individual who had at least 30 quarters of coverage under such subchapter;

(iii) had been married to an individual for a period of at least 1 year (at the time of such individual's death) if at such time the individual had at least 30 quarters of coverage under such subchapter; or

(iv) is divorced from an individual and had been married to the individual for a period of at least 10 years (at the time of the divorce) if at such time the individual had at least 30 quarters of coverage under such subchapter.

(5)(A) The amount of the monthly premium shall be zero in the case of an individual who is a person described in subparagraph (B) for a month, if—

(i) the individual's premium under this section for the month is not (and will not be) paid for, in whole or in part, by a State (under subchapter XIX of this chapter or otherwise), a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions thereof; and

(ii) in each of 84 months before such month, the individual was enrolled in this part under this section and the payment of the individual's premium under this section for the month was not paid for, in whole or in part, by a State (under subchapter XIX of this chapter or otherwise), a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions thereof.

(B) A person described in this subparagraph for a month is a person who establishes to the satisfaction of the Secretary that, as of the last day of the previous month—

(i)(I) the person was receiving cash benefits under a qualified State or local government retirement system (as defined in subparagraph (C)) on the basis of the person's employment in one or more positions covered under any such system, and (II) the person would have at least 40 quarters of coverage under subchapter II of this chapter if remuneration for medicare qualified government employment (as defined in paragraph (1) of section 410(p) of this title, but determined without regard to paragraph (3) of such section) paid to such person were treated as wages paid to such person and credited for purposes of determining quarters of coverage under section 413 of this title;

(ii)(I) the person was married (and had been married for the previous 1-year period) to an individual who is described in clause (i), or (II) the person met the requirement of clause (i)(II) and was married (and had been married for the previous 1-year period) to an individual described in clause (i)(I);

(iii) the person had been married to an individual for a period of at least 1 year (at the time of such individual's death) if (I) the individual was described in clause (i) at the time of the individual's death, or (II) the person met the requirement of clause (i)(II) and the individual was described in clause (i)(I) at the time of the individual's death; or

(iv) the person is divorced from an individual and had been married to the individual for a period of at least 10 years (at the time of the divorce) if (I) the individual was described in clause (i) at the time of the divorce, or (II) the person met the requirement of clause (i)(II) and the individual was described in clause (i)(I) at the time of the divorce.

(C) For purposes of subparagraph (B)(i)(I), the term ''qualified State or local government retirement system'' means a retirement system that—

(i) is established or maintained by a State or political subdivision thereof, or an agency or instrumentality of one or more States or political subdivisions thereof;

(ii) covers positions of some or all employees of such a State, subdivision, agency, or instrumentality; and

(iii) does not adjust cash retirement benefits based on eligibility for a reduction in premium under this paragraph.

(6)(A) In the case where a State, a political subdivision of a State, or an agency or instrumentality of a State or political subdivision thereof determines to pay, for the life of each individual, the monthly premiums due under paragraph (1) on behalf of each of the individuals in a qualified State or local government retiree group who meets the conditions of subsection (a) of this section, the amount of any increase otherwise applicable under section 1395r(b) of this title (as applied and modified by subsection (c)(6) of this section) with respect to the monthly premium for benefits under this part for an individual who is a member of such group shall be reduced by the total amount of taxes paid under section 3101(b) of the Internal Revenue Code of 1986 by such individual and under section 3111(b) of such Code by the employers of such individual on behalf of such individual with respect to employment (as defined in section 3121(b) of such Code).

(B) For purposes of this paragraph, the term ''qualified State or local government retiree

group'' means all of the individuals who retire prior to a specified date that is before January 1, 2002, from employment in one or more occupations or other broad classes of employees of—

(i) the State;

(ii) a political subdivision of the State; or

(iii) an agency or instrumentality of the State or political subdivision of the State.

(e) Contract or other arrangement for payment of monthly premiums

Payment of the monthly premiums on behalf of any individual who meets the conditions of subsection (a) of this section may be made by any public or private agency or organization under a contract or other arrangement entered into between it and the Secretary if the Secretary determines that payment of such premiums under such contract or arrangement is administratively feasible.

(f) Deposit of amounts into Treasury

Amounts paid to the Secretary for coverage under this section shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

(g) Buy-in under this part for qualified medicare beneficiaries

(1) The Secretary shall, at the request of a State made after 1989, enter into a modification of an agreement entered into with the State pursuant to section 1395v(a) of this title under which the agreement provides for enrollment in the program established by this part of qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title).

(2)(A) Except as provided in subparagraph (B), the provisions of subsections (c), (d), (e), and (f) of section 1395v of this title shall apply to qualified medicare beneficiaries enrolled, pursuant to such agreement, in the program established by this part in the same manner and to the same extent as they apply to qualified medicare beneficiaries enrolled, pursuant to such agreement, in part B of this subchapter.

(B) For purposes of this subsection, section 1395v(d)(1) of this title shall be applied by substituting ''section 1395i–2 of this title'' for ''section 1395r of this title'' and ''subsection (c)(6) (with reference to subsection (b) of section 1395r of this title)'' for ''subsection (b)''.

(Aug. 14, 1935, ch. 531, title XVIII, § 1818, as added Pub. L. 92–603, title II, § 202, Oct. 30, 1972, 86 Stat. 1374; amended Pub. L. 98–21, title VI, § 606(a)(3)(D), (b), Apr. 20, 1983, 97 Stat. 170, 171; Pub. L. 98–369, div. B, title III, §§ 2315(e), 2354(b)(3), (4), July 18, 1984, 98 Stat. 1080, 1100; Pub. L. 99–272, title IX, § 9124(a), Apr. 7, 1986, 100 Stat. 168; Pub. L. 100–203, title IV, § 4009(j)(9), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(b)(8)(D), July 1, 1988, 102 Stat. 772; Pub. L. 100–360, title I, § 103, July 1, 1988, 102 Stat. 687; Pub. L. 100–485, title VI, § 608(d)(2), Oct. 13, 1988, 102 Stat. 2413; Pub. L. 101–239, title VI, §§ 6012(a)(1), 6013(a), Dec. 19, 1989, 103 Stat. 2161, 2163; Pub. L. 101–508, title IV, § 4008(g)(1), (m)(3)(D), Nov. 5, 1990, 104 Stat. 1388–45, 1388–54; Pub. L. 103–66, title XIII, § 13508(a), Aug. 10, 1993, 107 Stat. 579; Pub. L. 105–33, title IV, § 4453(a), Aug. 5, 1997, 111 Stat. 425; Pub. L. 106–554, § 1(a)(6) [title III, § 331(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–502; Pub. L. 108–173, title I, § 101(e)(5), title VII, § 736(a)(7), Dec. 8, 2003, 117 Stat. 2151, 2355.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsecs. (a)(2), (c)(1), and (g)(2)(A), is classified to section 1395j et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsec. (d)(6)(A), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, § 101(e)(5), inserted at end of concluding provisions ''Except as otherwise provided, any reference to an individual entitled to benefits under this part includes an individual entitled to benefits under this part pursuant to an enrollment under this section or section 1395i–2a of this title.''

Subsec. (d)(6)(A). Pub. L. 108–173, § 736(a)(7)(A), inserted ''of such Code'' after ''3111(b)''.

Subsec. (g)(2)(B). Pub. L. 108–173, § 736(a)(7)(B), substituted ''subsection (b)'' for ''subsection (b).''

2000—Subsec. (c)(6). Pub. L. 106–554, § 1(a)(6) [title III, § 331(a)(1)], inserted ''and shall be subject to reduction in accordance with subsection (d)(6) of this section'' before semicolon.

Subsec. (d)(6). Pub. L. 106–554, § 1(a)(6) [title III, § 331(a)(2)], added par. (6).

1997—Subsec. (d)(2). Pub. L. 105–33, § 4453(a)(1), substituted ''paragraphs (4) and (5)'' for ''paragraph (4)''.

Subsec. (d)(5). Pub. L. 105–33, § 4453(a)(2), added par. (5).

1993—Subsec. (d)(2). Pub. L. 103–66, § 13508(a)(1), substituted ''Subject to paragraph (4), the amount of an individual's monthly premium under this section'' for ''Such amount''.

Subsec. (d)(4). Pub. L. 103–66, § 13508(a)(2), added par. (4).

1990—Subsec. (c)(7) to (9). Pub. L. 101–508, § 4008(g)(1), added pars. (7) to (9).

Subsec. (g)(2)(B). Pub. L. 101–508, § 4008(m)(3)(D), substituted '' 'subsection (c)(6)'' for '' 'subsection (c)''.

1989—Pub. L. 101–239, § 6012(a)(1), inserted ''elderly'' after ''uninsured'' in section catchline.

Subsec. (g). Pub. L. 101–239, § 6013(a), added subsec. (g).

1988—Subsec. (c)(4) to (7). Pub. L. 100–360, § 411(b)(8)(D), added Pub. L. 100–203, § 4009(j)(9), see 1987 Amendment note below.

Subsec. (d). Pub. L. 100–360, § 103, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) The monthly premium of each individual for each month in his coverage period before July 1974 shall be $33.

''(2) The Secretary shall, during the next to last calendar quarter of each year determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums for months occurring in the following calendar year. Such amount shall be equal to $33, multiplied by the ratio of (A) the inpatient hospital deductible for that following calendar year, as promulgated under section 1395e(b)(2) of this title, to (B) such deductible promulgated for 1973. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1, or, if a multiple of 50 cents but not a multiple of $1, to the next higher multiple of $1.''

Subsec. (d)(1). Pub. L. 100–485 substituted ''during that year'' for ''during that entire year''.

1987—Subsec. (c)(4) to (7). Pub. L. 100–203, § 4009(j)(9), as added by Pub. L. 100–360, § 411(b)(8)(D), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4) which read as follows: ''termination of coverage under this section by the filing of notice that the individual no longer wishes to participate in the hospital insurance program shall take effect at the close of the month following the month in which such notice is filed;''.

1986—Subsec. (c)(7). Pub. L. 99–272 added par. (7).

1984—Subsec. (c). Pub. L. 98–369, § 2315(e), substituted ''subsection (b) of section 1395r of this title'' for ''subsection (a) of section 1395r of this title''.

Subsec. (c)(1). Pub. L. 98–369, § 2354(b)(3), substituted ''October 1972'' for ''the month in which this Act is enacted''.

Subsec. (d)(2). Pub. L. 98–369, § 2354(b)(4), substituted '', if a multiple of 50 cents but not a multiple of $1,'' for ''if midway between multiples of $1''.

1983—Subsec. (c). Pub. L. 98–21, § 606(a)(3)(D), substituted ''subsection (a) of section 1395r'' for ''subsection (c) of section 1395r''.

Subsec. (d)(2). Pub. L. 98–21, § 606(b), substituted ''during the next to last calendar quarter of each year'' for ''during the last calendar quarter of each year, beginning in 1973,'', ''the following calendar year'' for ''the 12-month period commencing July 1 of the next year'', and ''for that following calendar year'' for ''for such next year''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title III, § 331(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–502, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to premiums for months beginning with January 1, 2002.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4453(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to premiums for months beginning with January 1998, and months before such month may be taken into account for purposes of meeting the requirement of section 1818(d)(5)(B)(iii) of the Social Security Act [subsec. (d)(5)(B)(iii) of this section], as added by subsection (a).''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13508(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to monthly premiums under section 1818 of the Social Security Act [this section] for months beginning with January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(g)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on February 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6012(a)(1) of Pub. L. 101–239 effective Dec. 19, 1989, but not applicable so as to provide coverage under this part for any month before July 1990, see section 6012(b) of Pub. L. 101–239, set out as an Effective Date note under section 1395i–2a of this title.

Section 6013(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1395v of this title] shall become effective January 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if originally included in the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 103 of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(b)(8)(D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9124(b) of Pub. L. 99–272 provided that:

''(1) The amendment made by subsection (a)(3) [amending this section] shall apply to premiums paid for months beginning with July 1986.

''(2) In applying that amendment, months (before, during, or after April 1986) in which an individual was required to pay a premium increased under the section that was so amended shall be taken into account in determining the month in which the premium will no longer be subject to an increase under that section as so amended.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2315(e) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2315(g) of Pub. L. 98–369, set out as an Effective and Termination Dates of 1984 Amendments note under section 1395ww of this title.

Amendment by section 2354(b)(3), (4) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

SPECIAL ENROLLMENT PROVISIONS FOR MERCHANT SEAMEN

Pub. L. 97–248, title I, § 125, Sept. 3, 1982, 96 Stat. 365, provided that:

''(a) Any individual who—

''(1) was entitled to medical, surgical, and dental treatment and hospitalization under section 322(a) of the Public Health Service Act [section 249(a) of this title] (as in effect on September 30, 1981), including such entitlement on the basis of continuing medical care under 42 C.F.R. § 32.17, at any time during the period beginning on March 10, 1981, and ending on October 1, 1981, and

''(2) as of September 30, 1981, was eligible under section 1818(a) or section 1836 of the Social Security Act [this section or section 1395*o* of this title] to enroll in the insurance program established by part A or part B, respectively, of title XVIII of that Act [this subchapter] (hereinafter in this section referred to as the 'respective program'),

may enroll (if not otherwise enrolled) in the respective program during the period beginning on the first day of the first month beginning at least 20 days after the date of the enactment of this Act [Sept. 3, 1982] and ending on December 31, 1982.

''(b)(1) The coverage period under the respective program of an individual who enrolls under subsection (a) shall begin—

''(A) on the first day of the month following the month in which the individual enrolls, or

''(B) on October 1, 1981, if the individual files a request for this subparagraph to apply and pays the monthly premiums for the months so covered.

''(2) The coverage period under the respective program of an individual described in subsection (a) who

enrolled in the respective program before the enrollment period described in that subsection shall be retroactively extended to October 1, 1981, if the individual files a request before January 1, 1983, for such retroactive extension and pays the monthly premiums for the months so covered.

''(c)(1) For purposes of section 1839(d) of the Social Security Act [section 1395r(d) of this title] with respect to the monthly premium for months after September 1981, if an individual described in subsection (a) has enrolled in the insurance program under part B of title XVIII of the Social Security Act [part B of this subchapter] at any time before the end of the enrollment period described in subsection (a), any month (before the end of that enrollment period) in which he was not enrolled in that program shall not be treated as a month in which he could have been enrolled in the program.

''(2) Paragraph (1) shall not apply to an individual—

''(A) if the individual has enrolled in the insurance program before March 10, 1981, unless the enrollment was terminated solely because the individual lost eligibility to be so enrolled, or

''(B) unless the individual applies for the benefit of such paragraph before January 1, 1983.

''(d)(1) The Secretary of Health and Human Services, beginning as soon as possible but not later than 30 days after the date of the enactment of this Act [Sept. 3, 1982], shall provide for the dissemination of information—

''(A) to unions and other associations representing or assisting seamen,

''(B) to offices enrolling individuals under the respective programs, and

''(C) to such other entities and in such a manner as will effectively inform individuals eligible for benefits under this section,

concerning the special benefits provided under this section.

''(2) An individual may establish that the individual was entitled at a date to medical, surgical, and dental treatment and hospitalization under section 322(a) of the Public Health Service Act [section 249(a) of this title] (as in effect before October 1, 1981) by providing—

''(A) documentation relating to the status under which the individual was provided care in (or under arrangements with) a Public Health Service facility on that date,

''(B) the individual's seamen's papers covering that date, or

''(C) such other reasonable documentation as the Secretary may require.''

§ 1395i–2a. Hospital insurance benefits for disabled individuals who have exhausted other entitlement

(a) Eligibility

Every individual who—

(1) has not attained the age of 65;

(2)(A) has been entitled to benefits under this part under section 426(b) of this title, and

(B)(i) continues to have the disabling physical or mental impairment on the basis of which the individual was found to be under a disability or to be a disabled qualified railroad retirement beneficiary, or (ii) is blind (within the meaning of section 416(i)(1) of this title), but

(C) whose entitlement under section 426(b) of this title ends due solely to the individual having earnings that exceed the substantial gainful activity amount (as defined in section 423(d)(4) of this title); and

(3) is not otherwise entitled to benefits under this part,

shall be eligible to enroll in the insurance program established by this part.

(b) Enrollment

(1) An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.

(2) The individual's initial enrollment period shall begin with the month in which the individual receives notice that the individual's entitlement to benefits under section 426(b) of this title will end due solely to the individual having earnings that exceed the substantial gainful activity amount (as defined in section 423(d)(4) of this title and shall end 7 months later.

(3) There shall be a general enrollment period during the period beginning on January 1 and ending on March 31 of each year (beginning with 1990).

(c) Coverage period

(1) The period (in this subsection referred to as a ''coverage period'') during which an individual is entitled to benefits under the insurance program under this part shall begin on whichever of the following is the latest:

(A) In the case of an individual who enrolls under subsection (b)(2) of this section before the month in which the individual first satisfies subsection (a) of this section, the first day of such month.

(B) In the case of an individual who enrolls under subsection (b)(2) of this section in the month in which the individual first satisfies subsection (a) of this section, the first day of the month following the month in which the individual so enrolls.

(C) In the case of an individual who enrolls under subsection (b)(2) of this section in the month following the month in which the individual first satisfies subsection (a) of this section, the first day of the second month following the month in which the individual so enrolls.

(D) In the case of an individual who enrolls under subsection (b)(2) of this section more than one month following the month in which the individual first satisfies subsection (a) of this section, the first day of the third month following the month in which the individual so enrolls.

(E) In the case of an individual who enrolls under subsection (b)(3) of this section, the July 1 following the month in which the individual so enrolls.

(2) An individual's coverage period under this section shall continue until the individual's enrollment is terminated as follows:

(A) As of the month following the month in which the Secretary provides notice to the individual that the individual no longer meets the condition described in subsection (a)(2)(B) of this section.

(B) As of the month following the month in which the individual files notice that the individual no longer wishes to participate in the insurance program established by this part.

(C) As of the month before the first month in which the individual becomes eligible for hospital insurance benefits under section 426(a) or 426–1 of this title.

(D) As of a date, determined under regulations of the Secretary, for nonpayment of premiums.

The regulations under subparagraph (D) may provide a grace period of not longer than 90 days, which may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period. Termination of coverage under this section shall result in simultaneous termination of any coverage affected under any other part of this subchapter.

(3) The provisions of subsections (h) and (i) of section 1395p of this title apply to enrollment and nonenrollment under this section in the same manner as they apply to enrollment and nonenrollment and special enrollment periods under section 1395i–2 of this title.

(d) Payment of premiums

(1)(A) Premiums for enrollment under this section shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe, and shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

(B)(i) Subject to clause (ii), such premiums shall be payable for the period commencing with the first month of an individual's coverage period and ending with the month in which the individual dies or, if earlier, in which the individual's coverage period terminates.

(ii) Such premiums shall not be payable for any month in which the individual is eligible for benefits under this part pursuant to section 426(b) of this title.

(2) The provisions of subsections (d) through (f) of section 1395i–2 of this title (relating to premiums) shall apply to individuals enrolled under this section in the same manner as they apply to individuals enrolled under that section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1818A, as added Pub. L. 101–239, title VI, § 6012(a)(2), Dec. 19, 1989, 103 Stat. 2161; amended Pub. L. 101–508, title IV, § 4008(m)(3)(C), Nov. 5, 1990, 104 Stat. 1388–54.)

AMENDMENTS

1990—Subsec. (d)(1)(A). Pub. L. 101–508, § 4008(m)(3)(C)(i), inserted ''for enrollment under this section'' after ''Premiums''.

Subsec. (d)(1)(C). Pub. L. 101–508, § 4008(m)(3)(C)(ii), struck out subpar. (C) which read as follows: ''For purposes of applying section 1395r(g) of this title and section 59B(f)(1)(B)(i) of the Internal Revenue Code of 1986, any reference to section 1395i–2 of this title shall be deemed to include a reference to this section.''

EFFECTIVE DATE

Section 6012(b) of Pub. L. 101–239 provided that: ''The amendments made by this section [enacting this section and amending section 1395i–2 of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989], but shall not apply so as to provide for coverage under part A of title XVIII of the Social Security Act [this part] for any month before July 1990.''

§ 1395i–3. Requirements for, and assuring quality of care in, skilled nursing facilities

(a) "Skilled nursing facility" defined

In this subchapter, the term ''skilled nursing facility'' means an institution (or a distinct part of an institution) which—

(1) is primarily engaged in providing to residents—

(A) skilled nursing care and related services for residents who require medical or nursing care, or

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons,

and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1395x(*l*) of this title) with one or more hospitals having agreements in effect under section 1395cc of this title; and

(3) meets the requirements for a skilled nursing facility described in subsections (b), (c), and (d) of this section.

(b) Requirements relating to provision of services

(1) Quality of life

(A) In general

A skilled nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

(B) Quality assessment and assurance

A skilled nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) Scope of services and activities under plan of care

A skilled nursing facility must provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care which—

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) Residents' assessment

(A) Requirement

A skilled nursing facility must conduct a comprehensive, accurate, standardized, re-

producible assessment of each resident's functional capacity, which assessment—

(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;

(iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and

(iv) includes the identification of medical problems.

(B) Certification

(i) In general

Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) Penalty for falsification

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

(III) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Use of independent assessors

If a State determines, under a survey under subsection (g) of this section or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) Frequency

(i) In general

Subject to the timeframes prescribed by the Secretary under section 1395yy(e)(6) of this title, such an assessment must be conducted—

(I) promptly upon (but no later than 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than January 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident's physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) Resident review

The skilled nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

(D) Use

The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

(E) Coordination

Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

(4) Provision of services and activities

(A) In general

To the extent needed to fulfill all plans of care described in paragraph (2), a skilled nursing facility must provide, directly or under arrangements (or, with respect to dental services, under agreements) with others for the provision of—

(i) nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine and emergency dental services to meet the needs of each resident; and

(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality. Nothing in clause (vi) shall be construed as requiring a facility to provide or arrange for dental services described in that clause without additional charge.

(B) Qualified persons providing services

Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be

provided by qualified persons in accordance with each resident's written plan of care.

(C) Required nursing care

(i) In general

Except as provided in clause (ii), a skilled nursing facility must provide 24-hour licensed nursing service which is sufficient to meet nursing needs of its residents and must use the services of a registered professional nurse at least 8 consecutive hours a day, 7 days a week.

(ii) Exception

To the extent that clause (i) may be deemed to require that a skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if the Secretary finds that—

(I) the facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein,

(II) the facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week,

(III) the facility either has only patients whose physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty,

(IV) the Secretary provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12)[1] of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

(V) the facility that is granted such a waiver notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this subparagraph shall be subject to annual renewal.

(5) Required training of nurse aides

(A) In general

(i) Except as provided in clause (ii), a skilled nursing facility must not use on a full-time basis any individual as a nurse aide in the facility on or after October 1, 1990 for more than 4 months unless the individual—

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A) of this section, and

(II) is competent to provide nursing or nursing-related services.

(ii) A skilled nursing facility must not use on a temporary, per diem, leased, or on any basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) Offering competency evaluation programs for current employees

A skilled nursing facility must provide, for individuals used as a nurse aide[2] by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) of this section and such preparation as may be necessary for the individual to complete such a program by October 1, 1990.

(C) Competency

The skilled nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(D) Re-training required

For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program or a new competency evaluation program.

(E) Regular in-service education

The skilled nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(F) "Nurse aide" defined

In this paragraph, the term ''nurse aide'' means any individual providing nursing or nursing-related services to residents in a skilled nursing facility, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or

(ii) who volunteers to provide such services without monetary compensation.

[1] See References in Text note below.

[2] So in original. Probably should be ''as nurse aides''.

(G) "Licensed health professional" defined

In this paragraph, the term ''licensed health professional'' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician.

(6) Physician supervision and clinical records

A skilled nursing facility must—

(A) require that the medical care of every resident be provided under the supervision of a physician;

(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)).

(7) Required social services

In the case of a skilled nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

(8) Information on nurse staffing

(A) In general

A skilled nursing facility shall post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. The information shall be displayed in a uniform manner (as specified by the Secretary) and in a clearly visible place.

(B) Publication of data

A skilled nursing facility shall, upon request, make available to the public the nursing staff data described in subparagraph (A).

(c) Requirements relating to residents' rights

(1) General rights

(A) Specified rights

A skilled nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) Free choice

The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) Free from restraints

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

(I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) Privacy

The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) Confidentiality

The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) Accommodation of needs

The right—

(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or roommate of the resident in the facility is changed.

(vi) Grievances

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(vii) Participation in resident and family groups

The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(viii) Participation in other activities

The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(ix) Examination of survey results

The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

(x) Refusal of certain transfers

The right to refuse a transfer to another room within the facility, if a purpose of

the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility (for purposes of this subchapter) to a portion of the facility that is not such a skilled nursing facility.

(xi) Other rights

Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this subchapter or to medical assistance under subchapter XIX of this chapter.

(B) Notice of rights and services

A skilled nursing facility must—

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility;

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under section 1396r(e)(6) of this title; and

(iii) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under this subchapter or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) Rights of incompetent residents

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

(D) Use of psychopharmacologic drugs

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually, an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs. In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this subchapter to have access to the services of such a consultant on a timely basis.

(E) Information respecting advance directives

A skilled nursing facility must comply with the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(2) Transfer and discharge rights

(A) In general

A skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XIX of this chapter on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv) the documentation must be made by a physician.

(B) Pre-transfer and pre-discharge notice

(i) In general

Before effecting a transfer or discharge of a resident, a skilled nursing facility must—

(I) notify the resident (and, if known, a family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice

The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's

health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

(iii) Items included in notice

Each notice under clause (i) must include—

(I) for transfers or discharges effected on or after October 1, 1990, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section; and

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]).

(C) Orientation

A skilled nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(3) Access and visitation rights

A skilled nursing facility must—

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman described in paragraph (2)(B)(iii)(II), or by the resident's individual physician;

(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

(4) Equal access to quality care

A skilled nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and covered services under this subchapter for all individuals regardless of source of payment.

(5) Admissions policy

(A) Admissions

With respect to admissions practices, a skilled nursing facility must—

(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or under a State plan under subchapter XIX of this chapter, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or such a State plan, and (III) prominently display in the facility and provide to such individuals written information about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits; and

(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility.

(B) Construction

(i) No preemption of stricter standards

Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under this subchapter with respect to admissions practices of skilled nursing facilities.

(ii) Contracts with legal representatives

Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(6) Protection of resident funds

(A) In general

The skilled nursing facility—

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) Management of personal funds

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit

The facility must deposit any amount of personal funds in excess of $100 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits[3] all interest earned on

[3] So in original. Probably should be ''credit''.

such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

(ii) Accounting and records

The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Conveyance upon death

Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

(C) Assurance of financial security

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(D) Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XIX of this chapter.

(d) Requirements relating to administration and other matters

(1) Administration

(A) In general

A skilled nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5) of this section).

(B) Required notices

If a change occurs in—

(i) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the facility,

(iii) the corporation, association, or other company responsible for the management of the facility, or

(iv) the individual who is the administrator or director of nursing of the facility,

the skilled nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) Skilled nursing facility administrator

The administrator of a skilled nursing facility must meet standards established by the Secretary under subsection (f)(4) of this section.

(2) Licensing and Life Safety Code

(A) Licensing

A skilled nursing facility must be licensed under applicable State and local law.

(B) Life Safety Code

A skilled nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in skilled nursing facilities.

(3) Sanitary and infection control and physical environment

A skilled nursing facility must—

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

(4) Miscellaneous

(A) Compliance with Federal, State, and local laws and professional standards

A skilled nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

(B) Other

A skilled nursing facility must meet such other requirements relating to the health, safety, and well-being of residents or relating to the physical facilities thereof as the Secretary may find necessary.

(e) State requirements relating to skilled nursing facility requirements

The requirements, referred to in section 1395aa(d) of this title, with respect to a State are as follows:

(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs

The State must—

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) of this section and that meet the requirements established under subsection (f)(2) of this section, and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii) of this section.

The failure of the Secretary to establish requirements under subsection (f)(2) of this section shall not relieve any State of its responsibility under this paragraph.

(2) Nurse aide registry

(A) In general

By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) Information in registry

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings, but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

(C) Prohibition against charges

A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) State appeals process for transfers and discharges

The State, for transfers and discharges from skilled nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism for hearing appeals on transfers and discharges of residents of such facilities. Such mechanism must meet the guidelines established by the Secretary under subsection (f)(3) of this section; but the failure of the Secretary to establish such guidelines shall not relieve any State of its responsibility to provide for such a fair mechanism.

(4) Skilled nursing facility administrator standards

By not later than January 1, 1990, the State must have implemented and enforced the skilled nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of skilled nursing facilities.

(5) Specification of resident assessment instrument

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii) of this section. Such instrument shall be—

(A) one of the instruments designated under subsection (f)(6)(B) of this section, or

(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A) of this section.

(f) Responsibilities of Secretary relating to skilled nursing facility requirements

(1) General responsibility

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs

(A) In general

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall establish, by not later than September 1, 1988—

(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights) and content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, residents' rights, and procedures for determination of competency;

(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs; and

(iv) requirements, under both such programs, that—

(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(iii)(I)),

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program, and

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata[4] basis during the period in which the nurse aide is so employed.

(B) Approval of certain programs

Such requirements—

(i) may permit approval of programs offered by or in facilities (subject to clause (iii)), as well as outside facilities (including employee organizations), and of programs in effect on December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) subject to subparagraphs (C) and (D), shall prohibit approval of such a program—

(I) offered by or in a skilled nursing facility which, within the previous 2 years—

(a) has operated under a waiver under subsection (b)(4)(C)(ii)(II) of this section;

(b) has been subject to an extended (or partial extended) survey under subsection (g)(2)(B)(i) of this section or section 1396r(g)(2)(B)(i) of this title, unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section; or

(c) has been assessed a civil money penalty described in subsection (h)(2)(B)(ii) of this section or section 1396r(h)(2)(A)(ii) of this title of not less than $5,000, or has been subject to a remedy described in clause (i) or (iii) of subsection (h)(2)(B) of this section, subsection (h)(4) of this section, section 1396r(h)(1)(B)(i) of this title, or in clause (i), (iii), or (iv) of section 1396r(h)(2)(A) of this title, or

(II) offered by or in a skilled nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in skilled nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the skilled nursing facility.

(C) Waiver authorized

Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of this subchapter) in a State if the State—

(i) determines that there is no other such program offered within a reasonable distance of the facility,

(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

(iii) provides notice of such determination and assurances to the State long-term care ombudsman.

(D) Waiver of disapproval of nurse-aide training programs

Upon application of a nursing facility, the Secretary may waive the application of subparagraph (B)(iii)(I)(c) if the imposition of the civil monetary penalty was not related to the quality of care provided to residents of the facility. Nothing in this subparagraph shall be construed as eliminating any requirement upon a facility to pay a civil monetary penalty described in the preceding sentence.

(3) Federal guidelines for State appeals process for transfers and discharges

For purposes of subsections (c)(2)(B)(iii)(I) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mech-

[4] So in original. Probably should be "pro rata".

anism for hearing appeals on transfers and discharges of residents from skilled nursing facilities.

(4) Secretarial standards for qualification of administrators

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1989, standards to be applied in assuring the qualifications of administrators of skilled nursing facilities.

(5) Criteria for administration

The Secretary shall establish criteria for assessing a skilled nursing facility's compliance with the requirement of subsection (d)(1) of this section with respect to—

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other skilled nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) Specification of resident assessment data set and instruments

The Secretary shall—

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

(7) List of items and services furnished in skilled nursing facilities not chargeable to the personal funds of a resident

(A) Regulations required

Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in skilled nursing facilities who are individuals receiving benefits under this part and those costs which are to be included in the reasonable cost (or other payment amount) under this subchapter for extended care services.

(B) Rule if failure to publish regulations

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in such subparagraph, in the case of a resident of a skilled nursing facility who is eligible to receive benefits under this part, the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) shall include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(g) Survey and certification process

(1) State and Federal responsibility

(A) In general

Pursuant to an agreement under section 1395aa of this title, each State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of skilled nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State skilled nursing facilities with the requirements of such subsections.

(B) Educational program

Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of skilled nursing facilities in order to present current regulations, procedures, and policies under this section.

(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property

The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after providing the individual involved with a written notice of the allegations (including a statement of the availability of a hearing for the individual to rebut the allegations) and the opportunity for a hearing on the record, make a written finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(D) Removal of name from nurse aide registry

(i) In general

In the case of a finding of neglect under subparagraph (C), the State shall establish

a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that—

(I) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

(II) the neglect involved in the original finding was a singular occurrence.

(ii) Timing of determination

In no case shall a determination on a petition submitted under clause (i) be made prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under subparagraph (C).

(E) Construction

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(2) Surveys

(A) Standard survey

(i) In general

Each skilled nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a skilled nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall review each State's procedures for the scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents

Each standard survey shall include, for a case-mix stratified sample of residents—

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(II) written plans of care provided under subsection (b)(2) of this section and an audit of the residents' assessments under subsection (b)(3) of this section to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents' rights under subsection (c) of this section.

(iii) Frequency

(I) In general

Each skilled nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The Statewide average interval between standard surveys of skilled nursing facilities under this subsection shall not exceed 12 months.

(II) Special surveys

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a skilled nursing facility, or the director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys

(i) In general

Each skilled nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

(ii) Timing

The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents

In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d) of this section. Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) Construction

Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) of this section on the basis of findings in a standard survey.

(C) Survey protocol

Standard and extended surveys shall be conducted—

(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys

Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(E) Survey teams

(i) In general

Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(ii) Prohibition of conflicts of interest

A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d) of this section, or who has a personal or familial financial interest in the facility being surveyed.

(iii) Training

The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Validation surveys

(A) In general

The Secretary shall conduct onsite surveys of a representative sample of skilled nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual skilled nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(B) Scope

With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of skilled nursing facilities surveyed by the State in the year, but in no case less than 5 skilled nursing facilities in the State.

(C) Remedies for substandard performance

If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary shall provide for an appropriate remedy, which may include the training of survey teams in the State.

(D) Special surveys of compliance

Where the Secretary has reason to question the compliance of a skilled nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the skilled nursing facility meets such requirements.

(4) Investigation of complaints and monitoring compliance

Each State shall maintain procedures and adequate staff to—

(A) investigate complaints of violations of requirements by skilled nursing facilities, and

(B) monitor, on-site, on a regular, as needed basis, a skilled nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if—

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard skilled nursing facilities.

(5) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys and certifications made respecting skilled nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,

(ii) copies of cost reports of such facilities filed under this subchapter or subchapter XIX of this chapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and

(iv) information disclosed under section 1320a–5 of this title.

(B) Notice to ombudsman

Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d) of this section, or of any adverse action taken against a skilled nursing facility under paragraph (1), (2), or (4) of subsection (h) of this section, with respect to a skilled nursing facility in the State.

(C) Notice to physicians and skilled nursing facility administrator licensing board

If a State finds that a skilled nursing facility has provided substandard quality of care, the State shall notify—

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) the State board responsible for the licensing of the skilled nursing facility administrator at the facility.

(D) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(h) Enforcement process

(1) In general

If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) of this section or otherwise, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), or (d) of this section, and further finds that the facility's deficiencies—

(A) immediately jeopardize the health or safety of its residents, the State shall recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(i); or

(B) do not immediately jeopardize the health or safety of its residents, the State may recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(ii).

If a State finds that a skilled nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous period, did not meet such requirements, the State may recommend a civil money penalty under paragraph (2)(B)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Secretarial authority

(A) In general

With respect to any skilled nursing facility in a State, if the Secretary finds, or pursuant to a recommendation of the State under paragraph (1) finds, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility's deficiencies—

(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (B)(iii), or terminate the facility's participation under this subchapter and may provide, in addition, for one or more of the other remedies described in subparagraph (B); or

(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (B).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a skilled nursing facility's deficiencies. If the Secretary finds, or pursuant to the recommendation of the State under paragraph (1) finds, that a skilled nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (B)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

(B) Specified remedies

The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

(i) Denial of payment

The Secretary may deny any further payments under this subchapter with respect to all individuals entitled to benefits under this subchapter in the facility or with respect to such individuals admitted to the facility after the effective date of the finding.

(ii) Authority with respect to civil money penalties

The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Appointment of temporary management

In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

(C) Continuation of payments pending remediation

The Secretary may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this subchapter with respect to a skilled nursing facility not in compliance with a requirement of subsection (b), (c), or (d) of this section, if—

(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility,

(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(iii) the facility agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

(D) Assuring prompt compliance

If a skilled nursing facility has not complied with any of the requirements of subsections (b), (c), and (d) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the Secretary shall impose the remedy described in subparagraph (B)(i) for all individuals who are admitted to the facility after such date.

(E) Repeated noncompliance

In the case of a skilled nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2) of this section, has been found to have provided substandard quality of care, the Secretary shall (regardless of what other remedies are provided)—

(i) impose the remedy described in subparagraph (B)(i), and

(ii) monitor the facility under subsection (g)(4)(B) of this section,

until the facility has demonstrated, to the satisfaction of the Secretary, that it is in compliance with the requirements of subsections (b), (c), and (d) of this section, and that it will remain in compliance with such requirements.

(3) Effective period of denial of payment

A finding to deny payment under this subsection shall terminate when the Secretary finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d) of this section.

(4) Immediate termination of participation for facility where Secretary finds noncompliance and immediate jeopardy

If the Secretary finds that a skilled nursing facility has not met a requirement of subsection (b), (c), or (d) of this section, and finds that the failure immediately jeopardizes the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(B)(iii), or the Secretary shall terminate the facility's participation under this subchapter. If the facility's participation under this subchapter is terminated, the State shall provide for the safe and orderly transfer of the residents eligible under this subchapter consistent with the requirements of subsection (c)(2) of this section.

(5) Construction

The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i),[5] and (iii) of paragraph (2)(B) may be imposed during the pendency of any hearing.

(6) Sharing of information

Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or State employees for purposes consistent with the effective administration of programs established under this subchapter and subchapter XIX of this chapter, including investigations by State medicaid fraud control units.

(i) Construction

Where requirements or obligations under this section are identical to those provided under section 1396r of this title, the fulfillment of those requirements or obligations under section 1396r of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1819, as added and amended Pub. L. 100–203, title IV, §§ 4201(a)(3), 4202(a)(2), 4203(a)(2), 4206, Dec. 22, 1987, 101 Stat. 1330–160, 1330–175, 1330–179, 1330–182;

[5] So in original. The comma probably should not appear.

Pub. L. 100–360, title IV, § 411(*l*)(1)(A), (2)(A)–(D), (F)–(L)(i), (4), (5), (7), (11), July 1, 1988, 102 Stat. 800–805, as amended Pub. L. 100–485, title VI, § 608(d)(27)(A), (C), (D), (I), (L), Oct. 13, 1988, 102 Stat. 2422, 2423; Pub. L. 101–239, title VI, § 6901(b)(1), (3), (d)(4), Dec. 19, 1989, 103 Stat. 2298, 2301; Pub. L. 101–508, title IV, §§ 4008(h)(1)(B)–(F)(i), (G), (2)(B)–(N), (m)(3)(F)[(E)], 4206(d)(1), Nov. 5, 1990, 104 Stat. 1388–46 to 1388–50, 1388–54, 1388–116; Pub. L. 102–375, title VII, § 708(a)(1)(A), Sept. 30, 1992, 106 Stat. 1291; Pub. L. 103–432, title I, §§ 106(c)(1)(A), (2)(A), (3)(A), (4)(A), (B), (d)(1)–(5), 110(b), Oct. 31, 1994, 108 Stat. 4406–4408; Pub. L. 105–15, § 1, May 15, 1997, 111 Stat. 34; Pub. L. 105–33, title IV, §§ 4432(b)(5)(A), 4755(a), Aug. 5, 1997, 111 Stat. 421, 526; Pub. L. 106–554, § 1(a)(6) [title IX, § 941(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–585; Pub. L. 108–173, title VII, § 736(a)(8), title IX, § 932(c)(2), Dec. 8, 2003, 117 Stat. 2355, 2401.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsecs. (b)(4)(C)(ii)(IV), (c)(2)(B)(iii)(II), and (g)(5)(B), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Section 307(a)(12) of the Act was repealed by Pub. L. 106–501, title III, § 306(5), Nov. 13, 2000, 114 Stat. 2244. Similar provisions are now contained in section 307(a)(9) of the Act, which is classified to section 3027(a)(9) of this title. Titles III and VII of the Act are classified generally to subchapters III (§ 3021 et seq.) and XI (§ 3058 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Subparagraphs (B), (C), and (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239], referred to in subsec. (e)(2)(A), are set out below.

Section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, referred to in subsec. (f)(7)(A), probably means section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments, Pub. L. 95–142, which is set out as a note under section 1395x of this title.

AMENDMENTS

2003—Subsec. (b)(4)(C)(i). Pub. L. 108–173, § 736(a)(8)(A), substituted ''at least'' for ''at least at least''.

Subsec. (d)(1)(A). Pub. L. 108–173, § 736(a)(8)(B), substituted ''physical, mental'' for ''physical mental''.

Subsec. (f)(2)(B)(iii). Pub. L. 108–173, § 932(c)(2)(A), substituted ''subparagraphs (C) and (D)'' for ''subparagraph (C)'' in introductory provisions.

Pub. L. 108–173, § 736(a)(8)(C), realigned margins of concluding provisions.

Subsec. (f)(2)(D). Pub. L. 108–173, § 932(c)(2)(B), added subpar. (D).

2000–Subsec. (b)(8). Pub. L. 106–554 added par. (8).

1997—Subsec. (b)(3)(C)(i). Pub. L. 105–33, § 4432(b)(5)(A), substituted ''Subject to the timeframes prescribed by the Secretary under section 1395yy(e)(6) of this title, such'' for ''Such'' in introductory provisions.

Subsec. (f)(2)(B)(iii). Pub. L. 105–15, § 1(1), inserted ''subject to subparagraph (C),'' after ''(iii)''.

Subsec. (f)(2)(C). Pub. L. 105–15, § 1(2), added subpar. (C).

Subsec. (g)(1)(D), (E). Pub. L. 105–33, § 4755(a), added subpar. (D) and redesignated former subpar. (D) as (E).

1994—Subsec. (b)(3)(C)(i)(I). Pub. L. 103–432, § 110(b), substituted ''but no later than 14 days'' for ''but no later than not later than 14 days''.

Subsec. (b)(5)(D). Pub. L. 103–432, § 106(d)(1), struck out comma before ''or a new competency evaluation program''.

Subsec. (b)(5)(G). Pub. L. 103–432, § 106(d)(2), substituted ''licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician'' for ''or licensed or certified social worker''.

Subsec. (c)(1)(D). Pub. L. 103–432, § 106(c)(2)(A), inserted at end ''In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this subchapter to have access to the services of such a consultant on a timely basis.''

Subsec. (c)(6)(B)(i). Pub. L. 103–432, § 106(c)(3)(A), substituted ''$100'' for ''$50''.

Subsec. (e)(2)(B). Pub. L. 103–432, § 106(c)(4)(A), inserted '', but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection'' after ''individual disputing the findings'' in first sentence.

Subsec. (f)(2)(B)(i). Pub. L. 103–432, § 106(d)(3), substituted ''facilities (subject to clause (iii)),'' for ''facilities,''.

Subsec. (f)(2)(B)(iii)(I)(b). Pub. L. 103–432, § 106(c)(1)(A), inserted before semicolon at end '', unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section''.

Subsec. (f)(2)(B)(iii)(I)(c). Pub. L. 103–432, § 106(d)(4), substituted ''clause'' for ''clauses'' in two places.

Subsec. (g)(1)(C). Pub. L. 103–432, § 106(c)(4)(B), substituted second sentence for former second sentence which read as follows: ''The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations.''

Subsec. (g)(5)(B). Pub. L. 103–432, § 106(d)(5), substituted ''paragraph'' for ''paragraphs'' before ''(1), (2), or (4) of subsection (h)''.

1992—Subsecs. (c)(2)(B)(iii)(II), (g)(5)(B). Pub. L. 102–375 substituted ''title III or VII of the Older Americans Act of 1965 in accordance with section 712 of the Act'' for ''section 307(a)(12) of the Older Americans Act of 1965''.

1990—Subsec. (b)(1)(B). Pub. L. 101–508, § 4008(h)(2)(B), inserted at end ''A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.''

Subsec. (b)(3)(C)(i)(I). Pub. L. 101–508, § 4008(h)(2)(C), substituted ''not later than 14 days'' for ''4 days''.

Subsec. (b)(4)(A)(vii). Pub. L. 101–508, § 4008(h)(2)(D), added cl. (vii).

Subsec. (b)(4)(C)(ii)(IV), (V). Pub. L. 101–508, § 4008(h)(2)(E), added subcls. (IV) and (V).

Subsec. (b)(5)(A). Pub. L. 101–508, § 4008(h)(1)(B), designated existing provisions as cl. (i), in introductory provisions substituted ''Except as provided in clause (ii), a skilled nursing facility'' for ''A skilled nursing facility'' and ''on a full-time basis'' for ''(on a full-time, temporary, per diem, or other basis)'', redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (b)(5)(C). Pub. L. 101–508, § 4008(h)(1)(C), substituted ''any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information'' for ''the State registry established under subsection (e)(2)(A) of this section as to information in the registry''.

Subsec. (b)(5)(D). Pub. L. 101–508, § 4008(h)(1)(D), inserted before period at end '', or a new competency evaluation program'' after ''and competency evaluation program''.

Subsec. (b)(5)(F)(i). Pub. L. 101–508, § 4008(h)(2)(F), substituted ''(G)) or a registered dietician,'' for ''(G)),''.

Subsec. (c)(1)(A). Pub. L. 101–508, § 4008(h)(2)(G)(B)[(ii)], inserted at end ''A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this subchapter or to medical assistance under subchapter XIX of this chapter.''

Subsec. (c)(1)(A)(iv). Pub. L. 101–508, § 4008(h)(2)(H), inserted before period at end ''and to access to current

clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request''.

Subsec. (c)(1)(A)(x), (xi). Pub. L. 101–508, § 4008(h)(2)(G)(i), added cl. (x) and redesignated former cl. (x) as (xi).

Subsec. (c)(1)(B)(ii). Pub. L. 101–508, § 4008(h)(2)(I), inserted ''including the notice (if any) of the State developed under section 1396r(e)(6) of this title'' after ''in such rights)''.

Subsec. (c)(1)(E). Pub. L. 101–508, § 4206(d)(1), added subpar. (E).

Subsec. (e)(1)(A). Pub. L. 101–508, § 4008(h)(2)(J), substituted ''subsection (f)(2) of this section'' for ''clause (i) or (ii) of subsection (f)(2)(A) of this section''.

Subsec. (e)(2)(A). Pub. L. 101–508, § 4008(h)(2)(K)(i), inserted before period at end '', or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989''.

Subsec. (e)(2)(C). Pub. L. 101–508, § 4008(h)(2)(K)(ii), added subpar. (C).

Subsec. (f)(2)(A)(ii). Pub. L. 101–508, § 4008(m)(3)(F)[(E)], struck out ''and'' after semicolon at end.

Subsec. (f)(2)(A)(iv). Pub. L. 101–508, § 4008(h)(1)(E), struck out ''and'' at end of subcl. (I), inserted ''who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program'' after ''nurse aide'' and substituted '', and'' for period at end of subcl. (II), and added subcl. (III).

Subsec. (f)(2)(B). Pub. L. 101–508, § 4008(h)(1)(G), inserted ''(through subcontract or otherwise)'' after ''may not delegate'' in second sentence.

Subsec. (f)(2)(B)(iii)(I). Pub. L. 101–508, § 4008(h)(1)(F)(i), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''offered by or in a skilled nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d) of this section, within the previous 2 years, or''.

Subsec. (g)(1)(C). Pub. L. 101–508, § 4008(h)(2)(L), inserted at end ''A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.''

Subsec. (g)(5)(A)(i). Pub. L. 101–508, § 4008(h)(2)(M), substituted ''deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans'' for ''deficiencies and plans''.

Subsec. (g)(5)(B). Pub. L. 101–508, § 4008(h)(2)(N), substituted ''or of any adverse action taken against a skilled nursing facility under paragraphs (1), (2), or (4) of subsection (h) of this section, with respect'' for ''with respect''.

1989—Subsec. (b)(5)(A). Pub. L. 101–239, § 6901(b)(1)(A), substituted ''October 1, 1990'' for ''January 1, 1990'' in introductory provisions.

Subsec. (b)(5)(B). Pub. L. 101–239, § 6901(b)(1)(B), substituted ''January 1, 1990'' and ''October 1, 1990'' for ''July 1, 1989'' and ''January 1, 1990'', respectively.

Subsec. (c)(1)(A)(ii)(II). Pub. L. 101–239, § 6901(d)(4)(A), substituted ''Secretary until such an order could reasonably be obtained)'' for ''Secretary) until such an order could reasonably be obtained''.

Subsec. (c)(1)(A)(v)(I). Pub. L. 101–239, § 6901(d)(4)(B), substituted ''accommodation'' for ''accommodations''.

Subsec. (f)(2)(A)(i)(I). Pub. L. 101–239, § 6901(d)(4)(C), substituted ''and content of the curriculum'' for '', content of the curriculum''.

Pub. L. 101–239, § 6901(b)(3)(A), inserted ''care of cognitively impaired residents,'' after ''social service needs,''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–239, § 6901(b)(3)(B), substituted ''recognition of mental health and social service needs, care of cognitively impaired residents'' for ''cognitive, behavioral and social care''.

Subsec. (f)(2)(A)(iv). Pub. L. 101–239, § 6901(b)(3)(C), (D), added cl. (iv).

Subsec. (h)(2)(C). Pub. L. 101–239, § 6901(d)(4)(D), inserted ''after the effective date of the findings'' after ''6 months'' in introductory provisions.

1988—Subsec. (b)(3)(A)(iii). Pub. L. 100–360, § 411(*l*)(2)(B), struck out ''in the case of a resident eligible for benefits under subchapter XIX of this chapter,'' before ''uses an instrument''.

Subsec. (b)(3)(A)(iv). Pub. L. 100–360, § 411(*l*)(2)(A), as amended by Pub. L. 100–485, § 608(d)(27)(C), struck out ''in the case of a resident eligible for benefits under this part,'' before ''includes the identification''.

Subsec. (b)(3)(B)(ii)(III). Pub. L. 100–360, § 411(*l*)(2)(C), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (b)(3)(C)(i)(I). Pub. L. 100–360, § 411(*l*)(1)(A)(i), substituted ''than January 1, 1991'' for ''than October 1, 1990''.

Subsec. (b)(4)(C)(i). Pub. L. 100–360, § 411(*l*)(1)(A)(ii), substituted ''24-hour licensed nursing'' for ''24-hour nursing'', ''must use'' for ''must employ'', and ''at least 8 consecutive hours a day,'' for ''during the day tour of duty (of at least 8 hours a day)''.

Subsec. (b)(5)(A). Pub. L. 100–360, § 411(*l*)(2)(D)(i), as amended by Pub. L. 100–485, § 608(d)(27)(D), struck out '', who is not a licensed health professional (as defined in subparagraph (E)),'' after ''any individual''.

Pub. L. 100–360, § 411(*l*)(1)(A)(iii), substituted ''January 1, 1990'' for ''October 1, 1989, (or January 1, 1990, in the case of an individual used by the facility as a nurse aide before July 1, 1989)''.

Subsec. (b)(5)(A)(ii). Pub. L. 100–360, § 411(*l*)(2)(D)(ii), substituted ''nursing or nursing-related services'' for ''such services''.

Subsec. (b)(5)(G). Pub. L. 100–360, § 411(*l*)(2)(D)(iii), inserted ''physical or occupational therapy assistant,'' after ''occupational therapist,''.

Subsec. (c)(1)(D). Pub. L. 100–360, § 411(*l*)(1)(A)(iv), as added by Pub. L. 100–485, § 608(d)(27)(A), added subpar. (D).

Subsec. (c)(2)(A)(v). Pub. L. 100–360, § 411(*l*)(2)(F), substituted ''for a stay at the facility'' for ''an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this subchapter and subchapter XIX of this chapter''.

Subsec. (c)(6). Pub. L. 100–360, § 411(*l*)(2)(G), substituted ''upon the written'' for ''once the facility accepts the written'' in subpar. (A)(ii), and ''Upon written'' for ''Upon a facility's acceptance of written'' in subpar. (B).

Subsec. (e)(1)(A). Pub. L. 100–360, § 411(*l*)(1)(A)(v), formerly § 411(*l*)(1)(A)(iv), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''January'' for ''March''.

Subsec. (e)(1)(B). Pub. L. 100–360, § 411(*l*)(1)(A)(vi), formerly § 411(*l*)(1)(A)(v), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''January'' for ''March''.

Subsec. (e)(2)(A). Pub. L. 100–360, § 411(*l*)(1)(A)(vii), formerly § 411(*l*)(1)(A)(vi), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''January'' for ''March''.

Subsec. (e)(2)(B). Pub. L. 100–360, § 411(*l*)(2)(H), inserted after first sentence ''The State shall make available to the public information in the registry.''

Subsec. (e)(3). Pub. L. 100–360, § 411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and in two places in text.

Pub. L. 100–360, § 411(*l*)(1)(A)(viii), formerly § 411(*l*)(1)(A)(vii), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''1989'' for ''1990''.

Subsec. (e)(5). Pub. L. 100–360, § 411(*l*)(1)(A)(ix), formerly § 411(*l*)(1)(A)(viii), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''1990'' for ''1989'' in introductory provisions.

Subsec. (f)(2)(A)(i)(I). Pub. L. 100–360, § 411(*l*)(2)(J), substituted ''recognition of mental health and social

service needs'' for ''cognitive, behavioral and social care''.

Subsec. (f)(3). Pub. L. 100–360, § 411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and in text.

Pub. L. 100–360, § 411(*l*)(1)(A)(x), formerly § 411(*l*)(1)(A)(ix), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''1988'' for ''1989''.

Subsec. (f)(6)(A). Pub. L. 100–360, § 411(*l*)(1)(A)(xi), formerly § 411(*l*)(1)(A)(x), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''January'' for ''July''.

Subsec. (f)(6)(B). Pub. L. 100–360, § 411(*l*)(1)(A)(xii), formerly § 411(*l*)(1)(A)(xi), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''April'' for ''October''.

Subsec. (f)(7)(A). Pub. L. 100–360, § 411(*l*)(2)(K), substituted ''residents'' for ''patients''.

Subsec. (f)(7)(B). Pub. L. 100–360, § 411(*l*)(2)(L)(i), substituted ''shall include'' for ''shall not include''.

Subsec. (g)(1)(C). Pub. L. 100–360, § 411(*l*)(5)(A)–(C), substituted ''and timely review'' for '', review,'', inserted ''or by another individual used by the facility in providing services to such a resident'' after ''a nursing facility'', and substituted ''The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority.'' for ''If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding.''

Subsec. (g)(1)(D). Pub. L. 100–360, § 411(*l*)(5)(D), substituted ''to issue regulations to carry out this subsection'' for ''to establish standards under subsection (f) of this section''.

Subsec. (g)(2)(A)(i). Pub. L. 100–360, § 411(*l*)(5)(E), amended third sentence generally. Prior to amendment, third sentence read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (g)(2)(B)(ii). Pub. L. 100–360, § 411(*l*)(5)(F), as added by Pub. L. 100–485, § 608(d)(27)(I), substituted ''practicable'' for ''practical''.

Subsec. (g)(2)(C)(i). Pub. L. 100–360, § 411(*l*)(4), substituted ''January'' for ''October''.

Subsec. (g)(3)(D). Pub. L. 100–360, § 411(*l*)(5)(G), formerly § 411(*l*)(5)(F), as redesignated by Pub. L. 100–485, § 608(d)(27)(I), substituted ''on the basis of that survey'' for ''on that basis''.

Subsec. (g)(4). Pub. L. 100–360, § 411(*l*)(5)(H), formerly § 411(*l*)(5)(G), as redesignated by Pub. L. 100–485, § 608(d)(27)(I), struck out ''chronically'' after ''enforcement actions against'' in last sentence.

Subsec. (h)(2)(B)(ii). Pub. L. 100–360, § 411(*l*)(7)(A), substituted ''. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.'' for ''and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1320a–7a of this title.''

Subsec. (h)(5). Pub. L. 100–360, § 411(*l*)(11), as added by Pub. L. 100–485, § 608(d)(27)(L), substituted ''clauses (i), and (iii) of paragraph (2)(B)'' for ''clauses (i), (iii), and (iv) of paragraph (2)(A)''.

Subsec. (h)(6). Pub. L. 100–360, § 411(*l*)(7)(B), inserted ''by such facilities'' after ''be made available''.

1987—Subsecs. (g) to (i). Pub. L. 100–203, §§ 4202(a)(2), 4203(a)(2), 4206, added subsecs. (g), (h), and (i), respectively.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 932(d), Dec. 8, 2003, 117 Stat. 2402, provided that: ''The amendments made by this section [amending this section and sections 1395cc, 1395ff, and 1396r of this title] shall apply to appeals filed on or after October 1, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title IX, § 941(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–586, provided that: ''The amendments made by this section [amending this section and section 1396r of this title] shall take effect on January 1, 2003.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4432(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395k, 1395*l*, 1395u, 1395x, 1395y, 1395cc, 1395tt, and 1395yy of this title] are effective for cost reporting periods beginning on or after July 1, 1998; except that the amendments made by subsection (b) [amending this section and sections 1395k, 1395*l*, 1395u, 1395x, 1395y, 1395cc, 1395tt, and 1395yy of this title] shall apply to items and services furnished on or after July 1, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 106(c)(1)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Section 106(c)(2)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of OBRA–1987 [Pub. L. 100–203].''

Section 106(c)(3)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect January 1, 1995.''

Section 106(c)(4)(C) of Pub. L. 103–432 provided that: ''The amendments made by this paragraph [amending this section] shall take effect January 1, 1995.''

Section 106(d)(7) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note below] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(h)(1)(F)(ii) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 106(d)(6), Oct. 31, 1994, 108 Stat. 4407, provided that:

''(I) The amendments made by clause (i) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a skilled nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

''(aa) had its participation terminated under title XVIII of the Social Security Act [this subchapter] or under the State plan under title XIX of such Act [subchapter XIX of this chapter];

''(bb) was subject to a denial of payment under either such title;

''(cc) was assessed a civil money penalty not less than $5,000 for deficiencies in skilled nursing facility standards;

''(dd) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

''(ee) pursuant to State action, was closed or had its residents transferred.

''(II) Notwithstanding subclause (I) and subject to section 1819(f)(2)(B)(iii)(I) of the Social Security Act [subsec. (f)(2)(B)(iii)(I) of this section] (as amended by clause (i)), a State may approve a training and competency evaluation program or a competency evaluation program offered by or in a skilled nursing facility described in subclause (I) if, during the previous 2 years, item (aa), (bb), (cc), (dd), or (ee) of subclause (I) did not apply to the facility.''

Section 4008(h)(1)(H) of Pub. L. 101–508 provided that: ''Except as provided in subparagraph (F) [amending this section and enacting provisions set out as a note above], the amendments made by this subsection [probably means this paragraph, amending this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4008(h)(2)(P) of Pub. L. 101–508 provided that: ''The amendments made by this paragraph [amending this section and sections 1395x and 1395yy of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4206(e)(1) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) and (d) [amending this section and sections 1395cc and 1395bbb of this title] shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6901(b)(6) of Pub. L. 101–239 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 1396b and 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

''(B) EXCEPTION.—The amendments made by paragraph (3) [amending this section and section 1396r of this title] shall apply to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after the end of the 90-day period beginning on the date of the enactment of this Act [Dec. 19, 1989], but shall not affect competency evaluations conducted under programs offered before the end of such period.''

Section 6901(d)(6) of Pub. L. 101–239 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 1396i and 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

''(B) EXCEPTION.—The amendment made by paragraph (1) [amending section 1396r of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if originally included in the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 4204 of title IV of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(*l*)(9), July 1, 1988, 102 Stat. 805; Pub. L. 100–485, title VI, § 608(d)(27)(K), Oct. 13, 1988, 102 Stat. 2423, provided that:

''(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1819 of the Social Security Act [this section], the amendments made by sections 4201 and 4202 [enacting and amending this section and amending sections 1395x, 1395aa, 1395tt, and 1395yy of this title] (relating to skilled nursing facility requirements and survey and certification requirements) shall apply to services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date.

''(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1819 of the Social Security Act [this section], the amendments made by section 4203 of this Act [amending this section and section 1395aa of this title] apply January 1, 1988, without regard to whether regulations to implement such amendments are promulgated by such date.

''(2) In applying the amendments made by section 4203 of this Act for services furnished by a skilled nursing facility before October 1, 1990, any reference to a requirement of subsection (b), (c), or (d), of section 1819 of the Social Security Act is deemed a reference to the provisions of section 1861(j) of such Act [section 1395x(j) of this title].

''(c) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part [part 1 of subtitle C (§§ 4201–4206), enacting this section, amending this section and sections 1395x, 1395aa, 1395tt, and 1395yy of this title, and enacting provisions set out as notes under this section] and implementing the amendments made by this part.''

REVIEW AND REPORT ON CURRENT STANDARDS OF PRACTICE FOR PHARMACY SERVICES PROVIDED TO PATIENTS IN NURSING FACILITIES

Pub. L. 108–173, title I, § 107(b), Dec. 8, 2003, 117 Stat. 2169, provided that:

''(1) REVIEW.—

''(A) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall conduct a thorough review of the current standards of practice for pharmacy services provided to patients in nursing facilities.

''(B) SPECIFIC MATTERS REVIEWED.—In conducting the review under subparagraph (A), the Secretary shall—

''(i) assess the current standards of practice, clinical services, and other service requirements generally used for pharmacy services in long-term care settings; and

''(ii) evaluate the impact of those standards with respect to patient safety, reduction of medication errors and quality of care.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than the date that is 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall submit a report to Congress on the study conducted under paragraph (1)(A).

''(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

''(i) a description of the plans of the Secretary to implement the provisions of this Act [see Tables for classification] in a manner consistent with applica-

ble State and Federal laws designed to protect the safety and quality of care of nursing facility patients; and

''(ii) recommendations regarding necessary actions and appropriate reimbursement to ensure the provision of prescription drugs to medicare beneficiaries residing in nursing facilities in a manner consistent with existing patient safety and quality of care standards under applicable State and Federal laws.''

STUDY AND REPORT REGARDING STATE LICENSURE AND CERTIFICATION STANDARDS AND RESPIRATORY THERAPY COMPETENCY EXAMINATIONS

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 107], Nov. 29, 1999, 113 Stat. 1536, 1501A–328, provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall conduct a study that—

''(1) identifies variations in State licensure and certification standards for health care providers (including nursing and allied health professionals) and other individuals providing respiratory therapy in skilled nursing facilities;

''(2) examines State requirements relating to respiratory therapy competency examinations for such providers and individuals; and

''(3) determines whether regular respiratory therapy competency examinations or certifications should be required under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for such providers and individuals.

''(b) REPORT.—Not later than 18 months after the date of enactment of this Act [Nov. 29, 1999], the Secretary of Health and Human Services shall submit to Congress a report on the results of the study conducted under this section, together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such study.''

RETROACTIVE REVIEW

Section 4755(c) of Pub. L. 105–33 provided that: ''The procedures developed by a State under the amendments made by subsection[s] (a) and (b) [amending this section and section 1396r of this title] shall permit an individual to petition for a review of any finding made by a State under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i-3(g)(1)(C) or 1396r(g)(1)(C)) after January 1, 1995.''

STUDY AND REPORT ON DEEMING FOR NURSING FACILITIES AND RENAL DIALYSIS FACILITIES

Pub. L. 104–134, title I, § 101(d) [title V, § 516(d)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–248; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall provide for—

''(A) a study concerning the effectiveness and appropriateness of the current mechanisms for surveying and certifying skilled nursing facilities for compliance with the conditions and requirements of sections 1819 and 1861(j) of the Social Security Act [this section and section 1395x(j) of this title] and nursing facilities for compliance with the conditions of section 1919 of such Act [section 1396r of this title], and

''(B) a study concerning the effectiveness and appropriateness of the current mechanisms for surveying and certifying renal dialysis facilities for compliance with the conditions and requirements of section 1881(b) of the Social Security Act [section 1395rr(b) of this title].

''(2) REPORT.—Not later than July 1, 1997, the Secretary shall transmit to Congress a report on each of the studies provided for under paragraph (1). The report on the study under paragraph (1)(A) shall include (and the report on the study under paragraph (1)(B) may include) a specific framework, where appropriate, for implementing a process under which facilities covered under the respective study may be deemed to meet applicable medicare conditions and requirements if they are accredited by a national accreditation body.''

MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES

Section 4008(h)(2)(O) of Pub. L. 101–508 provided that: ''Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] with respect to services described in clauses (ii), (iv), and (v) of section 1819(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A)(ii), (iv), and (v) of this section] shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.''

NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS; PUBLICATION OF PROPOSED REGULATIONS

Section 6901(b)(2) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall issue proposed regulations to establish the requirements described in sections 1819(f)(2) and 1919(f)(2) of the Social Security Act [subsec. (f)(2) of this section and section 1396r(f)(2) of this title] by not later than 90 days after the date of the enactment of this Act [Dec. 19, 1989].''

NURSE AIDE TRAINING AND COMPETENCY EVALUATION; SATISFACTION OF REQUIREMENTS; WAIVER

Section 6901(b)(4)(B)–(D) of Pub. L. 101–239 provided that:

''(B) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act [subsec. (b)(5)(A) of this section and section 1396r(b)(5)(A) of this title] (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act [subsec. (e)(1)(A) of this section and section 1396r(e)(1)(A) of this title]), if such aide would have satisfied such requirement as of July 1, 1989, if a number of hours (not less than 60 hours) were substituted for '75 hours' in sections 1819(f)(2) and 1919(f)(2) of such Act [subsec. (f)(2) of this section and section 1396r(f)(2) of this title], respectively, and if such aide had received, before July 1, 1989, at least the difference in the number of such hours in supervised practical nurse aide training or in regular in-service nurse aide education.

''(C) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act), if such aide was found competent (whether or not by the State), before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.

''(D) With respect to the nurse aide competency evaluation requirements described in sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act, a State may waive such requirements with respect to an individual who can demonstrate to the satisfaction of the State that such individual has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before the date of the enactment of this Act [Dec. 19, 1989].''

EVALUATION AND REPORT ON IMPLEMENTATION OF RESIDENT ASSESSMENT PROCESS

Section 4201(c) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1992, on the implementation of the resident assessment process for residents of skilled nursing facilities under the amendments made by this section [enacting this section and amending sections 1395x, 1395aa, 1395tt, and 1395yy of this title].''

ANNUAL REPORT ON STATUTORY COMPLIANCE AND ENFORCEMENT ACTIONS

Section 4205 of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall report to the Congress annually on the extent to which skilled nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1819 of the Social Security Act [subsecs. (b), (c), and (d) of this section] (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1819(h) of such Act (as added by section 4203 of this Act).''

§ 1395i–4. Medicare rural hospital flexibility program

(a) Establishment

Any State that submits an application in accordance with subsection (b) of this section may establish a medicare rural hospital flexibility program described in subsection (c) of this section.

(b) Application

A State may establish a medicare rural hospital flexibility program described in subsection (c) of this section if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing—

(1) assurances that the State—

(A) has developed, or is in the process of developing, a State rural health care plan that—

(i) provides for the creation of 1 or more rural health networks (as defined in subsection (d) of this section) in the State;

(ii) promotes regionalization of rural health services in the State; and

(iii) improves access to hospital and other health services for rural residents of the State; and

(B) has developed the rural health care plan described in subparagraph (A) in consultation with the hospital association of the State, rural hospitals located in the State, and the State Office of Rural Health (or, in the case of a State in the process of developing such plan, that assures the Secretary that the State will consult with its State hospital association, rural hospitals located in the State, and the State Office of Rural Health in developing such plan);

(2) assurances that the State has designated (consistent with the rural health care plan described in paragraph (1)(A)), or is in the process of so designating, rural nonprofit or public hospitals or facilities located in the State as critical access hospitals; and

(3) such other information and assurances as the Secretary may require.

(c) Medicare rural hospital flexibility program described

(1) In general

A State that has submitted an application in accordance with subsection (b) of this section, may establish a medicare rural hospital flexibility program that provides that—

(A) the State shall develop at least 1 rural health network (as defined in subsection (d) of this section) in the State; and

(B) at least 1 facility in the State shall be designated as a critical access hospital in accordance with paragraph (2).

(2) State designation of facilities

(A) In general

A State may designate 1 or more facilities as a critical access hospital in accordance with subparagraphs (B), (C), and (D).

(B) Criteria for designation as critical access hospital

A State may designate a facility as a critical access hospital if the facility—

(i) is a hospital that is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) or is treated as being located in a rural area pursuant to section 1395ww(d)(8)(E) of this title, and that—

(I) is located more than a 35-mile drive (or, in the case of mountainous terrain or in areas with only secondary roads available, a 15-mile drive) from a hospital, or another facility described in this subsection; or

(II) is certified before January 1, 2006, by the State as being a necessary provider of health care services to residents in the area;

(ii) makes available 24-hour emergency care services that a State determines are necessary for ensuring access to emergency care services in each area served by a critical access hospital;

(iii) provides not more than 25 acute care inpatient beds (meeting such standards as the Secretary may establish) for providing inpatient care for a period that does not exceed, as determined on an annual, average basis, 96 hours per patient;

(iv) meets such staffing requirements as would apply under section 1395x(e) of this title to a hospital located in a rural area, except that—

(I) the facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open and fully staffed, except insofar as the facility is required to make available emergency care services as determined under clause (ii) and must have nursing services available on a 24-hour basis, but need not otherwise staff the facility except when an inpatient is present;

(II) the facility may provide any services otherwise required to be provided by a full-time, on site dietitian, pharmacist, laboratory technician, medical technologist, and radiological technologist on a part-time, off site basis under arrangements as defined in section 1395x(w)(1) of this title; and

(III) the inpatient care described in clause (iii) may be provided by a physician assistant, nurse practitioner, or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility; and

(v) meets the requirements of section 1395x(aa)(2)(I) of this title.

(C) Recently closed facilities

A State may designate a facility as a critical access hospital if the facility—

(i) was a hospital that ceased operations on or after the date that is 10 years before November 29, 1999; and

(ii) as of the effective date of such designation, meets the criteria for designation under subparagraph (B).

(D) Downsized facilities

A State may designate a health clinic or a health center (as defined by the State) as a critical access hospital if such clinic or center—

(i) is licensed by the State as a health clinic or a health center;

(ii) was a hospital that was downsized to a health clinic or health center; and

(iii) as of the effective date of such designation, meets the criteria for designation under subparagraph (B).

(E) Authority to establish psychiatric and rehabilitation distinct part units

(i) In general

Subject to the succeeding provisions of this subparagraph, a critical access hospital may establish—

(I) a psychiatric unit of the hospital that is a distinct part of the hospital; and

(II) a rehabilitation unit of the hospital that is a distinct part of the hospital,

if the distinct part meets the requirements (including conditions of participation) that would otherwise apply to the distinct part if the distinct part were established by a subsection (d) hospital in accordance with the matter following clause (v) of section 1395ww(d)(1)(B) of this title, including any regulations adopted by the Secretary under such section.

(ii) Limitation on number of beds

The total number of beds that may be established under clause (i) for a distinct part unit may not exceed 10.

(iii) Exclusion of beds from bed count

In determining the number of beds of a critical access hospital for purposes of applying the bed limitations referred to in subparagraph (B)(iii) and subsection (f) of this section, the Secretary shall not take into account any bed established under clause (i).

(iv) Effect of failure to meet requirements

If a psychiatric or rehabilitation unit established under clause (i) does not meet the requirements described in such clause with respect to a cost reporting period, no payment may be made under this subchapter to the hospital for services furnished in such unit during such period. Payment to the hospital for services furnished in the unit may resume only after the hospital has demonstrated to the Secretary that the unit meets such requirements.

(d) "Rural health network" defined

(1) In general

In this section, the term ''rural health network'' means, with respect to a State, an organization consisting of—

(A) at least 1 facility that the State has designated or plans to designate as a critical access hospital; and

(B) at least 1 hospital that furnishes acute care services.

(2) Agreements

(A) In general

Each critical access hospital that is a member of a rural health network shall have an agreement with respect to each item described in subparagraph (B) with at least 1 hospital that is a member of the network.

(B) Items described

The items described in this subparagraph are the following:

(i) Patient referral and transfer.

(ii) The development and use of communications systems including (where feasible)—

(I) telemetry systems; and

(II) systems for electronic sharing of patient data.

(iii) The provision of emergency and nonemergency transportation among the facility and the hospital.

(C) Credentialing and quality assurance

Each critical access hospital that is a member of a rural health network shall have an agreement with respect to credentialing and quality assurance with at least—

(i) 1 hospital that is a member of the network;

(ii) 1 peer review organization or equivalent entity; or

(iii) 1 other appropriate and qualified entity identified in the State rural health care plan.

(e) Certification by Secretary

The Secretary shall certify a facility as a critical access hospital if the facility—

(1) is located in a State that has established a medicare rural hospital flexibility program in accordance with subsection (c) of this section;

(2) is designated as a critical access hospital by the State in which it is located; and

(3) meets such other criteria as the Secretary may require.

(f) Permitting maintenance of swing beds

Nothing in this section shall be construed to prohibit a State from designating or the Secretary from certifying a facility as a critical access hospital solely because, at the time the facility applies to the State for designation as a critical access hospital, there is in effect an agreement between the facility and the Secretary under section 1395tt of this title under which the facility's inpatient hospital facilities

are used for the provision of extended care services, so long as the total number of beds that may be used at any time for the furnishing of either such services or acute care inpatient services does not exceed 25 beds. For purposes of the previous sentence, any bed of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a critical access hospital shall not be counted.

(g) Grants

(1) Medicare rural hospital flexibility program

The Secretary may award grants to States that have submitted applications in accordance with subsection (b) of this section for—

(A) engaging in activities relating to planning and implementing a rural health care plan;

(B) engaging in activities relating to planning and implementing rural health networks; and

(C) designating facilities as critical access hospitals.

(2) Rural emergency medical services

(A) In general

The Secretary may award grants to States that have submitted applications in accordance with subparagraph (B) for the establishment or expansion of a program for the provision of rural emergency medical services.

(B) Application

An application is in accordance with this subparagraph if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing the assurances described in subparagraphs (A)(ii), (A)(iii), and (B) of subsection (b)(1) of this section and paragraph (3) of that subsection.

(3) Upgrading data systems

(A) Grants to hospitals

The Secretary may award grants to hospitals that have submitted applications in accordance with subparagraph (C) to assist eligible small rural hospitals in meeting the costs of implementing data systems required to meet requirements established under the medicare program pursuant to amendments made by the Balanced Budget Act of 1997.

(B) Eligible small rural hospital defined

For purposes of this paragraph, the term ''eligible small rural hospital'' means a non-Federal, short-term general acute care hospital that—

(i) is located in a rural area (as defined for purposes of section 1395ww(d) of this title); and

(ii) has less than 50 beds.

(C) Application

A hospital seeking a grant under this paragraph shall submit an application to the Secretary on or before such date and in such form and manner as the Secretary specifies.

(D) Amount of grant

A grant to a hospital under this paragraph may not exceed $50,000.

(E) Use of funds

A hospital receiving a grant under this paragraph may use the funds for the purchase of computer software and hardware, the education and training of hospital staff on computer information systems, and to offset costs related to the implementation of prospective payment systems.

(F) Reports

(i) Information

A hospital receiving a grant under this section shall furnish the Secretary with such information as the Secretary may require to evaluate the project for which the grant is made and to ensure that the grant is expended for the purposes for which it is made.

(ii) Timing of submission

(I) Interim reports

The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least annually on the grant program established under this section, including in such report information on the number of grants made, the nature of the projects involved, the geographic distribution of grant recipients, and such other matters as the Secretary deems appropriate.

(II) Final report

The Secretary shall submit a final report to such committees not later than 180 days after the completion of all of the projects for which a grant is made under this section.

(4) Additional requirements with respect to FLEX grants

With respect to grants awarded under paragraph (1) or (2) from funds appropriated for fiscal year 2005 and subsequent fiscal years—

(A) Consultation with the state hospital association and rural hospitals on the most appropriate ways to use grants

A State shall consult with the hospital association of such State and rural hospitals located in such State on the most appropriate ways to use the funds under such grant.

(B) Limitation on use of grant funds for administrative expenses

A State may not expend more than the lesser of—

(i) 15 percent of the amount of the grant for administrative expenses; or

(ii) the State's federally negotiated indirect rate for administering the grant.

(5) Use of funds for Federal administrative expenses

Of the total amount appropriated for grants under paragraphs (1) and (2) for a fiscal year (beginning with fiscal year 2005), up to 5 percent of such amount shall be available to the Health Resources and Services Administration for purposes of administering such grants.

(h) Grandfathering provisions

(1) In general

Any medical assistance facility operating in Montana and any rural primary care hospital designated by the Secretary under this section prior to August 5, 1997, shall be deemed to have been certified by the Secretary under subsection (e) of this section as a critical access hospital if such facility or hospital is otherwise eligible to be designated by the State as a critical access hospital under subsection (c) of this section.

(2) Continuation of medical assistance facility and rural primary care hospital terms

Notwithstanding any other provision of this subchapter, with respect to any medical assistance facility or rural primary care hospital described in paragraph (1), any reference in this subchapter to a ''critical access hospital'' shall be deemed to be a reference to a ''medical assistance facility'' or ''rural primary care hospital''.

(3) State authority to waive 35-mile rule

In the case of a facility that was designated as a critical access hospital before January 1, 2006, and was certified by the State as being a necessary provider of health care services to residents in the area under subsection (c)(2)(B)(i)(II) of this section, as in effect before such date, the authority under such subsection with respect to any redesignation of such facility shall continue to apply notwithstanding the amendment made by section 405(h)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(i) Waiver of conflicting part A provisions

The Secretary is authorized to waive such provisions of this part and part E of this subchapter as are necessary to conduct the program established under this section.

(j) Authorization of appropriations

There are authorized to be appropriated from the Federal Hospital Insurance Trust Fund for making grants to all States under subsection (g) of this section, $25,000,000 in each of the fiscal years 1998 through 2002, and for making grants to all States under paragraphs (1) and (2) of subsection (g) of this section, $35,000,000 in each of fiscal years 2005 through 2008.

(Aug. 14, 1935, ch. 531, title XVIII, § 1820, as added Pub. L. 101–239, title VI, § 6003(g)(1)(A), Dec. 19, 1989, 103 Stat. 2145; amended Pub. L. 101–508, title IV, § 4008(d)(1)–(3), (m)(2)(B), Nov. 5, 1990, 104 Stat. 1388–44, 1388–45, 1388–53; Pub. L. 103–432, title I, § 102(a)(1), (2), (b)(1)(A), (2), (c), (f), (h), Oct. 31, 1994, 108 Stat. 4401–4404; Pub. L. 105–33, title IV, §§ 4002(f)(1), 4201(a), Aug. 5, 1997, 111 Stat. 329, 369; Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(a), title IV, §§ 401(b)(2), 403(a)(1), (b), (c), 409], Nov. 29, 1999, 113 Stat. 1536, 1501A–365, 1501A–369, 1501A–370, 1501A–375; Pub. L. 108–173, title I, § 101(e)(1), title IV, § 405(e)(1), (2), (f), (g)(1), (h), Dec. 8, 2003, 117 Stat. 2150, 2267–2269.)

REFERENCES IN TEXT

The Balanced Budget Act of 1997, referred to in subsec. (g)(3)(A), is Pub. L. 105–33, Aug. 5, 1997, 111 Stat. 251. For complete classification of this Act to the Code, see Tables.

Section 405(h)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (h)(3), is section 405(h)(1) of Pub. L. 108–173, which amended this section. See 2003 Amendment note below.

Part E of this subchapter, referred to in subsec. (i), is classified to section 1395x et seq. of this title.

AMENDMENTS

2003—Subsec. (c)(2)(B)(i)(II). Pub. L. 108–173, § 405(h)(1), inserted ''before January 1, 2006,'' after ''is certified''.

Subsec. (c)(2)(B)(iii). Pub. L. 108–173, § 405(e)(1), substituted ''25'' for ''15 (or, in the case of a facility under an agreement described in subsection (f) of this section, 25)''.

Subsec. (c)(2)(E). Pub. L. 108–173, § 405(g)(1), added subpar. (E).

Subsec. (f). Pub. L. 108–173, § 405(e)(2), struck out ''and the number of beds used at any time for acute care inpatient services does not exceed 15 beds'' after ''does not exceed 25 beds''.

Subsec. (g)(4), (5). Pub. L. 108–173, § 405(f)(2), added pars. (4) and (5).

Subsec. (h). Pub. L. 108–173, § 405(h)(2)(A), substituted ''provisions'' for ''of certain facilities'' in heading.

Subsec. (h)(3). Pub. L. 108–173, § 405(h)(2)(B), added par. (3).

Subsec. (i). Pub. L. 108–173, § 101(e)(1), substituted ''part E'' for ''part D''.

Subsec. (j). Pub. L. 108–173, § 405(f)(1), inserted before period at end '', and for making grants to all States under paragraphs (1) and (2) of subsection (g) of this section, $35,000,000 in each of fiscal years 2005 through 2008''.

1999—Subsec. (c)(2)(A). Pub. L. 106–113, § 1000(a)(6) [title IV, § 403(c)(1)], substituted ''subparagraphs (B), (C), and (D)'' for ''subparagraph (B)''.

Subsec. (c)(2)(B)(i). Pub. L. 106–113, § 1000(a)(6) [title IV, § 403(b)], substituted ''hospital'' for ''nonprofit or public hospital''.

Pub. L. 106–113, § 1000(a)(6) [title IV, § 401(b)(2)], inserted ''or is treated as being located in a rural area pursuant to section 1395ww(d)(8)(E) of this title'' after ''section 1395ww(d)(2)(D) of this title)''.

Pub. L. 106–113, § 1000(a)(6) [title III, § 321(a)], substituted ''that is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1395ww(d)(2)(D) of this title), and that'' for ''and is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) that''.

Subsec. (c)(2)(B)(iii). Pub. L. 106–113, § 1000(a)(6) [title IV, § 403(a)(1)], substituted ''for a period that does not exceed, as determined on an annual, average basis, 96 hours per patient;'' for ''for a period not to exceed 96 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions), except that a peer review organization or equivalent entity may, on request, waive the 96-hour restriction on a case-by-case basis;''.

Subsec. (c)(2)(C), (D). Pub. L. 106–113, § 1000(a)(6) [title IV, § 403(c)(2)], added subpars. (C) and (D).

Subsec. (g)(3). Pub. L. 106–113, § 1000(a)(6) [title IV, § 409], added par. (3).

1997—Pub. L. 105–33, § 4201(a), amended section catchline and text generally, substituting provisions relating to medicare rural hospital flexibility program for provisions relating to essential access community hospital program.

Subsec. (j). Pub. L. 105–33, § 4002(f)(1), substituted ''part D'' for ''part C''.

1994—Subsec. (c)(1). Pub. L. 103–432, § 102(b)(2)(B)(i), substituted ''paragraph (3) or subsection (k) of this section'' for ''paragraph (3)''.

Subsec. (e)(1). Pub. L. 103–432, § 102(b)(1)(A)(i), redesignated par. (2) as (1) and struck out former par. (1) which

read as follows: ''is located in a rural area (as defined in section 1395ww(d)(2)(D) of this title);''.

Subsec. (e)(1)(A). Pub. L. 103–432, § 102(b)(1)(A)(ii), substituted ''except in the case of a hospital located in an urban area, is located'' for ''is located'' in introductory provisions, substituted ''or (ii)'' for '', (ii)'', and struck out ''or (iii) is located in an urban area that meets the criteria for classification as a regional referral center under such section,'' after ''section 1395ww(d)(5)(C) of this title,''.

Subsec. (e)(2) to (6). Pub. L. 103–432, § 102(b)(1)(A)(i), redesignated pars. (2) to (6) as (1) to (5), respectively.

Subsec. (f)(1)(F). Pub. L. 103–432, § 102(a)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''provides not more than 6 inpatient beds (meeting such conditions as the Secretary may establish) for providing inpatient care for a period not to exceed 72 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions) to patients requiring stabilization before discharge or transfer to a hospital;''.

Subsec. (f)(1)(H). Pub. L. 103–432, § 102(f), inserted before period at end '', except that in determining whether a facility meets the requirements of this subparagraph, subparagraphs (E) and (F) of that paragraph shall be applied as if any reference to a 'physician' is a reference to a physician as defined in section 1395x(r)(1) of this title''.

Subsec. (f)(3). Pub. L. 103–432, § 102(c), substituted ''because, at the time the facility applies to the State for designation as a rural primary care hospital, there is in effect an agreement between the facility and the Secretary under section 1395tt of this title under which the facility's inpatient hospital facilities are used for the furnishing of extended care services, except that the number of beds used for the furnishing of such services may not exceed the total number of licensed inpatient beds at the time the facility applies to the State for such designation (minus the number of inpatient beds used for providing inpatient care pursuant to paragraph (1)(F)). For purposes of the previous sentence, the number of beds of the facility used for the furnishing of extended care services shall not include any beds of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a rural primary care hospital.'' for ''because the facility has entered into an agreement with the Secretary under section 1395tt of this title under which the facility's inpatient hospital facilities may be used for the furnishing of extended care services.''

Subsec. (f)(4). Pub. L. 103–432, § 102(a)(2), added par. (4).

Subsec. (i)(1)(A). Pub. L. 103–432, § 102(b)(2)(B)(ii), in cl. (i) inserted ''(except as provided in subsection (k) of this section)'' and in cl. (ii) inserted ''or subsection (k) of this section''.

Subsec. (i)(1)(B). Pub. L. 103–432, § 102(b)(1)(A)(iii), substituted ''paragraph (2)'' for ''paragraph (3)''.

Subsec. (i)(2)(A). Pub. L. 103–432, § 102(b)(2)(B)(ii), in cl. (i) inserted ''(except as provided in subsection (k) of this section)'' and in cl. (ii) inserted ''or subsection (k) of this section''.

Subsec. (k). Pub. L. 103–432, § 102(b)(2)(A)(ii), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 103–432, § 102(h), substituted ''1990 through 1997'' for ''1990, 1991, and 1992'' in introductory provisions.

Pub. L. 103–432, § 102(b)(2)(A)(i), redesignated subsec. (k) as (*l*).

1990—Subsec. (d)(1). Pub. L. 101–508, § 4008(m)(2)(B)(i), struck out ''demonstration'' before ''program''.

Subsec. (f)(1)(A). Pub. L. 101–508, § 4008(d)(3), inserted before semicolon at end '', or is located in a county whose geographic area is substantially larger than the average geographic area for urban counties in the United States and whose hospital service area is characteristic of service areas of hospitals located in rural areas''.

Subsec. (f)(1)(B). Pub. L. 101–508, § 4008(d)(2), which directed the substitution of ''is a hospital (or, in the case of a facility that closed during the 12-month period that ends on the date the facility applies for such designation, at the time the facility closed),'' for ''is a hospital,'' was executed by making the substitution for ''is a hospital'' to reflect the probable intent of Congress.

Subsec. (g)(1)(A)(ii). Pub. L. 101–508, § 4008(m)(2)(B)(ii), substituted ''regional referral center'' for ''rural referral center''.

Subsec. (i)(2)(C). Pub. L. 101–508, § 4008(d)(1), inserted at end ''In designating facilities as rural primary care hospitals under this subparagraph, the Secretary shall give preference to facilities not meeting the requirements of clause (i) of subparagraph (A) that have entered into an agreement described in subsection (g)(2) of this section with a rural health network located in a State receiving a grant under subsection (a)(1) of this section.''

Subsec. (j). Pub. L. 101–508, § 4008(m)(2)(B)(iii), inserted ''and part C of this subchapter'' after ''this part''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IV, § 405(e)(3), Dec. 8, 2003, 117 Stat. 2267, provided that: ''The amendments made by this subsection [amending this section] shall apply to designations made before, on, or after January 1, 2004, but any election made pursuant to regulations promulgated to carry out such amendments shall only apply prospectively.''

Amendment by section 405(g)(1) of Pub. L. 108–173 applicable to cost reporting periods beginning on or after Oct. 1, 2004, see section 405(g)(3) of Pub. L. 108–173, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, § 321(a)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 401(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–369, provided that: ''The amendments made by this section [amending this section and sections 1395*l* and 1395ww of this title] shall become effective on January 1, 2000.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 403(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–370, provided that: ''The amendment made by paragraph (1) [amending this section] takes effect on the date of the enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(a) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(d)(4) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1), (2), and (3) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

GAO STUDY ON CERTAIN ELIGIBILITY REQUIREMENTS FOR CRITICAL ACCESS HOSPITALS

Pub. L. 106–554, § 1(a)(6) [title II, § 206], Dec. 21, 2000, 114 Stat. 2763, 2763A–483, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study on the eligibility requirements for critical access hospitals under section 1820(c) of the Social Security Act (42 U.S.C. 1395i–4(c)) with respect to limitations on average length of stay and number of beds in such a hospital, including an analysis of—

''(1) the feasibility of having a distinct part unit as part of a critical access hospital for purposes of the

medicare program under title XVIII of such Act [this subchapter]; and

''(2) the effect of seasonal variations in patient admissions on critical access hospital eligibility requirements with respect to limitations on average annual length of stay and number of beds.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a) together with recommendations regarding—

''(1) whether distinct part units should be permitted as part of a critical access hospital under the medicare program;

''(2) if so permitted, the payment methodologies that should apply with respect to services provided by such units;

''(3) whether, and to what extent, such units should be included in or excluded from the bed limits applicable to critical access hospitals under the medicare program; and

''(4) any adjustments to such eligibility requirements to account for seasonal variations in patient admissions.''

TRANSITION FOR MAF

Section 4201(c)(6) of Pub. L. 105–33 provided that:

''(A) IN GENERAL.—The Secretary of Health and Human Services shall provide for an appropriate transition for a facility that, as of the date of the enactment of this Act [Aug. 5, 1997], operated as a limited service rural hospital under a demonstration described in section 4008(i)(1) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508] (42 U.S.C. 1395b–1 note) from such demonstration to the program established under subsection (a) [amending this section]. At the conclusion of the transition period described in subparagraph (B), the Secretary shall end such demonstration.

''(B) TRANSITION PERIOD DESCRIBED.—

''(i) INITIAL PERIOD.—Subject to clause (ii), the transition period described in this subparagraph is the period beginning on the date of the enactment of this Act and ending on October 1, 1998.

''(ii) EXTENSION.—If the Secretary determines that the transition is not complete as of October 1, 1998, the Secretary shall provide for an appropriate extension of the transition period.''

GAO REPORTS

Section 102(a)(4) of Pub. L. 103–432 directed Comptroller General to submit to Congress, not later than 2 years after Oct. 31, 1994, reports on application of requirements under subsec. (f) of this section that rural primary care hospitals provide inpatient care only to those individuals whose attending physicians certify may reasonably be expected to be discharged within 72 hours after admission and maintain average length of inpatient stay during a year that does not exceed 72 hours, and extent to which such requirements have resulted in such hospitals providing inpatient care beyond their capabilities or have limited ability of such hospitals to provide needed services.

§ 1395i–5. Conditions for coverage of religious nonmedical health care institutional services

(a) In general

Subject to subsections (c) and (d) of this section, payment under this part may be made for inpatient hospital services or post-hospital extended care services furnished an individual in a religious nonmedical health care institution and for home health services furnished an individual by a religious nonmedical health care institution only if—

(1) the individual has an election in effect for such benefits under subsection (b) of this section; and

(2) the individual has a condition such that the individual would qualify for benefits under this part for inpatient hospital services, extended care services, or home health services, respectively, if the individual were an inpatient or resident in a hospital or skilled nursing facility, or receiving services from a home health agency, that was not such an institution.

(b) Election

(1) In general

An individual may make an election under this subsection in a form and manner specified by the Secretary consistent with this subsection. Unless otherwise provided, such an election shall take effect immediately upon its execution. Such an election, once made, shall continue in effect until revoked.

(2) Form

The election form under this subsection shall include the following:

(A) A written statement, signed by the individual (or such individual's legal representative), that—

(i) the individual is conscientiously opposed to acceptance of nonexcepted medical treatment; and

(ii) the individual's acceptance of nonexcepted medical treatment would be inconsistent with the individual's sincere religious beliefs.

(B) A statement that the receipt of nonexcepted medical services shall constitute a revocation of the election and may limit further receipt of services described in subsection (a) of this section.

(3) Revocation

An election under this subsection by an individual may be revoked by voluntarily notifying the Secretary in writing of such revocation and shall be deemed to be revoked if the individual receives nonexcepted medical treatment for which reimbursement is made under this subchapter.

(4) Limitation on subsequent elections

Once an individual's election under this subsection has been made and revoked twice—

(A) the next election may not become effective until the date that is 1 year after the date of most recent previous revocation, and

(B) any succeeding election may not become effective until the date that is 5 years after the date of the most recent previous revocation.

(5) Excepted medical treatment

For purposes of this subsection:

(A) Excepted medical treatment

The term ''excepted medical treatment'' means medical care or treatment (including medical and other health services)—

(i) received involuntarily, or

(ii) required under Federal or State law or law of a political subdivision of a State.

(B) Nonexcepted medical treatment

The term ''nonexcepted medical treatment'' means medical care or treatment (in-

cluding medical and other health services) other than excepted medical treatment.

(c) Monitoring and safeguard against excessive expenditures

(1) Estimate of expenditures

Before the beginning of each fiscal year (beginning with fiscal year 2000), the Secretary shall estimate the level of expenditures under this part for services described in subsection (a) of this section for that fiscal year.

(2) Adjustment in payments

(A) Proportional adjustment

If the Secretary determines that the level estimated under paragraph (1) for a fiscal year will exceed the trigger level (as defined in subparagraph (C)) for that fiscal year, the Secretary shall, subject to subparagraph (B), provide for such a proportional reduction in payment amounts under this part for services described in subsection (a) of this section for the fiscal year involved as will assure that such level (taking into account any adjustment under subparagraph (B)) does not exceed the trigger level for that fiscal year.

(B) Alternative adjustments

The Secretary may, instead of making some or all of the reduction described in subparagraph (A), impose such other conditions or limitations with respect to the coverage of covered services (including limitations on new elections of coverage and new facilities) as may be appropriate to reduce the level of expenditures described in paragraph (1) to the trigger level.

(C) Trigger level

For purposes of this subsection—

(i) In general

Subject to adjustment under paragraph (3)(B), the ''trigger level'' for a year is the unadjusted trigger level described in clause (ii).

(ii) Unadjusted trigger level

The ''unadjusted trigger level'' for—

(I) fiscal year 1998, is $20,000,000, or

(II) a succeeding fiscal year is the amount specified under this clause for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) for the 12-month period ending with July preceding the beginning of the fiscal year.

(D) Prohibition of administrative and judicial review

There shall be no administrative or judicial review under section 1395ff of this title, 1395*oo* of this title, or otherwise of the estimation of expenditures under subparagraph (A) or the application of reduction amounts under subparagraph (B).

(E) Effect on billing

Notwithstanding any other provision of this subchapter, in the case of a reduction in payment provided under this subsection for services of a religious nonmedical health care institution provided to an individual, the amount that the institution is otherwise permitted to charge the individual for such services is increased by the amount of such reduction.

(3) Monitoring expenditure level

(A) In general

The Secretary shall monitor the expenditure level described in paragraph (2)(A) for each fiscal year (beginning with fiscal year 1999).

(B) Adjustment in trigger level

(i) In general

If the Secretary determines that such level for a fiscal year exceeded, or was less than, the trigger level for that fiscal year, then, subject to clause (ii), the trigger level for the succeeding fiscal year shall be reduced, or increased, respectively, by the amount of such excess or deficit.

(ii) Limitation on carryforward

In no case may the increase effected under clause (i) for a fiscal year exceed $50,000,000.

(d) Sunset

If the Secretary determines that the level of expenditures described in subsection (c)(1) of this section for 3 consecutive fiscal years (with the first such year being not earlier than fiscal year 2002) exceeds the trigger level for such expenditures for such years (as determined under subsection (c)(2) of this section), benefits shall be paid under this part for services described in subsection (a) of this section and furnished on or after the first January 1 that occurs after such 3 consecutive years only with respect to an individual who has an election in effect under subsection (b) of this section as of such January 1 and only during the duration of such election.

(e) Annual report

At the beginning of each fiscal year (beginning with fiscal year 1999), the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual report on coverage and expenditures for services described in subsection (a) of this section under this part and under State plans under subchapter XIX of this chapter. Such report shall include—

(1) level of expenditures described in subsection (c)(1) of this section for the previous fiscal year and estimated for the fiscal year involved;

(2) trends in such level; and

(3) facts and circumstances of any significant change in such level from the level in previous fiscal years.

(Aug. 14, 1935, ch. 531, title XVIII, § 1821, as added Pub. L. 105–33, title IV, § 4454(a)(2), Aug. 5, 1997, 111 Stat. 428; amended Pub. L. 108–173, title VII, § 706(a), Dec. 8, 2003, 117 Stat. 2339.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, § 706(a)(1), inserted ''and for home health services furnished an individual

by a religious nonmedical health care institution'' after ''religious nonmedical health care institution'' in introductory provisions.

Subsec. (a)(2). Pub. L. 108–173, § 706(a)(2), substituted '', extended care services, or home health services'' for ''or extended care services'' and inserted '', or receiving services from a home health agency,'' after ''skilled nursing facility''.

EFFECTIVE DATE

Section 4454(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [enacting this section and amending sections 1320a–1, 1320c–11, 1395x, 1396a, and 1396g of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and shall apply to items and services furnished on or after such date. By not later than July 1, 1998, the Secretary of Health and Human Services shall first issue regulations to carry out such amendments. Such regulations may be issued so they are effective on an interim basis pending notice and opportunity for public comment. For periods before the effective date of such regulations, such regulations shall recognize elections entered into in good faith in order to comply with the requirements of section 1821(b) of the Social Security Act [subsec. (b) of this section].''

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR AGED AND DISABLED

§ 1395j. Establishment of supplementary medical insurance program for aged and disabled

There is hereby established a voluntary insurance program to provide medical insurance benefits in accordance with the provisions of this part for aged and disabled individuals who elect to enroll under such program, to be financed from premium payments by enrollees together with contributions from funds appropriated by the Federal Government.

(Aug. 14, 1935, ch. 531, title XVIII, § 1831, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 301; amended Pub. L. 92–603, title II, § 201(a)(3), Oct. 30, 1972, 86 Stat. 1371.)

AMENDMENTS

1972—Pub. L. 92–603 substituted ''aged and disabled individuals'' for ''individuals 65 years of age or over''.

STUDY REGARDING COVERAGE UNDER PART B OF MEDICARE FOR NONREIMBURSABLE SERVICES PROVIDED BY OPTOMETRISTS FOR PROSTHETIC LENSES FOR PATIENTS WITH APHAKIA

Pub. L. 94–182, title I, § 109, Dec. 31, 1975, 89 Stat. 1053, provided that the Secretary of Health, Education, and Welfare conduct a study on the appropriateness of reimbursement under the insurance program established by this part for services performed by optometrists with respect to the provision of prosthetic lenses for patients with aphakia and submit such study to Congress not later than 4 months after Dec. 31, 1975.

STUDY TO DETERMINE FEASIBILITY OF INCLUSION OF CERTAIN ADDITIONAL SERVICES UNDER PART B

Pub. L. 90–248, title I, § 141, Jan. 2, 1968, 81 Stat. 855, directed Secretary to conduct a study relating to inclusion under the supplementary medical insurance program under this part of services of additional types of licensed practitioners performing health services in independent practice and submit such study to Congress prior to Jan. 1, 1969.

§ 1395k. Scope of benefits; definitions

(a) Scope of benefits

The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in subparagraphs (B) and (D) of paragraph (2) and subparagraphs (E) and (F) of section 1395u(b)(6) of this title; and

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services (other than items described in subparagraph (G) or subparagraph (I));

(B) medical and other health services (other than items described in subparagraph (G) or subparagraph (I)) furnished by a provider of services or by others under arrangement with them made by a provider of services, excluding—

(i) physician services except where furnished by—

(I) a resident or intern of a hospital, or

(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1395x(b) of this title (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital) where the conditions specified in paragraph (7) of such section are met,

(ii) services for which payment may be made pursuant to section 1395n(b)(2) of this title,

(iii) services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist;[1]

(iv) services of a nurse practitioner or clinical nurse specialist but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services; and[2]

(C) outpatient physical therapy services (other than services to which the second sentence of section 1395x(p) of this title applies) and outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1395x(g) of this title);

(D)(i) rural health clinic services and (ii) Federally qualified health center services;

(E) comprehensive outpatient rehabilitation facility services;

(F) facility services furnished in connection with surgical procedures specified by the Secretary—

(i) pursuant to section 1395*l*(i)(1)(A) of this title and performed in an ambulatory surgical center (which meets health, safety, and other standards specified by the Secretary in regulations) if the center has an agreement in effect with the Secretary by which the center agrees to accept the standard overhead amount determined under section 1395*l*(i)(2)(A) of this title as

[1] So in original. The semicolon probably should be a comma.

[2] So in original. The word ''and'' probably should not appear.

full payment for such services (including intraocular lens in cases described in section 1395*l*(i)(2)(A)(iii) of this title) and to accept an assignment described in section 1395u(b)(3)(B)(ii) of this title with respect to payment for all such services (including intraocular lens in cases described in section 1395*l*(i)(2)(A)(iii) of this title) furnished by the center to individuals enrolled under this part, or

(ii) pursuant to section 1395*l*(i)(1)(B) of this title and performed by a physician, described in paragraph (1), (2), or (3) of section 1395x(r) of this title, in his office, if the Secretary has determined that—

(I) a quality control and peer review organization (having a contract with the Secretary under part B of subchapter XI of this chapter) is willing, able, and has agreed to carry out a review (on a sample or other reasonable basis) of the physician's performing such procedures in the physician's office,

(II) the particular physician involved has agreed to make available to such organization such records as the Secretary determines to be necessary to carry out the review, and

(III) the physician is authorized to perform the procedure in a hospital located in the area in which the office is located,

and if the physician agrees to accept the standard overhead amount determined under section 1395*l*(i)(2)(B) of this title as full payment for such services and to accept payment on an assignment-related basis with respect to payment for all services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1395x(s) of this title and furnished in connection with such surgical procedure to individuals enrolled under this part;

(G) covered items (described in section 1395m(a)(13) of this title) furnished by a provider of services or by others under arrangements with them made by a provider of services;

(H) outpatient critical access hospital services (as defined in section 1395x(mm)(3) of this title);

(I) prosthetic devices and orthotics and prosthetics (described in section 1395m(h)(4) of this title) furnished by a provider of services or by others under arrangements with them made by a provider of services; and

(J) partial hospitalization services provided by a community mental health center (as described in section 1395x(ff)(2)(B) of this title).

(b) Definitions

For definitions of ''spell of illness'', ''medical and other health services'', and other terms used in this part, see section 1395x of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1832, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 302; amended Pub. L. 90–248, title I, §§ 129(c)(6)(B), 133(d), Jan. 2, 1968, 81 Stat. 848, 851; Pub. L. 92–603, title II, §§ 227(e)(1), 251(a)(4), Oct. 30, 1972, 86 Stat. 1406, 1445; Pub. L. 95–210, § 1(a), Dec. 13, 1977, 91 Stat. 1485; Pub. L. 96–499, title IX, §§ 930(g), 933(a), 934(a), 948(a)(2), Dec. 5, 1980, 94 Stat. 2631, 2635, 2637, 2643; Pub. L. 97–248, title I, § 148(c), Sept. 3, 1982, 96 Stat. 394; Pub. L. 98–369, div. B, title III, §§ 2341(b), 2354(b)(6), July 18, 1984, 98 Stat. 1094, 1100; Pub. L. 99–509, title IX, §§ 9320(d), 9337(a), 9343(e)(1), Oct. 21, 1986, 100 Stat. 2013, 2033, 2041; Pub. L. 100–203, title IV, §§ 4062(d)(2), 4063(e)(2), 4073(b)(1), 4077(b)(2), 4085(i)(22)(A), Dec. 22, 1987, 101 Stat. 1330–108, 1330–118, 1330–120, as amended Pub. L. 100–360, title IV, § 411(g)(2)(E), (h)(4)(A), (7)(B), (i)(4)(C)(vi), July 1, 1988, 102 Stat. 783, 786, 787, 789; Pub. L. 100–360, title I, § 104(d)(3), title II, §§ 203(a), 205(a), July 1, 1988, 102 Stat. 689, 721, 729, 783; Pub. L. 101–234, title I, § 101(a), title II, § 201(a), Dec. 13, 1989, 103 Stat. 1979, 1981; Pub. L. 101–239, title VI, § 6116(a)(2), Dec. 19, 1989, 103 Stat. 2219; Pub. L. 101–508, title IV, §§ 4153(a)(2)(A), 4155(b)(1), 4157(b), 4161(a)(3)(A), 4162(b)(1), Nov. 5, 1990, 104 Stat. 1388–83, 1388–86, 1388–89, 1388–93, 1388–96; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4432(b)(5)(B), 4511(c), 4603(c)(2)(B)(ii), Aug. 5, 1997, 111 Stat. 373, 421, 443, 471; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 227(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–354; Pub. L. 106–554, § 1(a)(6) [title I, § 113(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (a)(2)(F)(ii)(I), is classified to section 1320c et seq. of this title.

AMENDMENTS

2000—Subsecs. (b), (c). Pub. L. 106–554 redesignated subsec. (c) as (b) and struck out former subsec. (b), which related to extension of coverage of immunosuppressive drugs for individuals who would exhaust benefits under section 1395x(s)(2)(J)(v) of this title in a year during the 5-year period beginning with 2000, and set forth provisions relating to extension periods for each year.

1999—Subsecs. (b), (c). Pub. L. 106–113 added subsec. (b) and redesignated former subsec. (b) as (c).

1997—Subsec. (a)(1). Pub. L. 105–33, § 4603(c)(2)(B)(ii), substituted ''subparagraphs (E) and (F) of section 1395u(b)(6) of this title;'' for ''section 1395u(b)(6)(E) of this title;''.

Pub. L. 105–33, § 4432(b)(5)(B), substituted ''(2) and section 1395u(b)(6)(E) of this title;'' for ''(2);''.

Subsec. (a)(2)(B)(iv). Pub. L. 105–33, § 4511(c), substituted ''but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services'' for ''provided in a rural area (as defined in section 1395ww(d)(2)(D) of this title)''.

Subsec. (a)(2)(H). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

1990—Subsec. (a)(2)(A), (B). Pub. L. 101–508, § 4153(a)(2)(A)(i), substituted ''subparagraph (G) or subparagraph (I)'' for ''subparagraph (G)''.

Subsec. (a)(2)(B)(iii). Pub. L. 101–508, § 4157(b), amended cl. (iii) generally. Prior to amendment, cl. (iii) related to services of a certified registered nurse anesthetist.

Subsec. (a)(2)(B)(iv). Pub. L. 101–508, § 4155(b)(1), added cl. (iv).

Subsec. (a)(2)(D). Pub. L. 101–508, § 4161(a)(3)(A), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(2)(I). Pub. L. 101–508, § 4153(a)(2)(A)(ii)–(iv), added subpar. (I).

Subsec. (a)(2)(J). Pub. L. 101–508, § 4162(b)(1), added subpar. (J).

1989—Subsec. (a). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 203(a), 205(a), and provided that the

provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(2)(H). Pub. L. 101–239 added subpar. (H).

Subsec. (b). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–360, § 205(a)(2), inserted sentence at end relating to in-home care provided to a chronically dependent individual on any day.

Subsec. (a)(2)(A). Pub. L. 100–360, § 205(a)(1), designated existing provisions as cl. (i) and added cl. (ii) relating to in-home care for a chronically dependent individual.

Pub. L. 100–360, § 203(a), inserted ''and home intravenous drug therapy services'' before semicolon at end.

Subsec. (a)(2)(B)(iv). Pub. L. 100–360, § 411(h)(7)(B), struck out Pub. L. 100–203, § 4077(b)(2), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(A), struck out Pub. L. 100–203, § 4073(b)(1), see 1987 Amendment note below.

Subsec. (a)(2)(F)(i). Pub. L. 100–360, § 411(g)(2)(E), added Pub. L. 100–203, § 4063(e)(2), see 1987 Amendment note below.

Subsec. (a)(2)(F)(ii). Pub. L. 100–360, § 411(i)(4) (C)(vi), added Pub. L. 100–203, § 4085(i)(22)(A), see 1987 Amendment note below.

Subsec. (b). Pub. L. 100–360, § 104(d)(3), substituted ''definitions of 'medical and other health services' and'' for ''definitions of 'spell of illness', 'medical and other health services', and''.

1987—Subsec. (a)(2)(A). Pub. L. 100–203, § 4062(d)(2)(A), inserted ''(other than items described in subparagraph (G))'' after ''services''.

Subsec. (a)(2)(B). Pub. L. 100–203, § 4062(d)(2)(B), inserted ''(other than items described in subparagraph (G))'' after ''health services''.

Subsec. (a)(2)(B)(iv). Pub. L. 100–203, § 4077(b)(2), which directed the addition of cl. (iv) relating to qualified psychologist services, was repealed by Pub. L. 100–360, § 411(h)(7)(B).

Pub. L. 100–203, § 4073(b)(1), which directed the addition of cl. (iv) relating to certified nurse-midwife services, was repealed by Pub. L. 100–360, § 411(h)(4)(A).

Subsec. (a)(2)(F)(i). Pub. L. 100–203, § 4063(e)(2), as added by Pub. L. 100–360, § 411(g)(2)(E), inserted ''(including intraocular lens in cases described in section 1395*l*(i)(2)(A)(iii) of this title)'' after ''services'' in two places.

Subsec. (a)(2)(F)(ii). Pub. L. 100–203, § 4085(i)(22)(A), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''payment on an assignment-related basis'' for ''an assignment described in section 1395u(b)(3)(B)(ii) of this title'' in concluding provisions.

Subsec. (a)(2)(G). Pub. L. 100–203, § 4062(d)(2)(C), added subpar. (G).

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99–509, § 9320(d), added cl. (iii).

Subsec. (a)(2)(C). Pub. L. 99–509, § 9337(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''outpatient physical therapy services, other than services to which the next to last sentence of section 1395x(p) of this title applies;''.

Subsec. (a)(2)(F). Pub. L. 99–509, § 9343(e)(1), inserted ''standard overhead'' in cl. (i) and concluding provisions of cl. (ii).

1984—Subsec. (a)(2)(F)(ii). Pub. L. 98–369, § 2341(b), substituted ''paragraph (1), (2), or (3) of section 1395x(r) of this title'' for ''section 1395x(r)(1) of this title''.

Subsec. (a)(2)(F)(ii)(II). Pub. L. 98–369, § 2354(b)(6), substituted ''organization'' for ''Organization''.

1982—Subsec. (a)(2)(F)(ii)(I). Pub. L. 97–248 substituted ''quality control and peer review organization (having a contract with the Secretary'' for ''Professional Standards Review Organization (designated, conditionally or otherwise,''.

1980—Subsec. (a)(2)(A). Pub. L. 96–499, § 930(g), struck out restriction on home health services of 100 visits during a calendar year.

Subsec. (a)(2)(B)(i)(II). Pub. L. 96–499, § 948(a)(2), substituted ''where the conditions specified in paragraph (7) of such section are met'' for '', unless either clause (A) or (B) of paragraph (7) of such section is met''.

Subsec. (a)(2)(E). Pub. L. 96–499, § 933(a), added subpar. (E).

Subsec. (a)(2)(F). Pub. L. 96–499, § 934(a), added subpar. (F).

1977—Subsec. (a)(1). Pub. L. 95–210, § 1(a)(1), substituted ''subparagraphs (B) and (D) of paragraph (2)'' for ''paragraph (2)(B)''.

Subsec. (a)(2)(D). Pub. L. 95–210, § 1(a)(2), added subpar. (D).

1972—Subsec. (a)(2)(B). Pub. L. 92–603, § 227(e)(1), inserted provisions relating to medical and other health services performed by a physician to a patient in a hospital which has an approved teaching program.

Subsec. (a)(2)(C). Pub. L. 92–603, § 251(a)(4), inserted '', other than services to which the next to last sentence of section 1395x(p) of this title applies''.

1968—Subsec. (a)(2)(B). Pub. L. 90–248, § 129(c)(6)(B), inserted ''and the services for which payment may be made pursuant to section 1395n(b)(2) of this title'' after ''hospital''.

Subsec. (a)(2)(C). Pub. L. 90–248, § 133(d), added subpar. (C).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4432(b)(5)(B) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Section 4511(e) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395x, 1395y, 1395cc, and 1395yy of this title] shall apply with respect to services furnished and supplies provided on and after January 1, 1998.''

Amendment by section 4603(c)(2)(B)(ii) of Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4153(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and sections 1395*l* and 1395m of this title] shall apply to items furnished on or after January 1, 1991.''

Section 4155(e) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395u, and 1395x of this title] shall apply to services furnished on or after January 1, 1991.''

Section 4157(d) of Pub. L. 101–508 provided that: ''The amendments made by the preceding subsections [amending this section and sections 1395x, 1395y, and 1395cc of this title] apply to services furnished on or after January 1, 1991.''

Section 4161(a)(8) of Pub. L. 101–508 provided that:

''(A) Subject to subparagraphs (B) and (C), the amendments made by this section [probably means this subsection, which amended this section and sections 1320a–7b, 1395*l*, 1395x, 1395y, and 1395*oo* of this title] shall apply to services furnished on or after October 1, 1991.

''(B) In the case of a Federally qualified health care center that has elected, as of January 1, 1990, under part B of title XVIII of the Social Security Act [this part], to have the amount of payments for services under such part determined on a reasonable-charge basis, the amendment made by paragraph (3)(A) [amending this section] shall only apply on and after such date (not earlier than October 1, 1991) as the center may elect.

''(C) The amendment made by paragraph (6) [amending section 1395*oo* of this title] shall apply to cost reports for periods beginning on or after October 1, 1991.''

Section 4162(c) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 1395x and 1395cc of this title] shall apply with respect to partial hospitalization services provided on or after October 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 101(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 104(d)(3) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Amendment by section 203(a) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Section 205(f) of Pub. L. 100–360, which provided that the amendments made by section 205 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395n, 1395x, and 1395y of this title] were applicable to items and services furnished on or after January 1, 1990, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(g)(2)(E), (h)(4)(A), (7)(B), (i)(4)(C)(vi) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4062(d)(2) of Pub. L. 100–203 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as a note under section 1395f of this title.

Section 4073(e) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395x, and 1396d of this title] shall be effective with respect to services performed on or after July 1, 1988.''

Section 4077(b)(5), formerly § 4077(b)(6), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(h)(7)(F), July 1, 1988, 102 Stat. 787, provided that: ''The amendments made by this subsection [amending this section and sections 1395*l* and 1395x of this title] shall be effective with respect to services performed on or after July 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9320(i) of Pub. L. 99–509, as amended by Pub. L. 100–485, title VI, § 608(c)(1), Oct. 13, 1988, 102 Stat. 2412, provided that: ''Except as provided in subsection (k) [set out below], the amendments made by this section (other than subsection (a)) [amending this section and sections 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title] shall apply to services furnished on or after January 1, 1989.''

Section 9337(e) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395n, 1395x, and 1395cc of this title] shall apply to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2341(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] apply to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(6) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(g) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 933(h) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and sections 1395n, 1395x, 1395z, and 1395aa of this title] shall become effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.''

Amendment by section 948(a)(2) of Pub. L. 96–499 applicable with respect to cost accounting periods beginning on or after Oct. 1, 1978, see section 948(c)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 1(j) of Pub. L. 95–210 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395x, 1395y, and 1395aa of this title and enacting provisions set out as notes under sections 1395*l* and 1395x of this title] shall apply to services rendered on or after the first day of the third calendar month which begins after the date of enactment of this Act [Dec. 13, 1977].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 227(e)(1) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 251(a)(4) of Pub. L. 92–603 applicable with respect to services furnished on or after July 1, 1973, see section 251(d)(1) of Pub. L. 92–603, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(6)(B) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 133(g) of Pub. L. 90–248 provided that: ''The amendments made by the preceding subsections of this section [amending this section and sections 1395n, 1395x, 1395aa, and 1395cc of this title] shall apply to services furnished after June 30, 1968.''

REPORT ON IMMUNOSUPPRESSIVE DRUG BENEFIT

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 227(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–356, which required the Secretary of Health and Human Services to submit to Congress not later than Mar. 1, 2003, a report on the

operation of section 1000(a)(6) [title II, § 227] of Pub. L. 106–113, amending this section and section 1395x of this title, including an analysis of impact and recommendations regarding an appropriate cost-effective method for providing coverage of immunosuppressive drugs under the medicare program on a permanent basis, was repealed by Pub. L. 106–554, § 1(a)(6) [title I, § 113(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473.

CONSTRUCTION OF SECTION 9320 OF PUB. L. 99–509

Section 9320(j) of Pub. L. 99–509 provided that: ''Nothing in this section or the amendments made by this section [amending this section and sections 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 1395ww of this title] shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision.''

QUALITY AND UTILIZATION OF IN-HOME CARE FOR CHRONICALLY DEPENDENT INDIVIDUALS

Section 205(e)(2) of Pub. L. 100–360 directed Secretary of Health and Human Services to take appropriate efforts to assure quality and provide for appropriate utilization of in-home care for chronically dependent individuals under the amendments made by section 205 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395n, 1395x, and 1395y of this title], prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

STUDY OF ALTERNATIVE OUT-OF-HOME SERVICES

Section 205(g) of Pub. L. 100–360, which required Secretary of Health and Human Services to study, and report to Congress, not later than 18 months after July 1, 1988, on advisability of providing, to chronically dependent individuals eligible for in-home care under amendments made by section 205 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395n, 1395x, and 1395y of this title], out-of-home services as alternative services to in-home care, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

CONTINUATION OF COST PASS-THROUGH FOR CERTIFIED REGISTERED NURSE ANESTHETISTS

Section 9320(k) of Pub. L. 99–509, as added by Pub. L. 100–485, title VI, § 608(c)(2), Oct. 13, 1988, 102 Stat. 2412, and amended by Pub. L. 101–239, title VI, § 6132(a), Dec. 19, 1989, 103 Stat. 2222, provided that:

''(1) Subject to paragraph (2), the amendments made by this section [amending this section and sections 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title and provisions set out as a note under section 1395ww of this title] shall not apply during a year (beginning with 1989) to a hospital located in a rural area (as defined for purposes of section 1886(d) of the Social Security Act [section 1395ww(d) of this title]) if the hospital establishes, at any time before the year[,] to the satisfaction of the Secretary of Health and Human Services that—

''(A) as of January 1, 1988, the hospital employed or contracted with a certified registered nurse anesthetist (but not more than one full-time equivalent certified registered nurse anesthetist),

''(B) in 1987 the hospital had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that did not exceed 500 (or such higher number as the Secretary determines to be appropriate), and

''(C) each certified registered nurse anesthetist employed by, or under contract with, the hospital has agreed not to bill under part B of title XVIII of such Act [this part] for professional services furnished by the anesthetist at the hospital.

''(2) Paragraph (1) shall not apply in a year (after 1989) to a hospital unless the hospital establishes, before the beginning of the year, that the hospital has had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services in the previous year that did not exceed 500 (or such higher number as the Secretary determines to be appropriate).''

[Section 6132(b) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending section 9320(k) of Pub. L. 99–509, set out above] shall apply to services furnished on or after January 1, 1990.'']

PAYMENT FOR SERVICES OF PHYSICIANS RENDERED IN A TEACHING HOSPITAL FOR ACCOUNTING PERIODS BEGINNING AFTER JUNE 30, 1975, AND PRIOR TO OCTOBER 1, 1978; STUDIES, REPORTS, ETC.; EFFECTIVE DATES

Pub. L. 93–233, § 15(a)(2), Dec. 31, 1973, 87 Stat. 966, provided that for the cost accounting periods beginning after June 30, 1975, and prior to Oct. 1, 1978, subsec. (a)(2)(B)(i) of this section will be administered as if subclause II of subsec. (a)(2)(B)(i) read as follows: ''(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1861(b) [section 1395x(b)(6) of this title] (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital), where the conditions specified in paragraph (7) of such section [section 1395x(b)(7) of this title] are met and''.

§ 1395*l*. Payment of benefits

(a) Amounts

Except as provided in section 1395mm of this title, and subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1395k(a)(1) of this title—80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis (and either is sponsored by a union or employer, or does not provide, or arrange for the provision of, any inpatient hospital services) may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b) of this section, (B) with respect to items and services described in section 1395x(s)(10)(A) of this title, the amounts paid shall be 100 percent of the reasonable charges for such items and services, (C) with respect to expenses incurred for those physicians' services for which payment may be made under this part that are described in section 1395y(a)(4) of this title, the amounts paid shall be subject to such limitations as may be prescribed by regulations, (D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule under subsection (h)(1) of this section or section 1395m(d)(1) of this title, the amount paid

shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on an assignment-related basis) of the lesser of the amount determined under such fee schedule, the limitation amount for that test determined under subsection (h)(4)(B) of this section, or the amount of the charges billed for the tests, (ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate, or (iii) on the basis of a rate established under a demonstration project under section 1395w–3(e) of this title, the amount paid shall be equal to 100 percent of such rate, (E) with respect to services furnished to individuals who have been determined to have end stage renal disease, the amounts paid shall be determined subject to the provisions of section 1395rr of this title, (F) with respect to clinical social worker services under section 1395x(s)(2)(N) of this title, the amounts paid shall be 80 percent of the lesser of (i) the actual charge for the services or (ii) 75 percent of the amount determined for payment of a psychologist under clause (L), (G) with respect to facility services furnished in connection with a surgical procedure specified pursuant to subsection (i)(1)(A) of this section and furnished to an individual in an ambulatory surgical center described in such subsection, for services furnished beginning with the implementation date of a revised payment system for such services in such facilities specified in subsection (i)(2)(D) of this section, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by the Secretary under such revised payment system, (H) with respect to services of a certified registered nurse anesthetist under section 1395x(s)(11) of this title, the amounts paid shall be 80 percent of the least of the actual charge, the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title) if the services had been performed by an anesthesiologist, or the fee schedule for such services established by the Secretary in accordance with subsection (*l*) of this section, (I) with respect to covered items (described in section 1395m(a)(13) of this title), the amounts paid shall be the amounts described in section 1395m(a)(1) of this title, and[1] (J) with respect to expenses incurred for radiologist services (as defined in section 1395m(b)(6) of this title), subject to section 1395w–4 of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount provided under the fee schedule established under section 1395m(b) of this title, (K) with respect to certified nurse-midwife services under section 1395x(s)(2)(L) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph (but in no event shall such fee schedule exceed 65 percent of the prevailing charge that would be allowed for the same service performed by a physician, or, for services furnished on or after January 1, 1992, 65 percent of the fee schedule amount provided under section 1395w–4 of this title for the same service performed by a physician), (L) with respect to qualified psychologist services under section 1395x(s)(2)(M) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph, (M) with respect to prosthetic devices and orthotics and prosthetics (as defined in section 1395m(h)(4) of this title), the amounts paid shall be the amounts described in section 1395m(h)(1) of this title, (N) with respect to expenses incurred for physicians' services (as defined in section 1395w–4(j)(3) of this title), the amounts paid shall be 80 percent of the payment basis determined under section 1395w–4(a)(1) of this title, (O) with respect to services described in section 1395x(s)(2)(K) of this title (relating to services furnished by physician assistants, nurse practitioners, or clinic nurse specialists), the amounts paid shall be equal to 80 percent of (i) the lesser of the actual charge or 85 percent of the fee schedule amount provided under section 1395w–4 of this title, or (ii) in the case of services as an assistant at surgery, the lesser of the actual charge or 85 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery, (P) with respect to surgical dressings, the amounts paid shall be the amounts determined under section 1395m(i) of this title, (Q) with respect to items or services for which fee schedules are established pursuant to section 1395u(s) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge or the fee schedule established in such section, (R) with respect to ambulance services, (i) the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary under section 1395m(*l*) of this title and (ii) with respect to ambulance services described in section 1395m(*l*)(8) of this title, the amounts paid shall be the amounts determined under section 1395m(g) of this title for outpatient critical access hospital services, (S) with respect to drugs and biologicals (including intravenous immune globulin (as defined in section 1395x(zz) of this title)) not paid on a cost or prospective payment basis as otherwise provided in this part (other than items and services described in subparagraph (B)), the amounts paid shall be 80 percent of the lesser of the actual charge or the payment amount established in section 1395u(*o*) of this title (or, if applicable, under section 1395w–3, 1395w–3a, or 1395w–3b of this title), (T) with respect to medical nutrition therapy services (as defined in section 1395x(vv) of this title), the amount paid shall be 80 percent of the lesser of the actual charge for the services or 85 percent of the amount determined under the fee schedule established under section 1395w–4(b) of this title for the same services if furnished by a

[1] So in original. The word ''and'' probably should not appear.

physician, (U) with respect to facility fees described in section 1395m(m)(2)(B) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge or the amounts specified in such section, and (V) notwithstanding subparagraphs (I) (relating to durable medical equipment), (M) (relating to prosthetic devices and orthotics and prosthetics), and (Q) (relating to 1395u(s) items), with respect to competitively priced items and services (described in section 1395w–3(a)(2) of this title) that are furnished in a competitive area, the amounts paid shall be the amounts described in section 1395w–3(b)(5) of this title;

(2) in the case of services described in section 1395k(a)(2) of this title (except those services described in subparagraphs (C), (D), (E), (F), (G), (H), and (I) of such section and unless otherwise specified in section 1395rr of this title)—

(A) with respect to home health services (other than a covered osteoporosis drug) (as defined in section 1395x(kk) of this title), the amount determined under the prospective payment system under section 1395fff of this title;

(B) with respect to other items and services (except those described in subparagraph (C), (D), or (E) of this paragraph and except as may be provided in section 1395ww of this title or section 1395yy(e)(9) of this title)—

(i) furnished before January 1, 1999, the lesser of—

(I) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

(II) the customary charges with respect to such services,

less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such other services exceed 80 percent of such reasonable cost, or

(ii) if such services are furnished before January 1, 1999, by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause), free of charge or at nominal charges to the public, 80 percent of the amount determined in accordance with section 1395f(b)(2) of this title, or

(iii) if such services are furnished on or after January 1, 1999, the amount determined under subsection (t) of this section, or

(iv) if (and for so long as) the conditions described in section 1395f(b)(3) of this title are met, the amounts determined under the reimbursement system described in such section;

(C) with respect to services described in the second sentence of section 1395x(p) of this title, 80 percent of the reasonable charges for such services;

(D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule determined under subsection (h)(1) of this section or section 1395m(d)(1) of this title, the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on an assignment-related basis or to a provider having an agreement under section 1395cc of this title) of the lesser of the amount determined under such fee schedule, the limitation amount for that test determined under subsection (h)(4)(B) of this section, or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate for such tests;

(E) with respect to—

(i) outpatient hospital radiology services (including diagnostic and therapeutic radiology, nuclear medicine and CAT scan procedures, magnetic resonance imaging, and ultrasound and other imaging services, but excluding screening mammography and, for services furnished on or after January 1, 2005, diagnostic mammography), and

(ii) effective for procedures performed on or after October 1, 1989, diagnostic procedures (as defined by the Secretary) described in section 1395x(s)(3) of this title (other than diagnostic x-ray tests and diagnostic laboratory tests),

the amount determined under subsection (n) of this section or, for services or procedures performed on or after January 1, 1999, subsection (t) of this section;

(F) with respect to a covered osteoporosis drug (as defined in section 1395x(kk) of this title) furnished by a home health agency, 80 percent of the reasonable cost of such service, as determined under section 1395x(v) of this title; and

(G) with respect to items and services described in section 1395x(s)(10)(A) of this title, the lesser of—

(i) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

(ii) the customary charges with respect to such services,

or, if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision), free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title;

(3) in the case of services described in section 1395k(a)(2)(D) of this title—

(A) except as provided in subparagraph (B), the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1395x(v)(1)(A) of this title, less the amount a provider may charge as described in clause (ii) of section

1395cc(a)(2)(A) of this title, but in no case may the payment for such services (other than for items and services described in section 1395x(s)(10)(A) of this title) exceed 80 percent of such costs; or

(B) with respect to the services described in clause (ii) of section 1395k(a)(2)(D) of this title that are furnished to an individual enrolled with a MA plan under part C of this subchapter pursuant to a written agreement described in section 1395w–23(a)(4) of this title, the amount (if any) by which—

(i) the amount of payment that would have otherwise been provided under subparagraph (A) (calculated as if ''100 percent'' were substituted for ''80 percent'' in such subparagraph) for such services if the individual had not been so enrolled; exceeds

(ii) the amount of the payments received under such written agreement for such services (not including any financial incentives provided for in such agreement such as risk pool payments, bonuses, or withholds),

less the amount the federally qualified health center may charge as described in section 1395w–27(e)(3)(B) of this title;

(4) in the case of facility services described in section 1395k(a)(2)(F) of this title, and outpatient hospital facility services furnished in connection with surgical procedures specified by the Secretary pursuant to subsection (i)(1)(A) of this section, the applicable amount as determined under paragraph (2) or (3) of subsection (i) of this section or subsection (t) of this section;

(5) in the case of covered items (described in section 1395m(a)(13) of this title) the amounts described in section 1395m(a)(1) of this title;

(6) in the case of outpatient critical access hospital services, the amounts described in section 1395m(g) of this title;

(7) in the case of prosthetic devices and orthotics and prosthetics (as described in section 1395m(h)(4) of this title), the amounts described in section 1395m(h) of this title;

(8) in the case of—

(A) outpatient physical therapy services (which includes outpatient speech-language pathology services) and outpatient occupational therapy services furnished—

(i) by a rehabilitation agency, public health agency, clinic, comprehensive outpatient rehabilitation facility, or skilled nursing facility,

(ii) by a home health agency to an individual who is not homebound, or

(iii) by another entity under an arrangement with an entity described in clause (i) or (ii); and

(B) outpatient physical therapy services (which includes outpatient speech-language pathology services) and outpatient occupational therapy services furnished—

(i) by a hospital to an outpatient or to a hospital inpatient who is entitled to benefits under part A of this subchapter but has exhausted benefits for inpatient hospital services during a spell of illness or is not so entitled to benefits under part A of this subchapter, or

(ii) by another entity under an arrangement with a hospital described in clause (i),

the amounts described in section 1395m(k) of this title; and

(9) in the case of services described in section 1395k(a)(2)(E) of this title that are not described in paragraph (8), the amounts described in section 1395m(k) of this title.

(b) Deductible provision

Before applying subsection (a) of this section with respect to expenses incurred by an individual during any calendar year, the total amount of the expenses incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which benefits payable under subsection (a) of this section are determinable) shall be reduced by a deductible of $75 for calendar years before 1991, $100 for 1991 through 2004, $110 for 2005, and for a subsequent year the amount of such deductible for the previous year increased by the annual percentage increase in the monthly actuarial rate under section 1395r(a)(1) of this title ending with such subsequent year (rounded to the nearest $1); except that (1) such total amount shall not include expenses incurred for items and services described in section 1395x(s)(10)(A) of this title, (2) such deductible shall not apply with respect to home health services (other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title)), (3) such deductible shall not apply with respect to clinical diagnostic laboratory tests for which payment is made under this part (A) under subsection (a)(1)(D)(i) or (a)(2)(D)(i) of this section on an assignment-related basis, or to a provider having an agreement under section 1395cc of this title, or (B) on the basis of a negotiated rate determined under subsection (h)(6) of this section, (4) such deductible shall not apply to Federally qualified health center services, (5) such deductible shall not apply with respect to screening mammography (as described in section 1395x(jj) of this title), (6) such deductible shall not apply with respect to screening pap smear and screening pelvic exam (as described in section 1395x(nn) of this title). The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or

equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence. The deductible under the previous sentence for blood or blood cells furnished an individual in a year shall be reduced to the extent that a deductible has been imposed under section 1395e(a)(2) of this title to blood or blood cells furnished the individual in the year, (7) such deductible shall not apply with respect to ultrasound screening for abdominal aortic aneurysm (as defined in section 1395x(bbb) of this title), and (8) such deductible shall not apply with respect to colorectal cancer screening tests (as described in section 1395x(pp)(1) of this title).

(c) Mental disorders

Notwithstanding any other provision of this part, with respect to expenses incurred in any calendar year in connection with the treatment of mental, psychoneurotic, and personality disorders of an individual who is not an inpatient of a hospital at the time such expenses are incurred, there shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section only 62½ percent of such expenses. For purposes of this subsection, the term ''treatment'' does not include brief office visits (as defined by the Secretary) for the sole purpose of monitoring or changing drug prescriptions used in the treatment of such disorders or partial hospitalization services that are not directly provided by a physician.

(d) Nonduplication of payments

No payment may be made under this part with respect to any services furnished an individual to the extent that such individual is entitled (or would be entitled except for section 1395e of this title) to have payment made with respect to such services under part A of this subchapter.

(e) Information for determination of amounts due

No payment shall be made to any provider of services or other person under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to which the amounts are being paid or for any prior period.

(f) Maximum rate of payment per visit for independent rural health clinics

In establishing limits under subsection (a) of this section on payment for rural health clinic services provided by rural health clinics (other than such clinics in hospitals with less than 50 beds), the Secretary shall establish such limit, for services provided—

(1) in 1988, after March 31, at $46 per visit, and

(2) in a subsequent year, at the limit established under this subsection for the previous year increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) applicable to primary care services (as defined in section 1395u(i)(4) of this title) furnished as of the first day of that year.

(g) Physical therapy services

(1) Subject to paragraphs (4) and (5), in the case of physical therapy services of the type described in section 1395x(p) of this title, but not described in subsection (a)(8)(B) of this section, and physical therapy services of such type which are furnished by a physician or as incident to physicians' services, with respect to expenses incurred in any calendar year, no more than the amount specified in paragraph (2) for the year shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.

(2) The amount specified in this paragraph—

(A) for 1999, 2000, and 2001, is $1,500, and

(B) for a subsequent year is the amount specified in this paragraph for the preceding year increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for such subsequent year;

except that if an increase under subparagraph (B) for a year is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

(3) Subject to paragraphs (4) and (5), in the case of occupational therapy services (of the type that are described in section 1395x(p) of this title (but not described in subsection (a)(8)(B) of this section) through the operation of section 1395x(g) of this title and of such type which are furnished by a physician or as incident to physicians' services), with respect to expenses incurred in any calendar year, no more than the amount specified in paragraph (2) for the year shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.

(4) This subsection shall not apply to expenses incurred with respect to services furnished during 2000, 2001, 2002, 2004, and 2005.

(5) With respect to expenses incurred during the period beginning on January 1, 2006, and ending on December 31, 2007, for services, the Secretary shall implement a process under which an individual enrolled under this part may, upon request of the individual or a person on behalf of the individual, obtain an exception from the uniform dollar limitation specified in paragraph (2), for services described in paragraphs (1) and (3) if the provision of such services is determined to be medically necessary. Under such process, if the Secretary does not make a decision on such a request for an exception within 10 business days of the date of the Secretary's receipt of the request, the Secretary shall be deemed to have found the services to be medically necessary.

(h) Fee schedules for clinical diagnostic laboratory tests; percentage of prevailing charge level; nominal fee for samples; adjustments; recipients of payments; negotiated payment rate

(1)(A) Subject to section 1395m(d)(1) of this title, the Secretary shall establish fee schedules for clinical diagnostic laboratory tests (including prostate cancer screening tests under section 1395x(*oo*) of this title consisting of prostate-specific antigen blood tests) for which payment is made under this part, other than such tests performed by a provider of services for an inpatient of such provider.

(B) In the case of clinical diagnostic laboratory tests performed by a physician or by a laboratory (other than tests performed by a qualified hospital laboratory (as defined in subparagraph (D)) for outpatients of such hospital), the fee schedules established under subparagraph

(A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished on or after July 1, 1984.

(C) In the case of clinical diagnostic laboratory tests performed by a qualified hospital laboratory (as defined in subparagraph (D)) for outpatients of such hospital, the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished on or after July 1, 1984.

(D) In this subsection, the term ''qualified hospital laboratory'' means a hospital laboratory, in a sole community hospital (as defined in section 1395ww(d)(5)(D)(iii) of this title), which provides some clinical diagnostic laboratory tests 24 hours a day in order to serve a hospital emergency room which is available to provide services 24 hours a day and 7 days a week.

(2)(A)(i) Except as provided in paragraph (4), the Secretary shall set the fee schedules at 60 percent (or, in the case of a test performed by a qualified hospital laboratory (as defined in paragraph (1)(D)) for outpatients of such hospital, 62 percent) of the prevailing charge level determined pursuant to the third and fourth sentences of section 1395u(b)(3) of this title for similar clinical diagnostic laboratory tests for the applicable region, State, or area for the 12-month period beginning July 1, 1984, adjusted annually (to become effective on January 1 of each year) by a percentage increase or decrease equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average), and subject to such other adjustments as the Secretary determines are justified by technological changes.

(ii) Notwithstanding clause (i)—

(I) any change in the fee schedules which would have become effective under this subsection for tests furnished on or after January 1, 1988, shall not be effective for tests furnished during the 3-month period beginning on January 1, 1988,

(II) the Secretary shall not adjust the fee schedules under clause (i) to take into account any increase in the consumer price index for 1988,

(III) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1991, 1992, and 1993 shall be 2 percent, and

(IV) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1994 and 1995, 1998 through 2002, and 2004 through 2008 shall be 0 percent.

(iii) In establishing fee schedules under clause (i) with respect to automated tests and tests (other than cytopathology tests) which before July 1, 1984, the Secretary made subject to a limit based on lowest charge levels under the sixth sentence of section 1395u(b)(3) of this title performed after March 31, 1988, the Secretary shall reduce by 8.3 percent the fee schedules otherwise established for 1988, and such reduced fee schedules shall serve as the base for 1989 and subsequent years.

(B) The Secretary may make further adjustments or exceptions to the fee schedules to assure adequate reimbursement of (i) emergency laboratory tests needed for the provision of bona fide emergency services, and (ii) certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality.

(3) In addition to the amounts provided under the fee schedules, the Secretary shall provide for and establish (A) a nominal fee to cover the appropriate costs in collecting the sample on which a clinical diagnostic laboratory test was performed and for which payment is made under this part, except that not more than one such fee may be provided under this paragraph with respect to samples collected in the same encounter, and (B) a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect the sample, except that such a fee may be provided only with respect to an individual who is homebound or an inpatient in an inpatient facility (other than a hospital). In establishing a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect a sample, the Secretary shall provide a method for computing the fee based on the number of miles traveled and the personnel costs associated with the collection of each individual sample, but the Secretary shall only be required to apply such method in the case of tests furnished during the period beginning on April 1, 1989, and ending on December 31, 1990, by a laboratory that establishes to the satisfaction of the Secretary (based on data for the 12-month period ending June 30, 1988) that (i) the laboratory is dependent upon payments under this subchapter for at least 80 percent of its collected revenues for clinical diagnostic laboratory tests, (ii) at least 85 percent of its gross revenues for such tests are attributable to tests performed with respect to individuals who are homebound or who are residents in a nursing facility, and (iii) the laboratory provided such tests for residents in nursing facilities representing at least 20 percent of the number of such facilities in the State in which the laboratory is located.

(4)(A) In establishing any fee schedule under this subsection, the Secretary may provide for an adjustment to take into account, with respect to the portion of the expenses of clinical diagnostic laboratory tests attributable to wages, the relative difference between a region's or local area's wage rates and the wage rate presumed in the data on which the schedule is based.

(B) For purposes of subsections (a)(1)(D)(i) and (a)(2)(D)(i) of this section, the limitation amount for a clinical diagnostic laboratory test performed—

(i) on or after July 1, 1986, and before April 1, 1988, is equal to 115 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(ii) after March 31, 1988, and before January 1, 1990, is equal to the median of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(iii) after December 31, 1989, and before January 1, 1991, is equal to 93 percent of the me-

dian of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(iv) after December 31, 1990, and before January 1, 1994, is equal to 88 percent of such median,

(v) after December 31, 1993, and before January 1, 1995, is equal to 84 percent of such median,

(vi) after December 31, 1994, and before January 1, 1996, is equal to 80 percent of such median,

(vii) after December 31, 1995, and before January 1, 1998, is equal to 76 percent of such median, and

(viii) after December 31, 1997, is equal to 74 percent of such median (or 100 percent of such median in the case of a clinical diagnostic laboratory test performed on or after January 1, 2001, that the Secretary determines is a new test for which no limitation amount has previously been established under this subparagraph).

(5)(A) In the case of a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part on an assignment-related basis or under a provider agreement under section 1395cc of this title, payment may be made only to the person or entity which performed or supervised the performance of such test; except that—

(i) if a physician performed or supervised the performance of such test, payment may be made to another physician with whom he shares his practice,

(ii) in the case of a test performed at the request of a laboratory by another laboratory, payment may be made to the referring laboratory but only if—

(I) the referring laboratory is located in, or is part of, a rural hospital,

(II) the referring laboratory is wholly owned by the entity performing such test, the referring laboratory wholly owns the entity performing such test, or both the referring laboratory and the entity performing such test are wholly-owned by a third entity, or

(III) not more than 30 percent of the clinical diagnostic laboratory tests for which such referring laboratory (but not including a laboratory described in subclause (II)),[2] receives requests for testing during the year in which the test is performed[2] are performed by another laboratory, and

(iii) in the case of a clinical diagnostic laboratory test provided under an arrangement (as defined in section 1395x(w)(1) of this title) made by a hospital, critical access hospital, or skilled nursing facility, payment shall be made to the hospital or skilled nursing facility.

(B) In the case of such a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part, and which is not described in subparagraph (A), payment may be made to the beneficiary only on the basis of the itemized bill of the person or entity which performed or supervised the performance of the test.

(C) Payment for a clinical diagnostic laboratory test, including a test performed in a physician's office but excluding a test performed by a rural health clinic may only be made on an assignment-related basis or to a provider of services with an agreement in effect under section 1395cc of this title.

(D) A person may not bill for a clinical diagnostic laboratory test, including a test performed in a physician's office but excluding a test performed by a rural health clinic, other than on an assignment-related basis. If a person knowingly and willfully and on a repeated basis bills for a clinical diagnostic laboratory test in violation of the previous sentence, the Secretary may apply sanctions against the person in the same manner as the Secretary may apply sanctions against a physician in accordance with paragraph (2) of section 1395u(j) of this title in the same manner such paragraphs apply[3] with respect to a physician. Paragraph (4) of such section shall apply in this subparagraph in the same manner as such paragraph applies to such section.

(6) In the case of any diagnostic laboratory test payment for which is not made on the basis of a fee schedule under paragraph (1), the Secretary may establish a payment rate which is acceptable to the person or entity performing the test and which would be considered the full charge for such tests. Such negotiated rate shall be limited to an amount not in excess of the total payment that would have been made for the services in the absence of such rate.

(7) Notwithstanding paragraphs (1) and (4), the Secretary shall establish a national minimum payment amount under this subsection for a diagnostic or screening pap smear laboratory test (including all cervical cancer screening technologies that have been approved by the Food and Drug Administration as a primary screening method for detection of cervical cancer) equal to $14.60 for tests furnished in 2000. For such tests furnished in subsequent years, such national minimum payment amount shall be adjusted annually as provided in paragraph (2).

(8)(A) The Secretary shall establish by regulation procedures for determining the basis for, and amount of, payment under this subsection for any clinical diagnostic laboratory test with respect to which a new or substantially revised HCPCS code is assigned on or after January 1, 2005 (in this paragraph referred to as ''new tests'').

(B) Determinations under subparagraph (A) shall be made only after the Secretary—

(i) makes available to the public (through an Internet website and other appropriate mechanisms) a list that includes any such test for which establishment of a payment amount under this subsection is being considered for a year;

(ii) on the same day such list is made available, causes to have published in the Federal Register notice of a meeting to receive comments and recommendations (and data on

[2] So in original. The comma after ''subclause (II))'' probably should follow ''is performed''.

[3] So in original. Probably should be ''such paragraph applies''.

which recommendations are based) from the public on the appropriate basis under this subsection for establishing payment amounts for the tests on such list;

(iii) not less than 30 days after publication of such notice convenes a meeting, that includes representatives of officials of the Centers for Medicare & Medicaid Services involved in determining payment amounts, to receive such comments and recommendations (and data on which the recommendations are based);

(iv) taking into account the comments and recommendations (and accompanying data) received at such meeting, develops and makes available to the public (through an Internet website and other appropriate mechanisms) a list of proposed determinations with respect to the appropriate basis for establishing a payment amount under this subsection for each such code, together with an explanation of the reasons for each such determination, the data on which the determinations are based, and a request for public written comments on the proposed determination; and

(v) taking into account the comments received during the public comment period, develops and makes available to the public (through an Internet website and other appropriate mechanisms) a list of final determinations of the payment amounts for such tests under this subsection, together with the rationale for each such determination, the data on which the determinations are based, and responses to comments and suggestions received from the public.

(C) Under the procedures established pursuant to subparagraph (A), the Secretary shall—

(i) set forth the criteria for making determinations under subparagraph (A); and

(ii) make available to the public the data (other than proprietary data) considered in making such determinations.

(D) The Secretary may convene such further public meetings to receive public comments on payment amounts for new tests under this subsection as the Secretary deems appropriate.

(E) For purposes of this paragraph:

(i) The term ''HCPCS'' refers to the Health Care Procedure Coding System.

(ii) A code shall be considered to be ''substantially revised'' if there is a substantive change to the definition of the test or procedure to which the code applies (such as a new analyte or a new methodology for measuring an existing analyte-specific test).

(i) Outpatient surgery

(1) The Secretary shall, in consultation with appropriate medical organizations—

(A) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ambulatory surgical center (meeting the standards specified under section 1395k(a)(2)(F)(i) of this title), critical access hospital, or hospital outpatient department, and

(B) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in a physician's office.

The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than every 2 years, in consultation with appropriate trade and professional organizations.

(2)(A) For services furnished prior to the implementation of the system described in subparagraph (D), subject to subparagraph (E), the amount of payment to be made for facility services furnished in connection with a surgical procedure specified pursuant to paragraph (1)(A) and furnished to an individual in an ambulatory surgical center described in such paragraph shall be equal to 80 percent of a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary's estimate of a fair fee which—

(i) takes into account the costs incurred by such centers, or classes of centers, generally in providing services furnished in connection with the performance of such procedure, as determined in accordance with a survey (based upon a representative sample of procedures and facilities) of the actual audited costs incurred by such centers in providing such services,

(ii) takes such costs into account in such a manner as will assure that the performance of the procedure in such a center will result in substantially less amounts paid under this subchapter than would have been paid if the procedure had been performed on an inpatient basis in a hospital, and

(iii) in the case of insertion of an intraocular lens during or subsequent to cataract surgery includes payment which is reasonable and related to the cost of acquiring the class of lens involved.

Each amount so established shall be reviewed and updated not later than July 1, 1987, and annually thereafter to take account of varying conditions in different areas.

(B) The amount of payment to be made under this part for facility services furnished, in connection with a surgical procedure specified pursuant to paragraph (1)(B), in a physician's office shall be equal to 80 percent of a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary's estimate of a fair fee which—

(i) takes into account additional costs, not usually included in the professional fee, incurred by physicians in securing, maintaining, and staffing the facilities and ancillary services appropriate for the performance of such procedure in the physician's office, and

(ii) takes such items into account in such a manner which will assure that the performance of such procedure in the physician's office will result in substantially less amounts paid under this subchapter than would have been paid if the services had been furnished on an inpatient basis in a hospital.

Each amount so established shall be reviewed and updated not later than July 1, 1987, and an-

nually thereafter to take account of varying conditions in different areas.

(C)(i) Notwithstanding the second sentence of each of subparagraphs (A) and (B), except as otherwise specified in clauses (ii), (iii), and (iv), if the Secretary has not updated amounts established under such subparagraphs or under subparagraph (D), with respect to facility services furnished during a fiscal year (beginning with fiscal year 1986 or a calendar year (beginning with 2006)), such amounts shall be increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved.

(ii) In each of the fiscal years 1998 through 2002, the increase under this subparagraph shall be reduced (but not below zero) by 2.0 percentage points.

(iii) In fiscal year 2004, beginning with April 1, 2004, the increase under this subparagraph shall be the Consumer Price Index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with March 31, 2003, minus 3.0 percentage points.

(iv) In fiscal year 2005, the last quarter of calendar year 2005, and each of calendar years 2006 through 2009, the increase under this subparagraph shall be 0 percent.

(D)(i) Taking into account the recommendations in the report under section 626(d) of Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the Secretary shall implement a revised payment system for payment of surgical services furnished in ambulatory surgical centers.

(ii) In the year the system described in clause (i) is implemented, such system shall be designed to result in the same aggregate amount of expenditures for such services as would be made if this subparagraph did not apply, as estimated by the Secretary and taking into account reduced expenditures that would apply if subparagraph (E) were to continue to apply, as estimated by the Secretary.

(iii) The Secretary shall implement the system described in clause (i) for periods in a manner so that it is first effective beginning on or after January 1, 2006, and not later than January 1, 2008.

(iv) There shall be no administrative or judicial review under section 1395ff, 1395*oo* of this title, or otherwise, of the classification system, the relative weights, payment amounts, and the geographic adjustment factor, if any, under this subparagraph.

(E) With respect to surgical procedures furnished on or after January 1, 2007, and before the effective date of the implementation of a revised payment system under subparagraph (D), if—

(i) the standard overhead amount under subparagraph (A) for a facility service for such procedure, without the application of any geographic adjustment, exceeds

(ii) the Medicare OPD fee schedule amount established under the prospective payment system for hospital outpatient department services under paragraph (3)(D) of subsection (t) for such service for such year, determined without regard to geographic adjustment under paragraph (2)(D) of such subsection,

the Secretary shall substitute under subparagraph (A) the amount described in clause (ii) for the standard overhead amount for such service referred to in clause (i).

(3)(A) The aggregate amount of the payments to be made under this part for outpatient hospital facility services or critical access hospital services furnished before January 1, 1999, in connection with surgical procedures specified under paragraph (1)(A) shall be equal to the lesser of—

(i) the amount determined with respect to such services under subsection (a)(2)(B) of this section; or

(ii) the blend amount (described in subparagraph (B)).

(B)(i) The blend amount for a cost reporting period is the sum of—

(I) the cost proportion (as defined in clause (ii)(I)) of the amount described in subparagraph (A)(i), and

(II) the ASC proportion (as defined in clause (ii)(II)) of the standard overhead amount payable with respect to the same surgical procedure as if it were provided in an ambulatory surgical center in the same area, as determined under paragraph (2)(A), less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title.

(ii) Subject to paragraph (4), in this paragraph:

(I) The term ''cost proportion'' means 75 percent for cost reporting periods beginning in fiscal year 1988, 50 percent for portions of cost reporting periods beginning on or after October 1, 1988, and ending on or before December 31, 1990, and 42 percent for portions of cost reporting periods beginning on or after January 1, 1991.

(II) The term ''ASC proportion'' means 25 percent for cost reporting periods beginning in fiscal year 1988, 50 percent for portions of cost reporting periods beginning on or after October 1, 1988, and ending on or before December 31, 1990, and 58 percent for portions of cost reporting periods beginning on or after January 1, 1991.

(4)(A) In the case of a hospital that—

(i) makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary),

(ii) receives more than 30 percent of its total revenues from outpatient services, and

(iii) on October 1, 1987—

(I) was an eye specialty hospital or an eye and ear specialty hospital, or

(II) was operated as an eye or eye and ear unit (as defined in subparagraph (B)) of a general acute care hospital which, on the date of the application described in clause (i), operates less than 20 percent of the beds that the hospital operated on October 1, 1987, and has sold or otherwise disposed of a substantial portion of the hospital's other acute care operations,

the cost proportion and ASC proportion in effect under subclauses (I) and (II) of paragraph (3)(B)(ii) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995.

(B) For purposes of this[4] subparagraph (A)(iii)(II), the term ''eye or eye and ear unit'' means a physically separate or distinct unit containing separate surgical suites devoted solely to eye or eye and ear services.

(5)(A) The Secretary is authorized to provide by regulations that in the case of a surgical procedure, specified by the Secretary pursuant to paragraph (1)(A), performed in an ambulatory surgical center described in such paragraph, there shall be paid (in lieu of any amounts otherwise payable under this part) with respect to the facility services furnished by such center and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic services) a single all-inclusive fee established pursuant to subparagraph (B), if all parties furnishing all such services agree to accept such fee (to be divided among the parties involved in such manner as they shall have previously agreed upon) as full payment for the services furnished.

(B) In implementing this paragraph, the Secretary shall establish with respect to each surgical procedure specified pursuant to paragraph (1)(A) the amount of the all-inclusive fee for such procedure, taking into account such factors as may be appropriate. The amount so established with respect to any surgical procedure shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(6) Any person, including a facility having an agreement under section 1395k(a)(2)(F)(i) of this title, who knowingly and willfully presents, or causes to be presented, a bill or request for payment, for an intraocular lens inserted during or subsequent to cataract surgery for which payment may be made under paragraph (2)(A)(iii), is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(j) Accrual of interest on balance of excess or deficit not paid

Whenever a final determination is made that the amount of payment made under this part either to a provider of services or to another person pursuant to an assignment under section 1395u(b)(3)(B)(ii) of this title was in excess of or less than the amount of payment that is due, and payment of such excess or deficit is not made (or effected by offset) within 30 days of the date of the determination, interest shall accrue on the balance of such excess or deficit not paid or offset (to the extent that the balance is owed by or owing to the provider) at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments.

(k) Hepatitis B vaccine

With respect to services described in section 1395x(s)(10)(B) of this title, the Secretary may provide, instead of the amount of payment otherwise provided under this part, for payment of such an amount or amounts as reasonably reflects the general cost of efficiently providing such services.

(*l*) Fee schedule for services of certified registered nurse anesthetists

(1)(A) The Secretary shall establish a fee schedule for services of certified registered nurse anesthetists under section 1395x(s)(11) of this title.

(B) In establishing the fee schedule under this paragraph the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology.

(C) The provisions of this subsection shall not apply to certain services furnished in certain hospitals in rural areas under the provisions of section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989.

(2) Except as provided in paragraph (3), the fee schedule established under paragraph (1) shall be initially based on audited data from cost reporting periods ending in fiscal year 1985 and such other data as the Secretary determines necessary.

(3)(A) In establishing the initial fee schedule for those services, the Secretary shall adjust the fee schedule to the extent necessary to ensure that the estimated total amount which will be paid under this subchapter for those services plus applicable coinsurance in 1989 will equal the estimated total amount which would be paid under this subchapter for those services in 1989 if the services were included as inpatient hospital services and payment for such services was made under part A of this subchapter in the same manner as payment was made in fiscal year 1987, adjusted to take into account changes in prices and technology relating to the administration of anesthesia.

(B) The Secretary shall also reduce the prevailing charge of physicians for medical direction of a certified registered nurse anesthetist, or the fee schedule for services of certified registered nurse anesthetists, or both, to the extent necessary to ensure that the estimated total amount which will be paid under this subchapter plus applicable coinsurance for such medical direction and such services in 1989 and 1990 will not exceed the estimated total amount which would have been paid plus applicable coinsurance but for the enactment of the amendments made by section 9320 of the Omnibus Budget Reconciliation Act of 1986. A reduced prevailing charge under this subparagraph shall become the prevailing charge but for subsequent years for purposes of applying the economic index under the fourth sentence of section 1395u(b)(3) of this title.

(4)(A) Except as provided in subparagraphs (C) and (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, by a certified registered nurse anesthetist who is not medically directed—

(i) the conversion factor shall be—

(I) for services furnished in 1991, $15.50,

(II) for services furnished in 1992, $15.75,

(III) for services furnished in 1993, $16.00,

[4] So in original. The word ''this'' probably should not appear.

(IV) for services furnished in 1994, $16.25,

(V) for services furnished in 1995, $16.50,

(VI) for services furnished in 1996, $16.75, and

(VII) for services furnished in calendar years after 1996, the previous year's conversion factor increased by the update determined under section 1395w–4(d) of this title for physician anesthesia services for that year;

(ii) the payment areas to be used shall be the fee schedule areas used under section 1395w–4 of this title (or, in the case of services furnished during 1991, the localities used under section 1395u(b) of this title) for purposes of computing payments for physicians' services that are anesthesia services;

(iii) the geographic adjustment factors to be applied to the conversion factor under clause (i) for services in a fee schedule area or locality is—[5]

(I) in the case of services furnished in 1991, the geographic work index value and the geographic practice cost index value specified in section 1395u(q)(1)(B) of this title for physicians' services that are anesthesia services furnished in the area or locality, and

(II) in the case of services furnished after 1991, the geographic work index value, the geographic practice cost index value, and the geographic malpractice index value used for determining payments for physicians' services that are anesthesia services under section 1395w–4 of this title,

with 70 percent of the conversion factor treated as attributable to work and 30 percent as attributable to overhead for services furnished in 1991 (and the portions attributable to work, practice expenses, and malpractice expenses in 1992 and thereafter being the same as is applied under section 1395w–4 of this title).

(B)(i) Except as provided in clause (ii) and subparagraph (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, and before January 1, 1994, by a certified registered nurse anesthetist who is medically directed, the Secretary shall apply the same methodology specified in subparagraph (A).

(ii) The conversion factor used under clause (i) shall be—

(I) for services furnished in 1991, $10.50,

(II) for services furnished in 1992, $10.75, and

(III) for services furnished in 1993, $11.00.

(iii) In the case of services of a certified registered nurse anesthetist who is medically directed or medically supervised by a physician which are furnished on or after January 1, 1994, the fee schedule amount shall be one-half of the amount described in section 1395w–4(a)(5)(B) of this title with respect to the physician.

(C) Notwithstanding subclauses (I) through (V) of subparagraph (A)(i)—

(i) in the case of a 1990 conversion factor that is greater than $16.50, the conversion factor for a calendar year after 1990 and before 1996 shall be the 1990 conversion factor reduced by the product of the last digit of the calendar year and one-fifth of the amount by which the 1990 conversion factor exceeds $16.50; and

(ii) in the case of a 1990 conversion factor that is greater than $15.49 but less than $16.51, the conversion factor for a calendar year after 1990 and before 1996 shall be the greater of—

(I) the 1990 conversion factor, or

(II) the conversion factor specified in subparagraph (A)(i) for the year involved.

(D) Notwithstanding subparagraph (C), in no case may the conversion factor used to determine payment for services in a fee schedule area or locality under this subsection, as adjusted by the adjustment factors specified in subparagraphs[6] (A)(iii), exceed the conversion factor used to determine the amount paid for physicians' services that are anesthesia services in the area or locality.

(5)(A) Payment for the services of a certified registered nurse anesthetist (for which payment may otherwise be made under this part) may be made on the basis of a claim or request for payment presented by the certified registered nurse anesthetist furnishing such services, or by a hospital, critical access hospital, physician, group practice, or ambulatory surgical center with which the certified registered nurse anesthetist furnishing such services has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, critical access hospital, physician, group practice, or ambulatory surgical center.

(B) No hospital or critical access hospital that presents a claim or request for payment for services of a certified nurse anesthetist under this part may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital or critical access hospital for purposes of this subchapter.

(6) If an adjustment under paragraph (3)(B) results in a reduction in the reasonable charge for a physicians' service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the effective date of the reduction, the physician's actual charge is subject to a limit under section 1395u(j)(1)(D) of this title.

(m) Incentive payments for physicians' services furnished in underserved areas

(1) In the case of physicians' services furnished in a year to an individual, who is covered under the insurance program established by this part and who incurs expenses for such services, in an area that is designated (under section 254e(a)(1)(A) of this title) as a health professional shortage area as identified by the Secretary prior to the beginning of such year, in addition to the amount otherwise paid under this part, there also shall be paid to the physician (or to an employer or facility in the cases described in clause (A) of section 1395u(b)(6) of this title) (on a monthly or quarterly basis) from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 10 percent of the payment amount for the service under this part.

[5] So in original. Probably should be ''are—''.

[6] So in original. Probably should be ''subparagraph''.

(2) For each health professional shortage area identified in paragraph (1) that consists of an entire county, the Secretary shall provide for the additional payment under paragraph (1) without any requirement on the physician to identify the health professional shortage area involved. The Secretary may implement the previous sentence using the method specified in subsection (u)(4)(C) of this section.

(3) The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services a list of the health professional shortage areas identified in paragraph (1) that consist of a partial county to facilitate the additional payment under paragraph (1) in such areas.

(4) There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, respecting—

(A) the identification of a county or area;

(B) the assignment of a specialty of any physician under this paragraph;

(C) the assignment of a physician to a county under this subsection; or

(D) the assignment of a postal ZIP Code to a county or other area under this subsection.

(n) Payments to hospital outpatient departments for radiology; amount; definitions

(1)(A)[7] The aggregate amount of the payments to be made for all or part of a cost reporting period for services described in subsection (a)(2)(E)(i) of this section furnished under this part on or after October 1, 1988, and before January 1, 1999, and for services described in subsection (a)(2)(E)(ii) of this section furnished under this part on or after October 1, 1989, and before January 1, 1999, shall be equal to the lesser of—

(i) the amount determined with respect to such services under subsection (a)(2)(B) of this section, or

(ii) the blend amount for radiology services and diagnostic procedures determined in accordance with subparagraph (B).

(B)(i) The blend amount for radiology services and diagnostic procedures for a cost reporting period is the sum of—

(I) the cost proportion (as defined in clause (ii)) of the amount described in subparagraph (A)(i); and

(II) the charge proportion (as defined in clause (ii)(II)) of 62 percent (for services described in subsection (a)(2)(E)(i) of this section), or (for procedures described in subsection (a)(2)(E)(ii) of this section), 42 percent or such other percent established by the Secretary (or carriers acting pursuant to guidelines issued by the Secretary) based on prevailing charges established with actual charge data, of the prevailing charge or (for services described in subsection (a)(2)(E)(i) of this section furnished on or after April 1, 1989 and for services described in subsection (a)(2)(E)(ii) of this section furnished on or after January 1, 1992) the fee schedule amount established for participating physicians for the same services as if they were furnished in a physician's office in the same locality as determined under section 1395u(b) of this title (or, in the case of services furnished on or after January 1, 1992, under section 1395w–4 of this title), less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title.

(ii) In this subparagraph:

(I) The term ''cost proportion'' means 50 percent, except that such term means 65 percent in the case of outpatient radiology services for portions of cost reporting periods which occur in fiscal year 1989 and in the case of diagnostic procedures described in subsection (a)(2)(E)(ii) of this section for portions of cost reporting periods which occur in fiscal year 1990, and such term means 42 percent in the case of outpatient radiology services for portions of cost reporting periods beginning on or after January 1, 1991.

(II) The term ''charge proportion'' means 100 percent minus the cost proportion.

***(o)* Limitation on benefit for payment for therapeutic shoes for individuals with severe diabetic foot disease**

(1) In the case of shoes described in section 1395x(s)(12) of this title—

(A) no payment may be made under this part, with respect to any individual for any year, for the furnishing of—

(i) more than one pair of custom molded shoes (including inserts provided with such shoes) and 2 additional pairs of inserts for such shoes, or

(ii) more than one pair of extra-depth shoes (not including inserts provided with such shoes) and 3 pairs of inserts for such shoes, and

(B) with respect to expenses incurred in any calendar year, no more than the amount of payment applicable under paragraph (2) shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.

Payment for shoes (or inserts) under this part shall be considered to include payment for any expenses for the fitting of such shoes (or inserts).

(2)(A) Except as provided by the Secretary under subparagraphs (B) and (C), the amount of payment under this paragraph for custom molded shoes, extra-depth shoes, and inserts shall be the amount determined for such items by the Secretary under section 1395m(h) of this title.

(B) The Secretary may establish payment amounts for shoes and inserts that are lower than the amount established under section 1395m(h) of this title if the Secretary finds that shoes and inserts of an appropriate quality are readily available at or below the amount established under such section.

(C) In accordance with procedures established by the Secretary, an individual entitled to benefits with respect to shoes described in section 1395x(s)(12) of this title may substitute modification of such shoes instead of obtaining one (or more, as specified by the Secretary) pair of inserts (other than the original pair of inserts with respect to such shoes). In such case, the Secretary shall substitute, for the payment amount established under section 1395m(h) of this title, a payment amount that the Secretary

[7] So in original. No par. (2) has been enacted.

estimates will assure that there is no net increase in expenditures under this subsection as a result of this subparagraph.

(3) In this subchapter, the term ''shoes'' includes, except for purposes of subparagraphs (A)(ii) and (B) of paragraph (2), inserts for extra-depth shoes.

(p) Repealed. Pub. L. 103–432, title I, § 123(b)(2)(A)(ii), Oct. 31, 1994, 108 Stat. 4411

(q) Requests for payment to include information on referring physician

(1) Each request for payment, or bill submitted, for an item or service furnished by an entity for which payment may be made under this part and for which the entity knows or has reason to believe there has been a referral by a referring physician (within the meaning of section 1395nn of this title) shall include the name and unique physician identification number for the referring physician.

(2)(A) In the case of a request for payment for an item or service furnished by an entity under this part on an assignment-related basis and for which information is required to be provided under paragraph (1) but not included, payment may be denied under this part.

(B) In the case of a request for payment for an item or service furnished by an entity under this part not submitted on an assignment-related basis and for which information is required to be provided under paragraph (1) but not included—

(i) if the entity knowingly and willfully fails to provide such information promptly upon request of the Secretary or a carrier, the entity may be subject to a civil money penalty in an amount not to exceed $2,000, and

(ii) if the entity knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection to provide the information required under paragraph (1), the entity may be subject to exclusion from participation in the programs under this chapter for a period not to exceed 5 years, in accordance with the procedures of subsections (c), (f), and (g) of section 1320a–7 of this title.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under clause (i) in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(r) Cap on prevailing charge; billing on assignment-related basis

(1) With respect to services described in section 1395x(s)(2)(K)(ii) of this title (relating to nurse practitioner or clinical nurse specialist services), payment may be made on the basis of a claim or request for payment presented by the nurse practitioner or clinical nurse specialist furnishing such services, or by a hospital, critical access hospital, skilled nursing facility or nursing facility (as defined in section 1396r(a) of this title), physician, group practice, or ambulatory surgical center with which the nurse practitioner or clinical nurse specialist has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, group practice, or ambulatory surgical center.

(2) No hospital or critical access hospital that presents a claim or request for payment under this part for services described in section 1395x(s)(2)(K)(ii) of this title may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this subchapter.

(s) Other prepaid organizations

The Secretary may not provide for payment under subsection (a)(1)(A) of this section with respect to an organization unless the organization provides assurances satisfactory to the Secretary that the organization meets the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(t) Prospective payment system for hospital outpatient department services

(1) Amount of payment

(A) In general

With respect to covered OPD services (as defined in subparagraph (B)) furnished during a year beginning with 1999, the amount of payment under this part shall be determined under a prospective payment system established by the Secretary in accordance with this subsection.

(B) Definition of covered OPD services

For purposes of this subsection, the term ''covered OPD services''—

(i) means hospital outpatient services designated by the Secretary;

(ii) subject to clause (iv), includes inpatient hospital services designated by the Secretary that are covered under this part and furnished to a hospital inpatient who (I) is entitled to benefits under part A of this subchapter but has exhausted benefits for inpatient hospital services during a spell of illness, or (II) is not so entitled;

(iii) includes implantable items described in paragraph (3), (6), or (8) of section 1395x(s) of this title; but

(iv) does not include any therapy services described in subsection (a)(8) of this section or ambulance services, for which payment is made under a fee schedule described in section 1395m(k) of this title or section 1395m(*l*) of this title and does not include screening mammography (as defined in section 1395x(jj) of this title) and diagnostic mammography.

(2) System requirements

Under the payment system—

(A) the Secretary shall develop a classification system for covered OPD services;

(B) the Secretary may establish groups of covered OPD services, within the classification system described in subparagraph (A), so that services classified within each group are comparable clinically and with respect to the use of resources and so that an implantable item is classified to the group that includes the service to which the item relates;

(C) the Secretary shall, using data on claims from 1996 and using data from the

most recent available cost reports, establish relative payment weights for covered OPD services (and any groups of such services described in subparagraph (B)) based on median (or, at the election of the Secretary, mean) hospital costs and shall determine projections of the frequency of utilization of each such service (or group of services) in 1999;

(D) the Secretary shall determine a wage adjustment factor to adjust the portion of payment and coinsurance attributable to labor-related costs for relative differences in labor and labor-related costs across geographic regions in a budget neutral manner;

(E) the Secretary shall establish, in a budget neutral manner, outlier adjustments under paragraph (5) and transitional pass-through payments under paragraph (6) and other adjustments as determined to be necessary to ensure equitable payments, such as adjustments for certain classes of hospitals;

(F) the Secretary shall develop a method for controlling unnecessary increases in the volume of covered OPD services;

(G) the Secretary shall create additional groups of covered OPD services that classify separately those procedures that utilize contrast agents from those that do not; and

(H) with respect to devices of brachytherapy consisting of a seed or seeds (or radioactive source), the Secretary shall create additional groups of covered OPD services that classify such devices separately from the other services (or group of services) paid for under this subsection in a manner reflecting the number, isotope, and radioactive intensity of such devices furnished, including separate groups for palladium-103 and iodine-125 devices and for stranded and non-stranded devices furnished on or after July 1, 2007.

For purposes of subparagraph (B), items and services within a group shall not be treated as ''comparable with respect to the use of resources'' if the highest median cost (or mean cost, if elected by the Secretary under subparagraph (C)) for an item or service within the group is more than 2 times greater than the lowest median cost (or mean cost, if so elected) for an item or service within the group; except that the Secretary may make exceptions in unusual cases, such as low volume items and services, but may not make such an exception in the case of a drug or biological that has been designated as an orphan drug under section 360bb of title 21.

(3) Calculation of base amounts

(A) Aggregate amounts that would be payable if deductibles were disregarded

The Secretary shall estimate the sum of—

(i) the total amounts that would be payable from the Trust Fund under this part for covered OPD services in 1999, determined without regard to this subsection, as though the deductible under subsection (b) of this section did not apply, and

(ii) the total amounts of copayments estimated to be paid under this subsection by beneficiaries to hospitals for covered OPD services in 1999, as though the deductible under subsection (b) of this section did not apply.

(B) Unadjusted copayment amount

(i) In general

For purposes of this subsection, subject to clause (ii), the ''unadjusted copayment amount'' applicable to a covered OPD service (or group of such services) is 20 percent of the national median of the charges for the service (or services within the group) furnished during 1996, updated to 1999 using the Secretary's estimate of charge growth during the period.

(ii) Adjusted to be 20 percent when fully phased in

If the pre-deductible payment percentage for a covered OPD service (or group of such services) furnished in a year would be equal to or exceed 80 percent, then the unadjusted copayment amount shall be 20 percent of amount determined under subparagraph (D).

(iii) Rules for new services

The Secretary shall establish rules for establishment of an unadjusted copayment amount for a covered OPD service not furnished during 1996, based upon its classification within a group of such services.

(C) Calculation of conversion factors

(i) For 1999

(I) In general

The Secretary shall establish a 1999 conversion factor for determining the medicare OPD fee schedule amounts for each covered OPD service (or group of such services) furnished in 1999. Such conversion factor shall be established on the basis of the weights and frequencies described in paragraph (2)(C) and in such a manner that the sum for all services and groups of the products (described in subclause (II) for each such service or group) equals the total projected amount described in subparagraph (A).

(II) Product described

The Secretary shall determine for each service or group the product of the medicare OPD fee schedule amounts (taking into account appropriate adjustments described in paragraphs (2)(D) and (2)(E)) and the estimated frequencies for such service or group.

(ii) Subsequent years

Subject to paragraph (8)(B), the Secretary shall establish a conversion factor for covered OPD services furnished in subsequent years in an amount equal to the conversion factor established under this subparagraph and applicable to such services furnished in the previous year increased by the OPD fee schedule increase factor specified under clause (iv) for the year involved.

(iii) Adjustment for service mix changes

Insofar as the Secretary determines that the adjustments for service mix under

paragraph (2) for a previous year (or estimates that such adjustments for a future year) did (or are likely to) result in a change in aggregate payments under this subsection during the year that are a result of changes in the coding or classification of covered OPD services that do not reflect real changes in service mix, the Secretary may adjust the conversion factor computed under this subparagraph for subsequent years so as to eliminate the effect of such coding or classification changes.

(iv) OPD fee schedule increase factor

For purposes of this subparagraph, the ''OPD fee schedule increase factor'' for services furnished in a year is equal to the market basket percentage increase applicable under section 1395ww(b)(3)(B)(iii) of this title to hospital discharges occurring during the fiscal year ending in such year, reduced by 1 percentage point for such factor for services furnished in each of 2000 and 2002. In applying the previous sentence for years beginning with 2000, the Secretary may substitute for the market basket percentage increase an annual percentage increase that is computed and applied with respect to covered OPD services furnished in a year in the same manner as the market basket percentage increase is determined and applied to inpatient hospital services for discharges occurring in a fiscal year.

(D) Calculation of medicare OPD fee schedule amounts

The Secretary shall compute a medicare OPD fee schedule amount for each covered OPD service (or group of such services) furnished in a year, in an amount equal to the product of—

(i) the conversion factor computed under subparagraph (C) for the year, and

(ii) the relative payment weight (determined under paragraph (2)(C)) for the service or group.

(E) Pre-deductible payment percentage

The pre-deductible payment percentage for a covered OPD service (or group of such services) furnished in a year is equal to the ratio of—

(i) the medicare OPD fee schedule amount established under subparagraph (D) for the year, minus the unadjusted copayment amount determined under subparagraph (B) for the service or group, to

(ii) the medicare OPD fee schedule amount determined under subparagraph (D) for the year for such service or group.

(4) Medicare payment amount

The amount of payment made from the Trust Fund under this part for a covered OPD service (and such services classified within a group) furnished in a year is determined, subject to paragraph (7), as follows:

(A) Fee schedule adjustments

The medicare OPD fee schedule amount (computed under paragraph (3)(D)) for the service or group and year is adjusted for relative differences in the cost of labor and other factors determined by the Secretary, as computed under paragraphs (2)(D) and (2)(E).

(B) Subtract applicable deductible

Reduce the adjusted amount determined under subparagraph (A) by the amount of the deductible under subsection (b) of this section, to the extent applicable.

(C) Apply payment proportion to remainder

The amount of payment is the amount so determined under subparagraph (B) multiplied by the pre-deductible payment percentage (as determined under paragraph (3)(E)) for the service or group and year involved, plus the amount of any reduction in the copayment amount attributable to paragraph (8)(C).

(5) Outlier adjustment

(A) In general

Subject to subparagraph (D), the Secretary shall provide for an additional payment for each covered OPD service (or group of services) for which a hospital's charges, adjusted to cost, exceed—

(i) a fixed multiple of the sum of—

(I) the applicable medicare OPD fee schedule amount determined under paragraph (3)(D), as adjusted under paragraph (4)(A) (other than for adjustments under this paragraph or paragraph (6)); and

(II) any transitional pass-through payment under paragraph (6); and

(ii) at the option of the Secretary, such fixed dollar amount as the Secretary may establish.

(B) Amount of adjustment

The amount of the additional payment under subparagraph (A) shall be determined by the Secretary and shall approximate the marginal cost of care beyond the applicable cutoff point under such subparagraph.

(C) Limit on aggregate outlier adjustments

(i) In general

The total of the additional payments made under this paragraph for covered OPD services furnished in a year (as estimated by the Secretary before the beginning of the year) may not exceed the applicable percentage (specified in clause (ii)) of the total program payments estimated to be made under this subsection for all covered OPD services furnished in that year. If this paragraph is first applied to less than a full year, the previous sentence shall apply only to the portion of such year.

(ii) Applicable percentage

For purposes of clause (i), the term ''applicable percentage'' means a percentage specified by the Secretary up to (but not to exceed)—

(I) for a year (or portion of a year) before 2004, 2.5 percent; and

(II) for 2004 and thereafter, 3.0 percent.

(D) Transitional authority

In applying subparagraph (A) for covered OPD services furnished before January 1, 2002, the Secretary may—

(i) apply such subparagraph to a bill for such services related to an outpatient encounter (rather than for a specific service or group of services) using OPD fee schedule amounts and transitional pass-through payments covered under the bill; and

(ii) use an appropriate cost-to-charge ratio for the hospital involved (as determined by the Secretary), rather than for specific departments within the hospital.

(E) Exclusion of separate drug and biological APCS from outlier payments

No additional payment shall be made under subparagraph (A) in the case of ambulatory payment classification groups established separately for drugs or biologicals.

(6) Transitional pass-through for additional costs of innovative medical devices, drugs, and biologicals

(A) In general

The Secretary shall provide for an additional payment under this paragraph for any of the following that are provided as part of a covered OPD service (or group of services):

(i) Current orphan drugs

A drug or biological that is used for a rare disease or condition with respect to which the drug or biological has been designated as an orphan drug under section 360bb of title 21 if payment for the drug or biological as an outpatient hospital service under this part was being made on the first date that the system under this subsection is implemented.

(ii) Current cancer therapy drugs and biologicals and brachytherapy

A drug or biological that is used in cancer therapy, including (but not limited to) a chemotherapeutic agent, an antiemetic, a hematopoietic growth factor, a colony stimulating factor, a biological response modifier, a bisphosphonate, and a device of brachytherapy or temperature monitored cryoablation, if payment for such drug, biological, or device as an outpatient hospital service under this part was being made on such first date.

(iii) Current radiopharmaceutical drugs and biological products

A radiopharmaceutical drug or biological product used in diagnostic, monitoring, and therapeutic nuclear medicine procedures if payment for the drug or biological as an outpatient hospital service under this part was being made on such first date.

(iv) New medical devices, drugs, and biologicals

A medical device, drug, or biological not described in clause (i), (ii), or (iii) if—

(I) payment for the device, drug, or biological as an outpatient hospital service under this part was not being made as of December 31, 1996; and

(II) the cost of the drug or biological or the average cost of the category of devices is not insignificant in relation to the OPD fee schedule amount (as calculated under paragraph (3)(D)) payable for the service (or group of services) involved.

(B) Use of categories in determining eligibility of a device for pass-through payments

The following provisions apply for purposes of determining whether a medical device qualifies for additional payments under clause (ii) or (iv) of subparagraph (A):

(i) Establishment of initial categories

(I) In general

The Secretary shall initially establish under this clause categories of medical devices based on type of device by April 1, 2001. Such categories shall be established in a manner such that each medical device that meets the requirements of clause (ii) or (iv) of subparagraph (A) as of January 1, 2001, is included in such a category and no such device is included in more than one category. For purposes of the preceding sentence, whether a medical device meets such requirements as of such date shall be determined on the basis of the program memoranda issued before such date.

(II) Authorization of implementation other than through regulations

The categories may be established under this clause by program memorandum or otherwise, after consultation with groups representing hospitals, manufacturers of medical devices, and other affected parties.

(ii) Establishing criteria for additional categories

(I) In general

The Secretary shall establish criteria that will be used for creation of additional categories (other than those established under clause (i)) through rulemaking (which may include use of an interim final rule with comment period).

(II) Standard

Such categories shall be established under this clause in a manner such that no medical device is described by more than one category. Such criteria shall include a test of whether the average cost of devices that would be included in a category and are in use at the time the category is established is not insignificant, as described in subparagraph (A)(iv)(II).

(III) Deadline

Criteria shall first be established under this clause by July 1, 2001. The Secretary may establish in compelling circumstances categories under this clause be-

fore the date such criteria are established.

(IV) Adding categories

The Secretary shall promptly establish a new category of medical devices under this clause for any medical device that meets the requirements of subparagraph (A)(iv) and for which none of the categories in effect (or that were previously in effect) is appropriate.

(iii) Period for which category is in effect

A category of medical devices established under clause (i) or (ii) shall be in effect for a period of at least 2 years, but not more than 3 years, that begins—

(I) in the case of a category established under clause (i), on the first date on which payment was made under this paragraph for any device described by such category (including payments made during the period before April 1, 2001); and

(II) in the case of any other category, on the first date on which payment is made under this paragraph for any medical device that is described by such category.

(iv) Requirements treated as met

A medical device shall be treated as meeting the requirements of subparagraph (A)(iv), regardless of whether the device meets the requirement of subclause (I) of such subparagraph, if—

(I) the device is described by a category established and in effect under clause (i); or

(II) the device is described by a category established and in effect under clause (ii) and an application under section 360e of title 21 has been approved with respect to the device, or the device has been cleared for market under section 360(k) of title 21, or the device is exempt from the requirements of section 360(k) of title 21 pursuant to subsection (*l*) or (m) of section 360 of title 21 or section 360j(g) of title 21.

Nothing in this clause shall be construed as requiring an application or prior approval (other than that described in subclause (II)) in order for a covered device described by a category to qualify for payment under this paragraph.

(C) Limited period of payment

(i) Drugs and biologicals

The payment under this paragraph with respect to a drug or biological shall only apply during a period of at least 2 years, but not more than 3 years, that begins—

(I) on the first date this subsection is implemented in the case of a drug or biological described in clause (i), (ii), or (iii) of subparagraph (A) and in the case of a drug or biological described in subparagraph (A)(iv) and for which payment under this part is made as an outpatient hospital service before such first date; or

(II) in the case of a drug or biological described in subparagraph (A)(iv) not described in subclause (I), on the first date on which payment is made under this part for the drug or biological as an outpatient hospital service.

(ii) Medical devices

Payment shall be made under this paragraph with respect to a medical device only if such device—

(I) is described by a category of medical devices established and in effect under subparagraph (B); and

(II) is provided as part of a service (or group of services) paid for under this subsection and provided during the period for which such category is in effect under such subparagraph.

(D) Amount of additional payment

Subject to subparagraph (E)(iii), the amount of the payment under this paragraph with respect to a device, drug, or biological provided as part of a covered OPD service is—

(i) in the case of a drug or biological, the amount by which the amount determined under section 1395u(*o*) of this title (or if the drug or biological is covered under a competitive acquisition contract under section 1395w–3b of this title, an amount determined by the Secretary equal to the average price for the drug or biological for all competitive acquisition areas and year established under such section as calculated and adjusted by the Secretary for purposes of this paragraph) for the drug or biological exceeds the portion of the otherwise applicable medicare OPD fee schedule that the Secretary determines is associated with the drug or biological; or

(ii) in the case of a medical device, the amount by which the hospital's charges for the device, adjusted to cost, exceeds the portion of the otherwise applicable medicare OPD fee schedule that the Secretary determines is associated with the device.

(E) Limit on aggregate annual adjustment

(i) In general

The total of the additional payments made under this paragraph for covered OPD services furnished in a year (as estimated by the Secretary before the beginning of the year) may not exceed the applicable percentage (specified in clause (ii)) of the total program payments estimated to be made under this subsection for all covered OPD services furnished in that year. If this paragraph is first applied to less than a full year, the previous sentence shall apply only to the portion of such year.

(ii) Applicable percentage

For purposes of clause (i), the term ''applicable percentage'' means—

(I) for a year (or portion of a year) before 2004, 2.5 percent; and

(II) for 2004 and thereafter, a percentage specified by the Secretary up to (but not to exceed) 2.0 percent.

(iii) Uniform prospective reduction if aggregate limit projected to be exceeded

If the Secretary estimates before the beginning of a year that the amount of the additional payments under this paragraph for the year (or portion thereof) as determined under clause (i) without regard to this clause will exceed the limit established under such clause, the Secretary shall reduce pro rata the amount of each of the additional payments under this paragraph for that year (or portion thereof) in order to ensure that the aggregate additional payments under this paragraph (as so estimated) do not exceed such limit.

(F) Limitation of application of functional equivalence standard

(i) In general

The Secretary may not publish regulations that apply a functional equivalence standard to a drug or biological under this paragraph.

(ii) Application

Clause (i) shall apply to the application of a functional equivalence standard to a drug or biological on or after December 8, 2003, unless—

(I) such application was being made to such drug or biological prior to December 8, 2003; and

(II) the Secretary applies such standard to such drug or biological only for the purpose of determining eligibility of such drug or biological for additional payments under this paragraph and not for the purpose of any other payments under this subchapter.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to effect the Secretary's authority to deem a particular drug to be identical to another drug if the 2 products are pharmaceutically equivalent and bioequivalent, as determined by the Commissioner of Food and Drugs.

(7) Transitional adjustment to limit decline in payment

(A) Before 2002

Subject to subparagraph (D), for covered OPD services furnished before January 1, 2002, for which the PPS amount (as defined in subparagraph (E)) is—

(i) at least 90 percent, but less than 100 percent, of the pre-BBA amount (as defined in subparagraph (F)), the amount of payment under this subsection shall be increased by 80 percent of the amount of such difference;

(ii) at least 80 percent, but less than 90 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount by which (I) the product of 0.71 and the pre-BBA amount, exceeds (II) the product of 0.70 and the PPS amount;

(iii) at least 70 percent, but less than 80 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount by which (I) the product of 0.63 and the pre-BBA amount, exceeds (II) the product of 0.60 and the PPS amount; or

(iv) less than 70 percent of the pre-BBA amount, the amount of payment under this subsection shall be increased by 21 percent of the pre-BBA amount.

(B) 2002

Subject to subparagraph (D), for covered OPD services furnished during 2002, for which the PPS amount is—

(i) at least 90 percent, but less than 100 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by 70 percent of the amount of such difference;

(ii) at least 80 percent, but less than 90 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount by which (I) the product of 0.61 and the pre-BBA amount, exceeds (II) the product of 0.60 and the PPS amount; or

(iii) less than 80 percent of the pre-BBA amount, the amount of payment under this subsection shall be increased by 13 percent of the pre-BBA amount.

(C) 2003

Subject to subparagraph (D), for covered OPD services furnished during 2003, for which the PPS amount is—

(i) at least 90 percent, but less than 100 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by 60 percent of the amount of such difference; or

(ii) less than 90 percent of the pre-BBA amount, the amount of payment under this subsection shall be increased by 6 percent of the pre-BBA amount.

(D) Hold harmless provisions

(i) Temporary treatment for certain rural hospitals

(I) In the case of a hospital located in a rural area and that has not more than 100 beds or a sole community hospital (as defined in section 1395ww(d)(5)(D)(iii) of this title) located in a rural area, for covered OPD services furnished before January 1, 2006, for which the PPS amount is less than the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount of such difference.

(II) In the case of a hospital located in a rural area and that has not more than 100 beds and that is not a sole community hospital (as defined in section 1395ww(d)(5)(D)(iii) of this title), for covered OPD services furnished on or after January 1, 2006, and before January 1, 2009, for which the PPS amount is less than the pre-BBA amount, the amount of payment under this subsection shall be increased by the applicable percentage of the amount of such difference. For purposes of the previous sentence, with respect to covered OPD services furnished during 2006, 2007, or

2008, the applicable percentage shall be 95 percent, 90 percent, and 85 percent, respectively.

(ii) Permanent treatment for cancer hospitals and children's hospitals

In the case of a hospital described in clause (iii) or (v) of section 1395ww(d)(1)(B) of this title, for covered OPD services for which the PPS amount is less than the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount of such difference.

(E) PPS amount defined

In this paragraph, the ''PPS amount'' means, with respect to covered OPD services, the amount payable under this subchapter for such services (determined without regard to this paragraph), including amounts payable as copayment under paragraph (8), coinsurance under section 1395cc(a)(2)(A)(ii) of this title, and the deductible under subsection (b) of this section.

(F) Pre-BBA amount defined

(i) In general

In this paragraph, the ''pre-BBA amount'' means, with respect to covered OPD services furnished by a hospital in a year, an amount equal to the product of the reasonable cost of the hospital for such services for the portions of the hospital's cost reporting period (or periods) occurring in the year and the base OPD payment-to-cost ratio for the hospital (as defined in clause (ii)).

(ii) Base payment-to-cost ratio defined

For purposes of this subparagraph, the ''base payment-to-cost ratio'' for a hospital means the ratio of—

(I) the hospital's reimbursement under this part for covered OPD services furnished during the cost reporting period ending in 1996 (or in the case of a hospital that did not submit a cost report for such period, during the first subsequent cost reporting period ending before 2001 for which the hospital submitted a cost report), including any reimbursement for such services through cost-sharing described in subparagraph (E), to

(II) the reasonable cost of such services for such period.

The Secretary shall determine such ratios as if the amendments made by section 4521 of the Balanced Budget Act of 1997 were in effect in 1996.

(G) Interim payments

The Secretary shall make payments under this paragraph to hospitals on an interim basis, subject to retrospective adjustments based on settled cost reports.

(H) No effect on copayments

Nothing in this paragraph shall be construed to affect the unadjusted copayment amount described in paragraph (3)(B) or the copayment amount under paragraph (8).

(I) Application without regard to budget neutrality

The additional payments made under this paragraph—

(i) shall not be considered an adjustment under paragraph (2)(E); and

(ii) shall not be implemented in a budget neutral manner.

(8) Copayment amount

(A) In general

Except as provided in subparagraphs (B) and (C), the copayment amount under this subsection is the amount by which the amount described in paragraph (4)(B) exceeds the amount of payment determined under paragraph (4)(C).

(B) Election to offer reduced copayment amount

The Secretary shall establish a procedure under which a hospital, before the beginning of a year (beginning with 1999), may elect to reduce the copayment amount otherwise established under subparagraph (A) for some or all covered OPD services to an amount that is not less than 20 percent of the medicare OPD fee schedule amount (computed under paragraph (3)(D)) for the service involved. Under such procedures, such reduced copayment amount may not be further reduced or increased during the year involved and the hospital may disseminate information on the reduction of copayment amount effected under this subparagraph.

(C) Limitation on copayment amount

(i) To inpatient hospital deductible amount

In no case shall the copayment amount for a procedure performed in a year exceed the amount of the inpatient hospital deductible established under section 1395e(b) of this title for that year.

(ii) To specified percentage

The Secretary shall reduce the national unadjusted copayment amount for a covered OPD service (or group of such services) furnished in a year in a manner so that the effective copayment rate (determined on a national unadjusted basis) for that service in the year does not exceed the following percentage:

(I) For procedures performed in 2001, on or after April 1, 2001, 57 percent.

(II) For procedures performed in 2002 or 2003, 55 percent.

(III) For procedures performed in 2004, 50 percent.

(IV) For procedures performed in 2005, 45 percent.

(V) For procedures performed in 2006 and thereafter, 40 percent.

(D) No impact on deductibles

Nothing in this paragraph shall be construed as affecting a hospital's authority to waive the charging of a deductible under subsection (b) of this section.

(E) Computation ignoring outlier and pass-through adjustments

The copayment amount shall be computed under subparagraph (A) as if the adjust-

ments under paragraphs (5) and (6) (and any adjustment made under paragraph (2)(E) in relation to such adjustments) had not occurred.

(9) Periodic review and adjustments components of prospective payment system

(A) Periodic review

The Secretary shall review not less often than annually and revise the groups, the relative payment weights, and the wage and other adjustments described in paragraph (2) to take into account changes in medical practice, changes in technology, the addition of new services, new cost data, and other relevant information and factors. The Secretary shall consult with an expert outside advisory panel composed of an appropriate selection of representatives of providers to review (and advise the Secretary concerning) the clinical integrity of the groups and weights. Such panel may use data collected or developed by entities and organizations (other than the Department of Health and Human Services) in conducting such review.

(B) Budget neutrality adjustment

If the Secretary makes adjustments under subparagraph (A), then the adjustments for a year may not cause the estimated amount of expenditures under this part for the year to increase or decrease from the estimated amount of expenditures under this part that would have been made if the adjustments had not been made. In determining adjustments under the preceding sentence for 2004 and 2005, the Secretary shall not take into account under this subparagraph or paragraph (2)(E) any expenditures that would not have been made but for the application of paragraph (14).

(C) Update factor

If the Secretary determines under methodologies described in paragraph (2)(F) that the volume of services paid for under this subsection increased beyond amounts established through those methodologies, the Secretary may appropriately adjust the update to the conversion factor otherwise applicable in a subsequent year.

(10) Special rule for ambulance services

The Secretary shall pay for hospital outpatient services that are ambulance services on the basis described in section 1395x(v)(1)(U) of this title, or, if applicable, the fee schedule established under section 1395m(*l*) of this title.

(11) Special rules for certain hospitals

In the case of hospitals described in clause (iii) or (v) of section 1395ww(d)(1)(B) of this title—

(A) the system under this subsection shall not apply to covered OPD services furnished before January 1, 2000; and

(B) the Secretary may establish a separate conversion factor for such services in a manner that specifically takes into account the unique costs incurred by such hospitals by virtue of their patient population and service intensity.

(12) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395*oo* of this title, or otherwise of—

(A) the development of the classification system under paragraph (2), including the establishment of groups and relative payment weights for covered OPD services, of wage adjustment factors, other adjustments, and methods described in paragraph (2)(F);

(B) the calculation of base amounts under paragraph (3);

(C) periodic adjustments made under paragraph (6);

(D) the establishment of a separate conversion factor under paragraph (8)(B); and

(E) the determination of the fixed multiple, or a fixed dollar cutoff amount, the marginal cost of care, or applicable percentage under paragraph (5) or the determination of insignificance of cost, the duration of the additional payments, the determination and deletion of initial and new categories (consistent with subparagraphs (B) and (C) of paragraph (6)), the portion of the medicare OPD fee schedule amount associated with particular devices, drugs, or biologicals, and the application of any pro rata reduction under paragraph (6).

(13) Authorization of adjustment for rural hospitals

(A) Study

The Secretary shall conduct a study to determine if, under the system under this subsection, costs incurred by hospitals located in rural areas by ambulatory payment classification groups (APCs) exceed those costs incurred by hospitals located in urban areas.

(B) Authorization of adjustment

Insofar as the Secretary determines under subparagraph (A) that costs incurred by hospitals located in rural areas exceed those costs incurred by hospitals located in urban areas, the Secretary shall provide for an appropriate adjustment under paragraph (2)(E) to reflect those higher costs by January 1, 2006.

(14) Drug APC payment rates

(A) In general

The amount of payment under this subsection for a specified covered outpatient drug (defined in subparagraph (B)) that is furnished as part of a covered OPD service (or group of services)—

(i) in 2004, in the case of—

(I) a sole source drug shall in no case be less than 88 percent, or exceed 95 percent, of the reference average wholesale price for the drug;

(II) an innovator multiple source drug shall in no case exceed 68 percent of the reference average wholesale price for the drug; or

(III) a noninnovator multiple source drug shall in no case exceed 46 percent of the reference average wholesale price for the drug;

(ii) in 2005, in the case of—

(I) a sole source drug shall in no case be less than 83 percent, or exceed 95 percent, of the reference average wholesale price for the drug;

(II) an innovator multiple source drug shall in no case exceed 68 percent of the reference average wholesale price for the drug; or

(III) a noninnovator multiple source drug shall in no case exceed 46 percent of the reference average wholesale price for the drug; or

(iii) in a subsequent year, shall be equal, subject to subparagraph (E)—

(I) to the average acquisition cost for the drug for that year (which, at the option of the Secretary, may vary by hospital group (as defined by the Secretary based on volume of covered OPD services or other relevant characteristics)), as determined by the Secretary taking into account the hospital acquisition cost survey data under subparagraph (D); or

(II) if hospital acquisition cost data are not available, the average price for the drug in the year established under section 1395u(*o*) of this title, section 1395w–3a of this title, or section 1395w–3b of this title, as the case may be, as calculated and adjusted by the Secretary as necessary for purposes of this paragraph.

(B) Specified covered outpatient drug defined

(i) In general

In this paragraph, the term ''specified covered outpatient drug'' means, subject to clause (ii), a covered outpatient drug (as defined in section 1396r–8(k)(2) of this title) for which a separate ambulatory payment classification group (APC) has been established and that is—

(I) a radiopharmaceutical; or

(II) a drug or biological for which payment was made under paragraph (6) (relating to pass-through payments) on or before December 31, 2002.

(ii) Exception

Such term does not include—

(I) a drug or biological for which payment is first made on or after January 1, 2003, under paragraph (6);

(II) a drug or biological for which a temporary HCPCS code has not been assigned; or

(III) during 2004 and 2005, an orphan drug (as designated by the Secretary).

(C) Payment for designated orphan drugs during 2004 and 2005

The amount of payment under this subsection for an orphan drug designated by the Secretary under subparagraph (B)(ii)(III) that is furnished as part of a covered OPD service (or group of services) during 2004 and 2005 shall equal such amount as the Secretary may specify.

(D) Acquisition cost survey for hospital outpatient drugs

(i) Annual GAO surveys in 2004 and 2005

(I) In general

The Comptroller General of the United States shall conduct a survey in each of 2004 and 2005 to determine the hospital acquisition cost for each specified covered outpatient drug. Not later than April 1, 2005, the Comptroller General shall furnish data from such surveys to the Secretary for use in setting the payment rates under subparagraph (A) for 2006.

(II) Recommendations

Upon the completion of such surveys, the Comptroller General shall recommend to the Secretary the frequency and methodology of subsequent surveys to be conducted by the Secretary under clause (ii).

(ii) Subsequent secretarial surveys

The Secretary, taking into account such recommendations, shall conduct periodic subsequent surveys to determine the hospital acquisition cost for each specified covered outpatient drug for use in setting the payment rates under subparagraph (A).

(iii) Survey requirements

The surveys conducted under clauses (i) and (ii) shall have a large sample of hospitals that is sufficient to generate a statistically significant estimate of the average hospital acquisition cost for each specified covered outpatient drug. With respect to the surveys conducted under clause (i), the Comptroller General shall report to Congress on the justification for the size of the sample used in order to assure the validity of such estimates.

(iv) Differentiation in cost

In conducting surveys under clause (i), the Comptroller General shall determine and report to Congress if there is (and the extent of any) variation in hospital acquisition costs for drugs among hospitals based on the volume of covered OPD services performed by such hospitals or other relevant characteristics of such hospitals (as defined by the Comptroller General).

(v) Comment on proposed rates

Not later than 30 days after the date the Secretary promulgated proposed rules setting forth the payment rates under subparagraph (A) for 2006, the Comptroller General shall evaluate such proposed rates and submit to Congress a report regarding the appropriateness of such rates based on the surveys the Comptroller General has conducted under clause (i).

(E) Adjustment in payment rates for overhead costs

(i) MedPAC report on drug APC design

The Medicare Payment Advisory Commission shall submit to the Secretary, not later than July 1, 2005, a report on adjust-

ment of payment for ambulatory payment classifications for specified covered outpatient drugs to take into account overhead and related expenses, such as pharmacy services and handling costs. Such report shall include—

(I) a description and analysis of the data available with regard to such expenses;

(II) a recommendation as to whether such a payment adjustment should be made; and

(III) if such adjustment should be made, a recommendation regarding the methodology for making such an adjustment.

(ii) Adjustment authorized

The Secretary may adjust the weights for ambulatory payment classifications for specified covered outpatient drugs to take into account the recommendations contained in the report submitted under clause (i).

(F) Classes of drugs

For purposes of this paragraph:

(i) Sole source drugs

The term ''sole source drug'' means—

(I) a biological product (as defined under section 1395x(t)(1) of this title); or

(II) a single source drug (as defined in section 1396r–8(k)(7)(A)(iv) of this title).

(ii) Innovator multiple source drugs

The term ''innovator multiple source drug'' has the meaning given such term in section 1396r–8(k)(7)(A)(ii) of this title.

(iii) Noninnovator multiple source drugs

The term ''noninnovator multiple source drug'' has the meaning given such term in section 1396r–8(k)(7)(A)(iii) of this title.

(G) Reference average wholesale price

The term ''reference average wholesale price'' means, with respect to a specified covered outpatient drug, the average wholesale price for the drug as determined under section 1395u(*o*) of this title as of May 1, 2003.

(H) Inapplicability of expenditures in determining conversion, weighting, and other adjustment factors

Additional expenditures resulting from this paragraph shall not be taken into account in establishing the conversion, weighting, and other adjustment factors for 2004 and 2005 under paragraph (9), but shall be taken into account for subsequent years.

(15) Payment for new drugs and biologicals until HCPCS code assigned

With respect to payment under this part for an outpatient drug or biological that is covered under this part and is furnished as part of covered OPD services for which a HCPCS code has not been assigned, the amount provided for payment for such drug or biological under this part shall be equal to 95 percent of the average wholesale price for the drug or biological.

(16) Miscellaneous provisions

(A) Application of reclassification of certain hospitals

If a hospital is being treated as being located in a rural area under section 1395ww(d)(8)(E) of this title, that hospital shall be treated under this subsection as being located in that rural area.

(B) Threshold for establishment of separate APCS for drugs

The Secretary shall reduce the threshold for the establishment of separate ambulatory payment classification groups (APCs) with respect to drugs or biologicals to $50 per administration for drugs and biologicals furnished in 2005 and 2006.

(C) Payment for devices of brachytherapy at charges adjusted to cost

Notwithstanding the preceding provisions of this subsection, for a device of brachytherapy consisting of a seed or seeds (or radioactive source) furnished on or after January 1, 2004, and before January 1, 2008, the payment basis for the device under this subsection shall be equal to the hospital's charges for each device furnished, adjusted to cost. Charges for such devices shall not be included in determining any outlier payment under this subsection.

(u) Incentive payments for physician scarcity areas

(1) In general

In the case of physicians' services furnished on or after January 1, 2005, and before January 1, 2008—

(A) by a primary care physician in a primary care scarcity county (identified under paragraph (4)); or

(B) by a physician who is not a primary care physician in a specialist care scarcity county (as so identified),

in addition to the amount of payment that would otherwise be made for such services under this part, there also shall be paid an amount equal to 5 percent of the payment amount for the service under this part.

(2) Determination of ratios of physicians to medicare beneficiaries in area

Based upon available data, the Secretary shall establish for each county or equivalent area in the United States, the following:

(A) Number of physicians practicing in the area

The number of physicians who furnish physicians' services in the active practice of medicine or osteopathy in that county or area, other than physicians whose practice is exclusively for the Federal Government, physicians who are retired, or physicians who only provide administrative services. Of such number, the number of such physicians who are—

(i) primary care physicians; or

(ii) physicians who are not primary care physicians.

(B) Number of medicare beneficiaries residing in the area

The number of individuals who are residing in the county and are entitled to benefits under part A of this subchapter or enrolled under this part, or both (in this subsection referred to as ''individuals'').

(C) Determination of ratios

(i) Primary care ratio

The ratio (in this paragraph referred to as the ''primary care ratio'') of the number of primary care physicians (determined under subparagraph (A)(i)), to the number of individuals determined under subparagraph (B).

(ii) Specialist care ratio

The ratio (in this paragraph referred to as the ''specialist care ratio'') of the number of other physicians (determined under subparagraph (A)(ii)), to the number of individuals determined under subparagraph (B).

(3) Ranking of counties

The Secretary shall rank each such county or area based separately on its primary care ratio and its specialist care ratio.

(4) Identification of counties

(A) In general

The Secretary shall identify—

(i) those counties and areas (in this paragraph referred to as ''primary care scarcity counties'') with the lowest primary care ratios that represent, if each such county or area were weighted by the number of individuals determined under paragraph (2)(B), an aggregate total of 20 percent of the total of the individuals determined under such paragraph; and

(ii) those counties and areas (in this subsection referred to as ''specialist care scarcity counties'') with the lowest specialist care ratios that represent, if each such county or area were weighted by the number of individuals determined under paragraph (2)(B), an aggregate total of 20 percent of the total of the individuals determined under such paragraph.

(B) Periodic revisions

The Secretary shall periodically revise the counties or areas identified in subparagraph (A) (but not less often than once every three years) unless the Secretary determines that there is no new data available on the number of physicians practicing in the county or area or the number of individuals residing in the county or area, as identified in paragraph (2).

(C) Identification of counties where service is furnished

For purposes of paying the additional amount specified in paragraph (1), if the Secretary uses the 5-digit postal ZIP Code where the service is furnished, the dominant county of the postal ZIP Code (as determined by the United States Postal Service, or otherwise) shall be used to determine whether the postal ZIP Code is in a scarcity county identified in subparagraph (A) or revised in subparagraph (B).

(D) Judicial review

There shall be no administrative or judicial review under section 1395ff, 1395*oo* of this title, or otherwise, respecting—

(i) the identification of a county or area;

(ii) the assignment of a specialty of any physician under this paragraph;

(iii) the assignment of a physician to a county under paragraph (2); or

(iv) the assignment of a postal ZIP Code to a county or other area under this subsection.

(5) Rural census tracts

To the extent feasible, the Secretary shall treat a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)), as an equivalent area for purposes of qualifying as a primary care scarcity county or specialist care scarcity county under this subsection.

(6) Physician defined

For purposes of this paragraph, the term ''physician'' means a physician described in section 1395x(r)(1) of this title and the term ''primary care physician'' means a physician who is identified in the available data as a general practitioner, family practice practitioner, general internist, or obstetrician or gynecologist.

(7) Publication of list of counties; posting on website

With respect to a year for which a county or area is identified or revised under paragraph (4), the Secretary shall identify such counties or areas as part of the proposed and final rule to implement the physician fee schedule under section 1395w–4 of this title for the applicable year. The Secretary shall post the list of counties identified or revised under paragraph (4) on the Internet website of the Centers for Medicare & Medicaid Services.

(Aug. 14, 1935, ch. 531, title XVIII, § 1833, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 302; amended Pub. L. 90–248, title I, §§ 129(c)(7), (8), 131(a), (b), 132(b), 135(c), Jan. 2, 1968, 81 Stat. 848–850, 853; Pub. L. 92–603, title II, §§ 204(a), 211(c)(4), 226(c)(2), 233(b), 245(d), 251(a)(2), (3), 279, 299K(a), Oct. 30, 1972, 86 Stat. 1377, 1384, 1404, 1411, 1424, 1445, 1454, 1464; Pub. L. 95–142, § 16(a), Oct. 25, 1977, 91 Stat. 1200; Pub. L. 95–210, § 1(b), Dec. 13, 1977, 91 Stat. 1485; Pub. L. 95–292, § 4(b), (c), June 13, 1978, 92 Stat. 315; Pub. L. 96–473, § 6(j), Oct. 19, 1980, 94 Stat. 2266; Pub. L. 96–499, title IX, §§ 918(a)(4), 930(h), 932(a)(1), 934(b), (d)(1), (3), 935(a), 942, 943(a), Dec. 5, 1980, 94 Stat. 2626, 2631, 2634, 2637, 2639, 2641; Pub. L. 96–611, § 1(b)(1), (2), Dec. 28, 1980, 94 Stat. 3566; Pub. L. 97–35, title XXI, §§ 2106(a), 2133(a), 2134(a), Aug. 13, 1981, 95 Stat. 792, 797; Pub. L. 97–248, title I, §§ 101(c)(2), 112(a), (b), 117(a)(2), 148(d), Sept. 3, 1982, 96 Stat. 336, 340, 355, 394; Pub. L. 98–369, div. B, title III, §§ 2303(a)–(d), 2305(a)–(d),

2308(b)(2)(B), 2321(b), (d)(4)(A), 2323(b)(1), (2), (4), 2354(b)(5), (7), July 18, 1984, 98 Stat. 1064, 1069, 1070, 1074, 1084–1086, 1100; Pub. L. 98–617, § 3(b)(2), (3), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–272, title IX, §§ 9303(a)(1), (b)(1)–(3), 9401(b)–(2)(E), Apr. 7, 1986, 100 Stat. 188, 189, 198, 199; Pub. L. 99–509, title IX, §§ 9320(e)(1), (2), 9337(b), 9339(a)(1), (b)(1), (2), (c)(1), 9343(a), (b), (e)(2), Oct. 21, 1986, 100 Stat. 2014, 2033, 2036, 2039–2041; Pub. L. 100–203, title IV, §§ 4042(b)(2)(B), 4043(a), 4045(c)(2)(A), 4049(a)(1), 4055(a), formerly 4054(a), 4062(d)(3), 4063(b), (e)(1), 4064(a), (b)(1), (2), (c)(1), formerly (c), 4066(a), (b), 4067(a), 4068(a), 4070(a), (b)(4), 4072(b), 4073(b), formerly (b)(2), (3), 4077(b)(2), (3), formerly (b)(3), (4), 4084(a), (c)(2), 4085(b)(1), (i)(1)–(3), (21)(D)(i), (22)(B), (23), Dec. 22, 1987, 101 Stat. 1330–85, 1330–88, 1330–90, 1330–108 to 1330–115, 1330–117, 1330–118, 1330–120, 1330–121, 1330–129 to 1330–133, as amended Pub. L. 100–360, title IV, § 411(f)(2)(D), (8)(B)(i), (12)(A), (14), (g)(2)(E), (3)(A)–(C), (E), (F), (h)(3)(B), (4)(B), (C), (7)(C), (D), (F), (i)(3), (4)(C)(i), (ii), (iv), (vi), July 1, 1988, 102 Stat. 777, 779, 781, 783, 784, 786–789; Pub. L. 100–360, title I, § 104(d)(7), title II, §§ 201(a), 202(b)(1)–(3), 203(c)(1)(A)–(E), 204(d)(1), 205(c), 212(c)(2), title IV, § 411(f)(8)(C), (g)(1)(E), (2)(D), (3)(D), (4)(C), (5), (h)(1)(A), (i)(4)(B), July 1, 1988, 102 Stat. 699, 704, 722, 729, 730, 741, 779, 782–785, 789, as amended Pub. L. 100–485, title VI, § 608(d)(3)(G), Oct. 13, 1988, 102 Stat. 2414; Pub. L. 100–485, title VI, § 608(d)(4), (22)(B), (D), (23)(A), Oct. 13, 1988, 102 Stat. 2414, 2420, 2421; Pub. L. 100–647, title VIII, §§ 8421(a), 8422(a), Nov. 10, 1988, 102 Stat. 3802; Pub. L. 101–234, title II, §§ 201(a), 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6003(e)(2)(A), (g)(3)(D)(vii), 6102(c)(1), (e)(1), (5), (6)(A), (7), (f)(2), 6111(a), (b)(1), 6113(b)(3), (d), 6116(b)(1), 6131(a)(1), (b), 6133(a), 6204(b), Dec. 19, 1989, 103 Stat. 2143, 2153, 2184, 2187–2189, 2213, 2214, 2217, 2219, 2221, 2222, 2241; Pub. L. 101–508, title IV, §§ 4008(m)(2)(C), 4104(b)(1), 4118(f)(2)(D), 4151(c)(1), (2), 4153(a)(2)(B), (C), 4154(a), (b)(1), (c)(1), (e)(1), 4155(b)(2), (3), 4160, 4161(a)(3)(B), 4163(d)(1), 4206(b)(2), 4302, Nov. 5, 1990, 104 Stat. 1388–53, 1388–59, 1388–70, 1388–73, 1388–83 to 1388–87, 1388–91, 1388–93, 1388–100, 1388–116, 1388–125; Pub. L. 101–597, title IV, § 401(c)(2), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103–66, title XIII, §§ 13516(b), 13532(a), 13544(b)(2), 13551, 13555(a), Aug. 10, 1993, 107 Stat. 584, 586, 590, 592; Pub. L. 103–432, title I, §§ 123(b)(2)(A), (e), 141(a), (c)(1), 147(a), (d), (e)(2), (3), (f)(6)(C), (D), 156(a)(2)(B), 160(d)(1), Oct. 31, 1994, 108 Stat. 4411, 4412, 4424, 4425, 4429, 4430, 4432, 4440, 4443; Pub. L. 105–33, title IV, §§ 4002(j)(1)(A), 4101(b), 4102(b), 4103(b), 4104(c)(1), (2), 4201(c)(1), 4205(a)(1)(A), (2), 4315(b), 4432(b)(5)(C), 4511(b), 4512(b)(1), 4521(a), (b), 4523(a), (d)(1)(A)(i), (B)–(3), 4531(b)(1), 4541(a)(1), (c), (d)(1), 4553(a), (b), 4555, 4556(b), 4603(c)(2)(A), Aug. 5, 1997, 111 Stat. 330, 360–362, 365, 373, 376, 390, 421, 442–445, 449, 450, 454, 456, 460, 462, 463, 470; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, §§ 201(a)–(e)(1), (f)–(h)(1), (i), (j), 202(a), 204(a),(b), 211(a)(3)(B), 221(a)(1), 224(a), title III, § 321(g)(2), (k)(2), title IV, §§ 401(b)(1), 403(e)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–336 to 1501A–342, 1501A–345, 1501A–348, 1501A–351, 1501A–353, 1501A–366, 1501A–369, 1501A–371; Pub. L. 106–554, § 1(a)(6) [title I, §§ 105(c), 111(a)(1), title II, §§ 201(b)(1), 205(b), 223(c), 224(a), title IV, §§ 401(a), (b)(1), 402(a), (b), 403(a), 405(a), 406(a), 421(a), 430(a), title V, § 531(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–472, 2763A–481, 2763A–483, 2763A–489, 2763A–490, 2763A–502, 2763A–503, 2763A–505 to 2763A–508, 2763A–516, 2763A–524, 2763A–547; Pub. L. 108–173, title II, § 237(a), title III, §§ 302(b)(2), 303(i)(3)(A), title IV, §§ 411(a)(1), (b), 413(a), (b)(1), title VI, §§ 614(a), (b), 621(a)(1)–(5), (b)(1), (2), 622, 624(a)(1), 626(a)–(c), 627(a), 628, 629, 642(b), title VII, § 736(b)(1), (2), title IX, § 942(b), Dec. 8, 2003, 117 Stat. 2212, 2229, 2254, 2274, 2275, 2277, 2306–2311, 2317–2322, 2355, 2421; Pub. L. 109–171, title V, §§ 5103, 5105, 5107(a)(1), 5112(e), 5113(a), Feb. 8, 2006, 120 Stat. 40–42, 44; Pub. L. 109–432, div. B, title I, §§ 107(a), (b)(1), 109(a)(1), (b), title II, § 201, Dec. 20, 2006, 120 Stat. 2983–2986.)

AMENDMENT OF SECTION

Pub. L. 109–432, div. B, title I, § 109(a)(1), (b), (c), Dec. 20, 2006, 120 Stat. 2984, 2985, provided that, applicable to payment for services furnished on or after Jan. 1, 2009, this section is amended as follows:

(1) in subsection (i)(2)(D), by redesignating cl. (iv) as (v) and by adding a new cl. (iv) to read as follows:

''(iv) The Secretary may implement such system in a manner so as to provide for a reduction in any annual update for failure to report on quality measures in accordance with paragraph (7).'';

(2) in subsection (i), by adding paragraph (7) at end to read as follows:

''(7)(A) For purposes of paragraph (2)(D)(iv), the Secretary may provide, in the case of an ambulatory surgical center that does not submit, to the Secretary in accordance with this paragraph, data required to be submitted on measures selected under this paragraph with respect to a year, any annual increase provided under the system established under paragraph (2)(D) for such year shall be reduced by 2.0 percentage points. A reduction under this subparagraph shall apply only with respect to the year involved and the Secretary shall not take into account such reduction in computing any annual increase factor for a subsequent year.

''(B) Except as the Secretary may otherwise provide, the provisions of subparagraphs (B), (C), (D), and (E) of paragraph (17) of subsection (t) shall apply with respect to services of ambulatory surgical centers under this paragraph in a similar manner to the manner in which they apply under such paragraph and, for purposes of this subparagraph, any reference to a hospital, outpatient setting, or outpatient hospital services is deemed a reference to an ambulatory surgical center, the setting of such a center, or services of such a center, respectively.'';

(3) in subsection (t)(3)(C)(iv), by inserting ''subject to paragraph (17),'' after ''this subparagraph,''; and

(4) in subsection (t), by adding paragraph (17) at end to read as follows:

(17) Quality reporting

(A) Reduction in update for failure to report

(i) In general

For purposes of paragraph (3)(C)(iv) for 2009 and each subsequent year, in the case of a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title) that does not submit, to the Secretary in accordance with this paragraph, data required to be submitted on measures selected under this paragraph

with respect to such a year, the OPD fee schedule increase factor under paragraph (3)(C)(iv) for such year shall be reduced by 2.0 percentage points.

(ii) Non-cumulative application

A reduction under this subparagraph shall apply only with respect to the year involved and the Secretary shall not take into account such reduction in computing the OPD fee schedule increase factor for a subsequent year.

(B) Form and manner of submission

Each subsection (d) hospital shall submit data on measures selected under this paragraph to the Secretary in a form and manner, and at a time, specified by the Secretary for purposes of this paragraph.

(C) Development of outpatient measures

(i) In general

The Secretary shall develop measures that the Secretary determines to be appropriate for the measurement of the quality of care (including medication errors) furnished by hospitals in outpatient settings and that reflect consensus among affected parties and, to the extent feasible and practicable, shall include measures set forth by one or more national consensus building entities.

(ii) Construction

Nothing in this paragraph shall be construed as preventing the Secretary from selecting measures that are the same as (or a subset of) the measures for which data are required to be submitted under section 1395ww(b)(3)(B)(viii) of this title.

(D) Replacement of measures

For purposes of this paragraph, the Secretary may replace any measures or indicators in appropriate cases, such as where all hospitals are effectively in compliance or the measures or indicators have been subsequently shown not to represent the best clinical practice.

(E) Availability of data

The Secretary shall establish procedures for making data submitted under this paragraph available to the public. Such procedures shall ensure that a hospital has the opportunity to review the data that are to be made public with respect to the hospital prior to such data being made public. The Secretary shall report quality measures of process, structure, outcome, patients' perspectives on care, efficiency, and costs of care that relate to services furnished in outpatient settings in hospitals on the Internet website of the Centers for Medicare & Medicaid Services.

REFERENCES IN TEXT

Part C of this subchapter, referred to in subsec. (a)(3)(B), is classified to section 1395w–21 et seq. of this title.

Part A of this subchapter, referred to in subsecs. (a)(8)(B)(i), (d), (*l*)(3)(A), (t)(1)(B)(ii)(I), and (u)(2)(B), is classified to section 1395c et seq. of this title.

Section 626(d) of Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (i)(2)(D)(i), is section 626(d) of Pub. L. 108–173, which is set out as a note under this section.

Section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (*l*)(1)(C), is section 9320(k) of Pub. L. 99–509, as amended, which is set out as a note under section 1395k of this title.

The amendments made by section 9320 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (*l*)(3)(B), are amendments made by section 9320 of Pub. L. 99–509, which amended sections 1395k, 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title and provisions set out as a note under section 1395ww of this title.

Section 4521 of The Balanced Budget Act of 1997, referred to in subsec. (t)(7)(F), is section 4521 of Pub. L. 105–33, Aug. 5, 1997, 111 Stat. 444, which amended this section and enacted provisions set out as a note under this section.

AMENDMENTS

2006—Subsec. (b)(7). Pub. L. 109–171, § 5112(e), added cl. (7).

Subsec. (b)(8). Pub. L. 109–171, § 5113(a), added cl. (8).

Subsec. (g)(1), (3). Pub. L. 109–171, § 5107(a)(1)(A), substituted ''paragraphs (4) and (5)'' for ''paragraph (4)''.

Subsec. (g)(5). Pub. L. 109–432, § 201, substituted ''the period beginning on January 1, 2006, and ending on December 31, 2007,'' for ''2006''.

Pub. L. 109–171, § 5107(a)(1)(B), added par. (5).

Subsec. (i)(2)(A). Pub. L. 109–171, § 5103(1), inserted ''subject to subparagraph (E),'' after ''subparagraph (D),''.

Subsec. (i)(2)(D)(ii). Pub. L. 109–171, § 5103(2), inserted ''and taking into account reduced expenditures that would apply if subparagraph (E) were to continue to apply, as estimated by the Secretary'' before period at end.

Subsec. (i)(2)(E). Pub. L. 109–171, § 5103(3), added subpar. (E).

Subsec. (t)(2)(H). Pub. L. 109–432, § 107(b)(1), inserted ''and for stranded and non-stranded devices furnished on or after July 1, 2007'' before period at end.

Subsec. (t)(7)(D)(i). Pub. L. 109–171, § 5105, designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (t)(16)(C). Pub. L. 109–432, § 107(a), substituted ''2008'' for ''2007''.

2003—Subsec. (a)(1)(D)(iii). Pub. L. 108–173, § 302(b)(2)(C), added subcl. (iii).

Subsec. (a)(1)(G). Pub. L. 108–173, § 626(c), added cl. (G).

Subsec. (a)(1)(S). Pub. L. 108–173, § 642(b), inserted ''(including intravenous immune globulin (as defined in section 1395x(zz) of this title))'' after ''with respect to drugs and biologicals''.

Pub. L. 108–173, § 303(i)(3)(A), inserted ''(or, if applicable, under section 1395w–3, 1395w–3a, or 1395w–3b of this title)'' after ''1395u(*o*) of this title''.

Subsec. (a)(1)(V). Pub. L. 108–173, § 302(b)(2)(A), (B), added cl. (V).

Subsec. (a)(2)(E)(i). Pub. L. 108–173, § 614(b), inserted ''and, for services furnished on or after January 1, 2005, diagnostic mammography'' after ''screening mammography''.

Subsec. (a)(3). Pub. L. 108–173, § 237(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''in the case of services described in section 1395k(a)(2)(D) of this title, the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1395x(v)(1)(A) of this title, less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such services (other than for items and services described in section 1395x(s)(10)(A) of this title) exceed 80 percent of such costs;''.

Subsec. (b). Pub. L. 108–173, § 629, substituted '', $100 for 1991 through 2004, $110 for 2005, and for a subsequent year the amount of such deductible for the previous

year increased by the annual percentage increase in the monthly actuarial rate under section 1395r(a)(1) of this title ending with such subsequent year (rounded to the nearest $1)'' for ''and $100 for 1991 and subsequent years'' before semicolon in first sentence.

Subsec. (g)(4). Pub. L. 108–173, § 624(a)(1), substituted ''2002, 2004, and 2005'' for ''and 2002''.

Subsec. (h)(2)(A)(ii)(IV). Pub. L. 108–173, § 628, substituted '', 1998 through 2002, and 2004 through 2008'' for ''and 1998 through 2002''.

Subsec. (h)(5)(D). Pub. L. 108–173, § 736(b)(1), substituted ''clinic,'' for ''clinic,,''.

Subsec. (h)(8). Pub. L. 108–173, § 942(b), added par. (8).

Subsec. (i)(2)(A). Pub. L. 108–173, § 626(b)(1)(A), substituted ''For services furnished prior to the implementation of the system described in subparagraph (D), the'' for ''The'' in introductory provisions.

Subsec. (i)(2)(A)(i). Pub. L. 108–173, § 626(b)(1)(B), struck out ''taken not later than January 1, 1995, and every 5 years thereafter,'' before ''of the actual audited costs''.

Subsec. (i)(2)(C). Pub. L. 108–173, § 626(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Notwithstanding the second sentence of subparagraph (A) or the second sentence of subparagraph (B), if the Secretary has not updated amounts established under such subparagraphs with respect to facility services furnished during a fiscal year (beginning with fiscal year 1996), such amounts shall be increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved. In each of the fiscal years 1998 through 2002, the increase under this subparagraph shall be reduced (but not below zero) by 2.0 percentage points.''

Subsec. (i)(2)(D). Pub. L. 108–173, § 626(b)(2), added subpar. (D).

Subsec. (m). Pub. L. 108–173, § 413(b)(1), designated existing provisions as par. (1), inserted ''in a year'' after ''In the case of physicians' services furnished'' and ''as identified by the Secretary prior to the beginning of such year'' after ''as a health professional shortage area'', and added pars. (2) to (4).

Subsec. (*o*)(1)(B). Pub. L. 108–173, § 627(a)(1), substituted ''no more than the amount of payment applicable under paragraph (2)'' for ''no more than the limits established under paragraph (2)''.

Subsec. (*o*)(2). Pub. L. 108–173, § 627(a)(2), amended par. (2) generally, substituting provisions relating to determination of amount of payments pursuant to section 1395m of this title for provisions specifying dollar amounts of payments.

Subsec. (t)(1)(B)(iv). Pub. L. 108–173, § 614(a), inserted before period at end ''and does not include screening mammography (as defined in section 1395x(jj) of this title) and diagnostic mammography''.

Subsec. (t)(2)(H). Pub. L. 108–173, § 621(b)(2), which directed the amendment of par. (2) by adding a new subpar. (H) at the end, was executed by adding subpar. (H) after subpar. (G), to reflect the probable intent of Congress.

Subsec. (t)(3)(C)(ii). Pub. L. 108–173, § 736(b)(2), substituted ''clause (iv)'' for ''clause (iii)''.

Subsec. (t)(5)(E). Pub. L. 108–173, § 621(a)(3), added subpar. (E).

Subsec. (t)(6)(D)(i). Pub. L. 108–173, § 621(a)(4), inserted ''(or if the drug or biological is covered under a competitive acquisition contract under section 1395w–3b of this title, an amount determined by the Secretary equal to the average price for the drug or biological for all competitive acquisition areas and year established under such section as calculated and adjusted by the Secretary for purposes of this paragraph)'' after ''under section 1395u(*o*) of this title''.

Subsec. (t)(6)(F). Pub. L. 108–173, § 622, added subpar. (F).

Subsec. (t)(7)(D)(i). Pub. L. 108–173, § 411(a)(1)(A), (C), substituted ''certain'' for ''small'' in heading and ''2006'' for ''2004'' in text.

Pub. L. 108–173, § 411(a)(1)(B), inserted ''or a sole community hospital (as defined in section 1395ww(d)(5)(D)(iii) of this title) located in a rural area'' after ''100 beds''.

Subsec. (t)(9)(B). Pub. L. 108–173, § 621(a)(5), inserted at end ''In determining adjustments under the preceding sentence for 2004 and 2005, the Secretary shall not take into account under this subparagraph or paragraph (2)(E) any expenditures that would not have been made but for the application of paragraph (14).''

Subsec. (t)(13). Pub. L. 108–173, § 411(b)(2), added par. (13). Former par. (13) redesignated (16).

Subsec. (t)(14), (15). Pub. L. 108–173, § 621(a)(1), added pars. (14) and (15).

Subsec. (t)(16). Pub. L. 108–173, § 411(b)(1), redesignated par. (13) as (16).

Subsec. (t)(16)(B). Pub. L. 108–173, § 621(a)(2), added subpar. (B).

Subsec. (t)(16)(C). Pub. L. 108–173, § 621(b)(1), added subpar. (C).

Subsec. (u). Pub. L. 108–173, § 413(a), added subsec. (u).

2000—Subsec. (a)(1)(D)(i). Pub. L. 106–554, § 1(a)(6) [title II, § 201(b)(1)], struck out ''or which are furnished on an outpatient basis by a critical access hospital'' after ''on an assignment-related basis''.

Subsec. (a)(1)(R). Pub. L. 106–554, § 1(a)(6) [title II, § 205(b)], substituted ''ambulance services, (i)'' for ''ambulance service,'' and inserted before comma at end ''and (ii) with respect to ambulance services described in section 1395m(*l*)(8) of this title, the amounts paid shall be the amounts determined under section 1395m(g) of this title for outpatient critical access hospital services''.

Subsec. (a)(1)(T). Pub. L. 106–554, § 1(a)(6) [title I, § 105(c)], added cl. (T).

Subsec. (a)(1)(U). Pub. L. 106–554, § 1(a)(6) [title II, § 223(c)], added cl. (U).

Subsec. (a)(2)(D)(i). Pub. L. 106–554, § 1(a)(6) [title II, § 201(b)(1)], struck out ''or which are furnished on an outpatient basis by a critical access hospital'' after ''on an assignment-related basis''.

Subsec. (f). Pub. L. 106–554, § 1(a)(6) [title II, § 224(a)], substituted ''hospitals'' for ''rural hospitals'' in introductory provisions.

Subsec. (g)(4). Pub. L. 106–554, § 1(a)(6) [title IV, § 421(a)], substituted ''2000, 2001, and 2002.'' for ''2000 and 2001.''

Subsec. (h)(4)(B)(viii). Pub. L. 106–554, § 1(a)(6) [title V, § 531(a)], inserted before period at end ''(or 100 percent of such median in the case of a clinical diagnostic laboratory test performed on or after January 1, 2001, that the Secretary determines is a new test for which no limitation amount has previously been established under this subparagraph)''.

Subsec. (t)(2)(G). Pub. L. 106–554, § 1(a)(6) [title IV, § 430(a)], added subpar. (G).

Subsec. (t)(3)(C)(iii). Pub. L. 106–554, § 1(a)(6) [title IV, § 401(b)(1)(B)], added cl. (iii). Former cl. (iii) redesignated (iv).

Pub. L. 106–554, § 1(a)(6) [title IV, § 401(a)], substituted ''in each of 2000 and 2002'' for ''in each of 2000, 2001, and 2002''.

Subsec. (t)(3)(C)(iv). Pub. L. 106–554, § 1(a)(6) [title IV, § 401(b)(1)(A)], redesignated cl. (iii) as (iv).

Subsec. (t)(6)(A)(ii). Pub. L. 106–554, § 1(a)(6) [title IV, § 406(a)], inserted ''or temperature monitored cryoablation'' after ''device of brachytherapy''.

Subsec. (t)(6)(A)(iv)(II). Pub. L. 106–554, § 1(a)(6) [title IV, § 402(b)(1)], substituted ''the cost of the drug or biological or the average cost of the category of devices'' for ''the cost of the device, drug, or biological''.

Subsec. (t)(6)(B). Pub. L. 106–554, § 1(a)(6) [title IV, § 402(a)(2)], added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''The payment under this paragraph with respect to a medical device, drug, or biological shall only apply during a period of at least 2 years, but not more than 3 years, that begins—

''(i) on the first date this subsection is implemented in the case of a drug, biological, or device described

in clause (i), (ii), or (iii) of subparagraph (A) and in the case of a device, drug, or biological described in subparagraph (A)(iv) and for which payment under this part is made as an outpatient hospital service before such first date; or

''(ii) in the case of a device, drug, or biological described in subparagraph (A)(iv) not described in clause (i), on the first date on which payment is made under this part for the device, drug, or biological as an outpatient hospital service.''

Subsec. (t)(6)(C). Pub. L. 106–554, §1(a)(6) [title IV, §402(a)(2)], added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (t)(6)(D). Pub. L. 106–554, §1(a)(6) [title IV, §402(b)(2)], substituted ''subparagraph (E)(iii)'' for ''subparagraph (D)(iii)'' in introductory provisions.

Pub. L. 106–554, §1(a)(6) [title IV, §402(a)(1)], redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (t)(6)(E). Pub. L. 106–554, §1(a)(6) [title IV, §402(a)(1)], redesignated subpar. (D) as (E).

Subsec. (t)(7)(D)(ii). Pub. L. 106–554, §1(a)(6) [title IV, §405(a)], in heading, inserted ''and children's hospitals'' after ''cancer hospitals'' and in text, substituted ''clause (iii) or (v) of section 1395ww(d)(1)(B) of this title'' for ''section 1395ww(d)(1)(B)(v) of this title''.

Subsec. (t)(7)(F)(ii)(I). Pub. L. 106–554, §1(a)(6) [title IV, §403(a)], inserted ''(or in the case of a hospital that did not submit a cost report for such period, during the first subsequent cost reporting period ending before 2001 for which the hospital submitted a cost report)'' after ''1996''.

Subsec. (t)(8)(C). Pub. L. 106–554, §1(a)(6) [title I, §111(a)(1)], amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''In no case shall the copayment amount for a procedure performed in a year exceed the amount of the inpatient hospital deductible established under section 1395e(b) of this title for that year.''

Subsec. (t)(11). Pub. L. 106–554, §1(a)(6) [title IV, §405(a)(2)], substituted ''clause (iii) or (v) of section 1395ww(d)(1)(B) of this title'' for ''section 1395ww(d)(1)(B)(v) of this title'' in introductory provisions.

Subsec. (t)(12)(E). Pub. L. 106–554, §1(a)(6) [title IV, §402(b)(3)], substituted ''additional payments, the determination and deletion of initial and new categories (consistent with subparagraphs (B) and (C) of paragraph (6))'' for ''additional payments (consistent with paragraph (6)(B))''.

1999—Subsec. (a)(1)(D)(i). Pub. L. 106–113, §1000(a)(6) [title IV, §403(e)(1)], inserted ''or which are furnished on an outpatient basis by a critical access hospital'' after ''on an assignment-related basis''.

Subsec. (a)(1)(O). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(2)], substituted a comma for the semicolon at end.

Subsec. (a)(2)(D)(i). Pub. L. 106–113, §1000(a)(6) [title IV, §403(e)(1)], inserted ''or which are furnished on an outpatient basis by a critical access hospital'' after ''on an assignment-related basis''.

Subsec. (g)(1), (3). Pub. L. 106–113, §1000(a)(6) [title II, §221(a)(1)(A)], substituted ''Subject to paragraph (4), in the case'' for ''In the case''.

Subsec. (g)(4). Pub. L. 106–113, §1000(a)(6) [title II, §221(a)(1)(B)], added par. (4).

Subsec. (h)(5)(A)(iii). Pub. L. 106–113, §1000(a)(6) [title III, §321(g)(2)], substituted '', critical access hospital, or skilled nursing facility,'' for ''or critical access hospital,'' and inserted ''or skilled nursing facility'' before period at end.

Subsec. (h)(7). Pub. L. 106–113, §1000(a)(6) [title II, §224(a)], added par. (7).

Subsec. (*l*)(4)(A)(i)(VII). Pub. L. 106–113, §1000(a)(6) [title II, §211(a)(3)(B)], substituted ''1395w–4(d) of this title'' for ''1395w–4(d)(3) of this title''.

Subsec. (t)(1)(B)(ii). Pub. L. 106–113, §1000(a)(6) [title II, §201(e)(1)(A)], substituted ''clause (iv)'' for ''clause (iii)'' and directed the striking out of ''but'' which was executed by striking out ''but'' after semicolon at end to reflect the probable intent of Congress.

Subsec. (t)(1)(B)(iii), (iv). Pub. L. 106–113, §1000(a)(6) [title II, §201(e)(1)(B)], added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (t)(2). Pub. L. 106–113, §1000(a)(6) [title II, §201(g)], inserted concluding provisions.

Subsec. (t)(2)(B). Pub. L. 106–113, §1000(a)(6) [title II, §201(e)(1)(C)], inserted ''and so that an implantable item is classified to the group that includes the service to which the item relates'' before semicolon at end.

Subsec. (t)(2)(C). Pub. L. 106–113, §1000(a)(6) [title II, §201(f)], inserted ''(or, at the election of the Secretary, mean)'' after ''median''.

Subsec. (t)(2)(E). Pub. L. 106–113, §1000(a)(6) [title II, §201(c)], substituted '', in a budget neutral manner, outlier adjustments under paragraph (5) and transitional pass-through payments under paragraph (6) and other adjustments as determined to be necessary to ensure equitable payments, such as'' for ''other adjustments, in a budget neutral manner, as determined to be necessary to ensure equitable payments, such as outlier adjustments or''.

Subsec. (t)(4). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(1)], inserted '', subject to paragraph (7),'' after ''is determined'' in introductory provisions.

Subsec. (t)(4)(C). Pub. L. 106–113, §1000(a)(6) [title II, §204(b)], inserted '', plus the amount of any reduction in the copayment amount attributable to paragraph (8)(C)'' before period at end.

Subsec. (t)(5). Pub. L. 106–113, §1000(a)(6) [title II, §201(a)(2)], added par. (5). Former par. (5) redesignated (7).

Subsec. (t)(6). Pub. L. 106–113, §1000(a)(6) [title II, §201(b)], added par. (6). Former par. (6) redesignated (8).

Subsec. (t)(7). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(3)], added par. (7). Former par. (7) redesignated (8).

Pub. L. 106–113, §1000(a)(6) [title II, §201(a)(1)], redesignated par. (5) as (7). Former par. (7) redesignated (9).

Subsec. (t)(7)(D). Pub. L. 106–113, §1000(a)(6) [title II, §201(i)], added subpar. (D).

Subsec. (t)(8). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(2)], redesignated par. (7) as (8). Former par. (8) redesignated (9).

Pub. L. 106–113, §1000(a)(6) [title II, §201(a)(1)], redesignated par. (6) as (8). Former par. (8) redesignated (10).

Subsec. (t)(8)(A). Pub. L. 106–113, §1000(a)(6) [title II, §204(a)(1)], substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Pub. L. 106–113, §1000(a)(6) [title II, §201(h)(1)(B)], inserted at end ''The Secretary shall consult with an expert outside advisory panel composed of an appropriate selection of representatives of providers to review (and advise the Secretary concerning) the clinical integrity of the groups and weights. Such panel may use data collected or developed by entities and organizations (other than the Department of Health and Human Services) in conducting such review.''

Pub. L. 106–113, §1000(a)(6) [title II, §201(h)(1)(A)], substituted ''shall review not less often than annually'' for ''may periodically review''.

Subsec. (t)(8)(C) to (E). Pub. L. 106–113, §1000(a)(6) [title II, §204(a)(2), (3)], added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (t)(9). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(2)], redesignated par. (8) as (9). Former par. (9) redesignated (10).

Pub. L. 106–113, §1000(a)(6) [title II, §201(j)], substituted ''section 1395x(v)(1)(U) of this title'' for ''the matter in subsection (a)(1) of this section preceding subparagraph (A)''.

Pub. L. 106–113, §1000(a)(6) [title II, §201(a)(1)], redesignated par. (7) as (9). Former par. (9) redesignated (11).

Subsec. (t)(10). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(2)], redesignated par. (9) as (10). Former par. (10) redesignated (11).

Pub. L. 106–113, §1000(a)(6) [title II, §201(a)(1)], redesignated par. (8) as (10).

Subsec. (t)(11). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(2)], redesignated par. (10) as (11). Former par. (11) redesignated (12).

Pub. L. 106–113, § 1000(a)(6) [title II, § 201(a)(1)], redesignated par. (9) as (11).

Subsec. (t)(11)(E). Pub. L. 106–113, § 1000(a)(6) [title II, § 201(d)], added subpar. (E).

Subsec. (t)(12). Pub. L. 106–113, § 1000(a)(6) [title II, § 202(a)(2)], redesignated par. (11) as (12).

Subsec. (t)(13). Pub. L. 106–113, § 1000(a)(6) [title IV, § 401(b)(1)], added par. (13).

1997—Subsec. (a)(1)(A). Pub. L. 105–33, § 4002(j)(1)(A), inserted ''(and either is sponsored by a union or employer, or does not provide, or arrange for the provision of, any inpatient hospital services)'' after ''prepayment basis''.

Subsec. (a)(1)(D). Pub. L. 105–33, § 4104(c), inserted ''or section 1395m(d)(1) of this title'' after ''subsection (h)(1) of this section''.

Subsec. (a)(1)(O). Pub. L. 105–33, § 4512(b)(1), substituted ''section 1395x(s)(2)(K) of this title'' for ''section 1395x(s)(2)(K)(ii) of this title'' and ''services furnished by physician assistants, nurse practitioners, or clinic nurse specialists'' for ''nurse practitioner or clinical nurse specialist services''.

Pub. L. 105–33, § 4511(b)(1), amended cl. (O) generally. Prior to amendment, cl. (O) read as follows: ''with respect to services described in section 1395x(s)(2)(K)(iii) of this title (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), the amounts paid shall be 80 percent of the lesser of the actual charge or the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title) if the services had been performed by a physician (subject to the limitation described in subsection (r)(2) of this section),''.

Subsec. (a)(1)(Q). Pub. L. 105–33, § 4315(b), added cl. (Q).

Subsec. (a)(1)(R). Pub. L. 105–33, § 4531(b)(1), added cl. (R).

Subsec. (a)(1)(S). Pub. L. 105–33, § 4556(b), added cl. (S).

Subsec. (a)(2). Pub. L. 105–33, § 4541(a)(1)(A), inserted ''(C),'' before ''(D)'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 105–33, § 4603(c)(2)(A)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''with respect to home health services (other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title)) and to items and services described in section 1395x(s)(10)(A) of this title, the lesser of—

''(i) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

''(ii) the customary charges with respect to such services,

or, if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision), free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title;''.

Subsec. (a)(2)(B). Pub. L. 105–33, § 4432(b)(5)(C), inserted ''or section 1395yy(e)(9) of this title'' after ''1395ww of this title'' in introductory provisions.

Pub. L. 105–33, § 4523(d)(3), inserted ''furnished before January 1, 1999,'' after ''(i)'' in cl. (i), inserted ''before January 1, 1999,'' after ''furnished'' in cl. (ii), added cl. (iii), and redesignated former cl. (iii) as (iv).

Subsec. (a)(2)(D). Pub. L. 105–33, § 4104(c)(1), inserted ''or section 1395m(d)(1) of this title'' after ''subsection (h)(1) of this section''.

Subsec. (a)(2)(E). Pub. L. 105–33, § 4523(d)(2)(B), inserted ''or, for services or procedures performed on or after January 1, 1999, subsection (t) of this section'' before semicolon at end.

Subsec. (a)(2)(G). Pub. L. 105–33, § 4603(c)(2)(A)(ii)–(iv), added subpar. (G).

Subsec. (a)(3). Pub. L. 105–33, § 4541(a)(1)(B), substituted ''section 1395k(a)(2)(D) of this title'' for ''subparagraphs (D) and (E) of section 1395k(a)(2) of this title''.

Subsec. (a)(4). Pub. L. 105–33, § 4523(d)(1)(B), inserted ''or subsection (t) of this section'' before semicolon at end.

Subsec. (a)(6). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (a)(8), (9). Pub. L. 105–33, § 4541(a)(1)(C)–(E), added pars. (8) and (9).

Subsec. (b)(5). Pub. L. 105–33, § 4101(b), added cl. (5) at end of first sentence.

Subsec. (b)(6). Pub. L. 105–33, § 4102(b), added cl. (6) at end of first sentence.

Subsec. (f). Pub. L. 105–33, § 4205(a)(1)(A), substituted ''rural health clinics (other than such clinics in rural hospitals with less than 50 beds)'' for ''independent rural health clinics'' in introductory provisions.

Subsec. (f)(1). Pub. L. 105–33, § 4205(a)(2), inserted ''per visit'' after ''$46''.

Subsec. (g). Pub. L. 105–33, § 4541(d)(1), substituted ''the amount specified in paragraph (2) for the year'' for ''$900'' in two places, redesignated first sentence as par. (1) and last sentence as par. (3), and added par. (2).

Pub. L. 105–33, § 4541(c), (d)(1)(A), substituted, in first sentence, ''physical therapy services of the type described in section 1395x(p) of this title, but not described in subsection (a)(8)(B) of this section, and physical therapy services of such type which are furnished by a physician or as incident to physicians' services'' for ''services described in the second sentence of section 1395x(p) of this title'', and substituted, in last sentence, ''occupational therapy services (of the type that are described in section 1395x(p) of this title (but not described in subsection (a)(8)(B) of this section) through the operation of section 1395x(g) of this title and of such type which are furnished by a physician or as incident to physicians' services)'' for ''outpatient occupational therapy services which are described in the second sentence of section 1395x(p) of this title through the operation of section 1395x(g) of this title''.

Subsec. (h)(1)(A). Pub. L. 105–33, § 4104(c)(2), substituted ''Subject to section 1395m(d)(1) of this title, the Secretary'' for ''The Secretary''.

Pub. L. 105–33, § 4103(b), inserted ''(including prostate cancer screening tests under section 1395x(*oo*) of this title consisting of prostate-specific antigen blood tests)'' after ''laboratory tests''.

Subsec. (h)(2)(A)(ii)(IV). Pub. L. 105–33, § 4553(a), inserted ''and 1998 through 2002'' after ''1995''.

Subsec. (h)(4)(B)(vii). Pub. L. 105–33, § 4553(b)(2)(A), inserted ''and before January 1, 1998,'' after ''December 31, 1995,''.

Subsec. (h)(4)(B)(viii). Pub. L. 105–33, § 4553(b)(1), (2)(B), (3), added cl. (viii).

Subsec. (h)(5)(A)(iii). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (i)(1)(A). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (i)(2)(C). Pub. L. 105–33, § 4555, inserted at end ''In each of the fiscal years 1998 through 2002, the increase under this subparagraph shall be reduced (but not below zero) by 2.0 percentage points.''

Subsec. (i)(3)(A). Pub. L. 105–33, § 4523(d)(1)(A)(i), inserted ''before January 1, 1999,'' after ''furnished'' and struck out ''in a cost reporting period'' after ''paragraph (1)(A)''.

Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (i)(3)(B)(i)(II). Pub. L. 105–33, § 4521(a), struck out ''of 80 percent'' before ''of the standard overhead amount'' and inserted before period at end '', less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title''.

Subsec. (*l*)(5). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' wherever appearing.

Subsec. (n)(1)(A). Pub. L. 105–33, § 4523(d)(2)(A), inserted ''and before January 1, 1999,'' after ''October 1, 1988,'' and after ''October 1, 1989,''.

Subsec. (n)(1)(B)(i)(II). Pub. L. 105–33, § 4521(b), struck out ''of 80 percent'' before ''of the prevailing charge'' and inserted before period at end '', less the amount a

provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title''.

Subsec. (r)(1). Pub. L. 105–33, § 4511(b)(2)(A), substituted ''section 1395x(s)(2)(K)(ii) of this title (relating to nurse practitioner or clinical nurse specialist services)'' for ''section 1395x(s)(2)(K)(iii) of this title (relating to nurse practitioner or clinical nurse specialist services provided in a rural area)''.

Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (r)(2). Pub. L. 105–33, § 4511(b)(2)(B), (D), redesignated par. (3) as (2) and struck out former par. (2) which read as follows:

''(2)(A) For purposes of subsection (a)(1)(O) of this section, the prevailing charge for services described in section 1395x(s)(2)(K)(iii) of this title may not exceed the applicable percentage (as defined in subparagraph (B)) of the prevailing charge (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title) determined for such services performed by physicians who are not specialists.

''(B) In subparagraph (A), the term 'applicable percentage' means—

''(i) 75 percent in the case of services performed in a hospital, and

''(ii) 85 percent in the case of other services.''

Subsec. (r)(3). Pub. L. 105–33, § 4511(b)(2)(C), (D), redesignated par. (3) as (2) and substituted ''section 1395x(s)(2)(K)(ii) of this title'' for ''section 1395x(s)(2)(K)(iii) of this title''.

Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (t). Pub. L. 105–33, § 4523(a), added subsec. (t).

1994—Subsec. (a)(1)(D)(i). Pub. L. 103–432, § 156(a)(2)(B)(i), struck out '', or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' after ''assignment-related basis''.

Subsec. (a)(1)(G). Pub. L. 103–432, § 156(a)(2)(B)(ii), struck out cl. (G) which read as follows: ''with respect to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion), the amounts paid shall be 100 percent of the reasonable charges for such items and services,''.

Subsec. (a)(2)(A). Pub. L. 103–432, § 156(a)(2)(B)(iii), struck out '', to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),'' before ''and to items and services'' in introductory provisions.

Pub. L. 103–432, § 147(f)(6)(C)(i), substituted ''health services (other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title))'' for ''health services'' in introductory provisions.

Subsec. (a)(2)(D)(i). Pub. L. 103–432, § 156(a)(2)(B)(iv), substituted ''assignment-related basis or'' for ''assignment-related basis,'' and struck out '', or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' after ''section 1395cc of this title''.

Subsec. (a)(2)(F). Pub. L. 103–432, § 147(f)(6)(C)(ii)–(iv), added subpar. (F).

Subsec. (a)(3). Pub. L. 103–432, § 156(a)(2)(B)(v), struck out ''and for items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion)'' after ''section 1395x(s)(10)(A) of this title''.

Subsec. (b)(2). Pub. L. 103–432, § 147(f)(6)(D), inserted ''(other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title))'' after ''services''.

Subsec. (b)(4), (5). Pub. L. 103–432, § 156(a)(2)(B)(vi), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''such deductible shall not apply with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),''.

Subsec. (h)(5)(D). Pub. L. 103–432, § 123(e), substituted ''paragraph (2) of section 1395u(j)'' for ''paragraphs (2) and (3) of section 1395u(j)'' and inserted at end ''Paragraph (4) of such section shall apply in this subparagraph in the same manner as such paragraph applies to such section.''

Subsec. (i)(1). Pub. L. 103–432, § 141(a)(3), inserted before period at end of last sentence '', in consultation with appropriate trade and professional organizations''.

Subsec. (i)(2)(A). Pub. L. 103–432, § 141(a)(2)(A), struck out ''and may be adjusted by the Secretary, when appropriate,'' after ''annually thereafter'' in last sentence.

Subsec. (i)(2)(A)(i). Pub. L. 103–432, § 141(a)(1), inserted before comma at end '', as determined in accordance with a survey (based upon a representative sample of procedures and facilities) taken not later than January 1, 1995, and every 5 years thereafter, of the actual audited costs incurred by such centers in providing such services''.

Subsec. (i)(2)(B). Pub. L. 103–432, § 141(a)(2)(A), struck out ''and may be adjusted by the Secretary, when appropriate,'' after ''annually thereafter'' in last sentence.

Subsec. (i)(2)(C). Pub. L. 103–432, § 141(a)(2)(B), added subpar. (C).

Subsec. (i)(3)(B)(ii). Pub. L. 103–432, § 141(c)(1), in subcls. (I) and (II) substituted ''for portions of cost reporting periods'' for ''for reporting periods'' and ''and ending on or before December 31, 1990'' for ''and on or before December 31, 1990''.

Subsec. (*l*)(5)(B), (C). Pub. L. 103–432, § 123(b)(2)(A)(i), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows:

''(B)(i) Payment for the services of a certified registered nurse anesthetist under this part may be made only on an assignment-related basis, and any such assignment agreed to by a certified registered nurse anesthetist shall be binding upon any other person presenting a claim or request for payment for such services.

''(ii) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services of a certified registered nurse anesthetist for which payment may be made under this part only on an assignment-related basis is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (n)(1)(B)(i)(II). Pub. L. 103–432, § 147(d)(2), substituted ''April 1, 1989'' for ''January 1, 1989''.

Pub. L. 103–432, § 147(d)(1), inserted ''and for services described in subsection (a)(2)(E)(ii) of this section furnished on or after January 1, 1992'' after ''January 1, 1989'' and ''(or, in the case of services furnished on or after January 1, 1992, under section 1395w–4 of this title)'' before period at end.

Subsec. (p). Pub. L. 103–432, § 123(b)(2)(A)(ii), struck out subsec. (p) which read as follows: ''In the case of certified nurse-midwife services for which payment may be made under this part only pursuant to section 1395x(s)(2)(L) of this title, in the case of qualified psychologists services for which payment may be made under this part only pursuant to section 1395x(s)(2)(M) of this title, and in the case of clinical social worker services for which payment may be made under this part only pursuant to section 1395x(s)(2)(N) of this title,

payment may only be made under this part for such services on an assignment-related basis. Except for deductible and coinsurance amounts applicable under this section, whoever knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in the previous sentence, is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (q)(1). Pub. L. 103–432, § 147(a), substituted ''unique physician identification number'' for ''provider number'' and struck out ''and indicate whether or not the referring physician is an interested investor (within the meaning of section 1395nn(h)(5) of this title)'' after ''for the referring physician''.

Subsec. (r). Pub. L. 103–432, § 160(d)(1), redesignated subsec. (r), relating to other prepaid organizations, as (s).

Subsec. (r)(1). Pub. L. 103–432, § 147(e)(2), substituted ''or ambulatory'' for ''ambulatory'' in two places and ''center'' for ''center,'' before ''with which the nurse''.

Subsec. (r)(2)(A). Pub. L. 103–432, § 147(e)(3), substituted ''subsection (a)(1)(O) of this section'' for ''subsection (a)(1)(M) of this section''.

Subsec. (r)(3), (4). Pub. L. 103–432, § 123(b)(2)(A)(iii), redesignated par. (4) as (3) and struck out former par. (3) which read as follows:

''(3)(A) Payment under this part for services described in section 1395x(s)(2)(K)(iii) of this title may be made only on an assignment-related basis, and any such assignment agreed to by a nurse practitioner or clinical nurse specialist shall be binding upon any other person presenting a claim or request for payment for such services.

''(B) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in section 1395x(s)(2)(K)(iii) of this title in violation of subparagraph (A) is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (s). Pub. L. 103–432, § 160(d)(1), redesignated subsec. (r), relating to other prepaid organizations, as (s).

1993—Subsec. (a)(1). Pub. L. 103–66, § 13544(b)(2), redesignated cl. (M) relating to nurse practitioner and clinical nurse specialist services as (O), inserted comma before ''(O)'', transferred and inserted such cl. to appear before semicolon at end, struck out ''and'' before ''(N)'', and inserted '', and'' and cl. (P) following cl. (O) and before semicolon at end.

Subsec. (g). Pub. L. 103–66, § 13555(a), substituted ''$900'' for ''$750'' in two places.

Subsec. (h)(2)(A)(ii)(IV). Pub. L. 103–66, § 13551(a), added subcl. (IV).

Subsec. (h)(4)(B)(iv) to (vii). Pub. L. 103–66, § 13551(b), added cls. (iv) to (vii), and struck out former cl. (iv) which read as follows: ''after December 31, 1990, is equal to 88 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).''

Subsec. (i)(3)(B)(ii). Pub. L. 103–66, § 13532(a)(1), in introductory provisions substituted ''paragraph (4)'' for ''the last sentence of this clause'' and struck out concluding provisions which read as follows: ''In the case of a hospital that makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary), receives more than 30 percent of its total revenues from outpatient services and was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987, the cost proportion and ASC proportion in effect under subclauses (I) and (II) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995.''

Subsec. (i)(4). Pub. L. 103–66, § 13532(a)(2), added par. (4).

Subsec. (*l*)(4)(B)(i). Pub. L. 103–66, § 13516(b)(1), inserted ''and before January 1, 1994,'' after ''1991,''.

Subsec. (*l*)(4)(B)(ii). Pub. L. 103–66, § 13516(b)(2), inserted ''and'' at end of subcl. (II), substituted a period for the comma at end of subcl. (III), and struck out subcls. (IV) to (VII) which read as follows:

''(IV) for services furnished in 1994, $11.25,

''(V) for services furnished in 1995, $11.50,

''(VI) for services furnished in 1996, $11.70, and

''(VII) for services furnished in calendar years after 1997, the previous year's conversion factor increased by the update determined under section 1395w–4(d)(3) of this title for physician anesthesia services for that year.''

Subsec. (*l*)(4)(B)(iii). Pub. L. 103–66, § 13516(b)(3), added cl. (iii).

1990—Subsec. (a)(1)(H). Pub. L. 101–508, § 4118(f)(2)(D), struck out '', as the case may be'' after ''section 1395w–4 of this title''.

Subsec. (a)(1)(J). Pub. L. 101–508, § 4104(b)(1), struck out ''or physician pathology services'' after ''1395m(b)(6) of this title)'' and ''or section 1395m(f) of this title, respectively'' after ''1395m(b) of this title''.

Subsec. (a)(1)(K). Pub. L. 101–508, § 4155(b)(2)(A), which directed amendment of cl. (K) by striking ''and'' at the end, could not be executed because of prior amendment by Pub. L. 101–508, § 4153(a)(2)(B)(i), see below.

Pub. L. 101–508, § 4153(a)(2)(B)(i), struck out ''and'' after ''by a physician),''.

Subsec. (a)(1)(L). Pub. L. 101–508, § 4153(a)(2)(B)(ii), substituted ''subparagraph,'' for ''subparagraph and'' at end.

Subsec. (a)(1)(M). Pub. L. 101–508, § 4155(b)(2)(B), added cl. (M) relating to nurse practitioner and clinical nurse specialist services.

Pub. L. 101–508, § 4153(a)(2)(B)(ii), added cl. (M) relating to prosthetic devices and orthotics.

Subsec. (a)(2). Pub. L. 101–508, § 4153(a)(2)(C)(i), substituted ''(H), and (I)'' for ''and (H)'' in introductory provisions.

Subsec. (a)(2)(E)(i). Pub. L. 101–508, § 4163(d)(1), inserted '', but excluding screening mammography'' after ''imaging services''.

Subsec. (a)(7). Pub. L. 101–508, § 4153(a)(2)(C)(ii)–(iv), added par. (7).

Subsec. (b). Pub. L. 101–508, § 4302, inserted ''for calendar years before 1991 and $100 for 1991 and subsequent years'' after ''$75''.

Subsec. (b)(5). Pub. L. 101–508, § 4161(a)(3)(B), added cl. (5) at end of first sentence.

Subsec. (h)(2)(A)(ii). Pub. L. 101–508, § 4154(a)(1), substituted ''clause (i)'' for ''any other provision of this subsection'' in introductory provisions.

Subsec. (h)(2)(A)(ii)(III). Pub. L. 101–508, § 4154(a)(2)–(4), added subcl. (III).

Subsec. (h)(4)(B). Pub. L. 101–508, § 4154(b)(1)(B), struck out ''and'' at end of cl. (ii), inserted ''and before January 1, 1991,'' after ''1989,'' in cl. (iii), substituted '', and'' for period at end of cl. (iii), and added cl. (iv).

Subsec. (h)(5)(A)(ii)(II). Pub. L. 101–508, § 4154(e)(1)(A), substituted ''wholly owned by'' for ''a wholly-owned subsidiary of''.

Subsec. (h)(5)(A)(ii)(III). Pub. L. 101–508, § 4154(e)(1)(C), substituted ''receives requests for testing during the year in which the test is performed'' for ''submits bills or requests for payment in any year''.

Pub. L. 101–508, § 4154(e)(1)(B), which directed substitution of ''laboratory (but not including a laboratory described in subclause (II)),'' for ''laboratory'', was executed by making the substitution for ''laboratory'' the second time appearing to reflect the probable intent of Congress.

Subsec. (h)(5)(A)(iii). Pub. L. 101–508, § 4008(m)(2)(C), which directed technical correction to Pub. L. 101–239, § 6003(g)(3)(C)(vii)(I), was executed by making technical correction to Pub. L. 101–239, § 6003(g)(3)(D)(vii)(I), resulting in no change in text. See 1989 Amendment note below.

Subsec. (h)(5)(C). Pub. L. 101–508, § 4154(c)(1)(A), substituted ''test, including a test performed in a physician's office but excluding a test performed by a rural health clinic'' for ''test performed by a laboratory other than a rural health clinic''.

Subsec. (h)(5)(D). Pub. L. 101–508, § 4154(c)(1)(B), substituted ''test, including a test performed in a physician's office but excluding a test performed by a rural health clinic,'' for ''test performed by a laboratory, other than a rural health clinic''.

Subsec. (i)(3)(B)(ii). Pub. L. 101–508, § 4151(c)(1)(B), substituted ''on or after October 1, 1988, and before January 1, 1995'' for ''in fiscal year 1989 or fiscal year 1990'' in last sentence.

Subsec. (i)(3)(B)(ii)(I). Pub. L. 101–508, § 4151(c)(1)(A)(i), substituted ''50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 42 percent for portions of cost reporting periods beginning on or after January 1, 1991'' for ''and 50 percent for other cost reporting periods''.

Subsec. (i)(3)(B)(ii)(II). Pub. L. 101–508, § 4151(c)(1)(A)(ii), substituted ''50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 58 percent for portions of cost reporting periods beginning on or after January 1, 1991'' for ''and 50 percent for other cost reporting periods''.

Subsec. (*l*)(1). Pub. L. 101–508, § 4160(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (*l*)(2). Pub. L. 101–508, § 4160(2), struck out at end ''The fee schedule shall be adjusted annually (to become effective on January 1 of each calendar year) by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for that year.''

Subsec. (*l*)(4). Pub. L. 101–508, § 4160(3), added par. (4) and struck out former par. (4) which read as follows: ''In establishing the fee schedule under paragraph (1), the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology. The Secretary may establish a nationwide fee schedule or adjust the fee schedule for geographic areas (as the Secretary may determine to be appropriate).''

Subsec. (m). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area''.

Subsec. (n)(1)(B)(ii)(I). Pub. L. 101–508, § 4151(c)(2), inserted before period at end '', and such term means 42 percent in the case of outpatient radiology services for portions of cost reporting periods beginning on or after January 1, 1991''.

Subsec. (r). Pub. L. 101–508, § 4206(b)(2), added subsec. (r) relating to other prepaid organizations.

Pub. L. 101–508, § 4155(b)(3), added subsec. (r) relating to cap on prevailing charge and billing on assignment-related basis.

1989—Subsec. (a). Pub. L. 101–234, § 202(a), repealed Pub. L. 100–360, § 212(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 205(c)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(F). Pub. L. 101–239, § 6113(b)(3)(A), added cl. (F).

Subsec. (a)(1)(H). Pub. L. 101–239, § 6102(e)(5), inserted ''(or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title, as the case may be)'' after ''prevailing charge that would be recognized''.

Subsec. (a)(1)(J). Pub. L. 101–239, § 6102(f)(2), inserted ''or physician pathology services'' after ''1395m(b)(6) of this title)'' and ''or section 1395m(f) of this title, respectively'' after ''1395m(b) of this title''.

Pub. L. 101–239, § 6102(e)(6)(A), inserted ''subject to section 1395w–4 of this title,'' before ''the amounts''.

Subsec. (a)(1)(K). Pub. L. 101–239, § 6102(e)(7), inserted '', or, for services furnished on or after January 1, 1992, 65 percent of the fee schedule amount provided under section 1395w–4 of this title for the same service performed by a physician'' after ''for the same service performed by a physician''.

Subsec. (a)(1)(M). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 201(b)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(N). Pub. L. 101–239, § 6102(e)(1)(B), added cl. (N).

Subsec. (a)(2). Pub. L. 101–239, § 6116(b)(1)(A), substituted ''(G), and (H)'' for ''and (G)'' in introductory provisions.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 202(b)(2), 203(c)(1)(A)–(D), 204(d)(1), and 205(c)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(3). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 205(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(6). Pub. L. 101–239, § 6116(b)(1)(B)–(D), added par. (6).

Subsec. (b). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 202(b)(3), 203(c)(1)(E), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (c). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 201(a)(1), (4), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (d). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 201(a)(1)(D), (2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (d)(1). Pub. L. 101–239, § 6113(d), substituted ''62½ percent of such expenses.'' for ''whichever of the following amounts is the smaller:

''(A) $1375.00, or

''(B) 62½ percent of such expenses.''

Subsec. (g). Pub. L. 101–239, § 6133(a), substituted ''$750'' for ''$500'' in two places.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 201(a)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (h)(1)(B), (C). Pub. L. 101–239, § 6111(a)(1), substituted ''on or after July 1, 1984'' for ''during the period beginning on July 1, 1984, and ending on December 31, 1989. For such tests furnished on or after January 1, 1990, the fee schedule shall be established on a nationwide basis.''

Subsec. (h)(1)(D). Pub. L. 101–239, § 6003(e)(2)(A), substituted ''section 1395ww(d)(5)(D)(iii) of this title'' for ''the last sentence of section 1395ww(d)(5)(C)(ii) of this title''.

Subsec. (h)(4)(B)(ii). Pub. L. 101–239, § 6111(a)(3)(A), (B), substituted ''after March 31, 1988, and before January 1, 1990,'' for ''after March 31, 1988, and so long as a fee schedule for the test has not been established on a nationwide basis,''.

Subsec. (h)(4)(B)(iii). Pub. L. 101–239, § 6111(a)(2), (3)(C), (4), added cl. (iii).

Subsec. (h)(5)(A)(ii). Pub. L. 101–239, § 6111(b)(1), substituted ''referring laboratory but only if—'' for ''referring laboratory, and'' in introductory provisions, and added subcls. (I) through (III).

Subsec. (h)(5)(A)(iii). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(I), as amended by Pub. L. 101–508, § 4008(m)(2)(C), substituted ''hospital or rural primary care hospital,'' for ''hospital,''.

Subsec. (i)(1)(A). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(II), inserted '', rural primary care hospital,'' after ''section 1395k(a)(2)(F)(i) of this title)''.

Subsec. (i)(3)(A). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(III), inserted ''or rural primary care hospital services'' after ''facility services'' in introductory provisions.

Subsec. (*l*)(5)(A). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(IV), inserted ''rural primary care hospital,'' after ''hospital,'' in two places.

Subsec. (*l*)(5)(C). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(V), substituted ''hospital or rural primary care hospital'' for ''hospital'' in two places.

Subsec. (m). Pub. L. 101–239, § 6102(c)(1), struck out ''class 1 or class 2'' before ''health manpower shortage area'' and substituted ''10 percent'' for ''5 percent''.

Subsec. (*o*)(1). Pub. L. 101–239, § 6131(a)(1)(C), inserted ''(or inserts)'' after ''shoes'' in two places in last sentence.

Subsec. (*o*)(1)(A). Pub. L. 101–239, § 6131(a)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''no payment may be made under this part for the furnishing of more than one pair of shoes for any individual for any calendar year, and''.

Subsec. (*o*)(1)(B), (2)(A). Pub. L. 101–239, § 6131(a)(1)(B), substituted ''limits'' for ''limit''.

Subsec. (*o*)(2)(A)(i). Pub. L. 101–239, § 6131(a)(1)(D), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''for the furnishing of one pair of custom molded shoes is $300''.

Subsec. (*o*)(2)(A)(ii)(II). Pub. L. 101–239, § 6131(a)(1)(E), inserted ''any pairs of'' after ''$50 for''.

Subsec. (*o*)(2)(D). Pub. L. 101–239, § 6131(b), added subpar. (D).

Subsec. (p). Pub. L. 101–239, § 6113(b)(3)(B), substituted ''1395x(s)(2)(L) of this title,'' for ''1395x(s)(2)(L) of this title and'' and inserted ''and in the case of clinical social worker services for which payment may be made under this part only pursuant to section 1395x(s)(2)(N) of this title,'' after ''section 1395x(s)(2)(M) of this title,''.

Subsec. (q). Pub. L. 101–239, § 6204(b), added subsec. (q).

1988—Subsec. (a). Pub. L. 100–360, § 212(c)(2), inserted ''or, as provided in section 1395t–1(c) of this title, from the Federal Catastrophic Drug Insurance Trust Fund'' after ''Fund'' in introductory provisions.

Pub. L. 100–360, § 205(c)(3), inserted provision at end relating to payment for in-home care for chronically dependent individuals.

Subsec. (a)(1)(D)(i). Pub. L. 100–360, § 411(i)(4)(C)(i), amended Pub. L. 100–203, § 4085(i)(1)(A), see 1987 Amendment note below.

Subsec. (a)(1)(F). Pub. L. 100–360, § 411(f)(12)(A), (14), added and renumbered Pub. L. 100–203, § 4055(a)(1), see 1987 Amendment note below.

Pub. L. 100–360, § 411(i)(4)(C)(iv), made technical amendment to directory language of Pub. L. 100–203, § 4085(i)(21)(D)(i), see 1987 Amendment note below.

Pub. L. 100–360, § 411(i)(4)(C)(ii), repealed Pub. L. 100–203, § 4085(i)(1)(B), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(B)(i), (ii), redesignated and amended directory language of Pub. L. 100–203, § 4073(b)(1)(A), see 1987 Amendment note below.

Subsec. (a)(1)(G). Pub. L. 100–360, § 411(h)(7)(C)(ii), repealed Pub. L. 100–203, § 4077(b)(3)(A), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(B)(iii), repealed Pub. L. 100–203, § 4073(b)(2)(B), see 1987 Amendment note below.

Subsec. (a)(1)(H). Pub. L. 100–360, § 411(h)(7)(C)(ii), repealed Pub. L. 100–203, § 4077(b)(3)(B), see 1987 Amendment note below.

Pub. L. 100–360, § 411(g)(1)(E), which directed the amendment of cl. (H) by striking ''and'' before ''(I)'' could not be executed because of the prior amendment by section 4049(a)(1) of Pub. L. 100–203, see 1987 Amendment note below.

Pub. L. 100–360, § 411(i)(3), added Pub. L. 100–203, § 4084(c)(2), see 1987 Amendment note below.

Subsec. (a)(1)(J). Pub. L. 100–360, § 411(f)(8)(B)(i), made technical amendment to directory language of Pub. L. 100–203, § 4049(a)(1), see 1987 Amendment note below.

Pub. L. 100–360, § 411(f)(8)(C), substituted ''section 1395m(b)(6) of this title'' for ''section 1395m(b)(5) of this title''.

Subsec. (a)(1)(K). Pub. L. 100–360, § 411(h)(7)(C)(iii), (F), redesignated and amended Pub. L. 100–203, § 4077(b)(2)(A), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(B)(i), (iv), (v), redesignated and amended Pub. L. 100–203, § 4073(b)(1)(B), see 1987 Amendment note below.

Subsec. (a)(1)(L). Pub. L. 100–360, § 411(h)(7)(C)(i), (iv), (v), (F), redesignated and amended Pub. L. 100–203, § 4077(b)(2)(B), see 1987 Amendment note below.

Subsec. (a)(1)(M). Pub. L. 100–360, § 202(b)(1), added cl. (M) relating to expenses incurred for covered outpatient drugs.

Subsec. (a)(2). Pub. L. 100–360, § 205(c)(1), inserted ''(A)(ii),'' after ''subparagraphs'' in introductory provisions.

Pub. L. 100–360, § 202(b)(2), inserted ''(other than covered outpatient drugs)'' after ''in the case of services'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 100–360, § 203(c)(1)(A), substituted ''(E), or (F)'' for ''or (E)'' in introductory provisions.

Subsec. (a)(2)(D)(i). Pub. L. 100–360, § 411(i)(4)(C)(i), amended Pub. L. 100–203, § 4085(i)(1)(A), see 1987 Amendment note below.

Subsec. (a)(2)(E)(i). Pub. L. 100–360, § 204(d)(1), inserted '', but excluding screening mammography'' after ''imaging services''.

Subsec. (a)(2)(F). Pub. L. 100–360, § 203(c)(1)(B)–(D), added cl. (F) relating to home intravenous drug therapy services.

Subsec. (a)(3). Pub. L. 100–360, § 205(c)(2), substituted ''subparagraphs (A)(ii), (D),'' for ''subparagraphs (D)''.

Subsec. (b). Pub. L. 100–360, § 104(d)(7), as added by Pub. L. 100–485, § 608(d)(3)(G), inserted at end ''The deductible under the previous sentence for blood or blood cells furnished an individual in a year shall be reduced to the extent that a deductible has been imposed under section 1395e(a)(2) of this title to blood or blood cells furnished the individual in the year.''

Subsec. (b)(1). Pub. L. 100–360, § 202(b)(3)(A), inserted ''or for covered outpatient drugs'' after ''section 1395x(s)(10)(A) of this title''.

Subsec. (b)(2). Pub. L. 100–360, § 203(c)(1)(E), substituted ''services and home intravenous drug therapy services'' for ''services''.

Pub. L. 100–360, § 202(b)(3)(B), inserted ''or with respect to covered outpatient drugs'' after ''home health services''.

Subsec. (b)(3) to (5). Pub. L. 100–360, § 411(f)(12)(A), (14), added and renumbered Pub. L. 100–203, § 4055(a)(2), see 1987 Amendment note below.

Subsec. (c). Pub. L. 100–360, § 201(a)(4), added subsec. (c) relating to limitation on out-of-pocket catastrophic cost-sharing, adjustment, buy-out plans, and conditions for payments with respect to plans other than buy-out plans. Former subsec. (c) redesignated (d)(1).

Pub. L. 100–360, § 411(h)(1)(A), substituted ''monitoring or changing drug prescriptions'' for ''prescribing or monitoring prescription drugs'' in last sentence.

Pub. L. 100–360, § 201(a)(1)(A), as amended by Pub. L. 100–485, § 608(d)(4), substituted ''subsections (a) through (c)'' for ''subsections (a) and (b)'' in introductory provisions.

Pub. L. 100–360, § 201(a)(1)(B), (C), redesignated former pars. (1) and (2) as subpars. (A) and (B) and substituted ''this paragraph'' for ''this subsection'' in last sentence.

Subsec. (d)(1). Pub. L. 100–360, § 201(a)(1)(D), redesignated former subsec. (c) as subsec. (d)(1). Former subsec. (d) redesignated subsec. (d)(2).

Subsec. (d)(2). Pub. L. 100–360, § 201(a)(2), redesignated former subsec. (d) as subsec. (d)(2).

Subsec. (f). Pub. L. 100–360, § 411(g)(5), substituted ''MEI (as defined in section 1395u(i)(3) of this title) ap-

plicable to primary care services (as defined in section 1395u(i)(4) of this title)'' for ''medicare economic index (referred to in the fourth sentence of section 1395u(b)(3) of this title) applicable to physicians' services''.

Subsec. (g). Pub. L. 100–360, § 201(a)(3), substituted ''subsections (a) through (c) of this section'' for ''subsections (a) and (b) of this section'' in two places.

Subsec. (h)(1)(D). Pub. L. 100–360, § 411(g)(3)(E), (F), amended and redesignated Pub. L. 100–203, § 4064(c)(1), see 1987 Amendment note below.

Subsec. (h)(2)(A)(i). Pub. L. 100–360, § 411(g)(3)(A), added Pub. L. 100–203, § 4064(a)(1), see 1987 Amendment note below.

Subsec. (h)(2)(A)(ii). Pub. L. 100–360, § 411(g)(3)(A), added Pub. L. 100–203, § 4064(a)(3), see 1987 Amendment note below.

Subsec. (h)(2)(A)(iii). Pub. L. 100–360, § 411(g)(3)(B), (C), amended Pub. L. 100–203, § 4064(b)(1), see 1987 Amendment note below.

Subsec. (h)(2)(B). Pub. L. 100–360, § 411(g)(3)(A), added Pub. L. 100–203, § 4064(a)(2), see 1987 Amendment note below.

Subsec. (h)(3). Pub. L. 100–647, § 8421(a), inserted at end ''In establishing a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect a sample, the Secretary shall provide a method for computing the fee based on the number of miles traveled and the personnel costs associated with the collection of each individual sample, but the Secretary shall only be required to apply such method in the case of tests furnished during the period beginning on April 1, 1989, and ending on December 31, 1990, by a laboratory that establishes to the satisfaction of the Secretary (based on data for the 12-month period ending June 30, 1988) that (i) the laboratory is dependent upon payments under this subchapter for at least 80 percent of its collected revenues for clinical diagnostic laboratory tests, (ii) at least 85 percent of its gross revenues for such tests are attributable to tests performed with respect to individuals who are homebound or who are residents in a nursing facility, and (iii) the laboratory provided such tests for residents in nursing facilities representing at least 20 percent of the number of such facilities in the State in which the laboratory is located.''

Subsec. (h)(4)(B)(ii). Pub. L. 100–360, § 411(g)(3)(D), inserted ''after'' before ''March 31, 1988''.

Subsec. (h)(5)(A). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(22)(B), see 1987 Amendment note below.

Subsec. (h)(5)(C). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(22)(B), see 1987 Amendment note below.

Subsec. (h)(5)(D). Pub. L. 100–360, § 411(i)(4)(B), substituted ''A person may not bill for a clinical diagnostic laboratory test performed by a laboratory, other than a rural health clinic, other than on an assignment-related basis. If a person knowingly and willfully and on a repeated basis bills for a clinical diagnostic laboratory test in violation of the previous sentence'' for ''If a person knowingly and willfully and on a repeated basis bills an individual enrolled under this part for charges for a clinical diagnostic laboratory test for which payment may only be made on an assignment-related basis under subparagraph (C)'' and ''paragraphs (2) and (3) of section 1395u(j) of this title in the same manner such paragraphs apply with respect to a physician'' for ''section 1395u(j)(2) of this title''.

Subsec. (i)(2)(A)(iii). Pub. L. 100–360, § 411(g)(2)(D), substituted ''insertion'' for ''implantation'' and inserted ''or subsequent to'' after ''during''.

Subsec. (i)(4). Pub. L. 100–360, § 411(f)(12)(A), (14), added and renumbered Pub. L. 100–203, § 4055(a)(3), see 1987 Amendment note below.

Subsec. (i)(6). Pub. L. 100–485, § 608(d)(22)(B), substituted ''Any person, including'' for ''Any person, other than''.

Pub. L. 100–360, § 411(g)(2)(E), added Pub. L. 100–203, § 4063(e)(1), see 1987 Amendment note below.

Subsec. (*l*)(2). Pub. L. 100–360, § 411(f)(2)(D), added Pub. L. 100–203, § 4042(b)(2)(B), see 1987 Amendment note below.

Subsec. (*l*)(3)(B). Pub. L. 100–647, § 8422(a), inserted ''plus applicable coinsurance'' after ''would have been paid''.

Subsec. (*l*)(5)(B)(ii). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(23), see 1987 Amendment note below.

Subsec. (n)(1)(A). Pub. L. 100–360, § 411(g)(4)(C)(i), as amended by Pub. L. 100–485, § 608(d)(22)(D), substituted ''for services described in subsection (a)(2)(E)(i) of this section furnished under this part on or after October 1, 1988, and for services described in subsection (a)(2)(E)(ii) of this section furnished under this part on or after October 1, 1989,'' for ''beginning on or after October 1, 1988 under this part for services described in subsection (a)(2)(E) of this section'' in introductory provisions.

Subsec. (n)(1)(B)(i)(II). Pub. L. 100–360, § 411(g)(4)(C)(ii), inserted ''or (for services described in subsection (a)(2)(E)(i) of this section furnished on or after January 1, 1989) the fee schedule amount established'' after ''the prevailing charge''.

Subsec. (n)(1)(B)(ii). Pub. L. 100–360, § 411(g)(4)(C)(iii), amended subcls. (I) and (II) generally. Prior to amendment, subcls. (I) and (II) read as follows:

''(I) The term 'cost proportion' means 65 percent for all or any part of cost reporting periods which occur in fiscal year 1989 and 50 percent for other cost reporting periods.

''(II) The term 'charge proportion' means 35 percent for all or any parts of cost reporting periods which occur in fiscal year 1989 and 50 percent for other cost reporting periods.''

Subsec. (*o*). Pub. L. 100–360, § 411(h)(3)(B), as amended by Pub. L. 100–485, § 608(d)(23)(A), amended Pub. L. 100–203, § 4072(b), see 1987 Amendment note below.

Subsec. (p). Pub. L. 100–360, § 411(h)(7)(D), (F), redesignated and amended Pub. L. 100–203, § 4077(b)(3), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(C), redesignated and amended Pub. L. 100–203, § 4073(b)(2), see 1987 Amendment note below.

1987—Subsec. (a)(1)(D)(i). Pub. L. 100–203, § 4085(i)(1)(A), as amended by Pub. L. 100–360, § 411(i)(4)(C)(i), substituted ''on an assignment-related basis,'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title,''.

Subsec. (a)(1)(F). Pub. L. 100–203, § 4055(a)(1), formerly § 4054(a)(1), as added and renumbered by Pub. L. 100–360, § 411(f)(12)(A), (14), struck out cl. (F) which read as follows: ''with respect to expenses incurred for services described in subsection (i)(4) of this section under the conditions specified in such subsection, the amounts paid shall be the reasonable charge for such services,''.

Pub. L. 100–203, § 4085(i)(21)(D)(i), as amended by Pub. L. 100–360, § 411(i)(4)(C)(iv), amended Pub. L. 99–509, § 9343(e)(2)(A), see 1986 Amendment note below.

Pub. L. 100–203, § 4085(i)(1)(B), which directed striking out ''and'' at end, was repealed by Pub. L. 100–360, § 411(i)(4)(C)(ii).

Pub. L. 100–203, § 4073(b)(1)(A), formerly § 4073(b)(2)(A), as redesignated and amended by Pub. L. 100–360, § 411(h)(4)(B)(i), (ii), struck out ''and'' at end.

Subsec. (a)(1)(G). Pub. L. 100–203, § 4077(b)(3)(A), which directed striking out ''and'' at end, was repealed by Pub. L. 100–360, § 411(h)(7)(C)(ii).

Pub. L. 100–203, § 4073(b)(2)(B), which directed substituting ''services,'' for ''services; and'', was repealed by Pub. L. 100–360, § 411(h)(4)(B)(iii).

Pub. L. 100–203, § 4062(d)(3)(A)(i), substituted ''services,'' for ''services; and''.

Subsec. (a)(1)(H). Pub. L. 100–203, § 4077(b)(3)(B), which directed substituting ''services,'' for ''services; and'', was repealed by Pub. L. 100–360, § 411(h)(7)(C)(ii).

Pub. L. 100–203, § 4084(c)(2), as added by Pub. L. 100–360, § 411(i)(3), substituted ''least of the actual charge, the prevailing charge that would be recognized if the services had been performed by an anesthesiologist,'' for ''lesser of the actual charge''.

Pub. L. 100–203, § 4062(d)(3)(A)(ii), inserted ''and'' before the cl. (I) added by section 4062(d)(3)(A)(ii) of Pub. L. 100–203, see below.

Pub. L. 100–203, § 4049(a)(1), struck out ''and'' before the cl. (I) added by section 4062(d)(3)(A)(ii) of Pub. L. 100–203, see below.

Subsec. (a)(1)(I). Pub. L. 100–203, § 4062(d)(3)(A)(ii), added cl. (I).

Subsec. (a)(1)(J). Pub. L. 100–203, § 4049(a)(1), as amended by Pub. L. 100–360, § 411(f)(8)(B)(i), added cl. (J).

Subsec. (a)(1)(K). Pub. L. 100–203, § 4077(b)(2)(A), formerly § 4077(b)(3)(C), as redesignated and amended by Pub. L. 100–360, § 411(h)(7)(C)(iii), (F), inserted ''and'' after ''performed by a physician),''.

Pub. L. 100–203, § 4073(b)(1)(B), formerly § 4073(b)(2)(C), as redesignated and amended by Pub. L. 100–360, § 411(h)(4)(B)(i), (iv), (v), added cl. (K), formerly (I), relating to amounts paid with respect to certified nurse-midwife services under section 1395x(s)(2)(L) of this title.

Subsec. (a)(1)(L). Pub. L. 100–203, § 4077(b)(2)(B), formerly § 4077(b)(3)(D), as redesignated and amended by Pub. L. 100–360, § 411(h)(7)(C)(i), (iv), (v), (F), added cl. (L), formerly (J), relating to amounts paid with respect to qualified psychologist services under section 1395x(s)(2)(M) of this title.

Subsec. (a)(2). Pub. L. 100–203, § 4062(d)(3)(B)(i), inserted reference to subpar. (G).

Subsec. (a)(2)(A). Pub. L. 100–203, § 4062(d)(3)(B)(ii), struck out ''(other than durable medical equipment)'' after ''home health services''.

Subsec. (a)(2)(B). Pub. L. 100–203, § 4066(b), inserted reference to subpar. (E).

Subsec. (a)(2)(D)(i). Pub. L. 100–203, § 4085(i)(1)(A), as amended by Pub. L. 100–360, § 411(i)(4)(C)(i), substituted ''on an assignment-related basis,'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title,''.

Subsec. (a)(2)(E). Pub. L. 100–203, § 4066(a)(1), added subpar. (E).

Subsec. (a)(5). Pub. L. 100–203, § 4062(d)(3)(C)–(E), added par. (5).

Subsec. (b)(3). Pub. L. 100–203, § 4055(a)(2), formerly § 4054(a)(2), as added and renumbered by Pub. L. 100–360, § 411(f)(12)(A), (14), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''such total amount shall not include expenses incurred for services the amount of payment for which is determined under subsection (a)(1)(F) of this section,''.

Pub. L. 100–203, § 4085(i)(21)(D)(i), amended Pub. L. 99–509, § 9343(e)(2)(A), see 1986 Amendment note below.

Subsec. (b)(4). Pub. L. 100–203, § 4055(a)(2), formerly § 4054(a)(2), as added and renumbered by Pub. L. 100–360, § 411(f)(12)(A), (14), redesignated cl. (5) as (4). Former cl. (4) redesignated (3).

Subsec. (b)(4)(A). Pub. L. 100–203, § 4085(i)(1)(C), substituted ''on an assignment-related basis'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title''.

Subsec. (b)(5). Pub. L. 100–203, § 4055(a)(2), formerly § 4054(a)(2), as added and renumbered by Pub. L. 100–360, § 411(f)(12)(A), (14), redesignated cl. (5) as (4).

Subsec. (c). Pub. L. 100–203, § 4070(b)(4), inserted ''or partial hospitalization services that are not directly provided by a physician'' before period at end of last sentence.

Pub. L. 100–203, § 4070(a)(2), inserted sentence at end defining ''treatment''.

Subsec. (c)(1). Pub. L. 100–203, § 4070(a)(1), substituted ''$1375.00'' for ''$312.50''.

Subsec. (f). Pub. L. 100–203, § 4067(a), added subsec. (f).

Subsec. (h)(1)(C). Pub. L. 100–203, § 4085(i)(2), inserted before period at end '', and ending on December 31, 1989. For such tests furnished on or after January 1, 1990, the fee schedule shall be established on a nationwide basis''.

Subsec. (h)(1)(D). Pub. L. 100–203, § 4064(c)(1), formerly § 4064(c), as amended and redesignated by Pub. L. 100–360, § 411(g)(3)(E), (F), inserted '', in a sole community hospital (as defined in the last sentence of section 1395ww(d)(5)(C)(ii) of this title),''.

Subsec. (h)(2). Pub. L. 100–203, § 4064(c), which had directed that ''laboratory in a sole community hospital'' be substituted for ''hospital laboratory'' in subsec. (h)(2), was redesignated § 4064(c)(1) by section 411(g)(3)(F) of Pub. L. 100–360 and amended by section 411(g)(3)(E) of Pub. L. 100–360 to provide for amendment of subsec. (h)(1)(D) instead of subsec. (h)(2).

Subsec. (h)(2)(A)(i). Pub. L. 100–203, § 4064(a)(1), as added by Pub. L. 100–360, § 411(g)(3)(A), inserted ''(A)(i)'' after ''(2)''.

Subsec. (h)(2)(A)(ii). Pub. L. 100–203, § 4064(a)(3), as added by Pub. L. 100–360, § 411(g)(3)(A), added cl. (ii).

Subsec. (h)(2)(A)(iii). Pub. L. 100–203, § 4064(b)(1), as amended by Pub. L. 100–360, § 411(g)(3)(B), (C), set out as cl. (iii) provisions formerly set out in an otherwise undesignated sentence in par. (2) relating to the rebasing of fee schedules for certain automated and similar tests for 1988 and for the continuation of such reduced fee schedules as the base for 1989 and subsequent years.

Subsec. (h)(2)(B). Pub. L. 100–203, § 4064(a)(2), as added by Pub. L. 100–360, § 411(g)(3)(A), inserted subpar. (B) designation preceding second sentence and redesignated former subpars. (A) and (B) of par. (2) as cls. (i) and (ii).

Subsec. (h)(4)(B)(i). Pub. L. 100–203, § 4064(b)(2)(A), substituted ''April'' for ''January''.

Subsec. (h)(4)(B)(ii). Pub. L. 100–203, § 4064(b)(2)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''after December 31, 1987, and so long as a fee schedule for the test has not been established on a nationwide basis, is equal to 110 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).''

Subsec. (h)(5)(A). Pub. L. 100–203, § 4085(i)(22)(B), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''on an assignment-related basis'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title,'' in introductory provisions.

Subsec. (h)(5)(A)(iii). Pub. L. 100–203, § 4085(i)(3), added cl. (iii).

Subsec. (h)(5)(C). Pub. L. 100–203, § 4085(i)(22)(B), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''on an assignment-related basis'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, in accordance with section 1395u(b)(6)(B) of this title, under the procedure described in section 1395gg(f)(1) of this title,''.

Subsec. (h)(5)(D). Pub. L. 100–203, § 4085(b)(1), added subpar. (D).

Subsec. (i)(2)(A)(iii). Pub. L. 100–203, § 4063(b), added cl. (iii).

Subsec. (i)(3)(B)(ii). Pub. L. 100–203, § 4068(a)(1), substituted ''Subject to the last sentence of this clause, in'' for ''In''.

Pub. L. 100–203, § 4068(a)(2), inserted sentence at end relating to cost and ASC proportions in the case of an eye or eye and ear specialty hospital.

Subsec. (i)(4). Pub. L. 100–203, § 4055(a)(3), formerly § 4054(a)(3), as added and renumbered by Pub. L. 100–360, § 411(f)(12)(A), (14), struck out par. (4) which read as follows: ''In the case of services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1395x(s) of this title and furnished in connection with surgical procedures (specified pursuant to paragraph (1) of this subsection) in a physician's office, an ambulatory surgical center described in such paragraph, or a hospital outpatient department, payment for such services shall be determined in accordance with subsection (a)(1)(F) of this section if the physician accepts an assignment described in section 1395u(b)(3)(B)(ii) of this title with respect to payment for such services.''

Subsec. (i)(6). Pub. L. 100–203, § 4063(e)(1), as added by Pub. L. 100–360, § 411(g)(2)(E), added par. (6).

Subsec. (*l*)(2). Pub. L. 100–203, § 4084(a)(1), substituted ''1985 and such other data as the Secretary determines necessary'' for ''1985''.

Pub. L. 100–203, § 4042(b)(2)(B), as added by Pub. L. 100–360, § 411(f)(2)(D), substituted ''1395u(i)(3)'' for ''1395u(b)(4)(E)(ii)''.

Subsec. (*l*)(5)(A). Pub. L. 100–203, § 4084(a)(2), substituted ''group practice, or ambulatory surgical center'' for ''or group practice'' in two places.

Subsec. (*l*)(5)(B)(ii). Pub. L. 100–203, § 4085(i)(23), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''money penalty'' for ''monetary penalty'' and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a–7a of this title with respect to actions described in subsection (a) of that section.''

Subsec. (*l*)(6). Pub. L. 100–203, § 4045(c)(2)(A)(i), (ii), struck out subpar. (A) designation and substituted ''after the effective date of the reduction, the physician's actual charge is subject to a limit under section 1395u(j)(1)(D) of this title.'' for ''(subject to subparagraph (D)), the physician may not charge the individual more than the limiting charge (as defined in subparagraph (B)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ½ of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge.''

Pub. L. 100–203, § 4045(c)(2)(A)(iii), struck out subpars. (B) to (D) which read as follows:

''(B) In subparagraph (A), the term 'limiting charge' means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in subparagraph (A).

''(C) If a physician knowingly and willfully imposes charges in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

''(D) This paragraph shall not apply to services furnished after the earlier of (i) December 31, 1990, or (ii) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (m). Pub. L. 100–203, § 4043(a), added subsec. (m).

Subsec. (n). Pub. L. 100–203, § 4066(a)(2), added subsec. (n).

Subsec. (*o*). Pub. L. 100–203, § 4072(b), as amended by Pub. L. 100–360, § 411(h)(3)(B), as amended by Pub. L. 100–485, § 608(d)(23)(A), added subsec. (*o*) [originally added as subsec. (f)].

Subsec. (p). Pub. L. 100–203, § 4077(b)(3), formerly § 4077(b)(4), as redesignated and amended by Pub. L. 100–360, § 411(h)(7)(D), (F), inserted ''and in the case of qualified psychologists services for which payment may be made under this part only pursuant to section 1395x(s)(2)(M) of this title''.

Pub. L. 100–203, § 4073(b)(2), formerly § 4073(b)(3), as redesignated and amended by Pub. L. 100–360, § 411(h)(4)(C), added subsec. (p) [originally added as subsec. (m)] and inserted provision relating to monetary penalty for whoever knowingly and willfully presents, or causes to be presented, to an enrolled individual a bill or request for payment for described services.

1986—Subsec. (a)(1)(D). Pub. L. 99–272, § 9401(b)(2)(B), substituted '', under the procedure described in section 1395gg(f)(1) of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' for ''or under the procedure described in section 1395gg(f)(1) of this title''.

Subsec. (a)(1)(D)(i). Pub. L. 99–272, § 9303(b)(1), inserted '', the limitation amount for that test determined under subsection (h)(4)(B) of this section,'' after ''lesser of the amount determined under such fee schedule''.

Subsec. (a)(1)(F). Pub. L. 99–509, § 9343(e)(2)(A), as amended by Pub. L. 100–203, § 4085(i)(21)(D)(i), substituted ''(i)(4)'' for ''(i)(3)''.

Subsec. (a)(1)(G). Pub. L. 99–272, § 9401(b)(2)(A), added cl. (G).

Subsec. (a)(1)(H). Pub. L. 99–509, § 9320(e)(1), added cl. (H).

Subsec. (a)(2)(A). Pub. L. 99–272, § 9401(b)(2)(C), inserted '', to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),'' after ''(other than durable medical equipment)''.

Subsec. (a)(2)(D). Pub. L. 99–272, § 9401(b)(2)(D), substituted ''to a provider having an agreement under section 1395cc of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' for ''or to a provider having an agreement under section 1395cc of this title''.

Subsec. (a)(2)(D)(i). Pub. L. 99–272, § 9303(b)(1), inserted '', the limitation amount for that test determined under subsection (h)(4)(B) of this section,'' after ''lesser of the amount determined under such fee schedule''.

Subsec. (a)(3). Pub. L. 99–272, § 9401(b)(2)(E), inserted ''and for items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion'' after ''1395x(s)(10)(A) of this title''.

Subsec. (a)(4). Pub. L. 99–509, § 9343(a)(1)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''in the case of facility services described in subparagraph (F) of section 1395k(a)(2) of this title, the applicable amount described in paragraph (2) of subsection (i) of this section.''

Subsec. (b)(3). Pub. L. 99–509, § 9343(e)(2)(A), as amended by Pub. L. 100–203, § 4085(i)(21)(D)(i), which directed that cl. (3) be amended by striking ''or under subsection (i)(2) or (i)(4) of this section'', was executed by striking ''or under subsection (i)(2) or (i)(5) of this section'', to reflect the probable intent of Congress and an earlier amendment by Pub. L. 99–509, § 9343(a)(2), see below.

Pub. L. 99–509, § 9343(a)(2), substituted ''(i)(5)'' for ''(i)(4)''.

Subsec. (b)(5). Pub. L. 99–272, § 9401(b)(1), added cl. (5).

Subsec. (g). Pub. L. 99–509, § 9337(b), substituted ''second sentence'' for ''next to last sentence'', and inserted at end ''In the case of outpatient occupational therapy services which are described in the second sentence of section 1395x(p) of this title through the operation of section 1395x(g) of this title, with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.''

Subsec. (h)(1)(B). Pub. L. 99–509, § 9339(b)(1), substituted ''December 31, 1989'' and ''January 1, 1990'' for ''December 31, 1987'' and ''January 1, 1988'', respectively.

Pub. L. 99–509, § 9339(a)(1)(A), substituted ''qualified hospital laboratory (as defined in subparagraph (D))'' for ''hospital laboratory''.

Pub. L. 99–272, § 9303(a)(1)(A), substituted ''December 31, 1987'' for ''June 30, 1987'' and ''January 1, 1988'' for ''July 1, 1987''.

Subsec. (h)(1)(C). Pub. L. 99–509, § 9339(a)(1)(B), substituted ''qualified hospital laboratory (as defined in subparagraph (D))'' for ''hospital laboratory'', struck out '', and ending on December 31, 1987'' after ''July 1, 1984'', and struck out ''For such tests furnished on or after January 1, 1988, the fee schedule under subparagraph (A) shall not apply with respect to clinical diagnostic laboratory tests performed by a hospital laboratory for outpatients of such hospital.'' which constituted second sentence.

Pub. L. 99–272, § 9303(a)(1)(A), substituted ''December 31, 1987'' for ''June 30, 1987'' and ''January 1, 1988'' for ''July 1, 1987''.

Subsec. (h)(1)(D). Pub. L. 99–509, § 9339(a)(1)(C), added subpar. (D).

Subsec. (h)(2). Pub. L. 99–509, § 9339(b)(2), struck out ''(or, effective January 1, 1988, for the United States)'' after ''applicable region, State, or area''.

Pub. L. 99–509, § 9339(a)(1)(D), substituted ''qualified hospital laboratory (as defined in paragraph (1)(D))'' for ''hospital laboratory''.

Pub. L. 99–272, § 9303(a)(1), substituted ''January 1, 1988'' for ''July 1, 1987'', and inserted ''(to become effective on January 1 of each year)'' after ''adjusted annually''.

Subsec. (h)(3). Pub. L. 99–509, § 9339(c)(1), inserted cl. (A) designation after ''provide for and establish'', and added cl. (B).

Subsec. (h)(4). Pub. L. 99–272, § 9303(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(5)(C). Pub. L. 99–272, § 9303(b)(3), substituted ''laboratory other than'' for ''laboratory which is independent of a physician's office or''.

Subsec. (i)(1). Pub. L. 99–509, § 9343(b)(2), inserted at end ''The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than every 2 years.''

Subsec. (i)(2). Pub. L. 99–509, § 9343(e)(2)(B), inserted ''80 percent of'' before ''a standard overhead amount'' in introductory provisions of subpars. (A) and (B).

Pub. L. 99–509, § 9343(b)(1), substituted ''shall be reviewed and updated not later than July 1, 1987, and annually thereafter'' for ''shall be reviewed periodically'' in concluding provisions of subpars. (A) and (B).

Subsec. (i)(3) to (5). Pub. L. 99–509, § 9343(a)(1)(B), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (*l*). Pub. L. 99–509, § 9320(e)(2), added subsec. (*l*).

1984—Subsec. (a)(1). Pub. L. 98–369, § 2354(b)(7), struck out ''and'' at the end.

Subsec. (a)(1)(B). Pub. L. 98–369, § 2323(b)(1), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (a)(1)(D). Pub. L. 98–369, § 2303(a), amended cl. (D) generally. Prior to amendment, cl. (D) read as follows: ''with respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the amounts paid shall be equal to 100 percent of the negotiated rate for such tests (as determined pursuant to subsection (h) of this section),''.

Subsec. (a)(1)(F), (G). Pub. L. 98–369, § 2305(a), redesignated cl. (G) as (F), and struck out former cl. (F) which related to payment of reasonable charges for preadmission diagnostic services furnished by a physician to individuals enrolled under this part which are furnished in the outpatient department of a hospital within seven days of such individual's admission to the same hospital or another hospital or furnished in the physician's office within seven days of such individual's admission to a hospital as an inpatient.

Subsec. (a)(2). Pub. L. 98–369, § 2305(c), struck out ''and in paragraph (5) of this subsection'' after ''of such section''.

Subsec. (a)(2)(A). Pub. L. 98–617, § 3(b)(2), inserted '', or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision),''.

Pub. L. 98–369, § 2354(b)(5), realigned margin of subpar. (A).

Pub. L. 98–369, § 2321(b)(1), inserted in provision preceding cl. (i) ''(other than durable medical equipment)''.

Pub. L. 98–369, § 2323(b)(1), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (a)(2)(B). Pub. L. 98–369, § 2354(b)(5), realigned margin of subpar. (B).

Pub. L. 98–369, § 2321(b)(2), inserted in provision preceding cl. (i) ''items and'' after ''to other''.

Pub. L. 98–369, § 2303(b)(1), inserted ''or (D)'' after ''subparagraph (C)''.

Subsec. (a)(2)(B)(ii). Pub. L. 98–369, § 2308(b)(2)(B), inserted '', or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause),''.

Subsec. (a)(2)(D). Pub. L. 98–369, § 2303(b)(2)–(4), added subpar. (D).

Subsec. (a)(3). Pub. L. 98–369, § 2323(b)(1), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (a)(5). Pub. L. 98–369, § 2305(b), struck out par. (5) which related to payment of reasonable costs for preadmission diagnostic services described in section 1395x(s)(2)(C) of this title furnished to an individual by the outpatient department of a hospital within seven days of such individual's admission to the same hospital as an inpatient or to another hospital.

Subsec. (b)(1). Pub. L. 98–369, § 2323(b)(2), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (b)(3). Pub. L. 98–369, § 2305(d), substituted ''subsection (a)(1)(F)'' for ''subsection (a)(1)(G)''.

Subsec. (b)(4). Pub. L. 98–369, § 2303(c), added cl. (4).

Subsec. (f). Pub. L. 98–369, § 2321(d)(4)(A), transferred subsec. (f) to part C of this subchapter and redesignated its provisions as section 1889 of the Social Security Act, which is classified to section 1395zz of this title.

Subsec. (h). Pub. L. 98–369, § 2303(d), amended subsec. (h) generally, substituting provisions directing the Secretary to establish fee schedules for clinical diagnostic laboratory tests at a percentage of the prevailing charge level and nominal fees to cover costs in collecting samples and authorizing the Secretary to make adjustments in the fee schedule, setting forth the recipients of payments, and authorizing the Secretary to establish a negotiated payment rate for provision authorizing the Secretary to establish a negotiated rate of payment with the laboratory which would be considered the full charge for such tests.

Subsec. (h)(5)(C). Pub. L. 98–617, § 3(b)(3), inserted a comma before ''under the procedure described in section''.

Subsec. (i)(3). Pub. L. 98–369, § 2305(d), substituted ''subsection (a)(1)(F)'' for ''subsection (a)(1)(G)''.

Subsec. (k). Pub. L. 98–369, § 2323(b)(4), added subsec. (k).

1982—Subsec. (a)(1)(B). Pub. L. 97–248, § 112(a)(1), substituted provisions that with respect to items and services described in section 1395x(s)(10) of this title, amounts paid shall be 100 percent of reasonable charges for such items and services for provision that with respect to expenses incurred for radiological or pathological services for which payment could be made under this part, furnished to any inpatient of a hospital by a physician in field of radiology or pathology who had in effect an agreement with Secretary by which the physician agreed to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part, the amounts paid would be equal to 100 percent of the reasonable charges for such services.

Subsec. (a)(1)(H). Pub. L. 97–248, § 112(a)(2), (3), struck out cl. (H) which provided that, with respect to items and services described in section 1395x(s)(10) of this title, the amount of benefits paid would be 100 percent of reasonable charges for such items and services.

Subsec. (a)(2)(B). Pub. L. 97–248, § 101(c)(2), inserted ''and except as may be provided in section 1395ww of this title''.

Subsec. (b)(1). Pub. L. 97–248, § 112(b), struck out subcl. (A) provision that total amount of expenses shall not include expenses incurred for radiological or pathological services furnished an individual as an inpatient of a hospital by a physician in field of radiology or pathology who has an agreement with Secretary by which physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients under this part, and redesignated subcl. (B) provisions as cl. (1).

Subsec. (i)(1). Pub. L. 97–248, § 148(d), struck out requirement of consultation with National Professional Standards Review Council.

Subsec. (j). Pub. L. 97–248, § 117(a)(2), added subsec. (j).

1981—Subsec. (a)(2)(A). Pub. L. 97–35, § 2106(a), substituted provisions that with respect to home health services and to items and services described in section 1395x(s)(10) of this title, the lesser of reasonable cost of such services as determined under section 1395x(v) of

this title or customary charges with respect to such services, or if such services are furnished by a public provider of services free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title for provisions that with respect to home health services and to items and services described in section 1395x(s)(10) of this title, the reasonable cost of such services, as determined under section 1395x(v) of this title.

Subsec. (a)(2)(B). Pub. L. 97–35, § 2106(a), substituted new formula in cls. (i) to (iii) with respect to other services for provisions providing for reasonable costs of such services less the amount a provider may charge as described in section 1395cc(a)(2)(A) of this title and that in no case may payment for such other services exceed 80 percent of such costs.

Subsec. (b). Pub. L. 97–35, §§ 2133(a), 2134(a), redesignated cls. (2) to (4) as (1) to (3), and struck out former cl. (1), which provided that amount of deductible for such calendar year as so determined shall first be reduced by amount of any expenses incurred by such individual in last three months of preceding calendar year and applied toward such individual's deductible under this section for such preceding year.

Pub. L. 97–35, § 2134(a), substituted ''by a deductible of $75'' for ''by a deductible of $60''.

1980—Subsec. (a)(1)(B). Pub. L. 96–499, § 943(a), inserted ''who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part'' after ''radiology or pathology''.

Subsec. (a)(1)(D). Pub. L. 96–499, § 918(a)(4), substituted ''subsection (h)'' for ''subsection (g)''.

Subsec. (a)(1)(F). Pub. L. 96–499, § 932(a)(1)(B), added cl. (F).

Subsec. (a)(1)(G). Pub. L. 96–499, § 934(d)(1), added cl. (G).

Subsec. (a)(1)(H). Pub. L. 96–611, § 1(b)(1)(A), (B), added cl. (H).

Subsec. (a)(2). Pub. L. 96–611, § 1(b)(1)(C), inserted in subpar. (A) ''and to items and services described in section 1395x(s)(10) of this title''.

Pub. L. 96–499, § 942, authorized payment of reasonable cost of home health services and prescribed formulae for determining payment amounts for services other than home health services.

Subsec. (a)(3). Pub. L. 96–611, § 1(b)(1)(D), inserted ''(other than for items and services described in section 1395x(s)(10) of this title)''.

Pub. L. 96–499, § 942, prescribed a formula for determining payment amounts for services described in subpars. (D) and (E) of section 1395k(a)(2) of this title.

Subsec. (a)(4), (5). Pub. L. 96–499, § 942, added pars. (4) and (5).

Subsec. (b)(2). Pub. L. 96–611, § 1(b)(2), inserted ''(A)'' after ''expenses incurred'' and added cl. (B).

Pub. L. 96–499, § 943(a), inserted ''who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part''.

Subsec. (b)(3). Pub. L. 96–499, § 930(h)(2), added cl. (3).

Subsec. (b)(4). Pub. L. 96–499, § 934(d)(3), added cl. (4).

Subsec. (g). Pub. L. 96–499, § 935(a), substituted ''$500'' for ''$100''.

Subsec. (h). Pub. L. 96–473 redesignated subsec. (g) as added by section 279(b) of Pub. L. 92–603 as (h), which for purposes of codification had been editorially set out as subsec. (h), thereby requiring no change in text. See 1972 Amendment note below.

Subsec. (i). Pub. L. 96–499, § 934(b), added subsec. (i).

1978—Subsec. (a)(1)(E). Pub. L. 95–292, § 4(b)(2), added cl. (E).

Subsec. (a)(2). Pub. L. 95–292, § 4(c), inserted ''(unless otherwise specified in section 1395rr of this title)'' after ''and with respect to other services'' in provisions preceding subpar. (A).

1977—Subsec. (a)(2). Pub. L. 95–210, § 1(b)(2), inserted parenthetical provisions preceding subpar. (A) excepting those services described in subparagraph (D) of section 1395k(a)(2) of this title.

Subsec. (a)(3). Pub. L. 95–210, § 1(b)(1), (3), (4), added par. (3).

Subsec. (f)(1). Pub. L. 95–142 substituted provisions relating to determinations by Secretary with respect to presumptions regarding purchase price or practicality of buying or renting durable medical equipment, for provisions relating to purchase price of durable medical equipment authorized to be paid by Secretary.

Subsec. (f)(2). Pub. L. 95–142 substituted provisions relating to waiver of coinsurance amount in purchase of used durable medical equipment, for provisions relating to reimbursement procedures established by Secretary in cases of rental of durable medical equipment.

Subsec. (f)(3), (4). Pub. L. 95–142 added pars. (3) and (4).

1972—Subsec. (a). Pub. L. 92–603, § 226(c)(2), inserted reference to section 1395mm of this title in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 92–603, §§ 211(c)(4), 279(a), added cls. (C) and (D).

Subsec. (a)(2). Pub. L. 92–603, §§ 233(b), 251(a)(3), 299K(a), substituted subpars. (A) and (B) for provisions relating to the amount payable by reference to section 1395x(v) of this title, added subpar. (C), and in provisions preceding subpar. (A), inserted ''with respect to home health services, 100 percent, and with respect to other services,'' before ''80 percent''.

Subsec. (b). Pub. L. 92–603, § 204(a), substituted ''$60'' for ''$50''.

Subsec. (f). Pub. L. 92–603, § 245(d), designated existing provisions as par. (1)(A) and added par. (1)(B) and (2).

Subsec. (g). Pub. L. 92–603, § 251(a)(2), added subsec. (g).

Subsec. (h). Pub. L. 92–603, § 279(b), added subsec. (h). Subsec. was in the original (g) and was changed to accommodate subsec. (g) as added by section 251(a)(2) of Pub. L. 92–603.

1968—Subsec. (a)(1). Pub. L. 90–248, § 131(a)(1), (2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b). Pub. L. 90–248, §§ 129(c)(7), 131(b), struck out reference in cl. (1) to expenses regarded under former cl. (2) as incurred for services furnished in last three months of preceding year, struck out former cl. (2) which provided that amount of any deduction imposed by section 1395e(a)(2)(A) of this title for outpatient hospital diagnostic services furnished in any calendar year is to be regarded as an incurred expense for such year; and added cl. (2).

Pub. L. 90–248, § 135(c), inserted last sentence providing that there shall be a deductible equal to expenses incurred for first three pints of whole blood (or equivalent quantities of packed red blood cells as defined under regulations) furnished to an individual during a calendar year which deductible is to be appropriately reduced to extent that such blood has been replaced, and such blood will be deemed to have been replaced when institution or person furnishing such blood is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells) furnished individual to which three pint deductible applies.

Subsec. (d). Pub. L. 90–248, § 129(c)(8), struck out reference to subsection (a)(2)(A) of section 1395e of this title.

Subsec. (f). Pub. L. 90–248, § 132(b), added subsec. (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. B, title I, § 109(c), Dec. 20, 2006, 120 Stat. 2985, provided that: ''The amendments made by this section [amending this section and section 1395ww of this title] shall apply to payment for services furnished on or after January 1, 2009.''

Pub. L. 109–171, title V, § 5112(f), Feb. 8, 2006, 120 Stat. 44, provided that: ''The amendments made by this section [amending this section and sections 1395w–4, 1395x, and 1395y of this title] shall apply to services furnished on or after January 1, 2007.''

Pub. L. 109–171, title V, § 5113(c), Feb. 8, 2006, 120 Stat. 44, provided that: ''The amendments made by this section [amending this section and section 1395m of this title] shall apply to services furnished on or after January 1, 2007.''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 237(a) of Pub. L. 108–173 applicable to services provided on or after Jan. 1, 2006, and contract years beginning on or after such date, see section 237(e) of Pub. L. 108–173, set out as a note under section 1320a–7b of this title.

Pub. L. 108–173, title IV, § 411(a)(2), Dec. 8, 2003, 117 Stat. 2274, provided that: ''The amendment made by paragraph (1)(B) [amending this section] shall apply with respect to cost reporting periods beginning on and after January 1, 2004.''

Pub. L. 108–173, title IV, § 413(b)(2), Dec. 8, 2003, 117 Stat. 2277, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to physicians' services furnished on or after January 1, 2005.''

Pub. L. 108–173, title VI, § 614(c), Dec. 8, 2003, 117 Stat. 2306, provided that: ''The amendments made by this section [amending this section] shall apply—

''(1) in the case of screening mammography, to services furnished on or after the date of the enactment of this Act [Dec. 8, 2003]; and

''(2) in the case of diagnostic mammography, to services furnished on or after January 1, 2005.''

Pub. L. 108–173, title VI, § 621(a)(6), Dec. 8, 2003, 117 Stat. 2310, provided that: ''The amendments made by this subsection [amending this section] shall apply to items and services furnished on or after January 1, 2004.''

Pub. L. 108–173, title VI, § 627(c), Dec. 8, 2003, 117 Stat. 2321, provided that: ''The amendments made by this section [amending this section and sections 1395m and 1395u of this title] shall apply to items furnished on or after January 1, 2005.''

Pub. L. 108–173, title VI, § 642(c), Dec. 8, 2003, 117 Stat. 2322, provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply to items furnished administered [sic] on or after January 1, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title I, § 105(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–472, provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395x of this title] shall apply to services furnished on or after January 1, 2002.''

Pub. L. 106–554, § 1(a)(6) [title I, § 111(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to services furnished on or after April 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title II, § 201(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–481, provided that: ''The amendment made—

''(1) by subsection (a) [amending section 1395m of this title] shall apply to services furnished on or after the date of the enactment of BBRA [Pub. L. 106–113, § 1000(a)(6), approved Nov. 29, 1999];

''(2) by subsection (b)(1) [amending this section] shall apply as if included in the enactment of section 403(e)(1) of BBRA (113 Stat. 1501A–371) [Pub. L. 106–113, § 1000(a)(6) [title IV, § 403(e)(1)]]; and

''(3) by subsection (b)(2) [amending provisions set out as a note under section 1395m of this title] shall apply as if included in the enactment of section 403(d)(2) of BBRA (113 Stat. 1501A–371) [Pub. L. 106–113, § 1000(a)(6) [title IV, § 403(d)(2)], set out as a note under section 1395m of this title].''

Pub. L. 106–554, § 1(a)(6) [title II, § 205(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–483, provided that: ''The amendments made by this section [amending this section and section 1395m of this title] shall apply to services furnished on or after the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, § 1(a)(6) [title II, § 223(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–490, provided that: ''The amendments made by subsections (b) and (c) [amending this section and section 1395m of this title] shall be effective for services furnished on or after October 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title II, § 224(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–490, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after July 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title IV, § 401(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–503, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of BBA [Pub. L. 105–33].''

Pub. L. 106–554, § 1(a)(6) [title IV, § 402(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–505, provided that: ''The amendments made by this section [amending this section] take effect on the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, § 1(a)(6) [title IV, § 403(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–506, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of BBRA [Pub. L. 106–113, § 1000(a)(6)].''

Pub. L. 106–554, § 1(a)(6) [title IV, § 405(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–507, provided that: ''The amendments made by subsection (a) [amending this section] shall apply as if included in the enactment of section 202 of BBRA [Pub. L. 106–113, § 1000(a)(6) [title II, § 202]] (113 Stat. 1501A–342).''

Pub. L. 106–554, § 1(a)(6) [title IV, § 406(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–508, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to devices furnished on or after April 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title IV, § 430(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–525, provided that: ''The amendments made by this section [amending this section and section 1395x of this title] apply to items and services furnished on or after July 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 201(h)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–340, provided that: ''The Secretary of Health and Human Services shall first conduct the annual review under the amendment made by paragraph (1)(A) [amending this section] in 2001 for application in 2002 and the amendment made by paragraph (1)(B) [amending this section] takes effect on the date of the enactment of this Act [Nov. 29, 1999].''

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 201(m)], Nov. 29, 1999, 113 Stat. 1536, 1501A–341, provided that: ''Except as provided in this section, the amendments made by this section [amending this section and sections 1395m and 1395x of this title] shall be effective as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].''

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 202(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–344, provided that: ''The amendments made by this section [amending this section] shall be effective as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].''

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 204(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–345, provided that: ''The amendments made by this section [amending this section] apply as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33] and shall only apply to procedures performed for which payment is made on the basis of the prospective payment system under section 1833(t) of the Social Security Act [subsec. (t) of this section].''

Amendment by section 1000(a)(6) [title III, § 321(g)(2), (k)(2)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Amendment by section 1000(a)(6) [title IV, § 401(b)(1)] of Pub. L. 106–113 effective Jan. 1, 2000, see section

1000(a)(6) [title IV, § 401(c)] of Pub. L. 106–113, set out as a note under section 1395i–4 of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 403(e)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–371, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4002(j)(1)(B) of Pub. L. 105–33 provided that: ''The amendment made by subparagraph (A) [amending this section] applies to new contracts entered into after the date of enactment of this Act [Aug. 5, 1997] and, with respect to contracts in effect as of such date, shall apply to payment for services furnished after December 31, 1998.''

Section 4101(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1395m of this title] shall apply to items and services furnished on or after January 1, 1998.''

Section 4102(e) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395w–4, 1395x, and 1395y of this title] shall apply to items and services furnished on or after January 1, 1998.''

Section 4103(e) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395w–4, 1395x, and 1395y of this title] shall apply to items and services furnished on or after January 1, 2000.''

Section 4104(e) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395m, 1395w–4, 1395x, and 1395y of this title] shall apply to items and services furnished on or after January 1, 1998.''

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4205(a)(1)(B) of Pub. L. 105–33 provided that: ''The amendment made by subparagraph (A) [amending this section] applies to services furnished on or after January 1, 1998.''

Section 4315(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] to the extent such amendments substitute fee schedules for reasonable charges, shall apply to particular services as of the date specified by the Secretary of Health and Human Services.''

Amendment by section 4432(b)(5)(C) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Amendment by section 4511(b) of Pub. L. 105–33 applicable with respect to services furnished and supplies provided on and after Jan. 1, 1998, see section 4511(e) of Pub. L. 105–33, set out as a note under section 1395k of this title.

Section 4512(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395x of this title] shall apply with respect to services furnished and supplies provided on and after January 1, 1998.''

Section 4521(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished during portions of cost reporting periods occurring on or after October 1, 1997.''

Section 4523(d)(1)(A)(ii) of Pub. L. 105–33 provided that: ''The amendment made by clause (i) [amending this section] shall apply to services furnished on or after January 1, 1999.''

Section 4531(b)(3) of Pub. L. 105–33 provided that: ''The amendments made by this subsection [amending this section and section 1395m of this title] shall apply to services furnished on or after January 1, 2000.''

Section 4541(e) of Pub. L. 105–33 provided that:

''(1) The amendments made by subsections (a)(1), (a)(2), and (b) [amending this section and sections 1395m and 1395y of this title] apply to services furnished on or after January 1, 1998, including portions of cost reporting periods occurring on or after such date, except that section 1834(k) of the Social Security Act [section 1395m(k) of this title] (as added by subsection (a)(2)) shall not apply to services described in section 1833(a)(8)(B) of such Act [subsec. (a)(8)(B) of this section] (as added by subsection (a)(1)) that are furnished during 1998.

''(2) The amendments made by subsections (a)(3) and (c) [amending this section and section 1395cc of this title] apply to services furnished on or after January 1, 1999.

''(3) The amendments made by subsection (d)(1) [amending this section] apply to expenses incurred on or after January 1, 1999.''

Section 4556(d) of Pub. L. 105–33 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395u of this title] shall apply to drugs and biologicals furnished on or after January 1, 1998.''

Amendment by section 4603(c)(2)(A) of Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 123(f)(1), (2) of Pub. L. 103–432 provided that:

''(1) ENFORCEMENT; MISCELLANEOUS AND TECHNICAL AMENDMENTS.—The amendments made by subsections (a) and (e) [amending this section and section 1395w–4 of this title] shall apply to services furnished on or after the date of the enactment of this Act [Oct. 31, 1994]; except that the amendments made by subsection (a) [amending section 1395w–4 of this title] shall not apply to services of a nonparticipating supplier or other person furnished before January 1, 1995.

''(2) PRACTITIONERS.—The amendments made by subsection (b) [amending this section and section 1395u of this title] shall apply to services furnished on or after January 1, 1995.''

Section 141(c)(2) of Pub. L. 103–432 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Amendment by section 147(a), (e)(2), (3), (f)(6)(C), (D) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Section 147(d)(1), (2) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–239.

Amendment by section 156(a)(2)(B) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13532(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to portions of cost reporting periods beginning on or after January 1, 1994.''

Section 13544(b)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section and section 1395m of this title] shall apply to items furnished on or after January 1, 1994.''

Section 13555(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4104(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1395m and 1395w–4 of this title] shall apply to services furnished on or after January 1, 1991.''

Amendment by section 4153(a)(2)(B), (C) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1,

1991, see section 4153(a)(3) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Section 4154(b)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to tests furnished on or after January 1, 1991.''

Section 4154(c)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1)(A) [amending this section] shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272], and the amendment made by paragraph (1)(B) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4154(e)(5) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §147(f)(2), Oct. 31, 1994, 108 Stat. 4431, provided that: ''The amendments made by paragraphs (1)(A), (1)(B), (2), and (4) [amending this section, section 1395w–2 of this title, and provisions set out as a note below] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239], and the amendment made by paragraph (1)(C) [amending this section] shall take effect January 1, 1991.''

Amendment by section 4155(b)(2), (3) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4155(e) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(a)(3)(B) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Section 4163(e) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §147(f)(5)(B), Oct. 31, 1994, 108 Stat. 4431, provided that: ''Except as provided in subsection (d)(3) [enacting provisions set out as a note under section 1395y of this title], the amendments made by this section [amending this section and sections 1395m, 1395x, 1395y, 1395z, 1395aa, and 1395bb of this title] shall apply to screening mammography performed on or after January 1, 1991.''

Section 4206(e)(2) of Pub. L. 101–508 provided that: ''The amendments made by subsection (b) [amending this section and section 1395mm of this title] shall apply to contracts under section 1876 of the Social Security Act [section 1395mm of this title] and payments under section 1833(a)(1)(A) of such Act [subsec. (a)(1)(A) of this section] as of first day of the first month beginning more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6102(c)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to services furnished on or after January 1, 1991.''

Section 6102(f)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1395m of this title] shall apply to services furnished on or after January 1, 1991.''

Section 6102(g) of Pub. L. 101–239 provided that: ''Except as otherwise provided in this section, this section, and the amendments made by this section [enacting section 1395w–4 of this title, amending this section and sections 1395m, 1395u, and 1395rr of this title, and enacting provisions set out as notes under this section and sections 1395m, 1395u, and 1395w–4 of this title], shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6111(b)(2) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4154(e)(4), Nov. 5, 1990, 104 Stat. 1388–86, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to clinical diagnostic laboratory tests performed on or after May 1, 1990.''

Section 6113(e) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1395x of this title], and the provisions of subsection (c) [set out below], shall apply to services furnished on or after July 1, 1990, and the amendments made by subsection (d) [amending this section] shall apply to expenses incurred in a year beginning with 1990.''

Section 6131(c) of Pub. L. 101–239 provided that:

''(1) The amendments made by this section [amending this section and section 1395x of this title] shall apply with respect to therapeutic shoes and inserts furnished on or after July 1, 1989.

''(2) In applying the amendments made by this section, the increase under subparagraph (C) of section 1833(*o*)(2) of the Social Security Act [subsec. (*o*)(2)(C) of this section] shall apply to the dollar amounts specified under subparagraph (A) of such section (as amended by this section) in the same manner as the increase would have applied to the dollar amounts specified under subparagraph (A) of such section (as in effect before the date of the enactment of this Act [Dec. 19, 1989]).''

Section 6133(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1990.''

Amendment by section 6204(b) of Pub. L. 101–239 effective with respect to referrals made on or after Jan. 1, 1992, see section 6204(c) of Pub. L. 101–239, set out as a note under section 1395nn of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Amendment by section 202(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8422(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective as if included in the amendment made by section 9320(e)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(b)(1)–(3) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 203(c)(1)(A)–(E) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(d)(1) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 205(c) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(f)(2)(D), (8)(B)(i), (C), (12)(A), (14), (g)(1)(E), (2)(D), (E), (3)(A)–(F), (4)(C), (5), (h)(1)(A), (3)(B), (4)(B), (C), (7)(C), (D), (F), (i)(3), (4)(B)–(C)(ii), (iv), and (vi) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4043(c) of Pub. L. 100–203 provided that: ''The amendments made by this [sic] subsection (a) [amending this section] shall apply with respect to services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act [section 1395ww(d)(2)(D) of this title]) on or after January 1,

1989, and to other services furnished on or after January 1, 1991.''

Amendment by section 4045(c)(2)(A) of Pub. L. 100–203 applicable to items and services furnished on or after Apr. 1, 1988, see section 4045(d) of Pub. L. 100–203, set out as a note under section 1395u of this title.

Amendment by section 4049(a)(1) of Pub. L. 100–203 applicable to services performed on or after Apr. 1, 1989, see section 4049(b)(2) of Pub. L. 100–203, as amended, set out as a note under section 1395m of this title.

Section 4055(b), formerly § 4054(b), of Pub. L. 100–203, as added and renumbered by Pub. L. 100–360, title IV, § 411(f)(12)(A), (14), July 1, 1988, 102 Stat. 781, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1988.''

Amendment by section 4062(d)(3) of Pub. L. 100–203 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as a note under section 1395f of this title.

Section 4063(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall apply to items furnished on or after July 1, 1988.''

Section 4064(b)(3) of Pub. L. 100–203 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to services furnished on or after April 1, 1988.''

Section 4064(c)(2) of Pub. L. 100–203, as added by Pub. L. 100–360, title IV, § 411(g)(3)(F), July 1, 1988, 102 Stat. 784, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to diagnostic laboratory tests furnished on or after April 1, 1988.''

Section 4066(c) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to outpatient hospital radiology services furnished on or after October 1, 1988, and other diagnostic procedures performed on or after October 1, 1989.''

Section 4067(c) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1988.''

Section 4068(c) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as if included in the amendment made by section 9343(a)(1)(B) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4070(c)(1) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply with respect to calendar years beginning with 1988; except that with respect to 1988, any reference in section 1833(c) of the Social Security Act [subsec. (c) of this section], as amended by subsection (a), to '$1375.00' is deemed a reference to '$562.50'. The amendment made by subsection (a)(2) [amending this section] shall apply to services furnished on or after January 1, 1989.''

For effective date of amendment by section 4072(b) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendment by section 4073(b) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4073(e) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Amendment by section 4077(b)(2), (3) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4077(b)(5) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Section 4084(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply as if included in the amendment made by section 9320(e)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4084(c)(3) of Pub. L. 100–203, as added by Pub. L. 100–360, title IV, § 411(i)(3), July 1, 1988, 102 Stat. 788, provided that: ''The amendments made by this subsection [amending this section and section 1395x of this title] shall apply to services furnished after December 31, 1988.''

Section 4085(b)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to procedures performed on or after January 1, 1988.''

Section 4085(i)(21) of Pub. L. 100–203 provided that the amendment to section 9343 of Pub. L. 99–509 by section 4085(i)(21)(D) of Pub. L. 100–203, amending this section and provisions set out as an Effective Date of 1986 Amendments note below, is effective as if included in the enactment of Pub. L. 99–509.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9320(e)(1), (2) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Amendment by section 9337(b) of Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

Section 9339(a)(2) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section] apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.''

Section 9339(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to samples collected on or after January 1, 1987.''

Section 9343(h) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4085(i)(21)(D)(ii), (iii), Dec. 22, 1987, 101 Stat. 1330–134; Pub. L. 100–360, title IV, § 411(i)(4)(C)(v), July 1, 1988, 102 Stat. 789, provided that:

''(1) The amendments made by subsection (a)(1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987.

''(2) The amendments made by subsections (b)(1) and (c) [amending this section and sections 1395y and 1395cc of this title] shall apply to services furnished after June 30, 1987.

''(3) The Secretary of Health and Human Services shall first provide, under the amendment made by subsection (b)(2) [amending this section], for the review and update of procedure lists within 6 months after the date of the enactment of this Act [Oct. 21, 1986].

''(4) The amendments made by subsection (d) [amending section 1320c–3 of this title] shall apply to contracts entered into or renewed after January 1, 1987.''

Section 9303(a)(2) of Pub. L. 99–272 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to clinical laboratory diagnostic tests performed on or after July 1, 1986.''

Section 9303(b)(5)(A), (B) of Pub. L. 99–272 provided that:

''(A) The amendments made by paragraphs (1) and (2) [amending this section] shall apply to clinical diagnostic laboratory tests performed on or after July 1, 1986.

''(B) The amendment made by paragraph (3) [amending this section] shall apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2303(j) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 1395u, 1395cc, 1396a, and 1396b of this title and enacting provisions set out as notes under

this section and section 1395u of this title] shall apply to clinical diagnostic laboratory tests furnished on or after July 1, 1984.

''(2) The amendments made by subsection (g)(2) [amending section 1396b of this title] shall apply to payments for calendar quarters beginning on or after October 1, 1984.

''(3) The amendments made by this section shall not apply to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of the Social Security Amendments of 1983 [section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title]. Payment for such services shall be made under part B of title XVIII of the Social Security Act [this part] at 80 percent (or 100 percent in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii) of the Social Security Act [section 1395u(b)(3)(B)(ii) of this title] or under the procedure described in section 1870(f)(1) of such Act [section 1395gg(f)(1) of this title]) of the reasonable charge for such service. The deductible under section 1833(b) of such Act [subsec. (b) of this section] shall not apply to such tests if payment is made on the basis of such an assignment or procedure.''

Section 2305(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and enacting provisions set out below] shall apply to services performed after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2321(b), (d)(4)(A) of Pub. L. 98–369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2323(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1395x, 1395cc, and 1395rr of this title and enacting provisions set out below] apply to services furnished on or after September 1, 1984.''

Amendment by section 2354(b)(5), (7) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 112(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to items and services furnished on or after October 1, 1982.''

Amendment by section 117(a)(2) of Pub. L. 97–248 applicable to final determinations made on or after Sept. 3, 1982, see section 117(b) of Pub. L. 97–248, set out as a note under section 1395g of this title.

Amendment by section 148(d) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2106(c) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] is effective as of December 5, 1980, and the amendment made by subsection (b)(2) [amending section 1395q(b) of this title], is effective as of April 1, 1981.''

Section 2133(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] first apply to the deductible for calendar year 1982 with respect to expenses incurred on or after October 1, 1981.''

Section 2134(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1982, and shall apply to the deductible for calendar years beginning with 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2 of Pub. L. 96–611 provided that: ''The amendments made by this Act [probably should be the amendments made by section 1 of this Act, which amended this section and sections 1395x, 1395y, 1395aa, and 1395cc of this title] shall take effect on, and apply to services furnished on or after, July 1, 1981.''

Amendment by section 930(h) of Pub. L. 96–499, effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 935(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenses incurred in calendar years beginning with calendar year 1982.''

Section 943(b) of Pub. L. 96–499 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished after the sixth calendar month beginning after the date of the enactment of this Act [Dec. 5, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

Section 16(b) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to durable medical equipment purchased or rented on or after October 1, 1977.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 204(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1395n of this title] shall be effective with respect to calendar years after 1972 (except that, for purposes of applying clause (1) of the first sentence of section 1833(b) of the Social Security Act [subsec. (b) of this section], such amendments shall be deemed to have taken effect on January 1, 1972).''

Amendment by section 211(c)(4) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 226(c)(2) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 233(b) of Pub. L. 92–603 applicable to services furnished by hospitals, extended care facilities, and home health agencies in accounting periods beginning after Dec. 31, 1972, see section 233(f) of Pub. L. 92–603, set out as a note under section 1395f of this title. See, also, Pub. L. 93–233, §16, Dec. 31, 1973, 87 Stat. 967, set out as a note under section 1395f of this title.

Amendment by section 251(a)(2), (3) of Pub. L. 92–603 applicable with respect to services furnished on or after July 1, 1973, see section 251(d)(1) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 299K(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished by home health agencies in accounting periods beginning after December 31, 1972.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(7), (8) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 131(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to services furnished after March 31, 1968.''

Section 132(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply only with respect to items purchased after December 31, 1967.''

Amendment by section 135(c) of Pub. L. 90–248 applicable with respect to payment for blood (or packed red blood cells) furnished an individual after Dec. 31, 1967, see section 135(d) of Pub. L. 90–248, set out as a note under section 1395e of this title.

CONSTRUCTION REGARDING LIMITING INCREASES IN COST-SHARING

Pub. L. 106–554, § 1(a)(6) [title I, § 111(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: ''Nothing in this Act [H.R. 5661, as enacted by section 1(a)(6) of Pub. L. 106–554, see Tables for classification] or the Social Security Act [this chapter] shall be construed as preventing a hospital from waiving the amount of any coinsurance for outpatient hospital services under the medicare program under title XVIII of the Social Security Act [this subchapter] that may have been increased as a result of the implementation of the prospective payment system under section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t)).''

IMPLEMENTATION OF 2006 AMENDMENT

Pub. L. 109–432, div. B, title I, § 107(b)(2), Dec. 20, 2006, 120 Stat. 2983, provided that: ''The Secretary of Health and Human Services may implement the amendment made by paragraph (1) [amending this section] by program instruction or otherwise.''

Pub. L. 109–171, title V, § 5107(a)(2), Feb. 8, 2006, 120 Stat. 42, provided that: ''The Secretary of Health and Human Services shall waive such provisions of law and regulation (including those described in section 110(c) of Public Law 108–173 [set out as a note under section 1395w–101 of this title]) as are necessary to implement the amendments made by paragraph (1) [amending this section] on a timely basis and, notwithstanding any other provision of law, may implement such amendments by program instruction or otherwise. There shall be no administrative or judicial review under section 1869 or section 1878 of the Social Security Act (42 U.S.C. 1395ff and 1395*oo*), or otherwise of the process (including the establishment of the process) under section 1833(g)(5) of such Act [subsec. (g)(5) of this section], as added by paragraph (1).''

IMPLEMENTATION OF CLINICALLY APPROPRIATE CODE EDITS IN ORDER TO IDENTIFY AND ELIMINATE IMPROPER PAYMENTS FOR THERAPY SERVICES

Pub. L. 109–171, title V, § 5107(b), Feb. 8, 2006, 120 Stat. 43, provided that: ''By not later than July 1, 2006, the Secretary of Health and Human Services shall implement clinically appropriate code edits with respect to payments under part B of title XVIII of the Social Security Act [this part] for physical therapy services, occupational therapy services, and speech-language pathology services in order to identify and eliminate improper payments for such services, including edits of clinically illogical combinations of procedure codes and other edits to control inappropriate billings.''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

GAO STUDY OF MEDICARE PAYMENT FOR INHALATION THERAPY

Pub. L. 108–173, title III, § 305(b), Dec. 8, 2003, 117 Stat. 2255, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study to examine the adequacy of current reimbursements for inhalation therapy under the medicare program.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).''

TREATMENT OF CERTAIN CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED TO HOSPITAL OUTPATIENTS IN CERTAIN RURAL AREAS

Pub. L. 108–173, title IV, § 416, Dec. 8, 2003, 117 Stat. 2282, as amended by Pub. L. 109–432, div. B, title I, § 105, Dec. 20, 2006, 120 Stat. 2981, provided that:

''(a) IN GENERAL.—Notwithstanding subsections (a), (b), and (h) of section 1833 of the Social Security Act (42 U.S.C. 1395*l*) and section 1834(d)(1) of such Act (42 U.S.C. 1395m(d)(1)), in the case of a clinical diagnostic laboratory test covered under part B of title XVIII of such Act [this part] that is furnished during a cost reporting period described in subsection (b) by a hospital with fewer than 50 beds that is located in a qualified rural area (identified under paragraph (12)(B)(iii) of section 1834(*l*) of the Social Security Act (42 U.S.C. 1395m(*l*)), as added by section 414(c)) as part of outpatient services of the hospital, the amount of payment for such test shall be 100 percent of the reasonable costs of the hospital in furnishing such test.

''(b) APPLICATION.—A cost reporting period described in this subsection is a cost reporting period beginning during the 3-year period beginning on July 1, 2004.

''(c) PROVISION AS PART OF OUTPATIENT HOSPITAL SERVICES.—For purposes of subsection (a), in determining whether clinical diagnostic laboratory services are furnished as part of outpatient services of a hospital, the Secretary [of Health and Human Services] shall apply the same rules that are used to determine whether clinical diagnostic laboratory services are furnished as an outpatient critical access hospital service under section 1834(g)(4) of the Social Security Act (42 U.S.C. 1395m(g)(4)).''

[Pub. L. 109–432, div. B, title I, § 105, Dec. 20, 2006, 120 Stat. 2981, provided that the amendment made by that section to section 416(b) of Pub. L. 108–173, set out above, is effective as if included in the enactment of section 416 of Pub. L. 108–173.]

GAO REPORT ON PAYMENTS FOR BRACHYTHERAPY DEVICES

Pub. L. 108–173, title VI, § 621(b)(3), Dec. 8, 2003, 117 Stat. 2311, provided that: ''The Comptroller General of the United States shall conduct a study to determine appropriate payment amounts under section 1833(t)(16)(C) of the Social Security Act [subsec. (t)(16)(C) of this section], as added by paragraph (1), for devices of brachytherapy. Not later than January 1, 2005, the Comptroller General shall submit to Congress and the Secretary [of Health and Human Services] a report on the study conducted under this paragraph, and shall include specific recommendations for appropriate payments for such devices.''

MORATORIUM ON PHYSICAL THERAPY SERVICES CAPS IN 2003

Pub. L. 108–173, title VI, § 624(a)(2), Dec. 8, 2003, 117 Stat. 2317, provided that: ''For the period beginning on the date of the enactment of this Act [Dec. 8, 2003] and ending of [sic] December 31, 2003, the Secretary [of Health and Human Services] shall not apply the provisions of paragraphs (1), (2), and (3) of section 1833(g) [subsec. (g) of this section] to expenses incurred with respect to services described in such paragraphs during such period. Nothing in the preceding sentence shall be construed as affecting the application of such paragraphs by the Secretary before the date of the enactment of this Act.''

PROMPT SUBMISSION OF OVERDUE REPORTS ON PAYMENT AND UTILIZATION OF OUTPATIENT THERAPY SERVICES

Pub. L. 108–173, title VI, § 624(b), Dec. 8, 2003, 117 Stat. 2317, provided that: ''Not later than March 31, 2004, the Secretary [of Health and Human Services] shall submit to Congress the reports required under section 4541(d)(2) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 457) [set out as a note under this section] (relating to alternatives to a single annual dollar cap on outpatient therapy) and under section 221(d) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Appendix F, 113 Stat. 1501A–352), as enacted into law by section 1000(a)(6) of Public Law 106–113 [set out as a note under this section] (relating to utilization patterns for outpatient therapy).''

GAO STUDY OF AMBULATORY SURGICAL CENTER PAYMENTS

Pub. L. 108–173, title VI, § 626(d), Dec. 8, 2003, 117 Stat. 2319, provided that:

''(1) STUDY.—

''(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study that compares the relative costs of procedures furnished in ambulatory surgical centers to the relative costs of procedures furnished in hospital outpatient departments under section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t)). The study shall also examine how accurately ambulatory payment categories reflect procedures furnished in ambulatory surgical centers.

''(B) CONSIDERATION OF ASC DATA.—In conducting the study under paragraph (1), the Comptroller General shall consider data submitted by ambulatory surgical centers regarding the matters described in clauses (i) through (iii) of paragraph (2)(B).

''(2) REPORT AND RECOMMENDATIONS.—

''(A) REPORT.—Not later than January 1, 2005, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).

''(B) RECOMMENDATIONS.—The report submitted under subparagraph (A) shall include recommendations on the following matters:

''(i) The appropriateness of using the groups of covered services and relative weights established under the outpatient prospective payment system as the basis of payment for ambulatory surgical centers.

''(ii) If the relative weights under such hospital outpatient prospective payment system are appropriate for such purpose—

''(I) whether the payment rates for ambulatory surgical centers should be based on a uniform percentage of the payment rates or weights under such outpatient system; or

''(II) whether the payment rates for ambulatory surgical centers should vary, or the weights should be revised, based on specific procedures or types of services (such as ophthalmology and pain management services).

''(iii) Whether a geographic adjustment should be used for payment of services furnished in ambulatory surgical centers, and if so, the labor and nonlabor shares of such payment.''

DEMONSTRATION PROJECT FOR COVERAGE OF CERTAIN PRESCRIPTION DRUGS AND BIOLOGICALS

Pub. L. 108–173, title VI, § 641, Dec. 8, 2003, 117 Stat. 2321, provided that:

''(a) DEMONSTRATION PROJECT.—The Secretary [of Health and Human Services] shall conduct a demonstration project under part B of title XVIII of the Social Security Act [this part] under which payment is made for drugs or biologicals that are prescribed as replacements for drugs and biologicals described in section 1861(s)(2)(A) or 1861(s)(2)(Q) of such Act (42 U.S.C. 1395x(s)(2)(A), 1395x(s)(2)(Q)), or both, for which payment is made under such part. Such project shall provide for cost-sharing applicable with respect to such drugs or biologicals in the same manner as cost-sharing applies with respect to part D [part D of this subchapter] drugs under standard prescription drug coverage (as defined in section 1860D–2(b) of the Social Security Act [section 1395w–102(b) of this title], as added by section 101(a)).

''(b) DEMONSTRATION PROJECT SITES.—The project established under this section shall be conducted in sites selected by the Secretary.

''(c) DURATION.—The Secretary shall conduct the demonstration project for the 2-year period beginning on the date that is 90 days after the date of the enactment of this Act [Dec. 8, 2003], but in no case may the project extend beyond December 31, 2005.

''(d) LIMITATION.—Under the demonstration project over the duration of the project, the Secretary may not provide—

''(1) coverage for more than 50,000 patients; and

''(2) more than $500,000,000 in funding.

''(e) REPORT.—Not later than July 1, 2006, the Secretary shall submit to Congress a report on the project. The report shall include an evaluation of patient access to care and patient outcomes under the project, as well as an analysis of the cost effectiveness of the project, including an evaluation of the costs savings (if any) to the medicare program attributable to reduced physicians' services and hospital outpatient departments services for administration of the biological.''

PAYMENT FOR PANCREATIC ISLET CELL INVESTIGATIONAL TRANSPLANTS FOR MEDICARE BENEFICIARIES IN CLINICAL TRIALS

Pub. L. 108–173, title VII, § 733, Dec. 8, 2003, 117 Stat. 2352, provided that:

''(a) CLINICAL TRIAL.—

''(1) IN GENERAL.—The Secretary [of Health and Human Services], acting through the National Institute of Diabetes and Digestive and Kidney Disorders, shall conduct a clinical investigation of pancreatic islet cell transplantation which includes medicare beneficiaries.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to conduct the clinical investigation under paragraph (1).

''(b) MEDICARE PAYMENT.—Not earlier than October 1, 2004, the Secretary shall pay for the routine costs as well as transplantation and appropriate related items and services (as described in subsection (c)) in the case of medicare beneficiaries who are participating in a clinical trial described in subsection (a) as if such transplantation were covered under title XVIII of such Act [this subchapter] and as would be paid under part A or part B of such title [part A of this subchapter or this part] for such beneficiary.

''(c) SCOPE OF PAYMENT.—For purposes of subsection (b):

''(1) The term 'routine costs' means reasonable and necessary routine patient care costs (as defined in the Centers for Medicare & Medicaid Services Coverage Issues Manual, section 30–1), including immunosuppressive drugs and other followup care.

''(2) The term 'transplantation and appropriate related items and services' means items and services related to the acquisition and delivery of the pan-

creatic islet cell transplantation, notwithstanding any national noncoverage determination contained in the Centers for Medicare & Medicaid Services Coverage Issues Manual.

''(3) The term 'medicare beneficiary' means an individual who is entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter], or enrolled under part B of such title [this part], or both.

''(d) CONSTRUCTION.—The provisions of this section shall not be construed—

''(1) to permit payment for partial pancreatic tissue or islet cell transplantation under title XVIII of the Social Security Act [this subchapter] other than payment as described in subsection (b); or

''(2) as authorizing or requiring coverage or payment conveying—

''(A) benefits under part A of such title [part A of this subchapter] to a beneficiary not entitled to such part A; or

''(B) benefits under part B of such title [this part] to a beneficiary not enrolled in such part B.''

GAO STUDY OF REDUCTION IN MEDIGAP PREMIUM LEVELS RESULTING FROM REDUCTIONS IN COINSURANCE

Pub. L. 106–554, §1(a)(6) [title I, §111(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: ''The Comptroller General of the United States shall work, in concert with the National Association of Insurance Commissioners, to evaluate the extent to which the premium levels for medicare supplemental policies reflect the reductions in coinsurance resulting from the amendment made by subsection (a) [amending this section]. Not later than April 1, 2004, the Comptroller General shall submit to Congress a report on such evaluation and the extent to which the reductions in beneficiary coinsurance effected by such amendment have resulted in actual savings to medicare beneficiaries.''

MEDPAC STUDY ON LOW-VOLUME, ISOLATED RURAL HEALTH CARE PROVIDERS

Pub. L. 106–554, §1(a)(6) [title II, §225], Dec. 21, 2000, 114 Stat. 2763, 2763A–490, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the effect of low patient and procedure volume on the financial status of low-volume, isolated rural health care providers participating in the medicare program under title XVIII of the Social Security Act [this subchapter].

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under subsection (a) indicating—

''(1) whether low-volume, isolated rural health care providers are having, or may have, significantly decreased medicare margins or other financial difficulties resulting from any of the payment methodologies described in subsection (c);

''(2) whether the status as a low-volume, isolated rural health care provider should be designated under the medicare program and any criteria that should be used to qualify for such a status; and

''(3) any changes in the payment methodologies described in subsection (c) that are necessary to provide appropriate reimbursement under the medicare program to low-volume, isolated rural health care providers (as designated pursuant to paragraph (2)).

''(c) PAYMENT METHODOLOGIES DESCRIBED.—The payment methodologies described in this subsection are the following:

''(1) The prospective payment system for hospital outpatient department services under section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t)).

''(2) The fee schedule for ambulance services under section 1834(*l*) of such Act (42 U.S.C. 1395m(*l*)).

''(3) The prospective payment system for inpatient hospital services under section 1886 of such Act (42 U.S.C. 1395ww).

''(4) The prospective payment system for routine service costs of skilled nursing facilities under section 1888(e) of such Act (42 U.S.C. 1395yy(e)).

''(5) The prospective payment system for home health services under section 1895 of such Act (42 U.S.C. 1395fff).''

SPECIAL RULE FOR PAYMENT FOR 2001

Pub. L. 106–554, §1(a)(6) [title IV, §401(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–503, provided that: ''Notwithstanding the amendment made by subsection (a) [amending this section], for purposes of making payments under section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t)) for covered OPD services furnished during 2001, the medicare OPD fee schedule amount under such section—

''(1) for services furnished on or after January 1, 2001, and before April 1, 2001, shall be the medicare OPD fee schedule amount for 2001 as determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for services furnished on or after April 1, 2001, and before January 1, 2002, shall be the fee schedule amount (as determined taking into account the amendment made by subsection (a)), increased by a transitional percentage allowance equal to 0.32 percent (to account for the timing of implementation of the full market basket update).''

TRANSITION PROVISIONS APPLICABLE TO SUBSECTION (t)(6)(B)

Pub. L. 106–554, §1(a)(6) [title IV, §402(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–506, provided that:

''(1) IN GENERAL.—In the case of a medical device provided as part of a service (or group of services) furnished during the period before initial categories are implemented under subparagraph (B)(i) of section 1833(t)(6) of the Social Security Act [subsec. (t)(6)(B)(i) of this section] (as amended by subsection (a)), payment shall be made for such device under such section in accordance with the provisions in effect before the date of the enactment of this Act [Dec. 21, 2000]. In addition, beginning on the date that is 30 days after the date of the enactment of this Act, payment shall be made for such a device that is not included in a program memorandum described in such subparagraph if the Secretary of Health and Human Services determines that the device (including a device that would have been included in such program memoranda but for the requirement of subparagraph (A)(iv)(I) of that section) is likely to be described by such an initial category.

''(2) APPLICATION OF CURRENT PROCESS.—Notwithstanding any other provision of law, the Secretary shall continue to accept applications with respect to medical devices under the process established pursuant to paragraph (6) of section 1833(t) of the Social Security Act [subsec. (t)(6) of this section] (as in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]) through December 1, 2000, and any device—

''(A) with respect to which an application was submitted (pursuant to such process) on or before such date; and

''(B) that meets the requirements of clause (ii) or (iv) of subparagraph (A) of such paragraph (as determined pursuant to such process),

shall be treated as a device with respect to which an initial category is required to be established under subparagraph (B)(i) of such paragraph (as amended by subsection (a)(2)).''

STUDY ON STANDARDS FOR SUPERVISION OF PHYSICAL THERAPIST ASSISTANTS

Pub. L. 106–554, §1(a)(6) [title IV, §421(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–516, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the implications—

''(A) of eliminating the 'in the room' supervision requirement for medicare payment for services of physical therapy assistants who are supervised by physical therapists; and

''(B) of such requirement on the cap imposed under section 1833(g) of the Social Security Act (42 U.S.C. 1395*l*(g)) on physical therapy services.

''(2) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Secretary shall submit to Congress a report on the study conducted under paragraph (1).''

DELAY IN IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM FOR AMBULATORY SURGICAL CENTERS

Pub. L. 106–554, §1(a)(6) [title IV, §424(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–518, provided that: ''The Secretary of Health and Human Services may not implement a revised prospective payment system for services of ambulatory surgical facilities under section 1833(i) of the Social Security Act (42 U.S.C. 1395*l*(i)) before January 1, 2002.''

MEDPAC STUDY AND REPORT ON MEDICARE REIMBURSEMENT FOR SERVICES PROVIDED BY CERTAIN PROVIDERS

Pub. L. 106–554, §1(a)(6) [title IV, §434], Dec. 21, 2000, 114 Stat. 2763, 2763A–526, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the appropriateness of the current payment rates under the medicare program under title XVIII of the Social Security Act [this subchapter] for services provided by a—

''(1) certified nurse-midwife (as defined in subsection (gg)(2) of section 1861 of such Act (42 U.S.C. 1395x));

''(2) physician assistant (as defined in subsection (aa)(5)(A) of such section);

''(3) nurse practitioner (as defined in such subsection); and

''(4) clinical nurse specialist (as defined in subsection (aa)(5)(B) of such section).

The study shall separately examine the appropriateness of such payment rates for orthopedic physician assistants, taking into consideration the requirements for accreditation, training, and education.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study.''

MEDPAC STUDY ON ACCESS TO OUTPATIENT PAIN MANAGEMENT SERVICES

Pub. L. 106–554, §1(a)(6) [title IV, §438], Dec. 21, 2000, 114 Stat. 2763, 2763A–528, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the barriers to coverage and payment for outpatient interventional pain medicine procedures under the medicare program under title XVIII of the Social Security Act [this subchapter]. Such study shall examine—

''(1) the specific barriers imposed under the medicare program on the provision of pain management procedures in hospital outpatient departments, ambulatory surgery centers, and physicians' offices; and

''(2) the consistency of medicare payment policies for pain management procedures in those different settings.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study.''

ESTABLISHMENT OF CODING AND PAYMENT PROCEDURES FOR NEW CLINICAL DIAGNOSTIC LABORATORY TESTS AND OTHER ITEMS ON A FEE SCHEDULE

Pub. L. 106–554, §1(a)(6) [title V, §531(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–547, provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall establish procedures for coding and payment determinations for the categories of new clinical diagnostic laboratory tests and new durable medical equipment under part B of title XVIII of the Social Security Act [this part] that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for ICD–9–CM.''

REPORT ON PROCEDURES USED FOR ADVANCED, IMPROVED TECHNOLOGIES

Pub. L. 106–554, §1(a)(6) [title V, §531(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–547, provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall submit to Congress a report that identifies the specific procedures used by the Secretary under part B of title XVIII of the Social Security Act [this part] to adjust payments for clinical diagnostic laboratory tests and durable medical equipment which are classified to existing codes where, because of an advance in technology with respect to the test or equipment, there has been a significant increase or decrease in the resources used in the test or in the manufacture of the equipment, and there has been a significant improvement in the performance of the test or equipment. The report shall include such recommendations for changes in law as may be necessary to assure fair and appropriate payment levels under such part for such improved tests and equipment as reflects increased costs necessary to produce improved results.''

CONGRESSIONAL INTENTION REGARDING BASE AMOUNTS IN APPLYING HOPD PPS

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §201(*l*)], Nov. 29, 1999, 113 Stat. 1536, 1501A–341, provided that: ''With respect to determining the amount of copayments described in paragraph (3)(A)(ii) of section 1833(t) of the Social Security Act [subsec. (t) of this section], as added by section 4523(a) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33], Congress finds that such amount should be determined without regard to such section, in a budget neutral manner with respect to aggregate payments to hospitals, and that the Secretary of Health and Human Services has the authority to determine such amount without regard to such section.''

STUDY AND REPORT TO CONGRESS REGARDING SPECIAL TREATMENT OF RURAL AND CANCER HOSPITALS IN PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §203], Nov. 29, 1999, 113 Stat. 1536, 1501A–344, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Medicare Payment Advisory Commission (referred to in this section as 'MedPAC') shall conduct a study to determine the appropriateness (and the appropriate method) of providing payments to hospitals described in paragraph (2) for covered OPD services (as defined in paragraph (1)(B) of section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t))) based on the prospective payment system established by the Secretary in accordance with such section.

''(2) HOSPITALS DESCRIBED.—The hospitals described in this paragraph are the following:

''(A) A medicare-dependent, small rural hospital (as defined in section 1886(d)(5)(G)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(G)(iv))).

''(B) A sole community hospital (as defined in section 1886(d)(5)(D)(iii) of such Act (42 U.S.C. 1395ww(d)(5)(D)(iii))).

''(C) Rural health clinics (as defined in section 1861(aa)(2) of such Act (42 U.S.C. 1395x(aa)(2)).

''(D) Rural referral centers (as so classified under section 1886(d)(5)(C) of such Act (42 U.S.C. 1395ww(d)(5)(C)).

''(E) Any other rural hospital with not more than 100 beds.

''(F) Any other rural hospital that the Secretary determines appropriate.

''(G) A hospital described in section 1886(d)(1)(B)(v) of such Act (42 U.S.C. 1395ww(d)(1)(B)(v)).

''(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Nov. 29, 1999], MedPAC shall submit a report to the Secretary of Health and Human Services and Congress on the study conducted under subsection (a), together with any recommendations for legislation that MedPAC determines to be appropriate as a result of such study.

''(c) COMMENTS.—Not later than 60 days after the date on which MedPAC submits the report under subsection (b) to the Secretary of Health and Human Services, the Secretary shall submit comments on such report to Congress.''

GAO STUDY ON RESOURCES REQUIRED TO PROVIDE SAFE AND EFFECTIVE OUTPATIENT CANCER THERAPY

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 213], Nov. 29, 1999, 113 Stat. 1536, 1501A–350, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a nationwide study to determine the physician and non-physician clinical resources necessary to provide safe outpatient cancer therapy services and the appropriate payment rates for such services under the medicare program. In making such determination, the Comptroller General shall—

''(1) determine the adequacy of practice expense relative value units associated with the utilization of those clinical resources;

''(2) determine the adequacy of work units in the practice expense formula; and

''(3) assess various standards to assure the provision of safe outpatient cancer therapy services.

''(b) REPORT TO CONGRESS.—The Comptroller General shall submit to Congress a report on the study conducted under subsection (a). The report shall include recommendations regarding practice expense adjustments to the payment methodology under part B of title XVIII of the Social Security Act [this part], including the development and inclusion of adequate work units to assure the adequacy of payment amounts for safe outpatient cancer therapy services. The study shall also include an estimate of the cost of implementing such recommendations.''

FOCUSED MEDICAL REVIEWS OF CLAIMS DURING MORATORIUM PERIOD

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 221(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–351, as amended by Pub. L. 106–554, § 1(a)(6) [title IV, § 421(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–516, provided that: ''During years in which paragraph (4) of section 1833(g) of the Social Security Act (42 U.S.C. 1395*l*(g)) applies, the Secretary of Health and Human Services shall conduct focused medical reviews of claims for reimbursement for services described in paragraph (1) or (3) of such section, with an emphasis on such claims for services that are provided to residents of skilled nursing facilities.''

STUDY AND REPORT ON UTILIZATION

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 221(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352, provided that:

''(1) STUDY.—

''(A) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study which compares—

''(i) utilization patterns (including nationwide patterns, and patterns by region, types of settings, and diagnosis or condition) of outpatient physical therapy services, outpatient occupational therapy services, and speech-language pathology services that are covered under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395) [this subchapter] and provided on or after January 1, 2000; with

''(ii) such patterns for such services that were provided in 1998 and 1999.

''(B) REVIEW OF CLAIMS.—In conducting the study under this subsection the Secretary of Health and Human Services shall review a statistically significant number of claims for reimbursement for the services described in subparagraph (A).

''(2) REPORT.—Not later than June 30, 2001, the Secretary of Health and Human Services shall submit a report to Congress on the study conducted under paragraph (1), together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such study.''

PHASE-IN OF PPS FOR AMBULATORY SURGICAL CENTERS

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 226], Nov. 29, 1999, 113 Stat. 1536, 1501A–354, as amended by Pub. L. 106–554, § 1(a)(6) [title IV, § 424(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–518, 2763A–519, provided that: ''If the Secretary of Health and Human Services implements a revised prospective payment system for services of ambulatory surgical facilities under section 1833(i) of the Social Security Act (42 U.S.C. 1395*l*(i)), prior to incorporating data from the 1999 Medicare cost survey or a subsequent cost survey, such system shall be implemented in a manner so that—

''(1) in the first year of its implementation, only a proportion (specified by the Secretary and not to exceed one-fourth) of the payment for such services shall be made in accordance with such system and the remainder shall be made in accordance with current regulations; and

''(2) in each of the following 2 years a proportion (specified by the Secretary and not to exceed one-half and three-fourths, respectively) of the payment for such services shall be made under such system and the remainder shall be made in accordance with current regulations.

By not later than January 1, 2003, the Secretary shall incorporate data from a 1999 medicare cost survey or a subsequent cost survey for purposes of implementing or revising such system.''

MEDPAC STUDY ON POSTSURGICAL RECOVERY CARE CENTER SERVICES

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 229(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–356, provided that:

''(1) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study on the cost-effectiveness and efficacy of covering under the medicare program under title XVIII of the Social Security Act [this subchapter] services of a post-surgical recovery care center (that provides an intermediate level of recovery care following surgery). In conducting such study, the Commission shall consider data on these centers gathered in demonstration projects.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Nov. 29,1999], the Commission shall submit to Congress a report on such study and shall include in the report recommendations on the feasibility, costs, and savings of covering such services under the medicare program.''

MEDICARE REIMBURSEMENT FOR TELEHEALTH SERVICES

Section 4206 of Pub. L. 105–33, as amended by Pub. L. 106–554, § 1(a)(6) [title II, § 223(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–487, provided that:

''(a) IN GENERAL.—For services furnished on and after January 1, 1999, and before October 1, 2001, the Secretary of Health and Human Services shall make payments from the Federal Supplementary Medical Insurance Trust Fund under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.) in accordance with the methodology described in subsection (b) for professional consultation via telecommunications systems with a physician (as defined in section 1861(r) of such Act (42 U.S.C. 1395x(r)) or a practitioner (described in section 1842(b)(18)(C) of such Act (42 U.S.C. 1395u(b)(18)(C)) furnishing a service for which payment may be made under such part to a beneficiary under the medicare program residing in a county in a rural area (as defined in section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D))) that is designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)), notwithstanding that the individual physician or prac-

titioner providing the professional consultation is not at the same location as the physician or practitioner furnishing the service to that beneficiary.

''(b) METHODOLOGY FOR DETERMINING AMOUNT OF PAYMENTS.—Taking into account the findings of the report required under section 192 of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 1988), the findings of the report required under paragraph (c), and any other findings related to the clinical efficacy and cost-effectiveness of telehealth applications, the Secretary shall establish a methodology for determining the amount of payments made under subsection (a) within the following parameters:

''(1) The payment shall [be] shared between the referring physician or practitioner and the consulting physician or practitioner. The amount of such payment shall not be greater than the current fee schedule of the consulting physician or practitioner for the health care services provided.

''(2) The payment shall not include any reimbursement for any telephone line charges or any facility fees, and a beneficiary may not be billed for any such charges or fees.

''(3) The payment shall be made subject to the coinsurance and deductible requirements under subsections (a)(1) and (b) of section 1833 of the Social Security Act (42 U.S.C. 1395*l*).

''(4) The payment differential of section 1848(a)(3) of such Act (42 U.S.C. 1395w–4(a)(3)) shall apply to services furnished by non-participating physicians. The provisions of section 1848(g) of such Act (42 U.S.C. 1395w–4(g)) and section 1842(b)(18) of such Act (42 U.S.C. 1395u(b)(18)) shall apply. Payment for such service shall be increased annually by the update factor for physicians' services determined under section 1848(d) of such Act (42 U.S.C. 1395w–4(d)).

''(c) SUPPLEMENTAL REPORT.—Not later than January 1, 1999, the Secretary shall submit a report to Congress which shall contain a detailed analysis of—

''(1) how telemedicine and telehealth systems are expanding access to health care services;

''(2) the clinical efficacy and cost-effectiveness of telemedicine and telehealth applications;

''(3) the quality of telemedicine and telehealth services delivered; and

''(4) the reasonable cost of telecommunications charges incurred in practicing telemedicine and telehealth in rural, frontier, and underserved areas.

''(d) EXPANSION OF TELEHEALTH SERVICES FOR CERTAIN MEDICARE BENEFICIARIES.—

''(1) IN GENERAL.—Not later than January 1, 1999, the Secretary shall submit a report to Congress that examines the possibility of making payments from the Federal Supplementary Medical Insurance Trust Fund under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.) for professional consultation via telecommunications systems with such a physician or practitioner furnishing a service for which payment may be made under such part to a beneficiary described in paragraph (2), notwithstanding that the individual physician or practitioner providing the professional consultation is not at the same location as the physician or practitioner furnishing the service to that beneficiary.

''(2) BENEFICIARY DESCRIBED.—A beneficiary described in this paragraph is a beneficiary under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) who does not reside in a rural area (as so defined) that is designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)), who is homebound or nursing homebound, and for whom being transferred for health care services imposes a serious hardship.

''(3) REPORT.—The report described in paragraph (1) shall contain a detailed statement of the potential costs and savings to the medicare program of making the payments described in that paragraph using various reimbursement schemes.''

REPORT ON COVERAGE OF OUTPATIENT OCCUPATIONAL THERAPY SERVICES

Pub. L. 105–33, title IV, § 4541(d)(2), Aug. 5, 1997, 111 Stat. 457, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 221(c)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–351, provided that: ''Not later than January 1, 2001, the Secretary of Health and Human Services shall submit to Congress a report that includes recommendations on—

''(A) the establishment of a mechanism for assuring appropriate utilization of outpatient physical therapy services, outpatient occupational therapy services, and speech-language pathology services that are covered under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395) [this subchapter]; and

''(B) the establishment of an alternative payment policy for such services based on classification of individuals by diagnostic category, functional status, prior use of services (in both inpatient and outpatient settings), and such other criteria as the Secretary determines appropriate, in place of the uniform dollar limitations specified in section 1833(g) of such Act [subsec. (g) of this section], as amended by paragraph (1).

The recommendations shall include how such a mechanism or policy might be implemented in a budget-neutral manner.''

[Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 221(c)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352, provided that: ''The amendment made by paragraph (1) [amending section 4541(d)(2) of Pub. L. 105–33, set out above] shall take effect as if included in the enactment of section 4541 of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].'']

STUDY AND REPORT ON CLINICAL LABORATORY TESTS

Section 4553(c) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—The Secretary shall request the Institute of Medicine of the National Academy of Sciences to conduct a study of payments under part B of title XVIII of the Social Security Act [this part] for clinical laboratory tests. The study shall include a review of the adequacy of the current methodology and recommendations regarding alternative payment systems. The study shall also analyze and discuss the relationship between such payment systems and access to high quality laboratory tests for medicare beneficiaries, including availability and access to new testing methodologies.

''(2) REPORT TO CONGRESS.—The Secretary shall, not later than 2 years after the date of enactment of this section [Aug. 5, 1997], report to the Committees on Ways and Means and Commerce of the House of Representatives and the Committee on Finance of the Senate the results of the study described in paragraph (1), including any recommendations for legislation.''

ADJUSTMENTS TO PAYMENT AMOUNTS FOR NEW TECHNOLOGY INTRAOCULAR LENSES

Section 141(b) of Pub. L. 103–432 provided that:

''(1) ESTABLISHMENT OF PROCESS FOR REVIEW OF AMOUNTS.—Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall develop and implement a process under which interested parties may request review by the Secretary of the appropriateness of the reimbursement amount provided under section 1833(i)(2)(A)(iii) of the Social Security Act [subsec. (i)(2)(A)(iii) of this section] with respect to a class of new technology intraocular lenses. For purposes of the preceding sentence, an intraocular lens may not be treated as a new technology lens unless it has been approved by the Food and Drug Administration.

''(2) FACTORS CONSIDERED.—In determining whether to provide an adjustment of payment with respect to a particular lens under paragraph (1), the Secretary shall take into account whether use of the lens is likely to

result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

''(3) NOTICE AND COMMENT.—The Secretary shall publish notice in the Federal Register from time to time (but no less often than once each year) of a list of the requests that the Secretary has received for review under this subsection, and shall provide for a 30-day comment period on the lenses that are the subjects of the requests contained in such notice. The Secretary shall publish a notice of the Secretary's determinations with respect to intraocular lenses listed in the notice within 90 days after the close of the comment period.

''(4) EFFECTIVE DATE OF ADJUSTMENT.—Any adjustment of a payment amount (or payment limit) made under this subsection shall become effective not later than 30 days after the date on which the notice with respect to the adjustment is published under paragraph (3).''

STUDY OF MEDICARE COVERAGE OF PATIENT CARE COSTS ASSOCIATED WITH CLINICAL TRIALS OF NEW CANCER THERAPIES

Section 142 of Pub. L. 103–432 directed Secretary of Health and Human Services to conduct a study, and to submit a report to Congress not later than 2 years after Oct. 31, 1994, of effects of expressly covering under medicare program patient care costs for beneficiaries enrolled in clinical trials of new cancer therapies, where protocol for the trial has been approved by the National Cancer Institute or met similar scientific and ethical standards, including approval by an institutional review board.

STUDY OF ANNUAL CAP ON AMOUNT OF MEDICARE PAYMENT FOR OUTPATIENT PHYSICAL THERAPY AND OCCUPATIONAL THERAPY SERVICES

Section 143 of Pub. L. 103–432 directed Secretary of Health and Human Services to submit to Congress, not later than Jan. 1, 1996, study and report on appropriateness of continuing annual limitation on amount of payment for outpatient services of independently practicing physical and occupational therapists under medicare program, which was to include such recommendations for changes in such annual limitation as Secretary found appropriate.

AMBULATORY SURGICAL CENTER SERVICES; INFLATION UPDATE

Section 13531 of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services shall not provide for any inflation update in the payment amounts under subparagraphs (A) and (B) of section 1833(i)(2) of the Social Security Act [subsec. (i)(2)(A) and (B) of this section] for fiscal year 1994 or for fiscal year 1995.''

FREEZE IN ALLOWANCE FOR INTRAOCULAR LENSES

Section 13533 of Pub. L. 103–66 provided that: ''Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act [subsec. (i)(2)(A)(iii) of this section], the amount of payment determined under such section for an intraocular lens inserted subsequent to or during cataract surgery in an ambulatory surgical center on or after January 1, 1994, and before January 1, 1999, shall be equal to $150.''

Section 4151(c)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 141(d), Oct. 31, 1994, 108 Stat. 4426, provided that: ''Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act [subsec. (i)(2)(A)(iii) of this section], the amount of payment determined under such section for an intraocular lens inserted during or subsequent to cataract surgery furnished to an individual in an ambulatory surgical center on or after the date of the enactment of this Act [Nov. 5, 1990] and on or before December 31, 1992, shall be equal to $200.''

[Section 141(d) of Pub. L. 103–432 provided that the amendment made by that section to section 4151(c)(3) of Pub. L. 101–508, set out above, is effective as if included in the enactment of Pub. L. 101–508.]

REDUCTION IN PAYMENTS UNDER PART B DURING FINAL TWO MONTHS OF 1990

Section 4158 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law (including any other provision of this Act, other than subsection (b)(4)), payments under part B of title XVIII of the Social Security Act [this part] for items and services furnished during the period beginning on November 1, 1990, and ending on December 31, 1990, shall be reduced by 2 percent, in accordance with subsection (b).

''(b) SPECIAL RULES FOR APPLICATION OF REDUCTION.—

''(1) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under part B of such title on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, the reduction made under subsection (a) shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the period described in such subsection, but only in the same proportion as the fraction of the cost reporting period that occurs during such period.

''(2) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under subsection (a) for items or services for which payment under part B of such title is made on an assignment-related basis (as defined in section 1842(i)(1) of the Social Security Act [section 1395u(i)(1) of this title]), the person furnishing the items or services shall be considered to have accepted payment of the reasonable charge for the items or services, less any reduction in payment amount made under subsection (a), as payment in full.

''(3) TREATMENT OF PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS.—Subsection (a) shall not apply to payments under risk-sharing contracts under section 1876 of the Social Security Act [section 1395mm of this title] or under similar contracts under section 402 of the Social Security Amendments of 1967 [Pub. L. 90–248, enacting section 1395b–1 of this title and amending section 1395*ll* of this title] or section 222 of the Social Security Amendments of 1972 [Pub. L. 92–603, amending sections 1395b–1 and 1395*ll* of this title and enacting provisions set out as a note under section 1395b–1 of this title].''

EFFECT ON STATE LAW

Conscientious objections of health care provider under State law unaffected by enactment of subsecs. (a)(1)(Q) and (f) of this section, see section 4206(c) of Pub. L. 101–508, set out as a note under section 1395cc of this title.

DEVELOPMENT OF CRITERIA REGARDING CONSULTATION WITH A PHYSICIAN

Section 6113(c) of Pub. L. 101–239, as amended by Pub. L. 103–432, title I, § 147(b), Oct. 31, 1994, 108 Stat. 4429, provided that: ''The Secretary of Health and Human Services shall, taking into consideration concerns for patient confidentiality, develop criteria with respect to payment for qualified psychologist services and clinical social worker services for which payment may be made directly to the psychologist or clinical social worker under part B of title XVIII of the Social Security Act [this part] under which such a psychologist or clinical social worker must agree to consult with a patient's attending physician in accordance with such criteria.''

[Section 147(b) of Pub. L. 103–432 provided that the amendment made by that section to section 6113(c) of Pub. L. 101–239, set out above, is effective with respect to services furnished on or after Jan. 1, 1991.]

STUDY OF REIMBURSEMENT FOR AMBULANCE SERVICES

Section 6136 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study to determine adequacy and appropriateness of payment amounts under this subchapter for ambulance services and, not later than one year after Dec. 19, 1989, submit a report to Congress on results of the study, with report to include such recommendations for changes in medicare payment policy with respect to ambulance services as may be needed to ensure access by medicare beneficiaries to quality ambulance services in metropolitan and rural areas.

PROPAC STUDY OF PAYMENTS FOR SERVICES IN HOSPITAL OUTPATIENT DEPARTMENTS

Section 6137 of Pub. L. 101–239, directed Prospective Payment Assessment Commission to conduct a study on payment under this subchapter for hospital outpatient services and, not later than July 1, 1990, and not later than Mar. 1, 1991, to submit reports to Congress on specified portions of the study, with the reports to include such recommendations as the Commission deemed appropriate, prior to repeal by Pub. L. 103–432, title I, § 147(c)(1), Oct. 31, 1994, 108 Stat. 4429.

BUDGET NEUTRALITY

Section 8421(b) of Pub. L. 100–647 provided that: ''The Secretary of Health and Human Services shall adjust the fees for transportation and personnel established under section 1833(h)(3)(B) of the Social Security Act [subsec. (h)(3)(B) of this section] for tests not covered under the amendment made by subsection (a) [amending this section] in such manner that the total cost of fees under such section is the same as would have been the case without such amendment.''

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

For requirement that Secretary of Health and Human Services modify contracts under subsection (a)(1)(A) of this section to take into account amendments made by Pub. L. 100–360 and that such organizations make appropriate adjustments in their agreements with medicare beneficiaries to take into account such amendments, see section 222 of Pub. L. 100–360, set out as a note under section 1395mm of this title.

STUDY AND REPORT TO CONGRESS RESPECTING INCENTIVE PAYMENTS FOR PHYSICIANS' SERVICES FURNISHED IN UNDERSERVED AREAS

Section 4043(b) of Pub. L. 100–203 directed Secretary of Health and Human Services to study and report to Congress, by not later than Jan. 1, 1990, on feasibility of making additional payments described in section 1395*l*(m) of this title with respect to physician services performed in health manpower shortage areas located in urban areas, prior to repeal by Pub. L. 101–508, title IV, § 4118(g)(1), Nov. 5, 1990, 104 Stat. 1388–70.

FEE SCHEDULES FOR PHYSICIAN PATHOLOGY SERVICES

Section 4050 of Pub. L. 100–203 directed Secretary of Health and Human Services to develop a relative value scale and fee schedules with updating index for payment of physician pathology services under this part, and to report to committees of Congress not later than Apr. 1, 1989, on the scale, schedules, and index, prior to repeal by Pub. L. 101–508, title IV, § 4104(b)(3), Nov. 5, 1990, 104 Stat. 1388–59.

APPLYING COPAYMENT AND DEDUCTIBLE TO CERTAIN OUTPATIENT PHYSICIANS' SERVICES

Section 4054 of Pub. L. 100–203, relating to payment under part B of title XVIII of the Social Security Act (this part) for physicians' services specified in subsec. (i) of this section and furnished on or after Apr. 1, 1988, in an ambulatory surgical center or hospital outpatient department on an assignment-related basis, was negated in the amendment of section 4054 by Pub. L. 100–360, title IV, § 411(f)(12)(A), July 1, 1988, 102 Stat. 781.

OTHER PHYSICIAN PAYMENT STUDIES

Section 4056(c), formerly § 4055(c), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(f)(14), July 1, 1988, 102 Stat. 781, provided directed Secretary to (1) conduct a study of changes in the payment system for physicians' services, under part B, that would be required for the implementation of a national fee schedule for such services furnished on or after Jan. 1, 1990, and report to Congress on such study by not later than July 1, 1989, (2) conduct a study of issues relating to the volume and intensity of physicians' services under part B and submit to Congress an interim report on such study not later than May 1, 1988, and a final report on such study not later than May 1, 1989, and (3) conduct a survey to determine distribution of (A) the liabilities and expenditures for health care services of individuals entitled to benefits under this subchapter, including liabilities for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, and (B) the collection rates among different classes of physicians for such liabilities, including collection rates for required coinsurance and for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, report to Congress on such study by not later than July 1, 1990.

STUDY OF PAYMENT FOR CHEMOTHERAPY IN PHYSICIANS' OFFICES

Section 4056(d), formerly § 4055(d), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(f)(14), July 1, 1988, 102 Stat. 781, directed Secretary to study ways of modifying part B to permit adequate payment under such part for costs associated with providing chemotherapy to cancer patients in physicians' offices, with the Secretary to report to Congress on results of study by not later than Apr. 1, 1989, prior to repeal by Pub. L. 105–362, title VI, § 601(b)(7), Nov. 10, 1998, 112 Stat. 3286.

CLINICAL DIAGNOSTIC LABORATORY TESTS; LIMITATION ON CHANGES IN FEE SCHEDULES

Section 4064(a) of Pub. L. 100–203 which provided 3-month freeze in fee schedules for clinical laboratory diagnostic laboratory tests under part B of title XVIII of the Social Security Act (this part) and directed the Secretary of Health and Human Services to not adjust the fee schedules established under subsec. (h) of this section to take into account any increase in the consumer price index, was negated in the amendment of section 4064(a) by Pub. L. 100–360, title IV, § 411(g)(3)(A), July 1, 1988, 102 Stat. 783.

GAO STUDY OF FEE SCHEDULES

Section 4064(b)(4) of Pub. L. 100–203 directed Comptroller General to conduct a study of level of fee schedules established for clinical diagnostic laboratory services under subsec. (h)(2) of this section to determine, based on costs of, and revenues received for, such tests the appropriateness of such schedules, with Comptroller General to report to Congress on results of such study by not later than Jan. 1, 1990, and with provision that suppliers of such tests which fail to provide Comptroller General with reasonable access to necessary records to carry out study being subject to exclusion from the medicare program under section 1320a–7(a) of this title.

AMOUNTS PAID FOR INDEPENDENT RURAL HEALTH CLINIC SERVICES

Section 4067(b) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall report to Congress, by not later than March 1, 1989, on the adequacy of the amounts paid under title XVIII of the Social Security Act [this subchapter] for rural health

clinic services provided by independent rural health clinics.''

REPORT ON ESTABLISHMENT OF NATIONAL FEE SCHEDULES FOR PAYMENT OF CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 9339(b)(3) of Pub. L. 99–509 directed Secretary of Health and Human Services to report to Congress, by not later than Apr. 1, 1988, on advisability and feasibility of, and methodology for, establishing national fee schedules for payment for clinical diagnostic laboratory tests under section 1395*l*(h) of this title, prior to repeal by Pub. L. 101–508, title IV, § 4154(e)(3), Nov. 5, 1990, 104 Stat. 1388–86, effective as if included in enactment of Pub. L. 99–509.

STATE STANDARDS FOR DIRECTORS OF CLINICAL LABORATORIES

Section 9339(d) of Pub. L. 99–509 provided that:

''(1) IN GENERAL.—If a State (as defined for purposes of title XVIII of the Social Security Act [this subchapter]) provides for the licensing or other standards with respect to the operation of clinical laboratories (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications.

''(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on January 1, 1987.''

TRANSITIONAL PROVISIONS FOR PAYMENT OF FEES FOR CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 9303(a)(3) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall provide that the annual adjustment under section 1833(h) of the Social Security Act [subsec. (h) of this section] for 1986—

''(A) shall take effect on January 1, 1987,

''(B) shall apply for the 12-month period beginning on that date, and

''(C) shall take into account the percentage increase or decrease in the Consumer Price Index for all urban consumers (United States city average) occurring over an 18-month period, rather than over a 12-month period.''

EXTENSION OF MEDICARE PHYSICIAN PAYMENT PROVISIONS

Amount of payment under this part for physicians' services furnished between Oct. 1, 1985, and Mar. 14, 1986, to be determined on the same basis as the amount of such services furnished on Sept. 30, 1985, see section 5(b) of Pub. L. 99–107, as amended, set out as a note under section 1395ww of this title.

FEE SCHEDULES FOR DIAGNOSTIC LABORATORY TESTS AND FEASIBILITY OF DIRECT PAYMENTS TO PHYSICIANS; REPORT TO CONGRESS

Section 2303(i) of Pub. L. 98–369 provided that:

''(1) The Comptroller General shall report to the Congress on—

''(A) the appropriateness of the fee schedules under section 1833(h) of the Social Security Act [subsec. (h) of this section] and their impact on the volume and quality of clinical diagnostic laboratory tests;

''(B) the potential impact of the adoption of a national fee schedule; and

''(C) the potential impact of applying a national fee schedule to clinical diagnostic laboratory tests provided by hospitals to their outpatients.

''(2) The Secretary of Health and Human Services shall report to the Congress with respect to the advisability and feasibility of a system of direct payment to any physician for all clinical diagnostic laboratory tests ordered by such physician.

''(3) The reports required by paragraphs (1) and (2) shall be submitted not later than January 1, 1987.''

PACEMAKER REIMBURSEMENT REVIEW AND REFORM

Section 2304(a) of Pub. L. 98–369 provided that:

''(1) The Secretary of Health and Human Services shall issue revisions to the current guidelines for the payment under part B of title XVIII of the Social Security Act [this part] for the transtelephonic monitoring of cardiac pacemakers. Such revised guidelines shall include provisions regarding the specifications for and frequency of transtelephonic monitoring procedures which will be found to be reasonable and necessary.

''(2)(A) Except as provided in subparagraph (B), if the guidelines required by paragraph (1) have not been issued and put into effect by October 1, 1984, and until such guidelines have been issued and put into effect, payment may not be made under part B of title XVIII of the Social Security Act for transtelephonic monitoring procedures, with respect to a single-chamber cardiac pacemaker powered by lithium batteries, conducted more frequently than—

''(i) weekly during the first month after implantation,

''(ii) once every two months during the period representing 80 percent of the estimated life of the implanted device, and

''(iii) monthly thereafter.

''(B) Subparagraph (A) shall not apply in cases where the Secretary determines that special medical factors (including possible evidence of pacemaker or lead malfunction) justify more frequent transtelephonic monitoring procedures.''

PAYMENT FOR PREADMISSION DIAGNOSTIC TESTING PERFORMED IN PHYSICIAN'S OFFICE

Section 2305(f) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and enacting provisions set out above] shall not be construed as prohibiting payment, subject to the applicable copayments, under part B of title XVIII of the Social Security Act [this part] for preadmission diagnostic testing performed in a physician's office to the extent such testing is otherwise reimbursable under regulations of the Secretary.''

PROVIDERS OF SERVICES TO CALCULATE AND REPORT LESSER-OF-COST-OR-CHARGES DETERMINATIONS SEPARATELY WITH RESPECT TO PAYMENTS UNDER PARTS A AND B OF THIS SUBCHAPTER; ISSUANCE OF REGULATIONS

For provision directing the Secretary to issue regulations requiring providers of services to calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under parts A and B of this subchapter other than diagnostic tests under subsec. (h) of this section, see section 2308(a) of Pub. L. 98–369, set out as a note under section 1395f of this title.

DETERMINATION OF NOMINAL CHARGES FOR APPLYING NOMINALITY TEST

For provision directing the Secretary to provide, in addition to other rules deemed appropriate, that charges representing 60 percent or less of costs be considered nominal for purposes of applying the nominality test under subsec. (a)(2)(B)(ii) of this section, see section 2308(b)(1) of Pub. L. 98–369, set out as a note under section 1395f of this title.

STUDY OF MEDICARE PART B PAYMENTS; COMPILATION OF CENTRALIZED CHARGE DATA BASE; REPORT TO CONGRESS

Section 2309 of Pub. L. 98–369 directed Director of Office of Technology Assessment to conduct a study of physician reimbursement under the Medicare program and make a report not later than Dec. 31, 1985, covering findings and recommendations on methods by which payment amounts and other program policies under the

program might be modified, and directed that Secretary of Health and Human Services compile a centralized Medicare part B charge data base to aid in the study.

MONITORING PROVISION OF HEPATITIS B VACCINE; REVIEW OF CHANGES IN MEDICAL TECHNOLOGY

Section 2323(e) of Pub. L. 98–369 provided that: ''The Secretary shall monitor the provision of hepatitis B vaccine under part B of title XVIII of the Social Security Act [this part], and shall review any changes in medical technology which may have an effect on the amounts which should be paid for such service.''

REPORT ON PREADMISSION DIAGNOSTIC TESTING EXPENSES

Section 932(b) of Pub. L. 96–499 required a report to Congress, no later than one year after Dec. 5, 1980, on the policy respecting expenses incurred for preadmission diagnostic testing furnished to an individual at a hospital within seven days of an individual's admission to another hospital.

STUDY OF FEASIBILITY AND DESIRABILITY OF IMPOSING COPAYMENT REQUIREMENT ON RURAL HEALTH CLINIC VISITS; REPORT NOT LATER THAN DECEMBER 13, 1978

Section 1(c) of Pub. L. 95–210 directed Secretary of Health, Education, and Welfare to conduct a study of the feasibility and desirability of imposing a copayment for each visit to a rural health clinic for rural health clinic services under this part and that Secretary report to appropriate committee of Congress, not later than one year after Dec. 13, 1977, on such study.

PROHIBITION AGAINST PAYMENTS IN CASES OF NONENTITLEMENT TO MONTHLY BENEFITS UNDER SUBCHAPTER II OR SUSPENSION OF BENEFITS OF ALIENS OUTSIDE THE UNITED STATES

Section 104(b)(1) of Pub. L. 89–97 provided that: ''No payments shall be made under part B of title XVIII of the Social Security Act [this part] with respect to expenses incurred by an individual during any month for which such individual may not be paid monthly benefits under title II of such Act [subchapter II of this chapter] (or for which such monthly benefits would be suspended if he were otherwise entitled thereto) by reason of section 202(t) of such Act [section 402(t) of this title] (relating to suspension of benefits of aliens who are outside the United States).''

§ 1395m. Special payment rules for particular items and services

(a) Payment for durable medical equipment

(1) General rule for payment

(A) In general

With respect to a covered item (as defined in paragraph (13)) for which payment is determined under this subsection, payment shall be made in the frequency specified in paragraphs (2) through (7) and in an amount equal to 80 percent of the payment basis described in subparagraph (B).

(B) Payment basis

Subject to subparagraph (F)(i), the payment basis described in this subparagraph is the lesser of—

(i) the actual charge for the item, or

(ii) the payment amount recognized under paragraphs (2) through (7) of this subsection for the item;

except that clause (i) shall not apply if the covered item is furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

(C) Exclusive payment rule

Subject to subparagraph (F)(ii), this subsection shall constitute the exclusive provision of this subchapter for payment for covered items under this part or under part A of this subchapter to a home health agency.

(D) Reduction in fee schedules for certain items

With respect to a seat-lift chair or transcutaneous electrical nerve stimulator furnished on or after April 1, 1990, the Secretary shall reduce the payment amount applied under subparagraph (B)(ii) for such an item by 15 percent, and, in the case of a transcutaneous electrical nerve stimulator furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 45 percent.

(E) Clinical conditions for coverage

(i) In general

The Secretary shall establish standards for clinical conditions for payment for covered items under this subsection.

(ii) Requirements

The standards established under clause (i) shall include the specification of types or classes of covered items that require, as a condition of payment under this subsection, a face-to-face examination of the individual by a physician (as defined in section 1395x(r)(1) of this title), a physician assistant, nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1395x(aa)(5) of this title) and a prescription for the item.

(iii) Priority of establishment of standards

In establishing the standards under this subparagraph, the Secretary shall first establish standards for those covered items for which the Secretary determines there has been a proliferation of use, consistent findings of charges for covered items that are not delivered, or consistent findings of falsification of documentation to provide for payment of such covered items under this part.

(iv) Standards for power wheelchairs

Effective on December 8, 2003, in the case of a covered item consisting of a motorized or power wheelchair for an individual, payment may not be made for such covered item unless a physician (as defined in section 1395x(r)(1) of this title), a physician assistant, nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1395x(aa)(5) of this title) has conducted a face-to-face examination of the individual and written a prescription for the item.

(v) Limitation on payment for covered items

Payment may not be made for a covered item under this subsection unless the item meets any standards established under this subparagraph for clinical condition of coverage.

(F) Application of competitive acquisition; limitation of inherent reasonableness authority

In the case of covered items furnished on or after January 1, 2009, that are included in a competitive acquisition program in a competitive acquisition area under section 1395w–3(a) of this title—

(i) the payment basis under this subsection for such items and services furnished in such area shall be the payment basis determined under such competitive acquisition program; and

(ii) the Secretary may use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise recognized under subparagraph (B)(ii) for an area that is not a competitive acquisition area under section 1395w–3 of this title and in the case of such adjustment, paragraph (10)(B) shall not be applied.

(2) Payment for inexpensive and other routinely purchased durable medical equipment

(A) In general

Payment for an item of durable medical equipment (as defined in paragraph (13))—

(i) the purchase price of which does not exceed $150,

(ii) which the Secretary determines is acquired at least 75 percent of the time by purchase, or

(iii) which is an accessory used in conjunction with a nebulizer, aspirator, or a ventilator excluded under paragraph (3)(A),

shall be made on a rental basis or in a lump-sum amount for the purchase of the item. The payment amount recognized for purchase or rental of such equipment is the amount specified in subparagraph (B) for purchase or rental, except that the total amount of payments with respect to an item may not exceed the payment amount specified in subparagraph (B) with respect to the purchase of the item.

(B) Payment amount

For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to the purchase or rental of an item furnished in a carrier service area—

(i) in 1989 and in 1990 is the average reasonable charge in the area for the purchase or rental, respectively, of the item for the 12-month period ending on June 30, 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987;

(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;

(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and

(iv) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year (reduced by 10 percent, in the case of a blood glucose testing strip furnished after 1997 for an individual with diabetes).

(C) Computation of local payment amount and national limited payment amount

For purposes of subparagraph (B)—

(i) the local payment amount for an item or device for a year is equal to—

(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and

(II) for 1992, 1993, and 1994, the amount determined under this clause for the preceding year increased by the covered item update for the year; and

(ii) the national limited payment amount for an item or device for a year is equal to—

(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item,

(II) for 1992 and 1993, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year,

(III) for 1994, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the median of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the median of all local payment amounts determined under such clause for such item or device for that year, and

(IV) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.

(3) Payment for items requiring frequent and substantial servicing

(A) In general

Payment for a covered item (such as IPPB machines and ventilators, excluding ventila-

tors that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices) for which there must be frequent and substantial servicing in order to avoid risk to the patient's health shall be made on a monthly basis for the rental of the item and the amount recognized is the amount specified in subparagraph (B).

(B) Payment amount

For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to an item or device furnished in a carrier service area—

(i) in 1989 and in 1990 is the average reasonable charge in the area for the rental of the item or device for the 12-month period ending with June 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987;

(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;

(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and

(iv) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year.

(C) Computation of local payment amount and national limited payment amount

For purposes of subparagraph (B)—

(i) the local payment amount for an item or device for a year is equal to—

(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and

(II) for 1992, 1993, and 1994, the amount determined under this clause for the preceding year increased by the covered item update for the year; and

(ii) the national limited payment amount for an item or device for a year is equal to—

(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item,

(II) for 1992 and 1993, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year,

(III) for 1994, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the median of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the median of all local payment amounts determined under such clause for such item or device for that year, and

(IV) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.

(4) Payment for certain customized items

Payment with respect to a covered item that is uniquely constructed or substantially modified to meet the specific needs of an individual patient, and for that reason cannot be grouped with similar items for purposes of payment under this subchapter, shall be made in a lump-sum amount (A) for the purchase of the item in a payment amount based upon the carrier's individual consideration for that item, and (B) for the reasonable and necessary maintenance and servicing for parts and labor not covered by the supplier's or manufacturer's warranty, when necessary during the period of medical need, and the amount recognized for such maintenance and servicing shall be paid on a lump-sum, as needed basis based upon the carrier's individual consideration for that item.

(5) Payment for oxygen and oxygen equipment

(A) In general

Payment for oxygen and oxygen equipment shall be made on a monthly basis in the monthly payment amount recognized under paragraph (9) for oxygen and oxygen equipment (other than portable oxygen equipment), subject to subparagraphs (B), (C), (E), and (F).

(B) Add-on for portable oxygen equipment

When portable oxygen equipment is used, but subject to subparagraph (D), the payment amount recognized under subparagraph (A) shall be increased by the monthly payment amount recognized under paragraph (9) for portable oxygen equipment.

(C) Volume adjustment

When the attending physician prescribes an oxygen flow rate—

(i) exceeding 4 liters per minute, the payment amount recognized under subparagraph (A), subject to subparagraph (D), shall be increased by 50 percent, or

(ii) of less than 1 liter per minute, the payment amount recognized under subparagraph (A) shall be decreased by 50 percent.

(D) Limit on adjustment

When portable oxygen equipment is used and the attending physician prescribes an oxygen flow rate exceeding 4 liters per

minute, there shall only be an increase under either subparagraph (B) or (C), whichever increase is larger, and not under both such subparagraphs.

(E) Recertification for patients receiving home oxygen therapy

In the case of a patient receiving home oxygen therapy services who, at the time such services are initiated, has an initial arterial blood gas value at or above a partial pressure of 56 or an arterial oxygen saturation at or above 89 percent (or such other values, pressures, or criteria as the Secretary may specify) no payment may be made under this part for such services after the expiration of the 90-day period that begins on the date the patient first receives such services unless the patient's attending physician certifies that, on the basis of a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 30 days of such 90-day period, there is a medical need for the patient to continue to receive such services.

(F) Ownership of equipment

(i) In general

Payment for oxygen equipment (including portable oxygen equipment) under this paragraph may not extend over a period of continuous use (as determined by the Secretary) of longer than 36 months.

(ii) Ownership

(I) Transfer of title

On the first day that begins after the 36th continuous month during which payment is made for the equipment under this paragraph, the supplier of the equipment shall transfer title to the equipment to the individual.

(II) Payments for oxygen and maintenance and servicing

After the supplier transfers title to the equipment under subclause (I)—

(aa) payments for oxygen shall continue to be made in the amount recognized for oxygen under paragraph (9) for the period of medical need; and

(bb) maintenance and servicing payments shall, if the Secretary determines such payments are reasonable and necessary, be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the equipment), and such payments shall be in an amount determined to be appropriate by the Secretary.

(6) Payment for other covered items (other than durable medical equipment)

Payment for other covered items (other than durable medical equipment and other covered items described in paragraph (3), (4), or (5)) shall be made in a lump-sum amount for the purchase of the item in the amount of the purchase price recognized under paragraph (8).

(7) Payment for other items of durable medical equipment

(A) Payment

In the case of an item of durable medical equipment not described in paragraphs (2) through (6), the following rules shall apply:

(i) Rental

(I) In general

Except as provided in clause (iii), payment for the item shall be made on a monthly basis for the rental of the item during the period of medical need (but payments under this clause may not extend over a period of continuous use (as determined by the Secretary) of longer than 13 months).

(II) Payment amount

Subject to subparagraph (B), the amount recognized for the item, for each of the first 3 months of such period, is 10 percent of the purchase price recognized under paragraph (8) with respect to the item, and, for each of the remaining months of such period, is 7.5 percent of such purchase price.

(ii) Ownership after rental

On the first day that begins after the 13th continuous month during which payment is made for the rental of an item under clause (i), the supplier of the item shall transfer title to the item to the individual.

(iii) Purchase agreement option for power-driven wheelchairs

In the case of a power-driven wheelchair, at the time the supplier furnishes the item, the supplier shall offer the individual the option to purchase the item, and payment for such item shall be made on a lump-sum basis if the individual exercises such option.

(iv) Maintenance and servicing

After the supplier transfers title to the item under clause (ii) or in the case of a power-driven wheelchair for which a purchase agreement has been entered into under clause (iii), maintenance and servicing payments shall, if the Secretary determines such payments are reasonable and necessary, be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment), and such payments shall be in an amount determined to be appropriate by the Secretary.

(B) Range for rental amounts

(i) For 1989

For items furnished during 1989, the payment amount recognized under subparagraph (A)(i) shall not be more than 115 percent, and shall not be less than 85 percent, of the prevailing charge established for rental of the item in January 1987, increased by the percentage increase in the

consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987.

(ii) For 1990

For items furnished during 1990, clause (i) shall apply in the same manner as it applies to items furnished during 1989.

(C) Replacement of items

(i) Establishment of reasonable useful lifetime

In accordance with clause (iii), the Secretary shall determine and establish a reasonable useful lifetime for items of durable medical equipment for which payment may be made under this paragraph.

(ii) Payment for replacement items

If the reasonable lifetime of such an item, as so established, has been reached during a continuous period of medical need, or the carrier determines that the item is lost or irreparably damaged, the patient may elect to have payment for an item serving as a replacement for such item made—

(I) on a monthly basis for the rental of the replacement item in accordance with subparagraph (A); or

(II) in the case of an item for which a purchase agreement has been entered into under subparagraph (A)(ii) or (A)(iii), in a lump-sum amount for the purchase of the item.

(iii) Length of reasonable useful lifetime

The reasonable useful lifetime of an item of durable medical equipment under this subparagraph shall be equal to 5 years, except that, if the Secretary determines that, on the basis of prior experience in making payments for such an item under this subchapter, a reasonable useful lifetime of 5 years is not appropriate with respect to a particular item, the Secretary shall establish an alternative reasonable lifetime for such item.

(8) Purchase price recognized for miscellaneous devices and items

For purposes of paragraphs (6) and (7), the amount that is recognized under this paragraph as the purchase price for a covered item is the amount described in subparagraph (C) of this paragraph, determined as follows:

(A) Computation of local purchase price

Each carrier under section 1395u of this title shall compute a base local purchase price for the item as follows:

(i) The carrier shall compute a base local purchase price, for each item described—

(I) in paragraph (6) equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987, or

(II) in paragraph (7) equal to the average of the purchase prices on the claims submitted on an assignment-related basis for the unused item supplied during the 6-month period ending with December 1986.

(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

(I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987,

(II) in 1991, equal to the local purchase price computed under this clause for the previous year, increased by the covered item update for 1991, and decreased by the percentage by which the average of the reasonable charges for claims paid for all items described in paragraph (7) is lower than the average of the purchase prices submitted for such items during the final 9 months of 1988;[1] or

(III) in 1992, 1993, and 1994, equal to the local purchase price computed under this clause for the previous year increased by the covered item update for the year.

(B) Computation of national limited purchase price

With respect to the furnishing of a particular item in a year, the Secretary shall compute a national limited purchase price—

(i) for 1991, equal to the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year;

(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

(iii) for 1994, the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the median of all local purchase prices computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local purchase prices computed under such subparagraph for the item for the year; and

(iv) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.

(C) Purchase price recognized

For purposes of paragraphs (6) and (7), the amount that is recognized under this paragraph as the purchase price for each item furnished—

(i) in 1989 or 1990, is 100 percent of the local purchase price computed under subparagraph (A)(ii)(I);

[1] So in original. The semicolon probably should be a comma.

(ii) in 1991, is the sum of (I) 67 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1991, and (II) 33 percent of the national limited purchase price computed under subparagraph (B) for 1991;

(iii) in 1992, is the sum of (I) 33 percent of the local purchase price computed under subparagraph (A)(ii)(III) for 1992, and (II) 67 percent of the national limited purchase price computed under subparagraph (B) for 1992; and

(iv) in 1993 or a subsequent year, is the national limited purchase price computed under subparagraph (B) for that year.

(9) Monthly payment amount recognized with respect to oxygen and oxygen equipment

For purposes of paragraph (5), the amount that is recognized under this paragraph for payment for oxygen and oxygen equipment is the monthly payment amount described in subparagraph (C) of this paragraph. Such amount shall be computed separately (i) for all items of oxygen and oxygen equipment (other than portable oxygen equipment) and (ii) for portable oxygen equipment (each such group referred to in this paragraph as an ''item'').

(A) Computation of local monthly payment rate

Each carrier under this section shall compute a base local payment rate for each item as follows:

(i) The carrier shall compute a base local average monthly payment rate per beneficiary as an amount equal to (I) the total reasonable charges for the item during the 12-month period ending with December 1986, divided by (II) the total number of months for all beneficiaries receiving the item in the area during the 12-month period for which the carrier made payment for the item under this subchapter.

(ii) The carrier shall compute a local average monthly payment rate for the item applicable—

(I) to 1989 and 1990, equal to 95 percent of the base local average monthly payment rate computed under clause (i) for the item increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987, or

(II) to 1991, 1992, 1993, and 1994, equal to the local average monthly payment rate computed under this clause for the item for the previous year increased by the covered item increase for the year.

(B) Computation of national limited monthly payment rate

With respect to the furnishing of an item in a year, the Secretary shall compute a national limited monthly payment rate equal to—

(i) for 1991, the local monthly payment rate computed under subparagraph (A)(ii)(II) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year;

(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

(iii) for 1994, the local monthly payment rate computed under subparagraph (A)(ii) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year;

(iv) for 1995, 1996, and 1997, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

(v) for 1998, 75 percent of the amount determined under this subparagraph for 1997; and

(vi) for 1999 and each subsequent year, 70 percent of the amount determined under this subparagraph for 1997.

(C) Monthly payment amount recognized

For purposes of paragraph (5), the amount that is recognized under this paragraph as the base monthly payment amount for each item furnished—

(i) in 1989 and in 1990, is 100 percent of the local average monthly payment rate computed under subparagraph (A)(ii) for the item;

(ii) in 1991, is the sum of (I) 67 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1991, and (II) 33 percent of the national limited monthly payment rate computed under subparagraph (B)(i) for the item for 1991;

(iii) in 1992, is the sum of (I) 33 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1992, and (II) 67 percent of the national limited monthly payment rate computed under subparagraph (B)(ii) for the item for 1992; and

(iv) in a subsequent year, is the national limited monthly payment rate computed under subparagraph (B) for the item for that year.

(D) Authority to create classes

(i) In general

Subject to clause (ii), the Secretary may establish separate classes for any item of oxygen and oxygen equipment and separate national limited monthly payment rates for each of such classes.

(ii) Budget neutrality

The Secretary may take actions under clause (i) only to the extent such actions do not result in expenditures for any year to be more or less than the expenditures which would have been made if such actions had not been taken.

(10) Exceptions and adjustments

(A) Areas outside continental United States

Exceptions to the amounts recognized under the previous provisions of this subsection shall be made to take into account the unique circumstances of covered items furnished in Alaska, Hawaii, or Puerto Rico.

(B) Adjustment for inherent reasonableness

The Secretary is authorized to apply the provisions of paragraphs (8) and (9) of section 1395u(b) of this title to covered items and suppliers of such items and payments under this subsection in an area and with respect to covered items and services for which the Secretary does not make a payment amount adjustment under paragraph (1)(F).

(C) Transcutaneous electrical nerve stimulator (TENS)

In order to permit an attending physician time to determine whether the purchase of a transcutaneous electrical nerve stimulator is medically appropriate for a particular patient, the Secretary may determine an appropriate payment amount for the initial rental of such item for a period of not more than 2 months. If such item is subsequently purchased, the payment amount with respect to such purchase is the payment amount determined under paragraph (2).

(11) Improper billing and requirement of physician order

(A) Improper billing for certain rental items

Notwithstanding any other provision of this subchapter, a supplier of a covered item for which payment is made under this subsection and which is furnished on a rental basis shall continue to supply the item without charge (other than a charge provided under this subsection for the maintenance and servicing of the item) after rental payments may no longer be made under this subsection. If a supplier knowingly and willfully violates the previous sentence, the Secretary may apply sanctions against the supplier under section 1395u(j)(2) of this title in the same manner such sanctions may apply with respect to a physician.

(B) Requirement of physician order

The Secretary is authorized to require, for specified covered items, that payment may be made under this subsection with respect to the item only if a physician has communicated to the supplier, before delivery of the item, a written order for the item.

(12) Regional carriers

The Secretary may designate, by regulation under section 1395u of this title, one carrier for one or more entire regions to process all claims within the region for covered items under this section.

(13) "Covered item" defined

In this subsection, the term ''covered item'' means durable medical equipment (as defined in section 1395x(n) of this title), including such equipment described in section 1395x(m)(5) of this title, but not including implantable items for which payment may be made under section 1395*l*(t) of this title.

(14) Covered item update

In this subsection, the term ''covered item update'' means, with respect to a year—

(A) for 1991 and 1992, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced by 1 percentage point;

(B) for 1993, 1994, 1995, 1996, and 1997, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year;

(C) for each of the years 1998 through 2000, 0 percentage points;

(D) for 2001, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 2000;

(E) for 2002, 0 percentage points;

(F) for 2003, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of 2002;

(G) for 2004 through 2006—

(i) subject to clause (ii), in the case of class III medical devices described in section 360c(a)(1)(C) of title 21, the percentage increase described in subparagraph (B) for the year involved; and

(ii) in the case of covered items not described in clause (i), 0 percentage points;

(H) for 2007—

(i) subject to clause (ii), in the case of class III medical devices described in section 360c(a)(1)(C) of title 21, the percentage change determined by the Secretary to be appropriate taking into account recommendations contained in the report of the Comptroller General of the United States under section 302(c)(1)(B) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and

(ii) in the case of covered items not described in clause (i), 0 percentage points; and

(I) for 2008—

(i) subject to clause (ii), in the case of class III medical devices described in section 360c(a)(1)(C) of title 21, the percentage increase described in subparagraph (B) (as applied to the payment amount for 2007 determined after the application of the percentage change under subparagraph (H)(i)); and

(ii) in the case of covered items not described in clause (i), 0 percentage points; and

(J) for a subsequent year, the percentage increase in the consumer price index for all

urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year.

(15) Advance determinations of coverage for certain items

(A) Development of lists of items by Secretary

The Secretary may develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization throughout a carrier's entire service area or a portion of such area.

(B) Development of lists of suppliers by Secretary

The Secretary may develop and periodically update a list of suppliers of items for which payment may be made under this subsection with respect to whom—

(i) the Secretary has found that a substantial number of claims for payment under this part for items furnished by the supplier have been denied on the basis of the application of section 1395y(a)(1) of this title; or

(ii) the Secretary has identified a pattern of overutilization resulting from the business practice of the supplier.

(C) Determinations of coverage in advance

A carrier shall determine in advance of delivery of an item whether payment for the item may not be made because the item is not covered or because of the application of section 1395y(a)(1) of this title if—

(i) the item is included on the list developed by the Secretary under subparagraph (A);

(ii) the item is furnished by a supplier included on the list developed by the Secretary under subparagraph (B); or

(iii) the item is a customized item (other than inexpensive items specified by the Secretary) and the patient to whom the item is to be furnished or the supplier requests that such advance determination be made.

(16) Disclosure of information and surety bond

The Secretary shall not provide for the issuance (or renewal) of a provider number for a supplier of durable medical equipment, for purposes of payment under this part for durable medical equipment furnished by the supplier, unless the supplier provides the Secretary on a continuing basis—

(A) with—

(i) full and complete information as to the identity of each person with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the supplier or in any subcontractor (as defined by the Secretary in regulations) in which the supplier directly or indirectly has a 5 percent or more ownership interest; and

(ii) to the extent determined to be feasible under regulations of the Secretary, the name of any disclosing entity (as defined in section 1320a–3(a)(2) of this title) with respect to which a person with such an ownership or control interest in the supplier is a person with such an ownership or control interest in the disclosing entity; and

(B) with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000.

The Secretary may waive the requirement of a bond under subparagraph (B) in the case of a supplier that provides a comparable surety bond under State law. The Secretary, at the Secretary's discretion, may impose the requirements of the first sentence with respect to some or all providers of items or services under part A of this subchapter or some or all suppliers or other persons (other than physicians or other practitioners, as defined in section 1395u(b)(18)(C) of this title) who furnish items or services under this part.

(17) Prohibition against unsolicited telephone contacts by suppliers

(A) In general

A supplier of a covered item under this subsection may not contact an individual enrolled under this part by telephone regarding the furnishing of a covered item to the individual unless 1 of the following applies:

(i) The individual has given written permission to the supplier to make contact by telephone regarding the furnishing of a covered item.

(ii) The supplier has furnished a covered item to the individual and the supplier is contacting the individual only regarding the furnishing of such covered item.

(iii) If the contact is regarding the furnishing of a covered item other than a covered item already furnished to the individual, the supplier has furnished at least 1 covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

(B) Prohibiting payment for items furnished subsequent to unsolicited contacts

If a supplier knowingly contacts an individual in violation of subparagraph (A), no payment may be made under this part for any item subsequently furnished to the individual by the supplier.

(C) Exclusion from program for suppliers engaging in pattern of unsolicited contacts

If a supplier knowingly contacts individuals in violation of subparagraph (A) to such an extent that the supplier's conduct establishes a pattern of contacts in violation of such subparagraph, the Secretary shall exclude the supplier from participation in the programs under this chapter, in accordance with the procedures set forth in subsections (c), (f), and (g) of section 1320a–7 of this title.

(18) Refund of amounts collected for certain disallowed items

(A) In general

If a nonparticipating supplier furnishes to an individual enrolled under this part a cov-

ered item for which no payment may be made under this part by reason of paragraph (17)(B), the supplier shall refund on a timely basis to the patient (and shall be liable to the patient for) any amounts collected from the patient for the item, unless—

(i) the supplier establishes that the supplier did not know and could not reasonably have been expected to know that payment may not be made for the item by reason of paragraph (17)(B), or

(ii) before the item was furnished, the patient was informed that payment under this part may not be made for that item and the patient has agreed to pay for that item.

(B) Sanctions

If a supplier knowingly and willfully fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against the supplier in accordance with section 1395u(j)(2) of this title.

(C) Notice

Each carrier with a contract in effect under this part with respect to suppliers of covered items shall send any notice of denial of payment for covered items by reason of paragraph (17)(B) and for which payment is not requested on an assignment-related basis to the supplier and the patient involved.

(D) Timely basis defined

A refund under subparagraph (A) is considered to be on a timely basis only if—

(i) in the case of a supplier who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the supplier receives a denial notice under subparagraph (C), or

(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the supplier receives notice of an adverse determination on reconsideration or appeal.

(19) Certain upgraded items

(A) Individual's right to choose upgraded item

Notwithstanding any other provision of this subchapter, the Secretary may issue regulations under which an individual may purchase or rent from a supplier an item of upgraded durable medical equipment for which payment would be made under this subsection if the item were a standard item.

(B) Payments to supplier

In the case of the purchase or rental of an upgraded item under subparagraph (A)—

(i) the supplier shall receive payment under this subsection with respect to such item as if such item were a standard item; and

(ii) the individual purchasing or renting the item shall pay the supplier an amount equal to the difference between the supplier's charge and the amount under clause (i).

In no event may the supplier's charge for an upgraded item exceed the applicable fee schedule amount (if any) for such item.

(C) Consumer protection safeguards

Any regulations under subparagraph (A) shall provide for consumer protection standards with respect to the furnishing of upgraded equipment under subparagraph (A). Such regulations shall provide for—

(i) determination of fair market prices with respect to an upgraded item;

(ii) full disclosure of the availability and price of standard items and proof of receipt of such disclosure information by the beneficiary before the furnishing of the upgraded item;

(iii) conditions of participation for suppliers in the billing arrangement;

(iv) sanctions of suppliers who are determined to engage in coercive or abusive practices, including exclusion; and

(v) such other safeguards as the Secretary determines are necessary.

(20) Identification of quality standards

(A) In general

Subject to subparagraph (C), the Secretary shall establish and implement quality standards for suppliers of items and services described in subparagraph (D) to be applied by recognized independent accreditation organizations (as designated under subparagraph (B)) and with which such suppliers shall be required to comply in order to—

(i) furnish any such item or service for which payment is made under this part; and

(ii) receive or retain a provider or supplier number used to submit claims for reimbursement for any such item or service for which payment may be made under this subchapter.

(B) Designation of independent accreditation organizations

Not later than the date that is 1 year after the date on which the Secretary implements the quality standards under subparagraph (A), notwithstanding section 1395bb(b) of this title, the Secretary shall designate and approve one or more independent accreditation organizations for purposes of such subparagraph.

(C) Quality standards

The quality standards described in subparagraph (A) may not be less stringent than the quality standards that would otherwise apply if this paragraph did not apply and shall include consumer services standards.

(D) Items and services described

The items and services described in this subparagraph are the following items and services, as the Secretary determines appropriate:

(i) Covered items (as defined in paragraph (13)) for which payment may otherwise be made under this subsection.

(ii) Prosthetic devices and orthotics and prosthetics described in subsection (h)(4) of this section.

(iii) Items and services described in section 1395u(s)(2) of this title.

(E) Implementation

The Secretary may establish by program instruction or otherwise the quality stand-

ards under this paragraph, after consultation with representatives of relevant parties. Such standards shall be applied prospectively and shall be published on the Internet website of the Centers for Medicare & Medicaid Services.

(21) Special payment rule for specified items and supplies

(A) In general

Notwithstanding the preceding provisions of this subsection, for specified items and supplies (described in subparagraph (B)) furnished during 2005, the payment amount otherwise determined under this subsection for such specified items and supplies shall be reduced by the percentage difference between—

(i) the amount of payment otherwise determined for the specified item or supply under this subsection for 2002, and

(ii) the amount of payment for the specified item or supply under chapter 89 of title 5, as identified in the column entitled ''Median FEHP Price'' in the table entitled ''SUMMARY OF MEDICARE PRICES COMPARED TO VA, MEDICAID, RETAIL, AND FEHP PRICES FOR 16 ITEMS'' included in the Testimony of the Inspector General before the Senate Committee on Appropriations, June 12, 2002, or any subsequent report by the Inspector General.

(B) Specified item or supply described

For purposes of subparagraph (A), a specified item or supply means oxygen and oxygen equipment, standard wheelchairs (including standard power wheelchairs), nebulizers, diabetic supplies consisting of lancets and testing strips, hospital beds, and air mattresses, but only if the HCPCS code for the item or supply is identified in a table referred to in subparagraph (A)(ii).

(C) Application of update to special payment amount

The covered item update under paragraph (14) for specified items and supplies for 2006 and each subsequent year shall be applied to the payment amount under subparagraph (A) unless payment is made for such items and supplies under section 1395w–3 of this title.

(b) Fee schedules for radiologist services

(1) Development

The Secretary shall develop—

(A) a relative value scale to serve as the basis for the payment for radiologist services under this part, and

(B) using such scale and appropriate conversion factors and subject to subsection (c)(1)(A) of this section, fee schedules (on a regional, statewide, locality, or carrier service area basis) for payment for radiologist services under this part, to be implemented for such services furnished during 1989.

(2) Consultation

In carrying out paragraph (1), the Secretary shall regularly consult closely with the Physician Payment Review Commission, the American College of Radiology, and other organizations representing physicians or suppliers who furnish radiologist services and shall share with them the data and data analysis being used to make the determinations under paragraph (1), including data on variations in current medicare payments by geographic area, and by service and physician specialty.

(3) Considerations

In developing the relative value scale and fee schedules under paragraph (1), the Secretary—

(A) shall take into consideration variations in the cost of furnishing such services among geographic areas and among different sites where services are furnished, and

(B) may also take into consideration such other factors respecting the manner in which physicians in different specialties furnish such services as may be appropriate to assure that payment amounts are equitable and designed to promote effective and efficient provision of radiologist services by physicians in the different specialties.

(4) Savings

(A) Budget neutral fee schedules

The Secretary shall develop preliminary fee schedules for 1989, which are designed to result in the same amount of aggregate payments (net of any coinsurance and deductibles under sections 1395*l*(a)(1)(J) and 1395*l*(b) of this title) for radiologist services furnished in 1989 as would have been made if this subsection had not been enacted.

(B) Initial savings

The fee schedules established for payment purposes under this subsection for services furnished in 1989 shall be 97 percent of the amounts permitted under the preliminary fee schedules developed under subparagraph (A).

(C) 1990 fee schedules

For radiologist services (other than portable X-ray services) furnished under this part during 1990, after March 31 of such year, the conversion factors used under this subsection shall be 96 percent of the conversion factors that applied under this subsection as of December 31, 1989.

(D) 1991 fee schedules

For radiologist services (other than portable X-ray services) furnished under this part during 1991, the conversion factors used in a locality under this subsection shall, subject to clause (vii), be reduced to the adjusted conversion factor for the locality determined as follows:

(i) National weighted average conversion factor

The Secretary shall estimate the national weighted average of the conversion factors used under this subsection for services furnished during 1990 beginning on April 1, using the best available data.

(ii) Reduced national weighted average

The national weighted average estimated under clause (i) shall be reduced by 13 percent.

(iii) Computation of 1990 locality index relative to national average

The Secretary shall establish an index which reflects, for each locality, the ratio of the conversion factor used in the locality under this subsection to the national weighted average estimated under clause (i).

(iv) Adjusted conversion factor

The adjusted conversion factor for the professional or technical component of a service in a locality is the sum of ½ of the locally-adjusted amount determined under clause (v) and ½ of the GPCI-adjusted amount determined under clause (vi).

(v) Locally-adjusted amount

For purposes of clause (iv), the locally adjusted amount determined under this clause is the product of (I) the national weighted average conversion factor computed under clause (ii), and (II) the index value established under clause (iii) for the locality.

(vi) GPCI-adjusted amount

For purposes of clause (iv), the GPCI-adjusted amount determined under this clause is the sum of—

(I) the product of (a) the portion of the reduced national weighted average conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238–36243)); and

(II) the product of (a) the remaining portion of the reduced national weighted average conversion factor computed under clause (ii), and (b) the geographic practice cost index value specified in section 1395u(b)(14)(C)(iv) of this title for the locality.

In applying this clause with respect to the professional component of a service, 80 percent of the conversion factor shall be considered to be attributable to physician work and with respect to the technical component of the service, 0 percent shall be considered to be attributable to physician work.

(vii) Limits on conversion factor

The conversion factor to be applied to a locality to the professional or technical component of a service shall not be reduced under this subparagraph by more than 9.5 percent below the conversion factor applied in the locality under subparagraph (C) to such component, but in no case shall the conversion factor be less than 60 percent of the national weighted average of the conversion factors (computed under clause (i)).

(E) Rule for certain scanning services

In the case of the technical components of magnetic resonance imaging (MRI) services and computer assisted tomography (CAT) services furnished after December 31, 1990, the amount otherwise payable shall be reduced by 10 percent.

(F) Subsequent updating

For radiologist services furnished in subsequent years, the fee schedules shall be the schedules for the previous year updated by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year.

(G) Nonparticipating physicians and suppliers

Each fee schedule so established shall provide that the payment rate recognized for nonparticipating physicians and suppliers is equal to the appropriate percent (as defined in section 1395u(b)(4)(A)(iv) of this title) of the payment rate recognized for participating physicians and suppliers.

(5) Limiting charges of nonparticipating physicians and suppliers

(A) In general

In the case of radiologist services furnished after January 1, 1989, for which payment is made under a fee schedule under this subsection, if a nonparticipating physician or supplier furnishes the service to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B)).

(B) "Limiting charge" defined

In subparagraph (A), the term ''limiting charge'' means, with respect to a service furnished—

(i) in 1989, 125 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1),

(ii) in 1990, 120 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1), and

(iii) after 1990, 115 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1).

(C) Enforcement

If a physician or supplier knowingly and willfully bills in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1395u(j)(2) of this title in the same manner as such sanctions may apply to a physician.

(6) "Radiologist services" defined

For the purposes of this subsection and section 1395*l*(a)(1)(J) of this title, the term ''radiologist services'' only includes radiology services performed by, or under the direction or supervision of, a physician—

(A) who is certified, or eligible to be certified, by the American Board of Radiology, or

(B) for whom radiology services account for at least 50 percent of the total amount of charges made under this part.

(c) Payment and standards for screening mammography

(1) In general

With respect to expenses incurred for screening mammography (as defined in section 1395x(jj) of this title), payment may be made only—

(A) for screening mammography conducted consistent with the frequency permitted under paragraph (2); and

(B) if the screening mammography is conducted by a facility that has a certificate (or provisional certificate) issued under section 263b of this title.

(2) Frequency covered

(A) In general

Subject to revision by the Secretary under subparagraph (B)—

(i) no payment may be made under this part for screening mammography performed on a woman under 35 years of age;

(ii) payment may be made under this part for only one screening mammography performed on a woman over 34 years of age, but under 40 years of age; and

(iii) in the case of a woman over 39 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

(B) Revision of frequency

(i) Review

The Secretary, in consultation with the Director of the National Cancer Institute, shall review periodically the appropriate frequency for performing screening mammography, based on age and such other factors as the Secretary believes to be pertinent.

(ii) Revision of frequency

The Secretary, taking into consideration the review made under clause (i), may revise from time to time the frequency with which screening mammography may be paid for under this subsection.

(d) Frequency limits and payment for colorectal cancer screening tests

(1) Screening fecal-occult blood tests

(A) Payment amount

The payment amount for colorectal cancer screening tests consisting of screening fecal-occult blood tests is equal to the payment amount established for diagnostic fecal-occult blood tests under section 1395*l*(h) of this title.

(B) Frequency limit

No payment may be made under this part for a colorectal cancer screening test consisting of a screening fecal-occult blood test—

(i) if the individual is under 50 years of age; or

(ii) if the test is performed within the 11 months after a previous screening fecal-occult blood test.

(2) Screening flexible sigmoidoscopies

(A) Fee schedule

With respect to colorectal cancer screening tests consisting of screening flexible sigmoidoscopies, payment under section 1395w–4 of this title shall be consistent with payment under such section for similar or related services.

(B) Payment limit

In the case of screening flexible sigmoidoscopy services, payment under this part shall not exceed such amount as the Secretary specifies, based upon the rates recognized for diagnostic flexible sigmoidoscopy services.

(C) Facility payment limit

(i) In general

Notwithstanding subsections (i)(2)(A) and (t) of section 1395*l* of this title, in the case of screening flexible sigmoidoscopy services furnished on or after January 1, 1999, that—

(I) in accordance with regulations, may be performed in an ambulatory surgical center and for which the Secretary permits ambulatory surgical center payments under this part, and

(II) are performed in an ambulatory surgical center or hospital outpatient department,

payment under this part shall be based on the lesser of the amount under the fee schedule that would apply to such services if they were performed in a hospital outpatient department in an area or the amount under the fee schedule that would apply to such services if they were performed in an ambulatory surgical center in the same area.

(ii) Limitation on coinsurance

Notwithstanding any other provision of this subchapter, in the case of a beneficiary who receives the services described in clause (i)—

(I) in computing the amount of any applicable copayment, the computation of such coinsurance shall be based upon the fee schedule under which payment is made for the services, and

(II) the amount of such coinsurance is equal to 25 percent of the payment amount under the fee schedule described in subclause (I).

(D) Special rule for detected lesions

If during the course of such screening flexible sigmoidoscopy, a lesion or growth is detected which results in a biopsy or removal of the lesion or growth, payment under this part shall not be made for the screening flexible sigmoidoscopy but shall be made for the procedure classified as a flexible sigmoidoscopy with such biopsy or removal.

(E) Frequency limit

No payment may be made under this part for a colorectal cancer screening test con-

sisting of a screening flexible sigmoidoscopy—

(i) if the individual is under 50 years of age; or

(ii) if the procedure is performed within the 47 months after a previous screening flexible sigmoidoscopy or, in the case of an individual who is not at high risk for colorectal cancer, if the procedure is performed within the 119 months after a previous screening colonoscopy.

(3) Screening colonoscopy

(A) Fee schedule

With respect to colorectal cancer screening test consisting of a screening colonoscopy, payment under section 1395w–4 of this title shall be consistent with payment amounts under such section for similar or related services.

(B) Payment limit

In the case of screening colonoscopy services, payment under this part shall not exceed such amount as the Secretary specifies, based upon the rates recognized for diagnostic colonoscopy services.

(C) Facility payment limit

(i) In general

Notwithstanding subsections (i)(2)(A) and (t) of section 1395*l* of this title, in the case of screening colonoscopy services furnished on or after January 1, 1999, that are performed in an ambulatory surgical center or a hospital outpatient department, payment under this part shall be based on the lesser of the amount under the fee schedule that would apply to such services if they were performed in a hospital outpatient department in an area or the amount under the fee schedule that would apply to such services if they were performed in an ambulatory surgical center in the same area.

(ii) Limitation on coinsurance

Notwithstanding any other provision of this subchapter, in the case of a beneficiary who receives the services described in clause (i)—

(I) in computing the amount of any applicable coinsurance, the computation of such coinsurance shall be based upon the fee schedule under which payment is made for the services, and

(II) the amount of such coinsurance is equal to 25 percent of the payment amount under the fee schedule described in subclause (I).

(D) Special rule for detected lesions

If during the course of such screening colonoscopy, a lesion or growth is detected which results in a biopsy or removal of the lesion or growth, payment under this part shall not be made for the screening colonoscopy but shall be made for the procedure classified as a colonoscopy with such biopsy or removal.

(E) Frequency limit

No payment may be made under this part for a colorectal cancer screening test consisting of a screening colonoscopy for individuals at high risk for colorectal cancer if the procedure is performed within the 23 months after a previous screening colonoscopy or for other individuals if the procedure is performed within the 119 months after a previous screening colonoscopy or within 47 months after a previous screening flexible sigmoidoscopy.

(e) Repealed. Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981

(f) Reduction in payments for physician pathology services during 1991

(1) In general

For physician pathology services furnished under this part during 1991, the prevailing charges used in a locality under this part shall be 7 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

(2) Limitation

The prevailing charge for the technical and professional components of an[2] physician pathology service furnished by a physician through an independent laboratory shall not be reduced pursuant to paragraph (1) to the extent that such reduction would reduce such prevailing charge below 115 percent of the prevailing charge for the professional component of such service when furnished by a hospital-based physician in the same locality. For purposes of the preceding sentence, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians' office.

(g) Payment for outpatient critical access hospital services

(1) In general

The amount of payment for outpatient critical access hospital services of a critical access hospital is equal to 101 percent of the reasonable costs of the hospital in providing such services, unless the hospital makes the election under paragraph (2).

(2) Election of cost-based hospital outpatient service payment plus fee schedule for professional services

A critical access hospital may elect to be paid for outpatient critical access hospital services amounts equal to the sum of the following, less the amount that such hospital may charge as described in section 1395cc(a)(2)(A) of this title:

(A) Facility fee

With respect to facility services, not including any services for which payment may be made under subparagraph (B), the reasonable costs of the critical access hospital in providing such services.

(B) Fee schedule for professional services

With respect to professional services otherwise included within outpatient critical access hospital services, 115 percent of

[2] So in original. Probably should be ''a''.

such amounts as would otherwise be paid under this part if such services were not included in outpatient critical access hospital services.

The Secretary may not require, as a condition for applying subparagraph (B) with respect to a critical access hospital, that each physician or other practitioner providing professional services in the hospital must assign billing rights with respect to such services, except that such subparagraph shall not apply to those physicians and practitioners who have not assigned such billing rights.

(3) Disregarding charges

The payment amounts under this subsection shall be determined without regard to the amount of the customary or other charge.

(4) No beneficiary cost-sharing for clinical diagnostic laboratory services

No coinsurance, deductible, copayment, or other cost-sharing otherwise applicable under this part shall apply with respect to clinical diagnostic laboratory services furnished as an outpatient critical access hospital service. Nothing in this subchapter shall be construed as providing for payment for clinical diagnostic laboratory services furnished as part of outpatient critical access hospital services, other than on the basis described in this subsection.

(5) Coverage of costs for certain emergency room on-call providers

In determining the reasonable costs of outpatient critical access hospital services under paragraphs (1) and (2)(A), the Secretary shall recognize as allowable costs, amounts (as defined by the Secretary) for reasonable compensation and related costs for physicians, physician assistants, nurse practitioners, and clinical nurse specialists who are on-call (as defined by the Secretary) to provide emergency services but who are not present on the premises of the critical access hospital involved, and are not otherwise furnishing services covered under this subchapter and are not on-call at any other provider or facility.

(h) Payment for prosthetic devices and orthotics and prosthetics

(1) General rule for payment

(A) In general

Payment under this subsection for prosthetic devices and orthotics and prosthetics shall be made in a lump-sum amount for the purchase of the item in an amount equal to 80 percent of the payment basis described in subparagraph (B).

(B) Payment basis

Except as provided in subparagraphs (C), (E), and (H)(i), the payment basis described in this subparagraph is the lesser of—

(i) the actual charge for the item; or

(ii) the amount recognized under paragraph (2) as the purchase price for the item.

(C) Exception for certain public home health agencies

Subparagraph (B)(i) shall not apply to an item furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

(D) Exclusive payment rule

Subject to subparagraph (H)(ii), this subsection shall constitute the exclusive provision of this subchapter for payment for prosthetic devices, orthotics, and prosthetics under this part or under part A of this subchapter to a home health agency.

(E) Exception for certain items

Payment for ostomy supplies, tracheostomy supplies, and urologicals shall be made in accordance with subparagraphs (B) and (C) of subsection (a)(2) of this section.

(F) Special payment rules for certain prosthetics and custom-fabricated orthotics

(i) In general

No payment shall be made under this subsection for an item of custom-fabricated orthotics described in clause (ii) or for an item of prosthetics unless such item is—

(I) furnished by a qualified practitioner; and

(II) fabricated by a qualified practitioner or a qualified supplier at a facility that meets such criteria as the Secretary determines appropriate.

(ii) Description of custom-fabricated item

(I) In general

An item described in this clause is an item of custom-fabricated orthotics that requires education, training, and experience to custom-fabricate and that is included in a list established by the Secretary in subclause (II). Such an item does not include shoes and shoe inserts.

(II) List of items

The Secretary, in consultation with appropriate experts in orthotics (including national organizations representing manufacturers of orthotics), shall establish and update as appropriate a list of items to which this subparagraph applies. No item may be included in such list unless the item is individually fabricated for the patient over a positive model of the patient.

(iii) Qualified practitioner defined

In this subparagraph, the term ''qualified practitioner'' means a physician or other individual who—

(I) is a qualified physical therapist or a qualified occupational therapist;

(II) in the case of a State that provides for the licensing of orthotics and prosthetics, is licensed in orthotics or prosthetics by the State in which the item is supplied; or

(III) in the case of a State that does not provide for the licensing of orthotics and prosthetics, is specifically trained and educated to provide or manage the

provision of prosthetics and custom-designed or -fabricated orthotics, and is certified by the American Board for Certification in Orthotics and Prosthetics, Inc. or by the Board for Orthotist/Prosthetist Certification, or is credentialed and approved by a program that the Secretary determines, in consultation with appropriate experts in orthotics and prosthetics, has training and education standards that are necessary to provide such prosthetics and orthotics.

(iv) Qualified supplier defined

In this subparagraph, the term ''qualified supplier'' means any entity that is accredited by the American Board for Certification in Orthotics and Prosthetics, Inc. or by the Board for Orthotist/Prosthetist Certification, or accredited and approved by a program that the Secretary determines has accreditation and approval standards that are essentially equivalent to those of such Board.

(G) Replacement of prosthetic devices and parts

(i) In general

Payment shall be made for the replacement of prosthetic devices which are artificial limbs, or for the replacement of any part of such devices, without regard to continuous use or useful lifetime restrictions if an ordering physician determines that the provision of a replacement device, or a replacement part of such a device, is necessary because of any of the following:

(I) A change in the physiological condition of the patient.

(II) An irreparable change in the condition of the device, or in a part of the device.

(III) The condition of the device, or the part of the device, requires repairs and the cost of such repairs would be more than 60 percent of the cost of a replacement device, or, as the case may be, of the part being replaced.

(ii) Confirmation may be required if device or part being replaced is less than 3 years old

If a physician determines that a replacement device, or a replacement part, is necessary pursuant to clause (i)—

(I) such determination shall be controlling; and

(II) such replacement device or part shall be deemed to be reasonable and necessary for purposes of section 1395y(a)(1)(A) of this title;

except that if the device, or part, being replaced is less than 3 years old (calculated from the date on which the beneficiary began to use the device or part), the Secretary may also require confirmation of necessity of the replacement device or replacement part, as the case may be.

(H) Application of competitive acquisition to orthotics; limitation of inherent reasonableness authority

In the case of orthotics described in paragraph (2)(C) of section 1395w–3(a) of this title furnished on or after January 1, 2009, that are included in a competitive acquisition program in a competitive acquisition area under such section—

(i) the payment basis under this subsection for such orthotics furnished in such area shall be the payment basis determined under such competitive acquisition program; and

(ii) the Secretary may use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise recognized under subparagraph (B)(ii) for an area that is not a competitive acquisition area under section 1395w–3 of this title, and in the case of such adjustment, paragraphs (8) and (9) of section 1395u(b) of this title shall not be applied.

(2) Purchase price recognized

For purposes of paragraph (1), the amount that is recognized under this paragraph as the purchase price for prosthetic devices, orthotics, and prosthetics is the amount described in subparagraph (C) of this paragraph, determined as follows:

(A) Computation of local purchase price

Each carrier under section 1395u of this title shall compute a base local purchase price for the item as follows:

(i) The carrier shall compute a base local purchase price for each item equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987.

(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

(I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 6-month period ending with December 1987, or

(II) in 1991, 1992 or 1993, equal to the local purchase price computed under this clause for the previous year increased by the applicable percentage increase for the year.

(B) Computation of regional purchase price

With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price—

(i) for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the applicable percentage increase for the year.

(C) Purchase price recognized

For purposes of paragraph (1) and subject to subparagraph (D), the amount that is rec-

ognized under this paragraph as the purchase price for each item furnished—

(i) in 1989, 1990, or 1991, is 100 percent of the local purchase price computed under subparagraph (A)(ii);

(ii) in 1992, is the sum of (I) 75 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1992, and (II) 25 percent of the regional purchase price computed under subparagraph (B) for 1992;

(iii) in 1993, is the sum of (I) 50 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1993, and (II) 50 percent of the regional purchase price computed under subparagraph (B) for 1993; and

(iv) in 1994 or a subsequent year, is the regional purchase price computed under subparagraph (B) for that year.

(D) Range on amount recognized

The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

(i) in 1992, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.

(3) Applicability of certain provisions relating to durable medical equipment

Paragraphs (12), (15), and (17) and subparagraphs (A) and (B) of paragraph (10) and paragraph (11) of subsection (a) of this section shall apply to prosthetic devices, orthotics, and prosthetics in the same manner as such provisions apply to covered items under such subsection.

(4) Definitions

In this subsection—

(A) the term ''applicable percentage increase'' means—

(i) for 1991, 0 percent;

(ii) for 1992 and 1993, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

(iii) for 1994 and 1995, 0 percent;

(iv) for 1996 and 1997, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

(v) for each of the years 1998 through 2000, 1 percent;

(vi) for 2001, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 2000;

(vii) for 2002, 1 percent;

(viii) for 2003, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

(ix) for 2004, 2005, and 2006, 0 percent; and

(x) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

(B) the term ''prosthetic devices'' has the meaning given such term in section 1395x(s)(8) of this title, except that such term does not include parenteral and enteral nutrition nutrients, supplies, and equipment and does not include an implantable item for which payment may be made under section 1395*l*(t) of this title; and

(C) the term ''orthotics and prosthetics'' has the meaning given such term in section 1395x(s)(9) of this title (and includes shoes described in section 1395x(s)(12) of this title), but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1395x(m)(5) of this title.

(i) Payment for surgical dressings

(1) In general

Payment under this subsection for surgical dressings (described in section 1395x(s)(5) of this title) shall be made in a lump sum amount for the purchase of the item in an amount equal to 80 percent of the lesser of—

(A) the actual charge for the item; or

(B) a payment amount determined in accordance with the methodology described in subparagraphs (B) and (C) of subsection (a)(2) of this section (except that in applying such methodology, the national limited payment amount referred to in such subparagraphs shall be initially computed based on local payment amounts using average reasonable charges for the 12-month period ending December 31, 1992, increased by the covered item updates described in such subsection for 1993 and 1994).

(2) Exceptions

Paragraph (1) shall not apply to surgical dressings that are—

(A) furnished as an incident to a physician's professional service; or

(B) furnished by a home health agency.

(j) Requirements for suppliers of medical equipment and supplies

(1) Issuance and renewal of supplier number

(A) Payment

Except as provided in subparagraph (C), no payment may be made under this part after October 31, 1994, for items furnished by a supplier of medical equipment and supplies unless such supplier obtains (and renews at such intervals as the Secretary may require) a supplier number.

(B) Standards for possessing a supplier number

A supplier may not obtain a supplier number unless—

(i) for medical equipment and supplies furnished on or after October 31, 1994, and before January 1, 1996, the supplier meets standards prescribed by the Secretary in regulations issued on June 18, 1992; and

(ii) for medical equipment and supplies furnished on or after January 1, 1996, the supplier meets revised standards prescribed by the Secretary (in consultation with representatives of suppliers of medical equipment and supplies, carriers, and consumers) that shall include requirements that the supplier—

(I) comply with all applicable State and Federal licensure and regulatory requirements;

(II) maintain a physical facility on an appropriate site;

(III) have proof of appropriate liability insurance; and

(IV) meet such other requirements as the Secretary may specify.

(C) Exception for items furnished as incident to a physician's service

Subparagraph (A) shall not apply with respect to medical equipment and supplies furnished incident to a physician's service.

(D) Prohibition against multiple supplier numbers

The Secretary may not issue more than one supplier number to any supplier of medical equipment and supplies unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

(E) Prohibition against delegation of supplier determinations

The Secretary may not delegate (other than by contract under section 1395u of this title) the responsibility to determine whether suppliers meet the standards necessary to obtain a supplier number.

(2) Certificates of medical necessity

(A) Limitation on information provided by suppliers on certificates of medical necessity

(i) In general

Effective 60 days after October 31, 1994, a supplier of medical equipment and supplies may distribute to physicians, or to individuals entitled to benefits under this part, a certificate of medical necessity for commercial purposes which contains no more than the following information completed by the supplier:

(I) An identification of the supplier and the beneficiary to whom such medical equipment and supplies are furnished.

(II) A description of such medical equipment and supplies.

(III) Any product code identifying such medical equipment and supplies.

(IV) Any other administrative information (other than information relating to the beneficiary's medical condition) identified by the Secretary.

(ii) Information on payment amount and charges

If a supplier distributes a certificate of medical necessity containing any of the information permitted to be supplied under clause (i), the supplier shall also list on the certificate of medical necessity the fee schedule amount and the supplier's charge for the medical equipment or supplies being furnished prior to distribution of such certificate to the physician.

(iii) Penalty

Any supplier of medical equipment and supplies who knowingly and willfully distributes a certificate of medical necessity in violation of clause (i) or fails to provide the information required under clause (ii) is subject to a civil money penalty in an amount not to exceed $1,000 for each such certificate of medical necessity so distributed. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) "Certificate of medical necessity" defined

For purposes of this paragraph, the term ''certificate of medical necessity'' means a form or other document containing information required by the carrier to be submitted to show that an item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

(3) Coverage and review criteria

The Secretary shall annually review the coverage and utilization of items of medical equipment and supplies to determine whether such items should be made subject to coverage and utilization review criteria, and if appropriate, shall develop and apply such criteria to such items.

(4) Limitation on patient liability

If a supplier of medical equipment and supplies (as defined in paragraph (5))—

(A) furnishes an item or service to a beneficiary for which no payment may be made by reason of paragraph (1);

(B) furnishes an item or service to a beneficiary for which payment is denied in advance under subsection (a)(15) of this section; or

(C) furnishes an item or service to a beneficiary for which payment is denied under section 1395y(a)(1) of this title;

any expenses incurred for items and services furnished to an individual by such a supplier not on an assigned basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services. The provisions of subsection (a)(18) of this section shall apply to refunds required under the previous sentence in the same manner as such

provisions apply to refunds under such subsection.

(5) "Medical equipment and supplies" defined

The term ''medical equipment and supplies'' means—

(A) durable medical equipment (as defined in section 1395x(n) of this title);

(B) prosthetic devices (as described in section 1395x(s)(8) of this title);

(C) orthotics and prosthetics (as described in section 1395x(s)(9) of this title);

(D) surgical dressings (as described in section 1395x(s)(5) of this title);

(E) such other items as the Secretary may determine; and

(F) for purposes of paragraphs (1) and (3)—

(i) home dialysis supplies and equipment (as described in section 1395x(s)(2)(F) of this title),

(ii) immunosuppressive drugs (as described in section 1395x(s)(2)(J) of this title),

(iii) therapeutic shoes for diabetics (as described in section 1395x(s)(12) of this title),

(iv) oral drugs prescribed for use as an anticancer therapeutic agent (as described in section 1395x(s)(2)(Q) of this title), and

(v) self-administered erythropoetin (as described in section 1395x(s)(2)(P) of this title).

(k) Payment for outpatient therapy services and comprehensive outpatient rehabilitation services

(1) In general

With respect to services described in section 1395*l*(a)(8) or 1395*l*(a)(9) of this title for which payment is determined under this subsection, the payment basis shall be—

(A) for services furnished during 1998, the amount determined under paragraph (2); or

(B) for services furnished during a subsequent year, 80 percent of the lesser of—

(i) the actual charge for the services, or

(ii) the applicable fee schedule amount (as defined in paragraph (3)) for the services.

(2) Payment in 1998 based upon adjusted reasonable costs

The amount under this paragraph for services is the lesser of—

(A) the charges imposed for the services, or

(B) the adjusted reasonable costs (as defined in paragraph (4)) for the services,

less 20 percent of the amount of the charges imposed for such services.

(3) Applicable fee schedule amount

In this subsection, the term ''applicable fee schedule amount'' means, with respect to services furnished in a year, the amount determined under the fee schedule established under section 1395w–4 of this title for such services furnished during the year or, if there is no such fee schedule established for such services, the amount determined under the fee schedule established for such comparable services as the Secretary specifies.

(4) Adjusted reasonable costs

In paragraph (2), the term ''adjusted reasonable costs'' means, with respect to any services, reasonable costs determined for such services, reduced by 10 percent. The 10-percent reduction shall not apply to services described in section 1395*l*(a)(8)(B) of this title (relating to services provided by hospitals).

(5) Uniform coding

For claims for services submitted on or after April 1, 1998, for which the amount of payment is determined under this subsection, the claim shall include a code (or codes) under a uniform coding system specified by the Secretary that identifies the services furnished.

(6) Restraint on billing

The provisions of subparagraphs (A) and (B) of section 1395u(b)(18) of this title shall apply to therapy services for which payment is made under this subsection in the same manner as they apply to services provided by a practitioner described in section 1395u(b)(18)(C) of this title.

(*l*) Establishment of fee schedule for ambulance services

(1) In general

The Secretary shall establish a fee schedule for payment for ambulance services whether provided directly by a supplier or provider or under arrangement with a provider under this part through a negotiated rulemaking process described in title 5 and in accordance with the requirements of this subsection.

(2) Considerations

In establishing such fee schedule, the Secretary shall—

(A) establish mechanisms to control increases in expenditures for ambulance services under this part;

(B) establish definitions for ambulance services which link payments to the type of services provided;

(C) consider appropriate regional and operational differences;

(D) consider adjustments to payment rates to account for inflation and other relevant factors; and

(E) phase in the application of the payment rates under the fee schedule in an efficient and fair manner consistent with paragraph (11), except that such phase-in shall provide for full payment of any national mileage rate for ambulance services provided by suppliers that are paid by carriers in any of the 50 States where payment by a carrier for such services for all such suppliers in such State did not, prior to the implementation of the fee schedule, include a separate amount for all mileage within the county from which the beneficiary is transported.

(3) Savings

In establishing such fee schedule, the Secretary shall—

(A) ensure that the aggregate amount of payments made for ambulance services under this part during 2000 does not exceed

the aggregate amount of payments which would have been made for such services under this part during such year if the amendments made by section 4531(a) of the Balanced Budget Act of 1997 continued in effect, except that in making such determination the Secretary shall assume an update in such payments for 2002 equal to percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced in the case of 2002 by 1.0 percentage points; and

(B) set the payment amounts provided under the fee schedule for services furnished in 2001 and each subsequent year at amounts equal to the payment amounts under the fee schedule for services furnished during the previous year, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced in the case of 2002 by 1.0 percentage points.

(4) Consultation

In establishing the fee schedule for ambulance services under this subsection, the Secretary shall consult with various national organizations representing individuals and entities who furnish and regulate ambulance services and share with such organizations relevant data in establishing such schedule.

(5) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title or otherwise of the amounts established under the fee schedule for ambulance services under this subsection, including matters described in paragraph (2).

(6) Restraint on billing

The provisions of subparagraphs (A) and (B) of section 1395u(b)(18) of this title shall apply to ambulance services for which payment is made under this subsection in the same manner as they apply to services provided by a practitioner described in section 1395u(b)(18)(C) of this title.

(7) Coding system

The Secretary may require the claim for any services for which the amount of payment is determined under this subsection to include a code (or codes) under a uniform coding system specified by the Secretary that identifies the services furnished.

(8) Services furnished by critical access hospitals

Notwithstanding any other provision of this subsection, the Secretary shall pay the reasonable costs incurred in furnishing ambulance services if such services are furnished—

(A) by a critical access hospital (as defined in section 1395x(mm)(1) of this title), or

(B) by an entity that is owned and operated by a critical access hospital,

but only if the critical access hospital or entity is the only provider or supplier of ambulance services that is located within a 35-mile drive of such critical access hospital.

(9) Transitional assistance for rural providers

In the case of ground ambulance services furnished on or after July 1, 2001, and before January 1, 2004, for which the transportation originates in a rural area (as defined in section 1395ww(d)(2)(D) of this title) or in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)), the fee schedule established under this subsection shall provide that, with respect to the payment rate for mileage for a trip above 17 miles, and up to 50 miles, the rate otherwise established shall be increased by not less than ½ of the additional payment per mile established for the first 17 miles of such a trip originating in a rural area.

(10) Phase-in providing floor using blend of fee schedule and regional fee schedules

In carrying out the phase-in under paragraph (2)(E) for each level of ground service furnished in a year, the portion of the payment amount that is based on the fee schedule shall be the greater of the amount determined under such fee schedule (without regard to this paragraph) or the following blended rate of the fee schedule under paragraph (1) and of a regional fee schedule for the region involved:

(A) For 2004 (for services furnished on or after July 1, 2004), the blended rate shall be based 20 percent on the fee schedule under paragraph (1) and 80 percent on the regional fee schedule.

(B) For 2005, the blended rate shall be based 40 percent on the fee schedule under paragraph (1) and 60 percent on the regional fee schedule.

(C) For 2006, the blended rate shall be based 60 percent on the fee schedule under paragraph (1) and 40 percent on the regional fee schedule.

(D) For 2007, 2008, and 2009, the blended rate shall be based 80 percent on the fee schedule under paragraph (1) and 20 percent on the regional fee schedule.

(E) For 2010 and each succeeding year, the blended rate shall be based 100 percent on the fee schedule under paragraph (1).

For purposes of this paragraph, the Secretary shall establish a regional fee schedule for each of the nine census divisions (referred to in section 1395ww(d)(2) of this title) using the methodology (used in establishing the fee schedule under paragraph (1)) to calculate a regional conversion factor and a regional mileage payment rate and using the same payment adjustments and the same relative value units as used in the fee schedule under such paragraph.

(11) Adjustment in payment for certain long trips

In the case of ground ambulance services furnished on or after July 1, 2004, and before January 1, 2009, regardless of where the transportation originates, the fee schedule established under this subsection shall provide that, with respect to the payment rate for mileage for a trip above 50 miles the per mile rate otherwise established shall be increased

by ¼ of the payment per mile otherwise applicable to miles in excess of 50 miles in such trip.

(12) Assistance for rural providers furnishing services in low population density areas

(A) In general

In the case of ground ambulance services furnished on or after July 1, 2004, and before January 1, 2010, for which the transportation originates in a qualified rural area (identified under subparagraph (B)(iii)), the Secretary shall provide for a percent increase in the base rate of the fee schedule for a trip established under this subsection. In establishing such percent increase, the Secretary shall estimate the average cost per trip for such services (not taking into account mileage) in the lowest quartile as compared to the average cost per trip for such services (not taking into account mileage) in the highest quartile of all rural county populations.

(B) Identification of qualified rural areas

(i) Determination of population density in area

Based upon data from the United States decennial census for the year 2000, the Secretary shall determine, for each rural area, the population density for that area.

(ii) Ranking of areas

The Secretary shall rank each such area based on such population density.

(iii) Identification of qualified rural areas

The Secretary shall identify those areas (in subparagraph (A) referred to as ''qualified rural areas'') with the lowest population densities that represent, if each such area were weighted by the population of such area (as used in computing such population densities), an aggregate total of 25 percent of the total of the population of all such areas.

(iv) Rural area

For purposes of this paragraph, the term ''rural area'' has the meaning given such term in section 1395ww(d)(2)(D) of this title. If feasible, the Secretary shall treat a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725) as a rural area for purposes of this paragraph.

(v) Judicial review

There shall be no administrative or judicial review under section 1395ff, 1395*oo* of this title, or otherwise, respecting the identification of an area under this subparagraph.

(13) Temporary increase for ground ambulance services

(A) In general

After computing the rates with respect to ground ambulance services under the other applicable provisions of this subsection, in the case of such services furnished on or after July 1, 2004, and before January 1, 2007, for which the transportation originates in—

(i) a rural area described in paragraph (9) or in a rural census tract described in such paragraph, the fee schedule established under this section shall provide that the rate for the service otherwise established, after the application of any increase under paragraphs (11) and (12), shall be increased by 2 percent; and

(ii) an area not described in clause (i), the fee schedule established under this subsection shall provide that the rate for the service otherwise established, after the application of any increase under paragraph (11), shall be increased by 1 percent.

(B) Application of increased payments after 2006

The increased payments under subparagraph (A) shall not be taken into account in calculating payments for services furnished after the period specified in such subparagraph.

(14) Providing appropriate coverage of rural air ambulance services

(A) In general

The regulations described in section 1395x(s)(7) of this title shall provide, to the extent that any ambulance services (whether ground or air) may be covered under such section, that a rural air ambulance service (as defined in subparagraph (C)) is reimbursed under this subsection at the air ambulance rate if the air ambulance service—

(i) is reasonable and necessary based on the health condition of the individual being transported at or immediately prior to the time of the transport; and

(ii) complies with equipment and crew requirements established by the Secretary.

(B) Satisfaction of requirement of medically necessary

The requirement of subparagraph (A)(i) is deemed to be met for a rural air ambulance service if—

(i) subject to subparagraph (D), such service is requested by a physician or other qualified medical personnel (as specified by the Secretary) who reasonably determines or certifies that the individual's condition is such that the time needed to transport the individual by land or the instability of transportation by land poses a threat to the individual's survival or seriously endangers the individual's health; or

(ii) such service is furnished pursuant to a protocol that is established by a State or regional emergency medical service (EMS) agency and recognized or approved by the Secretary under which the use of an air ambulance is recommended, if such agency does not have an ownership interest in the entity furnishing such service.

(C) Rural air ambulance service defined

For purposes of this paragraph, the term ''rural air ambulance service'' means fixed

wing and rotary wing air ambulance service in which the point of pick up of the individual occurs in a rural area (as defined in section 1395ww(d)(2)(D) of this title) or in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)).

(D) Limitation

(i) In general

Subparagraph (B)(i) shall not apply if there is a financial or employment relationship between the person requesting the rural air ambulance service and the entity furnishing the ambulance service, or an entity under common ownership with the entity furnishing the air ambulance service, or a financial relationship between an immediate family member of such requester and such an entity.

(ii) Exception

Where a hospital and the entity furnishing rural air ambulance services are under common ownership, clause (i) shall not apply to remuneration (through employment or other relationship) by the hospital of the requester or immediate family member if the remuneration is for provider-based physician services furnished in a hospital (as described in section 1395xx of this title) which are reimbursed under part A of this subchapter and the amount of the remuneration is unrelated directly or indirectly to the provision of rural air ambulance services.

(m) Payment for telehealth services

(1) In general

The Secretary shall pay for telehealth services that are furnished via a telecommunications system by a physician (as defined in section 1395x(r) of this title) or a practitioner (described in section 1395u(b)(18)(C) of this title) to an eligible telehealth individual enrolled under this part notwithstanding that the individual physician or practitioner providing the telehealth service is not at the same location as the beneficiary. For purposes of the preceding sentence, in the case of any Federal telemedicine demonstration program conducted in Alaska or Hawaii, the term ''telecommunications system'' includes store-and-forward technologies that provide for the asynchronous transmission of health care information in single or multimedia formats.

(2) Payment amount

(A) Distant site

The Secretary shall pay to a physician or practitioner located at a distant site that furnishes a telehealth service to an eligible telehealth individual an amount equal to the amount that such physician or practitioner would have been paid under this subchapter had such service been furnished without the use of a telecommunications system.

(B) Facility fee for originating site

With respect to a telehealth service, subject to section 1395*l*(a)(1)(U) of this title, there shall be paid to the originating site a facility fee equal to—

(i) for the period beginning on October 1, 2001, and ending on December 31, 2001, and for 2002, $20; and

(ii) for a subsequent year, the facility fee specified in clause (i) or this clause for the preceding year increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for such subsequent year.

(C) Telepresenter not required

Nothing in this subsection shall be construed as requiring an eligible telehealth individual to be presented by a physician or practitioner at the originating site for the furnishing of a service via a telecommunications system, unless it is medically necessary (as determined by the physician or practitioner at the distant site).

(3) Limitation on beneficiary charges

(A) Physician and practitioner

The provisions of section 1395w–4(g) of this title and subparagraphs (A) and (B) of section 1395u(b)(18) of this title shall apply to a physician or practitioner receiving payment under this subsection in the same manner as they apply to physicians or practitioners under such sections.

(B) Originating site

The provisions of section 1395u(b)(18) of this title shall apply to originating sites receiving a facility fee in the same manner as they apply to practitioners under such section.

(4) Definitions

For purposes of this subsection:

(A) Distant site

The term ''distant site'' means the site at which the physician or practitioner is located at the time the service is provided via a telecommunications system.

(B) Eligible telehealth individual

The term ''eligible telehealth individual'' means an individual enrolled under this part who receives a telehealth service furnished at an originating site.

(C) Originating site

(i) In general

The term ''originating site'' means only those sites described in clause (ii) at which the eligible telehealth individual is located at the time the service is furnished via a telecommunications system and only if such site is located—

(I) in an area that is designated as a rural health professional shortage area under section 254e(a)(1)(A) of this title;

(II) in a county that is not included in a Metropolitan Statistical Area; or

(III) from an entity that participates in a Federal telemedicine demonstration project that has been approved by (or receives funding from) the Secretary of Health and Human Services as of December 31, 2000.

(ii) Sites described

The sites referred to in clause (i) are the following sites:

(I) The office of a physician or practitioner.

(II) A critical access hospital (as defined in section 1395x(mm)(1) of this title).

(III) A rural health clinic (as defined in section 1395x(aa)(2) of this title).

(IV) A Federally qualified health center (as defined in section 1395x(aa)(4) of this title).

(V) A hospital (as defined in section 1395x(e) of this title).

(D) Physician

The term ''physician'' has the meaning given that term in section 1395x(r) of this title.

(E) Practitioner

The term ''practitioner'' has the meaning given that term in section 1395u(b)(18)(C) of this title.

(F) Telehealth service

(i) In general

The term ''telehealth service'' means professional consultations, office visits, and office psychiatry services (identified as of July 1, 2000, by HCPCS codes 99241–99275, 99201–99215, 90804–90809, and 90862 (and as subsequently modified by the Secretary)), and any additional service specified by the Secretary.

(ii) Yearly update

The Secretary shall establish a process that provides, on an annual basis, for the addition or deletion of services (and HCPCS codes), as appropriate, to those specified in clause (i) for authorized payment under paragraph (1).

(Aug. 14, 1935, ch. 531, title XVIII, § 1834, as added and amended Pub. L. 100–203, title IV, §§ 4049(a)(2), 4062(b), Dec. 22, 1987, 101 Stat. 1330–91, 1330–100; Pub. L. 100–360, title II, §§ 202(b)(4), 203(c)(1)(F), 204(b), title IV, § 411(a)(3)(A), (B)(ii), (C)(ii), (f)(8)(A), (B)(ii), (D), (g)(1)(A), (B), July 1, 1988, 102 Stat. 704, 722, 726, 768, 779, 781; Pub. L. 100–485, title VI, § 608(d)(21)(C), (22)(A), Oct. 13, 1988, 102 Stat. 2420; Pub. L. 101–234, title II, § 201(a), title III, § 301(b)(1), (c)(1), Dec. 13, 1989, 103 Stat. 1981, 1985; Pub. L. 101–239, title VI, §§ 6102(f)(1), 6105(a), 6112(a), (c), (d)(1), (e)(2), 6116(b)(2), 6140, Dec. 19, 1989, 103 Stat. 2188, 2210, 2214–2216, 2220, 2224; Pub. L. 101–508, title IV, §§ 4102(a), (d), (f), 4104(a), 4152(a)(1), (b), (c)(1)–(4)(B)(i), (e), (f)(1), (g)(1), 4153(a)(1), (2)(D), 4163(b), Nov. 5, 1990, 104 Stat. 1388–55, 1388–57, 1388–59, 1388–74, 1388–77 to 1388–81, 1388–83, 1388–97; Pub. L. 103–66, title XIII, §§ 13542(a), 13543(a), (b), 13544(a)(1), (2), (b)(1), 13545(a), 13546, Aug. 10, 1993, 107 Stat. 587, 589, 590; Pub. L. 103–432, title I, §§ 102(e), 126(b)(1), (2), (4), (5), (g)(1), (10)(B), 131(a), 132(a), (b), 133(a)(1), 134(a)(1), 135(a)(1), (b)(1), (3), (d)(1), (e)(2)–(5), 145(a), 156(a)(2)(C), Oct. 31, 1994, 108 Stat. 4403, 4414–4416, 4419, 4421, 4424, 4427, 4440; Pub. L. 105–33, title IV, §§ 4101(a), (c), 4104(b)(1), 4105(b)(2), 4201(c)(5), 4312(a), (c), 4316(b), 4531(b)(2), 4541(a)(2), 4551(a), (c)(1), 4552(a), (b), Aug. 5, 1997, 111 Stat. 360, 363, 367, 374, 386, 387, 392, 451, 455, 457–459; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 201(e)(2), title III, § 321(k)(3), title IV, § 403(d)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–340, 1501A–366, 1501A–371; Pub. L. 106–554, § 1(a)(6) [title I, §§ 103(b), 104(b), title II, §§ 201(a), 202(a), 204(a), 205(a), 221(a), 223(b), title IV, §§ 423(a)(1), (b)(1), 425(a), 426(a), 427(a), 428(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–468, 2763A–469, 2763A–481, 2763A–482, 2763A–486, 2763A–487, 2763A–518 to 2763A–520, 2763A–522; Pub. L. 108–173, title III, § 302(a), (c)(1)(A), (2), (3), (d)(1), (2), title IV, §§ 405(a)(1), (b)(1), (d)(1), 414(a)–(c)(1), (d), 415(a), title VI, § 627(b)(1), title VII, § 736(b)(4), (5), Dec. 8, 2003, 117 Stat. 2223, 2230–2232, 2266, 2267, 2278–2281, 2321, 2356; Pub. L. 109–171, title V, §§ 5101(a)(1), (b)(1), 5113(b), Feb. 8, 2006, 120 Stat. 37, 38, 44.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (a)(1)(C), (16), (h)(1)(D), and (*l*)(14)(D)(ii), is classified to section 1395c et seq. of this title.

Section 302(c)(1)(B) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (a)(14)(H)(i), is section 302(c)(1)(B) of Pub. L. 108–173, which is set out as a note under this section.

Section 4531(a) of the Balanced Budget Act of 1997, referred to in subsec. (*l*)(3)(A), is section 4531(a) of Pub. L. 105–33, which amended sections 1395u and 1395x of this title.

CODIFICATION

Amendment of subsec. (a)(4) by Pub. L. 101–508, § 4152(c)(4)(B)(i), did not become effective pursuant to Pub. L. 101–508, § 4152(c)(4)(B)(ii), because of action of Secretary in developing specific criteria for the treatment of wheelchairs as customized items for purposes of subsec. (a)(4). See Effective Date of 1990 Amendment note below.

PRIOR PROVISIONS

A prior section 1395m, act Aug. 14, 1935, ch. 531, title XVIII, § 1834, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 303, prescribed limitations on payments for home health services, prior to repeal by Pub. L. 96–499, title IX, § 930(i), Dec. 5, 1980, 94 Stat. 2631, effective with respect to services furnished on or after July 1, 1981.

AMENDMENTS

2006—Subsec. (a)(5)(A). Pub. L. 109–171, § 5101(b)(1)(A), substituted ''(E), and (F)'' for ''and (E)''.

Subsec. (a)(5)(F). Pub. L. 109–171, § 5101(b)(1)(B), added subpar. (F).

Subsec. (a)(7)(A). Pub. L. 109–171, § 5101(a)(1), amended heading and text of subpar. (A) generally, revising and restating as cls. (i) to (iv) provisions of former cls. (i) to (vi).

Subsec. (d)(2)(C)(ii). Pub. L. 109–171, § 5113(b), struck out ''deductible and'' before ''coinsurance'' in heading and struck out ''deductible or'' before ''copayment'' and before ''coinsurance'' in subcl. (I).

Subsec. (d)(3)(C)(ii). Pub. L. 109–171, § 5113(b), struck out ''deductible and'' before ''coinsurance'' in heading and struck out ''deductible or'' before ''coinsurance'' in two places in subcl. (I).

2003—Subsec. (a)(1)(B). Pub. L. 108–173, § 302(d)(1)(A), substituted ''Subject to subparagraph (F)(i), the payment basis'' for ''The payment basis'' in introductory provisions.

Subsec. (a)(1)(C). Pub. L. 108–173, § 302(d)(1)(B), substituted ''Subject to subparagraph (F)(ii), this subsection'' for ''This subsection''.

Subsec. (a)(1)(E). Pub. L. 108–173, § 302(a)(2), added subpar. (E).

Subsec. (a)(1)(F). Pub. L. 108–173, § 302(d)(1)(C), added subpar. (F).

Subsec. (a)(10)(B). Pub. L. 108–173, § 302(d)(1)(D), inserted ''in an area and with respect to covered items and services for which the Secretary does not make a payment amount adjustment under paragraph (1)(F)'' after ''under this subsection''.

Subsec. (a)(14)(F). Pub. L. 108–173, § 302(c)(1)(A)(ii), substituted ''2003'' for ''a subsequent year'' and ''2002;'' for ''the previous year.''

Subsec. (a)(14)(G) to (J). Pub. L. 108–173, § 302(c)(1)(A)(i), (iii), added subpars (G) to (J).

Subsec. (a)(17), (19). Pub. L. 108–173, § 302(a)(1)(A), redesignated par. (17), relating to certain upgraded items, as (19) and transferred it to the end of subsec. (a).

Subsec. (a)(20). Pub. L. 108–173, § 302(a)(1)(B), added par. (20).

Subsec. (a)(21). Pub. L. 108–173, § 302(c)(2), added par. (21).

Subsec. (b)(4)(D)(iv). Pub. L. 108–173, § 736(b)(4), substituted ''clause (vi)'' for ''clauses (vi)''.

Subsec. (g)(1). Pub. L. 108–173, § 405(a)(1), inserted ''equal to 101 percent of'' before ''the reasonable costs''.

Subsec. (g)(2). Pub. L. 108–173, § 405(d)(1), inserted concluding provisions.

Subsec. (g)(5). Pub. L. 108–173, § 405(b)(1), in heading, inserted ''certain'' before ''emergency'' and substituted ''providers'' for ''physicians'', and, in text, substituted ''physicians, physician assistants, nurse practitioners, and clinical nurse specialists who are on-call (as defined by the Secretary) to provide emergency services'' for ''emergency room physicians who are on-call (as defined by the Secretary)'' and ''services covered under this subchapter'' for ''physicians' services''.

Subsec. (h)(1)(B). Pub. L. 108–173, § 302(d)(2)(A), substituted '', (E), and (H)(i)'' for ''and (E)'' in introductory provisions.

Subsec. (h)(1)(D). Pub. L. 108–173, § 302(d)(2)(B), substituted ''Subject to subparagraph (H)(ii), this subsection'' for ''This subsection''.

Subsec. (h)(1)(H). Pub. L. 108–173, § 302(d)(2)(C), added subpar. (H).

Subsec. (h)(4)(A)(viii). Pub. L. 108–173, § 302(c)(3)(B), substituted ''2003'' for ''a subsequent year''.

Subsec. (h)(4)(A)(ix), (x). Pub. L. 108–173, § 302(c)(3)(A), (C), added cls. (ix) and (x).

Subsec. (h)(4)(C). Pub. L. 108–173, § 627(b)(1), inserted ''(and includes shoes described in section 1395x(s)(12) of this title)'' after ''in section 1395x(s)(9) of this title''.

Subsec. (*l*)(2)(E). Pub. L. 108–173, § 414(a)(1), inserted ''consistent with paragraph (11)'' after ''in an efficient and fair manner''.

Subsec. (*l*)(8), (9). Pub. L. 108–173, § 414(a)(2), redesignated par. (8), relating to transitional assistance for rural providers, as (9).

Subsec. (*l*)(10). Pub. L. 108–173, § 414(a)(3), added par. (10).

Subsec. (*l*)(11). Pub. L. 108–173, § 414(b), added par. (11).

Subsec. (*l*)(12). Pub. L. 108–173, § 414(c)(1), added par. (12).

Subsec. (*l*)(13). Pub. L. 108–173, § 414(d), added par. (13).

Subsec. (*l*)(14). Pub. L. 108–173, § 415(a), added par. (14).

Subsec. (m)(4)(C)(ii)(III). Pub. L. 108–173, § 736(b)(5), substituted ''1395x(aa)(2)'' for ''1395x(aa)(s)''.

2000—Subsec. (a)(14)(C). Pub. L. 106–554, § 1(a)(6) [title IV, § 425(a)(2)], substituted ''through 2000'' for ''through 2002'' and struck out ''and'' at end.

Subsec. (a)(14)(D) to (F). Pub. L. 106–554, § 1(a)(6) [title IV, § 425(a)(1), (3)], added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

Subsec. (c). Pub. L. 106–554, § 1(a)(6) [title I, § 104(b)], amended heading and text generally, substituting present provisions for provisions which had set forth similar standards for screening mammography but had provided for payment limited to 80 percent of the least of the actual charge, a statutory fee schedule, if applicable, or the indexed dollar limit described, and which had set forth provisions relating to reduction of indexed dollar limit, application of limit in a hospital outpatient setting, and limitation of charges of nonparticipating physicians.

Subsec. (d)(2)(E)(ii). Pub. L. 106–554, § 1(a)(6) [title I, § 103(b)(1)], inserted before period at end ''or, in the case of an individual who is not at high risk for colorectal cancer, if the procedure is performed within the 119 months after a previous screening colonoscopy''.

Subsec. (d)(3). Pub. L. 106–554, § 1(a)(6) [title I, § 103(b)(2)(A)], struck out ''for individuals at high risk for colorectal cancer'' after ''colonoscopy'' in heading.

Subsec. (d)(3)(A). Pub. L. 106–554, § 1(a)(6) [title I, § 103(b)(2)(B)], struck out ''for individuals at high risk for colorectal cancer (as defined in section 1395x(pp)(2) of this title)'' after ''screening colonoscopy''.

Subsec. (d)(3)(E). Pub. L. 106–554, § 1(a)(6) [title I, § 103(b)(2)(C)], inserted before period at end ''or for other individuals if the procedure is performed within the 119 months after a previous screening colonoscopy or within 47 months after a previous screening flexible sigmoidoscopy''.

Subsec. (g)(2)(B). Pub. L. 106–554, § 1(a)(6) [title II, § 202(a)], inserted ''115 percent of'' before ''such amounts''.

Subsec. (g)(4). Pub. L. 106–554, § 1(a)(6) [title II, § 201(a)], added par. (4).

Subsec. (g)(5). Pub. L. 106–554, § 1(a)(6) [title II, § 204(a)], added par. (5).

Subsec. (h)(1)(F). Pub. L. 106–554, § 1(a)(6) [title IV, § 427(a)], added subpar. (F).

Subsec. (h)(1)(G). Pub. L. 106–554, § 1(a)(6) [title IV, § 428(a)], added subpar. (G).

Subsec. (h)(4)(A)(v). Pub. L. 106–554, § 1(a)(6) [title IV, § 426(a)(2)], substituted ''through 2000'' for ''through 2002'' and struck out ''and'' at end.

Subsec. (h)(4)(A)(vi) to (viii). Pub. L. 106–554, § 1(a)(6) [title IV, § 426(a)(1), (3)], added cls. (vi) and (vii) and redesignated former cl. (vi) as (viii).

Subsec. (*l*)(2)(E). Pub. L. 106–554, § 1(a)(6) [title IV, § 423(b)(1)], inserted before period at end '', except that such phase-in shall provide for full payment of any national mileage rate for ambulance services provided by suppliers that are paid by carriers in any of the 50 States where payment by a carrier for such services for all such suppliers in such State did not, prior to the implementation of the fee schedule, include a separate amount for all mileage within the county from which the beneficiary is transported''.

Subsec. (*l*)(3)(A), (B). Pub. L. 106–554, § 1(a)(6) [title IV, § 423(a)(1)], substituted ''reduced in the case of 2002'' for ''reduced in the case of 2001 and 2002''.

Subsec. (*l*)(8). Pub. L. 106–554, § 1(a)(6) [title II, § 221(a)], added par. (8) relating to transitional assistance for rural providers.

Pub. L. 106–554, § 1(a)(6) [title II, § 205(a)], added par. (8) relating to services furnished by critical access hospitals.

Subsec. (m). Pub. L. 106–554, § 1(a)(6) [title II, § 223(b)], added subsec. (m).

1999—Subsec. (a)(13). Pub. L. 106–113, § 1000(a)(6) [title II, § 201(e)(2)(A)], substituted ''1395x(m)(5) of this title, but not including implantable items for which payment may be made under section 1395*l*(t) of this title'' for ''1395x(m)(5) of this title)''.

Subsec. (g). Pub. L. 106–113, § 1000(a)(6) [title IV, § 403(d)(1)], amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: ''The amount of payment under this part for outpatient critical access hospital services is the reasonable costs of the critical access hospital in providing such services.''

Subsec. (h)(4)(A)(i). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(3)(A)], substituted semicolon for comma at end.

Subsec. (h)(4)(A)(v). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(3)(B)], substituted ''; and'' for '', and'' at end.

Subsec. (h)(4)(B). Pub. L. 106–113, § 1000(a)(6) [title II, § 201(e)(2)(B)], inserted ''and does not include an implantable item for which payment may be made under section 1395*l*(t) of this title'' before the semicolon.

1997—Subsec. (a)(2)(B)(iv). Pub. L. 105–33, § 4105(b)(2), inserted before period at end ''(reduced by 10 percent, in the case of a blood glucose testing strip furnished after 1997 for an individual with diabetes)''.

Subsec. (a)(9)(B)(iv). Pub. L. 105–33, § 4552(a)(2)(A), substituted ''1995, 1996, and 1997'' for ''each subsequent year''.

Subsec. (a)(9)(B)(v), (vi). Pub. L. 105–33, § 4552(a)(1), (2)(B), (3), added cls. (v) and (vi).

Subsec. (a)(9)(D). Pub. L. 105–33, § 4552(b), which directed amendment of section 1848(a)(9) (42 U.S.C. 1395m(a)(9)) by adding subpar. (D) at end, was executed by adding subpar. (D) at end of subsec. (a)(9) of this section, to reflect the probable intent of Congress.

Subsec. (a)(10)(B). Pub. L. 105–33, § 4316(b), substituted ''The Secretary'' for ''For covered items furnished on or after January 1, 1991, the Secretary'' and struck out ''(other than subparagraph (D))'' before ''of section 1395u(b) of this title'' and ''as such provisions would otherwise apply to physicians' services and physicians and a reasonable charge under section 1395u(b) of this title but for the application of section 1395w–4(i)(3) of this title. In applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines (in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable'' before period at end.

Subsec. (a)(14)(B). Pub. L. 105–33, § 4551(a)(1)(B)(i), substituted ''1993, 1994, 1995, 1996, and 1997'' for ''a subsequent year''.

Subsec. (a)(14)(C), (D). Pub. L. 105–33, § 4551(a)(1)(A), (B)(ii), (C), added subpars. (C) and (D).

Subsec. (a)(16). Pub. L. 105–33, § 4312(c), inserted at end ''The Secretary, at the Secretary's discretion, may impose the requirements of the first sentence with respect to some or all providers of items or services under part A of this subchapter or some or all suppliers or other persons (other than physicians or other practitioners, as defined in section 1395u(b)(18)(C) of this title) who furnish items or services under this part.''

Pub. L. 105–33, § 4312(a), added par. (16).

Subsec. (a)(17). Pub. L. 105–33, § 4551(c)(1), added par. (17) relating to certain upgraded items.

Subsec. (c)(1)(C). Pub. L. 105–33, § 4101(c), in introductory provisions, struck out '', subject to the deductible established under section 1395*l*(b) of this title,'' before ''be equal to 80''.

Subsec. (c)(2)(A)(iii). Pub. L. 105–33, § 4101(a)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''In the case of a woman over 39 years of age, but under 50 years of age, who—

''(I) is at a high risk of developing breast cancer (as determined pursuant to factors identified by the Secretary), payment may not be made under this part for a screening mammography performed within the 11 months following the month in which a previous screening mammography was performed, or

''(II) is not at a high risk of developing breast cancer, payment may not be made under this part for a screening mammography performed within the 23 months following the month in which a previous screening mammography was performed.''

Subsec. (c)(2)(A)(iv), (v). Pub. L. 105–33, § 4101(a)(2), struck out cls. (iv) and (v), which read as follows:

''(iv) In the case of a woman over 49 years of age, but under 65 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

''(v) In the case of a woman over 64 years of age, payment may not be made for screening mammography performed within 23 months following the month in which a previous screening mammography was performed.''

Subsec. (d). Pub. L. 105–33, § 4104(b)(1), added subsec. (d).

Subsec. (g). Pub. L. 105–33, § 4201(c)(5), amended heading and text of subsec. (g) generally. Prior to amendment, text related to payment for outpatient rural primary care hospital services as determined, in par. (1), by either the cost-based facility fee plus professional charges method or the all-inclusive rate method and, in par. (2), by the prospective payment system.

Subsec. (h)(4)(A)(iv). Pub. L. 105–33, § 4551(a)(2)(B), substituted ''1996 and 1997'' for ''a subsequent year''.

Subsec. (h)(4)(A)(v), (vi). Pub. L. 105–33, § 4551(a)(2)(A), (C), added cls. (v) and (vi).

Subsec. (k). Pub. L. 105–33, § 4541(a)(2), added subsec. (k).

Subsec. (*l*). Pub. L. 105–33, § 4531(b)(2), added subsec. (*l*).

1994—Subsec. (a)(3)(D). Pub. L. 103–432, § 135(e)(5), struck out heading and text of subpar. (D). Text read as follows: ''If the reasonable useful lifetime of such an item, as established under paragraph (7)(C), has been reached during a continuous period of medical need, or the Secretary determines on the basis of investigation by the carrier that the item is lost or irreparably damaged, payment for an item serving as a replacement for such item shall be made on a monthly basis for the rental of the replacement item in accordance with subparagraph (A).''

Subsec. (a)(5)(E). Pub. L. 103–432, § 135(d)(1), substituted ''pressure of 56'' for ''pressure of 55''.

Subsec. (a)(7). Pub. L. 103–432, § 135(e)(2), made technical amendment to directory language of Pub. L. 101–508, § 4152(c)(2). See 1990 Amendment note below.

Subsec. (a)(7)(A)(iii)(II). Pub. L. 103–432, § 135(e)(3), substituted ''clause (vi)'' for ''clause (v)''.

Subsec. (a)(7)(C)(i). Pub. L. 103–432, § 135(e)(4), substituted ''this paragraph'' for ''this paragraph or paragraph (3)''.

Subsec. (a)(10)(B). Pub. L. 103–432, § 134(a)(1), inserted at end ''In applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines (in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable.''

Pub. L. 103–432, § 126(g)(10)(B), substituted ''would otherwise apply to physicians' services'' for ''apply to physicians' services'' and inserted before period at end ''but for the application of section 1395w–4(i)(3) of this title''.

Subsec. (a)(14)(A). Pub. L. 103–432, § 135(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''for 1991 and 1992, reduction of 1 percentage point; and''.

Subsec. (a)(15). Pub. L. 103–432, § 135(b)(1), amended heading and text of par. (15) generally. Prior to amendment, text read as follows:

''(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY.—The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, and motorized scooters.

''(B) DETERMINATIONS OF COVERAGE IN ADVANCE.—A carrier shall determine in advance whether payment for an item included on the list developed by the Secretary under subparagraph (A) may not be made because of the application of section 1395y(a)(1) of this title.''

Subsec. (a)(16). Pub. L. 103–432, § 131(a)(2), struck out heading and text of par. (16). Text read as follows:

''(A) IN GENERAL.—A supplier of a covered item under this subsection may not distribute to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed forms or other documents required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

''(B) PENALTY.—Any supplier of a covered item who knowingly and willfully distributes a form or other document in violation of subparagraph (A) is subject to a civil money penalty in an amount not to exceed $1,000 for each such form or document so distributed. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (a)(17), (18). Pub. L. 103–432, §132(a)(1), (2), added pars. (17) and (18).

Subsec. (b)(4)(D). Pub. L. 103–432, §126(b)(2)(A), in introductory provisions substituted ''shall, subject to clause (vii), be reduced to the adjusted conversion factor for the locality determined as follows:'' for ''shall be determined as follows:''.

Subsec. (b)(4)(D)(iv). Pub. L. 103–432, §126(b)(2)(B), substituted ''Adjusted conversion factor'' for ''Local adjustment'' in heading and ''The adjusted conversion factor for'' for ''Subject to clause (vii), the conversion factor to be applied to'' in text.

Subsec. (b)(4)(D)(vii). Pub. L. 103–432, §126(b)(2)(C), (D), struck out ''under this subparagraph'' after ''applied to a locality'' and inserted ''reduced under this subparagraph by'' before ''more than 9.5 percent''.

Subsec. (b)(4)(E). Pub. L. 103–432, §126(b)(5), inserted heading ''Rule for certain scanning services''.

Pub. L. 103–432, §126(b)(4), made technical amendment to directory language of Pub. L. 101–508, §4102(d). See 1990 Amendment note below.

Pub. L. 103–432, §126(b)(1), redesignated subpar. (E), relating to subsequent updating, as (F).

Subsec. (b)(4)(F), (G). Pub. L. 103–432, §126(b)(1), redesignated subpars. (E), relating to subsequent updating, and (F) as (F) and (G), respectively.

Subsec. (c)(1)(B). Pub. L. 103–432, §145(a)(1), substituted ''is conducted by a facility that has a certificate (or provisional certificate) issued under section 263b of this title'' for ''meets the quality standards established under paragraph (3)''.

Subsec. (c)(1)(C)(iii). Pub. L. 103–432, §145(a)(2), substituted ''paragraph (3)'' for ''paragraph (4)''.

Subsec. (c)(3) to (5). Pub. L. 103–432, §145(a)(3), (4), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which directed Secretary to establish standards to assure the safety and accuracy of screening mammography performed under this part.

Subsec. (f). Pub. L. 103–432, §126(g)(1), substituted ''during 1991'' for ''during fiscal year 1991'' in heading.

Subsec. (g)(1). Pub. L. 103–432, §102(e)(1)(A), (2), substituted in introductory provisions ''during a year before the prospective payment system described in paragraph (2) is in effect'' for ''during a year before 1993'' and inserted at end ''The amount of payment shall be determined under either method without regard to the amount of the customary or other charge.''

Subsec. (g)(1)(B). Pub. L. 103–432, §156(a)(2)(C), struck out ''and for items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion'' after ''section 1395x(s)(10)(A) of this title''.

Subsec. (g)(2). Pub. L. 103–432, §102(e)(1)(B), substituted ''January 1, 1996'' for ''January 1, 1993''.

Subsec. (h)(3). Pub. L. 103–432, §135(b)(3), substituted ''Paragraphs (12), (15), and (17)'' for ''Paragraphs (12) and (17)''.

Pub. L. 103–432, §132(b), substituted ''Paragraphs (12) and (17)'' for ''Paragraph (12)''.

Subsec. (j). Pub. L. 103–432, §131(a)(1), added subsec. (j).

Subsec. (j)(4), (5). Pub. L. 103–432, §133(a)(1), added par. (4) and redesignated former par. (4) as (5).

1993—Subsec. (a)(1)(D). Pub. L. 103–66, §13545(a), substituted ''45 percent'' for ''15 percent'' after ''(as previously reduced) by''.

Subsec. (a)(2)(A)(iii). Pub. L. 103–66, §13543(b), added cl. (iii).

Subsec. (a)(2)(C). Pub. L. 103–66, §13542(a)(1), in cl. (i)(II), substituted ''for 1992, 1993, and 1994'' for ''for 1992'' and ''update for the year'' for ''update for 1992'', and in cl. (ii), struck out ''and'' at end of subcl. (I), added subcls. (II) and (III), and redesignated former subcl. (II) as (IV).

Subsec. (a)(3)(A). Pub. L. 103–66, §13543(a), substituted ''IPPB machines and ventilators, excluding ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices'' for ''ventilators, aspirators, IPPB machines, and nebulizers''.

Subsec. (a)(3)(C). Pub. L. 103–66, §13542(a)(1), in cl. (i)(II), substituted ''for 1992, 1993, and 1994'' for ''for 1992'' and ''update for the year'' for ''update for 1992'', and in cl. (ii), struck out ''and'' at end of subcl. (I), added subcls. (II) and (III), and redesignated former subcl. (II) as (IV).

Subsec. (a)(8)(A)(ii)(III). Pub. L. 103–66, §13542(a)(2)(A), substituted ''1992, 1993, and 1994'' for ''1992''.

Subsec. (a)(8)(B)(ii) to (iv). Pub. L. 103–66, §13542(a)(2)(B), added cls. (ii) and (iii) and redesignated former cl. (ii) as (iv).

Subsec. (a)(9)(A)(ii)(II). Pub. L. 103–66, §13542(a)(3)(A), substituted ''1991, 1992, 1993, and 1994'' for ''1991 and 1992''.

Subsec. (a)(9)(B)(ii) to (iv). Pub. L. 103–66, §13542(a)(3)(B), added cls. (ii) and (iii) and redesignated former cl. (ii) as (iv).

Subsec. (h)(1)(B). Pub. L. 103–66, §13544(a)(2), substituted ''subparagraphs (C) and (E)'' for ''subparagraph (C)'' in introductory provisions.

Subsec. (h)(1)(E). Pub. L. 103–66, §13544(a)(1), added subpar. (E).

Subsec. (h)(4)(A). Pub. L. 103–66, §13546, struck out ''and'' at end of cl. (i), substituted ''1992 and 1993'' for ''a subsequent year'' in cl. (ii), and added cls. (iii) and (iv).

Subsec. (i). Pub. L. 103–66, §13544(b)(1), added subsec. (i).

1990—Subsec. (a). Pub. L. 101–508, §4153(a)(2)(D)(i), struck out '', prosthetic devices, orthotics, and prosthetics'' after ''medical equipment'' in heading.

Subsec. (a)(1)(D). Pub. L. 101–508, §4152(a)(1), inserted before period at end '', and, in the case of a transcutaneous electrical nerve stimulator furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 15 percent''.

Subsec. (a)(2)(A). Pub. L. 101–508, §4153(a)(2)(D)(ii), substituted ''(13)'' for ''(13)(A)''.

Pub. L. 101–508, §4152(c)(4)(A), inserted ''or'' after ''$150,'' in cl. (i), struck out ''or'' after ''purchase,'' in cl. (ii), and struck out cl. (iii) which read as follows: ''which is a power-driven wheelchair (other than a customized wheelchair that is classified as a customized item under paragraph (4) pursuant to criteria specified by the Secretary),''.

Subsec. (a)(2)(B). Pub. L. 101–508, §4152(b)(1)(A), (B), struck out ''or'' after ''1987;'' in cl. (i), added cls. (ii) to (iv), and struck out former cl. (ii) which read as follows: ''in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.''

Subsec. (a)(2)(C). Pub. L. 101–508, §4152(b)(1)(C), added subpar. (C).

Subsec. (a)(3)(B). Pub. L. 101–508, §4152(b)(1)(A), (B), struck out ''or'' after ''1987;'' in cl. (i), added cls. (ii) to (iv), and struck out former cl. (ii) which read as follows: ''in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.''

Subsec. (a)(3)(C). Pub. L. 101–508, §4152(b)(1)(C), added subpar. (C).

Subsec. (a)(3)(D). Pub. L. 101–508, § 4152(c)(3), added subpar. (D).

Subsec. (a)(4). Pub. L. 101–508, § 4152(c)(4)(B)(i), directed amendment of par. (4) by inserting at end ''In the case of a wheelchair furnished on or after January 1, 1992, the wheelchair shall be treated as a customized item for purposes of this paragraph if the wheelchair has been measured, fitted, or adapted in consideration of the patient's body size, disability, period of need, or intended use, and has been assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs that are intended for an individual patient's use in accordance with instructions from the patient's physician.'' The amendment did not become effective pursuant to Pub. L. 101–508, § 4152(c)(4)(B)(ii). See Effective Date of 1990 Amendment note below.

Subsec. (a)(5)(A). Pub. L. 101–508, § 4152(g)(1)(A), substituted ''(B), (C), and (E)'' for ''(B) and (C)''.

Subsec. (a)(5)(E). Pub. L. 101–508, § 4152(g)(1)(B), added subpar. (E).

Subsec. (a)(7)(A)(i). Pub. L. 101–508, § 4152(c)(2)(A), as amended by Pub. L. 103–432, § 135(e)(2), substituted ''15 months, or, in the case of an item for which a purchase agreement has been entered into under clause (iii), a period of continuous use of longer than 13 months'' for ''15 months''.

Pub. L. 101–508, § 4152(c)(1), substituted ''for each of the first 3 months of such period'' for ''for each such month'' and '', and for each of the remaining months of such period is 7.5 percent of such purchase price;'' for semicolon at end.

Subsec. (a)(7)(A)(ii), (iii). Pub. L. 101–508, § 4152(c)(2)(D), as amended by Pub. L. 103–432, § 135(e)(2), added cls. (ii) and (iii). Former cls. (ii) and (iii) redesignated (iv) and (v), respectively.

Subsec. (a)(7)(A)(iv). Pub. L. 101–508, § 4152(c)(2)(B), as amended by Pub. L. 103–432, § 135(e)(2), redesignated cl. (ii) as (iv), substituted ''in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i),'' for ''during the succeeding 6-month period of medical need,'' and struck out ''and'' at end.

Subsec. (a)(7)(A)(v). Pub. L. 101–508, § 4152(c)(2)(C), as amended by Pub. L. 103–432, § 135(e)(2), redesignated cl. (iii) as (v), inserted at beginning ''in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii),'', and substituted ''; and'' for period at end.

Subsec. (a)(7)(A)(vi). Pub. L. 101–508, § 4152(c)(2)(E), as amended by Pub. L. 103–432, § 135(e)(2), added cl. (vi).

Subsec. (a)(7)(C). Pub. L. 101–508, § 4152(c)(2)(F), as amended by Pub. L. 103–432, § 135(e)(2), added subpar. (C).

Subsec. (a)(8)(A)(ii). Pub. L. 101–508, § 4152(b)(2)(A), added subcl. (II), redesignated former subcl. (II) as (III), struck out ''1991 or'' before ''1992'', and substituted ''the covered item update for the year'' for ''the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year''.

Subsec. (a)(8)(B). Pub. L. 101–508, § 4152(b)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price—

''(i) for 1991 and for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

''(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.''

Subsec. (a)(8)(C). Pub. L. 101–508, § 4152(b)(2)(C)(ii), struck out ''and subject to subparagraph (D)'' after ''and (7)'' in introductory provisions.

Subsec. (a)(8)(C)(ii). Pub. L. 101–508, § 4152(b)(2)(C)(i), (iii), in subcl. (I) substituted ''67 percent'' for ''75 percent'' and in subcl. (II) substituted ''33 percent'' for ''25 percent'' and ''national limited purchase price'' for ''regional purchase price''.

Subsec. (a)(8)(C)(iii). Pub. L. 101–508, § 4152(b)(2)(C)(i), (iv), in subcl. (I) substituted ''33 percent'' for ''50 percent'' and ''subparagraph (A)(ii)(III)'' for ''subparagraph (A)(ii)(II)'' and in subcl. (II) substituted ''67 percent'' for ''50 percent'' and ''national limited purchase price'' for ''regional purchase price''.

Subsec. (a)(8)(C)(iv). Pub. L. 101–508, § 4152(b)(2)(C)(i), substituted ''national limited purchase price'' for ''regional purchase price''.

Subsec. (a)(8)(D). Pub. L. 101–508, § 4152(b)(2)(D), struck out subpar. (D) which read as follows: ''The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

''(i) in 1991, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

''(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.''

Subsec. (a)(9)(A)(ii)(II). Pub. L. 101–508, § 4152(b)(3)(A), substituted ''the covered item increase for the year'' for ''the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year''.

Subsec. (a)(9)(B). Pub. L. 101–508, § 4152(b)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''With respect to the furnishing of an item in each region (as defined by the Secretary), the Secretary shall compute a regional monthly payment rate—

''(i) for 1991 and 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local monthly payment rates for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

''(ii) for each subsequent year, equal to the regional monthly payment rates computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.''

Subsec. (a)(9)(C)(ii). Pub. L. 101–508, § 4152(b)(3)(C)(i), (ii), in subcl. (I) substituted ''67 percent'' for ''75 percent'' and in subcl. (II) substituted ''33 percent'' for ''25 percent'' and ''national limited monthly payment rate'' for ''regional monthly payment rate''.

Subsec. (a)(9)(C)(iii). Pub. L. 101–508, § 4152(b)(3)(C)(i), (iii), in subcl. (I) substituted ''33 percent'' for ''50 percent'' and in subcl. (II) substituted ''67 percent'' for ''50 percent'', ''national limited monthly payment rate'' for ''regional monthly payment rate'', and ''subparagraph (B)(ii)'' for ''subparagraph (B)(i)''.

Subsec. (a)(9)(C)(iv). Pub. L. 101–508, § 4152(b)(3)(C)(i), substituted ''national limited monthly payment rate'' for ''regional monthly payment rate''.

Subsec. (a)(9)(D). Pub. L. 101–508, § 4152(b)(3)(D), struck out subpar. (D) which read as follows: ''The amount that is recognized under subparagraph (C) as the base monthly payment amount for an item furnished—

''(i) in 1991, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year; and

''(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the av-

erage of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year.''

Subsec. (a)(12). Pub. L. 101–508, § 4152(b)(5), struck out ''defined for purposes of paragraphs (8)(B) and (9)(B)'' after ''one or more entire regions''.

Subsec. (a)(13). Pub. L. 101–508, § 4153(a)(2)(D)(iii), substituted ''means durable medical equipment (as defined in section 1395x(n) of this title), including such equipment described in section 1395x(m)(5) of this title).'' for ''means—

''(A) durable medical equipment (as defined in section 1395x(n) of this title), including such equipment described in section 1395x(m)(5) of this title;

''(B) prosthetic devices (described in section 1395x(s)(8) of this title), but not including parenteral and enteral nutrition nutrients, supplies, and equipment; and

''(C) orthotics and prosthetics (described in section 1395x(s)(9) of this title);

but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1395x(m)(5) of this title.''

Subsec. (a)(14). Pub. L. 101–508, § 4152(b)(4), added par. (14).

Subsec. (a)(15). Pub. L. 101–508, § 4152(e), added par. (15).

Subsec. (a)(16). Pub. L. 101–508, § 4152(f)(1), added par. (16).

Subsec. (b)(1)(B). Pub. L. 101–508, § 4163(b)(1), inserted ''and subject to subsection (c)(1)(A) of this section'' after ''conversion factors''.

Pub. L. 101–508, § 4102(f), inserted ''locality,'' after ''statewide,''.

Subsec. (b)(4)(D). Pub. L. 101–508, § 4102(a)(2), added subpar. (D). Former subpar. (D) redesignated (E) relating to subsequent updating.

Subsec. (b)(4)(E). Pub. L. 101–508, § 4102(d), as amended by Pub. L. 103–432, § 126(b)(4), added subpar. (E) relating to rule for certain scanning services.

Pub. L. 101–508, § 4102(a)(1), redesignated subpar. (D), relating to subsequent updating, as (E). Former subpar. (E) redesignated (F).

Subsec. (b)(4)(F). Pub. L. 101–508, § 4102(a)(1), redesignated subpar. (E) as (F).

Subsec. (c). Pub. L. 101–508, § 4163(b)(2), added subsec. (c).

Subsec. (f). Pub. L. 101–508, § 4104(a), amended subsec. (f) generally, substituting provisions relating to reduction in payments for physician pathology services during 1991 for provisions directing Secretary to provide for application of a fee schedule with respect to such services.

Subsec. (h). Pub. L. 101–508, § 4153(a)(1), added subsec. (h).

1989—Subsec. (a)(1)(D). Pub. L. 101–239, § 6112(c), added subpar. (D).

Subsec. (a)(2)(A)(iii). Pub. L. 101–239, § 6112(d)(1), added cl. (iii).

Subsec. (a)(2)(B)(i), (3)(B)(i). Pub. L. 101–239, § 6112(a)(1), inserted ''and in 1990'' after ''1989''.

Subsec. (a)(7)(A)(i). Pub. L. 101–239, § 6112(a)(4)(A), substituted ''this clause'' for ''this subparagraph''.

Subsec. (a)(7)(B)(i). Pub. L. 101–239, § 6112(a)(4)(B), inserted ''in'' after ''rental of the item''.

Subsec. (a)(7)(B)(ii). Pub. L. 101–239, § 6112(a)(4)(C), substituted ''clause (i) shall apply in the same manner as it applies to items furnished during 1989'' for ''the payment amount recognized under subparagraph (A)(i) shall not be more than the maximum amount established under clause (i), and shall not be less than the minimum amount established under such clause, for 1989, each such amount increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 1989''.

Subsec. (a)(8)(A)(ii)(I). Pub. L. 101–239, § 6112(a)(2)(A), inserted ''and 1990'' after ''1989''.

Subsec. (a)(8)(A)(ii)(II). Pub. L. 101–239, § 6112(a)(2)(B), substituted ''1991 or 1992'' for ''1990, 1991, or 1992''.

Subsec. (a)(8)(D)(i). Pub. L. 101–239, § 6140(1), substituted ''1991, may not exceed 125 percent, and may not be lower than 85 percent'' for ''1991, may not exceed 130 percent, and may not be lower than 80 percent''.

Subsec. (a)(8)(D)(ii). Pub. L. 101–239, § 6140(2), substituted ''120 percent, and may not be lower than 90 percent'' for ''125 percent, and may not be lower than 85 percent''.

Subsec. (a)(9)(A)(ii)(I). Pub. L. 101–239, § 6112(a)(3)(A), inserted ''and 1990'' after ''1989''.

Subsec. (a)(9)(A)(ii)(II). Pub. L. 101–239, § 6112(a)(3)(B), substituted ''1991 and 1992'' for ''1990, 1991, and 1992''.

Subsec. (a)(9)(D)(i). Pub. L. 101–239, § 6140(1), substituted ''1991, may not exceed 125 percent, and may not be lower than 85 percent'' for ''1991, may not exceed 130 percent, and may not be lower than 80 percent''.

Subsec. (a)(9)(D)(ii). Pub. L. 101–239, § 6140(2), substituted ''120 percent, and may not be lower than 90 percent'' for ''125 percent, and may not be lower than 85 percent''.

Subsec. (a)(13). Pub. L. 101–239, § 6112(e)(2), inserted before period at end ''or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1395x(m)(5) of this title''.

Subsec. (b)(1)(B). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 204(b)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(4)(A). Pub. L. 101–234, § 301(b)(1), (c)(1), amended subpar. (A) identically, substituting ''coinsurance and deductibles under sections 1395*l*(a)(1)(J)'' for ''insurance and deductibles under section 1395n(a)(1)(I)''.

Subsec. (b)(4)(C) to (E). Pub. L. 101–239, § 6105(a), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsecs. (c) to (e). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 202(b)(4), 203(c)(1)(F), 204(b)(2), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (f). Pub. L. 101–239, § 6102(f)(1), added subsec. (f).

Subsec. (g). Pub. L. 101–239, § 6116(b)(2), added subsec. (g).

1988—Pub. L. 100–360, § 411(g)(1)(A), inserted ''items and'' in section catchline.

Subsec. (a)(1)(C). Pub. L. 100–360, § 411(g)(1)(B)(i), inserted ''or under part A of this subchapter to a home health agency'' before period at end.

Subsec. (a)(2)(A). Pub. L. 100–360, § 411(g)(1)(B)(iii), struck out ''rental'' before ''payments'' in concluding provisions.

Subsec. (a)(2)(B)(i). Pub. L. 100–360, § 411(g)(1) (B)(iii), substituted ''reasonable'' for ''allowed''.

Subsec. (a)(3)(A). Pub. L. 100–360, § 411(g)(1)(B)(iv), struck out the extra space appearing in text of original act after ''ventilators''.

Subsec. (a)(3)(B)(i). Pub. L. 100–360, § 411(g)(1) (B)(iii), substituted ''reasonable'' for ''allowable''.

Subsec. (a)(4). Pub. L. 100–360, § 411(g)(1) (B)(v)–(vii), inserted '', and for that reason cannot be grouped with similar items for purposes of payment under this subchapter,'' after ''individual patient'', inserted cl. (A) and (B) designations, and in cl. (B), substituted ''servicing'' for ''service'' in two places.

Subsec. (a)(7)(A)(ii). Pub. L. 100–360, § 411(g)(1) (B)(vii), inserted ''maintenance and'' before ''servicing''.

Subsec. (a)(7)(A)(iii). Pub. L. 100–360, § 411(g)(1) (B)(vii), (viii), substituted ''maintenance and servicing'' for ''service and maintenance'', and in subcl. (I) substituted ''fee or fees established by the Secretary'' for ''fee established by the carrier''.

Subsec. (a)(7)(B)(i). Pub. L. 100–360, § 411(a)(3)(A), (C)(ii), provided that subsec. (a)(7)(B)(i) of this section,

as inserted by section 4062(b) of Pub. L. 100–203, is deemed to have a reference to ''1987'' immediately after ''December''.

Subsec. (a)(8)(A)(i)(I). Pub. L. 100–360, § 411(g)(1)(B)(iii), substituted ''reasonable'' for ''allowable''.

Subsec. (a)(8)(B). Pub. L. 100–360, § 411(g)(1)(B)(xi), as amended Pub. L. 100–485, § 608(d)(22)(A)(i), substituted ''(as defined by the Secretary)'' for ''(as defined in section 1395ww(d)(2)(D) of this title)'', and in cl. (i) struck out the comma after ''1991''.

Subsec. (a)(9)(A)(ii)(I). Pub. L. 100–360, § 411(g)(1)(B)(ix), substituted ''6-month'' for ''12-month''.

Subsec. (a)(9)(A)(ii)(II). Pub. L. 100–360, § 411(g)(1)(B)(x), substituted '', 1991, and 1992'' for ''and to 1991''.

Subsec. (a)(9)(B). Pub. L. 100–360, § 411(g)(1)(B)(xi), as amended by Pub. L. 100–485, § 608(d)(22)(A)(i), substituted ''(as defined by the Secretary)'' for ''(as defined in section 1395ww(d)(2)(D) of this title)'', and in cl. (i) struck out the comma after ''1991''.

Subsec. (a)(9)(C)(i). Pub. L. 100–360, § 411(g)(1)(B)(xii), substituted ''subparagraph (A)(ii)'' for ''subparagraph (A)(ii)(I)''.

Subsec. (a)(10)(B). Pub. L. 100–360, § 411(g)(1)(B)(xiii), inserted before period at end ''and payments under this subsection as such provisions apply to physicians' services and physicians and a reasonable charge under section 1395u(b) of this title''.

Subsec. (a)(11)(A). Pub. L. 100–360, § 411(g)(1)(B)(vii), (xiv), inserted ''maintenance and'' before ''servicing'' and substituted ''section 1395u(j)(2) of this title'' for ''subsection (j)(2) of this section''.

Subsec. (a)(12). Pub. L. 100–360, § 411(g)(1)(B)(xv), as amended by Pub. L. 100–485, § 608(d)(22)(A)(ii), substituted ''one or more entire regions defined for purposes of paragraphs (8)(B) and (9)(B)'' for ''each region (as defined in section 1395ww(d)(2)(D) of this title)''.

Subsec. (a)(14). Pub. L. 100–360, § 411(g)(1)(B)(xvi), struck out par. (14) which read as follows: ''In this subsection, any reference to the term 'carrier' includes a reference, with respect to durable medical equipment furnished by a home health agency as part of home health services, to a fiscal intermediary.''

Subsec. (b). Pub. L. 100–360, § 411(a)(3)(A), (B)(ii), (f)(8)(B)(ii), amended Pub. L. 100–203, § 4049(a)(2), see 1987 Amendment note below.

Subsec. (b)(1)(B). Pub. L. 100–360, § 204(b)(1), inserted ''and subject to subsection (e)(1)(A) of this section'' after ''conversion factors''.

Subsec. (b)(4)(C). Pub. L. 100–360, § 411(f)(8)(D)(ii), as added by Pub. L. 100–485, § 608(d)(21)(C), substituted ''For radiologist'' for ''Radiologist'' and ''1395u(i)(3) of this title'' for ''1395u(b)(4)(E)(ii) of this title''.

Subsec. (b)(4)(D), (5). Pub. L. 100–360, § 411(f)(8)(D)(i), inserted ''and suppliers'' after ''physicians'' in heading.

Subsec. (b)(5)(C). Pub. L. 100–360, § 411(f)(8)(D)(iii), (iv), formerly (ii), (iii), as redesignated by Pub. L. 100–485, § 608(d)(21)(C), substituted ''bills'' for ''imposes a charge'' and inserted ''in the same manner as such sanctions may apply to a physician'' before period at end.

Subsec. (b)(6). Pub. L. 100–360, § 411(f)(8)(D)(v), formerly (iv), as redesignated by Pub. L. 100–485, § 608(d)(21)(C), substituted ''and section 1395*l*(a)(1)(J) of this title'' for '', section 1395*l*(a)(1)(I) of this title, and section 1395u(h)(1)(B) of this title''.

Pub. L. 100–360, § 411(f)(8)(A), substituted ''radiology'' for ''radiologic''.

Subsec. (b)(6)(B). Pub. L. 100–360, § 411(f)(8)(D)(vi), formerly (v), as redesignated by Pub. L. 100–485, § 608(d)(21)(C), substituted ''the total amount of charges'' for ''billings''.

Pub. L. 100–360, § 411(f)(8)(A), substituted ''radiology'' for ''radiologic''.

Subsec. (c). Pub. L. 100–360, § 202(b)(4), added subsec. (c) relating to payment for covered outpatient drugs.

Subsec. (d). Pub. L. 100–360, § 203(c)(1)(F), added subsec. (d) relating to home intravenous drug therapy services.

Subsec. (e). Pub. L. 100–360, § 204(b)(2), added subsec. (e) relating to payments and standards for screening mammography.

1987—Subsec. (b). Pub. L. 100–203, § 4049(a)(2), as amended by Pub. L. 100–360, § 411(a)(3)(A), (B)(ii), (f)(8)(B)(ii), added subsec. (b).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title V, § 5101(a)(2), Feb. 8, 2006, 120 Stat. 38, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to items furnished for which the first rental month occurs on or after January 1, 2006.''

Pub. L. 109–171, title V, § 5101(b)(2), Feb. 8, 2006, 120 Stat. 39, provided that:

''(A) IN GENERAL.—The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 2006.

''(B) APPLICATION TO CERTAIN INDIVIDUALS.—In the case of an individual receiving oxygen equipment on December 31, 2005, for which payment is made under section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), the 36-month period described in paragraph (5)(F)(i) of such section, as added by paragraph (1), shall begin on January 1, 2006.''

Amendment by section 5113(b) of Pub. L. 109–171 applicable to services furnished on or after Jan. 1, 2007, see section 5113(c) of Pub. L. 109–171, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 405(a)(1) of Pub. L. 108–173 applicable to payments for services furnished during cost reporting periods beginning on or after Jan. 1, 2004, see section 405(a)(2) of Pub. L. 108–173, set out as a note under section 1395f of this title.

Pub. L. 108–173, title IV, § 405(b)(2), Dec. 8, 2003, 117 Stat. 2266, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to costs incurred for services furnished on or after January 1, 2005.''

Pub. L. 108–173, title IV, § 405(d)(2), Dec. 8, 2003, 117 Stat. 2267, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after July 1, 2004.

''(B) RULE OF APPLICATION.—In the case of a critical access hospital that made an election under section 1834(g)(2) of the Social Security Act (42 U.S.C. 1395m(g)(2)) before November 1, 2003, the amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after July 1, 2001.''

Pub. L. 108–173, title IV, § 415(c), Dec. 8, 2003, 117 Stat. 2282, provided that: ''The amendments made by this subsection [probably should be ''this section'', amending this section and section 1395x of this title] shall apply to services furnished on or after January 1, 2005.''

Amendment by section 627(b)(1) of Pub. L. 108–173 applicable to items furnished on or after Jan. 1, 2005, see section 627(c) of Pub. L. 108–173, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title I, § 103(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–469, provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply to colorectal cancer screening services provided on or after July 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title I, § 104(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–470, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395w–4 of this title] shall apply with respect to screening mammographies furnished on or after January 1, 2002.''

Amendment by section 1(a)(6) [title II, § 201(a)] of Pub. L. 106–554 applicable to services furnished on or after Nov. 29, 1999, see section 1(a)(6) [title II, § 201(c)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, § 1(a)(6) [title II, § 202(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–481, provided that: ''The amend-

ment made by subsection (a) [amending this section] shall apply with respect to items and services furnished on or after July 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title II, § 204(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–482, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 2001.''

Amendment by section 1(a)(6) [title II, § 205(a)] of Pub. L. 106–554 applicable to services furnished on or after Dec. 21, 2000, see section 1(a)(6) [title II, § 205(c)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, § 1(a)(6) [title II, § 221(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–487, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after July 1, 2001. In applying such amendment to services furnished on or after such date and before January 1, 2002, the amount of the rate increase provided under such amendment shall be equal to $1.25 per mile.''

Amendment by section 1(a)(6) [title II, § 223(b)] of Pub. L. 106–554 effective for services furnished on or after Oct. 1, 2001, see section 1(a)(6) [title II, § 223(e)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, § 1(a)(6) [title IV, § 423(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–518, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after July 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title IV, § 428(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–522, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to items replaced on or after April 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title II, § 201(e)(2)] of Pub. L. 106–113 effective as if included in enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see § 1000(a)(6) [title II, § 201(m)] of Pub. L. 106–113, set out as a note under section 1395*l* of this title.

Amendment by section 1000(a)(6) [title III, § 321(k)(3)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 403(d)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–371, as amended by Pub. L. 106–554, § 1(a)(6) [title II, § 201(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–481, provided that: ''Paragraphs (1) through (3) of section 1834(g) of the Social Security Act [subsec. (g) of this section] (as amended by paragraph (1)) apply for cost reporting periods beginning on or after October 1, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4101(a), (c) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4101(d) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4104(b)(1) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4104(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Section 4105(d) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1395w–4 and 1395x of this title] shall apply to items and services furnished on or after July 1, 1998.

''(2) TESTING STRIPS.—The amendment made by subsection (b)(2) [amending this section] shall apply with respect to blood glucose testing strips furnished on or after January 1, 1998.''

Amendment by section 4201(c)(5) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4312(f)(1) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to suppliers of durable medical equipment with respect to such equipment furnished on or after January 1, 1998.''

Section 4312(f)(3) of Pub. L. 105–33 provided that: ''The amendments made by subsections (c) through (e) [amending this section and section 1395x of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and may be applied with respect to items and services furnished on or after January 1, 1998.''

Section 4316(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 4531(b)(2) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 2000, see section 4531(b)(3) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4541(a)(2) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, including portions of cost reporting periods occurring on or after such date, except that subsec. (k) of this section inapplicable to services described in section 1395*l*(a)(8)(B) of this title that are furnished during 1998, see section 4541(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Section 4551(c)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to purchases or rentals after the effective date of any regulations issued pursuant to such amendment.''

Section 4552(e) of Pub. L. 105–33 provided that:

''(1) OXYGEN.—The amendments made by subsection (a) [amending this section] shall apply to items furnished on and after January 1, 1998.

''(2) OTHER PROVISIONS.—The amendments made by this section other than subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 126(i) of Pub. L. 103–432 provided that: ''Except as provided in subsection (h) [amending section 1395u of this title, enacting provisions set out as notes under sections 1395u and 1395w–4 of this title, and amending provisions set out as a note under section 1395w–4 of this title], the amendments made by this section and the provisions of this section [amending this section and sections 1395u, 1395w–1, and 1395w–4 of this title, enacting provisions set out as notes under sections 1395u and 1395w–4 of this title, and amending provisions set out as notes under this section and sections 1395u and 1395w–4 of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Section 131(a)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective 60 days after Oct. 31, 1994.

Section 132(c) of Pub. L. 103–432 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to items furnished after the expiration of the 60-day period that begins on the date of the enactment of this Act [Oct. 31, 1994].''

Section 133(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1395m and 1395pp of this title] shall apply to items or services furnished on or after January 1, 1995.''

Section 134(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

Section 135(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective on the date of the enactment of this Act [Oct. 31, 1994].''

Section 135(b)(1) of Pub. L. 103–432 provided that the amendment made by that section is effective Oct. 31, 1994.

Section 135(b)(3) of Pub. L. 103–432 provided that the amendment made by that section is effective Oct. 31, 1994.

Section 135(d)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective on the date of the enactment of this Act [Oct. 31, 1994].''

Section 135(e)(8) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section and provisions set out as notes under this section and section 1395cc of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Section 145(d) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1395x to 1395bb of this title] shall apply to mammography furnished by a facility on and after the first date that the certificate requirements of section 354(b) of the Public Health Service Act [section 263b(b) of this title] apply to such mammography conducted by such facility.''

Amendment by section 156(a)(2)(C) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13542(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to items furnished on or after January 1, 1994.''

Section 13543(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to items furnished on or after January 1, 1994.''

Section 13544(a)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall apply to items furnished on or after January 1, 1994.''

Amendment by section 13544(b)(1) of Pub. L. 103–66 applicable to items furnished on or after Jan. 1, 1994, see section 13544(b)(3) of Pub. L. 103–66, set out as a note under section 1395*l* of this title.

Section 13545(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to items furnished on or after January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4102(i) of Pub. L. 101–508 provided that:

''(1) Except as otherwise provided, the amendments made by this section [amending this section, section 1395w–4 of this title, and provisions set out as a note below] shall apply to services furnished on or after January 1, 1991.

''(2) The amendment made by subsection (f) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Amendment by section 4104(a) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4104(d) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

Section 4152(a)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 135(e)(1), Oct. 31, 1994, 108 Stat. 4424, provided that: ''The amendments made by this subsection [amending this section and section 1395x of this title] shall apply to items furnished on or after January 1, 1991.''

Section 4152(c)(4)(B)(ii) of Pub. L. 101–508 provided that: ''The amendment made by clause (i) [amending this section] shall apply to items furnished on or after January 1, 1992, unless the Secretary develops specific criteria before that date for the treatment of wheelchairs as customized items for purposes of section 1834(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (in which case the amendment made by such clause shall not become effective).'' [Criteria established by Secretary Nov. 1, 1991, see 56 F.R. 65995, Dec. 20, 1991, 42 CFR § 414.224.]

Section 4152(f)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to forms and documents distributed on or after January 1, 1991.''

Section 4152(g)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to patients who first receive home oxygen therapy services on or after January 1, 1991.''

Section 4152(i) of Pub. L. 101–508 provided that: ''Except as otherwise provided, the amendments made by this section [amending this section, section 1395x of this title, and provisions set out as a note under section 1395f of this title] shall apply to items furnished on or after January 1, 1991.''

Amendment by section 4153(a)(1), (2)(D) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4153(a)(3) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4163(b) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6102(f)(1) of Pub. L. 101–239 applicable to services furnished on or after Jan. 1, 1991, see section 6102(f)(3) of Pub. L. 101–239, set out as a note under section 1395*l* of this title.

Section 6112(e)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and sections 1395x and 1395cc of this title] shall apply with respect to items furnished on or after January 1, 1990.''

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Section 301(b)(1), (c)(1) of Pub. L. 101–234 provided that the amendments made by that section are effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(b)(4) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 203(c)(1)(F) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Section 204(e) of Pub. L. 100–360, which provided that the amendments made by section 204 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395x to 1395z, 1395aa, 1395bb, 1396a, and 1396n of this title] applied to screening mammography performed on or after January 1, 1990, and that subsec. (e)(5) of this section only applied until such time as the Secretary of Health and Human Services implemented the physician fee schedules based on relative value scale developed under section 1395w–1(e) of this title, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(a)(3)(A), (B)(ii), (C)(ii), (f)(8)(A), (B)(ii), (D), (g)(1)(A) and (B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4049(b)(2) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VI, § 6102(e)(6)(B), Dec. 19, 1989, 103 Stat. 2188; Pub. L. 101–508, title IV, § 4118(h)(2), Nov. 5, 1990, 104 Stat. 1388–70, provided that: ''The amendments made by this section [amending this section and section 1395*l* of this title] shall apply to services performed on or after April 1, 1989.''

[Section 4118(h) of Pub. L. 101–508 provided that the amendment by that section to section 4049(b)(2) of Pub. L. 100–203, set out above, is effective as if included in enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.]

EFFECTIVE DATE

Subsection (a) of this section applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as an Effective Date of 1987 Amendment note under section 1395f of this title.

REGULATIONS

Pub. L. 106–554, § 1(a)(6) [title IV, § 427(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–521, provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall promulgate revised regulations to carry out the amendment made by subsection (a) [amending this section] using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code.''

TRANSFER OF FUNCTIONS

Physician Payment Review Commission (PPRC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title. Section 4022(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by PPRC, and that, for that purpose, any reference in law to PPRC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.

GAO REPORT ON CLASS III MEDICAL DEVICES

Pub. L. 108–173, title III, § 302(c)(1)(B), Dec. 8, 2003, 117 Stat. 2231, provided that: ''Not later than March 1, 2006, the Comptroller General of the United States shall submit to Congress, and transmit to the Secretary [of Health and Human Services], a report containing recommendations on the appropriate update percentage under section 1834(a)(14) of the Social Security Act (42 U.S.C. 1395m(a)(14)) for class III medical devices described in section 513(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)(C) [360c(a)(1)(C)]) furnished to medicare beneficiaries during 2007 and 2008.''

USE OF DATA

Pub. L. 108–173, title IV, § 414(c)(2), Dec. 8, 2003, 117 Stat. 2280, provided that: ''In order to promptly implement section 1834(*l*)(12) of the Social Security Act [subsec. (*l*)(12) of this section], as added by paragraph (1), the Secretary [of Health and Human Services] may use data furnished by the Comptroller General of the United States.''

IMPLEMENTATION OF 2003 AMENDMENT

Pub. L. 108–173, title IV, § 414(e), Dec. 8, 2003, 117 Stat. 2280, provided that: ''The Secretary [of Health and Human Services] may implement the amendments made by this section [amending this section, section 1395x of this title, and provisions set out as a note under this section], and revise the conversion factor applicable under section 1834(*l*) of the Social Security Act (42 U.S.C. 1395m(*l*)) for purposes of implementing such amendments, on an interim final basis, or by program instruction.''

GAO REPORT ON COSTS AND ACCESS

Pub. L. 108–173, title IV, § 414(f), Dec. 8, 2003, 117 Stat. 2280, provided that: ''Not later than December 31, 2005, the Comptroller General of the United States shall submit to Congress an initial report on how costs differ among the types of ambulance providers and on access, supply, and quality of ambulance services in those regions and States that have a reduction in payment under the medicare ambulance fee schedule (under section 1834(*l*) of the Social Security Act [subsection (*l*) of this section], as amended by this Act). Not later than December 31, 2007, the Comptroller General shall submit to Congress a final report on such access and supply.''

REPORT ON DEMONSTRATION PROJECT PERMITTING SKILLED NURSING FACILITIES TO BE ORIGINATING TELEHEALTH SITES; AUTHORITY TO IMPLEMENT

Pub. L. 108–173, title IV, § 418, Dec. 8, 2003, 117 Stat. 2283, provided that:

''(a) EVALUATION.—The Secretary [of Health and Human Services], acting through the Administrator of the Health Resources and Services Administration in consultation with the Administrator of the Centers for Medicare & Medicaid Services, shall evaluate demonstration projects conducted by the Secretary under which skilled nursing facilities (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a))[)] are treated as originating sites for telehealth services.

''(b) REPORT.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the evaluation conducted under subsection (a). Such report shall include recommendations on mechanisms to ensure that permitting a skilled nursing facility to serve as an originating site for the use of telehealth services or any other service delivered via a telecommunications system does not serve as a substitute for in-person visits furnished by a physician, or for in-person visits furnished by a physician assistant, nurse practitioner or clinical nurse specialist, as is otherwise required by the Secretary.

''(c) AUTHORITY TO EXPAND ORIGINATING TELEHEALTH SITES TO INCLUDE SKILLED NURSING FACILITIES.—Insofar as the Secretary concludes in the report required under subsection (b) that it is advisable to permit a skilled nursing facility to be an originating site for telehealth services under section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), and that the Secretary can establish the mechanisms to ensure such permission does not serve as a substitute for in-person visits furnished by a physician, or for in-person visits furnished by a physician assistant, nurse practitioner or clinical nurse specialist, the Secretary may deem a skilled nursing facility to be an originating site under paragraph (4)(C)(ii) of such section beginning on January 1, 2006.''

PAYMENT FOR NEW TECHNOLOGIES

Pub. L. 106–554, § 1(a)(6) [title I, § 104(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–470, as amended by Pub. L. 108–173, title IX, § 900(e)(6)(H), Dec. 8, 2003, 117 Stat. 2374, provided that:

''(1) TESTS FURNISHED IN 2001.—

''(A) SCREENING.—For a screening mammography (as defined in section 1861(jj) of the Social Security Act (42 U.S.C. 1395x(jj))) furnished during the period beginning on April 1, 2001, and ending on December 31, 2001, that uses a new technology, payment for such screening mammography shall be made as follows:

''(i) In the case of a technology which directly takes a digital image (without involving film), in an amount equal to 150 percent of the amount of payment under section 1848 of such Act (42 U.S.C. 1395w–4) for a bilateral diagnostic mammography (under HCPCS code 76091) for such year.

''(ii) In the case of a technology which allows conversion of a standard film mammogram into a digital image and subsequently analyzes such resulting image with software to identify possible problem areas, in an amount equal to the limit that would otherwise be applied under section 1834(c)(3) of such Act (42 U.S.C. 1395m(c)(3)) for 2001, increased by $15.

''(B) BILATERAL DIAGNOSTIC MAMMOGRAPHY.—For a bilateral diagnostic mammography furnished during the period beginning on April 1, 2001, and ending on December 31, 2001, that uses a new technology described in subparagraph (A), payment for such mammography shall be the amount of payment provided for under such subparagraph.

''(C) ALLOCATION OF AMOUNTS.—The Secretary shall provide for an appropriate allocation of the amounts under subparagraphs (A) and (B) between the professional and technical components.

''(D) IMPLEMENTATION OF PROVISION.—The Secretary of Health and Human Services may implement the provisions of this paragraph by program memorandum or otherwise.

''(2) CONSIDERATION OF NEW HCPCS CODE FOR NEW TECHNOLOGIES AFTER 2001.—The Secretary shall determine, for such mammographies performed after 2001, whether the assignment of a new HCPCS code is appropriate for mammography that uses a new technology. If the Secretary determines that a new code is appropriate for such mammography, the Secretary shall provide for such new code for such tests furnished after 2001.

''(3) NEW TECHNOLOGY DESCRIBED.—For purposes of this subsection, a new technology with respect to a mammography is an advance in technology with respect to the test or equipment that results in the following:

''(A) A significant increase or decrease in the resources used in the test or in the manufacture of the equipment.

''(B) A significant improvement in the performance of the test or equipment.

''(C) A significant advance in medical technology that is expected to significantly improve the treatment of medicare beneficiaries.

''(4) HCPCS CODE DEFINED.—The term 'HCPCS code' means a code under the Health Care Common Procedure Coding System (HCPCS).''

MEDPAC STUDY AND REPORT ON MEDICARE COVERAGE OF CARDIAC AND PULMONARY REHABILITATION THERAPY SERVICES

Pub. L. 106–554, § 1(a)(6) [title I, § 127], Dec. 21, 2000, 114 Stat. 2763, 2763A–479, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study on coverage of cardiac and pulmonary rehabilitation therapy services under the medicare program under title XVIII of the Social Security Act [this subchapter].

''(2) FOCUS.—In conducting the study under paragraph (1), the Commission shall focus on the appropriate—

''(A) qualifying diagnoses required for coverage of cardiac and pulmonary rehabilitation therapy services;

''(B) level of physician direct involvement and supervision in furnishing such services; and

''(C) level of reimbursement for such services.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under subsection (a) together with such recommendations for legislation and administrative action as the Commission determines appropriate.''

GAO STUDIES ON COSTS OF AMBULANCE SERVICES FURNISHED IN RURAL AREAS

Pub. L. 106–554, § 1(a)(6) [title II, § 221(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–486, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study on each of the matters described in paragraph (2).

''(2) MATTERS DESCRIBED.—The matters referred to in paragraph (1) are the following:

''(A) The cost of efficiently providing ambulance services for trips originating in rural areas, with special emphasis on collection of cost data from rural providers.

''(B) The means by which rural areas with low population densities can be identified for the purpose of designating areas in which the cost of providing ambulance services would be expected to be higher than similar services provided in more heavily populated areas because of low usage. Such study shall also include an analysis of the additional costs of providing ambulance services in areas designated under the previous sentence.

''(3) REPORT.—Not later than June 30, 2002, the Comptroller General shall submit to Congress a report on the results of the studies conducted under paragraph (1) and shall include recommendations on steps that should be taken to assure access to ambulance services in rural areas.''

ADJUSTMENT IN RURAL RATES

Pub. L. 106–554, § 1(a)(6) [title II, § 221(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–487, as amended by Pub. L. 108–173, title IV, § 414(g)(1), Dec. 8, 2003, 117 Stat. 2281, provided that: ''In providing for adjustments under subparagraph (D) of section 1834(*l*)(2) of the Social Security Act (42 U.S.C. 1395m(*l*)(2)) for years beginning with 2004, the Secretary of Health and Human Services shall take into consideration the recommendations contained in the report under subsection (b)(3) [set out above] and shall adjust the fee schedule payment rates under such section for ambulance services provided in low density rural areas based on the increased cost (if any) of providing such services in such areas.''

STUDY AND REPORT ON ADDITIONAL COVERAGE FOR TELEHEALTH SERVICES

Pub. L. 106–554, § 1(a)(6) [title II, § 223(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–489, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study to identify—

''(A) settings and sites for the provision of telehealth services that are in addition to those permitted under section 1834(m) of the Social Security Act [subsec. (m) of this section], as added by subsection (b);

''(B) practitioners that may be reimbursed under such section for furnishing telehealth services that are in addition to the practitioners that may be reimbursed for such services under such section; and

''(C) geographic areas in which telehealth services may be reimbursed that are in addition to the geographic areas where such services may be reimbursed under such section.

''(2) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Secretary shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation that the Secretary determines are appropriate.''

SPECIAL RULES FOR PAYMENTS FOR 2001

Pub. L. 106–554, § 1(a)(6) [title IV, § 423(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–518, provided that: ''Notwithstanding the amendment made by paragraph (1) [amending this section], for purposes of making payments for ambulance services under part B of title XVIII of the Social Security Act [this part], for services furnished during 2001, the 'percentage increase in the consumer price index' specified in section 1834(*l*)(3)(B) of such Act (42 U.S.C. 1395m(*l*)(3)(B))—

''(A) for services furnished on or after January 1, 2001, and before July 1, 2001, shall be the percentage increase for 2001 as determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(B) for services furnished on or after July 1, 2001, and before January 1, 2002, shall be equal to 4.7 percent.''

Pub. L. 106–554, § 1(a)(6) [title IV, § 425(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–519, provided that: ''Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments for durable medical equipment under section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), other than for oxygen and oxygen equipment specified in paragraph (9) of such section, the payment basis recognized for 2001 under such section—

''(1) for items furnished on or after January 1, 2001, and before July 1, 2001, shall be the payment basis for 2001 as determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000] (including the application of section 228(a)(1) of BBRA [Pub. L. 106–113, § 1000(a)(6) [title II, § 228(a)(1)], set out as a note below]); and

''(2) for items furnished on or after July 1, 2001, and before January 1, 2002, shall be the payment basis that is determined under such section 1834(a) if such section 228(a)(1) did not apply and taking into account the amendment made by subsection (a), increased by a transitional percentage allowance equal to 3.28 percent (to account for the timing of implementation of the CPI update).''

Pub. L. 106–554, § 1(a)(6) [title IV, § 426(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–520, provided that: ''Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments for prosthetic devices and orthotics and prosthetics (as defined in subparagraphs (B) and (C) of paragraph (4) of section 1834(h) of the Social Security Act (42 U.S.C. 1395m(h)) under such section, the payment basis recognized for 2001 under paragraph (2) of such section—

''(1) for items furnished on or after January 1, 2001, and before July 1, 2001, shall be the payment basis for 2001 as determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for items furnished on or after July 1, 2001, and before January 1, 2002, shall be the payment basis that is determined under such section taking into account the amendments made by subsection (a), increased by a transitional percentage allowance equal to 2.6 percent (to account for the timing of implementation of the CPI update).''

PREEMPTION OF RULE

Pub. L. 106–554, § 1(a)(6) [title IV, § 428(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–522, provided that: ''The provisions of section 1834(h)(1)(G) [subsec. (h)(1)(G) of this section] as added by subsection (a) shall supersede any rule that as of the date of the enactment of this Act [Dec. 21, 2000] may have applied a 5-year replacement rule with regard to prosthetic devices.''

GAO STUDY AND REPORT ON COSTS OF EMERGENCY AND MEDICAL TRANSPORTATION SERVICES

Pub. L. 106–554, § 1(a)(6) [title IV, § 436], Dec. 21, 2000, 114 Stat. 2763, 2763A–527, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study on the costs of providing emergency and medical transportation services across the range of acuity levels of conditions for which such transportation services are provided.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for any changes in methodology or payment level necessary to fairly compensate suppliers of emergency and medical transportation services and to ensure the access of beneficiaries under the medicare program under title XVIII of the Social Security Act [this subchapter].''

TREATMENT OF TEMPORARY PAYMENT INCREASES AFTER CALENDAR YEAR 2001

Pub. L. 106–554, § 1(a)(6) [title V, § 547(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–553, provided that: ''The payment increase provided under the following sections shall not apply after calendar year 2001 and shall not be taken into account in calculating the payment amounts applicable for items and services furnished after such year:

''(1) Section 401(c)(2) [set out as a note under section 1395*l* of this title] (relating to covered OPD services).

''(2) Section 422(e)(2) [set out as a note under section 1395rr of this title] (relating to renal dialysis services paid for on a composite rate basis).

''(3) Section 423(a)(2)(B) [set out above] (relating to ambulance services).

''(4) Section 425(b)(2) [set out above] (relating to durable medical equipment).

''(5) Section 426(b)(2) [set out above] (relating to prosthetic devices and orthotics and prosthetics).''

STUDY OF DELIVERY OF INTRAVENOUS IMMUNE GLOBULIN (IVIG) OUTSIDE HOSPITALS AND PHYSICIANS' OFFICES

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 201(n)], Nov. 29, 1999, 113 Stat. 1536, 1501A–341, required the Secretary of Health and Human Services to conduct a study of the extent to which intravenous immune globulin could be delivered and reimbursed under the medicare program outside of a hospital or physician's office and to submit a report on such study to Congress within 18 months after Nov. 29, 1999.

TEMPORARY INCREASE IN PAYMENT RATES FOR DURABLE MEDICAL EQUIPMENT AND OXYGEN

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 228], Nov. 29, 1999, 113 Stat. 1536, 1501A–356, provided that:

''(a) IN GENERAL.—For purposes of payments under section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) for covered items (as defined in paragraph (13) of that section) furnished during 2001 and 2002, the Secretary of Health and Human Services shall increase the payment amount in effect (but for this section) for such items for—

''(1) 2001 by 0.3 percent, and

''(2) 2002 by 0.6 percent.

''(b) LIMITING APPLICATION TO SPECIFIED YEARS.—The payment amount increase—

''(1) under subsection (a)(1) shall not apply after 2001 and shall not be taken into account in calculating the payment amounts applicable for covered items furnished after such year; and

''(2) under subsection (a)(2) shall not apply after 2002 and shall not be taken into account in calculating the payment amounts applicable for covered items furnished after such year.''

DEMONSTRATION OF COVERAGE OF AMBULANCE SERVICES UNDER MEDICARE THROUGH CONTRACTS WITH UNITS OF LOCAL GOVERNMENT

Pub. L. 105–33, title IV, § 4532, Aug. 5, 1997, 111 Stat. 453, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 225], Nov. 29, 1999, 113 Stat. 1536, 1501A–353, provided that:

''(a) DEMONSTRATION PROJECT CONTRACTS WITH LOCAL GOVERNMENTS.—The Secretary of Health and Human Services shall establish up to 3 demonstration projects under which, at the request of a unit of local government, the Secretary enters into a contract with the unit of local government under which—

''(1) the unit of local government furnishes (or arranges for the furnishing of) ambulance services for which payment may be made under part B of title XVIII of the Social Security Act [this part] for individuals residing in the unit of local government who are enrolled under such part, except that the unit of local government may not enter into the contract unless the contract covers at least 80 percent of the individuals residing in the unit of local government who are enrolled under such part but not in a Medicare+Choice plan;

''(2) any individual or entity furnishing ambulance services under the contract meets the requirements

otherwise applicable to individuals and entities furnishing such services under such part; and

''(3) for each month during which the contract is in effect, the Secretary makes a capitated payment to the unit of local government in accordance with subsection (b).

The projects may extend over a period of not to exceed 3 years each. Not later than July 1, 2000, the Secretary shall publish a request for proposals for such projects.

''(b) AMOUNT OF PAYMENT.—

''(1) IN GENERAL.—The amount of the monthly payment made for months occurring during a calendar year to a unit of local government under a demonstration project contract under subsection (a) shall be equal to the product of—

''(A) the Secretary's estimate of the number of individuals covered under the contract for the month; and

''(B) 1/12 of the capitated payment rate for the year established under paragraph (2).

''(2) CAPITATED PAYMENT RATE DEFINED.—In this subsection, the term 'capitated payment rate' means, with respect to a demonstration project—

''(A) in its first year, a rate established for the project by the Secretary, using the most current available data, in a manner that ensures that aggregate payments under the project will not exceed the aggregate payment that would have been made for ambulance services under part B of title XVIII of the Social Security Act [this part] in the local area of government's jurisdiction; and

''(B) in a subsequent year, the capitated payment rate established for the previous year increased by an appropriate inflation adjustment factor.

''(c) OTHER TERMS OF CONTRACT.—The Secretary and the unit of local government may include in a contract under this section such other terms as the parties consider appropriate, including—

''(1) covering individuals residing in additional units of local government (under arrangements entered into between such units and the unit of local government involved);

''(2) permitting the unit of local government to transport individuals to non-hospital providers if such providers are able to furnish quality services at a lower cost than hospital providers; or

''(3) implementing such other innovations as the unit of local government may propose to improve the quality of ambulance services and control the costs of such services.

''(d) CONTRACT PAYMENTS IN LIEU OF OTHER BENEFITS.—Payments under a contract to a unit of local government under this section shall be instead of the amounts which (in the absence of the contract) would otherwise be payable under part B of title XVIII of the Social Security Act [this part] for the services covered under the contract which are furnished to individuals who reside in the unit of local government.

''(e) REPORT ON EFFECTS OF CAPITATED CONTRACTS.—

''(1) STUDY.—The Secretary shall evaluate the demonstration projects conducted under this section. Such evaluation shall include an analysis of the quality and cost-effectiveness of ambulance services furnished under the projects.

''(2) REPORT.—Not later than January 1, 2000, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report such recommendations as the Secretary considers appropriate, including recommendations regarding modifications to the methodology used to determine the amount of payments made under such contracts and extending or expanding such projects.''

[References to Medicare+Choice deemed to refer to Medicare Advantage, see section 201(b) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.]

[Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 225], Nov. 29, 1999, 113 Stat. 1536, 1501A–353, provided that the amendment made by that section to section 4532 of Pub. L. 105–33, set out above, is effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33.]

PAYMENT FREEZE FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT

Section 4551(b) of Pub. L. 105–33 provided that: ''In determining the amount of payment under part B of title XVIII of the Social Security Act [this part] with respect to parenteral and enteral nutrients, supplies, and equipment during each of the years 1998 through 2002, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1995.''

SERVICE STANDARDS FOR PROVIDERS OF OXYGEN AND OXYGEN EQUIPMENT

Section 4552(c) of Pub. L. 105–33 provided that: ''The Secretary shall as soon as practicable establish service standards for persons seeking payment under part B of title XVIII of the Social Security Act [this part] for the providing of oxygen and oxygen equipment to beneficiaries within their homes.''

ACCESS TO HOME OXYGEN EQUIPMENT

Section 4552(d) of Pub. L. 105–33 provided that:

''(1) STUDY.—The Comptroller General of the United States shall study issues relating to access to home oxygen equipment and shall, within 18 months after the date of the enactment of this Act [Aug. 5, 1997], report to the Committees on Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, including recommendations (if any) for legislation.

''(2) PEER REVIEW EVALUATION.—The Secretary of Health and Human Services shall arrange for peer review organizations established under section 1154 of the Social Security Act [section 1320c–3 of this title] to evaluate access to, and quality of, home oxygen equipment.''

USE OF COVERED ITEMS BY DISABLED BENEFICIARIES

Section 131(b) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with representatives of suppliers of durable medical equipment under part B of the medicare program [this part] and individuals entitled to benefits under such program on the basis of disability, shall conduct a study of the effects of the methodology for determining payments for items of such equipment under such part on the ability of such individuals to obtain items of such equipment, including customized items.

''(2) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report such recommendations as the Secretary considers appropriate to assure that disabled medicare beneficiaries have access to items of durable medical equipment.''

CRITERIA FOR TREATMENT OF ITEMS AS PROSTHETIC DEVICES OR ORTHOTICS AND PROSTHETICS

Section 131(c) of Pub. L. 103–432 provided that not later than one year after Oct. 31, 1994, Secretary of Health and Human Services was to submit to Congress a report describing prosthetic devices or orthotics and prosthetics covered under this part that do not require individualized or custom fitting and adjustment to be used by a patient, including recommendations for appropriate methodology for determining amount of payment for such items.

ADJUSTMENT REQUIRED FOR CERTAIN ITEMS

Section 134(b) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—In accordance with section 1834(a)(10)(B) of the Social Security Act [subsec. (a)(10)(B) of this section] (as amended by subsection (a)), the Secretary of Health and Human Services shall determine whether the payment amounts for the items described in paragraph (2) are not inherently reasonable, and shall adjust such amounts in accordance with such section if the amounts are not inherently reasonable.

''(2) ITEMS DESCRIBED.—The items referred to in paragraph (1) are decubitus care equipment, transcutaneous electrical nerve stimulators, and any other items considered appropriate by the Secretary.''

LIMITATION ON PREVAILING CHARGE FOR PHYSICIANS' RADIOLOGY SERVICES FURNISHED DURING 1991; EXCEPTIONS

Section 4102(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(b)(3), Oct. 31, 1994, 108 Stat. 4415, provided that:

''(1) IN GENERAL.—In applying part B of title XVIII of the Social Security Act [this part], the prevailing charge for physicians' services, furnished during 1991, which are radiology services may not exceed the fee schedule amount established under section 1834(b) of such Act [subsec. (b) of this section] with respect to such services.

''(2) EXCEPTION.—Paragraph (1) shall not apply to nuclear medicine services.''

LIMITATION ON CARRIER ADJUSTMENTS FOR RADIOLOGIST SERVICES FURNISHED DURING 1991

Section 4102(e) of Pub. L. 101–508 provided that: ''For radiologist services furnished during 1991 for which payment is made under section 1834(b) of the Social Security Act [subsec. (b) of this section]—

''(1) a carrier may not make any adjustment, under section 1842(b)(3)(B) of such Act [section 1395u(b)(3)(B) of this title], in the payment amount for the service under section 1834(b) on the basis that the payment amount is higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier,

''(2) no payment adjustment may be made under section 1842(b)(8) of such Act, and

''(3) section 1842(b)(9) of such Act shall not apply.''

STUDY OF PAYMENTS FOR PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS

Section 4153(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §135(e)(6), Oct. 31, 1994, 108 Stat. 4424, directed Comptroller General to conduct a study of feasibility and desirability of establishing a separate fee schedule for use in determining the amount of payments for covered items under subsec. (h) of this section with respect to suppliers of prosthetic devices, orthotics, and prosthetics who provide professional services that would take into account the costs to such providers of providing such services and, not later than 1 year after Nov. 5, 1990, submit a report on the study to Committees on Energy and Commerce and Ways and Means of House of Representatives and Committee on Finance of Senate, including any recommendations regarding payments for prosthetic devices, orthotics, and prosthetics under the medicare program.

SPECIAL RULE FOR NUCLEAR MEDICINE PHYSICIANS

Section 6105(b) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4102(g)(1), Nov. 5, 1990, 104 Stat. 1388–57, provided that: ''In applying section 1834(b) of the Social Security Act [subsec. (b) of this section] with respect to nuclear medicine services furnished by a physician for whom nuclear medicine services account for at least 80 percent of the total amount of charges made under part B of title XVIII of the Social Security Act [this part] beginning April 1, 1990, and ending December 31, 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based ⅓ on the fee schedule computed under such section (without regard to this subsection) and ⅔ on 101 percent of the 1988 prevailing charge for such services.''

SPECIAL RULE FOR INTERVENTIONAL RADIOLOGISTS; ''SPLIT BILLING''

Section 6105(c) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4102(h), Nov. 5, 1990, 104 Stat. 1388–58, provided that: ''In applying section 1834(b) of the Social Security Act [subsec. (b) of this section] to radiologist services furnished in 1990 or 1991, the exception for 'split billing' set forth at section 5262J of the Medicare Carriers Manual shall apply to services furnished in 1990 or 1991 in the same manner and to the same extent as the exception applied to services furnished in 1989.''

RENTAL PAYMENTS FOR ENTERAL AND PARENTERAL PUMPS

Section 6112(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any monthly rental payment under part B of title XVIII of the Social Security Act [this part] for an enteral or parenteral pump furnished on or after April 1, 1990, shall be determined in accordance with the methodology under which monthly rental payments for such pumps were determined during 1989.

''(2) CAP ON RENTAL PAYMENTS, SERVICING, AND REPAIRS.—In the case of an enteral or parenteral pump described in paragraph (1) that is furnished on a rental basis during a period of medical need—

''(A) monthly rental payments shall not be made under part B of title XVIII of the Social Security Act for more than 15 months during such period, and

''(B) after monthly rental payments have been made for 15 months during such period, payment under such part shall be made for maintenance and servicing of the pump in such amounts as the Secretary of Health and Human Services determines to be reasonable and necessary to ensure the proper operation of the pump.''

TREATMENT OF POWER-DRIVEN WHEELCHAIRS AS CUSTOMIZED ITEMS

Section 6112(d)(2) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall by regulation specify criteria to be used by carriers in making determinations on a case-by-case basis as whether to classify power-driven wheelchairs as a customized item (as described in section 1834(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) for purposes of reimbursement under title XVIII of such Act [this subchapter].''

STUDY OF PAYMENT FOR PORTABLE X-RAY SERVICES

Section 6134 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study of costs of furnishing, and payments for, portable x-ray services under part B and, not later than 1 year after Dec. 19, 1989, report to Congress on results of such study including a recommendation respecting whether payment for such services should be made in the same manner as for radiologists' services or on the basis of a separate fee schedule.

GAO STUDY OF STANDARDS FOR USE OF AND PAYMENT FOR ITEMS OF DURABLE MEDICAL EQUIPMENT

Section 6139 of Pub. L. 101–239 directed Comptroller General to conduct a study of appropriate uses of items of durable medical equipment and of appropriate criteria for making determinations of medical necessity under this subchapter for such items, with particular emphasis on items (including seat-lift chairs) that may be subject to abusive billing practices, such study to include an analysis of appropriate use of forms in making medical necessity determinations for items of durable medical equipment under such title, and procedures for identifying items of durable medical equipment that should no longer be covered under this subchapter, and

to be conducted with a panel convened by the Comptroller General consisting of specialists in the disciplines of orthopedic medicine, rehabilitation, arthritis, and geriatric medicine, representatives of consumer organizations, and representatives of carriers under the medicare program, with the Comptroller General to submit not later than Apr. 1, 1991, a report to Committees on Ways and Means and Energy and Commerce of House of Representatives and Committee on Finance of Senate on the study including recommendations.

REPORTS ON MEDICARE BENEFICIARY DRUG EXPENSES

Section 202(i) of Pub. L. 100–360, directed Secretary of Health and Human Services, by not later than Apr. 1, 1989, to report to Congress on expenses incurred by medicare beneficiaries for outpatient prescription drugs, and to provide Director of Congressional Budget Office with such data from that Survey as Director might request to make required estimates, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

ADDITIONAL STUDIES BY SECRETARY OR COMPTROLLER GENERAL

Section 202(k) of Pub. L. 100–360 directed Secretary of Health and Human Services to conduct a study, and make a report to Congress by Jan. 1, 1990, on possibility of including drugs which have not yet been approved under section 355 or 357 of Title 21, Food and Drugs, and biological products which have not been licensed under section 262 of this title but which are commonly used in the treatment of cancer or in immunosuppressive therapy and other experimental drugs and biological products as covered outpatient drugs under medicare program, to conduct a study, and report to Congress by Jan. 1, 1990, evaluating potential to use mail service pharmacies to reduce costs to medicare program and to medicare beneficiaries, to conduct a study, and report to Congress by Jan. 1, 1993, on methods to improve utilization review of covered outpatient drugs, and to conduct a longitudinal study, and report to Congress by Jan. 1, 1993, on use of outpatient prescription drugs by medicare beneficiaries with respect to medical necessity, potential for adverse drug interactions, cost (including whether lower cost drugs could have been used), and patient stockpiling or wastage, and which further directed Comptroller General to conduct studies, and report to Congress by not later than May 1, 1991, on comparing average wholesale prices with actual pharmacy acquisition costs by type of pharmacy, on determining the overhead costs of retail pharmacies, and on discounts given by pharmacies to other third-party insurers, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

DEVELOPMENT OF STANDARD MEDICARE CLAIMS FORMS

Section 202(*l*) of Pub. L. 100–360 directed Secretary of Health and Human Services to develop, in consultation with representatives of pharmacies and other interested individuals, a standard claims form (and a standard electronic claims format) to be used in requests for payment for covered outpatient drugs under medicare program and other third-party payors, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

STUDIES AND REPORTS ON SCREENING MAMMOGRAPHY

Section 204(f) of Pub. L. 100–360 directed Physician Payment Review Commission to study and report, by July 1, 1989, to Committees on Ways and Means and Energy and Commerce of the House of Representatives and Committee on Finance of the Senate concerning the cost of providing screening mammography in a variety of settings and at different volume levels, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

DEADLINE FOR ESTABLISHMENT OF FEE SCHEDULES FOR RADIOLOGIST SERVICES; REPORT TO CONGRESS

Section 4049(b)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(f)(8)(E), July 1, 1988, 102 Stat. 780; Pub. L. 101–508, title IV, § 4118(g)(3), Nov. 5, 1990, 104 Stat. 1388–70, directed Secretary of Health and Human Services to propose the relative value scale and fee schedules for radiologist services (under subsec. (b) of this section) by not later than Aug. 1, 1988.

STUDY AND EVALUATION

Section 4062(c) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(g)(1)(C), July 1, 1988, 102 Stat. 782, provided that:

''(1) The Secretary of Health and Human Services shall monitor the impact of the amendments made by this section [enacting this section, amending sections 1395f, 1395k, 1395*l*, and 1395cc of this title, and repealing section 1395zz of this title] on the availability of covered items and shall evaluate the appropriateness of the volume adjustment for oxygen and oxygen equipment under section 1834(a)(5)(C) of the Social Security Act [subsec. (a)(5)(C) of this section] (as amended by subsection (b) of this section). The Secretary shall report to Congress, by not later than January 1, 1991, on such impact and on the evaluation and shall include in such report recommendations for changes in payment methodology for covered items under section 1834(a) of such Act.

''(2) Before January 1, 1991, the Secretary may not conduct any demonstration project respecting alternative methods of payment for covered items under title XVIII of the Social Security Act [this subchapter].

''(3) In this subsection, the term 'covered item' has the meaning given such term in section 1834(a)(13) of the Social Security Act [subsec. (a)(13) of this section] (as amended by subsection (b) of this section).

''(4) The Secretary shall, upon written request and payment of a reasonable copying fee which the Secretary may establish, provide the data and information used in determining the payment amounts for covered items under section 1834(a) of the Social Security Act [subsec. (a) of this section], but only in a form which does not permit identification of individual suppliers.

''(5) The Comptroller General shall conduct a study on the appropriateness of the level of payments allowed for covered items under the medicare program, and shall report to Congress on the results of such study (including recommendations on the transition to regional or national rates) by not later than January 1, 1991. Entities furnishing such items which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject to exclusion from the medicare program under section 1128(a) of the Social Security Act [section 1320a–7(a) of this title].''

§ 1395n. Procedure for payment of claims of providers of services

(a) Conditions for payment for services described in section 1395k(a)(2) of this title

Except as provided in subsections (b), (c), and (e) of this section, payment for services described in section 1395k(a)(2) of this title furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc(a) of this title, and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services fur-

nished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that, where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year; and

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that—

(A) in the case of home health services (i) such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m)(7) of this title) and needs or needed skilled nursing care (other than solely venipuncture for the purpose of obtaining a blood sample) on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(B) in the case of medical and other health services, except services described in subparagraphs (B), (C), and (D) of section 1395x(s)(2) of this title, such services are or were medically required;

(C) in the case of outpatient physical therapy services or outpatient occupational therapy services, (i) such services are or were required because the individual needed physical therapy services or occupational therapy services, respectively, (ii) a plan for furnishing such services has been established by a physician or by the qualified physical therapist or qualified occupational therapist, respectively, providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(D) in the case of outpatient speech pathology services, (i) such services are or were required because the individual needed speech pathology services, (ii) a plan for furnishing such services has been established by a physician or by the speech pathologist providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(E) in the case of comprehensive outpatient rehabilitation facility services, (i) such services are or were required because the individual needed skilled rehabilitation services, (ii) a plan for furnishing such services has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; and

(F) in the case of partial hospitalization services, (i) the individual would require inpatient psychiatric care in the absence of such services, (ii) an individualized, written plan for furnishing such services has been established by a physician and is reviewed periodically by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.

For purposes of this section, the term ''provider of services'' shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency. For purposes of paragraph (2)(A), an individual shall be considered to be ''confined to his home'' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered ''confined to his home'', the condi-

tion of the individual should be such that there exists a normal inability to leave home and that leaving home requires a considerable and taxing effort by the individual. Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish adult day-care services in the State shall not disqualify an individual from being considered to be ''confined to his home''. Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration.

(b) Conditions for payment for services described in section 1395x(s) of this title

(1) Payment may also be made to any hospital for services described in section 1395x(s) of this title furnished as an outpatient service by a hospital or by others under arrangements made by it to an individual entitled to benefits under this part even though such hospital does not have an agreement in effect under this subchapter if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has made an election pursuant to section 1395f(d)(1)(C) of this title with respect to the calendar year in which such emergency services are provided. Such payments shall be made only in the amounts provided under section 1395*l*(a)(2) of this title and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1395cc(a) of this title.

(2) Payment may also be made on the basis of an itemized bill to an individual for services described in paragraph (1) of this subsection if (A) payment cannot be made under such paragraph (1) solely because the hospital does not elect, in accordance with section 1395f(d)(1)(C) of this title, to claim such payments and (B) such individual files application (submitted within such time and in such form and manner, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amounts payable under this paragraph shall, subject to the provisions of section 1395*l* of this title, be equal to 80 percent of the hospital's reasonable charges for such services.

(c) Collection of charges from individuals for services specified in section 1395x(s) of this title

Notwithstanding the provisions of this section and sections 1395k, 1395*l*, and 1395cc(a)(1)(A) of this title, a hospital or a critical access hospital may, subject to such limitations as may be prescribed by regulations, collect from an individual the customary charges for services specified in section 1395x(s) of this title and furnished to him by such hospital as an outpatient, but only if such charges for such services do not exceed the applicable supplementary medical insurance deductible, and such customary charges shall be regarded as expenses incurred by such individual with respect to which benefits are payable in accordance with section 1395*l*(a)(1) of this title. Payments under this subchapter to hospitals which have elected to make collections from individuals in accordance with the preceding sentence shall be adjusted periodically to place the hospital in the same position it would have been had it instead been reimbursed in accordance with section 1395*l*(a)(2) of this title (or, in the case of a critical access hospital, in accordance with section 1395*l*(a)(6) of this title).

(d) Payment to Federal provider of services or other Federal agencies prohibited

Subject to section 1395qq of this title, no payment may be made under this part to any Federal provider of services or other Federal agency, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services or other person for any item or service which such provider or person is obligated by a law of, or a contract with, the United States to render at public expense.

(e) Payment to fund designated by medical staff or faculty of medical school

For purposes of services (1) which are inpatient hospital services by reason of paragraph (7) of section 1395x(b) of this title or for which entitlement exists by reason of clause (II) of section 1395k(a)(2)(B)(i) of this title, and (2) for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(A) such hospital has an agreement with the Secretary under section 1395cc of this title, and

(B) the Secretary has received written assurances that (i) such payment will be used by such fund solely for the improvement of care to patients in such hospital or for educational or charitable purposes and (ii) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged provision will be made for return of any moneys incorrectly collected).

(Aug. 14, 1935, ch. 531, title XVIII, § 1835, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 303; amended Pub. L. 90–248, title I, §§ 126(b), 129(c)(9)(A), (B), 130(a), (b), 133(e), Jan. 2, 1968, 81 Stat. 846, 848, 849, 851; Pub. L. 92–603, title II, §§ 204(b), 227(e)(2), 251(b)(2), 281(f), 283(b), Oct. 30, 1972, 86 Stat. 1377, 1406, 1445, 1456; Pub. L. 94–437, title IV, § 401(a), Sept. 30, 1976, 90 Stat. 1408; Pub. L. 96–499, title IX, §§ 930(e), (j), 933(b), 944(a), Dec. 5, 1980, 94 Stat. 2631, 2632, 2635, 2642; Pub. L. 97–35, title XXI, §§ 2106(b)(1), 2122(a)(1), Aug. 13, 1981, 95 Stat. 792, 796; Pub. L. 98–21, title

VI, § 602(b), Apr. 20, 1983, 97 Stat. 163; Pub. L. 98–369, div. B, title III, §§ 2336(a), (b), 2342(b), 2354(b)(1), (8), (9), July 18, 1984, 98 Stat. 1091, 1094, 1100; Pub. L. 98–617, § 3(a)(3), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–509, title IX, § 9337(c), Oct. 21, 1986, 100 Stat. 2034; Pub. L. 100–203, title IV, §§ 4024(b), 4070(b)(3), 4085(i)(4), Dec. 22, 1987, 101 Stat. 1330–74, 1330–115, 1330–132; Pub. L. 100–360, title II, §§ 203(d)(1), 205(d), July 1, 1988, 102 Stat. 724, 731; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, § 6003(g)(3)(D)(viii), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 101–508, title IV, § 4008(m)(2)(D), Nov. 5, 1990, 104 Stat. 1388–53; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4615(a), Aug. 5, 1997, 111 Stat. 373, 475; Pub. L. 106–554, § 1(a)(6) [title V, § 507(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–532; Pub. L. 108–173, title VII, § 736(c)(2)(B), Dec. 8, 2003, 117 Stat. 2356.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173 substituted ''leave home and'' for ''leave home,'' in fifth sentence of concluding provisions.

2000—Subsec. (a). Pub. L. 106–554, in concluding provisions, struck out '', and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment'' after ''taxing effort by the individual'' and inserted at end ''Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish adult day-care services in the State shall not disqualify an individual from being considered to be 'confined to his home'. Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration.''

1997—Subsec. (a)(2)(A). Pub. L. 105–33, § 4615(a), inserted ''(other than solely venipuncture for the purpose of obtaining a blood sample)'' after ''skilled nursing care''.

Subsec. (c). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' in two places.

1990—Subsec. (c). Pub. L. 101–508 substituted ''a hospital or a rural primary care hospital may'' for ''a hospital may'' in first sentence, substituted ''section 1395*l*(a)(2) of this title (or, in the case of a rural primary care hospital, in accordance with section 1395*l*(a)(6) of this title)'' for ''section 1395*l*(a)(2) of this title'' in second sentence, and struck out at end ''A rural primary care hospital shall be considered a hospital for purposes of this subsection.''

1989—Subsec. (a)(2)(G), (H). Pub. L. 101–234 repealed Pub. L. 100–360, §§ 203(d)(1), 205(d), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (c). Pub. L. 101–239 inserted at end ''A rural primary care hospital shall be considered a hospital for purposes of this subsection.''

1988—Subsec. (a)(2)(G). Pub. L. 100–360, § 203(d)(1), added subpar. (G) relating to home intravenous drug therapy services.

Subsec. (a)(2)(H). Pub. L. 100–360, § 205(d), added subpar. (H) relating to in-home care provided to chronically dependent individuals.

1987—Subsec. (a). Pub. L. 100–203, § 4024(b), inserted two sentences at end clarifying ''confined to his home'' for purposes of par. (2)(A).

Subsec. (a)(2)(C)(i). Pub. L. 100–203, § 4085(i)(4), struck out second comma at end.

Subsec. (a)(2)(F). Pub. L. 100–203, § 4070(b)(3), added subpar. (F).

1986—Subsec. (a)(2). Pub. L. 99–509, § 9337(c)(2), inserted in second sentence ''(or meets the requirements of such section through the operation of section 1395x(g) of this title)'' in two places, and ''or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services''.

Subsec. (a)(2)(C). Pub. L. 99–509, § 9337(c)(1), inserted ''or outpatient occupational therapy services'' in introductory provisions, ''or occupational therapy services, respectively,'' in cl. (i), and ''or qualified occupational therapist, respectively,'' in cl. (ii).

1984—Subsec. (a). Pub. L. 98–369, § 2354(b)(1), as amended by Pub. L. 98–617, § 3(a)(3), in concluding provisions, substituted ''contractual'' for ''contractural''.

Pub. L. 98–369, § 2336(b), inserted before period at end of fourth sentence '', except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary)''.

Pub. L. 98–369, § 2336(a), inserted sentence at end that for purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

Subsec. (a)(2)(B), (C). Pub. L. 98–369, § 2354(b)(8)(A), struck out ''and'' at end.

Subsec. (a)(2)(C)(ii). Pub. L. 98–369, § 2342(b), substituted ''by a physician or by the qualified physical therapist providing such services and is periodically reviewed by a physician'' for '', and is periodically reviewed, by a physician''.

Subsec. (a)(2)(D). Pub. L. 98–369, § 2354(b)(8)(B), realigned margin of subpar. (D).

Subsec. (e)(2). Pub. L. 98–369, § 2354(b)(9), designated concluding pars. (1) and (2) as (A) and (B), respectively, and in par. (B) inserted ''(i)'' after ''written assurances that'' and substituted ''(ii) the individuals who'' for ''(B) the individuals who'' and ''return of'' for ''return for''.

1983—Subsec. (e). Pub. L. 98–21 inserted ''(or would be if section 1395ww of this title did not apply)'' after ''section 1395(v)(1)(D) of this title''.

1981—Subsec. (a)(2)(A). Pub. L. 97–35, § 2122(a)(1), substituted ''needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy'' for ''needed skilled nursing care on an intermittent basis, or physical, occupational, or speech therapy''.

Subsec. (a)(2)(D). Pub. L. 97–35, § 2106(b)(1), inserted ''and'' after ''physician;''.

Subsec. (a)(2)(E). Pub. L. 97–35, § 2106(b)(1), substituted a period for ''; and'' at the end.

1980—Subsec. (a). Pub. L. 96–499, § 930(e), inserted sentence at end authorizing Secretary to prescribe regulations to prohibit significantly interested physicians from performing physician certification required by par. (2) for home health services.

Subsec. (a)(2)(A). Pub. L. 96–499, § 930(j), substituted ''physical, occupational, or speech'' for ''physical or speech''.

Subsec. (a)(2)(D)(ii). Pub. L. 96–499, § 944(a), inserted ''by a physician or by the speech pathologist providing such services'', after ''has been established''.

Subsec. (a)(2)(E). Pub. L. 96–499, § 933(b), added subpar. (E).

1976—Subsec. (d). Pub. L. 94–437 substituted ''Subject to section 1395qq of this title, no payment'' for ''No payment''.

1972—Subsec. (a). Pub. L. 92–603, § 227(e)(2)(A), inserted reference to subsec. (e) of this section in introductory provisions.

Subsec. (a)(1). Pub. L. 92–603, § 281(f), placed a 3-year time limitation on time within which a written request for payment is filed, with provision for reduction of limit to 1 year.

Subsec. (a)(2)(C). Pub. L. 92–603, § 251(b)(2), substituted ''because the individual needed physical therapy services'' for ''because the individual needed physical therapy services on an outpatient basis''.

Subsec. (a)(2)(D). Pub. L. 92–603, § 283(b), added subpar. (D).

Subsec. (c). Pub. L. 92–603, § 204(b), substituted ''the applicable supplementary medical insurance deductible'' for ''$50''.

Subsec. (e). Pub. L. 92–603, § 227(e)(2)(B), added subsec. (e).

1968—Subsec. (a). Pub. L. 90–248, §§ 129(c)(9)(A), 130(a), inserted introductory exception phrase and included reference to subsec. (c).

Subsec. (a)(2). Pub. L. 90–248, § 133(e)(5), inserted sentence at end defining ''provider of services''.

Subsec. (a)(2)(B). Pub. L. 90–248, §§ 126(b), 133(e)(4), inserted ''except services described in subparagraphs (B) and (C) of section 1395x(s)(2) of this title,'' after ''health services,'' and inserted reference to subpar. (d).

Subsec. (a)(2)(C). Pub. L. 90–248, § 133(e)(1)–(3), added subpar. (C).

Subsec. (b). Pub. L. 90–248, § 129(c)(9)(B), added subsec. (b). Former subsec. (b) redesignated (c), in turn redesignated (d).

Subsec. (c). Pub. L. 90–248, § 130(b), added subsec. (c). Former subsec. (c), previously designated (b), redesignated (d).

Subsec. (d). Pub. L. 90–248, §§ 129(c)(9)(B), 130(b), redesignated former subsec. (b) as (c), in turn as (d), respectively.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to home health services furnished on or after Dec. 21, 2000, see section 1(a)(6) [title V, § 507(a)(2)] of Pub. L. 106–554, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4615(a) of Pub. L. 105–33 applicable to home health services furnished after 6-month period beginning after Aug. 5, 1997, see section 4615(b) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 203(d)(1) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 205(d) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4024(b) of Pub. L. 100–203 applicable to items and services provided on or after Jan. 1, 1988, see section 4024(c) of Pub. L. 100–203, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2336(a) of Pub. L. 98–369 applicable to certifications and plans of care made or established on or after July 18, 1984, see section 2336(c)(1) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2342(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] apply to plans of care established on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(1), (8), (9) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2122(a)(1) of Pub. L. 97–35 applicable to services furnished pursuant to plans of treatment implemented after the third month beginning after Aug. 13, 1981, see section 2122(b) of Pub. L. 97–35, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(e), (j) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Amendment by section 933(b) of Pub. L. 96–499 effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period beginning on or after July 1, 1981, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

Section 944(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to plans for furnishing services established on or after January 1, 1981.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 204(b) of Pub. L. 92–603 effective with respect to calendar years after 1972, see section 204(c) of Pub. L. 92–603, set out as a note under section 1395*l* of this title.

Amendment by section 227(e)(2) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 251(b)(2) of Pub. L. 92–603 applicable with respect to services furnished on or after Oct. 30, 1972, see section 251(d)(2) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 281(f) of Pub. L. 92–603 applicable in the case of services furnished (or deemed to have been furnished) after 1970, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

Section 283(c) of Pub. L. 92–603 provided that: ''The provisions of this section [amending this section and

section 1395x of this title] shall apply with respect to services rendered after December 31, 1972.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 126(b) of Pub. L. 90–248 applicable with respect to services furnished after Jan. 2, 1968, see section 126(c) of Pub. L. 90–248, set out as a note under section 1395f of this title.

Amendment by section 129(c)(9)(A), (B) of Pub. L. 90–248 applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 130(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to services furnished after March 31, 1968.''

Amendment by section 133(e) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

REGULATIONS

Secretary of Health and Human Services required to provide, not later than 90 days after July 18, 1984, for revision of regulations as may be required to reflect amendment to subsec. (a) by section 2336(b) of Pub. L. 98–369, see section 2336(c)(2) of Pub. L. 98–369, set out as a note under section 1395f of this title.

MEDPAC STUDY ON DIRECT ACCESS TO PHYSICAL THERAPY SERVICES

Pub. L. 108–173, title VI, § 647, Dec. 8, 2003, 117 Stat. 2326, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission (in this section referred to as the 'Commission') shall conduct a study on the feasibility and advisability of allowing medicare fee-for-service beneficiaries direct access to outpatient physical therapy services and physical therapy services furnished as comprehensive rehabilitation facility services.

''(b) REPORT.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.

''(c) DIRECT ACCESS DEFINED.—The term 'direct access' means, with respect to outpatient physical therapy services and physical therapy services furnished as comprehensive outpatient rehabilitation facility services, coverage of and payment for such services in accordance with the provisions of title XVIII of the Social Security Act [this subchapter], except that sections 1835(a)(2), 1861(p), and 1861(cc) of such Act (42 U.S.C. 1395n(a)(2), 1395x(p), and 1395x(cc), respectively) shall be applied—

''(1) without regard to any requirement that—

''(A) an individual be under the care of (or referred by) a physician; or

''(B) services be provided under the supervision of a physician; and

''(2) by allowing a physician or a qualified physical therapist to satisfy any requirement for—

''(A) certification and recertification; and

''(B) establishment and periodic review of a plan of care.''

HOME HEALTH PROSPECTIVE PAYMENT DEMONSTRATION PROJECT

Section 4027 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(d)(6), July 1, 1988, 102 Stat. 775, directed Secretary of Health and Human Services to provide for a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for services furnished under the medicare and medicaid programs, directed that the project be designed in a manner to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case, and per-episode basis) on program expenditures, access to, and quality of, home health care, and home health agency operations, directed Secretary to assure that services are first furnished under the project not later than Apr. 1, 1989, and, for this purpose, authorized Secretary to reinstate a previously awarded contract, or award a sole source contract, to carry out the project, provided for funding, and directed Secretary to submit to Congress, not later than one year after Dec. 22, 1987, an interim report on the demonstration project and, not later than four years after Dec. 22, 1987, a final report on results of the project.

§ 1395*o*. Eligible individuals

Every individual who—

(1) is entitled to hospital insurance benefits under part A of this subchapter, or

(2) has attained age 65 and is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this part,

is eligible to enroll in the insurance program established by this part.

(Aug. 14, 1935, ch. 531, title XVIII, § 1836, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 304; amended Pub. L. 92–603, title II, § 201(c)(1), Oct. 30, 1972, 86 Stat. 1372.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in par. (1), is classified to section 1395c et seq. of this title.

AMENDMENTS

1972—Pub. L. 92–603 designed former par. (2)(B) as par. (1), former par. (1) as introductory clause in par. (2), and former pars. (2)(A)(i) and (ii) as pars. (2)(A) and (B), and struck out ''(A)'' after ''(2)''.

PERSONS CONVICTED OF SUBVERSIVE ACTIVITIES

Section 104(b)(2) of Pub. L. 89–97 provided that: ''An individual who has been convicted of any offense under (A) chapter 37 [section 792 et seq. of Title 18, Crimes and Criminal Procedure] (relating to espionage and censorship), chapter 105 [section 2151 et seq. of Title 18] (relating to sabotage), or chapter 115 [section 2381 et seq. of Title 18] (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, or (B) section 4, 112, or 113 of the Internal Security Act of 1950, as amended [section 783, 822, or 823 of Title 50, War and National Defense], may not enroll under part B of title XVIII of the Social Security Act [this part].''

§ 1395p. Enrollment periods

(a) Generally; regulations

An individual may enroll in the insurance program established by this part only in such manner and form as may be prescribed by regulations, and only during an enrollment period prescribed in or under this section.

(b) Repealed. Pub. L. 96–499, title IX, § 945(a), Dec. 5, 1980, 94 Stat. 2642

(c) Initial general enrollment period; eligible individuals before March 1, 1966

In the case of individuals who first satisfy paragraph (1) or (2) of section 1395*o* of this title before March 1, 1966, the initial general enrollment period shall begin on the first day of the second month which begins after July 30, 1965,

and shall end on May 31, 1966. For purposes of this subsection and subsection (d) of this section, an individual who has attained age 65 and who satisfies paragraph (1) of section 1395*o* of this title but not paragraph (2) of such section shall be treated as satisfying such paragraph (1) on the first day on which he is (or on filing application would have been) entitled to hospital insurance benefits under part A of this subchapter.

(d) Eligible individuals on or after March 1, 1966

In the case of an individual who first satisfies paragraph (1) or (2) of section 1395*o* of this title on or after March 1, 1966, his initial enrollment period shall begin on the first day of the third month before the month in which he first satisfies such paragraphs and shall end seven months later. Where the Secretary finds that an individual who has attained age 65 failed to enroll under this part during his initial enrollment period (based on a determination by the Secretary of the month in which such individual attained age 65), because such individual (relying on documentary evidence) was mistaken as to his correct date of birth, the Secretary shall establish for such individual an initial enrollment period based on his attaining age 65 at the time shown in such documentary evidence (with a coverage period determined under section 1395q of this title as though he had attained such age at that time).

(e) General enrollment period

There shall be a general enrollment period during the period beginning on January 1 and ending on March 31 of each year.

(f) Individuals deemed enrolled in medical insurance program

Any individual—

(1) who is eligible under section 1395*o* of this title to enroll in the medical insurance program by reason of entitlement to hospital insurance benefits as described in paragraph (1) of such section, and

(2) whose initial enrollment period under subsection (d) of this section begins after March 31, 1973, and

(3) who is residing in the United States, exclusive of Puerto Rico,

shall be deemed to have enrolled in the medical insurance program established by this part.

(g) Commencement of enrollment period

All of the provisions of this section shall apply to individuals satisfying subsection (f) of this section, except that—

(1) in the case of an individual who satisfies subsection (f) of this section by reason of entitlement to disability insurance benefits described in section 426(b) of this title, his initial enrollment period shall begin on the first day of the later of (A) April 1973 or (B) the third month before the 25th month of such entitlement, and shall reoccur with each continuous period of eligibility (as defined in section 1395r(d) of this title) and upon attainment of age 65;

(2)(A) in the case of an individual who is entitled to monthly benefits under section 402 or 423 of this title on the first day of his initial enrollment period or becomes entitled to monthly benefits under section 402 of this title during the first 3 months of such period, his enrollment shall be deemed to have occurred in the third month of his initial enrollment period, and

(B) in the case of an individual who is not entitled to benefits under section 402 of this title on the first day of his initial enrollment period and does not become so entitled during the first 3 months of such period, his enrollment shall be deemed to have occurred in the month in which he files the application establishing his entitlement to hospital insurance benefits provided such filing occurs during the last 4 months of his initial enrollment period; and

(3) in the case of an individual who would otherwise satisfy subsection (f) of this section but does not establish his entitlement to hospital insurance benefits until after the last day of his initial enrollment period (as defined in subsection (d) of this section), his enrollment shall be deemed to have occurred on the first day of the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section).

(h) Waiver of enrollment period requirements where individual's rights were prejudiced by administrative error or inaction

In any case where the Secretary finds that an individual's enrollment or nonenrollment in the insurance program established by this part or part A of this subchapter pursuant to section 1395i–2 of this title is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Federal Government, or its instrumentalities, the Secretary may take such action (including the designation for such individual of a special initial or subsequent enrollment period, with a coverage period determined on the basis thereof and with appropriate adjustments of premiums) as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction.

(i) Special enrollment periods

(1) In the case of an individual who—

(A) at the time the individual first satisfies paragraph (1) or (2) of section 1395*o* of this title, is enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual's (or the individual's spouse's) current employment status, and

(B) has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period,

there shall be a special enrollment period described in paragraph (3). In the case of an individual not described in the previous sentence who has not attained the age of 65, at the time the individual first satisfies paragraph (1) of section 1395*o* of this title, is enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iii) of this title) by reason of the individual's current employment status (or the current employment status of a family

member of the individual), and has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period, there shall be a special enrollment period described in paragraph (3)(B).

(2) In the case of an individual who—

(A)(i) has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or (ii) is an individual described in paragraph (1)(A);

(B) has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual's (or individual's spouse's) current employment status; and

(C) has not terminated enrollment under this section at any time at which the individual is not enrolled in such a group health plan by reason of the individual's (or individual's spouse's) current employment status,

there shall be a special enrollment period described in paragraph (3). In the case of an individual not described in the previous sentence who has not attained the age of 65, has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iii) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual), and has not terminated enrollment under this section at any time at which the individual is not enrolled in such a large group health plan by reason of the individual's current employment status (or the current employment status of a family member of the individual), there shall be a special enrollment period described in paragraph (3)(B).

(3)(A) The special enrollment period referred to in the first sentences of paragraphs (1) and (2) is the period including each month during any part of which the individual is enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of current employment status ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled.

(B) The special enrollment period referred to in the second sentences of paragraphs (1) and (2) is the period including each month during any part of which the individual is enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iii) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual) ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled.

(4)(A) In the case of an individual who is entitled to benefits under part A of this subchapter pursuant to section 426(b) of this title and—

(i) who at the time the individual first satisfies paragraph (1) of section 1395*o* of this title—

(I) is enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual's current or former employment or by reason of the current or former employment status of a member of the individual's family, and

(II) has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period; and

(ii) whose continuous enrollment under such group health plan is involuntarily terminated at a time when the enrollment under the plan is not by reason of the individual's current employment or by reason of the current employment of a member of the individual's family,

there shall be a special enrollment period described in subparagraph (B).

(B) The special enrollment period referred to in subparagraph (A) is the 6-month period beginning on the first day of the month which includes the date of the enrollment termination described in subparagraph (A)(ii).

(j) Special rules for individuals with ALS

In applying this section in the case of an individual who is entitled to benefits under part A of this subchapter pursuant to the operation of section 426(h) of this title, the following special rules apply:

(1) The initial enrollment period under subsection (d) of this section shall begin on the first day of the first month in which the individual satisfies the requirement of section 1395*o*(1) of this title.

(2) In applying subsection (g)(1) of this section, the initial enrollment period shall begin on the first day of the first month of entitlement to disability insurance benefits referred to in such subsection.

(k) Special enrollment period for certain volunteers serving outside United States

(1) In the case of an individual who—

(A) at the time the individual first satisfies paragraph (1) or (2) of section 1395*o* of this title, is described in paragraph (3), and has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period; or

(B) has terminated enrollment under this section during a month in which the individual is described in paragraph (3),

there shall be a special enrollment period described in paragraph (2).

(2) The special enrollment period described in this paragraph is the 6-month period beginning on the first day of the month which includes the date that the individual is no longer described in paragraph (3).

(3) For purposes of paragraph (1), an individual described in this paragraph is an individual who—

(A) is serving as a volunteer outside of the United States through a program—

(i) that covers at least a 12-month period; and

(ii) that is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

(B) demonstrates health insurance coverage while serving in the program.

(Aug. 14, 1935, ch. 531, title XVIII, § 1837, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 304; amended Pub. L. 89–384, § 3(a), (b), Apr. 8, 1966, 80 Stat. 105; Pub. L. 90–248, title I, §§ 136(a), 145(a), (b), Jan. 2, 1968, 81 Stat. 853, 859; Pub. L. 92–603, title II, §§ 201(c)(2), 206(a), 259(a), 260, Oct. 30, 1972, 86 Stat. 1372, 1378, 1448; Pub. L. 96–265, title I, § 103(a)(3), June 9, 1980, 94 Stat. 444; Pub. L. 96–499, title IX, § 945(a), (b), Dec. 5, 1980, 94 Stat. 2642; Pub. L. 97–35, title XXI, § 2151(a)(1), (2), Aug. 13, 1981, 95 Stat. 801; Pub. L. 98–369, div. B, title III, §§ 2338(b), 2354(b)(10), July 18, 1984, 98 Stat. 1092, 1101; Pub. L. 99–272, title IX, §§ 9201(c)(1), 9219(a)(2), Apr. 7, 1986, 100 Stat. 171, 182; Pub. L. 99–509, title IX, § 9319(c)(1)–(3), Oct. 21, 1986, 100 Stat. 2011; Pub. L. 99–514, title XVIII, § 1895(b)(12), Oct. 22, 1986, 100 Stat. 2934; Pub. L. 101–239, title VI, § 6202(b)(4)(C), (c)(1), Dec. 19, 1989, 103 Stat. 2233; Pub. L. 103–432, title I, §§ 147(f)(1)(A), 151(c)(2), Oct. 31, 1994, 108 Stat. 4430, 4435; Pub. L. 105–33, title IV, §§ 4581(b)(1), 4631(a)(2), Aug. 5, 1997, 111 Stat. 465, 486; Pub. L. 106–554, § 1(a)(6) [title I, § 115(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–474; Pub. L. 109–171, title V, § 5115(a)(2)(A), Feb. 8, 2006, 120 Stat. 45.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (c), (h), (i)(4)(A), and (j), is classified to section 1395c et seq. of this title.

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (k)(3)(A)(ii), is classified to section 501 of Title 26, Internal Revenue Code.

AMENDMENTS

2006—Subsec. (k). Pub. L. 109–171 added subsec. (k).

2000—Subsec. (j). Pub. L. 106–554 added subsec. (j).

1997—Subsec. (i)(1) to (3). Pub. L. 105–33, § 4631(a)(2), substituted ''1395y(b)(1)(B)(iii) of this title'' for ''1395y(b)(1)(B)(iv) of this title'' wherever appearing.

Subsec. (i)(4). Pub. L. 105–33, § 4581(b)(1), added par. (4).

1994—Subsec. (i)(1). Pub. L. 103–432, § 151(c)(2)(A), in closing provisions substituted ''(as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual (as those terms are defined in section 1395y(b)(1)(B)(iv) of this title)''.

Subsec. (i)(1)(A). Pub. L. 103–432, § 151(c)(2)(D), inserted ''status'' after ''current employment''.

Subsec. (i)(2). Pub. L. 103–432, § 151(c)(2)(A), (C), in closing provisions substituted ''(as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual (as those terms are defined in section 1395y(b)(1)(B)(iv) of this title)'' and ''by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual''.

Subsec. (i)(2)(B), (C). Pub. L. 103–432, § 151(c)(2)(D), inserted ''status'' after ''current employment''.

Subsec. (i)(3)(A). Pub. L. 103–432, § 151(c)(2)(D), inserted ''status'' after ''current employment''.

Pub. L. 103–432, § 147(f)(1)(A), substituted ''including each month during any part of which the individual is enrolled'' for ''beginning with the first day of the first month in which the individual is no longer enrolled'' and ''ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled'' for ''and ending seven months later''.

Subsec. (i)(3)(B). Pub. L. 103–432, § 151(c)(2)(B), substituted ''in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual in a large group health plan (as such terms are defined in section 1395y(b)(1)(B)(iv) of this title)''.

Pub. L. 103–432, § 147(f)(1)(A), substituted ''including each month during any part of which the individual is enrolled'' for ''beginning with the first day of the first month in which the individual is no longer enrolled'' and ''ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled'' for ''and ending seven months later''.

1989—Subsec. (i)(1). Pub. L. 101–239, § 6202(c)(1)(A), redesignated subpars. (B) and (C) as (A) and (B), respectively, struck out former subpar. (A) which read as follows: ''has attained the age of 65,'', and inserted ''not described in the previous sentence'' after ''In the case of an individual'' in second sentence.

Pub. L. 101–239, § 6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

Subsec. (i)(2). Pub. L. 101–239, § 6202(c)(1)(B), substituted ''(1)(A)'' for ''(1)(B)'' in subpar. (B)(i), redesignated subpars. (B) and (C) as (A) and (B), respectively, struck out former subpar. (A) which read as follows: ''has attained the age of 65;'', and inserted ''not described in the previous sentence'' after ''In the case of an individual'' in second sentence.

Pub. L. 101–239, § 6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

Subsec. (i)(3). Pub. L. 101–239, § 6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

1986—Subsec. (i)(1). Pub. L. 99–509, § 9319(c)(1), inserted sentence at end providing for a special enrollment period described in paragraph (3)(B) for individuals not age 65, enrolled in a large health plan, and having elected not to enroll during initial enrollment period.

Subsec. (i)(1)(A). Pub. L. 99–514 realigned margins of subpar. (A).

Pub. L. 99–272, § 9219(a)(2)(A), amended subpar. (A) generally, substituting ''has attained the age of 65'' for ''meets the conditions described in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title''.

Subsec. (i)(2). Pub. L. 99–509, § 9319(c)(2), inserted sentence at end providing for a special enrollment period described in paragraph (3)(B) for individuals not age 65, enrolled or deemed enrolled in the medical insurance program established under this part, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during a subsequent special enrollment period during which the individual was not enrolled in a large group health plan, and has not terminated enrollment.

Subsec. (i)(2)(A). Pub. L. 99–272, § 9219(a)(2)(B), amended subpar. (A) generally, substituting ''has attained the age of 65;'' for ''meets the conditions described in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title,''.

Subsec. (i)(2)(B). Pub. L. 99–272, § 9219(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period and any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title by rea-

son of the individual's (or individual's spouse's) current employment, and''.

Subsec. (i)(2)(C), (D). Pub. L. 99–272, § 9219(a)(2)(B), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (i)(3). Pub. L. 99–509, § 9319(c)(3), designated existing provisions as subpar. (A), inserted ''the first sentences of'' after ''referred to in'', and added subpar. (B).

Pub. L. 99–272, § 9201(c)(1), amended par. (3) generally, striking out provision that special enrollment period could be period beginning with first day of third month before month in which the individual attains age of 70 and ending seven months later.

1984—Subsec. (g)(1). Pub. L. 98–369, § 2354(b)(10), substituted ''section 426(b) of this title'' for ''section 426(a)(2)(B) of this title'' and ''section 1395r(d) of this title'' for ''section 1395(e) of this title''.

Subsec. (i). Pub. L. 98–369, § 2338(b), added subsec. (i).

1981—Subsec. (e). Pub. L. 97–35, § 2151(a)(1), substituted ''during the period beginning on January 1 and ending on March 31 of each year'' for ''which is any period after the period described in subsection (d) of this section''.

Subsec. (g)(3). Pub. L. 97–35, § 2151(a)(2), substituted ''the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section)'' for ''the month in which the individual files an application establishing such entitlement''.

1980—Subsec. (b). Pub. L. 96–499, § 945(a), struck out subsec. (b) which provided that no individual could enroll under this part more than twice.

Subsec. (e). Pub. L. 96–499, § 945(b)(1), substituted ''which is any period after the period described in subsection (d) of this section'' for '', after the period described in subsection (c) of this section, during the period beginning on January 1 and ending on March 31 of each year beginning with 1969''.

Subsec. (g)(1). Pub. L. 96–265 substituted ''the 25th month'' for ''the 25th consecutive month''.

Subsec. (g)(3). Pub. L. 96–499, § 945(b)(2), substituted ''the month in which the individual files an application establishing such entitlement'' for ''the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section)''.

1972—Subsec. (b). Pub. L. 92–603, § 260, struck out provisions preventing enrollment under this part more than three years after first opportunity for such enrollment.

Subsec. (c). Pub. L. 92–603, § 201(c)(2)(A), (B), substituted ''paragraph (1) or (2)'' for ''paragraphs (1) and (2)'', and substituted provisions relating to the treatment of an individual who has attained age 65 and who satisfies paragraph (1) of section 1395*o* of this title but not paragraph (2) of such section, for provisions relating to the treatment of an individual who satisfies paragraph (2) of section 1395*o* of this title solely by reason of subparagraph (B) thereof.

Subsec. (d). Pub. L. 92–603, § 201(c)(2)(C), substituted ''paragraph (1) or (2)'' for ''paragraphs (1) and (2)''.

Subsecs. (f), (g). Pub. L. 92–603, § 206(a), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 92–603, § 259(a), added subsec. (h).

1968—Subsec. (b)(1). Pub. L. 90–248, § 145(a), permitted an individual enrolling in supplementary medical insurance program for first time to enroll at any time in a general enrollment period which begins within 3 years of close of his initial enrollment period.

Subsec. (d). Pub. L. 90–248, § 136(a), inserted last sentence providing that if an individual who has attained age 65 failed to enroll in program because, relying on erroneous documentary evidence, he was mistaken about his age, he may enroll using date of attainment of age 65 that he alleges under documentary evidence.

Subsec. (e). Pub. L. 90–248, § 145(b), provided for an annual general enrollment period for supplementary medical insurance program beginning January 1 and ending March 31 of each year, commencing in 1969.

1966—Subsec. (c). Pub. L. 89–384, § 3(a), delayed eligibility date from January 1, 1966, to March 1, 1966, and closing date for enrollment period from March 31, 1966, to May 31, 1966.

Subsec. (d). Pub. L. 89–384, § 3(b), substituted March 1, 1966, for January 1, 1966.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title V, § 5115(b), Feb. 8, 2006, 120 Stat. 46, provided that: ''The amendment made by subsection (a)(1) [amending section 1395r of this title] shall apply to months beginning with January 2007 and the amendments made by subsection (a)(2) [amending this section and section 1395q of this title] shall take effect on January 1, 2007.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to benefits for months beginning July 1, 2001, see section 1(a)(6) [title I, § 115(c)] of Pub. L. 106–554, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4581(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395q and 1395r of this title] shall apply to involuntary terminations of coverage under a group health plan occurring on or after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 147(f)(1)(C) of Pub. L. 103–432 provided that: ''The amendments made by subparagraphs (A) and (B) [amending this section and section 1395q of this title] shall take effect on the first day of the first month that begins after the expiration of the 120-day period that begins on the date of the enactment of this Act [Oct. 31, 1994].''

Section 151(c)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 103–66.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6202(b)(4)(C) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 6202(c)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1395r of this title] shall apply to enrollments occurring after, and premiums for months after, the second calendar quarter beginning after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 99–509 applicable to enrollments occurring on or after Jan. 1, 1987, see section 9319(f)(2) of Pub. L. 99–509, set out as a note under section 1395y of this title.

Section 9201(d)(2) of Pub. L. 99–272 provided that: ''The amendments made by subsections (b) and (c) [amending this section, section 1395q of this title, and sections 623 and 631 of Title 29, Labor] shall become effective on May 1, 1986.''

Section 9219(a)(3)(B) of Pub. L. 99–272 provided that:

''(i) The amendments made by paragraph (2) [amending this section] shall apply to enrollments in months beginning with the first effective month (as defined in clause (ii)), except that in the case of any individual who would have a special enrollment period under sec-

tion 1837(i) of the Social Security Act [subsec. (i) of this section] that would have begun after November 1984 and before the first effective month, the period shall be deemed to begin with the first day of the first effective month.

''(ii) For purposes of clause (i), the term 'first effective month' means the first month that begins more than 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2338(d)(2) of Pub. L. 98–369 provided that:

''(A) The amendments made by subsections (b) and (c) [amending this section and section 1395q of this title] shall apply to enrollments in months beginning with the first effective month, except that in the case of any individual who would have had a special enrollment period under section 1837(i) of the Social Security Act [subsec. (i) of this section] that would have begun before such first effective month, such period shall be deemed to begin with the first day of such first effective month.

''(B) For purposes of subparagraph (A), the term 'first effective month' means the first month which begins more than 90 days after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(10) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2151(b) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 1395q and 1395r of this title] shall not apply to enrollments pursuant to written requests for enrollment filed before October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 945(d) of Pub. L. 96–499 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and sections 1395q and 1395r of this title] shall apply to enrollments occurring on or after April 1, 1981.''

Amendment by Pub. L. 96–265 applicable with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after the first day of the sixth month which begins after June 9, 1980, see section 103(c) of Pub. L. 96–265, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 259(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as of July 1, 1966.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 136(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to individuals enrolling under part B of title XVIII [this part] in months beginning after the date of the enactment of this Act [Jan. 2, 1968].''

Section 145(e) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and section 1395q of this title] shall become effective April 1, 1968. Notwithstanding the provisions of section 2 of Public Law 90–97, the amendments made by subsection (d) [amending section 1395r of this title] shall become effective December 1, 1968.''

MEDICARE PART B SPECIAL ENROLLMENT PERIOD

Pub. L. 108–173, title VI, § 625(b), Dec. 8, 2003, 117 Stat. 2318, provided that:

''(1) IN GENERAL.—In the case of any individual who, as of the date of the enactment of this Act [Dec. 8, 2003], is eligible to enroll but is not enrolled under part B of title XVIII of the Social Security Act [this part] and is a covered beneficiary (as defined in section 1072(5) of title 10, United States Code), the Secretary of Health and Human Services shall provide for a special enrollment period during which the individual may enroll under such part. Such period shall begin as soon as possible after the date of the enactment of this Act and shall end on December 31, 2004.

''(2) COVERAGE PERIOD.—In the case of an individual who enrolls during the special enrollment period provided under paragraph (1), the coverage period under part B of title XVIII of the Social Security Act [this part] shall begin on the first day of the month following the month in which the individual enrolls.''

EXTENSION THROUGH MARCH 31, 1968 OF 1967 GENERAL ENROLLMENT PERIOD

Pub. L. 90–97, § 1, Sept. 30, 1967, 81 Stat. 249, extended the general enrollment period under subsec. (e) of this section, beginning Oct. 1, 1967, and ending Dec. 31, 1967, for purposes of enrolling in the insurance program established under part B of title XVIII of such Act [this part] and of terminating such enrollment as provided in section 1395q(b)(1) of this title, through Mar. 31, 1968.

ENROLLMENT BEFORE OCT. 1, 1966, OF ELIGIBLE INDIVIDUALS FAILING FOR GOOD CAUSE TO ENROLL BEFORE JUNE 1, 1966; COMMENCEMENT OF COVERAGE PERIOD

Section 102(b) of Pub. L. 89–97, as amended by section 3(c) of Pub. L. 89–384, provided that: ''If—

''(1) an individual was eligible to enroll under section 1837(c) of the Social Security Act [subsec. (c) of this section] before June 1, 1966, but failed to enroll before such date, and

''(2) it is shown to the satisfaction of the Secretary of Health, Education, and Welfare [now Health and Human Services] that there was good cause for such failure to enroll before June 1, 1966,

such individual may enroll pursuant to this subsection at any time before October 1, 1966. The determination of what constitutes good cause for purposes of the preceding sentence shall be made in accordance with regulations of the Secretary. In the case of any individual who enrolls pursuant to this subsection, the coverage period (within the meaning of section 1838 of the Social Security Act [section 1395q of this title]) shall begin on the first day of the 6th month after the month in which he enrolls.''

§ 1395q. Coverage period

(a) Commencement

The period during which an individual is entitled to benefits under the insurance program established by this part (hereinafter referred to as his ''coverage period'') shall begin on whichever of the following is the latest:

(1) July 1, 1966, or (in the case of a disabled individual who has not attained age 65) July 1, 1973; or

(2)(A) in the case of an individual who enrolls pursuant to subsection (d) of section 1395p of this title before the month in which he first satisfies paragraph (1) or (2) of section 1395*o* of this title, the first day of such month, or

(B) in the case of an individual who enrolls pursuant to such subsection (d) in the month in which he first satisfies such paragraph, the first day of the month following the month in which he so enrolls, or

(C) in the case of an individual who enrolls pursuant to such subsection (d) in the month following the month in which he first satisfies

such paragraph, the first day of the second month following the month in which he so enrolls, or

(D) in the case of an individual who enrolls pursuant to such subsection (d) more than one month following the month in which he satisfies such paragraph, the first day of the third month following the month in which he so enrolls, or

(E) in the case of an individual who enrolls pursuant to subsection (e) of section 1395p of this title, the July 1 following the month in which he so enrolls; or

(3)(A) in the case of an individual who is deemed to have enrolled on or before the last day of the third month of his initial enrollment period, the first day of the month in which he first meets the applicable requirements of section 1395*o* of this title or July 1, 1973, whichever is later, or

(B) in the case of an individual who is deemed to have enrolled on or after the first day of the fourth month of his initial enrollment period, as prescribed under subparagraphs (B), (C), (D), and (E) of paragraph (2) of this subsection.

(b) Continuation

An individual's coverage period shall continue until his enrollment has been terminated—

(1) by the filing of notice that the individual no longer wishes to participate in the insurance program established by this part, or

(2) for nonpayment of premiums.

The termination of a coverage period under paragraph (1) shall (except as otherwise provided in section 1395v(e) of this title) take effect at the close of the month following the month in which the notice is filed. The termination of a coverage period under paragraph (2) shall take effect on a date determined under regulations, which may be determined so as to provide a grace period in which overdue premiums may be paid and coverage continued. The grace period determined under the preceding sentence shall not exceed 90 days; except that it may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period.

Where an individual who is deemed to have enrolled for medical insurance pursuant to section 1395p(f) of this title files a notice before the first day of the month in which his coverage period begins advising that he does not wish to be so enrolled, the termination of the coverage period resulting from such deemed enrollment shall take effect with the first day of the month the coverage would have been effective. Where an individual who is deemed enrolled for medical insurance benefits pursuant to section 1395p(f) of this title files a notice requesting termination of his deemed coverage in or after the month in which such coverage becomes effective, the termination of such coverage shall take effect at the close of the month following the month in which the notice is filed.

(c) Termination

In the case of an individual satisfying paragraph (1) of section 1395*o* of this title whose entitlement to hospital insurance benefits under part A of this subchapter is based on a disability rather than on his having attained the age of 65, his coverage period (and his enrollment under this part) shall be terminated as of the close of the last month for which he is entitled to hospital insurance benefits.

(d) Payment of expenses incurred during coverage period

No payments may be made under this part with respect to the expenses of an individual unless such expenses were incurred by such individual during a period which, with respect to him, is a coverage period.

(e) Commencement of coverage for special enrollment periods

Notwithstanding subsection (a) of this section, in the case of an individual who enrolls during a special enrollment period pursuant to section 1395p(i)(3) or 1395p(i)(4)(B) of this title—

(1) in any month of the special enrollment period in which the individual is at any time enrolled in a plan (specified in subparagraph (A) or (B), as applicable, of section 1395p(i)(3) of this title or specified in section 1395p(i)(4)(A)(i) of this title) or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

(2) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.

(f) Commencement of coverage for certain volunteers serving outside United States

Notwithstanding subsection (a), in the case of an individual who enrolls during a special enrollment period pursuant to section 1395p(k) of this title, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.

(Aug. 14, 1935, ch. 531, title XVIII, § 1838, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 305; amended Pub. L. 90–248, title I, § 145(c), Jan. 2, 1968, 81 Stat. 859; Pub. L. 92–603, title II, §§ 201(c)(3), 206(b), (c), 257(a), Oct. 30, 1972, 86 Stat. 1373, 1378, 1447; Pub. L. 96–499, title IX, §§ 945(c)(1), 947(b), Dec. 5, 1980, 94 Stat. 2642, 2643; Pub. L. 97–35, title XXI, §§ 2106(b)(2), 2151(a)(3), Aug. 13, 1981, 95 Stat. 792, 802; Pub. L. 98–369, div. B, title III, § 2338(c), July 18, 1984, 98 Stat. 1092; Pub. L. 99–272, title IX, § 9201(c)(2), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99–509, title IX, § 9344(b)(1), Oct. 21, 1986, 100 Stat. 2042; Pub. L. 103–432, title I, § 147(f)(1)(B), Oct. 31, 1994, 108 Stat. 4430; Pub. L. 105–33, title IV, § 4581(b)(2), Aug. 5, 1997, 111 Stat. 465; Pub. L. 108–173, title VII, § 736(b)(6), Dec. 8, 2003, 117 Stat. 2356; Pub. L. 109–171, title V, § 5115(a)(2)(B), Feb. 8, 2006, 120 Stat. 46.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (c), is classified to section 1395c et seq. of this title.

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–171 added subsec. (f).

2003—Subsec. (a)(1). Pub. L. 108–173 inserted comma after ''1966''.

1997—Subsec. (e). Pub. L. 105–33 inserted ''or 1395p(i)(4)(B)'' after ''1395p(i)(3)'' in introductory provisions and ''or specified in section 1395p(i)(4)(A)(i) of this title'' after ''1395p(i)(3) of this title'' in par. (1).

1994—Subsec. (e). Pub. L. 103–432 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) in the first month of the special enrollment period, the coverage period shall begin on the first day of that month, or

''(2) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.''

1986—Subsec. (b). Pub. L. 99–509 substituted ''month following the month'' for ''calendar quarter following the calendar quarter'' in second and sixth sentences.

Subsec. (e). Pub. L. 99–272 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Notwithstanding subsection (a) of this section, in the case of an individual who enrolls during a special enrollment period pursuant to—

''(1) subparagraph (A) of section 1395p(i)(3) of this title—

''(A) before the month in which he attains the age of 70, the coverage period shall begin on the first day of the month in which he has attained the age of 70, or

''(B) in or after the month in which he attains the age of 70, the coverage period shall begin on the first day of the month following the month in which he so enrolls; or

''(2) subparagraph (B) of section 1395p(i)(3) of this title—

''(A) in the first month of the special enrollment period, the coverage period shall begin on the first day of such month, or

''(B) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which he so enrolls.''

1984—Subsec. (e). Pub. L. 98–369, § 2338(c), added subsec. (e).

1981—Subsec. (a)(2)(E). Pub. L. 97–35, § 2151(a)(3), substituted ''the July 1 following'' for ''the first day of the third month following''.

Subsec. (b). Pub. L. 97–35, § 2106(b)(2), struck out provision that notice filed by an individual enrolled pursuant to section 1395p(f) of this title shall not be considered a disenrollment for purposes of section 1395p(b) of this title.

1980—Subsec. (a)(2)(E). Pub. L. 96–499, § 945(c)(1), substituted ''the first day of the third month'' for ''the July 1''.

Subsec. (b). Pub. L. 96–499, § 947(b), inserted ''(except as otherwise provided in section 1395v(e) of this title)''.

1972—Subsec. (a)(1). Pub. L. 92–603, § 201(c)(3)(A), inserted ''or (in the case of a disabled individual who has not attained age 65) July 1, 1973'' after ''July 1, 1966''.

Subsec. (a)(2). Pub. L. 92–603, § 201(c)(3)(B), substituted in subpar. (A) ''paragraph (1) or (2)'' for ''paragraphs (1) and (2)'' and in subpars. (B) to (D) ''paragraph'' for ''paragraphs''.

Subsec. (a)(3). Pub. L. 92–603, § 206(b), added par. (3).

Subsec. (b). Pub. L. 92–603, §§ 206(c), 257(a), inserted provisions relating to an individual who is deemed to have enrolled for medical insurance pursuant to section 1395p(f) of this title and an individual who is deemed enrolled for medical insurance benefits pursuant to section 1395p(f) of this title and struck out provisions limiting the allowable grace period to 90 days and inserted provision for extension of such period of up to 180 days where failure to pay premiums is due to good cause.

Subsecs. (c), (d). Pub. L. 92–603, § 202(c)(3)(C), added subsec. (c) and redesignated former subsec. (c) as (d).

1968—Subsec. (b). Pub. L. 90–248 struck out '', during a general enrollment period described in section 1395p(e) of this title,'' after ''notice'' in par. (1), and substituted in first sentence following par. (2) ''the calendar quarter following the calendar quarter'' for ''December 31 of the year''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective Jan. 1, 2007, see section 5115(b) of Pub. L. 109–171, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to involuntary terminations of coverage under a group health plan occurring on or after Aug. 5, 1997, see section 4581(c) of Pub. L. 105–33, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective on first day of first month beginning after expiration of the 120-day period that begins on Oct. 31, 1994, see section 147(f)(1)(C) of Pub. L. 103–432, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9344(b)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to notices filed on or after July 1, 1987.''

Amendment by Pub. L. 99–272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99–272, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

For effective date of amendment by Pub. L. 98–369, see section 2338(d)(2) of Pub. L. 98–369, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2106(b)(2) of Pub. L. 97–35 effective Apr. 1, 1981, see section 2106(c) of Pub. L. 97–35, set out as a note under section 1395*l* of this title.

Amendment by section 2151(a)(3) of Pub. L. 97–35 not applicable to enrollments pursuant to written requests for enrollment filed before Oct. 1, 1981, see section 2151(b) of Pub. L. 97–35, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 945(c)(1) of Pub. L. 96–499 applicable to enrollments occurring on or after Apr. 1, 1981, see section 945(d) of Pub. L. 96–499, set out as a note under section 1395p of this title.

Amendment by section 947(b) of Pub. L. 96–499 applicable to notices filed after third calendar month beginning after Dec. 5, 1980, see section 947(d) of Pub. L. 96–499, set out as a note under section 1395v of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 257(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to nonpayment of premiums which become due and payable on or after the date of the enactment of this Act [Oct. 30, 1972] or which became payable within the 90-day period immediately preceding such date; and for purposes of such amendments any premium which became due and payable within such 90-day period shall be considered a premium becoming due and payable on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Apr. 1, 1968, see section 145(e) of Pub. L. 90–248, set out as a note under section 1395p of this title.

COVERAGE PERIOD; TERMINATION DATES

Pub. L. 90–97, § 3(a), Sept. 30, 1967, 81 Stat. 249, provided that: ''In the case of any individual who, pursuant to section 1838(b)(1) of the Social Security Act [subsec. (b)(1) of this section], terminates his enrollment in the insurance program established under part B of title

XVIII of such Act [this part], his coverage period (as defined in section 1838(a) of such Act) [subsec. (a) of this section]—

"(1) shall terminate at the close of December 31, 1967, if he filed his notice of termination before January 1, 1968, or

"(2) shall terminate at the close of March 31, 1968, if he filed his notice of termination after December 31, 1967, and before April 1, 1968.

An individual whose coverage period terminated pursuant to paragraph (1) at the close of December 31, 1967, may, notwithstanding section 1837(b)(2) of such Act [section 1395p(b)(2) of this title], enroll in such program before April 1, 1968, and for purposes of sections 1838(a)(2)(E) [subsec. (a)(2)(E) of this section] and 1837(b)(2) of such Act [section 1395p(b)(2) of this title] such enrollment shall be deemed an enrollment under section 1837(e) of such Act [section 1395p(e) of this title] and a second enrollment under such part."

EXTENSION OF 1967 GENERAL ENROLLMENT PERIOD THROUGH MARCH 31, 1968

Extension of the general enrollment period under section 1395p(e) of this title through March 31, 1968, see section 1 of Pub. L. 90–97, Sept. 30, 1967, 81 Stat. 249, set out as a note under section 1395p of this title.

COVERAGE PERIOD FOR INDIVIDUALS BECOMING ELIGIBLE IN MARCH 1966 WHO ENROLL IN MAY 1966

Pub. L. 89–384, § 3(d), Apr. 8, 1966, 80 Stat. 105, provided that: "In the case of an individual who first satisfies paragraphs (1) and (2) of section 1836 of the Social Security Act [section 1395*o* of this title] in March, 1966, and who enrolls pursuant to subsection (d) of section 1837 of such Act [section 1395p of this title] in May 1966, his coverage period shall, notwithstanding section 1838(a)(2)(D) of such Act [subsec. (a)(2)(D) of this section], begin on July 1, 1966."

COMMENCEMENT OF COVERAGE PERIOD OF CERTAIN ENROLLEES

Commencement of coverage period upon enrollment before Oct. 1, 1966 of eligible individuals failing for good cause to enroll before June 1, 1966, see section 102(b) of Pub. L. 89–97, set out as a note under section 1395p of this title.

§ 1395r. Amount of premiums for individuals enrolled under this part

(a) Determination of monthly actuarial rates and premiums

(1) The Secretary shall, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for enrollees age 65 and over which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to those enrollees age 65 and older will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate, the Secretary shall include an appropriate amount for a contingency margin.

(2) The monthly premium of each individual enrolled under this part for each month after December 1983 shall be the amount determined under paragraph (3), adjusted as required in accordance with subsections (b), (c), (f), and (i) of this section, and to reflect any credit provided under section 1395w–24(b)(1)(C)(ii)(III) of this title.

(3) The Secretary, during September of each year, shall determine and promulgate a monthly premium rate for the succeeding calendar year that (except as provided in subsection (g) of this section) is equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1), for that succeeding calendar year. Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium rate for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and older as provided in paragraph (1).

(4) The Secretary shall also, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for disabled enrollees under age 65 which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to disabled enrollees under age 65 will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.

(b) Increase in monthly premium

In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1395p of this title) and not pursuant to a special enrollment period under section 1395p(i)(4) of this title, the monthly premium determined under subsection (a) of this section (without regard to any adjustment under subsection (i) of this section) shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period in which he reenrolled, but there shall not be taken into account months for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual's (or the individual's spouse's) current employment status or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iii) of this title) by reason of the individual's current employment status (or the

current employment status of a family member of the individual) or months for which the individual can demonstrate that the individual was an individual described in section 1395p(k)(3) of this title. Any increase in an individual's monthly premium under the first sentence of this subsection with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which such individual may have. No increase in the premium shall be effected for a month in the case of an individual who enrolls under this part during 2001, 2002, 2003, or 2004 and who demonstrates to the Secretary before December 31, 2004, that the individual is a covered beneficiary (as defined in section 1072(5) of title 10). The Secretary of Health and Human Services shall consult with the Secretary of Defense in identifying individuals described in the previous sentence.

(c) Premiums rounded to nearest multiple of ten cents

If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

(d) "Continuous period of eligibility" defined

For purposes of subsection (b) of this section (and section 1395p(g)(1) of this title), an individual's ''continuous period of eligibility'' is the period beginning with the first day on which he is eligible to enroll under section 1395*o* of this title and ending with his death; except that any period during all of which an individual satisfied paragraph (1) of section 1395*o* of this title and which terminated in or before the month preceding the month in which he attained age 65 shall be a separate ''continuous period of eligibility'' with respect to such individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this section).

(e) State payment of part B late enrollment premium increases

(1) Upon the request of a State (or any appropriate State or local governmental entity specified by the Secretary), the Secretary may enter into an agreement with the State (or such entity) under which the State (or such entity) agrees to pay on a quarterly or other periodic basis to the Secretary (to be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund) an amount equal to the amount of the part B late enrollment premium increases with respect to the premiums for eligible individuals (as defined in paragraph (3)(A)).

(2) No part B late enrollment premium increase shall apply to an eligible individual for premiums for months for which the amount of such an increase is payable under an agreement under paragraph (1).

(3) In this subsection:

(A) The term ''eligible individual'' means an individual who is enrolled under this part B and who is within a class of individuals specified in the agreement under paragraph (1).

(B) The term ''part B late enrollment premium increase'' means any increase in a premium as a result of the application of subsection (b) of this section.

(f) Limitation on increase in monthly premium

For any calendar year after 1988, if an individual is entitled to monthly benefits under section 402 or 423 of this title or to a monthly annuity under section 3(a), 4(a), or 4(f) of the Railroad Retirement Act of 1974 [45 U.S.C. 231b(a), 231c(a), (f)] for November and December of the preceding year, if the monthly premium of the individual under this section for December and for January is deducted from those benefits under section 1395s(a)(1) of this title or section 1395s(b)(1) of this title, and if the amount of the individual's premium is not adjusted for such January under subsection (i) of this section, the monthly premium otherwise determined under this section for an individual for that year shall not be increased, pursuant to this subsection, to the extent that such increase would reduce the amount of benefits payable to that individual for that December below the amount of benefits payable to that individual for that November (after the deduction of the premium under this section). For purposes of this subsection, retroactive adjustments or payments and deductions on account of work shall not be taken into account in determining the monthly benefits to which an individual is entitled under section 402 or 423 of this title or under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(g) Exclusions from estimate of benefits and administrative costs

In estimating the benefits and administrative costs which will be payable from the Federal Supplementary Medical Insurance Trust Fund for a year for purposes of determining the monthly premium rate under subsection (a)(3) of this section, the Secretary shall exclude an estimate of any benefits and administrative costs attributable to—

(1) the application of section 1395x(v)(1)(L)(viii) of this title or to the establishment under section 1395x(v)(1)(L)(i)(V) of this title of a per visit limit at 106 percent of the median (instead of 105 percent of the median), but only to the extent payment for home health services under this subchapter is not being made under section 1395fff of this title (relating to prospective payment for home health services); and

(2) the medicare prescription drug discount card and transitional assistance program under section 1395w–141 of this title.

(h) Potential application of comparative cost adjustment in CCA areas

(1) In general

Certain individuals who are residing in a CCA area under section 1395w–29 of this title who are not enrolled in an MA plan under part C of this subchapter may be subject to a premium adjustment under subsection (f) of such section for months in which the CCA program under such section is in effect in such area.

(2) No effect on late enrollment penalty or income-related adjustment in subsidies

Nothing in this subsection or section 1395w–29(f) of this title shall be construed as

affecting the amount of any premium adjustment under subsection (b) or (i) of this section. Subsection (f) of this section shall be applied without regard to any premium adjustment referred to in paragraph (1).

(3) Implementation

In order to carry out a premium adjustment under this subsection and section 1395w–29(f) of this title (insofar as it is effected through the manner of collection of premiums under section 1395s(a) of this title), the Secretary shall transmit to the Commissioner of Social Security—

(A) at the beginning of each year, the name, social security account number, and the amount of the premium adjustment (if any) for each individual enrolled under this part for each month during the year; and

(B) periodically throughout the year, information to update the information previously transmitted under this paragraph for the year.

(i) Reduction in premium subsidy based on income

(1) In general

In the case of an individual whose modified adjusted gross income exceeds the threshold amount under paragraph (2), the monthly amount of the premium subsidy applicable to the premium under this section for a month after December 2006 shall be reduced (and the monthly premium shall be increased) by the monthly adjustment amount specified in paragraph (3).

(2) Threshold amount

For purposes of this subsection, the threshold amount is—

(A) except as provided in subparagraph (B), $80,000, and

(B) in the case of a joint return, twice the amount applicable under subparagraph (A) for the calendar year.

(3) Monthly adjustment amount

(A) In general

Subject to subparagraph (B), the monthly adjustment amount specified in this paragraph for an individual for a month in a year is equal to the product of the following:

(i) Sliding scale percentage

The applicable percentage specified in the table in subparagraph (C) for the individual minus 25 percentage points.

(ii) Unsubsidized part B premium amount

200 percent of the monthly actuarial rate for enrollees age 65 and over (as determined under subsection (a)(1) of this section for the year).

(B) 3-year phase in

The monthly adjustment amount specified in this paragraph for an individual for a month in a year before 2009 is equal to the following percentage of the monthly adjustment amount specified in subparagraph (A):

(i) For 2007, 33 percent.

(ii) For 2008, 67 percent.

(C) Applicable percentage

(i) In general

If the modified adjusted gross income is:	The applicable percentage is:
More than $80,000 but not more than $100,000	35 percent
More than $100,000 but not more than $150,000	50 percent
More than $150,000 but not more than $200,000	65 percent
More than $200,000	80 percent.

(ii) Joint returns

In the case of a joint return, clause (i) shall be applied by substituting dollar amounts which are twice the dollar amounts otherwise applicable under clause (i) for the calendar year.

(iii) Married individuals filing separate returns

In the case of an individual who—

(I) is married as of the close of the taxable year (within the meaning of section 7703 of the Internal Revenue Code of 1986) but does not file a joint return for such year, and

(II) does not live apart from such individual's spouse at all times during the taxable year,

clause (i) shall be applied by reducing each of the dollar amounts otherwise applicable under such clause for the calendar year by the threshold amount for such year applicable to an unmarried individual.

(4) Modified adjusted gross income

(A) In general

For purposes of this subsection, the term ''modified adjusted gross income'' means adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986)—

(i) determined without regard to sections 135, 911, 931, and 933 of such Code; and

(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax under such Code.

In the case of an individual filing a joint return, any reference in this subsection to the modified adjusted gross income of such individual shall be to such return's modified adjusted gross income.

(B) Taxable year to be used in determining modified adjusted gross income

(i) In general

In applying this subsection for an individual's premiums in a month in a year, subject to clause (ii) and subparagraph (C), the individual's modified adjusted gross income shall be such income determined for the individual's last taxable year beginning in the second calendar year preceding the year involved.

(ii) Temporary use of other data

If, as of October 15 before a calendar year, the Secretary of the Treasury does

not have adequate data for an individual in appropriate electronic form for the taxable year referred to in clause (i), the individual's modified adjusted gross income shall be determined using the data in such form from the previous taxable year. Except as provided in regulations prescribed by the Commissioner of Social Security in consultation with the Secretary, the preceding sentence shall cease to apply when adequate data in appropriate electronic form are available for the individual for the taxable year referred to in clause (i), and proper adjustments shall be made to the extent that the premium adjustments determined under the preceding sentence were inconsistent with those determined using such taxable year.

(iii) Non-filers

In the case of individuals with respect to whom the Secretary of the Treasury does not have adequate data in appropriate electronic form for either taxable year referred to in clause (i) or clause (ii), the Commissioner of Social Security, in consultation with the Secretary, shall prescribe regulations which provide for the treatment of the premium adjustment with respect to such individual under this subsection, including regulations which provide for—

(I) the application of the highest applicable percentage under paragraph (3)(C) to such individual if the Commissioner has information which indicates that such individual's modified adjusted gross income might exceed the threshold amount for the taxable year referred to in clause (i), and

(II) proper adjustments in the case of the application of an applicable percentage under subclause (I) to such individual which is inconsistent with such individual's modified adjusted gross income for such taxable year.

(C) Use of more recent taxable year

(i) In general

The Commissioner of Social Security in consultation with the Secretary of the Treasury shall establish a procedures under which an individual's modified adjusted gross income shall, at the request of such individual, be determined under this subsection—

(I) for a more recent taxable year than the taxable year otherwise used under subparagraph (B), or

(II) by such methodology as the Commissioner, in consultation with such Secretary, determines to be appropriate, which may include a methodology for aggregating or disaggregating information from tax returns in the case of marriage or divorce.

(ii) Standard for granting requests

A request under clause (i)(I) to use a more recent taxable year may be granted only if—

(I) the individual furnishes to such Commissioner with respect to such year such documentation, such as a copy of a filed Federal income tax return or an equivalent document, as the Commissioner specifies for purposes of determining the premium adjustment (if any) under this subsection; and

(II) the individual's modified adjusted gross income for such year is significantly less than such income for the taxable year determined under subparagraph (B) by reason of the death of such individual's spouse, the marriage or divorce of such individual, or other major life changing events specified in regulations prescribed by the Commissioner in consultation with the Secretary.

(5) Inflation adjustment

(A) In general

In the case of any calendar year beginning after 2007, each dollar amount in paragraph (2) or (3) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the percentage (if any) by which the average of the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with August of the preceding calendar year exceeds such average for the 12-month period ending with August 2006.

(B) Rounding

If any dollar amount after being increased under subparagraph (A) is not a multiple of $1,000, such dollar amount shall be rounded to the nearest multiple of $1,000.

(6) Joint return defined

For purposes of this subsection, the term ''joint return'' has the meaning given to such term by section 7701(a)(38) of the Internal Revenue Code of 1986.

(Aug. 14, 1935, ch. 531, title XVIII, § 1839, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 305; amended Pub. L. 90–248, title I, § 145(d), Jan. 2, 1968, 81 Stat. 859; Pub. L. 92–603, title II, §§ 201(c)(4), (5), 203 (a)–(d), Oct. 30, 1972, 86 Stat. 1373, 1376, 1377; Pub. L. 94–182, title I, § 104(a), Dec. 31, 1975, 89 Stat. 1052; Pub. L. 95–216, title II, § 205(e), Dec. 20, 1977, 91 Stat. 1529; Pub. L. 96–499, title IX, § 945(c)(2), Dec. 5, 1980, 94 Stat. 2642; Pub. L. 97–35, title XXI, § 2151(a)(4), Aug. 13, 1981, 95 Stat. 802; Pub. L. 97–248, title I, § 124(a), (b), Sept. 3, 1982, 96 Stat. 364; Pub. L. 97–448, title III, § 309(b)(8), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–21, title VI, § 606(a)(1)–(3)(C), Apr. 20, 1983, 97 Stat. 169, 170; Pub. L. 98–369, div. B, title III, §§ 2302(a), (b), 2338(a), July 18, 1984, 98 Stat. 1063, 1091; Pub. L. 98–617, § 3(b)(4), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–272, title IX, §§ 9219(a)(1), 9313, Apr. 7, 1986, 100 Stat. 182, 194; Pub. L. 99–509, title IX, §§ 9001(c), 9319(c)(4), Oct. 21, 1986, 100 Stat. 1970, 2012; Pub. L. 100–203, title IV, § 4080, Dec. 22, 1987, 101 Stat. 1330–126; Pub. L. 100–360, title II, § 211(a)–(c)(1), July 1, 1988, 102 Stat. 733, 738; Pub. L. 100–485, title VI, § 608(d)(9), Oct. 13, 1988, 102 Stat. 2415; Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6202(b)(4)(C), (c)(2), 6301, Dec. 19, 1989, 103 Stat. 2233, 2234, 2258; Pub. L. 101–508, title IV, § 4301,

Nov. 5, 1990, 104 Stat. 1388–125; Pub. L. 103–66, title XIII, § 13571, Aug. 10, 1993, 107 Stat. 609; Pub. L. 103–432, title I, §§ 144, 151(c)(3), Oct. 31, 1994, 108 Stat. 4427, 4435; Pub. L. 105–33, title IV, §§ 4571(a), (b)(1), 4581(a), 4582, 4631(a)(2), Aug. 5, 1997, 111 Stat. 464, 465, 486; Pub. L. 105–277, div. J, title V, § 5101(e), Oct. 21, 1998, 112 Stat. 2681–915; Pub. L. 106–554, § 1(a)(6) [title VI, § 606(a)(2)(B)(i)], Dec. 21, 2000, 114 Stat. 2763, 2763A–557; Pub. L. 108–173, title I, § 105(a), title II, §§ 222(*l*)(2)(A), 241(b)(2)(A), title VI, § 625(a)(1), title VII, § 736(b)(7), title VIII, § 811(a), (b)(1), Dec. 8, 2003, 117 Stat. 2166, 2206, 2220, 2317, 2356, 2364, 2367; Pub. L. 109–171, title V, §§ 5111, 5115(a)(1), Feb. 8, 2006, 120 Stat. 43, 45.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (f), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Part C of this subchapter, referred to in subsec. (h)(1), is classified to section 1395w–21 et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsec. (i)(3)(C)(iii)(I), (4)(A), (6), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–171, § 5115(a)(1), inserted ''or months for which the individual can demonstrate that the individual was an individual described in section 1395p(k)(3) of this title'' before period at end of second sentence.

Subsec. (i)(3)(B). Pub. L. 109–171, § 5111(1), (2), substituted ''3-year'' for ''5-year'' in heading and ''2009'' for ''2011'' in introductory provisions.

Subsec. (i)(3)(B)(i). Pub. L. 109–171, § 5111(3), substituted ''33 percent'' for ''20 percent''.

Subsec. (i)(3)(B)(ii). Pub. L. 109–171, § 5111(4), substituted ''67 percent'' for ''40 percent''.

Subsec. (i)(3)(B)(iii), (iv). Pub. L. 109–171, § 5111(5), struck out cls. (iii) and (iv), which read as follows:

''(iii) For 2009, 60 percent.

''(iv) for 2010, 80 percent.''

2003—Subsec. (a)(2). Pub. L. 108–173, § 811(b)(1)(A), substituted ''(f), and (i)'' for ''and (f)''.

Pub. L. 108–173, § 222(*l*)(2)(A), substituted ''any credit provided under section 1395w–24(b)(1)(C)(ii)(III)'' for ''80 percent of any reduction elected under section 1395w–24(f)(1)(E)''.

Subsec. (a)(4). Pub. L. 108–173, § 736(b)(7), substituted ''will equal one-half of the total'' for ''which will equal one-half of the total''.

Subsec. (b). Pub. L. 108–173, § 811(b)(1)(B), inserted ''(without regard to any adjustment under subsection (i) of this section)'' after ''subsection (a) of this section''.

Pub. L. 108–173, § 625(a)(1), inserted at end ''No increase in the premium shall be effected for a month in the case of an individual who enrolls under this part during 2001, 2002, 2003, or 2004 and who demonstrates to the Secretary before December 31, 2004, that the individual is a covered beneficiary (as defined in section 1072(5) of title 10). The Secretary of Health and Human Services shall consult with the Secretary of Defense in identifying individuals described in the previous sentence.''

Subsec. (f). Pub. L. 108–173, § 811(b)(1)(C), substituted ''if the monthly premium'' for ''and if the monthly premium'' and inserted ''and if the amount of the individual's premium is not adjusted for such January under subsection (i) of this section,'' after ''section 1395s(b)(1) of this title,''.

Subsec. (g). Pub. L. 108–173, § 105(a), substituted ''attributable to—'' for ''attributable to'', inserted par. (1) designation before ''the application of'', substituted ''; and'' for period at end, and added par. (2).

Subsec. (h). Pub. L. 108–173, § 241(b)(2)(A), added subsec. (h).

Subsec. (i). Pub. L. 108–173, § 811(a), added subsec. (i).

2000—Subsec. (a)(2). Pub. L. 106–554 substituted ''shall be the amount determined under paragraph (3), adjusted as required in accordance with subsections (b), (c), and (f) of this section, and to reflect 80 percent of any reduction elected under section 1395w–24(f)(1)(E) of this title.'' for ''shall, except as provided in subsections (b), (c), and (f) of this section, be the amount determined under paragraph (3).''

1998—Subsec. (a)(3). Pub. L. 105–277, § 5101(e)(1), inserted ''(except as provided in subsection (g) of this section)'' after ''year that''.

Subsec. (g). Pub. L. 105–277, § 5101(e)(2), added subsec. (g).

1997—Subsec. (a)(2). Pub. L. 105–33, § 4571(b)(1)(A), substituted ''subsections (b), (c), and (f)'' for ''subsections (b) and (e)''.

Subsec. (a)(3). Pub. L. 105–33, § 4571(b)(1)(B), in last sentence, inserted ''rate'' after ''monthly premium'' and struck out ''and the derivation of the dollar amounts specified in this paragraph'' before period at end.

Pub. L. 105–33, § 4571(a), substituted ''The Secretary, during September of each year, shall determine and promulgate a monthly premium rate for the succeeding calendar year that is equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1), for that succeeding calendar year.'' for ''The Secretary shall, during September of 1983 and of each year thereafter, determine and promulgate the monthly premium applicable for individuals enrolled under this part for the succeeding calendar year. The monthly premium shall (except as otherwise provided in subsection (e) of this section) be equal to the smaller of—

''(A) the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1) of this subsection, for that calendar year, or

''(B) the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a)(1) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on November 1 of the year before the year of the promulgation. He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals for the following November 1.''

Subsec. (b). Pub. L. 105–33, § 4631(a)(2), substituted ''1395y(b)(1)(B)(iii) of this title'' for ''1395y(b)(1)(B)(iv) of this title'' in second sentence.

Pub. L. 105–33, § 4571(b)(1)(C), struck out ''or (e)'' after ''determined under subsection (a)'' in first sentence.

Pub. L. 105–33, § 4581(a), inserted ''and not pursuant to a special enrollment period under section 1395p(i)(4) of this title'' after ''section 1395p of this title)'' in first sentence.

Subsec. (e). Pub. L. 105–33, § 4571(b)(1)(D), (E), redesignated subsec. (g) as (e) and struck out former subsec. (e) which read as follows:

''(1)(A) Notwithstanding the provisions of subsection (a) of this section, the monthly premium for each individual enrolled under this part for each month after after December 1995 and prior to January 1999 shall be an amount equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, as determined under subsection (a)(1) of this section and applicable to such month.

''(B) Notwithstanding the provisions of subsection (a) of this section, the monthly premium for each individual enrolled under this part for each month in—

''(i) 1991 shall be $29.90,

''(ii) 1992 shall be $31.80,

''(iii) 1993 shall be $36.60,

''(iv) 1994 shall be $41.10, and

''(v) 1995 shall be $46.10.

''(2) Any increases in premium amounts taking effect prior to January 1998 by reason of paragraph (1) shall be taken into account for purposes of determining increases thereafter under subsection (a)(3) of this section.''

Subsec. (e)(1). Pub. L. 105–33, § 4582, inserted ''(or any appropriate State or local governmental entity specified by the Secretary)'' after ''request of a State'' and inserted ''(or such entity)'' after ''agreement with the State'' and after ''which the State''.

Subsec. (g). Pub. L. 105–33, § 4571(b)(1)(E), redesignated subsec. (g) as (e).

1994—Subsec. (b). Pub. L. 103–432, § 151(c)(3), in second sentence, inserted ''status'' after ''current employment'' and substituted ''(as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual (as those terms are defined in section 1395y(b)(1)(B)(iv) of this title)''.

Subsec. (g). Pub. L. 103–432, § 144, added subsec. (g).

1993—Subsec. (e)(1)(A). Pub. L. 103–66, § 13571(1), substituted ''after December 1995 and prior to January 1999 shall be an amount equal to 50 percent'' for ''December 1983 and prior to January 1991 shall be an amount equal to 50 percent''.

Subsec. (e)(2). Pub. L. 103–66, § 13571(2), substituted ''1998'' for ''1991''.

1990—Subsec. (e)(1). Pub. L. 101–508 designated existing provisions as subpar. (A) and added subpar. (B).

1989—Subsec. (a). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(1)(A)–(D), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (b). Pub. L. 101–239, § 6202(c)(2), struck out ''during which the individual has attained the age of 65 and'' after ''into account months'' in second sentence.

Pub. L. 101–239, § 6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(1)(E), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (e). Pub. L. 101–239, § 6301, substituted ''1991'' for ''1990'' wherever appearing.

Subsec. (e)(1). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(1)(F), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (g). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(a), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(1). Pub. L. 100–360, § 211(c)(1)(A), (B), inserted ''(other than costs relating to the amendments made by the Medicare Catastrophic Coverage Act of 1988)'' before period at end of second sentence, and '', but shall not take into account any amounts in the Trust Fund that may be attributable to receipts or outlays relating to the Medicare Catastrophic Coverage Account'' before period at end of last sentence.

Subsec. (a)(2). Pub. L. 100–360, § 211(c)(1)(C), substituted '', (e), and (g)'' for ''and (e)''.

Subsec. (a)(3). Pub. L. 100–360, § 211(c)(1)(D), substituted ''subsections (e) and (g)'' for ''subsection (e)'' in introductory provisions.

Subsec. (a)(4). Pub. L. 100–360, § 211(c)(1)(A), (B), inserted ''(other than costs relating to the amendments made by the Medicare Catastrophic Coverage Act of 1988)'' before period at end of second sentence, and '', but shall not take into account any amounts in the Trust Fund that may be attributable to receipts or outlays relating to the Medicare Catastrophic Coverage Account'' before period at end of last sentence.

Subsec. (b). Pub. L. 100–360, § 211(c)(1)(E), substituted ''otherwise determined under this section (without regard to subsections (f) and (g)(6) of this section)'' for ''determined under subsection (a) or (e) of this section''.

Subsec. (e)(1). Pub. L. 100–360, § 211(c)(1)(F), inserted ''except as provided in subsection (g) of this section,'' after ''subsection (a) of this section''.

Subsec. (f). Pub. L. 100–485, § 608(d)(8)(B), substituted ''for that December below the amount of benefits payable to that individual for that November'' for ''for that January below the amount of benefits payable to that individual for that December''.

Pub. L. 100–360, § 211(b), amended subsec. (f) generally, substituting a single paragraph for former pars. (1) and (2).

Subsec. (g). Pub. L. 100–360, § 211(a), added subsec. (g) relating to adjustment in medicare part B premium.

Subsec. (g)(1)(B)(iii)(I). Pub. L. 100–485, § 608(d)(9)(A)(i), substituted ''year, over'' for ''year, and''.

Subsec. (g)(1)(B)(iii)(II). Pub. L. 100–485, § 608(d)(9)(A)(ii), substituted ''supplemental premium rate'' for ''supplemental rate''.

Subsec. (g)(7)(A)(ii). Pub. L. 100–485, § 608(d)(9)(A)(iii), substituted ''of each such year'' for ''of such year''.

1987—Subsec. (e). Pub. L. 100–203, § 4080(1), substituted ''1990'' for ''1989'' wherever appearing.

Subsec. (f)(1). Pub. L. 100–203, § 4080(2), substituted ''1987, or 1988'' for ''or 1987''.

Subsec. (f)(2). Pub. L. 100–203, § 4080(3), substituted ''1988, or 1989'' for ''or 1988''.

1986—Subsec. (b). Pub. L. 99–509, § 9319(c)(4), inserted ''or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan as an active individual (as those terms are defined in section 1395y(b)(4)(B) of this title)'' at end of second sentence.

Pub. L. 99–272, § 9219(a)(1), substituted ''months during which the individual has attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title'' for ''months in which the individual has met the conditions specified in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section''.

Subsec. (e). Pub. L. 99–272, § 9313(1), substituted ''1989'' for ''1988'' wherever appearing.

Subsec. (f)(1). Pub. L. 99–272, § 9313(2), substituted '', 1986, or 1987'' for ''or 1986''.

Subsec. (f)(2). Pub. L. 99–272, § 9313(3), substituted '', 1987, or 1988'' for ''or 1987''.

Subsec. (f)(2)(A). Pub. L. 99–509, § 9001(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the monthly premium amount determined under subsection (a)(2) of this section for that January reduced by the amount (if any) necessary to make the monthly benefits under section 402 or 423 of this title for that December after the deduction of the monthly premium (disregarding subsection (b) of this section) for that January at least equal to the monthly benefits under section 402 or 423 of this title for the preceding November after the deduction of the premium (disregarding subsection (b) of this section) for that individual for that December, or''.

1984—Subsec. (b). Pub. L. 98–369, § 2338(a), inserted provision that there shall not be taken into account months in which the individual has met conditions specified in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section by reason of the individual's (or the individual's spouse's) current employment.

Subsec. (e). Pub. L. 98–369, § 2302(a), substituted ''1988'' for ''1986'' in pars. (1) and (2).

Subsec. (f). Pub. L. 98–369, § 2302(b), added subsec. (f).

Subsec. (f)(2)(A). Pub. L. 98–617, § 3(b)(4), substituted ''for that December after the deduction'' for ''for that January after the deduction'' and ''for that December'' for ''for that November''.

1983—Subsec. (a). Pub. L. 98–21, § 606(a)(1), added subsec. (a) and struck out former subsec. (a) which provided that monthly premium of each individual enrolled under this part for each month before 1968 would be $3.

Subsec. (b). Pub. L. 98–21, § 606(a)(3)(A), substituted ''subsection (a) or (e)'' for ''subsection (b), (c), or (g)''.

Pub. L. 98–21, § 606(a)(1), (2), redesignated subsec. (d) as (b), and struck out former subsec. (b) which provided for determination by Secretary of monthly premium for each individual enrolled under this part for each month after 1967 and before July 1, 1973.

Subsec. (c). Pub. L. 98–21, § 606(a)(1), (2), redesignated subsec. (e) as (c), and struck out former subsec. (c) which directed Secretary to determine during December of each year after 1972 the monthly actuarial rate for enrollees age 65 and over applicable to succeeding fiscal year (beginning July 1), provided for his determination of monthly premium for such period, and directed him to determine monthly actuarial rate for disabled enrollees under age 65.

Subsec. (d). Pub. L. 98–21, § 606(a)(3)(B), which directed that ''purposes of subsection (b)'' be substituted for ''purposes of subsection (c)'' was executed by substituting ''purposes of subsection (b)'' for ''purposes of subsection (d)'', as the probable intent of Congress in view of previous substitution of ''subsection (d)'' for ''subsection (c)'' by Pub. L. 92–603, § 203(d)(2).

Pub. L. 98–21, § 606(a)(2), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (b).

Pub. L. 97–448 inserted reference to determination of monthly premium pursuant to subsec. (g) of this section.

Subsec. (e). Pub. L. 98–21, § 606(a)(2), redesignated subsec. (g) as (e). Former subsec. (e) redesignated (c).

Subsec. (e)(1). Pub. L. 98–21, § 606(a)(3)(C), substituted ''(a)'' for ''(c)'', ''(a)(1)'' for ''(c)(1)'', ''December 1983'' for ''June 1983'', and ''January 1986'' for ''July 1985''.

Subsec. (e)(2). Pub. L. 98–21, § 606(a)(3)(C)(i), (iii), substituted ''(a)(3)'' for ''(c)(3)'' and ''January 1986'' for ''July 1985''.

Subsecs. (f), (g). Pub. L. 98–21, § 606(a)(2), redesignated subsecs. (f) and (g) as (d) and (e), respectively.

1982—Subsec. (c)(2). Pub. L. 97–248, § 124(a)(1), substituted ''except as provided in subsections (d) and (g)'' for ''except as provided in subsection (d)''.

Subsec. (c)(3). Pub. L. 97–248, § 124(a)(2), inserted ''(except as otherwise provided in subsection (g) of this section)''.

Subsec. (g). Pub. L. 97–248, § 124(b), added subsec. (g).

1981—Subsec. (d). Pub. L. 97–35 substituted ''the close of the enrollment period in which he reenrolled'' for ''the month after the month in which he reenrolled'' in cl. (2).

1980—Subsec. (d). Pub. L. 96–499 substituted ''who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the month after the month in which he reenrolled'' for ''who enrolls for a second time) (2) the months which elapsed between the date of the termination of his first coverage period and the close of the enrollment period in which he enrolled for the second time''.

1977—Subsec. (c)(3)(B). Pub. L. 95–216 substituted ''the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a)(1) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on May 1 of the year of the promulgation'' for ''the monthly premium rate most recently promulgated by the Secretary under this paragraph or, in the case of the determination made in December 1971, such rate promulgated under subsection (b)(2) of this section multiplied by the ratio of (i) the amount in column IV of the table which, by reason of the law in effect at the time the promulgation is made, will be in effect as of May 1 next following such determination appears (or is deemed to appear) in section 415(a) of this title on the line which includes the figure '750' in column III of such table to (ii) the amount in column IV of the table which appeared (or was deemed to appear) in section 415(a) of this title on the line which included the figure '750' in column III as of May 1 of the year in which such determination is made'' and inserted ''He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals on the following May 1.''

1975—Subsec. (c)(3). Pub. L. 94–182 substituted ''May 1'' for ''June 1'' wherever appearing.

1972—Subsec. (b)(1). Pub. L. 92–603, § 203(a), inserted ''and before July 1, 1973'' following ''1967''.

Subsec. (b)(2). Pub. L. 92–603, § 203(b), substituted ''ending on or before December 31, 1971'' for ''thereafter''.

Subsec. (c). Pub. L. 92–603, § 203(c), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 92–603, §§ 201(c)(4), 203(c), (d)(1), redesignated former subsec. (c) as (d), inserted reference to subsec. (c) after reference to subsec. (b), inserted ''(in the same continuous period of eligibility)'' after ''for each full 12 months'', and inserted provisions relating to any increase in an individual's monthly premium under the first sentence of this subsection. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 92–603, § 203(c), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Pub. L. 92–603, § 201(c)(5), added subsec. (e).

Subsec. (f). Pub. L. 92–603, § 203(c), (d)(2), redesignated former subsec. (e) as (f) and substituted ''subsection (d)'' for ''subsection (c)''.

1968—Subsec. (b)(2). Pub. L. 90–248 required Secretary, during December of each year, beginning in 1968, to determine and announce amount (whether or not such amount was applicable for premiums for any prior month) of supplementary medical insurance premium for 12-month period beginning on July 1 of each following year, which premium is to be such that aggregate premiums will equal one-half estimated benefit and administrative expenses of supplementary medical insurance program for such 12-month period, and that at time of announcement of premium amount, Secretary must make public actuarial assumptions and bases used in deciding amount of premium.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 5115(a)(1) of Pub. L. 109–171 applicable to months beginning with Jan. 2007, see section 5115(b) of Pub. L. 109–171, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 222(*l*)(2)(A) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Pub. L. 108–173, title VI, § 625(a)(2), Dec. 8, 2003, 117 Stat. 2318, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to premiums for months beginning with January 2004. The Secretary [of Health and Human Services] shall establish a method for providing rebates of premium penalties paid for months on or after January 2004 for which a penalty does not apply under such amendment but for which a penalty was previously collected.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VI, § 606(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–558, provided that: ''The

amendments made by subsection (a) [amending this section and sections 1395s, 1395w, 1395w–21, 1395w–23, and 1395w–24 of this title] shall apply to years beginning with 2003.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4581(a) of Pub. L. 105–33 applicable to involuntary terminations of coverage under a group health plan occurring on or after Aug. 5, 1997, see section 4581(c) of Pub. L. 105–33, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 151(c)(3) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 103–66.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6202(b)(4)(C) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 6202(c)(2) of Pub. L. 101–239 applicable to enrollments occurring after, and premiums for months after, second calendar quarter beginning after Dec. 19, 1989, see section 6202(c)(3) of Pub. L. 101–239, set out as a note under section 1395p of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, and applicable to premiums for months beginning after Dec. 31, 1989, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 211(d) of Pub. L. 100–360, which provided that the amendments made by section 211 of Pub. L. 100–360 [amending this section and sections 1395w and 1395mm of this title] applied (except as otherwise specified in such amendments) to monthly premiums for months beginning with January 1989, was repealed by Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9001(c) of Pub. L. 99–509 applicable with respect to monthly premiums under this section for months after December 1986, see section 9001(d)(3) of Pub. L. 99–509, set out as a note under section 415 of this title.

Amendment by section 9319(c)(4) of Pub. L. 99–509 applicable to enrollments occurring on or after Jan. 1, 1987, see section 9319(f)(2) of Pub. L. 99–509 set out as a note under section 1395y of this title.

Section 9219(a)(3)(A) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to months beginning with January 1983 for premiums for months beginning with the first month that begins more than 30 days after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2302(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to premiums for months beginning with January 1986.''

Section 2338(d)(1) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to months beginning with January 1983 for premiums for months beginning with the first month which begins more than 30 days after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1983 AMENDMENTS; TRANSITIONAL RULE

Section 606(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and sections 1395i–2, 1395v, 1395w, and 1395mm of this title] shall apply to premiums for months beginning with January 1984, and for months after June 1983 and before January 1984—

''(1) the monthly premiums under part A and under part B of title XVIII of the Social Security Act [parts A and B of this subchapter] for individuals enrolled under each respective part shall be the monthly premium under that part for the month of June 1983, and

''(2) the amount of the Government contributions under section 1844(a)(1) of such Act [section 1395w(a)(1) of this title] shall be computed on the basis of the actuarially adequate rate which would have been in effect under part B of title XVIII of such Act for such months without regard to the amendments made by this section, but using the amount of the premium in effect for the month of June 1983.''

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 not applicable to enrollments pursuant to written requests for enrollment filed before Oct. 1, 1981, see section 2151(b) of Pub. L. 97–35, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–499 applicable to enrollments occurring on or after Apr. 1, 1981, see section 945(d) of Pub. L. 96–499, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective with respect to monthly benefits and lump-sum death payments for deaths occurring after December 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 104(b) of Pub. L. 94–182 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to determinations made under section 1839(c)(3) of the Social Security Act [subsec. (c)(3) of this section] after the date of the enactment of this Act [Dec. 31, 1975].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Dec. 1, 1968, see section 145(e) of Pub. L. 90–248, set out as a note under section 1395p of this title.

DETERMINATION OF PREMIUM AMOUNTS BY SECRETARY

Pub. L. 90–97, § 2, Sept. 30, 1967, 81 Stat. 249, provided that: ''Notwithstanding the provisions of section 1839(a) and (b) of the Social Security Act [subsecs. (a) and (b) of this section]—

''(1) the dollar amount applicable for premiums under part B of title XVIII of such Act [this part] for each month before April 1968 shall be $3, and

''(2) the Secretary of Health, Education, and Welfare may determine and promulgate such dollar amount for months after March 1968 and before January 1970 at any time on or before December 31, 1967.''

PERSONS ENROLLING BEFORE APRIL 1, 1968, WHO DID NOT ENROLL DURING THEIR INITIAL ENROLLMENT PERIOD

Pub. L. 90–97, § 3(b), Sept. 30, 1967, 81 Stat. 250, provided that: ''In the case of any individual who did not

enroll in the insurance program established under part B of title XVIII of the Social Security Act [this part] in his initial enrollment period, but does so enroll before April 1, 1968, the enrollment period in which he so enrolls shall, for purposes of section 1839(c) of such Act [subsec. (c) of this section], be deemed to have closed on December 31, 1967.''

§ 1395s. Payment of premiums

(a) Deductions from section 402 or 423 monthly benefits

(1) In the case of an individual who is entitled to monthly benefits under section 402 or 423 of this title, his monthly premiums under this part shall (except as provided in subsections (b)(1) and (c) of this section) be collected by deducting the amount thereof from the amount of such monthly benefits. Such deduction shall be made in such manner and at such times as the Commissioner of Social Security shall by regulation prescribe. Such regulations shall be prescribed after consultation with the Secretary.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates from benefits under section 402 or 423 of this title which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Commissioner of Social Security and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(b) Deductions from railroad retirement annuities or pensions

(1) In the case of an individual who is entitled to receive for a month an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] (whether or not such individual is also entitled for such month to a monthly insurance benefit under section 402 of this title), his monthly premiums under this part shall (except as provided in subsection (c) of this section) be collected by deducting the amount thereof from such annuity or pension. Such deduction shall be made in such manner and at such times as the Secretary shall by regulations prescribe. Such regulations shall be prescribed only after consultation with the Railroad Retirement Board.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Railroad Retirement Account to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfers shall be made on the basis of a certification by the Railroad Retirement Board and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(c) Portion of monthly premium in excess of deducted amount

If an individual to whom subsection (a) or (b) of this section applies estimates that the amount which will be available for deduction under such subsection for any premium payment period will be less than the amount of the monthly premiums for such period, he may (under regulations) pay to the Secretary such portion of the monthly premiums for such period as he desires.

(d) Deductions from civil service retirement annuities

(1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of title 5 or any other law administered by the Director of the Office of Personnel Management providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (b) of this section applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) of this section applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health and Human Services to the Director of the Office of Personnel Management, be collected by deducting the amount thereof from each installment of such annuity. Such deduction shall be made in such manner and at such times as the Director of the Office of Personnel Management may determine. The Director of the Office of Personnel Management shall furnish such information as the Secretary of Health and Human Services may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 or 8903a of title 5 may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law administered by the Director of the Office of Personnel Management, to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the Director of the Office of Personnel Management and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(e) Manner and time of payment prescribed by Secretary

In the case of an individual who participates in the insurance program established by this part but with respect to whom none of the preceding provisions of this section applies, or with respect to whom subsection (c) of this section applies, the premiums shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe.

(f) Deposit of amounts in Treasury

Amounts paid to the Secretary under subsection (c) or (e) of this section shall be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund.

(g) Premium payability period

In the case of an individual who participates in the insurance program established by this part, premiums shall be payable for the period commencing with the first month of his coverage period and ending with the month in which he dies or, if earlier, in which his coverage under such program terminates.

(h) Exempted monthly benefits

In the case of an individual who is enrolled under the program established by this part as a member of a coverage group to which an agreement with a State entered into pursuant to section 1395v of this title is applicable, subsections (a), (b), (c), and (d) of this section shall not apply to his monthly premium for any month in his coverage period which is determined under section 1395v(d) of this title.

(i) Adjustments for individuals enrolled in Medicare+Choice plans

In the case of an individual enrolled in a Medicare+Choice plan, the Secretary shall provide for necessary adjustments of the monthly beneficiary premium to reflect 80 percent of any reduction elected under section 1395w–24(f)(1)(E) of this title and to reflect any credit provided under section 1395w–24(b)(1)(C)(iv) of this title. To the extent to which the Secretary determines that such an adjustment is appropriate, with the concurrence of any agency responsible for the administration of such benefits, such premium adjustment may be provided directly, as an adjustment to any social security, railroad retirement, or civil service retirement benefits, or, in the case of an individual who receives medical assistance under subchapter XIX of this chapter for medicare costs described in section 1396d(p)(3)(A)(ii) of this title, as an adjustment to the amount otherwise owed by the State for such medical assistance.

(Aug. 14, 1935, ch. 531, title XVIII, § 1840, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 306; amended Pub. L. 89–384, § 4(c), Apr. 8, 1966, 80 Stat. 106; Pub. L. 90–248, title I, § 166, title IV, § 403(g), Jan. 2, 1968, 81 Stat. 874, 932; Pub. L. 92–603, title II, §§ 201(c)(6), 263(a)–(d)(3), Oct. 30, 1972, 86 Stat. 1373, 1448, 1449; Pub. L. 93–445, title III, § 306, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 98–369, div. B, title III, § 2354(b)(11), title VI, § 2663(j)(2)(F)(ii), July 18, 1984, 98 Stat. 1101, 1170; Pub. L. 99–53, § 2(g), June 17, 1985, 99 Stat. 94; Pub. L. 100–360, title II, § 212(b)(1), July 1, 1988, 102 Stat. 740; Pub. L. 100–485, title VI, § 608(d)(10)(B), Oct. 13, 1988, 102 Stat. 2415; Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 103–296, title I, § 108(c)(2), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 106–554, § 1(a)(6) [title VI, § 606(a)(2)(B)(ii)], Dec. 21, 2000, 114 Stat. 2763, 2763A–557; Pub. L. 108–173, title II, § 222(*l*)(2)(B), Dec. 8, 2003, 117 Stat. 2206.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (b)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

2003—Subsec. (i). Pub. L. 108–173 inserted ''and to reflect any credit provided under section 1395w–24(b)(1)(C)(iv) of this title'' after ''section 1395w–24(f)(1)(E) of this title'' in first sentence.

2000—Subsec. (i). Pub. L. 106–554 added subsec. (i).

1994—Subsec. (a)(1). Pub. L. 103–296, § 108(c)(2)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' and inserted at end ''Such regulations shall be prescribed after consultation with the Secretary.''

Subsec. (a)(2). Pub. L. 103–296, § 108(c)(2)(B), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1989—Subsec. (i). Pub. L. 101–234 repealed Pub. L. 100–360, § 212(b)(1), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (i). Pub. L. 100–485 substituted ''Supplementary'' for ''Supplemental''.

Pub. L. 100–360 added subsec. (i) relating to transfer to flat prescription drug premiums to Federal Catastrophic Drug Insurance Trust Fund.

1985—Subsec. (d)(1). Pub. L. 99–53 inserted reference to section 8903a of title 5.

1984—Subsec. (a)(2). Pub. L. 98–369, § 2663(j)(2)(F)(ii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(1). Pub. L. 98–369, § 2354(b)(11), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

Pub. L. 98–369, § 2663(j)(2)(F)(ii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(2). Pub. L. 98–369, § 2354(b)(11), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

1974—Subsec. (b)(1). Pub. L. 93–445 substituted ''under the Railroad Retirement Act of 1974'' for ''or pension under the Railroad Retirement Act of 1937''.

1972—Subsec. (a)(1). Pub. L. 92–603, §§ 201(c)(6)(A), 263(a), substituted ''subsections (b)(1) and (c)'' for ''subsection (d)'' and inserted reference to section 423 of this title.

Subsec. (a)(2). Pub. L. 92–603, § 201(c)(6)(B), inserted reference to section 423 of this title.

Subsec. (b)(1). Pub. L. 92–603, § 263(b), inserted ''(whether or not such individual is also entitled for such month to a monthly insurance benefit under section 402 of this title)'' after ''1937'' and substituted ''subsection (c)'' for ''subsection (d)''.

Subsec. (c). Pub. L. 92–603, § 263(c), struck out subsec. (c) covering individuals entitled both to monthly benefits under section 402 of this title and to an annuity or pension under Railroad Retirement Act of 1937 and redesignated former subsec. (d) as (c).

Subsec. (d). Pub. L. 92–603, § 263(c), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 92–603, § 263(c), (d)(1), redesignated subsec. (f) as (e) and substituted ''subsection (c)'' for ''subsection (d)''. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 92–603, § 263(c), (d)(2), redesignated subsec. (g) as (f) and substituted ''subsections (c) or (e)'' for ''subsections (d) or (f)''. Former subsec. (f) redesignated (e) and amended.

Subsec. (g). Pub. L. 92–603, § 263(c), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f) and amended.

Subsecs. (h), (i). Pub. L. 92–603, § 263(c), (d)(3), redesignated subsec. (i) as (h) and substituted ''(c) and (d)'' for ''(c), (d), and (e)''. Former subsec. (h) redesignated (g).

1968—Subsec. (e). Pub. L. 90–248 provided for reimbursement of civil service retirement annuitants for certain premium payments under supplementary medical insurance program, and substituted ''subchapter III of chapter 83 of Title 5 or any other law'' and ''such other law'' for ''the Civil Service Retirement Act, or other Act'' and ''such other Act'', in pars. (1) and (2), respectively.

1966—Subsec. (i). Pub. L. 89–384 added subsec. (i).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(b)(11) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(ii) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 263(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395t and 1395u of this title] with respect to collection of premiums shall apply to premiums becoming due and payable after the fourth month following the month in which this Act is enacted [October 1972].''

§ 1395t. Federal Supplementary Medical Insurance Trust Fund

(a) Creation; deposits; fund transfers

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Supplementary Medical Insurance Trust Fund'' (hereinafter in this section referred to as the ''Trust Fund''). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, such amounts as may be deposited in, or appropriated to, such fund as provided in this part, and such amounts as may be deposited in, or appropriated to, the Medicare Prescription Drug Account established by section 1395w–116 of this title or the Transitional Assistance Account established by section 1395w–141(k)(1) of this title.

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the ''Board of Trustees'') composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the ''Managing Trustee''). The Administrator of the Centers for Medicare & Medicaid Services shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years; Each report provided under paragraph (2) beginning with the report in 2005 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.[1]

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the dis-

[1] So in original. See 2003 Amendment note below.

bursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Authority of Managing Trustee to sell obligations

Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) Interest on or proceeds from sale or redemption of obligations

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) Transfers to other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(g) Payments from Trust Fund of amounts provided for by this part or with respect to administrative expenses

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(1) of this title. The payments provided for under part D of this subchapter, other than under section 1395w–141(k)(2) of this title, shall be made from the Medicare Prescription Drug Account in the Trust Fund. The payments provided for under section 1395w–141(k)(2) of this title shall be made from the Transitional Assistance Account in the Trust Fund.

(h) Payments from Trust Fund of costs incurred by Director of Office of Personnel Management

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to pay the costs incurred by the Director of the Office of Personnel Management in making deductions pursuant to section 1395s(d) of this title or pursuant to section 1395w–113(c)(1) or 1395w–24(d)(2)(A) of this title (in which case payments shall be made in appropriate part from the Medicare Prescription Drug Account in the Trust Fund). During each fiscal year, or after the close of such fiscal year, the Director of the Office of Personnel Management shall certify to the Secretary the amount of the costs the Director incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(i) Payments from Trust Fund of costs incurred by Railroad Retirement Board

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the

Secretary of Health and Human Services certifies are necessary to pay the costs incurred by the Railroad Retirement Board for services performed pursuant to section 1395s(b)(1) and section 1395u(g) of this title and pursuant to sections 1395w–113(c)(1) and 1395w–24(d)(2)(A) of this title (in which case payments shall be made in appropriate part from the Medicare Prescription Drug Account in the Trust Fund). During each fiscal year or after the close of such fiscal year, the Railroad Retirement Board shall certify to the Secretary the amount of the costs it incurred in performing such services and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(Aug. 14, 1935, ch. 531, title XVIII, § 1841, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 308; amended Pub. L. 90–248, title I, § 169(a), Jan. 2, 1968, 81 Stat. 875; Pub. L. 92–603, title I, § 132(e), title II, § 263(d)(4), (e), Oct. 30, 1972, 86 Stat. 1361, 1449; Pub. L. 95–292, § 5, June 13, 1978, 92 Stat. 315; Pub. L. 98–21, title I, § 154(c), title III, § 341(c), Apr. 20, 1983, 97 Stat. 107, 135; Pub. L. 98–369, div. B, title III, § 2354(b)(2), (11), (12), title VI, § 2663(j)(2)(F)(iii), July 18, 1984, 98 Stat. 1100, 1101, 1170; Pub. L. 99–272, title IX, § 9213(b), Apr. 7, 1986, 100 Stat. 180; Pub. L. 100–360, title II, § 212(b)(2), (c)(4), July 1, 1988, 102 Stat. 740, 741; Pub. L. 100–647, title VIII, § 8005(a), Nov. 10, 1988, 102 Stat. 3781; Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 103–296, title I, § 108(c)(3), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 108–173, title I, §§ 101(e)(3)(C), 105(d), title VIII, § 801(d)(2), title IX, § 900(e)(1)(E), Dec. 8, 2003, 117 Stat. 2151, 2166, 2359, 2371.)

REFERENCES IN TEXT

Section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (b)(2), is section 801(a) of Pub. L. 108–173, which is set out as a note under section 1395i of this title.

Part D of this subchapter, referred to in subsec. (g), is classified to section 1395w–101 et seq. of this title.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, § 105(d)(1), inserted ''or the Transitional Assistance Account established by section 1395w–141(k)(1) of this title'' after ''section 1395w–116 of this title''.

Pub. L. 108–173, § 101(e)(3)(C)(i), substituted ''section 401(i)(1) of this title,'' for ''section 401(i)(1) of this title, and'' and inserted '', and such amounts as may be deposited in, or appropriated to, the Medicare Prescription Drug Account established by section 1395w–116 of this title'' before period at end.

Subsec. (b). Pub. L. 108–173, § 900(e)(1)(E), in introductory provisions, substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' and, in concluding provisions, substituted ''Chief Actuary of the Centers for Medicare & Medicaid Services'' for ''Chief Actuarial Officer of the Health Care Financing Administration''.

Subsec. (b)(2). Pub. L. 108–173, § 801(d)(2), inserted at end ''Each report provided under paragraph (2) beginning with the report in 2005 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.''

Subsec. (g). Pub. L. 108–173, § 105(d)(2), inserted at end ''The payments provided for under section 1395w–141(k)(2) of this title shall be made from the Transitional Assistance Account in the Trust Fund.''

Pub. L. 108–173, § 101(e)(3)(C)(ii), inserted at end ''The payments provided for under part D of this subchapter, other than under section 1395w–141(k)(2) of this title, shall be made from the Medicare Prescription Drug Account in the Trust Fund.''

Subsec. (h). Pub. L. 108–173, § 101(e)(3)(C)(iii), inserted ''or pursuant to section 1395w–113(c)(1) or 1395w–24(d)(2)(A) of this title (in which case payments shall be made in appropriate part from the Medicare Prescription Drug Account in the Trust Fund)'' after ''section 1395s(d) of this title''.

Subsec. (i). Pub. L. 108–173, § 101(e)(3)(C)(iv), inserted ''and pursuant to sections 1395w–113(c)(1) and 1395w–24(d)(2)(A) of this title (in which case payments shall be made in appropriate part from the Medicare Prescription Drug Account in the Trust Fund)'' after ''section 1395u(g) of this title''.

1994—Subsec. (b). Pub. L. 103–296 inserted ''the Commissioner of Social Security,'' after ''composed of'' in introductory provisions.

1989—Subsecs. (a), (b). Pub. L. 101–234 repealed Pub. L. 100–360, § 212(b)(2), (c)(4), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (a). Pub. L. 100–360, § 212(b)(2), inserted three sentences at end providing for transfer of supplemental catastrophic coverage premiums into the Federal Supplementary Medical Insurance Trust Fund.

Subsec. (b). Pub. L. 100–647 inserted after first sentence ''A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term.''

Pub. L. 100–360, § 212(c)(4), inserted after sixth sentence ''Such report shall also identify (and treat separately) those receipts and outlays in the Trust Fund which are also receipts and outlays in the Medicare Catastrophic Coverage Account created under section 1395t–2 of this title.''

1986—Subsec. (b). Pub. L. 99–272 struck out provision at end of penultimate sentence that the certification shall not refer to economic assumptions underlying Trustee's report.

1984—Subsec. (c). Pub. L. 98–369, § 2354(b)(2), substituted ''under chapter 31 of title 31'' for ''under the Second Liberty Bond Act, as amended''.

Subsecs. (f), (g). Pub. L. 98–369, § 2663(j)(2)(F)(iii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

Subsec. (h). Pub. L. 98–369, § 2663(j)(2)(F)(iii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Pub. L. 98–369, § 2354(b)(11), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission'' in two places.

Pub. L. 98–369, § 2354(b)(12), substituted ''the Director'' for ''it''.

Subsec. (i). Pub. L. 98–369, § 2663(j)(2)(F)(iii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1983—Subsec. (b). Pub. L. 98–21, § 341(c)(1), substituted ''Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate'' for ''Secretary of Health, Education, and Welfare, all ex officio'' in provisions preceding par. (1).

Pub. L. 98–21, § 154(c), inserted at end provision that the report referred to in par. (2) shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that

the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable, and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Pub. L. 98–21, § 341(c)(2), inserted at end provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

1978—Subsec. (b). Pub. L. 95–292 substituted ''Administrator of the Health Care Financing Administration'' for ''Commissioner of Social Security'' in provisions preceding par. (1).

1972—Subsec. (a). Pub. L. 92–603, § 132(e), inserted ''such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and'' after ''consist of'' and before ''such amounts''.

Subsec. (h). Pub. L. 92–603, § 263(d)(4), substituted ''1395s(d)'' for ''1395s(e)''.

Subsec. (i). Pub. L. 92–603, § 263(e), added subsec. (i).

1968—Subsec. (b)(2). Pub. L. 90–248 substituted ''April'' for ''March''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to members of Board of Trustees of Federal Supplementary Medical Insurance Trust Fund serving on such Board as members of the public on or after Nov. 10, 1988, see section 8005(b) of Pub. L. 100–647, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(b)(2), (11), (12) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(iii) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 154(c) and 341(c) of Pub. L. 98–21 effective Apr. 20, 1983, see sections 154(e) and 341(d) of Pub. L. 98–21, set out as notes under section 401 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 132(e) of Pub. L. 92–603 applicable with respect to gifts and bequests received after Oct. 30, 1972, see section 132(f) of Pub. L. 92–603, set out as a note under section 401 of this title.

Amendment by section 263(d)(4), (e) of Pub. L. 92–603 with respect to collection of premiums applicable to premiums becoming due and payable after the fourth month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 263(f) of Pub. L. 92–603, set out as a note under section 1395s of this title.

DISPOSAL OF FUNDS IN FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND

Section 102(c) of Pub. L. 101–234 provided that: ''Any balance in the Federal Hospital Insurance Catastrophic Coverage Reserve Fund (created under section 1817A(a) of the Social Security Act [former section 1395i–1a(a) of this title], as inserted by section 112(a) of MCCA [Pub. L. 100–360]) as of January 1, 1990, shall be transferred into the Federal Supplementary Medical Insurance Trust Fund and any amounts payable due to overpayments into such Trust Fund shall be payable from the Federal Supplementary Medical Insurance Trust Fund.''

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Notwithstanding subsec. (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98–21, set out as a note under section 401 of this title.

§§ 1395t–1, 1395t–2. Repealed. Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981

Section 1395t–1, act Aug. 14, 1935, ch. 531, title XVIII, § 1841A, as added July 1, 1988, Pub. L. 100–360, title II, § 212(a), 102 Stat. 739; amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(10)(A), 102 Stat. 2415, provided for the creation of the Federal Catastrophic Drug Insurance Trust Fund.

Section 1395t–2, act Aug. 14, 1935, ch. 531, title XVIII, § 1841B, as added July 1, 1988, Pub. L. 100–360, title II, § 213, formerly § 213(a), 102 Stat. 741, as redesignated Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(11), 102 Stat. 2415, provided for the creation of the Medicare Catastrophic Coverage Account.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as an Effective Date of 1989 Amendment note under section 401 of this title.

§ 1395u. Provisions relating to the administration of part B

(a) In general

The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1395kk–1 of this title.

(b) Determination of reasonable charges

(1) Repealed. Pub. L. 108–173, title IX, § 911(c)(3)(A), Dec. 8, 2003, 117 Stat. 2384.

(2)(A), (B) Repealed. Pub. L. 108–173, title IX, § 911(c)(3)(B)(i), Dec. 8, 2003, 117 Stat. 2384.

(C) In the case of residents of nursing facilities who receive services described in clause (i) or (ii) of section 1395x(s)(2)(K) of this title performed by a member of a team, the Secretary shall instruct medicare administrative contractors to develop mechanisms which permit rou-

tine payment under this part for up to 1.5 visits per month per resident. In the previous sentence, the term ''team'' refers to a physician and includes a physician assistant acting under the supervision of the physician or a nurse practitioner working in collaboration with that physician, or both.

(3) The Secretary—

(A) shall take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under section 1395x(v) of this title);

(B) shall take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the medicare administrative contractor, and such payment will (except as otherwise provided in section 1395gg(f) of this title) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which (I) the reasonable charge is the full charge for the service, (II) the physician or other person furnishing such service agrees not to charge (and to refund amounts already collected) for services for which payment under this subchapter is denied under section 1320c–3(a)(2) of this title by reason of a determination under section 1320c–3(a)(1)(B) of this title, and (III) the physician or other person furnishing such service agrees not to charge (and to refund amounts already collected) for such service if payment may not be made therefor by reason of the provisions of paragraph (1) of section 1395y(a) of this title, and if the individual to whom such service was furnished was without fault in incurring the expenses of such service, and if the Secretary's determination that payment (pursuant to such assignment) was incorrect and was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter (except in the case of physicians' services and ambulance service furnished as described in section 1395y(a)(4) of this title, other than for purposes of section 1395gg(f) of this title);

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year);

(C) to (E) Repealed. Pub. L. 108–173, title IX, § 911(c)(3)(C)(iv), Dec. 8, 2003, 117 Stat. 2384;

(F) shall take such action as may be necessary to assure that where payment under this part for a service rendered is on a charge basis, such payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year in which the bill is submitted or request for payment is made, on the basis of such levels in effect for the 12-month period preceding such year;

(G) shall, for a service that is furnished with respect to an individual enrolled under this part, that is not paid on an assignment-related basis, and that is subject to a limiting charge under section 1395w–4(g) of this title—

(i) determine, prior to making payment, whether the amount billed for such service exceeds the limiting charge applicable under section 1395w–4(g)(2) of this title;

(ii) notify the physician, supplier, or other person periodically (but not less often than once every 30 days) of determinations that amounts billed exceeded such applicable limiting charges; and

(iii) provide for prompt response to inquiries of physicians, suppliers, and other persons concerning the accuracy of such limiting charges for their services;

(H) shall implement—

(i) programs to recruit and retain physicians as participating physicians in the area served by the medicare administrative contractor, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians;[1]

(I) Repealed. Pub. L. 108–173, title IX, § 911(c)(3)(C)(vi), Dec. 8, 2003, 117 Stat. 2384;

(J), (K) Repealed. Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981;

(L) shall monitor and profile physicians' billing patterns within each area or locality and provide comparative data to physicians whose utilization patterns vary significantly from other physicians in the same payment area or locality.

In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services. No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 per-

[1] So in original. Probably should be followed by ''and''.

cent of the customary charges made for similar services in the same locality during the 12-month period ending on the June 30 last preceding the start of the calendar year in which the service is rendered. In the case of physicians' services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, or (with respect to physicians' services furnished in a year after 1987) the level determined under this sentence (or under any other provision of law affecting the prevailing charge level) for the previous year except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by year-to-year economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1395x(s)(6) of this title, charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (I) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, medicare administrative contractor, or agent of the Department of Health and Human Services performing functions under this subchapter and acting within the scope of his or its authority, and (II) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such third and fourth sentences for any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975, and shall remain at such prevailing charge level until the prevailing charge for a year (as adjusted by economic index data) equals or exceeds such prevailing charge level. The amount of any charges for outpatient services which shall be considered reasonable shall be subject to the limitations established by regulations issued by the Secretary pursuant to section 1395x(v)(1)(K) of this title, and in determining the reasonable charge for such services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility.

(4)(A)(i) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(ii)(I) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(II) In determining the prevailing charge levels under the fourth sentence of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall permit an additional one percentage point increase in the increase otherwise permitted under that sentence.

(iii) In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating physicians, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating physicians as having been justified by economic changes.

(iv) The reasonable charge for physicians' services furnished on or after January 1, 1987, and before January 1, 1992, by a nonparticipating physician shall be no greater than the applicable percent of the prevailing charge levels established under the third and fourth sentences of paragraph (3) (or under any other applicable provision of law affecting the prevailing charge level). In the previous sentence, the term ''applicable percent'' means for services furnished (I) on or after January 1, 1987, and before April 1, 1988, 96 percent, (II) on or after April 1, 1988, and before January 1, 1989, 95.5 percent, and (III) on or after January 1, 1989, 95 percent.

(v) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning January 1, 1987.

(vi) Before each year (beginning with 1989), the Secretary shall establish a prevailing charge floor for primary care services (as defined in subsection (i)(4) of this section) equal to 60 percent of the estimated average prevailing charge levels based on the best available data (deter-

mined, under the third and fourth sentences of paragraph (3) and under paragraph (4), without regard to this clause and without regard to physician specialty) for such service for all localities in the United States (weighted by the relative frequency of the service in each locality) for the year.

(vii) Beginning with 1987, the percentage increase in the MEI (as defined in subsection (i)(3) of this section) for each year shall be the same for nonparticipating physicians as for participating physicians.

(B)(i) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983.

(ii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services—

(I) if the physician was not a participating physician at any time during the 12-month period beginning on October 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983, and

(II) if the physician was a participating physician at any time during the 12-month period beginning on October 1, 1984, the physician's customary charges shall be determined based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985.

(iii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning January 1, 1987.

(iv) In determining the reasonable charge under paragraph (3) for physicians' services (other than primary care services, as defined in subsection (i)(4) of this section) furnished during 1991, the customary charges shall be the same customary charges as were recognized under this section for the 9-month period beginning April 1, 1990. In a case in which subparagraph (F) applies (relating to new physicians) so as to limit the customary charges of a physician during 1990 to a percent of prevailing charges, the previous sentence shall not prevent such limit on customary charges under such subparagraph from increasing in 1991 to a higher percent of such prevailing charges.

(C) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during periods beginning after September 30, 1985, the Secretary shall treat the level as set under subparagraph (A)(i) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(i).

(D)(i) In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, by a physician who was not a participating physician (as defined in subsection (h)(1) of this section) on September 30, 1985, the Secretary shall not recognize increases in actual charges for services furnished during the 15-month period beginning on July 1, 1984, above the level of the physician's actual charges billed in the 3-month period ending on June 30, 1984.

(ii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) on April 30, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 7-month period beginning on October 1, 1985, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, or January 1, 1988, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) on December 31, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 8-month period beginning on May 1, 1986, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iv) In determining the customary charges for a physicians' service furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such actual charges (for that service furnished during such previous year) that exceeds the maximum allowable actual charge for such service established under subsection (j)(1)(C) of this section.

(E)(i) For purposes of this part for physicians' services furnished in 1987, the percentage increase in the MEI is 3.2 percent.

(ii) For purposes of this part for physicians' services furnished in 1988, on or after April 1, the percentage increase in the MEI is—

(I) 3.6 percent for primary care services (as defined in subsection (i)(4) of this section), and

(II) 1 percent for other physicians' services.

(iii) For purposes of this part for physicians' services furnished in 1989, the percentage increase in the MEI is—

(I) 3.0 percent for primary care services, and

(II) 1 percent for other physicians' services.

(iv) For purposes of this part for items and services furnished in 1990, after March 31, 1990, the percentage increase in the MEI is—

(I) 0 percent for radiology services, for anesthesia services, and for other services specified in the list referred to in paragraph (14)(C)(i),

(II) 2 percent for other services (other than primary care services), and

(III) such percentage increase in the MEI (as defined in subsection (i)(3) of this section) as would be otherwise determined for primary care services (as defined in subsection (i)(4) of this section).

(v) For purposes of this part for items and services furnished in 1991, the percentage increase in the MEI is—

(I) 0 percent for services (other than primary care services), and

(II) 2 percent for primary care services (as defined in subsection (i)(4) of this section).

(5) Repealed. Pub. L. 108–173, title IX, § 911(c)(3)(D), Dec. 8, 2003, 117 Stat. 2384.

(6) No payment under this part for a service provided to any individual shall (except as provided in section 1395gg of this title) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that (A) payment may be made (i) to the employer of such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (ii) where the service was provided under a contractual arrangement between such physician or other person and an entity, to the entity if, under the contractual arrangement, the entity submits the bill for the service and the contractual arrangement meets such program integrity and other safeguards as the Secretary may determine to be appropriate, (B) payment may be made to an entity (i) which provides coverage of the services under a health benefits plan, but only to the extent that payment is not made under this part, (ii) which has paid the person who provided the service an amount (including the amount payable under this part) which that person has accepted as payment in full for the service, and (iii) to which the individual has agreed in writing that payment may be made under this part, (C) in the case of services described in clause (i) of section 1395x(s)(2)(K) of this title, payment shall be made to either (i) the employer of the physician assistant involved, or (ii) with respect to a physician assistant who was the owner of a rural health clinic (as described in section 1395x(aa)(2) of this title) for a continuous period beginning prior to August 5, 1997, and ending on the date that the Secretary determines such rural health clinic no longer meets the requirements of section 1395x(aa)(2) of this title, payment may be made directly to the physician assistant, (D) payment may be made to a physician for physicians' services (and services furnished incident to such services) furnished by a second physician to patients of the first physician if (i) the first physician is unavailable to provide the services; (ii) the services are furnished pursuant to an arrangement between the two physicians that (I) is informal and reciprocal, or (II) involves per diem or other fee-for-time compensation for such services; (iii) the services are not provided by the second physician over a continuous period of more than 60 days; and (iv) the claim form submitted to the medicare administrative contractor for such services includes the second physician's unique identifier (provided under the system established under subsection (r) of this section) and indicates that the claim meets the requirements of this subparagraph for payment to the first physician, (E) in the case of an item or service (other than services described in section 1395yy(e)(2)(A)(ii) of this title) furnished by, or under arrangements made by, a skilled nursing facility to an individual who (at the time the item or service is furnished) is a resident of a skilled nursing facility, payment shall be made to the facility, (F) in the case of home health services (including medical supplies described in section 1395x(m)(5) of this title, but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who (at the time the item or service is furnished) is under a plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise), (G) in the case of services in a hospital or clinic to which section 1395qq(e) of this title applies, payment shall be made to such hospital or clinic, and (H) in the case of services described in section 1395x(aa)(3) of this title that are furnished by a health care professional under contract with a Federally qualified health center, payment shall be made to the center. No payment which under the preceding sentence may be made directly to the physician or other person providing the service involved (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or entity as described in subparagraph (A) of such sentence); but nothing in this subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physician or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment. For purposes of subparagraph (C) of the first sentence of this paragraph, an employment relationship may include any independent contractor arrangement, and employer status shall be determined in accordance with the law of the State in which the services described in such clause are performed.

(7)(A) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, the Secretary shall not provide (except on the basis described in subparagraph (C)) for payment for such services under this part—

(i) unless—

(I) the physician renders sufficient personal and identifiable physicians' services to

the patient to exercise full, personal control over the management of the portion of the case for which the payment is sought,

(II) the services are of the same character as the services the physician furnishes to patients not entitled to benefits under this subchapter, and

(III) at least 25 percent of the hospital's patients (during a representative past period, as determined by the Secretary) who were not entitled to benefits under this subchapter and who were furnished services described in subclauses (I) and (II) paid all or a substantial part of charges (other than nominal charges) imposed for such services; and

(ii) to the extent that the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B).

(B) The customary charge for such services in a hospital shall be determined in accordance with regulations issued by the Secretary and taking into account the following factors:

(i) In the case of a physician who is not a teaching physician (as defined by the Secretary), the Secretary shall take into account the amounts the physician charges for similar services in the physician's practice outside the teaching setting.

(ii) In the case of a teaching physician, if the hospital, its physicians, or other appropriate billing entity has established one or more schedules of charges which are collected for medical and surgical services, the Secretary shall base payment under this subchapter on the greatest of—

(I) the charges (other than nominal charges) which are most frequently collected in full or substantial part with respect to patients who were not entitled to benefits under this subchapter and who were furnished services described in subclauses (I) and (II) of subparagraph (A)(i),

(II) the mean of the charges (other than nominal charges) which were collected in full or substantial part with respect to such patients, or

(III) 85 percent of the prevailing charges paid for similar services in the same locality.

(iii) If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished to patients in such hospital on an assignment-related basis, the customary charge for such services shall be equal to 90 percent of the prevailing charges paid for similar services in the same locality.

(C) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, if the conditions described in subclauses (I) and (II) of subparagraph (A)(i) are met and if the physician elects payment to be determined under this subparagraph, the Secretary shall provide for payment for such services under this part on the basis of regulations of the Secretary governing reimbursement for the services of hospital-based physicians (and not on any other basis).

(D)(i) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, no payment shall be made under this part for services of assistants at surgery with respect to a surgical procedure if such hospital has a training program relating to the medical specialty required for such surgical procedure and a qualified individual on the staff of the hospital is available to provide such services; except that payment may be made under this part for such services, to the extent that such payment is otherwise allowed under this paragraph, if such services, as determined under regulations of the Secretary—

(I) are required due to exceptional medical circumstances,

(II) are performed by team physicians needed to perform complex medical procedures, or

(III) constitute concurrent medical care relating to a medical condition which requires the presence of, and active care by, a physician of another specialty during surgery,

and under such other circumstances as the Secretary determines by regulation to be appropriate.

(ii) For purposes of this subparagraph, the term ''assistant at surgery'' means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

(iii) The Secretary shall determine appropriate methods of reimbursement of assistants at surgery where such services are reimbursable under this part.

(8)(A)(i) The Secretary shall by regulation—

(I) describe the factors to be used in determining the cases (of particular items or services) in which the application of this subchapter to payment under this part (other than to physicians' services paid under section 1395w–4 of this title) results in the determination of an amount that, because of its being grossly excessive or grossly deficient, is not inherently reasonable, and

(II) provide in those cases for the factors to be considered in determining an amount that is realistic and equitable.

(ii) Notwithstanding the determination made in clause (i), the Secretary may not apply factors that would increase or decrease the payment under this part during any year for any particular item or service by more than 15 percent from such payment during the preceding year except as provided in subparagraph (B).

(B) The Secretary may make a determination under this subparagraph that would result in an increase or decrease under subparagraph (A) of more than 15 percent of the payment amount for a year, but only if—

(i) the Secretary's determination takes into account the factors described in subparagraph (C) and any additional factors the Secretary determines appropriate,

(ii) the Secretary's determination takes into account the potential impacts described in subparagraph (D), and

(iii) the Secretary complies with the procedural requirements of paragraph (9).

(C) The factors described in this subparagraph are as follows:

(i) The programs established under this subchapter and subchapter XIX of this chapter are the sole or primary sources of payment for an item or service.

(ii) The payment amount does not reflect changing technology, increased facility with that technology, or reductions in acquisition or production costs.

(iii) The payment amount for an item or service under this part is substantially higher or lower than the payment made for the item or service by other purchasers.

(D) The potential impacts of a determination under subparagraph (B) on quality, access, and beneficiary liability, including the likely effects on assignment rates and participation rates.

(9)(A) The Secretary shall consult with representatives of suppliers or other individuals who furnish an item or service before making a determination under paragraph (8)(B) with regard to that item or service.

(B) The Secretary shall publish notice of a proposed determination under paragraph (8)(B) in the Federal Register—

(i) specifying the payment amount proposed to be established with respect to an item or service,

(ii) explaining the factors and data that the Secretary took into account in determining the payment amount so specified, and

(iii) explaining the potential impacts described in paragraph (8)(D).

(C) After publication of the notice required by subparagraph (B), the Secretary shall allow not less than 60 days for public comment on the proposed determination.

(D)(i) Taking into consideration the comments made by the public, the Secretary shall publish in the Federal Register a final determination under paragraph (8)(B) with respect to the payment amount to be established with respect to the item or service.

(ii) A final determination published pursuant to clause (i) shall explain the factors and data that the Secretary took into consideration in making the final determination.

(10)(A)(i) In determining the reasonable charge for procedures described in subparagraph (B) and performed during the 9-month period beginning on April 1, 1988, the prevailing charge for such procedure shall be the prevailing charge otherwise recognized for such procedure for 1987—

(I) subject to clause (iii), reduced by 2.0 percent, and

(II) further reduced by the applicable percentage specified in clause (ii).

(ii) For purposes of clause (i), the applicable percentage specified in this clause is—

(I) 15 percent, in the case of a prevailing charge otherwise recognized (without regard to this paragraph and determined without regard to physician specialty) that is at least 150 percent of the weighted national average (as determined by the Secretary) of such prevailing charges for such procedure for all localities in the United States for 1987;

(II) 0 percent, in the case of a prevailing charge that does not exceed 85 percent of such weighted national average; and

(III) in the case of any other prevailing charge, a percent determined on the basis of a straight-line sliding scale, equal to 3/13 of a percentage point for each percent by which the prevailing charge exceeds 85 percent of such weighted national average.

(iii) In no case shall the reduction under clause (i) for a procedure result in a prevailing charge in a locality for 1988 which is less than 85 percent of the Secretary's estimate of the weighted national average of such prevailing charges for such procedure for all localities in the United States for 1987 (based upon the best available data and determined without regard to physician specialty) after making the reduction described in clause (i)(I).

(B) The procedures described in this subparagraph are as follows: bronchoscopy, carpal tunnel repair, cataract surgery (including subsequent insertion of an intraocular lens), coronary artery bypass surgery, diagnostic and/or therapeutic dilation and curettage, knee arthroscopy, knee arthroplasty, pacemaker implantation surgery, total hip replacement, suprapubic prostatectomy, transurethral resection of the prostate, and upper gastrointestinal endoscopy.

(C) In the case of a reduction in the reasonable charge for a physicians' service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(D) There shall be no administrative or judicial review under section 1395ff of this title or otherwise of any determination under subparagraph (A) or under paragraph (11)(B)(ii).

(11)(A) In providing payment for cataract eyeglasses and cataract contact lenses, and professional services relating to them, under this part, each carrier shall—

(i) provide for separate determinations of the payment amount for the eyeglasses and lenses and of the payment amount for the professional services of a physician (as defined in section 1395x(r) of this title), and

(ii) not recognize as reasonable for such eyeglasses and lenses more than such amount as the Secretary establishes in guidelines relating to the inherent reasonableness of charges for such eyeglasses and lenses.

(B)(i) In determining the reasonable charge under paragraph (3) for a cataract surgical procedure, subject to clause (ii), the prevailing charge for such procedure otherwise recognized for participating and nonparticipating physicians shall be reduced by 10 percent with respect to procedures performed in 1987.

(ii) In no case shall the reduction under clause (i) for a surgical procedure result in a prevailing charge in a locality for a year which is less than 75 percent of the weighted national average of such prevailing charges for such procedure for all the localities in the United States for 1986.

(C)(i) The prevailing charge level determined with respect to A-mode ophthalmic ultrasound

procedures may not exceed 5 percent of the prevailing charge level established with respect to extracapsular cataract removal with lens insertion.

(ii) The reasonable charge for an intraocular lens inserted during or subsequent to cataract surgery in a physician's office may not exceed the actual acquisition cost for the lens (taking into account any discount) plus a handling fee (not to exceed 5 percent of such actual acquisition cost).

(D) In the case of a reduction in the reasonable charge for a physicians' service or item under subparagraph (B) or (C), if a nonparticipating physician furnishes the service or item to an individual entitled to benefits under this part after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(12) Repealed. Pub. L. 105–33, title IV, § 4512(b)(2), Aug. 5, 1997, 111 Stat. 444.

(13)(A) In determining payments under section 1395*l*(*l*) of this title and section 1395w–4 of this title for anesthesia services furnished on or after January 1, 1994, the methodology for determining the base and time units used shall be the same for services furnished by physicians, for medical direction by physicians of two, three, or four certified registered nurse anesthetists, or for services furnished by a certified registered nurse anesthetist (whether or not medically directed) and shall be based on the methodology in effect, for anesthesia services furnished by physicians, as of August 10, 1993.

(B) The Secretary shall require claims for physicians' services for medical direction of nurse anesthetists during the periods in which the provisions of subparagraph (A) apply to indicate the number of such anesthetists being medically directed concurrently at any time during the procedure, the name of each nurse anesthetist being directed, and the type of procedure for which the services are provided.

(14)(A)(i) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during the 9-month period beginning on April 1, 1990, the prevailing charge for such service shall be the prevailing charge otherwise recognized for such service for 1989 reduced by 15 percent or, if less, ⅓ of the percent (if any) by which the prevailing charge otherwise applied in the locality in 1989 exceeds the locally-adjusted reduced prevailing amount (as determined under subparagraph (B)(i)) for the service.

(ii) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during 1991, the prevailing charge for such service shall be the prevailing charge otherwise recognized for such service for the period during 1990 beginning on April 1, reduced by the same amount as the amount of the reduction effected under this paragraph (as amended by the Omnibus Budget Reconciliation Act of 1990) for such service during such period.

(B) For purposes of this paragraph:

(i) The ''locally-adjusted reduced prevailing amount'' for a locality for a physicians' service is equal to the product of—

(I) the reduced national weighted average prevailing charge for the service (specified under clause (ii)), and

(II) the adjustment factor (specified under clause (iii)) for the locality.

(ii) The ''reduced national weighted average prevailing charge'' for a physicians' service is equal to the national weighted average prevailing charge for the service (specified in subparagraph (C)(ii)) reduced by the percentage change (specified in subparagraph (C)(iii)) for the service.

(iii) The ''adjustment factor'', for a physicians' service for a locality, is the sum of—

(I) the practice expense component (percent), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101–M, 101st Congress, 1st Session) for the service, multiplied by the geographic practice cost index value (specified in subparagraph (C)(iv)) for the locality, and

(II) 1 minus the practice expense component (percent), divided by 100.

(C) For purposes of this paragraph:

(i) The physicians' services specified in this clause are the procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee, Revised September 20, 1989, prepared by the Physician Payment Review Commission which specification is of physicians' services that have been identified as overvalued by at least 10 percent based on a comparison of payments for such services under a resource-based relative value scale and of the national average prevailing charges under this part.

(ii) The ''national weighted average prevailing charge'' specified in this clause, for a physicians' service specified in clause (i), is the national weighted average prevailing charge for the service in 1989 as determined by the Secretary using the best data available.

(iii) The ''percentage change'' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list referred to in clause (i).

(iv) The geographic practice cost index value specified in this clause for a locality is the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research).

(D) In the case of a reduction in the prevailing charge for a physicians' service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(15)(A) In determining the reasonable charge for surgery, radiology, and diagnostic physicians' services which the Secretary shall designate (based on their high volume of expenditures under this part) and for which the prevail-

ing charge (but for this paragraph) differs by physician specialty, the prevailing charge for such a service may not exceed the prevailing charge or fee schedule amount for that specialty of physicians that furnish the service most frequently nationally.

(B) In the case of a reduction in the prevailing charge for a physician's service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of the reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(16)(A) In determining the reasonable charge for all physicians' services other than physicians' services specified in subparagraph (B) furnished during 1991, the prevailing charge for a locality shall be 6.5 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

(B) For purposes of subparagraph (A), the physicians' services specified in this subparagraph are as follows:

(i) Radiology, anesthesia and physician pathology services, the technical components of diagnostic tests specified in paragraph (17) and physicians' services specified in paragraph (14)(C)(i).

(ii) Primary care services specified in subsection (i)(4) of this section, hospital inpatient medical services, consultations, other visits, preventive medicine visits, psychiatric services, emergency care facility services, and critical care services.

(iii) Partial mastectomy; tendon sheath injections and small joint arthrocentesis; femoral fracture and trochanteric fracture treatments; endotracheal intubation; thoracentesis; thoracostomy; aneurysm repair; cystourethroscopy; transurethral fulguration and resection; tympanoplasty with mastoidectomy; and ophthalmoscopy.

(17) With respect to payment under this part for the technical (as distinct from professional) component of diagnostic tests (other than clinical diagnostic laboratory tests, tests specified in paragraph (14)(C)(i), and radiology services, including portable x-ray services) which the Secretary shall designate (based on their high volume of expenditures under this part), the reasonable charge for such technical component (including the applicable portion of a global service) may not exceed the national median of such charges for all localities, as estimated by the Secretary using the best available data.

(18)(A) Payment for any service furnished by a practitioner described in subparagraph (C) and for which payment may be made under this part on a reasonable charge or fee schedule basis may only be made under this part on an assignment-related basis.

(B) A practitioner described in subparagraph (C) or other person may not bill (or collect any amount from) the individual or another person for any service described in subparagraph (A), except for deductible and coinsurance amounts applicable under this part. No person is liable for payment of any amounts billed for such a service in violation of the previous sentence. If a practitioner or other person knowingly and willfully bills (or collects an amount) for such a service in violation of such sentence, the Secretary may apply sanctions against the practitioner or other person in the same manner as the Secretary may apply sanctions against a physician in accordance with subsection (j)(2) of this section in the same manner as such section applies with respect to a physician. Paragraph (4) of subsection (j) of this section shall apply in this subparagraph in the same manner as such paragraph applies to such section.

(C) A practitioner described in this subparagraph is any of the following:

(i) A physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1395x(aa)(5) of this title).

(ii) A certified registered nurse anesthetist (as defined in section 1395x(bb)(2) of this title).

(iii) A certified nurse-midwife (as defined in section 1395x(gg)(2) of this title).

(iv) A clinical social worker (as defined in section 1395x(hh)(1) of this title).

(v) A clinical psychologist (as defined by the Secretary for purposes of section 1395x(ii) of this title).

(vi) A registered dietitian or nutrition professional.

(D) For purposes of this paragraph, a service furnished by a practitioner described in subparagraph (C) includes any services and supplies furnished as incident to the service as would otherwise be covered under this part if furnished by a physician or as incident to a physician's service.

(19) For purposes of section 1395*l*(a)(1) of this title, the reasonable charge for ambulance services (as described in section 1395x(s)(7) of this title) provided during calendar year 1998 and calendar year 1999 may not exceed the reasonable charge for such services provided during the previous calendar year (after application of this paragraph), increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved reduced by 1.0 percentage point.

(c) Prompt payment of claims

(1) Repealed. Pub. L. 108–173, title IX, § 911(c)(4)(A), Dec. 8, 2003, 117 Stat. 2384.

(2)(A) Each contract under section 1395kk–1 of this title that provides for making payments under this part shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this part—

(i) which are clean claims, and

(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph:

(i) The term ''clean claim'' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.

(ii) The term ''applicable number of calendar days'' means—

(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days (or 19 calendar days with respect to claims submitted by participating physicians),

(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days (or 18 calendar days with respect to claims submitted by participating physicians),

(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period ending on or before September 30, 1993, 24 calendar days (or 17 calendar days with respect to claims submitted by participating physicians), and

(V) with respect to claims received in the 12-month period beginning October 1, 1993, and claims received in any succeeding 12-month period, 30 calendar days.

(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received, interest shall be paid at the rate used for purposes of section 3902(a) of title 31 (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(3)(A) Each contract under this section which provides for the disbursement of funds, as described in section 1395kk–1(a)(3)(B) of this title, shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this subchapter within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph, the term ''applicable number of calendar days'' means—

(i) with respect to claims submitted electronically as prescribed by the Secretary, 13 days, and

(ii) with respect to claims submitted otherwise, 28 days.

(4) Neither a medicare administrative contractor nor the Secretary may impose a fee under this subchapter—

(A) for the filing of claims related to physicians' services,

(B) for an error in filing a claim relating to physicians' services or for such a claim which is denied,

(C) for any appeal under this subchapter with respect to physicians' services,

(D) for applying for (or obtaining) a unique identifier under subsection (r) of this section, or

(E) for responding to inquiries respecting physicians' services or for providing information with respect to medical review of such services.

(d) to (f). Repealed. Pub. L. 108–173, title IX, § 911(c)(5), Dec. 8, 2003, 117 Stat. 2384

(g) Authority of Railroad Retirement Board to enter into contracts with medicare administrative contractors

The Railroad Retirement Board shall, in accordance with such regulations as the Secretary may prescribe, contract with a medicare administrative contractor or contractors to perform the functions set out in this section with respect to individuals entitled to benefits as qualified railroad retirement beneficiaries pursuant to section 426(a) of this title and section 231f(d) of title 45.

(h) Participating physician or supplier; agreement with Secretary; publication of directories; availability; inclusion of program in explanation of benefits; payment of claims on assignment-related basis

(1) Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term ''participating physician or supplier'' means a physician or supplier (excluding any provider of services) who, before the beginning of any year beginning with 1984, enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on an assignment-related basis for all items and services furnished to individuals enrolled under this part during such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, or in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after the beginning of a year, for items and services furnished during the remainder of the year.

(2) The Secretary shall maintain a toll-free telephone number or numbers at which individuals enrolled under this part may obtain the names, addresses, specialty, and telephone numbers of participating physicians and suppliers and may request a copy of an appropriate directory published under paragraph (4). The Secretary shall, without charge, mail a copy of such directory upon such a request.

(3)(A) In any case in which[2] medicare administrative contractor having a contract under section 1395kk–1 of this title that provides for making payments under this part is able to develop a system for the electronic transmission to such contractor of bills for services, such contractor shall establish direct lines for the electronic receipt of claims from participating physicians and suppliers.

(B) The Secretary shall establish a procedure whereby an individual enrolled under this part may assign, in an appropriate manner on the form claiming a benefit under this part for an item or service furnished by a participating physician or supplier, the individual's rights of payment under a medicare supplemental policy (described in section 1395ss(g)(1) of this title) in which the individual is enrolled. In the case

[2] So in original. Probably should be followed by ''a''.

such an assignment is properly executed and a payment determination is made by a medicare administrative contractor with a contract under this section, the contractor shall transmit to the private entity issuing the medicare supplemental policy notice of such fact and shall include an explanation of benefits and any additional information that the Secretary may determine to be appropriate in order to enable the entity to decide whether (and the amount of) any payment is due under the policy. The Secretary may enter into agreements for the transmittal of such information to entities electronically. The Secretary shall impose user fees for the transmittal of information under this subparagraph by a medicare administrative contractor, whether electronically or otherwise, and such user fees shall be collected and retained by the contractor.

(4) At the beginning of each year the Secretary shall publish directories (for appropriate local geographic areas) containing the name, address, and specialty of all participating physicians and suppliers (as defined in paragraph (1)) for that area for that year. Each directory shall be organized to make the most useful presentation of the information (as determined by the Secretary) for individuals enrolled under this part. Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.

(5)(A) The Secretary shall promptly notify individuals enrolled under this part through an annual mailing of the participation program under this subsection and the publication and availability of the directories and shall make the appropriate area directory or directories available in each district and branch office of the Social Security Administration, in the offices of medicare administrative contractors, and to senior citizen organizations.

(B) The annual notice provided under subparagraph (A) shall include—

(i) a description of the participation program,

(ii) an explanation of the advantages to beneficiaries of obtaining covered services through a participating physician or supplier,

(iii) an explanation of the assistance offered by medicare administrative contractors in obtaining the names of participating physicians and suppliers, and

(iv) the toll-free telephone number under paragraph (2)(A) for inquiries concerning the program and for requests for free copies of appropriate directories.

(6) The Secretary shall provide that the directories shall be available for purchase by the public. The Secretary shall provide that each appropriate area directory is sent to each participating physician located in that area and that an appropriate number of copies of each such directory is sent to hospitals located in the area. Such copies shall be sent free of charge.

(7) The Secretary shall provide that each explanation of benefits provided under this part for services furnished in the United States, in conjunction with the payment of claims under section 1395*l*(a)(1) of this title (made other than on an assignment-related basis), shall include—

(A) a prominent reminder of the participating physician and supplier program established under this subsection (including the limitation on charges that may be imposed by such physicians and suppliers and a clear statement of any amounts charged for the particular items or services on the claim involved above the amount recognized under this part),

(B) the toll-free telephone number or numbers, maintained under paragraph (2), at which an individual enrolled under this part may obtain information on participating physicians and suppliers,

(C)(i) an offer of assistance to such an individual in obtaining the names of participating physicians of appropriate specialty and (ii) an offer to provide a free copy of the appropriate participating physician directory; and

(D) in the case of services for which the billed amount exceeds the limiting charge imposed under section 1395w–4(g) of this title, information regarding such applicable limiting charge (including information concerning the right to a refund under section 1395w–4(g)(1)(A)(iv) of this title).

(8) The Secretary may refuse to enter into an agreement with a physician or supplier under this subsection, or may terminate or refuse to renew such agreement, in the event that such physician or supplier has been convicted of a felony under Federal or State law for an offense which the Secretary determines is detrimental to the best interests of the program or program beneficiaries.

(i) Definitions

For purposes of this subchapter:

(1) A claim is considered to be paid on an ''assignment-related basis'' if the claim is paid on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title.

(2) The term ''participating physician'' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician (under subsection (h)(1) of this section); the term ''nonparticipating physician'' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is not a participating physician; and the term ''nonparticipating supplier or other person'' means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (h)(1) of this section).

(3) The term ''percentage increase in the MEI'' means, with respect to physicians' services furnished in a year, the percentage increase in the medicare economic index (referred to in the fourth sentence of subsection (b)(3) of this section) applicable to such services furnished as of the first day of that year.

(4) The term ''primary care services'' means physicians' services which constitute office medical services, emergency department services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home,

domiciliary, or custodial care medical services.

(j) Monitoring of charges of nonparticipating physicians; sanctions; restitution

(1)(A) In the case of a physician who is not a participating physician for items and services furnished during a portion of the 30-month period beginning July 1, 1984, the Secretary shall monitor the physician's actual charges to individuals enrolled under this part for physicians' services during that portion of that period. If such physician knowingly and willfully bills individuals enrolled under this part for actual charges in excess of such physician's actual charges for the calendar quarter beginning on April 1, 1984, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(B)(i) During any period (on or after January 1, 1987, and before the date specified in clause (ii)), during which a physician is a nonparticipating physician, the Secretary shall monitor the actual charges of each such physician for physicians' services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills on a repeated basis for such a service an actual charge in excess of the maximum allowable actual charge determined under subparagraph (C) for that service, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(ii) Clause (i) shall not apply to services furnished after December 31, 1990.

(C)(i) For a particular physicians' service furnished by a nonparticipating physician to individuals enrolled under this part during a year, for purposes of subparagraph (B), the maximum allowable actual charge is determined as follows: If the physician's maximum allowable actual charge for that service in the previous year was—

(I) less than 115 percent of the applicable percent (as defined in subsection (b)(4)(A)(iv) of this section) of the prevailing charge for the year and service involved, the maximum allowable actual charge for the year involved is the greater of the maximum allowable actual charge described in subclause (II) or the charge described in clause (ii), or

(II) equal to, or greater than, 115 percent of the applicable percent (as defined in subsection (b)(4)(A)(iv) of this section) of the prevailing charge for the year and service involved, the maximum allowable actual charge is 101 percent of the physician's maximum allowable actual charge for the service for the previous year.

(ii) For purposes of clause (i)(I), the charge described in this clause for a particular physicians' service furnished in a year is the maximum allowable actual charge for the service of the physician for the previous year plus the product of (I) the applicable fraction (as defined in clause (iii)) and (II) the amount by which 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, exceeds the physician's maximum allowable actual charge for the service for the previous year.

(iii) In clause (ii), the ''applicable fraction'' is—

(I) for 1987, ¼,
(II) for 1988, ⅓,
(III) for 1989, ½, and
(IV) for any subsequent year, 1.

(iv) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for 1987, in the case of a physicians' service for which the physician has actual charges for the calendar quarter beginning on April 1, 1984, the ''maximum allowable actual charge'' for 1986 is the physician's actual charge for such service furnished during such quarter.

(v) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for a year after 1986, in the case of a physicians' service for which the physician has no actual charges for the calendar quarter beginning on April 1, 1984, and for which a maximum allowable actual charge has not been previously established under this clause, the ''maximum allowable actual charge'' for the previous year shall be the 50th percentile of the customary charges for the service (weighted by frequency of the service) performed by nonparticipating physicians in the locality during the 12-month period ending June 30 of that previous year.

(vi) For purposes of this subparagraph, a ''physician's actual charge'' for a physicians' service furnished in a year or other period is the weighted average (or, at the option of the Secretary for a service furnished in the calendar quarter beginning April 1, 1984, the median) of the physician's charges for such service furnished in the year or other period.

(vii) In the case of a nonparticipating physician who was a participating physician during a previous period, for the purpose of computing the physician's maximum allowable actual charge during the physician's period of nonparticipation, the physician shall be deemed to have had a maximum allowable actual charge during the period of participation, and such deemed maximum allowable actual charge shall be determined according to clauses (i) through (vi).

(viii) Notwithstanding any other provision of this subparagraph, the maximum allowable actual charge for a particular physician's service furnished by a nonparticipating physician to individuals enrolled under this part during the 3-month period beginning on January 1, 1988, shall be the amount determined under this subparagraph for 1987. The maximum allowable actual charge for any such service otherwise determined under this subparagraph for 1988 shall take effect on April 1, 1988.

(ix) If there is a reduction under subsection (b)(13) of this section in the reasonable charge for medical direction furnished by a nonparticipating physician, the maximum allowable actual charge otherwise permitted under this subsection for such services shall be reduced in the same manner and in the same percentage as the reduction in such reasonable charge.

(D)(i) If an action described in clause (ii) results in a reduction in a reasonable charge for a physicians' service or item and a nonparticipating physician furnishes the service or item to an individual entitled to benefits under this part after the effective date of such action, the physician may not charge the individual more than

125 percent of the reduced payment allowance (as defined in clause (iii)) plus (for services or items furnished during the 12-month period (or 9-month period in the case of an action described in clause (ii)(II)) beginning on the effective date of the action) ½ of the amount by which the physician's maximum allowable actual charge for the service or item for the previous 12-month period exceeds such 125 percent level.

(ii) The first sentence of clause (i) shall apply to—

(I) an adjustment under subsection (b)(8)(B) of this section (relating to inherent reasonableness),

(II) a reduction under subsection (b)(10)(A) or (b)(14)(A) of this section (relating to certain overpriced procedures),

(III) a reduction under subsection (b)(11)(B) of this section (relating to certain cataract procedures),

(IV) a prevailing charge limit established under subsection (b)(11)(C)(i) or (b)(15)(A) of this section,

(V) a reasonable charge limit established under subsection (b)(11)(C)(ii) of this section, and

(VI) an adjustment under section 1395*l*(*l*)(3)(B) of this title (relating to physician supervision of certified registered nurse anesthetists).

(iii) In clause (i), the term ''reduced payment allowance'' means, with respect to an action—

(I) under subsection (b)(8)(B) of this section, the inherently reasonable charge established under subsection (b)(8) of this section;

(II) under subsection (b)(10)(A), (b)(11)(B), (b)(11)(C)(i), (b)(14)(A), or (b)(15)(A) of this section or under section 1395*l*(*l*)(3)(B) of this title, the prevailing charge for the service after the action; or

(III) under subsection (b)(11)(C)(ii) of this section, the payment allowance established under such subsection.

(iv) If a physician knowingly and willfully bills in violation of clause (i) (whether or not such charge violates subparagraph (B)), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(v) Clause (i) shall not apply to items and services furnished after December 31, 1990.

(2) Subject to paragraph (3), the sanctions which the Secretary may apply under this paragraph are—

(A) excluding a physician from participation in the programs under this chapter for a period not to exceed 5 years, in accordance with the procedures of subsections (c), (f), and (g) of section 1320a–7 of this title, or

(B) civil monetary penalties and assessments, in the same manner as such penalties and assessments are authorized under section 1320a–7a(a) of this title,

or both. The provisions of section 1320a–7a of this title (other than the first 2 sentences of subsection (a) and other than subsection (b)) shall apply to a civil money penalty and assessment under subparagraph (B) in the same manner as such provisions apply to a penalty, assessment, or proceeding under section 1320a–7a(a) of this title, except to the extent such provisions are inconsistent with subparagraph (A) or paragraph (3).

(3)(A) The Secretary may not exclude a physician pursuant to paragraph (2)(A) if such physician is a sole community physician or sole source of essential specialized services in a community.

(B) The Secretary shall take into account access of beneficiaries to physicians' services for which payment may be made under this part in determining whether to bar a physician from participation under paragraph (2)(A).

(4) The Secretary may, out of any civil monetary penalty or assessment collected from a physician pursuant to this subsection, make a payment to a beneficiary enrolled under this part in the nature of restitution for amounts paid by such beneficiary to such physician which was determined to be an excess charge under paragraph (1).

(k) Sanctions for billing for services of assistant at cataract operations

(1) If a physician knowingly and willfully presents or causes to be presented a claim or bills an individual enrolled under this part for charges for services as an assistant at surgery for which payment may not be made by reason of section 1395y(a)(15) of this title, the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section in the case of surgery performed on or after March 1, 1987.

(2) If a physician knowingly and willfully presents or causes to be presented a claim or bills an individual enrolled under this part for charges that includes a charge for an assistant at surgery for which payment may not be made by reason of section 1395y(a)(15) of this title, the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section in the case of surgery performed on or after March 1, 1987.

***(l)* Prohibition of unassigned billing of services determined to be medically unnecessary by carrier**

(1)(A) Subject to subparagraph (C), if—

(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

(ii) payment for such services is not accepted on an assignment-related basis,

(iii)(I) a medicare administrative contractor determines under this part or a peer review organization determines under part B of subchapter XI of this chapter that payment may not be made by reason of section 1395y(a)(1) of this title because a service otherwise covered under this subchapter is not reasonable and necessary under the standards described in that section or (II) payment under this subchapter for such services is denied under section 1320c–3(a)(2) of this title by reason of a determination under section 1320c–3(a)(1)(B) of this title, and

(iv) the physician has collected any amounts for such services,

the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual in the case described in subparagraph (A)(iii)(I) if—

(i) the physician establishes that the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1395y(a)(1) of this title, or

(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

(2) Each medicare administrative contractor with a contract in effect under this section with respect to physicians and each peer review organization with a contract under part B of subchapter XI of this chapter shall send any notice of denial of payment for physicians' services based on section 1395y(a)(1) of this title and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(m) Disclosure of information of unassigned claims for certain physicians' services

(1) In the case of a nonparticipating physician who—

(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician's actual charge is at least $500, and

(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician's estimated actual charge for the procedure, the estimated approved charge under this part for the procedure, the excess of the physician's actual charge over the approved charge, and the coinsurance amount applicable to the procedure. The written estimate may not be used as the basis for, or evidence in, a civil suit.

(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

(3) If a physician knowingly and willfully fails to comply with paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(4) The Secretary shall provide for such monitoring of requests for payment for physicians' services to which paragraph (1) applies as is necessary to assure compliance with paragraph (2).

(n) Elimination of markup for certain purchased services

(1) If a physician's bill or a request for payment for services billed by a physician includes a charge for a diagnostic test described in section 1395x(s)(3) of this title (other than a clinical diagnostic laboratory test) for which the bill or request for payment does not indicate that the billing physician personally performed or supervised the performance of the test or that another physician with whom the physician who shares a practice personally performed or supervised the performance of the test, the amount payable with respect to the test shall be determined as follows:

(A) If the bill or request for payment indicates that the test was performed by a supplier, identifies the supplier, and indicates the amount the supplier charged the billing physician, payment for the test (less the applicable deductible and coinsurance amounts) shall be the actual acquisition costs (net of any discounts) or, if lower, the supplier's reasonable charge (or other applicable limit) for the test.

(B) If the bill or request for payment (i) does not indicate who performed the test, or (ii) indicates that the test was performed by a supplier but does not identify the supplier or include the amount charged by the supplier, no payment shall be made under this part.

(2) A physician may not bill an individual enrolled under this part—

(A) any amount other than the payment amount specified in paragraph (1)(A) and any applicable deductible and coinsurance for a diagnostic test for which payment is made pursuant to paragraph (1)(A), or

(B) any amount for a diagnostic test for which payment may not be made pursuant to paragraph (1)(B).

(3) If a physician knowingly and willfully in repeated cases bills one or more individuals in violation of paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(*o*) Reimbursement for drugs and biologicals

(1) If a physician's, supplier's, or any other person's bill or request for payment for services includes a charge for a drug or biological for which payment may be made under this part and the drug or biological is not paid on a cost or prospective payment basis as otherwise provided in this part, the amount payable for the drug or biological is equal to the following:

(A) In the case of any of the following drugs or biologicals, 95 percent of the average wholesale price:

(i) A drug or biological furnished before January 1, 2004.

(ii) Blood clotting factors furnished during 2004.

(iii) A drug or biological furnished during 2004 that was not available for payment under this part as of April 1, 2003.

(iv) A vaccine described in subparagraph (A) or (B) of section 1395x(s)(10) of this title furnished on or after January 1, 2004.

(v) A drug or biological furnished during 2004 in connection with the furnishing of renal dialysis services if separately billed by renal dialysis facilities.

(B) In the case of a drug or biological furnished during 2004 that is not described in—

(i) clause (ii), (iii), (iv), or (v) of subparagraph (A),

(ii) subparagraph (D)(i), or

(iii) subparagraph (F),

the amount determined under paragraph (4).

(C) In the case of a drug or biological that is not described in subparagraph (A)(iv), (D)(i), or (F) furnished on or after January 1, 2005, the amount provided under section 1395w–3 of this title, section 1395w–3a of this title, section 1395w–3b of this title, or section 1395rr(b)(13) of this title, as the case may be for the drug or biological.

(D)(i) Except as provided in clause (ii), in the case of infusion drugs furnished through an item of durable medical equipment covered under section 1395x(n) of this title on or after January 1, 2004, 95 percent of the average wholesale price for such drug in effect on October 1, 2003.

(ii) In the case of such infusion drugs furnished in a competitive acquisition area under section 1395w–3 of this title on or after January 1, 2007, the amount provided under section 1395w–3 of this title.

(E) In the case of a drug or biological, consisting of intravenous immune globulin, furnished—

(i) in 2004, the amount of payment provided under paragraph (4); and

(ii) in 2005 and subsequent years, the amount of payment provided under section 1395w–3a of this title.

(F) In the case of blood and blood products (other than blood clotting factors), the amount of payment shall be determined in the same manner as such amount of payment was determined on October 1, 2003.

(G) In the case of inhalation drugs or biologicals furnished through durable medical equipment covered under section 1395x(n) of this title that are furnished—

(i) in 2004, the amount provided under paragraph (4) for the drug or biological; and

(ii) in 2005 and subsequent years, the amount provided under section 1395w–3a of this title for the drug or biological.

(2) If payment for a drug or biological is made to a licensed pharmacy approved to dispense drugs or biologicals under this part, the Secretary may pay a dispensing fee (less the applicable deductible and coinsurance amounts) to the pharmacy. This paragraph shall not apply in the case of payment under paragraph (1)(C).

(3)(A) Payment for a charge for any drug or biological for which payment may be made under this part may be made only on an assignment-related basis.

(B) The provisions of subsection (b)(18)(B) of this section shall apply to charges for such drugs or biologicals in the same manner as they apply to services furnished by a practitioner described in subsection (b)(18)(C) of this section.

(4)(A) Subject to the succeeding provisions of this paragraph, the amount of payment for a drug or biological under this paragraph furnished in 2004 is equal to 85 percent of the average wholesale price (determined as of April 1, 2003) for the drug or biological.

(B) The Secretary shall substitute for the percentage under subparagraph (A) for a drug or biological the percentage that would apply to the drug or biological under the column entitled ''Average of GAO and OIG data (percent)'' in the table entitled ''Table 3.—Medicare Part B Drugs in the Most Recent GAO and OIG Studies'' published on August 20, 2003, in the Federal Register (68 Fed. Reg. 50445).

(C)(i) The Secretary may substitute for the percentage under subparagraph (A) a percentage that is based on data and information submitted by the manufacturer of the drug or biological by October 15, 2003.

(ii) The Secretary may substitute for the percentage under subparagraph (A) with respect to drugs and biologicals furnished during 2004 on or after April 1, 2004, a percentage that is based on data and information submitted by the manufacturer of the drug or biological after October 15, 2003, and before January 1, 2004.

(D) In no case may the percentage substituted under subparagraph (B) or (C) be less than 80 percent.

(5)(A) Subject to subparagraph (B), in the case of clotting factors furnished on or after January 1, 2005, the Secretary shall, after reviewing the January 2003 report to Congress by the Comptroller General of the United States entitled ''Payment for Blood Clotting Factor Exceeds Providers Acquisition Cost'', provide for a separate payment, to the entity which furnishes to the patient blood clotting factors, for items and services related to the furnishing of such factors in an amount that the Secretary determines to be appropriate. Such payment amount may take into account any or all of the following:

(i) The mixing (if appropriate) and delivery of factors to an individual, including special inventory management and storage requirements.

(ii) Ancillary supplies and patient training necessary for the self-administration of such factors.

(B) In determining the separate payment amount under subparagraph (A) for blood clotting factors furnished in 2005, the Secretary shall ensure that the total amount of payments under this part (as estimated by the Secretary) for such factors under paragraph (1)(C) and such separate payments for such factors does not exceed the total amount of payments that would have been made for such factors under this part (as estimated by the Secretary) if the amendments made by section 303 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 had not been enacted.

(C) The separate payment amount under this subparagraph for blood clotting factors furnished in 2006 or a subsequent year shall be equal to the separate payment amount determined under this paragraph for the previous

year increased by the percentage increase in the consumer price index for medical care for the 12-month period ending with June of the previous year.

(6) In the case of an immunosuppressive drug described in subparagraph (J) of section 1395x(s)(2) of this title and an oral drug described in subparagraph (Q) or (T) of such section, the Secretary shall pay to the pharmacy a supplying fee for such a drug determined appropriate by the Secretary (less the applicable deductible and coinsurance amounts).

(7) There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of determinations of payment amounts, methods, or adjustments under paragraphs (4) through (6).

(p) Requiring submission of diagnostic information

(1) Each request for payment, or bill submitted, for an item or service furnished by a physician or practitioner specified in subsection (b)(18)(C) of this section for which payment may be made under this part shall include the appropriate diagnosis code (or codes) as established by the Secretary for such item or service.

(2) In the case of a request for payment for an item or service furnished by a physician or practitioner specified in subsection (b)(18)(C) of this section on an assignment-related basis which does not include the code (or codes) required under paragraph (1), payment may be denied under this part.

(3) In the case of a request for payment for an item or service furnished by a physician not submitted on an assignment-related basis and which does not include the code (or codes) required under paragraph (1)—

(A) if the physician knowingly and willfully fails to provide the code (or codes) promptly upon request of the Secretary or a medicare administrative contractor, the physician may be subject to a civil money penalty in an amount not to exceed $2,000, and

(B) if the physician knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection, to include the code (or codes) required under paragraph (1), the physician may be subject to the sanction described in subsection (j)(2)(A) of this section.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under subparagraph (A) in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(4) In the case of an item or service defined in paragraph (3), (6), (8), or (9) of subsection 1395x(s) of this title ordered by a physician or a practitioner specified in subsection (b)(18)(C) of this section, but furnished by another entity, if the Secretary (or fiscal agent of the Secretary) requires the entity furnishing the item or service to provide diagnostic or other medical information in order for payment to be made to the entity, the physician or practitioner shall provide that information to the entity at the time that the item or service is ordered by the physician or practitioner.

(q) Anesthesia services; counting actual time units

(1)(A) The Secretary, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all localities in making payment for physician anesthesia services furnished under this part. Such guide shall be designed so as to result in expenditures under this subchapter for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.

(B) For physician anesthesia services furnished under this part during 1991, the prevailing charge conversion factor used in a locality under this subsection shall, subject to clause (iv), be reduced to the adjusted prevailing charge conversion factor for the locality determined as follows:

(i) The Secretary shall estimate the national weighted average of the prevailing charge conversion factors used under this subsection for services furnished during 1990 after March 31, using the best available data.

(ii) The national weighted average estimated under clause (i) shall be reduced by 7 percent.

(iii) The adjusted prevailing charge conversion factor for a locality is the sum of—

(I) the product of (a) the portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238–36243)); and

(II) the product of (a) the remaining portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) and (b) the geographic practice cost index value specified in subsection (b)(14)(C)(iv) of this section for the locality.

In applying this clause, 70 percent of the prevailing charge conversion factor shall be considered to be attributable to physician work.

(iv) The prevailing charge conversion factor to be applied to a locality under this subparagraph shall not be reduced by more than 15 percent below the prevailing charge conversion factor applied in the locality for the period during 1990 after March 31, but in no case shall the prevailing charge conversion factor be less than 60 percent of the national weighted average of the prevailing charge conversion factors (computed under clause (i)).

(2) For purposes of payment for anesthesia services (whether furnished by physicians or by certified registered nurse anesthetists) under this part, the time units shall be counted based on actual time rather than rounded to full time units.

(r) Establishment of physician identification system

The Secretary shall establish a system which provides for a unique identifier for each physician who furnishes services for which payment may be made under this subchapter. Under such

system, the Secretary may impose appropriate fees on such physicians to cover the costs of investigation and recertification activities with respect to the issuance of the identifiers.

(s) Application of fee schedule

(1) Subject to paragraph (3), the Secretary may implement a statewide or other areawide fee schedule to be used for payment of any item or service described in paragraph (2) which is paid on a reasonable charge basis. Any fee schedule established under this paragraph for such item or service shall be updated each year by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the preceding year, except that in no event shall a fee schedule for an item described in paragraph (2)(D) be updated before 2003.

(2) The items and services described in this paragraph are as follows:

(A) Medical supplies.

(B) Home dialysis supplies and equipment (as defined in section 1395rr(b)(8) of this title).

(C) Repealed. Pub. L. 108–173, title VI, § 627(b)(2), Dec. 8, 2003, 117 Stat. 2321.

(D) Parenteral and enteral nutrients, equipment, and supplies.

(E) Electromyogram devices.

(F) Salivation devices.

(G) Blood products.

(H) Transfusion medicine.

(3) In the case of items and services described in paragraph (2)(D) that are included in a competitive acquisition program in a competitive acquisition area under section 1395w–3(a) of this title—

(A) the payment basis under this subsection for such items and services furnished in such area shall be the payment basis determined under such competitive acquisition program; and

(B) the Secretary may use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise applicable under paragraph (1) for an area that is not a competitive acquisition area under section 1395w–3 of this title, and in the case of such adjustment, paragraphs (8) and (9) of subsection (b) of this section shall not be applied.

(t) Facility provider number required on claims

Each request for payment, or bill submitted, for an item or service furnished to an individual who is a resident of a skilled nursing facility for which payment may be made under this part shall include the facility's medicare provider number.

(u) Reporting of anemia quality indicators for cancer anti-anemia drugs

Each request for payment, or bill submitted, for a drug furnished to an individual for the treatment of anemia in connection with the treatment of cancer shall include (in a form and manner specified by the Secretary) information on the hemoglobin or hematocrit levels for the individual.

(Aug. 14, 1935, ch. 531, title XVIII, § 1842, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 309; amended Pub. L. 90–248, title I, §§ 125(a), 154(d), Jan. 2, 1968, 81 Stat. 845, 863; Pub. L. 92–603, title II, §§ 211(c)(3), 224(a), 227(e)(3), 236(a), 258(a), 262(a), 263(d)(5), 281(d), Oct. 30, 1972, 86 Stat. 1384, 1395, 1407, 1414, 1447–1449, 1455; Pub. L. 93–445, title III, § 307, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 94–182, title I, § 101(a), Dec. 31, 1975, 89 Stat. 1051; Pub. L. 94–368, §§ 2, 3(a), (b), July 16, 1976, 90 Stat. 997; Pub. L. 95–142, § 2(a)(1), Oct. 25, 1977, 91 Stat. 1175; Pub. L. 95–216, title V, § 501(b), Dec. 20, 1977, 91 Stat. 1565; Pub. L. 96–499, title IX, §§ 918(a)(1), 946(a), (b), 948(b), Dec. 5, 1980, 94 Stat. 2625, 2642, 2643; Pub. L. 97–35, title XXI, § 2142(b), Aug. 13, 1981, 95 Stat. 798; Pub. L. 97–248, title I, §§ 104(a), 113(a), 128(d)(1), Sept. 3, 1982, 96 Stat. 336, 340, 367; Pub. L. 98–369, div. B, title III, §§ 2303(e), 2306(a), (b)(1), (c), 2307(a)(1), (2), 2326(c)(2), (d)(2), 2339, 2354(b)(13), (14), title VI, 2663(j)(2)(F)(iv), July 18, 1984, 98 Stat. 1066, 1070, 1071, 1073, 1087, 1088, 1093, 1101, 1170; Pub. L. 98–617, § 3(a)(1), (b)(5), (6), Nov. 8, 1984, 98 Stat. 3295, 3296; Pub. L. 99–272, title IX, §§ 9219(b)(1)(A), (2)(A), 9301(b)(1), (2), (c)(2)–(4), (d)(1)–(3), 9304(a), 9306(a), 9307(c), Apr. 7, 1986, 100 Stat. 182–188, 190, 193, 194; Pub. L. 99–509, title IX, §§ 9307(c)(2)(A), 9311(c), 9320(e)(3), 9331(a)(1)–(3), (b)(1)–(3), (c)(3)(A), 9332(a)(1), (b)(1), (2), (c)(1), (d)(1), 9333(a), (b), 9334(a), 9338(b), (c), 9341(a)(2), Oct. 21, 1986, 100 Stat. 1995, 1998, 2015, 2018–2026, 2028, 2035, 2038; Pub. L. 99–514, title XVIII, § 1895(b)(14)(A), (15), (16)(A), Oct. 22, 1986, 100 Stat. 2934; Pub. L. 100–93, § 8(c)(2), Aug. 18, 1987, 101 Stat. 692; Pub. L. 100–203, title IV, §§ 4031(a)(2), 4035(a)(2), 4041(a)(1), (3)(A), 4042(a), (b)(1), (2)(A), (c), 4044(a), 4045(a), (c)(1), (2)(B), (D), 4046(a), 4047(a), 4048(a), (e), 4051(a), 4053(a), formerly 4052(a), 4054(a), formerly 4053(a), 4063(a), 4081(a), 4082(c), 4085(g)(1), (i)(5)–(7), (22)(C), (24)–(27), 4096(a)(1), Dec. 22, 1987, 101 Stat. 1330–76, 1330–78, 1330–83 to 1330–89, 1330–93, 1330–97, 1330–109, 1330–126, 1330–128, 1330–131, 1330–132, 1330–139, as amended Pub. L. 100–360, title IV, § 411(f)(1)(A), (2)(C), (D), (F), (3)(A), (4)(B), (7)(B), (11)(A), (14), (g)(2)(C), (i)(2), (4)(C)(vi), (j)(4)(A), July 1, 1988, 102 Stat. 776–779, 781, 783, 788, 789, 791; Pub. L. 100–360, title II, §§ 201(c), 202(c)(1), (e)(1)–(3)(A), (C), (4)(A), (5), (g), 223(b), (c), title IV, § 411(a)(3)(A), (C)(i), (f)(1)(B), (2)(A), (B), (E), (3)(B), (4)(A), (C), (5), (6)(B), (7)(A), (9), (g)(2)(A), (B), (i)(1)(A), July 1, 1988, 102 Stat. 702, 713, 716–718, 747, 768, 776–780, 783, 787; Pub. L. 100–485, title VI, § 608(d)(5)(A)–(D), (F)–(H), (17), (21)(A), (B), (D), (24)(B), Oct. 13, 1988, 102 Stat. 2414, 2418, 2420, 2421; Pub. L. 101–234, title II, § 201(a), title III, § 301(b)(2), (6), (c)(2), (d)(3), Dec. 13, 1989, 103 Stat. 1981, 1985, 1986; Pub. L. 101–239, title VI, §§ 6003(g)(3)(D)(ix), 6102(b), (e)(2)–(4), (9), 6104, 6106(a), 6107(b), 6108(a)(1), (b)(1), (2), 6114(b), (c), 6202(d)(2), Dec. 19, 1989, 103 Stat. 2153, 2184, 2187, 2188, 2208, 2210, 2212, 2213, 2218, 2234; Pub. L. 101–508, title IV, §§ 4101(a), (b)(1), 4103, 4105(a)(1), (2), (b)(1), 4106(a)(1), (b)(2), 4108(a), 4110(a), 4118(a)(1), (2), (f)(2)(A)–(C), (i)(1), (j)(2), 4155(c), Nov. 5, 1990, 104 Stat. 1388–54, 1388–58 to 1388–63, 1388–66, 1388–67, 1388–69 to 1388–71, 1388–87; Pub. L. 101–597, title IV, § 401(c)(2), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103–66, title XIII, §§ 13515(a)(2), 13516(a)(2), 13517(b), 13568(a), (b), Aug. 10, 1993, 107 Stat. 583–585, 608; Pub. L. 103–432, title I, §§ 123(b)(1), (2)(B), (c), 125(a), (b)(1), 126(a)(1), (c), (e), (g)(9), (h)(2), 135(b)(2), 151(b)(1)(B), (2)(B), Oct. 31, 1994,

108 Stat. 4411–4416, 4423, 4434; Pub. L. 104–191, title II, §§ 202(b)(2), 221(b), Aug. 21, 1996, 110 Stat. 1998, 2011; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4205(d)(3)(B), 4302(b), 4315(a), 4316(a), 4317(a), (b), 4432(b)(2), (4), 4512(b)(2), (c), 4531(a)(2), 4556(a), 4603(c)(2)(B)(i), 4611(d), Aug. 5, 1997, 111 Stat. 373, 377, 382, 390, 392, 421, 444, 450, 462, 471, 473; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 223(c), title III, §§ 305(a), 321(k)(4)], Nov. 29, 1999, 113 Stat. 1536, 1501A–353, 1501A–361, 1501A–366; Pub. L. 106–554, § 1(a)(6) [title I, §§ 105(d), 114(a), title II, § 222(a), title III, § 313(b)(1), (2), title IV, § 432(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–472, 2763A–473, 2763A–487, 2763A–499, 2763A–526; Pub. L. 108–173, title III, §§ 302(d)(3), 303(b), (e), (g)(1), (i)(1), 305(a), title VI, § 627(b)(2), title VII, § 736(b)(8), (9), title IX, §§ 911(c), 952(a), (b), Dec. 8, 2003, 117 Stat. 2233, 2238, 2252–2255, 2321, 2356, 2383, 2427; Pub. L. 109–171, title V, §§ 5114(a)(2), 5202(a)(2), Feb. 8, 2006, 120 Stat. 45, 47; Pub. L. 109–432, div. B, title I, § 110(a), title II, § 205(b)(2), title IV, § 405(c)(2)(A)(i), Dec. 20, 2006, 120 Stat. 2985, 2989, 2999.)

References in Text

The Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (b)(14)(A)(ii), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388. For complete classification of this Act to the Code, see Tables.

Part B of subchapter XI of this chapter, referred to in subsec. (*l*)(1)(A)(iii), (2), is classified to section 1320c et seq. of this title.

Section 303 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (*o*)(5)(B), is section 303 of Pub. L. 108–173, which enacted sections 1395w–3a and 1395w–3b of this title, amended this section and sections 1395*l*, 1395w–4, 1395x, 1395y, and 1396r–8 of this title, enacted provisions set out as notes under this section and sections 1395w–3a, 1395w–3b, and 1395w–4 of this title, and repealed provisions set out as a note under this section.

Amendments

2006—Subsec. (b)(6)(H). Pub. L. 109–432, §§ 205(b)(2), 405(c)(2)(A)(i), amended directory language of Pub. L. 109–171, § 5114(a)(2), identically, making technical correction. See below.

Pub. L. 109–171, § 5114(a)(2), as amended by Pub. L. 109–432, §§ 205(b)(2), 405(c)(2)(A)(i), added subpar. (H).

Subsec. (c)(3)(B)(ii). Pub. L. 109–171, § 5202(a)(2), substituted ''28 days'' for ''26 days''.

Subsec. (u). Pub. L. 109–432, § 110(a), added subsec. (u).

2003—Pub. L. 108–173, § 911(c)(1), substituted ''Provisions relating to the administration of part B'' for ''Use of carriers for administration of benefits'' in section catchline.

Subsec. (a). Pub. L. 108–173, § 911(c)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized the Secretary to enter into contracts with carriers for the administration of benefits under this part.

Subsec. (b)(1). Pub. L. 108–173, § 911(c)(3)(A), struck out par. (1), which provided that contracts with carriers under subsection (a) could be entered into without regard to section 5 of title 41 or any other provision of law requiring competitive bidding.

Subsec. (b)(2)(A), (B). Pub. L. 108–173, § 911(c)(3)(B)(i), struck out subpars. (A) and (B), which conditioned entering into contract on Secretary's finding that carrier would perform obligations efficiently and effectively, provided for establishment and publication of standards and criteria for efficient and effective performance, and directed Secretary to establish standards for evaluating carriers' performance of reviews of initial carrier determinations and of fair hearings under former paragraph (3)(C).

Subsec. (b)(2)(C). Pub. L. 108–173, § 911(c)(3)(B)(ii), substituted ''medicare administrative contractors'' for ''carriers''.

Subsec. (b)(2)(D), (E). Pub. L. 108–173, § 911(c)(3)(B)(iii), struck out subpars. (D) and (E), which directed that carrier be subject to standards and criteria relating to the carrier's success in recovering payments for items or services for which payment has been or could be made under a primary plan and that Secretary could continue administration of claims for certain home health services through fiscal intermediaries under section 1395h of this title.

Subsec. (b)(3). Pub. L. 108–173, § 911(c)(3)(C)(ix), inserted ''medicare administrative contractor,'' after ''carrier,'' in seventh sentence in concluding provisions.

Pub. L. 108–173, § 911(c)(3)(C)(viii), struck out ''and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate.'' before ''In determining'' in concluding provisions.

Pub. L. 108–173, § 911(c)(3)(C)(i), substituted ''The Secretary'' for ''Each such contract shall provide that the carrier'' in introductory provisions.

Subsec. (b)(3)(A). Pub. L. 108–173, § 911(c)(3)(C)(ii), substituted ''shall take such action'' for ''will take such action''.

Subsec. (b)(3)(B). Pub. L. 108–173, § 911(c)(3)(C)(iii), substituted ''to the policyholders and subscribers of the medicare administrative contractor'' for ''to the policyholders and subscribers of the carrier'' in introductory provisions.

Pub. L. 108–173, § 911(c)(3)(C)(ii), substituted ''shall take such action'' for ''will take such action'' in introductory provisions.

Subsec. (b)(3)(C) to (E). Pub. L. 108–173, § 911(c)(3)(C)(iv), struck out subpars. (C) to (E), which directed that each contract provide that the carrier would establish and maintain procedures for a fair hearing in any case where the amount in controversy was between $100 and $500, that the carrier would furnish to the Secretary such information and reports as he would find necessary in performing his functions under this part, and that the carrier would maintain such records and afford such access thereto as the Secretary would find necessary to assure the correctness and verification of the information and reports under former subpar. (D) and otherwise to carry out the purposes of this part.

Subsec. (b)(3)(F). Pub. L. 108–173, § 911(c)(3)(C)(ii), substituted ''shall take such action'' for ''will take such action''.

Subsec. (b)(3)(G). Pub. L. 108–173, § 911(c)(3)(C)(ii), substituted ''shall, for a service'' for ''will, for a service'' in introductory provisions.

Subsec. (b)(3)(H). Pub. L. 108–173, § 911(c)(3)(C)(v)(I), struck out ''if it makes determinations or payments with respect to physicians' services,'' before ''shall implement'' in introductory provisions.

Pub. L. 108–173, § 911(c)(3)(C)(ii), substituted ''shall implement'' for ''will implement'' in introductory provisions.

Subsec. (b)(3)(H)(i). Pub. L. 108–173, § 911(c)(3)(C)(v)(II), substituted ''medicare administrative contractor'' for ''carrier''.

Subsec. (b)(3)(I). Pub. L. 108–173, § 911(c)(3)(C)(vi), struck out subpar. (I), which directed that each contract would require the carrier to submit annual reports to the Secretary describing steps taken to recover payments made under this part for items or services for which payment had been or could have been made under a primary plan.

Subsec. (b)(3)(L). Pub. L. 108–173, § 911(c)(3)(C)(vii), substituted period for semicolon at end.

Pub. L. 108–173, § 911(c)(3)(C)(ii), substituted ''shall monitor'' for ''will monitor''.

Subsec. (b)(5). Pub. L. 108–173, § 911(c)(3)(D), struck out par. (5), which provided that each contract under this section would be for a term of at least one year and could be made automatically renewable and authorized Secretary to terminate any contract where carrier had failed substantially to carry out the contract or was carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

Subsec. (b)(6). Pub. L. 108–173, § 952(b), substituted ''except to an employer or entity as described in subparagraph (A)'' for ''except to an employer or facility as described in clause (A)'' in second sentence.

Subsec. (b)(6)(A)(ii). Pub. L. 108–173, § 952(a), added cl. (ii) and struck out former cl. (ii) which read as follows: ''(where the service was provided in a hospital, critical access hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service,''.

Subsec. (b)(6)(D)(iv). Pub. L. 108–173, § 911(c)(3)(E), substituted ''medicare administrative contractor'' for ''carrier''.

Subsec. (b)(7). Pub. L. 108–173, § 911(c)(3)(F), substituted ''the Secretary'' for ''the carrier'' in introductory provisions of subpar. (A), before ''shall take into account'' in subpar. (B)(i), in introductory provisions of subpar. (B)(ii), and before ''shall provide'' in subpar. (C).

Subsec. (c)(1). Pub. L. 108–173, § 911(c)(4)(A), struck out par. (1), which provided that any contract entered into with a carrier under this section would provide for advances of funds for the making of payments and for payment for necessary and proper cost of administration, and directed the Secretary to cause to have published in the Federal Register, by not later than Sept. 1 each year, data, standards, and methodology to be used to establish budgets for carriers and to cause to be published in the Federal Register for public comment, at least 90 days before Sept. 1, the data, standards, and methodology proposed to be used.

Subsec. (c)(2)(A). Pub. L. 108–173, § 911(c)(4)(B), substituted ''contract under section 1395kk–1 of this title that provides for making payments under this part'' for ''contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B) of this section,'' in introductory provisions.

Subsec. (c)(2)(B)(ii)(III). Pub. L. 108–173, § 736(b)(8)(A), struck out ''and'' at end.

Subsec. (c)(2)(B)(ii)(IV). Pub. L. 108–173, § 736(b)(8)(B), substituted '', and'' for period at end.

Subsec. (c)(3)(A). Pub. L. 108–173, § 911(c)(4)(C), substituted ''section 1395kk–1(a)(3)(B) of this title'' for ''subsection (a)(1)(B) of this section''.

Subsec. (c)(4). Pub. L. 108–173, § 911(c)(4)(D), substituted ''medicare administrative contractor'' for ''carrier'' in introductory provisions.

Subsec. (c)(5), (6). Pub. L. 108–173, § 911(c)(4)(E), struck out pars. (5) and (6), which provided that each contract would require the carrier to meet criteria to measure the timeliness of responses to requests for payment of items described in section 1395m(a)(15)(C) of this title and prohibited any carrier from carrying out any activity pursuant to a contract under the Medicare Integrity Program under section 1395ddd of this title.

Subsec. (d) to (f). Pub. L. 108–173, § 911(c)(5), struck out subsecs. (d) to (f), which provided that contracts under this section could require surety bonds and that certifying or disbursing officers or carriers would not be liable with respect to payments in the absence of gross negligence or intent to defraud and defined ''carrier'' for purposes of this part.

Subsec. (g). Pub. L. 108–173, § 911(c)(6), substituted ''medicare administrative contractor or contractors'' for ''carrier or carriers''.

Subsec. (h)(2). Pub. L. 108–173, § 911(c)(7)(A), substituted ''The Secretary'' for ''Each carrier having an agreement with the Secretary under subsection (a) of this section'' in first sentence and for ''Each such carrier'' in last sentence.

Subsec. (h)(3)(A). Pub. L. 108–173, § 911(c)(7)(B)(ii), which directed substitution of ''such contractor'' for ''such carrier'', was executed by making the substitution in two places to reflect the probable intent of Congress.

Pub. L. 108–173, § 911(c)(7)(B)(i), substituted ''medicare administrative contractor having a contract under section 1395kk–1 of this title that provides for making payments under this part'' for ''a carrier having an agreement with the Secretary under subsection (a) of this section''.

Subsec. (h)(3)(B). Pub. L. 108–173, § 911(c)(7)(C), substituted ''a medicare administrative contractor'' for ''a carrier'' in two places and ''the contractor'' for ''the carrier'' in two places.

Subsec. (h)(5)(A), (B)(iii). Pub. L. 108–173, § 911(c)(7)(D), substituted ''medicare administrative contractors'' for ''carriers''.

Subsec. (i)(2). Pub. L. 108–173, § 736(b)(9), substituted ''services, to a physician'' for ''services, a physician''.

Subsec. (*l*)(1)(A)(iii), (2). Pub. L. 108–173, § 911(c)(8), substituted ''medicare administrative contractor'' for ''carrier''.

Subsec. (*o*)(1). Pub. L. 108–173, § 303(b)(1), substituted ''equal to the following:'' for ''equal to 95 percent of the average wholesale price.'' and added subpars. (A) to (G).

Subsec. (*o*)(1)(G). Pub. L. 108–173, § 305(a), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''The provisions of subparagraphs (A) through (F) of this paragraph shall not apply to an inhalation drug or biological furnished through durable medical equipment covered under section 1395x(n) of this title.''

Subsec. (*o*)(2). Pub. L. 108–173, § 303(i)(1), inserted at end ''This paragraph shall not apply in the case of payment under paragraph (1)(C).''

Subsec. (*o*)(4). Pub. L. 108–173, § 303(b)(2), added par. (4).

Subsec. (*o*)(5), (6). Pub. L. 108–173, § 303(e), added pars. (5) and (6).

Subsec. (*o*)(7). Pub. L. 108–173, § 303(g)(1), added par. (7).

Subsec. (p)(3)(A). Pub. L. 108–173, § 911(c)(9), substituted ''medicare administrative contractor'' for ''carrier''.

Subsec. (q)(1)(A). Pub. L. 108–173, § 911(c)(10), struck out ''carrier'' before ''localities''.

Subsec. (s)(1). Pub. L. 108–173, § 302(d)(3)(A), substituted ''Subject to paragraph (3), the Secretary'' for ''The Secretary''.

Subsec. (s)(2)(C). Pub. L. 108–173, § 627(b)(2), struck out subpar. (C) which read as follows: ''Therapeutic shoes.''

Subsec. (s)(3). Pub. L. 108–173, § 302(d)(3)(B), added par. (3).

2000—Subsec. (b)(6)(C). Pub. L. 106–554, § 1(a)(6) [title II, § 222(a)], struck out ''for such services provided before January 1, 2003,'' before ''payment may be made'' and substituted comma for semicolon at end.

Subsec. (b)(6)(E). Pub. L. 106–554, § 1(a)(6) [title III, § 313(b)(1)], inserted ''by, or under arrangements made by, a skilled nursing facility'' before ''to an individual who'' and struck out ''or of a part of a facility that includes a skilled nursing facility (as determined under regulations)'' before '', payment shall be made'' and ''(without regard to whether or not the item or service was furnished by the facility, by others under arrangement with them made by the facility, under any other contracting or consulting arrangement, or otherwise)'' after ''to the facility''.

Subsec. (b)(6)(G). Pub. L. 106–554, § 1(a)(6) [title IV, § 432(b)(2)], added subpar. (G).

Subsec. (b)(18)(C)(vi). Pub. L. 106–554, § 1(a)(6) [title I, § 105(d)], added cl. (vi).

Subsec. (*o*)(3). Pub. L. 106–554, § 1(a)(6) [title I, § 114(a)], added par. (3).

Subsec. (t). Pub. L. 106–554, § 1(a)(6) [title III, § 313(b)(2)], struck out ''by a physician'' before ''to an individual'' and ''or of a part of a facility that includes a skilled nursing facility (as determined under regulations),'' before ''for which payment may be made''.

1999—Subsec. (b)(6)(F). Pub. L. 106–113, § 1000(a)(6) [title III, § 305(a)], inserted ''(including medical supplies described in section 1395x(m)(5) of this title, but excluding durable medical equipment to the extent provided for in such section)'' after ''home health services''.

Subsec. (b)(8)(A)(i)(I). Pub. L. 106–113, § 1000(a)(6) [title II, § 223(c)], substituted ''the application of this subchapter to payment under this part'' for ''the application of this part''.

Subsec. (s)(2)(E). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(4)], inserted period at end.

1997—Subsec. (b)(2)(E). Pub. L. 105–33, § 4611(d), added subpar. (E).

Subsec. (b)(6). Pub. L. 105–33, § 4512(c), inserted at end ''For purposes of subparagraph (C) of the first sentence of this paragraph, an employment relationship may include any independent contractor arrangement, and employer status shall be determined in accordance with the law of the State in which the services described in such clause are performed.''

Subsec. (b)(6)(A)(ii). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (b)(6)(C). Pub. L. 105–33, § 4205(d)(3)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''in the case of services described in clauses (i), (ii), or (iv) of section 1395x(s)(2)(K) of this title payment shall be made to the employer of the physician assistant or nurse practitioner involved, and''.

Subsec. (b)(6)(E). Pub. L. 105–33, § 4432(b)(2), added subpar. (E).

Subsec. (b)(6)(F). Pub. L. 105–33, § 4603(c)(2)(B)(i), added subpar. (F).

Subsec. (b)(8), (9). Pub. L. 105–33, § 4316(a), amended pars. (8) and (9) generally. Prior to amendment, par. (8) related to determination of reasonable charges for physician services, including factors to be considered, provision for increase or decrease of charge, consideration of resource costs, accounting for regional differences in prevailing charges, and impact of changes in reasonable charges, and par. (9) related to notice of proposed reasonable charges to be published in Federal Register, provision for comments on proposed changes, and publication of final determinations with respect to change in reasonable charges.

Subsec. (b)(12). Pub. L. 105–33, § 4512(b)(2), struck out par. (12) which read as follows:

''(12)(A) With respect to services described in clauses (i), (ii), or (iv) of section 1395x(s)(2)(K) of this title (relating to a physician assistants and nurse practitioners)—

''(i) payment under this part may only be made on an assignment-related basis; and

''(ii) the prevailing charges determined under paragraph (3) shall not exceed—

''(I) in the case of services performed as an assistant at surgery, 65 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery, or

''(II) in other cases, the applicable percentage (as defined in subparagraph (B)) of the prevailing charge rate determined for such services (or, for services furnished on or after January 1, 1992, the fee schedule amount specified in section 1395w–4 of this title) performed by physicians who are not specialists.

''(B) In subparagraph (A)(ii)(II), the term 'applicable percentage' means—

''(i) 75 percent in the case of services performed (other than as an assistant at surgery) in a hospital, and

''(ii) 85 percent in the case of other services.''

Subsec. (b)(19). Pub. L. 105–33, § 4531(a)(2), added par. (19).

Subsec. (h)(8). Pub. L. 105–33, § 4302(b), added par. (8).

Subsec. (*o*). Pub. L. 105–33, § 4556(a), added subsec. (*o*).

Subsec. (p)(1), (2). Pub. L. 105–33, § 4317(a), inserted ''or practitioner specified in subsection (b)(18)(C) of this section'' after ''by a physician''.

Subsec. (p)(4). Pub. L. 105–33, § 4317(b), added par. (4).

Subsec. (s). Pub. L. 105–33, § 4315(a), added subsec. (s).

Subsec. (t). Pub. L. 105–33, § 4432(b)(4), added subsec. (t).

1996—Subsec. (c)(6). Pub. L. 104–191, § 202(b)(2), added par. (6).

Subsec. (r). Pub. L. 104–191, § 221(b), inserted at end ''Under such system, the Secretary may impose appropriate fees on such physicians to cover the costs of investigation and recertification activities with respect to the issuance of the identifiers.''

1994—Subsec. (b)(2)(A). Pub. L. 103–432, § 126(g)(9), made technical amendment to directory language of Pub. L. 101–508, § 4118(j)(2). See 1990 Amendment note below.

Subsec. (b)(2)(D). Pub. L. 103–432, § 151(b)(2)(B), added subpar. (D).

Subsec. (b)(3)(G). Pub. L. 103–432, § 151(b)(1)(B)(i), which directed striking out ''and'' at end of subpar. (G), could not be executed because ''and'' did not appear at end of subpar. (G) subsequent to amendment by Pub. L. 103–432, § 123(c)(2). See below.

Pub. L. 103–432, § 123(c)(2), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''will provide to each nonparticipating physician, at the beginning of each year, a list of the physician's limiting charges established under section 1395w–4(g)(2) of this title for the year for the physicians' services mostly commonly furnished by that physician; and''.

Subsec. (b)(3)(H). Pub. L. 103–432, § 151(b)(1)(B)(ii), which directed striking out ''and'' at end of subpar. (H), could not be executed because ''and'' does not appear at end.

Subsec. (b)(3)(I). Pub. L. 103–432, § 151(b)(1)(B)(iii), added subpar. (I).

Subsec. (b)(6)(D). Pub. L. 103–432, § 125(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''payment may be made to a physician who arranges for visit services (including emergency visits and related services) to be provided to an individual by a second physician on an occasional, reciprocal basis if (i) the first physician is unavailable to provide the visit services, (ii) the individual has arranged or seeks to receive the visit services from the first physician, (iii) the claim form submitted to the carrier includes the second physician's unique identifier (provided under the system established under subsection (r) of this section) and indicates that the claim is for such a 'covered visit service (and related services)', and (iv) the visit services are not provided by the second physician over a continuous period of longer than 60 days.''

Subsec. (b)(12)(C). Pub. L. 103–432, § 123(b)(2)(B), struck out subpar. (C). Prior to amendment, subpar. (C) read as follows: ''Except for deductible and coinsurance amounts applicable under section 1395*l* of this title, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in clauses (i), (ii), or (iv) of section 1395x(s)(2)(K) of this title in violation of subparagraph (A)(i) is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (b)(16)(B)(iii). Pub. L. 103–432, § 126(a)(1), struck out '', simple and subcutaneous'' after ''Partial'', substituted ''injections and small joint'' for ''injections; small joint'' and ''femoral fracture and'' for ''femoral fracture treatments;'', struck out ''lobectomy;'' after ''thoracostomy;'' and ''enterectomy; colectomy; cholecystectomy;'' after ''aneurysm repair;'', substituted ''fulguration and resection'' for ''fulguration; transurerethral resection'', and struck out ''sacral laminectomy;'' before ''tympanoplasty''.

Subsec. (b)(17). Pub. L. 103–432, § 126(e), redesignated par. (18), relating to payment for technical component of diagnostic tests, as (17) and inserted '', tests specified in paragraph (14)(C)(i),'' after ''diagnostic laboratory tests''.

Subsec. (b)(18). Pub. L. 103–432, § 126(e), redesignated par. (18), relating to payment for technical component of diagnostic tests, as (17).

Pub. L. 103–432, § 123(b)(1), added par. (18), relating to payment for service furnished by a practitioner described in subpar. (C).

Subsec. (c)(1). Pub. L. 103–432, § 126(h)(2), struck out subpar. (A) designation before ''Any contract entered'' and struck out subpar. (B) which read as follows: ''Of

the amounts appropriated for administrative activities to carry out this part, the Secretary shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under this section, to reward carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians or in increasing the proportion of total payments for physicians' services which are payments for such services rendered by participating physicians.''

Subsec. (c)(4). Pub. L. 103–432, § 125(a), added par. (4).

Subsec. (c)(5). Pub. L. 103–432, § 135(b)(2), added par. (5).

Subsec. (h)(7)(C). Pub. L. 103–432, § 123(c)(1)(B), struck out ''shall include'' before cl. (i).

Subsec. (h)(7)(D). Pub. L. 103–432, § 123(c)(1)(A), (C), (D), added subpar. (D).

Subsec. (q)(1). Pub. L. 103–432, § 126(c)(1), made technical amendment to Pub. L. 101–508, § 4103(a). See 1990 Amendment note below.

Subsec. (q)(1)(B). Pub. L. 103–432, § 126(c)(2)(A), substituted ''shall, subject to clause (iv), be reduced to the adjusted prevailing charge conversion factor for the locality determined as follows:'' for ''shall be determined as follows:'' in introductory provisions.

Subsec. (q)(1)(B)(iii). Pub. L. 103–432, § 126(c)(2)(B), substituted ''The adjusted prevailing charge conversion factor for'' for ''Subject to clause (iv), the prevailing charge conversion factor to be applied in''.

1993—Subsec. (b)(4)(F). Pub. L. 103–66, § 13515(a)(2), struck out subpar. (F) which related to prevailing charge or fee schedule amount in case of professional services of health care practitioner (other than primary care services and other than services furnished in rural area designated as health professional shortage area) furnished during practitioner's first through fourth years of practice.

Subsec. (b)(13)(A). Pub. L. 103–66, § 13516(a)(2)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after April 1, 1988, and before January 1, 1996, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent procedure (other than cataract surgery or an iridectomy) shall be reduced by—

''(i) 10 percent, in the case of medical direction of 2 nurse anesthetists concurrently,

''(ii) 25 percent, in the case of medical direction of 3 nurse anesthetists concurrently, and

''(iii) 40 percent, in the case of medical direction of 4 nurse anesthetists concurrently.''

Subsec. (b)(13)(B), (C). Pub. L. 103–66, § 13516(a)(2), redesignated subpar. (C) as (B), substituted ''subparagraph (A)'' for ''subparagraph (A) or (B)'', and struck out former subpar. (B) which read as follows: ''In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after January 1, 1989, and before January 1, 1996, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent cataract surgery or iridectomy procedure shall be reduced by 10 percent.''

Subsec. (c)(2)(B)(ii). Pub. L. 103–66, § 13568(b), substituted ''period ending on or before September 30, 1993'' for ''period'' in subcl. (IV) and added subcl. (V).

Subsec. (c)(3)(B). Pub. L. 103–66, § 13568(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

''(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.''

Subsec. (i)(2). Pub. L. 103–66, § 13517(b), substituted ''; the term'' for '', and the term'' and inserted before period at end ''; and the term 'nonparticipating supplier or other person' means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (h)(1) of this section)''.

1990—Subsec. (b)(2)(A). Pub. L. 101–508, § 4118(j)(2), as amended by Pub. L. 103–432, § 126(g)(9), substituted ''section 1395w–1(e)(2)'' for ''section 1395w–1(f)(2)''.

Subsec. (b)(3)(G). Pub. L. 101–508, § 4118(f)(2)(B), substituted ''section 1395w–4(g)(2) of this title'' for ''subsection (j)(1)(C) of this section''.

Subsec. (b)(4)(A)(vi). Pub. L. 101–508, § 4105(b)(1), substituted ''60 percent'' for ''50 percent''.

Subsec. (b)(4)(B)(iv). Pub. L. 101–508, § 4105(a)(2), added cl. (iv).

Subsec. (b)(4)(E)(iv)(I). Pub. L. 101–508, § 4118(a)(2), substituted ''the list referred to in paragraph (14)(C)(i)'' for ''Table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the 'Omnibus Budget Reconciliation Act of 1989'), 101st Congress''.

Subsec. (b)(4)(E)(v). Pub. L. 101–508, § 4105(a)(1), added cl. (v).

Subsec. (b)(4)(F). Pub. L. 101–508, § 4106(a)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''In determining the customary charges for physicians' services furnished during a calendar year (other than primary care services and other than services furnished in a rural area (as defined in section 1395ww(d)(2)(D) of this title) that is designated, under section 254e(a)(1)(A) of this title, as a health manpower shortage area) for which adequate actual charge data are not available because a physician has not yet been in practice for a sufficient period of time, the Secretary shall set a customary charge at a level no higher than 80 percent of the prevailing charge for a service. For the first calendar year during which the preceding sentence no longer applies, the Secretary shall set the customary charge at a level no higher than 85 percent of the prevailing charge for the service.''

Subsec. (b)(4)(F)(i). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area''.

Pub. L. 101–508, § 4106(b)(2)(A), (B), substituted ''professional services'' for ''physicians' services and professional services'' and ''practitioner's first'' for ''physician's or practitioner's first''.

Subsec. (b)(4)(F)(ii)(II). Pub. L. 101–508, § 4106(b)(2)(C), substituted ''practitioner'' for ''physician or practitioner'' in two places.

Subsec. (b)(6)(C). Pub. L. 101–508, § 4155(c), substituted ''clauses (i), (ii), or (iv) of section 1395x(s)(2)(K)'' for ''section 1395x(s)(2)(K)''.

Subsec. (b)(6)(D). Pub. L. 101–508, § 4110(a), added subpar. (D).

Subsec. (b)(12)(A). Pub. L. 101–508, § 4155(c), substituted ''clauses (i), (ii), or (iv) of section 1395x(s)(2)(K)'' for ''section 1395x(s)(2)(K)'' in introductory provisions.

Subsec. (b)(12)(A)(ii)(II). Pub. L. 101–508, § 4118(f)(2)(C), struck out '', as the case may be'' after ''section 1395w–4 of this title''.

Pub. L. 101–508, § 4118(f)(2)(A), made technical correction to Pub. L. 101–239, § 6102(e)(4). See 1989 Amendment note below.

Subsec. (b)(12)(C). Pub. L. 101–508, § 4155(c), substituted ''clauses (i), (ii), or (iv) of section 1395x(s)(2)(K)'' for ''section 1395x(s)(2)(K)''.

Subsec. (b)(13)(A), (B). Pub. L. 101–508, § 4103(b), substituted ''1996'' for ''1991''.

Subsec. (b)(14)(A). Pub. L. 101–508, § 4101(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(14)(B)(iii)(I). Pub. L. 101–508, § 4118(a)(1)(A), which directed amendment of subcl. (I) by substituting ''practice expense component (percent), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101–M, 101st Congress, 1st Session) for the service'' for ''practice expense ratio

for the service (specified in table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i))'', was executed by making the substitution for ''practice expense ratio for the service (specified in Table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i))'' to reflect the probable intent of Congress.

Subsec. (b)(14)(B)(iii)(II). Pub. L. 101–508, § 4118(a)(1)(B), substituted ''practice expense component (percent), divided by 100'' for ''practice expense ratio''.

Subsec. (b)(14)(C)(i). Pub. L. 101–508, § 4118(a)(1)(C), substituted ''procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee, Revised September 20, 1989, prepared by the Physician Payment Review Commission'' for ''physicians' services specified in Table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the 'Omnibus Budget Reconciliation Act of 1989'), 101st Congress,''.

Subsec. (b)(14)(C)(iii). Pub. L. 101–508, § 4118(a)(1)(D), which directed amendment of cl. (iii) by substituting ''The 'percentage change' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list'' for ''The 'percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in table #2 in the Joint Explanatory Statement'', was executed by making the substitution for ''The 'percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in Table #2 in the Joint Explanatory Statement'' to reflect the probable intent of Congress.

Subsec. (b)(14)(C)(iv). Pub. L. 101–508, § 4118(a)(1)(E), which directed amendment of cl. (iv) by substituting ''the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research)'' for ''such value specified for the locality in table #3 in the Joint Explanatory Statement referred to in clause (i)'', was executed by making the substitution for ''such value specified for the locality in Table #3 in the Joint Explanatory Statement referred to in clause (i)'' to reflect the probable intent of Congress.

Subsec. (b)(16). Pub. L. 101–508, § 4101(b), added par. (16).

Subsec. (b)(18). Pub. L. 101–508, § 4108(a), added par. (18).

Subsec. (q)(1). Pub. L. 101–508, § 4103(a), as amended by Pub. L. 103–432, § 126(c)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (r). Pub. L. 101–508, § 4118(i)(1), added subsec. (r).

1989—Subsec. (b)(2)(A). Pub. L. 101–239, § 6202(d)(2), inserted at end ''The Secretary may not require, as a condition of entering into or renewing a contract under this section or under section 1395hh of this title, that a carrier match data obtained other than in its activities under this part with data used in the administration of this part for purposes of identifying situations in which section 1395y(b) of this title may apply.''

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 202(e)(3)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(2)(C). Pub. L. 101–239, § 6114(c)(2), added subpar. (C).

Subsec. (b)(3)(G). Pub. L. 101–239, § 6102(e)(2), substituted ''limiting charges established under subsection (j)(1)(C) of this section'' for ''maximum allowable actual charges (established under subsection (j)(1)(C) of this section)''.

Subsec. (b)(3)(I) to (K). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 201(c), 202(e)(2), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (b)(3)(L). Pub. L. 101–239, § 6102(b), added subpar. (L).

Subsec. (b)(4)(A)(iv). Pub. L. 101–239, § 6102(e)(3), inserted ''and before January 1, 1992,'' after ''January 1, 1987,''.

Subsec. (b)(4)(E)(iv). Pub. L. 101–239, § 6107(b), added cl. (iv).

Subsec. (b)(4)(F). Pub. L. 101–239, § 6108(a)(1), inserted ''furnished during a calendar year'' after ''physicians' services'' and inserted at end ''For the first calendar year during which the preceding sentence no longer applies, the Secretary shall set the customary charge at a level no higher than 85 percent of the prevailing charge for the service.''

Subsec. (b)(6)(A)(ii). Pub. L. 101–239, § 6003(g)(3)(D)(ix), inserted ''rural primary care hospital,'' after ''hospital,''.

Subsec. (b)(6)(C). Pub. L. 101–239, § 6114(c)(1), inserted ''or nurse practitioner'' after ''physician assistant''.

Subsec. (b)(12)(A). Pub. L. 101–239, § 6114(b), substituted ''physician assistants and nurse practitioners'' for ''physician assistant acting under the supervision of a physician'' in introductory provisions.

Subsec. (b)(12)(A)(ii)(II). Pub. L. 101–239, § 6102(e)(4), as amended by Pub. L. 101–508, § 4118(f)(2)(A), inserted ''(or, for services furnished on or after January 1, 1992, the fee schedule amount specified in section 1395w–4 of this title, as the case may be)'' after ''prevailing charge rate determined for such services''.

Subsec. (b)(14). Pub. L. 101–239, § 6104(a), added par. (14).

Subsec. (b)(15). Pub. L. 101–239, § 6108(b)(1), added par. (15).

Subsecs. (c)(1)(A), (2)(A), (3)(A), (4), (f)(3), (h)(1), (2), (4). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 202(c)(1)(A), (B), (e)(1), (3)(A), (4)(A), (5), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (j)(1)(B)(ii). Pub. L. 101–239, § 6102(e)(9), substituted ''December 31, 1990.'' for ''the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (j)(1)(C)(vii). Pub. L. 101–234, § 301(b)(2), (c)(2), amended cl. (vii) identically, substituting ''according'' for ''accordingly''.

Subsec. (j)(1)(D)(ii)(II). Pub. L. 101–239, § 6104(b)(1), inserted ''or (b)(14)(A)'' after ''(b)(10)(A)''.

Subsec. (j)(1)(D)(ii)(IV). Pub. L. 101–239, § 6108(b)(2)(A), inserted ''or (b)(15)(A)'' after ''subsection (b)(11)(C)(i)''.

Subsec. (j)(1)(D)(iii)(II). Pub. L. 101–239, § 6108(b)(2)(B), substituted ''(b)(14)(A), or (b)(15)(A)'' for ''or (b)(14)(A)''.

Pub. L. 101–239, § 6104(b)(2), substituted ''(b)(11)(C)(i), or (b)(14)(A)'' for ''or (b)(11)(C)(i)''.

Subsec. (j)(1)(D)(v). Pub. L. 101–239, § 6102(e)(9), substituted ''December 31, 1990.'' for ''the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (j)(2). Pub. L. 101–234, § 301(b)(6), (d)(3), which directed identical amendments to subsec. (j)(2) by substituting ''subsections'' for ''paragraphs'' in subpar. (B) as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987 [probably meaning section 8(c)(2)(A) of Pub. L. 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987, which amended subpar. (A) of subsec. (j)(2), generally] could not be executed because the word ''paragraphs'' did not appear.

Subsec. (*o*). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 202(c)(1)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (q). Pub. L. 101–239, § 6106(a), added subsec. (q).

1988—Subsec. (b)(2). Pub. L. 100–360, § 411(i)(2), amended Pub. L. 100–203, § 4082(c), see 1987 Amendment note below.

Subsec. (b)(2)(A). Pub. L. 100–485, § 608(d)(5)(G), inserted ", including claims processing functions" after "and related functions" in last sentence.

Pub. L. 100–360, § 411(f)(1)(B), inserted reference to section 1395w–1(f)(2) of this title in third sentence.

Pub. L. 100–360, § 202(e)(3)(C), as amended by Pub. L. 100–485, § 608(d)(5)(F), inserted at end "With respect to activities relating to implementation and operation (and related functions) of the electronic system established under subsection (*o*)(4) of this section, the Secretary may enter into contracts with carriers under this section to perform such activities on a regional basis."

Subsec. (b)(3). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(24), see 1987 Amendment note below.

Pub. L. 100–360, § 411(f)(4)(B)(ii), added Pub. L. 100–203, § 4045(c)(2)(D), see 1987 Amendment note below.

Pub. L. 100–360, § 411(f)(11)(A), (14), renumbered and amended Pub. L. 100–203, § 4053(a), see 1987 Amendment note below.

Subsec. (b)(3)(B)(ii). Pub. L. 100–360, § 411(j)(4)(A), made technical correction to directory language of Pub. L. 100–203, § 4096(a)(1)(A), see 1987 Amendment note below.

Subsec. (b)(3)(I). Pub. L. 100–360, § 201(c), added subpar. (I) requiring notice that an individual has reached the part B catastrophic limit on out-of-pocket cost sharing for the year.

Subsec. (b)(3)(J). Pub. L. 100–360, § 202(e)(2), added subpar. (J) relating to requirements for determinations or payments with respect to covered outpatient drugs, to receive information and respond to requests by participating pharmacies.

Subsec. (b)(3)(K). Pub. L. 100–485, § 608(d)(5)(C), inserted ", including claims processing functions," after "and for related functions".

Pub. L. 100–360, § 202(e)(2), added subpar. (K) requiring contracts with organizations described in subsection (f)(3) of this section to implement and operate the electronic system established under subsection (*o*)(4) of this section for covered outpatient drugs.

Subsec. (b)(4)(A)(iv). Pub. L. 100–360, § 411(f)(2)(F)(i), as amended by Pub. L. 100–485, § 608(d)(21)(B), redesignated and amended Pub. L. 100–203, § 4042(c)(1), see 1987 Amendment note below.

Subsec. (b)(4)(A)(iv)(II). Pub. L. 100–360, § 411(f)(2)(E), substituted "before January 1, 1989" for "before January 1, 1988".

Subsec. (b)(4)(A)(vi). Pub. L. 100–360, § 411(f)(3)(A), made technical amendment to directory language of Pub. L. 100–203, § 4044(a), see 1987 Amendment note below.

Pub. L. 100–360, § 411(f)(3)(B), substituted "subsection (i)(4) of this section" for "subparagraph (E)(iii)" and "the estimated average prevailing charge levels based on the best available data" for "the average of the prevailing charge levels" and struck out "for participating physicians" before "under the third".

Subsec. (b)(4)(A)(vii). Pub. L. 100–360, § 411(f)(2)(D), added Pub. L. 100–203, § 4042(b)(2)(A), see 1987 Amendment note below.

Pub. L. 100–360, § 411(f)(3)(A), made technical amendment to directory language of Pub. L. 100–203, § 4044(a), see 1987 Amendment note below.

Subsec. (b)(4)(E). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(C), (D), see 1987 Amendment notes below.

Subsec. (b)(4)(F). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(D), see 1987 Amendment note below.

Subsec. (b)(4)(F)(ii)(I). Pub. L. 100–360, § 411(f)(2)(B), substituted "subsection (i)(4) of this section" for "subparagraph (E)(iii)".

Subsec. (b)(4)(F)(iii). Pub. L. 100–360, § 411(f)(2)(A), substituted "services," for "services;" in subcl. (I) and "physicians'" for "physician's" in subcl. (II).

Subsec. (b)(4)(G). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(D), see 1987 Amendment note below.

Pub. L. 100–360, § 411(f)(6)(B), substituted "other than primary care services" for "other primary care services" and struck out "(as determined under the third and fourth sentences of paragraph (3) and under paragraph (4))" after "the prevailing charge".

Subsec. (b)(7)(B)(iii). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(22)(C), see 1987 Amendment note below.

Subsec. (b)(10)(A)(i). Pub. L. 100–360, § 411(f)(4)(A)(i), struck out "under paragraph (3)" after "reasonable charge", substituted "subparagraph (B)" for "subparagraph (C)", and struck out "for participating and nonparticipating physicians" after "charge for such procedure".

Subsec. (b)(10)(A)(iii). Pub. L. 100–360, § 411(f)(4)(A)(ii), substituted "clause (i)(I)" for "clause (i)(II)".

Subsec. (b)(10)(B). Pub. L. 100–360, § 411(f)(4)(A)(iii), inserted "(including subsequent insertion of an intraocular lens)" after "cataract surgery".

Subsec. (b)(10)(D). Pub. L. 100–360, § 411(f)(4)(A)(iv), substituted "under section 1395ff" for "section 1395ff".

Subsec. (b)(11)(B)(i). Pub. L. 100–360, § 411(f)(4)(B)(i), amended Pub. L. 100–203, § 4045(c)(2)(B), see 1987 Amendment note below.

Subsec. (b)(11)(C)(i). Pub. L. 100–360, § 411(f)(5)(A), substituted "insertion" for "implantation".

Subsec. (b)(11)(C)(ii). Pub. L. 100–360, § 411(g)(2)(A), substituted "inserted during or subsequent to" for "implanted during".

Subsec. (b)(12)(C). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(25), see 1987 Amendment note below.

Subsec. (b)(13), (14). Pub. L. 100–360, § 411(f)(7)(A), redesignated par. (14) as (13).

Subsec. (c)(1)(A). Pub. L. 100–360, § 202(e)(3)(A), designated existing provisions as cl. (i), inserted ", except as provided in clause (ii)," after "under this part, and" and added cl. (ii) relating to payment for implementation and operation of the electronic system for covered outpatient drugs.

Subsec. (c)(1)(A)(ii). Pub. L. 100–485, § 608(d)(5)(D), inserted ", including claims processing functions" after "and related functions".

Subsec. (c)(2)(A), (3)(A). Pub. L. 100–360, § 202(e)(5)(A), as amended by Pub. L. 100–485, § 608(d)(5)(H), substituted "Except as provided in paragraph (4), each" for "Each".

Subsec. (c)(4). Pub. L. 100–360, § 202(e)(5)(B), added par. (4) requiring contracts for the disbursement of funds with respect to claims for payment for covered outpatient drugs to provide for a payment cycle, and requiring interest if such requirements are not met.

Subsec. (f)(3). Pub. L. 100–485, § 608(d)(5)(B), inserted ", including claims processing functions" after "and related functions".

Pub. L. 100–360, § 202(e)(1), added par. (3) which read as follows: "with respect to implementation and operation (and related functions) of the electronic system established under subsection (*o*)(4) of this section, a voluntary association, corporation, partnership, or other nongovernmental organization, which the Secretary determines to be qualified to conduct such activities."

Subsec. (h)(1). Pub. L. 100–360, § 202(c)(1)(A), inserted ", except that, with respect to a supplier of covered outpatient drugs, the term 'participating supplier' means a participating pharmacy (as defined in subsection (*o*)(1) of this section)" after "part during such year".

Subsec. (h)(2). Pub. L. 100–360, § 202(e)(4)(A), inserted "(other than a carrier described in subsection (f)(3) of this section)" after "Each carrier".

Subsec. (h)(3)(B). Pub. L. 100–360, § 411(i)(1)(A), substituted "payment determination" for "claims determination", "shall include an explanation of benefits and any additional information that the Secretary may determine to be appropriate in order" for "including such information as the Secretary determines is generally provided", "enter into agreements" for "enter into

arrangements'', and ''under this subparagraph by a carrier'' for ''under this subparagraph'' and inserted '', and such user fees shall be collected and retained by the carrier''.

Subsec. (h)(4). Pub. L. 100–360, § 202(c)(1)(B), inserted at end ''In publishing directories under this paragraph, the Secretary shall provide for separate directories (wherever appropriate) for participating pharmacies.''

Subsec. (h)(5). Pub. L. 100–360, § 223(b), designated existing provisions as subpar. (A), inserted ''through an annual mailing'', struck out at end ''The Secretary shall include such notice in the mailing of appropriate benefit checks provided under subchapter II of this chapter.'', and added subpar. (B).

Subsec. (h)(7). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(A), see 1987 Amendment note below.

Pub. L. 100–360, § 223(c), in subpar. (A) inserted ''prominent'' before ''reminder'' and substituted ''and a clear statement of any amounts charged for the particular items or services on the claim involved above the amount recognized under this part),'' for ''7E), and'' and added subpar. (C).

Subsec. (h)(8). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(B), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(B), see 1987 Amendment note below.

Subsec. (i)(2), (3). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(C), see 1987 Amendment note below.

Subsec. (i)(3). Pub. L. 100–485, § 608(d)(21)(A), substituted ''subsection (b)(3) of this section'' for ''paragraph (3)''.

Subsec. (i)(4). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(E), see 1987 Amendment note below.

Subsec. (j)(1)(C)(i). Pub. L. 100–360, § 411(f)(2)(F)(ii), added Pub. L. 100–203, § 4042(c)(2), see 1987 Amendment note below.

Subsec. (j)(1)(C)(viii). Pub. L. 100–360, § 411(f)(1)(A), amended Pub. L. 100–203, § 4041(a)(1)(B), see 1987 Amendment note below.

Subsec. (j)(1)(C)(ix). Pub. L. 100–360, § 411(f)(7)(B), added Pub. L. 100–203, § 4048(e), see 1987 Amendment note below.

Subsec. (j)(1)(D)(ii)(IV). Pub. L. 100–360, § 411(f)(5)(B), struck out ''is'' after ''limit''.

Subsec. (j)(1)(D)(ii)(V). Pub. L. 100–360, § 411(g)(2)(B), redesignated subcl. (IV) as (V) and struck out ''is'' after ''limit''.

Subsec. (j)(1)(D)(iii). Pub. L. 100–360, § 411(g)(2)(C), amended Pub. L. 100–203, § 4063(a)(2)(B), see 1987 Amendment note below.

Subsec. (j)(1)(D)(iv). Pub. L. 100–360, § 411(f)(4)(C), substituted ''bills'' for ''imposes a charge''.

Subsec. (j)(2). Pub. L. 100–360, § 411(i)(4)(C)(vi), as amended by Pub. L. 100–485, § 608(d)(24)(B), added Pub. L. 100–203, § 4085(i)(26), see 1987 Amendment note below.

Subsec. (*l*)(1)(C)(i). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(27), see 1987 Amendment note below.

Subsec. (n)(1). Pub. L. 100–360, § 411(f)(9)(A), in introductory provisions, struck out ''to a patient'' after ''includes a charge'', inserted ''the bill or request for'' after ''for which'', and substituted ''shares a practice'' for ''shares his practice'' and ''supervised the performance of the test, the'' for ''supervised the test, the''.

Subsec. (n)(1)(A). Pub. L. 100–485, § 608(d)(17), substituted ''the supplier's'' for ''the the supplier's''.

Pub. L. 100–360, § 411(f)(9)(B), as amended by Pub. L. 100–485, § 608(d)(21)(D), substituted ''(or other applicable limit)'' for ''to individuals enrolled under this part''.

Pub. L. 100–360, § 411(a)(3)(A), (C)(i), clarified that illegible matter after ''or, if lower, the'' was ''the supplier's reasonable charge to individuals enrolled under this part for the test''.

Subsec. (n)(2)(A). Pub. L. 100–360, § 411(f)(9)(C), inserted ''the payment amount specified in paragraph (1)(A) and'' after ''other than''.

Subsec. (n)(3). Pub. L. 100–360, § 411(f)(9)(D), struck out ''or supplier'' after ''such physician''.

Subsec. (*o*). Pub. L. 100–360, § 202(c)(1)(C), added subsec. (*o*) relating to ''participating pharmacies'' as entities authorized under State law to dispense covered outpatient drugs which had entered into agreements with Secretary to participate in catastrophic coverage program.

Subsec. (*o*)(1)(A)(i). Pub. L. 100–485, § 608(d)(5)(A)(i), substituted ''paragraph (4)'' for ''subparagraph (D)(i)''.

Subsec. (*o*)(1)(B)(ii). Pub. L. 100–485, § 608(d)(5)(A)(ii), substituted ''an eligible organization'' for ''eligible organization''.

Subsec. (p). Pub. L. 100–360, § 202(g), added subsec. (p).

1987—Subsec. (b)(2). Pub. L. 100–203, § 4082(c), as amended by Pub. L. 100–360, § 411(i)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 100–203, § 4041(a)(3)(A)(i), inserted at end ''In establishing such standards and criteria, the Secretary shall provide a system to measure a carrier's performance of responsibilities described in paragraph (3)(H) and subsection (h) of this section.''

Subsec. (b)(3). Pub. L. 100–203, § 4085(i)(24), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''In the case of physicians' services'' for ''In the case of physician services'' and ''(with respect to physicians' services'' for ''(with respect to physicians services'' in fourth sentence.

Pub. L. 100–203, § 4045(c)(2)(D), as added by Pub. L. 100–360, § 411(f)(4)(B)(ii), inserted ''(or under any other provision of law affecting the prevailing charge level)'' in fourth sentence.

Pub. L. 100–203, § 4053(a), formerly § 4052(a), as renumbered and amended by Pub. L. 100–360, § 411(f)(11)(A), (14), inserted '', and shall remain at such prevailing charge level until the prevailing charge for a year (as adjusted by economic index data) equals or exceeds such prevailing charge level'' before period at end of penultimate sentence.

Subsec. (b)(3)(B)(ii). Pub. L. 100–203, § 4096(a)(1)(A), as amended by Pub. L. 100–360, § 411(j)(4)(A), added subcl. (II), redesignated former subcl. (II) as (III), and inserted ''(and to refund amounts already collected)''.

Subsec. (b)(3)(C). Pub. L. 100–203, § 4085(i)(5), substituted ''less than $500'' for ''not more than $500''.

Subsec. (b)(4)(A)(iv). Pub. L. 100–203, § 4042(c)(1), formerly § 4042(c), as redesignated and amended by Pub. L. 100–360, § 411(f)(2)(F)(i), and by Pub. L. 100–485, § 608(d)(21)(B), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''In determining the prevailing charge level under the third and fourth sentences of paragraph (3) for a physicians' service furnished on or after January 1, 1987, by a nonparticipating physician, the Secretary shall set the level at 96 percent of the prevailing charge levels established under such sentences with respect to such service furnished by participating physicians.''

Subsec. (b)(4)(A)(v). Pub. L. 100–203, § 4041(a)(1)(A)(i), added cl. (v). Former cl. (v) redesignated (vi).

Subsec. (b)(4)(A)(vi). Pub. L. 100–203, § 4044(a), as amended by Pub. L. 100–360, § 411(f)(3)(A), added cl. (vi). Former cl. (vi) redesignated (vii).

Pub. L. 100–203, § 4041(a)(1)(A)(i), redesignated former cl. (v) as (vi).

Subsec. (b)(4)(A)(vii). Pub. L. 100–203, § 4042(b)(2)(A), as added by Pub. L. 100–360, § 411(f)(2)(D), substituted ''subsection (i)(3) of this section'' for ''subparagraph (E)(ii)''.

Pub. L. 100–203, § 4044(a), as amended by Pub. L. 100–360, § 411(f)(3)(A), redesignated former cl. (vi) as (vii).

Subsec. (b)(4)(B)(iii). Pub. L. 100–203, § 4041(a)(1)(A)(ii), added cl. (iii).

Subsec. (b)(4)(E). Pub. L. 100–203, § 4042(b)(1)(D), as added by Pub. L. 100–360, § 411(f)(2)(C), redesignated subpar. (F) as (E). Former subpar. (E) transferred to subsec. (i).

Pub. L. 100–203, § 4042(b)(1)(C), as added by Pub. L. 100–360, § 411(f)(2)(C), struck out ''(E) In this section:'' before cl. (i), redesignated cls. (i) and (ii) as pars. (2)

and (3), respectively, and transferred those pars. to subsec. (i).

Subsec. (b)(4)(F). Pub. L. 100–203, § 4042(b)(1)(D), as added by Pub. L. 100–360, § 411(f)(2)(C), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 100–203, § 4042(a), added subpar. (F).

Subsec. (b)(4)(G). Pub. L. 100–203, § 4042(b)(1)(D), as added by Pub. L. 100–360, § 411(f)(2)(C), redesignated subpar. (G) as (F).

Pub. L. 100–203, § 4047(a), added subpar. (G).

Subsec. (b)(7)(B)(iii). Pub. L. 100–203, § 4085(i)(22)(C), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''an assignment-related basis'' for ''the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title''.

Subsec. (b)(10). Pub. L. 100–203, § 4045(a), amended par. (10) generally, revising and restating as subpars. (A) to (D) provisions of former subpars. (A) to (C).

Subsec. (b)(11)(B)(i). Pub. L. 100–203, § 4045(c)(2)(B), as amended by Pub. L. 100–360, § 411(f)(4)(B)(i), struck out ''and shall be further reduced by 2 percent with respect to procedures performed in 1988'' after ''in 1987'' and struck out second sentence which read as follows: ''A reduced prevailing charge under this subparagraph shall become the prevailing charge level for subsequent years for purposes of applying the economic index under the fourth sentence of paragraph (3).''

Subsec. (b)(11)(C). Pub. L. 100–203, § 4063(a)(1)(A), designated existing provisions as cl. (i) and added cl. (ii).

Pub. L. 100–203, § 4046(a)(1)(B), (C), added subpar. (C) and redesignated former subpar. (C) as (D).

Pub. L. 100–203, § 4045(c)(1)(A), struck out former cl. (i) designation before ''In the case of'' and substituted '', the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.'' for ''(subject to clause (iv)), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ½ of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge.'', and struck out former cls. (ii) to (iv) which read as follows:

''(ii) In clause (i), the term 'limiting charge' means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in clause (i).

''(iii) If a physician knowingly and willfully imposes charges in violation of clause (i), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

''(iv) This subparagraph shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (b)(11)(D). Pub. L. 100–203, § 4063(a)(1)(B), which directed that subpar. (D) be amended by inserting ''or item'' after ''service'' or ''services'' each place either appears, was executed by inserting ''or item'' after ''service'' wherever appearing. The word ''services'' does not appear because of a prior amendment by section 4045(c)(1)(A) of Pub. L. 100–203 to subpar. (D), formerly (C), see above.

Pub. L. 100–203, § 4046(a)(1)(A), (B), redesignated former subpar. (C) as (D) and substituted ''subparagraph (B) or (C)'' for ''subparagraph (B)''.

Subsec. (b)(12)(C). Pub. L. 100–203, § 4085(i)(25), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''money penalty'' for ''monetary penalty'' and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a–7a of this title with respect to actions described in subsection (a) of that section.''

Subsec. (b)(14). Pub. L. 100–203, § 4048(a), added par. (14).

Subsec. (c)(1). Pub. L. 100–203, § 4041(a)(3)(A)(ii), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 100–203, § 4035(a)(2), inserted at end ''The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for carriers under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.''

Subsec. (c)(3). Pub. L. 100–203, § 4031(a)(2), added par. (3).

Subsec. (h)(3). Pub. L. 100–203, § 4081(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(5). Pub. L. 100–203, § 4085(i)(6), substituted ''the participation program'' for ''the the participation program''.

Subsec. (h)(7). Pub. L. 100–203, § 4042(b)(1)(A), as added by Pub. L. 100–360, § 411(f)(2)(C), struck out '', described in paragraph (8)'' after ''assignment-related basis'' in introductory provisions.

Subsec. (h)(8). Pub. L. 100–203, § 4042(b)(1)(B), as added by Pub. L. 100–360, § 411(f)(2)(C), substituted ''(1) A'' for ''(8) For purposes of this subchapter, a'', indented such par. 2 ems, and inserted subsec. (i) designation and ''For purposes of this subchapter:'', effectively transferring former subsec. (h)(8) to subsec. (i).

Subsec. (i). Pub. L. 100–203, § 4042(b)(1)(B), as added by Pub. L. 100–360, § 411(f)(2)(C), transferred introductory provisions and par. (1) from former subsec. (h)(8).

Subsec. (i)(2), (3). Pub. L. 100–203, § 4042(b)(1)(C), as added by Pub. L. 100–360, § 411(f)(2)(C), transferred pars. (2) and (3) from subsec. (b)(4)(E).

Subsec. (i)(4). Pub. L. 100–203, § 4042(b)(1)(E), as added by Pub. L. 100–360, § 411(f)(2)(C), added par. (4).

Subsec. (j)(1)(B)(i). Pub. L. 100–203, § 4054(a)(1), (2), formerly § 4053(a)(1), (2), as renumbered by Pub. L. 100–360, § 411(f)(14), substituted ''the actual charges of each such physician'' for ''each such physician's actual charges'' and ''on a repeated basis for such a service an actual charge'' for ''for such a service a physician's actual charge (as defined in subparagraph (C)(vi)''.

Subsec. (j)(1)(C)(i). Pub. L. 100–203, § 4085(i)(7)(A), inserted ''maximum allowable'' after ''If the physician's''.

Pub. L. 100–203, § 4042(c)(2), as added by Pub. L. 100–360, § 411(f)(2)(F)(ii), substituted ''applicable percent (as defined in subsection (b)(4)(A)(iv) of this section) of the prevailing charge for the year and service involved'' for ''prevailing charge for the year involved for such service furnished by nonparticipating physicians'' in subcls. (I) and (II).

Subsec. (j)(1)(C)(v). Pub. L. 100–203, § 4085(i)(7)(B), substituted ''1986'' for ''1987''.

Subsec. (j)(1)(C)(vi). Pub. L. 100–203, § 4054(a)(3), formerly § 4053(a)(3), as renumbered by Pub. L. 100–360, § 411(f)(14), struck out ''and subparagraph (B)'' after ''purposes of this subparagraph''.

Subsec. (j)(1)(C)(vii). Pub. L. 100–203, § 4085(i)(7)(C), added cl. (vii).

Subsec. (j)(1)(C)(viii). Pub. L. 100–203, § 4041(a)(1)(B), as amended by Pub. L. 100–360, § 411(f)(1)(A), added cl. (viii).

Subsec. (j)(1)(C)(ix). Pub. L. 100–203, § 4048(e), as added by Pub. L. 100–360, § 411(f)(7)(B), added cl. (ix).

Subsec. (j)(1)(D). Pub. L. 100–203, § 4045(c)(1)(B), added subpar. (D).

Subsec. (j)(1)(D)(ii)(IV). Pub. L. 100–203, § 4063(a)(2)(A), added subcl. (IV) relating to establishment of reasonable charge limit under subsec. (b)(11)(C)(ii) of this section.

Pub. L. 100–203, § 4046(a)(2)(A), added subcl. (IV) relating to establishment of prevailing charge limit under subsec. (b)(11)(C)(i) of this section. Former subcl. (IV) redesignated (V).

Subsec. (j)(1)(D)(ii)(V), (VI). Pub. L. 100–203, § 4063(a)(2)(A), redesignated former subcl. (V) as (VI).

Pub. L. 100–203, § 4046(a)(2)(A), redesignated former subcl. (IV) as (V).

Subsec. (j)(1)(D)(iii). Pub. L. 100–203, § 4063(a)(2)(B), as amended by Pub. L. 100–360, § 411(g)(2)(C), struck out

''or'' at end of subcl. (I), substituted ''; or'' for period at end of subcl. (II), and added subcl. (III).

Pub. L. 100–203, § 4046(a)(2)(B), substituted '', (b)(11)(B), or (b)(11)(C)(i)'' for ''or (b)(11)(B)'' in subcl. (II).

Subsec. (j)(2). Pub. L. 100–203, § 4085(i)(26), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), and amended by Pub. L. 100–485, § 608(d)(24)(B), substituted ''chapter'' for ''subchapter'' in subpar. (A), struck out ''the imposition of'' before ''civil monetary penalties'' and inserted ''and assessments'' in subpar. (B), substituted ''chapter'' for ''subchapter'' in two places in last sentence, and amended last sentence generally. Prior to amendment, last sentence read as follows: ''No payment may be made under this chapter with respect to any item or service furnished by a physician during the period when he is excluded from participation in the programs under this chapter pursuant to this subsection.''

Pub. L. 100–93, § 8(c)(2)(A), amended subpar. (A) generally and substituted ''excluded from participation in the programs'' for ''barred from participation in the program'' in last sentence. Prior to amendment, subpar. (A) read as follows: ''barring a physician from participation under the program under this subchapter for a period not to exceed 5 years, in accordance with the procedures of paragraphs (2) and (3) of section 1395y(d) of this title, or''.

Subsec. (j)(3)(A). Pub. L. 100–93, § 8(c)(2)(B), substituted ''exclude'' for ''bar''.

Subsec. (k)(1), (2). Pub. L. 100–203, § 4085(g)(1), substituted ''subsection (j)(2) of this section in the case of surgery performed on or after March 1, 1987'' for ''subsection (j)(2) of this section''.

Subsec. (*l*)(1)(A)(iii). Pub. L. 100–203, § 4096(a)(1)(B), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (*l*)(1)(C). Pub. L. 100–203, § 4096(a)(1)(C), inserted ''in the case described in subparagraph (A)(iii)(I)'' after ''to an individual'' in introductory provisions.

Subsec. (*l*)(1)(C)(i). Pub. L. 100–203, § 4085(i)(27), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), inserted ''the physician establishes that'' after ''(i)''.

Subsec. (n). Pub. L. 100–203, § 4051(a), added subsec. (n).

1986—Subsec. (b)(3). Pub. L. 99–509, § 9331(c)(3)(A), inserted ''or (with respect to physicians services furnished in a year after 1987) the level determined under this sentence for the previous year'' after ''ending June 30, 1973,'' and ''year-to-year'' before ''economic changes'' in fourth sentence.

Pub. L. 99–272, § 9301(d)(1)(B), (C), substituted ''June 30 last preceding the start of the calendar year'' for ''March 31 last preceding the start of the twelve-month period (beginning October 1 of each year)'' in third sentence, and struck out ''the twelve-month period beginning on October 1 in'' before ''any calendar year after 1974'' in eighth sentence.

Subsec. (b)(3)(C). Pub. L. 99–509, § 9341(a)(2), substituted ''at least $100, but not more than $500'' for ''$100 or more''.

Subsec. (b)(3)(F). Pub. L. 99–272, § 9301(d)(1)(A), struck out ''(ending on September 30)'' after ''before the year''.

Subsec. (b)(3)(G). Pub. L. 99–509, § 9331(b)(2), added subpar. (G).

Subsec. (b)(3)(H). Pub. L. 99–509, § 9332(a)(1), added subpar. (H).

Subsec. (b)(4)(A)(i), (ii). Pub. L. 99–272, § 9301(b)(1)(A), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(4)(A)(iii). Pub. L. 99–509, § 9331(a)(1), added cl. (iii) and struck out former cl. (iii) which read as follows: ''In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during a 12-month period beginning on or after January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for services furnished during the previous calendar year (without regard to clause (ii)(II)) for physicians who were participating physicians during that year.''

Pub. L. 99–272, § 9301(b)(1)(A)(ii), added cl. (iii).

Subsec. (b)(4)(A)(iv), (v). Pub. L. 99–509, § 9331(a)(1), added cls. (iv) and (v).

Subsec. (b)(4)(B). Pub. L. 99–272, § 9301(b)(1)(B), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(4)(C). Pub. L. 99–509, § 9331(a)(2), directed amendment of subpar. (C) by striking out ''(i)'' after ''(C)'' and striking out cl. (ii), applicable to services furnished on or after Jan. 1, 1987, which is identical to amendment by Pub. L. 99–514, § 1895(b)(14)(A), as amended, effective as if included in enactment of Pub. L. 99–272.

Pub. L. 99–514, § 1895(b)(14)(A), as amended by Pub. L. 99–509, § 9307(c)(2)(A), struck out cl. (i) designation, and struck out cl. (ii) which read as follows: ''In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the periods beginning after December 31, 1986, by a physician who was not a participating physician on that date, the Secretary shall treat the level as set under subparagraph (A)(ii) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(ii).''

Pub. L. 99–272, § 9301(b)(1)(C), designated existing provisions as cl. (i), substituted ''subparagraph (A)(i)'' for ''subparagraph (A)'' wherever appearing, and added cl. (ii).

Subsec. (b)(4)(D)(i) to (iii). Pub. L. 99–272, § 9301(b)(1)(D), designated existing provisions as cl. (i), substituted ''In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, by a physician who was not a participating physician (as defined in subsection (h)(1) of this section) on September 30, 1985'' for ''In determining the customary charges for physicians' services furnished during the 12-month period beginning October 1, 1985, or October 1, 1986, by a physician who at no time for any services furnished during the 12-month period beginning October 1, 1984, was a participating physician (as defined in subsection (h)(1) of this section)'', and added cls. (ii) and (iii).

Subsec. (b)(4)(D)(iv). Pub. L. 99–509, § 9331(b)(3), added cl. (iv).

Subsec. (b)(4)(E). Pub. L. 99–509, § 9331(a)(3), added subpar. (E).

Subsec. (b)(6). Pub. L. 99–509, § 9338(c), substituted ''except that (A) payment may be made (i)'' for ''except that payment may be made (A)(i)'', substituted ''(B) payment may be made'' for ''or (B)'', and inserted before the period at end '', and (C) in the case of services described in section 1395x(s)(2)(K) of this title payment shall be made to the employer of the physician assistant involved''.

Subsec. (b)(7)(B)(ii)(III). Pub. L. 99–272, § 9219(b)(1)(A), realigned margin of subcl. (III).

Subsec. (b)(7)(B)(iii). Pub. L. 99–272, § 9219(b)(2)(A), realigned margin of cl. (iii).

Subsec. (b)(8). Pub. L. 99–509, § 9333(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) and (C).

Pub. L. 99–272, § 9304(a), added par. (8).

Subsec. (b)(9). Pub. L. 99–509, § 9333(b), added par. (9). Former par. (9) redesignated (11).

Pub. L. 99–272, § 9306(a), added par. (9).

Subsec. (b)(10). Pub. L. 99–509, § 9333(b), added par. (10).

Subsec. (b)(11). Pub. L. 99–509, § 9334(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) and (C).

Pub. L. 99–509, § 9333(b), redesignated former par. (9) as (11).

Subsec. (b)(12). Pub. L. 99–509, § 9338(b), added par. (12).

Subsec. (c). Pub. L. 99–509, § 9311(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (h)(1). Pub. L. 99–272, § 9301(d)(2), substituted ''before the beginning of any year beginning with 1984'' for ''before October 1 of any year beginning with 1984'', ''on an assignment-related basis'' for ''on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title'', ''during such year'' for ''during the 12-month period beginning on October 1 of such year'', ''after the beginning of a year'' for ''after October 1 of a year'', and ''during the remainder of the year'' for ''during the remainder of the 12-month period beginning on such October 1''.

Subsec. (h)(2). Pub. L. 99–509, § 9332(b)(1)(A), struck out period at end and substituted ''and may request a copy of an appropriate directory published under paragraph (4). Each such carrier shall, without charge, mail a copy of such directory upon such a request.''

Subsec. (h)(4). Pub. L. 99–509, § 9332(b)(2), inserted at end ''Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.''

Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (2) of subsec. (i) as par. (4) of this subsection.

Subsec. (h)(5). Pub. L. 99–509, § 9332(b)(1)(B), substituted ''the participation program under this subsection and the publication and availability of the directories'' for ''publication of the directories'' and inserted at end ''The Secretary shall include such notice in the mailing of appropriate benefit checks provided under subchapter II of this chapter.''

Pub. L. 99–514, § 1895(b)(15)(A), struck out ''such'' before ''the directories'' and before ''the appropriate area directory''.

Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (3) of subsec. (i) as par. (5) of this subsection.

Subsec. (h)(6). Pub. L. 99–509, § 9332(b)(1)(C), inserted before period at end of second sentence ''and that an appropriate number of copies of each such directory is sent to hospitals located in the area'' and inserted at end ''Such copies shall be sent free of charge.''

Pub. L. 99–514, § 1895(b)(15)(B), substituted ''the'' for ''the the'' before ''directories''.

Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (4) of subsec. (i) as par. (6) of this subsection.

Subsec. (h)(7), (8). Pub. L. 99–272, § 9301(c)(4), added pars. (7) and (8).

Subsec. (i)(1). Pub. L. 99–272, § 9301(c)(3)(A), struck out par. (1) which required the Secretary to publish a list containing the name, address, specialty, and percent of claims submitted with respect to each physician and supplier during preceding year that were paid on the basis of an assignment described in subsec. (b)(3)(B)(ii) of this section, in accordance with subsec. (b)(6)(B) of this section, or under procedure described in section 1395gg(f)(1) of this title.

Subsec. (i)(2). Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (2) of this subsection as par. (4) of subsec. (h).

Pub. L. 99–272, § 9301(d)(3), substituted ''year'' for ''fiscal year'', wherever appearing.

Pub. L. 99–272, § 9301(c)(2)(A), (B), (3)(B), substituted ''shall publish directories (for appropriate local geographic areas)'' for ''shall publish a directory'', inserted ''for that area'' before ''for that fiscal year'', substituted ''Each directory shall'' for ''The directory shall'', and substituted ''paragraph (1)'' for ''subsection (h)(1) of this section''.

Subsec. (i)(3). Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (3) of this subsection as par. (5) of subsec. (h).

Pub. L. 99–272, § 9301(c)(2)(C), (3)(C), struck out ''directory'' first place it appeared and inserted in lieu ''the directories'', struck out ''directory'' second place it appeared and inserted in lieu ''the appropriate area directory or directories'', and struck out ''list and'' wherever appearing.

Subsec. (i)(4). Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (4) of this subsection as par. (6) of subsec. (h).

Pub. L. 99–272, § 9301(c)(2)(D), (3)(C), struck out ''list and'' after ''The Secretary shall provide that the'' in first sentence, substituted ''the directories shall'' for ''directory shall'', and inserted provision requiring the Secretary to provide that each appropriate area directory be sent to each participating physician located in that area.

Subsec. (j)(1). Pub. L. 99–509, § 9331(b)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Pub. L. 99–272, § 9301(b)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: ''In the case of a physician who is not a participating physician, the Secretary shall monitor each such physician's actual charges to individuals enrolled under this part for physicians' services furnished during the 15-month period beginning July 1, 1984.''

Subsec. (j)(2). Pub. L. 99–509, § 9320(e)(3), substituted ''this paragraph'' for ''paragraph (1) or subsection (k) of this section'' in introductory text.

Pub. L. 99–272, § 9307(c)(1), inserted reference to subsec. (k) of this section in introductory text.

Subsec. (k). Pub. L. 99–514, § 1895(b)(16)(A), inserted ''presents or causes to be presented a claim or'' in pars. (1) and (2).

Pub. L. 99–272, § 9307(c)(2), added subsec. (k).

Subsec. (*l*). Pub. L. 99–509, § 9332(c)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 99–509, § 9332(d)(1), added subsec. (m).

1984—Subsec. (b)(2). Pub. L. 98–369, § 2326(c)(2), inserted at end provision that the Secretary publish in the Federal Register standards and criteria for efficient and effective performance of contract obligations under this section and provide an opportunity for public comment prior to implementation.

Subsec. (b)(3). Pub. L. 98–369, § 2306(b)(1)(B), (C), substituted ''during the 12-month period ending on the March 31 last preceding'' for ''during the last preceding calendar year elapsing prior to'' in third sentence and substituted ''October 1'' for ''July 1'' wherever appearing in third and eighth sentences.

Pub. L. 98–369, § 2354(b)(14), substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively in concluding provisions.

Pub. L. 98–369, § 2663(j)(2)(F)(iv), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in concluding provisions.

Subsec. (b)(3)(B)(ii)(II). Pub. L. 98–369, § 2354(b)(13), struck out the period after ''subchapter''.

Subsec. (b)(3)(F). Pub. L. 98–369, § 2306(b)(1)(A), substituted ''September 30'' for ''June 30''.

Subsec. (b)(4), (5). Pub. L. 98–369, § 2306(a), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (b)(6). Pub. L. 98–369, § 2339, redesignated cl. (A) as cl. (A)(i) and former cl. (B) as cl. (A)(ii), added a new cl. (B), and in the provisions after cl. (B), substituted ''clause (A) of such sentence'' for ''clause (A) or (B) of such sentence''.

Pub. L. 98–369, § 2306(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 98–369, § 2306(a), redesignated par. (6) as (7).

Subsec. (b)(7)(A). Pub. L. 98–617, § 3(b)(5)(B), struck out at end ''If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.''

Pub. L. 98–369, § 2307(a)(1), as amended by Pub. L. 98–617, § 3(a)(1), inserted ''If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment de-

scribed in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.'' at the end.

Subsec. (b)(7)(A)(ii). Pub. L. 98–617, § 3(b)(5)(A), substituted ''the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B)'' for ''the amount of the payment exceeds the reasonable charge for the services (with the customary charge determined consistent with subparagraph (B))''.

Subsec. (b)(7)(B)(i). Pub. L. 98–369, § 2307(a)(2)(A), (B), substituted ''physician who is not a teaching physician (as defined by the Secretary)'' for ''physician who has a substantial practice outside the teaching setting'' and ''practice outside the teaching setting'' for ''outside practice''.

Subsec. (b)(7)(B)(ii). Pub. L. 98–369, § 2307(a)(2)(C), (D), substituted ''In the case of a teaching physician'' for ''In the case of a physician who does not have a practice described in clause (i)'' and ''greatest'' for ''greater''.

Subsec. (b)(7)(B)(ii)(III). Pub. L. 98–369, § 2307(a)(2)(E)–(G), added subcl. (III).

Subsec. (b)(7)(B)(iii). Pub. L. 98–617, § 3(b)(6), added cl. (iii).

Subsec. (c). Pub. L. 98–369, § 2326(d)(2), inserted provision that the Secretary, in determining a carrier's necessary and proper cost of administration with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated carrier in carrying out the terms of its contract.

Subsec. (h). Pub. L. 98–369, § 2306(c), added subsec. (h).

Pub. L. 98–369, § 2303(e), struck out subsec. (h) providing for payment for laboratory tests.

Subsecs. (i), (j). Pub. L. 98–369, § 2306(c), added subsecs. (i) and (j).

1982—Subsec. (b)(3)(B)(ii)(II). Pub. L. 97–248, § 128(d)(1), substituted ''section 1395y(a)'' for ''section 1395y''.

Subsec. (b)(3). Pub. L. 97–248, § 104(a), in provisions following subpar. (F), inserted provisions that in determining the reasonable charge for outpatient services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility.

Subsec. (b)(6)(D). Pub. L. 97–248, § 113(a), added subpar. (D).

1981—Subsec. (b)(3). Pub. L. 97–35 inserted provision that the amount of any charges for outpatient services which shall be considered reasonable shall be subject to the limitations established by regulations issued by the Secretary pursuant to section 1395x(v)(1)(K) of this title.

1980—Subsec. (b)(3). Pub. L. 96–499, § 946(a), in provisions following subpar. (F), substituted ''service is rendered'' for ''bill is submitted or the request for payment is made''.

Subsec. (b)(3)(F). Pub. L. 96–499, § 946(b), added subpar. (F).

Subsec. (b)(6). Pub. L. 96–499, § 948(b), added par. (6).

Subsec. (h). Pub. L. 96–499, § 918(a)(1), added subsec. (h).

1977—Subsec. (b)(3). Pub. L. 95–216 provided that, with respect to power-operated wheelchairs for which payment may be made in accordance with section 1395x(s)(6) of this title, charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality.

Subsec. (b)(5). Pub. L. 95–142 inserted provisions relating to payments under a reassignment or power of attorney in cases other than direct payments to physicians or service providers.

1976—Subsec. (b)(3). Pub. L. 94–368 substituted ''for the twelve-month period beginning on July 1 in any calendar year after 1974'' for ''for the fiscal year beginning July 1, 1975,'', ''prior to the start of the twelve-month period (beginning July 1, of each year) in which the bill is submitted or the request for payment is made'' for ''prior to the start of the fiscal year in which the bill is submitted or the request for payment is made'', and ''for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence'' for ''for any fiscal year beginning after June 30, 1973,''.

1975—Subsec. (b)(3). Pub. L. 94–182 inserted provisions relating to raising for fiscal year beginning July 1, 1975 inadequate prevailing charge levels for services of physicians in certain localities.

1974—Subsec. (g). Pub. L. 93–445 substituted ''section 231f(d) of title 45'' for ''section 228s–2(b) of title 45''.

1972—Subsec. (a). Pub. L. 92–603, § 227(e)(3), substituted ''which involve payments for physicians' services on a reasonable charge basis'' for ''which involve payments for physicians' services''.

Subsec. (b)(3). Pub. L. 92–603, §§ 244(a), 258(a), inserted provisions relating to determination of reasonableness of physician charges, medical services, supplies, and equipment and for the extension of time for filing claims for supplementary medical insurance benefits where the delay is due to administrative error, at end thereof.

Subsec. (b)(3)(B)(ii). Pub. L. 92–603, §§ 211(c)(3), 281(d), designated existing provisions as subcl. (I), added subcl. II, inserted exception in the case of services furnished as described in section 1395y(a)(4) of this title, other than for purposes of section 1395gg(f) of this title.

Subsec. (b)(3)(C). Pub. L. 92–603, § 262(a), inserted provisions setting a $100 minimum amount on claims to establish entitlement to a hearing.

Subsec. (b)(5). Pub. L. 92–603, § 236(a), added par. (5).

Subsec. (g). Pub. L. 92–603, § 263(d)(5), added subsec. (g).

1968—Subsec. (b)(3)(B). Pub. L. 90–248 provided that payment be made on the basis of an itemized bill instead of a receipted bill as formerly required, and established a time limit within which payment may be requested, and inserted ''(except as otherwise provided in section 1395gg(f) of this title)'' after ''payment will''.

Change of Name

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Effective Date of 2006 Amendment

Pub. L. 109–432, div. B, title I, § 110(b), Dec. 20, 2006, 120 Stat. 2985, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to drugs furnished on or after January 1, 2008. The Secretary of Health and Human Services shall address the implementation of such amendment in the rulemaking process under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for payment for physicians' services for 2008, consistent with the previous sentence.''

Pub. L. 109–432, div. B, title II, § 205(c), Dec. 20, 2006, 120 Stat. 2990, provided that: ''The amendments made by this section [amending this section, section 1395ww of this title, and provisions set out as a note under section 1395eee of this title] shall take effect as if included in the enactment of the Deficit Reduction Act of 2005 (Public Law 109–171).''

Pub. L. 109–432, div. B, title IV, § 405(c)(2)(A), Dec. 20, 2006, 120 Stat. 2999, provided that the amendment made by section 405(c)(2)(A) is effective as if included in the

enactment of the Deficit Reduction Act of 2005 (Public Law 109–171).

Pub. L. 109–171, title V, § 5114(c), Feb. 8, 2006, 120 Stat. 45, provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply to services furnished on or after January 1, 2006.''

Amendment by section 5202(a)(2) of Pub. L. 109–171 applicable to claims submitted on or after Jan. 1, 2006, see section 5202(b) of Pub. L. 109–171, set out as a note under section 1395h of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 627(b)(2) of Pub. L. 108–173 applicable to items furnished on or after Jan. 1, 2005, see section 627(c) of Pub. L. 108–173, set out as a note under section 1395*l* of this title.

Amendment by section 911(c) of Pub. L. 108–173 effective Oct. 1, 2005, except as otherwise provided, with transition rules authorizing Secretary of Health and Human Services to continue to enter into contracts under this section prior to such date, and provisions authorizing continuation of Medicare Integrity Program functions during the period that begins on Dec. 8, 2003, and ends on Oct. 1, 2011, see section 911(d) of Pub. L. 108–173, set out as an Effective Date; Transition Rule note under section 1395kk–1 of this title.

Pub. L. 108–173, title IX, § 952(c), Dec. 8, 2003, 117 Stat. 2427, provided that: ''The amendments made by this section [amending this section] shall apply to payments made on or after the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title I, § 105(d)] of Pub. L. 106–554 applicable to services furnished on or after Jan. 1, 2002, see section 1(a)(6) [title I, § 105(e)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, § 1(a)(6) [title I, § 114(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–474, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to items furnished on or after January 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title II, § 222(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–487, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, § 1(a)(6) [title III, § 313(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–499, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 1395y and 1395cc of this title] shall apply to services furnished on or after January 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title IV, § 432(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–526, provided that: ''The amendments made by this section [amending this section and sections 1395y and 1395qq of this title] shall apply to services furnished on or after July 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 305(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–362, provided that: ''The amendments made by this section [amending this section and section 1395y of this title] shall apply to payments for services provided on or after the date of enactment of this Act [Nov. 29, 1999].''

Amendment by section 1000(a)(6) [title III, § 321(k)(4)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4205(d)(3)(B) of Pub. L. 105–33 effective Aug. 5, 1997, see section 4205(d)(4) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Section 4302(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1395cc of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and apply to the entry and renewal of contracts on or after such date.''

Amendment by section 4315(a) of Pub. L. 105–33, to the extent such amendment substitutes fee schedules for reasonable charges, applicable to particular services as of date specified by the Secretary of Health and Human Services, see section 4315(c) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4316(a) of Pub. L. 105–33 effective Aug. 5, 1997, see section 4316(c) of Pub. L. 105–33, set out as a note under section 1395m of this title.

Section 4317(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply to items and services furnished on or after January 1, 1998.''

Amendment by section 4432(b)(2), (4) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Amendment by section 4512(b)(2), (c) of Pub. L. 105–33 applicable with respect to services furnished and supplies provided on and after Jan. 1, 1998, see section 4512(d) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4556(a) of Pub. L. 105–33 applicable to drugs and biologicals furnished on or after Jan. 1, 1998, see section 4556(d) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4603(c)(2)(B)(i) of Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

Amendment by section 4611(d) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, and for purposes of applying such amendment, any home health spell of illness that began, but did not end, before such date, to be considered to have begun as of such date, see section 4611(f) of Pub. L. 105–33, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 123(b)(1), (2)(B) of Pub. L. 103–432 applicable to services furnished on or after Jan. 1, 1995, see section 123(f)(2) of Pub. L. 103–432, set out as a note under section 1395*l* of this title.

Section 123(f)(3), (4) of Pub. L. 103–432 provided that:

''(3) EOMBS.—The amendments made by subsection (c)(1) [amending this section] shall apply to explanations of benefits provided on or after July 1, 1995.

''(4) CARRIER DETERMINATIONS.—The amendments made by subsection (c)(2) [amending this section] shall apply to contracts as of January 1, 1995.''

Section 125(b)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 126(a)(1), (c), (e), (g)(9) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 126(i) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Section 126(h)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective for payments for fiscal years beginning with fiscal year 1994.

Section 135(b)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective for standards applied for contract years beginning after Oct. 31, 1994.

Amendment by section 151(b)(1)(B), (2)(B) of Pub. L. 103–432 applicable to contracts with fiscal intermediaries and carriers under this subchapter for con-

tract years beginning with 1995, see section 151(b)(4) of Pub. L. 103–432, set out as a note under section 1395h of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13515(d) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section and section 1395w–4 of this title] shall apply to services furnished on or after January 1, 1994.''

Amendment by section 13568(a), (b) of Pub. L. 103–66 applicable to claims received on or after Oct. 1, 1993, see section 13568(c) of Pub. L. 103–66, set out as a note under section 1395h of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4105(b)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(2)(A)(ii), Oct. 31, 1994, 108 Stat. 4415, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after January 1, 1991.''

Section 4106(d) of Pub. L. 101–508 provided that:

''(1) The amendments made by subsection (a) [amending this section and provisions set out below] apply to services furnished after 1990, except that—

''(A) the provisions concerning the third and fourth years of practice apply only to physicians' services furnished after 1990 and 1991, respectively, and

''(B) the provisions concerning the second, third, and fourth years of practice apply only to services of a health care practitioner furnished after 1991, 1992, and 1993, respectively.

''(2) The amendments made by subsection (b) [amending this section and section 1395w–4 of this title] shall apply to services furnished after 1991.''

Section 4108(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to tests and services furnished on or after January 1, 1991.''

Section 4110(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4118(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] apply to services furnished after March 1990.''

Section 4118(f)(2)(A) of Pub. L. 101–508 provided that the amendment by that section is effective as if included in the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239.

Section 4118(f)(2)(B) of Pub. L. 101–508 provided that the amendment by that section is effective Jan. 1, 1991.

Amendment by section 4155(c) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4155(e) of Pub. L. 101–508, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6102(e)(3) of Pub. L. 101–239 provided that the amendment made by that section is effective for physicians' services furnished on or after Jan. 1, 1992.

Section 6106(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1990.''

Section 6108(a)(2) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4106(a)(2), Nov. 5, 1990, 104 Stat. 1388–61, provided that:

''(A) Subject to subparagraph (B), the amendments made by paragraph (1) [amending this section] apply to services furnished in 1990 or 1991 which were subject to the first sentence of section 1842(b)(4)(F) of the Social Security Act [subsec. (b)(4)(F) of this section] in 1989 or 1990.

''(B) The amendments made by paragraph (1) shall not apply to services furnished in 1990 before April 1, 1990. With respect to physicians' services furnished during 1990 on and after April 1, such amendments shall be applied as though any reference, in the matter inserted by such amendments, to the 'first calendar year during which the preceding sentence no longer applies' were deemed a reference to the remainder of 1990.''

Section 6108(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] apply to procedures performed after March 31, 1990.''

Section 6114(f) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply to services furnished on or after April 1, 1990.''

Amendment by section 6202(d)(2) of Pub. L. 101–239 applicable to agreements and contracts entered into or renewed on or after Dec. 19, 1989, see section 6202(d)(3) of Pub. L. 101–239, set out as a note under section 1395h of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Section 301(e) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section and sections 1395m, 1395cc, 1395*ll*, and 1395ww of this title, enacting provisions set out as notes under section 1395m of this title, and repealing provisions set out as notes under sections 1395b, 1395b–1, 1395b–2, and 1395h of this title and section 8902 of Title 5, Government Organization and Employees] (other than subsections (c) and (d) [amending this section and sections 1395m, 1395cc, 1395*ll*, and 1395ww of this title and enacting provisions set out as a note under section 1395m of this title]) shall take effect January 1, 1990, except that—

''(1) the repeal of section 421 of MCCA [Pub. L. 100–360, set out as a note under section 1395b of this title] shall not apply to duplicative part A benefits for periods before January 1, 1990, and

''(2) the amendments made by subsection (b) [amending this section and sections 1395m, 1395cc, 1395*ll*, and 1395ww of this title] shall take effect on the date of the enactment of this Act [Dec. 13, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 202(m) of Pub. L. 100–360, as amended by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981, provided that:

''(1) [Repealed. Prior to repeal by Pub. L. 101–234, par. (1) read as follows: 'IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 1395w–3 of this title and amending this section and sections 1320a–7a, 1395*l*, 1395m, 1395x, 1395y, 1395cc, 1395mm, and 1396b of this title] shall apply to items dispensed on or after January 1, 1990.']

''(2) [Repealed. Prior to repeal by Pub. L. 101–234, par. (2) read as follows: 'CARRIERS.—The amendments made by subsection (e) [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988]; except that the amendments made by subsection (e)(5) [amending this section] shall take effect on January 1, 1991, but shall not be construed as requiring payment before February 1, 1991.']

''(3) [Repealed. Prior to repeal by Pub. L. 101–234, par. (3) read as follows: 'HMO/CMP ENROLLMENTS.—The amendment made by subsection (f) [amending section 1395mm of this title] shall apply to enrollments effected on or after January 1, 1990.']

''(4) DIAGNOSTIC CODING.—The amendment made by subsection (g) [amending this section] shall apply to services furnished after March 31, 1989.

''(5) [Repealed. Prior to repeal by Pub. L. 101–234, par. (5) read as follows: 'TRANSITION.—With respect to administrative expenses (and costs of the Prescription Drug Payment Review Commission) for periods before January 1, 1990, amounts otherwise payable from the

Federal Catastrophic Drug Insurance Trust Fund shall be payable from the Federal Supplementary Medical Insurance Trust Fund and shall also be treated as a debit to the Medicare Catastrophic Coverage Account.']."

[Amendment of section 202(m) of Pub. L. 100–360, set out above, effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as an Effective Date of 1989 Amendment note under section 1320a–7a of this title.]

Section 223(d)(2), (3) of Pub. L. 100–360 provided that:

"(2) The amendments made by subsection (b) [amending this section] shall apply to annual notices beginning with 1989.

"(3) The amendments made by subsection (c) [amending this section] shall first apply to explanations of benefits provided for items and services furnished on or after January 1, 1989."

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(a)(3)(A), (C)(i), (f)(1)(A), (B), (2)–(4)(C), (5), (6)(B), (7), (9), (11)(A), (14), (g)(2)(A)–(C), (i)(1)(A), (2), (4)(C)(vi), and (j)(4)(A) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4031(a)(2) of Pub. L. 100–203 applicable to claims received on or after July 1, 1988, see section 4031(a)(3)(A) of Pub. L. 100–203, set out as a note under section 1395h of this title.

Amendment by section 4035(a)(2) of Pub. L. 100–203 effective Dec. 22, 1987, and applicable to budgets for fiscal years beginning with fiscal year 1989, see section 4035(a)(3) of Pub. L. 100–203, set out as a note under section 1395h of this title.

Section 4044(b) of Pub. L. 100–203 provided that: "The amendments made by subsection (a) [amending this section] shall apply to payment for physicians' services furnished on or after January 1, 1989."

Section 4045(d) of Pub. L. 100–203 provided that: "The amendments made by this section [amending this section and sections 1395*l* and 1395w–1 of this title and amending provisions set out below] shall apply to items and services furnished on or after April 1, 1988, except the amendment made by subsection (c)(2)(B) [amending this section] shall apply to services furnished on or after January 1, 1988."

Section 4046(b) of Pub. L. 100–203 provided that: "The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1988."

Section 4047(b) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(f)(6)(C), July 1, 1988, 102 Stat. 779, provided that: "The amendment made by subsection (a) [amending this section] shall apply to physicians who first furnish services to medicare beneficiaries on or after April 1, 1988."

Section 4051(c) of Pub. L. 100–203 provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply to diagnostic tests performed on or after April 1, 1988.

"(2) The Secretary of Health and Human Services shall complete the review and make an appropriate adjustment of prevailing charge levels under subsection (b) [set out below] for items and services furnished no later than January 1, 1989."

Section 4053(b), formerly § 4052(b), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(f)(11)(B), (14), July 1, 1988, 102 Stat. 781, provided that: "The amendment made by subsection (a) [amending this section] shall apply to payment for services furnished on or after April 1, 1988."

Section 4054(c), formerly § 4053(c), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(f)(14), July 1, 1988, 102 Stat. 781, provided that: "The amendment made by subsection (a) [amending this section] shall apply to charges imposed for services furnished on or after April 1, 1988."

Amendment by section 4063(a) of Pub. L. 100–203 applicable to items furnished on or after July 1, 1988, see section 4063(c) of Pub. L. 100–203, set out as a note under section 1395(*l*) of this title.

Section 4081(c)(1) of Pub. L. 100–203 provided that: "The amendment made by subsection (a) [amending this section] shall apply to contracts with carriers for claims for items and services furnished by participating physicians and suppliers on or after January 1, 1989."

Section 4082(e)(3) of Pub. L. 100–203 provided that: "The amendments made by subsection (c) [amending this section] shall apply to evaluation of performance of carriers under contracts entered into or renewed on or after October 1, 1988."

Section 4085(g)(2) of Pub. L. 100–203 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective as if included in section 9307(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272]."

Section 4085(i)(7) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Amendment by section 4096(a)(1) of Pub. L. 100–203 applicable to services furnished on or after Jan. 1, 1988, see section 4096(d) of Pub. L. 100–203, set out as a note under section 1320c–3 of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(16)(B) of Pub. L. 99–514 provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to claims presented after the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1895(b)(14)(A), (15) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9307(c)(2) of Pub. L. 99–509 provided that the amendment made by section 9307(c)(2)(A) of Pub. L. 99–509 [amending directory language of section 1895(b)(14)(A)(ii) of Pub. L. 99–514 which amended this section] is effective as if included in the enactment of the Tax Reform Act of 1986, Pub. L. 99–514.

Amendment by section 9311(c) of Pub. L. 99–509 applicable to claims received on or after Nov. 1, 1986, with subsec. (c)(2)(C) of this section applicable to claims received on or after Apr. 1, 1987, see section 9311(d) of Pub. L. 99–509, set out as a note under section 1395h of this title.

Amendment by section 9320(e)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9331(a)(4) of Pub. L. 99–509 provided that: "The amendments made by this subsection [amending this section] shall apply to services furnished on or after January 1, 1987."

Section 9331(b)(4) of Pub. L. 99–509 provided that: "The amendments made by this subsection [amending this section] shall apply to services furnished on or after January 1, 1987."

Section 9331(c)(3)(B) of Pub. L. 99–509 provided that: "The amendments made by subparagraph (A) [amending this section] shall apply to physicians' services furnished on or after January 1, 1988."

Section 9332(a)(4)(A) of Pub. L. 99–509 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective for contracts under section 1842 of the Social Security Act [this section] as of October 1, 1987."

Section 9332(b)(3) of Pub. L. 99–509 provided that: ''The amendments made by this paragraph [probably means 'this subsection' which amended this section] shall first apply to directories for 1987.''

Section 9332(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after October 1, 1987.''

Section 9332(d)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to surgical procedures performed on or after October 1, 1987.''

Section 9333(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9334(c) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after January 1, 1987.''

Amendment by section 9338(b), (c) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1987, see section 9338(f) of Pub. L. 99–509 set out as a note under section 1395x of this title.

Amendment by section 9341(a)(2) of Pub. L. 99–509 applicable to items and services furnished on or after Jan. 1, 1987, see section 9341(b) of Pub. L. 99–509, set out as a note under section 1395ff of this title.

Section 9219(b)(1)(D) of Pub. L. 99–272 provided that: ''The amendments made by this paragraph [amending this section and sections 1395x and 1395yy of this title] shall be effective as if they had been originally included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

Section 9219(b)(2)(B) of Pub. L. 99–272 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as if it had been originally included in Public Law 98–617.''

Section 9301(b)(4) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [amending this section and enacting provisions set out as a note under this section] shall apply to services furnished on or after May 1, 1986.''

Section 9301(c)(5) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(14)(B), Oct. 22, 1986, 100 Stat. 2934, provided that: ''Section 1842(h)(7) of the Social Security Act [subsec. (h)(7) of this section], as added by paragraph (4) of this subsection, shall apply to explanations of benefits provided on or after such date (not later than October 1, 1986) as the Secretary of Health and Human Services shall specify.''

Section 9301(d)(4) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [amending this section and enacting provisions set out as a note under this section] shall apply to items and services furnished on or after October 1, 1986.''

Section 9306(b) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply to items and services furnished on or after April 1, 1986.''

Amendment by section 9307(c) of Pub. L. 99–272 applicable to services performed on or after April 1, 1986, see section 9307(e) of Pub. L. 99–272, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2303(e) of Pub. L. 98–369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(1), (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2306(b)(2) of Pub. L. 98–369 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to items and services furnished on or after October 1, 1985.''

Section 2307(a)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section] shall apply to services furnished on or after July 1, 1984.''

Amendment by section 2326(d)(2) of Pub. L. 98–369 applicable to agreements and contracts entered into or renewed after Sept. 30, 1984, see section 2326(d)(3) of Pub. L. 98–369, set out as a note under section 1395h of this title.

Amendment by section 2354(b)(13), (14) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(iv) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 104(b) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 309(a)(2), Jan. 12, 1983, 96 Stat. 2408, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after October 1, 1982.''

Section 113(b)(1) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] is effective with respect to services performed on or after October 1, 1982.''

Amendment by section 128(d)(1) of Pub. L. 97–248 effective Sept. 3, 1982, see section 128(e)(3) of Pub. L. 97–248, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 918(a)(2) of Pub. L. 96–499 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to bills submitted and requests for payment made on or after such date (not later than April 1, 1981) as the Secretary of Health and Human Services prescribes by a notice published in the Federal Register.''

Section 946(c) of Pub. L. 96–499 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective with respect to bills submitted or requests for payment made on or after July 1, 1981.''

Section 948(c)(2) of Pub. L. 96–499 provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to cost accounting periods beginning on or after January 1, 1981.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–216 effective in the case of items and services furnished after Dec. 20, 1977, see section 501(c) of Pub. L. 95–216, set out as a note under section 1395x of this title.

Amendment by Pub. L. 95–142 applicable with respect to care and services furnished on or after Oct. 25, 1977, see section 2(a)(4) of Pub. L. 95–142, set out as a note under section 1395g of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 4 of Pub. L. 94–368 provided that: ''The amendments made by sections 2 and 3 of this Act [amending this section and provisions set out as a note under section 390e of Title 7, Agriculture] shall be effective with respect to periods beginning after June 30, 1976; except that, for the twelve-month period beginning July 1, 1976, the amendments made by section 3 [amending this section and provisions set out as a note under section 390e of Title 7, Agriculture] shall be applicable with respect to claims filed under part B of title XVIII of the Social Security Act [this part] (after

June 30, 1976, and before July 1, 1977) with a carrier designated pursuant to section 1842 of such Act [this section], and processed by such carrier after the appropriate changes were made pursuant to such section 3 in the prevailing charge levels for such twelve-month period under the third and fourth sentences of section 1842(b)(3) of the Social Security Act [subsec. (b)(3) of this section].''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 211(c)(3) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 227(e)(3) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 236(c) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to bills submitted and requests for payments made after the date of the enactment of this Act [Oct. 30, 1972]. The amendments made by subsection (b) [amending section 1396a of this title] shall be effective January 1, 1973 (or earlier if the State plan so provides).''

Section 258(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to bills submitted and requests for payment made after March 1968.''

Section 262(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to hearings requested (under the procedures established under section 1842(b)(3)(C) of the Social Security Act [subsec. (b)(3)(C) of this section]) after the date of the enactment of this Act [Oct. 30, 1972].''

Amendment by section 263(d)(5) of Pub. L. 92–603 with respect to collection of premiums applicable to premiums becoming due and payable after the fourth month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 263(f) of Pub. L. 92–603, set out as a note under section 1395s of this title.

Amendment by section 281(d) of Pub. L. 92–603 to apply in the case of notices sent to individuals after 1968, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 125(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to claims on which a final determination has not been made on or before the date of enactment of this Act [Jan. 2, 1968].''

TRANSFER OF FUNCTIONS

Physician Payment Review Commission (PPRC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title. Section 4022(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by PPRC, and that, for that purpose, any reference in law to PPRC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.

LINKAGE OF REVISED DRUG PAYMENTS AND INCREASES FOR DRUG ADMINISTRATION

Pub. L. 108–173, title III, § 303(f), Dec. 8, 2003, 117 Stat. 2253, provided that: ''The Secretary [of Health and Human Services] shall not implement the revisions in payment amounts for drugs and biologicals administered by physicians as a result of the amendments made by subsection (b) [amending this section] with respect to 2004 unless the Secretary concurrently makes adjustments to the practice expense payment adjustment under the amendments made by subsection (a) [amending section 1395w–4 of this title].''

CONTINUATION OF PAYMENT METHODOLOGY FOR RADIOPHARMACEUTICALS

Pub. L. 108–173, title III, § 303(h), Dec. 8, 2003, 117 Stat. 2253, provided that: ''Nothing in the amendments made by this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395*l*, 1395w–4, 1395x, 1395y, and 1396r–8 of this title, and repealing provisions set out as a note under this section] shall be construed as changing the payment methodology under part B of title XVIII of the Social Security Act [this part] for radiopharmaceuticals, including the use by carriers of invoice pricing methodology.''

IMPLEMENTATION OF 2003 AMENDMENT

Pub. L. 108–173, title III, § 303(i)(5), Dec. 8, 2003, 117 Stat. 2255, provided that: ''The provisions of chapter 8 of title 5, United States Code, shall not apply with respect to regulations implementing the amendments made by subsections (a), (b), and (e)(3) [sic] [amending this section and section 1395w–4 of this title], to regulations implementing section 304 [set out as a note under this section], and to regulations implementing the amendment made by section 305(a) [amending this section], insofar as such regulations apply in 2004.''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Pub. L. 108–173, title III, § 303(j), Dec. 8, 2003, 117 Stat. 2255, provided that: ''Insofar as the amendments made by this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395*l*, 1395w–4, 1395x, 1395y, and 1396r–8 of this title, and repealing provisions set out as a note under this section] apply to payments for drugs or biologicals and drug administration services furnished by physicians, such amendments shall only apply to physicians in the specialties of hematology, hematology/oncology, and medical oncology under title XVIII of the Social Security Act [this subchapter].''

Pub. L. 108–173, title III, § 304, Dec. 8, 2003, 117 Stat. 2255, provided that: ''Notwithstanding section 303(j) [set out above], the amendments made by section 303 [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395*l*, 1395w–4, 1395x, 1395y, and 1396r–8 of this title, and repealing provisions set out as a note under this section] shall also apply to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology.''

ISSUANCE OF TEMPORARY NATIONAL CODES

Pub. L. 108–173, title VII, § 731(c), Dec. 8, 2003, 117 Stat. 2351, provided that: ''Not later than July 1, 2004, the Secretary [of Health and Human Services] shall implement revised procedures for the issuance of temporary national HCPCS codes under part B of title XVIII of the Social Security Act [this part].''

REVISED PART B PAYMENT FOR DRUGS AND BIOLOGICALS AND RELATED SERVICES

Pub. L. 106–554, § 1(a)(6) [title IV, § 429], Dec. 21, 2000, 114 Stat. 2763, 2763A–522, provided that:

''(a) RECOMMENDATIONS FOR REVISED PAYMENT METHODOLOGY FOR DRUGS AND BIOLOGICALS.—

''(1) STUDY.—

''(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the reimbursement for drugs and biologicals under the current medicare payment methodology (provided under section 1842(*o*) of the Social Security Act (42

U.S.C. 1395u(*o*))) and for related services under part B of title XVIII of such Act [this part]. In the study, the Comptroller General shall—

''(i) identify the average prices at which such drugs and biologicals are acquired by physicians and other suppliers;

''(ii) quantify the difference between such average prices and the reimbursement amount under such section; and

''(iii) determine the extent to which (if any) payment under such part is adequate to compensate physicians, providers of services, or other suppliers of such drugs and biologicals for costs incurred in the administration, handling, or storage of such drugs or biologicals.

''(B) CONSULTATION.—In conducting the study under subparagraph (A), the Comptroller General shall consult with physicians, providers of services, and suppliers of drugs and biologicals under the medicare program under title XVIII of such Act [this subchapter], as well as other organizations involved in the distribution of such drugs and biologicals to such physicians, providers of services, and suppliers.

''(2) REPORT.—Not later than 9 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress and to the Secretary of Health and Human Services a report on the study conducted under this subsection, and shall include in such report recommendations for revised payment methodologies described in paragraph (3).

''(3) RECOMMENDATIONS FOR REVISED PAYMENT METHODOLOGIES.—

''(A) IN GENERAL.—The Comptroller General shall provide specific recommendations for revised payment methodologies for reimbursement for drugs and biologicals and for related services under the medicare program. The Comptroller General may include in the recommendations—

''(i) proposals to make adjustments under subsection (c) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for the practice expense component of the physician fee schedule under such section for the costs incurred in the administration, handling, or storage of certain categories of such drugs and biologicals, if appropriate; and

''(ii) proposals for new payments to providers of services or suppliers for such costs, if appropriate.

''(B) ENSURING PATIENT ACCESS TO CARE.—In making recommendations under this paragraph, the Comptroller General shall ensure that any proposed revised payment methodology is designed to ensure that medicare beneficiaries continue to have appropriate access to health care services under the medicare program.

''(C) MATTERS CONSIDERED.—In making recommendations under this paragraph, the Comptroller General shall consider—

''(i) the method and amount of reimbursement for similar drugs and biologicals made by large group health plans;

''(ii) as a result of any revised payment methodology, the potential for patients to receive inpatient or outpatient hospital services in lieu of services in a physician's office; and

''(iii) the effect of any revised payment methodology on the delivery of drug therapies by hospital outpatient departments.

''(D) COORDINATION WITH BBRA STUDY.—In making recommendations under this paragraph, the Comptroller General shall conclude and take into account the results of the study provided for under section 213(a) of BBRA [Pub. L. 106–113, § 1000(a)(6) [title II, § 213(a)], set out as a note under section 1395*l* of this title] (113 Stat. 1501A–350).

''(b) IMPLEMENTATION OF NEW PAYMENT METHODOLOGY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, based on the recommendations contained in the report under subsection (a), the Secretary of Health and Human Services, subject to paragraph (2), shall revise the payment methodology under section 1842(*o*) of the Social Security Act (42 U.S.C. 1395u(*o*)) for drugs and biologicals furnished under part B of the medicare program [this part]. To the extent the Secretary determines appropriate, the Secretary may provide for the adjustments to payments amounts referred to in subsection (a)(3)(A)(i) or additional payments referred to in subsection (a)(2)(A)(ii).

''(2) LIMITATION.—In revising the payment methodology under paragraph (1), in no case may the estimated aggregate payments for drugs and biologicals under the revised system (including additional payments referred to in subsection (a)(3)(A)(ii)) exceed the aggregate amount of payment for such drugs and biologicals, as projected by the Secretary, that would have been made under the payment methodology in effect under such section 1842(*o*).

''(c) MORATORIUM ON DECREASES IN PAYMENT RATES.—Notwithstanding any other provision of law, effective for drugs and biologicals furnished on or after January 1, 2001, the Secretary may not directly or indirectly decrease the rates of reimbursement (in effect as of such date) for drugs and biologicals under the current medicare payment methodology (provided under section 1842(*o*) of the Social Security Act (42 U.S.C. 1395u(*o*))) until such time as the Secretary has reviewed the report submitted under subsection (a)(2).''

IMPLEMENTATION OF INHERENT REASONABLENESS (IR) AUTHORITY

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 223(a), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352, 1501A–353, provided that:

''(a) LIMITATION ON USE.—The Secretary of Health and Human Services may not use, or permit fiscal intermediaries or carriers to use, the inherent reasonableness authority provided under section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) until after—

''(1) the Comptroller General of the United States releases a report pursuant to the request for such a report made on March 1, 1999, regarding the impact of the Secretary's, fiscal intermediaries', and carriers' use of such authority; and

''(2) the Secretary has published a notice of final rulemaking in the Federal Register that relates to such authority and that responds to such report and to comments received in response to the Secretary's interim final regulation relating to such authority that was published in the Federal Register on January 7, 1998.

''(b) REEVALUATION OF IR CRITERIA.—In promulgating the final regulation under subsection (a)(2), the Secretary shall—

''(1) reevaluate the appropriateness of the criteria included in such interim final regulation for identifying payments which are excessive or deficient; and

''(2) take appropriate steps to ensure the use of valid and reliable data when exercising such authority.''

INITIAL BUDGET NEUTRALITY

Section 4315(d) of Pub. L. 105–33 provided that: ''The Secretary, in developing a fee schedule for particular services (under the amendments made by this section [amending this section and section 1395*l* of this title]), shall set amounts for the first year period to which the fee schedule applies at a level so that the total payments under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for those services for that year period shall be approximately equal to the estimated total payments if such fee schedule had not been implemented.''

IMPROVEMENTS IN ADMINISTRATION OF LABORATORY TESTS BENEFIT

Section 4554 of Pub. L. 105–33 provided that:

''(a) SELECTION OF REGIONAL CARRIERS.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall—

''(A) divide the United States into no more than 5 regions, and

''(B) designate a single carrier for each such region, for the purpose of payment of claims under part B of title XVIII of the Social Security Act [this part] with respect to clinical diagnostic laboratory tests furnished on or after such date (not later than July 1, 1999) as the Secretary specifies.

''(2) DESIGNATION.—In designating such carriers, the Secretary shall consider, among other criteria—

''(A) a carrier's timeliness, quality, and experience in claims processing, and

''(B) a carrier's capacity to conduct electronic data interchange with laboratories and data matches with other carriers.

''(3) SINGLE DATA RESOURCE.—The Secretary shall select one of the designated carriers to serve as a central statistical resource for all claims information relating to such clinical diagnostic laboratory tests handled by all the designated carriers under such part.

''(4) ALLOCATION OF CLAIMS.—The allocation of claims for clinical diagnostic laboratory tests to particular designated carriers shall be based on whether a carrier serves the geographic area where the laboratory specimen was collected or other method specified by the Secretary.

''(5) SECRETARIAL EXCLUSION.—Paragraph (1) shall not apply with respect to clinical diagnostic laboratory tests furnished by physician office laboratories if the Secretary determines that such offices would be unduly burdened by the application of billing responsibilities with respect to more than one carrier.

''(b) ADOPTION OF NATIONAL POLICIES FOR CLINICAL LABORATORY TESTS BENEFIT.—

''(1) IN GENERAL.—Not later than January 1, 1999, the Secretary shall first adopt, consistent with paragraph (2), national coverage and administrative policies for clinical diagnostic laboratory tests under part B of title XVIII of the Social Security Act [this part], using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code.

''(2) CONSIDERATIONS IN DESIGN OF NATIONAL POLICIES.—The policies under paragraph (1) shall be designed to promote program integrity and national uniformity and simplify administrative requirements with respect to clinical diagnostic laboratory tests payable under such part in connection with the following:

''(A) Beneficiary information required to be submitted with each claim or order for laboratory tests.

''(B) The medical conditions for which a laboratory test is reasonable and necessary (within the meaning of section 1862(a)(1)(A) of the Social Security Act [section 1395y(a)(1)(A) of this title]).

''(C) The appropriate use of procedure codes in billing for a laboratory test, including the unbundling of laboratory services.

''(D) The medical documentation that is required by a medicare contractor at the time a claim is submitted for a laboratory test in accordance with section 1833(e) of the Social Security Act [section 1395*l*(e) of this title].

''(E) Recordkeeping requirements in addition to any information required to be submitted with a claim, including physicians' obligations regarding such requirements.

''(F) Procedures for filing claims and for providing remittances by electronic media.

''(G) Limitation on frequency of coverage for the same tests performed on the same individual.

''(3) CHANGES IN LABORATORY POLICIES PENDING ADOPTION OF NATIONAL POLICY.—During the period that begins on the date of the enactment of this Act [Aug. 5, 1997] and ends on the date the Secretary first implements national policies pursuant to regulations promulgated under this subsection, a carrier under such part may implement changes relating to requirements for the submission of a claim for clinical diagnostic laboratory tests.

''(4) USE OF INTERIM POLICIES.—After the date the Secretary first implements such national policies, the Secretary shall permit any carrier to develop and implement interim policies of the type described in paragraph (1), in accordance with guidelines established by the Secretary, in cases in which a uniform national policy has not been established under this subsection and there is a demonstrated need for a policy to respond to aberrant utilization or provision of unnecessary tests. Except as the Secretary specifically permits, no policy shall be implemented under this paragraph for a period of longer than 2 years.

''(5) INTERIM NATIONAL POLICIES.—After the date the Secretary first designates regional carriers under subsection (a), the Secretary shall establish a process under which designated carriers can collectively develop and implement interim national policies of the type described in paragraph (1). No such policy shall be implemented under this paragraph for a period of longer than 2 years.

''(6) BIENNIAL REVIEW PROCESS.—Not less often than once every 2 years, the Secretary shall solicit and review comments regarding changes in the national policies established under this subsection. As part of such biennial review process, the Secretary shall specifically review and consider whether to incorporate or supersede interim policies developed under paragraph (4) or (5). Based upon such review, the Secretary may provide for appropriate changes in the national policies previously adopted under this subsection.

''(7) REQUIREMENT AND NOTICE.—The Secretary shall ensure that any policies adopted under paragraph (3), (4), or (5) shall apply to all laboratory claims payable under part B of title XVIII of the Social Security Act [this part], and shall provide for advance notice to interested parties and a 45-day period in which such parties may submit comments on the proposed change.

''(c) INCLUSION OF LABORATORY REPRESENTATIVE ON CARRIER ADVISORY COMMITTEES.—The Secretary shall direct that any advisory committee established by a carrier to advise such carrier with respect to coverage and administrative policies under part B of title XVIII of the Social Security Act [this part] shall include an individual to represent the independent clinical laboratories and such other laboratories as the Secretary deems appropriate. The Secretary shall consider recommendations from national and local organizations that represent independent clinical laboratories in such selection.''

WHOLESALE PRICE STUDY AND REPORT

Pub. L. 105–33, title IV, § 4556(c), Aug. 5, 1997, 111 Stat. 463, which directed the Secretary of Health and Human Services to study the effect on the average wholesale price of drugs and biologicals of the amendments to this section by section 4556(a) of Pub. L. 105–33, and to report to Congress the result of such study not later than July 1, 1999, was repealed by Pub. L. 108–173, title III, § 303(i)(6), Dec. 8, 2003, 117 Stat. 2255.

BUDGET NEUTRALITY ADJUSTMENT

Section 13515(b) of Pub. L. 103–66 provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services shall reduce the following values and amounts for 1994 (to be applied for that year and subsequent years) by such uniform percentage as the Secretary determines to be required to assure that the amendments made by subsection (a) [amending this section and section 1395w–4 of this title] will not result in expenditures under part B of title XVIII of the Social Security Act [this part] in 1994 that ex-

ceed the amount of such expenditures that would have been made if such amendments had not been made:

''(1) The relative values established under section 1848(c) of such Act [section 1395w–4(c) of this title] for services (other than anesthesia services) and, in the case of anesthesia services, the conversion factor established under section 1848 of such Act for such services.

''(2) The amounts determined under section 1848(a)(2)(B)(ii)(I) of such Act.

''(3) The prevailing charges or fee schedule amounts to be applied under such part for services of a health care practitioner (as defined in section 1842(b)(4)(F)(ii)(I) of such Act [subsec. (b)(4)(F)(ii)(I) of this section], as in effect before the date of the enactment of this Act [Aug. 10, 1993]).''

PROCEDURE CODES

Section 4101(b)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(a)(2), Oct. 31, 1994, 108 Stat. 4414, provided that: ''In applying section 1842(b)(16)(B) of the Social Security Act [subsec. (b)(16)(B) of this section]:

''(A) The codes for the procedures specified in clause (ii) are as follows: Hospital inpatient medical services (HCPCS codes 90200 through 90292), consultations (HCPCS codes 90600 through 90654), other visits (HCPCS code 90699), preventive medicine visits (HCPCS codes 90750 through 90764), psychiatric services (HCPCS codes 90801 through 90862), emergency care facility services (HCPCS codes 99062 through 99065), and critical care services (HCPCS codes 99160 through 99174).

''(B) The codes for the procedures specified in clause (iii) are as follows: Partial mastectomy (HCPCS code 19160); tendon sheath injections and small joint arthrocentesis (HCPCS codes 20550, 20600, 20605, and 20610); femoral fracture and trochanteric fracture treatments (HCPCS codes 27230, 27232, 27234, 27238, 27240, 27242, 27246, and 27248); endotracheal intubation (HCPCS code 31500); thoracentesis (HCPCS code 32000); thoracostomy (HCPCS codes 32020, 32035, and 32036); aneurysm repair (HCPCS codes 35111); cystourethroscopy (HCPCS code 52340); transurethral fulguration and resection (HCPCS codes 52606 and 52620); tympanoplasty with mastoidectomy (HCPCS code 69645); and ophthalmoscopy (HCPCS codes 92250 and 92260).''

STUDY OF RELEASE OF PREPAYMENT MEDICAL REVIEW SCREEN PARAMETERS

Section 4111 of Pub. L. 101–508 directed Secretary of Health and Human Services to conduct a study of effect of release of medicare prepayment medical review screen parameters on physician billings for services to which the parameters apply, such study to be based upon the release of the screen parameters at a minimum of six carriers, with Secretary to report results of study to Congress not later than Oct. 1, 1992.

FREEZE IN CHARGES FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT

Section 13541 of Pub. L. 103–66 provided that: ''In determining the amount of payment under part B of title XVIII of the Social Security Act [this part] with respect to parenteral and enteral nutrients, supplies, and equipment during 1994 and 1995, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1993.''

Section 4152(d) of Pub. L. 101–508 provided that: ''In determining the amount of payment under part B of title XVIII of the Social Security Act [this part] for enteral and parenteral nutrients, supplies, and equipment furnished during 1991, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such items for 1990.''

PROHIBITION ON REGULATIONS CHANGING COVERAGE OF CONVENTIONAL EYEWEAR

Section 4153(b)(1) of Pub. L. 101–508 provided that:

''(A) Notwithstanding any other provision of law (except as provided in subparagraph (B)) the Secretary of Health and Human Services (referred to in this subsection as the 'Secretary') may not issue any regulation that changes the coverage of conventional eyewear furnished to individuals (enrolled under part B of title XVIII of the Social Security Act [this part]) following cataract surgery with insertion of an intraocular lens.

''(B) Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing the amendments made by paragraph (2).''

DIRECTORY OF UNIQUE PHYSICIAN IDENTIFIER NUMBERS

Section 4164(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §147(f)(7)(B), Oct. 31, 1994, 108 Stat. 4432, provided that: ''Not later than March 31, 1991, the Secretary of Health and Human Services shall publish, and shall periodically update, a directory of the unique physician identification numbers of all physicians providing services for which payment may be made under part B of title XVIII of the Social Security Act [this part], and shall include in such directory the names, provider numbers, and billing addressess [sic] of all listed physicians.''

TREATMENT OF CERTAIN EYE EXAMINATION VISITS AS PRIMARY CARE SERVICES

Section 6102(e)(10) of Pub. L. 101–239 provided that: ''In applying section 1842(i)(4) of the Social Security Act [subsec. (i)(4) of this section] for services furnished on or after January 1, 1990, intermediate and comprehensive office visits for eye examinations and treatments (codes 92002 and 92004) shall be considered to be primary care services.''

DELAY IN UPDATE UNTIL APRIL 1, 1990, AND REDUCTION IN PERCENTAGE INCREASE IN MEDICARE ECONOMIC INDEX

Section 6107(a) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Subject to the amendments made by this section [amending this section], any increase or adjustment in customary, prevailing, or reasonable charges, fee schedule amounts, maximum allowable actual charges, and other limits on actual charges with respect to physicians' services and other items and services described in paragraph (2) under part B of title XVIII of the Social Security Act [this part] which would otherwise occur as of January 1, 1990, shall be delayed so as to occur as of April 1, 1990, and, notwithstanding any other provision of law, the amount of payment under such part for such items and services which are furnished during the period beginning on January 1, 1990, and ending on March 31, 1990, shall be determined on the same basis as the amount of payment for such services furnished on December 31, 1989.

''(2) ITEMS AND SERVICES COVERED.—The items and services described in this paragraph are items and services (other than ambulance services and clinical diagnostic laboratory services) for which payment is made under part B of title XVIII of the Social Security Act on the basis of a reasonable charge or a fee schedule.

''(3) EXTENSION OF PARTICIPATION AGREEMENTS AND RELATED PROVISIONS.—Notwithstanding any other provision of law—

''(A) subject to the last sentence of this paragraph, each participation agreement in effect on December 31, 1989, under section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section] shall remain in effect for the 3-month period beginning on January 1, 1990;

''(B) the effective period for such agreements under such section entered into for 1990 shall be the 9-month period beginning on April 1, 1990, and the Secretary of Health and Human Services shall provide an opportunity for physicians and suppliers to enroll as participating physicians and suppliers before April 1, 1990;

''(C) instead of publishing, under section 1842(h)(4) of the Social Security Act [subsec. (h)(4) of this section], at the beginning of 1990, directories of participating physicians and suppliers for 1990, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1990, of such directories of participating physicians and suppliers for such period; and

''(D) instead of providing to nonparticipating physicians under section 1842(b)(3)(G) of the Social Security Act [subsec. (b)(3)(G) of this section] at the beginning of 1990, a list of maximum allowable actual charges for 1990, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1990, such physicians such a list for such 9-month period.

An agreement with a participating physician or supplier described in subparagraph (A) in effect on December 31, 1989, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician or supplier requests on or before December 31, 1989, that the agreement be terminated.''

STATE DEMONSTRATION PROJECTS ON APPLICATION OF LIMITATION ON VISITS PER MONTH PER RESIDENT ON AGGREGATE BASIS FOR A TEAM

Section 6114(e) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall provide for at least 1 demonstration project under which, in the application of section 1842(b)(2)(C) of the Social Security Act [subsec. (b)(2)(C) of this section] (as added by subsection (c)(2) of this section) in one or more States, the limitation on the number of visits per month per resident would be applied on an average basis over the aggregate total of residents receiving services from members of the team.''

APPLICATION OF DIFFERENT PERFORMANCE STANDARDS FOR ELECTRONIC SYSTEM FOR COVERED OUTPATIENT DRUGS

Section 202(e)(3)(B) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(5)(E), Oct. 13, 1988, 102 Stat. 2414, which required Secretary of Health and Human Services, before entering into contracts under section 1395u of this title with respect to implementation and operation of electronic system for covered outpatient drugs, to establish standards with respect to performance with respect to such activities, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

DELAY IN APPLICATION OF COORDINATION OF BENEFITS WITH PRIVATE HEALTH INSURANCE

Section 202(e)(4)(B) of Pub. L. 100–360, which provided that the provisions of section 1395u(h)(3) of this title not apply to covered outpatient drugs (other than drugs described in section 1395x(s)(2)(J) of this title as of July 1, 1988) dispensed before January 1, 1993, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

EXTENSION OF PHYSICIAN PARTICIPATION AGREEMENTS AND RELATED PROVISIONS

Section 4041(a)(2) of Pub. L. 100–203 provided that: ''Notwithstanding any other provision of law—

''(A) subject to the last sentence of this paragraph, each agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section] shall remain in effect for the 3-month period beginning on January 1, 1988;

''(B) the effective period for agreements under such section entered into for 1988 shall be the nine-month period beginning on April 1, 1988, and the Secretary shall provide an opportunity for physicians to enroll as participating physicians prior to April 1, 1988;

''(C) instead of publishing, under section 1842(h)(4) of the Social Security Act [subsec. (h)(4) of this section] at the beginning of 1988, directories of participating physicians for 1988, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1988, of such directories of participating physicians for such period; and

''(D) instead of providing to nonparticipating physicians, under section 1842(b)(3)(G) of the Social Security Act [subsec. (b)(3)(G) of this section] at the beginning of 1988, a list of maximum allowable actual charges for 1988, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1988, to such physicians such a list for such 9-month period.

An agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician requests on or before December 31, 1987, that the agreement be terminated.''

DEVELOPMENT OF UNIFORM RELATIVE VALUE GUIDE

Section 4048(b) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, § 4118(h)(1), Nov. 5, 1990, 104 Stat. 1388–70, provided that: ''The Secretary of Health and Human Services, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all carrier localities in making payment for physician anesthesia services furnished under part B of title XVIII of the Social Security Act [this part] on and after March 1, 1989. Such guide shall be designed so as to result in expenditures under such title [this subchapter] for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.''

[Section 4118(h) of Pub. L. 101–508 provided that the amendment by that section to section 4048(b) of Pub. L. 100–203, set out above, is effective as if included in enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.]

STUDY OF PREVAILING CHARGES FOR ANESTHESIA SERVICES

Section 4048(c) of Pub. L. 100–203, which required Secretary of Health and Human Services to study variations in conversion factors used by carriers under section 1395u(b) of this title to determine prevailing charge for anesthesia services and to report results of study and make recommendations for appropriate adjustments in such factors not later than Jan. 1, 1989, was repealed by Pub. L. 101–508, title IV, § 4118(g)(2), Nov. 5, 1990, 104 Stat. 1388–70.

GAO STUDIES

Section 4048(d) of Pub. L. 100–203 provided that:

''(1) The Comptroller General shall conduct a study—

''(A) to determine the average anesthesia times reported for medicare reimbursement purposes,

''(B) to verify those times from patient medical records,

''(C) to compare anesthesia times to average surgical times, and

''(D) to determine whether the current payments for physician supervision of nurse anesthetists are excessive.

The Comptroller General shall report to Congress, by not later than January 1, 1989, on such study and in the report include recommendations regarding the appropriateness of the anesthesia times recognized by medicare for reimbursement purposes and recommendations regarding adjustments of payments for physician supervision of nurse anesthetists.

''(2) The Comptroller General shall conduct a study on the impact of the amendment made by subsection (a) [amending this section], and shall report to Congress on the results of such study by April 1, 1990.''

ADJUSTMENT IN MEDICARE PREVAILING CHARGES

Section 4051(b) of Pub. L. 100–203 provided that:

''(1) REVIEW.—The Secretary of Health and Human Services shall review payment levels under part B of title XVIII of the Social Security Act [this part] for diagnostic tests (described in section 1861(s)(3) of such Act [section 1935x(s)(3) of this title], but excluding clinical diagnostic laboratory tests) which are commonly performed by independent suppliers, sold as a service to physicians, and billed by such physicians, in order to determine the reasonableness of payment amounts for such tests (and for associated professional services component of such tests). The Secretary may require physicians and suppliers to provide such information on the purchase or sale price (net of any discounts) for such tests as is necessary to complete the review and make the adjustments under this subsection. The Secretary shall also review the reasonableness of payment levels for comparable in-office diagnostic tests.

''(2) ESTABLISHMENT OF REVISED PAYMENT SCREENS.—If, as a result of such review, the Secretary determines, after notice and opportunity of at least 60 days for public comment, that the current prevailing charge levels (under the third and fourth sentences of section 1842(b) of the Social Security Act [subsec. (b) of this section]) for any such tests or associated professional services are excessive, the Secretary shall establish such charge levels at levels which, consistent with assuring that the test is widely and consistently available to medicare beneficiaries, reflect a reasonable price for the test without any markup. Alternatively, the Secretary, pursuant to guidelines published after notice and opportunity of at least 60 days for public comment, may delegate to carriers with contracts under section 1842 of the Social Security Act the establishment of new prevailing charge levels under this paragraph. When such charge levels are established, the provisions of section 1842(j)(1)(D) of such Act shall apply in the same manner as they apply to a reduction under section 1842(b)(8)(A) of such Act.''

ADJUSTMENT FOR MAXIMUM ALLOWABLE ACTUAL CHARGE

Section 4054(b), formerly § 4053(b), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(f)(14), July 1, 1988, 102 Stat. 781, provided that: ''In the case of a physician who did not have actual charges under title XVIII of the Social Security Act [this subchapter] for a procedure in the calendar quarter beginning on April 1, 1984, but who establishes to the satisfaction of a carrier that he or she had actual charges (whether under such title or otherwise) for the procedure performed prior to June 30, 1984, the carrier shall compute the maximum allowable actual charge under section 1842(j) of the Social Security Act [subsec. (j) of this section] for such procedure performed by such physician in 1988 based on such physician's actual charges for the procedure.''

PHYSICIAN PAYMENT STUDIES; DEFINITIONS OF MEDICAL AND SURGICAL PROCEDURES

Section 4056(a), formerly § 4055(a), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(f)(13)(A), (14), July 1, 1988, 102 Stat. 781; Pub. L. 101–508, title IV, § 4118(g)(4), Nov. 5, 1990, 104 Stat. 1388–70, provided that:

''(1) REPORT ON VARIATIONS IN CARRIER PAYMENT PRACTICE.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct a study of variations in payment practices for physicians' services among the different carriers under section 1842 of the Social Security Act [this section]. Such study shall examine carrier variations in the services included in global fees and pre- and post-operative services included in payment for the operation.

''(2) UNIFORM DEFINITIONS OF PROCEDURES FOR PAYMENT PURPOSES.—The Secretary shall develop, in consultation with appropriate national medical specialty societies and by not later than July 1, 1989, uniform definitions of physicians' services (including appropriate classification scheme for procedures) which could serve as the basis for making payments for such services under part B of title XVIII of the Social Security Act [this part]. In developing such definitions, to the extent practicable—

''(A) ancillary services commonly performed in conjunction with a major procedure would be included with the major procedure;

''(B) pre- and post-procedure services would be included in the procedure; and

''(C) similar procedures would be listed together if the procedures are similar in resource requirements.''

PAYMENTS FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS; 1-YEAR FREEZE ON CHARGE LIMITATIONS

Section 4062(a) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—In imposing limitations on allowable charges for items and services (other than physicians' services) furnished in 1988 under part B of title XVIII of such Act [this part] and for which payment is made on the basis of the reasonable charge for the item or service, the Secretary of Health and Human Services shall not impose any limitation at a level higher than the same level as was in effect in December 1987.

''(2) TRANSITION.—The provisions of section 4041(a)(2) (other than subparagraph (D) thereof) of this subtitle [set out as a note above] shall apply to suppliers of items and services described in paragraph (1), and directories of participating suppliers of such items and services, in the same manner as such section applies to physicians furnishing physicians' services, and directories of participating physicians.''

SPECIAL RULE WITH RESPECT TO PAYMENT FOR INTRAOCULAR LENSES

Section 4063(d) of Pub. L. 100–203 provided that: ''With respect to the establishment of a reasonable charge limit under section 1842(b)(11)(C)(ii) of the Social Security Act [subsec. (b)(11)(C)(ii) of this section], in applying section 1842(j)(1)(D)(i) of such Act, the matter beginning with 'plus' shall be considered to have been deleted.''

STUDY ON COST EFFECTIVENESS OF HEARING PRIOR TO HEARING BY ADMINISTRATIVE LAW JUDGE ON CARRIER DETERMINATIONS; REPORT TO CONGRESS

Section 4082(d) of Pub. L. 100–203 provided that: ''The Comptroller General shall conduct a study concerning the cost effectiveness of requiring hearings with a carrier under part B of title XVIII of the Social Security Act [this part] before having a hearing before an administrative law judge respecting carrier determinations under that part. The Comptroller General shall report to the Congress on the results of such study by not later than June 30, 1989.''

CAPACITY TO SET GEOGRAPHIC PAYMENT LIMITS

Section 4085(e) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall develop the capability to implement (for services furnished on or after January 1, 1989) geographic limits on charges and payments under part B of title XVIII of the Social Security Act [this part] for physicians' services based on statewide, regional, or national average (or percentile in a distribution) of prevailing charges or payment amounts (weighted by frequency of services). Any such limits shall take into account adjustments for geographic differences in cost of practice and cost of living.''

UTILIZATION SCREENS FOR PHYSICIAN SERVICES PROVIDED TO PATIENTS IN REHABILITATION HOSPITALS

Section 4114 of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(4), Oct. 31, 1994, 108 Stat. 4416, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall issue guidelines to assure a uniform level of review of physician visits to patients of a rehabilitation hospital or unit

after the medical review screen parameter established under section 4085(h) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203, set out below] has been exceeded.''

Section 4085(h) of Pub. L. 100–203 provided that:

''(1) The Secretary of Health and Human Services shall establish (in consultation with appropriate physician groups, including those representing rehabilitative medicine) a separate utilization screen for physician visits to patients in rehabilitation hospitals and rehabilitative units (and patients in long-term care hospitals receiving rehabilitation services) to be used by carriers under section 1842 of the Social Security Act [this section] in performing functions under subsection (a) of such section related to the utilization practices of physicians in such hospitals and units.

''(2) Not later than 12 months after the date of enactment of this Act [Dec. 22, 1987], the Secretary of Health and Human Services shall take appropriate steps to implement the utilization screen established under paragraph (1).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

AMENDMENTS IN CONTRACTS AND REGULATIONS

The Secretary of Health and Human Services to provide for such timely amendments to contracts under this section, and regulations, to such extent as may be necessary to implement Pub. L. 99–509 on a timely basis, see section 9311(d)(3) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1395h of this title.

MEDICARE ECONOMIC INDEX

Section 9331(c)(1), (2), (4)–(6) of Pub. L. 99–509 provided that:

''(1) FOR 1987.—Notwithstanding any other provision of law, for purposes of part B of title XVIII of the Social Security Act [this part] for physicians' services furnished in 1987, the percentage increase in the MEI (as defined in section 1842(b)(4)(E)(ii) of the Social Security Act [subsec. (b)(4)(E)(ii) of this section]) shall be 3.2 percent.

''(2) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICARE ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the MEI in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.''

''(4) STUDY.—The Secretary shall conduct a study of the extent to which the MEI appropriately and equitably reflects economic changes in the provision of the physicians' services to medicare beneficiaries. In conducting such study the Secretary shall consult with appropriate experts.

''(5) LIMITATION ON CHANGES IN MEI METHODOLOGY.—The Secretary shall not change the methodology (including the basis and elements) used in the MEI from that in effect as of October 1, 1985, until completion of the study under paragraph (4). After the completion of the study, the Secretary may not change such methodology except after providing notice in the Federal Register and opportunity for public comment.

''(6) MEI DEFINED.—In this subsection, the term 'MEI' means the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act [subsec. (b)(3) of this section].''

DEVELOPMENT AND USE OF HCFA COMMON PROCEDURE CODING SYSTEM

Section 9331(d) of Pub. L. 99–509 provided that:

''(1) Not later than July 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary'), after public notice and opportunity for public comment and after consulation [consultation] with appropriate medical and other experts, shall group the procedure codes contained in any HCFA Common Procedure Coding System for payment purposes to minimize inappropriate increases in the intensity or volume of services provided as a result of coding distinctions which do not reflect substantial differences in the services rendered.

''(2) Not later than January 1, 1990, each carrier with which the Secretary has entered into a contract under section 1842 of the Social Security Act [this section] shall make payments under part B of title XVIII of such Act [this part] based on the grouping of procedure codes effected under paragraph (1).''

MEASURING CARRIER PERFORMANCE; CARRIER BONUSES FOR GOOD PERFORMANCE

Section 9332(a)(2), (3) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4085(i)(21)(B), Dec. 22, 1987, 101 Stat. 1330–133, which provided that the Secretary of Health and Human Services was to provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act [subsec. (b)(2) of this section] for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(h) of such Act and that, of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act [this part], the Secretary of Health and Human Services was to provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who were participating physicians or in increasing the proportion of total payments for physicians' services which were payments for such services rendered by participating physicians, was repealed by Pub. L. 100–203, title IV, § 4041(a)(3)(B)(i), Dec. 22, 1987, 101 Stat. 1330–84.

Section 9332(a)(4)(B), (C) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4041(a)(3)(B)(ii), (iii), Dec. 22, 1987, 101 Stat. 1330–84; Pub. L. 100–360, title IV, § 411(f)(1)(C), July 1, 1988, 102 Stat. 776, provided that:

''(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under the last sentence of section 1842(b)(2) of the Social Security Act [subsec. (b)(2) of this section] by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

''(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under section 1842(c)(1)(B) of the Social Security Act [subsec. (c)(1)(B) of this section] not later than September 30, 1988, to reflect performance of carriers during the enrollment period before April 1, 1988.''

REVIEW OF PROCEDURES

Section 9333(c) of Pub. L. 99–509 provided that: ''Not later than October 1, 1987, the Secretary of Health and Human Services shall review the inherent reasonableness of the reasonable charges for at least 10 of the most costly procedures with respect to which payment is made under part B of title XVIII of the Social Security Act [this part] (determined on the basis of the aggregate annual payments under such part with respect to each such procedure).''

RATIFICATION OF REGULATIONS

Section 9334(b) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4045(c)(2)(C), Dec. 22, 1987, 101 Stat. 1330–88, provided that:

''(1) IN GENERAL.—The Congress hereby ratifies the final regulation of the Secretary of Health and Human Services published on page 35693 of volume 51 of the Federal Register on October 7, 1986, relating to reasonable charge payment limits for anesthesia services under the medicare program.

''(2) PATIENT PROTECTIONS.—In the case of any reduction in the reasonable charge for physicians' services effected under the regulation described in paragraph (1), the provisions of section 1842(j)(1)(D) of the Social Security Act [subsec. (j)(1)(D) of this section] (added by the amendment made by subsection (a)(3)) shall apply in the same manner and to the same extent as they apply to a reduction in the reasonable charge for a physicians' service effected under section 1842(b)(8) of such Act.''

PAYMENT FOR PARENTERAL AND ENTERAL NUTRITION SUPPLIES AND EQUIPMENT

Section 9340 of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall apply the sixth sentence of section 1842(b)(3) of the Social Security Act [subsec. (b)(3) of this section] to payment—

''(1) for enteral nutrition nutrients, supplies, and equipment and parenteral nutrition supplies and equipment furnished on or after January 1, 1987, and

''(2) for parenteral nutrition nutrients furnished on or after October 1, 1987.''

REPORTING OF OPD SERVICES USING HCPCS

Section 9343(g) of Pub. L. 99–509 provided that: ''Not later than July 1, 1987, each fiscal intermediary which processes claims under part B of title XVIII of the Social Security Act [this part] shall require hospitals, as a condition of payment for outpatient hospital services under that part, to report claims for payment for such services under such part using a HCFA Common Procedure Coding System.''

PERIOD FOR ENTERING INTO PARTICIPATION AGREEMENTS

Section 9301(b)(3) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall provide, during the month of April 1986, that physicians and suppliers may enter into an agreement under section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section] for the 8-month period beginning May 1, 1986, or terminate such an agreement previously entered into for fiscal year 1986. In the case of a physician or supplier who entered into such an agreement for fiscal year 1986, the physician or supplier shall be deemed to have entered into such agreement for such 8-month period and for each succeeding year unless the physician or supplier terminates such agreement before the beginning of the respective period. At the beginning of such 8-month period, the Secretary shall publish a new directory (described in section 1842(h)(4) of that Act [subsec. (h)(4) of this section], as redesignated by subsection (c)(3)(D) of this section) of participating physicians and suppliers.''

TRANSITIONAL PROVISIONS FOR MEDICARE PART B PAYMENTS

Section 9301(d)(5) of Pub. L. 99–272 provided that: ''Notwithstanding any other provision of law, for purposes of making payment under part B of title XVIII of the Social Security Act [this part], customary and prevailing charges (and the lowest charges determined under the sixth sentence of section 1842(b)(3) of such Act [subsec. (b)(3) of this section]) for items and services furnished during the period beginning on October 1, 1986, and ending on December 31, 1986, shall be determined on the same basis as for items and services furnished on September 30, 1986.''

COMPUTATION OF CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS

Section 9304(b) of Pub. L. 99–272 provided that:

''(1) In applying section 1842(b) of the Social Security Act [subsec. (b) of this section] to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who at anytime during the period beginning on October 31, 1982, and ending on January 31, 1985, was a hospital-compensated physician (as defined in paragraph (3)) but who, as of February 1, 1985, was no longer a hospital-compensated physician, the physician's customary charges shall—

''(A) be based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985, and

''(B) in the case of a physician who was not a participating physician (as defined in section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section]) on September 30, 1985, and who is not such a physician on May 1, 1986, be deflated (to take into account the legislative freeze on actual charges for nonparticipating physicians' services) by multiplying the physician's customary charges by .85.

''(2) In applying section 1842(b) of the Social Security Act [subsec. (b) of this section] to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who during the period beginning on February 1, 1985, and ending on December 31, 1986, changes from being a hospital-compensated physician to not being a hospital-compensated physician, the physician's customary charges shall be determined in the same manner as if the physician were considered to be a new physician.

''(3) In this subsection, the term 'hospital-compensated physician' means, with respect to services furnished to patients of a hospital, a physician who is compensated by the hospital for the furnishing of physicians' services for which payment may be made under this part.''

EXTENSION OF MEDICARE PHYSICIAN PAYMENT PROVISIONS

Period of 15 months referred to in subsec. (j)(1) of this section for monitoring the charges of nonparticipating physicians to be deemed to include the period Oct. 1, 1985, to Mar. 14, 1986, see section 5(b) of Pub. L. 99–107, set out as a note under section 1395ww of this title.

SIMPLIFICATION OF PROCEDURES WITH RESPECT TO CLAIMS AND PAYMENTS FOR CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 2303(h) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall simplify the procedures under section 1842 of the Social Security Act [this section] with respect to claims and payments for clinical diagnostic laboratory tests so as to reduce unnecessary paperwork while assuring that sufficient information is supplied to identify instances of fraud and abuse.''

STUDY OF AMOUNTS BILLED FOR PHYSICIAN SERVICES AND PAID BY CARRIERS UNDER SUBSECTION (b)(7) OF THIS SECTION; REPORT TO CONGRESS

Section 2307(c) of Pub. L. 98–369 directed Comptroller General to conduct a study of the amounts billed for physician services and paid by carriers under subsec. (b)(7) of this section to determine whether such payments were made only where the physician satisfied the requirements of subsec. (b)(7)(A)(i) of this section, and to submit to Congress a report on results of such study not later than 18 months after July 18, 1984.

REPLACEMENT OF AGENCY, ORGANIZATION, OR CARRIER PROCESSING MEDICARE CLAIMS; NUMBER OF AGREEMENTS AND CONTRACTS AUTHORIZED FOR FISCAL YEARS 1985 THROUGH 1993

For provision authorizing two agreements under section 1395h of this title and two contracts under this section for replacement of an agency, organization, or carrier in the lowest 20th percentile, see section 2326(a) of Pub. L. 98–369, as amended, set out as a note under 1395h of this title.

RULES AND REGULATIONS

Section 113(b)(2) of Pub. L. 97–248 provided that: ''The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) before October 1, 1982, as may be necessary to implement the amendment made by subsection (a) [amending this section] on a timely basis. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than January 31, 1983.''

REPORT ON REIMBURSEMENT OF CLINICAL LABORATORIES

Section 918(a)(3) of Pub. L. 96–499 provided that not later than 24 months after an effective date (not later than Apr. 1, 1981) which was to have been prescribed by the Secretary of Health and Human Services, the Secretary was to report to the Congress (A) the proportion of bills and requests for payment submitted (during the 18-month period beginning on such effective date) under this subchapter for laboratory tests which did not identify who performed the tests, (B) the proportion of bills and requests for payment submitted during such period for laboratory tests with respect to which the amount paid under this subchapter was less than the amount that would otherwise have been payable in the absence of subsec. (h) of this section, (C) with respect to requests for payment described in subparagraph (B) which were submitted by patients, the average additional cost per laboratory test to patients resulting from reductions in payment that would otherwise have been made for such tests in the absence of such subsec. (h), and (D) with respect to bills described in subparagraph (B) which were submitted by physicians, the average reduction in payment per laboratory test to physicians resulting from the application of such subsec. (h).

PREVAILING CHARGE LEVELS FOR FISCAL YEAR BEGINNING JULY 1, 1975

Section 101(b) of Pub. L. 94–182 provided that: ''The amendment made by subsection (a) [amending subsec. (b)(3) of this section] shall be applicable with respect to claims filed under part B of title XVIII of the Social Security Act [this part] with a carrier designated pursuant to section 1842 of such Act [this section] and processed by such carrier after the appropriate changes were made in the prevailing charge levels for the fiscal year beginning July 1, 1975, on the basis of economic index data under the third and fourth sentences of section 1842(b)(3) of such Act [subsec. (b)(3) of this section]; except that (1) if less than the correct amount was paid (after the application of subsection (a) of this section) on any claim processed prior to the enactment of this section [Dec. 31, 1975], the correct amount shall be paid by such carrier at such time (not exceeding 6 months after the date of the enactment of this section) [Dec. 31, 1975] as is administratively feasible, and (2) no such payment shall be made on any claim where the difference between the amount paid and the correct amount due is less than $1.''

REPORT BY HEALTH INSURANCE BENEFITS ADVISORY COUNCIL ON METHODS OF REIMBURSEMENT OF PHYSICIANS FOR THEIR SERVICES

Section 224(b) of Pub. L. 92–603 directed Health Insurance Benefits Advisory Council to conduct a study of methods of reimbursement for physicians' services under Medicare with respect to fees, extent of assignments accepted by physicians, and share of physician-fee costs which Medicare program does not pay and submit such study to Congress by Jan. 1, 1973.

§ 1395v. Agreements with States

(a) Duty of Secretary; enrollment of eligible individuals

The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into an agreement with such State pursuant to which all eligible individuals in either of the coverage groups described in subsection (b) of this section (as specified in the agreement) will be enrolled under the program established by this part.

(b) Coverage of groups to which applicable

An agreement entered into with any State pursuant to subsection (a) of this section may be applicable to either of the following coverage groups:

(1) individuals receiving money payments under the plan of such State approved under subchapter I of this chapter or subchapter XVI of this chapter; or

(2) individuals receiving money payments under all of the plans of such State approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter.

Except as provided in subsection (g) of this section, there shall be excluded from any coverage group any individual who is entitled to monthly insurance benefits under subchapter II of this chapter or who is entitled to receive an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]. Effective January 1, 1974, and subject to section 1396a(f) of this title, the Secretary shall, at the request of any State not eligible to participate in the State plan program established under subchapter XVI of this chapter, continue in effect the agreement entered into under this section with such State subject to such modifications as the Secretary may by regulations provide to take account of the termination of any plans of such State approved under subchapters I, X, XIV, and XVI of this chapter and the establishment of the supplemental security income program under subchapter XVI of this chapter.

(c) Eligible individuals

For purposes of this section, an individual shall be treated as an eligible individual only if he is an eligible individual (within the meaning of section 1395*o* of this title) on the date an agreement covering him is entered into under subsection (a) of this section or he becomes an eligible individual (within the meaning of such section) at any time after such date; and he shall be treated as receiving money payments described in subsection (b) of this section if he receives such payments for the month in which the agreement is entered into or any month thereafter.

(d) Monthly premiums; coverage periods

In the case of any individual enrolled pursuant to this section—

(1) the monthly premium to be paid by the State shall be determined under section 1395r of this title (without any increase under subsection (b) thereof);

(2) his coverage period shall begin on whichever of the following is the latest:

(A) July 1, 1966;

(B) the first day of the third month following the month in which the State agreement is entered into;

(C) the first day of the first month in which he is both an eligible individual and a member of a coverage group specified in the agreement under this section; or

(D) such date as may be specified in the agreement; and

(3) his coverage period attributable to the agreement with the State under this section shall end on the last day of whichever of the following first occurs:

(A) the month in which he is determined by the State agency to have become ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h) of this section) for medical assistance, or

(B) the month preceding the first month for which he becomes entitled to monthly benefits under subchapter II of this chapter or to an annuity or pension under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(e) Subsection (d)(3) terminations deemed resulting in section 1395p enrollment

Any individual whose coverage period attributable to the State agreement is terminated pursuant to subsection (d)(3) of this section shall be deemed for purposes of this part (including the continuation of his coverage period under this part) to have enrolled under section 1395p of this title in the initial general enrollment period provided by section 1395p(c) of this title. The coverage period under this part of any such individual who (in the last month of his coverage period attributable to the State agreement or in any of the following six months) files notice that he no longer wishes to participate in the insurance program established by this part, shall terminate at the close of the month in which the notice is filed.

(f) "Carrier" as including State agency; provisions facilitating deductions, coinsurance, etc., and leading to economy and efficiency of operation

With respect to eligible individuals receiving money payments under the plan of a State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter, if the agreement entered into under this section so provides, the term ''carrier'' as defined in section 1395u(f)[1] of this title also includes the State agency, specified in such agreement, which administers or supervises the administration of the plan of such State approved under subchapter I, XVI, or XIX of this chapter. The agreement shall also contain such provisions as will facilitate the financial transactions of the State and the carrier with respect to deductions, coinsurance, and otherwise, and as will lead to economy and efficiency of operation, with respect to individuals receiving money payments under plans of the State approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, and individuals eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter.

(g) Subsection (b) exclusions from coverage groups

(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into a modification of an agreement entered into with such State pursuant to subsection (a) of this section under which the second sentence of subsection (b) of this section shall not apply with respect to such agreement.

(2) In the case of any individual who would (but for this subsection) be excluded from the applicable coverage group described in subsection (b) of this section by the second sentence of such subsection—

(A) subsections (c) and (d)(2) of this section shall be applied as if such subsections referred to the modification under this subsection (in lieu of the agreement under subsection (a) of this section), and

(B) subsection (d)(3)(B) of this section shall not apply so long as there is in effect a modification entered into by the State under this subsection.

(h) Modifications respecting subsection (b) coverage groups

(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into a modification of an agreement entered into with such State pursuant to subsection (a) of this section under which the coverage group described in subsection (b) of this section and specified in such agreement is broadened to include (A) individuals who are eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter, or (B) qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title).

(2) For purposes of this section, an individual shall be treated as eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter if, for the month in which the modification is entered into under this subsection or for any month thereafter, he has been determined to be eligible to receive medical assistance under such plan. In the case of any individual who would (but for this subsection) be excluded from the agreement, subsections (c) and (d)(2) of this section shall be applied as if they referred to the modification under this subsection (in lieu of the agreement under subsection (a) of this section), and subsection (d)(2)(C) of this section shall be applied (except in the case of qualified medicare beneficiaries, as defined in section 1396d(p)(1) of this title) by substituting ''second month following the first month'' for ''first month''.

(3) In this subsection, the term ''qualified medicare beneficiary'' also includes an individual described in section 1396a(a)(10)(E)(iii) of this title.

[1] See References in Text note below.

(i) Enrollment of qualified medicare beneficiaries

For provisions relating to enrollment of qualified medicare beneficiaries under part A of this subchapter, see section 1395i–2(g) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, §1843, as added Pub. L. 89–97, title I, §102(a), July 30, 1965, 79 Stat. 312; amended Pub. L. 89–384, §4(a), (b), Apr. 8, 1966, 80 Stat. 105; Pub. L. 90–248, title II, §§222(a), (b), (e), 241(e), Jan. 2, 1968, 81 Stat. 900, 901, 917; Pub. L. 93–233, §18(*l*), Dec. 31, 1973, 87 Stat. 970; Pub. L. 93–445, title III, §308, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 96–499, title IX, §§945(e), 947(a), (c), Dec. 5, 1980, 94 Stat. 2642, 2643; Pub. L. 98–21, title VI, §606(a)(3)(E), Apr. 20, 1983, 97 Stat. 171; Pub. L. 98–369, div. B, title III, §2354(b)(15), July 18, 1984, 98 Stat. 1101; Pub. L. 100–360, title III, §301(e)(1), July 1, 1988, 102 Stat. 749; Pub. L. 100–485, title VI, §608(d)(14)(H), Oct. 13, 1988, 102 Stat. 2416; Pub. L. 101–239, title VI, §6013(b), Dec. 19, 1989, 103 Stat. 2164; Pub. L. 101–508, title IV, §4501(d), Nov. 5, 1990, 104 Stat. 1388–165.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsecs. (b)(2) and (f), is classified to section 601 et seq. of this title.

The Railroad Retirement Act of 1974, referred to in subsec. (d)(3)(B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Section 1395u(f) of this title, referred to in subsec. (f), was repealed by Pub. L. 108–173, title IX, §911(c)(5), Dec. 8, 2003, 117 Stat. 2384.

Part A of this subchapter, referred to in subsec. (i), is classified to section 1395c et seq. of this title.

AMENDMENTS

1990—Subsec. (h)(3). Pub. L. 101–508 added par. (3).

1989—Subsec. (i). Pub. L. 101–239 added subsec. (i).

1988—Subsecs. (a), (g)(1). Pub. L. 100–360, §301(e)(1)(A), formerly §301(e)(1), as redesignated by Pub. L. 100–485, §608(d)(14)(H)(i), inserted ''or after 1988'' after ''during 1981''.

Subsec. (h)(1). Pub. L. 100–360, §301(e)(1)(A), formerly §301(e)(1), as redesignated by Pub. L. 100–485, §608(d)(14)(H)(i), inserted ''or after 1988'' after ''during 1981''.

Pub. L. 100–360, §301(e)(1)(B), as added by Pub. L. 100–485, §608(d)(14)(H)(ii), inserted cl. (A) designation after ''include'' and added cl. (B).

Subsec. (h)(2). Pub. L. 100–360, §301(e)(1)(C), as added by Pub. L. 100–485, §608(d)(14)(H)(ii), inserted ''(except in the case of qualified medicare beneficiaries, as defined in section 1396d(p)(1) of this title)'' after ''shall be applied''.

1984—Subsec. (d)(3)(B). Pub. L. 98–369 substituted ''1974'' for ''1937''.

1983—Subsec. (d)(1). Pub. L. 98–21 substituted ''without any increase under subsection (b) thereof'' for ''without any increase under subsection (c) thereof''.

1980—Subsec. (a). Pub. L. 96–499, §945(e), inserted ''or during 1981,'' after ''January 1, 1970,''.

Subsec. (e). Pub. L. 96–499, §947(a), inserted provision that the coverage period under this part of any individual who filed notice that he no longer wished to participate in the insurance program established by this part was to terminate at the close of the month in which the notice was filed.

Subsec. (g)(1). Pub. L. 96–499, §945(e), inserted ''or during 1981,'' after ''January 1, 1970,''.

Subsec. (g)(2)(C). Pub. L. 96–499, §947(c)(3), struck out cl. (C) which authorized individuals facing exclusion from the applicable coverage group to terminate their enrollment under this part by the filing of a notice indicating he no longer wished to participate in the insurance program established by this part.

Subsec. (h)(1). Pub. L. 96–499, §945(e), inserted ''or during 1981,'' after ''January 1, 1970,''.

1974—Subsec. (b). Pub. L. 93–445 substituted ''under the Railroad Retirement Act of 1974'' for ''or pension under the Railroad Retirement Act of 1937''.

1973—Subsec. (b). Pub. L. 93–233 provided for continuation of State agreements for coverage of certain individuals in connection with establishment of supplemental security income program.

1968—Pub. L. 90–248, §222(b)(4), inserted ''(or are eligible for medical assistance)'' in section catchline.

Subsec. (a). Pub. L. 90–248, §222(e)(1), substituted ''1970'' for ''1968''.

Subsec. (b)(2). Pub. L. 90–248, §241(e)(1), struck out ''IV,'' after ''I,'' and inserted '', and part A of subchapter IV of this chapter'' after ''XVI of this chapter''.

Subsec. (c). Pub. L. 90–248, §222(e)(2), struck out ''and before January 1, 1968'' after ''such date'' and ''before January 1968'' after ''thereafter'' just before the period.

Subsec. (d)(2)(D). Pub. L. 90–248, §222(e)(3), struck out ''(not later than January 1, 1968)'' after ''such date''.

Subsec. (d)(3)(A). Pub. L. 90–248, §222(b)(1), substituted ''ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h) of this section) for medical assistance'' for ''ineligible for money payments of a kind specified in the agreement''.

Subsec. (f). Pub. L. 90–248, §222(b)(2), inserted ''or eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter'' and '', and individuals eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter'' after ''or part A of subchapter IV of this chapter'' and '', and part A of subchapter IV of this chapter'', respectively.

Pub. L. 90–248, §241(e)(2), struck out ''IV,'' before ''X,'' in two places, and inserted ''or part A of subchapter IV of this chapter,'' after ''XVI of this chapter,'' first place it appears in first sentence and '', and part A of subchapter IV of this chapter'' after ''XVI of this chapter'' in second sentence.

Subsec. (g)(1). Pub. L. 90–248, §222(b)(3), substituted ''1970'' for ''1968''.

Subsec. (h). Pub. L. 90–248, §222(a), added subsec. (h).

1966—Subsec. (b). Pub. L. 89–384, §4(a), inserted reference to subsec. (g) in exclusionary provision.

Subsec. (g). Pub. L. 89–384, §4(b), added subsec. (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not regulations to implement such amendment are promulgated by such date, see section 4501(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective Jan. 1, 1990, see section 6013(c) of Pub. L. 101–239, set out as a note under section 1395i–2 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 301(e)(3) of Pub. L. 100–360 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1989, and the amendments made by paragraph (2) [amending section 1396a of this title] shall take effect on July 1, 1989.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any

right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 947(d) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and section 1395q of this title] apply to notices filed after the third calendar month beginning after the date of the enactment of this Act [Dec. 5, 1980].''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective Jan. 1, 1974, see section 18(z–3)(1) of Pub. L. 93–233.

TERMINATION PERIOD FOR CERTAIN INDIVIDUALS COVERED PURSUANT TO STATE AGREEMENTS

Section 947(e) of Pub. L. 96–499 provided that: ''The coverage period under part B of title XVIII of the Social Security Act [this part] of an individual whose coverage period attributable to a State agreement under section 1843 of such Act [this section] is terminated and who has filed notice before the end of the third calendar month beginning after the date of the enactment of this Act [Dec. 5, 1980] that he no longer wishes to participate in the insurance program established by part B of title XVIII shall terminate on the earlier of (1) the day specified in section 1838 [section 1395q of this title] without the amendments made by this section, or (2) (unless the individual files notice before the day specified in this clause that he wishes his coverage period to terminate as provided in clause (1)) the day on which his coverage period would terminate if the individual filed notice in the fourth calendar month beginning after the date of the enactment of this Act.''

DISTRICT OF COLUMBIA; AGREEMENT OF COMMISSIONER WITH SECRETARY FOR SUPPLEMENTARY MEDICAL INSURANCE

Pub. L. 90–227, § 2, Dec. 27, 1967, 81 Stat. 745, provided that: ''The Commissioner [now Mayor of District of Columbia] may enter into an agreement (and any modifications of such agreement) with the Secretary under section 1843 of the Social Security Act [this section] pursuant to which (1) eligible individuals (as defined in section 1836 of the Social Security Act) [section 1395*o* of this title] who are eligible to receive medical assistance under the District of Columbia's plan for medical assistance approved under title XIX of the Social Security Act [subchapter XIX of this chapter] will be enrolled in the supplementary medical insurance program established under part B of title XVIII of the Social Security Act [this part], and (2) provisions will be made for payment of the monthly premiums of such individuals for such program.''

§ 1395w. Appropriations to cover Government contributions and contingency reserve

(a) In general

There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1)(A) a Government contribution equal to the aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 and over as determined under section 1395r(a)(1) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1395r(a)(3) of this title, to

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for a month for enrollees under age 65 under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee under age 65 as determined under section 1395r(a)(4) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1395r(a)(3) of this title, to

(ii) the dollar amount of the premium per enrollee for such month; minus

(C) the aggregate amount of additional premium payments attributable to the application of section 1395r(i) of this title; plus

(2) such sums as the Secretary deems necessary to place the Trust Fund, at the end of any fiscal year occurring after June 30, 1967, in the same position in which it would have been at the end of such fiscal year if (A) a Government contribution representing the excess of the premiums deposited in the Trust Fund during the fiscal year ending June 30, 1967, over the Government contribution actually appropriated to the Trust Fund during such fiscal year had been appropriated to it on June 30, 1967, and (B) the Government contribution for premiums deposited in the Trust Fund after June 30, 1967, had been appropriated to it when such premiums were deposited.

(b) Contingency reserve

In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part, and to provide a contingency reserve, there is also authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available through the calendar year 1969 for repayable advances (without interest) to the Trust Fund, an amount equal to $18 multiplied by the number of individuals (as estimated by the Secretary) who could be covered in July 1966 by the insurance program established by this part if they had theretofore enrolled under this part.

(c) Election under section 1395w–24

The Secretary shall determine the Government contribution under subparagraphs (A) and (B) of subsection (a)(1) of this section without regard to any premium reduction resulting from

an election under section 1395w–24(f)(1)(E) of this title or any credits provided under section 1395w–24(b)(1)(C)(iv) of this title and without regard to any premium adjustment effected under sections 1395r(h) and 1395w–29(f) of this title and without regard to any premium adjustment under section 1395r(i) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1844, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 313; amended Pub. L. 90–248, title I, § 167, Jan. 2, 1968, 81 Stat. 874; Pub. L. 92–603, title II, § 203(e), Oct. 30, 1972, 86 Stat. 1377; Pub. L. 97–248, title I, § 124(c), Sept. 3, 1982, 96 Stat. 364; Pub. L. 98–21, title VI, § 606(a)(3)(F), (G), Apr. 20, 1983, 97 Stat. 171; Pub. L. 98–369, div. B, title III, § 2354(b)(16), July 18, 1984, 98 Stat. 1101; Pub. L. 100–360, title II, § 211(c)(2), July 1, 1988, 102 Stat. 738; Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 105–33, title IV, § 4571(b)(2), Aug. 5, 1997, 111 Stat. 464; Pub. L. 106–554, § 1(a)(6) [title VI, § 606(a)(2)(D)], Dec. 21, 2000, 114 Stat. 2763, 2763A–558; Pub. L. 108–173, title II, §§ 222(*l*)(2)(C), 241(b)(2)(B), title VIII, § 811(b)(2), Dec. 8, 2003, 117 Stat. 2206, 2221, 2368.)

AMENDMENTS

2003—Subsec. (a)(1)(B)(ii). Pub. L. 108–173, § 811(b)(2)(A)(i), substituted ''minus'' for ''plus''.

Subsec. (a)(1)(C). Pub. L. 108–173, § 811(b)(2)(A)(ii), added subpar. (C).

Subsec. (c). Pub. L. 108–173, § 811(b)(2)(B), inserted ''and without regard to any premium adjustment under section 1395r(i) of this title'' before period at end.

Pub. L. 108–173, § 241(b)(2)(B), inserted ''and without regard to any premium adjustment effected under sections 1395r(h) and 1395w–29(f) of this title'' before period at end.

Pub. L. 108–173, § 222(*l*)(2)(C), inserted ''or any credits provided under section 1395w–24(b)(1)(C)(iv) of this title'' after ''section 1395w–24(f)(1)(E) of this title''.

2000—Subsec. (c). Pub. L. 106–554 added subsec. (c).

1997—Subsec. (a)(1)(A)(i), (B)(i). Pub. L. 105–33 substituted ''section 1395r(a)(3) of this title'' for ''section 1395r(a)(3) or 1395r(e) of this title, as the case may be''.

1989—Subsec. (a). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–360 inserted at end ''In computing the amount of aggregate premiums and premiums per enrollee under paragraph (1), there shall not be taken into account premiums attributable to section 1395r(g) of this title or section 59B of the Internal Revenue Code of 1986.''

1984—Subsec. (a)(1)(B)(ii). Pub. L. 98–369 substituted ''; plus'' for a period.

1983—Subsec. (a)(1)(A)(i). Pub. L. 98–21, § 606(a)(3)(F), substituted ''section 1395r(a)(1)'' for ''section 1395r(c)(1)'' and ''section 1395r(a)(3) or 1395r(e)'' for ''section 1395r(c)(3) or 1395r(g)''.

Subsec. (a)(1)(B)(i). Pub. L. 98–21, § 606(a)(3)(G), substituted ''1395r(a)(4)'' for ''1395r(c)(4)'' and ''1395r(a)(3) or 1395r(e)'' for ''1395r(c)(3) or 1395r(g)''.

1982—Subsec. (a)(1)(A)(i), (B)(i). Pub. L. 97–248 substituted ''section 1395r(c)(3) or 1395r(g) of this title, as the case may be'' for ''section 1395r(c)(3) of this title''.

1972—Subsec. (a)(1). Pub. L. 92–603 designated existing provisions as subpar. (A), substituted provisions relating to Government contributions equal to aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in Trust Fund, and multiplied by specified ratio, for provisions relating to Government contributions equal to aggregate premiums payable under this part and deposited in Trust Fund, and added subpar. (B).

1968—Subsec. (a). Pub. L. 90–248, § 167(a), designated existing provisions as par. (1), inserted provision for deposit of Government contribution in Trust Fund, and added par. (2).

Subsec. (b). Pub. L. 90–248, § 167(b), substituted ''1969'' for ''1967''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 222(*l*)(2)(C) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, and applicable to premiums for months beginning after Dec. 31, 1989, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 applicable, except as otherwise specified in such amendment, to monthly premiums for months beginning with January 1989, see section 211(d) of Pub. L. 100–360, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the amount of Government contributions under subsec. (a)(1) of this section shall be computed with the actuarially adequate rate which would have been in effect but for the amendments made by this section and using the amount of the premium in effect for June 1983, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 203(e) of Pub. L. 92–603 provided that the amendment made by that section is effective with respect to enrollee premiums payable for months after June 1973.

§ 1395w–1. Repealed. Pub. L. 105–33, title IV, § 4022(b)(2)(A), Aug. 5, 1997, 111 Stat. 354

Section, act Aug. 14, 1935, ch. 531, title XVIII, § 1845, as added and amended Apr. 7, 1986, Pub. L. 99–272, title IX, § 9305, 100 Stat. 190; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9331(e), 9344(a)(1), 100 Stat. 2021, 2042; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4045(b), 4083(a)(1), (c)(1), 4085(a), (i)(8), 101 Stat. 1330–87, 1330–129, 1330–130, 1330–132; July 1, 1988, Pub. L. 100–360, title IV, § 411(i)(4)(A), 102 Stat. 788; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8425(a), 102 Stat. 3803; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4002(g)(3), 4118(j)(1), 104 Stat. 1388–37, 1388–70; Oct. 31, 1994, Pub. L. 103–432, title I, § 126(g)(8), 108 Stat. 4416, related to Physician Payment Review Commission.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1997, the date of termination of the Prospective Payment Assessment Commission

and the Physician Payment Review Commission, see section 4022(c)(2) of Pub. L. 105–33 set out as an Effective Date; Transition; Transfer of Functions note under section 1395b–6 of this title.

§ 1395w–2. Intermediate sanctions for providers or suppliers of clinical diagnostic laboratory tests

(a) If the Secretary determines that any provider or clinical laboratory approved for participation under this subchapter no longer substantially meets the conditions of participation or for coverage specified under this subchapter with respect to the provision of clinical diagnostic laboratory tests under this part, the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (b) of this section, in lieu of terminating immediately the provider agreement or cancelling immediately approval of the clinical laboratory.

(b)(1) The Secretary shall develop and implement—

(A) a range of intermediate sanctions to apply to providers or clinical laboratories under the conditions described in subsection (a), and

(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

(i) directed plans of correction,

(ii) civil money penalties in an amount not to exceed $10,000 for each day of substantial noncompliance,

(iii) payment for the costs of onsite monitoring by an agency responsible for conducting surveys, and

(iv) suspension of all or part of the payments to which a provider or clinical laboratory would otherwise be entitled under this subchapter with respect to clinical diagnostic laboratory tests furnished on or after the date on which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (a) of this section.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (ii) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any penalties, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(Aug. 14, 1935, ch. 531, title XVIII, § 1846, as added Pub. L. 100–203, title IV, § 4064(d)(1), Dec. 22, 1987, 101 Stat. 1330–111; amended Pub. L. 100–360, title II, § 203(e)(4), title IV, § 411(g)(3)(G), July 1, 1988, 102 Stat. 725, 784; Pub. L. 100–485, title VI, § 608(d)(22)(C), Oct. 13, 1988, 102 Stat. 2421; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–508, title IV, § 4154(e)(2), Nov. 5, 1990, 104 Stat. 1388–86.)

AMENDMENTS

1990—Pub. L. 101–508 substituted ''providers or suppliers of'' for ''providers of'' in section catchline.

1989—Pub. L. 101–234 repealed Pub. L. 100–360, § 203(e)(4), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Pub. L. 100–360, § 203(e)(4)(A), inserted ''and for qualified home intravenous drug therapy providers'' at end of section catchline.

Subsec. (a). Pub. L. 100–360, § 411(g)(3)(G)(i)(I), as amended by Pub. L. 100–485, substituted ''approved'' for ''certified''.

Pub. L. 100–360, § 411(g)(3)(G)(i)(II), inserted ''or for coverage'' after ''conditions of participation''.

Pub. L. 100–360, § 411(g)(3)(G)(i)(III), which directed amendment of subsec. (a) by substituting ''terminating immediately the provider agreement or cancelling immediately approval of the clinical laboratory'' for ''cancelling immediately the certification of the provider or clinical laboratory'', was executed by making the substitution for ''canceling immediately the certification of the provider or clinical laboratory'' to reflect the probable intent of Congress.

Pub. L. 100–360, § 203(e)(4)(B), inserted ''or that a qualified home intravenous drug therapy provider that is certified for participation under this subchapter no longer substantially meets the requirements of section 1395x(jj)(3) of this title'' after ''under this part''.

Subsec. (b)(1)(A). Pub. L. 100–360, § 411(g)(3)(G)(ii), struck out ''certified'' before ''clinical laboratories''.

Subsec. (b)(2)(A). Pub. L. 100–360, § 411(g)(3)(G)(iv), inserted at end ''The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (ii) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (b)(2)(A)(ii). Pub. L. 100–360, § 411(g)(3)(G)(iii), substituted ''civil money penalties in an amount not to exceed $10,000 for each day of substantial noncompliance'' for ''civil fines and penalties''.

Subsec. (b)(2)(A)(iii). Pub. L. 100–360, § 411(g)(3)(G)(v), struck out ''certification'' before ''surveys''.

Subsec. (b)(2)(A)(iv). Pub. L. 100–360, § 411(g)(3)(G)(ii), (vi), struck out ''certified'' before ''clinical laboratory'' and substituted ''furnished on or after the date on'' for ''provided on or after the date in''.

Pub. L. 100–360, § 203(e)(4)(C), inserted ''or home intravenous drug therapy services'' after ''clinical diagnostic laboratory tests''.

Subsec. (b)(3). Pub. L. 100–360, § 411(g)(3)(G)(vii), substituted ''any penalties'' for ''any fines'' and ''severe penalties'' for ''severe fines''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4154(e)(5) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of

Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 203(e)(4) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(g)(3)(G) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 4064(d)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [enacting this section] shall become effective on January 1, 1990.''

§ 1395w–3. Competitive acquisition of certain items and services

(a) Establishment of competitive acquisition programs

(1) Implementation of programs

(A) In general

The Secretary shall establish and implement programs under which competitive acquisition areas are established throughout the United States for contract award purposes for the furnishing under this part of competitively priced items and services (described in paragraph (2)) for which payment is made under this part. Such areas may differ for different items and services.

(B) Phased-in implementation

The programs—

(i) shall be phased in among competitive acquisition areas in a manner so that the competition under the programs occurs in—

(I) 10 of the largest metropolitan statistical areas in 2007;

(II) 80 of the largest metropolitan statistical areas in 2009; and

(III) additional areas after 2009; and

(ii) may be phased in first among the highest cost and highest volume items and services or those items and services that the Secretary determines have the largest savings potential.

(C) Waiver of certain provisions

In carrying out the programs, the Secretary may waive such provisions of the Federal Acquisition Regulation as are necessary for the efficient implementation of this section, other than provisions relating to confidentiality of information and such other provisions as the Secretary determines appropriate.

(2) Items and services described

The items and services referred to in paragraph (1) are the following:

(A) Durable medical equipment and medical supplies

Covered items (as defined in section 1395m(a)(13) of this title) for which payment would otherwise be made under section 1395m(a) of this title, including items used in infusion and drugs (other than inhalation drugs) and supplies used in conjunction with durable medical equipment, but excluding class III devices under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(B) Other equipment and supplies

Items and services described in section 1395u(s)(2)(D) of this title, other than parenteral nutrients, equipment, and supplies.

(C) Off-the-shelf orthotics

Orthotics described in section 1395x(s)(9) of this title for which payment would otherwise be made under section 1395m(h) of this title which require minimal self-adjustment for appropriate use and do not require expertise in trimming, bending, molding, assembling, or customizing to fit to the individual.

(3) Exception authority

In carrying out the programs under this section, the Secretary may exempt—

(A) rural areas and areas with low population density within urban areas that are not competitive, unless there is a significant national market through mail order for a particular item or service; and

(B) items and services for which the application of competitive acquisition is not likely to result in significant savings.

(4) Special rule for certain rented items of durable medical equipment and oxygen

In the case of a covered item for which payment is made on a rental basis under section 1395m(a) of this title and in the case of payment for oxygen under section 1395m(a)(5) of this title, the Secretary shall establish a process by which rental agreements for the covered items and supply arrangements with oxygen suppliers entered into before the application of the competitive acquisition program under this section for the item may be continued notwithstanding this section. In the case of any such continuation, the supplier involved shall provide for appropriate servicing and replacement, as required under section 1395m(a) of this title.

(5) Physician authorization

(A) In general

With respect to items or services included within a particular HCPCS code, the Secretary may establish a process for certain items and services under which a physician may prescribe a particular brand or mode of delivery of an item or service within such code if the physician determines that use of the particular item or service would avoid an adverse medical outcome on the individual, as determined by the Secretary.

(B) No effect on payment amount

A prescription under subparagraph (A) shall not affect the amount of payment otherwise applicable for the item or service under the code involved.

(6) Application

For each competitive acquisition area in which the program is implemented under this

subsection with respect to items and services, the payment basis determined under the competition conducted under subsection (b) of this section shall be substituted for the payment basis otherwise applied under section 1395m(a) of this title, section 1395m(h) of this title, or section 1395u(s) of this title, as appropriate.

(b) Program requirements

(1) In general

The Secretary shall conduct a competition among entities supplying items and services described in subsection (a)(2) of this section for each competitive acquisition area in which the program is implemented under subsection (a) of this section with respect to such items and services.

(2) Conditions for awarding contract

(A) In general

The Secretary may not award a contract to any entity under the competition conducted in an[1] competitive acquisition area pursuant to paragraph (1) to furnish such items or services unless the Secretary finds all of the following:

(i) The entity meets applicable quality standards specified by the Secretary under section 1395m(a)(20) of this title.

(ii) The entity meets applicable financial standards specified by the Secretary, taking into account the needs of small providers.

(iii) The total amounts to be paid to contractors in a competitive acquisition area are expected to be less than the total amounts that would otherwise be paid.

(iv) Access of individuals to a choice of multiple suppliers in the area is maintained.

(B) Timely implementation of program

Any delay in the implementation of quality standards under section 1395m(a)(20) of this title or delay in the receipt of advice from the program oversight committee established under subsection (c) of this section shall not delay the implementation of the competitive acquisition program under this section.

(3) Contents of contract

(A) In general

A contract entered into with an entity under the competition conducted pursuant to paragraph (1) is subject to terms and conditions that the Secretary may specify.

(B) Term of contracts

The Secretary shall recompete contracts under this section not less often than once every 3 years.

(4) Limit on number of contractors

(A) In general

The Secretary may limit the number of contractors in a competitive acquisition area to the number needed to meet projected demand for items and services covered under the contracts. In awarding contracts, the Secretary shall take into account the ability of bidding entities to furnish items or services in sufficient quantities to meet the anticipated needs of individuals for such items or services in the geographic area covered under the contract on a timely basis.

(B) Multiple winners

The Secretary shall award contracts to multiple entities submitting bids in each area for an item or service.

(5) Payment

(A) In general

Payment under this part for competitively priced items and services described in subsection (a)(2) of this section shall be based on bids submitted and accepted under this section for such items and services. Based on such bids the Secretary shall determine a single payment amount for each item or service in each competitive acquisition area.

(B) Reduced beneficiary cost-sharing

(i) Application of coinsurance

Payment under this section for items and services shall be in an amount equal to 80 percent of the payment basis described in subparagraph (A).

(ii) Application of deductible

Before applying clause (i), the individual shall be required to meet the deductible described in section 1395*l*(b) of this title.

(C) Payment on assignment-related basis

Payment for any item or service furnished by the entity may only be made under this section on an assignment-related basis.

(D) Construction

Nothing in this section shall be construed as precluding the use of an advanced beneficiary notice with respect to a competitively priced item and service.

(6) Participating contractors

(A) In general

Except as provided in subsection (a)(4) of this section, payment shall not be made for items and services described in subsection (a)(2) of this section furnished by a contractor and for which competition is conducted under this section unless—

(i) the contractor has submitted a bid for such items and services under this section; and

(ii) the Secretary has awarded a contract to the contractor for such items and services under this section.

(B) Bid defined

In this section, the term ''bid'' means an offer to furnish an item or service for a particular price and time period that includes, where appropriate, any services that are attendant to the furnishing of the item or service.

(C) Rules for mergers and acquisitions

In applying subparagraph (A) to a contractor, the contractor shall include a successor entity in the case of a merger or acquisition,

[1] So in original. Probably should be ''a''.

if the successor entity assumes such contract along with any liabilities that may have occurred thereunder.

(D) Protection of small suppliers

In developing procedures relating to bids and the awarding of contracts under this section, the Secretary shall take appropriate steps to ensure that small suppliers of items and services have an opportunity to be considered for participation in the program under this section.

(7) Consideration in determining categories for bids

The Secretary may consider the clinical efficiency and value of specific items within codes, including whether some items have a greater therapeutic advantage to individuals.

(8) Authority to contract for education, monitoring, outreach, and complaint services

The Secretary may enter into contracts with appropriate entities to address complaints from individuals who receive items and services from an entity with a contract under this section and to conduct appropriate education of and outreach to such individuals and monitoring quality of services with respect to the program.

(9) Authority to contract for implementation

The Secretary may contract with appropriate entities to implement the competitive bidding program under this section.

(10) No administrative or judicial review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of—

(A) the establishment of payment amounts under paragraph (5);

(B) the awarding of contracts under this section;

(C) the designation of competitive acquisition areas under subsection (a)(1)(A) of this section;

(D) the phased-in implementation under subsection (a)(1)(B) of this section;

(E) the selection of items and services for competitive acquisition under subsection (a)(2) of this section; or

(F) the bidding structure and number of contractors selected under this section.

(c) Program Advisory and Oversight Committee

(1) Establishment

The Secretary shall establish a Program Advisory and Oversight Committee (hereinafter in this section referred to as the ''Committee'').

(2) Membership; terms

The Committee shall consist of such members as the Secretary may appoint who shall serve for such term as the Secretary may specify.

(3) Duties

(A) Advice

The Committee shall provide advice to the Secretary with respect to the following functions:

(i) The implementation of the program under this section.

(ii) The establishment of financial standards for purposes of subsection (b)(2)(A)(ii) of this section.

(iii) The establishment of requirements for collection of data for the efficient management of the program.

(iv) The development of proposals for efficient interaction among manufacturers, providers of services, suppliers (as defined in section 1395x(d) of this title), and individuals.

(v) The establishment of quality standards under section 1395m(a)(20) of this title.

(B) Additional duties

The Committee shall perform such additional functions to assist the Secretary in carrying out this section as the Secretary may specify.

(4) Inapplicability of FACA

The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply.

(5) Termination

The Committee shall terminate on December 31, 2009.

(d) Report

Not later than July 1, 2009, the Secretary shall submit to Congress a report on the programs under this section. The report shall include information on savings, reductions in cost-sharing, access to and quality of items and services, and satisfaction of individuals.

(e) Demonstration project for clinical laboratory services

(1) In general

The Secretary shall conduct a demonstration project on the application of competitive acquisition under this section to clinical diagnostic laboratory tests—

(A) for which payment would otherwise be made under section 1395*l*(h) of this title (other than for pap smear laboratory tests under paragraph (7) of such section) or section 1395m(d)(1) of this title (relating to colorectal cancer screening tests); and

(B) which are furnished by entities that did not have a face-to-face encounter with the individual.

(2) Terms and conditions

(A) In general

Except as provided in subparagraph (B), such project shall be under the same conditions as are applicable to items and services described in subsection (a)(2) of this section, excluding subsection (b)(5)(B) of this section and other conditions as the Secretary determines to be appropriate.

(B) Application of CLIA quality standards

The quality standards established by the Secretary under section 263a of this title for clinical diagnostic laboratory tests shall apply to such tests under the demonstration project under this section in lieu of quality standards described in subsection (b)(2)(A)(i) of this section.

(3) Report

The Secretary shall submit to Congress—

(A) an initial report on the project not later than December 31, 2005; and

(B) such progress and final reports on the project after such date as the Secretary determines appropriate.

(Aug. 14, 1935, ch. 531, title XVIII, § 1847, as added Pub. L. 105–33, title IV, § 4319(a), Aug. 5, 1997, 111 Stat. 392; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366; Pub. L. 108–173, title III, § 302(b)(1), Dec. 8, 2003, 117 Stat. 2224.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a)(2)(A), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (c)(4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 1395w–3, act Aug. 14, 1935, ch. 531, title XVIII, § 1847, as added July 1, 1988, Pub. L. 100–360, title II, § 202(j), 102 Stat. 719; amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(5)(I), 102 Stat. 2414, provided for appointment of Prescription Drug Payment Review Commission by Director of Congressional Office of Technology Assessment, prior to repeal by Pub. L. 101–234, title II, § 201(a), (c), Dec. 13, 1989, 103 Stat. 1981, effective Jan. 1, 1990.

AMENDMENTS

2003—Pub. L. 108–173 amended section catchline and text generally, substituting provisions relating to competitive acquisition of certain items and services for provisions relating to demonstration projects for competitive acquisition of items and services.

1999—Subsec. (b)(2). Pub. L. 106–113 inserted ''and'' after ''specified by the Secretary''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

GAO REPORT ON IMPACT OF COMPETITIVE ACQUISITION ON SUPPLIERS

Pub. L. 108–173, title III, § 302(b)(3), Dec. 8, 2003, 117 Stat. 2230, provided that:

''(A) STUDY.—The Comptroller General of the United States shall conduct a study on the impact of competitive acquisition of durable medical equipment under section 1847 of the Social Security Act [this section], as amended by paragraph (1), on suppliers and manufacturers of such equipment and on patients. Such study shall specifically examine the impact of such competitive acquisition on access to, and quality of, such equipment and service related to such equipment.

''(B) REPORT.—Not later than January 1, 2009, the Comptroller General shall submit to Congress a report on the study conducted under subparagraph (A) and shall include in the report such recommendations as the Comptroller General determines appropriate.''

REPORT ON ACTIVITIES OF SUPPLIERS

Pub. L. 108–173, title III, § 302(e), Dec. 8, 2003, 117 Stat. 2233, provided that: ''The Inspector General of the Department of Health and Human Services shall conduct a study to determine the extent to which (if any) suppliers of covered items of durable medical equipment that are subject to the competitive acquisition program under section 1847 of the Social Security Act [this section], as amended by subsection (a) [probably should be (b)(1)], are soliciting physicians to prescribe certain brands or modes of delivery of covered items based on profitability. Not later than July 1, 2009, the Inspector General shall submit to Congress a report on such study.''

STUDY BY GAO

Section 4319(c) of Pub. L. 105–33 provided that: ''The Comptroller of the United States shall study the effectiveness of the establishment of competitive acquisition areas under section 1847(a) of the Social Security Act [subsec. (a) of this section], as added by this section.''

§ 1395w–3a. Use of average sales price payment methodology

(a) Application

(1) In general

Except as provided in paragraph (2), this section shall apply to payment for drugs and biologicals that are described in section 1395u(*o*)(1)(C) of this title and that are furnished on or after January 1, 2005.

(2) Election

This section shall not apply in the case of a physician who elects under subsection (a)(1)(A)(ii) of section 1395w–3b of this title for that section to apply instead of this section for the payment for drugs and biologicals.

(b) Payment amount

(1) In general

Subject to subsections (d)(3)(C) and (e) of this section, the amount of payment determined under this section for the billing and payment code for a drug or biological (based on a minimum dosage unit) is, subject to applicable deductible and coinsurance—

(A) in the case of a multiple source drug (as defined in subsection (c)(6)(C) of this section), 106 percent of the amount determined under paragraph (3); or

(B) in the case of a single source drug or biological (as defined in subsection (c)(6)(D) of this section), 106 percent of the amount determined under paragraph (4).

(2) Specification of unit

(A) Specification by manufacturer

The manufacturer of a drug or biological shall specify the unit associated with each National Drug Code (including package size) as part of the submission of data under section 1396r–8(b)(3)(A)(iii) of this title.

(B) Unit defined

In this section, the term ''unit'' means, with respect to each National Drug Code (including package size) associated with a drug or biological, the lowest identifiable quantity (such as a capsule or tablet, milligram of molecules, or grams) of the drug or biological that is dispensed, exclusive of any diluent without reference to volume measures pertaining to liquids. For years after 2004, the Secretary may establish the unit

for a manufacturer to report and methods for counting units as the Secretary determines appropriate to implement this section.

(3) Multiple source drug

For all drug products included within the same multiple source drug billing and payment code, the amount specified in this paragraph is the volume-weighted average of the average sales prices reported under section 1396r–8(b)(3)(A)(iii) of this title determined by—

(A) computing the sum of the products (for each National Drug Code assigned to such drug products) of—

(i) the manufacturer's average sales price (as defined in subsection (c) of this section); and

(ii) the total number of units specified under paragraph (2) sold; and

(B) dividing the sum determined under subparagraph (A) by the sum of the total number of units under subparagraph (A)(ii) for all National Drug Codes assigned to such drug products.

(4) Single source drug or biological

The amount specified in this paragraph for a single source drug or biological is the lesser of the following:

(A) Average sales price

The average sales price as determined using the methodology applied under paragraph (3) for all National Drug Codes assigned to such drug or biological product.

(B) Wholesale acquisition cost (WAC)

The wholesale acquisition cost (as defined in subsection (c)(6)(B) of this section) using the methodology applied under paragraph (3) for all National Drug Codes assigned to such drug or biological product.

(5) Basis for payment amount

The payment amount shall be determined under this subsection based on information reported under subsection (f) of this section and without regard to any special packaging, labeling, or identifiers on the dosage form or product or package.

(c) Manufacturer's average sales price

(1) In general

For purposes of this section, subject to paragraphs (2) and (3), the manufacturer's ''average sales price'' means, of a drug or biological for a National Drug Code for a calendar quarter for a manufacturer for a unit—

(A) the manufacturer's sales to all purchasers (excluding sales exempted in paragraph (2)) in the United States for such drug or biological in the calendar quarter; divided by

(B) the total number of such units of such drug or biological sold by the manufacturer in such quarter.

(2) Certain sales exempted from computation

In calculating the manufacturer's average sales price under this subsection, the following sales shall be excluded:

(A) Sales exempt from best price

Sales exempt from the inclusion in the determination of ''best price'' under section 1396r–8(c)(1)(C)(i) of this title.

(B) Sales at nominal charge

Such other sales as the Secretary identifies as sales to an entity that are merely nominal in amount (as applied for purposes of section 1396r–8(c)(1)(C)(ii)(III) of this title, except as the Secretary may otherwise provide).

(3) Sale price net of discounts

In calculating the manufacturer's average sales price under this subsection, such price shall include volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, and rebates (other than rebates under section 1396r–8 of this title). For years after 2004, the Secretary may include in such price other price concessions, which may be based on recommendations of the Inspector General, that would result in a reduction of the cost to the purchaser.

(4) Payment methodology in cases where average sales price during first quarter of sales is unavailable

In the case of a drug or biological during an initial period (not to exceed a full calendar quarter) in which data on the prices for sales for the drug or biological is not sufficiently available from the manufacturer to compute an average sales price for the drug or biological, the Secretary may determine the amount payable under this section for the drug or biological based on—

(A) the wholesale acquisition cost; or

(B) the methodologies in effect under this part on November 1, 2003, to determine payment amounts for drugs or biologicals.

(5) Frequency of determinations

(A) In general on a quarterly basis

The manufacturer's average sales price, for a drug or biological of a manufacturer, shall be calculated by such manufacturer under this subsection on a quarterly basis. In making such calculation insofar as there is a lag in the reporting of the information on rebates and chargebacks under paragraph (3) so that adequate data are not available on a timely basis, the manufacturer shall apply a methodology based on a 12-month rolling average for the manufacturer to estimate costs attributable to rebates and chargebacks. For years after 2004, the Secretary may establish a uniform methodology under this subparagraph to estimate and apply such costs.

(B) Updates in payment amounts

The payment amounts under subsection (b) of this section shall be updated by the Secretary on a quarterly basis and shall be applied based upon the manufacturer's average sales price calculated for the most recent calendar quarter for which data is available.

(C) Use of contractors; implementation

The Secretary may contract with appropriate entities to calculate the payment

amount under subsection (b) of this section. Notwithstanding any other provision of law, the Secretary may implement, by program instruction or otherwise, any of the provisions of this section.

(6) Definitions and other rules

In this section:

(A) Manufacturer

The term ''manufacturer'' means, with respect to a drug or biological, the manufacturer (as defined in section 1396r–8(k)(5) of this title).

(B) Wholesale acquisition cost

The term ''wholesale acquisition cost'' means, with respect to a drug or biological, the manufacturer's list price for the drug or biological to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological pricing data.

(C) Multiple source drug

(i) In general

The term ''multiple source drug'' means, for a calendar quarter, a drug for which there are 2 or more drug products which—

(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of ''Approved Drug Products with Therapeutic Equivalence Evaluations''),

(II) except as provided in subparagraph (E), are pharmaceutically equivalent and bioequivalent, as determined under subparagraph (F) and as determined by the Food and Drug Administration, and

(III) are sold or marketed in the United States during the quarter.

(ii) Exception

With respect to single source drugs or biologicals that are within the same billing and payment code as of October 1, 2003, the Secretary shall treat such single source drugs or biologicals as if the single source drugs or biologicals were multiple source drugs.

(D) Single source drug or biological

The term ''single source drug or biological'' means—

(i) a biological; or

(ii) a drug which is not a multiple source drug and which is produced or distributed under a new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application.

(E) Exception from pharmaceutical equivalence and bioequivalence requirement

Subparagraph (C)(ii) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (C)(i), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (F).

(F) Determination of pharmaceutical equivalence and bioequivalence

For purposes of this paragraph—

(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity; and

(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence.

(G) Inclusion of vaccines

In applying provisions of section 1396r–8 of this title under this section, ''other than a vaccine'' is deemed deleted from section 1396r–8(k)(2)(B) of this title.

(d) Monitoring of market prices

(1) In general

The Inspector General of the Department of Health and Human Services shall conduct studies, which may include surveys, to determine the widely available market prices of drugs and biologicals to which this section applies, as the Inspector General, in consultation with the Secretary, determines to be appropriate.

(2) Comparison of prices

Based upon such studies and other data for drugs and biologicals, the Inspector General shall compare the average sales price under this section for drugs and biologicals with—

(A) the widely available market price for such drugs and biologicals (if any); and

(B) the average manufacturer price (as determined under section 1396r–8(k)(1) of this title) for such drugs and biologicals.

(3) Limitation on average sales price

(A) In general

The Secretary may disregard the average sales price for a drug or biological that exceeds the widely available market price or the average manufacturer price for such drug or biological by the applicable threshold percentage (as defined in subparagraph (B)).

(B) Applicable threshold percentage defined

In this paragraph, the term ''applicable threshold percentage'' means—

(i) in 2005, in the case of an average sales price for a drug or biological that exceeds widely available market price or the average manufacturer price, 5 percent; and

(ii) in 2006 and subsequent years, the percentage applied under this subparagraph subject to such adjustment as the Secretary may specify for the widely available market price or the average manufacturer price, or both.

(C) Authority to adjust average sales price

If the Inspector General finds that the average sales price for a drug or biological exceeds such widely available market price or average manufacturer price for such drug or biological by the applicable threshold percentage, the Inspector General shall inform the Secretary (at such times as the Secretary may specify to carry out this subparagraph) and the Secretary shall, effective as of the next quarter, substitute for the amount of payment otherwise determined under this section for such drug or biological the lesser of—

(i) the widely available market price for the drug or biological (if any); or

(ii) 103 percent of the average manufacturer price (as determined under section 1396r–8(k)(1) of this title) for the drug or biological.

(4) Civil money penalty

(A) In general

If the Secretary determines that a manufacturer has made a misrepresentation in the reporting of the manufacturer's average sales price for a drug or biological, the Secretary may apply a civil money penalty in an amount of up to $10,000 for each such price misrepresentation and for each day in which such price misrepresentation was applied.

(B) Procedures

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under subparagraph (B) in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(5) Widely available market price

(A) In general

In this subsection, the term ''widely available market price'' means the price that a prudent physician or supplier would pay for the drug or biological. In determining such price, the Inspector General shall take into account the discounts, rebates, and other price concessions routinely made available to such prudent physicians or suppliers for such drugs or biologicals.

(B) Considerations

In determining the price under subparagraph (A), the Inspector General shall consider information from one or more of the following sources:

(i) Manufacturers.

(ii) Wholesalers.

(iii) Distributors.

(iv) Physician supply houses.

(v) Specialty pharmacies.

(vi) Group purchasing arrangements.

(vii) Surveys of physicians.

(viii) Surveys of suppliers.

(ix) Information on such market prices from insurers.

(x) Information on such market prices from private health plans.

(e) Authority to use alternative payment in response to public health emergency

In the case of a public health emergency under section 247d of this title in which there is a documented inability to access drugs and biologicals, and a concomitant increase in the price,[1] of a drug or biological which is not reflected in the manufacturer's average sales price for one or more quarters, the Secretary may use the wholesale acquisition cost (or other reasonable measure of drug or biological price) instead of the manufacturer's average sales price for such quarters and for subsequent quarters until the price and availability of the drug or biological has stabilized and is substantially reflected in the applicable manufacturer's average sales price.

(f) Quarterly report on average sales price

For requirements for reporting the manufacturer's average sales price (and, if required to make payment, the manufacturer's wholesale acquisition cost) for the drug or biological under this section, see section 1396r–8(b)(3) of this title.

(g) Judicial review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of—

(1) determinations of payment amounts under this section, including the assignment of National Drug Codes to billing and payment codes;

(2) the identification of units (and package size) under subsection (b)(2) of this section;

(3) the method to allocate rebates, chargebacks, and other price concessions to a quarter if specified by the Secretary;

(4) the manufacturer's average sales price when it is used for the determination of a payment amount under this section; and

(5) the disclosure of the average manufacturer price by reason of an adjustment under subsection (d)(3)(C) or (e) of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1847A, as added Pub. L. 108–173, title III, § 303(c)(1), Dec. 8, 2003, 117 Stat. 2239.)

REPORT ON SALES TO PHARMACY BENEFIT MANAGERS

Pub. L. 108–173, title III, § 303(c)(2), Dec. 8, 2003, 117 Stat. 2245, provided that:

''(A) STUDY.—The Secretary [of Health and Human Services] shall conduct a study on sales of drugs and biologicals to large volume purchasers, such as pharmacy benefit managers and health maintenance organizations, for purposes of determining whether the price at which such drugs and biologicals are sold to such purchasers does not represent the price such drugs and biologicals are made available for purchase to prudent physicians.

''(B) REPORT.—Not later than January 1, 2006, the Secretary shall submit to Congress a report on the study conducted under paragraph (1), and shall include recommendations on whether such sales to large volume purchasers should be excluded from the computation of a manufacturer's average sales price under section 1847A of the Social Security Act [this section], as added by paragraph (1).''

INSPECTOR GENERAL REPORT ON ADEQUACY OF REIMBURSEMENT RATE UNDER AVERAGE SALES PRICE METHODOLOGY

Pub. L. 108–173, title III, § 303(c)(3), Dec. 8, 2003, 117 Stat. 2245, provided that:

''(A) STUDY.—The Inspector General of the Department of Health and Human Services shall conduct a

[1] So in original. The comma probably should not appear.

study on the ability of physician practices in the specialties of hematology, hematology/oncology, and medical oncology of different sizes, especially particularly large practices, to obtain drugs and biologicals for the treatment of cancer patients at 106 percent of the average sales price for the drugs and biologicals. In conducting the study, the Inspector General shall conduct an audit of a representative sample of such practices to determine the adequacy of reimbursement under section 1847A of the Social Security Act [this section], as added by paragraph (1).

''(B) REPORT.—Not later October 1, 2005, the Inspector General shall submit to Congress a report on the study conducted under subparagraph (A), and shall include recommendations on the adequacy of reimbursement for such drugs and biologicals under such section 1847A [this section].''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

§ 1395w–3b. Competitive acquisition of outpatient drugs and biologicals

(a) Implementation of competitive acquisition

(1) Implementation of program

(A) In general

The Secretary shall establish and implement a competitive acquisition program under which—

(i) competitive acquisition areas are established for contract award purposes for acquisition of and payment for categories of competitively biddable drugs and biologicals (as defined in paragraph (2)) under this part;

(ii) each physician is given the opportunity annually to elect to obtain drugs and biologicals under the program, rather than under section 1395w–3a of this title; and

(iii) each physician who elects to obtain drugs and biologicals under the program makes an annual selection under paragraph (5) of the contractor through which drugs and biologicals within a category of drugs and biologicals will be acquired and delivered to the physician under this part.

This section shall not apply in the case of a physician who elects section 1395w–3a of this title to apply.

(B) Implementation

For purposes of implementing the program, the Secretary shall establish categories of competitively biddable drugs and biologicals. The Secretary shall phase in the program with respect to those categories beginning in 2006 in such manner as the Secretary determines to be appropriate.

(C) Waiver of certain provisions

In order to promote competition, in carrying out the program the Secretary may waive such provisions of the Federal Acquisition Regulation as are necessary for the efficient implementation of this section, other than provisions relating to confidentiality of information and such other provisions as the Secretary determines appropriate.

(D) Exclusion authority

The Secretary may exclude competitively biddable drugs and biologicals (including a class of such drugs and biologicals) from the competitive bidding system under this section if the application of competitive bidding to such drugs or biologicals—

(i) is not likely to result in significant savings; or

(ii) is likely to have an adverse impact on access to such drugs or biologicals.

(2) Competitively biddable drugs and biologicals and program defined

For purposes of this section—

(A) Competitively biddable drugs and biologicals defined

The term ''competitively biddable drugs and biologicals'' means a drug or biological described in section 1395u(*o*)(1)(C) of this title and furnished on or after January 1, 2006.

(B) Program

The term ''program'' means the competitive acquisition program under this section.

(C) Competitive acquisition area; area

The terms ''competitive acquisition area'' and ''area'' mean an appropriate geographic region established by the Secretary under the program.

(D) Contractor

The term ''contractor'' means an entity that has entered into a contract with the Secretary under this section.

(3) Application of program payment methodology

(A) In general

With respect to competitively biddable drugs and biologicals which are supplied under the program in an area and which are prescribed by a physician who has elected this section to apply—

(i) the claim for such drugs and biologicals shall be submitted by the contractor that supplied the drugs and biologicals;

(ii) collection of amounts of any deductible and coinsurance applicable with respect to such drugs and biologicals shall be the responsibility of such contractor and shall not be collected unless the drug or biological is administered to the individual involved; and

(iii) the payment under this section (and related amounts of any applicable deduct-

ible and coinsurance) for such drugs and biologicals shall be made only to such contractor upon receipt of a claim for a drug or biological supplied by the contractor for administration to a beneficiary.

(B) Process for adjustments

The Secretary shall provide a process for adjustments to payments in the case in which payment is made for drugs and biologicals which were billed at the time of dispensing but which were not actually administered.

(C) Information for purposes of cost-sharing

The Secretary shall provide a process by which physicians submit information to contractors for purposes of the collection of any applicable deductible or coinsurance amounts under subparagraph (A)(ii).

(D) Post-payment review process

The Secretary shall establish (by program instruction or otherwise) a post-payment review process (which may include the use of statistical sampling) to assure that payment is made for a drug or biological under this section only if the drug or biological has been administered to a beneficiary. The Secretary shall recoup, offset, or collect any overpayments determined by the Secretary under such process.

(4) Contract required

Payment may not be made under this part for competitively biddable drugs and biologicals prescribed by a physician who has elected this section to apply within a category and a competitive acquisition area with respect to which the program applies unless—

(A) the drugs or biologicals are supplied by a contractor with a contract under this section for such category of drugs and biologicals and area; and

(B) the physician has elected such contractor under paragraph (5) for such category and area.

(5) Contractor selection process

(A) Annual selection

(i) In general

The Secretary shall provide a process for the selection of a contractor, on an annual basis and in such exigent circumstances as the Secretary may provide and with respect to each category of competitively biddable drugs and biologicals for an area by selecting physicians.

(ii) Timing of selection

The selection of a contractor under clause (i) shall be made at the time of the election described in section 1395w–3a(a) of this title for this section to apply and shall be coordinated with agreements entered into under section 1395u(h) of this title.

(B) Information on contractors

The Secretary shall make available to physicians on an ongoing basis, through a directory posted on the Internet website of the Centers for Medicare & Medicaid Services or otherwise and upon request, a list of the contractors under this section in the different competitive acquisition areas.

(C) Selecting physician defined

For purposes of this section, the term ''selecting physician'' means, with respect to a contractor and category and competitive acquisition area, a physician who has elected this section to apply and has selected to apply under this section such contractor for such category and area.

(b) Program requirements

(1) Contract for competitively biddable drugs and biologicals

The Secretary shall conduct a competition among entities for the acquisition of competitively biddable drugs and biologicals. Notwithstanding any other provision of this subchapter, in the case of a multiple source drug, the Secretary shall conduct such competition among entities for the acquisition of at least one competitively biddable drug and biological within each billing and payment code within each category for each competitive acquisition area.

(2) Conditions for awarding contract

(A) In general

The Secretary may not award a contract to any entity under the competition conducted in a competitive acquisition area pursuant to paragraph (1) with respect to the acquisition of competitively biddable drugs and biologicals within a category unless the Secretary finds that the entity meets all of the following with respect to the contract period involved:

(i) Capacity to supply competitively biddable drug or biological within category

(I) In general

The entity has sufficient arrangements to acquire and to deliver competitively biddable drugs and biologicals within such category in the area specified in the contract.

(II) Shipment methodology

The entity has arrangements in effect for the shipment at least 5 days each week of competitively biddable drugs and biologicals under the contract and for the timely delivery (including for emergency situations) of such drugs and biologicals in the area under the contract.

(ii) Quality, service, financial performance and solvency standards

The entity meets quality, service, financial performance, and solvency standards specified by the Secretary, including—

(I) the establishment of procedures for the prompt response and resolution of complaints of physicians and individuals and of inquiries regarding the shipment of competitively biddable drugs and biologicals; and

(II) a grievance and appeals process for the resolution of disputes.

(B) Additional considerations

The Secretary may refuse to award a contract under this section, and may terminate such a contract, with an entity based upon—

(i) the suspension or revocation, by the Federal Government or a State government, of the entity's license for the distribution of drugs or biologicals (including controlled substances); or

(ii) the exclusion of the entity under section 1320a–7 of this title from participation under this subchapter.

(C) Application of Medicare Provider Ombudsman

For provision providing for a program-wide Medicare Provider Ombudsman to review complaints, see section 1395ee(b) of this title, as added by section 923 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.[1]

(3) Awarding multiple contracts for a category and area

The Secretary may limit (but not below 2) the number of qualified entities that are awarded such contracts for any category and area. The Secretary shall select among qualified entities based on the following:

(A) The bid prices for competitively biddable drugs and biologicals within the category and area.

(B) Bid price for distribution of such drugs and biologicals.

(C) Ability to ensure product integrity.

(D) Customer service.

(E) Past experience in the distribution of drugs and biologicals, including controlled substances.

(F) Such other factors as the Secretary may specify.

(4) Terms of contracts

(A) In general

A contract entered into with an entity under the competition conducted pursuant to paragraph (1) is subject to terms and conditions that the Secretary may specify consistent with this section.

(B) Period of contracts

A contract under this section shall be for a term of 3 years, but may be terminated by the Secretary or the entity with appropriate, advance notice.

(C) Integrity of drug and biological distribution system

A contractor (as defined in subsection (a)(2)(D) of this section) shall—

(i) acquire all drug and biological products it distributes directly from the manufacturer or from a distributor that has acquired the products directly from the manufacturer; and

(ii) comply with any product integrity safeguards as may be determined to be appropriate by the Secretary.

Nothing in this subparagraph shall be construed to relieve or exempt any contractor from the provisions of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] that relate to the wholesale distribution of prescription drugs or biologicals.

(D) Compliance with code of conduct and fraud and abuse rules

Under the contract—

(i) the contractor shall comply with a code of conduct, specified or recognized by the Secretary, that includes standards relating to conflicts of interest; and

(ii) the contractor shall comply with all applicable provisions relating to prevention of fraud and abuse, including compliance with applicable guidelines of the Department of Justice and the Inspector General of the Department of Health and Human Services.

(E) Direct delivery of drugs and biologicals to physicians

Under the contract the contractor shall only supply competitively biddable drugs and biologicals directly to the selecting physicians and not directly to individuals, except under circumstances and settings where an individual currently receives a drug or biological in the individual's home or other non-physician office setting as the Secretary may provide. The contractor shall not deliver drugs and biologicals to a selecting physician except upon receipt of a prescription for such drugs and biologicals, and such necessary data as may be required by the Secretary to carry out this section. This section does not—

(i) require a physician to submit a prescription for each individual treatment; or

(ii) change a physician's flexibility in terms of writing a prescription for drugs or biologicals for a single treatment or a course of treatment.

(5) Permitting access to drugs and biologicals

The Secretary shall establish rules under this section under which drugs and biologicals which are acquired through a contractor under this section may be used to resupply inventories of such drugs and biologicals which are administered consistent with safe drug practices and with adequate safeguards against fraud and abuse. The previous sentence shall apply if the physicians can demonstrate to the Secretary all of the following:

(A) The drugs or biologicals are required immediately.

(B) The physician could not have reasonably anticipated the immediate requirement for the drugs or biologicals.

(C) The contractor could not deliver to the physician the drugs or biologicals in a timely manner.

(D) The drugs or biologicals were administered in an emergency situation.

(6) Construction

Nothing in this section shall be construed as waiving applicable State requirements relating to licensing of pharmacies.

(c) Bidding process

(1) In general

In awarding a contract for a category of drugs and biologicals in an area under the pro-

[1] See References in Text note below.

gram, the Secretary shall consider with respect to each entity seeking to be awarded a contract the bid price and the other factors referred to in subsection (b)(3) of this section.

(2) Bid defined

In this section, the term ''bid'' means an offer to furnish a competitively biddable drug or biological for a particular price and time period.

(3) Bidding on a national or regional basis

Nothing in this section shall be construed as precluding a bidder from bidding for contracts in all areas of the United States or as requiring a bidder to submit a bid for all areas of the United States.

(4) Uniformity of bids within area

The amount of the bid submitted under a contract offer for any competitively biddable drug or biological for an area shall be the same for that drug or biological for all portions of that area.

(5) Confidentiality of bids

The provisions of subparagraph (D) of section 1396r–8(b)(3) of this title shall apply to periods during which a bid is submitted with respect to a competitively biddable drug or biological under this section in the same manner as it applies to information disclosed under such section, except that any reference—

(A) in that subparagraph to a ''manufacturer or wholesaler'' is deemed a reference to a ''bidder'' under this section;

(B) in that section to ''prices charged for drugs'' is deemed a reference to a ''bid'' submitted under this section; and

(C) in clause (i) of that section to ''this section'', is deemed a reference to ''part B of subchapter XVIII of this chapter''.

(6) Inclusion of costs

The bid price submitted in a contract offer for a competitively biddable drug or biological shall—

(A) include all costs related to the delivery of the drug or biological to the selecting physician (or other point of delivery); and

(B) include the costs of dispensing (including shipping) of such drug or biological and management fees, but shall not include any costs related to the administration of the drug or biological, or wastage, spillage, or spoilage.

(7) Price adjustments during contract period; disclosure of costs

Each contract awarded shall provide for—

(A) disclosure to the Secretary the contractor's reasonable, net acquisition costs for periods specified by the Secretary, not more often than quarterly, of the contract; and

(B) appropriate price adjustments over the period of the contract to reflect significant increases or decreases in a contractor's reasonable, net acquisition costs, as so disclosed.

(d) Computation of payment amounts

(1) In general

Payment under this section for competitively biddable drugs or biologicals shall be based on bids submitted and accepted under this section for such drugs or biologicals in an area. Based on such bids the Secretary shall determine a single payment amount for each competitively biddable drug or biological in the area.

(2) Special rules

The Secretary shall establish rules regarding the use under this section of the alternative payment amount provided under section 1395w–3a of this title to the use of a price for specific competitively biddable drugs and biologicals in the following cases:

(A) New drugs and biologicals

A competitively biddable drug or biological for which a payment and billing code has not been established.

(B) Other cases

Such other exceptional cases as the Secretary may specify in regulations.

(e) Cost-sharing

(1) Application of coinsurance

Payment under this section for competitively biddable drugs and biologicals shall be in an amount equal to 80 percent of the payment basis described in subsection (d)(1) of this section.

(2) Deductible

Before applying paragraph (1), the individual shall be required to meet the deductible described in section 1395*l*(b) of this title.

(3) Collection

Such coinsurance and deductible shall be collected by the contractor that supplies the drug or biological involved. Subject to subsection (a)(3)(B) of this section, such coinsurance and deductible may be collected in a manner similar to the manner in which the coinsurance and deductible are collected for durable medical equipment under this part.

(f) Special payment rules

(1) Use in exclusion cases

If the Secretary excludes a drug or biological (or class of drugs or biologicals) under subsection (a)(1)(D) of this section, the Secretary may provide for payment to be made under this part for such drugs and biologicals (or class) using the payment methodology under section 1395w–3a of this title.

(2) Application of requirement for assignment

For provision requiring assignment of claims for competitively biddable drugs and biologicals, see section 1395u(*o*)(3) of this title.

(3) Protection for beneficiary in case of medical necessity denial

For protection of individuals against liability in the case of medical necessity determinations, see section 1395u(b)(3)(B)(ii)(III) of this title.

(g) Judicial review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of—

(1) the establishment of payment amounts under subsection (d)(1) of this section;

(2) the awarding of contracts under this section;

(3) the establishment of competitive acquisition areas under subsection (a)(2)(C) of this section;

(4) the phased-in implementation under subsection (a)(1)(B) of this section;

(5) the selection of categories of competitively biddable drugs and biologicals for competitive acquisition under such subsection or the selection of a drug in the case of multiple source drugs; or

(6) the bidding structure and number of contractors selected under this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1847B, as added Pub. L. 108–173, title III, § 303(d)(1), Dec. 8, 2003, 117 Stat. 2245; amended Pub. L. 109–432, div. B, title I, § 108(a), Dec. 20, 2006, 120 Stat. 2983.)

REFERENCES IN TEXT

Section 1395ee(b) of this title, referred to in subsec. (b)(2)(C), was added by section 942(a)(5) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173, not section 923 of that Act, and relates to the Council for Technology and Innovation, not to the Medicare Provider Ombudsman.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. subsec. (b)(4)(C), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Part B of subchapter XVIII of this chapter, referred to in subsec. (c)(5)(C), is classified to section 1395j et seq. of this title.

AMENDMENTS

2006—Subsec. (a)(3)(A)(iii). Pub. L. 109–432, § 108(a)(1), substituted ''and biologicals shall be made only to such contractor upon receipt of a claim for a drug or biological supplied by the contractor for administration to a beneficiary.'' for ''and biologicals—

''(I) shall be made only to such contractor; and

''(II) shall be conditioned upon the administration of such drugs and biologicals.''

Subsec. (a)(3)(D). Pub. L. 109–432, § 108(a)(2), added subpar. (D).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. B, title I, § 108(c), Dec. 20, 2006, 120 Stat. 2983, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payment for drugs and biologicals supplied under section 1847B of the Social Security Act (42 U.S.C. 1395w–3b)—

''(1) on or after April 1, 2007; and

''(2) on or after July 1, 2006, and before April 1, 2007, for claims that are unpaid as of April 1, 2007.''

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109–432, div. B, title I, § 108(b), Dec. 20, 2006, 120 Stat. 2983, provided that: ''Nothing in this section [amending this section and enacting provisions set out as a note above] shall be construed as—

''(1) requiring the conduct of any additional competition under subsection (b)(1) of section 1847B of the Social Security Act (42 U.S.C. 1395w–3b); or

''(2) requiring any additional process for elections by physicians under subsection (a)(1)(A)(ii) of such section or additional selection by a selecting physician of a contractor under subsection (a)(5) of such section.''

REPORT

Pub. L. 108–173, title III, § 303(d)(2), Dec. 8, 2003, 117 Stat. 2252, provided that: ''Not later than July 1, 2008, the Secretary [of Health and Human Services] shall submit to Congress a report on the program conducted under section 1847B of the Social Security Act [this section], as added by paragraph (1). Such report shall include information on savings, reductions in cost-sharing, access to competitively biddable drugs and biologicals, the range of choices of contractors available to physicians, the satisfaction of physicians and of individuals enrolled under this part [probably means part B of title XVIII of the Social Security Act, which is classified to this part], and information comparing prices for drugs and biologicals under such section and section 1847A of such Act [section 1395w–3a of this title], as added by subsection (c).''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

§ 1395w–4. Payment for physicians' services

(a) Payment based on fee schedule

(1) In general

Effective for all physicians' services (as defined in subsection (j)(3) of this section) furnished under this part during a year (beginning with 1992) for which payment is otherwise made on the basis of a reasonable charge or on the basis of a fee schedule under section 1395m(b) of this title, payment under this part shall instead be based on the lesser of—

(A) the actual charge for the service, or

(B) subject to the succeeding provisions of this subsection, the amount determined under the fee schedule established under subsection (b) of this section for services furnished during that year (in this subsection referred to as the ''fee schedule amount'').

(2) Transition to full fee schedule

(A) Limiting reductions and increases to 15 percent in 1992

(i) Limit on increase

In the case of a service in a fee schedule area (as defined in subsection (j)(2) of this section) for which the adjusted historical payment basis (as defined in subparagraph (D)) is less than 85 percent of the fee schedule amount for services furnished in 1992, there shall be substituted for the fee schedule amount an amount equal to the adjusted historical payment basis plus 15 percent of the fee schedule amount otherwise established (without regard to this paragraph).

(ii) Limit in reduction

In the case of a service in a fee schedule area for which the adjusted historical pay-

ment basis exceeds 115 percent of the fee schedule amount for services furnished in 1992, there shall be substituted for the fee schedule amount an amount equal to the adjusted historical payment basis minus 15 percent of the fee schedule amount otherwise established (without regard to this paragraph).

(B) Special rule for 1993, 1994, and 1995

If a physicians' service in a fee schedule area is subject to the provisions of subparagraph (A) in 1992, for physicians' services furnished in the area—

(i) during 1993, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 75 percent of the fee schedule amount determined under subparagraph (A), adjusted by the update established under subsection (d)(3) of this section for 1993, and

(II) 25 percent of the fee schedule amount determined under paragraph (1) for 1993 without regard to this paragraph;

(ii) during 1994, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 67 percent of the fee schedule amount determined under clause (i), adjusted by the update established under subsection (d)(3) of this section for 1994 and as adjusted under subsection (c)(2)(F)(ii) of this section and under section 13515(b) of the Omnibus Budget Reconciliation Act of 1993, and

(II) 33 percent of the fee schedule amount determined under paragraph (1) for 1994 without regard to this paragraph; and

(iii) during 1995, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 50 percent of the fee schedule amount determined under clause (ii) adjusted by the update established under subsection (d)(3) of this section for 1995, and

(II) 50 percent of the fee schedule amount determined under paragraph (1) for 1995 without regard to this paragraph.

(C) Special rule for anesthesia and radiology services

With respect to physicians' services which are anesthesia services, the Secretary shall provide for a transition in the same manner as a transition is provided for other services under subparagraph (B). With respect to radiology services, ''109 percent'' and ''9 percent'' shall be substituted for ''115 percent'' and ''15 percent'', respectively, in subparagraph (A)(ii).

(D) "Adjusted historical payment basis" defined

(i) In general

In this paragraph, the term ''adjusted historical payment basis'' means, with respect to a physicians' service furnished in a fee schedule area, the weighted average prevailing charge applied in the area for the service in 1991 (as determined by the Secretary without regard to physician specialty and as adjusted to reflect payments for services with customary charges below the prevailing charge or other payment limitations imposed by law or regulation) adjusted by the update established under subsection (d)(3) of this section for 1992.

(ii) Application to radiology services

In applying clause (i) in the case of physicians' services which are radiology services (including radiologist services, as defined in section 1395m(b)(6) of this title), but excluding nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989, there shall be substituted for the weighted average prevailing charge the amount provided under the fee schedule established for the service for the fee schedule area under section 1395m(b) of this title.

(iii) Nuclear medicine services

In applying clause (i) in the case of physicians' services which are nuclear medicine services, there shall be substituted for the weighted average prevailing charge the amount provided under section 6105(b) of the Omnibus Budget Reconciliation Act of 1989.

(3) Incentives for participating physicians and suppliers

In applying paragraph (1)(B) in the case of a nonparticipating physician or a nonparticipating supplier or other person, the fee schedule amount shall be 95 percent of such amount otherwise applied under this subsection (without regard to this paragraph). In the case of physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3) of this section) of a nonparticipating physician, supplier, or other person for which payment is made under this part on a basis other than the fee schedule amount, the payment shall be based on 95 percent of the payment basis for such services furnished by a participating physician, supplier, or other person.

(4) Special rule for medical direction

(A) In general

With respect to physicians' services furnished on or after January 1, 1994, and consisting of medical direction of two, three, or four concurrent anesthesia cases, the fee schedule amount to be applied shall be equal to one-half of the amount described in subparagraph (B).

(B) Amount

The amount described in this subparagraph, for a physician's medical direction of the performance of anesthesia services, is the following percentage of the fee schedule amount otherwise applicable under this section if the anesthesia services were personally performed by the physician alone:

(i) For services furnished during 1994, 120 percent.

(ii) For services furnished during 1995, 115 percent.

(iii) For services furnished during 1996, 110 percent.

(iv) For services furnished during 1997, 105 percent.

(v) For services furnished after 1997, 100 percent.

(b) Establishment of fee schedules

(1) In general

Before November 1 of the preceding year, for each year beginning with 1998, the Secretary shall establish, by regulation, fee schedules that establish payment amounts for all physicians' services furnished in all fee schedule areas (as defined in subsection (j)(2) of this section) for the year. Except as provided in paragraph (2), each such payment amount for a service shall be equal to the product of—

(A) the relative value for the service (as determined in subsection (c)(2) of this section),

(B) the conversion factor (established under subsection (d) of this section) for the year, and

(C) the geographic adjustment factor (established under subsection (e)(2) of this section) for the service for the fee schedule area.

(2) Treatment of radiology services and anesthesia services

(A) Radiology services

With respect to radiology services (including radiologist services, as defined in section 1395m(b)(6) of this title), the Secretary shall base the relative values on the relative value scale developed under section 1395m(b)(1)(A) of this title, with appropriate modifications of the relative values to assure that the relative values established for radiology services which are similar or related to other physicians' services are consistent with the relative values established for those similar or related services.

(B) Anesthesia services

In establishing the fee schedule for anesthesia services for which a relative value guide has been established under section 4048(b) of the Omnibus Budget Reconciliation Act of 1987, the Secretary shall use, to the extent practicable, such relative value guide, with appropriate adjustment of the conversion factor, in a manner to assure that the fee schedule amounts for anesthesia services are consistent with the fee schedule amounts for other services determined by the Secretary to be of comparable value. In applying the previous sentence, the Secretary shall adjust the conversion factor by geographic adjustment factors in the same manner as such adjustment is made under paragraph (1)(C).

(C) Consultation

The Secretary shall consult with the Physician Payment Review Commission and organizations representing physicians or suppliers who furnish radiology services and anesthesia services in applying subparagraphs (A) and (B).

(3) Treatment of interpretation of electrocardiograms

The Secretary—

(A) shall make separate payment under this section for the interpretation of electrocardiograms performed or ordered to be performed as part of or in conjunction with a visit to or a consultation with a physician, and

(B) shall adjust the relative values established for visits and consultations under subsection (c) of this section so as not to include relative value units for interpretations of electrocardiograms in the relative value for visits and consultations.

(4) Special rule for imaging services

(A) In general

In the case of imaging services described in subparagraph (B) furnished on or after January 1, 2007, if—

(i) the technical component (including the technical component portion of a global fee) of the service established for a year under the fee schedule described in paragraph (1) without application of the geographic adjustment factor described in paragraph (1)(C), exceeds

(ii) the Medicare OPD fee schedule amount established under the prospective payment system for hospital outpatient department services under paragraph (3)(D) of section 1395*l*(t) of this title for such service for such year, determined without regard to geographic adjustment under paragraph (2)(D) of such section,

the Secretary shall substitute the amount described in clause (ii), adjusted by the geographic adjustment factor described in paragraph (1)(C), for the fee schedule amount for such technical component for such year.

(B) Imaging services described

For purposes of subparagraph (A), imaging services described in this subparagraph are imaging and computer-assisted imaging services, including X-ray, ultrasound (including echocardiography), nuclear medicine (including positron emission tomography), magnetic resonance imaging, computed tomography, and fluoroscopy, but excluding diagnostic and screening mammography.

(c) Determination of relative values for physicians' services

(1) Division of physicians' services into components

In this section, with respect to a physicians' service:

(A) "Work component" defined

The term ''work component'' means the portion of the resources used in furnishing the service that reflects physician time and intensity in furnishing the service. Such portion shall—

(i) include activities before and after direct patient contact, and

(ii) be defined, with respect to surgical procedures, to reflect a global definition including pre-operative and post-operative physicians' services.

(B) "Practice expense component" defined

The term ''practice expense component'' means the portion of the resources used in furnishing the service that reflects the general categories of expenses (such as office rent and wages of personnel, but excluding malpractice expenses) comprising practice expenses.

(C) "Malpractice component" defined

The term ''malpractice component'' means the portion of the resources used in furnishing the service that reflects malpractice expenses in furnishing the service.

(2) Determination of relative values

(A) In general

(i) Combination of units for components

The Secretary shall develop a methodology for combining the work, practice expense, and malpractice relative value units, determined under subparagraph (C), for each service in a manner to produce a single relative value for that service. Such relative values are subject to adjustment under subparagraph (F)(i) and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993.

(ii) Extrapolation

The Secretary may use extrapolation and other techniques to determine the number of relative value units for physicians' services for which specific data are not available and shall take into account recommendations of the Physician Payment Review Commission and the results of consultations with organizations representing physicians who provide such services.

(B) Periodic review and adjustments in relative values

(i) Periodic review

The Secretary, not less often than every 5 years, shall review the relative values established under this paragraph for all physicians' services.

(ii) Adjustments

(I) In general

The Secretary shall, to the extent the Secretary determines to be necessary and subject to subclause (II), adjust the number of such units to take into account changes in medical practice, coding changes, new data on relative value components, or the addition of new procedures. The Secretary shall publish an explanation of the basis for such adjustments.

(II) Limitation on annual adjustments

Subject to clauses (iv) and (v), the adjustments under subclause (I) for a year may not cause the amount of expenditures under this part for the year to differ by more than $20,000,000 from the amount of expenditures under this part that would have been made if such adjustments had not been made.

(iii) Consultation

The Secretary, in making adjustments under clause (ii), shall consult with the Medicare Payment Advisory Commission and organizations representing physicians.

(iv) Exemption of certain additional expenditures from budget neutrality

The additional expenditures attributable to—

(I) subparagraph (H) shall not be taken into account in applying clause (ii)(II) for 2004;

(II) subparagraph (I) insofar as it relates to a physician fee schedule for 2005 or 2006 shall not be taken into account in applying clause (ii)(II) for drug administration services under the fee schedule for such year for a specialty described in subparagraph (I)(ii)(II); and

(III) subparagraph (J) insofar as it relates to a physician fee schedule for 2005 or 2006 shall not be taken into account in applying clause (ii)(II) for drug administration services under the fee schedule for such year.

(v) Exemption of certain reduced expenditures from budget-neutrality calculation

The following reduced expenditures, as estimated by the Secretary, shall not be taken into account in applying clause (ii)(II):

(I) Reduced payment for multiple imaging procedures

Effective for fee schedules established beginning with 2007, reduced expenditures attributable to the multiple procedure payment reduction for imaging under the final rule published by the Secretary in the Federal Register on November 21, 2005 (42 CFR 405, et al.) insofar as it relates to the physician fee schedules for 2006 and 2007.

(II) OPD payment cap for imaging services

Effective for fee schedules established beginning with 2007, reduced expenditures attributable to subsection (b)(4).

(C) Computation of relative value units for components

For purposes of this section for each physicians' service—

(i) Work relative value units

The Secretary shall determine a number of work relative value units for the service based on the relative resources incorporating physician time and intensity required in furnishing the service.

(ii) Practice expense relative value units

The Secretary shall determine a number of practice expense relative value units for the service for years before 1999 equal to the product of—

(I) the base allowed charges (as defined in subparagraph (D)) for the service, and

(II) the practice expense percentage for the service (as determined under paragraph (3)(C)(ii)),

and for years beginning with 1999 based on the relative practice expense resources involved in furnishing the service. For 1999, such number of units shall be determined based 75 percent on such product and based 25 percent on the relative practice expense resources involved in furnishing the service. For 2000, such number of units shall be determined based 50 percent on such product and based 50 percent on such relative practice expense resources. For 2001, such number of units shall be determined based 25 percent on such product and based 75 percent on such relative practice expense resources. For a subsequent year, such number of units shall be determined based entirely on such relative practice expense resources.

(iii) Malpractice relative value units

The Secretary shall determine a number of malpractice relative value units for the service for years before 2000 equal to the product of—

(I) the base allowed charges (as defined in subparagraph (D)) for the service, and

(II) the malpractice percentage for the service (as determined under paragraph (3)(C)(iii)),

and for years beginning with 2000 based on the malpractice expense resources involved in furnishing the service.

(D) "Base allowed charges" defined

In this paragraph, the term ''base allowed charges'' means, with respect to a physician's service, the national average allowed charges for the service under this part for services furnished during 1991, as estimated by the Secretary using the most recent data available.

(E) Reduction in practice expense relative value units for certain services

(i) In general

Subject to clause (ii), the Secretary shall reduce the practice expense relative value units applied to services described in clause (iii) furnished in—

(I) 1994, by 25 percent of the number by which the number of practice expense relative value units (determined for 1994 without regard to this subparagraph) exceeds the number of work relative value units determined for 1994,

(II) 1995, by an additional 25 percent of such excess, and

(III) 1996, by an additional 25 percent of such excess.

(ii) Floor on reductions

The practice expense relative value units for a physician's service shall not be reduced under this subparagraph to a number less than 128 percent of the number of work relative value units.

(iii) Services covered

For purposes of clause (i), the services described in this clause are physicians' services that are not described in clause (iv) and for which—

(I) there are work relative value units, and

(II) the number of practice expense relative value units (determined for 1994) exceeds 128 percent of the number of work relative value units (determined for such year).

(iv) Excluded services

For purposes of clause (iii), the services described in this clause are services which the Secretary determines at least 75 percent of which are provided under this subchapter in an office setting.

(F) Budget neutrality adjustments

The Secretary—

(i) shall reduce the relative values for all services (other than anesthesia services) established under this paragraph (and, in the case of anesthesia services, the conversion factor established by the Secretary for such services) by such percentage as the Secretary determines to be necessary so that, beginning in 1996, the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in expenditures under this section that exceed the amount of such expenditures that would have been made if such amendment had not been made, and

(ii) shall reduce the amounts determined under subsection (a)(2)(B)(ii)(I) of this section by such percentage as the Secretary determines to be required to assure that, taking into account the reductions made under clause (i), the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in expenditures under this section in 1994 that exceed the amount of such expenditures that would have been made if such amendment had not been made.

(G) Adjustments in relative value units for 1998

(i) In general

The Secretary shall—

(I) subject to clauses (iv) and (v), reduce the practice expense relative value units applied to any services described in clause (ii) furnished in 1998 to a number equal to 110 percent of the number of work relative value units, and

(II) increase the practice expense relative value units for office visit procedure codes during 1998 by a uniform percentage which the Secretary estimates will result in an aggregate increase in payments for such services equal to the aggregate decrease in payments by reason of subclause (I).

(ii) Services covered

For purposes of clause (i), the services described in this clause are physicians' services that are not described in clause (iii) and for which—

(I) there are work relative value units, and

(II) the number of practice expense relative value units (determined for 1998) exceeds 110 percent of the number of work relative value units (determined for such year).

(iii) Excluded services

For purposes of clause (ii), the services described in this clause are services which the Secretary determines at least 75 percent of which are provided under this subchapter in an office setting.

(iv) Limitation on aggregate reallocation

If the application of clause (i)(I) would result in an aggregate amount of reductions under such clause in excess of $390,000,000, such clause shall be applied by substituting for 110 percent such greater percentage as the Secretary estimates will result in the aggregate amount of such reductions equaling $390,000,000.

(v) No reduction for certain services

Practice expense relative value units for a procedure performed in an office or in a setting out of an office shall not be reduced under clause (i) if the in-office or out-of-office practice expense relative value, respectively, for the procedure would increase under the proposed rule on resource-based practice expenses issued by the Secretary on June 18, 1997 (62 Federal Register 33158 et seq.).

(H) Adjustments in practice expense relative value units for certain drug administration services beginning in 2004

(i) Use of survey data

In establishing the physician fee schedule under subsection (b) of this section with respect to payments for services furnished on or after January 1, 2004, the Secretary shall, in determining practice expense relative value units under this subsection, utilize a survey submitted to the Secretary as of January 1, 2003, by a physician specialty organization pursuant to section 212 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 if the survey—

(I) covers practice expenses for oncology drug administration services; and

(II) meets criteria established by the Secretary for acceptance of such surveys.

(ii) Pricing of clinical oncology nurses in practice expense methodology

If the survey described in clause (i) includes data on wages, salaries, and compensation of clinical oncology nurses, the Secretary shall utilize such data in the methodology for determining practice expense relative value units under subsection (c) of this section.

(iii) Work relative value units for certain drug administration services

In establishing the relative value units under this paragraph for drug administration services described in clause (iv) furnished on or after January 1, 2004, the Secretary shall establish work relative value units equal to the work relative value units for a level 1 office medical visit for an established patient.

(iv) Drug administration services described

The drug administration services described in this clause are physicians' services—

(I) which are classified as of October 1, 2003, within any of the following groups of procedures: therapeutic or diagnostic infusions (excluding chemotherapy); chemotherapy administration services; and therapeutic, prophylactic, or diagnostic injections;

(II) for which there are no work relative value units assigned under this subsection as of such date; and

(III) for which national relative value units have been assigned under this subsection as of such date.

(I) Adjustments in practice expense relative value units for certain drug administration services beginning with 2005

(i) In general

In establishing the physician fee schedule under subsection (b) of this section with respect to payments for services furnished on or after January 1, 2005 or 2006, the Secretary shall adjust the practice expense relative value units for such year consistent with clause (ii).

(ii) Use of supplemental survey data

(I) In general

Subject to subclause (II), if a specialty submits to the Secretary by not later than March 1, 2004, for 2005, or March 1, 2005, for 2006, data that includes expenses for the administration of drugs and biologicals for which the payment amount is determined pursuant to section 1395u(*o*) of this title, the Secretary shall use such supplemental survey data in carrying out this subparagraph for the years involved insofar as they are collected and provided by entities and organizations consistent with the criteria established by the Secretary pursuant to section 212(a) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999.

(II) Limitation on specialty

Subclause (I) shall apply to a specialty only insofar as not less than 40 percent of payments for the specialty under this subchapter in 2002 are attributable to the administration of drugs and biologicals, as determined by the Secretary.

(III) Application

This clause shall not apply with respect to a survey to which subparagraph (H)(i) applies.

(J) Provisions for appropriate reporting and billing for physicians' services associated with the administration of covered outpatient drugs and biologicals

(i) Evaluation of codes

The Secretary shall promptly evaluate existing drug administration codes for physicians' services to ensure accurate reporting and billing for such services, taking into account levels of complexity of the administration and resource consumption.

(ii) Use of existing processes

In carrying out clause (i), the Secretary shall use existing processes for the consideration of coding changes and, to the extent coding changes are made, shall use such processes in establishing relative values for such services.

(iii) Implementation

In carrying out clause (i), the Secretary shall consult with representatives of physician specialties affected by the implementation of section 1395w–3a of this title or section 1395w–3b of this title, and shall take such steps within the Secretary's authority to expedite such considerations under clause (ii).

(iv) Subsequent, budget neutral adjustments permitted

Nothing in subparagraph (H) or (I) or this subparagraph shall be construed as preventing the Secretary from providing for adjustments in practice expense relative value units under (and consistent with) subparagraph (B) for years after 2004, 2005, or 2006, respectively.

(3) Component percentages

For purposes of paragraph (2), the Secretary shall determine a work percentage, a practice expense percentage, and a malpractice percentage for each physician's service as follows:

(A) Division of services by specialty

For each physician's service or class of physicians' services, the Secretary shall determine the average percentage of each such service or class of services that is performed, nationwide, under this part by physicians in each of the different physician specialties (as identified by the Secretary).

(B) Division of specialty by component

The Secretary shall determine the average percentage division of resources, among the work component, the practice expense component, and the malpractice component, used by physicians in each of such specialties in furnishing physicians' services. Such percentages shall be based on national data that describe the elements of physician practice costs and revenues, by physician specialty. The Secretary may use extrapolation and other techniques to determine practice costs and revenues for specialties for which adequate data are not available.

(C) Determination of component percentages

(i) Work percentage

The work percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the work component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

(ii) Practice expense percentage

For years before 2002, the practice expense percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the practice expense component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

(iii) Malpractice percentage

For years before 1999, the malpractice percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the malpractice component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

(D) Periodic recomputation

The Secretary may, from time to time, provide for the recomputation of work percentages, practice expense percentages, and malpractice percentages determined under this paragraph.

(4) Ancillary policies

The Secretary may establish ancillary policies (with respect to the use of modifiers, local codes, and other matters) as may be necessary to implement this section.

(5) Coding

The Secretary shall establish a uniform procedure coding system for the coding of all physicians' services. The Secretary shall provide for an appropriate coding structure for visits and consultations. The Secretary may incorporate the use of time in the coding for visits and consultations. The Secretary, in establishing such coding system, shall consult with the Physician Payment Review Commission and other organizations representing physicians.

(6) No variation for specialists

The Secretary may not vary the conversion factor or the number of relative value units for a physicians' service based on whether the physician furnishing the service is a specialist

or based on the type of specialty of the physician.

(d) Conversion factors

(1) Establishment

(A) In general

The conversion factor for each year shall be the conversion factor established under this subsection for the previous year (or, in the case of 1992, specified in subparagraph (B)) adjusted by the update (established under paragraph (3)) for the year involved (for years before 2001) and, for years beginning with 2001, multiplied by the update (established under paragraph (4)) for the year involved.

(B) Special provision for 1992

For purposes of subparagraph (A), the conversion factor specified in this subparagraph is a conversion factor (determined by the Secretary) which, if this section were to apply during 1991 using such conversion factor, would result in the same aggregate amount of payments under this part for physicians' services as the estimated aggregate amount of the payments under this part for such services in 1991.

(C) Special rules for 1998

Except as provided in subparagraph (D), the single conversion factor for 1998 under this subsection shall be the conversion factor for primary care services for 1997, increased by the Secretary's estimate of the weighted average of the three separate updates that would otherwise occur were it not for the enactment of chapter 1 of subtitle F of title IV of the Balanced Budget Act of 1997.

(D) Special rules for anesthesia services

The separate conversion factor for anesthesia services for a year shall be equal to 46 percent of the single conversion factor established for other physicians' services, except as adjusted for changes in work, practice expense, or malpractice relative value units.

(E) Publication and dissemination of information

The Secretary shall—

(i) cause to have published in the Federal Register not later than November 1 of each year (beginning with 2000) the conversion factor which will apply to physicians' services for the succeeding year, the update determined under paragraph (4) for such succeeding year, and the allowed expenditures under such paragraph for such succeeding year; and

(ii) make available to the Medicare Payment Advisory Commission and the public by March 1 of each year (beginning with 2000) an estimate of the sustainable growth rate and of the conversion factor which will apply to physicians' services for the succeeding year and data used in making such estimate.

(2) Repealed. Pub. L. 105–33, title IV, § 4502(b), Aug. 5, 1997, 111 Stat. 433

(3) Update for 1999 and 2000

(A) In general

Unless otherwise provided by law, subject to subparagraph (D) and the budget-neutrality factor determined by the Secretary under subsection (c)(2)(B)(ii) of this section, the update to the single conversion factor established in paragraph (1)(C) for 1999 and 2000 is equal to the product of—

(i) 1 plus the Secretary's estimate of the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year (divided by 100), and

(ii) 1 plus the Secretary's estimate of the update adjustment factor for the year (divided by 100),

minus 1 and multiplied by 100.

(B) Update adjustment factor

For purposes of subparagraph (A)(ii), the ''update adjustment factor'' for a year is equal (as estimated by the Secretary) to—

(i) the difference between (I) the sum of the allowed expenditures for physicians' services (as determined under subparagraph (C)) for the period beginning April 1, 1997, and ending on March 31 of the year involved, and (II) the amount of actual expenditures for physicians' services furnished during the period beginning April 1, 1997, and ending on March 31 of the preceding year; divided by

(ii) the actual expenditures for physicians' services for the 12-month period ending on March 31 of the preceding year, increased by the sustainable growth rate under subsection (f) of this section for the fiscal year which begins during such 12-month period.

(C) Determination of allowed expenditures

For purposes of this paragraph and paragraph (4), the allowed expenditures for physicians' services for the 12-month period ending with March 31 of—

(i) 1997 is equal to the actual expenditures for physicians' services furnished during such 12-month period, as estimated by the Secretary; or

(ii) a subsequent year is equal to the allowed expenditures for physicians' services for the previous year, increased by the sustainable growth rate under subsection (f) of this section for the fiscal year which begins during such 12-month period.

(D) Restriction on variation from medicare economic index

Notwithstanding the amount of the update adjustment factor determined under subparagraph (B) for a year, the update in the conversion factor under this paragraph for the year may not be—

(i) greater than 100 times the following amount: (1.03 + (MEI percentage/100)) − 1; or

(ii) less than 100 times the following amount: (0.93 + (MEI percentage/100)) − 1,

where ''MEI percentage'' means the Secretary's estimate of the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year involved.

(4) Update for years beginning with 2001

(A) In general

Unless otherwise provided by law, subject to the budget-neutrality factor determined by the Secretary under subsection (c)(2)(B)(ii) of this section and subject to adjustment under subparagraph (F), the update to the single conversion factor established in paragraph (1)(C) for a year beginning with 2001 is equal to the product of—

(i) 1 plus the Secretary's estimate of the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year (divided by 100); and

(ii) 1 plus the Secretary's estimate of the update adjustment factor under subparagraph (B) for the year.

(B) Update adjustment factor

For purposes of subparagraph (A)(ii), subject to subparagraph (D) and paragraphs (5) and (6), the ''update adjustment factor'' for a year is equal (as estimated by the Secretary) to the sum of the following:

(i) Prior year adjustment component

An amount determined by—

(I) computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians' services for the prior year (as determined under subparagraph (C)) and the amount of the actual expenditures for such services for that year;

(II) dividing that difference by the amount of the actual expenditures for such services for that year; and

(III) multiplying that quotient by 0.75.

(ii) Cumulative adjustment component

An amount determined by—

(I) computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians' services (as determined under subparagraph (C)) from April 1, 1996, through the end of the prior year and the amount of the actual expenditures for such services during that period;

(II) dividing that difference by actual expenditures for such services for the prior year as increased by the sustainable growth rate under subsection (f) of this section for the year for which the update adjustment factor is to be determined; and

(III) multiplying that quotient by 0.33.

(C) Determination of allowed expenditures

For purposes of this paragraph:

(i) Period up to April 1, 1999

The allowed expenditures for physicians' services for a period before April 1, 1999, shall be the amount of the allowed expenditures for such period as determined under paragraph (3)(C).

(ii) Transition to calendar year allowed expenditures

Subject to subparagraph (E), the allowed expenditures for—

(I) the 9-month period beginning April 1, 1999, shall be the Secretary's estimate of the amount of the allowed expenditures that would be permitted under paragraph (3)(C) for such period; and

(II) the year of 1999, shall be the Secretary's estimate of the amount of the allowed expenditures that would be permitted under paragraph (3)(C) for such year.

(iii) Years beginning with 2000

The allowed expenditures for a year (beginning with 2000) is equal to the allowed expenditures for physicians' services for the previous year, increased by the sustainable growth rate under subsection (f) of this section for the year involved.

(D) Restriction on update adjustment factor

The update adjustment factor determined under subparagraph (B) for a year may not be less than −0.07 or greater than 0.03.

(E) Recalculation of allowed expenditures for updates beginning with 2001

For purposes of determining the update adjustment factor for a year beginning with 2001, the Secretary shall recompute the allowed expenditures for previous periods beginning on or after April 1, 1999, consistent with subsection (f)(3) of this section.

(F) Transitional adjustment designed to provide for budget neutrality

Under this subparagraph the Secretary shall provide for an adjustment to the update under subparagraph (A)—

(i) for each of 2001, 2002, 2003, and 2004, of −0.2 percent; and

(ii) for 2005 of +0.8 percent.

(5) Update for 2004 and 2005

The update to the single conversion factor established in paragraph (1)(C) for each of 2004 and 2005 shall be not less than 1.5 percent.

(6) Update for 2006

The update to the single conversion factor established in paragraph (1)(C) for 2006 shall be 0 percent.

(7) Conversion factor for 2007

(A) In general

The conversion factor that would otherwise be applicable under this subsection for 2007 shall be the amount of such conversion factor divided by the product of—

(i) 1 plus the Secretary's estimate of the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for 2007 (divided by 100); and

(ii) 1 plus the Secretary's estimate of the update adjustment factor under paragraph (4)(B) for 2007.

(B) No effect on computation of conversion factor for 2008

The conversion factor under this subsection shall be computed under paragraph

(1)(A) for 2008 as if subparagraph (A) had never applied.

(e) Geographic adjustment factors

(1) Establishment of geographic indices

(A) In general

Subject to subparagraphs (B), (C), (E), (F)[1] and (G), the Secretary shall establish—

(i) an index which reflects the relative costs of the mix of goods and services comprising practice expenses (other than malpractice expenses) in the different fee schedule areas compared to the national average of such costs,

(ii) an index which reflects the relative costs of malpractice expenses in the different fee schedule areas compared to the national average of such costs, and

(iii) an index which reflects ¼ of the difference between the relative value of physicians' work effort in each of the different fee schedule areas and the national average of such work effort.

(B) Class-specific geographic cost-of-practice indices

The Secretary may establish more than one index under subparagraph (A)(i) in the case of classes of physicians' services, if, because of differences in the mix of goods and services comprising practice expenses for the different classes of services, the application of a single index under such clause to different classes of such services would be substantially inequitable.

(C) Periodic review and adjustments in geographic adjustment factors

The Secretary, not less often than every 3 years, shall, in consultation with appropriate representatives of physicians, review the indices established under subparagraph (A) and the geographic index values applied under this subsection for all fee schedule areas. Based on such review, the Secretary may revise such index and adjust such index values, except that, if more than 1 year has elasped[2] since the date of the last previous adjustment, the adjustment to be applied in the first year of the next adjustment shall be ½ of the adjustment that otherwise would be made.

(D) Use of recent data

In establishing indices and index values under this paragraph, the Secretary shall use the most recent data available relating to practice expenses, malpractice expenses, and physician work effort in different fee schedule areas.

(E) Floor at 1.0 on work geographic index

After calculating the work geographic index in subparagraph (A)(iii), for purposes of payment for services furnished on or after January 1, 2004, and before January 1, 2008, the Secretary shall increase the work geographic index to 1.00 for any locality for which such work geographic index is less than 1.00.

(G)[1] Floor for practice expense, malpractice, and work geographic indices for services furnished in Alaska

For purposes of payment for services furnished in Alaska on or after January 1, 2004, and before January 1, 2006, after calculating the practice expense, malpractice, and work geographic indices in clauses (i), (ii), and (iii) of subparagraph (A) and in subparagraph (B), the Secretary shall increase any such index to 1.67 if such index would otherwise be less than 1.67.

(2) Computation of geographic adjustment factor

For purposes of subsection (b)(1)(C) of this section, for all physicians' services for each fee schedule area the Secretary shall establish a geographic adjustment factor equal to the sum of the geographic cost-of-practice adjustment factor (specified in paragraph (3)), the geographic malpractice adjustment factor (specified in paragraph (4)), and the geographic physician work adjustment factor (specified in paragraph (5)) for the service and the area.

(3) Geographic cost-of-practice adjustment factor

For purposes of paragraph (2), the ''geographic cost-of-practice adjustment factor'', for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the practice expense component, and

(B) the geographic cost-of-practice index value for the area for the service, based on the index established under paragraph (1)(A)(i) or (1)(B) (as the case may be).

(4) Geographic malpractice adjustment factor

For purposes of paragraph (2), the ''geographic malpractice adjustment factor'', for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the malpractice component, and

(B) the geographic malpractice index value for the area, based on the index established under paragraph (1)(A)(ii).

(5) Geographic physician work adjustment factor

For purposes of paragraph (2), the ''geographic physician work adjustment factor'', for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the work component, and

(B) the geographic physician work index value for the area, based on the index established under paragraph (1)(A)(iii).

(f) Sustainable growth rate

(1) Publication

The Secretary shall cause to have published in the Federal Register not later than—

[1] So in original. No subpar. (F) has been enacted.

[2] So in original. Probably should be ''elapsed''.

(A) November 1, 2000, the sustainable growth rate for 2000 and 2001; and

(B) November 1 of each succeeding year the sustainable growth rate for such succeeding year and each of the preceding 2 years.

(2) Specification of growth rate

The sustainable growth rate for all physicians' services for a fiscal year (beginning with fiscal year 1998 and ending with fiscal year 2000) and a year beginning with 2000 shall be equal to the product of—

(A) 1 plus the Secretary's estimate of the weighted average percentage increase (divided by 100) in the fees for all physicians' services in the applicable period involved,

(B) 1 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than Medicare+Choice plan enrollees) from the previous applicable period to the applicable period involved,

(C) 1 plus the Secretary's estimate of the annual average percentage growth in real gross domestic product per capita (divided by 100) during the 10-year period ending with the applicable period involved, and

(D) 1 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services in the applicable period (compared with the previous applicable period) which will result from changes in law and regulations, determined without taking into account estimated changes in expenditures resulting from the update adjustment factor determined under subsection (d)(3)(B) or (d)(4)(B) of this section, as the case may be,

minus 1 and multiplied by 100.

(3) Data to be used

For purposes of determining the update adjustment factor under subsection (d)(4)(B) of this section for a year beginning with 2001, the sustainable growth rates taken into consideration in the determination under paragraph (2) shall be determined as follows:

(A) For 2001

For purposes of such calculations for 2001, the sustainable growth rates for fiscal year 2000 and the years 2000 and 2001 shall be determined on the basis of the best data available to the Secretary as of September 1, 2000.

(B) For 2002

For purposes of such calculations for 2002, the sustainable growth rates for fiscal year 2000 and for years 2000, 2001, and 2002 shall be determined on the basis of the best data available to the Secretary as of September 1, 2001.

(C) For 2003 and succeeding years

For purposes of such calculations for a year after 2002—

(i) the sustainable growth rates for that year and the preceding 2 years shall be determined on the basis of the best data available to the Secretary as of September 1 of the year preceding the year for which the calculation is made; and

(ii) the sustainable growth rate for any year before a year described in clause (i) shall be the rate as most recently determined for that year under this subsection.

Nothing in this paragraph shall be construed as affecting the sustainable growth rates established for fiscal year 1998 or fiscal year 1999.

(4) Definitions

In this subsection:

(A) Services included in physicians' services

The term ''physicians' services'' includes other items and services (such as clinical diagnostic laboratory tests and radiology services), specified by the Secretary, that are commonly performed or furnished by a physician or in a physician's office, but does not include services furnished to a Medicare+Choice plan enrollee.

(B) Medicare+Choice plan enrollee

The term ''Medicare+Choice plan enrollee'' means, with respect to a fiscal year, an individual enrolled under this part who has elected to receive benefits under this subchapter for the fiscal year through a Medicare+Choice plan offered under part C of this subchapter, and also includes an individual who is receiving benefits under this part through enrollment with an eligible organization with a risk-sharing contract under section 1395mm of this title.

(C) Applicable period

The term ''applicable period'' means—

(i) a fiscal year, in the case of fiscal year 1998, fiscal year 1999, and fiscal year 2000; or

(ii) a calendar year with respect to a year beginning with 2000;

as the case may be.

(g) Limitation on beneficiary liability

(1) Limitation on actual charges

(A) In general

In the case of a nonparticipating physician or nonparticipating supplier or other person (as defined in section 1395u(i)(2) of this title) who does not accept payment on an assignment-related basis for a physician's service furnished with respect to an individual enrolled under this part, the following rules apply:

(i) Application of limiting charge

No person may bill or collect an actual charge for the service in excess of the limiting charge described in paragraph (2) for such service.

(ii) No liability for excess charges

No person is liable for payment of any amounts billed for the service in excess of such limiting charge.

(iii) Correction of excess charges

If such a physician, supplier, or other person bills, but does not collect, an actual charge for a service in violation of clause (i), the physician, supplier, or other person

shall reduce on a timely basis the actual charge billed for the service to an amount not to exceed the limiting charge for the service.

(iv) Refund of excess collections

If such a physician, supplier, or other person collects an actual charge for a service in violation of clause (i), the physician, supplier, or other person shall provide on a timely basis a refund to the individual charged in the amount by which the amount collected exceeded the limiting charge for the service. The amount of such a refund shall be reduced to the extent the individual has an outstanding balance owed by the individual to the physician.

(B) Sanctions

If a physician, supplier, or other person—

(i) knowingly and willfully bills or collects for services in violation of subparagraph (A)(i) on a repeated basis, or

(ii) fails to comply with clause (iii) or (iv) of subparagraph (A) on a timely basis,

the Secretary may apply sanctions against the physician, supplier, or other person in accordance with paragraph (2) of section 1395u(j) of this title. In applying this subparagraph, paragraph (4) of such section applies in the same manner as such paragraph applies to such section and any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.

(C) Timely basis

For purposes of this paragraph, a correction of a bill for an excess charge or refund of an amount with respect to a violation of subparagraph (A)(i) in the case of a service is considered to be provided ''on a timely basis'', if the reduction or refund is made not later than 30 days after the date the physician, supplier, or other person is notified by the carrier under this part of such violation and of the requirements of subparagraph (A).

(2) "Limiting charge" defined

(A) For 1991

For physicians' services of a physician furnished during 1991, other than radiologist services subject to section 1395m(b) of this title, the ''limiting charge'' shall be the same percentage (or, if less, 25 percent) above the recognized payment amount under this part with respect to the physician (as a nonparticipating physician) as the percentage by which—

(i) the maximum allowable actual charge (as determined under section 1395u(j)(1)(C) of this title as of December 31, 1990, or, if less, the maximum actual charge otherwise permitted for the service under this part as of such date) for the service of the physician, exceeds

(ii) the recognized payment amount for the service of the physician (as a nonparticipating physician) as of such date.

In the case of evaluation and management services (as specified in section 1395u(b)(16)(B)(ii) of this title), the preceding sentence shall be applied by substituting ''40 percent'' for ''25 percent''.

(B) For 1992

For physicians' services furnished during 1992, other than radiologist services subject to section 1395m(b) of this title, the ''limiting charge'' shall be the same percentage (or, if less, 20 percent) above the recognized payment amount under this part for nonparticipating physicians as the percentage by which—

(i) the limiting charge (as determined under subparagraph (A) as of December 31, 1991) for the service, exceeds

(ii) the recognized payment amount for the service for nonparticipating physicians as of such date.

(C) After 1992

For physicians' services furnished in a year after 1992, the ''limiting charge'' shall be 115 percent of the recognized payment amount under this part for nonparticipating physicians or for nonparticipating suppliers or other persons.

(D) Recognized payment amount

In this section, the term ''recognized payment amount'' means, for services furnished on or after January 1, 1992, the fee schedule amount determined under subsection (a) of this section (or, if payment under this part is made on a basis other than the fee schedule under this section, 95 percent of the other payment basis), and, for services furnished during 1991, the applicable percentage (as defined in section 1395u(b)(4)(A)(iv) of this title) of the prevailing charge (or fee schedule amount) for nonparticipating physicians for that year.

(3) Limitation on charges for medicare beneficiaries eligible for medicaid benefits

(A) In general

Payment for physicians' services furnished on or after April 1, 1990, to an individual who is enrolled under this part and eligible for any medical assistance (including as a qualified medicare beneficiary, as defined in section 1396d(p)(1) of this title) with respect to such services under a State plan approved under subchapter XIX of this chapter may only be made on an assignment-related basis and the provisions of section 1396a(n)(3)(A) of this title apply to further limit permissible charges under this section.

(B) Penalty

A person may not bill for physicians' services subject to subparagraph (A) other than on an assignment-related basis. No person is liable for payment of any amounts billed for such a service in violation of the previous sentence. If a person knowingly and willfully bills for physicians' services in violation of the first sentence, the Secretary may apply sanctions against the person in accordance with section 1395u(j)(2) of this title.

(4) Physician submission of claims

(A) In general

For services furnished on or after September 1, 1990, within 1 year after the date of

providing a service for which payment is made under this part on a reasonable charge or fee schedule basis, a physician, supplier, or other person (or an employer or facility in the cases described in section 1395u(b)(6)(A) of this title)—

(i) shall complete and submit a claim for such service on a standard claim form specified by the Secretary to the carrier on behalf of a beneficiary, and

(ii) may not impose any charge relating to completing and submitting such a form.

(B) Penalty

(i) With respect to an assigned claim wherever a physician, provider, supplier or other person (or an employer or facility in the cases described in section 1395u(b)(6)(A) of this title) fails to submit such a claim as required in subparagraph (A), the Secretary shall reduce by 10 percent the amount that would otherwise be paid for such claim under this part.

(ii) If a physician, supplier, or other person (or an employer or facility in the cases described in section 1395u(b)(6)(A) of this title) fails to submit a claim required to be submitted under subparagraph (A) or imposes a charge in violation of such subparagraph, the Secretary shall apply the sanction with respect to such a violation in the same manner as a sanction may be imposed under section 1395u(p)(3) of this title for a violation of section 1395u(p)(1) of this title.

(5) Electronic billing; direct deposit

The Secretary shall encourage and develop a system providing for expedited payment for claims submitted electronically. The Secretary shall also encourage and provide incentives allowing for direct deposit as payments for services furnished by participating physicians. The Secretary shall provide physicians with such technical information as necessary to enable such physicians to submit claims electronically. The Secretary shall submit a plan to Congress on this paragraph by May 1, 1990.

(6) Monitoring of charges

(A) In general

The Secretary shall monitor—

(i) the actual charges of nonparticipating physicians for physicians' services furnished on or after January 1, 1991, to individuals enrolled under this part, and

(ii) changes (by specialty, type of service, and geographic area) in (I) the proportion of expenditures for physicians' services provided under this part by participating physicians, (II) the proportion of expenditures for such services for which payment is made under this part on an assignment-related basis, and (III) the amounts charged above the recognized payment amounts under this part.

(B) Report

The Secretary shall, by not later than April 15 of each year (beginning in 1992), report to the Congress information on the extent to which actual charges exceed limiting charges, the number and types of services involved, and the average amount of excess charges and information regarding the changes described in subparagraph (A)(ii).

(C) Plan

If the Secretary finds that there has been a significant decrease in the proportions described in subclauses (I) and (II) of subparagraph (A)(ii) or an increase in the amounts described in subclause (III) of that subparagraph, the Secretary shall develop a plan to address such a problem and transmit to Congress recommendations regarding the plan. The Medicare Payment Advisory Commission shall review the Secretary's plan and recommendations and transmit to Congress its comments regarding such plan and recommendations.

(7) Monitoring of utilization and access

(A) In general

The Secretary shall monitor—

(i) changes in the utilization of and access to services furnished under this part within geographic, population, and service related categories,

(ii) possible sources of inappropriate utilization of services furnished under this part which contribute to the overall level of expenditures under this part, and

(iii) factors underlying these changes and their interrelationships.

(B) Report

The Secretary shall by not later than April 15,[3] of each year (beginning with 1991) report to the Congress on the changes described in subparagraph (A)(i) and shall include in the report an examination of the factors (including factors relating to different services and specific categories and groups of services and geographic and demographic variations in utilization) which may contribute to such changes.

(C) Recommendations

The Secretary shall include in each annual report under subparagraph (B) recommendations—

(i) addressing any identified patterns of inappropriate utilization,

(ii) on utilization review,

(iii) on physician education or patient education,

(iv) addressing any problems of beneficiary access to care made evident by the monitoring process, and

(v) on such other matters as the Secretary deems appropriate.

The Medicare Payment Advisory Commission shall comment on the Secretary's recommendations and in developing its comments, the Commission shall convene and consult a panel of physician experts to evaluate the implications of medical utilization patterns for the quality of and access to patient care.

(h) Sending information to physicians

Before the beginning of each year (beginning with 1992), the Secretary shall send to each phy-

[3] So in original. The comma probably should not appear.

sician or nonparticipating supplier or other person furnishing physicians' services (as defined in subsection (j)(3) of this section) furnishing physicians' services under this part, for services commonly performed by the physician, supplier, or other person, information on fee schedule amounts that apply for the year in the fee schedule area for participating and non-participating physicians, and the maximum amount that may be charged consistent with subsection (g)(2) of this section. Such information shall be transmitted in conjunction with notices to physicians, suppliers, and other persons under section 1395u(h) of this title (relating to the participating physician program) for a year.

(i) Miscellaneous provisions

(1) Restriction on administrative and judicial review

There shall be no administrative or judicial review under section 1395ff of this title or otherwise of—

(A) the determination of the adjusted historical payment basis (as defined in subsection (a)(2)(D)(i) of this section),

(B) the determination of relative values and relative value units under subsection (c) of this section, including adjustments under subsections (c)(2)(F), (c)(2)(H), and (c)(2)(I) of this section and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993,

(C) the determination of conversion factors under subsection (d) of this section, including without limitation a prospective redetermination of the sustainable growth rates for any or all previous fiscal years,

(D) the establishment of geographic adjustment factors under subsection (e) of this section, and

(E) the establishment of the system for the coding of physicians' services under this section.

(2) Assistants-at-surgery

(A) In general

Subject to subparagraph (B), in the case of a surgical service furnished by a physician, if payment is made separately under this part for the services of a physician serving as an assistant-at-surgery, the fee schedule amount shall not exceed 16 percent of the fee schedule amount otherwise determined under this section for the global surgical service involved.

(B) Denial of payment in certain cases

If the Secretary determines, based on the most recent data available, that for a surgical procedure (or class of surgical procedures) the national average percentage of such procedure performed under this part which involve the use of a physician as an assistant at surgery is less than 5 percent, no payment may be made under this part for services of an assistant at surgery involved in the procedure.

(3) No comparability adjustment

For physicians' services for which payment under this part is determined under this section—

(A) a carrier may not make any adjustment in the payment amount under section 1395u(b)(3)(B) of this title on the basis that the payment amount is higher than the charge applicable, for comparable services and under comparable circumstances, to the policyholders and subscribers of the carrier,

(B) no payment adjustment may be made under section 1395u(b)(8) of this title, and

(C) section 1395u(b)(9) of this title shall not apply.

(j) Definitions

In this section:

(1) Category

For services furnished before January 1, 1998, the term ''category'' means, with respect to physicians' services, surgical services, and all physicians' services other than surgical services (as defined by the Secretary and including anesthesia services), primary care services (as defined in section 1395u(i)(4) of this title), and all other physicians' services. The Secretary shall define surgical services and publish such definition in the Federal Register no later than May 1, 1990, after consultation with organizations representing physicians.

(2) Fee schedule area

The term ''fee schedule area'' means a locality used under section 1395u(b) of this title for purposes of computing payment amounts for physicians' services.

(3) Physicians' services

The term ''physicians' services'' includes items and services described in paragraphs (1), (2)(A), (2)(D), (2)(G), (2)(P) (with respect to services described in subparagraphs (A) and (C) of section 1395x(*oo*)(2) of this title), (2)(R) (with respect to services described in subparagraphs (B), (C), and (D) of section 1395x(pp)(1) of this title), (2)(S), (2)(W), (2)(AA), (3), (4), (13), (14) (with respect to services described in section 1395x(nn)(2) of this title), and (15) of section 1395x(s) of this title (other than clinical diagnostic laboratory tests and, except for purposes of subsections (a)(3), (g), and (h) of this section[4] such other items and services as the Secretary may specify).

(4) Practice expenses

The term ''practice expenses'' includes all expenses for furnishing physicians' services, excluding malpractice expenses, physician compensation, and other physician fringe benefits.

(k) Quality reporting system

(1) In general

The Secretary shall implement a system for the reporting by eligible professionals of data on quality measures specified under paragraph (2). Such data shall be submitted in a form and manner specified by the Secretary (by program instruction or otherwise), which may include submission of such data on claims under this part.

(2) Use of consensus-based quality measures

(A) For 2007

(i) In general

For purposes of applying this subsection for the reporting of data on quality meas-

[4] So in original. Probably should be followed by a comma.

ures for covered professional services furnished during the period beginning July 1, 2007, and ending December 31, 2007, the quality measures specified under this paragraph are the measures identified as 2007 physician quality measures under the Physician Voluntary Reporting Program as published on the public website of the Centers for Medicare & Medicaid Services as of December 20, 2006, except as may be changed by the Secretary based on the results of a consensus-based process in January of 2007, if such change is published on such website by not later than April 1, 2007.

(ii) Subsequent refinements in application permitted

The Secretary may, from time to time (but not later than July 1, 2007), publish on such website (without notice or opportunity for public comment) modifications or refinements (such as code additions, corrections, or revisions) for the application of quality measures previously published under clause (i), but may not, under this clause, change the quality measures under the reporting system.

(iii) Implementation

Notwithstanding any other provision of law, the Secretary may implement by program instruction or otherwise this subsection for 2007.

(B) For 2008

(i) In general

For purposes of reporting data on quality measures for covered professional services furnished during 2008, the quality measures specified under this paragraph for covered professional services shall be measures that have been adopted or endorsed by a consensus organization (such as the National Quality Forum or AQA), that include measures that have been submitted by a physician specialty, and that the Secretary identifies as having used a consensus-based process for developing such measures. Such measures shall include structural measures, such as the use of electronic health records and electronic prescribing technology.

(ii) Proposed set of measures

Not later than August 15, 2007, the Secretary shall publish in the Federal Register a proposed set of quality measures that the Secretary determines are described in clause (i) and would be appropriate for eligible professionals to use to submit data to the Secretary in 2008. The Secretary shall provide for a period of public comment on such set of measures.

(iii) Final set of measures

Not later than November 15, 2007, the Secretary shall publish in the Federal Register a final set of quality measures that the Secretary determines are described in clause (i) and would be appropriate for eligible professionals to use to submit data to the Secretary in 2008.

(3) Covered professional services and eligible professionals defined

For purposes of this subsection:

(A) Covered professional services

The term ''covered professional services'' means services for which payment is made under, or is based on, the fee schedule established under this section and which are furnished by an eligible professional.

(B) Eligible professional

The term ''eligible professional'' means any of the following:

(i) A physician.

(ii) A practitioner described in section 1395u(b)(18)(C) of this title.

(iii) A physical or occupational therapist or a qualified speech-language pathologist.

(4) Use of registry-based reporting

As part of the publication of proposed and final quality measures for 2008 under clauses (ii) and (iii) of paragraph (2)(B), the Secretary shall address a mechanism whereby an eligible professional may provide data on quality measures through an appropriate medical registry (such as the Society of Thoracic Surgeons National Database), as identified by the Secretary.

(5) Identification units

For purposes of applying this subsection, the Secretary may identify eligible professionals through billing units, which may include the use of the Provider Identification Number, the unique physician identification number (described in section 1395*l*(q)(1) of this title), the taxpayer identification number, or the National Provider Identifier. For purposes of applying this subsection for 2007, the Secretary shall use the taxpayer identification number as the billing unit.

(6) Education and outreach

The Secretary shall provide for education and outreach to eligible professionals on the operation of this subsection.

(7) Limitations on review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of the development and implementation of the reporting system under paragraph (1), including identification of quality measures under paragraph (2) and the application of paragraphs (4) and (5).

(8) Implementation

The Secretary shall carry out this subsection acting through the Administrator of the Centers for Medicare & Medicaid Services.

(*l*) Physician Assistance and Quality Initiative Fund

(1) Establishment

The Secretary shall establish under this subsection a Physician Assistance and Quality Initiative Fund (in this subsection referred to as the ''Fund'') which shall be available to the Secretary for physician payment and quality improvement initiatives, which may include

application of an adjustment to the update of the conversion factor under subsection (d).

(2) Funding

(A) Amount available

There shall be available to the Fund for expenditures an amount equal to $1,350,000,000.

(B) Timely obligation of all available funds for services furnished during 2008

The Secretary shall provide for expenditures from the Fund in a manner designed to provide (to the maximum extent feasible) for the obligation of the entire amount specified in subparagraph (A) for payment with respect to physicians' services furnished during 2008.

(C) Payment from Trust Fund

The amount specified in subparagraph (A) shall be available to the Fund, as expenditures are made from the Fund, from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title.

(D) Funding limitation

Amounts in the Fund shall be available in advance of appropriations in accordance with subparagraph (B) but only if the total amount obligated from the Fund does not exceed the amount available to the Fund under subparagraph (A). The Secretary may obligate funds from the Fund only if the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services and the appropriate budget officer certify) that there are available in the Fund sufficient amounts to cover all such obligations incurred consistent with the previous sentence.

(E) Construction

In the case that expenditures from the Fund are applied to, or otherwise affect, a conversion factor under subsection (d) for a year, the conversion factor under such subsection shall be computed for a subsequent year as if such application or effect had never occurred.

(Aug. 14, 1935, ch. 531, title XVIII, § 1848, as added Pub. L. 101–239, title VI, § 6102(a), Dec. 19, 1989, 103 Stat. 2169; amended Pub. L. 101–508, title IV, §§ 4102(b), (g)(2), 4104(b)(2), 4105(a)(3), (c), 4106(b)(1), 4107(a)(1), 4109(a), 4116, 4118(b)–(f)(1), (k), Nov. 5, 1990, 104 Stat. 1388–56, 1388–57, 1388–59 to 1388–63, 1388–65, 1388–67, 1388–68, 1388–71; Pub. L. 103–66, title XIII, §§ 13511(a), 13512–13514(c), 13515(a)(1), (c), 13516(a)(1), 13517(a), 13518(a), Aug. 10, 1993, 107 Stat. 580–583, 585, 586; Pub. L. 103–432, title I, §§ 121(b)(1), (2), 122(a), (b), 123(a), (d), 126(b)(6), (g)(2)(B), (5)–(7), (10)(A), Oct. 31, 1994, 108 Stat. 4409, 4410, 4412, 4415, 4416; Pub. L. 105–33, title IV, §§ 4022(b)(2)(B), (C), 4102(d), 4103(d), 4104(d), 4105(a)(2), 4106(b), 4501, 4502(a)(1), (b), 4503, 4504(a), 4505(a), (b), (e), (f)(1), 4644(d), 4714(b)(2), Aug. 5, 1997, 111 Stat. 354, 355, 361, 362, 365, 366, 368, 432–437, 488, 510; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 211(a)(1), (2)(A), (3)(A), (b), title III, § 321(k)(5)], Nov. 29, 1999, 113 Stat. 1536, 1501A–345 to 1501A–348, 1501A–366; Pub. L. 106–554, § 1(a)(6) [title I, § 104(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–469; Pub. L. 108–7, div. N, title IV, § 402(a), Feb. 20, 2003, 117 Stat. 548; Pub. L. 108–173, title III, § 303(a)(1), (g)(2), title IV, § 412, title VI, §§ 601(a)(1), (2), (b)(1), 602, 611(c), title VII, § 736(b)(10), Dec. 8, 2003, 117 Stat. 2233, 2253, 2274, 2300, 2301, 2304, 2356; Pub. L. 109–171, title V, §§ 5102, 5104(a), 5112(c), Feb. 8, 2006, 120 Stat. 39, 40, 44; Pub. L. 109–432, div. B, title I, §§ 101(a), (b), (d), 102, Dec. 20, 2006, 120 Stat. 2975, 2980, 2981.)

REFERENCES IN TEXT

Section 13515(b) of the Omnibus Budget Reconciliation Act of 1993, referred to in subsecs. (a)(2)(B)(ii)(I), (c)(2)(A)(i), and (i)(1)(B), is section 13515(b) of Pub. L. 103–66, which is set out as a note under section 1395u of this title.

Section 6105(b) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (a)(2)(D)(ii), (iii), is section 6105(b) of Pub. L. 101–239, which is set out as a note under section 1395m of this title.

Section 4048(b) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (b)(2)(B), is section 4048(b) of Pub. L. 100–203, which is set out as a note under section 1395u of this title.

Section 13514(a) of the Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (c)(2)(F), is section 13514(a) of Pub. L. 103–66, which amended subsec. (b)(3) of this section. See 1993 Amendment note below.

Section 212 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, referred to in subsec. (c)(2)(H)(i), (I)(ii)(I), is section 1000(a)(6) [title II, § 212] of Pub. L. 106–113, which is set out as a note under this section.

The Balanced Budget Act of 1997, referred to in subsec. (d)(1)(C), is Pub. L. 105–33, Aug. 5, 1997, 111 Stat. 251. Chapter 1 of subtitle F of title IV of the Act is chapter 1 (§§ 4501–4513) of subtitle F of title IV of Pub. L. 105–33, which amended this section and sections 1395a, 1395k, 1395*l*, 1395u, 1395x, 1395y, 1395cc, and 1395yy of this title and enacted provisions set out as notes under this section and sections 1395a, 1395k, 1395*l*, 1395x, and 1395ww of this title. For complete classification of this Act to the Code, see Tables.

Part C of this subchapter, referred to in subsec. (f)(4)(B), is classified to section 1395w–21 et seq. of this title.

AMENDMENTS

2006—Subsec. (b)(4). Pub. L. 109–171, § 5102(b)(1), added par. (4).

Subsec. (c)(2)(B)(ii)(II). Pub. L. 109–171, § 5102(a)(1), substituted ''clauses (iv) and (v)'' for ''clause (iv)''.

Subsec. (c)(2)(B)(iv). Pub. L. 109–171, § 5102(a)(2), inserted ''of certain additional expenditures'' after ''Exemption'' in heading.

Subsec. (c)(2)(B)(v). Pub. L. 109–171, § 5102(a)(3), added cl. (v).

Subsec. (c)(2)(B)(v)(II). Pub. L. 109–171, § 5102(b)(2), added subcl. (II).

Subsec. (d)(4)(B). Pub. L. 109–171, § 5104(a)(1), substituted ''paragraphs (5) and (6)'' for ''paragraph (5)'' in introductory provisions.

Subsec. (d)(6). Pub. L. 109–171, § 5104(a)(2), added par. (6).

Subsec. (d)(7). Pub. L. 109–432, § 101(a), added par. (7).

Subsec. (e)(1)(E). Pub. L. 109–432, § 102, substituted ''2008'' for ''2007''.

Subsec. (j)(3). Pub. L. 109–171, § 5112(c), inserted ''(2)(AA),'' after ''(2)(W),''.

Subsec. (k). Pub. L. 109–432, § 101(b), added subsec. (k).

Subsec. (*l*). Pub. L. 109–432, § 101(d), added subsec. (*l*).

2003—Subsec. (c)(2)(B)(ii)(II). Pub. L. 108–173, § 303(a)(1)(A)(i), substituted ''Subject to clause (iv), the adjustments'' for ''The adjustments''.

Subsec. (c)(2)(B)(iv). Pub. L. 108–173, § 303(a)(1)(A)(ii), added cl. (iv).

Subsec. (c)(2)(H) to (J). Pub. L. 108–173, § 303(a)(1)(B), added subpars. (H) to (J).

Subsec. (d)(4)(B). Pub. L. 108–173, § 601(a)(2), inserted ''and paragraph (5)'' after ''subparagraph (D)'' in introductory provisions.

Subsec. (d)(5). Pub. L. 108–173, § 601(a)(1), added par. (5).

Subsec. (e)(1)(A). Pub. L. 108–173, § 602(1), which directed amendment of subsec. (e)(1)(A), as amended by section 421, by substituting ''subparagraphs (B), (C), (E), (F) and (G)'' for ''subparagraphs (B), (C), (E), and (F)'', was executed to subsec. (e)(1)(A), as amended by section 412 of Pub. L. 108–173, by making the substitution for ''subparagraphs (B), (C), and (E)'', to reflect the probable intent of Congress. See below.

Pub. L. 108–173, § 412(1), substituted ''subparagraphs (B), (C), and (E)'' for ''subparagraphs (B) and (C)''.

Subsec. (e)(1)(E). Pub. L. 108–173, § 412(2), added subpar. (E).

Subsec. (e)(1)(G). Pub. L. 108–173, § 602(2), added subpar. (G).

Subsec. (f)(2)(C). Pub. L. 108–173, § 601(b)(1), substituted ''annual average'' for ''projected'' and ''during the 10-year period ending with the applicable period involved'' for ''from the previous applicable period to the applicable period involved''.

Subsec. (i)(1)(B). Pub. L. 108–173, § 303(g)(2), substituted ''subsections (c)(2)(F), (c)(2)(H), and (c)(2)(I) of this section'' for ''subsection (c)(2)(F) of this section''.

Subsec. (i)(1)(C). Pub. L. 108–7 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''the determination of conversion factors under subsection (d) of this section,''.

Subsec. (i)(3)(A). Pub. L. 108–173, § 736(b)(10), substituted ''comparable services'' for ''a comparable services''.

Subsec. (j)(3). Pub. L. 108–173, § 611(c), inserted ''(2)(W),'' after ''(2)(S),''.

2000—Subsec. (j)(3). Pub. L. 106–554 inserted ''(13),'' after ''(4),''.

1999—Subsec. (d)(1)(A). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(3)(A)(i)], inserted ''(for years before 2001) and, for years beginning with 2001, multiplied by the update (established under paragraph (4)) for the year involved'' before period at end.

Subsec. (d)(1)(E). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(2)(A)], amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: ''The Secretary shall cause to have published in the Federal Register, during the last 15 days of October of—

''(i) 1991, the conversion factor which will apply to physicians' services for 1992, and the update determined under paragraph (3) for 1992; and

''(ii) each succeeding year, the conversion factor which will apply to physicians' services for the following year and the update determined under paragraph (3) for such year.''

Subsec. (d)(3). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(1)(A)(i)], inserted ''for 1999 and 2000'' after ''Update'' in heading.

Subsec. (d)(3)(A). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(1)(A)(ii)], substituted ''1999 and 2000'' for ''a year beginning with 1999'' in introductory provisions.

Subsec. (d)(3)(C). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(1)(A)(iii)], inserted ''and paragraph (4)'' after ''For purposes of this paragraph'' in introductory provisions.

Subsec. (d)(4). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(1)(B)], added par. (4).

Subsec. (f)(1). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(1)], amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The Secretary shall cause to have published in the Federal Register the sustainable growth rate for each fiscal year beginning with fiscal year 1998. Such publication shall occur by not later than August 1 before each fiscal year, except that such rate for fiscal year 1998 shall be published not later than November 1, 1997.''

Subsec. (f)(2). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(2)(A)], substituted ''fiscal year 1998 and ending with fiscal year 2000) and a year beginning with 2000'' for ''fiscal year 1998)'' in introductory provisions.

Subsec. (f)(2)(A). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(2)(B)], substituted ''applicable period'' for ''fiscal year''.

Subsec. (f)(2)(B), (C). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(2)(B)], substituted ''applicable period'' for ''fiscal year'' in two places.

Subsec. (f)(2)(D). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(3)(A)(ii), (b)(2)(B)], substituted ''applicable period'' for ''fiscal year'' in two places and ''subsection (d)(3)(B) or (d)(4)(B) of this section, as the case may be'' for ''subsection (d)(3)(B) of this section''.

Subsec. (f)(3). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(5)], added par. (3). Former par. (3) redesignated (4).

Subsec. (f)(3)(C). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(3)], added subpar. (C).

Subsec. (f)(4). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(4)], redesignated par. (3) as (4).

Subsec. (j)(3). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(5)], substituted ''section 1395x(*oo*)(2) of this title)'' for ''section 1395x(*oo*)(2) of this title,'', ''(B),'' for ''(B),'', and '', and (15)'' for ''and (15)''.

1997—Subsec. (b)(1). Pub. L. 105–33, § 4644(d), substituted ''Before November 1 of the preceding year, for each year beginning with 1998'' for ''Before January 1 of each year beginning with 1992'' in introductory provisions.

Subsec. (c)(2)(B)(iii). Pub. L. 105–33, § 4022(b)(2)(C), substituted ''Medicare Payment Advisory Commission'' for ''Physician Payment Review Commission''.

Subsec. (c)(2)(C)(ii). Pub. L. 105–33, § 4505(b)(1)(A), which directed an amendment striking the comma at the end of cl. (ii) and inserting a period and the following: ''For 1999, such number of units shall be determined based 75 percent on such product and based 25 percent on the relative practice expense resources involved in furnishing the service. For 2000, such number of units shall be determined based 50 percent on such product and based 50 percent on such relative practice expense resources. For 2001, such number of units shall be determined based 25 percent on such product and based 75 percent on such relative practice expense resources. For a subsequent year, such number of units shall be determined based entirely on such relative practice expense resources.'', was executed by making the insertion at end of cl. (ii) to reflect the probable intent of Congress, because cl. (ii) ended with a period rather than a comma.

Pub. L. 105–33, § 4505(a)(1), substituted ''1999'' for ''1998'' in two places.

Subsec. (c)(2)(C)(iii). Pub. L. 105–33, § 4505(f)(1)(A), inserted ''for the service for years before 2000'' before ''equal'' in introductory provisions, substituted comma for period at end of subcl. (II), and inserted concluding provisions.

Subsec. (c)(2)(G). Pub. L. 105–33, § 4505(e), added subpar. (G).

Subsec. (c)(3)(C)(ii). Pub. L. 105–33, § 4505(b)(2), substituted ''2002'' for ''1999'' in introductory provisions.

Pub. L. 105–33, § 4505(a)(2), substituted ''1999'' for ''1998'' in introductory provisions.

Subsec. (c)(3)(C)(iii). Pub. L. 105–33, § 4505(f)(1)(B), substituted ''For years before 1999, the malpractice'' for ''The malpractice'' in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 105–33, § 4501(b)(1), (2), struck out ''(or factors)'' after ''conversion factor'' in two places and struck out ''or updates'' after ''update''.

Subsec. (d)(1)(C). Pub. L. 105–33, § 4504(a)(1), substituted ''Except as provided in subparagraph (D), the single conversion factor'' for ''The single conversion factor''.

Pub. L. 105–33, § 4501(a)(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(1)(D). Pub. L. 105–33, § 4504(a)(3), added subpar. (D). Former subpar. (D) redesignated (E).

Pub. L. 105–33, § 4501(b)(1), (3), struck out ''(or updates)'' after ''update'' in two places and struck out ''(or factors)'' after ''conversion factor'' in cl. (ii).

Pub. L. 105–33, § 4501(a)(1), redesignated subpar. (C) as (D).

Subsec. (d)(1)(E). Pub. L. 105–33, § 4504(a)(2), redesignated subpar. (D) as (E).

Subsec. (d)(2). Pub. L. 105–33, § 4502(b), struck out heading and text of par. (2) which related to recommendation of update.

Subsec. (d)(2)(F). Pub. L. 105–33, § 4022(b)(1)(B)(i), struck out heading and text of subpar. (F). Text read as follows: ''The Physician Payment Review Commission shall review the report submitted under subparagraph (A) in a year and shall submit to the Congress, by not later than May 15 of the year, a report including its recommendations respecting the update (or updates) in the conversion factor (or factors) for the following year.''

Subsec. (d)(3). Pub. L. 105–33, § 4502(a)(1), amended heading and text generally. Prior to amendment, text related to updates of conversion factor based on index and made provision for adjustments in update.

Subsec. (f). Pub. L. 105–33, § 4503(b), amended subsec. heading and heading and text of par. (1) generally. Prior to amendment, par. (1) related to process for establishing medicare volume performance standard rates of increase.

Subsec. (f)(1)(B). Pub. L. 105–33, § 4022(b)(2)(B)(ii), struck out heading and text of subpar. (B). Text read as follows: ''The Physician Payment Review Commission shall review the recommendation transmitted during a year under subparagraph (A) and shall make its recommendation to Congress, by not later than May 15 of the year, respecting the performance standard rates of increase for the fiscal year beginning in that year.''

Subsec. (f)(2). Pub. L. 105–33, § 4503(a), added par. (2) and struck out heading and text of former par. (2) which related to specification of performance standard rates of increase for physician services for fiscal years beginning in 1991.

Subsec. (f)(3). Pub. L. 105–33, § 4503(a), added par. (3) and struck out heading and text of former par. (3). Text read as follows: ''The Secretary shall establish procedures for providing, on a quarterly basis to the the Congressional Budget Office, the Congressional Research Service, the Committees on Ways and Means and Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate, information on compliance with performance standard rates of increase established under this subsection.''

Pub. L. 105–33, § 4022(b)(2)(B)(iii), struck out ''Physician Payment Review Commission,'' before ''the Congressional Budget Office''.

Subsec. (f)(4), (5). Pub. L. 105–33, § 4503(a), struck out heading and text of par. (4) which related to separate group-specific performance standard rates of increase and par. (5) which defined ''physicians' services'' and ''HMO enrollee''.

Subsec. (g)(3)(A). Pub. L. 105–33, § 4714(b)(2), inserted before period at end ''and the provisions of section 1396a(n)(3)(A) of this title apply to further limit permissible charges under this section''.

Subsec. (g)(6)(C), (7)(C). Pub. L. 105–33, § 4022(b)(2)(C), substituted ''Medicare Payment Advisory Commission'' for ''Physician Payment Review Commission''.

Subsec. (j)(1). Pub. L. 105–33, § 4501(b)(4), substituted ''For services furnished before January 1, 1998, the term'' for ''The term''.

Subsec. (j)(3). Pub. L. 105–33, § 4106(b), substituted ''(4), (14)'' for ''(4) and (14)'' and inserted ''and (15)'' after ''1395x(nn)(2) of this title)''.

Pub. L. 105–33, § 4105(a)(2), inserted ''(2)(S),'' before ''(3)''.

Pub. L. 105–33, § 4103(d), inserted ''(2)(P) (with respect to services described in subparagraphs (A) and (C) of section 1395x(*oo*)(2) of this title,'' after ''(2)(G)''.

Pub. L. 105–33, §§ 4102(d), 4104(d), inserted ''(2)(R) (with respect to services described in subparagraphs (B) , (C), and (D) of section 1395x(pp)(1) of this title),'' before ''(3)'' and substituted ''(4) and (14) (with respect to services described in section 1395x(nn)(2) of this title)'' for ''and (4)''.

1994—Subsec. (a)(2)(D)(iii). Pub. L. 103–432, § 126(b)(6), struck out ''that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989'' after ''nuclear medicine services'' and substituted ''provided under section 6105(b) of the Omnibus Budget Reconciliation Act of 1989'' for ''provided under such section''.

Subsec. (c)(2)(C)(ii). Pub. L. 103–432, § 121(b)(1), inserted ''for the service for years before 1998'' before ''equal to'' in introductory provisions, substituted comma for period at end of subcl. (II), and inserted ''and for years beginning with 1998 based on the relative practice expense resources involved in furnishing the service.'' as closing provisions.

Subsec. (c)(3)(C)(ii). Pub. L. 103–432, § 121(b)(2), substituted ''For years before 1998, the practice'' for ''The practice''.

Subsec. (c)(4). Pub. L. 103–432, § 126(g)(6), made technical amendment to directory language of Pub. L. 101–508, § 4118(f)(1)(D). See 1990 Amendment note below.

Subsec. (e)(1)(C). Pub. L. 103–432, § 126(g)(5), inserted ''date of the'' before ''last previous adjustment''.

Pub. L. 103–432, § 122(a), substituted ''shall, in consultation with appropriate representatives of physicians, review'' for ''shall review''.

Subsec. (e)(1)(D). Pub. L. 103–432, § 122(b), added subpar. (D).

Subsec. (f)(2)(A)(i). Pub. L. 103–432, § 126(g)(7), made technical amendment to directory language of Pub. L. 101–508, § 4118(f)(1)(N)(ii). See 1990 Amendment note below.

Subsec. (f)(2)(C). Pub. L. 103–432, § 126(g)(2)(B), inserted heading.

Subsec. (g)(1). Pub. L. 103–432, § 123(a)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''If a nonparticipating physician or nonparticipating supplier or other person (as defined in section 1395u(i)(2) of this title) knowingly and willfully bills on a repeated basis for physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3) of this section, furnished with respect to an individual enrolled under this part on or after January 1, 1991) an actual charge in excess of the limiting charge described in paragraph (2) and for which payment is not made on an assignment-related basis under this part, the Secretary may apply sanctions against such physician, supplier, or other person in accordance with section 1395u(j)(2) of this title. In applying this subparagraph, any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.''

Subsec. (g)(3)(B). Pub. L. 103–432, § 123(a)(2), inserted after first sentence ''No person is liable for payment of any amounts billed for such a service in violation of the previous sentence.'' and in last sentence substituted ''first sentence'' for ''previous sentence''.

Subsec. (g)(6)(B). Pub. L. 103–432, § 123(d), inserted ''information on the extent to which actual charges exceed limiting charges, the number and types of services involved, and the average amount of excess charges and information'' after ''report to the Congress''.

Subsec. (i)(3). Pub. L. 103–432, § 126(g)(10)(A), struck out space before the period at end.

1993—Subsec. (a)(2)(B)(ii)(I). Pub. L. 103–66, § 13515(c)(1), inserted ''and under section 13515(b) of the Omnibus Budget Reconciliation Act of 1993'' after ''subsection (c)(2)(F)(ii) of this section''.

Pub. L. 103–66, § 13514(c)(1), inserted ''and as adjusted under subsection (c)(2)(F)(ii) of this section'' after ''for 1994''.

Subsec. (a)(3). Pub. L. 103–66, § 13517(a)(1), in heading inserted ''and suppliers'' after ''physicians'' and in text inserted ''or a nonparticipating supplier or other person'' after ''nonparticipating physician'' and inserted at end ''In the case of physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3) of this section) of a nonparticipating physician, supplier, or other person for which payment is made under this part on a basis other than the fee schedule amount, the payment shall be based on 95 percent of the payment basis for such services furnished by a participating physician, supplier, or other person.''

Subsec. (a)(4). Pub. L. 103–66, § 13516(a)(1), added par. (4).

Pub. L. 103–66, § 13515(a)(1), struck out heading and text of par. (4). Text read as follows: ''In the case of physicians' services furnished by a physician before the end of the physician's first full calendar year of furnishing services for which payment may be made under this part, and during each of the 3 succeeding years, the fee schedule amount to be applied shall be 80 percent, 85 percent, 90 percent, and 95 percent, respectively, of the fee schedule amount applicable to physicians who are not subject to this paragraph. The preceding sentence shall not apply to primary care services or services furnished in a rural area (as defined in section 1395ww(d)(2) of this title) that is designated under section 249(a)(1)(A) of this title as a health manpower shortage area.''

Subsec. (b)(3). Pub. L. 103–66, § 13514(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''If payment is made under this part for a visit to a physician or consultation with a physician and, as part of or in conjunction with the visit or consultation there is an electrocardiogram performed or ordered to be performed, no payment may be made under this part with respect to the interpretation of the electrocardiogram and no physician may bill an individual enrolled under this part separately for such an interpretation. If a physician knowingly and willfully bills one or more individuals in violation of the previous sentence, the Secretary may apply sanctions against the physician or entity in accordance with section 1395u(j)(2) of this title.''

Subsec. (c)(2)(A)(i). Pub. L. 103–66, § 13515(c)(2), inserted before period at end ''and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993''.

Pub. L. 103–66, § 13514(c)(2), inserted at end ''Such relative values are subject to adjustment under subparagraph (F)(i).''

Subsec. (c)(2)(E). Pub. L. 103–66, § 13513, added subpar. (E).

Subsec. (c)(2)(F). Pub. L. 103–66, § 13514(b), added subpar. (F).

Subsec. (d)(3)(A)(i). Pub. L. 103–66, § 13511(a)(1)(A), substituted ''clauses (iii) through (v)'' for ''clause (iii)''.

Subsec. (d)(3)(A)(iv) to (vi). Pub. L. 103–66, § 13511(a)(1)(B), added cls. (iv) to (vi).

Subsec. (d)(3)(B)(ii). Pub. L. 103–66, § 13512(b), substituted ''1994'' for ''1994 or 1995'' in subcl. (II) and ''5'' for ''3'' in subcl. (III).

Subsec. (f)(2)(B). Pub. L. 103–66, § 13512(a), added cls. (iii) to (v) and struck out former cl. (iii) which read as follows: ''for each succeeding year is 2 percentage points.''

Subsec. (g)(1). Pub. L. 103–66, § 13517(a)(2)(C), (D), inserted '', supplier, or other person'' after ''such physician'' and inserted at end ''In applying this subparagraph, any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.''

Pub. L. 103–66, § 13517(a)(2)(B), which directed insertion of ''including services which the Secretary excludes pursuant to subsection (j)(3) of this section,'' after ''physician's services ('', was executed by making the insertion after ''physicians' services ('' to reflect the probable intent of Congress.

Pub. L. 103–66, § 13517(a)(2)(A), inserted ''or nonparticipating supplier or other person (as defined in section 1395u(i)(2) of this title)'' after ''nonparticipating physician''.

Subsec. (g)(2)(C). Pub. L. 103–66, § 13517(a)(3), inserted ''or for nonparticipating suppliers or other persons'' after ''nonparticipating physicians''.

Subsec. (g)(2)(D). Pub. L. 103–66, § 13517(a)(4), inserted ''(or, if payment under this part is made on a basis other than the fee schedule under this section, 95 percent of the other payment basis)'' after ''subsection (a) of this section''.

Subsec. (h). Pub. L. 103–66, § 13517(a)(5), inserted ''or nonparticipating supplier or other person furnishing physicians' services (as defined in subsection (j)(3) of this section)'' after ''each physician'', inserted '', supplier, or other person'' after ''by the physician'', and inserted '', suppliers, and other persons'' after ''notices to physicians''.

Subsec. (i)(1)(B). Pub. L. 103–66, § 13515(c)(3), inserted ''and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993'' after ''subsection (c)(2)(F) of this section''.

Pub. L. 103–66, § 13514(c)(3), inserted at end ''including adjustments under subsection (c)(2)(F) of this section,''.

Subsec. (j)(1). Pub. L. 103–66, § 13511(a)(2), substituted ''Secretary and including anesthesia services), primary care services (as defined in section 1395u(i)(4) of this title),'' for ''Secretary)''.

Subsec. (j)(3). Pub. L. 103–66, § 13518(a), inserted ''(2)(G),'' after ''(2)(D),''.

Pub. L. 103–66, § 13517(a)(6), inserted '', except for purposes of subsections (a)(3), (g), and (h) of this section'' after ''tests and''.

1990—Subsec. (a)(1). Pub. L. 101–508, § 4104(b)(2), struck out ''or 1395m(f)'' after ''section 1395m(b)'' in introductory provisions.

Subsec. (a)(2)(C). Pub. L. 101–508, § 4102(b), inserted ''and radiology'' after ''Special rule for anesthesia'' in heading and inserted at end ''With respect to radiology services, '109 percent' and '9 percent' shall be substituted for '115 percent' and '15 percent', respectively, in subparagraph (A)(ii).''

Subsec. (a)(2)(D)(ii). Pub. L. 101–508, § 4102(g)(2)(A), inserted '', but excluding nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989'' after ''section 1395m(b)(6) of this title)''.

Subsec. (a)(2)(D)(iii). Pub. L. 101–508, § 4102(g)(2)(B), added cl. (iii).

Subsec. (a)(4). Pub. L. 101–508, § 4106(b)(1), added par. (4).

Subsec. (b)(3). Pub. L. 101–508, § 4109(a), added par. (3).

Subsec. (c)(1)(B). Pub. L. 101–508, § 4118(f)(1)(A), struck out at end ''In this subparagraph, the term 'practice expenses' includes all expenses for furnishing physicians' services, excluding malpractice expenses, physician compensation, and other physician fringe benefits.''

Subsec. (c)(3). Pub. L. 101–508, § 4118(f)(1)(C), redesignated par. (3), relating to ancillary policies, as (4).

Subsec. (c)(3)(C)(ii)(II), (iii)(II). Pub. L. 101–508, § 4118(f)(1)(B), struck out ''by'' before ''the proportion''.

Subsec. (c)(4). Pub. L. 101–508, § 4118(f)(1)(D), as amended by Pub. L. 103–432, § 126(g)(6), substituted ''section'' for ''subsection''.

Pub. L. 101–508, § 4118(f)(1)(C), redesignated par. (3), relating to ancillary policies, as (4). Former par. (4) redesignated (5).

Pub. L. 101–508, § 4118(d), struck out ''only for services furnished on or after January 1, 1993'' after ''visits and consultations''.

Subsec. (c)(5), (6). Pub. L. 101–508, § 4118(f)(1)(C), redesignated pars. (4) and (5) as (5) and (6), respectively.

Subsec. (d)(1)(A). Pub. L. 101–508, § 4118(f)(1)(E), (F)(i)(III), amended subpar. (A) identically, substituting ''paragraph (3)'' for ''subparagraph (C)''.

Pub. L. 101–508, § 4118(f)(1)(F)(i)(I), (II), substituted ''conversion factor (or factors)'' for ''conversion factor'' in two places and ''update or updates'' for ''update''.

Subsec. (d)(1)(C)(i). Pub. L. 101–508, § 4118(f)(1)(F)(ii)(I), substituted ''conversion factor'' for ''conversion factor (or factors)''.

Subsec. (d)(1)(C)(ii). Pub. L. 101–508, § 4118(f)(1)(F)(ii)(II), inserted ''the conversion factor (or factors) which will apply to physicians' services for the following year and'' before ''the update (or updates)'' and substituted ''such year'' for ''the following year''.

Subsec. (d)(2)(A). Pub. L. 101–508, § 4118(f)(1)(G), (I), substituted ''physicians' services (as defined in subsection (f)(5)(A) of this section)'' for ''physicians' services'' in first sentence and ''proportion of individuals who are enrolled under this part who are HMO enrollees'' for ''proportion of HMO enrollees'' in last sentence.

Subsec. (d)(2)(A)(ii). Pub. L. 101–508, § 4118(f)(1)(H), substituted ''and for the services involved'' for ''(as de-

fined in subsection (f)(5)(A) of this section)'' and ''such services'' for ''all such physicians' services''.

Subsec. (d)(2)(E)(i). Pub. L. 101–508, § 4118(f)(1)(J), inserted ''the'' before ''most recent''.

Subsec. (d)(2)(E)(ii)(I). Pub. L. 101–508, § 4118(f)(1)(K), substituted ''payments for physicians' services'' for ''physicians' services''.

Subsec. (d)(3)(A)(i). Pub. L. 101–508, § 4105(a)(3)(A), inserted ''except as provided in clause (iii),'' after ''subparagraph (B),''.

Subsec. (d)(3)(A)(iii). Pub. L. 101–508, § 4105(a)(3)(B), added cl. (iii).

Subsec. (d)(3)(B)(i). Pub. L. 101–508, § 4118(f)(1)(L)(i)(II), which directed amendment of cl. (i) by substituting ''services in such category'' for ''physicians' services (as defined in subsection (f)(5)(A))'', was executed by making the substitution for ''physicians' services (as defined in section (f)(5)(A))'' to reflect the probable intent of Congress.

Pub. L. 101–508, § 4118(f)(1)(L)(i)(I), substituted ''update for a category of physicians' services for a year'' for ''update for a year''.

Subsec. (d)(3)(B)(ii). Pub. L. 101–508, § 4118(f)(1)(L)(ii), inserted ''more than'' after ''decrease of'' in introductory provisions and struck out ''more than'' before ''2 percentage points'' in subcl. (I).

Subsec. (e)(1)(A). Pub. L. 101–508, § 4118(c)(1), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)'' in introductory provisions.

Subsec. (e)(1)(C). Pub. L. 101–508, § 4118(c)(2), added subpar. (C).

Subsec. (f)(1)(C). Pub. L. 101–508, § 4105(c)(1), substituted ''1991'' for ''1990'' after ''beginning with''.

Subsec. (f)(1)(D)(i). Pub. L. 101–508, § 4118(f)(1)(M), substituted ''portions of calendar years'' for ''calendar years''.

Subsec. (f)(2)(A). Pub. L. 101–508, § 4118(b)(1), (f)(1)(N)(i), in introductory provisions, substituted ''the performance standard rate of increase, for all physicians' services and for each category of physicians' services,'' for ''each performance standard rate of increase'' and ''product'' for ''sum''.

Pub. L. 101–508, § 4118(b)(6), substituted ''minus 1, multiplied by 100, and reduced'' for ''reduced'' in concluding provisions.

Subsec. (f)(2)(A)(i). Pub. L. 101–508, § 4118(f)(1)(N)(ii), as amended by Pub. L. 103–432, § 126(g)(7), substituted ''all physicians' services or for the category of physicians' services, respectively,'' for ''physicians' services (as defined in subsection (f)(5)(A) of this section)''.

Pub. L. 101–508, § 4118(f)(1)(M), substituted ''portions of calendar years'' for ''calendar years''.

Pub. L. 101–508, § 4118(b)(2), (3), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and ''percentage increase (divided by 100)'' for ''percentage increase''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–508, § 4118(b)(2), (4), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and inserted ''(divided by 100)'' after ''decrease''.

Subsec. (f)(2)(A)(iii). Pub. L. 101–508, § 4118(f)(1)(N)(iii), substituted ''all physicians' services or of the category of physicians' services, respectively,'' for ''physicians' services''.

Pub. L. 101–508, § 4118(b)(2), (5), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and inserted ''(divided by 100)'' after ''percentage growth''.

Subsec. (f)(2)(A)(iv). Pub. L. 101–508, § 4118(e), (f)(1)(N)(iv), substituted ''all physicians' services or of the category of physicians' services, respectively,'' for ''physicians' services (as defined in subsection (f)(5)(A) of this section)'' and inserted ''including changes in law and regulations affecting the percentage increase described in clause (i)'' after ''law or regulations''.

Pub. L. 101–508, § 4118(b)(2), (4), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and ''decrease (divided by 100)'' for ''decrease''.

Subsec. (f)(2)(C). Pub. L. 101–508, § 4105(c)(2), added subpar. (C).

Subsec. (f)(4)(A). Pub. L. 101–508, § 4118(f)(1)(O), substituted ''subparagraph (B)'' for ''paragraph (B)''.

Subsec. (f)(4)(B). Pub. L. 101–508, § 4118(f)(1)(P), substituted ''specifically approved by law'' for ''Congress specifically approves the plan''.

Subsec. (g)(2)(A). Pub. L. 101–508, § 4118(f)(1)(Q), inserted ''other than radiologist services subject to section 1395m(b) of this title,'' after ''during 1991,'' in introductory provisions.

Pub. L. 101–508, § 4116, inserted at end ''In the case of evaluation and management services (as specified in section 1395u(b)(16)(B)(ii) of this title), the preceding sentence shall be applied by substituting '40 percent' for '25 percent'.''

Subsec. (g)(2)(B). Pub. L. 101–508, § 4118(f)(1)(Q), inserted ''other than radiologist services subject to section 1395m(b) of this title,'' after ''during 1992,'' in introductory provisions.

Subsec. (i)(1)(A). Pub. L. 101–508, § 4118(f)(1)(R), substituted ''adjusted historical payment basis (as defined in subsection (a)(2)(D)(i)'' for ''historical payment basis (as defined in subsection (a)(2)(C)(i)''.

Subsec. (i)(2). Pub. L. 101–508, § 4107(a)(1), added par. (2).

Subsec. (i)(3). Pub. L. 101–508, § 4118(k), added par. (3).

Subsec. (j)(1). Pub. L. 101–508, § 4118(f)(1)(S), which directed the amendment of par. (1) by substituting ''(as defined by the Secretary) and all other physicians' services'' for '', and such other'' and all that follows through the period was executed by making the substitution for '', and such other category or categories of physicians' services as the Secretary, from time to time, defines in regulation.'' to reflect the probable intent of Congress.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 5112(c) of Pub. L. 109–171 applicable to services furnished on or after Jan. 1, 2007, see section 5112(f) of Pub. L. 109–171, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title VI, § 601(b)(2), Dec. 8, 2003, 117 Stat. 2301, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to computations of the sustainable growth rate for years beginning with 2003.''

Pub. L. 108–173, title VI, § 611(e), Dec. 8, 2003, 117 Stat. 2304, provided that: ''The amendments made by this section [amending this section and sections 1395x and 1395y of this title] shall apply to services furnished on or after January 1, 2005, but only for individuals whose coverage period under part B [probably means part B of title XVIII of the Social Security Act, which is classified to this part] begins on or after such date.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable with respect to screening mammographies furnished on or after Jan. 1, 2002, see section 1(a)(6) [title I, § 104(c)] of Pub. L. 106–554, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 211(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–350, provided that: ''The amendments made by this section [amending this section and sections 1395b–6 and 1395*l* of this title] shall be effective in determining the conversion factor under section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) for years beginning with 2001 and shall not apply to or affect any update (or any update adjustment factor) for any year before 2001.''

Amendment by section 1000(a)(6) [title III, § 321(k)(5)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4022(b)(2)(B), (C) of Pub. L. 105–33 effective Nov. 1, 1997, the date of termination of the Prospective Payment Assessment Commission and the Physician Payment Review Commission, see section 4022(c)(2) of Pub. L. 105–33 set out as an Effective Date; Transition; Transfer of Functions note under section 1395b–6 of this title.

Amendment by section 4102(d) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4102(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4103(d) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 2000, see section 4103(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4104(d) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4104(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4105(a)(2) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4105(d)(1) of Pub. L. 105–33, set out as a note under section 1395m of this title.

Amendment by section 4106(b) of Pub. L. 105–33 applicable to bone mass measurements performed on or after July 1, 1998, see section 4106(d) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Section 4502(a)(2) of Pub. L. 105–33 provided that: ''The amendment made by this subsection [amending this section] shall apply to the update for years beginning with 1999.''

Section 4504(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1998.''

Amendment by section 4714(b)(2) of Pub. L. 105–33 applicable to payment for (and with respect to provider agreements with respect to) items and services furnished on or after Aug. 5, 1997, see section 4714(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 123(a) of Pub. L. 103–432 applicable to services furnished on or after Oct. 31, 1994, but inapplicable to services of nonparticipating supplier or other person furnished before Jan. 1, 1995, see section 123(f)(1) of Pub. L. 103–432, set out as a note under section 1395*l* of this title.

Section 123(f)(5) of Pub. L. 103–432 provided that: ''The amendment made by subsection (d) [amending this section] shall apply to reports for years beginning with 1995.''

Amendment by section 126(b)(6), (g)(2)(B), (5)–(7), (10)(A) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 126(i) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13511(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after January 1, 1994; except that amendment made by subsection (a)(2) shall not apply—

''(1) to volume performance standard rates of increase established under section 1848(f) of the Social Security Act [subsec. (f) of this section] for fiscal years before fiscal year 1994, and

''(2) to adjustment in updates in the conversion factors for physicians' services under section 1848(d)(3)(B) of such Act for physicians' services to be furnished in calendar years before 1996.''

Section 13514(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after January 1, 1994.''

Amendment by section 13515(a)(1) of Pub. L. 103–66 applicable to services furnished on or after Jan. 1, 1994, see section 13515(d) of Pub. L. 103–66, set out as a note under section 1395u of this title.

Section 13517(c) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1994.''

Section 13518(c) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1995.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4102(b), (g)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4102(i)(1) of Pub. L. 101–508, set out as a note under section 1395m of this title.

Amendment by section 4104(b)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4104(d) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

Amendment by section 4106(b)(1) of Pub. L. 101–508 applicable to services furnished after 1991, see section 4106(d)(2) of Pub. L. 101–508, set out as a note under section 1395u of this title.

Section 4107(a)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(d)(2), Oct. 31, 1994, 108 Stat. 4415, provided that: ''Section 1848(i)(2) of the Social Security Act [subsec. (i)(2) of this section], as added by the amendment made by paragraph (1), shall apply to services furnished in 1991 in the same manner as it applies to services furnished after 1991. In applying the previous sentence, the prevailing charge shall be substituted for the fee schedule amount. In applying section 1848(g)(2)(D) of the Social Security Act for services of an assistant-at-surgery furnished during 1991, the recognized payment amount shall not exceed the maximum amount specified under section 1848(i)(2)(A) of such Act (as applied under this paragraph in such year).''

Section 4107(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(d)(1), Oct. 31, 1994, 108 Stat. 4415, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply with respect to services furnished on or after January 1, 1992.''

Section 4109(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1992. In applying section 1848(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section] (in computing the initial budget-neutral conversion factor for 1991), the Secretary shall compute such factor assuming that section 1848(b)(3) of such Act (as added by the amendment made by subsection (a)) had applied to physicians' services furnished during 1991.''

TRANSFER OF FUNCTIONS

Physician Payment Review Commission (PPRC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title. Section 4022(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by PPRC, and that, for that purpose, any reference in law to PPRC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in

House Document No. 103–7 (in which item 8 on page 94 identifies a reporting provision which, as subsequently amended, is contained in subsec. (g)(6)(B) of this section and in which item 9 on page 94 identifies a reporting provision which is contained in subsec. (g)(7)(B) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSITIONAL BONUS INCENTIVE PAYMENTS FOR QUALITY REPORTING IN 2007

Pub. L. 109–432, div. B, title I, § 101(c), Dec. 20, 2006, 120 Stat. 2977, provided that:

''(1) IN GENERAL.—With respect to covered professional services furnished during a reporting period (as defined in paragraph (6)(C)) by an eligible professional, if—

''(A) there are any quality measures that have been established under the physician reporting system that are applicable to any such services furnished by such professional for such period, and

''(B) the eligible professional satisfactorily submits (as determined under paragraph (2)) to the Secretary data on such quality measures in accordance with such reporting system for such reporting period,

in addition to the amount otherwise paid under part B of title XVIII of the Social Security Act [this part], subject to paragraph (3), there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6) of the Social Security Act (42 U.S.C. 1395u(b)(6))) from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t) an amount equal to 1.5 percent of the Secretary's estimate (based on claims submitted not later than two months after the end of the reporting period) of the allowed charges under such part for all such covered professional services furnished during the reporting period.

''(2) SATISFACTORY REPORTING DESCRIBED.—For purposes of paragraph (1), an eligible professional shall be treated as satisfactorily submitting data on quality measures for covered professional services for a reporting period if quality measures have been reported as follows:

''(A) THREE OR FEWER QUALITY MEASURES APPLICABLE.—If there are no more than 3 quality measures that are provided under the physician reporting system and that are applicable to such services of such professional furnished during the period, each such quality measure has been reported under such system in at least 80 percent of the cases in which such measure is reportable under the system.

''(B) FOUR OR MORE QUALITY MEASURES APPLICABLE.—If there are 4 or more quality measures that are provided under the physician reporting system and that are applicable to such services of such professional furnished during the period, at least 3 such quality measures have been reported under such system in at least 80 percent of the cases in which the respective measure is reportable under the system.

''(3) PAYMENT LIMITATION.—

''(A) IN GENERAL.—In no case shall the total payment made under this subsection to an eligible professional (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6) of the Social Security Act [section 1395u(b)(6)(A) of this title]) exceed the product of—

''(i) the total number of quality measures for which data are submitted under the physician reporting system for covered professional services of such professional that are furnished during the reporting period; and

''(ii) 300 percent of the average per measure payment amount specified in subparagraph (B).

''(B) AVERAGE PER MEASURE PAYMENT AMOUNT SPECIFIED.—The average per measure payment amount specified in this subparagraph is an amount, estimated by the Secretary (based on claims submitted not later than two months after the end of the reporting period), equal to—

''(i) the total of the amount of allowed charges under part B of title XVIII of the Social Security Act [this part] for all covered professional services furnished during the reporting period on claims for which quality measures are reported under the physician reporting system; divided by

''(ii) the total number of quality measures for which data are reported under such system for covered professional services furnished during the reporting period.

''(4) FORM OF PAYMENT.—The payment under this subsection shall be in the form of a single consolidated payment.

''(5) APPLICATION.—

''(A) PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of section 1848(k) of the Social Security Act [subsec. (k) of this section], as added by subsection (b), shall apply for purposes of this subsection in the same manner as they apply for purposes of such section.

''(B) COORDINATION WITH OTHER BONUS PAYMENTS.—The provisions of this subsection shall not be taken into account in applying subsections (m) and (u) of section 1833 of the Social Security Act (42 U.S.C. 1395*l*) and any payment under such subsections shall not be taken into account in computing allowable charges under this subsection.

''(C) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary may implement by program instruction or otherwise this subsection.

''(D) VALIDATION.—

''(i) IN GENERAL.—Subject to the succeeding provisions of this subparagraph, for purposes of determining whether a measure is applicable to the covered professional services of an eligible professional under paragraph (2), the Secretary shall presume that if an eligible professional submits data for a measure, such measure is applicable to such professional.

''(ii) METHOD.—The Secretary shall validate (by sampling or other means as the Secretary determines to be appropriate) whether measures applicable to covered professional services of an eligible professional have been reported.

''(iii) DENIAL OF PAYMENT AUTHORITY.—If the Secretary determines that an eligible professional has not reported measures applicable to covered professional services of such professional, the Secretary shall not pay the bonus incentive payment.

''(E) LIMITATIONS ON REVIEW.—

''(i) IN GENERAL.—There shall be no administrative or judicial review under section 1869 or 1878 of the Social Security Act [section 1395ff or 1395*oo* of this title] or otherwise of—

''(I) the determination of measures applicable to services furnished by eligible professionals under this subsection;

''(II) the determination of satisfactory reporting under paragraph (2);

''(III) the determination of the payment limitation under paragraph (3); and

''(IV) the determination of the bonus incentive payment under this subsection.

''(ii) TREATMENT OF DETERMINATIONS.—A determination under this subsection shall not be treated as a determination for purposes of section 1869 of the Social Security Act.

''(6) DEFINITIONS.—For purposes of this subsection:

''(A) ELIGIBLE PROFESSIONAL; COVERED PROFESSIONAL SERVICES.—The terms 'eligible professional' and 'covered professional services' have the meanings given such terms in section 1848(k)(3) of the Social Security Act [subsec. (k)(3) of this section], as added by subsection (b).

''(B) PHYSICIAN REPORTING SYSTEM.—The term 'physician reporting system' means the system established under section 1848(k) of the Social Security Act, as added by subsection (b).

''(C) REPORTING PERIOD.—The term 'reporting period' means the period beginning on July 1, 2007, and ending on December 31, 2007.

''(D) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.''

TREATMENT OF OTHER SERVICES CURRENTLY IN THE NONPHYSICIAN WORK POOL

Pub. L. 108–173, title III, § 303(a)(2), Dec. 8, 2003, 117 Stat. 2236, provided that: ''The Secretary [of Health and Human Services] shall make adjustments to the nonphysician work pool methodology (as such term is used in the final rule promulgated by the Secretary in the Federal Register on December 31, 2002 (67 Fed. Reg. 251)), for the determination of practice expense relative value units under the physician fee schedule under section 1848(c)(2)(C)(ii) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(C)(ii)), so that the practice expense relative value units for services determined under such methodology are not affected relative to the practice expense relative value units of services not determined under such methodology, as a result of the amendments made by paragraph (1) [amending this section].''

PAYMENT FOR MULTIPLE CHEMOTHERAPY AGENTS FURNISHED ON A SINGLE DAY THROUGH THE PUSH TECHNIQUE

Pub. L. 108–173, title III, § 303(a)(3), Dec. 8, 2003, 117 Stat. 2236, provided that:

''(A) REVIEW OF POLICY.—The Secretary [of Health and Human Services] shall review the policy, as in effect on October 1, 2003, with respect to payment under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for the administration of more than 1 drug or biological to an individual on a single day through the push technique.

''(B) MODIFICATION OF POLICY.—After conducting the review under subparagraph (A), the Secretary shall modify such payment policy as the Secretary determines to be appropriate.

''(C) EXEMPTION FROM BUDGET NEUTRALITY UNDER PHYSICIAN FEE SCHEDULE.—If the Secretary modifies such payment policy pursuant to subparagraph (B), any increased expenditures under title XVIII of the Social Security Act [this subchapter] resulting from such modification shall be treated as additional expenditures attributable to subparagraph (H) of section 1848(c)(2) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)), as added by paragraph (1)(B), for purposes of applying the exemption to budget neutrality under subparagraph (B)(iv) of such section, as added by paragraph (1)(A).''

TRANSITIONAL ADJUSTMENT

Pub. L. 108–173, title III, § 303(a)(4), Dec. 8, 2003, 117 Stat. 2237, provided that:

''(A) IN GENERAL.—In order to provide for a transition during 2004 and 2005 to the payment system established under the amendments made by this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395*l*, 1395u, 1395x, 1395y, and 1396r–8 of this title, and repealing provisions set out as a note under section 1395u of this title], in the case of physicians' services consisting of drug administration services described in subparagraph (H)(iv) of section 1848(c)(2) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)), as added by paragraph (1)(B), furnished on or after January 1, 2004, and before January 1, 2006, in addition to the amount determined under the fee schedule under section 1848(b) of such Act (42 U.S.C. 1395w–4(b)) there also shall be paid to the physician from the Federal Supplementary Medical Insurance Trust Fund an amount equal to the applicable percentage specified in subparagraph (B) of such fee schedule amount for the services so determined.

''(B) APPLICABLE PERCENTAGE.—The applicable percentage specified in this subparagraph for services furnished—

''(i) during 2004, is 32 percent; and

''(ii) during 2005, is 3 percent.''

MEDPAC REVIEW AND REPORTS; SECRETARIAL RESPONSE

Pub. L. 108–173, title III, § 303(a)(5), Dec. 8, 2003, 117 Stat. 2237, provided that:

''(A) REVIEW.—The Medicare Payment Advisory Commission shall review the payment changes made under this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395*l*, 1395u, 1395x, 1395y, and 1396r–8 of this title, enacting provisions set out as notes under this section and sections 1395u, 1395w–3a, and 1395w–3b of this title, and repealing provisions set out as a note under section 1395u of this title] insofar as they affect payment under part B of title XVIII of the Social Security Act [this part]—

''(i) for items and services furnished by oncologists; and

''(ii) for drug administration services furnished by other specialists.

''(B) OTHER MATTERS STUDIED.—In conducting the review under subparagraph (A), the Commission shall also review such changes as they affect—

''(i) the quality of care furnished to individuals enrolled under part B and the satisfaction of such individuals with that care;

''(ii) the adequacy of reimbursement as applied in, and the availability in, different geographic areas and to different physician practice sizes; and

''(iii) the impact on physician practices.

''(C) REPORTS.—The Commission shall submit to the Secretary [of Health and Human Services] and Congress—

''(i) not later than January 1, 2006, a report on the review conducted under subparagraph (A)(i); and

''(ii) not later than January 1, 2007, a report on the review conducted under subparagraph (A)(ii).

Each such report may include such recommendations regarding further adjustments in such payments as the Commission deems appropriate.

''(D) SECRETARIAL RESPONSE.—As part of the rulemaking with respect to payment for physicians services under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for 2007, the Secretary may make appropriate adjustments to payment for items and services described in subparagraph (A)(i), taking into account the report submitted under such subparagraph (C)(i).''

MULTIPLE CHEMOTHERAPY AGENTS, OTHER SERVICES CURRENTLY ON THE NON-PHYSICIAN WORK POOL, AND TRANSITIONAL ADJUSTMENT

Pub. L. 108–173, title III, § 303(g)(3), Dec. 8, 2003, 117 Stat. 2253, provided that: ''There shall be no administrative or judicial review under section 1869 [probably means section 1869 of the Social Security Act, which is classified to section 1395ff of this title], section 1878 [probably means section 1878 of the Social Security Act, which is classified to section 1395*oo* of this title], or otherwise, of determinations of payment amounts, methods, or adjustments under paragraphs (2) through (4) of subsection (a) [enacting provisions set out as notes under this section].''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

GAO STUDY OF GEOGRAPHIC DIFFERENCES IN PAYMENTS FOR PHYSICIANS' SERVICES

Pub. L. 108–173, title IV, § 413(c), Dec. 8, 2003, 117 Stat. 2277, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study of differences in payment amounts under the physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for physicians' services in different geographic areas. Such study shall include—

''(A) an assessment of the validity of the geographic adjustment factors used for each component of the fee schedule;

''(B) an evaluation of the measures used for such adjustment, including the frequency of revisions;

''(C) an evaluation of the methods used to determine professional liability insurance costs used in computing the malpractice component, including a review of increases in professional liability insurance premiums and variation in such increases by State and physician specialty and methods used to update the geographic cost of practice index and relative weights for the malpractice component; and

''(D) an evaluation of the effect of the adjustment to the physician work geographic index under section 1848(e)(1)(E) of the Social Security Act [subsection (e)(1)(E) of this section], as added by section 412, on physician location and retention in areas affected by such adjustment, taking into account—

''(i) differences in recruitment costs and retention rates for physicians, including specialists, between large urban areas and other areas; and

''(ii) the mobility of physicians, including specialists, over the last decade.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1). The report shall include recommendations regarding the use of more current data in computing geographic cost of practice indices as well as the use of data directly representative of physicians' costs (rather than proxy measures of such costs).''

AMENDMENTS NOT TREATED AS CHANGE IN LAW AND REGULATION IN SUSTAINABLE GROWTH RATE DETERMINATION

Pub. L. 109–171, title V, § 5104(b), Feb. 8, 2006, 120 Stat. 41, provided that: ''The amendments made by subsection (a) [amending this section] shall not be treated as a change in law for purposes of applying section 1848(f)(2)(D) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)(D)).''

Pub. L. 108–173, title VI, § 601(a)(3), Dec. 8, 2003, 117 Stat. 2301, provided that: ''The amendments made by this subsection [amending this section] shall not be treated as a change in law for purposes of applying section 1848(f)(2)(D) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)(D)).''

COLLABORATIVE DEMONSTRATION-BASED REVIEW OF PHYSICIAN PRACTICE EXPENSE GEOGRAPHIC ADJUSTMENT DATA

Pub. L. 108–173, title VI, § 605, Dec. 8, 2003, 117 Stat. 2302, provided that:

''(a) IN GENERAL.—Not later than January 1, 2005, the Secretary [of Health and Human Services] shall, in collaboration with State and other appropriate organizations representing physicians, and other appropriate persons, review and consider alternative data sources than those currently used in establishing the geographic index for the practice expense component under the medicare physician fee schedule under section 1848(e)(1)(A)(i) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)(A)(i)).

''(b) SITES.—The Secretary shall select two physician payment localities in which to carry out subsection (a). One locality shall include rural areas and at least one locality shall be a statewide locality that includes both urban and rural areas.

''(c) REPORT AND RECOMMENDATIONS.—

''(1) REPORT.—Not later than January 1, 2006, the Secretary shall submit to Congress a report on the review and consideration conducted under subsection (a). Such report shall include information on the alternative developed data sources considered by the Secretary under subsection (a), including the accuracy and validity of the data as measures of the elements of the geographic index for practice expenses under the medicare physician fee schedule as well as the feasibility of using such alternative data nationwide in lieu of current proxy data used in such index, and the estimated impacts of using such alternative data.

''(2) RECOMMENDATIONS.—The report submitted under paragraph (1) shall contain recommendations on which data sources reviewed and considered under subsection (a) are appropriate for use in calculating the geographic index for practice expenses under the medicare physician fee schedule.''

MEDPAC REPORT ON PAYMENT FOR PHYSICIANS' SERVICES

Pub. L. 108–173, title VI, § 606, Dec. 8, 2003, 117 Stat. 2302, provided that:

''(a) PRACTICE EXPENSE COMPONENT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Medicare Payment Advisory Commission shall submit to Congress a report on the effect of refinements to the practice expense component of payments for physicians' services, after the transition to a full resource-based payment system in 2002, under section 1848 of the Social Security Act (42 U.S.C. 1395w–4). Such report shall examine the following matters by physician specialty:

''(1) The effect of such refinements on payment for physicians' services.

''(2) The interaction of the practice expense component with other components of and adjustments to payment for physicians' services under such section.

''(3) The appropriateness of the amount of compensation by reason of such refinements.

''(4) The effect of such refinements on access to care by medicare beneficiaries to physicians' services.

''(5) The effect of such refinements on physician participation under the medicare program.

''(b) VOLUME OF PHYSICIANS' SERVICES.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Medicare Payment Advisory Commission shall submit to Congress a report on the extent to which increases in the volume of physicians' services under part B [this part] of the medicare program are a result of care that improves the health and well-being of medicare beneficiaries. The study shall include the following:

''(1) An analysis of recent and historic growth in the components that the Secretary [of Health and Human Services] includes under the sustainable growth rate (under section 1848(f) of the Social Security Act (42 U.S.C. 1395w–4(f))).

''(2) An examination of the relative growth of volume in physicians' services between medicare beneficiaries and other populations.

''(3) An analysis of the degree to which new technology, including coverage determinations of the Centers for Medicare & Medicaid Services, has affected the volume of physicians' services.

''(4) An examination of the impact on volume of demographic changes.

''(5) An examination of shifts in the site of service or services that influence the number and intensity of services furnished in physicians' offices and the extent to which changes in reimbursement rates to other providers have effected these changes.

''(6) An evaluation of the extent to which the Centers for Medicare & Medicaid Services takes into account the impact of law and regulations on the sustainable growth rate.''

MEDPAC STUDY OF PAYMENT FOR CARDIO-THORACIC SURGEONS

Pub. L. 108–173, title VI, § 644, Dec. 8, 2003, 117 Stat. 2323, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission (in this section referred to as the 'Commission') shall conduct a study on the practice expense relative values established by the Secretary of Health and Human Services under the medicare physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for physicians in the specialties of thoracic and cardiac surgery to determine whether such values adequately take into account the attendant costs that such physicians incur in providing clinical staff for patient care in hospitals.

''(b) REPORT.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.''

REPORT ON PHYSICIAN COMPENSATION

Pub. L. 108–173, title IX, § 953(a)(2), Dec. 8, 2003, 117 Stat. 2428, provided that: ''Not later than 12 months after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on all aspects of physician compensation for services furnished under title XVIII of the Social Security Act [this subchapter], and how those aspects interact and the effect on appropriate compensation for physician services. Such report shall review alternatives for the physician fee schedule under section 1848 of such title (42 U.S.C. 1395w–4).''

TREATMENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES UNDER MEDICARE

Pub. L. 106–554, § 1(a)(6) [title V, § 542], Dec. 21, 2000, 114 Stat. 2763, 2763A–550, as amended by Pub. L. 108–173, title VII, § 732, Dec. 8, 2003, 117 Stat. 2352; Pub. L. 109–432, div. B, title I, § 104, Dec. 20, 2006, 120 Stat. 2981, provided that:

''(a) IN GENERAL.—When an independent laboratory furnishes the technical component of a physician pathology service to a fee-for-service medicare beneficiary who is an inpatient or outpatient of a covered hospital, the Secretary of Health and Human Services shall treat such component as a service for which payment shall be made to the laboratory under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) and not as an inpatient hospital service for which payment is made to the hospital under section 1886(d) of such Act (42 U.S.C. 1395ww(d)) or as an outpatient hospital service for which payment is made to the hospital under section 1833(t) of such Act (42 U.S.C. 1395*l*(t)).

''(b) DEFINITIONS.—For purposes of this section:

''(1) COVERED HOSPITAL.—The term 'covered hospital' means, with respect to an inpatient or an outpatient, a hospital that had an arrangement with an independent laboratory that was in effect as of July 22, 1999, under which a laboratory furnished the technical component of physician pathology services to fee-for-service medicare beneficiaries who were hospital inpatients or outpatients, respectively, and submitted claims for payment for such component to a medicare carrier (that has a contract with the Secretary under section 1842 of the Social Security Act, 42 U.S.C. 1395u) and not to such hospital.

''(2) FEE-FOR-SERVICE MEDICARE BENEFICIARY.—The term 'fee-for-service medicare beneficiary' means an individual who—

''(A) is entitled to benefits under part A, or enrolled under part B, or both, of such title [part A or part B of this subchapter]; and

''(B) is not enrolled in any of the following:

''(i) A Medicare+Choice plan under part C of such title [part C of this subchapter].

''(ii) A plan offered by an eligible organization under section 1876 of such Act (42 U.S.C. 1395mm).

''(iii) A program of all-inclusive care for the elderly (PACE) under section 1894 of such Act (42 U.S.C. 1395eee).

''(iv) A social health maintenance organization (SHMO) demonstration project established under section 4018(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) [101 Stat. 1330–65].

''(c) EFFECTIVE DATE.—This section shall apply to services furnished during the 2-year period beginning on January 1, 2001, and for services furnished during 2005, 2006, and 2007.

''(d) GAO REPORT.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study of the effects of the previous provisions of this section on hospitals and laboratories and access of fee-for-service medicare beneficiaries to the technical component of physician pathology services.

''(2) REPORT.—Not later than April 1, 2002, the Comptroller General shall submit to Congress a report on such study. The report shall include recommendations about whether such provisions should be extended after the end of the period specified in subsection (c) for either or both inpatient and outpatient hospital services, and whether the provisions should be extended to other hospitals.''

ONE-TIME PUBLICATION OF INFORMATION ON TRANSITION

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 211(a)(2)(C)], Nov. 29, 1999, 113 Stat. 1536, 1501A–347, provided that: ''The Secretary of Health and Human Services shall cause to have published in the Federal Register, not later than 90 days after the date of the enactment of this section [Nov. 29, 1999], the Secretary's determination, based upon the best available data, of—

''(i) the allowed expenditures under subclauses (I) and (II) of subsection (d)(4)(C)(ii) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4), as added by subsection (a)(1)(B), for the 9-month period beginning on April 1, 1999, and for 1999;

''(ii) the estimated actual expenditures described in subsection (d) of such section for 1999; and

''(iii) the sustainable growth rate under subsection (f) of such section for 2000.''

USE OF DATA COLLECTED BY ORGANIZATIONS AND ENTITIES IN DETERMINING PRACTICE EXPENSE RELATIVE VALUES

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 212], Nov. 29, 1999, 113 Stat. 1536, 1501A–350, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall establish by regulation (after notice and opportunity for public comment) a process (including data collection standards) under which the Secretary will accept for use and will use, to the maximum extent practicable and consistent with sound data practices, data collected or developed by entities and organizations (other than the Department of Health and Human Services) to supplement the data normally collected by that Department in determining the practice expense component under section 1848(c)(2)(C)(ii) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(C)(ii)) for purposes of determining relative values for payment for physicians' services under the fee schedule under section 1848 of such Act (42 U.S.C. 1395w–4). The Secretary shall first promulgate such regulation on an interim final basis in a manner that permits the submission and use of data in the computation of practice expense relative value units for payment rates for 2001.

''(b) PUBLICATION OF INFORMATION.—The Secretary shall include, in the publication of the estimated and final updates under section 1848(c) of such Act (42 U.S.C. 1395w–4(c)) for payments for 2001 and for 2002, a description of the process established under subsection (a) for the use of external data in making adjustments in relative value units and the extent to which the Secretary has used such external data in making such adjustments for each such year, particularly in cases in which the data otherwise used are inadequate because

such data are not based upon a large enough sample size to be statistically reliable.''

CONSULTATION WITH ORGANIZATIONS IN ESTABLISHING PAYMENT AMOUNTS FOR SERVICES PROVIDED BY PHYSICIANS

Section 4105(a)(3) of Pub. L. 105–33 provided that: ''In establishing payment amounts under section 1848 of the Social Security Act [this section] for physicians' services consisting of diabetes outpatient self-management training services, the Secretary of Health and Human Services shall consult with appropriate organizations, including such organizations representing individuals or medicare beneficiaries with diabetes.''

REQUIREMENTS FOR DEVELOPING NEW RESOURCE-BASED PRACTICE EXPENSE RELATIVE VALUE UNITS

Section 4505(d) of Pub. L. 105–33 provided that:

''(1) DEVELOPMENT.—For purposes of section 1848(c)(2)(C)(ii) of the Social Security Act [subsec. (c)(2)(C)(ii) of this section], the Secretary of Health and Human Services shall develop new resource-based relative value units. In developing such units the Secretary shall—

''(A) utilize, to the maximum extent practicable, generally accepted cost accounting principles which (i) recognize all staff, equipment, supplies, and expenses, not just those which can be tied to specific procedures, and (ii) use actual data on equipment utilization and other key assumptions;

''(B) consult with organizations representing physicians regarding methodology and data to be used; and

''(C) develop a refinement process to be used during each of the 4 years of the transition period.

''(2) REPORT.—The Secretary shall transmit a report by March 1, 1998, on the development of resource-based relative value units under paragraph (1) to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate. The report shall include a presentation of data to be used in developing the value units and an explanation of the methodology.

''(3) NOTICE OF PROPOSED RULEMAKING.—The Secretary shall publish a notice of proposed rulemaking with the new resource-based relative value units on or before May 1, 1998, and shall allow for a 90-day public comment period.

''(4) ITEMS INCLUDED.—The new proposed rule shall consider the following:

''(A) Impact projections which compare new proposed payment amounts on data on actual physician practice expenses.

''(B) Impact projections for hospital-based and other specialties, geographic payment localities, and urban versus rural localities.''

APPLICATION OF CERTAIN BUDGET NEUTRALITY PROVISIONS

Section 4505(f)(2) of Pub. L. 105–33 provided that: ''In implementing the amendment made by paragraph (1)(A)(ii) [amending this section], the provisions of clauses (ii)(II) and (iii) of section 1848(c)(2)(B) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(B)) shall apply in the same manner as they apply to adjustments under clause (ii)(I) of such section.''

DEVELOPMENT OF RESOURCE-BASED METHODOLOGY FOR PRACTICE EXPENSES

Section 121(a) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a methodology for implementing in 1998 a resource-based system for determining practice expense relative value units for each physicians' service. The methodology utilized shall recognize the staff, equipment, and supplies used in the provision of various medical and surgical services in various settings.

''(2) REPORT.—The Secretary shall transmit a report by June 30, 1996, on the methodology developed under paragraph (1) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate. The report shall include a presentation of data utilized in developing the methodology and an explanation of the methodology.''

APPLICATION OF SUBSECTION (c)(2)(B)(ii)(II), (iii)

Section 121(b)(3) of Pub. L. 103–432 provided that: ''In implementing the amendment made by paragraph (1)(C) [amending this section], the provisions of clauses (ii)(II) and (iii) of section 1848(c)(2)(B) of the Social Security Act [subsec. (c)(2)(B)(ii)(II), (iii) of this section] shall apply in the same manner as they apply to adjustments under clause (ii)(I) of such section.''

REPORT ON REVIEW PROCESS

Section 122(c) of Pub. L. 103–432 provided that not later than 1 year after Oct. 31, 1994, Secretary of Health and Human Services was to study and report to Congress on data necessary to review and revise indices established under subsec. (e)(1)(A) of this section, any limitations on availability of data necessary to review and revise such indices at least every three years, ways of addressing such limitations, with particular attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every three years, and costs of developing more accurate and timely data.

RELATIVE VALUE FOR PEDIATRIC SERVICES

Section 124(a) of Pub. L. 103–432 provided that: ''The Secretary of Health and Human Services shall fully develop, by not later than July 1, 1995, relative values for the full range of pediatric physicians' services which are consistent with the relative values developed for other physicians' services under section 1848(c) of the Social Security Act [subsec. (c) of this section]. In developing such values, the Secretary shall conduct such refinements as may be necessary to produce appropriate estimates for such relative values.''

BUDGET NEUTRALITY ADJUSTMENT

For provisions requiring reduction of relative values established under subsec. (c) of this section and amounts determined under subsec. (a)(2)(B)(ii)(I) of this section for 1994 (to be applied for that year and subsequent years) in order to assure that the amendments to this section and section 1395u of this title by section 13515(a) of Pub. L. 103–66 will not result in expenditures under this part that exceed the amount of such expenditures that would have been made if such amendments had not been made, see section 13515(b) of Pub. L. 103–66, set out as a note under section 1395u of this title.

Section 13518(b) of Pub. L. 103–66 provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services shall implement the amendment made by subsection (a) [amending this section] in a manner to assure that such amendment will result in expenditures under part B of title XVIII of the Social Security Act [this part] in 1995 for services described in such amendment that shall be equal to the amount of expenditures for such services that would have been made if such amendment had not been made.''

ANCILLARY POLICIES; ADJUSTMENT FOR INDEPENDENT LABORATORIES FURNISHING PHYSICIAN PATHOLOGY SERVICES

Section 4104(c) of Pub. L. 101–508 provided: ''The Secretary of Health and Human Services, in establishing ancillary policies under section 1848(c)(3) of the Social Security Act [subsec. (c)(3) of this section], shall consider an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from an attending or consulting physician's office.''

COMPUTATION OF CONVERSION FACTOR FOR 1992

Section 4105(b)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(2)(A)(i), Oct. 31, 1994, 108 Stat. 4415, provided that: ''In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act for 1992 [subsec. (d)(1)(B) of this section], the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B of title XVIII of such Act [this part] for physicians' services in 1991 assuming that the amendment made by this subsection [amending section 1395u of this title] did not apply.''

Section 4106(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(3), Oct. 31, 1994, 108 Stat. 4416, provided that: ''In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section] for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B [this part] for physicians' services in 1991 assuming that the amendments made by this section [amending this section, section 1395u of this title, and provisions set out as a note under section 1395u of this title] (notwithstanding subsection (d) [set out as an Effective Date of 1990 Amendment note under section 1395u of this title]) applied to all services furnished during such year.''

PUBLICATION OF PERFORMANCE STANDARD RATES

Section 4105(d) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(2)(C), Oct. 31, 1994, 108 Stat. 4416, provided that: ''Not later than 45 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services, based on the most recent data available, shall estimate and publish in the Federal Register the performance standard rates of increase specified in section 1848(f)(2)(C) of the Social Security Act [subsec. (f)(2)(C) of this section] for fiscal year 1991.''

STUDY OF REGIONAL VARIATIONS IN IMPACT OF MEDICARE PHYSICIAN PAYMENT REFORM

Section 4115 of Pub. L. 101–508 provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of—

''(1) factors that may explain geographic variations in Medicare reasonable charges for physicians' services that are not attributable to variations in physician practice costs (including the supply of physicians in an area and area variations in the mix of services furnished);

''(2) the extent to which the geographic practice cost indices applied under the fee schedule established under section 1848 of the Social Security Act [this section] accurately reflect variations in practice costs and malpractice costs (and alternative sources of information upon which to base such indices);

''(3) the impact of the transition to a national, resource-based fee schedule for physicians' services under Medicare on access to physicians' services in areas that experience a disproportionately large reduction in payments for physicians' services under the fee schedule by reason of such variations; and

''(4) appropriate adjustments or modifications in the transition to, or manner of determining payments under, the fee schedule established under section 1848 of the Social Security Act, to compensate for such variations and ensure continued access to physicians' services for Medicare beneficiaries in such areas.

''(b) REPORT.—By not later than July 1, 1992, the Secretary shall submit to Congress a report on the study conducted under subsection (a).''

STATEWIDE FEE SCHEDULE AREAS FOR PHYSICIANS' SERVICES

Section 4117 of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(f), Oct. 31, 1994, 108 Stat. 4415, provided that: ''Notwithstanding section 1848(j)(2) of the Social Security Act (42 U.S.C. 1395w–4(j)(2)), in the case of the States of Nebraska and Oklahoma the Secretary of Health and Human Services (Secretary) shall treat the State as a single fee schedule area for purposes of determining—

''(1) the adjusted historical payment basis (as defined in section 1848(a)(2)(D) of such Act (42 U.S.C. 1395w–4(a)(2)(D))), and

''(2) the fee schedule amount (as referred to in section 1848(a) (42 U.S.C. 1395w–4(a)) of such Act),

for physicians' services (as defined in section 1848(j)(3) of such Act (42 U.S.C. 1395w–4(j)(3))) furnished on or after January 1, 1992.''

STUDIES

Pub. L. 101–239, title VI, § 6102(d), Dec. 19, 1989, 103 Stat. 2185, as amended by Pub. L. 103–432, title I, § 126(h)(1), Oct. 31, 1994, 108 Stat. 4416; Pub. L. 105–362, title VI, § 601(b)(5), Nov. 10, 1998, 112 Stat. 3286, provided for various studies and reports as follows: (1) directed Comptroller General to conduct study of alternative payment methodology for malpractice component for physicians' services, and to submit report to Congress by not later than Apr. 1, 1991; (2) directed Secretary of Health and Human Services to conduct study of how payments under this section may affect payments to eligible organizations with risk-sharing contracts under section 1395mm of this title, and to submit report to Congress by not later than Apr. 1, 1990; (3) directed Secretary to conduct study of volume performance standard rates of increase for services furnished by geography, specialty, and type of service, and to submit report with appropriate recommendations to Congress by not later than July 1, 1990; (4) directed Physician Payment Review Commission to conduct study of payment for practice and malpractice expenses, including appropriate methods for allocating malpractice expenses to particular procedures which could be incorporated into the determination of relative values for such procedures using a consensus panel and other appropriate methodologies, and to submit report and recommendations to Congress by not later than July 1, 1991; (5) directed Physician Payment Review Commission to conduct study of feasibility and desirability of using Metropolitan Statistical Areas or other payment areas for purposes of payment for physicians' services under this part, and to submit report to Congress by not later than July 1, 1991; (6) directed Physician Payment Review Commission to conduct study of payment for nonphysician providers of medicare services, including physician assistants, clinical psychologists, nurse midwives, and other health practitioners whose services can be billed under medicare program on a fee-for-service basis, and to submit report to Congress by not later than July 1, 1991; (7) directed Physician Payment Review Commission to conduct study of physician fees under State medicaid programs established under subchapter XIX of this chapter, and to submit report with recommendations to Congress by no later than July 1, 1991; and (8) directed Comptroller General to conduct study of effect of anti-trust laws on ability of physicians to act in groups to educate and discipline peers of such physicians in order to reduce and eliminate ineffective practice patterns and inappropriate utilization, and to submit report to Congress by no later than July 1, 1991.

DISTRIBUTION OF MODEL FEE SCHEDULE

Section 6102(e)(11) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4118(f)(2)(E), Nov. 5, 1990, 104 Stat. 1388–70, provided that: ''By September 1, 1990, the Secretary of Health and Human Services shall develop a Model Fee Schedule, using the methodology set forth in section 1848 of the Social Security Act [this section]. The Model Fee Schedule shall include as many services as the Secretary of Health and Human Services concludes can be assigned valid relative values. The Secretary of Health and Human Services shall submit the Model Fee Schedule to the appropriate committees of

Congress and make it generally available to the public.''

PART C—MEDICARE+CHOICE PROGRAM

PRIOR PROVISIONS

A prior part C of this subchapter, consisting of section 1395x et seq., was redesignated part E of this subchapter.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

§ 1395w–21. Eligibility, election, and enrollment

(a) Choice of medicare benefits through Medicare+Choice plans

(1) In general

Subject to the provisions of this section, each Medicare+Choice eligible individual (as defined in paragraph (3)) is entitled to elect to receive benefits (other than qualified prescription drug benefits) under this subchapter—

(A) through the original medicare fee-for-service program under parts A and B of this subchapter, or

(B) through enrollment in a Medicare+Choice plan under this part,

and may elect qualified prescription drug coverage in accordance with section 1395w–101 of this title.

(2) Types of Medicare+Choice plans that may be available

A Medicare+Choice plan may be any of the following types of plans of health insurance:

(A) Coordinated care plans (including regional plans)

(i) In general

Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without point of service options), plans offered by provider-sponsored organizations (as defined in section 1395w–25(d) of this title), and regional or local preferred provider organization plans (including MA regional plans).

(ii) Specialized MA plans for special needs individuals

Specialized MA plans for special needs individuals (as defined in section 1395w–28(b)(6) of this title) may be any type of coordinated care plan.

(B) Combination of MSA plan and contributions to Medicare+Choice MSA

An MSA plan, as defined in section 1395w–28(b)(3) of this title, and a contribution into a Medicare+Choice medical savings account (MSA).

(C) Private fee-for-service plans

A Medicare+Choice private fee-for-service plan, as defined in section 1395w–28(b)(2) of this title.

(3) Medicare+Choice eligible individual

(A) In general

In this subchapter, subject to subparagraph (B), the term ''Medicare+Choice eligible individual'' means an individual who is entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter.

(B) Special rule for end-stage renal disease

Such term shall not include an individual medically determined to have end-stage renal disease, except that—

(i) an individual who develops end-stage renal disease while enrolled in a Medicare+Choice plan may continue to be enrolled in that plan; and

(ii) in the case of such an individual who is enrolled in a Medicare+Choice plan under clause (i) (or subsequently under this clause), if the enrollment is discontinued under circumstances described in subsection (e)(4)(A) of this section, then the individual will be treated as a ''Medicare+Choice eligible individual'' for purposes of electing to continue enrollment in another Medicare+Choice plan.

(b) Special rules

(1) Residence requirement

(A) In general

Except as the Secretary may otherwise provide and except as provided in subparagraph (C), an individual is eligible to elect a Medicare+Choice plan offered by a Medicare+Choice organization only if the plan serves the geographic area in which the individual resides.

(B) Continuation of enrollment permitted

Pursuant to rules specified by the Secretary, the Secretary shall provide that an MA local plan may offer to all individuals residing in a geographic area the option to continue enrollment in the plan, notwithstanding that the individual no longer resides in the service area of the plan, so long as the plan provides that individuals exercising this option have, as part of the benefits under the original medicare fee-for-service program option, reasonable access within that geographic area to the full range of basic benefits, subject to reasonable cost sharing liability in obtaining such benefits.

(C) Continuation of enrollment permitted where service changed

Notwithstanding subparagraph (A) and in addition to subparagraph (B), if a Medicare+Choice organization eliminates from its service area a Medicare+Choice payment area that was previously within its service area, the organization may elect to offer individuals residing in all or portions of the affected area who would otherwise be ineligible to continue enrollment the option to continue enrollment in an MA local plan it offers so long as—

(i) the enrollee agrees to receive the full range of basic benefits (excluding emergency and urgently needed care) exclu-

sively at facilities designated by the organization within the plan service area; and

(ii) there is no other Medicare+Choice plan offered in the area in which the enrollee resides at the time of the organization's election.

(2) Special rule for certain individuals covered under FEHBP or eligible for veterans or military health benefits

(A) FEHBP

An individual who is enrolled in a health benefit plan under chapter 89 of title 5 is not eligible to enroll in an MSA plan until such time as the Director of the Office of Management and Budget certifies to the Secretary that the Office of Personnel Management has adopted policies which will ensure that the enrollment of such individuals in such plans will not result in increased expenditures for the Federal Government for health benefit plans under such chapter.

(B) VA and DOD

The Secretary may apply rules similar to the rules described in subparagraph (A) in the case of individuals who are eligible for health care benefits under chapter 55 of title 10 or under chapter 17 of title 38.

(3) Limitation on eligibility of qualified medicare beneficiaries and other medicaid beneficiaries to enroll in an MSA plan

An individual who is a qualified medicare beneficiary (as defined in section 1396d(p)(1) of this title), a qualified disabled and working individual (described in section 1396d(s) of this title), an individual described in section 1396a(a)(10)(E)(iii) of this title, or otherwise entitled to medicare cost-sharing under a State plan under subchapter XIX of this chapter is not eligible to enroll in an MSA plan.

(4) Coverage under MSA plans

(A) In general

Under rules established by the Secretary, an individual is not eligible to enroll (or continue enrollment) in an MSA plan for a year unless the individual provides assurances satisfactory to the Secretary that the individual will reside in the United States for at least 183 days during the year.

(B) Evaluation

The Secretary shall regularly evaluate the impact of permitting enrollment in MSA plans under this part on selection (including adverse selection), use of preventive care, access to care, and the financial status of the Trust Funds under this subchapter.

(C) Reports

The Secretary shall submit to Congress periodic reports on the numbers of individuals enrolled in such plans and on the evaluation being conducted under subparagraph (B).

(c) Process for exercising choice

(1) In general

The Secretary shall establish a process through which elections described in subsection (a) of this section are made and changed, including the form and manner in which such elections are made and changed. Such elections shall be made or changed only during coverage election periods specified under subsection (e) of this section and shall become effective as provided in subsection (f) of this section.

(2) Coordination through Medicare+Choice organizations

(A) Enrollment

Such process shall permit an individual who wishes to elect a Medicare+Choice plan offered by a Medicare+Choice organization to make such election through the filing of an appropriate election form with the organization.

(B) Disenrollment

Such process shall permit an individual, who has elected a Medicare+Choice plan offered by a Medicare+Choice organization and who wishes to terminate such election, to terminate such election through the filing of an appropriate election form with the organization.

(3) Default

(A) Initial election

(i) In general

Subject to clause (ii), an individual who fails to make an election during an initial election period under subsection (e)(1) of this section is deemed to have chosen the original medicare fee-for-service program option.

(ii) Seamless continuation of coverage

The Secretary may establish procedures under which an individual who is enrolled in a health plan (other than Medicare+Choice plan) offered by a Medicare+Choice organization at the time of the initial election period and who fails to elect to receive coverage other than through the organization is deemed to have elected the Medicare+Choice plan offered by the organization (or, if the organization offers more than one such plan, such plan or plans as the Secretary identifies under such procedures).

(B) Continuing periods

An individual who has made (or is deemed to have made) an election under this section is considered to have continued to make such election until such time as—

(i) the individual changes the election under this section, or

(ii) the Medicare+Choice plan with respect to which such election is in effect is discontinued or, subject to subsection (b)(1)(B) of this section, no longer serves the area in which the individual resides.

(d) Providing information to promote informed choice

(1) In general

The Secretary shall provide for activities under this subsection to broadly disseminate information to medicare beneficiaries (and

prospective medicare beneficiaries) on the coverage options provided under this section in order to promote an active, informed selection among such options.

(2) Provision of notice

(A) Open season notification

At least 15 days before the beginning of each annual, coordinated election period (as defined in subsection (e)(3)(B) of this section), the Secretary shall mail to each Medicare+Choice eligible individual residing in an area the following:

(i) General information

The general information described in paragraph (3).

(ii) List of plans and comparison of plan options

A list identifying the Medicare+Choice plans that are (or will be) available to residents of the area and information described in paragraph (4) concerning such plans. Such information shall be presented in a comparative form.

(iii) Additional information

Any other information that the Secretary determines will assist the individual in making the election under this section.

The mailing of such information shall be coordinated, to the extent practicable, with the mailing of any annual notice under section 1395b–2 of this title.

(B) Notification to newly eligible Medicare+Choice eligible individuals

To the extent practicable, the Secretary shall, not later than 30 days before the beginning of the initial Medicare+Choice enrollment period for an individual described in subsection (e)(1) of this section, mail to the individual the information described in subparagraph (A).

(C) Form

The information disseminated under this paragraph shall be written and formatted using language that is easily understandable by medicare beneficiaries.

(D) Periodic updating

The information described in subparagraph (A) shall be updated on at least an annual basis to reflect changes in the availability of Medicare+Choice plans and the benefits and Medicare+Choice monthly basic and supplemental beneficiary premiums for such plans.

(3) General information

General information under this paragraph, with respect to coverage under this part during a year, shall include the following:

(A) Benefits under original medicare fee-for-service program option

A general description of the benefits covered under the original medicare fee-for-service program under parts A and B of this subchapter, including—

(i) covered items and services,

(ii) beneficiary cost sharing, such as deductibles, coinsurance, and copayment amounts, and

(iii) any beneficiary liability for balance billing.

(B) Election procedures

Information and instructions on how to exercise election options under this section.

(C) Rights

A general description of procedural rights (including grievance and appeals procedures) of beneficiaries under the original medicare fee-for-service program and the Medicare+Choice program and the right to be protected against discrimination based on health status-related factors under section 1395w–22(b) of this title.

(D) Information on medigap and medicare select

A general description of the benefits, enrollment rights, and other requirements applicable to medicare supplemental policies under section 1395ss of this title and provisions relating to medicare select policies described in section 1395ss(t) of this title.

(E) Potential for contract termination

The fact that a Medicare+Choice organization may terminate its contract, refuse to renew its contract, or reduce the service area included in its contract, under this part, and the effect of such a termination, nonrenewal, or service area reduction may have on individuals enrolled with the Medicare+Choice plan under this part.

(F) Catastrophic coverage and single deductible

In the case of an MA regional plan, a description of the catastrophic coverage and single deductible applicable under the plan.

(4) Information comparing plan options

Information under this paragraph, with respect to a Medicare+Choice plan for a year, shall include the following:

(A) Benefits

The benefits covered under the plan, including the following:

(i) Covered items and services beyond those provided under the original medicare fee-for-service program.

(ii) Any beneficiary cost sharing, including information on the single deductible (if applicable) under section 1395w–27a(b)(1) of this title.

(iii) Any maximum limitations on out-of-pocket expenses.

(iv) In the case of an MSA plan, differences in cost sharing, premiums, and balance billing under such a plan compared to under other Medicare+Choice plans.

(v) In the case of a Medicare+Choice private fee-for-service plan, differences in cost sharing, premiums, and balance billing under such a plan compared to under other Medicare+Choice plans.

(vi) The extent to which an enrollee may obtain benefits through out-of-network health care providers.

(vii) The extent to which an enrollee may select among in-network providers and the types of providers participating in the plan's network.

(viii) The organization's coverage of emergency and urgently needed care.

(B) Premiums

(i) In general

The monthly amount of the premium charged to an individual.

(ii) Reductions

The reduction in part B premiums, if any.

(C) Service area

The service area of the plan.

(D) Quality and performance

To the extent available, plan quality and performance indicators for the benefits under the plan (and how they compare to such indicators under the original medicare fee-for-service program under parts A and B of this subchapter in the area involved), including—

(i) disenrollment rates for medicare enrollees electing to receive benefits through the plan for the previous 2 years (excluding disenrollment due to death or moving outside the plan's service area),

(ii) information on medicare enrollee satisfaction,

(iii) information on health outcomes, and

(iv) the recent record regarding compliance of the plan with requirements of this part (as determined by the Secretary).

(E) Supplemental benefits

Supplemental health care benefits, including any reductions in cost-sharing under section 1395w–22(a)(3) of this title and the terms and conditions (including premiums) for such benefits.

(5) Maintaining a toll-free number and Internet site

The Secretary shall maintain a toll-free number for inquiries regarding Medicare+Choice options and the operation of this part in all areas in which Medicare+Choice plans are offered and an Internet site through which individuals may electronically obtain information on such options and Medicare+Choice plans.

(6) Use of non-Federal entities

The Secretary may enter into contracts with non-Federal entities to carry out activities under this subsection.

(7) Provision of information

A Medicare+Choice organization shall provide the Secretary with such information on the organization and each Medicare+Choice plan it offers as may be required for the preparation of the information referred to in paragraph (2)(A).

(e) Coverage election periods

(1) Initial choice upon eligibility to make election if Medicare+Choice plans available to individual

If, at the time an individual first becomes entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, there is one or more Medicare+Choice plans offered in the area in which the individual resides, the individual shall make the election under this section during a period specified by the Secretary such that if the individual elects a Medicare+Choice plan during the period, coverage under the plan becomes effective as of the first date on which the individual may receive such coverage. If any portion of an individual's initial enrollment period under part B of this subchapter occurs after the end of the annual, coordinated election period described in paragraph (3)(B)(iii), the initial enrollment period under this part shall further extend through the end of the individual's initial enrollment period under part B of this subchapter.

(2) Open enrollment and disenrollment opportunities

Subject to paragraph (5)—

(A) Continuous open enrollment and disenrollment through 2005

At any time during the period beginning January 1, 1998, and ending on December 31, 2005, a Medicare+Choice eligible individual may change the election under subsection (a)(1) of this section.

(B) Continuous open enrollment and disenrollment for first 6 months during 2006

(i) In general

Subject to clause (ii), subparagraph (C)(iii), and subparagraph (D), at any time during the first 6 months of 2006, or, if the individual first becomes a Medicare+Choice eligible individual during 2006, during the first 6 months during 2006 in which the individual is a Medicare+Choice eligible individual, a Medicare+Choice eligible individual may change the election under subsection (a)(1) of this section.

(ii) Limitation of one change

An individual may exercise the right under clause (i) only once. The limitation under this clause shall not apply to changes in elections effected during an annual, coordinated election period under paragraph (3) or during a special enrollment period under the first sentence of paragraph (4).

(C) Continuous open enrollment and disenrollment for first 3 months in subsequent years

(i) In general

Subject to clauses (ii) and (iii) and subparagraph (D), at any time during the first 3 months of a year after 2006, or, if the individual first becomes a Medicare+Choice eligible individual during a year after 2006, during the first 3 months of such year in which the individual is a Medicare+Choice eligible individual, a Medicare+Choice eligible individual may change the election under subsection (a)(1) of this section.

(ii) Limitation of one change during open enrollment period each year

An individual may exercise the right under clause (i) only once during the appli-

cable 3-month period described in such clause in each year. The limitation under this clause shall not apply to changes in elections effected during an annual, coordinated election period under paragraph (3) or during a special enrollment period under paragraph (4).

(iii) Limitation on exercise of right with respect to prescription drug coverage

Effective for plan years beginning on or after January 1, 2006, in applying clause (i) (and clause (i) of subparagraph (B)) in the case of an individual who—

(I) is enrolled in an MA plan that does provide qualified prescription drug coverage, the individual may exercise the right under such clause only with respect to coverage under the original fee-for-service plan or coverage under another MA plan that does not provide such coverage and may not exercise such right to obtain coverage under an MA–PD plan or under a prescription drug plan under part D of this subchapter; or

(II) is enrolled in an MA–PD plan, the individual may exercise the right under such clause only with respect to coverage under another MA–PD plan (and not an MA plan that does not provide qualified prescription drug coverage) or under the original fee-for-service plan and coverage under a prescription drug plan under part D of this subchapter.

(D) Continuous open enrollment for institutionalized individuals

At any time after 2005 in the case of a Medicare+Choice eligible individual who is institutionalized (as defined by the Secretary), the individual may elect under subsection (a)(1) of this section—

(i) to enroll in a Medicare+Choice plan; or

(ii) to change the Medicare+Choice plan in which the individual is enrolled.

(E) Limited continuous open enrollment of original fee-for-service enrollees in medicare advantage non-prescription drug plans

(i) In general

On any date during 2007 or 2008 on which a Medicare Advantage eligible individual is an unenrolled fee-for-service individual (as defined in clause (ii)), the individual may elect under subsection (a)(1) to enroll in a Medicare Advantage plan that is not an MA–PD plan.

(ii) Unenrolled fee-for-service individual defined

In this subparagraph, the term ''unenrolled fee-for-service individual'' means, with respect to a date, a Medicare Advantage eligible individual who—

(I) is receiving benefits under this subchapter through enrollment in the original medicare fee-for-service program under parts A and B;

(II) is not enrolled in an MA plan on such date; and

(III) as of such date is not otherwise eligible to elect to enroll in an MA plan.

(iii) Limitation of one change during year

An individual may exercise the right under clause (i) only once during the year.

(iv) No effect on coverage under a prescription drug plan

Nothing in this subparagraph shall be construed as permitting an individual exercising the right under clause (i)—

(I) who is enrolled in a prescription drug plan under part D, to disenroll from such plan or to enroll in a different prescription drug plan; or

(II) who is not enrolled in a prescription drug plan, to enroll in such a plan.

(3) Annual, coordinated election period

(A) In general

Subject to paragraph (5), each individual who is eligible to make an election under this section may change such election during an annual, coordinated election period.

(B) Annual, coordinated election period

For purposes of this section, the term ''annual, coordinated election period'' means—

(i) with respect to a year before 2002, the month of November before such year;

(ii) with respect to 2002, 2003, 2004, and 2005, the period beginning on November 15 and ending on December 31 of the year before such year;

(iii) with respect to 2006, the period beginning on November 15, 2005, and ending on May 15, 2006; and

(iv) with respect to 2007 and succeeding years, the period beginning on November 15 and ending on December 31 of the year before such year.

(C) Medicare+Choice health information fairs

During the fall season of each year (beginning with 1999) and during the period described in subparagraph (B)(iii), in conjunction with the annual coordinated election period defined in subparagraph (B), the Secretary shall provide for a nationally coordinated educational and publicity campaign to inform Medicare+Choice eligible individuals about Medicare+Choice plans and the election process provided under this section.

(D) Special information campaigns

During November 1998 the Secretary shall provide for an educational and publicity campaign to inform Medicare+Choice eligible individuals about the availability of Medicare+Choice plans, and eligible organizations with risk-sharing contracts under section 1395mm of this title, offered in different areas and the election process provided under this section. During the period described in subparagraph (B)(iii), the Secretary shall provide for an educational and publicity campaign to inform MA eligible individuals about the availability of MA plans (including MA–PD plans) offered in different areas and the election process provided under this section.

(4) Special election periods

Effective as of January 1, 2006, an individual may discontinue an election of a Medicare+

Choice plan offered by a Medicare+Choice organization other than such plan, in an annual, coordinated election period and make a new election under this section if—

(A)(i) the certification of the organization or plan under this part has been terminated, or the organization or plan has notified the individual of an impending termination of such certification; or

(ii) the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides, or has notified the individual of an impending termination or discontinuation of such plan;

(B) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances (specified by the Secretary, but not including termination of the individual's enrollment on the basis described in clause (i) or (ii) of subsection (g)(3)(B) of this section);

(C) the individual demonstrates (in accordance with guidelines established by the Secretary) that—

(i) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual (including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards); or

(ii) the organization (or an agent or other entity acting on the organization's behalf) materially misrepresented the plan's provisions in marketing the plan to the individual; or

(D) the individual meets such other exceptional conditions as the Secretary may provide.

Effective as of January 1, 2006, an individual who, upon first becoming eligible for benefits under part A of this subchapter at age 65, enrolls in a Medicare+Choice plan under this part, the individual may discontinue the election of such plan, and elect coverage under the original fee-for-service plan, at any time during the 12-month period beginning on the effective date of such enrollment.

(5) Special rules for MSA plans

Notwithstanding the preceding provisions of this subsection, an individual—

(A) may elect an MSA plan only during—

(i) an initial open enrollment period described in paragraph (1), or

(ii) an annual, coordinated election period described in paragraph (3)(B);

(B) subject to subparagraph (C), may not discontinue an election of an MSA plan except during the periods described in clause (ii) or (iii) of subparagraph (A) and under the first sentence of paragraph (4); and

(C) who elects an MSA plan during an annual, coordinated election period, and who never previously had elected such a plan, may revoke such election, in a manner determined by the Secretary, by not later than December 15 following the date of the election.

(6) Open enrollment periods

Subject to paragraph (5), a Medicare+Choice organization—

(A) shall accept elections or changes to elections during the initial enrollment periods described in paragraph (1), during the month of November 1998 and during the annual, coordinated election period under paragraph (3) for each subsequent year, and during special election periods described in the first sentence of paragraph (4); and

(B) may accept other changes to elections at such other times as the organization provides.

(f) Effectiveness of elections and changes of elections

(1) During initial coverage election period

An election of coverage made during the initial coverage election period under subsection (e)(1) of this section shall take effect upon the date the individual becomes entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, except as the Secretary may provide (consistent with section 1395q of this title) in order to prevent retroactive coverage.

(2) During continuous open enrollment periods

An election or change of coverage made under subsection (e)(2) of this section shall take effect with the first day of the first calendar month following the date on which the election or change is made.

(3) Annual, coordinated election period

An election or change of coverage made during an annual, coordinated election period (as defined in subsection (e)(3)(B) of this section, other than the period described in clause (iii) of such subsection) in a year shall take effect as of the first day of the following year.

(4) Other periods

An election or change of coverage made during any other period under subsection (e)(4) of this section shall take effect in such manner as the Secretary provides in a manner consistent (to the extent practicable) with protecting continuity of health benefit coverage.

(g) Guaranteed issue and renewal

(1) In general

Except as provided in this subsection, a Medicare+Choice organization shall provide that at any time during which elections are accepted under this section with respect to a Medicare+Choice plan offered by the organization, the organization will accept without restrictions individuals who are eligible to make such election.

(2) Priority

If the Secretary determines that a Medicare+Choice organization, in relation to a Medicare+Choice plan it offers, has a capacity limit and the number of Medicare+Choice eli-

gible individuals who elect the plan under this section exceeds the capacity limit, the organization may limit the election of individuals of the plan under this section but only if priority in election is provided—

(A) first to such individuals as have elected the plan at the time of the determination, and

(B) then to other such individuals in such a manner that does not discriminate, on a basis described in section 1395w–22(b) of this title, among the individuals (who seek to elect the plan).

The preceding sentence shall not apply if it would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the medicare population in the service area of the plan.

(3) Limitation on termination of election

(A) In general

Subject to subparagraph (B), a Medicare+Choice organization may not for any reason terminate the election of any individual under this section for a Medicare+Choice plan it offers.

(B) Basis for termination of election

A Medicare+Choice organization may terminate an individual's election under this section with respect to a Medicare+Choice plan it offers if—

(i) any Medicare+Choice monthly basic and supplemental beneficiary premiums required with respect to such plan are not paid on a timely basis (consistent with standards under section 1395w–26 of this title that provide for a grace period for late payment of such premiums),

(ii) the individual has engaged in disruptive behavior (as specified in such standards), or

(iii) the plan is terminated with respect to all individuals under this part in the area in which the individual resides.

(C) Consequence of termination

(i) Terminations for cause

Any individual whose election is terminated under clause (i) or (ii) of subparagraph (B) is deemed to have elected the original medicare fee-for-service program option described in subsection (a)(1)(A) of this section.

(ii) Termination based on plan termination or service area reduction

Any individual whose election is terminated under subparagraph (B)(iii) shall have a special election period under subsection (e)(4)(A) of this section in which to change coverage to coverage under another Medicare+Choice plan. Such an individual who fails to make an election during such period is deemed to have chosen to change coverage to the original medicare fee-for-service program option described in subsection (a)(1)(A) of this section.

(D) Organization obligation with respect to election forms

Pursuant to a contract under section 1395w–27 of this title, each Medicare+Choice organization receiving an election form under subsection (c)(2) of this section shall transmit to the Secretary (at such time and in such manner as the Secretary may specify) a copy of such form or such other information respecting the election as the Secretary may specify.

(h) Approval of marketing material and application forms

(1) Submission

No marketing material or application form may be distributed by a Medicare+Choice organization to (or for the use of) Medicare+Choice eligible individuals unless—

(A) at least 45 days (or 10 days in the case described in paragraph (5)) before the date of distribution the organization has submitted the material or form to the Secretary for review, and

(B) the Secretary has not disapproved the distribution of such material or form.

(2) Review

The standards established under section 1395w–26 of this title shall include guidelines for the review of any material or form submitted and under such guidelines the Secretary shall disapprove (or later require the correction of) such material or form if the material or form is materially inaccurate or misleading or otherwise makes a material misrepresentation.

(3) Deemed approval (1-stop shopping)

In the case of material or form that is submitted under paragraph (1)(A) to the Secretary or a regional office of the Department of Health and Human Services and the Secretary or the office has not disapproved the distribution of marketing material or form under paragraph (1)(B) with respect to a Medicare+Choice plan in an area, the Secretary is deemed not to have disapproved such distribution in all other areas covered by the plan and organization except with regard to that portion of such material or form that is specific only to an area involved.

(4) Prohibition of certain marketing practices

Each Medicare+Choice organization shall conform to fair marketing standards, in relation to Medicare+Choice plans offered under this part, included in the standards established under section 1395w–26 of this title. Such standards—

(A) shall not permit a Medicare+Choice organization to provide for cash or other monetary rebates as an inducement for enrollment or otherwise, and

(B) may include a prohibition against a Medicare+Choice organization (or agent of such an organization) completing any portion of any election form used to carry out elections under this section on behalf of any individual.

(5) Special treatment of marketing material following model marketing language

In the case of marketing material of an organization that uses, without modification, proposed model language specified by the Secretary, the period specified in paragraph (1)(A) shall be reduced from 45 days to 10 days.

(i) Effect of election of Medicare+Choice plan option

(1) Payments to organizations

Subject to sections 1395w–22(a)(5), 1395w–23(a)(4), 1395w–23(g), 1395w–23(h), 1395ww(d)(11), and 1395ww(h)(3)(D) of this title, payments under a contract with a Medicare+Choice organization under section 1395w–23(a) of this title with respect to an individual electing a Medicare+Choice plan offered by the organization shall be instead of the amounts which (in the absence of the contract) would otherwise be payable under parts A and B of this subchapter for items and services furnished to the individual.

(2) Only organization entitled to payment

Subject to sections 1395w–23(a)(4), 1395w–23(e), 1395w–23(g), 1395w–23(h), 1395w–27(f)(2), 1395w–27a(h), 1395ww(d)(11), and 1395ww(h)(3)(D) of this title, only the Medicare+Choice organization shall be entitled to receive payments from the Secretary under this subchapter for services furnished to the individual.

(Aug. 14, 1935, ch. 531, title XVIII, § 1851, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 275; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(k)(6)(A), title V, §§ 501(a)(1), (b), (c), 502(a), 519(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–367, 1501A–378 to 1501A–380, 1501A–385; Pub. L. 106–554, § 1(a)(6) [title VI, §§ 606(a)(2)(C), 613(a), 619(a), 620(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–558, 2763A–560, 2763A–563; Pub. L. 107–188, title V, § 532(a), (c)(1), June 12, 2002, 116 Stat. 696; Pub. L. 108–173, title I, § 102(a), (c)(1), title II, §§ 221(a)(1), (d)(5), 222(*l*)(3)(A), (B), (D), (E), 231(a), 233(b), (d), 237(b)(2)(A), Dec. 8, 2003, 117 Stat. 2152, 2154, 2180, 2193, 2206, 2207, 2209, 2212; Pub. L. 109–432, div. B, title II, § 206(a), Dec. 20, 2006, 120 Stat. 2990.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Part D of this subchapter, referred to in subsec. (e)(2)(C)(iii), (E)(iv)(I), is classified to section 1395w–101 et seq. of this title.

AMENDMENTS

2006—Subsec. (e)(2)(E). Pub. L. 109–432 added subpar. (E).

2003—Subsec. (a)(1). Pub. L. 108–173, § 102(c)(1)(A), (C), inserted ''(other than qualified prescription drug benefits)'' after ''benefits'' in introductory provisions and inserted concluding provisions.

Subsec. (a)(1)(B). Pub. L. 108–173, § 102(c)(1)(B), substituted comma for period at end.

Subsec. (a)(2)(A). Pub. L. 108–173, § 221(a)(1), substituted ''Coordinated care plans (including regional plans)'' for ''Coordinated care plans'' in heading, inserted cl. (i) designation and heading before ''Coordinated'', and inserted ''regional or local'' before ''preferred provider organization plans'' and ''(including MA regional plans)'' before period at end.

Subsec. (a)(2)(A)(ii). Pub. L. 108–173, § 231(a), added cl. (ii).

Subsec. (a)(3)(B)(ii). Pub. L. 108–173, § 222(*l*)(3)(D), made technical amendment to reference in original act which appears in text as reference to subsection (e)(4)(A) of this section.

Subsec. (b)(1)(B). Pub. L. 108–173, § 222(*l*)(3)(A)(i), (ii), substituted ''an MA local plan'' for ''a plan'' and ''benefits under the original medicare fee-for-service program option'' for ''basic benefits described in section 1395w–22(a)(1)(A) of this title''.

Subsec. (b)(1)(C). Pub. L. 108–173, § 222(*l*)(3)(A)(iii), substituted ''in an MA local plan'' for ''in a Medicare+Choice plan'' in introductory provisions.

Subsec. (b)(4). Pub. L. 108–173, § 233(b)(1), struck out ''on a demonstration basis'' after ''plans'' in heading.

Subsec. (b)(4)(A). Pub. L. 108–173, § 233(b)(2), struck out first sentence which read as follows: ''An individual is not eligible to enroll in an MSA plan under this part—

''(i) on or after January 1, 2003, unless the enrollment is the continuation of such an enrollment in effect as of such date; or

''(ii) as of any date if the number of such individuals so enrolled as of such date has reached 390,000.''

Subsec. (b)(4)(C). Pub. L. 108–173, § 233(b)(3), struck out at end ''The Secretary shall submit such a report, by not later than March 1, 2002, on whether the time limitation under subparagraph (A)(i) should be extended or removed and whether to change the numerical limitation under subparagraph (A)(ii).''

Subsec. (d)(3)(F). Pub. L. 108–173, § 222(*l*)(3)(B)(i), added subpar. (F).

Subsec. (d)(4)(A)(ii). Pub. L. 108–173, § 222(*l*)(3)(B)(ii), inserted '', including information on the single deductible (if applicable) under section 1395w–27a(b)(1) of this title'' after ''cost sharing''.

Subsec. (d)(4)(B)(i). Pub. L. 108–173, § 222(*l*)(3)(B)(iii), substituted ''monthly amount of the premium charged to an individual'' for ''Medicare+Choice monthly basic beneficiary premium and Medicare+Choice monthly supplemental beneficiary premium, if any, for the plan or, in the case of an MSA plan, the Medicare+Choice monthly MSA premium''.

Subsec. (d)(4)(E). Pub. L. 108–173, § 222(*l*)(3)(B)(iv), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Whether the organization offering the plan includes mandatory supplemental benefits in its base benefit package or offers optional supplemental benefits and the terms and conditions (including premiums) for such coverage.''

Subsec. (e)(1). Pub. L. 108–173, § 102(a)(4), inserted at end ''If any portion of an individual's initial enrollment period under part B of this subchapter occurs after the end of the annual, coordinated election period described in paragraph (3)(B)(iii), the initial enrollment period under this part shall further extend through the end of the individual's initial enrollment period under part B of this subchapter.''

Subsec. (e)(2). Pub. L. 108–173, § 102(a)(1)(A), substituted ''2005'' and ''2006'' for ''2004'' and ''2005'', respectively, wherever appearing.

Subsec. (e)(2)(B)(i). Pub. L. 108–173, § 102(a)(6)(A), inserted '', subparagraph (C)(iii),'' after ''clause (ii)''.

Subsec. (e)(2)(C)(i). Pub. L. 108–173, § 102(a)(6)(B), substituted ''clauses (ii) and (iii)'' for ''clause (ii)''.

Subsec. (e)(2)(C)(iii). Pub. L. 108–173, § 102(a)(6)(C), added cl. (iii).

Subsec. (e)(3)(B). Pub. L. 108–173, § 102(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'annual, coordinated election period' means, with respect to a year before 2003 and after 2005, the month of November before such year and with respect to 2003, 2004, and 2005, the period beginning on November 15 and ending on December 31 of the year before such year.''

Subsec. (e)(3)(C). Pub. L. 108–173, § 102(a)(3)(A), inserted ''and during the period described in subparagraph (B)(iii)'' after ''(beginning with 1999)''.

Subsec. (e)(3)(D). Pub. L. 108–173, § 102(a)(3)(B), in heading, substituted ''campaigns'' for ''campaign in 1998'' and, in text, inserted at end ''During the period described in subparagraph (B)(iii), the Secretary shall provide for an educational and publicity campaign to inform MA eligible individuals about the availability of MA plans (including MA–PD plans) offered in different areas and the election process provided under this section.''

Subsec. (e)(4). Pub. L. 108–173, § 102(a)(1)(B), substituted ''2006'' for ''2005'' in two places.

Subsec. (e)(5)(A)(i). Pub. L. 108–173, § 233(d)(1), inserted ''or'' at end.

Subsec. (e)(5)(A)(ii). Pub. L. 108–173, § 233(d)(2), substituted semicolon for '', or''.

Subsec. (e)(5)(A)(iii). Pub. L. 108–173, § 233(d)(3), struck out cl. (iii) which read as follows: ''the month of November 1998;''.

Subsec. (f)(1). Pub. L. 108–173, § 222(*l*)(3)(E), substituted ''subsection (e)(1)'' for ''subsection (e)(1)(A)''.

Subsec. (f)(3). Pub. L. 108–173, § 102(a)(5), inserted '', other than the period described in clause (iii) of such subsection'' after ''subsection (e)(3)(B) of this section''.

Subsec. (i)(1). Pub. L. 108–173, § 237(b)(2)(A)(i), inserted ''1395w–23(a)(4),'' after ''Subject to sections 1395w–22(a)(5),''.

Subsec. (i)(2). Pub. L. 108–173, § 237(b)(2)(A)(ii), inserted ''1395w–23(a)(4),'' after ''Subject to sections''.

Pub. L. 108–173, § 221(d)(5), inserted ''1395w–27a(h),'' after ''1395w–27(f)(2),''.

2002—Subsec. (e)(2)(A). Pub. L. 107–188, § 532(a)(1), substituted ''through 2004'' for ''through 2001'' in heading and ''during the period beginning January 1, 1998, and ending on December 31, 2004'' for ''during 1998, 1999, 2000, and 2001'' in text.

Subsec. (e)(2)(B). Pub. L. 107–188, § 532(a)(2), substituted ''during 2005'' for ''during 2002'' in heading.

Subsec. (e)(2)(B)(i), (C)(i). Pub. L. 107–188, § 532(a)(3), substituted ''2005'' for ''2002'' wherever appearing.

Subsec. (e)(2)(D). Pub. L. 107–188, § 532(a)(4), substituted ''2004'' for ''2001''.

Subsec. (e)(3)(B). Pub. L. 107–188, § 532(c)(1)(A), substituted ''means, with respect to a year before 2003 and after 2005, the month of November before such year and with respect to 2003, 2004, and 2005, the period beginning on November 15 and ending on December 31 of the year before such year'' for ''means, with respect to a calendar year (beginning with 2000), the month of November before such year''.

Subsec. (e)(4). Pub. L. 107–188, § 532(a)(5), substituted ''2005'' for ''2002'' in introductory and concluding provisions.

Subsec. (e)(6)(A). Pub. L. 107–188, § 532(c)(1)(B), substituted ''during the annual, coordinated election period under paragraph (3) for each subsequent year'' for ''each subsequent year (as provided in paragraph (3))''.

2000—Subsec. (a)(3)(B). Pub. L. 106–554, § 1(a)(6) [title VI, § 620(a)], substituted ''except that—'' and cls. (i) and (ii) for ''except that an individual who develops end-stage renal disease while enrolled in a Medicare+Choice plan may continue to be enrolled in that plan.''

Subsec. (d)(4)(B). Pub. L. 106–554, § 1(a)(6) [title VI, § 606(a)(2)(C)], designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (f)(2). Pub. L. 106–554, § 1(a)(6) [title VI, § 619(a)], struck out '', except that if such election or change is made after the 10th day of any calendar month, then the election or change shall not take effect until the first day of the second calendar month following the date on which the election or change is made'' before period at end.

Subsec. (h)(1)(A). Pub. L. 106–554, § 1(a)(6) [title VI, § 613(a)(1)], inserted ''(or 10 days in the case described in paragraph (5))'' after ''45 days''.

Subsec. (h)(5). Pub. L. 106–554, § 1(a)(6) [title VI, § 613(a)(2)], added par. (5).

1999—Subsec. (b)(1)(A). Pub. L. 106–113, § 1000(a)(6) [title V, § 501(c)(1)], inserted ''and except as provided in subparagraph (C)'' after ''may otherwise provide''.

Subsec. (b)(1)(C). Pub. L. 106–113, § 1000(a)(6) [title V, § 501(c)(2)], added subpar. (C).

Subsec. (e)(2)(B)(i). Pub. L. 106–113, § 1000(a)(6) [title V, § 501(b)(1)], inserted ''and subparagraph (D)'' after ''clause (ii)''.

Subsec. (e)(2)(C)(i). Pub. L. 106–113, § 1000(a)(6) [title V, § 501(b)(2)], inserted ''and subparagraph (D)'' after ''clause (ii)''.

Subsec. (e)(2)(D). Pub. L. 106–113, § 1000(a)(6) [title V, § 501(b)(3)], added subpar. (D).

Subsec. (e)(3)(C). Pub. L. 106–113, § 1000(a)(6) [title V, § 519(a)], substituted ''During the fall season'' for ''In the month of November''.

Subsec. (e)(4)(A). Pub. L. 106–113, § 1000(a)(6) [title V, § 501(a)(1)], added subpar. (A) and struck out former subpar. (A) which read as follows: ''the organization's or plan's certification under this part has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;''.

Subsec. (f)(2). Pub. L. 106–113, § 1000(a)(6) [title V, § 502(a)], inserted ''or change'' before ''is made'' and '', except that if such election or change is made after the 10th day of any calendar month, then the election or change shall not take effect until the first day of the second calendar month following the date on which the election or change is made'' before the period at end.

Subsec. (i)(2). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(A)], struck out ''and'' after ''1395w–27(f)(2),''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title I, § 102(c)(2), Dec. 8, 2003, 117 Stat. 2154, provided that: ''The amendments made by this subsection [amending this section] shall apply on and after January 1, 2006.''

Pub. L. 108–173, title II, § 223(a), Dec. 8, 2003, 117 Stat. 2207, provided that: ''The amendments made by this subtitle [subtitle C (§§ 221–223) of title II of Pub. L. 108–173, enacting section 1395w–27a of this title and amending this section and sections 1395r, 1395s, 1395w, 1395w–22 to 1395w–24, 1395w–27, and 1395w–28 of this title] shall apply with respect to plan years beginning on or after January 1, 2006.''

Pub. L. 108–173, title II, § 231(f)(1), Dec. 8, 2003, 117 Stat. 2208, provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and section 1395w–28 of this title] shall take effect upon the date of the enactment of this Act [Dec. 8, 2003].''

Amendment by section 237(b)(2)(A) of Pub. L. 108–173 applicable to services provided on or after Jan. 1, 2006, and contract years beginning on or after such date, see section 237(e) of Pub. L. 108–173, set out as a note under section 1320a–7b of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–188, title V, § 532(c)(2), June 12, 2002, 116 Stat. 696, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to the annual, coordinated election period for years beginning with 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title VI, § 606(a)(2)(C)] of Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

Pub. L. 106–554, § 1(a)(6) [title VI, § 613(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–560, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to marketing material submitted on or after January 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title VI, § 619(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–563, provided that: ''The amendment made by this section [amending this section] shall apply to elections and changes of coverage made on or after June 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title VI, § 620(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–564, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to ter-

minations and discontinuations occurring on or after the date of the enactment of this Act [Dec. 21, 2000].

''(2) APPLICATION TO PRIOR PLAN TERMINATIONS.—Clause (ii) of section 1851(a)(3)(B) of the Social Security Act [subsection (a)(3)(B)(ii) of this section] (as inserted by subsection (a)) shall also apply to individuals whose enrollment in a Medicare+Choice plan was terminated or discontinued after December 31, 1998, and before the date of the enactment of this Act. In applying this paragraph, such an individual shall be treated, for purposes of part C of title XVIII of the Social Security Act [this part], as having discontinued enrollment in such a plan as of the date of the enactment of this Act.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, § 321(k)(6)(A)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 501(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–379, provided that:

''(1) The amendments made by subsection (a) [amending this section and section 1395ss of this title] apply to notices of impending terminations or discontinuances made on or after the date of the enactment of this Act [Nov. 29, 1999].

''(2) The amendments made by subsection (c) [amending this section] apply to elections made on or after the date of the enactment of this Act [Nov. 29, 1999] with respect to eliminations of Medicare+Choice payment areas from a service area that occur before, on, or after the date of the enactment of this Act.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 502(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–380, provided that: ''The amendments made by this section [amending this section] apply to elections and changes of coverage made on or after January 1, 2000.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 519(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–385, provided that: ''The amendment made by subsection (a) [amending this section] first applies to campaigns conducted beginning in 2000.''

REGULATIONS

Pub. L. 108–173, title II, § 223(b), Dec. 8, 2003, 117 Stat. 2207, provided that: ''The Secretary [of Health and Human Services] shall revise the regulations previously promulgated to carry out part C of title XVIII of the Social Security Act [this part] to carry out the provisions of this Act [see Tables for classification].''

CONSTRUCTION

Pub. L. 108–173, title II, § 221(b)(2), Dec. 8, 2003, 117 Stat. 2181, provided that: ''Nothing in part C of title XVIII of the Social Security Act [this part] shall be construed as preventing an MSA plan or MA private fee-for-service plan from having a service area that covers one or more MA regions or the entire nation.''

IMPLEMENTATION OF MEDICARE ADVANTAGE PROGRAM

Pub. L. 108–173, title II, § 201, Dec. 8, 2003, 117 Stat. 2176, provided that:

''(a) IN GENERAL.—There is hereby established the Medicare Advantage program. The Medicare Advantage program shall consist of the program under part C of title XVIII of the Social Security Act [this part] (as amended by this Act [see Tables for classification]).

''(b) REFERENCES.—Subject to subsection (c), any reference to the program under part C of title XVIII of the Social Security Act [this part] shall be deemed a reference to the Medicare Advantage program and, with respect to such part, any reference to 'Medicare+Choice' is deemed a reference to 'Medicare Advantage' and 'MA'.

''(c) TRANSITION.—In order to provide for an orderly transition and avoid beneficiary and provider confusion, the Secretary [of Health and Human Services] shall provide for an appropriate transition in the use of the terms 'Medicare+Choice' and 'Medicare Advantage' (or 'MA') in reference to the program under part C of title XVIII of the Social Security Act [this part]. Such transition shall be fully completed for all materials for plan years beginning not later than January 1, 2006. Before the completion of such transition, any reference to 'Medicare Advantage' or 'MA' shall be deemed to include a reference to 'Medicare+Choice'.''

REPORT ON IMPACT OF INCREASED FINANCIAL ASSISTANCE TO MEDICARE ADVANTAGE PLANS

Pub. L. 108–173, title II, § 211(g), Dec. 8, 2003, 117 Stat. 2178, directed the Secretary of Health and Human Services to submit to Congress, not later than July 1, 2006, a report that described the impact of additional financing provided under Pub. L. 108–173 and other Acts on the availability of Medicare Advantage plans in different areas and its impact on lowering premiums and increasing benefits under such plans.

MEDPAC STUDY AND REPORT ON CLARIFICATION OF AUTHORITY REGARDING DISAPPROVAL OF UNREASONABLE BENEFICIARY COST-SHARING

Pub. L. 108–173, title II, § 211(h), Dec. 8, 2003, 117 Stat. 2179, directed the Medicare Payment Advisory Commission, in consultation with beneficiaries, consumer groups, employers, and organizations offering plans under this part, to conduct a study to determine the extent to which the cost-sharing structures under such plans affect access to covered services or select enrollees based on the health status of eligible individuals described in subsection (a)(3) of this section, and to submit a report to Congress on such study not later than Dec. 31, 2004.

MORATORIUM ON NEW LOCAL PREFERRED PROVIDER ORGANIZATION PLANS

Pub. L. 108–173, title II, § 221(a)(2), Dec. 8, 2003, 117 Stat. 2180, provided that: ''The Secretary [of Health and Human Services] shall not permit the offering of a local preferred provider organization plan under part C of title XVIII of the Social Security Act [this part] during 2006 or 2007 in a service area unless such plan was offered under such part (including under a demonstration project under such part) in such area as of December 31, 2005.''

AUTHORITY TO DESIGNATE OTHER PLANS AS SPECIALIZED MA PLANS

Pub. L. 108–173, title II, § 231(d), Dec. 8, 2003, 117 Stat. 2208, provided that: ''In promulgating regulations to carry out section 1851(a)(2)(A)(ii) of the Social Security Act [subsec. (a)(2)(A)(ii) of this section] (as added by subsection (a)) and section 1859(b)(6) of such Act [section 1395w–28(b)(6) of this title] (as added by subsection (b)), the Secretary [of Health and Human Services] may provide (notwithstanding section 1859(b)(6)(A) of such Act) for the offering of specialized MA plans for special needs individuals by MA plans that disproportionately serve special needs individuals.''

REPORT ON IMPACT OF SPECIALIZED MA PLANS FOR SPECIAL NEEDS INDIVIDUALS

Pub. L. 108–173, title II, § 231(e), Dec. 8, 2003, 117 Stat. 2208, provided that: ''Not later than December 31, 2007, the Secretary [of Health and Human Services] shall submit to Congress a report that assesses the impact of specialized MA plans for special needs individuals on the cost and quality of services provided to enrollees. Such report shall include an assessment of the costs and savings to the medicare program as a result of amendments made by subsections (a), (b), and (c) [amending this section and section 1395w–28 of this title].''

MEDPAC STUDY ON CONSUMER COALITIONS

Pub. L. 106–554, § 1(a)(6) [title I, § 124], Dec. 21, 2000, 114 Stat. 2763, 2763A–478, directed the Medicare Payment

Advisory Commission to conduct a study examining the use of consumer coalitions in the marketing of Medicare+Choice plans under the medicare program under this subchapter and to submit a report on the study to Congress no later than 1 year after Dec. 21, 2000.

REPORT ON ACCOUNTING FOR VA AND DOD EXPENDITURES FOR MEDICARE BENEFICIARIES

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 551], Nov. 29, 1999, 113 Stat. 1536, 1501A–392, directed the Secretary of Health and Human Services, jointly with the Secretaries of Defense and of Veterans Affairs, to submit to Congress, no later than Apr. 1, 2001, a report on the estimated use of health care services furnished by the Departments of Defense and of Veterans Affairs to medicare beneficiaries.

REPORT ON MEDICARE MSA (MEDICAL SAVINGS ACCOUNT) PLANS

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 552(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–393, directed the Medicare Payment Assessment Commission to submit to Congress, no later than 1 year after Nov. 29, 1999, a report on specific legislative changes that should be made to make MSA plans a viable option under the Medicare+Choice program.

GAO AUDIT AND REPORTS ON PROVISION OF MEDICARE+CHOICE HEALTH INFORMATION TO BENEFICIARIES

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 553(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–393, provided that:

''(1) IN GENERAL.—Beginning in 2000, the Comptroller General shall conduct an annual audit of the expenditures by the Secretary of Health and Human Services during the preceding year in providing information regarding the Medicare+Choice program under part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.) to eligible medicare beneficiaries.

''(3) [(2)] REPORTS.—Not later than March 31 of 2001, 2004, 2007, and 2010, the Comptroller General shall submit a report to Congress on the results of the audit of the expenditures of the preceding 3 years conducted pursuant to subsection (a) [enacting provisions set out as a note under section 1395ss of this title], together with an evaluation of the effectiveness of the means used by the Secretary of Health and Human Services in providing information regarding the Medicare+Choice program under part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.) to eligible medicare beneficiaries.''

ENROLLMENT TRANSITION RULE

Section 4002(c) of Pub. L. 105–33 provided that: ''An individual who is enrolled on December 31, 1998, with an eligible organization under section 1876 of the Social Security Act (42 U.S.C. 1395mm) shall be considered to be enrolled with that organization on January 1, 1999, under part C of title XVIII of such Act [this part] if that organization has a contract under that part for providing services on January 1, 1999 (unless the individual has disenrolled effective on that date).''

SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL

Pub. L. 105–33, title IV, § 4002(f)(2), Aug. 5, 1997, 111 Stat. 330, directed the Secretary of Health and Human Services to submit to Congress, no later than 6 months after Aug. 5, 1997, proposed technical and conforming amendments in the law as required by the provisions of chapter 1 (§§ 4001–4006) of subtitle A of title IV of Pub. L. 105–33.

REPORT ON INTEGRATION AND TRANSITION

Pub. L. 105–33, title IV, § 4014(c), Aug. 5, 1997, 111 Stat. 337, directed the Secretary of Health and Human Services to submit to Congress, no later than Jan. 1, 1999, a plan which provided for the integration of health plans offered by social health maintenance organizations and similar plans as an option under the Medicare+Choice program under this part, for a transition for such organizations operating under demonstration project authority, and for appropriate payment levels for plans offered by such organizations.

MEDICARE ENROLLMENT DEMONSTRATION PROJECT

Section 4018 of Pub. L. 105–33 provided that:

''(a) DEMONSTRATION PROJECT.—

''(1) ESTABLISHMENT.—The Secretary shall implement a demonstration project (in this section referred to as the 'project') for the purpose of evaluating the use of a third-party contractor to conduct the Medicare+Choice plan enrollment and disenrollment functions, as described in part C of title XVIII of the Social Security Act [this part] (as added by section 4001 of this Act), in an area.

''(2) CONSULTATION.—Before implementing the project under this section, the Secretary shall consult with affected parties on—

''(A) the design of the project;

''(B) the selection criteria for the third-party contractor; and

''(C) the establishment of performance standards, as described in paragraph (3).

''(3) PERFORMANCE STANDARDS.—

''(A) IN GENERAL.—The Secretary shall establish performance standards for the accuracy and timeliness of the Medicare+Choice plan enrollment and disenrollment functions performed by the third-party contractor.

''(B) NONCOMPLIANCE.—In the event that the third-party contractor is not in substantial compliance with the performance standards established under subparagraph (A), such enrollment and disenrollment functions shall be performed by the Medicare+Choice plan until the Secretary appoints a new third-party contractor.

''(b) REPORT TO CONGRESS.—The Secretary shall periodically report to Congress on the progress of the project conducted pursuant to this section.

''(c) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of part C of title XVIII of the Social Security Act [this part] (as amended by section 4001 of this Act) to such extent and for such period as the Secretary determines is necessary to conduct the project.

''(d) DURATION.—A demonstration project under this section shall be conducted for a 3-year period.

''(e) SEPARATE FROM OTHER DEMONSTRATION PROJECTS.—A project implemented by the Secretary under this section shall not be conducted in conjunction with any other demonstration project.''

§ 1395w–22. Benefits and beneficiary protections

(a) Basic benefits

(1) Requirement

(A) In general

Except as provided in section 1395w–28(b)(3) of this title for MSA plans and except as provided in paragraph (6) for MA regional plans, each Medicare+Choice plan shall provide to members enrolled under this part, through providers and other persons that meet the applicable requirements of this subchapter and part A of subchapter XI of this chapter, benefits under the original medicare fee-for-service program option (and, for plan years before 2006, additional benefits required under section 1395w–24(f)(1)(A) of this title).

(B) Benefits under the original medicare fee-for-service program option defined

(i) In general

For purposes of this part, the term ''benefits under the original medicare fee-for-

service program option'' means those items and services (other than hospice care) for which benefits are available under parts A and B of this subchapter to individuals entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, with cost-sharing for those services as required under parts A and B of this subchapter or an actuarially equivalent level of cost-sharing as determined in this part.

(ii) Special rule for regional plans

In the case of an MA regional plan in determining an actuarially equivalent level of cost-sharing with respect to benefits under the original medicare fee-for-service program option, there shall only be taken into account, with respect to the application of section 1395w–27a(b)(2) of this title, such expenses only with respect to subparagraph (A) of such section.

(2) Satisfaction of requirement

(A) In general

A Medicare+Choice plan (other than an MSA plan) offered by a Medicare+Choice organization satisfies paragraph (1)(A), with respect to benefits for items and services furnished other than through a provider or other person that has a contract with the organization offering the plan, if the plan provides payment in an amount so that—

(i) the sum of such payment amount and any cost sharing provided for under the plan, is equal to at least

(ii) the total dollar amount of payment for such items and services as would otherwise be authorized under parts A and B of this subchapter (including any balance billing permitted under such parts).

(B) Reference to related provisions

For provision relating to—

(i) limitations on balance billing against Medicare+Choice organizations for noncontract providers, see subsection (k) of this section and section 1395cc(a)(1)(O) of this title, and

(ii) limiting actuarial value of enrollee liability for covered benefits, see section 1395w–24(e) of this title.

(C) Election of uniform coverage determination

In the case of a Medicare+Choice organization that offers a Medicare+Choice plan in an area in which more than one local coverage determination is applied with respect to different parts of the area, the organization may elect to have the local coverage determination for the part of the area that is most beneficial to Medicare+Choice enrollees (as identified by the Secretary) apply with respect to all Medicare+Choice enrollees enrolled in the plan.

(3) Supplemental benefits

(A) Benefits included subject to Secretary's approval

Each Medicare+Choice organization may provide to individuals enrolled under this part, other than under an MSA plan (without affording those individuals an option to decline the coverage), supplemental health care benefits that the Secretary may approve. The Secretary shall approve any such supplemental benefits unless the Secretary determines that including such supplemental benefits would substantially discourage enrollment by Medicare+Choice eligible individuals with the organization.

(B) At enrollees' option

(i) In general

Subject to clause (ii), a Medicare+Choice organization may provide to individuals enrolled under this part supplemental health care benefits that the individuals may elect, at their option, to have covered.

(ii) Special rule for MSA plans

A Medicare+Choice organization may not provide, under an MSA plan, supplemental health care benefits that cover the deductible described in section 1395w–28(b)(2)(B) of this title. In applying the previous sentence, health benefits described in section 1395ss(u)(2)(B) of this title shall not be treated as covering such deductible.

(C) Application to Medicare+Choice private fee-for-service plans

Nothing in this paragraph shall be construed as preventing a Medicare+Choice private fee-for-service plan from offering supplemental benefits that include payment for some or all of the balance billing amounts permitted consistent with subsection (k) of this section and coverage of additional services that the plan finds to be medically necessary. Such benefits may include reductions in cost-sharing below the actuarial value specified in section 1395w–24(e)(4)(B) of this title.

(4) Organization as secondary payer

Notwithstanding any other provision of law, a Medicare+Choice organization may (in the case of the provision of items and services to an individual under a Medicare+Choice plan under circumstances in which payment under this subchapter is made secondary pursuant to section 1395y(b)(2) of this title) charge or authorize the provider of such services to charge, in accordance with the charges allowed under a law, plan, or policy described in such section—

(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

(B) such individual to the extent that the individual has been paid under such law, plan, or policy for such services.

(5) National coverage determinations and legislative changes in benefits

If there is a national coverage determination or legislative change in benefits required to be provided under this part made in the period beginning on the date of an announcement

under section 1395w–23(b) of this title and ending on the date of the next announcement under such section and the Secretary projects that the determination will result in a significant change in the costs to a Medicare+Choice organization of providing the benefits that are the subject of such national coverage determination and that such change in costs was not incorporated in the determination of the annual Medicare+Choice capitation rate under section 1395w–23 of this title included in the announcement made at the beginning of such period, then, unless otherwise required by law—

(A) such determination or legislative change in benefits shall not apply to contracts under this part until the first contract year that begins after the end of such period, and

(B) if such coverage determination or legislative change provides for coverage of additional benefits or coverage under additional circumstances, section 1395w–21(i)(1) of this title shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period.

The projection under the previous sentence shall be based on an analysis by the Chief Actuary of the Centers for Medicare & Medicaid Services of the actuarial costs associated with the coverage determination or legislative change in benefits.

(6) Special benefit rules for regional plans

In the case of an MA plan that is an MA regional plan, benefits under the plan shall include the benefits described in paragraphs (1) and (2) of section 1395w–27a(b) of this title.

(b) Antidiscrimination

(1) Beneficiaries

(A) In general

A Medicare+Choice organization may not deny, limit, or condition the coverage or provision of benefits under this part, for individuals permitted to be enrolled with the organization under this part, based on any health status-related factor described in section 300gg–1(a)(1) of this title. The Secretary shall not approve a plan of an organization if the Secretary determines that the design of the plan and its benefits are likely to substantially discourage enrollment by certain MA eligible individuals with the organization.

(B) Construction

Subparagraph (A) shall not be construed as requiring a Medicare+Choice organization to enroll individuals who are determined to have end-stage renal disease, except as provided under section 1395w–21(a)(3)(B) of this title.

(2) Providers

A Medicare+Choice organization shall not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification. This paragraph shall not be construed to prohibit a plan from including providers only to the extent necessary to meet the needs of the plan's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan.

(c) Disclosure requirements

(1) Detailed description of plan provisions

A Medicare+Choice organization shall disclose, in clear, accurate, and standardized form to each enrollee with a Medicare+Choice plan offered by the organization under this part at the time of enrollment and at least annually thereafter, the following information regarding such plan:

(A) Service area

The plan's service area.

(B) Benefits

Benefits offered under the plan, including information described in section 1395w–21(d)(3)(A) of this title and exclusions from coverage and, if it is an MSA plan, a comparison of benefits under such a plan with benefits under other Medicare+Choice plans.

(C) Access

The number, mix, and distribution of plan providers, out-of-network coverage (if any) provided by the plan, and any point-of-service option (including the supplemental premium for such option).

(D) Out-of-area coverage

Out-of-area coverage provided by the plan.

(E) Emergency coverage

Coverage of emergency services, including—

(i) the appropriate use of emergency services, including use of the 911 telephone system or its local equivalent in emergency situations and an explanation of what constitutes an emergency situation;

(ii) the process and procedures of the plan for obtaining emergency services; and

(iii) the locations of (I) emergency departments, and (II) other settings, in which plan physicians and hospitals provide emergency services and post-stabilization care.

(F) Supplemental benefits

Supplemental benefits available from the organization offering the plan, including—

(i) whether the supplemental benefits are optional,

(ii) the supplemental benefits covered, and

(iii) the Medicare+Choice monthly supplemental beneficiary premium for the supplemental benefits.

(G) Prior authorization rules

Rules regarding prior authorization or other review requirements that could result in nonpayment.

(H) Plan grievance and appeals procedures

All plan appeal or grievance rights and procedures.

(I) Quality improvement program

A description of the organization's quality improvement program under subsection (e) of this section.

(2) Disclosure upon request

Upon request of a Medicare+Choice eligible individual, a Medicare+Choice organization must provide the following information to such individual:

(A) The general coverage information and general comparative plan information made available under clauses (i) and (ii) of section 1395w–21(d)(2)(A) of this title.

(B) Information on procedures used by the organization to control utilization of services and expenditures.

(C) Information on the number of grievances, redeterminations, and appeals and on the disposition in the aggregate of such matters.

(D) An overall summary description as to the method of compensation of participating physicians.

(d) Access to services

(1) In general

A Medicare+Choice organization offering a Medicare+Choice plan may select the providers from whom the benefits under the plan are provided so long as—

(A) the organization makes such benefits available and accessible to each individual electing the plan within the plan service area with reasonable promptness and in a manner which assures continuity in the provision of benefits;

(B) when medically necessary the organization makes such benefits available and accessible 24 hours a day and 7 days a week;

(C) the plan provides for reimbursement with respect to services which are covered under subparagraphs (A) and (B) and which are provided to such an individual other than through the organization, if—

(i) the services were not emergency services (as defined in paragraph (3)), but (I) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition, and (II) it was not reasonable given the circumstances to obtain the services through the organization,

(ii) the services were renal dialysis services and were provided other than through the organization because the individual was temporarily out of the plan's service area, or

(iii) the services are maintenance care or post-stabilization care covered under the guidelines established under paragraph (2);

(D) the organization provides access to appropriate providers, including credentialed specialists, for medically necessary treatment and services; and

(E) coverage is provided for emergency services (as defined in paragraph (3)) without regard to prior authorization or the emergency care provider's contractual relationship with the organization.

(2) Guidelines respecting coordination of post-stabilization care

A Medicare+Choice plan shall comply with such guidelines as the Secretary may prescribe relating to promoting efficient and timely coordination of appropriate maintenance and post-stabilization care of an enrollee after the enrollee has been determined to be stable under section 1395dd of this title.

(3) "Emergency services" defined

In this subsection—

(A) In general

The term ''emergency services'' means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that—

(i) are furnished by a provider that is qualified to furnish such services under this subchapter, and

(ii) are needed to evaluate or stabilize an emergency medical condition (as defined in subparagraph (B)).

(B) Emergency medical condition based on prudent layperson

The term ''emergency medical condition'' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part.

(4) Assuring access to services in Medicare+Choice private fee-for-service plans

In addition to any other requirements under this part, in the case of a Medicare+Choice private fee-for-service plan, the organization offering the plan must demonstrate to the Secretary that the organization has sufficient number and range of health care professionals and providers willing to provide services under the terms of the plan. The Secretary shall find that an organization has met such requirement with respect to any category of health care professional or provider if, with respect to that category of provider—

(A) the plan has established payment rates for covered services furnished by that category of provider that are not less than the payment rates provided for under part A of this subchapter, part B of this subchapter, or both, for such services, or

(B) the plan has contracts or agreements (other than deemed contracts or agreements under subsection (j)(6) of this section) with a sufficient number and range of providers within such category to provide covered services under the terms of the plan,

or a combination of both. The previous sentence shall not be construed as restricting the persons from whom enrollees under such a plan may obtain covered benefits, except that, if a plan entirely meets such requirement with respect to a category of health care professional or provider on the basis of subparagraph (B), it may provide for a higher beneficiary copayment in the case of health care professionals and providers of that category who do not have contracts or agreements (other than deemed contracts or agreements under subsection (j)(6) of this section) to provide covered services under the terms of the plan.

(e) Quality improvement program

(1) In general

Each MA organization shall have an ongoing quality improvement program for the purpose of improving the quality of care provided to enrollees in each MA plan offered by such organization (other than an MA private fee-for-service plan or an MSA plan).

(2) Chronic care improvement programs

As part of the quality improvement program under paragraph (1), each MA organization shall have a chronic care improvement program. Each chronic care improvement program shall have a method for monitoring and identifying enrollees with multiple or sufficiently severe chronic conditions that meet criteria established by the organization for participation under the program.

(3) Data

(A) Collection, analysis, and reporting

(i) In general

Except as provided in clauses (ii) and (iii) with respect to plans described in such clauses and subject to subparagraph (B), as part of the quality improvement program under paragraph (1), each MA organization shall provide for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality.

(ii) Application to MA regional plans

The Secretary shall establish as appropriate by regulation requirements for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality for MA organizations with respect to MA regional plans. Such requirements may not exceed the requirements under this subparagraph with respect to MA local plans that are preferred provider organization plans.

(iii) Application to preferred provider organizations

Clause (i) shall apply to MA organizations with respect to MA local plans that are preferred provider organization plans only insofar as services are furnished by providers or services, physicians, and other health care practitioners and suppliers that have contracts with such organization to furnish services under such plans.

(iv) Definition of preferred provider organization plan

In this subparagraph, the term ''preferred provider organization plan'' means an MA plan that—

(I) has a network of providers that have agreed to a contractually specified reimbursement for covered benefits with the organization offering the plan;

(II) provides for reimbursement for all covered benefits regardless of whether such benefits are provided within such network of providers; and

(III) is offered by an organization that is not licensed or organized under State law as a health maintenance organization.

(B) Limitations

(i) Types of data

The Secretary shall not collect under subparagraph (A) data on quality, outcomes, and beneficiary satisfaction to facilitate consumer choice and program administration other than the types of data that were collected by the Secretary as of November 1, 2003.

(ii) Changes in types of data

Subject to subclause (iii), the Secretary may only change the types of data that are required to be submitted under subparagraph (A) after submitting to Congress a report on the reasons for such changes that was prepared in consultation with MA organizations and private accrediting bodies.

(iii) Construction

Nothing in the[1] subsection shall be construed as restricting the ability of the Secretary to carry out the duties under section 1395w–21(d)(4)(D) of this title.

(4) Treatment of accreditation

(A) In general

The Secretary shall provide that a Medicare+Choice organization is deemed to meet all the requirements described in any specific clause of subparagraph (B) if the organization is accredited (and periodically reaccredited) by a private accrediting organization under a process that the Secretary has determined assures that the accrediting organization applies and enforces standards that meet or exceed the standards established under section 1395w–26 of this title to carry out the requirements in such clause.

(B) Requirements described

The provisions described in this subparagraph are the following:

(i) Paragraphs (1) through (3) of this subsection (relating to quality improvement programs).

(ii) Subsection (b) of this section (relating to antidiscrimination).

(iii) Subsection (d) of this section (relating to access to services).

(iv) Subsection (h) of this section (relating to confidentiality and accuracy of enrollee records).

[1] So in original. Probably should be ''this''.

(v) Subsection (i) of this section (relating to information on advance directives).

(vi) Subsection (j) of this section (relating to provider participation rules).

(vii) The requirements described in section 1395w–104(j) of this title, to the extent such requirements apply under section 1395w–131(c) of this title.

(C) Timely action on applications

The Secretary shall determine, within 210 days after the date the Secretary receives an application by a private accrediting organization and using the criteria specified in section 1395bb(b)(2) of this title, whether the process of the private accrediting organization meets the requirements with respect to any specific clause in subparagraph (B) with respect to which the application is made. The Secretary may not deny such an application on the basis that it seeks to meet the requirements with respect to only one, or more than one, such specific clause.

(D) Construction

Nothing in this paragraph shall be construed as limiting the authority of the Secretary under section 1395w–27 of this title, including the authority to terminate contracts with Medicare+Choice organizations under subsection (c)(2) of such section.

(f) Grievance mechanism

Each Medicare+Choice organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and enrollees with Medicare+Choice plans of the organization under this part.

(g) Coverage determinations, reconsiderations, and appeals

(1) Determinations by organization

(A) In general

A Medicare+Choice organization shall have a procedure for making determinations regarding whether an individual enrolled with the plan of the organization under this part is entitled to receive a health service under this section and the amount (if any) that the individual is required to pay with respect to such service. Subject to paragraph (3), such procedures shall provide for such determination to be made on a timely basis.

(B) Explanation of determination

Such a determination that denies coverage, in whole or in part, shall be in writing and shall include a statement in understandable language of the reasons for the denial and a description of the reconsideration and appeals processes.

(2) Reconsiderations

(A) In general

The organization shall provide for reconsideration of a determination described in paragraph (1)(B) upon request by the enrollee involved. The reconsideration shall be within a time period specified by the Secretary, but shall be made, subject to paragraph (3), not later than 60 days after the date of the receipt of the request for reconsideration.

(B) Physician decision on certain reconsiderations

A reconsideration relating to a determination to deny coverage based on a lack of medical necessity shall be made only by a physician with appropriate expertise in the field of medicine which necessitates treatment who is other than a physician involved in the initial determination.

(3) Expedited determinations and reconsiderations

(A) Receipt of requests

(i) Enrollee requests

An enrollee in a Medicare+Choice plan may request, either in writing or orally, an expedited determination under paragraph (1) or an expedited reconsideration under paragraph (2) by the Medicare+Choice organization.

(ii) Physician requests

A physician, regardless whether the physician is affiliated with the organization or not, may request, either in writing or orally, such an expedited determination or reconsideration.

(B) Organization procedures

(i) In general

The Medicare+Choice organization shall maintain procedures for expediting organization determinations and reconsiderations when, upon request of an enrollee, the organization determines that the application of the normal time frame for making a determination (or a reconsideration involving a determination) could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(ii) Expedition required for physician requests

In the case of a request for an expedited determination or reconsideration made under subparagraph (A)(ii), the organization shall expedite the determination or reconsideration if the request indicates that the application of the normal time frame for making a determination (or a reconsideration involving a determination) could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(iii) Timely response

In cases described in clauses (i) and (ii), the organization shall notify the enrollee (and the physician involved, as appropriate) of the determination or reconsideration under time limitations established by the Secretary, but not later than 72 hours of the time of receipt of the request for the determination or reconsideration (or receipt of the information necessary to make the determination or reconsideration), or such longer period as the Secretary may permit in specified cases.

(4) Independent review of certain coverage denials

The Secretary shall contract with an independent, outside entity to review and resolve in a timely manner reconsiderations that affirm denial of coverage, in whole or in part. The provisions of section 1395ff(c)(5) of this title shall apply to independent outside entities under contract with the Secretary under this paragraph.

(5) Appeals

An enrollee with a Medicare+Choice plan of a Medicare+Choice organization under this part who is dissatisfied by reason of the enrollee's failure to receive any health service to which the enrollee believes the enrollee is entitled and at no greater charge than the enrollee believes the enrollee is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 405(b) of this title, and in any such hearing the Secretary shall make the organization a party. If the amount in controversy is $1,000 or more, the individual or organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 405(g) of this title, and both the individual and the organization shall be entitled to be parties to that judicial review. In applying subsections (b) and (g) of section 405 of this title as provided in this paragraph, and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. The provisions of section 1395ff(b)(1)(E)(iii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this paragraph in the same manner as they apply to the dollar amounts specified in section 1395ff(b)(1)(E)(i) of this title.

(h) Confidentiality and accuracy of enrollee records

Insofar as a Medicare+Choice organization maintains medical records or other health information regarding enrollees under this part, the Medicare+Choice organization shall establish procedures—

(1) to safeguard the privacy of any individually identifiable enrollee information;

(2) to maintain such records and information in a manner that is accurate and timely; and

(3) to assure timely access of enrollees to such records and information.

(i) Information on advance directives

Each Medicare+Choice organization shall meet the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(j) Rules regarding provider participation

(1) Procedures

Insofar as a Medicare+Choice organization offers benefits under a Medicare+Choice plan through agreements with physicians, the organization shall establish reasonable procedures relating to the participation (under an agreement between a physician and the organization) of physicians under such a plan. Such procedures shall include—

(A) providing notice of the rules regarding participation,

(B) providing written notice of participation decisions that are adverse to physicians, and

(C) providing a process within the organization for appealing such adverse decisions, including the presentation of information and views of the physician regarding such decision.

(2) Consultation in medical policies

A Medicare+Choice organization shall consult with physicians who have entered into participation agreements with the organization regarding the organization's medical policy, quality, and medical management procedures.

(3) Prohibiting interference with provider advice to enrollees

(A) In general

Subject to subparagraphs (B) and (C), a Medicare+Choice organization (in relation to an individual enrolled under a Medicare+Choice plan offered by the organization under this part) shall not prohibit or otherwise restrict a covered health care professional (as defined in subparagraph (D)) from advising such an individual who is a patient of the professional about the health status of the individual or medical care or treatment for the individual's condition or disease, regardless of whether benefits for such care or treatment are provided under the plan, if the professional is acting within the lawful scope of practice.

(B) Conscience protection

Subparagraph (A) shall not be construed as requiring a Medicare+Choice plan to provide, reimburse for, or provide coverage of a counseling or referral service if the Medicare+Choice organization offering the plan—

(i) objects to the provision of such service on moral or religious grounds; and

(ii) in the manner and through the written instrumentalities such Medicare+Choice organization deems appropriate, makes available information on its policies regarding such service to prospective enrollees before or during enrollment and to enrollees within 90 days after the date that the organization or plan adopts a change in policy regarding such a counseling or referral service.

(C) Construction

Nothing in subparagraph (B) shall be construed to affect disclosure requirements under State law or under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.].

(D) "Health care professional" defined

For purposes of this paragraph, the term ''health care professional'' means a physician (as defined in section 1395x(r) of this

title) or other health care professional if coverage for the professional's services is provided under the Medicare+Choice plan for the services of the professional. Such term includes a podiatrist, optometrist, chiropractor, psychologist, dentist, physician assistant, physical or occupational therapist and therapy assistant, speech-language pathologist, audiologist, registered or licensed practical nurse (including nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, and certified nurse-midwife), licensed certified social worker, registered respiratory therapist, and certified respiratory therapy technician.

(4) Limitations on physician incentive plans

(A) In general

No Medicare+Choice organization may operate any physician incentive plan (as defined in subparagraph (B)) unless the organization provides assurances satisfactory to the Secretary that the following requirements are met:

(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or group.

(B) "Physician incentive plan" defined

In this paragraph, the term ''physician incentive plan'' means any compensation arrangement between a Medicare+Choice organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization under this part.

(5) Limitation on provider indemnification

A Medicare+Choice organization may not provide (directly or indirectly) for a health care professional, provider of services, or other entity providing health care services (or group of such professionals, providers, or entities) to indemnify the organization against any liability resulting from a civil action brought for any damage caused to an enrollee with a Medicare+Choice plan of the organization under this part by the organization's denial of medically necessary care.

(6) Special rules for Medicare+Choice private fee-for-service plans

For purposes of applying this part (including subsection (k)(1) of this section) and section 1395cc(a)(1)(O) of this title, a hospital (or other provider of services), a physician or other health care professional, or other entity furnishing health care services is treated as having an agreement or contract in effect with a Medicare+Choice organization (with respect to an individual enrolled in a Medicare+Choice private fee-for-service plan it offers), if—

(A) the provider, professional, or other entity furnishes services that are covered under the plan to such an enrollee; and

(B) before providing such services, the provider, professional, or other entity—

(i) has been informed of the individual's enrollment under the plan, and

(ii) either—

(I) has been informed of the terms and conditions of payment for such services under the plan, or

(II) is given a reasonable opportunity to obtain information concerning such terms and conditions,

in a manner reasonably designed to effect informed agreement by a provider.

The previous sentence shall only apply in the absence of an explicit agreement between such a provider, professional, or other entity and the Medicare+Choice organization.

(7) Promotion of e-prescribing by MA plans

(A) In general

An MA–PD plan may provide for a separate payment or otherwise provide for a differential payment for a participating physician that prescribes covered part D drugs in accordance with an electronic prescription drug program that meets standards established under section 1395w–104(e) of this title.

(B) Considerations

Such payment may take into consideration the costs of the physician in implementing such a program and may also be increased for those participating physicians who significantly increase—

(i) formulary compliance;

(ii) lower cost, therapeutically equivalent alternatives;

(iii) reductions in adverse drug interactions; and

(iv) efficiencies in filing prescriptions through reduced administrative costs.

(C) Structure

Additional or increased payments under this subsection may be structured in the same manner as medication therapy management fees are structured under section 1395w–104(c)(2)(E) of this title.

(k) Treatment of services furnished by certain providers

(1) In general

Except as provided in paragraph (2), a physician or other entity (other than a provider of services) that does not have a contract establishing payment amounts for services furnished to an individual enrolled under this part with a Medicare+Choice organization described in section 1395w–21(a)(2)(A) of this title or with an organization offering an MSA plan

shall accept as payment in full for covered services under this subchapter that are furnished to such an individual the amounts that the physician or other entity could collect if the individual were not so enrolled. Any penalty or other provision of law that applies to such a payment with respect to an individual entitled to benefits under this subchapter (but not enrolled with a Medicare+Choice organization under this part) also applies with respect to an individual so enrolled.

(2) Application to Medicare+Choice private fee-for-service plans

(A) Balance billing limits under Medicare+Choice private fee-for-service plans in case of contract providers

(i) In general

In the case of an individual enrolled in a Medicare+Choice private fee-for-service plan under this part, a physician, provider of services, or other entity that has a contract (including through the operation of subsection (j)(6) of this section) establishing a payment rate for services furnished to the enrollee shall accept as payment in full for covered services under this subchapter that are furnished to such an individual an amount not to exceed (including any deductibles, coinsurance, copayments, or balance billing otherwise permitted under the plan) an amount equal to 115 percent of such payment rate.

(ii) Procedures to enforce limits

The Medicare+Choice organization that offers such a plan shall establish procedures, similar to the procedures described in section 1395w–4(g)(1)(A) of this title, in order to carry out the previous sentence.

(iii) Assuring enforcement

If the Medicare+Choice organization fails to establish and enforce procedures required under clause (ii), the organization is subject to intermediate sanctions under section 1395w–27(g) of this title.

(B) Enrollee liability for noncontract providers

For provision—

(i) establishing minimum payment rate in the case of noncontract providers under a Medicare+Choice private fee-for-service plan, see subsection (a)(2) of this section; or

(ii) limiting enrollee liability in the case of covered services furnished by such providers, see paragraph (1) and section 1395cc(a)(1)(O) of this title.

(C) Information on beneficiary liability

(i) In general

Each Medicare+Choice organization that offers a Medicare+Choice private fee-for-service plan shall provide that enrollees under the plan who are furnished services for which payment is sought under the plan are provided an appropriate explanation of benefits (consistent with that provided under parts A and B of this subchapter and, if applicable, under medicare supplemental policies) that includes a clear statement of the amount of the enrollee's liability (including any liability for balance billing consistent with this subsection) with respect to payments for such services.

(ii) Advance notice before receipt of inpatient hospital services and certain other services

In addition, such organization shall, in its terms and conditions of payments to hospitals for inpatient hospital services and for other services identified by the Secretary for which the amount of the balance billing under subparagraph (A) could be substantial, require the hospital to provide to the enrollee, before furnishing such services and if the hospital imposes balance billing under subparagraph (A)—

(I) notice of the fact that balance billing is permitted under such subparagraph for such services, and

(II) a good faith estimate of the likely amount of such balance billing (if any), with respect to such services, based upon the presenting condition of the enrollee.

***(l)* Return to home skilled nursing facilities for covered post-hospital extended care services**

(1) Ensuring return to home SNF

(A) In general

In providing coverage of post-hospital extended care services, a Medicare+Choice plan shall provide for such coverage through a home skilled nursing facility if the following conditions are met:

(i) Enrollee election

The enrollee elects to receive such coverage through such facility.

(ii) SNF agreement

The facility has a contract with the Medicare+Choice organization for the provision of such services, or the facility agrees to accept substantially similar payment under the same terms and conditions that apply to similarly situated skilled nursing facilities that are under contract with the Medicare+Choice organization for the provision of such services and through which the enrollee would otherwise receive such services.

(B) Manner of payment to home SNF

The organization shall provide payment to the home skilled nursing facility consistent with the contract or the agreement described in subparagraph (A)(ii), as the case may be.

(2) No less favorable coverage

The coverage provided under paragraph (1) (including scope of services, cost-sharing, and other criteria of coverage) shall be no less favorable to the enrollee than the coverage that would be provided to the enrollee with respect to a skilled nursing facility the post-hospital extended care services of which are otherwise covered under the Medicare+Choice plan.

(3) Rule of construction

Nothing in this subsection shall be construed to do the following:

(A) To require coverage through a skilled nursing facility that is not otherwise qualified to provide benefits under part A of this subchapter for medicare beneficiaries not enrolled in a Medicare+Choice plan.

(B) To prevent a skilled nursing facility from refusing to accept, or imposing conditions upon the acceptance of, an enrollee for the receipt of post-hospital extended care services.

(4) Definitions

In this subsection:

(A) Home skilled nursing facility

The term ''home skilled nursing facility'' means, with respect to an enrollee who is entitled to receive post-hospital extended care services under a Medicare+Choice plan, any of the following skilled nursing facilities:

(i) SNF residence at time of admission

The skilled nursing facility in which the enrollee resided at the time of admission to the hospital preceding the receipt of such post-hospital extended care services.

(ii) SNF in continuing care retirement community

A skilled nursing facility that is providing such services through a continuing care retirement community (as defined in subparagraph (B)) which provided residence to the enrollee at the time of such admission.

(iii) SNF residence of spouse at time of discharge

The skilled nursing facility in which the spouse of the enrollee is residing at the time of discharge from such hospital.

(B) Continuing care retirement community

The term ''continuing care retirement community'' means, with respect to an enrollee in a Medicare+Choice plan, an arrangement under which housing and health-related services are provided (or arranged) through an organization for the enrollee under an agreement that is effective for the life of the enrollee or for a specified period.

(Aug. 14, 1935, ch. 531, title XVIII, § 1852, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 286; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(k)(6)(B), title V, §§ 518, 520(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–367, 1501A–384, 1501A–385; Pub. L. 106–554, § 1(a)(6) [title V, § 521(b), title VI, §§ 611(b), 615, 616, 621(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–543, 2763A–560, 2763A–561, 2763A–564; Pub. L. 108–173, title I, § 102(b), title II, §§ 211(j), 221(d)(3), 222(a)(2), (3), (h), (*l*)(1), 233(a)(1), (2), (c), title VII, § 722(a), (b), title IX, §§ 900(e)(1)(F), 940(b)(2)(A), 948(b)(2), Dec. 8, 2003, 117 Stat. 2153, 2180, 2193, 2195, 2196, 2204, 2206, 2209, 2347, 2348, 2371, 2417, 2426.)

REFERENCES IN TEXT

Part A of subchapter XI of this chapter, referred to in subsec. (a)(1)(A), is classified to section 1301 et seq. of this title.

Parts A and B of this subchapter, referred to in subsecs. (a)(1)(B)(i), (2)(A)(ii), (d)(4)(A), (k)(2)(C)(i), and (*l*)(3)(A), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (j)(3)(C), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–173, § 222(a)(2), substituted ''Requirement'' for ''In general'' in par. heading, designated existing provisions as subpar. (A), inserted heading, substituted ''chapter, benefits under the original medicare fee-for-service program option (and, for plan years before 2006, additional benefits required under section 1395w–24(f)(1)(A) of this title).'' for ''chapter—'', added subpar. (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) those items and services (other than hospice care) for which benefits are available under parts A and B of this subchapter to individuals residing in the area served by the plan, and

''(B) additional benefits required under section 1395w–24(f)(1)(A) of this title.''

Pub. L. 108–173, § 221(d)(3)(A), inserted ''and except as provided in paragraph (6) for MA regional plans'' after ''MSA plans'' in introductory provisions.

Subsec. (a)(2)(C). Pub. L. 108–173, § 948(b)(2), substituted ''determination'' for ''policy'' wherever appearing in heading and text.

Subsec. (a)(3)(C). Pub. L. 108–173, § 222(a)(3), inserted at end ''Such benefits may include reductions in cost-sharing below the actuarial value specified in section 1395w–24(e)(4)(B) of this title.''

Subsec. (a)(5). Pub. L. 108–173, § 900(e)(1)(F), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in concluding provisions.

Subsec. (a)(6). Pub. L. 108–173, § 221(d)(3)(B), added par. (6).

Subsec. (b)(1)(A). Pub. L. 108–173, § 222(*l*)(1), inserted at end ''The Secretary shall not approve a plan of an organization if the Secretary determines that the design of the plan and its benefits are likely to substantially discourage enrollment by certain MA eligible individuals with the organization.''

Subsec. (c)(1)(I). Pub. L. 108–173, § 722(b), amended heading and text of subpar. (I) generally. Prior to amendment, text read as follows: ''A description of the organization's quality assurance program under subsection (e) of this section, if required under such section.''

Pub. L. 108–173, § 233(a)(2)(A), inserted '', if required under such section'' before period at end.

Subsec. (d)(4). Pub. L. 108–173, § 211(j)(2), inserted before period at end of concluding provisions '', except that, if a plan entirely meets such requirement with respect to a category of health care professional or provider on the basis of subparagraph (B), it may provide for a higher beneficiary copayment in the case of health care professionals and providers of that category who do not have contracts or agreements (other than deemed contracts or agreements under subsection (j)(6) of this section) to provide covered services under the terms of the plan''.

Subsec. (d)(4)(B). Pub. L. 108–173, § 211(j)(1), inserted ''(other than deemed contracts or agreements under subsection (j)(6) of this section)'' after ''the plan has contracts or agreements''.

Subsec. (e). Pub. L. 108–173, § 722(a)(1), substituted ''improvement'' for ''assurance'' in heading.

Subsec. (e)(1). Pub. L. 108–173, § 722(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Each Medicare+Choice organization must have arrangements, consistent with any regulation, for an ongoing quality assurance program for health care services it provides to individuals enrolled with Medicare+Choice plans (other than MSA plans) of the organization.''

Pub. L. 108–173, § 233(a)(1), inserted ''(other than MSA plans)'' after ''plans''.

Subsec. (e)(2). Pub. L. 108–173, § 722(a)(2), amended par. (2) generally, substituting provisions relating to chronic care improvement programs for provisions relating to elements of the quality assurance program of an organization with respect to a Medicare+Choice plan.

Subsec. (e)(2)(A). Pub. L. 108–173, § 233(a)(2)(B), struck out '', a non-network MSA plan,'' after ''fee-for-service plan'' in introductory provisions.

Subsec. (e)(2)(B). Pub. L. 108–173, § 233(a)(2)(C), struck out '', non-network MSA plans,'' after ''fee-for-service plans'' in heading and '', a non-network MSA plan,'' after ''fee-for-service plan'' in introductory provisions.

Subsec. (e)(3). Pub. L. 108–173, § 722(a)(2), amended par. (3) generally, substituting provisions relating to collection, analysis, and reporting of data for provisions relating to external review by an independent quality review and improvement organization.

Subsec. (e)(4)(B)(i). Pub. L. 108–173, § 722(a)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''Paragraphs (1) and (2) of this subsection (relating to quality assurance programs).''

Subsec. (e)(4)(B)(vii). Pub. L. 108–173, § 722(a)(3)(B), added cl. (vii).

Subsec. (e)(5). Pub. L. 108–173, § 722(a)(4), struck out par. (5), which related to report to be submitted to Congress not later than 2 years after Dec. 21, 2000, and biennially thereafter, regarding how quality assurance programs focus on racial and ethnic minorities.

Subsec. (g)(5). Pub. L. 108–173, § 940(b)(2)(A), inserted at end ''The provisions of section 1395ff(b)(1)(E)(iii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this paragraph in the same manner as they apply to the dollar amounts specified in section 1395ff(b)(1)(E)(i) of this title.''

Subsec. (j)(4)(A). Pub. L. 108–173, § 222(h)(1), inserted ''the organization provides assurances satisfactory to the Secretary that'' after ''unless'' in introductory provisions.

Subsec. (j)(4)(A)(ii). Pub. L. 108–173, § 222(h)(2), substituted ''the organization'' for ''the organization—'', struck out subcl. (I) designation before ''provides'', substituted period for '', and'' at end of subcl. (I), and struck out subcl. (II), which read as follows: ''conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.''

Subsec. (j)(4)(A)(iii). Pub. L. 108–173, § 222(h)(3), struck out cl. (iii) which read as follows: ''The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.''

Subsec. (j)(7). Pub. L. 108–173, § 102(b), added par. (7).

Subsec. (k)(1). Pub. L. 108–173, § 233(c), inserted ''or with an organization offering an MSA plan'' after ''section 1395w–21(a)(2)(A) of this title''.

2000—Subsec. (a)(2)(C). Pub. L. 106–554, § 1(a)(6) [title VI, § 615], added subpar. (C).

Subsec. (a)(5). Pub. L. 106–554, § 1(a)(6) [title VI, § 611(b)(5)], inserted concluding provisions.

Pub. L. 106–554, § 1(a)(6) [title VI, § 611(b)(1), (2)], inserted ''and legislative changes in benefits'' after ''National coverage determinations'' in heading and inserted ''or legislative change in benefits required to be provided under this part'' after ''there is a national coverage determination'' in introductory provisions.

Subsec. (a)(5)(A). Pub. L. 106–554, § 1(a)(6) [title VI, § 611(b)(3)], inserted ''or legislative change in benefits'' after ''such determination''.

Subsec. (a)(5)(B). Pub. L. 106–554, § 1(a)(6) [title VI, § 611(b)(4)], inserted ''or legislative change'' after ''if such coverage determination''.

Subsec. (e)(2)(A), (B). Pub. L. 106–554, § 1(a)(6) [title VI, § 616(a)], inserted concluding provisions.

Subsec. (e)(5). Pub. L. 106–554, § 1(a)(6) [title VI, § 616(b)], added par. (5).

Subsec. (g)(4). Pub. L. 106–554, § 1(a)(6) [title V, § 521(b)], inserted at end ''The provisions of section 1395ff(c)(5) of this title shall apply to independent outside entities under contract with the Secretary under this paragraph.''

Subsec. (*l*). Pub. L. 106–554, § 1(a)(6) [title VI, § 621(a)], added subsec. (*l*).

1999—Subsec. (a)(3)(A). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(B)(i)], struck out comma after ''MSA plan'' and inserted comma after ''the coverage)''.

Subsec. (e)(2)(A). Pub. L. 106–113, § 1000(a)(6) [title V, § 520(a)(1)], substituted '', a non-network MSA plan, or a preferred provider organization plan'' for ''or a non-network MSA plan'' in introductory provisions.

Subsec. (e)(2)(B). Pub. L. 106–113, § 1000(a)(6) [title V, § 520(a)(2)], substituted '', non-network MSA plans, and preferred provider organization plans'' for ''and non-network MSA plans'' in heading and '', a non-network MSA plan, or a preferred provider organization plan'' for ''or a non-network MSA plan'' in introductory provisions.

Subsec. (e)(2)(D). Pub. L. 106–113, § 1000(a)(6) [title V, § 520(a)(3)], added subpar. (D).

Subsec. (e)(4). Pub. L. 106–113, § 1000(a)(6) [title V, § 518], amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''The Secretary shall provide that a Medicare+Choice organization is deemed to meet requirements of paragraphs (1) and (2) of this subsection and subsection (h) of this section (relating to confidentiality and accuracy of enrollee records) if the organization is accredited (and periodically reaccredited) by a private organization under a process that the Secretary has determined assures that the organization, as a condition of accreditation, applies and enforces standards with respect to the requirements involved that are no less stringent than the standards established under section 1395w–26 of this title to carry out the respective requirements.''

Subsec. (g)(1)(B). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(B)(ii)(I)], inserted ''or'' after ''in whole''.

Subsec. (g)(3)(B)(ii). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(B)(ii)(II)], inserted period at end.

Subsec. (h)(2). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(B)(iii)], substituted a semicolon for a comma before ''and''.

Subsec. (k)(2)(C)(ii). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(B)(iv)], substituted ''balance'' for ''balancing'' before ''billing under subparagraph (A) could'' in introductory provisions.

Change of Name

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Effective and Termination Dates of 2003 Amendment

Amendment by sections 221(d)(3) and 222(a)(2), (3), (h), (*l*)(1) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 1395w–21 of this title.

Pub. L. 108–173, title II, § 233(a)(3), Dec. 8, 2003, 117 Stat. 2209, provided that: ''The amendments made by this subsection [amending this section] shall apply on and after the date of the enactment of this Act [Dec. 8, 2003] but shall not apply to contract years beginning on or after January 1, 2006.''

Pub. L. 108–173, title VII, § 722(c), Dec. 8, 2003, 117 Stat. 2348, provided that: ''The amendments made by this section [amending this section] shall apply with respect to contract years beginning on and after January 1, 2006.''

Amendment by section 948(b)(2) of Pub. L. 108–173 effective, except as otherwise provided, as if included in

the enactment of BIPA (the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554), see section 948(e) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 1314 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title V, § 521(b)] of Pub. L. 106–554 applicable with respect to initial determinations made on or after Oct. 1, 2002, see section 1(a)(6) [title V, § 521(d)] of Pub. L. 106–554, set out as a note under section 1320c–3 of this title.

Pub. L. 106–554, § 1(a)(6) [title VI, § 611(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–560, provided that: ''The amendments made by this section [amending this section and section 1395w–23 of this title] are effective on the date of the enactment of this Act [Dec. 21, 2000] and shall apply to national coverage determinations and legislative changes in benefits occurring on or after such date.''

Pub. L. 106–554, § 1(a)(6) [title VI, § 621(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–565, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, § 321(k)(6)(B)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 520(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–386, provided that: ''The amendments made by subsection (a) [amending this section] apply to contract years beginning on or after January 1, 2000.''

MEDPAC STUDY

Pub. L. 106–554, § 1(a)(6) [title VI, § 621(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–565, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study analyzing the effects of the amendment made by subsection (a) [amending this section] on Medicare+Choice organizations. In conducting such study, the Commission shall examine the effects (if any) such amendment has had—

''(A) on the scope of additional benefits provided under the Medicare+Choice program;

''(B) on the administrative and other costs incurred by Medicare+Choice organizations; and

''(C) on the contractual relationships between such organizations and skilled nursing facilities.

''(2) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under paragraph (1).''

TRANSITIONAL PASS-THROUGH OF ADDITIONAL COSTS UNDER MEDICARE+CHOICE PROGRAM FOR 2000

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 227(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–355, provided that: ''The provisions of subparagraphs (A) and (B) of section 1852(a)(5) of the Social Security Act (42 U.S.C. 1395w–22(a)(5)) shall apply with respect to the coverage of additional benefits for immunosuppressive drugs under the amendments made by this section [amending sections 1395k and 1395x of this title] for drugs furnished in 2000 in the same manner as if such amendments constituted a national coverage determination described in the matter in such section before subparagraph (A).''

§ 1395w–23. Payments to Medicare+Choice organizations

(a) Payments to organizations

(1) Monthly payments

(A) In general

Under a contract under section 1395w–27 of this title and subject to subsections (e), (g), and (i) of this section and section 1395w–28(e)(4) of this title, the Secretary shall make monthly payments under this section in advance to each Medicare+Choice organization, with respect to coverage of an individual under this part in a Medicare+Choice payment area for a month, in an amount determined as follows:

(i) Payment before 2006

For years before 2006, the payment amount shall be equal to 1/12 of the annual MA capitation rate (as calculated under subsection (c)(1) of this section) with respect to that individual for that area, adjusted under subparagraph (C) and reduced by the amount of any reduction elected under section 1395w–24(f)(1)(E) of this title.

(ii) Payment for original fee-for-service benefits beginning with 2006

For years beginning with 2006, the amount specified in subparagraph (B).

(B) Payment amount for original fee-for-service benefits beginning with 2006

(i) Payment of bid for plans with bids below benchmark

In the case of a plan for which there are average per capita monthly savings described in section 1395w–24(b)(3)(C) or 1395w–24(b)(4)(C) of this title, as the case may be, the amount specified in this subparagraph is equal to the unadjusted MA statutory non-drug monthly bid amount, adjusted under subparagraph (C) and (if applicable) under subparagraphs (F) and (G), plus the amount (if any) of any rebate under subparagraph (E).

(ii) Payment of benchmark for plans with bids at or above benchmark

In the case of a plan for which there are no average per capita monthly savings described in section 1395w–24(b)(3)(C) or 1395w–24(b)(4)(C) of this title, as the case may be, the amount specified in this subparagraph is equal to the MA area-specific non-drug monthly benchmark amount, adjusted under subparagraph (C) and (if applicable) under subparagraphs (F) and (G).

(iii) Payment of benchmark for MSA plans

Notwithstanding clauses (i) and (ii), in the case of an MSA plan, the amount specified in this subparagraph is equal to the MA area-specific non-drug monthly benchmark amount, adjusted under subparagraph (C).

(C) Demographic adjustment, including adjustment for health status

(i) In general

The Secretary shall adjust the payment amount under subparagraph (A)(i) and the

amount specified under subparagraph (B)(i), (B)(ii), and (B)(iii) for such risk factors as age, disability status, gender, institutional status, and such other factors as the Secretary determines to be appropriate, including adjustment for health status under paragraph (3), so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such adjustment factors if such changes will improve the determination of actuarial equivalence.

(ii) Application during phase-out of budget neutrality factor

For 2006 through 2010:

(I) In applying the adjustment under clause (i) for health status to payment amounts, the Secretary shall ensure that such adjustment reflects changes in treatment and coding practices in the fee-for-service sector and reflects differences in coding patterns between Medicare Advantage plans and providers under part[1] A and B to the extent that the Secretary has identified such differences.

(II) In order to ensure payment accuracy, the Secretary shall conduct an analysis of the differences described in subclause (I). The Secretary shall complete such analysis by a date necessary to ensure that the results of such analysis are incorporated into the risk scores only for 2008, 2009, and 2010. In conducting such analysis, the Secretary shall use data submitted with respect to 2004 and subsequent years, as available.

(D) Separate payment for Federal drug subsidies

In the case of an enrollee in an MA–PD plan, the MA organization offering such plan also receives—

(i) subsidies under section 1395w–115 of this title (other than under subsection (g)); and

(ii) reimbursement for premium and cost-sharing reductions for low-income individuals under section 1395w–114(c)(1)(C) of this title.

(E) Payment of rebate for plans with bids below benchmark

In the case of a plan for which there are average per capita monthly savings described in section 1395w–24(b)(3)(C) or 1395w–24(b)(4)(C) of this title, as the case may be, the amount specified in this subparagraph is the amount of the monthly rebate computed under section 1395w–24(b)(1)(C)(i) of this title for that plan and year (as reduced by the amount of any credit provided under section 1395w–24(b)(1)(C)(iv) of this title).

(F) Adjustment for intra-area variations

(i) Intra-regional variations

In the case of payment with respect to an MA regional plan for an MA region, the Secretary shall also adjust the amounts specified under subparagraphs (B)(i) and (B)(ii) in a manner to take into account variations in MA local payment rates under this part among the different MA local areas included in such region.

(ii) Intra-service area variations

In the case of payment with respect to an MA local plan for a service area that covers more than one MA local area, the Secretary shall also adjust the amounts specified under subparagraphs (B)(i) and (B)(ii) in a manner to take into account variations in MA local payment rates under this part among the different MA local areas included in such service area.

(G) Adjustment relating to risk adjustment

The Secretary shall adjust payments with respect to MA plans as necessary to ensure that—

(i) the sum of—

(I) the monthly payment made under subparagraph (A)(ii); and

(II) the MA monthly basic beneficiary premium under section 1395w–24(b)(2)(A) of this title; equals

(ii) the unadjusted MA statutory non-drug monthly bid amount, adjusted in the manner described in subparagraph (C) and, for an MA regional plan, subparagraph (F).

(H) Special rule for end-stage renal disease

The Secretary shall establish separate rates of payment to a Medicare+Choice organization with respect to classes of individuals determined to have end-stage renal disease and enrolled in a Medicare+Choice plan of the organization. Such rates of payment shall be actuarially equivalent to rates that would have been paid with respect to other enrollees in the MA payment area (or such other area as specified by the Secretary) under the provisions of this section as in effect before December 8, 2003. In accordance with regulations, the Secretary shall provide for the application of the seventh sentence of section 1395rr(b)(7) of this title to payments under this section covering the provision of renal dialysis treatment in the same manner as such sentence applies to composite rate payments described in such sentence. In establishing such rates, the Secretary shall provide for appropriate adjustments to increase each rate to reflect the demonstration rate (including the risk adjustment methodology associated with such rate) of the social health maintenance organization end-stage renal disease capitation demonstrations (established by section 2355 of the Deficit Reduction Act of 1984, as amended by section 13567(b) of the Omnibus Budget Reconciliation Act of 1993), and shall compute such rates by taking into account such factors as renal treatment modality, age, and the underlying cause of the end-stage renal disease. The Secretary may apply the competitive bidding methodology provided for in this section, with appropriate adjustments to account for the risk adjustment methodology applied to end stage renal disease payments.

[1] So in original. Probably should be ''parts''.

(2) Adjustment to reflect number of enrollees

(A) In general

The amount of payment under this subsection may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled with an organization under this part and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(B) Special rule for certain enrollees

(i) In general

Subject to clause (ii), the Secretary may make retroactive adjustments under subparagraph (A) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with a Medicare+Choice organization under a plan operated, sponsored, or contributed to by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the organization under this part, except that for purposes of making such retroactive adjustments under this subparagraph, such period may not exceed 90 days.

(ii) Exception

No adjustment may be made under clause (i) with respect to any individual who does not certify that the organization provided the individual with the disclosure statement described in section 1395w–22(c) of this title at the time the individual enrolled with the organization.

(3) Establishment of risk adjustment factors

(A) Report

The Secretary shall develop, and submit to Congress by not later than March 1, 1999, a report on the method of risk adjustment of payment rates under this section, to be implemented under subparagraph (C), that accounts for variations in per capita costs based on health status. Such report shall include an evaluation of such method by an outside, independent actuary of the actuarial soundness of the proposal.

(B) Data collection

In order to carry out this paragraph, the Secretary shall require Medicare+Choice organizations (and eligible organizations with risk-sharing contracts under section 1395mm of this title) to submit data regarding inpatient hospital services for periods beginning on or after July 1, 1997, and data regarding other services and other information as the Secretary deems necessary for periods beginning on or after July 1, 1998. The Secretary may not require an organization to submit such data before January 1, 1998.

(C) Initial implementation

(i) In general

The Secretary shall first provide for implementation of a risk adjustment methodology that accounts for variations in per capita costs based on health status and other demographic factors for payments by no later than January 1, 2000.

(ii) Phase-in

Except as provided in clause (iv), such risk adjustment methodology shall be implemented in a phased-in manner so that the methodology insofar as it makes adjustments to capitation rates for health status applies to—

(I) 10 percent of 1/12 of the annual Medicare+Choice capitation rate in 2000 and each succeeding year through 2003;

(II) 30 percent of such capitation rate in 2004;

(III) 50 percent of such capitation rate in 2005;

(IV) 75 percent of such capitation rate in 2006; and

(V) 100 percent of such capitation rate in 2007 and succeeding years.

(iii) Data for risk adjustment methodology

Such risk adjustment methodology for 2004 and each succeeding year, shall be based on data from inpatient hospital and ambulatory settings.

(iv) Full implementation of risk adjustment for congestive heart failure enrollees for 2001

(I) Exemption from phase-in

Subject to subclause (II), the Secretary shall fully implement the risk adjustment methodology described in clause (i) with respect to each individual who has had a qualifying congestive heart failure inpatient diagnosis (as determined by the Secretary under such risk adjustment methodology) during the period beginning on July 1, 1999, and ending on June 30, 2000, and who is enrolled in a coordinated care plan that is the only coordinated care plan offered on January 1, 2001, in the service area of the individual.

(II) Period of application

Subclause (I) shall only apply during the 1-year period beginning on January 1, 2001.

(D) Uniform application to all types of plans

Subject to section 1395w–28(e)(4) of this title, the methodology shall be applied uniformly without regard to the type of plan.

(4) Payment rule for federally qualified health center services

If an individual who is enrolled with an MA plan under this part receives a service from a federally qualified health center that has a written agreement with the MA organization that offers such plan for providing such a service (including any agreement required under section 1395w–27(e)(3) of this title)—

(A) the Secretary shall pay the amount determined under section 1395*l*(a)(3)(B) of this title directly to the federally qualified health center not less frequently than quarterly; and

(B) the Secretary shall not reduce the amount of the monthly payments under this

subsection as a result of the application of subparagraph (A).

(b) Annual announcement of payment rates

(1) Annual announcements

(A) For 2005

The Secretary shall determine, and shall announce (in a manner intended to provide notice to interested parties), not later than the second Monday in May of 2004, with respect to each MA payment area, the following:

(i) MA capitation rates

The annual MA capitation rate for each MA payment area for 2005.

(ii) Adjustment factors

The risk and other factors to be used in adjusting such rates under subsection (a)(1)(C) of this section for payments for months in 2005.

(B) For 2006 and subsequent years

For a year after 2005—

(i) Initial announcement

The Secretary shall determine, and shall announce (in a manner intended to provide notice to interested parties), not later than the first Monday in April before the calendar year concerned, with respect to each MA payment area, the following:

(I) MA capitation rates; MA local area benchmark

The annual MA capitation rate for each MA payment area for the year.

(II) Adjustment factors

The risk and other factors to be used in adjusting such rates under subsection (a)(1)(C) of this section for payments for months in such year.

(ii) Regional benchmark announcement

The Secretary shall determine, and shall announce (in a manner intended to provide notice to interested parties), on a timely basis before the calendar year concerned, with respect to each MA region and each MA regional plan for which a bid was submitted under section 1395w–24 of this title, the MA region-specific non-drug monthly benchmark amount for that region for the year involved.

(iii) Benchmark announcement for CCA local areas

The Secretary shall determine, and shall announce (in a manner intended to provide notice to interested parties), on a timely basis before the calendar year concerned, with respect to each CCA area (as defined in section 1395w–29(b)(1)(A) of this title), the CCA non-drug monthly benchmark amount under section 1395w–29(e)(1) of this title for that area for the year involved.

(2) Advance notice of methodological changes

At least 45 days before making the announcement under paragraph (1) for a year, the Secretary shall provide for notice to Medicare+Choice organizations of proposed changes to be made in the methodology from the methodology and assumptions used in the previous announcement and shall provide such organizations an opportunity to comment on such proposed changes.

(3) Explanation of assumptions

In each announcement made under paragraph (1), the Secretary shall include an explanation of the assumptions and changes in methodology used in such announcement.

(4) Continued computation and publication of county-specific per capita fee-for-service expenditure information

The Secretary, through the Chief Actuary of the Centers for Medicare & Medicaid Services, shall provide for the computation and publication, on an annual basis beginning with 2001 at the time of publication of the annual Medicare+Choice capitation rates under paragraph (1), of the following information for the original medicare fee-for-service program under parts A and B of this subchapter (exclusive of individuals eligible for coverage under section 426–1 of this title) for each Medicare+Choice payment area for the second calendar year ending before the date of publication:

(A) Total expenditures per capita per month, computed separately for part A of this subchapter and for part B of this subchapter.

(B) The expenditures described in subparagraph (A) reduced by the best estimate of the expenditures (such as graduate medical education and disproportionate share hospital payments) not related to the payment of claims.

(C) The average risk factor for the covered population based on diagnoses reported for medicare inpatient services, using the same methodology as is expected to be applied in making payments under subsection (a) of this section.

(D) Such average risk factor based on diagnoses for inpatient and other sites of service, using the same methodology as is expected to be applied in making payments under subsection (a) of this section.

(c) Calculation of annual Medicare+Choice capitation rates

(1) In general

For purposes of this part, subject to paragraphs (6)(C) and (7), each annual Medicare+Choice capitation rate, for a Medicare+Choice payment area that is an MA local area for a contract year consisting of a calendar year, is equal to the largest of the amounts specified in the following subparagraph (A), (B), (C), or (D):

(A) Blended capitation rate

For a year before 2005, the sum of—

(i) the area-specific percentage (as specified under paragraph (2) for the year) of the annual area-specific Medicare+Choice capitation rate for the Medicare+Choice payment area, as determined under paragraph (3) for the year, and

(ii) the national percentage (as specified under paragraph (2) for the year) of the

input-price-adjusted annual national Medicare+Choice capitation rate, as determined under paragraph (4) for the year,

multiplied (for a year other than 2004) by the budget neutrality adjustment factor determined under paragraph (5).

(B) Minimum amount

12 multiplied by the following amount:

(i) For 1998, $367 (but not to exceed, in the case of an area outside the 50 States and the District of Columbia, 150 percent of the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title for the area).

(ii) For 1999 and 2000, the minimum amount determined under clause (i) or this clause, respectively, for the preceding year, increased by the national per capita Medicare+Choice growth percentage described in paragraph (6)(A) applicable to 1999 or 2000, respectively.

(iii)(I) Subject to subclause (II), for 2001, for any area in a Metropolitan Statistical Area with a population of more than 250,000, $525, and for any other area $475.

(II) In the case of an area outside the 50 States and the District of Columbia, the amount specified in this clause shall not exceed 120 percent of the amount determined under clause (ii) for such area for 2000.

(iv) For 2002, 2003, and 2004, the minimum amount specified in this clause (or clause (iii)) for the preceding year increased by the national per capita Medicare+Choice growth percentage, described in paragraph (6)(A) for that succeeding year.

(C) Minimum percentage increase

(i) For 1998, 102 percent of the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title for the Medicare+Choice payment area.

(ii) For 1999 and 2000, 102 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for the previous year.

(iii) For 2001, 103 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for 2000.

(iv) For 2002 and 2003, 102 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for the previous year.

(v) For 2004 and each succeeding year, the greater of—

(I) 102 percent of the annual MA capitation rate under this paragraph for the area for the previous year; or

(II) the annual MA capitation rate under this paragraph for the area for the previous year increased by the national per capita MA growth percentage, described in paragraph (6) for that succeeding year, but not taking into account any adjustment under paragraph (6)(C) for a year before 2004.

(D) 100 percent of fee-for-service costs

(i) In general

For each year specified in clause (ii), the adjusted average per capita cost for the year involved, determined under section 1395mm(a)(4) of this title and adjusted as appropriate for the purpose of risk adjustment, for the MA payment area for individuals who are not enrolled in an MA plan under this part for the year, but adjusted to exclude costs attributable to payments under section 1395ww(h) of this title.

(ii) Periodic rebasing

The provisions of clause (i) shall apply for 2004 and for subsequent years as the Secretary shall specify (but not less than once every 3 years).

(iii) Inclusion of costs of VA and DOD military facility services to medicare-eligible beneficiaries

In determining the adjusted average per capita cost under clause (i) for a year, such cost shall be adjusted to include the Secretary's estimate, on a per capita basis, of the amount of additional payments that would have been made in the area involved under this subchapter if individuals entitled to benefits under this subchapter had not received services from facilities of the Department of Defense or the Department of Veterans Affairs.

(2) Area-specific and national percentages

For purposes of paragraph (1)(A)—

(A) for 1998, the ''area-specific percentage'' is 90 percent and the ''national percentage'' is 10 percent,

(B) for 1999, the ''area-specific percentage'' is 82 percent and the ''national percentage'' is 18 percent,

(C) for 2000, the ''area-specific percentage'' is 74 percent and the ''national percentage'' is 26 percent,

(D) for 2001, the ''area-specific percentage'' is 66 percent and the ''national percentage'' is 34 percent,

(E) for 2002, the ''area-specific percentage'' is 58 percent and the ''national percentage'' is 42 percent, and

(F) for a year after 2002, the ''area-specific percentage'' is 50 percent and the ''national percentage'' is 50 percent.

(3) Annual area-specific Medicare+Choice capitation rate

(A) In general

For purposes of paragraph (1)(A), subject to subparagraphs (B) and (E), the annual area-specific Medicare+Choice capitation rate for a Medicare+Choice payment area—

(i) for 1998 is, subject to subparagraph (D), the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title for the area, increased by the national per capita Medicare+Choice growth percentage for 1998 (described in paragraph (6)(A)); or

(ii) for a subsequent year is the annual area-specific Medicare+Choice capitation rate for the previous year determined under this paragraph for the area, increased by the national per capita Medicare+Choice growth percentage for such subsequent year.

(B) Removal of medical education from calculation of adjusted average per capita cost

(i) In general

In determining the area-specific Medicare+Choice capitation rate under subparagraph (A) for a year (beginning with 1998), the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title shall be adjusted to exclude from the rate the applicable percent (specified in clause (ii)) of the payment adjustments described in subparagraph (C).

(ii) Applicable percent

For purposes of clause (i), the applicable percent for—

(I) 1998 is 20 percent,

(II) 1999 is 40 percent,

(III) 2000 is 60 percent,

(IV) 2001 is 80 percent, and

(V) a succeeding year is 100 percent.

(C) Payment adjustment

(i) In general

Subject to clause (ii), the payment adjustments described in this subparagraph are payment adjustments which the Secretary estimates were payable during 1997—

(I) for the indirect costs of medical education under section 1395ww(d)(5)(B) of this title, and

(II) for direct graduate medical education costs under section 1395ww(h) of this title.

(ii) Treatment of payments covered under State hospital reimbursement system

To the extent that the Secretary estimates that an annual per capita rate of payment for 1997 described in clause (i) reflects payments to hospitals reimbursed under section 1395f(b)(3) of this title, the Secretary shall estimate a payment adjustment that is comparable to the payment adjustment that would have been made under clause (i) if the hospitals had not been reimbursed under such section.

(D) Treatment of areas with highly variable payment rates

In the case of a Medicare+Choice payment area for which the annual per capita rate of payment determined under section 1395mm(a)(1)(C) of this title for 1997 varies by more than 20 percent from such rate for 1996, for purposes of this subsection the Secretary may substitute for such rate for 1997 a rate that is more representative of the costs of the enrollees in the area.

(E) Inclusion of costs of DOD and VA military facility services to Medicare-eligible beneficiaries

In determining the area-specific MA capitation rate under subparagraph (A) for a year (beginning with 2004), the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title shall be adjusted to include in the rate the Secretary's estimate, on a per capita basis, of the amount of additional payments that would have been made in the area involved under this subchapter if individuals entitled to benefits under this subchapter had not received services from facilities of the Department of Defense or the Department of Veterans Affairs.

(4) Input-price-adjusted annual national Medicare+Choice capitation rate

(A) In general

For purposes of paragraph (1)(A), the input-price-adjusted annual national Medicare+Choice capitation rate for a Medicare+Choice payment area for a year is equal to the sum, for all the types of medicare services (as classified by the Secretary), of the product (for each such type of service) of—

(i) the national standardized annual Medicare+Choice capitation rate (determined under subparagraph (B)) for the year,

(ii) the proportion of such rate for the year which is attributable to such type of services, and

(iii) an index that reflects (for that year and that type of services) the relative input price of such services in the area compared to the national average input price of such services.

In applying clause (iii), the Secretary may, subject to subparagraph (C), apply those indices under this subchapter that are used in applying (or updating) national payment rates for specific areas and localities.

(B) National standardized annual Medicare+Choice capitation rate

In subparagraph (A)(i), the ''national standardized annual Medicare+Choice capitation rate'' for a year is equal to—

(i) the sum (for all Medicare+Choice payment areas) of the product of—

(I) the annual area-specific Medicare+Choice capitation rate for that year for the area under paragraph (3), and

(II) the average number of medicare beneficiaries residing in that area in the year, multiplied by the average of the risk factor weights used to adjust payments under subsection (a)(1)(A) of this section for such beneficiaries in such area; divided by

(ii) the sum of the products described in clause (i)(II) for all areas for that year.

(C) Special rules for 1998

In applying this paragraph for 1998—

(i) medicare services shall be divided into 2 types of services: part A services and part B services;

(ii) the proportions described in subparagraph (A)(ii)—

(I) for part A services shall be the ratio (expressed as a percentage) of the national average annual per capita rate of payment for part A of this subchapter for 1997 to the total national average annual per capita rate of payment for parts A and B of this subchapter for 1997, and

(II) for part B services shall be 100 percent minus the ratio described in subclause (I);

(iii) for part A services, 70 percent of payments attributable to such services shall be adjusted by the index used under section 1395ww(d)(3)(E) of this title to adjust payment rates for relative hospital wage levels for hospitals located in the payment area involved;

(iv) for part B services—

(I) 66 percent of payments attributable to such services shall be adjusted by the index of the geographic area factors under section 1395w–4(e) of this title used to adjust payment rates for physicians' services furnished in the payment area, and

(II) of the remaining 34 percent of the amount of such payments, 40 percent shall be adjusted by the index described in clause (iii); and

(v) the index values shall be computed based only on the beneficiary population who are 65 years of age or older and who are not determined to have end stage renal disease.

The Secretary may continue to apply the rules described in this subparagraph (or similar rules) for 1999.

(5) Payment adjustment budget neutrality factor

For purposes of paragraph (1)(A), for each year (other than 2004), the Secretary shall determine a budget neutrality adjustment factor so that the aggregate of the payments under this part (other than those attributable to subsections (a)(3)(C)(iv), (a)(4), and (i) of this section) shall equal the aggregate payments that would have been made under this part if payment were based entirely on area-specific capitation rates.

(6) "National per capita Medicare+Choice growth percentage" defined

(A) In general

In this part, the ''national per capita Medicare+Choice growth percentage'' for a year is the percentage determined by the Secretary, by March 1st before the beginning of the year involved, to reflect the Secretary's estimate of the projected per capita rate of growth in expenditures under this subchapter for an individual entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, reduced by the number of percentage points specified in subparagraph (B) for the year. Separate determinations may be made for aged enrollees, disabled enrollees, and enrollees with end-stage renal disease.

(B) Adjustment

The number of percentage points specified in this subparagraph is—

(i) for 1998, 0.8 percentage points,

(ii) for 1999, 0.5 percentage points,

(iii) for 2000, 0.5 percentage points,

(iv) for 2001, 0.5 percentage points,

(v) for 2002, 0.3 percentage points, and

(vi) for a year after 2002, 0 percentage points.

(C) Adjustment for over or under projection of national per capita Medicare+Choice growth percentage

Beginning with rates calculated for 1999, before computing rates for a year as described in paragraph (1), the Secretary shall adjust all area-specific and national Medicare+Choice capitation rates (and beginning in 2000, the minimum amount) for the previous year for the differences between the projections of the national per capita Medicare+Choice growth percentage for that year and previous years and the current estimate of such percentage for such years, except that for purposes of paragraph (1)(C)(v)(II), no such adjustment shall be made for a year before 2004.

(7) Adjustment for national coverage determinations and legislative changes in benefits

If the Secretary makes a determination with respect to coverage under this subchapter or there is a change in benefits required to be provided under this part that the Secretary projects will result in a significant increase in the costs to Medicare+Choice of providing benefits under contracts under this part (for periods after any period described in section 1395w–22(a)(5) of this title), the Secretary shall adjust appropriately the payments to such organizations under this part. Such projection and adjustment shall be based on an analysis by the Chief Actuary of the Centers for Medicare & Medicaid Services of the actuarial costs associated with the new benefits.

(d) MA payment area; MA local area; MA region defined

(1) MA payment area

In this part, except as provided in this subsection, the term ''MA payment area'' means—

(A) with respect to an MA local plan, an MA local area (as defined in paragraph (2)); and

(B) with respect to an MA regional plan, an MA region (as established under section 1395w–27a(a)(2) of this title).

(2) MA local area

The term ''MA local area'' means a county or equivalent area specified by the Secretary.

(3) Rule for ESRD beneficiaries

In the case of individuals who are determined to have end stage renal disease, the Medicare+Choice payment area shall be a State or such other payment area as the Secretary specifies.

(4) Geographic adjustment

(A) In general

Upon written request of the chief executive officer of a State for a contract year (beginning after 1998) made by not later than February 1 of the previous year, the Secretary shall make a geographic adjustment to a Medicare+Choice payment area in the

State otherwise determined under paragraph (1) for MA local plans—

(i) to a single statewide Medicare+Choice payment area,

(ii) to the metropolitan based system described in subparagraph (C), or

(iii) to consolidating into a single Medicare+Choice payment area noncontiguous counties (or equivalent areas described in paragraph (1)(A)) within a State.

Such adjustment shall be effective for payments for months beginning with January of the year following the year in which the request is received.

(B) Budget neutrality adjustment

In the case of a State requesting an adjustment under this paragraph, the Secretary shall initially (and annually thereafter) adjust the payment rates otherwise established under this section with respect to MA local plans for Medicare+Choice payment areas in the State in a manner so that the aggregate of the payments under this section for such plans in the State shall not exceed the aggregate payments that would have been made under this section for such plans for Medicare+Choice payment areas in the State in the absence of the adjustment under this paragraph.

(C) Metropolitan based system

The metropolitan based system described in this subparagraph is one in which—

(i) all the portions of each metropolitan statistical area in the State or in the case of a consolidated metropolitan statistical area, all of the portions of each primary metropolitan statistical area within the consolidated area within the State, are treated as a single Medicare+Choice payment area, and

(ii) all areas in the State that do not fall within a metropolitan statistical area are treated as a single Medicare+Choice payment area.

(D) Areas

In subparagraph (C), the terms ''metropolitan statistical area'', ''consolidated metropolitan statistical area'', and ''primary metropolitan statistical area'' mean any area designated as such by the Secretary of Commerce.

(e) Special rules for individuals electing MSA plans

(1) In general

If the amount of the Medicare+Choice monthly MSA premium (as defined in section 1395w–24(b)(2)(C) of this title) for an MSA plan for a year is less than 1/12 of the annual Medicare+Choice capitation rate applied under this section for the area and year involved, the Secretary shall deposit an amount equal to 100 percent of such difference in a Medicare+Choice MSA established (and, if applicable, designated) by the individual under paragraph (2).

(2) Establishment and designation of Medicare+Choice medical savings account as requirement for payment of contribution

In the case of an individual who has elected coverage under an MSA plan, no payment shall be made under paragraph (1) on behalf of an individual for a month unless the individual—

(A) has established before the beginning of the month (or by such other deadline as the Secretary may specify) a Medicare+Choice MSA (as defined in section 138(b)(2) of the Internal Revenue Code of 1986), and

(B) if the individual has established more than one such Medicare+Choice MSA, has designated one of such accounts as the individual's Medicare+Choice MSA for purposes of this part.

Under rules under this section, such an individual may change the designation of such account under subparagraph (B) for purposes of this part.

(3) Lump-sum deposit of medical savings account contribution

In the case of an individual electing an MSA plan effective beginning with a month in a year, the amount of the contribution to the Medicare+Choice MSA on behalf of the individual for that month and all successive months in the year shall be deposited during that first month. In the case of a termination of such an election as of a month before the end of a year, the Secretary shall provide for a procedure for the recovery of deposits attributable to the remaining months in the year.

(f) Payments from Trust Funds

The payment to a Medicare+Choice organization under this section for individuals enrolled under this part with the organization and payments to a Medicare+Choice MSA under subsection (e)(1) of this section shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such proportion as the Secretary determines reflects the relative weight that benefits under part A of this subchapter and under part B of this subchapter represents of the actuarial value of the total benefits under this subchapter. Payments to MA organizations for statutory drug benefits provided under this subchapter are made from the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund. Monthly payments otherwise payable under this section for October 2000 shall be paid on the first business day of such month. Monthly payments otherwise payable under this section for October 2001 shall be paid on the last business day of September 2001. Monthly payments otherwise payable under this section for October 2006 shall be paid on the first business day of October 2006.

(g) Special rule for certain inpatient hospital stays

In the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title), a rehabilitation hospital described in

section 1395ww(d)(1)(B)(ii) of this title or a distinct part rehabilitation unit described in the matter following clause (v) of section 1395ww(d)(1)(B) of this title, or a long-term care hospital (described in section 1395ww(d)(1)(B)(iv) of this title) as of the effective date of the individual's—

(1) election under this part of a Medicare+Choice plan offered by a Medicare+Choice organization—

(A) payment for such services until the date of the individual's discharge shall be made under this subchapter through the Medicare+Choice plan or the original medicare fee-for-service program option described in section 1395w–21(a)(1)(A) of this title (as the case may be) elected before the election with such organization,

(B) the elected organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge, and

(C) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this part; or

(2) termination of election with respect to a Medicare+Choice organization under this part—

(A) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge,

(B) payment for such services during the stay shall not be made under section 1395ww(d) of this title or other payment provision under this subchapter for inpatient services for the type of facility, hospital, or unit involved, described in the matter preceding paragraph (1), as the case may be, or by any succeeding Medicare+Choice organization, and

(C) the terminated organization shall not receive any payment with respect to the individual under this part during the period the individual is not enrolled.

(h) Special rule for hospice care

(1) Information

A contract under this part shall require the Medicare+Choice organization to inform each individual enrolled under this part with a Medicare+Choice plan offered by the organization about the availability of hospice care if—

(A) a hospice program participating under this subchapter is located within the organization's service area; or

(B) it is common practice to refer patients to hospice programs outside such service area.

(2) Payment

If an individual who is enrolled with a Medicare+Choice organization under this part makes an election under section 1395d(d)(1) of this title to receive hospice care from a particular hospice program—

(A) payment for the hospice care furnished to the individual shall be made to the hospice program elected by the individual by the Secretary;

(B) payment for other services for which the individual is eligible notwithstanding the individual's election of hospice care under section 1395d(d)(1) of this title, including services not related to the individual's terminal illness, shall be made by the Secretary to the Medicare+Choice organization or the provider or supplier of the service instead of payments calculated under subsection (a) of this section; and

(C) the Secretary shall continue to make monthly payments to the Medicare+Choice organization in an amount equal to the value of the additional benefits required under section 1395w–24(f)(1)(A) of this title.

(i) New entry bonus

(1) In general

Subject to paragraphs (2) and (3), in the case of Medicare+Choice payment area in which a Medicare+Choice plan has not been offered since 1997 (or in which all organizations that offered a plan since such date have filed notice with the Secretary, as of October 13, 1999, that they will not be offering such a plan as of January 1, 2000, or filed notice with the Secretary as of October 3, 2000, that they will not be offering such a plan as of January 1, 2001), the amount of the monthly payment otherwise made under this section shall be increased—

(A) only for the first 12 months in which any Medicare+Choice plan is offered in the area, by 5 percent of the total monthly payment otherwise computed for such payment area; and

(B) only for the subsequent 12 months, by 3 percent of the total monthly payment otherwise computed for such payment area.

(2) Period of application

Paragraph (1) shall only apply to payment for Medicare+Choice plans which are first offered in a Medicare+Choice payment area during the 2-year period beginning on January 1, 2000.

(3) Limitation to organization offering first plan in an area

Paragraph (1) shall only apply to payment to the first Medicare+Choice organization that offers a Medicare+Choice plan in each Medicare+Choice payment area, except that if more than one such organization first offers such a plan in an area on the same date, paragraph (1) shall apply to payment for such organizations.

(4) Construction

Nothing in paragraph (1) shall be construed as affecting the calculation of the annual Medicare+Choice capitation rate under subsection (c) of this section for any payment area or as applying to payment for any period not described in such paragraph and paragraph (2).

(5) Offered defined

In this subsection, the term ''offered'' means, with respect to a Medicare+Choice plan as of a date, that a Medicare+Choice eligible individual may enroll with the plan on that date, regardless of when the enrollment takes effect or when the individual obtains benefits under the plan.

(j) Computation of benchmark amounts

For purposes of this part, the term ''MA area-specific non-drug monthly benchmark amount'' means for a month in a year—

(1) with respect to—

(A) a service area that is entirely within an MA local area, subject to section 1395w–29(d)(2)(A) of this title, an amount equal to 1/12 of the annual MA capitation rate under subsection (c)(1) (or, beginning with 2007, 1/12 of the applicable amount determined under subsection (k)(1)) for the area for the year, adjusted as appropriate (for years before 2007) for the purpose of risk adjustment; or

(B) a service area that includes more than one MA local area, an amount equal to the average of the amounts described in subparagraph (A) for each such local MA area, weighted by the projected number of enrollees in the plan residing in the respective local MA areas (as used by the plan for purposes of the bid and disclosed to the Secretary under section 1395w–24(a)(6)(A)(iii) of this title), adjusted as appropriate (for years before 2007) for the purpose of risk adjustment; or

(2) with respect to an MA region for a month in a year, the MA region-specific non-drug monthly benchmark amount, as defined in section 1395w–27a(f) of this title for the region for the year.

(k) Determination of applicable amount for purposes of calculating the benchmark amounts

(1) Applicable amount defined

For purposes of subsection (j), subject to paragraph (2), the term ''applicable amount'' means for an area—

(A) for 2007—

(i) if such year is not specified under subsection (c)(1)(D)(ii), an amount equal to the amount specified in subsection (c)(1)(C) for the area for 2006—

(I) first adjusted by the rescaling factor for 2006 for the area (as made available by the Secretary in the announcement of the rates on April 4, 2005, under subsection (b)(1), but excluding any national adjustment factors for coding intensity and risk adjustment budget neutrality that were included in such factor); and

(II) then increased by the national per capita MA growth percentage, described in subsection (c)(6) for 2007, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004;

(ii) if such year is specified under subsection (c)(1)(D)(ii), an amount equal to the greater of—

(I) the amount determined under clause (i) for the area for the year; or

(II) the amount specified in subsection (c)(1)(D) for the area for the year; and

(B) for a subsequent year—

(i) if such year is not specified under subsection (c)(1)(D)(ii), an amount equal to the amount determined under this paragraph for the area for the previous year (determined without regard to paragraph (2)), increased by the national per capita MA growth percentage, described in subsection (c)(6) for that succeeding year, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004; and

(ii) if such year is specified under subsection (c)(1)(D)(ii), an amount equal to the greater of—

(I) the amount determined under clause (i) for the area for the year; or

(II) the amount specified in subsection (c)(1)(D) for the area for the year.

(2) Phase-out of budget neutrality factor

(A) In general

Except as provided in subparagraph (D), in the case of 2007 through 2010, the applicable amount determined under paragraph (1) shall be multiplied by a factor equal to 1 plus the product of—

(i) the percent determined under subparagraph (B) for the year; and

(ii) the applicable phase-out factor for the year under subparagraph (C).

(B) Percent determined

(i) In general

For purposes of subparagraph (A)(i), subject to clause (iv), the percent determined under this subparagraph for a year is a percent equal to a fraction the numerator of which is described in clause (ii) and the denominator of which is described in clause (iii).

(ii) Numerator based on difference between demographic rate and risk rate

(I) In general

The numerator described in this clause is an amount equal to the amount by which the demographic rate described in subclause (II) exceeds the risk rate described in subclause (III).

(II) Demographic rate

The demographic rate described in this subclause is the Secretary's estimate of the total payments that would have been made under this part in the year if all the monthly payment amounts for all MA plans were equal to 1/12 of the annual MA capitation rate under subsection (c)(1) for the area and year, adjusted pursuant to subsection (a)(1)(C).

(III) Risk rate

The risk rate described in this subclause is the Secretary's estimate of the total payments that would have been made under this part in the year if all the monthly payment amounts for all MA plans were equal to the amount described in subsection (j)(1)(A) (determined as if this paragraph had not applied) under subsection (j) for the area and year, adjusted pursuant to subsection (a)(1)(C).

(iii) Denominator based on risk rate

The denominator described in this clause is equal to the total amount estimated for the year under clause (ii)(III).

(iv) Requirements

In estimating the amounts under the previous clauses, the Secretary shall—

(I) use a complete set of the most recent and representative Medicare Advantage risk scores under subsection (a)(3) that are available from the risk adjustment model announced for the year;

(II) adjust the risk scores to reflect changes in treatment and coding practices in the fee-for-service sector;

(III) adjust the risk scores for differences in coding patterns between Medicare Advantage plans and providers under the original Medicare fee-for-service program under parts A and B to the extent that the Secretary has identified such differences, as required in subsection (a)(1)(C);

(IV) as necessary, adjust the risk scores for late data submitted by Medicare Advantage organizations;

(V) as necessary, adjust the risk scores for lagged cohorts; and

(VI) as necessary, adjust the risk scores for changes in enrollment in Medicare Advantage plans during the year.

(v) Authority

In computing such amounts the Secretary may take into account the estimated health risk of enrollees in preferred provider organization plans (including MA regional plans) for the year.

(C) Applicable phase-out factor

For purposes of subparagraph (A)(ii), the term ''applicable phase-out factor'' means—

(i) for 2007, 0.55;

(ii) for 2008, 0.40;

(iii) for 2009, 0.25; and

(iv) for 2010, 0.05.

(D) Termination of application

Subparagraph (A) shall not apply in a year if the amount estimated under subparagraph (B)(ii)(III) for the year is equal to or greater than the amount estimated under subparagraph (B)(ii)(II) for the year.

(3) No revision in percent

(A) In general

The Secretary may not make any adjustment to the percent determined under paragraph (2)(B) for any year.

(B) Rule of construction

Nothing in this subsection shall be construed to limit the authority of the Secretary to make adjustments to the applicable amounts determined under paragraph (1) as appropriate for purposes of updating data or for purposes of adopting an improved risk adjustment methodology.

(Aug. 14, 1935, ch. 531, title XVIII, § 1853, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 299; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title V, §§ 511(a), 512, 514(a), 517], Nov. 29, 1999, 113 Stat. 1536, 1501A–380, 1501A–382 to 1501A–384; Pub. L. 106–554, § 1(a)(6) [title VI, §§ 601(a), 602(a), 603, 605(a), 606(a)(2)(A), 607, 608(a), 611(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–554 to 2763A–559; Pub. L. 107–188, title V, § 532(d)(1), June 12, 2002, 116 Stat. 696; Pub. L. 108–173, title I, § 101(e)(3)(D), title II, §§ 211(a)–(e)(1), 221(d)(1), (4), 222(d)–(f), (i), 237(b)(1), (2)(B), 241(b)(1), title VII, § 736(d)(1), title IX, § 900(e)(1)(G), Dec. 8, 2003, 117 Stat. 2151, 2176–2178, 2192, 2193, 2200–2202, 2204, 2212, 2213, 2220, 2357, 2371; Pub. L. 109–171, title V, § 5301, Feb. 8, 2006, 120 Stat. 48.)

REFERENCES IN TEXT

Section 2355 of the Deficit Reduction Act of 1984, as amended by section 13567(b) of the Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (a)(1)(H), is section 2355 of Pub. L. 98–369, div. B, title III, July 18, 1984, 98 Stat. 1103, as amended by section 13567(b) of Pub. L. 103–66, title XIII, Aug. 10, 1993, 107 Stat. 608, which is not classified to the Code.

Parts A and B of this subchapter, referred to in subsecs. (a)(1)(C)(ii)(I), (b)(4), (c)(4)(C), (6)(A), (f), and (k)(2)(B)(iv)(III), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsec. (e)(2)(A), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2006—Subsec. (a)(1)(C). Pub. L. 109–171, § 5301(b), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (j)(1)(A). Pub. L. 109–171, § 5301(a)(1)(A), inserted ''(or, beginning with 2007, 1/12 of the applicable amount determined under subsection (k)(1))'' after ''subsection (c)(1)'' and ''(for years before 2007)'' after ''adjusted as appropriate''.

Subsec. (j)(1)(B). Pub. L. 109–171, § 5301(a)(1)(B), inserted ''(for years before 2007)'' after ''adjusted as appropriate''.

Subsec. (k). Pub. L. 109–171, § 5301(a)(2), added subsec. (k).

2003—Subsec. (a)(1)(A). Pub. L. 108–173, § 222(e)(1)(B), substituted ''amount determined as follows:'' and cls. (i) and (ii) for ''amount'' and provisions describing amount equal to 1/12 of the annual Medicare+Choice capitation rate, reduced by the amount of any reduction elected under section 1395w–24(f)(1)(E) of this title and adjusted for certain factors.

Subsec. (a)(1)(B) to (G). Pub. L. 108–173, § 222(e)(1)(B), added subpars. (B) to (G). Former subpar. (B) redesignated (H).

Subsec. (a)(1)(H). Pub. L. 108–173, § 222(i), substituted as second sentence provisions relating to actuarial equivalence of rates of payment to rates that would have been paid with respect to other enrollees in the MA payment area under this section as in effect before Dec. 8, 2003, for provisions relating to actuarial equivalence of rates of payment to rates paid to other enrollees in the Medicare+Choice payment area and inserted sentence at end authorizing application of the competitive bidding methodology provided for in this section, with appropriate adjustments to account for the risk adjustment methodology applied to end stage renal disease payments.

Pub. L. 108–173, § 222(e)(1)(A), redesignated subpar. (B) as (H).

Subsec. (a)(3)(C)(ii). Pub. L. 108–173, § 736(d)(1)(A), substituted ''clause (iv)'' for ''clause (iii)'' in introductory provisions.

Subsec. (a)(3)(C)(iii), (iv). Pub. L. 108–173, § 736(d)(1)(B), redesignated cl. (iii), relating to full implementation of risk adjustment for congestive heart failure enrollees for 2001, as (iv).

Subsec. (a)(4). Pub. L. 108–173, § 237(b)(1), added par. (4).

Subsec. (b)(1). Pub. L. 108–173, § 222(f)(1), amended heading and text of par. (1) generally, substituting provisions relating to announcements of payment rates for 2005 and for 2006 and subsequent years for provisions relating to announcement for years before 2004, for 2004 and 2005, and for years after 2005.

Subsec. (b)(1)(B)(iii). Pub. L. 108–173, § 241(b)(1)(B), added cl. (iii).

Subsec. (b)(3). Pub. L. 108–173, § 222(f)(2), substituted ''in such announcement'' for ''in the announcement in sufficient detail so that Medicare+Choice organizations can compute monthly adjusted Medicare+Choice capitation rates for individuals in each Medicare+Choice payment area which is in whole or in part within the service area of such an organization''.

Subsec. (b)(4). Pub. L. 108–173, § 900(e)(1)(G)(i), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in introductory provisions.

Subsec. (c)(1). Pub. L. 108–173, § 221(d)(4), inserted ''that is an MA local area'' after ''for a Medicare+Choice payment area'' in introductory provisions.

Pub. L. 108–173, § 211(a)(2), substituted ''(C), or (D)'' for ''or (C)'' in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 108–173, § 211(b)(1), (c)(1)(A), substituted ''For a year before 2005, the sum'' for ''The sum'' in introductory provisions and inserted ''(for a year other than 2004)'' after ''multiplied'' in concluding provisions.

Subsec. (c)(1)(B)(iv). Pub. L. 108–173, § 211(c)(1)(B), substituted '', 2003, and 2004'' for ''and each succeeding year''.

Subsec. (c)(1)(C)(iv). Pub. L. 108–173, § 211(c)(1)(C), substituted ''and 2003'' for ''and each succeeding year''.

Subsec. (c)(1)(C)(v). Pub. L. 108–173, § 211(c)(1)(D), added cl. (v).

Subsec. (c)(1)(D). Pub. L. 108–173, § 211(a)(1), added subpar. (D).

Subsec. (c)(3)(A). Pub. L. 108–173, § 211(d)(1), substituted ''subparagraphs (B) and (E)'' for ''subparagraph (B)'' in introductory provisions.

Subsec. (c)(3)(E). Pub. L. 108–173, § 211(d)(2), added subpar. (E).

Subsec. (c)(5). Pub. L. 108–173, § 736(d)(1)(C), substituted ''(a)(3)(C)(iv)'' for ''(a)(3)(C)(iii)''.

Pub. L. 108–173, § 237(b)(2)(B), substituted ''subsections (a)(3)(C)(iii), (a)(4), and (i)'' for ''subsections (a)(3)(C)(iii) and (i)''.

Pub. L. 108–173, § 211(b)(2), inserted ''(other than 2004)'' after ''for each year''.

Subsec. (c)(6)(C). Pub. L. 108–173, § 211(c)(2), inserted '', except that for purposes of paragraph (1)(C)(v)(II), no such adjustment shall be made for a year before 2004'' before period at end.

Subsec. (c)(7). Pub. L. 108–173, § 900(e)(1)(G)(ii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

Subsec. (d). Pub. L. 108–173, § 221(d)(1)(A), substituted ''MA payment area; MA local area; MA region defined'' for '' 'Medicare+Choice payment area' defined'' in heading.

Subsec. (d)(1). Pub. L. 108–173, § 221(d)(1)(C), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''In this part, except as provided in paragraph (3), the term 'Medicare+Choice payment area' means a county, or equivalent area specified by the Secretary.''

Subsec. (d)(2), (3). Pub. L. 108–173, § 221(d)(1)(B), (D), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 108–173, § 221(d)(1)(B), redesignated par. (3) as (4).

Subsec. (d)(4)(A). Pub. L. 108–173, § 221(d)(1)(E)(i), inserted ''for MA local plans'' after ''paragraph (1)'' in introductory provisions.

Subsec. (d)(4)(A)(iii). Pub. L. 108–173, § 221(d)(1)(E)(ii), substituted ''paragraph (1)(A)'' for ''paragraph (1)''.

Subsec. (d)(4)(B). Pub. L. 108–173, § 221(d)(1)(E)(iii), inserted ''with respect to MA local plans'' after ''established under this section'' and ''for such plans'' after ''payments under this section'' and ''made under this section''.

Subsec. (f). Pub. L. 108–173, § 101(e)(3)(D), in heading, substituted ''Trust Funds'' for ''Trust Fund'' and, after first sentence, inserted ''Payments to MA organizations for statutory drug benefits provided under this subchapter are made from the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.''

Subsec. (g). Pub. L. 108–173, § 211(e)(1)(A), inserted '', a rehabilitation hospital described in section 1395ww(d)(1)(B)(ii) of this title or a distinct part rehabilitation unit described in the matter following clause (v) of section 1395ww(d)(1)(B) of this title, or a long-term care hospital (described in section 1395ww(d)(1)(B)(iv) of this title)'' after ''1395ww(d)(1)(B) of this title)'' in introductory provisions.

Subsec. (g)(2)(B). Pub. L. 108–173, § 211(e)(1)(B), inserted ''or other payment provision under this subchapter for inpatient services for the type of facility, hospital, or unit involved, described in the matter preceding paragraph (1), as the case may be,'' after ''1395ww(d) of this title''.

Subsec. (j). Pub. L. 108–173, § 222(d), added subsec. (j).

Subsec. (j)(1)(A). Pub. L. 108–173, § 241(b)(1)(A), inserted ''subject to section 1395w–29(d)(2)(A) of this title,'' after ''within an MA local area,''.

2002—Subsec. (b)(1). Pub. L. 107–188 in introductory provisions substituted ''for years before 2004 and after 2005 not later than March 1 before the calendar year concerned and for 2004 and 2005 not later than the second Monday in May before the respective calendar year'' for ''not later than March 1 before the calendar year concerned''.

2000—Subsec. (a)(1)(A). Pub. L. 106–554, § 1(a)(6) [title VI, § 606(a)(2)(A)], inserted ''reduced by the amount of any reduction elected under section 1395w–24(f)(1)(E) of this title and'' after ''for that area,''.

Subsec. (a)(1)(B). Pub. L. 106–554, § 1(a)(6) [title VI, § 605(a)], inserted at end ''In establishing such rates, the Secretary shall provide for appropriate adjustments to increase each rate to reflect the demonstration rate (including the risk adjustment methodology associated with such rate) of the social health maintenance organization end-stage renal disease capitation demonstrations (established by section 2355 of the Deficit Reduction Act of 1984, as amended by section 13567(b) of the Omnibus Budget Reconciliation Act of 1993), and shall compute such rates by taking into account such factors as renal treatment modality, age, and the underlying cause of the end-stage renal disease.''

Subsec. (a)(3)(C)(ii). Pub. L. 106–554, § 1(a)(6) [title VI, § 607(a)(1)], substituted ''Except as provided in clause (iii), such risk adjustment'' for ''Such risk adjustment''.

Subsec. (a)(3)(C)(ii)(I). Pub. L. 106–554, § 1(a)(6) [title VI, § 603(1)(A)], substituted ''and each succeeding year through 2003'' for ''and 2001'' and struck out ''and'' at end.

Subsec. (a)(3)(C)(ii)(II) to (V). Pub. L. 106–554, § 1(a)(6) [title VI, § 603(1)(B)], added subcls. (II) to (V) and struck out former subcl. (II) which read as follows: ''not more than 20 percent of such capitation rate in 2002.''

Subsec. (a)(3)(C)(iii). Pub. L. 106–554, § 1(a)(6) [title VI, § 607(a)(2)], added cl. (iii) relating to full implementation of risk adjustment for congestive heart failure enrollees for 2001.

Pub. L. 106–554, § 1(a)(6) [title VI, § 603(2)], added cl. (iii) relating to data for risk adjustment methodology.

Subsec. (c)(1)(B)(ii), (iii). Pub. L. 106–554, § 1(a)(6) [title VI, § 601(a)(2)], added cls. (ii) and (iii). Former cl. (ii) redesignated (iv).

Subsec. (c)(1)(B)(iv). Pub. L. 106–554, § 1(a)(6) [title VI, § 601(a)(1), (3)], redesignated cl. (ii) as (iv) and substituted ''2002 and each succeeding year'' for ''a succeeding year'' and ''clause (iii)'' for ''clause (i)''.

Subsec. (c)(1)(C)(ii), (iii). Pub. L. 106–554, § 1(a)(6) [title VI, § 602(a)(2)], added cls. (ii) and (iii). Former cl. (ii) redesignated (iv).

Subsec. (c)(1)(C)(iv). Pub. L. 106–554, § 1(a)(6) [title VI, § 602(a)(1), (3)], redesignated cl. (ii) as (iv) and substituted ''2002 and each succeeding year'' for ''a subsequent year''.

Subsec. (c)(5). Pub. L. 106–554, § 1(a)(6) [title VI, § 607(b)], substituted ''subsections (a)(3)(C)(iii) and (i)'' for ''subsection (i)''.

Subsec. (c)(7). Pub. L. 106–554, § 1(a)(6) [title VI, § 611(a)], amended heading and text of par. (7) generally. Prior to amendment, text read as follows: ''If the Secretary makes a determination with respect to coverage under this subchapter that the Secretary projects will result in a significant increase in the costs to Medicare+Choice of providing benefits under contracts under this part (for periods after any period described in section 1395w–22(a)(5) of this title), the Secretary shall adjust appropriately the payments to such organizations under this part.''

Subsec. (i)(1). Pub. L. 106–554, § 1(a)(6) [title VI, § 608(a)], in introductory provisions, inserted '', or filed notice with the Secretary as of October 3, 2000, that they will not be offering such a plan as of January 1, 2001'' after ''January 1, 2000''.

1999—Subsec. (a)(1)(A). Pub. L. 106–113, § 1000(a)(6) [title V, § 512(1)], substituted ''subsections (e), (g), and (i) of this section'' for ''subsections (e) and (f) of this section''.

Subsec. (a)(3)(C). Pub. L. 106–113, § 1000(a)(6) [title V, § 511(a)], designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (b)(4). Pub. L. 106–113, § 1000(a)(6) [title V, § 514(a)], added par. (4).

Subsec. (c)(5). Pub. L. 106–113, § 1000(a)(6) [title V, § 512(2)], inserted ''(other than those attributable to subsection (i) of this section)'' after ''payments under this part''.

Subsec. (c)(6)(B)(v). Pub. L. 106–113, § 1000(a)(6) [title V, § 517], substituted ''0.3 percentage points'' for ''0.5 percentage points''.

Subsec. (i). Pub. L. 106–113, § 1000(a)(6) [title V, § 512(3)], added subsec. (i).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title II, § 211(e)(2), Dec. 8, 2003, 117 Stat. 2178, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contract years beginning on or after January 1, 2004.''

Amendment by sections 221(d)(1), (4) and 222(d)–(f), (i) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Amendment by section 237(b)(1), (2)(B) of Pub. L. 108–173 applicable to services provided on or after Jan. 1, 2006, and contract years beginning on or after such date, see section 237(e) of Pub. L. 108–173, set out as a note under section 1320a–7b of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–188, title V, § 532(d)(2), June 12, 2002, 116 Stat. 697, provided that: ''The amendment made by paragraph (1) [amending this section] shall first apply to announcements for years after 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VI, § 605(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–556, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments for months beginning with January 2002.''

Amendment by section 1(a)(6) [title VI, § 606(a)(2)(A)] of Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

Pub. L. 106–554, § 1(a)(6) [title VI, § 608(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–559, provided that: ''The amendment made by subsection (a) [amending this section] shall apply as if included in the enactment of BBRA [Pub. L. 106–113, § 1000(a)(6)].''

Amendment by section 1(a)(6) [title VI, § 611(a)] of Pub. L. 106–554 effective Dec. 21, 2000, and applicable to national coverage determinations and legislative changes in benefits occurring on or after such date, see section 1(a)(6) [title VI, § 611(c)] of Pub. L. 106–554, set out as a note under section 1395w–22 of this title.

MEDPAC STUDY OF AAPCC

Pub. L. 108–173, title II, § 211(f), Dec. 8, 2003, 117 Stat. 2178, directed the Medicare Payment Advisory Commission to conduct a study that would assess the method used for determining the adjusted average per capita cost (AAPCC) under section 1395mm(a)(4) of this title, as applied under subsection (c)(1)(A) of this section, and to submit to Congress a report on such study not later than 18 months after Dec. 8, 2003.

IMPLEMENTATION OF 2003 AMENDMENT

Pub. L. 108–173, title II, § 211(i), Dec. 8, 2003, 117 Stat. 2179, provided that:

''(1) ANNOUNCEMENT OF REVISED MEDICARE ADVANTAGE PAYMENT RATES.—Within 6 weeks after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall determine, and shall announce (in a manner intended to provide notice to interested parties) MA capitation rates under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for 2004, revised in accordance with the provisions of this section [amending this section and section 1395w–22 of this title and enacting provisions set out as notes under this section and section 1395w–21 of this title].

''(2) TRANSITION TO REVISED PAYMENT RATES.—The provisions of section 604 of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554, set out as a note under this section] (114 Stat. 2763A–555) (other than subsection (a)) shall apply to the provisions of subsections (a) through (d) of this section [amending this section] for 2004 in the same manner as the provisions of such section 604 applied to the provisions of BIPA for 2001.

''(3) SPECIAL RULE FOR PAYMENT RATES IN 2004.—

''(A) JANUARY AND FEBRUARY.—Notwithstanding the amendments made by subsections (a) through (d) [amending this section], for purposes of making payments under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for January and February 2004, the annual capitation rate for a payment area shall be calculated and the excess amount under section 1854(f)(1)(B) of such Act (42 U.S.C. 1395w–24(f)(1)(B)) shall be determined as if such amendments had not been enacted.

''(B) MARCH THROUGH DECEMBER.—Notwithstanding the amendments made by subsections (a) through (d) [amending this section], for purposes of making payments under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for March through December 2004, the annual capitation rate for a payment area shall be calculated and the excess amount under section 1854(f)(1)(B) of such Act (42 U.S.C. 1395w–24(f)(1)(B)) shall be determined, in such manner as the Secretary estimates will ensure that the total of such payments with respect to 2004 is the same as the amounts that would have been if subparagraph (A) had not been enacted.

''(C) CONSTRUCTION.—Subparagraphs (A) and (B) shall not be taken into account in computing such capitation rate for 2005 and subsequent years.

''(4) PLANS REQUIRED TO PROVIDE NOTICE OF CHANGES IN PLAN BENEFITS.—In the case of an organization offering a plan under part C of title XVIII of the Social Security

Act [this part] that revises its submission of the information described in section 1854(a)(1) of such Act (42 U.S.C. 1395w–23(a)(1) [1395w–24(a)(1)]) for a plan pursuant to the application of paragraph (2), if such revision results in changes in beneficiary premiums, beneficiary cost-sharing, or benefits under the plan, then by not later than 3 weeks after the date the Secretary approves such submission, the organization offering the plan shall provide each beneficiary enrolled in the plan with written notice of such changes.

''(5) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869 or section 1878 of the Social Security Act (42 U.S.C. 1395ff and 1395*oo*), or otherwise of any determination made by the Secretary under this subsection or the application of the payment rates determined pursuant to this subsection.''

SPECIAL RULE FOR JANUARY AND FEBRUARY OF 2001

Pub. L. 106–554, §1(a)(6) [title VI, §601(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–554, provided that:

''(1) IN GENERAL.—Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for January and February 2001, the annual Medicare+Choice capitation rate for a Medicare+Choice payment area shall be calculated, and the excess amount under section 1854(f)(1)(B) of such Act (42 U.S.C. 1395w–24(f)(1)(B)) shall be determined, as if such amendments had not been enacted.

''(2) CONSTRUCTION.—Paragraph (1) shall not be taken into account in computing such capitation rate for 2002 and subsequent years.''

Pub. L. 106–554, §1(a)(6) [title VI, §602(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–555, provided that: ''The provisions of section 601(b) [set out above] shall apply with respect to the amendments made by subsection (a) [amending this section] in the same manner as they apply to the amendments made by section 601(a) [amending this section].''

TRANSITION TO REVISED MEDICARE+CHOICE PAYMENT RATES

Pub. L. 106–554, §1(a)(6) [title VI, §604], Dec. 21, 2000, 114 Stat. 2763, 2763A–555, provided that:

''(a) ANNOUNCEMENT OF REVISED MEDICARE+CHOICE PAYMENT RATES.—Within 2 weeks after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall determine, and shall announce (in a manner intended to provide notice to interested parties) Medicare+Choice capitation rates under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for 2001, revised in accordance with the provisions of this Act.

''(b) REENTRY INTO PROGRAM PERMITTED FOR MEDICARE+CHOICE PROGRAMS.—A Medicare+Choice organization that provided notice to the Secretary of Health and Human Services before the date of the enactment of this Act [Dec. 21, 2000] that it was terminating its contract under part C of title XVIII of the Social Security Act [this part] or was reducing the service area of a Medicare+Choice plan offered under such part shall be permitted to continue participation under such part, or to maintain the service area of such plan, for 2001 if it submits the Secretary with the information described in section 1854(a)(1) of the Social Security Act (42 U.S.C. 1395w–24(a)(1)) within 2 weeks after the date revised rates are announced by the Secretary under subsection (a).

''(c) REVISED SUBMISSION OF PROPOSED PREMIUMS AND RELATED INFORMATION.—If—

''(1) a Medicare+Choice organization provided notice to the Secretary of Health and Human Services as of July 3, 2000, that it was renewing its contract under part C of title XVIII of the Social Security Act [this part] for all or part of the service area or areas served under its current contract, and

''(2) any part of the service area or areas addressed in such notice includes a payment area for which the Medicare+Choice capitation rate under section 1853(c) of such Act (42 U.S.C. 1395w–23(c)) for 2001, as determined under subsection (a), is higher than the rate previously determined for such year,

such organization shall revise its submission of the information described in section 1854(a)(1) of the Social Security Act (42 U.S.C. 1395w–24(a)(1)), and shall submit such revised information to the Secretary, within 2 weeks after the date revised rates are announced by the Secretary under subsection (a). In making such submission, the organization may only reduce beneficiary premiums, reduce beneficiary cost-sharing, enhance benefits, utilize the stabilization fund described in section 1854(f)(2) of such Act (42 U.S.C. 1395w–24(f)(2)), or stabilize or enhance beneficiary access to providers (so long as such stabilization or enhancement does not result in increased beneficiary premiums, increased beneficiary cost-sharing, or reduced benefits).

''(d) WAIVER OF LIMITS ON STABILIZATION FUND.—Any regulatory provision that limits the proportion of the excess amount that can be withheld in such stabilization fund for a contract period shall not apply with respect to submissions described in subsections (b) and (c).

''(e) DISREGARD OF NEW RATE ANNOUNCEMENT IN APPLYING PASS-THROUGH FOR NEW NATIONAL COVERAGE DETERMINATIONS.—For purposes of applying section 1852(a)(5) of the Social Security Act (42 U.S.C. 1395w–22(a)(5)), the announcement of revised rates under subsection (a) shall not be treated as an announcement under section 1853(b) of such Act (42 U.S.C. 1395w–23(b)).''

PUBLICATION

Pub. L. 106–554, §1(a)(6) [title VI, §605(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–556, provided that: ''Not later than 6 months after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall publish for public comment a description of the appropriate adjustments described in the last sentence of section 1853(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w–23(a)(1)(B)), as added by subsection (a). The Secretary shall publish such adjustments in final form by not later than July 1, 2001, so that the amendment made by subsection (a) is implemented on a timely basis consistent with subsection (b) [set out as a note above].''

REPORT ON INCLUSION OF CERTAIN COSTS OF THE DEPARTMENT OF VETERANS AFFAIRS AND MILITARY FACILITY SERVICES IN CALCULATING MEDICARE+CHOICE PAYMENT RATES

Pub. L. 106–554, §1(a)(6) [title VI, §609], Dec. 21, 2000, 114 Stat. 2763, 2763A–559, provided that: ''The Secretary of Health and Human Services shall report to Congress by not later than January 1, 2003, on a method to phase-in the costs of military facility services furnished by the Department of Veterans Affairs, and the costs of military facility services furnished by the Department of Defense, to medicare-eligible beneficiaries in the calculation of an area's Medicare+Choice capitation payment. Such report shall include on a county-by-county basis—

''(1) the actual or estimated cost of such services to medicare-eligible beneficiaries;

''(2) the change in Medicare+Choice capitation payment rates if such costs are included in the calculation of payment rates;

''(3) one or more proposals for the implementation of payment adjustments to Medicare+Choice plans in counties where the payment rate has been affected due to the failure to calculate the cost of such services to medicare-eligible beneficiaries; and

''(4) a system to ensure that when a Medicare+Choice enrollee receives covered services through a facility of the Department of Veterans Affairs or the Department of Defense there is an appropriate payment recovery to the medicare program under title XVIII of the Social Security Act [this subchapter].''

MEDPAC STUDY AND REPORT

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 511(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–380, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study that evaluates the methodology used by the Secretary of Health and Human Services in developing the risk factors used in adjusting the Medicare+Choice capitation rate paid to Medicare+Choice organizations under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) and includes the issues described in paragraph (2).

''(2) ISSUES TO BE STUDIED.—The issues described in this paragraph are the following:

''(A) The ability of the average risk adjustment factor applied to a Medicare+Choice plan to explain variations in plans' average per capita medicare costs, as reported by Medicare+Choice plans in the plans' adjusted community rate filings.

''(B) The year-to-year stability of the risk factors applied to each Medicare+Choice plan and the potential for substantial changes in payment for small Medicare+Choice plans.

''(C) For medicare beneficiaries newly enrolled in Medicare+Choice plans in a given year, the correspondence between the average risk factor calculated from medicare fee-for-service data for those individuals from the period prior to their enrollment in a Medicare+Choice plan and the average risk factor calculated for such individuals during their initial year of enrollment in a Medicare+Choice plan.

''(D) For medicare beneficiaries disenrolling from or switching among Medicare+Choice plans in a given year, the correspondence between the average risk factor calculated from data pertaining to the period prior to their disenrollment from a Medicare+Choice plan and the average risk factor calculated from data pertaining to the period after disenrollment.

''(E) An evaluation of the exclusion of 'discretionary' hospitalizations from consideration in the risk adjustment methodology.

''(F) Suggestions for changes or improvements in the risk adjustment methodology.

''(3) REPORT.—Not later than December 1, 2000, the Commission shall submit a report to Congress on the study conducted under paragraph (1), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study.''

STUDY AND REPORT REGARDING REPORTING OF ENCOUNTER DATA

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 511(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–381, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study on how to reduce the costs and burdens on Medicare+Choice organizations of their complying with reporting requirements for encounter data imposed by the Secretary in establishing and implementing a risk adjustment methodology used in making payments to such organizations under section 1853 of the Social Security Act (42 U.S.C. 1395w–23). The Secretary shall consult with representatives of Medicare+Choice organizations in conducting the study. The study shall address the following issues:

''(A) Limiting the number and types of sites of services (that are in addition to inpatient sites) for which encounter data must be reported.

''(B) Establishing alternative risk adjustment methods that would require submission of less data.

''(C) The potential for Medicare+Choice organizations to misreport, overreport, or underreport prevalence of diagnoses in outpatient sites of care, the potential for increases in payments to Medicare+Choice organizations from changes in Medicare+Choice plan coding practices (commonly known as 'coding creep') and proposed methods for detecting and adjusting for such variations in diagnosis coding as part of the risk adjustment methodology using encounter data from multiple sites of care.

''(D) The impact of such requirements on the willingness of insurers to offer Medicare+Choice MSA plans and options for modifying encounter data reporting requirements to accommodate such plans.

''(E) Differences in the ability of Medicare+Choice organizations to report encounter data, and the potential for adverse competitive impacts on group and staff model health maintenance organizations or other integrated providers of care based on data reporting capabilities.

''(2) REPORT.—Not later than January 1, 2001, the Secretary shall submit a report to Congress on the study conducted under this subsection, together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such study.''

SPECIAL RULE FOR 2001

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 514(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–384, provided that: ''In providing for the publication of information under section 1853(b)(4) of the Social Security Act (42 U.S.C. 1395w–23(b)(4)), as added by subsection (a), in 2001, the Secretary of Health and Human Services shall also include the information described in such section for 1998, as well as for 1999.''

DEVELOPMENT OF SPECIAL PAYMENT RULES UNDER MEDICARE+CHOICE PROGRAM FOR FRAIL ELDERLY ENROLLED IN SPECIALIZED PROGRAMS

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 552(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–392, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the development of a payment methodology under the Medicare+Choice program for frail elderly Medicare+Choice beneficiaries enrolled in a Medicare+Choice plan under a specialized program for the frail elderly that—

''(A) accounts for the prevalence, mix, and severity of chronic conditions among such frail elderly Medicare+Choice beneficiaries;

''(B) includes medical diagnostic factors from all provider settings (including hospital and nursing facility settings); and

''(C) includes functional indicators of health status and such other factors as may be necessary to achieve appropriate payments for plans serving such beneficiaries.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999], the Commission shall submit a report to Congress on the study conducted under paragraph (1), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study.''

PUBLICATION OF NEW CAPITATION RATES

Section 4002(i) of Pub. L. 105–33 provided that: ''Not later than 4 weeks after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall announce the annual Medicare+Choice capitation rates for 1998 under section 1853(b) of the Social Security Act [subsec. (b) of this section].''

MEDICARE+CHOICE COMPETITIVE PRICING DEMONSTRATION PROJECT

Pub. L. 105–33, title IV, §§ 4011, 4012, Aug. 5, 1997, 111 Stat. 334–336, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 533], Nov. 29, 1999, 113 Stat. 1536, 1501A–389, provided that:

''SEC. 4011. MEDICARE PREPAID COMPETITIVE PRICING DEMONSTRATION PROJECT.

''(a) ESTABLISHMENT OF PROJECT.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary of Health and Human Services (in this subchapter [subchapter A (§§ 4011–4012) of chapter 2 of subtitle A of title IV of Pub. L. 105–33] referred to as the 'Secretary') shall establish a demonstration project (in this subchapter referred to as the 'project') under which payments to Medicare+Choice organizations in medicare payment

areas in which the project is being conducted are determined in accordance with a competitive pricing methodology established under this subchapter.

''(2) DELAY IN IMPLEMENTATION.—The Secretary shall not implement the project until January 1, 2002, or, if later, 6 months after the date the Competitive Pricing Advisory Committee has submitted to Congress a report on each of the following topics:

''(A) INCORPORATION OF ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM INTO PROJECT.—What changes would be required in the project to feasibly incorporate the original medicare fee-for-service program into the project in the areas in which the project is operational.

''(B) QUALITY ACTIVITIES.—The nature and extent of the quality reporting and monitoring activities that should be required of plans participating in the project, the estimated costs that plans will incur as a result of these requirements, and the current ability of the Health Care Financing Administration to collect and report comparable data, sufficient to support comparable quality reporting and monitoring activities with respect to beneficiaries enrolled in the original medicare fee-for-service program generally.

''(C) RURAL PROJECT.—The current viability of initiating a project site in a rural area, given the site specific budget neutrality requirements of the project under subsection (g), and insofar as the Committee decides that the addition of such a site is not viable, recommendations on how the project might best be changed so that such a site is viable.

''(D) BENEFIT STRUCTURE.—The nature and extent of the benefit structure that should be required of plans participating in the project, the rationale for such benefit structure, the potential implications that any benefit standardization requirement may have on the number of plan choices available to a beneficiary in an area designated under the project, the potential implications of requiring participating plans to offer variations on any standardized benefit package the committee might recommend, such that a beneficiary could elect to pay a higher percentage of out-of-pocket costs in exchange for a lower premium (or premium rebate as the case may be), and the potential implications of expanding the project (in conjunction with the potential inclusion of the original medicare fee-for-service program) to require medicare supplemental insurance plans operating in an area designated under the project to offer a coordinated and comparable standardized benefit package.

''(3) CONFORMING DEADLINES.—Any dates specified in the succeeding provisions of this section shall be delayed (as specified by the Secretary) in a manner consistent with the delay effected under paragraph (2).

''(b) DESIGNATION OF 7 MEDICARE PAYMENT AREAS COVERED BY PROJECT.—

''(1) IN GENERAL.—The Secretary shall designate, in accordance with the recommendations of the Competitive Pricing Advisory Committee under paragraphs (2) and (3), medicare payment areas as areas in which the project under this subchapter will be conducted. In this section, the term 'Competitive Pricing Advisory Committee' means the Competitive Pricing Advisory Committee established under section 4012(a).

''(2) INITIAL DESIGNATION OF 4 AREAS.—

''(A) IN GENERAL.—The Competitive Pricing Advisory Committee shall recommend to the Secretary, consistent with subparagraph (B), the designation of 4 specific areas as medicare payment areas to be included in the project. Such recommendations shall be made in a manner so as to ensure that payments under the project in 2 such areas will begin on January 1, 1999, and in 2 such areas will begin on January 1, 2000.

''(B) LOCATION OF DESIGNATION.—Of the 4 areas recommended under subparagraph (A), 3 shall be in urban areas and 1 shall be in a rural area.

''(3) DESIGNATION OF ADDITIONAL 3 AREAS.—Not later than December 31, 2001, the Competitive Pricing Advisory Committee may recommend to the Secretary the designation of up to 3 additional, specific medicare payment areas to be included in the project.

''(c) PROJECT IMPLEMENTATION.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall for each medicare payment area designated under subsection (b)—

''(A) in accordance with the recommendations of the Competitive Pricing Advisory Committee—

''(i) establish the benefit design among plans offered in such area,

''(ii) structure the method for selecting plans offered in such area; and

''(iii) establish beneficiary premiums for plans offered in such area in a manner such that a beneficiary who enrolls in an offered plan the per capita bid for which is less than the standard per capita government contribution (as established by the competitive pricing methodology established for such area) may, at the plan's election, be offered a rebate of some or all of the medicare part B premium that such individual must otherwise pay in order to participate in a Medicare+Choice plan under the Medicare+Choice program; and

''(B) in consultation with such Committee—

''(i) establish methods for setting the price to be paid to plans, including, if the Secretaries determines appropriate, the rewarding and penalizing of Medicare+Choice plans in the area on the basis of the attainment of, or failure to attain, applicable quality standards, and

''(ii) provide for the collection of plan information (including information concerning quality and access to care), the dissemination of information, and the methods of evaluating the results of the project.

''(2) CONSULTATION.—The Secretary shall take into account the recommendations of the area advisory committee established in section 4012(b), in implementing a project design for any area, except that no modifications may be made in the project design without consultation with the Competitive Pricing Advisory Committee. In no case may the Secretary change the designation of an area based on recommendations of any area advisory committee.

''(d) MONITORING AND REPORT.—

''(1) MONITORING IMPACT.—Taking into consideration the recommendations of the Competitive Pricing Advisory Committee and the area advisory committees, the Secretary shall closely monitor and measure the impact of the project in the different areas on the price and quality of, and access to, medicare covered services, choice of health plans, changes in enrollment, and other relevant factors.

''(2) REPORT.—Not later than December 31, 2002, the Secretary shall submit to Congress a report on the progress under the project under this subchapter, including a comparison of the matters monitored under paragraph (1) among the different designated areas. The report may include any legislative recommendations for extending the project to the entire medicare population.

''(e) WAIVER AUTHORITY.—The Secretary of Health and Human Services may waive such requirements of title XVIII of the Social Security Act [this subchapter] (as amended by this Act) as may be necessary for the purposes of carrying out the project.

''(f) RELATIONSHIP TO OTHER AUTHORITY.—Except pursuant to this subchapter, the Secretary of Health and Human Services may not conduct or continue any medicare demonstration project relating to payment of health maintenance organizations, Medicare+Choice organizations, or similar prepaid managed care entities on the basis of a competitive bidding process or pricing system described in subsection (a).

''(g) NO ADDITIONAL COSTS TO MEDICARE PROGRAM.—The aggregate payments to Medicare+Choice organiza-

tions under the project for any designated area for a fiscal year may not exceed the aggregate payments to such organizations that would have been made under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), as amended by section 4001 [enacting this part and redesignating former part C of this subchapter as part D], if the project had not been conducted.

''(h) DEFINITIONS.—Any term used in this subchapter which is also used in part C of title XVIII of the Social Security Act [this part], as amended by section 4001, shall have the same meaning as when used in such part.

''SEC. 4012. ADVISORY COMMITTEES.

''(a) COMPETITIVE PRICING ADVISORY COMMITTEE.—

''(1) IN GENERAL.—Before implementing the project under this subchapter [subchapter A (§§ 4011–4012) of chapter 2 of subtitle A of title IV of Pub. L. 105–33], the Secretary shall appoint the Competitive Pricing Advisory Committee, including independent actuaries, individuals with expertise in competitive health plan pricing, and an employee of the Office of Personnel Management with expertise in the administration of the Federal Employees Health Benefit Program, to make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research design for implementing the project.

''(2) INITIAL RECOMMENDATIONS.—The Competitive Pricing Advisory Committee initially shall submit recommendations regarding the area selection, benefit design among plans offered, structuring choice among health plans offered, methods for setting the price to be paid to plans, collection of plan information (including information concerning quality and access to care), information dissemination, and methods of evaluating the results of the project.

''(3) QUALITY RECOMMENDATION.—The Competitive Pricing Advisory Committee shall study and make recommendations regarding the feasibility of providing financial incentives and penalties to plans operating under the project that meet, or fail to meet, applicable quality standards.

''(4) ADVICE DURING IMPLEMENTATION.—Upon implementation of the project, the Competitive Pricing Advisory Committee shall continue to advise the Secretary on the application of the design in different areas and changes in the project based on experience with its operations.

''(5) SUNSET.—The Competitive Pricing Advisory Committee shall terminate on December 31, 2004.

''(b) APPOINTMENT OF AREA ADVISORY COMMITTEE.—Upon the designation of an area for inclusion in the project, the Secretary shall appoint an area advisory committee, composed of representatives of health plans, providers, and medicare beneficiaries in the area, to advise the Secretary concerning how the project will be implemented in the area. Such advice may include advice concerning the marketing and pricing of plans in the area and other salient factors. The duration of such a committee for an area shall be for the duration of the operation of the project in the area.

''(c) SPECIAL APPLICATION.—Notwithstanding section 9(c) of the Federal Advisory Committee Act (5 U.S.C. App.), the Competitive Pricing Advisory Commission and any area advisory committee (described in subsection (b)) may meet as soon as the members of the commission or committee, respectively, are appointed.''

§ 1395w–24. Premiums and bid amounts

(a) Submission of proposed premiums, bid amounts, and related information

(1) In general

(A) Initial submission

Not later than the second Monday in September of 2002, 2003, and 2004 (or the first Monday in June of each subsequent year), each MA organization shall submit to the Secretary, in a form and manner specified by the Secretary and for each MA plan for the service area (or segment of such an area if permitted under subsection (h) of this section) in which it intends to be offered in the following year the following:

(i) The information described in paragraph (2), (3), (4), or (6)(A) for the type of plan and year involved.

(ii) The plan type for each plan.

(iii) The enrollment capacity (if any) in relation to the plan and area.

(B) Beneficiary rebate information

In the case of a plan required to provide a monthly rebate under subsection (b)(1)(C) of this section for a year, the MA organization offering the plan shall submit to the Secretary, in such form and manner and at such time as the Secretary specifies, information on—

(i) the manner in which such rebate will be provided under clause (ii) of such subsection; and

(ii) the MA monthly prescription drug beneficiary premium (if any) and the MA monthly supplemental beneficiary premium (if any).

(C) Paperwork reduction for offering of MA regional plans nationally or in multi-region areas

The Secretary shall establish requirements for information submission under this subsection in a manner that promotes the offering of MA regional plans in more than one region (including all regions) through the filing of consolidated information.

(2) Information required for coordinated care plans before 2006

For a Medicare+Choice plan described in section 1395w–21(a)(2)(A) of this title for a year before 2006, the information described in this paragraph is as follows:

(A) Basic (and additional) benefits

For benefits described in section 1395w–22(a)(1)(A) of this title—

(i) the adjusted community rate (as defined in subsection (f)(3) of this section);

(ii) the Medicare+Choice monthly basic beneficiary premium (as defined in subsection (b)(2)(A) of this section);

(iii) a description of deductibles, coinsurance, and copayments applicable under the plan and the actuarial value of such deductibles, coinsurance, and copayments, described in subsection (e)(1)(A) of this section; and

(iv) if required under subsection (f)(1) of this section, a description of the additional benefits to be provided pursuant to such subsection and the value determined for such proposed benefits under such subsection.

(B) Supplemental benefits

For benefits described in section 1395w–22(a)(3) of this title—

(i) the adjusted community rate (as defined in subsection (f)(3) of this section);

(ii) the Medicare+Choice monthly supplemental beneficiary premium (as defined in subsection (b)(2)(B) of this section); and

(iii) a description of deductibles, coinsurance, and copayments applicable under the plan and the actuarial value of such deductibles, coinsurance, and copayments, described in subsection (e)(2) of this section.

(3) Requirements for MSA plans

For an MSA plan for any year, the information described in this paragraph is as follows:

(A) Basic (and additional) benefits

For benefits described in section 1395w–22(a)(1)(A) of this title, the amount of the Medicare+Choice monthly MSA premium.

(B) Supplemental benefits

For benefits described in section 1395w–22(a)(3) of this title, the amount of the Medicare+Choice monthly supplementary beneficiary premium.

(4) Requirements for private fee-for-service plans before 2006

For a Medicare+Choice plan described in section 1395w–21(a)(2)(C) of this title for benefits described in section 1395w–22(a)(1)(A) of this title for a year before 2006, the information described in this paragraph is as follows:

(A) Basic (and additional) benefits

For benefits described in section 1395w–22(a)(1)(A) of this title—

(i) the adjusted community rate (as defined in subsection (f)(3) of this section);

(ii) the amount of the Medicare+Choice monthly basic beneficiary premium;

(iii) a description of the deductibles, coinsurance, and copayments applicable under the plan, and the actuarial value of such deductibles, coinsurance, and copayments, as described in subsection (e)(4)(A) of this section; and

(iv) if required under subsection (f)(1) of this section, a description of the additional benefits to be provided pursuant to such subsection and the value determined for such proposed benefits under such subsection.

(B) Supplemental benefits

For benefits described in section 1395w–22(a)(3) of this title, the amount of the Medicare+Choice monthly supplemental beneficiary premium (as defined in subsection (b)(2)(B) of this section).

(5) Review

(A) In general

Subject to subparagraph (B), the Secretary shall review the adjusted community rates, the amounts of the basic and supplemental premiums, and values filed under paragraphs (2) and (4) of this subsection and shall approve or disapprove such rates, amounts, and values so submitted. The Chief Actuary of the Centers for Medicare & Medicaid Services shall review the actuarial assumptions and data used by the Medicare+Choice organization with respect to such rates, amounts, and values so submitted to determine the appropriateness of such assumptions and data.

(B) Exception

The Secretary shall not review, approve, or disapprove the amounts submitted under paragraph (3) or, in the case of an MA private fee-for-service plan, subparagraphs (A)(ii) and (B) of paragraph (4).

(6) Submission of bid amounts by MA organizations beginning in 2006

(A) Information to be submitted

For an MA plan (other than an MSA plan) for a plan year beginning on or after January 1, 2006, the information described in this subparagraph is as follows:

(i) The monthly aggregate bid amount for the provision of all items and services under the plan, which amount shall be based on average revenue requirements (as used for purposes of section 300e–1(8) of this title) in the payment area for an enrollee with a national average risk profile for the factors described in section 1395w–23(a)(1)(C) of this title (as specified by the Secretary).

(ii) The proportions of such bid amount that are attributable to—

(I) the provision of benefits under the original medicare fee-for-service program option (as defined in section 1395w–22(a)(1)(B) of this title);

(II) the provision of basic prescription drug coverage; and

(III) the provision of supplemental health care benefits.

(iii) The actuarial basis for determining the amount under clause (i) and the proportions described in clause (ii) and such additional information as the Secretary may require to verify such actuarial bases and the projected number of enrollees in each MA local area.

(iv) A description of deductibles, coinsurance, and copayments applicable under the plan and the actuarial value of such deductibles, coinsurance, and copayments, described in subsection (e)(4)(A) of this section.

(v) With respect to qualified prescription drug coverage, the information required under section 1395w–104 of this title, as incorporated under section 1395w–111(b)(2) of this title, with respect to such coverage.

In the case of a specialized MA plan for special needs individuals, the information described in this subparagraph is such information as the Secretary shall specify.

(B) Acceptance and negotiation of bid amounts

(i) Authority

Subject to clauses (iii) and (iv), the Secretary has the authority to negotiate regarding monthly bid amounts submitted under subparagraph (A) (and the proportions described in subparagraph (A)(ii)), including supplemental benefits provided under subsection (b)(1)(C)(ii)(I) of this section and in exercising such authority the Secretary shall have authority similar to the authority of the Director of the Office

of Personnel Management with respect to health benefits plans under chapter 89 of title 5.

(ii) Application of FEHBP standard

Subject to clause (iv), the Secretary may only accept such a bid amount or proportion if the Secretary determines that such amount and proportions are supported by the actuarial bases provided under subparagraph (A) and reasonably and equitably reflects the revenue requirements (as used for purposes of section 300e–1(8) of this title) of benefits provided under that plan.

(iii) Noninterference

In order to promote competition under this part and part D of this subchapter and in carrying out such parts, the Secretary may not require any MA organization to contract with a particular hospital, physician, or other entity or individual to furnish items and services under this subchapter or require a particular price structure for payment under such a contract to the extent consistent with the Secretary's authority under this part.

(iv) Exception

In the case of a plan described in section 1395w–21(a)(2)(C) of this title, the provisions of clauses (i) and (ii) shall not apply and the provisions of paragraph (5)(B), prohibiting the review, approval, or disapproval of amounts described in such paragraph, shall apply to the negotiation and rejection of the monthly bid amounts and the proportions referred to in subparagraph (A).

(b) Monthly premium charged

(1) In general

(A) Rule for other than MSA plans

Subject to the rebate under subparagraph (C), the monthly amount (if any) of the premium charged to an individual enrolled in a Medicare+Choice plan (other than an MSA plan) offered by a Medicare+Choice organization shall be equal to the sum of the Medicare+Choice monthly basic beneficiary premium, the Medicare+Choice monthly supplementary beneficiary premium (if any), and, if the plan provides qualified prescription drug coverage, the MA monthly prescription drug beneficiary premium.

(B) MSA plans

The monthly amount of the premium charged to an individual enrolled in an MSA plan offered by a Medicare+Choice organization shall be equal to the Medicare+Choice monthly supplemental beneficiary premium (if any).

(C) Beneficiary rebate rule

(i) Requirement

The MA plan shall provide to the enrollee a monthly rebate equal to 75 percent of the average per capita savings (if any) described in paragraph (3)(C) or (4)(C), as applicable to the plan and year involved.

(ii) Form of rebate

A rebate required under this subparagraph shall be provided through the application of the amount of the rebate toward one or more of the following:

(I) Provision of supplemental health care benefits and payment for premium for supplemental benefits

The provision of supplemental health care benefits described in section 1395w–22(a)(3) of this title in a manner specified under the plan, which may include the reduction of cost-sharing otherwise applicable as well as additional health care benefits which are not benefits under the original medicare fee-for-service program option, or crediting toward an MA monthly supplemental beneficiary premium (if any).

(II) Payment for premium for prescription drug coverage

Crediting toward the MA monthly prescription drug beneficiary premium.

(III) Payment toward part B premium

Crediting toward the premium imposed under part B of this subchapter (determined without regard to the application of subsections (b), (h), and (i) of section 1395r of this title).

(iii) Disclosure relating to rebates

The plan shall disclose to the Secretary information on the form and amount of the rebate provided under this subparagraph or the actuarial value in the case of supplemental health care benefits.

(iv) Application of part B premium reduction

Insofar as an MA organization elects to provide a rebate under this subparagraph under a plan as a credit toward the part B premium under clause (ii)(III), the Secretary shall apply such credit to reduce the premium under section 1395r of this title of each enrollee in such plan as provided in section 1395s(i) of this title.

(2) Premium and bid terminology defined

For purposes of this part:

(A) MA monthly basic beneficiary premium

The term ''MA monthly basic beneficiary premium'' means, with respect to an MA plan—

(i) described in section 1395w–23(a)(1)(B)(i) of this title (relating to plans providing rebates), zero; or

(ii) described in section 1395w–23(a)(1)(B)(ii) of this title, the amount (if any) by which the unadjusted MA statutory non-drug monthly bid amount (as defined in subparagraph (E)) exceeds the applicable unadjusted MA area-specific non-drug monthly benchmark amount (as defined in section 1395w–23(j) of this title).

(B) MA monthly prescription drug beneficiary premium

The term ''MA monthly prescription drug beneficiary premium'' means, with respect

to an MA plan, the base beneficiary premium (as determined under section 1395w–113(a)(2) of this title and as adjusted under section 1395w–113(a)(1)(B) of this title), less the amount of rebate credited toward such amount under subsection (b)(1)(C)(ii)(II) of this section.

(C) MA monthly supplemental beneficiary premium

The term ''MA monthly supplemental beneficiary premium'' means, with respect to an MA plan, the portion of the aggregate monthly bid amount submitted under clause (i) of subsection (a)(6)(A) of this section for the year that is attributable under clause (ii)(III) of such subsection to the provision of supplemental health care benefits, less the amount of rebate credited toward such portion under subsection (b)(1)(C)(ii)(I) of this section.

(D) Medicare+Choice monthly MSA premium

The term ''Medicare+Choice monthly MSA premium'' means, with respect to a Medicare+Choice plan, the amount of such premium filed under subsection (a)(3)(A) of this section for the plan.

(E) Unadjusted MA statutory non-drug monthly bid amount

The term ''unadjusted MA statutory non-drug monthly bid amount'' means the portion of the bid amount submitted under clause (i) of subsection (a)(6)(A) of this section for the year that is attributable under clause (ii)(I) of such subsection to the provision of benefits under the original medicare fee-for-service program option (as defined in section 1395w–22(a)(1)(B) of this title).

(3) Computation of average per capita monthly savings for local plans

For purposes of paragraph (1)(C)(i), the average per capita monthly savings referred to in such paragraph for an MA local plan and year is computed as follows:

(A) Determination of statewide average risk adjustment for local plans

(i) In general

Subject to clause (iii), the Secretary shall determine, at the same time rates are promulgated under section 1395w–23(b)(1) of this title (beginning with 2006) for each State, the average of the risk adjustment factors to be applied under section 1395w–23(a)(1)(C) of this title to payment for enrollees in that State for MA local plans.

(ii) Treatment of States for first year in which local plan offered

In the case of a State in which no MA local plan was offered in the previous year, the Secretary shall estimate such average. In making such estimate, the Secretary may use average risk adjustment factors applied to comparable States or applied on a national basis.

(iii) Authority to determine risk adjustment for areas other than States

The Secretary may provide for the determination and application of risk adjustment factors under this subparagraph on the basis of areas other than States or on a plan-specific basis.

(B) Determination of risk adjusted benchmark and risk-adjusted bid for local plans

For each MA plan offered in a local area in a State, the Secretary shall—

(i) adjust the applicable MA area-specific non-drug monthly benchmark amount (as defined in section 1395w–23(j)(1) of this title) for the area by the average risk adjustment factor computed under subparagraph (A); and

(ii) adjust the unadjusted MA statutory non-drug monthly bid amount by such applicable average risk adjustment factor.

(C) Determination of average per capita monthly savings

The average per capita monthly savings described in this subparagraph for an MA local plan is equal to the amount (if any) by which—

(i) the risk-adjusted benchmark amount computed under subparagraph (B)(i); exceeds

(ii) the risk-adjusted bid computed under subparagraph (B)(ii).

(4) Computation of average per capita monthly savings for regional plans

For purposes of paragraph (1)(C)(i), the average per capita monthly savings referred to in such paragraph for an MA regional plan and year is computed as follows:

(A) Determination of regionwide average risk adjustment for regional plans

(i) In general

The Secretary shall determine, at the same time rates are promulgated under section 1395w–23(b)(1) of this title (beginning with 2006) for each MA region the average of the risk adjustment factors to be applied under section 1395w–23(a)(1)(C) of this title to payment for enrollees in that region for MA regional plans.

(ii) Treatment of regions for first year in which regional plan offered

In the case of an MA region in which no MA regional plan was offered in the previous year, the Secretary shall estimate such average. In making such estimate, the Secretary may use average risk adjustment factors applied to comparable regions or applied on a national basis.

(iii) Authority to determine risk adjustment for areas other than regions

The Secretary may provide for the determination and application of risk adjustment factors under this subparagraph on the basis of areas other than MA regions or on a plan-specific basis.

(B) Determination of risk-adjusted benchmark and risk-adjusted bid for regional plans

For each MA regional plan offered in a region, the Secretary shall—

(i) adjust the applicable MA area-specific non-drug monthly benchmark amount (as defined in section 1395w–23(j)(2) of this title) for the region by the average risk adjustment factor computed under subparagraph (A); and

(ii) adjust the unadjusted MA statutory non-drug monthly bid amount by such applicable average risk adjustment factor.

(C) Determination of average per capita monthly savings

The average per capita monthly savings described in this subparagraph for an MA regional plan is equal to the amount (if any) by which—

(i) the risk-adjusted benchmark amount computed under subparagraph (B)(i); exceeds

(ii) the risk-adjusted bid computed under subparagraph (B)(ii).

(c) Uniform premium and bid amounts

Except as permitted under section 1395w–27(i) of this title, the MA monthly bid amount submitted under subsection (a)(6) of this section, the amounts of the MA monthly basic, prescription drug, and supplemental beneficiary premiums, and the MA monthly MSA premium charged under subsection (b) of this section of an MA organization under this part may not vary among individuals enrolled in the plan.

(d) Terms and conditions of imposing premiums

(1) In general

Each Medicare+Choice organization shall permit the payment of Medicare+Choice monthly basic, prescription drug, and supplemental beneficiary premiums on a monthly basis, may terminate election of individuals for a Medicare+Choice plan for failure to make premium payments only in accordance with section 1395w–21(g)(3)(B)(i) of this title, and may not provide for cash or other monetary rebates as an inducement for enrollment or otherwise.

(2) Beneficiary's option of payment through withholding from social security payment or use of electronic funds transfer mechanism

In accordance with regulations, an MA organization shall permit each enrollee, at the enrollee's option, to make payment of premiums (if any) under this part to the organization through—

(A) withholding from benefit payments in the manner provided under section 1395s of this title with respect to monthly premiums under section 1395r of this title;

(B) an electronic funds transfer mechanism (such as automatic charges of an account at a financial institution or a credit or debit card account); or

(C) such other means as the Secretary may specify, including payment by an employer or under employment-based retiree health coverage (as defined in section 1395w–132(c)(1) of this title) on behalf of an employee or former employee (or dependent).

All premium payments that are withheld under subparagraph (A) shall be credited to the appropriate Trust Fund (or Account thereof), as specified by the Secretary, under this subchapter and shall be paid to the MA organization involved. No charge may be imposed under an MA plan with respect to the election of the payment option described in subparagraph (A). The Secretary shall consult with the Commissioner of Social Security and the Secretary of the Treasury regarding methods for allocating premiums withheld under subparagraph (A) among the appropriate Trust Funds and Account.

(3) Information necessary for collection

In order to carry out paragraph (2)(A) with respect to an enrollee who has elected such paragraph to apply, the Secretary shall transmit to the Commissioner of Social Security—

(A) by the beginning of each year, the name, social security account number, consolidated monthly beneficiary premium described in paragraph (4) owed by such enrollee for each month during the year, and other information determined appropriate by the Secretary, in consultation with the Commissioner of Social Security; and

(B) periodically throughout the year, information to update the information previously transmitted under this paragraph for the year.

(4) Consolidated monthly beneficiary premium

In the case of an enrollee in an MA plan, the Secretary shall provide a mechanism for the consolidation of—

(A) the MA monthly basic beneficiary premium (if any);

(B) the MA monthly supplemental beneficiary premium (if any); and

(C) the MA monthly prescription drug beneficiary premium (if any).

(e) Limitation on enrollee liability

(1) For basic and additional benefits before 2006

For periods before 2006, in no event may—

(A) the Medicare+Choice monthly basic beneficiary premium (multiplied by 12) and the actuarial value of the deductibles, coinsurance, and copayments applicable on average to individuals enrolled under this part with a Medicare+Choice plan described in section 1395w–21(a)(2)(A) of this title of an organization with respect to required benefits described in section 1395w–22(a)(1)(A) of this title and additional benefits (if any) required under subsection (f)(1)(A) of this section for a year, exceed

(B) the actuarial value of the deductibles, coinsurance, and copayments that would be applicable on average to individuals entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter if they were not members of a Medicare+Choice organization for the year.

(2) For supplemental benefits before 2006

For periods before 2006, if the Medicare+Choice organization provides to its members enrolled under this part in a Medicare+Choice plan described in section 1395w–21(a)(2)(A) of this title with respect to

supplemental benefits described in section 1395w–22(a)(3) of this title, the sum of the Medicare+Choice monthly supplemental beneficiary premium (multiplied by 12) charged and the actuarial value of its deductibles, coinsurance, and copayments charged with respect to such benefits may not exceed the adjusted community rate for such benefits (as defined in subsection (f)(3) of this section).

(3) Determination on other basis

If the Secretary determines that adequate data are not available to determine the actuarial value under paragraph (1)(A), (2), or (4), the Secretary may determine such amount with respect to all individuals in same geographic area, the State, or in the United States, eligible to enroll in the Medicare+Choice plan involved under this part or on the basis of other appropriate data.

(4) Special rule for private fee-for-service plans and for basic benefits beginning in 2006

With respect to a Medicare+Choice private fee-for-service plan (other than a plan that is an MSA plan) and for periods beginning with 2006, with respect to an MA plan described in section 1395w–21(a)(2)(A) of this title, in no event may—

(A) the actuarial value of the deductibles, coinsurance, and copayments applicable on average to individuals enrolled under this part with such a plan of an organization with respect to benefits under the original medicare fee-for-service program option, exceed

(B) the actuarial value of the deductibles, coinsurance, and copayments that would be applicable with respect to such benefits on average to individuals entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter if they were not members of a Medicare+Choice organization for the year.

(f) Requirement for additional benefits before 2006

(1) Requirement

(A) In general

For years before 2006, each Medicare+Choice organization (in relation to a Medicare+Choice plan, other than an MSA plan, it offers) shall provide that if there is an excess amount (as defined in subparagraph (B)) for the plan for a contract year, subject to the succeeding provisions of this subsection, the organization shall provide to individuals such additional benefits (as the organization may specify) in a value which the Secretary determines is at least equal to the adjusted excess amount (as defined in subparagraph (C)).

(B) Excess amount

For purposes of this paragraph, the ''excess amount'', for an organization for a plan, is the amount (if any) by which—

(i) the average of the capitation payments made to the organization under section 1395w–23 of this title for the plan at the beginning of contract year, exceeds

(ii) the actuarial value of the required benefits described in section 1395w–22(a)(1)(A) of this title under the plan for individuals under this part, as determined based upon an adjusted community rate described in paragraph (3) (as reduced for the actuarial value of the coinsurance, copayments, and deductibles under parts A and B of this subchapter).

(C) Adjusted excess amount

For purposes of this paragraph, the ''adjusted excess amount'', for an organization for a plan, is the excess amount reduced to reflect any amount withheld and reserved for the organization for the year under paragraph (2).

(D) Uniform application

This paragraph shall be applied uniformly for all enrollees for a plan.

(E) Premium reductions

(i) In general

Subject to clause (ii), as part of providing any additional benefits required under subparagraph (A), a Medicare+Choice organization may elect a reduction in its payments under section 1395w–23(a)(1)(A) of this title with respect to a Medicare+Choice plan and the Secretary shall apply such reduction to reduce the premium under section 1395r of this title of each enrollee in such plan as provided in section 1395s(i) of this title.

(ii) Amount of reduction

The amount of the reduction under clause (i) with respect to any enrollee in a Medicare+Choice plan—

(I) may not exceed 125 percent of the premium described under section 1395r(a)(3) of this title; and

(II) shall apply uniformly to each enrollee of the Medicare+Choice plan to which such reduction applies.

(F) Construction

Nothing in this subsection shall be construed as preventing a Medicare+Choice organization from providing supplemental benefits (described in section 1395w–22(a)(3) of this title) that are in addition to the health care benefits otherwise required to be provided under this paragraph and from imposing a premium for such supplemental benefits.

(2) Stabilization fund

A Medicare+Choice organization may provide that a part of the value of an excess amount described in paragraph (1) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with such paragraph. Any of such value of the amount reserved which is not provided as additional benefits described in paragraph (1)(A) to individuals electing the Medicare+Choice

plan of the organization in accordance with such paragraph prior to the end of such periods, shall revert for the use of such trust funds.

(3) Adjusted community rate

For purposes of this subsection, subject to paragraph (4), the term ''adjusted community rate'' for a service or services means, at the election of a Medicare+Choice organization, either—

(A) the rate of payment for that service or services which the Secretary annually determines would apply to an individual electing a Medicare+Choice plan under this part if the rate of payment were determined under a ''community rating system'' (as defined in section 300e–1(8) of this title, other than subparagraph (C)), or

(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to such an individual, as the Secretary annually estimates is attributable to that service or services,

but adjusted for differences between the utilization characteristics of the individuals electing coverage under this part and the utilization characteristics of the other enrollees with the plan (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of individuals selecting other Medicare+Choice coverage, or Medicare+Choice eligible individuals in the area, in the State, or in the United States, eligible to elect Medicare+Choice coverage under this part and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

(4) Determination based on insufficient data

For purposes of this subsection, if the Secretary finds that there is insufficient enrollment experience to determine an average of the capitation payments to be made under this part at the beginning of a contract period or to determine (in the case of a newly operated provider-sponsored organization or other new organization) the adjusted community rate for the organization, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this part and may determine such a rate using data in the general commercial marketplace.

(g) Prohibition of State imposition of premium taxes

No State may impose a premium tax or similar tax with respect to payments to Medicare+Choice organizations under section 1395w–23 of this title or premiums paid to such organizations under this part.

(h) Permitting use of segments of service areas

The Secretary shall permit a Medicare+Choice organization to elect to apply the provisions of this section uniformly to separate segments of a service area (rather than uniformly to an entire service area) as long as such segments are composed of one or more Medicare+Choice payment areas.

(Aug. 14, 1935, ch. 531, title XVIII, § 1854, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 308; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(k)(6)(C), title V, §§ 515(a), 516(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–367, 1501A–384; Pub. L. 106–554, § 1(a)(6) [title VI, §§ 606(a)(1), 622(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–557, 2763A–566; Pub. L. 107–188, title V, § 532(b)(1), June 12, 2002, 116 Stat. 696; Pub. L. 108–173, title II, §§ 222(a)(1), (b), (c), (g), 232(b), title IX, § 900(e)(1)(H), Dec. 8, 2003, 117 Stat. 2193, 2196, 2199, 2203, 2208, 2371.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (a)(6)(B)(iii), is classified to section 1395w–101 et seq. of this title.

Parts A and B of this subchapter, referred to in subsecs. (b)(1)(C)(ii)(III), (iv), (e)(1)(B), (4)(B), and (f)(1)(B)(ii), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Pub. L. 108–173, § 222(g)(1)(A), substituted ''Premiums and bid amounts'' for ''Premiums'' in section catchline.

Subsec. (a). Pub. L. 108–173, § 222(g)(1)(B), inserted '', bid amounts,'' after ''premiums'' in heading.

Subsec. (a)(1). Pub. L. 108–173, § 222(a)(1)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Not later than the second Monday in September of 2002, 2003, and 2004 (or July 1 of each other year), each Medicare+Choice organization shall submit to the Secretary, in a form and manner specified by the Secretary and for each Medicare+Choice plan for the service area (or segment of such an area if permitted under subsection (h) of this section) in which it intends to be offered in the following year—

''(A) the information described in paragraph (2), (3), or (4) for the type of plan involved; and

''(B) the enrollment capacity (if any) in relation to the plan and area.''

Subsec. (a)(2). Pub. L. 108–173, § 222(g)(1)(C), inserted ''before 2006'' after ''for coordinated care plans'' in heading and ''for a year before 2006'' after ''section 1395w–21(a)(2)(A) of this title'' in introductory provisions.

Subsec. (a)(3). Pub. L. 108–173, § 222(g)(1)(D), substituted ''For an MSA plan for any year'' for ''For an MSA plan described'' in introductory provisions.

Subsec. (a)(4). Pub. L. 108–173, § 222(g)(1)(E), inserted ''before 2006'' after ''for private fee-for-service plans'' in heading and ''for a year before 2006'' after ''section 1395w–22(a)(1)(A) of this title'' in introductory provisions.

Subsec. (a)(5)(A). Pub. L. 108–173, § 900(e)(1)(H), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

Pub. L. 108–173, § 222(g)(1)(F), inserted ''paragraphs (2) and (4) of'' after ''filed under''.

Subsec. (a)(5)(B). Pub. L. 108–173, § 222(g)(1)(G), inserted '', in the case of an MA private fee-for-service plan,'' after ''paragraph (3) or''.

Subsec. (a)(6). Pub. L. 108–173, § 222(a)(1)(B), added par. (6).

Subsec. (b)(1)(A). Pub. L. 108–173, § 222(b)(1)(A), (g)(1)(H), substituted ''Subject to the rebate under subparagraph (C), the monthly amount (if any)'' for ''The monthly amount'' and a comma for ''and'' after ''basic beneficiary premium'' and inserted before period at end '', and, if the plan provides qualified prescription drug coverage, the MA monthly prescription drug beneficiary premium''.

Subsec. (b)(1)(C). Pub. L. 108–173, § 222(b)(1)(B), added subpar. (C).

Subsec. (b)(2). Pub. L. 108–173, § 222(b)(2), inserted ''and bid'' after ''Premium'' in heading, added subpars.

(A) to (C) and (E), redesignated former subpar. (C) as (D), and struck out former subpars. (A) and (B) which defined the terms ''Medicare+Choice monthly basic beneficiary premium'' and ''Medicare+Choice monthly supplemental beneficiary premium''.

Subsec. (b)(3), (4). Pub. L. 108–173, § 222(b)(3), added pars. (3) and (4).

Subsec. (c). Pub. L. 108–173, § 222(g)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The Medicare+Choice monthly basic and supplemental beneficiary premium, the Medicare+Choice monthly MSA premium charged under subsection (b) of this section of a Medicare+Choice organization under this part may not vary among individuals enrolled in the plan.''

Subsec. (d). Pub. L. 108–173, § 222(c), (g)(3), designated existing provisions as par. (1), inserted heading and '', prescription drug,'' after ''basic'', and added pars. (2) to (4).

Subsec. (e)(1). Pub. L. 108–173, § 222(g)(4)(A), inserted ''before 2006'' after ''benefits'' in heading and substituted ''For periods before 2006, in'' for ''In'' in introductory provisions.

Subsec. (e)(2). Pub. L. 108–173, § 222(g)(4)(B), inserted ''before 2006'' after ''benefits'' in heading and substituted ''For periods before 2006, if'' for ''If'' in text.

Subsec. (e)(3). Pub. L. 108–173, § 222(g)(4)(C), substituted '', (2), or (4)'' for ''or (2)''.

Subsec. (e)(4). Pub. L. 108–173, § 222(g)(4)(D)(i), (ii), inserted ''and for basic benefits beginning in 2006'' after ''plans'' in heading and ''and for periods beginning with 2006, with respect to an MA plan described in section 1395w–21(a)(2)(A) of this title'' after ''MSA plan)'' in introductory provisions.

Subsec. (e)(4)(A). Pub. L. 108–173, § 222(g)(4)(D)(iii), substituted ''benefits under the original medicare fee-for-service program option'' for ''required benefits described in section 1395w–22(a)(1) of this title''.

Subsec. (e)(4)(B). Pub. L. 108–173, § 222(g)(4)(D)(iv), inserted ''with respect to such benefits'' after ''would be applicable''.

Subsec. (f). Pub. L. 108–173, § 222(g)(5)(A), inserted ''before 2006'' after ''additional benefits'' in heading.

Subsec. (f)(1)(A). Pub. L. 108–173, § 222(g)(5)(B), substituted ''For years before 2006, each'' for ''Each''.

Subsec. (g). Pub. L. 108–173, § 232(b), inserted ''or premiums paid to such organizations under this part'' after ''section 1395w–23 of this title''.

2002—Subsec. (a)(1). Pub. L. 107–188 substituted ''Not later than the second Monday in September of 2002, 2003, and 2004 (or July 1 of each other year)'' for ''Not later than July 1 of each year'' in introductory provisions.

2000—Subsec. (a)(5)(A). Pub. L. 106–554, § 1(a)(6) [title VI, § 622(a)], substituted ''values so submitted'' for ''value so submitted'' and inserted at end ''The Chief Actuary of the Health Care Financing Administration shall review the actuarial assumptions and data used by the Medicare+Choice organization with respect to such rates, amounts, and values so submitted to determine the appropriateness of such assumptions and data.''

Subsec. (f)(1)(E), (F). Pub. L. 106–554, § 1(a)(6) [title VI, § 606(a)(1)], added subpar. (E) and redesignated former subpar. (E) as (F).

1999—Subsec. (a)(1). Pub. L. 106–113, § 1000(a)(6) [title V, § 516(a)], substituted ''July 1'' for ''May 1'' in introductory provisions.

Pub. L. 106–113, § 1000(a)(6) [title V, § 515(a)(1)], inserted ''(or segment of such an area if permitted under subsection (h) of this section)'' after ''service area'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(i)(I)], inserted ''section'' before ''1395w–22(a)(1)(A) of this title'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(i)(II)], inserted ''section'' after ''described in'' in introductory provisions.

Subsec. (a)(3)(A), (B). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(ii)], inserted ''section'' after ''described in''.

Subsec. (a)(4). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(iii)(I)], which directed insertion of ''section'' after ''described in'', was executed by making the insertion after ''described in'' the second time appearing in introductory provisions to reflect the probable intent of Congress.

Subsec. (a)(4)(A). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(iii)(II)], inserted ''section'' after ''described in'' in introductory provisions.

Subsec. (a)(4)(B). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(iii)(III)], inserted ''section'' after ''described in''.

Subsec. (h). Pub. L. 106–113, § 1000(a)(6) [title V, § 515(a)(2)], added subsec. (h).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 222(a)(1), (b), (c), (g) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Pub. L. 108–173, title II, § 232(c), Dec. 8, 2003, 117 Stat. 2209, provided that: ''The amendments made by this subsection [probably should be ''this section'', amending this section and section 1395w–26 of this title] shall take effect on the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–188, title V, § 532(b)(2), June 12, 2002, 116 Stat. 696, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to information submitted for years beginning with 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title VI, § 606(a)(1)] of Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

Pub. L. 106–554, § 1(a)(6) [title VI, § 622(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–566, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to submissions made on or after May 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, § 321(k)(6)(C)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 515(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–384, provided that: ''The amendments made by this section [amending this section] apply to contract years beginning on or after January 1, 2001.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 516(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–384, provided that: ''The amendment made by subsection (a) [amending this section] applies to information submitted by Medicare+Choice organizations for years beginning with 1999.''

§ 1395w–25. Organizational and financial requirements for Medicare+Choice organizations; provider-sponsored organizations

(a) Organized and licensed under State law

(1) In general

Subject to paragraphs (2) and (3), a Medicare+Choice organization shall be orga-

nized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers a Medicare+Choice plan.

(2) Special exception for provider-sponsored organizations

(A) In general

In the case of a provider-sponsored organization that seeks to offer a Medicare+Choice plan in a State, the Secretary shall waive the requirement of paragraph (1) that the organization be licensed in that State if—

(i) the organization files an application for such waiver with the Secretary by not later than November 1, 2002, and

(ii) the Secretary determines, based on the application and other evidence presented to the Secretary, that any of the grounds for approval of the application described in subparagraph (B), (C), or (D) has been met.

(B) Failure to act on licensure application on a timely basis

The ground for approval of such a waiver application described in this subparagraph is that the State has failed to complete action on a licensing application of the organization within 90 days of the date of the State's receipt of a substantially complete application. No period before August 5, 1997, shall be included in determining such 90-day period.

(C) Denial of application based on discriminatory treatment

The ground for approval of such a waiver application described in this subparagraph is that the State has denied such a licensing application and—

(i) the standards or review process imposed by the State as a condition of approval of the license imposes any material requirements, procedures, or standards (other than solvency requirements) to such organizations that are not generally applicable to other entities engaged in a substantially similar business, or

(ii) the State requires the organization, as a condition of licensure, to offer any product or plan other than a Medicare+Choice plan.

(D) Denial of application based on application of solvency requirements

With respect to waiver applications filed on or after the date of publication of solvency standards under section 1395w–26(a) of this title, the ground for approval of such a waiver application described in this subparagraph is that the State has denied such a licensing application based (in whole or in part) on the organization's failure to meet applicable solvency requirements and—

(i) such requirements are not the same as the solvency standards established under section 1395w–26(a) of this title; or

(ii) the State has imposed as a condition of approval of the license documentation or information requirements relating to solvency or other material requirements, procedures, or standards relating to solvency that are different from the requirements, procedures, and standards applied by the Secretary under subsection (d)(2) of this section.

For purposes of this paragraph, the term ''solvency requirements'' means requirements relating to solvency and other matters covered under the standards established under section 1395w–26(a) of this title.

(E) Treatment of waiver

In the case of a waiver granted under this paragraph for a provider-sponsored organization with respect to a State—

(i) Limitation to State

The waiver shall be effective only with respect to that State and does not apply to any other State.

(ii) Limitation to 36-month period

The waiver shall be effective only for a 36-month period and may not be renewed.

(iii) Conditioned on compliance with consumer protection and quality standards

The continuation of the waiver is conditioned upon the organization's compliance with the requirements described in subparagraph (G).

(iv) Preemption of State law

Any provisions of law of that State which relate to the licensing of the organization and which prohibit the organization from providing coverage pursuant to a contract under this part shall be superseded.

(F) Prompt action on application

The Secretary shall grant or deny such a waiver application within 60 days after the date the Secretary determines that a substantially complete waiver application has been filed. Nothing in this section shall be construed as preventing an organization which has had such a waiver application denied from submitting a subsequent waiver application.

(G) Application and enforcement of State consumer protection and quality standards

(i) In general

A waiver granted under this paragraph to an organization with respect to licensing under State law is conditioned upon the organization's compliance with all consumer protection and quality standards insofar as such standards—

(I) would apply in the State to the organization if it were licensed under State law;

(II) are generally applicable to other Medicare+Choice organizations and plans in the State; and

(III) are consistent with the standards established under this part.

Such standards shall not include any standard preempted under section 1395w–26(b)(3)(B) of this title.

(ii) Incorporation into contract

In the case of such a waiver granted to an organization with respect to a State,

the Secretary shall incorporate the requirement that the organization (and Medicare+Choice plans it offers) comply with standards under clause (i) as part of the contract between the Secretary and the organization under section 1395w–27 of this title.

(iii) Enforcement

In the case of such a waiver granted to an organization with respect to a State, the Secretary may enter into an agreement with the State under which the State agrees to provide for monitoring and enforcement activities with respect to compliance of such an organization and its Medicare+Choice plans with such standards. Such monitoring and enforcement shall be conducted by the State in the same manner as the State enforces such standards with respect to other Medicare+Choice organizations and plans, without discrimination based on the type of organization to which the standards apply. Such an agreement shall specify or establish mechanisms by which compliance activities are undertaken, while not lengthening the time required to review and process applications for waivers under this paragraph.

(H) Report

By not later than December 31, 2001, the Secretary shall submit to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate a report regarding whether the waiver process under this paragraph should be continued after December 31, 2002. In making such recommendation, the Secretary shall consider, among other factors, the impact of such process on beneficiaries and on the long-term solvency of the program under this subchapter.

(3) Licensure does not substitute for or constitute certification

The fact that an organization is licensed in accordance with paragraph (1) does not deem the organization to meet other requirements imposed under this part.

(b) Assumption of full financial risk

The Medicare+Choice organization shall assume full financial risk on a prospective basis for the provision of the health care services for which benefits are required to be provided under section 1395w–22(a)(1) of this title, except that the organization—

(1) may obtain insurance or make other arrangements for the cost of providing to any enrolled member such services the aggregate value of which exceeds such aggregate level as the Secretary specifies from time to time,

(2) may obtain insurance or make other arrangements for the cost of such services provided to its enrolled members other than through the organization because medical necessity required their provision before they could be secured through the organization,

(3) may obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

(4) may make arrangements with physicians or other health care professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

(c) Certification of provision against risk of insolvency for unlicensed PSOs

(1) In general

Each Medicare+Choice organization that is a provider-sponsored organization, that is not licensed by a State under subsection (a) of this section, and for which a waiver application has been approved under subsection (a)(2) of this section, shall meet standards established under section 1395w–26(a) of this title relating to the financial solvency and capital adequacy of the organization.

(2) Certification process for solvency standards for PSOs

The Secretary shall establish a process for the receipt and approval of applications of a provider-sponsored organization described in paragraph (1) for certification (and periodic recertification) of the organization as meeting such solvency standards. Under such process, the Secretary shall act upon such a certification application not later than 60 days after the date the application has been received.

(d) "Provider-sponsored organization" defined

(1) In general

In this part, the term ''provider-sponsored organization'' means a public or private entity—

(A) that is established or organized, and operated, by a health care provider, or group of affiliated health care providers,

(B) that provides a substantial proportion (as defined by the Secretary in accordance with paragraph (2)) of the health care items and services under the contract under this part directly through the provider or affiliated group of providers, and

(C) with respect to which the affiliated providers share, directly or indirectly, substantial financial risk with respect to the provision of such items and services and have at least a majority financial interest in the entity.

(2) Substantial proportion

In defining what is a ''substantial proportion'' for purposes of paragraph (1)(B), the Secretary—

(A) shall take into account the need for such an organization to assume responsibility for providing—

(i) significantly more than the majority of the items and services under the contract under this section through its own affiliated providers; and

(ii) most of the remainder of the items and services under the contract through providers with which the organization has

an agreement to provide such items and services,

in order to assure financial stability and to address the practical considerations involved in integrating the delivery of a wide range of service providers;

(B) shall take into account the need for such an organization to provide a limited proportion of the items and services under the contract through providers that are neither affiliated with nor have an agreement with the organization; and

(C) may allow for variation in the definition of substantial proportion among such organizations based on relevant differences among the organizations, such as their location in an urban or rural area.

(3) Affiliation

For purposes of this subsection, a provider is ''affiliated'' with another provider if, through contract, ownership, or otherwise—

(A) one provider, directly or indirectly, controls, is controlled by, or is under common control with the other,

(B) both providers are part of a controlled group of corporations under section 1563 of the Internal Revenue Code of 1986,

(C) each provider is a participant in a lawful combination under which each provider shares substantial financial risk in connection with the organization's operations, or

(D) both providers are part of an affiliated service group under section 414 of such Code.

(4) Control

For purposes of paragraph (3), control is presumed to exist if one party, directly or indirectly, owns, controls, or holds the power to vote, or proxies for, not less than 51 percent of the voting rights or governance rights of another.

(5) "Health care provider" defined

In this subsection, the term ''health care provider'' means—

(A) any individual who is engaged in the delivery of health care services in a State and who is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, and

(B) any entity that is engaged in the delivery of health care services in a State and that, if it is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, is so licensed.

(6) Regulations

The Secretary shall issue regulations to carry out this subsection.

(Aug. 14, 1935, ch. 531, title XVIII, § 1855, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 312.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (d)(3)(B), (D), is classified generally to Title 26, Internal Revenue Code.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 1395w–26. Establishment of standards

(a) Establishment of solvency standards for provider-sponsored organizations

(1) Establishment

(A) In general

The Secretary shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, standards described in section 1395w–25(c)(1) of this title (relating to the financial solvency and capital adequacy of the organization) that entities must meet to qualify as provider-sponsored organizations under this part.

(B) Factors to consider for solvency standards

In establishing solvency standards under subparagraph (A) for provider-sponsored organizations, the Secretary shall consult with interested parties and shall take into account—

(i) the delivery system assets of such an organization and ability of such an organization to provide services directly to enrollees through affiliated providers,

(ii) alternative means of protecting against insolvency, including reinsurance, unrestricted surplus, letters of credit, guarantees, organizational insurance coverage, partnerships with other licensed entities, and valuation attributable to the ability of such an organization to meet its service obligations through direct delivery of care, and

(iii) any standards developed by the National Association of Insurance Commissioners specifically for risk-based health care delivery organizations.

(C) Enrollee protection against insolvency

Such standards shall include provisions to prevent enrollees from being held liable to any person or entity for the Medicare+Choice organization's debts in the event of the organization's insolvency.

(2) Publication of notice

In carrying out the rulemaking process under this subsection, the Secretary, after consultation with the National Association of Insurance Commissioners, the American Academy of Actuaries, organizations representative of medicare beneficiaries, and other interested parties, shall publish the notice provided for under section 564(a) of title 5 by not later than 45 days after August 5, 1997.

(3) Target date for publication of rule

As part of the notice under paragraph (2), and for purposes of this subsection, the ''tar-

get date for publication'' (referred to in section 564(a)(5) of such title) shall be April 1, 1998.

(4) Abbreviated period for submission of comments

In applying section 564(c) of such title under this subsection, ''15 days'' shall be substituted for ''30 days''.

(5) Appointment of negotiated rulemaking committee and facilitator

The Secretary shall provide for—

(A) the appointment of a negotiated rulemaking committee under section 565(a) of such title by not later than 30 days after the end of the comment period provided for under section 564(c) of such title (as shortened under paragraph (4)), and

(B) the nomination of a facilitator under section 566(c) of such title by not later than 10 days after the date of appointment of the committee.

(6) Preliminary committee report

The negotiated rulemaking committee appointed under paragraph (5) shall report to the Secretary, by not later than January 1, 1998, regarding the committee's progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before 1 month before the target date for publication of the rule. If the committee reports that the committee has failed to make significant progress towards such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this subsection through such other methods as the Secretary may provide.

(7) Final committee report

If the committee is not terminated under paragraph (6), the rulemaking committee shall submit a report containing a proposed rule by not later than 1 month before the target date of publication.

(8) Interim, final effect

The Secretary shall publish a rule under this subsection in the Federal Register by not later than the target date of publication. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 60 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications of entities to be certified as provider-sponsored organizations pursuant to such rules and consistent with this subsection.

(9) Publication of rule after public comment

The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target date of publication.

(b) Establishment of other standards

(1) In general

The Secretary shall establish by regulation other standards (not described in subsection (a) of this section) for Medicare+Choice organizations and plans consistent with, and to carry out, this part. The Secretary shall publish such regulations by June 1, 1998. In order to carry out this requirement in a timely manner, the Secretary may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

(2) Use of current standards

Consistent with the requirements of this part, standards established under this subsection shall be based on standards established under section 1395mm of this title to carry out analogous provisions of such section.

(3) Relation to State laws

The standards established under this part shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to MA plans which are offered by MA organizations under this part.

(4) Prohibition of midyear implementation of significant new regulatory requirements

The Secretary may not implement, other than at the beginning of a calendar year, regulations under this section that impose new, significant regulatory requirements on a Medicare+Choice organization or plan.

(Aug. 14, 1935, ch. 531, title XVIII, § 1856, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 317; amended Pub. L. 106–554, § 1(a)(6) [title VI, §§ 612(a), 614(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–560; Pub. L. 108–173, title II, § 232(a), Dec. 8, 2003, 117 Stat. 2208.)

AMENDMENTS

2003—Subsec. (b)(3). Pub. L. 108–173 reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) and (B) stating general rule and listing standards specifically superseded.

2000—Subsec. (b)(3)(B)(i). Pub. L. 106–554, § 1(a)(6) [title VI, § 614(a)(1)], inserted ''(including cost-sharing requirements)'' after ''Benefit requirements''.

Subsec. (b)(3)(B)(iv). Pub. L. 106–554, § 1(a)(6) [title VI, § 614(a)(2)], added cl. (iv).

Subsec. (b)(4). Pub. L. 106–554, § 1(a)(6) [title VI, § 612(a)], added par. (4).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VI, § 612(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–560, provided that: ''The amendment made by subsection (a) [amending this section] takes effect on the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, § 1(a)(6) [title VI, § 614(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–561, provided that: ''The amendments made by subsection (a) [amending this section] take effect on the date of the enactment of this Act [Dec. 21, 2000].''

§ 1395w–27. Contracts with Medicare+Choice organizations

(a) In general

The Secretary shall not permit the election under section 1395w–21 of this title of a Medicare+Choice plan offered by a Medicare+Choice organization under this part, and no payment shall be made under section 1395w–23 of this title to an organization, unless the Secretary has entered into a contract under this section with the organization with respect to the offering of such plan. Such a contract with an organization may cover more than 1 Medicare+Choice plan. Such contract shall provide that the organization agrees to comply with the applicable requirements and standards of this part and the terms and conditions of payment as provided for in this part.

(b) Minimum enrollment requirements

(1) In general

Subject to paragraph (2), the Secretary may not enter into a contract under this section with a Medicare+Choice organization unless the organization has—

(A) at least 5,000 individuals (or 1,500 individuals in the case of an organization that is a provider-sponsored organization) who are receiving health benefits through the organization, or

(B) at least 1,500 individuals (or 500 individuals in the case of an organization that is a provider-sponsored organization) who are receiving health benefits through the organization if the organization primarily serves individuals residing outside of urbanized areas.

(2) Application to MSA plans

In applying paragraph (1) in the case of a Medicare+Choice organization that is offering an MSA plan, paragraph (1) shall be applied by substituting covered lives for individuals.

(3) Allowing transition

The Secretary may waive the requirement of paragraph (1) during the first 3 contract years with respect to an organization.

(c) Contract period and effectiveness

(1) Period

Each contract under this section shall be for a term of at least 1 year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term.

(2) Termination authority

In accordance with procedures established under subsection (h) of this section, the Secretary may at any time terminate any such contract if the Secretary determines that the organization—

(A) has failed substantially to carry out the contract;

(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part; or

(C) no longer substantially meets the applicable conditions of this part.

(3) Effective date of contracts

The effective date of any contract executed pursuant to this section shall be specified in the contract, except that in no case shall a contract under this section which provides for coverage under an MSA plan be effective before January 1999 with respect to such coverage.

(4) Previous terminations

(A) In general

The Secretary may not enter into a contract with a Medicare+Choice organization if a previous contract with that organization under this section was terminated at the request of the organization within the preceding 2-year period, except as provided in subparagraph (B) and except in such other circumstances which warrant special consideration, as determined by the Secretary.

(B) Earlier re-entry permitted where change in payment policy

Subparagraph (A) shall not apply with respect to the offering by a Medicare+Choice organization of a Medicare+Choice plan in a Medicare+Choice payment area if during the 6-month period beginning on the date the organization notified the Secretary of the intention to terminate the most recent previous contract, there was a legislative change enacted (or a regulatory change adopted) that has the effect of increasing payment amounts under section 1395w–23 of this title for that Medicare+Choice payment area.

(5) Contracting authority

The authority vested in the Secretary by this part may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this subchapter.

(d) Protections against fraud and beneficiary protections

(1) Periodic auditing

The Secretary shall provide for the annual auditing of the financial records (including data relating to medicare utilization and costs, including allowable costs under section 1395w–27a(c) of this title) of at least one-third of the Medicare+Choice organizations offering Medicare+Choice plans under this part. The Comptroller General shall monitor auditing activities conducted under this subsection.

(2) Inspection and audit

Each contract under this section shall provide that the Secretary, or any person or organization designated by the Secretary—

(A) shall have the right to inspect or otherwise evaluate (i) the quality, appropriateness, and timeliness of services performed under the contract, and (ii) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

(B) shall have the right to audit and inspect any books and records of the

Medicare+Choice organization that pertain (i) to the ability of the organization to bear the risk of potential financial losses, or (ii) to services performed or determinations of amounts payable under the contract.

(3) Enrollee notice at time of termination

Each contract under this section shall require the organization to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this subchapter, to each individual enrolled with the organization under this part.

(4) Disclosure

(A) In general

Each Medicare+Choice organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

(i) Such information as the Secretary may require demonstrating that the organization has a fiscally sound operation.

(ii) A copy of the report, if any, filed with the Secretary containing the information required to be reported under section 1320a–3 of this title by disclosing entities.

(iii) A description of transactions, as specified by the Secretary, between the organization and a party in interest. Such transactions shall include—

(I) any sale or exchange, or leasing of any property between the organization and a party in interest;

(II) any furnishing for consideration of goods, services (including management services), or facilities between the organization and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical group (or groups), individual practice association (or associations), or any combination thereof; and

(III) any lending of money or other extension of credit between an organization and a party in interest.

The Secretary may require that information reported respecting an organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(B) "Party in interest" defined

For the purposes of this paragraph, the term ''party in interest'' means—

(i) any director, officer, partner, or employee responsible for management or administration of a Medicare+Choice organization, any person who is directly or indirectly the beneficial owner of more than 5 percent of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 percent of the organization, and, in the case of a Medicare+Choice organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

(ii) any entity in which a person described in clause (i)—

(I) is an officer or director;

(II) is a partner (if such entity is organized as a partnership);

(III) has directly or indirectly a beneficial interest of more than 5 percent of the equity; or

(IV) has a mortgage, deed of trust, note, or other interest valuing more than 5 percent of the assets of such entity;

(iii) any person directly or indirectly controlling, controlled by, or under common control with an organization; and

(iv) any spouse, child, or parent of an individual described in clause (i).

(C) Access to information

Each Medicare+Choice organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.

(5) Loan information

The contract shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties.

(e) Additional contract terms

(1) In general

The contract shall contain such other terms and conditions not inconsistent with this part (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

(2) Cost-sharing in enrollment-related costs

(A) In general

A Medicare+Choice organization and a PDP sponsor under part D of this subchapter shall pay the fee established by the Secretary under subparagraph (B).

(B) Authorization

The Secretary is authorized to charge a fee to each Medicare+Choice organization with a contract under this part and each PDP sponsor with a contract under part D of this subchapter that is equal to the organization's or sponsor's pro rata share (as determined by the Secretary) of the aggregate amount of fees which the Secretary is directed to collect in a fiscal year. Any amounts collected shall be available without further appropriation to the Secretary for the purpose of carrying out section 1395w–21 of this title (relating to enrollment and dissemination of information), section 1395w–101(c) of this title, and section 1395b–4 of this title (relating to the health insurance counseling and assistance program).

(C) Authorization of appropriations

There are authorized to be appropriated for the purposes described in subparagraph

(B) for each fiscal year beginning with fiscal year 2001 and ending with fiscal year 2005 an amount equal to $100,000,000, and for each fiscal year beginning with fiscal year 2006 an amount equal to $200,000,000, reduced by the amount of fees authorized to be collected under this paragraph and section 1395w–112(b)(3)(D) of this title for the fiscal year.

(D) Limitation

In any fiscal year the fees collected by the Secretary under subparagraph (B) shall not exceed the lesser of—

(i) the estimated costs to be incurred by the Secretary in the fiscal year in carrying out the activities described in section 1395w–21 of this title and section 1395w–101(c) of this title and section 1395b–4 of this title; or

(ii)(I) $200,000,000 in fiscal year 1998;

(II) $150,000,000 in fiscal year 1999;

(III) $100,000,000 in fiscal year 2000;

(IV) the Medicare+Choice portion (as defined in subparagraph (E)) of $100,000,000 in fiscal year 2001 and each succeeding fiscal year before fiscal year 2006; and

(V) the applicable portion (as defined in subparagraph (F)) of $200,000,000 in fiscal year 2006 and each succeeding fiscal year.

(E) Medicare+Choice portion defined

In this paragraph, the term ''Medicare+Choice portion'' means, for a fiscal year, the ratio, as estimated by the Secretary, of—

(i) the average number of individuals enrolled in Medicare+Choice plans during the fiscal year, to

(ii) the average number of individuals entitled to benefits under part A of this subchapter, and enrolled under part B of this subchapter, during the fiscal year.

(F) Applicable portion defined

In this paragraph, the term ''applicable portion'' means, for a fiscal year—

(i) with respect to MA organizations, the Secretary's estimate of the total proportion of expenditures under this subchapter that are attributable to expenditures made under this part (including payments under part D of this subchapter that are made to such organizations); or

(ii) with respect to PDP sponsors, the Secretary's estimate of the total proportion of expenditures under this subchapter that are attributable to expenditures made to such sponsors under part D of this subchapter.

(3) Agreements with federally qualified health centers

(A) Payment levels and amounts

A contract under this section with an MA organization shall require the organization to provide, in any written agreement described in section 1395w–23(a)(4) of this title between the organization and a federally qualified health center, for a level and amount of payment to the federally qualified health center for services provided by such health center that is not less than the level and amount of payment that the plan would make for such services if the services had been furnished by a entity providing similar services that was not a federally qualified health center.

(B) Cost-sharing

Under the written agreement referred to in subparagraph (A), a federally qualified health center must accept the payment amount referred to in such subparagraph plus the Federal payment provided for in section 1395*l*(a)(3)(B) of this title as payment in full for services covered by the agreement, except that such a health center may collect any amount of cost-sharing permitted under the contract under this section, so long as the amounts of any deductible, coinsurance, or copayment comply with the requirements under section 1395w–24(e) of this title.

(f) Prompt payment by Medicare+Choice organization

(1) Requirement

A contract under this part shall require a Medicare+Choice organization to provide prompt payment (consistent with the provisions of sections 1395h(c)(2) and 1395u(c)(2) of this title) of claims submitted for services and supplies furnished to enrollees pursuant to the contract, if the services or supplies are not furnished under a contract between the organization and the provider or supplier (or in the case of a Medicare+Choice private fee-for-service plan, if a claim is submitted to such organization by an enrollee).

(2) Secretary's option to bypass noncomplying organization

In the case of a Medicare+Choice eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with paragraph (1), the Secretary may provide for direct payment of the amounts owed to providers and suppliers (or, in the case of a Medicare+Choice private fee-for-service plan, amounts owed to the enrollees) for covered services and supplies furnished to individuals enrolled under this part under the contract. If the Secretary provides for the direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this part to reflect the amount of the Secretary's payments (and the Secretary's costs in making the payments).

(g) Intermediate sanctions

(1) In general

If the Secretary determines that a Medicare+Choice organization with a contract under this section—

(A) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(B) imposes premiums on individuals enrolled under this part in excess of the amount of the Medicare+Choice monthly basic and supplemental beneficiary premiums permitted under section 1395w–24 of this title;

(C) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this part;

(D) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this part) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

(E) misrepresents or falsifies information that is furnished—

(i) to the Secretary under this part, or

(ii) to an individual or to any other entity under this part;

(F) fails to comply with the applicable requirements of section 1395w–22(j)(3) or 1395w–22(k)(2)(A)(ii) of this title; or

(G) employs or contracts with any individual or entity that is excluded from participation under this subchapter under section 1320a–7 or 1320a–7a of this title for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services;

the Secretary may provide, in addition to any other remedies authorized by law, for any of the remedies described in paragraph (2).

(2) Remedies

The remedies described in this paragraph are—

(A) civil money penalties of not more than $25,000 for each determination under paragraph (1) or, with respect to a determination under subparagraph (D) or (E)(i) of such paragraph, of not more than $100,000 for each such determination, plus, with respect to a determination under paragraph (1)(B), double the excess amount charged in violation of such paragraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under paragraph (1)(D), $15,000 for each individual not enrolled as a result of the practice involved,

(B) suspension of enrollment of individuals under this part after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or

(C) suspension of payment to the organization under this part for individuals enrolled after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

(3) Other intermediate sanctions

In the case of a Medicare+Choice organization for which the Secretary makes a determination under subsection (c)(2) of this section the basis of which is not described in paragraph (1), the Secretary may apply the following intermediate sanctions:

(A) Civil money penalties of not more than $25,000 for each determination under subsection (c)(2) of this section if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract.

(B) Civil money penalties of not more than $10,000 for each week beginning after the initiation of civil money penalty procedures by the Secretary during which the deficiency that is the basis of a determination under subsection (c)(2) of this section exists.

(C) Suspension of enrollment of individuals under this part after the date the Secretary notifies the organization of a determination under subsection (c)(2) of this section and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.

(D) Civil monetary penalties of not more than $100,000, or such higher amount as the Secretary may establish by regulation, where the finding under subsection (c)(2)(A) of this section is based on the organization's termination of its contract under this section other than at a time and in a manner provided for under subsection (a) of this section.

(4) Civil money penalties

The provisions of section 1320a–7a (other than subsections (a) and (b)) of this title shall apply to a civil money penalty under paragraph (2) or (3) in the same manner as they apply to a civil money penalty or proceeding under section 1320a–7a(a) of this title.

(h) Procedures for termination

(1) In general

The Secretary may terminate a contract with a Medicare+Choice organization under this section in accordance with formal investigation and compliance procedures established by the Secretary under which—

(A) the Secretary provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under subsection (c)(2) of this section; and

(B) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before terminating the contract.

(2) Exception for imminent and serious risk to health

Paragraph (1) shall not apply if the Secretary determines that a delay in termination, resulting from compliance with the procedures

specified in such paragraph prior to termination, would pose an imminent and serious risk to the health of individuals enrolled under this part with the organization.

(i) Medicare+Choice program compatibility with employer or union group health plans

(1) Contracts with MA organizations

To facilitate the offering of Medicare+Choice plans under contracts between Medicare+Choice organizations and employers, labor organizations, or the trustees of a fund established by one or more employers or labor organizations (or combination thereof) to furnish benefits to the entity's employees, former employees (or combination thereof) or members or former members (or combination thereof) of the labor organizations, the Secretary may waive or modify requirements that hinder the design of, the offering of, or the enrollment in such Medicare+Choice plans.

(2) Employer sponsored MA plans

To facilitate the offering of MA plans by employers, labor organizations, or the trustees of a fund established by one or more employers or labor organizations (or combination thereof) to furnish benefits to the entity's employees, former employees (or combination thereof) or members or former members (or combination thereof) of the labor organizations, the Secretary may waive or modify requirements that hinder the design of, the offering of, or the enrollment in such MA plans. Notwithstanding section 1395w–21(g) of this title, an MA plan described in the previous sentence may restrict the enrollment of individuals under this part to individuals who are beneficiaries and participants in such plan.

(Aug. 14, 1935, ch. 531, title XVIII, § 1857, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 319; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title V, §§ 513(a), (b)(1), 522(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–383, 1501A–387; Pub. L. 106–554, § 1(a)(6) [title VI, §§ 617(a), 623(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–561, 2763A–566; Pub. L. 108–173, title II, §§ 222(j), (k), (*l*)(3)(C), 237(c), title IX, § 900(e)(1)(I), Dec. 8, 2003, 117 Stat. 2205, 2207, 2213, 2372.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (e)(2)(A), (B), (F), is classified to section 1395w–101 et seq. of this title.

Parts A and B of this subchapter, referred to in subsec. (e)(2)(E)(ii), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (d)(1). Pub. L. 108–173, § 222(*l*)(3)(C), substituted ''and costs, including allowable costs under section 1395w–27a(c) of this title'' for '', costs, and computation of the adjusted community rate''.

Subsec. (d)(4)(A)(ii). Pub. L. 108–173, § 900(e)(1)(I), substituted ''Secretary'' for ''Health Care Financing Administration''.

Subsec. (e)(2)(A). Pub. L. 108–173, § 222(k)(1), inserted ''and a PDP sponsor under part D of this subchapter'' after ''organization''.

Subsec. (e)(2)(B). Pub. L. 108–173, § 222(k)(2), inserted ''and each PDP sponsor with a contract under part D of this subchapter'' after ''contract under this part'', ''or sponsor's'' after ''organization's'', and '', section 1395w–101(c) of this title,'' after ''information)''.

Subsec. (e)(2)(C). Pub. L. 108–173, § 222(k)(3), inserted ''and ending with fiscal year 2005'' after ''beginning with fiscal year 2001'', ''and for each fiscal year beginning with fiscal year 2006 an amount equal to $200,000,000,'' after ''$100,000,000,'', and ''and section 1395w–112(b)(3)(D) of this title'' after ''under this paragraph''.

Subsec. (e)(2)(D)(i). Pub. L. 108–173, § 222(k)(4)(A), inserted ''and section 1395w–101(c) of this title'' after ''section 1395w–21 of this title''.

Subsec. (e)(2)(D)(ii)(III). Pub. L. 108–173, § 222(k)(4)(B), struck out ''and'' at end.

Subsec. (e)(2)(D)(ii)(IV). Pub. L. 108–173, § 222(k)(4)(C), substituted ''each succeeding fiscal year before fiscal year 2006; and'' for ''each succeeding fiscal year.''

Subsec. (e)(2)(D)(ii)(V). Pub. L. 108–173, § 222(k)(4)(D), added subcl. (V).

Subsec. (e)(2)(F). Pub. L. 108–173, § 222(k)(5), added subpar. (F).

Subsec. (e)(3). Pub. L. 108–173, § 237(c), added par. (3).

Subsec. (i). Pub. L. 108–173, § 222(j), designated existing provisions as par. (1), inserted heading, and added par. (2).

2000—Subsec. (g)(3)(D). Pub. L. 106–554, § 1(a)(6) [title VI, § 623(a)], added subpar. (D).

Subsec. (i). Pub. L. 106–554, § 1(a)(6) [title VI, § 617(a)], added subsec. (i).

1999—Subsec. (c)(4). Pub. L. 106–113, § 1000(a)(6) [title V, § 513(b)(1)(B), (C)], designated existing provisions as subpar. (A), inserted heading, realigned margins, and added subpar. (B).

Pub. L. 106–113, § 1000(a)(6) [title V, § 513(a), (b)(1)(A)], substituted ''2-year period'' for ''5-year period'' and ''except as provided in subparagraph (B) and except in such other circumstances'' for ''except in circumstances''.

Subsec. (e)(2)(B). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(1)], substituted ''Any amounts collected shall be available without further appropriation to the Secretary for'' for ''Any amounts collected are authorized to be appropriated only for''.

Subsec. (e)(2)(C). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(2)], amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''For any fiscal year, the fees authorized under subparagraph (B) are contingent upon enactment in an appropriations act of a provision specifying the aggregate amount of fees the Secretary is directed to collect in a fiscal year. Fees collected during any fiscal year under this paragraph shall be deposited and credited as offsetting collections.''

Subsec. (e)(2)(D)(ii)(II). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(3)(A)], struck out ''and'' after semicolon.

Subsec. (e)(2)(D)(ii)(III). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(3)(B)], substituted ''; and'' for ''and each subsequent fiscal year.''

Subsec. (e)(2)(D)(ii)(IV). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(3)(C)], added subcl. (IV).

Subsec. (e)(2)(E). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(4)], added subpar. (E).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 222(j), (k), (*l*)(3)(C) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Amendment by section 237(c) of Pub. L. 108–173 applicable to services provided on or after Jan. 1, 2006, and contract years beginning on or after such date, see sec-

tion 237(e) of Pub. L. 108–173, set out as a note under section 1320a–7b of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VI, § 617(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–562, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to years beginning with 2001.''

Pub. L. 106–554, § 1(a)(6) [title VI, § 623(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–566, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to terminations occurring after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 513(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–383, provided that: ''The amendments made by this section [amending this section] apply to contract terminations occurring before, on, or after the date of the enactment of this Act [Nov. 29, 1999].''

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 522(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–387, provided that: ''The amendments made by subsection (a) [amending this section] apply to fees charged on or after January 1, 2001. The Secretary of Health and Human Services may not increase the fees charged under section 1857(e)(2) of the Social Security Act (42 U.S.C. 1395w–27(e)(2)) for the 3-month period beginning with October 2000 above the level in effect during the previous 9-month period.''

CONSTRUCTION RELATING TO ADDITIONAL EXCEPTIONS

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 513(b)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–383, provided that: ''Nothing in the amendment made by paragraph (1)(C) [amending this section] shall be construed to affect the authority of the Secretary of Health and Human Services to provide for exceptions in addition to the exception provided in such amendment, including exceptions provided under Operational Policy Letter #103 (OPL99.103).''

STUDY OF MULTI-YEAR CONTRACTS

Pub. L. 108–173, title I, § 107(d), Dec. 8, 2003, 117 Stat. 2171, directed the Secretary of Health and Human Services to provide for a study on the feasibility and advisability of providing for contracting with PDP sponsors and MA organizations under this part and part D of this subchapter on a multi-year basis, and to submit to Congress a report on such study not later than Jan. 1, 2007.

IMMEDIATE EFFECTIVE DATE FOR CERTAIN REQUIREMENTS FOR DEMONSTRATIONS

Section 4002(g) of Pub. L. 105–33 provided that: ''Section 1857(e)(2) of the Social Security Act [subsec. (e)(2) of this section] (requiring contribution to certain costs related to the enrollment process comparative materials) applies to demonstrations with respect to which enrollment is effected or coordinated under section 1851 of such Act [section 1395w–21 of this title].''

§ 1395w–27a. Special rules for MA regional plans

(a) Regional service area; establishment of MA regions

(1) Coverage of entire MA region

The service area for an MA regional plan shall consist of an entire MA region established under paragraph (2) and the provisions of section 1395w–24(h) of this title shall not apply to such a plan.

(2) Establishment of MA regions

(A) MA region

For purposes of this subchapter, the term ''MA region'' means such a region within the 50 States and the District of Columbia as established by the Secretary under this paragraph.

(B) Establishment

(i) Initial establishment

Not later than January 1, 2005, the Secretary shall first establish and publish MA regions.

(ii) Periodic review and revision of service areas

The Secretary may periodically review MA regions under this paragraph and, based on such review, may revise such regions if the Secretary determines such revision to be appropriate.

(C) Requirements for MA regions

The Secretary shall establish, and may revise, MA regions under this paragraph in a manner consistent with the following:

(i) Number of regions

There shall be no fewer than 10 regions, and no more than 50 regions.

(ii) Maximizing availability of plans

The regions shall maximize the availability of MA regional plans to all MA eligible individuals without regard to health status, especially those residing in rural areas.

(D) Market survey and analysis

Before establishing MA regions, the Secretary shall conduct a market survey and analysis, including an examination of current insurance markets, to determine how the regions should be established.

(3) National plan

Nothing in this subsection shall be construed as preventing an MA regional plan from being offered in more than one MA region (including all regions).

(b) Application of single deductible and catastrophic limit on out-of-pocket expenses

An MA regional plan shall include the following:

(1) Single deductible

Any deductible for benefits under the original medicare fee-for-service program option shall be a single deductible (instead of a separate inpatient hospital deductible and a part B deductible) and may be applied differentially for in-network services and may be waived for preventive or other items and services.

(2) Catastrophic limit

(A) In-network

A catastrophic limit on out-of-pocket expenditures for in-network benefits under the original medicare fee-for-service program option.

(B) Total

A catastrophic limit on out-of-pocket expenditures for all benefits under the original medicare fee-for-service program option.

(c) Portion of total payments to an organization subject to risk for 2006 and 2007

(1) Application of risk corridors

(A) In general

This subsection shall only apply to MA regional plans offered during 2006 or 2007.

(B) Notification of allowable costs under the plan

In the case of an MA organization that offers an MA regional plan in an MA region in 2006 or 2007, the organization shall notify the Secretary, before such date in the succeeding year as the Secretary specifies, of—

(i) its total amount of costs that the organization incurred in providing benefits covered under the original medicare fee-for-service program option for all enrollees under the plan in the region in the year and the portion of such costs that is attributable to administrative expenses described in subparagraph (C); and

(ii) its total amount of costs that the organization incurred in providing rebatable integrated benefits (as defined in subparagraph (D)) and with respect to such benefits the portion of such costs that is attributable to administrative expenses described in subparagraph (C) and not described in clause (i) of this subparagraph.

(C) Allowable costs defined

For purposes of this subsection, the term ''allowable costs'' means, with respect to an MA regional plan for a year, the total amount of costs described in subparagraph (B) for the plan and year, reduced by the portion of such costs attributable to administrative expenses incurred in providing the benefits described in such subparagraph.

(D) Rebatable integrated benefits

For purposes of this subsection, the term ''rebatable integrated benefits'' means such non-drug supplemental benefits under subclause (I) of section 1395w–24(b)(1)(C)(ii) of this title pursuant to a rebate under such section that the Secretary determines are integrated with the benefits described in subparagraph (B)(i).

(2) Adjustment of payment

(A) No adjustment if allowable costs within 3 percent of target amount

If the allowable costs for the plan for the year are at least 97 percent, but do not exceed 103 percent, of the target amount for the plan and year, there shall be no payment adjustment under this subsection for the plan and year.

(B) Increase in payment if allowable costs above 103 percent of target amount

(i) Costs between 103 and 108 percent of target amount

If the allowable costs for the plan for the year are greater than 103 percent, but not greater than 108 percent, of the target amount for the plan and year, the Secretary shall increase the total of the monthly payments made to the organization offering the plan for the year under section 1395w–23(a) of this title by an amount equal to 50 percent of the difference between such allowable costs and 103 percent of such target amount.

(ii) Costs above 108 percent of target amount

If the allowable costs for the plan for the year are greater than 108 percent of the target amount for the plan and year, the Secretary shall increase the total of the monthly payments made to the organization offering the plan for the year under section 1395w–23(a) of this title by an amount equal to the sum of—

(I) 2.5 percent of such target amount; and

(II) 80 percent of the difference between such allowable costs and 108 percent of such target amount.

(C) Reduction in payment if allowable costs below 97 percent of target amount

(i) Costs between 92 and 97 percent of target amount

If the allowable costs for the plan for the year are less than 97 percent, but greater than or equal to 92 percent, of the target amount for the plan and year, the Secretary shall reduce the total of the monthly payments made to the organization offering the plan for the year under section 1395w–23(a) of this title by an amount (or otherwise recover from the plan an amount) equal to 50 percent of the difference between 97 percent of the target amount and such allowable costs.

(ii) Costs below 92 percent of target amount

If the allowable costs for the plan for the year are less than 92 percent of the target amount for the plan and year, the Secretary shall reduce the total of the monthly payments made to the organization offering the plan for the year under section 1395w–23(a) of this title by an amount (or otherwise recover from the plan an amount) equal to the sum of—

(I) 2.5 percent of such target amount; and

(II) 80 percent of the difference between 92 percent of such target amount and such allowable costs.

(D) Target amount described

For purposes of this paragraph, the term ''target amount'' means, with respect to an MA regional plan offered by an organization in a year, an amount equal to—

(i) the sum of—

(I) the total monthly payments made to the organization for enrollees in the plan for the year that are attributable to benefits under the original medicare fee-for-service program option (as defined in section 1395w–22(a)(1)(B) of this title);

(II) the total of the MA monthly basic beneficiary premium collectable for such enrollees for the year; and

(III) the total amount of the rebates under section 1395w–24(b)(1)(C)(ii) of this

title that are attributable to rebatable integrated benefits; reduced by

(ii) the amount of administrative expenses assumed in the bid insofar as the bid is attributable to benefits described in clause (i)(I) or (i)(III).

(3) Disclosure of information

(A) In general

Each contract under this part shall provide—

(i) that an MA organization offering an MA regional plan shall provide the Secretary with such information as the Secretary determines is necessary to carry out this subsection; and

(ii) that, pursuant to section 1395w–27(d)(2)(B) of this title, the Secretary has the right to inspect and audit any books and records of the organization that pertain to the information regarding costs provided to the Secretary under paragraph (1)(B).

(B) Restriction on use of information

Information disclosed or obtained pursuant to the provisions of this subsection may be used by officers, employees, and contractors of the Department of Health and Human Services only for the purposes of, and to the extent necessary in, carrying out this subsection.

(d) Organizational and financial requirements

(1) In general

In the case of an MA organization that is offering an MA regional plan in an MA region and—

(A) meets the requirements of section 1395w–25(a)(1) of this title with respect to at least one such State in such region; and

(B) with respect to each other State in such region in which it does not meet requirements, it demonstrates to the satisfaction of the Secretary that it has filed the necessary application to meet such requirements,

the Secretary may waive such requirement with respect to each State described in subparagraph (B) for such period of time as the Secretary determines appropriate for the timely processing of such an application by the State (and, if such application is denied, through the end of such plan year as the Secretary determines appropriate to provide for a transition).

(2) Selection of appropriate State

In applying paragraph (1) in the case of an MA organization that meets the requirements of section 1395w–25(a)(1) of this title with respect to more than one State in a region, the organization shall select, in a manner specified by the Secretary among such States, one State the rules of which shall apply in the case of the States described in paragraph (1)(B).

(e) Stabilization Fund

(1) Establishment

The Secretary shall establish under this subsection an MA Regional Plan Stabilization Fund (in this subsection referred to as the ''Fund'') which shall be available for two purposes:

(A) Plan entry

To provide incentives to have MA regional plans offered in each MA region under paragraph (3).

(B) Plan retention

To provide incentives to retain MA regional plans in certain MA regions with below-national-average MA market penetration under paragraph (4).

(2) Funding

(A) Initial funding

(i) In general

There shall be available to the Fund, for expenditures from the Fund during the period beginning on January 1, 2012, and ending on December 31, 2013, a total of $3,500,000,000.

(ii) Payment from trust funds

Such amount shall be available to the Fund, as expenditures are made from the Fund, from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in the proportion specified in section 1395w–23(f) of this title.

(B) Additional funding from savings

(i) In general

There shall also be made available to the Fund, 50 percent of savings described in clause (ii).

(ii) Savings

The savings described in this clause are 25 percent of the average per capita savings described in section 1395w–24(b)(4)(C) of this title for which monthly rebates are provided under section 1395w–24(b)(1)(C) of this title in the fiscal year involved that are attributable to MA regional plans.

(iii) Availability

Funds made available under this subparagraph shall be transferred into a special account in the Treasury from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in the proportion specified in section 1395w–23(f) of this title on a monthly basis.

(C) Obligations

Amounts in the Fund shall be available in advance of appropriations to MA regional plans in qualifying MA regions only in accordance with paragraph (5).

(D) Ordering

Expenditures from the Fund shall first be made from amounts made available under subparagraph (A).

(3) Plan entry funding

(A) In general

Funding is available under this paragraph for a year only as follows:

(i) National plan

For a national bonus payment described in subparagraph (B) for the offering by a single MA organization of an MA regional plan in each MA region in the year, but only if there was not such a plan offered in each such region in the previous year. Funding under this clause is only available with respect to any individual MA organization for a single year, but may be made available to more than one such organization in the same year.

(ii) Regional plans

Subject to clause (iii), for an increased amount under subparagraph (C) for an MA regional plan offered in an MA region which did not have any MA regional plan offered in the prior year.

(iii) Limitation on regional plan funding in case of national plan

In no case shall there be any payment adjustment under subparagraph (C) for a year for which a national payment adjustment is made under subparagraph (B).

(B) National bonus payment

The national bonus payment under this subparagraph shall—

(i) be available to an MA organization only if the organization offers MA regional plans in every MA region;

(ii) be available with respect to all MA regional plans of the organization regardless of whether any other MA regional plan is offered in any region; and

(iii) subject to amounts available under paragraph (5) for a year, be equal to 3 percent of the benchmark amount otherwise applicable for each MA regional plan offered by the organization.

(C) Regional payment adjustment

(i) In general

The increased amount under this subparagraph for an MA regional plan in an MA region for a year shall be an amount, determined by the Secretary, based on the bid submitted for such plan (or plans) and shall be available to all MA regional plans offered in such region and year. Such amount may be based on the mean, mode, or median, or other measure of such bids and may vary from region to region. The Secretary may not limit the number of plans or bids in a region.

(ii) Multi-year funding

(I) In general

Subject to amounts available under paragraph (5), funding under this subparagraph shall be available for a period determined by the Secretary.

(II) Report

If the Secretary determines that funding will be provided for a second consecutive year with respect to an MA region, the Secretary shall submit to the Congress a report that describes the underlying market dynamics in the region and that includes recommendations concerning changes in the payment methodology otherwise provided for MA regional plans under this part.

(iii) Application to all plans in a region

Funding under this subparagraph with respect to an MA region shall be made available with respect to all MA regional plans offered in the region.

(iv) Limitation on availability of plan retention funding in next year

If an increased amount is made available under this subparagraph with respect to an MA region for a period determined by the Secretary under clause (ii)(I), in no case shall funding be available under paragraph (4) with respect to MA regional plans offered in the region in the year following such period.

(D) Application

Any additional payment under this paragraph provided for an MA regional plan for a year shall be treated as if it were an addition to the benchmark amount otherwise applicable to such plan and year, but shall not be taken into account in the computation of any benchmark amount for any subsequent year.

(4) Plan retention funding

(A) In general

Funding is available under this paragraph for a year with respect to MA regional plans offered in an MA region for the increased amount specified in subparagraph (B) but only if the region meets the requirements of subparagraphs (C) and (E).

(B) Payment increase

The increased amount under this subparagraph for an MA regional plan in an MA region for a year shall be an amount, determined by the Secretary, that does not exceed the greater of—

(i) 3 percent of the benchmark amount applicable in the region; or

(ii) such amount as (when added to the benchmark amount applicable to the region) will result in the ratio of—

(I) such additional amount plus the benchmark amount computed under section 1395w–24(b)(4)(B)(i) of this title for the region and year, to the adjusted average per capita cost for the region and year, as estimated by the Secretary under section 1395mm(a)(4) of this title and adjusted as appropriate for the purpose of risk adjustment; being equal to

(II) the weighted average of such benchmark amounts for all the regions and such year, to the average per capita cost for the United States and such year, as estimated by the Secretary under section 1395mm(a)(4) of this title and adjusted as appropriate for the purpose of risk adjustment.

(C) Regional requirements

The requirements of this subparagraph for an MA region for a year are as follows:

(i) Notification of plan exit

The Secretary has received notice (in such form and manner as the Secretary specifies) before a year that one or more MA regional plans that were offered in the region in the previous year will not be offered in the succeeding year.

(ii) Regional plans available from fewer than 2 MA organizations in the region

The Secretary determines that if the plans referred to in clause (i) are not offered in the year, fewer than 2 MA organizations will be offering MA regional plans in the region in the year involved.

(iii) Percentage enrollment in MA regional plans below national average

For the previous year, the Secretary determines that the average percentage of MA eligible individuals residing in the region who are enrolled in MA regional plans is less than the average percentage of such individuals in the United States enrolled in such plans.

(D) Application

Any additional payment under this paragraph provided for an MA regional plan for a year shall be treated as if it were an addition to the benchmark amount otherwise applicable to such plan and year, but shall not be taken into account in the computation of any benchmark amount for any subsequent year.

(E) 2-consecutive-year limitation

(i) In general

In no case shall any funding be available under this paragraph in an MA region in a period of consecutive years that exceeds 2 years.

(ii) Report

If the Secretary determines that funding will be provided under this paragraph for a second consecutive year with respect to an MA region, the Secretary shall submit to the Congress a report that describes the underlying market dynamics in the region and that includes recommendations concerning changes in the payment methodology otherwise provided for MA regional plans under this part.

(5) Funding limitation

(A) In general

The total amount expended from the Fund as a result of the application of this subsection through the end of a calendar year may not exceed the amount available to the Fund as of the first day of such year. For purposes of this subsection, amounts that are expended under this subchapter insofar as such amounts would not have been expended but for the application of this subsection shall be counted as amounts expended as a result of such application.

(B) Application of limitation

The Secretary may obligate funds from the Fund for a year only if the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services and the appropriate budget officer certify) that there are available in the Fund at the beginning of the year sufficient amounts to cover all such obligations incurred during the year consistent with subparagraph (A). The Secretary shall take such steps, in connection with computing additional payment amounts under paragraphs (3) and (4) and including limitations on enrollment in MA regional plans receiving such payments, as will ensure that sufficient funds are available to make such payments for the entire year. Funds shall only be made available from the Fund pursuant to an apportionment made in accordance with applicable procedures.

(6) Secretary reports

Not later than April 1 of each year (beginning in 2008), the Secretary shall submit a report to Congress and the Comptroller General of the United States that includes—

(A) a detailed description of—

(i) the total amount expended as a result of the application of this subsection in the previous year compared to the total amount that would have been expended under this subchapter in the year if this subsection had not been enacted;

(ii) the projections of the total amount that will be expended as a result of the application of this subsection in the year in which the report is submitted compared to the total amount that would have been expended under this subchapter in the year if this subsection had not been enacted;

(iii) amounts remaining within the funding limitation specified in paragraph (5); and

(iv) the steps that the Secretary will take under paragraph (5)(B) to ensure that the application of this subsection will not cause expenditures to exceed the amount available in the Fund; and

(B) a certification from the Chief Actuary of the Centers for Medicare & Medicaid Services that the description provided under subparagraph (A) is reasonable, accurate, and based on generally accepted actuarial principles and methodologies.

(7) Biennial GAO reports

Not later than January 1 of 2009, 2011, 2013, and 2015, the Comptroller General of the United States shall submit to the Secretary and Congress a report on the application of additional payments under this subsection. Each report shall include—

(A) an evaluation of—

(i) the quality of care provided to individuals enrolled in MA regional plans for which additional payments were made under this subsection;

(ii) the satisfaction of such individuals with benefits under such a plan;

(iii) the costs to the medicare program for payments made to such plans; and

(iv) any improvements in the delivery of health care services under such a plan;

(B) a comparative analysis of the performance of MA regional plans receiving payments under this subsection with MA regional plans not receiving such payments; and

(C) recommendations for such legislation or administrative action as the Comptroller General determines to be appropriate.

(f) Computation of applicable MA region-specific non-drug monthly benchmark amounts

(1) Computation for regions

For purposes of section 1395w–23(j)(2) of this title and this section, subject to subsection (e) of this section, the term ''MA region-specific non-drug monthly benchmark amount'' means, with respect to an MA region for a month in a year, the sum of the 2 components described in paragraph (2) for the region and year. The Secretary shall compute such benchmark amount for each MA region before the beginning of each annual, coordinated election period under section 1395w–21(e)(3)(B) of this title for each year (beginning with 2006).

(2) 2 components

For purposes of paragraph (1), the 2 components described in this paragraph for an MA region and a year are the following:

(A) Statutory component

The product of the following:

(i) Statutory region-specific non-drug amount

The statutory region-specific non-drug amount (as defined in paragraph (3)) for the region and year.

(ii) Statutory national market share

The statutory national market share percentage, determined under paragraph (4) for the year.

(B) Plan-bid component

The product of the following:

(i) Weighted average of MA plan bids in region

The weighted average of the plan bids for the region and year (as determined under paragraph (5)(A)).

(ii) Non-statutory market share

1 minus the statutory national market share percentage, determined under paragraph (4) for the year.

(3) Statutory region-specific non-drug amount

For purposes of paragraph (2)(A)(i), the term ''statutory region-specific non-drug amount'' means, for an MA region and year, an amount equal the sum (for each MA local area within the region) of the product of—

(A) MA area-specific non-drug monthly benchmark amount under section 1395w–23(j)(1)(A) of this title for that area and year; and

(B) the number of MA eligible individuals residing in the local area, divided by the total number of MA eligible individuals residing in the region.

(4) Computation of statutory market share percentage

(A) In general

The Secretary shall determine for each year a statutory national market share percentage that is equal to the proportion of MA eligible individuals nationally who were not enrolled in an MA plan during the reference month.

(B) Reference month defined

For purposes of this part, the term ''reference month'' means, with respect to a year, the most recent month during the previous year for which the Secretary determines that data are available to compute the percentage specified in subparagraph (A) and other relevant percentages under this part.

(5) Determination of weighted average MA bids for a region

(A) In general

For purposes of paragraph (2)(B)(i), the weighted average of plan bids for an MA region and a year is the sum, for MA regional plans described in subparagraph (D) in the region and year, of the products (for each such plan) of the following:

(i) Monthly MA statutory non-drug bid amount

The unadjusted MA statutory non-drug monthly bid amount for the plan.

(ii) Plan's share of MA enrollment in region

The factor described in subparagraph (B) for the plan.

(B) Plan's share of MA enrollment in region

(i) In general

Subject to the succeeding provisions of this subparagraph, the factor described in this subparagraph for a plan is equal to the number of individuals described in subparagraph (C) for such plan, divided by the total number of such individuals for all MA regional plans described in subparagraph (D) for that region and year.

(ii) Single plan rule

In the case of an MA region in which only a single MA regional plan is being offered, the factor described in this subparagraph shall be equal to 1.

(iii) Equal division among multiple plans in year in which plans are first available

In the case of an MA region in the first year in which any MA regional plan is offered, if more than one MA regional plan is offered in such year, the factor described in this subparagraph for a plan shall (as specified by the Secretary) be equal to—

(I) 1 divided by the number of such plans offered in such year; or

(II) a factor for such plan that is based upon the organization's estimate of projected enrollment, as reviewed and adjusted by the Secretary to ensure reasonableness and as is certified by the Chief Actuary of the Centers for Medicare & Medicaid Services.

(C) Counting of individuals

For purposes of subparagraph (B)(i), the Secretary shall count for each MA regional plan described in subparagraph (D) for an MA region and year, the number of individuals who reside in the region and who were enrolled under such plan under this part during the reference month.

(D) Plans covered

For an MA region and year, an MA regional plan described in this subparagraph is an MA regional plan that is offered in the region and year and was offered in the region in the reference month.

(g) Election of uniform coverage determination

Instead of applying section 1395w–22(a)(2)(C) of this title with respect to an MA regional plan, the organization offering the plan may elect to have a local coverage determination for the entire MA region be the local coverage determination applied for any part of such region (as selected by the organization).

(h) Assuring network adequacy

(1) In general

For purposes of enabling MA organizations that offer MA regional plans to meet applicable provider access requirements under section 1395w–22 of this title with respect to such plans, the Secretary may provide for payment under this section to an essential hospital that provides inpatient hospital services to enrollees in such a plan where the MA organization offering the plan certifies to the Secretary that the organization was unable to reach an agreement between the hospital and the organization regarding provision of such services under the plan. Such payment shall be available only if—

(A) the organization provides assurances satisfactory to the Secretary that the organization will make payment to the hospital for inpatient hospital services of an amount that is not less than the amount that would be payable to the hospital under section 1395ww of this title with respect to such services; and

(B) with respect to specific inpatient hospital services provided to an enrollee, the hospital demonstrates to the satisfaction of the Secretary that the hospital's costs of such services exceed the payment amount described in subparagraph (A).

(2) Payment amounts

The payment amount under this subsection for inpatient hospital services provided by a subsection (d) hospital to an enrollee in an MA regional plan shall be, subject to the limitation of funds under paragraph (3), the amount (if any) by which—

(A) the amount of payment that would have been paid for such services under this subchapter if the enrollees were covered under the original medicare fee-for-service program option and the hospital were a critical access hospital; exceeds

(B) the amount of payment made for such services under paragraph (1)(A).

(3) Available amounts

There shall be available for payments under this subsection—

(A) in 2006, $25,000,000; and

(B) in each succeeding year the amount specified in this paragraph for the preceding year increased by the market basket percentage increase (as defined in section 1395ww(b)(3)(B)(iii) of this title) for the fiscal year ending in such succeeding year.

Payments under this subsection shall be made from the Federal Hospital Insurance Trust Fund.

(4) Essential hospital

In this subsection, the term ''essential hospital'' means, with respect to an MA regional plan offered by an MA organization, a subsection (d) hospital (as defined in section 1395ww(d) of this title) that the Secretary determines, based upon an application filed by the organization with the Secretary, is necessary to meet the requirements referred to in paragraph (1) for such plan.

(Aug. 14, 1935, ch. 531, title XVIII, § 1858, as added Pub. L. 108–173, title II, § 221(c), Dec. 8, 2003, 117 Stat. 2181; amended Pub. L. 109–432, div. B, title III, § 301, Dec. 20, 2006, 120 Stat. 2990.)

AMENDMENTS

2006—Subsec. (e)(2)(A)(i). Pub. L. 109–432 substituted ''2012'' for ''2007'' and ''$3,500,000,000'' for ''$10,000,000,000''.

EFFECTIVE DATE

Section applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 1395w–21 of this title.

§ 1395w–28. Definitions; miscellaneous provisions

(a) Definitions relating to Medicare+Choice organizations

In this part—

(1) Medicare+Choice organization

The term ''Medicare+Choice organization'' means a public or private entity that is certified under section 1395w–26 of this title as meeting the requirements and standards of this part for such an organization.

(2) Provider-sponsored organization

The term ''provider-sponsored organization'' is defined in section 1395w–25(d)(1) of this title.

(b) Definitions relating to Medicare+Choice plans

(1) Medicare+Choice plan

The term ''Medicare+Choice plan'' means health benefits coverage offered under a policy, contract, or plan by a Medicare+Choice organization pursuant to and in accordance with a contract under section 1395w–27 of this title.

(2) Medicare+Choice private fee-for-service plan

The term ''Medicare+Choice private fee-for-service plan'' means a Medicare+Choice plan that—

(A) reimburses hospitals, physicians, and other providers at a rate determined by the plan on a fee-for-service basis without placing the provider at financial risk;

(B) does not vary such rates for such a provider based on utilization relating to such provider; and

(C) does not restrict the selection of providers among those who are lawfully authorized to provide the covered services and agree to accept the terms and conditions of payment established by the plan.

(3) MSA plan

(A) In general

The term ''MSA plan'' means a Medicare+Choice plan that—

(i) provides reimbursement for at least the items and services described in section 1395w–22(a)(1) of this title in a year but only after the enrollee incurs countable expenses (as specified under the plan) equal to the amount of an annual deductible (described in subparagraph (B));

(ii) counts as such expenses (for purposes of such deductible) at least all amounts that would have been payable under parts A and B of this subchapter, and that would have been payable by the enrollee as deductibles, coinsurance, or copayments, if the enrollee had elected to receive benefits through the provisions of such parts; and

(iii) provides, after such deductible is met for a year and for all subsequent expenses for items and services referred to in clause (i) in the year, for a level of reimbursement that is not less than—

(I) 100 percent of such expenses, or

(II) 100 percent of the amounts that would have been paid (without regard to any deductibles or coinsurance) under parts A and B of this subchapter with respect to such expenses,

whichever is less.

(B) Deductible

The amount of annual deductible under an MSA plan—

(i) for contract year 1999 shall be not more than $6,000; and

(ii) for a subsequent contract year shall be not more than the maximum amount of such deductible for the previous contract year under this subparagraph increased by the national per capita Medicare+Choice growth percentage under section 1395w–23(c)(6) of this title for the year.

If the amount of the deductible under clause (ii) is not a multiple of $50, the amount shall be rounded to the nearest multiple of $50.

(4) MA regional plan

The term ''MA regional plan'' means an MA plan described in section 1395w–21(a)(2)(A)(i) of this title—

(A) that has a network of providers that have agreed to a contractually specified reimbursement for covered benefits with the organization offering the plan;

(B) that provides for reimbursement for all covered benefits regardless of whether such benefits are provided within such network of providers; and

(C) the service area of which is one or more entire MA regions.

(5) MA local plan

The term ''MA local plan'' means an MA plan that is not an MA regional plan.

(6) Specialized MA plans for special needs individuals

(A) In general

The term ''specialized MA plan for special needs individuals'' means an MA plan that exclusively serves special needs individuals (as defined in subparagraph (B)).

(B) Special needs individual

The term ''special needs individual'' means an MA eligible individual who—

(i) is institutionalized (as defined by the Secretary);

(ii) is entitled to medical assistance under a State plan under subchapter XIX of this chapter; or

(iii) meets such requirements as the Secretary may determine would benefit from enrollment in such a specialized MA plan described in subparagraph (A) for individuals with severe or disabling chronic conditions.

The Secretary may waive application of section 1395w–21(a)(3)(B) of this title in the case of an individual described in clause (i), (ii), or (iii) of this subparagraph and may apply rules similar to the rules of section 1395eee(c)(4) of this title for continued eligibility of special needs individuals.

(c) Other references to other terms

(1) Medicare+Choice eligible individual

The term ''Medicare+Choice eligible individual'' is defined in section 1395w–21(a)(3) of this title.

(2) Medicare+Choice payment area

The term ''Medicare+Choice payment area'' is defined in section 1395w–23(d) of this title.

(3) National per capita Medicare+Choice growth percentage

The ''national per capita Medicare+Choice growth percentage'' is defined in section 1395w–23(c)(6) of this title.

(4) Medicare+Choice monthly basic beneficiary premium; Medicare+Choice monthly supplemental beneficiary premium

The terms ''Medicare+Choice monthly basic beneficiary premium'' and ''Medicare+Choice monthly supplemental beneficiary premium'' are defined in section 1395w–24(a)(2) of this title.

(5) MA local area

The term ''MA local area'' is defined in section 1395w–23(d)(2) of this title.

(d) Coordinated acute and long-term care benefits under Medicare+Choice plan

Nothing in this part shall be construed as preventing a State from coordinating benefits under a medicaid plan under subchapter XIX of

this chapter with those provided under a Medicare+Choice plan in a manner that assures continuity of a full-range of acute care and long-term care services to poor elderly or disabled individuals eligible for benefits under this subchapter and under such plan.

(e) Restriction on enrollment for certain Medicare+Choice plans

(1) In general

In the case of a Medicare+Choice religious fraternal benefit society plan described in paragraph (2), notwithstanding any other provision of this part to the contrary and in accordance with regulations of the Secretary, the society offering the plan may restrict the enrollment of individuals under this part to individuals who are members of the church, convention, or group described in paragraph (3)(B) with which the society is affiliated.

(2) Medicare+Choice religious fraternal benefit society plan described

For purposes of this subsection, a Medicare+Choice religious fraternal benefit society plan described in this paragraph is a Medicare+Choice plan described in section 1395w–21(a)(2) of this title that—

(A) is offered by a religious fraternal benefit society described in paragraph (3) only to members of the church, convention, or group described in paragraph (3)(B); and

(B) permits all such members to enroll under the plan without regard to health status-related factors.

Nothing in this subsection shall be construed as waiving any plan requirements relating to financial solvency.

(3) "Religious fraternal benefit society" defined

For purposes of paragraph (2)(A), a "religious fraternal benefit society" described in this section is an organization that—

(A) is described in section 501(c)(8) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Act;

(B) is affiliated with, carries out the tenets of, and shares a religious bond with, a church or convention or association of churches or an affiliated group of churches;

(C) offers, in addition to a Medicare+Choice religious fraternal benefit society plan, health coverage to individuals not entitled to benefits under this subchapter who are members of such church, convention, or group; and

(D) does not impose any limitation on membership in the society based on any health status-related factor.

(4) Payment adjustment

Under regulations of the Secretary, in the case of individuals enrolled under this part under a Medicare+Choice religious fraternal benefit society plan described in paragraph (2), the Secretary shall provide for such adjustment to the payment amounts otherwise established under section 1395w–24 of this title as may be appropriate to assure an appropriate payment level, taking into account the actuarial characteristics and experience of such individuals.

(f) Restriction on enrollment for specialized MA plans for special needs individuals

In the case of a specialized MA plan for special needs individuals (as defined in subsection (b)(6) of this section), notwithstanding any other provision of this part and in accordance with regulations of the Secretary and for periods before January 1, 2009, the plan may restrict the enrollment of individuals under the plan to individuals who are within one or more classes of special needs individuals.

(Aug. 14, 1935, ch. 531, title XVIII, § 1859, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 325; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 523], Nov. 29, 1999, 113 Stat. 1536, 1501A–387; Pub. L. 108–173, title II, §§ 221(b)(1), (d)(2), 231(b), (c), Dec. 8, 2003, 117 Stat. 2180, 2193, 2207, 2208.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (b)(3)(A), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsec. (e)(3)(A), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2003—Subsec. (b)(4), (5). Pub. L. 108–173, § 221(b)(1), added pars. (4) and (5).

Subsec. (b)(6). Pub. L. 108–173, § 231(b), added par. (6).

Subsec. (c)(5). Pub. L. 108–173, § 221(d)(2), added par. (5).

Subsec. (f). Pub. L. 108–173, § 231(c), added subsec. (f).

1999—Subsec. (e)(2). Pub. L. 106–113 substituted "section 1395w–21(a)(2) of this title" for "section 1395w–21(a)(2)(A) of this title" in introductory provisions.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 221(b)(1), (d)(2) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Amendment by section 231(b), (c) of Pub. L. 108–173 effective Dec. 8, 2003, see section 231(f)(1) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

REGULATIONS

Pub. L. 108–173, title II, § 231(f)(2), Dec. 8, 2003, 117 Stat. 2208, provided that: "No later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall issue final regulations to establish requirements for special needs individuals under section 1859(b)(6)(B)(iii) of the Social Security Act [subsec. (b)(6)(B)(iii) of this section], as added by subsection (b)."

AUTHORITY TO DESIGNATE OTHER PLANS AS SPECIALIZED MA PLANS

Secretary of Health and Human Services authorized, in promulgating regulations to carry out subsection (b)(6) of this section, to provide, notwithstanding subsection (b)(6)(A) of this section, for the offering of specialized MA plans for special needs individuals by MA

plans that disproportionately serve special needs individuals, see section 231(d) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

§ 1395w–29. Comparative cost adjustment (CCA) program

(a) Establishment of program

(1) In general

The Secretary shall establish a program under this section (in this section referred to as the ''CCA program'') for the application of comparative cost adjustment in CCA areas selected under this section.

(2) Duration

The CCA program shall begin January 1, 2010, and shall extend over a period of 6 years, and end on December 31, 2015.

(3) Report

Upon the completion of the CCA program, the Secretary shall submit a report to Congress. Such report shall include the following, with respect to both this part and the original medicare fee-for-service program:

(A) An evaluation of the financial impact of the CCA program.

(B) An evaluation of changes in access to physicians and other health care providers.

(C) Beneficiary satisfaction.

(D) Recommendations regarding any extension or expansion of the CCA program.

(b) Requirements for selection of CCA areas

(1) CCA area defined

(A) In general

For purposes of this section, the term ''CCA area'' means an MSA that meets the requirements of paragraph (2) and is selected by the Secretary under subsection (c) of this section.

(B) MSA defined

For purposes of this section, the term ''MSA'' means a Metropolitan Statistical Area (or such similar area as the Secretary recognizes).

(2) Requirements for CCA areas

The requirements of this paragraph for an MSA to be a CCA area are as follows:

(A) MA enrollment requirement

For the reference month (as defined under section 1395w–27a(f)(4)(B) of this title) with respect to 2010, at least 25 percent of the total number of MA eligible individuals who reside in the MSA were enrolled in an MA local plan described in section 1395w–21(a)(2)(A)(i) of this title.

(B) 2 plan requirement

There will be offered in the MSA during the annual, coordinated election period under section 1395w–21(e)(3)(B) of this title before the beginning of 2010 at least 2 MA local plans described in section 1395w–21(a)(2)(A)(i) of this title (in addition to the fee-for-service program under parts A and B of this subchapter), each offered by a different MA organization and each of which met the minimum enrollment requirements of paragraph (1) of section 1395w–27(b) of this title (as applied without regard to paragraph (3) thereof) as of the reference month.

(c) Selection of CCA areas

(1) General selection criteria

The Secretary shall select CCA areas from among those MSAs qualifying under subsection (b) of this section in a manner that—

(A) seeks to maximize the opportunity to test the application of comparative cost adjustment under this subchapter;

(B) does not seek to maximize the number of MA eligible individuals who reside in such areas; and

(C) provides for geographic diversity consistent with the criteria specified in paragraph (2).

(2) Selection criteria

With respect to the selection of MSAs that qualify to be CCA areas under subsection (b) of this section, the following rules apply, to the maximum extent feasible:

(A) Maximum number

The number of such MSAs selected may not exceed the lesser of (i) 6, or (ii) 25 percent of the number of MSAs that meet the requirement of subsection (b)(2)(A) of this section.

(B) One of 4 largest areas by population

At least one such qualifying MSA shall be selected from among the 4 such qualifying MSAs with the largest total population of MA eligible individuals.

(C) One of 4 areas with lowest population density

At least one such qualifying MSA shall be selected from among the 4 such qualifying MSAs with the lowest population density (as measured by residents per square mile or similar measure of density).

(D) Multistate area

At least one such qualifying MSA shall be selected that includes a multi-State area. Such an MSA may be an MSA described in subparagraph (B) or (C).

(E) Limitation within same geographic region

No more than 2 such MSAs shall be selected that are, in whole or in part, within the same geographic region (as specified by the Secretary) of the United States.

(F) Priority to areas not within certain demonstration projects

Priority shall be provided for those qualifying MSAs that do not have a demonstration project in effect as of December 8, 2003, for medicare preferred provider organization plans under this part.

(d) Application of comparative cost adjustment

(1) In general

In the case of a CCA area for a year—

(A) for purposes of applying this part with respect to payment for MA local plans, any reference to an MA area-specific non-drug

monthly benchmark amount shall be treated as a reference to such benchmark computed as if the CCA area-specific non-drug monthly benchmark amount (as defined in subsection (e)(1) of this section) were substituted for the amount described in section 1395w–23(j)(1)(A) of this title for the CCA area and year involved, as phased in under paragraph (3); and

(B) with respect to months in the year for individuals residing in the CCA area who are not enrolled in an MA plan, the amount of the monthly premium under section 1395r of this title is subject to adjustment under subsection (f) of this section.

(2) Exclusion of MA local areas with fewer than 2 organizations offering MA plans

(A) In general

In no case shall an MA local area that is within an MSA be included as part of a CCA area unless for 2010 (and, except as provided in subparagraph (B), for a subsequent year) there is offered in each part of such MA local area at least 2 MA local plans described in section 1395w–21(a)(2)(A)(i) of this title each of which is offered by a different MA organization.

(B) Continuation

If an MA local area meets the requirement of subparagraph (A) and is included in a CCA area for 2010, such local area shall continue to be included in such CCA area for a subsequent year notwithstanding that it no longer meets such requirement so long as there is at least one MA local plan described in section 1395w–21(a)(2)(A)(i) of this title that is offered in such local area.

(3) Phase-in of CCA benchmark

(A) In general

In applying this section for a year before 2013, paragraph (1)(A) shall be applied as if the phase-in fraction under subparagraph (B) of the CCA non-drug monthly benchmark amount for the year were substituted for such fraction of the MA area-specific non-drug monthly benchmark amount.

(B) Phase-in fraction

The phase-in fraction under this subparagraph is—

(i) for 2010 ¼; and

(ii) for a subsequent year is the phase-in fraction under this subparagraph for the previous year increased by ¼, but in no case more than 1.

(e) Computation of CCA benchmark amount

(1) CCA non-drug monthly benchmark amount

For purposes of this section, the term ''CCA non-drug monthly benchmark amount'' means, with respect to a CCA area for a month in a year, the sum of the 2 components described in paragraph (2) for the area and year. The Secretary shall compute such benchmark amount for each such CCA area before the beginning of each annual, coordinated election period under section 1395w–21(e)(3)(B) of this title for each year (beginning with 2010) in which the CCA area is so selected.

(2) 2 components

For purposes of paragraph (1), the 2 components described in this paragraph for a CCA area and a year are the following:

(A) MA local component

The product of the following:

(i) Weighted average of medicare advantage plan bids in area

The weighted average of the plan bids for the area and year (as determined under paragraph (3)(A)).

(ii) Non-FFS market share

One minus the fee-for-service market share percentage, determined under paragraph (4) for the area and year.

(B) Fee-for-service component

The product of the following:

(i) Fee-for-service area-specific non-drug amount

The fee-for-service area-specific non-drug amount (as defined in paragraph (5)) for the area and year.

(ii) Fee-for-service market share

The fee-for-service market share percentage, determined under paragraph (4) for the area and year.

(3) Determination of weighted average MA bids for a CCA area

(A) In general

For purposes of paragraph (2)(A)(i), the weighted average of plan bids for a CCA area and a year is, subject to subparagraph (D), the sum of the following products for MA local plans described in subparagraph (C) in the area and year:

(i) Monthly medicare advantage statutory non-drug bid amount

The accepted unadjusted MA statutory non-drug monthly bid amount.

(ii) Plan's share of medicare advantage enrollment in area

The number of individuals described in subparagraph (B), divided by the total number of such individuals for all MA plans described in subparagraph (C) for that area and year.

(B) Counting of individuals

The Secretary shall count, for each MA local plan described in subparagraph (C) for an area and year, the number of individuals who reside in the area and who were enrolled under such plan under this part during the reference month for that year.

(C) Exclusion of plans not offered in previous year

For an area and year, the MA local plans described in this subparagraph are MA local plans described in section 1395w–21(a)(2)(A)(i) of this title that are offered in the area and year and were offered in the CCA area in the reference month.

(D) Computation of weighted average of plan bids

In calculating the weighted average of plan bids for a CCA area under subparagraph (A)—

(i) in the case of an MA local plan that has a service area only part of which is within such CCA area, the MA organization offering such plan shall submit a separate bid for such plan for the portion within such CCA area; and

(ii) the Secretary shall adjust such separate bid (or, in the case of an MA local plan that has a service area entirely within such CCA area, the plan bid) as may be necessary to take into account differences between the service area of such plan within the CCA area and the entire CCA area and the distribution of plan enrollees of all MA local plans offered within the CCA area.

(4) Computation of fee-for-service market share percentage

The Secretary shall determine, for a year and a CCA area, the proportion (in this subsection referred to as the ''fee-for-service market share percentage'') equal to—

(A) the total number of MA eligible individuals residing in such area who during the reference month for the year were not enrolled in any MA plan; divided by

(B) the sum of such number and the total number of MA eligible individuals residing in such area who during such reference month were enrolled in an MA local plan described in section 1395w–21(a)(2)(A)(i) of this title,

or, if greater, such proportion determined for individuals nationally.

(5) Fee-for-service area-specific non-drug amount

(A) In general

For purposes of paragraph (2)(B)(i) and subsection (f)(2)(A) of this section, subject to subparagraph (C), the term ''fee-for-service area-specific non-drug amount'' means, for a CCA area and a year, the adjusted average per capita cost for such area and year involved, determined under section 1395mm(a)(4) of this title and adjusted as appropriate for the purpose of risk adjustment for benefits under the original medicare fee-for-service program option for individuals entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter who are not enrolled in an MA plan for the year, but adjusted to exclude costs attributable to payments under section 1395ww(h) of this title.

(B) Use of full risk adjustment to standardize fee-for-service costs to typical beneficiary

In determining the adjusted average per capita cost for an area and year under subparagraph (A), such costs shall be adjusted to fully take into account the demographic and health status risk factors established under section 1395w–23(a)(1)(A)(iv) of this title[1] so that such per capita costs reflect the average costs for a typical beneficiary residing in the CCA area.

(C) Inclusion of costs of VA and DOD military facility services to medicare-eligible beneficiaries

In determining the adjusted average per capita cost under subparagraph (A) for a year, such cost shall be adjusted to include the Secretary's estimate, on a per capita basis, of the amount of additional payments that would have been made in the area involved under this subchapter if individuals entitled to benefits under this subchapter had not received services from facilities of the Department of Veterans Affairs or the Department of Defense.

(f) Premium adjustment

(1) Application

(A) In general

Except as provided in subparagraph (B), in the case of an individual who is enrolled under part B of this subchapter, who resides in a CCA area, and who is not enrolled in an MA plan under this part, the monthly premium otherwise applied under part B of this subchapter (determined without regard to subsections (b), (f), and (i) of section 1395r of this title or any adjustment under this subsection) shall be adjusted in accordance with paragraph (2), but only in the case of premiums for months during the period in which the CCA program under this section for such area is in effect.

(B) No premium adjustment for subsidy eligible beneficiaries

No premium adjustment shall be made under this subsection for a premium for a month if the individual is determined to be a subsidy eligible individual (as defined in section 1395w–114(a)(3)(A) of this title) for the month.

(2) Amount of adjustment

(A) In general

Under this paragraph, subject to the exemption under paragraph (1)(B) and the limitation under subparagraph (B), if the fee-for-service area-specific non-drug amount (as defined in section[2] (e)(5)) for a CCA area in which an individual resides for a month—

(i) does not exceed the CCA non-drug monthly benchmark amount (as determined under subsection (e)(1) of this section) for such area and month, the amount of the premium for the individual for the month shall be reduced, by an amount equal to 75 percent of the amount by which such CCA benchmark exceeds such fee-for-service area-specific non-drug amount; or

(ii) exceeds such CCA non-drug benchmark, the amount of the premium for the individual for the month shall be adjusted to ensure, that—

(I) the sum of the amount of the adjusted premium and the CCA non-drug benchmark for the area; is equal to

(II) the sum of the unadjusted premium plus the amount of such fee-for-service area-specific non-drug amount for the area.

[1] See References in Text note below.

[2] So in original. Probably should be ''subsection''.

(B) Limitation

In no case shall the actual amount of an adjustment under subparagraph (A) for an area and month in a year result in an adjustment that exceeds the maximum adjustment permitted under subparagraph (C) for the area and year, or, if less, the maximum annual adjustment permitted under subparagraph (D) for the area and year.

(C) Phase-in of adjustment

The amount of an adjustment under subparagraph (A) for a CCA area and year may not exceed the product of the phase-in fraction for the year under subsection (d)(3)(B) of this section multiplied by the amount of the adjustment otherwise computed under subparagraph (A) for the area and year, determined without regard to this subparagraph and subparagraph (D).

(D) 5-percent limitation on adjustment

The amount of the adjustment under this subsection for months in a year shall not exceed 5 percent of the amount of the monthly premium amount determined for months in the year under section 1395r of this title without regard to subsections (b), (f), and (i) of such section and this subsection.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860C–1, as added Pub. L. 108–173, title II, § 241(a), Dec. 8, 2003, 117 Stat. 2214.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (b)(2)(B) and (e)(5)(A), is classified to section 1395c et seq. of this title.

Part B of this subchapter, referred to in subsecs. (b)(2)(B), (e)(5)(A), and (f)(1)(A), is classified to section 1395j et seq. of this title.

Section 1395w–23(a)(1)(A)(iv) of this title, referred to in subsec. (e)(5)(B), probably should be section 1395w–23(a)(1)(C) of this title, which relates to demographic adjustment, including adjustment for health status. Section 1395w–23 of this title does not contain a subsec. (a)(1)(A)(iv).

NO CHANGE IN MEDICARE'S DEFINED BENEFIT PACKAGE

Pub. L. 108–173, title II, § 241(c), Dec. 8, 2003, 117 Stat. 2221, provided that: ''Nothing in this part [probably should be this section, enacting this section and amending sections 1395r, 1395w, and 1395w–23 of this title] (or the amendments made by this part) shall be construed as changing the entitlement to defined benefits under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter].''

PART D—VOLUNTARY PRESCRIPTION DRUG BENEFIT PROGRAM

PRIOR PROVISIONS

A prior part D of this subchapter, consisting of section 1395x et seq., was redesignated part E of this subchapter.

SUBPART 1—PART D ELIGIBLE INDIVIDUALS AND PRESCRIPTION DRUG BENEFITS

§ 1395w–101. Eligibility, enrollment, and information

(a) Provision of qualified prescription drug coverage through enrollment in plans

(1) In general

Subject to the succeeding provisions of this part, each part D eligible individual (as defined in paragraph (3)(A)) is entitled to obtain qualified prescription drug coverage (described in section 1395w–102(a) of this title) as follows:

(A) Fee-for-service enrollees may receive coverage through a prescription drug plan

A part D eligible individual who is not enrolled in an MA plan may obtain qualified prescription drug coverage through enrollment in a prescription drug plan (as defined in section 1395w–151(a)(14) of this title).

(B) Medicare Advantage enrollees

(i) Enrollees in a plan providing qualified prescription drug coverage receive coverage through the plan

A part D eligible individual who is enrolled in an MA–PD plan obtains such coverage through such plan.

(ii) Limitation on enrollment of MA plan enrollees in prescription drug plans

Except as provided in clauses (iii) and (iv), a part D eligible individual who is enrolled in an MA plan may not enroll in a prescription drug plan under this part.

(iii) Private fee-for-service enrollees in MA plans not providing qualified prescription drug coverage permitted to enroll in a prescription drug plan

A part D eligible individual who is enrolled in an MA private fee-for-service plan (as defined in section 1395w–28(b)(2) of this title) that does not provide qualified prescription drug coverage may obtain qualified prescription drug coverage through enrollment in a prescription drug plan.

(iv) Enrollees in MSA plans permitted to enroll in a prescription drug plan

A part D eligible individual who is enrolled in an MSA plan (as defined in section 1395w–28(b)(3) of this title) may obtain qualified prescription drug coverage through enrollment in a prescription drug plan.

(2) Coverage first effective January 1, 2006

Coverage under prescription drug plans and MA–PD plans shall first be effective on January 1, 2006.

(3) Definitions

For purposes of this part:

(A) Part D eligible individual

The term ''part D eligible individual'' means an individual who is entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter.

(B) MA plan

The term ''MA plan'' has the meaning given such term in section 1395w–28(b)(1) of this title.

(C) MA–PD plan

The term ''MA–PD plan'' means an MA plan that provides qualified prescription drug coverage.

(b) Enrollment process for prescription drug plans

(1) Establishment of process

(A) In general

The Secretary shall establish a process for the enrollment, disenrollment, termination, and change of enrollment of part D eligible individuals in prescription drug plans consistent with this subsection.

(B) Application of MA rules

In establishing such process, the Secretary shall use rules similar to (and coordinated with) the rules for enrollment, disenrollment, termination, and change of enrollment with an MA–PD plan under the following provisions of section 1395w–21 of this title:

(i) Residence requirements

Section 1395w–21(b)(1)(A) of this title, relating to residence requirements.

(ii) Exercise of choice

Section 1395w–21(c) of this title (other than paragraph (3)(A) of such section), relating to exercise of choice.

(iii) Coverage election periods

Subject to paragraphs (2) and (3) of this subsection, section 1395w–21(e) of this title (other than subparagraphs (B), (C), and (E) of paragraph (2) and the second sentence of paragraph (4) of such section), relating to coverage election periods, including initial periods, annual coordinated election periods, special election periods, and election periods for exceptional circumstances.

(iv) Coverage periods

Section 1395w–21(f) of this title, relating to effectiveness of elections and changes of elections.

(v) Guaranteed issue and renewal

Section 1395w–21(g) of this title (other than paragraph (2) of such section and clause (i) and the second sentence of clause (ii) of paragraph (3)(C) of such section), relating to guaranteed issue and renewal.

(vi) Marketing material and application forms

Section 1395w–21(h) of this title, relating to approval of marketing material and application forms.

In applying clauses (ii), (iv), and (v) of this subparagraph, any reference to section 1395w–21(e) of this title shall be treated as a reference to such section as applied pursuant to clause (iii) of this subparagraph.

(C) Special rule

The process established under subparagraph (A) shall include, in the case of a part D eligible individual who is a full-benefit dual eligible individual (as defined in section 1396u–5(c)(6) of this title) who has failed to enroll in a prescription drug plan or an MA–PD plan, for the enrollment in a prescription drug plan that has a monthly beneficiary premium that does not exceed the premium assistance available under section 1395w–114(a)(1)(A) of this title).[1] If there is more than one such plan available, the Secretary shall enroll such an individual on a random basis among all such plans in the PDP region. Nothing in the previous sentence shall prevent such an individual from declining or changing such enrollment.

(2) Initial enrollment period

(A) Program initiation

In the case of an individual who is a part D eligible individual as of November 15, 2005, there shall be an initial enrollment period that shall be the same as the annual, coordinated open election period described in section 1395w–21(e)(3)(B)(iii) of this title, as applied under paragraph (1)(B)(iii).

(B) Continuing periods

In the case of an individual who becomes a part D eligible individual after November 15, 2005, there shall be an initial enrollment period which is the period under section 1395w–21(e)(1) of this title, as applied under paragraph (1)(B)(iii) of this section, as if ''entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter'' were substituted for ''entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter'', but in no case shall such period end before the period described in subparagraph (A).

(3) Additional special enrollment periods

The Secretary shall establish special enrollment periods, including the following:

(A) Involuntary loss of creditable prescription drug coverage

(i) In general

In the case of a part D eligible individual who involuntarily loses creditable prescription drug coverage (as defined in section 1395w–113(b)(4) of this title).

(ii) Notice

In establishing special enrollment periods under clause (i), the Secretary shall take into account when the part D eligible individuals are provided notice of the loss of creditable prescription drug coverage.

(iii) Failure to pay premium

For purposes of clause (i), a loss of coverage shall be treated as voluntary if the coverage is terminated because of failure to pay a required beneficiary premium.

(iv) Reduction in coverage

For purposes of clause (i), a reduction in coverage so that the coverage no longer meets the requirements under section 1395w–113(b)(5) of this title (relating to actuarial equivalence) shall be treated as an involuntary loss of coverage.

(B) Errors in enrollment

In the case described in section 1395p(h) of this title (relating to errors in enrollment),

[1] So in original. The closing parenthesis probably should not appear.

in the same manner as such section applies to part B of this subchapter.

(C) Exceptional circumstances

In the case of part D eligible individuals who meet such exceptional conditions (in addition to those conditions applied under paragraph (1)(B)(iii)) as the Secretary may provide.

(D) Medicaid coverage

In the case of an individual (as determined by the Secretary) who is a full-benefit dual eligible individual (as defined in section 1396u–5(c)(6) of this title).

(E) Discontinuance of MA–PD election during first year of eligibility

In the case of a part D eligible individual who discontinues enrollment in an MA–PD plan under the second sentence of section 1395w–21(e)(4) of this title at the time of the election of coverage under such sentence under the original medicare fee-for-service program.

(4) Information to facilitate enrollment

(A) In general

Notwithstanding any other provision of law but subject to subparagraph (B), the Secretary may provide to each PDP sponsor and MA organization such identifying information about part D eligible individuals as the Secretary determines to be necessary to facilitate efficient marketing of prescription drug plans and MA–PD plans to such individuals and enrollment of such individuals in such plans.

(B) Limitation

(i) Provision of information

The Secretary may provide the information under subparagraph (A) only to the extent necessary to carry out such subparagraph.

(ii) Use of information

Such information provided by the Secretary to a PDP sponsor or an MA organization may be used by such sponsor or organization only to facilitate marketing of, and enrollment of part D eligible individuals in, prescription drug plans and MA–PD plans.

(5) Reference to enrollment procedures for MA–PD plans

For rules applicable to enrollment, disenrollment, termination, and change of enrollment of part D eligible individuals in MA–PD plans, see section 1395w–21 of this title.

(6) Reference to penalties for late enrollment

Section 1395w–113(b) of this title imposes a late enrollment penalty for part D eligible individuals who—

(A) enroll in a prescription drug plan or an MA–PD plan after the initial enrollment period described in paragraph (2); and

(B) fail to maintain continuous creditable prescription drug coverage during the period of non-enrollment.

(c) Providing information to beneficiaries

(1) Activities

The Secretary shall conduct activities that are designed to broadly disseminate information to part D eligible individuals (and prospective part D eligible individuals) regarding the coverage provided under this part. Such activities shall ensure that such information is first made available at least 30 days prior to the initial enrollment period described in subsection (b)(2)(A) of this section.

(2) Requirements

The activities described in paragraph (1) shall—

(A) be similar to the activities performed by the Secretary under section 1395w–21(d) of this title, including dissemination (including through the toll-free telephone number 1–800–MEDICARE) of comparative information for prescription drug plans and MA–PD plans; and

(B) be coordinated with the activities performed by the Secretary under such section and under section 1395b–2 of this title.

(3) Comparative information

(A) In general

Subject to subparagraph (B), the comparative information referred to in paragraph (2)(A) shall include a comparison of the following with respect to qualified prescription drug coverage:

(i) Benefits

The benefits provided under the plan.

(ii) Monthly beneficiary premium

The monthly beneficiary premium under the plan.

(iii) Quality and performance

The quality and performance under the plan.

(iv) Beneficiary cost-sharing

The cost-sharing required of part D eligible individuals under the plan.

(v) Consumer satisfaction surveys

The results of consumer satisfaction surveys regarding the plan conducted pursuant to section 1395w–104(d) of this title.

(B) Exception for unavailability of information

The Secretary is not required to provide comparative information under clauses (iii) and (v) of subparagraph (A) with respect to a plan—

(i) for the first plan year in which it is offered; and

(ii) for the next plan year if it is impracticable or the information is otherwise unavailable.

(4) Information on late enrollment penalty

The information disseminated under paragraph (1) shall include information concerning the methodology for determining the late enrollment penalty under section 1395w–113(b) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–1, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8,

2003, 117 Stat. 2071; amended Pub. L. 109–432, div. B, title II, § 206(b), Dec. 20, 2006, 120 Stat. 2990.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (a)(3)(A) and (b)(2)(B), is classified to section 1395c et seq. of this title.

Part B of this subchapter, referred to in subsecs. (a)(3)(A) and (b)(2)(B), (3)(B), is classified to section 1395j et seq. of this title.

AMENDMENTS

2006—Subsec. (b)(1)(B)(iii). Pub. L. 109–432 substituted ''subparagraphs (B), (C), and (E)'' for ''subparagraphs (B) and (C)''.

SUBMISSION OF LEGISLATIVE PROPOSAL

Pub. L. 108–173, title I, § 101(b), Dec. 8, 2003, 117 Stat. 2150, provided that: ''Not later than 6 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this title and title II [see Tables for classification].''

STUDY ON TRANSITIONING PART B PRESCRIPTION DRUG COVERAGE

Pub. L. 108–173, title I, § 101(c), Dec. 8, 2003, 117 Stat. 2150, provided that: ''Not later than January 1, 2005, the Secretary [of Health and Human Services] shall submit a report to Congress that makes recommendations regarding methods for providing benefits under subpart 1 of part D of title XVIII of the Social Security Act [this subpart] for outpatient prescription drugs for which benefits are provided under part B of such title [part B of this subchapter].''

REPORT ON PROGRESS IN IMPLEMENTATION OF PRESCRIPTION DRUG BENEFIT

Pub. L. 108–173, title I, § 101(d), Dec. 8, 2003, 117 Stat. 2150, provided that: ''Not later than March 1, 2005, the Secretary [of Health and Human Services] shall submit a report to Congress on the progress that has been made in implementing the prescription drug benefit under this title [see Tables for classification]. The Secretary shall include in the report specific steps that have been taken, and that need to be taken, to ensure a timely start of the program on January 1, 2006. The report shall include recommendations regarding an appropriate transition from the program under section 1860D–31 of the Social Security Act [section 1395w–141 of this title] to prescription drug benefits under subpart 1 of part D of title XVIII of such Act [this subpart].''

STATE PHARMACEUTICAL ASSISTANCE TRANSITION COMMISSION

Pub. L. 108–173, title I, § 106, Dec. 8, 2003, 117 Stat. 2168, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established, as of the first day of the third month beginning after the date of the enactment of this Act [Dec. 8, 2003], a State Pharmaceutical Assistance Transition Commission (in this section referred to as the 'Commission') to develop a proposal for addressing the unique transitional issues facing State pharmaceutical assistance programs, and program participants, due to the implementation of the voluntary prescription drug benefit program under part D of title XVIII of the Social Security Act [this part], as added by section 101.

''(2) DEFINITIONS.—For purposes of this section:

''(A) STATE PHARMACEUTICAL ASSISTANCE PROGRAM DEFINED.—The term 'State pharmaceutical assistance program' means a program (other than the medicaid program) operated by a State (or under contract with a State) that provides as of the date of the enactment of this Act [Dec. 8, 2003] financial assistance to medicare beneficiaries for the purchase of prescription drugs.

''(B) PROGRAM PARTICIPANT.—The term 'program participant' means a low-income medicare beneficiary who is a participant in a State pharmaceutical assistance program.

''(b) COMPOSITION.—The Commission shall include the following:

''(1) A representative of each Governor of each State that the Secretary [of Health and Human Services] identifies as operating on a statewide basis a State pharmaceutical assistance program that provides for eligibility and benefits that are comparable or more generous than the low-income assistance eligibility and benefits offered under section 1860D–14 of the Social Security Act [section 1395w–114 of this title].

''(2) Representatives from other States that the Secretary identifies have in operation other State pharmaceutical assistance programs, as appointed by the Secretary.

''(3) Representatives of organizations that have an inherent interest in program participants or the program itself, as appointed by the Secretary but not to exceed the number of representatives under paragraphs (1) and (2).

''(4) Representatives of Medicare Advantage organizations, pharmaceutical benefit managers, and other private health insurance plans, as appointed by the Secretary.

''(5) The Secretary (or the Secretary's designee) and such other members as the Secretary may specify.

The Secretary shall designate a member to serve as Chair of the Commission and the Commission shall meet at the call of the Chair.

''(c) DEVELOPMENT OF PROPOSAL.—The Commission shall develop the proposal described in subsection (a) in a manner consistent with the following principles:

''(1) Protection of the interests of program participants in a manner that is the least disruptive to such participants and that includes a single point of contact for enrollment and processing of benefits.

''(2) Protection of the financial and flexibility interests of States so that States are not financially worse off as a result of the enactment of this title [see Tables for classification].

''(3) Principles of medicare modernization under this Act [see Tables for classification].

''(d) REPORT.—By not later than January 1, 2005, the Commission shall submit to the President and Congress a report that contains a detailed proposal (including specific legislative or administrative recommendations, if any) and such other recommendations as the Commission deems appropriate.

''(e) SUPPORT.—The Secretary shall provide the Commission with the administrative support services necessary for the Commission to carry out its responsibilities under this section.

''(f) TERMINATION.—The Commission shall terminate 30 days after the date of submission of the report under subsection (d).''

CONFLICT OF INTEREST STUDY

Pub. L. 108–173, title I, § 110, Dec. 8, 2003, 117 Stat. 2174, provided that:

''(a) STUDY.—The Federal Trade Commission shall conduct a study of differences in payment amounts for pharmacy services provided to enrollees in group health plans that utilize pharmacy benefit managers. Such study shall include the following:

''(1) An assessment of the differences in costs incurred by such enrollees and plans for prescription drugs dispensed by mail-order pharmacies owned by pharmaceutical benefit managers compared to mail-order pharmacies not owned by pharmaceutical benefit managers, and community pharmacies.

''(2) Whether such plans are acting in a manner that maximizes competition and results in lower prescription drug prices for enrollees.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress a report on the study conducted under subsection (a). Such report shall include recommendations regarding any need for legislation to ensure the fiscal integrity of the voluntary prescription drug benefit program under part D of title XVIII [this part], as added by section 101, that may be appropriated as the result of such study.

''(c) EXEMPTION FROM PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code, shall not apply to the collection of information under subsection (a).''

§ 1395w–102. Prescription drug benefits

(a) Requirements

(1) In general

For purposes of this part and part C of this subchapter, the term ''qualified prescription drug coverage'' means either of the following:

(A) Standard prescription drug coverage with access to negotiated prices

Standard prescription drug coverage (as defined in subsection (b) of this section) and access to negotiated prices under subsection (d) of this section.

(B) Alternative prescription drug coverage with at least actuarially equivalent benefits and access to negotiated prices

Coverage of covered part D drugs which meets the alternative prescription drug coverage requirements of subsection (c) of this section and access to negotiated prices under subsection (d) of this section, but only if the benefit design of such coverage is approved by the Secretary, as provided under subsection (c) of this section.

(2) Permitting supplemental prescription drug coverage

(A) In general

Subject to subparagraph (B), qualified prescription drug coverage may include supplemental prescription drug coverage consisting of either or both of the following:

(i) Certain reductions in cost-sharing

(I) In general

A reduction in the annual deductible, a reduction in the coinsurance percentage, or an increase in the initial coverage limit with respect to covered part D drugs, or any combination thereof, insofar as such a reduction or increase increases the actuarial value of benefits above the actuarial value of basic prescription drug coverage.

(II) Construction

Nothing in this paragraph shall be construed as affecting the application of subsection (c)(3) of this section.

(ii) Optional drugs

Coverage of any product that would be a covered part D drug but for the application of subsection (e)(2)(A) of this section.

(B) Requirement

A PDP sponsor may not offer a prescription drug plan that provides supplemental prescription drug coverage pursuant to subparagraph (A) in an area unless the sponsor also offers a prescription drug plan in the area that only provides basic prescription drug coverage.

(3) Basic prescription drug coverage

For purposes of this part and part C of this subchapter, the term ''basic prescription drug coverage'' means either of the following:

(A) Coverage that meets the requirements of paragraph (1)(A).

(B) Coverage that meets the requirements of paragraph (1)(B) but does not have any supplemental prescription drug coverage described in paragraph (2)(A).

(4) Application of secondary payor provisions

The provisions of section 1395w–22(a)(4) of this title shall apply under this part in the same manner as they apply under part C of this subchapter.

(5) Construction

Nothing in this subsection shall be construed as changing the computation of incurred costs under subsection (b)(4) of this section.

(b) Standard prescription drug coverage

For purposes of this part and part C of this subchapter, the term ''standard prescription drug coverage'' means coverage of covered part D drugs that meets the following requirements:

(1) Deductible

(A) In general

The coverage has an annual deductible—

(i) for 2006, that is equal to $250; or

(ii) for a subsequent year, that is equal to the amount specified under this paragraph for the previous year increased by the percentage specified in paragraph (6) for the year involved.

(B) Rounding

Any amount determined under subparagraph (A)(ii) that is not a multiple of $5 shall be rounded to the nearest multiple of $5.

(2) Benefit structure

(A) 25 percent coinsurance

The coverage has coinsurance (for costs above the annual deductible specified in paragraph (1) and up to the initial coverage limit under paragraph (3)) that is—

(i) equal to 25 percent; or

(ii) actuarially equivalent (using processes and methods established under section 1395w–111(c) of this title) to an average expected payment of 25 percent of such costs.

(B) Use of tiers

Nothing in this part shall be construed as preventing a PDP sponsor or an MA organization from applying tiered copayments under a plan, so long as such tiered copayments are consistent with subparagraph (A)(ii).

(3) Initial coverage limit

(A) In general

Except as provided in paragraph (4), the coverage has an initial coverage limit on the

maximum costs that may be recognized for payment purposes (including the annual deductible)—

(i) for 2006, that is equal to $2,250; or

(ii) for a subsequent year, that is equal to the amount specified in this paragraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved.

(B) Rounding

Any amount determined under subparagraph (A)(ii) that is not a multiple of $10 shall be rounded to the nearest multiple of $10.

(4) Protection against high out-of-pocket expenditures

(A) In general

(i) In general

The coverage provides benefits, after the part D eligible individual has incurred costs (as described in subparagraph (C)) for covered part D drugs in a year equal to the annual out-of-pocket threshold specified in subparagraph (B), with cost-sharing that is equal to the greater of—

(I) a copayment of $2 for a generic drug or a preferred drug that is a multiple source drug (as defined in section 1396r–8(k)(7)(A)(i) of this title) and $5 for any other drug; or

(II) coinsurance that is equal to 5 percent.

(ii) Adjustment of amount

For a year after 2006, the dollar amounts specified in clause (i)(I) shall be equal to the dollar amounts specified in this subparagraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved. Any amount established under this clause that is not a multiple of a 5 cents shall be rounded to the nearest multiple of 5 cents.

(B) Annual out-of-pocket threshold

(i) In general

For purposes of this part, the ''annual out-of-pocket threshold'' specified in this subparagraph—

(I) for 2006, is equal to $3,600; or

(II) for a subsequent year, is equal to the amount specified in this subparagraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved.

(ii) Rounding

Any amount determined under clause (i)(II) that is not a multiple of $50 shall be rounded to the nearest multiple of $50.

(C) Application

In applying subparagraph (A)—

(i) incurred costs shall only include costs incurred with respect to covered part D drugs for the annual deductible described in paragraph (1), for cost-sharing described in paragraph (2), and for amounts for which benefits are not provided because of the application of the initial coverage limit described in paragraph (3), but does not include any costs incurred for covered part D drugs which are not included (or treated as being included) in the plan's formulary; and

(ii) such costs shall be treated as incurred only if they are paid by the part D eligible individual (or by another person, such as a family member, on behalf of the individual), under section 1395w–114 of this title, or under a State Pharmaceutical Assistance Program and the part D eligible individual (or other person) is not reimbursed through insurance or otherwise, a group health plan, or other third-party payment arrangement (other than under such section or such a Program) for such costs.

(D) Information regarding third-party reimbursement

(i) Procedures for exchanging information

In order to accurately apply the requirements of subparagraph (C)(ii), the Secretary is authorized to establish procedures, in coordination with the Secretary of the Treasury and the Secretary of Labor—

(I) for determining whether costs for part D eligible individuals are being reimbursed through insurance or otherwise, a group health plan, or other third-party payment arrangement; and

(II) for alerting the PDP sponsors and MA organizations that offer the prescription drug plans and MA–PD plans in which such individuals are enrolled about such reimbursement arrangements.

(ii) Authority to request information from enrollees

A PDP sponsor or an MA organization may periodically ask part D eligible individuals enrolled in a prescription drug plan or an MA–PD plan offered by the sponsor or organization whether such individuals have or expect to receive such third-party reimbursement. A material misrepresentation of the information described in the preceding sentence by an individual (as defined in standards set by the Secretary and determined through a process established by the Secretary) shall constitute grounds for termination of enrollment in any plan under section 1395w–21(g)(3)(B) of this title (and as applied under this part under section 1395w–101(b)(1)(B)(v) of this title) for a period specified by the Secretary.

(5) Construction

Nothing in this part shall be construed as preventing a PDP sponsor or an MA organization offering an MA–PD plan from reducing to zero the cost-sharing otherwise applicable to preferred or generic drugs.

(6) Annual percentage increase

The annual percentage increase specified in this paragraph for a year is equal to the an-

nual percentage increase in average per capita aggregate expenditures for covered part D drugs in the United States for part D eligible individuals, as determined by the Secretary for the 12-month period ending in July of the previous year using such methods as the Secretary shall specify.

(c) Alternative prescription drug coverage requirements

A prescription drug plan or an MA–PD plan may provide a different prescription drug benefit design from standard prescription drug coverage so long as the Secretary determines (consistent with section 1395w–111(c) of this title) that the following requirements are met and the plan applies for, and receives, the approval of the Secretary for such benefit design:

(1) Assuring at least actuarially equivalent coverage

(A) Assuring equivalent value of total coverage

The actuarial value of the total coverage is at least equal to the actuarial value of standard prescription drug coverage.

(B) Assuring equivalent unsubsidized value of coverage

The unsubsidized value of the coverage is at least equal to the unsubsidized value of standard prescription drug coverage. For purposes of this subparagraph, the unsubsidized value of coverage is the amount by which the actuarial value of the coverage exceeds the actuarial value of the subsidy payments under section 1395w–115 of this title with respect to such coverage.

(C) Assuring standard payment for costs at initial coverage limit

The coverage is designed, based upon an actuarially representative pattern of utilization, to provide for the payment, with respect to costs incurred that are equal to the initial coverage limit under subsection (b)(3) of this section for the year, of an amount equal to at least the product of—

(i) the amount by which the initial coverage limit described in subsection (b)(3) of this section for the year exceeds the deductible described in subsection (b)(1) of this section for the year; and

(ii) 100 percent minus the coinsurance percentage specified in subsection (b)(2)(A)(i) of this section.

(2) Maximum required deductible

The deductible under the coverage shall not exceed the deductible amount specified under subsection (b)(1) of this section for the year.

(3) Same protection against high out-of-pocket expenditures

The coverage provides the coverage required under subsection (b)(4) of this section.

(d) Access to negotiated prices

(1) Access

(A) In general

Under qualified prescription drug coverage offered by a PDP sponsor offering a prescription drug plan or an MA organization offering an MA–PD plan, the sponsor or organization shall provide enrollees with access to negotiated prices used for payment for covered part D drugs, regardless of the fact that no benefits may be payable under the coverage with respect to such drugs because of the application of a deductible or other cost-sharing or an initial coverage limit (described in subsection (b)(3) of this section).

(B) Negotiated prices

For purposes of this part, negotiated prices shall take into account negotiated price concessions, such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations, for covered part D drugs, and include any dispensing fees for such drugs.

(C) Medicaid-related provisions

The prices negotiated by a prescription drug plan, by an MA–PD plan with respect to covered part D drugs, or by a qualified retiree prescription drug plan (as defined in section 1395w–132(a)(2) of this title) with respect to such drugs on behalf of part D eligible individuals, shall (notwithstanding any other provision of law) not be taken into account for the purposes of establishing the best price under section 1395r–8(c)(1)(C) of this title.

(2) Disclosure

A PDP sponsor offering a prescription drug plan or an MA organization offering an MA–PD plan shall disclose to the Secretary (in a manner specified by the Secretary) the aggregate negotiated price concessions described in paragraph (1)(B) made available to the sponsor or organization by a manufacturer which are passed through in the form of lower subsidies, lower monthly beneficiary prescription drug premiums, and lower prices through pharmacies and other dispensers. The provisions of section 1396r–8(b)(3)(D) of this title apply to information disclosed to the Secretary under this paragraph.

(3) Audits

To protect against fraud and abuse and to ensure proper disclosures and accounting under this part and in accordance with section 1395w–27(d)(2)(B) of this title (as applied under section 1395w–112(b)(3)(C) of this title), the Secretary may conduct periodic audits, directly or through contracts, of the financial statements and records of PDP sponsors with respect to prescription drug plans and MA organizations with respect to MA–PD plans.

(e) Covered part D drug defined

(1) In general

Except as provided in this subsection, for purposes of this part, the term ''covered part D drug'' means—

(A) a drug that may be dispensed only upon a prescription and that is described in subparagraph (A)(i), (A)(ii), or (A)(iii) of section 1396r–8(k)(2) of this title; or

(B) a biological product described in clauses (i) through (iii) of subparagraph (B) of such section or insulin described in sub-

paragraph (C) of such section and medical supplies associated with the injection of insulin (as defined in regulations of the Secretary),

and such term includes a vaccine licensed under section 262 of this title (and, for vaccines administered on or after January 1, 2008, its administration) and any use of a covered part D drug for a medically accepted indication (as defined in section 1396r–8(k)(6) of this title).

(2) Exclusions

(A) In general

Such term does not include drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under section 1396r–8(d)(2) of this title, other than subparagraph (E) of such section (relating to smoking cessation agents), or under section 1396r–8(d)(3) of this title, as such sections were in effect on December 8, 2003. Such term also does not include a drug when used for the treatment of sexual or erectile dysfunction, unless such drug were used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the Food and Drug Administration.

(B) Medicare covered drugs

A drug prescribed for a part D eligible individual that would otherwise be a covered part D drug under this part shall not be so considered if payment for such drug as so prescribed and dispensed or administered with respect to that individual is available (or would be available but for the application of a deductible) under part A or B of this subchapter for that individual.

(3) Application of general exclusion provisions

A prescription drug plan or an MA–PD plan may exclude from qualified prescription drug coverage any covered part D drug—

(A) for which payment would not be made if section 1395y(a) of this title applied to this part; or

(B) which is not prescribed in accordance with the plan or this part.

Such exclusions are determinations subject to reconsideration and appeal pursuant to subsections (g) and (h), respectively, of section 1395w–104 of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–2, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2075; amended Pub. L. 109–91, title I, § 103(a), Oct. 20, 2005, 119 Stat. 2092; Pub. L. 109–432, div. B, title II, § 202(b), Dec. 20, 2006, 120 Stat. 2986.)

REFERENCES IN TEXT

Part C of this subchapter, referred to in subsecs. (a)(1), (3), (4) and (b), is classified to section 1395w–21 et seq. of this title.

Parts A and B of this subchapter, referred to in subsec. (e)(2)(B), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2006—Subsec. (e)(1). Pub. L. 109–432 inserted ''(and, for vaccines administered on or after January 1, 2008, its administration)'' after ''section 262 of this title'' in concluding provisions.

2005—Subsec. (e)(2)(A). Pub. L. 109–91, § 103(a)(2), inserted at end ''Such term also does not include a drug when used for the treatment of sexual or erectile dysfunction, unless such drug were used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the Food and Drug Administration.''

Pub. L. 109–91, § 103(a)(1), inserted before period at end '', as such sections were in effect on December 8, 2003''.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–91, title I, § 103(c), Oct. 20, 2005, 119 Stat. 2092, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) and the amendment made by subsection (a)(2) [amending this section] shall apply to coverage for drugs dispensed on or after January 1, 2007.''

CONSTRUCTION

Pub. L. 109–91, title I, § 103(b), Oct. 20, 2005, 119 Stat. 2092, provided that: ''Nothing in this section [amending this section and enacting provisions set out as a note under this section] shall be construed as preventing a prescription drug plan or an MA–PD plan from providing coverage of drugs for the treatment of sexual or erectile dysfunction as supplemental prescription drug coverage under section 1860D–2(a)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1395w–102(a)(2)(A)(ii)).''

PAYMENT FOR ADMINISTRATION OF PART D VACCINES IN 2007

Pub. L. 109–432, div. B, title II, § 202(a), Dec. 20, 2006, 120 Stat. 2986, provided that: ''Notwithstanding any other provision of law, in the case of a vaccine that is a covered part D drug under section 1860D–2(e) of the Social Security Act (42 U.S.C. 1395w–102(e)) and that is administered during 2007, the administration of such vaccine shall be paid under part B of title XVIII of such Act [part B of this subchapter] as if it were the administration of a vaccine described in section 1861(s)(10)(B) of such Act (42 U.S.C. 1395w(s)(10)(B) [probably should be 1395x(s)(10)(B)]).''

§ 1395w–103. Access to a choice of qualified prescription drug coverage

(a) Assuring access to a choice of coverage

(1) Choice of at least two plans in each area

The Secretary shall ensure that each part D eligible individual has available, consistent with paragraph (2), a choice of enrollment in at least 2 qualifying plans (as defined in paragraph (3)) in the area in which the individual resides, at least one of which is a prescription drug plan. In any such case in which such plans are not available, the part D eligible individual shall be given the opportunity to enroll in a fallback prescription drug plan.

(2) Requirement for different plan sponsors

The requirement in paragraph (1) is not satisfied with respect to an area if only one entity offers all the qualifying plans in the area.

(3) Qualifying plan defined

For purposes of this section, the term ''qualifying plan'' means—

(A) a prescription drug plan; or

(B) an MA–PD plan described in section 1395w–21(a)(2)(A)(i) of this title that provides—

(i) basic prescription drug coverage; or

(ii) qualified prescription drug coverage that provides supplemental prescription drug coverage so long as there is no MA monthly supplemental beneficiary premium applied under the plan, due to the application of a credit against such premium of a rebate under section 1395w–24(b)(1)(C) of this title.

(b) Flexibility in risk assumed and application of fallback plan

In order to ensure access pursuant to subsection (a) of this section in an area—

(1) the Secretary may approve limited risk plans under section 1395w–111(f) of this title for the area; and

(2) only if such access is still not provided in the area after applying paragraph (1), the Secretary shall provide for the offering of a fallback prescription drug plan for that area under section 1395w–111(g) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–3, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2081.)

§ 1395w–104. Beneficiary protections for qualified prescription drug coverage

(a) Dissemination of information

(1) General information

(A) Application of MA information

A PDP sponsor shall disclose, in a clear, accurate, and standardized form to each enrollee with a prescription drug plan offered by the sponsor under this part at the time of enrollment and at least annually thereafter, the information described in section 1395w–22(c)(1) of this title relating to such plan, insofar as the Secretary determines appropriate with respect to benefits provided under this part, and including the information described in subparagraph (B).

(B) Drug specific information

The information described in this subparagraph is information concerning the following:

(i) Access to specific covered part D drugs, including access through pharmacy networks.

(ii) How any formulary (including any tiered formulary structure) used by the sponsor functions, including a description of how a part D eligible individual may obtain information on the formulary consistent with paragraph (3).

(iii) Beneficiary cost-sharing requirements and how a part D eligible individual may obtain information on such requirements, including tiered or other copayment level applicable to each drug (or class of drugs), consistent with paragraph (3).

(iv) The medication therapy management program required under subsection (c) of this section.

(2) Disclosure upon request of general coverage, utilization, and grievance information

Upon request of a part D eligible individual who is eligible to enroll in a prescription drug plan, the PDP sponsor offering such plan shall provide information similar (as determined by the Secretary) to the information described in subparagraphs (A), (B), and (C) of section 1395w–22(c)(2) of this title to such individual.

(3) Provision of specific information

(A) Response to beneficiary questions

Each PDP sponsor offering a prescription drug plan shall have a mechanism for providing specific information on a timely basis to enrollees upon request. Such mechanism shall include access to information through the use of a toll-free telephone number and, upon request, the provision of such information in writing.

(B) Availability of information on changes in formulary through the Internet

A PDP sponsor offering a prescription drug plan shall make available on a timely basis through an Internet website information on specific changes in the formulary under the plan (including changes to tiered or preferred status of covered part D drugs).

(4) Claims information

A PDP sponsor offering a prescription drug plan must furnish to each enrollee in a form easily understandable to such enrollees—

(A) an explanation of benefits (in accordance with section 1395b–7(a) of this title or in a comparable manner); and

(B) when prescription drug benefits are provided under this part, a notice of the benefits in relation to—

(i) the initial coverage limit for the current year; and

(ii) the annual out-of-pocket threshold for the current year.

Notices under subparagraph (B) need not be provided more often than as specified by the Secretary and notices under subparagraph (B)(ii) shall take into account the application of section 1395w–102(b)(4)(C) of this title to the extent practicable, as specified by the Secretary.

(b) Access to covered part D drugs

(1) Assuring pharmacy access

(A) Participation of any willing pharmacy

A prescription drug plan shall permit the participation of any pharmacy that meets the terms and conditions under the plan.

(B) Discounts allowed for network pharmacies

For covered part D drugs dispensed through in-network pharmacies, a prescription drug plan may, notwithstanding subparagraph (A), reduce coinsurance or copayments for part D eligible individuals enrolled in the plan below the level otherwise required. In no case shall such a reduction result in an increase in payments made by the Secretary under section 1395w–115 of this title to a plan.

(C) Convenient access for network pharmacies

(i) In general

The PDP sponsor of the prescription drug plan shall secure the participation in

its network of a sufficient number of pharmacies that dispense (other than by mail order) drugs directly to patients to ensure convenient access (consistent with rules established by the Secretary).

(ii) Application of TRICARE standards

The Secretary shall establish rules for convenient access to in-network pharmacies under this subparagraph that are no less favorable to enrollees than the rules for convenient access to pharmacies included in the statement of work of solicitation (#MDA906–03–R–0002) of the Department of Defense under the TRICARE Retail Pharmacy (TRRx) as of March 13, 2003.

(iii) Adequate emergency access

Such rules shall include adequate emergency access for enrollees.

(iv) Convenient access in long-term care facilities

Such rules may include standards with respect to access for enrollees who are residing in long-term care facilities and for pharmacies operated by the Indian Health Service, Indian tribes and tribal organizations, and urban Indian organizations (as defined in section 1603 of title 25).

(D) Level playing field

Such a sponsor shall permit enrollees to receive benefits (which may include a 90-day supply of drugs or biologicals) through a pharmacy (other than a mail order pharmacy), with any differential in charge paid by such enrollees.

(E) Not required to accept insurance risk

The terms and conditions under subparagraph (A) may not require participating pharmacies to accept insurance risk as a condition of participation.

(2) Use of standardized technology

(A) In general

The PDP sponsor of a prescription drug plan shall issue (and reissue, as appropriate) such a card (or other technology) that may be used by an enrollee to assure access to negotiated prices under section 1395w–102(d) of this title.

(B) Standards

(i) In general

The Secretary shall provide for the development, adoption, or recognition of standards relating to a standardized format for the card or other technology required under subparagraph (A). Such standards shall be compatible with part C of subchapter XI of this chapter and may be based on standards developed by an appropriate standard setting organization.

(ii) Consultation

In developing the standards under clause (i), the Secretary shall consult with the National Council for Prescription Drug Programs and other standard setting organizations determined appropriate by the Secretary.

(iii) Implementation

The Secretary shall develop, adopt, or recognize the standards under clause (i) by such date as the Secretary determines shall be sufficient to ensure that PDP sponsors utilize such standards beginning January 1, 2006.

(3) Requirements on development and application of formularies

If a PDP sponsor of a prescription drug plan uses a formulary (including the use of tiered cost-sharing), the following requirements must be met:

(A) Development and revision by a pharmacy and therapeutic (P&T) committee

(i) In general

The formulary must be developed and reviewed by a pharmacy and therapeutic committee. A majority of the members of such committee shall consist of individuals who are practicing physicians or practicing pharmacists (or both).

(ii) Inclusion of independent experts

Such committee shall include at least one practicing physician and at least one practicing pharmacist, each of whom—

(I) is independent and free of conflict with respect to the sponsor and plan; and

(II) has expertise in the care of elderly or disabled persons.

(B) Formulary development

In developing and reviewing the formulary, the committee shall—

(i) base clinical decisions on the strength of scientific evidence and standards of practice, including assessing peer-reviewed medical literature, such as randomized clinical trials, pharmacoeconomic studies, outcomes research data, and on such other information as the committee determines to be appropriate; and

(ii) take into account whether including in the formulary (or in a tier in such formulary) particular covered part D drugs has therapeutic advantages in terms of safety and efficacy.

(C) Inclusion of drugs in all therapeutic categories and classes

(i) In general

The formulary must include drugs within each therapeutic category and class of covered part D drugs, although not necessarily all drugs within such categories and classes.

(ii) Model guidelines

The Secretary shall request the United States Pharmacopeia to develop, in consultation with pharmaceutical benefit managers and other interested parties, a list of categories and classes that may be used by prescription drug plans under this paragraph and to revise such classification from time to time to reflect changes in therapeutic uses of covered part D drugs and the additions of new covered part D drugs.

(iii) Limitation on changes in therapeutic classification

The PDP sponsor of a prescription drug plan may not change the therapeutic categories and classes in a formulary other than at the beginning of each plan year except as the Secretary may permit to take into account new therapeutic uses and newly approved covered part D drugs.

(D) Provider and patient education

The PDP sponsor shall establish policies and procedures to educate and inform health care providers and enrollees concerning the formulary.

(E) Notice before removing drug from formulary or changing preferred or tier status of drug

Any removal of a covered part D drug from a formulary and any change in the preferred or tiered cost-sharing status of such a drug shall take effect only after appropriate notice is made available (such as under subsection (a)(3) of this section) to the Secretary, affected enrollees, physicians, pharmacies, and pharmacists.

(F) Periodic evaluation of protocols

In connection with the formulary, the sponsor of a prescription drug plan shall provide for the periodic evaluation and analysis of treatment protocols and procedures.

The requirements of this paragraph may be met by a PDP sponsor directly or through arrangements with another entity.

(c) Cost and utilization management; quality assurance; medication therapy management program

(1) In general

The PDP sponsor shall have in place, directly or through appropriate arrangements, with respect to covered part D drugs, the following:

(A) A cost-effective drug utilization management program, including incentives to reduce costs when medically appropriate, such as through the use of multiple source drugs (as defined in section 1396r–8(k)(7)(A)(i) of this title).

(B) Quality assurance measures and systems to reduce medication errors and adverse drug interactions and improve medication use.

(C) A medication therapy management program described in paragraph (2).

(D) A program to control fraud, abuse, and waste.

Nothing in this section shall be construed as impairing a PDP sponsor from utilizing cost management tools (including differential payments) under all methods of operation.

(2) Medication therapy management program

(A) Description

(i) In general

A medication therapy management program described in this paragraph is a program of drug therapy management that may be furnished by a pharmacist and that is designed to assure, with respect to targeted beneficiaries described in clause (ii), that covered part D drugs under the prescription drug plan are appropriately used to optimize therapeutic outcomes through improved medication use, and to reduce the risk of adverse events, including adverse drug interactions. Such a program may distinguish between services in ambulatory and institutional settings.

(ii) Targeted beneficiaries described

Targeted beneficiaries described in this clause are part D eligible individuals who—

(I) have multiple chronic diseases (such as diabetes, asthma, hypertension, hyperlipidemia, and congestive heart failure);

(II) are taking multiple covered part D drugs; and

(III) are identified as likely to incur annual costs for covered part D drugs that exceed a level specified by the Secretary.

(B) Elements

Such program may include elements that promote—

(i) enhanced enrollee understanding to promote the appropriate use of medications by enrollees and to reduce the risk of potential adverse events associated with medications, through beneficiary education, counseling, and other appropriate means;

(ii) increased enrollee adherence with prescription medication regimens through medication refill reminders, special packaging, and other compliance programs and other appropriate means; and

(iii) detection of adverse drug events and patterns of overuse and underuse of prescription drugs.

(C) Development of program in cooperation with licensed pharmacists

Such program shall be developed in cooperation with licensed and practicing pharmacists and physicians.

(D) Coordination with care management plans

The Secretary shall establish guidelines for the coordination of any medication therapy management program under this paragraph with respect to a targeted beneficiary with any care management plan established with respect to such beneficiary under a chronic care improvement program under section 1395b–8 of this title.

(E) Considerations in pharmacy fees

The PDP sponsor of a prescription drug plan shall take into account, in establishing fees for pharmacists and others providing services under such plan, the resources used, and time required to, implement the medication therapy management program under this paragraph. Each such sponsor shall disclose to the Secretary upon request the amount of any such management or dispens-

ing fees. The provisions of section 1396r–8(b)(3)(D) of this title apply to information disclosed under this subparagraph.

(d) Consumer satisfaction surveys

In order to provide for comparative information under section 1395w–101(c)(3)(A)(v) of this title, the Secretary shall conduct consumer satisfaction surveys with respect to PDP sponsors and prescription drug plans in a manner similar to the manner such surveys are conducted for MA organizations and MA plans under part C of this subchapter.

(e) Electronic prescription program

(1) Application of standards

As of such date as the Secretary may specify, but not later than 1 year after the date of promulgation of final standards under paragraph (4)(D), prescriptions and other information described in paragraph (2)(A) for covered part D drugs prescribed for part D eligible individuals that are transmitted electronically shall be transmitted only in accordance with such standards under an electronic prescription drug program that meets the requirements of paragraph (2).

(2) Program requirements

Consistent with uniform standards established under paragraph (3)—

(A) Provision of information to prescribing health care professional and dispensing pharmacies and pharmacists

An electronic prescription drug program shall provide for the electronic transmittal to the prescribing health care professional and to the dispensing pharmacy and pharmacist of the prescription and information on eligibility and benefits (including the drugs included in the applicable formulary, any tiered formulary structure, and any requirements for prior authorization) and of the following information with respect to the prescribing and dispensing of a covered part D drug:

(i) Information on the drug being prescribed or dispensed and other drugs listed on the medication history, including information on drug-drug interactions, warnings or cautions, and, when indicated, dosage adjustments.

(ii) Information on the availability of lower cost, therapeutically appropriate alternatives (if any) for the drug prescribed.

(B) Application to medical history information

Effective on and after such date as the Secretary specifies and after the establishment of appropriate standards to carry out this subparagraph, the program shall provide for the electronic transmittal in a manner similar to the manner under subparagraph (A) of information that relates to the medical history concerning the individual and related to a covered part D drug being prescribed or dispensed, upon request of the professional or pharmacist involved.

(C) Limitations

Information shall only be disclosed under subparagraph (A) or (B) if the disclosure of such information is permitted under the Federal regulations (concerning the privacy of individually identifiable health information) promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

(D) Timing

To the extent feasible, the information exchanged under this paragraph shall be on an interactive, real-time basis.

(3) Standards

(A) In general

The Secretary shall provide consistent with this subsection for the promulgation of uniform standards relating to the requirements for electronic prescription drug programs under paragraph (2).

(B) Objectives

Such standards shall be consistent with the objectives of improving—

(i) patient safety;

(ii) the quality of care provided to patients; and

(iii) efficiencies, including cost savings, in the delivery of care.

(C) Design criteria

Such standards shall—

(i) be designed so that, to the extent practicable, the standards do not impose an undue administrative burden on prescribing health care professionals and dispensing pharmacies and pharmacists;

(ii) be compatible with standards established under part C of subchapter XI of this chapter, standards established under subsection (b)(2)(B)(i) of this section, and with general health information technology standards; and

(iii) be designed so that they permit electronic exchange of drug labeling and drug listing information maintained by the Food and Drug Administration and the National Library of Medicine.

(D) Permitting use of appropriate messaging

Such standards shall allow for the messaging of information only if it relates to the appropriate prescribing of drugs, including quality assurance measures and systems referred to in subsection (c)(1)(B) of this section.

(E) Permitting patient designation of dispensing pharmacy

(i) In general

Consistent with clause (ii), such standards shall permit a part D eligible individual to designate a particular pharmacy to dispense a prescribed drug.

(ii) No change in benefits

Clause (i) shall not be construed as affecting—

(I) the access required to be provided to pharmacies by a prescription drug plan; or

(II) the application of any differences in benefits or payments under such a plan based on the pharmacy dispensing a covered part D drug.

(4) Development, promulgation, and modification of standards

(A) Initial standards

Not later than September 1, 2005, the Secretary shall develop, adopt, recognize, or modify initial uniform standards relating to the requirements for electronic prescription drug programs described in paragraph (2) taking into consideration the recommendations (if any) from the National Committee on Vital and Health Statistics (as established under section 242k(k) of this title) under subparagraph (B).

(B) Role of NCVHS

The National Committee on Vital and Health Statistics shall develop recommendations for uniform standards relating to such requirements in consultation with the following:

(i) Standard setting organizations (as defined in section 1320d(8) of this title)[1]

(ii) Practicing physicians.

(iii) Hospitals.

(iv) Pharmacies.

(v) Practicing pharmacists.

(vi) Pharmacy benefit managers.

(vii) State boards of pharmacy.

(viii) State boards of medicine.

(ix) Experts on electronic prescribing.

(x) Other appropriate Federal agencies.

(C) Pilot project to test initial standards

(i) In general

During the 1-year period that begins on January 1, 2006, the Secretary shall conduct a pilot project to test the initial standards developed under subparagraph (A) prior to the promulgation of the final uniform standards under subparagraph (D) in order to provide for the efficient implementation of the requirements described in paragraph (2).

(ii) Exception

Pilot testing of standards is not required under clause (i) where there already is adequate industry experience with such standards, as determined by the Secretary after consultation with effected standard setting organizations and industry users.

(iii) Voluntary participation of physicians and pharmacies

In order to conduct the pilot project under clause (i), the Secretary shall enter into agreements with physicians, physician groups, pharmacies, hospitals, PDP sponsors, MA organizations, and other appropriate entities under which health care professionals electronically transmit prescriptions to dispensing pharmacies and pharmacists in accordance with such standards.

(iv) Evaluation and report

(I) Evaluation

The Secretary shall conduct an evaluation of the pilot project conducted under clause (i).

(II) Report to Congress

Not later than April 1, 2007, the Secretary shall submit to Congress a report on the evaluation conducted under subclause (I).

(D) Final standards

Based upon the evaluation of the pilot project under subparagraph (C)(iv)(I) and not later than April 1, 2008, the Secretary shall promulgate uniform standards relating to the requirements described in paragraph (2).

(5) Relation to State laws

The standards promulgated under this subsection shall supersede any State law or regulation that—

(A) is contrary to the standards or restricts the ability to carry out this part; and

(B) pertains to the electronic transmission of medication history and of information on eligibility, benefits, and prescriptions with respect to covered part D drugs under this part.

(6) Establishment of safe harbor

The Secretary, in consultation with the Attorney General, shall promulgate regulations that provide for a safe harbor from sanctions under paragraphs (1) and (2) of section 1320a–7b(b) of this title and an exception to the prohibition under subsection (a)(1) of section 1395nn of this title with respect to the provision of nonmonetary remuneration (in the form of hardware, software, or information technology and training services) necessary and used solely to receive and transmit electronic prescription information in accordance with the standards promulgated under this subsection—

(A) in the case of a hospital, by the hospital to members of its medical staff;

(B) in the case of a group practice (as defined in section 1395nn(h)(4) of this title), by the practice to prescribing health care professionals who are members of such practice; and

(C) in the case of a PDP sponsor or MA organization, by the sponsor or organization to pharmacists and pharmacies participating in the network of such sponsor or organization, and to prescribing health care professionals.

(f) Grievance mechanism

Each PDP sponsor shall provide meaningful procedures for hearing and resolving grievances between the sponsor (including any entity or individual through which the sponsor provides covered benefits) and enrollees with prescription drug plans of the sponsor under this part in accordance with section 1395w–22(f) of this title.

(g) Coverage determinations and reconsiderations

(1) Application of coverage determination and reconsideration provisions

A PDP sponsor shall meet the requirements of paragraphs (1) through (3) of section 1395w–22(g) of this title with respect to covered benefits under the prescription drug plan it offers under this part in the same manner as such requirements apply to an MA organiza-

[1] So in original. Probably should be followed by a period.

tion with respect to benefits it offers under an MA plan under part C of this subchapter.

(2) Request for a determination for the treatment of tiered formulary drug

In the case of a prescription drug plan offered by a PDP sponsor that provides for tiered cost-sharing for drugs included within a formulary and provides lower cost-sharing for preferred drugs included within the formulary, a part D eligible individual who is enrolled in the plan may request an exception to the tiered cost-sharing structure. Under such an exception, a nonpreferred drug could be covered under the terms applicable for preferred drugs if the prescribing physician determines that the preferred drug for treatment of the same condition either would not be as effective for the individual or would have adverse effects for the individual or both. A PDP sponsor shall have an exceptions process under this paragraph consistent with guidelines established by the Secretary for making a determination with respect to such a request. Denial of such an exception shall be treated as a coverage denial for purposes of applying subsection (h) of this section.

(h) Appeals

(1) In general

Subject to paragraph (2), a PDP sponsor shall meet the requirements of paragraphs (4) and (5) of section 1395w–22(g) of this title with respect to benefits (including a determination related to the application of tiered cost-sharing described in subsection (g)(2) of this section) in a manner similar (as determined by the Secretary) to the manner such requirements apply to an MA organization with respect to benefits under the original medicare fee-for-service program option it offers under an MA plan under part C of this subchapter. In applying this paragraph only the part D eligible individual shall be entitled to bring such an appeal.

(2) Limitation in cases on nonformulary determinations

A part D eligible individual who is enrolled in a prescription drug plan offered by a PDP sponsor may appeal under paragraph (1) a determination not to provide for coverage of a covered part D drug that is not on the formulary under the plan only if the prescribing physician determines that all covered part D drugs on any tier of the formulary for treatment of the same condition would not be as effective for the individual as the nonformulary drug, would have adverse effects for the individual, or both.

(3) Treatment of nonformulary determinations

If a PDP sponsor determines that a plan provides coverage for a covered part D drug that is not on the formulary of the plan, the drug shall be treated as being included on the formulary for purposes of section 1395w–102(b)(4)(C)(i) of this title.

(i) Privacy, confidentiality, and accuracy of enrollee records

The provisions of section 1395w–22(h) of this title shall apply to a PDP sponsor and prescription drug plan in the same manner as it applies to an MA organization and an MA plan.

(j) Treatment of accreditation

Subparagraph (A) of section 1395w–22(e)(4) of this title (relating to treatment of accreditation) shall apply to a PDP sponsor under this part with respect to the following requirements, in the same manner as it applies to an MA organization with respect to the requirements in subparagraph (B) (other than clause (vii) thereof) of such section:

(1) Subsection (b) of this section (relating to access to covered part D drugs).

(2) Subsection (c) of this section (including quality assurance and medication therapy management).

(3) Subsection (i) of this section (relating to confidentiality and accuracy of enrollee records).

(k) Public disclosure of pharmaceutical prices for equivalent drugs

(1) In general

A PDP sponsor offering a prescription drug plan shall provide that each pharmacy that dispenses a covered part D drug shall inform an enrollee of any differential between the price of the drug to the enrollee and the price of the lowest priced generic covered part D drug under the plan that is therapeutically equivalent and bioequivalent and available at such pharmacy.

(2) Timing of notice

(A) In general

Subject to subparagraph (B), the information under paragraph (1) shall be provided at the time of purchase of the drug involved, or, in the case of dispensing by mail order, at the time of delivery of such drug.

(B) Waiver

The Secretary may waive subparagraph (A) in such circumstances as the Secretary may specify.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–4, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2082.)

REFERENCES IN TEXT

Part C of subchapter XI of this chapter, referred to in subsecs. (b)(2)(B)(i) and (e)(3)(C)(ii), is classified to section 1320d et seq. of this title.

Part C of this subchapter, referred to in subsecs. (d), (g)(1), and (h)(1), is classified to section 1395w–21 et seq. of this title.

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (e)(2)(C), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

GRANTS TO PHYSICIANS TO IMPLEMENT ELECTRONIC PRESCRIPTION DRUG PROGRAMS

Pub. L. 108–173, title I, § 108, Dec. 8, 2003, 117 Stat. 2172, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] is authorized to make grants to physicians for the purpose of assisting such physicians to implement electronic prescription drug programs that comply with the standards promulgated or modified under section 1860D–4(e) of the Social Security Act [subsec. (e) of this section], as inserted by section 101(a).

''(b) AWARDING OF GRANTS.—

''(1) APPLICATION.—No grant may be made under this section except pursuant to a grant application that is submitted and approved in a time, manner, and form specified by the Secretary.

''(2) CONSIDERATIONS AND PREFERENCES.—In awarding grants under this section, the Secretary shall—

''(A) give special consideration to physicians who serve a disproportionate number of medicare patients; and

''(B) give preference to physicians who serve a rural or underserved area.

''(3) LIMITATION ON GRANTS.—Only 1 grant may be awarded under this section with respect to any physician or group practice of physicians.

''(c) TERMS AND CONDITIONS.—

''(1) IN GENERAL.—Grants under this section shall be made under such terms and conditions as the Secretary specifies consistent with this section.

''(2) USE OF GRANT FUNDS.—Funds provided under grants under this section may be used for any of the following:

''(A) For purchasing, leasing, and installing computer software and hardware, including handheld computer technologies.

''(B) Making upgrades and other improvements to existing computer software and hardware to enable e-prescribing.

''(C) Providing education and training to eligible physician staff on the use of technology to implement the electronic transmission of prescription and patient information.

''(3) PROVISION OF INFORMATION.—As a condition for the awarding of a grant under this section, an applicant shall provide to the Secretary such information as the Secretary may require in order to—

''(A) evaluate the project for which the grant is made; and

''(B) ensure that funding provided under the grant is expended only for the purposes for which it is made.

''(4) AUDIT.—The Secretary shall conduct appropriate audits of grants under this section.

''(5) MATCHING REQUIREMENT.—The applicant for a grant under this section shall agree, with respect to the costs to be incurred by the applicant in implementing an electronic prescription drug program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 50 percent of such costs. Non-Federal contributions under the previous sentence may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 2007 and such sums as may be necessary for each of fiscal years 2008 and 2009.''

SUBPART 2—PRESCRIPTION DRUG PLANS; PDP SPONSORS; FINANCING

§ 1395w–111. PDP regions; submission of bids; plan approval

(a) Establishment of PDP regions; service areas

(1) Coverage of entire PDP region

The service area for a prescription drug plan shall consist of an entire PDP region established under paragraph (2).

(2) Establishment of PDP regions

(A) In general

The Secretary shall establish, and may revise, PDP regions in a manner that is consistent with the requirements for the establishment and revision of MA regions under subparagraphs (B) and (C) of section 1395w–27a(a)(2) of this title.

(B) Relation to MA regions

To the extent practicable, PDP regions shall be the same as MA regions under section 1395w–27a(a)(2) of this title. The Secretary may establish PDP regions which are not the same as MA regions if the Secretary determines that the establishment of different regions under this part would improve access to benefits under this part.

(C) Authority for territories

The Secretary shall establish, and may revise, PDP regions for areas in States that are not within the 50 States or the District of Columbia.

(3) National plan

Nothing in this subsection shall be construed as preventing a prescription drug plan from being offered in more than one PDP region (including all PDP regions).

(b) Submission of bids, premiums, and related information

(1) In general

A PDP sponsor shall submit to the Secretary information described in paragraph (2) with respect to each prescription drug plan it offers. Such information shall be submitted at the same time and in a similar manner to the manner in which information described in paragraph (6) of section 1395w–24(a) of this title is submitted by an MA organization under paragraph (1) of such section.

(2) Information described

The information described in this paragraph is information on the following:

(A) Coverage provided

The prescription drug coverage provided under the plan, including the deductible and other cost-sharing.

(B) Actuarial value

The actuarial value of the qualified prescription drug coverage in the region for a part D eligible individual with a national average risk profile for the factors described in section 1395w–115(c)(1)(A) of this title (as specified by the Secretary).

(C) Bid

Information on the bid, including an actuarial certification of—

(i) the basis for the actuarial value described in subparagraph (B) assumed in such bid;

(ii) the portion of such bid attributable to basic prescription drug coverage and, if applicable, the portion of such bid attributable to supplemental benefits;

(iii) assumptions regarding the reinsurance subsidy payments provided under section 1395w–115(b) of this title subtracted from the actuarial value to produce such bid; and

(iv) administrative expenses assumed in the bid.

(D) Service area

The service area for the plan.

(E) Level of risk assumed

(i) In general

Whether the PDP sponsor requires a modification of risk level under clause (ii) and, if so, the extent of such modification. Any such modification shall apply with respect to all prescription drug plans offered by a PDP sponsor in a PDP region. This subparagraph shall not apply to an MA–PD plan.

(ii) Risk levels described

A modification of risk level under this clause may consist of one or more of the following:

(I) Increase in Federal percentage assumed in initial risk corridor

An equal percentage point increase in the percents applied under subparagraphs (B)(i), (B)(ii)(I), (C)(i), and (C)(ii)(I) of section 1395w–115(e)(2) of this title. In no case shall the application of previous sentence prevent the application of a higher percentage under section 1395w–115(e)(2)(B)(iii)[1] of this title.

(II) Increase in Federal percentage assumed in second risk corridor

An equal percentage point increase in the percents applied under subparagraphs (B)(ii)(II) and (C)(ii)(II) of section 1395w–115(e)(2) of this title.

(III) Decrease in size of risk corridors

A decrease in the threshold risk percentages specified in section 1395w–115(e)(3)(C) of this title.

(F) Additional information

Such other information as the Secretary may require to carry out this part.

(3) Paperwork reduction for offering of prescription drug plans nationally or in multiregion areas

The Secretary shall establish requirements for information submission under this subsection in a manner that promotes the offering of such plans in more than one PDP region (including all regions) through the filing of consolidated information.

(c) Actuarial valuation

(1) Processes

For purposes of this part, the Secretary shall establish processes and methods for determining the actuarial valuation of prescription drug coverage, including—

(A) an actuarial valuation of standard prescription drug coverage under section 1395w–102(b) of this title;

(B) actuarial valuations relating to alternative prescription drug coverage under section 1395w–102(c)(1) of this title;

(C) an actuarial valuation of the reinsurance subsidy payments under section 1395w–115(b) of this title;

(D) the use of generally accepted actuarial principles and methodologies; and

(E) applying the same methodology for determinations of actuarial valuations under subparagraphs (A) and (B).

(2) Accounting for drug utilization

Such processes and methods for determining actuarial valuation shall take into account the effect that providing alternative prescription drug coverage (rather than standard prescription drug coverage) has on drug utilization.

(3) Responsibilities

(A) Plan responsibilities

PDP sponsors and MA organizations are responsible for the preparation and submission of actuarial valuations required under this part for prescription drug plans and MA–PD plans they offer.

(B) Use of outside actuaries

Under the processes and methods established under paragraph (1), PDP sponsors offering prescription drug plans and MA organizations offering MA–PD plans may use actuarial opinions certified by independent, qualified actuaries to establish actuarial values.

(d) Review of information and negotiation

(1) Review of information

The Secretary shall review the information filed under subsection (b) of this section for the purpose of conducting negotiations under paragraph (2).

(2) Negotiation regarding terms and conditions

Subject to subsection (i) of this section, in exercising the authority under paragraph (1), the Secretary—

(A) has the authority to negotiate the terms and conditions of the proposed bid submitted and other terms and conditions of a proposed plan; and

(B) has authority similar to the authority of the Director of the Office of Personnel Management with respect to health benefits plans under chapter 89 of title 5.

(e) Approval of proposed plans

(1) In general

After review and negotiation under subsection (d) of this section, the Secretary shall approve or disapprove the prescription drug plan.

(2) Requirements for approval

The Secretary may approve a prescription drug plan only if the following requirements are met:

(A) Compliance with requirements

The plan and the PDP sponsor offering the plan comply with the requirements under this part, including the provision of qualified prescription drug coverage.

(B) Actuarial determinations

The Secretary determines that the plan and PDP sponsor meet the requirements under this part relating to actuarial deter-

[1] See References in Text note below.

minations, including such requirements under section 1395w–102(c) of this title.

(C) Application of FEHBP standard

(i) In general

The Secretary determines that the portion of the bid submitted under subsection (b) of this section that is attributable to basic prescription drug coverage is supported by the actuarial bases provided under such subsection and reasonably and equitably reflects the revenue requirements (as used for purposes of section 300e–1(8)(C) of this title) for benefits provided under that plan, less the sum (determined on a monthly per capita basis) of the actuarial value of the reinsurance payments under section 1395w–115(b) of this title.

(ii) Supplemental coverage

The Secretary determines that the portion of the bid submitted under subsection (b) of this section that is attributable to supplemental prescription drug coverage pursuant to section 1395w–102(a)(2) of this title is supported by the actuarial bases provided under such subsection and reasonably and equitably reflects the revenue requirements (as used for purposes of section 300e–1(8)(C) of this title) for such coverage under the plan.

(D) Plan design

(i) In general

The Secretary does not find that the design of the plan and its benefits (including any formulary and tiered formulary structure) are likely to substantially discourage enrollment by certain part D eligible individuals under the plan.

(ii) Use of categories and classes in formularies

The Secretary may not find that the design of categories and classes within a formulary violates clause (i) if such categories and classes are consistent with guidelines (if any) for such categories and classes established by the United States Pharmacopeia.

(f) Application of limited risk plans

(1) Conditions for approval of limited risk plans

The Secretary may only approve a limited risk plan (as defined in paragraph (4)(A)) for a PDP region if the access requirements under section 1395w–103(a) of this title would not be met for the region but for the approval of such a plan (or a fallback prescription drug plan under subsection (g) of this section).

(2) Rules

The following rules shall apply with respect to the approval of a limited risk plan in a PDP region:

(A) Limited exercise of authority

Only the minimum number of such plans may be approved in order to meet the access requirements under section 1395w–103(a) of this title.

(B) Maximizing assumption of risk

The Secretary shall provide priority in approval for those plans bearing the highest level of risk (as computed by the Secretary), but the Secretary may take into account the level of the bids submitted by such plans.

(C) No full underwriting for limited risk plans

In no case may the Secretary approve a limited risk plan under which the modification of risk level provides for no (or a de minimis) level of financial risk.

(3) Acceptance of all full risk contracts

There shall be no limit on the number of full risk plans that are approved under subsection (e) of this section.

(4) Risk-plans defined

For purposes of this subsection:

(A) Limited risk plan

The term ''limited risk plan'' means a prescription drug plan that provides basic prescription drug coverage and for which the PDP sponsor includes a modification of risk level described in subparagraph (E) of subsection (b)(2) of this section in its bid submitted for the plan under such subsection. Such term does not include a fallback prescription drug plan.

(B) Full risk plan

The term ''full risk plan'' means a prescription drug plan that is not a limited risk plan or a fallback prescription drug plan.

(g) Guaranteeing access to coverage

(1) Solicitation of bids

(A) In general

Separate from the bidding process under subsection (b) of this section, the Secretary shall provide for a process for the solicitation of bids from eligible fallback entities (as defined in paragraph (2)) for the offering in all fallback service areas (as defined in paragraph (3)) in one or more PDP regions of a fallback prescription drug plan (as defined in paragraph (4)) during the contract period specified in paragraph (5).

(B) Acceptance of bids

(i) In general

Except as provided in this subparagraph, the provisions of subsection (e) of this section shall apply with respect to the approval or disapproval of fallback prescription drug plans. The Secretary shall enter into contracts under this subsection with eligible fallback entities for the offering of fallback prescription drug plans so approved in fallback service areas.

(ii) Limitation of 1 plan for all fallback service areas in a PDP region

With respect to all fallback service areas in any PDP region for a contract period, the Secretary shall approve the offering of only 1 fallback prescription drug plan.

(iii) Competitive procedures

Competitive procedures (as defined in section 403(5) of title 41) shall be used to

enter into a contract under this subsection. The provisions of subsection (d) of section 1395kk–1 of this title shall apply to a contract under this section in the same manner as they apply to a contract under such section.

(iv) Timing

The Secretary shall approve a fallback prescription drug plan for a PDP region in a manner so that, if there are any fallback service areas in the region for a year, the fallback prescription drug plan is offered at the same time as prescription drug plans would otherwise be offered.

(V)[2] No national fallback plan

The Secretary shall not enter into a contract with a single fallback entity for the offering of fallback plans throughout the United States.

(2) Eligible fallback entity

For purposes of this section, the term ''eligible fallback entity'' means, with respect to all fallback service areas in a PDP region for a contract period, an entity that—

(A) meets the requirements to be a PDP sponsor (or would meet such requirements but for the fact that the entity is not a risk-bearing entity); and

(B) does not submit a bid under subsection (b) of this section for any prescription drug plan for any PDP region for the first year of such contract period.

For purposes of subparagraph (B), an entity shall be treated as submitting a bid with respect to a prescription drug plan if the entity is acting as a subcontractor of a PDP sponsor that is offering such a plan. The previous sentence shall not apply to entities that are subcontractors of an MA organization except insofar as such organization is acting as a PDP sponsor with respect to a prescription drug plan.

(3) Fallback service area

For purposes of this subsection, the term ''fallback service area'' means, for a PDP region with respect to a year, any area within such region for which the Secretary determines before the beginning of the year that the access requirements of the first sentence of section 1395w–103(a) of this title will not be met for part D eligible individuals residing in the area for the year.

(4) Fallback prescription drug plan

For purposes of this part, the term ''fallback prescription drug plan'' means a prescription drug plan that—

(A) only offers the standard prescription drug coverage and access to negotiated prices described in section 1395w–102(a)(1)(A) of this title and does not include any supplemental prescription drug coverage; and

(B) meets such other requirements as the Secretary may specify.

(5) Payments under the contract

(A) In general

A contract entered into under this subsection shall provide for—

(i) payment for the actual costs (taking into account negotiated price concessions described in section 1395w–102(d)(1)(B) of this title) of covered part D drugs provided to part D eligible individuals enrolled in a fallback prescription drug plan offered by the entity; and

(ii) payment of management fees that are tied to performance measures established by the Secretary for the management, administration, and delivery of the benefits under the contract.

(B) Performance measures

The performance measures established by the Secretary pursuant to subparagraph (A)(ii) shall include at least measures for each of the following:

(i) Costs

The entity contains costs to the Medicare Prescription Drug Account and to part D eligible individuals enrolled in a fallback prescription drug plan offered by the entity through mechanisms such as generic substitution and price discounts.

(ii) Quality programs

The entity provides such enrollees with quality programs that avoid adverse drug reactions and overutilization and reduce medical errors.

(iii) Customer service

The entity provides timely and accurate delivery of services and pharmacy and beneficiary support services.

(iv) Benefit administration and claims adjudication

The entity provides efficient and effective benefit administration and claims adjudication.

(6) Monthly beneficiary premium

Except as provided in section 1395w–113(b) of this title (relating to late enrollment penalty) and subject to section 1395w–114 of this title (relating to low-income assistance), the monthly beneficiary premium to be charged under a fallback prescription drug plan offered in all fallback service areas in a PDP region shall be uniform and shall be equal to 25.5 percent of an amount equal to the Secretary's estimate of the average monthly per capita actuarial cost, including administrative expenses, under the fallback prescription drug plan of providing coverage in the region, as calculated by the Chief Actuary of the Centers for Medicare & Medicaid Services. In calculating such administrative expenses, the Chief Actuary shall use a factor that is based on similar expenses of prescription drug plans that are not fallback prescription drug plans.

(7) General contract terms and conditions

(A) In general

Except as may be appropriate to carry out this section, the terms and conditions of contracts with eligible fallback entities offering fallback prescription drug plans under this subsection shall be the same as the terms and conditions of contracts under this part for prescription drug plans.

[2] So in original. Probably should be ''(v)''.

(B) Period of contract

(i) In general

Subject to clause (ii), a contract approved for a fallback prescription drug plan for fallback service areas for a PDP region under this section shall be for a period of 3 years (except as may be renewed after a subsequent bidding process).

(ii) Limitation

A fallback prescription drug plan may be offered under a contract in an area for a year only if that area is a fallback service area for that year.

(C) Entity not permitted to market or brand fallback prescription drug plans

An eligible fallback entity with a contract under this subsection may not engage in any marketing or branding of a fallback prescription drug plan.

(h) Annual report on use of limited risk plans and fallback plans

The Secretary shall submit to Congress an annual report that describes instances in which limited risk plans and fallback prescription drug plans were offered under subsections (f) and (g) of this section. The Secretary shall include in such report such recommendations as may be appropriate to limit the need for the provision of such plans and to maximize the assumption of financial risk under section subsection (f) of this section.

(i) Noninterference

In order to promote competition under this part and in carrying out this part, the Secretary—

(1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and

(2) may not require a particular formulary or institute a price structure for the reimbursement of covered part D drugs.

(j) Coordination of benefits

A PDP sponsor offering a prescription drug plan shall permit State Pharmaceutical Assistance Programs and Rx plans under sections 1395w–133 and 1395w–134 of this title to coordinate benefits with the plan and, in connection with such coordination with such a Program, not to impose fees that are unrelated to the cost of coordination.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–11, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2092.)

REFERENCES IN TEXT

Section 1395w–115(e)(2)(B)(iii) of this title, referred to in subsec. (b)(2)(E)(ii)(I), was in the original ''section 1869D–15(e)(2)(B)(iii)'', and was translated as reading ''section 1860D–15(e)(2)(B)(iii)'', meaning 1860D–15(e)(2)(B)(iii) of the Social Security Act, to reflect the probable intent of Congress, because the Social Security Act does not contain a section 1869D–15 and section 1395w–115(e)(2)(B)(iii) of this title provides for an application of a higher percentage for years 2006 and 2007.

STUDY REGARDING REGIONAL VARIATIONS IN PRESCRIPTION DRUG SPENDING

Pub. L. 108–173, title I, § 107(a), Dec. 8, 2003, 117 Stat. 2169, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall conduct a study that examines variations in per capita spending for covered part D drugs under part D of title XVIII of the Social Security Act [this part] among PDP regions and, with respect to such spending, the amount of such variation that is attributable to—

''(A) price variations (described in section 1860D–15(c)(2) of such Act [section 1395w–115(c)(2) of this title]); and

''(B) differences in per capita utilization that is not taken into account in the health status risk adjustment provided under section 1860D–15(c)(1) of such Act [section 1395w–115(c)(1) of this title].

''(2) REPORT AND RECOMMENDATIONS.—Not later than January 1, 2009, the Secretary shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include—

''(A) information regarding the extent of geographic variation described in paragraph (1)(B);

''(B) an analysis of the impact on direct subsidies under section 1860D–15(a)(1) of the Social Security Act [section 1395w–115(a)(1) of this title] in different PDP regions if such subsidies were adjusted to take into account the variation described in subparagraph (A); and

''(C) recommendations regarding the appropriateness of applying an additional geographic adjustment factor under section 1860D–15(c)(2) [section 1395w–115(c)(2) of this title] that reflects some or all of the variation described in subparagraph (A).''

§ 1395w–112. Requirements for and contracts with prescription drug plan (PDP) sponsors

(a) General requirements

Each PDP sponsor of a prescription drug plan shall meet the following requirements:

(1) Licensure

Subject to subsection (c) of this section, the sponsor is organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers a prescription drug plan.

(2) Assumption of financial risk for unsubsidized coverage

(A) In general

Subject to subparagraph (B), to the extent that the entity is at risk the entity assumes financial risk on a prospective basis for benefits that it offers under a prescription drug plan and that is not covered under section 1395w–115(b) of this title.

(B) Reinsurance permitted

The plan sponsor may obtain insurance or make other arrangements for the cost of coverage provided to any enrollee to the extent that the sponsor is at risk for providing such coverage.

(3) Solvency for unlicensed sponsors

In the case of a PDP sponsor that is not described in paragraph (1) and for which a waiver has been approved under subsection (c) of this section, such sponsor shall meet solvency standards established by the Secretary under subsection (d) of this section.

(b) Contract requirements

(1) In general

The Secretary shall not permit the enrollment under section 1395w–101 of this title in a

prescription drug plan offered by a PDP sponsor under this part, and the sponsor shall not be eligible for payments under section 1395w–114 or 1395w–115 of this title, unless the Secretary has entered into a contract under this subsection with the sponsor with respect to the offering of such plan. Such a contract with a sponsor may cover more than one prescription drug plan. Such contract shall provide that the sponsor agrees to comply with the applicable requirements and standards of this part and the terms and conditions of payment as provided for in this part.

(2) Limitation on entities offering fallback prescription drug plans

The Secretary shall not enter into a contract with a PDP sponsor for the offering of a prescription drug plan (other than a fallback prescription drug plan) in a PDP region for a year if the sponsor—

(A) submitted a bid under section 1395w–111(g) of this title for such year (as the first year of a contract period under such section) to offer a fallback prescription drug plan in any PDP region;

(B) offers a fallback prescription drug plan in any PDP region during the year; or

(C) offered a fallback prescription drug plan in that PDP region during the previous year.

For purposes of this paragraph, an entity shall be treated as submitting a bid with respect to a prescription drug plan or offering a fallback prescription drug plan if the entity is acting as a subcontractor of a PDP sponsor that is offering such a plan. The previous sentence shall not apply to entities that are subcontractors of an MA organization except insofar as such organization is acting as a PDP sponsor with respect to a prescription drug plan.

(3) Incorporation of certain medicare advantage contract requirements

Except as otherwise provided, the following provisions of section 1395w–27 of this title shall apply to contracts under this section in the same manner as they apply to contracts under section 1395w–27(a) of this title:

(A) Minimum enrollment

Paragraphs (1) and (3) of section 1395w–27(b) of this title, except that—

(i) the Secretary may increase the minimum number of enrollees required under such paragraph (1) as the Secretary determines appropriate; and

(ii) the requirement of such paragraph (1) shall be waived during the first contract year with respect to an organization in a region.

(B) Contract period and effectiveness

Section 1395w–27(c) of this title, except that in applying paragraph (4)(B) of such section any reference to payment amounts under section 1395w–23 of this title shall be deemed payment amounts under section 1395w–115 of this title.

(C) Protections against fraud and beneficiary protections

Section 1395w–27(d) of this title.

(D) Additional contract terms

Section 1395w–27(e) of this title; except that section 1395w–27(e)(2) of this title shall apply as specified to PDP sponsors and payments under this part to an MA–PD plan shall be treated as expenditures made under part D.

(E) Intermediate sanctions

Section 1395w–27(g) of this title (other than paragraph (1)(F) of such section), except that in applying such section the reference in section 1395w–27(g)(1)(B) of this title to section 1395w–24 of this title is deemed a reference to this part.

(F) Procedures for termination

Section 1395w–27(h) of this title.

(c) Waiver of certain requirements to expand choice

(1) Authorizing waiver

(A) In general

In the case of an entity that seeks to offer a prescription drug plan in a State, the Secretary shall waive the requirement of subsection (a)(1) of this section that the entity be licensed in that State if the Secretary determines, based on the application and other evidence presented to the Secretary, that any of the grounds for approval of the application described in paragraph (2) have been met.

(B) Application of regional plan waiver rule

In addition to the waiver available under subparagraph (A), the provisions of section 1395w–27a(d) of this title shall apply to PDP sponsors under this part in a manner similar to the manner in which such provisions apply to MA organizations under part C of this subchapter, except that no application shall be required under paragraph (1)(B) of such section in the case of a State that does not provide a licensing process for such a sponsor.

(2) Grounds for approval

(A) In general

The grounds for approval under this paragraph are—

(i) subject to subparagraph (B), the grounds for approval described in subparagraphs (B), (C), and (D) of section 1395w–25(a)(2) of this title; and

(ii) the application by a State of any grounds other than those required under Federal law.

(B) Special rules

In applying subparagraph (A)(i)—

(i) the ground of approval described in section 1395w–25(a)(2)(B) of this title is deemed to have been met if the State does not have a licensing process in effect with respect to the PDP sponsor; and

(ii) for plan years beginning before January 1, 2008, if the State does have such a licensing process in effect, such ground for approval described in such section is deemed to have been met upon submission of an application described in such section.

(3) Application of waiver procedures

With respect to an application for a waiver (or a waiver granted) under paragraph (1)(A) of this subsection, the provisions of subparagraphs (E), (F), and (G) of section 1395w–25(a)(2) of this title shall apply, except that clauses (i) and (ii) of such subparagraph (E) shall not apply in the case of a State that does not have a licensing process described in paragraph (2)(B)(i) in effect.

(4) References to certain provisions

In applying provisions of section 1395w–25(a)(2) of this title under paragraphs (2) and (3) of this subsection to prescription drug plans and PDP sponsors—

(A) any reference to a waiver application under section 1395w–25 of this title shall be treated as a reference to a waiver application under paragraph (1)(A) of this subsection; and

(B) any reference to solvency standards shall be treated as a reference to solvency standards established under subsection (d) of this section.

(d) Solvency standards for non-licensed entities

(1) Establishment and publication

The Secretary, in consultation with the National Association of Insurance Commissioners, shall establish and publish, by not later than January 1, 2005, financial solvency and capital adequacy standards for entities described in paragraph (2).

(2) Compliance with standards

A PDP sponsor that is not licensed by a State under subsection (a)(1) of this section and for which a waiver application has been approved under subsection (c) of this section shall meet solvency and capital adequacy standards established under paragraph (1). The Secretary shall establish certification procedures for such sponsors with respect to such solvency standards in the manner described in section 1395w–25(c)(2) of this title.

(e) Licensure does not substitute for or constitute certification

The fact that a PDP sponsor is licensed in accordance with subsection (a)(1) of this section or has a waiver application approved under subsection (c) of this section does not deem the sponsor to meet other requirements imposed under this part for a sponsor.

(f) Periodic review and revision of standards

(1) In general

Subject to paragraph (2), the Secretary may periodically review the standards established under this section and, based on such review, may revise such standards if the Secretary determines such revision to be appropriate.

(2) Prohibition of midyear implementation of significant new regulatory requirements

The Secretary may not implement, other than at the beginning of a calendar year, regulations under this section that impose new, significant regulatory requirements on a PDP sponsor or a prescription drug plan.

(g) Prohibition of State imposition of premium taxes; relation to State laws

The provisions of sections 1395w–24(g) and 1395w–26(b)(3) of this title shall apply with respect to PDP sponsors and prescription drug plans under this part in the same manner as such sections apply to MA organizations and MA plans under part C of this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–12, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2099.)

REFERENCES IN TEXT

Part C of this subchapter, referred to in subsecs. (c)(1)(B) and (g), is classified to section 1395w–21 et seq. of this title.

§ 1395w–113. Premiums; late enrollment penalty

(a) Monthly beneficiary premium

(1) Computation

(A) In general

The monthly beneficiary premium for a prescription drug plan is the base beneficiary premium computed under paragraph (2) as adjusted under this paragraph.

(B) Adjustment to reflect difference between bid and national average bid

(i) Above average bid

If for a month the amount of the standardized bid amount (as defined in paragraph (5)) exceeds the amount of the adjusted national average monthly bid amount (as defined in clause (iii)), the base beneficiary premium for the month shall be increased by the amount of such excess.

(ii) Below average bid

If for a month the amount of the adjusted national average monthly bid amount for the month exceeds the standardized bid amount, the base beneficiary premium for the month shall be decreased by the amount of such excess.

(iii) Adjusted national average monthly bid amount defined

For purposes of this subparagraph, the term ''adjusted national average monthly bid amount'' means the national average monthly bid amount computed under paragraph (4), as adjusted under section 1395w–115(c)(2) of this title.

(C) Increase for supplemental prescription drug benefits

The base beneficiary premium shall be increased by the portion of the PDP approved bid that is attributable to supplemental prescription drug benefits.

(D) Increase for late enrollment penalty

The base beneficiary premium shall be increased by the amount of any late enrollment penalty under subsection (b) of this section.

(E) Decrease for low-income assistance

The monthly beneficiary premium is subject to decrease in the case of a subsidy eligible individual under section 1395w–114 of this title.

(F) Uniform premium

Except as provided in subparagraphs (D) and (E), the monthly beneficiary premium for a prescription drug plan in a PDP region is the same for all part D eligible individuals enrolled in the plan.

(2) Base beneficiary premium

The base beneficiary premium under this paragraph for a prescription drug plan for a month is equal to the product[1]—

(A) the beneficiary premium percentage (as specified in paragraph (3)); and

(B) the national average monthly bid amount (computed under paragraph (4)) for the month.

(3) Beneficiary premium percentage

For purposes of this subsection, the beneficiary premium percentage for any year is the percentage equal to a fraction—

(A) the numerator of which is 25.5 percent; and

(B) the denominator of which is 100 percent minus a percentage equal to—

(i) the total reinsurance payments which the Secretary estimates are payable under section 1395w–115(b) of this title with respect to the coverage year; divided by

(ii) the sum of—

(I) the amount estimated under clause (i) for the year; and

(II) the total payments which the Secretary estimates will be paid to prescription drug plans and MA–PD plans that are attributable to the standardized bid amount during the year, taking into account amounts paid by the Secretary and enrollees.

(4) Computation of national average monthly bid amount

(A) In general

For each year (beginning with 2006) the Secretary shall compute a national average monthly bid amount equal to the average of the standardized bid amounts (as defined in paragraph (5)) for each prescription drug plan and for each MA–PD plan described in section 1395w–21(a)(2)(A)(i) of this title. Such average does not take into account the bids submitted for MSA plans, MA private fee-for-service plan, and specialized MA plans for special needs individuals, PACE programs under section 1395eee of this title (pursuant to section 1395w–131(f) of this title), and under reasonable cost reimbursement contracts under section 1395mm(h) of this title (pursuant to section 1395w–131(e) of this title).

(B) Weighted average

(i) In general

The monthly national average monthly bid amount computed under subparagraph (A) for a year shall be a weighted average, with the weight for each plan being equal to the average number of part D eligible individuals enrolled in such plan in the reference month (as defined in section 1395w–27a(f)(4) of this title).

(ii) Special rule for 2006

For purposes of applying this paragraph for 2006, the Secretary shall establish procedures for determining the weighted average under clause (i) for 2005.

(5) Standardized bid amount defined

For purposes of this subsection, the term ''standardized bid amount'' means the following:

(A) Prescription drug plans

(i) Basic coverage

In the case of a prescription drug plan that provides basic prescription drug coverage, the PDP approved bid (as defined in paragraph (6)).

(ii) Supplemental coverage

In the case of a prescription drug plan that provides supplemental prescription drug coverage, the portion of the PDP approved bid that is attributable to basic prescription drug coverage.

(B) MA–PD plans

In the case of an MA–PD plan, the portion of the accepted bid amount that is attributable to basic prescription drug coverage.

(6) PDP approved bid defined

For purposes of this part, the term ''PDP approved bid'' means, with respect to a prescription drug plan, the bid amount approved for the plan under this part.

(b) Late enrollment penalty

(1) In general

Subject to the succeeding provisions of this subsection, in the case of a part D eligible individual described in paragraph (2) with respect to a continuous period of eligibility, there shall be an increase in the monthly beneficiary premium established under subsection (a) of this section in an amount determined under paragraph (3).

(2) Individuals subject to penalty

A part D eligible individual described in this paragraph is, with respect to a continuous period of eligibility, an individual for whom there is a continuous period of 63 days or longer (all of which in such continuous period of eligibility) beginning on the day after the last date of the individual's initial enrollment period under section 1395w–101(b)(2) of this title and ending on the date of enrollment under a prescription drug plan or MA–PD plan during all of which the individual was not covered under any creditable prescription drug coverage.

(3) Amount of penalty

(A) In general

The amount determined under this paragraph for a part D eligible individual for a continuous period of eligibility is the greater of—

(i) an amount that the Secretary determines is actuarially sound for each uncov-

[1] So in original. The word ''of'' probably should appear after ''product''.

ered month (as defined in subparagraph (B)) in the same continuous period of eligibility; or

(ii) 1 percent of the base beneficiary premium (computed under subsection (a)(2) of this section) for each such uncovered month in such period.

(B) Uncovered month defined

For purposes of this subsection, the term ''uncovered month'' means, with respect to a part D eligible individual, any month beginning after the end of the initial enrollment period under section 1395w–101(b)(2) of this title unless the individual can demonstrate that the individual had creditable prescription drug coverage (as defined in paragraph (4)) for any portion of such month.

(4) Creditable prescription drug coverage defined

For purposes of this part, the term ''creditable prescription drug coverage'' means any of the following coverage, but only if the coverage meets the requirement of paragraph (5):

(A) Coverage under prescription drug plan or MA–PD plan

Coverage under a prescription drug plan or under an MA–PD plan.

(B) Medicaid

Coverage under a medicaid plan under subchapter XIX of this chapter or under a waiver under section 1315 of this title.

(C) Group health plan

Coverage under a group health plan, including a health benefits plan under chapter 89 of title 5 (commonly known as the Federal employees health benefits program), and a qualified retiree prescription drug plan (as defined in section 1395w–132(a)(2) of this title).

(D) State pharmaceutical assistance program

Coverage under a State pharmaceutical assistance program described in section 1395w–133(b)(1) of this title.

(E) Veterans' coverage of prescription drugs

Coverage for veterans, and survivors and dependents of veterans, under chapter 17 of title 38.

(F) Prescription drug coverage under medigap policies

Coverage under a medicare supplemental policy under section 1395ss of this title that provides benefits for prescription drugs (whether or not such coverage conforms to the standards for packages of benefits under section 1395ss(p)(1) of this title).

(G) Military coverage (including TRICARE)

Coverage under chapter 55 of title 10.

(H) Other coverage

Such other coverage as the Secretary determines appropriate.

(5) Actuarial equivalence requirement

Coverage meets the requirement of this paragraph only if the coverage is determined (in a manner specified by the Secretary) to provide coverage of the cost of prescription drugs the actuarial value of which (as defined by the Secretary) to the individual equals or exceeds the actuarial value of standard prescription drug coverage (as determined under section 1395w–111(c) of this title).

(6) Procedures to document creditable prescription drug coverage

(A) In general

The Secretary shall establish procedures (including the form, manner, and time) for the documentation of creditable prescription drug coverage, including procedures to assist in determining whether coverage meets the requirement of paragraph (5).

(B) Disclosure by entities offering creditable prescription drug coverage

(i) In general

Each entity that offers prescription drug coverage of the type described in subparagraphs (B) through (H) of paragraph (4) shall provide for disclosure, in a form, manner, and time consistent with standards established by the Secretary, to the Secretary and part D eligible individuals of whether the coverage meets the requirement of paragraph (5) or whether such coverage is changed so it no longer meets such requirement.

(ii) Disclosure of non-creditable coverage

In the case of such coverage that does not meet such requirement, the disclosure to part D eligible individuals under this subparagraph shall include information regarding the fact that because such coverage does not meet such requirement there are limitations on the periods in a year in which the individuals may enroll under a prescription drug plan or an MA–PD plan and that any such enrollment is subject to a late enrollment penalty under this subsection.

(C) Waiver of requirement

In the case of a part D eligible individual who was enrolled in prescription drug coverage of the type described in subparagraphs (B) through (H) of paragraph (4) which is not creditable prescription drug coverage because it does not meet the requirement of paragraph (5), the individual may apply to the Secretary to have such coverage treated as creditable prescription drug coverage if the individual establishes that the individual was not adequately informed that such coverage did not meet such requirement.

(7) Continuous period of eligibility

(A) In general

Subject to subparagraph (B), for purposes of this subsection, the term ''continuous period of eligibility'' means, with respect to a part D eligible individual, the period that begins with the first day on which the individual is eligible to enroll in a prescription drug plan under this part and ends with the individual's death.

(B) Separate period

Any period during all of which a part D eligible individual is entitled to hospital insur-

ance benefits under part A of this subchapter and—

(i) which terminated in or before the month preceding the month in which the individual attained age 65; or

(ii) for which the basis for eligibility for such entitlement changed between section 426(b) of this title and section 426(a) of this title, between 426(b)[2] of this title and section 426–1 of this title, or between section 426–1 of this title and section 426(a) of this title,

shall be a separate continuous period of eligibility with respect to the individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this paragraph).

(c) Collection of monthly beneficiary premiums

(1) In general

Subject to paragraphs (2) and (3), the provisions of section 1395w–24(d) of this title shall apply to PDP sponsors and premiums (and any late enrollment penalty) under this part in the same manner as they apply to MA organizations and beneficiary premiums under part C of this subchapter, except that any reference to a Trust Fund is deemed for this purpose a reference to the Medicare Prescription Drug Account.

(2) Crediting of late enrollment penalty

(A) Portion attributable to increased actuarial costs

With respect to late enrollment penalties imposed under subsection (b) of this section, the Secretary shall specify the portion of such a penalty that the Secretary estimates is attributable to increased actuarial costs assumed by the PDP sponsor or MA organization (and not taken into account through risk adjustment provided under section 1395w–115(c)(1) of this title or through reinsurance payments under section 1395w–115(b) of this title) as a result of such late enrollment.

(B) Collection through withholding

In the case of a late enrollment penalty that is collected from a part D eligible individual in the manner described in section 1395w–24(d)(2)(A) of this title, the Secretary shall provide that only the portion of such penalty estimated under subparagraph (A) shall be paid to the PDP sponsor or MA organization offering the part D plan in which the individual is enrolled.

(C) Collection by plan

In the case of a late enrollment penalty that is collected from a part D eligible individual in a manner other than the manner described in section 1395w–24(d)(2)(A) of this title, the Secretary shall establish procedures for reducing payments otherwise made to the PDP sponsor or MA organization by an amount equal to the amount of such penalty less the portion of such penalty estimated under subparagraph (A).

(3) Fallback plans

In applying this subsection in the case of a fallback prescription drug plan, paragraph (2) shall not apply and the monthly beneficiary premium shall be collected in the manner specified in section 1395w–24(d)(2)(A) of this title (or such other manner as may be provided under section 1395s of this title in the case of monthly premiums under section 1395r of this title).

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–13, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2102.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (b)(7)(B), is classified to section 1395c et seq. of this title.

Part C of this subchapter, referred to in subsec. (c)(1), is classified to section 1395w–21 et seq. of this title.

§ 1395w–114. Premium and cost-sharing subsidies for low-income individuals

(a) Income-related subsidies for individuals with income up to 150 percent of poverty line

(1) Individuals with income below 135 percent of poverty line

In the case of a subsidy eligible individual (as defined in paragraph (3)) who is determined to have income that is below 135 percent of the poverty line applicable to a family of the size involved and who meets the resources requirement described in paragraph (3)(D) or who is covered under this paragraph under paragraph (3)(B)(i), the individual is entitled under this section to the following:

(A) Full premium subsidy

An income-related premium subsidy equal to—

(i) 100 percent of the amount described in subsection (b)(1) of this section, but not to exceed the premium amount specified in subsection (b)(2)(B) of this section; plus

(ii) 80 percent of any late enrollment penalties imposed under section 1395w–113(b) of this title for the first 60 months in which such penalties are imposed for that individual, and 100 percent of any such penalties for any subsequent month.

(B) Elimination of deductible

A reduction in the annual deductible applicable under section 1395w–102(b)(1) of this title to $0.

(C) Continuation of coverage above the initial coverage limit

The continuation of coverage from the initial coverage limit (under paragraph (3) of section 1395w–102(b) of this title) for expenditures incurred through the total amount of expenditures at which benefits are available under paragraph (4) of such section, subject to the reduced cost-sharing described in subparagraph (D).

(D) Reduction in cost-sharing below out-of-pocket threshold

(i) Institutionalized individuals

In the case of an individual who is a full-benefit dual eligible individual and who is

[2] So in original. Probably should be ''section 426(b)''.

an institutionalized individual or couple (as defined in section 1396a(q)(1)(B) of this title), the elimination of any beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title).

(ii) Lowest income dual eligible individuals

In the case of an individual not described in clause (i) who is a full-benefit dual eligible individual and whose income does not exceed 100 percent of the poverty line applicable to a family of the size involved, the substitution for the beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title) of a copayment amount that does not exceed $1 for a generic drug or a preferred drug that is a multiple source drug (as defined in section 1396r–8(k)(7)(A)(i) of this title) and $3 for any other drug, or, if less, the copayment amount applicable to an individual under clause (iii).

(iii) Other individuals

In the case of an individual not described in clause (i) or (ii), the substitution for the beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title) of a copayment amount that does not exceed the copayment amount specified under section 1395w–102(b)(4)(A)(i)(I) of this title for the drug and year involved.

(E) Elimination of cost-sharing above annual out-of-pocket threshold

The elimination of any cost-sharing imposed under section 1395w–102(b)(4)(A) of this title.

(2) Other individuals with income below 150 percent of poverty line

In the case of a subsidy eligible individual who is not described in paragraph (1), the individual is entitled under this section to the following:

(A) Sliding scale premium subsidy

An income-related premium subsidy determined on a linear sliding scale ranging from 100 percent of the amount described in paragraph (1)(A) for individuals with incomes at or below 135 percent of such level to 0 percent of such amount for individuals with incomes at 150 percent of such level.

(B) Reduction of deductible

A reduction in the annual deductible applicable under section 1395w–102(b)(1) of this title to $50.

(C) Continuation of coverage above the initial coverage limit

The continuation of coverage from the initial coverage limit (under paragraph (3) of section 1395w–102(b) of this title) for expenditures incurred through the total amount of expenditures at which benefits are available under paragraph (4) of such section, subject to the reduced coinsurance described in subparagraph (D).

(D) Reduction in cost-sharing below out-of-pocket threshold

The substitution for the beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts above the deductible under subparagraph (B) through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title) of coinsurance of ''15 percent'' instead of coinsurance of ''25 percent'' in section 1395w–102(b)(2) of this title.

(E) Reduction of cost-sharing above annual out-of-pocket threshold

Subject to subsection (c) of this section, the substitution for the cost-sharing imposed under section 1395w–102(b)(4)(A) of this title of a copayment or coinsurance not to exceed the copayment or coinsurance amount specified under section 1395w–102(b)(4)(A)(i)(I) of this title for the drug and year involved.

(3) Determination of eligibility

(A) Subsidy eligible individual defined

For purposes of this part, subject to subparagraph (F), the term ''subsidy eligible individual'' means a part D eligible individual who—

(i) is enrolled in a prescription drug plan or MA–PD plan;

(ii) has income below 150 percent of the poverty line applicable to a family of the size involved; and

(iii) meets the resources requirement described in subparagraph (D) or (E).

(B) Determinations

(i) In general

The determination of whether a part D eligible individual residing in a State is a subsidy eligible individual and whether the individual is described in paragraph (1) shall be determined under the State plan under subchapter XIX of this chapter for the State under section 1396u–5(a) of this title or by the Commissioner of Social Security. There are authorized to be appropriated to the Social Security Administration such sums as may be necessary for the determination of eligibility under this subparagraph.

(ii) Effective period

Determinations under this subparagraph shall be effective beginning with the month in which the individual applies for a determination that the individual is a subsidy eligible individual and shall remain in effect for a period specified by the Secretary, but not to exceed 1 year.

(iii) Redeterminations and appeals through medicaid

Redeterminations and appeals, with respect to eligibility determinations under

clause (i) made under a State plan under subchapter XIX of this chapter, shall be made in accordance with the frequency of, and manner in which, redeterminations and appeals of eligibility are made under such plan for purposes of medical assistance under such subchapter.

(iv) Redeterminations and appeals through Commissioner

With respect to eligibility determinations under clause (i) made by the Commissioner of Social Security—

(I) redeterminations shall be made at such time or times as may be provided by the Commissioner; and

(II) the Commissioner shall establish procedures for appeals of such determinations that are similar to the procedures described in the third sentence of section 1383(c)(1)(A) of this title.

(v) Treatment of medicaid beneficiaries

Subject to subparagraph (F), the Secretary—

(I) shall provide that part D eligible individuals who are full-benefit dual eligible individuals (as defined in section 1396u–5(c)(6) of this title) or who are recipients of supplemental security income benefits under subchapter XVI of this chapter shall be treated as subsidy eligible individuals described in paragraph (1); and

(II) may provide that part D eligible individuals not described in subclause (I) who are determined for purposes of the State plan under subchapter XIX of this chapter to be eligible for medical assistance under clause (i), (iii), or (iv) of section 1396a(a)(10)(E) of this title are treated as being determined to be subsidy eligible individuals described in paragraph (1).

Insofar as the Secretary determines that the eligibility requirements under the State plan for medical assistance referred to in subclause (II) are substantially the same as the requirements for being treated as a subsidy eligible individual described in paragraph (1), the Secretary shall provide for the treatment described in such subclause.

(C) Income determinations

For purposes of applying this section—

(i) in the case of a part D eligible individual who is not treated as a subsidy eligible individual under subparagraph (B)(v), income shall be determined in the manner described in section 1396d(p)(1)(B) of this title, without regard to the application of section 1396a(r)(2) of this title; and

(ii) the term ''poverty line'' has the meaning given such term in section 9902(2) of this title, including any revision required by such section.

Nothing in clause (i) shall be construed to affect the application of section 1396a(r)(2) of this title for the determination of eligibility for medical assistance under subchapter XIX of this chapter.

(D) Resource standard applied to full low-income subsidy to be based on three times SSI resource standard

The resources requirement of this subparagraph is that an individual's resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed—

(i) for 2006 three times the maximum amount of resources that an individual may have and obtain benefits under that program; and

(ii) for a subsequent year the resource limitation established under this clause for the previous year increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year.

Any resource limitation established under clause (ii) that is not a multiple of $10 shall be rounded to the nearest multiple of $10.

(E) Alternative resource standard

(i) In general

The resources requirement of this subparagraph is that an individual's resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed—

(I) for 2006, $10,000 (or $20,000 in the case of the combined value of the individual's assets or resources and the assets or resources of the individual's spouse); and

(II) for a subsequent year the dollar amounts specified in this subclause (or subclause (I)) for the previous year increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year.

Any dollar amount established under subclause (II) that is not a multiple of $10 shall be rounded to the nearest multiple of $10.

(ii) Use of simplified application form and process

The Secretary, jointly with the Commissioner of Social Security, shall—

(I) develop a model, simplified application form and process consistent with clause (iii) for the determination and verification of a part D eligible individual's assets or resources under this subparagraph; and

(II) provide such form to States.

(iii) Documentation and safeguards

Under such process—

(I) the application form shall consist of an attestation under penalty of perjury regarding the level of assets or resources (or combined assets and resources in the case of a married part D eligible individual) and valuations of general classes of assets or resources;

(II) such form shall be accompanied by copies of recent statements (if any) from financial institutions in support of the application; and

(III) matters attested to in the application shall be subject to appropriate methods of verification.

(iv) Methodology flexibility

The Secretary may permit a State in making eligibility determinations for premium and cost-sharing subsidies under this section to use the same asset or resource methodologies that are used with respect to eligibility for medical assistance for medicare cost-sharing described in section 1396d(p) of this title so long as the Secretary determines that the use of such methodologies will not result in any significant differences in the number of individuals determined to be subsidy eligible individuals.

(F) Treatment of territorial residents

In the case of a part D eligible individual who is not a resident of the 50 States or the District of Columbia, the individual is not eligible to be a subsidy eligible individual under this section but may be eligible for financial assistance with prescription drug expenses under section 1396u–5(e) of this title.

(4) Indexing dollar amounts

(A) Copayment for lowest income dual eligible individuals

The dollar amounts applied under paragraph (1)(D)(ii)—

(i) for 2007 shall be the dollar amounts specified in such paragraph increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year; or

(ii) for a subsequent year shall be the dollar amounts specified in this clause (or clause (i)) for the previous year increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year.

Any amount established under clause (i) or (ii), that is based on an increase of $1 or $3, that is not a multiple of 5 cents or 10 cents, respectively, shall be rounded to the nearest multiple of 5 cents or 10 cents, respectively.

(B) Reduced deductible

The dollar amount applied under paragraph (2)(B)—

(i) for 2007 shall be the dollar amount specified in such paragraph increased by the annual percentage increase described in section 1395w–102(b)(6) of this title for 2007; or

(ii) for a subsequent year shall be the dollar amount specified in this clause (or clause (i)) for the previous year increased by the annual percentage increase described in section 1395w–102(b)(6) of this title for the year involved.

Any amount established under clause (i) or (ii) that is not a multiple of $1 shall be rounded to the nearest multiple of $1.

(b) Premium subsidy amount

(1) In general

The premium subsidy amount described in this subsection for a subsidy eligible individual residing in a PDP region and enrolled in a prescription drug plan or MA–PD plan is the low-income benchmark premium amount (as defined in paragraph (2)) for the PDP region in which the individual resides or, if greater, the amount specified in paragraph (3).

(2) Low-income benchmark premium amount defined

(A) In general

For purposes of this subsection, the term ''low-income benchmark premium amount'' means, with respect to a PDP region in which—

(i) all prescription drug plans are offered by the same PDP sponsor, the weighted average of the amounts described in subparagraph (B)(i) for such plans; or

(ii) there are prescription drug plans offered by more than one PDP sponsor, the weighted average of amounts described in subparagraph (B) for prescription drug plans and MA–PD plans described in section 1395w–21(a)(2)(A)(i) of this title offered in such region.

(B) Premium amounts described

The premium amounts described in this subparagraph are, in the case of—

(i) a prescription drug plan that is a basic prescription drug plan, the monthly beneficiary premium for such plan;

(ii) a prescription drug plan that provides alternative prescription drug coverage the actuarial value of which is greater than that of standard prescription drug coverage, the portion of the monthly beneficiary premium that is attributable to basic prescription drug coverage; and

(iii) an MA–PD plan, the portion of the MA monthly prescription drug beneficiary premium that is attributable to basic prescription drug benefits (described in section 1395w–22(a)(6)(B)(ii) of this title[1]).

The premium amounts described in this subparagraph do not include any amounts attributable to late enrollment penalties under section 1395w–113(b) of this title.

(3) Access to 0 premium plan

In no case shall the premium subsidy amount under this subsection for a PDP region be less than the lowest monthly beneficiary premium for a prescription drug plan that offers basic prescription drug coverage in the region.

(c) Administration of subsidy program

(1) In general

The Secretary shall provide a process whereby, in the case of a part D eligible individual who is determined to be a subsidy eligible individual and who is enrolled in a prescription drug plan or is enrolled in an MA–PD plan—

(A) the Secretary provides for a notification of the PDP sponsor or the MA organization offering the plan involved that the individual is eligible for a subsidy and the

[1] So in original. Section 1395w–22(a)(6) of this title does not contain a subpar. (B).

amount of the subsidy under subsection (a) of this section;

(B) the sponsor or organization involved reduces the premiums or cost-sharing otherwise imposed by the amount of the applicable subsidy and submits to the Secretary information on the amount of such reduction;

(C) the Secretary periodically and on a timely basis reimburses the sponsor or organization for the amount of such reductions; and

(D) the Secretary ensures the confidentiality of individually identifiable information.

In applying subparagraph (C), the Secretary shall compute reductions based upon imposition under subsections (a)(1)(D) and (a)(2)(E) of this section of unreduced copayment amounts applied under such subsections.

(2) Use of capitated form of payment

The reimbursement under this section with respect to cost-sharing subsidies may be computed on a capitated basis, taking into account the actuarial value of the subsidies and with appropriate adjustments to reflect differences in the risks actually involved.

(d) Relation to medicaid program

For special provisions under the medicaid program relating to medicare prescription drug benefits, see section 1396u–5 of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–14, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2107.)

GAO STUDY REGARDING IMPACT OF ASSETS TEST FOR SUBSIDY ELIGIBLE INDIVIDUALS

Pub. L. 108–173, title I, § 107(e), Dec. 8, 2003, 117 Stat. 2171, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine the extent to which drug utilization and access to covered part D drugs under part D of title XVIII of the Social Security Act [this part] by subsidy eligible individuals differs from such utilization and access for individuals who would qualify as such subsidy eligible individuals but for the application of section 1860D–14(a)(3)(A)(iii) of such Act [subsec. (a)(3)(A)(iii) of this section].

''(2) REPORT.—Not later than September 30, 2007, the Comptroller General shall submit a report to Congress on the study conducted under paragraph (1) that includes such recommendations for legislation as the Comptroller General determines are appropriate.''

§ 1395w–115. Subsidies for part D eligible individuals for qualified prescription drug coverage

(a) Subsidy payment

In order to reduce premium levels applicable to qualified prescription drug coverage for part D eligible individuals consistent with an overall subsidy level of 74.5 percent for basic prescription drug coverage, to reduce adverse selection among prescription drug plans and MA–PD plans, and to promote the participation of PDP sponsors under this part and MA organizations under part C of this subchapter, the Secretary shall provide for payment to a PDP sponsor that offers a prescription drug plan and an MA organization that offers an MA–PD plan of the following subsidies in accordance with this section:

(1) Direct subsidy

A direct subsidy for each part D eligible individual enrolled in a prescription drug plan or MA–PD plan for a month equal to—

(A) the amount of the plan's standardized bid amount (as defined in section 1395w–113(a)(5) of this title), adjusted under subsection (c)(1) of this section, reduced by

(B) the base beneficiary premium (as computed under paragraph (2) of section 1395w–113(a) of this title and as adjusted under paragraph (1)(B) of such section).

(2) Subsidy through reinsurance

The reinsurance payment amount (as defined in subsection (b) of this section).

This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this section.

(b) Reinsurance payment amount

(1) In general

The reinsurance payment amount under this subsection for a part D eligible individual enrolled in a prescription drug plan or MA–PD plan for a coverage year is an amount equal to 80 percent of the allowable reinsurance costs (as specified in paragraph (2)) attributable to that portion of gross covered prescription drug costs as specified in paragraph (3) incurred in the coverage year after such individual has incurred costs that exceed the annual out-of-pocket threshold specified in section 1395w–102(b)(4)(B) of this title.

(2) Allowable reinsurance costs

For purposes of this section, the term ''allowable reinsurance costs'' means, with respect to gross covered prescription drug costs under a prescription drug plan offered by a PDP sponsor or an MA–PD plan offered by an MA organization, the part of such costs that are actually paid (net of discounts, chargebacks, and average percentage rebates) by the sponsor or organization or by (or on behalf of) an enrollee under the plan, but in no case more than the part of such costs that would have been paid under the plan if the prescription drug coverage under the plan were basic prescription drug coverage, or, in the case of a plan providing supplemental prescription drug coverage, if such coverage were standard prescription drug coverage.

(3) Gross covered prescription drug costs

For purposes of this section, the term ''gross covered prescription drug costs'' means, with respect to a part D eligible individual enrolled in a prescription drug plan or MA–PD plan during a coverage year, the costs incurred under the plan, not including administrative costs, but including costs directly related to the dispensing of covered part D drugs during the year and costs relating to the deductible. Such costs shall be determined whether they are paid by the individual or under the plan, regardless of whether the coverage under the plan exceeds basic prescription drug coverage.

(4) Coverage year defined

For purposes of this section, the term ''coverage year'' means a calendar year in which covered part D drugs are dispensed if the claim for such drugs (and payment on such claim) is

made not later than such period after the end of such year as the Secretary specifies.

(c) Adjustments relating to bids

(1) Health status risk adjustment

(A) Establishment of risk adjustors

The Secretary shall establish an appropriate methodology for adjusting the standardized bid amount under subsection (a)(1)(A) of this section to take into account variation in costs for basic prescription drug coverage among prescription drug plans and MA–PD plans based on the differences in actuarial risk of different enrollees being served. Any such risk adjustment shall be designed in a manner so as not to result in a change in the aggregate amounts payable to such plans under subsection (a)(1) of this section and through that portion of the monthly beneficiary prescription drug premiums described in subsection (a)(1)(B) of this section and MA monthly prescription drug beneficiary premiums.

(B) Considerations

In establishing the methodology under subparagraph (A), the Secretary may take into account the similar methodologies used under section 1395w–23(a)(3) of this title to adjust payments to MA organizations for benefits under the original medicare fee-for-service program option.

(C) Data collection

In order to carry out this paragraph, the Secretary shall require—

(i) PDP sponsors to submit data regarding drug claims that can be linked at the individual level to part A and part B data and such other information as the Secretary determines necessary; and

(ii) MA organizations that offer MA–PD plans to submit data regarding drug claims that can be linked at the individual level to other data that such organizations are required to submit to the Secretary and such other information as the Secretary determines necessary.

(D) Publication

At the time of publication of risk adjustment factors under section 1395w–23(b)(1)(B)(i)(II) of this title, the Secretary shall publish the risk adjusters established under this paragraph for the succeeding year.

(2) Geographic adjustment

(A) In general

Subject to subparagraph (B), for purposes of section 1395w–113(a)(1)(B)(iii) of this title, the Secretary shall establish an appropriate methodology for adjusting the national average monthly bid amount (computed under section 1395w–113(a)(4) of this title) to take into account differences in prices for covered part D drugs among PDP regions.

(B) De minimis rule

If the Secretary determines that the price variations described in subparagraph (A) among PDP regions are de minimis, the Secretary shall not provide for adjustment under this paragraph.

(C) Budget neutral adjustment

Any adjustment under this paragraph shall be applied in a manner so as to not result in a change in the aggregate payments made under this part that would have been made if the Secretary had not applied such adjustment.

(d) Payment methods

(1) In general

Payments under this section shall be based on such a method as the Secretary determines. The Secretary may establish a payment method by which interim payments of amounts under this section are made during a year based on the Secretary's best estimate of amounts that will be payable after obtaining all of the information.

(2) Requirement for provision of information

(A) Requirement

Payments under this section to a PDP sponsor or MA organization are conditioned upon the furnishing to the Secretary, in a form and manner specified by the Secretary, of such information as may be required to carry out this section.

(B) Restriction on use of information

Information disclosed or obtained pursuant to subparagraph (A) may be used by officers, employees, and contractors of the Department of Health and Human Services only for the purposes of, and to the extent necessary in, carrying out this section.

(3) Source of payments

Payments under this section shall be made from the Medicare Prescription Drug Account.

(4) Application of enrollee adjustment

The provisions of section 1395w–23(a)(2) of this title shall apply to payments to PDP sponsors under this section in the same manner as they apply to payments to MA organizations under section 1395w–23(a) of this title.

(e) Portion of total payments to a sponsor or organization subject to risk (application of risk corridors)

(1) Computation of adjusted allowable risk corridor costs

(A) In general

For purposes of this subsection, the term ''adjusted allowable risk corridor costs'' means, for a plan for a coverage year (as defined in subsection (b)(4) of this section)—

(i) the allowable risk corridor costs (as defined in subparagraph (B)) for the plan for the year, reduced by

(ii) the sum of (I) the total reinsurance payments made under subsection (b) of this section to the sponsor of the plan for the year, and (II) the total subsidy payments made under section 1395w–114 of this title to the sponsor of the plan for the year.

(B) Allowable risk corridor costs

For purposes of this subsection, the term ''allowable risk corridor costs'' means, with

respect to a prescription drug plan offered by a PDP sponsor or an MA–PD plan offered by an MA organization, the part of costs (not including administrative costs, but including costs directly related to the dispensing of covered part D drugs during the year) incurred by the sponsor or organization under the plan that are actually paid (net of discounts, chargebacks, and average percentage rebates) by the sponsor or organization under the plan, but in no case more than the part of such costs that would have been paid under the plan if the prescription drug coverage under the plan were basic prescription drug coverage, or, in the case of a plan providing supplemental prescription drug coverage, if such coverage were basic prescription drug coverage taking into account the adjustment under section 1395w–111(c)(2) of this title. In computing allowable costs under this paragraph, the Secretary shall compute such costs based upon imposition under paragraphs (1)(D) and (2)(E) of section 1395w–114(a) of this title of the maximum amount of copayments permitted under such paragraphs.

(2) Adjustment of payment

(A) No adjustment if adjusted allowable risk corridor costs within risk corridor

If the adjusted allowable risk corridor costs (as defined in paragraph (1)) for the plan for the year are at least equal to the first threshold lower limit of the risk corridor (specified in paragraph (3)(A)(i)), but not greater than the first threshold upper limit of the risk corridor (specified in paragraph (3)(A)(iii)) for the plan for the year, then no payment adjustment shall be made under this subsection.

(B) Increase in payment if adjusted allowable risk corridor costs above upper limit of risk corridor

(i) Costs between first and second threshold upper limits

If the adjusted allowable risk corridor costs for the plan for the year are greater than the first threshold upper limit, but not greater than the second threshold upper limit, of the risk corridor for the plan for the year, the Secretary shall increase the total of the payments made to the sponsor or organization offering the plan for the year under this section by an amount equal to 50 percent (or, for 2006 and 2007, 75 percent or 90 percent if the conditions described in clause (iii) are met for the year) of the difference between such adjusted allowable risk corridor costs and the first threshold upper limit of the risk corridor.

(ii) Costs above second threshold upper limits

If the adjusted allowable risk corridor costs for the plan for the year are greater than the second threshold upper limit of the risk corridor for the plan for the year, the Secretary shall increase the total of the payments made to the sponsor or organization offering the plan for the year under this section by an amount equal to the sum of—

(I) 50 percent (or, for 2006 and 2007, 75 percent or 90 percent if the conditions described in clause (iii) are met for the year) of the difference between the second threshold upper limit and the first threshold upper limit; and

(II) 80 percent of the difference between such adjusted allowable risk corridor costs and the second threshold upper limit of the risk corridor.

(iii) Conditions for application of higher percentage for 2006 and 2007

The conditions described in this clause are met for 2006 or 2007 if the Secretary determines with respect to such year that—

(I) at least 60 percent of prescription drug plans and MA–PD plans to which this subsection applies have adjusted allowable risk corridor costs for the plan for the year that are more than the first threshold upper limit of the risk corridor for the plan for the year; and

(II) such plans represent at least 60 percent of part D eligible individuals enrolled in any prescription drug plan or MA–PD plan.

(C) Reduction in payment if adjusted allowable risk corridor costs below lower limit of risk corridor

(i) Costs between first and second threshold lower limits

If the adjusted allowable risk corridor costs for the plan for the year are less than the first threshold lower limit, but not less than the second threshold lower limit, of the risk corridor for the plan for the year, the Secretary shall reduce the total of the payments made to the sponsor or organization offering the plan for the year under this section by an amount (or otherwise recover from the sponsor or organization an amount) equal to 50 percent (or, for 2006 and 2007, 75 percent) of the difference between the first threshold lower limit of the risk corridor and such adjusted allowable risk corridor costs.

(ii) Costs below second threshold lower limit

If the adjusted allowable risk corridor costs for the plan for the year are less the second threshold lower limit of the risk corridor for the plan for the year, the Secretary shall reduce the total of the payments made to the sponsor or organization offering the plan for the year under this section by an amount (or otherwise recover from the sponsor or organization an amount) equal to the sum of—

(I) 50 percent (or, for 2006 and 2007, 75 percent) of the difference between the first threshold lower limit and the second threshold lower limit; and

(II) 80 percent of the difference between the second threshold upper limit of the risk corridor and such adjusted allowable risk corridor costs.

(3) Establishment of risk corridors

(A) In general

For each plan year the Secretary shall establish a risk corridor for each prescription drug plan and each MA–PD plan. The risk corridor for a plan for a year shall be equal to a range as follows:

(i) First threshold lower limit

The first threshold lower limit of such corridor shall be equal to—

(I) the target amount described in subparagraph (B) for the plan; minus

(II) an amount equal to the first threshold risk percentage for the plan (as determined under subparagraph (C)(i)) of such target amount.

(ii) Second threshold lower limit

The second threshold lower limit of such corridor shall be equal to—

(I) the target amount described in subparagraph (B) for the plan; minus

(II) an amount equal to the second threshold risk percentage for the plan (as determined under subparagraph (C)(ii)) of such target amount.

(iii) First threshold upper limit

The first threshold upper limit of such corridor shall be equal to the sum of—

(I) such target amount; and

(II) the amount described in clause (i)(II).

(iv) Second threshold upper limit

The second threshold upper limit of such corridor shall be equal to the sum of—

(I) such target amount; and

(II) the amount described in clause (ii)(II).

(B) Target amount described

The target amount described in this paragraph is, with respect to a prescription drug plan or an MA–PD plan in a year, the total amount of payments paid to the PDP sponsor or MA–PD organization for the plan for the year, taking into account amounts paid by the Secretary and enrollees, based upon the standardized bid amount (as defined in section 1395w–113(a)(5) of this title and as risk adjusted under subsection (c)(1) of this section), reduced by the total amount of administrative expenses for the year assumed in such standardized bid.

(C) First and second threshold risk percentage defined

(i) First threshold risk percentage

Subject to clause (iii), for purposes of this section, the first threshold risk percentage is—

(I) for 2006 and 2007, and[1] 2.5 percent;

(II) for 2008 through 2011, 5 percent; and

(III) for 2012 and subsequent years, a percentage established by the Secretary, but in no case less than 5 percent.

(ii) Second threshold risk percentage

Subject to clause (iii), for purposes of this section, the second threshold risk percentage is—

(I) for 2006 and 2007, 5 percent;

(II) for 2008 through 2011, 10 percent; and

(III) for 2012 and subsequent years, a percentage established by the Secretary that is greater than the percent established for the year under clause (i)(III), but in no case less than 10 percent.

(iii) Reduction of risk percentage to ensure 2 plans in an area

Pursuant to section 1395w–111(b)(2)(E)(ii) of this title, a PDP sponsor may submit a bid that requests a decrease in the applicable first or second threshold risk percentages or an increase in the percents applied under paragraph (2).

(4) Plans at risk for entire amount of supplemental prescription drug coverage

A PDP sponsor and MA organization that offers a plan that provides supplemental prescription drug benefits shall be at full financial risk for the provision of such supplemental benefits.

(5) No effect on monthly premium

No adjustment in payments made by reason of this subsection shall affect the monthly beneficiary premium or the MA monthly prescription drug beneficiary premium.

(f) Disclosure of information

(1) In general

Each contract under this part and under part C of this subchapter shall provide that—

(A) the PDP sponsor offering a prescription drug plan or an MA organization offering an MA–PD plan shall provide the Secretary with such information as the Secretary determines is necessary to carry out this section; and

(B) the Secretary shall have the right in accordance with section 1395w–27(d)(2)(B) of this title (as applied under section 1395w–112(b)(3)(C) of this title) to inspect and audit any books and records of a PDP sponsor or MA organization that pertain to the information regarding costs provided to the Secretary under subparagraph (A).

(2) Restriction on use of information

Information disclosed or obtained pursuant to the provisions of this section may be used by officers, employees, and contractors of the Department of Health and Human Services only for the purposes of, and to the extent necessary in, carrying out this section.

(g) Payment for fallback prescription drug plans

In lieu of the amounts otherwise payable under this section to a PDP sponsor offering a fallback prescription drug plan (as defined in section 1395w–111(g)(4) of this title[2]), the amount payable shall be the amounts determined under the contract for such plan pursuant to section 1395w–111(g)(5) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–15, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2113.)

[1] So in original. The word ''and'' probably should not appear.

[2] See References in Text note below.

REFERENCES IN TEXT

Part C of this subchapter, referred to in subsecs. (a) and (f)(1), is classified to section 1395w–21 et seq. of this title.

Section 1395w–111(g)(4) of this title, referred to in subsec. (g), was in the original ''section 1860D–3(c)(4)'', and was translated as reading ''section 1860D–11(g)(4)'', meaning section 1860D–11(g)(4) of the Social Security Act, to reflect the probable intent of Congress, because section 1860D–3, which is classified to section 1395w–103 of this title, does not contain a subsec. (c), and section 1395w–111(g)(4) of this title defines ''fallback prescription drug plan'' for purposes of this part.

§ 1395w–116. Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund

(a) Establishment and operation of Account

(1) Establishment

There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1395t of this title an account to be known as the ''Medicare Prescription Drug Account'' (in this section referred to as the ''Account'').

(2) Funding

The Account shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, accrued interest on balances in the Account, and such amounts as may be deposited in, or appropriated to, such Account as provided in this part.

(3) Separate from rest of Trust Fund

Funds provided under this part to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund, but shall be invested, and such investments redeemed, in the same manner as all other funds and investments within such Trust Fund.

(b) Payments from Account

(1) In general

The Managing Trustee shall pay from time to time from the Account such amounts as the Secretary certifies are necessary to make payments to operate the program under this part, including—

(A) payments under section 1395w–114 of this title (relating to low-income subsidy payments);

(B) payments under section 1395w–115 of this title (relating to subsidy payments and payments for fallback plans);

(C) payments to sponsors of qualified retiree prescription drug plans under section 1395w–132(a) of this title; and

(D) payments with respect to administrative expenses under this part in accordance with section 401(g) of this title.

(2) Transfers to Medicaid account for increased administrative costs

The Managing Trustee shall transfer from time to time from the Account to the Grants to States for Medicaid account amounts the Secretary certifies are attributable to increases in payment resulting from the application of section 1396u–5(b) of this title.

(3) Payments of premiums withheld

The Managing Trustee shall make payment to the PDP sponsor or MA organization involved of the premiums (and the portion of late enrollment penalties) that are collected in the manner described in section 1395w–24(d)(2)(A) of this title and that are payable under a prescription drug plan or MA–PD plan offered by such sponsor or organization.

(4) Treatment in relation to part B premium

Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1395r of this title.

(c) Deposits into Account

(1) Low-income transfer

Amounts paid under section 1396u–5(c) of this title (and any amounts collected or offset under paragraph (1)(C) of such section) are deposited into the Account.

(2) Amounts withheld

Pursuant to sections 1395w–113(c) and 1395w–24(d) of this title (as applied under this part), amounts that are withheld (and allocated) to the Account are deposited into the Account.

(3) Appropriations to cover Government contributions

There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Account, an amount equivalent to the amount of payments made from the Account under subsection (b) of this section plus such amounts as the Managing Trustee certifies is necessary to maintain an appropriate contingency margin, reduced by the amounts deposited under paragraph (1) or subsection (a)(2) of this section.

(4) Initial funding and reserve

In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part and to provide an initial contingency reserve, there are authorized to be appropriated to the Account, out of any moneys in the Treasury not otherwise appropriated, such amount as the Secretary certifies are required, but not to exceed 10 percent of the estimated total expenditures from such Account in 2006.

(5) Transfer of any remaining balance from Transitional Assistance Account

Any balance in the Transitional Assistance Account that is transferred under section 1395w–141(k)(5) of this title shall be deposited into the Account.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–16, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2120.)

SUBPART 3—APPLICATION TO MEDICARE ADVANTAGE PROGRAM AND TREATMENT OF EMPLOYER-SPONSORED PROGRAMS AND OTHER PRESCRIPTION DRUG PLANS

§ 1395w–131. Application to Medicare Advantage program and related managed care programs

(a) Special rules relating to offering of qualified prescription drug coverage

(1) In general

An MA organization on and after January 1, 2006—

(A) may not offer an MA plan described in section 1395w–21(a)(2)(A) of this title in an area unless either that plan (or another MA plan offered by the organization in that same service area) includes required prescription drug coverage (as defined in paragraph (2)); and

(B) may not offer prescription drug coverage (other than that required under parts A and B of this subchapter) to an enrollee—

(i) under an MSA plan; or

(ii) under another MA plan unless such drug coverage under such other plan provides qualified prescription drug coverage and unless the requirements of this section with respect to such coverage are met.

(2) Qualifying coverage

For purposes of paragraph (1)(A), the term ''required coverage'' means with respect to an MA–PD plan—

(A) basic prescription drug coverage; or

(B) qualified prescription drug coverage that provides supplemental prescription drug coverage, so long as there is no MA monthly supplemental beneficiary premium applied under the plan (due to the application of a credit against such premium of a rebate under section 1395w–24(b)(1)(C) of this title).

(b) Application of default enrollment rules

(1) Seamless continuation

In applying section 1395w–21(c)(3)(A)(ii) of this title, an individual who is enrolled in a health benefits plan shall not be considered to have been deemed to make an election into an MA–PD plan unless such health benefits plan provides any prescription drug coverage.

(2) MA continuation

In applying section 1395w–21(c)(3)(B) of this title, an individual who is enrolled in an MA plan shall not be considered to have been deemed to make an election into an MA–PD plan unless—

(A) for purposes of the election as of January 1, 2006, the MA plan provided as of December 31, 2005, any prescription drug coverage; or

(B) for periods after January 1, 2006, such MA plan is an MA–PD plan.

(3) Discontinuance of MA–PD election during first year of eligibility

In applying the second sentence of section 1395w–21(e)(4) of this title in the case of an individual who is electing to discontinue enrollment in an MA–PD plan, the individual shall be permitted to enroll in a prescription drug plan under part D at the time of the election of coverage under the original medicare fee-for-service program.

(4) Rules regarding enrollees in MA plans not providing qualified prescription drug coverage

In the case of an individual who is enrolled in an MA plan (other than an MSA plan) that does not provide qualified prescription drug coverage, if the organization offering such coverage discontinues the offering with respect to the individual of all MA plans that do not provide such coverage—

(i) the individual is deemed to have elected the original medicare fee-for-service program option, unless the individual affirmatively elects to enroll in an MA–PD plan; and

(ii) in the case of such a deemed election, the disenrollment shall be treated as an involuntary termination of the MA plan described in subparagraph (B)(ii) of section 1395ss(s)(3) of this title for purposes of applying such section.

The information disclosed under section 1395w–22(c)(1) of this title for individuals who are enrolled in such an MA plan shall include information regarding such rules.

(c) Application of part D rules for prescription drug coverage

With respect to the offering of qualified prescription drug coverage by an MA organization under this part on and after January 1, 2006—

(1) In general

Except as otherwise provided, the provisions of this part shall apply under part C of this subchapter with respect to prescription drug coverage provided under MA–PD plans in lieu of the other provisions of part C of this subchapter that would apply to such coverage under such plans.

(2) Waiver

The Secretary shall waive the provisions referred to in paragraph (1) to the extent the Secretary determines that such provisions duplicate, or are in conflict with, provisions otherwise applicable to the organization or plan under part C of this subchapter or as may be necessary in order to improve coordination of this part with the benefits under this part.

(3) Treatment of MA owned and operated pharmacies

The Secretary may waive the requirement of section 1395w–104(b)(1)(C) of this title in the case of an MA–PD plan that provides access (other than mail order) to qualified prescription drug coverage through pharmacies owned and operated by the MA organization, if the Secretary determines that the organization's pharmacy network is sufficient to provide comparable access for enrollees under the plan.

(d) Special rules for private fee-for-service plans that offer prescription drug coverage

With respect to an MA plan described in section 1395w–21(a)(2)(C) of this title that offers

qualified prescription drug coverage, on and after January 1, 2006, the following rules apply:

(1) Requirements regarding negotiated prices

Subsections (a)(1) and (d)(1) of section 1395w–102 of this title and section 1395w–104(b)(2)(A) of this title shall not be construed to require the plan to provide negotiated prices (described in subsection (d)(1)(B) of such section), but shall apply to the extent the plan does so.

(2) Modification of pharmacy access standard and disclosure requirement

If the plan provides coverage for drugs purchased from all pharmacies, without charging additional cost-sharing, and without regard to whether they are participating pharmacies in a network or have entered into contracts or agreements with pharmacies to provide drugs to enrollees covered by the plan, subsections (b)(1)(C) and (k) of section 1395w–104 of this title shall not apply to the plan.

(3) Drug utilization management program and medication therapy management program not required

The requirements of subparagraphs (A) and (C) of section 1395w–104(c)(1) of this title shall not apply to the plan.

(4) Application of reinsurance

The Secretary shall determine the amount of reinsurance payments under section 1395w–115(b) of this title using a methodology that—

(A) bases such amount on the Secretary's estimate of the amount of such payments that would be payable if the plan were an MA–PD plan described in section 1395w–21(a)(2)(A)(i) of this title and the previous provisions of this subsection did not apply; and

(B) takes into account the average reinsurance payments made under section 1395w–115(b) of this title for populations of similar risk under MA–PD plans described in such section.

(5) Exemption from risk corridor provisions

The provisions of section 1395w–115(e) of this title shall not apply.

(6) Exemption from negotiations

Subsections (d) and (e)(2)(C) of section 1395w–111 of this title shall not apply and the provisions of section 1395w–24(a)(5)(B) of this title prohibiting the review, approval, or disapproval of amounts described in such section shall apply to the proposed bid and terms and conditions described in section 1395w–111(d) of this title.

(7) Treatment of incurred costs without regard to formulary

The exclusion of costs incurred for covered part D drugs which are not included (or treated as being included) in a plan's formulary under section 1395w–102(b)(4)(B)(i) of this title shall not apply insofar as the plan does not utilize a formulary.

(e) Application to reasonable cost reimbursement contractors

(1) In general

Subject to paragraphs (2) and (3) and rules established by the Secretary, in the case of an organization that is providing benefits under a reasonable cost reimbursement contract under section 1395mm(h) of this title and that elects to provide qualified prescription drug coverage to a part D eligible individual who is enrolled under such a contract, the provisions of this part (and related provisions of part C of this subchapter) shall apply to the provision of such coverage to such enrollee in the same manner as such provisions apply to the provision of such coverage under an MA–PD local plan described in section 1395–21(a)(2)(A)(i) of this title and coverage under such a contract that so provides qualified prescription drug coverage shall be deemed to be an MA–PD local plan.

(2) Limitation on enrollment

In applying paragraph (1), the organization may not enroll part D eligible individuals who are not enrolled under the reasonable cost reimbursement contract involved.

(3) Bids not included in determining national average monthly bid amount

The bid of an organization offering prescription drug coverage under this subsection shall not be taken into account in computing the national average monthly bid amount and low-income benchmark premium amount under this part.

(f) Application to PACE

(1) In general

Subject to paragraphs (2) and (3) and rules established by the Secretary, in the case of a PACE program under section 1395eee of this title that elects to provide qualified prescription drug coverage to a part D eligible individual who is enrolled under such program, the provisions of this part (and related provisions of part C of this subchapter) shall apply to the provision of such coverage to such enrollee in a manner that is similar to the manner in which such provisions apply to the provision of such coverage under an MA–PD local plan described in section 1395w–21(a)(2)(A)(ii) of this title and a PACE program that so provides such coverage may be deemed to be an MA–PD local plan.

(2) Limitation on enrollment

In applying paragraph (1), the organization may not enroll part D eligible individuals who are not enrolled under the PACE program involved.

(3) Bids not included in determining standardized bid amount

The bid of an organization offering prescription drug coverage under this subsection is not be taken into account in computing any average benchmark bid amount and low-income benchmark premium amount under this part.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–21, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2122.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (a)(1)(B), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Part C of this subchapter, referred to in subsecs. (c)(1), (2), (e)(1), and (f)(1), is classified to section 1395w–21 et seq. of this title.

§ 1395w–132. Special rules for employer-sponsored programs

(a) Subsidy payment

(1) In general

The Secretary shall provide in accordance with this subsection for payment to the sponsor of a qualified retiree prescription drug plan (as defined in paragraph (2)) of a special subsidy payment equal to the amount specified in paragraph (3) for each qualified covered retiree under the plan (as defined in paragraph (4)). This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this section.

(2) Qualified retiree prescription drug plan defined

For purposes of this subsection, the term ''qualified retiree prescription drug plan'' means employment-based retiree health coverage (as defined in subsection (c)(1) of this section) if, with respect to a part D eligible individual who is a participant or beneficiary under such coverage, the following requirements are met:

(A) Attestation of actuarial equivalence to standard coverage

The sponsor of the plan provides the Secretary, annually or at such other time as the Secretary may require, with an attestation that the actuarial value of prescription drug coverage under the plan (as determined using the processes and methods described in section 1395w–111(c) of this title) is at least equal to the actuarial value of standard prescription drug coverage.

(B) Audits

The sponsor of the plan, or an administrator of the plan designated by the sponsor, shall maintain (and afford the Secretary access to) such records as the Secretary may require for purposes of audits and other oversight activities necessary to ensure the adequacy of prescription drug coverage and the accuracy of payments made under this section. The provisions of section 1395w–102(d)(3) of this title shall apply to such information under this section (including such actuarial value and attestation) in a manner similar to the manner in which they apply to financial records of PDP sponsors and MA organizations.

(C) Provision of disclosure regarding prescription drug coverage

The sponsor of the plan shall provide for disclosure of information regarding prescription drug coverage in accordance with section 1395w–113(b)(6)(B) of this title.

(3) Employer and union special subsidy amounts

(A) In general

For purposes of this subsection, the special subsidy payment amount under this paragraph for a qualifying covered retiree for a coverage year enrolled with the sponsor of a qualified retiree prescription drug plan is, for the portion of the retiree's gross covered retiree plan-related prescription drug costs (as defined in subparagraph (C)(ii)) for such year that exceeds the cost threshold amount specified in subparagraph (B) and does not exceed the cost limit under such subparagraph, an amount equal to 28 percent of the allowable retiree costs (as defined in subparagraph (C)(i)) attributable to such gross covered prescription drug costs.

(B) Cost threshold and cost limit applicable

(i) In general

Subject to clause (ii)—

(I) the cost threshold under this subparagraph is equal to $250 for plan years that end in 2006; and

(II) the cost limit under this subparagraph is equal to $5,000 for plan years that end in 2006.

(ii) Indexing

The cost threshold and cost limit amounts specified in subclauses (I) and (II) of clause (i) for a plan year that ends after 2006 shall be adjusted in the same manner as the annual deductible and the annual out-of-pocket threshold, respectively, are annually adjusted under paragraphs (1) and (4)(B) of section 1395w–102(b) of this title.

(C) Definitions

For purposes of this paragraph:

(i) Allowable retiree costs

The term ''allowable retiree costs'' means, with respect to gross covered prescription drug costs under a qualified retiree prescription drug plan by a plan sponsor, the part of such costs that are actually paid (net of discounts, chargebacks, and average percentage rebates) by the sponsor or by or on behalf of a qualifying covered retiree under the plan.

(ii) Gross covered retiree plan-related prescription drug costs

For purposes of this section, the term ''gross covered retiree plan-related prescription drug costs'' means, with respect to a qualifying covered retiree enrolled in a qualified retiree prescription drug plan during a coverage year, the costs incurred under the plan, not including administrative costs, but including costs directly related to the dispensing of covered part D drugs during the year. Such costs shall be determined whether they are paid by the retiree or under the plan.

(iii) Coverage year

The term ''coverage year'' has the meaning given such term in section 1395w–115(b)(4) of this title.

(4) Qualifying covered retiree defined

For purposes of this subsection, the term ''qualifying covered retiree'' means a part D eligible individual who is not enrolled in a prescription drug plan or an MA–PD plan but is covered under a qualified retiree prescription drug plan.

(5) Payment methods, including provision of necessary information

The provisions of section 1395w–115(d) of this title (including paragraph (2), relating to requirement for provision of information) shall apply to payments under this subsection in a manner similar to the manner in which they apply to payment under section 1395w–115(b) of this title.

(6) Construction

Nothing in this subsection shall be construed as—

(A) precluding a part D eligible individual who is covered under employment-based retiree health coverage from enrolling in a prescription drug plan or in an MA–PD plan;

(B) precluding such employment-based retiree health coverage or an employer or other person from paying all or any portion of any premium required for coverage under a prescription drug plan or MA–PD plan on behalf of such an individual;

(C) preventing such employment-based retiree health coverage from providing coverage—

(i) that is better than standard prescription drug coverage to retirees who are covered under a qualified retiree prescription drug plan; or

(ii) that is supplemental to the benefits provided under a prescription drug plan or an MA–PD plan, including benefits to retirees who are not covered under a qualified retiree prescription drug plan but who are enrolled in such a prescription drug plan or MA–PD plan; or

(D) preventing employers to provide for flexibility in benefit design and pharmacy access provisions, without regard to the requirements for basic prescription drug coverage, so long as the actuarial equivalence requirement of paragraph (2)(A) is met.

(b) Application of MA waiver authority

The provisions of section 1395w–27(i) of this title shall apply with respect to prescription drug plans in relation to employment-based retiree health coverage in a manner similar to the manner in which they apply to an MA plan in relation to employers, including authorizing the establishment of separate premium amounts for enrollees in a prescription drug plan by reason of such coverage and limitations on enrollment to part D eligible individuals enrolled under such coverage.

(c) Definitions

For purposes of this section:

(1) Employment-based retiree health coverage

The term ''employment-based retiree health coverage'' means health insurance or other coverage of health care costs (whether provided by voluntary insurance coverage or pursuant to statutory or contractual obligation) for part D eligible individuals (or for such individuals and their spouses and dependents) under a group health plan based on their status as retired participants in such plan.

(2) Sponsor

The term ''sponsor'' means a plan sponsor, as defined in section 1002(16)(B) of title 29, in relation to a group health plan, except that, in the case of a plan maintained jointly by one employer and an employee organization and with respect to which the employer is the primary source of financing, such term means such employer.

(3) Group health plan

The term ''group health plan'' includes such a plan as defined in section 1167(1) of title 29 and also includes the following:

(A) Federal and State governmental plans

Such a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, including a health benefits plan offered under chapter 89 of title 5.

(B) Collectively bargained plans

Such a plan established or maintained under or pursuant to one or more collective bargaining agreements.

(C) Church plans

Such a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–22, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2125.)

STUDY ON EMPLOYMENT-BASED RETIREE HEALTH COVERAGE

Pub. L. 108–173, title I, § 111, Dec. 8, 2003, 117 Stat. 2174, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct an initial and final study under this subsection [probably should be this section] to examine trends in employment-based retiree health coverage (as defined in [sic] 1860D–22(c)(1) of the Social Security Act [subsec. (c)(1) of this section], as added by section 101), including coverage under the Federal Employees Health Benefits Program (FEHBP), and the options and incentives available under this Act [see Tables for classification] which may have an effect on the voluntary provision of such coverage.

''(b) CONTENT OF INITIAL STUDY.—The initial study under this section shall consider the following:

''(1) Trends in employment-based retiree health coverage prior to the date of the enactment of this Act [Dec. 8, 2003].

''(2) The opinions of sponsors of employment-based retiree health coverage concerning which of the options available under this Act [see Tables for classification] they are most likely to utilize for the provision of health coverage to their medicare-eligible retirees, including an assessment of the administrative burdens associated with the available options.

''(3) The likelihood of sponsors of employment-based retiree health coverage to maintain or adjust

their levels of retiree health benefits beyond coordination with medicare, including for prescription drug coverage, provided to medicare-eligible retirees after the date of the enactment of this Act.

''(4) The factors that sponsors of employment-based retiree health coverage expect to consider in making decisions about any changes they may make in the health coverage provided to medicare-eligible retirees.

''(5) Whether the prescription drug plan options available, or the health plan options available under the Medicare Advantage program, are likely to cause employers and other entities that did not provide health coverage to retirees prior to the date of the enactment of this Act to provide supplemental coverage or contributions toward premium expenses for medicare-eligible retirees who may enroll in such options in the future.

''(c) CONTENTS OF FINAL STUDY.—The final study under this section shall consider the following:

''(1) Changes in the trends in employment-based retiree health coverage since the completion of the initial study by the Comptroller General.

''(2) Factors contributing to any changes in coverage levels.

''(3) The number and characteristics of sponsors of employment-based retiree health coverage who receive the special subsidy payments under section 1860D–22 of the Social Security Act [this section], as added by section 101, for the provision of prescription drug coverage to their medicare-eligible retirees that is the same or greater actuarial value as the prescription drug coverage available to other medicare beneficiaries without employment-based retiree health coverage.

''(4) The extent to which sponsors of employment-based retiree health coverage provide supplemental health coverage or contribute to the premiums for medicare-eligible retirees who enroll in a prescription drug plan or an MA–PD plan.

''(5) Other coverage options, including tax-preferred retirement or health savings accounts, consumer-directed health plans, or other vehicles that sponsors of employment-based retiree health coverage believe would assist retirees with their future health care needs and their willingness to sponsor such alternative plan designs.

''(6) The extent to which employers or other entities that did not provide employment-based retiree health coverage prior to the date of the enactment of this Act [Dec. 8, 2003] provided some form of coverage or financial assistance for retiree health care needs after the date of the enactment of this Act.

''(7) Recommendations by employers, benefits experts, academics, and others on ways that the voluntary provision of employment-based retiree health coverage may be improved and expanded.

''(d) REPORTS.—The Comptroller General shall submit a report to Congress on—

''(1) the initial study under subsection (b) not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003]; and

''(2) the final study under subsection (c) not later than January 1, 2007.

''(e) CONSULTATION.—The Comptroller General shall consult with sponsors of employment-based retiree health coverage, benefits experts, human resources professionals, employee benefits consultants, and academics with experience in health benefits and survey research in the development and design of the initial and final studies under this section.''

§ 1395w–133. State Pharmaceutical Assistance Programs

(a) Requirements for benefit coordination

(1) In general

Before July 1, 2005, the Secretary shall establish consistent with this section requirements for prescription drug plans to ensure the effective coordination between a part D plan (as defined in paragraph (5)) and a State Pharmaceutical Assistance Program (as defined in subsection (b) of this section) with respect to—

(A) payment of premiums and coverage; and

(B) payment for supplemental prescription drug benefits,

for part D eligible individuals enrolled under both types of plans.

(2) Coordination elements

The requirements under paragraph (1) shall include requirements relating to coordination of each of the following:

(A) Enrollment file sharing.

(B) The processing of claims, including electronic processing.

(C) Claims payment.

(D) Claims reconciliation reports.

(E) Application of the protection against high out-of-pocket expenditures under section 1395w–102(b)(4) of this title.

(F) Other administrative processes specified by the Secretary.

Such requirements shall be consistent with applicable law to safeguard the privacy of any individually identifiable beneficiary information.

(3) Use of lump sum per capita method

Such requirements shall include a method for the application by a part D plan of specified funding amounts from a State Pharmaceutical Assistance Program for enrolled individuals for supplemental prescription drug benefits.

(4) Consultation

In establishing requirements under this subsection, the Secretary shall consult with State Pharmaceutical Assistance Programs, MA organizations, States, pharmaceutical benefit managers, employers, representatives of part D eligible individuals, the data processing experts, pharmacists, pharmaceutical manufacturers, and other experts.

(5) Part D plan defined

For purposes of this section and section 1395w–134 of this title, the term ''part D plan'' means a prescription drug plan and an MA–PD plan.

(b) State Pharmaceutical Assistance Program

For purposes of this part, the term ''State Pharmaceutical Assistance Program'' means a State program—

(1) which provides financial assistance for the purchase or provision of supplemental prescription drug coverage or benefits on behalf of part D eligible individuals;

(2) which, in determining eligibility and the amount of assistance to part D eligible individuals under the Program, provides assistance to such individuals in all part D plans and does not discriminate based upon the part D plan in which the individual is enrolled; and

(3) which satisfies the requirements of subsections (a) and (c) of this section.

(c) Relation to other provisions

(1) Medicare as primary payor

The requirements of this section shall not change or affect the primary payor status of a part D plan.

(2) Use of a single card

A card that is issued under section 1395w–104(b)(2)(A) of this title for use under a part D plan may also be used in connection with coverage of benefits provided under a State Pharmaceutical Assistance Program and, in such case, may contain an emblem or symbol indicating such connection.

(3) Other provisions

The provisions of section 1395w–134(c) of this title shall apply to the requirements under this section.

(4) Special treatment under out-of-pocket rule

In applying section 1395w–102(b)(4)(C)(ii) of this title, expenses incurred under a State Pharmaceutical Assistance Program may be counted toward the annual out-of-pocket threshold.

(5) Construction

Nothing in this section shall be construed as requiring a State Pharmaceutical Assistance Program to coordinate or provide financial assistance with respect to any part D plan.

(d) Facilitation of transition and coordination with State Pharmaceutical Assistance Programs

(1) Transitional grant program

The Secretary shall provide payments to State Pharmaceutical Assistance Programs with an application approved under this subsection.

(2) Use of funds

Payments under this section may be used by a Program for any of the following:

(A) Educating part D eligible individuals enrolled in the Program about the prescription drug coverage available through part D plans under this part.

(B) Providing technical assistance, phone support, and counseling for such enrollees to facilitate selection and enrollment in such plans.

(C) Other activities designed to promote the effective coordination of enrollment, coverage, and payment between such Program and such plans.

(3) Allocation of funds

Of the amount appropriated to carry out this subsection for a fiscal year, the Secretary shall allocate payments among Programs that have applications approved under paragraph (4) for such fiscal year in proportion to the number of enrollees enrolled in each such Program as of October 1, 2003.

(4) Application

No payments may be made under this subsection except pursuant to an application that is submitted and approved in a time, manner, and form specified by the Secretary.

(5) Funding

Out of any funds in the Treasury not otherwise appropriated, there are appropriated for each of fiscal years 2005 and 2006, $62,500,000 to carry out this subsection.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–23, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2128.)

§ 1395w–134. Coordination requirements for plans providing prescription drug coverage

(a) Application of benefit coordination requirements to additional plans

(1) In general

The Secretary shall apply the coordination requirements established under section 1395w–133(a) of this title to Rx plans described in subsection (b) of this section in the same manner as such requirements apply to a State Pharmaceutical Assistance Program.

(2) Application to treatment of certain out-of-pocket expenditures

To the extent specified by the Secretary, the requirements referred to in paragraph (1) shall apply to procedures established under section 1395w–102(b)(4)(D) of this title.

(3) User fees

(A) In general

The Secretary may impose user fees for the transmittal of information necessary for benefit coordination under section 1395w–102(b)(4)(D) of this title in a manner similar to the manner in which user fees are imposed under section 1395u(h)(3)(B) of this title, except that the Secretary may retain a portion of such fees to defray the Secretary's costs in carrying out procedures under section 1395w–102(b)(4)(D) of this title.

(B) Application

A user fee may not be imposed under subparagraph (A) with respect to a State Pharmaceutical Assistance Program.

(b) Rx Plan

An Rx plan described in this subsection is any of the following:

(1) Medicaid programs

A State plan under subchapter XIX of this chapter, including such a plan operating under a waiver under section 1315 of this title, if it meets the requirements of section 1395w–133(b)(2) of this title.

(2) Group health plans

An employer group health plan.

(3) FEHBP

The Federal employees health benefits plan under chapter 89 of title 5.

(4) Military coverage (including TRICARE)

Coverage under chapter 55 of title 10.

(5) Other prescription drug coverage

Such other health benefit plans or programs that provide coverage or financial assistance for the purchase or provision of prescription drug coverage on behalf of part D eligible individuals as the Secretary may specify.

(c) Relation to other provisions

(1) Use of cost management tools

The requirements of this section shall not impair or prevent a PDP sponsor or MA orga-

nization from applying cost management tools (including differential payments) under all methods of operation.

(2) No affect[1] on treatment of certain out-of-pocket expenditures

The requirements of this section shall not affect the application of the procedures established under section 1395w–102(b)(4)(D) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–24, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2130.)

SUBPART 4—MEDICARE PRESCRIPTION DRUG DISCOUNT CARD AND TRANSITIONAL ASSISTANCE PROGRAM

§ 1395w–141. Medicare prescription drug discount card and transitional assistance program

(a) Establishment of program

(1) In general

The Secretary shall establish a program under this section—

(A) to endorse prescription drug discount card programs that meet the requirements of this section in order to provide access to prescription drug discounts through prescription drug card sponsors for discount card eligible individuals throughout the United States; and

(B) to provide for transitional assistance for transitional assistance eligible individuals enrolled in such endorsed programs.

(2) Period of operation

(A) Implementation deadline

The Secretary shall implement the program under this section so that discount cards and transitional assistance are first available by not later than 6 months after December 8, 2003.

(B) Expediting implementation

The Secretary shall promulgate regulations to carry out the program under this section which may be effective and final immediately on an interim basis as of the date of publication of the interim final regulation. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comments on such regulation after the date of publication. The Secretary may change or revise such regulation after completion of the period of public comment.

(C) Termination and transition

(i) In general

Subject to clause (ii)—

(I) the program under this section shall not apply to covered discount card drugs dispensed after December 31, 2005; and

(II) transitional assistance shall be available after such date to the extent the assistance relates to drugs dispensed on or before such date.

(ii) Transition

In the case of an individual who is enrolled in an endorsed discount card program as of December 31, 2005, during the individual's transition period (if any) under clause (iii), in accordance with transition rules specified by the Secretary—

(I) such endorsed program may continue to apply to covered discount card drugs dispensed to the individual under the program during such transition period;

(II) no annual enrollment fee shall be applicable during the transition period;

(III) during such period the individual may not change the endorsed program plan in which the individual is enrolled; and

(IV) the balance of any transitional assistance remaining on January 1, 2006, shall remain available for drugs dispensed during the individual's transition period.

(iii) Transition period

The transition period under this clause for an individual is the period beginning on January 1, 2006, and ending in the case of an individual who—

(I) is enrolled in a prescription drug plan or an MA–PD plan before the last date of the initial enrollment period under section 1395w–101(b)(2)(A) of this title, on the effective date of the individual's coverage under such part; or

(II) is not so enrolled, on the last day of such initial period.

(3) Voluntary nature of program

Nothing in this section shall be construed as requiring a discount card eligible individual to enroll in an endorsed discount card program under this section.

(4) Glossary and definitions of terms

For purposes of this section:

(A) Covered discount card drug

The term ''covered discount card drug'' has the meaning given the term ''covered part D drug'' in section 1395w–102(e) of this title.

(B) Discount card eligible individual

The term ''discount card eligible individual'' is defined in subsection (b)(1)(A) of this section.

(C) Endorsed discount card program; endorsed program

The terms ''endorsed discount card program'' and ''endorsed program'' mean a prescription drug discount card program that is endorsed (and for which the sponsor has a contract with the Secretary) under this section.

(D) Negotiated price

Negotiated prices are described in subsection (e)(1)(A)(ii) of this section.

(E) Prescription drug card sponsor; sponsor

The terms ''prescription drug card sponsor'' and ''sponsor'' are defined in subsection (h)(1)(A) of this section.

[1] So in original. Probably should be ''effect''.

(F) State

The term ''State'' has the meaning given such term for purposes of subchapter XIX of this chapter.

(G) Transitional assistance eligible individual

The term ''transitional assistance eligible individual'' is defined in subsection (b)(2) of this section.

(b) Eligibility for discount card and for transitional assistance

For purposes of this section:

(1) Discount card eligible individual

(A) In general

The term ''discount card eligible individual'' means an individual who—

(i) is entitled to benefits, or enrolled, under part A of this subchapter or enrolled under part B of this subchapter; and

(ii) subject to paragraph (4), is not an individual described in subparagraph (B).

(B) Individual described

An individual described in this subparagraph is an individual described in subparagraph (A)(i) who is enrolled under subchapter XIX of this chapter (or under a waiver under section 1315 of this title of the requirements of such subchapter) and is entitled to any medical assistance for outpatient prescribed drugs described in section 1396d(a)(12) of this title.

(2) Transitional assistance eligible individual

(A) In general

Subject to subparagraph (B), the term ''transitional assistance eligible individual'' means a discount card eligible individual who resides in one of the 50 States or the District of Columbia and whose income (as determined under subsection (f)(1)(B) of this section) is not more than 135 percent of the poverty line (as defined in section 9902(2) of this title, including any revision required by such section) applicable to the family size involved (as determined under subsection (f)(1)(B) of this section).

(B) Exclusion of individuals with certain prescription drug coverage

Such term does not include an individual who has coverage of, or assistance for, covered discount card drugs under any of the following:

(i) A group health plan or health insurance coverage (as such terms are defined in section 300gg–91 of this title), other than coverage under a plan under part C of this subchapter and other than coverage consisting only of excepted benefits (as defined in such section).

(ii) Chapter 55 of title 10 (relating to medical and dental care for members of the uniformed services).

(iii) A plan under chapter 89 of title 5 (relating to the Federal employees' health benefits program).

(3) Special transitional assistance eligible individual

The term ''special transitional assistance eligible individual'' means a transitional assistance eligible individual whose income (as determined under subsection (f)(1)(B) of this section) is not more than 100 percent of the poverty line (as defined in section 9902(2) of this title, including any revision required by such section) applicable to the family size involved (as determined under subsection (f)(1)(B) of this section).

(4) Treatment of medicaid medically needy

For purposes of this section, the Secretary shall provide for appropriate rules for the treatment of medically needy individuals described in section 1396a(a)(10)(C) of this title as discount card eligible individuals and as transitional assistance eligible individuals.

(c) Enrollment and enrollment fees

(1) Enrollment process

The Secretary shall establish a process through which a discount card eligible individual is enrolled and disenrolled in an endorsed discount card program under this section consistent with the following:

(A) Continuous open enrollment

Subject to the succeeding provisions of this paragraph and subsection (h)(9) of this section, a discount card eligible individual who is not enrolled in an endorsed discount card program and is residing in a State may enroll in any such endorsed program—

(i) that serves residents of the State; and

(ii) at any time beginning on the initial enrollment date, specified by the Secretary, and before January 1, 2006.

(B) Use of standard enrollment form

An enrollment in an endorsed program shall only be effected through completion of a standard enrollment form specified by the Secretary. Each sponsor of an endorsed program shall transmit to the Secretary (in a form and manner specified by the Secretary) information on individuals who complete such enrollment forms and, to the extent provided under subsection (f) of this section, information regarding certification as a transitional assistance eligible individual.

(C) Enrollment only in one program

(i) In general

Subject to clauses (ii) and (iii), a discount card eligible individual may be enrolled in only one endorsed discount card program under this section.

(ii) Change in endorsed program permitted for 2005

The Secretary shall establish a process, similar to (and coordinated with) the process for annual, coordinated elections under section 1395w–21(e)(3) of this title during 2004, under which an individual enrolled in an endorsed discount card program may change the endorsed program in which the individual is enrolled for 2005.

(iii) Additional exceptions

The Secretary shall permit an individual to change the endorsed discount card program in which the individual is enrolled in the case of an individual who changes resi-

dence to be outside the service area of such program and in such other exceptional cases as the Secretary may provide (taking into account the circumstances for special election periods under section 1395w–21(e)(4) of this title). Under the previous sentence, the Secretary may consider a change in residential setting (such as placement in a nursing facility) or enrollment in or disenrollment from a plan under part C of this subchapter through which the individual was enrolled in an endorsed program to be an exceptional circumstance.

(D) Disenrollment

(i) Voluntary

An individual may voluntarily disenroll from an endorsed discount card program at any time. In the case of such a voluntary disenrollment, the individual may not enroll in another endorsed program, except under such exceptional circumstances as the Secretary may recognize under subparagraph (C)(iii) or during the annual coordinated enrollment period provided under subparagraph (C)(ii).

(ii) Involuntary

An individual who is enrolled in an endorsed discount card program and not a transitional assistance eligible individual may be disenrolled by the sponsor of the program if the individual fails to pay any annual enrollment fee required under the program.

(E) Application to certain enrollees

In the case of a discount card eligible individual who is enrolled in a plan described in section 1395w–21(a)(2)(A) of this title or under a reasonable cost reimbursement contract under section 1395mm(h) of this title that is offered by an organization that also is a prescription discount card sponsor that offers an endorsed discount card program under which the individual may be enrolled and that has made an election to apply the special rules under subsection (h)(9)(B) of this section for such an endorsed program, the individual may only enroll in such an endorsed discount card program offered by that sponsor.

(2) Enrollment fees

(A) In general

Subject to the succeeding provisions of this paragraph, a prescription drug card sponsor may charge an annual enrollment fee for each discount card eligible individual enrolled in an endorsed discount card program offered by such sponsor. The annual enrollment fee for either 2004 or 2005 shall not be prorated for portions of a year. There shall be no annual enrollment fee for a year after 2005.

(B) Amount

No annual enrollment fee charged under subparagraph (A) may exceed $30.

(C) Uniform enrollment fee

A prescription drug card sponsor shall ensure that the annual enrollment fee (if any) for an endorsed discount card program is the same for all discount card eligible individuals enrolled in the program and residing in the State.

(D) Collection

The annual enrollment fee (if any) charged for enrollment in an endorsed program shall be collected by the sponsor of the program.

(E) Payment of fee for transitional assistance eligible individuals

Under subsection (g)(1)(A) of this section, the annual enrollment fee (if any) otherwise charged under this paragraph with respect to a transitional assistance eligible individual shall be paid by the Secretary on behalf of such individual.

(F) Optional payment of fee by State

(i) In general

The Secretary shall establish an arrangement under which a State may provide for payment of some or all of the enrollment fee for some or all enrollees who are not transitional assistance eligible individuals in the State, as specified by the State under the arrangement. Insofar as such a payment arrangement is made with respect to an enrollee, the amount of the enrollment fee shall be paid directly by the State to the sponsor.

(ii) No Federal matching available under medicaid or SCHIP

Expenditures made by a State for enrollment fees described in clause (i) shall not be treated as State expenditures for purposes of Federal matching payments under subchapter XIX or XXI of this chapter.

(G) Rules in case of changes in program enrollment during a year

The Secretary shall provide special rules in the case of payment of an annual enrollment fee for a discount card eligible individual who changes the endorsed program in which the individual is enrolled during a year.

(3) Issuance of discount card

Each prescription drug card sponsor of an endorsed discount card program shall issue, in a standard format specified by the Secretary, to each discount card eligible individual enrolled in such program a card that establishes proof of enrollment and that can be used in a coordinated manner to identify the sponsor, program, and individual for purposes of the program under this section.

(4) Period of access

In the case of a discount card eligible individual who enrolls in an endorsed program, access to negotiated prices and transitional assistance, if any, under such endorsed program shall take effect on such date as the Secretary shall specify.

(d) Provision of information on enrollment and program features

(1) Secretarial responsibilities

(A) In general

The Secretary shall provide for activities under this subsection to broadly disseminate

information to discount card eligible individuals (and prospective eligible individuals) regarding—

(i) enrollment in endorsed discount card programs; and

(ii) the features of the program under this section, including the availability of transitional assistance.

(B) Promotion of informed choice

In order to promote informed choice among endorsed prescription drug discount card programs, the Secretary shall provide for the dissemination of information which—

(i) compares the annual enrollment fee and other features of such programs, which may include comparative prices for covered discount card drugs; and

(ii) includes educational materials on the variability of discounts on prices of covered discount card drugs under an endorsed program.

The dissemination of information under clause (i) shall, to the extent practicable, be coordinated with the dissemination of educational information on other medicare options.

(C) Special rule for initial enrollment date under the program

To the extent practicable, the Secretary shall ensure, through the activities described in subparagraphs (A) and (B), that discount card eligible individuals are provided with such information at least 30 days prior to the initial enrollment date specified under subsection (c)(1)(A)(ii) of this section.

(D) Use of medicare toll-free number

The Secretary shall provide through the toll-free telephone number 1–800–MEDICARE for the receipt and response to inquiries and complaints concerning the program under this section and endorsed programs.

(2) Prescription drug card sponsor responsibilities

(A) In general

Each prescription drug card sponsor that offers an endorsed discount card program shall make available to discount card eligible individuals (through the Internet and otherwise) information that the Secretary identifies as being necessary to promote informed choice among endorsed discount card programs by such individuals, including information on enrollment fees and negotiated prices for covered discount card drugs charged to such individuals.

(B) Response to enrollee questions

Each sponsor offering an endorsed discount card program shall have a mechanism (including a toll-free telephone number) for providing upon request specific information (such as negotiated prices and the amount of transitional assistance remaining available through the program) to discount card eligible individuals enrolled in the program. The sponsor shall inform transitional assistance eligible individuals enrolled in the program of the availability of such toll-free telephone number to provide information on the amount of available transitional assistance.

(C) Information on balance of transitional assistance available at point-of-sale

Each sponsor offering an endorsed discount card program shall have a mechanism so that information on the amount of transitional assistance remaining under subsection (g)(1)(B) of this section is available (electronically or by telephone) at the point-of-sale of covered discount card drugs.

(3) Public disclosure of pharmaceutical prices for equivalent drugs

(A) In general

A prescription drug card sponsor offering an endorsed discount card program shall provide that each pharmacy that dispenses a covered discount card drug shall inform a discount card eligible individual enrolled in the program of any differential between the price of the drug to the enrollee and the price of the lowest priced generic covered discount card drug under the program that is therapeutically equivalent and bioequivalent and available at such pharmacy.

(B) Timing of notice

(i) In general

Subject to clause (ii), the information under subparagraph (A) shall be provided at the time of purchase of the drug involved, or, in the case of dispensing by mail order, at the time of delivery of such drug.

(ii) Waiver

The Secretary may waive clause (i) in such circumstances as the Secretary may specify.

(e) Discount card features

(1) Savings to enrollees through negotiated prices

(A) Access to negotiated prices

(i) In general

Each prescription drug card sponsor that offers an endorsed discount card program shall provide each discount card eligible individual enrolled in the program with access to negotiated prices.

(ii) Negotiated prices

For purposes of this section, negotiated prices shall take into account negotiated price concessions, such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations, for covered discount card drugs, and include any dispensing fees for such drugs.

(B) Ensuring pharmacy access

Each prescription drug card sponsor offering an endorsed discount card program shall secure the participation in its network of a sufficient number of pharmacies that dispense (other than solely by mail order) drugs directly to enrollees to ensure convenient access to covered discount card drugs at negotiated prices (consistent with rules established by the Secretary). The Secretary shall

establish convenient access rules under this clause that are no less favorable to enrollees than the standards for convenient access to pharmacies included in the statement of work of solicitation (#MDA906–03–R–0002) of the Department of Defense under the TRICARE Retail Pharmacy (TRRx) as of March 13, 2003.

(C) Prohibition on charges for required services

(i) In general

Subject to clause (ii), a prescription drug card sponsor (and any pharmacy contracting with such sponsor for the provision of covered discount card drugs to individuals enrolled in such sponsor's endorsed discount card program) may not charge an enrollee any amount for any items and services required to be provided by the sponsor under this section.

(ii) Construction

Nothing in clause (i) shall be construed to prevent—

(I) the sponsor from charging the annual enrollment fee (except in the case of a transitional assistance eligible individual); and

(II) the pharmacy dispensing the covered discount card drug, from imposing a charge (consistent with the negotiated price) for the covered discount card drug dispensed, reduced by the amount of any transitional assistance made available.

(D) Inapplicability of medicaid best price rules

The prices negotiated from drug manufacturers for covered discount card drugs under an endorsed discount card program under this section shall (notwithstanding any other provision of law) not be taken into account for the purposes of establishing the best price under section 1396r–8(c)(1)(C) of this title.

(2) Reduction of medication errors and adverse drug interactions

Each endorsed discount card program shall implement a system to reduce the likelihood of medication errors and adverse drug interactions and to improve medication use.

(f) Eligibility procedures for endorsed programs and transitional assistance

(1) Determinations

(A) Procedures

The determination of whether an individual is a discount card eligible individual or a transitional assistance eligible individual or a special transitional assistance eligible individual (as defined in subsection (b) of this section) shall be determined under procedures specified by the Secretary consistent with this subsection.

(B) Income and family size determinations

For purposes of this section, the Secretary shall define the terms ''income'' and ''family size'' and shall specify the methods and period for which they are determined. If under such methods income or family size is determined based on the income or family size for prior periods of time, the Secretary shall permit (whether through a process of reconsideration or otherwise) an individual whose income or family size has changed to elect to have eligibility for transitional assistance determined based on income or family size for a more recent period.

(2) Use of self-certification for transitional assistance

(A) In general

Under the procedures specified under paragraph (1)(A) an individual who wishes to be treated as a transitional assistance eligible individual or a special transitional assistance eligible individual under this section (or another qualified person on such individual's behalf) shall certify on the enrollment form under subsection (c)(1)(B) of this section (or similar form specified by the Secretary), through a simplified means specified by the Secretary and under penalty of perjury or similar sanction for false statements, as to the amount of the individual's income, family size, and individual's prescription drug coverage (if any) insofar as they relate to eligibility to be a transitional assistance eligible individual or a special transitional assistance eligible individual. Such certification shall be deemed as consent to verification of respective eligibility under paragraph (3). A certification under this paragraph may be provided before, on, or after the time of enrollment under an endorsed program.

(B) Treatment of self-certification

The Secretary shall treat a certification under subparagraph (A) that is verified under paragraph (3) as a determination that the individual involved is a transitional assistance eligible individual or special transitional assistance eligible individual (as the case may be) for the entire period of the enrollment of the individual in any endorsed program.

(3) Verification

(A) In general

The Secretary shall establish methods (which may include the use of sampling and the use of information described in subparagraph (B)) to verify eligibility for individuals who seek to enroll in an endorsed program and for individuals who provide a certification under paragraph (2).

(B) Information described

The information described in this subparagraph is as follows:

(i) Medicaid-related information

Information on eligibility under subchapter XIX of this chapter and provided to the Secretary under arrangements between the Secretary and States in order to verify the eligibility of individuals who seek to enroll in an endorsed program and of individuals who provide certification under paragraph (2).

(ii) Social security information

Financial information made available to the Secretary under arrangements between the Secretary and the Commissioner of Social Security in order to verify the eligibility of individuals who provide such certification.

(iii) Information from Secretary of the Treasury

Financial information made available to the Secretary under section 6103(*l*)(19) of title 26 in order to verify the eligibility of individuals who provide such certification.

(C) Verification in cases of medicaid enrollees

(i) In general

Nothing in this section shall be construed as preventing the Secretary from finding that a discount card eligible individual meets the income requirements under subsection (b)(2)(A) of this section if the individual is within a category of discount card eligible individuals who are enrolled under subchapter XIX of this chapter (such as qualified medicare beneficiaries (QMBs), specified low-income medicare beneficiaries (SLMBs), and certain qualified individuals (QI–1s)).

(ii) Availability of information for verification purposes

As a condition of provision of Federal financial participation to a State that is one of the 50 States or the District of Columbia under subchapter XIX of this chapter, for purposes of carrying out this section, the State shall provide the information it submits to the Secretary relating to such subchapter in a manner specified by the Secretary that permits the Secretary to identify individuals who are described in subsection (b)(1)(B) of this section or are transitional assistance eligible individuals or special transitional assistance eligible individuals.

(4) Reconsideration

(A) In general

The Secretary shall establish a process under which a discount card eligible individual, who is determined through the certification and verification methods under paragraphs (2) and (3) not to be a transitional assistance eligible individual or a special transitional assistance eligible individual, may request a reconsideration of the determination.

(B) Contract authority

The Secretary may enter into a contract to perform the reconsiderations requested under subparagraph (A).

(C) Communication of results

Under the process under subparagraph (A) the results of such reconsideration shall be communicated to the individual and the prescription drug card sponsor involved.

(g) Transitional assistance

(1) Provision of transitional assistance

An individual who is a transitional assistance eligible individual (as determined under this section) and who is enrolled with an endorsed program is entitled—

(A) to have payment made of any annual enrollment fee charged under subsection (c)(2) of this section for enrollment under the program; and

(B) to have payment made, up to the amount specified in paragraph (2), under such endorsed program of 90 percent (or 95 percent in the case of a special transitional assistance eligible individual) of the costs incurred for covered discount card drugs obtained through the program taking into account the negotiated price (if any) for the drug under the program.

(2) Limitation on dollar amount

(A) In general

Subject to subparagraph (B), the amount specified in this paragraph for a transitional assistance eligible individual—

(i) for costs incurred during 2004, is $600; or

(ii) for costs incurred during 2005, is—

(I) $600, plus

(II) except as provided in subparagraph (E), the amount by which the amount available under this paragraph for 2004 for that individual exceeds the amount of payment made under paragraph (1)(B) for that individual for costs incurred during 2004.

(B) Proration

(i) In general

In the case of an individual not described in clause (ii) with respect to a year, the Secretary may prorate the amount specified in subparagraph (A) for the balance of the year involved in a manner specified by the Secretary.

(ii) Individual described

An individual described in this clause is a transitional assistance eligible individual who—

(I) with respect to 2004, enrolls in an endorsed program, and provides a certification under subsection (f)(2) of this section, before the initial implementation date of the program under this section; and

(II) with respect to 2005, is enrolled in an endorsed program, and has provided such a certification, before February 1, 2005.

(C) Accounting for available balances in cases of changes in program enrollment

In the case of a transitional assistance eligible individual who changes the endorsed discount card program in which the individual is enrolled under this section, the Secretary shall provide a process under which the Secretary provides to the sponsor of the endorsed program in which the individual enrolls information concerning the balance of amounts available on behalf of the individual under this paragraph.

(D) Limitation on use of funds

Pursuant to subsection (a)(2)(C) of this section, no assistance shall be provided

under paragraph (1)(B) with respect to covered discount card drugs dispensed after December 31, 2005.

(E) No rollover permitted in case of voluntary disenrollment

Except in such exceptional cases as the Secretary may provide, in the case of a transitional assistance eligible individual who voluntarily disenrolls from an endorsed plan, the provisions of subclause (II) of subparagraph (A)(ii) shall not apply.

(3) Payment

The Secretary shall provide a method for the reimbursement of prescription drug card sponsors for assistance provided under this subsection.

(4) Coverage of coinsurance

(A) Waiver permitted by pharmacy

Nothing in this section shall be construed as precluding a pharmacy from reducing or waiving the application of coinsurance imposed under paragraph (1)(B) in accordance with section 1320a–7b(b)(3)(G) of this title.

(B) Optional payment of coinsurance by State

(i) In general

The Secretary shall establish an arrangement under which a State may provide for payment of some or all of the coinsurance under paragraph (1)(B) for some or all enrollees in the State, as specified by the State under the arrangement. Insofar as such a payment arrangement is made with respect to an enrollee, the amount of the coinsurance shall be paid directly by the State to the pharmacy involved.

(ii) No Federal matching available under medicaid or SCHIP

Expenditures made by a State for coinsurance described in clause (i) shall not be treated as State expenditures for purposes of Federal matching payments under subchapter XIX or XXI of this chapter.

(iii) Not treated as medicare cost-sharing

Coinsurance described in paragraph (1)(B) shall not be treated as coinsurance under this subchapter for purposes of section 1396d(p)(3)(B) of this title.

(C) Treatment of coinsurance

The amount of any coinsurance imposed under paragraph (1)(B), whether paid or waived under this paragraph, shall not be taken into account in applying the limitation in dollar amount under paragraph (2).

(5) Ensuring access to transitional assistance for qualified residents of long-term care facilities and American Indians

(A) Residents of long-term care facilities

The Secretary shall establish procedures and may waive requirements of this section as necessary to negotiate arrangements with sponsors to provide arrangements with pharmacies that support long-term care facilities in order to ensure access to transitional assistance for transitional assistance eligible individuals who reside in long-term care facilities.

(B) American Indians

The Secretary shall establish procedures and may waive requirements of this section to ensure that, for purposes of providing transitional assistance, pharmacies operated by the Indian Health Service, Indian tribes and tribal organizations, and urban Indian organizations (as defined in section 1603 of title 25) have the opportunity to participate in the pharmacy networks of at least two endorsed programs in each of the 50 States and the District of Columbia where such a pharmacy operates.

(6) No impact on benefits under other programs

The availability of negotiated prices or transitional assistance under this section shall not be treated as benefits or otherwise taken into account in determining an individual's eligibility for, or the amount of benefits under, any other Federal program.

(7) Disregard for purposes of part C

Nonuniformity of benefits resulting from the implementation of this section (including the provision or nonprovision of transitional assistance and the payment or waiver of any enrollment fee under this section) shall not be taken into account in applying section 1395w–24(f) of this title.

(h) Qualification of prescription drug card sponsors and endorsement of discount card programs; beneficiary protections

(1) Prescription drug card sponsor and qualifications

(A) Prescription drug card sponsor and sponsor defined

For purposes of this section, the terms ''prescription drug card sponsor'' and ''sponsor'' mean any nongovernmental entity that the Secretary determines to be appropriate to offer an endorsed discount card program under this section, which may include—

(i) a pharmaceutical benefit management company;

(ii) a wholesale or retail pharmacy delivery system;

(iii) an insurer (including an insurer that offers medicare supplemental policies under section 1395ss of this title);

(iv) an organization offering a plan under part C of this subchapter; or

(v) any combination of the entities described in clauses (i) through (iv).

(B) Administrative qualifications

Each endorsed discount card program shall be operated directly, or through arrangements with an affiliated organization (or organizations), by one or more entities that have demonstrated experience and expertise in operating such a program or a similar program and that meets such business stability and integrity requirements as the Secretary may specify.

(C) Accounting for transitional assistance

The sponsor of an endorsed discount card program shall have arrangements satisfac-

tory to the Secretary to account for the assistance provided under subsection (g) of this section on behalf of transitional assistance eligible individuals.

(2) Applications for program endorsement

(A) Submission

Each prescription drug card sponsor that seeks endorsement of a prescription drug discount card program under this section shall submit to the Secretary, at such time and in such manner as the Secretary may specify, an application containing such information as the Secretary may require.

(B) Approval; compliance with applicable requirements

The Secretary shall review the application submitted under subparagraph (A) and shall determine whether to endorse the prescription drug discount card program. The Secretary may not endorse such a program unless—

(i) the program and prescription drug card sponsor offering the program comply with the applicable requirements under this section; and

(ii) the sponsor has entered into a contract with the Secretary to carry out such requirements.

(C) Termination of endorsement and contracts

An endorsement of an endorsed program and a contract under subparagraph (B) shall be for the duration of the program under this section (including any transition applicable under subsection (a)(2)(C)(ii) of this section), except that the Secretary may, with notice and for cause (as defined by the Secretary), terminate such endorsement and contract.

(D) Ensuring choice of programs

(i) In general

The Secretary shall ensure that there is available to each discount card eligible individual a choice of at least 2 endorsed programs (each offered by a different sponsor).

(ii) Limitation on number

The Secretary may limit (but not below 2) the number of sponsors in a State that are awarded contracts under this paragraph.

(3) Service area encompassing entire States

Except as provided in paragraph (9), if a prescription drug card sponsor that offers an endorsed program enrolls in the program individuals residing in any part of a State, the sponsor must permit any discount card eligible individual residing in any portion of the State to enroll in the program.

(4) Savings to medicare beneficiaries

Each prescription drug card sponsor that offers an endorsed discount card program shall pass on to discount card eligible individuals enrolled in the program negotiated prices on covered discount card drugs, including discounts negotiated with pharmacies and manufacturers, to the extent disclosed under subsection (i)(1) of this section.

(5) Grievance mechanism

Each prescription drug card sponsor shall provide meaningful procedures for hearing and resolving grievances between the sponsor (including any entity or individual through which the sponsor carries out the endorsed discount card program) and enrollees in endorsed discount card programs of the sponsor under this section in a manner similar to that required under section 1395w–22(f) of this title.

(6) Confidentiality of enrollee records

(A) In general

For purposes of the program under this section, the operations of an endorsed program are covered functions and a prescription drug card sponsor is a covered entity for purposes of applying part C of subchapter XI of this chapter and all regulatory provisions promulgated thereunder, including regulations (relating to privacy) adopted pursuant to the authority of the Secretary under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).[1]

(B) Waiver authority

In order to promote participation of sponsors in the program under this section, the Secretary may waive such relevant portions of regulations relating to privacy referred to in subparagraph (A), for such appropriate, limited period of time, as the Secretary specifies.

(7) Limitation on provision and marketing of products and services

The sponsor of an endorsed discount card program—

(A) may provide under the program—

(i) a product or service only if the product or service is directly related to a covered discount card drug; or

(ii) a discount price for nonprescription drugs; and

(B) may, to the extent otherwise permitted under paragraph (6) (relating to application of HIPAA requirements), market a product or service under the program only if the product or service is directly related to—

(i) a covered discount card drug; or

(ii) a drug described in subparagraph (A)(ii) and the marketing consists of information on the discounted price made available for the drug involved.

(8) Additional protections

Each endorsed discount card program shall meet such additional requirements as the Secretary identifies to protect and promote the interest of discount card eligible individuals, including requirements that ensure that discount card eligible individuals enrolled in endorsed discount card programs are not charged more than the lower of the price based on negotiated prices or the usual and customary price.

[1] See References in Text note below.

(9) Special rules for certain organizations

(A) In general

In the case of an organization that is offering a plan under part C of this subchapter or enrollment under a reasonable cost reimbursement contract under section 1395mm(h) of this title that is seeking to be a prescription drug card sponsor under this section, the organization may elect to apply the special rules under subparagraph (B) with respect to enrollees in any plan described in section 1395w–21(a)(2)(A) of this title that it offers or under such contract and an endorsed discount card program it offers, but only if it limits enrollment under such program to individuals enrolled in such plan or under such contract.

(B) Special rules

The special rules under this subparagraph are as follows:

(i) Limitation on enrollment

The sponsor limits enrollment under this section under the endorsed discount card program to discount card eligible individuals who are enrolled in the part C plan involved or under the reasonable cost reimbursement contract involved and is not required nor permitted to enroll other individuals under such program.

(ii) Pharmacy access

Pharmacy access requirements under subsection (e)(1)(B) of this section are deemed to be met if the access is made available through a pharmacy network (and not only through mail order) and the network used by the sponsor is approved by the Secretary.

(iii) Sponsor requirements

The Secretary may waive the application of such requirements for a sponsor as the Secretary determines to be duplicative or to conflict with a requirement of the organization under part C of this subchapter or section 1395mm of this title (as the case may be) or to be necessary in order to improve coordination of this section with the benefits under such part or section.

(i) Disclosure and oversight

(1) Disclosure

Each prescription drug card sponsor offering an endorsed discount card program shall disclose to the Secretary (in a manner specified by the Secretary) information relating to program performance, use of prescription drugs by discount card eligible individuals enrolled in the program, the extent to which negotiated price concessions described in subsection (e)(1)(A)(ii) of this section made available to the entity by a manufacturer are passed through to enrollees through pharmacies or otherwise, and such other information as the Secretary may specify. The provisions of section 1396r–8(b)(3)(D) of this title shall apply to drug pricing data reported under the previous sentence (other than data in aggregate form).

(2) Oversight; audit and inspection authority

The Secretary shall provide appropriate oversight to ensure compliance of endorsed discount card programs and their sponsors with the requirements of this section. The Secretary shall have the right to audit and inspect any books and records of a prescription discount card sponsor (and of any affiliated organization referred to in subsection (h)(1)(B) of this section) that pertain to the endorsed discount card program under this section, including amounts payable to the sponsor under this section.

(3) Sanctions for abusive practices

The Secretary may implement intermediate sanctions or may revoke the endorsement of a program offered by a sponsor under this section if the Secretary determines that the sponsor or the program no longer meets the applicable requirements of this section or that the sponsor has engaged in false or misleading marketing practices. The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for conduct that a party knows or should know is a violation of this section. The provisions of section 1320a–7a of this title (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(j) Treatment of territories

(1) In general

The Secretary may waive any provision of this section (including subsection (h)(2)(D)) in the case of a resident of a State (other than the 50 States and the District of Columbia) insofar as the Secretary determines it is necessary to secure access to negotiated prices for discount card eligible individuals (or, at the option of the Secretary, individuals described in subsection (b)(1)(A)(i) of this section).

(2) Transitional assistance

(A) In general

In the case of a State, other than the 50 States and the District of Columbia, if the State establishes a plan described in subparagraph (B) (for providing transitional assistance with respect to the provision of prescription drugs to some or all individuals residing in the State who are described in subparagraph (B)(i)), the Secretary shall pay to the State for the entire period of the operation of this section an amount equal to the amount allotted to the State under subparagraph (C).

(B) Plan

The plan described in this subparagraph is a plan that—

(i) provides transitional assistance with respect to the provision of covered discount card drugs to some or all individuals who are entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, who reside in the State, and who have income below 135 percent of the poverty line; and

(ii) assures that amounts received by the State under this paragraph are used only for such assistance.

(C) Allotment limit

The amount described in this subparagraph for a State is equal to $35,000,000 multiplied by the ratio (as estimated by the Secretary) of—

(i) the number of individuals who are entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter and who reside in the State (as determined by the Secretary as of July 1, 2003), to

(ii) the sum of such numbers for all States to which this paragraph applies.

(D) Continued availability of funds

Amounts made available to a State under this paragraph which are not used under this paragraph shall be added to the amount available to that State for purposes of carrying out section 1396u–5(e) of this title.

(k) Funding

(1) Establishment of Transitional Assistance Account

(A) In general

There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1395t of this title an account to be known as the ''Transitional Assistance Account'' (in this subsection referred to as the ''Account'').

(B) Funds

The Account shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, accrued interest on balances in the Account, and such amounts as may be deposited in, or appropriated to, the Account as provided in this subsection.

(C) Separate from rest of Trust Fund

Funds provided under this subsection to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund, but shall be invested, and such investments redeemed, in the same manner as all other funds and investments within such Trust Fund.

(2) Payments from account

(A) In general

The Managing Trustee shall pay from time to time from the Account such amounts as the Secretary certifies are necessary to make payments for transitional assistance provided under subsections (g) and (j)(2) of this section.

(B) Treatment in relation to part B premium

Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1395r of this title.

(3) Appropriations to cover benefits

There are appropriated to the Account in a fiscal year, out of any moneys in the Treasury not otherwise appropriated, an amount equal to the payments made from the Account in the year.

(4) For administrative expenses

There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the Secretary's responsibilities under this section.

(5) Transfer of any remaining balance to Medicare Prescription Drug Account

Any balance remaining in the Account after the Secretary determines that funds in the Account are no longer necessary to carry out the program under this section shall be transferred and deposited into the Medicare Prescription Drug Account under section 1395w–116 of this title.

(6) Construction

Nothing in this section shall be construed as authorizing the Secretary to provide for payment (other than payment of an enrollment fee on behalf of a transitional assistance eligible individual under subsection (g)(1)(A) of this section) to a sponsor for administrative expenses incurred by the sponsor in carrying out this section (including in administering the transitional assistance provisions of subsections (f) and (g) of this section).

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–31, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2131.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (b)(1)(A)(i) and (j)(2)(B)(i), (C)(i), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Part C of this subchapter, referred to in subsecs. (b)(2)(B)(i), (c)(1)(C)(iii), (g)(7), and (h)(1)(A)(iv), (9), is classified to section 1395w–21 et seq. of this title.

Part C of subchapter XI of this chapter, referred to in subsec. (h)(6)(A), is classified to section 1320d et seq. of this title.

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (h)(6)(A), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

RULES FOR IMPLEMENTATION

Pub. L. 108–173, title I, § 105(c), Dec. 8, 2003, 117 Stat. 2166, provided that: ''The following rules shall apply to the medicare prescription drug discount card and transitional assistance program under section 1860D–31 of the Social Security Act [this section], as added by section 101(a):

''(1) In promulgating regulations pursuant to subsection (a)(2)(B) of such section 1860D–31 [subsec. (a)(2)(B) of this section]—

''(A) section 1871(a)(3) of the Social Security Act (42 U.S.C. 1395hh(a)(3)), as added by section 902(a)(1), shall not apply;

''(B) chapter 35 of title 44, United States Code, shall not apply; and

''(C) sections 553(d) and 801(a)(3)(A) of title 5, United States Code, shall not apply.

''(2) Section 1857(c)(5) of the Social Security Act (42 U.S.C. 1395w–27(c)(5)) shall apply with respect to section 1860D–31 of such Act, as added by section 101(a), in the same manner as it applies to part C of title XVIII of such Act [part C of this subchapter].

''(3) The administration of such program shall be made without regard to chapter 35 of title 44, United States Code.

''(4)(A) There shall be no judicial review of a determination not to endorse, or enter into a contract,

with a prescription drug card sponsor under section 1860D–31 of the Social Security Act.

''(B) In the case of any order issued to enjoin any provision of section 1860D–31 of the Social Security Act (or of [sic] any provision of this section [amending sections 1395r, 1395t, and 1396r–8 of this title and sections 6103 and 7213 of Title 26, Internal Revenue Code]), such order shall not affect any other provision of such section (or of this section) and all such provisions shall be treated as severable.''

SUBPART 5—DEFINITIONS AND MISCELLANEOUS PROVISIONS

§ 1395w–151. Definitions; treatment of references to provisions in part C

(a) Definitions

For purposes of this part:

(1) Basic prescription drug coverage

The term ''basic prescription drug coverage'' is defined in section 1395w–102(a)(3) of this title.

(2) Covered part D drug

The term ''covered part D drug'' is defined in section 1395w–102(e) of this title.

(3) Creditable prescription drug coverage

The term ''creditable prescription drug coverage'' has the meaning given such term in section 1395w–113(b)(4) of this title.

(4) Part D eligible individual

The term ''part D eligible individual'' has the meaning given such term in section 1395w–101(a)(3)(A) of this title.[1]

(5) Fallback prescription drug plan

The term ''fallback prescription drug plan'' has the meaning given such term in section 1395w–111(g)(4) of this title.

(6) Initial coverage limit

The term ''initial coverage limit'' means such limit as established under section 1395w–102(b)(3) of this title, or, in the case of coverage that is not standard prescription drug coverage, the comparable limit (if any) established under the coverage.

(7) Insurance risk

The term ''insurance risk'' means, with respect to a participating pharmacy, risk of the type commonly assumed only by insurers licensed by a State and does not include payment variations designed to reflect performance-based measures of activities within the control of the pharmacy, such as formulary compliance and generic drug substitution.

(8) MA plan

The term ''MA plan'' has the meaning given such term in section 1395w–101(a)(3)(B) of this title.[1]

(9) MA–PD plan

The term ''MA–PD plan'' has the meaning given such term in section 1395w–101(a)(3)(C) of this title.[1]

(10) Medicare Prescription Drug Account

The term ''Medicare Prescription Drug Account'' means the Account created under section 1395w–116(a) of this title.

(11) PDP approved bid

The term ''PDP approved bid'' has the meaning given such term in section 1395w–113(a)(6) of this title.

(12) PDP region

The term ''PDP region'' means such a region as provided under section 1395w–111(a)(2) of this title.

(13) PDP sponsor

The term ''PDP sponsor'' means a nongovernmental entity that is certified under this part as meeting the requirements and standards of this part for such a sponsor.

(14) Prescription drug plan

The term ''prescription drug plan'' means prescription drug coverage that is offered—

(A) under a policy, contract, or plan that has been approved under section 1395w–111(e) of this title; and

(B) by a PDP sponsor pursuant to, and in accordance with, a contract between the Secretary and the sponsor under section 1395w–112(b) of this title.

(15) Qualified prescription drug coverage

The term ''qualified prescription drug coverage'' is defined in section 1395w–102(a)(1) of this title.

(16) Standard prescription drug coverage

The term ''standard prescription drug coverage'' is defined in section 1395w–102(b) of this title.

(17) State Pharmaceutical Assistance Program

The term ''State Pharmaceutical Assistance Program'' has the meaning given such term in section 1395w–133(b) of this title.

(18) Subsidy eligible individual

The term ''subsidy eligible individual'' has the meaning given such term in section 1395w–114(a)(3)(A) of this title.

(b) Application of part C provisions under this part

For purposes of applying provisions of part C of this subchapter under this part with respect to a prescription drug plan and a PDP sponsor, unless otherwise provided in this part such provisions shall be applied as if—

(1) any reference to an MA plan included a reference to a prescription drug plan;

(2) any reference to an MA organization or a provider-sponsored organization included a reference to a PDP sponsor;

(3) any reference to a contract under section 1395w–27 of this title included a reference to a contract under section 1395w–112(b) of this title;

(4) any reference to part C of this subchapter included a reference to this part; and

(5) any reference to an election period under section 1395w–21 of this title were a reference to an enrollment period under section 1395w–101 of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–41, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2148.)

REFERENCES IN TEXT

Part C of this subchapter, referred to in subsec. (b), is classified to section 1395w–21 et seq. of this title.

[1] See References in Text note below.

Section 1395w–101(a)(3) of this title, referred to in subsec. (a)(4), (8), (9), was in the original ''section 1860D–1(a)(4)'', and was translated as meaning section 1860D–1(a)(3) of act Aug. 14, 1935, which is classified to section 1395w–101(a)(3) of this title, to reflect the probable intent of Congress, because section 1395w–101(a) of this title does not contain a par. (4) and par. (3) defines terms for purposes of this part.

§ 1395w–152. Miscellaneous provisions

(a) Access to coverage in territories

The Secretary may waive such requirements of this part, including section 1395w–103(a)(1) of this title, insofar as the Secretary determines it is necessary to secure access to qualified prescription drug coverage for part D eligible individuals residing in a State (other than the 50 States and the District of Columbia).

(b) Application of demonstration authority

The provisions of section 402 of the Social Security Amendments of 1967 (Public Law 90–248) shall apply with respect to this part and part C of this subchapter in the same manner it applies with respect to parts A and B of this subchapter, except that any reference with respect to a Trust Fund in relation to an experiment or demonstration project relating to prescription drug coverage under this part shall be deemed a reference to the Medicare Prescription Drug Account within the Federal Supplementary Medical Insurance Trust Fund.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–42, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2149.)

REFERENCES IN TEXT

Section 402 of the Social Security Amendments of 1967, referred to in subsec. (b), is section 402 of Pub. L. 90–248, title IV, Jan. 2, 1968, 81 Stat. 930, which enacted section 1395b–1 of this title and amended section 1395*ll* of this title.

Parts A, B, and C of this subchapter, referred to in subsec. (b), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

PART E—MISCELLANEOUS PROVISIONS

AMENDMENTS

2003—Pub. L. 108–173, title I, § 101(a)(1), Dec. 8, 2003, 117 Stat. 2071, redesignated part D of this subchapter as part E.

1997—Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 275, redesignated part C of this subchapter as part D.

§ 1395x. Definitions

For purposes of this subchapter—

(a) Spell of illness

The term ''spell of illness'' with respect to any individual means a period of consecutive days—

(1) beginning with the first day (not included in a previous spell of illness) (A) on which such individual is furnished inpatient hospital services, inpatient critical access hospital services or extended care services, and (B) which occurs in a month for which he is entitled to benefits under part A of this subchapter, and

(2) ending with the close of the first period of 60 consecutive days thereafter on each of which he is neither an inpatient of a hospital or critical access hospital nor an inpatient of a facility described in section 1396r(a)(2) of this title or subsection (y)(1) of this section.

(b) Inpatient hospital services

The term ''inpatient hospital services'' means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

(1) bed and board;

(2) such nursing services and other related services, such use of hospital facilities, and such medical social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients; and

(3) such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements;

excluding, however—

(4) medical or surgical services provided by a physician, resident, or intern, services described by subsection (s)(2)(K) of this section, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and

(5) the services of a private-duty nurse or other private-duty attendant.

Paragraph (4) shall not apply to services provided in a hospital by—

(6) an intern or a resident-in-training under a teaching program approved by the Council on Medical Education of the American Medical Association or, in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of dentistry, approved by the Council on Dental Education of the American Dental Association, or in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of podiatry, approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association; or

(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this subchapter for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this subchapter.

(c) Inpatient psychiatric hospital services

The term ''inpatient psychiatric hospital services'' means inpatient hospital services furnished to an inpatient of a psychiatric hospital.

(d) Supplier

The term ''supplier'' means, unless the context otherwise requires, a physician or other

practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services under this subchapter.

(e) Hospital

The term ''hospital'' (except for purposes of sections 1395f(d), 1395f(f), and 1395n(b) of this title, subsection (a)(2) of this section, paragraph (7) of this subsection, and subsection (i) of this section) means an institution which—

(1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) maintains clinical records on all patients;

(3) has bylaws in effect with respect to its staff of physicians;

(4) has a requirement that every patient with respect to whom payment may be made under this subchapter must be under the care of a physician, except that a patient receiving qualified psychologist services (as defined in subsection (ii) of this section) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law;

(5) provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times; except that until January 1, 1979, the Secretary is authorized to waive the requirement of this paragraph for any one-year period with respect to any institution, insofar as such requirement relates to the provision of twenty-four-hour nursing service rendered or supervised by a registered professional nurse (except that in any event a registered professional nurse must be present on the premises to render or supervise the nursing service provided, during at least the regular daytime shift), where immediately preceding such one-year period he finds that—

(A) such institution is located in a rural area and the supply of hospital services in such area is not sufficient to meet the needs of individuals residing therein,

(B) the failure of such institution to qualify as a hospital would seriously reduce the availability of such services to such individuals, and

(C) such institution has made and continues to make a good faith effort to comply with this paragraph, but such compliance is impeded by the lack of qualified nursing personnel in such area;

(6)(A) has in effect a hospital utilization review plan which meets the requirements of subsection (k) of this section and (B) has in place a discharge planning process that meets the requirements of subsection (ee) of this section;

(7) in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing;

(8) has in effect an overall plan and budget that meets the requirements of subsection (z) of this section; and

(9) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution.

For purposes of subsection (a)(2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection. For purposes of sections 1395f(d) and 1395n(b) of this title (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), section 1395f(f)(2) of this title, and subsection (i) of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in subsection (j)(1)(A) of this section and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of subsection (r) of this section, to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. For purposes of section 1395f(f)(1) of this title, such term includes an institution which (i) is a hospital for purposes of sections 1395f(d), 1395f(f)(2), and 1395n(b) of this title and (ii) is accredited by the Joint Commission on Accreditation of Hospitals, or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such program to be essentially equivalent to those of the Joint Commission on Accreditation of Hospitals. Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a)(2) of this section, include any institution which is primarily for the care and treatment of mental diseases unless it is a psychiatric hospital (as defined in subsection (f) of this section). The term ''hospital'' also includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section), but only with respect to items and services ordinarily furnished by such institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations consistent with section 1395i–5 of this title. For provisions deeming certain requirements of this subsection to be met in the case of accredited institutions, see section 1395bb of this title. The term ''hospital'' also includes a facility of fifty beds or less which is located in an area determined by the Secretary to meet the definition relating to a rural area described in subparagraph (A) of paragraph (5) of this subsection and which meets the other requirements of this subsection, except that—

(A) with respect to the requirements for nursing services applicable after December 31, 1978, such requirements shall provide for tem-

porary waiver of the requirements, for such period as the Secretary deems appropriate, where (i) the facility's failure to fully comply with the requirements is attributable to a temporary shortage of qualified nursing personnel in the area in which the facility is located, (ii) a registered professional nurse is present on the premises to render or supervise the nursing service provided during at least the regular daytime shift, and (iii) the Secretary determines that the employment of such nursing personnel as are available to the facility during such temporary period will not adversely affect the health and safety of patients;

(B) with respect to the health and safety requirements promulgated under paragraph (9), such requirements shall be applied by the Secretary to a facility herein defined in such manner as to assure that personnel requirements take into account the availability of technical personnel and the educational opportunities for technical personnel in the area in which such facility is located, and the scope of services rendered by such facility; and the Secretary, by regulations, shall provide for the continued participation of such a facility where such personnel requirements are not fully met, for such period as the Secretary determines that (i) the facility is making good faith efforts to fully comply with the personnel requirements, (ii) the employment by the facility of such personnel as are available to the facility will not adversely affect the health and safety of patients, and (iii) if the Secretary has determined that because of the facility's waiver under this subparagraph the facility should limit its scope of services in order not to adversely affect the health and safety of the facility's patients, the facility is so limiting the scope of services it provides; and

(C) with respect to the fire and safety requirements promulgated under paragraph (9), the Secretary (i) may waive, for such period as he deems appropriate, specific provisions of such requirements which if rigidly applied would result in unreasonable hardship for such a facility and which, if not applied, would not jeopardize the health and safety of patients, and (ii) may accept a facility's compliance with all applicable State codes relating to fire and safety in lieu of compliance with the fire and safety requirements promulgated under paragraph (9), if he determines that such State has in effect fire and safety codes, imposed by State law, which adequately protect patients.

The term ''hospital'' does not include, unless the context otherwise requires, a critical access hospital (as defined in subsection (mm)(1) of this section).

(f) Psychiatric hospital

The term ''psychiatric hospital'' means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(2) satisfies the requirements of paragraphs (3) through (9) of subsection (e) of this section;

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A of this subchapter; and

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a ''psychiatric hospital''.

(g) Outpatient occupational therapy services

The term ''outpatient occupational therapy services'' has the meaning given the term ''outpatient physical therapy services'' in subsection (p) of this section, except that ''occupational'' shall be substituted for ''physical'' each place it appears therein.

(h) Extended care services

The term ''extended care services'' means the following items and services furnished to an inpatient of a skilled nursing facility and (except as provided in paragraphs (3), (6), and (7)) by such skilled nursing facility—

(1) nursing care provided by or under the supervision of a registered professional nurse;

(2) bed and board in connection with the furnishing of such nursing care;

(3) physical or occupational therapy or speech-language pathology services furnished by the skilled nursing facility or by others under arrangements with them made by the facility;

(4) medical social services;

(5) such drugs, biologicals, supplies, appliances, and equipment, furnished for use in the skilled nursing facility, as are ordinarily furnished by such facility for the care and treatment of inpatients;

(6) medical services provided by an intern or resident-in-training of a hospital with which the facility has in effect a transfer agreement (meeting the requirements of subsection (*l*) of this section), under a teaching program of such hospital approved as provided in the last sentence of subsection (b) of this section, and other diagnostic or therapeutic services provided by a hospital with which the facility has such an agreement in effect; and

(7) such other services necessary to the health of the patients as are generally provided by skilled nursing facilities, or by others under arrangements with them made by the facility;

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital.

(i) Post-hospital extended care services

The term ''post-hospital extended care services'' means extended care services furnished an individual after transfer from a hospital in

which he was an inpatient for not less than 3 consecutive days before his discharge from the hospital in connection with such transfer. For purposes of the preceding sentence, items and services shall be deemed to have been furnished to an individual after transfer from a hospital, and he shall be deemed to have been an inpatient in the hospital immediately before transfer therefrom, if he is admitted to the skilled nursing facility (A) within 30 days after discharge from such hospital, or (B) within such time as it would be medically appropriate to begin an active course of treatment, in the case of an individual whose condition is such that skilled nursing facility care would not be medically appropriate within 30 days after discharge from a hospital; and an individual shall be deemed not to have been discharged from a skilled nursing facility if, within 30 days after discharge therefrom, he is admitted to such facility or any other skilled nursing facility.

(j) Skilled nursing facility

The term ''skilled nursing facility'' has the meaning given such term in section 1395i–3(a) of this title.

(k) Utilization review

A utilization review plan of a hospital or skilled nursing facility shall be considered sufficient if it is applicable to services furnished by the institution to individuals entitled to insurance benefits under this subchapter and if it provides—

(1) for the review, on a sample or other basis, of admissions to the institution, the duration of stays therein, and the professional services (including drugs and biologicals) furnished, (A) with respect to the medical necessity of the services, and (B) for the purpose of promoting the most efficient use of available health facilities and services;

(2) for such review to be made by either (A) a staff committee of the institution composed of two or more physicians (of which at least two must be physicians described in subsection (r)(1) of this section), with or without participation of other professional personnel, or (B) a group outside the institution which is similarly composed and (i) which is established by the local medical society and some or all of the hospitals and skilled nursing facilities in the locality, or (ii) if (and for as long as) there has not been established such a group which serves such institution, which is established in such other manner as may be approved by the Secretary;

(3) for such review, in each case of inpatient hospital services or extended care services furnished to such an individual during a continuous period of extended duration, as of such days of such period (which may differ for different classes of cases) as may be specified in regulations, with such review to be made as promptly as possible, after each day so specified, and in no event later than one week following such day; and

(4) for prompt notification to the institution, the individual, and his attending physician of any finding (made after opportunity for consultation to such attending physician) by the physician members of such committee or group that any further stay in the institution is not medically necessary.

The review committee must be composed as provided in clause (B) of paragraph (2) rather than as provided in clause (A) of such paragraph in the case of any hospital or skilled nursing facility where, because of the small size of the institution, or (in the case of a skilled nursing facility) because of lack of an organized medical staff, or for such other reason or reasons as may be included in regulations, it is impracticable for the institution to have a properly functioning staff committee for the purposes of this subsection. If the Secretary determines that the utilization review procedures established pursuant to subchapter XIX of this chapter are superior in their effectiveness to the procedures required under this section, he may, to the extent that he deems it appropriate, require for purposes of this subchapter that the procedures established pursuant to subchapter XIX of this chapter be utilized instead of the procedures required by this section.

(*l*) Agreements for transfer between skilled nursing facilities and hospitals

A hospital and a skilled nursing facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case the two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that—

(1) transfer of patients will be effected between the hospital and the skilled nursing facility whenever such transfer is medically appropriate as determined by the attending physician; and

(2) there will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.

Any skilled nursing facility which does not have such an agreement in effect, but which is found by a State agency (of the State in which such facility is situated) with which an agreement under section 1395aa of this title is in effect (or, in the case of a State in which no such agency has an agreement under section 1395aa of this title, by the Secretary) to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of patients and the information referred to in paragraph (2), shall be considered to have such an agreement in effect if and for so long as such agency (or the Secretary, as the case may be) finds that to do so is in the public interest and essential to assuring extended care services for persons in the community who are eligible for payments with respect to such services under this subchapter.

(m) Home health services

The term ''home health services'' means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under ar-

rangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual's home—

(1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;

(2) physical or occupational therapy or speech-language pathology services;

(3) medical social services under the direction of a physician;

(4) to the extent permitted in regulations, part-time or intermittent services of a home health aide who has successfully completed a training program approved by the Secretary;

(5) medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care, and a covered osteoporosis drug (as defined in subsection (kk) of this section), but excluding other drugs and biologicals) and durable medical equipment while under such a plan;

(6) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in the last sentence of subsection (b) of this section; and

(7) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or skilled nursing facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and—

(A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or

(B) which are furnished at such facility while he is there to receive any such item or service described in clause (A),

but not including transportation of the individual in connection with any such item or service;

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital. For purposes of paragraphs (1) and (4), the term ''part-time or intermittent services'' means skilled nursing and home health aide services furnished any number of days per week as long as they are furnished (combined) less than 8 hours each day and 28 or fewer hours each week (or, subject to review on a case-by-case basis as to the need for care, less than 8 hours each day and 35 or fewer hours per week). For purposes of sections 1395f(a)(2)(C) and 1395n(a)(2)(A) of this title, ''intermittent'' means skilled nursing care that is either provided or needed on fewer than 7 days each week, or less than 8 hours of each day for periods of 21 days or less (with extensions in exceptional circumstances when the need for additional care is finite and predictable).

(n) Durable medical equipment

The term ''durable medical equipment'' includes iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) of this section or section 1395i–3(a)(1) of this title), whether furnished on a rental basis or purchased, and includes blood-testing strips and blood glucose monitors for individuals with diabetes without regard to whether the individual has Type I or Type II diabetes or to the individual's use of insulin (as determined under standards established by the Secretary in consultation with the appropriate organizations); except that such term does not include such equipment furnished by a supplier who has used, for the demonstration and use of specific equipment, an individual who has not met such minimum training standards as the Secretary may establish with respect to the demonstration and use of such specific equipment. With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.

***(o)* Home health agency**

The term ''home health agency'' means a public agency or private organization, or a subdivision of such an agency or organization, which—

(1) is primarily engaged in providing skilled nursing services and other therapeutic services;

(2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;

(3) maintains clinical records on all patients;

(4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing;

(5) has in effect an overall plan and budget that meets the requirements of subsection (z) of this section;

(6) meets the conditions of participation specified in section 1395bbb(a) of this title and such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization;

(7) provides the Secretary with a surety bond—

(A) effective for a period of 4 years (as specified by the Secretary) or in the case of

a change in the ownership or control of the agency (as determined by the Secretary) during or after such 4-year period, an additional period of time that the Secretary determines appropriate, such additional period not to exceed 4 years from the date of such change in ownership or control;

(B) in a form specified by the Secretary; and

(C) for a year in the period described in subparagraph (A) in an amount that is equal to the lesser of $50,000 or 10 percent of the aggregate amount of payments to the agency under this subchapter and subchapter XIX of this chapter for that year, as estimated by the Secretary; and

(8) meets such additional requirements (including conditions relating to bonding or establishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program;

except that for purposes of part A of this subchapter such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases. The Secretary may waive the requirement of a surety bond under paragraph (7) in the case of an agency or organization that provides a comparable surety bond under State law.

(p) Outpatient physical therapy services

The term ''outpatient physical therapy services'' means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient—

(1) who is under the care of a physician (as defined in paragraph (1), (3), or (4) of subsection (r) of this section), and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established by a physician (as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined);

excluding, however—

(3) any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital; and

(4) any such service—

(A) if furnished by a clinic or rehabilitation agency, or by others under arrangements with such clinic or agency, unless such clinic or rehabilitation agency—

(i) provides an adequate program of physical therapy services for outpatients and has the facilities and personnel required for such program or required for the supervision of such a program, in accordance with such requirements as the Secretary may specify,

(ii) has policies, established by a group of professional personnel, including one or more physicians (associated with the clinic or rehabilitation agency) and one or more qualified physical therapists, to govern the services (referred to in clause (i)) it provides,

(iii) maintains clinical records on all patients,

(iv) if such clinic or agency is situated in a State in which State or applicable local law provides for the licensing of institutions of this nature, (I) is licensed pursuant to such law, or (II) is approved by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(v) meets such other conditions relating to the health and safety of individuals who are furnished services by such clinic or agency on an outpatient basis, as the Secretary may find necessary, and provides the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000, or

(B) if furnished by a public health agency, unless such agency meets such other conditions relating to health and safety of individuals who are furnished services by such agency on an outpatient basis, as the Secretary may find necessary.

The term ''outpatient physical therapy services'' also includes physical therapy services furnished an individual by a physical therapist (in his office or in such individual's home) who meets licensing and other standards prescribed by the Secretary in regulations, otherwise than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, if the furnishing of such services meets such conditions relating to health and safety as the Secretary may find necessary. In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility. The term ''outpatient physical therapy services'' also includes speech-language pathology services furnished by a provider of services, a clinic, rehabilitation agency, or by a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient, subject to the conditions prescribed in this subsection. Nothing in this subsection shall be construed as requiring, with respect to outpatients who are not entitled to benefits under this subchapter, a physical therapist to provide outpatient physical therapy services only to outpatients who are under the care of a physician or pursuant to a plan of care established by a physician. The Secretary may waive the requirement of a surety bond under paragraph (4)(A)(v) in the case of a clinic or agency that provides a comparable surety bond under State law.

(q) Physicians' services

The term ''physicians' services'' means professional services performed by physicians, includ-

ing surgery, consultation, and home, office, and institutional calls (but not including services described in subsection (b)(6) of this section).

(r) Physician

The term ''physician'', when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1301(a)(7) of this title), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions, (3) a doctor of podiatric medicine for the purposes of subsections (k), (m), (p)(1), and (s) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them, (4) a doctor of optometry, but only for purposes of subsection (p)(1) of this section and with respect to the provision of items or services described in subsection (s) of this section which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only for the purpose of subsections (s)(1) and (s)(2)(A) of this section and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided. For the purposes of section 1395y(a)(4) of this title and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1395y(a)(4) of this title) are furnished.

(s) Medical and other health services

The term ''medical and other health services'' means any of the following items or services:

(1) physicians' services;

(2)(A) services and supplies (including drugs and biologicals which are not usually self-administered by the patient) furnished as an incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills (or would have been so included but for the application of section 1395w–3b of this title);

(B) hospital services (including drugs and biologicals which are not usually self-administered by the patient) incident to physicians' services rendered to outpatients and partial hospitalization services incident to such services;

(C) diagnostic services which are—

(i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and

(ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study;

(D) outpatient physical therapy services and outpatient occupational therapy services;

(E) rural health clinic services and Federally qualified health center services;

(F) home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies;

(G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in subsection (r)(1) of this section, for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician;

(H)(i) services furnished pursuant to a contract under section 1395mm of this title to a member of an eligible organization by a physician assistant or by a nurse practitioner (as defined in subsection (aa)(5) of this section) and such services and supplies furnished as an incident to his service to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service; and

(ii) services furnished pursuant to a risk-sharing contract under section 1395mm(g) of this title to a member of an eligible organization by a clinical psychologist (as defined by the Secretary) or by a clinical social worker (as defined in subsection (hh)(2) of this section), and such services and supplies furnished as an incident to such clinical psychologist's services or clinical social worker's services to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service;

(I) blood clotting factors, for hemophilia patients competent to use such factors to control bleeding without medical or other supervision, and items related to the administration of such factors, subject to utilization controls deemed necessary by the Secretary for the efficient use of such factors;

(J) prescription drugs used in immunosuppressive therapy furnished, to an individual who receives an organ transplant for which payment is made under this subchapter;

(K)(i) services which would be physicians' services and services described in subsection (ww)(1) of this section if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a physician assistant (as defined in subsection (aa)(5) of this section) under the supervision of a physician (as so defined) and which the physician assistant is legally authorized to perform by the State in which the services are performed, and such services and supplies furnished as incident to such services as would be covered under subparagraph (A) if furnished incident

to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services,[1]

(ii) services which would be physicians' services and services described in subsection (ww)(1) of this section if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) which the nurse practitioner or clinical nurse specialist is legally authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished incident to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services;

(L) certified nurse-midwife services;

(M) qualified psychologist services;

(N) clinical social worker services (as defined in subsection (hh)(2) of this section);

(O) erythropoietin for dialysis patients competent to use such drug without medical or other supervision with respect to the administration of such drug, subject to methods and standards established by the Secretary by regulation for the safe and effective use of such drug, and items related to the administration of such drug;

(P) prostate cancer screening tests (as defined in subsection (*oo*) of this section);

(Q) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an anticancer chemotherapeutic agent for a given indication, and containing an active ingredient (or ingredients), which is the same indication and active ingredient (or ingredients) as a drug which the carrier determines would be covered pursuant to subparagraph (A) or (B) if the drug could not be self-administered;

(R) colorectal cancer screening tests (as defined in subsection (pp) of this section); and[2]

(S) diabetes outpatient self-management training services (as defined in subsection (qq) of this section);

(T) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an acute anti-emetic used as part of an anticancer chemotherapeutic regimen if the drug is administered by a physician (or as prescribed by a physician)—

(i) for use immediately before, at, or within 48 hours after the time of the administration of the anticancer chemotherapeutic agent; and

(ii) as a full replacement for the anti-emetic therapy which would otherwise be administered intravenously;

(U) screening for glaucoma (as defined in subsection (uu) of this section) for individuals determined to be at high risk for glaucoma, individuals with a family history of glaucoma and individuals with diabetes;

(V) medical nutrition therapy services (as defined in subsection (vv)(1) of this section) in the case of a beneficiary with diabetes or a renal disease who—

(i) has not received diabetes outpatient self-management training services within a time period determined by the Secretary;

(ii) is not receiving maintenance dialysis for which payment is made under section 1395rr of this title; and

(iii) meets such other criteria determined by the Secretary after consideration of protocols established by dietitian or nutrition professional organizations;

(W) an initial preventive physical examination (as defined in subsection (ww) of this section);

(X) cardiovascular screening blood tests (as defined in subsection (xx)(1) of this section);

(Y) diabetes screening tests (as defined in subsection (yy) of this section);

(Z) intravenous immune globulin for the treatment of primary immune deficiency diseases in the home (as defined in subsection (zz) of this section); and

(AA) ultrasound screening for abdominal aortic aneurysm (as defined in subsection (bbb)) for an individual—

(i) who receives a referral for such an ultrasound screening as a result of an initial preventive physical examination (as defined in subsection (ww)(1));

(ii) who has not been previously furnished such an ultrasound screening under this subchapter; and

(iii) who—

(I) has a family history of abdominal aortic aneurysm; or

(II) manifests risk factors included in a beneficiary category recommended for screening by the United States Preventive Services Task Force regarding abdominal aortic aneurysms;

(3) diagnostic X-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient's home, if the performance of such tests meets such conditions relating to health and safety as the Secretary may find necessary and including diagnostic mammography if conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act [42 U.S.C. 263b]), diagnostic laboratory tests, and other diagnostic tests;

(4) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians;

(5) surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;

(6) durable medical equipment;

(7) ambulance service where the use of other methods of transportation is contraindicated by the individual's condition, but, subject to section 1395m(*l*)(14) of this title, only to the extent provided in regulations;

[1] So in original. Probably should be followed by ''and''.

[2] So in original. The word ''and'' probably should not appear.

(8) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens;

(9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition;

(10)(A) pneumococcal vaccine and its administration and, subject to section 4071(b) of the Omnibus Budget Reconciliation Act of 1987, influenza vaccine and its administration; and

(B) hepatitis B vaccine and its administration, furnished to an individual who is at high or intermediate risk of contracting hepatitis B (as determined by the Secretary under regulations);

(11) services of a certified registered nurse anesthetist (as defined in subsection (bb) of this section);

(12) subject to section 4072(e) of the Omnibus Budget Reconciliation Act of 1987, extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes, if—

(A) the physician who is managing the individual's diabetic condition (i) documents that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation, and (ii) certifies that the individual needs such shoes under a comprehensive plan of care related to the individual's diabetic condition;

(B) the particular type of shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary); and

(C) the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary) who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area);

(13) screening mammography (as defined in subsection (jj) of this section);

(14) screening pap smear and screening pelvic exam; and

(15) bone mass measurement (as defined in subsection (rr) of this section).

No diagnostic tests performed in any laboratory, including a laboratory that is part of a rural health clinic, or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1395f(d) of this title) shall be included within paragraph (3) unless such laboratory—

(16) if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

(17)(A) meets the certification requirements under section 353 of the Public Health Service Act [42 U.S.C. 263a]; and

(B) meets such other conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital. None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section 1395f(d) of this title shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

(t) Drugs and biologicals

(1) The term ''drugs'' and the term ''biologicals'', except for purposes of subsection (m)(5) of this section and paragraph (2), include only such drugs (including contrast agents) and biologicals, respectively, as are included (or approved for inclusion) in the United States Pharmacopoeia, the National Formulary, or the United States Homeopathic Pharmacopoeia, or in New Drugs or Accepted Dental Remedies (except for any drugs and biologicals unfavorably evaluated therein), or as are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of the hospital furnishing such drugs and biologicals for use in such hospital.

(2)(A) For purposes of paragraph (1), the term ''drugs'' also includes any drugs or biologicals used in an anticancer chemotherapeutic regimen for a medically accepted indication (as described in subparagraph (B)).

(B) In subparagraph (A), the term ''medically accepted indication'', with respect to the use of a drug, includes any use which has been approved by the Food and Drug Administration for the drug, and includes another use of the drug if—

(i) the drug has been approved by the Food and Drug Administration; and

(ii)(I) such use is supported by one or more citations which are included (or approved for inclusion) in one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, the United States Pharmacopoeia-Drug Information (or its successor publications), and other authoritative compendia as identified by the Secretary, unless the Secretary has determined that the use is not medically appropriate or the use is identified as not indicated in one or more such compendia, or

(II) the carrier involved determines, based upon guidance provided by the Secretary to carriers for determining accepted uses of

drugs, that such use is medically accepted based on supportive clinical evidence in peer reviewed medical literature appearing in publications which have been identified for purposes of this subclause by the Secretary.

The Secretary may revise the list of compendia in clause (ii)(I) as is appropriate for identifying medically accepted indications for drugs.

(u) Provider of services

The term ''provider of services'' means a hospital, critical access hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, or, for purposes of section 1395f(g) and section 1395n(e) of this title, a fund.

(v) Reasonable costs

(1)(A) The reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services, may provide for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this subchapter, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (i) take into account both direct and indirect costs of providers of services (excluding therefrom any such costs, including standby costs, which are determined in accordance with regulations to be unnecessary in the efficient delivery of services covered by the insurance programs established under this subchapter) in order that, under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by this subchapter will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (ii) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

(B) In the case of extended care services, the regulations under subparagraph (A) shall not include provision for specific recognition of a return on equity capital.

(C) Where a hospital has an arrangement with a medical school under which the faculty of such school provides services at such hospital, an amount not in excess of the reasonable cost of such services to the medical school shall be included in determining the reasonable cost to the hospital of furnishing services—

(i) for which payment may be made under part A of this subchapter, but only if—

(I) payment for such services as furnished under such arrangement would be made under part A of this subchapter to the hospital had such services been furnished by the hospital, and

(II) such hospital pays to the medical school at least the reasonable cost of such services to the medical school, or

(ii) for which payment may be made under part B of this subchapter, but only if such hospital pays to the medical school at least the reasonable cost of such services to the medical school.

(D) Where (i) physicians furnish services which are either inpatient hospital services (including services in conjunction with the teaching programs of such hospital) by reason of paragraph (7) of subsection (b) of this section or for which entitlement exists by reason of clause (II) of section 1395k(a)(2)(B)(i) of this title, and (ii) such hospital (or medical school under arrangement with such hospital) incurs no actual cost in the furnishing of such services, the reasonable cost of such services shall (under regulations of the Secretary) be deemed to be the cost such hospital or medical school would have incurred had it paid a salary to such physicians rendering such services approximately equivalent to the average salary paid to all physicians employed by such hospital (or if such employment does not exist, or is minimal in such hospital, by similar hospitals in a geographic area of sufficient size to assure reasonable inclusion of sufficient physicians in development of such average salary).

(E) Such regulations may, in the case of skilled nursing facilities in any State, provide for the use of rates, developed by the State in which such facilities are located, for the payment of the cost of skilled nursing facility services furnished under the State's plan approved under subchapter XIX of this chapter (and such rates may be increased by the Secretary on a class or size of institution or on a geographical basis by a percentage factor not in excess of 10 percent to take into account determinable items or services or other requirements under this subchapter not otherwise included in the computation of such State rates), if the Secretary

finds that such rates are reasonably related to (but not necessarily limited to) analyses undertaken by such State of costs of care in comparable facilities in such State. Notwithstanding the previous sentence, such regulations with respect to skilled nursing facilities shall take into account (in a manner consistent with subparagraph (A) and based on patient-days of services furnished) the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) of such facilities complying with the requirements of subsections (b), (c), and (d) of section 1395i–3 of this title (including the costs of conducting nurse aide training and competency evaluation programs and competency evaluation programs).

(F) Such regulations shall require each provider of services (other than a fund) to make reports to the Secretary of information described in section 1320a(a) of this title in accordance with the uniform reporting system (established under such section) for that type of provider.

(G)(i) In any case in which a hospital provides inpatient services to an individual that would constitute post-hospital extended care services if provided by a skilled nursing facility and a quality control and peer review organization (or, in the absence of such a qualified organization, the Secretary or such agent as the Secretary may designate) determines that inpatient hospital services for the individual are not medically necessary but post-hospital extended care services for the individual are medically necessary and such extended care services are not otherwise available to the individual (as determined in accordance with criteria established by the Secretary) at the time of such determination, payment for such services provided to the individual shall continue to be made under this subchapter at the payment rate described in clause (ii) during the period in which—

(I) such post-hospital extended care services for the individual are medically necessary and not otherwise available to the individual (as so determined),

(II) inpatient hospital services for the individual are not medically necessary, and

(III) the individual is entitled to have payment made for post-hospital extended care services under this subchapter,

except that if the Secretary determines that there is not an excess of hospital beds in such hospital and (subject to clause (iv)) there is not an excess of hospital beds in the area of such hospital, such payment shall be made (during such period) on the basis of the amount otherwise payable under part A with respect to inpatient hospital services.

(ii)(I) Except as provided in subclause (II), the payment rate referred to in clause (i) is a rate equal to the estimated adjusted State-wide average rate per patient-day paid for services provided in skilled nursing facilities under the State plan approved under subchapter XIX of this chapter for the State in which such hospital is located, or, if the State in which the hospital is located does not have a State plan approved under subchapter XIX of this chapter, the estimated adjusted State-wide average allowable costs per patient-day for extended care services under this subchapter in that State.

(II) If a hospital has a unit which is a skilled nursing facility, the payment rate referred to in clause (i) for the hospital is a rate equal to the lesser of the rate described in subclause (I) or the allowable costs in effect under this subchapter for extended care services provided to patients of such unit.

(iii) Any day on which an individual receives inpatient services for which payment is made under this subparagraph shall, for purposes of this chapter (other than this subparagraph), be deemed to be a day on which the individual received inpatient hospital services.

(iv) In determining under clause (i), in the case of a public hospital, whether or not there is an excess of hospital beds in the area of such hospital, such determination shall be made on the basis of only the public hospitals (including the hospital) which are in the area of the hospital and which are under common ownership with that hospital.

(H) In determining such reasonable cost with respect to home health agencies, the Secretary may not include—

(i) any costs incurred in connection with bonding or establishing an escrow account by any such agency as a result of the surety bond requirement described in subsection (*o*)(7) of this section and the financial security requirement described in subsection (*o*)(8) of this section;

(ii) in the case of home health agencies to which the surety bond requirement described in subsection (*o*)(7) of this section and the financial security requirement described in subsection (*o*)(8) of this section apply, any costs attributed to interest charged such an agency in connection with amounts borrowed by the agency to repay overpayments made under this subchapter to the agency, except that such costs may be included in reasonable cost if the Secretary determines that the agency was acting in good faith in borrowing the amounts;

(iii) in the case of contracts entered into by a home health agency after December 5, 1980, for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract which is entered into for a period exceeding five years; and

(iv) in the case of contracts entered into by a home health agency before December 5, 1980, for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract, which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency, to the extent that such cost exceeds the reasonable value of the services furnished on behalf of such agency.

(I) In determining such reasonable cost, the Secretary may not include any costs incurred by a provider with respect to any services furnished in connection with matters for which payment may be made under this subchapter and furnished pursuant to a contract between the pro-

vider and any of its subcontractors which is entered into after December 5, 1980, and the value or cost of which is $10,000 or more over a twelve-month period unless the contract contains a clause to the effect that—

(i) until the expiration of four years after the furnishing of such services pursuant to such contract, the subcontractor shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the contract, and books, documents and records of such subcontractor that are necessary to certify the nature and extent of such costs, and

(ii) if the subcontractor carries out any of the duties of the contract through a subcontract, with a value or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

The Secretary shall prescribe in regulation[3] criteria and procedures which the Secretary shall use in obtaining access to books, documents, and records under clauses required in contracts and subcontracts under this subparagraph.

(J) Such regulations may not provide for any inpatient routine salary cost differential as a reimbursable cost for hospitals and skilled nursing facilities.

(K)(i) The Secretary shall issue regulations that provide, to the extent feasible, for the establishment of limitations on the amount of any costs or charges that shall be considered reasonable with respect to services provided on an outpatient basis by hospitals (other than bona fide emergency services as defined in clause (ii)) or clinics (other than rural health clinics), which are reimbursed on a cost basis or on the basis of cost related charges, and by physicians utilizing such outpatient facilities. Such limitations shall be reasonably related to the charges in the same area for similar services provided in physicians' offices. Such regulations shall provide for exceptions to such limitations in cases where similar services are not generally available in physicians' offices in the area to individuals entitled to benefits under this subchapter.

(ii) For purposes of clause (i), the term ''bona fide emergency services'' means services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(I) placing the patient's health in serious jeopardy;

(II) serious impairment to bodily functions; or

(III) serious dysfunction of any bodily organ or part.

(L)(i) The Secretary, in determining the amount of the payments that may be made under this subchapter with respect to services furnished by home health agencies, may not recognize as reasonable (in the efficient delivery of such services) costs for the provision of such services by an agency to the extent these costs exceed (on the aggregate for the agency) for cost reporting periods beginning on or after—

(I) July 1, 1985, and before July 1, 1986, 120 percent of the mean of the labor-related and nonlabor per visit costs for freestanding home health agencies,

(II) July 1, 1986, and before July 1, 1987, 115 percent of such mean,

(III) July 1, 1987, and before October 1, 1997, 112 percent of such mean,

(IV) October 1, 1997, and before October 1, 1998, 105 percent of the median of the labor-related and nonlabor per visit costs for freestanding home health agencies, or

(V) October 1, 1998, 106 percent of such median.

(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specific basis. The Secretary may provide for such exemptions and exceptions to such limitation as he deems appropriate.

(iii) Not later than July 1, 1991, and annually thereafter (but not for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, or on or after July 1, 1997, and before October 1, 1997), the Secretary shall establish limits under this subparagraph for cost reporting periods beginning on or after such date by utilizing the area wage index applicable under section 1395ww(d)(3)(E) of this title and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished (determined without regard to whether such hospitals have been reclassified to a new geographic area pursuant to section 1395ww(d)(8)(B) of this title, a decision of the Medicare Geographic Classification Review Board under section 1395ww(d)(10) of this title, or a decision of the Secretary).

(iv) In establishing limits under this subparagraph for cost reporting periods beginning after September 30, 1997, the Secretary shall not take into account any changes in the home health market basket, as determined by the Secretary, with respect to cost reporting periods which began on or after July 1, 1994, and before July 1, 1996.

(v) For services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1997, subject to clause (viii)(I), the Secretary shall provide for an interim system of limits. Payment shall not exceed the costs determined under the preceding provisions of this subparagraph or, if lower, the product of—

(I) an agency-specific per beneficiary annual limitation calculated based 75 percent on 98

[3] So in original. Probably should be ''regulations''.

percent of the reasonable costs (including nonroutine medical supplies) for the agency's 12-month cost reporting period ending during fiscal year 1994, and based 25 percent on 98 percent of the standardized regional average of such costs for the agency's census division, as applied to such agency, for cost reporting periods ending during fiscal year 1994, such costs updated by the home health market basket index; and

(II) the agency's unduplicated census count of patients (entitled to benefits under this subchapter) for the cost reporting period subject to the limitation.

(vi) For services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1997, the following rules apply:

(I) For new providers and those providers without a 12-month cost reporting period ending in fiscal year 1994 subject to clauses (viii)(II) and (viii)(III), the per beneficiary limitation shall be equal to the median of these limits (or the Secretary's best estimates thereof) applied to other home health agencies as determined by the Secretary. A home health agency that has altered its corporate structure or name shall not be considered a new provider for this purpose.

(II) For beneficiaries who use services furnished by more than one home health agency, the per beneficiary limitations shall be prorated among the agencies.

(vii)(I) Not later than January 1, 1998, the Secretary shall establish per visit limits applicable for fiscal year 1998, and not later than April 1, 1998, the Secretary shall establish per beneficiary limits under clause (v)(I) for fiscal year 1998.

(II) Not later than August 1 of each year (beginning in 1998) the Secretary shall establish the limits applicable under this subparagraph for services furnished during the fiscal year beginning October 1 of the year.

(viii)(I) In the case of a provider with a 12-month cost reporting period ending in fiscal year 1994, if the limit imposed under clause (v) (determined without regard to this subclause) for a cost reporting period beginning during or after fiscal year 1999 is less than the median described in clause (vi)(I) (but determined as if any reference in clause (v) to ''98 percent'' were a reference to ''100 percent''), the limit otherwise imposed under clause (v) for such provider and period shall be increased by ⅓ of such difference.

(II) Subject to subclause (IV), for new providers and those providers without a 12-month cost reporting period ending in fiscal year 1994, but for which the first cost reporting period begins before fiscal year 1999, for cost reporting periods beginning during or after fiscal year 1999, the per beneficiary limitation described in clause (vi)(I) shall be equal to the median described in such clause (determined as if any reference in clause (v) to ''98 percent'' were a reference to ''100 percent'').

(III) Subject to subclause (IV), in the case of a new provider for which the first cost reporting period begins during or after fiscal year 1999, the limitation applied under clause (vi)(I) (but only with respect to such provider) shall be equal to 75 percent of the median described in clause (vi)(I).

(IV) In the case of a new provider or a provider without a 12-month cost reporting period ending in fiscal year 1994, subclause (II) shall apply, instead of subclause (III), to a home health agency which filed an application for home health agency provider status under this subchapter before September 15, 1998, or which was approved as a branch of its parent agency before such date and becomes a subunit of the parent agency or a separate agency on or after such date.

(V) Each of the amounts specified in subclauses (I) through (III) are such amounts as adjusted under clause (iii) to reflect variations in wages among different areas.

(ix) Notwithstanding the per beneficiary limit under clause (viii), if the limit imposed under clause (v) (determined without regard to this clause) for a cost reporting period beginning during or after fiscal year 2000 is less than the median described in clause (vi)(I) (but determined as if any reference in clause (v) to ''98 percent'' were a reference to ''100 percent''), the limit otherwise imposed under clause (v) for such provider and period shall be increased by 2 percent.

(x) Notwithstanding any other provision of this subparagraph, in updating any limit under this subparagraph by a home health market basket index for cost reporting periods beginning during each of fiscal years 2000, 2002, and 2003, the update otherwise provided shall be reduced by 1.1 percentage points. With respect to cost reporting periods beginning during fiscal year 2001, the update to any limit under this subparagraph shall be the home health market basket index.

(M) Such regulations shall provide that costs respecting care provided by a provider of services, pursuant to an assurance under title VI or XVI of the Public Health Service Act [42 U.S.C. 291 et seq., 300q et seq.] that the provider will make available a reasonable volume of services to persons unable to pay therefor, shall not be allowable as reasonable costs.

(N) In determining such reasonable costs, costs incurred for activities directly related to influencing employees respecting unionization may not be included.

(O)(i) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness with respect to an asset of a provider of services which has undergone a change of ownership, such regulations shall provide, except as provided in clause (iii), that the valuation of the asset after such change of ownership shall be the historical cost of the asset, as recognized under this subchapter, less depreciation allowed, to the owner of record as of August 5, 1997 (or, in the case of an asset not in existence as of August 5, 1997, the first owner of record of the asset after August 5, 1997).

(ii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for

which any payment has previously been made under this subchapter.

(iii) In the case of the transfer of a hospital from ownership by a State to ownership by a nonprofit corporation without monetary consideration, the basis for capital allowances to the new owner shall be the book value of the hospital to the State at the time of the transfer.

(P) If such regulations provide for the payment for a return on equity capital (other than with respect to costs of inpatient hospital services), the rate of return to be recognized, for determining the reasonable cost of services furnished in a cost reporting period, shall be equal to the average of the rates of interest, for each of the months any part of which is included in the period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(Q) Except as otherwise explicitly authorized, the Secretary is not authorized to limit the rate of increase on allowable costs of approved medical educational activities.

(R) In determining such reasonable cost, costs incurred by a provider of services representing a beneficiary in an unsuccessful appeal of a determination described in section 1395ff(b) of this title shall not be allowable as reasonable costs.

(S)(i) Such regulations shall not include provision for specific recognition of any return on equity capital with respect to hospital outpatient departments.

(ii)(I) Such regulations shall provide that, in determining the amount of the payments that may be made under this subchapter with respect to all the capital-related costs of outpatient hospital services, the Secretary shall reduce the amounts of such payments otherwise established under this subchapter by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1990, by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, and by 10 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1992 through 1999 and until the first date that the prospective payment system under section 1395*l*(t) of this title is implemented.

(II) The Secretary shall reduce the reasonable cost of outpatient hospital services (other than the capital-related costs of such services) otherwise determined pursuant to section 1395*l*(a)(2)(B)(i)(I) of this title by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1991 through 1999 and until the first date that the prospective payment system under section 1395*l*(t) of this title is implemented.

(III) Subclauses (I) and (II) shall not apply to payments with respect to the costs of hospital outpatient services provided by any hospital that is a sole community hospital (as defined in section 1395ww(d)(5)(D)(iii) of this title) or a critical access hospital (as defined in subsection (mm)(1) of this section).

(IV) In applying subclauses (I) and (II) to services for which payment is made on the basis of a blend amount under section 1395*l*(i)(3)(A)(ii) or 1395*l*(n)(1)(A)(ii) of this title, the costs reflected in the amounts described in sections 1395*l*(i)(3)(B)(i)(I) and 1395*l*(n)(1)(B)(i)(I) of this title, respectively, shall be reduced in accordance with such subclause.[4]

(T) In determining such reasonable costs for hospitals, no reduction in copayments under section 1395*l*(t)(8)(B) of this title shall be treated as a bad debt and the amount of bad debts otherwise treated as allowable costs which are attributable to the deductibles and coinsurance amounts under this subchapter shall be reduced—

(i) for cost reporting periods beginning during fiscal year 1998, by 25 percent of such amount otherwise allowable,

(ii) for cost reporting periods beginning during fiscal year 1999, by 40 percent of such amount otherwise allowable,

(iii) for cost reporting periods beginning during fiscal year 2000, by 45 percent of such amount otherwise allowable, and

(iv) for cost reporting periods beginning during a subsequent fiscal year, by 30 percent of such amount otherwise allowable.

(U) In determining the reasonable cost of ambulance services (as described in subsection (s)(7) of this section) provided during fiscal year 1998, during fiscal year 1999, and during so much of fiscal year 2000 as precedes January 1, 2000, the Secretary shall not recognize the costs per trip in excess of costs recognized as reasonable for ambulance services provided on a per trip basis during the previous fiscal year (after application of this subparagraph), increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the fiscal year involved reduced by 1.0 percentage point. For ambulance services provided after June 30, 1998, the Secretary may provide that claims for such services must include a code (or codes) under a uniform coding system specified by the Secretary that identifies the services furnished.

(V) In determining such reasonable costs for skilled nursing facilities with respect to cost reporting periods beginning on or after October 1, 2005, the amount of bad debts otherwise treated as allowed costs which are attributable to the coinsurance amounts under this subchapter for individuals who are entitled to benefits under part A and—

(i) are not described in section 1396u–5(c)(6)(A)(ii) of this title shall be reduced by 30 percent of such amount otherwise allowable; and

(ii) are described in such section shall not be reduced.

(2)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this subchapter with respect to such services may not exceed the amount that would be taken into account with respect to such services if furnished in such semi-private accommodations unless the more expensive ac-

[4] So in original. Probably should be ''subclauses.''

commodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this subchapter furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B of this subchapter, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this subchapter, the amount of the payment with respect to such bed and board under part A of this subchapter shall be the amount otherwise payable under this subchapter for such bed and board furnished in semi-private accommodations minus the difference between the charge customarily made by the hospital or skilled nursing facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

(4) If a provider of services furnishes items or services to an individual which are in excess of or more expensive than the items or services determined to be necessary in the efficient delivery of needed health services and charges are imposed for such more expensive items or services under the authority granted in section 1395cc(a)(2)(B)(ii),[5] of this title, the amount of payment with respect to such items or services otherwise due such provider in any fiscal period shall be reduced to the extent that such payment plus such charges exceed the cost actually incurred for such items or services in the fiscal period in which such charges are imposed.

(5)(A) Where physical therapy services, occupational therapy services, speech therapy services, or other therapy services or services of other health-related personnel (other than physicians) are furnished under an arrangement with a provider of services or other organization, specified in the first sentence of subsection (p) of this section (including through the operation of subsection (g) of this section) the amount included in any payment to such provider or other organization under this subchapter as the reasonable cost of such services (as furnished under such arrangements) shall not exceed an amount equal to the salary which would reasonably have been paid for such services (together with any additional costs that would have been incurred by the provider or other organization) to the person performing them if they had been performed in an employment relationship with such provider or other organization (rather than under such arrangement) plus the cost of such other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of such therapy) incurred by such person, as the Secretary may in regulations determine to be appropriate.

(B) Notwithstanding the provisions of subparagraph (A), if a provider of services or other organization specified in the first sentence of subsection (p) of this section requires the services of a therapist on a limited part-time basis, or only to perform intermittent services, the Secretary may make payment on the basis of a reasonable rate per unit of service, even though such rate is greater per unit of time than salary related amounts, where he finds that such greater payment is, in the aggregate, less than the amount that would have been paid if such organization had employed a therapist on a full- or part-time salary basis.

(6) For purposes of this subsection, the term, ''semi-private accommodations'' means two-bed, three-bed, or four-bed accommodations.

(7)(A) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1320a–1 of this title.

(B) For further limitations on reasonable cost and determination of payment amounts for operating costs of inpatient hospital services and waivers for certain States, see section 1395ww of this title.

(C) For provisions restricting payment for provider-based physicians' services and for payments under certain percentage arrangements, see section 1395xx of this title.

(D) For further limitations on reasonable cost and determination of payment amounts for routine service costs of skilled nursing facilities, see subsections (a) through (c) of section 1395yy of this title.

(8) ITEMS UNRELATED TO PATIENT CARE.—Reasonable costs do not include costs for the following—

(i) entertainment, including tickets to sporting and other entertainment events;

(ii) gifts or donations;

(iii) personal use of motor vehicles;

(iv) costs for fines and penalties resulting from violations of Federal, State, or local laws; and

(v) education expenses for spouses or other dependents of providers of services, their employees or contractors.

(w) Arrangements for certain services; payments pursuant to arrangements for utilization review activities

(1) The term ''arrangements'' is limited to arrangements under which receipt of payment by the hospital, critical access hospital, skilled nursing facility, home health agency, or hospice program (whether in its own right or as agent), with respect to services for which an individual is entitled to have payment made under this subchapter, discharges the liability of such individual or any other person to pay for the services.

[5] See References in Text note below.

(2) Utilization review activities conducted, in accordance with the requirements of the program established under part B of subchapter XI of this chapter with respect to services furnished by a hospital or critical access hospital to patients insured under part A of this subchapter or entitled to have payment made for such services under part B of this subchapter or under a State plan approved under subchapter XIX of this chapter, by a quality control and peer review organization designated for the area in which such hospital or critical access hospital is located shall be deemed to have been conducted pursuant to arrangements between such hospital or critical access hospital and such organization under which such hospital or critical access hospital is obligated to pay to such organization, as a condition of receiving payment for hospital or critical access hospital services so furnished under this part or under such a State plan, such amount as is reasonably incurred and requested (as determined under regulations of the Secretary) by such organization in conducting such review activities with respect to services furnished by such hospital or critical access hospital to such patients.

(x) State and United States

The terms ''State'' and ''United States'' have the meaning given to them by subsections (h) and (i), respectively, of section 410 of this title.

(y) Extended care in religious nonmedical health care institutions

(1) The term ''skilled nursing facility'' also includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section), but only (except for purposes of subsection (a)(2) of this section) with respect to items and services ordinarily furnished by such an institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations consistent with section 1395i–5 of this title.

(2) Notwithstanding any other provision of this subchapter, payment under part A of this subchapter may not be made for services furnished an individual in a skilled nursing facility to which paragraph (1) applies unless such individual elects, in accordance with regulations, for a spell of illness to have such services treated as post-hospital extended care services for purposes of such part; and payment under part A of this subchapter may not be made for post-hospital extended care services—

(A) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) applies after—

(i) such services have been furnished to him in such a facility for 30 days during such spell, or

(ii) such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph does not apply; or

(B) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) does not apply after such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph applies.

(3) The amount payable under part A of this subchapter for post-hospital extended care services furnished an individual during any spell of illness in a skilled nursing facility to which paragraph (1) applies shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day before the 31st day on which he is furnished such services in such a facility during such spell (and the reduction under this paragraph shall be in lieu of any reduction under section 1395e(a)(3) of this title).

(4) For purposes of subsection (i) of this section, the determination of whether services furnished by or in an institution described in paragraph (1) constitute post-hospital extended care services shall be made in accordance with and subject to such conditions, limitations, and requirements as may be provided in regulations.

(z) Institutional planning

An overall plan and budget of a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, or home health agency shall be considered sufficient if it—

(1) provides for an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that nothing in this paragraph shall require that there be prepared, in connection with any budget, an item-by-item identification of the components of each type of anticipated expenditure or income);

(2)(A) provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in paragraph (1) is applicable) which includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000 (or such lesser amount as may be established by the State under section 1320a–1(g)(1) of this title in which the hospital is located) related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(B) provides that such plan is submitted to the agency designated under section 1320a–1(b) of this title, or if no such agency is designated, to the appropriate health planning agency in the State (but this subparagraph shall not apply in the case of a facility exempt from review under section 1320a–1 of this title by reason of section 1320a–1(j) of this title);

(3) provides for review and updating at least annually; and

(4) is prepared, under the direction of the governing body of the institution or agency, by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff (if any) of the institution or agency.

(aa) Rural health clinic services and Federally qualified health center services

(1) The term ''rural health clinic services'' means—

(A) physicians' services and such services and supplies as are covered under subsection (s)(2)(A) of this section if furnished as an incident to a physician's professional service and items and services described in subsection (s)(10) of this section,

(B) such services furnished by a physician assistant or a nurse practitioner (as defined in paragraph (5)), by a clinical psychologist (as defined by the Secretary) or by a clinical social worker (as defined in subsection (hh)(1) of this section), and such services and supplies furnished as an incident to his service as would otherwise be covered if furnished by a physician or as an incident to a physician's service, and

(C) in the case of a rural health clinic located in an area in which there exists a shortage of home health agencies, part-time or intermittent nursing care and related medical supplies (other than drugs and biologicals) furnished by a registered professional nurse or licensed practical nurse to a homebound individual under a written plan of treatment (i) established and periodically reviewed by a physician described in paragraph (2)(B), or (ii) established by a nurse practitioner or physician assistant and periodically reviewed and approved by a physician described in paragraph (2)(B),

when furnished to an individual as an outpatient of a rural health clinic.

(2) The term ''rural health clinic'' means a facility which—

(A) is primarily engaged in furnishing to outpatients services described in subparagraphs (A) and (B) of paragraph (1);

(B) in the case of a facility which is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians (as defined in subsection (r)(1)) of this section under which provision is made for the periodic review by such physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such physicians of physician assistants and nurse practitioners, the preparation by such physicians of such medical orders for care and treatment of clinic patients as may be necessary, and the availability of such physicians for such referral of and consultation for patients as is necessary and for advice and assistance in the management of medical emergencies; and, in the case of a physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(C) maintains clinical records on all patients;

(D) has arrangements with one or more hospitals, having agreements in effect under section 1395cc of this title, for the referral and admission of patients requiring inpatient services or such diagnostic or other specialized services as are not available at the clinic;

(E) has written policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services described in paragraph (1) which it furnishes;

(F) has a physician, physician assistant, or nurse practitioner responsible for the execution of policies described in subparagraph (E) and relating to the provision of the clinic's services;

(G) directly provides routine diagnostic services, including clinical laboratory services, as prescribed in regulations by the Secretary, and has prompt access to additional diagnostic services from facilities meeting requirements under this subchapter;

(H) in compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined by the Secretary to be necessary for the treatment of emergency cases (as defined in regulations) and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(I) has a quality assessment and performance improvement program, and appropriate procedures for review of utilization of clinic services, as the Secretary may specify;

(J) has a nurse practitioner, a physician assistant, or a certified nurse-midwife (as defined in subsection (gg) of this section) available to furnish patient care services not less than 50 percent of the time the clinic operates; and

(K) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

For the purposes of this subchapter, such term includes only a facility which (i) is located in an area that is not an urbanized area (as defined by the Bureau of the Census) and in which there are insufficient numbers of needed health care practitioners (as determined by the Secretary), and that, within the previous 3-year period, has been designated by the chief executive officer of the State and certified by the Secretary as an area with a shortage of personal health services or designated by the Secretary either (I) as an area with a shortage of personal health services under section 330(b)(3) or 1302(7) of the Public Health Service Act [42 U.S.C. 254b(b)(3), 300e–1(7)], (II) as a health professional shortage area described in section 332(a)(1)(A) of that Act [42 U.S.C. 254e(a)(1)(A)] because of its shortage of primary medical care manpower, (III) as a high impact area described in section 329(a)(5)[6] of that Act, or (IV) as an area which includes a population group which the Secretary determines has a health manpower shortage under section 332(a)(1)(B) of that Act [42 U.S.C. 254e(a)(1)(B)], (ii) has filed an agreement with the Secretary by which it agrees not to charge any individual or other person for items or serv-

[6] See References in Text note below.

ices for which such individual is entitled to have payment made under this subchapter, except for the amount of any deductible or coinsurance amount imposed with respect to such items or services (not in excess of the amount customarily charged for such items and services by such clinic), pursuant to subsections (a) and (b) of section 1395*l* of this title, (iii) employs a physician assistant or nurse practitioner, and (iv) is not a rehabilitation agency or a facility which is primarily for the care and treatment of mental diseases. A facility that is in operation and qualifies as a rural health clinic under this subchapter or subchapter XIX of this chapter and that subsequently fails to satisfy the requirement of clause (i) shall be considered, for purposes of this subchapter and subchapter XIX of this chapter, as still satisfying the requirement of such clause if it is determined, in accordance with criteria established by the Secretary in regulations, to be essential to the delivery of primary care services that would otherwise be unavailable in the geographic area served by the clinic. If a State agency has determined under section 1395aa(a) of this title that a facility is a rural health clinic and the facility has applied to the Secretary for approval as such a clinic, the Secretary shall notify the facility of the Secretary's approval or disapproval not later than 60 days after the date of the State agency determination or the application (whichever is later).

(3) The term ''Federally qualified health center services'' means—

(A) services of the type described in subparagraphs (A) through (C) of paragraph (1) and services described in subsections (qq) and (vv); and

(B) preventive primary health services that a center is required to provide under section 330 of the Public Health Service Act [42 U.S.C. 254b],

when furnished to an individual as an outpatient of a Federally qualified health center by the center or by a health care professional under contract with the center and, for this purpose, any reference to a rural health clinic or a physician described in paragraph (2)(B) is deemed a reference to a Federally qualified health center or a physician at the center, respectively.

(4) The term ''Federally qualified health center'' means an entity which—

(A)(i) is receiving a grant under section 330 of the Public Health Service Act [42 U.S.C. 254b], or

(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and (II) meets the requirements to receive a grant under section 330 of such Act [42 U.S.C. 254b];

(B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant;

(C) was treated by the Secretary, for purposes of part B of this subchapter, as a comprehensive Federally funded health center as of January 1, 1990; or

(D) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(5)(A) The term ''physician assistant'' and the term ''nurse practitioner'' mean, for purposes of this subchapter, a physician assistant or nurse practitioner who performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law), and who meets such training, education, and experience requirements (or any combination thereof) as the Secretary may prescribe in regulations.

(B) The term ''clinical nurse specialist'' means, for purposes of this subchapter, an individual who—

(i) is a registered nurse and is licensed to practice nursing in the State in which the clinical nurse specialist services are performed; and

(ii) holds a master's degree in a defined clinical area of nursing from an accredited educational institution.

(6) The term ''collaboration'' means a process in which a nurse practitioner works with a physician to deliver health care services within the scope of the practitioner's professional expertise, with medical direction and appropriate supervision as provided for in jointly developed guidelines or other mechanisms as defined by the law of the State in which the services are performed.

(7)(A) The Secretary shall waive for a 1-year period the requirements of paragraph (2) that a rural health clinic employ a physician assistant, nurse practitioner or certified nurse midwife or that such clinic require such providers to furnish services at least 50 percent of the time that the clinic operates for any facility that requests such waiver if the facility demonstrates that the facility has been unable, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse-midwife in the previous 90-day period.

(B) The Secretary may not grant such a waiver under subparagraph (A) to a facility if the request for the waiver is made less than 6 months after the date of the expiration of any previous such waiver for the facility, or if the facility has not yet been determined to meet the requirements (including subparagraph (J) of the first sentence of paragraph (2)) of a rural health clinic.

(C) A waiver which is requested under this paragraph shall be deemed granted unless such request is denied by the Secretary within 60 days after the date such request is received.

(bb) Services of a certified registered nurse anesthetist

(1) The term ''services of a certified registered nurse anesthetist'' means anesthesia services and related care furnished by a certified registered nurse anesthetist (as defined in paragraph (2)) which the nurse anesthetist is legally authorized to perform as such by the State in which the services are furnished.

(2) The term ''certified registered nurse anesthetist'' means a certified registered nurse anesthetist licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. In prescribing such requirements the Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists. Such term also includes, as prescribed by the Secretary, an anesthesiologist assistant.

(cc) Comprehensive outpatient rehabilitation facility services

(1) The term ''comprehensive outpatient rehabilitation facility services'' means the following items and services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician—

(A) physicians' services;

(B) physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy;

(C) prosthetic and orthotic devices, including testing, fitting, or training in the use of prosthetic and orthotic devices;

(D) social and psychological services;

(E) nursing care provided by or under the supervision of a registered professional nurse;

(F) drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered;

(G) supplies and durable medical equipment; and

(H) such other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by comprehensive outpatient rehabilitation facilities,

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital. In the case of physical therapy, occupational therapy, and speech pathology services, there shall be no requirement that the item or service be furnished at any single fixed location if the item or service is furnished pursuant to such plan and payments are not otherwise made for the item or service under this subchapter.

(2) The term ''comprehensive outpatient rehabilitation facility'' means a facility which—

(A) is primarily engaged in providing (by or under the supervision of physicians) diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, disabled, or sick persons;

(B) provides at least the following comprehensive outpatient rehabilitation services: (i) physicians' services (rendered by physicians, as defined in subsection (r)(1) of this section, who are available at the facility on a full- or part-time basis); (ii) physical therapy; and (iii) social or psychological services;

(C) maintains clinical records on all patients;

(D) has policies established by a group of professional personnel (associated with the facility), including one or more physicians defined in subsection (r)(1) of this section to govern the comprehensive outpatient rehabilitation services it furnishes, and provides for the carrying out of such policies by a full- or part-time physician referred to in subparagraph (B)(i);

(E) has a requirement that every patient must be under the care of a physician;

(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the standards established for such licensing;

(G) has in effect a utilization review plan in accordance with regulations prescribed by the Secretary;

(H) has in effect an overall plan and budget that meets the requirements of subsection (z) of this section;

(I) provides the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000; and

(J) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such facility, including conditions concerning qualifications of personnel in these facilities.

The Secretary may waive the requirement of a surety bond under subparagraph (I) in the case of a facility that provides a comparable surety bond under State law.

(dd) Hospice care; hospice program; definitions; certification; waiver by Secretary

(1) The term ''hospice care'' means the following items and services provided to a terminally ill individual by, or by others under arrangements made by, a hospice program under a written plan (for providing such care to such individual) established and periodically reviewed by the individual's attending physician and by the medical director (and by the interdisciplinary group described in paragraph (2)(B)) of the program—

(A) nursing care provided by or under the supervision of a registered professional nurse,

(B) physical or occupational therapy, or speech-language pathology services,

(C) medical social services under the direction of a physician,

(D)(i) services of a home health aide who has successfully completed a training program approved by the Secretary and (ii) homemaker services,

(E) medical supplies (including drugs and biologicals) and the use of medical appliances, while under such a plan,

(F) physicians' services,

(G) short-term inpatient care (including both respite care and procedures necessary for pain control and acute and chronic symptom management) in an inpatient facility meeting such conditions as the Secretary determines to be appropriate to provide such care, but such respite care may be provided only on an

intermittent, nonroutine, and occasional basis and may not be provided consecutively over longer than five days,

(H) counseling (including dietary counseling) with respect to care of the terminally ill individual and adjustment to his death, and

(I) any other item or service which is specified in the plan and for which payment may otherwise be made under this subchapter.

The care and services described in subparagraphs (A) and (D) may be provided on a 24-hour, continuous basis only during periods of crisis (meeting criteria established by the Secretary) and only as necessary to maintain the terminally ill individual at home.

(2) The term ''hospice program'' means a public agency or private organization (or a subdivision thereof) which—

(A)(i) is primarily engaged in providing the care and services described in paragraph (1) and makes such services available (as needed) on a 24-hour basis and which also provides bereavement counseling for the immediate family of terminally ill individuals and services described in section 1395d(a)(5) of this title,

(ii) provides for such care and services in individuals' homes, on an outpatient basis, and on a short-term inpatient basis, directly or under arrangements made by the agency or organization, except that—

(I) the agency or organization must routinely provide directly substantially all of each of the services described in subparagraphs (A), (C), and (H) of paragraph (1), except as otherwise provided in paragraph (5), and

(II) in the case of other services described in paragraph (1) which are not provided directly by the agency or organization, the agency or organization must maintain professional management responsibility for all such services furnished to an individual, regardless of the location or facility in which such services are furnished; and

(iii) provides assurances satisfactory to the Secretary that the aggregate number of days of inpatient care described in paragraph (1)(G) provided in any 12-month period to individuals who have an election in effect under section 1395d(d) of this title with respect to that agency or organization does not exceed 20 percent of the aggregate number of days during that period on which such elections for such individuals are in effect;

(B) has an interdisciplinary group of personnel which—

(i) includes at least—

(I) one physician (as defined in subsection (r)(1) of this section),

(II) one registered professional nurse, and

(III) one social worker,

employed by or, in the case of a physician described in subclause (I), under contract with the agency or organization, and also includes at least one pastoral or other counselor,

(ii) provides (or supervises the provision of) the care and services described in paragraph (1), and

(iii) establishes the policies governing the provision of such care and services;

(C) maintains central clinical records on all patients;

(D) does not discontinue the hospice care it provides with respect to a patient because of the inability of the patient to pay for such care;

(E)(i) utilizes volunteers in its provision of care and services in accordance with standards set by the Secretary, which standards shall ensure a continuing level of effort to utilize such volunteers, and (ii) maintains records on the use of these volunteers and the cost savings and expansion of care and services achieved through the use of these volunteers;

(F) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, is licensed pursuant to such law; and

(G) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are provided care and services by such agency or organization.

(3)(A) An individual is considered to be ''terminally ill'' if the individual has a medical prognosis that the individual's life expectancy is 6 months or less.

(B) The term ''attending physician'' means, with respect to an individual, the physician (as defined in subsection (r)(1) of this section) or nurse practitioner (as defined in subsection (aa)(5) of this section), who may be employed by a hospice program, whom the individual identifies as having the most significant role in the determination and delivery of medical care to the individual at the time the individual makes an election to receive hospice care.

(4)(A) An entity which is certified as a provider of services other than a hospice program shall be considered, for purposes of certification as a hospice program, to have met any requirements under paragraph (2) which are also the same requirements for certification as such other type of provider. The Secretary shall coordinate surveys for determining certification under this subchapter so as to provide, to the extent feasible, for simultaneous surveys of an entity which seeks to be certified as a hospice program and as a provider of services of another type.

(B) Any entity which is certified as a hospice program and as a provider of another type shall have separate provider agreements under section 1395cc of this title and shall file separate cost reports with respect to costs incurred in providing hospice care and in providing other services and items under this subchapter.

(5)(A) The Secretary may waive the requirements of paragraph (2)(A)(ii)(I) for an agency or organization with respect to all or part of the nursing care described in paragraph (1)(A) if such agency or organization—

(i) is located in an area which is not an urbanized area (as defined by the Bureau of the Census);

(ii) was in operation on or before January 1, 1983; and

(iii) has demonstrated a good faith effort (as determined by the Secretary) to hire a sufficient number of nurses to provide such nursing care directly.

(B) Any waiver, which is in such form and containing such information as the Secretary may require and which is requested by an agency or organization under subparagraph (A) or (C), shall be deemed to be granted unless such request is denied by the Secretary within 60 days after the date such request is received by the Secretary. The granting of a waiver under subparagraph (A) or (C) shall not preclude the granting of any subsequent waiver request should such a waiver again become necessary.

(C) The Secretary may waive the requirements of paragraph (2)(A)(i) and (2)(A)(ii) for an agency or organization with respect to the services described in paragraph (1)(B) and, with respect to dietary counseling, paragraph (1)(H), if such agency or organization—

(i) is located in an area which is not an urbanized area (as defined by the Bureau of Census), and

(ii) demonstrates to the satisfaction of the Secretary that the agency or organization has been unable, despite diligent efforts, to recruit appropriate personnel.

(D) In extraordinary, exigent, or other nonroutine circumstances, such as unanticipated periods of high patient loads, staffing shortages due to illness or other events, or temporary travel of a patient outside a hospice program's service area, a hospice program may enter into arrangements with another hospice program for the provision by that other program of services described in paragraph (2)(A)(ii)(I). The provisions of paragraph (2)(A)(ii)(II) shall apply with respect to the services provided under such arrangements.

(E) A hospice program may provide services described in paragraph (1)(A) other than directly by the program if the services are highly specialized services of a registered professional nurse and are provided non-routinely and so infrequently so that the provision of such services directly would be impracticable and prohibitively expensive.

(ee) Discharge planning process

(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this subchapter and if it meets the guidelines and standards established by the Secretary under paragraph (2).

(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient's representative, or patient's physician.

(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

(D) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services, including hospice care and post-hospital extended care services, and the availability of those services, including the availability of home health services through individuals and entities that participate in the program under this subchapter and that serve the area in which the patient resides and that request to be listed by the hospital as available and, in the case of individuals who are likely to need post-hospital extended care services, the availability of such services through facilities that participate in the program under this subchapter and that serve the area in which the patient resides.

(E) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's representative).

(F) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel.

(H) Consistent with section 1395a of this title, the discharge plan shall—

(i) not specify or otherwise limit the qualified provider which may provide post-hospital home health services, and

(ii) identify (in a form and manner specified by the Secretary) any entity to whom the individual is referred in which the hospital has a disclosable financial interest (as specified by the Secretary consistent with section 1395cc(a)(1)(S) of this title) or which has such an interest in the hospital.

(3) With respect to a discharge plan for an individual who is enrolled with a Medicare+Choice organization under a Medicare+Choice plan and is furnished inpatient hospital services by a hospital under a contract with the organization—

(A) the discharge planning evaluation under paragraph (2)(D) is not required to include information on the availability of home health services through individuals and entities which do not have a contract with the organization; and

(B) notwithstanding subparagraph (H)(i)[7], the plan may specify or limit the provider (or providers) of post-hospital home health services or other post-hospital services under the plan.

[7] So in original. Probably should be ''paragraph (2)(H)(i)''.

(ff) Partial hospitalization services

(1) The term ''partial hospitalization services'' means the items and services described in paragraph (2) prescribed by a physician and provided under a program described in paragraph (3) under the supervision of a physician pursuant to an individualized, written plan of treatment established and periodically reviewed by a physician (in consultation with appropriate staff participating in such program), which plan sets forth the physician's diagnosis, the type, amount, frequency, and duration of the items and services provided under the plan, and the goals for treatment under the plan.

(2) The items and services described in this paragraph are—

(A) individual and group therapy with physicians or psychologists (or other mental health professionals to the extent authorized under State law),

(B) occupational therapy requiring the skills of a qualified occupational therapist,

(C) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients,

(D) drugs and biologicals furnished for therapeutic purposes (which cannot, as determined in accordance with regulations, be self-administered),

(E) individualized activity therapies that are not primarily recreational or diversionary,

(F) family counseling (the primary purpose of which is treatment of the individual's condition),

(G) patient training and education (to the extent that training and educational activities are closely and clearly related to individual's care and treatment),

(H) diagnostic services, and

(I) such other items and services as the Secretary may provide (but in no event to include meals and transportation);

that are reasonable and necessary for the diagnosis or active treatment of the individual's condition, reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization, and furnished pursuant to such guidelines relating to frequency and duration of services as the Secretary shall by regulation establish (taking into account accepted norms of medical practice and the reasonable expectation of patient improvement).

(3)(A) A program described in this paragraph is a program which is furnished by a hospital to its outpatients or by a community mental health center (as defined in subparagraph (B)), and which is a distinct and organized intensive ambulatory treatment service offering less than 24-hour-daily care.

(B) For purposes of subparagraph (A), the term ''community mental health center'' means an entity that—

(i)(I) provides the mental health services described in section 1913(c)(1) of the Public Health Service Act [42 U.S.C. 300x–2(c)(1)]; or

(II) in the case of an entity operating in a State that by law precludes the entity from providing itself the service described in subparagraph (E) of such section, provides for such service by contract with an approved organization or entity (as determined by the Secretary);

(ii) meets applicable licensing or certification requirements for community mental health centers in the State in which it is located; and

(iii) meets such additional conditions as the Secretary shall specify to ensure (I) the health and safety of individuals being furnished such services, (II) the effective and efficient furnishing of such services, and (III) the compliance of such entity with the criteria described in section 1931(c)(1) of the Public Health Service Act [42 U.S.C. 300x–31(c)(1)].

(gg) Certified nurse-midwife services

(1) The term ''certified nurse-midwife services'' means such services furnished by a certified nurse-midwife (as defined in paragraph (2)) and such services and supplies furnished as an incident to the nurse-midwife's service which the certified nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physicians' service.

(2) The term ''certified nurse-midwife'' means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary.

(hh) Clinical social worker; clinical social worker services

(1) The term ''clinical social worker'' means an individual who—

(A) possesses a master's or doctor's degree in social work;

(B) after obtaining such degree has performed at least 2 years of supervised clinical social work; and

(C)(i) is licensed or certified as a clinical social worker by the State in which the services are performed, or

(ii) in the case of an individual in a State which does not provide for licensure or certification—

(I) has completed at least 2 years or 3,000 hours of post-master's degree supervised clinical social work practice under the supervision of a master's level social worker in an appropriate setting (as determined by the Secretary), and

(II) meets such other criteria as the Secretary establishes.

(2) The term ''clinical social worker services'' means services performed by a clinical social worker (as defined in paragraph (1)) for the diagnosis and treatment of mental illnesses (other than services furnished to an inpatient of a hospital and other than services furnished to an inpatient of a skilled nursing facility which the facility is required to provide as a requirement for participation) which the clinical social worker is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed as would otherwise

be covered if furnished by a physician or as an incident to a physician's professional service.

(ii) Qualified psychologist services

The term ''qualified psychologist services'' means such services and such services and supplies furnished as an incident to his service furnished by a clinical psychologist (as defined by the Secretary) which the psychologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physician's service.

(jj) Screening mammography

The term ''screening mammography'' means a radiologic procedure provided to a woman for the purpose of early detection of breast cancer and includes a physician's interpretation of the results of the procedure.

(kk) Covered osteoporosis drug

The term ''covered osteoporosis drug'' means an injectable drug approved for the treatment of post-menopausal osteoporosis provided to an individual by a home health agency if, in accordance with regulations promulgated by the Secretary—

(1) the individual's attending physician certifies that the individual has suffered a bone fracture related to post-menopausal osteoporosis and that the individual is unable to learn the skills needed to self-administer such drug or is otherwise physically or mentally incapable of self-administering such drug; and

(2) the individual is confined to the individual's home (except when receiving items and services referred to in subsection (m)(7) of this section).

(*ll*) Speech-language pathology services; audiology services

(1) The term ''speech-language pathology services'' means such speech, language, and related function assessment and rehabilitation services furnished by a qualified speech-language pathologist as the speech-language pathologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician.

(2) The term ''audiology services'' means such hearing and balance assessment services furnished by a qualified audiologist as the audiologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), as would otherwise be covered if furnished by a physician.

(3) In this subsection:

(A) The term ''qualified speech-language pathologist'' means an individual with a master's or doctoral degree in speech-language pathology who—

(i) is licensed as a speech-language pathologist by the State in which the individual furnishes such services, or

(ii) in the case of an individual who furnishes services in a State which does not license speech-language pathologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time speech-language pathology services after obtaining a master's or doctoral degree in speech-language pathology or a related field, and successfully completed a national examination in speech-language pathology approved by the Secretary.

(B) The term ''qualified audiologist'' means an individual with a master's or doctoral degree in audiology who—

(i) is licensed as an audiologist by the State in which the individual furnishes such services, or

(ii) in the case of an individual who furnishes services in a State which does not license audiologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time audiology services after obtaining a master's or doctoral degree in audiology or a related field, and successfully completed a national examination in audiology approved by the Secretary.

(mm) Critical access hospital; critical access hospital services

(1) The term ''critical access hospital'' means a facility certified by the Secretary as a critical access hospital under section 1395i–4(e) of this title.

(2) The term ''inpatient critical access hospital services'' means items and services, furnished to an inpatient of a critical access hospital by such facility, that would be inpatient hospital services if furnished to an inpatient of a hospital by a hospital.

(3) The term ''outpatient critical access hospital services'' means medical and other health services furnished by a critical access hospital on an outpatient basis.

(nn) Screening pap smear; screening pelvic exam

(1) The term ''screening pap smear'' means a diagnostic laboratory test consisting of a routine exfoliative cytology test (Papanicolaou test) provided to a woman for the purpose of early detection of cervical or vaginal cancer and includes a physician's interpretation of the results of the test, if the individual involved has not had such a test during the preceding 2 years, or during the preceding year in the case of a woman described in paragraph (3).

(2) The term ''screening pelvic exam'' means a pelvic examination provided to a woman if the woman involved has not had such an examination during the preceding 2 years, or during the preceding year in the case of a woman described in paragraph (3), and includes a clinical breast examination.

(3) A woman described in this paragraph is a woman who—

(A) is of childbearing age and has had a test described in this subsection during any of the preceding 3 years that indicated the presence of cervical or vaginal cancer or other abnormality; or

(B) is at high risk of developing cervical or vaginal cancer (as determined pursuant to factors identified by the Secretary).

(*oo*) Prostate cancer screening tests

(1) The term ''prostate cancer screening test'' means a test that consists of any (or all) of the procedures described in paragraph (2) provided for the purpose of early detection of prostate cancer to a man over 50 years of age who has not had such a test during the preceding year.

(2) The procedures described in this paragraph are as follows:

(A) A digital rectal examination.

(B) A prostate-specific antigen blood test.

(C) For years beginning after 2002, such other procedures as the Secretary finds appropriate for the purpose of early detection of prostate cancer, taking into account changes in technology and standards of medical practice, availability, effectiveness, costs, and such other factors as the Secretary considers appropriate.

(pp) Colorectal cancer screening tests

(1) The term ''colorectal cancer screening test'' means any of the following procedures furnished to an individual for the purpose of early detection of colorectal cancer:

(A) Screening fecal-occult blood test.

(B) Screening flexible sigmoidoscopy.

(C) Screening colonoscopy.

(D) Such other tests or procedures, and modifications to tests and procedures under this subsection, with such frequency and payment limits, as the Secretary determines appropriate, in consultation with appropriate organizations.

(2) An ''individual at high risk for colorectal cancer'' is an individual who, because of family history, prior experience of cancer or precursor neoplastic polyps, a history of chronic digestive disease condition (including inflammatory bowel disease, Crohn's Disease, or ulcerative colitis), the presence of any appropriate recognized gene markers for colorectal cancer, or other predisposing factors, faces a high risk for colorectal cancer.

(qq) Diabetes outpatient self-management training services

(1) The term ''diabetes outpatient self-management training services'' means educational and training services furnished (at such times as the Secretary determines appropriate) to an individual with diabetes by a certified provider (as described in paragraph (2)(A)) in an outpatient setting by an individual or entity who meets the quality standards described in paragraph (2)(B), but only if the physician who is managing the individual's diabetic condition certifies that such services are needed under a comprehensive plan of care related to the individual's diabetic condition to ensure therapy compliance or to provide the individual with necessary skills and knowledge (including skills related to the self-administration of injectable drugs) to participate in the management of the individual's condition.

(2) In paragraph (1)—

(A) a ''certified provider'' is a physician, or other individual or entity designated by the Secretary, that, in addition to providing diabetes outpatient self-management training services, provides other items or services for which payment may be made under this subchapter; and

(B) a physician, or such other individual or entity, meets the quality standards described in this paragraph if the physician, or individual or entity, meets quality standards established by the Secretary, except that the physician or other individual or entity shall be deemed to have met such standards if the physician or other individual or entity meets applicable standards originally established by the National Diabetes Advisory Board and subsequently revised by organizations who participated in the establishment of standards by such Board, or is recognized by an organization that represents individuals (including individuals under this subchapter) with diabetes as meeting standards for furnishing the services.

(rr) Bone mass measurement

(1) The term ''bone mass measurement'' means a radiologic or radioisotopic procedure or other procedure approved by the Food and Drug Administration performed on a qualified individual (as defined in paragraph (2)) for the purpose of identifying bone mass or detecting bone loss or determining bone quality, and includes a physician's interpretation of the results of the procedure.

(2) For purposes of this subsection, the term ''qualified individual'' means an individual who is (in accordance with regulations prescribed by the Secretary)—

(A) an estrogen-deficient woman at clinical risk for osteoporosis;

(B) an individual with vertebral abnormalities;

(C) an individual receiving long-term glucocorticoid steroid therapy;

(D) an individual with primary hyperparathyroidism; or

(E) an individual being monitored to assess the response to or efficacy of an approved osteoporosis drug therapy.

(3) The Secretary shall establish such standards regarding the frequency with which a qualified individual shall be eligible to be provided benefits for bone mass measurement under this subchapter.

(ss) Religious nonmedical health care institution

(1) The term ''religious nonmedical health care institution'' means an institution that—

(A) is described in subsection (c)(3) of section 501 of the Internal Revenue Code of 1986 and is exempt from taxes under subsection (a) of such section;

(B) is lawfully operated under all applicable Federal, State, and local laws and regulations;

(C) provides only nonmedical nursing items and services exclusively to patients who choose to rely solely upon a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs;

(D) provides such nonmedical items and services exclusively through nonmedical nursing personnel who are experienced in caring for the physical needs of such patients;

(E) provides such nonmedical items and services to inpatients on a 24-hour basis;

(F) on the basis of its religious beliefs, does not provide through its personnel or otherwise medical items and services (including any medical screening, examination, diagnosis, prognosis, treatment, or the administration of drugs) for its patients;

(G)(i) is not owned by, under common ownership with, or has an ownership interest in, a provider of medical treatment or services;

(ii) is not affiliated with—

(I) a provider of medical treatment or services, or

(II) an individual who has an ownership interest in a provider of medical treatment or services;

(H) has in effect a utilization review plan which—

(i) provides for the review of admissions to the institution, of the duration of stays therein, of cases of continuous extended duration, and of the items and services furnished by the institution,

(ii) requires that such reviews be made by an appropriate committee of the institution that includes the individuals responsible for overall administration and for supervision of nursing personnel at the institution,

(iii) provides that records be maintained of the meetings, decisions, and actions of such committee, and

(iv) meets such other requirements as the Secretary finds necessary to establish an effective utilization review plan;

(I) provides the Secretary with such information as the Secretary may require to implement section 1395i–5 of this title, including information relating to quality of care and coverage determinations; and

(J) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution.

(2) To the extent that the Secretary finds that the accreditation of an institution by a State, regional, or national agency or association provides reasonable assurances that any or all of the requirements of paragraph (1) are met or exceeded, the Secretary may treat such institution as meeting the condition or conditions with respect to which the Secretary made such finding.

(3)(A)(i) In administering this subsection and section 1395i–5 of this title, the Secretary shall not require any patient of a religious nonmedical health care institution to undergo medical screening, examination, diagnosis, prognosis, or treatment or to accept any other medical health care service, if such patient (or legal representative of the patient) objects thereto on religious grounds.

(ii) Clause (i) shall not be construed as preventing the Secretary from requiring under section 1395i–5(a)(2) of this title the provision of sufficient information regarding an individual's condition as a condition for receipt of benefits under part A of this subchapter for services provided in such an institution.

(B)(i) In administering this subsection and section 1395i–5 of this title, the Secretary shall not subject a religious nonmedical health care institution or its personnel to any medical supervision, regulation, or control, insofar as such supervision, regulation, or control would be contrary to the religious beliefs observed by the institution or such personnel.

(ii) Clause (i) shall not be construed as preventing the Secretary from reviewing items and services billed by the institution to the extent the Secretary determines such review to be necessary to determine whether such items and services were not covered under part A of this subchapter, are excessive, or are fraudulent.

(4)(A) For purposes of paragraph (1)(G)(i), an ownership interest of less than 5 percent shall not be taken into account.

(B) For purposes of paragraph (1)(G)(ii), none of the following shall be considered to create an affiliation:

(i) An individual serving as an uncompensated director, trustee, officer, or other member of the governing body of a religious nonmedical health care institution.

(ii) An individual who is a director, trustee, officer, employee, or staff member of a religious nonmedical health care institution having a family relationship with an individual who is affiliated with (or has an ownership interest in) a provider of medical treatment or services.

(iii) An individual or entity furnishing goods or services as a vendor to both providers of medical treatment or services and religious nonmedical health care institutions.

(tt) Post-institutional home health services; home health spell of illness

(1) The term ''post-institutional home health services'' means home health services furnished to an individual—

(A) after discharge from a hospital or critical access hospital in which the individual was an inpatient for not less than 3 consecutive days before such discharge if such home health services were initiated within 14 days after the date of such discharge; or

(B) after discharge from a skilled nursing facility in which the individual was provided post-hospital extended care services if such home health services were initiated within 14 days after the date of such discharge.

(2) The term ''home health spell of illness'' with respect to any individual means a period of consecutive days—

(A) beginning with the first day (not included in a previous home health spell of illness) (i) on which such individual is furnished post-institutional home health services, and (ii) which occurs in a month for which the individual is entitled to benefits under part A of this subchapter, and

(B) ending with the close of the first period of 60 consecutive days thereafter on each of which the individual is neither an inpatient of a hospital or critical access hospital nor an inpatient of a facility described in section 1395i–3(a)(1) of this title or subsection (y)(1) of this section nor provided home health services.

(uu) Screening for glaucoma

The term ''screening for glaucoma'' means a dilated eye examination with an intraocular

pressure measurement, and a direct ophthalmoscopy or a slit-lamp biomicroscopic examination for the early detection of glaucoma which is furnished by or under the direct supervision of an optometrist or ophthalmologist who is legally authorized to furnish such services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished, as would otherwise be covered if furnished by a physician or as an incident to a physician's professional service, if the individual involved has not had such an examination in the preceding year.

(vv) Medical nutrition therapy services; registered dietitian or nutrition professional

(1) The term ''medical nutrition therapy services'' means nutritional diagnostic, therapy, and counseling services for the purpose of disease management which are furnished by a registered dietitian or nutrition professional (as defined in paragraph (2)) pursuant to a referral by a physician (as defined in subsection (r)(1) of this section).

(2) Subject to paragraph (3), the term ''registered dietitian or nutrition professional'' means an individual who—

(A) holds a baccalaureate or higher degree granted by a regionally accredited college or university in the United States (or an equivalent foreign degree) with completion of the academic requirements of a program in nutrition or dietetics, as accredited by an appropriate national accreditation organization recognized by the Secretary for this purpose;

(B) has completed at least 900 hours of supervised dietetics practice under the supervision of a registered dietitian or nutrition professional; and

(C)(i) is licensed or certified as a dietitian or nutrition professional by the State in which the services are performed; or

(ii) in the case of an individual in a State that does not provide for such licensure or certification, meets such other criteria as the Secretary establishes.

(3) Subparagraphs (A) and (B) of paragraph (2) shall not apply in the case of an individual who, as of December 21, 2000, is licensed or certified as a dietitian or nutrition professional by the State in which medical nutrition therapy services are performed.

(ww) Initial preventive physical examination

(1) The term ''initial preventive physical examination'' means physicians' services consisting of a physical examination (including measurement of height, weight, and blood pressure, and an electrocardiogram) with the goal of health promotion and disease detection and includes education, counseling, and referral with respect to screening and other preventive services described in paragraph (2), but does not include clinical laboratory tests.

(2) The screening and other preventive services described in this paragraph include the following:

(A) Pneumococcal, influenza, and hepatitis B vaccine and administration under subsection (s)(10).

(B) Screening mammography as defined in subsection (jj).

(C) Screening pap smear and screening pelvic exam as defined in subsection (nn).

(D) Prostate cancer screening tests as defined in subsection (*oo*).

(E) Colorectal cancer screening tests as defined in subsection (pp).

(F) Diabetes outpatient self-management training services as defined in subsection (qq)(1).

(G) Bone mass measurement as defined in subsection (rr).

(H) Screening for glaucoma as defined in subsection (uu).

(I) Medical nutrition therapy services as defined in subsection (vv).

(J) Cardiovascular screening blood tests as defined in subsection (xx)(1).

(K) Diabetes screening tests as defined in subsection (yy).

(L) Ultrasound screening for abdominal aortic aneurysm as defined in subsection (bbb).

(xx) Cardiovascular screening blood test

(1) The term ''cardiovascular screening blood test'' means a blood test for the early detection of cardiovascular disease (or abnormalities associated with an elevated risk of cardiovascular disease) that tests for the following:

(A) Cholesterol levels and other lipid or triglyceride levels.

(B) Such other indications associated with the presence of, or an elevated risk for, cardiovascular disease as the Secretary may approve for all individuals (or for some individuals determined by the Secretary to be at risk for cardiovascular disease), including indications measured by noninvasive testing.

The Secretary may not approve an indication under subparagraph (B) for any individual unless a blood test for such is recommended by the United States Preventive Services Task Force.

(2) The Secretary shall establish standards, in consultation with appropriate organizations, regarding the frequency for each type of cardiovascular screening blood tests, except that such frequency may not be more often than once every 2 years.

(yy) Diabetes screening tests

(1) The term ''diabetes screening tests'' means testing furnished to an individual at risk for diabetes (as defined in paragraph (2)) for the purpose of early detection of diabetes, including—

(A) a fasting plasma glucose test; and

(B) such other tests, and modifications to tests, as the Secretary determines appropriate, in consultation with appropriate organizations.

(2) For purposes of paragraph (1), the term ''individual at risk for diabetes'' means an individual who has any of the following risk factors for diabetes:

(A) Hypertension.

(B) Dyslipidemia.

(C) Obesity, defined as a body mass index greater than or equal to 30 kg/m^2.

(D) Previous identification of an elevated impaired fasting glucose.

(E) Previous identification of impaired glucose tolerance.

(F) A risk factor consisting of at least 2 of the following characteristics:

(i) Overweight, defined as a body mass index greater than 25, but less than 30, kg/m^2.

(ii) A family history of diabetes.

(iii) A history of gestational diabetes mellitus or delivery of a baby weighing greater than 9 pounds.

(iv) 65 years of age or older.

(3) The Secretary shall establish standards, in consultation with appropriate organizations, regarding the frequency of diabetes screening tests, except that such frequency may not be more often than twice within the 12-month period following the date of the most recent diabetes screening test of that individual.

(zz) Intravenous immune globulin

The term ''intravenous immune globulin'' means an approved pooled plasma derivative for the treatment in the patient's home of a patient with a diagnosed primary immune deficiency disease, but not including items or services related to the administration of the derivative, if a physician determines administration of the derivative in the patient's home is medically appropriate.

(aaa) Extended care in religious nonmedical health care institutions

(1) The term ''home health agency'' also includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section), but only with respect to items and services ordinarily furnished by such an institution to individuals in their homes, and that are comparable to items and services furnished to individuals by a home health agency that is not religious nonmedical health care institution.

(2)(A) Subject to subparagraphs (B), payment may be made with respect to services provided by such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations consistent with section 1395i–5 of this title.

(B) Notwithstanding any other provision of this subchapter, payment may not be made under subparagraph (A)—

(i) in a year insofar as such payments exceed $700,000; and

(ii) after December 31, 2006.

(bbb) Ultrasound screening for abdominal aortic aneurysm

The term ''ultrasound screening for abdominal aortic aneurysm'' means—

(1) a procedure using sound waves (or such other procedures using alternative technologies, of commensurate accuracy and cost, that the Secretary may specify) provided for the early detection of abdominal aortic aneurysm; and

(2) includes a physician's interpretation of the results of the procedure.

(Aug. 14, 1935, ch. 531, title XVIII, § 1861, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 313; amended Pub. L. 89–713, § 7, Nov. 2, 1966, 80 Stat. 1111; Pub. L. 90–248, title I, §§ 127(a), 129(a), (b), (c)(9)(C), (10), (11), 132(a), 133(a), (b), 134(a), 143(a), 144(a)–(d), Jan. 2, 1968, 81 Stat. 846–850, 852, 857, 858; Pub. L. 91–690, Jan. 12, 1971, 84 Stat. 2074; Pub. L. 92–603, title II, §§ 211(b), (c)(2), 221(c)(4), 223(a)–(d), (f), 227(a), (c), (d)(1), (f), 234(a)–(f), 237(c), 244(c), 246(b), 248, 249(b), 251(a)(1), (b)(1), (c), 252(a), 256(b), 264(a), 265, 267, 273(a), 276(a), 278(a) (4)–(15), (b)(6), (10), (11), (13), 283(a), Oct. 30, 1972, 86 Stat. 1383, 1384, 1389, 1393, 1394, 1404–1407, 1412, 1413, 1416, 1423–1426, 1445–1447, 1449–1454, 1456; Pub. L. 94–182, title I, §§ 102, 106(a), 112(a)(1), Dec. 31, 1975, 89 Stat. 1051, 1052, 1055; Pub. L. 95–142, §§ 3(a)(2), 5(m), 19(b)(1), 21(a), Oct. 25, 1977, 91 Stat. 1178, 1191, 1204, 1207; Pub. L. 95–210, § 1(d), (g), (h), Dec. 13, 1977, 91 Stat. 1485, 1487, 1488; Pub. L. 95–216, title V, § 501(a), Dec. 20, 1977, 91 Stat. 1564; Pub. L. 95–292, § 4(d), June 13, 1978, 92 Stat. 315; Pub. L. 96–499, title IX, §§ 902(a)(1), 915(a), 930(k)–(n), (p), 931(c), (d), 933(c)–(e), 936(a), 937(a), 938(a), 948(a)(1), 949, 950, 951(a), (b), 952(a), formerly 952, Dec. 5, 1980, 94 Stat. 2612, 2623, 2632, 2633, 2635, 2639, 2640, 2643, 2645, 2646; Pub. L. 96–611, § 1(a)(1), (b)(3), Dec. 28, 1980, 94 Stat. 3566; Pub. L. 97–35, title XXI, §§ 2102(a), 2114, 2121(c), (d), 2141(a), 2142(a), 2143(a), 2144(a), 2193(c)(9), Aug. 13, 1981, 95 Stat. 787, 796–799, 828; Pub. L. 97–248, title I, §§ 101(a)(2), (d), 102(a), 103(a), 105(a), 106(a), 107(a), 108(a)(2), 109(b), 114(b), 122(d), 127(1), 128(a)(1), (d)(2), 148(b), Sept. 3, 1982, 96 Stat. 335–339, 350, 359, 366, 367, 394; Pub. L. 97–448, title III, § 309(a)(4), Jan. 12, 1983, 96 Stat. 2408; Pub. L. 98–21, title VI, §§ 602(d), 607(b)(2), (d), Apr. 20, 1983, 97 Stat. 163, 171, 172; Pub. L. 98–369, div. B, title III, §§ 2314(a), 2318(a), (b), 2319(a), 2321(e), 2322(a), 2323(a), 2324(a), 2335(b), 2340(a), 2341(a), (c), 2342(a), 2343(a), (b), 2354(b)(18)–(29), July 18, 1984, 98 Stat. 1079, 1081, 1082, 1085, 1086, 1090, 1093, 1094, 1101; Pub. L. 98–617, § 3(a)(4), (b)(7), Nov. 8, 1984, 98 Stat. 3295, 3296; Pub. L. 99–272, title IX, §§ 9107(b), 9110(a), 9202(i)(1), 9219(b)(1)(B), (3)(A), Apr. 7, 1986, 100 Stat. 160, 162, 177, 182, 183; Pub. L. 99–509, title IX, §§ 9305(c)(1), (2), 9313(a)(2), 9315(a), 9320(b), (c), (f), 9335(c)(1), 9336(a), 9337(d), 9338(a), Oct. 21, 1986, 100 Stat. 1989, 2002, 2005, 2013, 2015, 2030, 2033, 2034; Pub. L. 100–203, title IV, §§ 4009(e)(1), (f), 4021(a), 4026(a)(1), 4039(b), 4064(e)(1), 4065(a), 4070(b)(1), (2), 4071(a), 4072(a), 4073(a), (c), 4074(a), (b), 4075(a), 4076(a), 4077(a)(1), (b)(1), (4), formerly (5), 4078, 4084(c)(1), 4085(i)(9)–(14), 4201(a)(1), (b)(1), (d)(1), (2), (5), formerly (d), Dec. 22, 1987, 101 Stat. 1330–57, 1330–58, 1330–67, 1330–74, 1330–81, 1330–111, 1330–112, 1330–114, 1330–116, 1330–118 to 1330–121, 1330–132, 1330–133, 1330–160, 1330–174, as amended Pub. L. 100–360, title IV, § 411(h)(4)(D), (5)–(7)(A), (E), (F), (i)(3), (4)(C)(iii), (*l*)(1)(B), (C), July 1, 1988, 102 Stat. 787–789, 801, as amended Pub. L. 100–485, title VI, § 608(d)(27)(B), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 100–360, title I, § 104(d)(4), title II, §§ 202(a), 203(b), (e)(1), 204(a), 205(b), 206(a), title IV, § 411(d)(1)(B)(i), (5)(A), (g)(3)(H), (h)(1)(B), (2), (3)(A), July 1, 1988, 102 Stat. 689, 702, 721, 725, 730, 731, 773, 774, 785, 786; Pub. L. 100–485, title VI, § 608(d)(6)(A), (23)(B), Oct. 13, 1988, 102 Stat. 2414, 2421; Pub. L. 100–647, title VIII, §§ 8423(a), 8424(a), Nov. 10, 1988, 102 Stat. 3803; Pub. L. 101–234, title I, § 101(a), title II, § 201(a), Dec. 13, 1989, 103 Stat. 1979, 1981; Pub. L. 101–239, title VI, §§ 6003(g)(3)(A), (C)(i), (D)(x), 6110, 6112(e)(1), 6113(a)–(b)(2), 6114(a), (d), 6115(a), 6116(a)(1), 6131(a)(2), 6141(a), 6213(a)–(c), Dec. 19, 1989, 103 Stat. 2151–2153, 2213, 2215–2219, 2221, 2225, 2250, 2251; Pub. L. 101–508, title IV,

§§4008(h)(2)(A)(i), 4151(a), (b)(1), 4152(a)(2), 4153(b)(2)(A), 4155(a), (d), 4156(a), 4157(a), 4161(a)(1), (2), (5), (b)(1), (2), 4162(a), 4163(a), 4201(d)(1), 4207(d)(1), formerly 4027(d)(1), Nov. 5, 1990, 104 Stat. 1388–48, 1388–71, 1388–72, 1388–74, 1388–84, 1388–86 to 1388–88, 1388–93 to 1388–96, 1388–104, 1388–120, renumbered Pub. L. 103–432, title I, §160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 101–597, title IV, §401(c)(2), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103–66, title XIII, §§13503(c)(1)(A), 13521, 13522, 13553(a), (b), 13554(a), 13556(a), 13564(a)(2), (b)(1), 13565, 13566(b), Aug. 10, 1993, 107 Stat. 578, 586, 591, 592, 607; Pub. L. 103–432, title I, §§102(g)(4), 104, 107(a), 145(b), 146(a), (b), 147(e)(1), (4), (5), (f)(3), (4)(A), (6)(A), (B), (E), 158(a)(1), Oct. 31, 1994, 108 Stat. 4404, 4405, 4407, 4427–4432, 4442; Pub. L. 104–299, §4(b)(1), Oct. 11, 1996, 110 Stat. 3645; Pub. L. 105–33, title IV, §§4102(a), (c), 4103(a), 4104(a)(1), 4105(a)(1), (b)(1), 4106(a), 4201(c)(1), (2), 4205(b)(1), (c)(1), (d)(1)–(3)(A), 4312(b)(1), (2), (d), (e), 4320, 4321(a), 4404(a), 4432(b)(5)(D), (E), 4444(a), 4445, 4446, 4451, 4454(a)(1), 4511(a)(1)–(2)(B), (d), 4512(a), 4513(a), 4522, 4531(a)(1), 4557(a), 4601(a), 4602(a)–(c), 4604(b), 4611(b), 4612(a), Aug. 5, 1997, 111 Stat. 360–362, 366, 367, 373, 376, 377, 386, 387, 394, 400, 421–426, 442–444, 450, 463, 466, 472, 474; Pub. L. 105–277, div. J, title V, §5101(a), (b), (d)(1), Oct. 21, 1998, 112 Stat. 2681–913, 2681–914; Pub. L. 106–113, div. B, §1000(a)(6) [title II, §§201(k), 221(b)(1), 227(a), title III, §§303(a), 304(a), 321(k)(7)–(9), title V, §521], Nov. 29, 1999, 113 Stat. 1536, 1501A–341, 1501A–351, 1501A–354, 1501A–360, 1501A–361, 1501A–367, 1501A–386; Pub. L. 106–554, §1(a)(6) [title I, §§101(a), 102(a), (b), 103(a), 105(a), (b), 112(a), 113(a), title IV, §§430(b), 431(a), title V, §§502(a), 541], Dec. 21, 2000, 114 Stat. 2763, 2763A–467, 2763A–468, 2763A–471, 2763A–473, 2763A–525, 2763A–529, 2763A–550; Pub. L. 108–173, title III, §303(i)(2), title IV, §§408(a), 414(g)(2), 415(b), title V, §512(c), title VI, §§611(a), (b), (d)(2), 612(a), (b), 613(a), (b), 642(a), title VII, §§706(b), 736(a)(10), (11), (b)(3), (11), (12), (c)(4), title IX, §§901(b), 926(b)(1), 946(a), Dec. 8, 2003, 117 Stat. 2254, 2270, 2281, 2282, 2299, 2303–2305, 2322, 2339, 2355, 2356, 2374, 2396, 2424; Pub. L. 109–171, title V, §§5004, 5112(a), (b), 5114(a)(1), (b), title VI, §6001(f)(1), Feb. 8, 2006, 120 Stat. 32, 43–45, 58.)

References in Text

Parts A and B of this subchapter, referred to in text, are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Section 4071(b) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (s)(10)(A), is section 4071(b) of Pub. L. 100–203, which is set out as a note below.

Section 4072(e) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (s)(12), is section 4072(e) of Pub. L. 100–203, which is set out as a note below.

The Public Health Service Act, referred to in subsec. (v)(1)(M), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of this title. Titles VI and XVI of the Public Health Service Act are classified generally to subchapters IV (§291 et seq.) and XIV (§300q et seq.), respectively, of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 1395cc(a)(2)(B)(ii) of this title, referred to in subsec. (v)(4), was repealed by Pub. L. 101–239, title VI, §6017(2), Dec. 19, 1989, 103 Stat. 2165.

Part B of subchapter XI of this chapter, referred to in subsec. (w)(2), is classified to section 1320c et seq. of this title.

Section 329 of the Public Health Service Act, referred to in subsec. (aa)(2), was section 329 of act July 1, 1944, which was classified to section 254b of this title and was omitted in the general amendment of subpart I (§254b et seq.) of part D of subchapter II of chapter 6A of this title by Pub. L. 104–299, §2, Oct. 11, 1996, 110 Stat. 3626.

The Indian Self-Determination Act, referred to in subsec. (aa)(4)(D), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (aa)(4)(D), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§1651 et seq.) of chapter 18 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (ss)(1)(A), is classified generally to Title 26, Internal Revenue Code.

Amendments

2006—Subsec. (s)(2)(AA). Pub. L. 109–171, §5112(a)(1), added subpar. (AA).

Subsec. (t)(2)(B)(ii)(I). Pub. L. 109–171, §6001(f)(1), inserted ''(or its successor publications)'' after ''United States Pharmacopoeia-Drug Information''.

Subsec. (v)(1)(T). Pub. L. 109–171, §5004(b), substituted ''section 1395*l*(t)(8)(B)'' for ''section 1395*l*(t)(5)(B)'' in introductory provisions.

Subsec. (v)(1)(V). Pub. L. 109–171, §5004(a), added subpar. (V).

Subsec. (aa)(3). Pub. L. 109–171, §5114(a)(1), substituted ''and services described in subsections (qq) and (vv); and'' for '', and'' in subpar. (A) and ''section 330'' for ''sections 329, 330, and 340'' in subpar. (B) and inserted ''by the center or by a health care professional under contract with the center'' after ''outpatient of a Federally qualified health center'' in concluding provisions.

Subsec. (aa)(4)(A)(i), (ii)(II). Pub. L. 109–171, §5114(b), struck out ''(other than subsection (h))'' after ''section 330''.

Subsec. (ww)(2)(L). Pub. L. 109–171, §5112(b), added subpar. (L).

Subsec. (bbb). Pub. L. 109–171, §5112(a)(2), added subsec. (bbb).

2003—Subsec. (d). Pub. L. 108–173, §901(b), added subsec. (d).

Subsec. (s)(2)(A). Pub. L. 108–173, §303(i)(2), inserted ''(or would have been so included but for the application of section 1395w–3b of this title)'' after ''included in the physicians' bills''.

Subsec. (s)(2)(K)(i). Pub. L. 108–173, §736(b)(11), substituted '', but'' for ''; and but''.

Pub. L. 108–173, §611(d)(2), inserted ''and services described in subsection (ww)(1) of this section'' after ''services which would be physicians' services''.

Subsec. (s)(2)(K)(ii). Pub. L. 108–173, §611(d)(2), inserted ''and services described in subsection (ww)(1) of this section'' after ''services which would be physicians' services''.

Subsec. (s)(2)(W). Pub. L. 108–173, §611(a), added subpar. (W).

Subsec. (s)(2)(X). Pub. L. 108–173, §612(a), added subpar. (X).

Subsec. (s)(2)(Y). Pub. L. 108–173, §613(a), added subpar. (Y).

Subsec. (s)(2)(Z). Pub. L. 108–173, §642(a)(1), added subpar. (Z).

Subsec. (s)(7). Pub. L. 108–173, §415(b), inserted '', subject to section 1395m(*l*)(14) of this title,'' after ''but''.

Subsec. (v)(1)(S)(ii)(III). Pub. L. 108–173, § 736(b)(3), inserted closing parenthesis after ''as defined in section 1395ww(d)(5)(D)(iii) of this title''.

Subsec. (v)(1)(U). Pub. L. 108–173, § 414(g)(2), realigned margins.

Subsec. (v)(8). Pub. L. 108–173, § 736(c)(4), realigned margins.

Subsec. (aa)(1)(B). Pub. L. 108–173, § 736(b)(12), struck out second comma after ''(as defined in subsection (hh)(1) of this section),''.

Subsec. (dd)(2)(A)(i). Pub. L. 108–173, § 512(c), inserted ''and services described in section 1395d(a)(5) of this title'' before comma at end.

Subsec. (dd)(3)(B). Pub. L. 108–173, § 408(a), inserted ''or nurse practitioner (as defined in subsection (aa)(5) of this section)'' after ''the physician (as defined in subsection (r)(1) of this section)''.

Subsec. (dd)(5)(D), (E). Pub. L. 108–173, § 946(a), added subpars. (D) and (E).

Subsec. (ee)(2)(D). Pub. L. 108–173, § 926(b)(1), substituted ''hospice care and post-hospital extended care services'' for ''hospice services'' and inserted before period at end ''and, in the case of individuals who are likely to need post-hospital extended care services, the availability of such services through facilities that participate in the program under this subchapter and that serve the area in which the patient resides''.

Subsec. (mm). Pub. L. 108–173, § 736(a)(10), made technical amendment to heading.

Subsec. (tt)(1)(A), (2)(B). Pub. L. 108–173, § 736(a)(11), substituted ''critical access hospital'' for ''rural primary care hospital''.

Subsec. (ww). Pub. L. 108–173, § 611(b), added subsec. (ww).

Subsec. (xx). Pub. L. 108–173, § 612(b), added subsec. (xx).

Subsec. (yy). Pub. L. 108–173, § 613(b), added subsec. (yy).

Subsec. (zz). Pub. L. 108–173, § 642(a)(2), added subsec. (zz).

Subsec. (aaa). Pub. L. 108–173, § 706(b), added subsec. (aaa).

2000—Subsec. (s)(2)(A), (B). Pub. L. 106–554, § 1(a)(6) [title I, § 112(a)], substituted ''(including drugs and biologicals which are not usually self-administered by the patient)'' for ''(including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered)''.

Subsec. (s)(2)(J). Pub. L. 106–554, § 1(a)(6) [title I, § 113(a)], struck out provisions limiting application to drugs furnished within 12 months after the date of the transplant procedure for drugs furnished before 1995, to within 18 months after the date of the transplant procedure for drugs furnished during 1995, to within 24 months after the date of the transplant procedure for drugs furnished during 1996, to within 30 months after the date of the transplant procedure for drugs furnished during 1997, and to within 36 months after the date of the transplant procedure plus additional number of months provided under section 1395k(b) for drugs furnished during any year after 1997.

Subsec. (s)(2)(U). Pub. L. 106–554, § 1(a)(6) [title I, § 102(a)], added subpar. (U).

Subsec. (s)(2)(V). Pub. L. 106–554, § 1(a)(6) [title I, § 105(a)], added subpar. (V).

Subsec. (t)(1). Pub. L. 106–554, § 1(a)(6) [title IV, § 430(b)], inserted ''(including contrast agents)'' after ''only such drugs''.

Subsec. (v)(1)(L)(x). Pub. L. 106–554, § 1(a)(6) [title V, § 502(a)], struck out ''2001,'' after ''2000,'' and inserted at end ''With respect to cost reporting periods beginning during fiscal year 2001, the update to any limit under this subparagraph shall be the home health market basket index.''

Subsec. (v)(1)(T)(ii). Pub. L. 106–554, § 1(a)(6) [title V, § 541(1)], struck out ''and'' at end.

Subsec. (v)(1)(T)(iii). Pub. L. 106–554, § 1(a)(6) [title V, § 541(2)], substituted ''during fiscal year 2000'' for ''during a subsequent fiscal year'' and '', and'' for period at end.

Subsec. (v)(1)(T)(iv). Pub. L. 106–554, § 1(a)(6) [title V, § 541(3)], added cl. (iv).

Subsec. (ff)(3)(B). Pub. L. 106–554, § 1(a)(6) [title IV, § 431(a)], substituted ''entity that—'' for ''entity—'', added cls. (i) to (iii), and struck out former cls. (i) and (ii) which read as follows:

''(i) providing the services described in section 1916(c)(4) of the Public Health Service Act; and

''(ii) meeting applicable licensing or certification requirements for community mental health centers in the State in which it is located.''

Subsec. (nn)(1), (2). Pub. L. 106–554, § 1(a)(6) [title I, § 101(a)], substituted ''2 years'' for ''3 years''.

Subsec. (pp)(1)(C). Pub. L. 106–554, § 1(a)(6) [title I, § 103(a)(1)], substituted ''Screening colonoscopy'' for ''In the case of an individual at high risk for colorectal cancer, screening colonoscopy''.

Subsec. (pp)(2). Pub. L. 106–554, § 1(a)(6) [title I, § 103(a)(2)], substituted ''An'' for ''In paragraph (1)(C), an''.

Subsec. (uu). Pub. L. 106–554, § 1(a)(6) [title I, § 102(b)], added subsec. (uu).

Subsec. (vv). Pub. L. 106–554, § 1(a)(6) [title I, § 105(b)], added subsec. (vv).

1999—Subsec. (*o*)(7). Pub. L. 106–113, § 1000(a)(6) [title III, § 304(a)], amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''provides the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000; and''.

Subsec. (p)(1). Pub. L. 106–113, § 1000(a)(6) [title II, § 221(b)(1)(A)], substituted '', (3), or (4)'' for ''or (3)''.

Subsec. (r)(4). Pub. L. 106–113, § 1000(a)(6) [title II, § 221(b)(1)(B)], inserted ''for purposes of subsection (p)(1) of this section and'' after ''but only''.

Subsec. (s)(2)(J)(v). Pub. L. 106–113, § 1000(a)(6) [title II, § 227(a)], inserted before semicolon at end ''plus such additional number of months (if any) provided under section 1395k(b) of this title''.

Subsec. (s)(2)(T)(ii). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(7)], substituted semicolon for period at end.

Subsec. (v)(1)(L)(ix), (x). Pub. L. 106–113, § 1000(a)(6) [title III, § 303(a)], added cl. (ix) and redesignated former cl. (ix) as (x).

Subsec. (v)(1)(S)(ii)(I), (II). Pub. L. 106–113, § 1000(a)(6) [title II, § 201(k)], substituted ''and until the first date that the prospective payment system under section 1395*l*(t) of this title is implemented'' for ''and during fiscal year 2000 before January 1, 2000''.

Subsec. (aa)(2)(I). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(8)], substituted semicolon for comma at end and realigned margins.

Subsec. (ee)(3). Pub. L. 106–113, § 1000(a)(6) [title V, § 521], added par. (3).

Subsec. (ss)(1)(G)(i). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(9)(B)], which directed substitution of ''or'' for ''of'', was executed by making the substitution for ''of'' the second time appearing to reflect the probable intent of Congress.

Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(9)(A)], substituted ''owned'' for ''owed''.

1998—Subsec. (v)(1)(L)(i)(III) to (V). Pub. L. 105–277, § 5101(b), in subcl. (III) struck out ''or'' at end, in subcl. (IV) inserted ''and before October 1, 1998,'' after ''1997,'' and substituted '', or'' for period at end, and added subcl. (V).

Subsec. (v)(1)(L)(v). Pub. L. 105–277, § 5101(a)(1), inserted ''subject to clause (viii)(I),'' before ''the Secretary'' in introductory provisions.

Subsec. (v)(1)(L)(vi)(I). Pub. L. 105–277, § 5101(a)(2), inserted ''subject to clauses (viii)(II) and (viii)(III)'' after ''1994''.

Subsec. (v)(1)(L)(viii). Pub. L. 105–277, § 5101(a)(3), added cl. (viii).

Subsec. (v)(1)(L)(ix). Pub. L. 105–277, § 5101(d)(1), added cl. (ix).

1997—Subsec. (a). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' in pars. (1) and (2).

Subsec. (b)(4). Pub. L. 105–33, § 4511(a)(2)(B), substituted ''subsection (s)(2)(K)'' for ''clauses (i) or (iii) of subsection (s)(2)(K)''.

Subsec. (e). Pub. L. 105–33, § 4454(a)(1)(A), in fifth sentence after par. (9), substituted ''includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section),'' for ''includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts,'' and inserted ''consistent with section 1395i–5 of this title'' before the period.

Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' in last sentence.

Subsec. (h). Pub. L. 105–33, § 4432(b)(5)(D)(i), substituted ''paragraphs (3), (6), and (7)'' for ''paragraphs (3) and (6)'' in introductory provisions.

Subsec. (h)(7). Pub. L. 105–33, § 4432(b)(5)(D)(ii), inserted '', or by others under arrangements with them made by the facility'' after ''skilled nursing facilities''.

Subsec. (m). Pub. L. 105–33, § 4612(a), inserted at end of closing provisions ''For purposes of paragraphs (1) and (4), the term 'part-time or intermittent services' means skilled nursing and home health aide services furnished any number of days per week as long as they are furnished (combined) less than 8 hours each day and 28 or fewer hours each week (or, subject to review on a case-by-case basis as to the need for care, less than 8 hours each day and 35 or fewer hours per week). For purposes of sections 1395f(a)(2)(C) and 1395n(a)(2)(A) of this title, 'intermittent' means skilled nursing care that is either provided or needed on fewer than 7 days each week, or less than 8 hours of each day for periods of 21 days or less (with extensions in exceptional circumstances when the need for additional care is finite and predictable).''

Subsec. (n). Pub. L. 105–33, § 4105(b)(1), inserted before semicolon in first sentence '', and includes blood-testing strips and blood glucose monitors for individuals with diabetes without regard to whether the individual has Type I or Type II diabetes or to the individual's use of insulin (as determined under standards established by the Secretary in consultation with the appropriate organizations)''.

Subsec. (*o*). Pub. L. 105–33, § 4312(b)(1)(D), inserted at end of closing provisions ''The Secretary may waive the requirement of a surety bond under paragraph (7) in the case of an agency or organization that provides a comparable surety bond under State law.''

Subsec. (*o*)(7), (8). Pub. L. 105–33, § 4312(b)(1)(A)–(C), added par. (7) and redesignated former par. (7) as (8).

Subsec. (p). Pub. L. 105–33, § 4312(e)(2), inserted at end of closing provisions ''The Secretary may waive the requirement of a surety bond under paragraph (4)(A)(v) in the case of a clinic or agency that provides a comparable surety bond under State law.''

Subsec. (p)(4)(A)(v). Pub. L. 105–33, § 4312(e)(1), inserted ''and provides the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000,'' after ''as the Secretary may find necessary,''.

Subsec. (r)(5). Pub. L. 105–33, § 4513(a), struck out ''demonstrated by x-ray to exist'' following ''(to correct a subluxation''.

Subsec. (s)(2)(K)(i). Pub. L. 105–33, §§ 4511(a)(2)(A)(i), 4512(a), struck out ''(I) in a hospital, skilled nursing facility, or nursing facility (as defined in section 1396r(a) of this title), (II) as an assistant at surgery, or (III) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health professional shortage area,'' after ''physician (as so defined)'' and inserted at end ''and such services and supplies furnished as incident to such services as would be covered under subparagraph (A) if furnished incident to a physician's professional service; and but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services,''.

Subsec. (s)(2)(K)(ii). Pub. L. 105–33, § 4511(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a nurse practitioner (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) in a skilled nursing facility or nursing facility (as defined in section 1396r(a) of this title) which the nurse practitioner is legally authorized to perform by the State in which the services are performed,''.

Subsec. (s)(2)(K)(iii), (iv). Pub. L. 105–33, § 4511(a)(2)(A)(ii), struck out cls. (iii) and (iv) which read as follows:

''(iii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) which the nurse practitioner or clinical nurse specialist is authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service, and

''(iv) such services and supplies furnished as an incident to services described in clause (i) or (ii) as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service;''.

Subsec. (s)(2)(N) to (P). Pub. L. 105–33, § 4103(a)(1), struck out ''and'' at end of subpars. (N) and (O) and added subpar. (P).

Subsec. (s)(2)(R). Pub. L. 105–33, § 4104(a)(1)(A), added subpar. (R).

Subsec. (s)(2)(S). Pub. L. 105–33, § 4105(a)(1)(A), added subpar. (S).

Subsec. (s)(2)(T). Pub. L. 105–33, § 4557(a), added subpar. (T).

Subsec. (s)(12)(C). Pub. L. 105–33, § 4106(a)(1)(A), struck out ''and'' at end.

Subsec. (s)(14). Pub. L. 105–33, § 4102(c), inserted ''and screening pelvic exam'' after ''screening pap smear''.

Subsec. (s)(15) to (17). Pub. L. 105–33, § 4106(a)(1)(B)–(D), added par. (15) and redesignated former pars. (15) and (16) as (16) and (17), respectively.

Subsec. (u). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (v)(1)(H)(i). Pub. L. 105–33, § 4312(b)(2)(A), substituted ''the surety bond requirement described in subsection (*o*)(7) of this section and the financial security requirement described in subsection (*o*)(8) of this section'' for ''the financial security requirement described in subsection (*o*)(7) of this section''.

Subsec. (v)(1)(H)(ii). Pub. L. 105–33, § 4312(b)(2)(B), substituted ''the surety bond requirement described in subsection (*o*)(7) of this section and the financial security requirement described in subsection (*o*)(8) of this section apply'' for ''the financial security requirement described in subsection (*o*)(7) of this section applies''.

Subsec. (v)(1)(L)(i). Pub. L. 105–33, § 4602(a)(5), struck out closing provisions which read as follows: ''of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies.''

Subsec. (v)(1)(L)(i)(I). Pub. L. 105–33, § 4602(a)(1), (2), inserted ''of the mean of the labor-related and nonlabor per visit costs for freestanding home health agencies'' before comma at end and realigned margins.

Subsec. (v)(1)(L)(i)(II). Pub. L. 105–33, § 4602(a)(1), (3), substituted ''of such mean,'' for '', or'' at end and realigned margins.

Subsec. (v)(1)(L)(i)(III). Pub. L. 105–33, § 4602(a)(1), (4), inserted ''and before October 1, 1997,'' after ''July 1, 1987,'', substituted ''of such mean, or'' for comma at end, and realigned margins.

Subsec. (v)(1)(L)(i)(IV). Pub. L. 105–33, § 4602(a)(5), added subcl. (IV).

Subsec. (v)(1)(L)(iii). Pub. L. 105–33, § 4604(b), substituted ''service is furnished'' for ''agency is located''.

Pub. L. 105–33, § 4602(b), inserted '', or on or after July 1, 1997, and before October 1, 1997'' after ''July 1, 1996''.

Subsec. (v)(1)(L)(iv). Pub. L. 105–33, § 4601(a), added cl. (iv).

Subsec. (v)(1)(L)(v) to (vii). Pub. L. 105–33, § 4602(c), added cls. (v) to (vii).

Subsec. (v)(1)(O)(i). Pub. L. 105–33, § 4404(a)(1), struck out ''and (if applicable) a return on equity capital'' after ''capital indebtedness'' and substituted ''provider of services'' for ''hospital or skilled nursing facility'', ''clause (iii)'' for ''clause (iv)'', and ''the historical cost of the asset, as recognized under this subchapter, less depreciation allowed, to the owner of record as of August 5, 1997 (or, in the case of an asset not in existence as of August 5, 1997, the first owner of record of the asset after August 5, 1997).'' for ''the lesser of the allowable acquisition cost of such asset to the owner of record as of July 18, 1984 (or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date), or the acquisition cost of such asset to the new owner.''

Subsec. (v)(1)(O)(ii) to (iv). Pub. L. 105–33, § 4404(a)(2), (3), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: ''Such regulations shall provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984.''

Subsec. (v)(1)(S)(ii)(I), (II). Pub. L. 105–33, § 4522, substituted ''through 1999 and during fiscal year 2000 before January 1, 2000'' for ''through 1998''.

Subsec. (v)(1)(S)(ii)(III). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (v)(1)(T). Pub. L. 105–33, § 4451, added subpar. (T).

Subsec. (v)(1)(U). Pub. L. 105–33, § 4531(a)(1), added subpar. (U).

Subsec. (v)(7)(D). Pub. L. 105–33, § 4432(b)(5)(E), inserted ''subsections (a) through (c) of'' before ''section 1395yy of this title''.

Subsec. (v)(8). Pub. L. 105–33, § 4320, added par. (8).

Subsec. (w). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' wherever appearing.

Subsec. (y). Pub. L. 105–33, § 4454(a)(1)(B)(i), substituted ''Extended care in religious nonmedical health care institutions'' for ''Post-hospital extended care in Christian Science skilled nursing facilities'' in heading.

Subsec. (y)(1). Pub. L. 105–33, § 4454(a)(1)(B)(iii), which directed the amendment of this subsec. by inserting ''consistent with section 1395i–5 of this title'' before the period, was executed by making the insertion in par. (1) to reflect the probable intent of Congress.

Pub. L. 105–33, § 4454(a)(1)(B)(ii), substituted ''includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section),'' for ''includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts,''.

Subsec. (aa)(2). Pub. L. 105–33, § 4205(d)(3)(A), in second sentence of concluding provisions inserted before period at end ''if it is determined, in accordance with criteria established by the Secretary in regulations, to be essential to the delivery of primary care services that would otherwise be unavailable in the geographic area served by the clinic''.

Pub. L. 105–33, § 4205(d)(1), (2), in cl. (i) of first sentence of concluding provisions substituted ''Bureau of the Census) and in which there are insufficient numbers of needed health care practitioners (as determined by the Secretary), and that, within the previous 3-year period, has been designated'' for ''Bureau of the Census) and that is designated'' and ''personal health services or designated by the Secretary'' for ''personal health services, or that is designated by the Secretary''.

Subsec. (aa)(2)(I). Pub. L. 105–33, § 4205(b)(1), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: ''has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible;''.

Subsec. (aa)(5). Pub. L. 105–33, § 4511(d), designated existing provisions as subpar. (A), substituted ''The term 'physician assistant' and the term 'nurse practitioner' mean, for purposes of this subchapter, a physician assistant or nurse practitioner who performs'' for ''The term 'physician assistant', the term 'nurse practitioner', and the term 'clinical nurse specialist' mean, for purposes of this subchapter, a physician assistant, nurse practitioner, or clinical nurse specialist who performs'', and added subpar. (B).

Subsec. (aa)(7)(B). Pub. L. 105–33, § 4205(c)(1), inserted before period at end '', or if the facility has not yet been determined to meet the requirements (including subparagraph (J) of the first sentence of paragraph (2)) of a rural health clinic''.

Subsec. (cc)(2). Pub. L. 105–33, § 4312(d)(4), inserted concluding provisions.

Subsec. (cc)(2)(I), (J). Pub. L. 105–33, § 4312(d)(1)–(3), added subpar. (I) and redesignated former subpar. (I) as (J).

Subsec. (dd)(1)(I). Pub. L. 105–33, § 4444(a), added subpar. (I).

Subsec. (dd)(2)(A)(ii)(I). Pub. L. 105–33, § 4445(1), substituted ''subparagraphs (A), (C), and (H)'' for ''subparagraphs (A), (C), (F), and (H)''.

Subsec. (dd)(2)(B)(i). Pub. L. 105–33, § 4445(2), in concluding provisions, inserted ''or, in the case of a physician described in subclause (I), under contract with'' after ''employed by''.

Subsec. (dd)(5)(B). Pub. L. 105–33, § 4446(1), inserted ''or (C)'' after ''subparagraph (A)'' in two places.

Subsec. (dd)(5)(C). Pub. L. 105–33, § 4446(2), added subpar. (C).

Subsec. (ee)(2)(D). Pub. L. 105–33, § 4321(a)(1), inserted before period at end '', including the availability of home health services through individuals and entities that participate in the program under this subchapter and that serve the area in which the patient resides and that request to be listed by the hospital as available''.

Subsec. (ee)(2)(H). Pub. L. 105–33, § 4321(a)(2), added subpar. (H).

Subsec. (mm). Pub. L. 105–33, § 4201(c)(2), amended heading and text of subsec. (mm) generally. Prior to amendment, text read as follows:

''(1) The term 'rural primary care hospital' means a facility designated by the Secretary as a rural primary care hospital under section 1395i–4(i)(2) of this title.

''(2) The term 'inpatient rural primary care hospital services' means items and services, furnished to an inpatient of a rural primary care hospital by such a hospital, that would be inpatient hospital services if furnished to an inpatient of a hospital by a hospital.

''(3) The term 'outpatient rural primary care hospital services' means medical and other health services furnished by a rural primary care hospital.''

Subsec. (nn). Pub. L. 105–33, § 4102(a), substituted ''Screening pap smear; screening pelvic exam'' for ''Screening pap smear'' in heading, designated existing provisions as par. (1), inserted ''or vaginal'' after ''cervical'' in two places, substituted ''3 years, or during the preceding year in the case of a woman described in paragraph (3).'' for ''3 years (or such shorter period as the Secretary may specify in the case of a woman who is at high risk of developing cervical or vaginal cancer (as determined pursuant to factors identified by the Secretary)).'', and added pars. (2) and (3).

Subsec. (*oo*). Pub. L. 105–33, § 4103(a)(2), added subsec. (*oo*).

Subsec. (pp). Pub. L. 105–33, § 4104(a)(1)(B), added subsec. (pp).

Subsec. (qq). Pub. L. 105–33, § 4105(a)(1)(B), added subsec. (qq).

Subsec. (rr). Pub. L. 105–33, § 4106(a)(2), added subsec. (rr).

Subsec. (ss). Pub. L. 105–33, § 4454(a)(1)(C), added subsec. (ss).

Subsec. (tt). Pub. L. 105–33, § 4611(b), added subsec. (tt).

1996—Subsec. (aa)(4)(A)(i). Pub. L. 104–299 substituted ''section 330 (other than subsection (h))'' for ''section 329, 330, or 340''.

Subsec. (aa)(4)(A)(ii)(II). Pub. L. 104–299 which directed amendment of subcl. (I) by substituting ''section

330 (other than subsection (h))'' for ''section 329, 330, or 340'', was executed to subcl. (II) to reflect the probable intent of Congress.

1994—Subsec. (a)(1). Pub. L. 103–432, §102(g)(4)(A), substituted ''inpatient hospital services, inpatient rural primary care hospital services'' for ''inpatient hospital services''.

Subsec. (a)(2). Pub. L. 103–432, §102(g)(4)(B), substituted ''hospital or rural primary care hospital'' for ''hospital''.

Subsec. (b)(3). Pub. L. 103–432, §147(f)(3), made technical amendment to Pub. L. 101–508, §4157(a). See 1990 Amendment note below.

Subsec. (b)(4). Pub. L. 103–432, §147(f)(3), made technical amendment to Pub. L. 101–508, §4157(a). See 1990 Amendment note below.

Pub. L. 103–432, §147(e)(4), substituted ''clauses (i) or (iii) of subsection (s)(2)(K) of this section'' for ''subsection (s)(2)(K)(i) of this section''.

Subsec. (e)(4). Pub. L. 103–432, §104, substituted ''physician, except that a patient receiving qualified psychologist services (as defined in subsection (ii) of this section) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law;'' for ''physician;''.

Subsec. (h)(3). Pub. L. 103–432, §146(b)(1), substituted ''or occupational therapy or speech-language pathology services'' for '', occupational, or speech therapy''.

Subsec. (m)(2). Pub. L. 103–432, §146(b)(2), substituted ''or occupational therapy or speech-language pathology services'' for '', occupational, or speech therapy''.

Subsec. (m)(5). Pub. L. 103–432, §147(f)(6)(B)(ii), substituted ''and a covered osteoporosis drug (as defined in subsection (kk) of this section), but excluding other drugs'' for ''but excluding drugs''.

Subsec. (p). Pub. L. 103–432, §146(b)(3), substituted ''speech-language pathology services'' for ''speech pathology services'' after ''term 'outpatient physical therapy services' also includes'' in third sentence of closing provisions.

Subsec. (s)(2)(K)(iii). Pub. L. 103–432, §147(e)(1), made an amendment identical to that made by Pub. L. 101–508, §4161(a)(5)(A), substituting ''subsection (aa)(5)'' for ''subsection (aa)(3)'' and ''subsection (aa)(6)'' for ''subsection (aa)(4)''.

Subsec. (s)(2)(N). Pub. L. 103–432, §147(f)(6)(B)(iii)(I), inserted ''and'' at end.

Subsec. (s)(2)(O), (P). Pub. L. 103–432, §147(f)(6)(B)(iii)(II), redesignated subpar. (P) as (O) and struck out former subpar. (O) which read as follows: ''a covered osteoporosis drug and its administration (as defined in subsection (jj) of this section) furnished on or after January 1, 1991, and on or before December 31, 1995; and''.

Subsec. (s)(3). Pub. L. 103–432, §145(b), inserted ''and including diagnostic mammography if conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act'' after ''necessary''.

Subsec. (v)(1)(L)(iii). Pub. L. 103–432, §158(a)(1), substituted ''and determined using the survey of the most recent available wages and wage-related costs of hospitals'' for ''as of such date to hospitals''.

Subsec. (aa)(2). Pub. L. 103–432, §147(f)(4)(A), in last sentence of closing provisions, substituted ''approval as such a clinic'' for ''certification as such a clinic'' and ''Secretary's approval or disapproval'' for ''the Secretary's approval or disapproval of the certification''.

Subsec. (aa)(5). Pub. L. 103–432, §147(e)(5), substituted ''this subchapter'' for ''this chapter''.

Subsec. (cc)(1)(B). Pub. L. 103–432, §146(b)(4), substituted ''speech-language pathology services'' for ''speech pathology services''.

Subsec. (dd)(1)(B). Pub. L. 103–432, §146(b)(5), substituted ''therapy, or speech-language pathology services'' for ''therapy or speech-language pathology''.

Subsec. (ee)(2)(D). Pub. L. 103–432, §107(a), inserted '', including hospice services,'' after ''post-hospital services''.

Subsec. (jj). Pub. L. 103–432, §147(f)(6)(E), redesignated subsec. (jj), defining ''covered osteoporosis drug'', as (kk).

Pub. L. 103–432, §147(f)(6)(A), (B)(i), amended subsec. (jj), defining ''covered osteoporosis drug'', in introductory provisions, by striking out ''a bone fracture related to'' before ''post-menopausal osteoporosis'' and substituting ''individual by a home health agency if'' for ''individual if'', and in par. (1), by substituting ''individual has suffered a bone fracture related to post-menopausal osteoporosis and that the individual'' for ''patient''.

Subsec. (kk). Pub. L. 103–432, §147(f)(6)(E), redesignated subsec. (jj), defining ''covered osteoporosis drug'', as (kk).

Subsec. (*ll*). Pub. L. 103–432, §146(a), added subsec. (*ll*).

1993—Subsec. (s)(2)(J). Pub. L. 103–66, §13565, substituted ''subchapter, but only in the case of drugs furnished—'' and cls. (i) to (v) for ''subchapter, within 1 year after the date of the transplant procedure;''.

Subsec. (s)(2)(P). Pub. L. 103–66, §13566(b), substituted ''dialysis'' for ''home dialysis'' and realigned margin.

Subsec. (s)(2)(Q). Pub. L. 103–66, §13553(a), added subpar. (Q).

Subsec. (t). Pub. L. 103–66, §13553(b), designated existing provisions as par. (1), inserted ''and paragraph (2)'', and added par. (2).

Subsec. (v)(1)(B). Pub. L. 103–66, §13503(c)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any cost reporting period shall be equal to the average of the rates of interest, for each of the months any part of which is included in the period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.''

Subsec. (v)(1)(L)(ii). Pub. L. 103–66, §13564(b)(1), struck out '', with appropriate adjustment for administrative and general costs of hospital-based agencies'' after ''discipline specific basis''.

Subsec. (v)(1)(L)(iii). Pub. L. 103–66, §13564(a)(2), substituted ''thereafter (but not for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996)'' for ''thereafter''.

Subsec. (v)(1)(S)(ii)(I). Pub. L. 103–66, §13521, substituted ''fiscal years 1992 through 1998'' for ''fiscal year 1992, 1993, 1994, or 1995''.

Subsec. (v)(1)(S)(ii)(II). Pub. L. 103–66, §13522, substituted ''fiscal years 1991 through 1998'' for ''fiscal years 1991, 1992, 1993, 1994, or 1995''.

Subsec. (aa)(4)(D). Pub. L. 103–66, §13556(a), added subpar. (D).

Subsec. (gg)(2). Pub. L. 103–66, §13554(a), substituted a period for '', and performs services in the area of management of the care of mothers and babies throughout the maternity cycle.''

1990—Subsec. (b)(3). Pub. L. 101–508, §4157(a)(1), as amended by Pub. L. 103–432, §147(f)(3), struck out ''(including clinical psychologist (as defined by the Secretary))'' after ''the hospital or by others''.

Subsec. (b)(4). Pub. L. 101–508, §4157(a)(2), as amended by Pub. L. 103–432, §147(f)(3), substituted '', services described by subsection (s)(2)(K)(i) of this section, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and'' for ''and anesthesia services provided by a certified registered nurse anesthetist; and''.

Subsec. (n). Pub. L. 101–508, §4152(a)(2), inserted at end ''With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.''

Subsec. (s)(2)(E). Pub. L. 101–508, §4161(a)(1), inserted ''and Federally qualified health center services'' after ''clinic services''.

Subsec. (s)(2)(H)(i). Pub. L. 101–508, §4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)''.

Subsec. (s)(2)(K)(i). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area''.

Pub. L. 101–508, § 4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)''.

Subsec. (s)(2)(K)(ii). Pub. L. 101–508, § 4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)'' and ''subsection (aa)(6)'' for ''subsection (aa)(4)''.

Subsec. (s)(2)(K)(iii). Pub. L. 101–508, § 4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)'' and ''subsection (aa)(6)'' for ''subsection (aa)(4)''.

Pub. L. 101–508, § 4155(a)(3), added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (s)(2)(K)(iv). Pub. L. 101–508, § 4155(a)(2), redesignated cl. (iii) as (iv).

Subsec. (s)(2)(O). Pub. L. 101–508, § 4156(a)(1), added subpar. (O).

Subsec. (s)(2)(P). Pub. L. 101–508, § 4201(d)(1), added subpar. (P).

Subsec. (s)(8). Pub. L. 101–508, § 4153(b)(2)(A), inserted '', and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens'' after ''such devices''.

Subsec. (s)(13). Pub. L. 101–508, § 4163(a)(1), added par. (13).

Subsec. (v)(1)(E). Pub. L. 101–508, § 4008(h)(2)(A)(i), substituted ''the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) of such facilities'' for ''the costs of such facilities'' in second sentence.

Subsec. (v)(1)(L)(iii). Pub. L. 101–508, § 4207(d)(1), formerly § 4027(d)(1), as renumbered by Pub. L. 103–432, § 160(d)(4), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''In establishing limits under this subparagraph, the Secretary shall—

''(I) utilize a wage index that is based on verified wage data obtained from home health agencies, and

''(II) base such limits on the most recent verified wage data available, which data may be for cost reporting periods beginning no earlier than July 1, 1985.

In the case of a home health agency that refuses to provide data, or deliberately provides false data, respecting wages for purposes of this clause upon the request of the Secretary, the Secretary may withhold up to 5 percent of the amount of the payments otherwise payable to the agency under this subchapter until such date as the Secretary determines that such data has been satisfactorily provided.''

Subsec. (v)(1)(S)(ii)(I). Pub. L. 101–508, § 4151(a)(1), inserted before period at end '', by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, and by 10 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1992, 1993, 1994, or 1995''.

Subsec. (v)(1)(S)(ii)(II). Pub. L. 101–508, § 4151(b)(1)(D), added subcl. (II). Former subcl. (II) redesignated (III).

Pub. L. 101–508, § 4151(b)(1)(A), substituted ''Subclauses (I) and (II)'' for ''Subclause (I)'' and ''costs of hospital outpatient services provided by any hospital'' for ''capital-related costs of any hospital''.

Pub. L. 101–508, § 4151(a)(2), substituted ''section 1395ww(d)(5)(D)(iii) of this title or a rural primary care hospital (as defined in subsection (mm)(1) of this section)'' for ''section 1395ww(d)(5)(D)(iii) of this title)''.

Subsec. (v)(1)(S)(ii)(III). Pub. L. 101–508, § 4151(b)(1)(C), redesignated former subcl. (II) as (III). Former subcl. (III) redesignated (IV).

Pub. L. 101–508, § 4151(b)(1)(B), substituted ''subclauses (I) and (II)'' for ''subclause (I)'' and ''the costs reflected'' for ''capital-related costs reflected''.

Subsec. (v)(1)(S)(ii)(IV). Pub. L. 101–508, § 4151(b)(1)(C), redesignated subcl. (III) as (IV).

Subsec. (aa). Pub. L. 101–508, § 4161(a)(2)(A), inserted ''and Federally qualified health center services'' after ''clinic services'' in heading.

Subsec. (aa)(1)(B). Pub. L. 101–508, § 4161(a)(5)(B), substituted ''paragraph (5)'' for ''paragraph (3)''.

Subsec. (aa)(2). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area'' in second sentence.

Pub. L. 101–508, § 4161(b)(1), inserted at end ''If a State agency has determined under section 1395aa(a) of this title that a facility is a rural health clinic and the facility has applied to the Secretary for certification as such a clinic, the Secretary shall notify the facility of the the Secretary's approval or disapproval of the certification not later than 60 days after the date of the State agency determination or the application (whichever is later).''

Subsec. (aa)(3). Pub. L. 101–508, § 4161(a)(2)(C), added par. (3). Former par. (3) redesignated (5).

Pub. L. 101–508, § 4161(a)(2)(B), which directed amendment of par. (3) by substituting ''the previous provisions of this subsection'' for ''paragraphs (1) and (2)'', could not be executed because the words ''paragraphs (1) and (2)'' did not appear after amendment by Pub. L. 101–508, § 4155(d). See below.

Pub. L. 101–508, § 4155(d), substituted ''The term 'physician assistant', the term 'nurse practitioner', and the term 'clinical nurse specialist' mean, for purposes of this chapter, a physician assistant, nurse practitioner, or clinical nurse specialist who performs'' for ''The term 'physician assistant' and the term 'nurse practitioner' mean, for the purposes of paragraphs (1) and (2), a physician assistant or nurse practitioner who performs''.

Subsec. (aa)(4) to (6). Pub. L. 101–508, § 4161(a)(2)(B), (C), added par. (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

Subsec. (aa)(7). Pub. L. 101–508, § 4161(b)(2), added par. (7).

Subsec. (ff)(3). Pub. L. 101–508, § 4162(a), designated existing provision as subpar. (A), substituted ''outpatients or by a community mental health center (as defined in subparagraph (B)),'' for ''outpatients'', and added subpar. (B).

Subsec. (jj). Pub. L. 101–508, § 4163(a)(2), added subsec. (jj) defining ''screening mammography''.

Pub. L. 101–508, § 4156(a)(2), added subsec. (jj) defining ''covered osteoporosis drug''.

1989—Subsec. (a). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(A), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (e). Pub. L. 101–239, § 6003(g)(3)(D)(x)(I), inserted at end ''The term 'hospital' does not include, unless the context otherwise requires, a rural primary care hospital (as defined in subsection (mm)(1) of this section).''

Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(B), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (i). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 104(d)(4)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (m). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 206(a), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (m)(5). Pub. L. 101–239, § 6112(e)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''medical supplies (other than drugs and biologicals) and durable medical equipment, while under such a plan;''.

Subsec. (s). Pub. L. 101–239, § 6141(a)(1), substituted '', including a laboratory that is part of'' for ''which is independent of a physician's office, a laboratory not independent of a physician's office that has a volume of clinical diagnostic laboratory tests exceeding 5,000 per year,'' in provisions following par. (14).

Subsec. (s)(2)(H)(ii). Pub. L. 101–239, § 6113(b)(2)(A), substituted ''subsection (hh)(2)'' for ''subsection (hh)''.

Subsec. (s)(2)(J). Pub. L. 101–239, § 6114(a)(1), struck out ''and'' at end.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 202(a)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (s)(2)(K). Pub. L. 101–239, § 6114(a)(2), added cl. (ii), redesignated former cl. (ii) as (iii), and substituted ''to services described in clause (i) or (ii)'' for ''to such services'' in cl. (iii).

Subsec. (s)(2)(N). Pub. L. 101–239, § 6113(b)(1), added subpar. (N).

Subsec. (s)(12). Pub. L. 101–239, § 6131(a)(2), inserted ''with inserts'' after ''custom molded shoes'' in introductory provisions.

Subsec. (s)(13). Pub. L. 101–234, § 201(a), which repealed Pub. L. 100–360, § 204(a)(1)(B)–(D), and directed that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, was executed by striking out par. (13) as added by Pub. L. 100–360, § 204(a)(1)(B)–(D), but former par. (13) which was redesignated (14) was not restored in view of intervening redesignation as (15) by Pub. L. 101–239, § 6115(a)(1)(C), see 1988 Amendment note below.

Subsec. (s)(14). Pub. L. 101–239, § 6115(a)(1)(A), (B), (D), added par. (14). Former par. (14) redesignated (15).

Pub. L. 101–234, § 201(a), which repealed Pub. L. 100–360, § 204(a)(1)(A), and directed that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, was not executed in view of intervening redesignation of par. (14) as (15) by Pub. L. 101–239, § 6115(a)(1)(C), see 1988 Amendment note below.

Subsec. (s)(15). Pub. L. 101–239, § 6115(a)(1)(C), redesignated par. (14) as (15). Former par. (15) redesignated (16).

Pub. L. 101–234, § 201(a), which repealed Pub. L. 100–360, § 204(a)(1)(A), and directed that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, was not executed in view of intervening redesignation of par. (15) as (16) by Pub. L. 101–239, § 6115(a)(1)(C), see 1988 Amendment note below.

Subsec. (s)(16). Pub. L. 101–239, § 6141(a)(2), (3), added subpar. (A) and designated existing provisions as subpar. (B).

Pub. L. 101–239, § 6115(a)(1)(C), redesignated par. (15) as (16).

Subsec. (t). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 202(a)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (u). Pub. L. 101–239, § 6003(g)(3)(C)(i), inserted ''rural primary care hospital,'' after ''hospital,''.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 203(e)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (v)(1)(G)(i). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(D), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (v)(1)(S). Pub. L. 101–239, § 6110, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (v)(2)(A), (3). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(D), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (w)(1). Pub. L. 101–239, § 6003(g)(3)(D) (x)(II), inserted ''rural primary care hospital,'' after ''hospital,''.

Subsec. (w)(2). Pub. L. 101–239, § 6003(g)(3)(D) (x)(III), substituted ''hospital or rural primary care hospital'' for ''hospital'' in six places.

Subsec. (y). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(E), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (aa)(1)(B). Pub. L. 101–239, § 6213(b), substituted ''(as defined in paragraph (3)), by'' for ''(as defined in paragraph (3)), or by'' and inserted ''or by a clinical social worker (as defined in subsection (hh)(1) of this section),'' after ''Secretary)''.

Subsec. (aa)(2). Pub. L. 101–239, § 6213(c), in second sentence substituted ''designated by the chief executive officer of the State and certified by the Secretary as an area with a shortage of personal health services, or that is designated by the Secretary'' for ''designated by the Secretary'', ''section 330(b)(3) or 1302(7) of the Public Health Service Act,'' for ''section 1302(7) of the Public Health Service Act or'', and ''medical care manpower, (III) as a high impact area described in section 329(a)(5) of that Act, or (IV) as an area which includes a population group which the Secretary determines has a health manpower shortage under section 332(a)(1)(B) of that Act,'' for ''medical care manpower,''.

Subsec. (aa)(2)(J), (K). Pub. L. 101–239, § 6213(a), added subpar. (J) and redesignated former subpar. (J) as (K).

Subsec. (aa)(4). Pub. L. 101–239, § 6114(d), added par. (4).

Subsec. (hh). Pub. L. 101–239, § 6113(b)(2)(B), inserted ''; clinical social worker services'' after ''social worker'' in heading, redesignated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in subpar. (C), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, in cl. (ii), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added par. (2).

Subsec. (ii). Pub. L. 101–239, § 6113(a), struck out ''on-site at a community mental health center (as such term is used in the Public Health Service Act), and such services that are necessarily furnished off-site (other than at an off-site office of such psychologist) as part of a treatment plan because of the inability of the individual furnished such services to travel to the center by reason of physical or mental impairment, because of institutionalization, or because of similar circumstances of the individual,'' after ''as defined by the Secretary)''.

Subsecs. (jj) to (*ll*). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 203(b), 204(a)(2), 205(b), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (mm). Pub. L. 101–239, § 6003(g)(3)(A), added subsec. (mm).

Subsec. (mm)(3). Pub. L. 101–239, § 6116(a)(1), added par. (3).

Subsec. (nn). Pub. L. 101–239, § 6115(a)(2), added subsec. (nn).

1988—Subsec. (a). Pub. L. 100–360, § 104(d)(4)(A), struck out subsec. (a) which defined ''spell of illness''.

Subsec. (a)(2). Pub. L. 100–360, § 411(*l*)(1)(B)(i), (ii), redesignated and amended Pub. L. 100–203, § 4201(d)(1), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100–360, § 104(d)(4)(B), substituted ''and paragraph (7) of this subsection'' for ''paragraph (7) of this subsection, and subsection (i) of this section'' in introductory provisions, struck out second sentence which read as follows: ''For purposes of subsection (a)(2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection.'', substituted ''and section 1395f(f)(2) of this title'' for ''section 1395f(f)(2) of this title, and subsection (i) of this section'' in third sentence, and struck out '', except for purposes of subsection (a)(2) of this section,'' after ''such term shall not'' in fifth sentence.

Subsec. (i). Pub. L. 100–360, § 104(d)(4)(C), struck out subsec. (i) which defined ''post-hospital extended care services''.

Subsec. (m). Pub. L. 100–360, § 206(a), inserted at end ''For purposes of paragraphs (1) and (4) and sections 1395f(a)(2)(C) and 1395n(a)(2)(A) of this title, nursing

care and home health aide services shall be considered to be provided or needed on an 'intermittent' basis if they are provided or needed less than 7 days each week and, in the case they are provided or needed for 7 days each week, if they are provided or needed for a period of up to 38 consecutive days.''

Subsec. (n). Pub. L. 100–360, § 411(*l*)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), added Pub. L. 100–203, § 4201(d)(5), see 1987 Amendment note below.

Pub. L. 100–360, § 411(*l*)(1)(B)(iii), added Pub. L. 100–203, § 4201(d)(2), see 1987 Amendment note below.

Pub. L. 100–360, § 411(d)(1)(B)(i), inserted ''; except that such term does not include such equipment furnished by a supplier who has used, for the demonstration and use of specific equipment, an individual who has not met such minimum training standards as the Secretary may establish with respect to the demonstration and use of such specific equipment'' before period at end.

Subsec. (p). Pub. L. 100–647, § 8424(a), inserted at end ''Nothing in this subsection shall be construed as requiring, with respect to outpatients who are not entitled to benefits under this subchapter, a physical therapist to provide outpatient physical therapy services only to outpatients who are under the care of a physician or pursuant to a plan of care established by a physician.''

Subsec. (s). Pub. L. 100–360, § 411(g)(3)(H), inserted a comma before ''year'' in provisions immediately preceding par. (13).

Subsec. (s)(2)(H)(ii). Pub. L. 100–360, § 411(h)(5)(A), amended Pub. L. 100–203, § 4074(a), see 1987 Amendment note below.

Subsec. (s)(2)(J). Pub. L. 100–360, § 202(a)(1), amended subpar. (J) generally, substituting ''covered outpatient drugs (as defined in subsection (t) of this section); and'' for former provision which related to prescription drugs used in immunosuppressive therapy.

Subsec. (s)(2)(K)(i). Pub. L. 100–360, § 411(h)(6), amended Pub. L. 100–203, § 4076(a), see 1987 Amendment note below.

Subsec. (s)(2)(K)(i)(I). Pub. L. 100–485, § 608(d)(23)(B), substituted ''nursing facility (as defined in section 1396r(a) of this title)'' for ''intermediate care facility (as defined in section 1396d(c) of this title)''.

Subsec. (s)(2)(M). Pub. L. 100–360, § 411(h)(7)(A), made technical amendment to directory language of Pub. L. 100–203, § 4077(b)(1), see 1987 Amendment note below.

Subsec. (s)(10)(A). Pub. L. 100–360, § 411(h)(2), inserted '', subject to section 4071(b) of the Omnibus Budget Reconciliation Act of 1987,'' before ''influenza vaccine''.

Subsec. (s)(12). Pub. L. 100–360, § 411(h)(3)(A), inserted ''subject to section 4072(e) of the Omnibus Budget Reconciliation Act of 1987,'' in introductory provisions.

Subsec. (s)(13). Pub. L. 100–360, § 204(a)(1)(B)–(D), added par. (13) relating to screening mammography (as defined in subsection (kk) of this section). Former par. (13) redesignated (14).

Subsec. (s)(14). Pub. L. 100–360, § 204(a)(1)(A), redesignated par. (13) as (14). Former par. (14) redesignated (15).

Subsec. (s)(15). Pub. L. 100–360, § 411(i)(4)(C)(iii), amended directory language of Pub. L. 100–203, § 4085(i)(11), to correct an error, see 1987 Amendment note below.

Pub. L. 100–360, § 204(a)(1)(A), redesignated par. (14) as (15).

Subsec. (s)(16). Pub. L. 100–360, § 411(i)(4)(C)(iii), amended directory language of Pub. L. 100–203, § 4085(i)(11), to correct an error, see 1987 Amendment note below.

Subsec. (t). Pub. L. 100–360, § 202(a)(2), designated existing provisions as par. (1), inserted ''and paragraph (2)'', and added pars. (2) to (4) defining ''covered outpatient drug'' and ''covered home IV drug''.

Subsec. (u). Pub. L. 100–360, § 203(e)(1), inserted ''home intravenous drug therapy provider,'' after ''hospice program,''.

Subsec. (v)(1)(G)(i). Pub. L. 100–360, § 104(d)(4)(D), struck out ''post-hospital'' before ''extended care services'' in four places.

Subsec. (v)(1)(L)(iii). Pub. L. 100–360, § 411(d)(5)(A), substituted ''verified'' for ''audited'' in subcls. (I) and (II) and inserted at end ''In the case of a home health agency that refuses to provide data, or deliberately provides false data, respecting wages for purposes of this clause upon the request of the Secretary, the Secretary may withhold up to 5 percent of the amount of the payments otherwise payable to the agency under this subchapter until such date as the Secretary determines that such data has been satisfactorily provided.''

Subsec. (v)(2)(A), (3). Pub. L. 100–360, § 104(d)(4)(D), struck out ''post-hospital'' before ''extended care services''.

Subsec. (y). Pub. L. 100–360, § 104(d)(4)(E)(i), substituted ''Extended care'' for ''Post-hospital extended care'' in heading.

Subsec. (y)(1). Pub. L. 100–360, § 104(d)(4)(E)(ii), struck out ''(except for purposes of subsection (a)(2) of this section)'' after ''Massachusetts, but only''.

Subsec. (y)(2). Pub. L. 100–360, § 104(d)(4)(E)(i), (iii), (iv), struck out ''post-hospital'' before ''extended care services'' in two places, substituted ''year'' for ''spell of illness'' and ''spell'' wherever each appeared, and substituted ''45 days'' for ''30 days''.

Subsec. (y)(3). Pub. L. 100–360, § 104(d)(4)(E)(i), (iii), (v), struck out ''post-hospital'' before ''extended care services'' and substituted ''year'' for ''spell of illness'', ''the coinsurance amount established under section 1395e(a)(3)(C) of this title for each day before the 46th day'' for ''one-eighth of the inpatient hospital deductible for each day before the 31st day'', and ''year'' for ''spell''.

Subsec. (y)(4). Pub. L. 100–360, § 104(d)(4)(E)(vi), struck out par. (4) which provided that certain determinations about services provided by an institution described in par. (1) be made under regulations.

Subsec. (bb)(2). Pub. L. 100–360, § 411(i)(3), added Pub. L. 100–203, § 4084(c)(1), see 1987 Amendment note below.

Subsec. (ff). Pub. L. 100–360, § 411(h)(1)(B)(i), inserted heading.

Subsec. (ff)(3). Pub. L. 100–360, § 411(h)(1)(B)(ii), substituted ''furnished by a hospital to its outpatients'' for ''hospital-based or hospital-affiliated (as defined by the Secretary)''.

Subsec. (gg). Pub. L. 100–360, § 411(h)(4)(D), amended Pub. L. 100–203, § 4073(c), see 1987 Amendment note below.

Subsec. (hh). Pub. L. 100–360, § 411(h)(5)(B), amended Pub. L. 100–203, § 4074(b), see 1987 Amendment note below.

Subsec. (ii). Pub. L. 100–647, § 8423(a), inserted ''on-site'' before ''at a community mental health center'' and '', and such services that are necessarily furnished off-site (other than at an off-site office of such psychologist) as part of a treatment plan because of the inability of the individual furnished such services to travel to the center by reason of physical or mental impairment, because of institutionalization, or because of similar circumstances of the individual,'' after ''Public Health Service Act)''.

Pub. L. 100–360, § 411(h)(7)(E), (F), redesignated and amended Pub. L. 100–203, § 4077(b)(4), see 1987 Amendment note below.

Subsec. (jj). Pub. L. 100–485, § 608(d)(6)(A), inserted heading.

Pub. L. 100–360, § 203(b), added subsec. (jj) relating to home intravenous drug therapy services.

Subsec. (kk). Pub. L. 100–360, § 204(a)(2), added subsec. (kk) relating to screening mammography.

Subsec. (*ll*). Pub. L. 100–360, § 205(b), added subsec. (*ll*) relating to in-home care furnished to chronically dependent individual.

1987—Subsec. (a)(2). Pub. L. 100–203, § 4201(d)(1), formerly § 4201(d), as redesignated and amended by Pub. L. 100–360, § 411(*l*)(1)(B)(i), (ii), substituted ''facility described in section 1396i–3(a)(1) of this title or subsection (y)(1) of this section'' for ''skilled nursing facility''.

Subsec. (b)(3). Pub. L. 100–203, § 4009(e)(1), inserted ''(including clinical psychologist (as defined by the Secretary))'' before ''under arrangements''.

Subsec. (b)(4). Pub. L. 100–203, § 4085(i)(9), substituted ''and anesthesia'' for '', anesthesia'' and ''certified registered nurse'' for ''certified certified registered nurse''.

Subsec. (b)(6). Pub. L. 100–203, § 4039(b)(2), substituted ''Council on Podiatric Medical Education of the American Podiatric Medical Association'' for ''Council on Podiatry Education of the American Podiatry Association''.

Subsec. (e)(4). Pub. L. 100–203, § 4009(f), inserted ''with respect to whom payment may be made under this subchapter'' after ''patient''.

Subsec. (g). Pub. L. 100–203, § 4085(i)(10), made technical amendment to heading.

Subsec. (j). Pub. L. 100–203, § 4201(a)(1), amended subsec. generally, substituting provision defining ''skilled nursing facility'' as having the meaning given such term in section 1395i–3(a) of this title for provision defining ''skilled nursing facility'' as, except for purposes of subsec. (a)(2) of this section, an institution or a distinct part of an institution which has in effect a transfer agreement, meeting the requirements of subsec. (*l*) of this section, with one or more hospitals having agreements in effect under section 1395cc of this title and which meet a specified list of criteria.

Subsec. (n). Pub. L. 100–203, § 4201(d)(2), (5), as added by Pub. L. 100–360, § 411(*l*)(1)(B)(iii), and Pub. L. 100–360, § 411(*l*)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), made similar amendments, resulting in the substitution of ''subsection (e)(1) of this section or section 1395i–3(a)(1) of this title'' for ''subsection (e)(1) or (j)(1) of this section'' in introductory provisions.

Subsec. (*o*)(6). Pub. L. 100–203, § 4021(a), inserted ''the conditions of participation specified in section 1395bbb(a) of this title and'' after ''meets''.

Subsec. (r)(3). Pub. L. 100–203, § 4039(b)(1), substituted ''subsections (k), (m), (p)(1), and (s) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title'' for ''subsection (s) of this section'', and struck out ''; and for the purposes of subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only if his performance of functions under subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform''.

Subsec. (s). Pub. L. 100–203, § 4085(i)(11), substituted in closing provisions ''which would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital.'' for ''which—'' before par. (15) and struck out pars. (15) and (16).

Pub. L. 100–203, § 4064(e)(1), inserted ''a laboratory not independent of a physician's office that has a volume of clinical diagnostic laboratory tests exceeding 5,000 per year'' in provisions preceding par. (13).

Subsec. (s)(2)(B). Pub. L. 100–203, § 4070(b)(1), inserted ''and partial hospitalization services incident to such services'' before semicolon.

Subsec. (s)(2)(H)(ii). Pub. L. 100–203, § 4074(a), as amended by Pub. L. 100–360, § 411(h)(5)(A), inserted ''or by a clinical social worker (as defined in subsection (hh) of this section)'' after ''clinical psychologist (as defined by the Secretary)'', and substituted ''incident to such clinical psychologist's services or clinical social worker's services'' for ''incident to his services''.

Subsec. (s)(2)(J). Pub. L. 100–203, § 4075(a), substituted ''prescription drugs used in immunosuppressive therapy'' for ''immunosuppressive drugs''.

Subsec. (s)(2)(K)(i). Pub. L. 100–203, § 4076(a), as amended by Pub. L. 100–360, § 411(h)(6), inserted ''(I)'' and substituted '', (II) as an assistant at surgery, or (III) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area,'' for ''or as an assistant at surgery''.

Subsec. (s)(2)(L). Pub. L. 100–203, § 4073(a), added subpar. (L).

Subsec. (s)(2)(M). Pub. L. 100–203, § 4077(b)(1), as amended by Pub. L. 100–360, § 411(h)(7)(A), added subpar. (M).

Subsec. (s)(10)(A). Pub. L. 100–203, § 4071(a), inserted ''and influenza vaccine and its administration'' before semicolon.

Subsec. (s)(12). Pub. L. 100–203, § 4072(a), added par. (12). Former par. (12) redesignated (13).

Subsec. (s)(13), (14). Pub. L. 100–203, § 4072(a)(1), redesignated pars. (12) and (13) as (13) and (14), respectively. Former par. (14) redesignated (15).

Subsec. (s)(15). Pub. L. 100–203, § 4085(i)(11), as amended by Pub. L. 100–360, § 411(i)(4)(C)(iii), struck out par. (15) which read as follows: ''would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital; or''.

Pub. L. 100–203, § 4072(a)(1), redesignated par. (14) as (15). Former par. (15) redesignated (16).

Subsec. (s)(16). Pub. L. 100–203, § 4085(i)(11), as amended by Pub. L. 100–360, § 411(i)(4)(C)(iii), struck out par. (16) which read as follows: ''is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.''

Pub. L. 100–203, § 4072(a)(1), redesignated par. (15) as (16).

Subsec. (v)(1)(E). Pub. L. 100–203, § 4201(b)(1), inserted at end ''Notwithstanding the previous sentence, such regulations with respect to skilled nursing facilities shall take into account (in a manner consistent with subparagraph (A) and based on patient-days of services furnished) the costs of such facilities complying with the requirements of subsections (b), (c), and (d) of section 1395i–3 of this title (including the costs of conducting nurse aide training and competency evaluation programs and competency evaluation programs).''

Subsec. (v)(1)(L)(iii). Pub. L. 100–203, § 4026(a)(1), added cl. (iii).

Subsec. (v)(1)(S). Pub. L. 100–203, § 4065(a), added subpar. (S).

Subsec. (v)(5)(A). Pub. L. 100–203, § 4085(i)(12), substituted ''subsection (p)'' and ''subsection (g)'' for ''section 1861(p)'' and ''section 1861(g)'', respectively.

Subsec. (aa)(1)(B). Pub. L. 100–203, § 4077(a)(1), substituted ''physician assistant or a nurse practitioner (as defined in paragraph (3)), or by a clinical psychologist (as defined by the Secretary),'' for ''physician assistant or by a nurse practitioner''.

Subsec. (bb). Pub. L. 100–203, § 4085(i)(13), made technical amendment to heading.

Subsec. (bb)(2). Pub. L. 100–203, § 4084(c)(1), as added by Pub. L. 100–360, § 411(i)(3), inserted at end ''Such term also includes, as prescribed by the Secretary, an anesthesiologist assistant.''

Subsec. (cc)(1). Pub. L. 100–203, § 4078, inserted provision at end relating to location requirements in case of physical therapy, occupational therapy, and speech pathology services.

Subsec. (ee). Pub. L. 100–203, § 4085(i)(14), made technical amendment to heading.

Subsec. (ff). Pub. L. 100–203, § 4070(b)(2), added subsec. (ff).

Subsec. (gg). Pub. L. 100–203, § 4073(c), as amended by Pub. L. 100–360, § 411(h)(4)(D), added subsec. (gg).

Subsec. (hh). Pub. L. 100–203, § 4074(b), as amended by Pub. L. 100–360, § 411(h)(5)(B), added subsec. (hh).

Subsec. (ii). Pub. L. 100–203, § 4077(b)(4), formerly § 4077(b)(5), as redesignated and amended by Pub. L. 100–360, § 411(h)(7)(E), (F), added subsec. (ii).

1986—Subsec. (b)(4). Pub. L. 99–509, § 9320(f), inserted before the semicolon at end '', anesthesia services provided by a certified registered nurse anesthetist''.

Subsec. (e)(6). Pub. L. 99–509, § 9305(c)(1), inserted ''(A)'' after ''(6)'' and cl. (B).

Subsec. (g). Pub. L. 99–509, § 9337(d)(1), added subsec. (g).

Subsec. (n). Pub. L. 99–272, § 9219(b)(1)(B), substituted ''as his home'' for ''at his home''.

Subsec. (r)(4). Pub. L. 99–509, § 9336(a), amended cl. (4) generally. Prior to amendment, cl. (4) read as follows: ''a doctor of optometry who is legally authorized to practice optometry by the State in which he performs

such function, but only with respect to services related to the condition of aphakia, or''.

Subsec. (s)(2)(D). Pub. L. 99–509, § 9337(d)(2), inserted ''and outpatient occupational therapy services''.

Subsec. (s)(2)(J). Pub. L. 99–509, § 9335(c)(1), added subpar. (J).

Subsec. (s)(2)(K). Pub. L. 99–509, § 9338(a), added subpar. (K).

Subsec. (s)(11) to (15). Pub. L. 99–509, § 9320(b), added par. (11) and redesignated former pars. (11) to (14) as (12) to (15), respectively.

Subsec. (v)(1)(B). Pub. L. 99–272, § 9107(b)(2), substituted ''any cost reporting period shall be equal to'' for ''any fiscal period shall not exceed one and one-half times'' and ''the period'' for ''such fiscal period''.

Subsec. (v)(1)(G)(i). Pub. L. 99–272, § 9219(b)(3)(A), inserted ''on the basis of'' after ''(during such period)'' in provisions following subcl. (III).

Subsec. (v)(1)(L). Pub. L. 99–509, § 9315(a), inserted ''(i)'' after ''(L)'', struck out ''the 75th percentile of such costs per visit for free standing home health agencies, or, in the judgment of the Secretary, such lower percentile or such comparable or lower limit (based on or related to the mean of the costs of such agencies or otherwise) as the Secretary may determine.'', and substituted in lieu ''for cost reporting periods beginning on or after—

''(I) July 1, 1985, and before July 1, 1986, 120 percent,

''(II) July 1, 1986, and before July 1, 1987, 115 percent, or

''(III) July 1, 1987, 112 percent,

of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies.

''(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies.''

Subsec. (v)(1)(O)(i). Pub. L. 99–272, § 9110(a)(1), inserted '', except as provided in clause (iv),'' after ''such regulations shall provide''.

Subsec. (v)(1)(O)(iv). Pub. L. 99–272, § 9110(a)(2), added cl. (iv).

Subsec. (v)(1)(P). Pub. L. 99–272, § 9107(b)(1), added subpar. (P).

Subsec. (v)(1)(Q). Pub. L. 99–272, § 9202(i)(1), added subpar. (Q).

Subsec. (v)(1)(R). Pub. L. 99–509, § 9313(a)(2), added subpar. (R).

Subsec. (v)(5)(A). Pub. L. 99–509, § 9337(d)(3), inserted ''(including through the operation of subsection (g) of this section)'' after ''subsection (p) of this section''.

Subsec. (bb). Pub. L. 99–509, § 9320(c), added subsec. (bb).

Subsec. (ee). Pub. L. 99–509, § 9305(c)(2), added subsec. (ee).

1984—Subsec. (d). Pub. L. 98–369, § 2335(b)(1), struck out subsec. (d) which defined ''inpatient tuberculosis hospital services'' as inpatient hospital services furnished to an inpatient of a tuberculosis hospital.

Subsec. (e). Pub. L. 98–369, § 2335(b)(2), struck out ''or tuberculosis unless it is a tuberculosis hospital (as defined in subsection (g) of this section) or'' before ''unless it is a psychiatric hospital'' in provisions following par. (9).

Subsec. (f). Pub. L. 98–369, § 2340(a), struck out par. (5) which provided that ''psychiatric hospital'' meant an institution which was accredited by the Joint Commission on Accreditation of Hospitals, and struck out ''if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary'' in concluding provisions.

Subsec. (g). Pub. L. 98–369, § 2335(b)(1), struck out subsec. (g) which defined ''tuberculosis hospital''.

Subsec. (j). Pub. L. 98–369, § 2335(b)(3), in provisions following par. (15), struck out ''or tuberculosis'' after ''treatment of mental diseases''.

Subsec. (j)(2). Pub. L. 98–369, § 2354(b)(18), substituted ''provision for'' for ''provision of''.

Subsec. (j)(13). Pub. L. 98–369, § 2354(b)(19), substituted ''an institution'' for ''a nursing home''.

Subsec. (m)(5). Pub. L. 98–369, § 2321(e)(1), which directed the substitution of ''and durable medical equipment'' for '', and the use of medical applicances'' was executed by making the substitution for '', and the use of medical appliances'' as the probable intent of Congress.

Subsec. (n). Pub. L. 98–369, § 2321(e)(3), added subsec. (n).

Subsec. (p)(1). Pub. L. 98–369, § 2341(a), substituted ''paragraph (1) or (3) of subsection (r) of this section'' for ''subsection (r)(1) of this section''.

Subsec. (p)(2). Pub. L. 98–369, § 2342(a), substituted ''by a physician as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined)'' for '', and is periodically reviewed, by a physician (as so defined)''.

Subsec. (r)(3). Pub. L. 98–617, § 3(b)(7), substituted ''under subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title'' for ''under subsections (k) and (m) and sections 1395f(a) and 1395n of this title'' before ''is consistent with the policy''.

Pub. L. 98–369, § 2341(c), substituted ''for the purposes of subsections (k), (m), and (p)(1) of this section'' for ''for the purposes of subsections (k) and (m) of this section'', and substituted ''sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only if'' for ''sections 1395f(a) and 1395n of this title but only if''.

Subsec. (s)(2)(H). Pub. L. 98–369, § 2322(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (s)(2)(I). Pub. L. 98–369, § 2324(a), added subpar. (I).

Subsec. (s)(6). Pub. L. 98–369, § 2321(e)(2), struck out provision which included iron lungs, oxygen tents, etc. with durable medical equipment. See subsec. (n) of this section.

Subsec. (s)(10). Pub. L. 98–369, § 2323(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (u). Pub. L. 98–369, § 2354(b)(20), struck out ''or'' before ''home health agency''.

Subsec. (v)(1)(B). Pub. L. 98–369, § 2354(b)(21)(A), realigned margin of subpar. (B).

Subsec. (v)(1)(C). Pub. L. 98–369, § 2354(b)(21)(B), realigned margins of subpar. (C).

Subsec. (v)(1)(C)(i). Pub. L. 98–369, § 2354(b)(22), inserted a dash after ''but only if''.

Subsec. (v)(1)(D). Pub. L. 98–369, § 2354(b)(21)(B), realigned margin of subpar. (D).

Pub. L. 98–369, § 2354(b)(21)(C), inserted a comma after ''section 1395k(a)(2)(B)(i) of this title''.

Subsec. (v)(1)(E). Pub. L. 98–369, § 2319(a)(1), struck out cl. (i) which directed that such regulations provide that any determination of reasonable cost with respect to services provided by hospital-based skilled nursing facilities be made on the basis of a single standard based on the reasonableness of costs incurred by free standing skilled nursing facilities, subject to such adjustments as deemed appropriate by the Secretary, and struck out the designation ''(ii)''.

Pub. L. 98–369, § 2354(b)(23), as amended by Pub. L. 98–617, § 3(a)(4), substituted ''use'' for ''uses''.

Subsec. (v)(1)(I)(i), (ii). Pub. L. 98–369, § 2354(b)(24), substituted ''by the Secretary, or upon request by the Comptroller General'' for ''to the Secretary, or upon request to the Comptroller General''.

Subsec. (v)(1)(K). Pub. L. 98–369, § 2318(a), (b), designated existing provisions as cl. (i), substituted therein ''as defined in clause (ii)'' for ''provided in an emergency room'', and added cl. (ii).

Subsec. (v)(1)(O). Pub. L. 98–369, § 2314(a), added subpar. (O).

Subsec. (v)(3). Pub. L. 98–369, § 2354(b)(25), substituted ''semi-private'' for ''semiprivate'' after ''furnished in''.

Subsec. (v)(7)(D). Pub. L. 98–369, § 2319(a)(2), added subpar. (D).

Subsec. (z)(2). Pub. L. 98–369, § 2354(b)(26), substituted ''paragraph (1)'' for ''subparagraph (1)''.

Subsec. (aa)(2)(I). Pub. L. 98–369, § 2354(b)(27), substituted ''utilization'' for ''ultilization''.

Subsec. (cc)(1)(F). Pub. L. 98–369, § 2354(b)(28), substituted ''self-administered'' for ''self administered''.

Subsec. (cc)(1)(G). Pub. L. 98–369, § 2321(e)(4), substituted ''and durable medical equipment'' for '', appliances, and equipment, including the purchase or rental of equipment''.

Subsec. (cc)(2)(F). Pub. L. 98–369, § 2354(b)(29), substituted ''standards established'' for ''standard establishment''.

Subsec. (dd)(2)(A)(ii)(I). Pub. L. 98–369, § 2343(a), inserted ''except as otherwise provided in paragraph (5),''.

Subsec. (dd)(5). Pub. L. 98–369, § 2343(b), added par. (5).

1983—Subsec. (v)(1)(G)(i). Pub. L. 98–21, § 602(d)(1), substituted ''the amount otherwise payable under part A with respect to'' for ''on the basis of the reasonable cost of'' in provisions following subcl. (III).

Subsec. (v)(2)(A). Pub. L. 98–21, § 602(d)(2), substituted ''the amount that would be taken into account with respect to'' for ''an amount equal to the reasonable cost of''.

Subsec. (v)(2)(B). Pub. L. 98–21, § 602(d)(3), struck out ''the equivalent of the reasonable cost of'' after ''only''.

Subsec. (v)(3). Pub. L. 98–21, § 602(d)(4), substituted ''the amount otherwise payable under this subchapter for such bed and board furnished in semiprivate accommodations'' for ''the reasonable cost of such bed and board furnished in semiprivate accommodations (determined pursuant to paragraph (1))''.

Subsec. (v)(7)(C). Pub. L. 97–448 amended directory language of Pub. L. 97–248, § 109(b)(2), to correct typographical error, and did not involve any change in text. See 1982 Amendment note below.

Subsec. (z)(2). Pub. L. 98–21, § 607(d), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 98–21, § 607(b)(2), substituted ''$600,000 (or such lesser amount as may be established by the State under section 1320a–1(g)(1) of this title in which the hospital is located)'' for ''$100,000''.

1982—Subsec. (e)(C). Pub. L. 97–248, § 128(d)(2), substituted ''(i) may'' for ''may (i),''.

Subsec. (s)(2)(H). Pub. L. 97–248, § 114(b), added subpar. (H).

Subsec. (u). Pub. L. 97–248, § 122(d)(1), inserted ''hospice program,'' after ''home health agency,''.

Subsec. (v)(1)(E). Pub. L. 97–248, § 102(a), struck out provisions that this subparagraph would not apply to any skilled nursing facility that either was a distinct part of or directly operated by a hospital or was in a close, formal satellite relationship with a participating hospital, and in the case of the latter, the reasonable cost of any services furnished by such facility as determined by the Secretary under this subsection would not exceed 150 percent of the costs determined by the application of this subparagraph, redesignated the remainder as cl. (ii), and added cl. (i).

Subsec. (v)(1)(G)(i). Pub. L. 97–248, § 148(b), substituted ''quality control and peer review organization'' for ''Professional Standards Review Organization''.

Subsec. (v)(1)(H)(iii). Pub. L. 97–248, § 109(b)(1), struck out ''(I)'' and '', or (II) which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency''.

Subsec. (v)(1)(I). Pub. L. 97–248, § 127(1), amended directory language of Pub. L. 96–499, § 952, by inserting ''(a)'' after ''952'', and did not involve any change in text. See 1980 Amendment note below.

Subsec. (v)(1)(J). Pub. L. 97–248, § 103(a), substituted provisions that cost regulations may not provide for any inpatient routine salary cost differential as a reimbursable cost for hospitals and skilled nursing facilities for provisions that such regulations would provide that an inpatient routine nursing salary cost differential would be allowable as a reimbursable cost of hospitals, at a rate not to exceed 5 percent, to be applied under the same methodology used for the nursing salary cost differential for the month of April 1981.

Subsec. (v)(1)(L). Pub. L. 97–248, § 101(a)(2), struck out cl. (i) which provided that the Secretary, in determining the amount of the payments that could be made under this subchapter with respect to routine operating costs for the provision of general inpatient hospital services, could not recognize as reasonable, routine operating costs for the provision of general inpatient hospital services by a hospital to the extent these costs exceeded 108 percent of the mean of such routine operating costs per diem for hospitals, or, in the judgment of the Secretary, such lower percentage or such comparable or lower limit as the Secretary could determine, and struck out ''(ii)''.

Pub. L. 97–248, § 105(a), inserted ''free standing'' after ''costs per visit for''.

Subsec. (v)(1)(M). Pub. L. 97–248, § 106(a), added subpar. (M).

Subsec. (v)(1)(N). Pub. L. 97–248, § 107(a), added subpar. (N).

Subsec. (v)(7). Pub. L. 97–248, § 101(d), redesignated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (v)(7)(C). Pub. L. 97–248, § 108(a)(2), added subpar. (C).

Pub. L. 97–248, § 109(b)(2), as amended by Pub. L. 97–448, § 309(a)(4), inserted ''and for payments under certain percentage arrangements''.

Subsec. (w)(1). Pub. L. 97–248, § 122(d)(2), substituted ''home health agency, or hospice program'' for ''or home health agency''.

Subsec. (w)(2). Pub. L. 97–248, § 148(b), substituted ''quality control and peer review organization'' for ''Professional Standards Review Organization''.

Subsec. (cc)(1). Pub. L. 97–248, § 128(a)(1), substituted ''inpatient'' for ''outpatient'' in provisions following subpar. (H).

Subsec. (dd). Pub. L. 97–248, § 122(d)(3), added subsec. (dd).

1981—Subsec. (u). Pub. L. 97–35, § 2121(c), struck out ''detoxification facility,'' after ''home health agency,''.

Subsec. (v)(1)(G)(i). Pub. L. 97–35, § 2102(a)(1), substituted ''there is not an excess of hospital beds in such hospital and (subject to clause (iv)) there is not an excess of hospital beds in the area of such hospital'' for ''the hospital had (during the immediately preceding calendar year) an average daily occupancy rate of 80 percent or more'' in provision following subcl. (III).

Pub. L. 97–35, § 2114, substituted ''the Secretary or such agent as the Secretary may designate'' for ''an organization or agency with review responsibility as is otherwise provided for under part A of subchapter XI of this chapter'' in provision preceding subcl. (I).

Subsec. (v)(1)(G)(iv). Pub. L. 97–35, § 2102(a)(2), substituted provisions that the determination under cl. (i) of this subparagraph, in the case of a public hospital, whether or not there is an excess of hospital beds in the area of such hospital, be made on the basis of only the public hospitals which are in the area of the hospital and which are under common ownership with that hospital for provisions that public hospitals under common ownership may elect to be treated as a single hospital, and beginning two years after the date this subparagraph is first applied with respect to a hospital, the Secretary, to the extent feasible, shall not treat as an inpatient an individual with respect to whom payment was made to the hospital only because of this subparagraph or section 1396a(h) of this title for such determination.

Subsec. (v)(1)(J). Pub. L. 97–35, § 2141(a), added subpar. (J).

Subsec. (v)(1)(K). Pub. L. 97–35, § 2142(a), added subpar. (K).

Subsec. (v)(1)(L). Pub. L. 97–35, § 2143(a), added subpar. (L).

Pub. L. 97–35, § 2144(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (w)(2). Pub. L. 97–35, § 2193(c)(9), substituted ''subchapter XIX of this chapter'' for ''subchapter V or XIX of this chapter''.

Subsec. (bb). Pub. L. 97–35, § 2121(d), struck out subsec. (bb) which defined ''alcohol detoxification facility services'' and ''detoxification facility''.

1980—Subsec. (b)(7). Pub. L. 96–499, § 948(a)(1), provided that par. (4) was not to apply to services provided in a

hospital by a physician where the hospital had a teaching program approved as specified in par. (6) if the hospital elected to receive payment for reasonable costs of such services and all physicians in such hospital agreed not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this subchapter.

Subsec. (e). Pub. L. 96–499, § 930(k), substituted ''subsection (i)'' for ''subsections (i) and (n)'' in text preceding par. (1) and in text following par. (9).

Pub. L. 96–499, § 949, in text following par. (9), inserted provision defining ''hospital'' as a facility of fifty beds or less located in an area determined by the Secretary to meet definition relating to a rural area described in subpar. (A) of par. (5) and prescribing exceptions to such definition.

Subsec. (i). Pub. L. 96–499, § 950, substituted ''30 days'' for ''14 days'' in three places and struck out former cl. (B) which related to admission to skilled nursing facilities within 28 days after hospital discharge of an individual unable to be admitted to such facilities within 14 days because of a shortage of appropriate bed space, and redesignated former cl. (C) as (B).

Subsec. (j)(13). Pub. L. 96–499, § 915(a), substituted ''such edition (as is specified by the Secretary in regulations) of the Life Safety Code of the National Fire Protection Association'' for ''the Life Safety Code of the National Fire Protection Association (23rd edition, 1973)''.

Subsec. (k)(2)(A). Pub. L. 96–499, § 951(b), inserted ''(of which at least two must be physicians described in subsection (r)(1) of this section)'' after ''two or more physicians''.

Subsec. (m)(4). Pub. L. 96–499, § 930(*l*), inserted ''who has successfully completed a training program approved by the Secretary'' after ''health aide''.

Subsec. (n). Pub. L. 96–499, § 930(m), struck out subsec. (n) which defined ''post-hospital home health services''.

Subsec. (*o*). Pub. L. 96–499, § 930(n)(2), in provisions following par. (7), struck out provision that ''home health agency'' was not to include a private organization which was not a nonprofit organization exempt from Federal income taxation under section 501 of title 26 unless it were licensed pursuant to State law and met such additional standards and requirements as prescribed by regulations.

Subsec. (*o*)(7). Pub. L. 96–499, § 930(n)(1), added par. (7).

Subsec. (r)(2). Pub. L. 96–499, § 936(a), amended cl. (2) generally to expand definition of ''physician'' to include doctors of dental surgery or dental medicine acting within the scope of their licenses.

Subsec. (r)(3). Pub. L. 96–499, § 951(a), substituted provisions relating to doctors of podiatric medicine for provisions relating to doctors of podiatry and surgical chiropody.

Subsec. (r)(4). Pub. L. 96–499, § 937(a), substituted ''services related to the condition of aphakia'' for ''establishing the necessity for prosthetic lenses''.

Subsec. (s)(2)(G). Pub. L. 96–499, § 938(a), added subpar. (G).

Subsec. (s)(10) to (14). Pub. L. 96–611, § 1(a)(1), added par. (10) and redesignated former pars. (10) to (13) as (11) to (14), respectively.

Subsec. (u). Pub. L. 96–499, § 933(c), inserted ''comprehensive outpatient rehabilitation facility,'' after ''nursing facility''.

Pub. L. 96–499, § 931(c), inserted ''detoxification facility,''.

Subsec. (v)(1)(G). Pub. L. 96–499, § 902(a)(1), added subpar. (G).

Subsec. (v)(1)(H). Pub. L. 96–499, § 930(p), added subpar. (H).

Subsec. (v)(1)(I). Pub. L. 96–499, § 952(a), formerly § 952, as redesignated by Pub. L. 97–248, § 127(1), added subpar. (I).

Subsec. (z). Pub. L. 96–499, § 933(d), which purported to substitute ''skilled nursing facility, comprehensive outpatient rehabilitation facility,'' for ''extended care facility,'' was executed by inserting ''comprehensive outpatient rehabilitation facility,'' after ''skilled nursing facility,'' as the probable intent of Congress, in view of the substitution of ''skilled nursing facility'' for ''extended care facility'' by section 278(b)(6) of Pub. L. 92–603.

Subsec. (aa)(1)(A). Pub. L. 96–611, § 1(b)(3), inserted reference to items and services described in subsection (s)(10) of this section.

Subsec. (bb). Pub. L. 96–499, § 931(d), added subsec. (bb).

Subsec. (cc). Pub. L. 96–499, § 933(e), added subsec. (cc).

1978—Subsec. (s)(2)(F). Pub. L. 95–292 added subpar. (F).

1977—Subsec. (j)(11). Pub. L. 95–142, § 3(a)(2), substituted provisions relating to compliance with requirements of section 1320a–3 of this title, for provisions relating disclosure of ownership, corporate status, etc., information to the Secretary or his delegate.

Subsec. (j)(13). Pub. L. 95–142, § 21(a), struck out ''; and'' after ''nursing facilities''.

Subsec. (j)(14). Pub. L. 95–142, § 21(a), added par. (14).

Subsec. (s). Pub. L. 95–210, § 1(g), (h), added subpar. (E) of par. (2) and in provisions following par. (9) inserted '', a rural health clinic,'' after ''independent of a physician's office''.

Subsec. (s)(6). Pub. L. 95–216 inserted ''(which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe)'' after ''wheelchairs''.

Subsec. (v)(1)(F). Pub. L. 95–142, § 19(b)(1), added subpar. (F).

Subsec. (w)(2). Pub. L. 95–142, § 5(m), inserted ''part B of this subchapter or under'' after ''or entitled to have payment made for such services under''.

Subsec. (aa). Pub. L. 95–210, § 1(d), added subsec. (aa).

1975—Subsec. (e)(5). Pub. L. 94–182, § 102, substituted ''January 1, 1979'' for ''January 1, 1976''.

Subsec. (j)(13). Pub. L. 94–182, § 106(a), substituted ''23d edition, 1973'' for ''21st edition, 1967''.

Subsec. (w). Pub. L. 94–182, § 112(a)(1), designated existing provisions as par. (1) and added par. (2).

1972—Subsec. (a)(2). Pub. L. 92–603, § 278(a)(4), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (b)(6). Pub. L. 92–603, §§ 227(a), 276(a), redesignated existing second sentence of subsec. (b) as par. (6) and in subsec. (b)(6) as so designated inserted reference to services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of podiatry, approved by the Council on Podiatry Education of the American Podiatry Association.

Subsec. (b)(7). Pub. L. 92–603, § 227(a), added par. (7).

Subsec. (e). Pub. L. 92–603, § 211(b), inserted reference to section 1395f(f) of this title in the provisions preceding par. (1), inserted reference to sections 1395f(f)(2) of this title after ''For purposes of sections 1395f(d) and 1395n(b) of this title (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections),'', and inserted provisions for accreditation by the Joint Commission on Accreditation of Hospitals.

Subsec. (e)(8). Pub. L. 92–603, § 234(a), added par. (8). Former par. (8) redesignated (9).

Subsec. (e)(9). Pub. L. 92–603, §§ 234(a), 244(c), redesignated former par. (8) as (9) and struck out provisions requiring that other requirements not be higher than the comparable requirements prescribed for the accreditation of hospitals by the Joint Commission on Accreditation of Hospitals.

Subsecs. (f)(2), (g)(2). Pub. L. 92–603, § 234(b), (c), inserted reference to par. (9) of subsec. (e) of this section.

Subsec. (h). Pub. L. 92–603, § 278(a)(5), substituted ''skilled nursing facility'' for ''extended care facility'', ''skilled nursing facilities'' for ''extended care facilities'' and ''a'' for ''an''.

Subsec. (i). Pub. L. 92–603, §§ 248, 278(a)(6), (b)(10), extended the class of persons qualifying to be deemed as

having been an inpatient in a hospital immediately before transfer therefrom by designating as clause (A) the existing requirement that the person have been admitted to the skilled nursing facility within 14 days after discharge from such hospital and adding cls. (B) and (C) and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (j). Pub. L. 92–603, § 278(a)(7), substituted ''skilled nursing facility'' for ''extended care facility'' in provisions preceding par. (1).

Subsec. (j)(10). Pub. L. 92–603, § 234(d), added par. (10). Former par. (10) redesignated par. (11) by section 234(d)(2) of Pub. L. 92–603 and again redesignated par. (15) by section 246(b)(2) of Pub. L. 92–603.

Subsec. (j)(11) to (13). Pub. L. 92–603, § 246(b)(3), added pars. (11) to (13).

Subsec. (j)(15). Pub. L. 92–603, §§ 234(d), 246(b)(2), (4), 265, 267, 278(b)(13), redesignated former par. (10) as (11), amended par. (11) as thus redesignated by inserting provisions that the Secretary shall not require as a condition of participation that medical social services be furnished in any such institution, redesignated such par. (11) as thus amended as par. (15), and inserted provision that all information concerning skilled nursing facilities required to be filed with the Secretary be made available to Federal and state employees for purposes consistent with the effective administration of programs established under subchapters XVIII and XIX and inserted provision for the waiver of the registered nurse requirement in skilled nursing facilities in rural areas.

Subsec. (k). Pub. L. 92–603, §§ 237(c), 278(a)(8), inserted provisions authorizing the Secretary to utilize the procedures established under subchapter XIX of this chapter if such procedures were determined to be superior in their effectiveness and substituted ''skilled nursing facility'' for ''extended care facility'', ''skilled nursing facilities'' for ''extended care facilities'', and ''a'' for ''an''.

Subsec. (*l*). Pub. L. 92–603, § 278(a)(9), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (m)(7). Pub. L. 92–603, § 278(a)(10), substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (n). Pub. L. 92–603, § 278(a)(11), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (*o*)(5), (6). Pub. L. 92–603, § 234(e), added par. (5) and redesignated former par. (5) as (6).

Subsec. (p). Pub. L. 92–603, §§ 251(a)(1), (b)(1), 283(a), inserted provisions covering physical therapy services of a licensed physical therapist other than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, inserted ''In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility'', and extended definition of ''outpatient physical therapy services'' to include outpatient speech pathology services.

Subsec. (q). Pub. L. 92–603, § 227(f), substituted ''subsection (b)(6) of this section'' for ''the last sentence of subsection (b) of this section'' in parenthetical phrase.

Subsec. (r). Pub. L. 92–603, §§ 211(c)(2), 256(b), 264(a), 273(a), inserted ''or (C) the certification required by section 1395x(a)(2)(E) of this title,'' inserted provision so as to include doctors in one of the specified arts legally authorized to practice such art in the country in which inpatient hospital services referred to in section 1395y(a)(4) are furnished, added cl. (4) covering doctors of optometry who are legally authorized to practice optometry by the State in which they perform such functions, but only with respect to establishing the necessity for prosthetic lenses, and added cl. (5) providing for the inclusion of chiropractor services.

Subsec. (s)(8). Pub. L. 92–603, § 252(a), inserted ''(including colostomy bags and supplies directly related to colostomy care)'' after ''organ''.

Subsec. (u). Pub. L. 92–603, §§ 227(d)(1), 278(a)(12), substituted ''skilled nursing facility, or home health agency, or, for purposes of sections 1395(g) and 1395n(e) of this title, a fund.'' for ''extended care facility, or home health agency.''.

Subsec. (v)(1). Pub. L. 92–603, §§ 223(a), (b), (c), (d), 227(c)(1), (2), (3), (4), 249(b), 278(b)(11), inserted definition of the costs of services, inserted provision that the regulation for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonably based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this subchapter, inserted parenthetical provisions covering exclusion of costs, substituted ''the necessary costs of efficiently delivering covered services covered by the insurance programs'' for ''the costs with respect to individuals covered by the insurance programs'', designated existing provisions as subpars. (A) and (B), and added subpars. (C), (D), and (E), and substituted ''skilled nursing facilities'' for ''extended care facilities''.

Subsec. (v)(3). Pub. L. 92–603, § 278(a)(13), substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (v)(4). Pub. L. 92–603, § 223(f), added par. (4). Former par. (4) redesignated (6).

Subsec. (v)(5). Pub. L. 92–603, § 251(c), added par. (5).

Subsec. (v)(6). Pub. L. 92–603, §§ 223(f), 251(c), redesignated former par. (4) as (6).

Subsec. (v)(7). Pub. L. 92–603, §§ 221(c)(4), 223(b), 251(c), added par. (7).

Subsecs. (w), (y). Pub. L. 92–603, § 278(a)(14), (15), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (z). Pub. L. 92–603, §§ 234(b), 278(b)(6), added subsec. (z) and substituted ''skilled nursing facility'' for ''extended care facility''.

1971—Subsec. (e)(5). Pub. L. 91–690 authorized the Secretary, until January 1, 1976, to waive the requirement relating to the provision of 24 hour nursing service rendered or supervised by a registered professional nurse.

1968—Subsec. (e). Pub. L. 90–248, § 129(c)(9)(C), inserted reference to section 1395n(b) in first and third sentences and inserted ''or diagnostic services'' after ''hospital services'' in third sentence.

Pub. L. 90–248, § 143(a), in second sentence after par. (8), changed definition of hospitals for purposes of making payments for emergency hospital services by deleting provision that hospital meet requirements of pars. (1) to (4), by requiring that such hospitals have full-time nursing services, be licensed as a hospital, and be primarily engaged in providing not nursing care and related services but medical or rehabilitative care by or under the supervision of a doctor of medicine or osteopathy.

Subsec. (p). Pub. L. 90–248, §§ 129(c)(10), 133(b), struck out definition of ''outpatient hospital diagnostic services'' and inserted definition of ''outpatient physical therapy services'', respectively.

Subsec. (r)(3). Pub. L. 90–248, § 127(a), added cl. (3).

Subsec. (s). Pub. L. 90–248, § 144(a)–(c), struck out ''(unless they would otherwise constitute inpatient hospital services, extended care services, or home health services)'' after ''items or services'' in text preceding par. (1), inserted after ''hospital'' in sentence following par. (9) ''which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1395f(d) of this title)'', and inserted sentence following par. (13) providing that medical and other health services (other than physicians' services and services incident to physicians' services) furnished a patient of a facility which meets the definition of a hospital for emergency services will be covered under the medical insurance program only if such facility satisfies such health and safety requirements as are appropriate for the item or service furnished as the Secretary may determine are necessary.

Subsec. (s)(2)(A) to (C). Pub. L. 90–248, § 129(a), designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (s)(2)(D). Pub. L. 90–248, § 133(a), added subpar. (D).

Subsec. (s)(3). Pub. L. 90–248, § 134(a), included in medical and other health services diagnostic X-ray tests furnished in the patient's home under the supervision of a physician if the tests meet such health and safety conditions as the Secretary finds necessary.

Subsec. (s)(6). Pub. L. 90–248, § 132(a), provided that payments may be made with respect to expenses incurred in the purchase as well as in the rental of durable medical equipment.

Pub. L. 90–248, § 144(d), inserted ''other than in institution that meets the requirements of subsection (e)(1) or (j)(1) of this section''.

Subsec. (s)(12), (13). Pub. L. 90–248, § 129(b), added pars. (12) and (13) which excluded from the diagnostic services referred to in par. (2)(C) (other than physician's services) certain items or service.

Subsec. (y)(3). Pub. L. 90–248, § 129(c)(11), substituted ''1395e(a)(3)'' for ''1395e(a)(4)''.

1966—Subsec. (v)(1). Pub. L. 89–713 inserted provisions which required that, in the case of extended care services furnished by proprietary facilities, the regulations include provision for specific recognition of a reasonable return on equity capital and which placed a limitation on the rate of return of one and one-half times the average of the rates of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 5112(a), (b) of Pub. L. 109–171 applicable to services furnished on or after Jan. 1, 2007, see section 5112(f) of Pub. L. 109–171, set out as a note under section 1395*l* of this title.

Amendment by section 5114(a)(1), (b) of Pub. L. 109–171 applicable to services furnished on or after Jan. 1, 2006, see section 5114(c) of Pub. L. 109–171, set out as a note under section 1395u of this title.

Amendment by section 6001(f)(1) of Pub. L. 109–171 effective Feb. 8, 2006, see section 6001(f)(3) of Pub. L. 109–171, set out as a note under section 1396r–8 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 415(b) of Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2005, see section 415(c) of Pub. L. 108–173, set out as a note under section 1395m of this title.

Amendment by section 512(c) of Pub. L. 108–173 applicable to services provided by a hospice program on or after Jan. 1, 2005, see section 512(d) of Pub. L. 108–173, set out as a note under section 1395d of this title.

Amendment by section 611(a), (b), (d)(2) of Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2005, but only for individuals whose coverage period under this part begins on or after such date, see section 611(e) of Pub. L. 108–173, set out as a note under section 1395w–4 of this title.

Pub. L. 108–173, title VI, § 612(d), Dec. 8, 2003, 117 Stat. 2305, provided that: ''The amendments made by this section [amending this section and section 1395y of this title] shall apply to tests furnished on or after January 1, 2005.''

Pub. L. 108–173, title VI, § 613(d), Dec. 8, 2003, 117 Stat. 2306, provided that: ''The amendments made by this section [amending this section and section 1395y of this title] shall apply to tests furnished on or after January 1, 2005.''

Amendment by section 642(a) of Pub. L. 108–173 applicable to items furnished on or after Jan. 1, 2004, see section 642(c) of Pub. L. 108–173, set out as a note under section 1395*l* of this title.

Pub. L. 108–173, title IX, § 926(b)(2), Dec. 8, 2003, 117 Stat. 2396, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to discharge plans made on or after such date as the Secretary [of Health and Human Services] shall specify, but not later than 6 months after the date the Secretary provides for availability of information under subsection (a) [enacting provisions set out as a note under this section].''

Amendment by section 946(a) of Pub. L. 108–173 applicable to hospice care provided on or after Dec. 8, 2003, see section 946(c) of Pub. L. 108–173, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title I, § 101(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–468, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to items and services furnished on or after July 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title I, § 102(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–468, provided that: ''The amendments made by this section [amending this section and section 1395y of this title] shall apply to services furnished on or after January 1, 2002.''

Amendment by section 1(a)(6) [title I, § 103(a)] of Pub. L. 106–554 applicable to colorectal cancer screening services provided on or after July 1, 2001, see section 1(a)(6) [title I, § 103(c)] of Pub. L. 106–554, set out as a note under section 1395m of this title.

Amendment by section 1(a)(6) [title I, § 105(a), (b)] of Pub. L. 106–554 applicable to services furnished on or after Jan. 1, 2002, see section 1(a)(6) [title I, § 105(e)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, § 1(a)(6) [title I, § 112(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to drugs and biologicals administered on or after the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, § 1(a)(6) [title I, § 113(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to drugs furnished on or after the date of the enactment of this Act [Dec. 21, 2000].''

Amendment by section 1(a)(6) [title IV, § 430(b)] of Pub. L. 106–554 applicable to items and services furnished on or after July 1, 2001, see section 1(a)(6) [title IV, § 430(c)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, § 1(a)(6) [title IV, § 431(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–525, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to community mental health centers with respect to services furnished on or after the first day of the third month beginning after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title II, § 201(k)] of Pub. L. 106–113 effective as if included in enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see § 1000(a)(6) [title II, § 201(m)] of Pub. L. 106–113, set out as a note under section 1395*l* of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 221(b)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–351, provided that: ''The amendments made by paragraph (1) [amending this section] apply to services furnished on or after January 1, 2000.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 303(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–361, provided that: ''The amendments made by this section [amending this section and section 1395fff of this title] shall apply to services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1999.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 304(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–361, provided that:

''The amendments made by this section [amending this section and enacting section 1320b–7f of this title] take effect on the date of the enactment of this Act [Nov. 29, 1999], and in applying section 1861(*o*)(7) of the Social Security Act (42 U.S.C. 1395x(*o*)(7)), as amended by subsection (a), the Secretary of Health and Human Services may take into account the previous period for which a home health agency had a surety bond in effect under such section before such date.''

Amendment by section 1000(a)(6) [title III, §321(k)(7)–(9)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4102(a), (c) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4102(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4103(a) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 2000, see section 4103(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4104(a)(1) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4104(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4105(a)(1), (b)(1) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4105(d)(1) of Pub. L. 105–33, set out as a note under section 1395m of this title.

Section 4106(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395w–4, 1395aa, 1396a, and 1396n of this title] shall apply to bone mass measurements performed on or after July 1, 1998.''

Amendment by section 4201(c)(1), (2) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4205(b)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1998.''

Section 4205(c)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] applies to waiver requests made on or after January 1, 1998.''

Section 4205(d)(4) of Pub. L. 105–33 provided that:

''(A) IN GENERAL.—Except as otherwise provided, the amendments made by the preceding paragraphs [amending this section and section 1395u of this title] take effect on the date of the enactment of this Act [Aug. 5, 1997].

''(B) CURRENT RURAL HEALTH CLINICS.—The amendments made by the preceding paragraphs take effect, with respect to entities that are rural health clinics under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) on the date of enactment of this Act, on the date of the enactment of this Act [sic].

''(C) GRANDFATHERED CLINICS.—

''(i) IN GENERAL.—The amendment made by paragraph (3)(A) [amending this section] shall take effect on the effective date of regulations issued by the Secretary under clause (ii).

''(ii) REGULATIONS.—The Secretary shall issue final regulations implementing paragraph (3)(A) that shall take effect no later than January 1, 1999.''

Amendment by section 4312(d), (e) of Pub. L. 105–33 effective Aug. 5, 1997, and may be applied with respect to items and services furnished on or after Jan. 1, 1998, see section 4312(f)(3) of Pub. L. 105–33, set out as a note under section 1395m of this title.

Section 4312(f)(2) of Pub. L. 105–33 provided that: ''The amendments made by subsection (b) [amending this section] shall apply to home health agencies with respect to services furnished on or after January 1, 1998. The Secretary of Health and Human Services shall modify participation agreements under section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) with respect to home health agencies to provide for implementation of such amendments on a timely basis.''

Section 4321(d)(1) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to discharges occurring on or after the date which is 90 days after the date of the enactment of this Act [Aug. 5, 1997].''

Section 4404(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] apply to changes of ownership that occur after the third month beginning after the date of enactment of this section [Aug. 5, 1997].''

Amendment by section 4432(b)(5)(D), (E) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Section 4444(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to items or services furnished on or after April 1, 1998.''

Amendment by sections 4445 and 4446 of Pub. L. 105–33 applicable to benefits provided on or after Aug. 5, 1997, except as otherwise provided, see section 4449 of Pub. L. 105–33, set out as a note under section 1395d of this title.

Amendment by section 4454(a)(1) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

Amendment by section 4511(a)(1)–(2)(B), (d) of Pub. L. 105–33 applicable to services furnished and supplies provided on and after Jan. 1, 1998, see section 4511(e) of Pub. L. 105–33, set out as a note under section 1395k of this title.

Amendment by section 4512(a) of Pub. L. 105–33 applicable to services furnished and supplies provided on and after Jan. 1, 1998, see section 4512(d) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Section 4513(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] applies to services furnished on or after January 1, 2000.''

Section 4557(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to items and services furnished on or after January 1, 1998.''

Section 4604(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1395bbb of this title] apply to cost reporting periods beginning on or after October 1, 1997.''

Amendment by section 4611(b) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, and for purposes of applying such amendment, any home health spell of illness that began, but did not end, before such date, to be considered to have begun as of such date, see section 4611(f) of Pub. L. 105–33, set out as a note under section 1395d of this title.

Section 4612(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] applies to services furnished on or after October 1, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–299 effective Oct. 1, 1996, see section 5 of Pub. L. 104–299, as amended, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 107(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the first day of the first month beginning more than one year after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 145(b) of Pub. L. 103–432 applicable to mammography furnished by the facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Section 146(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1995.''

Amendment by section 147(e)(1), (4), (5), (f)(3), (4)(A), (6)(A), (B), (E) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Section 158(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to cost reporting periods beginning on or after July 1, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13503(c)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraph (1) [amending this section and section 1395*oo* of this title] shall take effect October 1, 1993.''

Section 13553(c) of Pub. L. 103–66 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to items furnished on or after January 1, 1994.''

Section 13554(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1994.''

Section 13556(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 4161(a)(2)(C) of OBRA–1990 [Pub. L. 101–508].''

Section 13564(b)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1993.''

Section 13566(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 1395rr of this title] shall apply to erythropoietin furnished on or after January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4008(h)(2)(A)(i) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4008(h)(2)(P) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

Amendment by section 4152(a)(2) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4152(a)(3) of Pub. L. 101–508, set out as a note under section 1395m of this title.

Section 4153(b)(2)(C) of Pub. L. 101–508 provided that: ''The amendments made by subparagraphs (A) and (B) [amending this section and section 1395y of this title] shall apply to items furnished on or after January 1, 1991.''

Amendment by section 4155(a), (d) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4155(e) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4157(a) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4157(d) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(a)(1), (2), (5) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Section 4161(b)(5) of Pub. L. 101–508 provided that: ''This subsection [amending this section and section 1395*oo* of this title and enacting provisions set out as a note below] shall take effect on October 1, 1991, except that the amendment made by paragraph (4) [amending section 1395*oo* of this title] shall apply to cost reports for periods beginning on or after October 1, 1991.''

Amendment by section 4162(a) of Pub. L. 101–508 applicable with respect to partial hospitalization services provided on or after Oct. 1, 1991, see section 4162(c) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4163(a) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

Section 4201(d)(3)[(4)] of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395rr of this title] shall apply to items and services furnished on or after July 1, 1991.''

Section 4207(d)(4), formerly 4027(d)(3), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (10), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to home health agency cost reporting periods beginning on or after July 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6112(e)(1) of Pub. L. 101–239 applicable with respect to items furnished on or after Jan. 1, 1990, see section 6112(e)(4) of Pub. L. 101–239, set out as a note under section 1395m of this title.

Amendment by section 6113(a)–(b)(2) of Pub. L. 101–239 applicable to services furnished on or after July 1, 1990, see section 6113(e) of Pub. L. 101–239, set out as a note under section 1395*l* of this title.

Amendment by section 6114(a), (d) of Pub. L. 101–239 applicable to services furnished on or after Apr. 1, 1990, see section 6114(f) of Pub. L. 101–239, set out as a note under section 1395u of this title.

Section 6115(d) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and sections 1395y, 1395aa, 1395bb, 1396a, and 1396n of this title] shall apply to screening pap smears performed on or after July 1, 1990.''

Amendment by section 6131(a)(2) of Pub. L. 101–239 applicable with respect to therapeutic shoes and inserts furnished on or after July 1, 1989, with additional provisions regarding applicability of the increase under section 1395*l*(*o*)(2)(C) of this title, see section 6131(c) of Pub. L. 101–239, set out as a note under section 1395*l* of this title.

Section 6141(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6213(d) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4207(k)(4), formerly § 4027(k)(4), Nov. 5, 1990, 104 Stat. 1388–125, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by subsections (a) through (c) of this section [amending this section] shall apply to services furnished on or after October 1, 1989.''

Amendment by section 101(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8423(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after January 1, 1989.''

Section 8424(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective with respect to services provided after December 31, 1988.''

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Cov-

erage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 104(d)(4) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Amendment by section 202(a) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 203(b), (e)(1) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(a) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 205(b) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

Section 206(b) of Pub. L. 100–360, which provided that the amendment of this section by section 206(a) of Pub. L. 100–360 applied to services furnished in cases of initial periods of home health services beginning on or after January 1, 1990, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(d)(5)(A), (g)(3)(H), (h)(1)(B)–(3)(A), (4)(D), (5)–(7)(A), (E), (F), (i)(3), (4)(C)(iii), (*l*)(1)(B), (C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(d)(1)(B)(ii) of Pub. L. 100–360 provided that: ''The amendment made by clause (i) [amending this section] shall apply to equipment furnished on or after the effective date provided in section 4021(c) of OBRA [Pub. L. 100–203, set out below].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4009(e)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to services furnished on or after April 1, 1988.''

Section 4021(c) of Pub. L. 100–203 provided that: ''Except as otherwise provided, the amendments made by subsections (a) and (b) [enacting section 1395bbb of this title and amending this section] shall apply to home health agencies as of the first day of the 18th calendar month that begins after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4026(a)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(d)(5)(B), July 1, 1988, 102 Stat. 775, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after July 1, 1989.''

Section 4064(e)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to diagnostic tests performed on or after January 1, 1990.''

Section 4065(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 1395rr of this title] shall become effective on January 1, 1988.''

Section 4070(c)(2) of Pub. L. 100–203 provided that:

''(A) The amendments made by subsection (b) [amending this section and sections 1395*l* and 1395n of this title] shall become effective on the date of enactment of this Act [Dec. 22, 1987].

''(B) The Secretary of Health and Human Services shall implement the amendments made by subsection (b) so as to ensure that there is no additional cost to the medicare program by reason of such amendments.''

Section 4071(b) of Pub. L. 100–203 provided that:

''(1) The provisions of subsection (e) of section 4072 of this subpart [section 4072(e) of Pub. L. 100–203, set out below] shall apply to this section [amending this section] in the same manner as it applies to section 4072. [Amendments became effective pursuant to final report dated Apr. 26, 1993. See Cong. Rec., vol. 139, pt. 7, p. 10460, Ex. Comm. 1254.]

''(2) In conducting the demonstration project pursuant to paragraph (1), in order to determine the cost effectiveness of including influenza vaccine in the medicare program, the Secretary of Health and Human Services is required to conduct a demonstration of the provision of influenza vaccine as a service for medicare beneficiaries and to expend $25,000,000 each year of the demonstration project for this purpose. In conducting this demonstration, the Secretary is authorized to purchase in bulk influenza vaccine and to distribute it in a manner to make it widely available to medicare beneficiaries, to develop projects to provide vaccine in the same manner as other covered medicare services in large scale demonstration projects, including statewide projects, and to engage in other appropriate use of moneys to provide influenza vaccine to medicare beneficiaries and evaluate the cost effectiveness of its use. In determining cost effectiveness, the Secretary shall consider the direct cost of the vaccine, the utilization of vaccine which might otherwise not have occurred, the costs of illnesses and nursing home days avoided, and other relevant factors, except that extended life for beneficiaries shall not be considered to reduce the cost effectiveness of the vaccine.''

Section 4072(e) of Pub. L. 100–203 provided that:

''(1) The amendments made by this section [amending this section and sections 1395*l*, 1395y, 1395aa, 1395bb, 1396a, and 1396n of this title] shall become effective (if at all) in accordance with paragraph (2).

''(2)(A) The Secretary of Health and Human Services (in this paragraph referred to as the 'Secretary'), shall establish a demonstration project to begin on October 1, 1988, to test the cost-effectiveness of furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section to a sample group of medicare beneficiaries.

''(B)(i) The demonstration project under subparagraph (A) shall be conducted for an initial period of 24 months. Not later than October 1, 1990, the Secretary shall report to the Congress on the results of such project. If the Secretary finds, on the basis of existing data, that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is cost-effective, the Secretary shall include such finding in such report, such project shall be discontinued, and the amendments made by this section shall become effective on November 1, 1990.

''(ii) If the Secretary determines that such finding cannot be made on the basis of existing data, such project shall continue for an additional 24 months. Not later than April 1, 1993, the Secretary shall submit a final report to the Congress on the results of such project. The amendments made by this section shall become effective on the first day of the first month to begin after such report is submitted to the Congress unless the report contains a finding by the Secretary that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is not cost-effective (in which case the amendments made by this section shall not become effective).''

[Amendments by section 4072 of Pub. L. 100–203 became effective pursuant to final report dated Apr. 26, 1993. See Cong. Rec., vol. 139, pt. 7, p. 10460, Ex. Comm. 1252.]

Amendment by section 4073(a), (c) of Pub. L. 100–203 effective with respect to services performed on or after

July 1, 1988, see section 4073(e) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Section 4074(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to services performed on or after January 1, 1988.''

Section 4075(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to drugs dispensed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4076(b) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply with respect to services furnished on or after January 1, 1989.''

Section 4077(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to services furnished on or after the date of enactment of this Act [Dec. 22, 1987].''

Amendment by section 4077(b)(1), (4) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4077(b)(5) of Pub. L. 100–203, as amended, set out as a note under section 1395k of this title.

Amendment by section 4084(c)(1) of Pub. L. 100–203 applicable to services furnished after Dec. 31, 1988, see section 4084(c)(3) of Pub. L. 100–203, as added, set out as a note under section 1395*l* of this title.

Amendments by section 4201(a)(1), (b)(1), (d)(1), (2), (5) of Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9305(c)(4) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section and section 1395bb of this title] shall apply to hospitals as of one year after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9313(a)(3) of Pub. L. 99–509 provided that: ''The amendments made by this paragraph [probably means ''this subsection'' which amended this section and section 1395ff of this title] take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Amendment by section 9320(b), (c), (f) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9335(c)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to immunosuppressive drugs furnished on or after January 1, 1987.''

Section 9336(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1987.''

Amendment by section 9337(d) of Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

Section 9338(f) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall apply to services furnished on or after January 1, 1987.''

Section 9107(c)(2) of Pub. L. 99–272 provided that: ''The amendments made by subsection (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1985.''

Section 9110(b) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall be applied as though they were originally included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

Section 9202(i)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after July 1, 1985.''

Amendment by section 9219(b)(1)(B) of Pub. L. 99–272 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 9219(b)(1)(D) of Pub. L. 99–272, set out as a note under section 1395u of this title.

Section 9219(b)(3)(B) of Pub. L. 99–272 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as if it had been originally included in the Social Security Amendments of 1983 [Pub. L. 98–21].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2314(c)(1), (2) of Pub. L. 98–369 provided that:

''(1) Clause (i) of section 1861(v)(1)(O) of the Social Security Act [subsec. (v)(1)(O)(i) of this section] shall not apply to changes of ownership of assets pursuant to an enforceable agreement entered into before the date of the enactment of this Act [July 18, 1984].

''(2) Clause (iii) of section 1861(v)(1)(O) of such Act [subsec. (v)(1)(O)(iii) of this section] shall apply to costs incurred on or after the date of the enactment of this Act.''

Section 2318(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2319(a) of Pub. L. 98–369 applicable to cost reporting periods beginning on or after July 1, 1984, see section 2319(c) of Pub. L. 98–369, set out as an Effective Date note under section 1395yy of this title.

Amendment by section 2321(e) of Pub. L. 98–369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2322(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2323(a) of Pub. L. 98–369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2324(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to items and services purchased on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2335(b) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2340(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2341(a), (c) of Pub. L. 98–369 applicable to services furnished on or after July 18, 1984, see section 2341(d) of Pub. L. 98–369, set out as a note under section 1395k of this title.

Amendment by section 2342(a) of Pub. L. 98–369 applicable to plans of care established on or after July 18, 1984, see section 2342(c) of Pub. L. 98–369, set out as a note under section 1395n of this title.

Section 2343(c) of Pub. L. 98–369 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(18)–(29) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or in-

terpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 602(d) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 309(c)(1) of Pub. L. 97–448, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 101(a)(2) of Pub. L. 97–248 applicable to cost reporting periods beginning on or after Oct. 1, 1982, see section 101(b)(1) of Pub. L. 97–248, set out as an Effective Date note under section 1395ww of this title.

Section 102(b) of Pub. L. 97–248, as amended by Pub. L. 98–21, title VI, §605(a), Apr. 20, 1983, 97 Stat. 169, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1983.''

Section 103(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods ending after September 30, 1982, but in the case of any cost reporting period beginning before October 1, 1982, any reduction in payments under title XVIII of the Social Security Act [this subchapter] to a hospital or skilled nursing facility resulting from such amendment shall be imposed only in proportion to the part of the period which occurs after September 30, 1982.''

Section 105(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after the date of the enactment of this Act [Sept. 3, 1982].''

Section 106(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to any costs incurred under title XVIII of the Social Security Act [this subchapter], except that it shall not apply to costs which have been allowed prior to the date of the enactment of this Act [Sept. 3, 1982] pursuant to the final court order affirmed by a United States Court of Appeals.''

Section 107(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to costs incurred after the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 109(b)(2) of Pub. L. 97–248 effective Sept. 3, 1982, see section 109(c)(1) of Pub. L. 97–248, set out as a note under section 1395xx of this title.

Section 109(c)(3) of Pub. L. 97–248 provided that: ''The amendment made by subsection (b)(1) [amending this section] shall not apply to contracts entered into before the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 122(d) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Section 128(e) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Any amendment to the Omnibus Budget Reconciliaton [Reconciliation] Act of 1981 [Pub. L. 97–35] made by this section [amending provisions set out as notes under sections 426 and 1395x of this title] shall be effective as if it had been originally included in the provision of the Omnibus Budget Reconciliation Act of 1981 to which such amendment relates.

''(2) Except as otherwise provided in this section, any amendment to the Social Security Act [this chapter] or the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [Title 26, Internal Revenue Code] made by this section (other than subsection (d)) [amending this section and sections 1395y, 1395cc, and 1395uu of this title and section 162 of Title 26] shall be effective as if it had been originally included as a part of that provision of the Social Security Act or Internal Revenue Code of 1986 to which it relates, as such provision of such Act or Code was amended by the Omnibus Budget Reconciliaton [Reconciliation] Act of 1981 [Pub. L. 97–35].

''(3) The amendments made by subsection (d) [amending this section and sections 1395u, 1395bb, 1395cc, and 1395gg of this title] shall take effect upon enactment [Sept. 3, 1982].''

Amendment by section 148(b) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2102(b)(1) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section], shall apply to services provided on or after the first day of the first month beginning after the date of the enactment of this Act [Aug. 13, 1981].''

Amendment by section 2121(c), (d) of Pub. L. 97–35 applicable to services furnished in detoxification facilities for inpatient stays beginning on or after the tenth day after Aug. 13, 1981, see section 2121(i) of Pub. L. 97–35, set out as a note under section 1395d of this title.

Section 2141(c) of Pub. L. 97–35 provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to cost reporting periods ending after September 30, 1981.

''(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.''

Section 2143(b) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, §128(c)(1), Sept. 3, 1982, 96 Stat. 367, provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to cost reporting periods ending after September 30, 1981.

''(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.''

Section 2144(b) of Pub. L. 97–35 provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to cost reporting periods ending after September 30, 1981.

''(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.''

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(9) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

Section 902(c) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this sec-

tion and sections 1320c–7 and 1396a of this title] shall become effective on the date of [probably should be ''on''] which final regulations, promulgated by the Secretary to implement such amendments, are first issued; and those regulations shall be issued not later than the first day of the sixth month following the month in which this Act is enacted [December 1980].''

Section 930(s) of Pub. L. 96–499 provided that:

''(1) the amendments made by this section [amending this section, sections 426, 1395c, 1395d, 1395f, 1395h, 1395k, 1395*l*, and 1395n of this title, and section 231f of Title 45, Railroads, and repealing section 1395m of this title] shall become effective with respect to services furnished on or after July 1, 1981, except that the amendments made by subsections (n)(1) and (*o*) [amending this section and section 1395h of this title] shall become effective on the date of the enactment of this Act [Dec. 5, 1980].

''(2) The Secretary of Health and Human Services shall take administrative action to assure that improvements, in accordance with the amendment made by subsection (n)(1) [amending this section], will be made not later than June 30, 1981.''

Amendment by section 931(c), (d) of Pub. L. 96–499 effective Apr. 1, 1981, see section 931(e) of Pub. L. 96–499, set out as a note under section 1395d of this title.

Amendment by section 933(c)–(e) of Pub. L. 96–499 effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period beginning on or after July 1, 1981, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

Amendment by section 936(a) of Pub. L. 96–499 applicable with respect to services provided on or after July 1, 1981, see section 936(d) of Pub. L. 96–499, set out as a note under section 1395f of this title.

Section 937(c) of Pub. L. 96–499, as amended by Pub. L. 98–369, div. B, title III, § 2354(c)(1)(B), July 18, 1984, 98 Stat. 1102, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after July 1, 1981.''

Section 938(b) of Pub. L. 96–499 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1981.''

Section 948(c)(1) of Pub. L. 96–499 provided that: ''The amendments made by subsection (a) [amending this section and section 1395k of this title] shall apply with respect to cost accounting periods beginning on or after October 1, 1978. A hospital's election under section 1861(b)(7)(A) of the Social Security Act [subsec. (b)(7)(A) of this section] (as administered in accordance with section 15 of Public Law 93–233) as of September 30, 1978, shall constitute such hospital's election under such section (as amended by subsection (a)(1)) on and after October 1, 1978, until otherwise provided by the hospital.''

Section 951(c) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 501(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall be effective in the case of items and services furnished after the date of the enactment of this Act [Dec. 20, 1977].''

Amendment by Pub. L. 95–210 applicable to services rendered on or after the first day of the third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

Amendment by section 3(a)(2) of Pub. L. 95–142 effective Oct. 25, 1977, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Amendment by section 19(b)(1) of Pub. L. 95–142 effective with respect to operation of a hospital, skilled nursing facility, or intermediate care facility on and after the first day of its first fiscal year which begins after the end of the six-month period beginning on the date a uniform reporting system is established under section 1320a(a) of this title for that type of health services facility, except that for other types of facilities or organizations effective with respect to operations on and after the first day of its first fiscal year which begins after such date as the Secretary determines to be appropriate for the implementation of the reporting requirement for that type of facility or organization, see section 19(c)(2) of Pub. L. 95–142, set out as a note under section 1396a of this title.

Section 21(c)(1) of Pub. L. 95–142 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective on the first day of the first calendar quarter which begins more than six months after the date of enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 106(b) of Pub. L. 94–182 provided that: ''Subject to subsection (c) [enacting provisions set out below], the amendment made by subsection (a) [amending this section] shall be effective on the first day of the sixth month which begins after the date of enactment of this Act [Dec. 31, 1975].''

Section 112(d) of Pub. L. 94–182 provided that: ''The amendments made by this section [amending this section and sections 1320c–17 and 1395g of this title] shall be effective with respect to utilization review activities conducted on and after the first day of the first month which begins more than 30 days after the date of enactment of this Act [Dec. 31, 1975].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 211(b), (c)(2) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Section 223(h) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1395cc of this title] shall be effective with respect to accounting periods beginning after December 31, 1972.''

Section 227(g) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395f, 1395k, 1395n, 1395u, and 1395cc of this title] shall apply with respect to accounting periods beginning after June 30, 1973.''

Section 234(i) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395f, 1395z, and 1395bb of this title] shall apply with respect to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month in which this Act is enacted [October 1972].''

Section 246(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1396 of this title] shall be effective July 1, 1973.''

Section 251(d) of Pub. L. 92–603, as amended by Pub. L. 93–233, § 17(a), Dec. 31, 1973, 87 Stat. 967, provided that:

''(1) The amendments made by subsection (a) [amending this section and sections 1395*l* and 1395k of this

title] shall apply with respect to services furnished on or after July 1, 1973.

''(2) The amendments made by subsection (b) [amending this section and section 1395n of this title] shall apply with respect to services furnished on or after the date of enactment of this Act [Oct. 30, 1972].

''(3) The amendments made by subsection (c) [amending this section] shall be effective with respect to accounting periods beginning after the month in which there are promulgated, by the Secretary of Health, Education, and Welfare, final regulations implementing the provisions of section 1861(v)(5) of the Social Security Act [subsec. (v)(5) of this section].''

Section 252(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to items furnished on or after the date of the enactment of this Act [Oct. 30, 1972].''

Amendment by section 256(b) of Pub. L. 92–603 applicable with respect to admissions occurring after the second month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 256(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Section 264(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to services performed on or after the date of the enactment of this Act [Oct. 30, 1972].''

Section 273(b) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to services furnished after June 30, 1973.''

Section 276(b) of Pub. L. 92–603 provided that: ''The amendment made by this section [amending this section] shall apply with respect to accounting periods beginning after December 31, 1972.''

Amendment by section 283(a) of Pub. L. 92–603 to apply with respect to services rendered after Dec. 31, 1972, see section 283(c) of Pub. L. 92–603, set out as a note under section 1395n of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 127(c) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395y of this title] shall apply with respect to services furnished after December 31, 1967.''

Amendment by section 129(a), (b), (c)(9)(C), (10), (11) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 132(a) of Pub. L. 90–248 applicable with respect to items purchased after Dec. 31, 1967, see section 132(c) of Pub. L. 90–248, set out as a note under section 1395*l* of this title.

Amendment by section 133(a), (b) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

Section 134(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services furnished after December 31, 1967.''

Amendment by section 143(a) of Pub. L. 90–248 effective July 1, 1966, see section 143(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 144(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to services furnished after March 31, 1968.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–713 effective Nov. 2, 1966, see section 6 of Pub. L. 89–713, set out as a note under section 6091 of Title 26, Internal Revenue Code.

CONFORMING REFERENCES TO PREVIOUS PART D

Pub. L. 108–173, title I, §101(e)(1), Dec. 8, 2003, 117 Stat. 2150, provided that: ''Any reference in law (in effect before the date of the enactment of this Act [Dec. 8, 2003]) to part D of title XVIII of the Social Security Act [part D of this subchapter] is deemed a reference to part E of such title [this part] (as in effect after such date).''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

FRONTIER EXTENDED STAY CLINIC DEMONSTRATION PROJECT

Pub. L. 108–173, title IV, §434, Dec. 8, 2003, 117 Stat. 2288, provided that:

''(a) AUTHORITY TO CONDUCT DEMONSTRATION PROJECT.—The Secretary [of Health and Human Services] shall waive such provisions of the medicare program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as are necessary to conduct a demonstration project under which frontier extended stay clinics described in subsection (b) in isolated rural areas are treated as providers of items and services under the medicare program.

''(b) CLINICS DESCRIBED.—A frontier extended stay clinic is described in this subsection if the clinic—

''(1) is located in a community where the closest short-term acute care hospital or critical access hospital is at least 75 miles away from the community or is inaccessible by public road; and

''(2) is designed to address the needs of—

''(A) seriously or critically ill or injured patients who, due to adverse weather conditions or other reasons, cannot be transferred quickly to acute care referral centers; or

''(B) patients who need monitoring and observation for a limited period of time.

''(c) SPECIFICATION OF CODES.—The Secretary shall determine the appropriate life-safety codes for such clinics that treat patients for needs referred to in subsection (b)(2).

''(d) FUNDING.—

''(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated, in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, such sums as are necessary to conduct the demonstration project under this section.

''(2) BUDGET NEUTRAL IMPLEMENTATION.—In conducting the demonstration project under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under the medicare program do not exceed the amount which the Secretary would have paid under the medicare program if the demonstration project under this section was not implemented.

''(e) THREE-YEAR PERIOD.—The Secretary shall conduct the demonstration under this section for a 3-year period.

''(f) REPORT.—Not later than the date that is 1 year after the date on which the demonstration project concludes, the Secretary shall submit to Congress a report on the demonstration project, together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

''(g) DEFINITIONS.—In this section, the terms 'hospital' and 'critical access hospital' have the meanings

given such terms in subsections (e) and (mm), respectively, of section 1861 of the Social Security Act (42 U.S.C. 1395x).''

MEDPAC STUDY OF COVERAGE OF SURGICAL FIRST ASSISTING SERVICES OF CERTIFIED REGISTERED NURSE FIRST ASSISTANTS

Pub. L. 108–173, title VI, § 643, Dec. 8, 2003, 117 Stat. 2322, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission (in this section referred to as the 'Commission') shall conduct a study on the feasibility and advisability of providing for payment under part B of title XVIII of the Social Security Act [part B of this subchapter] for surgical first assisting services furnished by a certified registered nurse first assistant to medicare beneficiaries.

''(b) REPORT.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.

''(c) DEFINITIONS.—In this section:

''(1) SURGICAL FIRST ASSISTING SERVICES.—The term 'surgical first assisting services' means services consisting of first assisting a physician with surgery and related preoperative, intraoperative, and postoperative care (as determined by the Secretary [of Health and Human Services]) furnished by a certified registered nurse first assistant (as defined in paragraph (2)) which the certified registered nurse first assistant is legally authorized to perform by the State in which the services are performed.

''(2) CERTIFIED REGISTERED NURSE FIRST ASSISTANT.—The term 'certified registered nurse first assistant' means an individual who—

''(A) is a registered nurse and is licensed to practice nursing in the State in which the surgical first assisting services are performed;

''(B) has completed a minimum of 2,000 hours of first assisting a physician with surgery and related preoperative, intraoperative, and postoperative care; and

''(C) is certified as a registered nurse first assistant by an organization recognized by the Secretary.''

STUDIES RELATING TO VISION IMPAIRMENTS

Pub. L. 108–173, title VI, § 645, Dec. 8, 2003, 117 Stat. 2323, provided that:

''(a) COVERAGE OF OUTPATIENT VISION SERVICES FURNISHED BY VISION REHABILITATION PROFESSIONALS UNDER PART B.—

''(1) STUDY.—The Secretary [of Health and Human Services] shall conduct a study to determine the feasibility and advisability of providing for payment for vision rehabilitation services furnished by vision rehabilitation professionals.

''(2) REPORT.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations for such legislation or administrative action as the Secretary determines to be appropriate.

''(3) VISION REHABILITATION PROFESSIONAL DEFINED.—In this subsection, the term 'vision rehabilitation professional' means an orientation and mobility specialist, a rehabilitation teacher, or a low vision therapist.

''(b) REPORT ON APPROPRIATENESS OF A DEMONSTRATION PROJECT TO TEST FEASIBILITY OF USING PPO NETWORKS TO REDUCE COSTS OF ACQUIRING EYEGLASSES FOR MEDICARE BENEFICIARIES AFTER CATARACT SURGERY.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall submit to Congress a report on the feasibility of establishing a two-year demonstration project under which the Secretary enters into arrangements with vision care preferred provider organization networks to furnish and pay for conventional eyeglasses subsequent to each cataract surgery with insertion of an intraocular lens on behalf of Medicare beneficiaries. In such report, the Secretary shall include an estimate of potential cost savings to the Medicare program through the use of such networks, taking into consideration quality of service and beneficiary access to services offered by vision care preferred provider organization networks.''

DEMONSTRATION OF COVERAGE OF CHIROPRACTIC SERVICES UNDER MEDICARE

Pub. L. 108–173, title VI, § 651, Dec. 8, 2003, 117 Stat. 2332, provided that:

''(a) DEFINITIONS.—In this section:

''(1) CHIROPRACTIC SERVICES.—The term 'chiropractic services' has the meaning given that term by the Secretary [of Health and Human Services] for purposes of the demonstration projects, but shall include, at a minimum—

''(A) care for neuromusculoskeletal conditions typical among eligible beneficiaries; and

''(B) diagnostic and other services that a chiropractor is legally authorized to perform by the State or jurisdiction in which such treatment is provided.

''(2) DEMONSTRATION PROJECT.—The term 'demonstration project' means a demonstration project established by the Secretary under subsection (b)(1).

''(3) ELIGIBLE BENEFICIARY.—The term 'eligible beneficiary' means an individual who is enrolled under part B of the medicare program.

''(4) MEDICARE PROGRAM.—The term 'medicare program' means the health benefits program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(b) DEMONSTRATION OF COVERAGE OF CHIROPRACTIC SERVICES UNDER MEDICARE.—

''(1) ESTABLISHMENT.—The Secretary shall establish demonstration projects in accordance with the provisions of this section for the purpose of evaluating the feasibility and advisability of covering chiropractic services under the medicare program (in addition to the coverage provided for services consisting of treatment by means of manual manipulation of the spine to correct a subluxation described in section 1861(r)(5) of the Social Security Act (42 U.S.C. 1395x(r)(5))).

''(2) NO PHYSICIAN APPROVAL REQUIRED.—In establishing the demonstration projects, the Secretary shall ensure that an eligible beneficiary who participates in a demonstration project, including an eligible beneficiary who is enrolled for coverage under a Medicare+Choice plan (or, on and after January 1, 2006, under a Medicare Advantage plan), is not required to receive approval from a physician or other health care provider in order to receive a chiropractic service under a demonstration project.

''(3) CONSULTATION.—In establishing the demonstration projects, the Secretary shall consult with chiropractors, organizations representing chiropractors, eligible beneficiaries, and organizations representing eligible beneficiaries.

''(4) PARTICIPATION.—Any eligible beneficiary may participate in the demonstration projects on a voluntary basis.

''(c) CONDUCT OF DEMONSTRATION PROJECTS.—

''(1) DEMONSTRATION SITES.—

''(A) SELECTION OF DEMONSTRATION SITES.—The Secretary shall conduct demonstration projects at 4 demonstration sites.

''(B) GEOGRAPHIC DIVERSITY.—Of the sites described in subparagraph (A)—

''(i) two shall be in rural areas; and

''(ii) two shall be in urban areas.

''(C) SITES LOCATED IN HPSAS.—At least 1 site described in clause (i) of subparagraph (B) and at least 1 site described in clause (ii) of such subparagraph shall be located in an area that is designated under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)) as a health professional shortage area.

''(2) IMPLEMENTATION; DURATION.—

''(A) IMPLEMENTATION.—The Secretary shall not implement the demonstration projects before October 1, 2004.

''(B) DURATION.—The Secretary shall complete the demonstration projects by the date that is 2 years after the date on which the first demonstration project is implemented.

''(d) EVALUATION AND REPORT.—

''(1) EVALUATION.—The Secretary shall conduct an evaluation of the demonstration projects—

''(A) to determine whether eligible beneficiaries who use chiropractic services use a lesser overall amount of items and services for which payment is made under the medicare program than eligible beneficiaries who do not use such services;

''(B) to determine the cost of providing payment for chiropractic services under the medicare program;

''(C) to determine the satisfaction of eligible beneficiaries participating in the demonstration projects and the quality of care received by such beneficiaries; and

''(D) to evaluate such other matters as the Secretary determines is appropriate.

''(2) REPORT.—Not later than the date that is 1 year after the date on which the demonstration projects conclude, the Secretary shall submit to Congress a report on the evaluation conducted under paragraph (1) together with such recommendations for legislation or administrative action as the Secretary determines is appropriate.

''(e) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of the medicare program to the extent and for the period the Secretary finds necessary to conduct the demonstration projects.

''(f) FUNDING.—

''(1) DEMONSTRATION PROJECTS.—

''(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (2), the Secretary shall provide for the transfer from the Federal Supplementary Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t) of such funds as are necessary for the costs of carrying out the demonstration projects under this section.

''(B) LIMITATION.—In conducting the demonstration projects under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under the medicare program do not exceed the amount which the Secretary would have paid under the medicare program if the demonstration projects under this section were not implemented.

''(2) EVALUATION AND REPORT.—There are authorized to be appropriated such sums as are necessary for the purpose of developing and submitting the report to Congress under subsection (d).''

DEMONSTRATION PROJECT TO CLARIFY THE DEFINITION OF HOMEBOUND

Pub. L. 108–173, title VII, §702, Dec. 8, 2003, 117 Stat. 2335, provided that:

''(a) DEMONSTRATION PROJECT.—Not later than 180 days after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall conduct a 2-year demonstration project under part B of title XVIII of the Social Security Act [part B of this subchapter] under which medicare beneficiaries with chronic conditions described in subsection (b) are deemed to be homebound for purposes of receiving home health services under the medicare program.

''(b) MEDICARE BENEFICIARY DESCRIBED.—For purposes of subsection (a), a medicare beneficiary is eligible to be deemed to be homebound, without regard to the purpose, frequency, or duration of absences from the home, if—

''(1) the beneficiary has been certified by one physician as an individual who has a permanent and severe, disabling condition that is not expected to improve;

''(2) the beneficiary is dependent upon assistance from another individual with at least 3 out of the 5 activities of daily living for the rest of the beneficiary's life;

''(3) the beneficiary requires skilled nursing services for the rest of the beneficiary's life and the skilled nursing is more than medication management;

''(4) an attendant is required to visit the beneficiary on a daily basis to monitor and treat the beneficiary's medical condition or to assist the beneficiary with activities of daily living;

''(5) the beneficiary requires technological assistance or the assistance of another person to leave the home; and

''(6) the beneficiary does not regularly work in a paid position full-time or part-time outside the home.

''(c) DEMONSTRATION PROJECT SITES.—The demonstration project established under this section shall be conducted in 3 States selected by the Secretary to represent the Northeast, Midwest, and Western regions of the United States.

''(d) LIMITATION ON NUMBER OF PARTICIPANTS.—The aggregate number of such beneficiaries that may participate in the project may not exceed 15,000.

''(e) DATA.—The Secretary shall collect such data on the demonstration project with respect to the provision of home health services to medicare beneficiaries that relates to quality of care, patient outcomes, and additional costs, if any, to the medicare program.

''(f) REPORT TO CONGRESS.—Not later than 1 year after the date of the completion of the demonstration project under this section, the Secretary shall submit to Congress a report on the project using the data collected under subsection (e). The report shall include the following:

''(1) An examination of whether the provision of home health services to medicare beneficiaries under the project has had any of the following effects:

''(A) Has adversely affected the provision of home health services under the medicare program.

''(B) Has directly caused an increase of expenditures under the medicare program for the provision of such services that is directly attributable to such clarification.

''(2) The specific data evidencing the amount of any increase in expenditures that is directly attributable to the demonstration project (expressed both in absolute dollar terms and as a percentage) above expenditures that would otherwise have been incurred for home health services under the medicare program.

''(3) Specific recommendations to exempt permanently and severely disabled homebound beneficiaries from restrictions on the length, frequency, and purpose of their absences from the home to qualify for home health services without incurring additional costs to the medicare program.

''(g) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

''(h) CONSTRUCTION.—Nothing in this section shall be construed as waiving any applicable civil monetary penalty, criminal penalty, or other remedy available to the Secretary under title XI or title XVIII of the Social Security Act [this subchapter and subchapter XI of this chapter] for acts prohibited under such titles, including penalties for false certifications for purposes of receipt of items or services under the medicare program.

''(i) AUTHORIZATION OF APPROPRIATIONS.—Payments for the costs of carrying out the demonstration project under this section shall be made from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t).

''(j) DEFINITIONS.—In this section:

''(1) MEDICARE BENEFICIARY.—The term 'medicare beneficiary' means an individual who is enrolled under part B of title XVIII of the Social Security Act [part B of this subchapter].

''(2) HOME HEALTH SERVICES.—The term 'home health services' has the meaning given such term in section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)).

''(3) ACTIVITIES OF DAILY LIVING DEFINED.—The term 'activities of daily living' means eating, toileting, transferring, bathing, and dressing.''

INFORMATION ON MEDICARE-CERTIFIED SKILLED NURSING FACILITIES IN HOSPITAL DISCHARGE PLANS

Pub. L. 108–173, title IX, § 926(a), Dec. 8, 2003, 117 Stat. 2396, provided that: ''The Secretary [of Health and Human Services] shall publicly provide information that enables hospital discharge planners, medicare beneficiaries, and the public to identify skilled nursing facilities that are participating in the medicare program.''

IMPLEMENTATION OF AMENDMENTS BY PUB. L. 105–277

Pub. L. 105–277, div. J, title V, § 5101(i), Oct. 21, 1998, 112 Stat. 2681–916, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall promptly issue (without regard to chapter 8 of title 5, United States Code) such regulations or program memoranda as may be necessary to effect the amendments made by this section [amending this section, sections 1395r and 1395fff of this title, and provisions set out as notes under section 1395fff of this title] for cost reporting periods beginning during fiscal year 1999.

''(2) USE OF PAYMENT AMOUNTS AND LIMITS FROM PUBLISHED TABLES.—

''(A) PER BENEFICIARY LIMITS.—In effecting the amendments made by subsection (a) [amending this section] for cost reporting periods beginning in fiscal year 1999, the 'median' referred to in section 1861(v)(1)(L)(vi)(I) of the Social Security Act [subsec. (v)(1)(L)(vi)(I) of this section] for such periods shall be the national standardized per beneficiary limitation specified in Table 3C published in the Federal Register on August 11, 1998 (63 FR 42926) and the 'standardized regional average of such costs' referred to in section 1861(v)(1)(L)(v)(I) of such Act [subsec. (v)(1)(L)(v)(I) of this section] for a census division shall be the sum of the labor and nonlabor components of the standardized per beneficiary limitation for that census division specified in Table 3B published in the Federal Register on that date (63 FR 42926) (or in Table 3D as so published with respect to Puerto Rico and Guam), and adjusted to reflect variations in wages among different geographic areas as specified in Tables 4a and 4b published in the Federal Register on that date (63 FR 42926–42933).

''(B) PER VISIT LIMITS.—In effecting the amendments made by subsection (b) [amending this section] for cost reporting periods beginning in fiscal year 1999, the limits determined under section 1861(v)(1)(L)(i)(V) of such Act [subsec. (v)(1)(L)(i)(V) of this section] for cost reporting periods beginning during such fiscal year shall be equal to the per visit limits as specified in Table 3A published in the Federal Register on August 11, 1998 (63 FR 42925) and as subsequently corrected, multiplied by 106/105, and adjusted to reflect variations in wages among different geographic areas as specified in Tables 4a and 4b published in the Federal Register on August 11, 1998 (63 FR 42926–42933).''

STUDY ON EXPANSION OF MEDICAL NUTRITION THERAPY SERVICES BENEFIT

Pub. L. 106–554, § 1(a)(6) [title I, § 105(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–472, provided that: ''Not later than July 1, 2003, the Secretary of Health and Human Services shall submit to Congress a report that contains recommendations with respect to the expansion to other medicare beneficiary populations of the medical nutrition therapy services benefit (furnished under the amendments made by this section [amending this section and sections 1395*l* and 1395u of this title]).''

STUDY ON MEDICARE COVERAGE OF ROUTINE THYROID SCREENING

Pub. L. 106–554, § 1(a)(6) [title I, § 123], Dec. 21, 2000, 114 Stat. 2763, 2763A–478, provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall request the National Academy of Sciences, and as appropriate in conjunction with the United States Preventive Services Task Force, to conduct a study on the addition of coverage of routine thyroid screening using a thyroid stimulating hormone test as a preventive benefit provided to medicare beneficiaries under title XVIII of the Social Security Act [this subchapter] for some or all medicare beneficiaries. In conducting the study, the Academy shall consider the short-term and long-term benefits, and costs to the medicare program, of such addition.

''(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall submit a report on the findings of the study conducted under subsection (a) to the Committee on Ways and Means and the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate.''

GAO STUDY ON COVERAGE OF SURGICAL FIRST ASSISTING SERVICES OF CERTIFIED REGISTERED NURSE FIRST ASSISTANTS

Pub. L. 106–554, § 1(a)(6) [title IV, § 433], Dec. 21, 2000, 114 Stat. 2763, 2763A–526, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study on the effect on the medicare program under title XVIII of the Social Security Act [this subchapter] and on medicare beneficiaries of coverage under the program of surgical first assisting services of certified registered nurse first assistants. The Comptroller General shall consider the following when conducting the study:

''(1) Any impact on the quality of care furnished to medicare beneficiaries by reason of such coverage.

''(2) Appropriate education and training requirements for certified registered nurse first assistants who furnish such first assisting services.

''(3) Appropriate rates of payment under the program to such certified registered nurse first assistants for furnishing such services, taking into account the costs of compensation, overhead, and supervision attributable to certified registered nurse first assistants.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a).''

MEDPAC STUDY AND REPORT ON MEDICARE COVERAGE OF SERVICES PROVIDED BY CERTAIN NONPHYSICIAN PROVIDERS

Pub. L. 106–554, § 1(a)(6) [title IV, § 435], Dec. 21, 2000, 114 Stat. 2763, 2763A–527, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study to determine the appropriateness of providing coverage under the medicare program under title XVIII of the Social Security Act [this subchapter] for services provided by a—

''(A) surgical technologist;

''(B) marriage counselor;

''(C) marriage and family therapist;

''(D) pastoral care counselor; and

''(E) licensed professional counselor of mental health.

''(2) COSTS TO PROGRAM.—The study shall consider the short-term and long-term benefits, and costs to the medicare program, of providing the coverage described in paragraph (1).

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study

conducted under subsection (a), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study.''

DEVELOPMENT OF PATIENT ASSESSMENT INSTRUMENTS

Pub. L. 106–554, §1(a)(6) [title V, §545], Dec. 21, 2000, 114 Stat. 2763, 2763A–551, provided that:

''(a) DEVELOPMENT.—

''(1) IN GENERAL.—Not later than January 1, 2005, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means and the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate a report on the development of standard instruments for the assessment of the health and functional status of patients, for whom items and services described in subsection (b) are furnished, and include in the report a recommendation on the use of such standard instruments for payment purposes.

''(2) DESIGN FOR COMPARISON OF COMMON ELEMENTS.—The Secretary shall design such standard instruments in a manner such that—

''(A) elements that are common to the items and services described in subsection (b) may be readily comparable and are statistically compatible;

''(B) only elements necessary to meet program objectives are collected; and

''(C) the standard instruments supersede any other assessment instrument used before that date.

''(3) CONSULTATION.—In developing an assessment instrument under paragraph (1), the Secretary shall consult with the Medicare Payment Advisory Commission, the Agency for Healthcare Research and Quality, and qualified organizations representing providers of services and suppliers under title XVIII [this subchapter].

''(b) DESCRIPTION OF SERVICES.—For purposes of subsection (a), items and services described in this subsection are those items and services furnished to individuals entitled to benefits under part A, or enrolled under part B, or both of title XVIII of the Social Security Act [part A or part B of this subchapter] for which payment is made under such title [this subchapter], and include the following:

''(1) Inpatient and outpatient hospital services.

''(2) Inpatient and outpatient rehabilitation services.

''(3) Covered skilled nursing facility services.

''(4) Home health services.

''(5) Physical or occupational therapy or speech-language pathology services.

''(6) Items and services furnished to such individuals determined to have end stage renal disease.

''(7) Partial hospitalization services and other mental health services.

''(8) Any other service for which payment is made under such title as the Secretary determines to be appropriate.''

CONFORMING REFERENCES TO PREVIOUS PART C

Section 4002(f)(1) of Pub. L. 105–33 provided that: ''Any reference in law (in effect before the date of the enactment of this Act [Aug. 5, 1997]) to part C of title XVIII of the Social Security Act [part C of this subchapter] is deemed a reference to part D of such title [this part] (as in effect after such date).''

DEADLINE FOR PUBLICATION OF DETERMINATION ON COVERAGE OF SCREENING BARIUM ENEMA

Section 4104(a)(2) of Pub. L. 105–33 provided that: ''Not later than the earlier of the date that is January 1, 1998, or 90 days after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall publish notice in the Federal Register with respect to the determination under paragraph (1)(D) of section 1861(pp) of the Social Security Act (42 U.S.C. 1395x(pp)), as added by paragraph (1), on the coverage of a screening barium enema as a colorectal cancer screening test under such section.''

ESTABLISHMENT OF OUTCOME MEASURES FOR BENEFICIARIES WITH DIABETES

Section 4105(c) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with appropriate organizations, shall establish outcome measures, including glysolated hemoglobin (past 90-day average blood sugar levels), for purposes of evaluating the improvement of the health status of medicare beneficiaries with diabetes mellitus.

''(2) RECOMMENDATIONS FOR MODIFICATIONS TO SCREENING BENEFITS.—Taking into account information on the health status of medicare beneficiaries with diabetes mellitus as measured under the outcome measures established under paragraph (1), the Secretary shall from time to time submit recommendations to Congress regarding modifications to the coverage of services for such beneficiaries under the medicare program.''

VACCINES OUTREACH EXPANSION

Section 4107 of Pub. L. 105–33 provided that:

''(a) EXTENSION OF INFLUENZA AND PNEUMOCOCCAL VACCINATION CAMPAIGN.—In order to increase utilization of pneumococcal and influenza vaccines in medicare beneficiaries, the Influenza and Pneumococcal Vaccination Campaign carried out by the Health Care Financing Administration in conjunction with the Centers for Disease Control and Prevention and the National Coalition for Adult Immunization, is extended until the end of fiscal year 2002.

''(b) AUTHORIZATION OF APPROPRIATION.—There are hereby authorized to be appropriated for each of fiscal years 1998 through 2002, $8,000,000 for the Campaign described in subsection (a). Of the amount so authorized to be appropriated in each fiscal year, 60 percent of the amount so appropriated shall be payable from the Federal Hospital Insurance Trust Fund, and 40 percent shall be payable from the Federal Supplementary Medical Insurance Trust Fund.''

STUDY ON PREVENTIVE AND ENHANCED BENEFITS

Section 4108 of Pub. L. 105–33 directed the Secretary of Health and Human Services to request the National Academy of Sciences to analyze the expansion or modification of preventive or other benefits provided to medicare beneficiaries under this subchapter, and not later than 2 years after Aug. 5, 1997, to submit a report on the findings of the analysis to Congress.

UTILIZATION GUIDELINES

Section 4513(c) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services shall develop and implement utilization guidelines relating to the coverage of chiropractic services under part B of title XVIII of the Social Security Act [part B of this subchapter] in cases in which a subluxation has not been demonstrated by X-ray to exist.''

AUTHORIZING PAYMENT FOR PARAMEDIC INTERCEPT SERVICE PROVIDERS IN RURAL COMMUNITIES

Pub. L. 105–33, title IV, §4531(c), Aug. 5, 1997, 111 Stat. 452, as amended by Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §412(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–377, provided that: ''In promulgating regulations to carry out section 1861(s)(7) of the Social Security Act (42 U.S.C. 1395x(s)(7)) with respect to the coverage of ambulance service, the Secretary of Health and Human Services may include coverage of advanced life support services (in this subsection referred to as 'ALS intercept services') provided by a paramedic intercept service provider in a rural area if the following conditions are met:

''(1) The ALS intercept services are provided under a contract with one or more volunteer ambulance services and are medically necessary based on the health condition of the individual being transported.

''(2) The volunteer ambulance service involved—

''(A) is certified as qualified to provide ambulance service for purposes of such section,

''(B) provides only basic life support services at the time of the intercept, and

''(C) is prohibited by State law from billing for any services.

''(3) The entity supplying the ALS intercept services—

''(A) is certified as qualified to provide such services under the medicare program under title XVIII of the Social Security Act [this subchapter], and

''(B) bills all recipients who receive ALS intercept services from the entity, regardless of whether or not such recipients are medicare beneficiaries.

For purposes of this subsection, an area shall be treated as a rural area if it is designated as a rural area by any law or regulation of the State or if it is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)).''

[Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 412(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–377, provided that: ''The amendment made by subsection (a) [amending section 4531(c) of Pub. L. 105–33, set out above] takes effect on January 1, 2000, and applies to ALS intercept services furnished on or after such date.'']

NO EXCEPTIONS PERMITTED BASED ON AMENDMENT TO SUBSECTION (v)(1)(L)

Section 4601(b) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services shall not consider the amendment made by subsection (a) [amending this section] in making any exemptions and exceptions pursuant to section 1861(v)(1)(L)(ii) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)(ii)).''

STUDY ON DEFINITION OF HOMEBOUND

Section 4613 of Pub. L. 105–33 provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of the criteria that should be applied, and the method of applying such criteria, in the determination of whether an individual is homebound for purposes of qualifying for receipt of benefits for home health services under the medicare program. Such criteria shall include the extent and circumstances under which a person may be absent from the home but nonetheless qualify.

''(b) REPORT.—Not later than October 1, 1998, the Secretary shall submit a report to Congress on the study conducted under subsection (a). The report shall include specific recommendations on such criteria and methods.''

REVISIONS OF COVERAGE FOR IMMUNOSUPPRESSIVE DRUG THERAPY

Section 160(c) of Pub. L. 103–432 provided that: ''The Secretary of Health and Human Services may administer section 1861(s)(2)(J) of the Social Security Act (42 U.S.C. 1395x(s)(2)(J)) in a manner such that the months of coverage of drugs described in such section are provided consecutively, so long as the total number of months of coverage provided is the same as the number of months described in such section.''

FREEZE IN PER VISIT COST LIMITS FOR HOME HEALTH SERVICES

Section 13564(a)(1) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services shall not provide for any change in the per visit cost limits for home health services under section 1861(v)(1)(L) of such Act [subsec. (v)(1)(L) of this section] for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, except as may be necessary to take into account the amendment made by subsection (b)(1) [amending this section]. The effect of the preceding sentence shall not be considered by the Secretary in making adjustments pursuant to section 1861(v)(1)(L)(ii) of such Act to the payment limits for such services during such cost reporting periods.''

STUDY AND REPORT ON EFFECTS OF COVERAGE OF OSTEOPOROSIS DRUGS

Section 4156(b) of Pub. L. 101–508 directed Secretary of Health and Human Services to conduct a study analyzing effects of coverage of osteoporosis drugs under part B of this subchapter on health of individuals enrolled under such part and utilization of inpatient hospital and extended care services by such individuals, and, by not later than Oct. 1, 1994, to submit a report to Congress on such study, which was to include recommendations regarding expansion of coverage under the medicare program of items and services for individuals with post-menopausal osteoporosis as the Secretary considered appropriate.

PRODUCTIVITY SCREENING GUIDELINES APPLICATION TO STAFF IN RURAL HEALTH CLINICS

Section 4161(b)(3) of Pub. L. 101–508 provided that: ''In employing any screening guideline in determining the productivity of physicians, physician assistants, nurse practitioners, and certified nurse-midwives in a rural health clinic, the Secretary of Health and Human Services shall provide that the guideline shall take into account the combined services of such staff (and not merely the service within each class of practitioner).''

DEVELOPMENT OF PROSPECTIVE PAYMENT SYSTEM FOR HOME HEALTH SERVICES

Section 4207(c), formerly 4027(c), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (9), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 105–362, title VI, § 601(b)(2), Nov. 10, 1998, 112 Stat. 3286, directed Secretary of Health and Human Services to develop a proposal to modify the current system under which payment is made for home health services under this subchapter or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates, with Secretary to submit to Congress by not later than Apr. 1, 1993, the research findings upon which the proposal was to be based, and directed Prospective Payment Assessment Commission to submit to Congress by not later than Mar. 1, 1994, an analysis of and comments on the proposal.

APPLICATION OF BUDGET-NEUTRAL BASIS

Section 4207(d)(2), formerly 4027(d)(2), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''In updating the wage index for establishing limits under section 1861(v)(1)(L)(iii) of the Social Security Act [subsec. (v)(1)(L)(iii) of this section], the Secretary shall ensure that aggregate payments to home health agencies under title XVIII of such Act [this subchapter] will be no greater or lesser than such payments would have been without regard to such update.''

TRANSITION PROVISIONS FOR DETERMINING REASONABLE COSTS FOR HOME HEALTH AGENCY SERVICES

Section 4207(d)(3), formerly 4027(d)(3), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that, notwithstanding subsec. (v)(1)(L)(iii) of this section, the Secretary of Health and Human Services was to, in determining the limits of reasonable costs under this subchapter with respect to services furnished by a home health agency, utilize a wage index equal to (1) for cost reporting periods beginning on or after July 1, 1991, and on or before June 30, 1992, a combined area wage index consisting of 67 percent of the area wage index applicable to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States, and 33 percent of the area wage index applicable to hospitals located in the geographic area in which the home health agency was located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States, and (2) for cost reporting periods begin-

ning on or after July 1, 1992, and on or before June 30, 1993, a combined area wage index consisting of 33 percent of the area wage index applicable to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States, and 67 percent of the area wage index applicable to hospitals located in the geographic area in which the home health agency was located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States.

PERMITTING DENTIST TO SERVE AS HOSPITAL MEDICAL DIRECTOR

Section 6025 of Pub. L. 101–239 provided that: ''Notwithstanding the requirement that the responsibility for organization and conduct of the medical staff of an institution be assigned only to a doctor of medicine or osteopathy in order for the institution to participate as a hospital under the medicare program, an institution that has a doctor of dental surgery or of dental medicine serving as its medical director shall be considered to meet such requirement if the laws of the State in which the institution is located permit a doctor of dental surgery or of dental medicine to serve as the medical staff director of a hospital.''

RECOGNITION OF COSTS OF CERTAIN HOSPITAL-BASED NURSING SCHOOLS

Section 6205(a)(1)(A) of Pub. L. 101–239 provided that: ''The reasonable costs incurred by a hospital in training students of a hospital-based nursing school shall be allowable as reasonable costs under title XVIII of the Social Security Act [this subchapter] and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated educational program (other than an approved graduate medical education program) if, before June 15, 1989, and thereafter, the hospital demonstrates that for each year, it incurs at least 50 percent of the costs of training nursing students at such school, the nursing school and the hospital share some common board members, and all instruction is provided at the hospital or, if in another building, a building on the immediate grounds of the hospital.''

[Section 6205(a)(2) of Pub. L. 101–239 provided that: ''Paragraph (1)(A) [set out above] shall apply with respect to cost reporting periods beginning on or after the date of the enactment of this Act [Dec. 19, 1989] and on or before the date on which the Secretary issues regulations pursuant to subsection (b)(2)(A) [set out as a note under section 1395ww of this title].'']

DISSEMINATION OF RURAL HEALTH CLINIC INFORMATION

Section 6213(e) of Pub. L. 101–239 directed Secretary of Health and Human Services, not later than 60 days after Dec. 19, 1989, in consultation with the Director of the Office of Rural Health Policy, to disseminate to health care facilities and to the chief executive officer, chief health officer, and chief human services officer of each State, applications and other necessary information to enable such a facility to apply for designation as a rural health clinic for the purposes of this subchapter and subchapter XIX of this chapter.

TREATMENT OF CERTAIN FACILITIES AS RURAL HEALTH CLINICS

Section 6213(f) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall not deny certification of a facility as a rural health clinic under section 1861(aa)(2) of the Social Security Act [subsec. (aa)(2) of this section] if the facility is located on an island and would otherwise be qualified to be certified as such a facility but for the requirement that the services of a physician assistant or nurse practitioner be provided in the facility.''

CONTINUED USE OF HOME HEALTH WAGE INDEX IN EFFECT PRIOR TO JULY 1, 1989, UNTIL AFTER JULY 1, 1991

Section 6222 of Pub. L. 101–239 provided that: ''Notwithstanding the requirement of section 1861(v)(1)(L)(iii) of the Social Security Act [subsec. (v)(1)(L)(iii) of this section], the Secretary of Health and Human Services shall, in determining the limits of reasonable costs under title XVIII of the Social Security Act [this subchapter] with respect to services furnished by home health agencies, continue to utilize the wage index that was in effect for cost reporting periods beginning before July 1, 1989, until cost reporting periods beginning on or after July 1, 1991.''

PAYMENT FOR MEDICAL ESCORT OR MEDICAL ATTENDANT ON COMMERCIAL AIRLINER ALLOWED

Section 8427 of Pub. L. 100–647 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall provide that in cases where (as of the date of the enactment of this Act [Nov. 10, 1988]) transportation on a commercial airliner is covered under section 1861(s)(7) of the Social Security Act [subsec. (s)(7) of this section], the Secretary shall also provide for payment for medically necessary services of a medical escort or medical attendant.

''(b) EFFECTIVE PERIOD.—Subsection (a) shall apply to payment for services furnished during the 5-year period beginning on July 1, 1989.''

SKILLED NURSING FACILITY; ACCESS AND VISITATION RIGHTS

Section 411(*l*)(2)(E) of Pub. L. 100–360 provided that: ''Effective as of the date of the enactment of this Act [July 1, 1988] and until the effective date of section 1819(c) of such Act [see Effective Date note set out under section 1395i–3 of this title], section 1861(j) of the Social Security Act [subsec. (j) of this section] is deemed to include the requirement described in section 1819(c)(3)(A) of such Act [section 1395i–3(c)(3)(A) of this title] (as added by section 4201(a)(3) of OBRA).''

MORATORIUM ON PRIOR AUTHORIZATION FOR HOME HEALTH AND POST-HOSPITAL EXTENDED CARE SERVICES

Section 4039(e) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall not implement any voluntary or mandatory program of prior authorization for home health services, extended care services, or post-hospital extended care services under part A or B of title XVIII of the Social Security Act [part A or B of this subchapter] at any time prior to six months after the date on which the Congress receives the report required under section 9305(k)(4) of the Omnibus Budget Reconciliation Act of 1986 [section 9305(k)(4) of Pub. L. 99–509, set out below].''

DELAY IN PUBLISHING REGULATIONS WITH RESPECT TO DEEMING STATUS OF ENTITIES

Section 4039(f) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall not deem any entity to be a provider of services (as defined in section 1861(u) of the Social Security Act [subsec. (u) of this section]) for purposes of title XVIII of such Act [this subchapter]—

''(1) on any date prior to 6 months after the date on which the Secretary has published a proposed rule with respect to the deeming of the entity, and

''(2) until the Secretary publishes a final rule with respect to the deeming of the entity.''

DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT

Section 9305(h) of Pub. L. 99–509 directed Secretary of Health and Human Services to develop a uniform needs assessment instrument that could be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating individual's need for post-hospital extended care services, home health services, and long-term care services of health-related or supportive nature, and further provided for creation of advisory panel to assist Secretary and for a report to Congress not later than Jan. 1, 1989.

PRIOR AND CONCURRENT AUTHORIZATION DEMONSTRATION PROJECT

Section 9305(k) of Pub. L. 99–509 directed Secretary of Health and Human Services to conduct a demonstration program concerning prior and concurrent authorization for post-hospital extended care services and home health services furnished under part A or part B of this subchapter, which was to include at least four projects and was to be initiated by not later than Jan. 1, 1987, under which the Secretary was to monitor the acceptance of individuals entitled to benefits under this subchapter by providers to ensure that the placement of such individuals was not delayed until the results of prior and concurrent review were known, and further directed Secretary to evaluate the demonstration program and report to Congress on such evaluation no later than Feb. 1, 1989.

CONSIDERATIONS IN ESTABLISHING LIMITS ON PAYMENT FOR HOME HEALTH SERVICES

Section 9315(b) of Pub. L. 99–509 provided that: ''In establishing limitations under section 1861(v)(1)(L) of the Social Security Act [subsec. (v)(1)(L) of this section] on payment for home health services for cost reporting periods beginning on or after July 1, 1986, the Secretary of Health and Human Services shall—

''(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1983; and

''(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data.

Paragraph (2) shall apply to changes in requirements effected before, on, or after July 1, 1986.''

COMPTROLLER GENERAL STUDY AND REPORT ON COST LIMITS FOR HOME HEALTH SERVICES

Section 9315(c) of Pub. L. 99–509 directed Comptroller General to study and report to Congress, not later than Feb. 1, 1988, on appropriateness and impact on medicare beneficiaries of applying the per visit cost limits for home health services under subsec. (v)(1)(L) of this section on a discipline-specific basis, rather than on an aggregate basis, for all home health services furnished by an agency, and appropriateness of the percentage limits so established.

REDUCTION IN PAYMENT TO AVOID DUPLICATE PAYMENT FOR SERVICES OF PHYSICIAN ASSISTANTS

Section 9338(d) of Pub. L. 99–509 directed Secretary of Health and Human Services to reduce the amount of payments otherwise made to hospitals and skilled nursing facilities under this subchapter to eliminate estimated duplicate payments for historical or current costs attributable to services described in section 1395x(s)(2)(K) of this title, prior to repeal by Pub. L. 101–508, title IV, § 4002(f), Nov. 5, 1990, 104 Stat. 1388–36, effective as if included in the enactment of Pub. L. 99–509.

STUDY AND REPORT ON PAYMENTS FOR PHYSICIAN ASSISTANTS

Section 9338(e) of Pub. L. 99–509 directed Secretary to report to Congress, by Apr. 1, 1988, concerning adjustments to amount of payment made, under part B for services described in subsec. (s)(2)(K) of this section, to ensure that amount of such payments reflects approximate cost of furnishing the services, taking into account compensation costs and overhead and supervision costs attributable to physician assistants.

COST LIMITS FOR ROUTINE SERVICES FOR URBAN AND RURAL HOSPITAL-BASED SKILLED NURSING FACILITIES; COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1982, AND PRIOR TO JULY 1, 1984

Section 2319(d) of Pub. L. 98–369 provided that: ''Notwithstanding limits on the cost of skilled nursing facilities which may have been issued under section 1861(v) of the Social Security Act [subsec. (v) of this section] prior to the date of the enactment of this Act [July 18, 1984], in the case of cost reporting periods beginning on or after October 1, 1982, and prior to July 1, 1984, the cost limits for routine services for urban and rural hospital-based skilled nursing facilities shall be 112 percent of the mean of the respective routine costs for urban and rural hospital-based skilled nursing facilities.''

STUDY AND REPORT RELATING TO REQUIREMENTS THAT CORE SERVICES BE FURNISHED DIRECTLY BY HOSPICES

Section 2343(d) of Pub. L. 98–369 directed Secretary of Health and Human Services to conduct a study of necessity and appropriateness of requirements that certain ''core'' services be furnished directly by a hospice, as required under subsec. (dd)(2)(A)(ii)(I) of this section and report results of such study to Congress with the report required under section 122(i)(1) [122(j)(1)] of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), set out as a note under section 1395f of this title.

REPORT ON EFFECT OF 1982 AMENDMENT ON HOSPITAL-BASED SKILLED NURSING FACILITIES

Section 605(b) of Pub. L. 98–21 directed Secretary of Health and Human Services, prior to Dec. 31, 1983, to complete a study and report to Congress with respect to (1) effect which implementation of section 102 of the Tax Equity and Fiscal Responsibility Act of 1982, amending this section, would have on hospital-based skilled nursing facilities, given the differences (if any) in patient populations served by such facilities and by community-based skilled nursing facilities and (2) impact on skilled nursing facilities of hospital prospective payment systems, and recommendations concerning payment of skilled nursing facilities.

Section 2319(e) of Pub. L. 98–369 directed Secretary of Health and Human Services to submit to Congress, prior to Dec. 1, 1984, the report required under section 605(b) of the Social Security Amendments of 1983 (Pub. L. 87–21), set out above.

ELIMINATION OF PRIVATE ROOM SUBSIDY

Section 111 of Pub. L. 97–248 provided that:

''(a) The Secretary of Health and Human Services shall, pursuant to section 1861(v)(2) of the Social Security Act [subsec. (v)(2) of this section], not allow as a reasonable cost the estimated amount by which the costs incurred by a hospital or skilled nursing facility for nonmedically necessary private accommodations for medicare beneficiaries exceeds the costs which would have been incurred by such hospital or facility for semiprivate accommodations.

''(b) The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) as may be necessary to implement subsection (a) by October 1, 1982. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than January 31, 1983.''

REGULATIONS REGARDING ACCESS TO BOOKS AND RECORDS

Section 952(b) of Pub. L. 96–499, as added by Pub. L. 97–248, title I, § 127(2), Sept. 3, 1982, 96 Stat. 366, provided that: ''Unless the Secretary of Health and Human Services first publishes final regulations prescribing the criteria and procedures described in the last sentence of section 1861(v)(1)(I) of the Social Security Act [subsec. (v)(1)(I) of this section] by January 1, 1983, after providing a period of not less than 60 days for public comment on proposed regulations, the amendment made by subsection (a) [amending this section] shall only apply to books, documents, and records relating to services fur-

nished (pursuant to contract or subcontract) on or after the date on which final regulations of the Secretary are first published.''

COMPLIANCE WITH THE LIFE SAFETY CODE OR STATE FIRE AND SAFETY CODE

Section 915(b) of Pub. L. 96–499 provided that: ''Any institution (or part of an institution) which complied with the requirements of section 1861(j)(13) of the Social Security Act [subsec. (j)(13) of this section] on the day before the date of the enactment of this Act [Dec. 5, 1980] shall, so long as such compliance is maintained (either by meeting the applicable provisions of the Life Safety Code (21st edition, 1967, or 23d edition, 1973), with or without waivers of specific provisions, or by meeting the applicable provisions of a fire and safety code imposed by State law as provided for in such section 1861(j)(13)), be considered (for purposes of titles XVIII or XIX of such Act [this subchapter or subchapter XIX of this chapter]) to be in compliance with the requirements of such section 1861(j)(13), as it is amended by subsection (a) of this section.''

Section 106(c) of Pub. L. 94–182 provided that: ''Any institution (or part of an institution) which complied with the requirements of section 1861(j)(13) of the Social Security Act [subsec. (j)(13) of this section] on the day preceding the first day referred to in subsection (b) [enacting provisions set out as a note under this section] shall, so long as such compliance is maintained (either by meeting the applicable provisions of the Life Safety Code (21st edition, 1967), with or without waivers of specific provisions, or by meeting the applicable provisions of a fire and safety code imposed by State law as provided for in such section 1861(j)(13)), be considered (for purposes of titles XVIII and XIX of such Act) [subchapters XVIII and XIX of this chapter] to be in compliance with the requirements of such section 1861(j)(13), as it is amended by subsection (a) of this section.''

PRIVATE, NONPROFIT HEALTH CARE CLINICS QUALIFYING, AS OF JULY 1, 1977, AS RURAL HEALTH CLINICS

Section 1(e) of Pub. L. 95–210 provided that: ''Any private, nonprofit health care clinic that—

''(1) on July 1, 1977, was operating and located in an area which on that date (A) was not an urbanized area (as defined by the Bureau of the Census) and (B) had a supply of physicians insufficient to meet the needs of the area (as determined by the Secretary), and

''(2) meets the definition of a rural health clinic under section 1861(aa)(2) [subsec. (aa)(2) of this section] or section 1905(*l*) of the Social Security Act [section 1396d(*l*) of this title], except for clause (i) of section 1861(aa)(2) [subsec. (aa)(2) of this section],

shall be considered, for the purposes of title XVIII or XIX, respectively, of the Social Security Act [this subchapter or subchapter XIX of this chapter], as satisfying the definition of a rural health clinic under such section.''

PROMULGATION OF REGULATIONS DEFINING COSTS CHARGEABLE TO PERSONAL FUNDS OF PATIENTS IN SKILLED NURSING FACILITIES; DATE OF ISSUANCE

Section 21(b) of Pub. L. 95–142 provided that: ''The Secretary of Health, Education, and Welfare [now Health and Human Services] shall, by regulation, define those costs which may be charged to the personal funds of patients in skilled nursing facilities who are individuals receiving benefits under the provisions of title XVIII [this subchapter], or under a State plan approved under the provisions of title XIX [subchapter XIX of this chapter], of the Social Security Act, and those costs which are to be included in the reasonable cost or reasonable charge for extended care services as determined under the provisions of title XVIII, or for skilled nursing and intermediate care facility services as determined under the provisions of title XIX, of such Act.''

[Section 21(c)(2) of Pub. L. 95–142 provided that: ''The Secretary of Health, Education, and Welfare shall issue the regulations required under subsection (b) [set out above] within ninety days after the date of enactment of this Act [Oct. 25, 1977].'']

HOME HEALTH SERVICES; GRANTS FOR ESTABLISHMENT, OPERATION, STAFFING, ETC., OF PUBLIC AND NONPROFIT PRIVATE AGENCIES AND ENTITIES; PROCEDURES; PAYMENTS; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 94–63, title VI, §602, July 29, 1975, 89 Stat. 346, as amended by Pub. L. 94–460, title III, §302, Oct. 8, 1976, 90 Stat. 1960; Pub. L. 95–83, title III, §310, Aug. 1, 1977, 91 Stat. 397, which provided for a program of home health services and of training of professional and paraprofessional personnel, was repealed by Pub. L. 95–626, title II, §207(b), Nov. 10, 1978, 92 Stat. 3586, effective Oct. 1, 1978.

PAYMENT FOR SERVICE OF PHYSICIANS RENDERED IN A TEACHING HOSPITAL FOR ACCOUNTING PERIODS BEGINNING AFTER JUNE 30, 1975, AND PRIOR TO OCTOBER 1, 1978; STUDIES, REPORTS, ETC.; EFFECTIVE DATES

Pub. L. 93–233, §15(a)(1), (b)–(d), Dec. 31, 1973, 87 Stat. 965, as amended by Pub. L. 93–368, §7, Aug. 7, 1974, 88 Stat. 422; Pub. L. 94–368, §1, July 16, 1976, 90 Stat. 997; Pub. L. 95–292, §7, June 13, 1978, 92 Stat. 316, provided that for the cost accounting periods beginning after June 30, 1975, and prior to October 1, 1978, subsec. (b) of this section will be administered as if paragraph (7) of subsec. (b) read as follows: ''(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this title [this subchapter] for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this title [this subchapter]'', provided for studies with respect to methods of reimbursement for physicians' services under subchapters XVIII and XIX of this chapter in hospitals which have a teaching program and a determination as to how and to what extent such funds are utilized, and provided that a final report be submitted to the Secretary of Health, Education, and Welfare, the Committee on Finance of the Senate, and the Committee on Ways and Means of the House of Representatives not later than Mar. 1, 1976.

PHYSICAL THERAPY SERVICES REQUIREMENTS; EFFECTIVE DATE POSTPONEMENT

Section 17(a) of Pub. L. 93–233 provided that: ''In the administration of title XVIII of the Social Security Act [this subchapter], the amount payable thereunder with respect to physical therapy and other services referred to in section 1861(v)(5)(A) of such Act [subsec. (v)(5)(A) of this section] (as added by section 151(c) [251(c)] of the Social Security Amendments of 1972) shall be determined (for the period with respect to which the amendment made by such section 151(c) [251(c)] would, except for the provisions of this section, be applicable) in like manner as if the 'December 31, 1972', which appears in such subsection (d)(3) of such section 151 [251(d)(3), set out as Effective Date of 1972 Amendment note above], read 'the month in which there are promulgated, by the Secretary of Health, Education, and Welfare [now Health and Human Services], final regulations implementing the provisions of section 1861(v)(5) of the Social Security Act [subsec. (v)(5) of this section]'.''

PAYMENT FOR DURABLE MEDICAL EQUIPMENT

Section 245(a)–(c) of Pub. L. 92–603 provided that:

''(a) The Secretary is authorized to conduct reimbursement experiments designed to eliminate unreasonable expenses resulting from prolonged rentals of durable medical equipment described in section 1861(s)(6) of the Social Security Act [subsec. (s)(6) of this section].

''(b) Such experiment may be conducted in one or more geographic areas, as the Secretary deems appropriate, and may, pursuant to agreements with suppliers, provide for reimbursement for such equipment on a lump-sum basis whenever it is determined (in accordance with guidelines established by the Secretary) that a lump-sum payment would be more economical than the anticipated period of rental payments. Such experiments may also provide for incentives to beneficiaries (including waiver of the 20 percent coinsurance amount applicable under section 1833 of the Social Security Act [section 1395*l* of this title]) to purchase used equipment whenever the purchase price is at least 25 percent less than the reasonable charge for new equipment.

''(c) The Secretary is authorized, at such time as he deems appropriate, to implement on a nationwide basis any such reimbursement procedures which he finds to be workable, desirable and economical and which are consistent with the purposes of this section.''

§ 1395y. Exclusions from coverage and medicare as secondary payer

(a) Items or services specifically excluded

Notwithstanding any other provision of this subchapter, no payment may be made under part A or part B of this subchapter for any expenses incurred for items or services—

(1)(A) which, except for items and services described in a succeeding subparagraph, are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member,

(B) in the case of items and services described in section 1395x(s)(10) of this title, which are not reasonable and necessary for the prevention of illness,

(C) in the case of hospice care, which are not reasonable and necessary for the palliation or management of terminal illness,

(D) in the case of clinical care items and services provided with the concurrence of the Secretary and with respect to research and experimentation conducted by, or under contract with, the Medicare Payment Advisory Commission or the Secretary, which are not reasonable and necessary to carry out the purposes of section 1395ww(e)(6) of this title,[1]

(E) in the case of research conducted pursuant to section 1320b–12 of this title, which is not reasonable and necessary to carry out the purposes of that section,

(F) in the case of screening mammography, which is performed more frequently than is covered under section 1395m(c)(2) of this title or which is not conducted by a facility described in section 1395m(c)(1)(B) of this title, in the case of screening pap smear and screening pelvic exam, which is performed more frequently than is provided under section 1395x(nn) of this title, and, in the case of screening for glaucoma, which is performed more frequently than is provided under section 1395x(uu) of this title,

(G) in the case of prostate cancer screening tests (as defined in section 1395x(*oo*) of this title), which are performed more frequently than is covered under such section,

(H) in the case of colorectal cancer screening tests, which are performed more frequently than is covered under section 1395m(d) of this title,

(I) the frequency and duration of home health services which are in excess of normative guidelines that the Secretary shall establish by regulation,

(J) in the case of a drug or biological specified in section 1395w–3a(c)(6)(C) of this title for which payment is made under part B of this subchapter that is furnished in a competitive area under section 1395w–3b of this title, that is not furnished by an entity under a contract under such section,

(K) in the case of an initial preventive physical examination, which is performed not later than 6 months after the date the individual's first coverage period begins under part B of this subchapter,

(L) in the case of cardiovascular screening blood tests (as defined in section 1395x(xx)(1) of this title), which are performed more frequently than is covered under section 1395x(xx)(2) of this title,

(M) in the case of a diabetes screening test (as defined in section 1395x(yy)(1) of this title), which is performed more frequently than is covered under section 1395x(yy)(3) of this title, and

(N) in the case of ultrasound screening for abdominal aortic aneurysm which is performed more frequently than is provided for under section 1395x(s)(2)(AA) of this title;

(2) for which the individual furnished such items or services has no legal obligation to pay, and which no other person (by reason of such individual's membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for, except in the case of Federally qualified health center services;

(3) which are paid for directly or indirectly by a governmental entity (other than under this chapter and other than under a health benefits or insurance plan established for employees of such an entity), except in the case of rural health clinic services, as defined in section 1395x(aa)(1) of this title, in the case of Federally qualified health center services, as defined in section 1395x(aa)(3) of this title, in the case of services for which payment may be made under section 1395qq(e) of this title, and in such other cases as the Secretary may specify;

(4) which are not provided within the United States (except for inpatient hospital services furnished outside the United States under the conditions described in section 1395f(f) of this title and, subject to such conditions, limitations, and requirements as are provided under or pursuant to this subchapter, physicians' services and ambulance services furnished an individual in conjunction with such inpatient hospital services but only for the period during which such inpatient hospital services were furnished);

(5) which are required as a result of war, or of an act of war, occurring after the effective date of such individual's current coverage under such part;

(6) which constitute personal comfort items (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C));

(7) where such expenses are for routine physical checkups, eyeglasses (other than eyewear

[1] See References in Text note below.

described in section 1395x(s)(8) of this title) or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state of the eyes, hearing aids or examinations therefor, or immunizations (except as otherwise allowed under section 1395x(s)(10) of this title and subparagraph (B), (F), (G), (H), or (K) of paragraph (1));

(8) where such expenses are for orthopedic shoes or other supportive devices for the feet, other than shoes furnished pursuant to section 1395x(s)(12) of this title;

(9) where such expenses are for custodial care (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C));

(10) where such expenses are for cosmetic surgery or are incurred in connection therewith, except as required for the prompt repair of accidental injury or for improvement of the functioning of a malformed body member;

(11) where such expenses constitute charges imposed by immediate relatives of such individual or members of his household;

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, except that payment may be made under part A of this subchapter in the case of inpatient hospital services in connection with the provision of such dental services if the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(13) where such expenses are for—

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor,

(B) the treatment of subluxations of the foot, or

(C) routine foot care (including the cutting or removal of corns or calluses, the trimming of nails, and other routine hygienic care);

(14) which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph), services described by section 1395x(s)(2)(K) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist, and which are furnished to an individual who is a patient of a hospital or critical access hospital by an entity other than the hospital or critical access hospital, unless the services are furnished under arrangements (as defined in section 1395x(w)(1) of this title) with the entity made by the hospital or critical access hospital;

(15)(A) which are for services of an assistant at surgery in a cataract operation (including subsequent insertion of an intraocular lens) unless, before the surgery is performed, the appropriate utilization and quality control peer review organization (under part B of subchapter XI of this chapter) or a carrier under section 1395u of this title has approved of the use of such an assistant in the surgical procedure based on the existence of a complicating medical condition, or

(B) which are for services of an assistant at surgery to which section 1395w–4(i)(2)(B) of this title applies;

(16) in the case in which funds may not be used for such items and services under the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.];

(17) where the expenses are for an item or service furnished in a competitive acquisition area (as established by the Secretary under section 1395w–3(a) of this title) by an entity other than an entity with which the Secretary has entered into a contract under section 1395w–3(b) of this title for the furnishing of such an item or service in that area, unless the Secretary finds that the expenses were incurred in a case of urgent need, or in other circumstances specified by the Secretary;

(18) which are covered skilled nursing facility services described in section 1395yy(e)(2)(A)(i) of this title and which are furnished to an individual who is a resident of a skilled nursing facility during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1395x(s)(2)(D) of this title, which are furnished to such an individual without regard to such period), by an entity other than the skilled nursing facility, unless the services are furnished under arrangements (as defined in section 1395x(w)(1) of this title) with the entity made by the skilled nursing facility;

(19) which are for items or services which are furnished pursuant to a private contract described in section 1395a(b) of this title;

(20) in the case of outpatient occupational therapy services or outpatient physical therapy services furnished as an incident to a physician's professional services (as described in section 1395x(s)(2)(A) of this title), that do not meet the standards and conditions (other than any licensing requirement specified by the Secretary) under the second sentence of section 1395x(p) of this title (or under such sentence through the operation of section 1395x(g) of this title) as such standards and conditions would apply to such therapy services if furnished by a therapist;

(21) where such expenses are for home health services (including medical supplies described in section 1395x(m)(5) of this title, but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who is under a plan of care of the home health agency if the claim for payment for such services is not submitted by the agency; or

(22) subject to subsection (h) of this section, for which a claim is submitted other than in an electronic form specified by the Secretary.

Paragraph (7) shall not apply to Federally qualified health center services described in section 1395x(aa)(3)(B) of this title. In making a national coverage determination (as defined in paragraph (1)(B) of section 1395ff(f) of this title) the Secretary shall ensure consistent with subsection (*l*) of this section that the public is afforded notice and opportunity to comment prior to imple-

mentation by the Secretary of the determination; meetings of advisory committees with respect to the determination are made on the record; in making the determination, the Secretary has considered applicable information (including clinical experience and medical, technical, and scientific evidence) with respect to the subject matter of the determination; and in the determination, provide a clear statement of the basis for the determination (including responses to comments received from the public), the assumptions underlying that basis, and make available to the public the data (other than proprietary data) considered in making the determination.

(b) Medicare as secondary payer

(1) Requirements of group health plans

(A) Working aged under group health plans

(i) In general

A group health plan—

(I) may not take into account that an individual (or the individual's spouse) who is covered under the plan by virtue of the individual's current employment status with an employer is entitled to benefits under this subchapter under section 426(a) of this title, and

(II) shall provide that any individual age 65 or older (and the spouse age 65 or older of any individual) who has current employment status with an employer shall be entitled to the same benefits under the plan under the same conditions as any such individual (or spouse) under age 65.

(ii) Exclusion of group health plan of a small employer

Clause (i) shall not apply to a group health plan unless the plan is a plan of, or contributed to by, an employer that has 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year or the preceding calendar year.

(iii) Exception for small employers in multiemployer or multiple employer group health plans

Clause (i) also shall not apply with respect to individuals enrolled in a multiemployer or multiple employer group health plan if the coverage of the individuals under the plan is by virtue of current employment status with an employer that does not have 20 or more individuals in current employment status for each working day in each of 20 or more calendar weeks in the current calendar year and the preceding calendar year; except that the exception provided in this clause shall only apply if the plan elects treatment under this clause.

(iv) Exception for individuals with end stage renal disease

Subparagraph (C) shall apply instead of clause (i) to an item or service furnished in a month to an individual if for the month the individual is, or (without regard to entitlement under section 426 of this title) would upon application be, entitled to benefits under section 426–1 of this title.

(v) "Group health plan" defined

In this subparagraph, and subparagraph (C), the term ''group health plan'' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, without regard to section 5000(d) of such Code.

(B) Disabled individuals in large group health plans

(i) In general

A large group health plan (as defined in clause (iii)) may not take into account that an individual (or a member of the individual's family) who is covered under the plan by virtue of the individual's current employment status with an employer is entitled to benefits under this subchapter under section 426(b) of this title.

(ii) Exception for individuals with end stage renal disease

Subparagraph (C) shall apply instead of clause (i) to an item or service furnished in a month to an individual if for the month the individual is, or (without regard to entitlement under section 426 of this title) would upon application be, entitled to benefits under section 426–1 of this title.

(iii) "Large group health plan" defined

In this subparagraph, the term ''large group health plan'' has the meaning given such term in section 5000(b)(2) of the Internal Revenue Code of 1986, without regard to section 5000(d) of such Code.

(C) Individuals with end stage renal disease

A group health plan (as defined in subparagraph (A)(v))—

(i) may not take into account that an individual is entitled to or eligible for benefits under this subchapter under section 426–1 of this title during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A of this subchapter under the provisions of section 426–1 of this title, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 426–1 of this title if the individual had filed an application for such benefits; and

(ii) may not differentiate in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner;

except that clause (ii) shall not prohibit a plan from paying benefits secondary to this subchapter when an individual is entitled to or eligible for benefits under this subchapter under section 426–1 of this title after the end of the 12-month period described in clause (i). Effective for items and services furnished

on or after February 1, 1991, and before August 5, 1997,[2] (with respect to periods beginning on or after February 1, 1990), this subparagraph shall be applied by substituting ''18-month'' for ''12-month'' each place it appears. Effective for items and services furnished on or after August 5, 1997,[2] (with respect to periods beginning on or after the date that is 18 months prior to August 5, 1997), clauses (i) and (ii) shall be applied by substituting ''30-month'' for ''12-month'' each place it appears.

(D) Treatment of certain members of religious orders

In this subsection, an individual shall not be considered to be employed, or an employee, with respect to the performance of services as a member of a religious order which are considered employment only by virtue of an election made by the religious order under section 3121(r) of the Internal Revenue Code of 1986.

(E) General provisions

For purposes of this subsection:

(i) Aggregation rules

(I) All employers treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer.

(II) All employees of the members of an affiliated service group (as defined in section 414(m) of such Code) shall be treated as employed by a single employer.

(III) Leased employees (as defined in section 414(n)(2) of such Code) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n) of such Code.

In applying sections of the Internal Revenue Code of 1986 under this clause, the Secretary shall rely upon regulations and decisions of the Secretary of the Treasury respecting such sections.

(ii) "Current employment status" defined

An individual has ''current employment status'' with an employer if the individual is an employee, is the employer, or is associated with the employer in a business relationship.

(iii) Treatment of self-employed persons as employers

The term ''employer'' includes a self-employed person.

(F) Limitation on beneficiary liability

An individual who is entitled to benefits under this subchapter and is furnished an item or service for which such benefits are incorrectly paid is not liable for repayment of such benefits under this paragraph unless payment of such benefits was made to the individual.

[2] So in original. The comma probably should not appear.

(2) Medicare secondary payer

(A) In general

Payment under this subchapter may not be made, except as provided in subparagraph (B), with respect to any item or service to the extent that—

(i) payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under paragraph (1), or

(ii) payment has been made, or can reasonably be expected to be made under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance.

In this subsection, the term ''primary plan'' means a group health plan or large group health plan, to the extent that clause (i) applies, and a workmen's compensation law or plan, an automobile or liability insurance policy or plan (including a self-insured plan) or no fault insurance, to the extent that clause (ii) applies. An entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.

(B) Conditional payment

(i) Authority to make conditional payment

The Secretary may make payment under this subchapter with respect to an item or service if a primary plan described in subparagraph (A)(ii) has not made or cannot reasonably be expected to make payment with respect to such item or service promptly (as determined in accordance with regulations). Any such payment by the Secretary shall be conditioned on reimbursement to the appropriate Trust Fund in accordance with the succeeding provisions of this subsection.

(ii) Repayment required

A primary plan, and an entity that receives payment from a primary plan, shall reimburse the appropriate Trust Fund for any payment made by the Secretary under this subchapter with respect to an item or service if it is demonstrated that such primary plan has or had a responsibility to make payment with respect to such item or service. A primary plan's responsibility for such payment may be demonstrated by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan's insured, or by other means. If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date notice of, or information related to, a primary plan's responsibility for such payment or other information is received, the Sec-

retary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).

(iii) Action by United States

In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any or all entities that are or were required or responsible (directly, as an insurer or self-insurer, as a third-party administrator, as an employer that sponsors or contributes to a group health plan, or large group health plan, or otherwise) to make payment with respect to the same item or service (or any portion thereof) under a primary plan. The United States may, in accordance with paragraph (3)(A) collect double damages against any such entity. In addition, the United States may recover under this clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan's payment to any entity. The United States may not recover from a third-party administrator under this clause in cases where the third-party administrator would not be able to recover the amount at issue from the employer or group health plan and is not employed by or under contract with the employer or group health plan at the time the action for recovery is initiated by the United States or for whom it provides administrative services due to the insolvency or bankruptcy of the employer or plan.

(iv) Subrogation rights

The United States shall be subrogated (to the extent of payment made under this subchapter for such an item or service) to any right under this subsection of an individual or any other entity to payment with respect to such item or service under a primary plan.

(v) Waiver of rights

The Secretary may waive (in whole or in part) the provisions of this subparagraph in the case of an individual claim if the Secretary determines that the waiver is in the best interests of the program established under this subchapter.

(vi) Claims-filing period

Notwithstanding any other time limits that may exist for filing a claim under an employer group health plan, the United States may seek to recover conditional payments in accordance with this subparagraph where the request for payment is submitted to the entity required or responsible under this subsection to pay with respect to the item or service (or any portion thereof) under a primary plan within the 3-year period beginning on the date on which the item or service was furnished.

(C) Treatment of questionnaires

The Secretary may not fail to make payment under subparagraph (A) solely on the ground that an individual failed to complete a questionnaire concerning the existence of a primary plan.

(3) Enforcement

(A) Private cause of action

There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) in accordance with paragraphs (1) and (2)(A).

(B) Reference to excise tax with respect to nonconforming group health plans

For provision imposing an excise tax with respect to nonconforming group health plans, see section 5000 of the Internal Revenue Code of 1986.

(C) Prohibition of financial incentives not to enroll in a group health plan or a large group health plan

It is unlawful for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits under this subchapter not to enroll (or to terminate enrollment) under a group health plan or a large group health plan which would (in the case of such enrollment) be a primary plan (as defined in paragraph (2)(A)). Any entity that violates the previous sentence is subject to a civil money penalty of not to exceed $5,000 for each such violation. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(4) Coordination of benefits

Where payment for an item or service by a primary plan is less than the amount of the charge for such item or service and is not payment in full, payment may be made under this subchapter (without regard to deductibles and coinsurance under this subchapter) for the remainder of such charge, but—

(A) payment under this subchapter may not exceed an amount which would be payable under this subchapter for such item or service if paragraph (2)(A) did not apply; and

(B) payment under this subchapter, when combined with the amount payable under the primary plan, may not exceed—

(i) in the case of an item or service payment for which is determined under this subchapter on the basis of reasonable cost (or other cost-related basis) or under section 1395ww of this title, the amount which would be payable under this subchapter on such basis, and

(ii) in the case of an item or service for which payment is authorized under this subchapter on another basis—

(I) the amount which would be payable under the primary plan (without regard

to deductibles and coinsurance under such plan), or

(II) the reasonable charge or other amount which would be payable under this subchapter (without regard to deductibles and coinsurance under this subchapter),

whichever is greater.

(5) Identification of secondary payer situations

(A) Requesting matching information

(i) Commissioner of Social Security

The Commissioner of Social Security shall, not less often than annually, transmit to the Secretary of the Treasury a list of the names and TINs of medicare beneficiaries (as defined in section 6103(*l*)(12) of the Internal Revenue Code of 1986) and request that the Secretary disclose to the Commissioner the information described in subparagraph (A) of such section.

(ii) Administrator

The Administrator of the Centers for Medicare & Medicaid Services shall request, not less often than annually, the Commissioner of the Social Security Administration to disclose to the Administrator the information described in subparagraph (B) of section 6103(*l*)(12) of the Internal Revenue Code of 1986.

(B) Disclosure to fiscal intermediaries and carriers

In addition to any other information provided under this subchapter to fiscal intermediaries and carriers, the Administrator shall disclose to such intermediaries and carriers (or to such a single intermediary or carrier as the Secretary may designate) the information received under subparagraph (A) for purposes of carrying out this subsection.

(C) Contacting employers

(i) In general

With respect to each individual (in this subparagraph referred to as an ''employee'') who was furnished a written statement under section 6051 of the Internal Revenue Code of 1986 by a qualified employer (as defined in section 6103(*l*)(12)(E)(iii) of such Code), as disclosed under subparagraph (B), the appropriate fiscal intermediary or carrier shall contact the employer in order to determine during what period the employee or employee's spouse may be (or have been) covered under a group health plan of the employer and the nature of the coverage that is or was provided under the plan (including the name, address, and identifying number of the plan).

(ii) Employer response

Within 30 days of the date of receipt of the inquiry, the employer shall notify the intermediary or carrier making the inquiry as to the determinations described in clause (i). An employer (other than a Federal or other governmental entity) who willfully or repeatedly fails to provide timely and accurate notice in accordance with the previous sentence shall be subject to a civil money penalty of not to exceed $1,000 for each individual with respect to which such an inquiry is made. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(D) Obtaining information from beneficiaries

Before an individual applies for benefits under part A of this subchapter or enrolls under part B of this subchapter, the Administrator shall mail the individual a questionnaire to obtain information on whether the individual is covered under a primary plan and the nature of the coverage provided under the plan, including the name, address, and identifying number of the plan.

(6) Screening requirements for providers and suppliers

(A) In general

Notwithstanding any other provision of this subchapter, no payment may be made for any item or service furnished under part B of this subchapter unless the entity furnishing such item or service completes (to the best of its knowledge and on the basis of information obtained from the individual to whom the item or service is furnished) the portion of the claim form relating to the availability of other health benefit plans.

(B) Penalties

An entity that knowingly, willfully, and repeatedly fails to complete a claim form in accordance with subparagraph (A) or provides inaccurate information relating to the availability of other health benefit plans on a claim form under such subparagraph shall be subject to a civil money penalty of not to exceed $2,000 for each such incident. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(c) Drug products

No payment may be made under part B of this subchapter for any expenses incurred for—

(1) a drug product—

(A) which is described in section 107(c)(3) of the Drug Amendments of 1962,

(B) which may be dispensed only upon prescription,

(C) for which the Secretary has issued a notice of an opportunity for a hearing under subsection (e) of section 355 of title 21 on a proposed order of the Secretary to withdraw approval of an application for such drug product under such section because the Secretary has determined that the drug is less than effective for all conditions of use prescribed, recommended, or suggested in its labeling, and

(D) for which the Secretary has not determined there is a compelling justification for its medical need; and

(2) any other drug product—

(A) which is identical, related, or similar (as determined in accordance with section 310.6 of title 21 of the Code of Federal Regulations) to a drug product described in paragraph (1), and

(B) for which the Secretary has not determined there is a compelling justification for its medical need,

until such time as the Secretary withdraws such proposed order.

(d) Items or services provided for emergency medical conditions

For purposes of subsection (a)(1)(A) of this section, in the case of any item or service that is required to be provided pursuant to section 1395dd of this title to an individual who is entitled to benefits under this subchapter, determinations as to whether the item or service is reasonable and necessary shall be made on the basis of the information available to the treating physician or practitioner (including the patient's presenting symptoms or complaint) at the time the item or service was ordered or furnished by the physician or practitioner (and not on the patient's principal diagnosis). When making such determinations with respect to such an item or service, the Secretary shall not consider the frequency with which the item or service was provided to the patient before or after the time of the admission or visit.

(e) Item or service by excluded individual or entity or at direction of excluded physician; limitation of liability of beneficiaries with respect to services furnished by excluded individuals and entities

(1) No payment may be made under this subchapter with respect to any item or service (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished—

(A) by an individual or entity during the period when such individual or entity is excluded pursuant to section 1320a–7, 1320a–7a, 1320c–5 or 1395u(j)(2) of this title from participation in the program under this subchapter; or

(B) at the medical direction or on the prescription of a physician during the period when he is excluded pursuant to section 1320a–7, 1320a–7a, 1320c–5 or 1395u(j)(2) of this title from participation in the program under this subchapter and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).

(2) Where an individual eligible for benefits under this subchapter submits a claim for payment for items or services furnished by an individual or entity excluded from participation in the programs under this subchapter, pursuant to section 1320a–7, 1320a–7a, 1320c–5, 1320c–9 (as in effect on September 2, 1982), 1395u(j)(2), 1395y(d) (as in effect on August 18, 1987), or 1395cc of this title, and such beneficiary did not know or have reason to know that such individual or entity was so excluded, then, to the extent permitted by this subchapter, and notwithstanding such exclusion, payment shall be made for such items or services. In each such case the Secretary shall notify the beneficiary of the exclusion of the individual or entity furnishing the items or services. Payment shall not be made for items or services furnished by an excluded individual or entity to a beneficiary after a reasonable time (as determined by the Secretary in regulations) after the Secretary has notified the beneficiary of the exclusion of that individual or entity.

(f) Utilization guidelines for provision of home health services

The Secretary shall establish utilization guidelines for the determination of whether or not payment may be made, consistent with paragraph (1)(A) of subsection (a) of this section, under part A or part B of this subchapter for expenses incurred with respect to the provision of home health services, and shall provide for the implementation of such guidelines through a process of selective postpayment coverage review by intermediaries or otherwise.

(g) Contracts with utilization and quality control peer review organizations

The Secretary shall, in making the determinations under paragraphs (1) and (9) of subsection (a) of this section, and for the purposes of promoting the effective, efficient, and economical delivery of health care services, and of promoting the quality of services of the type for which payment may be made under this subchapter, enter into contracts with utilization and quality control peer review organizations pursuant to part B of subchapter XI of this chapter.

(h) Waiver of electronic form requirement

(1) The Secretary—

(A) shall waive the application of subsection (a)(22) of this section in cases in which—

(i) there is no method available for the submission of claims in an electronic form; or

(ii) the entity submitting the claim is a small provider of services or supplier; and

(B) may waive the application of such subsection in such unusual cases as the Secretary finds appropriate.

(2) For purposes of this subsection, the term ''small provider of services or supplier'' means—

(A) a provider of services with fewer than 25 full-time equivalent employees; or

(B) a physician, practitioner, facility, or supplier (other than provider of services) with fewer than 10 full-time equivalent employees.

(i) Awards and contracts for original research and experimentation of new and existing medical procedures; conditions

In order to supplement the activities of the Medicare Payment Advisory Commission under section 1395ww(e) of this title in assessing the safety, efficacy, and cost-effectiveness of new and existing medical procedures, the Secretary may carry out, or award grants or contracts for, original research and experimentation of the type described in clause (ii) of section 1395ww(e)(6)(E) of this title with respect to such a procedure if the Secretary finds that—

(1) such procedure is not of sufficient commercial value to justify research and experimentation by a commercial organization;

(2) research and experimentation with respect to such procedure is not of a type that may appropriately be carried out by an institute, division, or bureau of the National Institutes of Health; and

(3) such procedure has the potential to be more cost-effective in the treatment of a condition than procedures currently in use with respect to such condition.

(j) Nonvoting members and experts

(1) Any advisory committee appointed to advise the Secretary on matters relating to the interpretation, application, or implementation of subsection (a)(1) of this section shall assure the full participation of a nonvoting member in the deliberations of the advisory committee, and shall provide such nonvoting member access to all information and data made available to voting members of the advisory committee, other than information that—

(A) is exempt from disclosure pursuant to subsection (a) of section 552 of title 5 by reason of subsection (b)(4) of such section (relating to trade secrets); or

(B) the Secretary determines would present a conflict of interest relating to such nonvoting member.

(2) If an advisory committee described in paragraph (1) organizes into panels of experts according to types of items or services considered by the advisory committee, any such panel of experts may report any recommendation with respect to such items or services directly to the Secretary without the prior approval of the advisory committee or an executive committee thereof.

(k) Dental benefits under group health plans

(1) Subject to paragraph (2), a group health plan (as defined in subsection (a)(1)(A)(v)[3] of this section) providing supplemental or secondary coverage to individuals also entitled to services under this subchapter shall not require a medicare claims determination under this subchapter for dental benefits specifically excluded under subsection (a)(12) of this section as a condition of making a claims determination for such benefits under the group health plan.

(2) A group health plan may require a claims determination under this subchapter in cases involving or appearing to involve inpatient dental hospital services or dental services expressly covered under this subchapter pursuant to actions taken by the Secretary.

***(l)* National and local coverage determination process**

(1) Factors and evidence used in making national coverage determinations

The Secretary shall make available to the public the factors considered in making national coverage determinations of whether an item or service is reasonable and necessary. The Secretary shall develop guidance documents to carry out this paragraph in a manner similar to the development of guidance documents under section 371(h) of title 21.

(2) Timeframe for decisions on requests for national coverage determinations

In the case of a request for a national coverage determination that—

(A) does not require a technology assessment from an outside entity or deliberation from the Medicare Coverage Advisory Committee, the decision on the request shall be made not later than 6 months after the date of the request; or

(B) requires such an assessment or deliberation and in which a clinical trial is not requested, the decision on the request shall be made not later than 9 months after the date of the request.

(3) Process for public comment in national coverage determinations

(A) Period for proposed decision

Not later than the end of the 6-month period (or 9-month period for requests described in paragraph (2)(B)) that begins on the date a request for a national coverage determination is made, the Secretary shall make a draft of proposed decision on the request available to the public through the Internet website of the Centers for Medicare & Medicaid Services or other appropriate means.

(B) 30-day period for public comment

Beginning on the date the Secretary makes a draft of the proposed decision available under subparagraph (A), the Secretary shall provide a 30-day period for public comment on such draft.

(C) 60-day period for final decision

Not later than 60 days after the conclusion of the 30-day period referred to under subparagraph (B), the Secretary shall—

(i) make a final decision on the request;

(ii) include in such final decision summaries of the public comments received and responses to such comments;

(iii) make available to the public the clinical evidence and other data used in making such a decision when the decision differs from the recommendations of the Medicare Coverage Advisory Committee; and

(iv) in the case of a final decision under clause (i) to grant the request for the national coverage determination, the Secretary shall assign a temporary or permanent code (whether existing or unclassified) and implement the coding change.

(4) Consultation with outside experts in certain national coverage determinations

With respect to a request for a national coverage determination for which there is not a review by the Medicare Coverage Advisory Committee, the Secretary shall consult with appropriate outside clinical experts.

(5) Local coverage determination process

(A) Plan to promote consistency of coverage determinations

The Secretary shall develop a plan to evaluate new local coverage determinations to determine which determinations should

[3] So in original. Probably should be ''(b)(1)(A)(v)''.

be adopted nationally and to what extent greater consistency can be achieved among local coverage determinations.

(B) Consultation

The Secretary shall require the fiscal intermediaries or carriers providing services within the same area to consult on all new local coverage determinations within the area.

(C) Dissemination of information

The Secretary should serve as a center to disseminate information on local coverage determinations among fiscal intermediaries and carriers to reduce duplication of effort.

(6) National and local coverage determination defined

For purposes of this subsection—

(A) National coverage determination

The term ''national coverage determination'' means a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under this subchapter.

(B) Local coverage determination

The term ''local coverage determination'' has the meaning given that in section 1395ff(f)(2)(B) of this title.

(m) Coverage of routine costs associated with certain clinical trials of category A devices

(1) In general

In the case of an individual entitled to benefits under part A of this subchapter, or enrolled under part B of this subchapter, or both who participates in a category A clinical trial, the Secretary shall not exclude under subsection (a)(1) of this section payment for coverage of routine costs of care (as defined by the Secretary) furnished to such individual in the trial.

(2) Category A clinical trial

For purposes of paragraph (1), a ''category A clinical trial'' means a trial of a medical device if—

(A) the trial is of an experimental/investigational (category A) medical device (as defined in regulations under section 405.201(b) of title 42, Code of Federal Regulations (as in effect as of September 1, 2003));

(B) the trial meets criteria established by the Secretary to ensure that the trial conforms to appropriate scientific and ethical standards; and

(C) in the case of a trial initiated before January 1, 2010, the device involved in the trial has been determined by the Secretary to be intended for use in the diagnosis, monitoring, or treatment of an immediately life-threatening disease or condition.

(Aug. 14, 1935, ch. 531, title XVIII, § 1862, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 325; amended Pub. L. 90–248, title I, §§ 127(b), 128, Jan. 2, 1968, 81 Stat. 846, 847; Pub. L. 92–603, title II, §§ 210, 211(c)(1), 229(a), 256(c), Oct. 30, 1972, 86 Stat. 1382, 1384, 1408, 1447; Pub. L. 93–233, § 18(k)(3), Dec. 31, 1973, 87 Stat. 970; Pub. L. 93–480, § 4(a), Oct. 26, 1974, 88 Stat. 1454; Pub. L. 94–182, title I, § 103, Dec. 31, 1975, 89 Stat. 1051; Pub. L. 95–142, §§ 7(a), 13(a), (b)(1), (2), Oct. 25, 1977, 91 Stat. 1192, 1197, 1198; Pub. L. 95–210, § 1(f), Dec. 13, 1977, 91 Stat. 1487; Pub. L. 96–272, title III, § 308(a), June 17, 1980, 94 Stat. 531; Pub. L. 96–499, title IX, §§ 913(b), 936(c), 939(a), 953, Dec. 5, 1980, 94 Stat. 2620, 2640, 2647; Pub. L. 96–611, § 1(a)(3), Dec. 28, 1980, 94 Stat. 3566; Pub. L. 97–35, title XXI, §§ 2103(a)(1), 2146(a), 2152(a), Aug. 13, 1981, 95 Stat. 787, 800, 802; Pub. L. 97–248, title I, §§ 116(b), 122(f), (g)(1), 128(a)(2)–(4), 142, 148(a), Sept. 3, 1982, 96 Stat. 353, 362, 366, 381, 394; Pub. L. 97–448, title III, § 309(b)(10), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–21, title VI, §§ 601(f), 602(e), Apr. 20, 1983, 97 Stat. 162, 163; Pub. L. 98–369, div. B, title III, §§ 2301(a), 2304(c), 2313(c), 2344(a)–(c), 2354(b)(30), (31), July 18, 1984, 98 Stat. 1063, 1068, 1078, 1095, 1101, 1102; Pub. L. 99–272, title IX, §§ 9201(a), 9307(a), 9401(c)(1), Apr. 7, 1986, 100 Stat. 170, 193, 199; Pub. L. 99–509, title IX, §§ 9316(b), 9319(a), (b), 9320(h)(1), 9343(c)(1), Oct. 21, 1986, 100 Stat. 2007, 2010, 2011, 2016, 2040; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–93, §§ 8(c)(1), (3), 10, Aug. 18, 1987, 101 Stat. 692, 693, 696; Pub. L. 100–203, title IV, §§ 4009(j)(6)(C), 4034(a), 4036(a)(1), 4039(c)(1), 4072(c), 4085(i)(15), (16), Dec. 22, 1987, 101 Stat. 1330–59, 1330–77, 1330–79, 1330–82, 1330–117, 1330–133; Pub. L. 100–360, title II, §§ 202(d), 204(d)(2), 205(e)(1), title IV, § 411(f)(4)(D)(i), (i)(4)(D), July 1, 1988, 102 Stat. 715, 729, 731, 778, 790; Pub. L. 100–485, title VI, § 608(d)(7), (24)(C), Oct. 13, 1988, 102 Stat. 2415, 2421; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6003(g)(3)(D)(xi), 6103(b)(3)(B), 6115(b), 6202(a)(2)(A), (b)(1), (e)(1), 6411(d)(2), Dec. 19, 1989, 103 Stat. 2154, 2199, 2219, 2228, 2229, 2234, 2271; Pub. L. 101–508, title IV, §§ 4107(b), 4153(b)(2)(B), 4157(c)(1), 4161(a)(3)(C), 4163(d)(2), 4203(a)(1), (b), (c)(1), 4204(g)(1), Nov. 5, 1990, 104 Stat. 1388–62, 1388–84, 1388–89, 1388–94, 1388–100, 1388–107, 1388–112; Pub. L. 103–66, title XIII, §§ 13561(a)(1), (b)–(d)(1), (e)(1), 13581(b)(1), Aug. 10, 1993, 107 Stat. 593, 594, 611; Pub. L. 103–432, title I, §§ 145(c)(1), 147(e)(6), 151(a)(1)(A), (C), (2)(A), (b)(3)(A), (B), (c)(1), (4)–(6), (9)(B), 156(a)(2)(D), 157(b)(7), Oct. 31, 1994, 108 Stat. 4427, 4430, 4432–4436, 4441, 4442; Pub. L. 104–224, § 1, Oct. 2, 1996, 110 Stat. 3031; Pub. L. 104–226, § 1(b)(1), Oct. 2, 1996, 110 Stat. 3033; Pub. L. 105–12, § 9(a)(1), Apr. 30, 1997, 111 Stat. 26; Pub. L. 105–33, title IV, §§ 4022(b)(1)(B), 4102(c), 4103(c), 4104(c)(3), 4201(c)(1), 4319(b), 4432(b)(1), 4507(a)(2)(B), 4511(a)(2)(C), 4541(b), 4603(c)(2)(C), 4614(a), 4631(a)(1), (b), (c)(1), 4632(a), 4633(a), (b), Aug. 5, 1997, 111 Stat. 354, 361, 362, 365, 373, 394, 420, 441, 442, 456, 471, 474, 486, 487; Pub. L. 106–113, div. B, § 1000(a)(6) [title III, §§ 305(b), 321(k)(10)], Nov. 29, 1999, 113 Stat. 1536, 1501A–362, 1501A–367; Pub. L. 106–554, § 1(a)(6) [title I, § 102(c), title III, § 313(a), title IV, § 432(b)(1), title V, § 522(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–468, 2763A–499, 2763A–526, 2763A–546; Pub. L. 107–105, § 3(a), Dec. 27, 2001, 115 Stat. 1006; Pub. L. 108–173, title III, §§ 301(a)–(c), 303(i)(3)(B), title VI, §§ 611(d)(1), 612(c), 613(c), title VII, § 731(a)(1), (b)(1), title IX, §§ 900(e)(1)(J), 944(a)(1), 948(a), 950(a), Dec. 8, 2003, 117 Stat. 2221, 2222, 2254, 2304–2306, 2349, 2351, 2372, 2422, 2425, 2426; Pub. L. 109–171, title V, § 5112(d), Feb. 8, 2006, 120 Stat. 44.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 1395ww(e)(6) of this title, referred to in subsec. (a)(1)(D), was repealed by Pub. L. 105–33, title IV, §4022(b)(1)(A)(i), Aug. 5, 1997, 111 Stat. 354.

Part B of subchapter XI of this chapter, referred to in subsecs. (a)(15) and (g), is classified to section 1320c et seq. of this title.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (a)(16), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (b), is classified generally to Title 26, Internal Revenue Code.

Section 107(c)(3) of the Drug Amendments of 1962, referred to in subsec. (c)(1)(A), is section 107(c)(3) of Pub. L. 87–781, title I, Oct. 10, 1962, 76 Stat. 788, which is set out as an Effective Date of 1962 Amendment note under section 321 of Title 21, Food and Drugs.

CODIFICATION

Section 1314(i) of this title, which was transferred and redesignated as subsec. (j) of this section by Pub. L. 108–173, was based on act Aug. 14, 1935, ch. 531, title XI, §1114(i), as added Pub. L. 106–554, §1(a)(6) [title V, §522(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–546.

Amendments by section 301(a) to (c) of Pub. L. 108–173 were executed to this section as it read on the date of enactment of Pub. L. 108–173 to reflect the probable intent of Congress, notwithstanding section 301(d) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note below, which provided that the amendments by section 301(a) of Pub. L. 108–173 be effective as if included in the enactment of title III of Pub. L. 98–369 and that the amendments by section 301(b), (c) of Pub. L. 108–173 be effective as if included in the enactment of section 953 of Pub. L. 96–499. The amendments by section 301(a) are incapable of being executed to this section as it read on the effective date of title III of Pub. L. 98–369, and the amendments by section 301(b), (c) are incapable of being executed to this section as it read on the effective date of section 953 of Pub. L. 96–499. See 2003 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(1)(N). Pub. L. 109–171 added subpar. (N).

2003—Subsec. (a). Pub. L. 108–173, §948(a)(2)(A), struck out ''established under section 1314(f) of this title'' after ''meetings of advisory committees'' in concluding provisions.

Pub. L. 108–173, §731(a)(1)(A), inserted ''consistent with subsection (*l*) of this section'' after ''the Secretary shall ensure'' in concluding provisions.

Subsec. (a)(1)(J). Pub. L. 108–173, §303(i)(3)(B), added subpar. (J).

Subsec. (a)(1)(K). Pub. L. 108–173, §611(d)(1)(A), added subpar. (K).

Subsec. (a)(1)(L). Pub. L. 108–173, §612(c), added subpar. (L).

Subsec. (a)(1)(M). Pub. L. 108–173, §613(c), added subpar. (M).

Subsec. (a)(7). Pub. L. 108–173, §611(d)(1)(B), substituted ''(H), or (K)'' for ''or (H)''.

Subsec. (b)(1)(A). Pub. L. 108–173, §301(c)(1), realigned margins.

Subsec. (b)(2)(A). Pub. L. 108–173, §301(b)(1), inserted at end of concluding provisions ''An entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.''

Subsec. (b)(2)(A)(ii). Pub. L. 108–173, §301(a)(1), struck out ''promptly (as determined in accordance with regulations)'' after ''be expected to be made''.

Subsec. (b)(2)(B)(i). Pub. L. 108–173, §301(a)(2)(B), added cl. (i). Former cl. (i) redesignated (ii).

Subsec. (b)(2)(B)(ii). Pub. L. 108–173, §301(b)(2), substituted ''A primary plan, and an entity that receives payment from a primary plan, shall reimburse the appropriate Trust Fund for any payment made by the Secretary under this subchapter with respect to an item or service if it is demonstrated that such primary plan has or had a responsibility to make payment with respect to such item or service. A primary plan's responsibility for such payment may be demonstrated by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan's insured, or by other means.'' for ''Any payment under this subchapter with respect to any item or service to which subparagraph (A) applies shall be conditioned on reimbursement to the appropriate Trust Fund established by this subchapter when notice or other information is received that payment for such item or service has been or could be made under such subparagraph.'' and ''on the date notice of, or information related to, a primary plan's responsibility for such payment or other information is received'' for ''on the date such notice or other information is received''.

Pub. L. 108–173, §301(a)(2)(A), redesignated cl. (i) as (ii). Former cl. (ii) redesignated (iii).

Subsec. (b)(2)(B)(iii). Pub. L. 108–173, §301(b)(3), substituted ''In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any or all entities that are or were required or responsible (directly, as an insurer or self-insurer, as a third-party administrator, as an employer that sponsors or contributes to a group health plan, or large group health plan, or otherwise) to make payment with respect to the same item or service (or any portion thereof) under a primary plan. The United States may, in accordance with paragraph (3)(A) collect double damages against any such entity. In addition, the United States may recover under this clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan's payment to any entity.'' for ''In order to recover payment under this subchapter for such an item or service, the United States may bring an action against any entity which is required or responsible (directly, as a third-party administrator, or otherwise) to make payment with respect to such item or service (or any portion thereof) under a primary plan (and may, in accordance with paragraph (3)(A) collect double damages against that entity), or against any other entity (including any physician or provider) that has received payment from that entity with respect to the item or service, and may join or intervene in any action related to the events that gave rise to the need for the item or service.''

Pub. L. 108–173, §301(a)(2)(A), redesignated cl. (ii) as (iii). Former cl. (iii) redesignated (iv).

Subsec. (b)(2)(B)(iv) to (vi). Pub. L. 108–173, §301(a)(2)(A), redesignated cls. (iii) to (v) as (iv) to (vi), respectively.

Subsec. (b)(3)(A). Pub. L. 108–173, §301(c)(2), struck out ''such'' before ''paragraphs''.

Subsec. (b)(5)(A)(ii). Pub. L. 108–173, §900(e)(1)(J), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

Subsec. (d). Pub. L. 108–173, §944(a)(1), added subsec. (d).

Subsec. (j). Pub. L. 108–173, §948(a)(1), transferred subsec. (i) of section 1314 of this title and redesignated it as subsec. (j) of this section. See Codification note above.

Subsec. (j)(1). Pub. L. 108–173, §948(a)(2)(B), in introductory provisions, struck out ''under subsection (f) of this section'' after ''appointed'' and substituted ''subsection (a)(1) of this section'' for ''section 1395y(a)(1) of this title''.

Subsec. (k). Pub. L. 108–173, §950(a), added subsec. (k).

Subsec. (*l*). Pub. L. 108–173, § 731(a)(1)(B), added subsec. (*l*).

Subsec. (m). Pub. L. 108–173, § 731(b)(1), added subsec. (m).

2001—Subsec. (a)(22). Pub. L. 107–105, § 3(a)(1), added par. (22).

Subsec. (h). Pub. L. 107–105, § 3(a)(2), added subsec. (h).

2000—Subsec. (a). Pub. L. 106–554, § 1(a)(6) [title V, § 522(b)], inserted at end ''In making a national coverage determination (as defined in paragraph (1)(B) of section 1395ff(f) of this title) the Secretary shall ensure that the public is afforded notice and opportunity to comment prior to implementation by the Secretary of the determination; meetings of advisory committees established under section 1314(f) of this title with respect to the determination are made on the record; in making the determination, the Secretary has considered applicable information (including clinical experience and medical, technical, and scientific evidence) with respect to the subject matter of the determination; and in the determination, provide a clear statement of the basis for the determination (including responses to comments received from the public), the assumptions underlying that basis, and make available to the public the data (other than proprietary data) considered in making the determination.''

Subsec. (a)(1)(F). Pub. L. 106–554, § 1(a)(6) [title I, § 102(c)], struck out ''and,'' after ''section 1395m(c)(1)(B) of this title,'' and inserted at end ''and, in the case of screening for glaucoma, which is performed more frequently than is provided under section 1395x(uu) of this title,''.

Subsec. (a)(3). Pub. L. 106–554, § 1(a)(6) [title IV, § 432(b)(1)], struck out second comma after ''section 1395x(aa)(1) of this title'' and inserted ''in the case of services for which payment may be made under section 1395qq(e) of this title,'' after ''section 1395x(aa)(3) of this title,''.

Subsec. (a)(18). Pub. L. 106–554, § 1(a)(6) [title III, § 313(a)], substituted ''during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1395x(s)(2)(D) of this title, which are furnished to such an individual without regard to such period),'' for ''or of a part of a facility that includes a skilled nursing facility (as determined under regulations),''.

1999—Subsec. (a)(7). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(10)], substituted ''subparagraph'' for ''subparagraphs''.

Subsec. (a)(21). Pub. L. 106–113, § 1000(a)(6) [title III, § 305(b)], inserted ''(including medical supplies described in section 1395x(m)(5) of this title, but excluding durable medical equipment to the extent provided for in such section)'' after ''home health services''.

1997—Subsec. (a)(1)(D). Pub. L. 105–33, § 4022(b)(1)(B), substituted ''Medicare Payment Advisory Commission'' for ''Prospective Payment Assessment Commission''.

Subsec. (a)(1)(F). Pub. L. 105–33, § 4102(c), inserted ''and screening pelvic exam'' after ''screening pap smear''.

Subsec. (a)(1)(G). Pub. L. 105–33, § 4103(c)(1), added subpar. (G).

Subsec. (a)(1)(H). Pub. L. 105–33, § 4104(c)(3)(A), added subpar. (H).

Subsec. (a)(1)(I). Pub. L. 105–33, § 4614(a), added subpar. (I).

Subsec. (a)(7). Pub. L. 105–33, § 4104(c)(3)(B), substituted ''(G), or (H)'' for ''or (G)''.

Pub. L. 105–33, § 4103(c)(2), substituted ''subparagraphs (B), (F), or (G) of paragraph (1)'' for ''paragraph (1)(B) or under paragraph (1)(F)''.

Subsec. (a)(14). Pub. L. 105–33, § 4511(a)(2)(C), substituted ''section 1395x(s)(2)(K) of this title'' for ''section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title''.

Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' wherever appearing.

Subsec. (a)(16). Pub. L. 105–12 added par. (16).

Subsec. (a)(17). Pub. L. 105–33, § 4319(b), added par. (17).

Subsec. (a)(18). Pub. L. 105–33, § 4432(b)(1), added par. (18).

Subsec. (a)(19). Pub. L. 105–33, § 4507(a)(2)(B), added par. (19).

Subsec. (a)(20). Pub. L. 105–33, § 4541(b), added par. (20).

Subsec. (a)(21). Pub. L. 105–33, § 4603(c)(2)(C), added par. (21).

Subsec. (b)(1)(B)(i). Pub. L. 105–33, § 4631(a)(1)(A), substituted ''in clause (iii))'' for ''in clause (iv))''.

Subsec. (b)(1)(B)(iii), (iv). Pub. L. 105–33, § 4631(a)(1)(B), (C), redesignated cl. (iv) as (iii) and struck out heading and text of former cl. (iii). Text read as follows: ''Clause (i) shall only apply to items and services furnished on or after January 1, 1987, and before October 1, 1998.''

Subsec. (b)(1)(C). Pub. L. 105–33, § 4631(b), in concluding provisions, substituted ''August 5, 1997'' for ''October 1, 1998'' and inserted at end ''Effective for items and services furnished on or after August 5, 1997, (with respect to periods beginning on or after the date that is 18 months prior to August 5, 1997), clauses (i) and (ii) shall be applied by substituting '30-month' for '12-month' each place it appears.''

Subsec. (b)(1)(F). Pub. L. 105–33, § 4633(b), added subpar. (F).

Subsec. (b)(2)(B)(ii). Pub. L. 105–33, § 4633(a), substituted ''(directly, as a third-party administrator, or otherwise) to make payment'' for ''under this subsection to pay'' and inserted at end ''The United States may not recover from a third-party administrator under this clause in cases where the third-party administrator would not be able to recover the amount at issue from the employer or group health plan and is not employed by or under contract with the employer or group health plan at the time the action for recovery is initiated by the United States or for whom it provides administrative services due to the insolvency or bankruptcy of the employer or plan.''

Subsec. (b)(2)(B)(v). Pub. L. 105–33, § 4632(a), added cl. (v).

Subsec. (b)(5)(C)(iii). Pub. L. 105–33, § 4631(c)(1), struck out heading and text of cl. (iii). Text read as follows: ''Clause (ii) shall not apply to inquiries made after September 30, 1998.''

Subsec. (i). Pub. L. 105–33, § 4022(b)(1)(B), substituted ''Medicare Payment Advisory Commission'' for ''Prospective Payment Assessment Commission'' in introductory provisions.

1996—Subsec. (b)(5)(B). Pub. L. 104–226, § 1(b)(1)(A), substituted ''under subparagraph (A) for purposes of carrying out this subsection'' for ''under—

''(i) subparagraph (A), and

''(ii) section 1320b–14 of this title,

for purposes of carrying out this subsection''.

Subsec. (b)(5)(C)(i). Pub. L. 104–226, § 1(b)(1)(B), substituted ''disclosed under subparagraph (B)'' for ''disclosed under subparagraph (B)(i)''.

Subsec. (h). Pub. L. 104–224 struck out subsec. (h) which required Secretary to provide registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under this chapter.

1994—Subsec. (a)(1)(F). Pub. L. 103–432, § 145(c)(1), substituted ''is not conducted by a facility described in section 1395m(c)(1)(B) of this title'' for ''or which does not meet the standards established under section 1395m(c)(3) of this title''.

Subsec. (a)(14). Pub. L. 103–432, § 156(a)(2)(D)(i), inserted ''or'' at end.

Pub. L. 103–432, § 147(e)(6), substituted ''section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title'' for ''section 1395x(s)(2)(K)(i) of this title''.

Subsec. (a)(15). Pub. L. 103–432, § 156(a)(2)(D)(ii), substituted period for ''; or'' at end.

Subsec. (a)(16). Pub. L. 103–432, § 156(a)(2)(D)(iii), struck out par. (16) which read as follows: ''furnished in connection with a surgical procedure for which a second opinion is required under section 1320c–13(c)(2) of this title and has not been obtained.''

Subsec. (b)(1)(A)(i)(II). Pub. L. 103–432, § 151(c)(1)(A), substituted ''older (and the spouse age 65 or older of any individual) who has current employment status with an employer'' for ''over (and the individual's

spouse age 65 or older) who is covered under the plan by virtue of the individual's current employment status with an employer''.

Subsec. (b)(1)(A)(ii). Pub. L. 103–432, § 151(c)(1)(B), substituted ''employer that has 20 or more employees'' for ''employer or employee organization that has 20 or more individuals in current employment status''.

Subsec. (b)(1)(A)(v). Pub. L. 103–432, § 151(c)(9)(B), made technical amendment to directory language of Pub. L. 103–66, § 13561(e)(1)(D). See 1993 Amendment note below.

Subsec. (b)(1)(C). Pub. L. 103–432, § 151(c)(5), substituted ''paying benefits secondary to this subchapter when'' for ''taking into account that'' in closing provisions.

Pub. L. 103–432, § 151(c)(4), substituted ''this subparagraph'' for ''clauses (i) and (ii)'' after ''February 1, 1990),'' in last sentence.

Subsec. (b)(2)(B)(i). Pub. L. 103–432, § 151(b)(3)(A), (B), substituted ''Repayment required'' for ''Primary plans'' in heading and inserted at end ''If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date such notice or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).''

Subsec. (b)(2)(C). Pub. L. 103–432, § 151(a)(1)(C), added subpar. (C).

Subsec. (b)(3)(C). Pub. L. 103–432, § 157(b)(7), substituted ''group health plan or a large group health plan'' for ''group health plan'' in heading and text, struck out '', unless such incentive is also offered to all individuals who are eligible for coverage under the plan'' after ''(as defined in paragraph (2)(A))'', and substituted ''(other than subsections (a) and (b))'' for ''(other than the first sentence of subsection (a) and other than subsection (b))''.

Subsec. (b)(5)(C)(i). Pub. L. 103–432, § 151(c)(6), substituted ''section 6103(*l*)(12)(E)(iii) of such Code'' for ''section 6103(*l*)(12)(D)(iii) of such Code''.

Subsec. (b)(5)(D). Pub. L. 103–432, § 151(a)(1)(A), added subpar. (D).

Subsec. (b)(6). Pub. L. 103–432, § 151(a)(2)(A), added par. (6).

1993—Subsec. (b)(1)(A)(i). Pub. L. 103–66, § 13561(e)(1)(A), amended subcls. (I) and (II) generally. Prior to amendment, subcls. (I) and (II) read as follows:

''(I) may not take into account, for any item or service furnished to an individual 65 years of age or older at the time the individual is covered under the plan by reason of the current employment of the individual (or the individual's spouse), that the individual is entitled to benefits under this subchapter under section 426(a) of this title, and

''(II) shall provide that any employee age 65 or older, and any employee's spouse age 65 or older, shall be entitled to the same benefits under the plan under the same conditions as any employee, and the spouse of such employee, under age 65.''

Subsec. (b)(1)(A)(ii). Pub. L. 103–66, § 13561(e)(1)(B), substituted ''unless the plan is a plan of, or contributed to by, an employer or employee organization that has 20 or more individuals in current employment status'' for ''unless the plan is sponsored by or contributed to by an employer that has 20 or more employees''.

Subsec. (b)(1)(A)(iii). Pub. L. 103–66, § 13561(e)(1)(C), substituted ''by virtue of current employment status with an employer that does not have 20 or more individuals in current employment status for each working day in each of 20 or more calendar weeks in the current calendar year and'' for ''by virtue of employment with an employer that does not have 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year or''.

Subsec. (b)(1)(A)(iv). Pub. L. 103–66, § 13561(c)(2), substituted ''Subparagraph (C) shall apply instead of clause (i)'' for ''Clause (i) shall not apply'' and inserted ''(without regard to entitlement under section 426 of this title)'' after ''individual is, or''.

Subsec. (b)(1)(A)(v). Pub. L. 103–66, § 13561(e)(1)(D), as amended by Pub. L. 103–432, § 151(c)(9)(B), inserted before period at end '', without regard to section 5000(d) of such Code''.

Subsec. (b)(1)(B). Pub. L. 103–66, § 13561(e)(1)(E), substituted ''individuals'' for ''active individuals'' in heading.

Subsec. (b)(1)(B)(i). Pub. L. 103–66, § 13561(e)(1)(F), substituted ''clause (iv)) may not take into account that an individual (or a member of the individual's family) who is covered under the plan by virtue of the individual's current employment status with an employer'' for ''clause (iv)(II)) may not take into account that an active individual (as defined in clause (iv)(I))''.

Subsec. (b)(1)(B)(ii). Pub. L. 103–66, § 13561(c)(2), substituted ''Subparagraph (C) shall apply instead of clause (i)'' for ''Clause (i) shall not apply'' and inserted ''(without regard to entitlement under section 426 of this title)'' after ''individual is, or''.

Subsec. (b)(1)(B)(iii). Pub. L. 103–66, § 13561(b), substituted ''1998'' for ''1995''.

Subsec. (b)(1)(B)(iv). Pub. L. 103–66, § 13561(e)(1)(G), amended heading and text generally. Prior to amendment, text defined ''active individual'' and ''large group health plan''.

Subsec. (b)(1)(C). Pub. L. 103–66, § 13561(c)(1), (3), substituted ''or eligible for benefits under this subchapter under'' for ''benefits under this subchapter solely by reason of'' in cl. (i) and concluding provisions and substituted ''before October 1, 1998'' for ''on or before January 1, 1996'' in concluding provisions.

Subsec. (b)(1)(E). Pub. L. 103–66, § 13561(e)(1)(H), added cls. (ii) and (iii).

Pub. L. 103–66, § 13561(d)(1), added subpar. (E).

Subsec. (b)(5)(B). Pub. L. 103–66, § 13581(b)(1)(A), substituted ''under—'' for ''under subparagraph (A) for the purposes of carrying out this subsection.'' and added cls. (i) and (ii) and concluding provisions.

Subsec. (b)(5)(C)(i). Pub. L. 103–66, § 13581(b)(1)(B), substituted ''subparagraph (B)(i)'' for ''subparagraph (B)''.

Subsec. (b)(5)(C)(iii). Pub. L. 103–66, § 13561(a)(1), substituted ''1998'' for ''1995''.

1990—Subsec. (a). Pub. L. 101–508, § 4161(a)(3)(C)(iii), inserted at end ''Paragraph (7) shall not apply to Federally qualified health center services described in section 1395x(aa)(3)(B) of this title.''

Subsec. (a)(1)(A). Pub. L. 101–508, § 4163(d)(2)(A)(i), substituted ''a succeeding subparagraph'' for ''subparagraph (B), (C), (D), or (E)''.

Subsec. (a)(1)(F). Pub. L. 101–508, § 4163(d)(2)(A)(ii)–(iv), added subpar. (F).

Subsec. (a)(2). Pub. L. 101–508, § 4161(a)(3)(C)(i), inserted before semicolon at end '', except in the case of Federally qualified health center services''.

Subsec. (a)(3). Pub. L. 101–508, § 4161(a)(3)(C)(ii), inserted '', in the case of Federally qualified health center services, as defined in section 1395x(aa)(3) of this title,'' after ''section 1395x(aa)(1) of this title,''.

Subsec. (a)(7). Pub. L. 101–508, § 4163(d)(2)(B), inserted ''or under paragraph (1)(F)'' after ''paragraph (1)(B)''.

Pub. L. 101–508, § 4153(b)(2)(B), inserted ''(other than eyewear described in section 1395x(s)(8) of this title)'' after first reference to ''eyeglasses''.

Subsec. (a)(14). Pub. L. 101–508, § 4157(c)(1), inserted '', services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist,'' after ''this paragraph)'' and struck out before semicolon at end ''or are services of a certified registered nurse anesthetist''.

Subsec. (a)(15). Pub. L. 101–508, § 4107(b), designated existing provisions as par. (A), substituted '', or'' for ''; or'' at end, and added par. (B).

Subsec. (b)(1)(B)(iii). Pub. L. 101–508, § 4203(b), substituted ''October 1, 1995'' for ''January 1, 1992''.

Subsec. (b)(1)(C). Pub. L. 101–508, § 4203(c)(1)(B), inserted at end ''Effective for items and services fur-

nished on or after February 1, 1991, and on or before January 1, 1996, (with respect to periods beginning on or after February 1, 1990), clauses (i) and (ii) shall be applied by substituting '18-month' for '12-month' each place it appears.''

Subsec. (b)(1)(C)(i). Pub. L. 101–508, § 4203(c)(1)(A), substituted ''during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A of this subchapter under the provisions of section 426–1 of this title, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 426–1 of this title if the individual had filed an application for such benefits; and'' for ''during the 12-month period which begins with the earlier of—

''(I) the month in which a regular course of renal dialysis is initiated, or

''(II) in the case of an individual who receives a kidney transplant, the first month in which he would be eligible for benefits under part A of this subchapter (if he had filed an application for such benefits) under the provisions of section 426–1(b)(1)(B) of this title; and''.

Subsec. (b)(3)(C). Pub. L. 101–508, § 4204(g)(1), added subpar. (C).

Subsec. (b)(5)(C)(iii). Pub. L. 101–508, § 4203(a)(1), substituted ''September 30, 1995'' for ''September 30, 1991''.

1989—Pub. L. 101–239, § 6202(b)(1)(A), inserted ''and medicare as secondary payer'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 101–234 repealed Pub. L. 100–360, § 204(d)(2)(A)(i), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(E). Pub. L. 101–239, § 6103(b)(3)(B), substituted ''section 1320b–12'' for ''section 1395*ll*(c)''.

Subsec. (a)(1)(F). Pub. L. 101–239, § 6115(b), inserted before semicolon at end '', and, in the case of screening pap smear, which is performed more frequently than is provided under 1395x(nn) of this title''.

Pub. L. 101–234 repealed Pub. L. 100–360, § 204(d)(2)(A)(ii)–(iv), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(G), (6), (7). Pub. L. 101–234 repealed Pub. L. 100–360, §§ 204(d)(2)(B), 205(e)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(14). Pub. L. 101–239, § 6003(g)(3)(D)(xi), substituted ''hospital or rural primary care hospital'' for ''hospital'' in three places.

Subsec. (b). Pub. L. 101–239, § 6202(b)(1)(B), amended heading and text generally, substituting pars. (1) to (4) relating to medicare as secondary payer for former pars. (1) to (5) relating to items or services paid under workmen's compensation laws and end stage renal disease program.

Subsec. (b)(1)(D). Pub. L. 101–239, § 6202(e)(1), added subpar. (D).

Subsec. (b)(5). Pub. L. 101–239, § 6202(a)(2)(A), added par. (5).

Subsec. (c). Pub. L. 101–234 repealed Pub. L. 100–360, § 202(d), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (e)(1). Pub. L. 101–239, § 6411(d)(2), inserted '', not including items or services furnished in an emergency room of a hospital'' after ''(other than an emergency item or service''.

1988—Subsec. (a)(1)(A). Pub. L. 100–360, § 204(d)(2)(A)(i), substituted ''a succeeding subparagraph'' for ''subparagraph (B), (C), (D), or (E)''.

Subsec. (a)(1)(F). Pub. L. 100–360, § 204(d)(2)(A)(ii)–(iv), added subpar. (F) relating to screening mammography.

Subsec. (a)(1)(G). Pub. L. 100–360, § 205(e)(1)(A), as amended by Pub. L. 100–485, § 608(d)(7), added subpar. (G) relating to in-home care for chronically dependent individuals.

Subsec. (a)(6). Pub. L. 100–360, § 205(e)(1)(B), inserted ''and except, in the case of in-home care, as is otherwise permitted under paragraph (1)(G)'' after ''paragraph (1)(C)''.

Subsec. (a)(7). Pub. L. 100–360, § 204(d)(2)(B), inserted ''or under paragraph (1)(F)'' after ''(1)(B)''.

Subsec. (a)(15). Pub. L. 100–360, § 411(f)(4)(D)(i), inserted ''(including subsequent insertion of an intraocular lens)'' after ''operation''.

Subsec. (c). Pub. L. 100–360, § 202(d), designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv), redesignated former par. (2) as subpar. (B), redesignated former subpar. (A) as cl. (i) and substituted ''subparagraph (A)'' for ''paragraph (1)'', redesignated former subpar. (B) as cl. (ii), and added par. (2) prohibiting payment for expenses incurred for a covered outpatient drug if the drug is dispensed in a quantity exceeding a supply of 30 days with an exception.

Subsec. (e)(1). Pub. L. 100–360, § 411(i)(4)(D)(i), as amended by Pub. L. 100–485, § 608(d)(24)(C)(i), designated existing provisions of subsec. (e) as par. (1), redesignated former par. (1) as subpar. (A), substituted '', 1320a–7a, 1320c–5 or 1395u(j)(2)'' for ''or section 1320a–7a'', redesignated former par. (2) as subpar. (B), and substituted '', 1320a–7a, 1320c–5 or 1395u(j)(2)'' for ''or section 1320a–7a''.

Subsec. (e)(2). Pub. L. 100–360, § 411(i)(4)(D)(ii), as amended by Pub. L. 100–485, § 608(d)(24)(C)(ii), amended former section 1395aaa of this title by striking out the catchline ''Limitation of liability of beneficiaries with respect to services furnished by excluded individuals and entities'', substituting ''(2)'' for the section designation, inserting ''1395u(j)(2),'' in text, and transferring the text to par. (2) of subsec. (e) of this section.

1987—Subsec. (a)(1)(A). Pub. L. 100–203, § 4085(i)(15), substituted ''(D), or (E)'' for ''or (D)''.

Subsec. (a)(8). Pub. L. 100–203, § 4072(c), inserted '', other than shoes furnished pursuant to section 1395x(s)(12) of this title'' before semicolon.

Subsec. (a)(14). Pub. L. 100–203, § 4085(i)(16), substituted ''a patient'' for ''an patient''.

Pub. L. 100–203, § 4009(j)(6)(C), made technical amendment to Pub. L. 99–509, § 9320(h)(1). See 1986 Amendment note below.

Subsec. (b)(2)(A)(ii). Pub. L. 100–203, § 4036(a)(1), substituted ''can reasonably be expected to be made under such a plan'' for ''the Secretary determines will be made under such a plan as promptly as would otherwise be the case if payment were made by the Secretary under this subchapter''.

Subsec. (b)(4)(B)(i). Pub. L. 100–203, § 4034(a), substituted ''subsection (b) of section 5000 of the Internal Revenue Code of 1986 without regard to subsection (d) of such section'' for ''section 5000(b) of the Internal Revenue Code of 1986''.

Subsec. (d). Pub. L. 100–93, § 8(c)(1)(A), struck out subsec. (d), which provided that no payment be made under this subchapter for any item or services to an individual by a person where Secretary determines such person knowingly and willfully made any false statement or representation of a material fact, submitted excessive bills or requests, or furnished excessive services or supplies, and provided a dissatisfied person with a hearing on determination of the Secretary.

Subsec. (e) [formerly § 1395aaa]. Pub. L. 100–93, § 10, added par. (2). See 1988 Amendment note above.

Pub. L. 100–93, § 8(c)(1)(B), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''No payment may be made under this subchapter with respect to any item or service furnished by a physician or other individual during the period when he is barred pursuant to section 1320a–7 of this title from participation in the program under this subchapter.''

Subsec. (h)(1)(B). Pub. L. 100–203, § 4039(c)(1)(A), substituted ''law (and any amount paid to a provider under any such warranty),'' for ''law,''.

Subsec. (h)(1)(D). Pub. L. 100–203, § 4039(c)(1)(B), inserted ''in determining the amount subject to repayment under paragraph (2)(C),'' after ''(3),''.

Subsec. (h)(2)(C). Pub. L. 100–203, § 4039(c)(1)(C), added subpar. (C).

Subsec. (h)(4). Pub. L. 100–93, § 8(c)(3), substituted ''subsections (c), (f), and (g) of section 1320a–7 of this title'' for ''paragraphs (2) and (3) of subsection (d) of this section''.

Subsec. (h)(4)(B). Pub. L. 100–203, § 4039(c)(1)(D), substituted '', has improperly'' for ''or has improperly'' and inserted ''or has failed to make repayment to the Secretary as required under paragraph (2)(C),'' after ''(2)(B),''.

1986—Subsec. (a)(1)(E). Pub. L. 99–509, § 9316(b), added subpar. (E).

Subsec. (a)(14). Pub. L. 99–509, § 9343(c)(1), substituted ''patient'' for ''inpatient''.

Pub. L. 99–509, § 9320(h)(1), as amended by Pub. L. 100–203, § 4009(j)(6)(C), inserted ''or are services of a certified registered nurse anesthetist'' after ''hospital'' at end.

Subsec. (a)(15). Pub. L. 99–272, § 9307(a), added par. (15).

Subsec. (a)(16). Pub. L. 99–272, § 9401(c)(1), added par. (16).

Subsec. (b)(2)(A). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(3)(A)(i). Pub. L. 99–272, § 9201(a)(1), substituted ''(or to the spouse of such individual)'' for ''who is under 70 years of age during any part of such month (or to the spouse of such individual, if the spouse is under 70 years of age during any part of such month)''.

Subsec. (b)(3)(A)(iii). Pub. L. 99–272, § 9201(a)(2), struck out ''and ending with the month before the month in which such individual attains the age of 70'' after ''section 426(a) of this title''.

Subsec. (b)(3)(A)(iv). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(4). Pub. L. 99–509, § 9319(a), added par. (4).

Subsec. (b)(5). Pub. L. 99–509, § 9319(b), added par. (5).

1984—Subsec. (a)(12). Pub. L. 98–369, § 2354(b)(30), struck out second comma after ''dental procedure''.

Subsec. (b)(1). Pub. L. 98–369, § 2344(a), substituted ''to be made promptly'' for ''to be made'' and ''has been or could be made under such a law'' for ''has been made under such a law'', and inserted ''In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such law, policy, plan, or insurance, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a law, policy, plan, or insurance.''

Subsec. (b)(2)(B). Pub. L. 98–369, § 2344(b), substituted ''has been or could be made under a plan'' for ''has been made under a plan'', and inserted ''In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan.''

Subsec. (b)(3)(A)(i). Pub. L. 98–369, § 2301(a), struck out ''over 64 but'' before ''under 70 years'' in two places.

Subsec. (b)(3)(A)(ii). Pub. L. 98–369, § 2344(c), substituted ''has been or could be made under a group health plan'' for ''has been made under a group health plan'', and inserted ''In order to recover payment made under this title for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this title for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan.''

Subsec. (b)(3)(A)(iii). Pub. L. 98–369, § 2354(b)(31), inserted ''before the month'' after ''ending with the month''.

Subsec. (h). Pub. L. 98–369, § 2304(c), added subsec. (h).

Subsec. (i). Pub. L. 98–369, § 2313(c), added subsec. (i).

1983—Subsec. (a)(1)(A). Pub. L. 98–21, § 601(f)(1), inserted reference to subpar. (D).

Subsec. (a)(1)(D). Pub. L. 98–21, § 601(f)(2)–(4), added subpar. (D).

Subsec. (a)(14). Pub. L. 98–21, § 602(e), added par. (14).

Subsec. (b)(3)(A)(i). Pub. L. 97–448 inserted ''in any month'' after ''service furnished'', and ''during any part of such month'' after ''70 years of age'' wherever appearing.

1982—Subsec. (a)(1). Pub. L. 97–248, § 122(f)(1), designated existing provisions as subpars. (A) and (B), in subpar. (A) as so designated inserted exception to provisions for items and services described in subpar. (B) or (C), substituted ''and'' for ''or'' as the connector between provisions, and added subpar. (C).

Subsec. (a)(6). Pub. L. 97–248, § 122(f)(2), inserted ''(except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C))''.

Subsec. (a)(7). Pub. L. 97–248, § 122(f)(3), substituted ''paragraph (1)(B)'' for ''paragraph (1)''.

Subsec. (a)(9). Pub. L. 97–248, § 122(f)(4), inserted ''(except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C))''.

Subsec. (b)(1). Pub. L. 97–248, § 128(a)(2), struck out ''or plan'' after ''service has been made under such a law''.

Subsec. (b)(2)(A). Pub. L. 97–248, § 128(a)(3), substituted ''section 162(i)(2)'' for ''section 162(h)(2)''.

Subsec. (b)(2)(B). Pub. L. 97–248, § 128(a)(4), inserted ''furnished'' before ''to an individual''.

Subsec. (b)(3). Pub. L. 97–248, § 116(b), added par. (3).

Subsec. (d)(1)(C). Pub. L. 97–248, § 148(a), substituted ''on the basis of information acquired by the Secretary in the administration of this subchapter'' for '', on the basis of reports transmitted to him in accordance with section 1320c–6 of this title (or, in the absence of any such report, on the basis of such data as he acquires in the administration of the program under this subchapter),''.

Subsec. (f). Pub. L. 97–248, § 122(g)(1), substituted ''paragraph (1)(A)'' for ''paragraph (1)''.

Subsec. (g). Pub. L. 97–248, § 142, added subsec. (g).

1981—Subsec. (b). Pub. L. 97–35, § 2146(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 97–35, § 2103(a)(1), added subsec. (c).

Subsec. (f). Pub. L. 97–35, § 2152(a), added subsec. (f).

1980—Subsec. (a)(1). Pub. L. 96–611, § 1(a)(3)(A), inserted '', or, in the case of items and services described in section 1395x(s)(10) of this title, which are not reasonable and necessary for the prevention of illness'' after ''of a malformed body member''.

Subsec. (a)(7). Pub. L. 96–611, § 1(a)(3)(B), inserted ''(except as otherwise allowed under section 1395x(s)(10) of this title and paragraph (1))'' after ''immunizations''.

Subsec. (a)(12). Pub. L. 96–499, § 936(c), inserted ''or because of the severity of the dental procedure,'' after ''and clinical status''.

Subsec. (a)(13)(C). Pub. L. 96–499, § 939(a), struck out ‘‘, warts,’’ after ‘‘corns’’.

Subsec. (b). Pub. L. 96–499, § 953, inserted ‘‘or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance’’ and ‘‘, policy, plan, or insurance’’ after ‘‘or a State’’ and ‘‘, policy, plan, or insurance’’ after ‘‘law or plan’’ and inserted provision authorizing the Secretary to waive the provisions of this subsection in the case of an individual claim if he determined that the probability of recovery or amount involved did not warrant the pursuit of the claim.

Subsec. (d)(4). Pub. L. 96–272 added par. (4).

Subsec. (e). Pub. L. 96–499, § 913(b), substituted provisions barring payment under this subchapter with respect to items or services furnished by a physician or other individual during a period when such physician or other individual was barred pursuant to section 1320a–7 of this title from participation under this subchapter for provisions authorizing the Secretary to suspend a physician or individual practitioner from participation under this subchapter upon determining that such physician or practitioner had been convicted of a criminal offense related to such physician's or practitioner's involvement in the programs under this subchapter or the program under subchapter XIX of this chapter.

1977—Subsec. (a)(3). Pub. L. 95–210 substituted ‘‘except in the case of rural health clinic services, as defined in section 1395x(aa)(1) of this title, and in such other cases as the Secretary may specify’’ for ‘‘except in such cases as the Secretary may specify’’.

Subsec. (d)(1)(B). Pub. L. 95–142, § 13(b)(1), struck out requirement for concurrence of appropriate program review team for finding of Secretary under this paragraph.

Subsec. (d)(1)(C). Pub. L. 95–142, § 13(b)(2), substituted provisions relating to determinations by the Secretary on the basis of reports transmitted to him in accordance with section 1320c–6 of this title or other data acquired in the administration of this subchapter, for provisions relating to determinations by the Secretary with the concurrence of appropriate review team members.

Subsec. (d)(4). Pub. L. 95–142, § 13(a), struck out par. (4) which set forth provisions relating to appointment and functions of program review teams.

Subsec. (e). Pub. L. 95–142, § 7(a), added subsec. (e).

1975—Subsec. (c). Pub. L. 94–182 struck out subsec. (c) prohibiting payments to Federal employees under this subchapter unless a determination and certification by the Secretary of a modification of any health benefits plan under chapter 89 of Title 5 was made which would allow a Federal employee benefits under part A or B of this subchapter.

1974—Subsec. (c). Pub. L. 93–480 substituted ‘‘January 1, 1976’’ for ‘‘January 1, 1975’’.

1973—Subsec. (a)(12). Pub. L. 93–233 substituted ‘‘the provision of such dental services if the individual, because of his underlying medical condition and clinical status, requires hospitalization in connection with the provision of such services’’ for ‘‘a dental procedure where the individual suffers from impairments of such severity as to require hospitalization’’.

1972—Subsec. (a)(4). Pub. L. 92–603, § 211(c)(1), inserted reference to physicians' services and ambulance services furnished an individual in conjunction with emergency inpatient hospital services.

Subsec. (a)(12). Pub. L. 92–603, § 256(c), authorized payment under part A in the case of inpatient hospital services in connection with a dental procedure where the individual suffers from impairments of such severity as to require hospitalization.

Subsec. (c). Pub. L. 92–603, § 210, added subsec. (c).

Subsec. (d). Pub. L. 92–603, § 229(a), added subsec. (d).

1968—Subsec. (a)(7). Pub. L. 90–248, § 128, prohibited payment for procedures performed (during the course of any eye examination) to determine the refractive state of the eyes.

Subsec. (a)(13). Pub. L. 90–248, § 127(b), added par. (13).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 applicable to services furnished on or after Jan. 1, 2007, see section 5112(f) of Pub. L. 109–171, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title III, § 301(d), Dec. 8, 2003, 117 Stat. 2222, provided that: ‘‘The amendments made by this section [amending this section] shall be effective—

‘‘(1) in the case of subsection (a), as if included in the enactment of title III [sic] of the Medicare and Medicaid Budget Reconciliation Amendments of 1984 (Public Law 98–369); and

‘‘(2) in the case of subsections (b) and (c), as if included in the enactment of section 953 of the Omnibus Reconciliation Act of 1980 (Public Law 96–499; 94 Stat. 2647).’’

Amendment by section 611(d)(1) of Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2005, but only for individuals whose coverage period under this part begins on or after such date, see section 611(e) of Pub. L. 108–173, set out as a note under section 1395w–4 of this title.

Amendment by section 612(c) of Pub. L. 108–173 applicable to tests furnished on or after Jan. 1, 2005, see section 612(d) of Pub. L. 108–173, set out as a note under section 1395x of this title.

Amendment by section 613(c) of Pub. L. 108–173 applicable to tests furnished on or after Jan. 1, 2005, see section 613(d) of Pub. L. 108–173, set out as a note under section 1395x of this title.

Pub. L. 108–173, title VII, § 731(a)(2), Dec. 8, 2003, 117 Stat. 2351, provided that: ‘‘The amendments made by paragraph (1) [amending this section] shall apply to national coverage determinations as of January 1, 2004, and section 1862(*l*)(5) of the Social Security Act [subsec. (*l*)(5) of this section], as added by such paragraph, shall apply to local coverage determinations made on or after July 1, 2004.’’

Pub. L. 108–173, title VII, § 731(b)(2), Dec. 8, 2003, 117 Stat. 2351, provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply to routine costs incurred on and after January 1, 2005, and, as of such date, section 411.15(*o*) of title 42, Code of Federal Regulations, is superseded to the extent inconsistent with section 1862(m) of the Social Security Act [subsec. (m) of this section], as added by such paragraph.’’

Pub. L. 108–173, title IX, § 944(a)(2), Dec. 8, 2003, 117 Stat. 2423, provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply to items and services furnished on or after January 1, 2004.’’

Amendment by section 948(a) of Pub. L. 108–173 effective, except as otherwise provided, as if included in the enactment of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554], see section 948(e) of Pub. L. 108–173, set out as a note under section 1314 of this title.

Pub. L. 108–173, title IX, § 950(b), Dec. 8, 2003, 117 Stat. 2427, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall take effect on the date that is 60 days after the date of the enactment of this Act [Dec. 8, 2003].’’

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–105, § 3(b), Dec. 27, 2001, 115 Stat. 1007, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply to claims submitted on or after October 16, 2003.’’

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title I, § 102(c)] of Pub. L. 106–554 applicable to services furnished on or after Jan. 1, 2002, see section 1(a)(6) [title I, § 102(d)] of Pub. L. 106–554, set out as a note under section 1395x of this title.

Amendment by section 1(a)(6) [title III, §313(a)] of Pub. L. 106–554 applicable to services furnished on or after Jan. 1, 2001, see section 1(a)(6) [title III, §313(c)] of Pub. L. 106–554, set out as a note under section 1395u of this title.

Amendment by section 1(a)(6) [title IV, §432(b)(1)] of Pub. L. 106–554 applicable to services furnished on or after July 1, 2001 see section 1(a)(6) [title IV, §432(c)] of Pub. L. 106–554, set out as a note under section 1395u of this title.

Amendment by section 1(a)(6) [title V, §522(b)] of Pub. L. 106–554 applicable with respect to a review of any national or local coverage determination filed, a request to make such a determination made, and a national coverage determination made, on or after Oct. 1, 2001, see section 1(a)(6) [title V, §522(d)] of Pub. L. 106–554, set out as a note under section 1314 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, §305(b)] of Pub. L. 106–113 applicable to payments for services provided on or after Nov. 29, 1999, see §1000(a)(6) [title III, §305(c)] of Pub. L. 106–113, set out as a note under section 1395u of this title.

Amendment by section 1000(a)(6) [title III, §321(k)(10)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

Amendment by section 4022(b)(1)(B) of Pub. L. 105–33 effective Nov. 1, 1997, the date of termination of the Prospective Payment Assessment Commission and the Physician Payment Review Commission, see section 4022(c)(2) of Pub. L. 105–33, set out as an Effective Date; Transition; Transfer of Functions note under section 1395b–6 of this title.

Amendment by section 4102(c) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4102(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4103(c) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 2000, see section 4103(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4104(c)(3) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4104(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4432(b)(1) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Amendment by section 4507(a)(2)(B) of Pub. L. 105–33 applicable with respect to contracts entered into on and after Jan. 1, 1998, see section 4507(c) of Pub. L. 105–33, set out as a note under section 1395a of this title.

Amendment by section 4511(a)(2)(C) of Pub. L. 105–33 applicable with respect to services furnished and supplies provided on and after Jan. 1, 1998, see section 4511(e) of Pub. L. 105–33, set out as a note under section 1395k of this title.

Amendment by section 4541(b) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, including portions of cost reporting periods occurring on or after such date, see section 4541(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4603(c)(2)(C) of Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

Section 4614(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] apply to services furnished on or after October 1, 1997.''

Section 4632(b) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] apply to items and services furnished on or after the date of the enactment of this Act [Aug. 5, 1997].''

Section 4633(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] apply to items and services furnished on or after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 145(c)(1) of Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Amendment by section 147(e)(6) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Section 151(a)(2)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to items and services furnished on or after the expiration of the 120-day period beginning on the date of the enactment of this Act [Oct. 31, 1994].''

Section 151(b)(3)(C) of Pub. L. 103–432 provided that: ''The amendments made by this paragraph [amending this section] shall apply to payments for items and services furnished on or after the date of the enactment of this Act [Oct. 31, 1994].''

Section 151(c)(1), (9) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 103–66.

Section 151(c)(4) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–508.

Section 151(c)(5), (6) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–239.

Amendment by section 156(a)(2)(D) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

Section 157(b)(8) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section, section 1395mm of this title, and provisions set out as notes under section 1395mm of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 151(c)(10) of Pub. L. 103–432 provided that: ''The amendment made by section 13561(e)(1)(G) of OBRA–1993 [Pub. L. 103–66, amending this section], to the extent it relates to the definition of large group health plan, shall be effective as if included in the enactment of OBRA–1989 [Pub. L. 101–239].''

Amendment by section 13561(d)(1) of Pub. L. 103–66 effective 90 days after Aug. 10, 1993, see section 13561(d)(3) of Pub. L. 103–66, set out as a note under section 5000 of Title 26, Internal Revenue Code.

Section 13561(e)(1)(D) of Pub. L. 103–66, as amended by Pub. L. 103–432, title I, §151(c)(9)(A), Oct. 31, 1994, 108 Stat. 4436, provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–239.

Section 13581(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting section 1320b–14 of this title and amending this section, section 1396a of this title, and section 552a of Title 5, Government Organization and Employees] shall take effect on January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4153(b)(2)(B) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4153(b)(2)(C) of Pub. L. 101–508, set out as a note under section 1395x of this title.

Amendment by section 4157(c)(1) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4157(d) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(a)(3)(C) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4163(d)(2)(A)(i)–(iii), (B) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, as amended, set out as a note under section 1395*l* of this title.

Section 4163(d)(3) of Pub. L. 101–508, as added by Pub. L. 103–432, title I, § 147(f)(5)(A), Oct. 31, 1994, 108 Stat. 4431, provided that: ''The amendment made by paragraph (2)(A)(iv) [amending this section] shall apply to screening pap smears performed on or after July 1, 1990.''

Section 4204(g)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to incentives offered on or after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(b) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Amendment by section 6202(b)(1) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 6202(e)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to items and services furnished on or after October 1, 1989.''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(d) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 204(d)(2) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 205(e)(1) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(i)(4)(D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(f)(4)(D)(ii) of Pub. L. 100–360 provided that: ''The amendment made by clause (i) [amending this section] shall apply to operations performed on or after 60 days after the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4009(j)(6) of Pub. L. 100–203, provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Section 4034(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 9319(a) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4036(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to items and services furnished on or after 30 days after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4039(c)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on January 1, 1988.''

For effective date of amendment by section 4072(c) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9319(f) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 5000 of Title 26, Internal Revenue Code, and amending this section and sections 1395p and 1395r of this title] shall apply to items and services furnished on or after January 1, 1987.

''(2) The amendments made by subsection (c) [amending sections 1395p and 1395r of this title] shall apply to enrollments occurring on or after January 1, 1987.''

Amendment by section 9320(h)(1) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Amendment by section 9343(c)(1) of Pub. L. 99–509 applicable to services furnished after June 30, 1987, see section 9343(h)(2) of Pub. L. 99–509, as amended, set out as a note under section 1395*l* of this title.

Section 9201(d)(1) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to items and services furnished on or after May 1, 1986.''

Amendment by section 9307(a) of Pub. L. 99–272 applicable to services performed on or after Apr. 1, 1986, see section 9307(e) of Pub. L. 99–272, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2301(c)(1) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to items and services furnished on or after January 1, 1985.''

Amendment by section 2304(c) of Pub. L. 98–369 applicable to pacemaker devices and leads implanted or removed on or after the effective date of final regulations promulgated to carry out such amendment, see section 2304(d) of Pub. L. 98–369, set out as a note below.

Section 2313(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395ww of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2344(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this sec-

tion] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(30), (31) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 601(f) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, and amendment by section 602(e)(3) of Pub. L. 98–21 effective Oct. 1, 1983, see section 604(a)(1), (2) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 116(b) of Pub. L. 97–248 applicable with respect to items and services furnished on or after Jan. 1, 1983, see section 116(c) of Pub. L. 97–248, set out as a note under section 623 of Title 29, Labor.

Amendment by section 122(f), (g)(1) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Amendment by section 128(a)(2)–(4) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of this title.

Amendment by sections 142 and 148(a) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2103(a)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to expenses incurred on or after October 1, 1981.''

Section 2146(c)(1) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

Amendment by section 936(c) of Pub. L. 96–499 applicable with respect to services provided on or after July 1, 1981, see section 936(d) of Pub. L. 96–499, set out as a note under section 1395f of this title.

Section 939(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services furnished on or after July 1, 1981.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

Section 13(c) of Pub. L. 95–142 provided that: ''The amendments made by this section [amending this section and sections 1320c–6 and 1395cc of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective with respect to admissions subject to the provisions of section 1395(a)(2) of this title which occur after Dec. 31, 1973, see section 18(z–3)(2) of Pub. L. 93–233, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 211(c)(1) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 256(c) of Pub. L. 92–603 applicable with respect to admissions occurring after the second month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 256(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 127(b) of Pub. L. 90–248 applicable with respect to services furnished after Dec. 31, 1967, see section 127(c) of Pub. L. 90–248, set out as a note under section 1395x of this title.

CONSTRUCTION OF 2003 AMENDMENT

Pub. L. 108–173, title VII, §731(b)(3), Dec. 8, 2003, 117 Stat. 2351, provided that: ''Nothing in the amendment made by paragraph (1) [amending this section] shall be construed as applying to, or affecting, coverage or payment for a nonexperimental/investigational (category B) device.''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

TREATMENT OF HOSPITALS FOR CERTAIN SERVICES UNDER MEDICARE SECONDARY PAYOR (MSP) PROVISIONS

Pub. L. 108–173, title IX, §943, Dec. 8, 2003, 117 Stat. 2422, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] shall not require a hospital (including a critical access hospital) to ask questions (or obtain information) relating to the application of section 1862(b) of the Social Security Act [subsec. (b) of this section] (relating to medicare secondary payor provisions) in the case of reference laboratory services described in subsection (b), if the Secretary does not impose such requirement in the case of such services furnished by an independent laboratory.

''(b) REFERENCE LABORATORY SERVICES DESCRIBED.—Reference laboratory services described in this subsection are clinical laboratory diagnostic tests (or the interpretation of such tests, or both) furnished without

a face-to-face encounter between the individual entitled to benefits under part A [probably means part A of title XVIII of the Social Security Act which is classified to part A of this subchapter] or enrolled under part B [probably means part B of title XVIII of the Social Security Act which is classified to part B of this subchapter], or both, and the hospital involved and in which the hospital submits a claim only for such test or interpretation.''

ANNUAL PUBLICATION OF LIST OF NATIONAL COVERAGE DETERMINATIONS

Pub. L. 108–173, title IX, § 953(b), Dec. 8, 2003, 117 Stat. 2428, provided that: ''The Secretary [of Health and Human Services] shall provide, in an appropriate annual publication available to the public, a list of national coverage determinations made under title XVIII of the Social Security Act [this subchapter] in the previous year and information on how to get more information with respect to such determinations.''

NOTIFICATION TO PHYSICIANS OF EXCESSIVE HOME HEALTH VISITS

Section 4614(b) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services may establish a process for notifying a physician in cases in which the number of home health visits, furnished under title XVIII of the Social Security Act [this subchapter] pursuant to a prescription or certification of the physician, significantly exceeds such threshold (or thresholds) as the Secretary specifies. The Secretary may adjust such threshold to reflect demonstrated differences in the need for home health services among different beneficiaries.''

DISTRIBUTION OF QUESTIONNAIRE BY CONTRACTOR

Section 151(a)(1)(B) of Pub. L. 103–432 provided that: ''The Secretary of Health and Human Services shall enter into an agreement with an entity not later than 60 days after the date of the enactment of the Social Security Act Amendments of 1994 [Oct. 31, 1994], to distribute the questionnaire described in section 1862(b)(5)(D) of the Social Security Act [subsec. (b)(5)(D) of this section] (as added by subparagraph (A)).''

RETROACTIVE EXEMPTION FOR CERTAIN SITUATIONS INVOLVING RELIGIOUS ORDERS

Section 13561(f) of Pub. L. 103–66 provided that: ''Section 1862(b)(1)(D) of the Social Security Act [subsec. (b)(1)(D) of this section] applies, with respect to items and services furnished before October 1, 1989, to any claims that the Secretary of Health and Human Services had not identified as of that date as subject to the provisions of section 1862(b) of such Act.''

GAO STUDY OF EXTENSION OF SECONDARY PAYER PERIOD

Section 4203(c)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 151(c)(7), Oct. 31, 1994, 108 Stat. 4436, directed Comptroller General to conduct study of impact of second sentence of subsec. (b)(1)(C) of this section and to submit preliminary report to Congress not later than Jan. 1, 1993, and final report not later than Jan. 1, 1995.

DEADLINE FOR FIRST TRANSMITTAL AND REQUEST OF MATCHING INFORMATION

Section 6202(a)(2)(B) of Pub. L. 101–239 provided that: ''The Commissioner of Social Security shall first—

''(i) transmit to the Secretary of the Treasury information under paragraph (5)(A)(i) of section 1862(b) of the Social Security Act [subsec. (b)(5)(A)(i) of this section] (as inserted by subparagraph (A)), and

''(ii) request from the Secretary disclosure of information described in section 6013(*l*)(12)(A) of the Internal Revenue Code of 1986 [26 U.S.C. 6013(*l*)(12)(A)],

by not later than 14 days after the date of the enactment of this Act [Dec. 19, 1989].''

DESIGNATION OF PEDIATRIC HOSPITALS AS MEETING CERTIFICATION AS HEART TRANSPLANT FACILITY

Section 4009(b) of Pub. L. 100–203 provided that: ''For purposes of determining whether a pediatric hospital that performs pediatric heart transplants meets the criteria established by the Secretary of Health and Human Services for facilities in which the heart transplants performed will be considered to meet the requirement of section 1862(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section], the Secretary shall treat such a hospital as meeting such criteria if—

''(1) the hospital's pediatric heart transplant program is operated jointly by the hospital and another facility that meets such criteria,

''(2) the unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria), and

''(3) the hospital demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients.''

APPROVAL OF SURGICAL ASSISTANTS FOR PROCEDURES PERFORMED APRIL 1, 1986, TO DECEMBER 15, 1986

Section 1895(b)(16)(C) of Pub. L. 99–514 provided that: ''For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery.''

EXTENDING WAIVER OF LIABILITY PROVISIONS TO HOSPICE PROGRAMS

Section 9305(f) of Pub. L. 99–509, as amended by Pub. L. 100–360, title IV, § 426(a), July 1, 1988, 102 Stat. 814; Pub. L. 101–508, title IV, § 4008(a)(2), Nov. 5, 1990, 104 Stat. 1388–44, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a hospice program should be denied pursuant to section 1862(a)(1)(C) of the Social Security Act [subsec. (a)(1)(C) of this section], apply (under section 1879(a) of such Act [section 1395pp(a) of this title]) a presumption of compliance of 2.5 percent (based on the number of days of hospice care billed) in a manner substantially similar to that provided to home health agencies under policies in effect as of July 1, 1985.

''(2) EFFECTIVE DATE.—Paragraph (1) shall apply to hospice care furnished on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act [Oct. 21, 1986] and before December 31, 1995.''

[Section 4008(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending section 9305(f) of Pub. L. 99–509, set out above, and section 9126(c) of Pub. L. 99–272, set out below] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].'']

STUDY OF IMPACT ON DISABLED BENEFICIARIES AND FAMILY OF AMENDMENTS RELATING TO LARGE GROUP HEALTH PLANS AND MEDICARE AS SECONDARY PAYER

Section 9319(e) of Pub. L. 99–509 directed Comptroller General to study and report to Congress, not later than Mar. 1, 1990, the impact of the amendments made by this section (enacting section 5000 of Title 26, Internal Revenue Code, and amending this section and sections 1395p and 1395r of this title) on access of disabled individuals and members of their family to employment and health insurance, such report to include informa-

tion relating to number of disabled medicare beneficiaries for whom medicare has become secondary, either through their employment or the employment of a family member, amount of savings to the medicare program achieved annually through this provision, and effect on employment, and employment-based health coverage, of disabled individuals and family members.

REINSTATEMENT OF WAIVER OF LIABILITY PRESUMPTION

Section 9126(c) of Pub. L. 99–272, as amended by Pub. L. 100–360, title IV, §426(b), July 1, 1988, 102 Stat. 814; Pub. L. 101–508, title IV, §4008(a)(1), Nov. 5, 1990, 104 Stat. 1388–44, provided that: ''The Secretary of Health and Human Services shall, for purposes of determining whether payments to a skilled nursing facility should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section], apply the same presumption of compliance (5 percent) as in effect under regulations as of July 1, 1985. Such presumption shall apply for the period beginning with the first month beginning after the date of the enactment of this Act [Apr. 7, 1986] and ending on December 31, 1995.''

HOME HEALTH WAIVER OF LIABILITY

Section 9205 of Pub. L. 99–272, as amended by Pub. L. 100–360, title IV, §426(d), July 1, 1988, 102 Stat. 814; Pub. L. 103–432, title I, §158(b)(1), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The Secretary of Health and Human Services shall, for purposes of determining whether payments to a home health agency should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section], apply a presumption of compliance (2.5 percent) in the same manner as under the regulations in effect as of July 1, 1985. Such presumption shall apply until December 31, 1995.''

[Section 158(b)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending section 9205 of Pub. L. 99–272, set out above] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].'']

RECOMMENDATIONS AND GUIDELINES FOR ELIMINATION OF ASSISTANTS AT SURGERY; REPORT TO CONGRESS

Section 9307(d) of Pub. L. 99–272 provided that the Secretary of Health and Human Services, after consultation with the Physician Payment Review Commission, develop recommendations and guidelines respecting other surgical procedures for which an assistant at surgery was generally not medically necessary and circumstances under which use of an assistant at surgery was generally appropriate but should be subject to prior approval of an appropriate entity and that the Secretary report to Congress, not later than January 1, 1987, on these recommendations and guidelines.

PACEMAKER REIMBURSEMENT REVIEW AND REFORM; PROMULGATION OF REGULATIONS; EFFECTIVE DATE OF PACEMAKER REGISTRATION

Section 2304(d) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall promulgate final regulations to carry out this section and the amendment made by this section [amending this section and enacting provisions set out as a note under section 1395*l* of this title] prior to January 1, 1985, and the amendment made by subsection (c) [amending this section] shall apply to pacemaker devices and leads implanted or removed on or after the effective date of such regulations.''

PAYMENT FOR DEBRIDEMENT OF MYCOTIC TOENAILS

Section 2325 of Pub. L. 98–369 provided that: ''The Secretary shall provide, pursuant to section 1862(a) of the Social Security Act [subsec. (a) of this section], that payment will not be made under part B of title XVIII of such Act [part B of this subchapter] for a physician's debridement of mycotic toenails to the extent such debridement is performed for a patient more frequently than once every 60 days, unless the medical necessity for more frequent treatment is documented by the billing physician.''

INTERIM WAIVER IN CERTAIN CASES OF BILLING RULE FOR ITEMS AND SERVICES OTHER THAN PHYSICIANS' SERVICES

Section 602(k) of Pub. L. 98–21, as amended by Pub. L. 99–272, title IX, §9112(a), Apr. 7, 1986, 100 Stat. 163, provided that:

''(1) The Secretary of Health and Human Services may, for any cost reporting period beginning prior to October 1, 1986, waive the requirements of sections 1862(a)(14) and 1866(a)(1)(H) of the Social Security Act [subsec. (a)(14) of this section and section 1395cc(a)(1)(H) of this title] in the case of a hospital which has followed a practice, since prior to October 1, 1982, of allowing direct billing under part B of title XVIII of such Act [part B of this subchapter] for services (other than physicians' services) so extensively, that immediate compliance with those requirements would threaten the stability of patient care. Any such waiver shall provide that such billing may continue to be made under part B of such title but that the payments to such hospital under part A of such title [part A of this subchapter] shall be reduced by the amount of the billings for such services under part B of such title. If such a waiver is granted, at the end of the waiver period the Secretary may provide for such methods of payments under part A as is appropriate, given the organizational structure of the institution.

''(2) In the case of a hospital which is receiving payments pursuant to a waiver under paragraph (1), payment of the adjustment for indirect costs of approved educational activities shall be made as if the hospital were receiving under part A of title XVIII of the Social Security Act all the payments which are made under part B of such title solely by reason of such waiver.

''(3) Any waiver granted under paragraph (1) shall provide that, with respect to those items and services billed under part B of title XVIII of the Social Security Act solely by reason of such waiver—

''(A) payment under such part shall be equal to 100 percent of the reasonable charge or other applicable payment base for the items and services; and

''(B) the entity furnishing the items and services must agree to accept the amount paid pursuant to subparagraph (A) as the full charge for the items and services.''

[Section 9112(b) of Pub. L. 99–272 provided that:

[''(1) Section 602(k)(2) of the Social Security Amendments of 1983 (as added by subsection (a)) [set out above] shall apply to cost reporting periods beginning on or after January 1, 1986.

[''(2) Section 602(k)(3) of the Social Security Amendments of 1983 (as added by subsection (a)) [set out above] shall apply to items and services furnished after the end of the 10-day period beginning on the date of the enactment of this Act [Apr. 7, 1986].''']

PROHIBITION OF PAYMENT FOR INEFFECTIVE DRUGS

Section 115(b) of Pub. L. 97–248 provided that: ''No provision of law limiting the use of funds for purposes of enforcing or implementing section 1862(c) [subsec. (c) of this section] or section 1903(i)(5) [section 1396b(i)(5) of this title] of the Social Security Act, section 2103 of the Omnibus Budget Reconciliation Act of 1981 [section 2103 of Pub. L. 97–35, amending sections 1395y and 1396b of this title and enacting provisions set out as notes under sections 1395y and 1396b of this title], or any rule or regulation issued pursuant to any such section (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations) shall apply to any period after September 30, 1982, unless such provision of law is enacted after the date of the enactment of this Act [Sept. 3, 1982] and specifically states that such provision is to supersede this section.''

ESTABLISHMENT AND IMPLEMENTATION OF GUIDELINES

Section 2152(b) of Pub. L. 97–35 directed the Secretary of Health and Human Services to establish, and provide

for the implementation of, the guidelines described in subsec. (f) of this section not later than Oct. 1, 1981.

REPORT TO CONGRESSIONAL COMMITTEES ON IMPLEMENTATION OF CERTIFICATION REQUIREMENTS RELATING TO MODIFICATION OF HEALTH BENEFITS PLAN OR PROGRAM; FAILURE TO SUBMIT REPORT

Section 4(b) of Pub. L. 93–480 provided that the Civil Service Commission and the Secretary of Health, Education, and Welfare submit a report on or before Mar. 1, 1975, on the steps which have been taken, and the steps which are planned, to enable the Secretary to make the determination and certification referred to in former subsec. (c) of this section and that if such report is not submitted by Mar. 1, 1975, the date specified in former subsec. (c) shall be deemed to be July 1, 1975, rather than Jan. 1, 1976.

§ 1395z. Consultation with State agencies and other organizations to develop conditions of participation for providers of services

In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections (e)(9), (f)(4), (j)(15),[1] (*o*)(6), (cc)(2)(I), and[2] (dd)(2), and (mm)(1) of section 1395x of this title, or by ambulatory surgical centers under section 1395k(a)(2)(F)(i) of this title, the Secretary shall consult with appropriate State agencies and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of such subsections may be varied for different areas or different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a State plan approved under subchapter I, XVI, or XIX of this chapter, the Secretary shall impose like requirements as a condition to the payment for services (or for the services specified by the State or subdivision) in such institutions in such State or subdivision.

(Aug. 14, 1935, ch. 531, title XVIII, § 1863, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 325; amended Pub. L. 92–603, title II, § 234(g)(2), Oct. 30, 1972, 86 Stat. 1413; Pub. L. 96–499, title IX, §§ 933(f), 934(c)(1), Dec. 5, 1980, 94 Stat. 2636, 2639; Pub. L. 97–248, title I, § 122(g)(2), Sept. 3, 1982, 96 Stat. 362; Pub. L. 98–369, div. B, title III, §§ 2335(c), 2349(b)(1), 2354(b)(32), July 18, 1984, 98 Stat. 1090, 1097, 1102; Pub. L. 100–360, title II, §§ 203(e)(2), 204(c)(1), July 1, 1988, 102 Stat. 725, 728; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, § 6003(g)(3)(C)(ii), Dec. 19, 1989, 103 Stat. 2152; Pub. L. 101–508, title IV, § 4163(c)(1), Nov. 5, 1990, 104 Stat. 1388–99; Pub. L. 103–432, title I, § 145(c)(2), Oct. 31, 1994, 108 Stat. 4427.)

REFERENCES IN TEXT

Subsection (j) of section 1395x of this title, referred to in text, was amended generally by Pub. L. 100–203, title IV, § 4201(a)(1), Dec. 22, 1987, 101 Stat. 1330–160, and, as so amended, does not contain a par. (15).

[1] See References in Text note below.

[2] So in original. The word "and" probably should not appear.

AMENDMENTS

1994—Pub. L. 103–432 struck out "or whether screening mammography meets the standards established under section 1395m(c)(3) of this title," before "the Secretary shall consult".

1990—Pub. L. 101–508 inserted "or whether screening mammography meets the standards established under section 1395m(c)(3) of this title," after "section 1395k(a)(2)(F)(i) of this title,".

1989—Pub. L. 101–239 substituted "(jj)(3), and (mm)(1)" for "and (jj)(3)".

Pub. L. 101–234 repealed Pub. L. 100–360, §§ 203(e)(2), 204(c)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

1988—Pub. L. 100–360, § 204(c)(1), inserted "or whether screening mammography meets the standards established under section 1395m(e)(3) of this title," after "1395k(a)(2)(F)(i) of this title,".

Pub. L. 100–360, § 203(e)(2), substituted "(dd)(2), and (jj)(3)" for "and (dd)(2)".

1984—Pub. L. 98–369, § 2335(c), struck out "(g)(4)," after "(e)(9), (f)(4),".

Pub. L. 98–369, § 2354(b)(32), substituted "(j)(15)" for "(j)(11)".

Pub. L. 98–369, § 2349(b)(1), substituted "appropriate State agencies" for "the Health Insurance Benefits Advisory Council established by section 1395dd of this title, appropriate State agencies,".

1982—Pub. L. 97–248 substituted "(cc)(2)(I), and (dd)(2)" for "and (cc)(2)(I)".

1980—Pub. L. 96–499, § 933(f), substituted "(*o*)(6), and (cc)(2)(I) of section 1395x" for "and (*o*)(6) of section 1395x".

Pub. L. 96–499, § 934(c)(1), inserted "or by ambulatory surgical centers under section 1395k(a)(2)(F)(i) of this title,".

1972—Pub. L. 92–603 substituted "subsections (e)(9), (f)(4), (g)(4), (j)(11), and (*o*)(6) of section 1395x of this title" for "subsections (e)(8), (f)(4), (g)(4), (j)(10), and (*o*)(5) of section 1395x of this title".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 203(e)(2) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(c)(1) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2335(c) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2349(b)(1) of Pub. L. 98–369 effective July 18, 1984, see section 2349(c) of Pub. L. 98–369, set out as a note under section 907a of this title.

Amendment by section 2354(b)(32) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 933(f) of Pub. L. 96–499 effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period beginning on or after July 1, 1981, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to providers of services for fiscal years beginning after the fifth month following October 1972, see section 234(i) of Pub. L. 92–603, set out as a note under section 1395x of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1395aa. Agreements with States

(a) Use of State agencies to determine compliance by providers of services with conditions of participation

The Secretary shall make an agreement with any State which is able and willing to do so under which the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by him for the purpose of determining whether an institution therein is a hospital or skilled nursing facility, or whether an agency therein is a home health agency, or whether an agency is a hospice program or whether a facility therein is a rural health clinic as defined in section 1395x(aa)(2) of this title, a critical access hospital, as defined in section 1395x(mm)(1) of this title, or a comprehensive outpatient rehabilitation facility as defined in section 1395x(cc)(2) of this title, or whether a laboratory meets the requirements of paragraphs (16) and (17) of section 1395x(s) of this title, or whether a clinic, rehabilitation agency or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1395x(p)(4) of this title, or whether an ambulatory surgical center meets the standards specified under section 1395k(a)(2)(F)(i) of this title. To the extent that the Secretary finds it appropriate, an institution or agency which such a State (or local) agency certifies is a hospital, skilled nursing facility, rural health clinic, comprehensive outpatient rehabilitation facility, home health agency, or hospice program (as those terms are defined in section 1395x of this title) may be treated as such by the Secretary. Any State agency which has such an agreement may (subject to approval of the Secretary) furnish to a skilled nursing facility, after proper request by such facility, such specialized consultative services (which such agency is able and willing to furnish in a manner satisfactory to the Secretary) as such facility may need to meet one or more of the conditions specified in section 1395i–3(a) of this title. Any such services furnished by a State agency shall be deemed to have been furnished pursuant to such agreement. Within 90 days following the completion of each survey of any health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization by the appropriate State or local agency described in the first sentence of this subsection, the Secretary shall make public in readily available form and place, and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives), the pertinent findings of each such survey relating to the compliance of each such health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization with (1) the statutory conditions of participation imposed under this subchapter and (2) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization. Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline (1) to collect, maintain, and continually update information on home health agencies located in the State or locality that are certified to participate in the program established under this subchapter (which information shall include any significant deficiencies found with respect to patient care in the most recent certification survey conducted by a State agency or accreditation survey conducted by a private accreditation agency under section 1395bb of this title with respect to the home health agency, when that survey was completed, whether corrective actions have been taken or are planned, and the sanctions, if any, imposed under this subchapter with respect to the agency) and (2) to receive complaints (and answer questions) with respect to home health agencies in the State or locality. Any such agreement shall provide for such State or local agency to maintain a unit for investigating such complaints that possesses enforcement authority and has access to survey and certification reports, information gathered by any private accreditation agency utilized by the Secretary under section 1395bb of this title, and consumer medical records (but only with the consent of the consumer or his or her legal representative).

(b) Payment in advance or by way of reimbursement to State for performance of functions of subsection (a)

The Secretary shall pay any such State, in advance or by way of reimbursement, as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (a) of this section, and for the Federal Hospital Insurance Trust Fund's fair share of the costs attributable to the planning and other efforts directed toward coordination of activities in carrying out its agreement and other activities related to the provision of services similar to those for which payment may be made under part A of this subchapter, or related to the facilities and personnel required for the provision of such services, or related to improving the quality of such services.

(c) Use of State or local agencies to survey hospitals

The Secretary is authorized to enter into an agreement with any State under which the appropriate State or local agency which performs the certification function described in subsection (a) of this section will survey, on a selective sample basis (or where the Secretary finds that a survey is appropriate because of substantial allegations of the existence of a significant deficiency or deficiencies which would, if found to be present, adversely affect health and safety of patients), provider entities that, pursuant to subsection (a) or (b)(1) of section 1395bb of this title, are treated as meeting the conditions or requirements of this subchapter. The Secretary shall pay for such services in the manner prescribed in subsection (b) of this section.

(d) Fulfillment of requirements by States

The Secretary may not enter an agreement under this section with a State with respect to determining whether an institution therein is a skilled nursing facility unless the State meets the requirements specified in section 1395i–3(e) of this title and section 1395i–3(g) of this title and the establishment of remedies under sections 1395i–3(h)(2)(B) and 1395i–3(h)(2)(C) of this title (relating to establishment and application of remedies).

(e) Prohibition of user fees for survey and certification

Notwithstanding any other provision of law, the Secretary may not impose, or require a State to impose, any fee on any facility or entity subject to a determination under subsection (a) of this section, or any renal dialysis facility subject to the requirements of section 1395rr(b)(1) of this title, for any such determination or any survey relating to determining the compliance of such facility or entity with any requirement of this subchapter (other than any fee relating to section 263a of this title).

(Aug. 14, 1935, ch. 531, title XVIII, § 1864, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 326; amended Pub. L. 90–248, title I, § 133(f), title II, § 228(b), Jan. 2, 1968, 81 Stat. 852, 904; Pub. L. 92–603, title II, §§ 244(a), 277, 278(a)(16), (b)(15), 299D(a), Oct. 30, 1972, 86 Stat. 1422, 1452–1454, 1461; Pub. L. 95–210, § 1(i), Dec. 13, 1977, 91 Stat. 1488; Pub. L. 96–499, title IX, §§ 933(g), 934(c)(2), Dec. 5, 1980, 94 Stat. 2639; Pub. L. 96–611, § 1(a)(2), Dec. 28, 1980, 94 Stat. 3566; Pub. L. 97–248, title I, § 122(g)(3), Sept. 3, 1982, 96 Stat. 362; Pub. L. 98–369, div. B, title III, § 2354(b)(17), July 18, 1984, 98 Stat. 1101; Pub. L. 99–509, title IX, § 9320(h)(3), Oct. 21, 1986, 100 Stat. 2016; Pub. L. 100–203, title IV, §§ 4025(a), 4072(d), 4201(a)(2), (d)(4), 4202(a)(1), (c), 4203(a)(1), 4212(b), Dec. 22, 1987, 101 Stat. 1330–74, 1330–117, 1330–160, 1330–174, 1330–179, 1330–212, as amended Pub. L. 100–360, title IV, § 411(*l*)(1)(C), (6)(B), July 1, 1988, 102 Stat. 804, as amended Pub. L. 100–485, title VI, § 608(d)(20)(B), (C), (27)(B), Oct. 13, 1988, 102 Stat. 2419, 2420, 2422; Pub. L. 100–360, title II, §§ 203(e)(3), 204(c)(2), (d)(3), title IV, § 411(d)(4)(A), July 1, 1988, 102 Stat. 725, 728, 729, 774; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6003(g)(3)(C)(iii), 6115(c), Dec. 19, 1989, 103 Stat. 2152, 2219; Pub. L. 101–508, title IV, §§ 4154(d)(1), 4163(c)(2), 4207(g), formerly 4027(g), Nov. 5, 1990, 104 Stat. 1388–85, 1388–100, 1388–123; Pub. L. 103–432, title I, §§ 145(c)(3), 160(a)(1), (d)(4), Oct. 31, 1994, 108 Stat. 4427, 4443, 4444; Pub. L. 104–134, title I, § 101(d) [title V, § 516(c)(1)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–247; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–33, title IV, §§ 4106(c), 4201(c)(1), Aug. 5, 1997, 111 Stat. 368, 373.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (b), is classified to section 1395c et seq. of this title.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33, § 4201(c)(1), substituted "critical access" for "rural primary care".

Pub. L. 105–33, § 4106(c), substituted "paragraphs (16) and (17)" for "paragraphs (15) and (16)".

1996—Subsec. (c). Pub. L. 104–134, in first sentence, substituted at end "provider entities that, pursuant to subsection (a) or (b)(1) of section 1395bb of this title, are treated as meeting the conditions or requirements of this subchapter." for "hospitals which have an agreement with the Secretary under section 1395cc of this title and which are accredited by the Joint Commission on Accreditation of Hospitals."

1994—Subsec. (a). Pub. L. 103–432, § 160(a)(1)(B), struck out "or (in the case of a laboratory that does not participate or seek to participate in the medicare program) the requirements of section 263a of this title" after "section 1395x(s) of this title" in first sentence.

Pub. L. 103–432, § 145(c)(3), struck out ", or whether screening mammography meets the standards established under section 1395m(c)(3) of this title" after "section 1395k(a)(2)(F)(i) of this title" in first sentence.

Subsec. (e). Pub. L. 103–432, § 160(a)(1)(A), inserted before period at end "(other than any fee relating to section 263a of this title)".

1990—Subsec. (a). Pub. L. 101–508, § 4163(c)(2), inserted before period at end of first sentence ", or whether screening mammography meets the standards established under section 1395m(c)(3) of this title".

Pub. L. 101–508, § 4154(d)(1), substituted "section 1395x(s) of this title or (in the case of a laboratory that does not participate or seek to participate in the medicare program) the requirements of section 263a of this title," for "section 1395x(s) of this title," in first sentence.

Subsec. (e). Pub. L. 101–508, § 4207(g), formerly § 4027(g), as renumbered by Pub. L. 103–432, § 160(d)(4), added subsec. (e).

1989—Subsec. (a). Pub. L. 101–239, § 6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–239, § 6003(g)(3)(C)(iii), inserted '', a rural primary care hospital, as defined in section 1395x(mm)(1) of this title,'' after ''1395x(aa)(2) of this title''.

Pub. L. 101–234 repealed Pub. L. 100–360, §§ 203(e)(3), 204(c)(2), (d)(3), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 and 1989 Amendment notes.

1988—Subsec. (a). Pub. L. 100–360, § 411(*l*)(6)(B), amended Pub. L. 100–203, § 4212(b), see 1987 Amendment note below.

Pub. L. 100–360, § 411(*l*)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), added Pub. L. 100–203, § 4201(d)(4), see 1987 Amendment note below.

Pub. L. 100–360, § 411(d)(4)(A)(i), as amended by Pub. L. 100–485, § 608(d)(20)(B)(i), substituted ''most recent certification survey conducted by a State agency or accreditation survey conducted by a private accreditation agency under section 1395bb of this title with respect to the home health agency,'' for ''most recent certification survey conducted with respect to the agency,''.

Pub. L. 100–360, § 411(d)(4)(A)(ii)(I), as amended by Pub. L. 100–485, § 608(d)(20)(C), substituted ''such State or local agency to maintain a unit'' for ''such agency to maintain a unit''.

Pub. L. 100–360, § 411(d)(4)(A)(ii)(II), as amended by Pub. L. 100–485, § 608(d)(20)(B)(ii), substituted ''utilized by the Secretary under section 1395bb of this title'' for ''pursuant to an agreement with the Secretary under this section''.

Pub. L. 100–360, § 204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)''.

Pub. L. 100–360, § 204(c)(2), inserted '', or whether screening mammography meets the standards established under section 1395m(e)(3) of this title'' after ''section 1395k(a)(2)(F)(i) of this title''.

Pub. L. 100–360, § 203(e)(3), inserted ''or a home intravenous drug therapy provider,'' after ''hospice program'' and substituted ''hospice program, or home intravenous drug therapy provider'' for ''or hospice program''.

1987—Subsec. (a). Pub. L. 100–203, § 4212(b), which directed an amendment of subsec. (a) identical to Pub. L. 100–203, § 4202(c), was amended generally by Pub. L. 100–360, § 411(*l*)(6)(B), so that it does not amend this section but rather section 1396r of this title.

Pub. L. 100–203, § 4202(c), inserted '', and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives),'' after ''place'' in fifth sentence.

Pub. L. 100–203, § 4201(d)(4), as added by Pub. L. 100–360, § 411(*l*)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), substituted ''conditions specified in section 1395i–3(a) of this title'' for ''conditions specified in section 1395x(j) of this title''.

Pub. L. 100–203, § 4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)'' in first sentence.

Pub. L. 100–203, § 4025(a), inserted at end ''Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline (1) to collect, maintain, and continually update information on home health agencies located in the State or locality that are certified to participate in the program established under this subchapter (which information shall include any significant deficiencies found with respect to patient care in the most recent certification survey conducted with respect to the agency, when that survey was completed, whether corrective actions have been taken or are planned, and the sanctions, if any, imposed under this subchapter with respect to the agency) and (2) to receive complaints (and answer questions) with respect to home health agencies in the State or locality. Any such agreement shall provide for such agency to maintain a unit for investigating such complaints that possesses enforcement authority and has access to survey and certification reports, information gathered by any private accreditation agency pursuant to an agreement with the Secretary under this section, and consumer medical records (but only with the consent of the consumer or his or her legal representative).''

Subsec. (d). Pub. L. 100–203, § 4203(a)(1), inserted before period at end ''and the establishment of remedies under sections 1395i–3(h)(2)(B) and 1395i–3(h)(2)(C) of this title (relating to establishment and application of remedies)''.

Pub. L. 100–203, § 4202(a)(1), inserted ''and section 1395i–3(g) of this title'' before period at end.

Pub. L. 100–203, § 4201(a)(2), added subsec. (d).

1986—Subsec. (a). Pub. L. 99–509 substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)''.

1984—Subsec. (c). Pub. L. 98–369 struck out ''the'' after ''Joint Commission on''.

1982—Subsec. (a). Pub. L. 97–248 inserted ''or whether an agency is a hospice program'' and substituted ''home health agency, or hospice program'' for ''or home health agency''.

1980—Subsec. (a). Pub. L. 96–611 substituted ''requirements of paragraphs (11) and (12) of section 1395x(s) of this title'' for ''requirements of paragraphs (10) and (11) of section 1395x(s) of this title''.

Pub. L. 96–499, § 933(g), inserted ''or a comprehensive outpatient rehabilitation facility as defined in section 1395x(cc)(2) of this title'' after ''section 1395x(aa)(2) of this title'' and ''comprehensive outpatient rehabilitation facility,'' after ''rural health clinic'' in four places.

Pub. L. 96–499, § 934(c)(2), inserted '', or whether an ambulatory surgical center meets the standards specified under section 1395k(a)(2)(F) of this title'' after ''section 1395x(p)(4) of this title'' and ''ambulatory surgical center,'' after ''health care facility,'' in three places.

1977—Subsec. (a). Pub. L. 95–210 expanded enumeration of institutions and agencies included under coverage of this subsection by inserting references to rural health clinics in five places.

1972—Subsec. (a). Pub. L. 92–603, §§ 277, 278(a)(16), (b)(15), 299D(a), provided for the furnishing of specialized consultative services to skilled nursing facilities, authorized the Secretary to make public the pertinent findings of each survey within 90 days following the completion of each survey of any health care facility, etc., and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (c). Pub. L. 92–603, § 244(a), added subsec. (c).

1968—Subsec. (a). Pub. L. 90–248, § 133(f), inserted clause at end of first sentence for determining whether a clinic, rehabilitation agency, or public health agency meets the requirements of section 1395x(p)(4)(A) or (B) of this title.

Pub. L. 90–248, § 228(b), struck out last sentence providing for utilization of State facilities to provide consultative services to institutions furnishing medical care, covered in section 1396a(a)(24) of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4106(c) of Pub. L. 105–33 applicable to bone mass measurements performed on or after July 1, 1998, see section 4106(d) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 145(c)(3) of Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4154(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Clinical Laboratory Improvement Amendments of 1988 [Pub. L. 100–578].''

Amendment by section 4163(c)(2) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 203(e)(3) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(c)(2), (d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(d)(4)(A), (*l*)(1)(C), (6)(B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4025(c), formerly § 4025(b), of Pub. L. 100–203, as redesignated and amended by Pub. L. 100–360, title IV, § 411(d)(4)(B)(i), July 1, 1988, 102 Stat. 774, provided that: ''The amendment made by this section [amending this section and section 1395bb of this title] shall apply with respect to agreements entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987].''

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendments by sections 4201(a)(2), (d)(4) and 4202(a)(1), (c) of Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

Amendment by section 4203(a)(1) of Pub. L. 100–203 applicable Jan. 1, 1988, except as otherwise specifically provided in section 1395i–3 of this title, without regard to whether regulations to implement such amendment are promulgated by such date, and in applying amendment by section 4203(a)(1) of Pub. L. 100–203 for services furnished by a skilled nursing facility before Oct. 1, 1990, any reference to a requirement of section 1395i–3(b), (c), or (d) of this title is deemed a reference to section 1395x(j) of this title, see section 4204(b) of Pub. L. 100–203, as added by Pub. L. 100–485, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

For effective date of amendment by section 933(g) of Pub. L. 96–499, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 299D(c) of Pub. L. 92–603 provided that: ''The provisions of this section [amending this section and section 1396a of this title] shall be effective beginning January 1, 1973, or within 6 months following the enactment of this Act [Oct. 30, 1972], whichever is later.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 133(f) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

Section 228(b) of Pub. L. 90–248 provided that the amendment made by such section 228(b) is effective July 1, 1969.

PILOT PROGRAM FOR NATIONAL AND STATE BACKGROUND CHECKS ON DIRECT PATIENT ACCESS EMPLOYEES OF LONG-TERM CARE FACILITIES OR PROVIDERS

Pub. L. 108–173, title III, § 307, Dec. 8, 2003, 117 Stat. 2257, provided that:

''(a) AUTHORITY TO CONDUCT PROGRAM.—The Secretary [of Health and Human Services], in consultation with the Attorney General, shall establish a pilot program to identify efficient, effective, and economical procedures for long term care facilities or providers to conduct background checks on prospective direct patient access employees.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—Under the pilot program, a long-term care facility or provider in a participating State, prior to employing a direct patient access employee that is first hired on or after the commencement date of the pilot program in the State, shall conduct a background check on the employee in accordance with such procedures as the participating State shall establish.

''(2) PROCEDURES.—

''(A) IN GENERAL.—The procedures established by a participating State under paragraph (1) should be designed to—

''(i) give a prospective direct access patient employee notice that the long-term care facility or

provider is required to perform background checks with respect to new employees;

''(ii) require, as a condition of employment, that the employee—

''(I) provide a written statement disclosing any disqualifying information;

''(II) provide a statement signed by the employee authorizing the facility to request national and State criminal history background checks;

''(III) provide the facility with a rolled set of the employee's fingerprints; and

''(IV) provide any other identification information the participating State may require;

''(iii) require the facility or provider to check any available registries that would be likely to contain disqualifying information about a prospective employee of a long-term care facility or provider; and

''(iv) permit the facility or provider to obtain State and national criminal history background checks on the prospective employee through a 10-fingerprint check that utilizes State criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

''(B) ELIMINATION OF UNNECESSARY CHECKS.—The procedures established by a participating State under paragraph (1) shall permit a long-term care facility or provider to terminate the background check at any stage at which the facility or provider obtains disqualifying information regarding a prospective direct patient access employee.

''(3) PROHIBITION ON HIRING OF ABUSIVE WORKERS.—

''(A) IN GENERAL.—A long-term care facility or provider may not knowingly employ any direct patient access employee who has any disqualifying information.

''(B) PROVISIONAL EMPLOYMENT.—

''(i) IN GENERAL.—Under the pilot program, a participating State may permit a long-term care facility or provider to provide for a provisional period of employment for a direct patient access employee pending completion of a background check, subject to such supervision during the employee's provisional period of employment as the participating State determines appropriate.

''(ii) SPECIAL CONSIDERATION FOR CERTAIN FACILITIES AND PROVIDERS.—In determining what constitutes appropriate supervision of a provisional employee, a participating State shall take into account cost or other burdens that would be imposed on small rural long-term care facilities or providers, as well as the nature of care delivered by such facilities or providers that are home health agencies or providers of hospice care.

''(4) USE OF INFORMATION; IMMUNITY FROM LIABILITY.—

''(A) USE OF INFORMATION.—A participating State shall ensure that a long-term care facility or provider that obtains information about a direct patient access employee pursuant to a background check uses such information only for the purpose of determining the suitability of the employee for employment.

''(B) IMMUNITY FROM LIABILITY.—A participating State shall ensure that a long-term care facility or provider that, in denying employment for an individual selected for hire as a direct patient access employee (including during any period of provisional employment), reasonably relies upon information obtained through a background check of the individual, shall not be liable in any action brought by the individual based on the employment determination resulting from the information.

''(5) AGREEMENTS WITH EMPLOYMENT AGENCIES.—A participating State may establish procedures for facilitating the conduct of background checks on prospective direct patient access employees that are hired by a long-term care facility or provider through an employment agency (including a temporary employment agency).

''(6) PENALTIES.—A participating State may impose such penalties as the State determines appropriate to enforce the requirements of the pilot program conducted in that State.

''(c) PARTICIPATING STATES.—

''(1) IN GENERAL.—The Secretary shall enter into agreements with not more than 10 States to conduct the pilot program under this section in such States.

''(2) REQUIREMENTS FOR STATES.—An agreement entered into under paragraph (1) shall require that a participating State—

''(A) be responsible for monitoring compliance with the requirements of the pilot program;

''(B) have procedures by which a provisional employee or an employee may appeal or dispute the accuracy of the information obtained in a background check performed under the pilot program; and

''(C) agree to—

''(i) review the results of any State or national criminal history background checks conducted regarding a prospective direct patient access employee to determine whether the employee has any conviction for a relevant crime;

''(ii) immediately report to the entity that requested the criminal history background checks the results of such review; and

''(iii) in the case of an employee with a conviction for a relevant crime that is subject to reporting under section 1128E of the Social Security Act (42 U.S.C. 1320a–7e), report the existence of such conviction to the database established under that section.

''(3) APPLICATION AND SELECTION CRITERIA.—

''(A) APPLICATION.—A State seeking to participate in the pilot program established under this section, shall submit an application to the Secretary containing such information and at such time as the Secretary may specify.

''(B) SELECTION CRITERIA.—

''(i) IN GENERAL.—In selecting States to participate in the pilot program, the Secretary shall establish criteria to ensure—

''(I) geographic diversity;

''(II) the inclusion of a variety of long-term care facilities or providers;

''(III) the evaluation of a variety of payment mechanisms for covering the costs of conducting the background checks required under the pilot program; and

''(IV) the evaluation of a variety of penalties (monetary and otherwise) used by participating States to enforce the requirements of the pilot program in such States.

''(ii) ADDITIONAL CRITERIA.—The Secretary shall, to the greatest extent practicable, select States to participate in the pilot program in accordance with the following:

''(I) At least one participating State should permit long-term care facilities or providers to provide for a provisional period of employment pending completion of a background check and at least one such State should not permit such a period of employment.

''(II) At least one participating State should establish procedures under which employment agencies (including temporary employment agencies) may contact the State directly to conduct background checks on prospective direct patient access employees.

''(III) At least one participating State should include patient abuse prevention training (including behavior training and interventions) for managers and employees of long-term care facilities and providers as part of the pilot program conducted in that State.

''(iii) INCLUSION OF STATES WITH EXISTING PROGRAMS.—Nothing in this section shall be con-

strued as prohibiting any State which, as of the date of the enactment of this Act [Dec. 8, 2003], has procedures for conducting background checks on behalf of any entity described in subsection (g)(5) from being selected to participate in the pilot program conducted under this section.

''(d) PAYMENTS.—Of the amounts made available under subsection (f) to conduct the pilot program under this section, the Secretary shall—

''(1) make payments to participating States for the costs of conducting the pilot program in such States; and

''(2) reserve up to 4 percent of such amounts to conduct the evaluation required under subsection (e).

''(e) EVALUATION.—The Secretary, in consultation with the Attorney General, shall conduct by grant, contract, or interagency agreement an evaluation of the pilot program conducted under this section. Such evaluation shall—

''(1) review the various procedures implemented by participating States for long-term care facilities or providers to conduct background checks of direct patient access employees and identify the most efficient, effective, and economical procedures for conducting such background checks;

''(2) assess the costs of conducting such background checks (including start-up and administrative costs);

''(3) consider the benefits and problems associated with requiring employees or facilities or providers to pay the costs of conducting such background checks;

''(4) consider whether the costs of conducting such background checks should be allocated between the medicare and medicaid programs and if so, identify an equitable methodology for doing so;

''(5) determine the extent to which conducting such background checks leads to any unintended consequences, including a reduction in the available workforce for such facilities or providers;

''(6) review forms used by participating States in order to develop, in consultation with the Attorney General, a model form for such background checks;

''(7) determine the effectiveness of background checks conducted by employment agencies; and

''(8) recommend appropriate procedures and payment mechanisms for implementing a national criminal background check program for such facilities and providers.

''(f) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out the pilot program under this section for the period of fiscal years 2004 through 2007, $25,000,000.

''(g) DEFINITIONS.—In this section:

''(1) CONVICTION FOR A RELEVANT CRIME.—The term 'conviction for a relevant crime' means any Federal or State criminal conviction for—

''(A) any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7); and

''(B) such other types of offenses as a participating State may specify for purposes of conducting the pilot program in such State.

''(2) DISQUALIFYING INFORMATION.—The term 'disqualifying information' means a conviction for a relevant crime or a finding of patient or resident abuse.

''(3) FINDING OF PATIENT OR RESIDENT ABUSE.—The term 'finding of patient or resident abuse' means any substantiated finding by a State agency under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i–3(g)(1)(C), 1396r(g)(1)(C)) or a Federal agency that a direct patient access employee has committed—

''(A) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

''(B) such other types of acts as a participating State may specify for purposes of conducting the pilot program in such State.

''(4) DIRECT PATIENT ACCESS EMPLOYEE.—The term 'direct patient access employee' means any individual (other than a volunteer) that has access to a patient or resident of a long-term care facility or provider through employment or through a contract with such facility or provider, as determined by a participating State for purposes of conducting the pilot program in such State.

''(5) LONG-TERM CARE FACILITY OR PROVIDER.—

''(A) IN GENERAL.—The term 'long-term care facility or provider' means the following facilities or providers which receive payment for services under title XVIII or XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter]:

''(i) A skilled nursing facility (as defined in section 1819(a) of the Social Security Act) (42 U.S.C. 1395i–3(a)).

''(ii) A nursing facility (as defined in section 1919(a) in such Act) (42 U.S.C. 1396r(a)).

''(iii) A home health agency.

''(iv) A provider of hospice care (as defined in section 1861(dd)(1) of such Act) (42 U.S.C. 1395x(dd)(1)).

''(v) A long-term care hospital (as described in section 1886(d)(1)(B)(iv) of such Act) (42 U.S.C. 1395ww(d)(1)(B)(iv)).

''(vi) A provider of personal care services.

''(vii) A residential care provider that arranges for, or directly provides, long-term care services.

''(viii) An intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) [(]42 U.S.C. 1396d(d)).

''(B) ADDITIONAL FACILITIES OR PROVIDERS.—During the first year in which a pilot program under this section is conducted in a participating State, the State may expand the list of facilities or providers under subparagraph (A) (on a phased-in basis or otherwise) to include such other facilities or providers of long-term care services under such titles as the participating State determines appropriate.

''(C) EXCEPTIONS.—Such term does not include—

''(i) any facility or entity that provides, or is a provider of, services described in subparagraph (A) that are exclusively provided to an individual pursuant to a self-directed arrangement that meets such requirements as the participating State may establish in accordance with guidance from the Secretary; or

''(ii) any such arrangement that is obtained by a patient or resident functioning as an employer.

''(6) PARTICIPATING STATE.—The term 'participating State' means a State with an agreement under subsection (c)(1).''

USE OF STATE OR LOCAL AGENCIES IN EVALUATING LABORATORIES

Section 160(a)(2) of Pub. L. 103–432 provided that: ''An agreement made by the Secretary of Health and Human Services with a State under section 1864(a) of the Social Security Act [subsec. (a) of this section] may include an agreement that the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by the Secretary for the purpose of determining whether a laboratory meets the requirements of section 353 of the Public Health Service Act [section 263a of this title].''

NURSE AID TRAINING AND COMPETENCY EVALUATION, FAILURE BY STATE TO MEET GUIDELINES

Section 4008(h)(1)(A) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services may not refuse to enter into an agreement or cancel an existing agreement with a State under section 1864 of the Social Security Act [this section] on the basis that the State failed to meet the requirement of section 1819(e)(1)(A) of such Act [section 1395i–3(e)(1)(A) of this title] before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1819(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.''

§ 1395bb. Effect of accreditation

(a) In general

Except as provided in subsection (b)[1] of this section and the second sentence of section 1395z of this title, if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2)(A) such institution authorizes the Commission to release to the Secretary upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission, together with any other information directly related to the survey as the Secretary may require (including corrective action plans),[2]

(B) such Commission releases such a copy and any such information to the Secretary,

then, such institution shall be deemed to meet the requirements of the numbered paragraphs of section 1395x(e) of this title; except—

(3) paragraph (6) thereof, and

(4) any standard, promulgated by the Secretary pursuant to paragraph (9) thereof, which is higher than the requirements prescribed for accreditation by such Commission.

If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan (or imposes another requirement which serves substantially the same purpose), requires a discharge planning process (or imposes another requirement which serves substantially the same purpose), or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Commission comply also with clause (A) or (B) of section 1395x(e)(6) of this title or the standard described in such paragraph (4), as the case may be.

(b) Accreditation by American Osteopathic Association or other national accreditation body

(1) In addition, if the Secretary finds that accreditation of a provider entity (as defined in paragraph (4)) by the American Osteopathic Association or any other national accreditation body demonstrates that all of the applicable conditions or requirements of this subchapter (other than the requirements of section 1395m(j) of this title or the conditions and requirements under section 1395rr(b) of this title) are met or exceeded—

(A) in the case of a provider entity not described in paragraph (3)(B), the Secretary shall treat such entity as meeting those conditions or requirements with respect to which the Secretary made such finding; or

(B) in the case of a provider entity described in paragraph (3)(B), the Secretary may treat such entity as meeting those conditions or requirements with respect to which the Secretary made such finding.

(2) In making such a finding, the Secretary shall consider, among other factors with respect to a national accreditation body, its requirements for accreditation, its survey procedures, its ability to provide adequate resources for conducting required surveys and supplying information for use in enforcement activities, its monitoring procedures for provider entities found out of compliance with the conditions or requirements, and its ability to provide the Secretary with necessary data for validation.

(3)(A) Except as provided in subparagraph (B), not later than 60 days after the date of receipt of a written request for a finding under paragraph (1) (with any documentation necessary to make a determination on the request), the Secretary shall publish a notice identifying the national accreditation body making the request, describing the nature of the request, and providing a period of at least 30 days for the public to comment on the request. The Secretary shall approve or deny a request for such a finding, and shall publish notice of such approval or denial, not later than 210 days after the date of receipt of the request (with such documentation). Such an approval shall be effective with respect to accreditation determinations made on or after such effective date (which may not be later than the date of publication of the approval) as the Secretary specifies in the publication notice.

(B) The 210-day and 60-day deadlines specified in subparagraph (A) shall not apply in the case of any request for a finding with respect to accreditation of a provider entity to which the conditions and requirements of sections 1395i–3 and 1395x(j) of this title apply.

(4) For purposes of this section, the term ''provider entity'' means a provider of services, supplier, facility, clinic, agency, or laboratory.

(c) Disclosure of accreditation survey

The Secretary may not disclose any accreditation survey (other than a survey with respect to a home health agency) made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body, except that the Secretary may disclose such a survey and information related to such a survey to the extent such survey and information relate to an enforcement action taken by the Secretary.

(d) Deficiencies

Notwithstanding any other provision of this subchapter, if the Secretary finds that a provider entity has significant deficiencies (as defined in regulations pertaining to health and safety), the entity shall, after the date of notice of such finding to the entity and for such period as may be prescribed in regulations, be deemed not to meet the conditions or requirements the entity has been treated as meeting pursuant to subsection (a) or (b)(1) of this section.

(e) State or local accreditation

For provisions relating to validation surveys of entities that are treated as meeting applicable conditions or requirements of this subchapter pursuant to subsection (a) or (b)(1) of this section, see section 1395aa(c) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1865, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 326; amended Pub. L. 92–603, title II,

[1] See References in Text note below.

[2] So in original. Probably should be followed by ''and''.

§§ 234(h), 244(b), Oct. 30, 1972, 86 Stat. 1413, 1423; Pub. L. 97–248, title I, §§ 122(g)(4), 128(d)(3), Sept. 3, 1982, 96 Stat. 362, 367; Pub. L. 98–369, div. B, title III, §§ 2345(a), 2346(a), July 18, 1984, 98 Stat. 1096; Pub. L. 99–509, title IX, §§ 9305(c)(3), 9320(h)(3), Oct. 21, 1986, 100 Stat. 1990, 2016; Pub. L. 100–203, title IV, §§ 4025(b), 4072(d), Dec. 22, 1987, 101 Stat. 1330–117, as amended Pub. L. 100–360, title IV, § 411(d)(4)(B)(ii), July 1, 1988, 102 Stat. 774; Pub. L. 100–360, title II, §§ 204(c)(3), (d)(3), July 1, 1988, 102 Stat. 728, 729; Pub. L. 100–485, title VI, § 608(d)(20)(D), Oct. 13, 1988, 102 Stat. 2420; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6003(g)(3)(C)(iv), 6019(a)–(c), 6115(c), Dec. 19, 1989, 103 Stat. 2153, 2165, 2166, 2219; Pub. L. 101–508, title IV, § 4163(c)(3), Nov. 5, 1990, 104 Stat. 1388–100; Pub. L. 103–432, title I, § 145(c)(4), Oct. 31, 1994, 108 Stat. 4427; Pub. L. 104–134, title I, § 101(d) [title V, § 516(b), (c)(2)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–246, 1321–247; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 108–173, title VII, § 736(a)(12), Dec. 8, 2003, 117 Stat. 2355.)

REFERENCES IN TEXT

Subsection (b) of this section, referred to in subsec. (a), was redesignated subsec. (d) and a new subsec. (b) added by Pub. L. 104–134, title I, § 101(d) [title V, § 516(b)(1), (3)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–246; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

AMENDMENTS

2003—Subsec. (b)(3)(B). Pub. L. 108–173 substituted ''sections'' for ''section''.

1996—Subsec. (a). Pub. L. 104–134, § 101(d) [title V, § 516(b)(2), (3)], struck out after second sentence: ''In addition, if the Secretary finds that accreditation of an entity by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1395k(a)(2)(F)(i), 1395x(e), 1395x(f), 1395x(j), 1395x(*o*), 1395x(p)(4)(A) or (B), paragraphs (15) and (16) of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), 1395x(dd)(2), or 1395x(mm)(1) of this title, as the case may be, are met, he may, to the extent he deems it appropriate, treat such entity as meeting the condition or conditions with respect to which he made such finding.'' and redesignated fourth sentence as subsec. (c).

Subsec. (b). Pub. L. 104–134, § 101(d) [title V, § 516(b)(3)], added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 104–134, § 101(d) [title V, § 516(b)(2)], redesignated fourth sentence of subsec. (a) as subsec. (c).

Subsec. (d). Pub. L. 104–134, § 101(d) [title V, § 516(b)(1), (c)(2)(A)], redesignated subsec. (b) as (d) and substituted ''a provider entity'' for ''a hospital'', ''the entity'' for ''the hospital'' in two places, and ''the conditions or requirements the entity has been treated as meeting pursuant to subsection (a) or (b)(1) of this section'' for ''the requirements of the numbered paragraphs of section 1395x(e) of this title''.

Subsec. (e). Pub. L. 104–134, § 101(d) [title V, § 516(c)(2)(B)], added subsec. (e).

1994—Subsec. (a). Pub. L. 103–432 struck out ''1395m(c)(3),'' after ''conditions of section 1395k(a)(2)(F)(i),'' in closing provisions.

1990—Subsec. (a). Pub. L. 101–508 inserted ''1395m(c)(3),'' after ''1395k(a)(2)(F)(i),'' in second sentence.

1989—Subsec. (a). Pub. L. 101–239, § 6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–239, § 6019(b), inserted before period at end '', except that the Secretary may disclose such a survey and information related to such a survey to the extent such survey and information relate to an enforcement action taken by the Secretary''.

Pub. L. 101–239, § 6003(g)(3)(C)(iv), substituted ''1395x(dd)(2), or 1395x(mm)(1) of this title'' for ''or 1395x(dd)(2) of this title'' in third sentence.

Pub. L. 101–234 repealed Pub. L. 100–360, § 204(c)(3), (d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 and 1989 Amendment notes.

Subsec. (a)(2). Pub. L. 101–239, § 6019(a), designated existing provisions as subpar. (A), struck out ''(if it is included within a survey described in section 1395aa(c) of this title)'' after ''such institution'', inserted '', together with any other information directly related to the survey as the Secretary may require (including corrective action plans)'' after ''by such Commission'', and added subpar. (B).

Subsec. (b). Pub. L. 101–239, § 6019(c), struck out ''following a survey made pursuant to section 1395aa(c) of this title'' after ''if the Secretary finds''.

1988—Subsec. (a). Pub. L. 100–360, § 411(d)(4)(B)(ii), as amended by Pub. L. 100–485, § 608(d)(20)(D), added Pub. L. 100–203, § 4025(b), see 1987 Amendment note below.

Pub. L. 100–360, § 204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)'' in third sentence.

Pub. L. 100–360, § 204(c)(3), inserted ''1395m(e)(3),'' after ''1395k(a)(2)(F)(i),'' in third sentence.

1987—Subsec. (a). Pub. L. 100–203, § 4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)'' in penultimate sentence.

Pub. L. 100–203, § 4025(b), as added by Pub. L. 100–360, § 411(d)(4)(B)(ii), as amended by Pub. L. 100–485, § 608(d)(20)(D), inserted ''(other than a survey with respect to a home health agency)'' after ''survey'' in last sentence.

1986—Subsec. (a). Pub. L. 99–509, § 9305(c)(3), inserted '', requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)'' after ''the same purpose)'', and ''clause (A) or (B) of'' after ''comply also with'' in second sentence.

Pub. L. 99–509, § 9320(h)(3), substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)'' in third sentence.

1984—Subsec. (a). Pub. L. 98–369, § 2346(a), in provisions following par. (4), substituted ''section 1395k(a)(2)(F)(i), 1395x(e), 1395x(f), 1395x(j), 1395x(*o*), 1395x(p)(4)(A) or (B), paragraphs (11) and (12) of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), or 1395x(dd)(2) of this title'' for ''section 1395x(e), (j), (*o*), or (dd) of this title'', and substituted ''entity'' for ''institution or agency'' in two places.

Pub. L. 98–369, § 2345(a), struck out ''(on a confidential basis)'' after ''release to the Secretary'' in par. (2), and inserted provision that the Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body, in provisions following par. (4).

1982—Subsec. (a). Pub. L. 97–248, § 122(g)(4), substituted ''(*o*), or (dd)'' for ''or (*o*)''.

Subsec. (b). Pub. L. 97–248, § 128(d)(3), substituted ''a hospital'' for ''an institution'' and ''the hospital'' for ''such institution''.

1972—Pub. L. 92–603 designated existing provisions as subsec. (a), inserted reference to subsec. (b) of this section in opening provisions, redesignated existing provisions as pars. (1) and (3) and added pars. (2) and (4) and in provisions following par. (4) inserted provisions for the imposition of a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in par. (4), and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first

date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6019(d) of Pub. L. 101–239 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].

''(2) The amendments made by subsection (a) [amending this section] shall take effect 6 months after the date of the enactment of this Act.''

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 204(c)(3), (d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(d)(4)(B)(ii) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4025(b) of Pub. L. 100–203 applicable with respect to agreements entered into or renewed on or after Dec. 22, 1987, see section 4025(c) of Pub. L. 100–203, as amended, set out as a note under section 1395aa of this title.

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 9305(c)(3) of Pub. L. 99–509 applicable to hospitals as of one year after Oct. 21, 1986, see section 9305(c)(4) of Pub. L. 99–509, set out as a note under section 1395x of this title.

Amendment by section 9320(h)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2345(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984], and shall apply with respect to surveys released to the Secretary on, before, or after such date.''

Section 2346(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(g)(4) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Amendment by section 128(d)(3) of Pub. L. 97–248 effective Sept. 3, 1982, see section 128(e)(3) of Pub. L. 97–248, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 234(h) of Pub. L. 92–603 applicable with respect to providers of services for fiscal years beginning after the fifth month following October 1972, see section 234(i) of Pub. L. 92–603, set out as a note under section 1395x of this title.

§ 1395cc. Agreements with providers of services; enrollment processes

(a) Filing of agreements; eligibility for payment; charges with respect to items and services

(1) Any provider of services (except a fund designated for purposes of section 1395f(g) and section 1395n(e) of this title) shall be qualified to participate under this subchapter and shall be eligible for payments under this subchapter if it files with the Secretary an agreement—

(A)(i) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this subchapter (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this subchapter or for which such provider is paid pursuant to the provisions of section 1395f(e) of this title), and (ii) not to impose any charge that is prohibited under section 1396a(n)(3) of this title,

(B) not to charge any individual or any other person for items or services for which such individual is not entitled to have payment made under this subchapter because payment for expenses incurred for such items or services may not be made by reason of the provisions of paragraph (1) or (9) of section 1395y(a) of this title, but only if (i) such individual was without fault in incurring such expenses and (ii) the Secretary's determination that such payment may not be made for such items and services was made after the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter,

(C) to make adequate provision for return (or other disposition, in accordance with regulations) of any moneys incorrectly collected from such individual or other person,

(D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an agency or organization which serves as a fiscal inter-

mediary or carrier (for purposes of part A or part B, or both, of this subchapter) with respect to the provider,

(E) to release data with respect to patients of such provider upon request to an organization having a contract with the Secretary under part B of subchapter XI of this chapter as may be necessary (i) to allow such organization to carry out its functions under such contract, or (ii) to allow such organization to carry out similar review functions under any contract the organization may have with a private or public agency paying for health care in the same area with respect to patients who authorize release of such data for such purposes,

(F)(i) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b), (c), or (d) of section 1395ww of this title, to maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located, under which the organization will perform functions under that part with respect to the review of the validity of diagnostic information provided by such hospital, the completeness, adequacy, and quality of care provided, the appropriateness of admissions and discharges, and the appropriateness of care provided for which additional payments are sought under section 1395ww(d)(5) of this title, with respect to inpatient hospital services for which payment may be made under part A of this subchapter (and for purposes of payment under this subchapter, the cost of such agreement to the hospital shall be considered a cost incurred by such hospital in providing inpatient services under part A of this subchapter, and (I) shall be paid directly by the Secretary to such organization on behalf of such hospital in accordance with a rate per review established by the Secretary, (II) shall be transferred from the Federal Hospital Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and (III) shall not be less in the aggregate for a fiscal year than the aggregate amount expended in fiscal year 1988 for direct and administrative costs (adjusted for inflation and for any direct or administrative costs incurred as a result of review functions added with respect to a subsequent fiscal year) of such reviews),

(ii) in the case of hospitals, critical access hospitals, skilled nursing facilities, and home health agencies, to maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital, facility, or agency is located) to perform the functions described in paragraph (3)(A),

(G) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b) or (d) of section 1395ww of this title, not to charge any individual or any other person for inpatient hospital services for which such individual would be entitled to have payment made under part A of this subchapter but for a denial or reduction of payments under section 1395ww(f)(2) of this title,

(H)(i) in the case of hospitals which provide services for which payment may be made under this subchapter and in the case of critical access hospitals which provide critical access hospital services, to have all items and services (other than physicians' services as defined in regulations for purposes of section 1395y(a)(14) of this title, and other than services described by section 1395x(s)(2)(K) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist) (I) that are furnished to an individual who is a patient of the hospital, and (II) for which the individual is entitled to have payment made under this subchapter, furnished by the hospital or otherwise under arrangements (as defined in section 1395x(w)(1) of this title) made by the hospital,

(ii) in the case of skilled nursing facilities which provide covered skilled nursing facility services—

(I) that are furnished to an individual who is a resident of the skilled nursing facility during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1395x(s)(2)(D) of this title, that are furnished to such an individual without regard to such period), and

(II) for which the individual is entitled to have payment made under this subchapter,

to have items and services (other than services described in section 1395yy(e)(2)(A)(ii) of this title) furnished by the skilled nursing facility or otherwise under arrangements (as defined in section 1395x(w)(1) of this title) made by the skilled nursing facility,

(I) in the case of a hospital or critical access hospital—

(i) to adopt and enforce a policy to ensure compliance with the requirements of section 1395dd of this title and to meet the requirements of such section,

(ii) to maintain medical and other records related to individuals transferred to or from the hospital for a period of five years from the date of the transfer, and

(iii) to maintain a list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition,

(J) in the case of hospitals which provide inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care under any health plan contracted for under section 1079 or 1086 of title 10, or under section 1713[1] of title 38, in accordance with admission prac-

[1] See References in Text note below.

tices, payment methodology, and amounts as prescribed under joint regulations issued by the Secretary and by the Secretaries of Defense and Transportation, in implementation of sections 1079 and 1086 of title 10,

(K) not to charge any individual or any other person for items or services for which payment under this subchapter is denied under section 1320c–3(a)(2) of this title by reason of a determination under section 1320c–3(a)(1)(B) of this title,

(L) in the case of hospitals which provide inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care under section 1703 of title 38, in accordance with such admission practices, and such payment methodology and amounts, as are prescribed under joint regulations issued by the Secretary and by the Secretary of Veterans Affairs in implementation of such section,

(M) in the case of hospitals, to provide to each individual who is entitled to benefits under part A of this subchapter (or to a person acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this subchapter,

(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal,

and which provides such additional information as the Secretary may specify,

(N) in the case of hospitals and critical access hospitals—

(i) to make available to its patients the directory or directories of participating physicians (published under section 1395u(h)(4) of this title) for the area served by the hospital or critical access hospital,

(ii) if hospital personnel (including staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services,

(iii) to post conspicuously in any emergency department a sign (in a form specified by the Secretary) specifying rights of individuals under section 1395dd of this title with respect to examination and treatment for emergency medical conditions and women in labor, and

(iv) to post conspicuously (in a form specified by the Secretary) information indicating whether or not the hospital participates in the medicaid program under a State plan approved under subchapter XIX of this chapter,

(O) to accept as payment in full for services that are covered under this subchapter and are furnished to any individual enrolled with a Medicare+Choice organization under part C of this subchapter, with a PACE provider under section 1395eee or 1396u–4 of this title, or with an eligible organization with a risk-sharing contract under section 1395mm of this title, under section 1395mm(i)(2)(A) of this title (as in effect before February 1, 1985), under section 1395b–1(a) of this title, or under section 222(a) of the Social Security Amendments of 1972, which does not have a contract (or, in the case of a PACE provider, contract or other agreement) establishing payment amounts for services furnished to members of the organization or PACE program eligible individuals enrolled with the PACE provider, the amounts that would be made as a payment in full under this subchapter (less any payments under sections 1395ww(d)(11) and 1395ww(h)(3)(D) of this title) if the individuals were not so enrolled,

(P) in the case of home health agencies which provide home health services to individuals entitled to benefits under this subchapter who require catheters, catheter supplies, ostomy bags, and supplies related to ostomy care (described in section 1395x(m)(5) of this title), to offer to furnish such supplies to such an individual as part of their furnishing of home health services,

(Q) in the case of hospitals, skilled nursing facilities, home health agencies, and hospice programs, to comply with the requirement of subsection (f) of this section (relating to maintaining written policies and procedures respecting advance directives),

(R) to contract only with a health care clearinghouse (as defined in section 1320d of this title) that meets each standard and implementation specification adopted or established under part C of subchapter XI of this chapter on or after the date on which the health care clearinghouse is required to comply with the standard or specification,

(S) in the case of a hospital that has a financial interest (as specified by the Secretary in regulations) in an entity to which individuals are referred as described in section 1395x(ee)(2)(H)(ii) of this title, or in which such an entity has such a financial interest, or in which another entity has such a financial interest (directly or indirectly) with such hospital and such an entity, to maintain and disclose to the Secretary (in a form and manner specified by the Secretary) information on—

(i) the nature of such financial interest,

(ii) the number of individuals who were discharged from the hospital and who were identified as requiring home health services, and

(iii) the percentage of such individuals who received such services from such provider (or another such provider),

(T) in the case of hospitals and critical access hospitals, to furnish to the Secretary

such data as the Secretary determines appropriate pursuant to subparagraph (E) of section 1395ww(d)(12) of this title to carry out such section,

(U) in the case of hospitals which furnish inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care both—

(i) under the contract health services program funded by the Indian Health Service and operated by the Indian Health Service, an Indian tribe, or tribal organization (as those terms are defined in section 1603 of title 25), with respect to items and services that are covered under such program and furnished to an individual eligible for such items and services under such program; and

(ii) under any program funded by the Indian Health Service and operated by an urban Indian organization with respect to the purchase of items and services for an eligible urban Indian (as those terms are defined in such section 1603),

in accordance with regulations promulgated by the Secretary regarding admission practices, payment methodology, and rates of payment (including the acceptance of no more than such payment rate as payment in full for such items and services,[2] and

(V) in the case of hospitals that are not otherwise subject to the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] (or a State occupational safety and health plan that is approved under 18(b)[3] of such Act [29 U.S.C. 667(b)]), to comply with the Bloodborne Pathogens standard under section 1910.1030 of title 29 of the Code of Federal Regulations (or as subsequently redesignated).

In the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization's contract with the Secretary under part B of subchapter XI of this chapter is terminated on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

(2)(A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1395e(a)(1), (a)(3), or (a)(4), section 1395*l*(b), or section 1395x(y)(3) of this title with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B of this subchapter or which are durable medical equipment furnished as home health services (but in the case of items and services furnished to individuals with end-stage renal disease, an amount equal to 20 percent of the estimated amounts for such items and services calculated on the basis established by the Secretary). In the case of items and services described in section 1395*l*(c) of this title, clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section. A provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1395x(s)(10)(A) of this title and with respect to clinical diagnostic laboratory tests for which payment is made under part B of this subchapter. Notwithstanding the first sentence of this subparagraph, a home health agency may charge such an individual or person, with respect to covered items subject to payment under section 1395m(a) of this title, the amount of any deduction imposed under section 1395*l*(b) of this title and 20 percent of the payment basis described in section 1395m(a)(1)(B) of this title. In the case of items and services for which payment is made under part B of this subchapter under the prospective payment system established under section 1395*l*(t) of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge, the applicable copayment amount established under section 1395*l*(t)(5)[1] of this title. In the case of services described in section 1395*l*(a)(8) of this title or section 1395*l*(a)(9) of this title for which payment is made under part B of this subchapter under section 1395m(k) of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge for such services 20 percent of the lesser of the actual charge or the applicable fee schedule amount (as defined in such section) for such services.

(B) Where a provider of services has furnished, at the request of such individual, items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this subchapter, such provider of services may also charge such individual or other person for such more expensive items or services to the extent that the amount customarily charged by it for the items or services furnished at such request exceeds the amount customarily charged by it for the items or services with respect to which payment may be made under this subchapter.

(C) A provider of services may in accordance with its customary practice also appropriately charge any such individual for any whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished him with respect to which a deductible is imposed under section 1395e(a)(2) of this title, except that (i) any excess of such charge over the cost to such provider for the blood (or equivalent quantities of packed red blood cells, as so defined) shall be deducted from any payment to such provider under this subchapter, (ii) no such charge may be imposed for the cost of administration of such blood (or equivalent quantities of packed red blood cells, as so defined), and (iii) such charge may not be made to the extent such blood (or equivalent quantities of packed red blood cells, as so defined) has been replaced on behalf of such individual or arrangements have

[2] So in original. The comma probably should be preceded by a closing parenthesis.

[3] So in original. Probably should be preceded by "section".

been made for its replacement on his behalf. For purposes of this subparagraph, whole blood (or equivalent quantities of packed red blood cells, as so defined) furnished an individual shall be deemed replaced when the provider of services is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is imposed under section 1395e(a)(2) of this title.

(D) Where a provider of services customarily furnishes items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this subchapter, such provider, notwithstanding the preceding provisions of this paragraph, may not, under the authority of subparagraph (B)(ii) of this paragraph, charge any individual or other person any amount for such items or services in excess of the amount of the payment which may otherwise be made for such items or services under this subchapter if the admitting physician has a direct or indirect financial interest in such provider.

(3)(A) Under the agreement required under paragraph (1)(F)(ii), the peer review organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of section 1320c–3(a)(4)(A) of this title and under section 1320c–3(a)(14) of this title with respect to services, furnished by the hospital, critical access hospital, facility, or agency involved, for which payment may be made under this subchapter.

(B) For purposes of payment under this subchapter, the cost of such an agreement to the hospital, critical access hospital, facility, or agency shall be considered a cost incurred by such hospital, critical access hospital, facility, or agency in providing covered services under this subchapter and shall be paid directly by the Secretary to the peer review organization on behalf of such hospital, critical access hospital, facility, or agency in accordance with a schedule established by the Secretary.

(C) Such payments—

(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

(ii) shall not be less in the aggregate for a fiscal year—

(I) in the case of hospitals, than the amount specified in paragraph (1)(F)(i)(III), and

(II) in the case of facilities, critical access hospitals, and agencies, than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such facilities, critical access hospitals, or agencies under part B of subchapter XI of this chapter.

(b) Termination or nonrenewal of agreements

(1) A provider of services may terminate an agreement with the Secretary under this section at such time and upon such notice to the Secretary and the public as may be provided in regulations, except that notice of more than six months shall not be required.

(2) The Secretary may refuse to enter into an agreement under this section or, upon such reasonable notice to the provider and the public as may be specified in regulations, may refuse to renew or may terminate such an agreement after the Secretary—

(A) has determined that the provider fails to comply substantially with the provisions of the agreement, with the provisions of this subchapter and regulations thereunder, or with a corrective action required under section 1395ww(f)(2)(B) of this title,

(B) has determined that the provider fails substantially to meet the applicable provisions of section 1395x of this title,

(C) has excluded the provider from participation in a program under this subchapter pursuant to section 1320a–7 of this title or section 1320a–7a of this title, or

(D) has ascertained that the provider has been convicted of a felony under Federal or State law for an offense which the Secretary determines is detrimental to the best interests of the program or program beneficiaries.

(3) A termination of an agreement or a refusal to renew an agreement under this subsection shall become effective on the same date and in the same manner as an exclusion from participation under the programs under this subchapter becomes effective under section 1320a–7(c) of this title.

(4)(A) A hospital that fails to comply with the requirement of subsection (a)(1)(V) of this section (relating to the Bloodborne Pathogens standard) is subject to a civil money penalty in an amount described in subparagraph (B), but is not subject to termination of an agreement under this section.

(B) The amount referred to in subparagraph (A) is an amount that is similar to the amount of civil penalties that may be imposed under section 17 of the Occupational Safety and Health Act of 1970 [29 U.S.C. 666] for a violation of the Bloodborne Pathogens standard referred to in subsection (a)(1)(U)[4] of this section by a hospital that is subject to the provisions of such Act [29 U.S.C. 651 et seq.].

(C) A civil money penalty under this paragraph shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(c) Refiling after termination or nonrenewal; agreements with skilled nursing facilities

(1) Where the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services, such provider may not file another agreement under this subchapter unless the Secretary finds that the reason for the termination or nonrenewal has been removed and that there is reasonable assurance that it will not recur.

(2) Where the Secretary has terminated or has refused to renew an agreement under this sub-

[4] So in original. Probably should be subsection ''(a)(1)(V)''.

chapter with a provider of services, the Secretary shall promptly notify each State agency which administers or supervises the administration of a State plan approved under subchapter XIX of this chapter of such termination or nonrenewal.

(d) Decision to withhold payment for failure to review long-stay cases

If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1395x(k) of this title of long-stay cases in a hospital, he may, in lieu of terminating his agreement with such hospital, decide that, with respect to any individual admitted to such hospital after a subsequent date specified by him, no payment shall be made under this subchapter for inpatient hospital services (including inpatient psychiatric hospital services) after the 20th day of a continuous period of such services. Such decision may be made effective only after such notice to the hospital and to the public, as may be prescribed by regulations, and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

(e) "Provider of services" defined

For purposes of this section, the term ''provider of services'' shall include—

(1) a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services; and

(2) a community mental health center (as defined in section 1395x(ff)(3)(B) of this title), but only with respect to the furnishing of partial hospitalization services (as described in section 1395x(ff)(1) of this title).

(f) Maintenance of written policies and procedures

(1) For purposes of subsection (a)(1)(Q) of this section and sections 1395i–3(c)(2)(E), 1395*l*(s), 1395w–25(i), 1395mm(c)(8), and 1395bbb(a)(6) of this title, the requirement of this subsection is that a provider of services, Medicare+Choice organization, or prepaid or eligible organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

(A) to provide written information to each such individual concerning—

(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

(ii) the written policies of the provider or organization respecting the implementation of such rights;

(B) to document in a prominent part of the individual's current medical record whether or not the individual has executed an advance directive;

(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives at facilities of the provider or organization; and

(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

(B) in the case of a skilled nursing facility, at the time of the individual's admission as a resident,

(C) in the case of a home health agency, in advance of the individual coming under the care of the agency,

(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

(E) in the case of an eligible organization (as defined in section 1395mm(b) of this title) or an organization provided payments under section 1395*l*(a)(1)(A) of this title or a Medicare+Choice organization, at the time of enrollment of the individual with the organization.

(3) In this subsection, the term ''advance directive'' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.

(4) For construction relating to this subsection, see section 14406 of this title (relating to clarification respecting assisted suicide, euthanasia, and mercy killing).

(g) Penalties for improper billing

Except as permitted under subsection (a)(2) of this section, any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment inconsistent with an arrangement under subsection (a)(1)(H) of this section or in violation of the requirement for such an arrangement, is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than sub-

sections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(h) Dissatisfaction with determination of Secretary; appeal by institutions or agencies; single notice and hearing

(1)(A) Except as provided in paragraph (2), an institution or agency dissatisfied with a determination by the Secretary that it is not a provider of services or with a determination described in subsection (b)(2) of this section shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(B) An institution or agency described in subparagraph (A) that has filed for a hearing under subparagraph (A) shall have expedited access to judicial review under this subparagraph in the same manner as providers of services, suppliers, and individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, may obtain expedited access to judicial review under the process established under section 1395ff(b)(2) of this title. Nothing in this subparagraph shall be construed to affect the application of any remedy imposed under section 1395i–3 of this title during the pendency of an appeal under this subparagraph.

(C)(i) The Secretary shall develop and implement a process to expedite proceedings under this subsection in which—

(I) the remedy of termination of participation has been imposed;

(II) a remedy described in clause (i) or (iii) of section 1395i–3(h)(2)(B) of this title has been imposed, but only if such remedy has been imposed on an immediate basis; or

(III) a determination has been made as to a finding of substandard quality of care that results in the loss of approval of a skilled nursing facility's nurse aide training program.

(ii) Under such process under clause (i), priority shall be provided in cases of termination described in clause (i)(I).

(iii) Nothing in this subparagraph shall be construed to affect the application of any remedy imposed under section 1395i–3 of this title during the pendency of an appeal under this subparagraph.

(2) An institution or agency is not entitled to separate notice and opportunity for a hearing under both section 1320a–7 of this title and this section with respect to a determination or determinations based on the same underlying facts and issues.

(i) Intermediate sanctions for psychiatric hospitals

(1) If the Secretary determines that a psychiatric hospital which has an agreement in effect under this section no longer meets the requirements for a psychiatric hospital under this subchapter and further finds that the hospital's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the Secretary shall terminate such agreement; or

(B) do not immediately jeopardize the health and safety of its patients, the Secretary may terminate such agreement, or provide that no payment will be made under this subchapter with respect to any individual admitted to such hospital after the effective date of the finding, or both.

(2) If a psychiatric hospital, found to have deficiencies described in paragraph (1)(B), has not complied with the requirements of this subchapter—

(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the Secretary shall provide that no payment will be made under this subchapter with respect to any individual admitted to such hospital after the end of such 3-month period, or

(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no payment may be made under this subchapter with respect to any individual in the hospital until the Secretary finds that the hospital is in compliance with the requirements of this subchapter.

(j) Enrollment process for providers of services and suppliers

(1) Enrollment process

(A) In general

The Secretary shall establish by regulation a process for the enrollment of providers of services and suppliers under this subchapter.

(B) Deadlines

The Secretary shall establish by regulation procedures under which there are deadlines for actions on applications for enrollment (and, if applicable, renewal of enrollment). The Secretary shall monitor the performance of medicare administrative contractors in meeting the deadlines established under this subparagraph.

(C) Consultation before changing provider enrollment forms

The Secretary shall consult with providers of services and suppliers before making changes in the provider enrollment forms required of such providers and suppliers to be eligible to submit claims for which payment may be made under this subchapter.

(2) Hearing rights in cases of denial or non-renewal

A provider of services or supplier whose application to enroll (or, if applicable, to renew enrollment) under this subchapter is denied may have a hearing and judicial review of such denial under the procedures that apply under subsection (h)(1)(A) of this section to a provider of services that is dissatisfied with a determination by the Secretary.

(Aug. 14, 1935, ch. 531, title XVIII, § 1866, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 327; amended Pub. L. 90–248, title I, §§ 129(c)(12), 133(c), 135(b), Jan. 2, 1968, 81 Stat. 849, 851, 852; Pub. L. 92–603, title II, §§ 223(e), (g), 227(d)(2), 229(b), 249A(b)–(d), 278(a)(17), (b)(18), 281(c), Oct. 30, 1972, 86 Stat. 1394, 1406, 1409, 1427, 1453–1455; Pub. L. 95–142, §§ 3(b), 8(b), 13(b)(3), 15(a), Oct. 25, 1977, 91 Stat. 1178, 1194, 1195, 1198, 1200; Pub. L. 95–210, § 2(e), Dec. 13, 1977, 91 Stat. 1489; Pub. L. 95–292, § 4(e), June 13, 1978, 92 Stat. 315; Pub. L. 96–272, title III, § 308(b), June 17, 1980, 94 Stat. 531; Pub. L. 96–499, title IX, § 916(a), Dec. 5, 1980, 94 Stat. 2623; Pub. L. 96–611, § 1(b)(4), Dec. 28, 1980, 94 Stat. 3566; Pub. L. 97–35, title XXI, § 2153, Aug. 13, 1981, 95 Stat. 802; Pub. L. 97–248, title I, §§ 122(g)(5), (6), 128(a)(5), (d)(4), 144, Sept. 3, 1982, 96 Stat. 362, 366, 367, 393; Pub. L. 97–448, title III, § 309(a)(5), (b)(11), Jan. 12, 1983, 96 Stat. 2408, 2409; Pub. L. 98–21, title VI, § 602(f), (*l*), Apr. 20, 1983, 97 Stat. 163, 166; Pub. L. 98–369, div. B, title III, §§ 2303(f), 2315(d), 2321(c), 2323(b)(3), 2335(d), 2347(a), 2348(a), 2354(b)(33), (34), July 18, 1984, 98 Stat. 1066, 1080, 1084, 1086, 1090, 1096, 1097, 1102; Pub. L. 99–272, title IX, §§ 9121(a), 9122(a), 9401(b)(2)(F), 9402(a), 9403(b), Apr. 7, 1986, 100 Stat. 164, 167, 199, 200; Pub. L. 99–509, title IX, §§ 9305(b)(1), 9320(h)(2), 9332(e)(1), 9337(c)(2), 9343(c)(2), (3), 9353(e)(1), Oct. 21, 1986, 100 Stat. 1989, 2016, 2025, 2034, 2040, 2047; Pub. L. 99–514, title XVIII, § 1895(b)(5), Oct. 22, 1986, 100 Stat. 2933; Pub. L. 99–576, title II, § 233(a), Oct. 28, 1986, 100 Stat. 3265; Pub. L. 100–93, § 8(d), Aug. 18, 1987, 101 Stat. 693; Pub. L. 100–203, title IV, §§ 4012(a), 4062(d)(4), 4085(i)(17), (28), 4097(a), (b), 4212(e)(4), Dec. 22, 1987, 101 Stat. 1330–60, 1330–109, 1330–133, 1330–140, 1330–213, as amended Pub. L. 100–360, title IV, § 411(i)(4)(C)(vi), (j)(5), July 1, 1988, 102 Stat. 790, 791; Pub. L. 100–360, title I, § 104(d)(5), title II, §§ 201(b), (d), 202(h)(1), title IV, § 411(c)(2)(A)(i), (C), (g)(1)(D), July 1, 1988, 102 Stat. 689, 702, 718, 772, 782, as amended Pub. L. 100–485, title VI, § 608(d)(3)(F), (19)(A), Oct. 13, 1988, 102 Stat. 2414, 2419; Pub. L. 100–485, title VI, § 608(f)(1), Oct. 13, 1988, 102 Stat. 2424; Pub. L. 101–234, title I, § 101(a), title II, § 201(a), title III, § 301(b)(4), (d)(1), Dec. 13, 1989, 103 Stat. 1979, 1981, 1985, 1986; Pub. L. 101–239, title VI, §§ 6003(g)(3)(D)(xii), (xiii), 6017, 6018(a), 6020, 6112(e)(3), Dec. 19, 1989, 103 Stat. 2154, 2165, 2166, 2216; Pub. L. 101–508, title IV, §§ 4008(b)(3)(B), (m)(3)(G)[(F)], 4153(d)(1), 4157(c)(2), 4162(b)(2), 4206(a), Nov. 5, 1990, 104 Stat. 1388–44, 1388–54, 1388–84, 1388–89, 1388–96, 1388–115; Pub. L. 102–54, § 13(q)(3)(F), June 13, 1991, 105 Stat. 280; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–296, title I, § 108(c)(5), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 103–432, title I, §§ 106(b)(1)(B), 147(e)(7), 156(a)(2)(E), 160(d)(2), Oct. 31, 1994, 108 Stat. 4406, 4430, 4441, 4443; Pub. L. 104–191, title II, § 262(b)(1), Aug. 21, 1996, 110 Stat. 2031; Pub. L. 105–12, § 9(a)(2), Apr. 30, 1997, 111 Stat. 26; Pub. L. 105–33, title IV, §§ 4002(d), (e), 4201(c)(1), 4302(a), 4321(b), 4432(b)(5)(F), 4511(a)(2)(D), 4523(b), 4541(a)(3), 4641(a), 4714(b)(1), Aug. 5, 1997, 111 Stat. 329, 373, 382, 395, 422, 442, 449, 456, 487, 510; Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(k)(11), (12)], Nov. 29, 1999, 113 Stat. 1536, 1501A–368; Pub. L. 106–554, § 1(a)(6) [title III, § 313(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–499; Pub. L. 108–173, title II, § 236(a)(1), title V, §§ 505(b), 506(a), title VII, § 736(a)(13), title IX, §§ 932(b), (c)(1), 936(a), 947(a), Dec. 8, 2003, 117 Stat. 2210, 2294, 2355, 2400, 2401, 2411, 2425.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (a) and (h)(1)(B), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (a)(1), (3)(C)(ii)(II), is classified to section 1320c et seq. of this title.

Section 1713 of title 38, referred to in subsec. (a)(1)(J), was renumbered section 1781 of title 38 by Pub. L. 107–135, title II, § 208(c)(1), (2), Jan. 23, 2002, 115 Stat. 2463.

Part C of this subchapter, referred to in subsec. (a)(1)(O), is classified to section 1395w–21 et seq. of this title.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (a)(1)(O)(i), is section 222(a) of Pub. L. 92–603, which is set out as a note under section 1395b–1 of this title.

Part C of subchapter XI of this chapter, referred to in subsec. (a)(1)(R), is classified to section 1320d et seq. of this title.

The Occupational Safety and Health Act of 1970, referred to in subsecs. (a)(1)(V) and (b)(4)(B), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

Section 1395*l*(t)(5) of this title, referred to in subsec. (a)(2)(A), was redesignated section 1395*l*(t)(8) of this title by Pub. L. 106–113, div. B, § 1000(a)(6) [title II, §§ 201(a)(1), 202(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–336, 1501A–342.

AMENDMENTS

2003—Pub. L. 108–173, § 936(a)(1), inserted "; enrollment processes" in section catchline.

Subsec. (a)(1)(O). Pub. L. 108–173, § 236(a)(1), substituted "part C of this subchapter, with a PACE provider under section 1395eee or 1396u–4 of this title, or" for "part C of this subchapter or", struck out "(i)" before "with a risk-sharing contract", struck out "and (ii)" before "which does not have a contract", inserted "(or, in the case of a PACE provider, contract or other agreement)" after "have a contract", and substituted "members of the organization or PACE program eligible individuals enrolled with the PACE provider," for "members of the organization".

Subsec. (a)(1)(T). Pub. L. 108–173, § 505(b), added subpar. (T).

Subsec. (a)(1)(U). Pub. L. 108–173, § 506(a), added subpar. (U).

Subsec. (a)(1)(V). Pub. L. 108–173, § 947(a)(1), added subpar. (V).

Subsec. (b)(2)(D). Pub. L. 108–173, § 736(a)(13), realigned margins.

Subsec. (b)(4). Pub. L. 108–173, § 947(a)(2), added par. (4).

Subsec. (h)(1). Pub. L. 108–173, § 932(b), (c)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j). Pub. L. 108–173, § 936(a)(2), added subsec. (j).

2000—Subsec. (a)(1)(H)(ii)(I). Pub. L. 106–554 inserted "during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1395x(s)(2)(D) of this title, that are furnished to such an individual without regard to such period)" after "skilled nursing facility".

1999—Subsec. (a)(1)(I)(iii). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(11)(A)], substituted comma for semicolon at end.

Subsec. (a)(1)(N)(iv). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(11)(B)], struck out "and" at end.

Subsec. (a)(1)(O). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(11)(C)], substituted comma for semicolon at end.

Subsec. (a)(1)(Q). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(12)(A)], substituted comma for semicolon at end.

Subsec. (a)(1)(R). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(12)(B)], inserted ", and" at end.

1997—Subsec. (a)(1)(A). Pub. L. 105–33, § 4714(b)(1), designated existing provisions as cl. (i) and inserted before comma at end ", and (ii) not to impose any charge that is prohibited under section 1396a(n)(3) of this title".

Subsec. (a)(1)(F)(ii). Pub. L. 105–33, § 4201(c)(1), substituted "critical access" for "rural primary care".

Subsec. (a)(1)(H). Pub. L. 105–33, § 4511(a)(2)(D), substituted "section 1395x(s)(2)(K) of this title" for "section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title".

Pub. L. 105–33, § 4432(b)(5)(F), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Pub. L. 105–33, § 4201(c)(1), substituted "critical access" for "rural primary care" in two places.

Subsec. (a)(1)(I), (N). Pub. L. 105–33, § 4201(c)(1), substituted "critical access" for "rural primary care" in introductory provisions of subpars. (I) and (N) and in subpar. (N)(i).

Subsec. (a)(1)(O). Pub. L. 105–33, § 4002(e), struck out "in the case of hospitals and skilled nursing facilities," before "to accept as payment in full for", "inpatient hospital and extended care" after "to accept as payment in full for", and "(in the case of hospitals) or limits (in the case of skilled nursing facilities)" after "the organization the amounts"; inserted "with a Medicare+Choice organization under part C of this subchapter or" after "any individual enrolled" and "(less any payments under sections 1395ww(d)(11) and 1395ww(h)(3)(D) of this title)" after "under this subchapter".

Subsec. (a)(1)(S). Pub. L. 105–33, § 4321(b), added subpar. (S).

Subsec. (a)(2)(A). Pub. L. 105–33, § 4541(a)(3), which directed the amendment of subsec. (a)(2)(A)(ii) by inserting the following at the end "In the case of services described in section 1395*l*(a)(8) of this title or section 1395*l*(a)(9) of this title for which payment is made under part B of this subchapter under section 1395m(k) of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge for such services 20 percent of the lesser of the actual charge or the applicable fee schedule amount (as defined in such section) for such services.", was executed by inserting the material at the end of subpar. (A) to reflect the probable intent of Congress.

Pub. L. 105–33, § 4523(b), which directed the amendment of subsec. (a)(2)(A)(ii) by inserting the following at the end "In the case of items and services for which payment is made under part B of this subchapter under the prospective payment system established under section 1395*l*(t) of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge, the applicable copayment amount established under section 1395*l*(t)(5) of this title.", was executed by inserting the material at the end of subpar. (A) to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 105–33, § 4201(c)(1), substituted "critical access" for "rural primary care" wherever appearing.

Subsec. (b)(2)(D). Pub. L. 105–33, § 4302(a), added subpar. (D).

Subsec. (f)(1). Pub. L. 105–33, § 4002(d)(1), inserted "1395w–25(i)," after "1395*l*(s)," and ", Medicare+Choice organization," after "provider of services" in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 105–33, § 4641(a), substituted "in a prominent part of the individual's current medical record" for "in the individual's medical record".

Subsec. (f)(2)(E). Pub. L. 105–33, § 4002(d)(2), inserted "or a Medicare+Choice organization" after "section 1395*l*(a)(1)(A) of this title".

Subsec. (f)(4). Pub. L. 105–12 added par. (4).

1996—Subsec. (a)(1)(R). Pub. L. 104–191 added subpar. (R).

1994—Subsec. (a)(1)(H). Pub. L. 103–432, § 147(e)(7), substituted "section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title" for "section 1395x(s)(2)(K)(i) of this title".

Subsec. (a)(2)(A). Pub. L. 103–432, § 156(a)(2)(E), struck out ", with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)," after "section 1395x(s)(10)(A) of this title".

Subsec. (d). Pub. L. 103–432, § 106(b)(1)(B), substituted "long-stay cases in a hospital" for "long-stay cases in a hospital or skilled nursing facility", "such hospital" for "such hospital or facility" in two places, "period of such services" for "period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, as the case may be", and "notice to the hospital" for "notice to the hospital, or (in the case of a skilled nursing facility) to the facility and the hospital or hospitals with which it has a transfer agreement,".

Subsec. (f)(1). Pub. L. 103–432, § 160(d)(2), substituted "1395*l*(s)" for "1395*l*(r)" in introductory provisions.

Subsec. (h)(1). Pub. L. 103–296 inserted before period at end ", except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

1991—Subsec. (a)(1)(J). Pub. L. 102–83 substituted "section 1713 of title 38" for "section 613 of title 38".

Subsec. (a)(1)(L). Pub. L. 102–83 substituted "section 1703 of title 38" for "section 603 of title 38".

Pub. L. 102–54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

1990—Subsec. (a)(1)(F)(i). Pub. L. 101–508, § 4008(m)(3)(G)[(F)](i), substituted ")," for comma at end.

Subsec. (a)(1)(F)(ii). Pub. L. 101–508, § 4008(m)(3)(G)[(F)](ii), substituted "paragraph (3)(A)," for "paragraph (4)(A);".

Subsec. (a)(1)(H). Pub. L. 101–508, § 4157(c)(2), inserted "services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and" after "and other than".

Subsec. (a)(1)(I)(i). Pub. L. 101–508, § 4008(b)(3)(B), inserted "and to meet the requirements of such section" after "section 1395dd of this title".

Subsec. (a)(1)(P). Pub. L. 101–508, § 4153(d)(1), substituted "catheters, catheter supplies, ostomy bags, and supplies related to ostomy care" for "ostomy supplies".

Subsec. (a)(1)(Q). Pub. L. 101–508, § 4206(a)(1), added subpar. (Q).

Subsec. (e). Pub. L. 101–508, § 4162(b)(2), substituted "include—" and pars. (1) and (2) for "include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services."

Subsec. (f). Pub. L. 101–508, § 4206(a)(2), added subsec. (f).

1989—Subsec. (a)(1)(F)(i)(III). Pub. L. 101–234, § 301(b)(4), (d)(1), amended subcl. (III) identically substituting "fiscal year)" for "fiscal year))" before "of such reviews," at end.

Subsec. (a)(1)(F)(ii). Pub. L. 101–239, § 6003(g)(3)(D)(xii)(I), inserted "rural primary care hospitals," after "hospitals,".

Subsec. (a)(1)(H). Pub. L. 101–239, § 6003(g)(3)(D)(xii)(II), inserted "and in the case of rural

primary care hospitals which provide rural primary care hospital services'' after ''payment may be made under this subchapter''.

Subsec. (a)(1)(I). Pub. L. 101–239, § 6018(a)(1), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: ''in the case of a hospital and in the case of a rural primary care hospital, to comply with the requirements of section 1395dd of this title to the extent applicable,''.

Pub. L. 101–239, § 6003(g)(3)(D)(xii)(III), inserted ''and in the case of a rural primary care hospital'' after ''hospital''.

Subsec. (a)(1)(N). Pub. L. 101–239, § 6003(g)(3)(D)(xii)(IV), substituted ''hospitals and rural primary care hospitals'' for ''hospitals'' in introductory provisions and ''hospital or rural primary care hospital,'' for ''hospital,'' in cl. (i).

Subsec. (a)(1)(N)(iii), (iv). Pub. L. 101–239, § 6018(a)(2), added cls. (iii) and (iv).

Subsec. (a)(1)(P). Pub. L. 101–239, § 6112(e)(3), added subpar. (P).

Subsec. (a)(2)(A). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 201(b), (d), 202(h)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(2)(B). Pub. L. 101–239, § 6017, redesignated cl. (i) as subpar. (B) and struck out cl. (ii) which authorized charges for items or services more expensive than determined to be necessary and which have not been requested by the individual to the extent that such costs in the second fiscal period preceding the fiscal period in which such charges are imposed exceed necessary costs, under certain circumstances.

Subsec. (a)(3)(A), (B). Pub. L. 101–239, § 6003(g)(3)(D)(xiii)(I), substituted ''hospital, rural primary care hospital,'' for ''hospital,'' wherever appearing.

Subsec. (a)(3)(C)(ii)(II). Pub. L. 101–239, § 6003(g)(3)(D)(xiii)(II), substituted ''facilities, rural primary care hospitals,'' for ''facilities'' in two places.

Subsec. (d). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(5), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (i). Pub. L. 101–239, § 6020, added subsec. (i).

1988—Subsec. (a)(1)(M). Pub. L. 100–360, § 411(c)(2)(C)(i), as added by Pub. L. 100–485, § 608(d)(19)(A), struck out ''and'' at end.

Subsec. (a)(1)(N). Pub. L. 100–360, § 411(c)(2)(C)(ii), as added by Pub. L. 100–485, § 608(d)(19)(A), substituted '', and'' for period at end.

Subsec. (a)(1)(O). Pub. L. 100–360, § 411(c)(2)(A)(i), substituted cls. (i) and (ii) for ''with a risk-sharing contract under section 1395mm of this title''.

Subsec. (a)(2)(A). Pub. L. 100–360, § 201(d), substituted ''section 1395*l*(d)(1) of this title'' for ''section 1395*l*(c) of this title'' in second sentence.

Pub. L. 100–360, § 411(g)(1)(D), substituted ''section 1395m(a)(1)(B) of this title'' for ''section 1395m(a)(2) of this title'' in last sentence.

Pub. L. 100–360, § 202(h)(1), inserted ''1395m(c),'' after ''1395*l*(b),'' and ''and in the case of covered outpatient drugs, applicable coinsurance percent (specified in section 1395m(c)(2)(C) of this title) of the lesser of the actual charges for the drugs or the payment limit (established under section 1395m(c)(3) of this title)'' after ''established by the Secretary''.

Pub. L. 100–360, § 201(b), inserted at end ''A provider of services may not impose a charge under the first sentence of this subparagraph for services for which payment is made to the provider pursuant to section 1395*l*(c) of this title (relating to catastrophic benefits).''

Subsec. (a)(3)(C)(ii). Pub. L. 100–360, § 411(j)(5), made technical correction to directory language of Pub. L. 100–203, § 4097(b), see 1987 Amendment note below.

Subsec. (d). Pub. L. 100–360, § 104(d)(5), as amended by Pub. L. 100–485, § 608(d)(3)(F), struck out ''post-hospital'' before ''extended care services''.

Subsec. (f). Pub. L. 100–485, § 608(f)(1), struck out subsec. (f) which provided for termination or decertification and alternatives thereto.

Subsec. (g). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(28), see 1987 Amendment note below.

1987—Subsec. (a)(1)(F)(i)(III). Pub. L. 100–203, § 4097(a), substituted ''1988'' for ''1986'' and inserted ''and for any direct or administrative costs incurred as a result of review functions added with respect to a subsequent fiscal year'' after ''inflation''.

Subsec. (a)(1)(O). Pub. L. 100–203, § 4012(a), added subpar. (O).

Subsec. (a)(2)(A). Pub. L. 100–203, § 4062(d)(4), inserted at end ''Notwithstanding the first sentence of this subparagraph, a home health agency may charge such an individual or person, with respect to covered items subject to payment under section 1395m(a) of this title, the amount of any deduction imposed under section 1395*l*(b) of this title and 20 percent of the payment basis described in section 1395m(a)(2) of this title.''

Subsec. (a)(3). Pub. L. 100–93, § 8(d)(1), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The Secretary may refuse to enter into or renew an agreement under this section with a provider of services if any person who has a direct or indirect ownership or control interest of 5 percent or more in such provider, or who is an officer, director, agent, or managing employee (as defined in section 1320a–5(b) of this title) of such provider, is a person described in section 1320a–5(a) of this title.''

Subsec. (a)(3)(C)(ii). Pub. L. 100–203, § 4097(b), as amended by Pub. L. 100–360, § 411(j)(5), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''shall not be less in the aggregate for hospitals, facilities, and agencies for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such hospitals, facilities, or agencies under part B of subchapter XI of this chapter.''

Subsec. (a)(4). Pub. L. 100–93, § 8(d)(1)(B), redesignated par. (4) as (3).

Subsec. (b). Pub. L. 100–93, § 8(d)(2), amended subsec. (b) generally, substituting pars. (1) to (3) for former pars. (1) to (5).

Subsec. (c)(1). Pub. L. 100–93, § 8(d)(3), (4), substituted ''the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services'' for ''an agreement filed under this subchapter by a provider of services has been terminated by the Secretary'' and inserted ''or nonrenewal'' after ''termination''.

Subsec. (c)(2). Pub. L. 100–203, § 4212(e)(4), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''In the case of a skilled nursing facility participating in the programs established by this subchapter and subchapter XIX of this chapter, the Secretary may enter into an agreement under this section only if such facility has been approved pursuant to section 1396i(a) of this title, and the term of any such agreement shall be in accordance with the period of approval of eligibility specified by the Secretary pursuant to such section.''

Subsec. (c)(3). Pub. L. 100–203, § 4212(e)(4), redesignated par. (3) as (2).

Pub. L. 100–93, § 8(d)(3), (4), substituted ''the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services'' for ''an agreement filed under this subchapter by a provider of services has been terminated by the Secretary'' and inserted ''or nonrenewal'' after ''termination''.

Subsec. (g). Pub. L. 100–203, § 4085(i)(28), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''money penalty'' for ''monetary penalty'' in first sentence and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a–7a of this title with respect to actions described in subsection (a) of that section.''

Pub. L. 100–203, § 4085(i)(17), substituted ''inconsistent with an arrangement under subsection (a)(1)(H) of this section or in violation of the requirement for such an arrangement'' for ''for a hospital outpatient service for which payment may be made under part B of this subchapter and such bill or request violates an arrangement under subsection (a)(1)(H) of this section''.

Subsec. (h). Pub. L. 100–93, § 8(d)(5), added subsec. (h).

1986—Subsec. (a)(1)(F). Pub. L. 99–509, § 9353(e)(1)(A), designated existing provisions as cl. (i) and in cl. (i), as so designated, redesignated former cls. (i) to (iii) as subcls. (I) to (III), and added cl. (ii).

Pub. L. 99–272, § 9402(a), redesignated cl. (iv) as (iii) and in cl. (iii), as so redesignated, substituted ''1986'' for ''1982'', and struck out former cl. (iii) which provided that the cost of such agreement to the hospital shall not be less than amount which reflects the rates per review established in fiscal year 1982 for both direct and administrative costs (adjusted for inflation).

Subsec. (a)(1)(H). Pub. L. 99–509, § 9343(c)(2), struck out ''inpatient hospital'' after ''hospitals which provide'' and substituted ''a patient'' for ''an inpatient''.

Pub. L. 99–509, § 9320(h)(2), inserted '', and other than services of a certified registered nurse anesthetist'' after ''section 1395y(a)(14) of this title''.

Subsec. (a)(1)(I). Pub. L. 99–514 redesignated subpar. (I) relating to agreement not to charge for certain items and services as subpar. (K).

Pub. L. 99–272, § 9403(b), added subpar. (I) relating to agreement not to charge for certain items or services.

Pub. L. 99–272, § 9121(a), added subpar. (I) relating to compliance with the requirements of section 1395dd of this title.

Subsec. (a)(1)(J). Pub. L. 99–272, § 9122(a), added subpar. (J).

Subsec. (a)(1)(K). Pub. L. 99–514 redesignated subpar. (I) relating to agreement not to charge for certain items and services as subpar. (K).

Subsec. (a)(1)(L). Pub. L. 99–576 added subpar. (L).

Subsec. (a)(1)(M). Pub. L. 99–509, § 9305(b)(1), added subpar. (M).

Subsec. (a)(1)(N). Pub. L. 99–509, § 9332(e)(1), added subpar. (N).

Subsec. (a)(2)(A). Pub. L. 99–272, § 9401(b)(2)(F), inserted '', with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),'' after ''1395x(s)(10)(A) of this title'' in last sentence.

Subsec. (a)(4). Pub. L. 99–509, § 9353(e)(1)(B), added par. (4).

Subsec. (e). Pub. L. 99–509, § 9337(c)(2), inserted in second sentence ''(or meets the requirements of such section through the operation of section 1395x(g) of this title)'' in two places, and inserted ''or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services'' after ''(as therein defined)''.

Subsec. (g). Pub. L. 99–509, § 9343(c)(3), added subsec. (g).

1984—Subsec. (a)(1)(E). Pub. L. 98–369, § 2354(b)(33), inserted a comma at end.

Subsec. (a)(1)(F). Pub. L. 98–369, § 2315(d), substituted ''(b), (c), or (d)'' for ''(c) or (d)''.

Pub. L. 98–369, § 2347(a)(1), substituted ''maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located, under which the organization'' for ''maintain an agreement with a utilization and quality control peer review organization (if there is such an organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located) under which the organization''.

Pub. L. 98–369, § 2347(a)(2), repealed amendment made by Pub. L. 98–21, § 602(*l*)(1). See 1983 Amendment note below.

Subsec. (a)(2)(A). Pub. L. 98–369, § 2303(f), inserted ''and with respect to clinical diagnostic laboratory tests'' after ''section 1395x(s)(10) of this title''.

Pub. L. 98–369, § 2321(c), inserted ''or which are durable medical equipment furnished as home health services'' after ''part B of this subchapter''.

Pub. L. 98–369, § 2323(b)(3), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (b)(3). Pub. L. 98–369, § 2335(d)(1), substituted ''(including inpatient psychiatric hospital services)'' for ''(including tuberculosis hospital services and inpatient psychiatric hospital services)''.

Pub. L. 98–369, § 2354(b)(34), realigned margin of par. (3).

Subsec. (b)(4). Pub. L. 98–369, § 2348(a), substituted ''more than 30 days after such effective date'' for ''after the calendar year in which such termination is effective''.

Subsec. (d). Pub. L. 98–369, § 2335(d)(2), substituted ''(including inpatient psychiatric hospital services)'' for ''(including inpatient tuberculosis hospital services and inpatient psychiatric hospital services)''.

1983—Subsec. (a)(1). Pub. L. 98–21, § 602(*l*)(2), inserted provision at end of par. (1) that in the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization's contract with the Secretary under part B of subchapter XI terminates on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

Subsec. (a)(1)(F). Pub. L. 98–21, § 602(*l*)(1), which provided that, effective Oct. 1, 1984, subpar. (F) is amended by substituting ''(with an organization'' for ''(if there is such an organization'', was repealed by Pub. L. 98–369, § 2347(a)(2), effective July 18, 1984.

Subsec. (a)(1)(F) to (H). Pub. L. 98–21, § 602(f)(1), added subpars. (F) to (H).

Subsec. (a)(2)(A). Pub. L. 97–448, § 309(b)(11), inserted a comma after ''1395e(a)(1)''.

Pub. L. 97–448, § 309(a)(5), amended directory language of Pub. L. 97–248, § 122(g)(5), to correct an error, and did not involve any change in text. See 1982 Amendment note below.

Subsec. (a)(2)(B)(ii). Pub. L. 98–21, § 602(f)(2), inserted ''and except with respect to inpatient hospital costs with respect to which amounts are payable under section 1395ww(d) of this title'' after ''(except with respect to emergency services)'' in provision preceding subcl. (I).

1982—Subsec. (a)(1)(B). Pub. L. 97–248, § 128(d)(4), inserted ''of section 1395y(a) of this title''.

Subsec. (a)(1)(E). Pub. L. 97–248, § 144, added subpar. (E).

Subsec. (a)(2)(A). Pub. L. 97–248, § 122(g)(5), as amended by Pub. L. 97–448, § 309(a)(5), substituted ''(a)(3), or (a)(4)'' for ''or (a)(3)''.

Subsec. (b). Pub. L. 97–248, § 128(a)(5), in provisions preceding par. (1), struck out ''(and in the case of a skilled nursing facility, prior to the end of the term specified in subsection (a)(1) of this section)'' after ''may be terminated''.

Subsec. (b)(4)(A). Pub. L. 97–248, § 122(g)(6), inserted ''or hospice care'' after ''home health services''.

1981—Subsec. (a)(1). Pub. L. 97–35 struck out provision following subpar. (D) which provided that an agreement with a skilled nursing facility be for a term not exceeding 12 months with the exception that the Secretary could extend the time in specified situations.

1980—Subsec. (a)(2)(A). Pub. L. 96–611 inserted provision that a provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1395x(s)(10) of this title for which payment is made under part B of this subchapter.

Subsec. (c)(3). Pub. L. 96–272 added par. (3).

Subsec. (f). Pub. L. 96–499 added subsec. (f).

1978—Subsec. (a)(2)(A). Pub. L. 95–292 provided for computation of and charging of coinsurance amounts

for items and services furnished individuals with end stage renal disease on the basis established by the Secretary.

Subsec. (a)(3). Pub. L. 95–142, § 8(b)(1), added par. (3).

Subsec. (b)(2)(G). Pub. L. 95–142, § 8(b)(2), added cl. (G).

1977—Subsec. (a)(1)(D). Pub. L. 95–142, § 15(a), added subpar. (D).

Subsec. (b)(2)(C). Pub. L. 95–142, § 3(b), designated existing provisions as subcl. (i) and added subcl. (ii).

Subsec. (b)(2)(F). Pub. L. 95–142, § 13(b)(3), substituted ''of a quality which fails to meet professionally recognized standards of health care'' for ''harmful to individuals or to be of a grossly inferior quality'', and struck out provisions relating to approval by an appropriate program review team.

Subsec. (c)(2). Pub. L. 95–210 substituted ''section 1396i(a) of this title'' for ''section 1396i of this title''.

1972—Subsec. (a)(1). Pub. L. 92–603, §§ 227(d)(2), 249A(b), 278(a)(17), (b)(18), 281(c), substituted ''Any provider of services (except a fund designated for purposes of section 1395f(g) and section 1395n(e) of this title)'' for ''Any provider of services'', ''skilled nursing facility'' for ''extended care facility'', inserted provision that the agreement be for a term of not to exceed 12 months with an allowable extension of 2 months under specified circumstances, redesignated subpar. (B) as (C) and added subpar. (B).

Subsec. (a)(2)(B). Pub. L. 92–603, § 223(e), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(2)(C). Pub. L. 92–603, § 223(g)(2), substituted ''this subparagraph'' for ''clause (iii) of the preceding sentence''.

Subsec. (a)(2)(D). Pub. L. 92–603, § 223(g)(1), added subpar. (D).

Subsec. (b). Pub. L. 92–603, §§ 229(b), 249A(c), 278(a)(17), inserted ''(and in the case of an extended care facility, prior to the end of the term specified in subsection (a)(1) of this section)'' in provision preceding par. (1), in par. (2), added cls. (D) to (F), and in par. (3), substituted ''(including tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services, with respect to services furnished after the effective date of such termination, except that payment may be made for up to thirty days with respect to inpatient institutional services furnished to any eligible individual who was admitted to such institution prior to'' for ''(including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services, with respect to such services furnished to any individual who is admitted to the hospital or extended care facility furnishing such services on or after'' and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (c). Pub. L. 92–603, § 249A(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 92–603, § 278(a)(17), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

1968—Subsec. (a)(2)(A). Pub. L. 90–248, § 129(c)(12)(A)(i), (ii), substituted ''or (a)(3)'' for '', (a)(2), or (a)(4)'' in cl. (i), and deleted ''or, in the case of outpatient hospital diagnostic services, for which payment is made under part A'' in cl. (ii).

Subsec. (a)(2)(C). Pub. L. 90–248, § 129(c)(12)(B), substituted ''1395e(a)(2)'' for ''1395e(a)(3)''.

Pub. L. 90–248, § 135(b), authorized a provider of services to charge for blood in accordance with its customary practices, included, in addition to whole blood for which a provider of services may charge, equivalent quantities of packed red blood cells, and provided that blood furnished an individual will be deemed replaced when the provider is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells) furnished the individual to which the three pint deductible applies.

Subsec. (e). Pub. L. 90–248, § 133(c), added subsec. (e).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title II, § 236(c), Dec. 8, 2003, 117 Stat. 2212, provided that: ''The amendments made by this section [amending this section and sections 1395eee, 1396a, and 1396u–4 of this title] shall apply to services furnished on or after January 1, 2004.''

Amendment by section 505(b) of Pub. L. 108–173 first applicable to the wage index for discharges occurring on or after Oct. 1, 2004, see section 505(c) of Pub. L. 108–173, set out as a note under section 1395ww of this title.

Pub. L. 108–173, title V, § 506(b), Dec. 8, 2003, 117 Stat. 2295, provided that: ''The amendments made by this section [amending this section] shall apply as of a date specified by the Secretary of Health and Human Services (but in no case later than 1 year after the date of enactment of this Act [Dec. 8, 2003]) to medicare participation agreements in effect (or entered into) on or after such date.''

Amendment by section 932(b), (c)(1) of Pub. L. 108–173 applicable to appeals filed on or after Oct. 1, 2004, see section 932(d) of Pub. L. 108–173, set out as a note under section 1395i–3 of this title.

Pub. L. 108–173, title IX, § 936(b), Dec. 8, 2003, 117 Stat. 2412, provided that:

''(1) ENROLLMENT PROCESS.—The Secretary [of Health and Human Services] shall provide for the establishment of the enrollment process under section 1866(j)(1) of the Social Security Act [subsec. (j)(1) of this section], as added by subsection (a)(2), within 6 months after the date of the enactment of this Act [Dec. 8, 2003].

''(2) CONSULTATION.—Section 1866(j)(1)(C) of the Social Security Act [subsec. (j)(1)(C) of this section], as added by subsection (a)(2), shall apply with respect to changes in provider enrollment forms made on or after January 1, 2004.

''(3) HEARING RIGHTS.—Section 1866(j)(2) of the Social Security Act [subsec. (j)(2) of this section], as added by subsection (a)(2), shall apply to denials occurring on or after such date (not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003]) as the Secretary specifies.''

Pub. L. 108–173, title IX, § 947(b), Dec. 8, 2003, 117 Stat. 2425, provided that: ''The amendments made by this [sic] subsection (a) [amending this section] shall apply to hospitals as of July 1, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to services furnished on or after Jan. 1, 2001, see section 1(a)(6) [title III, § 313(c)] of Pub. L. 106–554, set out as a note under section 1395u of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997,

see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4302(a) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to the entry and renewal of contracts on or after such date, see section 4302(c) of Pub. L. 105–33, set out as a note under section 1395u of this title.

Amendment by section 4321(b) of Pub. L. 105–33 effective as of date specified by Secretary of Health and Human Services in regulations to be issued by Secretary not later than date which is one year after Aug. 5, 1997, see section 4321(d)(2) of Pub. L. 105–33, set out as an Effective Date note under section 1320b–16 of this title.

Amendment by section 4432(b)(5)(F) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Amendment by section 4511(a)(2)(D) of Pub. L. 105–33 applicable with respect to services furnished and supplies provided on and after Jan. 1, 1998, see section 4511(e) of Pub. L. 105–33, set out as a note under section 1395k of this title.

Amendment by section 4541(a)(3) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1999, see section 4541(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Section 4641(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to provider agreements entered into, renewed, or extended on or after such date (not later than 1 year after the date of the enactment of this Act [Aug. 5, 1997]) as the Secretary of Health and Human Services specifies.''

Amendments by section 4714(b)(1) of Pub. L. 105–33 applicable to payment for (and with respect to provider agreements with respect to) items and services furnished on or after Aug. 5, 1997, see section 4714(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 106(b)(2) of Pub. L. 103–432 provided that: ''The amendments made by paragraph (1) [amending this section and section 1395f of this title] shall take effect as if included in the enactment of OBRA–1987 [Pub. L. 100–203].''

Amendment by section 147(e)(7) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Amendment by section 156(a)(2)(E) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(b)(4) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and section 1395dd of this title] shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4153(d)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 135(e)(7), Oct. 31, 1994, 108 Stat. 4424, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Amendment by section 4157(c)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4157(d) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4162(b)(2) of Pub. L. 101–508 applicable with respect to partial hospitalization services provided on or after Oct. 1, 1991, see section 4162(c) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4206(a) of Pub. L. 101–508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4206(e)(1) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6018(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act [Dec. 19, 1989], without regard to whether regulations to carry out such amendments have been promulgated by such date.''

Amendment by section 6112(e)(3) of Pub. L. 101–239 applicable with respect to items furnished on or after Jan. 1, 1990, see section 6112(e)(4) of Pub. L. 101–239, set out as a note under section 1395m of this title.

Amendment by section 101(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 608(d)(3)(F), (19)(A) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, and amendment by section 608(f)(1) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(1), (2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 104(d)(5) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Amendment by section 202(h)(1) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(c)(2)(C), (g)(1)(D), (i)(4)(C)(vi), (j)(5) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(c)(2)(A)(ii) of Pub. L. 100–360 provided that: ''The amendment made by clause (i) [amending this section] shall apply to admissions occurring on or after the first day of the fourth month beginning after the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4012(a) of Pub. L. 100–203 applicable to admissions occurring on or after Apr. 1, 1988, or, if later, the earliest date the Secretary can provide the information required under section 4012(c) of Pub. L. 100–203 [42 U.S.C. 1395mm note] in machine readable form, see section 4012(d) of Pub. L. 100–203, set out as a note under section 1395mm of this title.

Amendment by section 4062(d)(4) of Pub. L. 100–203 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as a note under section 1395f of this title.

Section 4085(i)(17) of Pub. L. 100–203 provided that the amendment made by such section 4085(i)(17) is effective as if included in the enactment of Pub. L. 99–509.

Section 4097(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply with respect to fiscal years beginning on or after October 1, 1988.''

Amendment by section 4212(e)(4) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 233(b) of Pub. L. 99–576 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring after June 30, 1987.''

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9305(b)(2) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall first prescribe the language required under section 1866(a)(1)(M) of the Social Security Act [subsec. (a)(1)(M) of this section] not later than six months after the date of the enactment of this Act [Oct. 21, 1986]. The requirement of such section shall apply to admissions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide.''

Amendment by section 9320(h)(2) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9332(e)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to agreements under section 1866(a) of the Social Security Act [subsec. (a) of this section] as of October 1, 1987.''

Amendment by section 9337(c)(2) of Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

Amendment by section 9343(c)(2), (3) of Pub. L. 99–509 applicable to services furnished after June 30, 1987, see section 9343(h)(4) of Pub. L. 99–509, as amended, set out as a note under section 1395*l* of this title.

Section 9353(e)(3)(A) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to provider agreements as of October 1, 1987.''

Amendment by section 9121(a) of Pub. L. 99–272 effective on first day of first month that begins at least 90 days after Apr. 7, 1986, see section 9121(c) of Pub. L. 99–272, set out as a note under section 1395dd of this title.

Section 9122(b) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(6), Oct. 22, 1986, 100 Stat. 2933, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring on or after January 1, 1987.''

Section 9402(c)(1) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by section 9403(b) of Pub. L. 99–272 effective Apr. 7, 1986, see section 9403(c) of Pub. L. 99–272, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2303(f) of Pub. L. 98–369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(1), (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Amendment by section 2315(d) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2315(g) of Pub. L. 98–369, set out as an Effective and Termination Dates of 1984 Amendment note under section 1395ww of this title.

Amendment by section 2321(c) of Pub. L. 98–369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2323(b)(3) of Pub. L. 98–369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Amendment by section 2335(d) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2347(a) of Pub. L. 98–369 effective July 18, 1984, see section 2347(d) of Pub. L. 98–369, set out as a note under section 1320c–2 of this title.

Section 2348(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall apply to terminations issued on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(33), (34) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 602(*l*) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title III, § 2347(a)(2), July 18, 1984, 98 Stat. 1096, provided that the amendment made by that section is effective Oct. 1, 1984.

Amendment by section 602(f)(2) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Subsec. (a)(1)(F) to (H) of this section, as added by section 602(f)(1)(C) of Pub. L. 98–21, effective Oct. 1, 1983, see section 604(a)(2) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by section 309(a)(5) of Pub. L. 97–448 effective as if originally included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 309(c)(1) of Pub. L. 97–448, set out as a note under section 426 of this title.

Amendment by section 309(b)(11) of Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(g)(5), (6) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Amendment by section 128(a)(5) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of this title.

Amendment by section 128(d)(4) of Pub. L. 97–248 effective Sept. 3, 1982, see section 128(e)(3) of Pub. L. 97–248, set out as a note under section 1395x of this title.

Amendment by section 144 of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 2(f) of Pub. L. 95–210 provided that:

''(1) The amendments made by this section [amending this section and sections 1396a, 1396d, and 1396i of this title] shall (except as otherwise provided in paragraph (2)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act [subchapter XIX of this chapter], on and after the first day of the first calendar quarter that begins more than six months after the date of enactment of this Act [Dec. 13, 1977].

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [subchapter XIX of this chapter] which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title [subchapter] solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Dec. 13, 1977].''

Amendment by section 3(b) of Pub. L. 95–142 effective Oct. 25, 1977, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Amendment by section 8(b) of Pub. L. 95–142 [amending this section] applicable with respect to contracts, agreements, etc., made on and after first day of fourth month beginning after Oct. 25, 1977, see section 8(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–5 of this title.

Amendment by section 13(b)(3) of Pub. L. 95–142 effective Oct. 25, 1977, see section 13(c) of Pub. L. 95–142, set out as a note under section 1395y of this title.

Section 15(b) of Pub. L. 95–142 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to agreements entered into or renewed on and after the date of enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 223(e), (g) of Pub. L. 92–603 effective with respect to accounting periods beginning after Dec. 31, 1972, see section 223(h) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 227(d)(2) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 249A(e) of Pub. L. 92–603 provided that: ''The provisions of this section [enacting section 1396 of this title and amending this section] shall be effective with respect to agreements filed with the Secretary under section 1866 of the Social Security Act [this section] by skilled nursing facilities (as defined in section 1861(j) of such Act [section 1395x(j) of this title]) before, on, or after the date of enactment of this Act [Oct. 30, 1972], but accepted by him on or after such date.''

Amendment by section 281(c) of Pub. L. 92–603 applicable in the case of notices sent to individuals after 1968, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(12) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 133(c) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

Amendment by section 135(b) of Pub. L. 90–248 applicable with respect to payment for blood (or packed red blood cells) furnished an individual after Dec. 31, 1967, see section 135(d) of Pub. L. 90–248, set out as a note under section 1395e of this title.

REGULATIONS

Pub. L. 108–173, title V, § 506(c), Dec. 8, 2003, 117 Stat. 2295, provided that: ''The Secretary [of Health and Human Services] shall promulgate regulations to carry out the amendments made by subsection (a) [amending this section].''

GAO STUDY AND REPORT ON THE PROPAGATION OF CONCIERGE CARE

Pub. L. 108–173, title VI, § 650, Dec. 8, 2003, 117 Stat. 2331, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on concierge care (as defined in paragraph (2)) to determine the extent to which such care—

''(A) is used by medicare beneficiaries (as defined in section 1802(b)(5)(A) of the Social Security Act (42 U.S.C. 1395a(b)(5)(A))); and

''(B) has impacted upon the access of medicare beneficiaries (as so defined) to items and services for which reimbursement is provided under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(2) CONCIERGE CARE.—In this section, the term 'concierge care' means an arrangement under which, as a prerequisite for the provision of a health care item or service to an individual, a physician, practitioner (as described in section 1842(b)(18)(C) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C))), or other individual—

''(A) charges a membership fee or another incidental fee to an individual desiring to receive the health care item or service from such physician, practitioner, or other individual; or

''(B) requires the individual desiring to receive the health care item or service from such physi-

cian, practitioner, or other individual to purchase an item or service.

''(b) REPORT.—Not later than the date that is 12 months after the date of enactment of this Act [Dec. 8, 2003], the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a)(1) together with such recommendations for legislative or administrative action as the Comptroller General determines to be appropriate.''

EFFECT ON STATE LAW

Section 4206(c) of Pub. L. 101–508 provided that: ''Nothing in subsections (a) and (b) [amending this section and sections 1395*l* and 1395mm of this title] shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which, as a matter of conscience, cannot implement an advance directive.''

REPORTS TO CONGRESS ON NUMBER OF HOSPITALS TERMINATING OR NOT RENEWING PROVIDER AGREEMENTS

Section 233(c) of Pub. L. 99–576 provided that:

''(1) The Secretary of Health and Human Services shall periodically submit to the Congress a report on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act [this section] as a result of the additional conditions imposed under the amendments made by subsection (a) [amending this section].

''(2) Not later than October 1, 1987, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding implementation of this section [amending this section]. Thereafter, the Administrator shall notify such committees if any hospital terminates or fails to renew an agreement described in paragraph (1) for the reasons described in that paragraph.''

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 7 on page 96 identifies a report on ''Hospitals that have terminated or failed to renew an agreement under section 1866 of Social Security Act as a result of the additional conditions imposed'' authorized by 42 U.S.C. 1395cc note), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

Section 9122(d) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall report to Congress periodically on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act [this section] as a result of the additional conditions imposed under the amendments made by subsection (a) [amending this section].''

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 7 on page 96 identifies a report on ''Hospitals that have terminated or failed to renew an agreement under section 1866 of Social Security Act as a result of the additional conditions imposed'' authorized by 42 U.S.C. 1395cc note), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

DELAY IN IMPLEMENTATION OF REQUIREMENT THAT HOSPITALS MAINTAIN AGREEMENTS WITH UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATION

Section 2347(b) of Pub. L. 98–369 provided that: ''Notwithstanding section 604(a)(2) of the Social Security Amendments of 1983 [section 604(a)(2) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 1395ww of this title], the requirement that a hospital maintain an agreement with a utilization and quality control peer review organization, as contained in section 1866(a)(1)(F) of the Social Security Act [subsec. (a)(1)(F) of this section], shall become effective on November 15, 1984.''

INTERIM WAIVER IN CERTAIN CASES OF BILLING RULE FOR ITEMS AND SERVICES OTHER THAN PHYSICIANS' SERVICES

For authority to waive the requirements of subsec. (a)(1)(H) of this section for any cost period prior to Oct. 1, 1986, where immediate compliance would threaten the stability of patient care, see section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title.

PRIVATE SECTOR REVIEW INITIATIVE

Section 119 of Pub. L. 97–248 provided that:

''(a) The Secretary of Health and Human Services shall undertake an initiative to improve medical review by intermediaries and carriers under title XVIII of the Social Security Act [this subchapter] and to encourage similar review efforts by private insurers and other private entities. The initiative shall include the development of specific standards for measuring the performance of such intermediaries and carriers with respect to the identification and reduction of unnecessary utilization of health services.

''(b) Where such review activity results in the denial of payment to providers of services under title XVIII of the Social Security Act [this subchapter], such providers shall be prohibited, in accordance with sections 1866 and 1879 of such title [this section and section 1395pp of this title], from collecting any payments from beneficiaries unless otherwise provided under such title.''

AGREEMENTS FILED AND ACCEPTED PRIOR TO OCT. 30, 1972, DEEMED TO BE FOR SPECIFIED TERM ENDING DEC. 31, 1973

Section 249A(f) of Pub. L. 92–603 provided that: ''Notwithstanding any other provision of law, any agreement, filed by a skilled nursing facility (as defined in section 1861(j) of the Social Security Act [section 1395x(j) of this title]) with the Secretary under section 1866 of such Act [this section] and accepted by him prior to the date of enactment of this Act [Oct. 30, 1972], which was in effect on such date shall be deemed to be for a specified term ending on December 31, 1973.''

§ 1395cc–1. Demonstration of application of physician volume increases to group practices

(a) Demonstration program authorized

(1) In general

The Secretary shall conduct demonstration projects to test and, if proven effective, expand the use of incentives to health care groups participating in the program under this subchapter that—

(A) encourage coordination of the care furnished to individuals under the programs under parts A and B of this subchapter by institutional and other providers, practitioners, and suppliers of health care items and services;

(B) encourage investment in administrative structures and processes to ensure efficient service delivery; and

(C) reward physicians for improving health outcomes.

Such projects shall focus on the efficiencies of furnishing health care in a group-practice setting as compared to the efficiencies of furnishing health care in other health care delivery systems.

(2) Administration by contract

Except as otherwise specifically provided, the Secretary may administer the program

under this section in accordance with section 1395cc–2 of this title.

(3) Definitions

For purposes of this section, terms have the following meanings:

(A) Physician

Except as the Secretary may otherwise provide, the term ''physician'' means any individual who furnishes services which may be paid for as physicians' services under this subchapter.

(B) Health care group

The term ''health care group'' means a group of physicians (as defined in subparagraph (A)) organized at least in part for the purpose of providing physicians' services under this subchapter. As the Secretary finds appropriate, a health care group may include a hospital and any other individual or entity furnishing items or services for which payment may be made under this subchapter that is affiliated with the health care group under an arrangement structured so that such individual or entity participates in a demonstration under this section and will share in any bonus earned under subsection (d) of this section.

(b) Eligibility criteria

(1) In general

The Secretary is authorized to establish criteria for health care groups eligible to participate in a demonstration under this section, including criteria relating to numbers of health care professionals in, and of patients served by, the group, scope of services provided, and quality of care.

(2) Payment method

A health care group participating in the demonstration under this section shall agree with respect to services furnished to beneficiaries within the scope of the demonstration (as determined under subsection (c) of this section)—

(A) to be paid on a fee-for-service basis; and

(B) that payment with respect to all such services furnished by members of the health care group to such beneficiaries shall (where determined appropriate by the Secretary) be made to a single entity.

(3) Data reporting

A health care group participating in a demonstration under this section shall report to the Secretary such data, at such times and in such format as the Secretary requires, for purposes of monitoring and evaluation of the demonstration under this section.

(c) Patients within scope of demonstration

(1) In general

The Secretary shall specify, in accordance with this subsection, the criteria for identifying those patients of a health care group who shall be considered within the scope of the demonstration under this section for purposes of application of subsection (d) of this section and for assessment of the effectiveness of the group in achieving the objectives of this section.

(2) Other criteria

The Secretary may establish additional criteria for inclusion of beneficiaries within a demonstration under this section, which may include frequency of contact with physicians in the group or other factors or criteria that the Secretary finds to be appropriate.

(3) Notice requirements

In the case of each beneficiary determined to be within the scope of a demonstration under this section with respect to a specific health care group, the Secretary shall ensure that such beneficiary is notified of the incentives, and of any waivers of coverage or payment rules, applicable to such group under such demonstration.

(d) Incentives

(1) Performance target

The Secretary shall establish for each health care group participating in a demonstration under this section—

(A) a base expenditure amount, equal to the average total payments under parts A and B of this subchapter for patients served by the health care group on a fee-for-service basis in a base period determined by the Secretary; and

(B) an annual per capita expenditure target for patients determined to be within the scope of the demonstration, reflecting the base expenditure amount adjusted for risk and expected growth rates.

(2) Incentive bonus

The Secretary shall pay to each participating health care group (subject to paragraph (4)) a bonus for each year under the demonstration equal to a portion of the medicare savings realized for such year relative to the performance target.

(3) Additional bonus for process and outcome improvements

At such time as the Secretary has established appropriate criteria based on evidence the Secretary determines to be sufficient, the Secretary shall also pay to a participating health care group (subject to paragraph (4)) an additional bonus for a year, equal to such portion as the Secretary may designate of the saving to the program under this subchapter resulting from process improvements made by and patient outcome improvements attributable to activities of the group.

(4) Limitation

The Secretary shall limit bonus payments under this section as necessary to ensure that the aggregate expenditures under this subchapter (inclusive of bonus payments) with respect to patients within the scope of the demonstration do not exceed the amount which the Secretary estimates would be expended if the demonstration projects under this section were not implemented.

(Aug. 14, 1935, ch. 531, title XVIII, § 1866A, as added Pub. L. 106–554, § 1(a)(6) [title IV, § 412(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–509.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (a)(1)(A) and (d)(1)(A), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

GAO REPORT

Pub. L. 106–554, § 1(a)(6) [title IV, § 412(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–515, provided that: ''Not later than 2 years after the date on which the demonstration project under section 1866A of the Social Security Act [this section], as added by subsection (a), is implemented, the Comptroller General of the United States shall submit to Congress a report on such demonstration project. The report shall include such recommendations with respect to changes to the demonstration project that the Comptroller General determines appropriate.''

§ 1395cc–2. Provisions for administration of demonstration program

(a) General administrative authority

(1) Beneficiary eligibility

Except as otherwise provided by the Secretary, an individual shall only be eligible to receive benefits under the program under section 1395cc–1 of this title (in this section referred to as the ''demonstration program'') if such individual—

(A) is enrolled under the program under part B of this subchapter and entitled to benefits under part A of this subchapter; and

(B) is not enrolled in a Medicare+Choice plan under part C of this subchapter, an eligible organization under a contract under section 1395mm of this title (or a similar organization operating under a demonstration project authority), an organization with an agreement under section 1395*l*(a)(1)(A) of this title, or a PACE program under section 1395eee of this title.

(2) Secretary's discretion as to scope of program

The Secretary may limit the implementation of the demonstration program to—

(A) a geographic area (or areas) that the Secretary designates for purposes of the program, based upon such criteria as the Secretary finds appropriate;

(B) a subgroup (or subgroups) of beneficiaries or individuals and entities furnishing items or services (otherwise eligible to participate in the program), selected on the basis of the number of such participants that the Secretary finds consistent with the effective and efficient implementation of the program;

(C) an element (or elements) of the program that the Secretary determines to be suitable for implementation; or

(D) any combination of any of the limits described in subparagraphs (A) through (C).

(3) Voluntary receipt of items and services

Items and services shall be furnished to an individual under the demonstration program only at the individual's election.

(4) Agreements

The Secretary is authorized to enter into agreements with individuals and entities to furnish health care items and services to beneficiaries under the demonstration program.

(5) Program standards and criteria

The Secretary shall establish performance standards for the demonstration program including, as applicable, standards for quality of health care items and services, cost-effectiveness, beneficiary satisfaction, and such other factors as the Secretary finds appropriate. The eligibility of individuals or entities for the initial award, continuation, and renewal of agreements to provide health care items and services under the program shall be conditioned, at a minimum, on performance that meets or exceeds such standards.

(6) Administrative review of decisions affecting individuals and entities furnishing services

An individual or entity furnishing services under the demonstration program shall be entitled to a review by the program administrator (or, if the Secretary has not contracted with a program administrator, by the Secretary) of a decision not to enter into, or to terminate, or not to renew, an agreement with the entity to provide health care items or services under the program.

(7) Secretary's review of marketing materials

An agreement with an individual or entity furnishing services under the demonstration program shall require the individual or entity to guarantee that it will not distribute materials that market items or services under the program without the Secretary's prior review and approval.

(8) Payment in full

(A) In general

Except as provided in subparagraph (B), an individual or entity receiving payment from the Secretary under a contract or agreement under the demonstration program shall agree to accept such payment as payment in full, and such payment shall be in lieu of any payments to which the individual or entity would otherwise be entitled under this subchapter.

(B) Collection of deductibles and coinsurance

Such individual or entity may collect any applicable deductible or coinsurance amount from a beneficiary.

(b) Contracts for program administration

(1) In general

The Secretary may administer the demonstration program through a contract with a program administrator in accordance with the provisions of this subsection.

(2) Scope of program administrator contracts

The Secretary may enter into such contracts for a limited geographic area, or on a regional or national basis.

(3) Eligible contractors

The Secretary may contract for the administration of the program with—

(A) an entity that, under a contract under section 1395h or 1395u of this title, determines the amount of and makes payments for health care items and services furnished under this subchapter; or

(B) any other entity with substantial experience in managing the type of program concerned.

(4) Contract award, duration, and renewal

(A) In general

A contract under this subsection shall be for an initial term of up to three years, renewable for additional terms of up to three years.

(B) Noncompetitive award and renewal for entities administering part A or part B payments

The Secretary may enter or renew a contract under this subsection with an entity described in paragraph (3)(A) without regard to the requirements of section 5 of title 41.

(5) Applicability of Federal Acquisition Regulation

The Federal Acquisition Regulation shall apply to program administration contracts under this subsection.

(6) Performance standards

The Secretary shall establish performance standards for the program administrator including, as applicable, standards for the quality and cost-effectiveness of the program administered, and such other factors as the Secretary finds appropriate. The eligibility of entities for the initial award, continuation, and renewal of program administration contracts shall be conditioned, at a minimum, on performance that meets or exceeds such standards.

(7) Functions of program administrator

A program administrator shall perform any or all of the following functions, as specified by the Secretary:

(A) Agreements with entities furnishing health care items and services

Determine the qualifications of entities seeking to enter or renew agreements to provide services under the demonstration program, and as appropriate enter or renew (or refuse to enter or renew) such agreements on behalf of the Secretary.

(B) Establishment of payment rates

Negotiate or otherwise establish, subject to the Secretary's approval, payment rates for covered health care items and services.

(C) Payment of claims or fees

Administer payments for health care items or services furnished under the program.

(D) Payment of bonuses

Using such guidelines as the Secretary shall establish, and subject to the approval of the Secretary, make bonus payments as described in subsection (c)(2)(B) of this section to entities furnishing items or services for which payment may be made under the program.

(E) Oversight

Monitor the compliance of individuals and entities with agreements under the program with the conditions of participation.

(F) Administrative review

Conduct reviews of adverse determinations specified in subsection (a)(6) of this section.

(G) Review of marketing materials

Conduct a review of marketing materials proposed by an entity furnishing services under the program.

(H) Additional functions

Perform such other functions as the Secretary may specify.

(8) Limitation of liability

The provisions of section 1320c–6(b) of this title shall apply with respect to activities of contractors and their officers, employees, and agents under a contract under this subsection.

(9) Information sharing

Notwithstanding section 1306 of this title and section 552a of title 5, the Secretary is authorized to disclose to an entity with a program administration contract under this subsection such information (including medical information) on individuals receiving health care items and services under the program as the entity may require to carry out its responsibilities under the contract.

(c) Rules applicable to both program agreements and program administration contracts

(1) Records, reports, and audits

The Secretary is authorized to require entities with agreements to provide health care items or services under the demonstration program, and entities with program administration contracts under subsection (b) of this section, to maintain adequate records, to afford the Secretary access to such records (including for audit purposes), and to furnish such reports and other materials (including audited financial statements and performance data) as the Secretary may require for purposes of implementation, oversight, and evaluation of the program and of individuals' and entities' effectiveness in performance of such agreements or contracts.

(2) Bonuses

Notwithstanding any other provision of law, but subject to subparagraph (B)(ii), the Secretary may make bonus payments under the demonstration program from the Federal Health Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in amounts that do not exceed the amounts authorized under the program in accordance with the following:

(A) Payments to program administrators

The Secretary may make bonus payments under the program to program administrators.

(B) Payments to entities furnishing services

(i) In general

Subject to clause (ii), the Secretary may make bonus payments to individuals or entities furnishing items or services for which payment may be made under the demonstration program, or may authorize the program administrator to make such

bonus payments in accordance with such guidelines as the Secretary shall establish and subject to the Secretary's approval.

(ii) Limitations

The Secretary may condition such payments on the achievement of such standards related to efficiency, improvement in processes or outcomes of care, or such other factors as the Secretary determines to be appropriate.

(3) Antidiscrimination limitation

The Secretary shall not enter into an agreement with an entity to provide health care items or services under the demonstration program, or with an entity to administer the program, unless such entity guarantees that it will not deny, limit, or condition the coverage or provision of benefits under the program, for individuals eligible to be enrolled under such program, based on any health status-related factor described in section 300gg–1(a)(1) of this title.

(d) Limitations on judicial review

The following actions and determinations with respect to the demonstration program shall not be subject to review by a judicial or administrative tribunal:

(1) Limiting the implementation of the program under subsection (a)(2) of this section.

(2) Establishment of program participation standards under subsection (a)(5) of this section or the denial or termination of, or refusal to renew, an agreement with an entity to provide health care items and services under the program.

(3) Establishment of program administration contract performance standards under subsection (b)(6) of this section, the refusal to renew a program administration contract, or the noncompetitive award or renewal of a program administration contract under subsection (b)(4)(B) of this section.

(4) Establishment of payment rates, through negotiation or otherwise, under a program agreement or a program administration contract.

(5) A determination with respect to the program (where specifically authorized by the program authority or by subsection (c)(2) of this section)—

(A) as to whether cost savings have been achieved, and the amount of savings; or

(B) as to whether, to whom, and in what amounts bonuses will be paid.

(e) Application limited to parts A and B

None of the provisions of this section or of the demonstration program shall apply to the programs under part C of this subchapter.

(f) Reports to Congress

Not later than two years after December 21, 2000, and biennially thereafter for six years, the Secretary shall report to Congress on the use of authorities under the demonstration program. Each report shall address the impact of the use of those authorities on expenditures, access, and quality under the programs under this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1866B, as added Pub. L. 106–554, § 1(a)(6) [title IV, § 412(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–511; amended Pub. L. 108–173, title VII, § 736(c)(5), Dec. 8, 2003, 117 Stat. 2356.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in subsecs. (a)(1) and (e), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (b)(7)(D). Pub. L. 108–173 substituted ''(c)(2)(B)'' for ''(c)(2)(A)(ii)''.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

§ 1395cc–3. Health care quality demonstration program

(a) Definitions

In this section:

(1) Beneficiary

The term ''beneficiary'' means an individual who is entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, including any individual who is enrolled in a Medicare Advantage plan under part C of this subchapter.

(2) Health care group

(A) In general

The term ''health care group'' means—

(i) a group of physicians that is organized at least in part for the purpose of providing physician's services under this subchapter;

(ii) an integrated health care delivery system that delivers care through coordinated hospitals, clinics, home health agencies, ambulatory surgery centers, skilled nursing facilities, rehabilitation facilities and clinics, and employed, independent, or contracted physicians; or

(iii) an organization representing regional coalitions of groups or systems described in clause (i) or (ii).

(B) Inclusion

As the Secretary determines appropriate, a health care group may include a hospital or any other individual or entity furnishing items or services for which payment may be made under this subchapter that is affiliated with the health care group under an arrangement structured so that such hospital, individual, or entity participates in a demonstration project under this section.

(3) Physician

Except as otherwise provided for by the Secretary, the term ''physician'' means any individual who furnishes services that may be paid for as physicians' services under this subchapter.

(b) Demonstration projects

The Secretary shall establish a 5-year demonstration program under which the Secretary

shall approve demonstration projects that examine health delivery factors that encourage the delivery of improved quality in patient care, including—

(1) the provision of incentives to improve the safety of care provided to beneficiaries;

(2) the appropriate use of best practice guidelines by providers and services by beneficiaries;

(3) reduced scientific uncertainty in the delivery of care through the examination of variations in the utilization and allocation of services, and outcomes measurement and research;

(4) encourage shared decision making between providers and patients;

(5) the provision of incentives for improving the quality and safety of care and achieving the efficient allocation of resources;

(6) the appropriate use of culturally and ethnically sensitive health care delivery; and

(7) the financial effects on the health care marketplace of altering the incentives for care delivery and changing the allocation of resources.

(c) Administration by contract

(1) In general

Except as otherwise provided in this section, the Secretary may administer the demonstration program established under this section in a manner that is similar to the manner in which the demonstration program established under section 1395cc–1 of this title is administered in accordance with section 1395cc–2 of this title.

(2) Alternative payment systems

A health care group that receives assistance under this section may, with respect to the demonstration project to be carried out with such assistance, include proposals for the use of alternative payment systems for items and services provided to beneficiaries by the group that are designed to—

(A) encourage the delivery of high quality care while accomplishing the objectives described in subsection (b) of this section; and

(B) streamline documentation and reporting requirements otherwise required under this subchapter.

(3) Benefits

A health care group that receives assistance under this section may, with respect to the demonstration project to be carried out with such assistance, include modifications to the package of benefits available under the original medicare fee-for-service program under parts A and B of this subchapter or the package of benefits available through a Medicare Advantage plan under part C of this subchapter. The criteria employed under the demonstration program under this section to evaluate outcomes and determine best practice guidelines and incentives shall not be used as a basis for the denial of medicare benefits under the demonstration program to patients against their wishes (or if the patient is incompetent, against the wishes of the patient's surrogate) on the basis of the patient's age or expected length of life or of the patient's present or predicted disability, degree of medical dependency, or quality of life.

(d) Eligibility criteria

To be eligible to receive assistance under this section, an entity shall—

(1) be a health care group;

(2) meet quality standards established by the Secretary, including—

(A) the implementation of continuous quality improvement mechanisms that are aimed at integrating community-based support services, primary care, and referral care;

(B) the implementation of activities to increase the delivery of effective care to beneficiaries;

(C) encouraging patient participation in preference-based decisions;

(D) the implementation of activities to encourage the coordination and integration of medical service delivery; and

(E) the implementation of activities to measure and document the financial impact on the health care marketplace of altering the incentives of health care delivery and changing the allocation of resources; and

(3) meet such other requirements as the Secretary may establish.

(e) Waiver authority

The Secretary may waive such requirements of this subchapter and subchapter XI of this chapter as may be necessary to carry out the purposes of the demonstration program established under this section.

(f) Budget neutrality

With respect to the 5-year period of the demonstration program under subsection (b) of this section, the aggregate expenditures under this subchapter for such period shall not exceed the aggregate expenditures that would have been expended under this subchapter if the program established under this section had not been implemented.

(g) Notice requirements

In the case of an individual that receives health care items or services under a demonstration program carried out under this section, the Secretary shall ensure that such individual is notified of any waivers of coverage or payment rules that are applicable to such individual under this subchapter as a result of the participation of the individual in such program.

(h) Participation and support by Federal agencies

In carrying out the demonstration program under this section, the Secretary may direct—

(1) the Director of the National Institutes of Health to expand the efforts of the Institutes to evaluate current medical technologies and improve the foundation for evidence-based practice;

(2) the Administrator of the Agency for Healthcare Research and Quality to, where possible and appropriate, use the program under this section as a laboratory for the study of quality improvement strategies and to evaluate, monitor, and disseminate information relevant to such program; and

(3) the Administrator of the Centers for Medicare & Medicaid Services and the Administrator of the Center for Medicare Choices to support linkages of relevant medicare data to registry information from participating health care groups for the beneficiary populations served by the participating groups, for analysis supporting the purposes of the demonstration program, consistent with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996.

(Aug. 14, 1935, ch. 531, title XVIII, § 1866C, as added Pub. L. 108–173, title VI, § 646, Dec. 8, 2003, 117 Stat. 2324.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in subsecs. (a)(1) and (c)(3), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (h)(3), is Pub. L. 104–191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see section 1(a) of Pub. L. 104–191, set out as a Short Title of 1996 Amendments note under section 201 of this title and Tables.

§ 1395dd. Examination and treatment for emergency medical conditions and women in labor

(a) Medical screening requirement

In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists.

(b) Necessary stabilizing treatment for emergency medical conditions and labor

(1) In general

If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section.

(2) Refusal to consent to treatment

A hospital is deemed to meet the requirement of paragraph (1)(A) with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment, but the individual (or a person acting on the individual's behalf) refuses to consent to the examination and treatment. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment.

(3) Refusal to consent to transfer

A hospital is deemed to meet the requirement of paragraph (1) with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with subsection (c) of this section and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer, but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.

(c) Restricting transfers until individual stabilized

(1) Rule

If an individual at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(3)(B) of this section), the hospital may not transfer the individual unless—

(A)(i) the individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility,

(ii) a physician (within the meaning of section 1395x(r)(1) of this title) has signed a certification that[1] based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from effecting the transfer, or

(iii) if a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as defined by the Secretary in regulations) has signed a certification described in clause (ii) after a physician (as defined in section 1395x(r)(1) of this title), in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification; and

(B) the transfer is an appropriate transfer (within the meaning of paragraph (2)) to that facility.

A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.

(2) Appropriate transfer

An appropriate transfer to a medical facility is a transfer—

(A) in which the transferring hospital provides the medical treatment within its ca-

[1] So in original. Probably should be followed by a comma.

pacity which minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;

(B) in which the receiving facility—

(i) has available space and qualified personnel for the treatment of the individual, and

(ii) has agreed to accept transfer of the individual and to provide appropriate medical treatment;

(C) in which the transferring hospital sends to the receiving facility all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(1)(C) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;

(D) in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and

(E) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals transferred.

(d) Enforcement

(1) Civil money penalties

(A) A participating hospital that negligently violates a requirement of this section is subject to a civil money penalty of not more than $50,000 (or not more than $25,000 in the case of a hospital with less than 100 beds) for each such violation. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply with respect to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) Subject to subparagraph (C), any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital, including a physician on-call for the care of such an individual, and who negligently violates a requirement of this section, including a physician who—

(i) signs a certification under subsection (c)(1)(A) of this section that the medical benefits reasonably to be expected from a transfer to another facility outweigh the risks associated with the transfer, if the physician knew or should have known that the benefits did not outweigh the risks, or

(ii) misrepresents an individual's condition or other information, including a hospital's obligations under this section,

is subject to a civil money penalty of not more than $50,000 for each such violation and, if the violation is gross and flagrant or is repeated, to exclusion from participation in this subchapter and State health care programs. The provisions of section 1320a–7a of this title (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to a civil money penalty and exclusion under this subparagraph in the same manner as such provisions apply with respect to a penalty, exclusion, or proceeding under section 1320a–7a(a) of this title.

(C) If, after an initial examination, a physician determines that the individual requires the services of a physician listed by the hospital on its list of on-call physicians (required to be maintained under section 1395cc(a)(1)(I) of this title) and notifies the on-call physician and the on-call physician fails or refuses to appear within a reasonable period of time, and the physician orders the transfer of the individual because the physician determines that without the services of the on-call physician the benefits of transfer outweigh the risks of transfer, the physician authorizing the transfer shall not be subject to a penalty under subparagraph (B). However, the previous sentence shall not apply to the hospital or to the on-call physician who failed or refused to appear.

(2) Civil enforcement

(A) Personal harm

Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(B) Financial loss to other medical facility

Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for financial loss, under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(C) Limitations on actions

No action may be brought under this paragraph more than two years after the date of the violation with respect to which the action is brought.

(3) Consultation with peer review organizations

In considering allegations of violations of the requirements of this section in imposing sanctions under paragraph (1) or in terminating a hospital's participation under this subchapter, the Secretary shall request the appropriate utilization and quality control peer review organization (with a contract under part B of subchapter XI of this chapter) to assess whether the individual involved had an emergency medical condition which had not been stabilized, and provide a report on its findings. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall request such a review be-

fore effecting a sanction under paragraph (1) and shall provide a period of at least 60 days for such review. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall also request such a review before making a compliance determination as part of the process of terminating a hospital's participation under this subchapter for violations related to the appropriateness of a medical screening examination, stabilizing treatment, or an appropriate transfer as required by this section, and shall provide a period of 5 days for such review. The Secretary shall provide a copy of the organization's report to the hospital or physician consistent with confidentiality requirements imposed on the organization under such part B.

(4) Notice upon closing an investigation

The Secretary shall establish a procedure to notify hospitals and physicians when an investigation under this section is closed.

(e) Definitions

In this section:

(1) The term ''emergency medical condition'' means—

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part; or

(B) with respect to a pregnant woman who is having contractions—

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(2) The term ''participating hospital'' means a hospital that has entered into a provider agreement under section 1395cc of this title.

(3)(A) The term ''to stabilize'' means, with respect to an emergency medical condition described in paragraph (1)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta).

(B) The term ''stabilized'' means, with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta).

(4) The term ''transfer'' means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (A) has been declared dead, or (B) leaves the facility without the permission of any such person.

(5) The term ''hospital'' includes a critical access hospital (as defined in section 1395x(mm)(1) of this title).

(f) Preemption

The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section.

(g) Nondiscrimination

A participating hospital that has specialized capabilities or facilities (such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers as identified by the Secretary in regulation) shall not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.

(h) No delay in examination or treatment

A participating hospital may not delay provision of an appropriate medical screening examination required under subsection (a) of this section or further medical examination and treatment required under subsection (b) of this section in order to inquire about the individual's method of payment or insurance status.

(i) Whistleblower protections

A participating hospital may not penalize or take adverse action against a qualified medical person described in subsection (c)(1)(A)(iii) of this section or a physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of a requirement of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1867, as added Pub. L. 99–272, title IX, § 9121(b), Apr. 7, 1986, 100 Stat. 164; amended Pub. L. 99–509, title IX, § 9307(c)(4), Oct. 21, 1986, 100 Stat. 1996; Pub. L. 99–514, title XVIII, § 1895(b)(4), Oct. 22, 1986, 100 Stat. 2933; Pub. L. 100–203, title IV, § 4009(a)(1), formerly § 4009(a)(1), (2), Dec. 22, 1987, 101 Stat. 1330–56, 1330–57; Pub. L. 100–360, title IV, § 411(b)(8)(A)(i), July 1, 1988, 102 Stat. 772; Pub. L. 100–485, title VI, § 608(d)(18)(E), Oct. 13, 1988, 102 Stat. 2419; Pub. L. 101–239, title VI, §§ 6003(g)(3)(D)(xiv), 6211(a)–(h), Dec. 19, 1989, 103 Stat. 2154, 2245–2248; Pub. L. 101–508, title IV, §§ 4008(b)(1)–(3)(A), 4207(a)(1)(A), (2), (3), (k)(3), formerly 4027(a)(1)(A), (2), (3), (k)(3), Nov. 5, 1990, 104 Stat. 1388–44, 1388–117, 1388–124, renumbered and amended Pub. L. 103–432, title I, § 160(d)(4), (5)(A), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 105–33, title IV, § 4201(c)(1), Aug. 5, 1997, 111 Stat. 373; Pub. L. 108–173, title VII, § 736(a)(14), title IX, § 944(b), (c)(1), Dec. 8, 2003, 117 Stat. 2355, 2423.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (d)(3), is classified to section 1320c et seq. of this title.

PRIOR PROVISIONS

A prior section 1395dd, act Aug. 14, 1935, ch. 531, title XVIII, § 1867, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 329; amended Jan. 2, 1968, Pub. L. 90–248, title I, § 164(a), 81 Stat. 873; Oct. 30, 1972, Pub. L. 92–603, title II, § 288, 86 Stat. 1457, related to creation, composition, meetings, and functions of the Health Insurance Benefits Advisory Council and the appointment of a Chairman and members thereto, and qualifications, terms of office, compensation, and reimbursement of travel expenses of members, prior to repeal by Pub. L. 98–369, div. B, title III, § 2349(a), July 18, 1984, 98 Stat. 1097, eff. July 18, 1984.

AMENDMENTS

2003—Subsec. (d)(1)(B). Pub. L. 108–173, § 736(a)(14)(A), substituted ''if the violation is'' for ''if the violation is is'' in concluding provisions.

Subsec. (d)(3). Pub. L. 108–173, § 944(c)(1), inserted ''or in terminating a hospital's participation under this subchapter'' after ''in imposing sanctions under paragraph (1)'' and inserted at end ''Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall also request such a review before making a compliance determination as part of the process of terminating a hospital's participation under this subchapter for violations related to the appropriateness of a medical screening examination, stabilizing treatment, or an appropriate transfer as required by this section, and shall provide a period of 5 days for such review. The Secretary shall provide a copy of the organization's report to the hospital or physician consistent with confidentiality requirements imposed on the organization under such part B.''

Subsec. (d)(4). Pub. L. 108–173, § 944(b), added par. (4).

Subsec. (e)(1)(B). Pub. L. 108–173, § 736(a)(14)(B), substituted ''a pregnant woman'' for ''a pregnant women''.

Subsec. (e)(2). Pub. L. 108–173, § 736(a)(14)(C), substituted ''means a hospital'' for ''means hospital''.

1997—Subsec. (e)(5). Pub. L. 105–33 substituted ''critical access'' for ''rural primary care''.

1994—Subsec. (d)(3). Pub. L. 103–432, § 160(d)(5)(A), made technical amendment to Pub. L. 101–508, § 4207(a)(1)(A). See 1990 Amendment note below.

1990—Subsec. (c)(2)(C). Pub. L. 101–508, § 4008(b)(3)(A)(iii), substituted ''subsection (d)(1)(C)'' for ''subsection (d)(2)(C)''.

Subsec. (d)(1). Pub. L. 101–508, § 4008(b)(3)(A)(i), (ii), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: ''If a hospital knowingly and willfully, or negligently, fails to meet the requirements of this section, such hospital is subject to—

''(A) termination of its provider agreement under this subchapter in accordance with section 1395cc(b) of this title, or

''(B) at the option of the Secretary, suspension of such agreement for such period of time as the Secretary determines to be appropriate, upon reasonable notice to the hospital and to the public.''

Subsec. (d)(1)(B). Pub. L. 101–508, § 4207(a)(2), (3), formerly § 4027(a)(2), (3), as renumbered by Pub. L. 103–432, § 160(d)(4), which directed amendment of par. (2)(B) by substituting ''negligently'' for ''knowingly'' and ''is gross and flagrant or is repeated'' for ''knowing and willful or negligent'', was executed by making the substitutions in par. (1)(B) to reflect the probable intent of Congress and the intervening redesignation of par. (2) as (1) by Pub. L. 101–508, § 4008(b)(3)(A)(ii). See above.

Subsec. (d)(2). Pub. L. 101–508, § 4008(b)(3)(A)(ii), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (d)(2)(A). Pub. L. 101–508, § 4008(b)(1), (2), substituted ''negligently'' for ''knowingly'' and inserted ''(or not more than $25,000 in the case of a hospital with less than 100 beds)'' after ''$50,000''.

Subsec. (d)(3). Pub. L. 101–508, § 4207(a)(1)(A), formerly § 4027(a)(1)(A), as renumbered and amended by Pub. L. 103–432, § 160(d)(4), (5)(A), added par. (3). Former par. (3) redesignated (2).

Subsec. (i). Pub. L. 101–508, § 4207(k)(3), formerly § 4027(k)(3), as renumbered by Pub. L. 103–432, § 160(d)(4), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''A participating hospital may not penalize or take adverse action against a physician because the physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized.''

1989—Pub. L. 101–239, § 6211(h)(2)(A), struck out ''active'' before ''labor'' in section catchline.

Subsec. (a). Pub. L. 101–239, § 6211(h)(2)(B), which directed the amendment of subsec. (a) by striking out ''or to determine if the individual is in active labor (within the meaning of section (e)(2) of this section)'' was executed by striking out ''or to determine if the individual is in active labor (within the meaning of subsection (e)(2) of this section)'' after ''exists''.

Pub. L. 101–239, § 6211(a), substituted ''hospital's emergency department, including ancillary services routinely available to the emergency department,'' for ''hospital's emergency department''.

Subsec. (b). Pub. L. 101–239, § 6211(h)(2)(C), struck out ''active'' before ''labor'' in heading.

Subsec. (b)(1). Pub. L. 101–239, § 6211(h)(2)(D)(i), struck out ''or is in active labor'' after ''emergency medical condition'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 101–239, § 6211(h)(2)(D)(ii), struck out ''or to provide for treatment of the labor'' after ''stabilize the medical condition''.

Subsec. (b)(2). Pub. L. 101–239, § 6211(b)(1), inserted ''and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment,'' after ''in that paragraph'', substituted ''and treatment.'' for ''or treatment.'', and inserted at end ''The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment.''

Subsec. (b)(3). Pub. L. 101–239, § 6211(b)(2), inserted ''and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer,'' after ''subsection (c) of this section'' and inserted at end ''The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.''

Subsec. (c). Pub. L. 101–239, § 6211(g)(1)(A), substituted ''individual'' for ''patient'' in heading.

Subsec. (c)(1). Pub. L. 101–239, § 6211(c)(4), (g)(1)(B), (h)(2)(E), in introductory provisions, substituted ''an individual'' for ''a patient'', ''subsection (e)(3)(B) of this section)'' for ''subsection (e)(4)(B) of this section) or is in active labor'', and ''the individual'' for ''the patient'', and inserted at end ''A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.''

Subsec. (c)(1)(A)(i). Pub. L. 101–239, § 6211(c)(1), (g)(1)(B), substituted ''the individual'' for ''the patient'', ''the individual's behalf'' for ''the patient's behalf'', and ''after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility'' for ''requests that the transfer be effected''.

Subsec. (c)(1)(A)(ii). Pub. L. 101–239, § 6211(c)(2)(B), (3), (g)(1)(B), substituted ''has signed a certification that based upon the information available at the time of transfer'' for '', or other qualified medical personnel when a physician is not readily available in the emergency department, has signed a certification that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time'' and ''individual and, in the case of labor, to the unborn child'' for ''individual's medical condition''.

Subsec. (c)(1)(A)(iii). Pub. L. 101–239, § 6211(c)(2)(A), (C), (D), added cl. (iii).

Subsec. (c)(2)(A). Pub. L. 101–239, § 6211(c)(5), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (c)(2)(B). Pub. L. 101–239, § 6211(c)(5)(A), (g)(1)(B), redesignated subpar. (A) as (B) and substituted ''the individual'' for ''the patient'' in cls. (i) and (ii). Former subpar. (B) redesignated (C).

Subsec. (c)(2)(C). Pub. L. 101–239, § 6211(c)(5)(A), (d), redesignated subpar. (B) as (C) and substituted ''sends to'' for ''provides'' and ''all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(2)(C) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment'' for ''with appropriate medical records (or copies thereof) of the examination and treatment effected at the transferring hospital''. Former subpar. (C) redesignated (D).

Subsec. (c)(2)(D). Pub. L. 101–239, § 6211(c)(5)(A), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (c)(2)(E). Pub. L. 101–239, § 6211(c)(5)(A), (g)(1)(B), redesignated subpar. (D) as (E) and substituted ''individuals'' for ''patients''.

Subsec. (d)(2)(B). Pub. L. 101–239, § 6211(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The responsible physician in a participating hospital with respect to the hospital's violation of a requirement of this subsection is subject to the sanctions described in section 1395u(j)(2) of this title, except that, for purposes of this subparagraph, the civil money penalty with respect to each violation may not exceed $50,000, rather than $2,000.''

Subsec. (d)(2)(C). Pub. L. 101–239, § 6211(e)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''As used in this paragraph, the term 'responsible physician' means, with respect to a hospital's violation of a requirement of this section, a physician who—

''(i) is employed by, or under contract with, the participating hospital, and

''(ii) acting as such an employee or under such a contract, has professional responsibility for the provision of examinations or treatments for the individual, or transfers of the individual, with respect to which the violation occurred.''

Subsec. (e)(1). Pub. L. 101–239, § 6211(h)(1)(A), substituted ''means—'' and subpars. (A) and (B) for ''means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

''(A) placing the patient's health in serious jeopardy,

''(B) serious impairment to bodily functions, or

''(C) serious dysfunction of any bodily organ or part.''

Subsec. (e)(2). Pub. L. 101–239, § 6211(h)(1)(B), (E), redesignated par. (3) as (2) and struck out former par. (2) which defined ''active labor''.

Subsec. (e)(3). Pub. L. 101–239, § 6211(h)(1)(E), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 101–239, § 6211(h)(1)(E), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(4)(A). Pub. L. 101–239, § 6211(h)(1)(C), substituted ''emergency medical condition described in paragraph (1)(A)'' for ''emergency medical condition'', ''likely to result from or occur during'' for ''likely to result from'', and ''from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta)'' for ''from a facility''.

Subsec. (e)(4)(B). Pub. L. 101–239, § 6211(h)(1)(D), inserted ''described in paragraph (1)(A)'' after ''emergency medical condition'', ''or occur during'' after ''to result from'', and '', or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta)'' after ''from a facility''.

Subsec. (e)(5). Pub. L. 101–239, § 6211(h)(1)(E), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 101–239, § 6211(g)(2), substituted ''an individual'' for ''a patient'' in two places.

Subsec. (e)(6). Pub. L. 101–239, § 6211(h)(1)(E), redesignated par. (6) as (5).

Pub. L. 101–239, § 6003(g)(3)(D)(xiv), added par. (6).

Subsecs. (g) to (i). Pub. L. 101–239, § 6211(f), added subsecs. (g) to (i).

1988—Subsec. (d)(1). Pub. L. 100–360, § 411(b)(8)(A)(i), amended Pub. L. 100–203, § 4009(a)(2), see 1987 Amendment note below.

Subsec. (d)(2). Pub. L. 100–360, § 411(b)(8)(A)(i), as amended by Pub. L. 100–485, § 608(d)(18)(E), amended Pub. L. 100–203, § 4009(a)(1), see 1987 Amendment note below.

1987—Subsec. (d)(1). Pub. L. 100–203, § 4009(a)(2), which directed insertion of a provision related to imposing the sanction described in section 1395u(j)(2)(A) of this title, was amended generally by Pub. L. 100–360, § 411(b)(8)(A)(i), so that it does not amend par. (1).

Subsec. (d)(2). Pub. L. 100–203, § 4009(a)(1), as amended by Pub. L. 100–360, § 411(b)(8)(A)(i), as amended by Pub. L. 100–485, § 608(d)(18)(E), substituted subpars. (A) and (B) for ''In addition to the other grounds for imposition of a civil money penalty under section 1320a–7a(a) of this title, a participating hospital that knowingly violates a requirement of this section and the responsible physician in the hospital with respect to such a violation are each subject, under that section, to a civil money penalty of not more than $25,000 for each such violation.'', designated second sentence as subpar. (C), substituted ''this paragraph'' for ''the previous sentence'', and redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (C).

1986—Subsec. (b)(2), (3). Pub. L. 99–509 struck out ''legally responsible'' after ''individual (or a''.

Subsec. (e)(3). Pub. L. 99–514 struck out ''and has, under the agreement, obligated itself to comply with the requirements of this section'' after ''section 1395cc of this title''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 944(c)(2), Dec. 8, 2003, 117 Stat. 2423, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to terminations of participation initiated on or after the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4008(b)(1)–(3)(A) of Pub. L. 101–508 applicable to actions occurring on or after the first day of the sixth month beginning after Nov. 5, 1990, see section 4008(b)(4) of Pub. L. 101–508, set out as a note under section 1395cc of this title.

Amendment by section 4207(a)(1)(A) of Pub. L. 101–508 effective on the first day of the first month beginning more than 60 days after Nov. 5, 1990, see section 4207(a)(1)(C) of Pub. L. 101–508, as amended, set out as a note under section 1320c–3 of this title.

Section 4207(a)(4), formerly 4027(a)(4), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (5)(B), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by paragraphs (2) and (3) [amending this section] shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6211(i) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act [Dec. 19, 1989], without regard to whether regulations to carry out such amendments have been promulgated by such date.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4009(a)(2), formerly § 4009(a)(3), of Pub. L. 100–203, as redesignated by Pub. L. 100–360, title IV, § 411(b)(8)(A)(ii), July 1, 1988, 102 Stat. 772, provided that: ''The amendments made by this subsection [amending this section] shall apply to actions occurring on or after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section 9121(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [enacting this section and amending section 1395cc of this title] shall take effect on the first day of the first month that begins at least 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

SHORT TITLE

This section is popularly known as the Emergency Medical Treatment and Labor Act (EMTALA).

EMERGENCY MEDICAL TREATMENT AND LABOR ACT (EMTALA) TECHNICAL ADVISORY GROUP

Pub. L. 108–173, title IX, § 945, Dec. 8, 2003, 117 Stat. 2423, provided that:

''(a) ESTABLISHMENT.—The Secretary [of Health and Human Services] shall establish a Technical Advisory Group (in this section referred to as the 'Advisory Group') to review issues related to the Emergency Medical Treatment and Labor Act (EMTALA) and its implementation. In this section, the term 'EMTALA' refers to the provisions of section 1867 of the Social Security Act (42 U.S.C. 1395dd).

''(b) MEMBERSHIP.—The Advisory Group shall be composed of 19 members, including the Administrator of the Centers for Medicare & Medicaid Services and the Inspector General of the Department of Health and Human Services and of which—

''(1) 4 shall be representatives of hospitals, including at least one public hospital, that have experience with the application of EMTALA and at least 2 of which have not been cited for EMTALA violations;

''(2) 7 shall be practicing physicians drawn from the fields of emergency medicine, cardiology or cardiothoracic surgery, orthopedic surgery, neurosurgery, pediatrics or a pediatric subspecialty, obstetrics-gynecology, and psychiatry, with not more than one physician from any particular field;

''(3) 2 shall represent patients;

''(4) 2 shall be staff involved in EMTALA investigations from different regional offices of the Centers for Medicare & Medicaid Services; and

''(5) 1 shall be from a State survey office involved in EMTALA investigations and 1 shall be from a peer review organization, both of whom shall be from areas other than the regions represented under paragraph (4).

In selecting members described in paragraphs (1) through (3), the Secretary shall consider qualified individuals nominated by organizations representing providers and patients.

''(c) GENERAL RESPONSIBILITIES.—The Advisory Group—

''(1) shall review EMTALA regulations;

''(2) may provide advice and recommendations to the Secretary with respect to those regulations and their application to hospitals and physicians;

''(3) shall solicit comments and recommendations from hospitals, physicians, and the public regarding the implementation of such regulations; and

''(4) may disseminate information on the application of such regulations to hospitals, physicians, and the public.

''(d) ADMINISTRATIVE MATTERS.—

''(1) CHAIRPERSON.—The members of the Advisory Group shall elect a member to serve as chairperson of the Advisory Group for the life of the Advisory Group.

''(2) MEETINGS.—The Advisory Group shall first meet at the direction of the Secretary. The Advisory Group shall then meet twice per year and at such other times as the Advisory Group may provide.

''(e) TERMINATION.—The Advisory Group shall terminate 30 months after the date of its first meeting.

''(f) WAIVER OF ADMINISTRATIVE LIMITATION.—The Secretary shall establish the Advisory Group notwithstanding any limitation that may apply to the number of advisory committees that may be established (within the Department of Health and Human Services or otherwise).''

FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS

Pub. L. 108–173, title X, § 1011, Dec. 8, 2003, 117 Stat. 2432, provided that:

''(a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENT.—

''(1) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary [of Health and Human Services] $250,000,000 for each of fiscal years 2005 through 2008 for the purpose of making allotments under this section for payments to eligible providers in States described in paragraph (1) or (2) of subsection (b).

''(2) AVAILABILITY.—Funds appropriated under paragraph (1) shall remain available until expended.

''(b) STATE ALLOTMENTS.—

''(1) BASED ON PERCENTAGE OF UNDOCUMENTED ALIENS.—

''(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $167,000,000 of such amount to make allotments for such fiscal year in accordance with subparagraph (B).

''(B) FORMULA.—The amount of the allotment for payments to eligible providers in each State for a fiscal year shall be equal to the product of—

''(i) the total amount available for allotments under this paragraph for the fiscal year; and

''(ii) the percentage of undocumented aliens residing in the State as compared to the total number of such aliens residing in all States, as determined by the Statistics Division of the Immigration and Naturalization Service, as of January 2003, based on the 2000 decennial census.

''(2) BASED ON NUMBER OF UNDOCUMENTED ALIEN APPREHENSION STATES.—

''(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $83,000,000 of such amount to make allotments, in addition to amounts allotted under paragraph (1), for such fiscal year for each of the 6 States with the highest number of undocumented alien apprehensions for such fiscal year.

''(B) DETERMINATION OF ALLOTMENTS.—The amount of the allotment for each State described in subparagraph (A) for a fiscal year shall be equal to the product of—

''(i) the total amount available for allotments under this paragraph for the fiscal year; and

''(ii) the percentage of undocumented alien apprehensions in the State in that fiscal year as compared to the total of such apprehensions for all such States for the preceding fiscal year.

''(C) DATA.—For purposes of this paragraph, the highest number of undocumented alien apprehensions for a fiscal year shall be based on the apprehension rates for the 4-consecutive-quarter period ending before the beginning of the fiscal year for which information is available for undocumented aliens in such States, as reported by the Department of Homeland Security.

''(c) USE OF FUNDS.—

''(1) AUTHORITY TO MAKE PAYMENTS.—From the allotments made for a State under subsection (b) for a fiscal year, the Secretary shall pay the amount (subject to the total amount available from such allotments) determined under paragraph (2) directly to eligible providers located in the State for the provision of eligible services to aliens described in paragraph (5) to the extent that the eligible provider was not otherwise reimbursed (through insurance or otherwise) for such services during that fiscal year.

''(2) DETERMINATION OF PAYMENT AMOUNTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the payment amount determined under this paragraph shall be an amount determined by the Secretary that is equal to the lesser of—

''(i) the amount that the provider demonstrates was incurred for the provision of such services; or

''(ii) amounts determined under a methodology established by the Secretary for purposes of this subsection.

''(B) PRO-RATA REDUCTION.—If the amount of funds allotted to a State under subsection (b) for a fiscal year is insufficient to ensure that each eligible provider in that State receives the amount of payment calculated under subparagraph (A), the Secretary shall reduce that amount of payment with respect to each eligible provider to ensure that the entire amount allotted to the State for that fiscal year is paid to such eligible providers.

''(3) METHODOLOGY.—In establishing a methodology under paragraph (2)(A)(ii), the Secretary—

''(A) may establish different methodologies for types of eligible providers;

''(B) may base payments for hospital services on estimated hospital charges, adjusted to estimated cost, through the application of hospital-specific cost-to-charge ratios;

''(C) shall provide for the election by a hospital to receive either payments to the hospital for—

''(i) hospital and physician services; or

''(ii) hospital services and for a portion of the on-call payments made by the hospital to physicians; and

''(D) shall make quarterly payments under this section to eligible providers.

If a hospital makes the election under subparagraph (C)(i), the hospital shall pass on payments for services of a physician to the physician and may not charge any administrative or other fee with respect to such payments.

''(4) LIMITATION ON USE OF FUNDS.—Payments made to eligible providers in a State from allotments made under subsection (b) for a fiscal year may only be used for costs incurred in providing eligible services to aliens described in paragraph (5).

''(5) ALIENS DESCRIBED.—For purposes of paragraphs (1) and (2), aliens described in this paragraph are any of the following:

''(A) Undocumented aliens.

''(B) Aliens who have been paroled into the United States at a United States port of entry for the purpose of receiving eligible services.

''(C) Mexican citizens permitted to enter the United States for not more than 72 hours under the authority of a biometric machine readable border crossing identification card (also referred to as a 'laser visa') issued in accordance with the requirements of regulations prescribed under section 101(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(6)).

''(d) APPLICATIONS; ADVANCE PAYMENTS.—

''(1) DEADLINE FOR ESTABLISHMENT OF APPLICATION PROCESS.—

''(A) IN GENERAL.—Not later than September 1, 2004, the Secretary shall establish a process under which eligible providers located in a State may request payments under subsection (c).

''(B) INCLUSION OF MEASURES TO COMBAT FRAUD AND ABUSE.—The Secretary shall include in the process established under subparagraph (A) measures to ensure that inappropriate, excessive, or fraudulent payments are not made from the allotments determined under subsection (b), including certification by the eligible provider of the veracity of the payment request.

''(2) ADVANCE PAYMENT; RETROSPECTIVE ADJUSTMENT.—The process established under paragraph (1) may provide for making payments under this section for each quarter of a fiscal year on the basis of advance estimates of expenditures submitted by applicants for such payments and such other investigation as the Secretary may find necessary, and for making reductions or increases in the payments as necessary to adjust for any overpayment or underpayment for prior quarters of such fiscal year.

''(e) DEFINITIONS.—In this section:

''(1) ELIGIBLE PROVIDER.—The term 'eligible provider' means a hospital, physician, or provider of ambulance services (including an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization).

''(2) ELIGIBLE SERVICES.—The term 'eligible services' means health care services required by the application of section 1867 of the Social Security Act (42 U.S.C. 1395dd), and related hospital inpatient and outpatient services and ambulance services (as defined by the Secretary).

''(3) HOSPITAL.—The term 'hospital' has the meaning given such term in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e)), except that such term shall include a critical access hospital (as defined in section 1861(mm)(1) of such Act (42 U.S.C. 1395x(mm)(1)).

''(4) PHYSICIAN.—The term 'physician' has the meaning given that term in section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

''(5) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms 'Indian tribe' and 'tribal organization' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

''(6) STATE.—The term 'State' means the 50 States and the District of Columbia.''

INSPECTOR GENERAL STUDY OF PROHIBITION ON HOSPITAL EMPLOYMENT OF PHYSICIANS

Section 4008(c) of Pub. L. 101–508 directed Secretary of Health and Human Services (acting through Inspector General of Department of Health and Human Services) to conduct a study of the effect of State laws prohibiting the employment of physicians by hospitals on the availability and accessibility of trauma and emergency care services, and include in such study an analysis of the effect of such laws on the ability of hospitals to meet the requirements of section 1867 of the Social Security Act (this section) relating to the examination

and treatment of individuals with an emergency medical condition and women in labor, with Secretary to submit a report to Congress on the study not later than 1 year after Nov. 5, 1990.

§ 1395ee. Practicing Physicians Advisory Council; Council for Technology and Innovation

(a) Practicing Physicians Advisory Council

(1) Appointment

The Secretary shall appoint, based upon nominations submitted by medical organizations representing physicians, a Practicing Physicians Advisory Council (in this subsection referred to as the ''Council'') to be composed of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under this subchapter in the previous year. At least 11 of the members of the Council shall be physicians described in section 1395x(r)(1) of this title and the members of the Council shall include both participating and nonparticipating physicians and physicians practicing in rural areas and underserved urban areas.

(2) Meetings

The Council shall meet once during each calendar quarter to discuss certain proposed changes in regulations and carrier manual instructions related to physician services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, such consultation shall occur before the publication of such proposed changes.

(3) Reimbursement of expenses

Members of the Council shall be entitled to receive reimbursement of expenses and per diem in lieu of subsistence in the same manner as other members of advisory councils appointed by the Secretary are provided such reimbursement and per diem under this subchapter.

(b) Council for Technology and Innovation

(1) Establishment

The Secretary shall establish a Council for Technology and Innovation within the Centers for Medicare & Medicaid Services (in this section referred to as ''CMS'').

(2) Composition

The Council shall be composed of senior CMS staff and clinicians and shall be chaired by the Executive Coordinator for Technology and Innovation (appointed or designated under paragraph (4)).

(3) Duties

The Council shall coordinate the activities of coverage, coding, and payment processes under this subchapter with respect to new technologies and procedures, including new drug therapies, and shall coordinate the exchange of information on new technologies between CMS and other entities that make similar decisions.

(4) Executive Coordinator for Technology and Innovation

The Secretary shall appoint (or designate) a noncareer appointee (as defined in section 3132(a)(7) of title 5) who shall serve as the Executive Coordinator for Technology and Innovation. Such executive coordinator shall report to the Administrator of CMS, shall chair the Council, shall oversee the execution of its duties, and shall serve as a single point of contact for outside groups and entities regarding the coverage, coding, and payment processes under this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1868, as added Pub. L. 101–508, title IV, § 4112, Nov. 5, 1990, 104 Stat. 1388–64; amended Pub. L. 108–173, title IX, § 942(a), Dec. 8, 2003, 117 Stat. 2420.)

PRIOR PROVISIONS

A prior section 1395ee, act Aug. 14, 1935, ch. 531, title XVIII, § 1868, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 329, provided for creation of a National Medical Review Committee, functions of such Committee, including submission of annual reports to the Secretary and Congress, employment of technical assistance, and for availability of assistance and data, prior to repeal by Pub. L. 90–248, title I, § 164(c), Jan. 2, 1968, 81 Stat. 874.

AMENDMENTS

2003—Pub. L. 108–173, § 942(a)(1), inserted ''; Council for Technology and Innovation'' in section catchline.

Subsec. (a). Pub. L. 108–173, § 942(a)(2)–(4), inserted subsec. heading, redesignated existing provisions as par. (1), substituted ''in this subsection'' for ''in this section'', and redesignated former subsecs. (b) and (c) as pars. (2) and (3), respectively.

Subsec. (b). Pub. L. 108–173, § 942(a)(5), added subsec. (b). Former subsec. (b) redesignated par. (2) of subsec. (a).

Subsec. (c). Pub. L. 108–173, § 942(a)(4), redesignated subsec. (c) as par. (3) of subsec. (a).

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1395ff. Determinations; appeals

(a) Initial determinations

(1) Promulgations of regulations

The Secretary shall promulgate regulations and make initial determinations with respect to benefits under part A of this subchapter or part B of this subchapter in accordance with those regulations for the following:

(A) The initial determination of whether an individual is entitled to benefits under such parts.

(B) The initial determination of the amount of benefits available to the individual under such parts.

(C) Any other initial determination with respect to a claim for benefits under such parts, including an initial determination by the Secretary that payment may not be made, or may no longer be made, for an item or service under such parts, an initial deter-

mination made by a utilization and quality control peer review organization under section 1320c–3(a)(2) of this title, and an initial determination made by an entity pursuant to a contract (other than a contract under section 1395w–22 of this title) with the Secretary to administer provisions of this subchapter or subchapter XI of this chapter.

(2) Deadlines for making initial determinations

(A) In general

Subject to subparagraph (B), in promulgating regulations under paragraph (1), initial determinations shall be concluded by not later than the 45-day period beginning on the date the fiscal intermediary or the carrier, as the case may be, receives a claim for benefits from an individual as described in paragraph (1). Notice of such determination shall be mailed to the individual filing the claim before the conclusion of such 45-day period.

(B) Clean claims

Subparagraph (A) shall not apply with respect to any claim that is subject to the requirements of section 1395h(c)(2) or 1395u(c)(2) of this title.

(3) Redeterminations

(A) In general

In promulgating regulations under paragraph (1) with respect to initial determinations, such regulations shall provide for a fiscal intermediary or a carrier to make a redetermination with respect to a claim for benefits that is denied in whole or in part.

(B) Limitations

(i) Appeal rights

No initial determination may be reconsidered or appealed under subsection (b) of this section unless the fiscal intermediary or carrier has made a redetermination of that initial determination under this paragraph.

(ii) Decisionmaker

No redetermination may be made by any individual involved in the initial determination.

(C) Deadlines

(i) Filing for redetermination

A redetermination under subparagraph (A) shall be available only if notice is filed with the Secretary to request the redetermination by not later than the end of the 120-day period beginning on the date the individual receives notice of the initial determination under paragraph (2).

(ii) Concluding redeterminations

Redeterminations shall be concluded by not later than the 60-day period beginning on the date the fiscal intermediary or the carrier, as the case may be, receives a request for a redetermination. Notice of such determination shall be mailed to the individual filing the claim before the conclusion of such 60-day period.

(D) Construction

For purposes of the succeeding provisions of this section a redetermination under this paragraph shall be considered to be part of the initial determination.

(4) Requirements of notice of determinations

With respect to an initial determination insofar as it results in a denial of a claim for benefits—

(A) the written notice on the determination shall include—

(i) the reasons for the determination, including whether a local medical review policy or a local coverage determination was used;

(ii) the procedures for obtaining additional information concerning the determination, including the information described in subparagraph (B); and

(iii) notification of the right to seek a redetermination or otherwise appeal the determination and instructions on how to initiate such a redetermination under this section;

(B) such written notice shall be provided in printed form and written in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both; and

(C) the individual provided such written notice may obtain, upon request, information on the specific provision of the policy, manual, or regulation used in making the redetermination.

(5) Requirements of notice of redeterminations

With respect to a redetermination insofar as it results in a denial of a claim for benefits—

(A) the written notice on the redetermination shall include—

(i) the specific reasons for the redetermination;

(ii) as appropriate, a summary of the clinical or scientific evidence used in making the redetermination;

(iii) a description of the procedures for obtaining additional information concerning the redetermination; and

(iv) notification of the right to appeal the redetermination and instructions on how to initiate such an appeal under this section;

(B) such written notice shall be provided in printed form and written in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both; and

(C) the individual provided such written notice may obtain, upon request, information on the specific provision of the policy, manual, or regulation used in making the redetermination.

(b) Appeal rights

(1) In general

(A) Reconsideration of initial determination

Subject to subparagraph (D), any individual dissatisfied with any initial determination under subsection (a)(1) of this section shall be entitled to reconsideration of the

determination, and, subject to subparagraphs (D) and (E), a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title and, subject to paragraph (2), to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title. For purposes of the preceding sentence, any reference to the ''Commissioner of Social Security'' or the ''Social Security Administration'' in subsection (g) or (*l*) of section 405 of this title shall be considered a reference to the ''Secretary'' or the ''Department of Health and Human Services'', respectively.

(B) Representation by provider or supplier

(i) In general

Sections 406(a), 1302, and 1395hh of this title shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this section by a person that furnishes or supplies the individual, directly or indirectly, with services or items, solely on the basis that the person furnishes or supplies the individual with such a service or item.

(ii) Mandatory waiver of right to payment from beneficiary

Any person that furnishes services or items to an individual may not represent an individual under this section with respect to the issue described in section 1395pp(a)(2) of this title unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal.

(iii) Prohibition on payment for representation

If a person furnishes services or items to an individual and represents the individual under this section, the person may not impose any financial liability on such individual in connection with such representation.

(iv) Requirements for representatives of a beneficiary

The provisions of section 405(j) of this title and of section 406 of this title (other than subsection (a)(4) of such section) regarding representation of claimants shall apply to representation of an individual with respect to appeals under this section in the same manner as they apply to representation of an individual under those sections.

(C) Succession of rights in cases of assignment

The right of an individual to an appeal under this section with respect to an item or service may be assigned to the provider of services or supplier of the item or service upon the written consent of such individual using a standard form established by the Secretary for such an assignment.

(D) Time limits for filing appeals

(i) Reconsiderations

Reconsideration under subparagraph (A) shall be available only if the individual described in subparagraph (A) files notice with the Secretary to request reconsideration by not later than the end of the 180-day period beginning on the date the individual receives notice of the redetermination under subsection (a)(3) of this section, or within such additional time as the Secretary may allow.

(ii) Hearings conducted by the Secretary

The Secretary shall establish in regulations time limits for the filing of a request for a hearing by the Secretary in accordance with provisions in sections 405 and 406 of this title.

(E) Amounts in controversy

(i) In general

A hearing (by the Secretary) shall not be available to an individual under this section if the amount in controversy is less than $100, and judicial review shall not be available to the individual if the amount in controversy is less than $1,000.

(ii) Aggregation of claims

In determining the amount in controversy, the Secretary, under regulations, shall allow two or more appeals to be aggregated if the appeals involve—

(I) the delivery of similar or related services to the same individual by one or more providers of services or suppliers, or

(II) common issues of law and fact arising from services furnished to two or more individuals by one or more providers of services or suppliers.

(iii) Adjustment of dollar amounts

For requests for hearings or judicial review made in a year after 2004, the dollar amounts specified in clause (i) shall be equal to such dollar amounts increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) for July 2003 to the July preceding the year involved. Any amount determined under the previous sentence that is not a multiple of $10 shall be rounded to the nearest multiple of $10.

(F) Expedited proceedings

(i) Expedited determination

In the case of an individual who has received notice from a provider of services that such provider plans—

(I) to terminate services provided to an individual and a physician certifies that failure to continue the provision of such services is likely to place the individual's health at significant risk, or

(II) to discharge the individual from the provider of services,

the individual may request, in writing or orally, an expedited determination or an expedited reconsideration of an initial determination made under subsection (a)(1) of this section, as the case may be, and the Secretary shall provide such expedited determination or expedited reconsideration.

(ii) Reference to expedited access to judicial review

For the provision relating to expedited access to judicial review, see paragraph (2).

(G) Reopening and revision of determinations

The Secretary may reopen or revise any initial determination or reconsidered determination described in this subsection under guidelines established by the Secretary in regulations.

(2) Expedited access to judicial review

(A) In general

The Secretary shall establish a process under which a provider of services or supplier that furnishes an item or service or an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, who has filed an appeal under paragraph (1) (other than an appeal filed under paragraph (1)(F)(i)) may obtain access to judicial review when a review entity (described in subparagraph (D)), on its own motion or at the request of the appellant, determines that the Departmental Appeals Board does not have the authority to decide the question of law or regulation relevant to the matters in controversy and that there is no material issue of fact in dispute. The appellant may make such request only once with respect to a question of law or regulation for a specific matter in dispute in a case of an appeal.

(B) Prompt determinations

If, after or coincident with appropriately filing a request for an administrative hearing, the appellant requests a determination by the appropriate review entity that the Departmental Appeals Board does not have the authority to decide the question of law or regulations relevant to the matters in controversy and that there is no material issue of fact in dispute, and if such request is accompanied by the documents and materials as the appropriate review entity shall require for purposes of making such determination, such review entity shall make a determination on the request in writing within 60 days after the date such review entity receives the request and such accompanying documents and materials. Such a determination by such review entity shall be considered a final decision and not subject to review by the Secretary.

(C) Access to judicial review

(i) In general

If the appropriate review entity—

(I) determines that there are no material issues of fact in dispute and that the only issues to be adjudicated are ones of law or regulation that the Departmental Appeals Board does not have authority to decide; or

(II) fails to make such determination within the period provided under subparagraph (B),

then the appellant may bring a civil action as described in this subparagraph.

(ii) Deadline for filing

Such action shall be filed, in the case described in—

(I) clause (i)(I), within 60 days of the date of the determination described in such clause; or

(II) clause (i)(II), within 60 days of the end of the period provided under subparagraph (B) for the determination.

(iii) Venue

Such action shall be brought in the district court of the United States for the judicial district in which the appellant is located (or, in the case of an action brought jointly by more than one applicant, the judicial district in which the greatest number of applicants are located) or in the District Court for the District of Columbia.

(iv) Interest on any amounts in controversy

Where a provider of services or supplier is granted judicial review pursuant to this paragraph, the amount in controversy (if any) shall be subject to annual interest beginning on the first day of the first month beginning after the 60-day period as determined pursuant to clause (ii) and equal to the rate of interest on obligations issued for purchase by the Federal Supplementary Medical Insurance Trust Fund for the month in which the civil action authorized under this paragraph is commenced, to be awarded by the reviewing court in favor of the prevailing party. No interest awarded pursuant to the preceding sentence shall be deemed income or cost for the purposes of determining reimbursement due providers of services or suppliers under this subchapter.

(D) Review entity defined

For purposes of this subsection, the term ''review entity'' means an entity of up to three reviewers who are administrative law judges or members of the Departmental Appeals Board selected for purposes of making determinations under this paragraph.

(3) Requiring full and early presentation of evidence by providers

A provider of services or supplier may not introduce evidence in any appeal under this section that was not presented at the reconsideration conducted by the qualified independent contractor under subsection (c) of this section, unless there is good cause which precluded the introduction of such evidence at or before that reconsideration.

(c) Conduct of reconsiderations by independent contractors

(1) In general

The Secretary shall enter into contracts with qualified independent contractors to conduct reconsiderations of initial determinations made under subparagraphs (B) and (C) of subsection (a)(1) of this section. Contracts shall be for an initial term of three years and shall be renewable on a triennial basis thereafter.

(2) Qualified independent contractor

For purposes of this subsection, the term ''qualified independent contractor'' means an

entity or organization that is independent of any organization under contract with the Secretary that makes initial determinations under subsection (a)(1) of this section, and that meets the requirements established by the Secretary consistent with paragraph (3).

(3) Requirements

Any qualified independent contractor entering into a contract with the Secretary under this subsection shall meet all of the following requirements:

(A) In general

The qualified independent contractor shall perform such duties and functions and assume such responsibilities as may be required by the Secretary to carry out the provisions of this subsection, and shall have sufficient medical, legal, and other expertise (including knowledge of the program under this subchapter) and sufficient staffing to make reconsiderations under this subsection.

(B) Reconsiderations

(i) In general

The qualified independent contractor shall review initial determinations. Where an initial determination is made with respect to whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1395y(a)(1)(A) of this title), such review shall include consideration of the facts and circumstances of the initial determination by a panel of physicians or other appropriate health care professionals and any decisions with respect to the reconsideration shall be based on applicable information, including clinical experience (including the medical records of the individual involved) and medical, technical, and scientific evidence.

(ii) Effect of national and local coverage determinations

(I) National coverage determinations

If the Secretary has made a national coverage determination pursuant to the requirements established under the third sentence of section 1395y(a) of this title, such determination shall be binding on the qualified independent contractor in making a decision with respect to a reconsideration under this section.

(II) Local coverage determinations

If the Secretary has made a local coverage determination, such determination shall not be binding on the qualified independent contractor in making a decision with respect to a reconsideration under this section. Notwithstanding the previous sentence, the qualified independent contractor shall consider the local coverage determination in making such decision.

(III) Absence of national or local coverage determination

In the absence of such a national coverage determination or local coverage determination, the qualified independent contractor shall make a decision with respect to the reconsideration based on applicable information, including clinical experience and medical, technical, and scientific evidence.

(C) Deadlines for decisions

(i) Reconsiderations

Except as provided in clauses (iii) and (iv), the qualified independent contractor shall conduct and conclude a reconsideration under subparagraph (B), and mail the notice of the decision with respect to the reconsideration by not later than the end of the 60-day period beginning on the date a request for reconsideration has been timely filed.

(ii) Consequences of failure to meet deadline

In the case of a failure by the qualified independent contractor to mail the notice of the decision by the end of the period described in clause (i) or to provide notice by the end of the period described in clause (iii), as the case may be, the party requesting the reconsideration or appeal may request a hearing before the Secretary, notwithstanding any requirements for a reconsidered determination for purposes of the party's right to such hearing.

(iii) Expedited reconsiderations

The qualified independent contractor shall perform an expedited reconsideration under subsection (b)(1)(F) of this section as follows:

(I) Deadline for decision

Notwithstanding section 416(j) of this title and subject to clause (iv), not later than the end of the 72-hour period beginning on the date the qualified independent contractor has received a request for such reconsideration and has received such medical or other records needed for such reconsideration, the qualified independent contractor shall provide notice (by telephone and in writing) to the individual and the provider of services and attending physician of the individual of the results of the reconsideration. Such reconsideration shall be conducted regardless of whether the provider of services or supplier will charge the individual for continued services or whether the individual will be liable for payment for such continued services.

(II) Consultation with beneficiary

In such reconsideration, the qualified independent contractor shall solicit the views of the individual involved.

(III) Special rule for hospital discharges

A reconsideration of a discharge from a hospital shall be conducted under this clause in accordance with the provisions of paragraphs (2), (3), and (4) of section 1320c–3(e) of this title as in effect on the date that precedes December 21, 2000.

(iv) Extension

An individual requesting a reconsideration under this subparagraph may be granted such additional time as the individual specifies (not to exceed 14 days) for the qualified independent contractor to conclude the reconsideration. The individual may request such additional time orally or in writing.

(D) Qualifications for reviewers

The requirements of subsection (g) of this section shall be met (relating to qualifications of reviewing professionals).

(E) Explanation of decision

Any decision with respect to a reconsideration of a qualified independent contractor shall be in writing, be written in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and shall include (to the extent appropriate) and shall include[1] a detailed explanation of the decision as well as a discussion of the pertinent facts and applicable regulations applied in making such decision, and[2] a notification of the right to appeal such determination and instructions on how to initiate such appeal under this section[3] and[3] in the case of a determination of whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1395y(a)(1)(A) of this title)[3] an explanation of the medical and scientific rationale for the decision.

(F) Notice requirements

Whenever a qualified independent contractor makes a decision with respect to a reconsideration under this subsection, the qualified independent contractor shall promptly notify the entity responsible for the payment of claims under part A of this subchapter or part B of this subchapter of such decision.

(G) Dissemination of decisions on reconsiderations

Each qualified independent contractor shall make available all decisions with respect to reconsiderations of such qualified independent contractors to fiscal intermediaries (under section 1395h of this title), carriers (under section 1395u of this title), peer review organizations (under part B of subchapter XI of this chapter), Medicare+Choice organizations offering Medicare+Choice plans under part C of this subchapter, other entities under contract with the Secretary to make initial determinations under part A of this subchapter or part B of this subchapter or subchapter XI of this chapter, and to the public. The Secretary shall establish a methodology under which qualified independent contractors shall carry out this subparagraph.

(H) Ensuring consistency in decisions

Each qualified independent contractor shall monitor its decisions with respect to reconsiderations to ensure the consistency of such decisions with respect to requests for reconsideration of similar or related matters.

(I) Data collection

(i) In general

Consistent with the requirements of clause (ii), a qualified independent contractor shall collect such information relevant to its functions, and keep and maintain such records in such form and manner as the Secretary may require to carry out the purposes of this section and shall permit access to and use of any such information and records as the Secretary may require for such purposes.

(ii) Type of data collected

Each qualified independent contractor shall keep accurate records of each decision made, consistent with standards established by the Secretary for such purpose. Such records shall be maintained in an electronic database in a manner that provides for identification of the following:

(I) Specific claims that give rise to appeals.

(II) Situations suggesting the need for increased education for providers of services, physicians, or suppliers.

(III) Situations suggesting the need for changes in national or local coverage determination.

(IV) Situations suggesting the need for changes in local coverage determinations.

(iii) Annual reporting

Each qualified independent contractor shall submit annually to the Secretary (or otherwise as the Secretary may request) records maintained under this paragraph for the previous year.

(J) Hearings by the Secretary

The qualified independent contractor shall (i) submit such information as is required for an appeal of a decision of the contractor, and (ii) participate in such hearings as required by the Secretary.

(K) Independence requirements

(i) In general

Subject to clause (ii), a qualified independent contractor shall not conduct any activities in a case unless the entity—

(I) is not a related party (as defined in subsection (g)(5) of this section);

(II) does not have a material familial, financial, or professional relationship with such a party in relation to such case; and

(III) does not otherwise have a conflict of interest with such a party.

(ii) Exception for reasonable compensation

Nothing in clause (i) shall be construed to prohibit receipt by a qualified independ-

[1] So in original.

[2] So in original. The word ''and'' probably should not appear.

[3] So in original. A comma probably should appear.

ent contractor of compensation from the Secretary for the conduct of activities under this section if the compensation is provided consistent with clause (iii).

(iii) Limitations on entity compensation

Compensation provided by the Secretary to a qualified independent contractor in connection with reviews under this section shall not be contingent on any decision rendered by the contractor or by any reviewing professional.

(4) Number of qualified independent contractors

The Secretary shall enter into contracts with a sufficient number of qualified independent contractors (but not fewer than 4 such contractors) to conduct reconsiderations consistent with the timeframes applicable under this subsection.

(5) Limitation on qualified independent contractor liability

No qualified independent contractor having a contract with the Secretary under this subsection and no person who is employed by, or who has a fiduciary relationship with, any such qualified independent contractor or who furnishes professional services to such qualified independent contractor, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this subsection or to a valid contract entered into under this subsection, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in the performance of such duty, function, or activity.

(d) Deadlines for hearings by the Secretary; notice

(1) Hearing by administrative law judge

(A) In general

Except as provided in subparagraph (B), an administrative law judge shall conduct and conclude a hearing on a decision of a qualified independent contractor under subsection (c) of this section and render a decision on such hearing by not later than the end of the 90-day period beginning on the date a request for hearing has been timely filed.

(B) Waiver of deadline by party seeking hearing

The 90-day period under subparagraph (A) shall not apply in the case of a motion or stipulation by the party requesting the hearing to waive such period.

(2) Departmental Appeals Board review

(A) In general

The Departmental Appeals Board of the Department of Health and Human Services shall conduct and conclude a review of the decision on a hearing described in paragraph (1) and make a decision or remand the case to the administrative law judge for reconsideration by not later than the end of the 90-day period beginning on the date a request for review has been timely filed.

(B) DAB hearing procedure

In reviewing a decision on a hearing under this paragraph, the Departmental Appeals Board shall review the case de novo.

(3) Consequences of failure to meet deadlines

(A) Hearing by administrative law judge

In the case of a failure by an administrative law judge to render a decision by the end of the period described in paragraph (1), the party requesting the hearing may request a review by the Departmental Appeals Board of the Department of Health and Human Services, notwithstanding any requirements for a hearing for purposes of the party's right to such a review.

(B) Departmental Appeals Board review

In the case of a failure by the Departmental Appeals Board to render a decision by the end of the period described in paragraph (2), the party requesting the hearing may seek judicial review, notwithstanding any requirements for a hearing for purposes of the party's right to such judicial review.

(4) Notice

Notice of the decision of an administrative law judge shall be in writing in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and shall include—

(A) the specific reasons for the determination (including, to the extent appropriate, a summary of the clinical or scientific evidence used in making the determination);

(B) the procedures for obtaining additional information concerning the decision; and

(C) notification of the right to appeal the decision and instructions on how to initiate such an appeal under this section.

(e) Administrative provisions

(1) Limitation on review of certain regulations

A regulation or instruction that relates to a method for determining the amount of payment under part B of this subchapter and that was initially issued before January 1, 1981, shall not be subject to judicial review.

(2) Outreach

The Secretary shall perform such outreach activities as are necessary to inform individuals entitled to benefits under this subchapter and providers of services and suppliers with respect to their rights of, and the process for, appeals made under this section. The Secretary shall use the toll-free telephone number maintained by the Secretary under section 1395b–2(b) of this title to provide information regarding appeal rights and respond to inquiries regarding the status of appeals.

(3) Continuing education requirement for qualified independent contractors and administrative law judges

The Secretary shall provide to each qualified independent contractor, and, in consultation with the Commissioner of Social Security, to administrative law judges that decide appeals of reconsiderations of initial determinations

or other decisions or determinations under this section, such continuing education with respect to coverage of items and services under this subchapter or policies of the Secretary with respect to part B of subchapter XI of this chapter as is necessary for such qualified independent contractors and administrative law judges to make informed decisions with respect to appeals.

(4) Reports

(A) Annual report to Congress

The Secretary shall submit to Congress an annual report describing the number of appeals for the previous year, identifying issues that require administrative or legislative actions, and including any recommendations of the Secretary with respect to such actions. The Secretary shall include in such report an analysis of determinations by qualified independent contractors with respect to inconsistent decisions and an analysis of the causes of any such inconsistencies.

(B) Survey

Not less frequently than every 5 years, the Secretary shall conduct a survey of a valid sample of individuals entitled to benefits under this subchapter who have filed appeals of determinations under this section, providers of services, and suppliers to determine the satisfaction of such individuals or entities with the process for appeals of determinations provided for under this section and education and training provided by the Secretary with respect to that process. The Secretary shall submit to Congress a report describing the results of the survey, and shall include any recommendations for administrative or legislative actions that the Secretary determines appropriate.

(f) Review of coverage determinations

(1) National coverage determinations

(A) In general

Review of any national coverage determination shall be subject to the following limitations:

(i) Such a determination shall not be reviewed by any administrative law judge.

(ii) Such a determination shall not be held unlawful or set aside on the ground that a requirement of section 553 of title 5 or section 1395hh(b) of this title, relating to publication in the Federal Register or opportunity for public comment, was not satisfied.

(iii) Upon the filing of a complaint by an aggrieved party, such a determination shall be reviewed by the Departmental Appeals Board of the Department of Health and Human Services. In conducting such a review, the Departmental Appeals Board—

(I) shall review the record and shall permit discovery and the taking of evidence to evaluate the reasonableness of the determination, if the Board determines that the record is incomplete or lacks adequate information to support the validity of the determination;

(II) may, as appropriate, consult with appropriate scientific and clinical experts; and

(III) shall defer only to the reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

(iv) The Secretary shall implement a decision of the Departmental Appeals Board within 30 days of receipt of such decision.

(v) A decision of the Departmental Appeals Board constitutes a final agency action and is subject to judicial review.

(B) Definition of national coverage determination

For purposes of this section, the term ''national coverage determination'' means a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under this subchapter, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this subchapter or a determination with respect to the amount of payment made for a particular item or service so covered.

(2) Local coverage determination

(A) In general

Review of any local coverage determination shall be subject to the following limitations:

(i) Upon the filing of a complaint by an aggrieved party, such a determination shall be reviewed by an administrative law judge. The administrative law judge—

(I) shall review the record and shall permit discovery and the taking of evidence to evaluate the reasonableness of the determination, if the administrative law judge determines that the record is incomplete or lacks adequate information to support the validity of the determination;

(II) may, as appropriate, consult with appropriate scientific and clinical experts; and

(III) shall defer only to the reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

(ii) Upon the filing of a complaint by an aggrieved party, a decision of an administrative law judge under clause (i) shall be reviewed by the Departmental Appeals Board of the Department of Health and Human Services.

(iii) The Secretary shall implement a decision of the administrative law judge or the Departmental Appeals Board within 30 days of receipt of such decision.

(iv) A decision of the Departmental Appeals Board constitutes a final agency action and is subject to judicial review.

(B) Definition of local coverage determination

For purposes of this section, the term ''local coverage determination'' means a determination by a fiscal intermediary or a carrier under part A of this subchapter or part B of this subchapter, as applicable, respecting whether or not a particular item or

service is covered on an intermediary- or carrier-wide basis under such parts, in accordance with section 1395y(a)(1)(A) of this title.

(3) No material issues of fact in dispute

In the case of a determination that may otherwise be subject to review under paragraph (1)(A)(iii) or paragraph (2)(A)(i), where the moving party alleges that—

(A) there are no material issues of fact in dispute, and

(B) the only issue of law is the constitutionality of a provision of this subchapter, or that a regulation, determination, or ruling by the Secretary is invalid,

the moving party may seek review by a court of competent jurisdiction without filing a complaint under such paragraph and without otherwise exhausting other administrative remedies.

(4) Pending national coverage determinations

(A) In general

In the event the Secretary has not issued a national coverage or noncoverage determination with respect to a particular type or class of items or services, an aggrieved person (as described in paragraph (5)) may submit to the Secretary a request to make such a determination with respect to such items or services. By not later than the end of the 90-day period beginning on the date the Secretary receives such a request (notwithstanding the receipt by the Secretary of new evidence (if any) during such 90-day period), the Secretary shall take one of the following actions:

(i) Issue a national coverage determination, with or without limitations.

(ii) Issue a national noncoverage determination.

(iii) Issue a determination that no national coverage or noncoverage determination is appropriate as of the end of such 90-day period with respect to national coverage of such items or services.

(iv) Issue a notice that states that the Secretary has not completed a review of the request for a national coverage determination and that includes an identification of the remaining steps in the Secretary's review process and a deadline by which the Secretary will complete the review and take an action described in clause (i), (ii), or (iii).

(B) Deemed action by the Secretary

In the case of an action described in subparagraph (A)(iv), if the Secretary fails to take an action referred to in such clause by the deadline specified by the Secretary under such clause, then the Secretary is deemed to have taken an action described in subparagraph (A)(iii) as of the deadline.

(C) Explanation of determination

When issuing a determination under subparagraph (A), the Secretary shall include an explanation of the basis for the determination. An action taken under subparagraph (A) (other than clause (iv)) is deemed to be a national coverage determination for purposes of review under paragraph (1)(A).

(5) Standing

An action under this subsection seeking review of a national coverage determination or local coverage determination may be initiated only by individuals entitled to benefits under part A of this subchapter, or enrolled under part B of this subchapter, or both, who are in need of the items or services that are the subject of the coverage determination.

(6) Publication on the Internet of decisions of hearings of the Secretary

Each decision of a hearing by the Secretary with respect to a national coverage determination shall be made public, and the Secretary shall publish each decision on the Medicare[4] Internet site of the Department of Health and Human Services. The Secretary shall remove from such decision any information that would identify any individual, provider of services, or supplier.

(7) Annual report on national coverage determinations

(A) In general

Not later than December 1 of each year, beginning in 2001, the Secretary shall submit to Congress a report that sets forth a detailed compilation of the actual time periods that were necessary to complete and fully implement national coverage determinations that were made in the previous fiscal year for items, services, or medical devices not previously covered as a benefit under this subchapter, including, with respect to each new item, service, or medical device, a statement of the time taken by the Secretary to make and implement the necessary coverage, coding, and payment determinations, including the time taken to complete each significant step in the process of making and implementing such determinations.

(B) Publication of reports on the Internet

The Secretary shall publish each report submitted under clause (i) on the medicare Internet site of the Department of Health and Human Services.

(8) Construction

Nothing in this subsection shall be construed as permitting administrative or judicial review pursuant to this section insofar as such review is explicitly prohibited or restricted under another provision of law.

(g) Qualifications of reviewers

(1) In general

In reviewing determinations under this section, a qualified independent contractor shall assure that—

(A) each individual conducting a review shall meet the qualifications of paragraph (2);

(B) compensation provided by the contractor to each such reviewer is consistent with paragraph (3); and

[4] So in original. Probably should not be capitalized.

(C) in the case of a review by a panel described in subsection (c)(3)(B) of this section composed of physicians or other health care professionals (each in this subsection referred to as a ''reviewing professional''), a reviewing professional meets the qualifications described in paragraph (4) and, where a claim is regarding the furnishing of treatment by a physician (allopathic or osteopathic) or the provision of items or services by a physician (allopathic or osteopathic), a reviewing professional shall be a physician (allopathic or osteopathic).

(2) Independence

(A) In general

Subject to subparagraph (B), each individual conducting a review in a case shall—

(i) not be a related party (as defined in paragraph (5));

(ii) not have a material familial, financial, or professional relationship with such a party in the case under review; and

(iii) not otherwise have a conflict of interest with such a party.

(B) Exception

Nothing in subparagraph (A) shall be construed to—

(i) prohibit an individual, solely on the basis of a participation agreement with a fiscal intermediary, carrier, or other contractor, from serving as a reviewing professional if—

(I) the individual is not involved in the provision of items or services in the case under review;

(II) the fact of such an agreement is disclosed to the Secretary and the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, or such individual's authorized representative, and neither party objects; and

(III) the individual is not an employee of the intermediary, carrier, or contractor and does not provide services exclusively or primarily to or on behalf of such intermediary, carrier, or contractor;

(ii) prohibit an individual who has staff privileges at the institution where the treatment involved takes place from serving as a reviewer merely on the basis of having such staff privileges if the existence of such privileges is disclosed to the Secretary and such individual (or authorized representative), and neither party objects; or

(iii) prohibit receipt of compensation by a reviewing professional from a contractor if the compensation is provided consistent with paragraph (3).

For purposes of this paragraph, the term ''participation agreement'' means an agreement relating to the provision of health care services by the individual and does not include the provision of services as a reviewer under this subsection.

(3) Limitations on reviewer compensation

Compensation provided by a qualified independent contractor to a reviewer in connection with a review under this section shall not be contingent on the decision rendered by the reviewer.

(4) Licensure and expertise

Each reviewing professional shall be—

(A) a physician (allopathic or osteopathic) who is appropriately credentialed or licensed in one or more States to deliver health care services and has medical expertise in the field of practice that is appropriate for the items or services at issue; or

(B) a health care professional who is legally authorized in one or more States (in accordance with State law or the State regulatory mechanism provided by State law) to furnish the health care items or services at issue and has medical expertise in the field of practice that is appropriate for such items or services.

(5) Related party defined

For purposes of this section, the term ''related party'' means, with respect to a case under this subchapter involving a specific individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, any of the following:

(A) The Secretary, the medicare administrative contractor involved, or any fiduciary, officer, director, or employee of the Department of Health and Human Services, or of such contractor.

(B) The individual (or authorized representative).

(C) The health care professional that provides the items or services involved in the case.

(D) The institution at which the items or services (or treatment) involved in the case are provided.

(E) The manufacturer of any drug or other item that is included in the items or services involved in the case.

(F) Any other party determined under any regulations to have a substantial interest in the case involved.

(h) Prior determination process for certain items and services

(1) Establishment of process

(A) In general

With respect to a medicare administrative contractor that has a contract under section 1395kk–1 of this title that provides for making payments under this subchapter with respect to physicians' services (as defined in section 1395w–4(j)(3) of this title), the Secretary shall establish a prior determination process that meets the requirements of this subsection and that shall be applied by such contractor in the case of eligible requesters.

(B) Eligible requester

For purposes of this subsection, each of the following shall be an eligible requester:

(i) A participating physician, but only with respect to physicians' services to be furnished to an individual who is entitled to benefits under this subchapter and who has consented to the physician making the request under this subsection for those physicians' services.

(ii) An individual entitled to benefits under this subchapter, but only with respect to a physicians' service for which the individual receives, from a physician, an advance beneficiary notice under section 1395pp(a) of this title.

(2) Secretarial flexibility

The Secretary shall establish by regulation reasonable limits on the physicians' services for which a prior determination of coverage may be requested under this subsection. In establishing such limits, the Secretary may consider the dollar amount involved with respect to the physicians' service, administrative costs and burdens, and other relevant factors.

(3) Request for prior determination

(A) In general

Subject to paragraph (2), under the process established under this subsection an eligible requester may submit to the contractor a request for a determination, before the furnishing of a physicians' service, as to whether the physicians' service is covered under this subchapter consistent with the applicable requirements of section 1395y(a)(1)(A) of this title (relating to medical necessity).

(B) Accompanying documentation

The Secretary may require that the request be accompanied by a description of the physicians' service, supporting documentation relating to the medical necessity for the physicians' service, and any other appropriate documentation. In the case of a request submitted by an eligible requester who is described in paragraph (1)(B)(ii), the Secretary may require that the request also be accompanied by a copy of the advance beneficiary notice involved.

(4) Response to request

(A) In general

Under such process, the contractor shall provide the eligible requester with written notice of a determination as to whether—

(i) the physicians' service is so covered;

(ii) the physicians' service is not so covered; or

(iii) the contractor lacks sufficient information to make a coverage determination with respect to the physicians' service.

(B) Contents of notice for certain determinations

(i) Noncoverage

If the contractor makes the determination described in subparagraph (A)(ii), the contractor shall include in the notice a brief explanation of the basis for the determination, including on what national or local coverage or noncoverage determination (if any) the determination is based, and a description of any applicable rights under subsection (a) of this section.

(ii) Insufficient information

If the contractor makes the determination described in subparagraph (A)(iii), the contractor shall include in the notice a description of the additional information required to make the coverage determination.

(C) Deadline to respond

Such notice shall be provided within the same time period as the time period applicable to the contractor providing notice of initial determinations on a claim for benefits under subsection (a)(2)(A) of this section.

(D) Informing beneficiary in case of physician request

In the case of a request by a participating physician under paragraph (1)(B)(i), the process shall provide that the individual to whom the physicians' service is proposed to be furnished shall be informed of any determination described in subparagraph (A)(ii) (relating to a determination of non-coverage) and the right (referred to in paragraph (6)(B)) to obtain the physicians' service and have a claim submitted for the physicians' service.

(5) Binding nature of positive determination

If the contractor makes the determination described in paragraph (4)(A)(i), such determination shall be binding on the contractor in the absence of fraud or evidence of misrepresentation of facts presented to the contractor.

(6) Limitation on further review

(A) In general

Contractor determinations described in paragraph (4)(A)(ii) or (4)(A)(iii) (relating to pre-service claims) are not subject to further administrative appeal or judicial review under this section or otherwise.

(B) Decision not to seek prior determination or negative determination does not impact right to obtain services, seek reimbursement, or appeal rights

Nothing in this subsection shall be construed as affecting the right of an individual who—

(i) decides not to seek a prior determination under this subsection with respect to physicians' services; or

(ii) seeks such a determination and has received a determination described in paragraph (4)(A)(ii),

from receiving (and submitting a claim for) such physicians' services and from obtaining administrative or judicial review respecting such claim under the other applicable provisions of this section. Failure to seek a prior determination under this subsection with respect to physicians' service shall not be taken into account in such administrative or judicial review.

(C) No prior determination after receipt of services

Once an individual is provided physicians' services, there shall be no prior determination under this subsection with respect to such physicians' services.

(i) Mediation process for local coverage determinations

(1) Establishment of process

The Secretary shall establish a mediation process under this subsection through the use

of a physician trained in mediation and employed by the Centers for Medicare & Medicaid Services.

(2) Responsibility of mediator

Under the process established in paragraph (1), such a mediator shall mediate in disputes between groups representing providers of services, suppliers (as defined in section 1395x(d) of this title), and the medical director for a medicare administrative contractor whenever the regional administrator (as defined by the Secretary) involved determines that there was a systematic pattern and a large volume of complaints from such groups regarding decisions of such director or there is a complaint from the co-chair of the advisory committee for that contractor to such regional administrator regarding such dispute.

(Aug. 14, 1935, ch. 531, title XVIII, § 1869, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 330; amended Pub. L. 92–603, title II, § 299O(a), Oct. 30, 1972, 86 Stat. 1464; Pub. L. 98–369, div. B, title III, § 2354(b)(35), July 18, 1984, 98 Stat. 1102; Pub. L. 99–509, title IX, §§ 9313(a)(1), (b)(1), 9341(a)(1), Oct. 21, 1986, 100 Stat. 2002, 2037; Pub. L. 100–93, § 8(e), Aug. 18, 1987, 101 Stat. 694; Pub. L. 100–203, title IV, §§ 4082(a), (b), 4085(i)(18), (19), Dec. 22, 1987, 101 Stat. 1330–128, 1330–133; Pub. L. 103–296, title I, § 108(c)(5), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 105–33, title IV, § 4611(c), Aug. 5, 1997, 111 Stat. 473; Pub. L. 106–554, § 1(a)(6) [title V, §§ 521(a), 522(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–534, 2763A–543; Pub. L. 108–173, title IX, §§ 931(d), 932(a), 933(a)(1), (b)–(d)(3), 938(a), 940(a), (b)(1), 940A(a), 948(b)(1), (c), Dec. 8, 2003, 117 Stat. 2399, 2402–2406, 2413, 2416, 2417, 2426.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in text, are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsecs. (c)(3)(G) and (e)(3), is classified to section 1320c et seq. of this title.

AMENDMENTS

2003—Subsec. (a)(3)(C)(ii). Pub. L. 108–173, § 940(a)(1), substituted ''60-day period'' for ''30-day period'' in two places.

Subsec. (a)(4), (5). Pub. L. 108–173, § 933(c)(1), added pars. (4) and (5).

Subsec. (b)(1)(A). Pub. L. 108–173, § 932(a)(1)(A), inserted '', subject to paragraph (2),'' before ''to judicial review of the Secretary's final decision''.

Subsec. (b)(1)(E)(iii). Pub. L. 108–173, § 940(b)(1), added cl. (iii).

Subsec. (b)(1)(F)(ii). Pub. L. 108–173, § 932(a)(2), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ''In a hearing by the Secretary under this section, in which the moving party alleges that no material issues of fact are in dispute, the Secretary shall make an expedited determination as to whether any such facts are in dispute and, if not, shall render a decision expeditiously.''

Subsec. (b)(2). Pub. L. 108–173, § 932(a)(1)(B), added par. (2).

Subsec. (b)(3). Pub. L. 108–173, § 933(a)(1), added par. (3).

Subsec. (c)(3)(A). Pub. L. 108–173, § 933(d)(1)(A), substituted ''sufficient medical, legal, and other expertise (including knowledge of the program under this subchapter) and sufficient staffing'' for ''sufficient training and expertise in medical science and legal matters''.

Subsec. (c)(3)(B)(i). Pub. L. 108–173, § 933(b), inserted ''(including the medical records of the individual involved)'' after ''clinical experience''.

Subsec. (c)(3)(C)(i). Pub. L. 108–173, § 940(a)(2), substituted ''60-day period'' for ''30-day period''.

Subsec. (c)(3)(D). Pub. L. 108–173, § 933(d)(2)(A), amended heading and text of subpar. (D) generally, substituting provisions directing that subsec. (g) requirements be met for provisions prohibiting a physician or health care professional from reviewing a determination where such physician or health care professional had been directly responsible for furnishing services or had had a significant financial interest in the institution, organization, or agency which provided the services.

Subsec. (c)(3)(E). Pub. L. 108–173, § 933(c)(2), inserted ''be written in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and shall include (to the extent appropriate)'' after ''in writing,'' and ''and a notification of the right to appeal such determination and instructions on how to initiate such appeal under this section'' after ''such decision,''.

Subsec. (c)(3)(I)(ii)(III). Pub. L. 108–173, § 948(b)(1)(A), substituted ''determination'' for ''policy''.

Subsec. (c)(3)(I)(ii)(IV). Pub. L. 108–173, § 948(b)(1)(B), substituted ''coverage determinations'' for ''medical review policies''.

Subsec. (c)(3)(J)(i). Pub. L. 108–173, § 933(c)(4), substituted ''submit'' for ''prepare'' and struck out ''with respect to a reconsideration to the Secretary for a hearing, including as necessary, explanations of issues involved in the decision and relevant policies'' after ''decision of the contractor''.

Subsec. (c)(3)(K). Pub. L. 108–173, § 933(d)(1)(B), added subpar. (K).

Subsec. (c)(4). Pub. L. 108–173, § 933(d)(3), substituted ''a sufficient number of qualified independent contractors (but not fewer than 4 such contractors) to conduct reconsiderations consistent with the timeframes applicable under this subsection'' for ''not fewer than 12 qualified independent contractors under this subsection''.

Subsec. (d). Pub. L. 108–173, § 933(c)(3)(A), inserted ''; notice'' after ''Secretary'' in heading.

Subsec. (d)(4). Pub. L. 108–173, § 933(c)(3)(B), added par. (4).

Subsec. (f)(2)(A)(i). Pub. L. 108–173, § 931(d), struck out ''of the Social Security Administration'' after ''an administrative law judge'' in introductory provisions.

Subsec. (f)(4)(A)(iv). Pub. L. 108–173, § 948(c)(1), substituted ''clause (i), (ii), or (iii)'' for ''subclause (I), (II), or (III)''.

Subsec. (f)(4)(B). Pub. L. 108–173, § 948(c)(2), substituted ''subparagraph (A)(iv)'' for ''clause (i)(IV)'' and ''subparagraph (A)(iii)'' for ''clause (i)(III)''.

Subsec. (f)(4)(C). Pub. L. 108–173, § 948(c)(3), substituted ''subparagraph (A)'' for ''clause (i)'' in two places, ''clause (iv)'' for ''subclause (IV)'', and ''paragraph (1)(A)'' for ''subparagraph (A)''.

Subsec. (g). Pub. L. 108–173, § 933(d)(2)(B), added subsec. (g).

Subsec. (h). Pub. L. 108–173, § 938(a), added subsec. (h).

Subsec. (i). Pub. L. 108–173, § 940A(a), added subsec. (i).

2000—Pub. L. 106–554, § 1(a)(6) [title V, § 521(a)], amended section generally, completely revising and expanding provisions relating to determinations with respect to benefits under part A or part B of this subchapter, changing the structure of the section from two subsecs. lettered (a) and (b) to five subsecs. lettered (a) to (e).

Subsec. (f). Pub. L. 106–554, § 1(a)(6) [title V, § 522(a)], added subsec. (f).

1997—Subsec. (b)(2)(B). Pub. L. 105–33 inserted ''(or $100 in the case of home health services)'' after ''$500''.

1994—Subsec. (b)(1). Pub. L. 103–296 inserted '', except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and

Human Services, respectively'' after ''section 405(g) of this title'' in closing provisions.

1987—Subsec. (a). Pub. L. 100–203, § 4085(i)(18), inserted ''or a claim for benefits with respect to home health services under part B of this subchapter'' before ''shall''.

Subsec. (b)(2). Pub. L. 100–203, § 4085(i)(19), inserted ''and (1)(D)'' after ''paragraph (1)(C)'' in two places.

Subsec. (b)(3)(B). Pub. L. 100–203, § 4082(a), substituted ''section 553'' for ''chapter 5''.

Subsec. (b)(5). Pub. L. 100–203, § 4082(b), added par. (5).

Subsec. (c). Pub. L. 100–93 struck out subsec. (c) which read as follows: ''Any institution or agency dissatisfied with any determination by the Secretary that it is not a provider of services, or with any determination described in section 1395cc(b)(2) of this title, shall be entitled to a hearing thereon by the Secretary (after reasonable notice and opportunity for hearing) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.''

1986—Subsec. (a). Pub. L. 99–509, § 9341(a)(1)(A), inserted ''or part B'' after ''amount of benefits under part A''.

Pub. L. 99–509, § 9313(b)(1)(A), inserted ''and any other determination with respect to a claim for benefits under part A of this subchapter'' before ''shall''.

Subsec. (b)(1). Pub. L. 99–509, § 9313(a)(1), in concluding provisions, inserted at end ''Sections 406(a), 1302, and 1395hh of this title shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Any person that furnishes services or items to an individual may not represent an individual under this subsection with respect to the issue described in section 1395pp(a)(2) of this title unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal. If a person furnishes services or items to an individual and represents the individual under this subsection, the person may not impose any financial liability on such individual in connection with such representation.''

Subsec. (b)(1)(C). Pub. L. 99–509, § 9341(a)(1)(B), inserted ''or part B''.

Subsec. (b)(1)(D). Pub. L. 99–509, § 9313(b)(1)(B), added subpar. (D).

Subsec. (b)(2). Pub. L. 99–509, § 9341(a)(1)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Notwithstanding the provisions of subparagraph (C) of paragraph (1) of this subsection, a hearing shall not be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $100; nor shall judicial review be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $1,000.''

Subsec. (b)(3), (4). Pub. L. 99–509, § 9341(a)(1)(D), added pars. (3) and (4).

1984—Subsec. (b)(1)(B). Pub. L. 98–369 struck out the comma before ''or section 1395i–2'' and struck out '', or section 1819'' after ''section 1395i–2 of this title''.

1972—Subsec. (b). Pub. L. 92–603 redesignated existing provisions as par. (1), generally amended conditions under which a dissatisfied individual shall be entitled to a hearing by Secretary and to judicial review of final decision of Secretary after such hearing, and added par. (2).

Change of Name

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Effective Date of 2003 Amendment

Amendment by section 932(a) of Pub. L. 108–173 applicable to appeals filed on or after Oct. 1, 2004, see section 932(d) of Pub. L. 108–173, set out as a note under section 1395i–3 of this title.

Pub. L. 108–173, title IX, § 933(a)(2), Dec. 8, 2003, 117 Stat. 2402, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 2004.''

Pub. L. 108–173, title IX, § 933(d)(4), Dec. 8, 2003, 117 Stat. 2406, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall be effective as if included in the enactment of the respective provisions of subtitle C of title V of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554] (114 Stat. 2763A–534).''

Pub. L. 108–173, title IX, § 938(b), Dec. 8, 2003, 117 Stat. 2415, provided that:

''(1) Effective date.—The Secretary [of Health and Human Services] shall establish the prior determination process under the amendment made by subsection (a) [amending this section] in such a manner as to provide for the acceptance of requests for determinations under such process filed not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003].

''(2) Sunset.—Such prior determination process shall not apply to requests filed after the end of the 5-year period beginning on the first date on which requests for determinations under such process are accepted.

''(3) Transition.—During the period in which the amendment made by subsection (a) [amending this section] has become effective but contracts are not provided under section 1874A of the Social Security Act [section 1395kk–1 of this title] with medicare administrative contractors, any reference in section 1869(g) [probably should be 1869(h)] of such Act [subsec. (h) of this section] (as added by such amendment) to such a contractor is deemed a reference to a fiscal intermediary or carrier with an agreement under section 1816, or contract under section 1842, respectively, of such Act [sections 1395h and 1395u of this title].

''(4) Limitation on application to SGR.—For purposes of applying section 1848(f)(2)(D) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)(D)), the amendment made by subsection (a) [amending this section] shall not be considered to be a change in law or regulation.''

Amendment by section 948(b)(1), (c) of Pub. L. 108–173 effective, except as otherwise provided, as if included in the enactment of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554], see section 948(e) of Pub. L. 108–173, set out as a note under section 1314 of this title.

Effective Date of 2000 Amendment

Amendment by section § 1(a)(6) [title V, § 521(a)] of Pub. L. 106–554 applicable with respect to initial determinations made on or after Oct. 1, 2002, see section 1(a)(6) [title V, § 521(d)] of Pub. L. 106–554, set out as a note under section 1320c–3 of this title.

Amendment by section 1(a)(6) [title V, § 522(a)] of Pub. L. 106–554 applicable with respect to a review of any national or local coverage determination filed, a request to make such a determination made, and a national coverage determination made, on or after Oct. 1, 2001, see section 1(a)(6) [title V, § 522(d)] of Pub. L. 106–554, set out as a note under section 1314 of this title.

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, and for purposes of applying such amendment, any home health spell of illness that began, but did not end, before such date, to be considered to have begun as of such date, see section 4611(f) of Pub. L. 105–33, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4082(e)(1), (2) of Pub. L. 100–203 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].

''(2) The amendment made by subsection (b) [amending this section] shall apply to requests for hearings filed after the end of the 60-day period beginning on the date of the enactment of this Act.''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9313(b)(2) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section] take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9341(b) of Pub. L. 99–509 provided that: ''The amendments made by subsection (a) [amending this section and sections 1395u and 1395pp of this title] shall apply to items and services furnished on or after January 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 299O(b) of Pub. L. 92–603 provided that:

''(1) The provisions of subparagraphs (A) and (B) of section 1869(b)(1) of the Social Security Act [subsec. (b)(1)(A), (B) of this section], as amended by subsection (a) of this section, shall be effective on the date of enactment of this Act [Oct. 30, 1972].

''(2) The provisions of paragraph (2) and subparagraph (C) of paragraph (1) of section 1869(b) of the Social Security Act [subsec. (b)(1)(C) and (b)(2) of this section], as amended by subsection (a) of this section, shall be effective with respect to any claims under part A of title XVIII of such Act [part A of this subchapter], filed—

''(A) in or after the month in which this Act is enacted [Oct. 1972], or

''(B) before the month in which this Act is enacted [Oct. 1972], but only if a civil action with respect to a final decision of the Secretary of Health, Education, and Welfare on such claim has not been commenced under such section 1869(b) [subsec. (b) of this section] before such month.''

TRANSFER OF RESPONSIBILITY FOR MEDICARE APPEALS

Pub. L. 108–173, title IX, § 931(a)–(c), Dec. 8, 2003, 117 Stat. 2396–2398, provided that:

''(a) TRANSITION PLAN.—

''(1) IN GENERAL.—Not later than April 1, 2004, the Commissioner of Social Security and the Secretary [of Health and Human Services] shall develop and transmit to Congress and the Comptroller General of the United States a plan under which the functions of administrative law judges responsible for hearing cases under title XVIII of the Social Security Act [this subchapter] (and related provisions in title XI of such Act [subchapter XI of this chapter]) are transferred from the responsibility of the Commissioner and the Social Security Administration to the Secretary and the Department of Health and Human Services.

''(2) CONTENTS.—The plan shall include information on the following:

''(A) WORKLOAD.—The number of such administrative law judges and support staff required now and in the future to hear and decide such cases in a timely manner, taking into account the current and anticipated claims volume, appeals, number of beneficiaries, and statutory changes.

''(B) COST PROJECTIONS AND FINANCING.—Funding levels required for fiscal year 2005 and subsequent fiscal years to carry out the functions transferred under the plan.

''(C) TRANSITION TIMETABLE.—A timetable for the transition.

''(D) REGULATIONS.—The establishment of specific regulations to govern the appeals process.

''(E) CASE TRACKING.—The development of a unified case tracking system that will facilitate the maintenance and transfer of case specific data across both the fee-for-service and managed care components of the medicare program.

''(F) FEASIBILITY OF PRECEDENTIAL AUTHORITY.—The feasibility of developing a process to give decisions of the Departmental Appeals Board in the Department of Health and Human Services addressing broad legal issues binding, precedential authority.

''(G) ACCESS TO ADMINISTRATIVE LAW JUDGES.—The feasibility of—

''(i) filing appeals with administrative law judges electronically; and

''(ii) conducting hearings using tele- or video-conference technologies.

''(H) INDEPENDENCE OF ADMINISTRATIVE LAW JUDGES.—The steps that should be taken to ensure the independence of administrative law judges consistent with the requirements of subsection (b)(2).

''(I) GEOGRAPHIC DISTRIBUTION.—The steps that should be taken to provide for an appropriate geographic distribution of administrative law judges throughout the United States to carry out subsection (b)(3).

''(J) HIRING.—The steps that should be taken to hire administrative law judges (and support staff) to carry out subsection (b)(4).

''(K) PERFORMANCE STANDARDS.—The appropriateness of establishing performance standards for administrative law judges with respect to timelines for decisions in cases under title XVIII of the Social Security Act [this subchapter] taking into account requirements under subsection (b)(2) for the independence of such judges and consistent with the applicable provisions of title 5, United States Code[,] relating to impartiality.

''(L) SHARED RESOURCES.—The steps that should be taken to carry out subsection (b)(6) (relating to the arrangements with the Commissioner of Social Security to share office space, support staff, and other resources, with appropriate reimbursement).

''(M) TRAINING.—The training that should be provided to administrative law judges with respect to laws and regulations under title XVIII of the Social Security Act [this subchapter].

''(3) ADDITIONAL INFORMATION.—The plan may also include recommendations for further congressional action, including modifications to the requirements and deadlines established under section 1869 of the Social Security Act (42 U.S.C. 1395ff) (as amended by this Act).

''(4) GAO EVALUATION.—The Comptroller General of the United States shall evaluate the plan and, not later than the date that is 6 months after the date on which the plan is received by the Comptroller General, shall submit to Congress a report on such evaluation.

''(b) TRANSFER OF ADJUDICATION AUTHORITY.—

''(1) IN GENERAL.—Not earlier than July 1, 2005, and not later than October 1, 2005, the Commissioner of Social Security and the Secretary shall implement the transition plan under subsection (a) and transfer the administrative law judge functions described in

such subsection from the Social Security Administration to the Secretary.

''(2) ASSURING INDEPENDENCE OF JUDGES.—The Secretary shall assure the independence of administrative law judges performing the administrative law judge functions transferred under paragraph (1) from the Centers for Medicare & Medicaid Services and its contractors. In order to assure such independence, the Secretary shall place such judges in an administrative office that is organizationally and functionally separate from such Centers. Such judges shall report to, and be under the general supervision of, the Secretary, but shall not report to, or be subject to supervision by, another officer of the Department of Health and Human Services.

''(3) GEOGRAPHIC DISTRIBUTION.—The Secretary shall provide for an appropriate geographic distribution of administrative law judges performing the administrative law judge functions transferred under paragraph (1) throughout the United States to ensure timely access to such judges.

''(4) HIRING AUTHORITY.—Subject to the amounts provided in advance in appropriations Acts, the Secretary shall have authority to hire administrative law judges to hear such cases, taking into consideration those judges with expertise in handling medicare appeals and in a manner consistent with paragraph (3), and to hire support staff for such judges.

''(5) FINANCING.—Amounts payable under law to the Commissioner for administrative law judges performing the administrative law judge functions transferred under paragraph (1) from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall become payable to the Secretary for the functions so transferred.

''(6) SHARED RESOURCES.—The Secretary shall enter into such arrangements with the Commissioner as may be appropriate with respect to transferred functions of administrative law judges to share office space, support staff, and other resources, with appropriate reimbursement from the Trust Funds described in paragraph (5).

''(c) INCREASED FINANCIAL SUPPORT.—In addition to any amounts otherwise appropriated, to ensure timely action on appeals before administrative law judges and the Departmental Appeals Board consistent with section 1869 of the Social Security Act (42 U.S.C. 1395ff) (as amended by this Act), there are authorized to be appropriated (in appropriate part from the Federal Hospital Insurance Trust Fund, established under section 1817 of the Social Security Act (42 U.S.C. 1395i), and the Federal Supplementary Medical Insurance Trust Fund, established under section 1841 of such Act (42 U.S.C. 1395t)) to the Secretary such sums as are necessary for fiscal year 2005 and each subsequent fiscal year to—

''(1) increase the number of administrative law judges (and their staffs) under subsection (b)(4);

''(2) improve education and training opportunities for administrative law judges (and their staffs); and

''(3) increase the staff of the Departmental Appeals Board.''

TRANSITION

Pub. L. 108–173, title IX, § 933(d)(5), Dec. 8, 2003, 117 Stat. 2406, provided that: ''In applying section 1869(g) of the Social Security Act [subsec. (g) of this section] (as added by paragraph (2)), any reference to a medicare administrative contractor shall be deemed to include a reference to a fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and a carrier under section 1842 of such Act (42 U.S.C. 1395u).''

PROCESS FOR CORRECTION OF MINOR ERRORS AND OMISSIONS WITHOUT PURSUING APPEALS PROCESS

Pub. L. 108–173, title IX, § 937, Dec. 8, 2003, 117 Stat. 2412, provided that:

''(a) CLAIMS.—The Secretary [of Health and Human Services] shall develop, in consultation with appropriate medicare contractors (as defined in section 1889(g) of the Social Security Act [section 1395zz(g) of this title], as inserted by section 301(a)(1) [probably should be 921(f)(1)]) and representatives of providers of services and suppliers, a process whereby, in the case of minor errors or omissions (as defined by the Secretary) that are detected in the submission of claims under the programs under title XVIII of such Act [this subchapter], a provider of services or supplier is given an opportunity to correct such an error or omission without the need to initiate an appeal. Such process shall include the ability to resubmit corrected claims.

''(b) DEADLINE.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall first develop the process under subsection (a).''

STUDY OF AGGREGATION RULE FOR CLAIMS FOR SIMILAR PHYSICIANS' SERVICES

Pub. L. 101–508, title IV, § 4113, Nov. 5, 1990, 104 Stat. 1388–64, directed Secretary of Health and Human Services to carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under subsec. (b)(2) of this section, and to report on the results of such study and any recommendations to Congress by Dec. 31, 1992.

MEDICARE HEARINGS AND APPEALS

Section 4037 of Pub. L. 100–203 provided that:

''(a) MAINTAINING CURRENT SYSTEM FOR HEARINGS AND APPEALS.—Any hearing conducted under section 1869(b)(1) of the Social Security Act [subsec. (b)(1) of this section] prior to the earliest of the date on which the Secretary of Health and Human Services submits the report required to be submitted by the Secretary under subsection (b)(1) or September 1 shall be conducted by Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration in the same manner as are hearings conducted under section 205(b)(1) of such Act [section 405(b)(1) of this title].

''(b) STUDY AND REPORT ON USE OF TELEPHONE HEARINGS.—

''(1) The Secretary of Health and Human Services and the Comptroller General of the United States shall each conduct a study on holding hearings under section 1869(b)(1) of the Social Security Act [subsec. (b)(1) of this section] by telephone and shall each report the results of the study not later than 6 months after the date of enactment of this Act [Dec. 22, 1987].

''(2) The studies under paragraph (1) shall focus on whether telephone hearings allow for a full and fair evidentiary hearing, in general, or with respect to any particular category of claims and shall examine the possible improvements to the hearing process (such as cost-effectiveness, convenience to the claimant, and reduction in time under the process) resulting from the use of such hearings as compared to the adoption of other changes to the process (such as expansions in staff and resources).''

§ 1395gg. Overpayment on behalf of individuals and settlement of claims for benefits on behalf of deceased individuals

(a) Payments to providers of services or other person regarded as payment to individuals

Any payment under this subchapter to any provider of services or other person with respect to any items or services furnished any individual shall be regarded as a payment to such individual.

(b) Incorrect payments on behalf of individuals; payment adjustment

Where—

(1) more than the correct amount is paid under this subchapter to a provider of services or other person for items or services furnished an individual and the Secretary determines (A) that, within such period as he may specify, the excess over the correct amount cannot be recouped from such provider of services or other person, or (B) that such provider of services or other person was without fault with respect to the payment of such excess over the correct amount, or

(2) any payment has been made under section 1395f(e) of this title to a provider of services or other person for items or services furnished an individual,

proper adjustments shall be made, under regulations prescribed (after consultation with the Railroad Retirement Board) by the Secretary, by decreasing subsequent payments—

(3) to which such individual is entitled under subchapter II of this chapter or under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], as the case may be, or

(4) if such individual dies before such adjustment has been completed, to which any other individual is entitled under subchapter II of this chapter or under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], as the case may be, with respect to the wages and self-employment income or the compensation constituting the basis of the benefits of such deceased individual under subchapter II of this chapter.

As soon as practicable after any adjustment under paragraph (3) or (4) is determined to be necessary, the Secretary, for purposes of this section, section 1395i(g) of this title, and section 1395t(f) of this title, shall certify (to the Railroad Retirement Board if the adjustment is to be made by decreasing subsequent payments under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]) the amount of the overpayment as to which the adjustment is to be made. For purposes of clause (B) of paragraph (1), such provider of services or such other person shall, in the absence of evidence to the contrary, be deemed to be without fault if the Secretary's determination that more than such correct amount was paid was made subsequent to the third year following the year in which notice was sent to such individual that such amount had been paid; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter.

(c) Exception to subsection (b) payment adjustment

There shall be no adjustment as provided in subsection (b) of this section (nor shall there be recovery) in any case where the incorrect payment has been made (including payments under section 1395f(e) of this title) with respect to an individual who is without fault or where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4) of this section, if such adjustment (or recovery) would defeat the purposes of subchapter II or subchapter XVIII of this chapter or would be against equity and good conscience. Adjustment or recovery of an incorrect payment (or only such part of an incorrect payment as the Secretary determines to be inconsistent with the purposes of this subchapter) against an individual who is without fault shall be deemed to be against equity and good conscience if (A) the incorrect payment was made for expenses incurred for items or services for which payment may not be made under this subchapter by reason of the provisions of paragraph (1) or (9) of section 1395y(a) of this title and (B) if the Secretary's determination that such payment was incorrect was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter.

(d) Liability of certifying or disbursing officer for failure to recoup

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person where the adjustment or recovery of such amount is waived under subsection (c) of this section or where adjustment under subsection (b) of this section is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

(e) Settlement of claims for benefits under this subchapter on behalf of deceased individuals

If an individual, who received services for which payment may be made to such individual under this subchapter, dies, and payment for such services was made (other than under this subchapter), and the individual died before any payment due him under this subchapter with respect to such services was completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) if the payment for such services was made (before or after such individual's death) by a person other than the deceased individual, to the person or persons determined by the Secretary under regulations to have paid for such services, or if the payment for such services was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any;

(2) if there is no person who meets the requirements of paragraph (1), to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who was either living in the same household with the deceased at the time of his death or was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if the person who meets such requirements dies before the payment due him under this subchapter is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis

of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person, if any, determined by the Secretary to be the surviving spouse of the deceased individual;

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(8) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), (6), or (7), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the legal representatives of the estate of the deceased individual, if any.

(f) Settlement of claims for section 1395k benefits on behalf of deceased individuals

If an individual who received medical and other health services for which payment may be made under section 1395k(a)(1) of this title dies, and no assignment of the right to payment for such services was made by such individual before his death, and payment for such services has not been made—

(1) if the person or persons who furnished the services agree to the terms of assignment specified in section 1395u(b)(3)(B)(ii) of this title with respect to the services, payment for such services shall be made to such person or persons, and

(2) if the person or persons who furnished the services do not agree to the terms of assignment specified in section 1395u(b)(3)(B)(ii) of this title with respect to the services, payment for such services shall be made on the basis of an itemized bill to the person who has agreed to assume the legal obligation to make payment for such services and files a request for payment (with such accompanying evidence of such legal obligation as may be required in regulations),

but only in such amount and subject to such conditions as would be applicable if the individual who received the services had not died.

(g) Refund of premiums for deceased individuals

If an individual, who is enrolled under section 1395i–2(c) of this title or under section 1395p of this title, dies, and premiums with respect to such enrollment have been received with respect to such individual for any month after the month of his death, such premiums shall be refunded to the person or persons determined by the Secretary under regulations to have paid such premiums or if payment for such premiums was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any. If there is no person who meets the requirements of the preceding sentence such premiums shall be refunded to the person or persons in the priorities specified in paragraphs (2) through (7) of subsection (e) of this section.

(h) Appeals by providers of services or suppliers

Notwithstanding subsection (f) of this section or any other provision of law, the Secretary shall permit a provider of services or supplier to appeal any determination of the Secretary under this subchapter relating to services rendered under this subchapter to an individual who subsequently dies if there is no other party available to appeal such determination.

(Aug. 14, 1935, ch. 531, title XVIII, § 1870, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 331; amended Pub. L. 90–248, title I, § 154(b), (c), Jan. 2, 1968, 81 Stat. 862; Pub. L. 92–603, title II, §§ 261(a), 266, 281(a), (b), Oct. 30, 1972, 86 Stat. 1448, 1450, 1454, 1455; Pub. L. 93–445, title III, § 309, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 96–499, title IX, § 954(a), Dec. 5, 1980, 94 Stat. 2647; Pub. L. 97–248, title I, § 128(d)(1), Sept. 3, 1982, 96 Stat. 367; Pub. L. 100–203, title IV, §§ 4039(h)(7), 4096(a)(2), Dec, 22, 1987, 101 Stat. 1330–139, as amended Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 776; Pub. L. 100–360, title IV, § 411(j)(4)(B), July 1, 1988, 102 Stat. 791; Pub. L. 108–173, title IX, § 939(a), Dec. 8, 2003, 117 Stat. 2416.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (b), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

2003—Subsec. (h). Pub. L. 108–173 added subsec. (h).

1988—Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(7), see 1987 Amendment note below.

Subsec. (f)(1), (2). Pub. L. 100–360, § 411(j)(4)(B), substituted "of assignment specified in" for "specified in subclauses (I) and (II) of".

1987—Pub. L. 100–203, § 4039(h)(7), as added by Pub. L. 100–360, § 411(e)(3), amended section catchline generally.

Subsec. (f)(1), (2). Pub. L. 100–203, § 4096(a)(2), substituted "to the terms specified in subclauses (I) and

(II) of section 1395u(b)(3)(B)(ii) of this title with respect to the services'' for ''that the reasonable charge is the full charge for the services''.

1982—Subsec. (c). Pub. L. 97–248 substituted ''section 1395y(a)'' for ''section 1395y''.

1980—Subsec. (f). Pub. L. 96–499 amended subsec. (f) generally, inserting provision for payments to providers of medical and other health services where the person or persons furnishing the services did not agree that the reasonable charge was the full charge for such services.

1974—Subsec. (b). Pub. L. 93–445 substituted ''Railroad Retirement Act of 1974'' for ''Railroad Retirement Act of 1937'', wherever appearing.

1972—Subsec. (b). Pub. L. 92–603, § 281(a), required that provider of services or other person be without fault with respect to payment of excess over correct amount as prerequisite to adjustment or recovery of incorrect payments.

Subsec. (c). Pub. L. 92–603, §§ 261(a), 281(b), substituted ''or where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4) of this section, if'' for ''and where'', inserted reference to subchapter XVIII of this chapter, and inserted provisions covering the adjustment or recovery of incorrect payments against individuals who are without fault.

Subsec. (g). Pub. L. 92–603, § 266, added subsec. (g).

1968—Pub. L. 90–248, § 154(b), provided for settlement of claims for benefits on behalf of deceased individuals in section catchline.

Subsecs. (e), (f). Pub. L. 90–248, § 154(c), added subsecs. (e) and (f).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 939(b), Dec. 8, 2003, 117 Stat. 2416, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003] and shall apply to items and services furnished on or after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4096(a)(2) of Pub. L. 100–203 applicable to services furnished on or after Jan. 1, 1988, see section 4096(d) of Pub. L. 100–203, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Sept. 3, 1982, see section 128(e)(3) of Pub. L. 97–248, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 954(b) of Pub. L. 96–499 provided that: ''The amendment made by this section [amending this section] shall apply only to claims filed on or after January 1, 1981.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 261(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to waiver actions considered after the date of the enactment of this Act [Oct. 30, 1972].''

Section 281(g) of Pub. L. 92–603 provided that: ''The provisions of subsection (a)(1) [amending this section] shall apply with respect to notices of payment sent to individuals after the date of enactment of this Act [Oct. 30, 1972]. The provisions of subsections (a)(2), (b), (c), and (d) [amending this section and sections 1395u and 1395cc of this title] shall apply in the case of notices sent to individuals after 1968. The provisions of subsections (e) and (f) [amending sections 1395f and 1395n of this title] shall apply in the case of services furnished (or deemed to have been furnished) after 1970.''

WAIVER OF LIABILITY LIMITING RECOUPMENT IN CERTAIN CASES

Pub. L. 101–239, title VI, § 6109, Dec. 19, 1989, 103 Stat. 2213, provided that: ''In the case where more than the correct amount may have been paid to a physician or individual under part B of title XVIII of the Social Security Act [part B of this subchapter] with respect to services furnished during the period beginning on July 1, 1985, and ending on March 31, 1986, as a result of a carrier's establishing statewide fees for certain procedure codes while the carrier was in the process of implementing the national common procedure coding system of the Health Care Financing Administration, the provisions of section 1870(c) of the Social Security Act [subsec. (c) of this section] shall apply, without the need for affirmative action by such a physician or individual, so as to prevent any recoupment, or other decrease in subsequent payments, to the physician or individual. The previous sentence shall apply to claims for items and services which were reopened by carriers on or after July 31, 1987.''

§ 1395hh. Regulations

(a) Authority to prescribe regulations; ineffectiveness of substantive rules not promulgated by regulation

(1) The Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this subchapter. When used in this subchapter, the term ''regulations'' means, unless the context otherwise requires, regulations prescribed by the Secretary.

(2) No rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under this subchapter shall take effect unless it is promulgated by the Secretary by regulation under paragraph (1).

(3)(A) The Secretary, in consultation with the Director of the Office of Management and Budget, shall establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation or an interim final regulation.

(B) Such timeline may vary among different regulations based on differences in the complexity of the regulation, the number and scope of comments received, and other relevant factors, but shall not be longer than 3 years except under exceptional circumstances. If the Secretary intends to vary such timeline with respect to the publication of a final regulation, the Secretary shall cause to have published in the Federal Register notice of the different timeline by not

later than the timeline previously established with respect to such regulation. Such notice shall include a brief explanation of the justification for such variation.

(C) In the case of interim final regulations, upon the expiration of the regular timeline established under this paragraph for the publication of a final regulation after opportunity for public comment, the interim final regulation shall not continue in effect unless the Secretary publishes (at the end of the regular timeline and, if applicable, at the end of each succeeding 1-year period) a notice of continuation of the regulation that includes an explanation of why the regular timeline (and any subsequent 1-year extension) was not complied with. If such a notice is published, the regular timeline (or such timeline as previously extended under this paragraph) for publication of the final regulation shall be treated as having been extended for 1 additional year.

(D) The Secretary shall annually submit to Congress a report that describes the instances in which the Secretary failed to publish a final regulation within the applicable regular timeline under this paragraph and that provides an explanation for such failures.

(4) If the Secretary publishes a final regulation that includes a provision that is not a logical outgrowth of a previously published notice of proposed rulemaking or interim final rule, such provision shall be treated as a proposed regulation and shall not take effect until there is the further opportunity for public comment and a publication of the provision again as a final regulation.

(b) Notice of proposed regulations; public comment

(1) Except as provided in paragraph (2), before issuing in final form any regulation under subsection (a) of this section, the Secretary shall provide for notice of the proposed regulation in the Federal Register and a period of not less than 60 days for public comment thereon.

(2) Paragraph (1) shall not apply where—

(A) a statute specifically permits a regulation to be issued in interim final form or otherwise with a shorter period for public comment,

(B) a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained, or

(C) subsection (b) of section 553 of title 5 does not apply pursuant to subparagraph (B) of such subsection.

(c) Publication of certain rules; public inspection; changes in data collection and retrieval

(1) The Secretary shall publish in the Federal Register, not less frequently than every 3 months, a list of all manual instructions, interpretative rules, statements of policy, and guidelines of general applicability which—

(A) are promulgated to carry out this subchapter, but

(B) are not published pursuant to subsection (a)(1) of this section and have not been previously published in a list under this subsection.

(2) Effective June 1, 1988, each fiscal intermediary and carrier administering claims for extended care, post-hospital extended care, home health care, and durable medical equipment benefits under this subchapter shall make available to the public all interpretative materials, guidelines, and clarifications of policies which relate to payments for such benefits.

(3) The Secretary shall to the extent feasible make such changes in automated data collection and retrieval by the Secretary and fiscal intermediaries with agreements under section 1395h of this title as are necessary to make easily accessible for the Secretary and other appropriate parties a data base which fairly and accurately reflects the provision of extended care, post-hospital extended care and home health care benefits pursuant to this subchapter, including such categories as benefit denials, results of appeals, and other relevant factors, and selectable by such categories and by fiscal intermediary, service provider, and region.

(e)[1] Retroactivity of substantive changes; reliance upon written guidance

(1)(A) A substantive change in regulations, manual instructions, interpretative rules, statements of policy, or guidelines of general applicability under this subchapter shall not be applied (by extrapolation or otherwise) retroactively to items and services furnished before the effective date of the change, unless the Secretary determines that—

(i) such retroactive application is necessary to comply with statutory requirements; or

(ii) failure to apply the change retroactively would be contrary to the public interest.

(B)(i) Except as provided in clause (ii), a substantive change referred to in subparagraph (A) shall not become effective before the end of the 30-day period that begins on the date that the Secretary has issued or published, as the case may be, the substantive change.

(ii) The Secretary may provide for such a substantive change to take effect on a date that precedes the end of the 30-day period under clause (i) if the Secretary finds that waiver of such 30-day period is necessary to comply with statutory requirements or that the application of such 30-day period is contrary to the public interest. If the Secretary provides for an earlier effective date pursuant to this clause, the Secretary shall include in the issuance or publication of the substantive change a finding described in the first sentence, and a brief statement of the reasons for such finding.

(C) No action shall be taken against a provider of services or supplier with respect to noncompliance with such a substantive change for items and services furnished before the effective date of such a change.

(2)(A) If—

(i) a provider of services or supplier follows the written guidance (which may be transmitted electronically) provided by the Secretary or by a medicare contractor (as defined in section 1395zz(g) of this title) acting within the scope of the contractor's contract authority, with respect to the furnishing of items or serv-

[1] So in original. No subsec. (d) has been enacted.

ices and submission of a claim for benefits for such items or services with respect to such provider or supplier;

(ii) the Secretary determines that the provider of services or supplier has accurately presented the circumstances relating to such items, services, and claim to the contractor in writing; and

(iii) the guidance was in error;

the provider of services or supplier shall not be subject to any penalty or interest under this subchapter or the provisions of subchapter XI of this chapter insofar as they relate to this subchapter (including interest under a repayment plan under section 1395ddd of this title or otherwise) relating to the provision of such items or service or such claim if the provider of services or supplier reasonably relied on such guidance.

(B) Subparagraph (A) shall not be construed as preventing the recoupment or repayment (without any additional penalty) relating to an overpayment insofar as the overpayment was solely the result of a clerical or technical operational error.

(f) Report on areas of inconsistency or conflict

(1) Not later than 2 years after December 8, 2003, and every 3 years thereafter, the Secretary shall submit to Congress a report with respect to the administration of this subchapter and areas of inconsistency or conflict among the various provisions under law and regulation.

(2) In preparing a report under paragraph (1), the Secretary shall collect—

(A) information from individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, providers of services, and suppliers and from the Medicare Beneficiary Ombudsman with respect to such areas of inconsistency and conflict; and

(B) information from medicare contractors that tracks the nature of written and telephone inquiries.

(3) A report under paragraph (1) shall include a description of efforts by the Secretary to reduce such inconsistency or conflicts, and recommendations for legislation or administrative action that the Secretary determines appropriate to further reduce such inconsistency or conflicts.

(Aug. 14, 1935, ch. 531, title XVIII, § 1871, as added Pub. L. 89–97, title I, § 102(a) July 30, 1965, 79 Stat. 331; amended Pub. L. 99–509, title IX, § 9321(e)(1), Oct. 21, 1986, 100 Stat. 2017; Pub. L. 100–203, title IV, § 4035(b), (c), Dec. 22, 1987, 101 Stat. 1330–78; Pub. L. 108–173, title IX, §§ 902(a)(1), (b)(1), 903(a)(1), (b)(1), (c)(1), 904(b), Dec. 8, 2003, 117 Stat. 2375–2377.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (f)(2)(A), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (a)(3). Pub. L. 108–173, § 902(a)(1), added par. (3).

Subsec. (a)(4). Pub. L. 108–173, § 902(b)(1), added par. (4).

Subsec. (e). Pub. L. 108–173, § 903(a)(1), added subsec. (e).

Subsec. (e)(1)(B), (C). Pub. L. 108–173, § 903(b)(1), added subpars. (B) and (C).

Subsec. (e)(2). Pub. L. 108–173, § 903(c)(1), added par. (2).

Subsec. (f). Pub. L. 108–173, § 904(b), added subsec. (f).

1987—Subsec. (a). Pub. L. 100–203, § 4035(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 100–203, § 4035(c), added subsec. (c).

1986—Pub. L. 99–509 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 902(a)(2), Dec. 8, 2003, 117 Stat. 2375, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003]. The Secretary [of Health and Human Services] shall provide for an appropriate transition to take into account the backlog of previously published interim final regulations.''

Pub. L. 108–173, title IX, § 902(b)(2), Dec. 8, 2003, 117 Stat. 2376, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to final regulations published on or after the date of the enactment of this Act [Dec. 8, 2003].''

Pub. L. 108–173, title IX, § 903(a)(2), Dec. 8, 2003, 117 Stat. 2376, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to substantive changes issued on or after the date of the enactment of this Act [Dec. 8, 2003].''

Pub. L. 108–173, title IX, § 903(b)(2), Dec. 8, 2003, 117 Stat. 2376, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to compliance actions undertaken on or after the date of the enactment of this Act [Dec. 8, 2003].''

Pub. L. 108–173, title IX, § 903(c)(2), Dec. 8, 2003, 117 Stat. 2377, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003] and shall only apply to a penalty or interest imposed with respect to guidance provided on or after July 24, 2003.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Dec. 22, 1987, and applicable to budgets for fiscal years beginning with fiscal year 1989, see section 4035(a)(3) of Pub. L. 100–203, set out as a note under section 1395h of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9321(e)(3)(A) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to notices of proposed rulemaking issued after the date of the enactment of this Act [Oct. 21, 1986].''

REGULATIONS

Pub. L. 101–508, title IV, § 4207(j), formerly § 4027(j), Nov. 5, 1990, 104 Stat. 1388–124, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (12), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subtitle [subtitle A (§§ 4000–4361) of title IV of Pub. L. 101–508, see Tables for classification] and the amendments made by this subtitle.''

Section 4039(g) of title IV of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subtitle and the amendments made by this subtitle [subtitle A (§§ 4001–4097) of title IV of Pub. L. 100–203, see Tables for classification].''

GAO STUDY ON ADVISORY OPINION AUTHORITY

Pub. L. 108–173, title IX, § 904(a), Dec. 8, 2003, 117 Stat. 2377, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine the feasibility and appropriateness of establishing in the Secretary [of Health and Human Services] authority to provide legally binding advisory opinions on appropriate interpretation and application of regulations to carry out the medicare program under title XVIII of the Social Security Act [this subchapter]. Such study shall examine the appropriate timeframe for issuing such advisory opinions, as well as the need for additional staff and funding to provide such opinions.

''(2) REPORT.—The Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) by not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003].''

§ 1395ii. Application of certain provisions of subchapter II

The provisions of sections 406 and 416(j) of this title, and of subsections (a), (d), (e), (h), (i), (j), (k), and (*l*) of section 405 of this title, shall also apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter, except that, in applying such provisions with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(Aug. 14, 1935, ch. 531, title XVIII, § 1872, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 332; amended Pub. L. 92–603, title II, § 242(a), Oct. 30, 1972, 86 Stat. 1419; Pub. L. 98–369, div. B, title III, § 2354(b)(36), July 18, 1984, 98 Stat. 1102; Pub. L. 103–296, title I, § 108(c)(4), Aug. 15, 1994, 108 Stat. 1485.)

AMENDMENTS

1994—Pub. L. 103–296 inserted before period at end '', except that, in applying such provisions with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

1984—Pub. L. 98–369 struck out the comma after ''406'' and struck out reference to subsec. (f) of section 405 of this title.

1972—Pub. L. 92–603 struck out reference to provisions of section 408 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 not applicable to any acts, statements, or representations made or committed prior to Oct. 30, 1972, see section 242(d) of Pub. L. 92–603, set out as an Effective Date note under section 1320a–7b of this title.

§ 1395jj. Designation of organization or publication by name

Designation in this subchapter, by name, of any nongovernmental organization or publication shall not be affected by change of name of such organization or publication, and shall apply to any successor organization or publication which the Secretary finds serves the purpose for which such designation is made.

(Aug. 14, 1935, ch. 531, title XVIII, § 1873, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 332.)

§ 1395kk. Administration of insurance programs

(a) Functions of Secretary; performance directly or by contract

Except as otherwise provided in this subchapter and in the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], the insurance programs established by this subchapter shall be administered by the Secretary. The Secretary may perform any of his functions under this subchapter directly, or by contract providing for payment in advance or by way of reimbursement, and in such installments, as the Secretary may deem necessary.

(b) Contracts to secure special data, actuarial information, etc.

The Secretary may contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this subchapter.

(c) Oaths and affirmations

In the course of any hearing, investigation, or other proceeding that he is authorized to conduct under this subchapter, the Secretary may administer oaths and affirmations.

(Aug. 14, 1935, ch. 531, title XVIII, § 1874, as added and amended Pub. L. 89–97, title I, §§ 102(a), 111(a), July 30, 1965, 79 Stat. 332, 340; Pub. L. 92–603, title II, § 289, Oct. 30, 1972, 86 Stat. 1457; Pub. L. 93–445, title III, § 310, Oct. 16, 1974, 88 Stat. 1359.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–445 substituted ''Railroad Retirement Act of 1974'' for ''Railroad Retirement Act of 1937''.

1972—Subsec. (c). Pub. L. 92–603 added subsec. (c).

1965—Subsec. (a). Pub. L. 89–97 inserted reference to Railroad Retirement Act of 1937 in first sentence.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar

year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97.

§ 1395kk–1. Contracts with medicare administrative contractors

(a) Authority

(1) Authority to enter into contracts

The Secretary may enter into contracts with any eligible entity to serve as a medicare administrative contractor with respect to the performance of any or all of the functions described in paragraph (4) or parts of those functions (or, to the extent provided in a contract, to secure performance thereof by other entities).

(2) Eligibility of entities

An entity is eligible to enter into a contract with respect to the performance of a particular function described in paragraph (4) only if—

(A) the entity has demonstrated capability to carry out such function;

(B) the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement;

(C) the entity has sufficient assets to financially support the performance of such function; and

(D) the entity meets such other requirements as the Secretary may impose.

(3) Medicare administrative contractor defined

For purposes of this subchapter and subchapter XI of this chapter—

(A) In general

The term ''medicare administrative contractor'' means an agency, organization, or other person with a contract under this section.

(B) Appropriate medicare administrative contractor

With respect to the performance of a particular function in relation to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, a specific provider of services or supplier (or class of such providers of services or suppliers), the ''appropriate'' medicare administrative contractor is the medicare administrative contractor that has a contract under this section with respect to the performance of that function in relation to that individual, provider of services or supplier or class of provider of services or supplier.

(4) Functions described

The functions referred to in paragraphs (1) and (2) are payment functions (including the function of developing local coverage determinations, as defined in section 1395ff(f)(2)(B) of this title), provider services functions, and functions relating to services furnished to individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, as follows:

(A) Determination of payment amounts

Determining (subject to the provisions of section 1395*oo* of this title and to such review by the Secretary as may be provided for by the contracts) the amount of the payments required pursuant to this subchapter to be made to providers of services, suppliers and individuals.

(B) Making payments

Making payments described in subparagraph (A) (including receipt, disbursement, and accounting for funds in making such payments).

(C) Beneficiary education and assistance

Providing education and outreach to individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and providing assistance to those individuals with specific issues, concerns, or problems.

(D) Provider consultative services

Providing consultative services to institutions, agencies, and other persons to enable them to establish and maintain fiscal records necessary for purposes of this subchapter and otherwise to qualify as providers of services or suppliers.

(E) Communication with providers

Communicating to providers of services and suppliers any information or instructions furnished to the medicare administrative contractor by the Secretary, and facilitating communication between such providers and suppliers and the Secretary.

(F) Provider education and technical assistance

Performing the functions relating to provider education, training, and technical assistance.

(G) Additional functions

Performing such other functions, including (subject to paragraph (5)) functions under the Medicare Integrity Program under section 1395ddd of this title, as are necessary to carry out the purposes of this subchapter.

(5) Relationship to MIP contracts

(A) Nonduplication of duties

In entering into contracts under this section, the Secretary shall assure that functions of medicare administrative contractors in carrying out activities under parts A and B of this subchapter do not duplicate activities carried out under a contract entered into under the Medicare Integrity Program under section 1395ddd of this title. The previous sentence shall not apply with respect to the activity described in section 1395ddd(b)(5) of this title (relating to prior authorization of certain items of durable medical equipment under section 1395m(a)(15) of this title).

(B) Construction

An entity shall not be treated as a medicare administrative contractor merely by

reason of having entered into a contract with the Secretary under section 1395ddd of this title.

(6) Application of Federal Acquisition Regulation

Except to the extent inconsistent with a specific requirement of this section, the Federal Acquisition Regulation applies to contracts under this section.

(b) Contracting requirements

(1) Use of competitive procedures

(A) In general

Except as provided in laws with general applicability to Federal acquisition and procurement or in subparagraph (B), the Secretary shall use competitive procedures when entering into contracts with medicare administrative contractors under this section, taking into account performance quality as well as price and other factors.

(B) Renewal of contracts

The Secretary may renew a contract with a medicare administrative contractor under this section from term to term without regard to section 5 of title 41 or any other provision of law requiring competition, if the medicare administrative contractor has met or exceeded the performance requirements applicable with respect to the contract and contractor, except that the Secretary shall provide for the application of competitive procedures under such a contract not less frequently than once every 5 years.

(C) Transfer of functions

The Secretary may transfer functions among medicare administrative contractors consistent with the provisions of this paragraph. The Secretary shall ensure that performance quality is considered in such transfers. The Secretary shall provide public notice (whether in the Federal Register or otherwise) of any such transfer (including a description of the functions so transferred, a description of the providers of services and suppliers affected by such transfer, and contact information for the contractors involved).

(D) Incentives for quality

The Secretary shall provide incentives for medicare administrative contractors to provide quality service and to promote efficiency.

(2) Compliance with requirements

No contract under this section shall be entered into with any medicare administrative contractor unless the Secretary finds that such medicare administrative contractor will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, quality of services provided, and other matters as the Secretary finds pertinent.

(3) Performance requirements

(A) Development of specific performance requirements

(i) In general

The Secretary shall develop contract performance requirements to carry out the specific requirements applicable under this subchapter to a function described in subsection (a)(4) of this section and shall develop standards for measuring the extent to which a contractor has met such requirements. Such requirements shall include specific performance duties expected of a medical director of a medicare administrative contractor, including requirements relating to professional relations and the availability of such director to conduct medical determination activities within the jurisdiction of such a contractor.

(ii) Consultation

In developing such performance requirements and standards for measurement, the Secretary shall consult with providers of services, organizations representative of beneficiaries under this subchapter, and organizations and agencies performing functions necessary to carry out the purposes of this section with respect to such performance requirements.

(iii) Publication of standards

The Secretary shall make such performance requirements and measurement standards available to the public.

(B) Considerations

The Secretary shall include, as one of the standards developed under subparagraph (A), provider and beneficiary satisfaction levels.

(C) Inclusion in contracts

All contractor performance requirements shall be set forth in the contract between the Secretary and the appropriate medicare administrative contractor. Such performance requirements—

(i) shall reflect the performance requirements published under subparagraph (A), but may include additional performance requirements;

(ii) shall be used for evaluating contractor performance under the contract; and

(iii) shall be consistent with the written statement of work provided under the contract.

(4) Information requirements

The Secretary shall not enter into a contract with a medicare administrative contractor under this section unless the contractor agrees—

(A) to furnish to the Secretary such timely information and reports as the Secretary may find necessary in performing his functions under this subchapter; and

(B) to maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (A) and otherwise to carry out the purposes of this subchapter.

(5) Surety bond

A contract with a medicare administrative contractor under this section may require the medicare administrative contractor, and any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(c) Terms and conditions

(1) In general

A contract with any medicare administrative contractor under this section may contain such terms and conditions as the Secretary finds necessary or appropriate and may provide for advances of funds to the medicare administrative contractor for the making of payments by it under subsection (a)(4)(B) of this section.

(2) Prohibition on mandates for certain data collection

The Secretary may not require, as a condition of entering into, or renewing, a contract under this section, that the medicare administrative contractor match data obtained other than in its activities under this subchapter with data used in the administration of this subchapter for purposes of identifying situations in which the provisions of section 1395y(b) of this title may apply.

(d) Limitation on liability of medicare administrative contractors and certain officers

(1) Certifying officer

No individual designated pursuant to a contract under this section as a certifying officer shall, in the absence of the reckless disregard of the individual's obligations or the intent by that individual to defraud the United States, be liable with respect to any payments certified by the individual under this section.

(2) Disbursing officer

No disbursing officer shall, in the absence of the reckless disregard of the officer's obligations or the intent by that officer to defraud the United States, be liable with respect to any payment by such officer under this section if it was based upon an authorization (which meets the applicable requirements for such internal controls established by the Comptroller General of the United States) of a certifying officer designated as provided in paragraph (1) of this subsection.

(3) Liability of medicare administrative contractor

(A) In general

No medicare administrative contractor shall be liable to the United States for a payment by a certifying or disbursing officer unless, in connection with such payment, the medicare administrative contractor acted with reckless disregard of its obligations under its medicare administrative contract or with intent to defraud the United States.

(B) Relationship to False Claims Act

Nothing in this subsection shall be construed to limit liability for conduct that would constitute a violation of sections 3729 through 3731 of title 31.

(4) Indemnification by Secretary

(A) In general

Subject to subparagraphs (B) and (D), in the case of a medicare administrative contractor (or a person who is a director, officer, or employee of such a contractor or who is engaged by the contractor to participate directly in the claims administration process) who is made a party to any judicial or administrative proceeding arising from or relating directly to the claims administration process under this subchapter, the Secretary may, to the extent the Secretary determines to be appropriate and as specified in the contract with the contractor, indemnify the contractor and such persons.

(B) Conditions

The Secretary may not provide indemnification under subparagraph (A) insofar as the liability for such costs arises directly from conduct that is determined by the judicial proceeding or by the Secretary to be criminal in nature, fraudulent, or grossly negligent. If indemnification is provided by the Secretary with respect to a contractor before a determination that such costs arose directly from such conduct, the contractor shall reimburse the Secretary for costs of indemnification.

(C) Scope of indemnification

Indemnification by the Secretary under subparagraph (A) may include payment of judgments, settlements (subject to subparagraph (D)), awards, and costs (including reasonable legal expenses).

(D) Written approval for settlements or compromises

A contractor or other person described in subparagraph (A) may not propose to negotiate a settlement or compromise of a proceeding described in such subparagraph without the prior written approval of the Secretary to negotiate such settlement or compromise. Any indemnification under subparagraph (A) with respect to amounts paid under a settlement or compromise of a proceeding described in such subparagraph are conditioned upon prior written approval by the Secretary of the final settlement or compromise.

(E) Construction

Nothing in this paragraph shall be construed—

(i) to change any common law immunity that may be available to a medicare administrative contractor or person described in subparagraph (A); or

(ii) to permit the payment of costs not otherwise allowable, reasonable, or allocable under the Federal Acquisition Regulation.

(e) Requirements for information security

(1) Development of information security program

A medicare administrative contractor that performs the functions referred to in subpara-

graphs (A) and (B) of subsection (a)(4) of this section (relating to determining and making payments) shall implement a contractor-wide information security program to provide information security for the operation and assets of the contractor with respect to such functions under this subchapter. An information security program under this paragraph shall meet the requirements for information security programs imposed on Federal agencies under paragraphs (1) through (8) of section 3544(b) of title 44 (other than the requirements under paragraphs (2)(D)(i), (5)(A), and (5)(B) of such section).

(2) Independent audits

(A) Performance of annual evaluations

Each year a medicare administrative contractor that performs the functions referred to in subparagraphs (A) and (B) of subsection (a)(4) of this section (relating to determining and making payments) shall undergo an evaluation of the information security of the contractor with respect to such functions under this subchapter. The evaluation shall—

(i) be performed by an entity that meets such requirements for independence as the Inspector General of the Department of Health and Human Services may establish; and

(ii) test the effectiveness of information security control techniques of an appropriate subset of the contractor's information systems (as defined in section 3502(8) of title 44) relating to such functions under this subchapter and an assessment of compliance with the requirements of this subsection and related information security policies, procedures, standards and guidelines, including policies and procedures as may be prescribed by the Director of the Office of Management and Budget and applicable information security standards promulgated under section 11331 of title 40.

(B) Deadline for initial evaluation

(i) New contractors

In the case of a medicare administrative contractor covered by this subsection that has not previously performed the functions referred to in subparagraphs (A) and (B) of subsection (a)(4) of this section (relating to determining and making payments) as a fiscal intermediary or carrier under section 1395h or 1395u of this title, the first independent evaluation conducted pursuant to subparagraph (A) shall be completed prior to commencing such functions.

(ii) Other contractors

In the case of a medicare administrative contractor covered by this subsection that is not described in clause (i), the first independent evaluation conducted pursuant to subparagraph (A) shall be completed within 1 year after the date the contractor commences functions referred to in clause (i) under this section.

(C) Reports on evaluations

(i) To the Department of Health and Human Services

The results of independent evaluations under subparagraph (A) shall be submitted promptly to the Inspector General of the Department of Health and Human Services and to the Secretary.

(ii) To Congress

The Inspector General of the Department of Health and Human Services shall submit to Congress annual reports on the results of such evaluations, including assessments of the scope and sufficiency of such evaluations.

(iii) Agency reporting

The Secretary shall address the results of such evaluations in reports required under section 3544(c) of title 44.

(f) Incentives to improve contractor performance in provider education and outreach

The Secretary shall use specific claims payment error rates or similar methodology of medicare administrative contractors in the processing or reviewing of medicare claims in order to give such contractors an incentive to implement effective education and outreach programs for providers of services and suppliers.

(g) Communications with beneficiaries, providers of services and suppliers

(1) Communication strategy

The Secretary shall develop a strategy for communications with individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and with providers of services and suppliers under this subchapter.

(2) Response to written inquiries

Each medicare administrative contractor shall, for those providers of services and suppliers which submit claims to the contractor for claims processing and for those individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, with respect to whom claims are submitted for claims processing, provide general written responses (which may be through electronic transmission) in a clear, concise, and accurate manner to inquiries of providers of services, suppliers, and individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, concerning the programs under this subchapter within 45 business days of the date of receipt of such inquiries.

(3) Response to toll-free lines

The Secretary shall ensure that each medicare administrative contractor shall provide, for those providers of services and suppliers which submit claims to the contractor for claims processing and for those individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, with respect to whom claims are submitted for claims processing, a toll-free telephone number at which such individuals,

providers of services, and suppliers may obtain information regarding billing, coding, claims, coverage, and other appropriate information under this subchapter.

(4) Monitoring of contractor responses

(A) In general

Each medicare administrative contractor shall, consistent with standards developed by the Secretary under subparagraph (B)—

(i) maintain a system for identifying who provides the information referred to in paragraphs (2) and (3); and

(ii) monitor the accuracy, consistency, and timeliness of the information so provided.

(B) Development of standards

(i) In general

The Secretary shall establish and make public standards to monitor the accuracy, consistency, and timeliness of the information provided in response to written and telephone inquiries under this subsection. Such standards shall be consistent with the performance requirements established under subsection (b)(3) of this section.

(ii) Evaluation

In conducting evaluations of individual medicare administrative contractors, the Secretary shall take into account the results of the monitoring conducted under subparagraph (A) taking into account as performance requirements the standards established under clause (i). The Secretary shall, in consultation with organizations representing providers of services, suppliers, and individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, establish standards relating to the accuracy, consistency, and timeliness of the information so provided.

(C) Direct monitoring

Nothing in this paragraph shall be construed as preventing the Secretary from directly monitoring the accuracy, consistency, and timeliness of the information so provided.

(5) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(h) Conduct of prepayment review

(1) Conduct of random prepayment review

(A) In general

A medicare administrative contractor may conduct random prepayment review only to develop a contractor-wide or program-wide claims payment error rates or under such additional circumstances as may be provided under regulations, developed in consultation with providers of services and suppliers.

(B) Use of standard protocols when conducting prepayment reviews

When a medicare administrative contractor conducts a random prepayment review, the contractor may conduct such review only in accordance with a standard protocol for random prepayment audits developed by the Secretary.

(C) Construction

Nothing in this paragraph shall be construed as preventing the denial of payments for claims actually reviewed under a random prepayment review.

(D) Random prepayment review

For purposes of this subsection, the term ''random prepayment review'' means a demand for the production of records or documentation absent cause with respect to a claim.

(2) Limitations on non-random prepayment review

(A) Limitations on initiation of non-random prepayment review

A medicare administrative contractor may not initiate non-random prepayment review of a provider of services or supplier based on the initial identification by that provider of services or supplier of an improper billing practice unless there is a likelihood of sustained or high level of payment error under section 1395ddd(f)(3)(A) of this title.

(B) Termination of non-random prepayment review

The Secretary shall issue regulations relating to the termination, including termination dates, of non-random prepayment review. Such regulations may vary such a termination date based upon the differences in the circumstances triggering prepayment review.

(Aug. 14, 1935, ch. 531, title XVIII, § 1874A, as added and amended Pub. L. 108–173, title IX, §§ 911(a)(1), 912(a), 921(b)(1), (c)(1), 934(a), 940A(b), Dec. 8, 2003, 117 Stat. 2378, 2387–2389, 2406, 2417.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (a)(3)(B), (4), (5)(A) and (g)(1)–(3), (4)(B)(ii), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (b)(3)(A)(i). Pub. L. 108–173, § 940A(b), inserted at end ''Such requirements shall include specific performance duties expected of a medical director of a medicare administrative contractor, including requirements relating to professional relations and the availability of such director to conduct medical determination activities within the jurisdiction of such a contractor.''

Subsec. (e). Pub. L. 108–173, § 912(a), added subsec. (e).

Subsec. (f). Pub. L. 108–173, § 921(b)(1), added subsec. (f).

Subsec. (g). Pub. L. 108–173, § 921(c)(1), added subsec. (g).

Subsec. (h). Pub. L. 108–173, § 934(a), added subsec. (h).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 921(c)(2), Dec. 8, 2003, 117 Stat. 2390, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect October 1, 2004.''

Pub. L. 108–173, title IX, § 934(b), Dec. 8, 2003, 117 Stat. 2407, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall take effect 1 year after the date of the enactment of this Act [Dec. 8, 2003].

''(2) DEADLINE FOR PROMULGATION OF CERTAIN REGULATIONS.—The Secretary [of Health and Human Services] shall first issue regulations under section 1874A(h) of the Social Security Act [subsec. (h) of this section], as added by subsection (a), by not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003].

''(3) APPLICATION OF STANDARD PROTOCOLS FOR RANDOM PREPAYMENT REVIEW.—Section 1874A(h)(1)(B) of the Social Security Act [subsec. (h)(1)(B) of this section], as added by subsection (a), shall apply to random prepayment reviews conducted on or after such date (not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003]) as the Secretary shall specify.''

EFFECTIVE DATE; TRANSITION RULE

Pub. L. 108–173, title IX, § 911(d), Dec. 8, 2003, 117 Stat. 2385, provided that:

''(1) EFFECTIVE DATE.—

''(A) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 1395h and 1395u of this title] shall take effect on October 1, 2005, and the Secretary [of Health and Human Services] is authorized to take such steps before such date as may be necessary to implement such amendments on a timely basis.

''(B) CONSTRUCTION FOR CURRENT CONTRACTS.—Such amendments shall not apply to contracts in effect before the date specified under subparagraph (A) that continue to retain the terms and conditions in effect on such date (except as otherwise provided under this Act [see Tables for classification], other than under this section) until such date as the contract is let out for competitive bidding under such amendments.

''(C) DEADLINE FOR COMPETITIVE BIDDING.—The Secretary shall provide for the letting by competitive bidding of all contracts for functions of medicare administrative contractors for annual contract periods that begin on or after October 1, 2011.

''(2) GENERAL TRANSITION RULES.—

''(A) AUTHORITY TO CONTINUE TO ENTER INTO NEW AGREEMENTS AND CONTRACTS AND WAIVER OF PROVIDER NOMINATION PROVISIONS DURING TRANSITION.—Prior to October 1, 2005, the Secretary may, consistent with subparagraph (B), continue to enter into agreements under section 1816 and contracts under section 1842 of the Social Security Act (42 U.S.C. 1395h, 1395u). The Secretary may enter into new agreements under section 1816 prior to October 1, 2005, without regard to any of the provider nomination provisions of such section.

''(B) APPROPRIATE TRANSITION.—The Secretary shall take such steps as are necessary to provide for an appropriate transition from agreements under section 1816 and contracts under section 1842 of the Social Security Act (42 U.S.C. 1395h, 1395u) to contracts under section 1874A [this section], as added by subsection (a)(1).

''(3) AUTHORIZING CONTINUATION OF MIP FUNCTIONS UNDER CURRENT CONTRACTS AND AGREEMENTS AND UNDER TRANSITION CONTRACTS.—Notwithstanding the amendments made by this section [enacting this section and amending sections 1395h and 1395u of this title], the provisions contained in the exception in section 1893(d)(2) of the Social Security Act (42 U.S.C. 1395ddd(d)(2)) shall continue to apply during the period that begins on the date of the enactment of this Act [Dec. 8, 2003] and ends on October 1, 2011, and any reference in such provisions to an agreement or contract shall be deemed to include a contract under section 1874A of such Act [this section], as inserted by subsection (a)(1), that continues the activities referred to in such provisions.''

CONSTRUCTION

Pub. L. 108–173, title IX, § 901(a), Dec. 8, 2003, 117 Stat. 2374, provided that: ''Nothing in this title [see Tables for classification] shall be construed—

''(1) to compromise or affect existing legal remedies for addressing fraud or abuse, whether it be criminal prosecution, civil enforcement, or administrative remedies, including under sections 3729 through 3733 of title 31, United States Code (commonly known as the 'False Claims Act'); or

''(2) to prevent or impede the Department of Health and Human Services in any way from its ongoing efforts to eliminate waste, fraud, and abuse in the medicare program.

Furthermore, the consolidation of medicare administrative contracting set forth in this division [Pub. L. 108–173 does not contain any divisions] does not constitute consolidation of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund or reflect any position on that issue.''

CONSIDERATION OF INCORPORATION OF CURRENT LAW STANDARDS

Pub. L. 108–173, title IX, § 911(a)(2), Dec. 8, 2003, 117 Stat. 2383, provided that: ''In developing contract performance requirements under section 1874A(b) of the Social Security Act [subsec. (b) of this section], as inserted by paragraph (1), the Secretary [of Health and Human Services] shall consider inclusion of the performance standards described in sections 1816(f)(2) of such Act [section 1395h(f)(2) of this title] (relating to timely processing of reconsiderations and applications for exemptions) and section 1842(b)(2)(B) of such Act [section 1395u(b)(2)(B) of this title] (relating to timely review of determinations and fair hearing requests), as such sections were in effect before the date of the enactment of this Act [Dec. 8, 2003].''

REFERENCES

Pub. L. 108–173, title IX, § 911(e), Dec. 8, 2003, 117 Stat. 2386, provided that: ''On and after the effective date provided under subsection (d)(1) [set out above], any reference to a fiscal intermediary or carrier under title XI or XVIII of the Social Security Act [subchapter XI of this chapter and this subchapter] (or any regulation, manual instruction, interpretative rule, statement of policy, or guideline issued to carry out such titles) shall be deemed a reference to a medicare administrative contractor (as provided under section 1874A of the Social Security Act [this section]).''

SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL

Pub. L. 108–173, title IX, § 911(f), Dec. 8, 2003, 117 Stat. 2386, provided that: ''Not later than 6 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this section [enacting this section, amending sections 1395h and 1395u of this title, and enacting provisions set out as notes under this section].''

REPORTS ON IMPLEMENTATION

Pub. L. 108–173, title IX, § 911(g), Dec. 8, 2003, 117 Stat. 2386, provided that:

''(1) PLAN FOR IMPLEMENTATION.—By not later than October 1, 2004, the Secretary [of Health and Human Services] shall submit a report to Congress and the Comptroller General of the United States that describes the plan for implementation of the amendments made by this section [enacting this section and amending sections 1395h and 1395u of this title]. The Comptroller General shall conduct an evaluation of such plan and shall submit to Congress, not later than 6 months after the date the report is received, a report on such evaluation and shall include in such report such recommendations as the Comptroller General deems appropriate.

''(2) STATUS OF IMPLEMENTATION.—The Secretary shall submit a report to Congress not later than October 1, 2008, that describes the status of implementation of

such amendments and that includes a description of the following:

''(A) The number of contracts that have been competitively bid as of such date.

''(B) The distribution of functions among contracts and contractors.

''(C) A timeline for complete transition to full competition.

''(D) A detailed description of how the Secretary has modified oversight and management of medicare contractors to adapt to full competition.''

APPLICATION TO FISCAL INTERMEDIARIES AND CARRIERS

Pub. L. 108–173, title IX, § 912(b), Dec. 8, 2003, 117 Stat. 2388, provided that:

''(1) IN GENERAL.—The provisions of section 1874A(e)(2) of the Social Security Act [subsec. (e)(2) of this section] (other than subparagraph (B)), as added by subsection (a), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.

''(2) DEADLINE FOR INITIAL EVALUATION.—In the case of such a fiscal intermediary or carrier with an agreement or contract under such respective section in effect as of the date of the enactment of this Act [Dec. 8, 2003], the first evaluation under section 1874A(e)(2)(A) of the Social Security Act [subsec. (e)(2)(A) of this section] (as added by subsection (a)), pursuant to paragraph (1), shall be completed (and a report on the evaluation submitted to the Secretary [of Health and Human Services]) by not later than 1 year after such date.''

Pub. L. 108–173, title IX, § 921(b)(2), Dec. 8, 2003, 117 Stat. 2389, provided that: ''The provisions of section 1874A(f) of the Social Security Act [subsec. (f) of this section], as added by paragraph (1), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.''

Pub. L. 108–173, title IX, § 921(c)(3), Dec. 8, 2003, 117 Stat. 2390, provided that: ''The provisions of section 1874A(g) of the Social Security Act [subsec. (g) of this section], as added by paragraph (1), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.''

Pub. L. 108–173, title IX, § 934(c), Dec. 8, 2003, 117 Stat. 2407, provided that: ''The provisions of section 1874A(h) of the Social Security Act [subsec. (h) of this section], as added by subsection (a), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.''

POLICY DEVELOPMENT REGARDING EVALUATION AND MANAGEMENT (E & M) DOCUMENTATION GUIDELINES

Pub. L. 108–173, title IX, § 941, Dec. 8, 2003, 117 Stat. 2418, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] may not implement any new or modified documentation guidelines (which for purposes of this section includes clinical examples) for evaluation and management physician services under the [sic] title XVIII of the Social Security Act [this subchapter] on or after the date of the enactment of this Act [Dec. 8, 2003] unless the Secretary—

''(1) has developed the guidelines in collaboration with practicing physicians (including both generalists and specialists) and provided for an assessment of the proposed guidelines by the physician community;

''(2) has established a plan that contains specific goals, including a schedule, for improving the use of such guidelines;

''(3) has conducted appropriate and representative pilot projects under subsection (b) to test such guidelines;

''(4) finds, based on reports submitted under subsection (b)(5) with respect to pilot projects conducted for such or related guidelines, that the objectives described in subsection (c) will be met in the implementation of such guidelines; and

''(5) has established, and is implementing, a program to educate physicians on the use of such guidelines and that includes appropriate outreach.

The Secretary shall make changes to the manner in which existing evaluation and management documentation guidelines are implemented to reduce paperwork burdens on physicians.

''(b) PILOT PROJECTS TO TEST MODIFIED OR NEW EVALUATION AND MANAGEMENT DOCUMENTATION GUIDELINES.—

''(1) IN GENERAL.—With respect to proposed new or modified documentation guidelines referred to in subsection (a), the Secretary shall conduct under this subsection appropriate and representative pilot projects to test the proposed guidelines.

''(2) LENGTH AND CONSULTATION.—Each pilot project under this subsection shall—

''(A) be voluntary;

''(B) be of sufficient length as determined by the Secretary (but in no case to exceed 1 year) to allow for preparatory physician and medicare contractor education, analysis, and use and assessment of potential evaluation and management guidelines; and

''(C) be conducted, in development and throughout the planning and operational stages of the project, in consultation with practicing physicians (including both generalists and specialists).

''(3) RANGE OF PILOT PROJECTS.—Of the pilot projects conducted under this subsection with respect to proposed new or modified documentation guidelines—

''(A) at least one shall focus on a peer review method by physicians (not employed by a medicare contractor) which evaluates medical record information for claims submitted by physicians identified as statistical outliers relative to codes used for billing purposes for such services;

''(B) at least one shall focus on an alternative method to detailed guidelines based on physician documentation of face to face encounter time with a patient;

''(C) at least one shall be conducted for services furnished in a rural area and at least one for services furnished outside such an area; and

''(D) at least one shall be conducted in a setting where physicians bill under physicians' services in teaching settings and at least one shall be conducted in a setting other than a teaching setting.

''(4) STUDY OF IMPACT.—Each pilot project shall examine the effect of the proposed guidelines on—

''(A) different types of physician practices, including those with fewer than 10 full-time-equivalent employees (including physicians); and

''(B) the costs of physician compliance, including education, implementation, auditing, and monitoring.

''(5) REPORT ON PILOT PROJECTS.—Not later than 6 months after the date of completion of pilot projects carried out under this subsection with respect to a proposed guideline described in paragraph (1), the Secretary shall submit to Congress a report on the pilot projects. Each such report shall include a finding by the Secretary of whether the objectives described in subsection (c) will be met in the implementation of such proposed guideline.

''(c) OBJECTIVES FOR EVALUATION AND MANAGEMENT GUIDELINES.—The objectives for modified evaluation and management documentation guidelines developed by the Secretary shall be to—

''(1) identify clinically relevant documentation needed to code accurately and assess coding levels accurately;

''(2) decrease the level of non-clinically pertinent and burdensome documentation time and content in the physician's medical record;

''(3) increase accuracy by reviewers; and

''(4) educate both physicians and reviewers.

''(d) STUDY OF SIMPLER, ALTERNATIVE SYSTEMS OF DOCUMENTATION FOR PHYSICIAN CLAIMS.—

''(1) STUDY.—The Secretary shall carry out a study of the matters described in paragraph (2).

''(2) MATTERS DESCRIBED.—The matters referred to in paragraph (1) are—

''(A) the development of a simpler, alternative system of requirements for documentation accompanying claims for evaluation and management physician services for which payment is made under title XVIII of the Social Security Act [this subchapter]; and

''(B) consideration of systems other than current coding and documentation requirements for payment for such physician services.

''(3) CONSULTATION WITH PRACTICING PHYSICIANS.—In designing and carrying out the study under paragraph (1), the Secretary shall consult with practicing physicians, including physicians who are part of group practices and including both generalists and specialists.

''(4) APPLICATION OF HIPAA UNIFORM CODING REQUIREMENTS.—In developing an alternative system under paragraph (2), the Secretary shall consider requirements of administrative simplification under part C of title XI of the Social Security Act [part C of subchapter XI of this chapter].

''(5) REPORT TO CONGRESS.—

''(A) Not later than October 1, 2005, the Secretary shall submit to Congress a report on the results of the study conducted under paragraph (1).

''(B) The Medicare Payment Advisory Commission shall conduct an analysis of the results of the study included in the report under subparagraph (A) and shall submit a report on such analysis to Congress.

''(e) STUDY ON APPROPRIATE CODING OF CERTAIN EXTENDED OFFICE VISITS.—The Secretary shall conduct a study of the appropriateness of coding in cases of extended office visits in which there is no diagnosis made. Not later than October 1, 2005, the Secretary shall submit a report to Congress on such study and shall include recommendations on how to code appropriately for such visits in a manner that takes into account the amount of time the physician spent with the patient.

''(f) DEFINITIONS.—In this section—

''(1) the term 'rural area' has the meaning given that term in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D)); and

''(2) the term 'teaching settings' are those settings described in section 415.150 of title 42, Code of Federal Regulations.''

§ 1395*ll*. Studies and recommendations

(a) Health care of the aged and disabled

The Secretary shall carry on studies and develop recommendations to be submitted from time to time to the Congress relating to health care of the aged and the disabled, including studies and recommendations concerning (1) the adequacy of existing personnel and facilities for health care for purposes of the programs under parts A and B of this subchapter; (2) methods for encouraging the further development of efficient and economical forms of health care which are a constructive alternative to inpatient hospital care; and (3) the effects of the deductibles and coinsurance provisions upon beneficiaries, persons who provide health services, and the financing of the program.

(b) Operation and administration of insurance programs

The Secretary shall make a continuing study of the operation and administration of this subchapter (including a validation of the accreditation process of the Joint Commission on Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972 [42 U.S.C. 1395mm], the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 [42 U.S.C. 1395b–1] and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972 [42 U.S.C. 1395b–1 note]), and shall transmit to the Congress annually a report concerning the operation of such programs.

(Aug. 14, 1935, ch. 531, title XVIII, § 1875, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 332; amended Pub. L. 90–248, title IV, § 402(c), Jan. 2, 1968, 81 Stat. 931; Pub. L. 92–603, title II, §§ 201(c)(7), 222(c), 226(d), 244(d), Oct. 30, 1972, 86 Stat. 1373, 1393, 1404, 1423; Pub. L. 98–369, div. B, title III, § 2354(b)(17), July 18, 1984, 98 Stat. 1101; Pub. L. 99–509, title IX, § 9316(a), Oct. 21, 1986, 100 Stat. 2006; Pub. L. 100–203, title IV, § 4085(i)(20), Dec. 22, 1987, 101 Stat. 1330–133; Pub. L. 100–647, title VIII, § 8413, Nov. 10, 1988, 102 Stat. 3801; Pub. L. 101–234, title III, § 301(b)(5), (d)(2), Dec. 13, 1989, 103 Stat. 1985, 1986; Pub. L. 101–239, title VI, § 6103(b)(3)(A), Dec. 19, 1989, 103 Stat. 2199; Pub. L. 108–173, title I, § 101(e)(7), Dec. 8, 2003, 117 Stat. 2152.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (a), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 226 of the Social Security Amendments of 1972, referred to in subsec. (b), is section 226 of Pub. L. 92–603, which enacted section 1395mm of this title and provisions set out as notes under that section and amended this section and sections 1395f, 1395*l*, and 1396b of this title.

Section 402 of the Social Security Amendments of 1967, referred to in subsec. (b), is section 402 of Pub. L. 90–248, which enacted section 1395b–1 of this title and amended this section.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (b), is section 222(a) of Pub. L. 92–603, which enacted provisions set out as note under section 1395b–1 of this title.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–173 substituted ''this subchapter'' for ''the insurance programs under parts A and B of this subchapter''.

1989—Subsec. (c). Pub. L. 101–239 struck out subsec. (c) which related to patient outcome assessment research program.

Subsec. (c)(7). Pub. L. 101–234, § 301(b)(5), (d)(2), amended par. (7) identically, substituting ''date of the enactment of this section'' for ''date of the enactment of this Act''.

1988—Subsec. (c)(3). Pub. L. 100–647 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of carrying out the research program, there are authorized to be appropriated—

''(A) from the Federal Hospital Insurance Trust Fund $4,000,000 for fiscal year 1987 and $5,000,000 for each of fiscal years 1988 and 1989, and

''(B) from the Federal Supplementary Medical Insurance Trust Fund $2,000,000 for fiscal year 1987 and $2,500,000 for each of fiscal years 1988 and 1989.''

1987—Subsec. (c)(3)(B). Pub. L. 100–203 substituted ''fiscal year 1987'' for ''fiscal years 1987''.

1986—Subsec. (c). Pub. L. 99–509 added subsec. (c).

1984—Subsec. (b). Pub. L. 98–369 struck out ''the'' after ''Joint Commission on''.

1972—Subsec. (a). Pub. L. 92–603, § 201(c)(7), inserted ''and the disabled'' after ''aged''.

Subsec. (b). Pub. L. 92–603, §§ 222(c), 226(d)(1), 244(d), substituted ''(including a validation of the accreditation process of the Joint Commission on the Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972, the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972)'' for ''(including the experimentation authorized by section 402 of the Social Security Amendments of 1967)''. Pub. L. 92–603, § 226(d)(2), which directed the substitution of ''1972'' for ''1971'', could not be executed because ''1971'' did not appear.

1968—Subsec. (b). Pub. L. 90–248 inserted ''(including the experimentation authorized by section 402 of the Social Security Amendments of 1967'' after ''under parts A and B of this subchapter''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6103(b)(3)(A) of Pub. L. 101–239 provided that the amendment made by that section is effective for fiscal years beginning after fiscal year 1990.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 226(d) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

INSTITUTE OF MEDICINE EVALUATION AND REPORT ON HEALTH CARE PERFORMANCE MEASURES

Pub. L. 108–173, title II, § 238, Dec. 8, 2003, 117 Stat. 2213, provided that:

''(a) EVALUATION.—

''(1) IN GENERAL.—Not later than the date that is 2 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall enter into an arrangement under which the Institute of Medicine of the National Academy of Sciences (in this section referred to as the 'Institute') shall conduct an evaluation of leading health care performance measures in the public and private sectors and options to implement policies that align performance with payment under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(2) SPECIFIC MATTERS EVALUATED.—In conducting the evaluation under paragraph (1), the Institute shall—

''(A) catalogue, review, and evaluate the validity of leading health care performance measures;

''(B) catalogue and evaluate the success and utility of alternative performance incentive programs in public or private sector settings; and

''(C) identify and prioritize options to implement policies that align performance with payment under the medicare program that indicate—

''(i) the performance measurement set to be used and how that measurement set will be updated;

''(ii) the payment policy that will reward performance; and

''(iii) the key implementation issues (such as data and information technology requirements) that must be addressed.

''(3) SCOPE OF HEALTH CARE PERFORMANCE MEASURES.—The health care performance measures described in paragraph (2)(A) shall encompass a variety of perspectives, including physicians, hospitals, other health care providers, health plans, purchasers, and patients.

''(4) CONSULTATION WITH MEDPAC.—In evaluating the matters described in paragraph (2)(C), the Institute shall consult with the Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6).

''(b) REPORT.—Not later than the date that is 18 months after the date of enactment of this Act [Dec. 8, 2003], the Institute shall submit to the Secretary and appropriate committees of jurisdiction of the Senate and House of Representatives a report on the evaluation conducted under subsection (a)(1) describing the findings of such evaluation and recommendations for an overall strategy and approach for aligning payment with performance, including options for updating performance measures, in the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter], the Medicare Advantage program under part C of such title [part C of this subchapter], and any other programs under such title XVIII [this subchapter].

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for purposes of conducting the evaluation and preparing the report required by this section.''

GAO STUDY ON ACCESS TO PHYSICIANS' SERVICES

Pub. L. 108–173, title VI, § 604, Dec. 8, 2003, 117 Stat. 2301, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study on access of medicare beneficiaries to physicians' services under the medicare program. The study shall include—

''(1) an assessment of the use by beneficiaries of such services through an analysis of claims submitted by physicians for such services under part B of the medicare program [part B of this subchapter];

''(2) an examination of changes in the use by beneficiaries of physicians' services over time; and

''(3) an examination of the extent to which physicians are not accepting new medicare beneficiaries as patients.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a). The report shall include a determination whether—

''(1) data from claims submitted by physicians under part B of the medicare program [part B of this subchapter] indicate potential access problems for medicare beneficiaries in certain geographic areas; and

''(2) access by medicare beneficiaries to physicians' services may have improved, remained constant, or deteriorated over time.''

STUDY ON ENROLLMENT PROCEDURES FOR GROUPS THAT RETAIN INDEPENDENT CONTRACTOR PHYSICIANS

Pub. L. 106–554, § 1(a)(6) [title IV, § 413], Dec. 21, 2000, 114 Stat. 2763, 2763A–515, provided that:

''(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the current medicare enrollment process for groups that retain independent contractor physicians with particular emphasis on hospital-based physicians, such as emergency department staffing groups. In conducting the evaluation, the Comptroller General shall consult with groups that retain independent contractor physicians and shall—

''(1) review the issuance of individual medicare provider numbers and the possible medicare program integrity vulnerabilities of the current process;

''(2) review direct and indirect costs associated with the current process incurred by the medicare program and groups that retain independent contractor physicians;

''(3) assess the effect on program integrity by the enrollment of groups that retain independent contractor hospital-based physicians; and

''(4) develop suggested procedures for the enrollment of these groups.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a).''

GAO STUDIES AND REPORTS ON MEDICARE PAYMENTS

Pub. L. 106–554, §1(a)(6) [title IV, §437], Dec. 21, 2000, 114 Stat. 2763, 2763A–527, provided that:

''(a) GAO STUDY ON HCFA POST-PAYMENT AUDIT PROCESS.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study on the post-payment audit process under the medicare program under title XVIII of the Social Security Act [this subchapter] as such process applies to physicians, including the proper level of resources that the Health Care Financing Administration should devote to educating physicians regarding—

''(A) coding and billing;

''(B) documentation requirements; and

''(C) the calculation of overpayments.

''(2) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) together with specific recommendations for changes or improvements in the post-payment audit process described in such paragraph.

''(b) GAO STUDY ON ADMINISTRATION AND OVERSIGHT.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study on the aggregate effects of regulatory, audit, oversight, and paperwork burdens on physicians and other health care providers participating in the medicare program under title XVIII of the Social Security Act [this subchapter].

''(2) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations regarding any area in which—

''(A) a reduction in paperwork, an ease of administration, or an appropriate change in oversight and review may be accomplished; or

''(B) additional payments or education are needed to assist physicians and other health care providers in understanding and complying with any legal or regulatory requirements.''

STUDY AND REPORT REGARDING UTILIZATION OF PHYSICIANS' SERVICES BY MEDICARE BENEFICIARIES

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §211(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–349, provided that:

''(1) STUDY BY SECRETARY.—The Secretary of Health and Human Services, acting through the Administrator of the Agency for Health Care Policy and Research, shall conduct a study of the issues specified in paragraph (2).

''(2) ISSUES TO BE STUDIED.—The issues specified in this paragraph are the following:

''(A) The various methods for accurately estimating the economic impact on expenditures for physicians' services under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) [parts A and B of this subchapter] resulting from—

''(i) improvements in medical capabilities;

''(ii) advancements in scientific technology;

''(iii) demographic changes in the types of medicare beneficiaries that receive benefits under such program; and

''(iv) geographic changes in locations where medicare beneficiaries receive benefits under such program.

''(B) The rate of usage of physicians' services under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) among beneficiaries between ages 65 and 74, 75 and 84, 85 and over, and disabled beneficiaries under age 65.

''(C) Other factors that may be reliable predictors of beneficiary utilization of physicians' services under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(3) REPORT TO CONGRESS.—Not later than 3 years after the date of the enactment of this Act [Nov. 29, 1999], the Secretary of Health and Human Services shall submit a report to Congress setting forth the results of the study conducted pursuant to paragraph (1), together with any recommendations the Secretary determines are appropriate.

''(4) MEDPAC REPORT TO CONGRESS.—Not later than 180 days after the date of submission of the report under paragraph (3), the Medicare Payment Advisory Commission shall submit a report to Congress that includes—

''(A) an analysis and evaluation of the report submitted under paragraph (3); and

''(B) such recommendations as it determines are appropriate.''

STUDY OF ADULT DAY CARE SERVICES

Pub. L. 100–360, title II, §208, July 1, 1988, 102 Stat. 732, as amended by Pub. L. 100–485, title VI, §608(d)(8), Oct. 13, 1988, 102 Stat. 2415, directed Secretary of Health and Human Services to conduct a survey of adult day care services in United States and to report to Congress, by not later than 1 year after July 1, 1988, on the information collected in the survey, prior to repeal by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE

Section 9313(d) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4085(i)(21)(A), Dec. 22, 1987, 101 Stat. 1330–133, directed Secretary of Health and Human Services to arrange, with the National Academy of Sciences or other appropriate nonprofit private entity, for a study to design a strategy for reviewing and assuring the quality of care for which payment may be made under this subchapter, specified items to be included in the study, and directed Secretary to submit to Congress, not later than Jan. 1, 1990, a report on the study with recommendations with respect to strengthening quality assurancees and review activities for services furnished under the medicare program.

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

For treatment of hospitals in States which have had a waiver approved under this section, upon termination of waiver, see section 9202(j) of Pub. L. 99–272, as amended, set out as a note under section 1395ww of this title.

DRUG DETOXIFICATION MEDICARE COVERAGE AND FACILITY INCENTIVES

Pub. L. 96–499, title IX, §931(f), Dec. 5, 1980, 94 Stat. 2634, which related to a study of medicare coverage of certain additional detoxification-related services, was repealed by Pub. L. 97–35, title XXI, §2121(h), Aug. 13, 1981, 95 Stat. 796.

LEGISLATIVE RECOMMENDATIONS REGARDING REIMBURSEMENT FOR OPTOMETRISTS' SERVICES

Pub. L. 96–499, title IX, §937(b), Dec. 5, 1980, 94 Stat. 2640, provided that the Secretary of Health and Human Services submit to the Congress by Jan. 1, 1982, legislative recommendations with respect to reimbursement

under title XVIII of the Social Security Act [this subchapter] for services furnished by optometrists in connection with cataracts and such other services which they are legally authorized to perform.

DEMONSTRATION PROJECTS, STUDIES, AND REPORTS: NUTRITIONAL THERAPY, SECOND OPINION COST-SHARING, SERVICES OF REGISTERED DIETITIANS, SERVICES OF CLINICAL SOCIAL WORKERS, ORTHOPEDIC SHOES, RESPIRATORY THERAPY SERVICES, AND FOOT CONDITIONS; GRANTS, PAYMENTS, AND EXPENDITURES

Pub. L. 96–499, title IX, § 958, Dec. 5, 1980, 94 Stat. 2648, directed Secretary of Health and Human Services to carry out certain demonstration projects and conduct certain studies as follows: (a) a demonstration project to determine extent to which nutritional therapy in early renal failure could retard the disease with resultant substantive deferment of dialysis, and aspects of making such therapy available under this subchapter, report to Congress to be submitted within twenty-four months of Dec. 5, 1980; (b) demonstration projects with respect to waiving the applicable cost sharing amounts which beneficiaries under this subchapter had to pay for obtaining a second opinion on having surgery, report to be submitted within one year after Dec. 5, 1980; (c) a study of conditions under which services of registered dietitians could be covered as a home health benefit under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; (d) demonstration projects to determine aspects of making services of clinical social workers more generally available under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; (e) a study of methods for providing coverage under part B of this subchapter for orthopedic shoes for individuals with disabling or deforming conditions requiring special fitting considerations, or requiring special shoes in conjunction with the use of an orthosis or foot support, report to be submitted no later than July 1, 1981; (f) a study of conditions under which services with respect to respiratory therapy could be covered as a home health benefit under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; and (g) a study analyzing cost effects of alternative approaches to improving coverage under this subchapter for treatment of various types of foot conditions, report to be submitted within twenty-four months of Dec. 5, 1980. Payments and expenditures for such studies and projects were to be made in appropriate part from the Federal Hospital Insurance Trust Fund established by section 1395i of this title, and the Federal Supplemental Medical Insurance Trust Fund established by section 1395t of this title.

DEMONSTRATION PROJECT RELATING TO THE TERMINALLY ILL

Pub. L. 96–265, title V, § 506, June 9, 1980, 94 Stat. 475, authorized Secretary of Health and Human Services to provide for participation, by Social Security Administration, in a demonstration project relating to the terminally ill then being conducted within the Department of Health and Human Services, the purpose of such participation to be to study impact on terminally ill of provisions of disability programs administered by Social Security Administration and to determine how best to provide services needed by persons who were terminally ill through programs over which the Social Security Administration had administrative responsibility, and authorized to be appropriated necessary sums not in excess of $2,000,000 for any fiscal year.

REPORT TO CONGRESS WITH RESPECT TO URBAN OR RURAL COMPREHENSIVE MENTAL HEALTH CENTERS AND CENTERS FOR TREATMENT OF ALCOHOLISM AND DRUG ABUSE; SUBMISSION NO LATER THAN JUNE 13, 1978

Pub. L. 95–210, § 4, Dec. 13, 1977, 91 Stat. 1490, directed Secretary of Health, Education, and Welfare to submit to Congress, no later than six months after Dec. 13, 1977, a report on the advantages and disadvantages of extending coverage under this subchapter to urban or rural comprehensive mental health centers and to centers for treatment of alcoholism and drug abuse.

STUDY AND REVIEW BY COMPTROLLER GENERAL OF ADMINISTRATIVE STRUCTURE FOR PROCESSING MEDICARE CLAIMS; REPORT TO CONGRESS

Pub. L. 95–142, § 12, Oct. 25, 1977, 91 Stat. 1197, directed Comptroller General to conduct a comprehensive study and review of administrative structure established for processing of claims under this subchapter for purpose of determining whether and to what extent more efficient claims administration under this subchapter could be achieved and directed Comptroller General to submit to Congress no later than July 1, 1979, a complete report with respect to such study and review.

REPORT BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE ON DELIVERY OF HOME HEALTH AND OTHER IN-HOME SERVICES; CONTENTS; CONSULTATION REQUIREMENTS; SUBMISSION TO CONGRESS

Pub. L. 95–142, § 18, Oct. 25, 1977, 91 Stat. 1202, directed Secretary of Health, Education, and Welfare, not later than one year after Oct. 25, 1977, to submit to appropriate committees of Congress a report analyzing, evaluating, and making recommendations with respect to all aspects of delivery of home health and other in-home services authorized to be provided under subchapters XVIII, XIX, and XX of this chapter.

§ 1395mm. Payments to health maintenance organizations and competitive medical plans

(a) Rates and adjustments

(1)(A) The Secretary shall annually determine, and shall announce (in a manner intended to provide notice to interested parties) not later than September 7 before the calendar year concerned—

(i) a per capita rate of payment for each class of individuals who are enrolled under this section with an eligible organization which has entered into a risk-sharing contract and who are entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, and

(ii) a per capita rate of payment for each class of individuals who are so enrolled with such an organization and who are enrolled under part B of this subchapter only.

For purposes of this section, the term ''risk-sharing contract'' means a contract entered into under subsection (g) of this section and the term ''reasonable cost reimbursement contract'' means a contract entered into under subsection (h) of this section.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The annual per capita rate of payment for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in paragraph (4)) for that class.

(D) In the case of an eligible organization with a risk-sharing contract, the Secretary shall make monthly payments in advance and in accordance with the rate determined under subparagraph (C) and except as provided in sub-

section (g)(2) of this section, to the organization for each individual enrolled with the organization under this section.

(E)(i) The amount of payment under this paragraph may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(ii)(I) Subject to subclause (II), the Secretary may make retroactive adjustments under clause (i) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with an eligible organization (which has a risk-sharing contract under this section) under a health benefit plan operated, sponsored, or contributed to by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the plan under this section, except that for purposes of making such retroactive adjustments under this clause, such period may not exceed 90 days.

(II) No adjustment may be made under subclause (I) with respect to any individual who does not certify that the organization provided the individual with the explanation described in subsection (c)(3)(E) of this section at the time the individual enrolled with the organization.

(F)(i) At least 45 days before making the announcement under subparagraph (A) for a year (beginning with the announcement for 1991), the Secretary shall provide for notice to eligible organizations of proposed changes to be made in the methodology or benefit coverage assumptions from the methodology and assumptions used in the previous announcement and shall provide such organizations an opportunity to comment on such proposed changes.

(ii) In each announcement made under subparagraph (A) for a year (beginning with the announcement for 1991), the Secretary shall include an explanation of the assumptions (including any benefit coverage assumptions) and changes in methodology used in the announcement in sufficient detail so that eligible organizations can compute per capita rates of payment for classes of individuals located in each county (or equivalent area) which is in whole or in part within the service area of such an organization.

(2) With respect to any eligible organization which has entered into a reasonable cost reimbursement contract, payments shall be made to such plan in accordance with subsection (h)(2) of this section rather than paragraph (1).

(3) Subject to subsections (c)(2)(B)(ii) and (c)(7) of this section, payments under a contract to an eligible organization under paragraph (1) or (2) shall be instead of the amounts which (in the absence of the contract) would be otherwise payable, pursuant to sections 1395f(b) and 1395l(a) of this title, for services furnished by or through the organization to individuals enrolled with the organization under this section.

(4) For purposes of this section, the term ''adjusted average per capita cost'' means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for services covered under parts A and B of this subchapter, or part B only, and types of expenses otherwise reimbursable under parts A and B of this subchapter, or part B only (including administrative costs incurred by organizations described in sections 1395h and 1395u of this title), if the services were to be furnished by other than an eligible organization or, in the case of services covered only under section 1395x(s)(2)(H) of this title, if the services were to be furnished by a physician or as an incident to a physician's service.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The portion of that payment to the organization for a month to be paid by each trust fund shall be determined as follows:

(A) In regard to expenditures by eligible organizations having risk-sharing contracts, the allocation shall be determined each year by the Secretary based on the relative weight that benefits from each fund contribute to the adjusted average per capita cost.

(B) In regard to expenditures by eligible organizations operating under a reasonable cost reimbursement contract, the initial allocation shall be based on the plan's most recent budget, such allocation to be adjusted, as needed, after cost settlement to reflect the distribution of actual expenditures.

The remainder of that payment shall be paid by the former trust fund.

(6) Subject to subsections (c)(2)(B)(ii) and (c)(7) of this section, if an individual is enrolled under this section with an eligible organization having a risk-sharing contract, only the eligible organization shall be entitled to receive payments from the Secretary under this subchapter for services furnished to the individual.

(b) Definitions; requirements

For purposes of this section, the term ''eligible organization'' means a public or private entity (which may be a health maintenance organization or a competitive medical plan), organized under the laws of any State, which—

(1) is a qualified health maintenance organization (as defined in section 300e–9(d)[1] of this title), or

(2) meets the following requirements:

(A) The entity provides to enrolled members at least the following health care services:

(i) Physicians' services performed by physicians (as defined in section 1395x(r)(1) of this title).

(ii) Inpatient hospital services.

(iii) Laboratory, X-ray, emergency, and preventive services.

[1] See References in Text note below.

(iv) Out-of-area coverage.

(B) The entity is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.

(C) The entity provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(D) The entity assumes full financial risk on a prospective basis for the provision of the health care services listed in subparagraph (A), except that such entity may—

(i) obtain insurance or make other arrangements for the cost of providing to any enrolled member health care services listed in subparagraph (A) the aggregate value of which exceeds $5,000 in any year,

(ii) obtain insurance or make other arrangements for the cost of health care service listed in subparagraph (A) provided to its enrolled members other than through the entity because medical necessity required their provision before they could be secured through the entity,

(iii) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

(iv) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

(E) The entity has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

Paragraph (2)(A)(ii) shall not apply to an entity which had contracted with a single State agency administering a State plan approved under subchapter XIX of this chapter for the provision of services (other than inpatient hospital services) to individuals eligible for such services under such State plan on a prepaid risk basis prior to 1970.

(c) Enrollment in plan; duties of organization to enrollees

(1) The Secretary may not enter into a contract under this section with an eligible organization unless it meets the requirements of this subsection and subsection (e) of this section with respect to members enrolled under this section.

(2)(A) The organization must provide to members enrolled under this section, through providers and other persons that meet the applicable requirements of this subchapter and part A of subchapter XI of this chapter—

(i) only those services covered under parts A and B of this subchapter, for those members entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or

(ii) only those services covered under part B of this subchapter, for those members enrolled only under such part,

which are available to individuals residing in the geographic area served by the organization, except that (I) the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered, and (II) in the case of an organization with a risk-sharing contract, the organization may provide such members with such additional health care services as the Secretary may approve. The Secretary shall approve any such additional health care services which the organization proposes to offer to such members, unless the Secretary determines that including such additional services will substantially discourage enrollment by covered individuals with the organization.

(B) If there is a national coverage determination made in the period beginning on the date of an announcement under subsection (a)(1)(A) of this section and ending on the date of the next announcement under such subsection that the Secretary projects will result in a significant change in the costs to the organization of providing the benefits that are the subject of such national coverage determination and that was not incorporated in the determination of the per capita rate of payment included in the announcement made at the beginning of such period—

(i) such determination shall not apply to risk-sharing contracts under this section until the first contract year that begins after the end of such period; and

(ii) if such coverage determination provides for coverage of additional benefits or under additional circumstances, subsection (a)(3) of this section shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period,

unless otherwise required by law.

(3)(A)(i) Each eligible organization must have an open enrollment period, for the enrollment of individuals under this section, of at least 30 days duration every year and including the period or periods specified under clause (ii), and must provide that at any time during which enrollments are accepted, the organization will accept up to the limits of its capacity (as determined by the Secretary) and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (d) of this section in the order in which they apply for enrollment, unless to do so would result in failure to meet the requirements of subsection (f) of this section or would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the population in the geographic area served by the organization.

(ii)(I) If a risk-sharing contract under this section is not renewed or is otherwise terminated,

eligible organizations with risk-sharing contracts under this section and serving a part of the same service area as under the terminated contract are required to have an open enrollment period for individuals who were enrolled under the terminated contract as of the date of notice of such termination. If a risk-sharing contract under this section is renewed in a manner that discontinues coverage for individuals residing in part of the service area, eligible organizations with risk-sharing contracts under this section and enrolling individuals residing in that part of the service area are required to have an open enrollment period for individuals residing in the part of the service area who were enrolled under the contract as of the date of notice of such discontinued coverage.

(II) The open enrollment periods required under subclause (I) shall be for 30 days and shall begin 30 days after the date that the Secretary provides notice of such requirement.

(III) Enrollment under this clause shall be effective 30 days after the end of the open enrollment period, or, if the Secretary determines that such date is not feasible, such other date as the Secretary specifies.

(B) An individual may enroll under this section with an eligible organization in such manner as may be prescribed in regulations and may terminate his enrollment with the eligible organization as of the beginning of the first calendar month following the date on which the request is made for such termination (or, in the case of financial insolvency of the organization, as may be prescribed by regulations) or, in the case of such an organization with a reasonable cost reimbursement contract, as may be prescribed by regulations. In the case of an individual's termination of enrollment, the organization shall provide the individual with a copy of the written request for termination of enrollment and a written explanation of the period (ending on the effective date of the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this subchapter other than through the organization.

(C) The Secretary may prescribe the procedures and conditions under which an eligible organization that has entered into a contract with the Secretary under this subsection may inform individuals eligible to enroll under this section with the organization about the organization, or may enroll such individuals with the organization. No brochures, application forms, or other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this section unless (i) at least 45 days before its distribution, the organization has submitted the material to the Secretary for review and (ii) the Secretary has not disapproved the distribution of the material. The Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines, in the Secretary's discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.

(D) The organization must provide assurances to the Secretary that it will not expel or refuse to re-enroll any such individual because of the individual's health status or requirements for health care services, and that it will notify each such individual of such fact at the time of the individual's enrollment.

(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under this section, including an explanation of—

(i) the enrollee's rights to benefits from the organization,

(ii) the restrictions on payments under this subchapter for services furnished other than by or through the organization,

(iii) out-of-area coverage provided by the organization,

(iv) the organization's coverage of emergency services and urgently needed care, and

(v) appeal rights of enrollees.

(F) Each eligible organization that provides items and services pursuant to a contract under this section shall provide assurances to the Secretary that in the event the organization ceases to provide such items and services, the organization shall provide or arrange for supplemental coverage of benefits under this subchapter related to a pre-existing condition with respect to any exclusion period, to all individuals enrolled with the entity who receive benefits under this subchapter, for the lesser of six months or the duration of such period.

(G)(i) Each eligible organization having a risk-sharing contract under this section shall notify individuals eligible to enroll with the organization under this section and individuals enrolled with the organization under this section that—

(I) the organization is authorized by law to terminate or refuse to renew the contract, and

(II) termination or nonrenewal of the contract may result in termination of the enrollments of individuals enrolled with the organization under this section.

(ii) The notice required by clause (i) shall be included in—

(I) any marketing materials described in subparagraph (C) that are distributed by an eligible organization to individuals eligible to enroll under this section with the organization, and

(II) any explanation provided to enrollees by the organization pursuant to subparagraph (E).

(4) The organization must—

(A) make the services described in paragraph (2) (and such other health care services as such individuals have contracted for) (i) available and accessible to each such individual, within the area served by the organization, with reasonable promptness and in a manner which assures continuity, and (ii) when medically necessary, available and accessible twenty-four hours a day and seven days a week, and

(B) provide for reimbursement with respect to services which are described in subparagraph (A) and which are provided to such an individual other than through the organization, if (i) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition and (ii)

it was not reasonable given the circumstances to obtain the services through the organization.

(5)(A) The organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and members enrolled with the organization under this section.

(B) A member enrolled with an eligible organization under this section who is dissatisfied by reason of his failure to receive any health service to which he believes he is entitled and at no greater charge than he believes he is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 405(b) of this title, and in any such hearing the Secretary shall make the eligible organization a party. If the amount in controversy is $1,000 or more, the individual or eligible organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 405(g) of this title, and both the individual and the eligible organization shall be entitled to be parties to that judicial review. In applying sections 405(b) and 405(g) of this title as provided in this subparagraph, and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. The provisions of section 1395ff(b)(1)(E)(iii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this subparagraph in the same manner as they apply to the dollar amounts specified in section 1395ff(b)(1)(E)(i) of this title.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals, which program (A) stresses health outcomes and (B) provides review by physicians and other health care professionals of the process followed in the provision of such health care services.

(7) A risk-sharing contract under this section shall provide that in the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title) as of the effective date of the individual's—

(A) enrollment with an eligible organization under this section—

(i) payment for such services until the date of the individual's discharge shall be made under this subchapter as if the individual were not enrolled with the organization,

(ii) the organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge, and

(iii) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this section; or

(B) termination of enrollment with an eligible organization under this section—

(i) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge,

(ii) payment for such services during the stay shall not be made under section 1395ww(d) of this title, and

(iii) the organization shall not receive any payment with respect to the individual under this section during the period the individual is not enrolled.

(8) A contract under this section shall provide that the eligible organization shall meet the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(d) Right to enroll with contracting organization in geographic area

Subject to the provisions of subsection (c)(3) of this section, every individual entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter or enrolled under part B of this subchapter only (other than an individual medically determined to have end-stage renal disease) shall be eligible to enroll under this section with any eligible organization with which the Secretary has entered into a contract under this section and which serves the geographic area in which the individual resides.

(e) Limitation on charges; election of coverage; "adjusted community rate" defined; workmen's compensation and insurance benefits

(1) In no case may—

(A) the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under parts A and B of this subchapter) to individuals who are enrolled under this section with the organization and who are entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or

(B) the portion of its premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under part B of this subchapter) to individuals who are enrolled under this section with the organization and enrolled under part B of this subchapter only

exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or enrolled under part B only, respectively, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to services covered under parts A and B of this subchapter, election of coverage for such additional services (unless such services have

been approved by the Secretary under subsection (c)(2) of this section) shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services.

(3) For purposes of this section, the term ''adjusted community rate'' for a service or services means, at the election of an eligible organization, either—

(A) the rate of payment for that service or services which the Secretary annually determines would apply to a member enrolled under this section with an eligible organization if the rate of payment were determined under a ''community rating system'' (as defined in section 300e–1(8) of this title, other than subparagraph (C)), or

(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to a member enrolled under this section with the eligible organization, as the Secretary annually estimates is attributable to that service or services,

but adjusted for differences between the utilization characteristics of the members enrolled with the eligible organization under this section and the utilization characteristics of the other members of the organization (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of members in other eligible organizations, or individuals in the area, in the State, or in the United States, eligible to enroll under this section with an eligible organization and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

(4) Notwithstanding any other provision of law, the eligible organization may (in the case of the provision of services to a member enrolled under this section for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or plan of the United States or a State, under an automobile or liability insurance policy or plan, including a self-insured plan, or under no fault insurance) charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law or policy—

(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

(B) such member to the extent that the member has been paid under such law, plan, or policy for such services.

(f) Membership requirements

(1) For contract periods beginning before January 1, 1999, each eligible organization with which the Secretary enters into a contract under this section shall have, for the duration of such contract, an enrolled membership at least one-half of which consists of individuals who are not entitled to benefits under this subchapter.

(2) Subject to paragraph (4), the Secretary may modify or waive the requirement imposed by paragraph (1) only—

(A) to the extent that more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter, or

(B) in the case of an eligible organization that is owned and operated by a governmental entity, only with respect to a period of three years beginning on the date the organization first enters into a contract under this section, and only if the organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.

(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section or of payment to the organization under this section for individuals newly enrolled with the organization, after the date the Secretary notifies the organization of such noncompliance.

(4) Effective for contract periods beginning after December 31, 1996, the Secretary may waive or modify the requirement imposed by paragraph (1) to the extent the Secretary finds that it is in the public interest.

(g) Risk-sharing contract

(1) The Secretary may enter a risk-sharing contract with any eligible organization, as defined in subsection (b) of this section, which has at least 5,000 members, except that the Secretary may enter into such a contract with an eligible organization that has fewer members if the organization primarily serves members residing outside of urbanized areas.

(2) Each risk-sharing contract shall provide that—

(A) if the adjusted community rate, as defined in subsection (e)(3) of this section, for services under parts A and B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or

(B) if the adjusted community rate for services under part B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under that part) for members enrolled under this section with the organization and entitled to benefits under part B of this subchapter only

is less than the average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of an annual contract period for members enrolled under this

section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively, the eligible organization shall provide to members enrolled under a risk-sharing contract under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively, the additional benefits described in paragraph (3) which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced); except that this paragraph shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced) and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5). If the Secretary finds that there is insufficient enrollment experience to determine an average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this section.

(3) The additional benefits referred to in paragraph (2) are—

(A) the reduction of the premium rate or other charges made with respect to services furnished by the organization to members enrolled under this section, or

(B) the provision of additional health benefits,

or both.

(4) Repealed. Pub. L. 100–203, title IV, § 4012(b), Dec. 22, 1987, 101 Stat. 1330–61.

(5) An organization having a risk-sharing contract under this section may (with the approval of the Secretary) provide that a part of the value of additional benefits otherwise required to be provided by reason of paragraph (2) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with paragraph (3). Any of such value of additional benefits which is not provided to members of the organization in accordance with paragraph (3) prior to the end of such period, shall revert for the use of such trust funds.

(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1395h(c)(2) and 1395u(c)(2) of this title) of claims submitted for services and supplies furnished to individuals pursuant to such contract, if the services or supplies are not furnished under a contract between the organization and the provider or supplier.

(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for such covered services furnished to individuals enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of the Secretary's payments (and costs incurred by the Secretary in making such payments).

(h) Reasonable cost reimbursement contract; requirements

(1) If—

(A) the Secretary is not satisfied that an eligible organization has the capacity to bear the risk of potential losses under a risk-sharing contract under this section, or

(B) the eligible organization so elects or has an insufficient number of members to be eligible to enter into a risk-sharing contract under subsection (g)(1) of this section,

the Secretary may, if he is otherwise satisfied that the eligible organization is able to perform its contractual obligations effectively and efficiently, enter into a contract with such organization pursuant to which such organization is reimbursed on the basis of its reasonable cost (as defined in section 1395x(v) of this title) in the manner prescribed in paragraph (3).

(2) A reasonable cost reimbursement contract under this subsection may, at the option of such organization, provide that the Secretary—

(A) will reimburse hospitals and skilled nursing facilities either for the reasonable cost (as determined under section 1395x(v) of this title) or for payment amounts determined in accordance with section 1395ww of this title, as applicable, of services furnished to individuals enrolled with such organization pursuant to subsection (d) of this section, and

(B) will deduct the amount of such reimbursement from payment which would otherwise be made to such organization.

If such an eligible organization pays a hospital or skilled nursing facility directly, the amount paid shall not exceed the reasonable cost of the services (as determined under section 1395x(v) of this title) or the amount determined under section 1395ww of this title, as applicable, unless such organization demonstrates to the satisfaction of the Secretary that such excess payments are justified on the basis of advantages gained by the organization.

(3) Payments made to an organization with a reasonable cost reimbursement contract shall be subject to appropriate retroactive corrective adjustment at the end of each contract year so as to assure that such organization is paid for the reasonable cost actually incurred (excluding any part of incurred cost found to be unnecessary in the efficient delivery of health services) or the amounts otherwise determined under section 1395ww of this title for the types of expenses otherwise reimbursable under this subchapter

for providing services covered under this subchapter to individuals described in subsection (a)(1) of this section.

(4) Any reasonable cost reimbursement contract with an eligible organization under this subsection shall provide that the Secretary shall require, at such time following the expiration of each accounting period of the eligible organization (and in such form and in such detail) as he may prescribe—

(A) that the organization report to him in an independently certified financial statement its per capita incurred cost based on the types of components of expenses otherwise reimbursable under this subchapter for providing services described in subsection (a)(1) of this section, including therein, in accordance with accounting procedures prescribed by the Secretary, its methods of allocating costs between individuals enrolled under this section and other individuals enrolled with such organization;

(B) that failure to report such information as may be required may be deemed to constitute evidence of likely overpayment on the basis of which appropriate collection action may be taken;

(C) that in any case in which an eligible organization is related to another organization by common ownership or control, a consolidated financial statement shall be filed and that the allowable costs for such organization may not include costs for the types of expense otherwise reimbursable under this subchapter, in excess of those which would be determined to be reasonable in accordance with regulations (providing for limiting reimbursement to costs rather than charges to the eligible organization by related organizations and owners) issued by the Secretary; and

(D) that in any case in which compensation is paid by an eligible organization substantially in excess of what is normally paid for similar services by similar practitioners (regardless of method of compensation), such compensation may as appropriate be considered to constitute a distribution of profits.

(5)(A) After August 5, 1997, the Secretary may not enter into a reasonable cost reimbursement contract under this subsection (if the contract is not in effect as of August 5, 1997), except for a contract with an eligible organization which, immediately previous to entering into such contract, had an agreement in effect under section 1395*l*(a)(1)(A) of this title.

(B) Subject to subparagraph (C), the Secretary shall approve an application for a modification to a reasonable cost contract under this section in order to expand the service area of such contract if—

(i) such application is submitted to the Secretary on or before September 1, 2003; and

(ii) the Secretary determines that the organization with the contract continues to meet the requirements applicable to such organizations and contracts under this section.

(C)(i) Subject to clause (ii), a reasonable cost reimbursement contract under this subsection may be extended or renewed indefinitely.

(ii) For any period beginning on or after January 1, 2008, a reasonable cost reimbursement contract under this subsection may not be extended or renewed for a service area insofar as such area during the entire previous year was within the service area of—

(I) 2 or more MA regional plans described in clause (iii); or

(II) 2 or more MA local plans described in clause (iii).

(iii) A plan described in this clause for a year for a service area is a plan described in section 1395w–21(a)(2)(A)(i) of this title if the service area for the year meets the following minimum enrollment requirements:

(I) With respect to any portion of the area involved that is within a Metropolitan Statistical Area with a population of more than 250,000 and counties contiguous to such Metropolitan Statistical Area, 5,000 individuals.

(II) With respect to any other portion of such area, 1,500 individuals.

(i) Duration, termination, effective date, and terms of contract; powers and duties of Secretary

(1) Each contract under this section shall be for a term of at least one year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—

(A) has failed substantially to carry out the contract;

(B) is carrying out the contract in a manner substantially inconsistent with the efficient and effective administration of this section; or

(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f) of this section.

(2) The effective date of any contract executed pursuant to this section shall be specified in the contract.

(3) Each contract under this section—

(A) shall provide that the Secretary, or any person or organization designated by him—

(i) shall have the right to inspect or otherwise evaluate (I) the quality, appropriateness, and timeliness of services performed under the contract and (II) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

(ii) shall have the right to audit and inspect any books and records of the eligible organization that pertain (I) to the ability of the organization to bear the risk of potential financial losses, or (II) to services performed or determinations of amounts payable under the contract;

(B) shall require the organization with a risk-sharing contract to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this sub-

chapter, to each individual enrolled under this section with the organization; and

(C)(i) shall require the organization to comply with subsections (a) and (c) of section 300e–17 of this title (relating to disclosure of certain financial information) and with the requirement of section 300e(c)(8)[2] of this title (relating to liability arrangements to protect members);

(ii) shall require the organization to provide and supply information (described in section 1395cc(b)(2)(C)(ii) of this title) in the manner such information is required to be provided or supplied under that section;

(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and

(D) shall contain such other terms and conditions not inconsistent with this section (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

(4) The Secretary may not enter into a risk-sharing contract with an eligible organization if a previous risk-sharing contract with that organization under this section was terminated at the request of the organization within the preceding five-year period, except in circumstances which warrant special consideration, as determined by the Secretary.

(5) The authority vested in the Secretary by this section may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this subchapter.

(6)(A) If the Secretary determines that an eligible organization with a contract under this section—

(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(ii) imposes premiums on individuals enrolled under this section in excess of the premiums permitted;

(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section;

(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this section) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

(v) misrepresents or falsifies information that is furnished—

(I) to the Secretary under this section, or

(II) to an individual or to any other entity under this section;

(vi) fails to comply with the requirements of subsection (g)(6)(A) of this section or paragraph (8); or

(vii) in the case of a risk-sharing contract, employs or contracts with any individual or entity that is excluded from participation under this subchapter under section 1320a–7 or 1320a–7a of this title for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services;

the Secretary may provide, in addition to any other remedies authorized by law, for any of the remedies described in subparagraph (B).

(B) The remedies described in this subparagraph are—

(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A) or, with respect to a determination under clause (iv) or (v)(I) of such subparagraph, of not more than $100,000 for each such determination, plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(iv), $15,000 for each individual not enrolled as a result of the practice involved,

(ii) suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or

(iii) suspension of payment to the organization under this section for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

(C) In the case of an eligible organization for which the Secretary makes a determination under paragraph (1), the basis of which is not described in subparagraph (A), the Secretary may apply the following intermediate sanctions:

(i) Civil money penalties of not more than $25,000 for each determination under paragraph (1) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract.

(ii) Civil money penalties of not more than $10,000 for each week beginning after the initiation of procedures by the Secretary under paragraph (9) during which the deficiency that is the basis of a determination under paragraph (1) exists.

(iii) Suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the deficiency that is the basis

[2] See References in Text note below.

for the determination has been corrected and is not likely to recur.

(D) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under subparagraph (B)(i) or (C)(i) in the same manner as such provisions apply to a civil money penalty or proceeding under section 1320a–7a(a) of this title.

(7)(A) Each risk-sharing contract with an eligible organization under this section shall provide that the organization will maintain a written agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the eligible organization is located) or with an entity selected by the Secretary under section 1320c–3(a)(4)(C) of this title under which the review organization will perform functions under section 1320c–3(a)(4)(B) of this title and section 1320c–3(a)(14) of this title (other than those performed under contracts described in section 1395cc(a)(1)(F) of this title) with respect to services, furnished by the eligible organization, for which payment may be made under this subchapter.

(B) For purposes of payment under this subchapter, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this subchapter and shall be paid directly by the Secretary to the review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

(C) Such payments—

(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of subchapter XI of this chapter.

(8)(A) Each contract with an eligible organization under this section shall provide that the organization may not operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization—

(I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or the physician group, and

(II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

(iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

(B) In this paragraph, the term ''physician incentive plan'' means any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization.

(9) The Secretary may terminate a contract with an eligible organization under this section or may impose the intermediate sanctions described in paragraph (6) on the organization in accordance with formal investigation and compliance procedures established by the Secretary under which—

(A) the Secretary first provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under paragraph (1) and the organization fails to develop or implement such a plan;

(B) in deciding whether to impose sanctions, the Secretary considers aggravating factors such as whether an organization has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to the organization's attention;

(C) there are no unreasonable or unnecessary delays between the finding of a deficiency and the imposition of sanctions; and

(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.

(j) Payment in full and limitation on actual charges; physicians, providers of services, or renal dialysis facilities not under contract with organization

(1)(A) In the case of physicians' services or renal dialysis services described in paragraph (2) which are furnished by a participating physician or provider of services or renal dialysis facility to an individual enrolled with an eligible organization under this section and enrolled under part B of this subchapter, the applicable participation agreement is deemed to provide that the physician or provider of services or renal dialysis facility will accept as payment in full from

the eligible organization the amount that would be payable to the physician or provider of services or renal dialysis facility under part B of this subchapter and from the individual under such part, if the individual were not enrolled with an eligible organization under this section.

(B) In the case of physicians' services described in paragraph (2) which are furnished by a nonparticipating physician, the limitations on actual charges for such services otherwise applicable under part B of this subchapter (to services furnished by individuals not enrolled with an eligible organization under this section) shall apply in the same manner as such limitations apply to services furnished to individuals not enrolled with such an organization.

(2) The physicians' services or renal dialysis services described in this paragraph are physicians' services or renal dialysis services which are furnished to an enrollee of an eligible organization under this section by a physician, provider of services, or renal dialysis facility who is not under a contract with the organization.

(k) Risk-sharing contracts

(1) Except as provided in paragraph (2)—

(A) on or after the date standards for Medicare+Choice organizations and plans are first established under section 1395w–26(b)(1) of this title, the Secretary shall not enter into any risk-sharing contract under this section with an eligible organization; and

(B) for any contract year beginning on or after January 1, 1999, the Secretary shall not renew any such contract.

(2) An individual who is enrolled in part B of this subchapter only and is enrolled in an eligible organization with a risk-sharing contract under this section on December 31, 1998, may continue enrollment in such organization in accordance with regulations described in section 1395w–26(b)(1) of this title.

(3) Notwithstanding subsection (a) of this section, the Secretary shall provide that payment amounts under risk-sharing contracts under this section for months in a year (beginning with January 1998) shall be computed—

(A) with respect to individuals entitled to benefits under both parts A and B of this subchapter, by substituting payment rates under section 1395w–23(a) of this title for the payment rates otherwise established under subsection (a) of this section, and

(B) with respect to individuals only entitled to benefits under part B of this subchapter, by substituting an appropriate proportion of such rates (reflecting the relative proportion of payments under this subchapter attributable to such part) for the payment rates otherwise established under subsection (a) of this section.

(4) The following requirements shall apply to eligible organizations with risk-sharing contracts under this section in the same manner as they apply to Medicare+Choice organizations under part C of this subchapter:

(A) Data collection requirements under section 1395w–23(a)(3)(B) of this title.

(B) Restrictions on imposition of premium taxes under section 1395w–24(g) of this title in relating to payments to such organizations under this section.

(C) The requirement to accept enrollment of new enrollees during November 1998 under section 1395w–21(e)(6) of this title.

(D) Payments under section 1395w–27(e)(2) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1876, as added and amended Pub. L. 92–603, title II, §§ 226(a), 278(b)(3), Oct. 30, 1972, 86 Stat. 1396, 1453; Pub. L. 93–233, § 18(m), (n), Dec. 31, 1973, 87 Stat. 970, 971; Pub. L. 94–460, title II, § 201(a)–(d), Oct. 8, 1976, 90 Stat. 1956, 1957; Pub. L. 95–292, § 5, June 13, 1978, 92 Stat. 315; Pub. L. 97–248, title I, § 114(a), Sept. 3, 1982, 96 Stat. 341; Pub. L. 97–448, title III, § 309(b)(12), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–21, title VI, §§ 602(g), 606(a)(3)(H), Apr. 20, 1983, 97 Stat. 164, 171; Pub. L. 98–369, div. B, title III, §§ 2350(a)(1), (b)(1), (2), (c), 2354(b)(37), (38), July 18, 1984, 98 Stat. 1097, 1098, 1102; Pub. L. 99–272, title IX, § 9211(a)–(d), Apr. 7, 1986, 100 Stat. 178, 179; Pub. L. 99–509, title IX, §§ 9312(b)(1), (c)(1), (2), (d)(1), (e)(1), (f), 9353(e)(2), Oct. 21, 1986, 100 Stat. 1999–2001, 2048; Pub. L. 99–514, title XVIII, § 1895(b)(11)(A), Oct. 22, 1986, 100 Stat. 2934; Pub. L. 100–203, title IV, §§ 4011(a)(1), (b)(1), 4012(b), 4013(a), 4014, 4018(a), 4039(h)(8), Dec. 22, 1987, 101 Stat. 1330–60, 1330–61, 1330–65, as amended Pub. L. 100–360, title IV, § 411(c)(3), (e)(3), July 1, 1988, 102 Stat. 773, 776; Pub. L. 100–360, title II, §§ 202(f), 211(c)(3), 224, title IV, § 411(c)(1), (4), (6), formerly (5), July 1, 1988, 102 Stat. 717, 738, 748, 772, 773, as amended Pub. L. 100–485, title VI, § 608(d)(19)(B), (C), Oct. 13, 1988, 102 Stat. 2419; Pub. L. 100–647, title VIII, § 8412(a)(1), Nov. 10, 1988, 102 Stat. 3801; Pub. L. 101–234, title II, §§ 201(a), 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6206(a)(1), (b)(1), 6212(b)(1), (c)(2), 6411(d)(3)(A), Dec. 19, 1989, 103 Stat. 2244, 2250, 2271; Pub. L. 101–508, title IV, §§ 4204(a)(1), (2), (c)(1), (2), (d)(1), (e)(1), 4206(b)(1), Nov. 5, 1990, 104 Stat. 1388–108 to 1388–111, 1388–116; Pub. L. 103–296, title I, § 108(c)(6), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 103–432, title I, § 157(b)(1), (4), Oct. 31, 1994, 108 Stat. 4442; Pub. L. 104–191, title II, §§ 215(a), (b), 231(g), Aug. 21, 1996, 110 Stat. 2005–2007, 2014; Pub. L. 105–33, title IV, § 4002(a)–(b)(2)(A), Aug. 5, 1997, 111 Stat. 328, 329; Pub. L. 106–113, div. B, 1000(a)(6) [title V, § 503], Nov. 29, 1999, 113 Stat. 1536, 1501A–380; Pub. L. 106–554, § 1(a)(6) [title VI, § 634], Dec. 21, 2000, 114 Stat. 2763, 2763A–568; Pub. L. 108–173, title II, § 234, title VII, § 736(d)(2), title IX, § 940(b)(2)(B), Dec. 8, 2003, 117 Stat. 2209, 2357, 2417.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 300e–9(d) of this title, referred to in subsec. (b)(1), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

Parts A and B of subchapter XI of this chapter, referred to in subsecs. (c)(2) and (i)(7)(A), (B)(ii), are classified to sections 1301 et seq. and 1320c et seq., respectively, of this title.

Section 300e(c)(8) of this title, referred to in subsec. (i)(3)(C)(i), was redesignated section 300e(c)(7) of this title by Pub. L. 100–517, § 5(b), Oct. 24, 1988, 102 Stat. 2579.

Part C of this subchapter, referred to in subsec. (k)(4), is classified to section 1395w–21 et seq. of this title.

AMENDMENTS

2003—Subsec. (c)(2)(B). Pub. L. 108–173, §736(d)(2)(A), substituted ''significant'' for ''signifcant'' in introductory provisions.

Subsec. (c)(5)(B). Pub. L. 108–173, §940(b)(2)(B), which directed amendment of subsec. (b)(5)(B) by inserting at end ''The provisions of section 1395ff(b)(1)(E)(iii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this subparagraph in the same manner as they apply to the dollar amounts specified in section 1395ff(b)(1)(E)(i) of this title.'', was executed by making the insertion at end of subsec. (c)(5)(B), to reflect the probable intent of Congress. Subsec. (b) does not contain a par. (5)(B).

Subsec. (h)(5)(C). Pub. L. 108–173, §234, amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The Secretary may not extend or renew a reasonable cost reimbursement contract under this subsection for any period beyond December 31, 2004.''

Subsec. (j)(2). Pub. L. 108–173, §736(d)(2)(B), substituted ''this section'' for ''this setion''.

2000—Subsec. (h)(5)(B), (C). Pub. L. 106–554 added subpar. (B) and redesignated former subpar. (B) as (C).

1999—Subsec. (h)(5)(B). Pub. L. 106–113 substituted ''2004'' for ''2002''.

1997—Subsec. (f)(1). Pub. L. 105–33, §4002(a)(1), substituted ''For contract periods beginning before January 1, 1999, each'' for ''Each'' and struck out ''or under a State plan approved under subchapter XIX of this chapter'' before period at end.

Subsec. (f)(2). Pub. L. 105–33, §4002(a)(2), substituted ''Subject to paragraph (4), the Secretary'' for ''The Secretary''.

Subsec. (f)(4). Pub. L. 105–33, §4002(a)(3), added par. (4).

Subsec. (h)(5). Pub. L. 105–33, §4002(b)(2)(A), added par. (5).

Subsec. (k). Pub. L. 105–33, §4002(b)(1), added subsec. (k).

1996—Subsec. (i)(1). Pub. L. 104–191, §215(a)(1), substituted ''in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—'' for ''the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the eligible organization involved as he may provide in regulations), if he finds that the organization—'' in introductory provisions, added subpars. (A) to (C), and struck out former subpars. (A) to (C) which read as follows:

''(A) has failed substantially to carry out the contract,

''(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this section, or

''(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f) of this section.''

Subsec. (i)(6)(B). Pub. L. 104–191, §215(a)(4), struck out concluding provisions which read as follows: ''The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as they apply to a civil money penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (i)(6)(C). Pub. L. 104–191, §215(a)(2), added subpar. (C).

Subsec. (i)(6)(D). Pub. L. 104–191, §231(g), added subpar. (D).

Subsec. (i)(7)(A). Pub. L. 104–191, §215(b), substituted ''a written agreement'' for ''an agreement''.

Subsec. (i)(9). Pub. L. 104–191, §215(a)(3), added par. (9).

1994—Subsec. (a)(1)(E)(ii)(I). Pub. L. 103–432, §157(b)(4), struck out comma after ''contributed to''.

Subsec. (a)(3). Pub. L. 103–432, §157(b)(1), substituted ''subsections (c)(2)(B)(ii) and (c)(7) of this section'' for ''subsection (c)(7) of this section''.

Subsec. (c)(5)(B). Pub. L. 103–296 inserted at end ''In applying sections 405(b) and 405(g) of this title as provided in this subparagraph, and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.''

1990—Subsec. (a)(1)(E). Pub. L. 101–508, §4204(e)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(6). Pub. L. 101–508, §4204(c)(2), substituted ''subsections (c)(2)(B)(ii) and (c)(7)'' for ''subsection (c)(7)''.

Subsec. (c)(2). Pub. L. 101–508, §4204(c)(1), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) and former cls. (i) and (ii) as cls. (i) and (ii) and subcls. (I) and (II), respectively, and added subpar. (B).

Subsec. (c)(8). Pub. L. 101–508, §4206(b)(1), added par. (8).

Subsec. (i)(6)(A)(vi). Pub. L. 101–508, §4204(a)(2), inserted ''or paragraph (8)'' after ''(g)(6)(A) of this section''.

Subsec. (i)(8). Pub. L. 101–508, §4204(a)(1), added par. (8).

Subsec. (j)(1)(A). Pub. L. 101–508, §4204(d)(1)(A), substituted ''physicians' services or renal dialysis services'' for ''physicians' services'', ''physician or provider of services or renal dialysis facility'' for ''physician'' in three places, and ''applicable participation agreement'' for ''participation agreement under section 1395u(h)(1) of this title''.

Subsec. (j)(2). Pub. L. 101–508, §4204(d)(1)(B), substituted ''physicians' services or renal dialysis services'' for ''physicians' services'' in two places and ''which are furnished to an enrollee of an eligible organization under this setion [sic] by a physician, provider of services, or renal dialysis facility who is not under a contract with the organization.'' for ''which—'' and subpars. (A) and (B) which read as follows:

''(A) are emergency services or out-of-area coverage (described in clauses (iii) and (iv) of subsection (b)(2)(A) of this section), and

''(B) are furnished to an enrollee of an eligible organization under this section by a person who is not under a contract with the organization.''

1989—Subsec. (a)(1)(F). Pub. L. 101–239, §6206(a)(1), added subpar. (F).

Subsec. (a)(5). Pub. L. 101–234, §202(a), repealed Pub. L. 100–360, §211(c)(3)(A), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (c)(3)(A)(i). Pub. L. 101–239, §6206(b)(1)(A), substituted ''period or periods'' for ''30-day period''.

Subsec. (c)(3)(A)(ii). Pub. L. 101–239, §6206(b)(1)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ''For each area served by more than one eligible organization under this section, the Secretary (after consultation with such organizations) shall establish a single 30-day period each year during which all eligible organizations serving the area must provide for open enrollment under this section. The Secretary shall determine annual per capita rates under subsection (a)(1)(A) of this section in a manner that assures that individuals enrolling during such a 30-day period will not have premium charges increased or any additional benefits decreased for 12 months beginning on the date the individual's enrollment becomes effective. An eligible organization may provide for such other open enrollment period or periods as it deems appropriate consistent with this section.''

Subsecs. (e)(1), (g)(3)(A). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §202(f), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (g)(5). Pub. L. 101–239, § 6212(c)(2), struck out ''and during a period of not longer than four years'' after first reference to ''Secretary''.

Subsec. (i)(6)(A)(vii). Pub. L. 101–239, § 6411(d)(3)(A), added cl. (vii).

Subsec. (j). Pub. L. 101–239, § 6212(b)(1), added subsec. (j).

1988—Subsec. (a)(5). Pub. L. 100–360, § 211(c)(3)(B), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The portion of that payment to the organization for a month to be paid by the latter trust fund shall be equal to 200 percent of the sum of—

''(A) the product of (i) the number of such individuals for the month who have attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1395r(a)(1) of this title, and

''(B) the product of (i) the number of such individuals for the month who have not attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1395r(a)(4) of this title.''

Pub. L. 100–360, § 211(c)(3)(A), substituted '', the Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund'' for ''and the Federal Supplementary Medical Insurance Trust Fund'' in first sentence.

Subsec. (c)(3)(F). Pub. L. 100–360, § 411(c)(1), realigned margin with left margin of subpar. (G).

Subsec. (e)(1). Pub. L. 100–360, § 202(f)(1), inserted at end ''The preceding sentence shall be applied separately with respect to covered outpatient drugs.''

Subsec. (f)(3). Pub. L. 100–647 redesignated par. (4) as (3) and struck out former par. (3) which read as follows:

''(A) An eligible organization described in subparagraph (B) may elect, for purposes of enrollment and residency requirements under this section and for determining the compliance of a subdivision, subsidiary, or affiliate described in subparagraph (B)(iii) with the requirement of paragraph (1) for the period before October 1, 1992, to have members described in subparagraph (B)(iii) who receive services through the subdivision, subsidiary, or affiliate considered to be members of the parent organization.

''(B) An eligible organization described in this subparagraph is an eligible organization which—

''(i) is described in section 1396b(m)(2)(B)(iii) of this title;

''(ii) has members who have a collectively bargained contractual right to obtain health benefits from the organization;

''(iii) elects to provide benefits under a risk-sharing contract to individuals residing in a service area, who have a collectively bargained contractual right to obtain benefits from the organization, through a subdivision, subsidiary, or affiliate which itself is an eligible organization serving the area and which is owned or controlled by the parent eligible organization; and

''(iv) has assumed any risk of insolvency and quality assurance with respect to individuals receiving benefits through such a subdivision, subsidiary, or affiliate.''

Subsec. (f)(3)(A). Pub. L. 100–360, § 411(c)(6), formerly § 411(c)(5), as redesignated by Pub. L. 100–485, § 608(d)(19)(C), inserted ''enrollment and residency requirements under this section and for'' after ''for purposes of'' and substituted ''described in subparagraph (B)(iii) who receives services through the subdivision'' for ''of the subdivision''.

Subsec. (f)(4). Pub. L. 100–647 redesignated par. (4) as (3).

Subsec. (g)(3)(A). Pub. L. 100–360, § 202(f)(2), substituted ''rates'' for ''rate''.

Subsec. (g)(5). Pub. L. 100–360, § 411(c)(3), amended Pub. L. 100–203, § 4013, see 1987 Amendment note below.

Subsec. (i)(6)(A). Pub. L. 100–360, § 411(c)(4)(A), inserted '', in addition to any other remedies authorized by law,'' after ''the Secretary may provide'' in concluding provisions.

Subsec. (i)(6)(B). Pub. L. 100–360, § 411(c)(4)(C), formerly § 411(c)(4)(B), as redesignated by Pub. L. 100–485, § 608(d)(19)(B)(ii), substituted ''or proceeding under section 1320a–7a(a) of this title'' for ''under that section'' in last sentence.

Subsec. (i)(6)(B)(i). Pub. L. 100–360, § 411(c)(4)(B), as added by Pub. L. 100–485, § 608(d)(19)(B)(i), (iii), inserted ''of such subparagraph'' after ''(v)(I)''.

Pub. L. 100–360, § 224, inserted at end ''plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(iv), $15,000 for each individual not enrolled as a result of the practice involved,''.

Subsec. (i)(7)(A). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(8)(A), (B), see 1987 Amendment note below.

Subsec. (i)(7)(B). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(8)(C), see 1987 Amendment note below.

1987—Subsec. (c)(3)(F). Pub. L. 100–203, § 4011(a)(1), added subpar. (F).

Subsec. (c)(3)(G). Pub. L. 100–203, § 4011(b)(1), added subpar. (G).

Subsec. (f)(3), (4). Pub. L. 100–203, § 4018(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (g)(4). Pub. L. 100–203, § 4012(b), struck out par. (4) which read as follows: ''A risk-sharing contract under this subsection may, at the option of an eligible organization, provide that the Secretary—

''(A) will reimburse hospitals and skilled nursing facilities either for payment amounts determined in accordance with section 1395ww of this title, or, if applicable, for the reasonable cost (as determined under section 1395x(v) of this title) or other appropriate basis for payment established under this subchapter, of inpatient services furnished to individuals enrolled with such organization pursuant to subsection (d) of this section, and

''(B) will deduct the amount of such reimbursement for payment which would otherwise be made to such organization.''

Subsec. (g)(5). Pub. L. 100–203, § 4013, which directed amendment of par. (5) by substituting ''six years'' for ''four years'', was amended generally by Pub. L. 100–360, § 411(c)(3), so that it does not amend this section.

Subsec. (i)(6). Pub. L. 100–203, § 4014, amended par. (6) generally. Prior to amendment, par. (6) read as follows:

''(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $10,000 for each such failure.

''(B) The provisions of section 1320a–7a of this title (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.''

Subsec. (i)(7)(A). Pub. L. 100–203, § 4039(h)(8)(A), (B), as added by Pub. L. 100–360, § 411(e)(3), substituted ''Each'' for ''Except as provided under section 1320c–3(a)(4)(C) of this title, each'', inserted ''or with an entity selected by the Secretary under section 1320c–3(a)(4)(C) of this title'' after ''located)'', and substituted ''which the review organization'' for ''which the peer review organization''.

Subsec. (i)(7)(B). Pub. L. 100–203, § 4039(h)(8)(C), as added by Pub. L. 100–360, § 411(e)(3), substituted ''the review organization'' for ''the peer review organization''.

1986—Subsec. (a)(1)(A). Pub. L. 99–514 substituted ''announce (in a manner intended to provide notice to interested parties)'' for ''publish'' in introductory provisions.

Pub. L. 99–272, § 9211(d), inserted ‘‘, and shall publish not later than September 7 before the calendar year concerned’’ after ‘‘The Secretary shall annually determine’’ in introductory provisions.

Subsec. (a)(3). Pub. L. 99–272, § 9211(a)(2), substituted ‘‘Subject to subsection (c)(7) of this section, payments’’ for ‘‘Payments’’.

Subsec. (a)(6). Pub. L. 99–272, § 9211(a)(3), substituted ‘‘Subject to subsection (c)(7) of this section, if’’ for ‘‘If’’.

Subsec. (c)(3)(B). Pub. L. 99–272, § 9211(b), substituted ‘‘the date on which’’ for ‘‘a full calendar month after’’, and inserted provision at end that in the case of an individual’s termination of enrollment, the organization shall provide the individual with a copy of the written request for termination of enrollment and a written explanation of the period (ending on the effective date of the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this subchapter other than through the organization.

Subsec. (c)(3)(C). Pub. L. 99–272, § 9211(c), inserted provisions at end that no brochures, application forms, or other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this section unless at least 45 days before its distribution, the organization has submitted the material to the Secretary for review and the Secretary has not disapproved the distribution of the material, and that Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines, in the Secretary’s discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.

Subsec. (c)(7). Pub. L. 99–272, § 9211(a)(1), added par. (7).

Subsec. (c)(3)(E). Pub. L. 99–509, § 9312(b)(1), added subpar. (E).

Subsec. (f)(2). Pub. L. 99–509, § 9312(c)(1), struck out ‘‘if the Secretary determines that’’ after ‘‘imposed by paragraph (1) only’’, added new subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

‘‘(A) special circumstances warrant such modification or waiver, and

‘‘(B) the eligible organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.’’

Subsec. (f)(3). Pub. L. 99–509, § 9312(c)(2)(A), added par. (3).

Subsec. (g)(6). Pub. L. 99–509, § 9312(d)(1), added par. (6).

Subsec. (i)(1)(C). Pub. L. 99–509, § 9312(c)(3)(B), substituted ‘‘(e), and (f)’’ for ‘‘and (e)’’.

Subsec. (i)(3)(C). Pub. L. 99–509, § 9312(e)(1), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (i)(6). Pub. L. 99–509, § 9312(f), added par. (6).

Subsec. (i)(7). Pub. L. 99–509, § 9353(e)(2), added par. (7).

1984—Subsec. (b)(2)(D). Pub. L. 98–369, § 2354(b)(37), substituted ‘‘subparagraph (A)’’ for ‘‘paragraph (1)’’.

Subsec. (c)(3)(A). Pub. L. 98–369, § 2350(a)(1), designated existing provisions as cl. (i), inserted ‘‘and including the 30-day period specified under clause (ii)’’ after ‘‘30 days duration every year’’, and added cl. (ii).

Subsec. (c)(4)(A)(i). Pub. L. 98–369, § 2354(b)(38), substituted ‘‘with reasonable promptness’’ for ‘‘promptly as appropriate’’.

Subsec. (g)(2). Pub. L. 98–369, § 2350(b)(1), inserted ‘‘and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5)’’ at end of first sentence.

Subsec. (g)(4)(A). Pub. L. 98–369, § 2350(c), inserted ‘‘and skilled nursing facilities’’ after ‘‘hospitals’’, inserted ‘‘or the appropriate basis for payment established under this subchapter’’ after ‘‘section 1395x(v) of this title)’’, and struck out ‘‘hospital’’ before ‘‘services furnished to individuals’’.

Subsec. (g)(5). Pub. L. 98–369, § 2350(b)(2), added par. (5).

1983—Subsec. (a)(5)(A)(ii), (B)(ii). Pub. L. 98–21, § 606(a)(3)(H), substituted ‘‘1395r(a)(1)’’ for ‘‘1395r(c)(1)’’.

Subsec. (g)(1). Pub. L. 97–448 substituted ‘‘subsection (b)’’ for ‘‘subsection (b)(1)’’.

Subsec. (g)(4). Pub. L. 98–21, § 602(g), added par. (4).

1982—Pub. L. 97–248 completely revised section, expanding its coverage to permit payments to both health maintenance organizations and competitive medical plans.

1978—Subsec. (b)(2)(B). Pub. L. 95–292 substituted ‘‘Administrator of the Health Care Financing Administration’’ for ‘‘Commissioner of Social Security’’.

1976—Subsec. (b). Pub. L. 94–460, § 201(a), struck out provisions defining a health maintenance organization as a public or private organization which provides physicians’ services and a sufficient number of primary care and specialty care physicians, assures its members access to qualified practitioners in specialties available in area served by such organization, demonstrates financial responsibility and means to provide comprehensive health care services, has at least half of its enrolled members under age 65, assures prompt and qualified health service, and has an open enrollment period at least every year, and revised the definition and requirements of an health maintenance organization to conform to those set forth in the Public Health Service Act, except that the services which such an organization must provide are those covered in parts A and B of this subchapter rather than the basic health services defined in the Public Health Service Act, and inserted provisions requiring Secretary to administer determinations of whether an organization is a health maintenance organization through and in the office of the Assistant Secretary for Health, to integrate the administration of such functions and duties with the administration of provisions requiring the continued regulation of health maintenance organizations under the Public Health Service Act, and to administer other provisions of this section through the Commissioner of Social Security.

Subsec. (h). Pub. L. 94–460, § 201(b), substituted provisions that each health maintenance organization with which the Secretary enters into a contract under this section have an enrolled membership at least half of which consists of individuals who have not attained age 65, with the Secretary empowered to waive that requirement for a period of not more than three years from the date a health maintenance organization first enters into an agreement with the Secretary pursuant to subsection (i) of this section for provisions that such requirement not apply with respect to any health maintenance organization for such period not to exceed three years from the date such organization enters into an agreement with the Secretary pursuant to subsection (i) of this section, as the Secretary might permit.

Subsec. (i)(6)(B). Pub. L. 94–460, § 201(c), substituted ‘‘(other than costs with respect to out-of-area services and, in the case of an organization which has entered into a risk-sharing contract with the Secretary pursuant to paragraph (2)(A), the cost of providing any member with basic health services the aggregate value of which exceeds $5,000 in any year)’’ for ‘‘(Other than those with respect to out-of-area services)’’.

Subsec. (k). Pub. L. 94–460, § 201(d), added subsec. (k).

1973—Subsec. (a)(3)(A)(ii). Pub. L. 93–233, § 18(m), struck out ‘‘, with the apportionment of savings being proportional to the losses absorbed and not yet offset’’ at end.

Subsec. (g)(2). Pub. L. 93–233, § 18(n), substituted ‘‘portion of its premium rate or other charges’’ for ‘‘portion’’ and ‘‘shall not exceed’’ for ‘‘may not exceed’’, and struck out cl. (i) designation preceding ‘‘the actuarial value’’ and provisions reading ‘‘less (ii) the actuarial value of other charges made in lieu of such deductible and coinsurance’’, respectively.

1972—Subsec. (i). Pub. L. 92–603, § 278(b)(3), substituted ''skilled nursing facility'' for ''extended care facility'' and ''skilled nursing facilities'' for ''extended care facilities''.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 215(c) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section] shall apply with respect to contract years beginning on or after January 1, 1997.''

Amendment by section 231(g) of Pub. L. 104–191 applicable to acts or omissions occurring on or after Jan. 1, 1997, see section 231(i) of Pub. L. 104–191, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 157(b)(8) of Pub. L. 103–432, set out as a note under section 1395y of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4204(a)(4) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by paragraph (3) [amending section 1320a–7a of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4204(c)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 157(b)(2), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to national coverage determinations that are not incorporated in the determination of the per capita rate of payment for individuals enrolled for years beginning with 1991 with an eligible organization which has entered into a risk-sharing contract under section 1876 of the Social Security Act [this section].''

Section 4204(d)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 157(b)(3), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to items and services furnished on or after January 1, 1991.''

Section 4204(e)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 157(b)(5), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to individuals enrolling with an eligible organization under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer (or the employer or former employer of the individual's spouse) on or after January 1, 1991.''

Amendment by section 4206(b)(1) of Pub. L. 101–508 applicable to contracts under this section and payments under section 1395*l*(a)(1)(A) of this title as of the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4206(e)(2) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6206(b)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect 60 days after the date of the enactment of this Act [Dec. 19, 1989].''

Section 6212(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after April 1, 1990.''

Section 6212(c)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and repealing provisions set out as notes below] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6411(d)(4)(B) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (3) [amending this section and section 1396a of this title] shall apply to employment and contracts as of 90 days after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Amendment by section 202(a) of Pub. L. 101–234 effective Jan. 1, 1990, and applicable to premiums for months beginning after Dec. 31, 1989, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8412(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall not apply to contracts in effect on the date of the enactment of this Act [Nov. 10, 1988] or extensions (not exceeding 90 days) thereof.''

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(f) of Pub. L. 100–360 applicable to enrollments effected on or after Jan. 1, 1990, see section 202(m)(3) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 211(c)(3) of Pub. L. 100–360 applicable, except as specified in such amendment, to monthly premiums for months beginning with January 1989, see section 211(d) of Pub. L. 100–360, set out as a note under section 1395r of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(c)(1), (3), (4), (6), (e)(3) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4011(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987].''

Section 4011(b)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4012(d) of Pub. L. 100–203 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395cc this title] shall apply to admissions occurring on or after April 1, 1988, or, if later, the earliest date the Secretary can provide the information required under subsection (c) [set out as a note below] in machine readable form.''

Section 4013(b) of Pub. L. 100–203, which provided the effective date for amendment made by section 4013(a) of Pub. L. 100–203, was omitted in the general amendment of section 4013 of Pub. L. 100–203 by Pub. L. 100–360, title IV, § 411(c)(3), July 1, 1988, 102 Stat. 773.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(11)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to determinations of per capita payment rates for 1987 and subsequent years.''

Section 9312(b)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1987, and shall apply to enrollments effected on or after such date.''

Section 9312(c)(3) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4018(d), Dec. 22, 1987, 101 Stat. 1330–66; Pub. L. 101–239, title VI, §6212(a), Dec. 19, 1989, 103 Stat. 2249; Pub. L. 103–66, title XIII, §13569, Aug. 10, 1993, 107 Stat. 608, provided that:

''(A) NEW RESTRICTION.—The amendment made by paragraph (1) [amending this section] shall apply to modifications and waivers granted after the date of the enactment of this Act [Oct. 21, 1986].

''(B) SANCTIONS FOR NONCOMPLIANCE.—The amendments made by paragraph (2) [amending this section] shall take effect on the date of the enactment of this Act.

''(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization (or successor organization) that—

''(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act [subsec. (f)(2) of this section], a modification or waiver of the requirement imposed by paragraph (1) of that section, but

''(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization has complied, or made significant progress towards compliance, with such schedule of compliance, the Secretary may extend such waiver. If the Secretary determines that the organization has not complied with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act [subsec. (f)(3) of this section] (as amended by this section) effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.

''(D) TREATMENT OF CERTAIN WAIVERS.—In the case of an eligible organization (or successor organization) that is described in clauses (i) and (ii) of subparagraph (C) and that received a grant or grants totaling at least $3,000,000 in fiscal year 1987 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act [42 U.S.C. 254b(d)(1)(A), 254c(d)(1)]—

''(i) before January 1, 1996, section 1876(f) of the Social Security Act [subsec. (f) of this section] shall not apply to the organization;

''(ii) beginning on January 1, 1990, the Secretary of Health and Human Services shall conduct an annual review of the organization to determine the organization's compliance with the quality assurance requirements of section 1876(c)(6) of such Act [subsec. (c)(6) of this section]; and

''(iii) after January 1, 1990, if the organization receives an unfavorable review under clause (ii), the Secretary, after notice to the organization of the unfavorable review and an opportunity to correct any deficiencies identified during the review, may provide for the sanction described in section 1876(f)(3) of such Act [subsec. (f)(3) of this section] effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization that the organization is not in compliance with the requirements of section 1876(c)(6) of such Act.''

Section 9312(d)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to risk-sharing contracts under section 1876 of the Social Security Act [this section] with respect to services furnished on or after January 1, 1987.''

Section 9312(e)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contracts as of January 1, 1987.''

Section 9353(e)(3)(B) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4039(h)(9)(C), as added by Pub. L. 100–360, title IV, §411(e)(3), July 1, 1988, 102 Stat. 776, provided that: ''The amendment made by paragraph (2) [amending this section] shall apply to risk-sharing contracts with eligible organizations, under section 1876 of the Social Security Act [this section], as of April 1, 1987. The provisions of section 1876(i)(7) of the Social Security Act [subsec. (i)(7) of this section] (added by such amendment) shall apply to health maintenance organizations with contracts in effect under section 1876 of such Act (as in effect before the date of the enactment of Public Law 97–248 [Sept. 3, 1982]) in the same manner as it applies to eligible organizations with risk-sharing contracts in effect under section 1876 of such Act (as in effect on the date of the enactment of this Act [Dec. 22, 1987]).''

Section 9211(e) of Pub. L. 99–272 provided that:

''(1) FINANCIAL RESPONSIBILITY.—The amendments made by subsection (a) [amending this section] shall apply to enrollments and disenrollments that become effective on or after the date of the enactment of this Act [Apr. 7, 1986].

''(2) DISENROLLMENTS.—The amendments made by subsection (b) [amending this section] shall apply to requests for termination of enrollment submitted on or after May 1, 1986.

''(3) MATERIAL REVIEW.—(A) The amendment made by subsection (c) [amending this section] shall not apply to material which has been distributed before July 1, 1986.

''(B) Such amendment also shall not apply so as to require the submission of material which is distributed before July 1, 1986.

''(C) Such amendment shall also not apply to material which the Secretary determines has been prepared before the date of the enactment of this Act [Apr. 7, 1986] and for which a commitment for distribution has been made, if the application of such amendment would constitute a hardship for the organization involved.

''(4) PUBLICATION.—The amendment made by subsection (d) [amending this section] shall apply to determinations of per capita rates of payment for 1987 and subsequent years.

''(5) NECESSARY MODIFICATION OF CONTRACTS.—The Secretary of Health and Human Services shall provide for such changes in the risk-sharing contracts which have been entered into under section 1876 of the Social Security Act [this section] as may be necessary to conform to the requirements imposed by the amendments made by this section [amending this section] on a timely basis.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2350(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and enacting provisions set out as notes under this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(37), (38) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS; TRANSITIONAL RULE

Amendment by section 602(g) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by section 606(a)(3)(H) of Pub. L. 98–21 applicable to premiums for months beginning with Jan-

uary 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

Amendment by section 309(b)(12) of Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 114(c) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. B, title III, § 2354(c)(3)(A), (B), July 18, 1984, 98 Stat. 1102; Pub. L. 98–617, § 3(a)(5), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–509, title IX, § 9312(a), Oct. 21, 1986, 100 Stat. 1999, provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to services furnished on or after the initial effective date (as defined in paragraph (4)), except that such amendment shall not apply—

''(A) with respect to services furnished by an eligible organization to any individual who is enrolled with that organization under an existing cost contract (as defined in paragraph (3)(A)) and entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter] at the time the organization first enters into a new risk-sharing contract (as defined in paragraph (3)(D)) unless—

''(i) the individual requests at any time that the amendment apply, or

''(ii) the Secretary determines at any time that the amendment should apply to all members of the organization because of administrative costs or other administrative burdens involved and so informs in advance each affected member of the eligible organization;

''(B) with respect to services furnished by an eligible organization during the five-year period beginning on the initial effective date, if—

''(i) the organization has an existing risk-sharing contract (as defined in paragraph (3)(B)) on the initial effective date, or

''(ii) on the date of the enactment of this Act [Sept. 3, 1982] the organization was furnishing services pursuant to an existing demonstration project (as defined in paragraph (3)(C)), such demonstration project is concluded before the initial effective date, and before such initial effective date the organization enters into an existing risk-sharing contract,

unless the organization requests that the amendment apply earlier; or

''(C) with respect to services furnished by an eligible organization during the period of an existing demonstration project if on the initial effective date the organization was furnishing services pursuant to the project and if the project concludes after such date.

''(2)(A) In the case of an eligible organization which has in effect an existing cost contract (as defined in paragraph (3)(A)) on the initial effective date, the organization may receive payment under a new risk-sharing contract with respect to a current, nonrisk medicare enrollee (as defined in subparagraph (C)) only to the extent that the organization enrolls, for each such enrollee, two new medicare enrollees (as defined in subparagraph (D)). The selection of those current nonrisk medicare enrollees with respect to whom payment may be so received under a new risk-sharing contract shall be made in a nonbiased manner.

''(B) Subparagraph (A) shall not be construed to prevent an eligible organization from providing for enrollment, on a basis described in subsection (a)(6) of section 1876 of the Social Security Act [subsec. (a)(6) of this section] (as amended by this Act [Pub. L. 97–248], other than under a reasonable cost reimbursement contract), of current, nonrisk medicare enrollees and from providing such enrollees with some or all of the additional benefits described in section 1876(g)(2) of the Social Security Act [subsec. (g)(2) of this section] (as amended by this Act [Pub. L. 97–248]), but (except as provided in subparagraph (A))—

''(i) payment to the organization with respect to such enrollees shall only be made in accordance with the terms of a reasonable cost reimbursement contract, and

''(ii) no payment may be made under section 1876 of such Act [this section] with respect to such enrollees for any such additional benefits.

Individuals enrolled with the organization under this subparagraph shall be considered to be individuals enrolled with the organization for the purpose of meeting the requirement of section 1876(g)(2) of the Social Security Act [subsec. (g)(2) of this section] (as amended by this Act [Pub. L. 97–248]).

''(C) For purposes of this paragraph, the term 'current, nonrisk medicare enrollee' means, with respect to an organization, an individual who on the initial effective date—

''(i) is enrolled with that organization under an existing cost contract, and

''(ii) is entitled to benefits under part A and enrolled under part B, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter].

''(D) For purposes of this paragraph, the term 'new medicare enrollee' means, with respect to an organization, an individual who—

''(i) is enrolled with the organization after the date the organization first enters into a new risk-sharing contract,

''(ii) at the time of such enrollment is entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter], and

''(iii) was not enrolled with the organization at the time the individual became entitled to benefits under part A, or to enroll in part B, of such title [this subchapter].

''(E) The preceding provisions of this paragraph shall not to [sic] apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.

''(3) For purposes of this subsection:

''(A) The term 'existing cost contract' means a contract which is entered into under section 1876 of the Social Security Act [this section], as in effect before the initial effective date, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title], and which is not an existing risk-sharing contract or an existing demonstration project.

''(B) The term 'existing risk-sharing contract' means a contract entered into under section 1876(i)(2)(A) of the Social Security Act [subsec. (i)(2)(A) of this section], as in effect before the initial effective date.

''(C) The term 'existing demonstration project' means a demonstration project under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of this title] or under section 222(a) of the Social Security Amendments of 1972 [section 222(a) of Pub. L. 92–603, set out as a note under section 1395b–1 of this title], relating to the provision of services for which payment may be made under title XVIII of the Social Security Act [this subchapter].

''(D) The term 'new risk-sharing contract' means a contract entered into under section 1876(g) of the Social Security Act [subsec. (g) of this section], as amended by this Act [Pub. L. 97–248].

''(E) The term 'reasonable cost reimbursement contract' means a contract entered into under section 1876(h) of such Act [subsec. (h) of this section], as amended by this Act, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title].

''(4) As used in this section, the term 'initial effective date' means—

''(A) the first day of the thirteenth month which begins after the date of the enactment of this Act [Sept. 3, 1982], or

''(B) the first day of the first month [Feb. 1, 1985] after the month in which the Secretary of Health and Human Services notifies the Committee on Finance of the Senate and the Committees on Ways and Means and on Energy and Commerce of the House of Representatives that he is reasonably certain that the methodology to make appropriate adjustments (referred to in section 1876(a)(4) of the Social Security Act [subsec. (a)(4) of this section], as amended by this Act [Pub. L. 97–248]) has been developed and can be implemented to assure actuarial equivalence in the estimation of adjusted average per capita costs under that section,

whichever is later.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 201(e) of Pub. L. 94–460 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to contracts entered into between the Secretary and health maintenance organizations under section 1876 of the Social Security Act [this section] on and after the first day of the first calendar month which begins more than 30 days after the date of enactment of this Act [Oct. 8, 1976].''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 18(z–3)(3) of Pub. L. 93–233 provided that: ''The amendments made by subsections (m) and (n) [amending this section] shall be effective with respect to services provided after June 30, 1973.''

EFFECTIVE DATE

Section 226(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [enacting this section, amending sections 1395f, 1395*l*, 1395*ll*, and 1396b of this title, and enacting provisions set out as notes under this section] shall be effective with respect to services provided on or after July 1, 1973.''

REPORT ON IMPACT

Section 4002(b)(2)(B) of Pub. L. 105–33 provided that: ''By not later than January 1, 2001, the Secretary of Health and Human Services shall submit to Congress a report that analyzes the potential impact of termination of reasonable cost reimbursement contracts, pursuant to the amendment made by subparagraph (A), on medicare beneficiaries enrolled under such contracts and on the medicare program. The report shall include such recommendations regarding any extension or transition with respect to such contracts as the Secretary deems appropriate.''

TRANSITION RULE FOR PSO ENROLLMENT

Section 4002(h) of Pub. L. 105–33 provided that: ''In applying subsection (g)(1) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) to a risk-sharing contract entered into with an eligible organization that is a provider-sponsored organization (as defined in section 1855(d)(1) of such Act [section 1395w–25(d)(1) of this title], as inserted by section 5001 [4001]) for a contract year beginning on or after January 1, 1998, there shall be substituted for the minimum number of enrollees provided under such section the minimum number of enrollees permitted under section 1857(b)(1) of such Act [1395w–27(b)(1) of this title] (as so inserted).''

REQUIREMENTS WITH RESPECT TO ACTUARIAL EQUIVALENCE OF AAPCC

Section 4204(b) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(a), Oct. 31, 1994, 108 Stat. 4441; Pub. L. 104–316, title I, §122(g), Oct. 19, 1996, 110 Stat. 3837, provided that:

''(1)(A) Not later than October 1, 1995, the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall submit a proposal to the Congress that provides for revisions to the payment method to be applied in years beginning with 1997 for organizations with a risk-sharing contract under section 1876(g) of the Social Security Act [subsec. (g) of this section].

''(B) In proposing the revisions required under subparagraph (A), the Secretary shall consider—

''(i) the difference in costs associated with medicare beneficiaries with differing health status and demographic characteristics; and

''(ii) the effects of using alternative geographic classifications on the determinations of costs associated with beneficiaries residing in different areas.

''(2) Not later than 3 months after the date of submittal of the proposal under paragraph (1), the Comptroller General shall review the proposal and shall report to Congress on the appropriateness of the proposed modifications.''

[Amendment by section 122(g) of Pub. L. 104–316 to section 4204(b)(4), (5) of Pub. L. 101–508, set out above, could not be executed, because section 4204(b) of Pub. L. 101–508 did not contain pars. (4) and (5) subsequent to amendment by Pub. L. 103–432.]

STUDY OF CHIROPRACTIC SERVICES

Section 4204(f) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(b)(6), Oct. 31, 1994, 108 Stat. 4442, directed Secretary to conduct a study of the extent to which health maintenance organizations with contracts under section 1876 of the Social Security Act (this section) make available to enrollees entitled to benefits under title XVIII of such Act (this subchapter) chiropractic services that are covered under such title, such study to examine the arrangements under which such services are made available and the types of practitioners furnishing such services to such enrollees and to be based on contracts entered into or renewed on or after Jan. 1, 1991, and before Jan. 1, 1993, with Secretary to issue a report to Congress on results of the study not later than Jan. 1, 1993, including recommendations with respect to any legislative and regulatory changes determined necessary by Secretary to ensure access to such services.

EFFECT ON STATE LAW

Conscientious objections of health care provider under State law unaffected by enactment of subsec. (c)(8) of this section, see section 4206(c) of Pub. L. 101–508, set out as a note under section 1395cc of this title.

NOTICE OF METHODOLOGY USED IN MAKING ANNOUNCEMENTS UNDER SUBSECTION (a)(1)(A)

Section 6206(a)(2) of Pub. L. 101–239 provided that: ''Before July 1, 1990, the Secretary of Health and Human Services shall provide for notice to eligible organizations of the methodology used in making the announcement under section 1876(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section] for 1990.''

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

Section 203(b) of Pub. L. 101–234 provided that: ''Notwithstanding any other provision of this Act [see

Tables for classification], the amendments made by this Act (other than the repeal of sections 1833(c)(5) and 1834(c)(6) of the Social Security Act [sections 1395*l*(c)(5) and 1395m(c)(6) of this title]) shall not apply to risk-sharing contracts, for contract year 1990—

''(1) with eligible organizations under section 1876 of the Social Security Act [this section], or

''(2) with health maintenance organizations under section 1876(i)(2)(A) of such Act [subsec. (i)(2)(A) of this section] (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of this title], or under section 222(a) of the Social Security Amendments of 1972 [Pub. L. 92–603, set out as a note under section 1395b–1 of this title].''

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

Section 222 of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(13), Oct. 13, 1988, 102 Stat. 2415, provided that: ''The Secretary of Health and Human Services shall—

''(1) modify contracts under section 1876 of the Social Security Act [this section], for portions of contract years occurring after December 31, 1988, to take into account the amendments made by this Act [see Short Title of 1988 Amendment note under section 1305 of this title]; and

''(2) require such organizations and organizations paid under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title] to make appropriate adjustments (including adjustments in premiums and benefits) in the terms of their agreements with medicare beneficiaries to take into account such amendments.

The Secretary shall also provide for appropriate modifications of contracts with health maintenance organizations under section 1876(i)(2)(A) of the Social Security Act [subsec. (i)(2)(A) of this section] (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of this title], or under section 222(a) of the Social Security Amendments of 1972 [42 U.S.C. 1395b–1 note], for portions of contract years occurring after December 31, 1988, so as to apply to such organizations and contracts the requirements imposed by the amendments made by this Act upon an organization with a risk-sharing contract under section 1876 of the Social Security Act.''

PROVISION OF MEDICARE DRG RATES FOR CERTAIN PAYMENTS AND DATA ON INPATIENT COST PASS-THROUGH ITEMS

Section 4012(c) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(c)(2)(B), July 1, 1988, 102 Stat. 773, provided that: ''The Secretary of Health and Human Services shall provide (in machine readable form) to eligible organizations under section 1876 of the Social Security Act [this section] medicare DRG rates for payments required by the amendment made by subsection (a) [amending section 1395cc of this title] and data on cost pass-through items for all inpatient services provided to medicare beneficiaries enrolled with such organizations.''

MEDICARE PAYMENT DEMONSTRATION PROJECTS

Section 4015 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(c)(5), as added by Pub. L. 100–485, title VI, § 608(d)(19)(C), Oct. 13, 1988, 102 Stat. 2419, provided that:

''(a) MEDICARE INSURED GROUP DEMONSTRATION PROJECTS.—

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') may provide for capitation demonstration projects (in this subsection referred to as 'projects') with an entity which is an eligible organization with a contract with the Secretary under section 1876 of the Social Security Act [this section] or which meets the restrictions and requirements of this subsection. The Secretary may not approve a project unless it meets the requirements of this subsection.

''(2) The Secretary may not conduct more than 3 projects and may not expend, from funds under title XVIII of the Social Security Act [this subchapter], more than $600,000,000 in any fiscal year for all such projects.

''(3) The per capita rate of payment under a project—

''(A) may be based on the adjusted average per capita cost (as defined in section 1876(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) determined only with respect to the group of individuals involved (rather than with respect to medicare beneficiaries generally), but

''(B) the rate of payment may not exceed the lesser of—

''(i) 95 percent of the adjusted average per capita cost described in subparagraph (A), or

''(ii)(I) in the 4th year or 5th year of a project, 115 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) of such Act [subsec. (a)(4) of this section]) for classes of individuals described in section 1876(a)(1)(B) of that Act [subsec. (a)(1)(B) of this section], or

''(II) in any subsequent year of a project, 95 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) [subsec. (a)(4) of this section]) for such classes.

''(4) If the payment amounts made to a project are greater than the costs of the project (as determined by the Secretary or, if applicable, on the basis of adjusted community rates described in section 1876(e)(3) of the Social Security Act [subsec. (e)(3) of this section]), the project—

''(A) may retain the surplus, but not to exceed 5 percent of the average adjusted per capita cost determined in accordance with paragraph (3)(A), and

''(B) with respect to any additional surplus not retained by the project, shall apply such surplus to additional benefits for individuals served by the project or return such surplus to the Secretary.

''(5) Enrollment under the project shall be voluntary. Individuals enrolled with the project may terminate such enrollment as of the beginning of the first calendar month following the date on which the request is made for such termination. Upon such termination, such individuals shall retain the same rights to other health benefits that such individuals would have had if they had never enrolled with the project without any exclusion or waiting period for pre-existing conditions.

''(6) The requirements of—

''(A) subsection (c)(3)(C) (relating to dissemination of information),

''(B) subsection (c)(3)(E) (annual statement of rights),

''(C) subsection (c)(5) (grievance procedures),

''(D) subsection (c)(6) (on-going quality),

''(E) subsection (g)(6) (relating to prompt payment of claims),

''(F) subsection (i)(3)(A) and (B) (relating to access to information and termination notices),

''(G) subsection (i)(6) (relating to providing necessary services), and

''(H) subsection (i)(7) (relating to agreements with peer review organizations),

of section 1876 of the Social Security Act [this section] shall apply to a project in the same manner as they apply to eligible organizations with risk-sharing contracts under such section.

''(7) The benefits provided under a project must be at least actuarially equivalent to the combination of the benefits available under title XVIII of the Social Security Act [this subchapter] and the benefits available through any alternative plans in which the individual can enroll through the employer. The project shall guarantee the actuarial value of benefits available under the employer plan for the duration of the project.

''(8) A project shall comply with all applicable State laws.

''(9) The Secretary may not authorize a project unless the entity offering the project demonstrates to the satisfaction of the Secretary that it has the necessary financial reserves to pay for any liability for benefits under the project (including those liabilities for health benefits under medicare and any supplemental benefits).

''(10) The Comptroller General shall monitor projects under this subsection and shall report periodically (not less often than once every year) to the Committee on Finance of the Senate and the Committee on Energy and Commerce and Committee on Ways and Means of the House of Representatives on the status of such projects and the effect on such projects of the requirements of this section and shall submit a final report to each such committee on the results of such projects.

''(b) PAYMENT METHODOLOGY REFORM DEMONSTRATIONS PROJECTS.—

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') is specifically authorized to conduct demonstration projects under this subsection for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act [this subchapter], including—

''(A) computing adjustments to the average per capita cost under section 1876 of such Act [this section] on the basis of health status or prior utilization of services, and

''(B) accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under such section which differs from payments currently provided on a county-by-county basis.

''(2) No project may be conducted under this subsection—

''(A) with an entity which is not an eligible organization (as defined in section 1876(b) of the Social Security Act [subsec. (b) of this section]), and

''(B) unless the project meets all the requirements of subsections (c) and (i)(3) of section 1876 of such Act [subsecs. (c) and (i)(3) of this section].

''(3) There are authorized to be appropriated to carry out projects under this subsection $5,000,000 in each of fiscal years 1989 and 1990.

''(c) APPLICATION OF PROVISIONS.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 [section 1395b–1(a)(2), (b) of this title] shall apply to the demonstration projects under this section in the same manner as they apply to experiments under subsection (a)(1) of that section.''

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the requirement to report not less than once every year to certain committees of Congress under section 4015(a)(10) of Pub. L. 100–203, set out above, is listed on page 9), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

GAO STUDY AND REPORTS ON MEDICARE CAPITATION

Section 4017 of Pub. L. 100–203 directed Comptroller General to conduct a study on medicare capitation rates that would include an analysis and assessment of the current method for computing per capita rates of payment under section 1876 of the Social Security Act (this section), including the method for determining the United States per capita cost; the method for establishing relative costs for geographic areas and the data used to establish age, sex, and other weighting factors; ways to refine the calculation of adjusted average per capita costs under section 1876 of such Act, including making adjustments for health status or prior utilization of services and improvements in the definition of geographic areas; the extent to which individuals enrolled with organizations with a risk-sharing contract with the Secretary under section 1876 of such Act differ in utilization and cost from fee-for-service beneficiaries and ways for modifying enrollment patterns through program changes or for reflecting the differences in rates through group experience rating or other means; approaches for limiting the liability of the contracting organization under section 1876 of such Act in catastrophic cases; ways of establishing capitation rates on a basis other than fee-for-service experience in areas with high prepaid market penetration; and methods for providing the rate levels necessary to maintain access to quality prepaid services in rural or medically underserved areas, while maintaining cost savings; and directed Comptroller General, not later than January 1 of 1989 and 1990, to submit to Congress interim reports on the progress of the study and, not later than Jan. 1, 1991, a final report on the results of such study.

DEMONSTRATION PROJECTS TO PROVIDE PAYMENT ON A PREPAID, CAPITATED BASIS FOR COMMUNITY NURSING AND AMBULATORY CARE FURNISHED TO MEDICARE BENEFICIARIES

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §532], Nov. 29, 1999, 113 Stat. 1536, 1501A–388, as amended by Pub. L. 106–554, §1(a)(6) [title VI, §632(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–566, provided that:

''(a) EXTENSION.—Notwithstanding any other provision of law, any demonstration project conducted under section 4079 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–123 [Pub. L. 100–203]; 42 U.S.C. 1395mm note) and conducted for the additional period of 2 years as provided for under section 4019 of BBA [Pub. L. 105–33, set out as a note below], shall be conducted for an additional period of 2 years.

''(b) TERMS AND CONDITIONS.—

''(1) JANUARY THROUGH SEPTEMBER 2000.—For the 9-month period beginning with January 2000, any such demonstration project shall be conducted under the same terms and conditions as applied to such demonstration during 1999.

''(2) OCTOBER 2000 THROUGH DECEMBER 2001.—For the 15-month period beginning with October 2000, any such demonstration project shall be conducted under the same terms and conditions as applied to such demonstration during 1999, except that the following modifications shall apply:

''(A) BASIC CAPITATION RATE.—The basic capitation rate paid for services covered under the project (other than case management services) per enrollee per month and furnished during—

''(i) the period beginning with October 1, 2000, and ending with December 31, 2000, shall be determined by actuarially adjusting the actual capitation rate paid for such services in 1999 for inflation, utilization, and other changes to the CNO service package, and by reducing such adjusted capitation rate by 10 percent in the case of the demonstration sites located in Arizona, Minnesota, and Illinois, and 15 percent for the demonstration site located in New York; and

''(ii) 2001 shall be determined by actuarially adjusting the capitation rate determined under clause (i) for inflation, utilization, and other changes to the CNO service package.

''(B) TARGETED CASE MANAGEMENT FEE.—Effective October 1, 2000—

''(i) the case management fee per enrollee per month for—

''(I) the period described in subparagraph (A)(i) shall be determined by actuarially adjusting the case management fee for 1999 for inflation; and

''(II) 2001 shall be determined by actuarially adjusting the amount determined under subclause (I) for inflation; and

''(ii) such case management fee shall be paid only for enrollees who are classified as moderately frail or frail pursuant to criteria established by the Secretary.

''(C) GREATER UNIFORMITY IN CLINICAL FEATURES AMONG SITES.—Each project shall implement for each site—

''(i) protocols for periodic telephonic contact with enrollees based on—

''(I) the results of such standardized written health assessment; and

''(II) the application of appropriate care planning approaches;

''(ii) disease management programs for targeted diseases (such as congestive heart failure, arthritis, diabetes, and hypertension) that are highly prevalent in the enrolled populations;

''(iii) systems and protocols to track enrollees through hospitalizations, including pre-admission planning, concurrent management during inpatient hospital stays, and post-discharge assessment, planning, and follow-up; and

''(iv) standardized patient educational materials for specified diseases and health conditions.

''(D) QUALITY IMPROVEMENT.—Each project shall implement at each site once during the 15-month period—

''(i) enrollee satisfaction surveys; and

''(ii) reporting on specified quality indicators for the enrolled population.

''(c) EVALUATION.—

''(1) PRELIMINARY REPORT.—Not later than July 1, 2001, the Secretary of Health and Human Services shall submit to the Committees on Ways and Means and Commerce [now Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate a preliminary report that—

''(A) evaluates such demonstration projects for the period beginning July 1, 1997, and ending December 31, 1999, on a site-specific basis with respect to the impact on per beneficiary spending, specific health utilization measures, and enrollee satisfaction; and

''(B) includes a similar evaluation of such projects for the portion of the extension period that occurs after September 30, 2000.

''(2) FINAL REPORT.—The Secretary shall submit a final report to such Committees on such demonstration projects not later than July 1, 2002. Such report shall include the same elements as the preliminary report required by paragraph (1), but for the period after December 31, 1999.

''(3) METHODOLOGY FOR SPENDING COMPARISONS.—Any evaluation of the impact of the demonstration projects on per beneficiary spending included in such reports shall include a comparison of—

''(A) data for all individuals who—

''(i) were enrolled in such demonstration projects as of the first day of the period under evaluation; and

''(ii) were enrolled for a minimum of 6 months thereafter; with

''(B) data for a matched sample of individuals who are enrolled under part B of title XVIII of the Social Security Act [part B of this subchapter] and are not enrolled in such a project, or in a Medicare+Choice plan under part C of such title [part C of this subchapter], a plan offered by an eligible organization under section 1876 of such Act [this section], or a health care prepayment plan under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title].''

[Pub. L. 106–554, § 1(a)(6) [title VI, § 632(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–568, provided that: ''The amendments made by subsection (a) [amending section 1000(a)(6) [title V, § 532] of Pub. L. 106–113, set out above] shall be effective as if included in the enactment of section 532 of BBRA [Pub. L. 106–113, § 1000(a)(6) [title V, § 532] (113 Stat. 1501A–388).''']

Section 4019 of Pub. L. 105–33 provided that: ''Notwithstanding any other provision of law, demonstration projects conducted under section 4079 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203, set out as a note below] may be conducted for an additional period of 2 years, and the deadline for any report required relating to the results of such projects shall be not later than 6 months before the end of such additional period.''

Section 4079 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(h)(8), July 1, 1988, 102 Stat. 787, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into an agreement with not less than four eligible organizations submitting applications under this section to conduct demonstration projects to provide payment on a prepaid, capitated basis for community nursing and ambulatory care furnished to any individual entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act [part A and part B of this subchapter] (other than an individual medically determined to have end-stage renal disease) who resides in the geographic area served by the organization and enrolls with such organization (in accordance with subsection (c)(2)).

''(b) DEFINITIONS OF COMMUNITY NURSING AND AMBULATORY CARE AND ELIGIBLE ORGANIZATION.—As used in this section:

''(1) The term 'community nursing and ambulatory care' means the following services:

''(A) Part-time or intermittent nursing care furnished by or under the supervision of registered professional nurses.

''(B) Physical, occupational, or speech therapy.

''(C) Social and related services supportive of a plan of ambulatory care.

''(D) Part-time or intermittent services of a home health aide.

''(E) Medical supplies (other than drugs and biologicals) and durable medical equipment while under a plan of care.

''(F) Medical and other health services described in paragraphs (2)(H)(ii) and (5) through (9) of section 1861(s) of the Social Security Act [section 1395x(s)(2)(H)(ii), (5)–(9) of this title].

''(G) Rural health clinic services described in section 1861(aa)(1)(C) of such Act [section 1395x(aa)(1)(C) of this title].

''(H) Certain other related services listed in section 1915(c)(4)(B) of such Act [section 1396n(c)(4)(B) of this title] to the extent the Secretary finds such services are appropriate to prevent the need for institutionalization of a patient.

''(2) The term 'eligible organization' means a public or private entity, organized under the laws of any State, which meets the following requirements:

''(A) The entity (or a division or part of such entity) is primarily engaged in the direct provision of community nursing and ambulatory care.

''(B) The entity provides directly, or through arrangements with other qualified personnel, the services described in paragraph (1).

''(C) The entity provides that all nursing care (including services of home health aids) is furnished by or under the supervision of a registered nurse.

''(D) The entity provides that all services are furnished by qualified staff and are coordinated by a registered professional nurse.

''(E) The entity has policies governing the furnishing of community nursing and ambulatory care that are developed by registered professional nurses in cooperation with (as appropriate) other professionals.

''(F) The entity maintains clinical records on all patients.

''(G) The entity has protocols and procedures to assure, when appropriate, timely referral to or consultation with other health care providers or professionals.

''(H) The entity complies with applicable State and local laws governing the provision of community nursing and ambulatory care to patients.

''(I) The requirements of subparagraphs (B), (D), and (E) of section 1876(b)(2) of the Social Security Act [42 U.S.C. 1395mm(b)(2)(B), (D), (E)].

''(c) AGREEMENTS WITH ELIGIBLE ORGANIZATIONS TO CONDUCT DEMONSTRATION PROJECTS.—

''(1) The Secretary may not enter into an agreement with an eligible organization to conduct a demonstration project under this section unless the organization meets the requirements of this subsection and subsection (e) with respect to members enrolled with the organization under this section.

''(2) The organization shall have an open enrollment period for the enrollment of individuals under this section. The duration of such period of enrollment and any other requirement pertaining to enrollment or termination of enrollment shall be specified in the agreement with the organization.

''(3) The organization must provide to members enrolled with the organization under this section, through providers and other persons that meet the applicable requirements of titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter], community nursing and ambulatory care (as defined in subsection (b)(1)) which is generally available to individuals residing in the geographic area served by the organization, except that the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered.

''(4) The organization must make community nursing and ambulatory care (and such other health care services as such individuals have contracted for) available and accessible to each individual enrolled with the organization under this section, within the area served by the organization, with reasonable promptness and in a manner which assures continuity.

''(5) Section 1876(c)(5) of the Social Security Act [subsec. (c)(5) of this section] shall apply to organizations under this section in the same manner as it applies to organizations under section 1876 of such Act.

''(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals under the demonstration project conducted under this section, which program (A) stresses health outcomes and (B) provides review by health care professionals of the process followed in the provision of such health care services.

''(7) Under a demonstration project under this section—

''(A) the Secretary could require the organization to provide financial or other assurances (including financial risk-sharing) that minimize the inappropriate substitution of other services under title XVIII of such Act [this subchapter] for community nursing services; and

''(B) if the Secretary determines that the organization has failed to perform in accordance with the requirements of the project (including meeting financial responsibility requirements under the project, any pattern of disproportionate or inappropriate institutionalization) the Secretary shall, after notice, terminate the project.

''(d) DETERMINATION OF PER CAPITA PAYMENT RATES.—

''(1) The Secretary shall determine for each 12-month period in which a demonstration project is conducted under this section, and shall announce (in a manner intended to provide notice to interested parties) not later than three months before the beginning of such period, with respect to each eligible organization conducting a demonstration project under this section, a per capita rate of payment for each class of individuals who are enrolled with such organization who are entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act [part A and part B of this subchapter].

''(2)(A) Except as provided in paragraph (3), the per capita rate of payment under paragraph (1) shall be determined in accordance with this paragraph.

''(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

''(C) The per capita rate of payment under paragraph (1) for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in subparagraph (D)) for that class.

''(D) For purposes of subparagraph (C), the term 'adjusted average per capita cost' means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for those services covered under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter] and types of expenses otherwise reimbursable under such parts A and B which are described in subparagraphs (A) through (G) of subsection (b)(1) (including administrative costs incurred by organizations described in sections 1816 and 1842 of such Act [sections 1395h and 1395u of this title]), if the services were to be furnished by other than an eligible organization.

''(3) The Secretary shall, in consultation with providers, health policy experts, and consumer groups develop capitation-based reimbursement rates for such classes of individuals entitled to benefits under part A and enrolled under part B of the Social Security Act [probably means parts A and B of title XVIII of that Act, this subchapter] as the Secretary shall determine. Such rates shall be applied in determining per capita rates of payment under paragraph (1) with respect to at least one eligible organization conducting a demonstration project under this section.

''(4)(A) In the case of an eligible organization conducting a demonstration project under this section, the Secretary shall make monthly payments in advance and in accordance with the rate determined under paragraph (2) or (3), except as provided in subsection (e)(3)(B), to the organization for each individual enrolled with the organization.

''(B) The amount of payment under paragraph (2) or (3) may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

''(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B of the Social Security Act shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under such Act [this chapter] in such proportions from each such trust fund as the Secretary deems to be fair and equitable taking into consideration benefits attributable to such parts A and B, respectively.

''(6) During any period in which an individual is enrolled with an eligible organization conducting a demonstration project under this section, only the eligible organization (and no other individual or person) shall be entitled to receive payments from the Secretary under this title [probably means title XVIII of the Social Security Act, this subchapter] for community nursing and ambulatory care (as defined in subsection (b)(1)) furnished to the individual.

''(e) RESTRICTION ON PREMIUMS, DEDUCTIBLES, COPAYMENTS, AND COINSURANCE.—

''(1) In no case may the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to community nursing and ambulatory care) to individuals who are enrolled under this sec-

tion with the organization, exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B of the Social Security Act [probably means parts A and B of title XVIII of that Act, this subchapter], if they were not members of an eligible organization.

''(2) If the eligible organization provides to its members enrolled under this section services in addition to community nursing and ambulatory care, election of coverage for such additional services shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

''(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

''(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services (as defined in section 1876(e)(3) of the Social Security Act [subsec. (e)(3) of this section]).

''(3)(A) Subject to subparagraphs (B) and (C), each agreement to conduct a demonstration project under this section shall provide that if—

''(i) the adjusted community rate, referred to in paragraph (2), for community nursing and ambulatory care covered under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter] (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization,

is less than

''(ii) the average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of the 12-month period (as determined on such basis as the Secretary determines appropriate) described in such subsection for members enrolled under this section with the organization,

the eligible organization shall provide to such members the additional benefits described in section 1876(g)(3) of the Social Security Act [subsec. (g)(3) of this section] which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

''(B) Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

''(C) An organization conducting a demonstration project under this section may provide (with the approval of the Secretary) that a part of the value of such additional benefits under subparagraph (A) be withheld and reserved by the Secretary as provided in section 1876(g)(5) of the Social Security Act [subsec. (g)(5) of this section].

''(4) The provisions of paragraphs (3), (5), and (6) of section 1876(g) of the Social Security Act [subsec. (g)(3), (5), and (6) of this section] shall apply in the same manner to agreements under this section as they apply to risk-sharing contracts under section 1876 of such Act, and, for this purpose, any reference in such paragraphs to paragraph (2) is deemed a reference to paragraph (3) of this subsection.

''(5) Section 1876(e)(4) of the Social Security Act [subsec. (e)(4) of this section] shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876 of such Act.

''(f) COMMENCEMENT AND DURATION OF PROJECTS.—Each demonstration project under this section shall begin not later than July 1, 1989, and shall be conducted for a period of three years.

''(g) REPORT.—Not later than January 1, 1992, the Secretary shall submit to the Congress a report on the results of the demonstration projects conducted under this section.''

STUDY OF AAPCC AND ACR

Section 9312(g) of Pub. L. 99–509 directed Secretary of Health and Human Services to provide, through contract with an appropriate organization, for a study of the methods by which the adjusted average per capita cost (''AAPCC'', as defined in subsec. (a)(4) of this section) can be refined to more accurately reflect the average cost of providing care to different classes of patients, and the adjusted community rate (''ACR'', as defined in subsec. (e)(3) of this section) can be refined, with Secretary to submit to Congress, by not later than Jan. 1, 1988, specific legislative recommendations concerning methods by which the calculation of the AAPCC and the ACR could be refined.

ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT LOCAL SOCIAL SECURITY OFFICES

Section 9312(h) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act [this section] may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.''

USE OF RESERVE FUNDS

Section 9312(i) of Pub. L. 99–509 provided that: ''Notwithstanding any provision of section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)) to the contrary, funds reserved by an eligible organization under such section before the date of the enactment of this Act [Oct. 21, 1986] may be applied, at the organization's option, to offset the amount of any reduction in payment amounts to the organization effected under Public Law 99–177 [Dec. 12, 1985, 99 Stat. 1037, see Tables for classification] during fiscal year 1986.''

PHASE-IN OF ENROLLMENT PERIOD BY SECRETARY

Section 2350(a)(2) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services may phase in, over a period of not longer than three years, the application of the amendments made by paragraph (1) [amending this section] to all applicable areas in the United States if the Secretary determines that it is not administratively feasible to establish a single 30-day open enrollment period for all such applicable areas before the end of the period.''

STABILIZATION FUND; ESTABLISHMENT LIMITATION; USES; REPORT TO CONGRESS

Section 2350(b)(3), (4) of Pub. L. 98–369, as amended by Pub. L. 100–203, title IV, § 4013, Dec. 22, 1987, 101 Stat. 1330–61; Pub. L. 100–360, title IV, § 411(c)(3), July 1, 1988, 102 Stat. 773, prohibited Secretary of Health and Human Services from approving the establishment of a stabilization fund by an eligible organization under subsec. (g)(5) of this section for any contract period beginning later than Sept. 30, 1990, and directed Secretary to report to Congress with respect to use of stabilization funds by eligible organizations under subsec. (g)(5) of this section and to assess the need for such funds not later than 54 months after July 1984, prior to repeal by Pub. L. 101–239, title VI, § 6212(c)(1), Dec. 19, 1989, 103 Stat. 2250.

STUDY OF ADDITIONAL BENEFITS SELECTED BY ELIGIBLE ORGANIZATIONS

Section 114(d) of Pub. L. 97–248 directed Secretary of Health and Human Services to conduct a study of the

additional benefits selected by eligible organizations pursuant to subsec. (g)(2) of this section, with Secretary to report to Congress within 24 months of the initial effective date (as defined in subsec. (c)(4) of section 114 of Pub. L. 97–248) with respect to the findings and conclusions made as a result of such study.

STUDY EVALUATING THE EXTENT OF, AND REASONS FOR, TERMINATION BY MEDICARE BENEFICIARIES OF MEMBERSHIP IN ORGANIZATIONS WITH CONTRACTS UNDER THIS SECTION

Section 114(e) of Pub. L. 97–248 directed Secretary of Health and Human Services to conduct a study evaluating the extent of, and reasons for, the termination by medicare beneficiaries of their memberships in organizations with contracts under section 1876 of the Social Security Act (this section), with Secretary to submit an interim report to Congress, within two years after the initial effective date (as defined in subsec. (c)(4) of section 114 of Pub. L. 97–248), and a final report within five years after such date containing the respective interim and final findings and conclusions made as a result of such study.

REIMBURSEMENT FOR SERVICES

Section 226(b) of Pub. L. 92–603 provided that:

''(1) Notwithstanding the provisions of section 1814 and section 1833 of the Social Security Act [sections 1395f and 1395*l* of this title], any health maintenance organization which has entered into a contract with the Secretary pursuant to section 1876 of such Act [this section] shall, for the duration of such contract, (except as provided in paragraph (2)) be entitled to reimbursement only as provided in section 1876 of such Act [this section] for individuals who are members of such organizations.

''(2) With respect to individuals who are members of organizations which have entered into a risk-sharing contract with the Secretary pursuant to subsection (i)(2)(A) [of this section] prior to July 1, 1973, and who, although eligible to have payment made pursuant to section 1876 of such Act [this section] for services rendered to them, chose (in accordance with regulations) not to have such payment made pursuant to such section, the Secretary shall, for a period not to exceed three years commencing on July 1, 1973, pay to such organization on the basis of an interim per capita rate, determined in accordance with the provisions of section 1876(a)(2) of such Act [subsec. (a)(2) of this section], with appropriate actuarial adjustments to reflect the difference in utilization of out-of-plan services, which would have been considered sufficiently reasonable and necessary under the rules of the health maintenance organization to be provided by that organization, between such individuals and individuals who are enrolled with such organization pursuant to section 1876 of such Act [this section]. Payments under this paragraph shall be subject to retroactive adjustment at the end of each contract year as provided in paragraph (3).

''(3) If the Secretary determines that the per capita cost of any such organization in any contract year for providing services to individuals described in paragraph (2), when combined with the cost of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such year for providing out-of-plan services to such individuals, is less than or greater than the adjusted average per capita cost (as defined in section 1876(a)(3) of such Act) [subsec. (a)(3) of this section] of providing such services, the resulting savings shall be apportioned between such organization and such Trust Funds, or the resulting losses shall be absorbed by such organization, in the manner prescribed in section 1876(a)(3) of such Act [subsec. (a)(3) of this section].''

§ 1395nn. Limitation on certain physician referrals

(a) Prohibition of certain referrals

(1) In general

Except as provided in subsection (b) of this section, if a physician (or an immediate family member of such physician) has a financial relationship with an entity specified in paragraph (2), then—

(A) the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this subchapter, and

(B) the entity may not present or cause to be presented a claim under this subchapter or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).

(2) Financial relationship specified

For purposes of this section, a financial relationship of a physician (or an immediate family member of such physician) with an entity specified in this paragraph is—

(A) except as provided in subsections (c) and (d) of this section, an ownership or investment interest in the entity, or

(B) except as provided in subsection (e) of this section, a compensation arrangement (as defined in subsection (h)(1) of this section) between the physician (or an immediate family member of such physician) and the entity.

An ownership or investment interest described in subparagraph (A) may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in any entity providing the designated health service.

(b) General exceptions to both ownership and compensation arrangement prohibitions

Subsection (a)(1) of this section shall not apply in the following cases:

(1) Physicians' services

In the case of physicians' services (as defined in section 1395x(q) of this title) provided personally by (or under the personal supervision of) another physician in the same group practice (as defined in subsection (h)(4) of this section) as the referring physician.

(2) In-office ancillary services

In the case of services (other than durable medical equipment (excluding infusion pumps) and parenteral and enteral nutrients, equipment, and supplies)—

(A) that are furnished—

(i) personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are directly supervised by the physician or by another physician in the group practice, and

(ii)(I) in a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to

the furnishing of designated health services, or

(II) in the case of a referring physician who is a member of a group practice, in another building which is used by the group practice—

(aa) for the provision of some or all of the group's clinical laboratory services, or

(bb) for the centralized provision of the group's designated health services (other than clinical laboratory services),

unless the Secretary determines other terms and conditions under which the provision of such services does not present a risk of program or patient abuse, and

(B) that are billed by the physician performing or supervising the services, by a group practice of which such physician is a member under a billing number assigned to the group practice, or by an entity that is wholly owned by such physician or such group practice,

if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(3) Prepaid plans

In the case of services furnished by an organization—

(A) with a contract under section 1395mm of this title to an individual enrolled with the organization,

(B) described in section 1395*l*(a)(1)(A) of this title to an individual enrolled with the organization,

(C) receiving payments on a prepaid basis, under a demonstration project under section 1395b–1(a) of this title or under section 222(a) of the Social Security Amendments of 1972, to an individual enrolled with the organization,

(D) that is a qualified health maintenance organization (within the meaning of section 300e–9(d)[1] of this title) to an individual enrolled with the organization, or

(E) that is a Medicare+Choice organization under part C of this subchapter that is offering a coordinated care plan described in section 1395w–21(a)(2)(A) of this title to an individual enrolled with the organization.

(4) Other permissible exceptions

In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

(5) Electronic prescribing

An exception established by regulation under section 1395w–104(e)(6) of this title.[1]

(c) General exception related only to ownership or investment prohibition for ownership in publicly traded securities and mutual funds

Ownership of the following shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A) of this section:

(1) Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) which may be purchased on terms generally available to the public and which are—

(A)(i) securities listed on the New York Stock Exchange, the American Stock Exchange, or any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis, or

(ii) traded under an automated interdealer quotation system operated by the National Association of Securities Dealers, and

(B) in a corporation that had, at the end of the corporation's most recent fiscal year, or on average during the previous 3 fiscal years, stockholder equity exceeding $75,000,000.

(2) Ownership of shares in a regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, if such company had, at the end of the company's most recent fiscal year, or on average during the previous 3 fiscal years, total assets exceeding $75,000,000.

(d) Additional exceptions related only to ownership or investment prohibition

The following, if not otherwise excepted under subsection (b) of this section, shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A) of this section:

(1) Hospitals in Puerto Rico

In the case of designated health services provided by a hospital located in Puerto Rico.

(2) Rural providers

In the case of designated health services furnished in a rural area (as defined in section 1395ww(d)(2)(D) of this title) by an entity, if—

(A) substantially all of the designated health services furnished by the entity are furnished to individuals residing in such a rural area; and

(B) effective for the 18-month period beginning on December 8, 2003, the entity is not a specialty hospital (as defined in subsection (h)(7) of this section).

(3) Hospital ownership

In the case of designated health services provided by a hospital (other than a hospital described in paragraph (1)) if—

(A) the referring physician is authorized to perform services at the hospital;

(B) effective for the 18-month period beginning on December 8, 2003, the hospital is not a specialty hospital (as defined in subsection (h)(7) of this section); and

(C) the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

(e) Exceptions relating to other compensation arrangements

The following shall not be considered to be a compensation arrangement described in subsection (a)(2)(B) of this section:

[1] See References in Text note below.

(1) Rental of office space; rental of equipment

(A) Office space

Payments made by a lessee to a lessor for the use of premises if—

(i) the lease is set out in writing, signed by the parties, and specifies the premises covered by the lease,

(ii) the space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee, except that the lessee may make payments for the use of space consisting of common areas if such payments do not exceed the lessee's pro rata share of expenses for such space based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using such common areas,

(iii) the lease provides for a term of rental or lease for at least 1 year,

(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(B) Equipment

Payments made by a lessee of equipment to the lessor of the equipment for the use of the equipment if—

(i) the lease is set out in writing, signed by the parties, and specifies the equipment covered by the lease,

(ii) the equipment rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee,

(iii) the lease provides for a term of rental or lease of at least 1 year,

(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(2) Bona fide employment relationships

Any amount paid by an employer to a physician (or an immediate family member of such physician) who has a bona fide employment relationship with the employer for the provision of services if—

(A) the employment is for identifiable services,

(B) the amount of the remuneration under the employment—

(i) is consistent with the fair market value of the services, and

(ii) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician,

(C) the remuneration is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the employer, and

(D) the employment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

Subparagraph (B)(ii) shall not prohibit the payment of remuneration in the form of a productivity bonus based on services performed personally by the physician (or an immediate family member of such physician).

(3) Personal service arrangements

(A) In general

Remuneration from an entity under an arrangement (including remuneration for specific physicians' services furnished to a nonprofit blood center) if—

(i) the arrangement is set out in writing, signed by the parties, and specifies the services covered by the arrangement,

(ii) the arrangement covers all of the services to be provided by the physician (or an immediate family member of such physician) to the entity,

(iii) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement,

(iv) the term of the arrangement is for at least 1 year,

(v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and except in the case of a physician incentive plan described in subparagraph (B), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(vi) the services to be performed under the arrangement do not involve the counseling or promotion or a business arrangement or other activity that violates any State or Federal law, and

(vii) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(B) Physician incentive plan exception

(i) In general

In the case of a physician incentive plan (as defined in clause (ii)) between a physician and an entity, the compensation may

be determined in a manner (through a withhold, capitation, bonus, or otherwise) that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties, if the plan meets the following requirements:

(I) No specific payment is made directly or indirectly under the plan to a physician or a physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the entity.

(II) In the case of a plan that places a physician or a physician group at substantial financial risk as determined by the Secretary pursuant to section 1395mm(i)(8)(A)(ii) of this title, the plan complies with any requirements the Secretary may impose pursuant to such section.

(III) Upon request by the Secretary, the entity provides the Secretary with access to descriptive information regarding the plan, in order to permit the Secretary to determine whether the plan is in compliance with the requirements of this clause.

(ii) "Physician incentive plan" defined

For purposes of this subparagraph, the term ''physician incentive plan'' means any compensation arrangement between an entity and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the entity.

(4) Remuneration unrelated to the provision of designated health services

In the case of remuneration which is provided by a hospital to a physician if such remuneration does not relate to the provision of designated health services.

(5) Physician recruitment

In the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if—

(A) the physician is not required to refer patients to the hospital,

(B) the amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and

(C) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(6) Isolated transactions

In the case of an isolated financial transaction, such as a one-time sale of property or practice, if—

(A) the requirements described in subparagraphs (B) and (C) of paragraph (2) are met with respect to the entity in the same manner as they apply to an employer, and

(B) the transaction meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(7) Certain group practice arrangements with a hospital

(A)[2] In general

An arrangement between a hospital and a group under which designated health services are provided by the group but are billed by the hospital if—

(i) with respect to services provided to an inpatient of the hospital, the arrangement is pursuant to the provision of inpatient hospital services under section 1395x(b)(3) of this title,

(ii) the arrangement began before December 19, 1989, and has continued in effect without interruption since such date,

(iii) with respect to the designated health services covered under the arrangement, substantially all of such services furnished to patients of the hospital are furnished by the group under the arrangement,

(iv) the arrangement is pursuant to an agreement that is set out in writing and that specifies the services to be provided by the parties and the compensation for services provided under the agreement,

(v) the compensation paid over the term of the agreement is consistent with fair market value and the compensation per unit of services is fixed in advance and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(vi) the compensation is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity, and

(vii) the arrangement between the parties meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(8) Payments by a physician for items and services

Payments made by a physician—

(A) to a laboratory in exchange for the provision of clinical laboratory services, or

(B) to an entity as compensation for other items or services if the items or services are furnished at a price that is consistent with fair market value.

(f) Reporting requirements

Each entity providing covered items or services for which payment may be made under this subchapter shall provide the Secretary with the information concerning the entity's ownership, investment, and compensation arrangements, including—

(1) the covered items and services provided by the entity, and

[2] So in original. No subpar. (B) has been enacted.

(2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A) of this section), or with a compensation arrangement (as described in subsection (a)(2)(B) of this section), in the entity, or whose immediate relatives have such an ownership or investment interest or who have such a compensation relationship with the entity.

Such information shall be provided in such form, manner, and at such times as the Secretary shall specify. The requirement of this subsection shall not apply to designated health services provided outside the United States or to entities which the Secretary determines provides[3] services for which payment may be made under this subchapter very infrequently.

(g) Sanctions

(1) Denial of payment

No payment may be made under this subchapter for a designated health service which is provided in violation of subsection (a)(1) of this section.

(2) Requiring refunds for certain claims

If a person collects any amounts that were billed in violation of subsection (a)(1) of this section, the person shall be liable to the individual for, and shall refund on a timely basis to the individual, any amounts so collected.

(3) Civil money penalty and exclusion for improper claims

Any person that presents or causes to be presented a bill or a claim for a service that such person knows or should know is for a service for which payment may not be made under paragraph (1) or for which a refund has not been made under paragraph (2) shall be subject to a civil money penalty of not more than $15,000 for each such service. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(4) Civil money penalty and exclusion for circumvention schemes

Any physician or other entity that enters into an arrangement or scheme (such as a cross-referral arrangement) which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this section, shall be subject to a civil money penalty of not more than $100,000 for each such arrangement or scheme. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(5) Failure to report information

Any person who is required, but fails, to meet a reporting requirement of subsection (f) of this section is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(6) Advisory opinions

(A) In general

The Secretary shall issue written advisory opinions concerning whether a referral relating to designated health services (other than clinical laboratory services) is prohibited under this section. Each advisory opinion issued by the Secretary shall be binding as to the Secretary and the party or parties requesting the opinion.

(B) Application of certain rules

The Secretary shall, to the extent practicable, apply the rules under subsections (b)(3) and (b)(4) of this section and take into account the regulations promulgated under subsection (b)(5) of section 1320a–7d of this title in the issuance of advisory opinions under this paragraph.

(C) Regulations

In order to implement this paragraph in a timely manner, the Secretary may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

(D) Applicability

This paragraph shall apply to requests for advisory opinions made after the date which is 90 days after August 5, 1997, and before the close of the period described in section 1320a–7d(b)(6) of this title.

(h) Definitions and special rules

For purposes of this section:

(1) Compensation arrangement; remuneration

(A) The term ''compensation arrangement'' means any arrangement involving any remuneration between a physician (or an immediate family member of such physician) and an entity other than an arrangement involving only remuneration described in subparagraph (C).

(B) The term ''remuneration'' includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(C) Remuneration described in this subparagraph is any remuneration consisting of any of the following:

(i) The forgiveness of amounts owed for inaccurate tests or procedures, mistakenly performed tests or procedures, or the correction of minor billing errors.

(ii) The provision of items, devices, or supplies that are used solely to—

[3] So in original. Probably should be ''provide''.

(I) collect, transport, process, or store specimens for the entity providing the item, device, or supply, or

(II) order or communicate the results of tests or procedures for such entity.

(iii) A payment made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee for service basis, for the furnishing of health services by that physician to an individual who is covered by a policy with the insurer or by the self-insured plan, if—

(I) the health services are not furnished, and the payment is not made, pursuant to a contract or other arrangement between the insurer or the plan and the physician,

(II) the payment is made to the physician on behalf of the covered individual and would otherwise be made directly to such individual,

(III) the amount of the payment is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals, and

(IV) the payment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(2) Employee

An individual is considered to be ''employed by'' or an ''employee'' of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

(3) Fair market value

The term ''fair market value'' means the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(4) Group practice

(A) Definition of group practice

The term ''group practice'' means a group of 2 or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association—

(i) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment and personnel,

(ii) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed under a billing number assigned to the group and amounts so received are treated as receipts of the group,

(iii) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined,

(iv) except as provided in subparagraph (B)(i), in which no physician who is a member of the group directly or indirectly receives compensation based on the volume or value of referrals by the physician,

(v) in which members of the group personally conduct no less than 75 percent of the physician-patient encounters of the group practice, and

(vi) which meets such other standards as the Secretary may impose by regulation.

(B) Special rules

(i) Profits and productivity bonuses

A physician in a group practice may be paid a share of overall profits of the group, or a productivity bonus based on services personally performed or services incident to such personally performed services, so long as the share or bonus is not determined in any manner which is directly related to the volume or value of referrals by such physician.

(ii) Faculty practice plans

In the case of a faculty practice plan associated with a hospital, institution of higher education, or medical school with an approved medical residency training program in which physician members may provide a variety of different specialty services and provide professional services both within and outside the group, as well as perform other tasks such as research, subparagraph (A) shall be applied only with respect to the services provided within the faculty practice plan.

(5) Referral; referring physician

(A) Physicians' services

Except as provided in subparagraph (C), in the case of an item or service for which payment may be made under part B of this subchapter, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a ''referral'' by a ''referring physician''.

(B) Other items

Except as provided in subparagraph (C), the request or establishment of a plan of care by a physician which includes the provision of the designated health service constitutes a ''referral'' by a ''referring physician''.

(C) Clarification respecting certain services integral to a consultation by certain specialists

A request by a pathologist for clinical diagnostic laboratory tests and pathological

examination services, a request by a radiologist for diagnostic radiology services, and a request by a radiation oncologist for radiation therapy, if such services are furnished by (or under the supervision of) such pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician does not constitute a ''referral'' by a ''referring physician''.

(6) Designated health services

The term ''designated health services'' means any of the following items or services:

(A) Clinical laboratory services.

(B) Physical therapy services.

(C) Occupational therapy services.

(D) Radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services.

(E) Radiation therapy services and supplies.

(F) Durable medical equipment and supplies.

(G) Parenteral and enteral nutrients, equipment, and supplies.

(H) Prosthetics, orthotics, and prosthetic devices and supplies.

(I) Home health services.

(J) Outpatient prescription drugs.

(K) Inpatient and outpatient hospital services.

(7) Specialty hospital

(A) In general

For purposes of this section, except as provided in subparagraph (B), the term ''specialty hospital'' means a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title) that is primarily or exclusively engaged in the care and treatment of one of the following categories:

(i) Patients with a cardiac condition.

(ii) Patients with an orthopedic condition.

(iii) Patients receiving a surgical procedure.

(iv) Any other specialized category of services that the Secretary designates as inconsistent with the purpose of permitting physician ownership and investment interests in a hospital under this section.

(B) Exception

For purposes of this section, the term ''specialty hospital'' does not include any hospital—

(i) determined by the Secretary—

(I) to be in operation before November 18, 2003; or

(II) under development as of such date;

(ii) for which the number of physician investors at any time on or after such date is no greater than the number of such investors as of such date;

(iii) for which the type of categories described in subparagraph (A) at any time on or after such date is no different than the type of such categories as of such date;

(iv) for which any increase in the number of beds occurs only in the facilities on the main campus of the hospital and does not exceed 50 percent of the number of beds in the hospital as of November 18, 2003, or 5 beds, whichever is greater; and

(v) that meets such other requirements as the Secretary may specify.

(Aug. 14, 1935, ch. 531, title XVIII, § 1877, as added Pub. L. 101–239, title VI, § 6204(a), Dec. 19, 1989, 103 Stat. 2236; amended Pub. L. 101–508, title IV, § 4207(e)(1)–(3), (k)(2), formerly § 4027(e)(1)–(3), (k)(2), Nov. 5, 1990, 104 Stat. 1388–121, 1388–122, 1388–124, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 103–66, title XIII, § 13562(a), Aug. 10, 1993, 107 Stat. 596; Pub. L. 103–432, title I, § 152(a), (b), Oct. 31, 1994, 108 Stat. 4436; Pub. L. 105–33, title IV, § 4314, Aug. 5, 1997, 111 Stat. 389; Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 524(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–387; Pub. L. 108–173, title I, § 101(e)(8)(B), title V, § 507(a), Dec. 8, 2003, 117 Stat. 2152, 2295.)

REFERENCES IN TEXT

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (b)(3)(C), is section 222(a) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note under section 1395b–1 of this title.

Section 300e–9(d) of this title, referred to in subsec. (b)(3)(D), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

Part C of this subchapter, referred to in subsec. (b)(3)(E), is classified to section 1395w–21 et seq. of this title.

Section 1395w–104(e)(6) of this title, referred to in subsec. (b)(5), was in the original ''section 1860D–3(e)(6)'', and was translated as reading ''section 1860D–4(e)(6)'', meaning section 1860D–4(e)(6) of the Social Security Act, to reflect the probable intent of Congress, because section 1860D–3, which is classified to section 1395w–103 of this title, does not contain a subsec. (e), and section 1860D–4(e)(6) relates to electronic prescription program regulations.

The Internal Revenue Code, referred to in subsecs. (c)(2) and (h)(2), is classified generally to Title 26, Internal Revenue Code.

Part B of this subchapter, referred to in subsec. (h)(5)(A), is classified to section 1395j et seq. of this title.

PRIOR PROVISIONS

A prior section 1395nn, act Aug. 14, 1935, ch. 531, title XVIII, § 1877, as added and amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 242(b), 278(b)(8), 86 Stat. 1419, 1454; Oct. 25, 1977, Pub. L. 95–142, § 4(a), 91 Stat. 1179; Dec. 5, 1980, Pub. L. 96–499, title IX, § 917, 94 Stat. 2625; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2306(f)(2), 98 Stat. 1073; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9321(a)(1), 100 Stat. 2016; Aug. 18, 1987, Pub. L. 100–93, § 4(c), 101 Stat. 689, enumerated offenses relating to the Medicare program and penalties for such offenses, prior to repeal by Pub. L. 100–93, §§ 4(e), 15(a), Aug. 18, 1987, 101 Stat. 689, 698, effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period.

AMENDMENTS

2003—Subsec. (b)(5). Pub. L. 108–173, § 101(e)(8)(B), added par. (5).

Subsec. (d)(2). Pub. L. 108–173, § 507(a)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In the case of designated health services furnished in a rural area (as defined in section 1395ww(d)(2)(D) of this title) by an entity, if substantially all of the designated health services furnished by such entity are furnished to individuals residing in such a rural area.''

Subsec. (d)(3)(B), (C). Pub. L. 108–173, § 507(a)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (h)(7). Pub. L. 108–173, § 507(a)(1)(B), added par. (7).

1999—Subsec. (b)(3)(C). Pub. L. 106–113, § 1000(a)(6) [title V, § 524(a)(1)], struck out ''or'' at the end.

Subsec. (b)(3)(D). Pub. L. 106–113, § 1000(a)(6) [title V, § 524(a)(2)], substituted '', or'' for period at end.

Subsec. (b)(3)(E). Pub. L. 106–113, § 1000(a)(6) [title V, § 524(a)(3)], which directed addition of provisions at end of par. (3) but which separated directory language from language to be added because of the apparent placement out of sequence of pars. (2) and (3) of § 524(a), was executed by adding subpar. (E) at end of par. (3) to reflect the probable intent of Congress.

1997—Subsec. (g)(6). Pub. L. 105–33 added par. (6).

1994—Subsec. (f). Pub. L. 103–432, § 152(a)(1), (4), (5), in introductory provisions, substituted ''ownership, investment, and compensation arrangements'' for ''ownership arrangements'', and in closing provisions, substituted ''designated health services'' for ''covered items and services'' and struck out ''Such information shall first be provided not later than October 1, 1991.'' after ''shall specify.'' and ''The Secretary may waive the requirements of this subsection (and the requirements of chapter 35 of title 44 with respect to information provided under this subsection) with respect to reporting by entities in a State (except for entities providing designated health services) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.'' at end.

Subsec. (f)(2). Pub. L. 103–432, § 152(a)(2), (3), inserted '', or with a compensation arrangement (as described in subsection (a)(2)(B) of this section),'' after ''investment interest (as described in subsection (a)(2)(A) of this section)'' and ''interest or who have such a compensation relationship with the entity'' before period at end.

Subsec. (h)(6). Pub. L. 103–432, § 152(b), in subpar. (D), substituted ''services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services'' for ''or other diagnostic services'', and in subpars. (E), (F), and (H), inserted ''and supplies'' before period at end.

1993—Subsecs. (a) to (e). Pub. L. 103–66, § 13562(a)(1), amended headings and text of subsecs. (a) to (e) generally, substituting present provisions for provisions which related to: prohibition of certain referrals in subsec. (a), general exceptions to both ownership and compensation arrangement prohibitions in subsec. (b), general exception related only to ownership or investment prohibition for ownership in publicly-traded securities in subsec. (c), additional exceptions related only to ownership or investment prohibition in subsec. (d), and exceptions relating to other compensation arrangements in subsec. (e).

Subsec. (f). Pub. L. 103–66, § 13562(a)(3), substituted ''designated health services'' for ''clinical laboratory services'' in concluding provisions.

Subsec. (g)(1). Pub. L. 103–66, § 13562(a)(4), substituted ''designated health service'' for ''clinical laboratory service''.

Subsec. (h). Pub. L. 103–66, § 13562(a)(2), amended heading and text of subsec. (h) generally, substituting pars. (1) to (6) for former pars. (1) to (7) which defined ''compensation arrangement'', ''remuneration'', ''employee'', ''fair market value'', ''group practice'', ''investor'', ''interested investor'', ''disinterested investor'', ''referral'', and ''referring physician''.

1990—Subsec. (b)(4), (5). Pub. L. 101–508, § 4207(e)(2), formerly § 4027(e)(2), as renumbered by Pub. L. 103–432, § 160(d)(4), added par. (4) and redesignated former par. (4) as (5).

Subsec. (f). Pub. L. 101–508, § 4207(e)(3)(B), (C), formerly § 4027(e)(3)(B), (C), as renumbered by Pub. L. 103–432, § 160(d)(4), substituted ''October 1, 1991'' for ''1 year after December 19, 1989'' in second sentence and inserted at end ''The requirement of this subsection shall not apply to covered items and services provided outside the United States or to entities which the Secretary determines provides services for which payment may be made under this subchapter very infrequently. The Secretary may waive the requirements of this subsection (and the requirements of chapter 35 of title 44 with respect to information provided under this subsection) with respect to reporting by entities in a State (except for entities providing clinical laboratory services) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.''

Subsec. (f)(2). Pub. L. 101–508, § 4207(e)(3)(A), formerly § 4027(e)(3)(A), as renumbered by Pub. L. 103–432, § 160(d)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the names and all of the medicare provider numbers of the physicians who are interested investors or who are immediate relatives of interested investors.''

Subsec. (g)(5). Pub. L. 101–508, § 4207(k)(2), formerly § 4027(k)(2), as renumbered by Pub. L. 103–432, § 160(d)(4), inserted at end ''The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (h)(6). Pub. L. 101–508, § 4207(e)(1)(C), formerly § 4027(e)(1)(C), as renumbered by Pub. L. 103–432, § 160(d)(4), added par. (6). Former par. (6) redesignated (7).

Pub. L. 101–508, § 4207(e)(1)(A), (B), formerly § 4027(e)(1)(A), (B), as renumbered by Pub. L. 103–432, § 160(d)(4), substituted ''in the case of an item or service for which payment may be made under part B of this subchapter, the request by a physician for the item or service,'' for ''in the case of a clinical laboratory service which under law is required to be provided by (or under the supervision of) a physician, the request by a physician for the service,'' in subpar. (A) and struck out ''in the case of another clinical laboratory service,'' after ''subparagraph (C),'' in subpar. (B).

Subsec. (h)(7). Pub. L. 101–508, § 4207(e)(1)(C), formerly § 4027(e)(1)(C), as renumbered by Pub. L. 103–432, § 160(d)(4), redesignated par. (6) as (7).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 524(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–388, provided that: ''The amendment made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 152(d)(1) of Pub. L. 103–432 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to referrals made on or after January 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13562(b) of Pub. L. 103–66, as amended by Pub. L. 103–432, title I, § 152(c), Oct. 31, 1994, 108 Stat. 4437, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to referrals—

''(A) made on or after January 1, 1992, in the case of clinical laboratory services, and

''(B) made after December 31, 1994, in the case of other designated health services.

''(2) EXCEPTIONS.—With respect to referrals made for clinical laboratory services on or before December 31, 1994—

''(A) the second sentence of subsection (a)(2), and subsections (b)(2)(B) and (d)(2), of section 1877 of the Social Security Act [subsecs. (a)(2), (b)(2)(B), and (d)(2) of this section] (as in effect on the day before the date of the enactment of this Act [Aug. 10, 1993]) shall apply instead of the corresponding provisions in section 1877 (as amended by this Act);

''(B) section 1877(b)(4) of the Social Security Act [subsec. (b)(4) of this section] (as in effect on the day before the date of the enactment of this Act) shall apply;

''(C) the requirements of section 1877(c)(2) of the Social Security Act [subsec. (c)(2) of this section] (as amended by this Act) shall not apply to any securities of a corporation that meets the requirements of section 1877(c)(2) of the Social Security Act (as in effect on the day before the date of the enactment of this Act);

''(D) section 1877(e)(3) of the Social Security Act [subsec. (e)(3) of this section] (as amended by this Act) shall apply, except that it shall not apply to any arrangement that meets the requirements of subsection (e)(2) or subsection (e)(3) of section 1877 of the Social Security Act (as in effect on the day before the date of the enactment of this Act);

''(E) the requirements of clauses (iv) and (v) of section 1877(h)(4)(A), and of clause (i) of section 1877(h)(4)(B), of the Social Security Act [subsec. (h)(4)(A)(iv), (v), (B)(i) of this section] (as amended by this Act) shall not apply; and

''(F) section 1877(h)(4)(B) of the Social Security Act [subsec. (h)(4)(B) of this section] (as in effect on the day before the date of the enactment of this Act) shall apply instead of section 1877(h)(4)(A)(ii) of such Act (as amended by this Act).''

[Section 152(d)(2) of Pub. L. 103–432 provided that: ''The amendment made by subsection (c) [amending section 13562(b) of Pub. L. 103–66, set out above] shall apply as if included in the enactment of OBRA–1993 [Pub. L. 103–66].'']

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4207(e)(5), formerly 4027(e)(5), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by this subsection [amending this section and provisions set out below] shall be effective as if included in the enactment of section 6204 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

EFFECTIVE DATE

Section 6204(c) of Pub. L. 101–239 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1395*l* of this title] shall become effective with respect to referrals made on or after January 1, 1992.

''(2) The reporting requirement of section 1877(f) of the Social Security Act [subsec. (f) of this section] shall take effect on October 1, 1990.''

DEADLINE FOR CERTAIN REGULATIONS

Section 6204(d) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4207(e)(4)(B), formerly § 4027(e)(4)(B), Nov. 5, 1990, 104 Stat. 1388–122, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The Secretary of Health and Human Services shall publish final regulations to carry out section 1877 of the Social Security Act [this section] by not later than October 1, 1991.''

APPLICATION OF EXCEPTION FOR HOSPITALS UNDER DEVELOPMENT

Pub. L. 108–173, title V, § 507(b), Dec. 8, 2003, 117 Stat. 2296, provided that: ''For purposes of section 1877(h)(7)(B)(i)(II) of the Social Security Act [subsec. (h)(7)(B)(i)(II) of this section], as added by subsection (a)(1)(B), in determining whether a hospital is under development as of November 18, 2003, the Secretary [of Health and Human Services] shall consider—

''(1) whether architectural plans have been completed, funding has been received, zoning requirements have been met, and necessary approvals from appropriate State agencies have been received; and

''(2) any other evidence the Secretary determines would indicate whether a hospital is under development as of such date.''

STUDIES

Pub. L. 108–173, title V, § 507(c), Dec. 8, 2003, 117 Stat. 2296, provided that:

''(1) MEDPAC STUDY.—The Medicare Payment Advisory Commission, in consultation with the Comptroller General of the United States, shall conduct a study to determine—

''(A) any differences in the costs of health care services furnished to patients by physician-owned specialty hospitals and the costs of such services furnished by local full-service community hospitals within specific diagnosis-related groups;

''(B) the extent to which specialty hospitals, relative to local full-service community hospitals, treat patients in certain diagnosis-related groups within a category, such as cardiology, and an analysis of the selection;

''(C) the financial impact of physician-owned specialty hospitals on local full-service community hospitals;

''(D) how the current diagnosis-related group system should be updated to better reflect the cost of delivering care in a hospital setting; and

''(E) the proportions of payments received, by type of payer, between the specialty hospitals and local full-service community hospitals.

''(2) HHS STUDY.—The Secretary [of Health and Human Services] shall conduct a study of a representative sample of specialty hospitals—

''(A) to determine the percentage of patients admitted to physician-owned specialty hospitals who are referred by physicians with an ownership interest;

''(B) to determine the referral patterns of physician owners, including the percentage of patients they referred to physician-owned specialty hospitals and the percentage of patients they referred to local full-service community hospitals for the same condition;

''(C) to compare the quality of care furnished in physician-owned specialty hospitals and in local full-service community hospitals for similar conditions and patient satisfaction with such care; and

''(D) to assess the differences in uncompensated care, as defined by the Secretary, between the specialty hospital and local full-service community hospitals, and the relative value of any tax exemption available to such hospitals.

''(3) REPORTS.—Not later than 15 months after the date of the enactment of this Act [Dec. 8, 2003], the Commission and the Secretary, respectively, shall each submit to Congress a report on the studies conducted under paragraphs (1) and (2), respectively, and shall include any recommendations for legislation or administrative changes.''

GAO STUDY OF OWNERSHIP BY REFERRING PHYSICIANS

Section 6204(e) of Pub. L. 101–239 directed Comptroller General to conduct a study of ownership of hospitals and other providers of medicare services by referring physicians and, by not later than Feb. 1, 1991, report to Congress on results of such study, prior to repeal by Pub. L. 104–316, title I, § 122(h)(1), Oct. 19, 1996, 110 Stat. 3837.

STATISTICAL SUMMARY OF COMPARATIVE UTILIZATION

Section 6204(f) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4207(e)(4)(A), formerly § 4027(e)(4)(A), Nov. 5, 1990, 104 Stat. 1388–122, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 104–316, title I, § 122(h)(2), Oct. 19, 1996, 110 Stat. 3837, directed Secretary of Health and Human Services, not later than June 30, 1992, to submit to Congress a statistical profile comparing utilization of items and services by medicare beneficiaries served by entities in which the referring physician has a direct or indirect financial interest and by medicare beneficiaries served by other entities, for the States and entities specified in subsec. (f) of this section (other than entities providing clinical laboratory services).

§ 1395*oo*. Provider Reimbursement Review Board

(a) Establishment

Any provider of services which has filed a required cost report within the time specified in regulations may obtain a hearing with respect to such cost report by a Provider Reimbursement Review Board (hereinafter referred to as the ''Board'') which shall be established by the Secretary in accordance with subsection (h) of this section and (except as provided in subsection (g)(2) of this section) any hospital which receives payments in amounts computed under subsection (b) or (d) of section 1395ww of this title and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board, if—

(1) such provider—

(A)(i) is dissatisfied with a final determination of the organization serving as its fiscal intermediary pursuant to section 1395h of this title as to the amount of total program reimbursement due the provider for the items and services furnished to individuals for which payment may be made under this subchapter for the period covered by such report, or

(ii) is dissatisfied with a final determination of the Secretary as to the amount of the payment under subsection (b) or (d) of section 1395ww of this title,

(B) has not received such final determination from such intermediary on a timely basis after filing such report, where such report complied with the rules and regulations of the Secretary relating to such report, or

(C) has not received such final determination on a timely basis after filing a supplementary cost report, where such cost report did not so comply and such supplementary cost report did so comply,

(2) the amount in controversy is $10,000 or more, and

(3) such provider files a request for a hearing within 180 days after notice of the intermediary's final determination under paragraph (1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination, or with respect to appeals pursuant to paragraph (1) (B) or (C), within 180 days after notice of such determination would have been received if such determination had been made on a timely basis.

(b) Appeals by groups

The provisions of subsection (a) of this section shall apply to any group of providers of services if each provider of services in such group would, upon the filing of an appeal (but without regard to the $10,000 limitation), be entitled to such a hearing, but only if the matters in controversy involve a common question of fact or interpretation of law or regulations and the amount in controversy is, in the aggregate, $50,000 or more.

(c) Right to counsel; rules of evidence

At such hearing, the provider of services shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Evidence may be received at any such hearing even though inadmissible under rules of evidence applicable to court procedure.

(d) Decisions of Board

A decision by the Board shall be based upon the record made at such hearing, which shall include the evidence considered by the intermediary and such other evidence as may be obtained or received by the Board, and shall be supported by substantial evidence when the record is viewed as a whole. The Board shall have the power to affirm, modify, or reverse a final determination of the fiscal intermediary with respect to a cost report and to make any other revisions on matters covered by such cost report (including revisions adverse to the provider of services) even though such matters were not considered by the intermediary in making such final determination.

(e) Rules and regulations

The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this subchapter or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this section. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d) and (e) of section 405 of this title with respect to subpenas shall apply to the Board to the same extent as they apply to the Secretary with respect to subchapter II of this chapter.

(f) Finality of decision; judicial review; determinations of Board authority; jurisdiction; venue; interest on amount in controversy

(1) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the provider of services is notified of the Board's decision, reverses, affirms, or modifies the Board's decision. Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmance, or modification by the Secretary is received. Providers shall also have the right to obtain judicial review of any action of the fiscal intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described

in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which notification of such determination is received. If a provider of services may obtain a hearing under subsection (a) of this section and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority to decide the question of law or regulations relevant to the matters in controversy (accompanied by such documents and materials as the Board shall require for purposes of rendering such determination). The Board shall render such determination in writing within thirty days after the Board receives the request and such accompanying documents and materials, and the determination shall be considered a final decision and not subject to review by the Secretary. If the Board fails to render such determination within such period, the provider may bring a civil action (within sixty days of the end of such period) with respect to the matter in controversy contained in such request for a hearing. Such action shall be brought in the district court of the United States for the judicial district in which the provider is located (or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located) or in the District Court for the District of Columbia and shall be tried pursuant to the applicable provisions under chapter 7 of title 5 notwithstanding any other provisions in section 405 of this title. Any appeal to the Board or action for judicial review by providers which are under common ownership or control or which have obtained a hearing under subsection (b) of this section must be brought by such providers as a group with respect to any matter involving an issue common to such providers.

(2) Where a provider seeks judicial review pursuant to paragraph (1), the amount in controversy shall be subject to annual interest beginning on the first day of the first month beginning after the 180-day period as determined pursuant to subsection (a)(3) of this section and equal to the rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund for the month in which the civil action authorized under paragraph (1) is commenced, to be awarded by the reviewing court in favor of the prevailing party.

(3) No interest awarded pursuant to paragraph (2) shall be deemed income or cost for the purposes of determining reimbursement due providers under this chapter.

(g) Certain findings not reviewable

(1) The finding of a fiscal intermediary that no payment may be made under this subchapter for any expenses incurred for items or services furnished to an individual because such items or services are listed in section 1395y of this title shall not be reviewed by the Board, or by any court pursuant to an action brought under subsection (f) of this section.

(2) The determinations and other decisions described in section 1395ww(d)(7) of this title shall not be reviewed by the Board or by any court pursuant to an action brought under subsection (f) of this section or otherwise.

(h) Composition and compensation

The Board shall be composed of five members appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive services. Two of such members shall be representative of providers of services. All of the members of the Board shall be persons knowledgeable in the field of payment of providers of services, and at least one of them shall be a certified public accountant. Members of the Board shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the rate specified (at the time the service involved is rendered by such members) for grade GS–18 in section 5332 of title 5. The term of office shall be three years, except that the Secretary shall appoint the initial members of the Board for shorter terms to the extent necessary to permit staggered terms of office.

(i) Technical and clerical assistance

The Board is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

(j) "Provider of services" defined

In this section, the term ''provider of services'' includes a rural health clinic and a Federally qualified health center.

(Aug. 14, 1935, ch. 531, title XVIII, § 1878, as added Pub. L. 92–603, title II, § 243(a), Oct. 30, 1972, 86 Stat. 1420; amended Pub. L. 93–484, § 3(a), Oct. 26, 1974, 88 Stat. 1459; Pub. L. 96–499, title IX, § 955, Dec. 5, 1980, 94 Stat. 2647; Pub. L. 98–21, title VI, § 602(h), Apr. 20, 1983, 97 Stat. 165; Pub. L. 98–369, div. B, title III, §§ 2351(a)(1), (b)(1), 2354(b)(39), (40), July 18, 1984, 98 Stat. 1098, 1099, 1102; Pub. L. 101–508, title IV, § 4161(a)(6), (b)(4), Nov. 5, 1990, 104 Stat. 1388–94, 1388–95; Pub. L. 103–66, title XIII, § 13503(c)(1)(B), Aug. 10, 1993, 107 Stat. 579.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (h), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (f)(2). Pub. L. 103–66 substituted ''the rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund for the month in which'' for ''the rate of return on equity capital established by regulation pursuant to section 1395x(v)(1)(B) of this title and in effect at the time''.

1990—Subsec. (j). Pub. L. 101–508, § 4161(b)(4), inserted ''a rural health clinic and'' after ''includes''.

Pub. L. 101–508, § 4161(a)(6), added subsec. (j).

1984—Subsec. (c). Pub. L. 98–369, § 2354(b)(39), substituted ''inadmissible'' for ''inadmissable''.

Subsec. (e). Pub. L. 98–369, § 2354(b)(40), substituted ''and (e)'' for '', (e), and (f)''.

Subsec. (f)(1). Pub. L. 98–369, § 2351(a)(1), substituted ''notification of such determination is received'' for ''such determination is rendered'' in third sentence.

Pub. L. 98–369, § 2351(b)(1), inserted ''or which have obtained a hearing under subsection (b) of this section'' after ''common ownership or control'' in last sentence.

1983—Subsec. (a). Pub. L. 98–21, § 602(h)(1)(A), inserted provision in introductory text that, except as provided in subsec. (g)(2) of this section, any hospital which receives payments in amounts computed under section

1395ww(b) or (d) of this title and which has submitted such reports within such time as Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by Board.

Subsec. (a)(1)(A). Pub. L. 98–21, § 602(h)(1)(B), (C), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(3). Pub. L. 98–21, § 602(h)(1)(D), substituted ''(1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination,'' for ''(1)(A)''.

Subsec. (f)(1). Pub. L. 98–21, § 602(h)(2), inserted ''(or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located)'' after ''the judicial district in which the provider is located'', and ''Any appeal to the Board or action for judicial review by providers which are under common ownership or control must be brought by such providers as a group with respect to any matter involving an issue common to such providers.''

Subsec. (g). Pub. L. 98–21, § 602(h)(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 98–21, § 602(h)(4), substituted ''payment of providers of services'' for ''cost reimbursement''.

1980—Subsec. (f)(1). Pub. L. 96–499 inserted provision empowering providers of services to obtain judicial review of any action of a fiscal intermediary involving a question of law or regulations relevant to matters in controversy whenever Board determined that it was without authority to decide such matters in controversy.

1974—Subsec. (f). Pub. L. 93–484 redesignated existing provisions as par. (1), inserted provisions authorizing judicial review for providers of final decisions of Board and judicial review of any affirmance by Secretary, and added pars. (2) and (3).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Oct. 1, 1993, see section 13503(c)(2) of Pub. L. 103–66, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4161(a)(6) of Pub. L. 101–508 applicable to cost reports for periods beginning on or after Oct. 1, 1991, see section 4161(a)(8)(C) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(b)(4) of Pub. L. 101–508 applicable to cost reports for periods beginning on or after Oct. 1, 1991, see section 4161(b)(5) of Pub. L. 101–508, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2351(a)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to any civil action commenced on or after the date of the enactment of this Act [July 18, 1984].''

Section 2351(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(39), (40) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title. See, also, section 2351(c) of Pub. L. 98–369, set out as a note below.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3(b) of Pub. L. 93–484 provided that: ''The amendment made by subsection (a) [amending this section] shall be applicable to cost reports of providers of services for accounting periods ending on or after June 30, 1973.''

EFFECTIVE DATE

Section 243(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [enacting this section and amending section 1395h of this title] shall apply with respect to cost reports of providers of services, as defined in title XVIII of the Social Security Act [this subchapter], for accounting periods ending on or after June 30, 1973.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

REVIEW OF PROVIDER REIMBURSEMENT REVIEW BOARD DECISIONS

Section 2351(c) of Pub. L. 98–369 provided that: ''Notwithstanding section 604 of the Social Security Amendments of 1983 (Public Law 98–21) [set out as an Effective Date of 1983 Amendments note under section 1395ww of this title]—

''(1) the amendments made by section 602(h)(2)(A) of that Act [amending this section] shall be effective with respect to any appeal or action brought on or after April 20, 1983; and

''(2) the amendments made by section 602(h)(2)(B) of that Act [amending this section] shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act [July 18, 1984].''

§ 1395pp. Limitation on liability where claims are disallowed

(a) Conditions prerequisite to payment for items and services notwithstanding determination of disallowance

Where—

(1) a determination is made that, by reason of section 1395y(a)(1) or (9) of this title or by reason of a coverage denial described in subsection (g) of this section, payment may not be made under part A or part B of this subchapter for any expenses incurred for items or services furnished an individual by a provider of services or by another person pursuant to an assignment under section 1395u(b)(3)(B)(ii) of this title, and

(2) both such individual and such provider of services or such other person, as the case may be, did not know, and could not reasonably have been expected to know, that payment would not be made for such items or services under such part A or part B of this subchapter,

then to the extent permitted by this subchapter, payment shall, notwithstanding such determina-

tion, be made for such items or services (and for such period of time as the Secretary finds will carry out the objectives of this subchapter), as though section 1395y(a)(1) and section 1395y(a)(9) of this title did not apply and as though the coverage denial described in subsection (g) of this section had not occurred. In each such case the Secretary shall notify both such individual and such provider of services or such other person, as the case may be, of the conditions under which payment for such items or services was made and in the case of comparable situations arising thereafter with respect to such individual or such provider or such other person, each shall, by reason of such notice (or similar notices provided before the enactment of this section), be deemed to have knowledge that payment cannot be made for such items or services or reasonably comparable items or services. Any provider or other person furnishing items or services for which payment may not be made by reason of section 1395y(a)(1) or (9) of this title or by reason of a coverage denial described in subsection (g) of this section shall be deemed to have knowledge that payment cannot be made for such items or services if the claim relating to such items or services involves a case, provider or other person furnishing services, procedure, or test, with respect to which such provider or other person has been notified by the Secretary (including notification by a utilization and quality control peer review organization) that a pattern of inappropriate utilization has occurred in the past, and such provider or other person has been allowed a reasonable time to correct such inappropriate utilization.

(b) Knowledge of person or provider that payment could not be made; indemnification of individual

In any case in which the provisions of paragraphs (1) and (2) of subsection (a) of this section are met, except that such provider or such other person, as the case may be, knew, or could be expected to know, that payment for such services or items could not be made under such part A or part B of this subchapter, then the Secretary shall, upon proper application filed within such time as may be prescribed in regulations, indemnify the individual (referred to in such paragraphs) for any payments received from such individual by such provider or such other person, as the case may be, for such items or services. Any payments made by the Secretary as indemnification shall be deemed to have been made to such provider or such other person, as the case may be, and shall be treated as overpayments, recoverable from such provider or such other person, as the case may be, under applicable provisions of law. In each such case the Secretary shall notify such individual of the conditions under which indemnification is made and in the case of comparable situations arising thereafter with respect to such individual, he shall, by reason of such notice (or similar notices provided before the enactment of this section), be deemed to have knowledge that payment cannot be made for such items or services. No item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which payment may be made to or on behalf of the individual under this subchapter.

(c) Knowledge of both provider and individual to whom items or services were furnished that payment could not be made

No payments shall be made under this subchapter in any cases in which the provisions of paragraph (1) of subsection (a) of this section are met, but both the individual to whom the items or services were furnished and the provider of service or other person, as the case may be, who furnished the items or services knew, or could reasonably have been expected to know, that payment could not be made for items or services under part A or part B of this subchapter by reason of section 1395y(a)(1) or (a)(9) of this title or by reason of a coverage denial described in subsection (g) of this section.

(d) Exercise of rights

In any case arising under subsection (b) of this section (but without regard to whether payments have been made by the individual to the provider or other person) or subsection (c) of this section, the provider or other person shall have the same rights that an individual has under sections 1395ff(b) and 1395u(b)(3)(C) of this title (as may be applicable) when the amount of benefit or payments is in controversy, except that such rights may, under prescribed regulations, be exercised by such provider or other person only after the Secretary determines that the individual will not exercise such rights under such sections.

(e) Payment where beneficiary not at fault

Where payment for inpatient hospital services or extended care services may not be made under part A of this subchapter on behalf of an individual entitled to benefits under such part solely because of an unintentional, inadvertent, or erroneous action with respect to the transfer of such individual from a hospital or skilled nursing facility that meets the requirements of section 1395x(e) or (j) of this title by such a provider of services acting in good faith in accordance with the advice of a utilization review committee, quality control and peer review organization, or fiscal intermediary, or on the basis of a clearly erroneous administrative decision by a provider of services, the Secretary shall take such action with respect to the payment of such benefits as he determines may be necessary to correct the effects of such unintentional, inadvertent, or erroneous action.

(f) Presumption with respect to coverage denial; rebuttal; requirements; "fiscal intermediary" defined

(1) A home health agency which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) of this section.

(2) The presumption of paragraph (1) with respect to specific services may be rebutted by actual or imputed knowledge of the facts described in subsection (a)(2) of this section, including any of the following:

(A) Notice by the fiscal intermediary of the fact that payment may not be made under this subchapter with respect to the services.

(B) It is clear and obvious that the provider should have known at the time the services were furnished that they were excluded from coverage.

(3) The requirements of this paragraph are as follows:

(A) The agency complies with requirements of the Secretary under this subchapter respecting timely submittal of bills for payment and medical documentation.

(B) The agency program has reasonable procedures to notify promptly each patient (and the patient's physician) where it is determined that a patient is being or will be furnished items or services which are excluded from coverage under this subchapter.

(4)(A) The requirement of this paragraph is that, on the basis of bills submitted by a home health agency during the previous quarter, the rate of denial of bills for the agency by reason of a coverage denial described in subsection (g) of this section does not exceed 2.5 percent, computed based on visits for home health services billed.

(B) For purposes of determining the rate of denial of bills for a home health agency under subparagraph (A), a bill shall not be considered to be denied until the expiration of the 60-day period that begins on the date such bill is denied by the fiscal intermediary, or, with respect to such a denial for which the agency requests reconsideration, until the fiscal intermediary issues a decision denying payment for such bill.

(5) In this subsection, the term ''fiscal intermediary'' means, with respect to a home health agency, an agency or organization with an agreement under section 1395h of this title with respect to the agency.

(6) The Secretary shall monitor the proportion of denied bills submitted by home health agencies for which reconsideration is requested, and shall notify Congress if the proportion of denials reversed upon reconsideration increases significantly.

(g) Coverage denial defined

The coverage denial described in this subsection is—

(1) with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1395f(a)(2)(C) of this title or section 1395n(a)(2)(A) of this title in that the individual—

(A) is or was not confined to his home, or

(B) does or did not need skilled nursing care on an intermittent basis; and

(2) with respect to the provision of hospice care to an individual, a determination that the individual is not terminally ill.

(h) Supplier responsibility for items furnished on assignment basis

If a supplier of medical equipment and supplies (as defined in section 1395m(j)(5) of this title)—

(1) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1395m(j)(1) of this title;

(2) furnishes an item or service to a beneficiary for which payment is denied in advance under section 1395m(a)(15) of this title; or

(3) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1395m(a)(17)(B) of this title,

any expenses incurred for items and services furnished to an individual by such a supplier on an assignment-related basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services. The provisions of section 1395m(a)(18) of this title shall apply to refunds required under the previous sentence in the same manner as such provisions apply to refunds under such section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1879, as added Pub. L. 92–603, title II, § 213(a), Oct. 30, 1972, 86 Stat. 1384; amended Pub. L. 96–499, title IX, § 956(a), Dec. 5, 1980, 94 Stat. 2648; Pub. L. 97–248, title I, §§ 145, 148(e), Sept. 3, 1982, 96 Stat. 393, 394; Pub. L. 99–509, title IX, §§ 9305(g)(1), 9341(a)(3), Oct. 21, 1986, 100 Stat. 1991, 2038; Pub. L. 100–203, title IV, § 4096(b), Dec. 22, 1987, 101 Stat. 1330–139; Pub. L. 101–239, title VI, § 6214(a), (b), Dec. 19, 1989, 103 Stat. 2252; Pub. L. 103–432, title I, § 133(b), Oct. 31, 1994, 108 Stat. 4421; Pub. L. 105–33, title IV, § 4447, Aug. 5, 1997, 111 Stat. 424.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

1997—Subsec. (g). Pub. L. 105–33 substituted ''subsection is—'' for ''subsection is,'', redesignated remaining text as par. (1) and former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigned margins, substituted ''; and'' for period at end, and added par. (2).

1994—Subsec. (h). Pub. L. 103–432 added subsec. (h).

1989—Subsec. (f)(1). Pub. L. 101–239, § 6214(a)(1), struck out ''with respect to any coverage denial described in subsection (g) of this section'' before period at end.

Subsec. (f)(4). Pub. L. 101–239, § 6214(a)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(6). Pub. L. 101–239, § 6214(b), added par. (6).

1987—Subsec. (b). Pub. L. 100–203 struck out '', subject to the deductible and coinsurance provisions of this subchapter,'' after ''(referred to in such paragraphs)'' and inserted at end ''No item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which payment may be made to or on behalf of the individual under this subchapter.''

1986—Subsec. (a). Pub. L. 99–509, § 9305(g)(1)(A)–(C), inserted in par. (1) ''or by reason of a coverage denial described in subsection (g) of this section'', and in concluding provisions inserted ''and as though the coverage denial described in subsection (g) of this section had not occurred'' and ''or by reason of a coverage denial described in subsection (g) of this section''.

Subsec. (c). Pub. L. 99–509, § 9305(g)(1)(D), inserted ''or by reason of a coverage denial described in subsection (g) of this section''.

Subsec. (d). Pub. L. 99–509, § 9341(a)(3), substituted ''sections 1395ff(b) and 1395u(b)(3)(C) of this title (as may be applicable)'' for ''section 1395ff(b) of this title (when the determination is under part A) or section 1395u(b)(3)(C) of this title (when the determination is under part B)''.

Subsecs. (f), (g). Pub. L. 99–509, § 9305(g)(1)(E), added subsecs. (f) and (g).

1982—Subsec. (a). Pub. L. 97–248, § 145, inserted provisions relating to imputing knowledge to provider or other person furnishing items or services for which payment may not be made that payment may not be made if the provider or other person has been notified that a pattern of inappropriate utilization has occurred in the past and there has been a reasonable time for correction of such utilization.

Subsec. (e). Pub. L. 97–248, § 148(e), substituted ''quality control and peer review organization'' for ''professional standards review organization''.

1980—Subsec. (e). Pub. L. 96–499 added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to benefits provided on or after Aug. 5, 1997, except as otherwise provided, see section 4449 of Pub. L. 105–33, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 applicable to items or services furnished on or after Jan. 1, 1995, see section 133(c) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6214(c) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to determinations for quarters beginning on or after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to services furnished on or after Jan. 1, 1988, see section 4096(d) of Pub. L. 100–203, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9305(g)(3) of Pub. L. 99–509, as amended by Pub. L. 100–360, title IV, § 426(c), July 1, 1988, 102 Stat. 814; Pub. L. 101–508, title IV, § 4207(b)(3), formerly § 4027(b)(3), Nov. 5, 1990, 104 Stat. 1388–118, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to coverage denials occurring on or after July 1, 1987, and before December 31, 1995.''

Amendment by section 9341(a)(3) of Pub. L. 99–509 applicable to items and services furnished on or after Jan. 1, 1987, see section 9341(b) of Pub. L. 99–509, set out as a note under section 1395ff of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 956(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1981.''

EFFECTIVE DATE

Section 213(b) of Pub. L. 92–603 provided that: ''The amendments made by this section [enacting this section] shall be effective with respect to claims under part A or part B of title XVIII of the Social Security Act [part A or part B of this subchapter], filed with respect to items or services furnished after the date of the enactment of this Act [Oct. 30, 1972].''

PROVISIONS RELATING TO ADVANCE BENEFICIARY NOTICES; REPORT ON PRIOR DETERMINATION PROCESS

Pub. L. 108–173, title IX, § 938(c), Dec. 8, 2003, 117 Stat. 2415, provided that:

''(1) DATA COLLECTION.—The Secretary [of Health and Human Services] shall establish a process for the collection of information on the instances in which an advance beneficiary notice (as defined in paragraph (5)) has been provided and on instances in which a beneficiary indicates on such a notice that the beneficiary does not intend to seek to have the item or service that is the subject of the notice furnished.

''(2) OUTREACH AND EDUCATION.—The Secretary shall establish a program of outreach and education for beneficiaries and providers of services and other persons on the appropriate use of advance beneficiary notices and coverage policies under the medicare program.

''(3) GAO REPORT ON USE OF ADVANCE BENEFICIARY NOTICES.—Not later than 18 months after the date on which section 1869(h) of the Social Security Act [section 1395ff(h) of this title] (as added by subsection (a)) takes effect, the Comptroller General of the United States shall submit to Congress a report on the use of advance beneficiary notices under title XVIII of such Act [this subchapter]. Such report shall include information concerning the providers of services and other persons that have provided such notices and the response of beneficiaries to such notices.

''(4) GAO REPORT ON USE OF PRIOR DETERMINATION PROCESS.—Not later than 36 months after the date on which section 1869(h) of the Social Security Act [section 1395ff(h) of this title] (as added by subsection (a)) takes effect, the Comptroller General of the United States shall submit to Congress a report on the use of the prior determination process under such section. Such report shall include—

''(A) information concerning—

''(i) the number and types of procedures for which a prior determination has been sought;

''(ii) determinations made under the process;

''(iii) the percentage of beneficiaries prevailing;

''(iv) in those cases in which the beneficiaries do not prevail, the reasons why such beneficiaries did not prevail; and

''(v) changes in receipt of services resulting from the application of such process;

''(B) an evaluation of whether the process was useful for physicians (and other suppliers) and beneficiaries, whether it was timely, and whether the amount of information required was burdensome to physicians and beneficiaries; and

''(C) recommendations for improvements or continuation of such process.

''(5) ADVANCE BENEFICIARY NOTICE DEFINED.—In this subsection, the term 'advance beneficiary notice' means a written notice provided under section 1879(a) of the Social Security Act (42 U.S.C. 1395pp(a)) to an individual entitled to benefits under part A or enrolled under part B of title XVIII of such Act [part A and part B of this subchapter] before items or services are furnished under such part in cases where a provider of services or other person that would furnish the item or service believes that payment will not be made for some or all of such items or services under such title [this subchapter].''

REPORTS TO CONGRESS ON DENIALS OF BILLS FOR PAYMENT

Section 9305(g)(2) of Pub. L. 99–509 directed Secretary of Health and Human Services to report to Congress annually in March of 1987 and 1988 information on frequency and distribution (by type of provider) of denials of bills for payment under this subchapter for extended care services, home health services, and hospice care, by reason of section 1395y(a)(1) or (9) of this title, and coverage denials described in subsec. (g) of this section, and such other information as appropriate to evaluate the appropriateness of any percentage standards established for the granting of favorable presumptions with respect to such denials.

§ 1395qq. Indian Health Service Facilities

(a) Eligibility for payments; conditions and requirements

A hospital or skilled nursing facility of the Indian Health Service, whether operated by such

Service or by an Indian tribe or tribal organization (as those terms are defined in section 1603 of title 25), shall be eligible for payments under this subchapter, notwithstanding sections 1395f(c) and 1395n(d) of this title, if and for so long as it meets all of the conditions and requirements for such payments which are applicable generally to hospitals or skilled nursing facilities (as the case may be) under this subchapter.

(b) Eligibility based on submission of plan to achieve compliance with conditions and requirements; twelve-month period

Notwithstanding subsection (a) of this section, a hospital or skilled nursing facility of the Indian Health Service which does not meet all of the conditions and requirements of this subchapter which are applicable generally to hospitals or skilled nursing facilities (as the case may be), but which submits to the Secretary within six months after September 30, 1976, an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for payments under this subchapter), without regard to the extent of its actual compliance with such conditions and requirements, during the first 12 months after the month in which such plan is submitted.

(c) Payments into special fund for improvements to achieve compliance with conditions and requirements; certification of compliance by Secretary

Notwithstanding any other provision of this subchapter, payments to which any hospital or skilled nursing facility of the Indian Health Service is entitled by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the hospitals and skilled nursing facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this subchapter. The preceding sentence shall cease to apply when the Secretary determines and certifies that substantially all of the hospitals and skilled nursing facilities of such Service in the United States are in compliance with such conditions and requirements.

(d) Report by Secretary; status of facilities in complying with conditions and requirements

The annual report of the Secretary which is required by section 1671 of title 25 shall include (along with the matters specified in section 1643 of title 25) a detailed statement of the status of the hospitals and skilled nursing facilities of the Service in terms of their compliance with the applicable conditions and requirements of this subchapter and of the progress being made by such hospitals and facilities (under plans submitted under subsection (b) of this section and otherwise) toward the achievement of such compliance.

(e) Services provided by Indian Health Service, Indian tribe, or tribal organization

(1)(A) Notwithstanding section 1395n(d) of this title, subject to subparagraph (B), the Secretary shall make payment under part B of this subchapter to a hospital or an ambulatory care clinic (whether provider-based or freestanding) that is operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined for purposes of subsection (a) of this section) for services described in paragraph (2) (and for items and services furnished during the 5-year period beginning on January 1, 2005, all items and services for which payment may be made under part B of this subchapter) furnished in or at the direction of the hospital or clinic under the same situations, terms, and conditions as would apply if the services were furnished in or at the direction of such a hospital or clinic that was not operated by such Service, tribe, or organization.

(B) Payment shall not be made for services under subparagraph (A) to the extent that payment is otherwise made for such services under this subchapter.

(2) The services described in this paragraph are the following:

(A) Services for which payment is made under section 1395w–4 of this title.

(B) Services furnished by a practitioner described in section 1395u(b)(18)(C) of this title for which payment under part B of this subchapter is made under a fee schedule.

(C) Services furnished by a physical therapist or occupational therapist as described in section 1395x(p) of this title for which payment under part B of this subchapter is made under a fee schedule.

(3) Subsection (c) of this section shall not apply to payments made under this subsection.

(f) Cross reference

For provisions relating to the authority of certain Indian tribes, tribal organizations, and Alaska Native health organizations to elect to directly bill for, and receive payment for, health care services provided by a hospital or clinic of such tribes or organizations and for which payment may be made under this subchapter, see section 1645 of title 25.

(Aug. 14, 1935, ch. 531, title XVIII, § 1880, as added Pub. L. 94–437, title IV, § 401(b), Sept. 30, 1976, 90 Stat. 1408; amended Pub. L. 102–573, title VII, § 701(d), Oct. 29, 1992, 106 Stat. 4572; Pub. L. 106–417, § 3(b)(1), Nov. 1, 2000, 114 Stat. 1815; Pub. L. 106–554, § 1(a)(6) [title IV, § 432(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–525; Pub. L. 108–173, title VI, § 630, Dec. 8, 2003, 117 Stat. 2321.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (e)(1)(A), (2)(B), (C), is classified to section 1395j et seq. of this title.

AMENDMENTS

2003—Subsec. (e)(1)(A). Pub. L. 108–173 inserted ''(and for items and services furnished during the 5-year period beginning on January 1, 2005, all items and services for which payment may be made under part B of this subchapter)'' after ''for services described in paragraph (2)''.

2000—Subsec. (e). Pub. L. 106–554, § 1(a)(6) [title IV, § 432(a)(2)], added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 106–417 added subsec. (e).

Subsec. (f). Pub. L. 106–554, § 1(a)(6) [title IV, § 432(a)(1)], redesignated subsec. (e) as (f).

1992—Subsec. (d). Pub. L. 102–573 made technical amendment to the reference to section 1671 of title 25 to reflect renumbering of corresponding section of original act.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title IV, § 432(a)] of Pub. L. 106–554 applicable to services furnished on or after July 1, 2001, see section 1(a)(6) [title IV, § 432(c)] of Pub. L. 106–554, set out as a note under section 1395u of this title.

Amendment by Pub. L. 106–417 effective Oct. 1, 2000, see section 3(c) of Pub. L. 106–417, set out as a note under section 1645 of Title 25, Indians.

MEDICARE PAYMENTS NOT CONSIDERED IN DETERMINING APPROPRIATIONS FOR INDIAN HEALTH CARE

Section 401(c) of Pub. L. 94–437 provided that any payments received for services provided to beneficiaries under this section were not to be considered in determining appropriations for health care and services to Indians, prior to the general amendment of section 401 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(a), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 401(a) of Pub. L. 94–437, which is classified to section 1641(a) of Title 25, Indians.

PREFERENCE IN SERVICES FOR INDIANS WITH MEDICARE COVERAGE NOT AUTHORIZED

Section 401(d) of Pub. L. 94–437, which provided that nothing in this section authorized the Secretary to provide services to an Indian beneficiary with coverage under this subchapter, in preference to an Indian beneficiary without such coverage, was omitted in the general amendment of section 401 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(a), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 401(b) of Pub. L. 94–437, which is classified to section 1641(b) of Title 25, Indians.

§ 1395rr. End stage renal disease program

(a) Type, duration, and scope of benefits

The benefits provided by parts A and B of this subchapter shall include benefits for individuals who have been determined to have end stage renal disease as provided in section 426–1 of this title, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this subchapter, the type, duration, and scope of the benefit provided by parts A and B of this subchapter with respect to individuals who have been determined to have end stage renal disease and who are entitled to such benefits without regard to section 426–1 of this title shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

(b) Payments with respect to services; dialysis; regulations; physicians' services; target reimbursement rates; home dialysis supplies and equipment; self-care home dialysis support services; self-care dialysis units; hepatitis B vaccine

(1) Payments under this subchapter with respect to services, in addition to services for which payment would otherwise be made under this subchapter, furnished to individuals who have been determined to have end stage renal disease shall include (A) payments on behalf of such individuals to providers of services and renal dialysis facilities which meet such requirements as the Secretary shall by regulation prescribe for institutional dialysis services and supplies (including self-dialysis services in a self-care dialysis unit maintained by the provider or facility), transplantation services, self-care home dialysis support services which are furnished by the provider or facility, and routine professional services performed by a physician during a maintenance dialysis episode if payments for his other professional services furnished to an individual who has end stage renal disease are made on the basis specified in paragraph (3)(A) of this subsection, (B) payments to or on behalf of such individuals for home dialysis supplies and equipment, and (C) payments to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for self-administered erythropoietin as described in section 1395x(s)(2)(P)[1] of this title if the Secretary finds that the patient receiving such drug from such a supplier can safely and effectively administer the drug (in accordance with the applicable methods and standards established by the Secretary pursuant to such section). The requirements prescribed by the Secretary under subparagraph (A) shall include requirements for a minimum utilization rate for transplantations.

(2)(A) With respect to payments for dialysis services furnished by providers of services and renal dialysis facilities to individuals determined to have end stage renal disease for which payments may be made under part B of this subchapter, such payments (unless otherwise provided in this section) shall be equal to 80 percent of the amounts determined in accordance with subparagraph (B); and with respect to payments for services for which payments may be made under part A of this subchapter, the amounts of such payments (which amounts shall not exceed, in respect to costs in procuring organs attributable to payments made to an organ procurement agency or histocompatibility laboratory, the costs incurred by that agency or laboratory) shall be determined in accordance with section 1395x(v) of this title or section 1395ww of this title (if applicable). Payments shall be made to a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services, except for payment by the individual of 20 percent of the estimated amounts for such services calculated on the basis established by the Secretary under subparagraph (B) and the deductible amount imposed by section 1395*l*(b) of this title.

(B) The Secretary shall prescribe in regulations any methods and procedures to (i) determine the costs incurred by providers of services and renal dialysis facilities in furnishing covered services to individuals determined to have end stage renal disease, and (ii) determine, on a cost-related basis or other economical and equitable basis (including any basis authorized under section 1395x(v) of this title) and consistent with any regulations promulgated under paragraph (7), the amounts of payments to be made for part B services furnished by such providers and facilities to such individuals.

(C) Such regulations, in the case of services furnished by proprietary providers and facilities

[1] See References in Text note below.

(other than hospital outpatient departments) may include, if the Secretary finds it feasible and appropriate, provision for recognition of a reasonable rate of return on equity capital, providing such rate of return does not exceed the rate of return stipulated in section 1395x(v)(1)(B) of this title.

(D) For purposes of section 1395*oo* of this title, a renal dialysis facility shall be treated as a provider of services.

(3) With respect to payments for physicians' services furnished to individuals determined to have end stage renal disease, the Secretary shall pay 80 percent of the amounts calculated for such services—

(A) on a reasonable charge basis (but may, in such case, make payment on the basis of the prevailing charges of other physicians for comparable services or, for services furnished on or after January 1, 1992, on the basis described in section 1395w–4 of this title) except that payment may not be made under this subparagraph for routine services furnished during a maintenance dialysis episode, or

(B) on a comprehensive monthly fee or other basis (which effectively encourages the efficient delivery of dialysis services and provides incentives for the increased use of home dialysis) for an aggregate of services provided over a period of time (as defined in regulations).

(4)(A) Pursuant to agreements with approved providers of services and renal dialysis facilities, the Secretary may make payments to such providers and facilities for the cost of home dialysis supplies and equipment and self-care home dialysis support services furnished to patients whose self-care home dialysis is under the direct supervision of such provider or facility, on the basis of a target reimbursement rate (as defined in paragraph (6)) or on the basis of a method established under paragraph (7).

(B) The Secretary shall make payments to a supplier of home dialysis supplies and equipment furnished to a patient whose self-care home dialysis is not under the direct supervision of an approved provider of services or renal dialysis facility only in accordance with a written agreement under which—

(i) the patient certifies that the supplier is the sole provider of such supplies and equipment to the patient,

(ii) the supplier agrees to receive payment for the cost of such supplies and equipment only on an assignment-related basis, and

(iii) the supplier certifies that it has entered into a written agreement with an approved provider of services or renal dialysis facility under which such provider or facility agrees to furnish to such patient all self-care home dialysis support services and all other necessary dialysis services and supplies, including institutional dialysis services and supplies and emergency services.

(5) An agreement under paragraph (4) shall require, in accordance with regulations prescribed by the Secretary, that the provider or facility will—

(A) assume full responsibility for directly obtaining or arranging for the provision of—

(i) such medically necessary dialysis equipment as is prescribed by the attending physician;

(ii) dialysis equipment maintenance and repair services;

(iii) the purchase and delivery of all necessary medical supplies; and

(iv) where necessary, the services of trained home dialysis aides;

(B) perform all such administrative functions and maintain such information and records as the Secretary may require to verify the transactions and arrangements described in subparagraph (A);

(C) submit such cost reports, data, and information as the Secretary may require with respect to the costs incurred for equipment, supplies, and services furnished to the facility's home dialysis patient population; and

(D) provide for full access for the Secretary to all such records, data, and information as he may require to perform his functions under this section.

(6) The Secretary shall establish, for each calendar year, commencing with January 1, 1979, a target reimbursement rate for home dialysis which shall be adjusted for regional variations in the cost of providing home dialysis. In establishing such a rate, the Secretary shall include—

(A) the Secretary's estimate of the cost of providing medically necessary home dialysis supplies and equipment;

(B) an allowance, in an amount determined by the Secretary, to cover the cost of providing personnel to aid in home dialysis; and

(C) an allowance, in an amount determined by the Secretary, to cover administrative costs and to provide an incentive for the efficient delivery of home dialysis;

but in no event (except as may be provided in regulations under paragraph (7)) shall such target rate exceed 75 percent of the national average payment, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year. Any such target rate so established shall be utilized, without renegotiation of the rate, throughout the calendar year for which it is established. During the last quarter of each calendar year, the Secretary shall establish a home dialysis target reimbursement rate for the next calendar year based on the most recent data available to the Secretary at the time. In establishing any rate under this paragraph, the Secretary may utilize a competitive-bid procedure, a prenegotiated rate procedure, or any other procedure (including methods established under paragraph (7)) which the Secretary determines is appropriate and feasible in order to carry out this paragraph in an effective and efficient manner.

(7) Subject to paragraph (12), the Secretary shall provide by regulation for a method (or methods) for determining prospectively the amounts of payments to be made for dialysis services furnished by providers of services and renal dialysis facilities to individuals in a facility and to such individuals at home. Such method (or methods) shall provide for the prospective determination of a rate (or rates) for each mode of care based on a single composite weighted formula (which takes into account the mix of patients who receive dialysis services at a facility

or at home and the relative costs of providing such services in such settings) for hospital-based facilities and such a single composite weighted formula for other renal dialysis facilities, or based on such other method or combination of methods which differentiate between hospital-based facilities and other renal dialysis facilities and which the Secretary determines, after detailed analysis, will more effectively encourage the more efficient delivery of dialysis services and will provide greater incentives for increased use of home dialysis than through the single composite weighted formulas. The amount of a payment made under any method other than a method based on a single composite weighted formula may not exceed the amount (or, in the case of continuous cycling peritoneal dialysis, 130 percent of the amount) of the median payment that would have been made under the formula for hospital-based facilities. Subject to section 422(a)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the Secretary shall provide for such exceptions to such methods as may be warranted by unusual circumstances (including the special circumstances of sole facilities located in isolated, rural areas and of pediatric facilities). Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 60 working days after the date the application is filed. The Secretary may provide that such method will serve in lieu of any target reimbursement rate that would otherwise be established under paragraph (6). The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the organizations (designated under subsection (c)(1)(A) of this section) for such organizations' necessary and proper administrative costs incurred in carrying out the responsibilities described in subsection (c)(2) of this section. The Secretary shall provide that amounts paid under the previous sentence shall be distributed to the organizations described in subsection (c)(1)(A) of this section to ensure equitable treatment of all such network organizations. The Secretary in distributing any such payments to network organizations shall take into account—

(A) the geographic size of the network area;

(B) the number of providers of end stage renal disease services in the network area;

(C) the number of individuals who are entitled to end stage renal disease services in the network area; and

(D) the proportion of the aggregate administrative funds collected in the network area.

The Secretary shall increase the amount of each composite rate payment for dialysis services furnished during 2000 by 1.2 percent above such composite rate payment amounts for such services furnished on December 31, 1999, for such services furnished on or after January 1, 2001, and before January 1, 2005, by 2.4 percent above such composite rate payment amounts for such services furnished on December 31, 2000, and for such services furnished on or after January 1, 2005, by 1.6 percent above such composite rate payment amounts for such services furnished on December 31, 2004.

(8) For purposes of this subchapter, the term ''home dialysis supplies and equipment'' means medically necessary supplies and equipment (including supportive equipment) required by an individual suffering from end stage renal disease in connection with renal dialysis carried out in his home (as defined in regulations), including obtaining, installing, and maintaining such equipment.

(9) For purposes of this subchapter, the term ''self-care home dialysis support services'', to the extent permitted in regulation, means—

(A) periodic monitoring of the patient's home adaptation, including visits by qualified provider or facility personnel (as defined in regulations), so long as this is done in accordance with a plan prepared and periodically reviewed by a professional team (as defined in regulations) including the individual's physician;

(B) installation and maintenance of dialysis equipment;

(C) testing and appropriate treatment of the water; and

(D) such additional supportive services as the Secretary finds appropriate and desirable.

(10) For purposes of this subchapter, the term ''self-care dialysis unit'' means a renal dialysis facility or a distinct part of such facility or of a provider of services, which has been approved by the Secretary to make self-dialysis services, as defined by the Secretary in regulations, available to individuals who have been trained for self-dialysis. A self-care dialysis unit must, at a minimum, furnish the services, equipment and supplies needed for self-care dialysis, have patient-staff ratios which are appropriate to self-dialysis (allowing for such appropriate lesser degree of ongoing medical supervision and assistance of ancillary personnel than is required for full care maintenance dialysis), and meet such other requirements as the Secretary may prescribe with respect to the quality and cost-effectiveness of services.

(11)(A) Hepatitis B vaccine and its administration, when provided to a patient determined to have end stage renal disease, shall not be included as dialysis services for purposes of payment under any prospective payment amount or comprehensive fee established under this section. Payment for such vaccine and its administration shall be made separately in accordance with section 1395*l* of this title.

(B) Erythropoietin, when provided to a patient determined to have end stage renal disease, shall not be included as a dialysis service for purposes of payment under any prospective payment amount or comprehensive fee established under this section, and subject to paragraphs (12) and (13) payment for such item shall be made separately—

(i) in the case of erythropoietin provided by a physician, in accordance with section 1395*l* of this title; and

(ii) in the case of erythropoietin provided by a provider of services, renal dialysis facility, or other supplier of home dialysis supplies and equipment—

(I) for erythropoietin provided during 1994, in an amount equal to $10 per thousand units (rounded to the nearest 100 units), and

(II) for erythropoietin provided during a subsequent year, in an amount determined to be appropriate by the Secretary, except that such amount may not exceed the amount determined under this clause for the previous year increased by the percentage increase (if any) in the implicit price deflator for gross national product (as published by the Department of Commerce) for the second quarter of the preceding year over the implicit price deflator for the second quarter of the second preceding year.

(C) The amount payable to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for erythropoietin shall be determined in the same manner as the amount payable to a renal dialysis facility for such item.

(12)(A) In lieu of payment under paragraph (7) beginning with services furnished on January 1, 2005, the Secretary shall establish a basic case-mix adjusted prospective payment system for dialysis services furnished by providers of services and renal dialysis facilities in a year to individuals in a facility and to such individuals at home. The case-mix under such system shall be for a limited number of patient characteristics.

(B) The system described in subparagraph (A) shall include—

(i) the services comprising the composite rate established under paragraph (7); and

(ii) the difference between payment amounts under this subchapter for separately billed drugs and biologicals (including erythropoietin) and acquisition costs of such drugs and biologicals, as determined by the Inspector General reports to the Secretary as required by section 623(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—

(I) beginning with 2005, for such drugs and biologicals for which a billing code exists prior to January 1, 2004; and

(II) beginning with 2007, for such drugs and biologicals for which a billing code does not exist prior to January 1, 2004,

adjusted to 2005, or 2007, respectively, as determined to be appropriate by the Secretary.

(C)(i) In applying subparagraph (B)(ii) for 2005, such payment amounts under this subchapter shall be determined using the methodology specified in paragraph (13)(A)(i).

(ii) For 2006, the Secretary shall provide for an adjustment to the payments under clause (i) to reflect the difference between the payment amounts using the methodology under paragraph (13)(A)(i) and the payment amount determined using the methodology applied by the Secretary under paragraph (13)(A)(iii) of such paragraph, as estimated by the Secretary.

(D) The Secretary shall adjust the payment rates under such system by a geographic index as the Secretary determines to be appropriate. If the Secretary applies a geographic index under this paragraph that differs from the index applied under paragraph (7) the Secretary shall phase-in the application of the index under this paragraph over a multiyear period.

(E)(i) Such system shall be designed to result in the same aggregate amount of expenditures for such services, as estimated by the Secretary, as would have been made for 2005 if this paragraph did not apply.

(ii) The adjustment made under subparagraph (B)(ii)(II) shall be done in a manner to result in the same aggregate amount of expenditures after such adjustment as would otherwise have been made for such services for 2006 or 2007, respectively, as estimated by the Secretary, if this paragraph did not apply.

(F) Beginning with 2006, the Secretary shall annually increase the basic case-mix adjusted payment amounts established under this paragraph, by an amount determined by—

(i) applying the estimated growth in expenditures for drugs and biologicals (including erythropoietin) that are separately billable to the component of the basic case-mix adjusted system described in subparagraph (B)(ii); and

(ii) converting the amount determined in clause (i) to an increase applicable to the basic case-mix adjusted payment amounts established under subparagraph (B).

Except as provided in subparagraph (G), nothing in this paragraph shall be construed as providing for an update to the composite rate component of the basic case-mix adjusted system under subparagraph (B).

(G) The Secretary shall increase the amount of the composite rate component of the basic case-mix adjusted system under subparagraph (B) for dialysis services—

(i) furnished on or after January 1, 2006, and before April 1, 2007, by 1.6 percent above the amount of such composite rate component for such services furnished on December 31, 2005; and

(ii) furnished on or after April 1, 2007, by 1.6 percent above the amount of such composite rate component for such services furnished on March 31, 2007.

(H) There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of the case-mix system, relative weights, payment amounts, the geographic adjustment factor, or the update for the system established under this paragraph, or the determination of the difference between medicare payment amounts and acquisition costs for separately billed drugs and biologicals (including erythropoietin) under this paragraph and paragraph (13).

(13)(A) The payment amounts under this subchapter for separately billed drugs and biologicals furnished in a year, beginning with 2004, are as follows:

(i) For such drugs and biologicals (other than erythropoietin) furnished in 2004, the amount determined under section 1395u(*o*)(1)(A)(v) of this title for the drug or biological.

(ii) For such drugs and biologicals (including erythropoietin) furnished in 2005, the acquisition cost of the drug or biological, as determined by the Inspector General reports to the Secretary as required by section 623(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. Insofar as the

Inspector General has not determined the acquisition cost with respect to a drug or biological, the Secretary shall determine the payment amount for such drug or biological.

(iii) For such drugs and biologicals (including erythropoietin) furnished in 2006 and subsequent years, such acquisition cost or the amount determined under section 1395w–3a of this title for the drug or biological, as the Secretary may specify.

(B)(i) Drugs and biologicals (including erythropoietin) which were separately billed under this subsection on the day before December 8, 2003, shall continue to be separately billed on and after such date.

(ii) Nothing in this paragraph, section 1395u(*o*) of this title, section 1395w–3a of this title, or section 1395w–3b of this title shall be construed as requiring or authorizing the bundling of payment for drugs and biologicals into the basic case-mix adjusted payment system under this paragraph.

(c) Renal disease network areas; coordinating councils, executive committees, and medical review boards; national end stage renal disease medical information system; functions of network organizations

(1)(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

(I) establish at least 17 end stage renal disease network areas, and

(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish (aa) a network council of renal dialysis and transplant facilities located in the area and (bb) a medical review board, which has a membership including at least one patient representative and physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2). The Secretary shall evaluate each applicant based on quality and scope of services and may not accord more than 20 percent of the weight of the evaluation to the element of price.

(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.

(B) At least one patient representative shall serve as a member of each network council and each medical review board.

(C) The Secretary shall, in regulations, prescribe requirements with respect to membership in network organizations by individuals (and the relatives of such individuals) (i) who have an ownership or control interest in a facility or provider which furnishes services referred to in section 1395x(s)(2)(F) of this title, or (ii) who have received remuneration from any such facility or provider in excess of such amounts as constitute reasonable compensation for services (including time and effort relative to the provision of professional medical services) or goods supplied to such facility or provider; and such requirements shall provide for the definition, disclosure, and, to the maximum extent consistent with effective administration, prevention of potential or actual financial or professional conflicts of interest with respect to decisions concerning the appropriateness, nature, or site of patient care.

(2) The network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs;

(B) developing criteria and standards relating to the quality and appropriateness of patient care and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs; and network goals with respect to the placement of patients in self-care settings and undergoing or preparing for transplantation;

(C) evaluating the procedure by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities;

(D) implementing a procedure for evaluating and resolving patient grievances;

(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and to assure the maintenance of the registry established under paragraph (7);

(G) identifying facilities and providers that are not cooperating toward meeting network goals and assisting such facilities and provid-

ers in developing appropriate plans for correction and reporting to the Secretary on facilities and providers that are not providing appropriate medical care; and

(H) submitting an annual report to the Secretary on July 1 of each year which shall include a full statement of the network's goals, data on the network's performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation and encouraging participation in vocational rehabilitation programs), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self-dialysis training, transplantation, and organ procurement facilities.

(3) Where the Secretary determines, on the basis of the data contained in the network's annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals or to follow the recommendations of the medical review board, he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network's plans and goals. If the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

(4) The Secretary shall, in determining whether to certify additional facilities or expansion of existing facilities within a network, take into account the network's goals and performance as reflected in the network's annual report.

(5) The Secretary, after consultation with appropriate professional and planning organizations, shall provide such guidelines with respect to the planning and delivery of renal disease services as are necessary to assist network organizations in their development of their respective networks' goals to promote the optimum use of self-dialysis and transplantation by suitable candidates for such modalities.

(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be so treated and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment. The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation.

(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

(A) the preparation of the annual report to the Congress required under subsection (g)[1] of this section;

(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.

(8) The provisions of sections 1320c–6 and 1320c–9 of this title shall apply with respect to network administrative organizations (including such organizations as medical review boards) with which the Secretary has entered into agreements under this subsection.

(d) Donors of kidney for transplant surgery

Notwithstanding any provision to the contrary in section 426 of this title any individual who donates a kidney for transplant surgery shall be entitled to benefits under parts A and B of this subchapter with respect to such donation. Reimbursement for the reasonable expenses incurred by such an individual with respect to a kidney donation shall be made (without regard to the deductible, premium, and coinsurance provisions of this subchapter), in such manner as may be prescribed by the Secretary in regulations, for all reasonable preparatory, operation, and postoperation recovery expenses associated with such donation, including but not limited to the expenses for which payment could be made if he were an eligible individual for purposes of parts A and B of this subchapter without regard to this subsection. Payments for postoperation recovery expenses shall be limited to the actual period of recovery.

(e) Reimbursement of providers, facilities, and nonprofit entities for costs of artificial kidney and automated dialysis peritoneal machines for home dialysis

(1) Notwithstanding any other provision of this subchapter, the Secretary may, pursuant to agreements with approved providers of services, renal dialysis facilities, and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently, reimburse such providers, facilities, and nonprofit entities (without regard to the deductible and coinsurance provisions of this subchapter) for the reasonable cost of the purchase, installation, maintenance and reconditioning for subsequent use of artificial kidney and automated dialysis peritoneal machines (including supportive equipment) which are to be used exclusively by entitled individuals dialyzing at home.

(2) An agreement under this subsection shall require that the provider, facility, or other entity will—

(A) make the equipment available for use only by entitled individuals dialyzing at home;

(B) recondition the equipment, as needed, for reuse by such individuals throughout the useful life of the equipment, including modification of the equipment consistent with advances in research and technology;

(C) provide for full access for the Secretary to all records and information relating to the purchase, maintenance, and use of the equipment; and

(D) submit such reports, data, and information as the Secretary may require with respect to the cost, management, and use of the equipment.

(3) For purposes of this section, the term ''supportive equipment'' includes blood pumps, heparin pumps, bubble detectors, other alarm systems, and such other items as the Secretary may determine are medically necessary.

(f) Experiments, studies, and pilot projects

(1) The Secretary shall initiate and carry out, at selected locations in the United States, pilot projects under which financial assistance in the purchase of new or used durable medical equipment for renal dialysis is provided to individuals suffering from end stage renal disease at the time home dialysis is begun, with provision for a trial period to assure successful adaptation to home dialysis before the actual purchase of such equipment.

(2) The Secretary shall conduct experiments to evaluate methods for reducing the costs of the end stage renal disease program. Such experiments shall include (without being limited to) reimbursement for nurses and dialysis technicians to assist with home dialysis, and reimbursement to family members assisting with home dialysis.

(3) The Secretary shall conduct experiments to evaluate methods of dietary control for reducing the costs of the end stage renal disease program, including (without being limited to) the use of protein-controlled products to delay the necessity for, or reduce the frequency of, dialysis in the treatment of end stage renal disease.

(4) The Secretary shall conduct a comprehensive study of methods for increasing public participation in kidney donation and other organ donation programs.

(5) The Secretary shall conduct a full and complete study of the reimbursement of physicians for services furnished to patients with end stage renal disease under this subchapter, giving particular attention to the range of payments to physicians for such services, the average amounts of such payments, and the number of hours devoted to furnishing such services to patients at home, in renal disease facilities, in hospitals, and elsewhere.

(6) The Secretary shall conduct a study of the number of patients with end stage renal disease who are not eligible for benefits with respect to such disease under this subchapter (by reason of this section or otherwise), and of the economic impact of such noneligibility of such individuals. Such study shall include consideration of mechanisms whereby governmental and other health plans might be instituted or modified to permit the purchase of actuarially sound coverage for the costs of end stage renal disease.

(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

(B) With respect to dialysis services furnished on or after January 1, 1988 (or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines), no dialysis facility may reuse dialysis supplies (other than dialyzer filters) unless the Secretary has established a protocol with respect to the reuse of such supplies and the facility follows the protocol so established.

(C) The Secretary shall incorporate protocols established under this paragraph, and the requirement of subparagraph (B), into the requirements for facilities prescribed under subsection (b)(1)(A) of this section and failure to follow such a protocol or requirement subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol or in violation of such requirement.

(8) The Secretary shall submit to the Congress no later than October 1, 1979, a full report on the experiments conducted under paragraphs (1), (2), (3), and (7), and the studies under paragraphs (4), (5), (6), and (7). Such report shall include any recommendations for legislative changes which the Secretary finds necessary or desirable as a result of such experiments and studies.

(g) Conditional approval of dialysis facilities; restriction-of-payments notice to public and facility; notice and hearing; judicial review

(1) In any case where the Secretary—

(A) finds that a renal dialysis facility is not in substantial compliance with requirements for such facilities prescribed under subsection (b)(1)(A) of this section,

(B) finds that the facility's deficiencies do not immediately jeopardize the health and safety of patients, and

(C) has given the facility a reasonable opportunity to correct its deficiencies,

the Secretary may, in lieu of terminating approval of the facility, determine that payment under this subchapter shall be made to the facil-

ity only for services furnished to individuals who were patients of the facility before the effective date of the notice.

(2) The Secretary's decision to restrict payments under this subsection shall be made effective only after such notice to the public and to the facility as may be prescribed in regulations, and shall remain in effect until (A) the Secretary finds that the facility is in substantial compliance with the requirements under subsection (b)(1)(A) of this section, or (B) the Secretary terminates the agreement under this subchapter with the facility.

(3) A facility dissatisfied with a determination by the Secretary under paragraph (1) shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(Aug. 14, 1935, ch. 531, title XVIII, § 1881, as added Pub. L. 95–292, § 2, June 13, 1978, 92 Stat. 308; amended Pub. L. 96–499, title IX, § 957, Dec. 5, 1980, 94 Stat. 2648; Pub. L. 97–35, title XXI, § 2145(a), Aug. 13, 1981, 95 Stat. 799; Pub. L. 98–21, title VI, § 602(i), Apr. 20, 1983, 97 Stat. 165; Pub. L. 98–369, div. B, title III, §§ 2323(c), 2352(a), 2354(b)(41), July 18, 1984, 98 Stat. 1086, 1099, 1102; Pub. L. 98–617, § 3(b)(8), Nov. 8, 1984, 98 Stat. 3296; Pub. L. 99–509, title IX, § 9335(a)(2), (d)(1), (e)–(i)(1), (j)(1), (k)(1), Oct. 21, 1986, 100 Stat. 2029–2033; Pub. L. 100–93, § 12, Aug. 18, 1987, 101 Stat. 697; Pub. L. 100–203, title IV, §§ 4036(b), (c)(2), (d)(5), 4065(b), Dec. 22, 1987, 101 Stat. 1330–79, 1330–80, 1330–112; Pub. L. 101–239, title VI, §§ 6102(e)(8), 6203(b)(1), (2), 6219(a), (b), Dec. 19, 1989, 103 Stat. 2188, 2235, 2254; Pub. L. 101–508, title IV, § 4201(c)(1), (d)(2), formerly (d)(2), (3), Nov. 5, 1990, 104 Stat. 1388–103, 1388–104, renumbered Pub. L. 103–432, title I, § 160(d)(3), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 103–66, title XIII, § 13566(a), Aug. 10, 1993, 107 Stat. 607; Pub. L. 103–296, title I, § 108(c)(5), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 222(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352; Pub. L. 106–554, § 1(a)(6) [title IV, § 422(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–516; Pub. L. 108–173, title VI, § 623(a), (b)(2), (d), Dec. 8, 2003, 117 Stat. 2312, 2313; Pub. L. 109–171, title V, § 5106, Feb. 8, 2006, 120 Stat. 42; Pub. L. 109–432, div. B, title I, § 103(a), Dec. 20, 2006, 120 Stat. 2981.)

REFERENCES IN TEXT

Section 1395x(s)(2)(P) of this title, referred to in subsec. (b)(1), was redesignated section 1395x(s)(2)(O) of this title by Pub. L. 103–432, title I, § 147(f)(6)(B)(iii)(II), Oct. 31, 1994, 108 Stat. 4432.

Section 422(a)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, referred to in subsec. (b)(7), is section 1(a)(6) [title IV, § 422(a)(2)] of Pub. L. 106–554, which is set out as a note under this section.

Section 623(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (b)(12)(B)(ii), (13)(A)(ii), is section 623(c) of Pub. L. 108–173, which is set out as a note under this section.

Subsection (g) of this section, referred to in subsec. (c)(7)(A), was repealed, and subsec. (h) was redesignated (g), by Pub. L. 100–203, title IV, §§ 4036(d)(5)(C), (D), Dec. 22, 1987, 101 Stat. 1330–80.

AMENDMENTS

2006—Subsec. (b)(12)(F). Pub. L. 109–171, § 5106(1), substituted ''Except as provided in subparagraph (G), nothing'' for ''Nothing'' in concluding provisions.

Subsec. (b)(12)(G). Pub. L. 109–432 amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''The Secretary shall increase the amount of the composite rate component of the basic case-mix adjusted system under subparagraph (B) for dialysis services furnished on or after January 1, 2006, by 1.6 percent above the amount of such composite rate component for such services furnished on December 31, 2005.''

Pub. L. 109–171, § 5106(3), added subpar. (G). Former subpar. (G) redesignated (H).

Subsec. (b)(12)(H). Pub. L. 109–171, § 5106(2), redesignated subpar. (G) as (H).

2003—Subsec. (b)(7). Pub. L. 108–173, § 623(a), (b)(2), (d)(2), in first sentence substituted ''Subject to paragraph (12), the Secretary'' for ''The Secretary'', in fourth sentence substituted ''Subject to section 422(a)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the Secretary'' for ''The Secretary'', and, in concluding provisions, struck out ''and'' before ''for such services furnished on or after January 1, 2001,'', inserted ''and before January 1, 2005,'' after ''January 1, 2001,'', and inserted '', and for such services furnished on or after January 1, 2005, by 1.6 percent above such composite rate payment amounts for such services furnished on December 31, 2004'' before period at end.

Subsec. (b)(11)(B). Pub. L. 108–173, § 623(d)(3), inserted ''subject to paragraphs (12) and (13)'' before ''payment for such item'' in introductory provisions.

Subsec. (b)(12), (13). Pub. L. 108–173, § 623(d)(1), added pars. (12) and (13).

2000—Subsec. (b)(7). Pub. L. 106–554 substituted ''for such services furnished on or after January 1, 2001, by 2.4 percent'' for ''for such services furnished on or after January 1, 2001, by 1.2 percent'' in concluding provisions.

1999—Subsec. (b)(7). Pub. L. 106–113 inserted concluding provisions.

1994—Subsec. (g)(3). Pub. L. 103–296 inserted before period at end '', except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

1993—Subsec. (b)(1)(C). Pub. L. 103–66, § 13566(a)(1), substituted ''section 1395x(s)(2)(P)'' for ''section 1395x(s)(2)(Q)''.

Subsec. (b)(11)(B)(ii)(I). Pub. L. 103–66, § 13566(a)(2), substituted ''1994'' for ''1991'' and ''$10'' for ''$11''.

1990—Subsec. (b)(1). Pub. L. 101–508, § 4201(d)(2)(A), formerly § 4201(d)(2), as renumbered by Pub. L. 103–432, § 160(d)(3), added cl. (C).

Subsec. (b)(11). Pub. L. 101–508, § 4201(d)(2)(B), formerly § 4201(d)(3), as renumbered by Pub. L. 103–432, § 160(d)(3), added subpar. (C).

Pub. L. 101–508, § 4201(c)(1), designated existing provisions as subpar. (A) and added subpar. (B).

1989—Subsec. (b)(3)(A). Pub. L. 101–239, § 6102(e)(8), inserted ''or, for services furnished on or after January 1, 1992, on the basis described in section 1395w–4 of this title'' after ''comparable services''.

Subsec. (b)(4). Pub. L. 101–239, § 6203(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(7). Pub. L. 101–239, § 6219(a), substituted ''organizations (designated under subsection (c)(1)(A) of this section) for such organizations' necessary and proper administrative costs incurred in carrying out the responsibilities described in subsection (c)(2) of this

section. The Secretary shall provide that amounts paid under the previous sentence shall be distributed to the organizations described in subsection (c)(1)(A) of this section to ensure equitable treatment of all such network organizations. The Secretary in distributing any such payments to network organizations shall take into account—'' and subpars. (A) to (D) for ''network administrative organization (designated under subsection (c)(1)(A) of this section for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2) of this section.'' in last sentence.

Pub. L. 101–239, § 6203(b)(1), inserted after second sentence ''The amount of a payment made under any method other than a method based on a single composite weighted formula may not exceed the amount (or, in the case of continuous cycling peritoneal dialysis, 130 percent of the amount) of the median payment that would have been made under the formula for hospital-based facilities.''

Subsec. (c)(8). Pub. L. 101–239, § 6219(b), added par. (8).

1987—Subsec. (b)(1). Pub. L. 100–203, § 4036(b), substituted ''transplantations'' for ''covered procedures and for self-dialysis training programs''.

Subsec. (b)(2)(C). Pub. L. 100–203, § 4065(b), substituted ''facilities (other than hospital outpatient departments)'' for ''facilities''.

Subsec. (c)(2)(F). Pub. L. 100–203, § 4036(d)(5)(A), struck out ''and subsection (g) of this section'' after ''required by subparagraph (H)''.

Subsec. (c)(6). Pub. L. 100–203, § 4036(d)(5)(B), struck out at end ''The Secretary shall periodically submit to the Congress such legislative recommendations as the Secretary finds warranted on the basis of such consultation and evidence to further the national objective of maximizing the use of home dialysis and transplantation consistent with good medical practice.''

Subsec. (f)(7)(B). Pub. L. 100–203, § 4036(c)(2), inserted ''(or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines)'' after ''January 1, 1988''.

Subsec. (g). Pub. L. 100–203, § 4036(d)(5)(C), (D), redesignated subsec. (h) as (g) and struck out former subsec. (g) which directed the Secretary to submit to Congress on July 1, 1979, and on July 1 of each year thereafter a report on end stage renal disease program.

Subsec. (h). Pub. L. 100–203, § 4036(d)(5)(D), redesignated subsec. (h) as (g).

Pub. L. 100–93 added subsec. (h).

1986—Subsec. (b)(7). Pub. L. 99–509, § 9335(j)(1), inserted at end ''The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) of this section for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2) of this section.''

Pub. L. 99–509, § 9335(a)(2), inserted ''and of pediatric facilities'' after ''isolated rural areas'' in third sentence, and inserted after third sentence ''Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 60 working days after the date the application is filed.''

Subsec. (c)(1)(A). Pub. L. 99–509, § 9335(d)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organizations (including a coordinating council, an executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organizations under this section.''

Subsec. (c)(1)(B). Pub. L. 99–509, § 9335(e), amended subpar. (B) generally, substituting ''network council and each medical review board'' for ''coordinating council and executive committee''.

Subsec. (c)(2)(A). Pub. L. 99–509, § 9335(f)(1), inserted ''and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs'' before the semicolon.

Subsec. (c)(2)(B). Pub. L. 99–509, § 9335(f)(2), inserted ''and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs'' before first semicolon.

Subsec. (c)(2)(D) to (F). Pub. L. 99–509, § 9335(f)(5), added subpars. (D) to (F). Former subpars. (D) and (E) redesignated (G) and (H), respectively.

Subsec. (c)(2)(G). Pub. L. 99–509, § 9335(f)(3), (5), redesignated former subpar. (D) as (G) and inserted ''and reporting to the Secretary on facilities and providers that are not providing appropriate medical care'' before the semicolon.

Subsec. (c)(2)(H). Pub. L. 99–509, § 9335(f)(4), (5), redesignated former subpar. (E) as (H) and inserted ''and encouraging participation in vocational rehabilitation programs'' after ''and transplantation''.

Subsec. (c)(3). Pub. L. 99–509, § 9335(g), inserted ''or to follow the recommendations of the medical review board'' after ''network plans and goals''.

Subsec. (c)(6). Pub. L. 99–509, § 9335(h), inserted ''and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment'' at end of first sentence.

Subsec. (c)(7). Pub. L. 99–509, § 9335(i)(1), added par. (7).

Subsec. (f)(7). Pub. L. 99–509, § 9335(k)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reusing dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound procedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program.''

1984—Subsecs. (a), (b)(1), (2)(A), (B), (3), (8). Pub. L. 98–369, § 2354(b)(41), substituted ''end stage'' for ''end-stage'' wherever appearing.

Subsec. (b)(11). Pub. L. 98–617 realigned margin of par. (11).

Pub. L. 98–369, § 2323(c), added par. (11).

Subsec. (c)(3). Pub. L. 98–369, § 2352(a), inserted provision that if the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

1983—Subsec. (b)(2)(A). Pub. L. 98–21 inserted ''or section 1395ww of this title (if applicable)'' after ''section 1395x(v) of this title''.

1981—Subsec. (b)(2)(B). Pub. L. 97–35, § 2145(a)(1), (2), substituted ''section 1395x(v) of this title) and consistent with any regulations promulgated under paragraph (7)'' for ''section 1395x(v) of this title)'' and struck out provisions that such regulations provide for the implementation of appropriate incentives for encouraging more efficient and effective delivery of services, and in-

clude a system for classifying comparable providers and facilities, and prospectively set rates or target rates with arrangements for sharing such reductions in costs as may be attributable to more efficient and effective delivery of services.

Subsec. (b)(3)(B). Pub. L. 97–35, § 2145(a)(3), substituted ''or other basis (which effectively encourages the efficient delivery of dialysis services and provides incentives for the increased use of home dialysis)'' for ''or other basis''.

Subsec. (b)(4). Pub. L. 97–35, § 2145(a)(4), inserted reference to alternative basis of a method established under par. (7).

Subsec. (b)(6). Pub. L. 97–35, § 2145(a)(5), (6), substituted ''(except as may be provided in regulations under paragraph (7)) shall such target rate exceed 75 percent'' and ''any other procedure (including methods established under paragraph (7)) which the Secretary'' for ''shall such target rate exceed 70 percent'' and ''any other procedure which the Secretary'', respectively.

Subsec. (b)(7) to (10). Pub. L. 97–35, § 2145(a)(7), (8), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

1980—Subsec. (e)(1). Pub. L. 96–499, § 957(a)(1)–(3), substituted ''services, renal dialysis facilities, and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently,'' for ''services and renal dialysis facilities'' and ''such providers, facilities, and nonprofit entities'' for ''such providers and facilities''.

Subsec. (e)(2). Pub. L. 96–499, § 957(a)(4), substituted '', facility, or other entity will'' for ''or facility will''.

Subsec. (g). Pub. L. 96–499, § 957(b), substituted ''July'' for ''April'' in two places.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to erythropoietin furnished on or after Jan. 1, 1994, see section 13566(c) of Pub. L. 103–66, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4201(c)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to erythropoietin furnished on or after January 1, 1991.''

Amendment by section 4201(d)(2) of Pub. L. 101–508 applicable to items and services furnished on or after July 1, 1991, see section 4201(d)(3)[(4)] of Pub. L. 101–508, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6203(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to dialysis services, supplies, and equipment furnished on or after February 1, 1990.''

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4065(b) of Pub. L. 100–203 effective Jan. 1, 1988, see section 4065(c) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9335(a)(3) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (2) [amending this section] shall apply to applications filed on or after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9335(j)(2) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4085(i)(21)(C), Dec. 22, 1987, 101 Stat. 1330–133, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to treatment furnished on or after January 1, 1987[,] except that, until network administrative organizations are established under section 1881(c)(1)(A) of the Social Security Act [subsec. (c)(1)(A) of this section] (as amended by subsection (d)(1) of this section), the distribution of payments described in the last sentence of section 1881(b)(7) of such Act shall be made based on the distribution of payments under section 1881 of such Act to network administrative organizations for fiscal year 1986.''

[Section 4085(i)(21) of Pub. L. 100–203 provided that the amendment of section 9335(j)(2) of Pub. L. 99–509, set out above, by section 4085(i)(21)(C) of Pub. L. 100–203 is effective as if included in the enactment of Pub. L. 99–509.]

Section 9335(*l*) of Pub. L. 99–509 provided that: ''The amendments made by subsections (e), (f), and (g) [amending this section] shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (d)(1) [amending this section].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2323(c) of Pub. L. 98–369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2352(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall apply to determinations made by the Secretary on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(41) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2145(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] apply to services furnished on or after October 1, 1981, and the Secretary of Health and Human Services shall first promulgate regulations to carry out section 1881(b)(7) of the Social Security Act [subsec. (b)(7) of this section] not later than October 1, 1981.''

EFFECTIVE DATE

Section effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become

effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

INSPECTOR GENERAL STUDIES ON ESRD DRUGS

Pub. L. 108–173, title VI, § 623(c), Dec. 8, 2003, 117 Stat. 2312, provided that:

''(1) IN GENERAL.—The Inspector General of the Department of Health and Human Services shall conduct two studies with respect to drugs and biologicals (including erythropoietin) furnished to end-stage renal disease patients under the medicare program which are separately billed by end stage renal disease facilities.

''(2) STUDIES ON ESRD DRUGS.—

''(A) EXISTING DRUGS.—The first study under paragraph (1) shall be conducted with respect to such drugs and biologicals for which a billing code exists prior to January 1, 2004.

''(B) NEW DRUGS.—The second study under paragraph (1) shall be conducted with respect to such drugs and biologicals for which a billing code does not exist prior to January 1, 2004.

''(3) MATTERS STUDIED.—Under each study conducted under paragraph (1), the Inspector General shall—

''(A) determine the difference between the amount of payment made to end stage renal disease facilities under title XVIII of the Social Security Act [this subchapter] for such drugs and biologicals and the acquisition costs of such facilities for such drugs and biologicals and which are separately billed by end stage renal disease facilities, and

''(B) estimate the rates of growth of expenditures for such drugs and biologicals billed by such facilities.

''(4) REPORTS.—

''(A) EXISTING ESRD DRUGS.—Not later than April 1, 2004, the Inspector General shall report to the Secretary [of Health and Human Services] on the study described in paragraph (2)(A).

''(B) NEW ESRD DRUGS.—Not later than April 1, 2006, the Inspector General shall report to the Secretary on the study described in paragraph (2)(B).''

DEMONSTRATION OF BUNDLED CASE-MIX ADJUSTED PAYMENT SYSTEM FOR ESRD SERVICES

Pub. L. 108–173, title VI, § 623(e), Dec. 8, 2003, 117 Stat. 2315, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a demonstration project of the use of a fully case-mix adjusted payment system for end stage renal disease services under section 1881 of the Social Security Act (42 U.S.C. 1395rr) for patient characteristics identified in the report under subsection (f) [set out as a note under this section] that bundles into such payment rates amounts for—

''(A) drugs and biologicals (including erythropoietin) furnished to end stage renal disease patients under the medicare program which are separately billed by end stage renal disease facilities (as of the date of the enactment of this Act [Dec. 8, 2003]); and

''(B) clinical laboratory tests related to such drugs and biologicals.

''(2) FACILITIES INCLUDED IN THE DEMONSTRATION.—In conducting the demonstration under this subsection, the Secretary shall ensure the participation of a sufficient number of providers of dialysis services and renal dialysis facilities, but in no case to exceed 500. In selecting such providers and facilities, the Secretary shall ensure that the following types of providers are included in the demonstration:

''(A) Urban providers and facilities.

''(B) Rural providers and facilities.

''(C) Not-for-profit providers and facilities.

''(D) For-profit providers and facilities.

''(E) Independent providers and facilities.

''(F) Specialty providers and facilities, including pediatric providers and facilities and small providers and facilities.

''(3) TEMPORARY ADD-ON PAYMENT FOR DIALYSIS SERVICES FURNISHED UNDER THE DEMONSTRATION.—

''(A) IN GENERAL.—During the period of the demonstration project, the Secretary shall increase payment rates that would otherwise apply under section 1881(b) of such Act (42 U.S.C. 1395rr(b)) by 1.6 percent for dialysis services furnished in facilities in the demonstration site.

''(B) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as—

''(i) as an annual update under section 1881(b) of the Social Security Act (42 U.S.C. 1395rr(b));

''(ii) as increasing the baseline for payments under such section; or

''(iii) requiring the budget neutral implementation of the demonstration project under this subsection.

''(4) 3-YEAR PERIOD.—The Secretary shall conduct the demonstration under this subsection for the 3-year period beginning on January 1, 2006.

''(5) USE OF ADVISORY BOARD.—

''(A) IN GENERAL.—In carrying out the demonstration under this subsection, the Secretary shall establish an advisory board comprised of representatives described in subparagraph (B) to provide advice and recommendations with respect to the establishment and operation of such demonstration.

''(B) REPRESENTATIVES.—Representatives referred to in subparagraph (A) include representatives of the following:

''(i) Patient organizations.

''(ii) Individuals with expertise in end stage renal dialysis services, such as clinicians, economists, and researchers.

''(iii) The Medicare Payment Advisory Commission, established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6).

''(iv) The National Institutes of Health.

''(v) Network organizations under section 1881(c) of the Social Security Act (42 U.S.C. 1395rr(c)).

''(vi) Medicare contractors to monitor quality of care.

''(vii) Providers of services and renal dialysis facilities furnishing end stage renal disease services.

''(C) TERMINATION OF ADVISORY PANEL.—The advisory panel shall terminate on December 31, 2008.

''(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, $5,000,000 in fiscal year 2006 to conduct the demonstration under this subsection.''

REPORT ON A BUNDLED PROSPECTIVE PAYMENT SYSTEM FOR END STAGE RENAL DISEASE SERVICES

Pub. L. 108–173, title VI, § 623(f), Dec. 8, 2003, 117 Stat. 2316, provided that:

''(1) REPORT.—

''(A) IN GENERAL.—Not later than October 1, 2005, the Secretary [of Health and Human Services] shall submit to Congress a report detailing the elements and features for the design and implementation of a bundled prospective payment system for services furnished by end stage renal disease facilities including, to the maximum extent feasible, bundling of drugs, clinical laboratory tests, and other items that are separately billed by such facilities. The report shall include a description of the methodology to be used for the establishment of payment rates, including components of the new system described in paragraph (2).

''(B) RECOMMENDATIONS.—The Secretary shall include in such report recommendations on elements, features, and methodology for a bundled prospective payment system or other issues related to such system as the Secretary determines to be appropriate.

''(2) ELEMENTS AND FEATURES OF A BUNDLED PROSPECTIVE PAYMENT SYSTEM.—The report required under paragraph (1) shall include the following elements and features of a bundled prospective payment system:

''(A) BUNDLE OF ITEMS AND SERVICES.—A description of the bundle of items and services to be included under the prospective payment system.

''(B) CASE MIX.—A description of the case-mix adjustment to account for the relative resource use of different types of patients.

''(C) WAGE INDEX.—A description of an adjustment to account for geographic differences in wages.

''(D) RURAL AREAS.—The appropriateness of establishing a specific payment adjustment to account for additional costs incurred by rural facilities.

''(E) OTHER ADJUSTMENTS.—Such other adjustments as may be necessary to reflect the variation in costs incurred by facilities in caring for patients with end stage renal disease.

''(F) UPDATE FRAMEWORK.—A methodology for appropriate updates under the prospective payment system.

''(G) ADDITIONAL RECOMMENDATIONS.—Such other matters as the Secretary determines to be appropriate.''

PROHIBITION ON EXCEPTIONS

Pub. L. 106–554, §1(a)(6) [title IV, §422(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–516, as amended by Pub. L. 108–173, title VI, §623(b)(1), Dec. 8, 2003 117 Stat. 2312, provided that:

''(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the Secretary of Health and Human Services may not provide for an exception under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) on or after December 31, 2000.

''(B) DEADLINE FOR NEW APPLICATIONS.—Subject to subparagraph (D), in the case of a facility that during 2000 did not file for an exception rate under such section, the facility may submit an application for an exception rate by not later than July 1, 2001.

''(C) PROTECTION OF APPROVED EXCEPTION RATES.—Any exception rate under such section in effect on December 31, 2000 (or, in the case of an application under subparagraph (B), as approved under such application) shall continue in effect so long as such rate is greater than the composite rate as updated by the amendment made by paragraph (1) [amending this section].

''(D) INAPPLICABILITY TO PEDIATRIC FACILITIES.—Subparagraphs (A) and (B) shall not apply, as of October 1, 2002, to pediatric facilities that do not have an exception rate described in subparagraph (C) in effect on such date. For purposes of this subparagraph, the term 'pediatric facility' means a renal facility at least 50 percent of whose patients are individuals under 18 years of age.''

DEVELOPMENT OF ESRD MARKET BASKET

Pub. L. 106–554, §1(a)(6) [title IV, §422(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–516, provided that:

''(1) DEVELOPMENT.—The Secretary of Health and Human Services shall collect data and develop an ESRD market basket whereby the Secretary can estimate, before the beginning of a year, the percentage by which the costs for the year of the mix of labor and nonlabor goods and services included in the ESRD composite rate under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) will exceed the costs of such mix of goods and services for the preceding year. In developing such index, the Secretary may take into account measures of changes in—

''(A) technology used in furnishing dialysis services;

''(B) the manner or method of furnishing dialysis services; and

''(C) the amounts by which the payments under such section for all services billed by a facility for a year exceed the aggregate allowable audited costs of such services for such facility for such year.

''(2) REPORT.—The Secretary of Health and Human Services shall submit to Congress a report on the index developed under paragraph (1) no later than July 1, 2002, and shall include in the report recommendations on the appropriateness of an annual or periodic update mechanism for renal dialysis services under the medicare program under title XVIII of the Social Security Act [this subchapter] based on such index.''

INCLUSION OF ADDITIONAL SERVICES IN COMPOSITE RATE

Pub. L. 106–554, §1(a)(6) [title IV, §422(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–517, provided that:

''(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a system which includes, to the maximum extent feasible, in the composite rate used for payment under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)), payment for clinical diagnostic laboratory tests and drugs (including drugs paid under section 1881(b)(11)(B) of such Act (42 U.S.C. 1395rr(b)(11)(B)) that are routinely used in furnishing dialysis services to medicare beneficiaries but which are currently separately billable by renal dialysis facilities.

''(2) REPORT.—The Secretary shall include, as part of the report submitted under subsection (b)(2) [set out above], a report on the system developed under paragraph (1) and recommendations on the appropriateness of incorporating the system into medicare payment for renal dialysis services.''

GAO STUDY ON ACCESS TO SERVICES

Pub. L. 106–554, §1(a)(6) [title IV, §422(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–517, provided that:

''(1) STUDY.—The Comptroller General of the United States shall study access of medicare beneficiaries to renal dialysis services. Such study shall include whether there is a sufficient supply of facilities to furnish needed renal dialysis services, whether medicare payment levels are appropriate, taking into account audited costs of facilities for all services furnished, to ensure continued access to such services, and improvements in access (and quality of care) that may result in the increased use of long nightly and short daily hemodialysis modalities.

''(2) REPORT.—Not later than January 1, 2003, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).''

SPECIAL RULE FOR PAYMENT FOR 2001

Pub. L. 106–554, §1(a)(6) [title IV, §422(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–517, provided that: ''Notwithstanding the amendment made by subsection (a)(1) [amending this section], for purposes of making payments under section 1881(b) of the Social Security Act (42 U.S.C. 1395rr(b)) for dialysis services furnished during 2001, the composite rate payment under paragraph (7) of such section—

''(1) for services furnished on or after January 1, 2001, and before April 1, 2001, shall be the composite rate payment determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for services furnished on or after April 1, 2001, and before January 1, 2002, shall be the composite rate payment (as determined taking into account the amendment made by subsection (a)(1)) increased by a transitional percentage allowance equal to 0.39 percent (to account for the timing of implementation of the CPI update).''

STUDY ON PAYMENT LEVEL FOR HOME HEMODIALYSIS

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §222(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352, provided that: ''The Medicare Payment Advisory Commission shall conduct a study on the appropriateness of the differential in payment under the medicare program for hemodialysis services furnished in a facility and such services furnished in a home. Not later than 18 months after the date of the enactment of this Act [Nov. 29, 1999], the Commission shall submit to Congress a report on such study and shall include recommendations regarding changes in medicare payment policy in response to the study.''

RENAL DIALYSIS-RELATED SERVICES

Pub. L. 105–33, title IV, § 4558, Aug. 5, 1997, 111 Stat. 463, provided that:

''(a) AUDITING OF COST REPORTS.—Beginning with cost reports for 1996, the Secretary shall audit cost reports of each renal dialysis provider at least once every 3 years.

''(b) IMPLEMENTATION OF QUALITY STANDARDS.—The Secretary of Health and Human Services shall develop, by not later than January 1, 1999, and implement, by not later than January 1, 2000, a method to measure and report quality of renal dialysis services provided under the medicare program under title XVIII of the Social Security Act [this subchapter].''

PROPAC STUDY ON ESRD COMPOSITE RATES

Section 4201(b) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—

''(A) STUDY.—The Prospective Payment Assessment Commission (in this subsection referred to as the 'Commission') shall conduct a study to determine the costs and services and profits associated with various modalities of dialysis treatments provided to end stage renal disease patients provided under title XVIII of the Social Security Act [this subchapter].

''(B) RECOMMENDATIONS.—Based on information collected for the study described in subparagraph (A), the Commission shall make recommendations to Congress regarding the method or methods and the levels at which the payments made for the facility component of dialysis services by providers of service and renal dialysis facilities under title XVIII of the Social Security Act should be established for dialysis services furnished during fiscal year 1993 and the methodology to be used to update such payments for subsequent fiscal years. In making recommendations concerning the appropriate methodology the Commission shall consider—

''(i) hemodialysis and other modalities of treatment,

''(ii) the appropriate services to be included in such payments,

''(iii) the adjustment factors to be incorporated including facility characteristics, such as hospital versus free-standing facilities, urban versus rural, size and mix of services,

''(iv) adjustments for labor and nonlabor costs,

''(v) comparative profit margins for all types of renal dialysis providers of service and renal dialysis facilities,

''(vi) adjustments for patient complexity, such as age, diagnosis, case mix, and pediatric services, and

''(vii) efficient costs related to high quality of care and positive outcomes for all treatment modalities.

''(2) REPORT.—Not later than June 1, 1992, the Commission shall submit a report to the Committee on Finance of the Senate, and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on the study conducted under paragraph (1)(A) and shall include in the report the recommendations described in paragraph (1)(B), taking into account the factors described in paragraph (1)(B).

''(3) ANNUAL REPORT.—The Commission, not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1993) shall report its recommendations to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on an appropriate change factor which should be used for updating payments for services rendered in that fiscal year. The Commission in making such report to Congress shall consider conclusions and recommendations available from the Institute of Medicine.''

[Prospective Payment Assessment Commission (ProPAC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title. Section 4022(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by ProPAC, and that, for that purpose, any reference in law to ProPAC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.]

STAFF-ASSISTED HOME DIALYSIS DEMONSTRATION PROJECT

Section 4202 of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 160(b), Oct. 31, 1994, 108 Stat. 4443, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall establish and carry out a 3-year demonstration project to determine whether the services of a home dialysis staff assistant providing services to a patient during hemodialysis treatment at the patient's home may be covered under the medicare program in a cost-effective manner that ensures patient safety.

''(2) NUMBER OF PARTICIPANTS.—The total number of eligible patients receiving services under the demonstration project established under paragraph (1) may not exceed 800.

''(b) PAYMENTS TO PARTICIPATING PROVIDERS AND FACILITIES.—

''(1) SERVICES FOR WHICH PAYMENT MAY BE MADE.—

''(A) IN GENERAL.—Under the demonstration project established under subsection (a), the Secretary shall make payments for 3 years under title XVIII of the Social Security Act [this subchapter] to providers of services (other than a skilled nursing facility) or renal dialysis facilities for services of a qualified home hemodialysis staff assistant (as described in subsection (d)) provided to an individual described in subsection (c) during hemodialysis treatment at the individual's home in an amount determined under paragraph (2).

''(B) SERVICES DESCRIBED.—For purposes of subparagraph (A), the term 'services of a home hemodialysis staff assistant' means—

''(i) technical assistance with the operation of a hemodialysis machine in the patient's home and with such patient's care during in-home hemodialysis; and

''(ii) administration of medications within the patient's home to maintain the patency of the extra corporeal circuit.

''(2) AMOUNT OF PAYMENT.—

''(A) IN GENERAL.—Payment to a provider of services or renal dialysis facility participating in the demonstration project established under subsection (a) for the services described in paragraph (1) shall be prospectively determined by the Secretary, made on a per treatment basis, and shall be in an amount determined under subparagraph (B).

''(B) DETERMINATION OF PAYMENT AMOUNT.—(i) The amount of payment made under subparagraph (A) shall be the product of—

''(I) the rate determined under clause (ii) with respect to a provider of services or a renal dialysis facility; and

''(II) the factor by which the labor portion of the composite rate determined under section 1881(b)(7) of the Social Security Act [subsec. (b)(7) of this section] is adjusted for differences in area wage levels.

''(ii) The rate determined under this clause, with respect to a provider of services or renal dialysis facility, shall be equal to the difference between—

''(I) two-thirds of the labor portion of the composite rate applicable under section 1881(b)(7) of such Act to the provider or facility, and

''(II) the product of the national median hourly wage for a home hemodialysis staff assistant and the national median time expended in the provision of home hemodialysis staff assistant services (taking into account time expended in travel and predialysis patient care).

''(iii) For purposes of clause (ii)(II)—

''(I) the national median hourly wage for a home hemodialysis staff assistant and the national median average time expended for home hemodialysis staff assistant services shall be determined annually on the basis of the most recent data available, and

''(II) the national median hourly wage for a home hemodialysis staff assistant shall be the sum of 65 percent of the national median hourly wage for a licensed practical nurse and 35 percent of the national median hourly wage for a registered nurse.

''(C) PAYMENT AS ADD-ON TO COMPOSITE RATE.—The amount of payment determined under this paragraph shall be in addition to the amount of payment otherwise made to the provider of services or renal dialysis facility under section 1881(b) of such Act.

''(c) INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES UNDER PROJECT.—

''(1) IN GENERAL.—An individual may receive services from a provider of services or renal dialysis facility participating in the demonstration project if—

''(A) the individual is not a resident of a nursing facility;

''(B) the individual is an end stage renal disease patient entitled to benefits under title XVIII of the Social Security Act [this subchapter];

''(C) the individual's physician certifies that the individual is confined to a bed or wheelchair and cannot transfer themselves [sic] from a bed to a chair;

''(D) the individual has a serious medical condition (as specified by the Secretary) which would be exacerbated by travel to and from a dialysis facility;

''(E) the individual is eligible for ambulance transportation to receive routine maintenance dialysis treatments, and, based on the individual's medical condition, there is reasonable expectation that such transportation will be used by the individual for a period of at least 6 consecutive months, such that the cost of ambulance transportation can reasonably be expected to meet or exceed the cost of home hemodialysis staff assistance as provided under subsection (b)(2); and

''(F) no family member or other individual is available to provide such assistance to the individual.

''(2) COVERAGE OF INDIVIDUALS CURRENTLY RECEIVING SERVICES.—Any individual who, on the date of the enactment of this Act [Nov. 5, 1990], is receiving staff assistance under the experimental authority provided under section 1881(f)(2) of the Social Security Act [subsec. (f)(2) of this section] shall be deemed to be an eligible individual for purposes of this subsection.

''(3) CONTINUATION OF COVERAGE UPON TERMINATION OF PROJECT.—Notwithstanding any provision of title XVIII of the Social Security Act, any individual receiving services under the demonstration project established under subsection (a) as of the date of the termination of the project shall continue to be eligible for home hemodialysis staff assistance after such date under such title on the same terms and conditions as applied under the demonstration project.

''(d) QUALIFICATIONS FOR HOME HEMODIALYSIS STAFF ASSISTANTS.—For purposes of subsection (b), a home dialysis aide is qualified if the aide—

''(1) meets minimum qualifications as specified by the Secretary; and

''(2) meets any applicable qualifications as specified under the law of the State in which the home hemodialysis staff assistant is providing services.

''(e) REPORTS.—

''(1) INTERIM STATUS REPORT.—Not later than December 1, 1992, the Secretary shall submit to Congress a preliminary report on the status of the demonstration project established under subsection (a).

''(2) FINAL REPORT.—Not later than December 31, 1995, the Secretary shall submit to Congress a final report evaluating the project, and shall include in such report recommendations regarding appropriate eligibility criteria and cost-control mechanisms for medicare coverage of the services of a home dialysis aide providing medical assistance to a patient during hemodialysis treatment at the patient's home.

''(f) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund (established under section 1841 of the Social Security Act [section 1395t of this title]) of not more than the following amounts to carry out the demonstration project established under subsection (a) (without regard to amounts appropriated in advance in appropriation Acts):

''(1) For fiscal year 1991, $4,000,000.

''(2) For fiscal year 1992, $4,000,000.

''(3) For fiscal year 1993, $3,000,000.

''(4) For fiscal year 1994, $2,000,000.

''(5) For fiscal year 1995, $1,000,000.''

STUDIES OF END-STAGE RENAL DISEASE PROGRAM

Section 4036(d)(1)–(4) of Pub. L. 100–203 provided that:

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall arrange for a study of the end-stage renal disease program within the medicare program.

''(2) Among other items, the study shall address—

''(A) access to treatment by both individuals eligible for medicare benefits and those not eligible for such benefits;

''(B) the quality of care provided to end-stage renal disease beneficiaries, as measured by clinical indicators, functional status of patients, and patient satisfaction;

''(C) the effect of reimbursement on quality of treatment;

''(D) major epidemiological and demographic changes in the end-stage renal disease population that may affect access to treatment, the quality of care, or the resource requirements of the program; and

''(E) the adequacy of existing data systems to monitor these matters on a continuing basis.

''(3) The Secretary shall submit to Congress, not later than 3 years after the date of the enactment of this Act [Dec. 22, 1987], a report on the study.

''(4) The Secretary shall request the National Academy of Sciences, acting through the Institute of Medicine, to submit an application to conduct the study described in this section. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.''

RATES FOR DIALYSIS SERVICES

Pub. L. 99–509, title IX, § 9335(a)(1), Oct. 21, 1986, 100 Stat. 2029, as amended by Pub. L. 101–239, title VI, § 6203(a)(1), Dec. 19, 1989, 103 Stat. 2235; Pub. L. 101–508, title IV, § 4201(a), Nov. 5, 1990, 104 Stat. 1388–102; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 222(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352, provided that: ''Effective with respect to dialysis services provided on or after October 1, 1986, and before December 31, 1990, the Secretary of Health and Human Services shall establish the base rate for routine dialysis treatment in a free-standing facility and in a hospital-based facility under section 1881(b)(7) of the Social Security Act [subsec. (b)(7) of this section] at a level equal to the respective rate in effect as of May 13, 1986, reduced by $2.00. With respect to services furnished on or after January 1, 1991, and before January 1, 2000, such base rate shall be equal to the respective rate in effect as of September 30, 1990 (deter-

mined without regard to any reductions imposed pursuant to section 6201 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, set out as a note under section 904 of Title 2, The Congress]), increased by $1.00. No change may be made in the base rate in effect as of September 30, 1990, unless the Secretary makes such change in accordance with notice and comment requirements set forth in section 1871(b)(1) of such Act [subsec. (b)(1) of this section].''

[Section 6203(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending section 9335(a)(1) of Pub. L. 99–509, set out above] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].'']

STUDY AND REPORT ON MEDICARE PAYMENT RATE REDUCTIONS FOR PATIENTS WITH END STAGE RENAL DISEASE

Section 9335(b) of Pub. L. 99–509 directed Secretary of Health and Human Services to provide for a study to evaluate the effects of reductions in the rates of payment for facility and physicians' services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and a report to Congress on results of the study by not later than Jan. 1, 1988, with Secretary to enter into an appropriate arrangement with the National Academy of Sciences or other appropriate nonprofit private entity for the conduct of the study.

DEADLINE FOR ESTABLISHING NEW END STAGE RENAL DISEASE NETWORK AREAS; TRANSITION

Section 9335(d)(2), (3) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4009(j)(6)(E), Dec. 22, 1987, 101 Stat. 1330–59, provided that:

''(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1) [amending this section], not later than May 1, 1987. The Secretary shall designate network administrative organizations for such areas by not later than July 1, 1987.

''(3) TRANSITION.—If, under the amendment made by paragraph (1), the Secretary designates a network administrative organization for an area which was not previously designated for that area, the Secretary shall offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.''

REPORT ON ESTABLISHMENT OF NATIONAL END STAGE RENAL DISEASE REGISTRY

Section 9335(i)(2) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall submit to the Congress, no later than April 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) [amending this section] and shall establish such registry by not later than January 1, 1988.''

DEADLINE FOR ESTABLISHMENT OF PROTOCOLS ON REUSE OF DIALYZER FILTERS

Section 9335(k)(2) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4036(c)(1)(A), Dec. 22, 1987, 101 Stat. 1330–79, provided that: ''The Secretary of Health and Human Services shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act [subsec. (f)(7)(A) of this section] by not later than October 1, 1987 (or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines).''

[Section 4036(c)(1)(B) of Pub. L. 100–203 provided that: ''The amendment made by subparagraph (A) [amending section 9335(k)(2) of Pub. L. 99–509, set out above] shall be effective as if included in the enactment of section 9335(k)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].'']

LIMITATION ON MERGER OF END STAGE RENAL DISEASE NETWORKS

Pub. L. 99–272, title IX, § 9214, Apr. 7, 1986, 100 Stat. 180, provided that: ''The Secretary of Health and Human Services shall maintain renal disease network organizations as authorized under section 1881(c) of the Social Security Act [subsec. (c) of this section], and may not merge the network organizations into other organizations or entities. The Secretary may consolidate such network organizations, but only if such consolidation does not result in fewer than 14 such organizations being permitted to exist.''

§ 1395ss. Certification of medicare supplemental health insurance policies

(a) Submission of policy by insurer

(1) The Secretary shall establish a procedure whereby medicare supplemental policies (as defined in subsection (g)(1) of this section) may be certified by the Secretary as meeting minimum standards and requirements set forth in subsection (c) of this section. Such procedure shall provide an opportunity for any insurer to submit any such policy, and such additional data as the Secretary finds necessary, to the Secretary for his examination and for his certification thereof as meeting the standards and requirements set forth in subsection (c) of this section. Subject to subsections (k)(3), (m), and (n) of this section, such certification shall remain in effect if the insurer files a notarized statement with the Secretary no later than June 30 of each year stating that the policy continues to meet such standards and requirements and if the insurer submits such additional data as the Secretary finds necessary to independently verify the accuracy of such notarized statement. Where the Secretary determines such a policy meets (or continues to meet) such standards and requirements, he shall authorize the insurer to have printed on such policy (but only in accordance with such requirements and conditions as the Secretary may prescribe) an emblem which the Secretary shall cause to be designed for use as an indication that a policy has received the Secretary's certification. The Secretary shall provide each State commissioner or superintendent of insurance with a list of all the policies which have received his certification.

(2) No medicare supplemental policy may be issued in a State on or after the date specified in subsection (p)(1)(C) of this section unless—

(A) the State's regulatory program under subsection (b)(1) of this section provides for the application and enforcement of the standards and requirements set forth in such subsection (including the 1991 NAIC Model Regulation or 1991 Federal Regulation (as the case may be)) by the date specified in subsection (p)(1)(C) of this section; or

(B) if the State's program does not provide for the application and enforcement of such standards and requirements, the policy has been certified by the Secretary under paragraph (1) as meeting the standards and requirements set forth in subsection (c) of this section (including such applicable standards) by such date.

Any person who issues a medicare supplemental policy, on and after the effective date specified in subsection (p)(1)(C) of this section, in viola-

tion of this paragraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(b) Standards and requirements; periodic review by Secretary

(1) Any medicare supplemental policy issued in any State which the Secretary determines has established under State law a regulatory program that—

(A) provides for the application and enforcement of standards with respect to such policies equal to or more stringent than the NAIC Model Standards (as defined in subsection (g)(2)(A) of this section), except as otherwise provided by subparagraph (H);

(B) includes requirements equal to or more stringent than the requirements described in paragraphs (2) through (5) of subsection (c) of this section;

(C) provides that—

(i) information with respect to the actual ratio of benefits provided to premiums collected under such policies will be reported to the State on forms conforming to those developed by the National Association of Insurance Commissioners for such purpose, or

(ii) such ratios will be monitored under the program in an alternative manner approved by the Secretary, and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;

(D) provides for application and enforcement of the standards and requirements described in subparagraphs (A), (B), and (C) to all medicare supplemental policies (as defined in subsection (g)(1) of this section) issued in such State,

(E) provides the Secretary periodically (but at least annually) with a list containing the name and address of the issuer of each such policy and the name and number of each such policy (including an indication of policies that have been previously approved, newly approved, or withdrawn from approval since the previous list was provided),

(F) reports to the Secretary on the implementation and enforcement of standards and requirements of this paragraph at intervals established by the Secretary,

(G) provides for a process for approving or disapproving proposed premium increases with respect to such policies, and establishes a policy for the holding of public hearings prior to approval of a premium increase, and

(H) in the case of a policy that meets the standards under subparagraph (A) except that benefits under the policy are limited to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), provides for the application of requirements equal to or more stringent than the requirements under subsection (t) of this section,

shall be deemed (subject to subsections (k)(3), (m), and (n) of this section, for so long as the Secretary finds that such State regulatory program continues to meet the standards and requirements of this paragraph) to meet the standards and requirements set forth in subsection (c) of this section. Each report required under subparagraph (F) shall include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards and requirements of this paragraph, actions taken by the State to bring such policies into compliance, information regarding State programs implementing consumer protection provisions, and such further information as the Secretary in consultation with the National Association of Insurance Commissioners may specify.

(2) The Secretary periodically shall review State regulatory programs to determine if they continue to meet the standards and requirements specified in paragraph (1). If the Secretary finds that a State regulatory program no longer meets the standards and requirements, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the State regulatory program to continue to meet such standards and requirements. If the Secretary makes a final determination that the State regulatory program, after such an opportunity, fails to meet such standards and requirements, the program shall no longer be considered to have in operation a program meeting such standards and requirements.

(3) Notwithstanding paragraph (1), a medicare supplemental policy offered in a State shall not be deemed to meet the standards and requirements set forth in subsection (c) of this section, with respect to an advertisement (whether through written, radio, or television medium) used (or, at a State's option, to be used) for the policy in the State, unless the entity issuing the policy provides a copy of each advertisement to the Commissioner of Insurance (or comparable officer identified by the Secretary) of that State for review or approval to the extent it may be required under State law.

(c) Requisite findings

The Secretary shall certify under this section any medicare supplemental policy, or continue certification of such a policy, only if he finds that such policy (or, with respect to paragraph (3) or the requirement described in subsection (s) of this section, the issuer of the policy)—

(1) meets or exceeds (either in a single policy or, in the case of nonprofit hospital and medical service associations, in one or more policies issued in conjunction with one another) the NAIC Model Standards (except as otherwise provided by subsection (t) of this section);

(2) meets the requirements of subsection (r) of this section;

(3)(A) accepts a notice under section 1395u(h)(3)(B) of this title as a claim form for

benefits under such policy in lieu of any claim form otherwise required and agrees to make a payment determination on the basis of the information contained in such notice;

(B) where such a notice is received—

(i) provides notice to such physician or supplier and the beneficiary of the payment determination under the policy, and

(ii) provides any payment covered by such policy directly to the participating physician or supplier involved;

(C) provides each enrollee at the time of enrollment a card listing the policy name and number and a single mailing address to which notices under section 1395u(h)(3)(B) of this title respecting the policy are to be sent;

(D) agrees to pay any user fees established under section 1395u(h)(3)(B) of this title with respect to information transmitted to the issuer of the policy; and

(E) provides to the Secretary at least annually, for transmittal to carriers, a single mailing address to which notices under section 1395u(h)(3)(B) of this title respecting the policy are to be sent;

(4) may, during a period of not less than 30 days after the policy is issued, be returned for a full refund of any premiums paid (without regard to the manner in which the purchase of the policy was solicited); and

(5) meets the applicable requirements of subsections (*o*) through (t) of this section.

(d) Criminal penalties; civil penalties for certain violations

(1) Whoever knowingly and willfully makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact with respect to the compliance of any policy with the standards and requirements set forth in subsection (c) of this section or in regulations promulgated pursuant to such subsection, or with respect to the use of the emblem designed by the Secretary under subsection (a) of this section, shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.

(2) Whoever falsely assumes or pretends to be acting, or misrepresents in any way that he is acting, under the authority of or in association with, the program of health insurance established by this subchapter, or any Federal agency, for the purpose of selling or attempting to sell insurance, or in such pretended character demands, or obtains money, paper, documents, or anything of value, shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.

(3)(A)(i) It is unlawful for a person to sell or issue to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter (including an individual electing a Medicare+Choice plan under section 1395w–21 of this title)—

(I) a health insurance policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under this subchapter or subchapter XIX of this chapter,

(II) in the case of an individual not electing a Medicare+Choice plan, a medicare supplemental policy with knowledge that the individual is entitled to benefits under another medicare supplemental policy or in the case of an individual electing a Medicare+Choice plan, a medicare supplemental policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under the Medicare+Choice plan or under another medicare supplemental policy, or

(III) a health insurance policy (other than a medicare supplemental policy) with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled, other than benefits to which the individual is entitled under a requirement of State or Federal law.

(ii) Whoever violates clause (i) shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a person other than the issuer of the policy) for each such prohibited act.

(iii) A seller (who is not the issuer of a health insurance policy) shall not be considered to violate clause (i)(II) with respect to the sale of a medicare supplemental policy if the policy is sold in compliance with subparagraph (B).

(iv) For purposes of this subparagraph, a health insurance policy (other than a Medicare supplemental policy) providing for benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual is not considered to ''duplicate'' any health benefits under this subchapter, under subchapter XIX of this chapter, or under a health insurance policy, and subclauses (I) and (III) of clause (i) do not apply to such a policy.

(v) For purposes of this subparagraph, a health insurance policy (or a rider to an insurance contract which is not a health insurance policy) is not considered to ''duplicate'' health benefits under this subchapter or under another health insurance policy if it—

(I) provides health care benefits only for long-term care, nursing home care, home health care, or community-based care, or any combination thereof,

(II) coordinates against or excludes items and services available or paid for under this subchapter or under another health insurance policy, and

(III) for policies sold or issued on or after the end of the 90-day period beginning on August 21, 1996, discloses such coordination or exclusion in the policy's outline of coverage.

For purposes of this clause, the terms ''coordinates'' and ''coordination'' mean, with respect to a policy in relation to health benefits under this subchapter or under another health insurance policy, that the policy under its terms is secondary to, or excludes from payment, items and services to the extent available or paid for under this subchapter or under another health insurance policy.

(vi)(I) An individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter who is applying for a health insurance policy (other than a policy described in subclause (III)) shall be furnished a disclosure statement described in clause (vii) for the type of policy being applied for. Such statement shall be furnished as a part of (or together with) the application for such policy.

(II) Whoever issues or sells a health insurance policy (other than a policy described in subclause (III)) to an individual described in subclause (I) and fails to furnish the appropriate disclosure statement as required under such subclause shall be fined under title 18, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a person other than the issuer of the policy) for each such violation.

(III) A policy described in this subclause (to which subclauses (I) and (II) do not apply) is a Medicare supplemental policy, a policy described in clause (v), or a health insurance policy identified under 60 Federal Register 30880 (June 12, 1995) as a policy not required to have a disclosure statement.

(IV) Any reference in this section to the revised NAIC model regulation (referred to in subsection (m)(1)(A) of this section) is deemed a reference to such regulation as revised by section 171(m)(2) of the Social Security Act Amendments of 1994 (Public Law 103–432) and as modified by substituting, for the disclosure required under section 16D(2), disclosure under subclause (I) of an appropriate disclosure statement under clause (vii).

(vii) The disclosure statement described in this clause for a type of policy is the statement specified under subparagraph (D) of this paragraph (as in effect before August 21, 1996) for that type of policy, as revised as follows:

(I) In each statement, amend the second line to read as follows:

"THIS IS NOT MEDICARE SUPPLEMENT INSURANCE".

(II) In each statement, strike the third line and insert the following: ''**Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.**''.

(III) In each statement not described in subclause (V), strike the boldface matter that begins ''**This insurance**'' and all that follows up to the next paragraph that begins ''**Medicare**''.

(IV) In each statement not described in subclause (V), insert before the boxed matter (that states ''**Before You Buy This Insurance**'') the following: ''**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**''.

(V) In a statement relating to policies providing both nursing home and non-institutional coverage, to policies providing nursing home benefits only, or policies providing home care benefits only, amend the sentence that begins ''Federal law'' to read as follows: ''Federal law requires us to inform you that in certain situations this insurance may pay for some care also covered by Medicare.''.

(viii)(I) Subject to subclause (II), nothing in this subparagraph shall restrict or preclude a State's ability to regulate health insurance policies, including any health insurance policy that is described in clause (iv), (v), or (vi)(III).

(II) A State may not declare or specify, in statute, regulation, or otherwise, that a health insurance policy (other than a Medicare supplemental policy) or rider to an insurance contract which is not a health insurance policy, that is described in clause (iv), (v), or (vi)(III) and that is sold, issued, or renewed to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter ''duplicates'' health benefits under this subchapter or under a Medicare supplemental policy.

(B)(i) It is unlawful for a person to issue or sell a medicare supplemental policy to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, whether directly, through the mail, or otherwise, unless—

(I) the person obtains from the individual, as part of the application for the issuance or purchase and on a form described in clause (ii), a written statement signed by the individual stating, to the best of the individual's knowledge, what health insurance policies (including any Medicare+Choice plan) the individual has, from what source, and whether the individual is entitled to any medical assistance under subchapter XIX of this chapter, whether as a qualified medicare beneficiary or otherwise, and

(II) the written statement is accompanied by a written acknowledgment, signed by the seller of the policy, of the request for and receipt of such statement.

(ii) The statement required by clause (i) shall be made on a form that—

(I) states in substance that a medicare-eligible individual does not need more than one medicare supplemental policy,

(II) states in substance that individuals may be eligible for benefits under the State medicaid program under subchapter XIX of this chapter and that such individuals who are entitled to benefits under that program usually do not need a medicare supplemental policy and that benefits and premiums under any such policy shall be suspended upon request of the policyholder during the period (of not longer than 24 months) of entitlement to benefits under such subchapter and may be reinstituted upon loss of such entitlement, and

(III) states that counseling services may be available in the State to provide advice concerning the purchase of medicare supplemental policies and enrollment under the medicaid program and may provide the telephone number for such services.

(iii)(I) Except as provided in subclauses (II) and (III), if the statement required by clause (i) is not obtained or indicates that the individual has a medicare supplemental policy or indicates that the individual is entitled to any medical assistance under subchapter XIX of this chapter, the sale of a medicare supplemental policy shall be considered to be a violation of subparagraph (A).

(II) Subclause (I) shall not apply in the case of an individual who has a medicare supplemental policy, if the individual indicates in writing, as part of the application for purchase, that the policy being purchased replaces such other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective and the issuer or seller certifies in writing that such policy will not, to the best of the issuer's or seller's knowledge, duplicate coverage (taking into account any such replacement).

(III) If the statement required by clause (i) is obtained and indicates that the individual is entitled to any medical assistance under subchapter XIX of this chapter, the sale of the policy is not in violation of clause (i) (insofar as such clause relates to such medical assistance), if (aa) a State medicaid plan under such subchapter pays the premiums for the policy, (bb) in the case of a qualified medicare beneficiary described in section 1396d(p)(1) of this title, the policy provides for coverage of outpatient prescription drugs, or (cc) the only medical assistance to which the individual is entitled under the State plan is medicare cost sharing described in section 1396d(p)(3)(A)(ii) of this title.

(iv) Whoever issues or sells a medicare supplemental policy in violation of this subparagraph shall be fined under title 18, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of a policy) for each such violation.

(C) Subparagraph (A) shall not apply with respect to the sale or issuance of a group policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations.

(4)(A) Whoever knowingly, directly or through his agent, mails or causes to be mailed any matter for a prohibited purpose (as determined under subparagraph (B)) shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.

(B) For purposes of subparagraph (A), a prohibited purpose means the advertising, solicitation, or offer for sale of a medicare supplemental policy, or the delivery of such a policy, in or into any State in which such policy has not been approved by the State commissioner or superintendent of insurance.

(C) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a medicare supplemental policy into a State if such person has ascertained that the party insured under such policy to whom (or on whose behalf) such policy is mailed is located in such State on a temporary basis.

(D) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a duplicate copy of a medicare supplemental policy previously issued to the party to whom (or on whose behalf) such duplicate copy is mailed.

(E) Subparagraph (A) shall not apply in the case of an issuer who mails or causes to be mailed a policy, certificate, or other matter solely to comply with the requirements of subsection (q) of this section.

(5) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under paragraphs (1), (2), (3)(A), and (4)(A) in the same manner as such provisions apply to penalties and proceedings under section 1320a–7a(a) of this title.

(e) Dissemination of information

(1) The Secretary shall provide to all individuals entitled to benefits under this subchapter (and, to the extent feasible, to individuals about to become so entitled) such information as will permit such individuals to evaluate the value of medicare supplemental policies to them and the relationship of any such policies to benefits provided under this subchapter.

(2) The Secretary shall—

(A) inform all individuals entitled to benefits under this subchapter (and, to the extent feasible, individuals about to become so entitled) of—

(i) the actions and practices that are subject to sanctions under subsection (d) of this section, and

(ii) the manner in which they may report any such action or practice to an appropriate official of the Department of Health and Human Services (or to an appropriate State official), and

(B) publish the toll-free telephone number for individuals to report suspected violations of the provisions of such subsection.

(3) The Secretary shall provide individuals entitled to benefits under this subchapter (and, to the extent feasible, individuals about to become so entitled) with a listing of the addresses and telephone numbers of State and Federal agencies and offices that provide information and assistance to individuals with respect to the selection of medicare supplemental policies.

(f) Study and evaluation of comparative effectiveness of various State approaches to regulating medicare supplemental policies; report to Congress no later than January 1, 1982; periodic evaluations

(1)(A) The Secretary shall, in consultation with Federal and State regulatory agencies, the National Association of Insurance Commissioners, private insurers, and organizations representing consumers and the aged, conduct a comprehensive study and evaluation of the comparative effectiveness of various State approaches to the regulation of medicare supplemental policies in (i) limiting marketing and agent abuse, (ii) assuring the dissemination of such information to individuals entitled to benefits under this subchapter (and to other consumers) as is necessary to permit informed choice, (iii) promoting policies which provide reasonable economic benefits for such individuals, (iv) reducing the purchase of unnecessary duplicative coverage, (v) improving price competition, and (vi) establishing effective approved State

regulatory programs described in subsection (b) of this section.

(B) Such study shall also address the need for standards or certification of health insurance policies, other than medicare supplemental policies, sold to individuals eligible for benefits under this subchapter.

(C) The Secretary shall, no later than January 1, 1982, submit a report to the Congress on the results of such study and evaluation, accompanied by such recommendations as the Secretary finds warranted by such results with respect to the need for legislative or administrative changes to accomplish the objectives set forth in subparagraphs (A) and (B), including the need for a mandatory Federal regulatory program to assure the marketing of appropriate types of medicare supplemental policies, and such other means as he finds may be appropriate to enhance effective State regulation of such policies.

(2) The Secretary shall submit to the Congress no later than July 1, 1982, and periodically as may be appropriate thereafter (but not less often than once every 2 years), a report evaluating the effectiveness of the certification procedure and the criminal penalties established under this section, and shall include in such reports an analysis of—

(A) the impact of such procedure and penalties on the types, market share, value, and cost to individuals entitled to benefits under this subchapter of medicare supplemental policies which have been certified by the Secretary;

(B) the need for any change in the certification procedure to improve its administration or effectiveness; and

(C) whether the certification program and criminal penalties should be continued.

(3) The Secretary shall provide information via a toll-free telephone number on medicare supplemental policies (including the relationship of State programs under subchapter XIX of this chapter to such policies).

(g) Definitions

(1) For purposes of this section, a medicare supplemental policy is a health insurance policy or other health benefit plan offered by a private entity to individuals who are entitled to have payment made under this subchapter, which provides reimbursement for expenses incurred for services and items for which payment may be made under this subchapter but which are not reimbursable by reason of the applicability of deductibles, coinsurance amounts, or other limitations imposed pursuant to this subchapter; but does not include a prescription drug plan under part D of this subchapter or a Medicare+Choice plan or any such policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations and does not include a policy or plan of an eligible organization (as defined in section 1395mm(b) of this title) if the policy or plan provides benefits pursuant to a contract under section 1395mm of this title or an approved demonstration project described in section 603(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, or a policy or plan of an organization if the policy or plan provides benefits pursuant to an agreement under section 1395*l*(a)(1)(A) of this title. For purposes of this section, the term ''policy'' includes a certificate issued under such policy.

(2) For purposes of this section:

(A) The term ''NAIC Model Standards'' means the ''NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act'', adopted by the National Association of Insurance Commissioners on June 6, 1979, as it applies to medicare supplemental policies.

(B) The term ''State with an approved regulatory program'' means a State for which the Secretary has made a determination under subsection (b)(1) of this section.

(C) The State in which a policy is issued means—

(i) in the case of an individual policy, the State in which the policyholder resides; and

(ii) in the case of a group policy, the State in which the holder of the master policy resides.

(h) Rules and regulations

The Secretary shall prescribe such regulations as may be necessary for the effective, efficient, and equitable administration of the certification procedure established under this section. The Secretary shall first issue final regulations to implement the certification procedure established under subsection (a) of this section not later than March 1, 1981.

(i) Commencement of certification program

(1) No medicare supplemental policy shall be certified and no such policy may be issued bearing the emblem authorized by the Secretary under subsection (a) of this section until July 1, 1982. On and after such date policies certified by the Secretary may bear such emblem, including policies which were issued prior to such date and were subsequently certified, and insurers may notify holders of such certified policies issued prior to such date using such emblem in the notification.

(2)(A) The Secretary shall not implement the certification program established under subsection (a) of this section with respect to policies issued in a State unless the Panel makes a finding that such State cannot be expected to have established, by July 1, 1982, an approved State regulatory program meeting the standards and requirements of subsection (b)(1) of this section. If the Panel makes such a finding, the Secretary shall implement such program under subsection (a) of this section with respect to medicare supplemental policies issued in such State, until such time as the Panel determines that such State has a program that meets the standards and requirements of subsection (b)(1) of this section.

(B) Any finding by the Panel under subparagraph (A) shall be transmitted in writing, not later than January 1, 1982, to the Committee on

Finance of the Senate and to the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives and shall not become effective until 60 days after the date of its transmittal to the Committees of the Congress under this subparagraph. In counting such days, days on which either House is not in session because of an adjournment sine die or an adjournment of more than three days to a day certain are excluded in the computation.

(j) State regulation of policies issued in other States

Nothing in this section shall be construed so as to affect the right of any State to regulate medicare supplemental policies which, under the provisions of this section, are considered to be issued in another State.

(k) Amended NAIC Model Regulation or Federal model standards applicable; effective date; medicare supplemental policy and State regulatory program meeting applicable standards

(1)(A) If, within the 90-day period beginning on July 1, 1988, the National Association of Insurance Commissioners (in this subsection referred to as the ''Association'') amends the NAIC Model Regulation adopted on June 6, 1979 (as it relates to medicare supplemental policies), with respect to matters such as minimum benefit standards, loss ratios, disclosure requirements, and replacement requirements and provisions otherwise necessary to reflect the changes in law made by the Medicare Catastrophic Coverage Act of 1988, except as provided in subsection (m) of this section, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the Model Regulation as amended by the Association in accordance with this paragraph (in this subsection and subsection (*l*) of this section referred to as the ''amended NAIC Model Regulation'').

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the amended NAIC Model Regulation or 1 year after the date the Association first adopts such amended Regulation.

(2)(A) If the Association does not amend the NAIC Model Regulation within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, Federal model standards (in this subsection and subsection (*l*) of this section referred to as ''Federal model standards'') for medicare supplemental policies to reflect the changes in law made by the Medicare Catastrophic Coverage Act of 1988, and subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to Federal model standards.

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the Federal model standards or 1 year after the date the Secretary first promulgates such standards.

(3) Notwithstanding any other provision of this section (except as provided in subsections (*l*), (m), and (n) of this section)—

(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a) of this section,

(B) no certification made pursuant to subsection (a) of this section shall remain in effect, and

(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A) of this section,

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the amended NAIC Model Regulation or the Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

(*l*) Transitional compliance with NAIC Model Transition Regulation; "qualifying medicare supplemental policy" and "NAIC Model Transition Regulation" defined

(1) Until the date specified in paragraph (3), in the case of a qualifying medicare supplemental policy described in paragraph (2) issued—

(A) before January 1, 1989, the policy is deemed to remain in compliance with this section if the insurer issuing the policy complies with the NAIC Model Transition Regulation (including giving notices to subscribers and filing for premium adjustments with the State as described in section 5.B. of such Regulation) by January 1, 1989; or

(B) on or after January 1, 1989, the policy is deemed to be in compliance with this section if the insurer issuing the policy complies with the NAIC Model Transition Regulation before the date of the sale of the policy.

(2) In paragraph (1), the term ''qualifying medicare supplemental policy'' means a medicare supplemental policy—

(A) issued in a State which—

(i) has not adopted standards equal to or more stringent than the NAIC Model Transition Regulation by January 1, 1989, and

(ii) has not adopted standards equal to or more stringent than the amended NAIC Model Regulation (or Federal model standards) by January 1, 1989; and

(B) which has been issued in compliance with this section (as in effect on June 1, 1988).

(3)(A) The date specified in this paragraph is the earlier of—

(i) the first date a State adopts, after January 1, 1989, standards equal to or more stringent than the NAIC Model Transition Regulation or equal to or more stringent than the amended NAIC Model Regulation (or Federal model standards), as the case may be, or

(ii) the later of (I) the date specified in subsection (k)(1)(B) or (k)(2)(B) of this section (as the case may be), or (II) the date specified in subparagraph (B).

(B) In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

(ii) having a legislature which is not scheduled to meet in 1989 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, and in which legislation described in clause (i) may be considered. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(4) In the case of a medicare supplemental policy in effect on January 1, 1989, and offered in a State which, as of such date—

(A) has adopted standards equal to or more stringent than the amended NAIC Model Regulation (or Federal model standards), but

(B) does not have in effect standards equal to or more stringent than the NAIC Model Transition Regulation (or otherwise requiring notice substantially the same as the notice required in section 5.B. of such Regulation),

the policy shall not be deemed to meet the standards in subsection (c) of this section unless each individual who is entitled to benefits under this subchapter and is a policyholder under such policy on January 1, 1989, is sent such a notice in any appropriate form by not later than January 31, 1989, that explains—

(A) the improved benefits under this subchapter contained in the Medicare Catastrophic Coverage Act of 1988, and

(B) how these improvements affect the benefits contained in the policies and the premium for the policy.

(5) In this subsection, the term ''NAIC Model Transition Regulation'' refers to the standards contained in the ''Model Regulation to Implement Transitional Requirements for the Conversion of Medicare Supplement Insurance Benefits and Premiums to Conform to Medicare Program Revisions'' (as adopted by the National Association of Insurance Commissioners in September 1987).

(m) Revision of amended NAIC Model Regulation and amended Federal model standards; effective dates; medicare supplemental policy and State regulatory program meeting applicable standards

(1)(A) If, within the 90-day period beginning on December 13, 1989, the National Association of Insurance Commissioners (in this subsection and subsection (n) of this section referred to as the ''Association'') revises the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) of this section and adopted on September 20, 1988) to improve such regulation and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) of this section) as revised by the Association in accordance with this paragraph (in this subsection and subsection (n) of this section referred to as the ''revised NAIC Model Regulation'').

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised NAIC Model Regulation or 1 year after the date the Association first adopts such revised Regulation.

(2)(A) If the Association does not revise the amended NAIC Model Regulation, within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, revised Federal model standards (in this subsection and subsection (n) of this section referred to as ''revised Federal model standards'') for medicare supplemental policies to improve such standards and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards.

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised Federal model standards or 1 year after the date the Secretary first promulgates such standards.

(3) Notwithstanding any other provision of this section (except as provided in subsection (n) of this section)—

(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a) of this section,

(B) no certification made pursuant to subsection (a) of this section shall remain in effect, and

(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A) of this section,

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

(n) Transition compliance with revision of NAIC Model Regulation and Federal model standards

(1) Until the date specified in paragraph (4), in the case of a qualifying medicare supplemental policy described in paragraph (3) issued in a State—

(A) before the transition deadline, the policy is deemed to remain in compliance with the standards described in subsection (b)(1)(A) of this section only if the insurer issuing the policy complies with the transition provision described in paragraph (2), or

(B) on or after the transition deadline, the policy is deemed to be in compliance with the

standards described in subsection (b)(1)(A) of this section only if the insurer issuing the policy complies with the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) before the date of the sale of the policy.

In this paragraph, the term ''transition deadline'' means 1 year after the date the Association adopts the revised NAIC Model Regulation or 1 year after the date the Secretary promulgates revised Federal model standards (as the case may be).

(2) The transition provision described in this paragraph is—

(A) such transition provision as the Association provides, by not later than December 15, 1989, so as to provide for an appropriate transition (i) to restore benefit provisions which are no longer duplicative as a result of the changes in benefits under this subchapter made by the Medicare Catastrophic Coverage Repeal Act of 1989 and (ii) to eliminate the requirement of payment for the first 8 days of coinsurance for extended care services, or

(B) if the Association does not provide for a transition provision by the date described in subparagraph (A), such transition provision as the Secretary shall provide, by January 1, 1990, so as to provide for an appropriate transition described in subparagraph (A).

(3) In paragraph (1), the term ''qualifying medicare supplemental policy'' means a medicare supplemental policy which has been issued in compliance with this section as in effect on the date before December 13, 1989.

(4)(A) The date specified in this paragraph for a policy issued in a State is—

(i) the first date a State adopts, after December 13, 1989, standards equal to or more stringent than the revised NAIC Model Regulation (or revised Federal model standards), as the case may be, or

(ii) the date specified in subparagraph (B),

whichever is earlier.

(B) In the case of a State which the Secretary identifies, in consultation with the Association, as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

(ii) having a legislature which is not scheduled to meet in 1990 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1990. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(5) In the case of a medicare supplemental policy in effect on January 1, 1990, the policy shall not be deemed to meet the standards in subsection (c) of this section unless each individual who is entitled to benefits under this subchapter and is a policyholder or certificate holder under such policy on such date is sent a notice in an appropriate form by not later than January 31, 1990, that explains—

(A) the changes in benefits under this subchapter effected by the Medicare Catastrophic Coverage Repeal Act of 1989, and

(B) how these changes may affect the benefits contained in such policy and the premium for the policy.

(6)(A) Except as provided in subparagraph (B), in the case of an individual who had in effect, as of December 31, 1988, a medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before December 13, 1989, no medicare supplemental policy of the insurer shall be deemed to meet the standards in subsection (c) of this section unless the insurer—

(i) provides written notice, no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in clause (ii), and

(ii) offers the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstitution of coverage (with coverage effective as of January 1, 1990), under the terms which (I) do not provide for any waiting period with respect to treatment of pre-existing conditions, (II) provides for coverage which is substantially equivalent to coverage in effect before the date of such termination, and (III) provides for classification of premiums on which terms are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

(B) An insurer is not required to make the offer under subparagraph (A)(ii) in the case of an individual who is a policyholder or certificate holder in another medicare supplemental policy as of December 13, 1989, if (as of January 1, 1990) the individual is not subject to a waiting period with respect to treatment of a pre-existing condition under such other policy.

(*o*) Requirements of group benefits; core group benefits; uniform outline of coverage

The requirements of this subsection are as follows:

(1) Each medicare supplemental policy shall provide for coverage of a group of benefits consistent with subsections (p), (v), and (w) of this section.

(2) If the medicare supplemental policy provides for coverage of a group of benefits other than the core group of basic benefits described in subsection (p)(2)(B) of this section, the issuer of the policy must make available to the individual a medicare supplemental policy with only such core group of basic benefits.

(3) The issuer of the policy has provided, before the sale of the policy, an outline of coverage that uses uniform language and format (including layout and print size) that facilitates comparison among medicare supplemental policies and comparison with medicare benefits.

(p) Standards for group benefits

(1)(A) If, within 9 months after November 5, 1990, the National Association of Insurance Commissioners (in this subsection referred to as the ''Association'') changes the revised NAIC Model Regulation (described in subsection (m) of this section) to incorporate—

(i) limitations on the groups or packages of benefits that may be offered under a medicare supplemental policy consistent with paragraphs (2) and (3) of this subsection,

(ii) uniform language and definitions to be used with respect to such benefits,

(iii) uniform format to be used in the policy with respect to such benefits, and

(iv) other standards to meet the additional requirements imposed by the amendments made by the Omnibus Budget Reconciliation Act of 1990,

subsection (g)(2)(A) of this section shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the ''1991 NAIC Model Regulation'').

(B) If the Association does not make the changes in the revised NAIC Model Regulation within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, a regulation and subsection (g)(2)(A) of this section shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the ''1991 Federal Regulation'').

(C)(i) Subject to clause (ii), the date specified in this subparagraph for a State is the date the State adopts the 1991 NAIC Model Regulation or 1991 Federal Regulation or 1 year after the date the Association or the Secretary first adopts such standards, whichever is earlier.

(ii) In the case of a State which the Secretary identifies, in consultation with the Association, as—

(I) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet the 1991 NAIC Model Regulation or 1991 Federal Regulation, but

(II) having a legislature which is not scheduled to meet in 1992 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1992. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(D) In promulgating standards under this paragraph, the Association or Secretary shall consult with a working group composed of representatives of issuers of medicare supplemental policies, consumer groups, medicare beneficiaries, and other qualified individuals. Such representatives shall be selected in a manner so as to assure balanced representation among the interested groups.

(E) If benefits (including deductibles and coinsurance) under this subchapter are changed and the Secretary determines, in consultation with the Association, that changes in the 1991 NAIC Model Regulation or 1991 Federal Regulation are needed to reflect such changes, the preceding provisions of this paragraph shall apply to the modification of standards previously established in the same manner as they applied to the original establishment of such standards.

(2) The benefits under the 1991 NAIC Model Regulation or 1991 Federal Regulation shall provide—

(A) for such groups or packages of benefits as may be appropriate taking into account the considerations specified in paragraph (3) and the requirements of the succeeding subparagraphs;

(B) for identification of a core group of basic benefits common to all policies; and

(C) that, subject to paragraph (4)(B), the total number of different benefit packages (counting the core group of basic benefits described in subparagraph (B) and each other combination of benefits that may be offered as a separate benefit package) that may be established in all the States and by all issuers shall not exceed 10 plus the 2 plans described in paragraph (11)(A).

(3) The benefits under paragraph (2) shall, to the extent possible—

(A) provide for benefits that offer consumers the ability to purchase the benefits that are available in the market as of November 5, 1990; and

(B) balance the objectives of (i) simplifying the market to facilitate comparisons among policies, (ii) avoiding adverse selection, (iii) providing consumer choice, (iv) providing market stability, and (v) promoting competition.

(4)(A)(i) Except as provided in subparagraph (B) or paragraph (6), no State with a regulatory program approved under subsection (b)(1) of this section may provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy unless such grouping meets the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation.

(ii) Except as provided in subparagraph (B), the Secretary may not provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy seeking approval by the Secretary unless such grouping meets the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation.

(B) With the approval of the State (in the case of a policy issued in a State with an approved regulatory program) or the Secretary (in the case of any other policy), the issuer of a medicare supplemental policy may offer new or innovative benefits in addition to the benefits pro-

vided in a policy that otherwise complies with the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation. Any such new or innovative benefits may include benefits that are not otherwise available and are cost-effective and shall be offered in a manner which is consistent with the goal of simplification of medicare supplemental policies.

(5)(A) Except as provided in subparagraph (B), this subsection shall not be construed as preventing a State from restricting the groups of benefits that may be offered in medicare supplemental policies in the State.

(B) A State with a regulatory program approved under subsection (b)(1) of this section may not restrict under subparagraph (A) the offering of a medicare supplemental policy consisting only of the core group of benefits described in paragraph (2)(B).

(6) The Secretary may waive the application of standards described in clauses (i) through (iii) of paragraph (1)(A) in those States that on November 5, 1990, had in place an alternative simplification program.

(7) This subsection shall not be construed as preventing an issuer of a medicare supplemental policy who otherwise meets the requirements of this section from providing, through an arrangement with a vendor, for discounts from that vendor to policyholders or certificateholders for the purchase of items or services not covered under its medicare supplemental policies.

(8) Any person who sells or issues a medicare supplemental policy, on and after the effective date specified in paragraph (1)(C) (but subject to paragraph (10)), in violation of the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation insofar as such regulation relates to the requirements of subsection (*o*) or (q) of this section or clause (i), (ii), or (iii) of paragraph (1)(A) is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not an issuer of a policy) for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(9)(A) Anyone who sells a medicare supplemental policy to an individual shall make available for sale to the individual a medicare supplemental policy with only the core group of basic benefits (described in paragraph (2)(B)).

(B) Anyone who sells a medicare supplemental policy to an individual shall provide the individual, before the sale of the policy, an outline of coverage which describes the benefits under the policy. Such outline shall be on a standard form approved by the State regulatory program or the Secretary (as the case may be) consistent with the 1991 NAIC Model Regulation or 1991 Federal Regulation under this subsection.

(C) Whoever sells a medicare supplemental policy in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of the policy) for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(D) Subject to paragraph (10), this paragraph shall apply to sales of policies occurring on or after the effective date specified in paragraph (1)(C).

(10) No penalty may be imposed under paragraph (8) or (9) in the case of a seller who is not the issuer of a policy until the Secretary has published a list of the groups of benefit packages that may be sold or issued consistent with paragraph (1)(A)(i).

(11)(A) For purposes of paragraph (2), the benefit packages described in this subparagraph are as follows:

(i) The benefit package classified as ''F'' under the standards established by such paragraph, except that it has a high deductible feature.

(ii) The benefit package classified as ''J'' under the standards established by such paragraph, except that it has a high deductible feature.

(B) For purposes of subparagraph (A), a high deductible feature is one which—

(i) requires the beneficiary of the policy to pay annual out-of-pocket expenses (other than premiums) in the amount specified in subparagraph (C) before the policy begins payment of benefits, and

(ii) covers 100 percent of covered out-of-pocket expenses once such deductible has been satisfied in a year.

(C) The amount specified in this subparagraph—

(i) for 1998 and 1999 is $1,500, and

(ii) for a subsequent year, is the amount specified in this subparagraph for the previous year increased by the percentage increase in the Consumer Price Index for all urban consumers (all items; U.S. city average) for the 12-month period ending with August of the preceding year.

If any amount determined under clause (ii) is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

(q) Guaranteed renewal of policies; termination; suspension

The requirements of this subsection are as follows:

(1) Each medicare supplemental policy shall be guaranteed renewable and—

(A) the issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(B) the issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(2) If the medicare supplemental policy is terminated by the group policyholder and is not replaced as provided under paragraph (4), the issuer shall offer certificateholders an individual medicare supplemental policy which (at the option of the certificateholder)—

(A) provides for continuation of the benefits contained in the group policy, or

(B) provides for such benefits as otherwise meets[1] the requirements of this section.

(3) If an individual is a certificateholder in a group medicare supplemental policy and the individual terminates membership in the group, the issuer shall—

(A) offer the certificateholder the conversion opportunity described in paragraph (2), or

(B) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(4) If a group medicare supplemental policy is replaced by another group medicare supplemental policy purchased by the same policyholder, issuer[2] of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(5)(A) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder for the period (not to exceed 24 months) in which the policyholder has applied for and is determined to be entitled to medical assistance under subchapter XIX of this chapter, but only if the policyholder notifies the issuer of such policy within 90 days after the date the individual becomes entitled to such assistance. If such suspension occurs and if the policyholder or certificate holder loses entitlement to such medical assistance, such policy shall be automatically reinstituted (effective as of the date of termination of such entitlement) under terms described in subsection (n)(6)(A)(ii) of this section as of the termination of such entitlement if the policyholder provides notice of loss of such entitlement within 90 days after the date of such loss.

(B) Nothing in this section shall be construed as affecting the authority of a State, under subchapter XIX of this chapter, to purchase a medicare supplemental policy for an individual otherwise entitled to assistance under such subchapter.

(C) Any person who issues a medicare supplemental policy and fails to comply with the requirements of this paragraph or paragraph (6) is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(6) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder if the policyholder is entitled to benefits under section 426(b) of this title and is covered under a group health plan (as defined in section 1395y(b)(1)(A)(v) of this title). If such suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, such policy shall be automatically reinstituted (effective as of the date of such loss of coverage) under terms described in subsection (n)(6)(A)(ii) of this section as of the loss of such coverage if the policyholder provides notice of loss of such coverage within 90 days after the date of such loss.

(r) Required ratio of aggregate benefits to aggregate premiums

(1) A medicare supplemental policy may not be issued or renewed (or otherwise provide coverage after the date described in subsection (p)(1)(C) of this section) in any State unless—

(A) the policy can be expected for periods after the effective date of these provisions (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such periods and in accordance with a uniform methodology, including uniform reporting standards, developed by the National Association of Insurance Commissioners) to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 65 percent in the case of individual policies; and

(B) the issuer of the policy provides for the issuance of a proportional refund, or a credit against future premiums of a proportional amount, based on the premium paid and in accordance with paragraph (2), of the amount of premiums received necessary to assure that the ratio of aggregate benefits provided to the aggregate premiums collected (net of such refunds or credits) complies with the expectation required under subparagraph (A), treating policies of the same type as a single policy for each standard package.

For purposes of applying subparagraph (A) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies. For the purpose of calculating the refund or credit required under paragraph (1)(B) for a policy issued before the date specified in subsection (p)(1)(C) of this section, the refund or credit calculation shall be based on the aggregate benefits provided and premiums collected under all such policies issued by an insurer in a State (separated as to individual and group policies) and shall be based only on aggregate benefits provided and premiums collected under such policies after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.

(2)(A) Paragraph (1)(B) shall be applied with respect to each type of policy by standard package. Paragraph (1)(B) shall not apply to a policy until 12 months following issue. The Comptroller General, in consultation with the National Association of Insurance Commissioners, shall submit to Congress a report containing recommendations on adjustment in the percentages under paragraph (1)(A) that may be appropriate.

[1] So in original. Probably should be ''meet''.

[2] So in original. Probably should be preceded by ''the''.

In the case of a policy issued before the date specified in subsection (p)(1)(C) of this section, paragraph (1)(B) shall not apply until 1 year after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.

(B) A refund or credit required under paragraph (1)(B) shall be made to each policyholder insured under the applicable policy as of the last day of the year involved.

(C) Such a refund or credit shall include interest from the end of the calendar year involved until the date of the refund or credit at a rate as specified by the Secretary for this purpose from time to time which is not less than the average rate of interest for 13-week Treasury notes.

(D) For purposes of this paragraph and paragraph (1)(B), refunds or credits against premiums due shall be made, with respect to a calendar year, not later than the third quarter of the succeeding calendar year.

(3) The provisions of this subsection do not preempt a State from requiring a higher percentage than that specified in paragraph (1)(A).

(4) The Secretary shall submit in October of each year (beginning with 1993) a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on loss ratios under medicare supplemental policies and the use of sanctions, such as a required rebate or credit or the disallowance of premium increases, for policies that fail to meet the requirements of this subsection (relating to loss ratios). Such report shall include a list of the policies that failed to comply with such loss ratio requirements or other requirements of this section.

(5)(A) The Comptroller General shall periodically, not less often than once every 3 years, perform audits with respect to the compliance of medicare supplemental policies with the loss ratio requirements of this subsection and shall report the results of such audits to the State involved and to the Secretary.

(B) The Secretary may independently perform such compliance audits.

(6)(A) A person who fails to provide refunds or credits as required in paragraph (1)(B) is subject to a civil money penalty of not to exceed $25,000 for each policy issued for which such failure occurred. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) Each issuer of a policy subject to the requirements of paragraph (1)(B) shall be liable to the policyholder or, in the case of a group policy, to the certificate holder for credits required under such paragraph.

(s) Coverage for pre-existing conditions

(1) If a medicare supplemental policy replaces another medicare supplemental policy, the issuer of the replacing policy shall waive any time periods applicable to preexisting conditions, waiting period, elimination periods and probationary periods in the new medicare supplemental policy for similar benefits to the extent such time was spent under the original policy.

(2)(A) The issuer of a medicare supplemental policy may not deny or condition the issuance or effectiveness of a medicare supplemental policy, or discriminate in the pricing of the policy, because of health status, claims experience, receipt of health care, or medical condition in the case of an individual for whom an application is submitted prior to or during the 6 month period beginning with the first month as of the first day on which the individual is 65 years of age or older and is enrolled for benefits under part B of this subchapter.

(B) Subject to subparagraphs (C) and (D), subparagraph (A) shall not be construed as preventing the exclusion of benefits under a policy, during its first 6 months, based on a pre-existing condition for which the policyholder received treatment or was otherwise diagnosed during the 6 months before the policy became effective.

(C) If a medicare supplemental policy or certificate replaces another such policy or certificate which has been in effect for 6 months or longer, the replacing policy may not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, and probationary periods in the new policy or certificate for similar benefits.

(D) In the case of a policy issued during the 6-month period described in subparagraph (A) to an individual who is 65 years of age or older as of the date of issuance and who as of the date of the application for enrollment has a continuous period of creditable coverage (as defined in section 300gg(c) of this title) of—

(i) at least 6 months, the policy may not exclude benefits based on a pre-existing condition; or

(ii) less than 6 months, if the policy excludes benefits based on a preexisting condition, the policy shall reduce the period of any preexisting condition exclusion by the aggregate of the periods of creditable coverage (if any, as so defined) applicable to the individual as of the enrollment date.

The Secretary shall specify the manner of the reduction under clause (ii), based upon the rules used by the Secretary in carrying out section 300gg(a)(3) of this title.

(3)(A) The issuer of a medicare supplemental policy—

(i) may not deny or condition the issuance or effectiveness of a medicare supplemental policy described in subparagraph (C) that is offered and is available for issuance to new enrollees by such issuer;

(ii) may not discriminate in the pricing of such policy, because of health status, claims experience, receipt of health care, or medical condition; and

(iii) may not impose an exclusion of benefits based on a preexisting condition under such policy,

in the case of an individual described in subparagraph (B) who seeks to enroll under the policy during the period specified in subparagraph (E) and who submits evidence of the date of termination or disenrollment along with the application for such medicare supplemental policy.

(B) An individual described in this subparagraph is an individual described in any of the following clauses:

(i) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under this subchapter and the plan terminates or ceases to provide all such supplemental health benefits to the individual.

(ii) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of this subchapter, and there are circumstances permitting discontinuance of the individual's election of the plan under the first sentence of section 1395w–21(e)(4) of this title or the individual is 65 years of age or older and is enrolled with a PACE provider under section 1395eee of this title, and there are circumstances that would permit the discontinuance of the individual's enrollment with such provider under circumstances that are similar to the circumstances that would permit discontinuance of the individual's election under the first sentence of such section if such individual were enrolled in a Medicare+Choice plan.

(iii) The individual is enrolled with an eligible organization under a contract under section 1395mm of this title, a similar organization operating under demonstration project authority, effective for periods before April 1, 1999, with an organization under an agreement under section 1395*l*(a)(1)(A) of this title, or with an organization under a policy described in subsection (t) of this section, and such enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under the first sentence of section 1395w–21(e)(4) of this title and, in the case of a policy described in subsection (t) of this section, there is no provision under applicable State law for the continuation or conversion of coverage under such policy.

(iv) The individual is enrolled under a medicare supplemental policy under this section and such enrollment ceases because—

(I) of the bankruptcy or insolvency of the issuer or because of other involuntary termination of coverage or enrollment under such policy and there is no provision under applicable State law for the continuation or conversion of such coverage;

(II) the issuer of the policy substantially violated a material provision of the policy; or

(III) the issuer (or an agent or other entity acting on the issuer's behalf) materially misrepresented the policy's provisions in marketing the policy to the individual.

(v) The individual—

(I) was enrolled under a medicare supplemental policy under this section,

(II) subsequently terminates such enrollment and enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of this subchapter, any eligible organization under a contract under section 1395mm of this title, any similar organization operating under demonstration project authority, any PACE provider under section 1395eee of this title, or any policy described in subsection (t) of this section, and

(III) the subsequent enrollment under subclause (II) is terminated by the enrollee during any period within the first 12 months of such enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1395w–21(e) of this title).

(vi) The individual, upon first becoming eligible for benefits under part A of this subchapter at age 65, enrolls in a Medicare+Choice plan under part C of this subchapter or in a PACE program under section 1395eee of this title, and disenrolls from such plan or such program by not later than 12 months after the effective date of such enrollment.

(C)(i) Subject to clauses (ii) and (iii), a medicare supplemental policy described in this subparagraph is a medicare supplemental policy which has a benefit package classified as ''A'', ''B'', ''C'', or ''F'' under the standards established under subsection (p)(2) of this section.

(ii)(I) Subject to subclause (II), only for purposes of an individual described in subparagraph (B)(v), a medicare supplemental policy described in this subparagraph is the same medicare supplemental policy referred to in such subparagraph in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in clause (i).

(II) If the medicare supplemental policy referred to in subparagraph (B)(v) was a medigap Rx policy (as defined in subsection (v)(6)(A) of this section), a medicare supplemental policy described in this subparagraph is such policy in which the individual was most recently enrolled as modified under subsection (v)(2)(C)(i) of this section or, at the election of the individual, a policy referred to in subsection (v)(3)(A)(i) of this section.

(iii) Only for purposes of an individual described in subparagraph (B)(vi) and subject to subsection (v)(1) of this section, a medicare supplemental policy described in this subparagraph shall include any medicare supplemental policy.

(iv) For purposes of applying this paragraph in the case of a State that provides for offering of benefit packages other than under the classification referred to in clause (i), the references to benefit packages in such clause are deemed references to comparable benefit packages offered in such State.

(D) At the time of an event described in subparagraph (B) because of which an individual ceases enrollment or loses coverage or benefits under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, the insurer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the rights of the individual under this paragraph, and obligations of issuers of medicare supplemental policies, under subparagraph (A).

(E) For purposes of subparagraph (A), the time period specified in this subparagraph is—

(i) in the case of an individual described in subparagraph (B)(i), the period beginning on the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if no such notice is re-

ceived, notice that a claim has been denied because of such a termination or cessation) and ending on the date that is 63 days after the applicable notice;

(ii) in the case of an individual described in clause (ii), (iii), (v), or (vi) of subparagraph (B) whose enrollment is terminated involuntarily, the period beginning on the date that the individual receives a notice of termination and ending on the date that is 63 days after the date the applicable coverage is terminated;

(iii) in the case of an individual described in subparagraph (B)(iv)(I), the period beginning on the earlier of (I) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice, if any, and (II) the date that the applicable coverage is terminated, and ending on the date that is 63 days after the date the coverage is terminated;

(iv) in the case of an individual described in clause (ii), (iii), (iv)(II), (iv)(III), (v), or (vi) of subparagraph (B) who disenrolls voluntarily, the period beginning on the date that is 60 days before the effective date of the disenrollment and ending on the date that is 63 days after such effective date; and

(v) in the case of an individual described in subparagraph (B) but not described in the preceding provisions of this subparagraph, the period beginning on the effective date of the disenrollment and ending on the date that is 63 days after such effective date.

(F)(i) Subject to clause (ii), for purposes of this paragraph—

(I) in the case of an individual described in subparagraph (B)(v) (or deemed to be so described, pursuant to this subparagraph) whose enrollment with an organization or provider described in subclause (II) of such subparagraph is involuntarily terminated within the first 12 months of such enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, such subsequent enrollment shall be deemed to be an initial enrollment described in such subparagraph; and

(II) in the case of an individual described in clause (vi) of subparagraph (B) (or deemed to be so described, pursuant to this subparagraph) whose enrollment with a plan or in a program described in such clause is involuntarily terminated within the first 12 months of such enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, such subsequent enrollment shall be deemed to be an initial enrollment described in such clause.

(ii) For purposes of clauses (v) and (vi) of subparagraph (B), no enrollment of an individual with an organization or provider described in clause (v)(II), or with a plan or in a program described in clause (vi), may be deemed to be an initial enrollment under this clause after the 2-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

(4) Any issuer of a medicare supplemental policy that fails to meet the requirements of this subsection is subject to a civil money penalty of not to exceed $5,000 for each such failure. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(t) Medicare select policies

(1) If a medicare supplemental policy meets the 1991 NAIC Model Regulation or 1991 Federal Regulation and otherwise complies with the requirements of this section except that benefits under the policy are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), the policy shall nevertheless be treated as meeting those standards if—

(A) full benefits are provided for items and services furnished through a network of entities which have entered into contracts or agreements with the issuer of the policy;

(B) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury, or condition and it is not reasonable given the circumstances to obtain the services through the network;

(C) the network offers sufficient access;

(D) the issuer of the policy has arrangements for an ongoing quality assurance program for items and services furnished through the network;

(E)(i) the issuer of the policy provides to each enrollee at the time of enrollment an explanation of (I) the restrictions on payment under the policy for services furnished other than by or through the network, (II) out of area coverage under the policy, (III) the policy's coverage of emergency services and urgently needed care, and (IV) the availability of a policy through the entity that meets the standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation without reference to this subsection and the premium charged for such policy, and

(ii) each enrollee prior to enrollment acknowledges receipt of the explanation provided under clause (i); and

(F) the issuer of the policy makes available to individuals, in addition to the policy described in this subsection, any policy (otherwise offered by the issuer to individuals in the State) that meets the standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation and other requirements of this section without reference to this subsection.

(2) If the Secretary determines that an issuer of a policy approved under paragraph (1)—

(A) fails substantially to provide medically necessary items and services to enrollees seeking such items and services through the issuer's network, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual,

(B) imposes premiums on enrollees in excess of the premiums approved by the State,

(C) acts to expel an enrollee for reasons other than nonpayment of premiums, or

(D) does not provide the explanation required under paragraph (1)(E)(i) or does not obtain the acknowledgment required under paragraph (1)(E)(ii),

the issuer is subject to a civil money penalty in an amount not to exceed $25,000 for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(3) The Secretary may enter into a contract with an entity whose policy has been certified under paragraph (1) or has been approved by a State under subsection (b)(1)(H) of this section to determine whether items and services (furnished to individuals entitled to benefits under this subchapter and under that policy) are not allowable under section 1395y(a)(1) of this title. Payments to the entity shall be in such amounts as the Secretary may determine, taking into account estimated savings under contracts with carriers and fiscal intermediaries and other factors that the Secretary finds appropriate. Paragraph (1), the first sentence of paragraph (2)(A), paragraph (2)(B), paragraph (3)(C), paragraph (3)(D), and paragraph (3)(E)[3] of section 1395u(b) of this title shall apply to the entity.

(u) Additional rules relating to individuals enrolled in MSA plans and in private fee-for-service plans

(1) It is unlawful for a person to sell or issue a policy described in paragraph (2) to an individual with knowledge that the individual has in effect under section 1395w–21 of this title an election of an MSA plan or a Medicare+Choice private fee-for-service plan.

(2)(A) A policy described in this subparagraph is a health insurance policy (other than a policy described in subparagraph (B)) that provides for coverage of expenses that are otherwise required to be counted toward meeting the annual deductible amount provided under the MSA plan.

(B) A policy described in this subparagraph is any of the following:

(i) A policy that provides coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

(ii) A policy of insurance to which substantially all of the coverage relates to—

(I) liabilities incurred under workers' compensation laws,

(II) tort liabilities,

(III) liabilities relating to ownership or use of property, or

(IV) such other similar liabilities as the Secretary may specify by regulations.

(iii) A policy of insurance that provides coverage for a specified disease or illness.

(iv) A policy of insurance that pays a fixed amount per day (or other period) of hospitalization.

[3] See References in Text note below.

(v) Rules relating to medigap policies that provide prescription drug coverage

(1) Prohibition on sale, issuance, and renewal of new policies that provide prescription drug coverage

(A) In general

Notwithstanding any other provision of law, on or after January 1, 2006, a medigap Rx policy (as defined in paragraph (6)(A)) may not be sold, issued, or renewed under this section—

(i) to an individual who is a part D enrollee (as defined in paragraph (6)(B)); or

(ii) except as provided in subparagraph (B), to an individual who is not a part D enrollee.

(B) Continuation permitted for non-part D enrollees

Subparagraph (A)(ii) shall not apply to the renewal of a medigap Rx policy that was issued before January 1, 2006.

(C) Construction

Nothing in this subsection shall be construed as preventing the offering on and after January 1, 2006, of ''H'', ''I'', and ''J'' policies described in paragraph (2)(D)(i) if the benefit packages are modified in accordance with paragraph (2)(C).

(2) Elimination of duplicative coverage upon part D enrollment

(A) In general

In the case of an individual who is covered under a medigap Rx policy and enrolls under a part D plan—

(i) before the end of the initial part D enrollment period, the individual may—

(I) enroll in a medicare supplemental policy without prescription drug coverage under paragraph (3); or

(II) continue the policy in effect subject to the modification described in subparagraph (C)(i); or

(ii) after the end of such period, the individual may continue the policy in effect subject to such modification.

(B) Notice required to be provided to current policyholders with medigap Rx policy

No medicare supplemental policy of an issuer shall be deemed to meet the standards in subsection (c) of this section unless the issuer provides written notice (in accordance with standards of the Secretary established in consultation with the National Association of Insurance Commissioners) during the 60-day period immediately preceding the initial part D enrollment period, to each individual who is a policyholder or certificate holder of a medigap Rx policy (at the most recent available address of that individual) of the following:

(i) If the individual enrolls in a plan under part D of this subchapter during the initial enrollment period under section 1395w–101(b)(2)(A) of this title, the individual has the option of—

(I) continuing enrollment in the individual's current plan, but the plan's cov-

erage of prescription drugs will be modified under subparagraph (C)(i); or

(II) enrolling in another medicare supplemental policy pursuant to paragraph (3).

(ii) If the individual does not enroll in a plan under part D of this subchapter during such period, the individual may continue enrollment in the individual's current plan without change, but—

(I) the individual will not be guaranteed the option of enrollment in another medicare supplemental policy pursuant to paragraph (3); and

(II) if the current plan does not provide creditable prescription drug coverage (as defined in section 1395w–113(b)(4) of this title), notice of such fact and that there are limitations on the periods in a year in which the individual may enroll under a part D plan and any such enrollment is subject to a late enrollment penalty.

(iii) Such other information as the Secretary may specify (in consultation with the National Association of Insurance Commissioners), including the potential impact of such election on premiums for medicare supplemental policies.

(C) Modification

(i) In general

The policy modification described in this subparagraph is the elimination of prescription coverage for expenses of prescription drugs incurred after the effective date of the individual's coverage under a part D plan and the appropriate adjustment of premiums to reflect such elimination of coverage.

(ii) Continuation of renewability and application of modification

No medicare supplemental policy of an issuer shall be deemed to meet the standards in subsection (c) of this section unless the issuer—

(I) continues renewability of medigap Rx policies that it has issued, subject to subclause (II); and

(II) applies the policy modification described in clause (i) in the cases described in clauses (i)(II) and (ii) of subparagraph (A).

(D) References to Rx policies

(i) H, I, and J policies

Any reference to a benefit package classified as ''H'', ''I'', or ''J'' (including the benefit package classified as ''J'' with a high deductible feature, as described in subsection (p)(11) of this section) under the standards established under subsection (p)(2) of this section shall be construed as including a reference to such a package as modified under subparagraph (C) and such packages as modified shall not be counted as a separate benefit package under such subsection.

(ii) Application in waivered States

Except for the modification provided under subparagraph (C), the waivers previously in effect under subsection (p)(2) of this section shall continue in effect.

(3) Availability of substitute policies with guaranteed issue

(A) In general

The issuer of a medicare supplemental policy—

(i) may not deny or condition the issuance or effectiveness of a medicare supplemental policy that has a benefit package classified as ''A'', ''B'', ''C'', or ''F'' (including the benefit package classified as ''F'' with a high deductible feature, as described in subsection (p)(11) of this section), under the standards established under subsection (p)(2) of this section, or a benefit package described in subparagraph (A) or (B) of subsection (w)(2) of this section and that is offered and is available for issuance to new enrollees by such issuer;

(ii) may not discriminate in the pricing of such policy, because of health status, claims experience, receipt of health care, or medical condition; and

(iii) may not impose an exclusion of benefits based on a pre-existing condition under such policy,

in the case of an individual described in subparagraph (B) who seeks to enroll under the policy not later than 63 days after the effective date of the individual's coverage under a part D plan.

(B) Individual covered

An individual described in this subparagraph with respect to the issuer of a medicare supplemental policy is an individual who—

(i) enrolls in a part D plan during the initial part D enrollment period;

(ii) at the time of such enrollment was enrolled in a medigap Rx policy issued by such issuer; and

(iii) terminates enrollment in such policy and submits evidence of such termination along with the application for the policy under subparagraph (A).

(C) Special rule for waivered States

For purposes of applying this paragraph in the case of a State that provides for offering of benefit packages other than under the classification referred to in subparagraph (A)(i), the references to benefit packages in such subparagraph are deemed references to comparable benefit packages offered in such State.

(4) Enforcement

(A) Penalties for duplication

The penalties described in subsection (d)(3)(A)(ii) of this section shall apply with respect to a violation of paragraph (1)(A).

(B) Guaranteed issue

The provisions of paragraph (4) of subsection (s) of this section shall apply with respect to the requirements of paragraph (3) in the same manner as they apply to the requirements of such subsection.

(5) Construction

Any provision in this section or in a medicare supplemental policy relating to guaran-

teed renewability of coverage shall be deemed to have been met with respect to a part D enrollee through the continuation of the policy subject to modification under paragraph (2)(C) or the offering of a substitute policy under paragraph (3). The previous sentence shall not be construed to affect the guaranteed renewability of such a modified or substitute policy.

(6) Definitions

For purposes of this subsection:

(A) Medigap Rx policy

The term ''medigap Rx policy'' means a medicare supplemental policy—

(i) which has a benefit package classified as ''H'', ''I'', or ''J'' (including the benefit package classified as ''J'' with a high deductible feature, as described in subsection (p)(11) of this section) under the standards established under subsection (p)(2) of this section, without regard to this subsection; and

(ii) to which such standards do not apply (or to which such standards have been waived under subsection (p)(6) of this section) but which provides benefits for prescription drugs.

Such term does not include a policy with a benefit package as classified under clause (i) which has been modified under paragraph (2)(C)(i).

(B) Part D enrollee

The term ''part D enrollee'' means an individual who is enrolled in a part D plan.

(C) Part D plan

The term ''part D plan'' means a prescription drug plan or an MA–PD plan (as defined for purposes of part D of this subchapter).

(D) Initial part D enrollment period

The term ''initial part D enrollment period'' means the initial enrollment period described in section 1395w–101(b)(2)(A) of this title.

(w) Development of new standards for medicare supplemental policies

(1) In general

The Secretary shall request the National Association of Insurance Commissioners to review and revise the standards for benefit packages under subsection (p)(1) of this section, taking into account the changes in benefits resulting from enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and to otherwise update standards to reflect other changes in law included in such Act. Such revision shall incorporate the inclusion of the 2 benefit packages described in paragraph (2). Such revisions shall be made consistent with the rules applicable under subsection (p)(1)(E) of this section with the reference to the ''1991 NAIC Model Regulation'' deemed a reference to the NAIC Model Regulation as published in the Federal Register on December 4, 1998, and as subsequently updated by the National Association of Insurance Commissioners to reflect previous changes in law (and subsection (v) of this section) and the reference to ''date of enactment of this subsection'' deemed a reference to December 8, 2003. To the extent practicable, such revision shall provide for the implementation of revised standards for benefit packages as of January 1, 2006.

(2) New benefit packages

The benefit packages described in this paragraph are the following (notwithstanding any other provision of this section relating to a core benefit package):

(A) First new benefit package

A benefit package consisting of the following:

(i) Subject to clause (ii), coverage of 50 percent of the cost-sharing otherwise applicable under parts A and B of this subchapter, except there shall be no coverage of the part B deductible and coverage of 100 percent of any cost-sharing otherwise applicable for preventive benefits.

(ii) Coverage for all hospital inpatient coinsurance and 365 extra lifetime days of coverage of inpatient hospital services (as in the current core benefit package).

(iii) A limitation on annual out-of-pocket expenditures under parts A and B of this subchapter to $4,000 in 2006 (or, in a subsequent year, to such limitation for the previous year increased by an appropriate inflation adjustment specified by the Secretary).

(B) Second new benefit package

A benefit package consisting of the benefit package described in subparagraph (A), except as follows:

(i) Substitute ''75 percent'' for ''50 percent'' in clause (i) of such subparagraph.

(ii) Substitute ''$2,000'' for ''$4,000'' in clause (iii) of such subparagraph.

(Aug. 14, 1935, ch. 531, title XVIII, § 1882, as added Pub. L. 96–265, title V, § 507(a), June 9, 1980, 94 Stat. 476; amended H. Res. 549, Mar. 25, 1980; Pub. L. 100–93, § 13, Aug. 18, 1987, 101 Stat. 697; Pub. L. 100–203, title IV, § 4081(b), Dec. 22, 1987, 101 Stat. 1330–127; Pub. L. 100–360, title II, § 221(a)–(f), title IV, §§ 411(i)(1)(B), (C), 428(b), July 1, 1988, 102 Stat. 742–746, 788, 817; Pub. L. 101–234, title II, § 203(a)(1), Dec. 13, 1989, 103 Stat. 1982; Pub. L. 101–508, title IV, §§ 4207(k)(1), formerly 4027(k)(1), 4351, formerly 4351(a), 4352, 4353(a)–(d)(1), 4354(a), (b), 4355(a)–(c), 4356(a), 4357(a), 4358(a), (b)(1), (2), Nov. 5, 1990, 104 Stat. 1388–124, 1388–125, 1388–129, 1388–130, 1388–132, 1388–134 to 1388–137; Pub. L. 103–432, title I, §§ 160(d)(4), 171(a)–(d)(3)(B), (4), (e)(1), (2), (f)(1), (g), (h)(1), (j)(2), (k), Oct. 31, 1994, 108 Stat. 4444–4451; Pub. L. 104–191, title II, § 271(a), (b), Aug. 21, 1996, 110 Stat. 2034–2036; Pub. L. 105–33, title IV, §§ 4002(j)(2), 4003, 4031(a)–(c), 4032(a), Aug. 5, 1997, 111 Stat. 330, 355, 357, 359; Pub. L. 105–362, title VI, § 601(b)(6), Nov. 10, 1998, 112 Stat. 3286; Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(k)(13), (14), title V, §§ 501(a)(2), 536(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–368, 1501A–378, 1501A–390; Pub. L. 106–170, title II, § 205(a), Dec. 17, 1999, 113 Stat. 1899; Pub. L. 106–554, § 1(a)(6) [title VI, § 618], Dec. 21, 2000, 114 Stat. 2763, 2763A–562; Pub. L. 108–173, title I, § 104(a), (b), title VII, § 736(e), Dec. 8, 2003, 117 Stat. 2161, 2164, 2357.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (d)(3)(A)(i), (vi)(I), (viii)(II), (B)(i), (s)(2)(A), (3)(B)(vi), and (w)(2)(A)(i), (iii), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 171(m) of the Social Security Act Amendments of 1994, referred to in subsecs. (d)(3)(A)(vi)(IV) and (r)(1), (2)(A), is section 171(m) of Pub. L. 103–432, title I, Oct. 31, 1994, 108 Stat. 4452, which is set out as a note below.

Part D of this subchapter, referred to in subsecs. (g)(1) and (v)(2)(B)(i), (ii), (6)(C), is classified to section 1395w–101 et seq. of this title.

Section 603(c) of the Social Security Amendments of 1983, referred to in subsec. (g)(1), is section 603(c) of Pub. L. 98–21, title VI, Apr. 20, 1983, 97 Stat. 168, which was not classified to the Code, and was repealed by Pub. L. 105–33, title IV, §4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

Section 2355 of the Deficit Reduction Act of 1984, referred to in subsec. (g)(1), is section 2355 of Pub. L. 98–369, div. B, title III, July 18, 1984, 98 Stat. 1103, which is not classified to the Code.

Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (g)(1), is section 9412(b) of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 2062, which was not classified to the Code, and was repealed by Pub. L. 105–33, title IV, §4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

The Medicare Catastrophic Coverage Act of 1988, referred to in subsecs. (k)(1)(A), (2)(A) and (*l*)(4)(A), is Pub. L. 100–360, July 1, 1988, 102 Stat. 683, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1305 of this title and Tables.

The Medicare Catastrophic Coverage Repeal Act of 1989, referred to in subsecs. (m)(1)(A), (2)(A) and (n)(2)(A), (5)(A), is Pub. L. 101–234, Dec. 13, 1989, 103 Stat. 1979. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1305 of this title and Tables.

The Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (p)(1)(A)(iv), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388. For complete classification of this Act to the Code, see Tables.

Part C of this subchapter, referred to in subsec. (s)(3)(B)(ii), (v)(II), (vi), is classified to section 1395w–21 et seq. of this title.

Paragraphs (2)(A), (B) and (3)(C)–(E) of section 1395u(b) of this title, referred to in subsec. (t)(3), were repealed by Pub. L. 108–173, title IX, §911(c)(3)(B)(i), (C)(iv), Dec. 8, 2003, 117 Stat. 2384.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (w)(1), is Pub. L. 108–173, Dec. 8, 2003, 117 Stat. 2066. For complete classification of this Act to the Code, see Short Title of 2003 Amendment note set out under section 1305 of this title and Tables.

AMENDMENTS

2003—Subsec. (d)(3)(A)(i)(II). Pub. L. 108–173, §736(e)(1), substituted ''plan, a medicare supplemental policy'' for ''plan a medicare supplemental policy''.

Subsec. (d)(3)(B)(iii)(II). Pub. L. 108–173, §736(e)(2), substituted ''to the best of the issuer's or seller's knowledge'' for ''to the best of the issuer or seller's knowledge''.

Subsec. (g)(1). Pub. L. 108–173, §104(b)(2)(A), inserted ''a prescription drug plan under part D of this subchapter or'' after ''but does not include''.

Subsec. (g)(2)(A). Pub. L. 108–173, §736(e)(3), substituted ''medicare supplemental policies'' for ''medicare supplement policies''.

Subsec. (*o*)(1). Pub. L. 108–173, §104(b)(2)(B), substituted ''subsections (p), (v), and (w)'' for ''subsection (p)''.

Subsec. (p)(2)(B). Pub. L. 108–173, §736(e)(4), substituted ''; and'' for '', and'' at end.

Subsec. (s)(3)(A)(iii). Pub. L. 108–173, §736(e)(5), substituted ''preexisting'' for ''pre-existing''.

Subsec. (s)(3)(C)(ii). Pub. L. 108–173, §104(a)(2)(A), designated existing provisions as subcl. (I), substituted ''Subject to subclause (II), only'' for ''Only'', and added subcl. (II).

Subsec. (s)(3)(C)(iii). Pub. L. 108–173, §104(a)(2)(B), inserted ''and subject to subsection (v)(1) of this section'' after ''subparagraph (B)(vi)''.

Subsec. (v). Pub. L. 108–173, §104(a)(1), added subsec. (v).

Subsec. (w). Pub. L. 108–173, §104(b)(1), added subsec. (w).

2000—Subsec. (s)(3)(A). Pub. L. 106–554, §1(a)(6) [title VI, §618(a)(1)], in concluding provisions, substituted ''seeks to enroll under the policy during the period specified in subparagraph (E)'' for '', subject to subparagraph (E), seeks to enroll under the policy not later than 63 days after the date of the termination of enrollment described in such subparagraph''.

Subsec. (s)(3)(E). Pub. L. 106–554, §1(a)(6) [title VI, §618(a)(2)], added subpar. (E) and struck out former subpar. (E) which read as follows:

''(E)(i) An individual described in subparagraph (B)(ii) may elect to apply subparagraph (A) by substituting, for the date of termination of enrollment, the date on which the individual was notified by the Medicare+Choice organization of the impending termination or discontinuance of the Medicare+Choice plan it offers in the area in which the individual resides, but only if the individual disenrolls from the plan as a result of such notification.

''(ii) In the case of an individual making such an election, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subparagraph (A) shall only become effective upon termination of coverage under the Medicare+Choice plan involved.''

Subsec. (s)(3)(F). Pub. L. 106–554, §1(a)(6) [title VI, §618(b)], added subpar. (F).

1999—Subsec. (g)(1). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(13)], struck out ''or'' after ''; but does not include''.

Subsec. (q)(5)(C). Pub. L. 106–170, §205(a)(1), inserted ''or paragraph (6)'' after ''this paragraph''.

Subsec. (q)(6). Pub. L. 106–170, §205(a)(2), added par. (6).

Subsec. (s)(2)(D). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(14)], inserted ''section'' after ''(as defined in'' in introductory provisions.

Subsec. (s)(3)(A). Pub. L. 106–113, §1000(a)(6) [title V, §501(a)(2)(A)], inserted '', subject to subparagraph (E),'' after ''in the case of an individual described in subparagraph (B) who'' in concluding provisions.

Subsec. (s)(3)(B)(ii). Pub. L. 106–113, §1000(a)(6) [title V, §536(a)(1)], inserted before period at end ''or the individual is 65 years of age or older and is enrolled with a PACE provider under section 1395eee of this title, and there are circumstances that would permit the discontinuance of the individual's enrollment with such provider under circumstances that are similar to the circumstances that would permit discontinuance of the individual's election under the first sentence of such section if such individual were enrolled in a Medicare+Choice plan''.

Subsec. (s)(3)(B)(v)(II). Pub. L. 106–113, §1000(a)(6) [title V, §536(a)(2)], inserted ''any PACE provider under section 1395eee of this title,'' after ''demonstration project authority,''.

Subsec. (s)(3)(B)(vi). Pub. L. 106–113, §1000(a)(6) [title V, §536(a)(3)], inserted ''or in a PACE program under section 1395eee of this title'' after ''part C of this subchapter'' and substituted ''such plan or such program'' for ''such plan''.

Subsec. (s)(3)(E). Pub. L. 106–113, §1000(a)(6) [title V, §501(a)(2)(B)], added subpar. (E).

1998—Subsec. (*l*)(6). Pub. L. 105–362 struck out par. (6) which read as follows: ''The Secretary shall report to the Congress in March 1989 and in July 1990 on actions States have taken in adopting standards equal to or

more stringent than the NAIC Model Transition Regulation or the amended NAIC Model Regulation (or Federal model standards).''

1997—Subsec. (d)(3)(A)(i). Pub. L. 105–33, § 4003(a)(1)(A), inserted ''(including an individual electing a Medicare+Choice plan under section 1395w–21 of this title)'' after ''part B of this subchapter'' in introductory provisions.

Subsec. (d)(3)(A)(i)(II). Pub. L. 105–33, § 4003(a)(1)(B), inserted ''in the case of an individual not electing a Medicare+Choice plan'' after ''(II)'' and inserted ''or in the case of an individual electing a Medicare+Choice plan, a medicare supplemental policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under the Medicare+Choice plan or under another medicare supplemental policy'' before comma at end.

Subsec. (d)(3)(A)(vi)(III). Pub. L. 105–33, § 4031(c), inserted '', a policy described in clause (v),'' after ''Medicare supplemental policy''.

Subsec. (d)(3)(B)(i)(I). Pub. L. 105–33, § 4003(a)(2), inserted ''(including any Medicare+Choice plan)'' after ''health insurance policies''.

Subsec. (g)(1). Pub. L. 105–33, § 4003(a)(3), inserted ''or a Medicare+Choice plan or'' after ''does not include'' the first place appearing.

Pub. L. 105–33, § 4002(j)(2), struck out '', during the period beginning on the date specified in subsection (p)(1)(C) of this section and ending on December 31, 1995,'' after ''Omnibus Budget Reconciliation Act of 1986, or''.

Subsec. (p)(2)(C). Pub. L. 105–33, § 4032(a)(1), inserted before period at end ''plus the 2 plans described in paragraph (11)(A)''.

Subsec. (p)(11). Pub. L. 105–33, § 4032(a)(2), added par. (11).

Subsec. (s)(2)(B). Pub. L. 105–33, § 4031(b)(1), substituted ''subparagraphs (C) and (D)'' for ''subparagraph (C)''.

Subsec. (s)(2)(D). Pub. L. 105–33, § 4031(b)(2), added subpar. (D).

Subsec. (s)(3). Pub. L. 105–33, § 4031(a)(3), added par. (3). Former par. (3) redesignated (4).

Pub. L. 105–33, § 4031(a)(1), (2), substituted ''requirements of this subsection'' for ''requirements of paragraphs (1) and (2)'' and redesignated par. (3) as (4).

Subsec. (s)(4). Pub. L. 105–33, § 4031(a)(2), redesignated par. (3) as (4).

Subsec. (u). Pub. L. 105–33, § 4003(b), added subsec. (u).

1996—Subsec. (d)(3)(A)(iii). Pub. L. 104–191, § 271(a)(1), substituted ''clause (i)(II)'' for ''clause (i)''.

Subsec. (d)(3)(A)(iv) to (viii). Pub. L. 104–191, § 271(a)(2), added cls. (iv) to (viii).

Subsec. (d)(3)(C). Pub. L. 104–191, § 271(b)(1), substituted ''with respect to'' for ''with respect to (i)'' and struck out before period at end '', (ii) the sale or issuance of a policy or plan described in subparagraph (A)(i)(I) (other than a medicare supplemental policy to an individual entitled to any medical assistance under subchapter XIX of this chapter) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual but only if (for policies sold or issued more than 60 days after the date the statements are published or promulgated under subparagraph (D)) there is disclosed in a prominent manner as part of (or together with) the application the applicable statement (specified under subparagraph (D)) of the extent to which benefits payable under the policy or plan duplicate benefits under this subchapter, or (iii) the sale or issuance of a policy or plan described in subparagraph (A)(i)(III) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual''.

Subsec. (d)(3)(D). Pub. L. 104–191, § 271(b)(2), struck out subpar. (D) which provided for development of statements for various types of health insurance policies sold or issued to persons entitled to health benefits under this subchapter regarding extent to which benefits payable under those policies duplicate benefits under this subchapter.

1994—Subsec. (a)(2). Pub. L. 103–432, § 171(c)(1)(B), in closing provisions substituted ''on and after the effective date specified in subsection (p)(1)(C) of this section'' for ''after the effective date of the NAIC or Federal standards with respect to the policy''.

Subsec. (a)(2)(A). Pub. L. 103–432, § 171(c)(1)(A), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC standards or the Federal standards''.

Subsec. (b)(1). Pub. L. 103–432, § 171(e)(2), substituted ''subparagraph (F)'' for ''subsection (F)'' in last sentence.

Pub. L. 103–432, § 171(c)(4), substituted ''the Secretary determines'' for ''the the Secretary determines'' in introductory provisions.

Pub. L. 103–432, § 171(c)(2), in last sentence substituted ''Each report'' for ''The report'', ''fail to meet the standards and requirements'' for ''fail to meet the standards'', ''compliance, information regarding'' for ''compliance, and information regarding'', and ''Commissioners may specify'' for ''Commissioners, may specify''.

Subsecs. (b)(1)(B), (c)(5). Pub. L. 103–432, § 171(a)(1), made technical amendment to Pub. L. 101–508, § 4351. See 1990 Amendment notes below.

Subsec. (d)(3)(A). Pub. L. 103–432, § 171(d)(1)(D), struck out at end ''This subsection shall not apply to such a seller until such date as the Secretary publishes a list of the standardized benefit packages that may be offered consistent with subsection (p) of this section.''

Pub. L. 103–432, § 171(d)(1)(C), designated third sentence as cl. (iii), substituted ''clause (i) with respect to the sale of a medicare supplemental policy'' for ''the previous sentence'', and struck out ''and the statement under such subparagraph indicates on its face that the sale of the policy will not duplicate health benefits to which the individual is otherwise entitled'' after ''compliance with subparagraph (B)''.

Pub. L. 103–432, § 171(d)(1)(B), designated second sentence as cl. (ii) and substituted ''Whoever violates clause (i)'' for ''Whoever violates the previous sentence''.

Pub. L. 103–432, § 171(d)(1)(A), designated first sentence as cl. (i) and amended it generally. Prior to amendment, first sentence read as follows: ''It is unlawful for a person to sell or issue a health insurance policy to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, with knowledge that such policy duplicates health benefits to which such individual is otherwise entitled, other than benefits to which he is entitled under a requirement of State or Federal law (other than this subchapter or subchapter XIX of this chapter).''

Subsec. (d)(3)(B)(ii)(II). Pub. L. 103–432, § 171(d)(2)(A), struck out ''65 years of age or older'' before ''may be eligible''.

Subsec. (d)(3)(B)(iii)(I). Pub. L. 103–432, § 171(d)(2)(B), (C), substituted ''has a medicare supplemental policy'' for ''has another medicare supplemental policy'' and ''sale of a medicare supplemental policy'' for ''sale of such a policy''.

Subsec. (d)(3)(B)(iii)(II). Pub. L. 103–432, § 171(d)(2)(D), substituted ''has a medicare supplemental policy'' for ''has another policy''.

Subsec. (d)(3)(B)(iii)(III). Pub. L. 103–432, § 171(d)(2)(E), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''Subclause (I) also shall not apply if a State medicaid plan under subchapter XIX of this chapter pays the premiums for the policy, or pays less than an individual's (who is described in section 1396d(p)(1) of this title) full liability for medicare cost sharing as defined in section 1396d(p)(3)(A) of this title.''

Subsec. (d)(3)(C). Pub. L. 103–432, § 171(d)(3)(A), substituted ''(i) the sale or issuance of a group policy'' for ''the selling of a group policy'' and added cls. (ii) and (iii).

Subsec. (d)(3)(D). Pub. L. 103–432, § 171(d)(3)(B), added subpar. (D).

Subsec. (d)(4)(D). Pub. L. 103–432, § 171(k)(1), struck out before period at end '', if such policy expires not more than 12 months after the date on which the duplicate copy is mailed''.

Subsec. (d)(4)(E). Pub. L. 103–432, § 171(k)(2), added subpar. (E).

Subsec. (f)(3). Pub. L. 103–432, § 171(j)(2), added par. (3).

Subsec. (g)(1). Pub. L. 103–432, § 171(f)(1), substituted ''an eligible organization (as defined in section 1395mm(b) of this title) if the policy or plan provides benefits pursuant to a contract under section 1395mm of this title or an approved demonstration project described in section 603(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, or, during the period beginning on the date specified in subsection (p)(1)(C) of this section and ending on December 31, 1995, a policy or plan of an organization if the policy or plan provides benefits pursuant to an agreement under section 1395*l*(a)(1)(A) of this title'' for ''a health maintenance organization or other direct service organization which offers benefits under this subchapter, including such services under a contract under under section 1395mm of this title or an agreement under section 1395*l* of this title.''

Subsec. (g)(2)(B). Pub. L. 103–432, § 171(c)(3), substituted ''Secretary'' for ''Panel''.

Subsec. (*o*). Pub. L. 103–432, § 171(a)(1), made technical amendment to Pub. L. 101–508, § 4351. See 1990 Amendment note below.

Subsec. (p). Pub. L. 103–432, § 171(a)(1), made technical amendment to Pub. L. 101–508, § 4351. See 1990 Amendment note below.

Subsec. (p)(1)(A). Pub. L. 103–432, § 171(a)(2)(A), in introductory provisions, substituted ''changes the revised NAIC Model Regulation (described in subsection (m) of this section) to incorporate'' for ''promulgates'', and in closing provisions, struck out ''(such limitations, language, definitions, format, and standards referred to collectively in this subsection as 'NAIC standards'),'' before ''subsection (g)(2)(A) of this section'' and substituted ''were a reference to the revised NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the '1991 NAIC Model Regulation')'' for ''included a reference to the NAIC standards''.

Subsec. (p)(1)(B). Pub. L. 103–432, § 171(a)(2)(B), substituted ''make the changes in the revised NAIC Model Regulation'' for ''promulgate NAIC standards'', ''a regulation'' for ''limitations, language, definitions, format, and standards described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as 'Federal standards')'', and ''were a reference to the revised NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the '1991 Federal Regulation')'' for ''included a reference to the Federal standards''.

Subsec. (p)(1)(C)(i). Pub. L. 103–432, § 171(a)(2)(C), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC standards or the Federal standards''.

Subsec. (p)(1)(C)(ii)(I), (E). Pub. L. 103–432, § 171(a)(2)(D), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC or Federal standards''.

Subsec. (p)(2). Pub. L. 103–432, § 171(a)(2)(D), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC or Federal standards'' in introductory provisions.

Subsec. (p)(2)(C). Pub. L. 103–432, § 171(a)(2)(E), substituted ''paragraph (4)(B)'' for ''paragraph (5)(B)''.

Subsec. (p)(4). Pub. L. 103–432, § 171(a)(2)(G), substituted ''applicable 1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''applicable standards'' wherever appearing.

Subsec. (p)(4)(A)(i). Pub. L. 103–432, § 171(a)(2)(F), inserted ''or paragraph (6)'' after ''subparagraph (B)''.

Subsec. (p)(6). Pub. L. 103–432, § 171(a)(2)(H), substituted ''described in clauses (i) through (iii) of paragraph (1)(A)'' for ''in regard to the limitation of benefits described in paragraph (4)''.

Subsec. (p)(7). Pub. L. 103–432, § 171(a)(2)(I), substituted ''policyholders'' for ''policyholder''.

Subsec. (p)(8). Pub. L. 103–432, § 171(a)(2)(J), substituted ''on and after the effective date specified in paragraph (1)(C) (but subject to paragraph (10)), in violation of the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation insofar as such regulation relates to the requirements of subsection (*o*) or (q) of this section or clause (i), (ii), or (iii) of paragraph (1)(A)'' for ''after the effective date of the NAIC or Federal standards with respect to the policy, in violation of the previous requirements of this subsection''.

Subsec. (p)(9)(B). Pub. L. 103–432, § 171(a)(2)(D), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC or Federal standards''.

Subsec. (p)(9)(D). Pub. L. 103–432, § 171(a)(2)(K), added subpar. (D).

Subsec. (p)(10). Pub. L. 103–432, § 171(a)(2)(L), substituted ''consistent with paragraph (1)(A)(i)'' for ''consistent with this subsection''.

Subsec. (q)(2). Pub. L. 103–432, § 171(b)(1), substituted ''paragraph (4)'' for ''paragraph (2)''.

Subsec. (q)(4). Pub. L. 103–432, § 171(b)(2), substituted ''issuer of the replacement policy'' for ''the succeeding issuer''.

Subsec. (q)(5)(A), (B). Pub. L. 103–432, § 171(d)(4), made technical amendment to the reference to subchapter XIX of this chapter to correct reference to corresponding provision of original act.

Subsec. (r)(1). Pub. L. 103–432, § 171(e)(1)(A), (E), in introductory provisions substituted ''or renewed (or otherwise provide coverage after the date described in subsection (p)(1)(C) of this section)'' for ''or sold'' and inserted at end of closing provisions ''For the purpose of calculating the refund or credit required under paragraph (1)(B) for a policy issued before the date specified in subsection (p)(1)(C) of this section, the refund or credit calculation shall be based on the aggregate benefits provided and premiums collected under all such policies issued by an insurer in a State (separated as to individual and group policies) and shall be based only on aggregate benefits provided and premiums collected under such policies after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.''

Subsec. (r)(1)(A). Pub. L. 103–432, § 171(e)(1)(C), substituted ''Commissioners)'' for ''Commissioners,''.

Pub. L. 103–432, § 171(e)(1)(B), inserted ''for periods after the effective date of these provisions'' after ''the policy can be expected''.

Subsec. (r)(1)(B). Pub. L. 103–432, § 171(e)(1)(D), inserted before period at end '', treating policies of the same type as a single policy for each standard package''.

Subsec. (r)(2)(A). Pub. L. 103–432, § 171(e)(1)(F)–(I), substituted ''by standard package'' for ''by policy number'' in first sentence and ''until 12 months following issue'' for ''with respect to the first 2 years in which it is in effect'' in second sentence, struck out ''in order to apply paragraph (1)(B) to the first 2 years in which policies are effective'' after ''may be appropriate'' in third sentence, and inserted at end ''In the case of a policy issued before the date specified in subsection (p)(1)(C) of this section, paragraph (1)(B) shall not apply until 1 year after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.''

Subsec. (r)(2)(C), (D). Pub. L. 103–432, § 171(e)(1)(J), substituted ''calendar year'' for ''policy year'' wherever appearing.

Subsec. (r)(4). Pub. L. 103–432, § 171(e)(1)(K), substituted ''October'' for ''February'', ''disallowance'' for ''disllowance'', ''loss ratios'' for ''loss-ratios'' in two places, and ''loss ratio'' for ''loss-ratio''.

Subsec. (r)(6)(A). Pub. L. 103–432, § 171(e)(1)(L), substituted ''fails to provide refunds or credits as required in paragraph (1)(B)'' for ''issues a policy in violation of

the loss ratio requirements of this subsection'' and ''policy issued for which such failure occurred'' for ''such violation''.

Subsec. (r)(6)(B). Pub. L. 103–432, § 171(e)(1)(M), substituted ''to the policyholder or, in the case of a group policy, to the certificate holder'' for ''to policyholders''.

Subsec. (s)(2)(A). Pub. L. 103–432, § 171(g)(1), (2), substituted ''in the case of an individual for whom an application is submitted prior to or'' for ''for which an application is submitted'' and ''as of the first day on which the individual is 65 years of age or older and is enrolled for benefits under part B'' for ''in which the individual (who is 65 years of age or older) first is enrolled for benefits under part B''.

Subsec. (s)(2)(B). Pub. L. 103–432, § 171(g)(3), substituted ''before the policy became effective'' for ''before it became effective''.

Subsec. (t)(1). Pub. L. 103–432, § 171(h)(1)(A), (B), substituted ''If a medicare supplemental policy meets the 1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''If a policy meets the NAIC Model Standards''.

Subsec. (t)(1)(A). Pub. L. 103–432, § 171(h)(1)(C), inserted ''or agreements'' after ''contracts''.

Subsec. (t)(1)(E)(i), (F). Pub. L. 103–432, § 171(h)(1)(D), substituted ''standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC standards''.

Subsec. (t)(2). Pub. L. 103–432, § 171(h)(1)(E), inserted ''the issuer'' before ''is subject to a civil money penalty'' in concluding provisions.

1990—Pub. L. 101–508, § 4353(a)(1), struck out ''Voluntary'' at beginning of section catchline.

Subsec. (a). Pub. L. 101–508, § 4353(a)(2), designated existing provisions as par. (1) and added par. (2).

Pub. L. 101–508, § 4207(k)(1), formerly § 4027(k)(1), as renumbered by Pub. L. 103–432, § 160(d)(4), struck out ''(k)(4),'' after ''subsections (k)(3),'' in third sentence.

Subsec. (b)(1). Pub. L. 101–508, § 4353(c)(5), inserted at end ''The report required under subsection (F) shall include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards of this paragraph, actions taken by the State to bring such policies into compliance, and information regarding State programs implementing consumer protection provisions, and such further information as the Secretary in consultation with the National Association of Insurance Commissioners, may specify.''

Pub. L. 101–508, § 4353(b)(1), (2), substituted ''the Secretary'' for ''Supplemental Health Insurance Panel (established under paragraph (2))'' in introductory provisions and for ''the Panel'' in concluding provisions.

Pub. L. 101–508, § 4207(k)(1), formerly § 4027(k)(1), as renumbered by Pub. L. 103–432, § 160(d)(4), which directed the amendment of third sentence of par. (1) by striking out ''(k)(4),'' was executed by making the deletion after ''subsections (k)(3),'' in concluding provisions to reflect the probable intent of Congress.

Subsec. (b)(1)(A). Pub. L. 101–508, § 4358(b)(2)(A), inserted before semicolon at end '', except as otherwise provided by subparagraph (H)''.

Pub. L. 101–508, § 4353(b)(3), inserted ''and enforcement'' after ''application''.

Subsec. (b)(1)(B). Pub. L. 101–508, § 4351(1), formerly § 4351(a)(1), as renumbered and amended by Pub. L. 103–432, § 171(a)(1), substituted ''through (5)'' for ''through (4)''.

Subsec. (b)(1)(C). Pub. L. 101–508, § 4355(b), substituted for semicolon at end '', and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;''.

Subsec. (b)(1)(D). Pub. L. 101–508, § 4353(b)(3), inserted ''and enforcement'' after ''application''.

Subsec. (b)(1)(F). Pub. L. 101–508, § 4353(c)(1)–(3), added subpar. (F).

Subsec. (b)(1)(G). Pub. L. 101–508, § 4355(c), which directed amendment of par. (1) by adding at the end thereof a new subpar. (G), was executed by adding the new subpar. (G) immediately after subpar. (F) to reflect the probable intent of Congress.

Subsec. (b)(1)(H). Pub. L. 101–508, § 4358(b)(2)(B)–(D), added subpar. (H).

Subsec. (b)(2). Pub. L. 101–508, § 4353(b)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(A) There is hereby established a panel (hereinafter in this section referred to as the 'Panel') to be known as the Supplemental Health Insurance Panel. The Panel shall consist of the Secretary, who shall serve as the Chairman, and four State commissioners or superintendents of insurance, who shall be appointed by the Secretary and serve at his pleasure. Such members shall first be appointed not later than December 31, 1980.

''(B) A majority of the members of the Panel shall constitute a quorum, but a lesser number may conduct hearings.

''(C) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Panel may require.

''(D) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

''(E) Members of the Panel shall be allowed, while away from their homes or regular places of business in the performance of services for the Panel, travel expenses (including per diem in lieu of subsistence) in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.''

Subsec. (c). Pub. L. 101–508, § 4357(a)(1), inserted ''or the requirement described in subsection (s) of this section'' after ''paragraph (3)'' in introductory provisions.

Pub. L. 101–508, § 4355(a)(2), struck out at end ''For purposes of paragraph (2), policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.''

Subsec. (c)(1). Pub. L. 101–508, § 4358(b)(1), inserted before semicolon at end ''(except as otherwise provided by subsection (t) of this section)''.

Subsec. (c)(2). Pub. L. 101–508, § 4355(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''can be expected (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices) to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 60 percent of the aggregate amount of premiums collected in the case of individual policies;''.

Subsec. (c)(5). Pub. L. 101–508, § 4351(2), formerly § 4351(a)(2), as renumbered and amended by Pub. L. 103–432, § 171(a)(1), added par. (5).

Subsec. (d)(3)(A). Pub. L. 101–508, § 4354(a)(1), substituted ''It is unlawful for a person to sell or issue'' for ''Whoever knowingly sells'', ''duplicates health benefits'' for ''substantially duplicates health benefits'', ''. Whoever violates the previous sentence shall be fined'' for '', shall be fined'', ''(other than this subchapter or subchapter XIX of this chapter)'' for ''(other than this subchapter)'', and ''$25,000 (or $15,000 in the case of a person other than the issuer of the policy)'' for ''$5,000'' and inserted at end ''A seller (who is not the issuer of a health insurance policy) shall not be considered to violate the previous sentence if the policy is sold in compliance with subparagraph (B) and the statement under such subparagraph indicates on its face that the sale of the policy will not duplicate health benefits to which the individual is otherwise entitled. This subsection shall not apply to such a seller until such date as the Secretary publishes a list of the standardized benefit packages that may be offered consistent with subsection (p) of this section.''

Subsec. (d)(3)(B). Pub. L. 101–508, § 4354(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this paragraph, benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual, shall not be considered as duplicative.''

Subsec. (d)(4)(B). Pub. L. 101–508, § 4353(d)(1), struck out at end ''For purposes of this paragraph, a medicare supplemental policy shall be deemed to be approved by the commissioner or superintendent of insurance of a State if—

''(i) the policy has been certified by the Secretary pursuant to subsection (c) of this section or was issued in a State with an approved regulatory program (as defined in subsection (g)(2)(B) of this section);

''(ii) the policy has been approved by the commissioners or superintendents of insurance in States in which more than 30 percent of such policies are sold; or

''(iii) the State has in effect a law which the commissioner or superintendent of insurance of the State has determined gives him the authority to review, and to approve, or effectively bar from sale in the State, such policy;

except that such a policy shall not be deemed to be approved by a State commissioner or superintendent of insurance if the State notifies the Secretary that such policy has been submitted for approval to the State and has been specifically disapproved by such State after providing appropriate notice and opportunity for hearing pursuant to the procedures (if any) of the State.''

Subsec. (g)(1). Pub. L. 101–508, § 4356(a), inserted before period at end of first sentence ''and does not include a policy or plan of a health maintenance organization or other direct service organization which offers benefits under this subchapter, including such services under a contract under under section 1395mm of this title or an agreement under section 1395*l* of this title''.

Subsecs. (*o*), (p). Pub. L. 101–508, § 4351(3), formerly § 4351(a)(3), as renumbered and amended by Pub. L. 103–432, § 171(a)(1), added subsecs. (*o*) and (p).

Subsec. (q). Pub. L. 101–508, § 4352, added subsec. (q).

Subsec. (q)(5). Pub. L. 101–508, § 4354(b), added par. (5).

Subsec. (r). Pub. L. 101–508, § 4355(a)(3), added subsec. (r).

Subsec. (s). Pub. L. 101–508, § 4357(a)(2), added subsec. (s).

Subsec. (t). Pub. L. 101–508, § 4358(a), added subsec. (t).

1989—Subsecs. (a), (b)(1). Pub. L. 101–234, § 203(a)(1)(A), substituted ''subsections (k)(3), (k)(4), (m), and (n) of this section'' for ''subsection (k)(3) of this section''.

Subsec. (k)(1)(A). Pub. L. 101–234, § 203(a)(1)(B)(i), inserted ''except as provided in subsection (m) of this section,'' before ''subsection (g)(2)(A)''.

Subsec. (k)(3). Pub. L. 101–234, § 203(a)(1)(B)(ii), substituted ''subsections (*l*), (m), and (n) of this section'' for ''subsection (*l*) of this section''.

Subsecs. (m), (n). Pub. L. 101–234, § 203(a)(1)(C), added subsecs. (m) and (n).

1988—Subsec. (a). Pub. L. 100–360, § 221(d)(1), substituted ''Subject to subsection (k)(3) of this section, such'' for ''Such''.

Subsec. (b)(1). Pub. L. 100–360, § 221(d)(2), substituted ''(subject to subsection (k)(3) of this section, for so long as'' for ''(for so long as'' in concluding provisions.

Subsec. (b)(1)(B). Pub. L. 100–360, § 221(a)(1), substituted ''through (4)'' for ''and (3)''.

Subsec. (b)(1)(C). Pub. L. 100–360, § 221(b)(2), (3), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 100–360, § 221(b)(1), substituted ''(A), (B), and (C)'' for ''(A) and (B)''.

Subsec. (b)(1)(D), (E). Pub. L. 100–360, § 221(b)(2), redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (b)(2)(A). Pub. L. 100–360, § 221(f), substituted ''appointed by the Secretary'' for ''appointed by the President''.

Subsec. (b)(3). Pub. L. 100–360, § 221(e), added par. (3).

Subsec. (c). Pub. L. 100–360, § 411(i)(1)(B), added Pub. L. 100–203, § 4081(b)(2)(A), see 1987 Amendment note below.

Subsec. (c)(3). Pub. L. 100–360, § 411(i)(1)(B), redesignated Pub. L. 100–203, § 4081(b)(2)(B)–(D), see 1987 Amendment note below.

Subsec. (c)(3)(A). Pub. L. 100–360, § 411(i)(1)(C)(i), substituted ''claim form'' for ''claims form'' in two places and ''such notice'' for ''such claims form''.

Subsec. (c)(3)(B)(i). Pub. L. 100–360, § 411(i)(1)(C)(ii), inserted ''under the policy'' after ''payment determination''.

Subsec. (c)(3)(B)(ii). Pub. L. 100–360, § 411(i)(1)(C)(iii), substituted ''payment covered by such policy'' for ''appropriate payment''.

Subsec. (c)(4). Pub. L. 100–360, § 221(a)(2), added par. (4).

Subsec. (d). Pub. L. 100–360, § 428(b)(1), substituted ''shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act'' for ''shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both'' in pars. (1), (2), (3)(A), and (4)(A).

Subsec. (d)(5). Pub. L. 100–360, § 428(b)(2), added par. (5).

Subsec. (e). Pub. L. 100–360, § 221(c), designated existing provision as par. (1) and added pars. (2) and (3).

Subsecs. (k), (*l*). Pub. L. 100–360, § 221(d)(3), added subsecs. (k) and (*l*).

1987—Subsec. (b)(1)(B). Pub. L. 100–203, § 4081(b)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''includes a requirement equal to or more stringent than the requirement described in subsection (c)(2) of this section; and''.

Subsec. (b)(1)(D). Pub. L. 100–203, § 4081(b)(1)(B), (C), added subpar. (D).

Subsec. (c). Pub. L. 100–203, § 4081(b)(2)(A), as added by Pub. L. 100–360, § 411(i)(1)(B), inserted ''(or, with respect to paragraph (3), the issuer of the policy)'' in introductory provisions.

Subsec. (c)(3). Pub. L. 100–203, § 4081(b)(2)(B)–(D), formerly § 4081(b)(2), as redesignated by Pub. L. 100–360, § 411(i)(1)(B), added par. (3).

Subsec. (d)(1). Pub. L. 100–93 substituted ''knowingly and willfully'' for ''knowingly or willfully''.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Committee on Interstate and Foreign Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–170, title II, § 205(b), Dec. 17, 1999, 113 Stat. 1900, provided that: ''The amendments made by subsection (a) [amending this section] apply with respect to requests made after the date of the enactment of this Act [Dec. 17, 1999].''

Amendment by section 1000(a)(6) [title III, § 321(k)(13), (14)] of Pub. L. 106–113 effective as if included in the en-

actment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Amendment by section 1000(a)(6) [title V, § 501(a)(2)] of Pub. L. 106–113 applicable to notices of impending terminations or discontinuances made on or after Nov. 29, 1999, see section 1000(a)(6) [title V, § 501(d)(1)] of Pub. L. 106–113, set out as a note under section 1395w–21 of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 536(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–391, provided that: ''The amendments made by this section [amending this section] shall apply to terminations or discontinuances made on or after the date of the enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4002(j)(2) of Pub. L. 105–33 provided that the amendment made by that section is effective Jan. 1, 1999.

Section 4031(d) of Pub. L. 105–33 provided that:

''(1) GUARANTEED ISSUE.—The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1998.

''(2) LIMIT ON PREEXISTING CONDITION EXCLUSIONS.—The amendment made by subsection (b) [amending this section] shall apply to policies issued on or after July 1, 1998.

''(3) CONFORMING AMENDMENT.—The amendment made by subsection (c) [amending this section] shall be effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191].''

Section 4032(b) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall take effect the date of the enactment of this Act [Aug. 5, 1997].

''(2) TRANSITION.—The provisions of section 4031(e) [set out as a note below] shall apply with respect to this section in the same manner as they apply to section 4031 [amending this section and enacting provisions set out as notes below].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 271(d) of Pub. L. 104–191 provided that:

''(1) Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 4354 of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].

''(2)(A) Clause (vi) of section 1882(d)(3)(A) of the Social Security Act [subsec. (d)(3)(A)(vi) of this section], as added by subsection (a), shall only apply to individuals applying for—

''(i) a health insurance policy described in section 1882(d)(3)(A)(iv) of such Act (as added by subsection (a)), after the date of the enactment of this Act [Aug. 21, 1996], or

''(ii) another health insurance policy after the end of the 30-day period beginning on the date of the enactment of this Act.

''(B) A seller or issuer of a health insurance policy may substitute, for the disclosure statement described in clause (vii) of such section, the statement specified under section 1882(d)(3)(D) of the Social Security Act (as in effect before the date of the enactment of this Act), without the revision specified in such clause.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 171(*l*) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1320c–3, 1395b–2, and 1395b–4 of this title, repealing section 1395zz of this title, and enacting and amending provisions set out as notes below] shall be effective as if included in the enactment of OBRA–1990 [Pub. L. 101–508]; except that—

''(1) the amendments made by subsection (d)(1) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994], but no penalty shall be imposed under section 1882(d)(3)(A) of the Social Security Act [subsec. (d)(3)(A) of this section] (for an action occurring after the effective date of the amendments made by section 4354 of OBRA–1990 [see section 4354(c) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note below] and before the date of the enactment of this Act) with respect to the sale or issuance of a policy which is not unlawful under section 1882(d)(3)(A)(i)(II) of the Social Security Act [subsec. (d)(3)(A)(i)(II) of this section] (as amended by this section);

''(2) the amendments made by subsection (d)(2)(A) [amending this section] and by subparagraphs (A), (B), and (E) of subsection (e)(1) [amending this section] shall be effective on the date specified in subsection (m)(4) [set out as a note below]; and

''(3) the amendment made by subsection (g)(2) [amending this section] shall take effect on January 1, 1995, and shall apply to individuals who attain 65 years of age or older on or after the effective date of section 1882(s)(2) of the Social Security Act [subsec. (s)(2) of this section, for effective date see section 4357(b) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note below] (and, in the case of individuals who attained 65 years of age after such effective date and before January 1, 1995, and who were not covered under such section before January 1, 1995, the 6-month period specified in that section shall begin January 1, 1995).''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4353(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to policies mailed, or caused to be mailed, on and after July 1, 1991.''

Section 4354(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to policies issued or sold more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4355(d) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 171(e)(3), Oct. 31, 1994, 108 Stat. 4449, provided that: ''The amendments made by this section [amending this section] shall apply to policies issued or renewed (or otherwise providing coverage after the date described in section 1882(p)(1)(C) of the Social Security Act [subsec. (p)(1)(C) of this section]) on or after the date specified in section 1882(p)(1)(C) of the Social Security Act.''

Section 4356(b) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 171(f)(2), Oct. 31, 1994, 108 Stat. 4449, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date specified in section 1882(p)(1)(C) of the Social Security Act [subsec. (p)(1)(C) of this section].''

Section 4357(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

Amendment by section 4358(a), (b)(1), (2) of Pub. L. 101–508 only applicable in 15 States (as determined by Secretary of Health and Human Services) and such other States as elect such amendment to apply to them, and during the 6½-year period beginning with 1992, with such amendment to remain in effect beyond the 6½-year period unless the Secretary makes certain determinations, see section 4358(c) of Pub. L. 101–508, as amended, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 203(e) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section, enacting provisions set out as notes under sections 1395b–2 and 1395mm of this title, and amending provisions set out as a note under this section] shall take effect January 1, 1990, except that the amendment made by subsection (d) [amending provisions set out as an Ef-

fective Date of 1988 Amendment note under this section] shall be effective as if included in the enactment of MCCA [Pub. L. 100–360].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 221(g) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(12), Oct. 13, 1988, 102 Stat. 2415; Pub. L. 101–234, title II, § 203(d), Dec. 13, 1989, 103 Stat. 1985, provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988].

''(2) The amendments made by subsections (a) and (b) [amending this section] shall become effective on the date specified in subsection (k)(1)(B) or (k)(2)(B) of section 1882 of the Social Security Act [subsec. (k)(1)(B) or (k)(2)(B) of this section] (as added by subsection (d) of this section).

''(3) The amendment made by subsection (e) [amending this section] shall apply to medicare supplemental policies as of January 1, 1989, with respect to advertising used on or after such date.

''(4) The Secretary of Health and Human Services shall provide for the reappointment of members to the Supplemental Health Insurance Panel (under section 1882(b)(2) of the Social Security Act [subsec. (b)(2) of this section]) by not later than 90 days after the date of the enactment of this Act [July 1, 1988].''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(i)(1)(B), (C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Amendment by section 428(b) of Pub. L. 100–360 effective July 1, 1988, and applicable only with respect to violations occurring on or after such date, see section 428(c) of Pub. L. 100–360, set out as an Effective Date note under section 1320b–10 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4081(c)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(i)(1)(D), (E), July 1, 1988, 102 Stat. 788; Pub. L. 100–485, title VI, § 608(d)(24)(A), Oct. 13, 1988, 102 Stat. 2421, provided that:

''(A) The amendments made by subsection (b) [amending this section] shall apply to medicare supplemental policies as of January 1, 1989 (or, if applicable, the date established under subparagraph (B)).

''(B) In the case of a State which the Secretary of Health and Human Services identifies as—

''(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to be changed to meet the requirements of section 1882(c)(3) of the Social Security Act [subsec. (c)(3) of this section], and

''(ii) having a legislature which is not scheduled to meet in 1988 in a legislative session in which such legislation may be considered or which has not enacted such legislation before July 1, 1988,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, and in which legislation described in clause (i) may be considered.''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE

Section 507(b) of Pub. L. 96–265 provided that: ''The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [June 9, 1980], except that the provisions of paragraph (4) of section 1882(d) of the Social Security Act [subsec. (d)(4) of this section] (as added by this section) shall become effective on July 1, 1982.''

RULE OF CONSTRUCTION

Pub. L. 108–173, title I, § 104(c), Dec. 8, 2003, 117 Stat. 2165, provided that:

''(1) IN GENERAL.—Nothing in this Act [see Tables for classification] shall be construed to require an issuer of a medicare supplemental policy under section 1882 of the Social Security Act (42 U.S.C. 1395rr) [42 U.S.C. 1395ss] to participate as a PDP sponsor under part D of title XVIII of such Act [part D of this subchapter], as added by section 101, as a condition for issuing such policy.

''(2) PROHIBITION ON STATE REQUIREMENT.—A State may not require an issuer of a medicare supplemental policy under section 1882 of the Social Security Act (42 U.S.C. 1395rr) [42 U.S.C. 1395ss] to participate as a PDP sponsor under such part D as a condition for issuing such policy.''

STUDY OF MEDIGAP POLICIES

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 553(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–393, provided that:

''(1) IN GENERAL.—The Comptroller General of the United States (in this section referred to as the 'Comptroller General') shall conduct a study of the issues described in paragraph (2) regarding medicare supplemental policies described in section 1882(g)(1) of the Social Security Act (42 U.S.C. 1395ss(g)(1)).

''(2) ISSUES TO BE STUDIED.—The issues described in this paragraph are the following:

''(A) The level of coverage provided by each type of medicare supplemental policy.

''(B) The current enrollment levels in each type of medicare supplemental policy.

''(C) The availability of each type of medicare supplemental policy to medicare beneficiaries over age 65½.

''(D) The number and type of medicare supplemental policies offered in each State.

''(E) The average out-of-pocket costs (including premiums) per beneficiary under each type of medicare supplemental policy.

''(2)[(3)] REPORT.—Not later than July 31, 2001, the Comptroller General shall submit a report to Congress on the results of the study conducted under this subsection, together with any recommendations for legislation that the Comptroller General determines to be appropriate as a result of such study.''

CONFORMING BENEFITS TO CHANGES IN TERMINOLOGY FOR HOSPITAL OUTPATIENT DEPARTMENT COST SHARING

Section 4031(f) of Pub. L. 105–33 provided that: ''For purposes of apply [sic] section 1882 of the Social Security Act (42 U.S.C. 1395ss) and regulations referred to in subsection (e) [set out as a note above], copayment amounts provided under section 1833(t)(5) of such Act [section 1395*l*(t)(5) of this title] with respect to hospital outpatient department services shall be treated under medicare supplemental policies in the same manner as coinsurance with respect to such services.''

TRANSITION PROVISIONS

Section 4031(e) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section [amending this section], the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act [this section] due solely to failure to make such change until the date specified in paragraph (4).

''(2) NAIC STANDARDS.—If, within 9 months after the date of the enactment of this Act [Aug. 5, 1997], the National Association of Insurance Commissioners (in this subsection referred to as the 'NAIC') modifies its NAIC

Model Regulation relating to section 1882 of the Social Security Act [this section] (referred to in such section as the 1991 NAIC Model Regulation, as modified pursuant to section 171(m)(2) of the Social Security Act Amendments of 1994 (Public Law 103–432) [set out as a note below] and as modified pursuant to section 1882(d)(3)(A)(vi)(IV) of the Social Security Act [subsec. (d)(3)(A)(vi)(IV) of this section], as added by section 271(a) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) to conform to the amendments made by this section [amending this section], such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

''(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate Regulation for the purposes of such section.

''(4) DATE SPECIFIED.—

''(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

''(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

''(ii) 1 year after the date the NAIC or the Secretary first makes the modifications under paragraph (2) or (3), respectively.

''(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

''(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

''(ii) having a legislature which is not scheduled to meet in 1999 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 1999. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 271(c) of Pub. L. 104–191 provided that:

''(1) NO PENALTIES.—Subject to paragraph (3), no criminal or civil money penalty may be imposed under section 1882(d)(3)(A) of the Social Security Act [subsec. (d)(3)(A) of this section] for any act or omission that occurred during the transition period (as defined in paragraph (4)) and that relates to any health insurance policy that is described in clause (iv) or (v) of such section (as amended by subsection (a)).

''(2) LIMITATION ON LEGAL ACTION.—Subject to paragraph (3), no legal action shall be brought or continued in any Federal or State court insofar as such action—

''(A) includes a cause of action which arose, or which is based on or evidenced by any act or omission which occurred, during the transition period; and

''(B) relates to the application of section 1882(d)(3)(A) of the Social Security Act to any act or omission with respect to the sale, issuance, or renewal of any health insurance policy that is described in clause (iv) or (v) of such section (as amended by subsection (a)).

''(3) DISCLOSURE CONDITION.—In the case of a policy described in clause (iv) of section 1882(d)(3)(A) of the Social Security Act that is sold or issued on or after the effective date of statements under section 171(d)(3)(C) of the Social Security Act Amendments of 1994 [Pub. L. 103–432, set out below] and before the end of the 30-day period beginning on the date of the enactment of this Act [Aug. 21, 1996], paragraphs (1) and (2) shall only apply if disclosure was made in accordance with section 1882(d)(3)(C)(ii) of the Social Security Act (as in effect before the date of the enactment of this Act).

''(4) TRANSITION PERIOD.—In this subsection, the term 'transition period' means the period beginning on November 5, 1991, and ending on the date of the enactment of this Act.''

APPLICABILITY OF DISCLOSURE REQUIREMENT

Section 171(d)(3)(C) of Pub. L. 103–432 provided that: ''The requirement of a disclosure under section 1882(d)(3)(C)(ii) of the Social Security Act [subsec. (d)(3)(C)(ii) of this section] shall not apply to an application made for a policy or plan before 60 days after the date the Secretary of Health and Human Services publishes or promulgates all the statements under section 1882(d)(3)(D) of such Act.''

STATE REGULATORY PROGRAMS

Section 171(m) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section [amending this section and sections 1320c–3, 1395b–2, and 1395b–4 of this title, repealing section 1395zz of this title, and enacting and amending provisions set out as notes under this section], the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act [this section] due solely to failure to make such change until the date specified in paragraph (4).

''(2) NAIC STANDARDS.—If, within 6 months after the date of the enactment of this Act [Oct. 31, 1994], the National Association of Insurance Commissioners (in this subsection referred to as the 'NAIC') modifies its 1991 NAIC Model Regulation (adopted in July 1991) to conform to the amendments made by this section and to delete from section 15C the exception which begins with 'unless', such revised regulation incorporating the modifications shall be considered to be the 1991 Regulation for the purposes of section 1882 of the Social Security Act.

''(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the 1991 Regulation for the purposes of section 1882 of the Social Security Act.

''(4) DATE SPECIFIED.—

''(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

''(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

''(ii) 1 year after the date the NAIC or the Secretary first makes the modifications under paragraph (2) or (3), respectively.

''(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

''(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

''(ii) having a legislature which is not scheduled to meet in 1996 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1996. For purposes of the previous sentence, in the case of a State that

has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

EVALUATION OF 1990 AMENDMENTS

Section 4358(d) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall conduct an evaluation of the amendments made by this section [amending this section and section 1320c–3 of this title] and shall report to Congress on such evaluation by not later than January 1, 1995.''

§ 1395tt. Hospital providers of extended care services

(a) Hospital facility agreements; reasonable costs of services

(1) Any hospital which has an agreement under section 1395cc of this title may (subject to subsection (b) of this section) enter into an agreement with the Secretary under which its inpatient hospital facilities may be used for the furnishing of services of the type which, if furnished by a skilled nursing facility, would constitute extended care services.

(2)(A) Notwithstanding any other provision of this subchapter, payment to any hospital (other than a critical access hospital) for services furnished under an agreement entered into under this section shall be based upon the reasonable cost of the services as determined under subparagraph (B).

(B)(i) The reasonable cost of the services consists of the reasonable cost of routine services (determined under clause (ii)) and the reasonable cost of ancillary services (determined under clause (iii)).

(ii) The reasonable cost of routine services furnished during any calendar year by a hospital under an agreement under this section is equal to the product of—

(I) the number of patient-days during the year for which the services were furnished, and

(II) the average reasonable cost per patient-day, such average reasonable cost per patient-day being the average rate per patient-day paid for routine services during the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under subsections (a) through (d) of section 1395yy of this title for subsequent cost reporting periods and up to and including such calendar year) under this subchapter to freestanding skilled nursing facilities in the region (as defined in section 1395ww(d)(2)(D) of this title) in which the facility is located.

(iii) The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(3) Notwithstanding any other provision of this subchapter, a critical access hospital shall be paid for covered skilled nursing facility services furnished under an agreement entered into under this section on the basis of equal to 101 percent of the reasonable costs of such services (as determined under section 1395x(v) of this title).

(b) Eligible facilities

The Secretary may not enter into an agreement under this section with any hospital unless, except as provided under subsection (g) of this section, the hospital is located in a rural area and has less than 100 beds.

(c) Terms and conditions of facility agreements

An agreement with a hospital under this section shall, except as otherwise provided under regulations of the Secretary, be of the same duration and subject to termination on the same conditions as are agreements with skilled nursing facilities under section 1395cc of this title and shall, where not inconsistent with any provision of this section, impose the same duties, responsibilities, conditions, and limitations, as those imposed under such agreements entered into under section 1395cc of this title; except that no such agreement with any hospital shall be in effect for any period during which the hospital does not have in effect an agreement under section 1395cc of this title. A hospital with respect to which an agreement under this section has been terminated shall not be eligible to enter into a new agreement until a two-year period has elapsed from the termination date.

(d) Post-hospital extended care services

Any agreement with a hospital under this section shall provide that payment for services will be made only for services for which payment would be made as post-hospital extended care services if those services had been furnished by a skilled nursing facility under an agreement entered into under section 1395cc of this title; and any individual who is furnished services, for which payment may be made under an agreement under this section, shall, for purposes of this subchapter (other than this section), be deemed to have received post-hospital extended care services in like manner and to the same extent as if the services furnished to him had been post-hospital extended care services furnished by a skilled nursing facility under an agreement under section 1395cc of this title.

(e) Reimbursement for routine hospital services

During a period for which a hospital has in effect an agreement under this section, in order to allocate routine costs between hospital and long-term care services for purposes of determining payment for inpatient hospital services, the total reimbursement due for routine services from all classes of long-term care patients (including this subchapter, subchapter XIX of this chapter, and private pay patients) shall be subtracted from the hospital's total routine costs before calculations are made to determine this subchapter reimbursement for routine hospital services.

(f) Conditions applicable to skilled nursing facilities

A hospital which enters into an agreement with the Secretary under this section shall be required to meet those conditions applicable to skilled nursing facilities relating to discharge planning and the social services function (and staffing requirements to satisfy it) which are promulgated by the Secretary under section 1395i–3 of this title. Services furnished by such a

hospital which would otherwise constitute post-hospital extended care services if furnished by a skilled nursing facility shall be subject to the same requirements applicable to such services when furnished by a skilled nursing facility except for those requirements the Secretary determines are inappropriate in the case of these services being furnished by a hospital under this section.

(g) Agreements on demonstration basis

The Secretary may enter into an agreement under this section on a demonstration basis with any hospital which does not meet the requirement of subsection (b)(1) of this section, if the hospital otherwise meets the requirements of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1883, as added Pub. L. 96–499, title IX, § 904(a)(1), Dec. 5, 1980, 94 Stat. 2615; amended Pub. L. 100–203, title IV, §§ 4005(b)(1), (2), 4201(d)(3), Dec. 22, 1987, 101 Stat. 1330–48, as amended Pub. L. 100–360, title IV, § 411(*l*)(1)(C), July 1, 1988, as added Pub. L. 100–485, title VI, § 608(d)(27)(B), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 100–360, title I, § 104(d)(6), title IV, § 411(b)(4)(D), July 1, 1988, 102 Stat. 689, 770; Pub. L. 101–234, title I, § 101(a), Dec. 13, 1989, 103 Stat. 1979; Pub. L. 101–508, title IV, § 4008(j)(1), Nov. 5, 1990, 104 Stat. 1388–51; Pub. L. 105–33, title IV, § 4432(b)(5)(G), Aug. 5, 1997, 111 Stat. 422; Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, §§ 403(f), 408(a), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–371, 1501A–375; Pub. L. 106–554, § 1(a)(6) [title II, § 203(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–482; Pub. L. 108–173, title IV, § 405(a)(1), Dec. 8, 2003, 117 Stat. 2266.)

AMENDMENTS

2003—Subsec. (a)(3). Pub. L. 108–173 inserted ''equal to 101 percent of'' before ''the reasonable costs''.

2000—Subsec. (a)(2)(A). Pub. L. 106–554, § 1(a)(6) [title II, § 203(b)(1)], inserted ''(other than a critical access hospital)'' after ''any hospital''.

Subsec. (a)(3). Pub. L. 106–554, § 1(a)(6) [title II, § 203(b)(2)], added par. (3).

1999—Subsec. (a)(1). Pub. L. 106–113, § 1000(a)(6) [title IV, § 403(f)(1)], struck out ''(other than a hospital which has in effect a waiver under subparagraph (A) of the last sentence of section 1395x(e) of this title)'' after ''Any hospital''.

Subsec. (b). Pub. L. 106–113, § 1000(a)(6) [title IV, § 408(a)], amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Secretary may not enter into an agreement under this section with any hospital unless—

''(1) except as provided under subsection (g) of this section, the hospital is located in a rural area and has less than 100 beds, and

''(2) the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 300m of this title) for the State in which the hospital is located.''

Subsec. (c). Pub. L. 106–113, § 1000(a)(6) [title IV, § 403(f)(2)], struck out '', or during which there is in effect for the hospital a waiver under subparagraph (A) of the last sentence of section 1395x(e) of this title'' before the period at end of first sentence.

Subsec. (d). Pub. L. 106–113, § 1000(a)(6) [title IV, § 408(b)], struck out ''(1)'' before ''Any agreement with a hospital'' and struck out pars. (2) and (3), which related to limiting payments under extended care service agreements pursuant to this section to hospitals with more than 49 beds where skilled nursing facilities were available or where such payments exceeded a designated maximum.

1997—Subsec. (a)(2)(B)(ii)(II). Pub. L. 105–33 inserted ''subsections (a) through (d) of'' before ''section 1395yy''.

1990—Subsec. (a)(2)(B)(ii)(II). Pub. L. 101–508 substituted ''the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under section 1395yy of this title for subsequent cost reporting periods and up to and including such calendar year) under this subchapter to free-standing skilled nursing facilities in the region (as defined in section 1395ww(d)(2)(D) of this title) in which the facility is located.'' for ''the previous calendar year'' and all that follows through the period, which was executed by making the substitution for ''the previous calendar year under the State plan (of the State in which the hospital is located) under subchapter XIX of this chapter to skilled nursing facilities located in the State and which meet the requirements specified in section 1396a(a)(28) of this title, or, in the case of a hospital located in a State which does not have such a State plan, the average rate per patient-day paid for routine services during the previous calendar year under this subchapter to skilled nursing facilities in such State.''

1989—Subsecs. (d)(1), (f). Pub. L. 101–234 repealed Pub. L. 100–360, § 104(d)(6), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (d)(1). Pub. L. 100–360, § 104(d)(6), struck out ''post-hospital'' before ''extended care services'' wherever appearing.

Subsec. (d)(3). Pub. L. 100–360, § 411(b)(4)(D), inserted before period at end '', except that such payment shall continue to be made in the period for those patients who are receiving extended care services at the time the hospital reaches the limit specified in this paragraph''.

Subsec. (f). Pub. L. 100–360, § 411(*l*)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), added Pub. L. 100–203, § 4201(d)(3), see 1987 Amendment note below.

Pub. L. 100–360, § 104(d)(6), struck out ''post-hospital'' before ''extended care services''.

1987—Subsec. (b)(1). Pub. L. 100–203, § 4005(b)(1), substituted ''100'' for ''50''.

Subsec. (d). Pub. L. 100–203, § 4005(b)(2), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f). Pub. L. 100–203, § 4201(d)(3), as added by Pub. L. 100–360, § 411(*l*)(1)(C), and Pub. L. 100–485, § 608(d)(27)(B), substituted ''section 1395i–3'' for ''section 1395x(j)(15)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to payments for services furnished during cost reporting periods beginning on or after Jan. 1, 2004, see section 405(a)(2) of Pub. L. 108–173, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title II, § 203(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–482, provided that: ''The amendments made by this section [amending this section and section 1395yy of this title] shall apply to cost reporting periods beginning on or after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 408(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–375, provided that: ''The amendments made by this section [amending this section] take effect on the date that is the first day after the expiration of the transition period under section 1888(e)(2)(E) of the Social Security Act (42 U.S.C. 1395yy(e)(2)(E)) for payments for covered skilled nursing facility services under the medicare program.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(j)(4) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after October 1, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 104(d)(6) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(b)(4)(D), (*l*)(1)(C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4005(b)(4) of Pub. L. 100–203 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply to agreements under section 1883 of the Social Security Act [this section] entered into after March 31, 1988.''

Amendment by section 4201(d)(3) of Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations to implement such amendment are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE

Section 904(d) of Pub. L. 96–499 provided that: ''The amendments made by this section [enacting this section and section 1396*l* of this title] shall become effective on the date on which final regulations, promulgated by the Secretary to implement such amendments, are first issued; and those regulations shall be issued not later than the first day of the sixth month following the month in which this Act is enacted [December 1980].''

HOLD HARMLESS FOR AMENDMENT BY PUB. L. 101–508

Section 4008(j)(2) of Pub. L. 101–508 provided that: ''If, as a result of the amendment made by paragraph (1) [amending this section], the reasonable cost of routine services furnished by a hospital during a calendar year (as determined under section 1883 of the Social Security Act [this section]) is less than the reasonable cost of such services determined under such section for the previous calendar year, the reasonable cost of such services furnished by the hospital during the calendar year under such section shall be equal to the reasonable cost determined under such section for the previous calendar year.''

SWING BEDS CERTIFIED PRIOR TO MAY 1, 1987

Section 4008(j)(3) of Pub. L. 101–508 provided that: ''Notwithstanding the requirement of section 1883(b)(1) of the Social Security Act [subsec. (b)(1) of this section] that the Secretary may not enter into an agreement under such section with a hospital that is not located in a rural area, any agreement entered into under such section on or before May 1, 1987, between the Secretary of Health and Human Services and a hospital located in an urban area shall remain in effect.''

REPORT OF HOSPITAL ADMISSIONS FOR EXTENDED CARE SERVICES

Section 4005(b)(3) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(4)(E), as added by Pub. L. 100–485, title VI, § 608(d)(18)(C), Oct. 13, 1988, 102 Stat. 2419, directed Secretary of Health and Human Services to report to Congress, not later than Feb. 1, 1989, concerning the proportion of admissions to hospitals for extended care services under this section which are denied or approved by a peer review organization, and recommendations for methods of encouraging hospitals that have a low occupancy rate, are eligible to enter (but have not entered) into an agreement under this section, and are located in areas with a need for additional providers of extended care services, to enter into such agreements.

REPORT ON HOSPITAL PROVIDERS OF EXTENDED CARE, SKILLED NURSING, AND INTERMEDIATE CARE SERVICES

Section 904(c) of Pub. L. 96–499 directed Secretary of Health and Human Services, within three years after Dec. 5, 1980, to submit to Congress a report evaluating programs established by the amendments made by this section (enacting this section and section 1396*l* of this title), including in such report an analysis of the extent and effect of the agreements under such programs on availability and effective and economical provision of long-term care services, whether such programs should be continued, the results of any demonstration projects conducted under such programs, and whether eligibility to participate in such programs should be extended to other hospitals, regardless of bed size or geographic location, where there is a shortage of long-term care beds.

§ 1395uu. Payments to promote closing or conversion of underutilized hospital facilities

(a) Transitional allowances; procedures applicable

Any hospital may file an application with the Secretary (in such form and including such data and information as the Secretary may require) for establishment of a transitional allowance under this subchapter with respect to the closing or conversion of an underutilized hospital facility. The Secretary also may establish procedures, consistent with this section, by which a hospital, before undergoing an actual closure or conversion of a hospital facility, can have a determination made as to whether or not it will be eligible for a transitional allowance under this section with respect to such closure or conversion.

(b) Allowable costs as transitional allowances; findings and determinations

If the Secretary finds, after consideration of an application under subsection (a) of this section, that—

(1) the hospital's closure or conversion—

(A) is formally initiated after September 30, 1981,

(B) is expected to benefit the program under this subchapter by (i) eliminating excess bed capacity, (ii) discontinuing an underutilized service for which there are adequate alternative sources, or (iii) substituting for the underutilized service some other service which is needed in the area, and

(C) is consistent with the findings of an appropriate health planning agency and with any applicable State program for reduction in the number of hospital beds in the State, and

(2) in the case of a complete closure of a hospital—

(A) the hospital is a private nonprofit hospital or a local governmental hospital, and

(B) the closure is not for replacement of the hospital,

the Secretary may include as an allowable cost in the hospital's reasonable cost (for the purpose of making payments to the hospital under this subchapter) an amount (in this section referred to as a ''transitional allowance''), as provided in subsection (c) of this section.

(c) Factors determinative of transitional allowance

(1) Each transitional allowance established shall be reasonably related to the prior or prospective use of the facility involved under this subchapter and shall recognize—

(A) in the case of a facility conversion or closure (other than a complete closure of a hospital)—

(i) in the case of a private nonprofit or local governmental hospital, that portion of the hospital's costs attributable to capital assets of the facility which have been taken into account in determining reasonable cost for purposes of determining the amount of payment to the hospital under this subchapter, and

(ii) in the case of any hospital, transitional operating cost increases related to the conversion or closure to the extent that such operating costs exceed amounts ordinarily reimbursable under this subchapter; and

(B) in the case of complete closure of a hospital, the outstanding portion of actual debt obligations previously recognized as reasonable for purposes of reimbursement under this subchapter, less any salvage value of the hospital.

(2) A transitional allowance shall be for a period (not to exceed 20 years) specified by the Secretary, except that, in the case of a complete closure described in paragraph (1)(B), the Secretary may provide for a lump-sum allowance where the Secretary determines that such a one-time allowance is more efficient and economical.

(3) A transitional allowance shall take effect on a date established by the Secretary, but not earlier than the date of completion of the closure or conversion concerned.

(4) A transitional allowance shall not be considered in applying the limits to costs recognized as reasonable pursuant to the third sentence of subparagraph (A) and subparagraph (L)(i) of section 1395x(v)(1) of this title, or in determining whether the reasonable cost exceeds the customary charges for a service for purposes of determining the amount to be paid to a provider pursuant to sections 1395f(b) and 1395*l*(a)(2) of this title.

(d) Hearing to review determination

A hospital dissatisfied with a determination of the Secretary on its application under this section may obtain an informal or formal hearing, at the discretion of the Secretary, by filing (in such form and within such time period as the Secretary establishes) a request for such a hearing. The Secretary shall make a final determination on such application within 30 days after the last day of such hearing.

(Aug. 14, 1935, ch. 531, title XVIII, § 1884, as added Pub. L. 97–35, title XXI, § 2101(a)[(1)], Aug. 13, 1981, 95 Stat. 785; amended Pub. L. 97–248, title I, § 128(a)(6), Sept. 3, 1982, 96 Stat. 366.)

AMENDMENTS

1982—Subsec. (d). Pub. L. 97–248 redesignated second subsec. (c), relating to hearing to review determination, as subsec. (d).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was enacted by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of this title.

EFFECTIVE DATE

Section 2101(c) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [enacting this section and amending section 1396b of this title] shall apply only to services furnished by a hospital during any accounting year beginning on or after October 1, 1981.''

PAYMENTS TO PROMOTE CLOSURE AND CONVERSION OF UNDERUTILIZED HOSPITAL FACILITIES

Pub. L. 98–369, div. B, title III, § 2353, July 18, 1984, 98 Stat. 1099, directed Secretary of Health and Human Services to carry out a study and report to Congress prior to Mar. 31, 1985, on modifications required in this section in order to conform the closure and conversion program authorized in that section to the prospective payment system under section 1395ww(d) of this title, so as to provide assistance to hospitals which may have particular problems in converting facilities (or parts thereof) from acute care to less intensive care or in closing facilities (or parts thereof), such report to include recommendations as to how, and whether, implementation of this section as modified may result in reductions in total hospital inpatient costs and total expenditures under this subchapter, and prohibited from implementing this section prior to Mar. 31, 1985.

ESTABLISHMENT AND EVALUATION OF TRANSITIONAL ALLOWANCES; REPORT AND RECOMMENDATIONS TO CONGRESS

Section 2101(b) of Pub. L. 97–35 prohibited Secretary of Health and Human Services from establishing under this section transitional allowances with respect to more than 50 hospitals prior to Jan. 1, 1984, and directed Secretary to evaluate effectiveness of program of transitional allowances established under this section and, not later than Jan. 1, 1983, report to Congress on such evaluation and include in such report such recommendations for such legislative changes as deemed appropriate.

§ 1395vv. Withholding payments from certain medicaid providers

(a) Adjustments by Secretary

The Secretary may adjust, in accordance with this section, payments under parts A and B to any institution which has in effect an agreement with the Secretary under section 1395cc of this title, and any person who has accepted payment on the basis of an assignment under section 1395u(b)(3)(B)(ii) of this title, where such institution or person—

(1) has (or previously had) in effect an agreement with a State agency to furnish medical care and services under a State plan approved under subchapter XIX of this chapter, and

(2) from which (or from whom) such State agency (A) has been unable to recover overpayments made under the State plan, or (B) has been unable to collect the information necessary to enable it to determine the amount (if any) of the overpayments made to such institution or person under the State plan.

(b) Implementing regulations; notice, opportunity to be heard, etc.

The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall—

(1) assure that the authority under this section is exercised only on behalf of a State agency which demonstrates to the Secretary's satisfaction that it has provided adequate notice of a determination or of a need for information, and an opportunity to appeal such determination or to provide such information,

(2) determine the amount of the payment to which the institution or person would otherwise be entitled under this subchapter which shall be treated as a setoff against overpayments under subchapter XIX of this chapter, and

(3) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under subchapter XIX of this chapter and to which the institution or person would otherwise be entitled under this subchapter.

(c) Payment to States of amounts recovered

Notwithstanding any other provision of this chapter, from the trust funds established under sections 1395i and 1395t of this title, as appropriate, the Secretary shall pay to the appropriate State agency amounts recovered under this section to offset the State agency's overpayment under subchapter XIX of this chapter. Such payments shall be accounted for by the State agency as recoveries of overpayments under the State plan.

(Aug. 14, 1935, ch. 531, title XVIII, § 1885, as added Pub. L. 97–35, title XXI, § 2104, Aug. 13, 1981, 95 Stat. 788.)

§ 1395ww. Payments to hospitals for inpatient hospital services

(a) Determination of costs for inpatient hospital services; limitations; exemptions; "operating costs of inpatient hospital services" defined

(1)(A)(i) The Secretary, in determining the amount of the payments that may be made under this subchapter with respect to operating costs of inpatient hospital services (as defined in paragraph (4)) shall not recognize as reasonable (in the efficient delivery of health services) costs for the provision of such services by a hospital for a cost reporting period to the extent such costs exceed the applicable percentage (as determined under clause (ii)) of the average of such costs for all hospitals in the same grouping as such hospital for comparable time periods.

(ii) For purposes of clause (i), the applicable percentage for hospital cost reporting periods beginning—

(I) on or after October 1, 1982, and before October 1, 1983, is 120 percent;

(II) on or after October 1, 1983, and before October 1, 1984, is 115 percent; and

(III) on or after October 1, 1984, is 110 percent.

(B)(i) For purposes of subparagraph (A) the Secretary shall establish case mix indexes for all short-term hospitals, and shall set limits for each hospital based upon the general mix of types of medical cases with respect to which such hospital provides services for which payment may be made under this subchapter.

(ii) The Secretary shall set such limits for a cost reporting period of a hospital—

(I) by updating available data for a previous period to the immediate preceding cost reporting period by the estimated average rate of change of hospital costs industry-wide, and

(II) by projecting for the cost reporting period by the applicable percentage increase (as defined in subsection (b)(3)(B) of this section).

(C) The limitation established under subparagraph (A) for any hospital shall in no event be lower than the allowable operating costs of inpatient hospital services (as defined in paragraph (4)) recognized under this subchapter for such hospital for such hospital's last cost reporting period prior to the hospital's first cost reporting period for which this section is in effect.

(D) Subparagraph (A) shall not apply to cost reporting periods beginning on or after October 1, 1983.

(2) The Secretary shall provide for such exemptions from, and exceptions and adjustments to, the limitation established under paragraph (1)(A) as he deems appropriate, including those which he deems necessary to take into account—

(A) the special needs of sole community hospitals, of new hospitals, of risk based health maintenance organizations, and of hospitals which provide atypical services or essential community services, and to take into account extraordinary circumstances beyond the hospital's control, medical and paramedical education costs, significantly fluctuating population in the service area of the hospital, and unusual labor costs,

(B) the special needs of psychiatric hospitals and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this subchapter, and

(C) a decrease in the inpatient hospital services that a hospital provides and that are cus-

tomarily provided directly by similar hospitals which results in a significant distortion in the operating costs of inpatient hospital services.

(3) The limitation established under paragraph (1)(A) shall not apply with respect to any hospital which—

(A) is located outside of a standard metropolitan statistical area, and

(B)(i) has less than 50 beds, and

(ii) was in operation and had less than 50 beds on September 3, 1982.

(4) For purposes of this section, the term ''operating costs of inpatient hospital services'' includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis (as determined by the Secretary), and includes the costs of all services for which payment may be made under this subchapter that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to the patient during the 3 days (or, in the case of a hospital that is not a subsection (d) hospital, during the 1 day) immediately preceding the date of the patient's admission if such services are diagnostic services (including clinical diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary). Such term does not include costs of approved educational activities, a return on equity capital, other capital-related costs (as defined by the Secretary for periods before October 1, 1987), or costs with respect to administering blood clotting factors to individuals with hemophilia.

(b) Computation of payment; definitions; exemptions; adjustments

(1) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, if the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a hospital (other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section and other than a rehabilitation facility described in subsection (j)(1) of this section) for a cost reporting period subject to this paragraph—

(A) are less than or equal to the target amount (as defined in paragraph (3)) for that hospital for that period, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to the amount of such operating costs, plus—

(i) 15 percent of the amount by which the target amount exceeds the amount of the operating costs, or

(ii) 2 percent of the target amount,

whichever is less;

(B) are greater than the target amount but do not exceed 110 percent of the target amount, the amount of the payment with respect to those operating costs payable under part A of this subchapter on a per discharge basis shall equal the target amount; or

(C) are greater than 110 percent of the target amount, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to (i) the target amount, plus (ii) in the case of cost reporting periods beginning on or after October 1, 1991, an additional amount equal to 50 percent of the amount by which the operating costs exceed 110 percent of the target amount (except that such additional amount may not exceed 10 percent of the target amount) after any exceptions or adjustments are made to such target amount for the cost reporting period;

plus the amount, if any, provided under paragraph (2), except that in no case may the amount payable under this subchapter (other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section) with respect to operating costs of inpatient hospital services exceed the maximum amount payable with respect to such costs pursuant to subsection (a) of this section.

(2)(A) Except as provided in subparagraph (E), in addition to the payment computed under paragraph (1), in the case of an eligible hospital (described in subparagraph (B)) for a cost reporting period beginning on or after October 1, 1997, the amount of payment on a per discharge basis under paragraph (1) shall be increased by the lesser of—

(i) 50 percent of the amount by which the operating costs are less than the expected costs (as defined in subparagraph (D)) for the period; or

(ii) 1 percent of the target amount for the period.

(B) For purposes of this paragraph, an ''eligible hospital'' means with respect to a cost reporting period, a hospital—

(i) that has received payments under this subsection for at least 3 full cost reporting periods before that cost reporting period, and

(ii) whose operating costs for the period are less than the least of its target amount, its trended costs (as defined in subparagraph (C)), or its expected costs (as defined in subparagraph (D)) for the period.

(C) For purposes of subparagraph (B)(ii), the term ''trended costs'' means for a hospital cost reporting period ending in a fiscal year—

(i) in the case of a hospital for which its cost reporting period ending in fiscal year 1996 was its third or subsequent full cost reporting period for which it receives payments under this subsection, the lesser of the operating costs or target amount for that hospital for its cost reporting period ending in fiscal year 1996, or

(ii) in the case of any other hospital, the operating costs for that hospital for its third full cost reporting period for which it receives payments under this subsection,

increased (in a compounded manner) for each succeeding fiscal year (through the fiscal year involved) by the market basket percentage increase for the fiscal year.

(D) For purposes of this paragraph, the term ''expected costs'', with respect to the cost reporting period ending in a fiscal year, means the lesser of the operating costs of inpatient hos-

pital services or target amount per discharge for the previous cost reporting period updated by the market basket percentage increase (as defined in paragraph (3)(B)(iii)) for the fiscal year.

(E)(i) In the case of an eligible hospital that is a hospital or unit that is within a class of hospital described in clause (ii) with a 12-month cost reporting period beginning before November 29, 1999, in determining the amount of the increase under subparagraph (A), the Secretary shall substitute for the percentage of the target amount applicable under subparagraph (A)(ii)—

(I) for a cost reporting period beginning on or after October 1, 2000, and before September 30, 2001, 1.5 percent; and

(II) for a cost reporting period beginning on or after October 1, 2001, and before September 30, 2002, 2 percent.

(ii) For purposes of clause (i), each of the following shall be treated as a separate class of hospital:

(I) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(II) Hospitals described in clause (iv) of such subsection.

(3)(A) Except as provided in subparagraph (C) and succeeding subparagraphs, and in paragraph (7)(A)(ii), for purposes of this subsection, the term ''target amount'' means, with respect to a hospital for a particular 12-month cost reporting period—

(i) in the case of the first such reporting period for which this subsection is in effect, the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for such hospital for the preceding 12-month cost reporting period, and

(ii) in the case of a later reporting period, the target amount for the preceding 12-month cost reporting period,

increased by the applicable percentage increase under subparagraph (B) for that particular cost reporting period.

(B)(i) For purposes of subsection (d) of this section and subsection (j) of this section for discharges occurring during a fiscal year, the ''applicable percentage increase'' shall be—

(I) for fiscal year 1986, ½ percent,

(II) for fiscal year 1987, 1.15 percent,

(III) for fiscal year 1988, 3.0 percent for hospitals located in a rural area, 1.5 percent for hospitals located in a large urban area (as defined in subsection (d)(2)(D) of this section), and 1.0 percent for hospitals located in other urban areas,

(IV) for fiscal year 1989, the market basket percentage increase minus 1.5 percent for hospitals located in a rural area, the market basket percentage increase minus 2.0 percentage points for hospitals located in a large urban area, and the market basket percentage increase minus 2.5 percentage points for hospitals located in other urban areas,

(V) for fiscal year 1990, the market basket percentage increase plus 4.22 percentage points for hospitals located in a rural area, the market basket percentage increase plus 0.12 percentage points for hospitals located in a large urban area, and the market basket percentage increase minus 0.53 percentage points for hospitals located in other urban areas,

(VI) for fiscal year 1991, the market basket percentage increase minus 2.0 percentage points for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.7 percentage point for hospitals located in a rural area,

(VII) for fiscal year 1992, the market basket percentage increase minus 1.6 percentage points for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.6 percentage point for hospitals located in a rural area,

(VIII) for fiscal year 1993, the market basket percentage increase minus 1.55 percentage point for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.55[1] for hospitals located in a rural area,

(IX) for fiscal year 1994, the market basket percentage increase minus 2.5 percentage points for hospitals located in a large urban or other urban area, and the market basket percentage increase minus 1.0 percentage point for hospitals located in a rural area,

(X) for fiscal year 1995, the market basket percentage increase minus 2.5 percentage points for hospitals located in a large urban or other urban area, and such percentage increase for hospitals located in a rural area as will provide for the average standardized amount determined under subsection (d)(3)(A) of this section for hospitals located in a rural area being equal to such average standardized amount for hospitals located in an urban area (other than a large urban area),

(XI) for fiscal year 1996, the market basket percentage increase minus 2.0 percentage points for hospitals in all areas,

(XII) for fiscal year 1997, the market basket percentage increase minus 0.5 percentage point for hospitals in all areas,

(XIII) for fiscal year 1998, 0 percent,

(XIV) for fiscal year 1999, the market basket percentage increase minus 1.9 percentage points for hospitals in all areas,

(XV) for fiscal year 2000, the market basket percentage increase minus 1.8 percentage points for hospitals in all areas,

(XVI) for fiscal year 2001, the market basket percentage increase for hospitals in all areas,

(XVII) for fiscal year 2002, the market basket percentage increase minus 0.55 percentage points for hospitals in all areas,

(XVIII) for fiscal year 2003, the market basket percentage increase minus 0.55 percentage points for hospitals in all areas,

(XIX) for each of fiscal years 2004 through 2006, subject to clause (vii), the market basket percentage increase for hospitals in all areas;[2] and

(XX) for each subsequent fiscal year, subject to clause (viii), the market basket percentage increase for hospitals in all areas.

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[1] So in original. Probably should be followed by ''percentage point''.

[2] So in original. The semicolon probably should be a comma.

(ii) For purposes of subparagraphs (A) and (E), the ''applicable percentage increase'' for 12-month cost reporting periods beginning during—

(I) fiscal year 1986, is 0.5 percent,

(II) fiscal year 1987, is 1.15 percent,

(III) fiscal year 1988, is the market basket percentage increase minus 2.0 percentage points,

(IV) a subsequent fiscal year ending on or before September 30, 1993, is the market basket percentage increase,

(V) fiscal years 1994 through 1997, is the market basket percentage increase minus the applicable reduction (as defined in clause (v)(II)), or in the case of a hospital for a fiscal year for which the hospital's update adjustment percentage (as defined in clause (v)(I)) is at least 10 percent, the market basket percentage increase,

(VI) for fiscal year 1998, is 0 percent,

(VII) for fiscal years 1999 through 2002, is the applicable update factor specified under clause (vi) for the fiscal year, and

(VIII) subsequent fiscal years is the market basket percentage increase.

(iii) For purposes of this subparagraph, the term ''market basket percentage increase'' means, with respect to cost reporting periods and discharges occurring in a fiscal year, the percentage, estimated by the Secretary before the beginning of the period or fiscal year, by which the cost of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for the period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.

(iv) For purposes of subparagraphs (C) and (D), the ''applicable percentage increase'' is—

(I) for 12-month cost reporting periods beginning during fiscal years 1986 through 1993, the applicable percentage increase specified in clause (ii),

(II) for fiscal year 1994, the market basket percentage increase minus 2.3 percentage points (adjusted to exclude any portion of a cost reporting period beginning during fiscal year 1993 for which the applicable percentage increase is determined under subparagraph (I)),

(III) for fiscal year 1995, the market basket percentage increase minus 2.2 percentage points, and

(IV) for fiscal year 1996 and each subsequent fiscal year, the applicable percentage increase under clause (i).

(v) For purposes of clause (ii)(V)—

(I) a hospital's ''update adjustment percentage'' for a fiscal year is the percentage by which the hospital's allowable operating costs of inpatient hospital services recognized under this subchapter for the cost reporting period beginning in fiscal year 1990 exceeds the hospital's target amount (as determined under subparagraph (A)) for such cost reporting period, increased for each fiscal year (beginning with fiscal year 1994) by the sum of any of the hospital's applicable reductions under subclause (V) for previous fiscal years; and

(II) the ''applicable reduction'' with respect to a hospital for a fiscal year is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for the fiscal year.

(vi) For purposes of clause (ii)(VII) for a fiscal year, if a hospital's allowable operating costs of inpatient hospital services recognized under this subchapter for the most recent cost reporting period for which information is available—

(I) is equal to, or exceeds, 110 percent of the hospital's target amount (as determined under subparagraph (A)) for such cost reporting period, the applicable update factor specified under this clause is the market basket percentage;

(II) exceeds 100 percent, but is less than 110 percent, of such target amount for the hospital, the applicable update factor specified under this clause is 0 percent or, if greater, the market basket percentage minus 0.25 percentage points for each percentage point by which such allowable operating costs (expressed as a percentage of such target amount) is less than 110 percent of such target amount;

(III) is equal to, or less than 100 percent, but exceeds ⅔ of such target amount for the hospital, the applicable update factor specified under this clause is 0 percent or, if greater, the market basket percentage minus 2.5 percentage points; or

(IV) does not exceed ⅔ of such target amount for the hospital, the applicable update factor specified under this clause is 0 percent.

(vii)(I) For purposes of clause (i)(XIX) for fiscal years 2005 and 2006, in a case of a subsection (d) hospital that does not submit data to the Secretary in accordance with subclause (II) with respect to such a fiscal year, the applicable percentage increase under such clause for such fiscal year shall be reduced by 0.4 percentage points. Such reduction shall apply only with respect to the fiscal year involved, and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i)(XIX) for a subsequent fiscal year.

(II) For fiscal years 2005 and 2006, each subsection (d) hospital shall submit to the Secretary quality data (for a set of 10 indicators established by the Secretary as of November 1, 2003) that relate to the quality of care furnished by the hospital in inpatient settings in a form and manner, and at a time, specified by the Secretary for purposes of this clause, but with respect to fiscal year 2005, the Secretary shall provide for a 30-day grace period for the submission of data by a hospital.

(viii)(I) For purposes of clause (i) for fiscal year 2007 and each subsequent fiscal year, in the case of a subsection (d) hospital that does not submit, to the Secretary in accordance with this clause, data required to be submitted on measures selected under this clause with respect to

such a fiscal year, the applicable percentage increase under clause (i) for such fiscal year shall be reduced by 2.0 percentage points. Such reduction shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i) for a subsequent fiscal year, and the Secretary and the Medicare Payment Advisory Commission shall carry out the requirements under section 5001(b) of the Deficit Reduction Act of 2005.

(II) Each subsection (d) hospital shall submit data on measures selected under this clause to the Secretary in a form and manner, and at a time, specified by the Secretary for purposes of this clause.

(III) The Secretary shall expand, beyond the measures specified under clause (vii)(II) and consistent with the succeeding subclauses, the set of measures that the Secretary determines to be appropriate for the measurement of the quality of care furnished by hospitals in inpatient settings.

(IV) Effective for payments beginning with fiscal year 2007, in expanding the number of measures under subclause (III), the Secretary shall begin to adopt the baseline set of performance measures as set forth in the November 2005 report by the Institute of Medicine of the National Academy of Sciences under section 238(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(V) Effective for payments beginning with fiscal year 2008, the Secretary shall add other measures that reflect consensus among affected parties and, to the extent feasible and practicable, shall include measures set forth by one or more national consensus building entities.

(VI) For purposes of this clause and clause (vii), the Secretary may replace any measures or indicators in appropriate cases, such as where all hospitals are effectively in compliance or the measures or indicators have been subsequently shown not to represent the best clinical practice.

(VII) The Secretary shall establish procedures for making data submitted under this clause available to the public. Such procedures shall ensure that a hospital has the opportunity to review the data that are to be made public with respect to the hospital prior to such data being made public. The Secretary shall report quality measures of process, structure, outcome, patients' perspectives on care, efficiency, and costs of care that relate to services furnished in inpatient settings in hospitals on the Internet website of the Centers for Medicare & Medicaid Services.

(C) In the case of a hospital that is a sole community hospital (as defined in subsection (d)(5)(D)(iii) of this section), subject to subparagraph (I), the term ''target amount'' means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the ''base cost reporting period'') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period,

(ii) with respect to a later cost reporting period beginning before fiscal year 1994, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(iv) for discharges occurring in the fiscal year in which that later cost reporting period begins,

(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv), or

(iv) with respect to discharges occurring in fiscal year 1995 and each subsequent fiscal year, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(D) For cost reporting periods ending on or before September 30, 1994, and for discharges occurring on or after October 1, 1997, and before October 1, 2011, in the case of a hospital that is a medicare-dependent, small rural hospital (as defined in subsection (d)(5)(G) of this section), subject to subparagraph (K), the term ''target amount'' means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the ''base cost reporting period'') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period, or

(ii) with respect to a later cost reporting period beginning before fiscal year 1994, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(iv) for discharges occurring in the fiscal year in which that later cost reporting period begins,

(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv), and

(iv) with respect to discharges occurring during fiscal year 1998 through fiscal year 2011, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(E) In the case of a hospital described in clause (v) of subsection (d)(1)(B) of this section, the term ''target amount'' means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the ''base cost reporting period'') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the sum of the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period, or

(ii) with respect to a later cost reporting period, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(ii) for that later cost reporting period.

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(F)(i) In the case of a hospital (or unit described in the matter following clause (v) of subsection (d)(1)(B) of this section) that received payment under this subsection for inpatient hospital services furnished during cost reporting periods beginning before October 1, 1990, that is within a class of hospital described in clause (iii), and that elects (in a form and manner determined by the Secretary) this subparagraph to apply to the hospital, the target amount for the hospital's 12-month cost reporting period beginning during fiscal year 1998 is equal to the average described in clause (ii).

(ii) The average described in this clause for a hospital or unit shall be determined by the Secretary as follows:

(I) The Secretary shall determine the allowable operating costs for inpatient hospital services for the hospital or unit for each of the 5 cost reporting periods for which the Secretary has the most recent settled cost reports as of August 5, 1997.

(II) The Secretary shall increase the amount determined under subclause (I) for each cost reporting period by the applicable percentage increase under subparagraph (B)(ii) for each subsequent cost reporting period up to the cost reporting period described in clause (i).

(III) The Secretary shall identify among such 5 cost reporting periods the cost reporting periods for which the amount determined under subclause (II) is the highest, and the lowest.

(IV) The Secretary shall compute the averages of the amounts determined under subclause (II) for the 3 cost reporting periods not identified under subclause (III).

(iii) For purposes of this subparagraph, each of the following shall be treated as a separate class of hospital:

(I) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(II) Hospitals described in clause (ii) of such subsection and rehabilitation units described in the matter following clause (v) of such subsection.

(III) Hospitals described in clause (iii) of such subsection.

(IV) Hospitals described in clause (iv) of such subsection.

(V) Hospitals described in clause (v) of such subsection.

(G)(i) In the case of a qualified long-term care hospital (as defined in clause (ii)) that elects (in a form and manner determined by the Secretary) this subparagraph to apply to the hospital, the target amount for the hospital's 12-month cost reporting period beginning during fiscal year 1998 is equal to the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period beginning during fiscal year 1996, increased by the applicable percentage increase for the cost reporting period beginning during fiscal year 1997.

(ii) In clause (i), a ''qualified long-term care hospital'' means, with respect to a cost reporting period, a hospital described in clause (iv) of subsection (d)(1)(B) of this section during each of the 2 cost reporting periods for which the Secretary has the most recent settled cost reports as of August 5, 1997, for each of which—

(I) the hospital's allowable operating costs of inpatient hospital services recognized under this subchapter exceeded 115 percent of the hospital's target amount, and

(II) the hospital would have a disproportionate patient percentage of at least 70 percent (as determined by the Secretary under subsection (d)(5)(F)(vi) of this section) if the hospital were a subsection (d) hospital.

(H)(i) In the case of a hospital or unit that is within a class of hospital described in clause (iv), for a cost reporting period beginning during fiscal years 1998 through 2002, the target amount for such a hospital or unit may not exceed the amount as updated up to or for such cost reporting period under clause (ii).

(ii)(I) In the case of a hospital or unit that is within a class of hospital described in clause (iv), the Secretary shall estimate the 75th percentile of the target amounts for such hospitals within such class for cost reporting periods ending during fiscal year 1996, as adjusted under clause (iii).

(II) The Secretary shall update the amount determined under subclause (I), for each cost reporting period after the cost reporting period described in such subclause and up to the first cost reporting period beginning on or after October 1, 1997, by a factor equal to the market basket percentage increase.

(III) For cost reporting periods beginning during each of fiscal years 1999 through 2002, subject to subparagraph (J), the Secretary shall update such amount by a factor equal to the market basket percentage increase.

(iii) In applying clause (ii)(I) in the case of a hospital or unit, the Secretary shall provide for an appropriate adjustment to the labor-related portion of the amount determined under such subparagraph to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital.

(iv) For purposes of this subparagraph, each of the following shall be treated as a separate class of hospital:

(I) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(II) Hospitals described in clause (ii) of such subsection and rehabilitation units described in the matter following clause (v) of such subsection.

(III) Hospitals described in clause (iv) of such subsection.

(I)(i) For cost reporting periods beginning on or after October 1, 2000, in the case of a sole community hospital there shall be substituted for the amount otherwise determined under subsection (d)(5)(D)(i) of this section, if such substitution results in a greater amount of payment under this section for the hospital—

(I) with respect to discharges occurring in fiscal year 2001, 75 percent of the amount otherwise applicable to the hospital under subsection (d)(5)(D)(i) of this section (referred to in this clause as the ''subsection (d)(5)(D)(i) amount'') and 25 percent of the rebased target amount (as defined in clause (ii));

(II) with respect to discharges occurring in fiscal year 2002, 50 percent of the subsection (d)(5)(D)(i) amount and 50 percent of the rebased target amount;

(III) with respect to discharges occurring in fiscal year 2003, 25 percent of the subsection (d)(5)(D)(i) amount and 75 percent of the rebased target amount; and

(IV) with respect to discharges occurring after fiscal year 2003, 100 percent of the rebased target amount.

(ii) For purposes of this subparagraph, the ''rebased target amount'' has the meaning given the term ''target amount'' in subparagraph (C) except that—

(I) there shall be substituted for the base cost reporting period the 12-month cost reporting period beginning during fiscal year 1996;

(II) any reference in subparagraph (C)(i) to the ''first cost reporting period'' described in such subparagraph is deemed a reference to the first cost reporting period beginning on or after October 1, 2000; and

(III) applicable increase percentage shall only be applied under subparagraph (C)(iv) for discharges occurring in fiscal years beginning with fiscal year 2002.

(iii) In no case shall a hospital be denied treatment as a sole community hospital or payment (on the basis of a target rate as such as a hospital) because data are unavailable for any cost reporting period due to changes in ownership, changes in fiscal intermediaries, or other extraordinary circumstances, so long as data for at least one applicable base cost reporting period is available.

(J) For cost reporting periods beginning during fiscal year 2001, for a hospital described in subsection (d)(1)(B)(iv) of this section—

(i) the limiting or cap amount otherwise determined under subparagraph (H) shall be increased by 2 percent; and

(ii) the target amount otherwise determined under subparagraph (A) shall be increased by 25 percent (subject to the limiting or cap amount determined under subparagraph (H), as increased by clause (i)).

(K)(i) With respect to discharges occurring on or after October 1, 2006, in the case of a medicare-dependent, small rural hospital, for purposes of applying subparagraph (D)—

(I) there shall be substituted for the base cost reporting period described in subparagraph (D)(i) the 12-month cost reporting period beginning during fiscal year 2002; and

(II) any reference in such subparagraph to the ''first cost reporting period'' described in such subparagraph is deemed a reference to the first cost reporting period beginning on or after October 1, 2006.

(ii) This subparagraph shall only apply to a hospital if the substitution described in clause (i)(I) results in an increase in the target amount under subparagraph (D) for the hospital.

(4)(A)(i) The Secretary shall provide for an exception and adjustment to (and in the case of a hospital described in subsection (d)(1)(B)(iii) of this section, may provide an exemption from) the method under this subsection for determining the amount of payment to a hospital where events beyond the hospital's control or extraordinary circumstances, including changes in the case mix of such hospital, create a distortion in the increase in costs for a cost reporting period (including any distortion in the costs for the base period against which such increase is measured). The Secretary may provide for such other exemptions from, and exceptions and adjustments to, such method as the Secretary deems appropriate, including the assignment of a new base period which is more representative, as determined by the Secretary, of the reasonable and necessary cost of inpatient services and including those which he deems necessary to take into account a decrease in the inpatient hospital services that a hospital provides and that are customarily provided directly by similar hospitals which results in a significant distortion in the operating costs of inpatient hospital services. The Secretary shall announce a decision on any request for an exemption, exception, or adjustment under this paragraph not later than 180 days after receiving a completed application

from the intermediary for such exemption, exception, or adjustment, and shall include in such decision a detailed explanation of the grounds on which such request was approved or denied.

(ii) The payment reductions under paragraph (3)(B)(ii)(V) shall not be considered by the Secretary in making adjustments pursuant to clause (i). In making such reductions, the Secretary shall treat the applicable update factor described in paragraph (3)(B)(vi) for a fiscal year as being equal to the market basket percentage for that year.

(B) In determining under subparagraph (A) whether to assign a new base period which is more representative of the reasonable and necessary cost to a hospital of providing inpatient services, the Secretary shall take into consideration—

(i) changes in applicable technologies and medical practices, or differences in the severity of illness among patients, that increase the hospital's costs;

(ii) whether increases in wages and wage-related costs for hospitals located in the geographic area in which the hospital is located exceed the average of the increases in such costs paid by hospitals in the United States; and

(iii) such other factors as the Secretary considers appropriate in determining increases in the hospital's costs of providing inpatient services.

(C) Paragraph (1) shall not apply to payment of hospitals which is otherwise determined under paragraph (3) of section 1395f(b) of this title.

(5) In the case of any hospital having any cost reporting period of other than a 12-month period, the Secretary shall determine the 12-month period which shall be used for purposes of this section.

(6) In the case of any hospital which becomes subject to the taxes under section 3111 of the Internal Revenue Code of 1986, with respect to any or all of its employees, for part or all of a cost reporting period, and was not subject to such taxes with respect to any or all of its employees for all or part of the 12-month base cost reporting period referred to in subsection (b)(3)(A)(i) of this section, the Secretary shall provide for an adjustment by increasing the base period amount described in such subsection for such hospital by an amount equal to the amount of such taxes which would have been paid or accrued by such hospital for such base period if such hospital had been subject to such taxes for all of such base period with respect to all its employees, minus the amount of any such taxes actually paid or accrued for such base period.

(7)(A) Notwithstanding paragraph (1), in the case of a hospital or unit that is within a class of hospital described in subparagraph (B) which first receives payments under this section on or after October 1, 1997—

(i) for each of the first 2 cost reporting periods for which the hospital has a settled cost report, the amount of the payment with respect to operating costs described in paragraph (1) under part A of this subchapter on a per discharge or per admission basis (as the case may be) is equal to the lesser of—

(I) the amount of operating costs for such respective period, or

(II) 110 percent of the national median (as estimated by the Secretary) of the target amount for hospitals in the same class as the hospital for cost reporting periods ending during fiscal year 1996, updated by the hospital market basket increase percentage to the fiscal year in which the hospital first received payments under this section, as adjusted under subparagraph (C); and

(ii) for purposes of computing the target amount for the subsequent cost reporting period, the target amount for the preceding cost reporting period is equal to the amount determined under clause (i) for such preceding period.

(B) For purposes of this paragraph, each of the following shall be treated as a separate class of hospital:

(i) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(ii) Hospitals described in clause (ii) of such subsection and rehabilitation units described in the matter following clause (v) of such subsection.

(iii) Hospitals described in clause (iv) of such subsection.

(C) In applying subparagraph (A)(i)(II) in the case of a hospital or unit, the Secretary shall provide for an appropriate adjustment to the labor-related portion of the amount determined under such subparagraph to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital.

(c) Payment in accordance with State hospital reimbursement control system; amount of payment; discontinuance of payments

(1) The Secretary may provide, in his discretion, that payment with respect to services provided by a hospital in a State may be made in accordance with a hospital reimbursement control system in a State, rather than in accordance with the other provisions of this title, if the chief executive officer of the State requests such treatment and if—

(A) the Secretary determines that the system, if approved under this subsection, will apply (i) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the State and (ii) to the review of at least 75 percent of all revenues or expenses in the State for inpatient hospital services and of revenues or expenses for inpatient hospital services provided under the State's plan approved under subchapter XIX of this chapter;

(B) the Secretary has been provided satisfactory assurances as to the equitable treatment under the system of all entities (including Federal and State programs) that pay hospitals for inpatient hospital services, of hospital employees, and of hospital patients;

(C) the Secretary has been provided satisfactory assurances that under the system, over 36-month periods (the first such period begin-

ning with the first month in which this subsection applies to that system in the State), the amount of payments made under this subchapter under such system will not exceed the amount of payments which would otherwise have been made under this subchapter not using such system;

(D) the Secretary determines that the system will not preclude an eligible organization (as defined in section 1395mm(b) of this title) from negotiating directly with hospitals with respect to the organization's rate of payment for inpatient hospital services; and

(E) the Secretary determines that the system requires hospitals to meet the requirement of section 1395cc(a)(1)(G) of this title and the system provides for the exclusion of certain costs in accordance with section 1395y(a)(14) of this title (except for such waivers thereof as the Secretary provides by regulation).

The Secretary cannot deny the application of a State under this subsection on the ground that the State's hospital reimbursement control system is based on a payment methodology other than on the basis of a diagnosis-related group or on the ground that the amount of payments made under this subchapter under such system must be less than the amount of payments which would otherwise have been made under this subchapter not using such system. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining payment amounts at no more than a specified percentage increase above the payment amounts in a base period, the State has the option of applying such test (for inpatient hospital services under part A of this subchapter) on an aggregate payment basis or on the basis of the amount of payment per inpatient discharge or admission. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining aggregate payment amounts below a national average percentage increase in total payments under part A of this subchapter for inpatient hospital services, the Secretary cannot deny the application of a State under this subsection on the ground that the State's rate of increase in such payments for such services must be less than such national average rate of increase.

(2) In determining under paragraph (1)(C) the amount of payment which would otherwise have been made under this subchapter for a State, the Secretary may provide for appropriate adjustment of such amount to take into account previous reductions effected in the amount of payments made under this subchapter in the State due to the operation of the hospital reimbursement control system in the State if the system has resulted in an aggregate rate of increase in operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) under this subchapter for hospitals in the State which is less than the aggregate rate of increase in such costs under this subchapter for hospitals in the United States.

(3) The Secretary shall discontinue payments under a system described in paragraph (1) if the Secretary—

(A) determines that the system no longer meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5), or

(B) has reason to believe that the assurances described in subparagraph (B) or (C) of paragraph (1) (or, if applicable, in paragraph (5)) are not being (or will not be) met.

(4) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system, and

(B) with respect to that system a waiver of certain requirements of this subchapter has been approved on or before (and which is in effect as of) April 20, 1983, pursuant to section 1395b–1(a) of this title or section 222(a) of the Social Security Amendments of 1972.

With respect to a State system described in this paragraph, the Secretary shall judge the effectiveness of such system on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under this subchapter, as compared to the national rate of increase or inflation for such payments, with the State retaining the option to have the test applied on the basis of the aggregate payments under the State system as compared to aggregate payments which would have been made under the national system since October 1, 1984, to the most recent date for which annual data are available.

(5) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system;

(B) the Secretary determines that the system—

(i) is operated directly by the State or by an entity designated pursuant to State law,

(ii) provides for payment of hospitals covered under the system under a methodology (which sets forth exceptions and adjustments, as well as any method for changes in the methodology) by which rates or amounts to be paid for hospital services during a specified period are established under the system prior to the defined rate period, and

(iii) hospitals covered under the system will make such reports (in lieu of cost and other reports, identified by the Secretary, otherwise required under this subchapter) as the Secretary may require in order to properly monitor assurances provided under this subsection;

(C) the State has provided the Secretary with satisfactory assurances that operation of the system will not result in any change in hospital admission practices which result in—

(i) a significant reduction in the proportion of patients (receiving hospital services covered under the system) who have no third-party coverage and who are unable to pay for hospital services,

(ii) a significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is (or is likely to be) less than the an-

ticipated charges for or costs of such services,

(iii) the refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital, or

(iv) the refusal to provide emergency services to any person who is in need of emergency services if the hospital provides such services;

(D) any change by the State in the system which has the effect of materially reducing payments to hospitals can only take effect upon 60 days notice to the Secretary and to the hospitals the payment to which is likely to be materially affected by the change; and

(E) the State has provided the Secretary with satisfactory assurances that in the development of the system the State has consulted with local governmental officials concerning the impact of the system on public hospitals.

The Secretary shall respond to requests of States under this paragraph within 60 days of the date the request is submitted to the Secretary.

(6) If the Secretary determines that the assurances described in paragraph (1)(C) have not been met with respect to any 36-month period, the Secretary may reduce payments under this subchapter to hospitals under the system in an amount equal to the amount by which the payment under this subchapter under such system for such period exceeded the amount of payments which would otherwise have been made under this subchapter not using such system.

(7) In the case of a State which made a request under paragraph (5) before December 31, 1984, for the approval of a State hospital reimbursement control system and which request was approved—

(A) in applying paragraphs (1)(C) and (6), a reference to a ''36-month period'' is deemed a reference to a ''48-month period'', and

(B) in order to allow the State the opportunity to provide the assurances described in paragraph (1)(C) for a 48-month period, the Secretary may not discontinue payments under the system, under the authority of paragraph (3)(A) because the Secretary has reason to believe that such assurances are not being (or will not be) met, before July 1, 1986.

(d) Inpatient hospital service payments on basis of prospective rates; Medicare Geographical Classification Review Board

(1)(A) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a subsection (d) hospital (as defined in subparagraph (B)) for inpatient hospital discharges in a cost reporting period or in a fiscal year—

(i) beginning on or after October 1, 1983, and before October 1, 1984, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the regional adjusted DRG prospective payment rate determined under paragraph (2) for such discharges;

(ii) beginning on or after October 1, 1984, and before October 1, 1987, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the applicable combined adjusted DRG prospective payment rate determined under subparagraph (D) for such discharges; or

(iii) beginning on or after April 1, 1988, is equal to—

(I) the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, or

(II) for discharges occurring during a fiscal year ending on or before September 30, 1996, the sum of 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges and 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph, but only if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same large urban or other area (or, for discharges occurring during a fiscal year ending on or before September 30, 1994, the same large urban or other area) as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area for discharges occurring during such fiscal year.

(B) As used in this section, the term ''subsection (d) hospital'' means a hospital located in one of the fifty States or the District of Columbia other than—

(i) a psychiatric hospital (as defined in section 1395x(f) of this title),

(ii) a rehabilitation hospital (as defined by the Secretary),

(iii) a hospital whose inpatients are predominantly individuals under 18 years of age,

(iv)(I) a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days, or

(II) a hospital that first received payment under this subsection in 1986 which has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and that has 80 percent or more of its annual medicare inpatient discharges with a principal diagnosis that reflects a finding of neoplastic disease in the 12-month cost reporting period ending in fiscal year 1997, or

(v)(I) a hospital that the Secretary has classified, at any time on or before December 31,

1990,[3] (or, in the case of a hospital that, as of December 19, 1989, is located in a State operating a demonstration project under section 1395f(b) of this title, on or before December 31, 1991) for purposes of applying exceptions and adjustments to payment amounts under this subsection, as a hospital involved extensively in treatment for or research on cancer,

(II) a hospital that was recognized as a comprehensive cancer center or clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of April 20, 1983, that is located in a State which, as of December 19, 1989, was not operating a demonstration project under section 1395f(b) of this title, that applied and was denied, on or before December 31, 1990, for classification as a hospital involved extensively in treatment for or research on cancer under this clause (as in effect on the day before August 5, 1997), that as of August 5, 1997, is licensed for less than 50 acute care beds, and that demonstrates for the 4-year period ending on December 31, 1996, that at least 50 percent of its total discharges have a principal finding of neoplastic disease, as defined in subparagraph (E), or

(III) a hospital that was recognized as a clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of February 18, 1998, that has never been reimbursed for inpatient hospital services pursuant to a reimbursement system under a demonstration project under section 1395f(b) of this title, that is a freestanding facility organized primarily for treatment of and research on cancer and is not a unit of another hospital, that as of December 21, 2000, is licensed for 162 acute care beds, and that demonstrates for the 4-year period ending on June 30, 1999, that at least 50 percent of its total discharges have a principal finding of neoplastic disease, as defined in subparagraph (E);

and, in accordance with regulations of the Secretary, does not include a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital (as defined by the Secretary). A hospital that was classified by the Secretary on or before September 30, 1995, as a hospital described in clause (iv) shall continue to be so classified notwithstanding that it is located in the same building as, or on the same campus as, another hospital.

(C) For purposes of this subsection, for cost reporting periods beginning—

(i) on or after October 1, 1983, and before October 1, 1984, the ''target percentage'' is 75 percent and the ''DRG percentage'' is 25 percent;

(ii) on or after October 1, 1984, and before October 1, 1985, the ''target percentage'' is 50 percent and the ''DRG percentage'' is 50 percent;

(iii) on or after October 1, 1985, and before October 1, 1986, the ''target percentage'' is 45 percent and the ''DRG percentage'' is 55 percent; and

(iv) on or after October 1, 1986, and before October 1, 1987, the ''target percentage'' is 25 percent and the ''DRG percentage'' is 75 percent.

(D) For purposes of subparagraph (A)(ii)(II), the ''applicable combined adjusted DRG prospective payment rate'' for discharges occurring—

(i) on or after October 1, 1984, and before October 1, 1986, is a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate, and 75 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges; and

(ii) on or after October 1, 1986, and before October 1, 1987, is a combined rate consisting of 50 percent of the national adjusted DRG prospective payment rate, and 50 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges.

(E) For purposes of subclauses (II) and (III) of subparagraph (B)(v) only, the term ''principal finding of neoplastic disease'' means the condition established after study to be chiefly responsible for occasioning the admission of a patient to a hospital, except that only discharges with ICD–9–CM principal diagnosis codes of 140 through 239, V58.0, V58.1, V66.1, V66.2, or 990 will be considered to reflect such a principal diagnosis.

(2) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region, for which payment may be made under part A of this subchapter. Each such rate shall be determined for hospitals located in urban or rural areas within the United States or within each such region, respectively, as follows:

(A) DETERMINING ALLOWABLE INDIVIDUAL HOSPITAL COSTS FOR BASE PERIOD.—The Secretary shall determine the allowable operating costs per discharge of inpatient hospital services for the hospital for the most recent cost reporting period for which data are available.

(B) UPDATING FOR FISCAL YEAR 1984.—The Secretary shall update each amount determined under subparagraph (A) for fiscal year 1984 by—

(i) updating for fiscal year 1983 by the estimated average rate of change of hospital costs industry-wide between the cost reporting period used under such subparagraph and fiscal year 1983 and the most recent case-mix data available, and

(ii) projecting for fiscal year 1984 by the applicable percentage increase (as defined in subsection (b)(3)(B) of this section) for fiscal year 1984.

(C) STANDARDIZING AMOUNTS.—The Secretary shall standardize the amount updated under subparagraph (B) for each hospital by—

(i) excluding an estimate of indirect medical education costs (taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985), except that the Secretary shall not take into ac-

[3] So in original. The comma probably should not appear.

count any reduction in the amount of additional payments under paragraph (5)(B)(ii) resulting from the amendment made by section 4621(a)(1) of the Balanced Budget Act of 1997 or any additional payments under such paragraph resulting from the application of section 111 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, of section 302 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, or the Medicare Prescription Drug, Improvement, and Modernization Act of 2003,

(ii) adjusting for variations among hospitals by area in the average hospital wage level,

(iii) adjusting for variations in case mix among hospitals, and

(iv) for discharges occurring on or after October 1, 1986, excluding an estimate of the additional payments to certain hospitals to be made under paragraph (5)(F), except that the Secretary shall not exclude additional payments under such paragraph made as a result of the enactment of section 6003(c) of the Omnibus Budget Reconciliation Act of 1989, the enactment of section 4002(b) of the Omnibus Budget Reconciliation Act of 1990, the enactment of section 303 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, or the enactment of section 402(a)(1)[4] of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(D) COMPUTING URBAN AND RURAL AVERAGES.—The Secretary shall compute an average of the standardized amounts determined under subparagraph (C) for the United States and for each region—

(i) for all subsection (d) hospitals located in an urban area within the United States or that region, respectively, and

(ii) for all subsection (d) hospitals located in a rural area within the United States or that region, respectively.

For purposes of this subsection, the term ''region'' means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes; the term ''urban area'' means an area within a Metropolitan Statistical Area (as defined by the Office of Management and Budget) or within such similar area as the Secretary has recognized under subsection (a) of this section by regulation; the term ''large urban area'' means, with respect to a fiscal year, such an urban area which the Secretary determines (in the publications described in subsection (e)(5) of this section before the fiscal year) has a population of more than 1,000,000 (as determined by the Secretary based on the most recent available population data published by the Bureau of the Census); and the term ''rural area'' means any area outside such an area or similar area. A hospital located in a Metropolitan Statistical Area shall be deemed to be located in the region in which the largest number of the hospitals in the same Metropolitan Statistical Area are located, or, at the option of the Secretary, the region in which the majority of the inpatient discharges (with respect to which payments are made under this subchapter) from hospitals in the same Metropolitan Statistical Area are made.

(E) REDUCING FOR VALUE OF OUTLIER PAYMENTS.—The Secretary shall reduce each of the average standardized amounts determined under subparagraph (D) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment rates which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(F) MAINTAINING BUDGET NEUTRALITY.—The Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) of this section for that fiscal year.

(G) COMPUTING DRG-SPECIFIC RATES FOR URBAN AND RURAL HOSPITALS IN THE UNITED STATES AND IN EACH REGION.—For each discharge classified within a diagnosis-related group, the Secretary shall establish a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in an urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in an urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in a rural area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in a rural area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(H) ADJUSTING FOR DIFFERENT AREA WAGE LEVELS.—The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the national and regional DRG prospective payment rates computed under subparagraph (G) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

(3) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in a fiscal year after fiscal year 1984 involving inpatient hos-

[4] See References in Text note below.

pital services of a subsection (d) hospital in the United States, and shall determine, for fiscal years before fiscal year 1997, a regional adjusted DRG prospective payment rate for such discharges in each region for which payment may be made under part A of this subchapter. Each such rate shall be determined for hospitals located in large urban, other urban, or rural areas within the United States and within each such region, respectively, as follows:

(A) UPDATING PREVIOUS STANDARDIZED AMOUNTS.—(i) For discharges occurring in a fiscal year beginning before October 1, 1987, the Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for the fiscal year involved by the applicable percentage increase under subsection (b)(3)(B) of this section. With respect to discharges occurring on or after October 1, 1987, the Secretary shall compute urban and rural averages on the basis of discharge weighting rather than hospital weighting, making appropriate adjustments to ensure that computation on such basis does not result in total payments under this section that are greater or less than the total payments that would have been made under this section but for this sentence, and making appropriate changes in the manner of determining the reductions under subparagraph (C)(ii).

(ii) For discharges occurring in a fiscal year beginning on or after October 1, 1987, and ending on or before September 30, 1994, the Secretary shall compute an average standardized amount for hospitals located in a large urban area, for hospitals located in a rural area, and for hospitals located in other urban areas, within the United States and within each region, equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) of this section with respect to hospitals located in the respective areas for the fiscal year involved.

(iii) For discharges occurring in the fiscal year beginning on October 1, 1994, the average standardized amount for hospitals located in a rural area shall be equal to the average standardized amount for hospitals located in an urban area. For discharges occurring on or after October 1, 1994, the Secretary shall adjust the ratio of the labor portion to non-labor portion of each average standardized amount to equal such ratio for the national average of all standardized amounts.

(iv)(I) Subject to subclause (II), for discharges occurring in a fiscal year beginning on or after October 1, 1995, the Secretary shall compute an average standardized amount for hospitals located in a large urban area and for hospitals located in other areas within the United States and within each region equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) of this section with respect to hospitals located in the respective areas for the fiscal year involved.

(II) For discharges occurring in a fiscal year (beginning with fiscal year 2004), the Secretary shall compute a standardized amount for hospitals located in any area within the United States and within each region equal to the standardized amount computed for the previous fiscal year under this subparagraph for hospitals located in a large urban area (or, beginning with fiscal year 2005, for all hospitals in the previous fiscal year) increased by the applicable percentage increase under subsection (b)(3)(B)(i) of this section for the fiscal year involved.

(v) Average standardized amounts computed under this paragraph shall be adjusted to reflect the most recent case-mix data available.

(vi) Insofar as the Secretary determines that the adjustments under paragraph (4)(C)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year that are a result of changes in the coding or classification of discharges that do not reflect real changes in case mix, the Secretary may adjust the average standardized amounts computed under this paragraph for subsequent fiscal years so as to eliminate the effect of such coding or classification changes.

(B) REDUCING FOR VALUE OF OUTLIER PAYMENTS.—The Secretary shall reduce each of the average standardized amounts determined under subparagraph (A) by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(C) MAINTAINING BUDGET NEUTRALITY FOR FISCAL YEAR 1985.—(i) For discharges occurring in fiscal year 1985, the Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) of this section for that fiscal year.

(ii) For discharges occurring after September 30, 1986, the Secretary shall further reduce each of the average standardized amounts (in a proportion which takes into account the differing effects of the standardization effected under paragraph (2)(C)(i)) so as to provide for a reduction in the total of the payments (attributable to this paragraph) made for discharges occurring on or after October 1, 1986, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987 if the factor described in clause (ii)(II) of paragraph (5)(B) (determined without regard to amendments made by the Omnibus Budget Reconciliation Act of 1990) were applied for discharges occurring on or

after such date instead of the factor described in clause (ii) of that paragraph.

(D) COMPUTING DRG-SPECIFIC RATES FOR HOSPITALS.—For each discharge classified within a diagnosis-related group, the Secretary shall establish for the fiscal year a national DRG prospective payment rate and shall establish, for fiscal years before fiscal year 1997, a regional DRG prospective payment rate for each region which is equal—

(i) for fiscal years before fiscal year 2004, for hospitals located in a large urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C)) for the fiscal year for hospitals located in such a large urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group;

(ii) for fiscal years before fiscal year 2004, for hospitals located in other areas in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C)) for the fiscal year for hospitals located in other areas in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(iii) for a fiscal year beginning after fiscal year 2003, for hospitals located in all areas, to the product of—

(I) the applicable standardized amount (computed under subparagraph (A)), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C) for the fiscal year; and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(E) ADJUSTING FOR DIFFERENT AREA WAGE LEVELS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the DRG prospective payment rates computed under subparagraph (D) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level. Not later than October 1, 1990, and October 1, 1993 (and at least every 12 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs of subsection (d) hospitals in the United States. Not less often than once every 3 years the Secretary (through such survey or otherwise) shall measure the earnings and paid hours of employment by occupational category and shall exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services. Any adjustments or updates made under this subparagraph for a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment. The Secretary shall apply the previous sentence for any period as if the amendments made by section 403(a)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 had not been enacted.

(ii) ALTERNATIVE PROPORTION TO BE ADJUSTED BEGINNING IN FISCAL YEAR 2005.—For discharges occurring on or after October 1, 2004, the Secretary shall substitute ''62 percent'' for the proportion described in the first sentence of clause (i), unless the application of this clause would result in lower payments to a hospital than would otherwise be made.

(4)(A) The Secretary shall establish a classification of inpatient hospital discharges by diagnosis-related groups and a methodology for classifying specific hospital discharges within these groups.

(B) For each such diagnosis-related group the Secretary shall assign an appropriate weighting factor which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups.

(C)(i) The Secretary shall adjust the classifications and weighting factors established under subparagraphs (A) and (B), for discharges in fiscal year 1988 and at least annually thereafter, to reflect changes in treatment patterns, technology (including a new medical service or technology under paragraph (5)(K)), and other factors which may change the relative use of hospital resources.

(ii) For discharges in fiscal year 1990, the Secretary shall reduce the weighting factor for each diagnosis-related group by 1.22 percent.

(iii) Any such adjustment under clause (i) for discharges in a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection for discharges in the fiscal year are not greater or less than those that would have been made for discharges in the year without such adjustment.

(D)(i) For discharges occurring on or after October 1, 2008, the diagnosis-related group to be assigned under this paragraph for a discharge described in clause (ii) shall be a diagnosis-related group that does not result in higher payment based on the presence of a secondary diagnosis code described in clause (iv).

(ii) A discharge described in this clause is a discharge which meets the following requirements:

(I) The discharge includes a condition identified by a diagnosis code selected under clause (iv) as a secondary diagnosis.

(II) But for clause (i), the discharge would have been classified to a diagnosis-related group that results in a higher payment based on the presence of a secondary diagnosis code selected under clause (iv).

(III) At the time of admission, no code selected under clause (iv) was present.

(iii) As part of the information required to be reported by a hospital with respect to a discharge of an individual in order for payment to be made under this subsection, for discharges occurring on or after October 1, 2007, the information shall include the secondary diagnosis of the individual at admission.

(iv) By not later than October 1, 2007, the Secretary shall select diagnosis codes associated with at least two conditions, each of which codes meets all of the following requirements (as determined by the Secretary):

(I) Cases described by such code have a high cost or high volume, or both, under this subchapter.

(II) The code results in the assignment of a case to a diagnosis-related group that has a higher payment when the code is present as a secondary diagnosis.

(III) The code describes such conditions that could reasonably have been prevented through the application of evidence-based guidelines.

The Secretary may from time to time revise (through addition or deletion of codes) the diagnosis codes selected under this clause so long as there are diagnosis codes associated with at least two conditions selected for discharges occurring during any fiscal year.

(v) In selecting and revising diagnosis codes under clause (iv), the Secretary shall consult with the Centers for Disease Control and Prevention and other appropriate entities.

(vi) Any change resulting from the application of this subparagraph shall not be taken into account in adjusting the weighting factors under subparagraph (C)(i) or in applying budget neutrality under subparagraph (C)(iii).

(5)(A)(i) For discharges occurring during fiscal years ending on or before September 30, 1997, the Secretary shall provide for an additional payment for a subsection (d) hospital for any discharge in a diagnosis-related group, the length of stay of which exceeds the mean length of stay for discharges within that group by a fixed number of days, or exceeds such mean length of stay by some fixed number of standard deviations, whichever is the fewer number of days.

(ii) For cases which are not included in clause (i), a subsection (d) hospital may request additional payments in any case where charges, adjusted to cost, exceed a fixed multiple of the applicable DRG prospective payment rate, or exceed such other fixed dollar amount, whichever is greater, or, for discharges in fiscal years beginning on or after October 1, 1994, exceed the sum of the applicable DRG prospective payment rate plus any amounts payable under subparagraphs (B) and (F) plus a fixed dollar amount determined by the Secretary.

(iii) The amount of such additional payment under clauses (i) and (ii) shall be determined by the Secretary and shall (except as payments under clause (i) are required to be reduced to take into account the requirements of clause (v)) approximate the marginal cost of care beyond the cutoff point applicable under clause (i) or (ii).

(iv) The total amount of the additional payments made under this subparagraph for discharges in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made based on DRG prospective payment rates for discharges in that year.

(v) The Secretary shall provide that—

(I) the day outlier percentage for fiscal year 1995 shall be 75 percent of the day outlier percentage for fiscal year 1994;

(II) the day outlier percentage for fiscal year 1996 shall be 50 percent of the day outlier percentage for fiscal year 1994; and

(III) the day outlier percentage for fiscal year 1997 shall be 25 percent of the day outlier percentage for fiscal year 1994.

(vi) For purposes of this subparagraph, the term ''day outlier percentage'' means, for a fiscal year, the percentage of the total additional payments made by the Secretary under this subparagraph for discharges in that fiscal year which are additional payments under clause (i).

(B) The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2) of this section, except as follows:

(i) The amount of such additional payment shall be determined by multiplying (I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and, for cases qualifying for additional payment under subparagraph (A)(i), the amount paid to the hospital under subparagraph (A), by (II) the indirect teaching adjustment factor described in clause (ii).

(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor is equal to c × (((1+r) to the nth power) −1), where ''r'' is the ratio of the hospital's full-time equivalent interns and residents to beds and ''n'' equals .405. Subject to clause (ix), for discharges occurring—

(I) on or after October 1, 1988, and before October 1, 1997, ''c'' is equal to 1.89;

(II) during fiscal year 1998, ''c'' is equal to 1.72;

(III) during fiscal year 1999, ''c'' is equal to 1.6;

(IV) during fiscal year 2000, ''c'' is equal to 1.47;

(V) during fiscal year 2001, ''c'' is equal to 1.54;

(VI) during fiscal year 2002, ''c'' is equal to 1.6;

(VII) on or after October 1, 2002, and before April 1, 2004, ''c'' is equal to 1.35;

(VIII) on or after April 1, 2004, and before October 1, 2004, ''c'' is equal to 1.47;

(IX) during fiscal year 2005, ''c'' is equal to 1.42;

(X) during fiscal year 2006, ''c'' is equal to 1.37;

(XI) during fiscal year 2007, ''c'' is equal to 1.32; and

(XII) on or after October 1, 2007, ''c'' is equal to 1.35.

(iii) In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.

(iv) Effective for discharges occurring on or after October 1, 1997, all the time spent by an intern or resident in patient care activities under an approved medical residency training program at an entity in a nonhospital setting shall be counted towards the determination of full-time equivalency if the hospital incurs all, or substantially all, of the costs for the training program in that setting.

(v) In determining the adjustment with respect to a hospital for discharges occurring on or after October 1, 1997, the total number of full-time equivalent interns and residents in the fields of allopathic and osteopathic medicine in either a hospital or nonhospital setting may not exceed the number (or, 130 percent of such number in the case of a hospital located in a rural area) of such full-time equivalent interns and residents in the hospital with respect to the hospital's most recent cost reporting period ending on or before December 31, 1996. Rules similar to the rules of subsection (h)(4)(F)(ii) of this section shall apply for purposes of this clause. The provisions of subsection (h)(7) of this section shall apply with respect to the first sentence of this clause in the same manner as it applies with respect to subsection (h)(4)(F)(i) of this section.

(vi) For purposes of clause (ii)—

(I) ''r'' may not exceed the ratio of the number of interns and residents, subject to the limit under clause (v), with respect to the hospital for its most recent cost reporting period to the hospital's available beds (as defined by the Secretary) during that cost reporting period, and

(II) for the hospital's cost reporting periods beginning on or after October 1, 1997, subject to the limits described in clauses (iv) and (v), the total number of full-time equivalent residents for payment purposes shall equal the average of the actual full-time equivalent resident count for the cost reporting period and the preceding two cost reporting periods.

In the case of the first cost reporting period beginning on or after October 1, 1997, subclause (II) shall be applied by using the average for such period and the preceding cost reporting period.

(vii) If any cost reporting period beginning on or after October 1, 1997, is not equal to twelve months, the Secretary shall make appropriate modifications to ensure that the average full-time equivalent residency count pursuant to subclause (II) of clause (vi) is based on the equivalent of full twelve-month cost reporting periods.

(viii) Rules similar to the rules of subsection (h)(4)(H) of this section shall apply for purposes of clauses (v) and (vi).

(ix) For discharges occurring on or after July 1, 2005, insofar as an additional payment amount under this subparagraph is attributable to resident positions redistributed to a hospital under subsection (h)(7)(B) of this section, in computing the indirect teaching adjustment factor under clause (ii) the adjustment shall be computed in a manner as if ''c'' were equal to 0.66 with respect to such resident positions.

(C)(i) The Secretary shall provide for such exceptions and adjustments to the payment amounts established under this subsection (other than under paragraph (9)) as the Secretary deems appropriate to take into account the special needs of regional and national referral centers (including those hospitals of 275 or more beds located in rural areas). A hospital which is classified as a rural hospital may appeal to the Secretary to be classified as a rural referral center under this clause on the basis of criteria (established by the Secretary) which shall allow the hospital to demonstrate that it should be so reclassified by reason of certain of its operating characteristics being similar to those of a typical urban hospital located in the same census region and which shall not require a rural osteopathic hospital to have more than 3,000 discharges in a year in order to be classified as a rural referral center. Such characteristics may include wages, scope of services, service area, and the mix of medical specialties. The Secretary shall publish the criteria not later than August 17, 1984, for implementation by October 1, 1984. An appeal allowed under this clause must be submitted to the Secretary (in such form and manner as the Secretary may prescribe) during the quarter before the first quarter of the hospital's cost reporting period (or, in the case of a cost reporting period beginning during October 1984, during the first quarter of that period), and the Secretary must make a final determination with respect to such appeal within 60 days after the date the appeal was submitted. Any payment adjustments necessitated by a reclassification based upon the appeal shall be effective at the beginning of such cost reporting period.

(ii) The Secretary shall provide, under clause (i), for the classification of a rural hospital as a regional referral center if the hospital has a case mix index equal to or greater than the median case mix index for hospitals (other than hospitals with approved teaching programs) located in an urban area in the same region (as defined in paragraph (2)(D)), has at least 5,000 discharges a year or, if less, the median number of discharges in urban hospitals in the region in which the hospital is located (or, in the case of a rural osteopathic hospital, meets the criterion established by the Secretary under clause (i) with respect to the annual number of discharges for such hospitals), and meets any other criteria established by the Secretary under clause (i).

(D)(i) For any cost reporting period beginning on or after April 1, 1990, with respect to a subsection (d) hospital which is a sole community

hospital, payment under paragraph (1)(A) shall be—

(I) an amount based on 100 percent of the hospital's target amount for the cost reporting period, as defined in subsection (b)(3)(C) of this section, or

(II) the amount determined under paragraph (1)(A)(iii),

whichever results in greater payment to the hospital.

(ii) In the case of a sole community hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.

(iii) For purposes of this subchapter, the term ''sole community hospital'' means any hospital—

(I) that the Secretary determines is located more than 35 road miles from another hospital,

(II) that, by reason of factors such as the time required for an individual to travel to the nearest alternative source of appropriate inpatient care (in accordance with standards promulgated by the Secretary), location, weather conditions, travel conditions, or absence of other like hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to individuals in a geographic area who are entitled to benefits under part A of this subchapter, or

(III) that is located in a rural area and designated by the Secretary as an essential access community hospital under section 1395i–4(i)(1) of this title as in effect on September 30, 1997.

(iv) The Secretary shall promulgate a standard for determining whether a hospital meets the criteria for classification as a sole community hospital under clause (iii)(II) because of the time required for an individual to travel to the nearest alternative source of appropriate inpatient care.

(v) If the Secretary determines that, in the case of a hospital located in a rural area and designated by the Secretary as an essential access community hospital under section 1395i–4(i)(1) of this title as in effect on September 30, 1997, the hospital has incurred increases in reasonable costs during a cost reporting period as a result of becoming a member of a rural health network (as defined in section 1395i–4(d) of this title) in the State in which it is located, and in incurring such increases, the hospital will increase its costs for subsequent cost reporting periods, the Secretary shall increase the hospital's target amount under subsection (b)(3)(C) of this section to account for such incurred increases.

(E)(i) The Secretary shall estimate the amount of reimbursement made for services described in section 1395y(a)(14) of this title with respect to which payment was made under part B of this subchapter in the base reporting periods referred to in paragraph (2)(A) and with respect to which payment is no longer being made.

(ii) The Secretary shall provide for an adjustment to the payment for subsection (d) hospitals in each fiscal year so as appropriately to reflect the net amount described in clause (i).

(F)(i) For discharges occurring on or after May 1, 1986, the Secretary shall provide, in accordance with this subparagraph, for an additional payment amount for each subsection (d) hospital which—

(I) serves a significantly disproportionate number of low-income patients (as defined in clause (v)), or

(II) is located in an urban area, has 100 or more beds, and can demonstrate that its net inpatient care revenues (excluding any of such revenues attributable to this subchapter or State plans approved under subchapter XIX of this chapter), during the cost reporting period in which the discharges occur, for indigent care from State and local government sources exceed 30 percent of its total of such net inpatient care revenues during the period.

(ii) Subject to clause (ix), the amount of such payment for each discharge shall be determined by multiplying (I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and, for cases qualifying for additional payment under subparagraph (A)(i), the amount paid to the hospital under subparagraph (A) for that discharge, by (II) the disproportionate share adjustment percentage established under clause (iii) or (iv) for the cost reporting period in which the discharge occurs.

(iii) The disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (i)(II) is equal to 35 percent.

(iv) The disproportionate share adjustment percentage for a cost reporting period for a hospital that is not described in clause (i)(II) and that—

(I) is located in an urban area and has 100 or more beds or is described in the second sentence of clause (v), is equal to the percent determined in accordance with the applicable formula described in clause (vii);

(II) is located in an urban area and has less than 100 beds, is equal to 5 percent or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xiii);

(III) is located in a rural area and is not described in subclause (IV) or (V) or in the second sentence of clause (v), is equal to 4 percent or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xii);

(IV) is located in a rural area, is classified as a rural referral center under subparagraph (C), and is classified as a sole community hospital under subparagraph (D), is equal to 10 percent or, if greater, the percent determined in accordance with the applicable formula described in clause (viii) or, subject to clause

(xiv) and for discharges occurring on or after April 1, 2001, the greater of the percentages determined under clause (x) or (xi);

(V) is located in a rural area, is classified as a rural referral center under subparagraph (C), and is not classified as a sole community hospital under subparagraph (D), is equal to the percent determined in accordance with the applicable formula described in clause (viii) or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xi); or

(VI) is located in a rural area, is classified as a sole community hospital under subparagraph (D), and is not classified as a rural referral center under subparagraph (C), is 10 percent or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (x).

(v) In this subparagraph, a hospital ''serves a significantly disproportionate number of low income patients'' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals, or exceeds—

(I) 15 percent, if the hospital is located in an urban area and has 100 or more beds,

(II) 30 percent (or 15 percent, for discharges occurring on or after April 1, 2001), if the hospital is located in a rural area and has more than 100 beds, or is located in a rural area and is classified as a sole community hospital under subparagraph (D),

(III) 40 percent (or 15 percent, for discharges occurring on or after April 1, 2001), if the hospital is located in an urban area and has less than 100 beds, or

(IV) 45 percent (or 15 percent, for discharges occurring on or after April 1, 2001), if the hospital is located in a rural area and is not described in subclause (II).

A hospital located in a rural area and with 500 or more beds also ''serves a significantly disproportionate number of low income patients'' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.

(vi) In this subparagraph, the term ''disproportionate patient percentage'' means, with respect to a cost reporting period of a hospital, the sum of—

(I) the fraction (expressed as a percentage), the numerator of which is the number of such hospital's patient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of this subchapter and were entitled to supplementary security income benefits (excluding any State supplementation) under subchapter XVI of this chapter, and the denominator of which is the number of such hospital's patient days for such fiscal year which were made up of patients who (for such days) were entitled to benefits under part A of this subchapter, and

(II) the fraction (expressed as a percentage), the numerator of which is the number of the hospital's patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under subchapter XIX of this chapter, but who were not entitled to benefits under part A of this subchapter, and the denominator of which is the total number of the hospital's patient days for such period.

In determining under subclause (II) the number of the hospital's patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under subchapter XIX, the Secretary may, to the extent and for the period the Secretary determines appropriate, include patient days of patients not so eligible but who are regarded as such because they receive benefits under a demonstration project approved under subchapter XI.

(vii) The formula used to determine the disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (iv)(I) is—

(I) in the case of such a hospital with a disproportionate patient percentage (as defined in clause (vi)) greater than 20.2—

(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, $(P-20.2)(.65) + 5.62$,

(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, $(P-20.2)(.7) + 5.62$,

(c) for discharges occurring on or after October 1, 1993, and on or before September 30, 1994, $(P-20.2)(.8) + 5.88$, and

(d) for discharges occurring on or after October 1, 1994, $(P-20.2)(.825) + 5.88$; or

(II) in the case of any other such hospital—

(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, $(P-15)(.6) + 2.5$,

(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, $(P-15)(.6) + 2.5$,[5]

(c) for discharges occurring on or after October 1, 1993, $(P-15)(.65) + 2.5$,

where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(viii) Subject to clause (xiv), the formula used to determine the disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (iv)(IV) or (iv)(V) is the percentage determined in accordance with the following formula: $(P-30)(.6) + 4.0$, where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(ix) In the case of discharges occurring—

(I) during fiscal year 1998, the additional payment amount otherwise determined under clause (ii) shall be reduced by 1 percent;

(II) during fiscal year 1999, such additional payment amount shall be reduced by 2 percent;

(III) during fiscal years 2000 and 2001, such additional payment amount shall be reduced by 3 percent and 2 percent, respectively;

(IV) during fiscal year 2002, such additional payment amount shall be reduced by 3 percent; and

[5] So in original. Probably should be followed by ''and''.

(V) during fiscal year 2003 and each subsequent fiscal year, such additional payment amount shall be reduced by 0 percent.

(x) Subject to clause (xiv), for purposes of clause (iv)(VI) (relating to sole community hospitals), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P − 15)(.65) + 2.5;

(II) is equal to or exceeds 19.3, but is less than 30.0, such adjustment percentage is equal to 5.25 percent; or

(III) is equal to or exceeds 30, such adjustment percentage is equal to 10 percent,

where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(xi) Subject to clause (xiv), for purposes of clause (iv)(V) (relating to rural referral centers), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P − 15)(.65) + 2.5;

(II) is equal to or exceeds 19.3, but is less than 30.0, such adjustment percentage is equal to 5.25 percent; or

(III) is equal to or exceeds 30, such adjustment percentage is determined in accordance with the following formula: (P − 30)(.6) + 5.25,

where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(xii) Subject to clause (xiv), for purposes of clause (iv)(III) (relating to small rural hospitals generally), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P − 15)(.65) + 2.5; or

(II) is equal to or exceeds 19.3, such adjustment percentage is equal to 5.25 percent,

where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(xiii) Subject to clause (xiv), for purposes of clause (iv)(II) (relating to urban hospitals with less than 100 beds), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P − 15)(.65) + 2.5; or

(II) is equal to or exceeds 19.3, such adjustment percentage is equal to 5.25 percent,

where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(xiv)(I) In the case of discharges occurring on or after April 1, 2004, subject to subclause (II), there shall be substituted for the disproportionate share adjustment percentage otherwise determined under clause (iv) (other than subclause (I)) or under clause (viii), (x), (xi), (xii), or (xiii), the disproportionate share adjustment percentage determined under clause (vii) (relating to large, urban hospitals).

(II) Under subclause (I), the disproportionate share adjustment percentage shall not exceed 12 percent for a hospital that is not classified as a rural referral center under subparagraph (C) or, in the case of discharges occurring on or after October 1, 2006, as a medicare-dependent, small rural hospital under subparagraph (G)(iv).

(G)(i) For any cost reporting period beginning on or after April 1, 1990, and before October 1, 1994, or discharges occurring on or after October 1, 1997, and before October 1, 2011, in the case of a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be equal to the sum of the amount determined under clause (ii) and the amount determined under paragraph (1)(A)(iii).

(ii) The amount determined under this clause is—

(I) for discharges occurring during the 36-month period beginning with the first day of the cost reporting period that begins on or after April 1, 1990, the amount by which the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(D) of this section) exceeds the amount determined under paragraph (1)(A)(iii); and

(II) for discharges occurring during any subsequent cost reporting period (or portion thereof) and before October 1, 1994, or discharges occurring on or after October 1, 1997, and before October 1, 2011, 50 percent (or 75 percent in the case of discharges occurring on or after October 1, 2006) of the amount by which the hospital's target amount for the cost reporting period or for discharges in the fiscal year (as defined in subsection (b)(3)(D) of this section) exceeds the amount determined under paragraph (1)(A)(iii).

(iii) In the case of a medicare dependent, small rural hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.

(iv) The term ''medicare-dependent, small rural hospital'' means, with respect to any cost reporting period to which clause (i) applies, any hospital—

(I) located in a rural area,

(II) that has not more than 100 beds,

(III) that is not classified as a sole community hospital under subparagraph (D), and

(IV) for which not less than 60 percent of its inpatient days or discharges during the cost reporting period beginning in fiscal year 1987, or two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report, were attributable to inpatients entitled to benefits under part A of this subchapter.

(H) The Secretary may provide for such adjustments to the payment amounts under this

subsection as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

(I)(i) The Secretary shall provide by regulation for such other exceptions and adjustments to such payment amounts under this subsection as the Secretary deems appropriate.

(ii) In making adjustments under clause (i) for transfer cases (as defined by the Secretary) in a fiscal year, not taking in account the effect of subparagraph (J), the Secretary may make adjustments to each of the average standardized amounts determined under paragraph (3) to assure that the aggregate payments made under this subsection for such fiscal year are not greater or lesser than those that would have otherwise been made in such fiscal year.

(J)(i) The Secretary shall treat the term ''transfer case'' (as defined in subparagraph (I)(ii)) as including the case of a qualified discharge (as defined in clause (ii)), which is classified within a diagnosis-related group described in clause (iii), and which occurs on or after October 1, 1998. In the case of a qualified discharge for which a substantial portion of the costs of care are incurred in the early days of the inpatient stay (as defined by the Secretary), in no case may the payment amount otherwise provided under this subsection exceed an amount equal to the sum of—

(I) 50 percent of the amount of payment under this subsection for transfer cases (as established under subparagraph (I)(i)), and

(II) 50 percent of the amount of payment which would have been made under this subsection with respect to the qualified discharge if no transfer were involved.

(ii) For purposes of clause (i), subject to clause (iii), the term ''qualified discharge'' means a discharge classified with a diagnosis-related group (described in clause (iii)) of an individual from a subsection (d) hospital, if upon such discharge the individual—

(I) is admitted as an inpatient to a hospital or hospital unit that is not a subsection (d) hospital for the provision of inpatient hospital services;

(II) is admitted to a skilled nursing facility;

(III) is provided home health services from a home health agency, if such services relate to the condition or diagnosis for which such individual received inpatient hospital services from the subsection (d) hospital, and if such services are provided within an appropriate period (as determined by the Secretary); or

(IV) for discharges occurring on or after October 1, 2000, the individual receives post discharge services described in clause (iv)(I).

(iii) Subject to clause (iv), a diagnosis-related group described in this clause is—

(I) 1 of 10 diagnosis-related groups selected by the Secretary based upon a high volume of discharges classified within such groups and a disproportionate use of post discharge services described in clause (ii); and

(II) a diagnosis-related group specified by the Secretary under clause (iv)(II).

(iv) The Secretary shall include in the proposed rule published under subsection (e)(5)(A) of this section for fiscal year 2001, a description of the effect of this subparagraph. The Secretary may include in the proposed rule (and in the final rule published under paragraph (6)) for fiscal year 2001 or a subsequent fiscal year, a description of—

(I) post-discharge services not described in subclauses (I), (II), and (III) of clause (ii), the receipt of which results in a qualified discharge; and

(II) diagnosis-related groups described in clause (iii)(I) in addition to the 10 selected under such clause.

(K)(i) Effective for discharges beginning on or after October 1, 2001, the Secretary shall establish a mechanism to recognize the costs of new medical services and technologies under the payment system established under this subsection. Such mechanism shall be established after notice and opportunity for public comment (in the publications required by subsection (e)(5) of this section for a fiscal year or otherwise). Such mechanism shall be modified to meet the requirements of clause (viii).

(ii) The mechanism established pursuant to clause (i) shall—

(I) apply to a new medical service or technology if, based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate (applying a threshold specified by the Secretary that is the lesser of 75 percent of the standardized amount (increased to reflect the difference between cost and charges) or 75 percent of one standard deviation for the diagnosis-related group involved);

(II) provide for the collection of data with respect to the costs of a new medical service or technology described in subclause (I) for a period of not less than two years and not more than three years beginning on the date on which an inpatient hospital code is issued with respect to the service or technology;

(III) provide for additional payment to be made under this subsection with respect to discharges involving a new medical service or technology described in subclause (I) that occur during the period described in subclause (II) in an amount that adequately reflects the estimated average cost of such service or technology; and

(IV) provide that discharges involving such a service or technology that occur after the close of the period described in subclause (II) will be classified within a new or existing diagnosis-related group with a weighting factor under paragraph (4)(B) that is derived from cost data collected with respect to discharges occurring during such period.

(iii) For purposes of clause (ii)(II), the term ''inpatient hospital code'' means any code that is used with respect to inpatient hospital services for which payment may be made under this subsection and includes an alphanumeric code issued under the International Classification of Diseases, 9th Revision, Clinical Modification (''ICD–9–CM'') and its subsequent revisions.

(iv) For purposes of clause (ii)(III), the term ''additional payment'' means, with respect to a

discharge for a new medical service or technology described in clause (ii)(I), an amount that exceeds the prospective payment rate otherwise applicable under this subsection to discharges involving such service or technology that would be made but for this subparagraph.

(v) The requirement under clause (ii)(III) for an additional payment may be satisfied by means of a new-technology group (described in subparagraph (L)), an add-on payment, a payment adjustment, or any other similar mechanism for increasing the amount otherwise payable with respect to a discharge under this subsection. The Secretary may not establish a separate fee schedule for such additional payment for such services and technologies, by utilizing a methodology established under subsection (a) or (h) of section 1395m of this title to determine the amount of such additional payment, or by other similar mechanisms or methodologies.

(vi) For purposes of this subparagraph and subparagraph (L), a medical service or technology will be considered a ''new medical service or technology'' if the service or technology meets criteria established by the Secretary after notice and an opportunity for public comment.

(vii) Under the mechanism under this subparagraph, the Secretary shall provide for the addition of new diagnosis and procedure codes in April 1 of each year, but the addition of such codes shall not require the Secretary to adjust the payment (or diagnosis-related group classification) under this subsection until the fiscal year that begins after such date.

(viii) The mechanism established pursuant to clause (i) shall be adjusted to provide, before publication of a proposed rule, for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of individuals entitled to benefits under part A of this subchapter as follows:

(I) The Secretary shall make public and periodically update a list of all the services and technologies for which an application for additional payment under this subparagraph is pending.

(II) The Secretary shall accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.

(III) The Secretary shall provide for a meeting at which organizations representing hospitals, physicians, such individuals, manufacturers, and any other interested party may present comments, recommendations, and data to the clinical staff of the Centers for Medicare & Medicaid Services before publication of a notice of proposed rulemaking regarding whether service or technology represents a substantial improvement.

(ix) Before establishing any add-on payment under this subparagraph with respect to a new technology, the Secretary shall seek to identify one or more diagnosis-related groups associated with such technology, based on similar clinical or anatomical characteristics and the cost of the technology. Within such groups the Secretary shall assign an eligible new technology into a diagnosis-related group where the average costs of care most closely approximate the costs of care of using the new technology. No add-on payment under this subparagraph shall be made with respect to such new technology and this clause shall not affect the application of paragraph (4)(C)(iii).

(L)(i) In establishing the mechanism under subparagraph (K), the Secretary may establish new-technology groups into which a new medical service or technology will be classified if, based on the estimated average costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate.

(ii) Such groups—

(I) shall not be based on the costs associated with a specific new medical service or technology; but

(II) shall, in combination with the applicable standardized amounts and the weighting factors assigned to such groups under paragraph (4)(B), reflect such cost cohorts as the Secretary determines are appropriate for all new medical services and technologies that are likely to be provided as inpatient hospital services in a fiscal year.

(iii) The methodology for classifying specific hospital discharges within a diagnosis-related group under paragraph (4)(A) or a new-technology group shall provide that a specific hospital discharge may not be classified within both a diagnosis-related group and a new-technology group.

(6) The Secretary shall provide for publication in the Federal Register, on or before the August 1 before each fiscal year (beginning with fiscal year 1984), of a description of the methodology and data used in computing the adjusted DRG prospective payment rates under this subsection, including any adjustments required under subsection (e)(1)(B) of this section.

(7) There shall be no administrative or judicial review under section 1395*oo* of this title or otherwise of—

(A) the determination of the requirement, or the proportional amount, of any adjustment effected pursuant to subsection (e)(1) of this section or the determination of the applicable percentage increase under paragraph (12)(A)(ii), and

(B) the establishment of diagnosis-related groups, of the methodology for the classification of discharges within such groups, and of the appropriate weighting factors thereof under paragraph (4), including the selection and revision of codes under paragraph (4)(D).

(8)(A) In the case of any hospital which is located in an area which is, at any time after April 20, 1983, reclassified from an urban to a rural area, payments to such hospital for the first two cost reporting periods for which such reclassification is effective shall be made as follows:

(i) For the first such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to two-thirds of the amount (if any) by which—

(I) the amount which would have been payable to such hospital for such reporting pe-

riod on the basis of an urban classification, exceeds

(II) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(ii) For the second such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to one-third of the amount (if any) by which—

(I) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

(II) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(B)(i) For purposes of this subsection, the Secretary shall treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an urban area, under the standards for designating Metropolitan Statistical Areas (and for designating New England County Metropolitan Areas) described in clause (ii), if the commuting rates used in determining outlying counties (or, for New England, similar recognized areas) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous Metropolitan Statistical Areas (or New England County Metropolitan Areas).

(ii) The standards described in this clause for cost reporting periods beginning in a fiscal year—

(I) before fiscal year 2003, are the standards published in the Federal Register on January 3, 1980, or, at the election of the hospital with respect to fiscal years 2001 and 2002, standards so published on March 30, 1990; and

(II) after fiscal year 2002, are the standards published in the Federal Register by the Director of the Office of Management and Budget based on the most recent available decennial population data.

Subparagraphs (C) and (D) shall not apply with respect to the application of subclause (I).

(C)(i) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by treating hospitals located in a rural county or counties as being located in an urban area, or by treating hospitals located in one urban area as being located in another urban area—

(I) reduces the wage index for that urban area (as applied under this subsection) by 1 percentage point or less, the Secretary, in calculating such wage index under this subsection, shall exclude those hospitals so treated, or

(II) reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if such hospitals were located in such urban area).

(ii) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by treating hospitals located in a rural county or counties as not being located in the rural area in a State, reduces the wage index for that rural area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection as if the hospitals so treated had not been excluded from calculation of the wage index for that rural area.

(iii) The application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) may not result in the reduction of any county's wage index to a level below the wage index for rural areas in the State in which the county is located.

(iv) The application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or of the Secretary under paragraph (10) may not result in a reduction in an urban area's wage index if—

(I) the urban area has a wage index below the wage index for rural areas in the State in which it is located; or

(II) the urban area is located in a State that is composed of a single urban area.

(v) This subparagraph shall apply with respect to discharges occurring in a fiscal year only if the Secretary uses a method for making adjustments to the DRG prospective payment rate for area differences in hospital wage levels under paragraph (3)(E) for the fiscal year that is based on the use of Metropolitan Statistical Area classifications.

(D) The Secretary shall make a proportional adjustment in the standardized amounts determined under paragraph (3) to assure that the provisions of subparagraphs (B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) do not result in aggregate payments under this section that are greater or less than those that would otherwise be made.

(E)(i) For purposes of this subsection, not later than 60 days after the receipt of an application (in a form and manner determined by the Secretary) from a subsection (d) hospital described in clause (ii), the Secretary shall treat the hospital as being located in the rural area (as defined in paragraph (2)(D)) of the State in which the hospital is located.

(ii) For purposes of clause (i), a subsection (d) hospital described in this clause is a subsection (d) hospital that is located in an urban area (as defined in paragraph (2)(D)) and satisfies any of the following criteria:

(I) The hospital is located in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)).

(II) The hospital is located in an area designated by any law or regulation of such State as a rural area (or is designated by such State as a rural hospital).

(III) The hospital would qualify as a rural, regional, or national referral center under paragraph (5)(C) or as a sole community hospital under paragraph (5)(D) if the hospital were located in a rural area.

(IV) The hospital meets such other criteria as the Secretary may specify.

(9)(A) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges is equal to the sum of—

(i) the applicable Puerto Rico percentage (specified in subparagraph (E)) of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges,

(ii) the applicable Federal percentage (specified in subparagraph (E)) of—

(I) for discharges beginning in a fiscal year beginning on or after October 1, 1997, and before October 1, 2003, the discharge-weighted average of—

(aa) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in a large urban area,

(bb) such rate for hospitals located in other urban areas, and

(cc) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels; and

(II) for discharges in a fiscal year beginning on or after October 1, 2003, the national DRG prospective payment rate determined under paragraph (3)(D)(iii) for hospitals located in any area for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels.

As used in this section, the term ''subsection (d) Puerto Rico hospital'' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the 50 States.

(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this subchapter. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A) of this section) for the hospital for the cost reporting period beginning in fiscal year 1987 and increase such amount by prorating the applicable percentage increase (as defined in subsection (b)(3)(B) of this section) to update the amount to the midpoint in fiscal year 1988.

(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

(I) excluding an estimate of indirect medical education costs,

(II) adjusting for variations among hospitals by area in the average hospital wage level,

(III) adjusting for variations in case mix among hospitals, and

(IV) excluding an estimate of the additional payments to certain subsection (d) Puerto Rico hospitals to be made under subparagraph (D)(iii) (relating to disproportionate share payments).

(iii) The Secretary shall compute a discharge weighted average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(vi) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (v) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this subchapter. Such rate shall be determined for hospitals located in urban or rural areas within Puerto Rico as follows:

(i)(I) For discharges in a fiscal year after fiscal year 1988 and before fiscal year 2004, the Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (B)(iii) or under this clause, increased for fiscal year 1989 by the ap-

plicable percentage increase under subsection (b)(3)(B) of this section, and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4) of this section, and adjusted to reflect the most recent case-mix data available.

(II) For discharges occurring in a fiscal year (beginning with fiscal year 2004), the Secretary shall compute an average standardized amount for hospitals located in any area of Puerto Rico that is equal to the average standardized amount computed under subclause (I) for fiscal year 2003 for hospitals in a large urban area (or, beginning with fiscal year 2005, for all hospitals in the previous fiscal year) increased by the applicable percentage increase under subsection (b)(3)(B) of this section for the fiscal year involved.

(ii) The Secretary shall reduce each of the average standardized amounts (or for fiscal year 2004 and thereafter, the average standardized amount) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

(iii) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

(I) the average standardized amount (computed under clause (i) and reduced under clause (ii)), and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(iv)(I) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rico average hospital wage level. The second and third sentences of paragraph (3)(E)(i) shall apply to subsection (d) Puerto Rico hospitals under this clause in the same manner as they apply to subsection (d) hospitals under such paragraph and, for purposes of this clause, any reference in such paragraph to a subsection (d) hospital is deemed a reference to a subsection (d) Puerto Rico hospital.

(II) For discharges occurring on or after October 1, 2004, the Secretary shall substitute ''62 percent'' for the proportion described in the first sentence of clause (i), unless the application of this subclause would result in lower payments to a hospital than would otherwise be made.

(D) The following provisions of paragraph (5) shall apply to subsection (d) Puerto Rico hospitals receiving payment under this paragraph in the same manner and to the extent as they apply to subsection (d) hospitals receiving payment under this subsection:

(i) Subparagraph (A) (relating to outlier payments).

(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount determined under subparagraph (A) of this paragraph and the amount paid to the hospital under clause (i) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(B)(i)(I).

(iii) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(F)(ii)(I).

(iv) Subparagraph (H) (relating to exceptions and adjustments).

(E) For purposes of subparagraph (A), for discharges occurring—

(i) on or after October 1, 1987, and before October 1, 1997, the applicable Puerto Rico percentage is 75 percent and the applicable Federal percentage is 25 percent;

(ii) on or after October 1, 1997, and before April 1, 2004, the applicable Puerto Rico percentage is 50 percent and the applicable Federal percentage is 50 percent;

(iii) on or after April 1, 2004, and before October 1, 2004, the applicable Puerto Rico percentage is 37.5 percent and the applicable Federal percentage is 62.5 percent; and

(iv) on or after October 1, 2004, the applicable Puerto Rico percentage is 25 percent and the applicable Federal percentage is 75 percent.

(10)(A) There is hereby established the Medicare Geographic Classification Review Board (hereinafter in this paragraph referred to as the ''Board'').

(B)(i) The Board shall be composed of 5 members appointed by the Secretary without regard to the provisions of title 5, governing appointments in the competitive service. Two of such members shall be representative of subsection (d) hospitals located in a rural area under paragraph (2)(D). At least 1 member shall be knowledgeable in the field of analyzing costs with respect to the provision of inpatient hospital services.

(ii) The Secretary shall make initial appointments to the Board as provided in this paragraph within 180 days after December 19, 1989.

(C)(i) The Board shall consider the application of any subsection (d) hospital requesting that the Secretary change the hospital's geographic classification for purposes of determining for a fiscal year—

(I) the hospital's average standardized amount under paragraph (2)(D), or

(II) the factor used to adjust the DRG prospective payment rate for area differences in hospital wage levels that applies to such hospital under paragraph (3)(E).

(ii) A hospital requesting a change in geographic classification under clause (i) for a fiscal year shall submit its application to the Board not later than the first day of the 13-month period ending on September 30 of the preceding fiscal year.

(iii)(I) The Board shall render a decision on an application submitted under clause (i) not later than 180 days after the deadline referred to in clause (ii).

(II) Appeal of decisions of the Board shall be subject to the provisions of section 557b[6] of title 5. The Secretary shall issue a decision on such an appeal not later than 90 days after the date on which the appeal is filed. The decision of the Secretary shall be final and shall not be subject to judicial review.

(D)(i) The Secretary shall publish guidelines to be utilized by the Board in rendering decisions on applications submitted under this paragraph, and shall include in such guidelines the following:

(I) Guidelines for comparing wages, taking into account (to the extent the Secretary determines appropriate) occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified.

(II) Guidelines for determining whether the county in which the hospital is located should be treated as being a part of a particular Metropolitan Statistical Area.

(III) Guidelines for considering information provided by an applicant with respect to the effects of the hospital's geographic classification on access to inpatient hospital services by medicare beneficiaries.

(IV) Guidelines for considering the appropriateness of the criteria used to define New England County Metropolitan Areas.

(ii) Notwithstanding clause (i), if the Secretary uses a method for making adjustments to the DRG prospective payment rate for area differences in hospital wage levels under paragraph (3)(E) that is not based on the use of Metropolitan Statistical Area classifications, the Secretary may revise the guidelines published under clause (i) to the extent such guidelines are used to determine the appropriateness of the geographic area in which the hospital is determined to be located for purposes of making such adjustments.

(iii) Under the guidelines published by the Secretary under clause (i), in the case of a hospital which has ever been classified by the Secretary as a rural referral center under paragraph (5)(C), the Board may not reject the application of the hospital under this paragraph on the basis of any comparison between the average hourly wage of the hospital and the average hourly wage of hospitals in the area in which it is located.

(iv) The Secretary shall publish the guidelines described in clause (i) by July 1, 1990.

(v) Any decision of the Board to reclassify a subsection (d) hospital for purposes of the adjustment factor described in subparagraph (C)(i)(II) for fiscal year 2001 or any fiscal year thereafter shall be effective for a period of 3 fiscal years, except that the Secretary shall establish procedures under which a subsection (d) hospital may elect to terminate such reclassification before the end of such period.

(vi) Such guidelines shall provide that, in making decisions on applications for reclassification for the purposes described in clause (v) for fiscal year 2003 and any succeeding fiscal year, the Board shall base any comparison of the average hourly wage for the hospital with the average hourly wage for hospitals in an area on—

(I) an average of the average hourly wage amount for the hospital from the most recently published hospital wage survey data of the Secretary (as of the date on which the hospital applies for reclassification) and such amount from each of the two immediately preceding surveys; and

(II) an average of the average hourly wage amount for hospitals in such area from the most recently published hospital wage survey data of the Secretary (as of the date on which the hospital applies for reclassification) and such amount from each of the two immediately preceding surveys.

(E)(i) The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this subchapter or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this paragraph. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d) and (e) of section 405 of this title with respect to subpenas shall apply to the Board to the same extent as such provisions apply to the Secretary with respect to subchapter II of this chapter.

(ii) The Board is authorized to engage such technical assistance and to receive such information as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

(F)(i) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for grade GS–18 of the General Schedule under section 5332 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. Each member of the Board who is an officer or employee of the United States shall serve without compensation in addition to that received for service as an officer or employee of the United States.

(ii) Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Board.

(11) ADDITIONAL PAYMENTS FOR MANAGED CARE ENROLLEES.—

(A) IN GENERAL.—For portions of cost reporting periods occurring on or after January 1, 1998, the Secretary shall provide for an additional payment amount for each applicable discharge of any subsection (d) hospital that has an approved medical residency training program.

(B) APPLICABLE DISCHARGE.—For purposes of this paragraph, the term ''applicable dis-

[6] So in original. Probably should be section ''557(b)''.

charge'' means the discharge of any individual who is enrolled under a risk-sharing contract with an eligible organization under section 1395mm of this title and who is entitled to benefits under part A of this subchapter or any individual who is enrolled with a Medicare+ Choice organization under part C of this subchapter.

(C) DETERMINATION OF AMOUNT.—The amount of the payment under this paragraph with respect to any applicable discharge shall be equal to the applicable percentage (as defined in subsection (h)(3)(D)(ii) of this section) of the estimated average per discharge amount that would otherwise have been paid under paragraph (5)(B) if the individuals had not been enrolled as described in subparagraph (B).

(D) SPECIAL RULE FOR HOSPITALS UNDER REIMBURSEMENT SYSTEM.—The Secretary shall establish rules for the application of this paragraph to a hospital reimbursed under a reimbursement system authorized under section 1395f(b)(3) of this title in the same manner as it would apply to the hospital if it were not reimbursed under such section.

(12) PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.—

(A) IN GENERAL.—In addition to any payments calculated under this section for a subsection (d) hospital, for discharges occurring during a fiscal year (beginning with fiscal year 2005), the Secretary shall provide for an additional payment amount to each low-volume hospital (as defined in subparagraph (C)(i)) for discharges occurring during that fiscal year that is equal to the applicable percentage increase (determined under subparagraph (B) for the hospital involved) in the amount paid to such hospital under this section for such discharges (determined without regard to this paragraph).

(B) APPLICABLE PERCENTAGE INCREASE.—The Secretary shall determine an applicable percentage increase for purposes of subparagraph (A) as follows:

(i) The Secretary shall determine the empirical relationship for subsection (d) hospitals between the standardized cost-per-case for such hospitals and the total number of discharges of such hospitals and the amount of the additional incremental costs (if any) that are associated with such number of discharges.

(ii) The applicable percentage increase shall be determined based upon such relationship in a manner that reflects, based upon the number of such discharges for a subsection (d) hospital, such additional incremental costs.

(iii) In no case shall the applicable percentage increase exceed 25 percent.

(C) DEFINITIONS.—

(i) LOW-VOLUME HOSPITAL.—For purposes of this paragraph, the term ''low-volume hospital'' means, for a fiscal year, a subsection (d) hospital (as defined in paragraph (1)(B)) that the Secretary determines is located more than 25 road miles from another subsection (d) hospital and has less than 800 discharges during the fiscal year.

(ii) DISCHARGE.—For purposes of subparagraph (B) and clause (i), the term ''discharge'' means an inpatient acute care discharge of an individual regardless of whether the individual is entitled to benefits under part A of this subchapter.

(13)(A) In order to recognize commuting patterns among geographic areas, the Secretary shall establish a process through application or otherwise for an increase of the wage index applied under paragraph (3)(E) for subsection (d) hospitals located in a qualifying county described in subparagraph (B) in the amount computed under subparagraph (D) based on out-migration of hospital employees who reside in that county to any higher wage index area.

(B) The Secretary shall establish criteria for a qualifying county under this subparagraph based on the out-migration referred to in subparagraph (A) and differences in the area wage indices. Under such criteria the Secretary shall, utilizing such data as the Secretary determines to be appropriate, establish—

(i) a threshold percentage, established by the Secretary, of the weighted average of the area wage index or indices for the higher wage index areas involved;

(ii) a threshold (of not less than 10 percent) for minimum out-migration to a higher wage index area or areas; and

(iii) a requirement that the average hourly wage of the hospitals in the qualifying county equals or exceeds the average hourly wage of all the hospitals in the area in which the qualifying county is located.

(C) For purposes of this paragraph, the term ''higher wage index area'' means, with respect to a county, an area with a wage index that exceeds that of the county.

(D) The increase in the wage index under subparagraph (A) for a qualifying county shall be equal to the percentage of the hospital employees residing in the qualifying county who are employed in any higher wage index area multiplied by the sum of the products, for each higher wage index area of—

(i) the difference between—

(I) the wage index for such higher wage index area, and

(II) the wage index of the qualifying county; and

(ii) the number of hospital employees residing in the qualifying county who are employed in such higher wage index area divided by the total number of hospital employees residing in the qualifying county who are employed in any higher wage index area.

(E) The process under this paragraph may be based upon the process used by the Medicare Geographic Classification Review Board under paragraph (10). As the Secretary determines to be appropriate to carry out such process, the Secretary may require hospitals (including subsection (d) hospitals and other hospitals) and critical access hospitals, as required under section 1395cc(a)(1)(T) of this title, to submit data regarding the location of residence, or the Secretary may use data from other sources.

(F) A wage index increase under this paragraph shall be effective for a period of 3 fiscal

years, except that the Secretary shall establish procedures under which a subsection (d) hospital may elect to waive the application of such wage index increase.

(G) A hospital in a county that has a wage index increase under this paragraph for a period and that has not waived the application of such an increase under subparagraph (F) is not eligible for reclassification under paragraph (8) or (10) during that period.

(H) Any increase in a wage index under this paragraph for a county shall not be taken into account for purposes of—

(i) computing the wage index for portions of the wage index area (not including the county) in which the county is located; or

(ii) applying any budget neutrality adjustment with respect to such index under paragraph (8)(D).

(I) The thresholds described in subparagraph (B), data on hospital employees used under this paragraph, and any determination of the Secretary under the process described in subparagraph (E) shall be final and shall not be subject to judicial review.

(e) Proportional adjustments in applicable percentage increases

(1)(A) For cost reporting periods of hospitals beginning in fiscal year 1984 or fiscal year 1985, the Secretary shall provide for such proportional adjustment in the applicable percentage increase (otherwise applicable to the periods under subsection (b)(3)(B) of this section) as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(I) of this section for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the target percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title);

except that the adjustment made under this subparagraph shall apply only to subsection (d) hospitals and shall not apply for purposes of making computations under subsection (d)(2)(B)(ii) of this section or subsection (d)(3)(A) of this section.

(B) For discharges occurring in fiscal year 1984 or fiscal year 1985, the Secretary shall provide under subsections (d)(2)(F) and (d)(3)(C) of this section for such equal proportional adjustment in each of the average standardized amounts otherwise computed for that fiscal year as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(II) and (d)(5) of this section for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the DRG percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title).

(C) For discharges occurring in fiscal year 1988, the Secretary shall provide for such equal proportional adjustment in each of the average standardized amounts otherwise computed under subsection (d)(3) of this section for that fiscal year as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsections (d)(1)(A)(iii), (d)(5), and (d)(9) of this section for that fiscal year for operating costs of inpatient hospital services of subsection (d) hospitals and subsection (d) Puerto Rico hospitals,

are not greater or less than—

(ii) the payment amounts that would have been payable for such services for those same hospitals for that fiscal year but for the enactment of the amendments made by section 9304 of the Omnibus Budget Reconciliation Act of 1986.

(2) Repealed. Pub. L. 105–33, title IV, § 4022(b)(1)(A)(i), Aug. 5, 1997, 111 Stat. 354.

(3) Repealed. Pub. L. 109–432, div. B, title I, § 106(c)(2), Dec. 20, 2006, 120 Stat. 2983.

(4)(A) Taking into consideration the recommendations of the Commission, the Secretary shall recommend for each fiscal year (beginning with fiscal year 1988) an appropriate change factor for inpatient hospital services for discharges in that fiscal year which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. The appropriate change factor may be different for all large urban subsection (d) hospitals, other urban subsection (d) hospitals, urban subsection (d) Puerto Rico hospitals, rural subsection (d) hospitals, and rural subsection (d) Puerto Rico hospitals, and all other hospitals and units not paid under subsection (d) of this section, and may vary among such other hospitals and units.

(B) In addition to the recommendation made under subparagraph (A), the Secretary shall, taking into consideration the recommendations of the Commission under paragraph (2)(B), recommend for each fiscal year (beginning with fiscal year 1992) other appropriate changes in each existing reimbursement policy under this subchapter under which payments to an institution are based upon prospectively determined rates.

(5) The Secretary shall cause to have published in the Federal Register, not later than—

(A) the April 1 before each fiscal year (beginning with fiscal year 1986), the Secretary's proposed recommendations under paragraph (4) for that fiscal year for public comment, and

(B) the August 1 before such fiscal year after such consideration of public comment on the proposal as is feasible in the time available, the Secretary's final recommendations under such paragraph for that year.

The Secretary shall include in the publication referred to in subparagraph (A) for a fiscal year

the report of the Commission's recommendations submitted under paragraph (3) for that fiscal year. To the extent that the Secretary's recommendations under paragraph (4) differ from the Commission's recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Commission's recommendations.

(f) Reporting of costs of hospitals receiving payments on basis of prospective rates

(1)(A) The Secretary shall maintain a system for the reporting of costs of hospitals receiving payments computed under subsection (d) of this section.

(B)(i) Subject to clause (ii), the Secretary shall place into effect a standardized electronic cost reporting format for hospitals under this subchapter.

(ii) The Secretary may delay or waive the implementation of such format in particular instances where such implementation would result in financial hardship (in particular with respect to hospitals with a small percentage of inpatients entitled to benefits under this subchapter).

(2) If the Secretary determines, based upon information supplied by a utilization and quality control peer review organization under part B of subchapter XI of this chapter, that a hospital, in order to circumvent the payment method established under subsection (b) or (d) of this section, has taken an action that results in the admission of individuals entitled to benefits under part A unnecessarily, unnecessary multiple admissions of the same such individuals, or other inappropriate medical or other practices with respect to such individuals, the Secretary may—

(A) deny payment (in whole or in part) under part A of this subchapter with respect to inpatient hospital services provided with respect to such an unnecessary admission (or subsequent admission of the same individual), or

(B) require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(3) The provisions of subsections (c) through (g) of section 1320a–7 of this title shall apply to determinations made under paragraph (2) in the same manner as they apply to exclusions effected under section 1320a–7(b)(13) of this title.

(g) Prospective payment for capital-related costs; return on equity capital for hospitals

(1)(A) Notwithstanding section 1395x(v) of this title, instead of any amounts that are otherwise payable under this subchapter with respect to the reasonable costs of subsection (d) hospitals and subsection (d) Puerto Rico hospitals for capital-related costs of inpatient hospital services, the Secretary shall, for hospital cost reporting periods beginning on or after October 1, 1991, provide for payments for such costs in accordance with a prospective payment system established by the Secretary. Aggregate payments made under subsection (d) of this section and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduction in the amount of payments attributable to capital-related costs that would otherwise have been made during such fiscal year had the amount of such payments been based on reasonable costs (as defined in section 1395x(v) of this title). For discharges occurring after September 30, 1993, the Secretary shall reduce by 7.4 percent the unadjusted standard Federal capital payment rate (as described in 42 CFR 412.308(c), as in effect on August 10, 1993) and shall (for hospital cost reporting periods beginning on or after October 1, 1993) redetermine which payment methodology is applied to the hospital under such system to take into account such reduction. In addition to the reduction described in the preceding sentence, for discharges occurring on or after October 1, 1997, the Secretary shall apply the budget neutrality adjustment factor used to determine the Federal capital payment rate in effect on September 30, 1995 (as described in section 412.352 of title 42 of the Code of Federal Regulations), to (i) the unadjusted standard Federal capital payment rate (as described in section 412.308(c) of that title, as in effect on September 30, 1997), and (ii) the unadjusted hospital-specific rate (as described in section 412.328(e)(1) of that title, as in effect on September 30, 1997), and, for discharges occurring on or after October 1, 1997, and before October 1, 2002, reduce the rates described in clauses (i) and (ii) by 2.1 percent.

(B) Such system—

(i) shall provide for (I) a payment on a per discharge basis, and (II) an appropriate weighting of such payment amount as relates to the classification of the discharge;

(ii) may provide for an adjustment to take into account variations in the relative costs of capital and construction for the different types of facilities or areas in which they are located;

(iii) may provide for such exceptions (including appropriate exceptions to reflect capital obligations) as the Secretary determines to be appropriate, and

(iv) may provide for suitable adjustment to reflect hospital occupancy rate.

(C) In this paragraph, the ''capital-related costs'' has the meaning given such term by the Secretary under subsection (a)(4) of this section as of September 30, 1987, and does not include a return on equity capital.

(2)(A) The Secretary shall provide that the amount which is allowable, with respect to reasonable costs of inpatient hospital services for which payment may be made under this subchapter, for a return on equity capital for hospitals shall, for cost reporting periods beginning on or after April 20, 1983, be equal to amounts otherwise allowable under regulations in effect on March 1, 1983, except that the rate of return to be recognized shall be equal to the applicable percentage (described in subparagraph (B)) of the average of the rates of interest, for each of the months any part of which is included in the reporting period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(B) In this paragraph, the ''applicable percentage'' is—

(i) 75 percent, for cost reporting periods beginning during fiscal year 1987,

(ii) 50 percent, for cost reporting periods beginning during fiscal year 1988,

(iii) 25 percent, for cost reporting periods beginning during fiscal year 1989, and

(iv) 0 percent, for cost reporting periods beginning on or after October 1, 1989.

(3)(A) Except as provided in subparagraph (B), in determining the amount of the payments that may be made under this subchapter with respect to all the capital-related costs of inpatient hospital services of a subsection (d) hospital and a subsection (d) Puerto Rico hospital, the Secretary shall reduce the amounts of such payments otherwise established under this subchapter by—

(i) 3.5 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1987,

(ii) 7 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1988 on or after October 1, 1987, and before January 1, 1988,

(iii) 12 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) in fiscal year 1988, occurring on or after January 1, 1988,

(iv) 15 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989, and

(v) 15 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during the period beginning January 1, 1990, and ending September 30, 1991.

(B) Subparagraph (A) shall not apply to payments with respect to the capital-related costs of any hospital that is a sole community hospital (as defined in subsection (d)(5)(D)(iii) of this section) or a critical access hospital (as defined in section 1395x(mm)(1) of this title).

(4) In determining the amount of the payments that are attributable to portions of cost reporting periods occurring during fiscal years 1998 through 2002 and that may be made under this subchapter with respect to capital-related costs of inpatient hospital services of a hospital which is described in clause (i), (ii), or (iv) of subsection (d)(1)(B) of this section or a unit described in the matter after clause (v) of such subsection, the Secretary shall reduce the amounts of such payments otherwise determined under this subchapter by 15 percent.

(h) Payments for direct graduate medical education costs

(1) Substitution of special payment rules

Notwithstanding section 1395x(v) of this title, instead of any amounts that are otherwise payable under this subchapter with respect to the reasonable costs of hospitals for direct graduate medical education costs, the Secretary shall provide for payments for such costs in accordance with paragraph (3) of this subsection. In providing for such payments, the Secretary shall provide for an allocation of such payments between part A and part B of this subchapter (and the trust funds established under the respective parts) as reasonably reflects the proportion of direct graduate medical education costs of hospitals associated with the provision of services under each respective part.

(2) Determination of hospital-specific approved FTE resident amounts

The Secretary shall determine, for each hospital with an approved medical residency training program, an approved FTE resident amount for each cost reporting period beginning on or after July 1, 1985, as follows:

(A) Determining allowable average cost per FTE resident in a hospital's base period

The Secretary shall determine, for the hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under this subchapter for direct graduate medical education costs of the hospital for each full-time-equivalent resident.

(B) Updating to the first cost reporting period

(i) In general

The Secretary shall update each average amount determined under subparagraph (A) by the percentage increase in the consumer price index during the 12-month cost reporting period described in such subparagraph.

(ii) Exception

The Secretary shall not perform an update under clause (i) in the case of a hospital if the hospital's reporting period, described in subparagraph (A), began on or after July 1, 1984, and before October 1, 1984.

(C) Amount for first cost reporting period

For the first cost reporting period of the hospital beginning on or after July 1, 1985, the approved FTE resident amount for the hospital is equal to the amount determined under subparagraph (B) increased by 1 percent.

(D) Amount for subsequent cost reporting periods

(i) In general

Except as provided in a subsequent clause, for each subsequent cost reporting period, the approved FTE resident amount for the hospital is equal to the approved FTE resident amount determined under this paragraph for the previous cost reporting period updated, through the midpoint of the period, by projecting the estimated percentage change in the consumer price index during the 12-month period ending at that midpoint, with appropriate adjustments to reflect previous under- or over-estimations under this subparagraph in the projected percentage change in the consumer price index.

(ii) Freeze in update for fiscal years 1994 and 1995

For cost reporting periods beginning during fiscal year 1994 or fiscal year 1995, the approved FTE resident amount for a hos-

pital shall not be updated under clause (i) for a resident who is not a primary care resident (as defined in paragraph (5)(H)) or a resident enrolled in an approved medical residency training program in obstetrics and gynecology.

(iii) Floor for locality adjusted national average per resident amount

The approved FTE resident amount for a hospital for the cost reporting period beginning during fiscal year 2001 shall not be less than 70 percent, and for the cost reporting period beginning during fiscal year 2002 shall not be less than 85 percent, of the locality adjusted national average per resident amount computed under subparagraph (E) for the hospital and period.

(iv) Adjustment in rate of increase for hospitals with FTE approved amount above 140 percent of locality adjusted national average per resident amount

(I) Freeze for fiscal years 2001 and 2002 and 2004 through 2013

For a cost reporting period beginning during fiscal year 2001 or fiscal year 2002 or during the period beginning with fiscal year 2004 and ending with fiscal year 2013, if the approved FTE resident amount for a hospital for the preceding cost reporting period exceeds 140 percent of the locality adjusted national average per resident amount computed under subparagraph (E) for that hospital and period, subject to subclause (III), the approved FTE resident amount for the period involved shall be the same as the approved FTE resident amount for the hospital for such preceding cost reporting period.

(II) 2 percent decrease in update for fiscal years 2003, 2004, and 2005

For the cost reporting period beginning during fiscal year 2003, if the approved FTE resident amount for a hospital for the preceding cost reporting period exceeds 140 percent of the locality adjusted national average per resident amount computed under subparagraph (E) for that hospital and preceding period, the approved FTE resident amount for the period involved shall be updated in the manner described in subparagraph (D)(i) except that, subject to subclause (III), the consumer price index applied for a 12-month period shall be reduced (but not below zero) by 2 percentage points.

(III) No adjustment below 140 percent

In no case shall subclause (I) or (II) reduce an approved FTE resident amount for a hospital for a cost reporting period below 140 percent of the locality adjusted national average per resident amount computed under subparagraph (E) for such hospital and period.

(E) Determination of locality adjusted national average per resident amount

The Secretary shall determine a locality adjusted national average per resident amount with respect to a cost reporting period of a hospital beginning during a fiscal year as follows:

(i) Determining hospital single per resident amount

The Secretary shall compute for each hospital operating an approved graduate medical education program a single per resident amount equal to the average (weighted by number of full-time equivalent residents, as determined under paragraph (4)) of the primary care per resident amount and the non-primary care per resident amount computed under paragraph (2) for cost reporting periods ending during fiscal year 1997.

(ii) Standardizing per resident amounts

The Secretary shall compute a standardized per resident amount for each such hospital by dividing the single per resident amount computed under clause (i) by an average of the 3 geographic index values (weighted by the national average weight for each of the work, practice expense, and malpractice components) as applied under section 1395w–4(e) of this title for 1999 for the fee schedule area in which the hospital is located.

(iii) Computing of weighted average

The Secretary shall compute the average of the standardized per resident amounts computed under clause (ii) for such hospitals, with the amount for each hospital weighted by the average number of full-time equivalent residents at such hospital (as determined under paragraph (4)).

(iv) Computing national average per resident amount

The Secretary shall compute the national average per resident amount, for a hospital's cost reporting period that begins during fiscal year 2001, equal to the weighted average computed under clause (iii) increased by the estimated percentage increase in the consumer price index for all urban consumers during the period beginning with the month that represents the midpoint of the cost reporting periods described in clause (i) and ending with the midpoint of the hospital's cost reporting period that begins during fiscal year 2001.

(v) Adjusting for locality

The Secretary shall compute the product of—

(I) the national average per resident amount computed under clause (iv) for the hospital, and

(II) the geographic index value average (described and applied under clause (ii)) for the fee schedule area in which the hospital is located.

(vi) Computing locality adjusted amount

The locality adjusted national per resident amount for a hospital for—

(I) the cost reporting period beginning during fiscal year 2001 is the product computed under clause (v); or

(II) each subsequent cost reporting period is equal to the locality adjusted national per resident amount for the hospital for the previous cost reporting period (as determined under this clause) updated, through the midpoint of the period, by projecting the estimated percentage change in the consumer price index for all urban consumers during the 12-month period ending at that midpoint.

(F) Treatment of certain hospitals

In the case of a hospital that did not have an approved medical residency training program or was not participating in the program under this subchapter for a cost reporting period beginning during fiscal year 1984, the Secretary shall, for the first such period for which it has such a residency training program and is participating under this subchapter, provide for such approved FTE resident amount as the Secretary determines to be appropriate, based on approved FTE resident amounts for comparable programs.

(3) Hospital payment amount per resident

(A) In general

The payment amount, for a hospital cost reporting period beginning on or after July 1, 1985, is equal to the product of—

(i) the aggregate approved amount (as defined in subparagraph (B)) for that period, and

(ii) the hospital's medicare patient load (as defined in subparagraph (C)) for that period.

(B) Aggregate approved amount

As used in subparagraph (A), the term ''aggregate approved amount'' means, for a hospital cost reporting period, the product of—

(i) the hospital's approved FTE resident amount (determined under paragraph (2)) for that period, and

(ii) the weighted average number of full-time-equivalent residents (as determined under paragraph (4)) in the hospital's approved medical residency training programs in that period.

The Secretary shall reduce the aggregate approved amount to the extent payment is made under subsection (k) of this section for residents included in the hospital's count of full-time equivalent residents.

(C) Medicare patient load

As used in subparagraph (A), the term ''medicare patient load'' means, with respect to a hospital's cost reporting period, the fraction of the total number of inpatient-bed-days (as established by the Secretary) during the period which are attributable to patients with respect to whom payment may be made under part A of this subchapter.

(D) Payment for managed care enrollees

(i) In general

For portions of cost reporting periods occurring on or after January 1, 1998, the Secretary shall provide for an additional payment amount under this subsection for services furnished to individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1395mm of this title and who are entitled to part A of this subchapter or with a Medicare+Choice organization under part C of this subchapter. The amount of such a payment shall equal, subject to clause (iii), the applicable percentage of the product of—

(I) the aggregate approved amount (as defined in subparagraph (B)) for that period; and

(II) the fraction of the total number of inpatient-bed days (as established by the Secretary) during the period which are attributable to such enrolled individuals.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is—

(I) 20 percent in 1998,

(II) 40 percent in 1999,

(III) 60 percent in 2000,

(IV) 80 percent in 2001, and

(V) 100 percent in 2002 and subsequent years.

(iii) Proportional reduction for nursing and allied health education

The Secretary shall estimate a proportional adjustment in payments to all hospitals determined under clauses (i) and (ii) for portions of cost reporting periods beginning in a year (beginning with 2000) such that the proportional adjustment reduces payments in an amount for such year equal to the total additional payment amounts for nursing and allied health education determined under subsection (*l*) of this section for portions of cost reporting periods occurring in that year.

(iv) Special rule for hospitals under reimbursement system

The Secretary shall establish rules for the application of this subparagraph to a hospital reimbursed under a reimbursement system authorized under section 1395f(b)(3) of this title in the same manner as it would apply to the hospital if it were not reimbursed under such section.

(4) Determination of full-time-equivalent residents

(A) Rules

The Secretary shall establish rules consistent with this paragraph for the computation of the number of full-time-equivalent residents in an approved medical residency training program.

(B) Adjustment for part-year or part-time residents

Such rules shall take into account individuals who serve as residents for only a portion of a period with a hospital or simultaneously with more than one hospital.

(C) Weighting factors for certain residents

Subject to subparagraph (D), such rules shall provide, in calculating the number of full-time-equivalent residents in an approved residency program—

(i) before July 1, 1986, for each resident the weighting factor is 1.00,

(ii) on or after July 1, 1986, for a resident who is in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is 1.00,

(iii) on or after July 1, 1986, and before July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .75, and

(iv) on or after July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .50.

(D) Foreign medical graduates required to pass FMGEMS examination

(i) In general

Except as provided in clause (ii), such rules shall provide that, in the case of an individual who is a foreign medical graduate (as defined in paragraph (5)(D)), the individual shall not be counted as a resident on or after July 1, 1986, unless—

(I) the individual has passed the FMGEMS examination (as defined in paragraph (5)(E)), or

(II) the individual has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates.

(ii) Transition for current FMGS

On or after July 1, 1986, but before July 1, 1987, in the case of a foreign medical graduate who—

(I) has served as a resident before July 1, 1986, and is serving as a resident after that date, but

(II) has not passed the FMGEMS examination or a previous examination of the Educational Commission for Foreign Medical Graduates before July 1, 1986,

the individual shall be counted as a resident at a rate equal to one-half of the rate at which the individual would otherwise be counted.

(E) Counting time spent in outpatient settings

Such rules shall provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting.

(F) Limitation on number of residents in allopathic and osteopathic medicine

(i) In general

Such rules shall provide that for purposes of a cost reporting period beginning on or after October 1, 1997, subject to paragraph (7), the total number of full-time equivalent residents before application of weighting factors (as determined under this paragraph) with respect to a hospital's approved medical residency training program in the fields of allopathic medicine and osteopathic medicine may not exceed the number (or, 130 percent of such number in the case of a hospital located in a rural area) of such full-time equivalent residents for the hospital's most recent cost reporting period ending on or before December 31, 1996.

(ii) Counting primary care residents on certain approved leaves of absence in base year FTE count

(I) In general

In determining the number of such full-time equivalent residents for a hospital's most recent cost reporting period ending on or before December 31, 1996, for purposes of clause (i), the Secretary shall count an individual to the extent that the individual would have been counted as a primary care resident for such period but for the fact that the individual, as determined by the Secretary, was on maternity or disability leave or a similar approved leave of absence.

(II) Limitation to 3 FTE residents for any hospital

The total number of individuals counted under subclause (I) for a hospital may not exceed 3 full-time equivalent residents.

(G) Counting interns and residents for FY 1998 and subsequent years

(i) In general

For cost reporting periods beginning during fiscal years beginning on or after October 1, 1997, subject to the limit described in subparagraph (F), the total number of full-time equivalent residents for determining a hospital's graduate medical education payment shall equal the average of the actual full-time equivalent resident counts for the cost reporting period and the preceding two cost reporting periods.

(ii) Adjustment for short periods

If any cost reporting period beginning on or after October 1, 1997, is not equal to twelve months, the Secretary shall make appropriate modifications to ensure that the average full-time equivalent resident counts pursuant to clause (i) are based on the equivalent of full twelve-month cost reporting periods.

(iii) Transition rule for 1998

In the case of a hospital's first cost reporting period beginning on or after October 1, 1997, clause (i) shall be applied by using the average for such period and the preceding cost reporting period.

(H) Special rules for application of subparagraphs (F) and (G)

(i) New facilities

The Secretary shall, consistent with the principles of subparagraphs (F) and (G) and

subject to paragraph (7), prescribe rules for the application of such subparagraphs in the case of medical residency training programs established on or after January 1, 1995. In promulgating such rules for purposes of subparagraph (F), the Secretary shall give special consideration to facilities that meet the needs of underserved rural areas.

(ii) Aggregation

The Secretary may prescribe rules which allow institutions which are members of the same affiliated group (as defined by the Secretary) to elect to apply the limitation of subparagraph (F) on an aggregate basis.

(iii) Data collection

The Secretary may require any entity that operates a medical residency training program and to which subparagraphs (F) and (G) apply to submit to the Secretary such additional information as the Secretary considers necessary to carry out such subparagraphs.

(iv) Nonrural hospitals operating training programs in rural areas

In the case of a hospital that is not located in a rural area but establishes separately accredited approved medical residency training programs (or rural tracks) in an[7] rural area or has an accredited training program with an integrated rural track, the Secretary shall adjust the limitation under subparagraph (F) in an appropriate manner insofar as it applies to such programs in such rural areas in order to encourage the training of physicians in rural areas.

(5) Definitions and special rules

As used in this subsection:

(A) Approved medical residency training program

The term ''approved medical residency training program'' means a residency or other postgraduate medical training program participation in which may be counted toward certification in a specialty or subspecialty and includes formal postgraduate training programs in geriatric medicine approved by the Secretary.

(B) Consumer price index

The term ''consumer price index'' refers to the Consumer Price Index for All Urban Consumers (United States city average), as published by the Secretary of Commerce.

(C) Direct graduate medical education costs

The term ''direct graduate medical education costs'' means direct costs of approved educational activities for approved medical residency training programs.

(D) Foreign medical graduate

The term ''foreign medical graduate'' means a resident who is not a graduate of—

(i) a school of medicine accredited by the Liaison Committee on Medical Education of the American Medical Association and the Association of American Medical Colleges (or approved by such Committee as meeting the standards necessary for such accreditation),

(ii) a school of osteopathy accredited by the American Osteopathic Association, or approved by such Association as meeting the standards necessary for such accreditation, or

(iii) a school of dentistry or podiatry which is accredited (or meets the standards for accreditation) by an organization recognized by the Secretary for such purpose.

(E) FMGEMS examination

The term ''FMGEMS examination'' means parts I and II of the Foreign Medical Graduate Examination in the Medical Sciences or any successor examination recognized by the Secretary for this purpose.

(F) Initial residency period

The term ''initial residency period'' means the period of board eligibility, except that—

(i) except as provided in clause (ii), in no case shall the initial period of residency exceed an aggregate period of formal training of more than five years for any individual, and

(ii) a period, of not more than two years, during which an individual is in a geriatric residency or fellowship program or a preventive medicine residency or fellowship program which meets such criteria as the Secretary may establish, shall be treated as part of the initial residency period, but shall not be counted against any limitation on the initial residency period.

Subject to subparagraph (G)(v), the initial residency period shall be determined, with respect to a resident, as of the time the resident enters the residency training program.

(G) Period of board eligibility

(i) General rule

Subject to clauses (ii), (iii), (iv), and (v), the term ''period of board eligibility'' means, for a resident, the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training.

(ii) Application of 1985–1986 directory

Except as provided in clause (iii), the period of board eligibility shall be such period specified in the 1985–1986 Directory of Residency Training Programs published by the Accreditation Council on Graduate Medical Education.

(iii) Changes in period of board eligibility

On or after July 1, 1989, if the Accreditation Council on Graduate Medical Education, in its Directory of Residency Training Programs—

(I) increases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, above the period specified in its 1985–1986

[7] So in original. Probably should be ''a''.

Directory, the Secretary may increase the period of board eligibility for that specialty, but not to exceed the period of board eligibility specified in that later Directory, or

(II) decreases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, below the period specified in its 1985–1986 Directory, the Secretary may decrease the period of board eligibility for that specialty, but not below the period of board eligibility specified in that later Directory.

(iv) Special rule for certain primary care combined residency programs

(I) In the case of a resident enrolled in a combined medical residency training program in which all of the individual programs (that are combined) are for training a primary care resident (as defined in subparagraph (H)), the period of board eligibility shall be the minimum number of years of formal training required to satisfy the requirements for initial board eligibility in the longest of the individual programs plus one additional year.

(II) A resident enrolled in a combined medical residency training program that includes an obstetrics and gynecology program shall qualify for the period of board eligibility under subclause (I) if the other programs such resident combines with such obstetrics and gynecology program are for training a primary care resident.

(v) Child neurology training programs

In the case of a resident enrolled in a child neurology residency training program, the period of board eligibility and the initial residency period shall be the period of board eligibility for pediatrics plus 2 years.

(H) Primary care resident

The term ''primary care resident'' means a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine, or osteopathic general practice.

(I) Resident

The term ''resident'' includes an intern or other participant in an approved medical residency training program.

(J) Adjustments for certain family practice residency programs

(i) In general

In the case of an approved medical residency training program (meeting the requirements of clause (ii)) of a hospital which received funds from the United States, a State, or a political subdivision of a State or an instrumentality of such a State or political subdivision (other than payments under this subchapter or a State plan under subchapter XIX of this chapter) for the program during the cost reporting period that began during fiscal year 1984, the Secretary shall—

(I) provide for an average amount under paragraph (2)(A) that takes into account the Secretary's estimate of the amount that would have been recognized as reasonable under this subchapter if the hospital had not received such funds, and

(II) reduce the payment amount otherwise provided under this subsection in an amount equal to the proportion of such program funds received during the cost reporting period involved that is allocable to this subchapter.

(ii) Additional requirements

A hospital's approved medical residency program meets the requirements of this clause if—

(I) the program is limited to training for family and community medicine;

(II) the program is the only approved medical residency program of the hospital; and

(III) the average amount determined under paragraph (2)(A) for the hospital (as determined without regard to the increase in such amount described in clause (i)(I)) does not exceed $10,000.

(6) Incentive payment under plans for voluntary reduction in number of residents

(A) In general

In the case of a voluntary residency reduction plan for which an application is approved under subparagraph (B), subject to subparagraph (F), each hospital which is part of the qualifying entity submitting the plan shall be paid an applicable hold harmless percentage (as specified in subparagraph (E)) of the sum of—

(i) the amount (if any) by which—

(I) the amount of payment which would have been made under this subsection if there had been a 5-percent reduction in the number of full-time equivalent residents in the approved medical education training programs of the hospital as of June 30, 1997, exceeds

(II) the amount of payment which is made under this subsection, taking into account the reduction in such number effected under the reduction plan; and

(ii) the amount of the reduction in payment under subsection (d)(5)(B) of this section for the hospital that is attributable to the reduction in number of residents effected under the plan below 95 percent of the number of full-time equivalent residents in such programs of the hospital as of June 30, 1997.

The determination of the amounts under clauses (i) and (ii) for any year shall be made on the basis of the provisions of this subchapter in effect on the application deadline date for the first calendar year to which the reduction plan applies.

(B) Approval of plan applications

The Secretary may not approve the application of an qualifying entity unless—

(i) the application is submitted in a form and manner specified by the Secretary and by not later than November 1, 1999,[8]

(ii) the application provides for the operation of a plan for the reduction in the number of full-time equivalent residents in the approved medical residency training programs of the entity consistent with the requirements of subparagraph (D);

(iii) the entity elects in the application the period of residency training years (not greater than 5) over which the reduction will occur;

(iv) the entity will not reduce the proportion of its residents in primary care (to the total number of residents) below such proportion as in effect as of the applicable time described in subparagraph (D)(v); and

(v) the Secretary determines that the application and the entity and such plan meet such other requirements as the Secretary specifies in regulations.

(C) Qualifying entity

For purposes of this paragraph, any of the following may be a qualifying entity:

(i) Individual hospitals operating one or more approved medical residency training programs.

(ii) Two or more hospitals that operate such programs and apply for treatment under this paragraph as a single qualifying entity.

(iii) A qualifying consortium (as described in section 4628 of the Balanced Budget Act of 1997).

(D) Residency reduction requirements

(i) Individual hospital applicants

In the case of a qualifying entity described in subparagraph (C)(i), the number of full-time equivalent residents in all the approved medical residency training programs operated by or through the entity shall be reduced as follows:

(I) If the base number of residents exceeds 750 residents, by a number equal to at least 20 percent of such base number.

(II) Subject to subclause (IV), if the base number of residents exceeds 600 but is less than 750 residents, by 150 residents.

(III) Subject to subclause (IV), if the base number of residents does not exceed 600 residents, by a number equal to at least 25 percent of such base number.

(IV) In the case of a qualifying entity which is described in clause (v) and which elects treatment under this subclause, by a number equal to at least 20 percent of the base number.

(ii) Joint applicants

In the case of a qualifying entity described in subparagraph (C)(ii), the number of full-time equivalent residents in the aggregate for all the approved medical residency training programs operated by or through the entity shall be reduced as follows:

(I) Subject to subclause (II), by a number equal to at least 25 percent of the base number.

(II) In the case of such a qualifying entity which is described in clause (v) and which elects treatment under this subclause, by a number equal to at least 20 percent of the base number.

(iii) Consortia

In the case of a qualifying entity described in subparagraph (C)(iii), the number of full-time equivalent residents in the aggregate for all the approved medical residency training programs operated by or through the entity shall be reduced by a number equal to at least 20 percent of the base number.

(iv) Manner of reduction

The reductions specified under the preceding provisions of this subparagraph for a qualifying entity shall be below the base number of residents for that entity and shall be fully effective not later than the 5th residency training year in which the application under subparagraph (B) is effective.

(v) Entities providing assurance of increase in primary care residents

An entity is described in this clause if—

(I) the base number of residents for the entity is less than 750 or the entity is described in subparagraph (C)(ii); and

(II) the entity represents in its application under subparagraph (B) that it will increase the number of full-time equivalent residents in primary care by at least 20 percent (from such number included in the base number of residents) by not later than the 5th residency training year in which the application under subparagraph (B) is effective.

If a qualifying entity fails to comply with the representation described in subclause (II) by the end of such 5th residency training year, the entity shall be subject to repayment of all amounts paid under this paragraph, in accordance with procedures established to carry out subparagraph (F).

(vi) "Base number of residents" defined

For purposes of this paragraph, the term ''base number of residents'' means, with respect to a qualifying entity (or its participating hospitals) operating approved medical residency training programs, the number of full-time equivalent residents in such programs (before application of weighting factors) of the entity as of the most recent residency training year ending before June 30, 1997, or, if less, for any subsequent residency training year that ends before the date the entity makes application under this paragraph.

(E) Applicable hold harmless percentage

For purposes of subparagraph (A), the ''applicable hold harmless percentage'' for the—

(i) first and second residency training years in which the reduction plan is in effect, 100 percent,

[8] So in original. The comma probably should be a semicolon.

(ii) third such year, 75 percent,
(iii) fourth such year, 50 percent, and
(iv) fifth such year, 25 percent.

(F) Penalty for noncompliance

(i) In general

No payment may be made under this paragraph to a hospital for a residency training year if the hospital has failed to reduce the number of full-time equivalent residents (in the manner required under subparagraph (D)) to the number agreed to by the Secretary and the qualifying entity in approving the application under this paragraph with respect to such year.

(ii) Increase in number of residents in subsequent years

If payments are made under this paragraph to a hospital, and if the hospital increases the number of full-time equivalent residents above the number of such residents permitted under the reduction plan as of the completion of the plan, then, as specified by the Secretary, the entity is liable for repayment to the Secretary of the total amounts paid under this paragraph to the entity.

(G) Treatment of rotating residents

In applying this paragraph, the Secretary shall establish rules regarding the counting of residents who are assigned to institutions the medical residency training programs in which are not covered under approved applications under this paragraph.

(7) Redistribution of unused resident positions

(A) Reduction in limit based on unused positions

(i) Programs subject to reduction

(I) In general

Except as provided in subclause (II), if a hospital's reference resident level (specified in clause (ii)) is less than the otherwise applicable resident limit (as defined in subparagraph (C)(ii)), effective for portions of cost reporting periods occurring on or after July 1, 2005, the otherwise applicable resident limit shall be reduced by 75 percent of the difference between such otherwise applicable resident limit and such reference resident level.

(II) Exception for small rural hospitals

This subparagraph shall not apply to a hospital located in a rural area (as defined in subsection (d)(2)(D)(ii) of this section) with fewer than 250 acute care inpatient beds.

(ii) Reference resident level

(I) In general

Except as otherwise provided in subclauses (II) and (III), the reference resident level specified in this clause for a hospital is the resident level for the most recent cost reporting period of the hospital ending on or before September 30, 2002, for which a cost report has been settled (or, if not, submitted (subject to audit)), as determined by the Secretary.

(II) Use of most recent accounting period to recognize expansion of existing programs

If a hospital submits a timely request to increase its resident level due to an expansion of an existing residency training program that is not reflected on the most recent settled cost report, after audit and subject to the discretion of the Secretary, the reference resident level for such hospital is the resident level for the cost reporting period that includes July 1, 2003, as determined by the Secretary.

(III) Expansions under newly approved programs

Upon the timely request of a hospital, the Secretary shall adjust the reference resident level specified under subclause (I) or (II) to include the number of medical residents that were approved in an application for a medical residency training program that was approved by an appropriate accrediting organization (as determined by the Secretary) before January 1, 2002, but which was not in operation during the cost reporting period used under subclause (I) or (II), as the case may be, as determined by the Secretary.

(iii) Affiliation

The provisions of clause (i) shall be applied to hospitals which are members of the same affiliated group (as defined by the Secretary under paragraph (4)(H)(ii)) as of July 1, 2003.

(B) Redistribution

(i) In general

The Secretary is authorized to increase the otherwise applicable resident limit for each qualifying hospital that submits a timely application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after July 1, 2005. The aggregate number of increases in the otherwise applicable resident limits under this subparagraph may not exceed the Secretary's estimate of the aggregate reduction in such limits attributable to subparagraph (A).

(ii) Considerations in redistribution

In determining for which hospitals the increase in the otherwise applicable resident limit is provided under clause (i), the Secretary shall take into account the demonstrated likelihood of the hospital filling the positions within the first 3 cost reporting periods beginning on or after July 1, 2005, made available under this subparagraph, as determined by the Secretary.

(iii) Priority for rural and small urban areas

In determining for which hospitals and residency training programs an increase in

the otherwise applicable resident limit is provided under clause (i), the Secretary shall distribute the increase to programs of hospitals located in the following priority order:

(I) First, to hospitals located in rural areas (as defined in subsection (d)(2)(D)(ii) of this section).

(II) Second, to hospitals located in urban areas that are not large urban areas (as defined for purposes of subsection (d) of this section).

(III) Third, to other hospitals in a State if the residency training program involved is in a specialty for which there are not other residency training programs in the State.

Increases of residency limits within the same priority category under this clause shall be determined by the Secretary.

(iv) Limitation

In no case shall more than 25 full-time equivalent additional residency positions be made available under this subparagraph with respect to any hospital.

(v) Application of locality adjusted national average per resident amount

With respect to additional residency positions in a hospital attributable to the increase provided under this subparagraph, notwithstanding any other provision of this subsection, the approved FTE resident amount is deemed to be equal to the locality adjusted national average per resident amount computed under paragraph (4)(E) for that hospital.

(vi) Construction

Nothing in this subparagraph shall be construed as permitting the redistribution of reductions in residency positions attributable to voluntary reduction programs under paragraph (6), under a demonstration project approved as of October 31, 2003, under the authority of section 402 of Public Law 90–248, or as affecting the ability of a hospital to establish new medical residency training programs under paragraph (4)(H).

(C) Resident level and limit defined

In this paragraph:

(i) Resident level

The term ''resident level'' means, with respect to a hospital, the total number of full-time equivalent residents, before the application of weighting factors (as determined under paragraph (4)), in the fields of allopathic and osteopathic medicine for the hospital.

(ii) Otherwise applicable resident limit

The term ''otherwise applicable resident limit'' means, with respect to a hospital, the limit otherwise applicable under subparagraphs (F)(i) and (H) of paragraph (4) on the resident level for the hospital determined without regard to this paragraph.

(D) Judicial review

There shall be no administrative or judicial review under section 1395ff, 1395*oo* of this title, or otherwise, with respect to determinations made under this paragraph.

(i) Avoiding duplicative payments to hospitals participating in rural demonstration programs

The Secretary shall reduce any payment amounts otherwise determined under this section to the extent necessary to avoid duplication of any payment made under section 4005(e) of the Omnibus Budget Reconciliation Act of 1987.

(j) Prospective payment for inpatient rehabilitation services

(1) Payment during transition period

(A) In general

Notwithstanding section 1395f(b) of this title, but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating and capital costs of inpatient hospital services of a rehabilitation hospital or a rehabilitation unit (in this subsection referred to as a ''rehabilitation facility''), other than a facility making an election under subparagraph (F) in a cost reporting period beginning on or after October 1, 2000, and before October 1, 2002, is equal to the sum of—

(i) the TEFRA percentage (as defined in subparagraph (C)) of the amount that would have been paid under part A of this subchapter with respect to such costs if this subsection did not apply, and

(ii) the prospective payment percentage (as defined in subparagraph (C)) of the product of (I) the per unit payment rate established under this subsection for the fiscal year in which the payment unit of service occurs, and (II) the number of such payment units occurring in the cost reporting period.

(B) Fully implemented system

Notwithstanding section 1395f(b) of this title, but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating and capital costs of inpatient hospital services of a rehabilitation facility for a payment unit in a cost reporting period beginning on or after October 1, 2002, or, in the case of a facility making an election under subparagraph (F), for any cost reporting period described in such subparagraph, is equal to the per unit payment rate established under this subsection for the fiscal year in which the payment unit of service occurs.

(C) TEFRA and prospective payment percentages specified

For purposes of subparagraph (A), for a cost reporting period beginning—

(i) on or after October 1, 2000, and before October 1, 2001, the ''TEFRA percentage'' is 66⅔ percent and the ''prospective payment percentage'' is 33⅓ percent; and

(ii) on or after October 1, 2001, and before October 1, 2002, the ''TEFRA percentage'' is 33⅓ percent and the ''prospective payment percentage'' is 66⅔ percent.

(D) Payment unit

For purposes of this subsection, the term ''payment unit'' means a discharge.

(E) Construction relating to transfer authority

Nothing in this subsection shall be construed as preventing the Secretary from providing for an adjustment to payments to take into account the early transfer of a patient from a rehabilitation facility to another site of care.

(F) Election to apply full prospective payment system

A rehabilitation facility may elect, not later than 30 days before its first cost reporting period for which the payment methodology under this subsection applies to the facility, to have payment made to the facility under this subsection under the provisions of subparagraph (B) (rather than subparagraph (A)) for each cost reporting period to which such payment methodology applies.

(2) Patient case mix groups

(A) Establishment

The Secretary shall establish—

(i) classes of patient discharges of rehabilitation facilities by functional-related groups (each in this subsection referred to as a ''case mix group''), based on impairment, age, comorbidities, and functional capability of the patient and such other factors as the Secretary deems appropriate to improve the explanatory power of functional independence measure-function related groups; and

(ii) a method of classifying specific patients in rehabilitation facilities within these groups.

(B) Weighting factors

For each case mix group the Secretary shall assign an appropriate weighting which reflects the relative facility resources used with respect to patients classified within that group compared to patients classified within other groups.

(C) Adjustments for case mix

(i) In general

The Secretary shall from time to time adjust the classifications and weighting factors established under this paragraph as appropriate to reflect changes in treatment patterns, technology, case mix, number of payment units for which payment is made under this subchapter, and other factors which may affect the relative use of resources. Such adjustments shall be made in a manner so that changes in aggregate payments under the classification system are a result of real changes and are not a result of changes in coding that are unrelated to real changes in case mix.

(ii) Adjustment

Insofar as the Secretary determines that such adjustments for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under the classification system during the fiscal year that are a result of changes in the coding or classification of patients that do not reflect real changes in case mix, the Secretary shall adjust the per payment unit payment rate for subsequent years so as to eliminate the effect of such coding or classification changes.

(D) Data collection

The Secretary is authorized to require rehabilitation facilities that provide inpatient hospital services to submit such data as the Secretary deems necessary to establish and administer the prospective payment system under this subsection.

(3) Payment rate

(A) In general

The Secretary shall determine a prospective payment rate for each payment unit for which such rehabilitation facility is entitled to receive payment under this subchapter. Subject to subparagraph (B), such rate for payment units occurring during a fiscal year shall be based on the average payment per payment unit under this subchapter for inpatient operating and capital costs of rehabilitation facilities using the most recent data available (as estimated by the Secretary as of the date of establishment of the system) adjusted—

(i) by updating such per-payment-unit amount to the fiscal year involved by the weighted average of the applicable percentage increases provided under subsection (b)(3)(B)(ii) of this section (for cost reporting periods beginning during the fiscal year) covering the period from the midpoint of the period for such data through the midpoint of fiscal year 2000 and by an increase factor (described in subparagraph (C)) specified by the Secretary for subsequent fiscal years up to the fiscal year involved;

(ii) by reducing such rates by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on prospective payment amounts which are additional payments described in paragraph (4) (relating to outlier and related payments);

(iii) for variations among rehabilitation facilities by area under paragraph (6);

(iv) by the weighting factors established under paragraph (2)(B); and

(v) by such other factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.

(B) Budget neutral rates

The Secretary shall establish the prospective payment amounts under this subsection for payment units during fiscal years 2001 and 2002 at levels such that, in the Secretary's estimation, the amount of total payments under this subsection for such fiscal years (including any payment adjustments pursuant to paragraphs (4) and (6) but

not taking into account any payment adjustment resulting from an election permitted under paragraph (1)(F)) shall be equal to 98 percent for fiscal year 2001 and 100 percent for fiscal year 2002 of the amount of payments that would have been made under this subchapter during the fiscal years for operating and capital costs of rehabilitation facilities had this subsection not been enacted. In establishing such payment amounts, the Secretary shall consider the effects of the prospective payment system established under this subsection on the total number of payment units from rehabilitation facilities and other factors described in subparagraph (A).

(C) Increase factor

For purposes of this subsection for payment units in each fiscal year (beginning with fiscal year 2001), the Secretary shall establish an increase factor. Such factor shall be based on an appropriate percentage increase in a market basket of goods and services comprising services for which payment is made under this subsection, which may be the market basket percentage increase described in subsection (b)(3)(B)(iii) of this section.

(4) Outlier and special payments

(A) Outliers

(i) In general

The Secretary may provide for an additional payment to a rehabilitation facility for patients in a case mix group, based upon the patient being classified as an outlier based on an unusual length of stay, costs, or other factors specified by the Secretary.

(ii) Payment based on marginal cost of care

The amount of such additional payment under clause (i) shall be determined by the Secretary and shall approximate the marginal cost of care beyond the cutoff point applicable under clause (i).

(iii) Total payments

The total amount of the additional payments made under this subparagraph for payment units in a fiscal year may not exceed 5 percent of the total payments projected or estimated to be made based on prospective payment rates for payment units in that year.

(B) Adjustment

The Secretary may provide for such adjustments to the payment amounts under this subsection as the Secretary deems appropriate to take into account the unique circumstances of rehabilitation facilities located in Alaska and Hawaii.

(5) Publication

The Secretary shall provide for publication in the Federal Register, on or before August 1 before each fiscal year (beginning with fiscal year 2001), of the classification and weighting factors for case mix groups under paragraph (2) for such fiscal year and a description of the methodology and data used in computing the prospective payment rates under this subsection for that fiscal year.

(6) Area wage adjustment

The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs which are attributable to wages and wage-related costs, of the prospective payment rates computed under paragraph (3) for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. Not later than October 1, 2001 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of information available to the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services. Any adjustments or updates made under this paragraph for a fiscal year shall be made in a manner that assures that the aggregated payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment.

(7) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395*oo* of this title, or otherwise of the establishment of—

(A) case mix groups, of the methodology for the classification of patients within such groups, and of the appropriate weighting factors thereof under paragraph (2),

(B) the prospective payment rates under paragraph (3),

(C) outlier and special payments under paragraph (4), and

(D) area wage adjustments under paragraph (6).

(k) Payment to nonhospital providers

(1) In general

For cost reporting periods beginning on or after October 1, 1997, the Secretary may establish rules for payment to qualified nonhospital providers for their direct costs of medical education, if those costs are incurred in the operation of an approved medical residency training program described in subsection (h) of this section. Such rules shall specify the amounts, form, and manner in which such payments will be made and the portion of such payments that will be made from each of the trust funds under this subchapter.

(2) Qualified nonhospital providers

For purposes of this subsection, the term ''qualified nonhospital providers'' means—

(A) a Federally[9] qualified health center, as defined in section 1395x(aa)(4) of this title;

(B) a rural health clinic, as defined in section 1395x(aa)(2) of this title;

(C) Medicare+Choice organizations; and

(D) such other providers (other than hospitals) as the Secretary determines to be appropriate.

[9] So in original. Probably should not be capitalized.

(*l*) Payment for nursing and allied health education for managed care enrollees

(1) In general

For portions of cost reporting periods occurring in a year (beginning with 2000), the Secretary shall provide for an additional payment amount for any hospital that receives payments for the costs of approved educational activities for nurse and allied health professional training under section 1395x(v)(1) of this title.

(2) Payment amount

The additional payment amount under this subsection for each hospital for portions of cost reporting periods occurring in a year shall be an amount specified by the Secretary in a manner consistent with the following:

(A) Determination of managed care enrollee payment ratio for graduate medical education payments

The Secretary shall estimate the ratio of payments for all hospitals for portions of cost reporting periods occurring in the year under subsection (h)(3)(D) of this section to total direct graduate medical education payments estimated for such portions of periods under subsection (h)(3) of this section.

(B) Application to fee-for-service nursing and allied health education payments

Such ratio shall be applied to the Secretary's estimate of total payments for nursing and allied health education determined under section 1395x(v) of this title for portions of cost reporting periods occurring in the year to determine a total amount of additional payments for nursing and allied health education to be distributed to hospitals under this subsection for portions of cost reporting periods occurring in the year; except that in no case shall such total amount exceed $60,000,000 in any year.

(C) Application to hospital

The amount of payment under this subsection to a hospital for portions of cost reporting periods occurring in a year is equal to the total amount of payments determined under subparagraph (B) for the year multiplied by the ratio of—

(i) the product of (I) the Secretary's estimate of the ratio of the amount of payments made under section 1395x(v) of this title to the hospital for nursing and allied health education activities for the hospital's cost reporting period ending in the second preceding fiscal year, to the hospital's total inpatient days for such period, and (II) the total number of inpatient days (as established by the Secretary) for such period which are attributable to services furnished to individuals who are enrolled under a risk sharing contract with an eligible organization under section 1395mm of this title and who are entitled to benefits under part A of this subchapter or who are enrolled with a Medicare+Choice organization under part C of this subchapter; to

(ii) the sum of the products determined under clause (i) for such cost reporting periods.

(Aug. 14, 1935, ch. 531, title XVIII, § 1886, as added and amended Pub. L. 97–248, title I, §§ 101(a)(1), 110, Sept. 3, 1982, 96 Stat. 331, 339; Pub. L. 97–448, title III, § 309(b)(13)–(15), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–21, title VI, § 601(a)(1), (2), (b), (c), (d)(2), (e), Apr. 20, 1983, 97 Stat. 149, 150, 152; Pub. L. 98–369, div. B, title III, §§ 2307(b)(1), 2310(a), 2311(a)–(c), 2312(a), (b), 2313(a), (b), (d), 2315(a)–(c), 2354(b)(42)–(44), July 18, 1984, 98 Stat. 1073, 1075–1080, 1102; Pub. L. 98–617, § 3(b)(9), Nov. 8, 1984, 98 Stat. 3296; Pub. L. 99–272, title IX, §§ 9101(b), (c), 9102(a)–(c), 9104(a), (b), 9105(a)–(c), 9106(a), 9107(a), 9109(a), 9111(a), 9127(a), 9202(a), Apr. 7, 1986, 100 Stat. 153–155, 157–162, 170, 171; Pub. L. 99–349, title II, § 206, July 2, 1986, 100 Stat. 749; Pub. L. 99–509, title IX, §§ 9302(a)(1), (2), (b)(1), (c), (d)(1)(A), (e), 9303, 9304(a)–(c), 9306(a)–(c), 9307(c)(1), 9314(a), 9320(g), 9321(e)(2), Oct. 21, 1986, 100 Stat. 1982–1985, 1988, 1995, 2005, 2015, 2018; Pub. L. 99–514, § 2, title XVIII, § 1895(b)(1)(A)–(C), (2)(A)–(C), (3), (9), Oct. 22, 1986, 100 Stat. 2095, 2931–2933; Pub. L. 100–93, § 8(c)(4), Aug. 18, 1987, 101 Stat. 693; Pub. L. 100–203, title IV, §§ 4002(a)–(f)(1), 4003(a)–(c), 4004(a), 4005(a)(1), (c)(1), (d)(1)(A), 4006(a)–(b)(2), 4007(b)(1), 4009(d)(1), (j)(1)–(6)(B), 4083(b)(1), Dec. 22, 1987, 101 Stat. 1330–42 to 1330–44, 1330–46, 1330–47, 1330–49, 1330–52, 1330–53, 1330–57 to 1330–59, 1330–129, as amended Pub. L. 100–360, title IV, § 411(b)(1)(E), (3), (4)(C)(i), (5)(B), (6)(B), (8)(B), July 1, 1988, 102 Stat. 769, 770, 772; Pub. L. 100–360, title IV, § 411(b)(1)(A)–(D), (F)–(H)(i), (4)(A), (B), (5)(A), July 1, 1988, 102 Stat. 768–770; Pub. L. 100–485, title VI, § 608(d)(18)(A), (B), Oct. 13, 1988, 102 Stat. 2418; Pub. L. 100–647, title I, § 1018(r)(1), title VIII, §§ 8401, 8403(a), Nov. 10, 1988, 102 Stat. 3586, 3798; Pub. L. 101–234, title III, § 301(b)(3), (c)(3), Dec. 13, 1989, 103 Stat. 1985, 1986; Pub. L. 101–239, title VI, §§ 6002, 6003(a)(1), (b)–(c)(3), (e)(1), (2)(B)–(E), (f), (g)(2), (4)–(h)(4), (6), 6004(a)(1), (2), (b)(1), 6011(a), 6015(a), 6022, Dec. 19, 1989, 103 Stat. 2140–2144, 2151, 2154–2157, 2159–2161, 2164, 2167; Pub. L. 101–403, title I, § 115(b)(1), Oct. 1, 1990, 104 Stat. 870; Pub. L. 101–508, title IV, §§ 4001, 4002(a)(1), (b)(1)–(4), (c)(1), (2), (e)(1), (g)(1), (2), (h)(1)(A), (2)(B), 4003(a), 4005(a)(1), (c)(1)(B), (2), 4008(f)(1), (m)(2)(A), Nov. 5, 1990, 104 Stat. 1388–31 to 1388–38, 1388–40, 1388–42, 1388–45, 1388–53; Pub. L. 103–66, title XIII, §§ 13501(a), (b)(1), (c), (e)(1), (f), 13502, 13506, 13563(a), (b)(1), (c)(1), Aug. 10, 1993, 107 Stat. 572, 574, 575, 577, 579, 605; Pub. L. 103–432, title I, §§ 101(a)(1), (b), (c), 102(b)(1)(B), 105, 108–110(a), (c), 153(a), Oct. 31, 1994, 108 Stat. 4400–4402, 4405, 4407, 4408, 4437; Pub. L. 105–33, title IV, §§ 4022(b)(1)(A), 4201(c)(1), (4), 4202(a), 4204(a)(1), (2), 4401(a), 4402, 4403(a), 4405(a)–(c), 4406, 4407, 4411–4415(c), 4416, 4417(a)(1), (b)(1), 4418(a), 4419(a)(1), 4421(a), (b), 4621–4626(a), 4627(a), 4644(a)(1), (b)(1), (c)(1), Aug. 5, 1997, 111 Stat. 354, 373–375, 397, 398, 400, 401, 403–410, 413, 475–480, 483, 488; Pub. L. 106–113, div. B, § 1000(a)(6) [title I, §§ 111(a), (c), 112(a), 121(a), 122, 125(a), title III, §§ 311, 312(a), 321(b), (e), (f), (h), (k)(15)–(17), title IV, §§ 401(a), 402(a), 404(a), (b)(1), 405–407(a)(2), (b)(1), (2), (c)(1), title V, § 541], Nov. 29, 1999, 113 Stat. 1536, 1501A–329 to 1501A–332, 1501A–362 to 150A–366, 1501A–368, 1501A–369, 1501A–372 to 1501A–374, 1501A–391; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 152(a), (b)], § 1(a)(6) [title II, §§ 211, 212(a), 213(a), title III, §§ 301(a), (e)(1), 302(a), (c), (d), 303(a), (c), (d)(1), 304(a), (c)(2), 305(a), (b),

307(a)(1), title V, §§ 511, 512(a), 533(b)(1), (3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–251, 2763A–252, 2763A–483, 2763A–485, 2763A–491 to 2763A–496, 2763A–533, 2763A–548, 2763A–550; Pub. L. 108–173, title IV, §§ 401(a)–(c), 402, 403, 406, 407(a), 422(a), (b)(1), title V, §§ 501(a), (b), 502(a), (b), 503(a)–(d)(1), 504, 505(a), title VII, §§ 711, 736(a)(9), (15), (c)(6), Dec. 8, 2003, 117 Stat. 2262–2265, 2269, 2270, 2284, 2286, 2289–2293, 2340, 2355, 2356; Pub. L. 109–171, title V, §§ 5001(a), (c), 5002(a), 5003(a)(1), (2)(A), (b)–(d), Feb. 8, 2006, 120 Stat. 28, 30–32; Pub. L. 109–432, div. B, title I, §§ 106(c), 109(a)(2), title II, § 205(b)(1), Dec. 20, 2006, 120 Stat. 2983, 2985, 2989.)

AMENDMENT OF SUBSECTION (b)(3)(B)(viii)(III)

Pub. L. 109–432, div. B, title I, § 109(a)(2), (c), Dec. 20, 2006, 120 Stat. 2985, provided that, applicable to payment for services furnished on or after Jan. 1, 2009, subsection (b)(3)(B)(viii)(III) of this section is amended by inserting ''(including medication errors)'' after ''quality of care''.

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in text, are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

Section 5001(b) of the Deficit Reduction Act of 2005, referred to in subsec. (b)(3)(B)(viii)(I), is section 5001(b) of Pub. L. 109–171, which is set out below.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsecs. (b)(3)(B)(viii)(IV) and (d)(2)(C)(i), is Pub. L. 108–173, Dec. 8, 2003, 117 Stat. 2066. Section 238(b) of the Act is set out as a note under section 1395*ll* of this title. Section 402(a) of the Act, which amended this section, does not contain a par. (1). Section 403(a)(1) of the Act amended this section. For complete classification of this Act to the Code, see Short Title of 2003 Amendment note set out under section 1305 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (b)(6), is classified generally to Title 26, Internal Revenue Code.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (c)(4)(B), is section 222(a) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note under section 1395b–1 of this title.

Section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985, referred to in subsec. (d)(2)(C)(i), is section 9104(a) of Pub. L. 99–272, which amended subsec. (d)(5)(B) of this section.

Section 4621(a)(1) of the Balanced Budget Act of 1997, referred to in subsec. (d)(2)(C)(i), is section 4621(a)(1) of Pub. L. 105–33, which amended subsec. (d)(5)(B)(ii) of this section.

Section 111 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, referred to in subsec. (d)(2)(C)(i), is section 1000(a)(6) [title I, § 111] of Pub. L. 106–113, which amended this section and enacted provisions set out as a note under this section.

Section 302 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, referred to in subsec. (d)(2)(C)(i), is section 1(a)(6) [title III, § 302] of Pub. L. 106–554, which amended this section and enacted provisions set out as a note under this section.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (d)(2)(C)(i), is Pub. L. 108–173, Dec. 8, 2003, 117 Stat. 2066. Section 402(a) of the Act, which amended this section, does not contain a par. (1). Section 403(a)(1) of the Act amended this section. For complete classification of this Act to the Code, see Short Title of 2003 Amendment note set out under section 1305 of this title and Tables.

Section 6003(c) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (d)(2)(C)(iv), is section 6003(c) of Pub. L. 101–239, which amended this section and enacted provisions set out below.

Section 4002(b) of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (d)(2)(C)(iv), is section 4002(b) of Pub. L. 101–508, which amended this section and enacted provisions set out below.

Section 303 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, referred to in subsec. (d)(2)(C)(iv), is section 1(a)(6) [title III, § 303] of Pub. L. 106–554, which amended this section and enacted provisions set out as notes under this section.

Section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985, referred to in subsec. (d)(3)(C)(ii), is section 9104 of Pub. L. 99–272, which amended subsec. (d)(2)(C)(i), (3)(C), (D)(i)(I), (ii)(I), and (5)(B) of this section.

Section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (d)(3)(C)(ii), is section 4003(a)(1) of Pub. L. 100–203, which amended subsec. (d)(5)(B)(ii) of this section.

The Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (d)(3)(C)(ii), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388. For complete classification of this Act to the Code, see Tables.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (d)(10)(B)(i), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 9304 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (e)(1)(C)(ii), is section 9304 of Pub. L. 99–509, which enacted subsecs. (d)(9) and (e)(1)(C) of this section and amended subsec. (d)(5)(C)(i)(I), (ii) of this section.

Part B of subchapter XI of this chapter, referred to in subsec. (f)(2), is classified to section 1320c et seq. of this title.

Section 4628 of the Balanced Budget Act of 1997, referred to in subsec. (h)(6)(C)(iii), is section 4628 of Pub. L. 105–33, which is set out as a note below.

Section 402 of Public Law 90–248, referred to in subsec. (h)(7)(B)(vi), is section 402 of Pub. L. 90–248, title IV, Jan. 2, 1968, 81 Stat. 930, which enacted section 1395b–1 of this title and amended section 1395*ll* of this title.

Section 4005(e) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (i), is section 4005(e) of Pub. L. 100–203, which is set out below.

AMENDMENTS

2006—Subsec. (b)(3)(B)(i)(XIX). Pub. L. 109–171, § 5001(a)(1)(A), substituted ''2006'' for ''2007''.

Subsec. (b)(3)(B)(i)(XX). Pub. L. 109–171, § 5001(a)(1)(B), substituted ''for each subsequent fiscal year, subject to clause (viii),'' for ''for fiscal year 2008 and each subsequent fiscal year,''.

Subsec. (b)(3)(B)(vii)(I). Pub. L. 109–171, § 5001(a)(2)(A), substituted ''for fiscal years 2005 and 2006'' for ''for each of fiscal years 2005 through 2007''.

Subsec. (b)(3)(B)(vii)(II). Pub. L. 109–171, § 5001(a)(2)(B), substituted ''For fiscal years 2005 and 2006, each'' for ''Each''.

Subsec. (b)(3)(B)(viii). Pub. L. 109–432, § 205(b)(1), realigned margins.

Pub. L. 109–171, § 5001(a)(3), added cl. (viii).

Subsec. (b)(3)(D). Pub. L. 109–171, § 5003(b)(1), inserted ''subject to subparagraph (K),'' after ''(d)(5)(G) of this section),'' in introductory provisions.

Pub. L. 109–171, § 5003(a)(2)(A)(i), substituted ''occurring'' for ''beginning'' and ''October 1, 2011'' for ''October 1, 2006'' in introductory provisions.

Subsec. (b)(3)(D)(iv). Pub. L. 109–171, § 5003(a)(2)(A)(ii), substituted ''through fiscal year 2011'' for ''through fiscal year 2005''.

Subsec. (b)(3)(K). Pub. L. 109–171, § 5003(b)(2), added subpar. (K).

Subsec. (d)(4)(C)(iv). Pub. L. 109–432, § 106(c)(1), struck out cl. (iv) which read as follows: ''The Secretary shall include recommendations with respect to adjustments

to weighting factors under clause (i) in the annual report to Congress required under subsection (e)(3)(B) of this section.''

Subsec. (d)(4)(D). Pub. L. 109–171, § 5001(c)(1), added subpar. (D).

Subsec. (d)(5)(F)(vi). Pub. L. 109–171, § 5002(a), inserted concluding provisions.

Subsec. (d)(5)(F)(xiv)(II). Pub. L. 109–171, § 5003(d), inserted ''or, in the case of discharges occurring on or after October 1, 2006, as a medicare-dependent, small rural hospital under subparagraph (G)(iv)'' before period at end.

Subsec. (d)(5)(G)(i). Pub. L. 109–171, § 5003(a)(1)(A), substituted ''October 1, 2011'' for ''October 1, 2006''.

Subsec. (d)(5)(G)(ii)(II). Pub. L. 109–171, § 5003(c), inserted ''(or 75 percent in the case of discharges occurring on or after October 1, 2006)'' after ''50 percent''.

Pub. L. 109–171, § 5003(a)(1)(B), substituted ''October 1, 2011'' for ''October 1, 2006'' and inserted ''or for discharges in the fiscal year'' after ''for the cost reporting period''.

Subsec. (d)(7)(B). Pub. L. 109–171, § 5001(c)(2), inserted '', including the selection and revision of codes under paragraph (4)(D)'' before period at end.

Subsec. (e)(3). Pub. L. 109–432, § 106(c)(2), struck out par. (3) which read as follows: ''The Secretary, not later than April 1, 1987, for fiscal year 1988 and not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1989), shall report to the Congress the Secretary's initial estimate of the percentage change that the Secretary will recommend under paragraph (4) with respect to that fiscal year.''

2003—Subsec. (b)(3)(B)(i)(XIX), (XX). Pub. L. 108–173, § 501(a), added subcls. (XIX) and (XX) and struck out former subcl. (XIX) which read as follows: ''for fiscal year 2004 and each subsequent fiscal year, the market basket percentage increase for hospitals in all areas.''

Subsec. (b)(3)(B)(vii). Pub. L. 108–173, § 501(b), added cl. (vii).

Subsec. (b)(3)(I)(i)(I). Pub. L. 108–173, § 736(a)(9), substituted ''the amount'' for ''the the amount''.

Subsec. (b)(3)(I)(iii). Pub. L. 108–173, § 407(a), added cl. (iii).

Subsec. (d)(2)(C)(i). Pub. L. 108–173, § 502(b), substituted ''1999,'' for ''1999 or'' and inserted '', or the Medicare Prescription Drug, Improvement, and Modernization Act of 2003'' before comma at end.

Subsec. (d)(2)(C)(iv). Pub. L. 108–173, § 402(b)(2), struck out ''or'' before ''the enactment of section 303'' and inserted '', or the enactment of section 402(a)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003'' before period at end.

Subsec. (d)(3). Pub. L. 108–173, § 401(b)(2)(A), inserted '', for fiscal years before fiscal year 1997,'' before ''a regional adjusted DRG prospective payment rate'' in introductory provisions.

Subsec. (d)(3)(A)(iii). Pub. L. 108–173, § 401(b)(3), substituted ''in an urban area'' for ''in an other urban area''.

Subsec. (d)(3)(A)(iv). Pub. L. 108–173, § 401(a), designated existing provisions as subcl. (I), substituted ''Subject to subclause (II), for discharges'' for ''For discharges'', and added subcl. (II).

Subsec. (d)(3)(D). Pub. L. 108–173, § 401(b)(1)(A), (B), (2)(B), in heading, struck out ''in different areas'' after ''hospitals'' and, in introductory provisions, inserted '', for fiscal years before fiscal year 1997,'' before ''a regional DRG prospective payment rate'' and struck out '', each of'' before ''which is equal—''.

Subsec. (d)(3)(D)(i). Pub. L. 108–173, § 401(b)(1)(C)(i), inserted ''for fiscal years before fiscal year 2004,'' before ''for hospitals'' in introductory provisions.

Subsec. (d)(3)(D)(i)(II). Pub. L. 108–173, § 401(b)(1)(C)(ii), struck out ''and'' at end.

Subsec. (d)(3)(D)(ii). Pub. L. 108–173, § 401(b)(1)(D)(i), inserted ''for fiscal years before fiscal year 2004,'' before ''for hospitals'' in introductory provisions.

Subsec. (d)(3)(D)(ii)(II). Pub. L. 108–173, § 401(b)(1)(D)(ii), substituted ''; and'' for period at end.

Subsec. (d)(3)(D)(iii). Pub. L. 108–173, § 401(b)(1)(E), added cl. (iii).

Subsec. (d)(3)(E). Pub. L. 108–173, § 403(a), designated existing provisions as cl. (i), inserted cl. heading, substituted ''Except as provided in clause (ii), the Secretary'' for ''The Secretary'', inserted at end ''The Secretary shall apply the previous sentence for any period as if the amendments made by section 403(a)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 had not been enacted.'', and added cl. (ii).

Subsec. (d)(5)(B)(ii). Pub. L. 108–173, § 422(b)(1)(A), substituted ''Subject to clause (ix), for discharges'' for ''For discharges'' in introductory provisions.

Subsec. (d)(5)(B)(ii)(VI). Pub. L. 108–173, § 502(a)(1), struck out ''and'' at end.

Subsec. (d)(5)(B)(ii)(VII). Pub. L. 108–173, § 502(a)(2), inserted ''and before April 1, 2004,'' after ''on or after October 1, 2002,'' and substituted semicolon for period at end.

Subsec. (d)(5)(B)(ii)(VIII) to (XII). Pub. L. 108–173, § 502(a)(3), added subcls. (VIII) to (XII).

Subsec. (d)(5)(B)(v). Pub. L. 108–173, § 422(b)(1)(B), inserted at end ''The provisions of subsection (h)(7) of this section shall apply with respect to the first sentence of this clause in the same manner as it applies with respect to subsection (h)(4)(F)(i) of this section.''

Subsec. (d)(5)(B)(ix). Pub. L. 108–173, § 422(b)(1)(C), added cl. (ix).

Subsec. (d)(5)(F)(iv)(II) to (VI). Pub. L. 108–173, § 402(b)(1)(A), inserted ''subject to clause (xiv) and'' before ''for discharges occurring''.

Subsec. (d)(5)(F)(viii). Pub. L. 108–173, § 402(b)(1)(B), substituted ''Subject to clause (xiv), the formula'' for ''The formula''.

Subsec. (d)(5)(F)(x) to (xiii). Pub. L. 108–173, § 402(b)(1)(C), substituted ''Subject to clause (xiv), for purposes'' for ''For purposes'' in introductory provisions.

Subsec. (d)(5)(F)(xiv). Pub. L. 108–173, § 402(a), added cl. (xiv).

Subsec. (d)(5)(K)(i). Pub. L. 108–173, § 503(b)(2)(A), inserted at end ''Such mechanism shall be modified to meet the requirements of clause (viii).''

Subsec. (d)(5)(K)(ii)(I). Pub. L. 108–173, § 503(b)(1), inserted ''(applying a threshold specified by the Secretary that is the lesser of 75 percent of the standardized amount (increased to reflect the difference between cost and charges) or 75 percent of one standard deviation for the diagnosis-related group involved)'' after ''is inadequate''.

Subsec. (d)(5)(K)(ii)(III). Pub. L. 108–173, § 503(d)(1), struck out ''subject to paragraph (4)(C)(iii),'' before ''provide for additional payment''.

Subsec. (d)(5)(K)(vii). Pub. L. 108–173, § 503(a), added cl. (vii).

Subsec. (d)(5)(K)(viii). Pub. L. 108–173, § 503(b)(2)(B), added cl. (viii).

Subsec. (d)(5)(K)(ix). Pub. L. 108–173, § 503(c), added cl. (ix).

Subsec. (d)(7)(A). Pub. L. 108–173, § 406(b), inserted ''or the determination of the applicable percentage increase under paragraph (12)(A)(ii)'' after ''to subsection (e)(1) of this section''.

Subsec. (d)(9)(A). Pub. L. 108–173, § 401(c)(1)(B), added cl. (ii) and concluding provisions and struck out former cl. (ii) which read as follows: ''for discharges beginning in a fiscal year beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 25 percent) of the discharge-weighted average of—

''(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in a large urban area,

''(II) such rate for hospitals located in other urban areas, and

''(III) such rate for hospitals located in a rural area, for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels. As used in this section, the term 'subsection (d) Puerto Rico hospital' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as de-

fined in paragraph (1)(B)) if it were located in one of the fifty States.''

Subsec. (d)(9)(A)(i). Pub. L. 108–173, §§ 401(c)(1)(A), 504(1)(A), substituted ''the applicable Puerto Rico percentage (specified in subparagraph (E))'' for ''for discharges beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 75 percent)'' and struck out ''and'' at end.

Subsec. (d)(9)(A)(ii). Pub. L. 108–173, § 504(1)(B), which directed the substitution of ''the applicable Federal percentage (specified in subparagraph (E))'' for ''for discharges beginning in a fiscal year beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 25 percent)'', could not be executed because of the amendment by Pub. L. 108–173, § 401(c)(1)(B). See above.

Subsec. (d)(9)(C)(i). Pub. L. 108–173, § 401(c)(2)(A), designated existing provisions as subcl. (I), substituted ''For discharges in a fiscal year after fiscal year 1988 and before fiscal year 2004, the Secretary'' for ''The Secretary'', and added subcl. (II).

Subsec. (d)(9)(C)(ii). Pub. L. 108–173, § 401(c)(2)(B), inserted ''(or for fiscal year 2004 and thereafter, the average standardized amount)'' after ''each of the average standardized amounts''.

Subsec. (d)(9)(C)(iii)(I). Pub. L. 108–173, § 401(c)(2)(C), struck out ''for hospitals located in an urban or rural area, respectively'' after ''reduced under clause (ii))''.

Subsec. (d)(9)(C)(iv). Pub. L. 108–173, § 403(b), designated existing provisions as subcl. (I), substituted ''paragraph (3)(E)(i)'' for ''paragraph (3)(E)'', and added subcl. (II).

Subsec. (d)(9)(E). Pub. L. 108–173, § 504(2), added subpar. (E).

Subsec. (d)(12). Pub. L. 108–173, § 406(a), added par. (12).

Subsec. (d)(13). Pub. L. 108–173, § 505(a), added par. (13).

Subsec. (g)(3)(B). Pub. L. 108–173, § 736(a)(15), inserted closing parenthesis after ''(as defined in subsection (d)(5)(D)(iii) of this section''.

Subsec. (h)(2)(D)(iv)(I). Pub. L. 108–173, § 711(1), in heading, inserted ''and 2004 through 2013'' after ''and 2002'' and, in text, inserted ''or during the period beginning with fiscal year 2004 and ending with fiscal year 2013'' after ''during fiscal year 2001 or fiscal year 2002''.

Subsec. (h)(2)(D)(iv)(II). Pub. L. 108–173, § 711(2), substituted ''For the'' for ''For a'' and struck out ''fiscal year 2004, or fiscal year 2005,'' after ''during fiscal year 2003,''.

Subsec. (h)(3)(D)(ii)(III). Pub. L. 108–173, § 736(c)(6), struck out ''and'' at end.

Subsec. (h)(4)(F)(i). Pub. L. 108–173, § 422(a)(1), inserted ''subject to paragraph (7),'' after ''October 1, 1997,''.

Subsec. (h)(4)(H)(i). Pub. L. 108–173, § 422(a)(2), inserted ''and subject to paragraph (7)'' after ''subparagraphs (F) and (G)''.

Subsec. (h)(7). Pub. L. 108–173, § 422(a)(3), added par. (7).

2000—Subsec. (b)(3)(B)(i)(XVI). Pub. L. 106–554, § 1(a)(6) [title III, § 301(a)(1)], substituted ''for hospitals in all areas,'' for ''minus 1.1 percentage points for hospitals (other than sole community hospitals) in all areas, and the market basket percentage increase for sole community hospitals,''.

Subsec. (b)(3)(B)(i)(XVII). Pub. L. 106–554, § 1(a)(6) [title III, § 301(a)(2)(B)], struck out ''and'' at end.

Pub. L. 106–554, § 1(a)(6) [title III, § 301(a)(2)(A)], which directed amendment of subcl. (XVII) by ''striking 'minus 1.1 percentage points' and inserting 'minus 0.55 percentage points; and'', was executed as if an end quotation mark for the inserted material followed ''points'', to reflect the probable intent of Congress.

Subsec. (b)(3)(B)(i)(XVIII). Pub. L. 106–554, § 1(a)(6) [title III, § 301(a)(5)], added subcl. (XVIII). Former subcl. (XVIII) redesignated (XIX).

Subsec. (b)(3)(B)(i)(XIX). Pub. L. 106–554, § 1(a)(6) [title III, § 301(a)(3), (4)], redesignated subcl. (XVIII) as (XIX) and substituted ''fiscal year 2004'' for ''fiscal year 2003''.

Subsec. (b)(3)(H)(ii)(III). Pub. L. 106–554, § 1(a)(6) [title III, § 307(a)(1)(A)], inserted ''subject to subparagraph (J),'' after ''2002,''.

Subsec. (b)(3)(I)(i). Pub. L. 106–554, § 1(a)(6) [title II, § 213(a)(1)], in introductory provisions, substituted ''there shall be substituted for the amount otherwise determined under subsection (d)(5)(D)(i) of this section, if such substitution results in a greater amount of payment under this section for the hospital'' for ''that for its cost reporting period beginning during 1999 is paid on the basis of the target amount applicable to the hospital under subparagraph (C) and that elects (in a form and manner determined by the Secretary) this subparagraph to apply to the hospital, there shall be substituted for such target amount''.

Subsec. (b)(3)(I)(i)(I). Pub. L. 106–554, § 1(a)(6) [title II, § 213(a)(2)], substituted ''the amount otherwise applicable to the hospital under subsection (d)(5)(D)(i) of this section (referred to in this clause as the 'subsection (d)(5)(D)(i) amount')'' for ''target amount otherwise applicable to the hospital under subparagraph (C) (referred to in this clause as the 'subparagraph (C) target amount')''.

Subsec. (b)(3)(I)(i)(II), (III). Pub. L. 106–554, § 1(a)(6) [title II, § 213(a)(3)], substituted ''subsection (d)(5)(D)(i) amount'' for ''subparagraph (C) target amount''.

Subsec. (b)(3)(J). Pub. L. 106–554, § 1(a)(6) [title III, § 307(a)(1)(B)], added subpar. (J).

Subsec. (d)(1)(B)(v)(III). Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 152(a)], added subcl. (III).

Subsec. (d)(1)(E). Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 152(b)], substituted ''For purposes of subclauses (II) and (III) of subparagraph (B)(v)'' for ''For purposes of subparagraph (B)(v)(II)''.

Subsec. (d)(2)(C)(i). Pub. L. 106–554, § 1(a)(6) [title III, § 302(c)], inserted ''or of section 302 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000'' after ''Balanced Budget Refinement Act of 1999''.

Subsec. (d)(2)(C)(iv). Pub. L. 106–554, § 1(a)(6) [title III, § 303(c)], substituted ''1989,'' for ''1989 or'' and inserted '', or the enactment of section 303 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000'' after ''Omnibus Budget Reconciliation Act of 1990''.

Subsec. (d)(3)(A)(vi). Pub. L. 106–554, § 1(a)(6) [title III, § 301(e)(1)], added cl. (vi).

Subsec. (d)(3)(E). Pub. L. 106–554, § 1(a)(6) [title III, § 304(c)(2)], in third sentence, substituted ''Not less often than once every 3 years the Secretary (through such survey or otherwise) shall measure'' for ''To the extent determined feasible by the Secretary, such survey shall measure''.

Subsec. (d)(4)(C)(i). Pub. L. 106–554, § 1(a)(6) [title V, § 533(b)(3)], substituted ''technology (including a new medical service or technology under paragraph (5)(K)),'' for ''technology,''.

Subsec. (d)(5)(B). Pub. L. 106–554, § 1(a)(6) [title III, § 302(d)], realigned margins.

Subsec. (d)(5)(B)(ii)(V). Pub. L. 106–554, § 1(a)(6) [title III, § 302(a)(1)], struck out ''and'' at end.

Subsec. (d)(5)(B)(ii)(VI). Pub. L. 106–554, § 1(a)(6) [title III, § 302(a)(4)], added subcl. (VI). Former subcl. (VI) redesignated (VII).

Subsec. (d)(5)(B)(ii)(VII). Pub. L. 106–554, § 1(a)(6) [title III, § 302(a)(2), (3)], redesignated subcl. (VI) as (VII) and substituted ''2002'' for ''2001''.

Subsec. (d)(5)(F)(i). Pub. L. 106–554, § 1(a)(6) [title III, § 303(d)(1)], struck out ''and before October 1, 1997,'' before ''the Secretary shall provide'' in introductory provisions.

Subsec. (d)(5)(F)(iv)(II). Pub. L. 106–554, § 1(a)(6) [title II, § 211(b)(5)(A)], inserted ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xiii)'' after ''5 percent''.

Subsec. (d)(5)(F)(iv)(III). Pub. L. 106–554, § 1(a)(6) [title II, § 211(b)(3)(A)], inserted ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xii)'' after ''4 percent''.

Subsec. (d)(5)(F)(iv)(IV). Pub. L. 106–554, § 1(a)(6) [title II, § 211(b)(4)], inserted ''or, for discharges occurring on

or after April 1, 2001, the greater of the percentages determined under clause (x) or (xi)'' after ''clause (viii)''.

Subsec. (d)(5)(F)(iv)(V). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(2)(A)], inserted ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xi)'' after ''clause (viii)''.

Subsec. (d)(5)(F)(iv)(VI). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(1)(A)], inserted ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (x)'' after ''10 percent''.

Subsec. (d)(5)(F)(v)(II). Pub. L. 106–554, §1(a)(6) [title II, §211(a)(1)], inserted ''(or 15 percent, for discharges occurring on or after April 1, 2001)'' after ''30 percent''.

Subsec. (d)(5)(F)(v)(III). Pub. L. 106–554, §1(a)(6) [title II, §211(a)(2)], inserted ''(or 15 percent, for discharges occurring on or after April 1, 2001)'' after ''40 percent''.

Subsec. (d)(5)(F)(v)(IV). Pub. L. 106–554, §1(a)(6) [title II, §211(a)(3)], inserted ''(or 15 percent, for discharges occurring on or after April 1, 2001)'' after ''45 percent''.

Subsec. (d)(5)(F)(ix)(III). Pub. L. 106–554, §1(a)(6) [title III, §303(a)(1)], struck out ''each of'' after ''during'' and inserted ''and 2 percent, respectively'' after ''3 percent''.

Subsec. (d)(5)(F)(ix)(IV). Pub. L. 106–554, §1(a)(6) [title III, §303(a)(2)], substituted ''3 percent'' for ''4 percent''.

Subsec. (d)(5)(F)(x). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(1)(B)], added cl. (x).

Subsec. (d)(5)(F)(xi). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(2)(B)], added cl. (xi).

Subsec. (d)(5)(F)(xii). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(3)(B)], added cl. (xii).

Subsec. (d)(5)(F)(xiii). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(5)(B)], added cl. (xiii).

Subsec. (d)(5)(G)(iv)(IV). Pub. L. 106–554, §1(a)(6) [title II, §212(a)], inserted '', or two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report,'' after ''1987''.

Subsec. (d)(5)(K), (L). Pub. L. 106–554, §1(a)(6) [title V, §533(b)(1)], added subpars. (K) and (L).

Subsec. (d)(10)(D)(v), (vi). Pub. L. 106–554, §1(a)(6) [title III, §304(a)], added cls. (v) and (vi).

Subsec. (h)(2)(D)(iii). Pub. L. 106–554, §1(a)(6) [title V, §511], in heading substituted ''for'' for ''in fiscal year 2001 at 70 percent of'' and in text inserted '', and for the cost reporting period beginning during fiscal year 2002 shall not be less than 85 percent,'' after ''70 percent''.

Subsec. (j)(1)(A). Pub. L. 106–554, §1(a)(6) [title III, §305(b)(1)(A)], inserted ''other than a facility making an election under subparagraph (F)'' before ''in a cost reporting period'' in introductory provisions.

Subsec. (j)(1)(B). Pub. L. 106–554, §1(a)(6) [title III, §305(b)(1)(B)], inserted ''or, in the case of a facility making an election under subparagraph (F), for any cost reporting period described in such subparagraph,'' after ''2002,''.

Subsec. (j)(1)(F). Pub. L. 106–554, §1(a)(6) [title III, §305(b)(1)(C)], added subpar. (F).

Subsec. (j)(3)(B). Pub. L. 106–554, §1(a)(6) [title III, §305(b)(2)], inserted ''but not taking into account any payment adjustment resulting from an election permitted under paragraph (1)(F)'' after ''paragraphs (4) and (6)''.

Pub. L. 106–554, §1(a)(6) [title III, §305(a)], substituted ''98 percent for fiscal year 2001 and 100 percent for fiscal year 2002'' for ''98 percent''.

Subsec. (*l*)(2)(C). Pub. L. 106–554, §1(a)(6) [title V, §512(a)], substituted ''the ratio of—'' and cls. (i) and (ii) for ''the Secretary's estimate of the ratio of the amount of payments made under section 1395x(v) of this title to the hospital for nursing and allied health education activities for the hospital's cost reporting period ending in the second preceding fiscal year to the total of such amounts for all hospitals for such cost reporting periods.''

1999—Subsec. (b)(1). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(15)(A)], inserted a comma after ''paragraph (2)'' in concluding provisions.

Subsec. (b)(2)(A). Pub. L. 106–113, §1000(a)(6) [title I, §122(1)], substituted ''Except as provided in subparagraph (E), in addition to'' for ''In addition to''.

Subsec. (b)(2)(E). Pub. L. 106–113, §1000(a)(6) [title I, §122(2)], added subpar. (E).

Subsec. (b)(3)(B)(i)(XVI) to (XVIII). Pub. L. 106–113, §1000(a)(6) [title IV, §406], added subcls. (XVI) and (XVII), redesignated former subcl. (XVII) as (XVIII), and struck out former subcl. (XVI) which read as follows: ''for each of fiscal years 2001 and 2002, the market basket percentage increase minus 1.1 percentage point for hospitals in all areas, and''.

Subsec. (b)(3)(B)(ii)(VI). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(15)(B)(i)], substituted comma for semicolon at end.

Subsec. (b)(3)(B)(ii)(VII). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(15)(B)(ii)], substituted ''year,'' for ''year;''.

Subsec. (b)(3)(C). Pub. L. 106–113, §1000(a)(6) [title IV, §405(1)], inserted ''subject to subparagraph (I),'' before ''the term 'target amount' means'' in introductory provisions.

Subsec. (b)(3)(D). Pub. L. 106–113, §1000(a)(6) [title IV, §404(b)(1)(A)], substituted ''and before October 1, 2006,'' for ''and before October 1, 2001,'' in introductory provisions.

Pub. L. 106–113, §1000(a)(6) [title III, §321(b)(2)], substituted ''and for discharges beginning on or after October 1, 1997, and before October 1, 2001,'' for ''and for cost reporting periods beginning on or after October 1, 1997, and before October 1, 2001,'' in introductory provisions.

Subsec. (b)(3)(D)(iv). Pub. L. 106–113, §1000(a)(6) [title IV, §404(b)(1)(B)], substituted ''fiscal year 2005'' for ''fiscal year 2000''.

Subsec. (b)(3)(H)(i) to (iii). Pub. L. 106–113, §1000(a)(6) [title I, §121(a)], added cl. (i), redesignated former cl. (i) as subcl. (I) of cl. (ii) and inserted '', as adjusted under clause (iii)'' after ''fiscal year 1996'', redesignated former cl. (ii) as subcl. (II) of cl. (ii) and substituted ''subclause (I)'' for ''clause (i)'' and ''such subclause'' for ''such clause'', added cl. (iii), and redesignated former cl. (iii) as subcl. (III) of cl. (ii).

Subsec. (b)(3)(I). Pub. L. 106–113, §1000(a)(6) [title IV, §405(2)], added subpar. (I).

Subsec. (b)(4)(A)(i). Pub. L. 106–113, §1000(a)(6) [title III, §321(f)], struck out ''or unit'' after ''(and in the case of a hospital''.

Subsec. (b)(7)(A)(i)(II). Pub. L. 106–113, §1000(a)(6) [title III, §321(h)], inserted ''(as estimated by the Secretary)'' after ''median''.

Subsec. (d)(2)(C)(i). Pub. L. 106–113, §1000(a)(6) [title I, §111(c)], inserted ''or any additional payments under such paragraph resulting from the application of section 111 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999'' after ''Balanced Budget Act of 1997''.

Subsec. (d)(5)(B)(ii)(V), (VI). Pub. L. 106–113, §1000(a)(6) [title I, §111(a)], added subcl. (V), redesignated former subcl. (V) as (VI), and substituted ''2001'' for ''2000'' in subcl. (VI).

Subsec. (d)(5)(B)(v). Pub. L. 106–113, §1000(a)(6) [title IV, §407(b)(2)], inserted ''(or, 130 percent of such number in the case of a hospital located in a rural area)'' after ''may not exceed the number''.

Pub. L. 106–113, §1000(a)(6) [title IV, §407(a)(2)], inserted at end ''Rules similar to the rules of subsection (h)(4)(F)(ii) of this section shall apply for purposes of this clause.''

Subsec. (d)(5)(F)(i). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(16)], inserted a comma after ''1986'' in introductory provisions.

Subsec. (d)(5)(F)(ix)(III). Pub. L. 106–113, §1000(a)(6) [title I, §112(a)(1)], substituted ''during each of fiscal years 2000 and 2001'' for ''during fiscal year 2000''.

Subsec. (d)(5)(F)(ix)(IV). Pub. L. 106–113, §1000(a)(6) [title I, §112(a)(2)–(4)], redesignated subcl. (V) as (IV), substituted ''reduced by 4 percent'' for ''reduced by 5 percent'', and struck out former subcl. (IV) which read as follows: ''during fiscal year 2001, such additional payment amount shall be reduced by 4 percent;''.

Subsec. (d)(5)(F)(ix)(V), (VI). Pub. L. 106–113, §1000(a)(6) [title I, §112(a)(3)], redesignated subcl. (VI) as (V). Former subcl. (V) redesignated (IV).

Subsec. (d)(5)(G)(i). Pub. L. 106–113, § 1000(a)(6) [title IV, § 404(a)(1)], substituted ''October 1, 2006,'' for ''October 1, 2001,''.

Pub. L. 106–113, § 1000(a)(6) [title III, § 321(b)(1)(A)], substituted ''or discharges occurring on or after October 1, 1997, and before October 1, 2001,'' for ''or beginning on or after October 1, 1997, and before October 1, 2001,''.

Subsec. (d)(5)(G)(ii)(II). Pub. L. 106–113, § 1000(a)(6) [title IV, § 404(a)(2)], substituted ''October 1, 2006,'' for ''October 1, 2001,''.

Pub. L. 106–113, § 1000(a)(6) [title III, § 321(b)(1)(B)], substituted ''or discharges occurring on or after October 1, 1997, and before October 1, 2001,'' for ''or beginning on or after October 1, 1997, and before October 1, 2001,''.

Subsec. (d)(8)(B). Pub. L. 106–113, § 1000(a)(6) [title IV, § 402(a)], designated existing provisions as cl. (i), substituted ''described in clause (ii)'' for ''published in the Federal Register on January 3, 1980'', and added cl. (ii).

Subsec. (d)(8)(E). Pub. L. 106–113, § 1000(a)(6) [title IV, § 401(a)], added subpar. (E).

Subsec. (d)(9)(A)(ii). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(17)], inserted a comma after ''1987'' in introductory provisions.

Subsec. (g)(1)(A). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(e)], substituted ''October 1, 2002,'' for ''September 30, 2002,'' in last sentence.

Subsec. (h)(2)(D)(i). Pub. L. 106–113, § 1000(a)(6) [title III, § 311(a)(1), (b)(1)], inserted heading and substituted ''a subsequent clause'' for ''clause (ii)'' and ''the approved FTE resident amount determined'' for ''the amount determined''.

Subsec. (h)(2)(D)(ii). Pub. L. 106–113, § 1000(a)(6) [title III, § 311(b)(2)], inserted heading and realigned margins.

Subsec. (h)(2)(D)(iii), (iv). Pub. L. 106–113, § 1000(a)(6) [title III, § 311(a)(2)], added cls. (iii) and (iv).

Subsec. (h)(2)(E), (F). Pub. L. 106–113, § 1000(a)(6) [title III, § 311(a)(3), (4)], added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (h)(3)(D)(i). Pub. L. 106–113, § 1000(a)(6) [title V, § 541(b)(1)], inserted '', subject to clause (iii),'' after ''shall equal'' in introductory provisions.

Subsec. (h)(3)(D)(iii), (iv). Pub. L. 106–113, § 1000(a)(6) [title V, § 541(b)(2), (3)], added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (h)(4)(F). Pub. L. 106–113, § 1000(a)(6) [title IV, § 407(a)(1)], designated existing provisions as cl. (i), inserted heading, realigned margins, and added cl. (ii).

Subsec. (h)(4)(F)(i). Pub. L. 106–113, § 1000(a)(6) [title IV, § 407(b)(1)], inserted ''(or, 130 percent of such number in the case of a hospital located in a rural area)'' after ''may not exceed the number''.

Subsec. (h)(4)(H)(iv). Pub. L. 106–113, § 1000(a)(6) [title IV, § 407(c)(1)], added cl. (iv).

Subsec. (h)(5)(F). Pub. L. 106–113, § 1000(a)(6) [title III, § 312(a)(1)], substituted ''Subject to subparagraph (G)(v), the initial residency period'' for ''The initial residency period'' in concluding provisions.

Subsec. (h)(5)(G)(i). Pub. L. 106–113, § 1000(a)(6) [title III, § 312(a)(2)(A)], substituted ''(iv), and (v)'' for ''and (iv)''.

Subsec. (h)(5)(G)(v). Pub. L. 106–113, § 1000(a)(6) [title III, § 312(a)(2)(B)], added cl. (v).

Subsec. (j)(1)(D). Pub. L. 106–113, § 1000(a)(6) [title I, § 125(a)(1)], struck out '', day of inpatient hospital services, or other unit of payment defined by the Secretary'' before period at end.

Subsec. (j)(1)(E). Pub. L. 106–113, § 1000(a)(6) [title I, § 125(a)(3)], added subpar. (E).

Subsec. (j)(2)(A)(i). Pub. L. 106–113, § 1000(a)(6) [title I, § 125(a)(2)], amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''classes of patients of rehabilitation facilities (each in this subsection referred to as a 'case mix group'), based on such factors as the Secretary deems appropriate, which may include impairment, age, related prior hospitalization, comorbidities, and functional capability of the patient; and''.

Subsec. (*l*). Pub. L. 106–113, § 1000(a)(6) [title V, § 541(a)], added subsec. (*l*).

1997—Subsec. (b)(1). Pub. L. 105–33, § 4421(b)(1), inserted ''and other than a rehabilitation facility described in subsection (j)(1) of this section'' after ''subsection (d)(1)(B) of this section'' in introductory provisions.

Pub. L. 105–33, § 4415(b)(1), inserted ''plus the amount, if any, provided under paragraph (2)'' before ''except that in no case'' in concluding provisions.

Subsec. (b)(1)(A). Pub. L. 105–33, § 4415(a), added cls. (i) and (ii) and concluding provisions and struck out former cls. (i) and (ii) and former concluding provisions which read as follows:

''(i) 50 percent of the amount by which the target amount exceeds the amount of the operating costs, or

''(ii) 5 percent of the target amount,

whichever is less; or''.

Subsec. (b)(1)(B). Pub. L. 105–33, § 4415(c)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 105–33, § 4415(c)(1), (2), redesignated subpar. (B) as (C) and substituted ''greater than 110 percent of the target amount'' for ''greater than the target amount'' and ''exceed 110 percent of the target amount'' for ''exceed the target amount''.

Subsec. (b)(2). Pub. L. 105–33, § 4415(b)(2), added par. (2).

Subsec. (b)(3)(A). Pub. L. 105–33, §§ 4413(a)(1), 4416(2), in introductory provisions, substituted ''subparagraph (C) and succeeding subparagraph,'' for ''subparagraphs (C), (D), and (E),'' and inserted ''and in paragraph (7)(A)(ii),'' before ''for purposes of this subsection''.

Subsec. (b)(3)(B)(i). Pub. L. 105–33, § 4421(b)(2), inserted ''and subsection (j) of this section'' after ''For purposes of subsection (d) of this section'' in introductory provisions.

Subsec. (b)(3)(B)(i)(XIII) to (XVII). Pub. L. 105–33, § 4401(a), added subcls. (XIII) to (XVII) and struck out former subcl. (XIII) which read as follows: ''for fiscal year 1998 and each subsequent fiscal year, the market basket percentage increase for hospitals in all areas.''

Subsec. (b)(3)(B)(ii)(VI) to (VIII). Pub. L. 105–33, § 4411(a)(1), added subcls. (VI) and (VII) and redesignated former subcl. (VI) as (VIII).

Subsec. (b)(3)(B)(vi). Pub. L. 105–33, § 4411(a)(2), added cl. (vi).

Subsec. (b)(3)(D). Pub. L. 105–33, § 4204(a)(2)(A), substituted ''September 30, 1994, and for cost reporting periods beginning on or after October 1, 1997, and before October 1, 2001,'' for ''September 30, 1994,'' in introductory provisions.

Subsec. (b)(3)(D)(iv). Pub. L. 105–33, § 4204(a)(2)(B)–(D), added cl. (iv).

Subsec. (b)(3)(F), (G). Pub. L. 105–33, § 4413(a)(2), (b), added subpars. (F) and (G).

Subsec. (b)(3)(H). Pub. L. 105–33, § 4414, added subpar. (H).

Subsec. (b)(4)(A)(i). Pub. L. 105–33, § 4419(a)(1), in first sentence, substituted ''The Secretary shall provide for an exception and adjustment to (and in the case of a hospital or unit described in subsection (d)(1)(B)(iii) of this section, may provide an exemption from)'' for ''The Secretary shall provide for an exemption from, or an exception and adjustment to,''.

Subsec. (b)(4)(A)(ii). Pub. L. 105–33, § 4411(b), inserted at end ''In making such reductions, the Secretary shall treat the applicable update factor described in paragraph (3)(B)(vi) for a fiscal year as being equal to the market basket percentage for that year.''

Subsec. (b)(7). Pub. L. 105–33, § 4416(1), added par. (7).

Subsec. (d)(1)(B). Pub. L. 105–33, § 4417(a)(1), inserted at end ''A hospital that was classified by the Secretary on or before September 30, 1995, as a hospital described in clause (iv) shall continue to be so classified notwithstanding that it is located in the same building as, or on the same campus as, another hospital.''

Subsec. (d)(1)(B)(iv). Pub. L. 105–33, § 4417(b)(1), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (d)(1)(B)(v). Pub. L. 105–33, § 4418(a)(1), designated existing provisions as subcl. (I), substituted '', or'' for semicolon at end, and added subcl. (II).

Subsec. (d)(1)(E). Pub. L. 105–33, § 4418(a)(2), added subpar. (E).

Subsec. (d)(2)(C)(i). Pub. L. 105–33, § 4621(a)(2), inserted at end ''except that the Secretary shall not take into account any reduction in the amount of additional payments under paragraph (5)(B)(ii) resulting from the amendment made by section 4621(a)(1) of the Balanced Budget Act of 1997,''.

Subsec. (d)(5)(A)(ii). Pub. L. 105–33, § 4405(c), substituted ''exceed the sum of the applicable DRG prospective payment rate plus any amounts payable under subparagraphs (B) and (F)'' for ''exceed the applicable DRG prospective payment rate''.

Subsec. (d)(5)(B)(i)(I). Pub. L. 105–33, § 4405(a), inserted '', for cases qualifying for additional payment under subparagraph (A)(i),'' before ''the amount paid to the hospital''.

Subsec. (d)(5)(B)(ii). Pub. L. 105–33, § 4621(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring on or after October 1, 1988, is equal to 1.89 × (((1 + r) to the nth power) − 1), where 'r' is the ratio of the hospital's full-time equivalent interns and residents to beds and 'n' equals .405.''

Subsec. (d)(5)(B)(iv). Pub. L. 105–33, § 4621(b)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''In determining such adjustment, the Secretary shall continue to count interns and residents assigned to outpatient services of the hospital or providing services at any entity receiving a grant under section 254c of this title that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by such interns and residents) as part of the calculation of the full-time-equivalent number of interns and residents.''

Subsec. (d)(5)(B)(v) to (viii). Pub. L. 105–33, § 4621(b)(1), added cls. (v) to (viii).

Subsec. (d)(5)(D)(iii)(III). Pub. L. 105–33, § 4201(c)(4)(A), inserted ''as in effect on September 30, 1997'' before period at end.

Subsec. (d)(5)(D)(v). Pub. L. 105–33, § 4201(c)(4)(B), inserted ''as in effect on September 30, 1997'' after ''section 1395i–4(i)(1) of this title'' and substituted ''(as defined in section 1395i–4(d) of this title)'' for ''(as defined in section 1395i–4(g) of this title)''.

Subsec. (d)(5)(F)(i). Pub. L. 105–33, § 4403(a)(1), inserted ''and before October 1, 1997'' after ''May 1, 1986'' in introductory provisions.

Subsec. (d)(5)(F)(ii). Pub. L. 105–33, § 4403(a)(2), substituted ''Subject to clause (ix), the amount'' for ''The amount''.

Subsec. (d)(5)(F)(ii)(I). Pub. L. 105–33, § 4405(b), inserted '', for cases qualifying for additional payment under subparagraph (A)(i),'' before ''the amount paid to the hospital''.

Subsec. (d)(5)(F)(ix). Pub. L. 105–33, § 4403(a)(3), added cl. (ix).

Subsec. (d)(5)(G)(i), (ii)(II). Pub. L. 105–33, § 4204(a)(1), substituted ''October 1, 1994, or beginning on or after October 1, 1997, and before October 1, 2001,'' for ''October 1, 1994,''.

Subsec. (d)(5)(I)(ii). Pub. L. 105–33, § 4407(1), inserted ''not taking in account the effect of subparagraph (J),'' after ''in a fiscal year,''.

Subsec. (d)(5)(J). Pub. L. 105–33, § 4407(2), added subpar. (J).

Subsec. (d)(6). Pub. L. 105–33, § 4644(a)(1), substituted ''August 1'' for ''September 1''.

Subsec. (d)(9)(A). Pub. L. 105–33, § 4406(1), struck out ''in a fiscal year beginning on or after October 1, 1987,'' after ''inpatient hospital discharges'' in introductory provisions.

Subsec. (d)(9)(A)(i). Pub. L. 105–33, § 4406(2), substituted ''for discharges beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 75 percent)'' for ''75 percent''.

Subsec. (d)(9)(A)(ii). Pub. L. 105–33, § 4406(3), substituted ''for discharges beginning in a fiscal year beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987 and September 30, 1997, 25 percent)'' for ''25 percent''.

Subsec. (d)(10)(C)(ii). Pub. L. 105–33, § 4644(c)(1), substituted ''the first day of the 13-month period ending on September 30 of the preceding fiscal year.'' for ''the first day of the preceding fiscal year.''

Subsec. (d)(10)(D)(iii), (iv). Pub. L. 105–33, § 4202(a), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (d)(11). Pub. L. 105–33, § 4622, added par. (11).

Subsec. (e)(2). Pub. L. 105–33, § 4022(b)(1)(A)(i), struck out par. (2) which related to appointment, composition, and responsibilities of the Prospective Payment Assessment Commission.

Subsec. (e)(3). Pub. L. 105–33, § 4022(b)(1)(A)(ii), redesignated subpar. (B) as par. (3) and struck out subpar. (A) which read as follows: ''The Commission, not later than the March 1 before the beginning of each fiscal year (beginning with fiscal year 1986), shall report its recommendations to Congress on an appropriate change factor which should be used for inpatient hospital services for discharges in that fiscal year, together with its general recommendations under paragraph (2)(B) regarding the effectiveness and quality of health care delivery systems in the United States.''

Subsec. (e)(5)(A). Pub. L. 105–33, § 4644(b)(1)(A), substituted ''April 1'' for ''May 1''.

Subsec. (e)(5)(B). Pub. L. 105–33, § 4644(b)(1)(B), substituted ''August 1'' for ''September 1''.

Subsec. (e)(6). Pub. L. 105–33, § 4022(b)(1)(A)(i), struck out par. (6) which related to appointments, membership, responsibilities, compensation, access to records and information, audits, and appropriations concerning the Prospective Payment Assessment Commission.

Subsec. (g)(1)(A). Pub. L. 105–33, § 4402, inserted at end ''In addition to the reduction described in the preceding sentence, for discharges occurring on or after October 1, 1997, the Secretary shall apply the budget neutrality adjustment factor used to determine the Federal capital payment rate in effect on September 30, 1995 (as described in section 412.352 of title 42 of the Code of Federal Regulations), to (i) the unadjusted standard Federal capital payment rate (as described in section 412.308(c) of that title, as in effect on September 30, 1997), and (ii) the unadjusted hospital-specific rate (as described in section 412.328(e)(1) of that title, as in effect on September 30, 1997), and, for discharges occurring on or after October 1, 1997, and before September 30, 2002, reduce the rates described in clauses (i) and (ii) by 2.1 percent.''

Subsec. (g)(3)(B). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (g)(4). Pub. L. 105–33, § 4412, added par. (4).

Subsec. (h)(3)(B). Pub. L. 105–33, § 4625(b), inserted concluding provisions.

Subsec. (h)(3)(D). Pub. L. 105–33, § 4624, added subpar. (D).

Subsec. (h)(4)(F) to (H). Pub. L. 105–33, § 4623, added subpars. (F) to (H).

Subsec. (h)(5)(G). Pub. L. 105–33, § 4627(a), substituted ''Subject to clauses (ii), (iii), and (iv)'' for ''Subject to clauses (ii) and (iii)'' in cl. (i) and added cl. (iv).

Subsec. (h)(6). Pub. L. 105–33, § 4626(a), added par. (6).

Subsec. (j). Pub. L. 105–33, § 4421(a), added subsec. (j).

Subsec. (k). Pub. L. 105–33, § 4625(a), added subsec. (k).

1994—Subsec. (a)(4). Pub. L. 103–432, § 110(a), inserted ''(or, in the case of a hospital that is not a subsection (d) hospital, during the 1 day)'' after ''3 days''.

Subsec. (b)(3)(B)(iv)(II). Pub. L. 103–432, § 105(b), substituted ''(adjusted to exclude any portion of a cost reporting period beginning during fiscal year 1993 for which the applicable percentage increase is determined under subparagraph (I))'' for ''(taking into account any portion of the 12-month cost reporting period beginning during fiscal year 1993 that occurred during fiscal year 1994)''.

Subsec. (b)(3)(D). Pub. L. 103–432, § 105(a)(2), substituted ''September 30, 1994'' for ''March 31, 1993'' in introductory provisions.

Subsec. (d)(3)(A)(iii). Pub. L. 103–432, § 101(c), inserted at end ''For discharges occurring on or after October 1,

1994, the Secretary shall adjust the ratio of the labor portion to non-labor portion of each average standardized amount to equal such ratio for the national average of all standardized amounts.''

Subsec. (d)(5)(B)(ii). Pub. L. 103–432, § 110(c), substituted ''October 1, 1988'' for ''May 1, 1986''.

Subsec. (d)(5)(D)(iii)(III). Pub. L. 103–432, § 102(b)(1)(B)(i), substituted ''that is located in a rural area and designated'' for ''that is designated''.

Subsec. (d)(5)(D)(v). Pub. L. 103–432, § 102(b)(1)(B)(ii), substituted ''in the case of a hospital located in a rural area and designated'' for ''in the case of a hospital designated''.

Subsec. (d)(5)(G)(ii)(I). Pub. L. 103–432, § 105(a)(1), substituted ''the 36-month period beginning with the first day of the cost reporting period that begins'' for ''the first 3 12-month cost reporting periods that begin''.

Subsec. (d)(5)(I). Pub. L. 103–432, § 109, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (d)(8)(C)(iv). Pub. L. 103–432, § 101(b)(1)(A), substituted ''paragraph (10)'' for ''paragraph (1)''.

Subsec. (d)(8)(C)(v). Pub. L. 103–432, § 101(b)(1)(B), added cl. (v).

Subsec. (d)(10)(C)(i)(II). Pub. L. 103–432, § 101(b)(2)(A), substituted ''the factor used to adjust the DRG prospective payment rate for area differences in hospital wage levels that applies'' for ''the area wage index applicable''.

Subsec. (d)(10)(D)(i)(I). Pub. L. 103–432, § 101(a)(1), inserted ''(to the extent the Secretary determines appropriate)'' after ''taking into account''.

Subsec. (d)(10)(D)(ii), (iii). Pub. L. 103–432, § 101(b)(2)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (e)(6)(B). Pub. L. 103–432, § 108, substituted ''health facility management, reimbursement of health facilities or other providers of services which reflect the scope of the Commission's responsibilities'' for ''hospital reimbursement, hospital financial management''.

Subsec. (h)(5)(E). Pub. L. 103–432, § 153(a), inserted ''or any successor examination'' after ''Medical Sciences''.

1993—Subsec. (b)(3)(B)(i)(IX). Pub. L. 103–66, § 13501(a)(1)(A), substituted ''percentage increase minus 2.5 percentage points for hospitals'' for ''percentage increase for hospitals'' and ''percentage increase minus 1.0 percentage point'' for ''percentage increase plus 1.5 percentage points''.

Subsec. (b)(3)(B)(i)(X). Pub. L. 103–66, § 13501(a)(1)(B), substituted ''percentage increase minus 2.5 percentage points for hospitals'' for ''percentage increase for hospitals'' and struck out ''and'' at end.

Subsec. (b)(3)(B)(i)(XI). Pub. L. 103–66, § 13501(a)(1)(C), struck out ''and each subsequent fiscal year'' after ''1996'', inserted ''minus 2.0 percentage points'' after ''percentage increase'', and substituted a comma for period at end.

Subsec. (b)(3)(B)(i)(XII), (XIII). Pub. L. 103–66, § 13501(a)(1)(D), added subcls. (XII) and (XIII).

Subsec. (b)(3)(B)(ii). Pub. L. 103–66, § 13501(a)(2)(B)(i), struck out '', (C), (D),'' after ''subparagraphs (A)''.

Subsec. (b)(3)(B)(ii)(III) to (VI). Pub. L. 103–66, § 13502(a)(1), struck out ''and'' at end of subcl. (III), in subcl. (IV), substituted ''a subsequent fiscal year ending on or before September 30, 1993,'' for ''subsequent fiscal years'' and a comma for the period at end, and added subcls. (V) and (VI).

Subsec. (b)(3)(B)(iv). Pub. L. 103–66, § 13501(a)(2)(A), added cl. (iv).

Subsec. (b)(3)(B)(v). Pub. L. 103–66, § 13502(a)(2), added cl. (v).

Subsec. (b)(3)(C)(i)(II). Pub. L. 103–66, § 13501(a)(2)(B)(ii), struck out ''or'' at end.

Subsec. (b)(3)(C)(ii). Pub. L. 103–66, § 13501(a)(2)(B)(iii), substituted ''period beginning before fiscal year 1994, the target'' for ''period, the target'', ''subparagraph (B)(iv)'' for ''subparagraph (B)(ii)'', and a comma for period at end.

Subsec. (b)(3)(C)(iii), (iv). Pub. L. 103–66, § 13501(a)(2)(B)(iv), added cls. (iii) and (iv).

Subsec. (b)(3)(D)(ii). Pub. L. 103–66, § 13501(a)(2)(B)(v), substituted ''period beginning before fiscal year 1994, the target'' for ''period, the target'', ''subparagraph (B)(iv)'' for ''subparagraph (B)(ii)'', and '', and'' for period at end.

Subsec. (b)(3)(D)(iii). Pub. L. 103–66, § 13501(a)(2)(B)(vi), added cl. (iii).

Subsec. (b)(4)(A). Pub. L. 103–66, § 13502(b), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (d)(1)(A)(iii). Pub. L. 103–66, § 13501(f), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''beginning on or after April 1, 1988, and ending on September 30, 1993,, the sum of (I) 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, and (II) 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph.''

Subsec. (d)(5)(A)(i). Pub. L. 103–66, § 13501(c)(1), substituted ''For discharges occurring during fiscal years ending on or before September 30, 1997, the Secretary'' for ''The Secretary''.

Subsec. (d)(5)(A)(ii). Pub. L. 103–66, § 13501(c)(2), substituted '', or, for discharges in fiscal years beginning on or after October 1, 1994, exceed the applicable DRG prospective payment rate plus a fixed dollar amount determined by the Secretary.'' for period at end.

Subsec. (d)(5)(A)(iii). Pub. L. 103–66, § 13501(c)(3), substituted ''shall (except as payments under clause (i) are required to be reduced to take into account the requirements of clause (v)) approximate'' for ''shall approximate''.

Subsec. (d)(5)(A)(v), (vi). Pub. L. 103–66, § 13501(c)(4), added cls. (v) and (vi).

Subsec. (d)(5)(B)(iv). Pub. L. 103–66, § 13506, inserted ''or providing services at any entity receiving a grant under section 254c of this title that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by such interns and residents)'' after ''the hospital''.

Subsec. (d)(5)(G)(i). Pub. L. 103–66, § 13501(e)(1)(A), which directed amendment of subsec. (d)(5)(G) in clause (i) in the matter preceding subclause (I), by striking ''ending on or before March 31, 1993,'' and all that follows and inserting ''before October 1, 1994, in the case of a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be equal to the sum of the amount determined under clause (ii) and the amount determined under paragraph (1)(A)(iii).'', was executed by substituting the new language for ''ending on or before March 31, 1993, with respect to a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be—

''(I) an amount based on 100 percent of the hospital's target amount for the cost reporting period, as defined in subsection (b)(3)(D) of this section, or

''(II) the amount determined under paragraph (1)(A)(iii),

whichever results in the greater payment to the hospital.'' to reflect the probable intent of Congress.

Subsec. (d)(5)(G)(ii) to (iv). Pub. L. 103–66, § 13501(e)(1)(B), (C), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (d)(8)(C)(iv). Pub. L. 103–66, § 13501(b)(1), added cl. (iv).

Subsec. (g)(1)(A). Pub. L. 103–66, § 13501(a)(3), inserted at end ''For discharges occurring after September 30, 1993, the Secretary shall reduce by 7.4 percent the unadjusted standard Federal capital payment rate (as described in 42 CFR 412.308(c), as in effect on August 10, 1993) and shall (for hospital cost reporting periods beginning on or after October 1, 1993) redetermine which payment methodology is applied to the hospital under such system to take into account such reduction.''

Subsec. (h)(2)(D). Pub. L. 103–66, § 13563(a)(1), designated existing provisions as cl. (i), substituted ''Except as provided in clause (ii), for each'' for ''For each'', and added cl. (ii).

Subsec. (h)(5)(F). Pub. L. 103–66, § 13563(b)(1)(A), struck out ''plus one year'' after ''board eligibility'' in introductory provisions.

Subsec. (h)(5)(F)(ii). Pub. L. 103–66, § 13563(b)(1)(B), inserted ''or a preventive medicine residency or fellowship program'' after ''fellowship program''.

Subsec. (h)(5)(H), (I). Pub. L. 103–66, § 13563(a)(2), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (h)(5)(J). Pub. L. 103–66, § 13563(c)(1), added subpar. (J).

1990—Subsec. (a)(4). Pub. L. 101–508, § 4003(a), struck out period at end of first sentence and inserted '', and includes the costs of all services for which payment may be made under this subchapter that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to the patient during the 3 days immediately preceding the date of the patient's admission if such services are diagnostic services (including clinical diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary).''

Subsec. (b)(1)(B)(ii). Pub. L. 101–508, § 4005(a)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: ''in the case of cost reporting periods beginning on or after October 1, 1982, and before October 1, 1984, 25 percent of the amount by which the amount of the operating costs exceeds the target amount;''.

Subsec. (b)(3)(B)(i)(V). Pub. L. 101–508, § 4002(a)(1)(A), struck out ''and'' after semicolon at end.

Subsec. (b)(3)(B)(i)(VI). Pub. L. 101–508, § 4002(c)(1)(A), substituted ''in a large urban or other urban area, and the market basket percentage increase minus 0.7 percentage point for hospitals located in a rural area'' for ''in all areas''.

Pub. L. 101–508, § 4002(a)(1)(C), added subcl. (VI). Former subcl. (VI) redesignated (IX).

Pub. L. 101–508, § 4002(a)(1)(B)(i), substituted ''1994'' for ''1991''.

Subsec. (b)(3)(B)(i)(VII). Pub. L. 101–508, § 4002(c)(1)(B), substituted ''in a large urban or other urban area, and the market basket percentage increase minus 0.6 percentage point for hospitals located in a rural area'' for ''in all areas''.

Pub. L. 101–508, § 4002(a)(1)(C), added subcl. (VII).

Subsec. (b)(3)(B)(i)(VIII). Pub. L. 101–508, § 4002(c)(1)(C), substituted ''in a large urban or other urban area, and the market basket percentage increase minus 0.55 for hospitals located in a rural area,'' for ''in all areas, and''.

Pub. L. 101–508, § 4002(a)(1)(C), added subcl. (VIII).

Subsec. (b)(3)(B)(i)(IX). Pub. L. 101–508, § 4002(c)(1)(E), added subcl. (IX). Former subcl. (IX) redesignated (XI).

Pub. L. 101–508, § 4002(c)(1)(D)(i), substituted ''1996'' for ''1994''.

Pub. L. 101–508, § 4002(a)(1)(B)(ii), redesignated subcl. (VI) as (IX).

Subsec. (b)(3)(B)(i)(X). Pub. L. 101–508, § 4002(c)(1)(E), added subcl. (X).

Subsec. (b)(3)(B)(i)(XI). Pub. L. 101–508, § 4002(c)(1)(D)(ii), redesignated subcl. (IX) as (XI).

Subsec. (b)(3)(B)(ii). Pub. L. 101–508, § 4002(c)(2)(A)(i), substituted ''(A), (C), (D), and (E),'' for ''(A) and (E),'' in introductory provisions.

Subsec. (b)(3)(C)(ii), (D)(ii). Pub. L. 101–508, § 4002(c)(2)(A)(ii), substituted ''subparagraph (B)(ii)'' for ''subparagraph (B)(i)''.

Subsec. (b)(4)(A). Pub. L. 101–508, § 4005(c)(1)(B), inserted at end ''The Secretary shall announce a decision on any request for an exemption, exception, or adjustment under this paragraph not later than 180 days after receiving a completed application from the intermediary for such exemption, exception, or adjustment, and shall include in such decision a detailed explanation of the grounds on which such request was approved or denied.''

Subsec. (b)(4)(B), (C). Pub. L. 101–508, § 4005(c)(2), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(4). Pub. L. 101–508, § 4008(f)(1), substituted ''payments under the State system as compared to aggregate payments which would have been made under the national system since'' for ''rate of increase from'' in last sentence.

Subsec. (d)(1)(A)(iii). Pub. L. 101–508, § 4002(e)(1), substituted ''beginning on or after April 1, 1988, and ending on September 30, 1993,'' for ''beginning on or after October 1, 1987, is equal to the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, or, if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same rural, large urban, or other urban area as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area for discharges occurring during the period beginning on April 1, 1988, and ending on October 20, 1990''.

Pub. L. 101–508, § 4002(c)(2)(B)(i), substituted ''large urban or other area'' for ''rural, large urban, or other urban area'' in text of cl. (iii)(II) as amended by Pub. L. 103–66, § 13501(f). See 1993 Amendment note above.

Pub. L. 101–403 substituted ''October 20, 1990'' for ''September 30, 1990''.

Subsec. (d)(2)(C)(iv). Pub. L. 101–508, § 4002(b)(4)(B), substituted ''1989 or the enactment of section 4002(b) of the Omnibus Budget Reconciliation Act of 1990.'' for ''1989.''

Pub. L. 101–508, § 4002(b)(4)(A), struck out period at end and inserted '', except that the Secretary shall not exclude additional payments under such paragraph made as a result of the enactment of section 6003(c) of the Omnibus Budget Reconciliation Act of 1989.''

Pub. L. 101–508, § 4002(b)(3)(A), struck out ''and before October 1, 1995,'' after ''October 1, 1986,''.

Subsec. (d)(3)(A)(ii). Pub. L. 101–508, § 4002(c)(2)(B)(ii)(I), substituted ''and ending on or before September 30, 1994, the Secretary'' for ''the Secretary''.

Subsec. (d)(3)(A)(iii) to (v). Pub. L. 101–508, § 4002(c)(2)(B)(ii)(II), (III), added cls. (iii) and (iv) and redesignated former cl. (iii) as (v).

Subsec. (d)(3)(B). Pub. L. 101–508, § 4002(c)(2)(B)(iii), substituted ''by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).'' for ''for hospitals located in an urban area and for hospitals located in a rural area by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments) for hospitals located in such respective area.''

Subsec. (d)(3)(C)(ii). Pub. L. 101–508, § 4002(b)(3)(B)(B), substituted ''occurring on or after October 1, 1986,'' through the end of cl. (ii) for ''occurring—'' and subcls. (I) and (II) which read as follows:

''(I) on or after October 1, 1986, and before October 1, 1995, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987 if the factor described in clause (ii)(II) of paragraph (5)(B) were applied for discharges occurring during such period instead of the factor described in clause (ii)(I) of that paragraph, and

''(II) on or after October 1, 1995, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) for those discharges that has resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987.''

Subsec. (d)(3)(D)(i). Pub. L. 101–508, § 4002(c)(2)(B)(iv)(I), which directed amendment of cl. (i) by substituting ''a large urban area'' for ''an urban area

(or,'' and all that follows through ''area),'' was executed by making the substitution for ''an urban area (or, for discharges occurring on or after April 1, 1988, in a large urban area or other urban area)'' to reflect the probable intent of Congress.

Subsec. (d)(3)(D)(i)(I). Pub. L. 101–508, § 4002(c)(2)(B)(iv)(II), substituted ''a large urban area'' for ''an urban area''.

Subsec. (d)(3)(D)(ii). Pub. L. 101–508, § 4002(c)(2)(B)(v), substituted ''other areas'' for ''a rural area'' in introductory provisions and in subcl. (I).

Subsec. (d)(4)(D). Pub. L. 101–508, § 4002(g)(2)(A), struck out subpar. (D) which read as follows: ''The Commission (established under subsection (e)(2) of this section) shall consult with and make recommendations to the Secretary with respect to the need for adjustments under subparagraph (C), based upon its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities. The Commission shall report to the Congress with respect to its evaluation of any adjustments made by the Secretary under subparagraph (C).''

Subsec. (d)(5)(B)(ii). Pub. L. 101–508, § 4002(b)(3)(B)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring—

''(I) on or after May 1, 1986, and before October 1, 1995, is equal to $1.89\times((1+r)^{.405}-1)$, or

''(II) on or after October 1, 1995, is equal to $1.43\times((1+r)^{.5795}-1)$,

where 'r' is the ratio of the hospital's full-time equivalent interns and residents to beds.''

Subsec. (d)(5)(D)(iii). Pub. L. 101–508, § 4008(m)(2)(A), substituted ''For purposes of this subchapter, the term'' for ''The term'' at beginning.

Subsec. (d)(5)(F)(i). Pub. L. 101–508, § 4002(b)(3)(A), struck out ''and before October 1, 1995,'' after ''May 1, 1986,''.

Subsec. (d)(5)(F)(iii). Pub. L. 101–508, § 4002(b)(2), substituted ''35 percent'' for ''30 percent''.

Subsec. (d)(5)(F)(vii)(I). Pub. L. 101–508, § 4002(b)(1)(A), substituted ''greater than 20.2—'' and subdivs. (a) to (d) for ''greater than 20.2, $(P-20.2)(.65)+5.62$, or''.

Subsec. (d)(5)(F)(vii)(II). Pub. L. 101–508, § 4002(b)(1)(B), substituted ''hospital—'' and subdivs. (a) to (c) for ''hospital, $(P-15)(.6)+2.5$,''.

Subsec. (d)(8)(C)(i). Pub. L. 101–508, § 4002(h)(1)(A)(i), substituted ''area, or by treating hospitals located in one urban area as being located in another urban area—'' for ''area—''.

Subsec. (d)(8)(C)(i)(II). Pub. L. 101–508, § 4002(h)(1)(A)(ii), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if each affected rural county were a separate urban area).''

Subsec. (d)(8)(C)(ii) to (iv). Pub. L. 101–508, § 4002(h)(1)(A)(iii), (iv), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: ''If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by reclassifying a county from a rural to an urban area or by reclassifying an urban county from one urban area to another urban area—

''(I) reduces the wage index for the urban area within which the county or counties is reclassified by 1 percentage point or less (as applied under this subsection), the Secretary, in calculating such wage index under this subsection, shall exclude those counties so reclassified, or

''(II) reduces the wage index for the urban area within which the county or counties is reclassified by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so reclassified) and to hospitals located in the counties so reclassified (as if each affected county were a separate area).''

Subsec. (d)(8)(D). Pub. L. 101–508, § 4002(c)(2)(B)(vi), struck out ''for hospitals located in an urban area'' after ''determined under paragraph (3)'' and struck out at end ''The Secretary shall make such adjustment in payments under this section to hospitals located in rural areas as are necessary to assure that the aggregate of payments to rural hospitals not affected by subparagraphs (B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) are not changed as a result of the application of subparagraphs (B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10).''

Subsec. (d)(10)(A). Pub. L. 101–508, § 4002(h)(2)(B)(i), substituted ''Geographic'' for ''Geographical''.

Subsec. (d)(10)(B)(i). Pub. L. 101–508, § 4002(h)(2)(B)(ii), substituted ''representative'' for ''representatives'' and struck out ''1 member shall be a member of the Prospective Payment Assessment Commission, and at least'' after ''At least''.

Subsec. (d)(10)(B)(ii). Pub. L. 101–508, § 4002(h)(2)(B)(iii), substituted ''initial'' for ''all''.

Subsec. (d)(10)(C)(iii)(II). Pub. L. 101–508, § 4002(h)(2)(B)(iv), substituted ''Appeal of decisions of the Board shall be subject to the provisions of section 557b of title 5'' for ''A decision of the Board shall be final unless the unsuccessful applicant appeals such decision to the Secretary by not later than 15 days after the Board renders its decision. The Secretary in considering the appeal of an applicant shall receive no new evidence but shall consider the record as a whole as such record appeared before the Board'' and substituted ''after the date on which'' for ''after''.

Subsec. (e)(2). Pub. L. 101–508, § 4002(g)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (e)(2)(A). Pub. L. 101–508, § 4002(g)(2)(B), substituted ''The Commission'' for ''In addition to carrying out its functions under subsection (d)(4)(D) of this section, the Commission''.

Subsec. (e)(3)(A). Pub. L. 101–508, § 4002(g)(2)(C), substituted ''Congress'' for ''the Secretary'' and inserted before period at end '', together with its general recommendations under paragraph (2)(B) regarding the effectiveness and quality of health care delivery systems in the United States''.

Subsec. (e)(4). Pub. L. 101–508, § 4002(g)(2)(D), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e)(5). Pub. L. 101–508, § 4002(g)(2)(E), substituted ''recommendations'' for ''recommendation'' in subpars. (A) and (B) and inserted at end ''To the extent that the Secretary's recommendations under paragraph (4) differ from the Commission's recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Commission's recommendations.''

Subsec. (e)(6)(G). Pub. L. 101–508, § 4002(g)(2)(F), redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: ''The Office shall report annually to the Congress on the functioning and progress of the Commission and on the status of the assessment of medical procedures and services by the Commission.''

Subsec. (g)(1)(A). Pub. L. 101–508, § 4001(b), inserted at end ''Aggregate payments made under subsection (d) of this section and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduction in the amount of payments attributable to capital-related costs that would otherwise have been made during such fiscal year had the amount of such payments been based on reasonable costs (as defined in section 1395x(v) of this title).''

Subsec. (g)(3)(A)(v). Pub. L. 101–508, § 4001(a), substituted ''September 30, 1991'' for ''September 30, 1990''.

Subsec. (g)(3)(B). Pub. L. 101–508, § 4001(c), substituted ''subsection (d)(5)(D)(iii) of this section or a rural primary care hospital (as defined in section 1395x(mm)(1) of this title)'' for ''subsection (d)(5)(D)(iii) of this section)''.

1989—Subsec. (a)(4). Pub. L. 101–239, § 6011(a), struck out ''or,'' after ''equity capital,'' and substituted ''October 1, 1987), or costs with respect to administering blood clotting factors to individuals with hemophilia'' for ''October 1, 1987)''.

Subsec. (b)(3)(A). Pub. L. 101–239, § 6004(b)(1)(A), substituted ''(C), (D), and (E)'' for ''(C) and (D)'' in introductory provisions.

Pub. L. 101–239, § 6003(f)(2)(i), substituted ''subparagraphs (C) and (D)'' for ''subparagraph (C)'' in introductory provisions.

Pub. L. 101–239, § 6003(e)(1)(B)(i), substituted ''(A) Except as provided in subparagraph (C), for purposes of this subsection'' for ''(A) For purposes of this subsection'' in introductory provisions.

Subsec. (b)(3)(B)(i)(V), (VI). Pub. L. 101–239, § 6003(a)(1), added subcl. (V), redesignated former subcl. (V) as (VI), and substituted ''fiscal year 1991'' for ''fiscal year 1990'' in subcl. (VI).

Subsec. (b)(3)(B)(ii). Pub. L. 101–239, § 6004(b)(1)(B), substituted ''For purposes of subparagraphs (A) and (E)'' for ''For purposes of subparagraph (A)'' in introductory provisions.

Subsec. (b)(3)(C). Pub. L. 101–239, § 6003(e)(1)(B)(ii), added subpar. (C).

Subsec. (b)(3)(D). Pub. L. 101–239, § 6003(f)(2)(ii), added subpar. (D).

Subsec. (b)(3)(E). Pub. L. 101–239, § 6004(b)(1)(C), added subpar. (E).

Subsec. (b)(4)(A). Pub. L. 101–239, § 6015(a), substituted ''deems appropriate, including the assignment of a new base period which is more representative, as determined by the Secretary, of the reasonable and necessary cost of inpatient services and'' for ''deems appropriate,''.

Subsec. (c)(4). Pub. L. 101–239, § 6022, substituted ''the aggregate rate of increase from October 1, 1984, to the most recent date for which annual data are available'' for ''the aggregate payment or payments per inpatient admission or discharge during the three cost reporting periods beginning on or after October 1, 1983, after which such test, at the option of the Secretary, shall no longer apply, and such State systems shall be treated in the same manner as under other waivers'' in second sentence.

Subsec. (d)(1)(B)(v). Pub. L. 101–239, § 6004(a)(1), added cl. (v).

Subsec. (d)(3)(E). Pub. L. 101–239, § 6003(h)(6), substituted ''October 1, 1990, and October 1, 1993 (and at least every 12 months thereafter)'' for ''October 1, 1990 (and at least every 36 months thereafter)'' and inserted at end ''Any adjustments or updates made under this subparagraph for a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment.''

Subsec. (d)(4)(C). Pub. L. 101–239, § 6003(b), designated existing provisions as cl. (i) and added cls. (ii) to (iv).

Subsec. (d)(5)(C). Pub. L. 101–239, § 6003(e)(1)(A)(i), (ii), (iv), (2)(B), redesignated former cl. (i)(I) as cl. (i), redesignated former cl. (i)(II) as cl. (ii) and substituted ''clause (i)'' for ''subclause (I)'' in three places, and redesignated former cls. (ii), (iii), and (iv) as subpars. (D), (I), and (H), respectively.

Subsec. (d)(5)(D). Pub. L. 101–239, § 6003(e)(1)(A)(iv), amended former subpar. (C)(ii) generally, redesignating it as subpar. (D) and substituting cls. (i) to (iv) relating to payments to sole community hospitals for cost reporting periods beginning on or after Apr. 1, 1990, for former single paragraph relating to payments to such hospitals for cost reporting periods beginning on or after Oct. 1, 1984.

Subsec. (d)(5)(D)(iii)(III). Pub. L. 101–239, § 6003(g)(2)(A), added subcl. (III).

Subsec. (d)(5)(D)(v). Pub. L. 101–239, § 6003(g)(2)(B), added cl. (v).

Subsec. (d)(5)(E). Pub. L. 101–239, § 6003(e)(1)(A)(iii), redesignated subpar. (D) as (E).

Subsec. (d)(5)(F)(iii). Pub. L. 101–239, § 6003(c)(3), substituted ''30 percent'' for ''25 percent''.

Subsec. (d)(5)(F)(iv)(I). Pub. L. 101–239, § 6003(c)(1)(A), substituted ''the applicable formula described in clause (vii)'' for ''the following formula: (P − 15)(.5)+2.5, where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi))''.

Subsec. (d)(5)(F)(iv)(III). Pub. L. 101–239, § 6003(c)(2)(A)(ii), inserted ''in subclause (IV) or (V) or'' after ''described''.

Subsec. (d)(5)(F)(iv)(IV) to (VI). Pub. L. 101–239, § 6003(c)(2)(A)(i), (iii), (iv), added subcls. (IV) to (VI).

Subsec. (d)(5)(F)(v)(II) to (IV). Pub. L. 101–239, § 6003(c)(2)(B), added subcl. (II), redesignated former subcls. (II) and (III) as (III) and (IV), respectively, and substituted ''area and is not described in subclause (II)'' for ''area'' in subcl. (IV).

Subsec. (d)(5)(F)(vii). Pub. L. 101–239, § 6003(c)(1)(B), added cl. (vii).

Subsec. (d)(5)(F)(viii). Pub. L. 101–239, § 6003(c)(2)(C), added cl. (viii).

Subsec. (d)(5)(G). Pub. L. 101–239, § 6003(f)(1), added subpar. (G).

Subsec. (d)(5)(H). Pub. L. 101–239, § 6003(e)(1)(A)(i), redesignated subpar. (C)(iv) as subpar. (H).

Subsec. (d)(5)(I). Pub. L. 101–239, § 6004(a)(2), struck out ''(including exceptions and adjustments that may be appropriate with respect to hospitals involved extensively in treatment for and research on cancer)'' after ''deems appropriate''.

Pub. L. 101–239, § 6003(e)(1)(A)(ii), redesignated subpar. (C)(iii) as subpar. (I).

Subsec. (d)(8)(C). Pub. L. 101–239, § 6003(h)(3), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows:

''(i) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10),, [sic] by treating hospitals located in a rural county or counties as being located in an urban area, reduces the wage index for that urban area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if each affected rural county were a separate urban area). If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10),, [sic] by treating the hospitals located in a rural county or counties as not being located in the rural area in a State, reduces the wage index for that rural area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection as if the hospitals so treated had not been excluded from calculation of the wage index for that rural area.

''(ii) Clause (i) shall only apply to discharges occurring on or after October 1, 1989, and before October 1, 1991.''

Subsec. (d)(8)(C)(i). Pub. L. 101–239, § 6003(h)(2), substituted ''subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10),'' for ''subparagraph (B)'' in two places.

Subsec. (d)(8)(C)(iv). Pub. L. 101–239, § 6003(h)(4), added cl. (iv).

Subsec. (d)(8)(D). Pub. L. 101–239, § 6003(h)(2)(B), substituted ''(B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10)'' for ''(B) and (C)'' in three places.

Subsec. (d)(9)(B)(ii)(IV). Pub. L. 101–239, § 6003(e)(2)(C), substituted ''subparagraph (D)(iii)'' for ''subparagraph (D)(v)''.

Subsec. (d)(9)(D)(iii). Pub. L. 101–239, § 6003(e)(2)(D)(ii), redesignated cl. (v) as (iii). Former cl. (iii) redesignated (iv).

Subsec. (d)(9)(D)(iv). Pub. L. 101–239, § 6003(e)(2)(D)(i), (ii), redesignated former cl. (iii) as (iv), substituted ''Subparagraph (H)'' for ''Subparagraph (C)(iii)'', and struck out former cl. (iv) which read as follows: ''Subparagraph (E) (relating to payments for costs of certified registered nurse anesthetists).''

Subsec. (d)(9)(D)(v). Pub. L. 101–239, § 6003(e)(2)(D)(iii), redesignated cl. (v) as (iii).

Subsec. (d)(10). Pub. L. 101–239, § 6003(h)(1), added par. (10).

Subsec. (g)(3)(A)(iv). Pub. L. 101–234, § 301(b)(3), (c)(3), amended cl. (iv) identically, substituting ''(as the case may be)'' for ''(as the case may) be''.

Subsec. (g)(3)(A)(v). Pub. L. 101–239, § 6002, added cl. (v).

Subsec. (g)(3)(B). Pub. L. 101–239, § 6003(e)(2)(E), substituted ''subsection (d)(5)(D)(iii)'' for ''subsection (d)(5)(C)(ii)''.

Subsec. (i). Pub. L. 101–239, § 6003(g)(4), added subsec. (i).

1988—Subsec. (b)(3)(B)(i)(III). Pub. L. 100–485, § 608(d)(18)(A), substituted ''for hospitals'' for ''for for hospitals'' before ''located in other urban areas''.

Pub. L. 100–360, § 411(b)(1)(A), substituted ''for hospitals located in other urban areas'' for ''other hospitals''.

Subsec. (b)(3)(B)(i)(IV). Pub. L. 100–485, § 608(d)(18)(A), substituted ''for hospitals'' for ''for for hospitals'' before ''located in other urban areas''.

Pub. L. 100–360, § 411(b)(1)(A), (B), substituted ''percentage points'' for ''percent'' in three places and ''for hospitals located in other urban areas'' for ''other hospitals''.

Subsec. (b)(3)(B)(i)(V). Pub. L. 100–360, § 411(b)(1)(C), inserted ''increase'' after ''market basket percentage''.

Subsec. (d)(1)(A)(iii). Pub. L. 100–360, § 411(b)(1)(G), substituted ''if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same rural, large urban, or other urban area as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area'' for ''if greater''.

Subsec. (d)(2)(C)(i). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(A). See 1986 Amendment note below.

Subsec. (d)(2)(C)(iv). Pub. L. 100–647, § 8401, substituted ''1995'' for ''1990''.

Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(B)(i), as amended by Pub. L. 100–203, § 4009(j)(6)(A), struck out Pub. L. 99–514, § 1895(b)(2)(A). See 1986 Amendment note below.

Subsec. (d)(2)(D). Pub. L. 100–360, § 411(b)(1)(D), substituted ''the publications described in subsection (e)(5) of this section'' for ''the publication described in subsection (e)(5)(B) of this section'' in second sentence.

Pub. L. 100–360, § 411(b)(1)(H)(i), struck out at end ''For purposes of payment under this subsection, a hospital is considered to be located in an urban area or large urban area, respectively, if the hospital is paid under this subsection at the rate for hospitals located in such an area.''

Subsec. (d)(3)(A). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(B). See 1986 Amendment note below.

Subsec. (d)(3)(A)(i). Pub. L. 100–360, § 411(b)(1)(E)(i), as added by Pub. L. 100–485, § 608(d)(18)(B), substituted ''occurring'' for ''occuring'' in first sentence.

Pub. L. 100–360, § 411(b)(1)(E)(ii), formerly § 411(b)(1)(E), as redesignated by Pub. L. 100–485, § 608(d)(18)(B), made technical correction to Pub. L. 100–203, § 4002(c)(1)(B)(iii), see 1987 Amendment note below.

Subsec. (d)(3)(A)(ii). Pub. L. 100–360, § 411(b)(1)(F), substituted ''in other urban areas'' for ''in urban areas''.

Subsec. (d)(3)(C)(ii). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(C). See 1986 Amendment note below.

Subsec. (d)(3)(C)(ii)(I), (II). Pub. L. 100–647, § 8401, substituted ''1995'' for ''1990''.

Subsec. (d)(3)(C)(iii). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(B)(i), as amended by Pub. L. 100–203, § 4009(j)(6)(A), struck out Pub. L. 99–514, § 1895(b)(2)(B). See 1986 Amendment note below.

Subsec. (d)(5)(B)(ii)(I), (II). Pub. L. 100–647, § 8401, substituted ''1995'' for ''1990''.

Subsec. (d)(5)(F)(i). Pub. L. 100–647, § 8401, substituted ''1995'' for ''1990''.

Subsec. (d)(5)(F)(vi)(I). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). See 1986 Amendment note below.

Subsec. (d)(8). Pub. L. 100–360, § 411(b)(4)(C)(i), made technical correction to directory language of Pub. L. 100–203, § 4005(a)(1)(D), see 1987 Amendment note below.

Subsec. (d)(8)(B). Pub. L. 100–360, § 411(b)(4)(A)(i), substituted ''For purposes of this subsection, the Secretary'' for ''The Secretary''.

Pub. L. 100–360, § 411(b)(4)(A)(ii), substituted ''the rural county would otherwise be considered part of an urban area, under the standards for designating Metropolitan Statistical Areas (and for designating New England County Metropolitan Areas) published in the Federal Register on January 3, 1980, if the commuting rates used in determining outlying counties (or, for New England, similar recognized areas) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous Metropolitan Statistical Areas (or New England County Metropolitan Areas).'' for ''—

''(i) the rural county would otherwise be considered part of an urban area but for the fact that the rural county does not meet the standard relating to the rate of commutation between the rural county and the central county or counties of any adjacent urban area; and

''(ii) either (I) the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area is equal to at least 15 percent of the number of residents of the rural county who are employed, or (II) the sum of the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area and the number of residents of any adjacent urban area who commute for employment to the rural county is at least equal to 20 percent of the number of residents of the rural county who are employed.''

Subsec. (d)(8)(C). Pub. L. 100–647, § 8403(a)(2), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 100–360, § 411(b)(4)(B), substituted ''standardized amounts'' for ''standardized amount''.

Subsec. (d)(8)(D). Pub. L. 100–647, § 8403(a)(1), redesignated former subpar. (C) as (D) and substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)'' wherever appearing.

Subsec. (d)(9)(C)(iv). Pub. L. 100–360, § 411(b)(3), added Pub. L. 100–203, § 4004(a)(2), see 1987 Amendment note below.

Subsec. (e)(6)(B). Pub. L. 100–360, § 411(b)(8)(B), amended Pub. L. 100–203, § 4009(d)(1), see 1987 Amendment note below.

Subsec. (f)(1)(A). Pub. L. 100–360, § 411(b)(6)(B), added Pub. L. 100–203, § 4007(b)(1)(A), (B), see 1987 Amendment note below.

Subsec. (f)(1)(B). Pub. L. 100–360, § 411(b)(6)(B), added Pub. L. 100–203, § 4007(b)(1)(C), see 1987 Amendment note below.

Subsec. (g)(3)(A)(ii) to (iv). Pub. L. 100–360, § 411(b)(5)(B), made technical amendment to Pub. L. 100–203, § 4006(a), see 1987 Amendment note below.

Subsec. (g)(3)(A)(iv). Pub. L. 100–360, § 411(b)(5)(A), inserted ''for payments attributable'' after ''15 percent''.

1987—Subsec. (a)(4). Pub. L. 100–203, § 4009(j)(1), inserted a comma after ''educational activities''.

Pub. L. 100–203, § 4006(b)(2)(A), substituted ''other capital-related costs (as defined by the Secretary for periods before October 1, 1987)'' for ''with respect to costs incurred in cost reporting periods beginning prior to October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select), other capital-related costs, as defined by the Secretary''.

Subsec. (b)(3)(B)(i). Pub. L. 100–203, § 4002(e)(1), struck out ''subparagraph (A) for 12-month cost reporting periods beginning during a fiscal year and for purposes of'' after ''For purposes of''.

Subsec. (b)(3)(B)(i)(II). Pub. L. 100–203, § 4002(a), struck out ''and for fiscal year 1988, the market basket percentage increase (as defined in clause (ii)) minus 2.0 percentage points, and'' after ''1.15 percent,''.

Subsec. (b)(3)(B)(i)(III) to (V). Pub. L. 100–203, § 4002(a), added subcls. (III) to (V) and struck out former subcl. (III) which read ''for fiscal year 1989 and subsequent fiscal years, the percentage determined by the Secretary pursuant to subsection (e)(4) of this section.''

Subsec. (b)(3)(B)(ii), (iii). Pub. L. 100–203, § 4002(e)(2), (3), added cl. (ii), redesignated former cl. (ii) as (iii), and substituted ''For purposes of this subparagraph'' for ''For purposes of clause (i)''.

Subsec. (d)(1)(A)(iii). Pub. L. 100–203, § 4002(d), inserted before period at end '', or, if greater for discharges occurring during the period beginning on April 1, 1988, and ending on September 30, 1990, the sum of (I) 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, and (II) 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph''.

Subsec. (d)(2)(C)(iv). Pub. L. 100–203, § 4009(j)(6)(A), made technical amendment to Pub. L. 99–509, § 9307(c)(1)(B). See 1986 Amendment note below.

Pub. L. 100–203, § 4003(c), substituted ''1990'' for ''1989''.

Subsec. (d)(2)(D). Pub. L. 100–203, § 4002(f)(1)(A), inserted sentence at end providing that hospital is considered located in urban area or large urban area, respectively, if it is paid under this subsection at rate for hospitals located in such area.

Pub. L. 100–203, § 4002(b), in second sentence inserted definition of ''large urban area''.

Subsec. (d)(3). Pub. L. 100–203, § 4002(c)(1)(A), substituted ''large urban, other urban, or rural areas'' for ''urban or rural areas'' in second sentence.

Subsec. (d)(3)(A)(i). Pub. L. 100–203, § 4002(c)(1)(B), (C), as amended by Pub. L. 100–360, § 411(b)(1)(E)(ii), designated existing provisions as cl. (i), substituted ''For discharges occuring [sic] in a fiscal year beginning before October 1, 1987, the Secretary'' for ''The Secretary'' and ''the fiscal year involved'' for ''each of fiscal years 1985, 1986, 1987, and 1988'', struck out '', and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4) of this section, and adjusted to reflect the most recent case-mix data available'', and added cls. (ii) and (iii).

Subsec. (d)(3)(C)(ii). Pub. L. 100–203, § 4003(c), substituted ''1990'' for ''1989'' in subcls. (I) and (II).

Pub. L. 100–203, § 4003(a)(2), inserted ''and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987'' after ''Amendments of 1985'' in subcls. (I) and (II).

Subsec. (d)(3)(C)(iii). Pub. L. 100–203, § 4009(j)(6)(A), made technical amendment to Pub. L. 99–509, § 9307(c)(1)(B). See 1986 Amendment note below.

Subsec. (d)(3)(D). Pub. L. 100–203, § 4002(c)(1)(D)(i), substituted ''hospitals in different areas'' for ''urban and rural hospitals'' in heading.

Subsec. (d)(3)(D)(i). Pub. L. 100–203, § 4002(c)(1)(D)(ii), (iii), inserted ''(or, for discharges occurring on or after April 1, 1988, in a large urban area or other urban area)'' after first reference to ''urban area'', and in subcl. (I) inserted ''such'' before ''an urban area''.

Subsec. (d)(3)(E). Pub. L. 100–203, § 4004(a)(1), formerly § 4004(a), as redesignated by Pub. L. 100–360, § 411(b)(3), inserted at end ''Not later than October 1, 1990 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs of subsection (d) hospitals in the United States. To the extent determined feasible by the Secretary, such survey shall measure the earnings and paid hours of employment by occupational category and shall exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services.''

Subsec. (d)(5)(B)(ii). Pub. L. 100–203, § 4003(c), substituted ''1990'' for ''1989'' in subcls. (I) and (II).

Pub. L. 100–203, § 4003(a)(1), substituted ''1.89'' for ''2'' in subcl. (I) and ''1.43'' for ''1.5'' in subcl. (II).

Subsec. (d)(5)(C)(i)(I). Pub. L. 100–203, § 4005(d)(1)(A), substituted ''275'' for ''500''.

Subsec. (d)(5)(C)(i)(II). Pub. L. 100–203, § 4009(j)(2), inserted ''index'' after ''case mix'' in two places.

Subsec. (d)(5)(C)(ii). Pub. L. 100–203, § 4005(c)(1), substituted ''1990'' for ''1988'' in second sentence and inserted after second sentence ''A subsection (d) hospital that meets the criteria for classification as a sole community hospital and otherwise qualifies for the adjustment authorized by the preceding sentence may qualify for such an adjustment without regard to the formula by which payments are determined for the hospital under paragraph (1)(A).''

Subsec. (d)(5)(F)(i). Pub. L. 100–203, § 4003(c), substituted ''1990'' for ''1989''.

Subsec. (d)(5)(F)(i)(II). Pub. L. 100–203, § 4009(j)(3)(A), substituted ''such net inpatient care revenues'' for second reference to ''such revenues''.

Subsec. (d)(5)(F)(iii). Pub. L. 100–203, § 4003(b)(1), substituted ''25 percent'' for ''15 percent''.

Subsec. (d)(5)(F)(iv)(I). Pub. L. 100–203, § 4009(j)(3)(B), substituted ''clause (v)'' for ''subclause (III)''.

Pub. L. 100–203, § 4003(b)(2), struck out ''the lesser of 15 percent, or'' after ''is equal to''.

Subsec. (d)(5)(F)(vi)(I). Pub. L. 100–203, § 4009(j)(6)(A), made technical amendment to Pub. L. 99–509, § 9307(c)(1)(B)(ii). See 1986 Amendment note below.

Subsec. (d)(8). Pub. L. 100–203, § 4005(a)(1), as amended by Pub. L. 100–360, § 411(b)(4)(C)(i), designated existing provisions as subpar. (A), redesignated former subpar. (A) and cls. (i) and (ii) as cl. (i) and subcls. (I) and (II), respectively, redesignated former subpar. (B) and cls. (i) and (ii) as cl. (ii) and subcl. (I) and (II), respectively, and added subpars. (B) and (C).

Subsec. (d)(9)(A)(ii). Pub. L. 100–203, § 4002(c)(2), substituted ''a large urban area,'' for ''an urban area, and'' in subcl. (I), added subcl. (II), and redesignated former subcl. (II) as (III).

Subsec. (d)(9)(B). Pub. L. 100–203, § 4009(j)(4), realigned margin of introductory provisions.

Subsec. (d)(9)(C)(iv). Pub. L. 100–203, § 4004(a)(2), as added by Pub. L. 100–360, § 411(b)(3), inserted at end ''The second and third sentences of paragraph (3)(E) shall apply to subsection (d) Puerto Rico hospitals under this clause in the same manner as they apply to subsection (d) hospitals under such paragraph and, for purposes of this clause, any reference in such paragraph to a subsection (d) hospital is deemed a reference to a subsection (d) Puerto Rico hospital.''

Subsec. (e)(3)(B). Pub. L. 100–203, § 4002(f)(1)(B), struck out ''or determine'' after ''recommend''.

Subsec. (e)(4). Pub. L. 100–203, § 4002(f)(1)(C), substituted ''for each fiscal year (beginning with fiscal year 1988)'' for ''for fiscal year 1988'', struck out ''and shall determine for each subsequent fiscal year the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B) of this section) for discharges in that fiscal year, and'' after ''in that fiscal year'', and amended last sentence generally. Prior to amendment, last sentence read as follows: ''The percentage change shall be the same for all subsection (d) hospitals and subsection (d) Puerto Rico hospitals, but may be different from that for other hospitals (and units not included as such hospitals) and may vary among such other hospitals and units.''

Subsec. (e)(5). Pub. L. 100–203, § 4009(j)(6)(B), amended Pub. L. 99–509, § 9302(a)(2)(C). See 1986 Amendment note below.

Pub. L. 100–203, § 4002(f)(1)(D), struck out ''or determination'' after ''recommendation'' in subpars. (A) and (B).

Subsec. (e)(6)(B). Pub. L. 100–203, § 4009(d)(1), as amended by Pub. L. 100–360, § 411(b)(8)(B), substituted ''include individuals with national recognition for their expertise in health economics, hospital reimbursement, hospital financial management, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives'' for ''provide expertise and experience in the provision and financing of health care'', and struck out last sentence which required Director to seek nominations from wide range of groups, including specified types of national organizations.

Subsec. (e)(6)(D). Pub. L. 100–203, § 4083(b)(1), inserted at end ''For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.''

Subsec. (f)(1)(A). Pub. L. 100–203, § 4007(b)(1)(A), (B), as added by Pub. L. 100–360, § 411(b)(6)(B), inserted subpar. (A) designation and struck out '', for a period ending not earlier than September 30, 1988,'' after ''shall maintain''.

Subsec. (f)(1)(B). Pub. L. 100–203, § 4007(b)(1)(C), as added by Pub. L. 100–360, § 411(b)(6)(B), added subpar. (B).

Subsec. (f)(3). Pub. L. 100–93 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The provisions of paragraphs (2), (3), and (4) of section 1395y(d) of this title shall apply to determinations under paragraph (2) of this subsection in the same manner as they apply to determinations made under section 1395y(d)(1) of this title.''

Subsec. (g)(1). Pub. L. 100–203, § 4006(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''If the Congress does not enact legislation, after April 20, 1983, and before October 1, 1987, respecting the payment under this subchapter for capital-related costs for inpatient hospital services, no payment may be made under this subchapter for capital-related costs of capital expenditures (as defined in section 1320a–1(g) of this title and except as provided in section 1320a–1(j) of this title) for inpatient hospital services in a State, which expenditures are obligated after September 30, 1987, unless the State has an agreement with the Secretary under section 1320a–1(b) of this title and under the agreement the State has recommended approval of the capital expenditures.''

Subsec. (g)(3)(A)(ii) to (iv). Pub. L. 100–203, § 4006(a), as amended by Pub. L. 100–360, § 411(b)(5)(B), substituted ''on or after October 1, 1987, and before January 1, 1988,'' for '', and'', at end of cl. (ii), added cls. (iii) and (iv), and struck out former cl. (iii) which read as follows: ''10 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989.''

Subsec. (g)(3)(C). Pub. L. 100–203, § 4006(b)(2)(B), struck out subpar. (C) which read as follows: ''If the Secretary provides, under subsection (a)(4) of this section, for the inclusion of other capital-related costs in operating costs of inpatient hospital services, the Secretary shall provide—

''(i) notwithstanding any other provision of this subchapter, for the continuation of payment under the reasonable cost methodology described in section 1395x(v)(1) of this title with respect to capital-related costs of any hospital that is such a sole community hospital for cost reporting periods beginning before October 1, 1990, and

''(ii) in the design of such payment system that the aggregate payment amounts under this subchapter for such other capital-related costs for payments attributable to portions of cost reporting periods occurring during fiscal year 1988 and fiscal year 1989 shall approximate the aggregate payment amount under this subchapter that would have been made (taking into account the provisions of subparagraphs (A) and (B)) during that fiscal year but for the inclusion of such costs by the Secretary.''

Subsec. (h)(4)(C). Pub. L. 100–203, § 4009(j)(5), substituted ''subparagraph (D)'' for ''subparagraph (E)''.

1986—Subsec. (a)(4). Pub. L. 99–509, § 9320(g)(1), struck out '', costs of anesthesia services provided by a certified registered nurse anesthetist,'' after ''approved educational activities''.

Pub. L. 99–509, § 9303(c), substituted ''October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select)'' for ''October 1, 1987''.

Pub. L. 99–349 substituted ''1987'' for ''1986''.

Pub. L. 99–272, § 9107(a)(2), inserted ''a return on equity capital,'' after ''anesthetist,'' and ''other'' before ''capital-related costs''.

Subsec. (b)(3)(B). Pub. L. 99–272, § 9101(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of subparagraph (A) and subsection (d) of this section and except as provided in subsection (e) of this section, the 'applicable percentage increase' for any 12-month cost reporting period or fiscal year shall be equal to one-quarter of 1 percentage point plus the percentage, estimated by the Secretary before the beginning of the period or year, by which the cost of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for such cost reporting period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year. In determining a percentage change under subsection (e)(4) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after October 1, 1985, and before October 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.''

Subsec. (b)(3)(B)(i)(II). Pub. L. 99–509, § 9302(a)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''for fiscal years 1987 and 1988, a percentage determined by the Secretary pursuant to subsection (e)(4) of this section, but not to exceed the market basket percentage increase (as defined in clause (ii)), and''.

Subsec. (b)(6). Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (c)(7). Pub. L. 99–272, § 9109(a), added par. (7).

Subsec. (d)(1)(A). Pub. L. 99–272, § 9102(a), substituted ''1987'' for ''1986'' in cls. (ii) and (iii).

Subsec. (d)(1)(C). Pub. L. 99–272, § 9102(b), struck out '', or discharges occurring'' after ''periods beginning'' in introductory provision, and ''and'' after ''percent;'' in cl. (ii), added cl. (iii), redesignated former cl. (iii) as (iv), and in cl. (iv) substituted ''on or after October 1, 1986, and before October 1, 1987'' for ''on or after October 1, 1985, and before October 1, 1986''.

Subsec. (d)(1)(D). Pub. L. 99–272, § 9102(c), struck out ''cost reporting periods beginning, or'' before ''discharges occurring'' in introductory provision, in cl. (i) substituted ''1986'' for ''1985'', and in cl. (ii) substituted ''1986'' and ''1987'' for ''1985'' and ''1986'', respectively.

Subsec. (d)(2)(C)(i). Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(A), which had directed the striking out of ''(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)'' after ''medical education costs''.

Pub. L. 99–272, § 9104(b)(1), inserted ''(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)'' after ''medical education costs''.

Subsec. (d)(2)(C)(iv). Pub. L. 99–509, § 9306(c), substituted ''1989'' for ''1988''.

Pub. L. 99–509, § 9307(c)(1)(B)(i), as amended by Pub. L. 100–203, § 4009(j)(6)(A), struck out Pub. L. 99–514, § 1895(b)(2)(A), which had directed that cl. (iv) was to be struck out.

Pub. L. 99–272, § 9105(b), added cl. (iv).

Subsec. (d)(3)(A). Pub. L. 99–509, § 9302(a)(2)(A), (c), substituted ''1986, 1987, and 1988'' for ''and 1986'' and inserted provisions relating to the computation of urban and rural averages with respect to discharges occurring on or after October 1, 1987.

Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(B), which had directed insertion of ''If the formula under paragraph (5)(B) for determining payments for the indirect costs of medical education is changed for any fiscal year, the Secretary shall readjust the standardized amounts previously determined for each hospital to take into account the changes in that formula.''

Pub. L. 99–272, § 9101(c)(1), substituted ''for each of fiscal years 1985 and 1986'' for ''for fiscal year 1985''.

Subsec. (d)(3)(B). Pub. L. 99–509, § 9302(b)(1), inserted ''for hospitals located in an urban area and for hospitals located in a rural area'' after ''subparagraph (A)'', and inserted before the period ''for hospitals located in such respective area''.

Subsec. (d)(3)(C). Pub. L. 99–272, § 9104(b)(2), inserted ''for fiscal year 1985'' after ''neutrality'' in heading, designated existing provision as cl. (i), substituted ''For discharges occurring in fiscal year 1985, the Secretary'' for ''The Secretary'', and added cl. (ii).

Subsec. (d)(3)(C)(ii). Pub. L. 99–509, § 9306(c), substituted ''1989'' for ''1988'' in subcls. (I) and (II).

Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(C), which had directed a general amendment of cl. (ii) to read as follows: ''The Secretary shall further reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which is the difference between—

''(I) the sum of the additional payment amounts under paragraph (5)(B) (relating to indirect costs of medical education) if the indirect teaching adjustment factor were equal to 1.159r (as 'r' is defined in paragraph (5)(B)(ii)), and

''(II) that sum using the factor specified in paragraph (5)(B)(ii)(II).''

Subsec. (d)(3)(C)(iii). Pub. L. 99–509, § 9307(c)(1)(B)(i), as amended by Pub. L. 100–203, § 4009(j)(6)(A), struck out Pub. L. 99–514, § 1895(b)(2)(B), which had added cl. (iii) reading as follows: ''The Secretary shall further reduce each of the average standardized amounts by reducing the standardized amount for each hospital (as previously determined without regard to this clause) by a proportion equal to the proportion (established by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(F) (relating to disproportionate share payments) for subsection (d) hospitals.''

Subsec. (d)(3)(D)(i)(I), (ii)(I). Pub. L. 99–272, § 9104(b)(3), inserted ''or reduced'' after ''(B), and adjusted''.

Subsec. (d)(4)(C). Pub. L. 99–509, § 9302(e)(1), substituted ''in fiscal year 1988 and at least annually'' for ''in fiscal year 1986 and at least every four fiscal years''.

Subsec. (d)(5)(B). Pub. L. 99–272, § 9104(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2) of this section, except that in the computation under this subparagraph the Secretary shall use an educational adjustment factor equal to twice the factor provided under such regulations. In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.''

Subsec. (d)(5)(B)(ii). Pub. L. 99–509, § 9306(c), substituted ''1989'' for ''1988'' in subcls. (I) and (II).

Subsec. (d)(5)(C)(i). Pub. L. 99–509, § 9302(d)(1)(A), designated existing provisions as subcl. (I) and added subcl. (II).

Pub. L. 99–272, § 9106(a), inserted ''and which shall not require a rural osteopathic hospital to have more than 3,000 discharges in a year in order to be classified as a rural referral center'' before the period in second sentence.

Pub. L. 99–272, § 9105(c), struck out '', and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this subchapter'' after ''in rural areas)''.

Subsec. (d)(5)(C)(i)(I). Pub. L. 99–509, § 9304(b)(1), inserted ''(other than under paragraph (9))'' after ''established under this subsection'' in first sentence.

Subsec. (d)(5)(C)(ii). Pub. L. 99–509, § 9304(b)(2), inserted ''(other than under paragraph (9))'' after ''this subsection'' in second and third sentences.

Pub. L. 99–509, § 9302(e)(4), substituted ''1988'' for ''1986''.

Pub. L. 99–272, § 9111(a), inserted provision authorizing the Secretary to adjust amount of payments to sole community hospitals that realize a significant increase in operating costs in a cost reporting period attributable to addition of new inpatient facilities or services.

Subsec. (d)(5)(E). Pub. L. 99–509, § 9320(g)(2), struck out subpar. (E) which read as follows: ''The Secretary shall provide for an additional payment amount for any subsection (d) hospital equal to the reasonable costs incurred by such hospital for anesthesia services provided by a certified registered nurse anesthetist. Payment under this subparagraph shall be the only payment made to such hospital with respect to such services.''

Subsec. (d)(5)(F). Pub. L. 99–272, § 9105(a), added subpar. (F).

Subsec. (d)(5)(F)(i). Pub. L. 99–509, § 9306(c), substituted ''1989'' for ''1988''.

Subsec. (d)(5)(F)(iv)(I). Pub. L. 99–509, § 9306(b)(1), inserted ''or is described in the second sentence of subclause (III)'' after ''100 or more beds''.

Subsec. (d)(5)(F)(iv)(III). Pub. L. 99–509, § 9306(b)(2), inserted ''and is not described in the second sentence of clause (v)'' after ''rural area''.

Subsec. (d)(5)(F)(v). Pub. L. 99–509, § 9306(a), inserted at end ''A hospital located in a rural area and with 500 or more beds also 'serves a significantly disproportionate number of low income patients' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.''

Subsec. (d)(5)(F)(vi)(I). Pub. L. 99–514, § 1895(b)(2)(A), formerly § 1895(b)(2)(C), as amended by Pub. L. 99–509, § 9307(c)(1)(B)(ii), as amended by Pub. L. 100–203, § 4009(j)(6)(A), which directed the substitution of ''supplemental'' for ''supplementary'' and ''period'' for ''fiscal year'', was repealed by Pub. L. 100–647, § 1018(r)(1).

Subsec. (d)(9). Pub. L. 99–509, § 9304(a), added par. (9).

Subsec. (e)(1)(C). Pub. L. 99–509, § 9304(c), added subpar. (C).

Subsec. (e)(3). Pub. L. 99–509, § 9302(e)(3), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 99–272, § 9101(c)(2), struck out ''(instead of the applicable percentage increase described in subsection (b)(3)(B) of this section)'' after ''should be used''.

Subsec. (e)(3)(A). Pub. L. 99–509, § 9321(e)(2)(A), substituted ''March'' for ''April''.

Subsec. (e)(4). Pub. L. 99–509, § 9302(a)(2)(B), (e)(2), substituted ''recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each

subsequent fiscal year'' for ''determine for each fiscal year (beginning with fiscal year 1987) and inserted at end ''The percentage change shall be the same for all subsection (d) hospitals and subsection (d) Puerto Rico hospitals, but may be different from that for other hospitals (and units not included as such hospitals) and may vary among such other hospitals and units.''

Pub. L. 99–272, § 9101(c)(3), substituted ''fiscal year 1987'' for ''fiscal year 1986''.

Subsec. (e)(5). Pub. L. 99–509, § 9302(a)(2)(C), as amended by Pub. L. 100–203, § 4009(j)(6)(B), inserted ''recommendation or'' before ''determination'' in subpars. (A) and (B).

Subsec. (e)(5)(A). Pub. L. 99–509, § 9321(e)(2)(B), substituted ''May'' for ''June''.

Subsec. (e)(6)(A). Pub. L. 99–272, § 9127(a), substituted ''17 individuals'' for ''15 individuals''.

Subsec. (g)(1). Pub. L. 99–349 substituted ''1987'' for ''1986'' in two places.

Subsec. (g)(2). Pub. L. 99–272, § 9107(a)(1), designated existing provision as subpar. (A), inserted ''the applicable percentage (described in subparagraph (B)) of'', and added subpar. (B).

Subsec. (g)(2)(B). Pub. L. 99–514, § 1895(b)(3), realigned margins of subpar. (B).

Subsec. (g)(3). Pub. L. 99–509, § 9303(a), added par. (3).

Subsec. (g)(3)(A). Pub. L. 99–509, § 9303(b), inserted ''and a subsection (d) Puerto Rico hospital'' after ''subsection (d) hospital''.

Subsec. (h). Pub. L. 99–272, § 9202(a), added subsec. (h).

Subsec. (h)(2)(C). Pub. L. 99–514, § 1895(b)(9)(A), substituted ''subparagraph (B)'' for ''paragraph (B)''.

Subsec. (h)(4)(D). Pub. L. 99–514, § 1895(b)(9)(B), (C), redesignated subpar. (E) as (D) and in cl. (ii) inserted ''but before July 1, 1987,''.

Subsec. (h)(4)(E). Pub. L. 99–509, § 9314(a), added subpar. (E).

Pub. L. 99–514, § 1895(b)(9)(C), redesignated former subpar. (E) as (D).

Subsec. (h)(5)(B). Pub. L. 99–514, § 1895(b)(9)(D), substituted ''The'' for ''As used in this paragraph, the''.

1984—Subsec. (a)(2)(B). Pub. L. 98–369, § 2354(b)(42), substituted ''disproportionate'' for ''disportionate''.

Subsec. (a)(4). Pub. L. 98–369, § 2312(b), temporarily inserted '', costs of anesthesia services provided by a certified registered nurse anesthetist'' after ''approved educational activities''. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(3)(A)(ii). Pub. L. 98–369, § 2354(b)(43), inserted ''of'' after ''in the case''.

Subsec. (b)(3)(B). Pub. L. 98–369, § 2310(a), substituted ''one-quarter of 1 percentage point'' for ''1 percentage point'' and inserted provision that in determining the percentage change under subsec. (e) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after Oct. 1, 1985, and before Oct. 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.

Subsec. (c)(4)(A). Pub. L. 98–369, § 2315(a), substituted ''(D), and (E)'' for ''and (D)''.

Subsec. (d)(2)(D). Pub. L. 98–369, § 2315(b), struck out ''Standard'' before ''Metropolitan'' in provision following cl. (ii).

Pub. L. 98–369, § 2311(b), inserted provision for determining the region a hospital located in a Metropolitan Statistical Area would be deemed to be located.

Subsec. (d)(3)(D)(i)(I). Pub. L. 98–369, § 2354(b)(44), substituted ''(C))'' for ''(C),''.

Subsec. (d)(5)(B). Pub. L. 98–369, § 2307(b)(1), inserted provision that in determining such adjustment the Secretary not distinguish between those interns and residents who are employees of a hospital and those who furnish services to a hospital but are not employees of such hospital.

Subsec. (d)(5)(C)(i). Pub. L. 98–617 substituted ''August 17, 1984'' for ''30 days after July 18, 1984'' before ''for implementation by''.

Pub. L. 98–369, § 2311(a), inserted provisions permitting a hospital classified as a rural hospital to appeal to the Secretary for reclassification as a rural referral center on the basis of criteria established and published by the Secretary and requiring the Secretary to make a final determination with respect to such appeal within 60 days after the date the appeal was submitted.

Subsec. (d)(5)(E). Pub. L. 98–369, § 2312(a), temporarily added subpar. (E). See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (d)(8). Pub. L. 98–369, § 2311(c), added par. (8).

Subsec. (e)(2). Pub. L. 98–369, § 2313(a), inserted ''(without regard to the provisions of title 5 governing appointments in the competitive service)'' after ''appointed by the Director''.

Subsec. (e)(5). Pub. L. 98–369, § 2315(c)(1), struck out ''for public comment'' after ''have published'' in provisions preceding subpar. (A).

Subsec. (e)(5)(A). Pub. L. 98–369, § 2315(c)(2), inserted ''for public comment'' after ''that fiscal year''.

Subsec. (e)(6)(C). Pub. L. 98–369, § 2313(b)(3), inserted provision that section 10(a)(1) of the Federal Advisory Committee Act not apply to any portion of a Commission meeting if the Commission, by majority vote, determines such portion of such meeting should be closed.

Subsec. (e)(6)(C)(i). Pub. L. 98–369, § 2313(b)(1), amended cl. (i) generally, substituting provision authorizing the Commission to employ and fix the compensation of an Executive Director, subject to the approval of the Director of the Office, and such other personnel, not to exceed 25, as necessary, without regard to the provisions of title 5 governing appointment in the competitive service, for provision authorizing the Commission to employ and fix the compensation of such personnel, not to exceed 25, as may be necessary to carry out its duties.

Subsec. (e)(6)(C)(iii). Pub. L. 98–369, § 2313(b)(2), inserted ''(without regard to section 5 of title 41)'' after ''Commission''.

Subsec. (e)(6)(D). Pub. L. 98–369, § 2313(b)(4), inserted provision relating to payment of physician comparability allowance in the same manner as provided under section 5948 of title 5 and providing that for such purpose subsec. (i) of such section apply to the Commission in the same manner as it applies to the Tennessee Valley Authority.

Subsec. (e)(6)(J). Pub. L. 98–369, § 2313(d), added subpar. (J).

1983—Subsec. (a)(1)(D). Pub. L. 98–21, § 601(a)(1), added subpar. (D).

Subsec. (a)(4). Pub. L. 98–21, § 601(a)(2), inserted provision that term ''operating costs of inpatient hospital services'' does not include costs of approved educational activities, or, with respect to costs incurred in cost reporting periods beginning prior to Oct. 1, 1986, capital-related costs, as defined by the Secretary.

Pub. L. 97–448, § 309(b)(13), substituted ''as such costs are determined'' for ''and such costs are determined''.

Subsec. (b)(1). Pub. L. 98–21, § 601(b)(1), (2), in provisions preceding subpar. (A), substituted ''Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title'' for ''Notwithstanding sections 1395f(b) of this title, but subject to the provisions of sections 1395e of this title'' and inserted ''(other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section)''.

Pub. L. 98–21, § 601(b)(3), inserted ''(other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section)'' in provisions following subpar. (B).

Pub. L. 97–448, § 309(b)(14), substituted ''section 1395f(b)'' for ''sections 1395f(b)'' in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 98–21, § 601(b)(4), struck out par. (2) which provided that par. (1) would not apply to cost reporting periods of hospitals beginning on or after Oct. 1, 1985.

Subsec. (b)(3)(B). Pub. L. 98–21, § 601(b)(5)–(8), inserted ''and subsection (d) of this section and except as provided in subsection (e) of this section'' after ''subparagraph (A)'', inserted ''or fiscal year'' after ''cost reporting period'' each place it appears, inserted ''before the

beginning of the period or year'' after ''estimated by the Secretary'', and substituted ''will exceed'' for ''exceeds''.

Subsec. (b)(6). Pub. L. 98–21, § 601(b)(9), added par. (6) and repealed a prior par. (6) which directed the Secretary to provide for an adjustment under this paragraph in the amount of payment otherwise provided a hospital under this subsection in the case of a hospital which, as of Aug. 15, 1982, was subject to FICA taxes and which was not subject to such taxes for part or all of a cost reporting period beginning on or after Oct. 1, 1982, that in making such adjustment for a cost reporting period the Secretary was to estimate the amount of the operating costs of inpatient hospital services that would have resulted if the hospital was subject to the FICA taxes during that period, that in making such estimate the Secretary was to reduce the amount of such FICA taxes that would have been paid (but not below zero) by the amount of costs which the hospital demonstrated to the satisfaction of the Secretary were incurred in the period for pensions, health, and other fringe benefits for employees (and former employees and family members) comparable to, and in lieu of, the benefits provided under subchapter II of this chapter and this subchapter, that if a hospital's operating costs of inpatient hospital services estimated under subparagraph (B) was greater than the hospital's operating costs of inpatient hospital services determined without regard to this paragraph for a cost reporting period, then the Secretary was to reduce the amount otherwise paid the hospital (respecting operating costs of inpatient hospital services) under this title (taking into account any limitation under subsection (a) of this section) for the period by the amount by which (i) the amount that would have been paid the hospital if (I) the amount of the operating costs of inpatient hospital services estimated under subparagraph (B) were treated as the amount of the operating costs of inpatient hospital services and (II) subsection (a) of this section did not apply to the determination, exceeded (ii) the amount that would otherwise have been paid the hospital if subsection (a) of this section (and this paragraph) did not apply, except that, in making such determination for cost reporting periods beginning on or after Oct. 1, 1984, clause (ii) of paragraph (1)(B) was to continue to apply.

Subsec. (b)(6)(C). Pub. L. 97–448, § 309(b)(15), substituted ''under this subchapter (taking into account any limitation under subsection (a) of this section)'' for ''under this subsection'' in provisions preceding cl. (i).

Subsec. (c)(1). Pub. L. 98–21, § 601(c)(1), added subpars. (D) and (E) and provisions following subpar. (E).

Subsec. (c)(3)(A). Pub. L. 98–21, § 601(c)(2)(A), substituted ''meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5),'' for ''meets the requirement of paragraph (1)(A)''.

Subsec. (c)(3)(B). Pub. L. 98–21, § 601(c)(2)(B), inserted ''(or, if applicable, in paragraph (5))''.

Subsec. (c)(4) to (6). Pub. L. 98–21, § 601(c)(3), added pars. (4) to (6).

Subsec. (d). Pub. L. 98–21, § 601(d)(2), (e), added subsec. (d) and redesignated former subsec. (d), relating to the elimination of lesser-of-cost-or-charges provisions, as subsec. (j) of section 1814 of act Aug. 14, 1935, which is classified to subsec. (j) of section 1395f of this title.

Subsecs. (e) to (g). Pub. L. 98–21, § 601(e), added subsecs. (e) to (g).

1982—Subsec. (d). Pub. L. 97–248, § 110, added subsec. (d).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 109(a)(2) of Pub. L. 109–432 applicable to payment for services furnished on or after Jan. 1, 2009, see section 109(c) of Pub. L. 109–432, set out as a note under section 1395*l* of this title.

Amendment by section 205(b)(1) of Pub. L. 109–432 effective as if included in the enactment of Pub. L. 109–171, see section 205(c) of Pub. L. 109–432, set out as a note under section 1395u of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IV, § 407(b), Dec. 8, 2003, 117 Stat. 2270, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after January 1, 2004.''

Pub. L. 108–173, title V, § 502(c), Dec. 8, 2003, 117 Stat. 2291, provided that: ''The amendments made by this section [amending this section] shall apply to discharges occurring on or after April 1, 2004.''

Pub. L. 108–173, title V, § 503(e), Dec. 8, 2003, 117 Stat. 2292, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall implement the amendments made by this section [amending this section] so that they apply to classification for fiscal years beginning with fiscal year 2005.

''(2) RECONSIDERATIONS OF APPLICATIONS FOR FISCAL YEAR 2004 THAT ARE DENIED.—In the case of an application for a classification of a medical service or technology as a new medical service or technology under section 1886(d)(5)(K) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(K)) that was filed for fiscal year 2004 and that is denied—

''(A) the Secretary shall automatically reconsider the application as an application for fiscal year 2005 under the amendments made by this section; and

''(B) the maximum time period otherwise permitted for such classification of the service or technology shall be extended by 12 months.''

Pub. L. 108–173, title V, § 505(c), Dec. 8, 2003, 117 Stat. 2294, provided that: ''The amendments made by this section [amending this section and section 1395cc of this title] shall first apply to the wage index for discharges occurring on or after October 1, 2004. In initially implementing such amendments, the Secretary [of Health and Human Services] may modify the deadlines otherwise applicable under clauses (ii) and (iii)(I) of section 1886(d)(10)(C) of the Social Security Act (42 U.S.C. 1395ww(d)(10)(C)), for submission of, and actions on, applications relating to changes in hospital geographic reclassification.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title II, § 212(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–485, provided that: ''The amendment made by this section [amending this section] shall apply with respect to cost reporting periods beginning on or after April 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title II, § 213(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–486, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 405 of BBRA [Pub. L. 106–113, § 1000(a)(6) [title IV, § 405]] (113 Stat. 1501A–372).''

Pub. L. 106–554, § 1(a)(6) [title III, § 301(e)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–492, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title III, § 303(d)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–494, provided that: ''The amendment made by paragraph (1) [amending this section] is effective as if included in the enactment of BBA [Pub. L. 105–33].''

Pub. L. 106–554, § 1(a)(6) [title III, § 305(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–496, provided that: ''The amendments made by this section [amending this section] take effect as if included in the enactment of BBA [Pub. L. 105–33].''

Pub. L. 106–554, § 1(a)(6) [title V, § 512(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–534, provided that: ''The amend-

ment made by subsection (a) [amending this section] shall apply to portions of cost reporting periods occurring on or after January 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §121(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–330, provided that: ''The amendments made by subsection (a) [amending this section] apply to cost reporting periods beginning on or after October 1, 1999.''

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §125(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–333, provided that: ''The amendments made by subsection (a) [amending this section] are effective as if included in the enactment of section 4421(a) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].''

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §312(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–365, provided that: ''The amendments made by subsection (a) [amending this section] apply on and after July 1, 2000, to residency programs that began before, on, or after the date of the enactment of this Act [Nov. 29, 1999].''

Amendment by section 1000(a)(6) [title III, §321(b), (e), (f), (h), (k)(15)–(17)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Amendment by section 1000(a)(6) [title IV, §401(a)] of Pub. L. 106–113 effective Jan. 1, 2000, see section 1000(a)(6) [title IV, §401(c)] of Pub. L. 106–113, set out as a note under section 1395i–4 of this title.

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §402(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–370, provided that: ''The amendments made by subsection (a) [amending this section] apply with respect to discharges occurring during cost reporting periods beginning on or after October 1, 1999.''

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §407(a)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–373, provided that:

''(A) DGME.—The amendments made by paragraph (1) [amending this section] apply to cost reporting periods that begin on or after the date of the enactment of this Act [Nov. 29, 1999].

''(B) IME.—The amendment made by paragraph (2) [amending this section] applies to discharges occurring in cost reporting periods that begin on or after such date of enactment.''

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §407(b)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–374, provided that:

''(A) DGME.—The amendment made by paragraph (1) [amending this section] applies to cost reporting periods beginning on or after April 1, 2000.

''(B) IME.—The amendment made by paragraph (2) [amending this section] applies to discharges occurring on or after April 1, 2000.''

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §407(c)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–374, provided that: ''The amendment made by paragraph (1) [amending this section] applies with respect to—

''(A) payments to hospitals under section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)) for cost reporting periods beginning on or after April 1, 2000; and

''(B) payments to hospitals under section 1886(d)(5)(B)(v) of such Act (42 U.S.C. 1395ww(d)(5)(B)(v)) for discharges occurring on or after April 1, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4022(b) of Pub. L. 105–33 effective Nov. 1, 1997, the date of termination of the Prospective Payment Assessment Commission and the Physician Payment Review Commission, see section 4022(c)(2) of Pub. L. 105–33, set out as an Effective Date; Transition; Transfer of Functions note under section 1395b–6 of this title.

Amendment by section 4201(c)(1), (4) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4204(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section and provisions set out as a note below] shall apply with respect to discharges occurring on or after October 1, 1997.''

Section 4405(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] apply to discharges occurring after September 30, 1997.''

Section 4415(e) of Pub. L. 105–33 provided that: ''The amendments made by subsections (a) and (c) [amending this section] shall apply with respect to cost reporting periods beginning on or after October 1, 1997.''

Section 4417(a)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1995.''

Section 4417(b)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after the date of the enactment of this Act [Aug. 5, 1997].''

Section 4419(a)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to hospitals or units that first qualify as a hospital or unit described in section 1886(d)(1)(B) (42 U.S.C. 1395ww(d)(1)(B)) for cost reporting periods beginning on or after October 1, 1997.''

Section 4421(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply to cost reporting periods beginning on or after October 1, 2000, except that the Secretary of Health and Human Services may require the submission of data under section 1886(j)(2)(D) of the Social Security Act [subsec. (j)(2)(D) of this section] (as added by subsection (a)) on and after the date of the enactment of this section [Aug. 5, 1997].''

Section 4627(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] apply to combined medical residency training programs in effect for residency years beginning on or after July 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 101(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of OBRA–1989 [Pub. L. 101–239].''

Section 153(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending this section] shall apply as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13501(b)(3) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1991.''

Section 13563(b)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraphs (1)(A) and (1)(B) [amending this section] shall take effect on July 1, 1995, and the date of the enactment of this Act [Aug. 10, 1993], respectively.''

Section 13563(c)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to payments under section 1886(h) of the Social Security Act [subsec. (h) of this section] for cost reporting periods beginning on or after October 1, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4002(a)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1991.''

Section 4002(b)(5) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1), (3), and

(4)(B) [amending this section] shall apply to discharges occurring on or after January 1, 1991, the amendment made by paragraph (2) [amending this section] shall apply to discharges occurring on or after October 1, 1991, and the amendment made by paragraph (4)(A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Section 4002(c)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) and paragraph (2)(A) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1991, and the amendments made by paragraph (2)(B) [amending this section] shall take effect October 1, 1994.''

Section 4002(e)(4)[(3)] of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1990.''

Section 4002(g)(5) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and section 1395w–1 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4002(h)(1)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to discharges occurring on or after January 1, 1991.''

Section 4003(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply—

''(1) in the case of any services provided during the day immediately preceding the date of a patient's admission (without regard to whether the services are related to the admission), to services furnished on or after the date of the enactment of this Act [Nov. 5, 1990] and before October 1, 1991;

''(2) in the case of diagnostic services (including clinical diagnostic laboratory tests), to services furnished on or after January 1, 1991; and

''(3) in the case of any other services, to services furnished on or after October 1, 1991.''

Section 4005(a)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1991.''

Section 4005(c)(4) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section and section 1395h of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], and the amendments made by paragraph (2) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Section 4008(f)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6003(a)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1990.''

Section 6003(c)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to discharges occurring on or after April 1, 1990.''

Section 6003(h)(7) of Pub. L. 101–239 provided that: ''The amendments made by paragraphs (3) and (4) [amending this section] shall apply to discharges occurring on or after April 1, 1990.''

Section 6004(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to cost reporting periods beginning on or after October 1, 1989, except that—

''(A) in the case of a hospital classified by the Secretary of Health and Human Services as a hospital involved extensively in treatment for or research on cancer under section 1886(d)(5)(I) of the Social Security Act [subsec. (d)(5)(I) of this section] (as redesignated by section 6003(e)(1)(A)) after the date of the enactment of this Act [Dec. 19, 1989], such amendments shall apply with respect to cost reporting periods beginning on or after the date of such classification,

''(B) in the case of a hospital that is not described in subparagraph (A), such amendments shall apply with respect to portions of cost reporting periods or discharges occurring during and after fiscal year 1987 for purposes of section 1886(g) of the Social Security Act [subsec. (g) of this section], and

''(C) such amendments shall take effect 30 days after the date of the enactment of this Act for purposes of determining the eligibility of a hospital to receive periodic interim payments under section 1815(e)(2) of the Social Security Act [section 1395g(e)(2) of this title].''

Section 6004(b)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to cost reporting periods beginning on or after April 1, 1989.''

Section 6011(d) of Pub. L. 101–239, as amended by Pub. L. 103–66, title XIII, § 13505, Aug. 10, 1993, 107 Stat. 579; Pub. L. 105–33, title IV, § 4452, Aug. 5, 1997, 111 Stat. 425, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to items furnished 6 months after the date of enactment of this Act [Dec. 19, 1989] and on or before September 30, 1994, and on or after October 1, 1997.''

[Section 13505 of Pub. L. 103–66 provided in part that the amendment made by that section to section 6011(d) of Pub. L. 101–239, set out above, is effective as if included in the enactment of Pub. L. 101–239.]

Section 6015(c) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective with respect to cost reporting periods beginning on or after April 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1018(r)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4002(g) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(1)(I), July 1, 1988, 102 Stat. 769, provided that:

''(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (6))—

''(A) the amendments made by subsections (a) and (c) [amending this section] shall apply to payments made under section 1886(d)(1)(A)(iii) of the Social Security Act [subsec. (d)(1)(A)(iii) of this section] on the basis of discharges occurring on or after April 1, 1988, and

''(B) for discharges occurring on or after October 1, 1988, the applicable percentage increase (described in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal

year 1987 is deemed to have been such percentage increase as amended by subsection (a).

''(2) PPS SOLE COMMUNITY HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital which receives payments made under section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section] because it is a sole community hospital—

''(A) the amendment made by subsections (a) and (c) [amending this section] shall apply to payments under section 1886(d)(1)(A)(ii)(I) of the Social Security Act made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting period beginning on or after October 1, 1987;

''(B) notwithstanding subparagraph (A), for cost reporting period beginning during fiscal year 1988, the applicable percentage increase (as defined in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section]) for the—

''(i) first 51 days of the cost reporting period shall be 0 percent,

''(ii) next 132 days of such period shall be 2.7 percent, and

''(iii) remainder of such period of the cost reporting period shall be the applicable percentage increase (as so defined, as amended by subsection (a)); and

''(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been the applicable percentage increase (as so defined, as amended by subsection (a)).

''(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

''(A) the amendments made by subsection (e) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987;

''(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1988, payment under title XVIII of the Social Security Act [this subchapter] shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section] were equal to the product of 2.7 percent and the ratio of 315 to 366; and

''(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1988 shall be deemed to have been 2.7 percent.

''(4) DEFINITION, REGIONAL FLOOR, AND TECHNICAL AND CONFORMING AMENDMENTS.—The amendments made by subsections (b) and (d) and paragraphs (1) and (2) of subsection (f) [amending this section and provisions set out as a note below] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].

''(5) TRANSITION FOR LARGE URBAN AREA RATES.—In computing the average standardized amount for hospitals located in a large urban area or other urban area under section 1886(d)(3)(A)(ii) of the Social Security Act [subsec. (d)(3)(A)(ii) of this section] (as amended by subsection (c)) for fiscal year 1988, the reference to 'the respective average standardized amount computed for the previous fiscal year under this subparagraph' is deemed a reference to the average standardized amount computed for hospitals located in an urban area for the 51-day period beginning on October 1, 1987.

''(6) DEFINITION.—In this subsection, the term 'subsection (d) hospital' has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section].''

Section 4003(e) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply to payments for discharges occurring on or after October 1, 1988.''

Section 4005(a)(3) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(4)(C)(ii), July 1, 1988, 102 Stat. 770, provided that: ''This subsection [amending this section] shall apply to discharges occurring on or after October 1, 1988.''

Section 4005(c)(2)(A) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987[.]''

Section 4005(d)(1)(B) of Pub. L. 100–203 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to discharges occurring on or after April 1, 1988.''

Section 4006(b)(3) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1987. The amendments made by paragraph (2) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987.''

Section 4007(b)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(6)(B), July 1, 1988, 102 Stat. 770, provided that: ''The amendment made by paragraph (1)(C) [amending this section] shall apply to hospital cost reporting periods beginning on or after October 1, 1989.''

Section 4009(d)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to appointments made after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4009(j)(6) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Section 4083(b)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(1)(D) of Pub. L. 99–514, which provided for applicability of amendments to this section by section 1895(b)(1) of Pub. L. 99–514 to discharges occurring on or after Oct. 1, 1986, with certain exceptions, was repealed by Pub. L. 99–509, title IX, § 9307(c)(1)(A), Oct. 21, 1986, 100 Stat. 1995, and by Pub. L. 100–647, title I, § 1018(r)(1), Nov. 10, 1988, 102 Stat. 3586.

Section 1895(b)(2)(B), formerly § 1895(b)(2)(D), of Pub. L. 99–514, as amended by Pub. L. 99–509, title IX, § 9307(c)(1)(B)(iii), as amended by Pub. L. 100–203, title IV, § 4009(j)(6)(A), Dec. 22, 1987, 101 Stat. 1330–59, which provided for applicability of amendments to this section by section 1895(b)(2)(A) of Pub. L. 99–514 to discharges occurring on or after May 1, 1986, was repealed by Pub. L. 100–647, title I, § 1018(r)(1), Nov. 10, 1988, 102 Stat. 3586.

Amendment by section 1895(b)(3), (9) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9302(a)(3) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1986 and, for purposes of section 1886(d) of the Social Security Act [subsec. (d) of this section], for cost reporting periods beginning and discharges occurring on or after October 1, 1986.''

Section 9302(b)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1986.''

Section 9302(d)(1)(B) of Pub. L. 99–509 provided that:

''(i) Subject to clause (ii), the amendments made by subparagraph (A) [amending this section] shall apply to payments for discharges occurring on or after October 1, 1986.

''(ii) An appeal for classification of a rural hospital as a regional referral center, pursuant to the amendments

made by subparagraph (A), which is filed before January 1, 1987, and which is approved shall be effective with respect to discharges occurring on or after October 1, 1986.''

Section 9303(b) of Pub. L. 99–509 provided that the amendment made by such section 9303(b) is effective for cost reporting periods beginning and discharges occurring (as the case may be) on or after Oct. 1, 1987.

Section 9304(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to discharges occurring on or after October 1, 1987.''

Section 9306(d) of Pub. L. 99–509 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to discharges occurring on or after October 1, 1986.''

Section 9307(c)(1) of Pub. L. 99–509 provided that the amendment made by such section 9307(c)(1) is effective as if included in the enactment of the Tax Reform Act of 1986 (Pub. L. 99–514), if H.Con.Res. 395, 99th Congress, 2d Session, is not adopted. H.Con.Res. 395 was not adopted.

Section 9314(b) of Pub. L. 99–509 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments for approved residency training programs as of July 1, 1987.''

Amendment by section 9320(g) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9321(e)(3)(B) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (2) [amending this section] shall take effect beginning with fiscal year 1989.''

Section 9101(d) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending section 5(c) of Pub. L. 99–107, set out below] shall take effect on March 15, 1986, and the amendments made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9101(e) of Pub. L. 99–272 provided that:

''(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (4))—

''(A) the amendment made by subsection (b) [amending this section] shall apply to payments made under section 1886(d)(1)(A) of such Act [subsec. (d)(1)(A) of this section] made on the basis of discharges occurring on or after May 1, 1986; and

''(B) for discharges occurring on or after October 1, 1986, the applicable percentage increase (described in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal year 1986 shall be deemed to have been ½ percent.

''(2) PPS HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital—

''(A) the amendment made by subsection (b) [amending this section] shall apply to payments under section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section] made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting periods beginning on or after October 1, 1985;

''(B) notwithstanding subparagraph (A), for the cost reporting period beginning during fiscal year 1986, the applicable percentage increase (as defined in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section]) for the—

''(i) first 7 months of the cost reporting period shall be 0 percent, and

''(ii) for the remaining 5 months of the cost reporting period shall be ½ percent; and

''(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been ½ percent.

''(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

''(A) the amendment made by subsection (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1985;

''(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1986, payment under title XVIII of the Social Security Act [this subchapter] shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section] were equal to 5/24 of 1 percent; and

''(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1986 shall be deemed to have been ½ percent.

''(4) DEFINITION.—In this subsection, the term 'subsection (d) hospital' has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section].''

Section 9102(d) of Pub. L. 99–272 provided that:

''(1) DELAY IN FINAL TRANSITION.—The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986].''

''(2) CHANGE IN HOSPITAL SPECIFIC PERCENTAGE.—The amendments made by subsection (b) [amending this section] shall apply—

''(A) to cost reporting periods beginning on or after October 1, 1985, but

''(B) notwithstanding subparagraph (A), for a hospital's cost reporting period beginning during fiscal year 1986, for purposes of section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section]—

''(i) during the first 7 months of the period the 'target percentage' is 50 percent and the 'DRG percentage' is 50 percent, and

''(ii) during the remaining 5 months of the period the 'target percentage' is 45 percent and the 'DRG percentage' is 55 percent.

''(3) CHANGE IN BLENDED RATE.—The amendments made by subsection (c) [amending this section] shall apply to discharges occurring on or after May 1, 1986.

''(4) EXCEPTION.—

''(A) Notwithstanding any other provision of this subsection, the amendments made by this section [amending this section] shall not apply to payments with respect to the operating costs of inpatient hospital services (as defined in section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) of a subsection (d) hospital (as defined in section 1886(d)(1)(B) of such Act [subsec. (d)(1)(B) of this section]) located in the State of Oregon.

''(B) Notwithstanding any other provision of law, for a cost reporting period beginning during fiscal year 1986 of a subsection (d) hospital to which the amendments made by this section [amending this section] do not apply, for purposes of section 1886(d)(1)(A) of of [sic] Social Security Act [subsec. (d)(1)(A) of this section]—

''(i) during the first 7 months of the period the 'target percentage' is 50 percent and the 'DRG percentage' is 50 percent, and

''(ii) during the remaining 5 months of the period the 'target percentage' is 25 percent and the 'DRG percentage' is 75 percent.

''(C) Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(D) of such Act [subsec. (d)(1)(D) of this section], the applicable combined adjusted DRG prospective payment rate for a subsection (d) hospital to which the amendments made by this section [amending this section] do not apply is, for discharges occurring on or after October 1, 1985, and before May 1, 1986, a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate and 75 percent of the regional adjusted DRG prospective payment rate for such discharges.''

Section 9104(c) of Pub. L. 99–272 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section]

shall apply to discharges occurring on or after May 1, 1986.

''(2) The amendments made by this section shall not first be applied to discharges occurring as of a date unless, for discharges occurring on that date, the amendments made by section 9105 [amending this section] are also being applied.''

Section 9105(e) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply to discharges occurring on or after May 1, 1986.''

Section 9106(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after January 1, 1986.''

Section 9107(c)(1) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to hospital cost reporting periods beginning on or after October 1, 1986.''

Section 9109(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9111(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall apply to payments for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1989.''

Section 9202(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to hospital cost reporting periods beginning on or after July 1, 1985.''

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2307(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1984.''

Section 2310(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to cost reporting periods beginning in, and discharges occurring in, fiscal year 1985 and thereafter.''

Section 2311(d) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) [amending this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1983, and the amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1984.

''(2) The amendment made by subsection (b) [amending this section] shall not apply so as to reduce any payment under section 1886(d) of the Social Security Act [subsec. (d) of this section] to a hospital the region of which is deemed to be changed pursuant to such amendment for discharges occurring in any cost reporting period beginning before October 1, 1984.''

Section 2312(c) of Pub. L. 98–369, as amended by Pub. L. 99–509, title IX, § 9320(a), Oct. 21, 1986, 100 Stat. 2013; Pub. L. 100–360, title IV, § 411(p), July 1, 1988, as added by Pub. L. 100–485, title VI, § 608(d)(29), Oct. 13, 1988, 102 Stat. 2424, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1984, and before January 1, 1989. In the case of a cost reporting period that begins before January 1, 1989, but ends after such date, additional payments under the amendment made by subsection (a) shall be proportionately reduced to reflect the portion of the period occurring after such date.''

Amendment by section 2313(a), (b), (d) of Pub. L. 98–369 effective July 18, 1984, see section 2313(e) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 1395y of this title.

Section 2315(g) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1395i–2 and 1395cc of this title and enacting and amending provisions set out as notes under this section] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98–21).''

Amendment by section 2354(b)(42)–(44) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 601(b)(9) of Pub. L. 98–21 provided that the repeal of subsec. (b)(6) of this section is effective with respect to cost reporting periods beginning on or after October 1, 1982, and that the enactment of a new subsec. (b)(6) of this section is effective with respect to cost reporting periods beginning on or after October 1, 1983.

Section 604 of title VI of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title III, § 2315(f)(1), July 18, 1984, 98 Stat. 1080, provided that:

''(a)(1) Except as provided in section 602(*l*) [amending section 1395cc of this title] and in paragraph (2), the amendments made by the preceding provisions of this title [amending this section and sections 1320c–2, 1395f, 1395n, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, and 1395xx of this title] apply to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983. A change in a hospital's cost reporting period that has been made after November 1982 shall be recognized for purposes of this section only if the Secretary finds good cause for that change.

''(2) Section 1866(a)(1)(F) of the Social Security Act [section 1395cc(a)(1)(F) of this title] (as added by section 602(f)(1)(C) of this title), section 1862(a)(14) [section 1395y(a)(14) of this title] (as added by section 602(e)(3) of this title) and sections 1886(a)(1)(G) and (H) of such Act [probably should be section 1866(a)(1)(G) and (H) which is classified to section 1395cc(a)(1)(G) and (H) of this title] (as added by section 602(f)(1)(C) of this title) take effect on October 1, 1983.

''(b) The Secretary shall make an appropriate reduction in the payment amount under section 1886(d) of the Social Security Act [subsec. (d) of this section] (as amended by this title) for any discharge, if the admission has occurred before a hospital's first cost reporting period that begins after September 1983, to take into account amounts payable under title XVIII of that Act [this subchapter] (as in effect before the date of the enactment of this Act [Apr. 20, 1983]) for items and services furnished before that period.

''(c)(1) The Secretary shall cause to be published in the Federal Register a notice of the interim final DRG prospective payment rates established under subsection (d) of section 1886 of the Social Security Act [subsec. (d) of this section] (as amended by this title) no later than September 1, 1983, and allow for a period of public comment thereon. Payment on the basis of prospective rates shall become effective on October 1, 1983, without the necessity for consideration of comments received, but the Secretary shall, by notice published in the Federal Register, affirm or modify the amounts by December 31, 1983, after considering those comments.

''(2) A modification under paragraph (1) that reduces a prospective payment rate shall apply only to discharges occurring after 30 days after the date the notice of the modification is published in the Federal Register.

''(3) Rules to implement the amendments made by this title [amending this section and sections 1320a–1, 1320c–2, 1395f, 1395i–2, 1395n, 1395r, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, and 1395xx of this title, enacting provisions set out as notes under sections 1395r and 1395x of this title, and amending provisions set out as a note under section 1395x of this title]

shall be established in accordance with the procedure described in this subsection.''

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE

Section 101(b)(1) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [enacting this section and amending section 1395x of this title] shall apply to cost reporting periods beginning on or after October 1, 1982.''

REGULATIONS

Section 4003(c) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this section [amending this section and enacting provisions set out as a note above].''

Section 2315(f)(2) of Pub. L. 98–369 provided that: ''Notwithstanding section 604(c) of the Social Security Amendments of 1983 [section 604(c) of Pub. L. 98–21, set out above], the Secretary of Health and Human Services shall cause to be published in the Federal Register proposed regulations to carry out subsection (c) of section 1886 of the Social Security Act [subsec. (c) of this section] not later than July 1, 1984, and allow for a period of 45 days for public comment thereon. After consideration of the comments received, the Secretary shall cause to be published in the Federal Register final regulations to carry out such subsection not later than October 1, 1984.''

Section 101(b)(2)(A) of Pub. L. 97–248 provided that: ''The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) before October 1, 1982, as may be necessary to implement such amendments [amendments by section 101(a) of Pub. L. 97–248, enacting this section and amending section 1395x of this title] on a timely basis. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than March 31, 1983.''

TRANSFER OF FUNCTIONS

Prospective Payment Assessment Commission (ProPAC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title. Section 4022(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by ProPAC, and that, for that purpose, any reference in law to ProPAC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.

CORRECTION OF MID-YEAR RECLASSIFICATION EXPIRATION

Pub. L. 109–432, div. B, title I, § 106(a), Dec. 20, 2006, 120 Stat. 2982, provided that: ''Notwithstanding any other provision of law, in the case of a subsection (d) hospital (as defined for purposes of section 1886 of the Social Security Act (42 U.S.C. 1395ww)) with respect to which a reclassification of its wage index for purposes of such section would (but for this subsection) expire on March 31, 2007, such reclassification of such hospital shall be extended through September 30, 2007. The previous sentence shall not be effected in a budget-neutral manner.''

PLAN FOR HOSPITAL VALUE BASED PURCHASING PROGRAM

Pub. L. 109–171, title V, § 5001(b), Feb. 8, 2006, 120 Stat. 29, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a plan to implement a value based purchasing program for payments under the Medicare program for subsection (d) hospitals beginning with fiscal year 2009.

''(2) DETAILS.—Such a plan shall include consideration of the following issues:

''(A) The on-going development, selection, and modification process for measures of quality and efficiency in hospital inpatient settings.

''(B) The reporting, collection, and validation of quality data.

''(C) The structure of value based payment adjustments, including the determination of thresholds or improvements in quality that would substantiate a payment adjustment, the size of such payments, and the sources of funding for the value based payments.

''(D) The disclosure of information on hospital performance.

In developing such a plan, the Secretary shall consult with relevant affected parties and shall consider experience with such demonstrations that are relevant to the value based purchasing program under this subsection.''

EXTENDED PHASE-IN OF THE INPATIENT REHABILITATION FACILITY CLASSIFICATION CRITERIA

Pub. L. 109–171, title V, § 5005, Feb. 8, 2006, 120 Stat. 33, provided that:

''(a) IN GENERAL.—Notwithstanding section 412.23(b)(2) of title 42, Code of Federal Regulations, the Secretary of Health and Human Services shall apply the applicable percent specified in subsection (b) in the classification criterion used under the IRF regulation (as defined in subsection (c)) to determine whether a hospital or unit of a hospital is an inpatient rehabilitation facility under the Medicare program under title XVIII of the Social Security Act [this subchapter].

''(b) APPLICABLE PERCENT.—For purposes of subsection (a), the applicable percent specified in this subsection for cost reporting periods—

''(1) beginning during the 12-month period beginning on July 1, 2006, is 60 percent;

''(2) beginning during the 12-month period beginning on July 1, 2007, is 65 percent; and

''(3) beginning on or after July 1, 2008, is 75 percent.

''(c) IRF REGULATION.—For purposes of subsection (a), the term 'IRF regulation' means the rule published in the Federal Register on May 7, 2004, entitled 'Medicare Program; Final Rule; Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility' (69 Fed. Reg. 25752).''

MEDICARE DEMONSTRATION PROJECTS TO PERMIT GAINSHARING ARRANGEMENTS

Pub. L. 109–171, title V, § 5007, Feb. 8, 2006, 120 Stat. 34, provided that:

''(a) ESTABLISHMENT.—The Secretary shall establish under this section a qualified gainsharing demonstration program under which the Secretary shall approve demonstration projects by not later than November 1, 2006, to test and evaluate methodologies and arrangements between hospitals and physicians designed to govern the utilization of inpatient hospital resources and physician work to improve the quality and efficiency of care provided to Medicare beneficiaries and to develop improved operational and financial hospital performance with sharing of remuneration as specified in the project. Such projects shall be operational by not later than January 1, 2007.

''(b) REQUIREMENTS DESCRIBED.—A demonstration project under this section shall meet the following requirements for purposes of maintaining or improving quality while achieving cost savings:

''(1) ARRANGEMENT FOR REMUNERATION AS SHARE OF SAVINGS.—The demonstration project shall involve an arrangement between a hospital and a physician under which the hospital provides remuneration to the physician that represents solely a share of the

savings incurred directly as a result of collaborative efforts between the hospital and the physician.

''(2) WRITTEN PLAN AGREEMENT.—The demonstration project shall be conducted pursuant to a written agreement that—

''(A) is submitted to the Secretary prior to implementation of the project; and

''(B) includes a plan outlining how the project will achieve improvements in quality and efficiency.

''(3) PATIENT NOTIFICATION.—The demonstration project shall include a notification process to inform patients who are treated in a hospital participating in the project of the participation of the hospital in such project.

''(4) MONITORING QUALITY AND EFFICIENCY OF CARE.—The demonstration project shall provide measures to ensure that the quality and efficiency of care provided to patients who are treated in a hospital participating in the demonstration project is continuously monitored to ensure that such quality and efficiency is maintained or improved.

''(5) INDEPENDENT REVIEW.—The demonstration project shall certify, prior to implementation, that the elements of the demonstration project are reviewed by an organization that is not affiliated with the hospital or the physician participating in the project.

''(6) REFERRAL LIMITATIONS.—The demonstration project shall not be structured in such a manner as to reward any physician participating in the project on the basis of the volume or value of referrals to the hospital by the physician.

''(c) WAIVER OF CERTAIN RESTRICTIONS.—

''(1) IN GENERAL.—An incentive payment made by a hospital to a physician under and in accordance with a demonstration project shall not constitute—

''(A) remuneration for purposes of section 1128B of the Social Security Act (42 U.S.C. 1320a–7b);

''(B) a payment intended to induce a physician to reduce or limit services to a patient entitled to benefits under Medicare or a State plan approved under title XIX of such Act [subchapter XIX of this chapter] in violation of section 1128A of such Act (42 U.S.C. 1320a–7a); or

''(C) a financial relationship for purposes of section 1877 of such Act (42 U.S.C. 1395nn).

''(2) PROTECTION FOR EXISTING ARRANGEMENTS.—In no case shall the failure to comply with the requirements described in paragraph (1) affect a finding made by the Inspector General of the Department of Health and Human Services prior to the date of the enactment of this Act [Feb. 8, 2006] that an arrangement between a hospital and a physician does not violate paragraph (1) or (2) of section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7(a) [42 U.S.C. 1320a–7a(a)]).

''(d) PROGRAM ADMINISTRATION.—

''(1) SOLICITATION OF APPLICATIONS.—By not later than 90 days after the date of the enactment of this Act [Feb. 8, 2006], the Secretary shall solicit applications for approval of a demonstration project, in such form and manner, and at such time specified by the Secretary.

''(2) NUMBER OF PROJECTS APPROVED.—The Secretary shall approve not more than 6 demonstration projects, at least 2 of which shall be located in a rural area.

''(3) DURATION.—The qualified gainsharing demonstration program under this section shall be conducted for the period beginning on January 1, 2007, and ending on December 31, 2009.

''(e) REPORTS.—

''(1) INITIAL REPORT.—By not later than December 1, 2006, the Secretary shall submit to Congress a report on the number of demonstration projects that will be conducted under this section.

''(2) PROJECT UPDATE.—By not later than December 1, 2007, the Secretary shall submit to Congress a report on the details of such projects (including the project improvements towards quality and efficiency described in subsection (b)(2)(B)).

''(3) QUALITY IMPROVEMENT AND SAVINGS.—By not later than December 1, 2008, the Secretary shall submit to Congress a report on quality improvement and savings achieved as a result of the qualified gainsharing demonstration program established under subsection (a).

''(4) FINAL REPORT.—By not later than May 1, 2010, the Secretary shall submit to Congress a final report on the information described in paragraph (3).

''(f) FUNDING.—

''(1) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary for fiscal year 2006 $6,000,000, to carry out this section.

''(2) AVAILABILITY.—Funds appropriated under paragraph (1) shall remain available for expenditure through fiscal year 2010.

''(g) DEFINITIONS.—For purposes of this section:

''(1) DEMONSTRATION PROJECT.—The term 'demonstration project' means a project implemented under the qualified gainsharing demonstration program established under subsection (a).

''(2) HOSPITAL.—The term 'hospital' means a hospital that receives payment under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)), and does not include a critical access hospital (as defined in section 1861(mm) of such Act (42 U.S.C. 1395x(mm))).

''(3) MEDICARE.—The term 'Medicare' means the programs under title XVIII of the Social Security Act [this subchapter].

''(4) PHYSICIAN.—The term 'physician' means, with respect to a demonstration project, a physician described in paragraph (1) or (3) of section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)) who is licensed as such a physician in the area in which the project is located and meets requirements to provide services for which benefits are provided under Medicare. Such term shall be deemed to include a practitioner described in section 1842(e)(18)(C) of such Act (42 U.S.C. 1395u(e)(18)(C)).

''(5) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.''

MORE FREQUENT UPDATE IN WEIGHTS USED IN HOSPITAL MARKET BASKET

Pub. L. 108–173, title IV, § 404, Dec. 8, 2003, 117 Stat. 2266, provided that:

''(a) MORE FREQUENT UPDATES IN WEIGHTS.—After revising the weights used in the hospital market basket under section 1886(b)(3)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(iii)) to reflect the most current data available, the Secretary [of Health and Human Services] shall establish a frequency for revising such weights, including the labor share, in such market basket to reflect the most current data available more frequently than once every 5 years.

''(b) INCORPORATION OF EXPLANATION IN RULEMAKING.—The Secretary shall include in the publication of the final rule for payment for inpatient hospital services under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) for fiscal year 2006, an explanation of the reasons for, and options considered, in determining frequency established under subsection (a).''

RURAL COMMUNITY HOSPITAL DEMONSTRATION PROGRAM

Pub. L. 108–173, title IV, § 410A, Dec. 8, 2003, 117 Stat. 2272, provided that:

''(a) ESTABLISHMENT OF RURAL COMMUNITY HOSPITAL (RCH) DEMONSTRATION PROGRAM.—

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a demonstration program to test the feasibility and advisability of the establishment of rural community hospitals (as defined in subsection (f)(1)) to furnish covered inpatient hospital services (as defined in subsection (f)(2)) to medicare beneficiaries.

''(2) DEMONSTRATION AREAS.—The program shall be conducted in rural areas selected by the Secretary in States with low population densities, as determined by the Secretary.

''(3) APPLICATION.—Each rural community hospital that is located in a demonstration area selected under paragraph (2) that desires to participate in the demonstration program under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(4) SELECTION OF HOSPITALS.—The Secretary shall select from among rural community hospitals submitting applications under paragraph (3) not more than 15 of such hospitals to participate in the demonstration program under this section.

''(5) DURATION.—The Secretary shall conduct the demonstration program under this section for a 5-year period.

''(6) IMPLEMENTATION.—The Secretary shall implement the demonstration program not later than January 1, 2005, but may not implement the program before October 1, 2004.

''(b) PAYMENT.—

''(1) IN GENERAL.—The amount of payment under the demonstration program for covered inpatient hospital services furnished in a rural community hospital, other than such services furnished in a psychiatric or rehabilitation unit of the hospital which is a distinct part, is—

''(A) for discharges occurring in the first cost reporting period beginning on or after the implementation of the demonstration program, the reasonable costs of providing such services; and

''(B) for discharges occurring in a subsequent cost reporting period under the demonstration program, the lesser of—

''(i) the reasonable costs of providing such services in the cost reporting period involved; or

''(ii) the target amount (as defined in paragraph (2)[)], applicable to the cost reporting period involved.

''(2) TARGET AMOUNT.—For purposes of paragraph (1)(B)(ii), the term 'target amount' means, with respect to a rural community hospital for a particular 12-month cost reporting period—

''(A) in the case of the second such reporting period for which this subsection is in effect, the reasonable costs of providing such covered inpatient hospital services as determined under paragraph (1)(A), and

''(B) in the case of a later reporting period, the target amount for the preceding 12-month cost reporting period,

increased by the applicable percentage increase (under clause (i) of section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B))) in the market basket percentage increase (as defined in clause (iii) of such section) for that particular cost reporting period.

''(c) FUNDING.—

''(1) IN GENERAL.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) of such funds as are necessary for the costs of carrying out the demonstration program under this section.

''(2) BUDGET NEUTRALITY.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented.

''(d) WAIVER AUTHORITY.—The Secretary may waive such requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

''(e) REPORT.—Not later than 6 months after the completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, together with recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

''(f) DEFINITIONS.—In this section:

''(1) RURAL COMMUNITY HOSPITAL DEFINED.—

''(A) IN GENERAL.—The term 'rural community hospital' means a hospital (as defined in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e))) that—

''(i) is located in a rural area (as defined in section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D))) or treated as being so located pursuant to section 1886(d)(8)(E) of such Act (42 U.S.C. 1395ww(d)(8)(E));

''(ii) subject to paragraph (2), has fewer than 51 acute care inpatient beds, as reported in its most recent cost report;

''(iii) makes available 24-hour emergency care services; and

''(iv) is not eligible for designation, or has not been designated, as a critical access hospital under section 1820 [probably means section 1820 of the Social Security Act which is classified to section 1395i–4 of this title].

''(B) TREATMENT OF PSYCHIATRIC AND REHABILITATION UNITS.—For purposes of paragraph (1)(B), beds in a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital shall not be counted.

''(2) COVERED INPATIENT HOSPITAL SERVICES.—The term 'covered inpatient hospital services' means inpatient hospital services, and includes extended care services furnished under an agreement under section 1883 of the Social Security Act (42 U.S.C. 1395tt).''

APPLICABILITY OF CHAPTER 35 OF TITLE 44

Pub. L. 108–173, title IV, § 422(b)(2), Dec. 8, 2003, 117 Stat. 2286, provided that: ''Chapter 35 of title 44, United States Code, shall not apply with respect to applications under section 1886(h)(7) of the Social Security Act [subsec. (h)(7) of this section], as added by subsection (a)(3).''

REPORT ON EXTENSION OF APPLICATIONS UNDER REDISTRIBUTION PROGRAM

Pub. L. 108–173, title IV, § 422(c), Dec. 8, 2003, 117 Stat. 2286, provided that: ''Not later than July 1, 2005, the Secretary [of Health and Human Services] shall submit to Congress a report containing recommendations regarding whether to extend the deadline for applications for an increase in resident limits under section 1886(h)(4)(I)(ii)(II) of the Social Security Act [section 1886(h)(4) (subsec. (h)(4) of this section) does not contain a subpar. (I)] (as added by subsection (a)).''

MEDPAC STUDY ON RURAL HOSPITAL PAYMENT ADJUSTMENTS

Pub. L. 108–173, title IV, § 433, Dec. 8, 2003, 117 Stat. 2288, provided that:

''(a) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study of the impact of sections 401 through 406, 411, 416, and 505 [amending this section and sections 1395f, 1395g, 1395i–4, 1395*l*, 1395m, 1395cc, and 1395tt of this title and enacting provisions set out as notes under this section and sections 1395f, 1395g, 1395i–4, 1395*l*, and 1395m of this title]. The Commission shall analyze the effect on total payments, growth in costs, capital spending, and such other payment effects under those sections.

''(b) REPORTS.—

''(1) INTERIM REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress an interim report on the matters studied under subsection (a) with respect only to changes to the critical access hospital provisions under section 405 [amending sections 1395f, 1395g, 1395i–4, 1395m, and 1395tt of this title and enacting provisions set out as notes under sections 1395f, 1395g, 1395i–4, and 1395m of this title].

''(2) FINAL REPORT.—Not later than 3 years after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress a final report on all matters studied under subsection (a).''

GAO STUDY AND REPORT ON APPROPRIATENESS OF PAYMENTS UNDER THE PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

Pub. L. 108–173, title V, § 501(c), Dec. 8, 2003, 117 Stat. 2290, provided that:

''(1) STUDY.—The Comptroller General of the United States, using the most current data available, shall conduct a study to determine—

''(A) the appropriate level and distribution of payments in relation to costs under the prospective payment system under section 1886 of the Social Security Act (42 U.S.C. 1395ww) for inpatient hospital services furnished by subsection (d) hospitals (as defined in subsection (d)(1)(B) of such section); and

''(B) whether there is a need to adjust such payments under such system to reflect legitimate differences in costs across different geographic areas, kinds of hospitals, and types of cases.

''(2) REPORT.—Not later than 24 months after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislative and administrative action as the Comptroller General determines appropriate.''

NOT BUDGET NEUTRAL

Pub. L. 108–173, title V, § 503(d)(2), Dec. 8, 2003, 117 Stat. 2292, provided that: ''There shall be no reduction or other adjustment in payments under section 1886 of the Social Security Act [this section] because an additional payment is provided under subsection (d)(5)(K)(ii)(III) of such section.''

ONE-TIME APPEALS PROCESS FOR HOSPITAL WAGE INDEX CLASSIFICATION

Pub. L. 108–173, title V, § 508, Dec. 8, 2003, 117 Stat. 2297, provided that:

''(a) ESTABLISHMENT OF PROCESS.—

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish not later than January 1, 2004, by instruction or otherwise a process under which a hospital may appeal the wage index classification otherwise applicable to the hospital and select another area within the State (or, at the discretion of the Secretary, within a contiguous State) to which to be reclassified.

''(2) PROCESS REQUIREMENTS.—The process established under paragraph (1) shall be consistent with the following:

''(A) Such an appeal may be filed as soon as possible after the date of the enactment of this Act [Dec. 8, 2003] but shall be filed by not later than February 15, 2004.

''(B) Such an appeal shall be heard by the Medicare Geographic Reclassification Review Board.

''(C) There shall be no further administrative or judicial review of a decision of such Board.

''(3) RECLASSIFICATION UPON SUCCESSFUL APPEAL.—If the Medicare Geographic Reclassification Review Board determines that the hospital is a qualifying hospital (as defined in subsection (c)), the hospital shall be reclassified to the area selected under paragraph (1). Such reclassification shall apply with respect to discharges occurring during the 3-year period beginning with April 1, 2004.

''(4) INAPPLICABILITY OF CERTAIN PROVISIONS.—Except as the Secretary may provide, the provisions of paragraphs (8) and (10) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) shall not apply to an appeal under this section.

''(b) APPLICATION OF RECLASSIFICATION.—In the case of an appeal decided in favor of a qualifying hospital under subsection (a), the wage index reclassification shall not affect the wage index computation for any area or for any other hospital and shall not be effected in a budget neutral manner. The provisions of this section shall not affect payment for discharges occurring after the end of the 3-year-period referred to in subsection (a).

''(c) QUALIFYING HOSPITAL DEFINED.—For purposes of this section, the term 'qualifying hospital' means a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B)) that—

''(1) does not qualify for a change in wage index classification under paragraph (8) or (10) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) on the basis of requirements relating to distance or commuting; and

''(2) meets such other criteria, such as quality, as the Secretary may specify by instruction or otherwise.

The Secretary may modify the wage comparison guidelines promulgated under section 1886(d)(10)(D) of such Act (42 U.S.C. 1395ww(d)(10)(D)) in carrying out this section.

''(d) WAGE INDEX CLASSIFICATION.—For purposes of this section, the term 'wage index classification' means the geographic area in which it is classified for purposes of determining for a fiscal year the factor used to adjust the DRG prospective payment rate under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) for area differences in hospital wage levels that applies to such hospital under paragraph (3)(E) of such section.

''(e) LIMITATION ON EXPENDITURES.—The aggregate amount of additional expenditures resulting from the application of this section shall not exceed $900,000,000.

''(f) TRANSITIONAL EXTENSION.—Any reclassification of a county or other area made by Act of Congress for purposes of making payments under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) that expired on September 30, 2003, shall be deemed to be in effect during the period beginning on January 1, 2004, and ending on September 30, 2004.''

EXCEPTION TO INITIAL RESIDENCY PERIOD FOR GERIATRIC RESIDENCY OR FELLOWSHIP PROGRAMS

Pub. L. 108–173, title VII, § 712, Dec. 8, 2003, 117 Stat. 2340, provided that:

''(a) CLARIFICATION OF CONGRESSIONAL INTENT.—Congress intended section 1886(h)(5)(F)(ii) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)(ii)), as added by section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), to provide an exception to the initial residency period for geriatric residency or fellowship programs such that, where a particular approved geriatric training program requires a resident to complete 2 years of training to initially become board eligible in the geriatric specialty, the 2 years spent in the geriatric training program are treated as part of the resident's initial residency period, but are not counted against any limitation on the initial residency period.

''(b) INTERIM FINAL REGULATORY AUTHORITY AND EFFECTIVE DATE.—The Secretary [of Health and Human Services] shall promulgate interim final regulations consistent with the congressional intent expressed in this section after notice and pending opportunity for public comment to be effective for cost reporting periods beginning on or after October 1, 2003.''

TREATMENT OF VOLUNTEER SUPERVISION

Pub. L. 108–173, title VII, § 713, Dec. 8, 2003, 117 Stat. 2340, provided that:

''(a) MORATORIUM ON CHANGES IN TREATMENT.—During the 1-year period beginning on January 1, 2004, for purposes of applying subsections (d)(5)(B) and (h) of section 1886 of the Social Security Act (42 U.S.C. 1395ww), the Secretary [of Health and Human Services] shall allow all hospitals to count residents in osteopathic and allopathic family practice programs in existence as of January 1, 2002, who are training at non-hospital sites,

without regard to the financial arrangement between the hospital and the teaching physician practicing in the non-hospital site to which the resident has been assigned.

''(b) STUDY AND REPORT.—

''(1) STUDY.—The Inspector General of the Department of Health and Human Services shall conduct a study of the appropriateness of alternative payment methodologies under such sections for the costs of training residents in non-hospital settings.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Inspector General shall submit to Congress a report on the study conducted under paragraph (1), together with such recommendations as the Inspector General determines appropriate.''

FURNISHING HOSPITALS WITH INFORMATION TO COMPUTE DSH FORMULA

Pub. L. 108–173, title IX, § 951, Dec. 8, 2003, 117 Stat. 2427, provided that: ''Beginning not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall arrange to furnish to subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B)) the data necessary for such hospitals to compute the number of patient days used in computing the disproportionate patient percentage under such section for that hospital for the current cost reporting year. Such data shall also be furnished to other hospitals which would qualify for additional payments under part A of title XVIII of the Social Security Act [part A of this subchapter] on the basis of such data.''

SPECIAL RULES FOR PAYMENT FOR FISCAL YEAR 2001

Pub. L. 106–554, § 1(a)(6) [title III, § 301(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–491, provided that: ''Notwithstanding the amendment made by subsection (a) [amending this section], for purposes of making payments for fiscal year 2001 for inpatient hospital services furnished by subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))[)], the 'applicable percentage increase' referred to in section 1886(b)(3)(B)(i) of such Act (42 U.S.C. 1395ww(b)(3)(B)(i))—

''(1) for discharges occurring on or after October 1, 2000, and before April 1, 2001, shall be determined in accordance with subclause (XVI) of such section as in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for discharges occurring on or after April 1, 2001, and before October 1, 2001, shall be equal to—

''(A) the market basket percentage increase plus 1.1 percentage points for hospitals (other than sole community hospitals) in all areas; and

''(B) the market basket percentage increase for sole community hospitals.''

Pub. L. 106–554, § 1(a)(6) [title III, § 302(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–493, provided that: ''Notwithstanding paragraph (5)(B)(ii)(V) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(ii)(V)), for purposes of making payments for subsection (d) hospitals (as defined in paragraph (1)(B) of such section) with indirect costs of medical education, the indirect teaching adjustment factor referred to in paragraph (5)(B)(ii) of such section shall be determined, for discharges occurring on or after April 1, 2001, and before October 1, 2001, as if 'c' in paragraph (5)(B)(ii)(V) of such section equalled 1.66 rather than 1.54.''

Pub. L. 106–554, § 1(a)(6) [title III, § 303(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–493, provided that: ''Notwithstanding the amendment made by subsection (a)(1) [amending this section], for purposes of making disproportionate share payments for subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))[)] for fiscal year 2001, the additional payment amount otherwise determined under clause (ii) of section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F))—

''(1) for discharges occurring on or after October 1, 2000, and before April 1, 2001, shall be adjusted as provided by clause (ix)(III) of such section as in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for discharges occurring on or after April 1, 2001, and before October 1, 2001, shall, instead of being reduced by 3 percent as provided by clause (ix)(III) of such section as in effect after the date of the enactment of this Act, be reduced by 1 percent.''

Pub. L. 106–554, § 1(a)(6) [title V, § 547(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–553, provided that:

''(a) INPATIENT HOSPITAL SERVICES.—The payment increase provided under the following sections shall not apply to discharges occurring after fiscal year 2001 and shall not be taken into account in calculating the payment amounts applicable for discharges occurring after such fiscal year:

''(1) Section 301(b)(2)(A) [set out as a note above] (relating to acute care hospital payment update).

''(2) Section 302(b) [set out as a note above] (relating to IME percentage adjustment).

''(3) Section 303(b)(2) [set out as a note above] (relating to DSH payments).''

CONSIDERATION OF PRICE OF BLOOD AND BLOOD PRODUCTS IN MARKET BASKET INDEX

Pub. L. 106–554, § 1(a)(6) [title III, § 301(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–491, provided that: ''The Secretary of Health and Human Services shall, when next (after the date of the enactment of this Act [Dec. 21, 2000]) rebasing and revising the hospital market basket index (as defined in section 1886(b)(3)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(iii))), consider the prices of blood and blood products purchased by hospitals and determine whether those prices are adequately reflected in such index.''

MEDPAC STUDY AND REPORT REGARDING CERTAIN HOSPITAL COSTS

Pub. L. 106–554, § 1(a)(6) [title III, § 301(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–491, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on—

''(A) any increased costs incurred by subsection (d) hospitals (as defined in paragraph (1)(B) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d))) in providing inpatient hospital services to medicare beneficiaries under title XVIII of such Act [this subchapter] during the period beginning on October 1, 1983, and ending on September 30, 1999, that were attributable to—

''(i) complying with new blood safety measure requirements; and

''(ii) providing such services using new technologies;

''(B) the extent to which the prospective payment system for such services under such section provides adequate and timely recognition of such increased costs;

''(C) the prospects for (and to the extent practicable, the magnitude of) cost increases that hospitals will incur in providing such services that are attributable to complying with new blood safety measure requirements and providing such services using new technologies during the 10 years after the date of the enactment of this Act [Dec. 21, 2000]; and

''(D) the feasibility and advisability of establishing mechanisms under such payment system to provide for more timely and accurate recognition of such cost increases in the future.

''(2) CONSULTATION.—In conducting the study under this subsection, the Commission shall consult with representatives of the blood community, including—

''(A) hospitals;

''(B) organizations involved in the collection, processing, and delivery of blood; and

''(C) organizations involved in the development of new blood safety technologies.

''(3) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation and administrative action as the Commission determines appropriate.''

PROCESS TO PERMIT STATEWIDE WAGE INDEX CALCULATION AND APPLICATION

Pub. L. 106–554, §1(a)(6) [title III, §304(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–494, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall establish a process (based on the voluntary process utilized by the Secretary of Health and Human Services under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for purposes of computing and applying a statewide geographic adjustment factor) under which an appropriate statewide entity may apply to have all the geographic areas in a State treated as a single geographic area for purposes of computing and applying the area wage index under section 1886(d)(3)(E) of such Act (42 U.S.C. 1395ww(d)(3)(E)). Such process shall be established by October 1, 2001, for reclassifications beginning in fiscal year 2003.

''(2) PROHIBITION ON INDIVIDUAL HOSPITAL RECLASSIFICATION.—Notwithstanding any other provision of law, if the Secretary applies a statewide geographic wage index under paragraph (1) with respect to a State, any application submitted by a hospital in that State under section 1886(d)(10) of the Social Security Act (42 U.S.C. 1395ww(d)(10)) for geographic reclassification shall not be considered.''

COLLECTION OF INFORMATION ON OCCUPATIONAL MIX

Pub. L. 106–554, §1(a)(6) [title III, §304(c)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–495, provided that: ''The Secretary of Health and Human Services shall provide for the collection of data every 3 years on occupational mix for employees of each subsection (d) hospital (as defined in section 1886(d)(1)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(D))) in the provision of inpatient hospital services, in order to construct an occupational mix adjustment in the hospital area wage index applied under section 1886(d)(3)(E) of such Act (42 U.S.C. 1395ww(d)(3)(E)).''

Pub. L. 106–554, §1(a)(6) [title III, §304(c)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–495, provided that: ''By not later than September 30, 2003, for application beginning October 1, 2004, the Secretary shall first complete—

''(A) the collection of data under paragraph (1) [set out above]; and

''(B) the measurement under the third sentence of section 1886(d)(3)(E) [subsection (d)(3)(E) of this section], as amended by paragraph (2).''

PAYMENT FOR INPATIENT SERVICES OF PSYCHIATRIC HOSPITALS

Pub. L. 106–554, §1(a)(6) [title III, §306], Dec. 21, 2000, 114 Stat. 2763, 2763A–496, provided that: ''With respect to hospitals described in clause (i) of section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) and psychiatric units described in the matter following clause (v) of such section, in making incentive payments to such hospitals under section 1886(b)(1)(A) of such Act (42 U.S.C. 1395ww(b)(1)(A)) for cost reporting periods beginning on or after October 1, 2000, and before October 1, 2001, the Secretary of Health and Human Services, in clause (ii) of such section, shall substitute '3 percent' for '2 percent'.''

EXPEDITING RECOGNITION OF NEW TECHNOLOGIES INTO INPATIENT PPS CODING SYSTEM

Pub. L. 106–554, §1(a)(6) [title V, §533(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–548, provided that:

''(1) REPORT.—Not later than April 1, 2001, the Secretary of Health and Human Services shall submit to Congress a report on methods of expeditiously incorporating new medical services and technologies into the clinical coding system used with respect to payment for inpatient hospital services furnished under the medicare program under title XVIII of the Social Security Act [this subchapter], together with a detailed description of the Secretary's preferred methods to achieve this purpose.

''(2) IMPLEMENTATION.—Not later than October 1, 2001, the Secretary shall implement the preferred methods described in the report transmitted pursuant to paragraph (1).''

CONSULTATION PRIOR TO RULEMAKING

Pub. L. 106–554, §1(a)(6) [title V, §533(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–549, provided that: ''The Secretary of Health and Human Services shall consult with groups representing hospitals, physicians, and manufacturers of new medical technologies before publishing the notice of proposed rulemaking required by section 1886(d)(5)(K)(i) of the Social Security Act [subsection (d)(5)(K)(i) of this section] (as added by paragraph (1)).''

SPECIAL PAYMENTS TO MAINTAIN 6.5 PERCENT IME PAYMENT FOR FISCAL YEAR 2000

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §111(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–329, provided that:

''(1) ADDITIONAL PAYMENT.—In addition to payments made to each subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) under section 1886(d)(5)(B) of such Act (42 U.S.C. 1395ww(d)(5)(B))) which receives payment for the direct costs of medical education for discharges occurring in fiscal year 2000, the Secretary of Health and Human Services shall make one or more payments to each such hospital in an amount which, as estimated by the Secretary, is equal in the aggregate to the difference between the amount of payments to the hospital under such section for such discharges and the amount of payments that would have been paid under such section for such discharges if 'c' in clause (ii)(IV) of such section equalled 1.6 rather than 1.47. Additional payments made under this subsection shall be made applying the same structure as applies to payments made under section 1886(d)(5)(B) of such Act.

''(2) NO EFFECT ON OTHER PAYMENTS OR DETERMINATIONS.—In making such additional payments, the Secretary shall not change payments, determinations, or budget neutrality adjustments made for such period under section 1886(d) of such Act (42 U.S.C. 1395ww(d)).''

DATA COLLECTION

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §112(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–330, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall require any subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) to submit to the Secretary, in the cost reports submitted to the Secretary by such hospital for discharges occurring during a fiscal year, data on the costs incurred by the hospital for providing inpatient and outpatient hospital services for which the hospital is not compensated, including non-medicare bad debt, charity care, and charges for medicaid and indigent care.

''(2) EFFECTIVE DATE.—The Secretary shall require the submission of the data described in paragraph (1) in cost reports for cost reporting periods beginning on or after October 1, 2001.''

PER DISCHARGE PROSPECTIVE PAYMENT SYSTEM FOR LONG-TERM CARE HOSPITALS

Pub. L. 106–554, §1(a)(6) [title III, §307(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–496, provided that: ''The amendments made by subsection (a) [amending this section] and by section 122 of BBRA [Pub. L. 106–113, §1000(a)(6) [title I, §122], amending this section] (113 Stat. 1501A–331) shall not be taken into account in the development and implementation of the prospective payment system under section 123 of BBRA [Pub. L. 106–113, §1000(a)(6) [title I, §123], set out as a note below] (113 Stat. 1501A–331).''

Pub. L. 106–554, §1(a)(6) [title III, §307(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–496, provided that:

''(1) MODIFICATION OF REQUIREMENT.—In developing the prospective payment system for payment for inpatient hospital services provided in long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iv)) under the medicare program under title XVIII of such Act [this subchapter] required under section 123 of BBRA [Pub. L. 106–113, §1000(a)(6) [title I, §123], set out as a note below], the Secretary of Health and Human Services shall examine the feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data. The Secretary shall examine and may provide for appropriate adjustments to the long-term hospital payment system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment consistent with section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)).

''(2) DEFAULT IMPLEMENTATION OF SYSTEM BASED ON EXISTING DRG METHODOLOGY.—If the Secretary is unable to implement the prospective payment system under section 123 of the BBRA by October 1, 2002, the Secretary shall implement a prospective payment system for such hospitals that bases payment under such a system using existing hospital diagnosis-related groups (DRGs), modified where feasible to account for resource use of long-term care hospital patients using the most recently available hospital discharge data for such services furnished on or after that date.''

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §123], Nov. 29, 1999, 113 Stat. 1536, 1501A–331, provided that:

''(a) DEVELOPMENT OF SYSTEM.—

''(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a per discharge prospective payment system for payment for inpatient hospital services of long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iv)) under the medicare program. Such system shall include an adequate patient classification system that is based on diagnosis-related groups (DRGs) and that reflects the differences in patient resource use and costs, and shall maintain budget neutrality.

''(2) COLLECTION OF DATA AND EVALUATION.—In developing the system described in paragraph (1), the Secretary may require such long-term care hospitals to submit such information to the Secretary as the Secretary may require to develop the system.

''(b) REPORT.—Not later than October 1, 2001, the Secretary shall submit to the appropriate committees of Congress a report that includes a description of the system developed under subsection (a)(1).

''(c) IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.—Notwithstanding section 1886(b)(3) of the Social Security Act (42 U.S.C. 1395ww(b)(3)), the Secretary shall provide, for cost reporting periods beginning on or after October 1, 2002, for payments for inpatient hospital services furnished by long-term care hospitals under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) in accordance with the system described in subsection (a).''

PER DIEM PROSPECTIVE PAYMENT SYSTEM FOR PSYCHIATRIC HOSPITALS

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §124], Nov. 29, 1999, 113 Stat. 1536, 1501A–332, provided that:

''(a) DEVELOPMENT OF SYSTEM.—

''(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a per diem prospective payment system for payment for inpatient hospital services of psychiatric hospitals and units (as defined in paragraph (3)) under the medicare program. Such system shall include an adequate patient classification system that reflects the differences in patient resource use and costs among such hospitals and shall maintain budget neutrality.

''(2) COLLECTION OF DATA AND EVALUATION.—In developing the system described in paragraph (1), the Secretary may require such psychiatric hospitals and units to submit such information to the Secretary as the Secretary may require to develop the system.

''(3) DEFINITION.—In this section, the term 'psychiatric hospitals and units' means a psychiatric hospital described in clause (i) of section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) and psychiatric units described in the matter following clause (v) of such section.

''(b) REPORT.—Not later than October 1, 2001, the Secretary shall submit to the appropriate committees of Congress a report that includes a description of the system developed under subsection (a)(1).

''(c) IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.—Notwithstanding section 1886(b)(3) of the Social Security Act (42 U.S.C. 1395ww(b)(3)), the Secretary shall provide, for cost reporting periods beginning on or after October 1, 2002, for payments for inpatient hospital services furnished by psychiatric hospitals and units under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) in accordance with the prospective payment system established by the Secretary under this section in a budget neutral manner.''

STUDY ON IMPACT OF IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §125(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–333, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the impact on utilization and beneficiary access to services of the implementation of the medicare prospective payment system for inpatient hospital services or rehabilitation facilities under section 1886(j) of the Social Security Act (42 U.S.C. 1395ww(j)).

''(2) REPORT.—Not later than 3 years after the date such system is first implemented, the Secretary shall submit to Congress a report on such study.''

MEDPAC STUDY ON MEDICARE PAYMENT FOR NONPHYSICIAN HEALTH PROFESSIONAL CLINICAL TRAINING IN HOSPITALS

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §141], Nov. 29, 1999, 113 Stat. 1536, 1501A–334, provided that:

''(a) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study of medicare payment policy with respect to professional clinical training of different classes of nonphysician health care professionals (such as nurses, nurse practitioners, allied health professionals, physician assistants, and psychologists) and the basis for any differences in treatment among such classes.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Nov. 29, 1999], the Commission shall submit a report to Congress on the study conducted under subsection (a).''

NOT COUNTING AGAINST NUMERICAL LIMITATION CERTAIN INTERNS AND RESIDENTS TRANSFERRED FROM A VA RESIDENCY PROGRAM THAT LOSES ACCREDITATION

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §407(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–374, provided that:

''(1) IN GENERAL.—Any applicable resident described in paragraph (2) shall not be taken into account in applying any limitation regarding the number of residents or interns for which payment may be made under section 1886 of the Social Security Act (42 U.S.C. 1395ww).

''(2) APPLICABLE RESIDENT DESCRIBED.—An applicable resident described in this paragraph is a resident or intern who—

''(A) participated in graduate medical education at a facility of the Department of Veterans Affairs;

''(B) was subsequently transferred on or after January 1, 1997, and before July 31, 1998, to a hospital that

was not a Department of Veterans Affairs facility; and

''(C) was transferred because the approved medical residency program in which the resident or intern participated would lose accreditation by the Accreditation Council on Graduate Medical Education if such program continued to train residents at the Department of Veterans Affairs facility.

''(3) EFFECTIVE DATE.—

''(A) IN GENERAL.—Paragraph (1) applies as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

''(B) RETROACTIVE PAYMENTS.—If the Secretary of Health and Human Services determines that a hospital operating an approved medical residency program is owed payments as a result of enactment of this subsection, the Secretary shall make such payments not later than 60 days after the date of the enactment of this Act [Nov. 29, 1999].''

GAO STUDY ON GEOGRAPHIC RECLASSIFICATION

Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 410], Nov. 29, 1999, 113 Stat. 1536, 1501A–376, provided that:

''(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the current laws and regulations for geographic reclassification of hospitals to determine whether such reclassification is appropriate for purposes of applying wage indices under the medicare program and whether such reclassification results in more accurate payments for all hospitals. Such study shall examine data on the number of hospitals that are reclassified and their reclassified status in determining payments under the medicare program. The study shall evaluate—

''(1) the magnitude of the effect of geographic reclassification on rural hospitals that are not reclassified;

''(2) whether the current thresholds used in geographic reclassification reclassify hospitals to the appropriate labor markets;

''(3) the effect of eliminating geographic reclassification through use of the occupational mix data;

''(4) the group reclassification policy;

''(5) changes in the number of reclassifications and the compositions of the groups;

''(6) the effect of State-specific budget neutrality compared to national budget neutrality; and

''(7) whether there are sufficient controls over the intermediary evaluation of the wage data reported by hospitals.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Nov. 29, 1999], the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a).''

CONTINUING TREATMENT OF PREVIOUSLY DESIGNATED CENTERS

Section 4202(b) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—Any hospital classified as a rural referral center by the Secretary of Health and Human Services under section 1886(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] for fiscal year 1991 shall be classified as such a rural referral center for fiscal year 1998 and each subsequent fiscal year.

''(2) BUDGET NEUTRALITY.—The provisions of section 1886(d)(8)(D) of the Social Security Act [subsec. (d)(8)(D) of this section] shall apply to reclassifications made pursuant to paragraph (1) in the same manner as such provisions apply to a reclassification under section 1886(d)(10) of such Act [subsec. (d)(10) of this section].''

HOSPITAL GEOGRAPHIC RECLASSIFICATION PERMITTED FOR PURPOSES OF DISPROPORTIONATE SHARE PAYMENT ADJUSTMENTS

Section 4203 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—For the period described in subsection (c), the Medicare Geographic Classification Review Board shall consider the application under section 1886(d)(10)(C)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(10)(C)(i)) of a hospital described in 1886(d)(1)(B) of such Act (42 U.S.C. 1395ww(d)(1)(B)) to change the hospital's geographic classification for purposes of determining for a fiscal year eligibility for and amount of additional payment amounts under section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)).

''(b) APPLICABLE GUIDELINES.—The Medicare Geographic Classification Review Board shall apply the guidelines established for reclassification under subclause (I) of section 1886(d)(10)(C)(i) of such Act to reclassification by reason of subsection (a) until the Secretary of Health and Human Services promulgates separate guidelines for such reclassification.

''(c) PERIOD DESCRIBED.—The period described in this subsection is the period beginning on the date of the enactment of this Act [Aug. 5, 1997] and ending 30 months after such date.''

TEMPORARY RELIEF FOR CERTAIN NON-TEACHING, NON-DSH HOSPITALS

Pub. L. 105–33, title IV, § 4401(b), Aug. 5, 1997, 111 Stat. 397, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366, provided that:

''(1) IN GENERAL.—In the case of a hospital described in paragraph (2) for its cost reporting period—

''(A) beginning in fiscal year 1998 the amount of payment made to the hospital under section 1886(d) of the Social Security Act [subsec. (d) of this section] for discharges occurring during such fiscal year only shall be increased as though the applicable percentage increase (otherwise applicable to discharges occurring during fiscal year 1998 under section 1886(b)(3)(B)(i)(XIII) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)(XIII))) had been increased by 0.5 percentage points; and

''(B) beginning in fiscal year 1999 the amount of payment made to the hospital under section 1886(d) of the Social Security Act for discharges occurring during such fiscal year only shall be increased as though the applicable percentage increase (otherwise applicable to discharges occurring during fiscal year 1999 under section 1886(b)(3)(B)(i)(XIV) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)(XIV))) had been increased by 0.3 percentage points.

Subparagraph (A) shall not apply in computing the increase under subparagraph (B) and neither subparagraph shall affect payment for discharges for any hospital occurring during a fiscal year after fiscal year 1999. Payment increases under this subsection for discharges occurring during a fiscal year are subject to settlement after the close of the fiscal year.

''(2) HOSPITALS COVERED.—A hospital described in this paragraph for a cost reporting period is a hospital—

''(A) that is described in paragraph (3) for such period;

''(B) that is located in a State in which the amount of the aggregate payments under section 1886(d) of such Act [subsec. (d) of this section] for hospitals located in the State and described in paragraph (3) for their cost reporting periods beginning during fiscal year 1995 is less than the aggregate allowable operating costs of inpatient hospital services (as defined in section 1886(a)(4) of such Act) for all such hospitals in such State with respect to such cost reporting periods; and

''(C) with respect to which the payments under section 1886(d) of such Act (42 U.S.C. 1395ww(d)) for discharges occurring in the cost reporting period involved, as estimated by the Secretary, is less than the allowable operating costs of inpatient hospital services (as defined in section 1886(a)(4) of such Act (42 U.S.C. 1395ww(a)(4))[)] for such hospital for such period, as estimated by the Secretary.

''(3) NON-TEACHING, NON-DSH HOSPITALS DESCRIBED.—A hospital described in this paragraph for a cost reporting period is a subsection (d) hospital (as defined in section 1886(d)(1)(B) of such Act (42 U.S.C. 1395ww(d)(1)(B))) that—

''(A) is not receiving any additional payment amount described in section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)) for discharges occurring during the period;

''(B) is not receiving any additional payment under section 1886(d)(5)(B) of such Act (42 U.S.C. 1395ww(d)(5)(B)) or a payment under section 1886(h) of such Act (42 U.S.C. 1395ww(h)) for discharges occurring during the period; and

''(C) does not qualify for payment under section 1886(d)(5)(G) of such Act (42 U.S.C. 1395ww(d)(5)(G)) for the period.''

FORMULA FOR ADDITIONAL PAYMENT AMOUNTS; REPORT

Section 4403(b), (c) of Pub. L. 105–33 provided that:

''(b) REPORT ON NEW PAYMENT FORMULA.—

''(1) REPORT.—Not later than 1 year after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that contains a formula for determining additional payment amounts to hospitals under section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)).

''(2) FACTORS IN DETERMINATION OF FORMULA.—In determining such formula the Secretary shall—

''(A) establish a single threshold for costs incurred by hospitals in serving low-income patients, and

''(B) consider the costs described in paragraph (3).

''(3) The costs described in this paragraph are as follows:

''(A) The costs incurred by the hospital during a period (as determined by the Secretary) of furnishing hospital services to individuals who are entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter] and who receive supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter] (excluding any supplementation of those benefits by a State under section 1616 of such Act (42 U.S.C. 1382e)).

''(B) The costs incurred by the hospital during a period (as so determined) of furnishing hospital services to individuals who receive medical assistance under the State plan under title XIX of such Act [subchapter XIX of this chapter] and are not entitled to benefits under part A of title XVIII of such Act [part A of this subchapter] (including individuals enrolled in a managed care organization (as defined in section 1903(m)(1)(A) of such Act (42 U.S.C. 1396b(m)(1)(A)) or any other managed care plan under such title and individuals who receive medical assistance under such title pursuant to a waiver approved by the Secretary under section 1115 of such Act (42 U.S.C. 1315)).

''(c) DATA COLLECTION.—In developing the formula described in subsection (b), the Secretary of Health and Human Services may require any subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) receiving additional payments by reason of section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)) to submit to the Secretary any information that the Secretary determines is necessary to develop such formula.''

GEOGRAPHIC RECLASSIFICATION FOR CERTAIN DISPROPORTIONATELY LARGE HOSPITALS

Section 4409 of Pub. L. 105–33 provided that:

''(a) NEW GUIDELINES FOR RECLASSIFICATION.—Notwithstanding the guidelines published under section 1886(d)(10)(D)(i)(I) of the Social Security Act (42 U.S.C. 1395ww(d)(10)(D)(i)(I)), the Secretary of Health and Human Services shall publish and use alternative guidelines under which a hospital described in subsection (b) qualifies for geographic reclassification under such section for a fiscal year beginning with fiscal year 1998.

''(b) HOSPITALS COVERED.—A hospital described in this subsection is a hospital that demonstrates that—

''(1) the average hourly wage paid by the hospital is not less than 108 percent of the average hourly wage paid by all other hospitals located in the Metropolitan Statistical Area (or the New England County Metropolitan Area) in which the hospital is located;

''(2) not less than 40 percent of the adjusted uninflated wages paid by all hospitals located in such Area is attributable to wages paid by the hospital; and

''(3) the hospital submitted an application requesting reclassification for purposes of wage index under section 1886(d)(10)(C) of such Act (42 U.S.C. 1395ww(d)(10)(C)) in each of fiscal years 1992 through 1997 and that such request was approved for each of such fiscal years.''

FLOOR ON AREA WAGE INDEX

Section 4410 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—For purposes of section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)) for discharges occurring on or after October 1, 1997, the area wage index applicable under such section to any hospital which is not located in a rural area (as defined in section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D))[)] may not be less than the area wage index applicable under such section to hospitals located in rural areas in the State in which the hospital is located.

''(b) IMPLEMENTATION.—The Secretary of Health and Human Services shall adjust the area wage index referred to in subsection (a) for hospitals not described in such subsection in a manner which assures that the aggregate payments made under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) in a fiscal year for the operating costs of inpatient hospital services are not greater or less than those which would have been made in the year if this section did not apply.

''(c) EXCLUSION OF CERTAIN WAGES.—In the case of a hospital that is owned by a municipality and that was reclassified as an urban hospital under section 1886(d)(10) of the Social Security Act [subsec. (d)(10) of this section] for fiscal year 1996, in calculating the hospital's average hourly wage for purposes of geographic reclassification under such section for fiscal year 1998, the Secretary of Health and Human Services shall exclude the general service wages and hours of personnel associated with a skilled nursing facility that is owned by the hospital of the same municipality and that is physically separated from the hospital to the extent that such wages and hours of such personnel are not shared with the hospital and are separately documented. A hospital that applied for and was denied reclassification as an urban hospital for fiscal year 1998, but that would have received reclassification had the exclusion required by this section been applied to it, shall be reclassified as an urban hospital for fiscal year 1998.''

REPORT ON EFFECT OF AMENDMENTS BY PUB. L. 105–33, § 4415, ON PSYCHIATRIC HOSPITALS

Section 4415(d) of Pub. L. 105–33 provided that: ''Not later than October 1, 1999, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that describes the effect of the amendments to section 1886(b)(1) of the Social Security Act (42 U.S.C. 1395ww(b)(1)), made under this section, on psychiatric hospitals (as defined in section 1886(d)(1)(B)(i) of such Act (42 U.S.C. 1395ww(d)(1)(B)(i)) that have approved medical residency training programs under title XVIII of such Act (42 U.S.C. 1395 et seq.)).''

TREATMENT OF CERTAIN CANCER HOSPITALS; PAYMENT

Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 152(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–252, provided that:

''(1) APPLICATION TO COST REPORTING PERIODS.—Any classification by reason of section 1886(d)(1)(B)(v)(III) of

the Social Security Act [subsec. (d)(1)(B)(v)(III) of this section] (as added by subsection (a)) shall apply to 12-month cost reporting periods beginning on or after July 1, 1999.

''(2) BASE YEAR.—Notwithstanding the provisions of section 1886(b)(3)(E) of such Act (42 U.S.C. 1395ww(b)(3)(E)) or other provisions to the contrary, the base cost reporting period for purposes of determining the target amount for any hospital classified by reason of section 1886(d)(1)(B)(v)(III) of such Act [subsec. (d)(1)(B)(v)(III) of this section] (as added by subsection (a)) shall be the 12-month cost reporting period beginning on July 1, 1995.

''(3) DEADLINE FOR PAYMENTS.—Any payments owed to a hospital by reason of this subsection shall be made expeditiously, but in no event later than 1 year after the date of the enactment of this Act [Dec. 21, 2000].''

Section 4418(b) of Pub. L. 105–33 provided that:

''(1) APPLICATION TO COST REPORTING PERIODS.—Any classification by reason of section 1886(d)(1)(B)(v)(II) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(v)(II)) (as added by subsection (a)) shall apply to all cost reporting periods beginning on or after January 1, 1991.

''(2) BASE YEAR.—Notwithstanding the provisions of section 1886(b)(3)(E) of such Act (42 U.S.C. 1395ww(b)(3)(E)) or other provisions to the contrary, the base cost reporting period for purposes of determining the target amount for any hospital classified by reason of section 1886(d)(1)(B)(v)(II) of such Act shall be either—

''(A) the hospital's cost reporting period beginning during fiscal year 1990, or

''(B) pursuant to an election under 1886(b)(3)(G) of such Act (42 U.S.C. 1395ww(b)(3)(G)), as added in section 4413(b), the period provided for under such section.

''(3) DEADLINE FOR PAYMENTS.—Any payments owed to a hospital by reason of this subsection shall be made expeditiously, but in no event later than 1 year after the date of the enactment of this Act [Aug. 5, 1997].''

REPORT ON EXCEPTIONS

Section 4419(b) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services shall publish annually in the Federal Register a report describing the total amount of payments made to hospitals by reason of section 1886(b)(4) of the Social Security Act (42 U.S.C. 1395ww(b)(4)), as amended by subsection (a), ending during the previous fiscal year.''

DEVELOPMENT OF PROPOSAL ON PAYMENTS FOR LONG-TERM CARE HOSPITALS

Section 4422 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—

''(1) LEGISLATIVE PROPOSAL.—The Secretary of Health and Human Services shall develop a legislative proposal for establishing a case-mix adjusted prospective payment system for payment of long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iv)) under the medicare program. Such system shall include an adequate patient classification system that reflects the differences in patient resource use and costs among such hospitals.

''(2) COLLECTION OF DATA AND EVALUATION.—In developing the legislative proposal described in paragraph (1), the Secretary—

''(A) may require such long-term care hospitals to submit such information to the Secretary as the Secretary may require to develop the proposal; and

''(B) shall consider several payment methodologies, including the feasibility of expanding the current diagnosis-related groups and prospective payment system established under section 1886(d) of the Social Security Act [subsec. (d) of this section] to apply to payments under the medicare program to long-term care hospitals.

''(b) REPORT.—Not later than October 1, 1999, the Secretary shall submit to the appropriate committees of Congress a report that includes the legislative proposal developed under subsection (a)(1).''

DISSEMINATION OF INFORMATION ON HIGH PER DISCHARGE RELATIVE VALUES FOR IN-HOSPITAL PHYSICIANS' SERVICES

Section 4506 of title IV of Pub. L. 105–33 provided that:

''(a) DETERMINATION AND NOTICE CONCERNING HOSPITAL-SPECIFIC PER DISCHARGE RELATIVE VALUES.—

''(1) IN GENERAL.—For 1999 and 2001 the Secretary of Health and Human Services shall determine for each hospital—

''(A) the hospital-specific per discharge relative value under subsection (b); and

''(B) whether the hospital-specific relative value is projected to be excessive (as determined based on such value represented as a percentage of the median of hospital-specific per discharge relative values determined under subsection (b)).

''(2) NOTICE TO SUBSET OF MEDICAL STAFFS; EVALUATION OF RESPONSES.—The Secretary shall notify the medical executive committee of a subset of the hospitals identified under paragraph (1)(B) as having an excessive hospital-specific relative value, of the determinations made with respect to the medical staff under paragraph (1). The Secretary shall evaluate the responses of the hospitals so notified with the responses of other hospitals so identified that were not so notified.

''(b) DETERMINATION OF HOSPITAL-SPECIFIC PER DISCHARGE RELATIVE VALUES.—

''(1) IN GENERAL.—For purposes of this section, the hospital-specific per discharge relative value for the medical staff of a hospital (other than a teaching hospital) for a year shall be equal to the average per discharge relative value (as determined under section 1848(c)(2) of the Social Security Act (42 U.S.C. 1395w–4(c)(2))[)] for physicians' services furnished to inpatients of the hospital by the hospital's medical staff (excluding interns and residents) during the second year preceding that calendar year, adjusted for variations in case-mix among hospitals and disproportionate share status and teaching status among hospitals (as determined by the Secretary under paragraph (3)).

''(2) SPECIAL RULE FOR TEACHING HOSPITALS.—The hospital-specific relative value projected for a teaching hospital in a year shall be equal to the sum of—

''(A) the average per discharge relative value (as determined under section 1848(c)(2) of such Act [section 1395w–4(c)(2) of this title]) for physicians' services furnished to inpatients of the hospital by the hospital's medical staff (excluding interns and residents) during the second year preceding that calendar year, and

''(B) the equivalent per discharge relative value (as determined under such section) for physicians' services furnished to inpatients of the hospital by interns and residents of the hospital during the second year preceding that calendar year, adjusted for variations in case-mix among hospitals, and in disproportionate share status and teaching status among hospitals (as determined by the Secretary under paragraph (3)).

The Secretary shall determine the equivalent relative value unit per discharge for interns and residents based on the best available data and may make such adjustment in the aggregate.

''(3) ADJUSTMENT FOR TEACHING AND DISPROPORTIONATE SHARE HOSPITALS.—The Secretary shall adjust the allowable per discharge relative values otherwise determined under this subsection to take into account the needs of teaching hospitals and hospitals receiving additional payments under subparagraphs (F) and (G) of section 1886(d)(5) of the Social Security Act (42 U.S.C. 1395ww(d)(5)). The adjustment for teaching status or disproportionate share shall not be less than zero.

''(c) DEFINITIONS.—For purposes of this section:

''(1) HOSPITAL.—The term 'hospital' means a subsection (d) hospital as defined in section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)).

''(2) MEDICAL STAFF.—An individual furnishing a physician's service is considered to be on the medical staff of a hospital—

''(A) if (in accordance with requirements for hospitals established by the Joint Commission on Accreditation of Health Organizations)—

''(i) the individual is subject to bylaws, rules, and regulations established by the hospital to provide a framework for the self-governance of medical staff activities,

''(ii) subject to the bylaws, rules, and regulations, the individual has clinical privileges granted by the hospital's governing body, and

''(iii) under the clinical privileges, the individual may provide physicians' services independently within the scope of the individual's clinical privileges, or

''(B) if the physician provides at least one service to an individual entitled to benefits under this title in that hospital.

''(3) PHYSICIANS' SERVICES.—The term 'physicians' services' means the services described in section 1848(j)(3) of the Social Security Act (42 U.S.C. 1395w–4(j)(3)).

''(4) RURAL AREA; URBAN AREA.—The terms 'rural area' and 'urban area' have the meaning given those terms under section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D)).

''(5) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

''(6) TEACHING HOSPITAL.—The term 'teaching hospital' means a hospital which has a teaching program approved as specified in section 1861(b)(6) of the Social Security Act (42 U.S.C. 1395x(b)(6)).''

INCENTIVE PAYMENTS UNDER PLANS FOR VOLUNTARY REDUCTION IN NUMBER OF RESIDENTS; RELATION TO DEMONSTRATION PROJECTS AND AUTHORITY; REGULATIONS

Section 4626(b), (c) of Pub. L. 105–33 provided that:

''(b) RELATION TO DEMONSTRATION PROJECTS AND AUTHORITY.—

''(1) Section 1886(h)(6) of the Social Security Act [subsec. (h)(6) of this section], added by subsection (a), other than subparagraph (F)(ii) thereof, shall not apply to any residency training program with respect to which a demonstration project described in paragraph (3) has been approved by the Health Care Financing Administration as of May 27, 1997.

''(2) Effective May 27, 1997, the Secretary of Health and Human Services is not authorized to approve any demonstration project described in paragraph (3) for any residency training year beginning before July 1, 2006.

''(3) A demonstration project described in this paragraph is a project that primarily provides for additional payments under title XVIII of the Social Security Act [this subchapter] in connection with a reduction in the number of residents in a medical residency training program.

''(c) INTERIM, FINAL REGULATIONS.—In order to carry out the amendment made by subsection (a) in a timely manner, the Secretary of Health and Human Services may first promulgate regulations, that take effect on an interim basis, after notice and pending opportunity for public comment, by not later than 6 months after the date of the enactment of this Act [Aug. 5, 1997].''

DEMONSTRATION PROJECT ON USE OF CONSORTIA

Section 4628 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall establish a demonstration project under which, instead of making payments to teaching hospitals pursuant to section 1886(h) of the Social Security Act [subsec. (h) of this section], the Secretary shall make payments under this section to each consortium that meets the requirements of subsection (b) and that applies to be included under the project.

''(b) QUALIFYING CONSORTIA.—For purposes of subsection (a), a consortium meets the requirements of this subsection if the consortium is in compliance with the following:

''(1) The consortium consists of a teaching hospital with one or more approved medical residency training programs and one or more of the following entities:

''(A) A school of allopathic medicine or osteopathic medicine.

''(B) Another teaching hospital, which may be a children's hospital.

''(C) A Federally qualified health center.

''(D) A medical group practice.

''(E) A managed care entity.

''(F) An entity furnishing outpatient services.

''(G) Such other entity as the Secretary determines to be appropriate.

''(2) The members of the consortium have agreed to participate in the programs of graduate medical education that are operated by the entities in the consortium.

''(3) With respect to the receipt by the consortium of payments made pursuant to this section, the members of the consortium have agreed on a method for allocating the payments among the members.

''(4) The consortium meets such additional requirements as the Secretary may establish.

''(c) AMOUNT AND SOURCE OF PAYMENT.—The total of payments to a qualifying consortium for a fiscal year pursuant to subsection (a) shall not exceed the amount that would have been paid under section 1886(h) or (k) of the Social Security Act [subsecs. (h), (k) of this section] for the teaching hospital (or hospitals) in the consortium. Such payments shall be made in such proportion from each of the trust funds established under title XVIII of such Act [this subchapter] as the Secretary specifies.''

RECOMMENDATIONS ON LONG-TERM POLICIES REGARDING TEACHING HOSPITALS AND GRADUATE MEDICAL EDUCATION

Section 4629 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—The Medicare Payment Advisory Commission (established under section 1805 of the Social Security Act [section 1395b–6 of this title] and in this section referred to as the 'Commission') shall examine and develop recommendations on whether and to what extent medicare payment policies and other Federal policies regarding teaching hospitals and graduate medical education should be changed. Such recommendations shall include recommendations regarding each of the following:

''(1) Possible methodologies for making payments for graduate medical education and the selection of entities to receive such payments. Matters considered under this paragraph shall include—

''(A) issues regarding children's hospitals and approved medical residency training programs in pediatrics, and

''(B) whether and to what extent payments are being made (or should be made) for training in the nursing and other allied health professions.

''(2) Federal policies regarding international medical graduates.

''(3) The dependence of schools of medicine on service-generated income.

''(4) Whether and to what extent the needs of the United States regarding the supply of physicians, in the aggregate and in different specialties, will change during the 10-year period beginning on October 1, 1997, and whether and to what extent any such changes will have significant financial effects on teaching hospitals.

''(5) Methods for promoting an appropriate number, mix, and geographical distribution of health professionals.

''(b) CONSULTATION.—In conducting the study under subsection (a), the Commission shall consult with the Council on Graduate Medical Education and individuals with expertise in the area of graduate medical education, including—

''(1) deans from allopathic and osteopathic schools of medicine;

''(2) chief executive officers (or equivalent administrative heads) from academic health centers, integrated health care systems, approved medical residency training programs, and teaching hospitals that sponsor approved medical residency training programs;

''(3) chairs of departments or divisions from allopathic and osteopathic schools of medicine, schools of dentistry, and approved medical residency training programs in oral surgery;

''(4) individuals with leadership experience from representative fields of non-physician health professionals;

''(5) individuals with substantial experience in the study of issues regarding the composition of the health care workforce of the United States; and

''(6) individuals with expertise in health care payment policies.

''(c) REPORT.—Not later than 2 years after the date of the enactment of this Act [Aug. 5, 1997], the Commission shall submit to the Congress a report providing its recommendations under this section and the reasons and justifications for such recommendations.''

STUDY OF HOSPITAL OVERHEAD AND SUPERVISORY PHYSICIAN COMPONENTS OF DIRECT MEDICAL EDUCATION COSTS

Section 4630 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study with respect to—

''(1) variations among hospitals in the hospital overhead and supervisory physician components of their direct medical education costs taken into account under section 1886(h) of the Social Security Act [subsec. (h) of this section], and

''(2) the reasons for such variations.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Aug. 5, 1997], the Secretary shall report the results of the study conducted under subsection (a) to the appropriate committees of Congress, including recommendations for legislation reducing variations described in subsection (a) that the Secretary finds inappropriate.''

DRG PROSPECTIVE PAYMENT RATE METHODOLOGY; TRANSITION RULE FOR FISCAL YEAR 1998

Section 4644(a)(2) of Pub. L. 105–33 provided that: ''With respect to the publication in the Federal Register of the DRG prospective payment rate methodology under such section for fiscal year 1998, the term '60 days' in section 801(a)(3)(A) and section 802(a) of title 5, United States Code, is deemed to be a reference to '30 days'.''

HOSPITAL PAYMENT UPDATES; TRANSITION RULE FOR FISCAL YEAR 1998

Section 4644(b)(2) of Pub. L. 105–33 provided that: ''With respect to the publication in the Federal Register of the appropriate change factor for inpatient hospital services for discharges in fiscal year 1998 under section 1886(e)(5)(B) (42 U.S.C. 1395ww(e)(5)(B)), the term '60 days' in section 801(a)(3)(A) and section 802(a) of title 5, United States Code, is deemed to be a reference to '30 days'.''

GEOGRAPHICAL RECLASSIFICATION; SPECIAL RULE FOR APPLICATIONS RECEIVED IN FISCAL YEAR 1997

Section 4644(c)(2) of Pub. L. 105–33 provided that: ''In the case of an application for a change in geographic classification under such section [subsec. (d)(10)(C)(ii) of this section] for fiscal year 1999, the Secretary of Health and Human Services shall shorten the deadlines under such section so as to permit completion of a final decision by the Secretary by June 15, 1998.''

NO STANDARDIZED AMOUNT ADJUSTMENTS FOR FISCAL YEARS 1992 OR 1993

Section 13501(b)(2) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services shall not revise the fiscal year 1992 or fiscal year 1993 standardized amounts pursuant to subsections (d)(3)(B) and (d)(8)(D) of section 1886 of the Social Security Act [subsec. (d)(3)(B) and (d)(8)(D) of this section] to account for the amendment made by paragraph (1) [amending this section].''

EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATIONS THROUGH FISCAL YEAR 1994; RECLASSIFICATION

Section 13501(d) of Pub. L. 103–66 provided that:

''(1) EXTENSION OF CLASSIFICATION THROUGH FISCAL YEAR 1994.—Any hospital that is classified as a regional referral center under section 1886(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] as of September 30, 1992, shall continue to be so classified for cost reporting periods beginning during fiscal year 1993 or fiscal year 1994, unless the area in which the hospital is located is redesignated as a Metropolitan Statistical Area by the Office of Management and Budget for such a fiscal year.

''(2) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—If any hospital fails to qualify as a rural referral center under section 1886(d)(5)(C) of the Social Security Act as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993 or fiscal year 1994, the Secretary of Health and Human Services shall—

''(A) notify such hospital of such failure to qualify,

''(B) provide an opportunity for such hospital to decline such reclassification, and

''(C) if the hospital—

''(i) declines such reclassification, administer the Social Security Act [this chapter] (other than section 1886(d)(8)(D)) for such fiscal year as if the decision by the Review Board had not occurred, or

''(ii) fails to decline such reclassification, administer the Social Security Act without regard to paragraph (1).

''(3) REQUIRING LUMP-SUM RETROACTIVE PAYMENT FOR HOSPITALS LOSING CLASSIFICATION.—

''(A) IN GENERAL.—In the case of a hospital described in paragraph (1), the Secretary of Health and Human Services shall make a lump-sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, the hospital was classified a regional referral center under section 1886(d)(5)(C) of such Act.

''(B) PERIOD OF APPLICABILITY.—In subparagraph (A), the 'period of applicability' is the period that begins on October 1, 1992, and ends on the date of the enactment of this Act [Aug. 10, 1993].''

HOSPITALS DECLINING URBAN AREA RECLASSIFICATIONS; RETROACTIVE PAYMENTS

Pub. L. 103–66, title XIII, § 13501(e)(2), (3), Aug. 10, 1993, 107 Stat. 576, as amended by Pub. L. 105–33, title IV, § 4204(a)(3), Aug. 5, 1997, 111 Stat. 376; Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 404(b)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–372; Pub. L. 109–171, title V, § 5003(a)(2)(B), Feb. 8, 2006, 120 Stat. 32, provided that:

''(2) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—If any hospital fails to qualify as a medicare-dependent, small rural hospital under section 1886(d)(5)(G)(i) of the Social Security Act [subsec.

(d)(5)(G)(i) of this section] as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993, fiscal year 1994, fiscal year 1998, fiscal year 1999, or fiscal year 2000 through fiscal year 2011, the Secretary of Health and Human Services shall—

''(A) notify such hospital of such failure to qualify,

''(B) provide an opportunity for such hospital to decline such reclassification, and

''(C) if the hospital declines such reclassification, administer the Social Security Act [this chapter] (other than section 1886(d)(8)(D)) for such fiscal year as if the decision by the Review Board had not occurred.

''(3) REQUIRING LUMP-SUM RETROACTIVE PAYMENT.—

''(A) IN GENERAL.—In the case of a hospital treated as a medicare-dependent, small rural hospital under section 1886(d)(5)(G) of the Social Security Act, the Secretary of Health and Human Services shall make a lump-sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, section 1886(d)(5)(G) of such Act had been applied as if the amendments made by paragraph (1) [amending this section] had been in effect.

''(B) PERIOD OF APPLICABILITY.—In subparagraph (A), the 'period of applicability' is, with respect to a hospital, the period that begins on the first day of the hospital's first 12-month cost reporting period that begins after April 1, 1992, and ends on the date of the enactment of this Act [Aug. 10, 1993].''

ADJUSTMENT IN GME BASE-YEAR COSTS OF FEDERAL INSURANCE CONTRIBUTIONS ACT

Section 13563(d) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—In determining the amount of payment to be made under section 1886(h) of the Social Security Act [subsec. (h) of this section] in the case of a hospital described in paragraph (2) for cost reporting periods beginning on or after October 1, 1992, the Secretary of Health and Human Services shall redetermine the approved FTE resident amount to reflect the amount that would have been paid the hospital if, during the hospital's base cost reporting period, the hospital had been liable for FICA taxes or for contributions to the retirement system of a State, a political subdivision of a State, or an instrumentality of such a State or political subdivision with respect to interns and residents in its medical residency training program.

''(2) HOSPITALS AFFECTED.—A hospital described in this paragraph is a hospital that did not pay FICA taxes with respect to interns and residents in its medical residency training program during the hospital's base cost reporting period, but is required to pay FICA taxes or make contributions to a retirement system described in paragraph (1) with respect to such interns and residents because of the amendments made by section 11332(b) of OBRA–1990 [Pub. L. 101–508, amending section 3121 of Title 26, Internal Revenue Code].

''(3) DEFINITIONS.—In this subsection:

''(A) The 'base cost reporting period' for a hospital is the hospital's cost reporting period that began during fiscal year 1984.

''(B) The term 'FICA taxes' means, with respect to a hospital, the taxes under section 3111 of the Internal Revenue Code of 1986 [26 U.S.C. 3111].''

DETERMINATION OF AREA WAGE INDEX FOR DISCHARGES OCCURRING JANUARY 1, 1991 TO OCTOBER 1, 1993

Section 4002(d)(1) of Pub. L. 101–508 provided that:

''(A) For purposes of section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section] for discharges occurring on or after January 1, 1991, and before October 1, 1993, the Secretary of Health and Human Services shall apply an area wage index determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

''(B) The Secretary shall apply the wage index described in subparagraph (A) without regard to a previous survey of wages and wage-related costs.''

STUDY AND REPORT ON RELATIONSHIP BETWEEN NON-WAGE-RELATED INPUT PRICES AND ADJUSTED AVERAGE STANDARDIZED AMOUNTS

Section 4002(e)(2) of Pub. L. 101–508 directed Secretary of Health and Human Services to collect sufficient data on the input prices associated with the non-wage-related portion of the adjusted average standardized amounts established under subsec. (d)(3) of this section to identify extent to which variations in such amounts among hospitals located in different geographic areas are attributable to differences in such prices, and, not later than June 1, 1993, submit a report to Congress analyzing such data, with such report to include recommendations regarding a methodology for adjusting such average standardized amounts to reflect such variations.

DEADLINE FOR SUBMISSION OF APPLICATIONS TO GEOGRAPHIC CLASSIFICATION REVIEW BOARD

Section 4002(h)(2)(A) of Pub. L. 101–508 provided that: ''For purposes of determining whether a hospital requesting a change in geographic classification for fiscal year 1992 under section 1886(d)(10) of the Social Security Act [subsec. (d)(10) of this section] has met the deadline described in subparagraph (C)(ii) of such section, an application submitted under such subparagraph shall be considered to have been submitted by the first day of the preceding fiscal year if it is submitted within 60 days of the date of publication of the guidelines described in subparagraph (D)(i) of such section.''

PAYMENTS FOR MEDICAL EDUCATION COSTS

Section 4004 of Pub. L. 101–508 provided that:

''(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

''(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part A of title XVIII of the Social Security Act [part A of this subchapter] due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h) [subsec. (h) of this section].

''(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

''(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

''(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

''(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part A of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

''(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

''(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

''(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to the clinical training costs during the cost reporting period described in subparagraph (A);

''(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

''(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

''(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

''(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part A of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act [section 1395x(v) of this title]).

''(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act [Nov. 5, 1990], the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part A of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

''(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

''(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.''

Section 4159 of Pub. L. 101–508 provided that:

''(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

''(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part B of title XVIII of the Social Security Act [part B of this subchapter] due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h) [subsec. (h) of this section].

''(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

''(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

''(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

''(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part B of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

''(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

''(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

''(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to clinical training costs during the cost reporting period described in subparagraph (A);

''(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

''(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

''(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

''(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part B of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act [section 1395x(v) of this title]).

''(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act [Nov. 5, 1990], the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part B of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

''(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

''(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.''

DEVELOPMENT OF NATIONAL PROSPECTIVE PAYMENT RATES FOR CURRENT NON-PPS HOSPITALS

Section 4005(b) of Pub. L. 101–508 provided that:

''(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section]) receive payment for the operating and capital-related costs of inpatient hospital services under part A [part A of this subchapter] of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

''(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

''(B) provide for adjustments to prospectively determined rates to account for changes in a hospital's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

''(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

''(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate; and

''(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

''(2) REPORTS.—(A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

''(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

GUIDANCE TO INTERMEDIARIES AND HOSPITALS

Section 4005(c)(3) of Pub. L. 101–508 provided that: ''The Administrator of the Health Care Financing Administration shall provide guidance to agencies and organizations performing functions pursuant to section 1816 of the Social Security Act [section 1395h of this title] and to hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of such Act [subsec. (d)(1)(B) of this section]) to assist such agencies, organizations, and hospitals in filing complete applications with the Administrator for exemptions, exceptions, and adjustments under section 1886(b)(4)(A) of such Act.''

FREEZE IN PAYMENTS UNDER PART A OF THIS SUBCHAPTER THROUGH DECEMBER 31, 1990

Section 4007 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the amount of payment for items or services under part A of title XVIII of the Social Security Act [part A of this subchapter] (including payments under section 1886 of such Act [this section] attributable to or allocated under such part) during the period described in subsection (b):

''(1) The market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Social Security Act) shall be deemed to be 0 for discharges occurring during such period.

''(2) The percentage increase or decrease in the medical care expenditure category of the consumer price index applicable under section 1814(i)(2)(B) of such Act [section 1395f(i)(2)(B) of this title] shall be deemed to be 0.

''(3) The area wage index applicable to a subsection (d) hospital under section 1886(d)(3)(E) of such Act shall be deemed to be the area wage index applicable to such hospital as of September 30, 1990.

''(4) The percentage change in the consumer price index applicable under section 1886(h)(2)(D) of such Act shall be deemed to be 0.

''(b) DESCRIPTION OF PERIOD.—The period referred to in subsection (a) is the period beginning on October 21, 1990, and ending on December 31, 1990.''

REVIEW OF HOSPITAL REGULATIONS WITH RESPECT TO RURAL HOSPITALS

Section 4008(*l*) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall review the requirements applicable under title XVIII of the Social Security Act [this subchapter] to determine which requirements could be made less administratively and economically burdensome (without diminishing the quality of care) for hospitals defined in section 1886(d)(1)(B) of such Act [subsec. (d)(1)(B) of this section] that are located in a rural area (as defined in section 1886(d)(2)(D) of such Act). Such review shall specifically include standards related to staffing requirements.

''(2) REPORT.—The Secretary of Health and Human Services shall report to Congress by April 1, 1992, on the results of the review conducted under subsection (a), and include conclusions on which regulations, if any, should be modified with respect to hospitals described in subsection (a).''

PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR

Section 4207(b)(1), formerly 4027(b)(1), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (5)(C), Oct. 31, 1994, 108 Stat. 4444, provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services may not issue any proposed or final regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in a fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1993, or, if later, the last fiscal year for which there is a maximum deficit amount specified under section 601(a)(1) of the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 665(a)(1)]) of more than $50,000,000, except as follows:

''(A) The Secretary may issue such a proposed regulation, instruction, or other policy with respect to the fiscal year before the May 15 preceding the beginning of the fiscal year.

''(B) The Secretary may issue such a final regulation, instruction, or other policy with respect to the fiscal year on or after October 15 of the fiscal year.

''(C) The Secretary may, at any time, issue such a proposed or final regulation, instruction, or other policy with respect to the fiscal year if required to implement specific provisions under statute.''

PROHIBITION OF PAYMENT CYCLE CHANGES

Section 4207(b)(2), formerly 4027(b)(2), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act [Nov. 5, 1990], any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down or speeding up claims processing, or delaying payment of claims, under title XVIII of the Social Security Act [this subchapter].''

EXTENSION OF AREA WAGE INDEX

Section 115(a) of Pub. L. 101–403 provided that: ''For purposes of determining the amount of payment made to a hospital under part A of title XVIII of the Social Security Act [part A of this subchapter] for the operating costs of inpatient hospital services for discharges occurring on or after October 1, 1990, and on or before October 20, 1990, the Secretary of Health and Human Services, in adjusting such amount under section 1886(d)(3)(E) of such Act [subsec. (d)(3)(E) of this section] to reflect the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage index, shall apply the area wage index applicable to such hospital as of September 30, 1990.''

ADJUSTMENTS RESULTING FROM EXTENSIONS OF REGIONAL FLOOR ON STANDARDIZED AMOUNTS

Section 115(b)(2) of Pub. L. 101–403 provided that: ''The Secretary of Health and Human Services shall make any adjustments resulting from the amendment made by paragraph (1) [amending this section] in the amount of the payments made to hospitals under section 1886(d) of the Social Security Act [subsec. (d) of this section] in a fiscal year for the operating costs of inpatient hospital services in a manner that ensures that the aggregate payments under such section are not greater or less than those that would have been made in the year without such adjustments.''

INDEXING OF FUTURE APPLICABLE PERCENTAGE INCREASES

Section 6003(a)(3) of Pub. L. 101–239 provided that: ''For discharges occurring on or after October 1, 1990, the applicable percentage increase (described in section 1886(b)(3)(B) of the Social Security Act [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal year 1990 is deemed to have been such percentage increase as amended by paragraph (1).''

CONTINUATION OF SOLE COMMUNITY HOSPITAL DESIGNATION FOR CURRENT SOLE COMMUNITY HOSPITALS

Section 6003(e)(3) of Pub. L. 101–239 provided that: ''Any hospital classified as a sole community hospital under section 1886(d)(5)(C)(ii) of the Social Security Act [subsec. (d)(5)(C)(ii) of this section] on the date of the enactment of this Act [Dec. 19, 1989] that will no longer be classified as a sole community hospital after such date as a result of the amendments made by paragraph (1) [amending this section] shall continue to be classified as a sole community hospital for purposes of section 1886(d)(5)(D) of such Act [subsec. (d)(5)(D) of this section].''

ADDITIONAL PAYMENT RESULTING FROM CORRECTIONS OF ERRONEOUSLY DETERMINED WAGE INDEX

Section 6003(h)(5) of Pub. L. 101–239 provided that:

''(A) IN GENERAL.—If the Secretary of Health and Human Services (hereinafter referred to as the 'Secretary') discovers an error with respect to the determination, adjustment, or computation of the area wage index described in section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section] and subsequently corrects such error, the Secretary shall make an additional payment under title XVIII of such Act [this subchapter] to a hospital affected by such error for inpatient hospital discharges occurring during the period when the erroneously determined, adjusted, or computed wage index was in effect.

''(B) CONDITIONS FOR ADDITIONAL PAYMENT.—A hospital is eligible for an additional payment under subparagraph (A) only if—

''(i) the error resulted from the submission of erroneous data, except that a hospital is not eligible for such additional payment if it submitted such erroneous data;

''(ii) the error was made with respect to the survey of the 1984 wages and wage-related costs of hospitals in the United States conducted under section 1886(d)(3)(E) of the Social Security Act; and

''(iii) the correction of the error resulted in an adjustment to the area wage index of not less than 3 percentage points.

''(C) PERIOD OF APPLICABILITY.—A hospital may not receive an additional payment under subparagraph (A) for discharges occurring after October 1, 1990.''

LEGISLATIVE PROPOSAL ELIMINATING SEPARATE AVERAGE STANDARDIZED AMOUNTS

Pub. L. 101–239, title VI, § 6003(i), Dec. 19, 1989, 103 Stat. 2158, directed Secretary of Health and Human Services to design a legislative proposal eliminating the system of determining separate average standardized amounts for subsection (d) hospitals classified as being located in large urban, other urban, or rural areas, prior to repeal by Pub. L. 105–362, title VI, § 601(b)(4), Nov. 10, 1998, 112 Stat. 3286.

DETERMINATION AND RECOMMENDATIONS OF PAYMENTS FOR COSTS OF ADMINISTERING BLOOD CLOTTING FACTORS TO INDIVIDUALS WITH HEMOPHILIA

Section 6011(b), (c) of Pub. L. 101–239 provided that:

''(b) DETERMINING PAYMENT AMOUNT.—The Secretary of Health and Human Services shall determine the amount of payment made to hospitals under part A of title XVIII of the Social Security Act [part A of this subchapter] for the costs of administering blood clotting factors to individuals with hemophilia by multiplying a predetermined price per unit of blood clotting factor (determined in consultation with the Prospective Payment Assessment Commission) by the number of units provided to the individual.

''(c) RECOMMENDATIONS ON PAYMENTS.—The Prospective Payment Assessment Commission and the Health Care Financing Administration shall develop recommendations with respect to payments to hospitals under part A of title XVIII of the Social Security Act for the costs of administering blood clotting factors to individuals with hemophilia, and shall submit such recommendations to Congress not later than 18 months after the date of enactment of this Act [Dec. 19, 1989].''

PUBLICATION OF INSTRUCTIONS RELATING TO EXCEPTIONS AND ADJUSTMENTS IN TARGET AMOUNTS

Section 6015(b) of Pub. L. 101–239 provided that: ''By not later than 180 days after the date of enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall publish instructions specifying the application process to be used in providing exceptions and adjustments under section 1886(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A) of this section].''

DELAY IN RECOUPMENT OF CERTAIN NURSING AND ALLIED EDUCATION COSTS

Section 6205(b) of Pub. L. 101–239 provided that:

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall not, before October 1, 1990, recoup from, or otherwise reduce or adjust payments under title XVIII of the Social Security Act [this subchapter] to, hospitals because of alleged overpayments to such hospitals under such title due to a determination that costs which were reported by a hospital on its medicare cost reports relating to approved nursing and allied health education programs were allowable costs and are included in the definition of 'operating costs of inpatient hospital services' pursuant to section 1886(a)(4) of such Act [subsec. (a)(4) of this section], so that no pass-through of such costs was permitted under that section.

''(2)(A) Before July 1, 1990, the Secretary shall issue regulations respecting payment of costs described in paragraph (1).

''(B) In issuing such regulations—

''(i) the Secretary shall allow a comment period of not less than 60 days,

''(ii) the Secretary shall consult with the Prospective Payment Assessment Commission, and

''(iii) any final rule shall not be effective prior to October 1, 1990, or 30 days after publication of the final rule in the Federal Register, whichever is later.

''(C) Such regulations shall specify—

''(i) the relationship required between an approved nursing or allied health education program and a hospital for the program's costs to be attributed to the hospital;

''(ii) the types of costs related to nursing or allied health education programs that are allowable by medicare;

''(iii) the distinction between costs of approved educational activities as recognized under section 1886(a)(3) of the Social Security Act [subsec. (a)(3) of this section] and educational costs treated as operating costs of inpatient hospital services; and

''(iv) the treatment of other funding sources for the program.''

INNER-CITY HOSPITAL TRIAGE DEMONSTRATION PROJECT

Section 6217 of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4207(k)(5), formerly § 4027(k)(5), Nov. 5, 1990, 104 Stat. 1388–125, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that:

''(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a demonstration project in a public hospital that is located in a large urban area and that has established a triage system, under which the Secretary shall make payments out of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate in a year) for 3 years to reimburse the hospital for the reasonable costs of operating the system, including costs—

''(1) to train hospital personnel to operate and participate in the system; and

''(2) to provide services to patients who might otherwise be denied appropriate and prompt care.

''(b) LIMITATIONS ON PAYMENT.—(1) The Secretary may not make payment under the demonstration project established under subsection (a) for costs that the Secretary determines are not reasonable.

''(2) The amount of payment made under the demonstration project during a single year may not exceed $500,000.''

TRANSITION ADJUSTMENTS TO TARGET AMOUNTS FOR INPATIENT HOSPITAL SERVICES

Section 101(c)(2)(B) of title I of Pub. L. 101–234 provided that: ''The Secretary of Health and Human Services shall make an appropriate adjustment to the target amount established under section 1886(b)(3)(A) of the Social Security Act [subsec. (b)(3)(A) of this section] in the case of inpatient hospital services provided to an inpatient whose stay began before January 1, 1990, in order to take into account the target amount that would have applied but for the amendments made by this title [see Tables for classification].''

ELECTION OF PERSONNEL POLICY FOR PROPAC EMPLOYEES

Section 8405 of Pub. L. 100–647 provided that: ''With respect to employees of the Prospective Payment Assessment Commission hired before December 22, 1987, such employees shall have the option to elect within 60 days of the date of enactment of this Act [Nov. 10, 1988] to be covered under either the personnel policy in effect with respect to such employees before December 22, 1987, or under the employees coverage provided under the last sentence of section 1886(e)(6)(D) of the Social Security Act [subsec. (e)(6)(D) of this section].''

ADJUSTMENTS IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES

Section 104(c) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(3)(C)–(E), Oct. 13, 1988, 102 Stat. 2413; Pub. L. 101–234, title I, § 101(c)(1), (2)(A), Dec. 13, 1989, 103 Stat. 1980, provided that:

''(1) PPS HOSPITALS.—In adjusting DRG prospective payment rates under section 1886(d) of the Social Security Act [subsec. (d) of this section], outlier cutoff points under section 1886(d)(5)(A) of such Act, and weighting factors under section 1886(d)(4) of such Act for discharges occurring on or after October 1, 1988, and before January 1, 1990, the Secretary of Health and Human Services shall, to the extent appropriate, take into consideration the reductions in payments to hospitals by (or on behalf of) medicare beneficiaries resulting from the elimination of a day limitation on medicare inpatient hospital services (under the amendments made by section 101 [amending section 1395d of this title]).

''(2) PPS-EXEMPT HOSPITALS.—In adjusting target amounts under section 1886(b)(3) of the Social Security Act [subsec. (b)(3) of this section] for portions of cost reporting periods occurring on or after January 1, 1989, and before January 1, 1990, the Secretary shall, on a hospital-specific basis, take into consideration the reductions in payments to hospitals by (or on behalf of) medicare beneficiaries resulting from the elimination of a day limitation on medicare inpatient hospital services (under the amendments made by section 101 [amending section 1395d of this title]), without regard to whether such a hospital is paid on the basis described in subparagraph (A) or (B) of section 1886(b)(1) of such Act, without regard to whether any of such beneficiaries exhausted medicare inpatient hospital insurance benefits before January 1, 1989.''

[Amendment of section 104(c) of Pub. L. 100–360, set out above, by section 101(c)(1), (2)(A) of Pub. L. 101–234 effective as if included in enactment of Pub. L. 100–360, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title].

PROPAC STUDY

Section 203(c)(2) of Pub. L. 100–360 directed Prospective Payment Assessment Commission to conduct a study, and make recommendations to Congress and Secretary of Health and Human Services by not later than Mar. 1, 1991, concerning appropriate adjustment to payment amounts provided under subsec. (d) of this section for inpatient hospital services to account for reduced costs to hospitals resulting from amendments made by section 203 of Pub. L. 100–360, amending sections 1320c–3, 1395h, 1395k to 1395n, 1395w–2, 1395x, 1395z, and 1395aa of this title, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

CLINIC HOSPITAL WAGE INDICES

Section 4004(b) of Pub. L. 100–203 provided that: ''In calculating the wage index under section 1886(d) of the Social Security Act [subsec. (d) of this section] for purposes of making payment adjustments after September 30, 1988, as required under paragraphs (2)(H) and (3)(E) of such section, in the case of any institution which received the waiver specified in section 602(k) of the Social Security Amendments of 1983 [section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title], the Secretary of Health and Human Services shall include wage costs paid to related organization employees directly involved in the delivery and administration of care provided by the related organization to hospital inpatients. For purposes of the preceding sentence, the term 'wage costs' does not include costs of overhead or home office administrative salaries or any costs that are not incurred in the hospital's Metropolitan Statistical Area.''

LIMITATION ON AMOUNTS PAID IN FISCAL YEARS 1988 AND 1989

Section 4005(c)(2)(B) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall take appropriate steps to ensure that the total amount paid in a fiscal year under title XVIII of the Social Security Act [this subchapter] by reason of the amendment made by paragraph (1)(B) [amending this section] does not exceed $5,000,000 in the case of fiscal year 1988 and $10,000,000 for fiscal year 1989.''

STUDY OF CRITERIA FOR CLASSIFICATION OF HOSPITALS AS RURAL REFERRAL CENTERS; REPORT

Section 4005(d)(2) of Pub. L. 100–203 directed Secretary of Health and Human Services to provide for a study of the criteria used for the classification of hospitals as rural referral centers, and report to Congress, by not later than Mar. 1, 1989, on the study and on recommendations for the criteria that should be applied for the classification of hospitals as rural referral centers for cost reporting periods beginning on or after Oct. 1, 1989.

GRANT PROGRAM FOR RURAL HEALTH CARE TRANSITION

Section 4005(e) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VI, § 6003(g)(1)(B)(i), Dec. 19, 1989, 103

Stat. 2150; Pub. L. 103–432, title I, § 103(a)(1), (b), (c), Oct. 31, 1994, 108 Stat. 4404, 4405, provided that:

''(1) The Administrator of the Health Care Financing Administration, in consultation with the Assistant Secretary for Health (or a designee), shall establish a program of grants to assist eligible small rural hospitals and their communities in the planning and implementation of projects to modify the type and extent of services such hospitals provide in order to adjust for one or more of the following factors:

''(A) Changes in clinical practice patterns.

''(B) Changes in service populations.

''(C) Declining demand for acute-care inpatient hospital capacity.

''(D) Declining ability to provide appropriate staffing for inpatient hospitals.

''(E) Increasing demand for ambulatory and emergency services.

''(F) Increasing demand for appropriate integration of community health services.

''(G) The need for adequate access (including appropriate transportation) to emergency care and inpatient care in areas in which a significant number of underutilized hospital beds are being eliminated.

''(H) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

Each demonstration project under this subsection shall demonstrate methods of strengthening the financial and managerial capability of the hospital involved to provide necessary services. Such methods may include programs of cooperation with other health care providers, of diversification in services furnished (including the provision of home health services), of physician recruitment, and of improved management systems. Grants under this paragraph may be used to provide instruction and consultation (and such other services as the Administrator determines appropriate) via telecommunications to physicians in such rural areas (within the meaning of section 1886(d)(2)(D) of the Social Security Act [subsec. (d)(2)(D) of this section]) as are designated either class 1 or class 2 health manpower shortage areas under section 332(a)(1)(A) of the Public Health Service Act [section 254e(a)(1)(A) of this title].

''(2) For purposes of this subsection, the term 'eligible small rural hospital' means any rural primary care hospital designated by the Secretary under section 1820(i)(2) of the Social Security Act [section 1395i–4(i)(2) of this title], or any non-Federal, short-term general acute care hospital that—

''(A) is located in a rural area (as determined in accordance with subsection (d)),

''(B) has less than 100 beds, and

''(C) is not for profit.

''(3)(A) Any eligible small rural hospital that desires to modify the type or extent of health care services that it provides in order to adjust for one or more of the factors specified in paragraph (1) may submit an application to the Administrator and a copy of such application to the Governor of the State in which it is located. The application shall specify the nature of the project proposed by the hospital, the data and information on which the project is based, and a timetable (of not more than 24 months) for completion of the project. The application shall be submitted on or before a date specified by the Administrator and shall be in such form as the Administrator may require.

''(B) The Governor shall transmit to the Administrator, within a reasonable time after receiving a copy of an application pursuant to subparagraph (A), any comments with respect to the application that the Governor deems appropriate.

''(C) The Governor of a State may designate an appropriate State agency to receive and comment on applications submitted under subparagraph (A).

''(4) A hospital shall be considered to be located in a rural area for purposes of this subsection if it is treated as being located in a rural area for purposes of section 1886(d)(3)(D) of the Social Security Act [subsec. (d)(3)(D) of this section].

''(5) In determining which hospitals making application under paragraph (3) will receive grants under this subsection, the Administrator shall take into account—

''(A) any comments received under paragraph (3)(B) with respect to a proposed project;

''(B) the effect that the project will have on—

''(i) reducing expenditures from the Federal Hospital Insurance Trust Fund,

''(ii) improving the access of medicare beneficiaries to health care of a reasonable quality;

''(C) the extent to which the proposal of the hospital, using appropriate data, demonstrates an understanding of—

''(i) the primary market or service area of the hospital, and

''(ii) the health care needs of the elderly and disabled that are not currently being met by providers in such market or area, and

''(D) the degree of coordination that may be expected between the proposed project and—

''(i) other local or regional health care providers, and

''(ii) community and government leaders,

as evidenced by the availability of support for the project (in cash or in kind) and other relevant factors.

''(6) A grant to a hospital under this subsection may not exceed $50,000 a year and may not exceed a term of 3 years.

''(7)(A) Except as provided in subparagraphs (B) and (C), a hospital receiving a grant under this subsection may use the grant for any of expenses incurred in planning and implementing the project with respect to which the grant is made.

''(B) A hospital receiving a grant under this subsection for a project may not use the grant to retire debt incurred with respect to any capital expenditure made prior to the date on which the project is initiated.

''(C) Not more than one-third of any grant made under this subsection may be expended for capital-related costs (as defined by the Secretary for purposes of section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) of the project, except that this limitation shall not apply with respect to a grant used for the purposes described in subparagraph (D).

''(D) A hospital may use a grant received under this subsection to develop a plan for converting itself to a rural primary care hospital (as described in section 1820 of the Social Security Act [section 1395i–4 of this title]) or to develop a rural health network (as defined in section 1820(g) of such Act) in the State in which it is located if the State is receiving a grant under section 1820(a)(1).

''(8)(A) A hospital receiving a grant under this section [amending this section and section 1395tt of this title and enacting provisions set out as notes under this section and section 1395tt of this title] shall furnish the Administrator with such information as the Administrator may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

''(B) The Administrator shall report to the Congress at least once every 12 months on the program of grants established under this subsection. The report shall assess the functioning and status of the program, shall evaluate the progress made toward achieving the purposes of the program, and shall include any recommendations the Secretary may deem appropriate with respect to the program. In preparing the report, the Secretary shall solicit and include the comments and recommendations of private and public entities with an interest in rural health care.

''(C) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

''(9) For purposes of carrying out the program of grants under this subsection, there are authorized to be

appropriated from the Federal Hospital Insurance Trust Fund $15,000,000 for fiscal year 1989, $25,000,000 for each of the fiscal years 1990, 1991, and 1992 and $30,000,000 for each of fiscal years 1993 through 1997.''

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 6 on page 100 identifies a reporting provision which, as subsequently amended, is contained in section 4005(e)(8)(B) of Pub. L. 100–203, set out above), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

[Section 103(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending section 4005(e)(2) of Pub. L. 100–203, set out above] shall apply to grants made on or after October 1, 1994.'']

[Pub. L. 103–432, § 103(c), which directed amendment of section 4008(e)(8)(B) of Pub. L. 100–203, was executed by amending section 4005(e)(8)(B) of Pub. L. 100–203, set out above, to reflect the probable intent of Congress.]

[Section 6003(g)(1)(B)(ii) of Pub. L. 101–239 provided that: ''The amendments made by clause (i) [amending section 4005(e) of Pub. L. 100–203, set out above] shall apply with respect to applications for grants under the Rural Health Care Transition Grant Program described in section 4005(e) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203] submitted on or after October 1, 1989, except that the amendments made by subclauses (V) and (VII) of such clause shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''']

REPORTING HOSPITAL INFORMATION

Section 4007 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(6), July 1, 1988, 102 Stat. 770; Pub. L. 100–485, title VI, § 608(d)(18)(D), Oct. 13, 1988, 102 Stat. 2419, provided that:

''(a) DEVELOPMENT OF DATA BASE.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall develop and place into effect not later than June 1, 1989, a data base of the operating costs of inpatient hospital services with respect to all hospitals under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], which data base shall be updated at least once every quarter (and maintained for the 12-month period preceding any such update). The data base under this subsection may include data from preliminary cost reports (but the Secretary shall make available an updated analysis of the differences between preliminary and settled cost reports).

''(b) [Amended subsec. (f) of this section and enacted provisions set out as an Effective Date of 1987 Amendment note above.]

''(c) DEMONSTRATION PROJECT.—

''(1) The Secretary of Health and Human Services shall provide for a demonstration project to develop, and determine the costs and benefits of establishing a uniform system for the reporting by medicare participating hospitals of balance sheet and information described in paragraph (2). In conducting the project, the Secretary shall require hospitals in at least 2 States, one of which maintains a uniform hospital reporting system, to report such information based on standard information established by the Secretary.

''(2) The information described in this paragraph is as follows:

''(A) Hospital discharges (classified by class of primary payer).

''(B) Patient days (classified by class of primary payer).

''(C) Licensed beds, staffed beds, and occupancy.

''(D) Inpatient charges and revenues (classified by class of primary payer).

''(E) Outpatient charges and revenues (classified by class of primary payer).

''(F) Inpatient and outpatient hospital expenses (by cost-center classified for operating and capital).

''(G) Reasonable costs.

''(H) Other income.

''(I) Bad debt and charity care.

''(J) Capital acquisitions.

''(K) Capital assets.

The Secretary shall develop a definition of 'outpatient visit' for purposes of reporting hospital information.

''(3) The Secretary shall develop the system under subsection (c) in a manner so as—

''(A) to facilitate the submittal of the information in the report in an electronic form, and

''(B) to be compatible with the needs of the medicare prospective payment system.

''(4) The Secretary shall prepare and submit, to the Prospective Payment Assessment Commission, the Comptroller General, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, by not later than 45 days after the end of each calendar quarter, data collected under the system.

''(5) In paragraph (2):

''(A) The term 'bad debt and charity care' has such meaning as the Secretary establishes.

''(B) The term 'class' means, with respect to payers at least, the programs under this title XVIII of the Social Security Act [this subchapter], a State plan approved under title XIX of such Act [subchapter XIX of this chapter], other third party-payers, and other persons (including self-paying individuals).

''(6) The Secretary shall set aside at least a total of $3,000,000 for fiscal years 1988, 1989, and 1990 from existing research funds or from operations funds to develop the format, according to paragraph (1) and for data collection and analysis, but total funds shall not exceed $15,000,000.

''(7) The Comptroller General shall analyze the adequacy of the existing system for reporting of hospital information and the costs and benefits of data reporting under the demonstration system and will recommend improvements in hospital data collection and in analysis and display of data in support of policy making.

''(d) CONSULTATION.—The Secretary shall consult representatives of the hospital industry in carrying out the provisions of this section.''

HOSPITAL OUTLIER PAYMENTS AND POLICY

Section 4008(d) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(7), July 1, 1988, 102 Stat. 771, provided that:

''(1) INCREASE IN OUTLIER PAYMENTS FOR BURN CENTER DRGS.—

''(A) IN GENERAL.—For discharges classified in diagnosis-related groups relating to burn cases and occurring on or after April 1, 1988, and before October 1, 1989, the marginal cost of care permitted by the Secretary of Health and Human Services under section 1886(d)(5)(A)(iii) of the Social Security Act [subsec. (d)(5)(A)(iii) of this section] shall be 90 percent of the appropriate per diem cost of care or 90 percent of the cost for cost outliers.

''(B) BUDGET NEUTRALITY.—Subparagraph (A) shall be implemented in a manner that ensures that total payments under section 1886(d) of the Social Security Act are not increased or decreased by reason of the adjustments required by such subparagraph.

''(2) LIMITATION ON CHANGES IN OUTLIER REGULATIONS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act [Dec. 22, 1987] and before September 1, 1988, any final regulation which changes the method of payment for outlier cases under section 1886(d)(5)(A) of the Social Security Act [subsec. (d)(5)(A) of this section].

''(B) PROPAC REPORT.—The chairman of the Prospective Payment Assessment Commission shall report to the Congress and the Secretary of Health and

Human Services, by not later than June 1, 1988, on the method of payment for outlier cases under such section and providing more adequate and appropriate payments with respect to burn outlier cases.

''(3) REPORT ON OUTLIER PAYMENTS.—The Secretary of Health and Human Services shall include in the annual report submitted to the Congress pursuant to section 1875(b) of the Social Security Act [section 1395*ll*(b) of this title] a comparison with respect to hospitals located in an urban area and hospitals located in a rural area in the amount of reductions under section 1886(d)(3)(B) of the Social Security Act [subsec. (d)(3)(B) of this section] and additional payments under section 1886(d)(5)(A) of such Act.''

PROPAC STUDIES AND REPORTS

Section 4009(h) of Pub. L. 100–203 provided that:

''(1) PROPAC REPORTS ON STUDY OF DRG RATES FOR HOSPITALS IN RURAL AND URBAN AREAS.—The Prospective Payment Assessment Commission shall evaluate the study conducted by the Secretary of Health and Human Services pursuant to section 603(a)(2)(C)(i) of the Social Security Amendments of 1983 [section 603(a)(2)(C)(i) of Pub. L. 98–21, set out below] (relating to the feasibility, impact, and desirability of eliminating or phasing out separate urban and rural DRG prospective payment rates) and report its conclusions and recommendations to the Congress not later than March 1, 1988.

''(2) PROPAC REPORT ON SEPARATE URBAN PAYMENT RATES.—The Prospective Payment Assessment Commission shall evaluate the desirability of maintaining separate DRG prospective payment rates for hospitals located in large urban areas (as defined in section 1886(d)(2)(D)) of the Social Security Act [subsec. (d)(2)(D) of this section]) and in other urban areas, and shall report to Congress on such evaluation not later than January 1, 1989.

''(3) REPORT ON ADJUSTMENT FOR NON-LABOR COSTS.—The Prospective Payment Assessment Commission shall perform an analysis to determine the feasibility and appropriateness of adjusting the non-wage-related portion of the adjusted average standardized amounts under section 1886(d)(3) of the Social Security Act [subsec. (d)(3) of this section] based on area differences in hospitals' costs (other than wage-related costs) and input prices. The Commission shall report to the Congress on such analysis by not later than October 1, 1989.''

SPECIAL RULE FOR URBAN AREAS IN NEW ENGLAND

Section 4009(i) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(8)(C), July 1, 1988, 102 Stat. 772, provided that: ''In the case of urban areas in New England, the Secretary of Health and Human Services shall apply the second sentence of section 1886(d)(2)(D) of the Social Security Act [subsec. (d)(2)(D) of this section], as amended by section 4002(b) of this subtitle, as though 970,000 were substituted for 1,000,000.''

RURAL HEALTH MEDICAL EDUCATION DEMONSTRATION PROJECT

Section 4038 of Pub. L. 100–203, as amended by Pub. L. 101–239, title VI, § 6216, Dec. 19, 1989, 103 Stat. 2253, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into agreements with 10 sponsoring hospitals submitting applications under this subsection to conduct demonstration projects to assist resident physicians in developing field clinical experience in rural areas.

''(b) NATURE OF PROJECT.—Under a demonstration project conducted under subsection (a), a sponsoring hospital entering into an agreement with the Secretary under such subsection shall enter into arrangements with a small rural hospital to provide to such rural hospital, for a period of one to three months of training, physicians (in such number as the agreement under subsection (a) may provide) who have completed one year of residency training.

''(c) SELECTION.—(1) In selecting from among applications submitted under subsection (a), the Secretary shall ensure that four small rural hospitals located in different counties participate in the demonstration project and that—

''(A) two of such hospitals are located in rural counties of more than 2,700 square miles (one of which is east of the Mississippi River and one of which is west of such river); and

''(B) two of such hospitals are located in rural counties with (as determined by the Secretary) a severe shortage of physicians (one of which is east of the Mississippi River and one of which is west of such river).

''(2) The provisions of paragraph (1) shall not apply with respect to applications submitted as a result of amendments made by section 6216 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, amending this note].

''(d) CLARIFICATION OF PAYMENT.—For purposes of section 1886 of the Social Security Act [this section]—

''(1) with respect to subsection (d)(5)(B) of such section, any resident physician participating in the project under subsection (a) for any part of a year shall be treated as if he or she were working at the appropriate sponsoring hospital with an agreement under subsection (a) on September 1 of such year (and shall not be treated as if working at the small rural hospital); and

''(2) with respect to subsection (h) of such section, the payment amount permitted under such subsection for a sponsoring hospital with an agreement under subsection (a) shall be increased (for the duration of the project only) by an amount equal to the amount of any direct graduate medical education costs (as defined in paragraph (5) of such subsection (h)) incurred by such hospital in supervising the education and training activities under a project under subsection (a).

''(e) DURATION OF PROJECT.—Each demonstration project under subsection (a) shall be commenced not later than six months after the date of enactment of this Act [Dec. 22, 1987] (or the date of the enactment of the Omnibus Budget Reconciliation Act of 1989 [Dec. 19, 1989], in the case of a project conducted as a result of the amendments made by section 6216 of such Act [Pub. L. 101–239, amending this note]) and shall be conducted for a period of three years.

''(f) DEFINITION.—In this section, the term 'sponsoring hospital' means a hospital that receives payments under sections 1886(d)(5)(B) and 1886(h) of the Social Security Act [subsecs. (d)(5)(B) and (h) of this section].''

PROHIBITION ON POLICY BY SECRETARY OF HEALTH AND HUMAN SERVICES TO REDUCE EXPENDITURES IN FISCAL YEARS 1989, 1990, AND 1991

Section 4039(d) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 426(e), July 1, 1988, 102 Stat. 814; Pub. L. 101–239, title VI, § 6207(b), Dec. 19, 1989, 103 Stat. 2245, provided that: ''Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act [Dec. 22, 1987] and before October 15, 1990, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in fiscal year 1989 or in fiscal year 1990 or in fiscal year 1991 of more than $50,000,000.''

TEMPORARY EXTENSION OF PAYMENT POLICIES FOR INPATIENT HOSPITAL SERVICES

Pub. L. 100–119, title I, § 107(a)(1), Sept. 29, 1987, 101 Stat. 782, as amended by Pub. L. 100–203, title IV, § 4002(f)(2), Dec. 22, 1987, 101 Stat. 1330–45, provided that: ''Notwithstanding any other provision of law, with respect to payment for inpatient hospital services under section 1886 of the Social Security Act [this section]:

''(A) TEMPORARY FREEZE IN PPS HOSPITAL RATES.—For purposes of subsection (d) of such section for discharges occurring during the period beginning on October 1, 1987, and ending on November 20, 1987 (in this paragraph referred to as the 'extension period'), the applicable percentage increase under subsection (b)(3)(B) of such section with respect to fiscal year 1988 is deemed to be 0 percent.

''(B) TEMPORARY FREEZE IN PAYMENT BASIS.—

''(i) EXTENSION OF BLENDED DRG RATE.—For purposes of subsection (d)(1) of such section, the 'applicable combined adjusted DRG prospective payment rate' for discharges occurring—

''(I) during the extension period is the rate specified in subsection (d)(1)(D)(ii) of such section, or

''(II) after such period is the national adjusted prospective payment rate determined under subsection (d)(3) of such section.

''(ii) EXTENSION OF HOSPITAL-SPECIFIC PAYMENT.—For the first 51 days of a hospital cost reporting period beginning during fiscal year 1988, payment shall be made under clause (ii) (rather than clause (iii)) of subsection (d)(1)(A) of such section (subject to clause (i) of this subparagraph), the target percentage and DRG percentage shall be those specified in subsection (d)(1)(C)(iv) of such section, and the applicable percentage increase in a hospital's target amount shall be deemed to be 0 percent.

''(C) TEMPORARY FREEZE IN AMOUNTS OF PAYMENT FOR CAPITAL.—For payments attributable to portions of cost reporting periods occurring during the extension period, the percent specified in subsection (g)(3)(A)(ii) of such section is deemed to be 3.5 percent.

''(D) TEMPORARY FREEZE IN RETURN ON EQUITY REDUCTIONS.—For the first 51 days of a cost reporting period beginning during fiscal year 1988, subsection (g)(2) of such section shall be applied as though the applicable percentage were 75 percent.

''(E) TEMPORARY FREEZE IN PAYMENTS RATES FOR PPS-EXEMPT HOSPITALS.—For purposes of payment under subsection (b) of such section for cost reporting periods beginning during fiscal year 1988, with respect to the first 51 days of such a period the applicable percentage increase under paragraph (3)(B) of such subsection is deemed to be 0 percent.''

[Section 4002(f)(2) of Pub. L. 100–203 provided that the amendment of section 107(a)(1) of Pub. L. 100–119, set out above, by section 4002(f)(2) of Pub. L. 100–203 is effective as of Sept. 29, 1987.]

FREEZING CERTAIN CHANGES IN MEDICARE PAYMENT REGULATIONS AND POLICIES

Pub. L. 100–119, title I, § 107(b), Sept. 29, 1987, 101 Stat. 783, provided that:

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue after September 18, 1987, and before November 21, 1987—

''(A) any final regulation that changes the policy with respect to payment under title XVIII of the Social Security Act [this subchapter] to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title;

''(B) any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under such title; or

''(C) any final regulation that changes the policy under such title with respect to payment for a return on equity capital for outpatient hospital services.

The final regulation of the Health Care Financing Administration published on September 1, 1987 (52 Federal Register 32920) and relating to changes to the return on equity capital provisions for outpatient hospital services is void and of no effect.

''(2) OTHER COST SAVINGS POLICIES.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after September 18, 1987, and before November 21, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1988 of more than $50,000,000. Any regulation, instruction, or policy which is issued in violation of this paragraph is void and of no effect.

''(3) EXCEPTION.—Paragraphs (1) and (2) shall not be construed to apply to any regulation, instruction, or policy required to implement the amendment made by section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 [section 9311(a) of Pub. L. 99–509, which amended section 1395g of this title] (relating to periodic interim payments).''

MAINTAINING CURRENT OUTLIER POLICY IN FISCAL YEAR 1987

Section 9302(b)(3) of Pub. L. 99–509 provided that: ''For payments made under section 1886(d) of the Social Security Act [subsec. (d) of this section] for discharges occurring in fiscal year 1987—

''(A) the proportions under paragraph (3)(B) for hospitals located in urban and rural areas shall be established at such levels as produce the same total dollar reduction under such paragraph as if this section had not been enacted; and

''(B) the thresholds and standards used for making additional payments under paragraph (5) of such section shall be the same as those in effect as of October 1, 1986.''

EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATION

Section 6003(d) of Pub. L. 101–239 provided that: ''Any hospital that is classified as a regional referral center under section 1886(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] as of September 30, 1989, including a hospital so classified as a result of section 9302(d)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509, set out below], shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1989, and before October 1, 1992.''

Section 9302(d)(2) of Pub. L. 99–509 provided that: ''Any hospital that is classified as a regional referral center under section 1886(d)(5)(C)(i) of the Social Security Act [subsec. (d)(5)(C)(i) of this section] on the date of the enactment of this Act [Oct. 21, 1986] shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.''

BUDGET-NEUTRAL IMPLEMENTATION

Section 9302(d)(3) of Pub. L. 99–509 provided that: ''Paragraph (2) [set out as a note above] and the amendment made by paragraph (1)(A) [amending this section] shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act [this section] are not increased or decreased by reason of the classifications required by such paragraph or amendment.''

PROMULGATION OF NEW RATE

Section 9302(f) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act [Oct. 21, 1986], for the publication of the payments rates that will apply under section 1886 of the Social Security Act [this section], for discharges occurring on or after October 1, 1986, taking into account the amendments made by this section [amending this section], without regard to the provisions of chapter 5 of title 5, United States Code.''

MISCELLANEOUS ACCOUNTING PROVISION

Section 9307(d) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4008(e), Dec. 22, 1987, 101 Stat.

1330–56, provided that: ''Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section], in the case of a hospital that—

''(1) had a cost reporting period beginning on September 28, 29, or 30 of 1985,

''(2) is located in a State in which inpatient hospital services were paid in fiscal year 1985 pursuant to a Statewide demonstration project under section 402 of the Social Security Amendments of 1967 [section 402 of Pub. L. 90–248, enacting section 1395b–1 of this title and amending section 1395*ll* of this title] and section 222 of the Social Security Amendments of 1972 [section 222 of Pub. L. 92–603, amending sections 1395b–1 and 1395*ll* of this title and enacting provisions set out as a note under section 1395b–1 of this title], and

''(3) elects, by notice to the Secretary of Health and Human Services by not later than April 1, 1988, to have this subsection apply,

during the first 7 months of such cost reporting period the 'target percentage' shall be 75 percent and the 'DRG percentage' shall be 25 percent, and during the remaining 5 months of such period the 'target percentage' and the 'DRG percentage' shall each be 50 percent.''

[Section 4008(e) of Pub. L. 100–203 provided that the amendment of section 9307(d) of Pub. L. 99–509, set out above, by section 4008(e) of Pub. L. 100–203 is effective as if included in the enactment of Pub. L. 99–509.]

TREATMENT OF CAPITAL-RELATED REGULATIONS

Section 9321(c) of Pub. L. 99–509, as amended by Pub. L. 100–119, title I, § 107(a)(2), Sept. 29, 1987, 101 Stat. 783; Pub. L. 100–203, title IV, § 4009(j)(6)(D), (F), Dec. 22, 1987, 101 Stat. 1330–59, provided that:

''(1) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE NOVEMBER 21, 1987.—Notwithstanding any other provision of law (except as provided in paragraph (3)), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before November 21, 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act [part A of this subchapter]. Any regulation published in violation of the previous sentence is void and of no effect.

''(2) NOT INCLUDING CAPITAL-RELATED REGULATIONS IN BUDGET BASELINE.—Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act [subsecs. (b)(3)(B), (d)(3)(A), and (e)(4) of this section] shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (4)).

''(3) EXCEPTION.—Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing section 1861(v)(1)(O) and 1886(g)(2) of the Social Security Act [section 1395x(v)(1)(O) of this title and subsec. (g)(2) of this section] and section 1886(g)(3)(A) and (B) of the Social Security Act [subsec. (g)(3)(A) and (B) of this section] (as amended by section 9303(a) of this Act).

''(4) CAPITAL-RELATED COSTS DEFINED.—In this subsection, the term 'capital-related costs' means those capital-related costs that are specifically excluded, under the second sentence of section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section], from the term 'operating costs of inpatient hospital services' (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.''

LIMITATION ON AUTHORITY TO ISSUE CERTAIN FINAL REGULATIONS AND INSTRUCTIONS RELATING TO HOSPITALS OR PHYSICIANS

Section 9321(d) of Pub. L. 99–509 provided that: ''Notwithstanding any other provision of law, except as required to implement specific provisions required under statute and except as provided under subsection (c) [set out above] with respect to a regulation described in that subsection, the Secretary of Health and Human Services is not authorized to issue in final form after the date of the enactment of this Act [Oct. 21, 1986] and before September 1, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in fiscal year 1988 of more than $50,000,000, and which relates to hospitals or physicians.''

STUDY OF METHODOLOGY FOR AREA WAGE ADJUSTMENT FOR CENTRAL CITIES; REPORT TO CONGRESS

Section 9103(b) of Pub. L. 99–272 provided that:

''(1) The Secretary of Health and Human Services, in consultation with the Prospective Payment Assessment Commission, shall collect information and shall develop one or more methodologies to permit the adjustment of the wage indices used for purposes of sections 1886(d)(2)(C)(ii), 1886(d)(2)(H), and 1886(d)(3)(E) of the Social Security Act [subsec. (d)(2)(C)(ii), (H), and (3)(E) of this section], in order to more accurately reflect hospital labor markets, by taking into account variations in wages and wage-related costs between the central city portion of urban areas and other parts of urban areas.

''(2) The Secretary shall report to Congress on the information collected and the methodologies developed under paragraph (1) not later than May 1, 1987. The report shall include a recommendation as to the feasibility and desirability of implementing such methodologies.''

CONTINUATION OF MEDICARE REIMBURSEMENT WAIVERS FOR CERTAIN HOSPITALS PARTICIPATING IN REGIONAL HOSPITAL REIMBURSEMENT DEMONSTRATIONS

Section 9108 of Pub. L. 99–272 provided that:

''(a) CONTINUATION OF WAIVERS.—A hospital reimbursement control system which, on January 1, 1985, was carrying out a demonstration under a contract which had been approved by the Secretary of Health and Human Services pursuant to section 222(a) of the Social Security Amendments of 1972 [section 222(a) of Pub. L. 92–603, set out as a note under section 1395b–1 of this title], or under section 402 of the Social Security Amendments of 1967 (as amended by section 222(b) of the Social Security Amendments of 1972) [section 1395b–1 of this title], shall be deemed to meet the requirements of section 1886(c)(1)(A) of the Social Security Act [subsec. (c)(1)(A) of this section] if such system applies—

''(1) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the geographic area served by such system on January 1, 1985, and

''(2) to the review of at least 75 percent of—

''(A) all revenues or expenses in such geographic area for inpatient hospital services, and

''(B) revenues or expenses in such geographic area for inpatient hospital services provided under the State's plan approved under title XIX [subchapter XIX of this chapter].

''(b) APPROVAL.—In the case of a hospital cost control system described in subsection (a), the requirements of section 1886(c) of the Social Security Act [subsec. (c) of this section] which apply to States shall instead apply to such system and, for such purposes, any reference to a State is deemed a reference to such system.

''(c) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

INFORMATION ON IMPACT OF PPS PAYMENTS ON HOSPITALS

Section 9114 of Pub. L. 99–272 provided that:

''(a) DISCLOSURE OF INFORMATION.—The Secretary of Health and Human Services shall make available to the Prospective Payment Assessment Commission, the

Congressional Budget Office, the Comptroller General, and the Congressional Research Service the most current information on the payments being made under section 1886 of the Social Security Act [this section] to individual hospitals. Such information shall be made available in a manner that permits examination of the impact of such section on hospitals.

''(b) CONFIDENTIALITY.—Information disclosed under subsection (a) shall be treated as confidential and shall not be subject to further disclosure in a manner that permits the identification of individual hospitals.''

SPECIAL RULES FOR IMPLEMENTATION OF HOSPITAL REIMBURSEMENT

Section 9115 of Pub. L. 99–272 provided that:

''(a) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this subpart and implementing the amendments made by this subpart [subpart A (§§ 9101–9115) of part 1 of subtitle A of title IX of Pub. L. 99–272, see Tables for classification].

''(b) USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subpart and the amendments made by this subpart.''

APPOINTMENT OF ADDITIONAL MEMBERS TO PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Section 9127(b) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(8), Oct. 22, 1986, 100 Stat. 2933, provided that: ''The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Prospective Payment Assessment Commission, as required by the amendment made by subsection (a) [amending this section], no later than 60 days after the date of the enactment of this Act [Apr. 7, 1986], for terms of three years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year.''

STUDIES BY SECRETARY; GAO STUDY; REPORT ON UNIFORMITY OF APPROVED FTE RESIDENT AMOUNTS; STUDY ON FOREIGN MEDICAL GRADUATES; ESTABLISHING PHYSICIAN IDENTIFIER SYSTEM; PAPERWORK REDUCTION

Section 9202(c)–(h) of Pub. L. 99–272, as amended by Pub. L. 100–203, title IV, § 4085(f), Dec. 22, 1987, 101 Stat. 1330–131; Pub. L. 101–508, title IV, § 4118(i)(2), Nov. 5, 1990, 104 Stat. 1388–70, provided that:

''(c) STUDIES BY SECRETARY.—(1) The Secretary of Health and Human Services shall conduct a study with respect to approved educational activities relating to nursing and other health professions for which reimbursement is made to hospitals under title XVIII of the Social Security Act [this subchapter]. The study shall address—

''(A) the types and numbers of such programs, and number of students supported or trained under each program;

''(B) the fiscal and administrative relationships between the hospitals involved and the schools with which the programs and students are affiliated; and

''(C) the types and amounts of expenses of such programs for which reimbursement is made, and the financial and other contributions which accrue to the hospital as a consequence of having such programs.

The Secretary shall report the results of such study to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives prior to December 31, 1987.

''(2) The Secretary shall conduct a separate study of the advisability of continuing or terminating the exception under section 1886(h)(5)(F)(ii) of the Social Security Act [subsec. (h)(5)(F)(ii) of this section] for geriatric residencies and fellowships, and of expanding such exception to cover other educational activities, particularly those which are necessary to meet the projected health care needs of Medicare beneficiaries. Such study shall also examine the adequacy of the supply of faculty in the field of geriatrics. The Secretary shall report the results of such study to the committees described in paragraph (1) prior to July 1, 1990.

''(d) GAO STUDY.—(1) The Comptroller General shall conduct a study of the variation in the amounts of payments made under title XVIII of the Social Security Act [this subchapter] with respect to patients in different teaching hospital settings and in the amounts of such payments which are made with respect to patients who are treated in teaching and nonteaching hospital settings. Such study shall identify the components of such payments (including payments with respect to inpatient hospital services, physicians' services, and capital costs, and, in the case of teaching hospital patients, payments with respect to direct and indirect teaching costs) and shall account, to the extent feasible, for any variations in the amounts of the payment components between teaching and nonteaching settings and among different teaching settings.

''(2) In carrying out such study, the Comptroller General may utilize a sample of hospital patients and any other data sources which he deems appropriate, and shall, to the extent feasible, control for differences in severity of illness levels, area wage levels, levels of physician reasonable charges for like services and procedures, and for other factors which could affect the comparability of patients and of payments between teaching and nonteaching settings and among teaching settings. The information obtained in the study shall be coordinated with the information obtained in conducting the study of teaching physicians' services under section 2307(c) of the Deficit Reduction Act of 1984 [section 2307(c) of Pub. L. 98–369, set out as a note under section 1395u of this title].

''(3) The Comptroller General shall report the results of the study to the committees described in subsection (c)(1) prior to December 31, 1987.

''(e) REPORT ON UNIFORMITY OF APPROVED FTE RESIDENT AMOUNTS.—The Secretary of Health and Human Services shall report to the committees described in subsection (c)(1), not later than December 31, 1987, on whether section 1886(h) of the Social Security Act [subsec. (h) of this section] should be revised to provide for greater uniformity in the approved FTE resident amounts established under paragraph (2) of that section, and, if so, how such revisions should be implemented.

''(f) STUDY ON FOREIGN MEDICAL GRADUATES.—The Secretary of Health and Human Services shall study, and report to the committees described in subsection (c)(1), not later than December 31, 1987, respecting the use of physicians who are foreign medical graduates (within the meaning of section 1886(h)(5)(D) of the Social Security Act [subsec. (h)(5)(D) of this section]) in the provision of health care services (particularly inpatient and outpatient hospital services) to medicare beneficiaries. Such study shall evaluate—

''(1) the types of services provided;

''(2) the cost of providing such services, relative to the cost of other physicians providing the services or other approaches to providing the services;

''(3) any deficiencies in the quality of the services provided, and methods of assuring the quality of such services; and

''(4) the impact on costs of and access to services if medicare payment for hospitals' costs of graduate medical education of foreign medical graduates were phased out.

''[(g) Repealed. Pub. L. 101–508, title IV, § 4118(i)(2), Nov. 5, 1990, 104 Stat. 1388–70.]

''(h) PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and the amendments made by this section [amending this section and section 1395x of this title and enacting notes

set out under this section and section 1395x of this title].''

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

Section 9202(j) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(10), Oct. 22, 1986, 100 Stat. 2933, provided that: ''In the case of a hospital in a State that has had a waiver approved under section 1886(c) of the Social Security Act [subsec. (c) of this section] or section 402 of the Social Security Amendments of 1967 [section 1395b–1 of this title], for cost reporting periods beginning on or after January 1, 1986, if the waiver is terminated—

''(1) the Secretary of Health and Human Services shall permit the hospital to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the medicare cost report;

''(2) the Secretary may make appropriate adjustments in the regional adjusted DRG prospective payment rate (for the region in which the State is located), based on the assumption that all teaching hospitals in the State use the medicare cost report; and

''(3) the Secretary shall adjust the hospital-specific portion of payment under section 1886(d) of such Act [subsec. (d) of this section] for any such hospital that actually chooses to use the medicare cost report.

The Secretary shall implement this subsection based on the best available data.''

MORATORIUM ON LABORATORY PAYMENT DEMONSTRATIONS; COOPERATION IN STUDY; REPORT TO CONGRESS

Section 9204 of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, § 9339(e), Oct. 21, 1986, 100 Stat. 2037; Pub. L. 100–203, title IV, § 4085(c), Dec. 22, 1987, 101 Stat. 1330–130; Pub. L. 100–647, title VIII, § 8426, Nov. 10, 1988, 102 Stat. 3803, provided that:

''(a) MORATORIUM.—Prior to January 1, 1990, the Secretary of Health and Human Services shall not conduct any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act [this subchapter]. The Secretary may contract for the design of, and site selection for, such demonstration projects.

''(b) COOPERATION IN STUDY.—The Secretary of Health and Human Services and the Comptroller General shall assist representatives of clinical laboratories in the industry's conduct of a study to determine whether methods exist which are better than competitive bidding for purposes of utilizing competitive market forces in setting payment levels for laboratory services under title XVIII of the Social Security Act [this subchapter]. If such a study is conducted by the clinical laboratory industry, the Secretary and the Comptroller General shall comment on such study and submit such comments and the study to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce.''

MEDICARE HOSPITAL AND PHYSICIAN PAYMENT PROVISIONS; EXTENSION PERIOD

Pub. L. 99–107, § 5, Sept. 30, 1985, 99 Stat. 479, as amended by Pub. L. 99–155, § 2(d), Nov. 14, 1985, 99 Stat. 814; Pub. L. 99–181, § 4, Dec. 13, 1985, 99 Stat. 1172; Pub. L. 99–189, § 4, Dec. 18, 1985, 99 Stat. 1184; Pub. L. 99–201, § 2, Dec. 23, 1985, 99 Stat. 1665; Pub. L. 99–272, title IX, §§ 9101(a), 9301(a), Apr. 7, 1986, 100 Stat. 153, 184, provided that:

''(a) MAINTAINING EXISTING HOSPITAL PAYMENT RATES.—Notwithstanding any other provision of law, the amount of payment under section 1886 of the Social Security Act [this section] for inpatient hospital services for discharges occurring (and cost reporting periods beginning) during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services for a discharge occurring on (or the cost reporting period beginning immediately on or before) September 30, 1985.

''(b) MAINTAINING EXISTING PAYMENT RATES FOR PHYSICIANS' SERVICES.—Notwithstanding any other provision of law, the amount of payment under part B of title XVIII of the Social Security Act [part B of this subchapter] for physicians' services which are furnished during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services furnished on September 30, 1985, and the 15-month period, referred to in section 1842(j)(1) of such Act [section 1395u(j)(1) of this title], shall be deemed to include the extension period.

''(c) EXTENSION PERIOD DEFINED.—

''(1) HOSPITAL PAYMENTS.—For purposes of subsection (a), the term 'extension period' means the period beginning on October 1, 1985, and ending on April 30, 1986.

''(2) PHYSICIAN PAYMENTS.—For purposes of subsection (b), the term 'extension period' means the period beginning on October 1, 1985, and ending on April 30, 1986.''

[Amendment of section 5 of Pub. L. 99–107, set out above, by section 9101(a) of Pub. l. 99–272 effective Mar. 15, 1986, see section 9101(d) of Pub. L. 99–272, set out above.]

DEFINITION OF HOSPITAL SERVING SIGNIFICANTLY DISPROPORTIONATE NUMBER OF LOW-INCOME PATIENTS OR PATIENTS ENTITLED TO HOSPITAL INSURANCE BENEFITS FOR AGED AND DISABLED; IDENTIFICATION

Section 2315(h) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall, prior to December 31, 1984—

''(1) develop and publish a definition of 'hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A' of title XVIII of the Social Security Act [part A of this subchapter] for purposes of section 1886(d)(5)(C)(i) of that Act [subsec. (d)(5)(C)(i) of this section], and

''(2) identify those hospitals which meet such definition, and make such identity available to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

PROSPECTIVE PAYMENT WAGE INDEX; STUDIES AND REPORTS TO CONGRESS

Section 2316 of Pub. L. 98–369, as amended by Pub. L. 99–272, title IX, § 9103(a)(1), Apr. 7, 1986, 100 Stat. 156, provided that:

''(a) The Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall conduct a study to develop an appropriate index for purposes of adjusting payment amounts under section 1886(d) of the Social Security Act [subsec. (d) of this section] to reflect area differences in average hospital wage levels, as required under paragraphs (2)(H) and (3)(E) of such section [subsec. (d)(2)(H) and (3)(E) of this section], taking into account wage differences of full time and part time workers. The Secretary of Health and Human Services shall report the results of such study to the Congress not later than 30 days after the date of the enactment of this Act [July 18, 1984], including any changes which the Secretary determines to be necessary to provide for an appropriate index.

''(b) The Secretary shall adjust the payment amounts for hospitals for discharges occurring on or after May 1, 1986, to reflect the changes the Secretary has promulgated in final regulations (on September 3, 1985) relating to the hospital wage index under section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section]. For discharges occurring after September 30, 1986, the Secretary shall provide for such periodic adjustments in the appropriate wage index used under that section as may be necessary, taking into account changes in the wage levels and relative proportions of full-time and part-time workers.

''(c) The Secretary shall conduct a study and report to the Congress on proposed criteria under which, in the case of a hospital that demonstrates to the Sec-

retary in a current fiscal year that the adjustment being made under paragraph (2)(H) or (3)(E) of section 1886(d) of the Social Security Act [subsec. (d)(2)(H) or (3)(E) of this section] for that hospital's discharges in that fiscal year does not accurately reflect the wage levels in the labor market serving the hospital, the Secretary, to the extent he deems appropriate, would modify such adjustment for that hospital for discharges in the subsequent fiscal year to take into account a difference in payment amounts in that current fiscal year to the hospital that resulted from such inaccuracy.''

[Section 9103(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this note] shall be effective as if it had been included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].'']

DIFFERENT TREATMENT OF CAPITAL-PROJECTS-RELATED COSTS BEFORE AND AFTER IMPLEMENTATION OF SYSTEM FOR INCLUDING SUCH COSTS UNDER PROSPECTIVELY DETERMINED PAYMENT RATE

Section 601(a)(3) of Pub. L. 98–21 provided that: ''It is the intent of Congress that, in considering the implementation of a system for including capital-related costs under a prospectively determined payment rate for inpatient hospital services, costs related to capital projects for which expenditures are obligated on or after the effective date of the implementation of such a system, may or may not be distinguished and treated differently from costs of projects for which expenditures were obligated before such date.''

NEW ENGLAND HOSPITALS; CLASSIFICATION AS URBAN OR RURAL

Section 601(g) of Pub. L. 98–21 provided that: ''In determining whether a hospital is in an urban or rural area for purposes of section 1886(d) of the Social Security Act [subsec. (d) of this section], the Secretary of Health and Human Services shall classify any hospital located in New England as being located in an urban area if such hospital was classified as being located in an urban area under the Standard Metropolitan Statistical Area system of classification in effect in 1979.''

REPORTS, EXPERIMENTS, AND DEMONSTRATION PROJECTS RELATED TO INCLUSION IN PROSPECTIVE PAYMENT AMOUNTS OF INPATIENT HOSPITAL SERVICE CAPITAL-RELATED COSTS

Section 603(a) of title VI of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title III, § 2317, July 18, 1984, 98 Stat. 1081; Pub. L. 99–509, title IX, § 9305(i)(1), Oct. 21, 1986, 100 Stat. 1993; Pub. L. 104–66, title I, § 1061(d), Dec. 21, 1995, 109 Stat. 720, directed Secretary of Health and Human Services to report to Congress within 18 months after Apr. 20, 1983, on legislation by which capital-related costs associated with inpatient hospital services could be included within the prospective payment amounts computed under subsec. (d) of this section, further provided that the Secretary was to study and report to Congress on reimbursement of sole community hospitals based on variations in occupancy, on coordination of an information transfer between parts A and B of this subchapter, on treatment of uncompensated care costs and adjustments appropriate for large rural teaching hospitals, and on advisability of having hospitals make cost-of-care information to certain patients, and further provided that the Secretary was to study and report to Congress on a method for including hospitals outside the 50 States and the District of Columbia under a prospective payment system.

INAPPLICABILITY OF COORDINATION OF FEDERAL INFORMATION POLICY TO THE COLLECTION OF INFORMATION

Section 101(b)(2)(B) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 309(a)(1), Jan. 12, 1983, 96 Stat. 2408, provided that: ''Chapter 35 of title 44, United States Code, shall not apply, until January 1, 1984, to collection of information and information collection requests which the Secretary of Health and Human Services determines to be necessary to carry out the amendments made by this section [amendments by section 101(a) of Pub. L. 97–248, enacting this section and amending section 1395x of this title].''

§ 1395xx. Payment of provider-based physicians and payment under certain percentage arrangements

(a) Criteria; amount of payments

(1) The Secretary shall by regulation determine criteria for distinguishing those services (including inpatient and outpatient services) rendered in hospitals or skilled nursing facilities—

(A) which constitute professional medical services, which are personally rendered for an individual patient by a physician and which contribute to the diagnosis or treatment of an individual patient, and which may be reimbursed as physicians' services under part B, and

(B) which constitute professional services which are rendered for the general benefit to patients in a hospital or skilled nursing facility and which may be reimbursed only on a reasonable cost basis or on the bases described in section 1395ww of this title.

(2)(A) For purposes of cost reimbursement, the Secretary shall recognize as a reasonable cost of a hospital or skilled nursing facility only that portion of the costs attributable to services rendered by a physician in such hospital or facility which are services described in paragraph (1)(B), apportioned on the basis of the amount of time actually spent by such physician rendering such services.

(B) In determining the amount of the payments which may be made with respect to services described in paragraph (1)(B), after apportioning costs as required by subparagraph (A), the Secretary may not recognize as reasonable (in the efficient delivery of health services) such portion of the provider's costs for such services to the extent that such costs exceed the reasonable compensation equivalent for such services. The reasonable compensation equivalent for any service shall be established by the Secretary in regulations.

(C) The Secretary may, upon a showing by a hospital or facility that it is unable to recruit or maintain an adequate number of physicians for the hospital or facility on account of the reimbursement limits established under this subsection, grant exceptions to such reimbursement limits as may be necessary to allow such provider to provide a compensation level sufficient to provide adequate physician services in such hospital or facility.

(b) Prohibition of recognition of payments under certain percentage agreements

(1) Except as provided in paragraph (2), in the case of a provider of services which is paid under this subchapter on a reasonable cost basis, or other basis related to costs that are reasonable, and which has entered into a contract for the purpose of having services furnished for or on behalf of it, the Secretary may not include any cost incurred by the provider under the contract if the amount payable under the contract by the provider for that cost is determined on the basis of a percentage (or other proportion) of the pro-

vider's charges, revenues, or claim for reimbursement.

(2) Paragraph (1) shall not apply—

(A) to services furnished by a physician and described in subsection (a)(1)(B) of this section and covered by regulations in effect under subsection (a) of this section, and

(B) under regulations established by the Secretary, where the amount involved under the percentage contract is reasonable and the contract—

(i) is a customary commercial business practice, or

(ii) provides incentives for the efficient and economical operation of the provider of services.

(Aug. 14, 1935, ch. 531, title XVIII, § 1887, as added and amended Pub. L. 97–248, title I, §§ 108(a)[(1)], 109(a), Sept. 3, 1982, 96 Stat. 337, 338; Pub. L. 98–21, title VI, § 602(j), Apr. 20, 1983, 97 Stat. 165.)

AMENDMENTS

1983—Subsec. (a)(1)(B). Pub. L. 98–21 inserted ''or on the bases described in section 1395ww of this title''.

1982—Subsec. (b). Pub. L. 97–248, § 109(a)(2), added subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 109(c)(1), (2) of Pub. L. 97–248 provided that:

''(1) The amendments made by this section [amending this section and section 1395x of this title] shall become effective on the date of the enactment of this Act [Sept. 3, 1982], except that section 1887(b)(1) of the Social Security Act [subsec. (b)(1) of this section] shall not apply before October 1, 1982, to services furnished by a physician and described in section 1887(a)(1)(B) of such Act [subsec. (a)(1)(B) of this section].

''(2) In the case of a contract with a provider of services entered into prior to the date of the enactment of this Act [Sept. 3, 1982], the amendment made by subsection (a) [amending this section] shall apply to payments under such contract (A) 30 days after the first date (after such date of enactment) the provider of services may unilaterally terminate the contract, or (B) one year after the date of the enactment of this Act, whichever is earlier.''

EFFECTIVE DATE OF REGULATIONS

Section 108(b), formerly § 108(c), of Pub. L. 97–248, as redesignated by Pub. L. 97–448, title III, § 309(a)(3), Jan. 12, 1983, 96 Stat. 2408, provided that: ''The Secretary of Health and Human Services shall first promulgate regulations to carry out section 1887(a) of the Social Security Act [subsec. (a) of this section] not later than October 1, 1982. Such regulations shall become effective on October 1, 1982, and shall be effective with respect to cost reporting periods ending after September 30, 1982, but in the case of any cost reporting period beginning before October 1, 1982, any reduction in payments under title XVIII of the Social Security Act [this subchapter] to a hospital or skilled nursing facility resulting from such regulations shall be imposed only in proportion to the part of the period which occurs after September 30, 1982.''

§ 1395yy. Payment to skilled nursing facilities for routine service costs

(a) Per diem limitations

The Secretary, in determining the amount of the payments which may be made under this subchapter with respect to routine service costs of extended care services shall not recognize as reasonable (in the efficient delivery of health services) per diem costs of such services to the extent that such per diem costs exceed the following per diem limits, except as otherwise provided in this section:

(1) With respect to freestanding skilled nursing facilities located in urban areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in urban areas.

(2) With respect to freestanding skilled nursing facilities located in rural areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in rural areas.

(3) With respect to hospital-based skilled nursing facilities located in urban areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in urban areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in urban areas exceeds the limit for freestanding skilled nursing facilities located in urban areas.

(4) With respect to hospital-based skilled nursing facilities located in rural areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in rural areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in rural areas exceeds the limit for freestanding skilled nursing facilities located in rural areas.

In applying this subsection the Secretary shall make appropriate adjustments to the labor related portion of the costs based upon an appropriate wage index, and shall, for cost reporting periods beginning on or after October 1, 1992, on or after October 1, 1995, and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection, except that the limits effective for cost reporting periods beginning on or after October 1, 1997, shall be based on the limits effective for cost reporting periods beginning on or after October 1, 1996.

(b) Excess overhead allocations for hospital-based facilities

With respect to a hospital-based skilled nursing facility, the Secretary may not recognize as reasonable the portion of the cost differences between hospital-based and freestanding skilled nursing facilities attributable to excess overhead allocations.

(c) Adjustments in limitations; publication of data

The Secretary may make adjustments in the limits set forth in subsection (a) of this section

with respect to any skilled nursing facility to the extent the Secretary deems appropriate, based upon case mix or circumstances beyond the control of the facility. The Secretary shall publish the data and criteria to be used for purposes of this subsection on an annual basis.

(d) Access to skilled nursing facilities

(1) Subject to subsection (e) of this section, any skilled nursing facility may choose to be paid under this subsection on the basis of a prospective payment for all routine service costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) and capital-related costs of extended care services provided in a cost reporting period if such facility had, in the preceding cost reporting period, fewer than 1,500 patient days with respect to which payments were made under this subchapter. Such prospective payment shall be in lieu of payments which would otherwise be made for routine service costs pursuant to section 1395x(v) of this title and subsections (a) through (c) of this section and capital-related costs pursuant to section 1395x(v) of this title. This subsection shall not apply to a facility for any cost reporting period immediately following a cost reporting period in which such facility had 1,500 or more patient days with respect to which payments were made under this subchapter, without regard to whether payments were made under this subsection during such preceding cost reporting period.

(2)(A) The amount of the payment under this section shall be determined on a per diem basis.

(B) Subject to the limitations of subparagraph (C), for skilled nursing facilities located—

(i) in an urban area, the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in urban areas within the same region, determined without regard to the limitations of subsection (a) of this section and adjusted for different area wage levels, and

(ii) in a rural area the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in rural areas within the same region, determined without regard to the limitations of subsection (a) of this section and adjusted for different area wage levels.

(C) The per diem amounts determined under subparagraph (B) shall not exceed the limit on routine service costs determined under subsection (a) of this section with respect to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility.

(3) For purposes of this subsection, urban and rural areas shall be determined in the same manner as for purposes of subsection (a) of this section, and the term ''region'' shall have the same meaning as under section 1395ww(d)(2)(D) of this title.

(4) The Secretary shall establish the prospective payment amounts for cost reporting periods beginning in a fiscal year at least 90 days prior to the beginning of such fiscal year, on the basis of the most recent data available for a 12-month period. A skilled nursing facility must notify the Secretary of its intention to be paid pursuant to this subsection for a cost reporting period no later than 30 days before the beginning of that period.

(5) The Secretary shall provide for a simplified cost report to be filed by facilities being paid pursuant to this subsection, which shall require only the cost information necessary for determining prospective payment amounts pursuant to paragraph (2) and reasonable costs of ancillary services.

(6) In lieu of payment on a cost basis for ancillary services provided by a facility which is being paid pursuant to this subsection, the Secretary may pay for such ancillary services on a reasonable charge basis if the Secretary determines that such payment basis will provide an equitable level of reimbursement and will ease the reporting burden of the facility.

(7) In computing the rates of payment to be made under this subsection, there shall be taken into account the costs described in the last sentence of section 1395x(v)(1)(E) of this title (relating to compliance with nursing facility requirements and of conducting nurse aide training and competency evaluation programs and competency evaluation programs).

(e) Prospective payment

(1) Payment provision

Notwithstanding any other provision of this subchapter, subject to paragraphs (7), (11), and (12), the amount of the payment for all costs (as defined in paragraph (2)(B)) of covered skilled nursing facility services (as defined in paragraph (2)(A)) for each day of such services furnished—

(A) in a cost reporting period during the transition period (as defined in paragraph (2)(E)), is equal to the sum of—

(i) the non-Federal percentage of the facility-specific per diem rate (computed under paragraph (3)), and

(ii) the Federal percentage of the adjusted Federal per diem rate (determined under paragraph (4)) applicable to the facility; and

(B) after the transition period is equal to the adjusted Federal per diem rate applicable to the facility.

(2) Definitions

For purposes of this subsection:

(A) Covered skilled nursing facility services

(i) In general

The term ''covered skilled nursing facility services''—

(I) means post-hospital extended care services as defined in section 1395x(i) of this title for which benefits are provided under part A of this subchapter; and

(II) includes all items and services (other than items and services described in clauses (ii), (iii), and (iv)) for which payment may be made under part B of this subchapter and which are furnished

to an individual who is a resident of a skilled nursing facility during the period in which the individual is provided covered post-hospital extended care services.

(ii) Services excluded

Services described in this clause are physicians' services, services described by clauses (i) and (ii) of section 1395x(s)(2)(K) of this title, certified nurse-midwife services, qualified psychologist services, services of a certified registered nurse anesthetist, items and services described in subparagraphs (F) and (O) of section 1395x(s)(2) of this title, and, only with respect to services furnished during 1998, the transportation costs of electrocardiogram equipment for electrocardiogram test services (HCPCS Code R0076). Services described in this clause do not include any physical, occupational, or speech-language therapy services regardless of whether or not the services are furnished by, or under the supervision of, a physician or other health care professional.

(iii) Exclusion of certain additional items and services

Items and services described in this clause are the following:

(I) Ambulance services furnished to an individual in conjunction with renal dialysis services described in section 1395x(s)(2)(F) of this title.

(II) Chemotherapy items (identified as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600 (and as subsequently modified by the Secretary)) and any additional chemotherapy items identified by the Secretary.

(III) Chemotherapy administration services (identified as of July 1, 1999, by HCPCS codes 36260–36262; 36489; 36530–36535; 36640; 36823; and 96405–96542 (and as subsequently modified by the Secretary)) and any additional chemotherapy administration services identified by the Secretary.

(IV) Radioisotope services (identified as of July 1, 1999, by HCPCS codes 79030–79440 (and as subsequently modified by the Secretary)) and any additional radioisotope services identified by the Secretary.

(V) Customized prosthetic devices (commonly known as artificial limbs or components of artificial limbs) under the following HCPCS codes (as of July 1, 1999 (and as subsequently modified by the Secretary)), and any additional customized prosthetic devices identified by the Secretary, if delivered to an inpatient for use during the stay in the skilled nursing facility and intended to be used by the individual after discharge from the facility: L5050–L5340; L5500–L5611; L5613–L5986; L5988; L6050–L6370; L6400–L6880; L6920–L7274; and L7362–7366.

(iv) Exclusion of certain rural health clinic and federally qualified health center services

Services described in this clause are—

(I) rural health clinic services (as defined in paragraph (1) of section 1395x(aa) of this title); and

(II) federally qualified health center services (as defined in paragraph (3) of such section);

that would be described in clause (ii) if such services were furnished by an individual not affiliated with a rural health clinic or a federally qualified health center.

(B) All costs

The term ''all costs'' means routine service costs, ancillary costs, and capital-related costs of covered skilled nursing facility services, but does not include costs associated with approved educational activities.

(C) Non-Federal percentage; Federal percentage

For—

(i) the first cost reporting period (as defined in subparagraph (D)) of a facility, the ''non-Federal percentage'' is 75 percent and the ''Federal percentage'' is 25 percent;

(ii) the next cost reporting period of such facility, the ''non-Federal percentage'' is 50 percent and the ''Federal percentage'' is 50 percent; and

(iii) the subsequent cost reporting period of such facility, the ''non-Federal percentage'' is 25 percent and the ''Federal percentage'' is 75 percent.

(D) First cost reporting period

The term ''first cost reporting period'' means, with respect to a skilled nursing facility, the first cost reporting period of the facility beginning on or after July 1, 1998.

(E) Transition period

(i) In general

The term ''transition period'' means, with respect to a skilled nursing facility, the 3 cost reporting periods of the facility beginning with the first cost reporting period.

(ii) Treatment of new skilled nursing facilities

In the case of a skilled nursing facility that first received payment for services under this subchapter on or after October 1, 1995, payment for such services shall be made under this subsection as if all services were furnished after the transition period.

(3) Determination of facility specific per diem rates

The Secretary shall determine a facility-specific per diem rate for each skilled nursing facility not described in paragraph (2)(E)(ii) for a cost reporting period as follows:

(A) Determining base payments

The Secretary shall determine, on a per diem basis, the total of—

(i) the allowable costs of extended care services for the facility for cost reporting periods beginning in fiscal year 1995, including costs associated with facilities described in subsection (d) of this section, with appropriate adjustments (as determined by the Secretary) to non-settled cost reports or, in the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS–III), the RUGS–III rate received by the facility during the cost reporting period beginning in 1997, and

(ii) an estimate of the amounts that would be payable under part B of this subchapter (disregarding any applicable deductibles, coinsurance, and copayments) for covered skilled nursing facility services described in paragraph (2)(A)(i)(II) furnished during the applicable cost reporting period described in clause (i) to an individual who is a resident of the facility, regardless of whether or not the payment was made to the facility or to another entity.

In making appropriate adjustments under clause (i), the Secretary shall take into account exceptions and shall take into account exemptions but, with respect to exemptions, only to the extent that routine costs do not exceed 150 percent of the routine cost limits otherwise applicable but for the exemption.

(B) Update to first cost reporting period

The Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the applicable cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase minus 1.0 percentage point.

(C) Updating to applicable cost reporting period

The Secretary shall update the amount determined under subparagraph (B) for each cost reporting period beginning with the first cost reporting period and up to and including the cost reporting period involved by a factor equal to the facility-specific update factor.

(D) Facility-specific update factor

For purposes of this paragraph, the ''facility-specific update factor'' for cost reporting periods beginning during—

(i) during each of fiscal years 1998 and 1999, is equal to the skilled nursing facility market basket percentage increase for such fiscal year minus 1 percentage point, and

(ii) during each subsequent fiscal year is equal to the skilled nursing facility market basket percentage increase for such fiscal year.

(4) Federal per diem rate

(A) Determination of historical per diem for facilities

For each skilled nursing facility that received payments for post-hospital extended care services during a cost reporting period beginning in fiscal year 1995 and that was subject to (and not exempted from) the per diem limits referred to in paragraph (1) or (2) of subsection (a) of this section (and facilities described in subsection (d) of this section), the Secretary shall estimate, on a per diem basis for such cost reporting period, the total of—

(i) the allowable costs of extended care services (excluding exceptions payments) for the facility for cost reporting periods beginning in 1995 with appropriate adjustments (as determined by the Secretary) to non-settled cost reports, and

(ii) an estimate of the amounts that would be payable under part B of this subchapter (disregarding any applicable deductibles, coinsurance, and copayments) for covered skilled nursing facility services described in paragraph (2)(A)(i)(II) furnished during such period to an individual who is a resident of the facility, regardless of whether or not the payment was made to the facility or to another entity.

(B) Update to first fiscal year

The Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase reduced (on an annualized basis) by 1 percentage point.

(C) Computation of standardized per diem rate

The Secretary shall standardize the amount updated under subparagraph (B) for each facility by—

(i) adjusting for variations among facilities by area in the average facility wage level per diem, and

(ii) adjusting for variations in case mix per diem among facilities.

(D) Computation of weighted average per diem rates

(i) All facilities

The Secretary shall compute a weighted average per diem rate for all facilities by computing an average of the standardized amounts computed under subparagraph (C), weighted for each facility by the number of days of extended care services furnished during the cost reporting period referred to in subparagraph (A).

(ii) Freestanding facilities

The Secretary shall compute a weighted average per diem rate for freestanding facilities by computing an average of the standardized amounts computed under subparagraph (C) only for such facilities, weighted for each facility by the number of days of extended care services furnished during the cost reporting period referred to in subparagraph (A).

(iii) Separate computation

The Secretary may compute and apply such averages separately for facilities lo-

cated in urban and rural areas (as defined in section 1395ww(d)(2)(D) of this title).

(E) Updating

(i) Initial period

For the initial period beginning on July 1, 1998, and ending on September 30, 1999, the Secretary shall compute for skilled nursing facilities an unadjusted Federal per diem rate equal to the average of the weighted average per diem rates computed under clauses (i) and (ii) of subparagraph (D), increased by skilled nursing facility market basket percentage change for such period minus 1 percentage point.

(ii) Subsequent fiscal years

The Secretary shall compute an unadjusted Federal per diem rate equal to the Federal per diem rate computed under this subparagraph—

(I) for fiscal year 2000, the rate computed for the initial period described in clause (i), increased by the skilled nursing facility market basket percentage change for the initial period minus 1 percentage point;

(II) for fiscal year 2001, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year;

(III) for each of fiscal years 2002 and 2003, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year involved minus 0.5 percentage points; and

(IV) for each subsequent fiscal year, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year involved.

(F) Adjustment for case mix creep

Insofar as the Secretary determines that the adjustments under subparagraph (G)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year that are a result of changes in the coding or classification of residents that do not reflect real changes in case mix, the Secretary may adjust unadjusted Federal per diem rates for subsequent fiscal years so as to eliminate the effect of such coding or classification changes.

(G) Determination of Federal rate

The Secretary shall compute for each skilled nursing facility for each fiscal year (beginning with the initial period described in subparagraph (E)(i)) an adjusted Federal per diem rate equal to the unadjusted Federal per diem rate determined under subparagraph (E), as adjusted under subparagraph (F), and as further adjusted as follows:

(i) Adjustment for case mix

The Secretary shall provide for an appropriate adjustment to account for case mix. Such adjustment shall be based on a resident classification system, established by the Secretary, that accounts for the relative resource utilization of different patient types. The case mix adjustment shall be based on resident assessment data and other data that the Secretary considers appropriate.

(ii) Adjustment for geographic variations in labor costs

The Secretary shall adjust the portion of such per diem rate attributable to wages and wage-related costs for the area in which the facility is located compared to the national average of such costs using an appropriate wage index as determined by the Secretary. Such adjustment shall be done in a manner that does not result in aggregate payments under this subsection that are greater or less than those that would otherwise be made if such adjustment had not been made.

(iii) Adjustment for exclusion of certain additional items and services

The Secretary shall provide for an appropriate proportional reduction in payments so that beginning with fiscal year 2001, the aggregate amount of such reductions is equal to the aggregate increase in payments attributable to the exclusion effected under clause (iii) of paragraph (2)(A).

(H) Publication of information on per diem rates

The Secretary shall provide for publication in the Federal Register, before May 1, 1998 (with respect to fiscal period described in subparagraph (E)(i)) and before the August 1 preceding each succeeding fiscal year (with respect to that succeeding fiscal year), of—

(i) the unadjusted Federal per diem rates to be applied to days of covered skilled nursing facility services furnished during the fiscal year,

(ii) the case mix classification system to be applied under subparagraph (G)(i) with respect to such services during the fiscal year, and

(iii) the factors to be applied in making the area wage adjustment under subparagraph (G)(ii) with respect to such services.

(5) Skilled nursing facility market basket index and percentage

For purposes of this subsection:

(A) Skilled nursing facility market basket index

The Secretary shall establish a skilled nursing facility market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered skilled nursing facility services.

(B) Skilled nursing facility market basket percentage

The term ''skilled nursing facility market basket percentage'' means, for a fiscal year

or other annual period and as calculated by the Secretary, the percentage change in the skilled nursing facility market basket index (established under subparagraph (A)) from the midpoint of the prior fiscal year (or period) to the midpoint of the fiscal year (or other period) involved.

(6) Submission of resident assessment data

A skilled nursing facility, or a facility described in paragraph (7)(B), shall provide the Secretary, in a manner and within the timeframes prescribed by the Secretary, the resident assessment data necessary to develop and implement the rates under this subsection. For purposes of meeting such requirement, a skilled nursing facility, or a facility described in paragraph (7), may submit the resident assessment data required under section 1395i–3(b)(3) of this title, using the standard instrument designated by the State under section 1395i–3(e)(5) of this title.

(7) Treatment of medicare swing bed hospitals

(A) Transition

Subject to subparagraph (C), the Secretary shall determine an appropriate manner in which to apply this subsection to the facilities described in subparagraph (B) (other than critical access hospitals), taking into account the purposes of this subsection, and shall provide that at the end of the transition period (as defined in paragraph (2)(E)) such facilities shall be paid only under this subsection. Payment shall not be made under this subsection to such facilities for cost reporting periods beginning before such date (not earlier than July 1, 1999) as the Secretary specifies.

(B) Facilities described

The facilities described in this subparagraph are facilities that have in effect an agreement described in section 1395tt of this title.

(C) Exemption from PPS of swing-bed services furnished in critical access hospitals

The prospective payment system established under this subsection shall not apply to services furnished by a critical access hospital pursuant to an agreement under section 1395tt of this title.

(8) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395*oo* of this title, or otherwise of—

(A) the establishment of Federal per diem rates under paragraph (4), including the computation of the standardized per diem rates under paragraph (4)(C), adjustments and corrections for case mix under paragraphs (4)(F) and (4)(G)(i), adjustments for variations in labor-related costs under paragraph (4)(G)(ii), and adjustments under paragraph (4)(G)(iii);

(B) the establishment of facility specific rates before July 1, 1999 (except any determination of costs paid under part A of this subchapter); and

(C) the establishment of transitional amounts under paragraph (7).

(9) Payment for certain services

In the case of an item or service furnished to a resident of a skilled nursing facility or a part of a facility that includes a skilled nursing facility (as determined under regulations) for which payment would (but for this paragraph) be made under part B of this subchapter in an amount determined in accordance with section 1395*l*(a)(2)(B) of this title, the amount of the payment under such part shall be the amount provided under the fee schedule for such item or service. In the case of an item or service described in clause (iii) of paragraph (2)(A) that would be payable under part A of this subchapter but for the exclusion of such item or service under such clause, payment shall be made for the item or service, in an amount otherwise determined under part B of this subchapter for such item or service, from the Federal Hospital Insurance Trust Fund under section 1395i of this title (rather than from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title).

(10) Required coding

No payment may be made under part B of this subchapter for items and services (other than services described in paragraph (2)(A)(ii)) furnished to an individual who is a resident of a skilled nursing facility or of a part of a facility that includes a skilled nursing facility (as determined under regulations), unless the claim for such payment includes a code (or codes) under a uniform coding system specified by the Secretary that identifies the items or services furnished.

(11) Permitting facilities to waive 3-year transition

Notwithstanding paragraph (1)(A), a facility may elect to have the amount of the payment for all costs of covered skilled nursing facility services for each day of such services furnished in cost reporting periods beginning no earlier than 30 days before the date of such election determined pursuant to paragraph (1)(B).

(12) Adjustment for residents with AIDS

(A) In general

Subject to subparagraph (B), in the case of a resident of a skilled nursing facility who is afflicted with acquired immune deficiency syndrome (AIDS), the per diem amount of payment otherwise applicable (determined without regard to any increase under section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, or under section 314(a) of Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000), shall be increased by 128 percent to reflect increased costs associated with such residents.

(B) Sunset

Subparagraph (A) shall not apply on and after such date as the Secretary certifies that there is an appropriate adjustment in the case mix under paragraph (4)(G)(i) to compensate for the increased costs associated with residents described in such subparagraph.

(Aug. 14, 1935, ch. 531, title XVIII, § 1888, as added Pub. L. 98–369, div. B, title III, § 2319(b), July 18, 1984, 98 Stat. 1082; amended Pub. L. 99–272, title IX, §§ 9126(a), (b), 9219(b)(1)(C), Apr. 7, 1986, 100 Stat. 168, 170, 182; Pub. L. 99–514, title XVIII, § 1895(b)(7)(A), (B), Oct. 22, 1986, 100 Stat. 2933; Pub. L. 100–203, title IV, § 4201(b)(2), Dec. 22, 1987, 101 Stat. 1330–174; Pub. L. 101–508, title IV, § 4008(e)(2), (h)(2)(A)(ii), Nov. 5, 1990, 104 Stat. 1388–45, 1388–48; Pub. L. 103–66, title XIII, § 13503(a)(2), (3)(A), Aug. 10, 1993, 107 Stat. 578; Pub. L. 105–33, title IV, §§ 4431, 4432(a), (b)(3), (5)(H), 4511(a)(2)(E), Aug. 5, 1997, 111 Stat. 414, 421, 422, 442; Pub. L. 106–113, div. B, § 1000(a)(6) [title I, §§ 102(a), 103(a), (b), 104(a), 105(a), title III, § 321(g)(1), (k)(18)], Nov. 29, 1999, 113 Stat. 1536, 1501A–325 to 1501A–327, 1501A–366, 1501A–368; Pub. L. 106–554, § 1(a)(6) [title II, § 203(a), title III, § 311(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–481, 2763A–497; Pub. L. 108–173, title IV, § 410(a), title V, § 511(a), Dec. 8, 2003, 117 Stat. 2271, 2298.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (e), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, referred to in subsec. (e)(12)(A), is section 1000(a)(6) [title I, § 101] of Pub. L. 106–113, div. B, Nov. 29, 1999, 113 Stat. 1536, 1501A–324, which is not classified to the Code.

Section 314(a) of Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, referred to in subsec. (e)(12)(A), is section 1(a)(6) [title III, § 314(a)] of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–499, which is not classified to the Code.

AMENDMENTS

2003—Subsec. (e)(2)(A)(i)(II). Pub. L. 108–173, § 410(a)(1), substituted ''clauses (ii), (iii), and (iv)'' for ''clauses (ii) and (iii)''.

Subsec. (e)(2)(A)(iv). Pub. L. 108–173, § 410(a)(2), added cl. (iv).

Subsec. (e)(12). Pub. L. 108–173, § 511(a), amended heading and text of par. (12) generally, substituting provisions relating to upward adjustment of per diem payment for residents of a skilled nursing facility with AIDS for provisions relating to per diem payment rule for certain qualified acute skilled nursing facilities.

2000—Subsec. (e)(4)(E)(ii)(II). Pub. L. 106–554, § 1(a)(6) [title III, § 311(a)(3)], added subcl. (II). Former subcl. (II) redesignated (III).

Subsec. (e)(4)(E)(ii)(III). Pub. L. 106–554, § 1(a)(6) [title III, § 311(a)(1), (2)], redesignated subcl. (II) as (III) and substituted ''each of fiscal years 2002 and 2003'' for ''each of fiscal years 2001 and 2002'' and ''minus 0.5 percentage points'' for ''minus 1 percentage point''. Former subcl. (III) redesignated (IV).

Subsec. (e)(4)(E)(ii)(IV). Pub. L. 106–554, § 1(a)(6) [title III, § 311(a)(1)], redesignated subcl. (III) as (IV).

Subsec. (e)(7). Pub. L. 106–554, § 1(a)(6) [title II, § 203(a)(1)], substituted ''Treatment of'' for ''Transition for'' in heading.

Subsec. (e)(7)(A). Pub. L. 106–554, § 1(a)(6) [title II, § 203(a)(2), (3)], in heading substituted ''Transition'' for ''In general'' and in text substituted ''Subject to subparagraph (C), the'' for ''The'' and inserted ''(other than critical access hospitals)'' after ''facilities described in subparagraph (B)''.

Subsec. (e)(7)(B). Pub. L. 106–554, § 1(a)(6) [title II, § 203(a)(4)], struck out '', for which payment is made for the furnishing of extended care services on a reasonable cost basis under section 1395f(*l*) of this title (as in effect on and after such date)'' before period at end.

Subsec. (e)(7)(C). Pub. L. 106–554, § 1(a)(6) [title II, § 203(a)(5)], added subpar. (C).

1999—Subsec. (e)(1). Pub. L. 106–113, § 1000(a)(6) [title I, § 105(a)(1)], substituted ''subject to paragraphs (7), (11), and (12)'' for ''subject to paragraphs (7) and (11)'' in introductory provisions.

Pub. L. 106–113, § 1000(a)(6) [title I, § 102(a)(1)], substituted ''paragraphs (7) and (11)'' for ''paragraph (7)'' in introductory provisions.

Subsec. (e)(2)(A)(i)(II). Pub. L. 106–113, § 1000(a)(6) [title I, § 103(a)(1)], substituted ''items and services described in clauses (ii) and (iii)'' for ''services described in clause (ii)''.

Subsec. (e)(2)(A)(iii). Pub. L. 106–113, § 1000(a)(6) [title I, § 103(a)(2)], added cl. (iii).

Subsec. (e)(3)(A)(i). Pub. L. 106–113, § 1000(a)(6) [title I, § 104(a)(1)(A)], inserted ''or, in the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS–III), the RUGS–III rate received by the facility during the cost reporting period beginning in 1997'' after ''to non-settled cost reports''.

Subsec. (e)(3)(A)(ii). Pub. L. 106–113, § 1000(a)(6) [title I, § 104(a)(1)(B)], substituted ''furnished during the applicable cost reporting period described in clause (i)'' for ''furnished during such period''.

Subsec. (e)(3)(B). Pub. L. 106–113, § 1000(a)(6) [title I, § 104(a)(2)], added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows:

''(i) IN GENERAL.—Subject to clause (ii), the Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase minus 1 percentage point.

''(ii) CERTAIN DEMONSTRATION PROJECTS.—In the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS–III), there shall be substituted for the amount described in clause (i) the RUGS–III rate received by the facility for 1997.''

Subsec. (e)(4)(E)(i). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(18)(A)], substituted ''Federal'' for ''federal''.

Subsec. (e)(4)(E)(ii). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(18)(B)], substituted ''Federal'' for ''federal'' in two places in introductory provisions.

Subsec. (e)(4)(G)(iii). Pub. L. 106–113, § 1000(a)(6) [title I, § 103(b)(1)], added cl. (iii).

Subsec. (e)(8)(A). Pub. L. 106–113, § 1000(a)(6) [title I, § 103(b)(2)], substituted ''adjustments for variations in labor-related costs under paragraph (4)(G)(ii), and adjustments under paragraph (4)(G)(iii)'' for ''and adjustments for variations in labor-related costs under paragraph (4)(G)(ii)''.

Subsec. (e)(8)(B). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(g)(1)], substituted ''July 1, 1999'' for ''January 1, 1999,''.

Subsec. (e)(9). Pub. L. 106–113, § 1000(a)(6) [title I, § 103(a)(3)], inserted at end ''In the case of an item or service described in clause (iii) of paragraph (2)(A) that would be payable under part A of this subchapter but for the exclusion of such item or service under such clause, payment shall be made for the item or service, in an amount otherwise determined under part B of this subchapter for such item or service, from the Federal Hospital Insurance Trust Fund under section 1395i of this title (rather than from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title).''

Subsec. (e)(11). Pub. L. 106–113, § 1000(a)(6) [title I, § 102(a)(2)], added par. (11).

Subsec. (e)(12). Pub. L. 106–113, § 1000(a)(6) [title I, § 105(a)(2), (b)], temporarily added par. (12).

1997—Subsec. (a). Pub. L. 105–33, § 4431, substituted ''described in this subsection, except that the limits effective for cost reporting periods beginning on or after October 1, 1997, shall be based on the limits effective for cost reporting periods beginning on or after October 1, 1996.'' for ''described in this subsection'' at end.

Subsec. (d)(1). Pub. L. 105–33, § 4432(b)(5)(H), substituted ''Subject to subsection (e) of this section, any skilled nursing facility'' for ''Any skilled nursing facility''.

Subsec. (e). Pub. L. 105–33, § 4432(a), added subsec. (e).

Subsec. (e)(2)(A)(ii). Pub. L. 105–33, § 4511(a)(2)(E), substituted ''and (ii)'' for ''through (iii)''.

Subsec. (e)(9), (10). Pub. L. 105–33, § 4432(b)(3), added pars. (9) and (10).

1993—Subsec. (a). Pub. L. 103–66, § 13503(a)(2), inserted ‘‘, on or after October 1, 1995,’’ after ‘‘October 1, 1992’’ in concluding provisions.

Subsec. (b). Pub. L. 103–66, § 13503(a)(3)(A), substituted ‘‘Secretary may not recognize’’ for ‘‘Secretary shall recognize’’ and a period for ‘‘(as determined by the Secretary) resulting from the reimbursement principles under this subchapter, notwithstanding the limits set forth in paragraph (3) or (4) of subsection (a) of this section.’’

1990—Subsec. (a). Pub. L. 101–508, § 4008(e)(2), struck out period at end and inserted ‘‘, and shall, for cost reporting periods beginning on or after October 1, 1992 and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection’’.

Subsec. (d)(1). Pub. L. 101–508, § 4008(h)(2)(A)(ii), substituted ‘‘(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) and capital-related costs’’ for ‘‘(and capital-related costs)’’.

1987—Subsec. (d)(7). Pub. L. 100–203 added par. (7).

1986—Subsec. (b). Pub. L. 99–272, § 9219(b)(1)(C), substituted ‘‘notwithstanding’’ for ‘‘nothwithstanding’’.

Subsec. (c). Pub. L. 99–272, § 9126(b), inserted provision requiring the Secretary to publish data and criteria to be used for purposes of this subsection on an annual basis.

Subsec. (d). Pub. L. 99–272, § 9126(a), added subsec. (d).

Subsec. (d)(1). Pub. L. 99–514, § 1895(b)(7)(A), substituted ‘‘cost reporting period’’ for ‘‘fiscal year’’ in five places.

Subsec. (d)(4). Pub. L. 99–514, § 1895(b)(7)(B), substituted ‘‘cost reporting periods beginning in a fiscal year’’ for ‘‘each fiscal year’’ and ‘‘cost reporting period no later than 30 days before the beginning of that period’’ for ‘‘fiscal year within 60 days after the Secretary establishes the final prospective payment amounts for such fiscal year’’.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IV, § 410(b), Dec. 8, 2003, 117 Stat. 2271, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 2005.’’

Pub. L. 108–173, title V, § 511(b), Dec. 8, 2003, 117 Stat. 2299, provided that: ‘‘The amendment made by paragraph (1) [probably should be ‘‘subsection (a)’’, amending this section] shall apply to services furnished on or after October 1, 2004.’’

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title II, § 203(a)] of Pub. L. 106–554 applicable to cost reporting periods beginning on or after Dec. 21, 2001, see section 1(a)(6) [title IV, § 203(c)] of Pub. L. 106–554, set out as a note under section 1395tt of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 102(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–325, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply to elections made on or after December 15, 1999, except that no election shall be effective under such amendments for a cost reporting period beginning before January 1, 2000.’’

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 103(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–326, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply to payments made for items and services furnished on or after April 1, 2000.’’

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 104(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–327, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 4432(a) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 105(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–328, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply for the period beginning on the date on which the first cost reporting period of the facility begins after the date of the enactment of this Act [Nov. 29, 1999] and ending on September 30, 2001, and applies to skilled nursing facilities furnishing covered skilled nursing facility services on the date of the enactment of this Act for which payment is made under title XVIII of the Social Security Act [this subchapter].’’

Amendment by section 1000(a)(6) [title III, § 321(g)(1), (k)(18)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4432(a), (b)(3), (5)(H) of Pub. L. 105–33 effective for cost reporting periods beginning on or after July 1, 1998, except that amendment by section 4432(b) applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Amendment by section 4511(a)(2)(E) of Pub. L. 105–33 applicable with respect to services furnished and supplies provided on and after Jan. 1, 1998, see section 4511(e) of Pub. L. 105–33, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13503(a)(3)(B) of Pub. L. 103–66 provided that: ‘‘The amendments made by subparagraph (A) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1993.’’

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(e)(3) of Pub. L. 101–508 provided that: ‘‘The amendments made by paragraphs (1) and (2) [amending this section and provisions set out as a note below] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].’’

Amendment by section 4008(h)(2)(A)(ii) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4008(h)(2)(P) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(7)(D) of Pub. L. 99–514 provided that: ‘‘The amendments made by subparagraphs (A) and (B) [amending this section] apply to cost reporting periods beginning on or after October 1, 1986.’’

Amendment by section 9219(b)(1)(C) of Pub. L. 99–272 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 9219(b)(1)(D) of Pub. L. 99–272, set out as a note under section 1395u of this title.

Section 9126(d) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(7)(C), Oct. 22, 1986, 100 Stat. 2933, provided that:

‘‘(1) The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1986.

‘‘(2) The amendment made by subsection (b) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].’’

EFFECTIVE DATE

Section 2319(c) of Pub. L. 98–369 provided that: ''The amendments made by subsections (a) [amending section 1395x of this title] and (b) [enacting this section] shall apply to cost reporting periods beginning on or after July 1, 1984.''

STUDY ON PORTABLE DIAGNOSTIC ULTRASOUND SERVICES FOR BENEFICIARIES IN SKILLED NURSING FACILITIES

Pub. L. 108–173, title V, § 513, Dec. 8, 2003, 117 Stat. 2300, directed the Comptroller General of the United States to conduct a study of portable diagnostic ultrasound services furnished to medicare beneficiaries in skilled nursing facilities and to submit to Congress a report on the study not later than 2 years after Dec. 8, 2003.

SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001

Pub. L. 106–554, § 1(a)(6) [title III, § 311(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–497, provided that: ''Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments for covered skilled nursing facility services under section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)) for fiscal year 2001, the Federal per diem rate referred to in paragraph (4)(E)(ii) of such section—

''(1) for the period beginning on October 1, 2000, and ending on March 31, 2001, shall be the rate determined in accordance with the law as in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for the period beginning on April 1, 2001, and ending on September 30, 2001, shall be the rate that would have been determined under such section if 'plus 1 percentage point' had been substituted for 'minus 1 percentage point' under subclause (II) of such paragraph (as in effect on the day before the date of the enactment of this Act).''

Pub. L. 106–554, § 1(a)(6) [title V, § 547(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–553, provided that: ''The payment increase provided under section 311(b)(2) [set out as a note above] (relating to covered skilled nursing facility services) shall not apply to services furnished after fiscal year 2001 and shall not be taken into account in calculating the payment amounts applicable for services furnished after such fiscal year.''

GAO REPORT ON ADEQUACY OF SNF PAYMENT RATES

Pub. L. 106–554, § 1(a)(6) [title III, § 311(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–498, provided that: ''Not later than July 1, 2002, the Comptroller General of the United States shall submit to Congress a report on the adequacy of medicare payment rates to skilled nursing facilities and the extent to which medicare contributes to the financial viability of such facilities. Such report shall take into account the role of private payors, medicaid, and case mix on the financial performance of these facilities, and shall include an analysis (by specific RUG classification) of the number and characteristics of such facilities.''

HCFA STUDY OF CLASSIFICATION SYSTEMS FOR SNF RESIDENTS

Pub. L. 106–554, § 1(a)(6) [title III, § 311(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–498, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the different systems for categorizing patients in medicare skilled nursing facilities in a manner that accounts for the relative resource utilization of different patient types.

''(2) REPORT.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the study conducted under subsection (a). Such report shall include such recommendations regarding changes in law as may be appropriate.''

GAO AUDIT OF NURSING STAFF RATIOS

Pub. L. 106–554, § 1(a)(6) [title III, § 312(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–498, provided that:

''(1) AUDIT.—The Comptroller General of the United States shall conduct an audit of nursing staffing ratios in a representative sample of medicare skilled nursing facilities. Such sample shall cover selected States and shall include broad representation with respect to size, ownership, location, and medicare volume. Such audit shall include an examination of payroll records and medicaid cost reports of individual facilities.

''(2) REPORT.—Not later than August 1, 2002, the Comptroller General shall submit to Congress a report on the audits conducted under paragraph (1). Such report shall include an assessment of the impact of the increased payments under this subtitle [subtitle B, §§ 311–315, of title III of § 1(a)(6) of Pub. L. 106–554, amending this section and sections 1395u, 1395y, and 1395cc of this title and enacting provisions set out as notes under this section and section 1395u of this title] on increased nursing staff ratios and shall make recommendations as to whether increased payments under subsection (a) [114 Stat. 2763A–498] should be continued.''

OVERSIGHT

Pub. L. 106–554, § 1(a)(6) [title III, § 313(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–499, provided that: ''The Secretary of Health and Human Services, through the Office of the Inspector General in the Department of Health and Human Services or otherwise, shall monitor payments made under part B of the title XVIII of the Social Security Act [part B of this subchapter] for items and services furnished to residents of skilled nursing facilities during a time in which the residents are not being provided medicare covered post-hospital extended care services to ensure that there is not duplicate billing for services or excessive services provided.''

ESTABLISHMENT OF PROCESS FOR GEOGRAPHIC RECLASSIFICATION

Pub. L. 106–554, § 1(a)(6) [title III, § 315], Dec. 21, 2000, 114 Stat. 2763, 2763A–500, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services may establish a procedure for the geographic reclassification of a skilled nursing facility for purposes of payment for covered skilled nursing facility services under the prospective payment system established under section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)). Such procedure may be based upon the method for geographic reclassifications for inpatient hospitals established under section 1886(d)(10) of the Social Security Act (42 U.S.C. 1395ww(d)(10)).

''(b) REQUIREMENT FOR SKILLED NURSING FACILITY WAGE DATA.—In no case may the Secretary implement the procedure under subsection (a) before such time as the Secretary has collected data necessary to establish an area wage index for skilled nursing facilities based on wage data from such facilities.''

REPORT TO CONGRESS

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 105(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–328, provided that: ''Not later than March 1, 2001, the Secretary of Health and Human Services shall assess the resource use of patients of skilled nursing facilities furnishing services under the medicare program who are immuno-compromised secondary to an infectious disease, with specific diagnoses as specified by the Secretary (under paragraph (12)(C), as added by subsection (a), of section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e))) to determine whether any permanent adjustments are needed to the RUGs to take into account the resource uses and costs of these patients.''

MEDICAL REVIEW PROCESS

Section 4432(c) of Pub. L. 105–33 provided that: ''In order to ensure that medicare beneficiaries are furnished appropriate services in skilled nursing facilities, the Secretary of Health and Human Services shall establish and implement a thorough medical review process to examine the effects of the amendments made by

this section [amending this section and sections 1395i–3, 1395k, 1395*l*, 1395u, 1395x, 1395y, 1395cc, and 1395tt of this title] on the quality of covered skilled nursing facility services furnished to medicare beneficiaries. In developing such a medical review process, the Secretary shall place a particular emphasis on the quality of nonroutine covered services and physicians' services for which payment is made under title XVIII of the Social Security Act [this subchapter].''

CONSTRUCTION OF WAGE INDEX FOR SKILLED NURSING FACILITIES

Pub. L. 103–432, title I, § 106(a), Oct. 31, 1994, 108 Stat. 4405, provided that: ''Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall begin to collect data on employee compensation and paid hours of employment in skilled nursing facilities for the purpose of constructing a skilled nursing facility wage index adjustment to the routine service cost limits required under section 1888(a)(4) of the Social Security Act [subsec. (a)(4) of this section].''

NO CHANGE IN LIMITS ON PER DIEM SERVICE COSTS FOR EXTENDED CARE SERVICES FOR FISCAL YEARS 1994 AND 1995

Section 13503(a)(1) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services may not provide for any change in the limits on per diem routine service costs for extended care services under section 1888 of the Social Security Act [this section] for cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendments made by paragraph (3)(A) [amending this section]. The effect of the preceding sentence shall not be considered by the Secretary in making adjustments pursuant to section 1888(c) of such Act to the payment limits for such services during such fiscal years.''

NO CHANGE IN PROSPECTIVE PAYMENTS FOR SERVICES FURNISHED DURING FISCAL YEARS 1994 AND 1995

Section 13503(b) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services may not change the amount of any prospective payment paid to a skilled nursing facility under section 1888(d) of the Social Security Act [subsec. (d) of this section] for services furnished during cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendment made by subsection (c)(1)(A) [amending section 1395x of this title].''

PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITY SERVICES

Section 4008(k) of Pub. L. 101–508 provided that:

''(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A [part A of this subchapter] of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

''(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

''(B) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice;

''(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

''(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

''(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

''(2) REPORTS.—(A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the proposal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

''(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

''(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

USE OF MORE RECENT DATA REGARDING ROUTINE SERVICE COSTS OF SKILLED NURSING FACILITIES

Pub. L. 101–239, title VI, § 6024, Dec. 19, 1989, 103 Stat. 2167, as amended by Pub. L. 101–508, title IV, § 4008(e)(1), Nov. 5, 1990, 104 Stat. 1388–45, provided that: ''The Secretary of Health and Human Services shall determine mean per diem routine service costs for freestanding and hospital based skilled nursing facilities under section 1888(a) of the Social Security Act [subsec. (a) of this section] for cost reporting periods beginning on or after October 1, 1989, in accordance with regulations published by the Secretary that require the use of cost reports submitted by skilled nursing facilities for cost reporting periods beginning not earlier than October 1, 1985. The Secretary shall update such costs under such section for cost reporting periods beginning on or after October 1, 1989, by using cost reports submitted by skilled nursing facilities for cost reporting periods ending not earlier than January 31, 1988, and not later than December 31, 1988.''

§ 1395zz. Provider education and technical assistance

(a) Coordination of education funding

The Secretary shall coordinate the educational activities provided through medicare contractors (as defined in subsection (g) of this section, including under section 1395ddd of this title) in order to maximize the effectiveness of Federal education efforts for providers of services and suppliers.

(b) Enhanced education and training

(1) Additional resources

There are authorized to be appropriated to the Secretary (in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund) such sums as may be necessary for fiscal years beginning with fiscal year 2005.

(2) Use

The funds made available under paragraph (1) shall be used to increase the conduct by

medicare contractors of education and training of providers of services and suppliers regarding billing, coding, and other appropriate items and may also be used to improve the accuracy, consistency, and timeliness of contractor responses.

(c) Tailoring education and training activities for small providers or suppliers

(1) In general

Insofar as a medicare contractor conducts education and training activities, it shall tailor such activities to meet the special needs of small providers of services or suppliers (as defined in paragraph (2)). Such education and training activities for small providers of services and suppliers may include the provision of technical assistance (such as review of billing systems and internal controls to determine program compliance and to suggest more efficient and effective means of achieving such compliance).

(2) Small provider of services or supplier

In this subsection, the term ''small provider of services or supplier'' means—

(A) a provider of services with fewer than 25 full-time-equivalent employees; or

(B) a supplier with fewer than 10 full-time-equivalent employees.

(d) Internet websites; FAQs

The Secretary, and each medicare contractor insofar as it provides services (including claims processing) for providers of services or suppliers, shall maintain an Internet website which—

(1) provides answers in an easily accessible format to frequently asked questions, and

(2) includes other published materials of the contractor,

that relate to providers of services and suppliers under the programs under this subchapter (and subchapter XI of this chapter insofar as it relates to such programs).

(e) Encouragement of participation in education program activities

A medicare contractor may not use a record of attendance at (or failure to attend) educational activities or other information gathered during an educational program conducted under this section or otherwise by the Secretary to select or track providers of services or suppliers for the purpose of conducting any type of audit or prepayment review.

(f) Construction

Nothing in this section or section 1395ddd(g)[1] of this title shall be construed as providing for disclosure by a medicare contractor—

(1) of the screens used for identifying claims that will be subject to medical review; or

(2) of information that would compromise pending law enforcement activities or reveal findings of law enforcement-related audits.

(g) Definitions

For purposes of this section, the term ''medicare contractor'' includes the following:

(1) A medicare administrative contractor with a contract under section 1395kk–1 of this title, including a fiscal intermediary with a contract under section 1395h of this title and a carrier with a contract under section 1395u of this title.

(2) An eligible entity with a contract under section 1395ddd of this title.

Such term does not include, with respect to activities of a specific provider of services or supplier an entity that has no authority under this subchapter or subchapter IX of this chapter with respect to such activities and such provider of services or supplier.

(Aug. 14, 1935, ch. 531, title XVIII, § 1889, as added and amended Pub. L. 108–173, title IX, § 921(a)(1), (d)(1), (e)(1), (f)(1), Dec. 8, 2003, 117 Stat. 2388, 2391.)

PRIOR PROVISIONS

A prior section 1395zz, act Aug. 14, 1935, ch. 531, title XVIII, § 1889, as added Nov. 5, 1990, Pub. L. 101–508, title IV, § 4361(a), 104 Stat. 1388–141, related to medicare and medigap information by telephone, prior to repeal by Pub. L. 103–432, title I, § 171(j)(3), (*l*), Oct. 31, 1994, 108 Stat. 4451, effective as if included in the enactment of Pub. L. 101–508.

Another prior section 1395zz, act Aug. 14, 1935, ch. 531, title XVIII, § 1889, formerly § 1833(f), as added Jan. 2, 1968, Pub. L. 90–248, title I, § 132(b), 81 Stat. 850, and amended Oct. 30, 1972, Pub. L. 92–603, title II, § 245(d), 86 Stat. 1424; Oct. 25, 1977, Pub. L. 95–142, § 16(a), 91 Stat. 1200; renumbered § 1889 and amended July 18, 1984, Pub. L. 98–369, div. B, title III, § 2321(d), 98 Stat. 1084, provided for purchase of durable medical equipment, covering (a) lease-purchase basis or rental and determination by Secretary, (b) waiver of coinsurance amount in purchase of used equipment, (c) reimbursement procedures, and (d) encouragement of lease-purchase basis, prior to repeal by Pub. L. 100–203, title IV, § 4062(d)(5), (e), Dec. 22, 1987, 101 Stat. 1330–109, applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989.

AMENDMENTS

2003—Subsecs. (b), (c). Pub. L. 108–173, § 921(d)(1), added subsecs. (b) and (c).

Subsec. (d). Pub. L. 108–173, § 921(e)(1), added subsec. (d).

Subsecs. (e) to (g). Pub. L. 108–173, § 921(f)(1), added subsecs. (e) to (g).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 921(d)(2), Dec. 8, 2003, 117 Stat. 2391, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 2004.''

Pub. L. 108–173, title IX, § 921(e)(2), Dec. 8, 2003, 117 Stat. 2391, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 2004.''

Pub. L. 108–173, title IX, § 921(f)(2), Dec. 8, 2003, 117 Stat. 2392, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE

Pub. L. 108–173, title IX, § 921(a)(2), Dec. 8, 2003, 117 Stat. 2388, provided that: ''The amendment made by paragraph (1) [enacting this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003].''

SMALL PROVIDER TECHNICAL ASSISTANCE DEMONSTRATION PROGRAM

Pub. L. 108–173, title IX, § 922, Dec. 8, 2003, 117 Stat. 2392, provided that:

''(a) ESTABLISHMENT.—

[1] So in original. Section 1395ddd does not contain a subsec. (g).

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a demonstration program (in this section referred to as the 'demonstration program') under which technical assistance described in paragraph (2) is made available, upon request and on a voluntary basis, to small providers of services or suppliers in order to improve compliance with the applicable requirements of the programs under medicare program under title XVIII of the Social Security Act [this subchapter] (including provisions of title XI of such Act [subchapter XI of this chapter] insofar as they relate to such title and are not administered by the Office of the Inspector General of the Department of Health and Human Services).

''(2) FORMS OF TECHNICAL ASSISTANCE.—The technical assistance described in this paragraph is—

''(A) evaluation and recommendations regarding billing and related systems; and

''(B) information and assistance regarding policies and procedures under the medicare program, including coding and reimbursement.

''(3) SMALL PROVIDERS OF SERVICES OR SUPPLIERS.—In this section, the term 'small providers of services or suppliers' means—

''(A) a provider of services with fewer than 25 full-time-equivalent employees; or

''(B) a supplier with fewer than 10 full-time-equivalent employees.

''(b) QUALIFICATION OF CONTRACTORS.—In conducting the demonstration program, the Secretary shall enter into contracts with qualified organizations (such as peer review organizations or entities described in section 1889(g)(2) of the Social Security Act [subsec. (g)(2) of this section], as inserted by section 921(f)(1)) with appropriate expertise with billing systems of the full range of providers of services and suppliers to provide the technical assistance. In awarding such contracts, the Secretary shall consider any prior investigations of the entity's work by the Inspector General of Department of Health and Human Services or the Comptroller General of the United States.

''(c) DESCRIPTION OF TECHNICAL ASSISTANCE.—The technical assistance provided under the demonstration program shall include a direct and in-person examination of billing systems and internal controls of small providers of services or suppliers to determine program compliance and to suggest more efficient or effective means of achieving such compliance.

''(d) GAO EVALUATION.—Not later than 2 years after the date the demonstration program is first implemented, the Comptroller General, in consultation with the Inspector General of the Department of Health and Human Services, shall conduct an evaluation of the demonstration program. The evaluation shall include a determination of whether claims error rates are reduced for small providers of services or suppliers who participated in the program and the extent of improper payments made as a result of the demonstration program. The Comptroller General shall submit a report to the Secretary and the Congress on such evaluation and shall include in such report recommendations regarding the continuation or extension of the demonstration program.

''(e) FINANCIAL PARTICIPATION BY PROVIDERS.—The provision of technical assistance to a small provider of services or supplier under the demonstration program is conditioned upon the small provider of services or supplier paying an amount estimated (and disclosed in advance of a provider's or supplier's participation in the program) to be equal to 25 percent of the cost of the technical assistance.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from amounts not otherwise appropriated in the Treasury, such sums as may be necessary to carry out this section.''

§ 1395aaa. Transferred

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XVIII, § 1890, as added Aug. 18, 1987, Pub. L. 100–93, § 10, 101 Stat. 696, which related to limitation of liability of beneficiaries with respect to services furnished by excluded individuals and entities, was amended and transferred to section 1862(e)(2) of act Aug. 14, 1935, by Pub. L. 100–360, title IV, § 411(i)(4)(D)(ii), July 1, 1988, 102 Stat. 790, as amended by Pub. L. 100–485, title VI, § 608(d)(24)(C)(ii), Oct. 13, 1988, 102 Stat. 2421, and is classified to section 1395y(e)(2) of this title.

§ 1395bbb. Conditions of participation for home health agencies; home health quality

(a) Conditions of participation; protection of individual rights; notification of State entities; use of home health aides; medical equipment; individual's plan of care; compliance with Federal, State, and local laws and regulations

The conditions of participation that a home health agency is required to meet under this subsection are as follows:

(1) The agency protects and promotes the rights of each individual under its care, including each of the following rights:

(A) The right to be fully informed in advance about the care and treatment to be provided by the agency, to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being, and (except with respect to an individual adjudged incompetent) to participate in planning care and treatment or changes in care or treatment.

(B) The right to voice grievances with respect to treatment or care that is (or fails to be) furnished without discrimination or reprisal for voicing grievances.

(C) The right to confidentiality of the clinical records described in section 1395x(*o*)(3) of this title.

(D) The right to have one's property treated with respect.

(E) The right to be fully informed orally and in writing (in advance of coming under the care of the agency) of—

(i) all items and services furnished by (or under arrangements with) the agency for which payment may be made under this subchapter,

(ii) the coverage available for such items and services under this subchapter, subchapter XIX of this chapter, and any other Federal program of which the agency is reasonably aware,

(iii) any charges for items and services not covered under this subchapter and any charges the individual may have to pay with respect to items and services furnished by (or under arrangements with) the agency, and

(iv) any changes in the charges or items and services described in clause (i), (ii), or (iii).

(F) The right to be fully informed in writing (in advance of coming under the care of the agency) of the individual's rights and obligations under this subchapter.

(G) The right to be informed of the availability of the State home health agency hotline established under section 1395aa(a) of this title.

(2) The agency notifies the State entity responsible for the licensing or certification of the agency of a change in—

(A) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the agency,

(B) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the agency, and

(C) the corporation, association, or other company responsible for the management of the agency.

Such notice shall be given at the time of the change and shall include the identity of each new person or company described in the previous sentence.

(3)(A) The agency must not use as a home health aide (on a full-time, temporary, per diem, or other basis), any individual to provide items or services described in section 1395x(m) of this title on or after January 1, 1990, unless the individual—

(i) has completed a training and competency evaluation program, or a competency evaluation program, that meets the minimum standards established by the Secretary under subparagraph (D), and

(ii) is competent to provide such items and services.

For purposes of clause (i), an individual is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the individual's most recent completion of such a program, there has been a continuous period of 24 consecutive months during none of which the individual provided items and services described in section 1395x(m) of this title for compensation.

(B)(i) The agency must provide, with respect to individuals used as a home health aide by the agency as of July 1, 1989, for a competency evaluation program (as described in subparagraph (A)(i)) and such preparation as may be necessary for the individual to complete such a program by January 1, 1990.

(ii) The agency must provide such regular performance review and regular in-service education as assures that individuals used to provide items and services described in section 1395x(m) of this title are competent to provide those items and services.

(C) The agency must not permit an individual, other than in a training and competency evaluation program that meets the minimum standards established by the Secretary under subparagraph (D), to provide items or services of a type for which the individual has not demonstrated competency.

(D)(i) The Secretary shall establish minimum standards for the programs described in subparagraph (A) by not later than October 1, 1988.

(ii) Such standards shall include the content of the curriculum, minimum hours of training, qualification of instructors, and procedures for determination of competency.

(iii) Such standards may permit approval of programs offered by or in home health agencies, as well as outside agencies (including employee organizations), and of programs in effect on December 22, 1987; except that they may not provide for the approval of a program offered by or in a home health agency which, within the previous 2 years—

(I) has been determined to be out of compliance with subparagraph (A), (B), or (C);

(II) has been subject to an extended (or partial extended) survey under subsection (c)(2)(D) of this section;

(III) has been assessed a civil money penalty described in subsection (f)(2)(A)(i) of this section of not less than $5,000; or

(IV) has been subject to the remedies described in subsection (e)(1) of this section or in clauses (ii) or (iii) of subsection (f)(2)(A) of this section.

(iv) Such standards shall permit a determination that an individual who has completed (before July 1, 1989) a training and competency evaluation program or a competency evaluation program shall be deemed for purposes of subparagraph (A) to have completed a program that is approved by the Secretary under the standards established under this subparagraph if the Secretary determines that, at the time the program was offered, the program met such standards.

(E) In this paragraph, the term ''home health aide'' means any individual who provides the items and services described in section 1395x(m) of this title, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (F)), or

(ii) who volunteers to provide such services without monetary compensation.

(F) In this paragraph, the term ''licensed health professional'' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(4) The agency includes an individual's plan of care required under section 1395x(m) of this title as part of the clinical records described in section 1395x(*o*)(3) of this title.

(5) The agency operates and provides services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title) and with accepted professional standards and principles which apply to professionals providing items and services in such an agency.

(6) The agency complies with the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(b) Duty of Secretary

It is the duty and responsibility of the Secretary to assure that the conditions of participation and requirements specified in or pursuant to section 1395x(*o*) of this title and subsection (a) of this section and the enforcement of such conditions and requirements are adequate to protect the health and safety of individuals under

the care of a home health agency and to promote the effective and efficient use of public moneys.

(c) Surveys of home health agencies

(1) Any agreement entered into or renewed by the Secretary pursuant to section 1395aa of this title relating to home health agencies shall provide that the appropriate State or local agency shall conduct, without any prior notice, a standard survey of each home health agency. Any individual who notifies (or causes to be notified) a home health agency of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a of this title. The Secretary shall review each State's or local agency's procedures for scheduling and conduct of standard surveys to assure that the State or agency has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(2)(A) Except as provided in subparagraph (B), each home health agency shall be subject to a standard survey not later than 36 months after the date of the previous standard survey conducted under this paragraph. The Secretary shall establish a frequency for surveys of home health agencies within this 36-month interval commensurate with the need to assure the delivery of quality home health services.

(B) If not otherwise conducted under subparagraph (A), a standard survey (or an abbreviated standard survey) of an agency—

(i) may be conducted within 2 months of any change of ownership, administration, or management of the agency to determine whether the change has resulted in any decline in the quality of care furnished by the agency, and

(ii) shall be conducted within 2 months of when a significant number of complaints have been reported with respect to the agency to the Secretary, the State, the entity responsible for the licensing of the agency, the State or local agency responsible for maintaining a toll-free hotline and investigative unit (under section 1395aa(a) of this title), or any other appropriate Federal, State, or local agency.

(C) A standard survey conducted under this paragraph with respect to a home health agency—

(i) shall include (to the extent practicable), for a case-mix stratified sample of individuals furnished items or services by the agency—

(I) visits to the homes of such individuals, but only with the consent of such individuals, for the purpose of evaluating (in accordance with a standardized reproducible assessment instrument (or instruments) approved by the Secretary under subsection (d) of this section) the extent to which the quality and scope of items and services furnished by the agency attained and maintained the highest practicable functional capacity of each such individual as reflected in such individual's written plan of care required under section 1395x(m) of this title and clinical records required under section 1395x(*o*)(3) of this title; and

(II) a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care;

(ii) shall be based upon a protocol that is developed, tested, and validated by the Secretary not later than January 1, 1989; and

(iii) shall be conducted by an individual—

(I) who meets minimum qualifications established by the Secretary not later than July 1, 1989,

(II) who is not serving (or has not served within the previous 2 years) as a member of the staff of, or as a consultant to, the home health agency surveyed respecting compliance with the conditions of participation specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section, and

(III) who has no personal or familial financial interest in the home health agency surveyed.

(D) Each home health agency that is found, under a standard survey, to have provided substandard care shall be subject to an extended survey to review and identify the policies and procedures which produced such substandard care and to determine whether the agency has complied with the conditions of participation specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section. Any other agency may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey). The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey).

(E) Nothing in this paragraph shall be construed as requiring an extended (or partial extended) survey as a prerequisite to imposing a sanction against an agency under subsection (e) of this section on the basis of the findings of a standard survey.

(d) Assessment process; reports to Congress

(1) Not later than January 1, 1989, the Secretary shall designate an assessment instrument (or instruments) for use by an agency in complying with subsection (c)(2)(C)(i)(I) of this section.

(2)(A) Not later than January 1, 1992, the Secretary shall—

(i) evaluate the assessment process,

(ii) report to Congress on the results of such evaluation, and

(iii) based on such evaluation, make such modifications in the assessment process as the Secretary determines are appropriate.

(B) The Secretary shall periodically update the evaluation conducted under subparagraph (A), report the results of such update to Congress, and, based on such update, make such modifications in the assessment process as the Secretary determines are appropriate.

(3) The Secretary shall provide for the comprehensive training of State and Federal surveyors

in matters relating to the performance of standard and extended surveys under this section, including the use of any assessment instrument (or instruments) designated under paragraph (1).

(e) Enforcement

(1) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this subchapter is no longer in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section and determines that the deficiencies involved immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subsection (f)(2)(A)(iii) of this section or terminate the certification of the agency, and may provide, in addition, for 1 or more of the other remedies described in subsection (f)(2)(A) of this section.

(2) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this subchapter is no longer in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section and determines that the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary may (for a period not to exceed 6 months) impose intermediate sanctions developed pursuant to subsection (f) of this section, in lieu of terminating the certification of the agency. If, after such a period of intermediate sanctions, the agency is still no longer in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section, the Secretary shall terminate the certification of the agency.

(3) If the Secretary determines that a home health agency that is certified for participation under this subchapter is in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subsection (f)(2)(A)(i) of this section for the days in which it finds that the agency was not in compliance with such requirements.

(4) The Secretary may continue payments under this subchapter with respect to a home health agency not in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section over a period of not longer than 6 months, if—

(A) the State or local survey agency finds that it is more appropriate to take alternative action to assure compliance of the agency with the requirements than to terminate the certification of the agency,

(B) the agency has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(C) the agency agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by home health agencies under this subparagraph.

(f) Intermediate sanctions

(1) The Secretary shall develop and implement, by not later than April 1, 1989—

(A) a range of intermediate sanctions to apply to home health agencies under the conditions described in subsection (e) of this section, and

(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

(i) civil money penalties in an amount not to exceed $10,000 for each day of noncompliance,

(ii) suspension of all or part of the payments to which a home health agency would otherwise be entitled under this subchapter with respect to items and services furnished by a home health agency on or after the date on which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (e)(2) of this section, and

(iii) the appointment of temporary management to oversee the operation of the home health agency and to protect and assure the health and safety of the individuals under the care of the agency while improvements are made in order to bring the agency into compliance with all the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The temporary management under clause (iii) shall not be terminated until the Secretary has determined that the agency has the management capability to ensure continued compliance with all the requirements referred to in that clause.

(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law.

(C) A finding to suspend payment under subparagraph (A)(ii) shall terminate when the Secretary finds that the home health agency is in substantial compliance with all the requirements specified in or pursuant to section 1395x(*o*) of this title and subsection (a) of this section.

(3) The Secretary shall develop and implement, by not later than April 1, 1989, specific procedures with respect to the conditions under which each of the intermediate sanctions developed under paragraph (1) is to be applied, including the amount of any fines and the severity of

each of these sanctions. Such procedures shall be designed so as to minimize the time between identification of deficiencies and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

(g) Payment on basis of location of service

A home health agency shall submit claims for payment for home health services under this subchapter only on the basis of the geographic location at which the service is furnished, as determined by the Secretary.

(Aug. 14, 1935, ch. 531, title XVIII, § 1891, as added and amended Pub. L. 100–203, title IV, §§ 4021(b), 4022(a), 4023(a), Dec. 22, 1987, 101 Stat. 1330–67, 1330–69, 1330–71; Pub. L. 100–360, title IV, § 411(d)(1)(A), (2)–(3)(B), July 1, 1988, 102 Stat. 773, 774; Pub. L. 100–485, title VI, § 608(d)(20)(A), Oct. 13, 1988, 102 Stat. 2419; Pub. L. 101–508, title IV, §§ 4206(d)(2), 4207(i)(1), formerly 4027(i)(1), Nov. 5, 1990, 104 Stat. 1388–116, 1388–123, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 104–134, title I, § 101(d) [title V, § 516(a)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–246; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–33, title IV, § 4604(a), Aug. 5, 1997, 111 Stat. 472; Pub. L. 108–173, title VII, § 736(c)(3), Dec. 8, 2003, 117 Stat. 2356.)

AMENDMENTS

2003—Subsec. (d)(1). Pub. L. 108–173 substituted ''subsection (c)(2)(C)(i)(I)'' for ''subsection (c)(2)(C)(I)''.

1997—Subsec. (g). Pub. L. 105–33 added subsec. (g).

1996—Subsec. (c)(2)(A). Pub. L. 104–134 substituted ''36 months'' for ''15 months'' in first sentence and amended last sentence generally. Prior to amendment, last sentence read as follows: ''The statewide average interval between standard surveys of any home health agency shall not exceed 12 months.''

1990—Subsec. (a)(3)(D)(iii). Pub. L. 101–508, § 4207(i)(1), formerly § 4027(i)(1), as renumbered by Pub. L. 103–432, substituted ''which, within the previous 2 years—'' and subcls. (I) to (IV) for ''which has been determined to be out of compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section within the previous 2 years.''

Subsec. (a)(6). Pub. L. 101–508, § 4206(d)(2), added par. (6).

1988—Subsec. (a)(3)(A). Pub. L. 100–360, § 411(d)(1)(A)(i), struck out ''who is not a licensed health care professional (as defined in subparagraph (F))'' after ''any individual'' in introductory provisions.

Subsec. (a)(3)(F). Pub. L. 100–360, § 411(d)(1)(A)(ii), inserted ''physical or occupational therapy assistant,'' after ''occupational therapist''.

Subsec. (a)(4) to (6). Pub. L. 100–360, § 411(d)(1)(A)(iii), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which read as follows: ''With respect to durable medical equipment furnished to individuals for whom the agency provides items and services, suppliers of such equipment do not use (on a full-time, temporary, per diem, or other basis) any individual who does not meet minimum training standards (established by the Secretary by October 1, 1988) for the demonstration and use of any such equipment furnished to individuals with respect to whom payments may be made under this subchapter.''

Subsec. (c)(1). Pub. L. 100–360, § 411(d)(2)(A), as amended by Pub. L. 100–485, § 608(d)(20)(A), amended third sentence generally. Prior to amendment, third sentence read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (d)(2)(A). Pub. L. 100–360, § 411(d)(2)(B), substituted ''1992'' for ''1991'' in introductory provisions.

Subsecs. (e), (f). Pub. L. 100–360, § 411(d)(3)(A), made technical amendment to Pub. L. 100–203, § 4023(a), see 1987 Amendment note below.

Subsec. (f)(2)(A). Pub. L. 100–360, § 411(d)(3)(B)(iii), inserted before last sentence ''The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Pub. L. 100–360, § 411(d)(3)(B)(i), realigned the margins of cls. (i) to (iii) and concluding provisions.

Subsec. (f)(2)(A)(i). Pub. L. 100–360, § 411(d)(3)(B)(ii), substituted ''in an amount not to exceed $10,000 for each day of noncompliance'' for ''for each day of noncompliance''.

1987—Subsecs. (c), (d). Pub. L. 100–203, § 4022(a), added subsecs. (c) and (d).

Subsecs. (e), (f). Pub. L. 100–203, § 4023(a), as amended by Pub. L. 100–360, § 411(d)(3)(A), added subsecs. (e) and (f).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1997, see section 4604(c) of Pub. L. 105–33, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4206(d)(2) of Pub. L. 101–508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4206(e)(1) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

Section 4207(i)(1), formerly 4027(i)(1), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that the amendment made by that section is effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.

Section 4207(i)(2), formerly 4027(i)(2), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (11), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that the Secretary may not permit approval of a training and competency evaluation program or a competency evaluation program offered by or in a home health agency which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

''(i) had its participation terminated under title XVIII of the Social Security Act [this subchapter];

''(ii) was assessed a civil money penalty not less than $5,000 for deficiencies in applicable quality standards for home health agencies;

''(iii) was subject to suspension by the Secretary of all or part of the payments to which it would otherwise be entitled under such title;

''(iv) operated under a temporary management appointed to oversee the operation of the agency and to ensure the health and safety of the agency's patients; or

''(v) pursuant to State action, was closed or had its patients transferred.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in

the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4022(b) of Pub. L. 100–203 provided that: ''Except as otherwise specifically provided in section 1891(d) of the Social Security Act [subsec. (d) of this section] (as added by subsection (a)), the amendment made by subsection (a) [amending this section] shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4023(b) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(d)(3)(C), July 1, 1988, 102 Stat. 774, provided that: ''Except as otherwise specifically provided in subsections (e) and (f) of section 1891 of the Social Security Act [subsecs. (e) and (f) of this section] (as added by subsection (a)), the amendment made by subsection (a) [amending this section] shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act [Dec. 22, 1987], and no intermediate sanction described in section 1891(f)(2)(A) of such Act [subsec. (f)(2)(A) of this section] shall be imposed for violations occurring before such effective date.''

EFFECTIVE DATE

Section applicable to home health agencies as of the first day of the 18th calendar month that begins after Dec. 22, 1987, except as otherwise provided, see section 4021(c) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 1395x of this title.

TREATMENT OF BRANCH OFFICES; GAO STUDY ON SUPERVISION OF HOME HEALTH CARE PROVIDED IN ISOLATED RURAL AREAS

Pub. L. 106–554, § 1(a)(6) [title V, § 506], Dec. 21, 2000, 114 Stat. 2763, 2763A–531, provided that:

''(a) TREATMENT OF BRANCH OFFICES.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, in determining for purposes of title XVIII of the Social Security Act [this subchapter] whether an office of a home health agency constitutes a branch office or a separate home health agency, neither the time nor distance between a parent office of the home health agency and a branch office shall be the sole determinant of a home health agency's branch office status.

''(2) CONSIDERATION OF FORMS OF TECHNOLOGY IN DEFINITION OF SUPERVISION.—The Secretary of Health and Human Services may include forms of technology in determining what constitutes 'supervision' for purposes of determining a home heath [sic] agency's branch office status under paragraph (1).

''(b) GAO STUDY.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study of the provision of adequate supervision to maintain quality of home health services delivered under the medicare program under title XVIII of the Social Security Act [this subchapter] in isolated rural areas. The study shall evaluate the methods that home health agency branches and subunits use to maintain adequate supervision in the delivery of services to clients residing in those areas, how these methods of supervision compare to requirements that subunits independently meet medicare conditions of participation, and the resources utilized by subunits to meet such conditions.

''(2) REPORT.—Not later than January 1, 2002, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1). The report shall include recommendations on whether exceptions are needed for subunits and branches of home health agencies under the medicare program to maintain access to the home health benefit or whether alternative policies should be developed to assure adequate supervision and access and recommendations on whether a national standard for supervision is appropriate.''

§ 1395ccc. Offset of payments to individuals to collect past-due obligations arising from breach of scholarship and loan contract

(a) In general

(1)(A) Subject to subparagraph (B), the Secretary shall enter into an agreement under this section with any individual who, by reason of a breach of a contract entered into by such individual pursuant to the National Health Service Corps Scholarship Program, the Physician Shortage Area Scholarship Program, or the Health Education Assistance Loan Program, owes a past-due obligation to the United States (as defined in subsection (b) of this section).

(B) The Secretary shall not enter into an agreement with an individual under this section to the extent—

(i)(I) the individual has entered into a contract with the Secretary pursuant to section 204(a)(1) of the Public Health Service Amendments of 1987, and

(II) the individual has fulfilled or (as determined by the Secretary) is fulfilling the terms of such contract; or

(ii) the liability of the individual under such section 204(a)(1) has otherwise been relieved under such section; or

(iii) the individual is performing such physician's[1] service obligation under a forbearance agreement entered into with the Secretary under subpart II of part D of title III of the Public Health Service Act [42 U.S.C. 254d et seq.].

(2) The agreement under this section shall provide that—

(A) deductions shall be made from the amounts otherwise payable to the individual under this subchapter, in accordance with a formula and schedule agreed to by the Secretary and the individual, until such past-due obligation (and accrued interest) have been repaid;

(B) payment under this subchapter for services provided by such individual shall be made only on an assignment-related basis;

(C) if the individual does not provide services, for which payment would otherwise be made under this subchapter, of a sufficient quantity to maintain the offset collection according to the agreed upon formula and schedule—

(i) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

(ii) subject to paragraph (4), the Secretary shall immediately exclude the individual from the program under this subchapter, until such time as the entire past-due obligation has been repaid.

(3) If the individual refuses to enter into an agreement or breaches any provision of the agreement—

[1] So in original. Probably should be ''individual's''.

(A) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

(B) subject to paragraph (4), the Secretary shall immediately exclude the individual from the program under this subchapter, until such time as the entire past-due obligation has been repaid.

(4) The Secretary shall not exclude an individual pursuant to paragraph (2)(C)(ii) or paragraph (3)(B) if such individual is a sole community practitioner or sole source of essential specialized services in a community if a State requests that the individual not be excluded.

(b) Past-due obligation

For purposes of this section, a past-due obligation is any amount—

(1) owed by an individual to the United States by reason of a breach of a scholarship contract under section 338E of the Public Health Service Act [42 U.S.C. 254*o*] or under subpart III of part F of title VII of such Act (as in effect before October 1, 1976) and which has not been paid by the deadline established by the Secretary pursuant to such respective section, and has not been canceled, waived, or suspended by the Secretary pursuant to such section; or

(2) owed by an individual to the United States by reason of a loan covered by Federal loan insurance under subpart I[2] of part C of title VII of the Public Health Service Act and payment for which has not been cancelled, waived, or suspended by the Secretary under such subpart.

(c) Collection under this section shall not be exclusive

This section shall not preclude the United States from applying other provisions of law otherwise applicable to the collection of obligations owed to the United States, including (but not limited to) the use of tax refund offsets pursuant to section 3720A of title 31 and the application of other procedures provided under chapter 37 of title 31.

(d) Collection from providers and health maintenance organizations

(1) In the case of an individual who owes a past-due obligation, and who is an employee of, or affiliated by a medical services agreement with, a provider having an agreement under section 1395cc of this title or a health maintenance organization or competitive medical plan having a contract under section 1395*l* of this title or section 1395mm of this title, the Secretary shall deduct the amounts of such past-due obligation from amounts otherwise payable under this subchapter to such provider, organization, or plan.

(2) Deductions shall be in accordance with a formula and schedule agreed to by the Secretary, the individual and the provider, organization, or plan. The deductions shall be made from the amounts otherwise payable to the individual under this subchapter as long as the individual continues to be employed or affiliated by a medical services agreement.

(3) Such deduction shall not be made until 6 months after the Secretary notifies the provider, organization, or plan of the amount to be deducted and the particular physicians[3] to whom the deductions are attributable.

(4) A deduction made under this subsection shall relieve the individual of the obligation (to the extent of the amount collected) to the United States, but the provider, organization, or plan shall have a right of action to collect from such individual the amount deducted pursuant to this subsection (including accumulated interest).

(5) No deduction shall be made under this subsection if, within the 6-month period after notice is given to the provider, organization, or plan, the individual pays the past-due obligation, or ceases to be employed by the provider, organization, or plan.

(6) The Secretary shall also apply the provisions of this subsection in the case of an individual who is a member of a group practice, if such group practice submits bills under this program as a group, rather than by individual physicians.[3]

(e) Transfer from trust funds

Amounts equal to the amounts deducted pursuant to this section shall be transferred from the Trust Fund from which the payment to the individual, provider, or other entity would otherwise have been made, to the general fund in the Treasury, and shall be credited as payment of the past-due obligation of the individual from whom (or with respect to whom) the deduction was made.

(Aug. 14, 1935, ch. 531, title XVIII, § 1892, as added Pub. L. 100–203, title IV, § 4052(a), Dec. 22, 1987, 101 Stat. 1330–95; amended Pub. L. 100–360, title IV, § 411(f)(10)(A), (C)(i), July 1, 1988, 102 Stat. 780; Pub. L. 100–485, title VI, § 608(d)(21)(E)–(H), Oct. 13, 1988, 102 Stat. 2420.)

REFERENCES IN TEXT

Section 204(a)(1) of the Public Health Service Amendments of 1987, referred to in subsec. (a)(1)(B), is section 204(a)(1) of Pub. L. 100–177, title II, Dec. 1, 1987, 101 Stat. 1000, which is set out as a note under section 254*o* of this title.

The Public Health Service Act, referred to in subsecs. (a)(1)(B)(iii) and (b), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart II of part D of title III of the Act is classified generally to subpart II (§ 254d et seq.) of part D of subchapter II of chapter 6A of this title. Subpart I of part C of title VII of the Act was classified generally to subpart I (§ 294 et seq.) of part C of subchapter V of chapter 6A of this title and was omitted in the general revision of subchapter V by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. See subpart I (§ 292 et seq.) of part A of subchapter V of chapter 6A of this title. Subpart III of part F of title VII of the Public Health Service Act (as in effect before October 1, 1976) was classified to subpart III (§ 295g–21 et seq.) of part F of subchapter V of chapter 6A of this title, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

[2] See References in Text note below.

[3] So in original. Probably should be ''individuals''.

AMENDMENTS

1988—Pub. L. 100–360, § 411(f)(10)(C)(i)(I), substituted ''individuals'' for ''physicians'' and inserted ''and loan'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 100–360, § 411(f)(10)(C)(i)(IV), as amended by Pub. L. 100–485, § 608(d)(21)(H), inserted '', the Physician Shortage Area Scholarship Program, or the Health Education Assistance Loan Program''.

Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' in two places.

Subsec. (a)(1)(B). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''an individual'' for ''a physician'' in introductory provisions and ''individual'' for ''physician'' in cls. (i)(I) and (II), (ii), and (iii).

Subsec. (a)(2)(A) to (C). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' wherever appearing.

Subsec. (a)(2)(C)(ii). Pub. L. 100–360, § 411(f)(10)(A)(i), substituted ''paragraph (4)'' for ''paragraph (3)''.

Subsec. (a)(3). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' in introductory provisions.

Subsec. (a)(3)(B). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician''.

Pub. L. 100–360, § 411(f)(10)(A)(i), substituted ''paragraph (4)'' for ''paragraph (3)''.

Subsec. (a)(4). Pub. L. 100–360, § 411(f)(10)(C)(i)(III), substituted ''community practitioner'' for ''community physician''.

Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''an individual'' for ''a physician'' and ''such individual'' for ''such physician''.

Pub. L. 100–360, § 411(f)(10)(A)(iii), as amended by Pub. L. 100–360, § 608(d)(21)(E), inserted before period at end ''if a State requests that the individual not be excluded''.

Pub. L. 100–360, § 411(f)(10)(A)(ii), substituted ''exclude'' for ''bar''.

Subsec. (b). Pub. L. 100–360, § 411(f)(10)(C)(i)(V), as amended by Pub. L. 100–485, § 608(d)(21)(F)(i), substituted ''or under subpart III of part F of title VII of such Act (as in effect before October 1, 1976) and which has not been paid by the deadline established by the Secretary pursuant to such respective section'' for '', and (2) which has not been paid by the deadline established by the Secretary pursuant to section 338E of the Public Health Service Act''.

Subsec. (b)(1). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''an individual'' for ''a physician''.

Subsec. (b)(2). Pub. L. 100–360, § 411(f)(10)(C)(i)(VI), as amended by Pub. L. 100–485, § 608(d)(21)(F)(i), added par. (2).

Subsec. (d)(1). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''an individual'' for ''a physician''.

Subsec. (d)(2). Pub. L. 100–360, § 411(f)(10)(C)(i)(VII), as added by Pub. L. 100–485, § 608(d)(21)(F), substituted ''continues'' for ''continued''.

Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' in three places.

Subsec. (d)(4) to (6). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' wherever appearing.

Subsec. (e). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' in two places.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(f)(10)(A) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(f)(10)(C)(iii) of Pub. L. 100–360 provided that: ''The Amendments made by this subparagraph [amending this section and former section 294f of this title] shall be effective 30 days after the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE

Section 4052(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting this section and amending section 254*o* of this title] shall be effective on the date of the enactment of this Act [Dec. 22, 1987].''

§ 1395ddd. Medicare Integrity Program

(a) Establishment of Program

There is hereby established the Medicare Integrity Program (in this section referred to as the ''Program'') under which the Secretary shall promote the integrity of the medicare program by entering into contracts in accordance with this section with eligible entities to carry out the activities described in subsection (b) of this section.

(b) Activities described

The activities described in this subsection are as follows:

(1) Review of activities of providers of services or other individuals and entities furnishing items and services for which payment may be made under this subchapter (including skilled nursing facilities and home health agencies), including medical and utilization review and fraud review (employing similar standards, processes, and technologies used by private health plans, including equipment and software technologies which surpass the capability of the equipment and technologies used in the review of claims under this subchapter as of August 21, 1996).

(2) Audit of cost reports.

(3) Determinations as to whether payment should not be, or should not have been, made under this subchapter by reason of section 1395y(b) of this title, and recovery of payments that should not have been made.

(4) Education of providers of services, beneficiaries, and other persons with respect to payment integrity and benefit quality assurance issues.

(5) Developing (and periodically updating) a list of items of durable medical equipment in accordance with section 1395m(a)(15) of this title which are subject to prior authorization under such section.

(6) The Medicare-Medicaid Data Match Program in accordance with subsection (g).

(c) Eligibility of entities

An entity is eligible to enter into a contract under the Program to carry out any of the activities described in subsection (b) of this section if—

(1) the entity has demonstrated capability to carry out such activities;

(2) in carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to this subchapter and in other cases arising out of such activities;

(3) the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement; and

(4) the entity meets such other requirements as the Secretary may impose.

In the case of the activity described in subsection (b)(5) of this section, an entity shall be deemed to be eligible to enter into a contract under the Program to carry out the activity if the entity is a carrier with a contract in effect under section 1395u of this title.

(d) Process for entering into contracts

The Secretary shall enter into contracts under the Program in accordance with such procedures as the Secretary shall by regulation establish, except that such procedures shall include the following:

(1) Procedures for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.

(2) Competitive procedures to be used—

(A) when entering into new contracts under this section;

(B) when entering into contracts that may result in the elimination of responsibilities of an individual fiscal intermediary or carrier under section 202(b) of the Health Insurance Portability and Accountability Act of 1996; and

(C) at any other time considered appropriate by the Secretary,

except that the Secretary may continue to contract with entities that are carrying out the activities described in this section pursuant to agreements under section 1395h of this title or contracts under section 1395u of this title in effect on August 21, 1996.

(3) Procedures under which a contract under this section may be renewed without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

The Secretary may enter into such contracts without regard to final rules having been promulgated.

(e) Limitation on contractor liability

The Secretary shall by regulation provide for the limitation of a contractor's liability for actions taken to carry out a contract under the Program, and such regulation shall, to the extent the Secretary finds appropriate, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1320c–6 of this title.

(f) Recovery of overpayments

(1) Use of repayment plans

(A) In general

If the repayment, within 30 days by a provider of services or supplier, of an overpayment under this subchapter would constitute a hardship (as described in subparagraph (B)), subject to subparagraph (C), upon request of the provider of services or supplier the Secretary shall enter into a plan with the provider of services or supplier for the repayment (through offset or otherwise) of such overpayment over a period of at least 6 months but not longer than 3 years (or not longer than 5 years in the case of extreme hardship, as determined by the Secretary). Interest shall accrue on the balance through the period of repayment. Such plan shall meet terms and conditions determined to be appropriate by the Secretary.

(B) Hardship

(i) In general

For purposes of subparagraph (A), the repayment of an overpayment (or overpayments) within 30 days is deemed to constitute a hardship if—

(I) in the case of a provider of services that files cost reports, the aggregate amount of the overpayments exceeds 10 percent of the amount paid under this subchapter to the provider of services for the cost reporting period covered by the most recently submitted cost report; or

(II) in the case of another provider of services or supplier, the aggregate amount of the overpayments exceeds 10 percent of the amount paid under this subchapter to the provider of services or supplier for the previous calendar year.

(ii) Rule of application

The Secretary shall establish rules for the application of this subparagraph in the case of a provider of services or supplier that was not paid under this subchapter during the previous year or was paid under this subchapter only during a portion of that year.

(iii) Treatment of previous overpayments

If a provider of services or supplier has entered into a repayment plan under subparagraph (A) with respect to a specific overpayment amount, such payment amount under the repayment plan shall not be taken into account under clause (i) with respect to subsequent overpayment amounts.

(C) Exceptions

Subparagraph (A) shall not apply if—

(i) the Secretary has reason to suspect that the provider of services or supplier may file for bankruptcy or otherwise cease to do business or discontinue participation in the program under this subchapter; or

(ii) there is an indication of fraud or abuse committed against the program.

(D) Immediate collection if violation of repayment plan

If a provider of services or supplier fails to make a payment in accordance with a repay-

ment plan under this paragraph, the Secretary may immediately seek to offset or otherwise recover the total balance outstanding (including applicable interest) under the repayment plan.

(E) Relation to no fault provision

Nothing in this paragraph shall be construed as affecting the application of section 1395gg(c) of this title (relating to no adjustment in the cases of certain overpayments).

(2) Limitation on recoupment

(A) In general

In the case of a provider of services or supplier that is determined to have received an overpayment under this subchapter and that seeks a reconsideration by a qualified independent contractor on such determination under section 1395ff(b)(1) of this title, the Secretary may not take any action (or authorize any other person, including any medicare contractor, as defined in subparagraph (C)) to recoup the overpayment until the date the decision on the reconsideration has been rendered. If the provisions of section 1395ff(b)(1) of this title (providing for such a reconsideration by a qualified independent contractor) are not in effect, in applying the previous sentence any reference to such a reconsideration shall be treated as a reference to a redetermination by the fiscal intermediary or carrier involved.

(B) Collection with interest

Insofar as the determination on such appeal is against the provider of services or supplier, interest on the overpayment shall accrue on and after the date of the original notice of overpayment. Insofar as such determination against the provider of services or supplier is later reversed, the Secretary shall provide for repayment of the amount recouped plus interest at the same rate as would apply under the previous sentence for the period in which the amount was recouped.

(C) Medicare contractor defined

For purposes of this subsection, the term ''medicare contractor'' has the meaning given such term in section 1395zz(g) of this title.

(3) Limitation on use of extrapolation

A medicare contractor may not use extrapolation to determine overpayment amounts to be recovered by recoupment, offset, or otherwise unless the Secretary determines that—

(A) there is a sustained or high level of payment error; or

(B) documented educational intervention has failed to correct the payment error.

There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of determinations by the Secretary of sustained or high levels of payment errors under this paragraph.

(4) Provision of supporting documentation

In the case of a provider of services or supplier with respect to which amounts were previously overpaid, a medicare contractor may request the periodic production of records or supporting documentation for a limited sample of submitted claims to ensure that the previous practice is not continuing.

(5) Consent settlement reforms

(A) In general

The Secretary may use a consent settlement (as defined in subparagraph (D)) to settle a projected overpayment.

(B) Opportunity to submit additional information before consent settlement offer

Before offering a provider of services or supplier a consent settlement, the Secretary shall—

(i) communicate to the provider of services or supplier—

(I) that, based on a review of the medical records requested by the Secretary, a preliminary evaluation of those records indicates that there would be an overpayment;

(II) the nature of the problems identified in such evaluation; and

(III) the steps that the provider of services or supplier should take to address the problems; and

(ii) provide for a 45-day period during which the provider of services or supplier may furnish additional information concerning the medical records for the claims that had been reviewed.

(C) Consent settlement offer

The Secretary shall review any additional information furnished by the provider of services or supplier under subparagraph (B)(ii). Taking into consideration such information, the Secretary shall determine if there still appears to be an overpayment. If so, the Secretary—

(i) shall provide notice of such determination to the provider of services or supplier, including an explanation of the reason for such determination; and

(ii) in order to resolve the overpayment, may offer the provider of services or supplier—

(I) the opportunity for a statistically valid random sample; or

(II) a consent settlement.

The opportunity provided under clause (ii)(I) does not waive any appeal rights with respect to the alleged overpayment involved.

(D) Consent settlement defined

For purposes of this paragraph, the term ''consent settlement'' means an agreement between the Secretary and a provider of services or supplier whereby both parties agree to settle a projected overpayment based on less than a statistically valid sample of claims and the provider of services or supplier agrees not to appeal the claims involved.

(6) Notice of over-utilization of codes

The Secretary shall establish, in consultation with organizations representing the class-

es of providers of services and suppliers, a process under which the Secretary provides for notice to classes of providers of services and suppliers served by the contractor in cases in which the contractor has identified that particular billing codes may be overutilized by that class of providers of services or suppliers under the programs under this subchapter (or provisions of subchapter XI of this chapter insofar as they relate to such programs).

(7) Payment audits

(A) Written notice for post-payment audits

Subject to subparagraph (C), if a medicare contractor decides to conduct a post-payment audit of a provider of services or supplier under this subchapter, the contractor shall provide the provider of services or supplier with written notice (which may be in electronic form) of the intent to conduct such an audit.

(B) Explanation of findings for all audits

Subject to subparagraph (C), if a medicare contractor audits a provider of services or supplier under this subchapter, the contractor shall—

(i) give the provider of services or supplier a full review and explanation of the findings of the audit in a manner that is understandable to the provider of services or supplier and permits the development of an appropriate corrective action plan;

(ii) inform the provider of services or supplier of the appeal rights under this subchapter as well as consent settlement options (which are at the discretion of the Secretary);

(iii) give the provider of services or supplier an opportunity to provide additional information to the contractor; and

(iv) take into account information provided, on a timely basis, by the provider of services or supplier under clause (iii).

(C) Exception

Subparagraphs (A) and (B) shall not apply if the provision of notice or findings would compromise pending law enforcement activities, whether civil or criminal, or reveal findings of law enforcement-related audits.

(8) Standard methodology for probe sampling

The Secretary shall establish a standard methodology for medicare contractors to use in selecting a sample of claims for review in the case of an abnormal billing pattern.

(g) Medicare-Medicaid Data Match Program

(1) Expansion of Program

(A) In general

The Secretary shall enter into contracts with eligible entities for the purpose of ensuring that, beginning with 2006, the Medicare-Medicaid Data Match Program (commonly referred to as the ''Medi-Medi Program'') is conducted with respect to the program established under this subchapter and State Medicaid programs under subchapter XIX for the purpose of—

(i) identifying program vulnerabilities in the program established under this subchapter and the Medicaid program established under subchapter XIX through the use of computer algorithms to look for payment anomalies (including billing or billing patterns identified with respect to service, time, or patient that appear to be suspect or otherwise implausible);

(ii) working with States, the Attorney General, and the Inspector General of the Department of Health and Human Services to coordinate appropriate actions to protect the Federal and State share of expenditures under the Medicaid program under subchapter XIX, as well as the program established under this subchapter; and

(iii) increasing the effectiveness and efficiency of both such programs through cost avoidance, savings, and recoupments of fraudulent, wasteful, or abusive expenditures.

(B) Reporting requirements

The Secretary shall make available in a timely manner any data and statistical information collected by the Medi-Medi Program to the Attorney General, the Director of the Federal Bureau of Investigation, the Inspector General of the Department of Health and Human Services, and the States (including a Medicaid fraud and abuse control unit described in section 1396b(q) of this title). Such information shall be disseminated no less frequently than quarterly.

(2) Limited waiver authority

The Secretary shall waive only such requirements of this section and of subchapters XI and XIX as are necessary to carry out paragraph (1).

(h) Use of recovery audit contractors

(1) In general

Under the Program, the Secretary shall enter into contracts with recovery audit contractors in accordance with this subsection for the purpose of identifying underpayments and overpayments and recouping overpayments under this subchapter with respect to all services for which payment is made under part A or B. Under the contracts—

(A) payment shall be made to such a contractor only from amounts recovered;

(B) from such amounts recovered, payment—

(i) shall be made on a contingent basis for collecting overpayments; and

(ii) may be made in such amounts as the Secretary may specify for identifying underpayments; and

(C) the Secretary shall retain a portion of the amounts recovered which shall be available to the program management account of the Centers for Medicare & Medicaid Services for purposes of activities conducted under the recovery audit program under this subsection.

(2) Disposition of remaining recoveries

The amounts recovered under such contracts that are not paid to the contractor under paragraph (1) or retained by the Secretary under

paragraph (1)(C) shall be applied to reduce expenditures under parts A and B.

(3) Nationwide coverage

The Secretary shall enter into contracts under paragraph (1) in a manner so as to provide for activities in all States under such a contract by not later than January 1, 2010.

(4) Audit and recovery periods

Each such contract shall provide that audit and recovery activities may be conducted during a fiscal year with respect to payments made under part A or B—

(A) during such fiscal year; and

(B) retrospectively (for a period of not more than 4 fiscal years prior to such fiscal year).

(5) Waiver

The Secretary shall waive such provisions of this subchapter as may be necessary to provide for payment of recovery audit contractors under this subsection in accordance with paragraph (1).

(6) Qualifications of contractors

(A) In general

The Secretary may not enter into a contract under paragraph (1) with a recovery audit contractor unless the contractor has staff that has the appropriate clinical knowledge of, and experience with, the payment rules and regulations under this subchapter or the contractor has, or will contract with, another entity that has such knowledgeable and experienced staff.

(B) Ineligibility of certain contractors

The Secretary may not enter into a contract under paragraph (1) with a recovery audit contractor to the extent the contractor is a fiscal intermediary under section 1395h of this title, a carrier under section 1395u of this title, or a medicare administrative contractor under section 1395kk–1 of this title.

(C) Preference for entities with demonstrated proficiency

In awarding contracts to recovery audit contractors under paragraph (1), the Secretary shall give preference to those risk entities that the Secretary determines have demonstrated more than 3 years direct management experience and a proficiency for cost control or recovery audits with private insurers, health care providers, health plans, under the Medicaid program under subchapter XIX, or under this subchapter.

(7) Construction relating to conduct of investigation of fraud

A recovery of an overpayment to a individual or entity by a recovery audit contractor under this subsection shall not be construed to prohibit the Secretary or the Attorney General from investigating and prosecuting, if appropriate, allegations of fraud or abuse arising from such overpayment.

(8) Annual report

The Secretary shall annually submit to Congress a report on the use of recovery audit contractors under this subsection. Each such report shall include information on the performance of such contractors in identifying underpayments and overpayments and recouping overpayments, including an evaluation of the comparative performance of such contractors and savings to the program under this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, §1893, as added Pub. L. 104–191, title II, §202(a), Aug. 21, 1996, 110 Stat. 1996; amended Pub. L. 108–173, title VII, §736(c)(7), title IX, §935(a), Dec. 8, 2003, 117 Stat. 2356, 2407; Pub. L. 109–171, title VI, §6034(d)(1), Feb. 8, 2006, 120 Stat. 77; Pub. L. 109–432, div. B, title III, §302(a), Dec. 20, 2006, 120 Stat. 2991.)

REFERENCES IN TEXT

Section 202(b) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (d)(2)(B), is section 202(b) of Pub. L. 104–191, which amended sections 1395h and 1395u of this title.

Parts A and B, referred to in subsec. (h)(1), (2), (4), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2006—Subsec. (b)(6). Pub. L. 109–171, §6034(d)(1)(A), added par. (6).

Subsec. (g). Pub. L. 109–171, §6034(d)(1)(B), added subsec. (g).

Subsec. (h). Pub. L. 109–432 added subsec. (h).

2003—Subsec. (a). Pub. L. 108–173, §736(c)(7), substituted ''medicare program'' for ''Medicare program''.

Subsec. (f). Pub. L. 108–173, §935(a), added subsec. (f).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, §935(b), Dec. 8, 2003, 117 Stat. 2411, provided that:

''(1) USE OF REPAYMENT PLANS.—Section 1893(f)(1) of the Social Security Act [subsec. (f)(1) of this section], as added by subsection (a), shall apply to requests for repayment plans made after the date of the enactment of this Act [Dec. 8, 2003].

''(2) LIMITATION ON RECOUPMENT.—Section 1893(f)(2) of the Social Security Act [subsec. (f)(2) of this section], as added by subsection (a), shall apply to actions taken after the date of the enactment of this Act.

''(3) USE OF EXTRAPOLATION.—Section 1893(f)(3) of the Social Security Act [subsec. (f)(3) of this section], as added by subsection (a), shall apply to statistically valid random samples initiated after the date that is 1 year after the date of the enactment of this Act.

''(4) PROVISION OF SUPPORTING DOCUMENTATION.—Section 1893(f)(4) of the Social Security Act [subsec. (f)(4) of this section], as added by subsection (a), shall take effect on the date of the enactment of this Act.

''(5) CONSENT SETTLEMENT.—Section 1893(f)(5) of the Social Security Act [subsec. (f)(5) of this section], as added by subsection (a), shall apply to consent settlements entered into after the date of the enactment of this Act.

''(6) NOTICE OF OVERUTILIZATION.—Not later than 1 year after the date of the enactment of this Act, the Secretary [of Health and Human Services] shall first establish the process for notice of overutilization of billing codes under section 1893A(f)(6) [1893(f)(6)] of the Social Security Act [probably means subsec. (f)(6) of this section], as added by subsection (a).

''(7) PAYMENT AUDITS.—Section 1893A(f)(7) [1893(f)(7)] of the Social Security Act [probably means subsec. (f)(7) of this section], as added by subsection (a), shall apply to audits initiated after the date of the enactment of this Act.

''(8) STANDARD FOR ABNORMAL BILLING PATTERNS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall first establish a standard methodology for selection of sample claims for abnor-

mal billing patterns under section 1893(f)(8) of the Social Security Act [subsec. (f)(8) of this section], as added by subsection (a).''

ACCESS TO COORDINATION OF BENEFITS CONTRACTOR DATABASE

Pub. L. 109–432, div. B, title III, § 302(b), Dec. 20, 2006, 120 Stat. 2992, provided that: ''The Secretary of Health and Human Services shall provide for access by recovery audit contractors conducting audit and recovery activities under section 1893(h) of the Social Security Act [subsec. (h) of this section], as added by subsection (a), to the database of the Coordination of Benefits Contractor of the Centers for Medicare & Medicaid Services with respect to the audit and recovery periods described in paragraph (4) of such section 1893(h).''

§ 1395eee. Payments to, and coverage of benefits under, programs of all-inclusive care for elderly (PACE)

(a) Receipt of benefits through enrollment in PACE program; definitions for PACE program related terms

(1) Benefits through enrollment in a PACE program

In accordance with this section, in the case of an individual who is entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter and who is a PACE program eligible individual (as defined in paragraph (5)) with respect to a PACE program offered by a PACE provider under a PACE program agreement—

(A) the individual may enroll in the program under this section; and

(B) so long as the individual is so enrolled and in accordance with regulations—

(i) the individual shall receive benefits under this subchapter solely through such program; and

(ii) the PACE provider is entitled to payment under and in accordance with this section and such agreement for provision of such benefits.

(2) "PACE program" defined

For purposes of this section, the term ''PACE program'' means a program of all-inclusive care for the elderly that meets the following requirements:

(A) Operation

The entity operating the program is a PACE provider (as defined in paragraph (3)).

(B) Comprehensive benefits

The program provides comprehensive health care services to PACE program eligible individuals in accordance with the PACE program agreement and regulations under this section.

(C) Transition

In the case of an individual who is enrolled under the program under this section and whose enrollment ceases for any reason (including that the individual no longer qualifies as a PACE program eligible individual, the termination of a PACE program agreement, or otherwise), the program provides assistance to the individual in obtaining necessary transitional care through appropriate referrals and making the individual's medical records available to new providers.

(3) "PACE provider" defined

(A) In general

For purposes of this section, the term ''PACE provider'' means an entity that—

(i) subject to subparagraph (B), is (or is a distinct part of) a public entity or a private, nonprofit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986; and

(ii) has entered into a PACE program agreement with respect to its operation of a PACE program.

(B) Treatment of private, for-profit providers

Clause (i) of subparagraph (A) shall not apply—

(i) to entities subject to a demonstration project waiver under subsection (h) of this section; and

(ii) after the date the report under section 4804(b) of the Balanced Budget Act of 1997 is submitted, unless the Secretary determines that any of the findings described in subparagraph (A), (B), (C), or (D) of paragraph (2) of such section are true.

(4) "PACE program agreement" defined

For purposes of this section, the term ''PACE program agreement'' means, with respect to a PACE provider, an agreement, consistent with this section, section 1396u–4 of this title (if applicable), and regulations promulgated to carry out such sections, between the PACE provider and the Secretary, or an agreement between the PACE provider and a State administering agency for the operation of a PACE program by the provider under such sections.

(5) "PACE program eligible individual" defined

For purposes of this section, the term ''PACE program eligible individual'' means, with respect to a PACE program, an individual who—

(A) is 55 years of age or older;

(B) subject to subsection (c)(4) of this section, is determined under subsection (c) of this section to require the level of care required under the State medicaid plan for coverage of nursing facility services;

(C) resides in the service area of the PACE program; and

(D) meets such other eligibility conditions as may be imposed under the PACE program agreement for the program under subsection (e)(2)(A)(ii) of this section.

(6) "PACE protocol" defined

For purposes of this section, the term ''PACE protocol'' means the Protocol for the Program of All-inclusive Care for the Elderly (PACE), as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon between the Secretary and On Lok, Inc.

(7) "PACE demonstration waiver program" defined

For purposes of this section, the term ''PACE demonstration waiver program'' means a demonstration program under either of the following sections (as in effect before the date of their repeal):

(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21), as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).

(B) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509).

(8) "State administering agency" defined

For purposes of this section, the term ''State administering agency'' means, with respect to the operation of a PACE program in a State, the agency of that State (which may be the single agency responsible for administration of the State plan under subchapter XIX of this chapter in the State) responsible for administering PACE program agreements under this section and section 1396u–4 of this title in the State.

(9) "Trial period" defined

(A) In general

For purposes of this section, the term ''trial period'' means, with respect to a PACE program operated by a PACE provider under a PACE program agreement, the first 3 contract years under such agreement with respect to such program.

(B) Treatment of entities previously operating PACE demonstration waiver programs

Each contract year (including a year occurring before the effective date of this section) during which an entity has operated a PACE demonstration waiver program shall be counted under subparagraph (A) as a contract year during which the entity operated a PACE program as a PACE provider under a PACE program agreement.

(10) "Regulations" defined

For purposes of this section, the term ''regulations'' refers to interim final or final regulations promulgated under subsection (f) of this section to carry out this section and section 1396u–4 of this title.

(b) Scope of benefits; beneficiary safeguards

(1) In general

Under a PACE program agreement, a PACE provider shall—

(A) provide to PACE program eligible individuals enrolled with the provider, regardless of source of payment and directly or under contracts with other entities, at a minimum—

(i) all items and services covered under this subchapter (for individuals enrolled under this section) and all items and services covered under subchapter XIX of this chapter, but without any limitation or condition as to amount, duration, or scope and without application of deductibles, copayments, coinsurance, or other cost-sharing that would otherwise apply under this subchapter or such subchapter, respectively; and

(ii) all additional items and services specified in regulations, based upon those required under the PACE protocol;

(B) provide such enrollees access to necessary covered items and services 24 hours per day, every day of the year;

(C) provide services to such enrollees through a comprehensive, multidisciplinary health and social services delivery system which integrates acute and long-term care services pursuant to regulations; and

(D) specify the covered items and services that will not be provided directly by the entity, and to arrange for delivery of those items and services through contracts meeting the requirements of regulations.

(2) Quality assurance; patient safeguards

The PACE program agreement shall require the PACE provider to have in effect at a minimum—

(A) a written plan of quality assurance and improvement, and procedures implementing such plan, in accordance with regulations; and

(B) written safeguards of the rights of enrolled participants (including a patient bill of rights and procedures for grievances and appeals) in accordance with regulations and with other requirements of this subchapter and Federal and State law that are designed for the protection of patients.

(3) Treatment of medicare services furnished by noncontract physicians and other entities

(A) Application of medicare advantage requirement with respect to medicare services furnished by noncontract physicians and other entities

Section 1395w–22(k)(1) of this title (relating to limitations on balance billing against MA organizations for noncontract physicians and other entities with respect to services covered under this subchapter) shall apply to PACE providers, PACE program eligible individuals enrolled with such PACE providers, and physicians and other entities that do not have a contract or other agreement establishing payment amounts for services furnished to such an individual in the same manner as such section applies to MA organizations, individuals enrolled with such organizations, and physicians and other entities referred to in such section.

(B) Reference to related provision for noncontract providers of services

For the provision relating to limitations on balance billing against PACE providers for services covered under this subchapter furnished by noncontract providers of services, see section 1395cc(a)(1)(O) of this title.

(4) Reference to related provision for services covered under subchapter XIX but not under this subchapter

For provisions relating to limitations on payments to providers participating under the State plan under subchapter XIX of this chapter that do not have a contract or other agreement with a PACE provider establishing payment amounts for services covered under such plan (but not under this subchapter) when such services are furnished to enrollees of that

PACE provider, see section 1396a(a)(66) of this title.

(c) Eligibility determinations

(1) In general

The determination of whether an individual is a PACE program eligible individual—

(A) shall be made under and in accordance with the PACE program agreement; and

(B) who is entitled to medical assistance under subchapter XIX of this chapter, shall be made (or who is not so entitled, may be made) by the State administering agency.

(2) Condition

An individual is not a PACE program eligible individual (with respect to payment under this section) unless the individual's health status has been determined by the Secretary or the State administering agency, in accordance with regulations, to be comparable to the health status of individuals who have participated in the PACE demonstration waiver programs. Such determination shall be based upon information on health status and related indicators (such as medical diagnoses and measures of activities of daily living, instrumental activities of daily living, and cognitive impairment) that are part of a uniform minimum data set collected by PACE providers on potential PACE program eligible individuals.

(3) Annual eligibility recertifications

(A) In general

Subject to subparagraph (B), the determination described in subsection (a)(5)(B) of this section for an individual shall be reevaluated at least annually.

(B) Exception

The requirement of annual reevaluation under subparagraph (A) may be waived during a period in accordance with regulations in those cases where the State administering agency determines that there is no reasonable expectation of improvement or significant change in an individual's condition during the period because of the severity of chronic condition, or degree of impairment of functional capacity of the individual involved.

(4) Continuation of eligibility

An individual who is a PACE program eligible individual may be deemed to continue to be such an individual notwithstanding a determination that the individual no longer meets the requirement of subsection (a)(5)(B) of this section if, in accordance with regulations, in the absence of continued coverage under a PACE program the individual reasonably would be expected to meet such requirement within the succeeding 6-month period.

(5) Enrollment; disenrollment

(A) Voluntary disenrollment at any time

The enrollment and disenrollment of PACE program eligible individuals in a PACE program shall be pursuant to regulations and the PACE program agreement and shall permit enrollees to voluntarily disenroll without cause at any time.

(B) Limitations on disenrollment

(i) In general

Regulations promulgated by the Secretary under this section and section 1396u–4 of this title, and the PACE program agreement, shall provide that the PACE program may not disenroll a PACE program eligible individual except—

(I) for nonpayment of premiums (if applicable) on a timely basis; or

(II) for engaging in disruptive or threatening behavior, as defined in such regulations (developed in close consultation with State administering agencies).

(ii) No disenrollment for noncompliant behavior

Except as allowed under regulations promulgated to carry out clause (i)(II), a PACE program may not disenroll a PACE program eligible individual on the ground that the individual has engaged in noncompliant behavior if such behavior is related to a mental or physical condition of the individual. For purposes of the preceding sentence, the term ''noncompliant behavior'' includes repeated noncompliance with medical advice and repeated failure to appear for appointments.

(iii) Timely review of proposed nonvoluntary disenrollment

A proposed disenrollment, other than a voluntary disenrollment, shall be subject to timely review and final determination by the Secretary or by the State administering agency (as applicable), prior to the proposed disenrollment becoming effective.

(d) Payments to PACE providers on capitated basis

(1) In general

In the case of a PACE provider with a PACE program agreement under this section, except as provided in this subsection or by regulations, the Secretary shall make prospective monthly payments of a capitation amount for each PACE program eligible individual enrolled under the agreement under this section in the same manner and from the same sources as payments are made to a Medicare+Choice organization under section 1395w–23 of this title (or, for periods beginning before January 1, 1999, to an eligible organization under a risk-sharing contract under section 1395mm of this title). Such payments shall be subject to adjustment in the manner described in section 1395w–23(a)(2) of this title or section 1395mm(a)(1)(E) of this title, as the case may be.

(2) Capitation amount

The capitation amount to be applied under this subsection for a provider for a contract year shall be an amount specified in the PACE program agreement for the year. Such amount shall be based upon payment rates established for purposes of payment under section 1395w–23 of this title (or, for periods before January 1, 1999, for purposes of risk-sharing contracts

under section 1395mm of this title) and shall be adjusted to take into account the comparative frailty of PACE enrollees and such other factors as the Secretary determines to be appropriate. Such amount under such an agreement shall be computed in a manner so that the total payment level for all PACE program eligible individuals enrolled under a program is less than the projected payment under this subchapter for a comparable population not enrolled under a PACE program.

(e) PACE program agreement

(1) Requirement

(A) In general

The Secretary, in close cooperation with the State administering agency, shall establish procedures for entering into, extending, and terminating PACE program agreements for the operation of PACE programs by entities that meet the requirements for a PACE provider under this section, section 1396u–4 of this title, and regulations.

(B) Numerical limitation

(i) In general

The Secretary shall not permit the number of PACE providers with which agreements are in effect under this section or under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 to exceed—

(I) 40 as of August 5, 1997; or

(II) as of each succeeding anniversary of August 5, 1997, the numerical limitation under this subparagraph for the preceding year plus 20.

Subclause (II) shall apply without regard to the actual number of agreements in effect as of a previous anniversary date.

(ii) Treatment of certain private, for-profit providers

The numerical limitation in clause (i) shall not apply to a PACE provider that—

(I) is operating under a demonstration project waiver under subsection (h) of this section; or

(II) was operating under such a waiver and subsequently qualifies for PACE provider status pursuant to subsection (a)(3)(B)(ii) of this section.

(2) Service area and eligibility

(A) In general

A PACE program agreement for a PACE program—

(i) shall designate the service area of the program;

(ii) may provide additional requirements for individuals to qualify as PACE program eligible individuals with respect to the program;

(iii) shall be effective for a contract year, but may be extended for additional contract years in the absence of a notice by a party to terminate and is subject to termination by the Secretary and the State administering agency at any time for cause (as provided under the agreement);

(iv) shall require a PACE provider to meet all applicable State and local laws and requirements; and

(v) shall contain such additional terms and conditions as the parties may agree to, so long as such terms and conditions are consistent with this section and regulations.

(B) Service area overlap

In designating a service area under a PACE program agreement under subparagraph (A)(i), the Secretary (in consultation with the State administering agency) may exclude from designation an area that is already covered under another PACE program agreement, in order to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program.

(3) Data collection; development of outcome measures

(A) Data collection

(i) In general

Under a PACE program agreement, the PACE provider shall—

(I) collect data;

(II) maintain, and afford the Secretary and the State administering agency access to, the records relating to the program, including pertinent financial, medical, and personnel records; and

(III) make available to the Secretary and the State administering agency reports that the Secretary finds (in consultation with State administering agencies) necessary to monitor the operation, cost, and effectiveness of the PACE program under this section and section 1396u–4 of this title.

(ii) Requirements during trial period

During the first 3 years of operation of a PACE program (either under this section or under a PACE demonstration waiver program), the PACE provider shall provide such additional data as the Secretary specifies in regulations in order to perform the oversight required under paragraph (4)(A).

(B) Development of outcome measures

Under a PACE program agreement, the PACE provider, the Secretary, and the State administering agency shall jointly cooperate in the development and implementation of health status and quality of life outcome measures with respect to PACE program eligible individuals.

(4) Oversight

(A) Annual, close oversight during trial period

During the trial period (as defined in subsection (a)(9) of this section) with respect to a PACE program operated by a PACE provider, the Secretary (in cooperation with the State administering agency) shall conduct a comprehensive annual review of the operation of the PACE program by the provider in order to assure compliance with the requirements of this section and regulations. Such a review shall include—

(i) an on-site visit to the program site;

(ii) comprehensive assessment of a provider's fiscal soundness;

(iii) comprehensive assessment of the provider's capacity to provide all PACE services to all enrolled participants;

(iv) detailed analysis of the entity's substantial compliance with all significant requirements of this section and regulations; and

(v) any other elements the Secretary or State administering agency considers necessary or appropriate.

(B) Continuing oversight

After the trial period, the Secretary (in cooperation with the State administering agency) shall continue to conduct such review of the operation of PACE providers and PACE programs as may be appropriate, taking into account the performance level of a provider and compliance of a provider with all significant requirements of this section and regulations.

(C) Disclosure

The results of reviews under this paragraph shall be reported promptly to the PACE provider, along with any recommendations for changes to the provider's program, and shall be made available to the public upon request.

(5) Termination of PACE provider agreements

(A) In general

Under regulations—

(i) the Secretary or a State administering agency may terminate a PACE program agreement for cause; and

(ii) a PACE provider may terminate an agreement after appropriate notice to the Secretary, the State agency, and enrollees.

(B) Causes for termination

In accordance with regulations establishing procedures for termination of PACE program agreements, the Secretary or a State administering agency may terminate a PACE program agreement with a PACE provider for, among other reasons, the fact that—

(i) the Secretary or State administering agency determines that—

(I) there are significant deficiencies in the quality of care provided to enrolled participants; or

(II) the provider has failed to comply substantially with conditions for a program or provider under this section or section 1396u–4 of this title; and

(ii) the entity has failed to develop and successfully initiate, within 30 days of the date of the receipt of written notice of such a determination, a plan to correct the deficiencies, or has failed to continue implementation of such a plan.

(C) Termination and transition procedures

An entity whose PACE provider agreement is terminated under this paragraph shall implement the transition procedures required under subsection (a)(2)(C) of this section.

(6) Secretary's oversight; enforcement authority

(A) In general

Under regulations, if the Secretary determines (after consultation with the State administering agency) that a PACE provider is failing substantially to comply with the requirements of this section and regulations, the Secretary (and the State administering agency) may take any or all of the following actions:

(i) Condition the continuation of the PACE program agreement upon timely execution of a corrective action plan.

(ii) Withhold some or all further payments under the PACE program agreement under this section or section 1396u–4 of this title with respect to PACE program services furnished by such provider until the deficiencies have been corrected.

(iii) Terminate such agreement.

(B) Application of intermediate sanctions

Under regulations, the Secretary may provide for the application against a PACE provider of remedies described in section 1395w–27(g)(2) (or, for periods before January 1, 1999, section 1395mm(i)(6)(B) of this title) or 1396b(m)(5)(B) of this title in the case of violations by the provider of the type described in section 1395w–27(g)(1) (or section 1395mm(i)(6)(A) of this title for such periods) or 1396b(m)(5)(A) of this title, respectively (in relation to agreements, enrollees, and requirements under this section or section 1396u–4 of this title, respectively).

(7) Procedures for termination or imposition of sanctions

Under regulations, the provisions of section 1395w–27(h) of this title (or for periods before January 1, 1999, section 1395mm(i)(9) of this title) shall apply to termination and sanctions respecting a PACE program agreement and PACE provider under this subsection in the same manner as they apply to a termination and sanctions with respect to a contract and a Medicare+Choice organization under part C of this subchapter (or for such periods an eligible organization under section 1395mm of this title).

(8) Timely consideration of applications for PACE program provider status

In considering an application for PACE provider program status, the application shall be deemed approved unless the Secretary, within 90 days after the date of the submission of the application to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information that is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

(f) Regulations

(1) In general

The Secretary shall issue interim final or final regulations to carry out this section and section 1396u–4 of this title.

(2) Use of PACE protocol

(A) In general

In issuing such regulations, the Secretary shall, to the extent consistent with the provisions of this section, incorporate the requirements applied to PACE demonstration waiver programs under the PACE protocol.

(B) Flexibility

In order to provide for reasonable flexibility in adapting the PACE service delivery model to the needs of particular organizations (such as those in rural areas or those that may determine it appropriate to use nonstaff physicians according to State licensing law requirements) under this section and section 1396u–4 of this title, the Secretary (in close consultation with State administering agencies) may modify or waive provisions of the PACE protocol so long as any such modification or waiver is not inconsistent with and would not impair the essential elements, objectives, and requirements of this section, but may not modify or waive any of the following provisions:

(i) The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

(ii) The delivery of comprehensive, integrated acute and long-term care services.

(iii) The interdisciplinary team approach to care management and service delivery.

(iv) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

(v) The assumption by the provider of full financial risk.

(C) Continuation of modifications or waivers of operational requirements under demonstration status

If a PACE program operating under demonstration authority has contractual or other operating arrangements which are not otherwise recognized in regulation and which were in effect on July 1, 2000, the Secretary (in close consultation with, and with the concurrence of, the State administering agency) shall permit any such program to continue such arrangements so long as such arrangements are found by the Secretary and the State to be reasonably consistent with the objectives of the PACE program.

(3) Application of certain additional beneficiary and program protections

(A) In general

In issuing such regulations and subject to subparagraph (B), the Secretary may apply with respect to PACE programs, providers, and agreements such requirements of part C of this subchapter (or, for periods before January 1, 1999, section 1395mm of this title) and sections 1396b(m) and 1396u–2 of this title relating to protection of beneficiaries and program integrity as would apply to Medicare+Choice organizations under part C of this subchapter (or for such periods eligible organizations under risk-sharing contracts under section 1395mm of this title) and to medicaid managed care organizations under prepaid capitation agreements under section 1396b(m) of this title.

(B) Considerations

In issuing such regulations, the Secretary shall—

(i) take into account the differences between populations served and benefits provided under this section and under part C of this subchapter (or, for periods before January 1, 1999, section 1395mm of this title) and section 1396b(m) of this title;

(ii) not include any requirement that conflicts with carrying out PACE programs under this section; and

(iii) not include any requirement restricting the proportion of enrollees who are eligible for benefits under this subchapter or subchapter XIX of this chapter.

(4) Construction

Nothing in this subsection shall be construed as preventing the Secretary from including in regulations provisions to ensure the health and safety of individuals enrolled in a PACE program under this section that are in addition to those otherwise provided under paragraphs (2) and (3).

(g) Waivers of requirements

With respect to carrying out a PACE program under this section, the following requirements of this subchapter (and regulations relating to such requirements) are waived and shall not apply:

(1) Section 1395d of this title, insofar as it limits coverage of institutional services.

(2) Sections 1395e, 1395f, 1395*l*, and 1395ww of this title, insofar as such sections relate to rules for payment for benefits.

(3) Sections 1395f(a)(2)(B), 1395f(a)(2)(C), and 1395n(a)(2)(A) of this title, insofar as they limit coverage of extended care services or home health services.

(4) Section 1395x(i) of this title, insofar as it imposes a 3-day prior hospitalization requirement for coverage of extended care services.

(5) Paragraphs (1) and (9) of section 1395y(a) of this title, insofar as they may prevent payment for PACE program services to individuals enrolled under PACE programs.

(h) Demonstration project for for-profit entities

(1) In general

In order to demonstrate the operation of a PACE program by a private, for-profit entity, the Secretary (in close consultation with State administering agencies) shall grant waivers from the requirement under subsection (a)(3) of this section that a PACE provider may not be a for-profit, private entity.

(2) Similar terms and conditions

(A) In general

Except as provided under subparagraph (B), and paragraph (1), the terms and condi-

tions for operation of a PACE program by a provider under this subsection shall be the same as those for PACE providers that are nonprofit, private organizations.

(B) Numerical limitation

The number of programs for which waivers are granted under this subsection shall not exceed 10. Programs with waivers granted under this subsection shall not be counted against the numerical limitation specified in subsection (e)(1)(B) of this section.

(i) Miscellaneous provisions

Nothing in this section or section 1396u–4 of this title shall be construed as preventing a PACE provider from entering into contracts with other governmental or nongovernmental payers for the care of PACE program eligible individuals who are not eligible for benefits under part A of this subchapter, or enrolled under part B of this subchapter, or eligible for medical assistance under subchapter XIX of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1894, as added Pub. L. 105–33, title IV, § 4801, Aug. 5, 1997, 111 Stat. 528; amended Pub. L. 106–554, § 1(a)(6) [title IX, § 902(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–582; Pub. L. 108–173, title II, § 236(a)(2), Dec. 8, 2003, 117 Stat. 2210.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in subsecs. (a)(1), (e)(7), (f)(3), and (i), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsec. (a)(3)(A)(i), is classified generally to Title 26, Internal Revenue Code.

Section 4804(b) of the Balanced Budget Act of 1997, referred to in subsec. (a)(3)(B)(ii), is section 4804(b) of Pub. L. 105–33, which is set out as a note below.

Section 603(c) of the Social Security Amendments of 1983, referred to in subsec. (a)(7)(A), is section 603(c) of Pub. L. 98–21, title VI, Apr. 20, 1983, 97 Stat. 168, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, § 4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

Section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985, referred to in subsec. (a)(7)(A), is section 9220 of Pub. L. 99–272, title IX, Apr. 7, 1986, 100 Stat. 183, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, § 4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, referred to in subsecs. (a)(7)(B) and (e)(1)(B)(i), is section 9412(b) of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 2062, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, § 4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

For the effective date of this section, referred to in subsec. (a)(9)(B), see section 4803 of Pub. L. 105–33, set out below.

AMENDMENTS

2003—Subsec. (b)(3), (4). Pub. L. 108–173 added pars. (3) and (4).

2000—Subsec. (f)(2)(C). Pub. L. 106–554 added subpar. (C).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2004, see section 236(c) of Pub. L. 108–173, set out as a note under section 1395cc of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title IX, § 902(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–583, provided that: ''The amendments made by this section [amending this section and section 1396u–4 of this title] shall be effective as [if] included in the enactment of BBA [Pub. L. 105–33].''

RURAL PACE PROVIDER GRANT PROGRAM

Pub. L. 109–171, title V, § 5302, Feb. 8, 2006, 120 Stat. 51, as amended by Pub. L. 109–432, div. B, title II, § 205(a), Dec. 20, 2006, 120 Stat. 2989, provided that:

''(a) DEFINITIONS.—In this section:

''(1) CMS.—The term 'CMS' means the Centers for Medicare & Medicaid Services.

''(2) PACE PROGRAM.—The term 'PACE program' has the meaning given that term in sections 1894(a)(2) and 1934(a)(2) of the Social Security Act (42 U.S.C. 1395eee(a)(2); 1396u–4(a)(2)).

''(3) PACE PROVIDER.—The term 'PACE provider' has the meaning given that term in section 1894(a)(3) or 1934(a)(3) of the Social Security Act (42 U.S.C. 1395eee(a)(3); 1396u–4(a)(3)).

''(4) RURAL AREA.—The term 'rural area' has the meaning given that term in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D)).

''(5) RURAL PACE PILOT SITE.—The term 'rural PACE pilot site' means a PACE provider that has been approved to provide services in a geographic service area that is, in whole or in part, a rural area, and that has received a site development grant under this section.

''(6) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

''(b) SITE DEVELOPMENT GRANTS AND TECHNICAL ASSISTANCE PROGRAM.—

''(1) SITE DEVELOPMENT GRANTS.—

''(A) IN GENERAL.—The Secretary shall establish a process and criteria to award site development grants to qualified PACE providers that have been approved to serve a rural area.

''(B) AMOUNT PER AWARD.—A site development grant awarded under subparagraph (A) to any individual rural PACE pilot site shall not exceed $750,000.

''(C) NUMBER OF AWARDS.—Not more than 15 rural PACE pilot sites shall be awarded a site development grant under subparagraph (A).

''(D) USE OF FUNDS.—Funds made available under a site development grant awarded under subparagraph (A) may be used for the following expenses only to the extent such expenses are incurred in relation to establishing or delivering PACE program services in a rural area:

''(i) Feasibility analysis and planning.

''(ii) Interdisciplinary team development.

''(iii) Development of a provider network, including contract development.

''(iv) Development or adaptation of claims processing systems.

''(v) Preparation of special education and outreach efforts required for the PACE program.

''(vi) Development of expense reporting required for calculation of outlier payments or reconciliation processes.

''(vii) Development of any special quality of care or patient satisfaction data collection efforts.

''(viii) Establishment of a working capital fund to sustain fixed administrative, facility, or other

fixed costs until the provider reaches sufficient enrollment size.

''(ix) Startup and development costs incurred prior to the approval of the rural PACE pilot site's PACE provider application by CMS.

''(x) Any other efforts determined by the rural PACE pilot site to be critical to its successful startup, as approved by the Secretary.

''(E) APPROPRIATION.—

''(i) IN GENERAL.—Out of funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out this subsection for fiscal year 2006, $7,500,000.

''(ii) AVAILABILITY.—Funds appropriated under clause (i) shall remain available for expenditure through fiscal year 2008.

''(2) TECHNICAL ASSISTANCE PROGRAM.—The Secretary shall establish a technical assistance program to provide—

''(A) outreach and education to State agencies and provider organizations interested in establishing PACE programs in rural areas; and

''(B) technical assistance necessary to support rural PACE pilot sites.

''(c) COST OUTLIER PROTECTION FOR RURAL PACE PILOT SITES.—

''(1) ESTABLISHMENT OF FUND FOR REIMBURSEMENT OF OUTLIER COSTS.—Notwithstanding any other provision of law, the Secretary shall establish an outlier fund to reimburse rural PACE pilot sites for recognized outlier costs (as defined in paragraph (3)) incurred for eligible outlier participants (as defined in paragraph (2)) in an amount, subject to paragraph (4), equal to 80 percent of the amount by which the recognized outlier costs exceeds $50,000.

''(2) ELIGIBLE OUTLIER PARTICIPANT.—For purposes of this subsection, the term 'eligible outlier participant' means a PACE program eligible individual (as defined in sections 1894(a)(5) and 1934(a)(5) of the Social Security Act (42 U.S.C. 1395eee(a)(5); 1396u–4(a)(5))) who resides in a rural area and with respect to whom the rural PACE pilot site incurs more than $50,000 in recognized costs in a 12-month period.

''(3) RECOGNIZED OUTLIER COSTS DEFINED.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'recognized outlier costs' means, with respect to services furnished to an eligible outlier participant by a rural PACE pilot site, the least of the following (as documented by the site to the satisfaction of the Secretary) for the provision of inpatient and related physician and ancillary services for the eligible outlier participant in a given 12-month period:

''(i) If the services are provided under a contract between the pilot site and the provider, the payment rate specified under the contract.

''(ii) The payment rate established under the original Medicare fee-for-service program for such service.

''(iii) The amount actually paid for the services by the pilot site.

''(B) INCLUSION IN ONLY ONE PERIOD.—Recognized outlier costs may not be included in more than one 12-month period.

''(3)[two pars. (3) have been enacted] OUTLIER EXPENSE PAYMENT.—

''(A)[no subpar. (B) has been enacted] PAYMENT FOR OUTLIER COSTS.—Subject to subparagraph (B), in the case of a rural PACE pilot site that has incurred outlier costs for an eligible outlier participant, the rural PACE pilot site shall receive an outlier expense payment equal to 80 percent of such costs that exceed $50,000.

''(4) LIMITATIONS.—

''(A) COSTS INCURRED PER ELIGIBLE OUTLIER PARTICIPANT.—The total amount of outlier expense payments made under this subsection to a rural PACE pilot site with respect to an eligible outlier participant for any 12-month period shall not exceed $100,000 for the 12-month period used to calculate the payment.

''(B) COSTS INCURRED PER PROVIDER.—No rural PACE pilot site may receive more than $500,000 in total outlier expense payments in a 12-month period.

''(C) LIMITATION OF OUTLIER COST REIMBURSEMENT PERIOD.—A rural PACE pilot site shall only receive outlier expense payments under this subsection with respect to costs incurred during the first 3 years of the site's operation.

''(5) REQUIREMENT TO ACCESS RISK RESERVES PRIOR TO PAYMENT.—A rural PACE pilot site shall access and exhaust any risk reserves held or arranged for the provider (other than revenue or reserves maintained to satisfy the requirements of section 460.80(c) of title 42, Code of Federal Regulations) and any working capital established through a site development grant awarded under subsection (b)(1), prior to receiving any payment from the outlier fund.

''(6) APPLICATION.—In order to receive an outlier expense payment under this subsection with respect to an eligible outlier participant, a rural PACE pilot site shall submit an application containing—

''(A) documentation of the costs incurred with respect to the participant;

''(B) a certification that the site has complied with the requirements under paragraph (4); and

''(C) such additional information as the Secretary may require.

''(7) APPROPRIATION.—

''(A) IN GENERAL.—Out of funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary $10,000,000 to carry out this subsection for the period of fiscal years 2006 through 2010.

''(B) AVAILABILITY.—Funds appropriated under subparagraph (A) shall remain available for obligation through fiscal year 2010.

''(d) EVALUATION OF PACE PROVIDERS SERVING RURAL SERVICE AREAS.—Not later than 60 months after the date of enactment of this Act [Feb. 8, 2006], the Secretary shall submit a report to Congress containing an evaluation of the experience of rural PACE pilot sites.

''(e) AMOUNTS IN ADDITION TO PAYMENTS UNDER SOCIAL SECURITY ACT.—Any amounts paid under the authority of this section to a PACE provider shall be in addition to payments made to the provider under section 1894 or 1934 of the Social Security Act (42 U.S.C. 1395eee; 1396u–4).''

FLEXIBILITY IN EXERCISING WAIVER AUTHORITY

Pub. L. 106–554, § 1(a)(6) [title IX, § 903], Dec. 21, 2000, 114 Stat. 2763, 2763A–583, provided that: ''In applying sections 1894(f)(2)(B) and 1934(f)(2)(B) of the Social Security Act (42 U.S.C. 1395eee(f)(2)(B), 1396u–4(f)(2)(B)), the Secretary of Health and Human Services—

''(1) shall approve or deny a request for a modification or a waiver of provisions of the PACE protocol not later than 90 days after the date the Secretary receives the request; and

''(2) may exercise authority to modify or waive such provisions in a manner that responds promptly to the needs of PACE programs relating to areas of employment and the use of community-based primary care physicians.''

TRANSITION; REGULATIONS

Section 4803 of title IV of Pub. L. 105–33, as amended by Pub. L. 106–554, § 1(a)(6) [title IX, § 901], Dec. 21, 2000, 114 Stat. 2763, 2763A–582, provided that:

''(a) TIMELY ISSUANCE OF REGULATIONS; EFFECTIVE DATE.—The Secretary of Health and Human Services shall promulgate regulations to carry out this subtitle [subtitle I (§§ 4801–4804) of title IV of Pub. L. 105–33, enacting this section and section 1396u–4 of this title, amending sections 1396b, 1396d, 1396r–5, and 1396v of this title, and enacting provisions set out as notes under this section and section 1395b–6 of this title] in a timely manner. Such regulations shall be designed so that entities may establish and operate PACE programs under

sections 1894 and 1934 of the Social Security Act [this section and section 1396u–4 of this title] (as added by sections 4801 and 4802 of this subtitle) for periods beginning not later than 1 year after the date of the enactment of this Act [Aug. 5, 1997].

''(b) EXPANSION AND TRANSITION FOR PACE DEMONSTRATION PROJECT WAIVERS.—

''(1) EXPANSION IN CURRENT NUMBER AND EXTENSION OF DEMONSTRATION PROJECTS.—Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 [see subsec. (d) below], as amended by section 4118(g) of the Omnibus Budget Reconciliation Act of 1987, is amended—

''(A) in paragraph (1), by inserting before the period at the end the following: ', except that the Secretary shall grant waivers of such requirements to up to the applicable numerical limitation specified in sections 1894(e)(1)(B) and 1934(e)(1)(B) of the Social Security Act' [subsec. (e)(1)(B) of this section and section 1396u–4(e)(1)(B) of this title]; and

''(B) in paragraph (2)—

''(i) in subparagraph (A), by striking ', including permitting the organization to assume progressively (over the initial 3-year period of the waiver) the full financial risk'; and

''(ii) in subparagraph (C), by adding at the end the following: 'In granting further extensions, an organization shall not be required to provide for reporting of information which is only required because of the demonstration nature of the project.'

''(2) ELIMINATION OF REPLICATION REQUIREMENT.—Section 9412(b)(2)(B) of such Act, as so amended, shall not apply to waivers granted under such section after the date of the enactment of this Act [Aug. 5, 1997].

''(3) TIMELY CONSIDERATION OF APPLICATIONS.—In considering an application for waivers under such section before the effective date of the repeals under subsection (d), subject to the numerical limitation under the amendment made by paragraph (1), the application shall be deemed approved unless the Secretary of Health and Human Services, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information which is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

''(c) PRIORITY AND SPECIAL CONSIDERATION IN APPLICATION.—During the 3-year period beginning on the date of the enactment of this Act [Aug. 5, 1997]:

''(1) PROVIDER STATUS.—The Secretary of Health and Human Services shall give priority in processing applications of entities to qualify as PACE programs under section 1894 or 1934 of the Social Security Act [this section and section 1396u–4 of this title]—

''(A) first, to entities that are operating a PACE demonstration waiver program (as defined in sections 1894(a)(7) and 1934(a)(7) of such Act [subsec. (a)(7) of this section and section 1396u–4(a)(7) of this title]); and

''(B) then to entities that have applied to operate such a program as of May 1, 1997.

''(2) NEW WAIVERS.—The Secretary shall give priority, in the awarding of additional waivers under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 [see subsec. (d) below]—

''(A) to any entities that have applied for such waivers under such section as of May 1, 1997; and

''(B) to any entity that, as of May 1, 1997, has formally contracted with a State to provide services for which payment is made on a capitated basis with an understanding that the entity was seeking to become a PACE provider.

''(3) SPECIAL CONSIDERATION.—The Secretary shall give special consideration, in the processing of applications described in paragraph (1) and the awarding of waivers described in paragraph (2), to an entity which as of May 1, 1997, through formal activities (such as entering into contracts for feasibility studies) has indicated a specific intent to become a PACE provider.

''(d) REPEAL OF CURRENT PACE DEMONSTRATION PROJECT WAIVER AUTHORITY.—

''(1) IN GENERAL.—Subject to paragraph (2), the following provisions of law are repealed:

''(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21) [97 Stat. 168].

''(B) Section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272) [100 Stat. 183].

''(C) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509) [100 Stat. 2062].

''(2) DELAY IN APPLICATION TO CURRENT WAIVERS.—

''(A) IN GENERAL.—Subject to subparagraph (B), in the case of waivers granted with respect to a PACE program before July 1, 2000, the repeals made by paragraph (1) shall not apply until the end of a transition period (of up to 36 months) that begins on the initial effective date of such regulations, and that allows sufficient time for an orderly transition from demonstration project authority to general authority provided under the amendments made by this subtitle [subtitle I (§§ 4801–4804) of title IV of Pub. L. 105–33, enacting this section and section 1396u–4 of this title and amending sections 1396b, 1396d, 1396r–5, and 1396v of this title].

''(B) STATE OPTION TO SEEK EXTENSION OF CURRENT PERIOD.—A State may elect to maintain the PACE programs which (as of the date of the enactment of this Act [Aug. 5, 1997]) were operating in the State under the authority described in paragraph (1) until a date (specified by the State) that is not later than 4 years after the initial effective date of regulations described in subsection (a). If a State makes such an election, the repeals made by paragraph (1) shall not apply to the programs until the date so specified, but only so long as such programs continue to operate under the same terms and conditions as apply to such programs as of the date of the enactment of this Act, and subparagraph (A) shall not apply to such programs.''

PACE PROGRAMS; STUDY AND REPORTS

Section 4804(a), (b) of title IV of Pub. L. 105–33 provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (in close consultation with State administering agencies, as defined in sections 1894(a)(8) and 1934(a)(8) of the Social Security Act [subsec. (a)(8) of this section and section 1396u–4(a)(8) of this title]) shall conduct a study of the quality and cost of providing PACE program services under the medicare and medicaid programs under the amendments made by this subtitle [subtitle I (§§ 4801–4804) of title IV of Pub. L. 105–33, enacting this section and section 1396u–4 of this title and amending sections 1396b, 1396d, 1396r–5, and 1396v of this title].

''(2) STUDY OF PRIVATE, FOR-PROFIT PROVIDERS.—Such study shall specifically compare the costs, quality, and access to services by entities that are private, for-profit entities operating under demonstration projects waivers granted under sections 1894(h) and 1934(h) of the Social Security Act [subsec. (h) of this section and section 1396u–4(h) of this title] with the costs, quality, and access to services of other PACE providers.

''(b) REPORT.—

''(1) IN GENERAL.—Not later than 4 years after the date of the enactment of this Act [Aug. 5, 1997], the Secretary shall provide for a report to Congress on the impact of such amendments on quality and cost of services. The Secretary shall include in such report such recommendations for changes in the operation of such amendments as the Secretary deems appropriate.

''(2) TREATMENT OF PRIVATE, FOR-PROFIT PROVIDERS.—The report shall include specific findings on whether any of the following findings is true:

''(A) The number of covered lives enrolled with entities operating under demonstration project waivers under sections 1894(h) and 1934(h) of the Social Security Act is fewer than 800 (or such lesser number as the Secretary may find statistically sufficient to make determinations respecting findings described in the succeeding subparagraphs).

''(B) The population enrolled with such entities is less frail than the population enrolled with other PACE providers.

''(C) Access to or quality of care for individuals enrolled with such entities is lower than such access or quality for individuals enrolled with other PACE providers.

''(D) The application of such section has resulted in an increase in expenditures under the medicare or medicaid programs above the expenditures that would have been made if such section did not apply.''

§ 1395fff. Prospective payment for home health services

(a) In general

Notwithstanding section 1395x(v) of this title, the Secretary shall provide, for portions of cost reporting periods occurring on or after October 1, 2000, for payments for home health services in accordance with a prospective payment system established by the Secretary under this section.

(b) System of prospective payment for home health services

(1) In general

The Secretary shall establish under this subsection a prospective payment system for payment for all costs of home health services. Under the system under this subsection all services covered and paid on a reasonable cost basis under the medicare home health benefit as of August 5, 1997, including medical supplies, shall be paid for on the basis of a prospective payment amount determined under this subsection and applicable to the services involved. In implementing the system, the Secretary may provide for a transition (of not longer than 4 years) during which a portion of such payment is based on agency-specific costs, but only if such transition does not result in aggregate payments under this subchapter that exceed the aggregate payments that would be made if such a transition did not occur.

(2) Unit of payment

In defining a prospective payment amount under the system under this subsection, the Secretary shall consider an appropriate unit of service and the number, type, and duration of visits provided within that unit, potential changes in the mix of services provided within that unit and their cost, and a general system design that provides for continued access to quality services.

(3) Payment basis

(A) Initial basis

(i) In general

Under such system the Secretary shall provide for computation of a standard prospective payment amount (or amounts) as follows:

(I) Such amount (or amounts) shall initially be based on the most current audited cost report data available to the Secretary and shall be computed in a manner so that the total amounts payable under the system for the 12-month period beginning on the date the Secretary implements the system shall be equal to the total amount that would have been made if the system had not been in effect and if section 1395x(v)(1)(L)(ix) of this title had not been enacted.

(II) For the 12-month period beginning after the period described in subclause (I), such amount (or amounts) shall be equal to the amount (or amounts) determined under subclause (I), updated under subparagraph (B).

(III) For periods beginning after the period described in subclause (II), such amount (or amounts) shall be equal to the amount (or amounts) that would have been determined under subclause (I) that would have been made for fiscal year 2001 if the system had not been in effect and if section 1395x(v)(1)(L)(ix) of this title had not been enacted but if the reduction in limits described in clause (ii) had been in effect, updated under subparagraph (B).

Each such amount shall be standardized in a manner that eliminates the effect of variations in relative case mix and area wage adjustments among different home health agencies in a budget neutral manner consistent with the case mix and wage level adjustments provided under paragraph (4)(A). Under the system, the Secretary may recognize regional differences or differences based upon whether or not the services or agency are in an urbanized area.

(ii) Reduction

The reduction described in this clause is a reduction by 15 percent in the cost limits and per beneficiary limits described in section 1395x(v)(1)(L) of this title, as those limits are in effect on September 30, 2000.

(B) Annual update

(i) In general

The standard prospective payment amount (or amounts) shall be adjusted for fiscal year 2002 and for fiscal year 2003 and for each subsequent year (beginning with 2004) in a prospective manner specified by the Secretary by the home health applicable increase percentage (as defined in clause (ii)) applicable to the fiscal year or year involved.

(ii) Home health applicable increase percentage

For purposes of this subparagraph, the term ''home health applicable increase percentage'' means, with respect to—

(I) each of fiscal years 2002 and 2003, the home health market basket percentage increase (as defined in clause (iii)) minus 1.1 percentage points;

(II) for[1] the last calendar quarter of 2003 and the first calendar quarter of 2004, the home health market basket percentage increase;

(III) the last 3 calendar quarters of 2004, and all of 2005[2] the home health market basket percentage increase minus 0.8 percentage points;

(IV) 2006, 0 percent; and

(V) any subsequent year, subject to clause (v), the home health market basket percentage increase.

(iii) Home health market basket percentage increase

For purposes of this subsection, the term ''home health market basket percentage increase'' means, with respect to a fiscal year or year, a percentage (estimated by the Secretary before the beginning of the fiscal year or year) determined and applied with respect to the mix of goods and services included in home health services in the same manner as the market basket percentage increase under section 1395ww(b)(3)(B)(iii) of this title is determined and applied to the mix of goods and services comprising inpatient hospital services for the fiscal year or year.

(iv) Adjustment for case mix changes

Insofar as the Secretary determines that the adjustments under paragraph (4)(A)(i) for a previous fiscal year or year (or estimates that such adjustments for a future fiscal year or year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year or year that are a result of changes in the coding or classification of different units of services that do not reflect real changes in case mix, the Secretary may adjust the standard prospective payment amount (or amounts) under paragraph (3) for subsequent fiscal years or years so as to eliminate the effect of such coding or classification changes.

(v) Adjustment if quality data not submitted

(I) Adjustment

For purposes of clause (ii)(V), for 2007 and each subsequent year, in the case of a home health agency that does not submit data to the Secretary in accordance with subclause (II) with respect to such a year, the home health market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points. Such reduction shall apply only with respect to the year involved, and the Secretary shall not take into account such reduction in computing the prospective payment amount under this section for a subsequent year, and the Medicare Payment Advisory Commission shall carry out the requirements under section 5201(d) of the Deficit Reduction Act of 2005.

(II) Submission of quality data

For 2007 and each subsequent year, each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.

(III) Public availability of data submitted

The Secretary shall establish procedures for making data submitted under subclause (II) available to the public. Such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public with respect to the agency prior to such data being made public.

(C) Adjustment for outliers

The Secretary shall reduce the standard prospective payment amount (or amounts) under this paragraph applicable to home health services furnished during a period by such proportion as will result in an aggregate reduction in payments for the period equal to the aggregate increase in payments resulting from the application of paragraph (5) (relating to outliers).

(4) Payment computation

(A) In general

The payment amount for a unit of home health services shall be the applicable standard prospective payment amount adjusted as follows:

(i) Case mix adjustment

The amount shall be adjusted by an appropriate case mix adjustment factor (established under subparagraph (B)).

(ii) Area wage adjustment

The portion of such amount that the Secretary estimates to be attributable to wages and wage-related costs shall be adjusted for geographic differences in such costs by an area wage adjustment factor (established under subparagraph (C)) for the area in which the services are furnished or such other area as the Secretary may specify.

(B) Establishment of case mix adjustment factors

The Secretary shall establish appropriate case mix adjustment factors for home health services in a manner that explains a significant amount of the variation in cost among different units of services.

(C) Establishment of area wage adjustment factors

The Secretary shall establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services in a geographic area compared to the national average applicable level. Such factors may be the factors used by the Secretary for purposes of section 1395ww(d)(3)(E) of this title.

[1] So in original. The word ''for'' probably should not appear.

[2] So in original. Probably should be followed by a comma.

(5) Outliers

The Secretary may provide for an addition or adjustment to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. The total amount of the additional payments or payment adjustments made under this paragraph with respect to a fiscal year or year may not exceed 5 percent of the total payments projected or estimated to be made based on the prospective payment system under this subsection in that year.

(6) Proration of prospective payment amounts

If a beneficiary elects to transfer to, or receive services from, another home health agency within the period covered by the prospective payment amount, the payment shall be prorated between the home health agencies involved.

(c) Requirements for payment information

With respect to home health services furnished on or after October 1, 1998, no claim for such a service may be paid under this subchapter unless—

(1) the claim has the unique identifier (provided under section 1395u(r) of this title) for the physician who prescribed the services or made the certification described in section 1395f(a)(2) or 1395n(a)(2)(A) of this title; and

(2) in the case of a service visit described in paragraph (1), (2), (3), or (4) of section 1395x(m) of this title, the claim contains a code (or codes) specified by the Secretary that identifies the length of time of the service visit, as measured in 15 minute increments.

(d) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395*oo* of this title, or otherwise of—

(1) the establishment of a transition period under subsection (b)(1) of this section;

(2) the definition and application of payment units under subsection (b)(2) of this section;

(3) the computation of initial standard prospective payment amounts under subsection (b)(3)(A) of this section (including the reduction described in clause (ii) of such subsection);

(4) the establishment of the adjustment for outliers under subsection (b)(3)(C) of this section;

(5) the establishment of case mix and area wage adjustments under subsection (b)(4) of this section; and

(6) the establishment of any adjustments for outliers under subsection (b)(5) of this section.

(e) Construction related to home health services

(1) Telecommunications

Nothing in this section shall be construed as preventing a home health agency furnishing a home health unit of service for which payment is made under the prospective payment system established by this section for such units of service from furnishing services via a telecommunication system if such services—

(A) do not substitute for in-person home health services ordered as part of a plan of care certified by a physician pursuant to section 1395f(a)(2)(C) or 1395n(a)(2)(A) of this title; and

(B) are not considered a home health visit for purposes of eligibility or payment under this subchapter.

(2) Physician certification

Nothing in this section shall be construed as waiving the requirement for a physician certification under section 1395f(a)(2)(C) or 1395n(a)(2)(A) of this title for the payment for home health services, whether or not furnished via a telecommunications system.

(Aug. 14, 1935, ch. 531, title XVIII, § 1895, as added Pub. L. 105–33, title IV, § 4603(a), Aug. 5, 1997, 111 Stat. 467; amended Pub. L. 105–277, div. J, title V, § 5101(c)(1), (d)(2), Oct. 21, 1998, 112 Stat. 2681–914; Pub. L. 106–113, div. B, § 1000(a)(6) [title III, §§ 302(b), 303(b), 306, 321(k)(19)], Nov. 29, 1999, 113 Stat. 1536, 1501A–359, 1501A–361, 1501A–362, 1501A–368; Pub. L. 106–554, § 1(a)(6) [title V, §§ 501(a), (c)(1), 504], Dec. 21, 2000, 114 Stat. 2763, 2763A–529, 2763A–531; Pub. L. 108–173, title VII, § 701, Dec. 8, 2003, 117 Stat. 2334; Pub. L. 109–171, title V, § 5201(a), (c), Feb. 8, 2006, 120 Stat. 46.)

REFERENCES IN TEXT

Section 5201(d) of the Deficit Reduction Act of 2005, referred to in subsec. (b)(3)(B)(v)(I), is section 5201(d) of title V of Pub. L. 109–171, Feb. 8, 2006, 120 Stat. 47, which is not classified to the Code.

AMENDMENTS

2006—Subsec. (b)(3)(B)(ii)(III). Pub. L. 109–171, § 5201(a)(1), substituted ''all of 2005'' for ''each of 2005 and 2006''.

Subsec. (b)(3)(B)(ii)(IV). Pub. L. 109–171, § 5201(a)(2), (4), added subcl. (IV). Former subcl. (IV) redesignated (V).

Pub. L. 109–171, § 5201(a)(3), struck out ''2007 and'' before ''any subsequent year''.

Subsec. (b)(3)(B)(ii)(V). Pub. L. 109–171, § 5201(a)(3), (c)(1), redesignated subcl. (IV) as (V) and inserted ''subject to clause (v),'' after ''subsequent year,''.

Subsec. (b)(3)(B)(v). Pub. L. 109–171, § 5201(c)(2), added cl. (v).

2003—Subsec. (b)(3)(B)(i). Pub. L. 108–173, § 701(a)(1), substituted ''fiscal year 2002 and for fiscal year 2003 and for each subsequent year (beginning with 2004)'' for ''each fiscal year (beginning with fiscal year 2002)'' and inserted ''or year'' after ''the fiscal year''.

Subsec. (b)(3)(B)(ii)(I). Pub. L. 108–173, § 701(a)(2)(A), struck out ''or'' at end.

Subsec. (b)(3)(B)(ii)(II). Pub. L. 108–173, § 701(b)(1), struck out ''or'' at end.

Pub. L. 108–173, § 701(a)(2)(D), added subcl. (II). Former subcl. (II) redesignated (III).

Subsec. (b)(3)(B)(ii)(III). Pub. L. 108–173, § 701(b)(4), added subcl. (III). Former subcl. (III) redesignated (IV).

Pub. L. 108–173, § 701(a)(2)(B), (C), redesignated subcl. (II) as (III) and substituted ''2004 and any subsequent year'' for ''any subsequent fiscal year''.

Subsec. (b)(3)(B)(ii)(IV). Pub. L. 108–173, § 701(b)(2), (3), redesignated subcl. (III) as (IV) and substituted ''2007'' for ''2004''.

Subsec. (b)(3)(B)(iii). Pub. L. 108–173, § 701(a)(3), inserted ''or year'' after ''fiscal year'' wherever appearing.

Subsec. (b)(3)(B)(iv). Pub. L. 108–173, § 701(a)(4), inserted ''or year'' after ''fiscal year'' wherever appearing and ''or years'' after ''fiscal years''.

Subsec. (b)(5). Pub. L. 108–173, § 701(a)(5), inserted ''or year'' after ''fiscal year''.

2000—Subsec. (b)(3)(A)(i)(II). Pub. L. 106–554, § 1(a)(6) [title V, § 501(a)(3)], added subcl. (II). Former subcl. (II) redesignated (III).

Subsec. (b)(3)(A)(i)(III). Pub. L. 106–554, §1(a)(6) [title V, §501(a)(1), (2)], redesignated subcl. (II) as (III) and substituted ''described in subclause (II)'' for ''described in subclause (I)''.

Subsec. (b)(3)(B)(iv). Pub. L. 106–554, §1(a)(6) [title V, §501(c)(1)], added cl. (iv).

Subsec. (e). Pub. L. 106–554, §1(a)(6) [title V, §504], added subsec. (e).

1999—Subsec. (b)(1). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(19)], made technical amendment to reference in original act which appears in text as reference to August 5, 1997.

Subsec. (b)(3)(A)(i). Pub. L. 106–113, §1000(a)(6) [title III, §302(b)], amended heading and text of cl. (i) generally. Prior to amendment, text read as follows: ''Under such system the Secretary shall provide for computation of a standard prospective payment amount (or amounts). Such amount (or amounts) shall initially be based on the most current audited cost report data available to the Secretary and shall be computed in a manner so that the total amounts payable under the system for fiscal year 2001 shall be equal to the total amount that would have been made if the system had not been in effect but if the reduction in limits described in clause (ii) had been in effect. Such amount shall be standardized in a manner that eliminates the effect of variations in relative case mix and wage levels among different home health agencies in a budget neutral manner consistent with the case mix and wage level adjustments provided under paragraph (4)(A). Under the system, the Secretary may recognize regional differences or differences based upon whether or not the services or agency are in an urbanized area.''

Subsec. (b)(3)(A)(i)(I). Pub. L. 106–113, §1000(a)(6) [title III, §303(b)(1)], which directed that the second sentence of cl. (i) be amended in subcl. (I) by the insertion of ''and if section 1395x(v)(1)(L)(ix) of this title had not been enacted'' before semicolon, was executed by making the insertion before the period at end of subcl. (I) to reflect the probable intent of Congress.

Subsec. (b)(3)(A)(i)(II). Pub. L. 106–113, §1000(a)(6) [title III, §303(b)(2)], inserted ''and if section 1395x(v)(1)(L)(ix) of this title had not been enacted'' after ''if the system had not been in effect''.

Subsec. (b)(3)(B)(ii)(I). Pub. L. 106–113, §1000(a)(6) [title III, §306], substituted ''each of fiscal years 2002 and 2003'' for ''fiscal year 2002 or 2003''.

1998—Subsec. (a). Pub. L. 105–277, §5101(c)(1)(A), substituted ''for portions of cost reporting periods occurring on or after October 1, 2000'' for ''for cost reporting periods beginning on or after October 1, 1999''.

Subsec. (b)(3)(A)(i). Pub. L. 105–277, §5101(c)(1)(B)(i), substituted ''fiscal year 2001'' for ''fiscal year 2000''.

Subsec. (b)(3)(A)(ii). Pub. L. 105–277, §5101(c)(1)(B)(ii), substituted ''September 30, 2000'' for ''September 30, 1999''.

Subsec. (b)(3)(B)(i). Pub. L. 105–277, §5101(d)(2)(A), substituted ''home health applicable increase percentage (as defined in clause (ii))'' for ''home health market basket percentage increase''.

Pub. L. 105–277, §5101(c)(1)(B)(iii), substituted ''fiscal year 2002'' for ''fiscal year 2001''.

Subsec. (b)(3)(B)(ii), (iii). Pub. L. 105–277, §5101(d)(2)(B), (C), added cl. (ii) and redesignated former cl. (ii) as (iii).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title V, §501(c)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–529, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to episodes concluding on or after October 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, §303(b)] of Pub. L.106–113 applicable to services furnished by home health agencies for cost reporting periods beginning on or after Oct. 1, 1999, see section 1000(a)(6) [title III, §303(c)] of Pub. L. 106–113, set out as a note under section 1395x of this title.

Amendment by section 1000(a)(6) [title III, §321(k)(19)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE

Pub. L. 105–33, title IV, §4603(d), Aug. 5, 1997, 111 Stat. 471, as amended by Pub. L. 105–277, div. J, title V, §5101(c)(2), Oct. 21, 1998, 112 Stat. 2681–914, provided that: ''Except as otherwise provided, the amendments made by this section [enacting this section and amending sections 1395f, 1395g, 1395k, 1395*l*, 1395u, and 1395y of this title] shall apply to portions of cost reporting periods occurring on or after October 1, 2000.''

ONE-YEAR INCREASE FOR HOME HEALTH SERVICES FURNISHED IN A RURAL AREA

Pub. L. 108–173, title IV, §421, Dec. 8, 2003, 117 Stat. 2283, as amended by Pub. L. 109–171, title V, §5201(b), Feb. 8, 2006, 120 Stat. 46, provided that:

''(a) IN GENERAL.—With respect to episodes and visits ending on or after April 1, 2004, and before April 1, 2005, and episodes and visits beginning on or after January 1, 2006, and before January 1, 2007, in the case of home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D))), the Secretary [of Health and Human Services] shall increase the payment amount otherwise made under section 1895 of such Act (42 U.S.C. 1395fff) for such services by 5 percent.

''(b) WAIVING BUDGET NEUTRALITY.—The Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Social Security Act (42 U.S.C. 1395fff) applicable to home health services furnished during a period to offset the increase in payments resulting from the application of subsection (a).

''(c) NO EFFECT ON SUBSEQUENT PERIODS.—The payment increase provided under subsection (a) for a period under such subsection—

''(1) shall not apply to episodes and visits ending after such period; and

''(2) shall not be taken into account in calculating the payment amounts applicable for episodes and visits occurring after such period.''

DEMONSTRATION PROJECT FOR MEDICAL ADULT DAY-CARE SERVICES

Pub. L. 108–173, title VII, §703, Dec. 8, 2003, 117 Stat. 2336, provided that:

''(a) ESTABLISHMENT.—Subject to the succeeding provisions of this section, the Secretary [of Health and Human Services] shall establish a demonstration project (in this section referred to as the 'demonstration project') under which the Secretary shall, as part of a plan of an episode of care for home health services established for a medicare beneficiary, permit a home health agency, directly or under arrangements with a medical adult day-care facility, to provide medical adult day-care services as a substitute for a portion of home health services that would otherwise be provided in the beneficiary's home.

''(b) PAYMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), the amount of payment for an episode of care for home health services, a portion of which consists of substitute medical adult day-care services, under the demonstration project shall be made at a rate equal to 95 percent of the amount that would otherwise apply for such home health services under section 1895 of the Social Security Act (42 U.S.C. 1395fff). In no case may a home health agency, or a medical adult day-care facility under arrangements with a home health agency, separately charge a beneficiary for medical adult day-care services furnished under the plan of care.

''(2) ADJUSTMENT IN CASE OF OVERUTILIZATION OF SUBSTITUTE ADULT DAY-CARE SERVICES TO ENSURE

BUDGET NEUTRALITY.—The Secretary shall monitor the expenditures under the demonstration project and under title XVIII of the Social Security Act [this subchapter] for home health services. If the Secretary estimates that the total expenditures under the demonstration project and under such title XVIII for home health services for a period determined by the Secretary exceed expenditures that would have been made under such title XVIII for home health services for such period if the demonstration project had not been conducted, the Secretary shall adjust the rate of payment to medical adult day-care facilities under paragraph (1) in order to eliminate such excess.

''(c) DEMONSTRATION PROJECT SITES.—The demonstration project established under this section shall be conducted in not more than 5 sites in States selected by the Secretary that license or certify providers of services that furnish medical adult day-care services.

''(d) DURATION.—The Secretary shall conduct the demonstration project for a period of 3 years.

''(e) VOLUNTARY PARTICIPATION.—Participation of medicare beneficiaries in the demonstration project shall be voluntary. The total number of such beneficiaries that may participate in the project at any given time may not exceed 15,000.

''(f) PREFERENCE IN SELECTING AGENCIES.—In selecting home health agencies to participate under the demonstration project, the Secretary shall give preference to those agencies that are currently licensed or certified through common ownership and control to furnish medical adult day-care services.

''(g) WAIVER AUTHORITY.—The Secretary may waive such requirements of title XVIII of the Social Security Act [this subchapter] as may be necessary for the purposes of carrying out the demonstration project, other than waiving the requirement that an individual be homebound in order to be eligible for benefits for home health services.

''(h) EVALUATION AND REPORT.—The Secretary shall conduct an evaluation of the clinical and cost-effectiveness of the demonstration project. Not later than 6 months after the completion of the project, the Secretary shall submit to Congress a report on the evaluation, and shall include in the report the following:

''(1) An analysis of the patient outcomes and costs of furnishing care to the medicare beneficiaries participating in the project as compared to such outcomes and costs to beneficiaries receiving only home health services for the same health conditions.

''(2) Such recommendations regarding the extension, expansion, or termination of the project as the Secretary determines appropriate.

''(i) DEFINITIONS.—In this section:

''(1) HOME HEALTH AGENCY.—The term 'home health agency' has the meaning given such term in section 1861(*o*) of the Social Security Act (42 U.S.C. 1395x(*o*)).

''(2) MEDICAL ADULT DAY-CARE FACILITY.—The term 'medical adult day-care facility' means a facility that—

''(A) has been licensed or certified by a State to furnish medical adult day-care services in the State for a continuous 2-year period;

''(B) is engaged in providing skilled nursing services and other therapeutic services directly or under arrangement with a home health agency;

''(C) is licensed and certified by the State in which it operates or meets such standards established by the Secretary to assure quality of care and such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the facility; and

''(D) provides medical adult day-care services.

''(3) MEDICAL ADULT DAY-CARE SERVICES.—The term 'medical adult day-care services' means—

''(A) home health service items and services described in paragraphs (1) through (7) of section 1861(m) [probably means section 1861(m) of the Social Security Act which is classified to section 1395x(m) of this title] furnished in a medical adult day-care facility;

''(B) a program of supervised activities furnished in a group setting in the facility that—

''(i) meet such criteria as the Secretary determines appropriate; and

''(ii) is designed to promote physical and mental health of the individuals; and

''(C) such other services as the Secretary may specify.

''(4) MEDICARE BENEFICIARY.—The term 'medicare beneficiary' means an individual entitled to benefits under part A of this title [probably means part A of title XVIII of the Social Security Act which is classified to part A of this subchapter], enrolled under part B of this title [probably means part B of title XVIII of the Social Security Act which is classified to part B of this subchapter], or both.''

TEMPORARY SUSPENSION OF OASIS REQUIREMENT FOR COLLECTION OF DATA ON NON-MEDICARE AND NON-MEDICAID PATIENTS

Pub. L. 108–173, title VII, § 704, Dec. 8, 2003, 117 Stat. 2338, provided that:

''(a) IN GENERAL.—During the period described in subsection (b), the Secretary [of Health and Human Services] may not require, under section 4602(e) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 467) [set out as a note under this section] or otherwise under OASIS, a home health agency to gather or submit information that relates to an individual who is not eligible for benefits under either title XVIII or title XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] (such information in this section referred to as 'non-medicare/medicaid OASIS information').

''(b) PERIOD OF SUSPENSION.—The period described in this subsection—

''(1) begins on the date of the enactment of this Act [Dec. 8, 2003]; and

''(2) ends on the last day of the second month beginning after the date as of which the Secretary has published final regulations regarding the collection and use by the Centers for Medicare & Medicaid Services of non-medicare/medicaid OASIS information following the submission of the report required under subsection (c).

''(c) REPORT.—

''(1) STUDY.—The Secretary shall conduct a study on how non-medicare/medicaid OASIS information is and can be used by large home health agencies. Such study shall examine—

''(A) whether there are unique benefits from the analysis of such information that cannot be derived from other information available to, or collected by, such agencies; and

''(B) the value of collecting such information by small home health agencies compared to the administrative burden related to such collection.

In conducting the study the Secretary shall obtain recommendations from quality assessment experts in the use of such information and the necessity of small, as well as large, home health agencies collecting such information.

''(2) REPORT.—The Secretary shall submit to Congress a report on the study conducted under paragraph (1) by not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003].

''(d) CONSTRUCTION.—Nothing in this section shall be construed as preventing home health agencies from collecting non-medicare/medicaid OASIS information for their own use.''

MEDPAC STUDY ON MEDICARE MARGINS OF HOME HEALTH AGENCIES

Pub. L. 108–173, title VII, § 705, Dec. 8, 2003, 117 Stat. 2339, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study of payment margins of home health agencies under the home health prospective payment system under section 1895 of the Social

Security Act (42 U.S.C. 1395fff). Such study shall examine whether systematic differences in payment margins are related to differences in case mix (as measured by home health resource groups (HHRGs)) among such agencies. The study shall use the partial or full-year cost reports filed by home health agencies.

''(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress a report on the study under subsection (a).''

SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001 BASED ON ADJUSTED PROSPECTIVE PAYMENT AMOUNTS

Pub. L. 106–554, §1(a)(6) [title V, §502(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–530, provided that:

''(1) IN GENERAL.—Notwithstanding the amendments made by subsection (a) [amending section 1395x of this title], for purposes of making payments under section 1895(b) of the Social Security Act (42 U.S.C. 1395fff(b)) for home health services furnished during fiscal year 2001, the Secretary of Health and Human Services shall—

''(A) with respect to episodes and visits ending on or after October 1, 2000, and before April 1, 2001, use the final standardized and budget neutral prospective payment amounts for 60-day episodes and standardized average per visit amounts for fiscal year 2001 as published by the Secretary in the Federal Register on July 3, 2000 (65 Fed. Reg. 41128–41214); and

''(B) with respect to episodes and visits ending on or after April 1, 2001, and before October 1, 2001, use such amounts increased by 2.2 percent.

''(2) NO EFFECT ON OTHER PAYMENTS OR DETERMINATIONS.—The Secretary shall not take the provisions of paragraph (1) into account for purposes of payments, determinations, or budget neutrality adjustments under section 1895 of the Social Security Act.''

TEMPORARY TWO-MONTH PERIODIC INTERIM PAYMENT

Pub. L. 106–554, §1(a)(6) [title V, §503], Dec. 21, 2000, 114 Stat. 2763, 2763A–530, provided that:

''(a) IN GENERAL.—Notwithstanding the amendments made by section 4603(b) of BBA [Pub. L. 105–33, amending section 1395g of this title] (42 U.S.C. 1395fff note), in the case of a home health agency that was receiving periodic interim payments under section 1815(e)(2) of the Social Security Act (42 U.S.C. 1395g(e)(2)) as of September 30, 2000, and that is not described in subsection (b), the Secretary of Health and Human Services shall, as soon as practicable, make a single periodic interim payment to such agency in an amount equal to four times the last full fortnightly periodic interim payment made to such agency under the payment system in effect prior to the implementation of the prospective payment system under section 1895(b) of such Act (42 U.S.C. 1395fff(b)). Such amount of such periodic interim payment shall be included in the tentative settlement of the last cost report for the home health agency under the payment system in effect prior to the implementation of such prospective payment system, regardless of the ending date of such cost report.

''(b) EXCEPTIONS.—The Secretary shall not make an additional periodic interim payment under subsection (a) in the case of a home health agency (determined as of the day that such payment would otherwise be made) that—

''(1) notifies the Secretary that such agency does not want to receive such payment;

''(2) is not receiving payments pursuant to section 405.371 of title 42, Code of Federal Regulations;

''(3) is excluded from the medicare program under title XI of the Social Security Act [subchapter XI of this chapter];

''(4) no longer has a provider agreement under section 1866 of such Act (42 U.S.C. 1395cc);

''(5) is no longer in business; or

''(6) is subject to a court order providing for the withholding of medicare payments under title XVIII of such Act [this subchapter].''

TEMPORARY INCREASE FOR HOME HEALTH SERVICES FURNISHED IN A RURAL AREA

Pub. L. 106–554, §1(a)(6) [title V, §508], Dec. 21, 2000, 114 Stat. 2763, 2763A–533, provided that:

''(a) 24-MONTH INCREASE BEGINNING APRIL 1, 2001.—In the case of home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D))) on or after April 1, 2001, and before April 1, 2003, the Secretary of Health and Human Services shall increase the payment amount otherwise made under section 1895 of such Act (42 U.S.C. 1395fff) for such services by 10 percent.

''(b) WAIVING BUDGET NEUTRALITY.—The Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Social Security Act (42 U.S.C. 1395fff) applicable to home health services furnished during a period to offset the increase in payments resulting from the application of subsection (a).''

CLARIFICATION OF APPLICATION OF TEMPORARY PAYMENT INCREASES FOR 2001

Pub. L. 106–554, §1(a)(6) [title V, §547(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–553, provided that:

''(1) TRANSITIONAL ALLOWANCE FOR FULL MARKETBASKET [SIC] INCREASE.—The payment increase provided under section 502(b)(1)(B) [set out as a note above] shall not apply to episodes and visits ending after fiscal year 2001 and shall not be taken into account in calculating the payment amounts applicable for subsequent episodes and visits.

''(2) TEMPORARY INCREASE FOR RURAL HOME HEALTH SERVICES.—The payment increase provided under section 508(a) [set out as a note above] for the period beginning on April 1, 2001, and ending on September 30, 2002, shall not apply to episodes and visits ending after such period, and shall not be taken into account in calculating the payment amounts applicable for episodes and visits occurring after such period.''

ADJUSTMENT TO REFLECT ADMINISTRATIVE COSTS NOT INCLUDED IN THE INTERIM PAYMENT SYSTEM; GAO REPORT ON COSTS OF COMPLIANCE WITH OASIS DATA COLLECTION REQUIREMENTS

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §301], Nov. 29, 1999, 113 Stat. 1536, 1501A–358, provided that:

''(a) ADJUSTMENT TO REFLECT ADMINISTRATIVE COSTS

''(1) IN GENERAL.—In the case of a home health agency that furnishes home health services to a medicare beneficiary, for each such beneficiary to whom the agency furnished such services during the agency's cost reporting period beginning in fiscal year 2000, the Secretary of Health and Human Services shall pay the agency, in addition to any amount of payment made under section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) for the beneficiary and only for such cost reporting period, an aggregate amount of $10 to defray costs incurred by the agency attributable to data collection and reporting requirements under the Outcome and Assessment Information Set (OASIS) required by reason of section 4602(e) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33] (42 U.S.C. 1395fff note).

''(2) PAYMENT SCHEDULE

''(A) MIDYEAR PAYMENT.—Not later than April 1, 2000, the Secretary shall pay to a home health agency an amount that the Secretary estimates to be 50 percent of the aggregate amount payable to the agency by reason of this subsection.

''(B) UPON SETTLED COST REPORT.—The Secretary shall pay the balance of amounts payable to an agency under this subsection on the date that the cost report submitted by the agency for the cost reporting period beginning in fiscal year 2000 is settled.

''(3) PAYMENT FROM TRUST FUNDS.—Payments under this subsection shall be made, in appropriate part as specified by the Secretary, from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund.

''(4) DEFINITIONS.—In this subsection:

''(A) HOME HEALTH AGENCY.—The term 'home health agency' has the meaning given that term under section 1861(*o*) of the Social Security Act (42 U.S.C. 1395x(*o*)).

''(B) HOME HEALTH SERVICES.—The term 'home health services' has the meaning given that term under section 1861(m) of such Act (42 U.S.C. 1395x(m)).

''(C) MEDICARE BENEFICIARY.—The term 'medicare beneficiary' means a beneficiary described in section 1861(v)(1)(L)(vi)(II) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)(vi)(II)).

''(b) GAO REPORT ON COSTS OF COMPLIANCE WITH OASIS DATA COLLECTION REQUIREMENTS.—

''(1) REPORT TO CONGRESS.—

''(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Nov. 29, 1999], the Comptroller General of the United States shall submit to Congress a report on the matters described in subparagraph (B) with respect to the data collection requirement of patients of such agencies under the Outcome and Assessment Information Set (OASIS) standard as part of the comprehensive assessment of patients.

''(B) MATTERS STUDIED.—For purposes of subparagraph (A), the matters described in this subparagraph include the following:

''(i) An assessment of the costs incurred by medicare home health agencies in complying with such data collection requirement.

''(ii) An analysis of the effect of such data collection requirement on the privacy interests of patients from whom data is collected.

''(C) AUDIT.—The Comptroller General shall conduct an independent audit of the costs described in subparagraph (B)(i). Not later than 180 days after receipt of the report under subparagraph (A), the Comptroller General shall submit to Congress a report describing the Comptroller General's findings with respect to such audit, and shall include comments on the report submitted to Congress by the Secretary of Health and Human Services under subparagraph (A).

''(2) DEFINITIONS.—In this subsection:

''(A) COMPREHENSIVE ASSESSMENT OF PATIENTS.—The term 'comprehensive assessment of patients' means the rule published by the Health Care Financing Administration that requires, as a condition of participation in the medicare program, a home health agency to provide a patient-specific comprehensive assessment that accurately reflects the patient's current status and that incorporates the Outcome and Assessment Information Set (OASIS).

''(B) OUTCOME AND ASSESSMENT INFORMATION SET.—The term 'Outcome and Assessment Information Set' means the standard provided under the rule relating to data items that must be used in conducting a comprehensive assessment of patients.''

REPORT TO CONGRESS ON NEED FOR REDUCTIONS

Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 302(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–360, as amended by Pub. L. 106–554, § 1(a)(6) [title V, § 501(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–529, provided that: ''Not later than April 1, 2002, the Comptroller General of the United States shall submit to Congress a report analyzing the need for the 15 percent reduction under subsection (b)(3)(A)(ii) of such section [subsec. (b)(3)(A)(ii) of this section], or for any reduction, in the computation of the base payment amounts under the prospective payment system for home health services established under such section.''

STUDY AND REPORT TO CONGRESS REGARDING EXEMPTION OF RURAL AGENCIES AND POPULATIONS FROM INCLUSION IN HOME HEALTH PROSPECTIVE PAYMENT SYSTEM

Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 307], Nov. 29, 1999, 113 Stat. 1536, 1501A–362, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission (referred to in this section as 'MedPAC') shall conduct a study to determine the feasibility and advisability of exempting home health services provided by a home health agency (or by others under arrangements with such agency) located in a rural area, or to an individual residing in a rural area, from payment under the prospective payment system for such services established by the Secretary of Health and Human Services in accordance with section 1895 of the Social Security Act (42 U.S.C. 1395fff).

''(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Nov. 29, 1999], MedPAC shall submit a report to Congress on the study conducted under subsection (a), together with any recommendations for legislation that MedPAC determines to be appropriate as a result of such study.''

CASE MIX SYSTEM DEVELOPMENT

Section 4602(d) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services shall expand research on a prospective payment system for home health agencies under the medicare program that ties prospective payments to a unit of service, including an intensive effort to develop a reliable case mix adjuster that explains a significant amount of the variances in costs.''

CASE MIX SYSTEM; SUBMISSION OF DATA

Section 4602(e) of Pub. L. 105–33 provided that: ''Effective for cost reporting periods beginning on or after October 1, 1997, the Secretary of Health and Human Services may require all home health agencies to submit additional information that the Secretary considers necessary for the development of a reliable case mix system.''

PROSPECTIVE PAYMENT SYSTEM CONTINGENCY

Pub. L. 105–33, title IV, § 4603(e), Aug. 5, 1997, 111 Stat. 471, as amended by Pub. L. 105–277, div. J, title V, § 5101(c)(3), Oct. 21, 1998, 112 Stat. 2681–914, provided that if the Secretary of Health and Human Services did not establish and implement the prospective payment system for home health services described in subsec. (b) of this section for portions of cost reporting periods described in section 4603(d) of Pub. L. 105–33 (set out as a note above), for such portions the Secretary was to provide for a reduction by 15 percent in the cost limits and per beneficiary limits described in section 1395x(v)(1)(L) of this title, as those limits would otherwise have been in effect on Sept. 30, 2000, prior to repeal by Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 302(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–359.

REPORTS TO CONGRESS REGARDING HOME HEALTH COST CONTAINMENT

Section 4616 of Pub. L. 105–33 provided that:

''(a) ESTIMATE.—Not later than October 1, 1997, the Secretary of Health and Human Services shall submit to the Committees on Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that includes an estimate of the outlays that will be made under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter] for the provision of home health services during each of fiscal years 1998 through 2002.

''(b) ANNUAL REPORT.—Not later than the end of each of years 1999 through 2002, the Secretary shall submit to such Committees a report that compares the actual outlays under such parts for such services during the fiscal year ending in the year, to the outlays estimated under subsection (a) for such fiscal year. If the Secretary finds that such actual outlays were greater than such estimated outlays for the fiscal year, the Secretary shall include in the report recommendations regarding beneficiary copayments for home health services provided under the medicare program or such other methods as will reduce the growth in outlays for home health services under the medicare program.''

§ 1395ggg. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XVIII, § 1896, as added Pub. L. 105–33, title IV, § 4015(a), Aug. 5, 1997, 111 Stat. 337; amended Pub. L. 106–398, § 1 [[div. A], title VII, § 712(a)(2), (b)–(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–177, 1654A–178; Pub. L. 107–314, div. A, title VII, § 713, Dec. 2, 2002, 116 Stat. 2589; Pub. L. 108–173, title VII, § 736(c)(8), Dec. 8, 2003, 117 Stat. 2356, authorized the Secretary of Health and Human Services and the Secretary of Defense, acting jointly, to establish a demonstration project for providing medicare health care services to certain medicare-eligible military retirees or dependents in a military treatment facility or by a designated provider, to be conducted during the 4-year period beginning on January 1, 1998.

§ 1395hhh. Health care infrastructure improvement program

(a) Establishment

The Secretary shall establish a loan program that provides loans to qualifying hospitals for payment of the capital costs of projects described in subsection (d) of this section.

(b) Application

No loan may be provided under this section to a qualifying hospital except pursuant to an application that is submitted and approved in a time, manner, and form specified by the Secretary. A loan under this section shall be on such terms and conditions and meet such requirements as the Secretary determines appropriate.

(c) Selection criteria

(1) In general

The Secretary shall establish criteria for selecting among qualifying hospitals that apply for a loan under this section. Such criteria shall consider the extent to which the project for which loan is sought is nationally or regionally significant, in terms of expanding or improving the health care infrastructure of the United States or the region or in terms of the medical benefit that the project will have.

(2) Qualifying hospital defined

For purposes of this section, the term ''qualifying hospital'' means a hospital or an entity described in paragraph (3) that—

(A) is engaged in research in the causes, prevention, and treatment of cancer; and

(B) is designated as a cancer center for the National Cancer Institute or is designated by the State legislature as the official cancer institute of the State and such designation by the State legislature occurred prior to December 8, 2003.

(3) Entity described

An entity described in this paragraph is an entity that—

(A) is described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title;

(B) has at least 1 existing memorandum of understanding or affiliation agreement with a hospital located in the State in which the entity is located; and

(C) retains clinical outpatient treatment for cancer on site as well as lab research and education and outreach for cancer in the same facility.

(d) Projects

A project described in this subsection is a project of a qualifying hospital that is designed to improve the health care infrastructure of the hospital, including construction, renovation, or other capital improvements.

(e) State and local permits

The provision of a loan under this section with respect to a project shall not—

(1) relieve any recipient of the loan of any obligation to obtain any required State or local permit or approval with respect to the project;

(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

(f) Forgiveness of indebtedness

The Secretary may forgive a loan provided to a qualifying hospital under this section under terms and conditions that are analogous to the loan forgiveness provision for student loans under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.), except that the Secretary shall condition such forgiveness on the establishment by the hospital of—

(A) an outreach program for cancer prevention, early diagnosis, and treatment that provides services to a substantial majority of the residents of a State or region, including residents of rural areas;

(B) an outreach program for cancer prevention, early diagnosis, and treatment that provides services to multiple Indian tribes; and

(C)(i) unique research resources (such as population databases); or

(ii) an affiliation with an entity that has unique research resources.

(g) Funding

(1) In general

There are appropriated, out of amounts in the Treasury not otherwise appropriated, to carry out this section, $200,000,000, to remain available during the period beginning on July 1, 2004, and ending on September 30, 2008.

(2) Administrative costs

From funds made available under paragraph (1), the Secretary may use, for the administration of this section, not more than $2,000,000 for each of fiscal years 2004 through 2008.

(3) Availability

Amounts appropriated under this section shall be available for obligation on July 1, 2004.

(h) Report to Congress

Not later than 4 years after December 8, 2003, the Secretary shall submit to Congress a report on the projects for which loans are provided under this section and a recommendation as to whether the Congress should authorize the Secretary to continue loans under this section beyond fiscal year 2008.

(i) Limitation on review

There shall be no administrative or judicial review of any determination made by the Secretary under this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1897, as added Pub. L. 108–173, title X, § 1016, Dec. 8, 2003, 117 Stat. 2447; amended Pub. L. 109–13, div. A, title VI, § 6045(a), (b), May 11, 2005, 119 Stat. 294.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (f), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part D of title IV of the Act is classified to part C (§ 1087a et seq.) of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2005—Subsec. (c)(2). Pub. L. 109–13, § 6045(a)(1)(A), inserted ''or an entity described in paragraph (3)'' after ''means a hospital'' in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 109–13, § 6045(a)(1)(B), inserted ''legislature'' after ''designated by the State'' and ''and such designation by the State legislature occurred prior to December 8, 2003'' before period at end.

Subsec. (c)(3). Pub. L. 109–13, § 6045(a)(2), added par. (3).

Subsec. (i). Pub. L. 109–13, § 6045(b), added subsec. (i).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–13, div. A, title VI, § 6045(c), May 11, 2005, 119 Stat. 295, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 1016 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2447).''

SUBCHAPTER XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

§ 1396. Appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for medical assistance.

(Aug. 14, 1935, ch. 531, title XIX, § 1901, as added Pub. L. 89–97, title I, § 121(a), July 30, 1965, 79 Stat. 343; amended Pub. L. 93–233, § 13(a)(1), Dec. 31, 1973, 87 Stat. 960; Pub. L. 98–369, div. B, title VI, § 2663(j)(3)(C), July 18, 1984, 98 Stat. 1171.)

AMENDMENTS

1984—Pub. L. 98–369 struck out ''Health, Education, and Welfare'' after ''Secretary''.

1973—Pub. L. 93–233 substituted ''disabled individuals'' for ''permanently and totally disabled individuals'' in cl. (1).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective with respect to payments under section 1396b of this title for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93–233, set out as a note under section 1396a of this title.

§ 1396a. State plans for medical assistance

(a) Contents

A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1396b of this title are authorized by this subchapter; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency, (C) that each State or local officer, employee, or independent contractor who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer, employee, or contractor, and each partner of such an officer, employee, or contractor shall be prohibited from committing any act, in relation to any activity under the plan, the commission

of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, and (D) that each State or local officer, employee, or independent contractor who is responsible for selecting, awarding, or otherwise obtaining items and services under the State plan shall be subject to safeguards against conflicts of interest that are at least as stringent as the safeguards that apply under section 423 of title 41 to persons described in subsection (a)(2) of section 423 of title 41;

(5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan; or provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under subchapter I or XVI of this chapter (insofar as it relates to the aged) if the State is eligible to participate in the State plan program established under subchapter XVI of this chapter, or by the agency or agencies administering the supplemental security income program established under subchapter XVI or the State plan approved under part A of subchapter IV of this chapter if the State is not eligible to participate in the State plan program established under subchapter XVI of this chapter;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with—

(A) the administration of the plan; and

(B) at State option, the exchange of information necessary to verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] and free or reduced price lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], in accordance with section 9(b) of that Act [42 U.S.C. 1758(b)], using data standards and formats established by the State agency;

(8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide—

(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1395aa(a) of this title), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services,

(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health, for such institutions, and

(C) that any laboratory services paid for under such plan must be provided by a laboratory which meets the applicable requirements of section 1395x(e)(9) of this title or paragraphs (16) and (17) of section 1395x(s) of this title, or, in the case of a laboratory which is in a rural health clinic, of section 1395x(aa)(2)(G) of this title;

(10) provide—

(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5), (17) and (21) of section 1396d(a) of this title, to—

(i) all individuals—

(I) who are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including individuals eligible under this subchapter by reason of section 602(a)(37),[1] 606(h),[1] or 673(b) of this title, or considered by the State to be receiving such aid as authorized under section 682(e)(6)[1] of this title),

(II)(aa) with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter (or were being paid as of the date of the enactment of section 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) and would continue to be paid but for the enactment of that section), (bb) who are qualified severely impaired individuals (as defined in section 1396d(q) of this title), or (cc) who are under 21 years of age and with respect to whom supplemental security income benefits would be paid under subchapter XVI if subparagraphs (A) and (B) of section 1382(c)(7) of this title were applied without regard to the phrase ''the first day of the month following'',

(III) who are qualified pregnant women or children as defined in section 1396d(n) of this title,

(IV) who are described in subparagraph (A) or (B) of subsection (*l*)(1) of this section and whose family income does not exceed the minimum income level the State is required to establish under subsection (*l*)(2)(A) of this section for such a family;[2]

(V) who are qualified family members as defined in section 1396d(m)(1) of this title,

(VI) who are described in subparagraph (C) of subsection (*l*)(1) of this section and

[1] See References in Text note below.

[2] So in original. The semicolon probably should be a comma.

whose family income does not exceed the income level the State is required to establish under subsection (*l*)(2)(B) of this section for such a family, or

(VII) who are described in subparagraph (D) of subsection (*l*)(1) of this section and whose family income does not exceed the income level the State is required to establish under subsection (*l*)(2)(C) of this section for such a family;[3]

(ii) at the option of the State, to[4] any group or groups of individuals described in section 1396d(a) of this title (or, in the case of individuals described in section 1396d(a)(i) of this title, to[4] any reasonable categories of such individuals) who are not individuals described in clause (i) of this subparagraph but—

(I) who meet the income and resources requirements of the appropriate State plan described in clause (i) or the supplemental security income program (as the case may be),

(II) who would meet the income and resources requirements of the appropriate State plan described in clause (i) if their work-related child care costs were paid from their earnings rather than by a State agency as a service expenditure,

(III) who would be eligible to receive aid under the appropriate State plan described in clause (i) if coverage under such plan was as broad as allowed under Federal law,

(IV) with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, aid or assistance under the appropriate State plan described in clause (i), supplemental security income benefits under subchapter XVI of this chapter, or a State supplementary payment;[2]

(V) who are in a medical institution for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period), who meet the resource requirements of the appropriate State plan described in clause (i) or the supplemental security income program, and whose income does not exceed a separate income standard established by the State which is consistent with the limit established under section 1396b(f)(4)(C) of this title,

(VI) who would be eligible under the State plan under this subchapter if they were in a medical institution, with respect to whom there has been a determination that but for the provision of home or community-based services described in subsection (c), (d), or (e) of section 1396n of this title they would require the level of care provided in a hospital, nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan, and who will receive home or community-based services pursuant to a waiver granted by the Secretary under subsection (c), (d), or (e) of section 1396n of this title,

(VII) who would be eligible under the State plan under this subchapter if they were in a medical institution, who are terminally ill, and who will receive hospice care pursuant to a voluntary election described in section 1396d(*o*) of this title;[5]

(VIII) who is a child described in section 1396d(a)(i) of this title—

(aa) for whom there is in effect an adoption assistance agreement (other than an agreement under part E of subchapter IV of this chapter) between the State and an adoptive parent or parents,

(bb) who the State agency responsible for adoption assistance has determined cannot be placed with adoptive parents without medical assistance because such child has special needs for medical or rehabilitative care, and

(cc) who was eligible for medical assistance under the State plan prior to the adoption assistance agreement being entered into, or who would have been eligible for medical assistance at such time if the eligibility standards and methodologies of the State's foster care program under part E of subchapter IV of this chapter were applied rather than the eligibility standards and methodologies of the State's aid to families with dependent children program under part A of subchapter IV of this chapter;[5]

(IX) who are described in subsection (*l*)(1) of this section and are not described in clause (i)(IV), clause (i)(VI), or clause (i)(VII);[5]

(X) who are described in subsection (m)(1) of this section;[5]

(XI) who receive only an optional State supplementary payment based on need and paid on a regular basis, equal to the difference between the individual's countable income and the income standard used to determine eligibility for such supplementary payment (with countable income being the income remaining after deductions as established by the State pursuant to standards that may be more restrictive than the standards for supplementary security income benefits under subchapter XVI of this chapter), which are available to all individuals in the State (but which may be based on different income standards by political subdivision according to cost of living differences), and which are paid by a State that does not have an agreement with the Commissioner of Social Security under section 1382e or 1383c of this title;[5]

[3] So in original. Probably should be followed by ''and''.

[4] So in original. The word ''to'' probably should not appear.

[5] So in original. The semicolon probably should be a comma.

(XII) who are described in subsection (z)(1) of this section (relating to certain TB-infected individuals);[5]

(XIII) who are in families whose income is less than 250 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved, and who but for earnings in excess of the limit established under section 1396d(q)(2)(B) of this title, would be considered to be receiving supplemental security income (subject, notwithstanding section 1396*o* of this title, to payment of premiums or other cost-sharing charges (set on a sliding scale based on income) that the State may determine);[5]

(XIV) who are optional targeted low-income children described in section 1396d(u)(2)(B) of this title;[5]

(XV) who, but for earnings in excess of the limit established under section 1396d(q)(2)(B) of this title, would be considered to be receiving supplemental security income, who is at least 16, but less than 65, years of age, and whose assets, resources, and earned or unearned income (or both) do not exceed such limitations (if any) as the State may establish;[5]

(XVI) who are employed individuals with a medically improved disability described in section 1396d(v)(1) of this title and whose assets, resources, and earned or unearned income (or both) do not exceed such limitations (if any) as the State may establish, but only if the State provides medical assistance to individuals described in subclause (XV);[5]

(XVII) who are independent foster care adolescents (as defined in section 1396d(w)(1) of this title), or who are within any reasonable categories of such adolescents specified by the State;[5]

(XVIII) who are described in subsection (aa) of this section (relating to certain breast or cervical cancer patients);[5] or

(XIX) who are disabled children described in subsection (cc)(1);

(B) that the medical assistance made available to any individual described in subparagraph (A)—

(i) shall not be less in amount, duration, or scope than the medical assistance made available to any other such individual, and

(ii) shall not be less in amount, duration, or scope than the medical assistance made available to individuals not described in subparagraph (A);

(C) that if medical assistance is included for any group of individuals described in section 1396d(a) of this title who are not described in subparagraph (A) or (E), then—

(i) the plan must include a description of (I) the criteria for determining eligibility of individuals in the group for such medical assistance, (II) the amount, duration, and scope of medical assistance made available to individuals in the group, and (III) the single standard to be employed in determining income and resource eligibility for all such groups, and the methodology to be employed in determining such eligibility, which shall be no more restrictive than the methodology which would be employed under the supplemental security income program in the case of groups consisting of aged, blind, or disabled individuals in a State in which such program is in effect, and which shall be no more restrictive than the methodology which would be employed under the appropriate State plan (described in subparagraph (A)(i)) to which such group is most closely categorically related in the case of other groups;

(ii) the plan must make available medical assistance—

(I) to individuals under the age of 18 who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A)(i), and

(II) to pregnant women, during the course of their pregnancy, who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A);

(iii) such medical assistance must include (I) with respect to children under 18 and individuals entitled to institutional services, ambulatory services, and (II) with respect to pregnant women, prenatal care and delivery services; and

(iv) if such medical assistance includes services in institutions for mental diseases or in an intermediate care facility for the mentally retarded (or both) for any such group, it also must include for all groups covered at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title or the care and services listed in any 7 of the paragraphs numbered (1) through (24) of such section;

(D) for the inclusion of home health services for any individual who, under the State plan, is entitled to nursing facility services;

(E)(i) for making medical assistance available for medicare cost-sharing (as defined in section 1396d(p)(3) of this title) for qualified medicare beneficiaries described in section 1396d(p)(1) of this title;

(ii) for making medical assistance available for payment of medicare cost-sharing described in section 1396d(p)(3)(A)(i) of this title for qualified disabled and working individuals described in section 1396d(s) of this title;

(iii) for making medical assistance available for medicare cost sharing described in section 1396d(p)(3)(A)(ii) of this title subject to section 1396d(p)(4) of this title, for individuals who would be qualified medicare beneficiaries described in section 1396d(p)(1) of this title but for the fact that their income exceeds the income level established by the State under section 1396d(p)(2) of this title but is less than 110 percent in 1993 and

1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) for a family of the size involved; and

(iv) subject to sections 1396u–3 and 1396d(p)(4) of this title, for making medical assistance available (but only for premiums payable with respect to months during the period beginning with January 1998, and ending with September 2007) for medicare cost-sharing described in section 1396d(p)(3)(A)(ii) of this title for individuals who would be qualified medicare beneficiaries described in section 1396d(p)(1) of this title but for the fact that their income exceeds the income level established by the State under section 1396d(p)(2) of this title and is at least 120 percent, but less than 135 percent, of the official poverty line (referred to in such section) for a family of the size involved and who are not otherwise eligible for medical assistance under the State plan;

(F) at the option of a State, for making medical assistance available for COBRA premiums (as defined in subsection (u)(2) of this section) for qualified COBRA continuation beneficiaries described in subsection (u)(1) of this section; and

(G) that, in applying eligibility criteria of the supplemental security income program under subchapter XVI of this chapter for purposes of determining eligibility for medical assistance under the State plan of an individual who is not receiving supplemental security income, the State will disregard the provisions of subsections (c) and (e) of section 1382b of this title;

except that (I) the making available of the services described in paragraph (4), (14), or (16) of section 1396d(a) of this title to individuals meeting the age requirements prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, (II) the making available of supplementary medical insurance benefits under part B of subchapter XVIII of this chapter to individuals eligible therefor (either pursuant to an agreement entered into under section 1395v of this title or by reason of the payment of premiums under such subchapter by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of deductibles, cost sharing, or similar charges under part B of subchapter XVIII of this chapter for individuals eligible for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals, (III) the making available of medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in clause (A) to any classification of individuals approved by the Secretary with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment shall not, by reason of this paragraph (10), require the making available of any such assistance, or the making available of such assistance of the same amount, duration, and scope, to any other individuals not described in clause (A), (IV) the imposition of a deductible, cost sharing, or similar charge for any item or service furnished to an individual not eligible for the exemption under section 1396*o*(a)(2) or (b)(2) of this title shall not require the imposition of a deductible, cost sharing, or similar charge for the same item or service furnished to an individual who is eligible for such exemption, (V) the making available to pregnant women covered under the plan of services relating to pregnancy (including prenatal, delivery, and postpartum services) or to any other condition which may complicate pregnancy shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any other individuals, provided such services are made available (in the same amount, duration, and scope) to all pregnant women covered under the State plan, (VI) with respect to the making available of medical assistance for hospice care to terminally ill individuals who have made a voluntary election described in section 1396d(*o*) of this title to receive hospice care instead of medical assistance for certain other services, such assistance may not be made available in an amount, duration, or scope less than that provided under subchapter XVIII of this chapter, and the making available of such assistance shall not, by reason of this paragraph (10), require the making available of medical assistance for hospice care to other individuals or the making available of medical assistance for services waived by such terminally ill individuals, (VII) the medical assistance made available to an individual described in subsection (*l*)(1)(A) of this section who is eligible for medical assistance only because of subparagraph (A)(i)(IV) or (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, postpartum, and family planning services) and to other conditions which may complicate pregnancy, (VIII) the medical assistance made available to a qualified medicare beneficiary described in section 1396d(p)(1) of this title who is only entitled to medical assistance because the individual is such a beneficiary shall be limited to medical assistance for medicare cost-sharing (described in section 1396d(p)(3) of this title), subject to the provisions of subsection (n) of this section and section 1396*o*(b) of this title, (IX) the making available of respiratory care services in accordance with subsection (e)(9) of this section shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any individuals not included under subsection (e)(9)(A) of this section, provided such services are made available (in the same amount, duration, and scope) to all individuals described in such subsection, (X) if the plan provides for any fixed dura-

tional limit on medical assistance for inpatient hospital services (whether or not such a limit varies by medical condition or diagnosis), the plan must establish exceptions to such a limit for medically necessary inpatient hospital services furnished with respect to individuals under one year of age in a hospital defined under the State plan, pursuant to section 1396r–4(a)(1)(A) of this title, as a disproportionate share hospital and subparagraph (B) (relating to comparability) shall not be construed as requiring such an exception for other individuals, services, or hospitals, (XI) the making available of medical assistance to cover the costs of premiums, deductibles, coinsurance, and other cost-sharing obligations for certain individuals for private health coverage as described in section 1396e of this title shall not, by reason of paragraph (10), require the making available of any such benefits or the making available of services of the same amount, duration, and scope of such private coverage to any other individuals, (XII) the medical assistance made available to an individual described in subsection (u)(1) of this section who is eligible for medical assistance only because of subparagraph (F) shall be limited to medical assistance for COBRA continuation premiums (as defined in subsection (u)(2) of this section), (XIII) the medical assistance made available to an individual described in subsection (z)(1) of this section who is eligible for medical assistance only because of subparagraph (A)(ii)(XII) shall be limited to medical assistance for TB-related services (described in subsection (z)(2) of this section), and (XIV) the medical assistance made available to an individual described in subsection (aa) of this section who is eligible for medical assistance only because of subparagraph (A)(10)(ii)(XVIII) shall be limited to medical assistance provided during the period in which such an individual requires treatment for breast or cervical cancer;

(11)(A) provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan, (B) provide, to the extent prescribed by the Secretary, for entering into agreements, with any agency, institution, or organization receiving payments under (or through an allotment under) subchapter V of this chapter, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such subchapter or allotment and which are included in the State plan approved under this section[6] (ii) making such provision as may be appropriate for reimbursing such agency, institution, or organization for the cost of any such care and services furnished any individual for which payment would otherwise be made to the State with respect to the individual under section 1396b of this title, and (iii) providing for coordination of information and education on pediatric vaccinations and delivery of immunization services, and (C) provide for coordination of the operations under this subchapter, including the provision of information and education on pediatric vaccinations and the delivery of immunization services, with the State's operations under the special supplemental nutrition program for women, infants, and children under section 17 of the Child Nutrition Act of 1966 [42 U.S.C. 1786];

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) provide—

(A) for a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded under which—

(i) proposed rates, the methodologies underlying the establishment of such rates, and justifications for the proposed rates are published,

(ii) providers, beneficiaries and their representatives, and other concerned State residents are given a reasonable opportunity for review and comment on the proposed rates, methodologies, and justifications,

(iii) final rates, the methodologies underlying the establishment of such rates, and justifications for such final rates are published, and

(iv) in the case of hospitals, such rates take into account (in a manner consistent with section 1396r–4 of this title) the situation of hospitals which serve a disproportionate number of low-income patients with special needs; and

(B) for payment for hospice care in amounts no lower than the amounts, using the same methodology, used under part A of subchapter XVIII of this chapter and for payment of amounts under section 1396d(*o*)(3) of this title; except that in the case of hospice care which is furnished to an individual who is a resident of a nursing facility or intermediate care facility for the mentally retarded, and who would be eligible under the plan for nursing facility services or services in an intermediate care facility for the mentally retarded if he had not elected to receive hospice care, there shall be paid an additional amount, to take into account the room and board furnished by the facility, equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual;

(14) provide that enrollment fees, premiums, or similar charges, and deductions, cost sharing, or similar charges, may be imposed only as provided in section 1396*o* of this title;

(15) provide for payment for services described in clause (B) or (C) of section 1396d(a)(2) of this title under the plan in accordance with subsection (bb) of this section;

(16) provide for inclusion, to the extent required by regulations prescribed by the Sec-

[6] So in original. Probably should be followed by a comma.

retary, of provisions (conforming to such regulations) with respect to the furnishing of medical assistance under the plan to individuals who are residents of the State but are absent therefrom;

(17) except as provided in subsections (*l*)(3), (m)(3), and (m)(4) of this section, include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchapter, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in the form of money payments under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or to have paid with respect to him supplemental security income benefits under subchapter XVI of this chapter) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program); and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums, payments made to the State under section 1396b(f)(2)(B) of this title, or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof) incurred for medical care or for any other type of remedial care recognized under State law;

(18) comply with the provisions of section 1396p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid,,[7] transfers of assets, and treatment of certain trusts;

(19) provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients;

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution; and

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 303(a)(4)(A)(i) and (ii)[8] or section 1383(a)(4)(A)(i) and (ii)[8] of this title which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out;

(21) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing facilities, and other alternatives to care in public institutions for mental diseases;

(22) include descriptions of (A) the kinds and numbers of professional medical personnel and supporting staff that will be used in the administration of the plan and of the responsibilities they will have, (B) the standards, for private or public institutions in which recipients of medical assistance under the plan may

[7] So in original.

[8] See References in Text note below.

receive care or services, that will be utilized by the State authority or authorities responsible for establishing and maintaining such standards, (C) the cooperative arrangements with State health agencies and State vocational rehabilitation agencies entered into with a view to maximum utilization of and coordination of the provision of medical assistance with the services administered or supervised by such agencies, and (D) other standards and methods that the State will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality;

(23) provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services, and (B) an enrollment of an individual eligible for medical assistance in a primary care case-management system (described in section 1396n(b)(1) of this title), a medicaid managed care organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under section 1396d(a)(4)(C) of this title, except as provided in subsection (g) of this section, in section 1396n of this title, and in section 1396u–2(a) of this title, except that this paragraph shall not apply in the case of Puerto Rico, the Virgin Islands, and Guam, and except that nothing in this paragraph shall be construed as requiring a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries under the State plan;

(24) effective July 1, 1969, provide for consultative services by health agencies and other appropriate agencies of the State to hospitals, nursing facilities, home health agencies, clinics, laboratories, and such other institutions as the Secretary may specify in order to assist them (A) to qualify for payments under this chapter, (B) to establish and maintain such fiscal records as may be necessary for the proper and efficient administration of this chapter, and (C) to provide information needed to determine payments due under this chapter on account of care and services furnished to individuals;

(25) provide—

(A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers, self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)]), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service) to pay for care and services available under the plan, including—

(i) the collection of sufficient information (as specified by the Secretary in regulations) to enable the State to pursue claims against such third parties, with such information being collected at the time of any determination or redetermination of eligibility for medical assistance, and

(ii) the submission to the Secretary of a plan (subject to approval by the Secretary) for pursuing claims against such third parties, which plan shall be integrated with, and be monitored as a part of the Secretary's review of, the State's mechanized claims processing and information retrieval systems required under section 1396b(r) of this title;

(B) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

(C) that in the case of an individual who is entitled to medical assistance under the State plan with respect to a service for which a third party is liable for payment, the person furnishing the service may not seek to collect from the individual (or any financially responsible relative or representative of that individual) payment of an amount for that service (i) if the total of the amount of the liabilities of third parties for that service is at least equal to the amount payable for that service under the plan (disregarding section 1396*o* of this title), or (ii) in an amount which exceeds the lesser of (I) the amount which may be collected under section 1396*o* of this title, or (II) the amount by which the amount payable for that service under the plan (disregarding section 1396*o* of this title) exceeds the total of the amount of the liabilities of third parties for that service;

(D) that a person who furnishes services and is participating under the plan may not refuse to furnish services to an individual (who is entitled to have payment made under the plan for the services the person furnishes) because of a third party's potential liability for payment for the service;

(E) that in the case of prenatal or preventive pediatric care (including early and periodic screening and diagnosis services under section 1396d(a)(4)(B) of this title) covered under the State plan, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to the liability of a third party for payment for such services; and

(ii) seek reimbursement from such third party in accordance with subparagraph (B);

(F) that in the case of any services covered under such plan which are provided to an in-

dividual on whose behalf child support enforcement is being carried out by the State agency under part D of subchapter IV of this chapter, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to any third-party liability for payment for such services, if such third-party liability is derived (through insurance or otherwise) from the parent whose obligation to pay support is being enforced by such agency, if payment has not been made by such third party within 30 days after such services are furnished; and

(ii) seek reimbursement from such third party in accordance with subparagraph (B);

(G) that the State prohibits any health insurer (including a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)], a self-insured plan, a service benefit plan, a managed care organization, a pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service), in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under a plan under this subchapter for such State, or any other State;

(H) that to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services; and

(I) that the State shall provide assurances satisfactory to the Secretary that the State has in effect laws requiring health insurers, including self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)]), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, as a condition of doing business in the State, to—

(i) provide, with respect to individuals who are eligible for, or are provided, medical assistance under the State plan, upon the request of the State, information to determine during what period the individual or their spouses or their dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the name, address, and identifying number of the plan) in a manner prescribed by the Secretary;

(ii) accept the State's right of recovery and the assignment to the State of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State plan;

(iii) respond to any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than 3 years after the date of the provision of such health care item or service; and

(iv) agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if—

(I) the claim is submitted by the State within the 3-year period beginning on the date on which the item or service was furnished; and

(II) any action by the State to enforce its rights with respect to such claim is commenced within 6 years of the State's submission of such claim;

(26) if the State plan includes medical assistance for inpatient mental hospital services, provide, with respect to each patient receiving such services, for a regular program of medical review (including medical evaluation) of his need for such services, and for a written plan of care;

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, and (B) to furnish the State agency or the Secretary with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency or the Secretary may from time to time request;

(28) provide—

(A) that any nursing facility receiving payments under such plan must satisfy all the requirements of subsections (b) through (d) of section 1396r of this title as they apply to such facilities;

(B) for including in ''nursing facility services'' at least the items and services specified (or deemed to be specified) by the Secretary under section 1396r(f)(7) of this title and making available upon request a description of the items and services so included;

(C) for procedures to make available to the public the data and methodology used in establishing payment rates for nursing facilities under this subchapter; and

(D) for compliance (by the date specified in the respective sections) with the requirements of—

(i) section 1396r(e) of this title;

(ii) section 1396r(g) of this title (relating to responsibility for survey and certification of nursing facilities); and

(iii) sections 1396r(h)(2)(B) and 1396r(h)(2)(D) of this title (relating to establishment and application of remedies);

(29) include a State program which meets the requirements set forth in section 1396g of this title, for the licensing of administrators of nursing homes;

(30)(A) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

(B) provide, under the program described in subparagraph (A), that—

(i) each admission to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved, and

(ii) the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 percent of all admissions and must be of sufficient size to serve the purpose of (I) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and (II) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases;

(31) with respect to services in an intermediate care facility for the mentally retarded (where the State plan includes medical assistance for such services) provide, with respect to each patient receiving such services, for a written plan of care, prior to admission to or authorization of benefits in such facility, in accordance with regulations of the Secretary, and for a regular program of independent professional review (including medical evaluation) which shall periodically review his need for such services;

(32) provide that no payment under the plan for any care or service provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise; except that—

(A) in the case of any care or service provided by a physician, dentist, or other individual practitioner, such payment may be made (i) to the employer of such physician, dentist, or other practitioner if such physician, dentist, or practitioner is required as a condition of his employment to turn over his fee for such care or service to his employer, or (ii) (where the care or service was provided in a hospital, clinic, or other facility) to the facility in which the care or service was provided if there is a contractual arrangement between such physician, dentist, or practitioner and such facility under which such facility submits the bill for such care or service;

(B) nothing in this paragraph shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the person or institution providing the care or service involved if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of such person or institution from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such person or institution under the plan is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment;

(C) in the case of services furnished (during a period that does not exceed 14 continuous days in the case of an informal reciprocal arrangement or 90 continuous days (or such longer period as the Secretary may provide) in the case of an arrangement involving per diem or other fee-for-time compensation) by, or incident to the services of, one physician to the patients of another physician who submits the claim for such services, payment shall be made to the physician submitting the claim (as if the services were furnished by, or incident to, the physician's services), but only if the claim identifies (in a manner specified by the Secretary) the physician who furnished the services; and

(D) in the case of payment for a childhood vaccine administered before October 1, 1994, to individuals entitled to medical assistance under the State plan, the State plan may make payment directly to the manufacturer of the vaccine under a voluntary replacement program agreed to by the State pursuant to which the manufacturer (i) supplies doses of the vaccine to providers administering the vaccine, (ii) periodically replaces the supply of the vaccine, and (iii) charges the State the manufacturer's price to the Centers for Disease Control and Prevention for the vaccine so administered (which price in-

cludes a reasonable amount to cover shipping and the handling of returns);

(33) provide—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of medical assistance under the plan in order to provide guidance with respect thereto in the administration of the plan to the State agency established or designated pursuant to paragraph (5) and, where applicable, to the State agency described in the second sentence of this subsection; and

(B) that, except as provided in section 1396r(g) of this title, the State or local agency utilized by the Secretary for the purpose specified in the first sentence of section 1395aa(a) of this title, or, if such agency is not the State agency which is responsible for licensing health institutions, the State agency responsible for such licensing, will perform for the State agency administering or supervising the administration of the plan approved under this subchapter the function of determining whether institutions and agencies meet the requirements for participation in the program under such plan, except that, if the Secretary has cause to question the adequacy of such determinations, the Secretary is authorized to validate State determinations and, on that basis, make independent and binding determinations concerning the extent to which individual institutions and agencies meet the requirements for participation;

(34) provide that in the case of any individual who has been determined to be eligible for medical assistance under the plan, such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application (or application was made on his behalf in the case of a deceased individual) for such assistance if such individual was (or upon application would have been) eligible for such assistance at the time such care and services were furnished;

(35) provide that any disclosing entity (as defined in section 1320a–3(a)(2) of this title) receiving payments under such plan complies with the requirements of section 1320a–3 of this title;

(36) provide that within 90 days following the completion of each survey of any health care facility, laboratory, agency, clinic, or organization, by the appropriate State agency described in paragraph (9), such agency shall (in accordance with regulations of the Secretary) make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility, laboratory, clinic, agency, or organization with (A) the statutory conditions of participation imposed under this subchapter, and (B) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such facility, laboratory, clinic, agency, or organization;

(37) provide for claims payment procedures which (A) ensure that 90 per centum of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by health care practitioners through individual or group practices or through shared health facilities are paid within 30 days of the date of receipt of such claims and that 99 per centum of such claims are paid within 90 days of the date of receipt of such claims, and (B) provide for procedures of prepayment and postpayment claims review, including review of appropriate data with respect to the recipient and provider of a service and the nature of the service for which payment is claimed, to ensure the proper and efficient payment of claims and management of the program;

(38) require that an entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, items or services under the plan, shall supply (within such period as may be specified in regulations by the Secretary or by the single State agency which administers or supervises the administration of the plan) upon request specifically addressed to such entity by the Secretary or such State agency, the information described in section 1320a–7(b)(9) of this title;

(39) provide that the State agency shall exclude any specified individual or entity from participation in the program under the State plan for the period specified by the Secretary, when required by him to do so pursuant to section 1320a–7 of this title or section 1320a–7a of this title, and provide that no payment may be made under the plan with respect to any item or service furnished by such individual or entity during such period;

(40) require each health services facility or organization which receives payments under the plan and of a type for which a uniform reporting system has been established under section 1320a(a) of this title to make reports to the Secretary of information described in such section in accordance with the uniform reporting system (established under such section) for that type of facility or organization;

(41) provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the State plan, the State agency shall promptly notify the Secretary and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board of such action;

(42) provide that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan;

(43) provide for—

(A) informing all persons in the State who are under the age of 21 and who have been

determined to be eligible for medical assistance including services described in section 1396d(a)(4)(B) of this title, of the availability of early and periodic screening, diagnostic, and treatment services as described in section 1396d(r) of this title and the need for age-appropriate immunizations against vaccine-preventable diseases,

(B) providing or arranging for the provision of such screening services in all cases where they are requested,

(C) arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services, and

(D) reporting to the Secretary (in a uniform form and manner established by the Secretary, by age group and by basis of eligibility for medical assistance, and by not later than April 1 after the end of each fiscal year, beginning with fiscal year 1990) the following information relating to early and periodic screening, diagnostic, and treatment services provided under the plan during each fiscal year:

(i) the number of children provided child health screening services,

(ii) the number of children referred for corrective treatment (the need for which is disclosed by such child health screening services),

(iii) the number of children receiving dental services, and

(iv) the State's results in attaining the participation goals set for the State under section 1396d(r) of this title;

(44) in each case for which payment for inpatient hospital services, services in an intermediate care facility for the mentally retarded, or inpatient mental hospital services is made under the State plan—

(A) a physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and a physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician, recertifies, where such services are furnished over a period of time, in such cases, at least as often as required under section 1396b(g)(6) of this title (or, in the case of services that are services provided in an intermediate care facility for the mentally retarded, every year), and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services, and

(B) such services were furnished under a plan established and periodically reviewed and evaluated by a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician;

(45) provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients, in accordance with section 1396k of this title;

(46) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title;

(47) at the option of the State, provide for making ambulatory prenatal care available to pregnant women during a presumptive eligibility period in accordance with section 1396r–1 of this title and provide for making medical assistance for items and services described in subsection (a) of section 1396r–1a of this title available to children during a presumptive eligibility period in accordance with such section and provide for making medical assistance available to individuals described in subsection (a) of section 1396r–1b of this title during a presumptive eligibility period in accordance with such section;

(48) provide a method of making cards evidencing eligibility for medical assistance available to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address;

(49) provide that the State will provide information and access to certain information respecting sanctions taken against health care practitioners and providers by State licensing authorities in accordance with section 1396r–2 of this title;

(50) provide, in accordance with subsection (q) of this section, for a monthly personal needs allowance for certain institutionalized individuals and couples;

(51) meet the requirements of section 1396r–5 of this title (relating to protection of community spouses);

(52) meet the requirements of section 1396r–6 of this title (relating to extension of eligibility for medical assistance);

(53) provide—

(A) for notifying in a timely manner all individuals in the State who are determined to be eligible for medical assistance and who are pregnant women, breastfeeding or postpartum women (as defined in section 17 of the Child Nutrition Act of 1966 [42 U.S.C. 1786]), or children below the age of 5, of the availability of benefits furnished by the special supplemental nutrition program under such section, and

(B) for referring any such individual to the State agency responsible for administering such program;

(54) in the case of a State plan that provides medical assistance for covered outpatient drugs (as defined in section 1396r–8(k) of this

title), comply with the applicable requirements of section 1396r–8 of this title;

(55) provide for receipt and initial processing of applications of individuals for medical assistance under subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX) of this section—

(A) at locations which are other than those used for the receipt and processing of applications for aid under part A of subchapter IV of this chapter and which include facilities defined as disproportionate share hospitals under section 1396r–4(a)(1)(A) of this title and Federally-qualified health centers described in section 1396d(1)(2)(B)[9] of this title, and

(B) using applications which are other than those used for applications for aid under such part;

(56) provide, in accordance with subsection (s) of this section, for adjusted payments for certain inpatient hospital services;

(57) provide that each hospital, nursing facility, provider of home health care or personal care services, hospice program, or medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title) receiving funds under the plan shall comply with the requirements of subsection (w) of this section;

(58) provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under the requirements of subsection (w) of this section;

(59) maintain a list (updated not less often than monthly, and containing each physician's unique identifier provided under the system established under subsection (x) of this section) of all physicians who are certified to participate under the State plan;

(60) provide that the State agency shall provide assurances satisfactory to the Secretary that the State has in effect the laws relating to medical child support required under section 1396g–1 of this title;

(61) provide that the State must demonstrate that it operates a medicaid fraud and abuse control unit described in section 1396b(q) of this title that effectively carries out the functions and requirements described in such section, as determined in accordance with standards established by the Secretary, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the State plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit;

(62) provide for a program for the distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with section 1396s of this title;

(63) provide for administration and determinations of eligibility with respect to individuals who are (or seek to be) eligible for medical assistance based on the application of section 1396u–1 of this title;

(64) provide, not later than 1 year after August 5, 1997, a mechanism to receive reports from beneficiaries and others and compile data concerning alleged instances of waste, fraud, and abuse relating to the operation of this subchapter;

(65) provide that the State shall issue provider numbers for all suppliers of medical assistance consisting of durable medical equipment, as defined in section 1395x(n) of this title, and the State shall not issue or renew such a supplier number for any such supplier unless—

(A)(i) full and complete information as to the identity of each person with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the supplier or in any subcontractor (as defined by the Secretary in regulations) in which the supplier directly or indirectly has a 5 percent or more ownership interest; and

(ii) to the extent determined to be feasible under regulations of the Secretary, the name of any disclosing entity (as defined in section 1320a–3(a)(2) of this title) with respect to which a person with such an ownership or control interest in the supplier is a person with such an ownership or control interest in the disclosing entity; and

(B) a surety bond in a form specified by the Secretary under section 1395m(a)(16)(B) of this title and in an amount that is not less than $50,000 or such comparable surety bond as the Secretary may permit under the second sentence of such section;

(66) provide for making eligibility determinations under section 1396u–5(a) of this title;

(67) provide, with respect to services covered under the State plan (but not under subchapter XVIII of this chapter) that are furnished to a PACE program eligible individual enrolled with a PACE provider by a provider participating under the State plan that does not have a contract or other agreement with the PACE provider that establishes payment amounts for such services, that such participating provider may not require the PACE provider to pay the participating provider an amount greater than the amount that would otherwise be payable for the service to the participating provider under the State plan for the State where the PACE provider is located (in accordance with regulations issued by the Secretary);

(68) provide that any entity that receives or makes annual payments under the State plan of at least $5,000,000, as a condition of receiving such payments, shall—

(A) establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information

[9] So in original. Probably should be section ''1396d(*l*)(2)(B)''.

about the False Claims Act established under sections 3729 through 3733 of title 31, administrative remedies for false claims and statements established under chapter 38 of title 31, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1320a–7b(f) of this title);

(B) include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and

(C) include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse;

(69) provide that the State must comply with any requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1396u–6 of this title; and

(70) at the option of the State and notwithstanding paragraphs (1), (10)(B), and (23), provide for the establishment of a non-emergency medical transportation brokerage program in order to more cost-effectively provide transportation for individuals eligible for medical assistance under the State plan who need access to medical care or services and have no other means of transportation which—

(A) may include a wheelchair van, taxi, stretcher car, bus passes and tickets, secured transportation, and such other transportation as the Secretary determines appropriate; and

(B) may be conducted under contract with a broker who—

(i) is selected through a competitive bidding process based on the State's evaluation of the broker's experience, performance, references, resources, qualifications, and costs;

(ii) has oversight procedures to monitor beneficiary access and complaints and ensure that transport personnel are licensed, qualified, competent, and courteous;

(iii) is subject to regular auditing and oversight by the State in order to ensure the quality of the transportation services provided and the adequacy of beneficiary access to medical care and services; and

(iv) complies with such requirements related to prohibitions on referrals and conflict of interest as the Secretary shall establish (based on the prohibitions on physician referrals under section 1395nn of this title and such other prohibitions and requirements as the Secretary determines to be appropriate).

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under subchapter I of this chapter (or subchapter XVI of this chapter, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter (except for purposes of paragraph (10)). The provisions of paragraphs (9)(A), (31), and (33) and of section 1396b(i)(4) of this title shall not apply to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).

For purposes of paragraph (10) any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter and who for such month was entitled to monthly insurance benefits under subchapter II of this chapter shall for purposes of this subchapter only be deemed to be eligible for financial aid or assistance for any month thereafter if such individual would have been eligible for financial aid or assistance for such month had the increase in monthly insurance benefits under subchapter II of this chapter resulting from enactment of Public Law 92–336 not been applicable to such individual.

The requirement of clause (A) of paragraph (37) with respect to a State plan may be waived by the Secretary if he finds that the State has exercised good faith in trying to meet such requirement. For purposes of this subchapter, any child who meets the requirements of paragraph (1) or (2) of section 673(b) of this title shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of subchapter IV of this chapter in the State where such child resides. Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1396b(v) of this title.

(b) Approval by Secretary

The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan—

(1) an age requirement of more than 65 years; or

(2) any residence requirement which excludes any individual who resides in the State, regardless of whether or not the residence is maintained permanently or at a fixed address; or

(3) any citizenship requirement which excludes any citizen of the United States.

(c) Lower payment levels or applying for benefits as condition of applying for, or receiving, medical assistance

Notwithstanding subsection (b) of this section, the Secretary shall not approve any State plan for medical assistance if the State requires individuals described in subsection (*l*)(1) of this section to apply for assistance under the State program funded under part A of subchapter IV of this chapter as a condition of applying for or receiving medical assistance under this subchapter.

(d) Performance of medical or utilization review functions

If a State contracts with an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, or a utilization and quality control peer review organization having a contract with the Secretary under part B of subchapter XI of this chapter for the performance of medical or utilization review functions required under this subchapter of a State plan with respect to specific services or providers (or services or providers in a geographic area of the State), such requirements shall be deemed to be met for those services or providers (or services or providers in that area) by delegation to such an entity or organization under the contract of the State's authority to conduct such review activities if the contract provides for the performance of activities not inconsistent with part B of subchapter XI of this chapter and provides for such assurances of satisfactory performance by such an entity or organization as the Secretary may prescribe.

(e) Continued eligibility of families determined ineligible because of income and resources or hours of work limitations of plan; individuals enrolled with health maintenance organizations; persons deemed recipients of supplemental security income or State supplemental payments; entitlement for certain newborns; postpartum eligibility for pregnant women

(1)(A) Notwithstanding any other provision of this subchapter, effective January 1, 1974, subject to subparagraph (B) each State plan approved under this subchapter must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of subchapter IV of this chapter in at least 3 of the 6 months immediately preceding the month in which such family became ineligible for such aid because of increased hours of, or increased income from, employment, shall, while a member of such family is employed, remain eligible for assistance under the plan approved under this subchapter (as though the family was receiving aid under the plan approved under part A of subchapter IV of this chapter) for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of subchapter IV of this chapter because of income and resources or hours of work limitations contained in such plan.

(B) Subparagraph (A) shall not apply with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter during the period beginning on April 1, 1990, and ending on September 30, 2003. During such period, for provisions relating to extension of eligibility for medical assistance for certain families who have received aid pursuant to a State plan approved under part A of subchapter IV of this chapter and have earned income, see section 1396r–6 of this title.

(2)(A) In the case of an individual who is enrolled with a medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title), with a primary care case manager (as defined in section 1396d(t) of this title), or with an eligible organization with a contract under section 1395mm of this title and who would (but for this paragraph) lose eligibility for benefits under this subchapter before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this subchapter, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but, except for benefits furnished under section 1396d(a)(4)(C) of this title, only with respect to such benefits provided to the individual as an enrollee of such organization or entity or by or through the case manager.

(B) For purposes of subparagraph (A), the term ''minimum enrollment period'' means, with respect to an individual's enrollment with an organization or entity under a State plan, a period, established by the State, of not more than six months beginning on the date the individual's enrollment with the organization or entity becomes effective.

(3) At the option of the State, any individual who—

(A) is 18 years of age or younger and qualifies as a disabled individual under section 1382c(a) of this title;

(B) with respect to whom there has been a determination by the State that—

(i) the individual requires a level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded,

(ii) it is appropriate to provide such care for the individual outside such an institution, and

(iii) the estimated amount which would be expended for medical assistance for the individual for such care outside an institution is not greater than the estimated amount which would otherwise be expended for medical assistance for the individual within an appropriate institution; and

(C) if the individual were in a medical institution, would be eligible for medical assistance under the State plan under this subchapter,

shall be deemed, for purposes of this subchapter only, to be an individual with respect to whom a supplemental security income payment, or State supplemental payment, respectively, is being paid under subchapter XVI of this chapter.

(4) A child born to a woman eligible for and receiving medical assistance under a State plan on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year so long as the child is a member of the woman's household and the woman remains (or would remain if pregnant) eligible for such assistance. During the period in which a child is deemed under the preceding sentence to be eligible for medical assistance, the medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).

(5) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance under the State plan, shall continue to be eligible under the plan, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan, through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends.

(6) In the case of a pregnant woman described in subsection (a)(10) of this section who, because of a change in income of the family of which she is a member, would not otherwise continue to be described in such subsection, the woman shall be deemed to continue to be an individual described in subsection (a)(10)(A)(i)(IV) of this section and subsection (*l*)(1)(A) of this section without regard to such change of income through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends. The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1396r–1 of this title during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.

(7) In the case of an infant or child described in subparagraph (B), (C), or (D) of subsection (*l*)(1) of this section or paragraph (2) of section 1396d(n) of this title—

(A) who is receiving inpatient services for which medical assistance is provided on the date the infant or child attains the maximum age with respect to which coverage is provided under the State plan for such individuals, and

(B) who, but for attaining such age, would remain eligible for medical assistance under such subsection,

the infant or child shall continue to be treated as an individual described in such respective provision until the end of the stay for which the inpatient services are furnished.

(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1396d(p)(1) of this title), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1396b(a) of this title, such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may provide for such determinations more frequently, but not more frequently than once every 6 months for an individual.

(9)(A) At the option of the State, the plan may include as medical assistance respiratory care services for any individual who—

(i) is medically dependent on a ventilator for life support at least six hours per day;

(ii) has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient;

(iii) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, nursing facility, or intermediate care facility for the mentally retarded and would be eligible to have payment made for such inpatient care under the State plan;

(iv) has adequate social support services to be cared for at home; and

(v) wishes to be cared for at home.

(B) The requirements of subparagraph (A)(ii) may be satisfied by a continuous stay in one or more hospitals, nursing facilities, or intermediate care facilities for the mentally retarded.

(C) For purposes of this paragraph, respiratory care services means services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State), payment for which is not otherwise included within other items and services furnished to such individual as medical assistance under the plan.

(10)(A) The fact that an individual, child, or pregnant woman may be denied aid under part A of subchapter IV of this chapter pursuant to section 602(a)(43)[10] of this title shall not be construed as denying (or permitting a State to deny) medical assistance under this subchapter to such individual, child, or woman who is eligible for assistance under this subchapter on a basis other than the receipt of aid under such part.

(B) If an individual, child, or pregnant woman is receiving aid under part A of subchapter IV of this chapter and such aid is terminated pursuant to section 602(a)(43)[10] of this title, the State may not discontinue medical assistance under this subchapter for the individual, child, or woman until the State has determined that the individual, child, or woman is not eligible for assistance under this subchapter on a basis other than the receipt of aid under such part.

(11)(A) In the case of an individual who is enrolled with a group health plan under section 1396e of this title and who would (but for this paragraph) lose eligibility for benefits under this subchapter before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this subchapter, that the

[10] See References in Text note below.

individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such plan.

(B) For purposes of subparagraph (A), the term ''minimum enrollment period'' means, with respect to an individual's enrollment with a group health plan, a period established by the State, of not more than 6 months beginning on the date the individual's enrollment under the plan becomes effective.

(12) At the option of the State, the plan may provide that an individual who is under an age specified by the State (not to exceed 19 years of age) and who is determined to be eligible for benefits under a State plan approved under this subchapter under subsection (a)(10)(A) of this section shall remain eligible for those benefits until the earlier of—

(A) the end of a period (not to exceed 12 months) following the determination; or

(B) the time that the individual exceeds that age.

(f) Effective date of State plan as determinative of duty of State to provide medical assistance to aged, blind, or disabled individuals

Notwithstanding any other provision of this subchapter, except as provided in subsection (e) of this section and section 1382h(b)(3) of this title and section 1396r–5 of this title, except with respect to qualified disabled and working individuals (described in section 1396d(s) of this title), and except with respect to qualified medicare beneficiaries, qualified severely impaired individuals, and individuals described in subsection (m)(1) of this subsection, no State not eligible to participate in the State plan program established under subchapter XVI of this chapter shall be required to provide medical assistance to any aged, blind, or disabled individual (within the meaning of subchapter XVI of this chapter) for any month unless such State would be (or would have been) required to provide medical assistance to such individual for such month had its plan for medical assistance approved under this subchapter and in effect on January 1, 1972, been in effect in such month, except that for this purpose any such individual shall be deemed eligible for medical assistance under such State plan if (in addition to meeting such other requirements as are or may be imposed under the State plan) the income of any such individual as determined in accordance with section 1396b(f) of this title (after deducting any supplemental security income payment and State supplementary payment made with respect to such individual, and incurred expenses for medical care as recognized under State law regardless of whether such expenses are reimbursed under another public program of the State or political subdivision thereof) is not in excess of the standard for medical assistance established under the State plan as in effect on January 1, 1972. In States which provide medical assistance to individuals pursuant to paragraph (10)(C) of subsection (a) of this section, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection if that individual is, or is eligible to be (1) an individual with respect to whom there is payable a State supplementary payment on the basis of which similarly situated individuals are eligible to receive medical assistance equal in amount, duration, and scope to that provided to individuals eligible under paragraph (10)(A), or (2) an eligible individual or eligible spouse, as defined in subchapter XVI of this chapter, with respect to whom supplemental security income benefits are payable; otherwise that individual shall be considered to be an individual eligible for medical assistance under paragraph (10)(C) of that subsection. In States which do not provide medical assistance to individuals pursuant to paragraph (10)(C) of that subsection, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection.

(g) Reduction of aid or assistance to providers of services attempting to collect from beneficiary in violation of third-party provisions

In addition to any other sanction available to a State, a State may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to three times the amount of any payment sought to be collected by that person in violation of subsection (a)(25)(C) of this section.

(h) Payments for hospitals serving disproportionate number of low-income patients and for home and community care

Nothing in this subchapter (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment that may be made under a plan under this subchapter for home and community care.

(i) Termination of certification for participation of and suspension of State payments to intermediate care facilities for the mentally retarded

(1) In addition to any other authority under State law, where a State determines that a[11] intermediate care facility for the mentally retarded which is certified for participation under its plan no longer substantially meets the requirements for such a facility under this subchapter and further determines that the facility's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the State shall provide for the termination of the facility's certification for participation under the plan and may provide, or

(B) do not immediately jeopardize the health and safety of its patients, the State may, in lieu of providing for terminating the facility's certification for participation under the plan, establish alternative remedies if the State

[11] So in original. Probably should be ''an''.

demonstrates to the Secretary's satisfaction that the alternative remedies are effective in deterring noncompliance and correcting deficiencies, and may provide

that no payment will be made under the State plan with respect to any individual admitted to such facility after a date specified by the State.

(2) The State shall not make such a decision with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the requirements for such a facility under this subchapter, to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) The State's decision to deny payment may be made effective only after such notice to the public and to the facility as may be provided for by the State, and its effectiveness shall terminate (A) when the State finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the requirements for such a facility under this subchapter, or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility's certification for participation under the plan effective with the first day of the first month following the month specified in such clause.

(j) Waiver or modification of subchapter requirements with respect to medical assistance program in American Samoa

Notwithstanding any other requirement of this subchapter, the Secretary may waive or modify any requirement of this subchapter with respect to the medical assistance program in American Samoa and the Northern Mariana Islands, other than a waiver of the Federal medical assistance percentage, the limitation in section 1308(f) of this title, or the requirement that payment may be made for medical assistance only with respect to amounts expended by American Samoa or the Northern Mariana Islands for care and services described in a numbered paragraph of section 1396d(a) of this title.

(k) Repealed. Pub. L. 103–66, title XIII, § 13611(d)(1)(C), Aug. 10, 1993, 107 Stat. 627

(*l*) Description of group

(1) Individuals described in this paragraph are—

(A) women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy),

(B) infants under one year of age,

(C) children who have attained one year of age but have not attained 6 years of age, and

(D) children born after September 30, 1983 (or, at the option of a State, after any earlier date), who have attained 6 years of age but have not attained 19 years of age,

who are not described in any of subclauses (I) through (III) of subsection (a)(10)(A)(i) of this section and whose family income does not exceed the income level established by the State under paragraph (2) for a family size equal to the size of the family, including the woman, infant, or child.

(2)(A)(i) For purposes of paragraph (1) with respect to individuals described in subparagraph (A) or (B) of that paragraph, the State shall establish an income level which is a percentage (not less than the percentage provided under clause (ii) and not more than 185 percent) of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(ii) The percentage provided under this clause, with respect to eligibility for medical assistance on or after—

(I) July 1, 1989, is 75 percent, or, if greater, the percentage provided under clause (iii), and

(II) April 1, 1990, 133 percent, or, if greater, the percentage provided under clause (iv).

(iii) In the case of a State which, as of July 1, 1988, has elected to provide, and provides, medical assistance to individuals described in this subsection or has enacted legislation authorizing, or appropriating funds, to provide such assistance to such individuals before July 1, 1989, the percentage provided under clause (ii)(I) shall not be less than—

(I) the percentage specified by the State in an amendment to its State plan (whether approved or not) as of July 1, 1988, or

(II) if no such percentage is specified as of July 1, 1988, the percentage established under the State's authorizing legislation or provided for under the State's appropriations;

but in no case shall this clause require the percentage provided under clause (ii)(I) to exceed 100 percent.

(iv) In the case of a State which, as of December 19, 1989, has established under clause (i), or has enacted legislation authorizing, or appropriating funds, to provide for, a percentage (of the income official poverty line) that is greater than 133 percent, the percentage provided under clause (ii) for medical assistance on or after April 1, 1990, shall not be less than—

(I) the percentage specified by the State in an amendment to its State plan (whether approved or not) as of December 19, 1989, or

(II) if no such percentage is specified as of December 19, 1989, the percentage established under the State's authorizing legislation or provided for under the State's appropriations.

(B) For purposes of paragraph (1) with respect to individuals described in subparagraph (C) of such paragraph, the State shall establish an income level which is equal to 133 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.

(C) For purposes of paragraph (1) with respect to individuals described in subparagraph (D) of that paragraph, the State shall establish an income level which is equal to 100 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.

(3) Notwithstanding subsection (a)(17) of this section, for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX) of this section—

(A) application of a resource standard shall be at the option of the State;

(B) any resource standard or methodology that is applied with respect to an individual described in subparagraph (A) of paragraph (1) may not be more restrictive than the resource standard or methodology that is applied under subchapter XVI of this chapter;

(C) any resource standard or methodology that is applied with respect to an individual described in subparagraph (B), (C), or (D) of paragraph (1) may not be more restrictive than the corresponding methodology that is applied under the State plan under part A of subchapter IV of this chapter;

(D) the income standard to be applied is the appropriate income standard established under paragraph (2); and

(E) family income shall be determined in accordance with the methodology employed under the State plan under part A or E of subchapter IV of this chapter (except to the extent such methodology is inconsistent with clause (D) of subsection (a)(17) of this section), and costs incurred for medical care or for any other type of remedial care shall not be taken into account.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(4)(A) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to provide medical assistance for pregnant women and infants under age 1 described in subsection (a)(10)(A)(i)(IV) of this section and for children described in subsection (a)(10)(A)(i)(VI) of this section or subsection (a)(10)(A)(i)(VII) of this section in the same manner as the State would be required to provide such assistance for such individuals if the State had in effect a plan approved under this subchapter.

(B) In the case of a State which is not one of the 50 States or the District of Columbia, the State need not meet the requirement of subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII) of this section and, for purposes of paragraph (2)(A), the State may substitute for the percentage provided under clause (ii) of such paragraph any percentage.

(m) Description of individuals

(1) Individuals described in this paragraph are individuals—

(A) who are 65 years of age or older or are disabled individuals (as determined under section 1382c(a)(3) of this title),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program, except as provided in paragraph (2)(C)) does not exceed an income level established by the State consistent with paragraph (2)(A), and

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) In the case of a State that provides medical assistance to individuals not described in subsection (a)(10)(A) of this section and at the State's option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in subsection (a)(10)(A) of this section.

(C) The provisions of section 1396d(p)(2)(D) of this title shall apply to determinations of income under this subsection in the same manner as they apply to determinations of income under section 1396d(p) of this title.

(3) Notwithstanding subsection (a)(17) of this section, for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X) of this section—

(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(4) Notwithstanding subsection (a)(17) of this section, for qualified medicare beneficiaries described in section 1396d(p)(1) of this title—

(A) the income standard to be applied is the income standard described in section 1396d(p)(1)(B) of this title, and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(n) Payment amounts

(1) In the case of medical assistance furnished under this subchapter for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of

such payment amount and any amount of payment made under subchapter XVIII of this chapter with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.

(2) In carrying out paragraph (1), a State is not required to provide any payment for any expenses incurred relating to payment for deductibles, coinsurance, or copayments for medicare cost-sharing to the extent that payment under subchapter XVIII of this chapter for the service would exceed the payment amount that otherwise would be made under the State plan under this subchapter for such service if provided to an eligible recipient other than a medicare beneficiary.

(3) In the case in which a State's payment for medicare cost-sharing for a qualified medicare beneficiary with respect to an item or service is reduced or eliminated through the application of paragraph (2)—

(A) for purposes of applying any limitation under subchapter XVIII of this chapter on the amount that the beneficiary may be billed or charged for the service, the amount of payment made under subchapter XVIII of this chapter plus the amount of payment (if any) under the State plan shall be considered to be payment in full for the service;

(B) the beneficiary shall not have any legal liability to make payment to a provider or to an organization described in section 1396b(m)(1)(A) of this title for the service; and

(C) any lawful sanction that may be imposed upon a provider or such an organization for excess charges under this subchapter or subchapter XVIII of this chapter shall apply to the imposition of any charge imposed upon the individual in such case.

This paragraph shall not be construed as preventing payment of any medicare cost-sharing by a medicare supplemental policy or an employer retiree health plan on behalf of an individual.

(*o*) Certain benefits disregarded for purposes of determining post-eligibility contributions

Notwithstanding any provision of subsection (a) of this section to the contrary, a State plan under this subchapter shall provide that any supplemental security income benefits paid by reason of subparagraph (E) or (G) of section 1382(e)(1) of this title to an individual who—

(1) is eligible for medical assistance under the plan, and

(2) is in a hospital, skilled nursing facility, or intermediate care facility at the time such benefits are paid,

will be disregarded for purposes of determining the amount of any post-eligibility contribution by the individual to the cost of the care and services provided by the hospital, skilled nursing facility, or intermediate care facility.

(p) Exclusion power of State; exclusion as prerequisite for medical assistance payments; "exclude" defined

(1) In addition to any other authority, a State may exclude any individual or entity for purposes of participating under the State plan under this subchapter for any reason for which the Secretary could exclude the individual or entity from participation in a program under subchapter XVIII of this chapter under section 1320a–7, 1320a–7a, or 1395cc(b)(2) of this title.

(2) In order for a State to receive payments for medical assistance under section 1396b(a) of this title, with respect to payments the State makes to a medicaid managed care organization (as defined in section 1396b(m) of this title) or to an entity furnishing services under a waiver approved under section 1396n(b)(1) of this title, the State must provide that it will exclude from participation, as such an organization or entity, any organization or entity that—

(A) could be excluded under section 1320a–7(b)(8) of this title (relating to owners and managing employees who have been convicted of certain crimes or received other sanctions),

(B) has, directly or indirectly, a substantial contractual relationship (as defined by the Secretary) with an individual or entity that is described in section 1320a–7(b)(8)(B) of this title, or

(C) employs or contracts with any individual or entity that is excluded from participation under this subchapter under section 1320a–7 or 1320a–7a of this title for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services.

(3) As used in this subsection, the term ''exclude'' includes the refusal to enter into or renew a participation agreement or the termination of such an agreement.

(q) Minimum monthly personal needs allowance deduction; "institutionalized individual or couple" defined

(1)(A) In order to meet the requirement of subsection (a)(50) of this section, the State plan must provide that, in the case of an institutionalized individual or couple described in subparagraph (B), in determining the amount of the individual's or couple's income to be applied monthly to payment for the cost of care in an institution, there shall be deducted from the monthly income (in addition to other allowances otherwise provided under the State plan) a monthly personal needs allowance—

(i) which is reasonable in amount for clothing and other personal needs of the individual (or couple) while in an institution, and

(ii) which is not less (and may be greater) than the minimum monthly personal needs allowance described in paragraph (2).

(B) In this subsection, the term ''institutionalized individual or couple'' means an individual or married couple—

(i) who is an inpatient (or who are inpatients) in a medical institution or nursing facility for which payments are made under this subchapter throughout a month, and

(ii) who is or are determined to be eligible for medical assistance under the State plan.

(2) The minimum monthly personal needs allowance described in this paragraph[12] is $30 for an institutionalized individual and $60 for an institutionalized couple (if both are aged, blind, or disabled, and their incomes are considered available to each other in determining eligibility).

(r) Disregarding payments for certain medical expenses by institutionalized individuals

(1)(A) For purposes of sections 1396a(a)(17) and 1396r–5(d)(1)(D) of this title and for purposes of a waiver under section 1396n of this title, with respect to the post-eligibility treatment of income of individuals who are institutionalized or receiving home or community-based services under such a waiver, the treatment described in subparagraph (B) shall apply, there shall be disregarded reparation payments made by the Federal Republic of Germany, and there shall be taken into account amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) medicare and other health insurance premiums, deductibles, or coinsurance, and

(ii) necessary medical or remedial care recognized under State law but not covered under the State plan under this subchapter, subject to reasonable limits the State may establish on the amount of these expenses.

(B)(i) In the case of a veteran who does not have a spouse or a child, if the veteran—

(I) receives, after the veteran has been determined to be eligible for medical assistance under the State plan under this subchapter, a veteran's pension in excess of $90 per month, and

(II) resides in a State veterans home with respect to which the Secretary of Veterans Affairs makes per diem payments for nursing home care pursuant to section 1741(a) of title 38,

any such pension payment, including any payment made due to the need for aid and attendance, or for unreimbursed medical expenses, that is in excess of $90 per month shall be counted as income only for the purpose of applying such excess payment to the State veterans home's cost of providing nursing home care to the veteran.

(ii) The provisions of clause (i) shall apply with respect to a surviving spouse of a veteran who does not have a child in the same manner as they apply to a veteran described in such clause.

(2)(A) The methodology to be employed in determining income and resource eligibility for individuals under subsection (a)(10)(A)(i)(III), (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), (a)(10)(A)(ii), (a)(10)(C)(i)(III), or (f) of this section or under section 1396d(p) of this title may be less restrictive, and shall be no more restrictive, than the methodology—

(i) in the case of groups consisting of aged, blind, or disabled individuals, under the supplemental security income program under subchapter XVI of this chapter, or

(ii) in the case of other groups, under the State plan most closely categorically related.

(B) For purposes of this subsection and subsection (a)(10) of this section, methodology is considered to be ''no more restrictive'' if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.

(s) Adjustment in payment for hospital services furnished to low-income children under age of 6 years

In order to meet the requirements of subsection (a)(55)[13] of this section, the State plan must provide that payments to hospitals under the plan for inpatient hospital services furnished to infants who have not attained the age of 1 year, and to children who have not attained the age of 6 years and who receive such services in a disproportionate share hospital described in section 1396r–4(b)(1) of this title, shall—

(1) if made on a prospective basis (whether per diem, per case, or otherwise) provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay,

(2) not be limited by the imposition of day limits with respect to the delivery of such services to such individuals, and

(3) not be limited by the imposition of dollar limits (other than such limits resulting from prospective payments as adjusted pursuant to paragraph (1)) with respect to the delivery of such services to any such individual who has not attained their first birthday (or in the case of such an individual who is an inpatient on his first birthday until such individual is discharged).

(t) Limitation on payments to States for expenditures attributable to taxes

Nothing in this subchapter (including sections 1396b(a) and 1396d(a) of this title) shall be construed as authorizing the Secretary to deny or limit payments to a State for expenditures, for medical assistance for items or services, attributable to taxes of general applicability imposed with respect to the provision of such items or services.

(u) Qualified COBRA continuation beneficiaries

(1) Individuals described in this paragraph are individuals—

(A) who are entitled to elect COBRA continuation coverage (as defined in paragraph (3)),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program) does not exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved,

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program, and

(D) with respect to whose enrollment for COBRA continuation coverage the State has

[12] So in original. Probably should be ''this subsection''.

[13] So in original. Probably should be subsection ''(a)(56)''.

determined that the savings in expenditures under this subchapter resulting from such enrollment is likely to exceed the amount of payments for COBRA premiums made.

(2) For purposes of subsection (a)(10)(F) of this section and this subsection, the term ''COBRA premiums'' means the applicable premium imposed with respect to COBRA continuation coverage.

(3) In this subsection, the term ''COBRA continuation coverage'' means coverage under a group health plan provided by an employer with 75 or more employees provided pursuant to title XXII of the Public Health Service Act [42 U.S.C. 300bb–1 et seq.], section 4980B of the Internal Revenue Code of 1986, or title VI[14] of the Employee Retirement Income Security Act of 1974.

(4) Notwithstanding subsection (a)(17) of this section, for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(XI) of this section—

(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(10)(B) or (a)(17) of this section, require or permit such treatment for other individuals.

(v) State agency disability and blindness determinations for medical assistance eligibility

A State plan may provide for the making of determinations of disability or blindness for the purpose of determining eligibility for medical assistance under the State plan by the single State agency or its designee, and make medical assistance available to individuals whom it finds to be blind or disabled and who are determined otherwise eligible for such assistance during the period of time prior to which a final determination of disability or blindness is made by the Social Security Administration with respect to such an individual. In making such determinations, the State must apply the definitions of disability and blindness found in section 1382c(a) of this title.

(w) Maintenance of written policies and procedures respecting advance directives

(1) For purposes of subsection (a)(57) of this section and sections 1396b(m)(1)(A) and 1396r(c)(2)(E) of this title, the requirement of this subsection is that a provider or organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

(A) to provide written information to each such individual concerning—

(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

(ii) the provider's or organization's written policies respecting the implementation of such rights;

(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives; and

(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

(B) in the case of a nursing facility, at the time of the individual's admission as a resident,

(C) in the case of a provider of home health care or personal care services, in advance of the individual coming under the care of the provider,

(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

(E) in the case of a medicaid managed care organization, at the time of enrollment of the individual with the organization.

(3) Nothing in this section shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive.

(4) In this subsection, the term ''advance directive'' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.

(5) For construction relating to this subsection, see section 14406 of this title (relating to clarification respecting assisted suicide, euthanasia, and mercy killing).

(x) Physician identifier system; establishment

The Secretary shall establish a system, for implementation by not later than July 1, 1991, which provides for a unique identifier for each physician who furnishes services for which payment may be made under a State plan approved under this subchapter.

[14] See References in Text note below.

(y) Intermediate sanctions for psychiatric hospitals

(1) In addition to any other authority under State law, where a State determines that a psychiatric hospital which is certified for participation under its plan no longer meets the requirements for a psychiatric hospital (referred to in section 1396d(h) of this title) and further finds that the hospital's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the State shall terminate the hospital's participation under the State plan; or

(B) do not immediately jeopardize the health and safety of its patients, the State may terminate the hospital's participation under the State plan, or provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the effective date of the finding, or both.

(2) Except as provided in paragraph (3), if a psychiatric hospital described in paragraph (1)(B) has not complied with the requirements for a psychiatric hospital under this subchapter—

(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the State shall provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the end of such 3-month period, or

(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no Federal financial participation shall be provided under section 1396b(a) of this title with respect to further services provided in the hospital until the State finds that the hospital is in compliance with the requirements of this subchapter.

(3) The Secretary may continue payments, over a period of not longer than 6 months from the date the hospital is found to be out of compliance with such requirements, if—

(A) the State finds that it is more appropriate to take alternative action to assure compliance of the hospital with the requirements than to terminate the certification of the hospital,

(B) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(C) the State agrees to repay to the Federal Government payments received under this paragraph if the corrective action is not taken in accordance with the approved plan and timetable.

(z) Optional coverage of TB-related services

(1) Individuals described in this paragraph are individuals not described in subsection (a)(10)(A)(i) of this section—

(A) who are infected with tuberculosis;

(B) whose income (as determined under the State plan under this subchapter with respect to disabled individuals) does not exceed the maximum amount of income a disabled individual described in subsection (a)(10)(A)(i) of this section may have and obtain medical assistance under the plan; and

(C) whose resources (as determined under the State plan under this subchapter with respect to disabled individuals) do not exceed the maximum amount of resources a disabled individual described in subsection (a)(10)(A)(i) of this section may have and obtain medical assistance under the plan.

(2) For purposes of subsection (a)(10) of this section, the term ''TB-related services'' means each of the following services relating to treatment of infection with tuberculosis:

(A) Prescribed drugs.

(B) Physicians' services and services described in section 1396d(a)(2) of this title.

(C) Laboratory and X-ray services (including services to confirm the presence of infection).

(D) Clinic services and Federally-qualified health center services.

(E) Case management services (as defined in section 1396n(g)(2) of this title).

(F) Services (other than room and board) designed to encourage completion of regimens of prescribed drugs by outpatients, including services to observe directly the intake of prescribed drugs.

(aa) Certain breast or cervical cancer patients

Individuals described in this subsection are individuals who—

(1) are not described in subsection (a)(10)(A)(i) of this section;

(2) have not attained age 65;

(3) have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under title XV of the Public Health Service Act (42 U.S.C. 300k et seq.) in accordance with the requirements of section 1504 of that Act (42 U.S.C. 300n) and need treatment for breast or cervical cancer; and

(4) are not otherwise covered under creditable coverage, as defined in section 2701(c) of the Public Health Service Act (42 U.S.C. 300gg(c)), but applied without regard to paragraph (1)(F) of such section.

(bb) Payment for services provided by Federally-qualified health centers and rural health clinics

(1) In general

Beginning with fiscal year 2001 with respect to services furnished on or after January 1, 2001, and each succeeding fiscal year, the State plan shall provide for payment for services described in section 1396d(a)(2)(C) of this title furnished by a Federally-qualified health center and services described in section 1396d(a)(2)(B) of this title furnished by a rural health clinic in accordance with the provisions of this subsection.

(2) Fiscal year 2001

Subject to paragraph (4), for services furnished on and after January 1, 2001, during fiscal year 2001, the State plan shall provide for payment for such services in an amount (calculated on a per visit basis) that is equal to 100 percent of the average of the costs of the center or clinic of furnishing such services during fiscal years 1999 and 2000 which are reasonable

and related to the cost of furnishing such services, or based on such other tests of reasonableness as the Secretary prescribes in regulations under section 1395*l*(a)(3) of this title, or, in the case of services to which such regulations do not apply, the same methodology used under section 1395*l*(a)(3) of this title, adjusted to take into account any increase or decrease in the scope of such services furnished by the center or clinic during fiscal year 2001.

(3) Fiscal year 2002 and succeeding fiscal years

Subject to paragraph (4), for services furnished during fiscal year 2002 or a succeeding fiscal year, the State plan shall provide for payment for such services in an amount (calculated on a per visit basis) that is equal to the amount calculated for such services under this subsection for the preceding fiscal year—

(A) increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) applicable to primary care services (as defined in section 1395u(i)(4) of this title) for that fiscal year; and

(B) adjusted to take into account any increase or decrease in the scope of such services furnished by the center or clinic during that fiscal year.

(4) Establishment of initial year payment amount for new centers or clinics

In any case in which an entity first qualifies as a Federally-qualified health center or rural health clinic after fiscal year 2000, the State plan shall provide for payment for services described in section 1396d(a)(2)(C) of this title furnished by the center or services described in section 1396d(a)(2)(B) of this title furnished by the clinic in the first fiscal year in which the center or clinic so qualifies in an amount (calculated on a per visit basis) that is equal to 100 percent of the costs of furnishing such services during such fiscal year based on the rates established under this subsection for the fiscal year for other such centers or clinics located in the same or adjacent area with a similar case load or, in the absence of such a center or clinic, in accordance with the regulations and methodology referred to in paragraph (2) or based on such other tests of reasonableness as the Secretary may specify. For each fiscal year following the fiscal year in which the entity first qualifies as a Federally-qualified health center or rural health clinic, the State plan shall provide for the payment amount to be calculated in accordance with paragraph (3).

(5) Administration in the case of managed care

(A) In general

In the case of services furnished by a Federally-qualified health center or rural health clinic pursuant to a contract between the center or clinic and a managed care entity (as defined in section 1396u–2(a)(1)(B) of this title), the State plan shall provide for payment to the center or clinic by the State of a supplemental payment equal to the amount (if any) by which the amount determined under paragraphs (2), (3), and (4) of this subsection exceeds the amount of the payments provided under the contract.

(B) Payment schedule

The supplemental payment required under subparagraph (A) shall be made pursuant to a payment schedule agreed to by the State and the Federally-qualified health center or rural health clinic, but in no case less frequently than every 4 months.

(6) Alternative payment methodologies

Notwithstanding any other provision of this section, the State plan may provide for payment in any fiscal year to a Federally-qualified health center for services described in section 1396d(a)(2)(C) of this title or to a rural health clinic for services described in section 1396d(a)(2)(B) of this title in an amount which is determined under an alternative payment methodology that—

(A) is agreed to by the State and the center or clinic; and

(B) results in payment to the center or clinic of an amount which is at least equal to the amount otherwise required to be paid to the center or clinic under this section.

(cc) Disabled children eligible to receive medical assistance at option of State

(1) Individuals described in this paragraph are individuals—

(A) who are children who have not attained 19 years of age and are born—

(i) on or after January 1, 2001 (or, at the option of a State, on or after an earlier date), in the case of the second, third, and fourth quarters of fiscal year 2007;

(ii) on or after October 1, 1995 (or, at the option of a State, on or after an earlier date), in the case of each quarter of fiscal year 2008; and

(iii) after October 1, 1989, in the case of each quarter of fiscal year 2009 and each quarter of any fiscal year thereafter;

(B) who would be considered disabled under section 1382c(a)(3)(C) of this title (as determined under subchapter XVI for children but without regard to any income or asset eligibility requirements that apply under such subchapter with respect to children); and

(C) whose family income does not exceed such income level as the State establishes and does not exceed—

(i) 300 percent of the poverty line (as defined in section 1397jj(c)(5) of this title) applicable to a family of the size involved; or

(ii) such higher percent of such poverty line as a State may establish, except that—

(I) any medical assistance provided to an individual whose family income exceeds 300 percent of such poverty line may only be provided with State funds; and

(II) no Federal financial participation shall be provided under section 1396b(a) of this title for any medical assistance provided to such an individual.

(2)(A) If an employer of a parent of an individual described in paragraph (1) offers family coverage under a group health plan (as defined in section 2791(a) of the Public Health Service Act [42 U.S.C. 300gg–91(a)]), the State shall—

(i) notwithstanding section 1396e of this title, require such parent to apply for, enroll

in, and pay premiums for such coverage as a condition of such parent's child being or remaining eligible for medical assistance under subsection (a)(10)(A)(ii)(XIX) if the parent is determined eligible for such coverage and the employer contributes at least 50 percent of the total cost of annual premiums for such coverage; and

(ii) if such coverage is obtained—

(I) subject to paragraph (2) of section 1396*o*(h)[15] of this title, reduce the premium imposed by the State under that section in an amount that reasonably reflects the premium contribution made by the parent for private coverage on behalf of a child with a disability; and

(II) treat such coverage as a third party liability under subsection (a)(25).

(B) In the case of a parent to which subparagraph (A) applies, a State, notwithstanding section 1396e of this title but subject to paragraph (1)(C)(ii), may provide for payment of any portion of the annual premium for such family coverage that the parent is required to pay. Any payments made by the State under this subparagraph shall be considered, for purposes of section 1396b(a) of this title, to be payments for medical assistance.

(Aug. 14, 1935, ch. 531, title XIX, § 1902, as added Pub. L. 89–97, title I, § 121(a), July 30, 1965, 79 Stat. 344; amended Pub. L. 90–248, title II, §§ 210(a)(6), 223(a), 224(a), (c)(1), 227(a), 228(a), 229(a), 231, 234(a), 235(a), 236(a), 237, 238, 241(f)(1)–(4), title III, § 302(b), Jan. 2, 1968, 81 Stat. 896, 901–906, 908, 911, 917, 929; Pub. L. 91–56, § 2(c), (d), Aug. 9, 1969, 83 Stat. 99; Pub. L. 92–223, § 4(b), Dec. 28, 1971, 85 Stat. 809; Pub. L. 92–603, title II, §§ 208(a), 209(a), (b)(1), 221(c)(5), 231, 232(a), 236(b), 237(a)(2), 239(a), (b), 240, 246(a), 249(a), 255(a), 268(a), 274(a), 278(a)(18)–(20), (b)(14), 298, 299A, 299D(b), Oct. 30, 1972, 86 Stat. 1381, 1389, 1410, 1415–1418, 1424, 1426, 1446, 1450, 1452–1454, 1460, 1462; Pub. L. 93–233, §§ 13(a)(2)–(10), 18(*o*)–(q), (x)(1)–(4), Dec. 31, 1973, 87 Stat. 960–962, 971, 972; Pub. L. 93–368, § 9(a), Aug. 7, 1974, 88 Stat. 422; Pub. L. 94–48, §§ 1, 2, July 1, 1975, 89 Stat. 247; Pub. L. 94–182, title I, § 111(a), Dec. 31, 1975, 89 Stat. 1054; Pub. L. 94–552, § 1, Oct. 18, 1976, 90 Stat. 2540; Pub. L. 95–142, §§ 2(a)(3), (b)(1), 3(c)(1), 7(b), (c), 9, 19(b)(2), 20(b), Oct. 25, 1977, 91 Stat. 1176, 1178, 1193, 1195, 1204, 1207; Pub. L. 95–210, § 2(c), Dec. 13, 1977, 91 Stat. 1488; Pub. L. 95–559, § 14(a)(1), Nov. 1, 1978, 92 Stat. 2140; Pub. L. 96–272, title III, § 308(c), June 17, 1980, 94 Stat. 531; Pub. L. 96–499, title IX, §§ 902(b), 903(b), 905(a), 912(b), 913(c), (d), 914(b)(1), 916(b)(1), 918(b)(1), 962(a), 965(b), Dec. 5, 1980, 94 Stat. 2613, 2615, 2618–2621, 2624, 2626, 2650, 2652; Pub. L. 96–611, § 5(b), Dec. 28, 1980, 94 Stat. 3568; Pub. L. 97–35, title XXI, §§ 2105(c), 2113(m), 2171(a), (b), 2172(a), 2173(a), (b)(1), 2174(a), 2175(a), (d)(1), 2178(b), 2181(a)(2), 2182, 2193(c)(9), Aug. 13, 1981, 95 Stat. 792, 795, 807–809, 811, 814–816, 828; Pub. L. 97–248, title I, §§ 131(a), (c), formerly (b), 132(a), (c), 134(a), 136(d), 137(a)(3), (b)(7)–(10), (e), 146(a), Sept. 3, 1982, 96 Stat. 367, 369, 370, 373, 375–378, 381, 394; Pub. L. 97–448, title III, § 309(a)(8), Jan. 12, 1983, 96 Stat. 2408; Pub. L. 98–369, div. B, title III, §§ 2303(g)(1), 2314(b), 2335(e), 2361(a), 2362(a), 2363(a)(1), 2367(a), 2368(a), (b), 2373(b)(1)–(10), title VI, § 2651(c), July 18, 1984, 98 Stat. 1066, 1079, 1091, 1104, 1105, 1108, 1109, 1111, 1149; Pub. L. 98–378, § 20(c), Aug. 16, 1984, 98 Stat. 1322; Pub. L. 98–617, § 3(a)(7), (b)(10), Nov. 8, 1984, 98 Stat. 3295, 3296; Pub. L. 99–272, title IX, §§ 9501(b), (c), 9503(a), 9505(b), (c)(1), (d), 9506(a), 9509(a), 9510(a), 9517(b), 9529(a)(1), (b)(1), title XII, § 12305(b)(3), Apr. 7, 1986, 100 Stat. 201, 202, 205, 208–212, 216, 220, 293; Pub. L. 99–509, title IX, §§ 9320(h)(3), 9401(a)–(e)(1), 9402(a), (b), 9403(a), (c), (e)–(g)(1), (4)(A), 9404(a), 9405, 9406(b), 9407(a), 9408(a), (b), (c)(2), (3), 9431(a), (b)(1), 9433(a), 9435(b)(1), Oct. 21, 1986, 100 Stat. 2016, 2050–2058, 2060, 2061, 2066, 2068, 2069; Pub. L. 99–514, title XVIII, § 1895(c)(1), (3)(B), (C), (7), Oct. 22, 1986, 100 Stat. 2935, 2936; Pub. L. 99–570, title XI, § 11005(b), Oct. 27, 1986, 100 Stat. 3207–169; Pub. L. 99–643, §§ 3(b), 7(b), Nov. 10, 1986, 100 Stat. 3575, 3579; Pub. L. 100–93, §§ 5(a), 7, 8(f), Aug. 18, 1987, 101 Stat. 689, 691, 694; Pub. L. 100–203, title IV, §§ 4072(d), 4101(a)(1), (2), (b)(1)–(2)(B), (c)(2), (e)(1)–(5), 4102(b)(1), 4104, 4113(a)(2), (b)(1), (2), (c)(1), (2), (d)(2), 4116, 4118(c)(1), (h)(1), (2), (m)(1)(B), (p)(1)–(4), (6)–(8), 4211(b)(1), (h)(1)–(5), 4212(d)(2), (3), (e)(1), 4213(b)(1), 4218(a), title IX, §§ 9115(b), 9119(d)(1), Dec. 22, 1987, 101 Stat. 1330–117, 1330–140 to 1330–143, 1330–146, 1330–147, 1330–151, 1330–152, 1330–154 to 1330–157, 1330–159, 1330–203, 1330–205, 1330–213, 1330–219, 1330–220, 1330–305, as amended Pub. L. 100–360, title IV, § 411(k)(5)(A), (7)(B)–(D), (10)(G)(ii), (iv), (*l*)(3)(H), (J), (8)(C), (n)(2), (4), formerly (3), July 1, 1988, 102 Stat. 791, 794, 796, 803, 805, 807, as amended Pub. L. 100–485, title VI, § 608(d)(14)(I), (15)(A), (27)(F)–(H), (28), Oct. 13, 1988, 102 Stat. 2416, 2423; Pub. L. 100–360, title II, § 204(d)(3), title III, §§ 301(a)(1), (e)(2), 302(a), (b)(1), (c)(1), (2), (d)–(e)(3), 303(d), (e), title IV, § 411(k)(5)(B), (17)(B), (*l*)(3)(E), (6)(C), (D), July 1, 1988, 102 Stat. 729, 748–753, 762, 763, 792, 800, 803, 804; Pub. L. 100–485, title II, § 202(c)(4), title III, § 303(a)(2), (b)(1), (d), title IV, § 401(d)(1), title VI, § 608(d)(15)(B), (16)(C), Oct. 13, 1988, 102 Stat. 2378, 2391, 2392, 2396, 2416, 2418; Pub. L. 100–647, title VIII, § 8434(b)(1), (2), Nov. 10, 1988, 102 Stat. 3805; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6115(c), 6401(a), 6402(a), (c)(2), 6403(b), (d)(1), 6404(c), 6405(b), 6406(a), 6408(c)(1), (d)(1), (4)(C), 6411(a)(1), (d)(3)(B), (e)(2), Dec. 19, 1989, 103 Stat. 2219, 2258, 2260, 2261, 2263–2265, 2268–2271; Pub. L. 101–508, title IV, §§ 4401(a)(2), 4402(a)(1), (c), (d)(1), 4501(b), (e)(2), 4601(a)(1), 4602(a), 4603(a), 4604(a), (b), 4701(b)(1), 4704(a), (e)(1), 4708(a), 4711(c)(1), (d), 4713(a), 4715(a), 4723(b), 4724(a), 4732(b)(1), 4751(a), 4752(a)(1)(A), (c)(1), 4754(a), 4755(a)(2), (c)(1), 4801(e)(1)(A), (11)(A), Nov. 5, 1990, 104 Stat. 1388–143, 1388–161, 1388–163 to 1388–173, 1388–186, 1388–187, 1388–190, 1388–192, 1388–194, 1388–195, 1388–204, 1388–206, 1388–208 to 1388–210, 1388–215, 1388–217; Pub. L. 102–234, §§ 2(b)(1), 3(a), Dec. 12, 1991, 105 Stat. 1799; Pub. L. 103–66, title XIII, § 13581(b)(2), 13601(b), 13602(c), 13603(a)–(c), 13611(d)(1), 13622(a)(1), (b), (c), 13623(a), 13625(a), 13631(a), (e)(1), (f)(1), Aug. 10, 1993, 107 Stat. 611, 613, 619, 620, 626, 632, 633, 636, 643, 644; Pub. L. 103–296, title I, § 108(d)(1), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 103–448, title II, § 204(w)(2)(E), Nov. 2, 1994, 108 Stat. 4746; Pub. L. 104–193, title I, §§ 108(k), 114(b)–(d)(1), title IX, § 913, Aug. 22, 1996,

[15] So in original. Probably should be section "1396*o*(i)".

110 Stat. 2169, 2180, 2354; Pub. L. 104–226, § 1(b)(2), Oct. 2, 1996, 110 Stat. 3033; Pub. L. 104–248, § 1(a)(1), Oct. 9, 1996, 110 Stat. 3148; Pub. L. 105–12, § 9(b)(2), Apr. 30, 1997, 111 Stat. 26; Pub. L. 105–33, title IV, §§ 4106(c), 4454(b)(1), 4701(b)(2)(A)(i)–(iv), (d)(1), 4702(b)(2), 4709, 4711(a), 4712(a), (b)(1), (c)(1), 4714(a)(1), 4715(a), 4724(c)(1), (d), (f), (g)(1), 4731(a), (b), 4732(a), 4733, 4741(a), 4751(a), (b), 4752(a), 4753(b), 4911(b), 4912(b)(1), 4913(a), Aug. 5, 1997, 111 Stat. 368, 431, 493, 495, 506–510, 516, 517, 519, 520, 522–525, 571, 573; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, §§ 603(a)(1), 604(a)(1), (2)(A), (b)(1), 608(a)–(d), (y)(2), (aa)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394 to 1501A–398; Pub. L. 106–169, title I, § 121(a)(1), (c)(4), title II, §§ 205(c), 206(b), Dec. 14, 1999, 113 Stat. 1829, 1830, 1834, 1837; Pub. L. 106–170, title II, § 201(a)(1), (2)(A), Dec. 17, 1999, 113 Stat. 1891, 1892; Pub. L. 106–354, § 2(a)(1)–(3), (b)(2)(A), Oct. 24, 2000, 114 Stat. 1381–1383; Pub. L. 106–554, § 1(a)(6) [title VII, §§ 702(a)–(c)(1), 707(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–572 to 2763A–574, 2763A–577; Pub. L. 107–121, § 2(a), (b)(1), (2), Jan. 15, 2002, 115 Stat. 2384; Pub. L. 108–40, § 7(b), June 30, 2003, 117 Stat. 837; Pub. L. 108–89, title IV, § 401(a), Oct. 1, 2003, 117 Stat. 1134; Pub. L. 108–173, title I, § 103(a)(1), (f)(1), title II, § 236(b)(1), Dec. 8, 2003, 117 Stat. 2154, 2160, 2211; Pub. L. 108–265, title I, § 105(b), June 30, 2004, 118 Stat. 744; Pub. L. 108–448, § 1(a), Dec. 8, 2004, 118 Stat. 3467; Pub. L. 109–91, title I, § 101(a), Oct. 20, 2005, 119 Stat. 2091; Pub. L. 109–171, title VI, §§ 6032(a), 6034(b), 6035(a), (b), 6062(a), 6065(a), 6083(a), Feb. 8, 2006, 120 Stat. 73, 76, 78, 79, 96, 101, 120; Pub. L. 109–432, div. B, title IV, § 405(c)(2)(A)(iv), Dec. 20, 2006, 120 Stat. 3000.)

REPEAL OF SUBSECTION (a)(29)

Pub. L. 101–508, title IV, § 4801(e)(11), Nov. 5, 1990, 104 Stat. 1388–217, provided that, effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396r(f)(4) of this title, subsection (a)(29) of this section is repealed.

REFERENCES IN TEXT

Parts A, D, and E of subchapter IV of this chapter, referred to in subsecs. (a), (c), (e)(1), (10), and (*l*)(3), are classified to sections 601 et seq., 651 et seq., and 670 et seq., respectively, of this title.

The Child Nutrition Act of 1966, referred to in subsec. (a)(7)(B), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Richard B. Russell National School Lunch Act, referred to in subsec. (a)(7)(B), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (a)(10), (13)(B), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 602 of this title, referred to in subsecs. (a)(10)(A)(i)(I) and (e)(10), was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains subsec. (a)(37) or (a)(43).

Section 606 of this title, referred to in subsec. (a)(10)(A)(i)(I), was repealed and a new section 606 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (h).

Section 682 of this title, referred to in subsec. (a)(10)(A)(i)(I), was repealed by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167.

The date of the enactment of section 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(10)(A)(i)(II), is the date of enactment of Pub. L. 104–193, which was approved Aug. 22, 1996. Section 211(a) of the Act amended section 1382c of this title.

Section 303(a)(4)(A) of this title, referred to in subsec. (a)(20)(C), was amended generally by Pub. L. 97–35, title XXIII, § 2353(a)(1)(A), Aug. 13, 1981, 95 Stat. 871, and, as so amended, no longer contained cls. (i) and (ii). Section 303(a)(4) was amended by Pub. L. 103–66, title XIII, § 13741(b), Aug. 10, 1993, 107 Stat. 663, and, as so amended, no longer contains subparagraphs.

Section 1383(a)(4)(A)(i) and (ii) of this title, referred to in subsec. (a)(20)(C), is a reference to section 1383(a)(4)(A)(i) and (ii) existing prior to the general revision of subchapter XVI of this chapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands. Subsec. (a)(4) of the prior section was amended generally by Pub. L. 97–35, title XXIII, § 2353(m)(2)(B), Aug. 13, 1981, 95 Stat. 973, and, as so amended, no longer contained clauses in subpar. (A). Subsec. (a)(4) of the prior section was also amended by Pub. L. 103–66, title XIII, § 13741(b), Aug. 10, 1993, 107 Stat. 663, and, as so amended, no longer contains subparagraphs.

Part B of subchapter XI of this chapter, referred to in subsec. (d), is classified to section 1320c et seq. of this title.

Public Law 92–336, referred to in provisions following subsec. (a)(52), is Pub. L. 92–336, July 1, 1972, 86 Stat. 406, which amended sections 401, 403, 409, 411, 415, 427, 428, and 430 of this title and sections 165, 1401, 1402, 3101, 3111, 3121, 3122, 3125, 6413, and 6654 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under sections 403, 409, 415, and 428 of this title and sections 165 and 1401 of Title 26.

The Public Health Service Act, referred to in subsecs. (u)(3) and (aa)(3), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Titles XV and XXII of the Act are classified generally to subchapters XIII (§ 300k et seq.) and XX (§ 300bb–1 et seq.), respectively, of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (u)(3), is classified generally to Title 26.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (u)(3), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title VI of the Act probably means part 6 of subtitle B of title I of the Act which is classified generally to part 6 (§ 1161 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor, because the Act has no title VI. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2006—Subsec. (a)(10)(A)(i)(II). Pub. L. 109–171, § 6065(a), inserted ''(aa)'' after ''(II)'', substituted ''and'' for '') and'' after ''P.L. 104–193)'', substituted ''section), (bb) who are'' for ''section or who are'', and inserted before comma at end '', or (cc) who are under 21 years of age and with respect to whom supplemental security income benefits would be paid under subchapter XVI if subparagraphs (A) and (B) of section 1382(c)(7) of this title were applied without regard to the phrase 'the first day of the month following' ''.

Subsec. (a)(10)(A)(ii)(XIX). Pub. L. 109–171, § 6062(a)(1)(A), added subcl. (XIX).

Subsec. (a)(25)(A). Pub. L. 109–171, § 6035(a)(1), in introductory provisions, inserted '', self-insured plans'' after

''health insurers'' and substituted ''managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service'' for ''and health maintenance organizations''.

Subsec. (a)(25)(G). Pub. L. 109–171, § 6035(a)(2), inserted ''a self-insured plan,'' before ''a service benefit plan'' and substituted ''a managed care organization, a pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service'' for ''and a health maintenance organization''.

Subsec. (a)(25)(I). Pub. L. 109–171, § 6035(b), added subpar. (I).

Subsec. (a)(68). Pub. L. 109–171, § 6032(a), added par. (68).

Subsec. (a)(69). Pub. L. 109–171, § 6034(b), as amended by Pub. L. 109–432, added par. (69).

Subsec. (a)(70). Pub. L. 109–171, § 6083(a), added par. (70).

Subsec. (cc). Pub. L. 109–171, § 6062(a)(1)(B), added subsec. (cc).

Subsec. (cc)(2). Pub. L. 109–171, § 6062(a)(2), added par. (2).

2005—Subsec. (a)(10)(E)(iv). Pub. L. 109–91 substituted ''September 2007'' for ''September 2005''.

2004—Subsec. (a)(7). Pub. L. 108–265 designated part of existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10)(E)(iv). Pub. L. 108–448 substituted ''2005'' for ''2004''.

2003—Subsec. (a)(10)(E)(iv). Pub. L. 108–173, § 103(f)(1), substituted ''ending with September 2004'' for ''ending with March 2004''.

Pub. L. 108–89 substituted ''March 2004'' for ''December 2002'', redesignated introductory provisions and subcl. (I) as cl. (iv), substituted semicolon for '', and'' after ''State plan'', and struck out subcl. (II) which read as follows: ''for the portion of medicare cost-sharing described in section 1396d(p)(3)(A)(ii) of this title that is attributable to the operation of the amendments made by (and subsection (e)(3) of) section 4611 of the Balanced Budget Act of 1997 for individuals who would be described in subclause (I) if '135 percent' and '175 percent' were substituted for '120 percent' and '135 percent' respectively;''.

Subsec. (a)(66). Pub. L. 108–173, § 103(a)(1), added par. (66).

Subsec. (a)(67). Pub. L. 108–173, § 236(b)(1), added par. (67).

Subsec. (e)(1)(B). Pub. L. 108–40 substituted ''2003'' for ''2002''.

2002—Subsec. (a)(15). Pub. L. 107–121, § 2(b)(2), substituted ''subsection (bb)'' for ''subsection (aa)''.

Subsec. (aa). Pub. L. 107–121, § 2(b)(1), redesignated subsec. (aa) relating to payment for services provided by federally-qualified health centers and rural health clinics as subsec. (bb).

Subsec. (aa)(4). Pub. L. 107–121, § 2(a), inserted '', but applied without regard to paragraph (1)(F) of such section'' before period at end.

Subsec. (bb). Pub. L. 107–121, § 2(b)(1), redesignated subsec. (aa) relating to payment for services provided by federally-qualified health centers and rural health clinics as subsec. (bb).

2000—Subsec. (a)(10). Pub. L. 106–354, § 2(a)(3), in concluding provisions, substituted ''(XIII)'' for ''and (XIII)'' and inserted before semicolon at end '', and (XIV) the medical assistance made available to an individual described in subsection (aa) of this section who is eligible for medical assistance only because of subparagraph (A)(10)(ii)(XVIII) shall be limited to medical assistance provided during the period in which such an individual requires treatment for breast or cervical cancer''.

Subsec. (a)(10)(A)(ii)(XVIII). Pub. L. 106–354, § 2(a)(1), added subcl. (XVIII).

Subsec. (a)(13)(A)(iv). Pub. L. 106–554, § 1(a)(6) [title VII, § 702(a)(1)(A)], inserted ''and'' at end.

Subsec. (a)(13)(B). Pub. L. 106–554, § 1(a)(6) [title VII, § 702(a)(1)(B)], struck out ''and'' at end.

Subsec. (a)(13)(C). Pub. L. 106–554, § 1(a)(6) [title VII, § 702(c)(1)], repealed Pub. L. 105–33, § 4712(c)(1). See 1997 Amendment note below.

Pub. L. 106–554, § 1(a)(6) [title VII, § 702(a)(1)(C)], struck out subpar. (C) which read as follows: ''(C)(i) for payment for services described in clause (B) or (C) of section 1396d(a)(2) of this title under the plan of 100 percent (or 95 percent for services furnished during fiscal year 2000, fiscal year 2001, or fiscal year 2002, 90 percent for services furnished during fiscal year 2003, or 85 percent for services furnished during fiscal year 2004) of costs which are reasonable and related to the cost of furnishing such services or based on such other tests of reasonableness, as the Secretary prescribes in regulations under section 1395*l*(a)(3) of this title, or, in the case of services to which those regulations do not apply, on the same methodology used under section 1395*l*(a)(3) of this title and (ii) in carrying out clause (i) in the case of services furnished by a Federally-qualified health center or a rural health clinic pursuant to a contract between the center and an organization under section 1396b(m) of this title, for payment to the center or clinic at least quarterly by the State of a supplemental payment equal to the amount (if any) by which the amount determined under clause (i) exceeds the amount of the payments provided under such contract;''.

Subsec. (a)(15). Pub. L. 106–554, § 1(a)(6) [title VII, § 702(a)(2)], added par. (15).

Subsec. (a)(47). Pub. L. 106–354, § 2(b)(2)(A), inserted before semicolon at end ''and provide for making medical assistance available to individuals described in subsection (a) of section 1396r–1b of this title during a presumptive eligibility period in accordance with such section''.

Subsec. (e)(1)(B). Pub. L. 106–554, § 1(a)(6) [title VII, § 707(b)], substituted ''2002'' for ''2001''.

Subsec. (aa). Pub. L. 106–554, § 1(a)(6) [title VII, § 702(b)], added subsec. (aa) relating to payment for services provided by Federally-qualified health centers and rural health clinics.

Pub. L. 106–354, § 2(a)(2), added subsec. (aa) relating to certain breast or cervical cancer patients.

1999—Subsec. (a)(10)(A)(ii)(XIV). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(aa)(1)], substituted ''1396d(u)(2)(B) of this title'' for ''1396d(u)(2)(C) of this title''.

Subsec. (a)(10)(A)(ii)(XV). Pub. L. 106–169, § 121(c)(4)(A), redesignated subcl. (XV), related to individuals who are independent foster care adolescents, as (XVII).

Pub. L. 106–169, § 121(a)(1)(C), added subcl. (XV), related to individuals who are independent foster care adolescents.

Pub. L. 106–169, § 121(a)(1)(A), which directed striking out of ''or'' at end of subcl. (XIII), was executed by amending subcl. (XV), related to individuals who would be considered to be receiving supplemental security income, etc. See Construction of 1999 Amendment note below.

Pub. L. 106–170, § 201(a)(1), added subcl. (XV), related to individuals who would be considered to be receiving supplemental security income, etc.

Subsec. (a)(10)(A)(ii)(XVI). Pub. L. 106–169, § 121(a)(1)(B), which directed insertion of ''or'' at end of subcl. (XIV), was executed to subcl. (XVI). See Construction of 1999 Amendment note below.

Pub. L. 106–170, § 201(a)(2)(A), added subcl. (XVI).

Subsec. (a)(10)(A)(ii)(XVII). Pub. L. 106–169, § 121(c)(4), redesignated subcl. (XV), related to individuals who are independent foster care adolescents, as (XVII) and substituted ''section 1396d(w)(1)'' for ''section 1396d(v)(1)''.

Subsec. (a)(10)(G). Pub. L. 106–169, § 206(b), substituted ''subsections (c) and (e) of section 1382b'' for ''section 1382b(e)''.

Pub. L. 106–169, § 205(c), added subpar. (G).

Subsec. (a)(13)(C)(i). Pub. L. 106–113, § 1000(a)(6) [title VI, § 603(a)(1)], substituted ''fiscal year 2001, or fiscal year 2002, 90 percent for services furnished during fiscal year 2003, or 85 percent for services furnished during fis-

cal year 2004'' for ''90 percent for services furnished during fiscal year 2001, 85 percent for services furnished during fiscal year 2002, or 70 percent for services furnished during fiscal year 2003''.

Subsec. (a)(30)(A). Pub. L. 106–113, § 1000(a)(6) [title VI, § 604(b)(1)(A)], inserted ''and'' at end.

Subsec. (a)(30)(B)(ii). Pub. L. 106–113, § 1000(a)(6) [title VI, § 604(b)(1)(B)], struck out ''and'' at end.

Subsec. (a)(30)(C). Pub. L. 106–113, § 1000(a)(6) [title VI, § 604(b)(1)(C)], struck out subpar. (C) which read as follows: ''use a utilization and quality control peer review organization (under part B of subchapter XI of this chapter), an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, or a private accreditation body to conduct (on an annual basis) an independent, external review of the quality of services furnished under each contract under section 1396b(m) of this title, with the results of such review made available to the State and, upon request, to the Secretary, the Inspector General in the Department of Health and Human Services, and the Comptroller General;''.

Subsec. (a)(60). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(y)(2)], made technical amendment to reference in original act which appears in text as reference to section 1396g-1 of this title.

Subsec. (a)(64). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(a)], inserted ''and'' at end.

Subsec. (d). Pub. L. 106–113, § 1000(a)(6) [title VI, § 604(a)(2)(A)], struck out ''(including quality review functions described in subsection (a)(30)(C) of this section)'' after ''medical or utilization review functions''.

Pub. L. 106–113, § 1000(a)(6) [title VI, § 604(a)(1)], struck out ''for the performance of the quality review functions described in subsection (a)(30)(C) of this section,'' before ''or a utilization and quality control peer review organization''.

Subsec. (j). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(b)], substituted ''of'' for ''of of'' after ''numbered paragraph''.

Subsec. (*l*)(1)(C). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(c)(1)], substituted ''children'' for ''children children''.

Subsec. (*l*)(3). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(c)(2)], struck out first comma after ''(a)(10)(A)(i)(VII)'' in introductory provisions.

Subsec. (*l*)(4)(B). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(c)(3)], inserted comma after ''(a)(10)(A)(i)(IV)''.

Subsec. (v). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(d)], struck out par. (1) designation before ''A State plan may provide''.

1997—Subsec. (a). Pub. L. 105–33, § 4454(b)(1), in second sentence of flush concluding provisions, substituted ''to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).'' for ''to a Christian Science sanatorium operated, or listed and certified, by The Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc..''

Subsec. (a)(4)(C), (D). Pub. L. 105–33, § 4724(c)(1), substituted ''(C)'' for ''and (C)'', ''local officer, employee, or independent contractor'' for ''local officer or employee'', and ''such an officer, employee, or contractor'' for ''such an officer or employee'' in two places and added subpar. (D).

Subsec. (a)(9)(C). Pub. L. 105–33, § 4106(c), substituted ''paragraphs (16) and (17)'' for ''paragraphs (15) and (16)''.

Subsec. (a)(10)(A)(i)(II). Pub. L. 105–33, § 4913(a), inserted ''(or were being paid as of the date of the enactment of section 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193)) and would continue to be paid but for the enactment of that section'' after ''subchapter XVI of this chapter''.

Subsec. (a)(10)(A)(ii)(XIII). Pub. L. 105–33, § 4733, added subcl. (XIII).

Subsec. (a)(10)(A)(ii)(XIV). Pub. L. 105–33, § 4911(b), added subcl. (XIV).

Subsec. (a)(10)(E)(iv). Pub. L. 105–33, § 4732(a), added cl. (iv).

Subsec. (a)(13)(A). Pub. L. 105–33, § 4711(a)(1), added subpar. (A) and struck out former subpar. (A) which related to payment of hospital services, nursing facility services, and services in intermediate care facilities for mentally retarded by use of rates which account for various specified costs.

Subsec. (a)(13)(B). Pub. L. 105–33, § 4711(a)(1)–(3), redesignated subpar. (D) as (B), inserted ''and'' at end, and struck out former subpar. (B) which read as follows: ''that the State shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1395x(v)(1)(O) of this title;''.

Subsec. (a)(13)(C). Pub. L. 105–33, § 4712(c)(1), which directed the repeal of subsec. (a)(13)(C), was repealed by Pub. L. 106–554, § 1(a)(6) [title VII, § 702(c)(1)]. See 2000 Amendment note above and Effective Date of 1997 Amendment note below.

Pub. L. 105–33, § 4712(b)(1), designated existing provisions as cl. (i) and added cl. (ii).

Pub. L. 105–33, § 4712(a), inserted ''(or 95 percent for services furnished during fiscal year 2000, 90 percent for services furnished during fiscal year 2001, 85 percent for services furnished during fiscal year 2002, or 70 percent for services furnished during fiscal year 2003)'' after ''100 percent''.

Pub. L. 105–33, § 4711(a)(1), (2), (4), redesignated subpar. (E) as (C), struck out ''and'' at end, and struck out former subpar. (C) which read as follows: ''that the State shall provide assurances satisfactory to the Secretary that the valuation of capital assets, for purposes of determining payment rates for nursing facilities and for intermediate care facilities for the mentally retarded, will not be increased (as measured from the date of acquisition by the seller to the date of the change of ownership), solely as a result of a change of ownership, by more than the lesser of—

''(i) one-half of the percentage increase (as measured over the same period of time, or, if necessary, as extrapolated retrospectively by the Secretary) in the Dodge Construction Systems Costs for Nursing Homes, applied in the aggregate with respect to those facilities which have undergone a change of ownership during the fiscal year, or

''(ii) one-half of the percentage increase (as measured over the same period of time) in the Consumer Price Index for All Urban Consumers (United States city average);''.

Subsec. (a)(13)(D), (E). Pub. L. 105–33, § 4711(a)(2), redesignated subpars. (D) and (E) as (B) and (C), respectively.

Subsec. (a)(13)(F). Pub. L. 105–33, § 4711(a)(5), struck out subpar. (F) which read as follows: ''for payment for home and community care (as defined in section 1396t(a) of this title and provided under such section) through rates which are reasonable and adequate to meet the costs of providing care, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards;''.

Subsec. (a)(23). Pub. L. 105–33, § 4724(d), struck out ''except as provided in subsection (g) of this section and in section 1396n and except in the case of Puerto Rico, the Virgin Islands, and Guam,'' after ''(23)'' and inserted before semicolon at end '', except as provided in subsection (g) of this section and in section 1396n of this title, except that this paragraph shall not apply in the case of Puerto Rico, the Virgin Islands, and Guam, and except that nothing in this paragraph shall be construed as requiring a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries under the State plan''.

Subsec. (a)(23)(B). Pub. L. 105–33, § 4701(d)(1), substituted '', in section 1396n of this title, and in section

1396u–2(a) of this title'' for ''and in section 1396n of this title''.

Pub. L. 105–33, § 4701(b)(2)(A)(i), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (a)(25)(A)(ii). Pub. L. 105–33, § 4753(b), substituted ''be integrated with, and be monitored as a part of the Secretary's review of, the State's mechanized claims processing and information retrieval systems required under section 1396b(r) of this title;'' for the dash that followed ''which plan shall'' and struck out subcls. (I) and (II) which read as follows:

''(I) be integrated with, and be monitored as a part of the Secretary's review of, the State's mechanized claims processing and information retrieval system under section 1396b(r) of this title, and

''(II) be subject to the provisions of section 1396b(r)(4) of this title relating to reductions in Federal payments for failure to meet conditions of approval, but shall not be subject to any other financial penalty as a result of any other monitoring, quality control, or auditing requirements;''.

Subsec. (a)(25)(G) to (I). Pub. L. 105–33, § 4741(a), redesignated subpars. (H) and (I) as (G) and (H), respectively, and struck out former subpar. (G) which read as follows: ''that the State plan shall meet the requirements of section 1396e of this title (relating to enrollment of individuals under group health plans in certain cases);''.

Subsec. (a)(26). Pub. L. 105–33, § 4751(a), substituted ''provide, with respect to each patient'' for ''provide—

''(A) with respect to each patient''

and struck out subpars. (B) and (C) which read as follows:

''(B) for periodic inspections to be made in all mental institutions within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel) of the care being provided to each person receiving medical assistance, including (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the institution, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

''(C) for full reports to the State agency by each medical review team of the findings of each inspection under subparagraph (B), together with any recommendations;''.

Subsec. (a)(31). Pub. L. 105–33, § 4751(b), substituted ''provide, with respect to each patient'' for ''provide—

''(A) with respect to each patient''

and struck out subpars. (B) and (C) which read as follows:

''(B) with respect to each intermediate care facility for the mentally retarded within the State, for periodic onsite inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), including with respect to each such person (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the facility, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

''(C) for full reports to the State agency by each independent professional review team of the findings of each inspection under subparagraph (B), together with any recommendations;''.

Subsec. (a)(47). Pub. L. 105–33, § 4912(b)(1), inserted before semicolon at end ''and provide for making medical assistance for items and services described in subsection (a) of section 1396r–1a of this title available to children during a presumptive eligibility period in accordance with such section''.

Subsec. (a)(57). Pub. L. 105–33, § 4701(b)(2)(A)(ii), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (a)(63). Pub. L. 105–33, § 4724(g)(1)(A), struck out ''and'' at end.

Subsec. (a)(64). Pub. L. 105–33, § 4724(g)(1)(B), which directed the amendment of par. (64) by substituting ''; and'' for the period at end, could not be executed because there was no period at end.

Pub. L. 105–33, § 4724(f), added par. (64).

Subsec. (a)(65). Pub. L. 105–33, § 4724(g)(1)(C), added par. (65).

Subsec. (e)(2)(A). Pub. L. 105–33, § 4709(2), which directed the amendment of subsec. (e)(2) by inserting ''or by or through the case manager'' before period at end, was executed by making insertion before period at end of subpar. (A) to reflect the probable intent of Congress.

Pub. L. 105–33, § 4709(1), substituted ''who is enrolled with a medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title), with a primary care case manager (as defined in section 1396d(t) of this title),'' for ''who is enrolled with a qualified health maintenance organization (as defined in title XIII of the Public Health Service Act) or with an entity described in paragraph (2)(B)(iii), (2)(E), (2)(G), or (6) of section 1396b(m) of this title under a contract described in section 1396b(m)(2)(A) of this title''.

Subsec. (e)(12). Pub. L. 105–33, § 4731(a), added par. (12).

Subsec. (i)(1)(B). Pub. L. 105–33, § 4752(a), substituted ''establish alternative remedies if the State demonstrates to the Secretary's satisfaction that the alternative remedies are effective in deterring noncompliance and correcting deficiencies, and may provide'' for ''provide''.

Subsec. (j). Pub. L. 105–33, § 4702(b)(2), substituted ''a numbered paragraph of'' for ''paragraphs (1) through (25)''.

Subsec. (*l*)(1)(D). Pub. L. 105–33, § 4731(b), inserted ''(or, at the option of a State, after any earlier date)'' after ''children born after September 30, 1983''.

Subsec. (n). Pub. L. 105–33, § 4714(a)(1), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (p)(2). Pub. L. 105–33, § 4701(b)(2)(A)(iii), substituted ''medicaid managed care organization'' for ''health maintenance organization'' in introductory provisions.

Subsec. (r)(1). Pub. L. 105–33, § 4715(a), designated existing provisions as subpar. (A), inserted '', the treatment described in subparagraph (B) shall apply,'' after ''under such a waiver'', substituted '', and'' for ''and,'' after ''Federal Republic of Germany'', and added subpar. (B).

Subsec. (w)(2)(E). Pub. L. 105–33, § 4701(b)(2)(A)(iv), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (w)(5). Pub. L. 105–12 added par. (5).

1996—Subsec. (a). Pub. L. 104–193, § 913, which directed substitution of ''The Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.'' for ''The First Church of Christ, Scientist, Boston, Massachusetts'' in third sentence, was executed by making the substitution for ''the First Church of Christ, Scientist, Boston, Massachusetts'' in first undesignated closing par. to reflect the probable intent of Congress.

Subsec. (a)(25)(A)(i). Pub. L. 104–226 struck out ''including the use of information collected by the Medicare and Medicaid Coverage Data Bank under section 1320b–14 of this title and any additional measures'' before ''as specified by the Secretary in regulations)''.

Subsec. (a)(59). Pub. L. 104–248 substituted ''subsection (x)'' for ''subsection (v)''.

Subsec. (a)(63). Pub. L. 104–193, § 114(b), added par. (63).

Subsec. (c). Pub. L. 104–193, § 114(d)(1), substituted ''if the State requires individuals described in subsection (*l*)(1) of this section to apply for assistance under the State program funded under part A of subchapter IV of this chapter as a condition of applying for or receiving medical assistance under this subchapter.'' for ''if—

''(1) the State has in effect, under its plan established under part A of subchapter IV of this chapter, payment levels that are less than the payment levels in effect under such plan on May 1, 1988; or

''(2) the State requires individuals described in subsection (*l*)(1) of this section to apply for benefits under such part as a condition of applying for, or receiving, medical assistance under this subchapter.''

Subsec. (e)(1)(B). Pub. L. 104–193, §114(c), substituted ''2001'' for ''1998''.

Subsec. (j). Pub. L. 104–193, §108(k), substituted ''1308(f)'' for ''1308(c)''.

1994—Subsec. (a)(10)(A)(ii)(XI). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(11)(C), (53)(A). Pub. L. 103–448 substituted ''special supplemental nutrition program'' for ''special supplemental food program''.

1993—Subsec. (a)(10). Pub. L. 103–66, §13603(c), in concluding provisions, substituted ''services, or hospitals, (XI)'' for ''services, or hospitals; and (XI)'' and ''other individuals, (XII)'' for ''other individuals, and (XI)'', and inserted '', and'' and subdiv. (XIII) before semicolon at end.

Subsec. (a)(10)(A)(ii)(XII). Pub. L. 103–66, §13603(a), added subcl. (XII).

Subsec. (a)(1)(C)(iv). Pub. L. 103–66, §13601(b)(1), substituted ''paragraphs numbered (1) through (24)'' for ''paragraphs numbered (1) through (21)''.

Subsec. (a)(11). Pub. L. 103–66, §13631(f)(1)(A), (B), in subpar. (B), struck out ''effective July 1, 1969,'' after ''(B)'' and ''and'' before ''(ii)'' and substituted ''to the individual under section 1396b of this title, and (iii) providing for coordination of information and education on pediatric vaccinations and delivery of immunization services'' for ''to him under section 1396b of this title'', and in subpar. (C), inserted '', including the provision of information and education on pediatric vaccinations and the delivery of immunization services,'' after ''operations under this subchapter''.

Subsec. (a)(18). Pub. L. 103–66, §13611(d)(1)(A), substituted '', transfers of assets, and treatment of certain trusts'' for ''and transfers of assets''.

Subsec. (a)(25)(A). Pub. L. 103–66, §13622(a), substituted ''insurers, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, and health maintenance organizations)'' for ''insurers)'' in introductory provisions.

Subsec. (a)(25)(A)(i). Pub. L. 103–66, §13581(b)(2), substituted ''(including the use of information collected by the Medicare and Medicaid Coverage Data Bank under section 1320b–14 of this title and any additional measures as specified'' for ''(as specified''.

Subsec. (a)(25)(H). Pub. L. 103–66, §13622(b), added subpar. (H).

Subsec. (a)(25)(I). Pub. L. 103–66, §13622(c), added subpar. (I).

Subsec. (a)(32)(D). Pub. L. 103–66, §13631(e)(1), added subpar. (D).

Subsec. (a)(43)(A). Pub. L. 103–66, §13631(f)(1)(C), inserted before comma at end ''and the need for age-appropriate immunizations against vaccine-preventable diseases''.

Subsec. (a)(51). Pub. L. 103–66, §13611(d)(1)(B), struck out ''(A)'' before ''meet the requirements'' and '', and (B) meet the requirement of section 1396p(c) of this title (relating to transfer of assets)'' after ''community spouses)''.

Subsec. (a)(54). Pub. L. 103–66, §13623(a)(1), which directed amendment of par. (54) by striking ''and'' at end, could not be executed because ''and'' did not appear at end subsequent to amendment by Pub. L. 103–66, §13602(c). See below.

Pub. L. 103–66, §13602(c), amended par. (54) generally. Prior to amendment, par. (54) read as follows:

''(A) provide that, any formulary or similar restriction (except as provided in section 1396r–8(d) of this title) on the coverage of covered outpatient drugs under the plan shall permit the coverage of covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under section 1396r–8(a) of this title, which are prescribed for a medically accepted indication (as defined in subsection 1396r–8(k)(6) of this title), and

''(B) comply with the reporting requirements of section 1396r–8(b)(2)(A) of this title and the requirements of subsections (d) and (g) of section 1396r–8 of this title; and''.

Subsec. (a)(55). Pub. L. 103–66, §13623(a)(3), redesignated par. (55) relating to providing for adjusted payments as (56).

Pub. L. 103–66, §13623(a)(2), amended par. (55) relating to providing for receipt and initial processing of applications by substituting semicolon for period at end of subpar. (B).

Subsec. (a)(56). Pub. L. 103–66, §13623(a)(3), redesignated par. (55) relating to providing for adjusted payments as (56), transferred such par. to appear after par. (55) relating to providing for receipt and initial processing of applications, and substituted semicolon for period at end.

Subsec. (a)(57). Pub. L. 103–66, §13623(a)(4), transferred par. (57) to appear after par. (56) as redesignated by Pub. L. 103–66, §13623(a)(3). See above.

Subsec. (a)(58). Pub. L. 103–66, §13623(a)(6), redesignated par. (58) relating to maintaining a list as (59).

Pub. L. 103–66, §13623(a)(5), amended par. (58) relating to providing that a State develop a written description of advance directive laws by substituting a semicolon for period at end.

Pub. L. 103–66, §13623(a)(4), transferred par. (58) relating to providing that a State develop a written description of advance directive laws to follow par. (57) which was transferred by Pub. L. 103–66, §13623(a)(4), to appear after par. (56), as redesignated by Pub. L. 103–66, §13623(a)(3). See above.

Subsec. (a)(59). Pub. L. 103–66, §13625(a)(1), struck out ''and'' at end.

Pub. L. 103–66, §13623(a)(6), redesignated par. (58), relating to maintaining a list, as (59), transferred such par. to appear after par. (58) relating to providing that a State develop a written description of advance directive laws, and substituted ''; and'' for period at end.

Subsec. (a)(60). Pub. L. 103–66, §13623(a)(7), added par. (60).

Subsec. (a)(61). Pub. L. 103–66, §13625(a), added par. (61).

Subsec. (a)(62). Pub. L. 103–66, §13631(a), added par. (62).

Subsec. (j). Pub. L. 103–66, §13601(b)(2), substituted ''paragraphs (1) through (25)'' for ''paragraphs (1) through (22)''.

Subsec. (k). Pub. L. 103–66, §13611(d)(1)(C), struck out subsec. (k) which read as follows:

''(k)(1) In the case of a medicaid qualifying trust (described in paragraph (2)), the amounts from the trust deemed available to a grantor, for purposes of subsection (a)(17) of this section, is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the grantor. For purposes of the previous sentence, the term 'grantor' means the individual referred to in paragraph (2).

''(2) For purposes of this subsection, a 'medicaid qualifying trust' is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.

''(3) This subsection shall apply without regard to—

''(A) whether or not the medicaid qualifying trust is irrevocable or is established for purposes other than to enable a grantor to qualify for medical assistance under this subchapter; or

''(B) whether or not the discretion described in paragraph (2) is actually exercised.

''(4) The State may waive the application of this subsection with respect to an individual where the State determines that such application would work an undue hardship.''

Subsec. (z). Pub. L. 103–66, § 13603(b), added subsec. (z).

1991—Subsec. (h). Pub. L. 102–234, § 3(a), struck out ''to limit the amount of payment adjustments that may be made under a plan under this subchapter with respect to hospitals that serve a disproportionate number of low-income patients with special needs or'' after ''Secretary''.

Subsec. (t). Pub. L. 102–234, § 2(b)(1), substituted ''Nothing'' for ''Except as provided in section 1396b(i) of this title, nothing'' and ''taxes of general applicability'' for ''taxes (whether or not of general applicability)''.

1990—Subsec. (a)(10). Pub. L. 101–508, § 4713(a)(1)(D), which directed amendment of par. (10) by adding subdiv. (XI), relating to medical assistance available to an individual described in subsection (u)(1), in the matter following subparagraph (E), was executed in the matter following subpar. (F) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 101–508, § 4713(a)(1)(A)–(C), which added subpar. (F). See below. Direction by section 4713(a)(1)(D) to strike ''and'' before ''(X)'' could not be executed because ''and'' did not appear after amendment by Pub. L. 101–508, § 4402(d)(1). See below.

Pub. L. 101–508, § 4402(d)(1), in closing provisions, struck out ''and'' at end of subdiv. (IX), inserted ''and'' at end of subdiv. (X), and added subdiv. (XI) relating to medical assistance to cover costs of premiums, etc.

Subsec. (a)(10)(A)(i)(VII). Pub. L. 101–508, § 4601(a)(1)(A), added subcl. (VII).

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 101–508, § 4601(a)(1)(B), substituted '', clause (i)(VI), or clause (i)(VII)'' for ''or clause (i)(VI)''.

Subsec. (a)(10)(C)(iv). Pub. L. 101–508, §§ 4711(d)(2), 4755(c)(1)(A), amended cl. (iv) identically, substituting ''through (21)'' for ''through (20)''.

Subsec. (a)(10)(E)(iii). Pub. L. 101–508, § 4501(b), added cl. (iii).

Subsec. (a)(10)(F). Pub. L. 101–508, § 4713(a)(1)(A)–(C), added subpar. (F).

Subsec. (a)(13)(A). Pub. L. 101–508, § 4801(e)(1)(A), inserted ''(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter)'' after ''take into account the costs''.

Subsec. (a)(13)(E). Pub. L. 101–508, § 4704(e)(1), repealed Pub. L. 101–239, § 6402(c)(2). See 1989 Amendment note below.

Pub. L. 101–508, § 4704(a), substituted ''prescribes'' for ''may prescribe'' and ''on the same methodology used under section 1395*l*(a)(3) of this title'' for ''on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph''.

Subsec. (a)(13)(F). Pub. L. 101–508, § 4711(c)(1)(A), added subpar. (F).

Subsec. (a)(17). Pub. L. 101–508, § 4723(b), inserted '', payments made to the State under section 1396b(f)(2)(B) of this title,'' after ''insurance premiums''.

Subsec. (a)(25)(G). Pub. L. 101–508, § 4402(a)(1), added subpar. (G).

Subsec. (a)(32)(C). Pub. L. 101–508, § 4708(a), added subpar. (C).

Subsec. (a)(41). Pub. L. 101–508, § 4754(a), substituted ''shall promptly notify the Secretary and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board'' for ''shall promptly notify the Secretary''.

Subsec. (a)(54). Pub. L. 101–508, § 4401(a)(2), added par. (54).

Subsec. (a)(55). Pub. L. 101–508, § 4604(b), added par. (55) relating to providing for adjusted payments.

Pub. L. 101–508, § 4602(a), added par. (55) relating to providing for receipt and initial processing of applications.

Subsec. (a)(57). Pub. L. 101–508, § 4751(a)(1), added par. (57).

Subsec. (a)(58). Pub. L. 101–508, § 4752(c), added par. (58) relating to maintaining a list.

Pub. L. 101–508, § 4751(a)(1), added par. (58) relating to providing that a State develop a written description of advance directive laws.

Subsec. (e)(2)(A). Pub. L. 101–508, § 4732(b)(1), inserted ''or with an eligible organization with a contract under section 1395mm of this title'' after ''section 1396b(m)(2)(A) of this title''.

Subsec. (e)(4). Pub. L. 101–508, § 4603(a)(1), inserted ''(or would remain if pregnant)'' after ''remains''.

Subsec. (e)(6). Pub. L. 101–508, § 4603(a)(2), substituted ''In'' for ''At the option of a State, in'', substituted ''the woman shall be deemed to continue to be'' for ''the State plan may nonetheless treat the woman as being'', and inserted at end ''The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1396r–1 of this title during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.''

Subsec. (e)(11). Pub. L. 101–508, § 4402(c), added par. (11).

Subsec. (h). Pub. L. 101–508, § 4711(c)(1)(B), inserted before period at end ''or to limit the amount of payment that may be made under a plan under this subchapter for home and community care''.

Subsec. (j). Pub. L. 101–508, §§ 4711(d)(1), 4755(c)(1)(B), amended subsec. (j) identically substituting ''through (22)'' for ''through (21)''.

Subsec. (*l*)(1)(C). Pub. L. 101–508, § 4601(a)(1)(C)(i), inserted ''children'' after ''(C)''.

Subsec. (*l*)(1)(D). Pub. L. 101–508, § 4601(a)(1)(C)(ii), added subpar. (D) and struck out former subpar. (D) which read as follows: ''at the option of the State, children born after September 30, 1983, who have attained 6 years of age but have not attained 7 or 8 years of age (as selected by the State),''.

Subsec. (*l*)(2)(C). Pub. L. 101–508, § 4601(a)(1)(C)(iii), added subpar. (C) and struck out former subpar. (C) which read as follows: ''If a State elects, under subsection (a)(10)(A)(ii)(IX) of this section, to cover individuals not described in subparagraph (A) or (B) of paragraph (1), for purposes of that paragraph and with respect to individuals not described in such subparagraphs the State shall establish an income level which is a percentage (not more than 100 percent) of the income official poverty line described in subparagraph (A).''

Subsec. (*l*)(3). Pub. L. 101–508, § 4601(a)(1)(C)(iv), inserted '', (a)(10)(A)(i)(VII),'' after ''(a)(10)(A)(i)(VI)''.

Subsec. (*l*)(4)(A). Pub. L. 101–508, § 4601(a)(1)(C)(v), inserted ''or subsection (a)(10)(A)(i)(VII) of this section'' after ''(a)(10)(A)(i)(VI) of this section''.

Subsec. (*l*)(4)(B). Pub. L. 101–508, § 4601(a)(1)(C)(vi), substituted ''(a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII)'' for ''or (a)(10)(A)(i)(VI)''.

Subsec. (m)(1)(B). Pub. L. 101–508, § 4501(e)(2)(A), inserted '', except as provided in paragraph (2)(C)'' after ''program''.

Subsec. (m)(2)(C). Pub. L. 101–508, § 4501(e)(2)(B), added subpar. (C).

Subsec. (r)(1). Pub. L. 101–508, § 4715(a), inserted ''there shall be disregarded reparation payments made by the Federal Republic of Germany and'' after ''under such a waiver''.

Subsec. (r)(2)(A). Pub. L. 101–508, § 4601(a)(1)(D), inserted ''(a)(10)(A)(i)(VII),'' after ''(a)(10)(A)(i)(VI),''.

Subsec. (s). Pub. L. 101–508, § 4604(a), added subsec. (s).

Subsec. (t). Pub. L. 101–508, § 4701(b)(1), added subsec. (t).

Subsec. (u). Pub. L. 101–508, § 4713(a)(2), added subsec. (u).

Subsec. (v). Pub. L. 101–508, § 4724(a), added subsec. (v).

Subsec. (w). Pub. L. 101–508, § 4751(a)(2), added subsec. (w).

Subsec. (x). Pub. L. 101–508, § 4752(a)(1)(A), added subsec. (x).

Subsec. (y). Pub. L. 101–508, § 4755(a)(2), added subsec. (y).

1989—Subsec. (a)(9)(C). Pub. L. 101–239, § 6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–234 repealed Pub. L. 100–360, § 204(d)(3), and provided that the provisions of law amended or re-

pealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec.(a)(10)(A). Pub. L. 101–239, § 6405(b), substituted ''(1) through (5), (17) and (21)'' for ''(1) through (5) and (17)'' in introductory provisions.

Subsec. (a)(10)(A)(i)(VI). Pub. L. 101–239, § 6401(a)(1), added subcl. (VI).

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 101–239, § 6401(a)(2), inserted ''or clause (i)(VI)'' after ''clause (i)(IV)''.

Subsec. (a)(10)(E). Pub. L. 101–239, § 6408(d)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(11)(C). Pub. L. 101–239, § 6406(a)(1), added subpar. (C).

Subsec. (a)(13)(D). Pub. L. 101–239, § 6408(c)(1), substituted ''in amounts no lower than the amounts, using the same methodology, used'' for ''in the same amounts, and using the same methodology, as used'', ''in the case of'' for ''a separate rate may be paid for'', and ''there shall be paid an additional amount, to take into account the room and board furnished by the facility, equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual'' for ''to take into account the room and board furnished by such facility''.

Subsec. (a)(13)(E). Pub. L. 101–239, § 6404(c), substituted ''clause (B) or (C) of section 1396d(a)(2) of this title'' for ''section 1396d(a)(2)(B) of this title provided by a rural health clinic''.

Pub. L. 101–239, § 6402(c)(2), which directed insertion of '', and for payment for services described in section 1396d(a)(2)(C) of this title under the plan,'' after ''provided by a rural health clinic under the plan'', was repealed by Pub. L. 101–508, § 4704(e)(1).

Subsec. (a)(30)(A). Pub. L. 101–239, § 6402(a), inserted before semicolon at end ''and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area''.

Subsec. (a)(43)(A). Pub. L. 101–239, § 6403(d)(1), substituted ''section 1396d(r)'' for ''section 1396d(a)(4)(B)''.

Subsec. (a)(43)(D). Pub. L. 101–239, § 6403(b), added subpar. (D).

Subsec. (a)(53). Pub. L. 101–239, § 6406(a)(2)–(4), added par. (53).

Subsec. (e)(7). Pub. L. 101–239, § 6401(a)(8), substituted '', (C), or (D)'' for ''or (C)'' in introductory provisions.

Subsec. (f). Pub. L. 101–239, § 6411(e)(2), inserted ''and section 1396r–5 of this title'' after ''section 1382h(b)(3) of this title''.

Pub. L. 101–239, § 6411(a)(1), inserted ''and except with respect to qualified medicare beneficiaries, qualified severely impaired individuals, and individuals described in subsection (m)(1) of this subsection'' before '', no State''.

Pub. L. 101–239, § 6408(d)(4)(C), inserted '', except with respect to qualified disabled and working individuals (described in section 1396d(s) of this title),'' after ''section 1382h(b)(3) of this title''.

Subsec. (*l*)(1)(C), (D). Pub. L. 101–239, § 6401(a)(3), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''at the option of the State, children born after September 30, 1983, who have attained one year of age but have not attained 2, 3, 4, 5, 6, 7, or 8 years of age (as selected by the State),''.

Subsec. (*l*)(2)(A)(ii)(II). Pub. L. 101–239, § 6401(a)(4)(A), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''July 1, 1990, is 100 percent.''

Subsec. (*l*)(2)(A)(iv). Pub. L. 101–239, § 6401(a)(4)(B), added cl. (iv).

Subsec. (*l*)(2)(B), (C). Pub. L. 101–239, § 6401(a)(5), (6), added subpar. (B), struck out '', or, if less, the percentage established under subparagraph (A)'' after ''not more than 100 percent'' in former subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (*l*)(3). Pub. L. 101–239, § 6401(a)(6)(A), inserted '', (a)(10)(A)(i)(VI),'' after ''(a)(10)(A)(i)(IV)'' in introductory provisions.

Subsec. (*l*)(3)(C). Pub. L. 101–239, § 6401(a)(6)(B), substituted ''(C), or (D)'' for ''or (C)''.

Subsec. (*l*)(4)(A). Pub. L. 101–239, § 6401(a)(7)(A), inserted ''and for children described in subsection (a)(10)(A)(i)(VI) of this section'' after ''(a)(10)(A)(i)(IV) of this section''.

Subsec. (*l*)(4)(B). Pub. L. 101–239, § 6401(a)(7)(B), inserted ''or (a)(10)(A)(i)(VI)'' after ''(a)(10)(A)(i)(IV)''.

Subsec. (p)(2)(C). Pub. L. 101–239, § 6411(d)(3)(B), added subpar. (C).

Subsec. (r)(2)(A). Pub. L. 101–239, § 6401(a)(9), inserted ''(a)(10)(A)(i)(VI),'' after ''(a)(10)(A)(i)(IV),'' in introductory provisions.

1988—Subsec. (a)(9)(C). Pub. L. 100–360, § 204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)''.

Subsec. (a)(10). Pub. L. 100–647, § 8434(b)(1), inserted ''who is only entitled to medical assistance because the individual is such a beneficiary'' after ''section 1396d(p)(1) of this title'' in subdiv. (VIII) of closing provisions.

Pub. L. 100–360, § 302(a)(1)(C), inserted ''(A)(i)(IV) or'' before ''(A)(ii)(X)'' in subdiv. (VII) of closing provisions.

Pub. L. 100–360, § 302(b)(1), added subdiv. (X) in closing provisions.

Subsec. (a)(10)(A)(i)(I). Pub. L. 100–485, § 202(c)(4), substituted ''section 682(e)(6) of this title'' for ''section 614(g) of this title''.

Subsec. (a)(10)(A)(i)(IV). Pub. L. 100–360, § 302(a)(1)(A), added subcl. (IV).

Subsec. (a)(10)(A)(i)(V). Pub. L. 100–485, § 401(d)(1), added subcl. (V).

Subsec. (a)(10)(A)(ii)(VI). Pub. L. 100–360, § 411(k)(17)(B), substituted ''(c), (d), or (e)'' for ''(c) or (d)'' in two places.

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 100–360, § 302(a)(1)(B), amended subcl. (IX) generally. Prior to amendment, subcl. (IX) read as follows: ''subject to subsection (*l*)(4) of this section, who are described in subsection (*l*)(1) of this section;''.

Subsec. (a)(10)(A)(ii)(X). Pub. L. 100–360, § 301(e)(2)(A), struck out ''subject to subsection (m)(3) of this section,'' before ''who are described''.

Subsec. (a)(10)(A)(ii)(XI). Pub. L. 100–360, § 411(k)(5)(B), substituted ''may be more restrictive'' for ''are more restrictive'' and a semicolon for the period at end.

Pub. L. 100–360, § 411(k)(5)(A), amended Pub. L. 100–203, § 4104, see 1987 Amendment note below.

Subsec. (a)(10)(C)(i)(III). Pub. L. 100–360, § 303(e)(1), substituted ''no more restrictive than the methodology'' for ''the same methodology'' in two places.

Subsec. (a)(10)(E). Pub. L. 100–360, § 301(e)(2)(B), struck out ''subject to subsection (m)(3) of this section,'' before ''for making medical''.

Pub. L. 100–360, § 301(a)(1), struck out ''at the option of a State, but'' after ''(E)''.

Subsec. (a)(13)(A). Pub. L. 100–360, § 411(*l*)(3)(J), as added by Pub. L. 100–485, § 608(d)(27)(H), amended Pub. L. 100–203, § 4211(h)(2)(B), see 1987 Amendment note below.

Subsec. (a)(13)(C). Pub. L. 100–360, § 411(*l*)(3)(H)(i), as amended by Pub. L. 100–485, § 608(d)(27)(F), amended Pub. L. 100–203, § 4211(h)(2)(C), see 1987 Amendment note below.

Subsec. (a)(13)(D). Pub. L. 100–360, § 411(*l*)(3)(H)(ii), (iii), as amended by Pub. L. 100–485, § 608(d)(27)(G), amended Pub. L. 100–203, § 4211(h)(2)(D), see 1987 Amendment note below.

Subsec. (a)(15). Pub. L. 100–360, § 301(e)(2)(C), as added by Pub. L. 100–485, § 608(d)(14)(I)(iii), struck out par. (15) which read as follows: ''in the case of eligible individuals 65 years of age or older who are not qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title) but are covered by either or both of the insurance programs established by subchapter XVIII of this chapter, provide where, under the plan, all of any deductible, cost sharing, or similar charge imposed with respect to such individual under the insurance program established by such subchapter is not met, the

portion thereof which is met shall be determined on a basis reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to such individual's income or his income and resources;''.

Subsec. (a)(17). Pub. L. 100–360, §411(k)(10)(G)(ii), amended directory language of Pub. L. 100–203, §4118(h)(1), see 1987 Amendment note below.

Pub. L. 100–360, §301(e)(2)(D), formerly §301(e)(2)(C), as redesignated and amended by Pub. L. 100–485, §608(d)(14)(I)(i), substituted ''(m)(3), and (m)(4)'' for ''(m)(4), and (m)(5)''.

Subsec. (a)(28)(D)(i). Pub. L. 100–360, §411(*l*)(3)(E), substituted ''section 1396r(e) of this title'' for ''section 1396r(f) of this title (relating to implementation of nursing facility requirements, including paragraph (6)(B), relating to specification of resident assessment instrument)''.

Subsec. (a)(33)(B). Pub. L. 100–360, §411(*l*)(6)(C), substituted ''section 1396r(g) of this title'' for ''section 1396r(d) of this title''.

Subsec. (a)(44)(A). Pub. L. 100–360, §411(*l*)(6)(D), amended Pub. L. 100–203, §4212(e)(1)(B), see 1987 Amendment note below.

Subsec. (a)(50). Pub. L. 100–360, §411(n)(4), formerly §411(n)(3), as redesignated by Pub. L. 100–485, §608(d)(28), added Pub. L. 100–203, §9119(d)(1)(A), see 1987 Amendment note below.

Subsec. (a)(51). Pub. L. 100–360, §303(e)(2)–(4), added par. (51).

Subsec. (a)(52). Pub. L. 100–485, §303(a)(2), added par. (52).

Subsec. (c). Pub. L. 100–360, §302(c)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Notwithstanding subsection (b) of this section, the Secretary shall not approve any State plan for medical assistance if he determines that the approval and operation of the plan will result in a reduction in aid or assistance in the form of money payments (other than so much, if any, of the aid or assistance in such form as was, immediately prior to the effective date of the State plan under this subchapter, attributable to medical needs) provided for eligible individuals under a plan of such State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter.''

Subsec. (d). Pub. L. 100–360, §411(k)(7)(C), amended Pub. L. 100–203, §4113(b)(2)(ii), see 1987 Amendment note below.

Subsec. (e)(1). Pub. L. 100–485, §303(b)(1), designated existing provisions as subpar. (A), inserted ''subject to subparagraph (B)'' after ''January 1, 1974,'', and added subpar. (B).

Subsec. (e)(2)(A). Pub. L. 100–360, §411(k)(7)(D), repealed Pub. L. 100–203, §4113(d)(2), see 1987 Amendment note below.

Pub. L. 100–360, §411(k)(7)(B), amended Pub. L. 100–203, §4113(a)(2), see 1987 Amendment note below.

Subsec. (e)(6). Pub. L. 100–360, §302(e)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''At the option of a State, if a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX) of this section, the plan may provide that any woman described in such subsection and subsection (*l*)(1)(A) of this section shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) of this section without regard to any change in income of the family of which she is a member until the end of the 60-day period beginning on the last day of her pregnancy.''

Subsec. (e)(7). Pub. L. 100–360, §302(e)(2), in introductory provisions, substituted ''In the case'' for ''If a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX) of this section, in the case'' and inserted ''or paragraph (2) of section 1396d(n) of this title'', and, in concluding provisions, substituted ''such respective provision'' for ''subsection (a)(10)(A)(ii)(IX) of this section and subsection (*l*)(1) of this section''.

Subsec. (e)(10). Pub. L. 100–485, §303(d), added par. (10).

Subsec. (f). Pub. L. 100–360, §411(k)(10)(G)(iv), added Pub. L. 100–203, §4118(h)(2), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, §411(*l*)(8)(C), amended Pub. L. 100–203, §4213(b)(1), see 1987 Amendment note below.

Subsec. (*l*)(1). Pub. L. 100–360, §302(e)(3)(A), inserted ''any of subclauses (I) through (III) of'' after ''described in'' in concluding provisions.

Subsec. (*l*)(1)(C). Pub. L. 100–360, §302(a)(2)(A), inserted ''at the option of the State,'' after ''(C)'' and struck out ''and'' after ''1983,''.

Subsec. (*l*)(2)(A). Pub. L. 100–360, §302(a)(2)(B), as amended by Pub. L. 100–485, §608(d)(15)(A), designated existing provisions as cl. (i), substituted ''(not less than the percentage provided under clause (ii) and not more than 185 percent)'' for ''(not more than 185 percent)'', and added cls. (ii) and (iii).

Subsec. (*l*)(2)(A)(ii). Pub. L. 100–485, §608(d)(15)(B)(i), in introductory provisions, substituted ''The'' for ''Subject to clause (iii), the'', and in subcl. (I), inserted ''or, if greater, the percentage provided under clause (iii),''.

Subsec. (*l*)(2)(A)(iii). Pub. L. 100–485, §608(d)(15)(B)(ii), substituted ''clause (ii)(I)'' for ''clause (ii)'' in introductory provisions and concluding provisions.

Subsec. (*l*)(3). Pub. L. 100–360, §302(e)(3)(B), inserted ''(a)(10)(A)(i)((IV) or'' after ''of subsection'' in introductory provisions.

Subsec. (*l*)(4). Pub. L. 100–360, §302(c)(2), (d), added par. (4) and struck out former par. (4) which read as follows:

''(A) A State plan may not elect the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) of this section unless the State has in effect, under its plan established under part A of subchapter IV of this chapter, payment levels that are not less than the payment levels in effect under its plan on July 1, 1987.

''(B)(i) A State may not elect, under subsection (a)(10)(A)(ii)(IX) of this section, to cover only individuals described in paragraph (1)(A) or to cover only individuals described in paragraph (1)(B).

''(ii) A State may not elect, under subsection (a)(10)(A)(ii)(IX) of this section, to cover individuals described in subparagraph (C) of paragraph (1) unless the State has elected, under such subsection, to cover individuals described in the preceding subparagraphs of such paragraph.

''(C) A State plan may not provide, in its election of the option of furnishing medical assistance to individuals described in paragraph (1), that such individuals must apply for benefits under part A of subchapter IV of this chapter as a condition of applying for, or receiving, medical assistance under this subchapter.''

Subsec. (m)(3). Pub. L. 100–360, §301(e)(2)(E), formerly §301(e)(2)(D), as redesignated and amended by Pub. L. 100–485, §608(d)(14)(I)(ii), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''A State plan may not provide coverage for individuals under subsection (a)(10)(A)(ii)(X) of this section or coverage under subsection (a)(10)(E) of this section, unless the plan provides coverage of some or all of the individuals described in subsection (*l*)(1) of this section.''

Subsec. (m)(4). Pub. L. 100–360, §301(e)(2)(E), formerly §301(e)(2)(D), as redesignated and amended by Pub. L. 100–485, §608(d)(14)(I)(ii), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (m)(4)(A). Pub. L. 100–647, §8434(b)(2), substituted ''section 1396d(p)(1)(B)'' for ''section 1396d(p)(1)(C)''.

Subsec. (m)(5). Pub. L. 100–360, §301(e)(2)(E), formerly §301(e)(2)(D), as redesignated and amended by Pub. L. 100–485, §608(d)(14)(I)(ii), redesignated par. (5) as (4).

Subsec. (*o*). Pub. L. 100–360, §411(n)(2), made technical correction to directory language of Pub. L. 100–203, §9115(b), see 1987 Amendment note below.

Subsec. (q). Pub. L. 100–360, §411(n)(4), formerly §411(n)(3), as redesignated by Pub. L. 100–485, §608(d)(28), added Pub. L. 100–203, §9119(d)(1)(B), see 1987 Amendment note below.

Subsec. (r). Pub. L. 100–360, §303(e)(5), designated existing provisions as par. (1), redesignated subpars. (A)

and (B) as cls. (i) and (ii), respectively, and added par. (2).

Pub. L. 100–360, § 303(d), added subsec. (r).

Subsec. (r)(2)(A). Pub. L. 100–485, § 608(d)(16)(C), substituted '', or (f) of this section or under section 1396d(p) of this title'' for ''of this section, or under subsection (f) of this section'' in introductory provisions.

1987—Subsec. (a)(9)(C). Pub. L. 100–203, § 4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)''.

Subsec. (a)(10). Pub. L. 100–203, § 4101(e)(1), substituted ''postpartum, and family planning services'' for ''and postpartum services'' in subdiv. (VII) of closing provisions.

Subsec. (a)(10)(A)(ii)(VI). Pub. L. 100–203, § 4211(h)(1)(A), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility''.

Pub. L. 100–203, § 4102(b)(1), substituted ''subsection (c) or (d) of section 1396n of this title'' for ''section 1396n(c) of this title'' in two places.

Subsec. (a)(10)(A)(ii)(IX), (X). Pub. L. 100–203, § 4118(p)(1), (2), realigned margin of subcls. (IX) and (X).

Subsec. (a)(10)(A)(ii)(XI). Pub. L. 100–203, § 4104, as amended by Pub. L. 100–360, § 411(k)(5)(A), added subcl. (XI).

Subsec. (a)(10)(C)(iv). Pub. L. 100–203, § 4211(h)(1)(B), substituted ''in an intermediate care facility'' for ''intermediate care facility services''.

Subsec. (a)(10)(D). Pub. L. 100–203, § 4211(h)(1)(C), struck out ''skilled'' before ''nursing''.

Subsec. (a)(13)(A). Pub. L. 100–203, § 4211(h)(2)(B), as amended by Pub. L. 100–360, § 411(*l*)(3)(J), as added by Pub. L. 100–485, § 608(d)(27)(H), substituted '', nursing facility, and intermediate care facility for the mentally retarded and'' for '', skilled nursing facility, and intermediate care facility and''.

Pub. L. 100–203, § 4211(h)(2)(A), substituted ''services, nursing facility services, and services in an intermediate care facility for the mentally retarded'' for '', skilled nursing facility, and intermediate care facility services''.

Pub. L. 100–203, § 4211(b)(1)(A), inserted ''which, in the case of nursing facilities, take into account the costs of complying with subsections (b) (other than paragraph (3)(F) thereof), (c), and (d) of section 1396r of this title and provide (in the case of a nursing facility with a waiver under section 1396r(b)(4)(C)(ii) of this title) for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care,'' after second reference to ''State''.

Subsec. (a)(13)(C). Pub. L. 100–203, § 4211(h)(2)(C), as amended by Pub. L. 100–360, § 411(*l*)(3)(H)(i), as amended by Pub. L. 100–485, § 608(d)(27)(F), substituted ''nursing facilities and for intermediate care facilities for the mentally retarded'' for ''skilled nursing facilities and intermediate care facilities'' in introductory provisions.

Subsec. (a)(13)(D). Pub. L. 100–203, § 4211(h)(2)(D), as amended by Pub. L. 100–360, § 411(*l*)(3)(H)(ii), (iii), as amended by Pub. L. 100–485, § 608(d)(27)(G), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility'' and ''nursing facility services or services in an intermediate care facility for the mentally retarded'' for ''skilled nursing facility services or intermediate care facility services''.

Subsec. (a)(17). Pub. L. 100–203, § 4118(p)(3), substituted ''subsections (*l*)(3), (m)(4), and (m)(5) of this section'' for ''subsection (*l*)(3) of this section''.

Pub. L. 100–203, § 4118(h)(1), as amended by Pub. L. 100–360, § 411(k)(10)(G)(ii), substituted ''(whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof)'' for ''(whether in the form of insurance premiums or otherwise)''.

Subsec. (a)(23). Pub. L. 100–203, § 4113(c)(1), designated provision relating to the obtaining of medical assistance by an eligible individual as cl. (A) and added cl. (B).

Pub. L. 100–93, § 8(f)(1), inserted ''subsection (g) of this section and in'' after ''as provided in''.

Subsec. (a)(28). Pub. L. 100–203, § 4211(b)(1)(B), amended par. (28) generally. Prior to amendment, par. (28) read as follows: ''provide that any skilled nursing facility receiving payments under such plan must satisfy all of the requirements contained in section 1395x(j) of this title, except that the exclusion contained therein with respect to institutions which are primarily for the care and treatment of mental diseases shall not apply for purposes of this subchapter;''.

Subsec. (a)(30)(B)(i), (ii). Pub. L. 100–203, § 4211(h)(3), substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing facility, intermediate care facility''.

Subsec. (a)(30)(C). Pub. L. 100–203, § 4118(p)(4), substituted ''use'' for ''provide''.

Pub. L. 100–203, § 4113(b)(1), inserted '', an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary,'' before ''or a private accreditation body''.

Subsec. (a)(31). Pub. L. 100–203, § 4212(d)(2), in introductory provision substituted ''services in an intermediate care facility for the mentally retarded (where'' for ''skilled nursing facility services (and with respect to intermediate care facility services where'' and in subpar. (B) substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing or intermediate care facility''.

Subsec. (a)(33)(B). Pub. L. 100–203, § 4212(d)(3), inserted '', except as provided in section 1396r(d) of this title,'' after ''(B) that''.

Subsec. (a)(38). Pub. L. 100–93, § 8(f)(2), substituted ''the information described in section 1320a–7(b)(9) of this title'' for ''respectively, (A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such entity has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such entity and any wholly owned supplier or between such entity and any subcontractor''.

Subsec. (a)(39). Pub. L. 100–93, § 8(f)(3), substituted ''exclude'' for ''bar'', ''individual or entity'' for ''person'' in two places, and inserted reference to section 1320a–7a of this title.

Subsec. (a)(42). Pub. L. 100–203, § 4118(m)(1)(B), struck out ''(A)'' after ''provide'', the comma after ''under the plan'', and cls. (B) and (C) which read as follows: ''(B) that such audits, for such entities also providing services under subchapter XVIII of this chapter, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such subchapter, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1320a–8(a) of this title''.

Subsec. (a)(44). Pub. L. 100–203, § 4212(e)(1)(A), substituted ''services in an intermediate care facility for the mentally retarded'' for ''skilled nursing facility services, intermediate care facility services''.

Subsec. (a)(44)(A). Pub. L. 100–203, § 4218(a)(1), substituted ''physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies'' for ''physician certifies'' and ''a physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician,'' for ''the physician, or a physician assistant or nurse practitioner under the supervision of a physician,''.

Pub. L. 100–203, §4212(e)(1)(B), as amended by Pub. L. 100–360, §411(*l*)(6)(D), substituted ''that are services provided in an intermediate care facility for the mentally retarded'' for ''that are intermediate care facility services provided in an institution for the mentally retarded''.

Subsec. (a)(44)(B). Pub. L. 100–203, §4218(a)(2), substituted ''a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician;'' for ''a physician;''.

Subsec. (a)(46). Pub. L. 100–93, §5(a)(1), struck out ''and'' after ''title;''.

Subsec. (a)(47). Pub. L. 100–93, §5(a)(2), (3), substituted semicolon for period at end of par. (47), relating to ambulatory prenatal care and redesignated par. (47), relating to cards evidencing eligibility, as (48).

Subsec. (a)(48). Pub. L. 100–93, §5(a)(3), redesignated par. (47), relating to cards evidencing eligibility for medical assistance, as (48), and substituted ''address; and'' for ''address.''

Subsec. (a)(49). Pub. L. 100–93, §5(a)(4), added par. (49).

Subsec. (a)(50). Pub. L. 100–203, §9119(d)(1)(A), as added by Pub. L. 100–360, §411(n)(4), formerly §411(n)(3), as redesignated by Pub. L. 100–485, §608(d)(28), added par. (50).

Subsec. (d). Pub. L. 100–203, §4113(b)(2)(i), inserted ''an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, for the performance of the quality review functions described in subsection (a)(30)(C) of this section, or'' after ''contracts with''.

Pub. L. 100–203, §4113(b)(2)(ii), as amended by Pub. L. 100–360, §411(k)(7)(C), substituted ''an entity or organization'' for ''organization (or organizations)'' in two places.

Subsec. (e)(2)(A). Pub. L. 100–203, §4113(d)(2), which directed substitution of ''subparagraph (B)(iii), (E), or (G) of section 1396b(m)(2) of this title'' for ''section 1396a(m)(2)(G) of this title'', was repealed by Pub. L. 100–360, §411(k)(7)(D).

Pub. L. 100–203, §4113(a)(2), as amended by Pub. L. 100–360, §411(k)(7)(B), substituted ''paragraph (2)(B)(iii), (2)(E), (2)(G), or (6) of section 1396b(m) of this title'' for ''section 1396b(m)(2)(G) of this title''.

Pub. L. 100–203, §4113(c)(2), substituted ''but, except for benefits furnished under section 1396d(a)(4)(C) of this title, only'' for ''but only''.

Subsec. (e)(3)(B)(i). Pub. L. 100–203, §4211(h)(4), substituted ''nursing facility, or intermediate care facility for the mentally retarded'' for ''skilled nursing facility, or intermediate care facility''.

Subsec. (e)(3)(C). Pub. L. 100–203, §4118(c)(1), substituted ''for medical assistance under the State plan under this subchapter'' for ''to have a supplemental security income (or State supplemental) payment made with respect to him under subchapter XVI of this chapter''.

Subsec. (e)(4). Pub. L. 100–203, §4101(a)(2), inserted sentence at end relating to child's medical assistance eligibility identification number and submission and payment of claims under such number during period in which a child is eligible for assistance.

Subsec. (e)(5). Pub. L. 100–203, §4101(e)(2), substituted ''through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends'' for ''until the end of the 60-day period beginning on the last day of her pregnancy''.

Subsec. (e)(7). Pub. L. 100–203, §4101(b)(2)(B), substituted ''subparagraph (B) or (C)'' for ''subparagraph (B), (C), (D), (E), or (F)''.

Subsec. (e)(9). Pub. L. 100–203, §4118(p)(6), realigned margins of par. (9).

Subsec. (e)(9)(A)(iii). Pub. L. 100–203, §4211(h)(5)(A), substituted ''nursing facility, or intermediate care facility for the mentally retarded'' for ''skilled nursing facility, or intermediate care facility,''.

Subsec. (e)(9)(B). Pub. L. 100–203, §4211(h)(5)(B), substituted ''nursing facilities, or intermediate care facilities for the mentally retarded'' for ''skilled nursing facilities, or intermediate care facilities''.

Subsec. (f). Pub. L. 100–203, §4118(h)(2), as added by Pub. L. 100–360, §411(k)(10)(G)(iv), inserted ''regardless of whether such expenses are reimbursed under another public program of the State or political subdivision thereof'' after ''State law'' in first sentence.

Subsec. (i). Pub. L. 100–203, §4213(b)(1), as amended by Pub. L. 100–360, §411(*l*)(8)(C), in par. (1), substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility'' and ''the requirements for such a facility under this subchapter'' for ''the provisions of section 1395x(j) of this title or section 1396d(c) of this title, respectively,'', and in pars. (2) and (3), substituted ''the requirements for such a facility under this subchapter'' for ''the provisions of section 1395x(j) of this title or section 1396d(c) of this title (as the case may be)''.

Subsec. (j). Pub. L. 100–203, §4116, inserted reference to Northern Mariana Islands in two places.

Subsec. (*l*). Pub. L. 100–93, §7, redesignated subsec. (*l*), relating to disregarding certain benefits for purposes of determining post-eligibility contributions, as (*o*).

Subsec. (*l*)(1). Pub. L. 100–203, §4118(p)(7), made technical corrections in introductory provisions and substituted ''and whose'' for '', whose'' in closing provisions.

Subsec. (*l*)(1)(C). Pub. L. 100–203, §4101(c)(2), substituted ''5, 6, 7, or 8 years of age'' for ''or 5 years of age''.

Pub. L. 100–203, §4101(b)(1), added subpar. (C). Former subpar. (C), which related to children who have attained one year of age but have not attained two years of age, was struck out.

Subsec. (*l*)(1)(D) to (F). Pub. L. 100–203, §4101(b)(1)(B), struck out subpars. (D) to (F) which related to children who have attained two years of age but have not attained three years of age, children who have attained three years of age but have not attained four years of age, and children who have attained four years of age but have not attained five years of age, respectively.

Subsec. (*l*)(2). Pub. L. 100–203, §4118(p)(8), struck out ''nonfarm'' after second reference to ''income'' in subpar. (A).

Pub. L. 100–203, §4101(a)(1)(A), designated existing provisions as subpar. (A), inserted ''with respect to individuals described in subparagraph (A) or (B) of that paragraph'', substituted ''185 percent'' for ''100 percent'', and added subpar. (B).

Subsec. (*l*)(3)(C). Pub. L. 100–203, §4101(b)(2)(A)(i), substituted ''subparagraph (B) or (C)'' for ''subparagraph (B), (C), (D), (E), or (F)''.

Subsec. (*l*)(3)(D). Pub. L. 100–203, §4101(a)(1)(B), inserted ''appropriate'' after ''applied is the''.

Subsec. (*l*)(3)(E). Pub. L. 100–203, §4101(e)(3), inserted ''(except to the extent such methodology is inconsistent with clause (D) of subsection (a)(17) of this section)'' after ''subchapter IV of this chapter''.

Subsec. (*l*)(4)(A). Pub. L. 100–203, §4101(e)(4), substituted ''July 1, 1987'' for ''April 17, 1986''.

Subsec. (*l*)(4)(B)(ii). Pub. L. 100–203, §4101(b)(2)(A)(ii), substituted ''subparagraph (C)'' for ''subparagraph (C), (D), (E), or (F)''.

Subsec. (*l*)(4)(C). Pub. L. 100–203, §4101(e)(5), added subpar. (C).

Subsec. (m)(2)(A). Pub. L. 100–203, §4118(p)(8), struck out ''nonfarm'' before ''official''.

Subsec. (*o*). Pub. L. 100–203, §9115(b), as amended by Pub. L. 100–360, §411(n)(2), substituted ''subparagraph (E) or (G) of section 1382(e)(1) of this title'' for ''section 1382(e)(1)(E) of this title''.

Pub. L. 100–93, §7, redesignated subsec. (*l*), relating to disregarding certain benefits for purposes of determining post-eligibility contributions, as (*o*).

Subsec. (p). Pub. L. 100–93, §7, added subsec. (p).

Subsec. (q). Pub. L. 100–203, §9119(d)(1)(B), as added by Pub. L. 100–360, §411(n)(4), formerly §411(n)(3), as redesignated by Pub. L. 100–485, §608(d)(28), added subsec. (q).

1986—Subsec. (a). Pub. L. 99–509, §9406(b), inserted at end ''Notwithstanding paragraph (10)(B) or any other

provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1396b(v) of this title.''

Pub. L. 99–272, § 9529(a)(1), inserted at end ''For purposes of this subchapter, any child who meets the requirements of paragraph (1) or (2) of section 673(b) of this title shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of subchapter IV of this chapter in the State where such child resides.''

Subsec. (a)(9)(C). Pub. L. 99–509, § 9320(h)(3), substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)''.

Subsec. (a)(10). Pub. L. 99–509, § 9408(b), added cl. (IX) at end.

Pub. L. 99–509, § 9403(c), added cl. (VIII) at end.

Pub. L. 99–509, § 9401(c), added cl. (VII) at end.

Pub. L. 99–272, § 9505(b)(1), added cl. (VI) at end.

Pub. L. 99–272, § 9501(b), added cl. (V) at end.

Subsec. (a)(10)(A)(i)(I). Pub. L. 99–272, § 12305(b)(3), substituted '', 606(h), or 673(b) of this title'' for ''or 606(h) of this title''.

Subsec. (a)(10)(A)(i)(II). Pub. L. 99–509, § 9404(a), inserted ''or who are qualified severely impaired individuals (as defined in section 1396d(q) of this title)'' after ''subchapter XVI of this chapter''.

Subsec. (a)(10)(A)(ii)(V). Pub. L. 99–272, § 9510(a), inserted ''for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period)'' after ''are in a medical institution''.

Subsec. (a)(10)(A)(ii)(VII). Pub. L. 99–514, § 1895(c)(7)(A), realigned margin of subcl. (VII).

Pub. L. 99–272, § 9505(b)(2), added subcl. (VII).

Subsec. (a)(10)(A)(ii)(VIII). Pub. L. 99–514, § 1895(c)(7)(B), realigned margins of subcl. (VIII).

Pub. L. 99–272, § 9529(b)(1), added subcl. (VIII).

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 99–509, § 9401(a), added subcl. (IX).

Subsec. (a)(10)(A)(ii)(X). Pub. L. 99–509, § 9402(a)(1), added subcl. (X).

Subsec. (a)(10)(C). Pub. L. 99–509, § 9403(g)(1), inserted ''or (E)'' after ''subparagraph (A)'' in introductory text.

Subsec. (a)(10)(C)(iv). Pub. L. 99–509, § 9408(c)(3), substituted ''through (20)'' for ''through (19)''.

Pub. L. 99–514, § 1895(c)(3)(C), substituted ''through (19)'' for ''through (18)''.

Pub. L. 99–272, § 9505(d)(2), substituted ''through (18)'' for ''through (17)''.

Subsec. (a)(10)(E). Pub. L. 99–509, § 9403(a), added subpar. (E).

Subsec. (a)(13)(B). Pub. L. 99–272, § 9509(a)(1), substituted ''hospitals'' for ''hospitals, skilled nursing facilities, and intermediate care facilities''.

Subsec. (a)(13)(C). Pub. L. 99–272, § 9509(a)(4), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 99–272, § 9505(c)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (a)(13)(D). Pub. L. 99–514, § 1895(c)(1), inserted ''and'' after ''facility;''.

Pub. L. 99–509, § 9435(b)(1), inserted ''and for payment of amounts under section 1396d(*o*)(3) of this title'' before first semicolon.

Pub. L. 99–272, § 9509(a)(2), (3), redesignated former subpar. (C) as (D), and struck out ''and'' at the end thereof. Former subpar. (D) redesignated (E).

Pub. L. 99–272, § 9505(c)(1)(B), redesignated former subpar. (C) as (D).

Subsec. (a)(13)(E). Pub. L. 99–272, § 9509(a)(3), redesignated former subpar. (D) as (E).

Subsec. (a)(15). Pub. L. 99–509, § 9403(g)(4)(A), inserted ''are not qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title) but'' after ''older who''.

Subsec. (a)(17). Pub. L. 99–509, § 9401(e)(1), inserted ''except as provided in subsection (*l*)(3) of this section'' after ''(17)''.

Subsec. (a)(25). Pub. L. 99–272, § 9503(a)(1), amended par. (25) generally. Prior to amendment, par. (25) read as follows: ''provide (A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties to pay for care and services (available under the plan) arising out of injury, disease, or disability, (B) that where the State or local agency knows that a third party has such a legal liability such agency will treat such legal liability as a resource of the individual on whose behalf the care and services are made available for purposes of paragraph (17)(B), and (C) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;''.

Subsec. (a)(30)(C). Pub. L. 99–509, § 9431(a), added subpar. (C).

Subsec. (a)(47). Pub. L. 99–570 added par. (47) relating to cards evidencing eligibility for medical assistance.

Pub. L. 99–509, § 9407(a), added par. (47) relating to ambulatory prenatal care.

Subsec. (b)(2). Pub. L. 99–509, § 9405, inserted before semicolon '', regardless of whether or not the residence is maintained permanently or at a fixed address''.

Subsec. (d). Pub. L. 99–509, § 9431(b)(1), inserted ''(including quality review functions described in subsection (a)(30)(C) of this section)'' after ''medical or utilization review functions''.

Subsec. (e)(2)(A). Pub. L. 99–272, § 9517(b)(1), inserted reference to an entity described in section 1396b(m)(2)(G) of this title, and substituted ''such organization or entity'' for ''such organization''.

Subsec. (e)(2)(B). Pub. L. 99–272, § 9517(b)(2), substituted ''an organization or entity'' for ''a health maintenance organization'' and ''the organization or entity'' for ''the organization''.

Subsec. (e)(5). Pub. L. 99–272, § 9501(c), added par. (5).

Subsec. (e)(6), (7). Pub. L. 99–509, § 9401(d), added pars. (6) and (7).

Subsec. (e)(8). Pub. L. 99–509, § 9403(f)(2), added par. (8).

Subsec. (e)(9). Pub. L. 99–509, § 9408(a), added par. (9).

Subsec. (f). Pub. L. 99–643, § 7(b), substituted ''subsection (e) of this section and section 1382h(b)(3) of this title'' for ''subsection (e) of this section''.

Subsec. (g). Pub. L. 99–272, § 9503(a)(2), added subsec. (g).

Subsec. (h). Pub. L. 99–509, § 9433(a), added subsec. (d) to section 2173 of Pub. L. 97–35 in turn which added subsec. (h) of this section. See 1981 Amendment note below.

Subsec. (j). Pub. L. 99–509, § 9408(c)(2), substituted ''(21)'' for ''(20)''.

Pub. L. 99–514, § 1895(c)(3)(B), substituted ''(20)'' for ''(19)''.

Pub. L. 99–272, § 9505(d)(1), substituted ''(19)'' for ''(18)''.

Subsec. (k). Pub. L. 99–272, § 9506(a), added subsec. (k).

Subsec. (*l*). Pub. L. 99–643, § 3(b), added subsec. (*l*) relating to disregarding of certain benefits for purposes of determining post-eligibility contributions.

Pub. L. 99–509, § 9401(b), added subsec. (*l*) relating to description of group.

Subsec. (m). Pub. L. 99–509, § 9402(a)(2), (b), added subsec. (m).

Subsec. (m)(3). Pub. L. 99–509, § 9403(f)(1)(A), which directed insertion of ''or coverage under subsection (a)(10)(E) of this section'' after ''subsection (a)(10)(A)(ii)(IX) of this section'', was executed by making the insertion after ''subsection (a)(10)(A)(ii)(X) of this section'' as the probable intent of Congress.

Subsec. (m)(5). Pub. L. 99–509, § 9403(f)(1)(B), added par. (5).

Subsec. (n). Pub. L. 99–509, § 9403(e), added subsec. (n).

1984—Subsec. (a)(9)(C). Pub. L. 98–369, § 2373(b)(1), realigned margin of subpar. (C).

Subsec. (a)(10)(A). Pub. L. 98–369, § 2373(b)(2), realigned margins of subpar. (A).

Subsec. (a)(10)(A)(i). Pub. L. 98–369, § 2361(a), amended cl. (i) generally. Prior to the amendment cl. (i) read as follows: ''all individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including pregnant women deemed by the State to be receiving such aid as authorized in section 606(g) of this title and individuals considered by the State to be receiving such aid as authorized under section 614(g) of this title), or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter; and''.

Subsec. (a)(10(A)(i)(I). Pub. L. 98–378, § 20(c), substituted ''section 602(a)(37) or 606(h) of this title'' for ''section 602(a)(37) of this title''.

Subsec. (a)(13)(A). Pub. L. 98–369, § 2373(b)(3), made clarifying amendment by striking out ''(A)'' and all that follows through ''hospital'' the first place it appears and inserting in lieu thereof ''(A) for payment (except where the State agency is subject to an order under section 1396m of this title) of the hospital'', resulting in no change in text.

Subsec. (a)(13)(B), (C). Pub. L. 98–369, § 2314(b), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(20)(B). Pub. L. 98–369, § 2373(b)(4), substituted ''periodic'' for ''periodical''.

Subsec. (a)(20)(C). Pub. L. 98–369, § 2373(b)(5), struck out reference to section 803(a)(1)(A)(i) and (ii) of this title.

Subsec. (a)(26). Pub. L. 98–369, § 2368(b), in amending par. (26) generally, revised existing provisions to continue their application to review of inpatient mental hospital service programs, and to sever provisions relating to review of skilled nursing programs. See par. (31) of this section.

Subsec. (a)(26)(B)(ii). Pub. L. 98–617, § 3(a)(7), repealed the amendment made by Pub. L. 98–369, § 2373(b)(6). See below.

Pub. L. 98–369, § 2373(b)(6), provided that cl. (ii) is amended by substituting ''facilities'' for ''homes''.

Subsec. (a)(26)(C). Pub. L. 98–617, § 3(b)(10), realigned margin of subpar. (C).

Subsec. (a)(28). Pub. L. 98–369, § 2335(e), struck out ''and tuberculosis'' after ''mental diseases''.

Subsec. (a)(30). Pub. L. 98–369, § 2363(a)(1)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(31). Pub. L. 98–369, § 2368(a), in amending par. (31) generally, revised existing provisions to cover review of skilled nursing facilities.

Subsec. (a)(33)(A). Pub. L. 98–369, § 2373(b)(7), substituted ''second sentence'' for ''penultimate sentence''.

Subsec. (a)(42). Pub. L. 98–369, § 2373(b)(8), substituted ''subchapter'' for ''part'' after ''audits conducted for purposes of such''.

Subsec. (a)(43). Pub. L. 98–369, § 2303(g)(1), redesignated par. (44) as (43), and struck out former par. (43) which provided that if the State plan makes provision for payment to a physician for laboratory services the performance of which such physician, or other physician with whom he shares his practice, did not personally perform or supervise, the plan include provision to insure that payment for such services not exceed the payment authorized by section 1395u(h) of this title.

Subsec. (a)(44). Pub. L. 98–369, § 2363(a)(1)(B), added par. (44).

Pub. L. 98–369, § 2303(g)(1)(C), redesignated former par. (44) as (43).

Subsec. (a)(45). Pub. L. 98–369, § 2367(a), added par. (45).

Subsec. (a)(46). Pub. L. 98–369, § 2651(c), added par. (46).

Subsec. (a), foll. par. (46). Pub. L. 98–369, § 2373(b)(9), substituted ''The provisions of paragraph (9)(A), (31), and (33) and of section 1396b(i)(4) of this title shall not apply to'' for ''For purposes of paragraph (9)(A), (26), (31), and (33), and of section 1396b(i)(4) of this title, the term 'skilled nursing facility' and 'nursing home' do not include''.

Subsec. (e)(4). Pub. L. 98–369, § 2362(a), added par. (4).

Subsec. (f). Pub. L. 98–369, § 2373(b)(10), substituted ''paragraph (10)(A)'' and ''paragraph (10)(C)'' for ''clause (10)(A)'' and ''clause (10)(C)'', respectively, wherever appearing.

1982—Subsec. (a)(10). Pub. L. 97–248, § 131(c), formerly § 131(b), as redesignated by Pub. L. 97–448, § 309(a)(8), in provisions following subpar. (D) added cl. (IV).

Subsec. (a)(10)(A). Pub. L. 97–248, § 137(b)(7), redesignated existing provisions as provisions preceding cl. (i) and cl. (i), and added cl. (ii).

Subsec. (a)(10)(C), (D). Pub. L. 97–248, § 137(a)(3), amended directory language of Pub. L. 97–35, § 2171(a)(3), to correct an error, and did not involve any change in text. See 1981 Amendment note below.

Subsec. (a)(10)(C)(i). Pub. L. 97–248, § 137(b)(8), substituted '', (II)'' for ''and (II)'', and added subcl. (III).

Subsec. (a)(10)(C)(ii)(I). Pub. L. 97–248, § 137(b)(9), substituted ''under the age of 18 who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A)(i)'' for ''described in section 1396d(a)(i) of this title''.

Subsec. (a)(14). Pub. L. 97–248, § 131(a), substituted provisions that a State plan for medical assistance must provide that enrollment fees, premiums, or similar charges, and deductions, cost sharing, or similar charges, may be imposed only as provided in section 1396*o* of this title for provisions that such plan must provide that, with respect to individuals receiving assistance, no enrollment fee, premium, or similar charge, and no deduction, cost sharing, or similar charge with respect to the care and services listed in pars. (1) through (5), (7), and (17) of section 1396d(a) of this title, would be imposed under the plan, and any deduction, cost sharing, or similar charge imposed under the plan with respect to other care and services would be nominal in amount (as determined in accordance with standards approved by the Secretary and included in the plan), and with respect to individuals not receiving assistance, there could be imposed an enrollment fee, premium, or similar charge (as determined in accordance with standards prescribed by the Secretary) related to the individual's income, and any deductible, cost-sharing, or similar charge imposed under the plan would be nominal.

Subsec. (a)(18). Pub. L. 97–248, § 132(a), substituted provisions that a State plan for medical assistance must comply with the provisions of section 1396p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid, and transfers of assets for provisions that such plan must provide that no lien could be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there would be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he had no surviving child who was under age 21 or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), was blind or permanently and totally disabled, or was blind or disabled as defined in section 1382c of this title with respect to States which were not eligible to participate in such program) of any medical assistance correctly paid on behalf of such individual under the plan.

Subsec. (a). Pub. L. 97–248, § 137(e), inserted '', (26)'' after ''(9)(A)'' in provisions following par. (44).

Subsec. (b)(2) to (4). Pub. L. 97–248, § 137(b)(10), struck out par. (2) which provided that the Secretary would not approve any plan which imposed any age requirement which excluded any individual who had not attained the age of 19 and was a dependent child under part A of subchapter IV of this chapter, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (d). Pub. L. 97–248, § 146(a), substituted references to utilization and quality control peer review organizations having a contract with the Secretary, for references to conditionally or otherwise designated

Professional Standards Review Organizations, wherever appearing.

Subsec. (e)(3). Pub. L. 97–248, § 134(a), added par. (3).

Subsec. (j). Pub. L. 97–248, §§ 132(c), 136(d), struck out subsec. (j) which related to the denial of medical assistance under a State plan because of an individual's disposal of resources for less than fair market value, the period of ineligibility, and the eligibility of certain individuals for medical assistance under a State plan who would otherwise be ineligible because of the provisions of section 1382b(c) of this title, and added a new subsec. (j) relating to waiver or modification of requirements with respect to American Samoa medical assistance program.

1981—Subsec. (a)(9)(C). Pub. L. 97–35, § 2175(d)(1)(C), added subpar. (C).

Subsec. (a)(10)(A). Pub. L. 97–35, § 2171(a)(1), substituted ''including at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title, to all individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including pregnant women deemed by the State to be receiving such aid as authorized by section 606(g) of this title and individuals considered by the State to be receiving such aid as authorized under section 614(g) of this title)'' for ''to all individuals receiving aid or assistance under any plan of the State approved under subchapters I, X, XIV, or XVI, or part A of subchapter IV of this chapter''.

Subsec. (a)(10)(B). Pub. L. 97–35, § 2171(a)(2), substituted reference to subparagraph for reference to clause in two places.

Subsec. (a)(10)(C). Pub. L. 97–35, § 2171(a)(3), as amended by Pub. L. 97–248, § 137(a)(3), substituted provisions relating to plans for medical assistance included for any group of individuals described in section 1396d(a) of this title who are not described in subpar. (A) for provisions relating to medical assistance for any group of individuals not described in subpar. (A) and who do not meet the income and resources requirements of the appropriate State plan, or the supplementary security income program under subchapter XVI of this chapter, as the case may be, as determined in accordance with standards prescribed by the Secretary.

Subsec. (a)(10)(D). Pub. L. 97–35, § 2171(a)(3), as amended by Pub. L. 97–248, § 137(a)(3), added subpar. (D).

Subsec. (a)(11). Pub. L. 97–35, § 2193(c)(9), substituted ''under or through an allotment under) subchapter V of this chapter, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such subchapter or allotment'' for ''for part or all of the cost of plans or projects under subchapter V of this chapter, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such plan or project under subchapter V of this chapter''.

Subsec. (a)(13)(A). Pub. L. 97–35, §§ 2171(b), 2173(a)(1)(B), (C), struck out subpar. (A) which provided that a State plan must provide for the inclusion of some institutional and some noninstitutional care and services and for the inclusion of home health services for any individual who is entitled to skilled nursing facility services, redesignated subpar. (E) as (A), and in subpar. (A), as so redesignated, made the subsection applicable to hospital facilities, inserted reference to rates which take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs and provide, in the case of hospital patients receiving services at an inappropriate level of care under conditions similar to those described in section 1395x(v)(1)(G) of this title, for lower reimbursement rates reflecting the level of care actually received in a manner consistent with such section, and substituted ''safety standards and to assure that individuals eligible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time) to inpatient hospital services of adequate quality'' for ''safety standards''.

Subsec. (a)(13)(B). Pub. L. 97–35, §§ 2171(b), 2173(a)(1)(C), struck out subpar. (B) which provided that a State plan must provide in the case of individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, for the inclusion of at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title, and redesignated subpar. (F) as (B).

Subsec. (a)(13)(C). Pub. L. 97–35, § 2171(b), struck out subpar. (C) which provided for care and services of individuals not included in former subpar. (B).

Subsec. (a)(13)(D). Pub. L. 97–35, § 2173(a)(1)(A), struck out subpar. (D) which provided for payment of reasonable cost of inpatient hospital services provided under the plan with provisions for determination of such costs with certain maximum limitations and for payment of reasonable cost of inappropriate inpatient services described in subsec. (h)(1) of this section.

Subsec. (a)(13)(E), (F). Pub. L. 97–35, § 2173(a)(1)(C), redesignated subpars. (E) and (F) as (A) and (B), respectively.

Subsec. (a)(20)(D). Pub. L. 97–35, § 2173(a)(2), struck out subpar. (D) which required provision for methods of determining reasonable cost of institutional care of such patients.

Subsec. (a)(23). Pub. L. 97–35, § 2175(a), substituted ''except as provided in section 1396n and except in the case of'' for ''except in the case of'', and struck out provision that a State plan shall not be deemed to be out of compliance with the requirements of this paragraph or pars. (1) and (10) of this subsection solely by reason of the fact that the State or any political subdivision thereof has entered into a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic.

Subsec. (a)(25)(C). Pub. L. 97–35, § 2182, substituted ''of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State'' for ''of the individual, the State''.

Subsec. (a)(30). Pub. L. 97–35, § 2174(a), substituted ''that payments are consistent'' for ''that payments (including payments for any drugs provided under the plan) are not in excess of reasonable charges consistent''.

Subsec. (a)(39). Pub. L. 97–35, § 2105(c), substituted ''person'' for ''individual'' in two places.

Subsec. (a)(44). Pub. L. 97–35, § 2181(a)(2)(C), added par. (44).

Subsec. (b)(2). Pub. L. 97–35, § 2172(a), substituted ''any age requirement which excludes any individual who has not attained the age of 19 and is a dependent child under part A of subchapter IV of this chapter;'' for ''effective July 1, 1967, any age requirement which excludes any individual who has not attained the age of 21 and is or would, except for the provisions of section 606(a)(2) of this title, be a dependent child under part A of subchapter IV of this chapter; or''.

Subsec. (d). Pub. L. 97–35, § 2113(m), added subsec. (d).

Subsec. (e). Pub. L. 97–35, § 2178(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 97–35, § 2173(b)(1), (d), as amended by Pub. L. 99–509, § 9433(a), added a new subsec. (h) and repealed former subsec. (h) which related to skilled nursing and intermediate care facility services.

1980—Subsec. (a)(13)(B). Pub. L. 96–499, § 965(b)(1), substituted ''paragraphs (1) through (5) and (17)'' for ''clauses (1) through (5)''.

Subsec. (a)(13)(C)(i). Pub. L. 96–499, § 965(b)(2), substituted ''paragraphs (1) through (5) and (17)'' for ''clauses (1) through (5)''.

Subsec. (a)(13)(C)(ii). Pub. L. 96–499, § 965(b)(3), substituted ''paragraphs numbered (1) through (17)'' for ''clauses numbered (1) through (16)''.

Subsec. (a)(13)(D). Pub. L. 96–499, § 902(b)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(13)(D)(i). Pub. L. 96–499, §§ 903(b), 905(a), inserted ''(except where the State agency is subject to an order under section 1396m of this title)'' after ''payment'' and '', except that in the case of hospitals reimbursed for services under part A of subchapter XVIII of this chapter in accordance with section 1395f(b)(3) of this title, the plan must provide for payment of inpatient hospital services provided in such hospitals under the plan in accordance with the reimbursement system used under such section'' after ''subchapter XVIII of this chapter''.

Subsec. (a)(13)(E). Pub. L. 96–499, § 905(a), inserted ''(except where the State agency is subject to an order under section 1396m of this title)''.

Pub. L. 96–499, § 962(a), substituted provisions which required a State plan for medical assistance to provide for payment of skilled nursing facility and intermediate care facility services provided under such plan through the use of rates determined in accordance with methods and standards developed by the State rather than on a reasonable cost related basis, required the filing of uniform cost reports by each facility, and required periodic audits of such reports by the State.

Subsec. (a)(14)(A)(i). Pub. L. 96–499, § 965(b)(4), substituted ''paragraphs (1) through (5), (7), and (17)'' for ''clauses (1) through (5) and (7)''.

Subsec. (a)(33)(B). Pub. L. 96–499, § 916(b)(1)(B), inserted exception authorizing the Secretary where there was cause to question the adequacy of participation determinations to make independent determinations concerning the extent to which individual institutions and agencies met the requirements for participation.

Subsec. (a)(35). Pub. L. 96–499, § 912(b), substituted ''disclosing entity (as defined in section 1320a–3(a)(2) of this title)'' for ''intermediate care facility''.

Subsec. (a)(39). Pub. L. 96–499, § 913(c), substituted provisions requiring that State plans for medical assistance authorize the State agency to bar specified individuals from participation in the program under the State plan when required by the Secretary to do so pursuant to section 1320a–7 of this title for provisions requiring that State plans for medical assistance provide for the suspension of physicians or other individuals from participation in the State plan upon notification by the Secretary that such physician or other individual had been suspended from participation in the plan under subchapter XVIII of this chapter.

Subsec. (a)(41). Pub. L. 96–272 added par. (41).

Subsec. (a)(42). Pub. L. 96–499, § 914(b)(1), added par. (42).

Subsec. (a)(43). Pub. L. 96–499, § 918(b)(1)(C), added par. (43).

Subsec. (g). Pub. L. 96–499, § 913(d), struck out subsec. (g) which related to waiver of suspension of payments to physicians or practitioners suspended from participation in approved State plans.

Subsec. (h). Pub. L. 96–499, § 902(b)(2), added subsec. (h).

Subsec. (i). Pub. L. 96–499, § 916(b)(1)(A), added subsec. (i).

Subsec. (j). Pub. L. 96–611 added subsec. (j).

1978—Subsec. (a)(4)(C). Pub. L. 95–559 added cl. (C).

1977—Subsec. (a)(13)(F). Pub. L. 95–210, § 2(c)(1), added subpar. (F).

Subsec. (a)(23). Pub. L. 95–210, § 2(c)(2), inserted '', or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic'' after ''who elect to obtain such care and services from such organization''.

Subsec. (a)(26). Pub. L. 95–142, § 20(b), inserted provision relating to staff of skilled nursing facilities.

Subsec. (a)(27)(B). Pub. L. 95–142, § 9, inserted ''or the Secretary'' after ''State agency'' wherever appearing.

Subsec. (a)(32). Pub. L. 95–142, § 2(a)(3), substituted provisions relating to terms, conditions, etc., for payments under an assignment or power of attorney, for provisions relating to terms, conditions, etc., for payments to anyone other than the individual receiving any care or service provided by a physician, dentist, or other individual practitioner, or such physician, dentist, or practitioner.

Subsec. (a)(35). Pub. L. 95–142, § 3(c)(1)(A), substituted provisions relating to requirements for intermediate care facilities to comply with section 1320a–3 of this title for provisions relating to disclosure requirements, effective Jan. 1, 1973, applicable to intermediate care facilities with respect to ownership, corporate, status, etc.

Subsec. (a)(37). Pub. L. 95–142, §§ 2(b)(1)(C), 3(c)(1)(C), 7(b)(1), added subsec. (a)(37) and made and struck out minor changes in phraseology, necessitating no changes in text.

Subsec. (a)(38). Pub. L. 95–142, §§ 3(c)(1)(D), 7(b)(2), 19(b)(2)(A), added par. (38) and made and struck out minor changes in phraseology necessitating no changes in text.

Subsec. (a)(39). Pub. L. 95–142, §§ 7(b)(3), 19(b)(2)(B), added par. (39).

Subsec. (a)(40). Pub. L. 95–142, § 19(b)(2)(C), added par. (40).

Subsec. (a), foll. par. (40). Pub. L. 95–142, § 2(b)(1)(D), added paragraph relating to waiver of requirement of cl. (A) of par. (37).

Subsec. (g). Pub. L. 95–142, § 7(c), added subsec. (g).

1976—Subsec. (g). Pub. L. 94–552 struck out provisions for consent to suit and waiver of immunity by State.

1975—Subsec. (a). Pub. L. 94–48, § 1, added undesignated paragraph at end of subsec. (a) relating to eligibility under this subchapter of any individual who was eligible for the month of August 1972, under a State plan approved under subchapters I, X, XIV, XVI, or part A of subchapter IV of this chapter if such individual would have been eligible for such month had the increase in monthly insurance benefits under subchapter II of this chapter resulting from enactment of Pub. L. 92–336 not been applicable to such individual.

Subsec. (a)(23). Pub. L. 94–48, § 2, inserted ''except in the case of Puerto Rico, the Virgin Islands, and Guam,''.

Subsec. (g). Pub. L. 94–182 added subsec. (g).

1974—Subsec. (a)(14)(B)(i). Pub. L. 93–368 substituted ''may'' for ''shall''.

1973—Subsec. (a)(5). Pub. L. 93–233, § 13(a)(2)(A), (B), substituted ''to administer or to supervise the administration of the plan'' for ''to administer the plan'' and ''to supervise the administration of the plan'' in that order and inserted after the parenthetical phrase the conditional provision ''if the State is eligible to participate in the State plan program established under subchapter XVI of this chapter, or by the agency or agencies administering the supplemental security income program established under subchapter XVI of this chapter or the State plan approved under part A of subchapter IV of this chapter if the State is not eligible to participate in the State plan program established under subchapter XVI of this chapter''.

Subsec. (a)(10). Pub. L. 93–233, § 13(a)(3), incorporated existing text in provisions designated as cl. (A), providing therein for medical assistance to individuals with respect to whom supplemental security income benefits are paid; incorporated existing par. (A) in provisions designated as cl. (B); incorporated existing par. (B) in provisions designated as cl. (C), providing therein for individuals not meeting income and resources requirements of the supplemental security income program; substituted in cls. (B)(ii), (C), (C)(i)(ii) and ''medical assistance'' for ''medical or remedial care and services'' appearing in predecessor provisions and in cl. (C)(i) ''except for income and resources'' for ''if needy'' appearing in predecessor provision; and in the exception provisions included reference to par. (16) of section 1396(a) of this title in item (I), substituted ''deductibles'' for ''the deductibles'' in item (II), and added item (III).

Subsec. (a)(13)(B). Pub. L. 93–233, § 13(a)(4), substituted ''any plan of the State approved'' for ''the State's plan

approved'' and inserted after ''part A of subchapter IV of this chapter'' text reading '', or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter''.

Subsec. (a)(13)(C)(ii)(I). Pub. L. 93–233, § 18(x)(1), substituted reference to cl. ''16'' for ''14''.

Subsec. (a)(14)(A). Pub. L. 93–233, § 13(a)(5), substituted ''any plan of the State approved'' for ''a State plan approved'' and ''with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or who meet the income and resources requirements of the appropriate State plan, or the supplemental security income program under subchapter XVI of this chapter, as the case may be, and individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in paragraph (10)(A)'' for ''who meet the income and resources requirements of the one of such State plans which is appropriate''.

Subsec. (a)(14)(B). Pub. L. 93–233, § 13(a)(6)(A)–(D), inserted after ''with respect to individuals'' the parenthetical provision ''(other than individuals with respect to whom there is being paid, or who are eligible or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in paragraph (10)(A))''; inserted after ''any such State plan'' the clause ''and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter''; substituted ''the appropriate State plan, or the supplemental security income program under subchapter XVI of this chapter, as the case may be,'' for ''the one of such State plans which is appropriate''; and struck out ''or who, after December 31, 1973, are included under the State plan for medical assistance pursuant to subsection (a)(10)(B) of this section approved under this subchapter'' preceding the hyphen and cl. (i), respectively.

Subsec. (a)(17). Pub. L. 93–233, § 13(a)(7)(A)–(D), (8), substituted: ''any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter'' for ''the State's plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter''; ''except for income and resources'' for ''if he met the requirements as to need''; ''any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, or to have paid with respect to him supplemental security income benefits under subchapter XVI of this chapter'' for ''a State plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter''; ''such aid, assistance, or benefits'' for ''and amount of such aid or assistance under such plan''; and ''(with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program)'' for ''is blind or permanently and totally disabled''.

Subsec. (a)(18). Pub. L. 93–233, § 13(a)(8), substituted ''(with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program)'' for ''is blind or permanently and totally disabled''.

Subsec. (a)(20)(C). Pub. L. 93–233, § 13(a)(9), inserted reference to section 803(a)(1)(A)(i) and (ii) of this title.

Subsec. (a)(21), (24). Pub. L. 93–233, § 18(x)(4), provided for substitution of ''nursing facilities'' for ''nursing homes''.

Subsec. (a)(26)(B). Pub. L. 93–233, § 18(x)(4), provided for substitution of ''nursing facility'' and ''nursing facilities'' for ''nursing home'' and ''nursing homes'', changes already executed under 1972 Amendment by Pub. L. 92–603, § 278(a)(19).

Subsec. (a)(33)(A). Pub. L. 93–233, § 18(x)(2), substituted ''penultimate sentence'' for ''last sentence''.

Subsec. (a)(34). Pub. L. 93–233, § 18(*o*), inserted ''(or application was made on his behalf in the case of a deceased individual)'' after ''he made application''.

Subsec. (a)(35)(A). Pub. L. 93–233, § 18(p), required the intermediate care facility to supply full and complete information respecting the person who is the owner (in whole or in part) of any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the intermediate care facility or any of the property or assets of the intermediate care facility.

Subsec. (a)(35) to (37). Pub. L. 93–233, § 18(x)(3)(A), (B), substituted ''; and'' for ''.'' at end of par. (35); and corrected numerical sequence of paragraphs, redesignating par. (37) as (36), the original subsec. (a) having been enacted without a par. (36).

Subsec. (e). Pub. L. 93–233, § 18(q), substituted ''each family which was receiving aid pursuant to a plan of the State approved under part A'' for ''each family which was eligible for assistance pursuant to part A'', ''for such aid because of increased hours of, or increased income from, employment'' for ''for such assistance because of increased income from employment'', and ''remain eligible for assistance under the plan approved under this subchapter (as though the family was receiving aid under the plan approved under part A of subchapter IV of this chapter) for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of subchapter IV of this chapter because of income and resources or hours of work limitations'' for ''remain eligible for such assistance for 4 calendar months following the month in which such family would otherwise be determined to be ineligible for such assistance because of the income and resources limitations''.

Subsec. (f). Pub. L. 93–233, § 13(a)(10)(A)–(D), substituted: ''no State not eligible to participate in the State plan program established under subchapter XVI of this chapter'' for ''no State'' and ''any supplemental security income payment and State supplementary payment made with respect to such individual'' for ''such individual's payment under subchapter XVI of this chapter'' and ''as recognized under State law'' for ''as defined in section 213 of Title 26'' in parenthetical text; and inserted two end sentences for consideration of certain individuals as eligible for medical assistance under cl. (10)(A) or (C) of subsec. (a) of this section or as eligible for such assistance under cl. (10)(A) in States not providing such assistance under cl. (10)(C), respectively.

1972—Subsec. (a). Pub. L. 92–603, §§ 268(a), 278(b)(14), inserted provisions exempting Christian Science sanatoriums from certain nursing facility and nursing home requirements.

Subsec. (a)(9). Pub. L. 92–603, § 239(a), inserted provisions to utilize State health agency for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services.

Subsec. (a)(13)(A)(ii), (C). Pub. L. 92–603, § 278(a)(18), (b)(14), substituted ''skilled nursing facility'' for ''skilled nursing home''.

Subsec. (a)(13)(D). Pub. L. 92–603, §§ 221(c)(5), 232(a), inserted provisions that the reasonable cost of inpatient hospital services shall not exceed the amount determined under section 1395x(v) of this title and inserted reference to the consistency of methods and standards with section 1320a–1 of this title for determining the reasonable cost of inpatient hospital services.

Subsec. (a)(13)(E). Pub. L. 92–603, § 249(a), added subpar. (E).

Subsec. (a)(14). Pub. L. 92–603, § 208(a), substituted a nominal amount for an amount reasonably related to

the recipient's income as the amount of the deduction, cost sharing, or similar charge imposed under the plan and inserted provisions covering individuals who are not receiving aid or assistance under any state plan and who do not meet the income and resources requirements and covering individuals who are included under the state plan for medical assistance pursuant to subsec. (a)(10)(B) of this section approved under this subchapter.

Subsec. (a)(23). Pub. L. 92–603, § 240, inserted provisions allowing States to adopt comprehensive health care programs while still complying with medicaid requirements.

Subsec. (a)(26). Pub. L. 92–603, §§ 274(a), 278(a)(19), (b)(14), substituted ''evaluation)'' for ''evaluation'' and ''care'' for ''care)'' and substituted ''skilled nursing facility'' and ''skilled nursing facilities'' for ''skilled nursing home'' and ''skilled nursing homes''.

Subsec. (a)(28). Pub. L. 92–603, §§ 246(a), 278(a)(20), substituted ''skilled nursing facility'' for ''skilled nursing home'' and substituted a simple reference to the requirements contained in section 1395x(j) of this title with a specified exception for provisions spelling out in detail the requirements for skilled nursing homes receiving payments.

Subsec. (a)(30). Pub. L. 92–603, § 237(a)(2), substituted ''under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title)'' for ''under the plan''.

Subsec. (a)(31)(A). Pub. L. 92–603, § 298, struck out ''which provides more than a minimum level of health care services'' after ''intermediate care facility''.

Subsec. (a)(32). Pub. L. 92–603, § 236(b)(3), added par. (32).

Subsec. (a)(33). Pub. L. 92–603, § 239(b)(3), added par. (33).

Subsec. (a)(34). Pub. L. 92–603, § 255(a)(3), added par. (34).

Subsec. (a)(35). Pub. L. 92–603, § 299A(3), added par. (35).

Subsec. (a)(37). Pub. L. 92–603, § 299D(b)(3), added par. (37).

Subsec. (d). Pub. L. 92–603, § 231, repealed subsec. (d) which related to modification of state plans for medical assistance under certain circumstances.

Subsec. (e). Pub. L. 92–603, § 209(a), added subsec. (e).

Subsec. (f). Pub. L. 92–603, § 209(b)(1), added subsec. (f).

1971—Subsec. (a)(31). Pub. L. 92–223 added par. (31).

1969—Subsec. (c). Pub. L. 91–56, § 2(c), substituted ''aid or assistance in the form of money payments (other than so much, if any, of the aid or assistance in such form as was, immediately prior to the effective date of the State plan under this subchapter, attributable to medical needs)'' for ''aid or assistance (other than so much of the aid or assistance as is provided for under the plan of the State approved under this subchapter)''.

Subsec. (d). Pub. L. 91–56, § 2(d), added subsec. (d).

1968—Subsec. (a)(2). Pub. L. 90–248, § 231, changed the date on which State plans must meet certain financial participation requirements by substituting ''July 1, 1969'' for ''July 1, 1970''.

Subsec. (a)(4). Pub. L. 90–248, § 210(a)(6), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10). Pub. L. 90–248, §§ 223(a), 241(f)(1), struck out ''IV,'' after ''I,'' and inserted '', and part A of subchapter IV of this chapter'' after ''XVI of this chapter'', and designated existing provisions as item I and added item II.

Subsec. (a)(11). Pub. L. 90–248, § 302(b), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(13). Pub. L. 90–248, § 224(a), designated existing provisions as subpar. (A), incorporated existing cl. (A) in provisions designated as subpars. (B) and (C)(i), making subpar. (B) and (C) applicable to individuals receiving aid or assistance under an approved State plan and to individuals not covered under subpar. (B), respectively, added cl. (ii) of subpar. (C), redesignated former cl. (B) as subpar. (D), and deleted effective date of July 1, 1967, for former cls. (A) and (B).

Subsec. (a)(13)(A). Pub. L. 90–248, § 224(c)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(14)(A). Pub. L. 90–248, § 235(a)(1), inserted ''in the case of individuals receiving aid or assistance under State plans approved under subchapters I, X, XIV, XVI, and part A of subchapter IV of this chapter,''.

Subsec. (a)(14)(B). Pub. L. 90–248, § 235(a)(2), inserted ''inpatient hospital services or'' after ''respect to'' and substituted ''to an individual'' for ''him''.

Subsec. (a)(15). Pub. L. 90–248, § 235(a)(3), struck out subpar. (B) provision for meeting the full cost of any deductible imposed with respect to any such individual under the insurance program established by part A of such subchapter, deleted subpar. (B) designation preceding ''where, under the plan'', and substituted therein ''established by such subchapter'' for ''established by part B of such subchapter''.

Subsec. (a)(17). Pub. L. 90–248, § 238, inserted in parenthetical expression ''and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, based on the variations between shelter costs in urban areas and in rural areas'' after ''all groups''.

Pub. L. 90–248, § 241(f)(2), in cl. (B) struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter'' after ''XVI of this chapter''.

Subsec. (a)(23) to (30). Pub. L. 90–248, §§ 227(a), 228(a), 229(a), 234(a), 236(a), 237, added pars. (23), (24), (25), (26) to (28), (29), (30), respectively.

Subsec. (b)(2). Pub. L. 90–248, § 241(f)(3), inserted ''part A of'' before ''subchapter IV''.

Subsec. (c). Pub. L. 90–248, § 241(f)(4), struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter'' after ''XVI of this chapter''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. B, title IV, § 405(c)(2)(A), Dec. 20, 2006, 120 Stat. 2999, provided that the amendment made by section 405(c)(2)(A) is effective as if included in the enactment of the Deficit Reduction Act of 2005 (Public Law 109–171).

Pub. L. 109–171, title VI, § 6032(b), Feb. 8, 2006, 120 Stat. 74, as amended by Pub. L. 109–432, div. B, title IV, § 405(c)(2)(A)(iii), Dec. 20, 2006, 120 Stat. 3000, provided that: ''Except as provided in section 6034(e) [set out below], the amendments made by subsection (a) [amending this section] take effect on January 1, 2007.''

Pub. L. 109–171, title VI, § 6034(e), Feb. 8, 2006, 120 Stat. 78, provided that: ''Except as otherwise provided in this chapter [chapter 3 (§§ 6031–6036) of subtitle A of title VI of Pub. L. 109–171, enacting sections 1396h and 1396u–6 of this title, amending this section and sections 1395i, 1395ddd, 1396b, and 1396v of this title, and enacting provisions set out as notes under this section and sections 1396b and 1396h of this title], in the case of a State plan under title XIX of the Social Security Act [this subchapter] which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by a provision of this chapter, the State plan shall not be regarded as failing to comply with the requirements of such Act [this chapter] solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Feb. 8, 2006]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.''

Pub. L. 109–171, title VI, § 6035(c), Feb. 8, 2006, 120 Stat. 80, as amended by Pub. L. 109–432, div. B, title IV, § 405(c)(2)(A)(iii), Dec. 20, 2006, 120 Stat. 3000, provided that: ''Except as provided in section 6034(e) [set out above], the amendments made by this section [amending this section] take effect on January 1, 2006.''

Pub. L. 109–171, title VI, § 6062(d), Feb. 8, 2006, 120 Stat. 99, provided that: ''The amendments made by this sec-

tion [amending this section and sections 1396b, 1396d, and 1396*o* of this title] shall apply to medical assistance for items and services furnished on or after January 1, 2007.''

Pub. L. 109–171, title VI, § 6065(b), Feb. 8, 2006, 120 Stat. 102, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to medical assistance for items and services furnished on or after the date that is 1 year after the date of enactment of this Act [Feb. 8, 2006].''

Pub. L. 109–171, title VI, § 6083(b), Feb. 8, 2006, 120 Stat. 121, provided that: ''The amendments made by subsection (a) [amending this section] take effect on the date of the enactment of this Act [Feb. 8, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–91, title I, § 101(c), Oct. 20, 2005, 119 Stat. 2091, provided that: ''The amendments made by this section [amending this section and section 1396u–3 of this title] shall be effective as of September 30, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–265 effective July 1, 2005, see section 502(b)(4) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Pub. L. 108–173, title I, § 103(f)(3), Dec. 8, 2003, 117 Stat. 2160, provided that: ''The amendments made by this subsection [amending this section and section 1396u–3 of this title] shall apply to calendar quarters beginning on or after April 1, 2004.''

Amendment by section 236(b)(1) of Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2004, see section 236(c) of Pub. L. 108–173, set out as a note under section 1395cc of this title.

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–121, § 2(c), Jan. 15, 2002, 115 Stat. 2384, provided that:

''(1) BCCPTA TECHNICAL AMENDMENT.—The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Public Law 106–354; 114 Stat. 1381).

''(2) BIPA TECHNICAL AMENDMENTS.—The amendments made by subsection (b) [amending this section and section 1396n of this title] shall take effect as if included in the enactment of section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–572) (as enacted into law by section 1(a)(6) of Public Law 106–554).''

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–554, § 1(a)(6) [title VII, § 702(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, provided that: ''The amendments made by this section [amending this section and sections 1396b and 1396n of this title and repealing provisions set out as a note under this section] take effect on January 1, 2001, and shall apply to services furnished on or after such date.''

Pub. L. 106–354, § 2(d), Oct. 24, 2000, 114 Stat. 1384, provided that: ''The amendments made by this section [enacting section 1396r–1b of this title and amending this section and sections 1396b and 1396d of this title] apply to medical assistance for items and services furnished on or after October 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date.''

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–170, title II, § 201(d), Dec. 17, 1999, 113 Stat. 1894, provided that: ''The amendments made by this section [amending this section and sections 1396b, 1396d, and 1396*o* of this title and enacting provisions set out as a note below] apply to medical assistance for items and services furnished on or after October 1, 2000.''

Pub. L. 106–169, title II, § 121(b), Dec. 14, 1999, 113 Stat. 1830, provided that: ''The amendments made by subsection (a) [amending this section and section 1396d of this title] apply to medical assistance for items and services furnished on or after October 1, 1999.''

Amendment by section 205(c) of Pub. L. 106–169 effective Jan. 1, 2000, and applicable to trusts established on or after such date, see section 205(d) of Pub. L. 106–169, set out as a note under section 1382a of this title.

Amendment by section 206(b) of Pub. L. 106–169 effective with respect to disposals made on or after Dec. 14, 1999, see section 206(c) of Pub. L. 106–169, set out as a note under section 1382b of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 603(a)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–395, provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note under this section] shall take effect as if included in the enactment of section 4712 of BBA (111 Stat. 508) [the Balanced Budget Act of 1997, Pub. L. 105–33].''

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 604(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–395, provided that:

''(1) The amendment made by subsection (a)(1) [amending this section] applies to expenditures made on and after the date of the enactment of this Act [Nov. 29, 1999].

''(2) The amendments made by subsections (a)(2) and (b) [amending this section and section 1396b of this title] apply as of such date as the Secretary of Health and Human Services certifies to Congress that the Secretary is fully implementing section 1932(c)(2) of the Social Security Act (42 U.S.C. 1396u–2(c)(2)).''

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(aa)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398 provided that the amendment made by section 1000(a)(6) [title VI, § 608(aa)(1)] is effective as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(bb)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398, provided that: ''Except as otherwise provided, the amendments made by this section [amending this section and sections 1396b, 1396d, 1396g–1, 1396i, 1396n, 1396r, 1396r–1, 1396r–1a, 1396r–4, 1396r–6, 1396r–8, 1396t, 1396u–2, and 1396u–3 of this title] shall take effect on the date of enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 4106(c) of Pub. L. 105–33 applicable to bone mass measurements performed on or after July 1, 1998, see section 4106(d) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Amendment by section 4454(b)(1) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

Amendment by section 4701(b)(2)(A)(i)–(iv), (d)(1) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on Oct. 1, 1997, except as otherwise provided, see section 4710(a) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Amendment by section 4702(b)(2) of Pub. L. 105–33 applicable to primary care case management services furnished on or after Oct. 1, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4710(b)(1) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Amendment by section 4709 of Pub. L. 105–33 effective Oct. 1, 1997, subject to provisions relating to extension of effective date for State law amendments, and to non-

application to waivers, see section 4710(b)(7) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Section 4711(d) of Pub. L. 105–33 provided that: ''This section [amending this section and sections 1396d and 1396r–4 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and the amendments made by subsections (a) and (c) [amending this section and sections 1396d and 1396r–4 of this title] shall apply to payment for items and services furnished on or after October 1, 1997.''

Section 4712(b)(3) of Pub. L. 105–33 provided that: ''The amendments made by this subsection [amending this section and section 1396b of this title] shall apply to services furnished on or after October 1, 1997.''

Pub. L. 105–33, title IV, §4712(c), Aug. 5, 1997, 111 Stat. 509, as amended by Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §603(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394, which provided that the amendment made by section 4712(c) was effective for services furnished on or after Oct. 1, 2004, was repealed by Pub. L. 106–554, §1(a)(6) [title VII, §702(c)(1), (e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, effective Jan. 1, 2001, and applicable to services furnished on or after such date.

Section 4714(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395w–4, 1395cc, 1396d of this title] shall apply to payment for (and with respect to provider agreements with respect to) items and services furnished on or after the date of the enactment of this Act [Aug. 5, 1997]. The amendments made by subsection (a) [amending this section and section 1396d of this title] shall also apply to payment by a State for items and services furnished before such date if such payment is the subject of a law suit that is based on the provisions of sections 1902(n) and 1905(p) of the Social Security Act [subsec. (n) of this section and section 1396d(p) of this title] and that is pending as of, or is initiated after, the date of the enactment of this Act.''

Section 4715(b) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply on and after October 1, 1997.''

Section 4724(c)(2) of Pub. L. 105–33 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 1998.''

Section 4724(g)(2) of Pub. L. 105–33 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to suppliers of medical assistance consisting of durable medical equipment furnished on or after January 1, 1998.''

Section 4731(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply to medical assistance for items and services furnished on or after October 1, 1997.''

Section 4741(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1396e of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

Section 4751(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] take effect on the date of the enactment of this Act [Aug. 5, 1997].''

Section 4752(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] takes effect on the date of the enactment of this Act [Aug. 5, 1997].''

Section 4753(c) of Pub. L. 105–33 provided that: ''Except as otherwise specifically provided, the amendments made by this section [amending this section and section 1396b of this title] shall take effect on January 1, 1998.''

Section 4911(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall apply to medical assistance for items and services furnished on or after October 1, 1997.''

Section 4912(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [enacting section 1396r–1a and amending this section and section 1396b of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

Section 4913(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] applies to medical assistance furnished on or after July 1, 1997.''

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 1(a)(2) of Pub. L. 104–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of the amendments made by section 4752(c)(1) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].''

Amendment by sections 108(k) and 114(b)–(d)(1), of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Section 913 of Pub. L. 104–193 provided that the amendment made by that section is effective Jan. 1, 1997.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13581(b)(2) of Pub. L. 103–66 effective Jan. 1, 1994, see section 13581(d) of Pub. L. 103–66, set out as a note under section 1395y of this title.

Section 13601(c) of Pub. L. 103–66 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1396d of this title] shall take effect as if included in the enactment of section 4721(a) of OBRA–1990 [Pub. L. 101–508].''

Amendment by section 13602(c) of Pub. L. 103–66 applicable to calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not regulations to carry out the amendments by section 13602(a)(1) and (c) of Pub. L. 103–66 have been promulgated by such date, see section 13602(d)(2) of Pub. L. 103–66, set out as a note under section 1396r–8 of this title.

Section 13603(f) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 1396d and 1396n of this title] shall apply to medical assistance furnished on or after January 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Amendment by section 13611(d)(1) of Pub. L. 103–66 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 13611 of Pub. L. 103–66 have been promulgated by such date, see section 13611(e) of Pub. L. 103–66, set out as a note under section 1396p of this title.

Section 13622(d) of Pub. L. 103–66 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (a)(1), (b), and (c) [amend-

ing this section] shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsections (a) and (b) [amending this section and section 1396b of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

''(3) The amendment made by subsection (a)(2) [amending section 1396b of this title] shall apply to items and services furnished on or after October 1, 1993.''

Amendment by section 13623(a) of Pub. L. 103–66 applicable, except as otherwise provided, to calendar quarters beginning on or after Apr. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13623 of Pub. L. 103–66 have been promulgated by such date, see section 13623(c) of Pub. L. 103–66, set out as an Effective Date note under section 1396g–1 of this title.

Section 13625(b) of Pub. L. 103–66 provided that: ''Section 1902(a)(61) of the Social Security Act [subsec. (a)(61) of this section] (as added by subsection (a)) shall take effect January 1, 1995, and the standards referred to in such section shall be established not later than March 31, 1994.''

Section 13631(e)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].''

Section 13631(f)(3) of Pub. L. 103–66 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 1396d of this title] shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 13631(i) of Pub. L. 103–66 provided that: ''Except as otherwise provided in this section, the amendments made by this section [enacting section 1396s of this title, transferring former section 1396s of this title to section 1396v of this title, and amending this section and sections 1396b and 1396d of this title] shall apply to payments under State plans approved under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1994.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 2(c)(1) of Pub. L. 102–234 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall take effect January 1, 1992, without regard to whether or not regulations have been promulgated to carry out such amendments by such date.''

Section 3(e)(1) of Pub. L. 102–234 provided that: ''The amendments made by this section [amending this section and sections 1396b and 1396r–4 of this title] shall take effect January 1, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4402(e) of Pub. L. 101–508 provided that:

''(1) The amendments made by this section [enacting section 1396e of this title and amending this section and sections 1396b and 1396d of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a) [enacting section 1396e of this title and amending this section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 5, 1990]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 4501(f) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1395v and 1396d of this title] shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) [amending this section and section 1396d of this title] shall apply to determinations of income for months beginning with January 1991.''

Section 4601(b) of Pub. L. 101–508 provided that:

''(1) The amendments made by this subsection [probably should be ''section'', which amended this section and sections 1396b, 1396d, and 1396r–6 of this title] apply (except as otherwise provided in this subsection) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection [section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 5, 1990]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 4602(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] apply to payments under title XIX of the Social Security Act [this subchapter] for calenar [sic] quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 4603(b) of Pub. L. 101–508 provided that:

''(1) INFANTS.—The amendment made by subsection (a)(1) [amending this section] shall apply to individuals born on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

''(2) PREGNANT WOMEN.—The amendments made by subsection (a)(2) [amending this section] shall apply with respect to determinations to terminate the eligibility of women, based on change of income, made on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 4604(d) of Pub. L. 101–508 provided that:

''(1) The amendments made by this subsection [probably should be ''section'', which amended this section and section 1396n of this title] shall become effective with respect to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection [section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 5, 1990]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Amendment by section 4701(b)(1) of Pub. L. 101–508 effective Jan. 1, 1991, see section 4701(c) of Pub. L. 101–508, set out as a note under section 1396b of this title.

Section 4704(f) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1396b, 1396d, and 1396n of this title] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Section 4708(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4711(e) of Pub. L. 101–508 provided that:

''(1) Except as provided in this subsection, the amendments made by this section [enacting section 1396t of this title and amending this section and sections 1396b and 1396d of this title] shall apply to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2)(A) The amendments made by subsection (c)(1) [amending this section] shall apply to home and community care furnished on or after July 1, 1991, or, if later, 30 days after the date of publication of interim regulations under section 1929(k)(1) [section 1396t(k)(1) of this title].

''(B) The amendment made by subsection (c)(2) [amending section 1396b of this title] shall apply to civil money penalties imposed after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4713(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall apply to medical assistance furnished on or after January 1, 1991.''

Section 4715(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to treatment of income for months beginning more than 30 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4732(e) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4751(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1396b and 1396r of this title] shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4752(c)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to medical assistance for calendar quarters beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(x) of the Social Security Act [subsec. (x) of this section].''

Section 4754(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sanctions effected more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4755(c)(1) of Pub. L. 101–508 provided that the amendment made by that section is effective July 1, 1990.

Section 4801(e)(11) of Pub. L. 101–508 provided that the amendment made by that section is effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396r(f)(4) of this title.

Section 4801(e)(19) of Pub. L. 101–508 provided that: ''Except as provided in paragraphs (7), (11), and (16), the amendments made by this subsection [amending this section and sections 1396b and 1396r of this title, repealing section 1396g of this title, and amending provisions set out as a note under this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Section 6401(c) of Pub. L. 101–239 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396b of this title] shall apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after April 1, 1990, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 19, 1989]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 6402(c), formerly § 6402(d), of Pub. L. 101–239, as renumbered and amended by Pub. L. 101–508, title IV, § 4704(e)(2), Nov. 5, 1990, 104 Stat. 1388–172, provided that: ''The amendments made by this section [enacting section 1396r–7 of this title and amending this section] (except as otherwise provided in such amendments) shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6403(e) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall take effect on April 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 6404(d) of Pub. L. 101–239 provided that:

''(1) The amendments made by this section [amending this section and section 1396d of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after April 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 19, 1989]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 6405(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall become effective with respect to services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner on or after July 1, 1990.''

Section 6406(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 1990, without regard to whether regulations to carry out such amendments have been promulgated by such date.''

Section 6408(c)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to services furnished on or after April 1, 1990, without regard to whether or not final regulations have been promulgated by such date to implement such amendments.''

Section 6408(d)(5) of Pub. L. 101–239 provided that:

''(A) The amendments made by this subsection [amending this section and sections 1396d and 1396*o* of this title] apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 19, 1989]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 6411(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if it had been included in the enactment of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

Amendment by section 6411(d)(3)(B) of Pub. L. 101–239 applicable to employment and contracts as of 90 days after Dec. 19, 1989, see section 6411(d)(4)(B) of Pub. L. 101–239, set out as a note under section 1395mm of this title.

Section 6411(e)(4) of Pub. L. 101–239 provided that:

''(A) SPOUSAL TRANSFERS.—The amendments made by paragraph (1) [amending section 1396p of this title] shall apply to transfers occurring after the date of the enactment of this Act [Dec. 19, 1989].

''(B) OTHER AMENDMENTS.—Except as provided in subparagraph (A), the amendments made by this subsection [amending this section and sections 1396p and 1396r–5 of this title] shall apply as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8434(c) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section and section 1396d of this title] shall be effective as if included in the enactment of section 301 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

Amendment by section 202(c)(4) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485 at such earlier effective dates, see section 204(a), (b)(1)(A) of Pub. L. 100–485, set out as a note under section 671 of this title.

Section 303(f) of Pub. L. 100–485, as amended by Pub. L. 101–239, title VI, § 6411(i)(2), Dec. 19, 1989, 103 Stat. 2273; Pub. L. 104–193, title I, § 110(q), Aug. 22, 1996, 110 Stat. 2175, provided that:

''(1) The amendments made by this section [enacting section 1396r–6 of this title, amending this section and section 1396d of this title] (other than subsections (b)(3), (d), and (e) [amending this section and section 602 of this title and provisions formerly set out as a note under section 606 of this title]) shall apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after April 1, 1990 (or, in the case of the Commonwealth of Kentucky, October 1, 1990) (without regard to whether regulations to implement such amendments are promulgated by such date), with respect to families that cease to be eligible for aid under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter] on or after such date.

''(2) The amendment made by subsection (b)(3) [amending section 602 of this title] shall become effective on April 1, 1990, but such amendment shall not apply with respect to families that cease to be eligible for aid under part A of title IV of the Social Security Act before such date.

''(3) The amendment made by subsection (d) [amending this section] shall become effective on the effective date of section 402(a)(43) of the Social Security Act, as inserted by section 403(a) of this Act [the first day of the first calendar quarter to begin one year or more after Oct. 13, 1988, see section 403(b) of Pub. L. 100–485, 102 Stat. 2398].

''(4) The amendment made by subsection (e) [amending provisions formerly set out as a note under section 606 of this title] shall take effect on October 1, 1988.''

Section 401(g) of Pub. L. 100–485, as amended by Pub. L. 103–432, title II, § 234(a), Oct. 31, 1994, 108 Stat. 4466, provided that:

''(1) Except as provided in paragraph (2), and in section 1905(m)(2) of the Social Security Act [section 1396d(m)(2) of this title] (as added by subsection (d)(2) of this section), the amendments made by this section [amending this section and sections 602, 607, and 1396d of this title] shall become effective on October 1, 1990.

''(2) The amendments made by this section shall not become effective with respect to Puerto Rico, American Samoa, Guam, or the Virgin Islands, until the date of the repeal of the limitations contained in section 1108(a) of the Social Security Act [section 1308(a) of this title] on payments to such jurisdictions for purposes of making maintenance payments under parts A and E of title IV of such Act [parts A and E of subchapter IV of this chapter].''

[Section 234(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending section 401(g)(2) of Pub. L. 100–485, set out above] shall take effect as if included in the provision of the Family Support Act of 1988 [Pub. L. 100–485] to which the amendment relates at the time such provision became law.'']

Amendment by section 608(d)(14)(I), (15)(A), (B), (16)(C), (27)(F)–(H), (28) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 204(d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 301(e)(2) of Pub. L. 100–360 effective July 1, 1989, see section 301(e)(3) of Pub. L. 100–360, set out as a note under section 1395v of this title.

Section 301(h) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, §608(d)(14)(K), Oct. 13, 1988, 102 Stat. 2416, provided that:

''(1) The amendments made by this section [amending this section and sections 1395v, 1396b, and 1396d of this title] apply (except as provided in subsections (e) and (f) [set out as notes under section 1395v and 1396b of this title] and under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after January 1, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, with respect to medical assistance for—

''(A) monthly premiums under title XVIII of such Act [subchapter XVIII of this chapter] for months beginning with January 1989, and

''(B) items and services furnished on and after January 1, 1989.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first session of the State legislature that begins after the date of the enactment of this Act [July 1, 1988]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 302(f) of Pub. L. 100–360 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1396b and 1396r–4 of this title] apply (except as provided in this subsection) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1989, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) PAYMENT ADJUSTMENT.—The amendments made by subsection (b)(2) [amending section 1396r–4 of this title] shall take effect on the date of the enactment of this Act [July 1, 1988].

''(3) DELAY FOR STATE LEGISLATION.—In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than subsection (b)(2)), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a regular legislative session of 2 years, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Amendment by section 303(d) of Pub. L. 100–360 effective on and after Apr. 8, 1988, with additional provision for supersedure of certain administrative regulations, see section 303(g)(4) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Amendment by section 303(e)(1), (5) of Pub. L. 100–360 applicable to medical assistance furnished on or after Oct. 1, 1982, see section 303(g)(6) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Subsec. (a)(51)(A), as enacted by section 303(e)(2)–(4) of Pub. L. 100–360, applicable to payments under this subchapter for calendar quarters beginning on or after Sept. 30, 1989, without regard to whether or not final regulations to carry out that paragraph have been promulgated by that date, see section 303(g)(1)(A) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Subsec. (a)(51)(B), as enacted by section 303(e)(2)–(4) of Pub. L. 100–360, applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1988 (except in certain situations requiring State legislative action), without regard to whether or not final regulations to carry out that paragraph have been promulgated by that date, with an exception for resources disposed of before July 1, 1988, see section 303(g)(2)(A), (C), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(5), (7)(B)–(D), (10)(G)(ii), (iv), (17)(B), (*l*)(3)(E), (H), (J), (6)(C), (D), (8)(C), and (n)(2), (4) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Section 4101(a)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section] shall apply to medical assistance furnished on or after July 1, 1988.''

Section 4101(b)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and provisions set out below] shall apply with respect to medical assistance furnished on or after July 1, 1988.''

Amendment by section 4101(c)(2) of Pub. L. 100–203 applicable to medical assistance furnished on or after Oct. 1, 1988, see section 4101(c)(3) of Pub. L. 100–203, set out as a note under section 1396d of this title.

Section 4101(e)(6) of Pub. L. 100–203 provided that:

''(A) The amendment made by paragraph (1) [amending this section] shall become effective on the date of enactment of this Act [Dec. 22, 1987].

''(B) The amendments made by paragraphs (2) and (3) [amending this section] shall be effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].

''(C) The amendment made by paragraph (4) [amending this section] shall apply to elections made on or after the enactment of this Act.

''(D) The amendment made by paragraph (5) [amending this section] shall apply as if included in the enactment of section 9401 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4113(c)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section] shall apply to services furnished on and after July 1, 1988.''

Section 4118(c)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if it were included in section 134 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].''

Section 4118(h)(3), formerly § 4118(h)(2), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(k)(10)(G)(iii), July 1, 1988, 102 Stat. 796, provided that: ''The amendments made by this subsection [amending this section and section 1396b of this title] shall apply to costs incurred after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4118(m)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section and repealing section 1320a–8 of this title] shall apply to audits conducted after the date of the enactment of this Act [Dec. 22, 1987].''

Amendments by sections 4211(b)(1), (h)(1)–(5), 4212(d)(2), (3), (e)(1) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, and except that subsec. (a)(28)(B) of this section as amended by section 4211(b) of Pub. L. 100–203 applicable to calendar quarters beginning more than 6 months after Dec. 22, 1987, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Section 4212(d)(4) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and section 1396b of this title] shall not apply to a State until such date (not earlier than October 1, 1990) as of which the Secretary determines that—

''(A) the State has specified the resident assessment instrument under section 1919(e)(5) of the Social Security Act [section 1396r(e)(5) of this title], and

''(B) the State has begun conducting surveys under section 1919(g)(2) of such Act.''

Amendment by section 4213(b)(1) of Pub. L. 100–203 applicable to payments under this subchapter for calendar quarters beginning on or after Dec. 22, 1987, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(b) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Section 4218(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to certifications or recertifications during the period beginning on July 1, 1988, and ending on October 1, 1990.''

Amendment by section 9115(b) of Pub. L. 100–203 effective July 1, 1988, see section 9115(c) of Pub. L. 100–203, set out as a note under section 1382 of this title.

Section 9119(d)(2) of Pub. L. 100–203, as added by Pub. L. 100–360, title IV, § 411(n)(4), formerly § 411(n)(3), July 1, 1988, 102 Stat. 807, and renumbered by Pub. L. 100–485, title VI, § 608(d)(28), Oct. 13, 1988, 102 Stat. 2423, provided that: ''The amendments made by paragraph (1) [amending this section] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Amendment by sections 5(a) and 8(f) of Pub. L. 100–93, applicable, with certain exception, to payments under subchapter XIX of this chapter for calendar quarters beginning more than thirty days after Aug. 18, 1987, without regard to whether or not final regulations to carry out such amendments have been published by such date, see section 15(c) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

Amendment by section 7 of Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 10(b) of Pub. L. 99–643 provided that:

''(1) Except as provided in paragraph (2), the amendments made by sections 3, 4, 5, 6, and 7 [amending this section and sections 1382, 1382c, 1382h, 1383, and 1396s of this title] shall become effective on July 1, 1987.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the requirements imposed by the amendments made by section 3(b) [amending this section] and section 7 of this Act [amending this section and section 1382h of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirements until 60 days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 10, 1986].''

Section 11005(c)(2) of Pub. L. 99–570 provided that: ''The amendments made by subsection (b) [amending this section] shall become effective on January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9320(h)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9401(f) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4101(b)(2)(C), Dec. 22, 1987, 101 Stat. 1330–141, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396b of this title] shall apply to medical assistance furnished in calendar quarters beginning on or after April 1, 1987.

''(2) Subparagraph (C) of section 1902(*l*)(1) of the Social Security Act [subsec. (*l*)(1)(C) of this section], as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1987.

''(3) An amendment made by this section shall become effective as provided in paragraph (1) or (2) without regard to whether or not final regulations to carry out such amendment have been promulgated by the applicable date.''

Section 9402(c) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to payments to States for calendar quarters beginning on or after July 1, 1987, without re-

gard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9403(h) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and sections 1396b, 1396d, and 1396*o* of this title] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9404(c) of Pub. L. 99–509 provided that:

''(1) The amendments made by this section [amending this section and section 1396d of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9406(c) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396b of this title] shall apply to medical assistance furnished to aliens on or after January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made in subsection (b) [amending this section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9407(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [enacting section 1396r–1 of this title and amending this section and sections 1396b and 1396s of this title] shall apply to ambulatory prenatal care furnished in calendar quarters beginning on or after April 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9408(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall apply to services furnished on or after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9431(c) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9433(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending section 2173 of Pub. L. 97–35, which amended this section] shall apply as though it was included in the enactment of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35).''

Section 9435(f) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1396d of this title and provisions set out as notes under this section and sections 1396d and 1396n of this title] shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Section 9501(d)(2), (3) of Pub. L. 99–272 provided that:

''(2) OPTIONAL SERVICES.—The amendments made by subsection (b) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].

''(3) CONTINUED COVERAGE.—The amendment made by subsection (c) [amending this section] shall apply to medical assistance furnished to a woman on or after the date of the enactment of this Act.''

Section 9503(g) of Pub. L. 99–272 provided that:

''(1) Except as otherwise provided, the amendments made by this section [amending this section and sections 1396b and 1396k of this title and section 1144 of Title 29, Labor, and enacting provisions set out as notes under this section and section 1144 of Title 29] shall apply to calendar quarters beginning on or after the date of the enactment of this Act [Apr. 7, 1986].

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

''(3) No penalty may be applied against any State for a violation of section 1902(a)(25) of the Social Security Act [subsec. (a)(25) of this section] occurring prior to the effective date of the amendments made by this section.

''(4) The amendment made by subsection (c) [enacting provisions set out below] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9505(e) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(d)(1), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendments made by this section [amending this section and sections 1396d and 1396*o* of this title] shall apply to medical assistance provided for hospice care furnished on or after the date of the enactment of this Act [Apr. 7, 1986], without regard to whether or not regulations to carry out the amendments have been promulgated by that date.''

Section 9506(b), (c) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(c), Oct. 21, 1986, 100 Stat. 2070, provided that:

''(b) EFFECTIVE DATE.—The amendment made by subsection (a) [amending this section] shall apply to medical assistance furnished on or after the first day of the second month beginning after the date of the enactment of this Act [Apr. 7, 1986].

''(c) EXCEPTION.—The amendment made by subsection (a) [amending this section] shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.''

Section 9509(b) of Pub. L. 99–272 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and enacting provisions set out below] shall apply to medical assistance furnished on or after October 1, 1985, but only with respect to changes of ownership occurring on or after such date.

''(2) The amendments made by this section shall not apply with respect to a change of ownership pursuant

to an enforceable agreement entered into prior to October 1, 1985.

''(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet the requirements imposed by the amendments made by this section before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Apr. 7, 1986].''

Section 9510(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, § 9435(d)(2), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendment made by this section [amending this section] shall apply with respect to payment for services furnished on or after October 1, 1985, without regard to whether or not regulations to carry out the amendment have been promulgated by that date.''

Section 9529(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to medical assistance furnished on or after the first calendar quarter that begins more than 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

Section 9529(b)(3) of Pub. L. 99–272 provided that: ''This subsection, and the amendments made by this subsection [amending this section and enacting provisions set out below], shall apply to adoption assistance agreements entered into before, on, or after the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by section 12305(b)(3) of Pub. L. 99–272 applicable to medical assistance furnished in or after first calendar quarter beginning more than 90 days after Apr. 7, 1986, see section 12305(c) of Pub. L. 99–272, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2303(g)(1) of Pub. L. 98–369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(1) and (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2314(c)(3) of Pub. L. 98–369 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section] shall apply to medical assistance furnished on or after October 1, 1984.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section [amending this section and section 1395x of this title and enacting provisions set out as a note under section 1395x of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2335(e) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2361(d) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 606 and 1396d of this title] shall apply to calendar quarters beginning on or after October 1, 1984, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984].''

Section 2362(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to children born on or after October 1, 1984.''

Amendment by section 2363(a)(1) of Pub. L. 98–369 applicable to calendar quarters beginning on or after July 18, 1984, except that, in the case of individuals admitted to skilled nursing facilities before that date, the amendment shall not require recertifications sooner or more frequently than were required under the law in effect before that date, see section 2363(c) of Pub. L. 98–369, set out as a note under section 1396b of this title.

Section 2367(c) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396k of this title] shall become effective on October 1, 1984.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984].''

Section 2368(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2651(c) of Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 131(a), (c) of Pub. L. 97–248 effective Oct. 1, 1982, see section 131(d) of Pub. L. 97–248, formerly § 131(c), redesignated Pub. L. 97–448, title III, § 309(a)(8), Jan. 12, 1983, 96 Stat. 2408, set out as an Effective Date note under section 1396*o* of this title.

Amendment by section 132(a), (c) of Pub. L. 97–248 effective Sept. 3, 1982, see section 132(d) of Pub. L. 97–248, set out as an Effective Date note under section 1396p of this title.

Section 134(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1982.''

Amendment by section 136(d) of Pub. L. 97–248 effective Oct. 1, 1982, see section 136(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

Section 137(d) of Pub. L. 97–248 provided that:

''(1) Except as otherwise provided in this section, any amendment to the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35] made by this section [amending this section and sections 1320a–1 and 1396b of this title

and provisions set out as a note under section 603 of this title] shall be effective as if it had been originally included in the provision of the Omnibus Budget Reconciliation Act of 1981 to which such amendment relates.

''(2) Except as otherwise provided in this section, any amendment to the Social Security Act [this chapter] made by the preceding provisions of this section [amending this section and sections 701, 705, 1320a–7a, 1320b–4, 1396b, 1396d, and 1396n of this title] shall be effective as if it had been originally included as a part of that provision of the Social Security Act to which it relates, as such provision of the Social Security Act was amended by the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35].''

Amendment by section 146(a) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2113(*o*) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 1320c, 1320c–1, 1320c–3, 1320c–4, 1320c–7, 1320c–8, 1320c–9, 1320c–11, 1320c–17, 1320c–21, and 1396b of this title and repealing sections 1320c–13 and 1320c–20 of this title] apply to agreements with Professional Standards Review Organizations entered into on or after October 1, 1981.''

Section 2171(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [Aug. 13, 1981].''

Section 2172(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall become effective on the date of the enactment of this Act [Aug. 13, 1981].''

Section 2173(b)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall not apply with respect to services furnished before the date the Secretary of Health and Human Services first promulgates and has in effect final regulations (on an interim or other basis) to carry out section 1902(a)(13)(A) of the Social Security Act [subsec. (a)(13)(A) of this section] (as amended by this subtitle).''

Section 2174(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall apply to services furnished on or after October 1, 1981.''

Section 2175(d)(2) of Pub. L. 97–35 provided that:

''(A) The amendments made by paragraph (1) [amending this section] shall (except as provided under subparagraph (B)) be effective with respect to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1981.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendment made by paragraph (1)(C), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar year beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 13, 1981].''

Section 2178(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall apply with respect to services furnished, under a State plan approved under title XIX of the Social Security Act [this subchapter], on or after October 1, 1981; except that such amendments shall not apply with respect to services furnished by a health maintenance organization under a contract with a State entered into under such title before October 1, 1981 unless the organization requests that such amendments apply and the Secretary of Health and Human Services and the single State agency (administering or supervising the administration of the State plan under such title) agree to such request.''

Section 2181(b) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, §137(a)(4), Sept. 3, 1982, 96 Stat. 376, provided that: ''The amendment made by subsection (a)(1) [amending section 603 of this title] shall apply to reductions for calendar quarters beginning on or after June 30, 1974, and the amendments made by subsection (a)(2) [amending this section] shall take effect on October 1, 1981, except that, in the case of a State plan under title XIX of the Social Security Act [this subchapter] which the Secretary determines requires State legislation in order to incorporate the provisions required to be included by this section into such State plan, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to include the provisions required to be included in such State plan by subsection (a)(2) of this section before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 13, 1981], but the requirements previously set forth in paragraphs (1) through (3) of section 403(g) of the Social Security Act [section 603(g)(1)–(3) of this title] (prior to its repeal by this section) shall apply under title XIX of such Act to such State on and after October 1, 1981, whether or not the provisions required to be included by this section in the State plan under title XIX have been incorporated into such State plan.''

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(9) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 902(b) of Pub. L. 96–499 effective on date on which final regulations to implement the amendment are first issued, see section 902(c) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 914(b)(2) of Pub. L. 96–499, as amended by Pub. L. 97–248, title I, §137(c)(1), Sept. 3, 1982, 96 Stat. 381, provided that:

''(A) The amendments made by paragraph (1) [amending this section] shall (except as provided under subparagraph (B)) apply to cost reporting periods, beginning on or after April 1, 1981, of an entity providing services under a State plan approved under title XIX of the Social Security Act [this subchapter].''

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

Section 918(b)(2) of Pub. L. 96–499 provided that:

''(A) The amendments made by paragraph (1) [enacting this section] shall (except as otherwise provided in subparagraph (B)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act [this subchapter], on and after the first day of the first calendar quarter that begins more than six months after the date of the enactment of this Act [Dec. 5, 1980].

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amend-

ments made by paragraph (1), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

Section 962(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1980.''

Section 965(c) of Pub. L. 96–499 provided that:

''(1) The amendments made by this section [amending this section and section 1396d of this title] shall (except as provided under paragraph (2)) be effective with respect to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning more than one hundred and twenty days after the date of the enactment of this Act [Dec. 5, 1980].

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 14(a)(2) of Pub. L. 95–559 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by paragraph (1) [amending this section] shall take effect one hundred and eighty days after the date of the enactment of this Act [Nov. 1, 1978].

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary determines requires State legislation in order for the plan to meet the requirement added by the amendments made by paragraph (1), such amendments shall not apply with respect to such State plan before ninety days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after the first day of the first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95–210, set out as a note under section 1395cc of this title.

Amendment by section 2(a)(3) of Pub. L. 95–142 applicable with respect to care and services furnished on or after Oct. 25, 1977, see section 2(a)(4) of Pub. L. 95–142, set out as a note under section 1395g of this title.

Section 2(b)(2) of Pub. L. 95–142 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to calendar quarters beginning on and after July 1, 1978, with respect to State plans approved under title XIX of the Social Security Act [this subchapter].''

Amendment by section 3(c)(1) of Pub. L. 95–142 effective Jan. 1, 1978, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Section 7(e)(2) of Pub. L. 95–142 provided that: ''The amendment made by subsection (b) [amending this section] shall become effective on January 1, 1978.''

Section 19(c)(2) of Pub. L. 95–142 provided that:

''(A) The amendments made by subsection (b) [amending this section and section 1395x of this title] shall apply with respect to operations of a hospital, skilled nursing facility, or intermediate care facility, on and after the first day of its first fiscal year which begins after the end of the six-month period beginning on the date a uniform reporting system is established (under section 1121(a) of the Social Security Act) [section 1320a(a) of this title] for that type of health services facility.

''(B) The amendments made by subsection (b) [amending this section and section 1395x of this title] shall apply, with respect to the operation of a health services facility or organization which is neither a hospital, a skilled nursing facility, nor an intermediate care facility, on and after the first day of its first fiscal year which begins after such date as the Secretary of Health, Education, and Welfare [now Health and Human Services] determines to be appropriate for the implementation of the reporting requirement for that type of facility or organization.

''(C) Except as provided in subparagraphs (A) and (B), the amendments made by subsection (b)(2) [amending this section] shall apply, with respect to State plans approved under title XIX of the Social Security Act [this subchapter], on and after October 1, 1977.''

Amendment by section 20(b) of Pub. L. 95–142 effective Oct. 1, 1977, and the Secretary to adjust payments made to States under section 1396b of this title to reflect such amendment, see section 20(c) of Pub. L. 95–142, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94–552 provided that: ''The amendments made by the first section [amending this section and section 1396b of this title] shall take effect as of January 1, 1976.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 111(c) of Pub. L. 94–182 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall (except as otherwise provided for therein) become effective January 1, 1976.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 9(b) of Pub. L. 93–368 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective January 1, 1973.''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 13(d) of Pub. L. 93–233 provided that: ''The amendments made by subsection (a) [amending this section and sections 1396, 1396b, and 1396d of this title] shall be effective with respect to payments under section 1903 of the Social Security Act [section 1396b of this title] for calendar quarters commencing after December 31, 1973.''

Section 18(z–3)(4) of Pub. L. 93–233 provided that: ''The amendments made by subsections (*o*) and (u) [amending this section and section 1396b of this title] shall be effective July 1, 1973''.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 208(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective January 1, 1973 (or earlier if the State plan so provided).''

Section 209(b)(2) of Pub. L. 92–603 provided that: ''The amendment made by this subsection [amending this section] shall become effective on January 1, 1974.''

Section 232(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 705 of this title] shall be effective July 1, 1972 (or earlier if the State plan so provides).''

Amendment by section 236(b) of Pub. L. 92–603 effective Jan. 1, 1973, or earlier if the State plan so provides, see section 236(c) of Pub. L. 92–603, set out as a note under section 1395u of this title.

Section 237(d)(2) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall be effective July 1, 1973.''

Section 239(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this sec-

tion and section 705 of this title] shall be effective January 1, 1973 (or earlier if the State plan so provides).''

Amendment by section 246(a) of Pub. L. 92–603 to be effective July 1, 1973, see section 246(c) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 255(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective July 1, 1973.''

Section 268(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1396g of this title] shall be effective on the date of the enactment of this Act [Oct. 30, 1972].''

Amendment by section 299D(b) of Pub. L. 92–603 effective beginning Jan. 1, 1973, or within 6 months following Oct. 30, 1972, whichever is later, see section 299D(c) of Pub. L. 92–603, set out as a note under section 1395aa of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 4(d) of Pub. L. 92–223, as amended by section 292 of Pub. L. 92–603, provided that: ''The amendments made by this section [amending this section and section 1396d of this title and repealing section 1320a of this title] shall become effective January 1, 1972; except that the repeal made by subsection (c) [repealing section 1320a of this title], shall not become effective in the case of any State, which on January 1, 1972 did not have in effect a State plan approved under title XIX of the Social Security Act [this subchapter], until the first day of the first month (occurring after such date) that such State does have in effect a State plan approved under such title [this subchapter].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 210(a)(6) of Pub. L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub. L. 90–248, set out as a note under section 302 of this title.

Section 223(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1967.''

Section 224(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after December 31, 1967.''

Section 224(c)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1970.''

Section 227(b) of Pub. L. 90–248, as amended by section 271A of Pub. L. 92–603, effective from and after July 1, 1972, provided that: ''The amendments made by this section [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1969; except that such amendments shall apply in the case of Puerto Rico, the Virgin Islands, and Guam only with respect to calendar quarters beginning after June 30, 1975.''

Section 229(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to legal liabilities of third parties arising after March 31, 1968.''

Section 234(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) of this section [amending this section] (unless otherwise specified in the body of such amendments) shall take effect on January 1, 1969.''

Section 235(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective in the case of calendar quarters beginning after December 31, 1967.''

Enactment by section 236(a) of Pub. L. 90–248 effective July 1, 1970, except as otherwise specified in the text thereof, see section 236(c) of Pub. L. 90–248, set out as an Effective Date note under section 1396g of this title.

Section 237 of Pub. L. 90–248 provided that the amendment made by that section is effective Apr. 1, 1968.

Section 238 of Pub. L. 90–248 provided that the amendment made by that section is effective July 1, 1969.

CONSTRUCTION OF 1999 AMENDMENT

Pub. L. 106–169, title I, §121(c), Dec. 14, 1999, 113 Stat. 1830, provided that: ''If the Ticket to Work and Work Incentives Improvement Act of 1999 [Pub. L. 106–170] is enacted (whether before, on, or after the date of the enactment of this Act)—

''(1) the amendments made by that Act [see Tables for classification] shall be executed as if this Act [see Short Title of 1999 Amendment note under section 1305 of this title] had been enacted after the enactment of such other Act;

''(2) with respect to subsection (a)(1)(A) of this section [amending this section], any reference to subclause (XIII) is deemed a reference to subclause (XV);

''(3) with respect to subsection (a)(1)(B) of this section [amending this section], any reference to subclause (XIV) is deemed a reference to subclause (XVI);

''(4) [Amended this section.]

''(5) [Amended section 1396d of this title.]''

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Health and Human Services under subsec. (a)(4)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

DEMONSTRATION PROJECTS REGARDING HOME AND COMMUNITY-BASED ALTERNATIVES TO PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN

Pub. L. 109–171, title VI, §6063, Feb. 8, 2006, 120 Stat. 99, provided that:

''(a) IN GENERAL.—The Secretary is authorized to conduct, during each of fiscal years 2007 through 2011, demonstration projects (each in the section referred to as a 'demonstration project') in accordance with this section under which up to 10 States (as defined for purposes of title XIX of the Social Security Act [this subchapter]) are awarded grants, on a competitive basis, to test the effectiveness in improving or maintaining a child's functional level and cost-effectiveness of providing coverage of home and community-based alternatives to psychiatric residential treatment for children enrolled in the Medicaid program under title XIX of such Act.

''(b) APPLICATION OF TERMS AND CONDITIONS.—

''(1) IN GENERAL.—Subject to the provisions of this section, for the purposes of the demonstration projects, and only with respect to children enrolled under such demonstration projects, a psychiatric residential treatment facility (as defined in section 483.352 of title 42 of the Code of Federal Regulations) shall be deemed to be a facility specified in section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), and to be included in each reference in such section 1915(c) to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded.

''(2) STATE OPTION TO ASSURE CONTINUITY OF MEDICAID COVERAGE.—Upon the termination of a demonstration project under this section, the State that conducted the project may elect, only with respect to a child who is enrolled in such project on the termination date, to continue to provide medical assistance for coverage of home and community-based alternatives to psychiatric residential treatment for the child in accordance with section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), as modified through the application of paragraph (1). Expenditures incurred for providing such medical assistance shall be treated as a home and community-based waiver program under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) for purposes of payment under section 1903 of such Act (42 U.S.C. 1396b).

''(c) TERMS OF DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—Except as otherwise provided in this section, a demonstration project shall be subject to the same terms and conditions as apply to a waiver under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), including the waiver of certain requirements under the first sentence of paragraph (3) of such section but not applying the second sentence of such paragraph.

''(2) BUDGET NEUTRALITY.—In conducting the demonstration projects under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) do not exceed the amount which the Secretary estimates would have been paid under that title if the demonstration projects under this section had not been implemented.

''(3) EVALUATION.—The application for a demonstration project shall include an assurance to provide for such interim and final evaluations of the demonstration project by independent third parties, and for such interim and final reports to the Secretary, as the Secretary may require.

''(d) PAYMENTS TO STATES; LIMITATIONS TO SCOPE AND FUNDING.—

''(1) IN GENERAL.—Subject to paragraph (2), a demonstration project approved by the Secretary under this section shall be treated as a home and community-based waiver program under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) for purposes of payment under section 1903 of such Act (42 U.S.C. 1396b).

''(2) LIMITATION.—In no case may the amount of payments made by the Secretary under this section for State demonstration projects for a fiscal year exceed the amount available under subsection (f)(2)(A) for such fiscal year.

''(e) SECRETARY'S EVALUATION AND REPORT.—The Secretary shall conduct an interim and final evaluation of State demonstration projects under this section and shall report to the President and Congress the conclusions of such evaluations within 12 months of completing such evaluations.

''(f) FUNDING.—

''(1) IN GENERAL.—For the purpose of carrying out this section, there are appropriated, from amounts in the Treasury not otherwise appropriated, for fiscal years 2007 through 2011, a total of $218,000,000, of which—

''(A) the amount specified in paragraph (2) shall be available for each of fiscal years 2007 through 2011; and

''(B) a total of $1,000,000 shall be available to the Secretary for the evaluations and report under subsection (e).

''(2) FISCAL YEAR LIMIT.—

''(A) IN GENERAL.—For purposes of paragraph (1), the amount specified in this paragraph for a fiscal year is the amount specified in subparagraph (B) for the fiscal year plus the difference, if any, between the total amount available under this paragraph for prior fiscal years and the total amount previously expended under paragraph (1)(A) for such prior fiscal years.

''(B) FISCAL YEAR AMOUNTS.—The amount specified in this subparagraph for—

''(i) fiscal year 2007 is $21,000,000;

''(ii) fiscal year 2008 is $37,000,000;

''(iii) fiscal year 2009 is $49,000,000;

''(iv) fiscal year 2010 is $53,000,000; and

''(v) fiscal year 2011 is $57,000,000.''

MONEY FOLLOWS THE PERSON REBALANCING DEMONSTRATION

Pub. L. 109–171, title VI, § 6071, Feb. 8, 2006, 120 Stat. 102, provided that:

''(a) PROGRAM PURPOSE AND AUTHORITY.—The Secretary is authorized to award, on a competitive basis, grants to States in accordance with this section for demonstration projects (each in this section referred to as an 'MFP demonstration project') designed to achieve the following objectives with respect to institutional and home and community-based long-term care services under State Medicaid programs:

''(1) REBALANCING.—Increase the use of home and community-based, rather than institutional, long-term care services.

''(2) MONEY FOLLOWS THE PERSON.—Eliminate barriers or mechanisms, whether in the State law, the State Medicaid plan, the State budget, or otherwise, that prevent or restrict the flexible use of Medicaid funds to enable Medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice.

''(3) CONTINUITY OF SERVICE.—Increase the ability of the State Medicaid program to assure continued provision of home and community-based long-term care services to eligible individuals who choose to transition from an institutional to a community setting.

''(4) QUALITY ASSURANCE AND QUALITY IMPROVEMENT.—Ensure that procedures are in place (at least comparable to those required under the qualified HCB program) to provide quality assurance for eligible individuals receiving Medicaid home and community-based long-term care services and to provide for continuous quality improvement in such services.

''(b) DEFINITIONS.—For purposes of this section:

''(1) HOME AND COMMUNITY-BASED LONG-TERM CARE SERVICES.—The term 'home and community-based long-term care services' means, with respect to a State Medicaid program, home and community-based services (including home health and personal care services) that are provided under the State's qualified HCB program or that could be provided under such a program but are otherwise provided under the Medicaid program.

''(2) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means, with respect to an MFP demonstration project of a State, an individual in the State—

''(A) who, immediately before beginning participation in the MFP demonstration project—

''(i) resides (and has resided, for a period of not less than 6 months or for such longer minimum period, not to exceed 2 years, as may be specified by the State) in an inpatient facility;

''(ii) is receiving Medicaid benefits for inpatient services furnished by such inpatient facility; and

''(iii) with respect to whom a determination has been made that, but for the provision of home and community-based long-term care services, the individual would continue to require the level of care provided in an inpatient facility and, in any case in which the State applies a more stringent level of care standard as a result of implementing the State plan option permitted under section 1915(i) of the Social Security Act [section 1396n(i) of this title], the individual must continue to require at least the level of care which had resulted in admission to the institution; and

''(B) who resides in a qualified residence beginning on the initial date of participation in the demonstration project.

''(3) INPATIENT FACILITY.—The term 'inpatient facility' means a hospital, nursing facility, or intermediate care facility for the mentally retarded. Such term includes an institution for mental diseases, but only, with respect to a State, to the extent medical assistance is available under the State Medicaid plan for services provided by such institution.

''(4) MEDICAID.—The term 'Medicaid' means, with respect to a State, the State program under title XIX of the Social Security Act [this subchapter] (including any waiver or demonstration under such title or under section 1115 of such Act [section 1315 of this title] relating to such title).

''(5) QUALIFIED HCB PROGRAM.—The term 'qualified HCB program' means a program providing home and community-based long-term care services operating under Medicaid, whether or not operating under waiver authority.

''(6) QUALIFIED RESIDENCE.—The term 'qualified residence' means, with respect to an eligible individual—

''(A) a home owned or leased by the individual or the individual's family member;

''(B) an apartment with an individual lease, with lockable access and egress, and which includes living, sleeping, bathing, and cooking areas over which the individual or the individual's family has domain and control; and

''(C) a residence, in a community-based residential setting, in which no more than 4 unrelated individuals reside.

''(7) QUALIFIED EXPENDITURES.—The term 'qualified expenditures' means expenditures by the State under its MFP demonstration project for home and community-based long-term care services for an eligible individual participating in the MFP demonstration project, but only with respect to services furnished during the 12-month period beginning on the date the individual is discharged from an inpatient facility referred to in paragraph (2)(A)(i).

''(8) SELF-DIRECTED SERVICES.—The term 'self-directed' means, with respect to home and community-based long-term care services for an eligible individual, such services for the individual which are planned and purchased under the direction and control of such individual or the individual's authorized representative (as defined by the Secretary), including the amount, duration, scope, provider, and location of such services, under the State Medicaid program consistent with the following requirements:

''(A) ASSESSMENT.—There is an assessment of the needs, capabilities, and preferences of the individual with respect to such services.

''(B) SERVICE PLAN.—Based on such assessment, there is developed jointly with such individual or the individual's authorized representative a plan for such services for such individual that is approved by the State and that—

''(i) specifies those services, if any, which the individual or the individual's authorized representative would be responsible for directing;

''(ii) identifies the methods by which the individual or the individual's authorized representative or an agency designated by an individual or representative will select, manage, and dismiss providers of such services;

''(iii) specifies the role of family members and others whose participation is sought by the individual or the individual's authorized representative with respect to such services;

''(iv) is developed through a person-centered process that—

''(I) is directed by the individual or the individual's authorized representative;

''(II) builds upon the individual's capacity to engage in activities that promote community life and that respects the individual's preferences, choices, and abilities; and

''(III) involves families, friends, and professionals as desired or required by the individual or the individual's authorized representative;

''(v) includes appropriate risk management techniques that recognize the roles and sharing of responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan based upon the resources and capabilities of the individual or the individual's authorized representative; and

''(vi) may include an individualized budget which identifies the dollar value of the services and supports under the control and direction of the individual or the individual's authorized representative.

''(C) BUDGET PROCESS.—With respect to individualized budgets described in subparagraph (B)(vi), the State application under subsection (c)—

''(i) describes the method for calculating the dollar values in such budgets based on reliable costs and service utilization;

''(ii) defines a process for making adjustments in such dollar values to reflect changes in individual assessments and service plans; and

''(iii) provides a procedure to evaluate expenditures under such budgets.

''(9) STATE.—The term 'State' has the meaning given such term for purposes of title XIX of the Social Security Act [this subchapter].

''(c) STATE APPLICATION.—A State seeking approval of an MFP demonstration project shall submit to the Secretary, at such time and in such format as the Secretary requires, an application meeting the following requirements and containing such additional information, provisions, and assurances, as the Secretary may require:

''(1) ASSURANCE OF A PUBLIC DEVELOPMENT PROCESS.—The application contains an assurance that the State has engaged, and will continue to engage, in a public process for the design, development, and evaluation of the MFP demonstration project that allows for input from eligible individuals, the families of such individuals, authorized representatives of such individuals, providers, and other interested parties.

''(2) OPERATION IN CONNECTION WITH QUALIFIED HCB PROGRAM TO ASSURE CONTINUITY OF SERVICES.—The State will conduct the MFP demonstration project for eligible individuals in conjunction with the operation of a qualified HCB program that is in operation (or approved) in the State for such individuals in a manner that assures continuity of Medicaid coverage for such individuals so long as such individuals continue to be eligible for medical assistance.

''(3) DEMONSTRATION PROJECT PERIOD.—The application shall specify the period of the MFP demonstration project, which shall include at least 2 consecutive fiscal years in the 5-fiscal-year period beginning with fiscal year 2007.

''(4) SERVICE AREA.—The application shall specify the service area or areas of the MFP demonstration project, which may be a statewide area or 1 or more geographic areas of the State.

''(5) TARGETED GROUPS AND NUMBERS OF INDIVIDUALS SERVED.—The application shall specify—

''(A) the target groups of eligible individuals to be assisted to transition from an inpatient facility to a qualified residence during each fiscal year of the MFP demonstration project;

''(B) the projected numbers of eligible individuals in each targeted group of eligible individuals to be so assisted during each such year; and

''(C) the estimated total annual qualified expenditures for each fiscal year of the MFP demonstration project.

''(6) INDIVIDUAL CHOICE, CONTINUITY OF CARE.—The application shall contain assurances that—

''(A) each eligible individual or the individual's authorized representative will be provided the opportunity to make an informed choice regarding whether to participate in the MFP demonstration project;

''(B) each eligible individual or the individual's authorized representative will choose the qualified residence in which the individual will reside and the setting in which the individual will receive home and community-based long-term care services;

''(C) the State will continue to make available, so long as the State operates its qualified HCB program consistent with applicable requirements, home and community-based long-term care services to each individual who completes participation in the MFP demonstration project for as long as the individual remains eligible for medical assistance for such services under such qualified HCB program (including meeting a requirement relating to requiring a level of care provided in an inpatient facility and continuing to require such services, and, if the State applies a more stringent level of care standard as a result of implementing the State plan option permitted under section 1915(i) of the Social

Security Act [section 1396n(i) of this title], meeting the requirement for at least the level of care which had resulted in the individual's admission to the institution).

''(7) REBALANCING.—The application shall—

''(A) provide such information as the Secretary may require concerning the dollar amounts of State Medicaid expenditures for the fiscal year, immediately preceding the first fiscal year of the State's MFP demonstration project, for long-term care services and the percentage of such expenditures that were for institutional long-term care services or were for home and community-based long-term care services;

''(B)(i) specify the methods to be used by the State to increase, for each fiscal year during the MFP demonstration project, the dollar amount of such total expenditures for home and community-based long-term care services and the percentage of such total expenditures for long-term care services that are for home and community-based long-term care services; and

''(ii) describe the extent to which the MFP demonstration project will contribute to accomplishment of objectives described in subsection (a).

''(8) MONEY FOLLOWS THE PERSON.—The application shall describe the methods to be used by the State to eliminate any legal, budgetary, or other barriers to flexibility in the availability of Medicaid funds to pay for long-term care services for eligible individuals participating in the project in the appropriate settings of their choice, including costs to transition from an institutional setting to a qualified residence.

''(9) MAINTENANCE OF EFFORT AND COST-EFFECTIVENESS.—The application shall contain or be accompanied by such information and assurances as may be required to satisfy the Secretary that—

''(A) total expenditures under the State Medicaid program for home and community-based long-term care services will not be less for any fiscal year during the MFP demonstration project than for the greater of such expenditures for—

''(i) fiscal year 2005; or

''(ii) any succeeding fiscal year before the first year of the MFP demonstration project; and

''(B) in the case of a qualified HCB program operating under a waiver under subsection (c) or (d) of section 1915 of the Social Security Act (42 U.S.C. 1396n), but for the amount awarded under a grant under this section, the State program would continue to meet the cost-effectiveness requirements of subsection (c)(2)(D) of such section or comparable requirements under subsection (d)(5) of such section, respectively.

''(10) WAIVER REQUESTS.—The application shall contain or be accompanied by requests for any modification or adjustment of waivers of Medicaid requirements described in subsection (d)(3), including adjustments to the maximum numbers of individuals included and package of benefits, including one-time transitional services, provided.

''(11) QUALITY ASSURANCE AND QUALITY IMPROVEMENT.—The application shall include—

''(A) a plan satisfactory to the Secretary for quality assurance and quality improvement for home and community-based long-term care services under the State Medicaid program, including a plan to assure the health and welfare of individuals participating in the MFP demonstration project; and

''(B) an assurance that the State will cooperate in carrying out activities under subsection (f) to develop and implement continuous quality assurance and quality improvement systems for home and community-based long-term care services.

''(12) OPTIONAL PROGRAM FOR SELF-DIRECTED SERVICES.—If the State elects to provide for any home and community-based long-term care services as self-directed services (as defined in subsection (b)(8)) under the MFP demonstration project, the application shall provide the following:

''(A) MEETING REQUIREMENTS.—A description of how the project will meet the applicable requirements of such subsection for the provision of self-directed services.

''(B) VOLUNTARY ELECTION.—A description of how eligible individuals will be provided with the opportunity to make an informed election to receive self-directed services under the project and after the end of the project.

''(C) STATE SUPPORT IN SERVICE PLAN DEVELOPMENT.—Satisfactory assurances that the State will provide support to eligible individuals who self-direct in developing and implementing their service plans.

''(D) OVERSIGHT OF RECEIPT OF SERVICES.—Satisfactory assurances that the State will provide oversight of eligible individual's receipt of such self-directed services, including steps to assure the quality of services provided and that the provision of such services are consistent with the service plan under such subsection.

Nothing in this section shall be construed as requiring a State to make an election under the project to provide for home and community-based long-term care services as self-directed services, or as requiring an individual to elect to receive self-directed services under the project.

''(13) REPORTS AND EVALUATION.—The application shall provide that—

''(A) the State will furnish to the Secretary such reports concerning the MFP demonstration project, on such timetable, in such uniform format, and containing such information as the Secretary may require, as will allow for reliable comparisons of MFP demonstration projects across States; and

''(B) the State will participate in and cooperate with the evaluation of the MFP demonstration project.

''(d) SECRETARY'S AWARD OF COMPETITIVE GRANTS.—

''(1) IN GENERAL.—The Secretary shall award grants under this section on a competitive basis to States selected from among those with applications meeting the requirements of subsection (c), in accordance with the provisions of this subsection.

''(2) SELECTION AND MODIFICATION OF STATE APPLICATIONS.—In selecting State applications for the awarding of such a grant, the Secretary—

''(A) shall take into consideration the manner in which, and extent to which, the State proposes to achieve the objectives specified in subsection (a);

''(B) shall seek to achieve an appropriate national balance in the numbers of eligible individuals, within different target groups of eligible individuals, who are assisted to transition to qualified residences under MFP demonstration projects, and in the geographic distribution of States operating MFP demonstration projects;

''(C) shall give preference to State applications proposing—

''(i) to provide transition assistance to eligible individuals within multiple target groups; and

''(ii) to provide eligible individuals with the opportunity to receive home and community-based long-term care services as self-directed services, as defined in subsection (b)(8); and

''(D) shall take such objectives into consideration in setting the annual amounts of State grant awards under this section.

''(3) WAIVER AUTHORITY.—The Secretary is authorized to waive the following provisions of title XIX of the Social Security Act [this subchapter], to the extent necessary to enable a State initiative to meet the requirements and accomplish the purposes of this section:

''(A) STATEWIDENESS.—Section 1902(a)(1) [subsec. (a)(1) of this section], in order to permit implementation of a State initiative in a selected area or areas of the State.

''(B) COMPARABILITY.—Section 1902(a)(10)(B), in order to permit a State initiative to assist a se-

lected category or categories of individuals described in subsection (b)(2)(A).

''(C) INCOME AND RESOURCES ELIGIBILITY.—Section 1902(a)(10)(C)(i)(III), in order to permit a State to apply institutional eligibility rules to individuals transitioning to community-based care.

''(D) PROVIDER AGREEMENTS.—Section 1902(a)(27), in order to permit a State to implement self-directed services in a cost-effective manner.

''(4) CONDITIONAL APPROVAL OF OUTYEAR GRANT.—In awarding grants under this section, the Secretary shall condition the grant for the second and any subsequent fiscal years of the grant period on the following:

''(A) NUMERICAL BENCHMARKS.—The State must demonstrate to the satisfaction of the Secretary that it is meeting numerical benchmarks specified in the grant agreement for—

''(i) increasing State Medicaid support for home and community-based long-term care services under subsection (c)(5); and

''(ii) numbers of eligible individuals assisted to transition to qualified residences.

''(B) QUALITY OF CARE.—The State must demonstrate to the satisfaction of the Secretary that it is meeting the requirements under subsection (c)(11) to assure the health and welfare of MFP demonstration project participants.

''(e) PAYMENTS TO STATES; CARRYOVER OF UNUSED GRANT AMOUNTS.—

''(1) PAYMENTS.—For each calendar quarter in a fiscal year during the period a State is awarded a grant under subsection (d), the Secretary shall pay to the State from its grant award for such fiscal year an amount equal to the lesser of—

''(A) the MFP-enhanced FMAP (as defined in paragraph (5)) of the amount of qualified expenditures made during such quarter; or

''(B) the total amount remaining in such grant award for such fiscal year (taking into account the application of paragraph (2)).

''(2) CARRYOVER OF UNUSED AMOUNTS.—Any portion of a State grant award for a fiscal year under this section remaining at the end of such fiscal year shall remain available to the State for the next 4 fiscal years, subject to paragraph (3).

''(3) REAWARDING OF CERTAIN UNUSED AMOUNTS.—In the case of a State that the Secretary determines pursuant to subsection (d)(4) has failed to meet the conditions for continuation of a MFP demonstration project under this section in a succeeding year or years, the Secretary shall rescind the grant awards for such succeeding year or years, together with any unspent portion of an award for prior years, and shall add such amounts to the appropriation for the immediately succeeding fiscal year for grants under this section.

''(4) PREVENTING DUPLICATION OF PAYMENT.—The payment under a MFP demonstration project with respect to qualified expenditures shall be in lieu of any payment with respect to such expenditures that could otherwise be paid under Medicaid, including under section 1903(a) of the Social Security Act [section 1396b(a) of this title]. Nothing in the previous sentence shall be construed as preventing the payment under Medicaid for such expenditures in a grant year after amounts available to pay for such expenditures under the MFP demonstration project have been exhausted.

''(5) MFP-ENHANCED FMAP.—For purposes of paragraph (1)(A), the 'MFP-enhanced FMAP', for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b) [section 1396d(b) of this title]) for the State increased by a number of percentage points equal to 50 percent of the number of percentage points by which (A) such Federal medical assistance percentage for the State, is less than (B) 100 percent; but in no case shall the MFP-enhanced FMAP for a State exceed 90 percent.

''(f) QUALITY ASSURANCE AND IMPROVEMENT; TECHNICAL ASSISTANCE; OVERSIGHT.—

''(1) IN GENERAL.—The Secretary, either directly or by grant or contract, shall provide for technical assistance to, and oversight of, States for purposes of upgrading quality assurance and quality improvement systems under Medicaid home and community-based waivers, including—

''(A) dissemination of information on promising practices;

''(B) guidance on system design elements addressing the unique needs of participating beneficiaries;

''(C) ongoing consultation on quality, including assistance in developing necessary tools, resources, and monitoring systems; and

''(D) guidance on remedying programmatic and systemic problems.

''(2) FUNDING.—From the amounts appropriated under subsection (h)(1) for the portion of fiscal year 2007 that begins on January 1, 2007, and ends on September 30, 2007, and for fiscal year 2008, not more than $2,400,000 shall be available to the Secretary to carry out this subsection during the period that begins on January 1, 2007, and ends on September 30, 2011.

''(g) RESEARCH AND EVALUATION.—

''(1) IN GENERAL.—The Secretary, directly or through grant or contract, shall provide for research on, and a national evaluation of, the program under this section, including assistance to the Secretary in preparing the final report required under paragraph (2). The evaluation shall include an analysis of projected and actual savings related to the transition of individuals to qualified residences in each State conducting an MFP demonstration project.

''(2) FINAL REPORT.—The Secretary shall make a final report to the President and Congress, not later than September 30, 2011, reflecting the evaluation described in paragraph (1) and providing findings and conclusions on the conduct and effectiveness of MFP demonstration projects.

''(3) FUNDING.—From the amounts appropriated under subsection (h)(1) for each of fiscal years 2008 through 2011, not more than $1,100,000 per year shall be available to the Secretary to carry out this subsection.

''(h) APPROPRIATIONS.—

''(1) IN GENERAL.—There are appropriated, from any funds in the Treasury not otherwise appropriated, for grants to carry out this section—

''(A) $250,000,000 for the portion of fiscal year 2007 beginning on January 1, 2007, and ending on September 30, 2007;

''(B) $300,000,000 for fiscal year 2008;

''(C) $350,000,000 for fiscal year 2009;

''(D) $400,000,000 for fiscal year 2010; and

''(E) $450,000,000 for fiscal year 2011.

''(2) AVAILABILITY.—Amounts made available under paragraph (1) for a fiscal year shall remain available for the awarding of grants to States by not later than September 30, 2011.''

STUDY REGARDING BARRIERS TO PARTICIPATION OF FARMWORKERS IN HEALTH PROGRAMS

Pub. L. 107–251, title IV, § 404, Oct. 26, 2002, 116 Stat. 1662, as amended by Pub. L. 108–163, § 2(n)(1), Dec. 6, 2003, 117 Stat. 2023, provided that:

''(a) IN GENERAL.—The Secretary shall conduct a study of the problems experienced by farmworkers (including their families) under Medicaid and SCHIP. Specifically, the Secretary shall examine the following:

''(1) BARRIERS TO ENROLLMENT.—Barriers to their enrollment, including a lack of outreach and outstationed eligibility workers, complicated applications and eligibility determination procedures, and linguistic and cultural barriers.

''(2) LACK OF PORTABILITY.—The lack of portability of Medicaid and SCHIP coverage for farmworkers who are determined eligible in one State but who move to other States on a seasonal or other periodic basis.

''(3) POSSIBLE SOLUTIONS.—The development of possible solutions to increase enrollment and access to

benefits for farmworkers, because, in part, of the problems identified in paragraphs (1) and (2), and the associated costs of each of the possible solutions described in subsection (b).

''(b) POSSIBLE SOLUTIONS.—Possible solutions to be examined shall include each of the following:

''(1) INTERSTATE COMPACTS.—The use of interstate compacts among States that establish portability and reciprocity for eligibility for farmworkers under the Medicaid and SCHIP and potential financial incentives for States to enter into such compacts.

''(2) DEMONSTRATION PROJECTS.—The use of multistate demonstration waiver projects under section 1115 of the Social Security Act (42 U.S.C. 1315) to develop comprehensive migrant coverage demonstration projects.

''(3) USE OF CURRENT LAW FLEXIBILITY.—Use of current law Medicaid and SCHIP State plan provisions relating to coverage of residents and out-of-State coverage.

''(4) NATIONAL MIGRANT FAMILY COVERAGE.—The development of programs of national migrant family coverage in which States could participate.

''(5) PUBLIC-PRIVATE PARTNERSHIPS.—The provision of incentives for development of public-private partnerships to develop private coverage alternatives for farmworkers.

''(6) OTHER POSSIBLE SOLUTIONS.—Such other solutions as the Secretary deems appropriate.

''(c) CONSULTATIONS.—In conducting the study, the Secretary shall consult with the following:

''(1) Farmworkers affected by the lack of portability of coverage under the Medicaid program or the State children's health insurance program (under titles XIX and XXI of the Social Security Act [this subchapter and subchapter XXI of this chapter]).

''(2) Individuals with expertise in providing health care to farmworkers, including designees of national and local organizations representing migrant health centers and other providers.

''(3) Resources with expertise in health care financing.

''(4) Representatives of foundations and other nonprofit entities that have conducted or supported research on farmworker health care financial issues.

''(5) Representatives of Federal agencies which are involved in the provision or financing of health care to farmworkers, including the Centers for Medicare & Medicaid Services and the Health Resources and Services Administration.

''(6) Representatives of State governments.

''(7) Representatives from the farm and agricultural industries.

''(8) Designees of labor organizations representing farmworkers.

''(d) DEFINITIONS.—For purposes of this section:

''(1) FARMWORKER.—The term 'farmworker' means a migratory agricultural worker or seasonal agricultural worker, as such terms are defined in section 330(g)(3) of the Public Health Service Act (42 U.S.C. 254c(g)(3) [254b(g)(3)]), and includes a family member of such a worker.

''(2) MEDICAID.—The term 'Medicaid' means the program under title XIX of the Social Security Act [this subchapter].

''(3) SCHIP.—The term 'SCHIP' means the State children's health insurance program under title XXI of the Social Security Act [subchapter XXI of this chapter].

''(e) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 26, 2002], the Secretary shall transmit a report to the President and the Congress on the study conducted under this section. The report shall contain a detailed statement of findings and conclusions of the study, together with its recommendations for such legislation and administrative actions as the Secretary considers appropriate.''

STUDY ON LIMITATION ON STATE PAYMENT FOR MEDICARE COST-SHARING AFFECTING ACCESS TO SERVICES FOR QUALIFIED MEDICARE BENEFICIARIES

Pub. L. 106–554, § 1(a)(6) [title I, § 125], Dec. 21, 2000, 114 Stat. 2763, 2763A–479, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine if access to certain services (including mental health services) for qualified medicare beneficiaries has been affected by limitations on a State's payment for medicare cost-sharing for such beneficiaries under section 1902(n) of the Social Security Act (42 U.S.C. 1396a(n)). As part of such study, the Secretary shall analyze the effect of such payment limitation on providers who serve a disproportionate share of such beneficiaries.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary shall submit to Congress a report on the study under subsection (a). The report shall include recommendations regarding any changes that should be made to the State payment limits under section 1902(n) for qualified medicare beneficiaries to ensure appropriate access to services.''

GAO STUDY OF FUTURE REBASING

Pub. L. 106–554, § 1(a)(6) [title VII, § 702(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, provided that: ''The Comptroller General of the United States shall provide for a study on the need for, and how to, rebase or refine costs for making payment under the medicaid program for services provided by Federally-qualified health centers and rural health clinics (as provided under the amendments made by this section [amending this section and sections 1396b and 1396n of this title and repealing provisions set out as a note under this section]). The Comptroller General shall provide for submittal of a report on such study to Congress by not later than 4 years after the date of the enactment of this Act [Dec. 21, 2000].''

GAO REPORTS

Pub. L. 106–170, title II, § 201(c), Dec. 17, 1999, 113 Stat. 1893, provided that: ''Not later than 3 years after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall submit a report to the Congress regarding the amendments made by this section [amending this section and sections 1396b, 1396d, and 1396*o* of this title] that examines—

''(1) the extent to which higher health care costs for individuals with disabilities at higher income levels deter employment or progress in employment;

''(2) whether such individuals have health insurance coverage or could benefit from the State option established under such amendments to provide a medicaid buy-in; and

''(3) how the States are exercising such option, including—

''(A) how such States are exercising the flexibility afforded them with regard to income disregards;

''(B) what income and premium levels have been set;

''(C) the degree to which States are subsidizing premiums above the dollar amount specified in section 1916(g)(2) of the Social Security Act (42 U.S.C. 1396*o*(g)(2)); and

''(D) the extent to which there exists any crowd-out effect.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 603(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–395, provided that: ''Not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999], the Comptroller General of the United States shall submit a report to Congress that evaluates the effect on Federally-qualified health centers and rural health clinics and on the populations served by such centers and clinics of the phase-out and

elimination of the reasonable cost basis for payment for Federally-qualified health center services and rural health clinic services provided under section 1902(a)(13)(C)(i) of the Social Security Act (42 U.S.C. 1396a(a)(13)(C)(i)), as amended by section 4712 of BBA (111 Stat. 508) [the Balanced Budget Act of 1997, Pub. L. 105–33] and subsection (a) of this section. Such report shall include an analysis of the amount, method, and impact of payments made by States that have provided for payment under title XIX of such Act [this subchapter] for such services on a basis other than payment of costs which are reasonable and related to the cost of furnishing such services, together with any recommendations for legislation, including whether a new payment system is needed, that the Comptroller General determines to be appropriate as a result of the study.''

DEMONSTRATION OF COVERAGE UNDER THE MEDICAID PROGRAM OF WORKERS WITH POTENTIALLY SEVERE DISABILITIES

Pub. L. 106–170, title II, § 204, Dec. 17, 1999, 113 Stat. 1897, provided that:

''(a) STATE APPLICATION.—A State may apply to the Secretary of Health and Human Services (in this section referred to as the 'Secretary') for approval of a demonstration project (in this section referred to as a 'demonstration project') under which up to a specified maximum number of individuals who are workers with a potentially severe disability (as defined in subsection (b)(1)) are provided medical assistance equal to—

''(1) that provided under section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) to individuals described in section 1902(a)(10)(A)(ii)(XIII) of that Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XIII)); or

''(2) in the case of a State that has not elected to provide medical assistance under that section to such individuals, such medical assistance as the Secretary determines is an appropriate equivalent to the medical assistance described in paragraph (1).

''(b) WORKER WITH A POTENTIALLY SEVERE DISABILITY DEFINED.—For purposes of this section—

''(1) IN GENERAL.—The term 'worker with a potentially severe disability' means, with respect to a demonstration project, an individual who—

''(A) is at least 16, but less than 65, years of age;

''(B) has a specific physical or mental impairment that, as defined by the State under the demonstration project, is reasonably expected, but for the receipt of items and services described in section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)), to become blind or disabled (as defined under section 1614(a) of the Social Security Act (42 U.S.C. 1382c(a))); and

''(C) is employed (as defined in paragraph (2)).

''(2) DEFINITION OF EMPLOYED.—An individual is considered to be 'employed' if the individual—

''(A) is earning at least the applicable minimum wage requirement under section 6 of the Fair Labor Standards Act (29 U.S.C. 206) and working at least 40 hours per month; or

''(B) is engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined under the demonstration project and approved by the Secretary.

''(c) APPROVAL OF DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—Subject to paragraph (3), the Secretary shall approve applications under subsection (a) that meet the requirements of paragraph (2) and such additional terms and conditions as the Secretary may require. The Secretary may waive the requirement of section 1902(a)(1) of the Social Security Act (42 U.S.C. 1396a(a)(1)) to allow for sub-State demonstrations.

''(2) TERMS AND CONDITIONS OF DEMONSTRATION PROJECTS.—The Secretary may not approve a demonstration project under this section unless the State provides assurances satisfactory to the Secretary that the following conditions are or will be met:

''(A) MAINTENANCE OF STATE EFFORT.—Federal funds paid to a State pursuant to this section must be used to supplement, but not supplant, the level of State funds expended for workers with potentially severe disabilities under programs in effect for such individuals at the time the demonstration project is approved under this section.

''(B) INDEPENDENT EVALUATION.—The State provides for an independent evaluation of the project.

''(3) LIMITATIONS ON FEDERAL FUNDING.—

''(A) APPROPRIATION.—

''(i) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this section—

''(I) $42,000,000 for each of fiscal years 2001 through 2004; and

''(II) $41,000,000 for each of fiscal years 2005 and 2006.

''(ii) BUDGET AUTHORITY.—Clause (i) constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of the amounts appropriated under clause (i).

''(B) LIMITATION ON PAYMENTS.—In no case may—

''(i) the aggregate amount of payments made by the Secretary to States under this section exceed $250,000,000;

''(ii) the aggregate amount of payments made by the Secretary to States for administrative expenses relating to annual reports required under subsection (d) exceed $2,000,000 of such $250,000,000; or

''(iii) payments be provided by the Secretary for a fiscal year after fiscal year 2009.

''(C) FUNDS ALLOCATED TO STATES.—The Secretary shall allocate funds to States based on their applications and the availability of funds. Funds allocated to a State under a grant made under this section for a fiscal year shall remain available until expended.

''(D) FUNDS NOT ALLOCATED TO STATES.—Funds not allocated to States in the fiscal year for which they are appropriated shall remain available in succeeding fiscal years for allocation by the Secretary using the allocation formula established under this section.

''(E) PAYMENTS TO STATES.—The Secretary shall pay to each State with a demonstration project approved under this section, from its allocation under subparagraph (C), an amount for each quarter equal to the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1395d(b) [42 U.S.C. 1396d(b)]) of expenditures in the quarter for medical assistance provided to workers with a potentially severe disability.

''(d) ANNUAL REPORT.—A State with a demonstration project approved under this section shall submit an annual report to the Secretary on the use of funds provided under the grant. Each report shall include enrollment and financial statistics on—

''(1) the total population of workers with potentially severe disabilities served by the demonstration project; and

''(2) each population of such workers with a specific physical or mental impairment described in subsection (b)(1)(B) served by such project.

''(e) RECOMMENDATION.—Not later than October 1, 2004, the Secretary shall submit a recommendation to the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate regarding whether the demonstration project established under this section should be continued after fiscal year 2006.

''(f) STATE DEFINED.—In this section, the term 'State' has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).''

MEDICAL ASSISTANCE PAYMENTS FOR ELIGIBLE PACE PROGRAM ENROLLEES

Pub. L. 105–277, div. A, § 101(f) [title VII, § 710], Oct. 21, 1998, 112 Stat. 2681–337, 2681–391, provided that: ''For purposes of payments to States for medical assistance

under title XIX of the Social Security Act [this subchapter] from amounts appropriated to carry out such title for fiscal year 1999 and for any subsequent fiscal year, individuals who are PACE program eligible individuals under section 1934 of that Act [section 1396u–4 of this title] and who meet the income and resource eligibility requirements of individuals who are eligible for medical assistance under section 1902(a)(10)(A)(ii)(VI) of that Act [subsec. (a)(10)(A)(ii)(VI) of this section] shall be treated as individuals described in such section 1902(a)(10)(A)(ii)(VI) during the period of their enrollment in the PACE program.''

STUDY AND REPORT BY SECRETARY OF HEALTH AND HUMAN SERVICES

Section 4711(b) of Pub. L. 105–33 provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall study the effect on access to, and the quality of, services provided to beneficiaries of the rate-setting methods used by States pursuant to section 1902(a)(13)(A) of the Social Security Act (42 U.S.C. 1396a(a)(13)(A)), as amended by subsection (a).

''(2) REPORT.—Not later than 4 years after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall submit a report to the appropriate committees of Congress on the conclusions of the study conducted under paragraph (1), together with any recommendations for legislation as a result of such conclusions.''

DUAL ELIGIBLES; MONITORING PAYMENTS

Section 4724(e) of Pub. L. 105–33 provided that: ''The Administrator of the Health Care Financing Administration shall develop mechanisms to improve the monitoring of, and to prevent, inappropriate payments under the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in the case of individuals who are dually eligible for benefits under such program and under the medicare program under title XVIII of such Act (42 U.S.C. 1395 et seq.).''

EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT

Section 4759 of title IV of Pub. L. 105–33 provided that: ''In the case of a State plan under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by a provision of this subtitle [subtitle H (§§ 4701–4759) of title IV of Pub. L. 105–33, enacting sections 1396u–2 and 1396u–3 of this title, amending this section and sections 1308, 1315, 1320a–3, 1320a–7b, 1395i–3, 1395w–4, 1395cc, 1396b, 1396d, 1396e, 1396n, 1396*o*, 1396r, 1396r–4, 1396r–6, 1396r–8, 1396u–2, and 1396v of this title, and repealing section 1396r–7 of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 5, 1997]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.''

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§ 601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u–1(a) of this title.

DEMONSTRATION PROJECTS TO STUDY EFFECT OF ALLOWING STATES TO EXTEND MEDICAID COVERAGE TO CERTAIN LOW-INCOME FAMILIES NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS

Section 4745 of Pub. L. 101–508, as amended by Pub. L. 103–66, title XIII, § 13643(a), Aug. 10, 1993, 107 Stat. 647, provided that:

''(a) DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—(A) The Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall enter into agreements with 3 and no more than 4 States submitting applications under this section for the purpose of conducting demonstration projects to study the effect on access to, and costs of, health care of eliminating the categorical eligibility requirement for medicaid benefits for certain low-income individuals.

''(B) In entering into agreements with States under this section the Secretary shall provide that at least 1 and no more than 2 of the projects are conducted on a substate basis.

''(2) REQUIREMENTS.—(A) The Secretary may not enter into an agreement with a State to conduct a project unless the Secretary determines that—

''(i) the project can reasonably be expected to improve access to health insurance coverage for the uninsured;

''(ii) with respect to projects for which the statewideness requirement has not been waived, the State provides, under its plan under title XIX of the Social Security Act [this subchapter], for eligibility for medical assistance for all individuals described in subparagraphs (A), (B), (C), and (D) of paragraph (1) of section 1902(*l*) of such Act [subsec. (*l*)(1)(A), (B), (C), (D) of this section] (based on the State's election of certain eligibility options the highest income standards and, based on the State's waiver of the application of any resource standard);

''(iii) eligibility for benefits under the project is limited to individuals in families with income below 150 percent of the income official poverty line and who are not individuals receiving benefits under title XIX of the Social Security Act;

''(iv) if the Secretary determines that it is cost-effective for the project to utilize employer coverage (as described in section 1925(b)(4)(D) of the Social Security Act [section 1396r–6(b)(4)(D) of this title]), the project must require an employer contribution and benefits under the State plan under title XIX of such Act will continue to be made available to the extent they are not available under the employer coverage;

''(v) the project provides for coverage of benefits consistent with subsection (b); and

''(vi) the project only imposes premiums, coinsurance, and other cost-sharing consistent with subsection (c).

''(B) The Secretary may waive the requirements of clause (ii) of this paragraph [probably means subparagraph (A)] with respect to those projects described in subparagraph (B) of paragraph (1).

''(3) PERMISSIBLE RESTRICTIONS.—A project may limit eligibility to individuals whose assets are valued below a level specified by the State. For this purpose, any evaluation of such assets shall be made in a manner consistent with the standards for valuation of assets under the State plan under title XIX of the Social Security Act for individuals entitled to assistance under part A of title IV of such Act [part A of subchapter IV of this chapter]. Nothing in this section shall be construed as requiring a State to provide for eligibility for individuals for months before the month in which such eligibility is first established.

''(4) EXTENSION OF ELIGIBILITY.—A project may provide for extension of eligibility for medical assistance for individuals covered under the project in a manner

similar to that provided under section 1925 of the Social Security Act to certain families receiving aid pursuant to a plan of the State approved under part A of title IV of such Act.

''(5) WAIVER OF REQUIREMENTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may waive such requirements of title XIX of the Social Security Act (except section 1903(m) of the Social Security Act [section 1396b(m) of this title]) as may be required to provide for additional coverage of individuals under projects under this section.

''(B) NONWAIVABLE PROVISIONS.—Except with respect to those projects described in subparagraph (B) of paragraph (1), the Secretary may not waive, under subparagraph (A), the statewideness requirement of section 1902(a)(1) of the Social Security Act [subsec. (a)(1) of this section] or the Federal medical assistance percentage specified in section 1905(b) of such Act [section 1396d(b) of this title].

''(b) BENEFITS.—

''(1) IN GENERAL.—Except as provided in this subsection, the amount, duration, and scope of medical assistance made available under a project shall be the same as the amount, duration, and scope of such assistance made available to individuals entitled to medical assistance under the State plan under section 1902(a)(10)(A)(i) of the Social Security Act [subsec. (a)(10)(A)(i) of this section].

''(2) LIMITS ON BENEFITS.—

''(A) REQUIRED.—Except with respect to those projects described in subparagraph (B) of paragraph (1), no medical assistance shall be made available under a project for nursing facility services or community-based long-term care services (as defined by the Secretary) or for pregnancy-related services. No medical assistance shall be made available under a project to individuals confined to a State correctional facility, county jail, local or county detention center, or other State institution.

''(B) PERMISSIBLE.—A State, with the approval of the Secretary, may limit or otherwise deny eligibility for medical assistance under the project and may limit coverage of items and services under the project, other than early and periodic screening, diagnostic, and treatment services for children under 18 years of age.

''(3) USE OF UTILIZATION CONTROLS.—Nothing in this subsection shall be construed as limiting a State's authority to impose controls over utilization of services, including preadmission requirements, managed care provisions, use of preferred providers, and use of second opinions before surgical procedures.

''(c) PREMIUMS AND COST-SHARING.—

''(1) NONE FOR THOSE WITH INCOME BELOW THE POVERTY LINE.—Under a project, there shall be no premiums, coinsurance, or other cost-sharing for individuals whose family income level does not exceed 100 percent of the income official poverty line (as defined in subsection (g)(1)) applicable to a family of the size involved.

''(2) LIMIT FOR THOSE WITH INCOME ABOVE THE POVERTY LINE.—Under a project, for individuals whose family income level exceeds 100 percent, but is less than 150 percent, of the income official poverty line applicable to a family of the size involved, the monthly average amount of premiums, coinsurance, and other cost-sharing for covered items and services shall not exceed 3 percent of the family's average gross monthly earnings.

''(3) INCOME DETERMINATION.—Each project shall provide for determinations of income in a manner consistent with the methodology used for determinations of income under title XIX of the Social Security Act [this subchapter] for individuals entitled to benefits under part A of title IV of such Act [part A of subchapter IV of this chapter].

''(d) DURATION.—Each project under this section shall commence not later than July 1, 1991 and shall be conducted for a 3-year period; except that the Secretary may terminate such a project if the Secretary determines that the project is not in substantial compliance with the requirements of this section.

''(e) LIMITS ON EXPENDITURES AND FUNDING.—

''(1) IN GENERAL.—(A) The Secretary in conducting projects shall limit the total amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act [this subchapter] to no more than $40,000,000.

''(B) Of the amounts appropriated under subparagraph (A), the Secretary shall provide that no more than one-third of such amounts shall be used to carry out the projects described in paragraph (1)(B) of subsection (a) (for which the statewideness requirement has been waived).

''(2) NO FUNDING OF CURRENT BENEFICIARIES.—No funding shall be available under a project with respect to medical assistance provided to individuals who are otherwise eligible for medical assistance under the plan without regard to the project.

''(3) NO INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Payments to a State under a project with respect to expenditures made for medical assistance made available under the project may not exceed the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act [section 1396d(b) of this title]) of such expenditures.

''(f) EVALUATION AND REPORT.—

''(1) EVALUATIONS.—For each project the Secretary shall provide for an evaluation to determine the effect of the project with respect to—

''(A) access to, and costs of, health care,

''(B) private health care insurance coverage, and

''(C) premiums and cost-sharing.

''(2) REPORTS.—The Secretary shall prepare and submit to Congress an interim report on the status of the projects not later than January 1, 1993, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than one year after the termination of the projects.

''(g) DEFINITIONS.—In this section:

''(1) The term 'income official poverty line' means such line as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [section 9902(2) of this title].

''(2) The term 'project' refers to a demonstration project under subsection (a).''

[Section 13643(a) of Pub. L. 103–66 provided in part that the amendment made by that section to section 4745 of Pub. L. 101–508, set out above, is effective as if included in enactment of Pub. L. 101–508.]

DEMONSTRATION PROJECT TO PROVIDE MEDICAID COVERAGE FOR HIV-POSITIVE INDIVIDUALS

Section 4747 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—Not later than 3 months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall provide for 2 demonstration projects to be administered by States that submit an application under this section, through programs administered by the States under title XIX of the Social Security Act [this subchapter]. Such demonstration projects shall provide coverage for the services described in subsection (c) to individuals whose income and resources do not exceed the maximum allowable amount for eligibility for any individual in any category of disability under the State plan under section 1902 of the Social Security Act [this section], and who have tested positive for the presence of HIV virus (without regard to the presence of any symptoms of AIDS or opportunistic diseases related to AIDS).

''(b) SERVICES AVAILABLE UNDER A DEMONSTRATION PROJECT.—(1) The medical assistance made available to individuals described in section 1902(a)(10)(A) of the Social Security Act [subsec. (a)(10)(A) of this section] shall be made available to individuals described in sub-

section (a) who receive services under a demonstration project under such paragraph.

''(2) A demonstration project under subsection (a) shall provide services in addition to the services described in paragraph (1) which shall be limited only on the basis of medical necessity or the appropriateness of such services. To the extent not provided as described in paragraph (1), such additional services shall include—

''(A) general and preventative medical care services (including inpatient, outpatient, residential care, physician visits, clinic visits, and hospice care);

''(B) prescription drugs, including drugs for the purposes of preventative health care services;

''(C) counseling and social services;

''(D) substance abuse treatment services (including services for multiple substances abusers);

''(E) home care services (including assistance in carrying out activities of daily living);

''(F) case management;

''(G) health education services;

''(H) respite care for caregivers;

''(I) dental services; and

''(J) diagnostic and laboratory services[.]

''(c) AGREEMENTS WITH STATES.—(1) Each State conducting a demonstration project under subsection (a) shall enter into an agreement with a hospital and at least one other nonprofit organization submitting applications to the State. The State shall require that such hospital and other entity have a demonstrated record of case management of patients who have tested positive for the presence of HIV virus and have access to a control group of such type of patients who are not receiving State or Federal payments for medical services (or other payments from private insurance coverage) before developing symptoms of AIDS. Under such agreement, the State shall agree to pay each such entity for the services provided under subsection (b) and not later than 12 months after the commencement of a demonstration project, institute a system of monthly payment to each such entity based on the average per capita cost of the services described in subsection (c) provided to individuals described in paragraphs (1) and (2) of subsection (a).

''(2) A demonstration project described in subsection (a) shall be limited to an enrollment of not more than 200 individuals.

''(3) A demonstration project conducted under subsection (a) shall commence not later than 9 months after the date of the enactment of this Act [Nov. 5, 1990] and shall terminate on the date that is 3 years after the date of commencement.

''(4)(A) The Secretary shall provide for an evaluation of the comparative costs of providing services to individuals who have tested positive for the presence of HIV virus at an early stage after detection of such virus and those that are treated at a later stage after such detection.

''(B) The Secretary shall report to Congress on the results of the evaluation conducted under subparagraph (A) no later than 6 months after the date of termination of the demonstration projects described in this section.

''(d) FEDERAL SHARE OF COSTS.—The Federal share of the cost of services described in paragraph (3) furnished under a demonstration project conducted under paragraph (1) shall be determined by the otherwise applicable Federal matching assistance percentage pursuant to section 1905(b) of the Social Security Act [section 1396d(b) of this title].

''(e) WAIVER OF REQUIREMENTS OF THE SOCIAL SECURITY ACT.—The Secretary may waive such requirements of the Social Security Act [this chapter] as the Secretary determines to be necessary to carry out the purposes of this section.

''(f) LIMITATION ON AMOUNT OF EXPENDITURES.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be $5,000,000 for fiscal year 1991, $12,000,000 for fiscal year 1992, and $13,000,000 for fiscal year 1993.''

PUBLIC EDUCATION CAMPAIGN

Section 4751(d) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The Secretary, no later than 6 months after the date of enactment of this section [Nov. 5, 1990], shall develop and implement a national campaign to inform the public of the option to execute advance directives and of a patient's right to participate and direct health care decisions.

''(2) DEVELOPMENT AND DISTRIBUTION OF INFORMATION.—The Secretary shall develop or approve nationwide informational materials that would be distributed by providers under the requirements of this section [amending this section and sections 1396b and 1396r of this title and enacting provisions set out above], to inform the public and the medical and legal profession of each person's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

''(3) PROVIDING ASSISTANCE TO STATES.—The Secretary shall assist appropriate State agencies, associations, or other private entities in developing the State-specific documents that would be distributed by providers under the requirements of this section. The Secretary shall further assist appropriate State agencies, associations, or other private entities in ensuring that providers are provided a copy of the documents that are to be distributed under the requirements of the section.

''(4) DUTIES OF SECRETARY.—The Secretary shall mail information to Social Security recipients, [and] add a page to the medicare handbook with respect to the provisions of this section.''

PHYSICIAN IDENTIFIER SYSTEM; DEADLINE AND CONSIDERATIONS

Section 4752(a)(1)(B) of Pub. L. 101–508 provided that: ''The system established under the amendment made by subparagraph (A) [amending this section] may be the same as, or different from, the system established under section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272, formerly set out in a note under section 1395ww of this title].''

FOREIGN MEDICAL GRADUATE CERTIFICATION

Section 4752(d) of Pub. L. 101–508 provided that:

''(1) PASSAGE OF FMGEMS EXAMINATION IN ORDER TO OBTAIN IDENTIFIER.—The Secretary of Health and Human Service[s] shall provide, in the identifier system established under section 1902(x) of the Social Security Act [subsec. (x) of this section], that no foreign medical graduate (as defined in section 1886(h)(5)(D) of such Act [section 1395ww(h)(5)(D) of this title]) shall be issued an identifier under such system unless the individual—

''(A) has passed the FMGEMS examination (as defined in section 1886(h)(5)(E) of such Act);

''(B) has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates; or

''(C) has held a license from 1 or more States continuously since 1958.

''(2) EFFECTIVE DATE.—Paragraph (1) shall apply with respect to issuance of an identifier applicable to services furnished on or after January 1, 1992.''

EXCLUSIONS IN DETERMINATION OF INCOME AND RESOURCES UNDER THIS SUBCHAPTER

Section 11115(c) of Pub. L. 101–508 provided that: ''Pursuant to section 1902(a)(17) of the Social Security Act (42 U.S.C. 1396a(a)(17)), the Secretary of Health and Human Services shall promulgate regulations to exempt from any determination of income and resources (for the month of receipt and the following month) under title XIX of the Social Security Act [this subchapter] any refund of Federal income taxes made to an individual by reason of section 32 of the Internal Revenue Code of 1986 [26 U.S.C. 32] (relating to earned income tax credit), and any payment made to an individ-

ual by an employer under section 3507 of such Code [26 U.S.C. 3507] (relating to advance payment of earned income credit).''

DEVELOPMENT OF MODEL APPLICATIONS FOR MEDICAID PROGRAM

Section 6506(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall, by not later than 1 year after the date of the enactment of this Act [Dec. 19, 1989], develop a model application form for use in applying for benefits under title XIX of the Social Security Act [this subchapter] for individuals who are not receiving cash assistance under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], and who are not institutionalized. In developing such model application form, the Secretary is not authorized to require that such form be adopted by States as part of their State medicaid plan.

''(2) DISSEMINATION OF MODEL FORM.—The Secretary shall provide for publication in the Federal Register of the model application form developed under paragraph (1), and shall send a copy of such form to each State agency responsible for administering a State medicaid plan.''

CLARIFICATION OF FEDERAL FINANCIAL PARTICIPATION FOR CASE-MANAGEMENT SERVICES

Section 8435 of Pub. L. 100–647 provided that: ''The Secretary of Health and Human Services may not fail or refuse to approve an amendment to a State plan under title XIX of the Social Security Act [this subchapter] that provides for coverage of case-management services described in section 1915(g)(2) of such Act [section 1396n(g)(2) of this title], or to deny payment to a State for such services under section 1903(a)(1) of such Act [section 1396b(a)(1) of this title] on the basis that a State is required to provide such services under State law or on the basis that the State had paid or is paying for such services from non-Federal funds before or after April 7, 1986. Nothing in this section shall be construed as requiring the Secretary to make payment to a State under section 1903(a)(1) of such Act for such case-management services which are provided without charge to the users of such services.''

TREATMENT OF STATES OPERATING UNDER DEMONSTRATION PROJECTS

Section 301(g)(1) of Pub. L. 100–360 provided that: ''In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115(a) of the Social Security Act [section 1315(a) of this title], the Secretary of Health and Human Services shall require the State to meet the requirement of section 1902(a)(10)(E) of the Social Security Act [subsec. (a)(10)(E) of this section] in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under title XIX of such Act [this subchapter].''

ADJUSTMENT IN MEDICAID PAYMENT FOR INPATIENT HOSPITAL SERVICES FURNISHED BY DISPROPORTIONATE SHARE HOSPITALS

Pub. L. 100–203, title IV, §4112, Dec. 22, 1987, 101 Stat. 1330–148, which related to adjustment in medicaid payment for inpatient hospital services furnished by disproportionate share hospitals was amended by Pub. L. 100–360, title IV, §411(k)(6)(A)–(B)(i), July 1, 1988, 102 Stat. 792, 793, and so amended, §4112 enacts the provisions of former section 4112 as section 1396r–4 of this title and amends sections 1396b and 1396s of this title.

AMENDMENT TO STATE PLAN TO PROVIDE ADJUSTMENT FOR SERVICES FURNISHED DURING FISCAL YEAR 1990

Section 4211(b)(2) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, §4801(e)(1)(B), Nov. 5, 1990, 104 Stat. 1388–215, provided that: ''A plan of a State under title XIX of the Social Security Act [this subchapter] shall not be considered to have met the requirement of section 1902(a)(13)(A) of the Social Security Act [subsec. (a)(13)(A) of this section] (as amended by paragraph (1)(A) of this subsection), as of the first day of a Federal fiscal year (beginning on or after October 1, 1990), unless the State has submitted to the Secretary of Health and Human Services, as of April 1 before the fiscal year, an amendment to such State plan to provide for an appropriate adjustment in payment amounts for nursing facility services furnished during the Federal fiscal year. Each such amendment shall include a detailed description of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services. The Secretary shall, not later than September 30 before the fiscal year concerned, review each such plan amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement. The absence of approval of such a plan amendment does not relieve the State or any nursing facility of any obligation or requirement under title XIX of the Social Security Act (as amended by this Act).''

TECHNICAL ASSISTANCE WITH RESPECT TO FACILITIES THAT TAKE INTO ACCOUNT CASE MIX OF RESIDENTS

Section 4211(j) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall, upon request by a State, furnish technical assistance with respect to the development and implementation of reimbursement methods for nursing facilities that take into account the case mix of residents in the different facilities.''

STATE UTILIZATION REVIEW SYSTEMS

Section 9432 of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4118(p)(11), as added by Pub. L. 100–360, title IV, §411(k)(10)(M), July 1, 1988, 102 Stat. 797; Pub. L. 101–508, title IV, §4755(b), Nov. 5, 1990, 104 Stat. 1388–210, provided that:

''(a) IN GENERAL.—(1) The Secretary of Health and Human Services (in this section referred to as the 'Secretary') may not publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act [this subchapter] to include a program requiring second surgical opinions or a program of inpatient hospital preadmission review.

''(2) The Secretary may not, during the period beginning on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 [Nov. 5, 1990] and ending on the date that is 180 days after the date on which the report required by subsection (d) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act [this subchapter] to include a program for ambulatory surgery, preadmission testing, or same-day surgery.

''(b) REPORT.—

''(1) The Secretary shall report to Congress, by not later than October 1, 1988, for each State in a representative sample of States—

''(A) the identity of those procedures which are high volume or high cost procedures among patients who are covered under the State medicaid plan,

''(B) the payment rates under those plans for such procedures, and the aggregate annual payment amounts made under such plans for such procedures (including the Federal share of such payment amounts),

''(C) the rate at which each such procedure is performed on medicaid patients and (to the extent that data are available) comparisons to the rate at which such procedure is performed on patients of comparable age who are not medicaid patients,

''(D) with respect to each such procedure—

''(i) the number of board certified or board eligible physicians in the State who provide care and

services to medicaid patients and who perform the procedure, and

''(ii) in the case of a State with a mandatory second surgical opinion program in operation, the number of physicians described in clause (i) who provide second opinions (of the type described in section 1164 of the Social Security Act [section 1320c–13 of this title]) for the procedure at prevailing payment rates under the State medicaid plan, and

''(E) in the case of a State with a mandatory second surgical opinion program or a program of inpatient hospital preadmission review in operation, a description of—

''(i) the extent to which such program impedes access to necessary care and services, and

''(ii) the measures that the State has taken to address such impediments, particularly in rural areas.

''(2) Such report shall also include a list of those surgical procedures which the Secretary believes meet the following criteria and for which a mandatory second opinion program under medicaid plans may be appropriate:

''(A) The procedure is one which generally can be postponed without undue risk to the patient.

''(B) The procedure is a high volume procedure among patients who are covered under State medicaid plans or is a high cost procedure.

''(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why requiring second opinions for 100 percent of such procedures would be cost effective.

''(3) The representative sample of States required to be included in the report shall include States with mandatory second surgical opinion programs in operation, States with programs of inpatient hospital preadmission review in operation, and States with neither such program in operation.

''(4) In this subsection and subsection (d), the term 'medicaid plan' means a State plan approved under title XIX of the Social Security Act [this subchapter].

''(c) STUDY.—

''(1) The Secretary shall conduct a study of the utilization of selected medical treatments and surgical procedures by medicaid beneficiaries in order to assess the appropriateness, necessity, and effectiveness of such treatments and procedures.

''(2) The study shall analyze the extent to which there is significant variation in the rate of utilization by medicaid beneficiaries of selected treatments and procedures for different geographic areas within States and among States.

''(3) The study shall also identify underutilized, medically necessary treatments and procedures for which—

''(A) a failure to furnish could have an adverse effect on health status, and

''(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

''(4) The study shall be coordinated, to the extent practicable, with the research program established pursuant to section 1875(c) of the Social Security Act [section 1395*ll*(c) of this title], with particular regard to the relationship of the variations described in paragraph (2) to patient outcomes.

''(5) The Secretary shall submit an interim report on the results of the study, including an analysis of the geographic variations under paragraph (2), to the Congress not later than January 1, 1990, and shall report the final results of the study to the Congress not later than January 1, 1992.

''(d) REPORT.—The Secretary shall report to Congress, by not later than January 1, 1993, for each State in a representative sample of States—

''(1) an analysis of the procedures for which programs for ambulatory surgery, preadmission testing, and same-day surgery are appropriate for patients who are covered under the State medicaid plan, and

''(2) the effects of such programs on access of such patients to necessary care, quality of care, and costs of care.

In selecting such a sample of States, the Secretary shall include some States with medicaid plans that include such programs.''

PROMULGATION OF REGULATIONS

Section 9503(c) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall promulgate final regulations necessary to carry out sections 1902(a)(25) and 1903(r)(6)(J) of the Social Security Act [subsec. (a)(25) of this section and section 1396b(r)(6)(J) of this title] within 6 months after the date of the enactment of this Act [Apr. 7, 1986].''

STUDY BY COMPTROLLER GENERAL OF EFFECT OF AMENDMENT TO SUBSECTION (a)(13)

Section 9509(c) of Pub. L. 99–272 directed Comptroller General to conduct a study of effects of the amendments made by this section and report results of such study to Congress two years after Apr. 7, 1986.

TASK FORCE ON TECHNOLOGY-DEPENDENT CHILDREN

Section 9520 of Pub. L. 99–272 directed Secretary of Health and Human Services, within six months after Apr. 7, 1986, to establish a task force concerning alternatives to institutional care for technology-dependent children, such task force to (1) include representatives of Federal and State agencies with responsibilities relating to child health, health insurers, large employers (including those that self-insure for health care costs), providers of health care to technology-dependent children, and parents of technology-dependent children, (2) identify barriers that prevent the provision of appropriate care in a home or community setting to meet special needs of technology-dependent children, (3) recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children, and (4) make a final report to Secretary and to Congress on its activities not later than two years after Apr. 7, 1986.

MEDICAID COVERAGE RELATING TO ADOPTION ASSISTANCE AGREEMENTS ENTERED INTO BEFORE APRIL 7, 1986

Section 9529(b)(2) of Pub. L. 99–272 provided that: ''In the case of an adoption assistance agreement (other than an agreement under part E of title IV of the Social Security Act [part E of subchapter IV of this chapter]) entered into before the date of the enactment of this Act [Apr. 7, 1986]—

''(A) the requirements of subdivisions (aa) and (bb) of section 1902(a)(10)(A)(ii)(VIII) of the Social Security Act [subsec. (a)(10)(A)(ii)(VIII)(aa), (bb) of this section] shall be deemed to be met if the State agency responsible for adoption assistance agreements determines that—

''(i) at the time of adoptive placement the child had special needs for medical or rehabilitative care that made the child difficult to place; and

''(ii) there is in effect with respect to such child an adoption assistance agreement between the State and an adoptive parent or parents; and

''(B) the requirement of subdivision (cc) of such section shall be deemed to be met if the child was found by the State to be eligible for medical assistance prior to such agreement being entered into.''

PAYMENT FOR PSYCHIATRIC HOSPITAL SERVICES

Section 2366 of Pub. L. 98–369 provided that: ''The provisions of section 1902(a)(13) of the Social Security Act

[subsec. (a)(13) of this section], in so far as they require a reduction of the amount of payment otherwise to be made to a public psychiatric hospital due to the level of care received in such hospital, shall not apply to payments to hospitals before July 1, 1985, and such a reduction made for payments during the 12-month period ending June 30, 1986, and during the 12-month period ending June 30, 1987, shall be one-third and two-thirds, respectively, of the amount of the reduction which would have been made without regard to this section.''

MORATORIUM ON REGULATORY ACTIONS BY SECRETARY

Section 2373(c) of Pub. L. 98–369, as amended by Pub. L. 100–93, §9, Aug. 18, 1987, 101 Stat. 695, provided that:

''(1) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to the moratorium period described in paragraph (2) by reason of such State's plan described in paragraph (5) under title XIX of the Social Security Act [this subchapter] (including any part of the plan operating pursuant to section 1902(f) of such Act [subsec. (f) of this section]), or the operation thereunder, being determined to be in violation of clause (IV), (V), or (VI) of section 1902(a)(10)(A)(ii) or section 1902(a)(10)(C)(i)(III) of such Act on account of such plan's (or its operation) having a standard or methodology which the Secretary interprets as being less restrictive than the standard or methodology required under such section, provided that such plan (or its operation) does not make ineligible any individual who would be eligible but for the provisions of this subsection.

''(2) The moratorium period is the period beginning on October 1, 1981, and ending 18 months after the date on which the Secretary submits the report required under paragraph (3).

''(3) The Secretary shall report to the Congress within 12 months after the date of the enactment of this Act [July 18, 1984] with respect to the appropriateness, and impact on States and recipients of medical assistance, of applying standards and methodologies utilized in cash assistance programs to those recipients of medical assistance who do not receive cash assistance, and any recommendations for changes in such requirements.

''(4) No provision of law shall repeal or suspend the moratorium imposed by this subsection unless such provision specifically amends or repeals this subsection.

''(5) In this subsection, a State plan is considered to include—

''(A) any amendment or other change in the plan which is submitted by a State, or

''(B) any policy or guideline delineated in the Medicaid operation or program manuals of the State which are submitted by the State to the Secretary,

whether before or after the date of enactment of this Act [July 18, 1984] and whether or not the amendment or change, or the operating or program manual was approved, disapproved, acted upon, or not acted upon by the Secretary.

''(6) During the moratorium period, the Secretary shall implement (and shall not change by any administrative action) the policy in effect at the beginning of such moratorium period with respect to—

''(A) the point in time at which an institutionalized individual must sell his home (in order that it not be counted as a resource); and

''(B) the time period allowed for sale of a home of any such individual,

who is an applicant for or recipient of medical assistance under the State plan as a medically needy individual (described in section 1902(a)(10)(C) of the Social Security Act [subsec. (a)(10)(C) of this section]) or as an optional categorically needy individual (described in section 1902(a)(10)(A)(ii) of such Act).''

[Amendment of section 2373(c) of Pub. L. 98–369, set out above, by section 9 of Pub. L. 100–93 applicable as though originally included in Pub. L. 98–369, §2373(c), see section 15(e) of Pub. L. 100–93, set out as an Effective Date of 1987 Amendment note under section 1320a–7 of this title.]

EVALUATION AND STUDY OF REASONS FOR TERMINATION BY MEDICAID BENEFICIARIES OF MEMBERSHIP IN HEALTH MAINTENANCE ORGANIZATIONS

Section 2178(d) of Pub. L. 97–35 directed Secretary of Health and Human Services to conduct a study evaluating extent of, and reasons for, termination by medicaid beneficiaries of their memberships in health maintenance organizations, placing special emphasis on quantity and quality of medical care provided in health maintenance organizations and quality of such care when provided on a fee-for-service basis, with Secretary to submit an interim report to Congress, within two years after Aug. 13, 1981, and a final report within five years from such date containing, respectively, the interim and final findings and conclusions made as a result of such study.

CONTINUING MEDICAID ELIGIBILITY FOR CERTAIN RECIPIENTS OF VETERANS' ADMINISTRATION PENSIONS

Section 310(b)(1) of Pub. L. 96–272 provided that:

''(A) For purposes of section 1902(a)(10)(A) of the Social Security Act [subsec. (a)(10)(A) of this section], any individual who, prior to the date of enactment of this Act [June 17, 1980] and for the month of December 1978, was eligible for and received aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV of such Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter], or was eligible for and received supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter] (or a supplementary payment described in section 13(c) of Public Law 93–233) [set out as a note under this section], and was also in receipt of (or was a dependent, for purposes of chapter 15 of title 38, United States Code, as in effect on December 31, 1978, of an individual in receipt of) pension from the Veterans' Administration for the month of December 1978 shall (subject to subparagraph (B)) be deemed to have been receiving such aid, assistance, supplemental security income, or supplementary payment, for each calendar month thereafter (prior to the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B)), if such individual would have been eligible therefor in December 1978 and in the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B) had the increase in income of such individual (or of the family of which such individual is a member), attributable to an election (made by such individual or another member of such individual's family) under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [section 306 of Pub. L. 95–588, set out as a note under section 521 of Title 38, Veterans' Benefits], not occurred.

''(B)(i) The provisions of subparagraph (A) shall take effect on January 1, 1979, and shall cease to be effective, in the case of any individual, for and after the first calendar month beginning more than 10 days after an 'informed election' (as defined in subdivision (ii) of this subparagraph) has been made by such individual (or, if such individual is not eligible to make such an election, by a member of such individual's family who is eligible to make such an election which affects such individual's eligibility for aid, assistance, or benefits under a plan or program referred to in subparagraph (A)).

''(ii) The term 'informed election' means an election made under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [section 306 of Pub. L. 95–588, set out as a note under section 521 of Title 38] (or a reaffirmation of such an election which previously was made under such section 306) after the date of compliance by the Administrator of Veterans' Affairs (hereinafter in this section referred to as the 'Administrator') with the provisions of paragraph (2)(A) with respect to the individual concerned. An individual who

fails, within the time limits prescribed in paragraph (2)(B), to disaffirm an election previously made by such individual under such section 306 shall be deemed, for purposes of this section and such section 306, to have reaffirmed such election.''

PRESERVATION OF MEDICAID ELIGIBILITY FOR INDIVIDUALS WHO CEASE TO BE ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME BENEFITS ON ACCOUNT OF COST-OF-LIVING INCREASES IN SOCIAL SECURITY BENEFITS

Pub. L. 94–566, title V, § 503, Oct. 20, 1976, 90 Stat. 2685, provided that: ''In addition to other requirements imposed by law as a condition for the approval of any State plan under title XIX of the Social Security Act [this subchapter], there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual, for any month after June 1977 for which such individual is entitled to a monthly insurance benefit under title II of such Act [subchapter II of this chapter] but is not eligible for benefits under title XVI of such Act [subchapter XVI of this chapter], in like manner and subject to the same terms and conditions as are applicable under such State plan in the case of individuals who are eligible for and receiving benefits under such title XVI [subchapter XVI of this chapter] for such month, if for such month such individual would be (or could become) eligible for benefits under such title XVI [subchapter XVI of this chapter] except for amounts of income received by such individual and his spouse (if any) which are attributable to increases in the level of monthly insurance benefits payable under title II of such Act [subchapter II of this chapter] which have occurred pursuant to section 215(i) of such Act [section 415(i) of this title], in the case of such individual, since the last month after April 1977 for which such individual was both eligible for (and received) benefits under such title XVI [subchapter XVI of this chapter] and was entitled to a monthly insurance benefit under such title II [subchapter II of this chapter], and, in the case of such individual's spouse (if any), since the last such month for which such spouse was both eligible for (and received) benefits under such title XVI [subchapter XVI of this chapter] and was entitled to a monthly insurance benefit under such title II [subchapter II of this chapter]. Solely for purposes of this section, payments of the type described in section 1616(a) of the Social Security Act [section 1382e(a) of this title] or of the type described in section 212(a) of Public Law 93–66 [set out as note under section 1382 of this title] shall be deemed to be benefits under title XVI of the Social Security Act [subchapter XVI of this chapter].''

MEDICAID ELIGIBILITY FOR INDIVIDUALS RECEIVING MANDATORY STATE SUPPLEMENTARY PAYMENTS; EFFECTIVE DATE

Section 13(c) of Pub. L. 93–233 provided that: ''In addition to other requirements imposed by law as conditions for the approval of any State plan under title XIX of the Social Security Act [this subchapter], there is hereby imposed (effective January 1, 1974) the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual—

''(1) for any month for which there (A) is payable with respect to such individual a supplementary payment pursuant to an agreement entered into between the State and the Secretary of Health, Education, and Welfare [now Health and Human Services] under section 212(a) of Public Law 93–66 [set out as note under section 1382 of this title], and (B) would be payable with respect to such individual such a supplementary payment, if the amount of the supplementary payments payable pursuant to such agreement were established without regard to paragraph (3)(A)(ii) of such section 212(a) [set out as note under section 1382 of this title], and

''(2) in like manner, and subject to the same terms and conditions, as medical assistance is provided under such plan to individuals with respect to whom benefits are payable for such month under the supplementary security income program established by title XVI of the Social Security Act [subchapter XVI of this chapter].

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals who are eligible for such assistance under this subsection.''

COVERAGE OF ESSENTIAL PERSONS UNDER MEDICAID

Section 230 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 159, provided that: ''In the case of any State plan (approved under title XIX of the Social Security Act [this subchapter]) which for December 1973 provided medical assistance to persons described in section 1905(a)(vi) of such Act [section 1396d(a)(vi) of this title], there is hereby imposed the requirement (and such State plan shall be deemed to require) that medical assistance under such plan be provided to each such person (who for December 1973 was eligible for medical assistance under such plan) for each month (after December 1973) that—

''(1) the individual (referred to in the last sentence of section 1905(a) of such Act [section 1396d(a) of this title]) with whom such person is living continues to meet the criteria (as in effect for December 1973) for aid or assistance under a State plan (referred to in such sentence), and

''(2) such person continues to have the relationship with such individual described in such sentence and meets the other criteria (referred to in such sentence) with respect to a State plan (so referred to) as such plan was in effect for December 1973.

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.''

PERSONS IN MEDICAL INSTITUTIONS

Section 231 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 159, as amended by Pub. L. 93–233, § 13(b)(1), Dec. 31, 1973, 87 Stat. 964, provided that: ''For purposes of section 1902(a)(10) of the Social Security Act [subsec. (a)(10) of this section], any individual who, for all (or any part of) the month of December 1973—

''(1) was an inpatient in an institution qualified for reimbursement under title XIX of the Social Security Act [this subchapter], and

''(2)(A) received or would (except for his being an inpatient in such institution) have been eligible to receive aid or assistance under a State plan approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter], and

''(B), [sic] on the basis of his status as described in subparagraph (A), was included as an individual eligible for medical assistance under a State plan approved under title XIX of such Act [this subchapter] (whether or not such individual actually received aid or assistance under a State plan referred to in subparagraph (A)),

shall be deemed to be receiving such aid or assistance for such month and for each succeeding month in a continuous period of months if, for each month in such period—

''(3) such individual continues to be (for all of such month) an inpatient in such an institution and would (except for his being an inpatient in such institution) continue to meet the conditions of eligibility to receive aid or assistance under such plan (as such plan was in effect for December 1973), and

''(4) such individual is determined (under the utilization review and other professional audit procedures applicable to State plans approved under title XIX of the Social Security Act [this subchapter]) to be in need of care in such an institution.

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the

medical assistance furnished to individuals eligible for such assistance under this section.''

BLIND AND DISABLED MEDICALLY INDIGENT PERSONS

Section 232 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 160, as amended by Pub. L. 93–233, § 13(b)(2), Dec. 31, 1973, 87 Stat. 964, provided that: ''For purposes of section 1902(a)(10) of the Social Security Act [subsec. (a)(10) of this section], any individual who, for the month of December 1973 was eligible [subsec. (a)(10) of this section] for medical assistance by reason of his having been determined to meet the criteria for blindness or disability (established by a State plan approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter]), shall be deemed for purposes of title XIX [this subchapter] to be an individual who is blind or disabled within the meaning of section 1614(a) of the Social Security Act [section 1382c(a) of this title] for each month in a continuous period of months (beginning with the month of January 1974), if, for each month in such period, such individual continues to meet the criteria for blindness or disability so established by such a State plan (as it was in effect for December 1973), and the other conditions of eligibility contained in the plan of the State approved under title XIX [this subchapter] (as it was in effect in December 1973). Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.''

IMPACT OF 1972 SOCIAL SECURITY BENEFITS INCREASE UNDER PUB. L. 92–336 UPON ELIGIBILITY FOR ASSISTANCE UNDER THIS SUBCHAPTER

Section 249E of Pub. L. 92–603, as amended by section 233 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 160, provided that: ''For purposes of section 1902(a)(10) of the Social Security Act [subsec. (a)(10) of this section] any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV of such Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter] and who for such month was entitled to monthly insurance benefits under title II of such Act [subchapter II of this chapter] shall be deemed to be eligible for such aid or assistance for any month thereafter prior to July 1975 if such individual would have been eligible for such aid or assistance for such month had the increase in monthly insurance benefits under title II of such Act [subchapter II of this chapter] resulting from enactment of Pub. L. 92–336 [see Tables] not been applicable to such individual.''

NURSING HOMES ELIGIBLE FOR MATCHING FUNDS FOR HOME SERVICES WHEN MEETING STATE LICENSURE REQUIREMENTS AFTER JUNE 30, 1968

Section 234(c) of Pub. L. 90–248 provided that: ''Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act [subchapter I, X, XIV, XVI, or XIX of this chapter] for payments made to any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such home promptly takes all necessary steps to again meet such requirements.''

DISTRICT OF COLUMBIA; PLAN FOR MEDICAL ASSISTANCE

Pub. L. 90–227, § 1, Dec. 27, 1967, 81 Stat. 744, provided: ''That (a) the Commissioner of the District of Columbia [now Mayor] (hereafter in this Act [enacting this note and provisions set out as a note under section 1395v of this title] referred to as the 'Commissioner') may submit under title XIX of the Social Security Act [this subchapter] to the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereafter in this Act referred to as the 'Secretary') a plan for medical assistance (and any modifications of such plan) to enable the District of Columbia to receive Federal financial assistance under such title for a medical assistance program established by the Commissioner under such plan.

''(b)(1) Notwithstanding any other provision of law, the Commissioner may take such action as may be necessary to submit such plan to the Secretary and to establish and carry out such medical assistance program, except that in prescribing the standards for determining eligibility for and the extent of medical assistance under the District of Columbia's plan for medical assistance, the Commissioner may not (except to the extent required by title XIX of the Social Security Act [this subchapter])—

''(A) prescribe maximum income levels for recipients of medical assistance under such plan which exceed (i) the title XIX maximum income levels if such levels are in effect, or (ii) the Commissioner's maximum income levels for the local medical assistance program if there are no title XIX maximum income levels in effect; or

''(B) prescribe criteria which would permit an individual or family to be eligible for such assistance if such individual or family would be ineligible, solely by reason of his or its resources, for medical assistance both under the plan of the State of Maryland approved under title XIX of the Social Security Act [this subchapter] and under the plan of the State of Virginia approved under such title.

''(2) For purposes of subparagraph (A) of paragraph (1) of this subsection—

''(A) the term 'title XIX maximum income levels' means any maximum income levels which may be specified by title XIX of the Social Security Act [this subchapter] for recipients of medical assistance under State plans approved under that title;

''(B) the term 'the Commissioner's maximum income levels for the local medical assistance program' means the maximum income levels prescribed for recipients of medical assistance under the District of Columbia's medical assistance program in effect in the fiscal year ending June 30, 1967; and

''(C) during any of the first four calendar quarters in which medical assistance is provided under such plan there shall be deemed to be no title XIX maximum income levels in effect if the title XIX maximum income levels in effect during such quarter are higher than the Commissioner's maximum income levels for the local medical assistance program.''

§ 1396b. Payment to States

(a) Computation of amount

From the sums appropriated therefor, the Secretary (except as otherwise provided in this section) shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing January 1, 1966—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title, subject to subsections (g) and (j) of this section and section 1396r–4(f) of this title) of the total amount expended during such quarter as medical assistance under the State plan; plus

(2)(A) an amount equal to 75 per centum of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to com-

pensation or training of skilled professional medical personnel, and staff directly supporting such personnel, of the State agency or any other public agency; plus

(B) notwithstanding paragraph (1) or subparagraph (A), with respect to amounts expended for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1396r(e)(1) of this title (including the costs for nurse aides to complete such competency evaluation programs), regardless of whether the programs are provided in or outside nursing facilities or of the skill of the personnel involved in such programs, an amount equal to 50 percent (or, for calendar quarters beginning on or after July 1, 1988, and before October 1, 1990, the lesser of 90 percent or the Federal medical assistance percentage plus 25 percentage points) of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to such programs; plus

(C) an amount equal to 75 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to preadmission screening and resident review activities conducted by the State under section 1396r(e)(7) of this title; plus

(D) for each calendar quarter during—

(i) fiscal year 1991, an amount equal to 90 percent,

(ii) fiscal year 1992, an amount equal to 85 percent,

(iii) fiscal year 1993, an amount equal to 80 percent, and

(iv) fiscal year 1994 and thereafter, an amount equal to 75 percent,

of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to State activities under section 1396r(g) of this title; plus

(3) an amount equal to—

(A)(i) 90 per centum of so much of the sums expended during such quarter as are attributable to the design, development, or installation of such mechanized claims processing and information retrieval systems as the Secretary determines are likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of subchapter XVIII of this chapter, including the State's share of the cost of installing such a system to be used jointly in the administration of such State's plan and the plan of any other State approved under this chapter, and

(ii) 90 per centum of so much of the sums expended during any such quarter in the fiscal year ending June 30, 1972, or the fiscal year ending June 30, 1973, as are attributable to the design, development, or installation of cost determination systems for State-owned general hospitals (except that the total amount paid to all States under this clause for either such fiscal year shall not exceed $150,000), and

(B) 75 per centum of so much of the sums expended during such quarter as are attributable to the operation of systems (whether such systems are operated directly by the State or by another person under a contract with the State) of the type described in subparagraph (A)(i) (whether or not designed, developed, or installed with assistance under such subparagraph) which are approved by the Secretary and which include provision for prompt written notice to each individual who is furnished services covered by the plan, or to each individual in a sample group of individuals who are furnished such services, of the specific services (other than confidential services) so covered, the name of the person or persons furnishing the services, the date or dates on which the services were furnished, and the amount of the payment or payments made under the plan on account of the services; and

(C)(i) 75 per centum of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of medical and utilization review by a utilization and quality control peer review organization or by an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, under a contract entered into under section 1396a(d) of this title; and

(ii) 75 percent of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of independent external reviews conducted under section 1396u–2(c)(2) of this title; and

(D) 75 percent of so much of the sums expended by the State plan during a quarter in 1991, 1992, or 1993, as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of section 1396r–8(g) of this title; and

(E) 50 percent of the sums expended with respect to costs incurred during such quarter as are attributable to providing—

(i) services to identify and educate individuals who are likely to be eligible for medical assistance under this subchapter and who have Sickle Cell Disease or who are carriers of the sickle cell gene, including education regarding how to identify such individuals; or

(ii) education regarding the risks of stroke and other complications, as well as the prevention of stroke and other complications, in individuals who are likely to be eligible for medical assistance under this subchapter and who have Sickle Cell Disease; plus

(4) an amount equal to 100 percent of the sums expended during the quarter which are attributable to the costs of the implementation and operation of the immigration status

verification system described in section 1320b–7(d) of this title; plus

(5) an amount equal to 90 per centum of the sums expended during such quarter which are attributable to the offering, arranging, and furnishing (directly or on a contract basis) of family planning services and supplies;

(6) subject to subsection (b)(3) of this section, an amount equal to—

(A) 90 per centum of the sums expended during such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and

(B) 75 per centum of the sums expended during each succeeding calendar quarter,

with respect to costs incurred during such quarter (as found necessary by the Secretary for the elimination of fraud in the provision and administration of medical assistance provided under the State plan) which are attributable to the establishment and operation of (including the training of personnel employed by) a State medicaid fraud control unit (described in subsection (q) of this section); plus

(7) subject to section 1396r(g)(3)(B) of this title, an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Quarterly expenditures beginning after December 31, 1969

(1) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) of this section for any State for any quarter beginning after December 31, 1969, shall not take into account any amounts expended as medical assistance with respect to individuals aged 65 or over and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter which would not have been so expended if the individuals involved had been enrolled in the insurance program established by part B of subchapter XVIII of this chapter, other than amounts expended under provisions of the plan of such State required by section 1396a(a)(34) of this title.

(2) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1320a–1 of this title.

(3) The amount of funds which the Secretary is otherwise obligated to pay a State during a quarter under subsection (a)(6) of this section may not exceed the higher of—

(A) $125,000, or

(B) one-quarter of 1 per centum of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State's plan under this subchapter.

(4) Amounts expended by a State for the use of an enrollment broker in marketing medicaid managed care organizations and other managed care entities to eligible individuals under this subchapter shall be considered, for purposes of subsection (a)(7) of this section, to be necessary for the proper and efficient administration of the State plan but only if the following conditions are met with respect to the broker:

(A) The broker is independent of any such entity and of any health care providers (whether or not any such provider participates in the State plan under this subchapter) that provide coverage of services in the same State in which the broker is conducting enrollment activities.

(B) No person who is an owner, employee, consultant, or has a contract with the broker either has any direct or indirect financial interest with such an entity or health care provider or has been excluded from participation in the program under this subchapter or subchapter XVIII of this chapter or debarred by any Federal agency, or subject to a civil money penalty under this chapter.

(5) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) of this section for any State shall be decreased in a quarter by the amount of any health care related taxes (described in subsection (w)(3)(A) of this section)[1] that are imposed on a hospital described in subsection (w)(3)(F) of this section in that quarter.

(c) Treatment of educationally-related services

Nothing in this subchapter shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) of this section for medical assistance for covered services furnished to a child with a disability because such services are included in the child's individualized education program established pursuant to part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.] or furnished to an infant or toddler with a disability because such services are included in the child's individualized family service plan adopted pursuant to part C of such Act [20 U.S.C. 1431 et seq.].

(d) Estimates of State entitlement; installments; adjustments to reflect overpayments or underpayments; time for recovery or adjustment; uncollectable or discharged debts; obligated appropriations; disputed claims

(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a) and (b) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2)(A) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or in-

[1] See References in Text note below.

creased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(B) Expenditures for which payments were made to the State under subsection (a) of this section shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1396a(a)(25) of this title.

(C) For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 60 days in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the 60 days, whether or not recovery was made.

(D) In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectable, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

(3)(A) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(B)(i) Subparagraph (A) and paragraph (2)(B) shall not apply to any amount recovered or paid to a State as part of the comprehensive settlement of November 1998 between manufacturers of tobacco products, as defined in section 5702(d) of the Internal Revenue Code of 1986, and State Attorneys General, or as part of any individual State settlement or judgment reached in litigation initiated or pursued by a State against one or more such manufacturers.

(ii) Except as provided in subsection (i)(19) of this section, a State may use amounts recovered or paid to the State as part of a comprehensive or individual settlement, or a judgment, described in clause (i) for any expenditures determined appropriate by the State.

(4) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(5) In any case in which the Secretary estimates that there has been an overpayment under this section to a State on the basis of a claim by such State that has been disallowed by the Secretary under section 1316(d) of this title, and such State disputes such disallowance, the amount of the Federal payment in controversy shall, at the option of the State, be retained by such State or recovered by the Secretary pending a final determination with respect to such payment amount. If such final determination is to the effect that any amount was properly disallowed, and the State chose to retain payment of the amount in controversy, the Secretary shall offset, from any subsequent payments made to such State under this subchapter, an amount equal to the proper amount of the disallowance plus interest on such amount disallowed for the period beginning on the date such amount was disallowed and ending on the date of such final determination at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates during such period.

(6)(A) Each State (as defined in subsection (w)(7)(D) of this section) shall include, in the first report submitted under paragraph (1) after the end of each fiscal year, information related to—

(i) provider-related donations made to the State or units of local government during such fiscal year, and

(ii) health care related taxes collected by the State or such units during such fiscal year.

(B) Each State shall include, in the first report submitted under paragraph (1) after the end of each fiscal year, information related to the total amount of payment adjustments made, and the amount of payment adjustments made to individual providers (by provider), under section 1396r–4(c) of this title during such fiscal year.

(e) Transition costs of closures or conversions permitted

A State plan approved under this subchapter may include, as a cost with respect to hospital services under the plan under this subchapter, periodic expenditures made to reflect transitional allowances established with respect to a hospital closure or conversion under section 1395uu of this title.

(f) Limitation on Federal participation in medical assistance

(1)(A) Except as provided in paragraph (4), payment under the preceding provisions of this section shall not be made with respect to any amount expended as medical assistance in a calendar quarter, in any State, for any member of a family the annual income of which exceeds the applicable income limitation determined under this paragraph.

(B)(i) Except as provided in clause (ii) of this subparagraph, the applicable income limitation with respect to any family is the amount determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133⅓ percent of the highest amount which would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments, under the plan of the State approved under part A of subchapter IV of this chapter.

(ii) If the Secretary finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amount otherwise determined under clause (i) to take account of families of different sizes.

(C) The total amount of any applicable income limitation determined under subparagraph (B)

shall, if it is not a multiple of $100 or such other amount as the Secretary may prescribe, be rounded to the next higher multiple of $100 or such other amount, as the case may be.

(2)(A) In computing a family's income for purposes of paragraph (1), there shall be excluded any costs (whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof) incurred by such family for medical care or for any other type of remedial care recognized under State law or, (B) notwithstanding section 1396*o* of this title at State option, an amount paid by such family, at the family's option, to the State, provided that the amount, when combined with costs incurred in prior months, is sufficient when excluded from the family's income to reduce such family's income below the applicable income limitation described in paragraph (1). The amount of State expenditures for which medical assistance is available under subsection (a)(1) of this section will be reduced by amounts paid to the State pursuant to this subparagraph.

(3) For purposes of paragraph (1)(B), in the case of a family consisting of only one individual, the ''highest amount which would ordinarily be paid'' to such family under the State's plan approved under part A of subchapter IV of this chapter shall be the amount determined by the State agency (on the basis of reasonable relationship to the amounts payable under such plan to families consisting of two or more persons) to be the amount of the aid which would ordinarily be payable under such plan to a family (without any income or resources) consisting of one person if such plan provided for aid to such a family.

(4) The limitations on payment imposed by the preceding provisions of this subsection shall not apply with respect to any amount expended by a State as medical assistance for any individual described in section 1396a(a)(10)(A)(i)(III), 1396a(a)(10)(A)(i)(IV), 1396a(a)(10)(A)(i)(V), 1396a(a)(10)(A)(i)(VI), 1396a(a)(10)(A)(i)(VII), 1396a(a)(10)(A)(ii)(IX), 1396a(a)(10)(A)(ii)(X), 1396a(a)(10)(A)(ii)(XIII), 1396a(a)(10)(A)(ii)(XIV), or[2] 1396a(a)(10)(A)(ii)(XV), 1396a(a)(10)(A)(ii)(XVI), 1396a(a)(10)(A)(ii)(XVII), 1396a(a)(10)(A)(ii)(XVIII), 1396a(a)(10)(A)(ii)(XIX), 1396d(p)(1) of this title or for any individual—

(A) who is receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV or XVI, or part A of subchapter IV, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or

(B) who is not receiving such aid or assistance, and with respect to whom such benefits are not being paid, but (i) is eligible to receive such aid or assistance, or to have such benefits paid with respect to him, or (ii) would be eligible to receive such aid or assistance, or to have such benefits paid with respect to him if he were not in a medical institution, or

(C) with respect to whom there is being paid, or who is eligible, or would be eligible if he were not in a medical institution, to have paid with respect to him, a State supplementary payment and is eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, or who is a PACE program eligible individual enrolled in a PACE program under section 1396u–4 of this title, but only if the income of such individual (as determined under section 1382a of this title, but without regard to subsection (b) thereof) does not exceed 300 percent of the supplemental security income benefit rate established by section 1382(b)(1) of this title,

at the time of the provision of the medical assistance giving rise to such expenditure.

(g) Decrease in Federal medical assistance percentage of amounts paid for services furnished under State plan after June 30, 1973

(1) Subject to paragraph (3), with respect to amounts paid for the following services furnished under the State plan after June 30, 1973 (other than services furnished pursuant to a contract with a health maintenance organization as defined in section 1395mm of this title or which is a qualified health maintenance organization (as defined in section 300e–9(d)[3] of this title)), the Federal medical assistance percentage shall be decreased as follows: After an individual has received inpatient hospital services or services in an intermediate care facility for the mentally retarded for 60 days or inpatient mental hospital services for 90 days (whether or not such days are consecutive), during any fiscal year, the Federal medical assistance percentage with respect to amounts paid for any such care furnished thereafter to such individual shall be decreased by a per centum thereof (determined under paragraph (5)) unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Secretary that, with respect to each calendar quarter for which the State submits a request for payment at the full Federal medical assistance percentage for amounts paid for inpatient hospital services or services in an intermediate care facility for the mentally retarded furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals and intermediate care facilities for the mentally retarded pursuant to paragraphs (26) and (31) of section 1396a(a) of this title whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams. In determining the number of days on which an individual has received services described in this subsection, there shall not be counted any days with respect to which such individual is entitled to have payments made (in whole or in part) on his behalf under section 1395d of this title.

(2) The Secretary shall, as part of his validation procedures under this subsection, conduct timely sample onsite surveys of private and public institutions in which recipients of medical

[2] So in original. The word ''or'' probably should precede ''1396d(p)(1)''.

[3] See References in Text note below.

assistance may receive care and services under a State plan approved under this subchapter, and his findings with respect to such surveys (as well as the showings of the State agency required under this subsection) shall be made available for public inspection.

(3)(A) No reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under this subsection shall take effect—

(i) if such reduction is due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning before January 1, 1977;

(ii) before January 1, 1978;

(iii) unless a notice of such reduction has been provided to the State at least 30 days before the date such reduction takes effect; or

(iv) due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning after September 30, 1977, unless notice of such reduction has been provided to the State no later than the first day of the fourth calendar quarter following the calendar quarter with respect to which such showing was made.

(B) The Secretary shall waive application of any reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under paragraph (1) because a showing by the State, made under such paragraph with respect to a calendar quarter ending after January 1, 1977, and before January 1, 1978, is determined to be either unsatisfactory under such paragraph or invalid under paragraph (2), if the Secretary determines that the State's showing made under paragraph (1) with respect to any calendar quarter ending on or before December 31, 1978, is satisfactory under such paragraph and is valid under paragraph (2).

(4)(A) The Secretary may not find the showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory if the showing is submitted to the Secretary later than the 30th day after the last day of the calendar quarter, unless the State demonstrates to the satisfaction of the Secretary good cause for not meeting such deadline.

(B) The Secretary shall find a showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory under such paragraph with respect to the requirement that the State conduct annual onsite inspections in mental hospitals and intermediate care facilities for the mentally retarded under paragraphs (26) and (31) of section 1396a(a) of this title, if the showing demonstrates that the State has conducted such an onsite inspection during the 12-month period ending on the last date of the calendar quarter—

(i) in each of not less than 98 per centum of the number of such hospitals and facilities requiring such inspection, and

(ii) in every such hospital or facility which has 200 or more beds,

and that, with respect to such hospitals and facilities not inspected within such period, the State has exercised good faith and due diligence in attempting to conduct such inspection, or if the State demonstrates to the satisfaction of the Secretary that it would have made such a showing but for failings of a technical nature only.

(5) In the case of a State's unsatisfactory or invalid showing made with respect to a type of facility or institutional services in a calendar quarter, the per centum amount of the reduction of the State's Federal medical assistance percentage for that type of services under paragraph (1) is equal to 33⅓ per centum multiplied by a fraction, the denominator of which is equal to the total number of patients receiving that type of services in that quarter under the State plan in facilities or institutions for which a showing was required to be made under this subsection, and the numerator of which is equal to the number of such patients receiving such type of services in that quarter in those facilities or institutions for which a satisfactory and valid showing was not made for that calendar quarter.

(6)(A) Recertifications required under section 1396a(a)(44) of this title shall be conducted at least every 60 days in the case of inpatient hospital services.

(B) Such recertifications in the case of services in an intermediate care facility for the mentally retarded shall be conducted at least—

(i) 60 days after the date of the initial certification,

(ii) 180 days after the date of the initial certification,

(iii) 12 months after the date of the initial certification,

(iv) 18 months after the date of the initial certification,

(v) 24 months after the date of the initial certification, and

(vi) every 12 months thereafter.

(C) For purposes of determining compliance with the schedule established by this paragraph, a recertification shall be considered to have been done on a timely basis if it was performed not later than 10 days after the date the recertification was otherwise required and the State establishes good cause why the physician or other person making such recertification did not meet such schedule.

(h) Repealed. Pub. L. 100–203, title IV, § 4211(g)(1), Dec. 22, 1987, 101 Stat. 1330–205

(i) Payment for organ transplants; item or service furnished by excluded individual, entity, or physician; other restrictions

Payment under the preceding provisions of this section shall not be made—

(1) for organ transplant procedures unless the State plan provides for written standards respecting the coverage of such procedures and unless such standards provide that—

(A) similarly situated individuals are treated alike; and

(B) any restriction, on the facilities or practitioners which may provide such procedures, is consistent with the accessibility of high quality care to individuals eligible for the procedures under the State plan; or

(2) with respect to any amount expended for an item or service (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished—

(A) under the plan by any individual or entity during any period when the individual or entity is excluded from participation under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title, or

(B) at the medical direction or on the prescription of a physician, during the period when such physician is excluded from participation under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person); or

(3) with respect to any amount expended for inpatient hospital services furnished under the plan (other than amounts attributable to the special situation of a hospital which serves a disproportionate number of low income patients with special needs) to the extent that such amount exceeds the hospital's customary charges with respect to such services or (if such services are furnished under the plan by a public institution free of charge or at nominal charges to the public) exceeds an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such payment which the Secretary finds will provide fair compensation to such institution for such services; or

(4) with respect to any amount expended for care or services furnished under the plan by a hospital unless such hospital has in effect a utilization review plan which meets the requirements imposed by section 1395x(k) of this title for purposes of subchapter XVIII of this chapter; and if such hospital has in effect such a utilization review plan for purposes of subchapter XVIII of this chapter, such plan shall serve as the plan required by this subsection (with the same standards and procedures and the same review committee or group) as a condition of payment under this subchapter; the Secretary is authorized to waive the requirements of this paragraph if the State agency demonstrates to his satisfaction that it has in operation utilization review procedures which are superior in their effectiveness to the procedures required under section 1395x(k) of this title; or

(5) with respect to any amount expended for any drug product for which payment may not be made under part B of subchapter XVIII of this chapter because of section 1395y(c) of this title; or

(6) with respect to any amount expended for inpatient hospital tests (other than in emergency situations) not specifically ordered by the attending physician or other responsible practitioner; or

(7) with respect to any amount expended for clinical diagnostic laboratory tests performed by a physician, independent laboratory, or hospital, to the extent such amount exceeds the amount that would be recognized under section 1395*l*(h) of this title for such tests performed for an individual enrolled under part B of subchapter XVIII of this chapter; or

(8) with respect to any amount expended for medical assistance (A) for nursing facility services to reimburse (or otherwise compensate) a nursing facility for payment of a civil money penalty imposed under section 1396r(h) of this title or (B) for home and community care to reimburse (or otherwise compensate) a provider of such care for payment of a civil money penalty imposed under this subchapter or subchapter XI of this chapter or for legal expenses in defense of an exclusion or civil money penalty under this subchapter or subchapter XI of this chapter if there is no reasonable legal ground for the provider's case; or

(9) Repealed. Pub. L. 104–193, title I, § 114(d)(2), Aug. 22, 1996, 110 Stat. 2180.

(10)(A) with respect to covered outpatient drugs unless there is a rebate agreement in effect under section 1396r–8 of this title with respect to such drugs or unless section 1396r–8(a)(3) of this title applies,

(B) with respect to any amount expended for an innovator multiple source drug (as defined in section 1396r–8(k) of this title) dispensed on or after July 1, 1991, if, under applicable State law, a less expensive multiple source drug could have been dispensed, but only to the extent that such amount exceeds the upper payment limit for such multiple source drug;[4]

(C) with respect to covered outpatient drugs described in section 1396r–8(a)(7) of this title, unless information respecting utilization data and coding on such drugs that is required to be submitted under such section is submitted in accordance with such section, and

(D) with respect to any amount expended for reimbursement to a pharmacy under this subchapter for the ingredient cost of a covered outpatient drug for which the pharmacy has already received payment under this subchapter (other than with respect to a reasonable restocking fee for such drug); or

(11) with respect to any amount expended for physicians' services furnished on or after the first day of the first quarter beginning more than 60 days after the date of establishment of the physician identifier system under section 1396a(x) of this title, unless the claim for the services includes the unique physician identifier provided under such system; or

(12) Repealed. Pub. L. 105–33, title IV, § 4742(a), Aug. 5, 1997, 111 Stat. 523.

(13) with respect to any amount expended to reimburse (or otherwise compensate) a nursing facility for payment of legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action; or

(14) with respect to any amount expended on administrative costs to carry out the program under section 1396s of this title; or

(15) with respect to any amount expended for a single-antigen vaccine and its administration in any case in which the administration of a combined-antigen vaccine was medically

[4] So in original. The semicolon probably should be a comma.

appropriate (as determined by the Secretary); or

(16) with respect to any amount expended for which funds may not be used under the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.]; or

(17) with respect to any amount expended for roads, bridges, stadiums, or any other item or service not covered under a State plan under this subchapter; or

(18) with respect to any amount expended for home health care services provided by an agency or organization unless the agency or organization provides the State agency on a continuing basis a surety bond in a form specified by the Secretary under paragraph (7) of section 1395x(*o*) of this title and in an amount that is not less than $50,000 or such comparable surety bond as the Secretary may permit under the last sentence of such section; or

(19) with respect to any amount expended on administrative costs to initiate or pursue litigation described in subsection (d)(3)(B) of this section;

(20) with respect to amounts expended for medical assistance provided to an individual described in subclause (XV) or (XVI) of section 1396a(a)(10)(A)(ii) of this title for a fiscal year unless the State demonstrates to the satisfaction of the Secretary that the level of State funds expended for such fiscal year for programs to enable working individuals with disabilities to work (other than for such medical assistance) is not less than the level expended for such programs during the most recent State fiscal year ending before December 17, 1999;

(21) with respect to amounts expended for covered outpatient drugs described in section 1396r–8(d)(2)(K) of this title (relating to drugs when used for treatment of sexual or erectile dysfunction); or

(22) with respect to amounts expended for medical assistance for an individual who declares under section 1320b–7(d)(1)(A) of this title to be a citizen or national of the United States for purposes of establishing eligibility for benefits under this subchapter, unless the requirement of subsection (x) is met.

Nothing in paragraph (1) shall be construed as permitting a State to provide services under its plan under this subchapter that are not reasonable in amount, duration, and scope to achieve their purpose. Paragraphs (1), (2), (16), (17), and (18) shall apply with respect to items or services furnished and amounts expended by or through a managed care entity (as defined in section 1396u–2(a)(1)(B) of this title) in the same manner as such paragraphs apply to items or services furnished and amounts expended directly by the State.

(j) Adjustment of amount

Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) of this section for any State for any quarter shall be adjusted in accordance with section 1396m of this title.

(k) Technical assistance to States

The Secretary is authorized to provide at the request of any State (and without cost to such State) such technical and actuarial assistance as may be necessary to assist such State to contract with any medicaid managed care organization which meets the requirements of subsection (m) of this section for the purpose of providing medical care and services to individuals who are entitled to medical assistance under this subchapter.

(*l*) Repealed. Pub. L. 94–552, § 1, Oct. 18, 1976, 90 Stat. 2540

(m) "Medicaid managed care organization" defined; duties and functions of Secretary; payments to States; reporting requirements; remedies

(1)(A) The term ''medicaid managed care organization'' means a health maintenance organization, an eligible organization with a contract under section 1395mm of this title or a Medicare+Choice organization with a contract under part C of subchapter XVIII of this chapter, a provider sponsored organization, or any other public or private organization, which meets the requirement of section 1396a(w) of this title and—

(i) makes services it provides to individuals eligible for benefits under this subchapter accessible to such individuals, within the area served by the organization, to the same extent as such services are made accessible to individuals (eligible for medical assistance under the State plan) not enrolled with the organization, and

(ii) has made adequate provision against the risk of insolvency, which provision is satisfactory to the State, meets the requirements of subparagraph (C)(i) (if applicable), and which assures that individuals eligible for benefits under this subchapter are in no case held liable for debts of the organization in case of the organization's insolvency.

An organization that is a qualified health maintenance organization (as defined in section 300e–9(d)[5] of this title) is deemed to meet the requirements of clauses (i) and (ii).

(B) The duties and functions of the Secretary, insofar as they involve making determinations as to whether an organization is a medicaid managed care organization within the meaning of subparagraph (A), shall be integrated with the administration of section 300e–11(a) and (b) of this title.

(C)(i) Subject to clause (ii), a provision meets the requirements of this subparagraph for an organization if the organization meets solvency standards established by the State for private health maintenance organizations or is licensed or certified by the State as a risk-bearing entity.

(ii) Clause (i) shall not apply to an organization if—

(I) the organization is not responsible for the provision (directly or through arrangements with providers of services) of inpatient hospital services and physicians' services;

(II) the organization is a public entity;

(III) the solvency of the organization is guaranteed by the State; or

[5] See References in Text note below.

(IV) the organization is (or is controlled by) one or more Federally-qualified[6] health centers and meets solvency standards established by the State for such an organization.

For purposes of subclause (IV), the term ''control'' means the possession, whether direct or indirect, of the power to direct or cause the direction of the management and policies of the organization through membership, board representation, or an ownership interest equal to or greater than 50.1 percent.

(2)(A) Except as provided in subparagraphs (B), (C), and (G), no payment shall be made under this subchapter to a State with respect to expenditures incurred by it for payment (determined under a prepaid capitation basis or under any other risk basis) for services provided by any entity (including a health insuring organization) which is responsible for the provision (directly or through arrangements with providers of services) of inpatient hospital services and any other service described in paragraph (2), (3), (4), (5), or (7) of section 1396d(a) of this title or for the provision of any three or more of the services described in such paragraphs unless—

(i) the Secretary has determined that the entity is a medicaid managed care organization as defined in paragraph (1);

(ii) Repealed. Pub. L. 105–33, title IV, § 4703(a), Aug. 5, 1997, 111 Stat. 495.

(iii) such services are provided for the benefit of individuals eligible for benefits under this subchapter in accordance with a contract between the State and the entity under which prepaid payments to the entity are made on an actuarially sound basis and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $1,000,000 for 1998 and, for a subsequent year, the amount established under this clause for the previous year increased by the percentage increase in the consumer price index for all urban consumers over the previous year;

(iv) such contract provides that the Secretary and the State (or any person or organization designated by either) shall have the right to audit and inspect any books and records of the entity (and of any subcontractor) that pertain (I) to the ability of the entity to bear the risk of potential financial losses, or (II) to services performed or determinations of amounts payable under the contract;

(v) such contract provides that in the entity's enrollment, reenrollment, or disenrollment of individuals who are eligible for benefits under this subchapter and eligible to enroll, reenroll, or disenroll with the entity pursuant to the contract, the entity will not discriminate among such individuals on the basis of their health status or requirements for health care services;

(vi) such contract (I) permits individuals who have elected under the plan to enroll with the entity for provision of such benefits to terminate such enrollment in accordance with section 1396u–2(a)(4) of this title, and (II) provides for notification in accordance with such section of each such individual, at the time of the individual's enrollment, of such right to terminate such enrollment;

(vii) such contract provides that, in the case of medically necessary services which were provided (I) to an individual enrolled with the entity under the contract and entitled to benefits with respect to such services under the State's plan and (II) other than through the organization because the services were immediately required due to an unforeseen illness, injury, or condition, either the entity or the State provides for reimbursement with respect to those services,[7]

(viii) such contract provides for disclosure of information in accordance with section 1320a–3 of this title and paragraph (4) of this subsection;

(ix) such contract provides, in the case of an entity that has entered into a contract for the provision of services with a Federally-qualified[6] health center or a rural health clinic, that the entity shall provide payment that is not less than the level and amount of payment which the entity would make for the services if the services were furnished by a provider which is not a Federally-qualified health center or a rural health clinic;

(x) any physician incentive plan that it operates meets the requirements described in section 1395mm(i)(8) of this title;

(xi) such contract provides for maintenance of sufficient patient encounter data to identify the physician who delivers services to patients; and

(xii) such contract, and the entity complies with the applicable requirements of section 1396u–2 of this title.

(B) Subparagraph (A)[8] except with respect to clause (ix) of subparagraph (A), does not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services provided by an entity which—

(i)(I) received a grant of at least $100,000 in the fiscal year ending June 30, 1976, under section 254b(d)(1)(A) or 254c(d)(1) of this title,[9] and for the period beginning July 1, 1976, and ending on the expiration of the period for which payments are to be made under this subchapter has been the recipient of a grant under either such section; and

(II) provides to its enrollees, on a prepaid capitation risk basis or on any other risk basis, all of the services and benefits described in paragraphs (1), (2), (3), (4)(C), and (5) of section 1396d(a) of this title and, to the extent required by section 1396a(a)(10)(D) of this title to be provided under a State plan for medical assistance, the services and benefits described in paragraph (7) of section 1396d(a) of this title; or

(ii) is a nonprofit primary health care entity located in a rural area (as defined by the Appalachian Regional Commission)—

(I) which received in the fiscal year ending June 30, 1976, at least $100,000 (by grant, subgrant, or subcontract) under the Appa-

[6] So in original. Probably should not be capitalized.

[7] So in original. The comma probably should be a semicolon.

[8] So in original. Probably should be followed by a comma.

[9] See References in Text note below.

lachian Regional Development Act of 1965,[9] and

(II) for the period beginning July 1, 1976, and ending on the expiration of the period for which payments are to be made under this subchapter either has been the recipient of a grant, subgrant, or subcontract under such Act or has provided services under a contract (initially entered into during a year in which the entity was the recipient of such a grant, subgrant, or subcontract) with a State agency under this subchapter on a prepaid capitation risk basis or on any other risk basis; or

(iii) which has contracted with the single State agency for the provision of services (but not including inpatient hospital services) to persons eligible under this subchapter on a prepaid risk basis prior to 1970.

(C) to (E) Repealed. Pub. L. 105–33, title IV, § 4703(b)(1)(A), Aug. 5, 1997, 111 Stat. 495.

(F) Repealed. Pub. L. 105–33, title IV, § 4701(d)(2)(B), Aug. 5, 1997, 111 Stat. 494.

(G) In the case of an entity which is receiving (and has received during the previous two years) a grant of at least $100,000 under section 254b(d)(1)(A) or 254c(d)(1) of this title[9] or is receiving (and has received during the previous two years) at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965,[9] clause (i) of subparagraph (A) shall not apply.

(H) In the case of an individual who—

(i) in a month is eligible for benefits under this subchapter and enrolled with a medicaid managed care organization with a contract under this paragraph or with a primary care case manager with a contract described in section 1396d(t)(3) of this title,

(ii) in the next month (or in the next 2 months) is not eligible for such benefits, but

(iii) in the succeeding month is again eligible for such benefits,

the State plan, subject to subparagraph (A)(vi), may enroll the individual for that succeeding month with the organization described in clause (i) if the organization continues to have a contract under this paragraph with the State or with the manager described in such clause if the manager continues to have a contract described in section 1396d(t)(3) of this title with the State.

(3) Repealed. Pub. L. 101–508, title IV, § 4732(d)(2), Nov. 5, 1990, 104 Stat. 1388–196.

(4)(A) Each medicaid managed care organization which is not a qualified health maintenance organization (as defined in section 300e–9(d)[9] of this title) must report to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General a description of transactions between the organization and a party in interest (as defined in section 300e–17(b) of this title), including the following transactions:

(i) Any sale or exchange, or leasing of any property between the organization and such a party.

(ii) Any furnishing for consideration of goods, services (including management services), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

(iii) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(B) Each organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.

(5)(A) If the Secretary determines that an entity with a contract under this subsection—

(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(ii) imposes premiums on individuals enrolled under this subsection in excess of the premiums permitted under this subchapter;

(iii) acts to discriminate among individuals in violation of the provision of paragraph (2)(A)(v), including expulsion or refusal to reenroll an individual or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this subsection) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

(iv) misrepresents or falsifies information that is furnished—

(I) to the Secretary or the State under this subsection, or

(II) to an individual or to any other entity under this subsection,[10] or

(v) fails to comply with the requirements of section 1395mm(i)(8) of this title,

the Secretary may provide, in addition to any other remedies available under law, for any of the remedies described in subparagraph (B).

(B) The remedies described in this subparagraph are—

(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A), or, with respect to a determination under clause (iii) or (iv)(I) of such subparagraph, of not more than $100,000 for each such determination, plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(iii), $15,000 for each individual not enrolled as a result of a practice described in such subparagraph, or

(ii) denial of payment to the State for medical assistance furnished under the contract

[10] So in original. The comma probably should be a semicolon.

under this subsection for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(6)(A) For purposes of this subsection and section 1396a(e)(2)(A) of this title, in the case of the State of New Jersey, the term ''contract'' shall be deemed to include an undertaking by the State agency, in the State plan under this subchapter, to operate a program meeting all requirements of this subsection.

(B) The undertaking described in subparagraph (A) must provide—

(i) for the establishment of a separate entity responsible for the operation of a program meeting the requirements of this subsection, which entity may be a subdivision of the State agency administering the State plan under this subchapter;

(ii) for separate accounting for the funds used to operate such program; and

(iii) for setting the capitation rates and any other payment rates for services provided in accordance with this subsection using a methodology satisfactory to the Secretary designed to ensure that total Federal matching payments under this subchapter for such services will be lower than the matching payments that would be made for the same services, if provided under the State plan on a fee for service basis to an actuarially equivalent population.

(C) The undertaking described in subparagraph (A) shall be subject to approval (and annual reapproval) by the Secretary in the same manner as a contract under this subsection.

(D) The undertaking described in subparagraph (A) shall not be eligible for a waiver under section 1396n(b) of this title.

(n) Repealed. Pub. L. 100–93, § 8(h)(1), Aug. 18, 1987, 101 Stat. 694

(*o*) Restrictions on authorized payments to States

Notwithstanding the preceding provisions of this section, no payment shall be made to a State under the preceding provisions of this section for expenditures for medical assistance provided for an individual under its State plan approved under this subchapter to the extent that a private insurer (as defined by the Secretary by regulation and including a group health plan (as defined in section 1167(1) of title 29), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided medical assistance under the plan.

(p) Assignment of rights of payment; incentive payments for enforcement and collection

(1) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, the enforcement and collection of rights of support or payment assigned under section 1396k of this title, pursuant to a cooperative arrangement under such section (either within or outside of such State), there shall be paid to such political subdivision or such other State from amounts which would otherwise represent the Federal share of payments for medical assistance provided to the eligible individuals on whose behalf such enforcement and collection was made, an amount equal to 15 percent of any amount collected which is attributable to such rights of support or payment.

(2) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under paragraph (1) shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.

(q) "State medicaid fraud control unit" defined

For the purposes of this section, the term ''State medicaid fraud control unit'' means a single identifiable entity of the State government which the Secretary certifies (and annually recertifies) as meeting the following requirements:

(1) The entity (A) is a unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations, (B) is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures, approved by the Secretary, that (i) assure its referral of suspected criminal violations relating to the program under this subchapter to the appropriate authority or authorities in the State for prosecution and (ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions, or (C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which are approved by the Secretary and which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to the program under this subchapter.

(2) The entity is separate and distinct from the single State agency that administers or supervises the administration of the State plan under this subchapter.

(3) The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with (A) any aspect of the provision of medical assistance and the activities of providers of such assistance under the State plan under this subchapter; and (B) upon the approval of the Inspector General of the relevant Federal agency, any aspect of the

provision of health care services and activities of providers of such services under any Federal health care program (as defined in section 1320a–7b(f)(1) of this title), if the suspected fraud or violation of law in such case or investigation is primarily related to the State plan under this subchapter.

(4)(A) The entity has—

(i) procedures for reviewing complaints of abuse or neglect of patients in health care facilities which receive payments under the State plan under this subchapter;

(ii) at the option of the entity, procedures for reviewing complaints of abuse or neglect of patients residing in board and care facilities; and

(iii) procedures for acting upon such complaints under the criminal laws of the State or for referring such complaints to other State agencies for action.

(B) For purposes of this paragraph, the term ''board and care facility'' means a residential setting which receives payment (regardless of whether such payment is made under the State plan under this subchapter) from or on behalf of two or more unrelated adults who reside in such facility, and for whom one or both of the following is provided:

(i) Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.

(ii) A substantial amount of personal care services that assist residents with the activities of daily living, including personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.

(5) The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the State plan or under any Federal health care program (as so defined) to health care facilities and that are discovered by the entity in carrying out its activities. All funds collected in accordance with this paragraph shall be credited exclusively to, and available for expenditure under, the Federal health care program (including the State plan under this subchapter) that was subject to the activity that was the basis for the collection.

(6) The entity employs such auditors, attorneys, investigators, and other necessary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

(7) The entity submits to the Secretary an application and annual reports containing such information as the Secretary determines, by regulation, to be necessary to determine whether the entity meets the other requirements of this subsection.

(r) Mechanized claims processing and information retrieval systems; operational, etc., requirements

(1) In order to receive payments under subsection (a) of this section for use of automated data systems in administration of the State plan under this subchapter, a State must have in operation mechanized claims processing and information retrieval systems that meet the requirements of this subsection and that the Secretary has found—

(A) are adequate to provide efficient, economical, and effective administration of such State plan;

(B) are compatible with the claims processing and information retrieval systems used in the administration of subchapter XVIII of this chapter, and for this purpose—

(i) have a uniform identification coding system for providers, other payees, and beneficiaries under this subchapter or subchapter XVIII of this chapter;

(ii) provide liaison between States and carriers and intermediaries with agreements under subchapter XVIII of this chapter to facilitate timely exchange of appropriate data; and

(iii) provide for exchange of data between the States and the Secretary with respect to persons sanctioned under this subchapter or subchapter XVIII of this chapter;

(C) are capable of providing accurate and timely data;

(D) are complying with the applicable provisions of part C of subchapter XI of this chapter;

(E) are designed to receive provider claims in standard formats to the extent specified by the Secretary; and

(F) effective for claims filed on or after January 1, 1999, provide for electronic transmission of claims data in the format specified by the Secretary and consistent with the Medicaid Statistical Information System (MSIS) (including detailed individual enrollee encounter data and other information that the Secretary may find necessary).

(2) In order to meet the requirements of this paragraph, mechanized claims processing and information retrieval systems must meet the following requirements:

(A) The systems must be capable of developing provider, physician, and patient profiles which are sufficient to provide specific information as to the use of covered types of services and items, including prescribed drugs.

(B) The State must provide that information on probable fraud or abuse which is obtained from, or developed by, the systems, is made available to the State's medicaid fraud control unit (if any) certified under subsection (q) of this section.

(C) The systems must meet all performance standards and other requirements for initial approval developed by the Secretary.

(s) Limitations on certain physician referrals

Notwithstanding the preceding provisions of this section, no payment shall be made to a State under this section for expenditures for medical assistance under the State plan consisting of a designated health service (as defined in subsection (h)(6) of section 1395nn of this title) furnished to an individual on the basis of a referral that would result in the denial of payment

for the service under subchapter XVIII of this chapter if such subchapter provided for coverage of such service to the same extent and under the same terms and conditions as under the State plan, and subsections (f) and (g)(5) of such section shall apply to a provider of such a designated health service for which payment may be made under this subchapter in the same manner as such subsections apply to a provider of such a service for which payment may be made under such subchapter.

(t) Repealed. Pub. L. 97–35, title XXI, § 2161(c)(2), Aug. 13, 1981, 95 Stat. 805, as amended by Pub. L. 97–248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376

(u) Limitation of Federal financial participation in erroneous medical assistance expenditures

(1)(A) Notwithstanding subsection (a)(1) of this section, if the ratio of a State's erroneous excess payments for medical assistance (as defined in subparagraph (D)) to its total expenditures for medical assistance under the State plan approved under this subchapter exceeds 0.03, for the period consisting of the third and fourth quarters of fiscal year 1983, or for any full fiscal year thereafter, then the Secretary shall make no payment for such period or fiscal year with respect to so much of such erroneous excess payments as exceeds such allowable error rate of 0.03.

(B) The Secretary may waive, in certain limited cases, all or part of the reduction required under subparagraph (A) with respect to any State if such State is unable to reach the allowable error rate for a period or fiscal year despite a good faith effort by such State.

(C) In estimating the amount to be paid to a State under subsection (d) of this section, the Secretary shall take into consideration the limitation on Federal financial participation imposed by subparagraph (A) and shall reduce the estimate he makes under subsection (d)(1) of this section, for purposes of payment to the State under subsection (d)(3) of this section, in light of any expected erroneous excess payments for medical assistance (estimated in accordance with such criteria, including sampling procedures, as he may prescribe and subject to subsequent adjustment, if necessary, under subsection (d)(2) of this section).

(D)(i) For purposes of this subsection, the term ''erroneous excess payments for medical assistance'' means the total of—

(I) payments under the State plan with respect to ineligible individuals and families, and

(II) overpayments on behalf of eligible individuals and families by reason of error in determining the amount of expenditures for medical care required of an individual or family as a condition of eligibility.

(ii) In determining the amount of erroneous excess payments for medical assistance to an ineligible individual or family under clause (i)(I), if such ineligibility is the result of an error in determining the amount of the resources of such individual or family, the amount of the erroneous excess payment shall be the smaller of (I) the amount of the payment with respect to such individual or family, or (II) the difference between the actual amount of such resources and the allowable resource level established under the State plan.

(iii) In determining the amount of erroneous excess payments for medical assistance to an individual or family under clause (i)(II), the amount of the erroneous excess payment shall be the smaller of (I) the amount of the payment on behalf of the individual or family, or (II) the difference between the actual amount incurred for medical care by the individual or family and the amount which should have been incurred in order to establish eligibility for medical assistance.

(iv) In determining the amount of erroneous excess payments, there shall not be included any error resulting from a failure of an individual to cooperate or give correct information with respect to third-party liability as required under section 1396k(a)(1)(C) or 602(a)(26)(C)[11] of this title or with respect to payments made in violation of section 1396e of this title.

(v) In determining the amount of erroneous excess payments, there shall not be included any erroneous payments made for ambulatory prenatal care provided during a presumptive eligibility period (as defined in section 1396r–1(b)(1) of this title), for items and services described in subsection (a) of section 1396r–1a of this title provided to a child during a presumptive eligibility period under such section, or for medical assistance provided to an individual described in subsection (a) of section 1396r–1b of this title during a presumptive eligibility period under such section.

(E) For purposes of subparagraph (D), there shall be excluded, in determining both erroneous excess payments for medical assistance and total expenditures for medical assistance—

(i) payments with respect to any individual whose eligibility therefor was determined exclusively by the Secretary under an agreement pursuant to section 1383c of this title and such other classes of individuals as the Secretary may by regulation prescribe whose eligibility was determined in part under such an agreement; and

(ii) payments made as the result of a technical error.

(2) The State agency administering the plan approved under this subchapter shall, at such times and in such form as the Secretary may specify, provide information on the rates of erroneous excess payments made (or expected, with respect to future periods specified by the Secretary) in connection with its administration of such plan, together with any other data he requests that are reasonably necessary for him to carry out the provisions of this subsection.

(3)(A) If a State fails to cooperate with the Secretary in providing information necessary to carry out this subsection, the Secretary, directly or through contractual or such other arrangements as he may find appropriate, shall establish the error rates for that State on the

[11] See References in Text note below.

basis of the best data reasonably available to him and in accordance with such techniques for sampling and estimating as he finds appropriate.

(B) In any case in which it is necessary for the Secretary to exercise his authority under subparagraph (A) to determine a State's error rates for a fiscal year, the amount that would otherwise be payable to such State under this subchapter for quarters in such year shall be reduced by the costs incurred by the Secretary in making (directly or otherwise) such determination.

(4) This subsection shall not apply with respect to Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, or American Samoa.

(v) Medical assistance to aliens not lawfully admitted for permanent residence

(1) Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) Payment shall be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

(A) such care and services are necessary for the treatment of an emergency medical condition of the alien,

(B) such alien otherwise meets the eligibility requirements for medical assistance under the State plan approved under this subchapter (other than the requirement of the receipt of aid or assistance under subchapter IV of this chapter, supplemental security income benefits under subchapter XVI of this chapter, or a State supplementary payment), and

(C) such care and services are not related to an organ transplant procedure.

(3) For purposes of this subsection, the term ''emergency medical condition'' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(A) placing the patient's health in serious jeopardy,

(B) serious impairment to bodily functions, or

(C) serious dysfunction of any bodily organ or part.

(w) Prohibition on use of voluntary contributions, and limitation on use of provider-specific taxes to obtain Federal financial participation under medicaid

(1)(A) Notwithstanding the previous provisions of this section, for purposes of determining the amount to be paid to a State (as defined in paragraph (7)(D)) under subsection (a)(1) of this section for quarters in any fiscal year, the total amount expended during such fiscal year as medical assistance under the State plan (as determined without regard to this subsection) shall be reduced by the sum of any revenues received by the State (or by a unit of local government in the State) during the fiscal year—

(i) from provider-related donations (as defined in paragraph (2)(A)), other than—

(I) bona fide provider-related donations (as defined in paragraph (2)(B)), and

(II) donations described in paragraph (2)(C);

(ii) from health care related taxes (as defined in paragraph (3)(A)), other than broad-based health care related taxes (as defined in paragraph (3)(B));

(iii) from a broad-based health care related tax, if there is in effect a hold harmless provision (described in paragraph (4)) with respect to the tax; or

(iv) only with respect to State fiscal years (or portions thereof) occurring on or after January 1, 1992, and before October 1, 1995, from broad-based health care related taxes to the extent the amount of such taxes collected exceeds the limit established under paragraph (5).

(B) Notwithstanding the previous provisions of this section, for purposes of determining the amount to be paid to a State under subsection (a)(7) of this section for all quarters in a Federal fiscal year (beginning with fiscal year 1993), the total amount expended during the fiscal year for administrative expenditures under the State plan (as determined without regard to this subsection) shall be reduced by the sum of any revenues received by the State (or by a unit of local government in the State) during such quarters from donations described in paragraph (2)(C), to the extent the amount of such donations exceeds 10 percent of the amounts expended under the State plan under this subchapter during the fiscal year for purposes described in paragraphs (2), (3), (4), (6), and (7) of subsection (a) of this section.

(C)(i) Except as otherwise provided in clause (ii), subparagraph (A)(i) shall apply to donations received on or after January 1, 1992.

(ii) Subject to the limits described in clause (iii) and subparagraph (E), subparagraph (A)(i) shall not apply to donations received before the effective date specified in subparagraph (F) if such donations are received under programs in effect or as described in State plan amendments or related documents submitted to the Secretary by September 30, 1991, and applicable to State fiscal year 1992, as demonstrated by State plan amendments, written agreements, State budget documentation, or other documentary evidence in existence on that date.

(iii) In applying clause (ii) in the case of donations received in State fiscal year 1993, the maximum amount of such donations to which such clause may be applied may not exceed the total amount of such donations received in the corresponding period in State fiscal year 1992 (or not later than 5 days after the last day of the corresponding period).

(D)(i) Except as otherwise provided in clause (ii), subparagraphs (A)(ii) and (A)(iii) shall apply to taxes received on or after January 1, 1992.

(ii) Subparagraphs (A)(ii) and (A)(iii) shall not apply to impermissible taxes (as defined in clause (iii)) received before the effective date specified in subparagraph (F) to the extent the taxes (including the tax rate or base) were in ef-

fect, or the legislation or regulations imposing such taxes were enacted or adopted, as of November 22, 1991.

(iii) In this subparagraph and subparagraph (E), the term ''impermissible tax'' means a health care related tax for which a reduction may be made under clause (ii) or (iii) of subparagraph (A).

(E)(i) In no case may the total amount of donations and taxes permitted under the exception provided in subparagraphs (C)(ii) and (D)(ii) for the portion of State fiscal year 1992 occurring during calendar year 1992 exceed the limit under paragraph (5) minus the total amount of broad-based health care related taxes received in the portion of that fiscal year.

(ii) In no case may the total amount of donations and taxes permitted under the exception provided in subparagraphs (C)(ii) and (D)(ii) for State fiscal year 1993 exceed the limit under paragraph (5) minus the total amount of broad-based health care related taxes received in that fiscal year.

(F) In this paragraph in the case of a State—

(i) except as provided in clause (iii), with a State fiscal year beginning on or before July 1, the effective date is October 1, 1992,

(ii) except as provided in clause (iii), with a State fiscal year that begins after July 1, the effective date is January 1, 1993, or

(iii) with a State legislature which is not scheduled to have a regular legislative session in 1992, with a State legislature which is not scheduled to have a regular legislative session in 1993, or with a provider-specific tax enacted on November 4, 1991, the effective date is July 1, 1993.

(2)(A) In this subsection (except as provided in paragraph (6)), the term ''provider-related donation'' means any donation or other voluntary payment (whether in cash or in kind) made (directly or indirectly) to a State or unit of local government by—

(i) a health care provider (as defined in paragraph (7)(B)),

(ii) an entity related to a health care provider (as defined in paragraph (7)(C)), or

(iii) an entity providing goods or services under the State plan for which payment is made to the State under paragraph (2), (3), (4), (6), or (7) of subsection (a) of this section.

(B) For purposes of paragraph (1)(A)(i)(I), the term ''bona fide provider-related donation'' means a provider-related donation that has no direct or indirect relationship (as determined by the Secretary) to payments made under this subchapter to that provider, to providers furnishing the same class of items and services as that provider, or to any related entity, as established by the State to the satisfaction of the Secretary. The Secretary may by regulation specify types of provider-related donations described in the previous sentence that will be considered to be bona fide provider-related donations.

(C) For purposes of paragraph (1)(A)(i)(II), donations described in this subparagraph are funds expended by a hospital, clinic, or similar entity for the direct cost (including costs of training and of preparing and distributing outreach materials) of State or local agency personnel who are stationed at the hospital, clinic, or entity to determine the eligibility of individuals for medical assistance under this subchapter and to provide outreach services to eligible or potentially eligible individuals.

(3)(A) In this subsection (except as provided in paragraph (6)), the term ''health care related tax'' means a tax (as defined in paragraph (7)(F)) that—

(i) is related to health care items or services, or to the provision of, the authority to provide, or payment for, such items or services, or

(ii) is not limited to such items or services but provides for treatment of individuals or entities that are providing or paying for such items or services that is different from the treatment provided to other individuals or entities.

In applying clause (i), a tax is considered to relate to health care items or services if at least 85 percent of the burden of such tax falls on health care providers.

(B) In this subsection, the term ''broad-based health care related tax'' means a health care related tax which is imposed with respect to a class of health care items or services (as described in paragraph (7)(A)) or with respect to providers of such items or services and which, except as provided in subparagraphs (D), (E), and (F)—

(i) is imposed at least with respect to all items or services in the class furnished by all non-Federal, nonpublic providers in the State (or, in the case of a tax imposed by a unit of local government, the area over which the unit has jurisdiction) or is imposed with respect to all non-Federal, nonpublic providers in the class; and

(ii) is imposed uniformly (in accordance with subparagraph (C)).

(C)(i) Subject to clause (ii), for purposes of subparagraph (B)(ii), a tax is considered to be imposed uniformly if—

(I) in the case of a tax consisting of a licensing fee or similar tax on a class of health care items or services (or providers of such items or services), the amount of the tax imposed is the same for every provider providing items or services within the class;

(II) in the case of a tax consisting of a licensing fee or similar tax imposed on a class of health care items or services (or providers of such services) on the basis of the number of beds (licensed or otherwise) of the provider, the amount of the tax is the same for each bed of each provider of such items or services in the class;

(III) in the case of a tax based on revenues or receipts with respect to a class of items or services (or providers of items or services) the tax is imposed at a uniform rate for all items and services (or providers of such items or services) in the class on all the gross revenues or receipts, or net operating revenues, relating to the provision of all such items or services (or all such providers) in the State (or, in the case of a tax imposed by a unit of local government within the State, in the area over which the unit has jurisdiction); or

(IV) in the case of any other tax, the State establishes to the satisfaction of the Secretary that the tax is imposed uniformly.

(ii) Subject to subparagraphs (D) and (E), a tax imposed with respect to a class of health care items and services is not considered to be imposed uniformly if the tax provides for any credits, exclusions, or deductions which have as their purpose or effect the return to providers of all or a portion of the tax paid in a manner that is inconsistent with subclauses (I) and (II) of subparagraph (E)(ii) or provides for a hold harmless provision described in paragraph (4).

(D) A tax imposed with respect to a class of health care items and services is considered to be imposed uniformly—

(i) notwithstanding that the tax is not imposed with respect to items or services (or the providers thereof) for which payment is made under a State plan under this subchapter or subchapter XVIII of this chapter, or

(ii) in the case of a tax described in subparagraph (C)(i)(III), notwithstanding that the tax provides for exclusion (in whole or in part) of revenues or receipts from a State plan under this subchapter or subchapter XVIII of this chapter.

(E)(i) A State may submit an application to the Secretary requesting that the Secretary treat a tax as a broad-based health care related tax, notwithstanding that the tax does not apply to all health care items or services in class (or all providers of such items and services), provides for a credit, deduction, or exclusion, is not applied uniformly, or otherwise does not meet the requirements of subparagraph (B) or (C). Permissible waivers may include exemptions for rural or sole-community providers.

(ii) The Secretary shall approve such an application if the State establishes to the satisfaction of the Secretary that—

(I) the net impact of the tax and associated expenditures under this subchapter as proposed by the State is generally redistributive in nature, and

(II) the amount of the tax is not directly correlated to payments under this subchapter for items or services with respect to which the tax is imposed.

The Secretary shall by regulation specify types of credits, exclusions, and deductions that will be considered to meet the requirements of this subparagraph.

(F) In no case shall a tax not qualify as a broad-based health care related tax under this paragraph because it does not apply to a hospital that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code and that does not accept payment under the State plan under this subchapter or under subchapter XVIII of this chapter.

(4) For purposes of paragraph (1)(A)(iii), there is in effect a hold harmless provision with respect to a broad-based health care related tax imposed with respect to a class of items or services if the Secretary determines that any of the following applies:

(A) The State or other unit of government imposing the tax provides (directly or indirectly) for a payment (other than under this subchapter) to taxpayers and the amount of such payment is positively correlated either to the amount of such tax or to the difference between the amount of the tax and the amount of payment under the State plan.

(B) All or any portion of the payment made under this subchapter to the taxpayer varies based only upon the amount of the total tax paid.

(C)(i) The State or other unit of government imposing the tax provides (directly or indirectly) for any payment, offset, or waiver that guarantees to hold taxpayers harmless for any portion of the costs of the tax.

(ii) For purposes of clause (i), a determination of the existence of an indirect guarantee shall be made under paragraph (3)(i) of section 433.68(f) of title 42, Code of Federal Regulations, as in effect on November 1, 2006, except that for portions of fiscal years beginning on or after January 1, 2008, and before October 1, 2011, ''5.5 percent'' shall be substituted for ''6 percent'' each place it appears.

The provisions of this paragraph shall not prevent use of the tax to reimburse health care providers in a class for expenditures under this subchapter nor preclude States from relying on such reimbursement to justify or explain the tax in the legislative process.

(5)(A) For purposes of this subsection, the limit under this subparagraph with respect to a State is an amount equal to 25 percent (or, if greater, the State base percentage, as defined in subparagraph (B)) of the non-Federal share of the total amount expended under the State plan during a State fiscal year (or portion thereof), as it would be determined pursuant to paragraph (1)(A) without regard to paragraph (1)(A)(iv).

(B)(i) In subparagraph (A), the term ''State base percentage'' means, with respect to a State, an amount (expressed as a percentage) equal to—

(I) the total of the amount of health care related taxes (whether or not broad-based) and the amount of provider-related donations (whether or not bona fide) projected to be collected (in accordance with clause (ii)) during State fiscal year 1992, divided by

(II) the non-Federal share of the total amount estimated to be expended under the State plan during such State fiscal year.

(ii) For purposes of clause (i)(I), in the case of a tax that is not in effect throughout State fiscal year 1992 or the rate (or base) of which is increased during such fiscal year, the Secretary shall project the amount to be collected during such fiscal year as if the tax (or increase) were in effect during the entire State fiscal year.

(C)(i) The total amount of health care related taxes under subparagraph (B)(i)(I) shall be determined by the Secretary based on only those taxes (including the tax rate or base) which were in effect, or for which legislation or regulations imposing such taxes were enacted or adopted, as of November 22, 1991.

(ii) The amount of provider-related donations under subparagraph (B)(i)(I) shall be determined by the Secretary based on programs in effect on September 30, 1991, and applicable to State fiscal

year 1992, as demonstrated by State plan amendments, written agreements, State budget documentation, or other documentary evidence in existence on that date.

(iii) The amount of expenditures described in subparagraph (B)(i)(II) shall be determined by the Secretary based on the best data available as of December 12, 1991.

(6)(A) Notwithstanding the provisions of this subsection, the Secretary may not restrict States' use of funds where such funds are derived from State or local taxes (or funds appropriated to State university teaching hospitals) transferred from or certified by units of government within a State as the non-Federal share of expenditures under this subchapter, regardless of whether the unit of government is also a health care provider, except as provided in section 1396a(a)(2) of this title, unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share under this section.

(B) For purposes of this subsection, funds the use of which the Secretary may not restrict under subparagraph (A) shall not be considered to be a provider-related donation or a health care related tax.

(7) For purposes of this subsection:

(A) Each of the following shall be considered a separate class of health care items and services:

(i) Inpatient hospital services.

(ii) Outpatient hospital services.

(iii) Nursing facility services (other than services of intermediate care facilities for the mentally retarded).

(iv) Services of intermediate care facilities for the mentally retarded.

(v) Physicians' services.

(vi) Home health care services.

(vii) Outpatient prescription drugs.

(viii) Services of managed care organizations (including health maintenance organizations, preferred provider organizations, and such other similar organizations as the Secretary may specify by regulation).

(ix) Such other classification of health care items and services consistent with this subparagraph as the Secretary may establish by regulation.

(B) The term ''health care provider'' means an individual or person that receives payments for the provision of health care items or services.

(C) An entity is considered to be ''related'' to a health care provider if the entity—

(i) is an organization, association, corporation or partnership formed by or on behalf of health care providers;

(ii) is a person with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the provider;

(iii) is the employee, spouse, parent, child, or sibling of the provider (or of a person described in clause (ii)); or

(iv) has a similar, close relationship (as defined in regulations) to the provider.

(D) The term ''State'' means only the 50 States and the District of Columbia but does not include any State whose entire program under this subchapter is operated under a waiver granted under section 1315 of this title.

(E) The ''State fiscal year'' means, with respect to a specified year, a State fiscal year ending in that specified year.

(F) The term ''tax'' includes any licensing fee, assessment, or other mandatory payment, but does not include payment of a criminal or civil fine or penalty (other than a fine or penalty imposed in lieu of or instead of a fee, assessment, or other mandatory payment).

(G) The term ''unit of local government'' means, with respect to a State, a city, county, special purpose district, or other governmental unit in the State.

(x) Satisfactory documentary evidence of citizenship or nationality by individual declaring to be citizen or national of United States

(1) For purposes of subsection (i)(22), the requirement of this subsection is, with respect to an individual declaring to be a citizen or national of the United States, that, subject to paragraph (2), there is presented satisfactory documentary evidence of citizenship or nationality (as defined in paragraph (3)) of the individual.

(2) The requirement of paragraph (1) shall not apply to an individual declaring to be a citizen or national of the United States who is eligible for medical assistance under this subchapter—

(A) and is entitled to or enrolled for benefits under any part of subchapter XVIII;

(B) and is receiving—

(i) disability insurance benefits under section 423 of this title or monthly insurance benefits under section 402 of this title based on such individual's disability (as defined in section 423(d) of this title); or

(ii) supplemental security income benefits under subchapter XVI;

(C) and with respect to whom—

(i) child welfare services are made available under part B of subchapter IV on the basis of being a child in foster care; or

(ii) adoption or foster care assistance is made available under part E of subchapter IV; or

(D) on such basis as the Secretary may specify under which satisfactory documentary evidence of citizenship or nationality has been previously presented.

(3)(A) For purposes of this subsection, the term ''satisfactory documentary evidence of citizenship or nationality'' means—

(i) any document described in subparagraph (B); or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

(B) The following are documents described in this subparagraph:

(i) A United States passport.

(ii) Form N–550 or N–570 (Certificate of Naturalization).

(iii) Form N–560 or N–561 (Certificate of United States Citizenship).

(iv) A valid State-issued driver's license or other identity document described in section

1324a(b)(1)(D) of title 8, but only if the State issuing the license or such document requires proof of United States citizenship before issuance of such license or document or obtains a social security number from the applicant and verifies before certification that such number is valid and assigned to the applicant who is a citizen.

(v) Such other document as the Secretary may specify, by regulation, that provides proof of United States citizenship or nationality and that provides a reliable means of documentation of personal identity.

(C) The following are documents described in this subparagraph:

(i) A certificate of birth in the United States.

(ii) Form FS–545 or Form DS–1350 (Certification of Birth Abroad).

(iii) Form I–197 (United States Citizen Identification Card).

(iv) Form FS–240 (Report of Birth Abroad of a Citizen of the United States).

(v) Such other document (not described in subparagraph (B)(iv)) as the Secretary may specify that provides proof of United States citizenship or nationality.

(D) The following are documents described in this subparagraph:

(i) Any identity document described in section 1324a(b)(1)(D) of title 8.

(ii) Any other documentation of personal identity of such other type as the Secretary finds, by regulation, provides a reliable means of identification.

(E) A reference in this paragraph to a form includes a reference to any successor form.

(y) Payments for establishment of alternate non-emergency services providers

(1) Payments

In addition to the payments otherwise provided under subsection (a), subject to paragraph (2), the Secretary shall provide for payments to States under such subsection for the establishment of alternate non-emergency service providers (as defined in section 1396*o*–1(e)(5)(B)[12] of this title), or networks of such providers.

(2) Limitation

The total amount of payments under this subsection shall not exceed $50,000,000 during the 4-year period beginning with 2006. This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

(3) Preference

In providing for payments to States under this subsection, the Secretary shall provide preference to States that establish, or provide for, alternate non-emergency services providers or networks of such providers that—

(A) serve rural or underserved areas where beneficiaries under this subchapter may not have regular access to providers of primary care services; or

(B) are in partnership with local community hospitals.

(4) Form and manner of payment

Payment to a State under this subsection shall be made only upon the filing of such application in such form and in such manner as the Secretary shall specify. Payment to a State under this subsection shall be made in the same manner as other payments under subsection (a).

(z) Medicaid transformation payments

(1) In general

In addition to the payments provided under subsection (a), subject to paragraph (4), the Secretary shall provide for payments to States for the adoption of innovative methods to improve the effectiveness and efficiency in providing medical assistance under this subchapter.

(2) Permissible uses of funds

The following are examples of innovative methods for which funds provided under this subsection may be used:

(A) Methods for reducing patient error rates through the implementation and use of electronic health records, electronic clinical decision support tools, or e-prescribing programs.

(B) Methods for improving rates of collection from estates of amounts owed under this subchapter.

(C) Methods for reducing waste, fraud, and abuse under the program under this subchapter, such as reducing improper payment rates as measured by annual payment error rate measurement (PERM) project rates.

(D) Implementation of a medication risk management program as part of a drug use review program under section 1396r–8(g) of this title.

(E) Methods in reducing, in clinically appropriate ways, expenditures under this subchapter for covered outpatient drugs, particularly in the categories of greatest drug utilization, by increasing the utilization of generic drugs through the use of education programs and other incentives to promote greater use of generic drugs.

(F) Methods for improving access to primary and specialty physician care for the uninsured using integrated university-based hospital and clinic systems.

(3) Application; terms and conditions

(A) In general

No payments shall be made to a State under this subsection unless the State applies to the Secretary for such payments in a form, manner, and time specified by the Secretary.

(B) Terms and conditions

Such payments are made under such terms and conditions consistent with this subsection as the Secretary prescribes.

(C) Annual report

Payment to a State under this subsection is conditioned on the State submitting to

[12] So in original. Probably should be section ''1396*o*–1(e)(4)(B)''.

the Secretary an annual report on the programs supported by such payment. Such report shall include information on—

(i) the specific uses of such payment;

(ii) an assessment of quality improvements and clinical outcomes under such programs; and

(iii) estimates of cost savings resulting from such programs.

(4) Funding

(A) Limitation on funds

The total amount of payments under this subsection shall be equal to, and shall not exceed—

(i) $75,000,000 for fiscal year 2007; and

(ii) $75,000,000 for fiscal year 2008.

This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

(B) Allocation of funds

The Secretary shall specify a method for allocating the funds made available under this subsection among States. Such method shall provide preference for States that design programs that target health providers that treat significant numbers of Medicaid beneficiaries. Such method shall provide that not less than 25 percent of such funds shall be allocated among States the population of which (as determined according to data collected by the United States Census Bureau) as of July 1, 2004, was more than 105 percent of the population of the respective State (as so determined) as of April 1, 2000.

(C) Form and manner of payment

Payment to a State under this subsection shall be made in the same manner as other payments under subsection (a). There is no requirement for State matching funds to receive payments under this subsection.

(5) Medication risk management program

(A) In general

For purposes of this subsection, the term ''medication risk management program'' means a program for targeted beneficiaries that ensures that covered outpatient drugs are appropriately used to optimize therapeutic outcomes through improved medication use and to reduce the risk of adverse events.

(B) Elements

Such program may include the following elements:

(i) The use of established principles and standards for drug utilization review and best practices to analyze prescription drug claims of targeted beneficiaries and identify outlier physicians.

(ii) On an ongoing basis provide outlier physicians—

(I) a comprehensive pharmacy claims history for each targeted beneficiary under their care;

(II) information regarding the frequency and cost of relapses and hospitalizations of targeted beneficiaries under the physician's care; and

(III) applicable best practice guidelines and empirical references.

(iii) Monitor outlier physician's prescribing, such as failure to refill, dosage strengths, and provide incentives and information to encourage the adoption of best clinical practices.

(C) Targeted beneficiaries

For purposes of this paragraph, the term ''targeted beneficiaries'' means Medicaid eligible beneficiaries who are identified as having high prescription drug costs and medical costs, such as individuals with behavioral disorders or multiple chronic diseases who are taking multiple medications.

(Aug. 14, 1935, ch. 531, title XIX, § 1903, as added Pub. L. 89–97, title I, § 121(a), July 30, 1965, 79 Stat. 349; amended Pub. L. 90–248, title II, §§ 220(a), 222(c), (d), 225(a), 229(c), 241(f)(5), Jan. 2, 1968, 81 Stat. 898, 901, 902, 904, 917; Pub. L. 90–364, title III, § 303(a)(1), June 28, 1968, 82 Stat. 274; Pub. L. 91–56, § 2(a), Aug. 9, 1969, 83 Stat. 99; Pub. L. 92–603, title II, §§ 207(a), 221(c)(6), 224(c), 225, 226(e), 229(c), 230, 233(c), 235(a), 237(a)(1), 249B, 278(b)(1), (5), (7), (16), 290, 295, 299E(a), Oct. 30, 1972, 86 Stat. 1379, 1389, 1395, 1396, 1404, 1410, 1411, 1414, 1415, 1428, 1453, 1454, 1457, 1459, 1462; Pub. L. 93–66, title II, § 234(a), July 9, 1973, 87 Stat. 160; Pub. L. 93–233, §§ 13(a)(11), (12), 18(r)–(v), (x)(5), (6), (y)(1), Dec. 31, 1973, 87 Stat. 963, 971–973; Pub. L. 94–182, title I, §§ 110(a), 111(b), Dec. 31, 1975, 89 Stat. 1054; Pub. L. 94–460, title II, § 202(a), Oct. 8, 1976, 90 Stat. 1957; Pub. L. 94–552, § 1, Oct. 18, 1976, 90 Stat. 2540; Pub. L. 95–83, title I, § 105(a)(1), (2), Aug. 1, 1977, 91 Stat. 384; Pub. L. 95–142, §§ 3(c)(2), 8(c), 10(a), 11(a), 17(a)–(c), 20(a), Oct. 25, 1977, 91 Stat. 1179, 1195, 1196, 1201, 1205; Pub. L. 95–559, § 14(c), Nov. 1, 1978, 92 Stat. 2141; Pub. L. 95–626, title I, § 102(b)(3), Nov. 10, 1978, 92 Stat. 3551; Pub. L. 96–79, title I, § 128, Oct. 4, 1979, 93 Stat. 629; Pub. L. 96–398, title IX, § 901, Oct. 7, 1980, 94 Stat. 1609; Pub. L. 96–499, title IX, §§ 905(b), (c), 961(a), 963, 964, Dec. 5, 1980, 94 Stat. 2618, 2650, 2651; Pub. L. 97–35, title XXI, §§ 2101(a)(2), 2103(b)(1), 2106(b)(3), 2113(n), 2161, 2163, 2164(a), 2174(b), 2178(a), 2183(a), Aug. 13, 1981, 95 Stat. 786, 788, 792, 795, 803–806, 809, 813, 816; Pub. L. 97–248, title I, §§ 133(a), 137(a)(1), (2), (b)(11)–(16), (27), (g), 146(b), Sept. 3, 1982, 96 Stat. 373, 376, 378, 379, 381, 394; Pub. L. 97–448, title III, § 309(b)(16), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–369, div. B, title III, §§ 2303(g)(2), 2363(a)(2), (4), (b), 2364, 2373(b)(11)–(14), July 18, 1984, 98 Stat. 1066, 1106, 1107, 1111, 1112; Pub. L. 98–617, § 3(a)(6), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–272, title IX, §§ 9503(b), (f), 9507(a), 9512(a), 9517(a), (c)(1), 9518(a), Apr. 7, 1986, 100 Stat. 206, 207, 210, 212, 215, 216; Pub. L. 99–509, title IX, §§ 9401(e)(2), 9403(g)(2), 9406(a), 9407(c), 9431(b)(2), 9434(a)(1), (2), (b), Oct. 21, 1986, 100 Stat. 2052, 2055, 2057, 2060, 2066, 2068, 2069; Pub. L. 99–514, title XVIII, § 1895(c)(2), Oct. 22, 1986, 100 Stat. 2935; Pub. L. 99–603, title I, § 121(b)(2), Nov. 6, 1986, 100 Stat. 3390; Pub. L. 100–93, § 8(g), (h)(1), Aug. 18, 1987, 101 Stat. 694; Pub. L. 100–203, title IV, §§ 4112(b), 4113(a)(1), (b)(3), (d)(1), 4118(d)(1), (e)(11), (h)(1), (p)(5), 4211(d)(1), (g), (i), 4212(c)(1), (2), (d)(1),

(e)(2), 4213(b)(2), Dec. 22, 1987, 101 Stat. 1330–149, 1330–150, 1330–152, 1330–155, 1330–159, 1330–204, 1330–205, 1330–207, 1330–212, 1330–213, 1330–219, as amended Pub. L. 100–360, title IV, § 411(a)(3)(A), (B)(iii), (k)(6)(B)(x), (7)(A), (D), (10)(D), (G)(ii), July 1, 1988, 102 Stat. 768, 794, 796; Pub. L. 100–360, title II, § 202(h)(2), title III, §§ 301(f), 302(c)(3), (e)(4), title IV, § 411(k)(12)(A), (13)(A), July 1, 1988, 102 Stat. 718, 750, 752, 753, 797, 798; Pub. L. 100–485, title VI, § 608(d)(26)(K)(ii), (f)(4), Oct. 13, 1988, 102 Stat. 2422, 2424; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6401(b), 6411(d)(2), 6901(b)(5)(A), Dec. 19, 1989, 103 Stat. 2259, 2271, 2299; Pub. L. 101–508, title IV, §§ 4401(a)(1), (b)(1), 4402(b), (d)(3), 4601(a)(3)(A), 4701(b)(2), 4704(b)(1), (2), 4711(c)(2), 4723(a), 4731(a), (b)(2), 4732(a), (b)(2), (c), (d), 4751(b)(1), 4752(a)(2), (b)(1), (e), 4801(a)(8), (e)(16)(A), Nov. 5, 1990, 104 Stat. 1388–143, 1388–159, 1388–163, 1388–164, 1388–166, 1388–170, 1388–172, 1388–187, 1388–194 to 1388–196, 1388–205 to 1388–207, 1388–212, 1388–218; Pub. L. 102–119, § 26(i)(1), Oct. 7, 1991, 105 Stat. 607; Pub. L. 102–234, §§ 2(a), (b)(2), 3(b)(2)(B), 4(a), Dec. 12, 1991, 105 Stat. 1793, 1799, 1803, 1804; Pub. L. 103–66, title XIII, §§ 13602(b), 13604(a), 13622(a)(2), 13624(a), 13631(c), (h)(1), Aug. 10, 1993, 107 Stat. 619, 621, 632, 636, 643, 645; Pub. L. 104–193, title I, § 114(d)(2), Aug. 22, 1996, 110 Stat. 2180; Pub. L. 104–248, § 1(b)(1), Oct. 9, 1996, 110 Stat. 3148; Pub. L. 105–12, § 9(b)(1), Apr. 30, 1997, 111 Stat. 26; Pub. L. 105–33, title IV, §§ 4701(b)(1), (2)(A)(v)–(viii), (B), (C), (c), (d)(2), 4702(b)(1), 4703(a), (b)(1), 4705(b), 4706, 4707(b), 4708(a), (d), 4712(b)(2), (c)(2), 4722(a), (b), 4724(a), (b)(1), 4742(a), 4753(a), 4802(b)(2), 4912(b)(2), Aug. 5, 1997, 111 Stat. 492, 493, 495, 500, 501, 505, 506, 509, 514–516, 523, 525, 549, 573; Pub. L. 105–100, title I, § 162(4), Nov. 19, 1997, 111 Stat. 2189; Pub. L. 106–31, title III, § 3031(a), (b), May 21, 1999, 113 Stat. 103, 104; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, §§ 604(a)(2)(B), (b)(2), 608(e)–(k), (aa)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–395, 1501A–397, 1501A–398; Pub. L. 106–170, title II, § 201(a)(4), (b), title IV, § 407(a)–(c), Dec. 17, 1999, 113 Stat. 1893, 1913; Pub. L. 106–354, § 2(b)(2)(B), Oct. 24, 2000, 114 Stat. 1383; Pub. L. 106–554, § 1(a)(6) [title VII, §§ 702(c)(1), 710(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, 2763A–578; Pub. L. 108–357, title VII, § 712(b), Oct. 22, 2004, 118 Stat. 1559; Pub. L. 108–446, title III, § 305(j)(1), Dec. 3, 2004, 118 Stat. 2806; Pub. L. 109–91, title I, § 104(b), Oct. 20, 2005, 119 Stat. 2092; Pub. L. 109–171, title VI, §§ 6002(b), 6033(a), 6036(a), 6043(b), 6051(a), 6062(c)(1), 6081, Feb. 8, 2006, 120 Stat. 59, 74, 80, 88, 92, 98, 111; Pub. L. 109–432, div. B, title IV, §§ 403, 405(c)(1)(A), Dec. 20, 2006, 120 Stat. 2994, 2998.)

References in Text

Parts A and B of subchapter XVIII of this chapter, referred to in subsecs. (b) and (i), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Subsection (w)(3)(A) of this section, referred to in subsec. (b)(5), was in the original ''section 1902(w)(3)(A)'', and was translated as reading ''section 1903(w)(3)(A)'', meaning section 1903(w)(3)(A) of the Social Security Act, to reflect the probable intent of Congress, because section 1902(w)(3), which is classified to section 1396a(w)(3) of this title, does not contain a subpar. (A), and subsec. (w)(3)(A) of this section relates to health care related taxes.

The Individuals with Disabilities Education Act, referred to in subsec. (c), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Parts B and C of the Act are classified generally to subchapters II (§ 1411 et seq.) and III (§ 1431 et seq.), respectively, of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Internal Revenue Code of 1986, referred to in subsecs. (d)(3)(B)(i) and (w)(3)(F), is classified generally to Title 26, Internal Revenue Code.

Part A of subchapter IV of this chapter, referred to in subsec. (f), is classified to section 601 et seq. of this title.

Section 300e–9(d) of this title, referred to in subsecs. (g)(1) and (m)(1)(A), (4)(A), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (i)(16), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

Part C of subchapter XVIII of this chapter, referred to in subsec. (m)(1)(A), is classified to section 1395w–21 et seq. of this title.

Sections 254b and 254c of this title, referred to in subsec. (m)(2)(B)(i)(I), (G), were in the original references to sections 329 and 330 of the Public Health Service Act, act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of chapter 6A of this title by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

The Appalachian Regional Development Act of 1965, referred to in subsec. (m)(2)(B)(ii), (G), is Pub. L. 89–4, Mar. 9, 1965, 79 Stat. 5, as amended, which was set out in the Appendix to former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as subtitle IV (§ 14101 et seq.) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Part C of subchapter XI of this chapter, referred to in subsec. (r)(1)(D), is classified to section 1320d et seq. of this title.

Section 602 of this title, referred to in subsec. (u)(1)(D)(iv), was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (a)(26)(C).

Parts B and E of subchapter IV, referred to in subsec. (x)(2)(C)(i), (ii), are classified to sections 620 et seq. and 670 et seq., respectively, of this title.

Amendments

2006—Subsec. (f)(4). Pub. L. 109–171, § 6062(c)(1), inserted ''1396a(a)(10)(A)(ii)(XIX),'' after ''1396a(a)(10)(A)(ii)(XVIII),'' in introductory provisions.

Subsec. (i)(10)(C). Pub. L. 109–171, § 6002(b), added subpar. (C).

Subsec. (i)(10)(D). Pub. L. 109–171, § 6033(a), added subpar. (D).

Subsec. (i)(22). Pub. L. 109–171, § 6036(a)(1), added par. (22).

Subsec. (w)(4)(C). Pub. L. 109–432, § 403, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (w)(7)(A)(viii). Pub. L. 109–171, § 6051(a), amended cl. (viii) generally. Prior to amendment, cl. (viii) read as follows: ''Services of a medicaid managed care organization with a contract under subsection (m) of this section.''

Subsec. (x). Pub. L. 109–171, § 6036(a)(2), added subsec. (x).

Subsec. (x)(1). Pub. L. 109–432, § 405(c)(1)(A)(i), substituted ''(i)(22)'' for ''(i)(23)''.

Subsec. (x)(2). Pub. L. 109–432, § 405(c)(1)(A)(ii)(I), substituted ''individual declaring to be a citizen or national of the United States'' for ''alien'' in introductory provisions.

Subsec. (x)(2)(B). Pub. L. 109–432, § 405(c)(1)(A)(ii)(II), added subpar. (B) and struck out former subpar. (B) which read as follows: ''on the basis of receiving supplemental security income benefits under subchapter XVI; or''.

Subsec. (x)(2)(C). Pub. L. 109–432, § 405(c)(1)(A)(ii)(V), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 109–432, § 405(c)(1)(A)(ii)(III), struck out ''other'' before ''basis'' and substituted ''has'' for ''had''.

Subsec. (x)(2)(D). Pub. L. 109–432, § 405(c)(1)(A)(ii)(IV), redesignated subpar. (C) as (D).

Subsec. (x)(3)(C)(iii). Pub. L. 109–432, § 405(c)(1)(A)(iii), substituted ''I–197'' for ''I–97''.

Subsec. (y). Pub. L. 109–171, § 6043(b), added subsec. (y).

Subsec. (z). Pub. L. 109–171, § 6081, added subsec. (z).

2005—Subsec. (i)(21). Pub. L. 109–91 added par. (21).

2004—Subsec. (a)(3)(D). Pub. L. 108–357, § 712(b)(1), substituted ''and'' for ''plus''.

Subsec. (a)(3)(E). Pub. L. 108–357, § 712(b)(2), added subpar. (E).

Subsec. (c). Pub. L. 108–446 substituted ''part C'' for ''part H''.

2000—Subsec. (f)(4). Pub. L. 106–554, § 1(a)(6) [title VII, § 710(a)], inserted ''1396a(a)(10)(A)(ii)(XVII), 1396a(a)(10)(A)(ii)(XVIII),'' after ''1396a(a)(10)(A)(ii)(XVI),''.

Subsec. (m)(2)(A)(ix). Pub. L. 106–554, § 1(a)(6) [title VII, § 702(c)(1)], repealed Pub. L. 105–33, § 4712(c)(2). See 1997 Amendment note below.

Subsec. (u)(1)(D)(v). Pub. L. 106–354 substituted '', for items'' for ''or for items'' and inserted before period at end '', or for medical assistance provided to an individual described in subsection (a) of section 1396r–1b of this title during a presumptive eligibility period under such section''.

1999—Subsec. (a)(3)(C)(i). Pub. L. 106–113, § 1000(a)(6) [title VI, § 604(a)(2)(B)], struck out ''or quality review'' after ''medical and utilization review''.

Subsec. (b)(4). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(e)], inserted ''of'' after ''for the use'' in introductory provisions.

Subsec. (d)(3). Pub. L. 106–31, § 3031(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(3)(B). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(f)], realigned margins.

Subsec. (f)(2). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(g)], struck out second period at end.

Subsec. (f)(4). Pub. L. 106–170, § 201(b), inserted ''1396a(a)(10)(A)(ii)(XV), 1396a(a)(10)(A)(ii)(XVI),'' before ''1396d(p)(1)'' in introductory provisions.

Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(aa)(2)], substituted ''1396a(a)(10)(A)(ii)(XIII), 1396a(a)(10)(A)(ii)(XIV), or 1396d(p)(1) of this title'' for ''1396d(p)(1), or 1396d(u) of this title'' in introductory provisions.

Subsec. (i)(14). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(h)], inserted ''or'' after semicolon.

Subsec. (i)(19). Pub. L. 106–31, § 3031(b), added par. (19).

Subsec. (i)(20). Pub. L. 106–170, § 201(a)(4), added par. (20).

Subsec. (m)(2)(A)(vi). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(i)(1)], struck out semicolon after ''section 1396u–2(a)(4) of this title''.

Subsec. (m)(2)(A)(xi), (xii). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(i)(2)], redesignated cl. (xi), relating to section 1396u–2, as (xii).

Subsec. (m)(6)(B)(ii). Pub. L. 106–113, § 1000(a)(6) [title VI, § 604(b)(2)(A)], inserted ''and'' at end.

Subsec. (m)(6)(B)(iii). Pub. L. 106–113, § 1000(a)(6) [title VI, § 604(b)(2)(B)], substituted a period for ''; and'' at end.

Subsec. (m)(6)(B)(iv). Pub. L. 106–113, § 1000(a)(6) [title VI, § 604(b)(2)(C)], struck out cl. (iv) which read as follows: ''that the State agency will contract, for purposes of meeting the requirement under section 1396a(a)(30)(C) of this title, with an organization or entity that under section 1320c–3 of this title reviews services provided by an eligible organization pursuant to a contract under section 1395mm of this title for the purpose of determining whether the quality of services meets professionally recognized standards of health care.''

Subsec. (*o*). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(j)], struck out second closing parenthesis after ''section 1167(1) of title 29''.

Subsec. (q)(3). Pub. L. 106–170, § 407(a), inserted ''(A)'' after ''in connection with'' and added subpar. (B).

Subsec. (q)(4). Pub. L. 106–170, § 407(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the State plan under this subchapter, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.''

Subsec. (q)(5). Pub. L. 106–170, § 407(b), inserted ''or under any Federal health care program (as so defined)'' before ''to health care facilities'' and inserted at end ''All funds collected in accordance with this paragraph shall be credited exclusively to, and available for expenditure under, the Federal health care program (including the State plan under this subchapter) that was subject to the activity that was the basis for the collection.''

Subsec. (w)(1)(B). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(k)(1)], substituted ''purposes'' for ''puroses''.

Subsec. (w)(3)(B). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(k)(2)], inserted a comma after ''(D)'' in introductory provisions.

Subsec. (w)(7)(A)(viii). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(k)(3)], realigned margins.

1997—Subsec. (a)(3)(C). Pub. L. 105–33, § 4705(b), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(4). Pub. L. 105–33, § 4707(b), added par. (4).

Subsec. (b)(5). Pub. L. 105–33, § 4722(b), added par. (5).

Subsec. (f)(4). Pub. L. 105–100 substituted ''1396d(p)(1), or 1396d(u) of this title'' for ''or 1396d(p)(1) of this title'' in introductory provisions.

Subsec. (f)(4)(C). Pub. L. 105–33, § 4802(b)(2), inserted ''or who is a PACE program eligible individual enrolled in a PACE program under section 1396u–4 of this title,'' after ''section 1396a(a)(10)(A) of this title,''.

Subsec. (i). Pub. L. 105–33, § 4708(d), inserted at end of closing provisions ''Paragraphs (1), (2), (16), (17), and (18) shall apply with respect to items or services furnished and amounts expended by or through a managed care entity (as defined in section 1396u–2(a)(1)(B) of this title) in the same manner as such paragraphs apply to items or services furnished and amounts expended directly by the State.''

Subsec. (i)(2). Pub. L. 105–33, § 4724(a)(1), substituted ''; or'' for the period at end.

Subsec. (i)(10)(B), (11). Pub. L. 105–33, § 4724(a)(2), inserted ''or'' at end.

Subsec. (i)(12). Pub. L. 105–33, § 4742(a), struck out par. (12) which related to restrictions on payments, on or after Jan. 1, 1992, for physicians' services to children under 21 years of age and to pregnant women.

Subsec. (i)(13). Pub. L. 105–33, § 4724(a)(2), inserted ''or'' at end.

Subsec. (i)(16). Pub. L. 105–12 added par. (16).

Subsec. (i)(17). Pub. L. 105–33, § 4724(a)(1), (3), added par. (17).

Subsec. (i)(18). Pub. L. 105–33, § 4724(b)(1), added par. (18).

Subsec. (k). Pub. L. 105–33, § 4701(b)(2)(A)(v), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (m)(1)(A). Pub. L. 105–33, § 4701(b)(1), in introductory provisions, substituted ''The term 'medicaid managed care organization' means a health maintenance organization, an eligible organization with a contract under section 1395mm of this title or a Medicare+Choice organization with a contract under part C of subchapter XVIII of this chapter, a provider sponsored organization, or any other public or private organization, which meets the requirement of section

1396a(w) of this title and—'' for ''The term 'health maintenance organization' means a public or private organization, organized under the laws of any State, which meets the requirement of section 1396a(w) of this title is a qualified health maintenance organization (as defined in section 300e–9(d) of this title) or which meets the requirement of section 1396a(a) of this title and—'' and inserted as closing provisions ''An organization that is a qualified health maintenance organization (as defined in section 300e–9(d) of this title) is deemed to meet the requirements of clauses (i) and (ii).''

Subsec. (m)(1)(A)(ii). Pub. L. 105–33, § 4706(1), inserted '', meets the requirements of subparagraph (C)(i) (if applicable),'' after ''provision is satisfactory to the State''.

Subsec. (m)(1)(B). Pub. L. 105–33, § 4701(b)(2)(A)(vi), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (m)(1)(C). Pub. L. 105–33, § 4706(2), added subpar. (C).

Subsec. (m)(2)(A)(i). Pub. L. 105–33, § 4701(b)(2)(A)(vii), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (m)(2)(A)(ii). Pub. L. 105–33, § 4703(a), struck out cl. (ii) which read as follows: ''less than 75 percent of the membership of the entity which is enrolled on a prepaid basis consists of individuals who (I) are insured for benefits under part B of subchapter XVIII of this chapter or for benefits under both parts A and B of such subchapter, or (II) are eligible to receive benefits under this subchapter;''.

Subsec. (m)(2)(A)(iii). Pub. L. 105–33, § 4708(a), substituted ''$1,000,000 for 1998 and, for a subsequent year, the amount established udner this clause for the previous year increased by the percentage increase in the consumer price index for all urban consumers over the previous year'' for ''$100,000''.

Subsec. (m)(2)(A)(vi). Pub. L. 105–33, § 4701(d)(2)(A), struck out ''except as provided under subparagraph (F),'' after ''such contract (I)'', substituted ''in accordance with section 1396u–2(a)(4) of this title;'' for ''without cause as of the beginning of the first calendar month following a full calendar month after the request is made for such termination'', and inserted ''in accordance with such section'' after ''provides for notification''.

Subsec. (m)(2)(A)(ix). Pub. L. 105–33, § 4712(c)(2), which directed the repeal of subsec. (m)(2)(A)(ix), was repealed by Pub. L. 106–554, § 1(a)(6) [title VII, § 702(c)(1)]. See 2000 Amendment note above and Effective Date of 1997 Amendment note below.

Pub. L. 105–33, § 4712(b)(2), amended cl. (ix) generally. Prior to amendment, cl. (ix) read as follows: ''such contract provides, in the case of an entity that has entered into a contract for the provision of services of such center with a federally qualified health center, that (I) rates of prepayment from the State are adjusted to reflect fully the rates of payment specified in section 1396a(a)(13)(E) of this title, and (II) at the election of such center payments made by the entity to such a center for services described in 1396d(a)(2)(C) of this title are made at the rates of payment specified in section 1396a(a)(13)(E) of this title;''.

Subsec. (m)(2)(A)(xi). Pub. L. 105–33, § 4701(c), added cl. (xi) relating to section 1396u–2.

Subsec. (m)(2)(C) to (E). Pub. L. 105–33, § 4703(b)(1)(A), struck out subpars. (C) to (E) which read as follows:

''(C) Subparagraph (A)(ii) shall not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services by an entity during the three-year period beginning on October 8, 1976, or beginning on the date the entity qualifies as a health maintenance organization (as determined by the Secretary), whichever occurs later, but only if the entity demonstrates to the satisfaction of the Secretary by the submission of plans for each year of such three-year period that it is making continuous efforts and progress toward achieving compliance with subparagraph (A)(ii).

''(D) In the case of a health maintenance organization that is a public entity, the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this subchapter or under subchapter XVIII of this chapter.

''(E) In the case of a health maintenance organization that—

''(i) is a nonprofit organization with at least 25,000 members,

''(ii) is and has been a qualified health maintenance organization (as defined in section 300e–9(d) of this title) for a period of at least four years,

''(iii) provides basic health services through members of the staff of the organization,

''(iv) is located in an area designated as medically underserved under section 300e–1(7) of this title, and

''(v) previously received a waiver of the requirement described in subparagraph (A)(ii) under section 1315 of this title,

the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that special circumstances warrant such modification or waiver and that the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this subchapter or under subchapter XVIII of this chapter.''

Subsec. (m)(2)(F). Pub. L. 105–33, § 4701(d)(2)(B), struck out subpar. (F) which read as follows: ''In the case of—

''(i) a contract with an entity described in subparagraph (E) or (G), with a qualified health maintenance organization (as defined in section 300e–9(d) of this title) which meets the requirement of subparagraph (A)(ii), or or with an eligible organization with a contract under section 1395mm of this title which meets the requirement of subparagraph (A)(ii), or

''(ii) a program pursuant to an undertaking described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis are individuals who (I) are not insured for benefits under part B of subchapter XVIII of this chapter or eligible for benefits under this subchapter, and (II) (in the case of such individuals whose prepayments are made in whole or in part by any government entity) had the opportunity at the time of enrollment in the program to elect other coverage of health care costs that would have been paid in whole or in part by any governmental entity,

a State plan may restrict the period in which requests for termination of enrollment without cause under subparagraph (A)(vi)(I) are permitted to the first month of each period of enrollment, each such period of enrollment not to exceed six months in duration, but only if the State provides notification, at least twice per year, to individuals enrolled with such entity or organization of the right to terminate such enrollment and the restriction on the exercise of this right. Such restriction shall not apply to requests for termination of enrollment for cause.''

Subsec. (m)(2)(G). Pub. L. 105–33, § 4703(b)(1)(B), substituted ''clause (i)'' for ''clauses (i) and (ii)''.

Subsec. (m)(2)(H). Pub. L. 105–33, § 4702(b)(1)(B), in concluding provisions, inserted before period at end ''or with the manager described in such clause if the manager continues to have a contract described in section 1396d(t)(3) of this title with the State''.

Pub. L. 105–33, § 4701(b)(2)(B), struck out ''health maintenance'' before ''organization described'' in concluding provisions.

Subsec. (m)(2)(H)(i). Pub. L. 105–33, § 4702(b)(1)(A), inserted ''or with a primary care case manager with a contract described in section 1396d(t)(3) of this title'' before comma at end.

Pub. L. 105–33, § 4701(b)(2)(A)(vii), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (m)(4)(A). Pub. L. 105–33, § 4701(b)(2)(A)(viii), substituted ''Each medicaid managed care organization'' for ''Each health maintenance organization''.

Subsec. (r)(1). Pub. L. 105–33, § 4753(a)(1), added par. (1) and struck out former par. (1) which read as follows:

''(1)(A) In order to receive payments under paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B).

''(B) The deadline for operation of such systems for a State is September 30, 1985.

''(C) If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section with respect to that State shall each be reduced by 5 percentage points for the first two quarters beginning on or after such deadline, and shall be further reduced by an additional 5 percentage points after each period consisting of two quarters during which the Secretary determines the State fails to meet the requirements of subparagraph (A); except that—

''(i) neither such per centum may be reduced by more than 25 percentage points by reason of this paragraph; and

''(ii) no reduction shall be made under this paragraph for any quarter following the quarter during which such State meets the requirements of subparagraph (A).''

Subsec. (r)(2). Pub. L. 105–33, § 4753(a)(1), (2)(B), (D), inserted introductory provisions, redesignated par. (5)(A)(i) to (iii) as par. (2)(A) to (C), and struck out former par. (2) which read as follows:

''(2)(A) In order to receive payments under paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must have its mechanized claims processing and information retrieval systems, of the type required to be operational under paragraph (1), initially approved by the Secretary in accordance with paragraph (5)(A) on or before the deadline established under subparagraph (B).

''(B) The deadline for approval of such systems for a State is the last day of the fourth quarter that begins after the date on which the Secretary determines that such systems became operational as required under paragraph (1).

''(C) If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section with respect to that State shall each be reduced by 5 percentage points for the first two quarters beginning after such deadline, and shall be further reduced by an additional 5 percentage points at the end of each period consisting of two quarters during which the State fails to meet the requirements of subparagraph (A); except that—

''(i) neither such per centum may be reduced by more than 25 percentage points by reason of this paragraph, and

''(ii) no reduction shall be made under this paragraph for any quarter following the quarter during which such State's systems are approved by the Secretary as provided in subparagraph (A).

''(D) Any State's systems which are approved by the Secretary for purposes of subsection (a)(3)(B) of this section on or before October 7, 1980, shall be deemed to be initially approved for purposes of this subsection.''

Subsec. (r)(3), (4). Pub. L. 105–33, § 4753(a)(1), struck out pars. (3) and (4) which related to Federal matching funds and Secretary's periodic review of approved retrieval systems.

Subsec. (r)(5). Pub. L. 105–33, § 4753(a)(2), struck out introductory provisions relating to requirements for Secretary's initial approval of mechanized claims processing and information retrieval systems and struck out ''under paragraph (6)'' before period at end of subpar. (A)(iii), redesignated subpar. (A)(i) to (iii) as par. (2)(A) to (C), and struck out subpar. (B) which related to requirements for Secretary's reapproval of mechanized claims processing and information retrieval systems.

Subsec. (r)(6) to (8). Pub. L. 105–33, § 4753(a)(3), struck out pars. (6) to (8) which related to Secretary's development of performance standards for approval of State mechanized processing claims and information retrieval systems, waiver of certain requirements for initial operation, and applicability of per centum reductions in certain situations.

Subsec. (u)(1)(D)(v). Pub. L. 105–33, § 4912(b)(2), inserted before period at end ''or for items and services described in subsection (a) of section 1396r–1a of this title provided to a child during a presumptive eligibility period under such section''.

Subsec. (w)(3)(B). Pub. L. 105–33, § 4722(a)(1), substituted ''(E), and (F)'' for ''and (E)'' in introductory provisions.

Subsec. (w)(3)(F). Pub. L. 105–33, § 4722(a)(2), added subpar. (F).

Subsec. (w)(7)(A)(viii). Pub. L. 105–33, § 4701(b)(2)(C), amended cl. (viii) generally. Prior to amendment, cl. (viii) read as follows: ''Services of health maintenance organizations (and other organizations with contracts under subsection (m) of this section).''

1996—Subsec. (i)(9). Pub. L. 104–193 struck out par. (9) which read as follows: ''with respect to any amount of medical assistance for pregnant women and children described in section 1396a(a)(10)(A)(ii)(IX) of this title, if the State has in effect, under its plan established under part A of subchapter IV of this chapter, payment levels that are less than the payment levels in effect under such plan on July 1, 1987;''.

Subsec. (i)(12)(A)(i). Pub. L. 104–248, § 1(b)(1)(A), inserted ''or is certified in family practice or pediatrics by the medical specialty board recognized by the American Osteopathic Association'' before comma at end.

Subsec. (i)(12)(A)(vi). Pub. L. 104–248, § 1(b)(1)(C)(i), (iii), (iv), added cl. (vi) and redesignated former cl. (vi) as (vii).

Pub. L. 104–248, § 1(b)(1)(C)(ii), inserted ''(or certified by the State in accordance with policies of the Secretary)'' after ''Secretary''.

Subsec. (i)(12)(A)(vii). Pub. L. 104–248, § 1(b)(1)(C)(iii), redesignated cl. (vi) as (vii).

Subsec. (i)(12)(B)(i). Pub. L. 104–248, § 1(b)(1)(B), inserted ''or is certified in family practice or obstetrics by the medical specialty board recognized by the American Osteopathic Association'' before comma at end.

Subsec. (i)(12)(B)(vi). Pub. L. 104–248, § 1(b)(1)(C)(i), (iii), (iv), added cl. (vi) and redesignated former cl. (vi) as (vii).

Pub. L. 104–248, § 1(b)(1)(C)(ii), inserted ''(or certified by the State in accordance with policies of the Secretary)'' after ''Secretary''.

Subsec. (i)(12)(B)(vii). Pub. L. 104–248, § 1(b)(1)(C)(iii), redesignated cl. (vi) as (vii).

1993—Subsec. (i)(10). Pub. L. 103–66, § 13631(c)(1), which directed the amendment of par. (10) by striking all that follows ''1396r–8(g) of this title'' and inserting a semicolon, could not be executed because ''1396r–8(g) of this title'' did not appear subsequent to the general amendment of par. (10) by Pub. L. 103–66, § 13602(b). See below.

Pub. L. 103–66, § 13602(b), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''with respect to covered outpatient drugs of a manufacturer dispensed in any State unless, (A) except as provided in section 1396r–8(a)(3) of this title, the manufacturer complies with the rebate requirements of section 1396r–8(a) of this title with respect to the drugs so dispensed in all States, and (B) effective January 1, 1993, the State provides for drug use review in accordance with section 1396r–8(g) of this title; or''.

Subsec. (i)(11). Pub. L. 103–66, § 13631(c)(2), redesignated par. (12) as (11), transferred such par. to appear after par. (10), and substituted semicolon for period at end. Former par. (11) redesignated (13).

Subsec. (i)(12). Pub. L. 103–66, § 13631(c)(3), redesignated par. (14) as (12), transferred such par. to appear

after par. (11), as redesignated by Pub. L. 103–66, § 13631(c)(2), and substituted semicolon for period at end. Former par. (12) redesignated (11).

Subsec. (i)(13). Pub. L. 103–66, § 13631(c)(4), redesignated par. (11) as (13), transferred such par. to appear after par. (12), as redesignated by Pub. L. 103–66, § 13631(c)(3), and directed substitution of ''; or'' for period at end.

Subsec. (i)(14). Pub. L. 103–66, § 13631(c)(5), added par. (14).

Subsec. (i)(15). Pub. L. 103–66, § 13631(h)(1), added par. (15).

Subsec. (*o*). Pub. L. 103–66, § 13622(a)(2), substituted ''regulation and including a group health plan (as defined in section 1167(1) of title 29)), a service benefit plan, and a health maintenance organization)'' for ''regulation)''.

Subsec. (s). Pub. L. 103–66, § 13624(a), added subsec. (s).

Subsec. (v)(2)(C). Pub. L. 103–66, § 13604(a), added subpar. (C).

1991—Subsec. (a)(1). Pub. L. 102–234, § 3(b)(2)(B), inserted ''and section 1396r–4(f) of this title'' after ''of this section''.

Subsec. (c). Pub. L. 102–119 substituted ''child with a disability'' for ''handicapped child'', ''Individuals with Disabilities Education Act'' for ''Education of the Handicapped Act'', and ''an infant or toddler with a disability'' for ''a handicapped infant or toddler''.

Subsec. (d)(6). Pub. L. 102–234, § 4(a), added par. (6).

Subsec. (i)(10). Pub. L. 102–234, § 2(b)(2), struck out par. (10) added by Pub. L. 101–508, § 4701(b)(2)(B), which read as follows: ''with respect to any amount expended for medical assistance for care or services furnished by a hospital, nursing facility, or intermediate care facility for the mentally retarded to reimburse the hospital or facility for the costs attributable to taxes imposed by the State soley [sic] with respect to hospitals or facilities.''

Subsec. (w). Pub. L. 102–234, § 2(a), added subsec. (w).

1990—Subsec. (a)(1). Pub. L. 101–508, § 4402(d)(3), struck out before semicolon ''(including expenditures for medicare cost-sharing and including expenditures for premiums under part B of subchapter XVIII of this chapter, for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, and, except in the case of individuals sixty-five years of age or older and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums for medical or any other type of remedial care or the cost thereof)''.

Subsec. (a)(2)(B). Pub. L. 101–508, § 4801(a)(8), substituted ''October 1, 1990'' for ''July 1, 1990''.

Subsec. (a)(3)(C), (D). Pub. L. 101–508, § 4401(b)(1), substituted ''and'' for ''plus'' at end of subpar. (C) and added subpar. (D).

Subsec. (f)(2). Pub. L. 101–508, § 4723(a), inserted ''(A)'' after ''(2)'' and added cl. (B).

Subsec. (f)(4). Pub. L. 101–508, § 4601(a)(3)(A), substituted ''1396a(a)(10)(A)(i)(III), 1396a(a)(10)(A)(i)(IV), 1396a(a)(10)(A)(i)(V), 1396a(a)(10)(A)(i)(VI), 1396a(a)(10)(A)(i)(VII)'' for ''1396a(a)(10)(A)(i)(IV), 1396a(a)(10)(A)(i)(VI)''.

Subsec. (i)(8). Pub. L. 101–508, § 4711(c)(2), inserted ''(A)'' after ''medical assistance'' and added cl. (B).

Subsec. (i)(10). Pub. L. 101–508, § 4701(b)(2), added par. (10) relating to any amount expended for medical assistance for care or services.

Pub. L. 101–508, § 4401(a)(1), added par. (10) relating to covered outpatient drugs.

Subsec. (i)(11). Pub. L. 101–508, § 4801(e)(16)(A), added par. (11).

Subsec. (i)(12). Pub. L. 101–508, § 4752(a)(2), added par. (12).

Subsec. (i)(14). Pub. L. 101–508, § 4752(e), added par. (14).

Subsec. (m)(1)(A). Pub. L. 101–508, § 4751(b)(1), inserted ''meets the requirement of section 1396a(w) of this title'' after ''State, which'' and ''meets the requirement of section 1396a(a) of this title and'' after ''or which''.

Subsec. (m)(2)(A)(i). Pub. L. 101–508, § 4732(d)(1), struck out ''(or the State as authorized by paragraph (3))'' after ''the Secretary''.

Subsec. (m)(2)(A)(ix). Pub. L. 101–508, § 4704(b)(1), added cl. (ix).

Subsec. (m)(2)(A)(x). Pub. L. 101–508, § 4731(a), added cl. (x).

Subsec. (m)(2)(A)(xi). Pub. L. 101–508, § 4752(b)(1), added cl. (xi).

Subsec. (m)(2)(B). Pub. L. 101–508, § 4704(b)(2), inserted ''except with respect to clause (ix) of subparagraph (A),'' after ''Subparagraph (A)''.

Subsec. (m)(2)(D). Pub. L. 101–508, § 4732(a), struck out ''(i) special circumstances warrant such modification or waiver, and (ii)'' after ''the Secretary determines that''.

Subsec. (m)(2)(F)(i). Pub. L. 101–508, § 4732(b)(2), substituted ''(G),'' for ''(G) or'' and inserted at end ''or with an eligible organization with a contract under section 1395mm of this title which meets the requirement of subparagraph (A)(ii), or''.

Subsec. (m)(2)(H). Pub. L. 101–508, § 4732(c), added subpar. (H).

Subsec. (m)(3). Pub. L. 101–508, § 4732(d)(2), struck out par. (3) which read as follows: ''A State may, in the case of an entity which has submitted an application to the Secretary for determination that it is a health maintenance organization within the meaning of paragraph (1) and for which no such determination has been made within 90 days of the submission of the application, make a provisional determination for the purposes of this subchapter that such entity is such a health maintenance organization. Such provisional determination shall remain in force until such time as the Secretary makes a determination regarding the entity's qualification under paragraph (1).''

Subsec. (m)(5)(A)(v). Pub. L. 101–508, § 4731(b)(2), added cl. (v).

Subsec. (u)(1)(D)(iv). Pub. L. 101–508, § 4402(b), which directed amendment of subpar. (C)(iv) by inserting before period at end ''or with respect to payments made in violation of section 1396e of this title'', was executed to subpar. (D)(iv) to reflect the probable intent of Congress because subpar. (C) does not have a cl. (iv).

1989—Subsec. (a)(2)(B). Pub. L. 101–239, § 6901(b)(5)(A), inserted ''(including the costs for nurse aides to complete such competency evaluation programs)'' after ''1396r(e)(1) of this title'' and ''(or, for calendar quarters beginning on or after July 1, 1988, and before July 1, 1990, the lesser of 90 percent or the Federal medical assistance percentage plus 25 percentage points)'' after ''50 percent''.

Subsec. (f)(4). Pub. L. 101–239, § 6401(b), inserted ''1396a(a)(10)(A)(i)(VI),'' after ''1396a(a)(10)(A) (i)(IV),''.

Subsec. (i)(2). Pub. L. 101–239, § 6411(d)(2), inserted '', not including items or services furnished in an emergency room of a hospital'' after ''emergency item or service''.

Subsec. (i)(5). Pub. L. 101–234 repealed Pub. L. 100–360, § 202(h)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(1). Pub. L. 100–360, § 301(f), amended Pub. L. 99–509, § 9403(g)(2), see 1986 Amendment note below.

Subsec. (c). Pub. L. 100–360, § 411(k)(13)(A), added subsec. (c).

Subsec. (f)(2). Pub. L. 100–360, § 411(k)(10)(G)(ii), amended Pub. L. 100–203, § 4118(h)(1), see 1987 Amendment note below.

Subsec. (f)(4). Pub. L. 100–360, § 302(e)(4), inserted ''1396a(a)(10)(A)(i)(IV),'' before ''1396a(a)(10)(A)(ii)(IX)'' in introductory provisions.

Subsec. (i)(2)(A). Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(ii), added Pub. L. 100–203, § 4118(e)(11)(A), see 1987 Amendment note below.

Subsec. (i)(2)(B). Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(ii), added Pub. L. 100–203, § 4118(e)(11)(B), see 1987 Amendment note below.

Subsec. (i)(3). Pub. L. 100–360, § 411(k)(6)(B)(x), added Pub. L. 100–203, § 4112(b), see 1987 Amendment note below.

Subsec. (i)(5). Pub. L. 100–360, § 202(h)(2), substituted ''section 1395y(c)(1)'' for ''section 1395y(c)''.

Subsec. (i)(9). Pub. L. 100–360, § 302(c)(3), added par. (9).

Subsec. (m)(2)(B)(i)(II). Pub. L. 100–485, § 608(f)(4), substituted ''1396a(a)(10)(D) of this title'' for ''1396a(a)(13)(A)(ii) of this title''.

Subsec. (m)(2)(F). Pub. L. 100–360, § 411(k)(7)(D), repealed Pub. L. 100–203, § 4113(d)(1), see 1987 Amendment note below.

Pub. L. 100–360, § 411(a)(3)(A), (B)(iii), (k)(7)(A), amended Pub. L. 100–203, § 4113(a)(1)(B), see 1987 Amendment note below.

Subsec. (m)(5). Pub. L. 100–360, § 411(k)(12)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

''(A) Any entity with a contract under this subsection that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $10,000 for each such failure.

''(B) The provisions of section 1320a–7a of this title (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.''

1987—Subsec. (a)(1). Pub. L. 100–203, § 4211(g)(2), substituted ''and (j)'' for '', (h), and (j)''.

Subsec. (a)(2)(A) to (C). Pub. L. 100–203, § 4211(d)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (a)(2)(D). Pub. L. 100–203, § 4212(c)(1), added subpar. (D).

Subsec. (a)(3)(C). Pub. L. 100–203, § 4113(b)(3), inserted ''or by an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary,'' after ''organization''.

Subsec. (a)(7). Pub. L. 100–203, § 4212(e)(2), inserted ''subject to section 1396r(g)(3)(B) of this title,'' after ''(7)''.

Subsec. (f)(2). Pub. L. 100–203, § 4118(h)(1), as amended by Pub. L. 100–360, § 411(k)(10)(G)(ii), substituted ''(whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof)'' for ''(whether in the form of insurance premiums or otherwise)''.

Subsec. (f)(4). Pub. L. 100–203, § 4118(p)(5), inserted '', 1396a(a)(10)(A)(ii)(X), or 1396d(p)(1)'' after ''1396a(a)(10)(A)(ii)(IX)''.

Subsec. (g)(1). Pub. L. 100–203, § 4212(d)(1)(A), substituted ''or services in an intermediate care facility for the mentally retarded'' for first reference to ''or intermediate care facility services'', struck out '', skilled nursing facility services for 30 days,'' after first reference to ''60 days'', substituted ''or services in an intermediate care facility for the mentally retarded'' for '', skilled nursing facility services, or intermediate care facility services'', and substituted ''and intermediate care facilities for the mentally retarded'' for '', skilled nursing facilities, and intermediate care facilities''.

Subsec. (g)(4)(B). Pub. L. 100–203, § 4212(d)(1)(B), substituted ''and intermediate care facilities for the mentally retarded'' for '', skilled nursing facilities, and intermediate care facilities''.

Subsec. (g)(6)(B) to (D). Pub. L. 100–203, § 4212(d)(1)(C), redesignated subpar. (C) as (B) and substituted ''services in an intermediate care facility for the mentally retarded'' for ''intermediate care facility services'', redesignated subpar. (D) as (C), and struck out former subpar. (B) which read as follows: ''Such recertifications in the case of skilled nursing facility services shall be conducted at least—

''(i) 30 days after the date of the initial certification,

''(ii) 60 days after the date of the initial certification,

''(iii) 90 days after the date of the initial certification, and

''(iv) every 60 days thereafter.''

Subsec. (g)(7). Pub. L. 100–203, § 4212(d)(1)(D), struck out par. (7) which read as follows: ''It is the duty and responsibility of the Secretary to assure that standards which govern the provision of care in skilled nursing facilities and intermediate care facilities under plans approved under this subchapter, and the enforcement of such standards, are adequate to protect the health and safety of residents and to promote the effective and efficient use of public moneys.''

Subsec. (h). Pub. L. 100–203, § 4211(g)(1), struck out subsec. (h) which related to reduction by Secretary of amount otherwise considered as expenditures under State plan where reasonable cost differential between statewide average cost of skilled nursing facility services and statewide average cost of intermediate care facility services does not exist for any calendar quarter beginning after June 30, 1973.

Subsec. (i). Pub. L. 100–203, § 4118(d)(1)(B), inserted sentence at end that nothing in par. (1) be construed as permitting a State to provide services under its plan under this subchapter that are not reasonable in amount, duration, and scope to achieve their purpose.

Subsec. (i)(1). Pub. L. 100–203, § 4118(d)(1)(A), substituted ''; or'' for period at end.

Subsec. (i)(2). Pub. L. 100–93, § 8(g), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''with respect to any amount paid for services furnished under the plan after December 31, 1972, by a provider or other person during any period of time, if payment may not be made under subchapter XVIII of this chapter with respect to services furnished by such provider or person during such period of time solely by reason of a determination by the Secretary under section 1395y(d)(1) of this title or under clause (D), (E), or (F) of section 1395cc(b)(2) of this title, or by reason of noncompliance with a request made by the Secretary under clause (C)(ii) of such section 1395cc(b)(2) or under section 1396a(a)(38) of this title; or''.

Subsec. (i)(2)(A). Pub. L. 100–203, § 4118(e)(11)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(ii), substituted ''under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title'' for ''in the State plan under this subchapter pursuant to section 1320a–7 of this title or section 1320a–7a of this title''.

Subsec. (i)(2)(B). Pub. L. 100–203, § 4118(e)(11)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(ii), substituted ''from participation under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title'' for ''pursuant to section 1320a–7 of this title or section 1320a–7a of this title from participation in the program under this subchapter''.

Subsec. (i)(3). Pub. L. 100–203, § 4112(b), as added by Pub. L. 100–360, § 411(k)(6)(B)(x), inserted ''(other than amounts attributable to the special situation of a hospital which serves a disproportionate number of low income patients with special needs)'' before ''to the extent''.

Subsec. (i)(4). Pub. L. 100–203, § 4211(i), struck out ''or skilled nursing facility'' after ''hospital'' in three places.

Subsec. (i)(8). Pub. L. 100–203, § 4213(b)(2), added par. (8).

Subsec. (m)(2)(F). Pub. L. 100–203, § 4113(d)(1), which directed the substitution of ''subparagraphs (E) or (G)'' for ''subparagraph (G)'', was repealed by Pub. L. 100–360, § 411(k)(7)(D).

Pub. L. 100–203, § 4113(a)(1)(B), as amended by Pub. L. 100–360, § 411(a)(3)(A), (B)(iii), (k)(7)(A), substituted ''(F) In the case of—'' and cls. (i) and (ii) for ''(F) In the case of a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 300e–9(d) of this title) which meets the requirement of subparagraph (A)(ii),''.

Subsec. (m)(6). Pub. L. 100–203, § 4113(a)(1)(A), added par. (6).

Subsec. (n). Pub. L. 100–93, § 8(h)(1), struck out subsec. (n) which related to State agency action upon disclosure or failure to disclose required information by institution, organization, etc.

Subsec. (r). Pub. L. 100–203, § 4212(c)(2), substituted ''paragraphs (2)(A)'' for ''paragraphs (2)'' in pars. (1)(A), (C) and (2)(A), (C).

1986—Subsec. (a)(1). Pub. L. 99–509, § 9403(g)(2), as amended by Pub. L. 100–360, § 301(f), inserted ''including expenditures for medicare cost-sharing and'' before ''including expenditures''.

Subsec. (a)(3)(C). Pub. L. 99–509, § 9431(b)(2), inserted ''or quality review'' after ''medical and utilization review''.

Subsec. (a)(4). Pub. L. 99–603 added par. (4).

Subsec. (d)(2). Pub. L. 99–272, § 9512(a), designated first sentence as subpar. (A), designated second sentence as subpar. (B), properly indented and aligned below subpar. (A), and added subpars. (C) and (D).

Subsec. (f)(4). Pub. L. 99–509, § 9401(e)(2), inserted ''for any individual described in section 1396a(a)(10)(A)(ii)(IX) of this title or'' after ''as medical assistance''.

Subsec. (i)(1). Pub. L. 99–272, § 9507(a), added par. (1).

Subsec. (m)(2)(A). Pub. L. 99–272, § 9517(a)(1), substituted ''subparagraphs (B), (C), and (G)'' for ''subparagraphs (B) and (C)'' in introductory text.

Pub. L. 99–272, § 9517(c)(1), inserted ''(including a health insuring organization)'' after ''any entity'' and ''(directly or through arrangements with providers of services)'' after ''responsible for the provision'' in introductory text.

Subsec. (m)(2)(A)(iii). Pub. L. 99–509, § 9434(a)(2), inserted before the semicolon ''and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $100,000''.

Subsec. (m)(2)(A)(viii). Pub. L. 99–509, § 9434(a)(1)(A), added cl. (viii).

Subsec. (m)(2)(F). Pub. L. 99–514, § 1895(c)(2), substituted ''In the case'' for ''in the case''.

Pub. L. 99–272, § 9517(a)(2), struck out designation ''(i)'' at beginning of subpar. (F), substituted ''in the case of a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 300e–9(d) of this title) which meets the requirement of subparagraph (A)(ii)'' for ''In the case of a contract with a health maintenance organization described in clause (ii)'', substituted ''such entity or organization'' for ''such organization'', and struck out cl. (ii) which defined a health maintenance organization.

Subsec. (m)(2)(G). Pub. L. 99–272, § 9517(a)(3), added subpar. (G).

Subsec. (m)(4). Pub. L. 99–509, § 9434(a)(1)(B), added par. (4).

Subsec. (m)(5). Pub. L. 99–509, § 9434(b), added par. (5).

Subsec. (r)(1)(B). Pub. L. 99–272, § 9518(a), substituted ''September 30, 1985'' for ''the earlier of (i) September 30, 1982, or (ii) the last day of the sixth month following the date specified for operation of such systems in the State's most recently approved advance planning document submitted before October 7, 1980''.

Subsec. (r)(4)(A). Pub. L. 99–272, § 9503(b)(2), substituted ''once every three years'' for ''once each fiscal year'' and inserted at end ''Reviews may, at the Secretary's discretion, constitute reviews of the entire system or of only those standards, systems requirements, and other conditions which have demonstrated weakness in previous reviews.''

Subsec. (r)(6)(J). Pub. L. 99–272, § 9503(b)(1), amended subpar. (J) generally. Prior to amendment, subsec. (J) read as follows: ''report on or before October 1, 1981, to the Congress on the extent to which States have developed and operated effective mechanized claims processing and information retrieval systems.''

Subsec. (u)(1)(D)(iv). Pub. L. 99–272, § 9503(f), added cl. (iv).

Subsec. (u)(1)(D)(v). Pub. L. 99–509, § 9407(c), added cl. (v).

Subsec. (v). Pub. L. 99–509, § 9406(a), added subsec. (v).

1984—Subsec. (g)(1). Pub. L. 98–369, § 2363(a)(2)(A), (B), in provision preceding subpar. (A), substituted ''inpatient hospital services or intermediate care facility services for 60 days, skilled nursing facility services for 30 days, or inpatient mental hospital services for'' for ''care as an inpatient in a hospital (including an institution for tuberculosis), skilled nursing facility or intermediate care facility on 60 days, or in a hospital for mental diseases on'', and struck out ''which for purposes of this section means the four calendar quarters ending with June 30,'' before ''the Federal medical assistance percentage'', and struck out ''in the same fiscal year'' before ''shall be decreased by a per centum thereof''.

Pub. L. 98–369, § 2363(a)(2)(C), substituted '', skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals, skilled nursing facilities, and intermediate care facilities pursuant to paragraphs (26) and (31) of section 1396a(a) of this title whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams'' for ''(including tuberculosis hospitals), skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), there is in operation in the State an effective program of control over utilization of such services; such a showing must include evidence that—'' and former subpars. (A) through (D) requirement for evidence concerning an effective program of utilization of certain medical services.

Subsec. (g)(4)(B). Pub. L. 98–369, § 2373(b)(11), substituted ''paragraphs (26)'' for ''paragraph (26)'' and ''diligence'' for ''deligence''.

Subsec. (g)(6). Pub. L. 98–369, § 2363(a)(4), in amending par. (6) generally, substituted provisions relating to recertifications for provisions relating to reports to Congress concerning Secretary's determination and review of showing respecting any decrease of Federal medical assistance percentage of amounts paid for services.

Subsec. (g)(7). Pub. L. 98–369, § 2363(b), as amended by Pub. L. 98–617, § 3(a)(6), added par. (7).

Subsec. (i)(7). Pub. L. 98–369, § 2303(g)(2), added par. (7).

Subsec. (m)(2)(A)(vi). Pub. L. 98–369, § 2364(1), inserted ''except as provided under subparagraph (F),'' after ''(I)''.

Subsec. (m)(2)(B)(i)(I). Pub. L. 98–369, § 2373(b)(12)(A), (C), struck out ''(II)'' before ''for the period'' and substituted ''period'' for ''peroid''.

Subsec. (m)(2)(B)(i)(II). Pub. L. 98–369, § 2373(b)(12)(B), substituted ''of section 1396d(a) of this title'' for ''of such section''.

Subsec. (m)(2)(C). Pub. L. 98–369, § 2373(b)(13), realigned margin of subpar. (C).

Subsec. (m)(2)(E), (F). Pub. L. 98–369, § 2364(2), added subpars. (E) and (F).

Subsec. (s)(3)(B). Pub. L. 98–369, § 2373(b)(14), substituted ''non-Federal'' for ''nonfederal''.

1983—Subsec. (t)(3). Pub. L. 97–448 substituted ''purposes'' for ''purpose'' and ''the lower of the Federal medical assistance percentage for the State in effect

for fiscal year 1981, or the Federal medical assistance percentage for the State in effect for fiscal year 1982'' for ''the Federal medical assistance percentage for States in effect for fiscal year 1981, disregarding any change in such percentage after fiscal year 1981''.

1982—Subsec. (a)(3)(C). Pub. L. 97–248, § 146(b), substituted ''utilization and quality control peer review organization'' for ''Professional Standards Review Organization''.

Subsec. (f)(3). Pub. L. 97–248, § 137(g), struck out ''(without regard to section 608 of this title)'' after ''consisting of one person if such plan''.

Subsec. (g)(1). Pub. L. 97–248, § 137(b)(11), inserted ''or which is a qualified health maintenance organization (as defined in section 300e–9(d) of this title)''.

Subsec. (g)(1)(A). Pub. L. 97–248, § 137(b)(12), substituted ''provided in an institution for the mentally retarded'' for ''described in section 1396d(d) of this title''.

Subsec. (k). Pub. L. 97–248, § 137(b)(13), substituted ''subsection (m) of this section'' for ''section 1395mm of this title''.

Subsec. (m)(2)(A). Pub. L. 97–248, § 137(b)(14), substituted ''or'' for ''and'' before ''(II)'' in cl. (iv), and substituted ''unforeseen'' for ''unforseen'' in cl. (vii)(II).

Subsec. (s). Pub. L. 97–248, § 137(a)(2), amended directory language of Pub. L. 97–35, § 2161(c)(1), to correct an error, and did not involve any change in text. See 1981 Amendment note below.

Subsec. (s)(1)(A). Pub. L. 97–248, § 137(b)(15)(A), (B), in provisions following cl. (iii), substituted ''fiscal year 1982'' for ''fiscal year 1981'', and ''subsections (a)(6) and (t) of this section, without regard to payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service,'' for ''subsection (t) of this section''.

Subsec. (s)(1)(C). Pub. L. 97–248, § 137(b)(15)(C), inserted ''a program in operation under'', before ''a plan approved''.

Subsec. (s)(3)(D). Pub. L. 97–248, § 137(b)(15)(D), substituted ''must determine that'' for ''determines that'', ''most recent year (which shall consist of a 12-month period determined by the Secretary for this purpose)'' for ''most recent calendar year'', and ''2- or 3-year period'' for ''2 or 3 calendar year period'', and struck out ''calendar'' wherever appearing.

Subsec. (s)(4)(B). Pub. L. 97–248, § 137(b)(15)(E), inserted ''and paragraph (3)(D)''.

Subsec. (s)(5)(A)(i). Pub. L. 97–248, § 137(b)(15)(F), inserted ''(including amounts saved, to the extent such amounts can be documented to the satisfaction of the Secretary, by reason of the suspension or termination of a provider or other person for fraud or abuse, but only during the period of such suspension or termination or, if shorter, the 1-year period beginning on the date of such termination or suspension)'' after ''recovered or diverted''.

Subsec. (s)(5)(B). Pub. L. 97–248, § 137(b)(27), inserted ''or quarters'' after ''carried forward to the following quarter''.

Subsec. (t). Pub. L. 97–248, § 137(a)(1), (2), amended directory language of Pub. L. 97–35, § 2161(b), (c)(2), to correct an error, and did not involve any change in text. See 1981 Amendment note below.

Subsec. (t)(1)(A). Pub. L. 97–248, § 137(b)(16)(A), substituted ''payments under subsection (a)(6) of this section, interest paid under subsection (d)(5) of this section, and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service'' for ''interest paid under subsection (d)(5) of this section''.

Subsec. (t)(1)(B). Pub. L. 97–248, § 137(b)(16)(B), (D), substituted ''Consumer Price Index for all urban consumers (U.S. city average) published by the Bureau of Labor Statistics'' for ''consumer price index for all urban consumers (published by the Bureau of Labor Statistics)'' and ''for the 12-month period ending on September 30, 1983'' for ''between September 1982 and September 1983''.

Subsec. (t)(1)(C). Pub. L. 97–248, § 137(b)(16)(C), (D), substituted ''Consumer Price Index for all urban consumers (U.S. city average) published by the Bureau of Labor Statistics'' for ''consumer price index for all urban consumers (published by the Bureau of Labor Statistics)'' and ''for the 24-month period ending on September 30, 1984'' for ''between September 1982 and September 1984''.

Subsec. (t)(2)(A). Pub. L. 97–248, § 137(b)(16)(A), substituted ''payments under subsection (a)(6) of this section, interest paid under subsection (d)(5) of this section, and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service'' for ''interest paid under subsection (d)(5) of this section''.

Subsec. (t)(3). Pub. L. 97–248, § 137(b)(16)(E), substituted ''for fiscal years 1982, 1983, and 1984'' for ''for fiscal year 1984'' wherever appearing, ''years 1983, 1984, and 1985, respectively'' for ''year 1985'', ''in effect for fiscal year 1981'' for ''in effect for fiscal year 1983'', and ''after fiscal year 1981'' for ''between fiscal year 1983 and fiscal year 1984''.

Subsec. (u). Pub. L. 97–248, § 133(a), added subsec. (u).

1981—Subsec. (a)(3)(B). Pub. L. 97–35, § 2113(n), substituted ''and'' for ''plus'' at the end of subpar. (B) and added subpar. (C).

Subsec. (d)(5). Pub. L. 97–35, § 2163, substituted ''determination at a rate'' for ''determination (but not to exceed a period of twelve months with respect to disallowances made prior to October 1, 1981, or six months with respect to disallowances made thereafter) at a rate''.

Subsec. (e). Pub. L. 97–35, § 2101(a)(2), added subsec. (e).

Subsec. (g)(1)(A). Pub. L. 97–35, § 2183(a), inserted ''and the physician, or a physician assistant or nurse practitioner under the supervision of a physician'' and ''or, in the case of services that are intermediate care facility services described in section 1396d(d) of this title, every year'' in parenthetical text.

Subsec. (i)(1). Pub. L. 97–35, § 2174(b), struck out par. (1) which provided that payments shall not be made with respect to any amount paid for items or services furnished under the plan after Dec. 31, 1972, to the extent that such amount exceeds the charge which would be determined to be reasonable for such items or services under fourth and fifth sentences of section 1395u(b)(3) of this title.

Subsec. (i)(5). Pub. L. 97–35, § 2103(b)(1), added par. (5).

Subsec. (i)(6). Pub. L. 97–35, § 2164(a), added par. (6).

Subsec. (m)(1)(A). Pub. L. 97–35, § 2178(a)(1), redefined ''Health Maintenance Organization'' substantially, and substituted reference to public and private organizations making services to individuals eligible for benefits under this subchapter and which makes adequate provision against the risk of insolvency for reference to a legal entity which provides health services to individuals enrolled in such organization and providing services and benefits to individuals eligible for benefits under specified provisions of this subchapter.

Subsec. (m)(2)(A). Pub. L. 97–35, § 2178(a)(2), in cl. (ii), substituted ''75 percent of the membership of the entity which is enrolled on a prepaid basis'' for ''one-half of the membership of the entity'', and added cls. (iii) to (vii).

Subsec. (m)(2)(D). Pub. L. 97–35, § 2178(a)(3), added subpar. (D).

Subsec. (n). Pub. L. 97–35, § 2106(b)(3), struck out ''of this section'' after ''section 1395cc of this title'' thereby perfecting the amendment made by Pub. L. 96–499, § 905(c)(2).

Subsec. (s). Pub. L. 97–35, § 2161(c)(1), as amended by Pub. L. 97–248, § 137(a)(2), repealed subsec. (s) which provided for reduction in medicaid payments to States, limitations on reductions, States included, and percentage reductions reduced under certain circumstances. See Effective Date of 1981 Amendment note below.

Pub. L. 97–35, § 2161(a), added subsec. (s).

Subsec. (t). Pub. L. 97–35, § 2161(c)(2), as amended by Pub. L. 97–248, § 137(a)(2), repealed subsec. (t) which pro-

vided for offset for meeting Federal medicaid expenditure targets, and computation for meeting expenditure targets. See Effective Date of 1981 Amendment note below.

Pub. L. 97–35, § 2161(b), as amended by Pub. L. 97–248, § 137(a)(1), added subsec. (t).

1980—Subsec. (a)(1). Pub. L. 96–499, § 905(b), inserted reference to subsection (j) of this section.

Subsec. (a)(6). Pub. L. 96–499, § 963, substituted ''such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and (B) 75 per centum of the sums expended during each succeeding calendar quarter'' for ''each quarter beginning on or after October 1, 1977, and ending before October 1, 1980''.

Subsec. (d)(5). Pub. L. 96–499, § 961(a), added par. (5).

Subsec. (g)(3)(B). Pub. L. 96–499, § 964, substituted ''January 1, 1978'' for ''October 1, 1977'' and ''any calendar quarter ending on or before December 31, 1978'' for ''the calendar quarter ending on December 31, 1977''.

Subsec. (j). Pub. L. 96–499, § 905(c)(1), substituted provisions relating to the adjustment of amounts determined under subsec. (a)(1) of this section in accordance with section 1396m of this title for provisions relating to orders for suspension of payment.

Subsec. (n). Pub. L. 96–499, § 905(c)(2), struck out ''or is subject to a suspension of payment order issued under subsection (j)'' after ''section 1395cc of this title''.

Subsec. (r). Pub. L. 96–398 added subsec. (r).

1979—Subsec. (m)(2)(C). Pub. L. 96–79 substituted ''the date the entity qualifies as a health maintenance organization (as determined by the Secretary)'' for ''the date the entity enters into a contract with the State under this subchapter for the provision of health services on a prepaid risk basis''.

1978—Subsec. (m)(1)(B). Pub. L. 95–559 struck out ''shall be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions'' after ''subparagraph (A),''.

Subsec. (m)(2)(B)(i)(I). Pub. L. 95–626 substituted ''section 254b(d)(1)(A)'' for ''section 247d(d)(1)(A)''.

1977—Subsec. (a)(3)(B). Pub. L. 95–142, § 10(a), inserted provisions relating to notice to individuals in a sample group and provisions exempting notice respecting confidential services from notice requirements.

Subsec. (a)(6), (7). Pub. L. 95–142, § 17(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (b)(3). Pub. L. 95–142, § 17(b), added par. (3).

Subsec. (g). Pub. L. 95–142, § 20(a), in par. (1) substituted ''Subject to paragraph (3), with respect to'' for ''With respect to'' and ''by a per centum thereof (determined under paragraph (5))'' for ''by 33⅓ per centum thereof'', in par. (2) inserted ''timely'' before ''sample onsite surveys'', and added pars. (3) to (6).

Subsec. (i)(2). Pub. L. 95–142, § 3(c)(2), inserted provisions relating to noncompliance under sections 1395cc(b)(2) and 1396a(a)(38) of this title.

Subsec. (m)(2)(A). Pub. L. 95–83, § 105(a)(1), in revising text, incorporated former cl. (i) (I) and (II) provisions in introductory text relating to responsibility for providing inpatient hospital services and other described services, substituting ''capitation basis'' for ''capitation risk basis'' and inserting ''unless''; redesignated as cl. (i) former cl. (ii), substituting ''has determined that the entity is a health maintenance organization'' for ''has not determined to be a health maintenance organization''; and redesignated as cl. (ii) former cl. (iii), substituting ''less than one-half of the membership of the entity consists of individuals who (I) are insured for benefits under part B of subchapter XVIII of this chapter or for benefits under both parts A and B of such subchapter, or (II) are eligible to receive benefits under this subchapter'' for ''more than one-half of the membership of which consists of individuals who are insured under parts A and B of subchapter XVIII of this chapter or recipients of benefits under this subchapter.''

Subsec. (m)(2)(C). Pub. L. 95–83, § 105(a)(2), substituted reference to subpar. ''(A)(ii)'' for ''(A)(iii)'' wherever appearing.

Subsec. (n). Pub. L. 95–142, § 8(c), added subsec. (n).

Subsecs. (*o*), (p). Pub. L. 95–142, § 11(a), added subsecs. (*o*) and (p).

Subsec. (q). Pub. L. 95–142, § 17(c), added subsec. (q).

1976—Subsec. (*l*). Pub. L. 94–552 repealed subsec. (*l*) which provided for reduction of amount of payments to States found not to be in compliance with section 1396a(g) of this title.

Subsec. (m). Pub. L. 94–460 added subsec. (m).

1975—Subsec. (g)(1)(C). Pub. L. 94–182, § 110(a), inserted provisions specifying the method by which the size and composition of the sample of admissions subject to review is to be established.

Subsec. (*l*). Pub. L. 94–182, § 111(b), added subsec. (*l*).

1973—Subsec. (a). Pub. L. 93–233, § 18(x)(5), struck out reference to section 1317 of this title in introductory parenthetical phrase.

Subsec. (a)(1). Pub. L. 93–233, §§ 13(a)(11), 18(r)(1), substituted ''individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title'' for ''individuals who are recipients of money payments under a State plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter'' and inserted ''and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter,'' after ''individuals sixty-five years of age or older''.

Subsec. (a)(4). Pub. L. 93–233, § 18(s), substituted ''sums expended with respect to costs incurred'' for ''sums expended''.

Subsec. (a)(5). Pub. L. 93–233, § 18(t), struck out ''(as found necessary by the Secretary for the proper and efficient administration of the plan)'' after ''such quarter''.

Subsec. (b). Pub. L. 93–233, §§ 18(r)(2), (u), (x)(6), inserted in par. (2) after ''individuals sixty-five years of age or older'' text reading ''and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter'' and end text reading '', other than amounts expended under provisions of the plan of such State required by section 1396a(a)(34) of this title,'' and redesignated pars. (2) and (3) as (1) and (2), respectively.

Subsec. (c). Pub. L. 93–233, § 18(y)(1)(A), struck out subsec. (c) which provided for Federal medical assistance percentage and Federal share of State medical expenses during fiscal year ending June 30, 1965.

Subsec. (d)(1). Pub. L. 93–233, § 18(y)(1)(B), struck out reference to subsec. (c) of this section.

Subsec. (f)(4). Pub. L. 93–233, § 13(a)(12), in subpar. (A), made payment limitations inapplicable to individual with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter; in subpar. (B), made payment limitations inapplicable to individual with respect to whom such benefits are not being paid, and in cls. (i) and (ii) inserted ''to have such benefits paid with respect to him'', and added subpar. (C).

Subsec. (g)(1)(C). Pub. L. 93–233, § 18(v), substituted ''directly responsible for the care of the patient or financially interested in any such institution or, except in the case of hospitals, employed by the institution'' for ''directly responsible for the care of the patient and who are not employed by or financially interested in any such institution''.

Subsec. (j). Pub. L. 93–66 struck out provisions respecting skilled nursing facility services and intermediate care facility services.

1972—Subsec. (a)(1). Pub. L. 92–603, § 207(a)(2), inserted reference to subsecs. (g) and (h) and of this section.

Subsec. (a)(3). Pub. L. 92–603, § 235(a), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 92–603, § 249B, temporarily added par. (4) which provided for payments to States of 100 per centum of sums expended for costs incurred during a quarter attributable to compensation or training of personnel responsible for inspecting public or private institutions providing long-term care to recipients of medical assistance to determine compliance with health or safety standards. Former par. 4 redesignated (5). See Effective Date of 1972 Amendment note below.

Pub. L. 92–603, § 235(a), redesignated former par. (3) as (4).

Subsec. (a)(5). Pub. L. 92–603, § 299E(a), added par. (5). Former par. (5) redesignated (6).

Pub. L. 92–603, § 249B, redesignated former par. (4) as (5).

Subsec. (a)(6). Pub. L. 92–603, § 299E, redesignated former par. (5) as (6).

Subsec. (b)(1). Pub. L. 92–603, § 295, struck out par. (1) which related to amount of quarterly expenditures exceeding average of total expenditures for each quarter of fiscal year ending June 30, 1965.

Subsec. (b)(3). Pub. L. 92–603, § 221(c)(6), added par. (3).

Subsec. (e). Pub. L. 92–603, § 230, repealed subsec. (e) which related to furnishing for comprehensive care and services by July 1, 1977.

Subsec. (g). Pub. L. 92–603, §§ 207(a)(1), 278(b)(1), added subsec. (g) and substituted ''skilled nursing facility'' for ''skilled nursing home'' and ''skilled nursing facilities'' for ''skilled nursing homes'' wherever appearing.

Subsec. (h). Pub. L. 92–603, §§ 207(a)(1), 278(b)(1)(5), added subsec. (h) and substituted ''skilled nursing facility'' for ''skilled nursing home'' wherever appearing.

Subsec. (i). Pub. L. 92–603, §§ 224(c), 229(c), 233(c), 237(a)(1), 278(b)(7), added subsec. (i) and substituted ''skilled nursing facility'' for ''skilled nursing home'' wherever appearing.

Subsec. (j). Pub. L. 92–603, § 290, added subsec. (j) relating to orders for suspension of payment.

Pub. L. 92–603, §§ 225, 278(b)(16), added subsec. (j) relating to skilled nursing facilities services, and substituted ''skilled nursing facility'' for ''skilled nursing home'' wherever appearing.

Subsec. (k). Pub. L. 92–603, § 226(e), added subsec. (k).

1969—Subsec. (e). Pub. L. 91–56 extended from July 1, 1975, to July 1, 1977, the date by which comprehensive care and services for eligible individuals must be made available for a State to be eligible for payments.

1968—Subsec. (a)(1). Pub. L. 90–248, § 222(d), substituted ''and, except in the case of individuals sixty-five years of age or older who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums'' for ''and other insurance premiums''.

Pub. L. 90–248, § 241(f)(5), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XVI of this chapter,''.

Subsec. (a)(2). Pub. L. 90–248, § 225(a), substituted ''of the State agency or any other public agency'' for ''of the State agency (or of the local agency administering the State plan in the political subdivision)''.

Subsec. (b). Pub. L. 90–248, § 222(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(2). Pub. L. 90–364 substituted ''1969'' for ''1967''.

Subsec. (d)(2). Pub. L. 90–248, § 229(c), provided for treatment of expenditures for which payments were made to the State under subsec. (a) as an overpayment to the extent that the State or local agency administering the plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1396a(a)(25) of this title.

Subsec. (f). Pub. L. 90–248, § 220(a), added subsec. (f).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. B, title IV, § 405(c)(1)(A), Dec. 20, 2006, 120 Stat. 2998, provided that the amendment made by section 405(c)(1)(A) is effective as if included in the amendment made by section 6036(a)(2) of the Deficit Reduction Act of 2005 [Pub. L. 109–171].

Pub. L. 109–171, title VI, § 6033(b), Feb. 8, 2006, 120 Stat. 74, provided that: ''The amendments made by subsection (a) [amending this section] take effect on the first day of the first fiscal year quarter that begins after the date of enactment of this Act [Feb. 8, 2006].''

Pub. L. 109–171, title VI, § 6036(b), Feb. 8, 2006, 120 Stat. 81, as amended by Pub. L. 109–432, div. B, title IV, § 405(c)(2)(A)(v)(I), Dec. 20, 2006, 120 Stat. 3000, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to determinations of initial eligibility for medical assistance made on or after July 1, 2006, and to redeterminations of eligibility made on or after such date in the case of individuals for whom the requirement of section 1903(x) of the Social Security Act [subsec. (x) of this section], as added by such amendments, was not previously met.''

Pub. L. 109–171, title VI, § 6043(c), Feb. 8, 2006, 120 Stat. 88, provided that: ''The amendments made by this section [amending this section and section 1396*o*–1 of this title] shall apply to non-emergency services furnished on or after January 1, 2007.''

Pub. L. 109–171, title VI, § 6051(b), Feb. 8, 2006, 120 Stat. 92, provided that:

''(1) IN GENERAL.—Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall be effective as of the date of the enactment of this Act [Feb. 8, 2006].

''(2) DELAY IN EFFECTIVE DATE.—

''(A) IN GENERAL.—Subject to subparagraph (B), in the case of a State specified in subparagraph (B), the amendment made by subsection (a) shall be effective as of October 1, 2009.

''(B) SPECIFIED STATES.—For purposes of subparagraph (A), the States specified in this subparagraph are States that have enacted a law providing for a tax on the services of a Medicaid managed care organization with a contract under section 1903(m) of the Social Security Act [subsec. (m) of this section] as of December 8, 2005.''

Amendment by section 6062(c)(1) of Pub. L. 109–171 applicable to medical assistance for items and services furnished on or after Jan. 1, 2007, see section 6062(d) of Pub. L. 109–171, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–91, title I, § 104(d), Oct. 20, 2005, 119 Stat. 2093, provided that: ''The amendments made by this section [amending this section and sections 1396r–8 and 1396u–5 of this title] shall apply to drugs dispensed on or after January 1, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, § 712(d), Oct. 22, 2004, 118 Stat. 1561, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1396d of this title] take effect on the date of enactment of this Act [Oct. 22, 2004] and apply to medical assistance and services provided under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after that date.''

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by section 702(c)(1) of Pub. L. 106–554 effective Jan. 1, 2001, and applicable to services furnished on or after such date, see section 1(a)(6) [title VII, § 702(e)] of Pub. L. 106–554, set out as a note under section 1396a of this title.

Pub. L. 106–554, § 1(a)(6) [title VII, § 710(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–578, provided that:

''(1) The amendment made by subsection (a)(1) [amending this section] shall be effective as if included in the enactment of section 121 of the Foster Care Inde-

pendence Act of 1999 (Public Law 106–169 [amending sections 1396a and 1396d of this title and enacting provisions set out as notes under section 1396a of this title]).

''(2) The amendment made by subsection (a)(2) [amending this section] shall be effective as if included in the enactment of the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Public Law 106–354).''

Amendment by Pub. L. 106–354 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date, see section 2(d) of Pub. L. 106–354, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by section 201(a)(4), (b) of Pub. L. 106–170 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, see section 201(d) of Pub. L. 106–170, set out as a note under section 1396a of this title.

Pub. L. 106–170, title IV, § 407(d), Dec. 17, 1999, 113 Stat. 1914, provided that: ''The amendments made by this section [amending this section] take effect on the date of the enactment of this Act [Dec. 17, 1999].''

Amendment by section 1000(a)(6) [title VI, § 604(a)(2)(B), (b)(2)] of Pub. L. 106–113 applicable as of such date as the Secretary of Health and Human Services certifies to Congress that the Secretary is fully implementing section 1396u–2(c)(2) of this title, see section 1000(a)(6) [title VI, § 604(c)(2)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(aa)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398, provided that the amendment made by section 1000(a)(6) [title VI, § 608(aa)(2)] is effective as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

Amendment by section 1000(a)(6) [title VI, § 608(e)–(k)] of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, § 608(bb)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

Pub. L. 106–31, title III, § 3031(c), May 21, 1999, 113 Stat. 104, provided that: ''This section [amending this section] and the amendments made by this section shall apply to amounts paid to a State prior to, on, or after the date of the enactment of this Act [May 21, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 162 of Pub. L. 105–100 provided that the amendment made by that section is effective as if included in the enactment of subtitle J (§§ 4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

Section 4710 of title IV of Pub. L. 105–33 provided that:

''(a) GENERAL EFFECTIVE DATE.—Except as otherwise provided in this chapter [chapter 1 (§§ 4701–4710) of subtitle H of title IV of Pub. L. 105–33, enacting section 1396u–2 of this title, amending this section and sections 1320a–3, 1320a–7b, 1396a, 1396d, 1396*o*, 1396r–6, 1396r–8, 1396u–2, and 1396v of this title, and enacting provisions set out as a note under section 1396u–2 of this title] and section 4759 [enacting provisions set out as a note under section 1396a of this title], the amendments made by this chapter shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and shall apply to contracts entered into or renewed on or after October 1, 1997.

''(b) SPECIFIC EFFECTIVE DATES.—Subject to subsection (c) and section 4759—

''(1) PCCM OPTION.—The amendments made by section 4702 [amending this section and sections 1396a and 1396d of this title] shall apply to primary care case management services furnished on or after October 1, 1997.

''(2) 75:25 RULE.—The amendments made by section 4703 [amending this section and section 1396r–6 of this title] apply to contracts under section 1903(m) of the Social Security Act (42 U.S.C. 1396b(m)) on and after June 20, 1997.

''(3) QUALITY STANDARDS.—Section 1932(c)(1) of the Social Security Act [section 1396u–2(c)(1) of this title], as added by section 4705(a), shall take effect on January 1, 1999.

''(4) SOLVENCY STANDARDS.—

''(A) IN GENERAL.—The amendments made by section 4706 [amending this section] shall apply to contracts entered into or renewed on or after October 1, 1998.

''(B) TRANSITION RULE.—In the case of an organization that as of the date of the enactment of this Act [Aug. 5, 1997] has entered into a contract under section 1903(m) of the Social Security Act [subsec. (m) of this section] with a State for the provision of medical assistance under title XIX of such Act [this subchapter] under which the organization assumes full financial risk and is receiving capitation payments, the amendment made by section 4706 shall not apply to such organization until 3 years after the date of the enactment of this Act.

''(5) SANCTIONS FOR NONCOMPLIANCE.—Section 1932(e) of the Social Security Act [section 1396u–2(e) of this title], as added by section 4707(a), shall apply to contracts entered into or renewed on or after April 1, 1998.

''(6) LIMITATION ON FFP FOR ENROLLMENT BROKERS.—The amendment made by section 4707(b) [amending this section] shall apply to amounts expended on or after October 1, 1997.

''(7) 6-MONTH GUARANTEED ELIGIBILITY.—The amendments made by section 4709 [amending section 1396a of this title] shall take effect on October 1, 1997.

''(c) NONAPPLICATION TO WAIVERS.—Nothing in this chapter (or the amendments made by this chapter) shall be construed as affecting the terms and conditions of any waiver, or the authority of the Secretary of Health and Human Services with respect to any such waiver, under section 1115 or 1915 of the Social Security Act (42 U.S.C. 1315, 1396n).''

Amendment by section 4712(b)(2) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4712(b)(3) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Pub. L. 105–33, title IV, § 4712(c), Aug. 5, 1997, 111 Stat. 509, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 603(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394, which provided that the amendment made by section 4712(c) was effective for services furnished on or after Oct. 1, 2004, was repealed by Pub. L. 106–554, § 1(a)(6) [title VII, § 702(c)(1), (e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, effective Jan. 1, 2001, and applicable to services furnished on or after such date.

Section 4722(d) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxes imposed before, on, or after the date of the enactment of this Act [Aug. 5, 1997] and the amendment made by subsection (b) [amending this section] shall apply to taxes imposed on or after such date.''

Section 4724(b)(2) of Pub. L. 105–33 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to home health care services furnished on or after January 1, 1998.''

Section 4742(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 4753(a) of Pub. L. 105–33 effective Jan. 1, 1998, except as otherwise specifically provided, see section 4753(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Amendment by section 4912(b)(2) of Pub. L. 105–33 effective Aug. 5, 1997, see section 4912(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and

services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 1(b)(2) of Pub. L. 104–248 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to physicians' services furnished on or after January 1, 1992.''

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13602(b) of Pub. L. 103–66 effective as if included in enactment of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, see section 13602(d)(1) of Pub. L. 103–66, set out as a note under section 1396r–8 of this title.

Section 13604(b) of Pub. L. 103–66 provided that:

''(1) Subject to paragraph (2), the amendments made by subsection (a) [amending this section] shall apply as if included in the enactment of OBRA–1986 [Pub. L. 99–509].

''(2) The Secretary of Health and Human Services shall not disallow expenditures made for the care and services described in section 1903(v)(2)(C) of the Social Security Act [subsec. (v)(2)(C) of this section], as added by subsection (a), furnished before the date of the enactment of this Act [Aug. 10, 1993].''

Amendment by section 13622(a)(2) of Pub. L. 103–66 applicable to items and services furnished on or after Oct. 1, 1993, see section 13622(d)(3) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Section 13624(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to referrals made on or after December 31, 1994.''

Section 13631(h)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to amounts expended for vaccines administered on or after October 1, 1993.''

Amendment by section 13631(c) of Pub. L. 103–66 applicable to payments under State plans approved under this subchapter for calendar quarters beginning on or after Oct. 1, 1994, see section 13631(i) of Pub. L. 103–66, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendments by section 2(a), (b)(2) of Pub. L. 102–234 effective Jan. 1, 1992, without regard to whether or not regulations have been promulgated to carry out such amendments by such date, see section 2(c)(1) of Pub. L. 102–234, set out as a note under section 1396a of this title.

Amendment by section 3(b)(2)(B) of Pub. L. 102–234 effective Jan. 1, 1992, see section 3(e)(1) of Pub. L. 102–234, set out as a note under section 1396a of this title.

Section 4(b) of Pub. L. 102–234 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to fiscal years ending after the date of the enactment of this Act [Dec. 12, 1991].''

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 4402(b), (d)(3) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101–508 have been promulgated by such date, see section 4402(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4601(a)(3)(A) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101–508 have been promulgated by such date, see section 4601(b) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4701(c) of Pub. L. 101–508 provided that: ''The amendment made by subsection (b) [amending this section and section 1396a of this title] shall take effect on January 1, 1991.''

Amendment by section 4704(b)(1), (2) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4704(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4711(c)(2) of Pub. L. 101–508 applicable to civil money penalties imposed after Nov. 5, 1990, see section 4711(e)(2)(B) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4731(c) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) and (b)(2) [amending this section] shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by subsection (b)(1) [amending section 1320a–7a of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Amendment by section 4751(b)(1) of Pub. L. 101–508 applicable with respect to services furnished on or after first day of first month beginning more than 1 year after Nov. 5, 1990, see section 4751(c) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4752(b)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contract years beginning after the date of the establishment of the system described in section 1902(x) of the Social Security Act [section 1396a(x) of this title].''

Section 4801(a)(9) of Pub. L. 101–508 provided that: ''Except as provided in paragraph (6), the amendments made by this subsection [amending this section and section 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4801(e)(16)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply with respect to actions initiated on or after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6401(b) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out the amendments by section 6401 of Pub. L. 101–239 have been promulgated by such date, see section 6401(c) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6901(b)(5)(A) of Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 6901(b)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 608(d)(26)(K)(ii) of Pub. L. 100–485 effective as if included in the enactment of the

Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 608(f)(4) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(h)(2) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Section 301(f) of Pub. L. 100–360 provided that the amendment made by that section is effective as though included in the enactment of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509.

Amendment by section 302(c)(3) of Pub. L. 100–360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1989, with respect to eligibility for medical assistance on or after that date, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 302(f) of Pub. L. 100–360, set out as a note under section 1396a of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(a)(3)(A), (B)(iii), (k)(6)(B)(x), (7)(A), (D), (10)(D), (G)(ii) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(k)(12)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to actions occurring on or after the date of the enactment of this Act [July 1, 1988].''

Section 411(k)(13)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4118(d)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 9507 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Amendment by section 4118(h)(1) of Pub. L. 100–203 applicable to costs incurred after Dec. 22, 1987, see section 4118(h)(3) of Pub. L. 100–203, as amended, set out as a note under section 1396a of this title.

Amendments by sections 4211(d)(1), (g), (i), 4212(c)(1), (2), (d)(1), (e)(2) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by section 4212(d)(1) of Pub. L. 100–203 not applicable until such date as of which the State has specified the resident assessment instrument under section 1396r(e)(5) of this title, and the State has begun conducting surveys under section 1396r(g)(2) of this title, see section 4212(d)(4) of Pub. L. 100–203, set out as a note under section 1396a of this title.

Amendment by section 4213(b)(2) of Pub. L. 100–203 applicable to payments under this subchapter for calendar quarters beginning on or after Dec. 22, 1987, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, see section 4214(b)(1) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9401(e)(2) of Pub. L. 99–509 applicable to medical assistance furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether of not final regulations to carry out such amendment have been promulgated by such date, see section 9401(f) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9403(g)(2) of Pub. l. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9406(a) of Pub. L. 99–509 applicable, except as otherwise provided, to medical assistance furnished to aliens on or after Jan. 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9406(c) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9407(c) of Pub. L. 99–509 applicable to ambulatory prenatal care furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9407(d) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9431(b)(2) of Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9431(c) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Section 9434(a)(3) of Pub. L. 99–509 provided that:

''(A) The amendments made by paragraph (1) [amending this section] shall take effect 6 months after the date of the enactment of this Act [Oct. 21, 1986].

''(B) The amendment made by paragraph (2) [amending this section] shall take effect on the date of the enactment of this Act and shall apply to contracts entered into, renewed, or extended after the end of the 30-day period beginning on the date of the enactment of this Act.''

Amendment by section 9503(b), (f) of Pub. L. 99–272 applicable to calendar quarters beginning on or after Apr. 7, 1986, except as otherwise provided, see section 9503(g)(1), (2) of Pub. L. 99–272, set out as a note under section 1396a of this title.

Section 9507(b) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to medical assistance furnished on or after January 1, 1987.''

Section 9512(b) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply to overpayments identified for quarters beginning on or after October 1, 1985.''

Section 9517(c)(2), (3) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, § 9435(e), Oct. 21, 1986, 100 Stat. 2070; Pub. L. 99–514, title XVIII, § 1895(c)(4), Oct. 22, 1986, 100 Stat. 2935; Pub. L. 101–508, title IV, § 4734, Nov. 5, 1990, 104 Stat. 1388–196; Pub. L. 104–240, § 1(a), Oct. 8, 1996, 110 Stat. 3140; Pub. L. 106–554, § 1(a)(6) [title VII, § 704(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–575, provided that:

''(2)(A) Except as provided in subparagraph (B) and in paragraph (3), the amendments made by paragraph (1)

[amending this section] shall apply to expenditures incurred for health insuring organizations which first become operational on or after January 1, 1986. For purposes of this paragraph, a health insuring organization is not considered to be operational until the date on which it first enrolls patients.

''(B) In the case of a health insuring organization—

''(i) which first becomes operational on or after January 1, 1986, but

''(ii) for which the Secretary of Health and Human Services has waived, under section 1915(b) of the Social Security Act [section 1396n(b) of this title] and before such date, certain requirements of section 1902 of such Act [section 1396a of this title],

clauses (ii) and (vi) of section 1903(m)(2)(A) of such Act [subsec. (m)(2)(A)(ii) and (vi) of this section] shall not apply during the period for which such waiver is effective.

''(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986).

''(D) Nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring a health-insuring organization to be organized under the health maintenance organization laws of a State.

''(3)(A) Subject to subparagraph (C), in the case of up to 3 health insuring organizations which are described in subparagraph (B), which first become operational on or after January 1, 1986, and which are designated by the Governor, and approved by the Legislature, of California, the amendments made by paragraph (1) shall not apply.

''(B) A health insuring organization described in this subparagraph is one that—

''(i) is operated directly by a public entity established by a county government in the State of California under a State enabling statute;

''(ii) enrolls all medicaid beneficiaries residing in the county or counties in which it operates;

''(iii) meets the requirements for health maintenance organizations under the Knox-Keene Act (Cal. Health and Safety Code, section 1340 et seq.) and the Waxman-Duffy Act (Cal. Welfare and Institutions Code, section 14450 et seq.);

''(iv) assures a reasonable choice of providers, which includes providers that have historically served medicaid beneficiaries and which does not impose any restriction which substantially impairs access to covered services of adequate quality where medically necessary;

''(v) provides for a payment adjustment for a disproportionate share hospital (as defined under State law consistent with section 1923 of the Social Security Act [section 1396r–4 of this title]) in a manner consistent with the requirements of such section; and

''(vi) provides for payment, in the case of childrens' hospital services provided to medicaid beneficiaries who are under 21 years of age, who are children with special health care needs under title V of the Social Security Act [subchapter V of this chapter], and who are receiving care coordination services under such title, at rates determined by the California Medical Assistance Commission.

''(C) Subparagraph (A) shall not apply with respect to any period for which the Secretary of Health and Human Services determines that the number of medicaid beneficiaries enrolled with health insuring organizations described in subparagraph (B) exceeds 14 percent of the number of such beneficiaries in the State of California.

''(D) In this paragraph, the term 'medicaid beneficiary' means an individual who is entitled to medical assistance under the State plan under title XIX of the Social Security Act [this subchapter], other than a qualified medicare beneficiary who is only entitled to such assistance because of section 1902(a)(10)(E) of such title [section 1396a(a)(10)(E) of this title].''

[Pub. L. 106–554, §1(a)(6) [title VII, §704(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–575, provided that: ''The amendment made by subsection (a) [amending section 9517(c)(3)(C) of Pub. L. 99–272, set out above] takes effect on the date of the enactment of this Act [Dec. 21, 2000].'']

[Pub. L. 104–240, §1(b), Oct. 8, 1996, 110 Stat. 3140, provided that: ''The amendment made by subsection (a) [amending section 9517(c)(3)(B)(ii) of Pub. L. 99–272, set out above] shall apply to quarters beginning on or after October 1, 1996.'']

Section 9518(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payment under section 1903(a) of the Social Security Act [subsec. (a) of this section] for calendar quarters beginning on or after October 1, 1982.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2303(g)(2) of Pub. L. 98–369 applicable to payments for calendar quarters beginning on or after Oct. 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(2) and (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2363(c) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section and section 1396a of this title] apply to calendar quarters beginning on or after the date of the enactment of this Act [July 18, 1984], except that, in the case of individuals admitted to skilled nursing facilities before such date, the amendments made by such subsection shall not require recertifications sooner or more frequently than were required under the law in effect before such date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 133(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 137(a)(1), (2) of Pub. L. 97–248 effective as if originally included in the provision of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, to which such amendment relates, see section 137(d)(1) of Pub. L. 97–248, set out as a note under section 1396a of this title.

Amendment by section 137(b)(11)–(16), (27) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

Section 137(g) of Pub. L. 97–248 provided that the amendment made by that section is effective Oct. 1, 1982.

Amendment by section 146(b) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2101(a)(2) of Pub. L. 97–35 applicable only to services furnished by a hospital during any accounting year beginning on or after Oct. 1, 1981, see section 2101(c) of Pub. L. 97–35, set out as an Effective Date note under section 1395uu of this title.

Section 2103(b)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to amounts expended on or after October 1, 1981.''

Amendment by section 2113(n) of Pub. L. 97–35 applicable to agreements with Professional Standards Review Organizations entered into on or after Oct. 1, 1981, see section 2113(*o*) of Pub. L. 97–35, set out as a note under section 1396a of this title.

Section 2161(c)(1) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided that the amendment made by such section 2161(c)(1) is effective for calendar quarters beginning on or after Oct. 1, 1984.

Section 2161(c)(2) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided that the amendment made by such section 2161(c)(2) is effective after payments for the first quarter of fiscal year 1985.

Section 2164(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to tests occurring on or after October 1, 1981.''

Amendment by section 2174(b) of Pub. L. 97–35 applicable to services furnished on or after Oct. 1, 1981, see section 2174(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

Amendment by section 2178(a) of Pub. L. 97–35 applicable with respect to services furnished, under a State plan approved under this subchapter, on or before Oct. 1, 1981, except that such amendments not applicable with respect to services furnished by a health maintenance organization under a contract with a State entered into under this subchapter before Oct. 1, 1981, unless the organization requests that such amendments apply and the Secretary and the State agency agree to such request, see section 2178(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

Section 2183(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments made to States for calendar quarters beginning on or after October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 961(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to expenditures for services furnished on or after October 1, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by section 3(c)(2) of Pub. L. 95–142 effective Jan. 1, 1978, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Amendment by section 8(c) of Pub. L. 95–142 effective with respect to contracts, agreements, etc., made on and after the first day of the fourth month beginning after Oct. 25, 1977, see section 8(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–5 of this title.

Section 10(b) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after the date of the enactment of this Act [Oct. 25, 1977].''

Section 11(c) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to medical assistance provided, under a State plan approved under title XIX of the Social Security Act [this subchapter], on and after January 1, 1978.''

Section 17(e)(1) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after September 30, 1977.''

Section 20(c) of Pub. L. 95–142, as amended by Pub. L. 95–292, § 8(e), June 13, 1978, 92 Stat. 316, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396a of this title] shall be effective on October 1, 1977, and the Secretary of Health, Education, and Welfare shall promptly adjust payments made to States under section 1903 of the Social Security Act [this section] to reflect the changes made by such amendments.

''(2) The amount of any reduction in the Federal medical assistance percentage of a State, otherwise required to be imposed under section 1903(g)(1) of the Social Security Act [subsec. (g)(1) of this section] because of an unsatisfactory or invalid showing made by the State with respect to a calendar quarter beginning on or after January 1, 1977, shall be determined under such section as amended by this section. Subparagraph (B) of paragraph (4) of section 1903(g) of such Act [subsec. (g)(4)(B) of this section], as added by this section, shall apply to any showing made by a State under such section with respect to a calendar quarter beginning on or after January 1, 1977.''

Section 105(a)(3) of Pub. L. 95–83 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to payments under title XIX of the Social Security Act [this subchapter] to States for services provided—

''(A) after October 8, 1976, under contracts under such title [this subchapter] entered into or renegotiated after such date, or

''(B) after the expiration of the one-year period beginning on such date,

whichever occurs first.''

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–552 effective Jan. 1, 1976, see section 2 of Pub. L. 94–552, set out as a note under section 1396a of this title.

Section 202(b) of Pub. L. 94–460 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to payments under title XIX of the Social Security Act [this subchapter] to States for services provided—

''(1) after the date of enactment of subsection (a) [Oct. 8, 1976] under contracts under such title entered into or renegotiated after such date, or

''(2) after the expiration of the 1-year period beginning on such date of enactment,

whichever occurs first.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 110(b) of Pub. L. 94–182 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first calendar month which begins not less than 90 days after the date of enactment of this Act [Dec. 31, 1975].''

Amendment by section 111(b) of Pub. L. 94–182 effective January 1, 1976, except as otherwise provided therein, see section 111(c) of Pub. L. 94–182, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by section 13(a)(11), (12) of Pub. L. 93–233 effective with respect to payments under this section for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93–233, set out as a note under section 1396a of this title.

Amendment by section 18(u) of Pub. L. 93–233 effective July 1, 1973, see section 18(z–3)(4) of Pub. L. 93–233, set out as a note under section 1396a of this title.

Section 234(b) of Pub. L. 93–66 provided that: ''The amendment made by subsection (a) [amending this section] shall be applicable in the case of expenditures for skilled nursing services and for intermediate care facility services furnished in calendar quarters which begin after December 31, 1972.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 207(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall, except as otherwise provided therein, be effective July 1, 1973.''

Amendment by section 226(e) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 233(c) of Pub. L. 92–603 applicable with respect to services furnished by hospitals in accounting periods beginning after Dec. 31, 1972, see section 233(f) of Pub. L. 92–603, set out as a note under section 1395f of this title. See, also, section 16 of Pub. L. 93–233, set out as an Effective Date note under section 1395f of this title.

Section 235(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to expenditures under State plans approved under title XIX of the Social Security Act [this subchapter], made after June 30, 1971.''

Section 237(d)(1) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a)(1) and (b) [amending this section and section 706 of this title] shall apply with respect to services furnished in calendar quarters beginning after June 30, 1973.''

Section 249B of Pub. L. 92–603, as amended by Pub. L. 93–368, § 8, Aug. 7, 1974, 88 Stat. 422; Pub. L. 95–83, title III, § 309(b), Aug. 1, 1977, 91 Stat. 396, provided that the amendment made by that section is effective for period beginning Oct. 1, 1972, and ending Sept. 30, 1980.

EFFECTIVE DATE OF 1968 AMENDMENTS

Section 220(b) of Pub. L. 90–248 provided that:

''(b)(1) In the case of any State whose plan under title XIX of the Social Security Act [this subchapter] is approved by the Secretary of Health, Education, and Welfare under section 1902 [section 1396a of this title] after July 25, 1967, the amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after the date of enactment of this Act [Jan. 2, 1968].

''(2) In the case of any State whose plan under title XIX of the Social Security Act [this subchapter] was approved by the Secretary of Health, Education, and Welfare under section 1902 of the Social Security Act [section 1396a of this title] prior to July 26, 1967, amendments made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1968, except that—

''(A) with respect to the third and fourth calendar quarters of 1968, such subsection shall be applied by substituting in subsection (f) of section 1903 of the Social Security Act [subsec. (f) of this section] 150 percent for 133½ percent each time such latter figure appears in such subsection (f), and

''(B) with respect to all calendar quarters during 1969, such subsection shall be applied by substituting in subsection (f) of section 1903 of such Act [subsec. (f) of this section] 140 percent for 133½ percent each time such latter figure appears in such subsection (f).''

Section 222(d) of Pub. L. 90–248, as amended by section 303(a)(2) of Pub. L. 90–364, provided that the amendment made by such section 222(d) is effective with respect to calendar quarters beginning after December 31, 1969.

Section 225(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to expenditures made after December 31, 1967.''

Section 303(b) of Pub. L. 90–364 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to calendar quarters beginning after December 31, 1967.''

REGULATIONS

Section 5 of Pub. L. 102–234 provided that:

''(a) IN GENERAL.—Subject to subsection (b), the Secretary of Health and Human Services shall issue such regulations (on an interim final or other basis) as may be necessary to implement this Act [see Short Title of 1991 Amendment note set out under section 1305 of this title] and the amendments made by this Act.

''(b) REGULATIONS CHANGING TREATMENT OF INTERGOVERNMENTAL TRANSFERS.—The Secretary may not issue any interim final regulation that changes the treatment (specified in section 433.45(a) of title 42, Code of Federal Regulations) of public funds as a source of State share of financial participation under title XIX of the Social Security Act [this subchapter], except as may be necessary to permit the Secretary to deny Federal financial participation for public funds described in section 1903(w)(6)(A) of such Act [subsection (w)(6)(A) of this section] (as added by section 2(a) of this Act) that are derived from donations or taxes that would not otherwise be recognized as the non-Federal share under section 1903(w) of such Act.

''(c) CONSULTATION WITH STATES.—The Secretary shall consult with the States before issuing any regulations under this Act.''

Secretary of Health and Human Services to promulgate final regulations necessary to carry out subsec. (r)(6)(j) of this section within 6 months after Apr. 7, 1986, see section 9503(c) of Pub. L. 99–272, set out as a note under section 1396a of this title.

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§ 601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u–1(a) of this title.

IMPLEMENTATION OF SUBSECTIONS (i)(22) AND (x) REQUIREMENTS

Pub. L. 109–171, title VI, § 6036(c), Feb. 8, 2006, 120 Stat. 81, as amended by Pub. L. 109–432, div. B, title IV, § 405(c)(2)(A)(v)(II), Dec. 20, 2006, 120 Stat. 3000, provided that: ''As soon as practicable after the date of enactment of this Act [Feb. 8, 2006], the Secretary of Health and Human Services shall establish an outreach program that is designed to educate individuals who are likely to be affected by the requirements of subsections (i)(22) and (x) of section 1903 of the Social Security Act [subsecs. (i)(22) and (x) of this section] (as added by subsection (a)) about such requirements and how they may be satisfied.''

CLARIFICATION REGARDING NON-REGULATION OF TRANSFERS

Pub. L. 108–173, title X, § 1001(e), Dec. 8, 2003, 117 Stat. 2431, provided that:

''(1) IN GENERAL.—Nothing in section 1903(w) of the Social Security Act (42 U.S.C. 1396b(w)) shall be construed by the Secretary [of Health and Human Services] as prohibiting a State's use of funds as the non-Federal share of expenditures under title XIX of such Act [this subchapter] where such funds are transferred from or certified by a publicly-owned regional medical center located in another State and described in paragraph (2), so long as the Secretary determines that such use of funds is proper and in the interest of the program under title XIX.

''(2) CENTER DESCRIBED.—A center described in this paragraph is a publicly-owned regional medical center that—

''(A) provides level 1 trauma and burn care services;

''(B) provides level 3 neonatal care services;

''(C) is obligated to serve all patients, regardless of State of origin;

''(D) is located within a Standard Metropolitan Statistical Area (SMSA) that includes at least 3 States, including the States described in paragraph (1);

''(E) serves as a tertiary care provider for patients residing within a 125 mile radius; and

''(F) meets the criteria for a disproportionate share hospital under section 1923 of such Act [section

1396r–4 of this title] in at least one State other than the one in which the center is located.

''(3) EFFECTIVE PERIOD.—This subsection shall apply through December 31, 2005.''

TREATMENT OF DONATION OR TAX PROCEEDS PRIOR TO EFFECTIVE DATE OF SUBSECTION (w)

Section 2(c)(2) of Pub. L. 102–234 provided that: ''Except as specifically provided in section 1903(w) of the Social Security Act [subsec. (w) of this section] and notwithstanding any other provision of such Act [this chapter], the Secretary of Health and Human Services shall not, with respect to expenditures prior to the effective date specified in section 1903(w)(1)(F) of such Act, disallow any claim submitted by a State for, or otherwise withhold Federal financial participation with respect to, amounts expended for medical assistance under title XIX of the Social Security Act [this subchapter] by reason of the fact that the source of the funds used to constitute the non-Federal share of such expenditures is a tax imposed on, or a donation received from, a health care provider, or on the ground that the amount of any donation or tax proceeds must be credited against the amount of the expenditure.''

TEMPORARY INCREASE IN FEDERAL MATCH FOR ADMINISTRATIVE COSTS

Section 4401(b)(2) of Pub. L. 101–508 provided that: ''The per centum to be applied under section 1903(a)(7) of the Social Security Act [subsec. (a)(7) of this section] for amounts expended during calendar quarters in fiscal year 1991 which are attributable to administrative activities necessary to carry out section 1927 (other than subsection (g)) of such Act [section 1396r–8 of this title] shall be 75 percent, rather than 50 percent; after fiscal year 1991, the match shall revert back to 50 percent.''

REPORT ON ERRORS IN ELIGIBILITY DETERMINATIONS; ERROR RATE TRANSITION RULES

Section 4607 of Pub. L. 101–508 directed Secretary of Health and Human Services to report to Congress, by not later than July 1, 1991, on error rates by States in determining eligibility of individuals described in subparagraph (A) or (B) of section 1396a(*l*)(1) of this title for medical assistance under plans approved under this subchapter, and directed that there should not be taken into account, for purposes of subsec. (u) of this section, payments and expenditures for medical assistance attributable to medical assistance for individuals described in such subparagraph (A) or (B), and made on or after July 1, 1989, and before the first calendar quarter that begins more than 12 months after the date of submission of the Secretary's report.

MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES

Section 4718 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—For purposes of section 1903(f)(1)(B) [probably means subsec. (f)(1)(B) of this section], for payments made before, on, or after the date of the enactment of this Act [Nov. 5, 1990], a State described in subparagraph (B) may use, in determining the 'highest amount which would ordinarily be paid to a family of the same size' (under the State's plan approved under part A of title IV of such Act [probably means part A of subchapter IV of this chapter]) in the case of a family consisting only of one individual and without regard to whether or not such plan provides for aid to families consisting only of one individual, an amount reasonably related to the highest money payment which would ordinarily be made under such a plan to a family of two without income or resources.

''(b) STATES COVERED.—Subsection (a) shall only apply to a State the State plan of which (under title XIX of the Social Security Act [this subchapter]) as of June 1, 1989, provided for the policy described in such paragraph. For purposes of the previous sentence, a State plan includes all the matter included in a State plan under section 2373(c)(5) of the Deficit Reduction Act of 1984 [Pub. L. 98–369, set out as a note under section 1396a of this title] (as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987 [Pub. L. 100–93]).''

DAY HABILITATION AND RELATED SERVICES

Section 6411(g) of Pub. L. 101–239 provided that:

''(1) PROHIBITION OF DISALLOWANCE PENDING ISSUANCE OF REGULATIONS.—Except as specifically permitted under paragraph (3), the Secretary of Health and Human Services may not—

''(A) withhold, suspend, disallow, or deny Federal financial participation under section 1903(a) of the Social Security Act [subsec. (a) of this section] for day habilitation and related services under paragraph (9) or (13) of section 1905(a) of such Act [section 1396d(a)(9), (13) of this title] on behalf of persons with mental retardation or with related conditions pursuant to a provision of its State plan as approved on or before June 30, 1989, or

''(B) withdraw Federal approval of any such State plan provision.

''(2) REQUIREMENTS FOR REGULATION.—A final regulation described in this paragraph is a regulation, promulgated after a notice of proposed rule-making and a period of at least 60 days for public comment, that—

''(A) specifies the types of day habilitation and related services that a State may cover under paragraph (9) or (13) of section 1905(a) of the Social Security Act on behalf of persons with mental retardation or with related conditions, and

''(B) any requirements respecting such coverage.

''(3) PROSPECTIVE APPLICATION OF REGULATION.—If the Secretary promulgates a final regulation described in paragraph (2) and the Secretary determines that a State plan under title XIX of the Social Security Act [this subchapter] does not comply with such regulation, the Secretary shall notify the State of the determination and its basis, and such determination shall not apply to day habilitation and related services furnished before the first day of the first calendar quarter beginning after the date of the notice to the State.''

NURSE AIDE TRAINING AND EVALUATION PROGRAMS; ALLOCATION OF COSTS BEFORE OCTOBER 1, 1990

Section 6901(b)(5)(B) of Pub. L. 101–239 provided that: ''In making payments under section 1903(a)(2)(B) of the Social Security Act [subsec. (a)(2)(B) of this section] for amounts expended for nurse aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such Act [section 1396r(e)(1) of this title], in the case of activities conducted before October 1, 1990, the Secretary of Health and Human Services shall not take into account, or allocate amounts on the basis of, the proportion of residents of nursing facilities that is entitled to benefits under title XVIII or XIX of such Act [this subchapter and subchapter XVIII of this chapter].''

CLARIFICATION OF FEDERAL MATCHING RATE FOR SURVEY AND CERTIFICATION ACTIVITIES

Section 6901(d)(2) of Pub. L. 101–239 provided that: ''During the period before October 1, 1990, the Federal percentage matching payment rate under section 1903(a) of the Social Security Act [subsec. (a) of this section] for so much of the sums expended under a State plan under title XIX of such Act [this subchapter] as are attributable to compensation or training of personnel responsible for inspecting public or private skilled nursing or intermediate care facilities to individuals receiving medical assistance to determine compliance with health or safety standards shall be 75 percent.''

QUALITY CONTROL TRANSITION PROVISIONS

Section 608(h) of Pub. L. 100–485 provided that: ''There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act [subsec. (u) of this

section], payments and expenditures for medical assistance which are made on or after January 1, 1989, and before July 1, 1989, and which are attributable to medicare-cost [sic] sharing for qualified medicare beneficiaries (as defined in section 1905(p) of such Act [section 1396d(p) of this title]).''

DELAY QUALITY CONTROL SANCTIONS FOR MEDICAID

Section 4117 of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall not, prior to July 1, 1988, implement any reductions in payments to States pursuant to section 1903(u) of the Social Security Act [subsec. (u) of this section] (or any provision of law described in subsection (c) of section 133 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 133(c) of Pub. L. 97–248, set out below]).''

TEMPORARY TECHNICAL ERROR DEFINITION

Section 4118(n) of Pub. L. 100–203 provided that: ''For purposes of section 1903(u)(1)(E)(ii) of the Social Security Act [subsec. (u)(1)(E)(ii) of this section], effective for the period beginning on the date of enactment of this Act [Dec. 22, 1987] and ending December 31, 1988, a 'technical error' is an error in eligibility condition (such as assignment of social security numbers and assignment of rights to third-party benefits as a condition of eligibility) that, if corrected, would not result in a difference in the amount of medical assistance paid.''

ENHANCED FUNDING FOR NURSE AIDE TRAINING

Section 4211(d)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(*l*)(3)(F), July 1, 1988, 102 Stat. 803, provided that: ''For the 8 calendar quarters (beginning with the calendar quarter that begins on July 1, 1988), with respect to payment under section 1903(a)(2)(B) of the Social Security Act [subsec. (a)(2)(B) of this section] to a State for additional amounts expended by the State under its plan approved under title XIX of such Act [this subchapter] for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such title [section 1396r(e)(1) of this title], any reference to '50 percent' is deemed a reference to the sum of the Federal medical assistance percentage (determined under section 1905(b) of such Act [section 1396d(b) of this title]) plus 25 percentage points, but not to exceed 90 percent.''

EXPENSES INCURRED FOR REVIEW OF CARE PROVIDED TO RESIDENTS OF NURSING FACILITIES

Section 4212(c)(3) of Pub. L. 100–203 provided that: ''For purposes of section 1903(a) of the Social Security Act [subsec. (a) of this section], proper expenses incurred by a State for medical review by independent professionals of the care provided to residents of nursing facilities who are entitled to medical assistance under title XIX of such Act [this subchapter] shall be reimbursable as expenses necessary for the proper and efficient administration of the State plan under that title.''

QUALITY CONTROL STUDIES AND PENALTY MORATORIUM

Section 12301 of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVII, § 1710, Oct. 22, 1986, 100 Stat. 2783; Pub. L. 100–485, title VI, § 609(b), Oct. 13, 1988, 102 Stat. 2425, provided that:

''(a) STUDIES.—(1) The Secretary of Health and Human Services (hereafter referred to in this section as the 'Secretary') shall conduct a study of quality control systems for the Aid to Families with Dependent Children Program under title IV–A of the Social Security Act [part A of subchapter IV of this chapter] and for the Medicaid Program under title XIX of such Act [this subchapter]. The study shall examine how best to operate such systems in order to obtain information which will allow program managers to improve the quality of administration, and provide reasonable data on the basis of which Federal funding may be withheld for States with excessive levels of erroneous payments.

''(2) The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent independent study for the purpose described in paragraph (1). For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary at the onset of the study and on an ongoing basis.

''(3) The Secretary and the National Academy of Sciences shall report the results of their respective studies to the Congress within one year after the date the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2).

''(b) MORATORIUM ON PENALTIES.—(1) During the 24-month period beginning with the first calendar quarter which begins after the date of the enactment of this Act [Apr. 7, 1986] (hereafter in this section referred to as the 'moratorium period'), the Secretary shall not impose any reductions in payments to States pursuant to section 403(i) of the Social Security Act [section 603(i) of this title] (or prior regulations), or pursuant to any comparable provision of law relating to the programs under title IV–A of such Act [part A of subchapter IV of this chapter] in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands.

''(2) During the moratorium period, the Secretary and the States shall continue to operate the quality control systems in effect under title IV–A of the Social Security Act, and to calculate the error rates under the provisions referred to in paragraph (1).

''(c) RESTRUCTURED QUALITY CONTROL SYSTEMS.—(1) Not later than 6 months after the date on which the results of both studies required under subsection (a)(3) have been reported, the Secretary shall publish regulations which shall—

''(A) restructure the quality control systems under title XIX of the Social Security Act [this subchapter] to the extent the Secretary determines to be appropriate, taking into account the studies conducted under subsection (a); and

''(B) establish, taking into account the studies conducted under subsection (a), criteria for adjusting the reductions which shall be made for quarters prior to the implementation of the restructured quality control systems so as to eliminate reductions for those quarters which would not be required if the restructured quality control systems had been in effect during those quarters.

''(2) Beginning with the first calendar quarter after the moratorium period, the Secretary shall implement the revised quality control systems under title XIX, and shall reduce payments to States—

''(A) for quarters after the moratorium period in accordance with the restructured quality control systems; and

''(B) for quarters in and before the moratorium period, as provided under the regulations described in paragraph (1)(B).

''(d) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVENESS OF LAWS LIMITING FEDERAL FINANCIAL PARTICIPATION WITH RESPECT TO ERRONEOUS PAYMENTS MADE BY STATES UNDER A STATE PLAN APPROVED UNDER THIS SUBCHAPTER

Section 133(c) of Pub. L. 97–248 provided that: ''No provision of law limiting Federal financial participation with respect to erroneous payments made by States under a State plan approved under title XIX of the Social Security Act [this subchapter] (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations), other than the limitations contained in section 1903 of such Act [this section], shall be effective with respect to payments to States under such section 1903 for quarters beginning on or after October 1, 1982, unless such provision of law is enacted after the date of the date of the enactment of this Act [Sept. 3, 1982] and expressly provides that

such limitation is in addition to or in lieu of the limitations contained in section 1903 of the Social Security Act.''

MEDICAID PAYMENTS FOR INDIAN HEALTH SERVICE FACILITIES TO BE PAID ENTIRELY BY FEDERAL FUNDS; EXCLUSION OF PAYMENTS TO STATES IN COMPUTATION OF TARGET AMOUNT OF FEDERAL MEDICAID EXPENDITURES

Pub. L. 97–92, §§102, 118, Dec. 15, 1981, 95 Stat. 1193, 1197, as amended by Pub. L. 97–161, Mar. 31, 1982, 96 Stat. 22, provided, for the period Dec. 15, 1981, to not later than Sept. 30, 1982, that: ''Notwithstanding section 1903(s) of the Social Security Act [subsec. (s) of this section], all medicaid payments to the States for Indian health service facilities as defined by section 1911 of the Social Security Act [section 1396j of this title] shall be paid entirely by Federal funds, and notwithstanding section 1903(t) of the Social Security Act [subsec. (t) of this section], all medicaid payments to the States for Indian health service facilities shall not be included in the computation of the target amount of Federal medicaid expenditures.''

PROMULGATION OF REGULATIONS FOR IMPLEMENTATION OF AMENDMENTS BY SECTION 17 OF PUB. L. 95–142

Section 17(e)(2) of Pub. L. 95–142 required Secretary of Health, Education, and Welfare to establish regulations, not later than 90 days after Oct. 25, 1977, to carry out amendments made by section 17 (amending sections 1395b–1 and 1396b of this title). See section 1302 of this title.

DEFERRAL OF IMPLEMENTATION OF DECREASES IN MATCHING FUNDS

Section 6 of Pub. L. 95–59, June 30, 1977, 91 Stat. 255, provided that: ''Notwithstanding the provisions of subsection (g) of section 1903 of the Social Security Act [subsec. (g) of this section], the amount payable to any State for the calendar quarters during the period commencing April 1, 1977, and ending September 30, 1977, on account of expenditures made under a State plan approved under title XIX of such Act [this subchapter], shall not be decreased by reason of the application of the provisions of such subsection with respect to any period for which such State plan was in operation prior to April 1, 1977.''

COMPREHENSIVE CARE AND SERVICES FOR ELIGIBLE INDIVIDUALS BY JULY 1, 1977; REQUIREMENT INAPPLICABLE FOR ANY PERIOD PRIOR TO JULY 1, 1971; REGULATIONS; ADVICE TO STATES

Section 2(b) of Pub. L. 91–56, which provided that subsection (e) of this section was inapplicable to the period prior to July 1, 1971, and which authorized the Secretary to issue regulations, was repealed by Pub. L. 92–603, title II, §230, Oct. 30, 1972, 86 Stat. 1410.

EXEMPTION OF PUERTO RICO, THE VIRGIN ISLANDS, AND GUAM FROM LIMITATIONS ON FEDERAL PAYMENTS FOR MEDICAL ASSISTANCE

Section 248(d) of Pub. L. 90–248 provided that: ''The amendment made by section 220(a) of this Act [amending this section] shall not apply in the case of Puerto Rico, the Virgin Islands, or Guam.''

NONDUPLICATION OF PAYMENTS TO STATES; LIMITATION ON INSTITUTIONAL CARE

Section 121(b) of Pub. L. 89–97, as amended by section 249D of Pub. L. 92–603, provided that: ''No payment may be made to any State under title I, IV, X, XIV, or XVI of the Social Security Act [subchapter I, IV, X, XIV, or XVI of this chapter] with respect to aid or assistance in the form of medical or any other type of remedial care for any period for which such State receives payments under title XIX of such Act [this subchapter], or for any period after December 31, 1969. After the date of enactment of the Social Security Amendments of 1972 [Oct. 30, 1972], Federal matching shall not be available for any portion of any payment by any State under title I, X, XIV, or XVI, or part A of title IV, of the Social Security Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter] for or on account of any medical or any other type of remedial care provided by an institution to any individual as an inpatient thereof, in the case of any State which has a plan approved under title XIX of such Act [this subchapter], if such care is (or could be) provided under a State plan approved under title XIX of such Act [this subchapter] by an institution certified under such title XIX [this subchapter].''

§ 1396c. Operation of State plans

If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this subchapter, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1396a of this title; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title XIX, §1904, as added Pub. L. 89–97, title I, §121(a), July 30, 1965, 79 Stat. 351.)

§ 1396d. Definitions

For purposes of this subchapter—

(a) Medical assistance

The term ''medical assistance'' means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance or, in the case of medicare cost-sharing with respect to a qualified medicare beneficiary described in subsection (p)(1) of this section, if provided after the month in which the individual becomes such a beneficiary) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, who are—

(i) under the age of 21, or, at the option of the State, under the age of 20, 19, or 18 as the State may choose,

(ii) relatives specified in section 606(b)(1)[1] of this title with whom a child is living if such child is (or would, if needy, be) a dependent child under part A of subchapter IV of this chapter,

(iii) 65 years of age or older,

(iv) blind, with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,

(v) 18 years of age or older and permanently and totally disabled, with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,

(vi) persons essential (as described in the second sentence of this subsection) to individuals receiving aid or assistance under State plans approved under subchapter I, X, XIV, or XVI of this chapter,

(vii) blind or disabled as defined in section 1382c of this title, with respect to States not eligible to participate in the State plan program established under subchapter XVI of this chapter,

(viii) pregnant women,

(ix) individuals provided extended benefits under section 1396r–6 of this title,

(x) individuals described in section 1396a(u)(1) of this title,

(xi) individuals described in section 1396a(z)(1) of this title,

(xii) employed individuals with a medically improved disability (as defined in subsection (v) of this section), or

(xiii) individuals described in section 1396a(aa)[2] of this title,

but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services (other than services in an institution for mental diseases);

(2)(A) outpatient hospital services, (B) consistent with State law permitting such services, rural health clinic services (as defined in subsection (*l*)(1) of this section) and any other ambulatory services which are offered by a rural health clinic (as defined in subsection (*l*)(1) of this section) and which are otherwise included in the plan, and (C) Federally-qualified health center services (as defined in subsection (*l*)(2) of this section) and any other ambulatory services offered by a Federally-qualified health center and which are otherwise included in the plan;

(3) other laboratory and X-ray services;

(4)(A) nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older; (B) early and periodic screening, diagnostic, and treatment services (as defined in subsection (r) of this section) for individuals who are eligible under the plan and are under the age of 21; and (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies;

(5)(A) physicians' services furnished by a physician (as defined in section 1395x(r)(1) of this title), whether furnished in the office, the patient's home, a hospital, or a nursing facility, or elsewhere, and (B) medical and surgical services furnished by a dentist (described in section 1395x(r)(2) of this title) to the extent such services may be performed under State law either by a doctor of medicine or by a doctor of dental surgery or dental medicine and would be described in clause (A) if furnished by a physician (as defined in section 1395x(r)(1) of this title);

(6) medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law;

(7) home health care services;

(8) private duty nursing services;

(9) clinic services furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician, including such services furnished outside the clinic by clinic personnel to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address;

(10) dental services;

(11) physical therapy and related services;

(12) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(13) other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level;

(14) inpatient hospital services and nursing facility services for individuals 65 years of age or over in an institution for mental diseases;

(15) services in an intermediate care facility for the mentally retarded (other than in an institution for mental diseases) for individuals who are determined, in accordance with section 1396a(a)(31) of this title, to be in need of such care;

(16) effective January 1, 1973, inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h) of this section;

(17) services furnished by a nurse-midwife (as defined in section 1395x(gg) of this title) which the nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider, and without regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle;

[1] See References in Text note below.

[2] Probably means the subsec. (aa) of section 1396a relating to certain breast or cervical cancer patients.

(18) hospice care (as defined in subsection (*o*) of this section);

(19) case management services (as defined in section 1396n(g)(2) of this title) and TB-related services described in section 1396a(z)(2)(F) of this title;

(20) respiratory care services (as defined in section 1396a(e)(9)(C) of this title);

(21) services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner (as defined by the Secretary) which the certified pediatric nurse practitioner or certified family nurse practitioner is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified pediatric nurse practitioner or certified family nurse practitioner is under the supervision of, or associated with, a physician or other health care provider;

(22) home and community care (to the extent allowed and as defined in section 1396t of this title) for functionally disabled elderly individuals;

(23) community supported living arrangements services (to the extent allowed and as defined in section 1396u of this title);

(24) personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are (A) authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (C) furnished in a home or other location;

(25) primary care case management services (as defined in subsection (t) of this section);

(26) services furnished under a PACE program under section 1396u–4 of this title to PACE program eligible individuals enrolled under the program under such section;

(27) subject to subsection (x) of this section, primary and secondary medical strategies and treatment and services for individuals who have Sickle Cell Disease; and

(28) any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary,

except as otherwise provided in paragraph (16), such term does not include—

(A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for mental diseases.

For purposes of clause (vi) of the preceding sentence, a person shall be considered essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XVI of this chapter), and such person is determined, under such a State plan, to be essential to the well-being of such individual. The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of subchapter XVIII of this chapter for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under subchapter XVIII of this chapter who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums for medical or any other type of remedial care or the cost thereof. No service (including counseling) shall be excluded from the definition of ''medical assistance'' solely because it is provided as a treatment service for alcoholism or drug dependency.

(b) Federal medical assistance percentage; State percentage; Indian health care percentage

Subject to section 1396u–3(d) of this title, the term ''Federal medical assistance percentage'' for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum, (3) for purposes of this subchapter and subchapter XXI of this chapter, the Federal medical assistance percentage for the District of Columbia shall be 70 percent, and (4) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 1397ee(b) of this title with respect to medical assistance provided to individuals who are eligible for such assistance only on the basis of section 1396a(a)(10)(A)(ii)(XVIII) of this title. The Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of section 1301(a)(8)(B) of this title. Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or

tribal organization (as defined in section 1603 of title 25). Notwithstanding the first sentence of this subsection, in the case of a State plan that meets the condition described in subsection (u)(1) of this section, with respect to expenditures (other than expenditures under section 1396r–4 of this title) described in subsection (u)(2)(A) of this section or subsection (u)(3) of this section for the State for a fiscal year, and that do not exceed the amount of the State's available allotment under section 1397dd of this title, the Federal medical assistance percentage is equal to the enhanced FMAP described in section 1397ee(b) of this title.

(c) Nursing facility

For definition of the term ''nursing facility'', see section 1396r(a) of this title.

(d) Intermediate care facility for mentally retarded

The term ''intermediate care facility for the mentally retarded'' means an institution (or distinct part thereof) for the mentally retarded or persons with related conditions if—

(1) the primary purpose of such institution (or distinct part thereof) is to provide health or rehabilitative services for mentally retarded individuals and the institution meets such standards as may be prescribed by the Secretary;

(2) the mentally retarded individual with respect to whom a request for payment is made under a plan approved under this subchapter is receiving active treatment under such a program; and

(3) in the case of a public institution, the State or political subdivision responsible for the operation of such institution has agreed that the non-Federal expenditures in any calendar quarter prior to January 1, 1975, with respect to services furnished to patients in such institution (or distinct part thereof) in the State will not, because of payments made under this subchapter, be reduced below the average amount expended for such services in such institution in the four quarters immediately preceding the quarter in which the State in which such institution is located elected to make such services available under its plan approved under this subchapter.

(e) Physicians' services

In the case of any State the State plan of which (as approved under this subchapter)—

(1) does not provide for the payment of services (other than services covered under section 1396a(a)(12) of this title) provided by an optometrist; but

(2) at a prior period did provide for the payment of services referred to in paragraph (1);

the term ''physicians' services'' (as used in subsection (a)(5) of this section) shall include services of the type which an optometrist is legally authorized to perform where the State plan specifically provides that the term ''physicians' services'', as employed in such plan, includes services of the type which an optometrist is legally authorized to perform, and shall be reimbursed whether furnished by a physician or an optometrist.

(f) Nursing facility services

For purposes of this subchapter, the term ''nursing facility services'' means services which are or were required to be given an individual who needs or needed on a daily basis nursing care (provided directly by or requiring the supervision of nursing personnel) or other rehabilitation services which as a practical matter can only be provided in a nursing facility on an inpatient basis.

(g) Chiropractors' services

If the State plan includes provision of chiropractors' services, such services include only—

(1) services provided by a chiropractor (A) who is licensed as such by the State and (B) who meets uniform minimum standards promulgated by the Secretary under section 1395x(r)(5) of this title; and

(2) services which consist of treatment by means of manual manipulation of the spine which the chiropractor is legally authorized to perform by the State.

(h) Inpatient psychiatric hospital services for individuals under age 21

(1) For purposes of paragraph (16) of subsection (a) of this section, the term ''inpatient psychiatric hospital services for individuals under age 21'' includes only—

(A) inpatient services which are provided in an institution (or distinct part thereof) which is a psychiatric hospital as defined in section 1395x(f) of this title or in another inpatient setting that the Secretary has specified in regulations;

(B) inpatient services which, in the case of any individual (i) involve active treatment which meets such standards as may be prescribed in regulations by the Secretary, and (ii) a team, consisting of physicians and other personnel qualified to make determinations with respect to mental health conditions and the treatment thereof, has determined are necessary on an inpatient basis and can reasonably be expected to improve the condition, by reason of which such services are necessary, to the extent that eventually such services will no longer be necessary; and

(C) inpatient services which, in the case of any individual, are provided prior to (i) the date such individual attains age 21, or (ii) in the case of an individual who was receiving such services in the period immediately preceding the date on which he attained age 21, (I) the date such individual no longer requires such services, or (II) if earlier, the date such individual attains age 22;

(2) Such term does not include services provided during any calendar quarter under the State plan of any State if the total amount of the funds expended, during such quarter, by the State (and the political subdivisions thereof) from non-Federal funds for inpatient services included under paragraph (1), and for active psychiatric care and treatment provided on an outpatient basis for eligible mentally ill children, is less than the average quarterly amount of the funds expended, during the 4-quarter period ending December 31, 1971, by the State (and the political subdivisions thereof) from non-Federal funds for such services.

(i) Institution for mental diseases

The term ''institution for mental diseases'' means a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

(j) State supplementary payment

The term ''State supplementary payment'' means any cash payment made by a State on a regular basis to an individual who is receiving supplemental security income benefits under subchapter XVI of this chapter or who would but for his income be eligible to receive such benefits, as assistance based on need in supplementation of such benefits (as determined by the Commissioner of Social Security), but only to the extent that such payments are made with respect to an individual with respect to whom supplemental security income benefits are payable under subchapter XVI of this chapter, or would but for his income be payable under that subchapter.

(k) Supplemental security income benefits

Increased supplemental security income benefits payable pursuant to section 211 of Public Law 93–66 shall not be considered supplemental security income benefits payable under subchapter XVI of this chapter.

(*l*) Rural health clinics

(1) The terms ''rural health clinic services'' and ''rural health clinic'' have the meanings given such terms in section 1395x(aa) of this title, except that (A) clause (ii) of section 1395x(aa)(2) of this title shall not apply to such terms, and (B) the physician arrangement required under section 1395x(aa)(2)(B) of this title shall only apply with respect to rural health clinic services and, with respect to other ambulatory care services, the physician arrangement required shall be only such as may be required under the State plan for those services.

(2)(A) The term ''Federally-qualified health center services'' means services of the type described in subparagraphs (A) through (C) of section 1395x(aa)(1) of this title when furnished to an individual as an[3] patient of a Federally-qualified health center and, for this purpose, any reference to a rural health clinic or a physician described in section 1395x(aa)(2)(B) of this title is deemed a reference to a Federally-qualified health center or a physician at the center, respectively.

(B) The term ''Federally-qualified health center'' means an entity which—

(i) is receiving a grant under section 254b of this title,

(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and

(II) meets the requirements to receive a grant under section 254b of this title,

(iii) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant, including requirements of the Secretary that an entity may not be owned, controlled, or operated by another entity, or

(iv) was treated by the Secretary, for purposes of part B of subchapter XVIII of this chapter, as a comprehensive Federally funded health center as of January 1, 1990;

and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93–638) [25 U.S.C. 450f et seq.] or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.] for the provision of primary health services. In applying clause (ii),[4] the Secretary may waive any requirement referred to in such clause for up to 2 years for good cause shown.

(m) Qualified family member

(1) Subject to paragraph (2), the term ''qualified family member'' means an individual (other than a qualified pregnant woman or child, as defined in subsection (n) of this section) who is a member of a family that would be receiving aid under the State plan under part A of subchapter IV of this chapter pursuant to section 607[5] of this title if the State had not exercised the option under section 607(b)(2)(B)(i)[5] of this title.

(2) No individual shall be a qualified family member for any period after September 30, 1998.

(n) "Qualified pregnant woman or child" defined

The term ''qualified pregnant woman or child'' means—

(1) a pregnant woman who—

(A) would be eligible for aid to families with dependent children under part A of subchapter IV of this chapter (or would be eligible for such aid if coverage under the State plan under part A of subchapter IV of this chapter included aid to families with dependent children of unemployed parents pursuant to section 607 of this title) if her child had been born and was living with her in the month such aid would be paid, and such pregnancy has been medically verified;

(B) is a member of a family which would be eligible for aid under the State plan under part A of subchapter IV of this chapter pursuant to section 607 of this title if the plan required the payment of aid pursuant to such section; or

(C) otherwise meets the income and resources requirements of a State plan under part A of subchapter IV of this chapter; and

(2) a child who has not attained the age of 19, who was born after September 30, 1983 (or such earlier date as the State may designate), and who meets the income and resources requirements of the State plan under part A of subchapter IV of this chapter.

(*o*) Optional hospice benefits

(1)(A) Subject to subparagraph (B), the term ''hospice care'' means the care described in sec-

[3] So in original. Probably should be ''a''.

[4] So in original. Probably should be clause ''(iii),''. See References in Text note below.

[5] See References in Text note below.

tion 1395x(dd)(1) of this title furnished by a hospice program (as defined in section 1395x(dd)(2) of this title) to a terminally ill individual who has voluntarily elected (in accordance with paragraph (2)) to have payment made for hospice care instead of having payment made for certain benefits described in section 1395d(d)(2)(A) of this title and for which payment may otherwise be made under subchapter XVIII of this chapter and intermediate care facility services under the plan. For purposes of such election, hospice care may be provided to an individual while such individual is a resident of a skilled nursing facility or intermediate care facility, but the only payment made under the State plan shall be for the hospice care.

(B) For purposes of this subchapter, with respect to the definition of hospice program under section 1395x(dd)(2) of this title, the Secretary may allow an agency or organization to make the assurance under subparagraph (A)(iii) of such section without taking into account any individual who is afflicted with acquired immune deficiency syndrome (AIDS).

(2) An individual's voluntary election under this subsection—

(A) shall be made in accordance with procedures that are established by the State and that are consistent with the procedures established under section 1395d(d)(2) of this title;

(B) shall be for such a period or periods (which need not be the same periods described in section 1395d(d)(1) of this title) as the State may establish; and

(C) may be revoked at any time without a showing of cause and may be modified so as to change the hospice program with respect to which a previous election was made.

(3) In the case of an individual—

(A) who is residing in a nursing facility or intermediate care facility for the mentally retarded and is receiving medical assistance for services in such facility under the plan,

(B) who is entitled to benefits under part A of subchapter XVIII of this chapter and has elected, under section 1395d(d) of this title, to receive hospice care under such part, and

(C) with respect to whom the hospice program under such subchapter and the nursing facility or intermediate care facility for the mentally retarded have entered into a written agreement under which the program takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual,

instead of any payment otherwise made under the plan with respect to the facility's services, the State shall provide for payment to the hospice program of an amount equal to the additional amount determined in section 1396a(a)(13)(B) of this title and, if the individual is an individual described in section 1396a(a)(10)(A) of this title, shall provide for payment of any coinsurance amounts imposed under section 1395e(a)(4) of this title.

(p) Qualified medicare beneficiary; medicare cost-sharing

(1) The term ''qualified medicare beneficiary'' means an individual—

(A) who is entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter (including an individual entitled to such benefits pursuant to an enrollment under section 1395i–2 of this title, but not including an individual entitled to such benefits only pursuant to an enrollment under section 1395i–2a of this title),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program, except as provided in paragraph (2)(D)) does not exceed an income level established by the State consistent with paragraph (2), and

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(B) shall be at least the percent provided under subparagraph (B) (but not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) Except as provided in subparagraph (C), the percent provided under this clause, with respect to eligibility for medical assistance on or after—

(i) January 1, 1989, is 85 percent,

(ii) January 1, 1990, is 90 percent, and

(iii) January 1, 1991, is 100 percent.

(C) In the case of a State which has elected treatment under section 1396a(f) of this title and which, as of January 1, 1987, used an income standard for individuals age 65 or older which was more restrictive than the income standard established under the supplemental security income program under subchapter XVI of this chapter, the percent provided under subparagraph (B), with respect to eligibility for medical assistance on or after—

(i) January 1, 1989, is 80 percent,

(ii) January 1, 1990, is 85 percent,

(iii) January 1, 1991, is 95 percent, and

(iv) January 1, 1992, is 100 percent.

(D)(i) In determining under this subsection the income of an individual who is entitled to monthly insurance benefits under subchapter II of this chapter for a transition month (as defined in clause (ii)) in a year, such income shall not include any amounts attributable to an increase in the level of monthly insurance benefits payable under such subchapter which have occurred pursuant to section 415(i) of this title for benefits payable for months beginning with December of the previous year.

(ii) For purposes of clause (i), the term ''transition month'' means each month in a year through the month following the month in which the annual revision of the official poverty line, referred to in subparagraph (A), is published.

(3) The term ''medicare cost-sharing'' means (subject to section 1396a(n)(2) of this title) the following costs incurred with respect to a qualified medicare beneficiary, without regard to

whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan:

(A)(i) premiums under section 1395i–2 or 1395i–2a of this title, and

(ii) premiums under section 1395r of this title,[6]

(B) Coinsurance under subchapter XVIII of this chapter (including coinsurance described in section 1395e of this title).

(C) Deductibles established under subchapter XVIII of this chapter (including those described in section 1395e of this title and section 1395*l*(b) of this title).

(D) The difference between the amount that is paid under section 1395*l*(a) of this title and the amount that would be paid under such section if any reference to ''80 percent'' therein were deemed a reference to ''100 percent''.

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1395mm of this title.

(4) Notwithstanding any other provision of this subchapter, in the case of a State (other than the 50 States and the District of Columbia)—

(A) the requirement stated in section 1396a(a)(10)(E) of this title shall be optional, and

(B) for purposes of paragraph (2), the State may substitute for the percent provided under subparagraph (B)[7] or[8] 1396a(a)(10)(E)(iii) of this title of such paragraph[7] any percent.

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirement of section 1396a(a)(10)(E) of this title in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(5)(A) The Secretary shall develop and distribute to States a simplified application form for use by individuals (including both qualified medicare beneficiaries and specified low-income medicare beneficiaries) in applying for medical assistance for medicare cost-sharing under this subchapter in the States which elect to use such form. Such form shall be easily readable by applicants and uniform nationally.

(B) In developing such form, the Secretary shall consult with beneficiary groups and the States.

(6) For provisions relating to outreach efforts to increase awareness of the availability of medicare cost-sharing, see section 1320b–14 of this title.

(q) Qualified severely impaired individual

The term ''qualified severely impaired individual'' means an individual under age 65—

(1) who for the month preceding the first month to which this subsection applies to such individual—

(A) received (i) a payment of supplemental security income benefits under section 1382(b) of this title on the basis of blindness or disability, (ii) a supplementary payment under section 1382e of this title or under section 212 of Public Law 93–66 on such basis, (iii) a payment of monthly benefits under section 1382h(a) of this title, or (iv) a supplementary payment under section 1382e(c)(3), and

(B) was eligible for medical assistance under the State plan approved under this subchapter; and

(2) with respect to whom the Commissioner of Social Security determines that—

(A) the individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under subchapter XVI of this chapter,

(B) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments),

(C) the lack of eligibility for benefits under this subchapter would seriously inhibit his ability to continue or obtain employment, and

(D) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under subchapter XVI of this chapter (including any federally administered State supplementary payments), this subchapter, and publicly funded attendant care services (including personal care assistance) that would be available to him in the absence of such earnings.

In the case of an individual who is eligible for medical assistance pursuant to section 1382h(b) of this title in June, 1987, the individual shall be a qualified severely impaired individual for so long as such individual meets the requirements of paragraph (2).

(r) Early and periodic screening, diagnostic, and treatment services

The term ''early and periodic screening, diagnostic, and treatment services'' means the following items and services:

(1) Screening services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical and dental practice, as determined by the State after consultation with recognized medical and dental organizations involved in child health care and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of certain physical or mental illnesses or conditions; and

[6] So in original. The comma probably should be a period.

[7] So in original. The words ''of such paragraph'' probably should follow ''subparagraph (B)''.

[8] So in original. Probably should be ''or section''.

(B) which shall at a minimum include—

(i) a comprehensive health and developmental history (including assessment of both physical and mental health development),

(ii) a comprehensive unclothed physical exam,

(iii) appropriate immunizations (according to the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines) according to age and health history,

(iv) laboratory tests (including lead blood level assessment appropriate for age and risk factors), and

(v) health education (including anticipatory guidance).

(2) Vision services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in vision, including eyeglasses.

(3) Dental services—

(A) which are provided—

(i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

(4) Hearing services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in hearing, including hearing aids.

(5) Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.

Nothing in this subchapter shall be construed as limiting providers of early and periodic screening, diagnostic, and treatment services to providers who are qualified to provide all of the items and services described in the previous sentence or as preventing a provider that is qualified under the plan to furnish one or more (but not all) of such items or services from being qualified to provide such items and services as part of early and periodic screening, diagnostic, and treatment services. The Secretary shall, not later than July 1, 1990, and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under this subchapter in early and periodic screening, diagnostic, and treatment services.

(s) Qualified disabled and working individual

The term ''qualified disabled and working individual'' means an individual—

(1) who is entitled to enroll for hospital insurance benefits under part A of subchapter XVIII of this chapter under section 1395i–2a of this title;

(2) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program) does not exceed 200 percent of the official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved;

(3) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual or a couple (in the case of an individual with a spouse) may have and obtain benefits for supplemental security income benefits under subchapter XVI of this chapter; and

(4) who is not otherwise eligible for medical assistance under this subchapter.

(t) Primary care case management services; primary care case manager; primary care case management contract; and primary care

(1) The term ''primary care case management services'' means case-management related services (including locating, coordinating, and monitoring of health care services) provided by a primary care case manager under a primary care case management contract.

(2) The term ''primary care case manager'' means any of the following that provides services of the type described in paragraph (1) under a contract referred to in such paragraph:

(A) A physician, a physician group practice, or an entity employing or having other arrangements with physicians to provide such services.

(B) At State option—

(i) a nurse practitioner (as described in subsection (a)(21) of this section);

(ii) a certified nurse-midwife (as defined in section 1395x(gg) of this title); or

(iii) a physician assistant (as defined in section 1395x(aa)(5) of this title).

(3) The term ''primary care case management contract'' means a contract between a primary care case manager and a State under which the manager undertakes to locate, coordinate, and

monitor covered primary care (and such other covered services as may be specified under the contract) to all individuals enrolled with the manager, and which—

(A) provides for reasonable and adequate hours of operation, including 24-hour availability of information, referral, and treatment with respect to medical emergencies;

(B) restricts enrollment to individuals residing sufficiently near a service delivery site of the manager to be able to reach that site within a reasonable time using available and affordable modes of transportation;

(C) provides for arrangements with, or referrals to, sufficient numbers of physicians and other appropriate health care professionals to ensure that services under the contract can be furnished to enrollees promptly and without compromise to quality of care;

(D) prohibits discrimination on the basis of health status or requirements for health care services in enrollment, disenrollment, or reenrollment of individuals eligible for medical assistance under this subchapter;

(E) provides for a right for an enrollee to terminate enrollment in accordance with section 1396u–2(a)(4) of this title; and

(F) complies with the other applicable provisions of section 1396u–2 of this title.

(4) For purposes of this subsection, the term ''primary care'' includes all health care services customarily provided in accordance with State licensure and certification laws and regulations, and all laboratory services customarily provided by or through, a general practitioner, family medicine physician, internal medicine physician, obstetrician/gynecologist, or pediatrician.

(u) Conditions for State plans

(1) The conditions described in this paragraph for a State plan are as follows:

(A) The State is complying with the requirement of section 1397ee(d)(1) of this title.

(B) The plan provides for such reporting of information about expenditures and payments attributable to the operation of this subsection as the Secretary deems necessary in order to carry out the fourth sentence of subsection (b) of this section.

(2)(A) For purposes of subsection (b) of this section, the expenditures described in this subparagraph are expenditures for medical assistance for optional targeted low-income children described in subparagraph (B).

(B) For purposes of this paragraph, the term ''optional targeted low-income child'' means a targeted low-income child as defined in section 1397jj(b)(1) of this title (determined without regard to that portion of subparagraph (C) of such section concerning eligibility for medical assistance under this subchapter) who would not qualify for medical assistance under the State plan under this subchapter as in effect on March 31, 1997 (but taking into account the expansion of age of eligibility effected through the operation of section 1396a(*l*)(1)(D) of this title). Such term excludes any child eligible for medical assistance only by reason of section 1396a(a)(10)(A)(ii)(XIX) of this title.

(3) For purposes of subsection (b) of this section, the expenditures described in this paragraph are expenditures for medical assistance for children who are born before October 1, 1983, and who would be described in section 1396a(*l*)(1)(D) of this title if they had been born on or after such date, and who are not eligible for such assistance under the State plan under this subchapter based on such State plan as in effect as of March 31, 1997.

(4) The limitations on payment under subsections (f) and (g) of section 1308 of this title shall not apply to Federal payments made under section 1396b(a)(1) of this title based on an enhanced FMAP described in section 1397ee(b) of this title.

(v) Employed individual with a medically improved disability

(1) The term ''employed individual with a medically improved disability'' means an individual who—

(A) is at least 16, but less than 65, years of age;

(B) is employed (as defined in paragraph (2));

(C) ceases to be eligible for medical assistance under section 1396a(a)(10)(A)(ii)(XV) of this title because the individual, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be eligible for benefits under section 423(d) or 1382c(a)(3) of this title; and

(D) continues to have a severe medically determinable impairment, as determined under regulations of the Secretary.

(2) For purposes of paragraph (1), an individual is considered to be ''employed'' if the individual—

(A) is earning at least the applicable minimum wage requirement under section 206 of title 29 and working at least 40 hours per month; or

(B) is engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined by the State and approved by the Secretary.

(w) Independent foster care adolescent

(1) For purposes of this subchapter, the term ''independent foster care adolescent'' means an individual—

(A) who is under 21 years of age;

(B) who, on the individual's 18th birthday, was in foster care under the responsibility of a State; and

(C) whose assets, resources, and income do not exceed such levels (if any) as the State may establish consistent with paragraph (2).

(2) The levels established by a State under paragraph (1)(C) may not be less than the corresponding levels applied by the State under section 1396u–1(b) of this title.

(3) A State may limit the eligibility of independent foster care adolescents under section 1396a(a)(10)(A)(ii)(XVII) of this title to those individuals with respect to whom foster care maintenance payments or independent living services were furnished under a program funded under part E of subchapter IV of this chapter before the date the individuals attained 18 years of age.

(x) Strategies, treatment, and services

For purposes of subsection (a)(27) of this section, the strategies, treatment, and services described in that subsection include the following:

(1) Chronic blood transfusion (with deferoxamine chelation) to prevent stroke in individuals with Sickle Cell Disease who have been identified as being at high risk for stroke.

(2) Genetic counseling and testing for individuals with Sickle Cell Disease or the sickle cell trait to allow health care professionals to treat such individuals and to prevent symptoms of Sickle Cell Disease.

(3) Other treatment and services to prevent individuals who have Sickle Cell Disease and who have had a stroke from having another stroke.

(Aug. 14, 1935, ch. 531, title XIX, § 1905, as added Pub. L. 89–97, title I, § 121(a), July 30, 1965, 79 Stat. 351; amended Pub. L. 90–248, title II, §§ 230, 233, 241(f)(6), 248(e), title III, § 302(a), Jan. 2, 1968, 81 Stat. 905, 917, 919, 929; Pub. L. 92–223, § 4(a), Dec. 28, 1971, 85 Stat. 809; Pub. L. 92–603, title II, §§ 212(a), 247(b), 275(a), 278(a)(21)–(23), 280, 297(a), 299, 299B, 299E(b), 299L, Oct. 30, 1972, 86 Stat. 1384, 1425, 1452–1454, 1459–1462, 1464; Pub. L. 93–233, §§ 13(a)(13)–(88), 18(w), (x)(7)–(10), (y)(2), Dec. 31, 1973, 87 Stat. 963, 964, 972, 973; Pub. L. 94–437, title IV, § 402(e), Sept. 30, 1976, 90 Stat. 1410; Pub. L. 95–210, § 2(a), (b), Dec. 13, 1977, 91 Stat. 1488; Pub. L. 95–292, § 8(a), (b), June 13, 1978, 92 Stat. 316; Pub. L. 96–473, § 6(k), Oct. 19, 1980, 94 Stat. 2266; Pub. L. 96–499, title IX, § 965(a), Dec. 5, 1980, 94 Stat. 2651; Pub. L. 97–35, title XXI, §§ 2162(a)(2), 2172(b), Aug. 13, 1981, 95 Stat. 806, 808; Pub. L. 97–248, title I, §§ 136(c), 137(b)(17), (18), (f), Sept. 3, 1982, 96 Stat. 376, 379, 381; Pub. L. 98–369, div. B, title III, §§ 2335(f), 2340(b), 2361(b), 2371(a), 2373(b)(15)–(20), July 18, 1984, 98 Stat. 1091, 1093, 1104, 1110, 1112; Pub. L. 99–272, title IX, §§ 9501(a), 9505(a), 9511(a), Apr. 7, 1986, 100 Stat. 201, 208, 212; Pub. L. 99–509, title IX, §§ 9403(b), (d), (g)(3), 9404(b), 9408(c)(1), 9435(b)(2), Oct. 21, 1986, 100 Stat. 2053, 2054, 2056, 2061, 2070; Pub. L. 99–514, title XVIII, § 1895(c)(3)(A), Oct. 22, 1986, 100 Stat. 2935; Pub. L. 100–203, title IV, §§ 4073(d), 4101(c)(1), 4103(a), 4105(a), 4114, 4118(p)(8), 4211(e), (f), (h)(6), Dec. 22, 1987, 101 Stat. 1330–119, 1330–141, 1330–146, 1330–147, 1330–152, 1330–159, 1330–204 to 1330–206; Pub. L. 100–360, title III, § 301(a)(2)–(d), (g)(2), title IV, § 411(h)(4)(E), (k)(4), (8), (14)(A), July 1, 1988, 102 Stat. 748–750, 787, 791, 794, 798; Pub. L. 100–485, title III, § 303(b)(2), title IV, § 401(d)(2), title VI, § 608(d)(14)(A)–(G), (J), (f)(3), Oct. 13, 1988, 102 Stat. 2392, 2396, 2415, 2416, 2424; Pub. L. 100–647, title VIII, § 8434(a), (b)(3), (4), Nov. 10, 1988, 102 Stat. 3805; Pub. L. 101–234, title II, § 201(b), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6402(c)(1), 6403(a), (c), (d)(2), 6404(a), (b), 6405(a), 6408(d)(2), (4)(A), (B), Dec. 19, 1989, 103 Stat. 2261–2265, 2268, 2269; Pub. L. 101–508, title IV, §§ 4402(d)(2), 4501(a), (c), (e)(1), 4601(a)(2), 4704(c), (d), (e)(1), 4705(a), 4711(a), 4712(a), 4713(b), 4717, 4719(a), 4721(a), 4722, 4755(a)(1)(A), Nov. 5, 1990, 104 Stat. 1388–163 to 1388–166, 1388–172, 1388–174, 1388–187, 1388–191, 1388–193, 1388–194, 1388–209; Pub. L. 103–66, title XIII, §§ 13601(a), 13603(e), 13605(a), 13606(a), 13631(f)(2), (g)(1), Aug. 10, 1993, 107 Stat. 612, 620, 621, 644, 645; Pub. L. 103–296, title I, § 108(d)(2), (3), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 104–299, § 4(b)(2), Oct. 11, 1996, 110 Stat. 3645; Pub. L. 105–33, title IV, §§ 4702(a), 4711(c)(1), 4712(d)(1), 4714(a)(2), 4725(b)(1), 4732(b), 4802(a)(1), 4911(a), Aug. 5, 1997, 111 Stat. 494, 508–510, 518, 520, 538, 570; Pub. L. 105–100, title I, § 162(1), (2), Nov. 19, 1997, 111 Stat. 2188; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, §§ 605(a), 608(*l*), (m), (aa)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396 to 1501A–398; Pub. L. 106–169, title I, § 121(a)(2), (c)(5), Dec. 14, 1999, 113 Stat. 1829, 1830; Pub. L. 106–170, title II, § 201(a)(2)(B), (C), Dec. 17, 1999, 113 Stat. 1892; Pub. L. 106–354, § 2(a)(4), (c), Oct. 24, 2000, 114 Stat. 1382, 1384; Pub. L. 106–554, § 1(a)(6) [title VII, § 709(a), title VIII, § 802(d)(1), (2), title IX, § 911(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–578, 2763A–581, 2763A–584; Pub. L. 108–357, title VII, § 712(a)(1), Oct. 22, 2004, 118 Stat. 1558; Pub. L. 109–171, title VI, § 6062(c)(2), Feb. 8, 2006, 120 Stat. 98.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsecs. (a), (m)(1), and (n), is classified to section 601 et seq. of this title.

Parts A and B of subchapter XVIII of this chapter, referred to in subsecs. (a), (*l*)(2)(B)(iv), (*o*)(3)(B), (p)(1)(A), and (s)(1), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 606 of this title, referred to in subsec. (a)(ii), was repealed and a new section 606 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (b)(1).

Section 211 of Pub. L. 93–66, referred to in subsec. (k), is section 211 of Pub. L. 93–66, July 9, 1973, 87 Stat. 152, as amended, which is set out as a note under section 1382 of this title.

The Indian Self-Determination Act, referred to in subsec. (*l*)(2)(B), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (*l*)(2)(B), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Clause (ii), referred to in subsec. (*l*)(2)(B), was redesignated as cl. (iii) by Pub. L. 101–508, title IV, § 4704(c)(3), Nov. 5, 1990, 104 Stat. 1388–172.

Section 607 of this title, referred to in subsec. (m)(1), was repealed and a new section 607 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (b)(2)(B)(i).

Section 212 of Public Law 93–66, referred to in subsec. (q)(1)(A), is section 212 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

2006—Subsec. (u)(2)(B). Pub. L. 109–171 inserted at end "Such term excludes any child eligible for medical assistance only by reason of section 1396a(a)(10)(A)(ii)(XIX) of this title."

2004—Subsec. (a)(27), (28). Pub. L. 108–357, § 712(a)(1)(A), added par. (27) and redesignated former par. (27) as (28).

Subsec. (x). Pub. L. 108–357, § 712(a)(1)(B), added subsec. (x).

2000—Subsec. (a)(xiii). Pub. L. 106–354, § 2(a)(4), added cl. (xiii).

Subsec. (b). Pub. L. 106–554, §1(a)(6) [title VIII, §802(d)(1)], in last sentence, substituted ''the State's available allotment under section 1397dd of this title'' for ''the State's allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under section 1397ee of this title to the State from such allotment for such fiscal year''.

Pub. L. 106–354, §2(c), in first sentence, struck out ''and'' before ''(3)'' and inserted before period at end '', and (4) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 1397ee(b) of this title with respect to medical assistance provided to individuals who are eligible for such assistance only on the basis of section 1396a(a)(10)(A)(ii)(XVIII) of this title''.

Subsec. (p)(5). Pub. L. 106–554, §1(a)(6) [title VII, §709(a)], added par. (5).

Subsec. (p)(6). Pub. L. 106–554, §1(a)(6) [title IX, §911(a)(2)], added par. (6).

Subsec. (u)(1)(B). Pub. L. 106–554, §1(a)(6) [title VIII, §802(d)(2)], struck out ''and section 1397dd(d) of this title'' before period at end.

1999—Subsec. (a)(xii). Pub. L. 106–170, §201(a)(2)(C), added cl. (xii).

Subsec. (a)(15). Pub. L. 106–113, §1000(a)(6) [title VI, §608(aa)(3)], substituted ''1396a(a)(31) of this title'' for ''1396a(a)(31)(A) of this title''.

Subsec. (b). Pub. L. 106–113, §1000(a)(6) [title VI, §605(a)], inserted ''(other than expenditures under section 1396r–4 of this title)'' after ''with respect to expenditures'' in last sentence.

Subsec. (b)(1). Pub. L. 106–113, §1000(a)(6) [title VI, §608(*l*)], substituted ''83 per centum,'' for ''83 per centum,,''.

Subsec. (*l*)(2)(B). Pub. L. 106–113, §1000(a)(6) [title VI, §608(m)], substituted ''an entity'' for ''a entity'' in introductory provisions.

Subsec. (v). Pub. L. 106–169, §121(c)(5)(A), redesignated subsec. (v), related to independent foster care adolescent, as (w).

Pub. L. 106–169, §121(a)(2), added subsec. (v), related to independent foster care adolescent.

Pub. L. 106–170, §201(a)(2)(B), added subsec. (v).

Subsec. (w). Pub. L. 106–169, §121(c)(5), redesignated subsec. (v) as (w) and substituted ''1396a(a)(10)(A)(ii)(XVII)'' for ''1396a(a)(10)(A)(ii)(XV)''.

1997—Subsec. (a)(25). Pub. L. 105–33, §4702(a)(1), added par. (25). Former par. (25) redesignated (26).

Subsec. (a)(26). Pub. L. 105–33, §4802(a)(1), added par. (26). Former par. (26) redesignated (27).

Pub. L. 105–33, §4702(a)(1)(B), redesignated par. (25) as (26) and substituted comma for period at end.

Subsec. (a)(27). Pub. L. 105–33, §4802(a)(1)(B), redesignated par. (26) as (27).

Subsec. (b). Pub. L. 105–100, §162(1), inserted ''for the State for a fiscal year, and that do not exceed the amount of the State's allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under section 1397ee of this title to the State from such allotment for such fiscal year,'' after ''subsection (u)(3) of this section''.

Pub. L. 105–33, §4911(a)(1), inserted at end ''Notwithstanding the first sentence of this subsection, in the case of a State plan that meets the condition described in subsection (u)(1) of this section, with respect to expenditures described in subsection (u)(2)(A) of this section or subsection (u)(3) of this section the Federal medical assistance percentage is equal to the enhanced FMAP described in section 1397ee(b) of this title.''

Pub. L. 105–33, §4732(b), substituted ''Subject to section 1396u–3(d) of this title, the term'' for ''The term''.

Pub. L. 105–33, §4725(b)(1), in first sentence, substituted '', (2)'' for ''and (2)'' and inserted before period '', and (3) for purposes of this subchapter and subchapter XXI of this chapter, the Federal medical assistance percentage for the District of Columbia shall be 70 percent''.

Subsec. (*l*)(2)(B)(iii). Pub. L. 105–33, §4712(d)(1), inserted ''including requirements of the Secretary that an entity may not be owned, controlled, or operated by another entity,'' after ''such a grant,''.

Subsec. (*o*)(3). Pub. L. 105–33, §4711(c)(1), substituted ''amount determined in section 1396a(a)(13)(B) of this title'' for ''amount described in section 1396a(a)(13)(D) of this title'' in concluding provisions.

Subsec. (p)(3). Pub. L. 105–33, §4714(a)(2), inserted ''(subject to section 1396a(n)(2) of this title)'' after ''means'' in introductory provisions.

Subsec. (t). Pub. L. 105–33, §4702(a)(2), added subsec. (t).

Subsec. (u). Pub. L. 105–33, §4911(a)(2), added subsec. (u).

Subsec. (u)(1)(B). Pub. L. 105–100, §162(2)(A), substituted ''the fourth sentence of subsection (b) of this section'' for ''paragraph (2)''.

Subsec. (u)(2)(A). Pub. L. 105–100, §162(2)(B), substituted ''subparagraph (B)'' for ''subparagraph (C), but not in excess, for a State for a fiscal year, of the amount described in subparagraph (B) for the State and fiscal year''.

Subsec. (u)(2)(B), (C). Pub. L. 105–100, §162(2)(C), added subpar. (B) and struck out former subpars. (B) and (C) which read as follows:

''(B) The amount described in this subparagraph, for a State for a fiscal year, is the amount of the State's allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under section 1397ee of this title to the State from such allotment for such fiscal year.

''(C) For purposes of this paragraph, the term 'optional targeted low-income child' means a targeted low-income child as defined in section 1397jj(b)(1) of this title who would not qualify for medical assistance under the State plan under this subchapter based on such plan as in effect on April 15, 1997 (but taking into account the expansion of age of eligibility effected through the operation of section 1396a(*l*)(2)(D) of this title).''

Subsec. (u)(3). Pub. L. 105–100, §162(2)(D), substituted ''described in this paragraph'' for ''described in this subparagraph'' and ''March 31, 1997'' for ''April 15, 1997''.

Subsec. (u)(4). Pub. L. 105–100, §162(2)(E), added par. (4).

1996—Subsec. (*l*)(2)(B)(i), (ii)(II). Pub. L. 104–299 substituted ''section 254b of this title'' for ''section 254b, 254c, 256, or 256a of this title''.

1994—Subsecs. (j), (q)(2). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

1993—Subsec. (a)(xi). Pub. L. 103–66, §13603(e)(1)–(3), added cl. (xi).

Subsec. (a)(7). Pub. L. 103–66, §13601(a)(1), struck out ''including personal care services (A) prescribed by a physician for an individual in accordance with a plan of treatment, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, (C) supervised by a registered nurse, and (D) furnished in a home or other location; but not including such services furnished to an inpatient or resident of a nursing facility'' after ''services''.

Subsec. (a)(17). Pub. L. 103–66, §13605(a), inserted before semicolon at end '', and without regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle''.

Subsec. (a)(19). Pub. L. 103–66, §13603(e)(4), amended par. (19) generally, inserting reference to TB-related services described in section 1396a(z)(2)(F) of this title.

Subsec. (a)(21). Pub. L. 103–66, §13601(a)(2), struck out ''and'' at end.

Subsec. (a)(22). Pub. L. 103–66, §13601(a)(4), redesignated par. (23) as (22). Former par. (22) redesignated (25).

Subsec. (a)(23). Pub. L. 103–66, §13601(a)(4), redesignated par. (24) as (23). Former par. (23) redesignated (22).

Subsec. (a)(24). Pub. L. 103–66, § 13601(a)(5), added par. (24). Former par. (24) redesignated (23).

Pub. L. 103–66, § 13601(a)(3), which directed amendment of par. (24) by substituting semicolon for comma at end, was executed by substituting semicolon for period at end to reflect the probable intent of Congress.

Subsec. (a)(25). Pub. L. 103–66, § 13601(a)(4), redesignated par. (22) as (25), transferred such par. to appear after par. (23), and substituted period for semicolon at end.

Subsec. (*l*)(2)(B). Pub. L. 103–66, § 13631(f)(2)(B), in concluding provisions, inserted ''or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act for the provision of primary health services'' before ''. In applying clause''.

Subsec. (*l*)(2)(B)(i). Pub. L. 103–66, § 13631(f)(2)(A), substituted ''256, or 256a'' for ''or 256''.

Pub. L. 103–66, § 13606(a)(1), struck out ''or'' at end.

Subsec. (*l*)(2)(B)(ii). Pub. L. 103–66, § 13631(f)(2)(A), substituted ''256, or 256a'' for ''or 256'' in subcl. (II).

Pub. L. 103–66, § 13606(a)(2), (3), realigned margin and substituted a comma for semicolon at end.

Subsec. (*l*)(2)(B)(iv). Pub. L. 103–66, § 13606(a)(4), (5), added cl. (iv).

Subsec. (r)(1)(A)(i). Pub. L. 103–66, § 13631(g)(1)(A), inserted ''and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines'' after ''child health care''.

Subsec. (r)(1)(B)(iii). Pub. L. 103–66, § 13631(g)(1)(B), inserted ''(according to the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines)'' after ''appropriate immunizations''.

1990—Subsec. (a). Pub. L. 101–508, § 4722, inserted at end ''No service (including counseling) shall be excluded from the definition of 'medical assistance' solely because it is provided as a treatment service for alcoholism or drug dependency.''

Pub. L. 101–508, § 4402(d)(2), inserted at end ''The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of subchapter XVIII of this chapter for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under subchapter XVIII of this chapter who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums for medical or any other type of remedial care or the cost thereof.''

Subsec. (a)(x). Pub. L. 101–508, § 4713(b), added cl. (x).

Subsec. (a)(2)(C). Pub. L. 101–508, § 4704(e)(1), repealed Pub. L. 101–239, § 6402(c)(1). See 1989 Amendment note below.

Subsec. (a)(7). Pub. L. 101–508, § 4721(a), substituted ''services including personal care services'' for ''services'' and added subpars. (A) to (D).

Subsec. (a)(13). Pub. L. 101–508, § 4719(a), inserted before semicolon at end '', including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level''.

Subsec. (a)(22). Pub. L. 101–508, § 4711(a)(1), which directed amendment of par. (22) by striking ''and'' at end, could not be executed because the word did not appear.

Subsec. (a)(23). Pub. L. 101–508, § 4712(a)(1), inserted ''and'' after semicolon at end.

Pub. L. 101–508, § 4711(a)(2), (3), which directed amendment of subsec. (a) by redesignating par. (23) as (24) and adding a new par. (23), was executed by adding the new par. (23), there being no former par. (23).

Subsec. (a)(24). Pub. L. 101–508, § 4712(a)(2), (3), which directed amendment of subsec. (a) by redesignating par. (24) as (25) and adding a new par. (24), was executed by adding the new par. (24), there being no former par. (24).

Subsec. (h)(1)(A). Pub. L. 101–508, § 4755(a)(1)(A), inserted ''or in another inpatient setting that the Secretary has specified in regulations'' after ''section 1395x(f) of this title''.

Subsec. (*l*)(2)(A). Pub. L. 101–508, § 4704(c)(1), substituted ''patient'' for ''outpatient''.

Subsec. (*l*)(2)(B). Pub. L. 101–508, § 4704(d)(2), which directed amendment of subpar. (B) by inserting ''and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93–638).'' after and below cl. (ii), was executed by inserting the new language after cl. (iii) to reflect the probable intent of Congress and the intervening redesignation of former cl. (ii) as (iii) by Pub. L. 101–508, § 4704(c)(3). See below.

Pub. L. 101–508, § 4704(c)(2), substituted ''entity'' for ''facility'' in introductory provisions.

Subsec. (*l*)(2)(B)(ii), (iii). Pub. L. 101–508, § 4704(c)(3), (d)(1), added cl. (ii), redesignated former cl. (ii) as (iii), and substituted comma for period at end of cl. (iii).

Subsec. (n)(2). Pub. L. 101–508, § 4601(a)(2), substituted ''age of 19'' for ''age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)''.

Subsec. (*o*)(1)(A). Pub. L. 101–508, § 4717, inserted ''and for which payment may otherwise be made under subchapter XVIII of this chapter'' after ''section 1395d(d)(2)(A) of this title''.

Subsec. (*o*)(3). Pub. L. 101–508, § 4705(a)(1), struck out ''a State which elects not to provide medical assistance for hospice care, but provides medical assistance for skilled nursing or intermediate care facility services with respect to'' after ''In the case of'' in introductory provisions.

Pub. L. 101–508, § 4705(a)(3), (4), in concluding provisions, substituted ''the additional amount described in section 1396a(a)(13)(D) of this title'' for ''the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1396a(a)(13) of this title,'' and struck out at end ''For purposes of this paragraph and section 1396a(a)(13)(D) of this title, the term 'room and board' includes performance of personal care services, including assistance in activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervising and assisting in the use of durable medical equipment and prescribed therapies.''

Subsec. (*o*)(3)(A), (C). Pub. L. 101–508, § 4705(a)(2), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing or intermediate care facility''.

Subsec. (p)(1)(B). Pub. L. 101–508, § 4501(e)(1)(A), which directed amendment of subpar. (B) by inserting '', except as provided in paragraph (2)(D)'' after ''supplementary social security income program'', was executed by inserting the new language after ''supplemental security income program'' to reflect the probable intent of Congress.

Subsec. (p)(2)(B). Pub. L. 101–508, § 4501(a)(1), inserted ''and'' at end of cl. (ii), substituted ''100 percent.'' for ''95 percent, and'' in cl. (iii), and struck out cl. (iv) which read as follows: ''January 1, 1992, is 100 percent.''

Subsec. (p)(2)(C). Pub. L. 101–508, § 4501(a)(2), substituted ''95 percent, and'' for ''90 percent,'' in cl. (iii) and ''100 percent.'' for ''95 percent, and'' in cl. (iv) and struck out cl. (v) which read as follows: ''January 1, 1993, is 100 percent.''

Subsec. (p)(2)(D). Pub. L. 101–508, § 4501(e)(1)(B), added subpar. (D).

Subsec. (p)(4). Pub. L. 101–508, § 4501(c)(2), inserted at end ''In the case of any State which is providing medical assistance to its residents under a waiver granted

under section 1315 of this title, the Secretary shall require the State to meet the requirement of section 1396a(a)(10)(E) of this title in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.''

Subsec. (p)(4)(B). Pub. L. 101–508, § 4501(c)(1), inserted ''or 1396a(a)(10)(E)(iii) of this title'' after ''subparagraph (B)''.

1989—Subsec. (a)(2)(B). Pub. L. 101–239, § 6404(a)(2), substituted ''subsection (*l*)(1)'' for ''subsection (*l*)'' in two places.

Subsec. (a)(2)(C). Pub. L. 101–239, § 6404(a)(3), added cl. (C) relating to Federally-qualified health center services.

Pub. L. 101–239, § 6402(c)(1), which directed addition of cl. (C) relating to ambulatory services, was repealed by Pub. L. 101–508, § 4704(e)(1).

Subsec. (a)(4)(B). Pub. L. 101–239, § 6403(d)(2), amended cl. (B) generally. Prior to amendment, cl. (B) read as follows: ''effective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary; and''.

Subsec. (a)(21), (22). Pub. L. 101–239, § 6405(a), added par. (21) and redesignated former par. (21) as (22).

Subsec. (*l*). Pub. L. 101–239, § 6404(b), designated existing provisions as par. (1), redesignated former cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

Subsec. (p)(1)(A). Pub. L. 101–239, § 6408(d)(4)(B), inserted '', but not including an individual entitled to such benefits only pursuant to an enrollment under section 1395i–2a of this title'' after ''section 1395i–2 of this title''.

Subsec. (p)(3)(A). Pub. L. 101–239, § 6408(d)(4)(A)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Premiums under subchapter XVIII of this chapter (including under part B and, if applicable, under section 1395i–2 of this title).''

Subsec. (p)(3)(A)(i). Pub. L. 101–239, § 6408(d)(4)(A)(ii), substituted ''section 1395i–2 or 1395i–2a'' for ''section 1395i–2''.

Subsec. (p)(3)(C). Pub. L. 101–234, § 201(b)(1), substituted ''Deductibles'' for ''Subject to paragraph (4), deductibles'' and ''section 1395e of this title and section 1395*l*(b) of this title)'' for ''section 1395e of this title, section 1395*l*(b) of this title, and section 1395m(c)(1) of this title''.

Subsec. (p)(4), (5). Pub. L. 101–234, § 201(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''In a State which provides medical assistance for prescribed drugs under subsection (a)(12) of this section, instead of providing to qualified medicare beneficiaries, under paragraph (3)(C), medicare cost-sharing with respect to the annual deductible for covered outpatient drugs under section 1395m(c)(1) of this title, the State may provide to such beneficiaries, before charges for covered outpatient drugs for a year reach such deductible amount, benefits for prescribed drugs in the same amount, duration, and scope as the benefits made available under the State plan for individuals described in section 1396a(a)(10)(A)(i) of this title.''

Subsec. (r). Pub. L. 101–239, § 6403(c), inserted at end ''The Secretary shall, not later than July 1, 1990, and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under this subchapter in early and periodic screening, diagnostic, and treatment services.''

Pub. L. 101–239, § 6403(a), added subsec. (r).

Subsec. (s). Pub. L. 101–239, § 6408(d)(2), added subsec. (s).

1988—Subsec. (a). Pub. L. 100–647, § 8434(b)(3), substituted ''in the case of medicare cost-sharing with respect to a qualified medicare beneficiary'' for ''in the case of a qualified medicare beneficiary'' in introductory provisions.

Subsec. (a)(ix). Pub. L. 100–485, § 303(b)(2), added cl. (ix).

Subsec. (a)(5)(B). Pub. L. 100–360, § 411(k)(4), substituted ''described in clause (A) if'' for ''described in subparagraph (A) if''.

Subsec. (a)(17). Pub. L. 100–360, § 411(h)(4)(E), amended Pub. L. 100–203, § 4073(d)(1), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, § 411(k)(14)(A), added subsec. (i).

Subsec. (m). Pub. L. 100–485, § 401(d)(2), added subsec. (m).

Subsec. (*o*)(1). Pub. L. 100–360, § 411(k)(8)(A), made clarifying amendment to directory language of Pub. L. 100–203, § 4114, see 1987 Amendment note below.

Subsec. (*o*)(1)(B). Pub. L. 100–360, § 411(k)(8)(B), struck out ''only'' after ''For purposes of this subchapter'' and substituted ''immune deficiency syndrome (AIDS)'' for ''immunodeficiency syndrome''.

Subsec. (*o*)(3). Pub. L. 100–485, § 608(f)(3), realigned the margin of par. (3).

Subsec. (p)(1). Pub. L. 100–647, § 8434(a), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read: ''who, but for section 1396a(a)(10)(E) of this title, is not eligible for medical assistance under the plan,''.

Subsec. (p)(1)(B). Pub. L. 100–360, § 301(a)(2), struck out ''and the election of the State'' after ''1396a(a)(10)(E) of this title''.

Subsec. (p)(1)(C). Pub. L. 100–360, § 301(c)(1), as amended by Pub. L. 100–485, § 608(d)(14)(E)(i), substituted ''paragraph (2)'' for ''paragraph (2)(A)''.

Subsec. (p)(1)(D). Pub. L. 100–360, § 301(c)(2), as amended by Pub. L. 100–485, § 608(d)(14)(E)(ii), substituted ''twice'' for ''(except as provided in paragraph (2)(B))''.

Subsec. (p)(2)(A). Pub. L. 100–647, § 8434(b)(4), substituted ''paragraph (1)(B)'' for ''paragraph (1)(C)''.

Pub. L. 100–360, § 301(b)(1), as amended by Pub. L. 100–485, § 608(d)(14)(A), substituted ''shall be at least the percent provided under subparagraph (B) (but not more than 100 percent)'' for ''may not exceed a percentage (not more than 100 percent)''.

Pub. L. 100–360, § 301(c)(3)(A), which directed amendment of subpar. (A) by striking ''(2)(A)'' and inserting ''(2)'', was repealed by Pub. L. 100–485, § 608(d)(14)(E)(iii).

Pub. L. 100–360, § 301(b)(2), which directed amendment of subpar. (A) by inserting ''(i)'' after ''(2)(A)'', was repealed by Pub. L. 100–485, § 608(d)(14)(B).

Subsec. (p)(2)(B). Pub. L. 100–360, § 301(b)(2), formerly § 301(b)(3), as renumbered and amended by Pub. L. 100–485, § 608(d)(14)(B)–(D)(ii), added subpar. (B) and struck out former subpar. (B) which read as follows: ''In the case of a State that provides medical assistance to individuals not described in section 1396a(a)(10)(A) of this title and at the State's option, the State may use under paragraph (1)(D) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1396a(a)(10)(A) of this title.''

Pub. L. 100–360, § 301(c)(3)(B), which directed amendment of par. (2) by striking subpar. (B), was repealed by Pub. L. 100–485, § 608(d)(14)(E)(iii).

Subsec. (p)(2)(C). Pub. L. 100–360, § 301(b)(2), formerly § 301(b)(3), as renumbered and amended by Pub. L. 100–485, § 608(d)(14)(B), (C), (D)(i), (iii), added subpar. (C).

Subsec. (p)(3). Pub. L. 100–360, § 301(d)(1), as added by Pub. L. 100–485, § 608(d)(14)(G)(ii), inserted ''without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan'' after ''qualified medicare beneficiary'' in introductory provisions.

Subsec. (p)(3)(A). Pub. L. 100–360, § 301(d)(2), formerly § 301(d)(1), as renumbered by Pub. L. 100–485, § 608(d)(14)(G)(i), substituted ''under subchapter XVIII of this chapter (including under part B and, if applicable, under section 1395i–2 of this title)'' for ''under part B and (if applicable) under section 1395i–2 of this title''.

Subsec. (p)(3)(B). Pub. L. 100–360, § 301(d)(3), formerly § 301(d)(2), as renumbered by Pub. L. 100–485,

§ 608(d)(14)(G)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Deductibles and coinsurance described in section 1395e of this title.''

Subsec. (p)(3)(C). Pub. L. 100–360, § 301(d)(3), formerly § 301(d)(2), as renumbered and amended by Pub. L. 100–485, § 608(d)(14)(F), (G)(i), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The annual deductible described in section 1395*l*(b) of this title.''

Subsec. (p)(4). Pub. L. 100–360, § 301(d)(4), formerly § 301(d)(3), as renumbered by Pub. L. 100–485, § 618(d)(14)(G)(i), added par. (4).

Subsec. (p)(5). Pub. L. 100–360, § 301(g)(2), as amended by Pub. L. 100–485, § 608(d)(14)(J), added par. (5).

1987—Subsec. (a)(4)(A). Pub. L. 100–203, § 4211(f), struck out ''skilled'' before ''nursing''.

Subsec. (a)(5). Pub. L. 100–203, § 4211(h)(6)(A), struck out ''skilled'' before ''nursing'' in cl. (A).

Pub. L. 100–203, § 4103(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(9). Pub. L. 100–203, § 4105(a), inserted provision including services furnished to an eligible individual who does not reside in a permanent dwelling or have a fixed home or mailing address.

Subsec. (a)(14). Pub. L. 100–203, § 4211(h)(6)(B), substituted ''and nursing facility services'' for '', skilled nursing facility services, and intermediate care facility services''.

Subsec. (a)(15). Pub. L. 100–203, § 4211(h)(6)(C), substituted ''services in an intermediate care facility for the mentally retarded (other than'' for ''intermediate care facility services (other than such services''.

Subsec. (a)(17). Pub. L. 100–203, § 4073(d)(1), as amended by Pub. L. 100–360, § 411(h)(4)(E), substituted ''(as defined in section 1395x(gg) of this title)'' for ''(as defined in subsection (m) of this section)''.

Subsec. (c). Pub. L. 100–203, § 4211(e)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) defined ''intermediate care facility''.

Subsec. (d). Pub. L. 100–203, § 4211(e)(2), substituted ''intermediate care facility for the mentally retarded'' for ''intermediate care facility'' and ''means an'' for ''may include services in a public'', and in par. (3) inserted ''in the case of a public institution'' after ''(3)''.

Subsec. (f). Pub. L. 100–203, § 4211(e)(3), struck out ''skilled'' before ''nursing'' in four places and before ''rehabilitation''.

Subsec. (i). Pub. L. 100–203, § 4211(e)(4), struck out subsec. (i) which provided that for purposes of this subchapter ''skilled nursing facility'' also includes any institution which is located in a State on an Indian reservation and is certified by the Secretary as being a qualified skilled nursing facility by meeting the requirements of section 1395x(j) of this title.

Subsec. (m). Pub. L. 100–203, § 4073(d)(2), struck out subsec. (m) which defined ''nurse-midwife''. See section 1395x(gg) of this title.

Subsec. (n)(2). Pub. L. 100–203, § 4101(c)(1), substituted ''has not attained the age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)'' for ''is under 5 years of age''.

Subsec. (*o*)(1). Pub. L. 100–203, § 4114, as amended by Pub. L. 100–360, § 411(k)(8)(A), designated existing provisions as subpar. (A), substituted ''Subject to subparagraph (B), the'' for ''The'', and added subpar. (B).

Subsec. (p)(2)(A). Pub. L. 100–203, § 4118(p)(8), struck out ''nonfarm'' before ''official''.

1986—Subsec. (a). Pub. L. 99–509, § 9403(g)(3), inserted ''or, in the case of a qualified medicare beneficiary described in subsection (p)(1) of this section, if provided after the month in which the individual becomes such a beneficiary'' after ''makes application for assistance''.

Subsec. (a)(18). Pub. L. 99–272, § 9505(a)(1), added par. (18). Former par. (18) redesignated (19).

Subsec. (a)(19). Pub. L. 99–514, § 1895(c)(3)(A), added par. (19). Former par. (19) redesignated (20).

Pub. L. 99–272, § 9505(a)(1)(B), redesignated former par. (18) as (19).

Subsec. (a)(20). Pub. L. 99–509, § 9408(c)(1), added par. (20). Former par. (20) redesignated (21).

Pub. L. 99–514, § 1895(c)(3)(A)(ii), redesignated former par. (19) as (20).

Subsec. (a)(21). Pub. L. 99–509, § 9408(c)(1)(B), redesignated former par. (20) as (21).

Subsec. (n)(1)(C). Pub. L. 99–272, § 9501(a), added subpar. (C).

Subsec. (n)(2). Pub. L. 99–272, § 9511(a), inserted ''(or such earlier date as the State may designate)'' after ''September 30, 1983''.

Subsec. (*o*). Pub. L. 99–272, § 9505(a)(2), added subsec. (*o*).

Subsec. (*o*)(3). Pub. L. 99–509, § 9435(b)(2), added par. (3).

Subsec. (p). Pub. L. 99–509, § 9403(b), (d), added subsec. (p).

Subsec. (q). Pub. L. 99–509, § 9404(b), added subsec. (q).

1984—Subsec. (a). Pub. L. 98–369, § 2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases'' in subd. (B) following par. (18).

Pub. L. 98–369, § 2373(b)(17), substituted ''clause (vi)'' for ''clauses (vi)'' and ''well-being'' for ''well being'' in last sentence.

Subsec. (a)(1). Pub. L. 98–369, § 2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases''.

Subsec. (a)(4). Pub. L. 98–369, § 2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases''.

Pub. L. 98–369, § 2373(b)(15), inserted a semicolon before ''(B)''.

Subsec. (a)(9). Pub. L. 98–369, § 2371(a), amended par. (9) generally, inserting ''furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician''.

Subsec. (a)(14), (15). Pub. L. 98–369, § 2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases''.

Subsec. (a)(17). Pub. L. 98–369, § 2373(b)(16), substituted ''the nurse-midwife'' for ''he'' in two places.

Subsec. (b). Pub. L. 98–369, § 2373(b)(18), substituted ''section 1301(a)(8)(B) of this title'' for ''subparagraph (B) of section 1301(a)(8) of this title''.

Subsec. (d)(1). Pub. L. 98–369, § 2373(b)(19), substituted ''the institution meets'' for ''which meet''.

Subsec. (h)(1)(A). Pub. L. 98–369, § 2340(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''inpatient services which are provided in an institution which is accredited as a psychiatric hospital by the Joint Commission on Accreditation of Hospitals;''.

Subsec. (m). Pub. L. 98–369, § 2373(b)(20), substituted ''the nurse'' for ''he'' in two places.

Subsec. (n). Pub. L. 98–369, § 2361(b), added subsec. (n).

1982—Subsec. (a)(i). Pub. L. 97–248, § 137(b)(17), struck out ''or any reasonable category of such individuals,'' after ''as the State may choose,''.

Subsec. (a)(viii). Pub. L. 97–248, § 137(b)(18), added cl. (viii).

Subsec. (b)(2). Pub. L. 97–248, § 136(c), substituted ''the Northern Mariana Islands, and American Samoa'' for ''and the Northern Mariana Islands''.

Subsec. (h)(1)(C). Pub. L. 97–248, § 137(f), redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and redesignated cls. (A) and (B) as cls. (i) and (ii), respectively.

1981—Subsec. (a). Pub. L. 97–35, § 2172(b), in cl. (i), inserted ''or, at the option of the State, under the age of 20, 19, or 18 as the State may choose, or any reasonable category of such individuals,'' and in cl. (ii), struck out reference to section 606(a)(2) of this title.

Subsec. (b). Pub. L. 97–35, § 2162(a)(2), inserted reference to Northern Mariana Islands.

1980—Subsec. (a)(17), (18). Pub. L. 96–499, § 965(a)(1)(B), (C), added par. (17) and redesignated former par. (17) as (18).

Subsec. (c). Pub. L. 96–473 substituted ''clause (1)'' for ''clauses (1)''.

Subsec. (m). Pub. L. 96–499, § 965(a)(2), added subsec. (m).

1978—Subsec. (c). Pub. L. 95–292 added cl. (4) to first sentence relating to a requirement that intermediate care facilities meet section 1395x(j)(14) of this title with respect to protection of patients' personal funds, and inserted reference to that cl. (4) in provisions covering intermediate care facilities on Indian reservations.

1977—Subsec. (a)(2). Pub. L. 95–210, § 2(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (*l*). Pub. L. 95–210, § 2(b), added subsec. (*l*).

1976—Subsec. (b). Pub. L. 94–437 inserted provision requiring that the Federal medical assistance percentage be 100 per centum for services received through an Indian Health Service facility.

1973—Subsec. (a). Pub. L. 93–233, § 13(a)(13), substituted in introductory text ''individuals (other than individuals with respect to whom there is being paid, or who are eligible or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter'' for ''individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter''.

Subsec. (a)(iv). Pub. L. 93–233, § 13(a)(14), inserted ''with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,'' after ''blind,''.

Subsec. (a)(v). Pub. L. 93–233, § 13(a)(15), substituted ''with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,'' for ''or''.

Subsec. (a)(vi). Pub. L. 93–233, § 13(a)(16), inserted ''or'' at end of text.

Subsec. (a)(vii). Pub. L. 93–233, § 13(a)(17), added cl. (vii).

Subsec. (a)(16). Pub. L. 93–233, § 18(x)(7), substituted ''under age 21, as defined in subsection (h) of this section; and'' for ''under 21, as defined in subsection (e) of this section;''.

Subsec. (b). Pub. L. 93–233, § 18(y)(2), struck out ''; except that the Secretary shall promulgate such percentage as soon as possible after July 30, 1965, which promulgation shall be conclusive for each of the six quarters in the period beginning January 1, 1966, and ending with the close of June 30, 1966'' after ''section 1301(a)(8) of this title''.

Subsec. (c). Pub. L. 93–233, § 18(x)(8), substituted ''skilled nursing facility'' for ''skilled nursing home'' wherever appearing.

Subsec. (h)(1)(B). Pub. L. 93–233, § 18(w), substituted ''(i) involve active treatment'' for '', involves active treatment (i)''; struck out ''pursuant to subchapter XVIII of this chapter'' after ''may be prescribed''; and substituted ''(ii)'' for ''(ii) which'', respectively.

Subsec. (h)(2). Pub. L. 93–233, § 18(x)(10), substituted ''paragraph (1)'' for ''paragraph (e)(1)''.

Subsec. (i). Pub. L. 93–233, § 18(x)(9), redesignated subsec. (h) as added by Pub. L. 92–603, § 299L(b), as subsec. (i).

Subsecs. (j), (k). Pub. L. 93–233, § 13(a)(18), added subsecs. (j) and (k).

1972—Subsec. (a). Pub. L. 92–603, § 299B(c), in text following redesignated subsec. (a)(17) substituted ''as otherwise provided in paragraph (16),'' for ''that''.

Subsec. (a)(4). Pub. L. 92–603, §§ 278(a)(21), 299E(b), substituted ''skilled nursing facility'' for ''skilled nursing home'' and added cl. (C).

Subsec. (a)(5). Pub. L. 92–603, §§ 278(a)(22), 280, substituted ''skilled nursing facility'' for ''skilled nursing home'' and inserted ''furnished by a physician (as defined in section 1395x(r)(1) of this title) after ''physicians' services''.

Subsec. (a)(14). Pub. L. 92–603, §§ 278(a)(23), 297(a), substituted ''skilled nursing facility'' for ''skilled nursing home'' and inserted reference to intermediate care facility services.

Subsec. (a)(15) to (17). Pub. L. 92–603, § 299B(a), added par. (16) and redesignated existing pars. (15) and (16) as (17) and (15), respectively.

Subsec. (c). Pub. L. 92–603, § 299L(a), inserted provision defining ''intermediate care facility'' with respect to any institution located in a State on an Indian reservation.

Subsec. (d)(3). Pub. L. 92–603, § 299, inserted provisions relating to reduction of non-Federal expenditures in any calendar quarter prior to January 1, 1975.

Subsec. (e). Pub. L. 92–603, § 212(a), added subsec. (e).

Subsec. (f). Pub. L. 92–603, § 247(b), added subsec. (f).

Subsec. (g). Pub. L. 92–603, § 275(a), added subsec. (g).

Subsec. (h). Pub. L. 92–603, § 299B(b), added subsec. (h).

Subsec. (i). Pub. L. 92–603, § 299L(b), added subsec. (i),

1971—Subsec. (a)(16). Pub. L. 92–223, § 4(a)(1)(C), added cl. (16).

Subsecs. (c), (d). Pub. L. 92–223, § 4(a)(2), added subsecs. (c) and (d).

1968—Subsec. (a). Pub. L. 90–248, § 230, inserted '', and with respect to physicians' or dentists' services, at the option of the State, to individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, XVI of this chapter, or part A of subchapter IV of this chapter'' after ''for individuals'' in text preceding cl. (i).

Pub. L. 90–248, § 233(b), inserted provision deeming, for purposes of cl. (vi) of the preceding sentence, a person as essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XV of this chapter, and such person is determined, under such a State plan, to be essential to the well being of such individual.

Subsec. (a)(ii). Pub. L. 90–248, § 241(f)(6), inserted ''part A of'' before ''subchapter IV''.

Subsec. (a)(vi). Pub. L. 90–248, § 233(a), added cl. (vi).

Subsec. (a)(4). Pub. L. 90–248, § 302(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (b). Pub. L. 90–248, § 248(e), substituted in cl. (2) of first sentence ''50'' for ''55''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 applicable to medical assistance for items and services furnished on or after Jan. 1, 2007, see section 6062(d) of Pub. L. 109–171, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Oct. 22, 2004, and applicable to medical assistance and services provided under this subchapter on or after that date, see section 712(d) of Pub. L. 108–357, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–554, § 1(a)(6) [title VII, § 709(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–578, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect 1 year after the date of the enactment of this Act [Dec. 21, 2000], regardless of whether regulations have been promulgated to carry out such amendment by such date. The Secretary of Health and Human Services shall develop the uniform application form under such amendment by not later than 9 months after the date of the enactment of this Act.''

Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–582, provided that: ''The amendments made by this section [amending this section and sections 1397dd, 1397ee, and 1397jj of this title] shall be effective as if included in the enactment of section 4901 of the BBA [Pub. L. 105–33] (111 Stat. 552).''

Amendment by section 1(a)(6) [title IX, § 911(a)(2)] of Pub. L. 106–554 effective one year after Dec. 21, 2000, see

section 1(a)(6) [title IX, § 911(c)] of Pub. L. 106–554, set out as an Effective Date note under section 1320b–14 of this title.

Amendment by Pub. L. 106–354 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date, see section 2(d) of Pub. L. 106–354, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–170 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, see section 201(d) of Pub. L. 106–170, set out as a note under section 1396a of this title.

Amendment by section 121(a)(2) of Pub. L. 106–169 applicable to medical assistance for items and services furnished on or after Oct. 1, 1999, see section 121(b) of Pub. L. 106–169, set out as a note under section 1396a of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 605(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396, provided that: ''The amendment made by subsection (a) [amending this section] takes effect on October 1, 1999, and applies to expenditures made on or after such date.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(aa)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398, provided that the amendment made by section 1000(a)(6) [title VI, § 608(aa)(3)] is effective as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

Amendment by section 1000(a)(6) [title VI, § 608(*l*), (m)] of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, § 608(bb)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 162 of Pub. L. 105–100 provided that the amendment made by that section is effective as if included in the enactment of subtitle J (§§ 4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

Amendment by section 4702(a) of Pub. L. 105–33 applicable to primary care case management services furnished on or after Oct. 1, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4710(b)(1) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Amendment by section 4711(c)(1) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to payment for items and services furnished on or after Oct. 1, 1997, see section 4711(d) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Section 4712(d)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 4714(a)(2) of Pub. L. 105–33 applicable to payment for (and with respect to provider agreements with respect to) items and services furnished on or after Aug. 5, 1997, and to payment by a State for items and services furnished before such date if such payment is subject of lawsuit that is based on subsection (p) of this section and section 1396a(n) of this title and that is pending as of, or is initiated after Aug. 5, 1997, see section 4714(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Section 4725(b)(2) of Pub. L. 105–33 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to—

''(A) items and services furnished on or after October 1, 1997;

''(B) payments made on a capitation or other risk-basis for coverage occurring on or after such date; and

''(C) payments attributable to DSH allotments for such States determined under section 1923(f) of such Act (42 U.S.C. 1396r–4(f)) for fiscal years beginning with fiscal year 1998.''

Amendment by section 4911(a) of Pub. L. 105–33 applicable to medical assistance for items and services furnished on or after Oct. 1, 1997, see section 4911(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–299 effective Oct. 1, 1996, see section 5 of Pub. L. 104–299, as amended, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13601(a) of Pub. L. 103–66 effective as if included in enactment of section 4721(a) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, see section 13601(c) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Amendment by section 13603(e) of Pub. L. 103–66 applicable to medical assistance furnished on or after Jan. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13603 of Pub. L. 103–66 have been promulgated by such date, see section 13603(f) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Section 13605(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after October 1, 1993.''

Section 13606(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to calendar quarters beginning on or after July 1, 1993.''

Amendment by section 13631(f)(2) of Pub. L. 103–66 applicable, except as otherwise provided, to calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 13631(f) of Pub. L. 103–66 have been promulgated by such date, see section 13631(f)(3) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Section 13631(g)(2) of Pub. L. 103–66 provided that: ''The amendments made by subparagraphs (A) and (B) of paragraph (1) [amending this section] shall first apply 90 days after the date the schedule referred to in subparagraphs (A)(i) and subparagraph (B)(iii) of section 1905(r)(1) of the Social Security Act [subsec. (r)(1)(B)(iii) of this section] (as amended by such respective subparagraphs) is first established.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4402(d)(2) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101–508 have been promulgated by such date, see section 4402(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4501(a), (c), (e)(1) of Pub. L. 101–508 applicable to calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not regulations to implement the amendments by section 4501 of Pub. L. 101–508 are promulgated by such date, except that amendment by section 4501(e)(1) of Pub. L. 101–508 is applicable to determinations of income for months beginning with January 1991, see section 4501(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4601(a)(2) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101–508 have been promulgated

by such date, see section 4601(b) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4704(c), (d), (e)(1) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4704(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4705(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as if included in the amendments made by section 6408(c)(1) of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, amending section 1396a of this title].''

Amendment by section 4711(a) of Pub. L. 101–508 applicable to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4711 of Pub. L. 101–508 have been promulgated by such date, see section 4711(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4712(a) of Pub. L. 101–508 applicable to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under section 1396u(h) of this title without regard to whether or not final regulations to carry out the amendments by section 4712 of Pub. L. 101–508 have been promulgated by such date, see section 4712(c) of Pub. L. 101–508, set out as an Effective Date note under section 1396u of this title.

Amendment by section 4713(b) of Pub. L. 101–508 applicable to medical assistance furnished on or after Jan. 1, 1991, see section 4713(c) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4719(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4721(b) of Pub. L. 101–508 provided that: ''The amendment made by this section [amending this section] shall become effective with respect to personal care services provided on or after October 1, 1994.''

Section 4755(a)(1)(B) of Pub. L. 101–508 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as if included in the enactment of the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6403(a), (c), (d)(2) of Pub. L. 101–239 effective Apr. 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6403 of Pub. L. 101–239 have been promulgated by such date, see section 6403(e) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6404(a), (b) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6404 of Pub. L. 101–239 have been promulgated by such date, see section 6404(d) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6405(a) of Pub. L. 101–239 effective with respect to services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner on or after July 1, 1990, see section 6405(c) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6408(d)(2), (4)(A), (B) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6408(d) of Pub. L. 101–239 have been promulgated by such date, see section 6408(d)(5) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 effective as if included in the enactment of section 301 of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 8434(c) of Pub. L. 100–647, set out as a note under section 1396a of this title.

Amendment by section 303(b)(2) of Pub. L. 100–485 applicable to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990 (or, in the case of the Commonwealth of Kentucky, Oct. 1, 1990) (without regard to whether regulations to implement such amendment are promulgated by such date), with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter on or after that date, see section 303(f)(1) of Pub. L. 100–485, set out as a note under section 1396a of this title.

Amendment by section 401(d)(2) of Pub. L. 100–485 effective Oct. 1, 1990, except as provided in subsec. (m)(2) of this section and not effective for Puerto Rico, Guam, American Samoa, and the Virgin Islands, until the date of repeal of limitations contained in section 1308(a) of this title on payments to such jurisdictions for purposes of making maintenance payments under this part and part E of this subchapter, see section 401(g) of Pub. L. 100–485, as amended, set out as a note under section 1396a of this title.

Amendment by section 608(d)(14)(A)–(G), (J) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 608(f)(3) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 301(a)(2)–(d) of Pub. L. 100–360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1989, without regard to whether or not final regulations to carry out such amendment have been promulgated by that date, with respect to medical assistance for monthly premiums under subchapter XVIII of this chapter for months beginning with January 1989, and items and services furnished on and after Jan. 1, 1989, see section 301(h) of Pub. L. 100–360, set out as a note under section 1396a of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(h)(4)(E), (k)(4), (8) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(k)(14)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4073(d) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4073(e) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Section 4101(c)(3) of Pub. L. 100–203 provided that:

''(A) The amendments made by this subsection [amending this section and section 1396a of this title] shall apply to medical assistance furnished on or after October 1, 1988.

''(B) For purposes of section 1905(n)(2) of the Social Security Act [section 1396d(n)(2) of this title] (as amended by subsection (a) [probably means ''subsection (c)'']) for medical assistance furnished during fiscal year 1989, any reference to 'age of 7' is deemed to be a reference to 'age of 6'.''

Section 4103(b) of Pub. L. 100–203 provided that:

''(1) The amendment made by subsection (a) [amending this section] applies (except as provided under paragraph (2)) to payments under title XIX of the Social Se-

curity Act [42 U.S.C. 1396 et seq.] for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Dec. 22, 1987].''

Section 4105(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1988, without regard to whether regulations to implement such amendment are promulgated by such date.''

Amendments by section 4211(e), (f), (h)(6) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9403(b), (d), (g)(3) of Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9404(b) of Pub. L. 99–509 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date, see section 9404(c) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9408(c)(1) of Pub. L. 99–509 applicable to services furnished on or after Oct. 21, 1986, see section 9408(d) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Section 9501(d)(1) of Pub. L. 99–272 provided that:

''(A) The amendments made by subsection (a) [amending this section] apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after the [sic] July 1, 1986, without regard to whether or not final regulations to carry out the amendments have been promulgated by that date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by section 9505(a) of Pub. L. 99–272 applicable to medical assistance provided for hospice care furnished on or after Apr. 7, 1986, see section 9505(e) of Pub. L. 99–272, set out as a note under section 1396a of this title.

Section 9511(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, § 9435(d)(2), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendment made by this section [amending this section] shall apply to services furnished on or after April 1, 1986, without regard to whether or not regulations to carry out the amendment have been promulgated by that date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2335(f) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2340(b) of Pub. L. 98–369 effective July 18, 1984, see section 2340(c) of Pub. L. 98–369, set out as a note under section 1395x of this title.

Amendment by section 2361(b) of Pub. L. 98–369 applicable to calendar quarters beginning on or after Oct. 1, 1984, without regard to whether or not final regulations to carry out the amendment have been promulgated by such date, except as otherwise provided, see section 2361(d) of Pub. L. 98–369, set out as a note under section 1396a of this title.

Section 2371(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 136(c) of Pub. L. 97–248 effective Oct. 1, 1982, see section 136(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

Amendment by section 137(b)(17), (18) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2172(b) of Pub. L. 97–35 effective Aug. 13, 1981, see section 2172(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–499, see section 965(c) of Pub. L. 96–499, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 8(d)(1) of Pub. L. 95–292 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective on July 1, 1978.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after the first day of the first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95–210, set out as a note under section 1395cc of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by section 13(a)(13)–(18) of Pub. L. 93–233 effective with respect to payments under section 1396b of this title for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93–233, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 212(b) of Pub. L. 92–603 provided that: ''The provisions of subsection (e) of section 1905 of the Social

Security Act [subsec. (e) of this section] (as added by subsection (a) of this section) shall be applicable in the case of services performed on or after the date of enactment of this Act [Oct. 30, 1972].''

Amendment by section 247(b) of Pub. L. 92–603 effective with respect to services furnished after Dec. 31, 1972, see section 247(c) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Section 275(b) of Pub. L. 92–603 provided that: ''The amendment made by this section [amending this section] shall be effective with respect to services furnished after June 30, 1973.''

Section 297(b) of Pub. L. 92–603 provided that: ''The amendment made by this section [amending this section] shall apply with respect to services furnished after December 31, 1972.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–223 effective Jan. 1, 1972, see section 4(d) of Pub. L. 92–223, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 248(e) of Pub. L. 90–248 provided that the amendment made by that section is effective with respect to quarters after 1967.

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108–357, title VII, § 712(a)(2), Oct. 22, 2004, 118 Stat. 1558, provided that: ''Nothing in subsections (a)(27) or (x) of section 1905 of the Social Security Act (42 U.S.C. 1396d), as added by paragraph (1), shall be construed as implying that a State medicaid program under title XIX of such Act [this subchapter] could not have treated, prior to the date of enactment of this Act [Oct. 22, 2004], any of the primary and secondary medical strategies and treatment and services described in such subsections as medical assistance under such program, including as early and periodic screening, diagnostic, and treatment services under section 1905(r) of such Act [subsec. (r) of this section].''

CONSTRUCTION OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 to be executed as if Pub. L. 106–169 had been enacted after the enactment of Pub. L. 106–170, see section 121(c)(1) of Pub. L. 106–169, set out as a note under section 1396a of this title.

TEMPORARY STATE FISCAL RELIEF

Pub. L. 108–27, title IV, § 401(a), May 28, 2003, 117 Stat. 764, as amended by Pub. L. 108–74, § 2(a), Aug. 15, 2003, 117 Stat. 896, which authorized $10,000,000,000 for an increase of the Medicaid Federal medical assistance percentage (FMAP) for the last 2 calendar quarters of fiscal year 2003 and the first 3 quarters of fiscal year 2004 and set forth State eligibility requirements, and was repealed effective Oct. 1, 2004, by Pub. L. 108–27, title IV, § 401(a)(9), May 28, 2003, 117 Stat. 766.

ALASKA FMAPS

Pub. L. 106–554, § 1(a)(6) [title VII, § 706], Dec. 21, 2000, 114 Stat. 2763, 2763A–577, provided that: ''Notwithstanding the first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), only with respect to each of fiscal years 2001 through 2005, for purposes of titles XIX and XXI of the Social Security Act [this subchapter and subchapter XXI of this chapter], the State percentage used to determine the Federal medical assistance percentage for Alaska shall be that percentage which bears the same ratio to 45 percent as the square of the adjusted per capita income of Alaska (determined by dividing the State's 3-year average per capita income by 1.05) bears to the square of the per capita income of the 50 States.''

Section 4725(a) of Pub. L. 105–33 provided that: ''Notwithstanding the first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), the Federal medical assistance percentage determined under such sentence for Alaska shall be 59.8 percent but only with respect to—

''(1) items and services furnished under a State plan under title XIX [this subchapter] or under a State child health plan under title XXI of such Act [subchapter XXI of this chapter] during fiscal years 1998, 1999, and 2000;

''(2) payments made on a capitation or other risk-basis under such titles for coverage occurring during such period; and

''(3) payments under title XIX of such Act attributable to DSH allotments for such State determined under section 1923(f) of such Act (42 U.S.C. 1396r–4(f)) for such fiscal years.''

EPSDT BENEFIT STUDY AND REPORT

Section 4744 of Pub. L. 105–33 provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with Governors, directors of State medicaid programs, the American Academy of Actuaries, and representatives of appropriate provider and beneficiary organizations, shall conduct a study of the provision of early and periodic screening, diagnostic, and treatment services under the medicaid program under title XIX of the Social Security Act [this subchapter] in accordance with the requirements of section 1905(r) of such Act (42 U.S.C. 1396d(r)).

''(2) REQUIRED CONTENTS.—The study conducted under paragraph (1) shall include examination of the actuarial value of the provision of such services under the medicaid program and an examination of the portions of such actuarial value that are attributable to paragraph (5) of section 1905(r) of such Act and to the second sentence of such section.

''(b) REPORT.—Not later than 12 months after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall submit a report to Congress on the results of the study conducted under subsection (a).''

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§ 601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u–1(a) of this title.

LIMITATION ON DISALLOWANCES OR DEFERRAL OF FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR INDIVIDUALS UNDER AGE 21

Section 4706 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—(1) If the Secretary of Health and Human Services makes a determination that a psychiatric facility has failed to comply with certification of need requirements for inpatient psychiatric hospital services for individuals under age 21 pursuant to section 1905(h) of the Social Security Act [subsec. (h) of this section], and such determination has not been subject to a final judicial decision, any disallowance or deferral of Federal financial participation under such Act [this chapter] based on such determination shall only apply to the period of time beginning with the first day of noncompliance and ending with the date by which the psychiatric facility develops documentation (using plan of care or utilization review procedures) of the need for inpatient care with respect to such individuals.

''(2) Any disallowance of Federal financial participation under title XIX of the Social Security Act [this subchapter] relating to the failure of a psychiatric facility to comply with certification of need requirements—

''(A) shall not exceed 25 percent of the amount of Federal financial participation for the period described in paragraph (1); and

''(B) shall not apply to any fiscal year before the fiscal year that is 3 years before the fiscal year in which the determination of noncompliance described in paragraph (1) is made.

''(b) EFFECTIVE DATE.—Subsection (a) shall apply to disallowance actions and deferrals of Federal financial participation with respect to services provided before the date of enactment of this Act [Nov. 5, 1990].''

INTERMEDIATE CARE FACILITY; ACCESS AND VISITATION RIGHTS

Section 411(*l*)(3)(C)(i), formerly § 411(*l*)(3)(C), of Pub. L. 100–360, as redesignated by Pub. L. 100–485, title VI, § 608(d)(27)(E), Oct. 13, 1988, 102 Stat. 2423, provided that: ''Effective as of the date of the enactment of this Act [July 1, 1988] and until the effective date of section 1919(c) of such Act [section 1396r(c) of this title, see Effective Date note set out under section 1396r of this title], section 1905(c) of the Social Security Act [subsec. (c) of this section] is deemed to include the requirement described in section 1919(c)(3)(A) of such Act (as inserted by section 4211(a)(3) of OBRA).''

REGULATIONS FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

Section 9514 of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall promulgate proposed regulations revising standards for intermediate care facilities for the mentally retarded under title XIX of the Social Security Act [this subchapter] within 60 days after the date of the enactment of this Act [Apr. 7, 1986].''

LIFE SAFETY CODE RECOGNITION

Section 9515 of Pub. L. 99–272 provided that: ''For purposes of section 1905(c) of the Social Security Act [subsec. (c) of this section], an intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) which meets the requirements of the relevant sections of the 1985 edition of the Life Safety Code of the National Fire Protection Association shall be deemed to meet the fire safety requirements for intermediate care facilities for the mentally retarded until such time as the Secretary specifies a later edition of the Life Safety Code for purposes of such section, or the Secretary determines that more stringent standards are necessary to protect the safety of residents of such facilities.''

STUDY OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE FORMULA AND OF ADJUSTMENTS OF TARGET AMOUNTS FOR FEDERAL MEDICAID EXPENDITURES; REPORT TO CONGRESS

Section 2165 of Pub. L. 97–35 directed the Comptroller General, in consultation with the Advisory Committee for Intergovernmental Relations, to study the Federal medical assistance percentage formula as applicable to distribution of Federal funds to States, with a view to revising the medicaid matching formula so as to take into account factors which might result in a more equitable distribution of Federal funds to States under this chapter, and to report to Congress on such study not later than Oct. 1, 1982.

COSTS CHARGED TO PERSONAL FUNDS OF PATIENTS IN INTERMEDIATE CARE FACILITIES; COSTS INCLUDED IN CHARGES FOR SERVICES; REGULATIONS

Section 8(c), (d)(2) of Pub. L. 95–292 required the Secretary of Health, Education, and Welfare to issue regulations, within 90 days after enactment of Pub. L. 95–292 but not later than July 1, 1978, defining those costs that may be charged to the personal funds of patients in intermediate care facilities who are individuals receiving medical assistance under a State plan approved under title XIX of the Social Security Act, and those costs that are to be included in the reasonable cost or reasonable charge for intermediate care facility services. See section 1302 of this title.

§ 1396e. Enrollment of individuals under group health plans

(a) Requirements of each State plan; guidelines

Each State plan—

(1) may implement guidelines established by the Secretary, consistent with subsection (b) of this section, to identify those cases in which enrollment of an individual otherwise entitled to medical assistance under this subchapter in a group health plan (in which the individual is otherwise eligible to be enrolled) is cost-effective (as defined in subsection (e)(2) of this section);

(2) may require, in case of an individual so identified and as a condition of the individual being or remaining eligible for medical assistance under this subchapter and subject to subsection (b)(2) of this section, notwithstanding any other provision of this subchapter, that the individual (or in the case of a child, the child's parent) apply for enrollment in the group health plan; and

(3) in the case of such enrollment (except as provided in subsection (c)(1)(B) of this section), shall provide for payment of all enrollee premiums for such enrollment and all deductibles, coinsurance, and other cost-sharing obligations for items and services otherwise covered under the State plan under this subchapter (exceeding the amount otherwise permitted under section 1396*o* of this title), and shall treat coverage under the group health plan as a third party liability (under section 1396a(a)(25) of this title).

(b) Timing of enrollment; failure to enroll

(1) In establishing guidelines under subsection (a)(1) of this section, the Secretary shall take into account that an individual may only be eligible to enroll in group health plans at limited times and only if other individuals (not entitled to medical assistance under the plan) are also enrolled in the plan simultaneously.

(2) If a parent of a child fails to enroll the child in a group health plan in accordance with subsection (a)(2) of this section, such failure shall not affect the child's eligibility for benefits under this subchapter.

(c) Premiums considered payments for medical assistance; eligibility

(1)(A) In the case of payments of premiums, deductibles, coinsurance, and other cost-sharing obligations under this section shall be considered, for purposes of section 1396b(a) of this title, to be payments for medical assistance.

(B) If all members of a family are not eligible for medical assistance under this subchapter and enrollment of the members so eligible in a group health plan is not possible without also enrolling members not so eligible—

(i) payment of premiums for enrollment of such other members shall be treated as payments for medical assistance for eligible individuals, if it would be cost-effective (taking into account payment of all such premiums), but

(ii) payment of deductibles, coinsurance, and other cost-sharing obligations for such other members shall not be treated as payments for medical assistance for eligible individuals.

(2) The fact that an individual is enrolled in a group health plan under this section shall not change the individual's eligibility for benefits under the State plan, except insofar as section 1396a(a)(25) of this title provides that payment for such benefits shall first be made by such plan.

(d) Repealed. Pub. L. 105–33, title IV, § 4741(b)(2), Aug. 5, 1997, 111 Stat. 523

(e) Definitions

In this section:

(1) The term ''group health plan'' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, and includes the provision of continuation coverage by such a plan pursuant to title XXII of the Public Health Service Act [42 U.S.C. 300bb–1 et seq.], section 4980B of the Internal Revenue Code of 1986, or title VI[1] of the Employee Retirement Income Security Act of 1974.

(2) The term ''cost-effective'' means, as established by the Secretary, that the reduction in expenditures under this subchapter with respect to an individual who is enrolled in a group health plan is likely to be greater than the additional expenditures for premiums and cost-sharing required under this section with respect to such enrollment.

(Aug. 14, 1935, ch. 531, title XIX, § 1906, as added Pub. L. 101–508, title IV, § 4402(a)(2), Nov. 5, 1990, 104 Stat. 1388–161; amended Pub. L. 105–33, title IV, § 4741(b), Aug. 5, 1997, 111 Stat. 523.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (e)(1), is classified generally to Title 26, Internal Revenue Code.

The Public Health Service Act, referred to in subsec. (e)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XXII of the Act is classified generally to subchapter XX (§ 300bb–1 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (e)(1), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title VI of the Act probably means part 6 of subtitle B of title I of the Act which is classified generally to part 6 (§ 1161 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor, because the Act has no title VI. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 1396e, act Aug. 14, 1935, ch. 531, title XIX, § 1906, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 226, 81 Stat. 903, created Advisory Council on Medical Assistance, set forth composition of Council, term of membership of members, and purposes of Council, and provided for compensation of members, prior to repeal by Pub. L. 92–603, title II, § 287, Oct. 30, 1972, 86 Stat. 1457, effective on the first day of the third calendar month following Oct. 30, 1972.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33, § 4741(b)(1), in introductory provisions, substituted ''Each'' for ''For purposes of section 1396a(a)(25)(G) of this title and subject to subsection (d) of this section, each'' and, in pars. (1) and (2), substituted ''may'' for ''shall''.

Subsec. (d). Pub. L. 105–33, § 4741(b)(2), struck out subsec. (d) which read as follows:

''(1) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

''(2) This section, and section 1396a(a)(25)(G) of this title, shall only apply to a State that is one of the 50 States or the District of Columbia.''

EFFECTIVE DATE

Section applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101–508 have been promulgated by such date, see section 4402(e) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 1396a of this title.

[1] See References in Text note below.

§ 1396f. Observance of religious beliefs

Nothing in this subchapter shall be construed to require any State which has a plan approved under this subchapter to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

(Aug. 14, 1935, ch. 531, title XIX, § 1907, as added Pub. L. 90–248, title II, § 232, Jan. 2, 1968, 81 Stat. 905.)

§ 1396g. State programs for licensing of administrators of nursing homes

(a) Nature of State program

For purposes of section 1396a(a)(29) of this title, a ''State program for the licensing of administrators of nursing homes'' is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section.

(b) Licensing by State agency or board representative of concerned professions and institutions

Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this section.

(c) Functions and duties of State agency or board

It shall be the function and duty of such agency or board to—

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home adminis-

trator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards; and

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

(d) Waiver of standards other than good character or suitability standards

No State shall be considered to have failed to comply with the provisions of section 1396a(a)(29) of this title because the agency or board of such State (established pursuant to subsection (b) of this section) shall have granted any waiver, with respect to any individual who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1396a(a)(29) of this title are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such agency or board pursuant to subsection (c) of this section.

(e) "Nursing home" and "nursing home administrator" defined

As used in this section, the term—

(1) ''nursing home'' means any institution or facility defined as such for licensing purposes under State law, or, if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary, but does not include a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).[1]

(2) ''nursing home administrator'' means any individual who is charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.

(Aug. 14, 1935, ch. 531, title XIX, § 1908, as added Pub. L. 90–248, title II, § 236(b), Jan. 2, 1968, 81 Stat. 908; amended Pub. L. 92–603, title II, §§ 268(b), 269, 274(b), Oct. 30, 1972, 86 Stat. 1451, 1452; Pub. L. 93–233, § 18(y)(3), Dec. 31, 1973, 87 Stat. 973; Pub. L. 104–193, title IX, § 913, Aug. 22, 1996, 110 Stat. 2354; Pub. L. 105–33, title IV, § 4454(b)(2), Aug. 5, 1997, 111 Stat. 431.)

REPEAL OF SECTION

Pub. L. 101–508, title IV, § 4801(e)(11), Nov. 5, 1990, 104 Stat. 1388–217, provided that, effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396r(f)(4) of this title, this section is repealed.

CODIFICATION

Another section 1908 of act Aug. 14, 1935, was renumbered section 1908A and is classified to section 1396g–1 of this title.

AMENDMENTS

1997—Subsec. (e)(1). Pub. L. 105–33 which directed substitution of ''a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).'' for ''a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts; and'' in ''Section 1908(e)(1) (42 U.S.C. 1396g–1(e)(1))'' of the Social Security Act, was executed by making the substitution in subsec. (e)(1) of this section to reflect the probable intent of Congress, because section 1396g–1 of this title, which is also section 1908 of the Social Security Act, does not have a subsec. (e).

1996—Subsec. (e)(1). Pub. L. 104–193, which directed substitution of ''The Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.'' for ''The First Church of Christ, Scientist, Boston, Massachusetts'' in section 1908(e)(1) of the Social Security Act (42 U.S.C. 1396g–1(e)(1)) could not be executed to this section or section 1396g–1 of this title, both of which are section 1908. Section 1396g–1 does not have a subsec. (e) and subsec. (e)(1) of this section does not contain the quoted language with the word ''the'' capitalized.

1973—Subsec. (d). Pub. L. 93–233 struck out second sentence reading substantially the same as the first sentence but containing the following additional text reading ''other than such standards as relate to good character or suitability if—

''(1) such waiver is for a period which ends after being in effect for two years or on June 30, 1972, whichever is earlier, and

''(2) there is provided in the State (during all of the period for which waiver is in effect), a program of training and instruction designed to enable all individuals with respect to whom any such waiver is granted, to attain the qualifications necessary in order to meet such standards'' and also ''calendar year'' instead of ''three calendar years'' and reference to ''subsection (c)(1) of this section'' instead of ''subsection (c) of this section''.

Subsec. (e). Pub. L. 93–233 redesignated subsec. (g) as (e), and repealed prior subsec. (e) relating to authorization of appropriations for fiscal years 1968 through 1972 and to limitation of grants.

Subsec. (f). Pub. L. 93–233 repealed subsec. (f) providing for creation of National Advisory Council on Nursing Home Administration and for its composition, appointment of members, the Chairman, representation

[1] So in original. The period probably should be ''; and''.

of interests, functions and duties, compensation and travel expenses, technical assistance, availability of assistance and data, and termination date of Dec. 31, 1971.

Subsec. (g). Pub. L. 93–233, redesignated subsec. (g) as (e).

1972—Subsec. (d). Pub. L. 92–603, §§ 269, 274(b), inserted references to the grant of waivers to individuals who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1396a(a)(29) of this title are first met by the State, have served as nursing home administrators and substituted ''subsection (c)(1)'' for ''subsection (b)(1)''.

Subsec. (g)(1). Pub. L. 92–603, § 268(b), inserted '', but does not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts'' after ''Secretary''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 913 of Pub. L. 104–193 provided that the amendment made by that section is effective Jan. 1, 1997.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 268(b) of Pub. L. 92–603 effective Oct. 30, 1972, see section 268(c) of Pub. L. 92–603, set out as a note under section 1396a of this title.

EFFECTIVE DATE

Section 236(c) of Pub. L. 90–248 provided that: ''Except as otherwise specified in the text thereof, the amendments made by this section [enacting this section and amending section 1396a of this title] shall take effect on July 1, 1970.''

§ 1396g–1. Required laws relating to medical child support

(a) In general

The laws relating to medical child support, which a State is required to have in effect under section 1396a(a)(60) of this title, are as follows:

(1) A law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that—

(A) the child was born out of wedlock,

(B) the child is not claimed as a dependent on the parent's Federal income tax return, or

(C) the child does not reside with the parent or in the insurer's service area.

(2) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, a law that requires such insurer—

(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) such a child unless the insurer is provided satisfactory written evidence that—

(i) such court or administrative order is no longer in effect, or

(ii) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

(3) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer—

(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) any such child unless—

(i) the employer is provided satisfactory written evidence that—

(I) such court or administrative order is no longer in effect, or

(II) the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

(ii) the employer has eliminated family health coverage for all of its employees; and

(D) to withhold from such employee's compensation the employee's share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 1673(b) of title 15), and to pay such share of premiums to the insurer, except that the Secretary may provide by regulation for appropriate circumstances under which an employer may withhold less than such employee's share of such premiums.

(4) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this subchapter and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(5) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent—

(A) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

(B) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

(C) to make payment on claims submitted in accordance with subparagraph (B) directly to such custodial parent, the provider, or the State agency.

(6) A law that permits the State agency under this subchapter to garnish the wages, salary, or other employment income of, and requires withholding amounts from State tax refunds to, any person who—

(A) is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under this subchapter,

(B) has received payment from a third party for the costs of such services to such child, but

(C) has not used such payments to reimburse, as appropriate, either the other parent or guardian of such child or the provider of such services,

to the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this subchapter, but any claims for current or past-due child support shall take priority over any such claims for the costs of such services.

(b) "Insurer" defined

For purposes of this section, the term "insurer" includes a group health plan, as defined in section 1167(1) of title 29, a health maintenance organization, and an entity offering a service benefit plan.

(Aug. 14, 1935, ch. 531, title XIX, § 1908A, formerly § 1908, as added Pub. L. 103–66, title XIII, § 13623(b), Aug. 10, 1993, 107 Stat. 633, renumbered § 1908A, Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(y)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398.)

REFERENCES IN TEXT

Part D of subchapter IV of this chapter, referred to in subsec. (a)(2)(B), (3)(B), is classified to section 651 et seq. of this title.

EFFECTIVE DATE

Section 13623(c) of Pub. L. 103–66 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1396a of this title] apply to calendar quarters beginning on or after April 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

"(2) In the case of a State plan under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."

§ 1396h. State false claims act requirements for increased State share of recoveries

(a) In general

Notwithstanding section 1396d(b) of this title, if a State has in effect a law relating to false or fraudulent claims that meets the requirements of subsection (b), the Federal medical assistance percentage with respect to any amounts recovered under a State action brought under such law, shall be decreased by 10 percentage points.

(b) Requirements

For purposes of subsection (a), the requirements of this subsection are that the Inspector General of the Department of Health and Human Services, in consultation with the Attorney General, determines that the State has in effect a law that meets the following requirements:

(1) The law establishes liability to the State for false or fraudulent claims described in section 3729 of title 31 with respect to any expenditure described in section 1396b(a) of this title.

(2) The law contains provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in sections 3730 through 3732 of title 31.

(3) The law contains a requirement for filing an action under seal for 60 days with review by the State Attorney General.

(4) The law contains a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of title 31.

(c) Deemed compliance

A State that, as of January 1, 2007, has a law in effect that meets the requirements of subsection (b) shall be deemed to be in compliance with such requirements for so long as the law continues to meet such requirements.

(d) No preclusion of broader laws

Nothing in this section shall be construed as prohibiting a State that has in effect a law that establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, with respect to programs in addition to the State program under this subchapter, or with respect to expenditures in addition to expenditures described in section 1396b(a) of this title, from being considered to be in compliance with the requirements of subsection (a) so long as the law meets such requirements.

(Aug. 14, 1935, ch. 531, title XIX, § 1909, as added Pub. L. 109–171, title VI, § 6031(a), Feb. 8, 2006, 120 Stat. 72.)

PRIOR PROVISIONS

A prior section 1396h, act Aug. 14, 1935, ch. 531, title XIX, § 1909, as added and amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 242(c), 278(b)(9), 86 Stat. 1419, 1454; Oct. 25, 1977, Pub. L. 95–142, § 4(b), 91 Stat. 1181; Dec. 5, 1980, Pub. L. 96–499, title IX, § 917, 94 Stat. 2625; Aug. 18, 1987, Pub. L. 100–93, § 4(a)–(c), 101 Stat. 688, 689, related to criminal penalties for acts involving Medicare and

State health care programs, prior to being renumbered section 1128B of title XI of act Aug. 14, 1935, by section 4(d) of Pub. L. 100–93 and transferred to section 1320a–7b of this title.

EFFECTIVE DATE

Pub. L. 109–171, title VI, § 6031(b), Feb. 8, 2006, 120 Stat. 73, as amended by Pub. L. 109–432, div. B, title IV, § 405(c)(2)(A)(iii), Dec. 20, 2006, 120 Stat. 3000, provided that: ''Except as provided in section 6034(e) [set out as an Effective Date of 2006 Amendment note under section 1396a of this title], the amendments made by this section [enacting this section] take effect on January 1, 2007.''

§ 1396i. Certification and approval of rural health clinics and intermediate care facilities for mentally retarded

(a)(1) Whenever the Secretary certifies a facility in a State to be qualified as a rural health clinic under subchapter XVIII of this chapter, such facility shall be deemed to meet the standards for certification as a rural health clinic for purposes of providing rural health clinic services under this title.

(2) The Secretary shall notify the State agency administering the medical assistance plan of his approval or disapproval of any facility in that State which has applied for certification by him as a qualified rural health clinic.

(b)(1) The Secretary may cancel approval of any intermediate care facility for the mentally retarded at any time if he finds on the basis of a determination made by him as provided in section 1396a(a)(33)(B) of this title that a facility fails to meet the requirements contained in section 1396a(a)(31) of this title or section 1396d(d) of this title, or if he finds grounds for termination of his agreement with the facility pursuant to section 1395cc(b) of this title. In that event the Secretary shall notify the State agency and the intermediate care facility for the mentally retarded that approval of eligibility of the facility to participate in the programs established by this subchapter and subchapter XVIII of this chapter shall be terminated at a time specified by the Secretary. The approval of eligibility of any such facility to participate in such programs may not be reinstated unless the Secretary finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

(2) Any intermediate care facility for the mentally retarded which is dissatisfied with a determination by the Secretary that it no longer qualifies as a[1] intermediate care facility for the mentally retarded for purposes of this subchapter, shall be entitled to a hearing by the Secretary to the same extent as is provided in section 405(b) of this title and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. Any agreement between such facility and the State agency shall remain in effect until the period for filing a request for a hearing has expired or, if a request has been filed, until a decision has been made by the Secretary; except that the agreement shall not be extended if the Secretary makes a written determination, specifying the reasons therefor, that the continuation of provider status constitutes an immediate and serious threat to the health and safety of patients, and the Secretary certifies that the facility has been notified of its deficiencies and has failed to correct them.

(Aug. 14, 1935, ch. 531, title XIX, § 1910, as added and amended Pub. L. 92–603, title II, §§ 249A(a), 278(b)(12), Oct. 30, 1972, 86 Stat. 1426, 1454; Pub. L. 95–210, § 2(d), Dec. 13, 1977, 91 Stat. 1489; Pub. L. 96–499, title IX, § 916(b)(2), Dec. 5, 1980, 94 Stat. 2624; Pub. L. 100–203, title IV, § 4212(e)(3), Dec. 22, 1987, 101 Stat. 1330–213; Pub. L. 100–360, title IV, § 411(*l*)(6)(F), July 1, 1988, as added Pub. L. 100–485, title VI, § 608(d)(27)(J), Oct. 13, 1988, 102 Stat. 2423; Pub. L. 101–239, title VI, § 6901(d)(5), Dec. 19, 1989, 103 Stat. 2301; Pub. L. 103–296, title I, § 108(d)(4), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(n)], Nov. 29, 1999, 113 Stat. 1536, 1501A–397.)

AMENDMENTS

1999—Pub. L. 106–113 struck out ''of'' after ''approval of'' in section catchline.

1994—Subsec. (b)(2). Pub. L. 103–296 inserted before period at end of first sentence '', except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

1989—Pub. L. 101–239, § 6901(d)(5)(A), substituted ''rural health clinics and intermediate care facilities for the mentally retarded'' for ''rural health clinics'' in section catchline.

Subsec. (b)(1). Pub. L. 101–239, § 6901(d)(5)(B)–(D), substituted ''any intermediate care facility for the mentally retarded'' for ''any skilled nursing or intermediate care facility'', ''section 1396a(a)(31) of this title or section 1396d(d) of this title'' for ''section 1396a(a)(28) of this title or section 1396r of this title or section 1396d(c) of this title'', and ''the intermediate care facility for the mentally retarded'' for ''the skilled nursing facility or intermediate care facility''.

Subsec. (b)(2). Pub. L. 101–239, § 6901(d)(5)(D), substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility'' in two places.

1988—Subsec. (b)(1). Pub. L. 100–360, § 411(*l*)(6)(F), as added by Pub. L. 100–485, § 608(d)(27)(J), inserted ''or section 1396r of this title'' after ''1396a(a)(28) of this title''.

1987—Pub. L. 100–203 struck out ''skilled nursing facilities and'' before ''of rural'' in section catchline, redesignated subsecs. (b) and (c) as (a) and (b), respectively, and struck out former subsec. (a) which related to certification and approval of skilled nursing facilities.

1980—Subsec. (c). Pub. L. 96–499 added subsec. (c).

1977—Pub. L. 95–210 substituted ''facilities and of rural health clinics'' for ''facilities'' in section catchline, redesignated existing subsecs. (a) and (b) as (a)(1) and (2), respectively, and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconcili-

[1] So in original. Probably should be ''an''.

ation Act of 1987, Pub. L. 100–203, see section 6901(d)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after first day of first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95–210, set out as a note under section 1395cc of this title.

EFFECTIVE DATE

Section effective with respect to agreements filed with Secretary under section 1395cc of this title by skilled nursing facilities before, on, or after Oct. 30, 1972, but accepted by him on or after such date, see section 249A(e) of Pub. L. 92–603, set out as an Effective Date of 1972 Amendment note under section 1395cc of this title.

§ 1396j. Indian Health Service facilities

(a) Eligibility for reimbursement for medical assistance

A facility of the Indian Health Service (including a hospital, nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan), whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 1603 of title 25), shall be eligible for reimbursement for medical assistance provided under a State plan if and for so long as it meets all of the conditions and requirements which are applicable generally to such facilities under this subchapter.

(b) Facilities deemed to meet requirements upon submission of acceptable plan for achieving compliance

Notwithstanding subsection (a) of this section, a facility of the Indian Health Service (including a hospital, nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan) which does not meet all of the conditions and requirements of this title which are applicable generally to such facility, but which submits to the Secretary within six months after September 30, 1976, an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for reimbursement under this subchapter), without regard to the extent of its actual compliance with such conditions and requirements, during the first twelve months after the month in which such plan is submitted.

(c) Agreement to reimburse State agency for providing care and services

The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Indian Health Service facilities to Indians who are eligible for medical assistance under the State plan.

(d) Cross reference

For provisions relating to the authority of certain Indian tribes, tribal organizations, and Alaska Native health organizations to elect to directly bill for, and receive payment for, health care services provided by a hospital or clinic of such tribes or organizations and for which payment may be made under this subchapter, see section 1645 of title 25.

(Aug. 14, 1935, ch. 531, title XIX, § 1911, as added Pub. L. 94–437, title IV, § 402(a), Sept. 30, 1976, 90 Stat. 1409; amended Pub. L. 100–203, title IV, §§ 4118(f)(1), 4211(h)(8), Dec. 22, 1987, 101 Stat. 1330–155, 1330–206; Pub. L. 100–360, title IV, § 411(k)(10)(E), July 1, 1988, 102 Stat. 796; Pub. L. 106–417, § 3(b)(2), Nov. 1, 2000, 114 Stat. 1815.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–417 added subsec. (d).

1988—Subsecs. (a), (b). Pub. L. 100–360, § 411(k)(10)(E), made technical correction to directory language of Pub. L. 100–203, § 4118(f)(1)(A), see 1987 Amendment note below.

1987—Subsecs. (a), (b). Pub. L. 100–203, § 4118(f)(1)(A), as amended by Pub. L. 100–360, § 411(k)(10)(E), substituted ", nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan" for "or nursing facility".

Pub. L. 100–203, § 4211(h)(8), substituted "or nursing facility" for ", intermediate care facility, or skilled nursing facility" wherever appearing.

Subsec. (c). Pub. L. 100–203, § 4118(f)(1)(B), added subsec. (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–417 effective Oct. 1, 2000, see section 3(c) of Pub. L. 106–417, set out as a note under section 1645 of Title 25, Indians.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4118(f)(2) of Pub. L. 100–203 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to health care services performed on or after the date of the enactment of this Act [Dec. 22, 1987]."

Amendment by section 4211(h)(8) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

AGREEMENTS TO REIMBURSE STATE AGENCY FOR HEALTH CARE AND SERVICES PROVIDED BY AGENCY TO INDIANS

Pub. L. 94–437, title IV, § 402(b), Sept. 30, 1976, 90 Stat. 1409, which authorized Secretary to enter into agreements to reimburse State agencies for health care and services provided in Service facilities to Indians eligible for medical assistance under this subchapter, was repealed by Pub. L. 100–713, title IV, § 401(b), Nov. 23, 1988, 102 Stat. 4818, applicable to services performed on or after the Nov. 23, 1988.

PAYMENTS INTO SPECIAL FUND TO IMPROVE INDIAN HEALTH SERVICE FACILITIES TO ACHIEVE COMPLIANCE WITH CONDITIONS AND REQUIREMENTS; CERTIFICATION OF COMPLIANCE BY SECRETARY

Section 402(c) of Pub. L. 94–437, as amended by Pub. L. 100–713, title IV, § 401(a), Nov. 23, 1988, 102 Stat. 4818, provided that payments to which any Indian Health Service facility was entitled by reason of this section were to be placed in a special fund of the Secretary for improvements of facilities of the Service to comply with requirements of this subchapter, required minimum funding for each service unit making collections for such facilities, and provided for section 402(c) of Pub. L. 94–437 to cease to apply when Secretary determined that substantially all such facilities complied with requirements of this subchapter, prior to the general amendment of section 402 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(b)(1), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 402(a) of Pub. L. 94–437 which is classified to section 1642(a) of Title 25, Indians.

MEDICAID PAYMENTS NOT CONSIDERED IN DETERMINING APPROPRIATIONS FOR INDIAN HEALTH CARE

Section 402(d) of Pub. L. 94–437 provided that any payments received for services provided recipients under this section were not to be considered in determining appropriations for the provision of health care and services to Indians, prior to the general amendment of section 402 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(b)(1), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 402(b) of Pub. L. 94–437 which is classified to section 1642(b) of Title 25, Indians.

§ 1396k. Assignment, enforcement, and collection of rights of payments for medical care; establishment of procedures pursuant to State plan; amounts retained by State

(a) For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the State plan approved under this subchapter, a State plan for medical assistance shall—

(1) provide that, as a condition of eligibility for medical assistance under the State plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required—

(A) to assign the State any rights, of the individual or of any other person who is eligible for medical assistance under this subchapter and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party;

(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is described in section 1396a(*l*)(1)(A) of this title or the individual is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State's agency established or designated under section 654(3) of this title) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the State plan with respect to (A) the enforcement and collection of rights to support or payment assigned under this section and (B) any other matters of common concern.

(b) Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

(Aug. 14, 1935, ch. 531, title XIX, § 1912, as added Pub. L. 95–142, § 11(b), Oct. 25, 1977, 91 Stat. 1196; amended Pub. L. 98–369, div. B, title III, § 2367(b), July 18, 1984, 98 Stat. 1109; Pub. L. 99–272, title IX, § 9503(e), Apr. 7, 1986, 100 Stat. 207; Pub. L. 101–508, title IV, § 4606(a), Nov. 5, 1990, 104 Stat. 1388–170.)

AMENDMENTS

1990—Subsec. (a)(1)(B). Pub. L. 101–508 inserted ''the individual is described in section 1396a(*l*)(1)(A) of this title or'' after ''unless (in either case)''.

1986—Subsec. (a)(1)(C). Pub. L. 99–272 added subpar. (C).

1984—Subsec. (a). Pub. L. 98–369 substituted ''State plan for medical assistance shall'' for ''State plan for medical assistance may''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4606(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to calendar quarters beginning on or after Apr. 7, 1986, except as otherwise provided, see section 9503(g)(1), (2) of Pub. L. 99–272, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise provided, see section 2367(c) of Pub. L. 98–369, set out as a note under section 1396a of this title.

§ 1396*l*. Hospital providers of nursing facility services

(a) Notwithstanding any other provision of this subchapter, payment may be made, in accordance with this section, under a State plan approved under this subchapter for nursing facility services furnished by a hospital which has in effect an agreement under section 1395tt of this title and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1396r of this title.

(b)(1) Except as provided in paragraph (3), payment to any such hospital, for any nursing facility services furnished pursuant to subsection (a) of this section, shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the State plan to nursing facilities, respectively,[1] located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(2) With respect to any period for which a hospital has an agreement under section 1395tt of this title, in order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services due from all classes of long-term care patients (including subchapter XVIII of this chapter, this subchapter, and private pay patients) shall be subtracted from the hospital total routine costs before calculations are made to determine reimbursement for routine hospital services under the State plan.

(3) Payment to all such hospitals, for any nursing facility services furnished pursuant to subsection (a) of this section, may be made at a payment rate established by the State in accordance with the requirements of section 1396a(a)(13)(A) of this title.

(Aug. 14, 1935, ch. 531, title XIX, § 1913, as added Pub. L. 96–499, title IX, § 904(b), Dec. 5, 1980, 94 Stat. 2617; amended Pub. L. 98–369, div. B, title III, § 2369(a), July 18, 1984, 98 Stat. 1110; Pub. L. 100–203, title IV, § 4211(h)(9), Dec. 22, 1987, 101 Stat. 1330–206.)

AMENDMENTS

1987—Pub. L. 100–203, § 4211(h)(9)(A), substituted ''nursing facility services'' for ''skilled nursing and intermediate care services'' in section catchline.

Subsec. (a). Pub. L. 100–203, § 4211(h)(9)(B), substituted ''nursing facility services'' for ''skilled nursing facility services and intermediate care facility services'' and inserted ''and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1396r of this title'' before period at end.

Subsec. (b)(1). Pub. L. 100–203, § 4211(h)(9)(C), substituted ''nursing facility services'' for ''skilled nursing or intermediate care facility services'' and ''nursing facilities'' for ''skilled nursing and intermediate care facilities''.

Subsec. (b)(3). Pub. L. 100–203, § 4211(h)(9)(D), substituted ''nursing facility services'' for ''skilled nursing or intermediate care facility services''.

1984—Subsec. (b)(1). Pub. L. 98–369, § 2369(a)(1), substituted ''Except as provided in paragraph (3), payment'' for ''Payment''.

Subsec. (b)(3). Pub. L. 98–369, § 2369(a)(2), added par. (3).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2369(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to payments for services furnished after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE

Section effective on date on which final regulations to implement the section are first issued, see section 904(d) of Pub. L. 96–499, set out as an Effective Date note under section 1395tt of this title.

§ 1396m. Withholding of Federal share of payments for certain medicare providers

(a) Adjustment of Federal matching payments

The Secretary may adjust, in accordance with this section, the Federal matching payment to a State with respect to expenditures for medical assistance for care or services furnished in any quarter by—

(1) an institution (A) which has or previously had in effect an agreement with the Secretary under section 1395cc of this title; and (B)(i) from which the Secretary has been unable to recover overpayments made under subchapter XVIII of this chapter, or (ii) from which the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such institution under subchapter XVIII of this chapter; and

(2) any person (A) who (i) has previously accepted payment on the basis of an assignment under section 1395u(b)(3)(B)(ii) of this title, and (ii) during the annual period immediately preceding such quarter submitted no claims for payment under subchapter XVIII of this chapter, or submitted claims for payment under subchapter XVIII of this chapter which aggregated less than the amount of overpayments made to him, and (B)(i) from whom the Secretary has been unable to recover overpay-

[1] So in original, '', respectively,'' probably should not appear.

ments received in violation of the terms of such assignment, or (ii) from whom the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such person under subchapter XVIII of this chapter.

(b) Reductions in payments to and by States

The Secretary may (subject to the remaining provisions of this section) reduce payment to a State under this subchapter for any quarter by an amount equal to the lesser of the Federal matching share of payments to any institution or person specified in subsection (a) of this section, or the total overpayments to such institution or person under subchapter XVIII of this chapter, and may require the State to reduce its payment to such institution or person by such amount.

(c) Notice

The Secretary shall not make any adjustment in the payment to a State, nor require any adjustment in the payment to an institution or person, pursuant to subsection (b) of this section until after he has provided adequate notice (which shall be not less than 60 days) to the State agency and the institution or person.

(d) Regulations

The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall (1) determine the amount of the Federal payment to which the institution or person would otherwise be entitled under this section which shall be treated as a setoff against overpayments under subchapter XVIII of this chapter, and (2) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under subchapter XVIII of this chapter and to which the institution or person would otherwise be entitled under this subchapter.

(e) Restoration to trust funds of recovered amounts

The Secretary shall restore to the trust funds established under sections 1395i and 1395t of this title, as appropriate, amounts recovered under this section as setoffs against overpayments under subchapter XVIII of this chapter.

(f) Liability of States for withheld payments

Notwithstanding any other provision of this subchapter, an institution or person shall not be entitled to recover from any State any amount in payment for medical care and services under this subchapter which is withheld by the State agency pursuant to an order by the Secretary under subsection (b) of this section.

(Aug. 14, 1935, ch. 531, title XIX, § 1914, as added Pub. L. 96–499, title IX, § 905(d), Dec. 5, 1980, 94 Stat. 2618.)

§ 1396n. Compliance with State plan and payment provisions

(a) Activities deemed as compliance

A State shall not be deemed to be out of compliance with the requirements of paragraphs (1), (10), or (23) of section 1396a(a) of this title solely by reason of the fact that the State (or any political subdivision thereof)—

(1) has entered into—

(A) a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic; or

(B) arrangements through a competitive bidding process or otherwise for the purchase of laboratory services referred to in section 1396d(a)(3) of this title or medical devices if the Secretary has found that—

(i) adequate services or devices will be available under such arrangements, and

(ii) any such laboratory services will be provided only through laboratories—

(I) which meet the applicable requirements of section 1395x(e)(9) of this title or paragraphs (16) and (17) of section 1395x(s) of this title, and such additional requirements as the Secretary may require, and

(II) no more than 75 percent of whose charges for such services are for services provided to individuals who are entitled to benefits under this subchapter or under part A or part B of subchapter XVIII of this chapter; or

(2) restricts for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if—

(A) the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), and

(B) under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.

(b) Waivers to promote cost-effectiveness and efficiency

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s)) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State—

(1) to implement a primary care case-management system or a specialty physician services arrangement which restricts the provider from (or through) whom an individual (eligible for medical assistance under this subchapter) can obtain medical care services (other than

in emergency circumstances), if such restriction does not substantially impair access to such services of adequate quality where medically necessary,

(2) to allow a locality to act as a central broker in assisting individuals (eligible for medical assistance under this subchapter) in selecting among competing health care plans, if such restriction does not substantially impair access to services of adequate quality where medically necessary,

(3) to share (through provision of additional services) with recipients of medical assistance under the State plan cost savings resulting from use by the recipient of more cost-effective medical care, and

(4) to restrict the provider from (or through) whom an individual (eligible for medical assistance under this subchapter) can obtain services (other than in emergency circumstances) to providers or practitioners who undertake to provide such services and who meet, accept, and comply with the reimbursement, quality, and utilization standards under the State plan, which standards shall be consistent with the requirements of section 1396r–4 of this title and are consistent with access, quality, and efficient and economic provision of covered care and services, if such restriction does not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1396a(a)(37)(A) of this title.

No waiver under this subsection may restrict the choice of the individual in receiving services under section 1396d(a)(4)(C) of this title.

(c) Waiver respecting medical assistance requirement in State plan; scope, etc.; "habilitation services" defined; imposition of certain regulatory limits prohibited; computation of expenditures for certain disabled patients; coordinated services; substitution of participants

(1) The Secretary may by waiver provide that a State plan approved under this subchapter may include as ''medical assistance'' under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan. For purposes of this subsection, the term ''room and board'' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) the State will provide, with respect to individuals who—

(i) are entitled to medical assistance for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded under the State plan,

(ii) may require such services, and

(iii) may be eligible for such home or community-based care under such waiver,

for an evaluation of the need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(C) such individuals who are determined to be likely to require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded are informed of the feasible alternatives, if available under the waiver, at the choice of such individuals, to the provision of inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(D) under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such individuals if the waiver had not been granted; and

(E) the State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness), section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community). A waiver under this subsection shall be for an initial term of three years and, upon the request of a State, shall be extended for additional five-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under that waiver, that the maximum amount of the individual's income which may be disregarded for any month for the maintenance needs of the individual may be an amount greater than the

maximum allowed for that purpose under regulations in effect on July 1, 1985.

(4) A waiver granted under this subsection may, consistent with paragraph (2)—

(A) limit the individuals provided benefits under such waiver to individuals with respect to whom the State has determined that there is a reasonable expectation that the amount of medical assistance provided with respect to the individual under such waiver will not exceed the amount of such medical assistance provided for such individual if the waiver did not apply, and

(B) provide medical assistance to individuals (to the extent consistent with written plans of care, which are subject to the approval of the State) for case management services, homemaker/home health aide services and personal care services, adult day health services, habilitation services, respite care, and such other services requested by the State as the Secretary may approve and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness.

Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.

(5) For purposes of paragraph (4)(B), the term ''habilitation services''—

(A) means services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings; and

(B) includes (except as provided in subparagraph (C)) prevocational, educational, and supported employment services; but

(C) does not include—

(i) special education and related services (as such terms are defined in section 1401 of title 20) which otherwise are available to the individual through a local educational agency; and

(ii) vocational rehabilitation services which otherwise are available to the individual through a program funded under section 730 of title 29.

(6) The Secretary may not require, as a condition of approval of a waiver under this section under paragraph (2)(D), that the actual total expenditures for home and community-based services under the waiver (and a claim for Federal financial participation in expenditures for the services) cannot exceed the approved estimates for these services. The Secretary may not deny Federal financial payment with respect to services under such a waiver on the ground that, in order to comply with paragraph (2)(D), a State has failed to comply with such a requirement.

(7)(A) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with a particular illness or condition who are inpatients in, or who would require the level of care provided in, hospitals, nursing facilities, or intermediate care facilities for the mentally retarded, the State may determine the average per capita expenditure that would have been made in a fiscal year for those individuals under the State plan separately from the expenditures for other individuals who are inpatients in, or who would require the level of care provided in, those respective facilities.

(B) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with developmental disabilities who are inpatients in a nursing facility and whom the State has determined, on the basis of an evaluation under paragraph (2)(B), to need the level of services provided by an intermediate care facility for the mentally retarded, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals under the State plan on the basis of the average per capita expenditures under the State plan for services to individuals who are inpatients in an intermediate care facility for the mentally retarded, without regard to the availability of beds for such inpatients.

(C) In making estimates under paragraph (2)(D) in the case of a waiver to the extent that it applies to individuals with mental retardation or a related condition who are resident in an intermediate care facility for the mentally retarded the participation of which under the State plan is terminated, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals without regard to any such termination.

(8) The State agency administering the plan under this subchapter may, whenever appropriate, enter into cooperative arrangements with the State agency responsible for administering the program for children with special health care needs under subchapter V of this chapter in order to assure improved access to coordinated services to meet the needs of such children.

(9) In the case of any waiver under this subsection which contains a limit on the number of individuals who shall receive home or community-based services, the State may substitute additional individuals to receive such services to replace any individuals who die or become ineligible for services under the State plan.

(10) The Secretary shall not limit to fewer than 200 the number of individuals in the State who may receive home and community-based services under a waiver under this subsection.

(d) Home and community-based services for elderly

(1) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this subchapter shall include as ''medical assistance'' under such plan payment for part or all of the cost of home or community-based services (other than room and board) which are provided pursuant to a written plan of care to individuals 65 years of age or older with respect to whom there has been a determination that but for the provision of such services the individuals would be likely to require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan. For

purposes of this subsection, the term ''room and board'' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) with respect to individuals 65 years of age or older who—

(i) are entitled to medical assistance for skilled nursing or intermediate care facility services under the State plan,

(ii) may require such services, and

(iii) may be eligible for such home or community-based services under such waiver,

the State will provide for an evaluation of the need for such skilled nursing facility or intermediate care facility services; and

(C) such individuals who are determined to be likely to require the level of care provided in a skilled nursing facility or intermediate care facility are informed of the feasible alternatives to the provision of skilled nursing facility or intermediate care facility services, which such individuals may choose if available under the waiver.

Each State with a waiver under this subsection shall provide to the Secretary annually, consistent with a reasonable data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness), section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community). Subject to a termination by the State (with notice to the Secretary) at any time, a waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional 5-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under the waiver, that the maximum amount of the individual's income which may be disregarded for any month is equal to the amount that may be allowed for that purpose under a waiver under subsection (c) of this section.

(4) A waiver under this subsection may, consistent with paragraph (2), provide medical assistance to individuals for case management services, homemaker/home health aide services and personal care services, adult day health services, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

(5)(A) In the case of a State having a waiver approved under this subsection, notwithstanding any other provision of section 1396b of this title to the contrary, the total amount expended by the State for medical assistance with respect to skilled nursing facility services, intermediate care facility services, and home and community-based services under the State plan for individuals 65 years of age or older during a waiver year under this subsection may not exceed the projected amount determined under subparagraph (B).

(B) For purposes of subparagraph (A), the projected amount under this subparagraph is the sum of the following:

(i) The aggregate amount of the State's medical assistance under this subchapter for skilled nursing facility services and intermediate care facility services furnished to individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved or the sum of—

(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the beginning of the base year and the beginning of the waiver year involved, plus

(II) the percentage increase between the beginning of the base year and the beginning of the waiver year involved in the number of residents in the State who have attained the age of 65, plus

(III) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

(ii) The aggregate amount of the State's medical assistance under this subchapter for home and community-based services for individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved or the sum of—

(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the beginning of the base year and the beginning of the waiver year involved, plus

(II) the percentage increase between the beginning of the base year and the beginning of the waiver year involved in the number of residents in the State who have attained the age of 65, plus

(III) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

(iii) The Secretary shall develop and promulgate by regulation (by not later than October 1, 1989)—

(I) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise both skilled nursing facility services and intermediate care facility services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (i)(I);

(II) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise home and community-based services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (ii)(I); and

(III) a method for projecting, on a State specific basis, the percentage increase in the number of residents in each State who are over 65 years of age for any period.

The Secretary shall develop (by not later than October 1, 1989) a method for projecting, on a State-specific basis, the percentage increase in the number of residents in each State who are over 65 years of age for any period. Effective on and after the date the Secretary promulgates the regulation under clause (iii), any reference in this subparagraph to the ''lesser of 7 percent'' shall be deemed to be a reference to the ''greater of 7 percent''.

(iv) If there is enacted after December 22, 1987, an Act which amends this subchapter whose provisions become effective on or after such date and which results in an increase in the aggregate amount of medical assistance under this subchapter for nursing facility services and home and community-based services for individuals who have attained the age of 65 years, the Secretary, at the request of a State with a waiver under this subsection for a waiver year or years and in close consultation with the State, shall adjust the projected amount computed under this subparagraph for the waiver year or years to take into account such increase.

(C) In this paragraph:

(i) The term ''home and community-based services'' includes services described in sections 1396d(a)(7) and 1396d(a)(8) of this title, services described in subsection (c)(4)(B) of this section, services described in paragraph (4), and personal care services.

(ii)(I) Subject to subclause (II), the term ''base year'' means the most recent year (ending before December 22, 1987) for which actual final expenditures under this subchapter have been reported to, and accepted by, the Secretary.

(II) For purposes of subparagraph (C), in the case of a State that does not report expenditures on the basis of the age categories described in such subparagraph for a year ending before December 22, 1987, the term ''base year'' means fiscal year 1989.

(iii) The term ''intermediate care facility services'' does not include services furnished in an institution certified in accordance with section 1396d(d) of this title.

(6)(A) A determination by the Secretary to deny a request for a waiver (or extension of waiver) under this subsection shall be subject to review to the extent provided under section 1316(b) of this title.

(B) Notwithstanding any other provision of this chapter, if the Secretary denies a request of the State for an extension of a waiver under this subsection, any waiver under this subsection in effect on the date such request is made shall remain in effect for a period of not less than 90 days after the date on which the Secretary denies such request (or, if the State seeks review of such determination in accordance with subparagraph (A), the date on which a final determination is made with respect to such review).

(e) Waiver for children infected with AIDS or drug dependent at birth

(1)(A) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this subchapter shall include as ''medical assistance'' under such plan payment for part or all of the cost of nursing care, respite care, physicians' services, prescribed drugs, medical devices and supplies, transportation services, and such other services requested by the State as the Secretary may approve which are provided pursuant to a written plan of care to a child described in subparagraph (B) with respect to whom there has been a determination that but for the provision of such services the infants would be likely to require the level of care provided in a hospital or nursing facility the cost of which could be reimbursed under the State plan.

(B) Children described in this subparagraph are individuals under 5 years of age who—

(i) at the time of birth were infected with (or tested positively for) the etiologic agent for acquired immune deficiency syndrome (AIDS),

(ii) have such syndrome, or

(iii) at the time of birth were dependent on heroin, cocaine, or phencyclidine,

and with respect to whom adoption or foster care assistance is (or will be) made available under part E of subchapter IV of this chapter.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expendi-

tures under the State plan for such individuals if the waiver had not been granted; and

(C) the State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness) and section 1396a(a)(10)(B) of this title (relating to comparability). A waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional five-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met.

(4) The provisions of paragraph (6) of subsection (d) of this section shall apply to this subsection in the same manner as it applies to subsection (d) of this section.

(f) Monitor of implementation of waivers; termination of waiver for noncompliance; time limitation for action on requests for plan approval, amendments, or waivers

(1) The Secretary shall monitor the implementation of waivers granted under this section to assure that the requirements for such waiver are being met and shall, after notice and opportunity for a hearing, terminate any such waiver where he finds noncompliance has occurred.

(2) A request to the Secretary from a State for approval of a proposed State plan or plan amendment or a waiver of a requirement of this subchapter submitted by the State pursuant to a provision of this subchapter shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(g) Optional targeted case management services

(1) A State may provide, as medical assistance, case management services under the plan without regard to the requirements of section 1396a(a)(1) of this title and section 1396a(a)(10)(B) of this title. The provision of case management services under this subsection shall not restrict the choice of the individual to receive medical assistance in violation of section 1396a(a)(23) of this title. A State may limit the provision of case management services under this subsection to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either, or to individuals described in section 1396a(z)(1)(A) of this title and a State may limit the provision of case management services under this subsection to individuals with chronic mental illness. The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services.

(2) For purposes of this subsection:

(A)(i) The term ''case management services'' means services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.

(ii) Such term includes the following:

(I) Assessment of an eligible individual to determine service needs, including activities that focus on needs identification, to determine the need for any medical, educational, social, or other services. Such assessment activities include the following:

(aa) Taking client history.

(bb) Identifying the needs of the individual, and completing related documentation.

(cc) Gathering information from other sources such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible individual.

(II) Development of a specific care plan based on the information collected through an assessment, that specifies the goals and actions to address the medical, social, educational, and other services needed by the eligible individual, including activities such as ensuring the active participation of the eligible individual and working with the individual (or the individual's authorized health care decision maker) and others to develop such goals and identify a course of action to respond to the assessed needs of the eligible individual.

(III) Referral and related activities to help an individual obtain needed services, including activities that help link eligible individuals with medical, social, educational providers or other programs and services that are capable of providing needed services, such as making referrals to providers for needed services and scheduling appointments for the individual.

(IV) Monitoring and followup activities, including activities and contacts that are necessary to ensure the care plan is effectively implemented and adequately addressing the needs of the eligible individual, and which may be with the individual, family members, providers, or other entities and conducted as frequently as necessary to help determine such matters as—

(aa) whether services are being furnished in accordance with an individual's care plan;

(bb) whether the services in the care plan are adequate; and

(cc) whether there are changes in the needs or status of the eligible individual, and if so, making necessary adjustments in the care plan and service arrangements with providers.

(iii) Such term does not include the direct delivery of an underlying medical, edu-

cational, social, or other service to which an eligible individual has been referred, including, with respect to the direct delivery of foster care services, services such as (but not limited to) the following:

(I) Research gathering and completion of documentation required by the foster care program.

(II) Assessing adoption placements.

(III) Recruiting or interviewing potential foster care parents.

(IV) Serving legal papers.

(V) Home investigations.

(VI) Providing transportation.

(VII) Administering foster care subsidies.

(VIII) Making placement arrangements.

(B) The term ''targeted case management services'' are case management services that are furnished without regard to the requirements of section 1396a(a)(1) of this title and section 1396a(a)(10)(B) of this title to specific classes of individuals or to individuals who reside in specified areas.

(3) With respect to contacts with individuals who are not eligible for medical assistance under the State plan or, in the case of targeted case management services, individuals who are eligible for such assistance but are not part of the target population specified in the State plan, such contacts—

(A) are considered an allowable case management activity, when the purpose of the contact is directly related to the management of the eligible individual's care; and

(B) are not considered an allowable case management activity if such contacts relate directly to the identification and management of the noneligible or nontargeted individual's needs and care.

(4)(A) In accordance with section 1396a(a)(25) of this title, Federal financial participation only is available under this subchapter for case management services or targeted case management services if there are no other third parties liable to pay for such services, including as reimbursement under a medical, social, educational, or other program.

(B) A State shall allocate the costs of any part of such services which are reimbursable under another federally funded program in accordance with OMB Circular A–87 (or any related or successor guidance or regulations regarding allocation of costs among federally funded programs) under an approved cost allocation program.

(5) Nothing in this subsection shall be construed as affecting the application of rules with respect to third party liability under programs, or activities carried out under title XXVI of the Public Health Service Act [42 U.S.C. 300ff et seq.] or by the Indian Health Service.

(h) Period of waivers; continuations

No waiver under this section (other than a waiver under subsection (c), (d), or (e) of this section) may extend over a period of longer than two years unless the State requests continuation of such waiver, and such request shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(i) State plan amendment option to provide home and community-based services for elderly and disabled individuals

(1) In general

Subject to the succeeding provisions of this subsection, a State may provide through a State plan amendment for the provision of medical assistance for home and community-based services (within the scope of services described in paragraph (4)(B) of subsection (c) for which the Secretary has the authority to approve a waiver and not including room and board or such other services requested by the State as the Secretary may approve) for individuals eligible for medical assistance under the State plan whose income does not exceed 150 percent of the poverty line (as defined in section 1397jj(c)(5) of this title), without determining that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded, but only if the State meets the following requirements:

(A) Needs-based criteria for eligibility for, and receipt of, home and community-based services

The State establishes needs-based criteria for determining an individual's eligibility under the State plan for medical assistance for such home and community-based services, and if the individual is eligible for such services, the specific home and community-based services that the individual will receive.

(B) Establishment of more stringent needs-based eligibility criteria for institutionalized care

The State establishes needs-based criteria for determining whether an individual requires the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded under the State plan or under any waiver of such plan that are more stringent than the needs-based criteria established under subparagraph (A) for determining eligibility for home and community-based services.

(C) Projection of number of individuals to be provided home and community-based services

(i) In general

The State submits to the Secretary, in such form and manner, and upon such frequency as the Secretary shall specify, the projected number of individuals to be provided home and community-based services.

(ii) Authority to limit number of eligible individuals

A State may limit the number of individuals who are eligible for such services

and may establish waiting lists for the receipt of such services.

(D) Criteria based on individual assessment

(i) In general

The criteria established by the State for purposes of subparagraphs (A) and (B) requires an assessment of an individual's support needs and capabilities, and may take into account the inability of the individual to perform 2 or more activities of daily living (as defined in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986) or the need for significant assistance to perform such activities, and such other risk factors as the State determines to be appropriate.

(ii) Adjustment authority

The State plan amendment provides the State with the option to modify the criteria established under subparagraph (A) (without having to obtain prior approval from the Secretary) in the event that the enrollment of individuals eligible for home and community-based services exceeds the projected enrollment submitted for purposes of subparagraph (C), but only if—

(I) the State provides at least 60 days notice to the Secretary and the public of the proposed modification;

(II) the State deems an individual receiving home and community-based services on the basis of the most recent version of the criteria in effect prior to the effective date of the modification to be eligible for such services for a period of at least 12 months beginning on the date the individual first received medical assistance for such services; and

(III) after the effective date of such modification, the State, at a minimum, applies the criteria for determining whether an individual requires the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded under the State plan or under any waiver of such plan which applied prior to the application of the more stringent criteria developed under subparagraph (B).

(E) Independent evaluation and assessment

(i) Eligibility determination

The State uses an independent evaluation for making the determinations described in subparagraphs (A) and (B).

(ii) Assessment

In the case of an individual who is determined to be eligible for home and community-based services, the State uses an independent assessment, based on the needs of the individual to—

(I) determine a necessary level of services and supports to be provided, consistent with an individual's physical and mental capacity;

(II) prevent the provision of unnecessary or inappropriate care; and

(III) establish an individualized care plan for the individual in accordance with subparagraph (G).

(F) Assessment

The independent assessment required under subparagraph (E)(ii) shall include the following:

(i) An objective evaluation of an individual's inability to perform 2 or more activities of daily living (as defined in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986) or the need for significant assistance to perform such activities.

(ii) A face-to-face evaluation of the individual by an individual trained in the assessment and evaluation of individuals whose physical or mental conditions trigger a potential need for home and community-based services.

(iii) Where appropriate, consultation with the individual's family, spouse, guardian, or other responsible individual.

(iv) Consultation with appropriate treating and consulting health and support professionals caring for the individual.

(v) An examination of the individual's relevant history, medical records, and care and support needs, guided by best practices and research on effective strategies that result in improved health and quality of life outcomes.

(vi) If the State offers individuals the option to self-direct the purchase of, or control the receipt of, home and community-based service, an evaluation of the ability of the individual or the individual's representative to self-direct the purchase of, or control the receipt of, such services if the individual so elects.

(G) Individualized care plan

(i) In general

In the case of an individual who is determined to be eligible for home and community-based services, the State uses the independent assessment required under subparagraph (E)(ii) to establish a written individualized care plan for the individual.

(ii) Plan requirements

The State ensures that the individualized care plan for an individual—

(I) is developed—

(aa) in consultation with the individual, the individual's treating physician, health care or support professional, or other appropriate individuals, as defined by the State, and, where appropriate the individual's family, caregiver, or representative; and

(bb) taking into account the extent of, and need for, any family or other supports for the individual;

(II) identifies the necessary home and community-based services to be furnished to the individual (or, if the individual elects to self-direct the purchase of, or control the receipt of, such services, funded for the individual); and

(III) is reviewed at least annually and as needed when there is a significant change in the individual's circumstances.

(iii) State option to offer election for self-directed services

(I) Individual choice

At the option of the State, the State may allow an individual or the individual's representative to elect to receive self-directed home and community-based services in a manner which gives them the most control over such services consistent with the individual's abilities and the requirements of subclauses (II) and (III).

(II) Self-directed services

The term ''self-directed'' means, with respect to the home and community-based services offered under the State plan amendment, such services for the individual which are planned and purchased under the direction and control of such individual or the individual's authorized representative, including the amount, duration, scope, provider, and location of such services, under the State plan consistent with the following requirements:

(aa) Assessment

There is an assessment of the needs, capabilities, and preferences of the individual with respect to such services.

(bb) Service plan

Based on such assessment, there is developed jointly with such individual or the individual's authorized representative a plan for such services for such individual that is approved by the State and that satisfies the requirements of subclause (III).

(III) Plan requirements

For purposes of subclause (II)(bb), the requirements of this subclause are that the plan—

(aa) specifies those services which the individual or the individual's authorized representative would be responsible for directing;

(bb) identifies the methods by which the individual or the individual's authorized representative will select, manage, and dismiss providers of such services;

(cc) specifies the role of family members and others whose participation is sought by the individual or the individual's authorized representative with respect to such services;

(dd) is developed through a person-centered process that is directed by the individual or the individual's authorized representative, builds upon the individual's capacity to engage in activities that promote community life and that respects the individual's preferences, choices, and abilities, and involves families, friends, and professionals as desired or required by the individual or the individual's authorized representative;

(ee) includes appropriate risk management techniques that recognize the roles and sharing of responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan based upon the resources and capabilities of the individual or the individual's authorized representative; and

(ff) may include an individualized budget which identifies the dollar value of the services and supports under the control and direction of the individual or the individual's authorized representative.

(IV) Budget process

With respect to individualized budgets described in subclause (III)(ff), the State plan amendment—

(aa) describes the method for calculating the dollar values in such budgets based on reliable costs and service utilization;

(bb) defines a process for making adjustments in such dollar values to reflect changes in individual assessments and service plans; and

(cc) provides a procedure to evaluate expenditures under such budgets.

(H) Quality assurance; conflict of interest standards

(i) Quality assurance

The State ensures that the provision of home and community-based services meets Federal and State guidelines for quality assurance.

(ii) Conflict of interest standards

The State establishes standards for the conduct of the independent evaluation and the independent assessment to safeguard against conflicts of interest.

(I) Redeterminations and appeals

The State allows for at least annual redeterminations of eligibility, and appeals in accordance with the frequency of, and manner in which, redeterminations and appeals of eligibility are made under the State plan.

(J) Presumptive eligibility for assessment

The State, at its option, elects to provide for a period of presumptive eligibility (not to exceed a period of 60 days) only for those individuals that the State has reason to believe may be eligible for home and community-based services. Such presumptive eligibility shall be limited to medical assistance for carrying out the independent evaluation and assessment under subparagraph (E) to determine an individual's eligibility for such services and if the individual is so eligible, the specific home and community-based services that the individual will receive.

(2) Definition of individual's representative

In this section, the term ''individual's representative'' means, with respect to an individual, a parent, a family member, or a guardian of the individual, an advocate for the individual, or any other individual who is authorized to represent the individual.

(3) Nonapplication

A State may elect in the State plan amendment approved under this section to not comply with the requirements of section 1396a(a)(1) of this title (relating to statewideness) and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community), but only for purposes of provided home and community-based services in accordance with such amendment. Any such election shall not be construed to apply to the provision of services to an individual receiving medical assistance in an institutionalized setting as a result of a determination that the individual requires the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded.

(4) No effect on other waiver authority

Nothing in this subsection shall be construed as affecting the option of a State to offer home and community-based services under a waiver under subsections (c) or (d) of this section or under section 1315 of this title.

(5) Continuation of Federal financial participation for medical assistance provided to individuals as of effective date of State plan amendment

Notwithstanding paragraph (1)(B), Federal financial participation shall continue to be available for an individual who is receiving medical assistance in an institutionalized setting, or home and community-based services provided under a waiver under this section or section 1315 of this title that is in effect as of the effective date of the State plan amendment submitted under this subsection, as a result of a determination that the individual requires the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded, without regard to whether such individuals satisfy the more stringent eligibility criteria established under that paragraph, until such time as the individual is discharged from the institution or waiver program or no longer requires such level of care.

(j) Optional choice of self-directed personal assistance services

(1) A State may provide, as ''medical assistance'', payment for part or all of the cost of self-directed personal assistance services (other than room and board) under the plan which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that, but for the provision of such services, the individuals would require and receive personal care services under the plan, or home and community-based services provided pursuant to a waiver under subsection (c). Self-directed personal assistance services may not be provided under this subsection to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services, not related by blood or marriage.

(2) The Secretary shall not grant approval for a State self-directed personal assistance services program under this section unless the State provides assurances satisfactory to the Secretary of the following:

(A) Necessary safeguards have been taken to protect the health and welfare of individuals provided services under the program, and to assure financial accountability for funds expended with respect to such services.

(B) The State will provide, with respect to individuals who—

(i) are entitled to medical assistance for personal care services under the plan, or receive home and community-based services under a waiver granted under subsection (c);

(ii) may require self-directed personal assistance services; and

(iii) may be eligible for self-directed personal assistance services,

an evaluation of the need for personal care under the plan, or personal services under a waiver granted under subsection (c).

(C) Such individuals who are determined to be likely to require personal care under the plan, or home and community-based services under a waiver granted under subsection (c) are informed of the feasible alternatives, if available under the State's self-directed personal assistance services program, at the choice of such individuals, to the provision of personal care services under the plan, or personal assistance services under a waiver granted under subsection (c).

(D) The State will provide for a support system that ensures participants in the self-directed personal assistance services program are appropriately assessed and counseled prior to enrollment and are able to manage their budgets. Additional counseling and management support may be provided at the request of the participant.

(E) The State will provide to the Secretary an annual report on the number of individuals served and total expenditures on their behalf in the aggregate. The State shall also provide an evaluation of overall impact on the health and welfare of participating individuals compared to non-participants every three years.

(3) A State may provide self-directed personal assistance services under the State plan without regard to the requirements of section 1396a(a)(1) of this title and may limit the population eligible to receive these services and limit the number of persons served without regard to section 1396a(a)(10)(B) of this title.

(4)(A) For purposes of this subsection, the term ''self-directed personal assistance services'' means personal care and related services, or home and community-based services otherwise available under the plan under this subchapter or subsection (c), that are provided to an eligible participant under a self-directed personal assistance services program under this section, under which individuals, within an approved self-directed services plan and budget, purchase personal assistance and related services, and permits participants to hire, fire, supervise, and manage the individuals providing such services.

(B) At the election of the State—

(i) a participant may choose to use any individual capable of providing the assigned tasks including legally liable relatives as paid providers of the services; and

(ii) the individual may use the individual's budget to acquire items that increase inde-

pendence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

(5) For purpose of this section, the term ''approved self-directed services plan and budget'' means, with respect to a participant, the establishment of a plan and budget for the provision of self-directed personal assistance services, consistent with the following requirements:

(A) Self-direction

The participant (or in the case of a participant who is a minor child, the participant's parent or guardian, or in the case of an incapacitated adult, another individual recognized by State law to act on behalf of the participant) exercises choice and control over the budget, planning, and purchase of self-directed personal assistance services, including the amount, duration, scope, provider, and location of service provision.

(B) Assessment of needs

There is an assessment of the needs, strengths, and preferences of the participants for such services.

(C) Service plan

A plan for such services (and supports for such services) for the participant has been developed and approved by the State based on such assessment through a person-centered process that—

(i) builds upon the participant's capacity to engage in activities that promote community life and that respects the participant's preferences, choices, and abilities; and

(ii) involves families, friends, and professionals in the planning or delivery of services or supports as desired or required by the participant.

(D) Service budget

A budget for such services and supports for the participant has been developed and approved by the State based on such assessment and plan and on a methodology that uses valid, reliable cost data, is open to public inspection, and includes a calculation of the expected cost of such services if those services were not self-directed. The budget may not restrict access to other medically necessary care and services furnished under the plan and approved by the State but not included in the budget.

(E) Application of quality assurance and risk management

There are appropriate quality assurance and risk management techniques used in establishing and implementing such plan and budget that recognize the roles and responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan and budget based upon the participant's resources and capabilities.

(6) A State may employ a financial management entity to make payments to providers, track costs, and make reports under the program. Payment for the activities of the financial management entity shall be at the administrative rate established in section 1396b(a) of this title.

(Aug. 14, 1935, ch. 531, title XIX, § 1915, as added Pub. L. 97–35, title XXI, § 2175(b), Aug. 13, 1981, 95 Stat. 809; amended Pub. L. 97–35, title XXI, §§ 2176, 2177(a), Aug. 13, 1981, 95 Stat. 812, 813; Pub. L. 97–248, title I, § 137(b)(19)(A), (20)–(25), Sept. 3, 1982, 96 Stat. 380; Pub. L. 97–448, title III, § 309(b)(17), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–369, div. B, title III, § 2373(b)(21), July 18, 1984, 98 Stat. 1112; Pub. L. 99–272, title IX, §§ 9502(a)–(e), (g)–(i), 9508(a), Apr. 7, 1986, 100 Stat. 202–204, 210; Pub. L. 99–509, title IX, §§ 9320(h)(3), 9411(a)–(d), Oct. 21, 1986, 100 Stat. 2016, 2061, 2062; Pub. L. 100–93, § 8(h)(2), Aug. 18, 1987, 101 Stat. 694; Pub. L. 100–203, title IV, §§ 4072(d), 4102(a)(1), (b)(2), 4118(a)(1), (b), (i)(1), (k), (*l*)(1), (p)(10), 4211(h)(10), Dec. 22, 1987, 101 Stat. 1330–117, 1330–143, 1330–146, 1330–154 to 1330–157, 1330–160, 1330–206; Pub. L. 100–360, title II, § 204(d)(3), title IV, § 411(k)(3), (10)(A), (H), (I), (17)(A), (*l*)(3)(G), July 1, 1988, 102 Stat. 729, 791, 794, 796, 799, 803; Pub. L. 100–485, title VI, § 608(d)(26)(M), (f)(2), Oct. 13, 1988, 102 Stat. 2422, 2424; Pub. L. 100–647, title VIII, §§ 8432(a), (b), 8437(a), Nov. 10, 1988, 102 Stat. 3804, 3806; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6115(c), 6411(c)(2), Dec. 19, 1989, 103 Stat. 2219, 2270; Pub. L. 101–508, title IV, §§ 4604(c), 4704(b)(3), 4741, 4742(a), (c)(1), (d)(1), Nov. 5, 1990, 104 Stat. 1388–169, 1388–172, 1388–197, 1388–198; Pub. L. 102–119, § 26(i)(2), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103–66, title XIII, § 13603(d), Aug. 10, 1993, 107 Stat. 620; Pub. L. 105–33, title IV, §§ 4106(c), 4743(a), Aug. 5, 1997, 111 Stat. 368, 524; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(*o*), (z)], Nov. 29, 1999, 113 Stat. 1536, 1501A–397, 1501A–398; Pub. L. 106–554, § 1(a)(6) [title VII, § 702(c)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574; Pub. L. 107–121, § 2(b)(3), Jan. 15, 2002, 115 Stat. 2384; Pub. L. 108–446, title III, § 305(j)(2), Dec. 3, 2004, 118 Stat. 2806; Pub. L. 109–171, title VI, §§ 6052(a), 6086(a), 6087(a), Feb. 8, 2006, 120 Stat. 93, 121, 127.)

REFERENCES IN TEXT

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (a)(1)(B)(ii)(II), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part E of subchapter IV of this chapter, referred to in subsec. (e)(1)(B), is classified to section 670 et seq. of this title.

The Public Health Service Act, referred to in subsec. (g)(5), is act July 1, 1944, ch. 373, 58 Stat. 682. Title XXVI of the Act is classified generally to subchapter XXIV (§ 300ff et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 7702B(c)(2)(B) of the Internal Revenue Code of 1986, referred to in subsec. (i)(1)(D)(i), (F)(i), is classified to section 7702B(c)(2)(B) of Title 26, Internal Revenue Code.

AMENDMENTS

2006—Subsec. (g)(2) to (5). Pub. L. 109–171, § 6052(a), added pars. (2) to (5) and struck out former par. (2), which read as follows: ''For purposes of this subsection, the term 'case management services' means services which will assist individuals eligible under the plan in

gaining access to needed medical, social, educational, and other services.''

Subsec. (i). Pub. L. 109–171, § 6086(a), added subsec. (i).

Subsec. (j). Pub. L. 109–171, § 6087(a), added subsec. (j).

2004—Subsec. (c)(5)(C)(i). Pub. L. 108–446, which directed the substitution of ''(as such terms are defined in section 1401 of title 20)'' for ''as defined in section 1401(16) and (17) of title 20)'', was executed by making the substitution for ''(as defined in paragraphs (16) and (17) of section 1401(a) of title 20)'' to reflect the probable intent of Congress and the amendment by Pub. L. 102–119. See 1991 Amendment note below.

2002—Subsec. (b). Pub. L. 107–121 substituted ''1396a(bb)'' for ''1396a(aa)''.

2000—Subsec. (b). Pub. L. 106–554 substituted ''1396a(a)(15), 1396a(aa),'' for ''1396a(a)(13)(C)'' in introductory provisions.

1999—Subsec. (b). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(z)], which directed, effective Oct. 1, 2004, substitution of ''section'' for ''sections 1396a(a)(13)(C) and'' in introductory provisions, could not be executed due to the amendment by Pub. L. 106–554. See 2000 Amendment note above.

Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(*o*)(1)], substituted ''1396a(a)(13)(C)'' for ''1396a(a)(13)(E)'' in introductory provisions.

Subsec. (d)(5)(B)(iii). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(*o*)(2)], which directed substitution of ''65'' for ''75'' in last sentence of cl. (iii), was executed by making the substitution in the penultimate sentence to reflect the probable intent of Congress.

Subsec. (h). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(*o*)(3)], substituted ''90 days of such date'' for ''90 day of such date''.

1997—Subsec. (a)(1)(B)(ii)(I). Pub. L. 105–33, § 4106(c), substituted ''paragraphs (16) and (17)'' for ''paragraphs (15) and (16)''.

Subsec. (c)(5). Pub. L. 105–33, § 4743(a), in introductory provisions, struck out '', with respect to individuals who receive such services after discharge from a nursing facility or intermediate care facility for the mentally retarded'' after '' 'habilitation services' ''.

1993—Subsec. (g)(1). Pub. L. 103–66 inserted ''or to individuals described in section 1396a(z)(1)(A) of this title'' after ''or with either,''.

1991—Subsec. (c)(5)(C)(i). Pub. L. 102–119 substituted ''(as defined in paragraphs (16) and (17) of section 1401(a) of title 20)'' for ''(as defined in section 1401(16) and (17) of title 20)''. The reference to section 1401 of title 20 includes the substitution of ''Individuals with Disabilities Education Act'' for ''Education of the Handicapped Act'' in the original.

1990—Subsec. (b). Pub. L. 101–508, § 4704(b)(3), inserted ''(other than sections 1396a(a)(13)(E) and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title)'' after ''section 1396a of this title'' in introductory provisions.

Pub. L. 101–508, § 4604(c), which directed amendment of subsec. (b) by inserting ''(other than subsection (s))'' after ''Section 1396a of this title'', was executed by inserting the new language after ''section 1396a of this title'' to reflect the probable intent of Congress.

Subsec. (b)(4). Pub. L. 101–508, § 4742(a), inserted before period at end ''and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1396a(a)(37)(A) of this title''.

Subsec. (c)(1). Pub. L. 101–508, § 4741(a), inserted at end ''For purposes of this subsection, the term 'room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.''

Subsec. (c)(4). Pub. L. 101–508, § 4742(d)(1), inserted at end ''Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.''

Subsec. (c)(7)(C). Pub. L. 101–508, § 4742(c)(1), added subpar. (C).

Subsec. (d)(1). Pub. L. 101–508, § 4741(a), inserted at end ''For purposes of this subsection, the term 'room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.''

Subsec. (d)(5)(B)(iv). Pub. L. 101–508, § 4741(b), substituted ''this subchapter whose provisions become effective on or after such date'' for first reference to ''this subchapter''.

1989—Subsec. (a)(1)(B)(ii)(I). Pub. L. 101–239, § 6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–234 repealed Pub. L. 100–360, § 204(d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(4). Pub. L. 101–239, § 6411(c)(2), inserted ''shall be consistent with the requirements of section 1396r–4 of this title and'' after ''which standards''.

1988—Subsec. (a)(1)(B)(ii)(I). Pub. L. 100–360, § 204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)''.

Subsec. (a)(2). Pub. L. 100–485, § 608(f)(2), substituted ''restricts'' for ''Restricts'' in introductory provisions.

Subsec. (c)(7). Pub. L. 100–360, § 411(*l*)(3)(G), amended Pub. L. 100–203, § 4211(h)(10)(G), see 1987 Amendment note below.

Subsec. (c)(7)(A). Pub. L. 100–647, § 8437(a), substituted ''who are inpatients in, or who would require the level of care provided in, hospitals,'' for ''who are inpatients in hospitals,'' and ''who are inpatients in, or who would require the level of care provided in, those respective facilities'' for ''who are inpatients of those respective facilities''.

Subsec. (c)(7)(B). Pub. L. 100–360, § 411(k)(10)(H), inserted '', without regard to the availability of beds for such inpatients'' before period at end.

Subsec. (c)(10). Pub. L. 100–360, § 411(k)(10)(A), substituted ''The Secretary shall not limit to fewer than 200'' for ''No waiver under this subsection shall limit by an amount less than 200'' and ''under a waiver under this subsection'' for ''under such waiver''.

Subsec. (d)(5)(B)(i), (ii). Pub. L. 100–647, § 8432(b), in introductory provisions, substituted ''the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year'' for ''the number of years beginning after the base year and ending before the waiver year'', in subcls. (I) and (II), substituted ''between the beginning of the base year and the beginning of the waiver year'' for ''between the base year and the waiver year'', and in subcl. (III), inserted ''(rounded to the nearest quarter of a year)'' after ''for each year'' and substituted ''at the end of the waiver year'' for ''before the waiver year''.

Subsec. (d)(5)(B)(iii). Pub. L. 100–360, § 411(k)(3)(A)(ii), inserted before last sentence ''The Secretary shall develop (by not later than October 1, 1989) a method for projecting, on a State-specific basis, the percentage increase in the number of residents in each State who are over 75 years of age for any period.''

Subsec. (d)(5)(B)(iii)(III). Pub. L. 100–360, § 411(k)(3)(A)(i), substituted ''65'' for ''75''.

Subsec. (d)(5)(B)(iv). Pub. L. 100–647, § 8432(a), added cl. (iv).

Subsec. (d)(5)(C)(i). Pub. L. 100–360, § 411(k)(3)(B), substituted ''paragraph (4), and personal care services'' for ''paragraph (4)(B), personal care services, and services furnished pursuant to a waiver under subsection (c) of this section''.

Subsec. (e). Pub. L. 100–360, § 411(k)(17)(A)(ii), (iii), added subsec. (e), redesignated former subsec. (e)(1) as (f)(1), and struck out former subsec. (e)(2) which read as follows: ''The Secretary shall report, not later than September 30, 1984, to Congress on waivers granted under this section.''

Subsec. (f)(1). Pub. L. 100–360, § 411(k)(17)(A)(ii), redesignated former subsec. (e)(1) as (f)(1).

Subsec. (f)(2). Pub. L. 100–360, § 411(k)(17)(A)(i), redesignated former subsec. (f) as subsec. (f)(2).

Subsec. (h). Pub. L. 100–360, § 411(k)(10)(I), made technical amendment to directory language of Pub. L. 100–203, § 4118(*l*)(1), see 1987 Amendment note below.

Pub. L. 100–360, § 411(k)(17)(A)(iv), as amended by Pub. L. 100–485, § 608(d)(26)(M), substituted '', (d), or (e)'' for ''or (d)''.

1987—Subsec. (a)(1)(B)(ii)(I). Pub. L. 100–203, § 4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)''.

Subsec. (a)(2). Pub. L. 100–93 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''restricts—

''(A) for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), or

''(B) (through suspension or otherwise) for a reasonable period of time the participation of a provider of items or services under the State plan, if the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the provider has (in a significant number or proportion of cases) provided such items or services either (i) at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), or (ii) of a quality which does not meet professionally recognized standards of health care,

if, under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.''

Subsec. (c)(1). Pub. L. 100–203, § 4211(h)(10)(A), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility''.

Subsec. (c)(2)(B). Pub. L. 100–203, § 4211(h)(10)(C), in closing provisions, substituted ''need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded'' for ''need for such inpatient hospital, skilled nursing facility or intermediate care facility services''.

Pub. L. 100–203, § 4118(p)(10), in closing provisions inserted ''such'' after ''need for''.

Subsec. (c)(2)(B)(i). Pub. L. 100–203, § 4211(h)(10)(B), substituted ''services, nursing facility services, or services in an intermediate care facility for the mentally retarded'' for '', skilled nursing facility, or intermediate care facility services''.

Subsec. (c)(2)(C). Pub. L. 100–203, § 4211(h)(10)(D), (E), substituted '', nursing facility, or intermediate care facility for the mentally retarded'' for ''or skilled nursing facility or intermediate care facility'' and '', nursing facility services, or services in an intermediate care facility for the mentally retarded'' for ''or skilled nursing facility or intermediate care facility services''.

Subsec. (c)(3). Pub. L. 100–203, § 4118(a)(1), substituted '', section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community)'' for ''and section 1396a(a)(10)(B) of this title (relating to comparability)''.

Subsec. (c)(5). Pub. L. 100–203, § 4211(h)(10)(F), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility''.

Subsec. (c)(7). Pub. L. 100–203, § 4211(h)(10)(G), as amended by Pub. L. 100–360, § 411(*l*)(3)(G), substituted '', nursing facilities, or intermediate care facilities for the mentally retarded'' for ''or in skilled nursing or intermediate care facilities'' in subpar. (A) and ''nursing facility'' for ''skilled nursing facility or intermediate care facility'' in subpar. (B).

Pub. L. 100–203, § 4118(k), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(10). Pub. L. 100–203, § 4118(b), added par. (10).

Subsec. (d). Pub. L. 100–203, § 4102(a)(1), added subsec. (d). Former subsec. (d) redesignated (h).

Subsec. (g)(1). Pub. L. 100–203, § 4118(i)(1), inserted at end ''The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services.''

Subsec. (h). Pub. L. 100–203, § 4118(*l*)(1), as amended by Pub. L. 100–360, § 411(k)(10)(I), substituted '', within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 day of such date, denies such request.'' for ''denies such request in writing within 90 days after the date of its submission to the Secretary.''

Pub. L. 100–203, § 4102(b)(2), substituted ''subsection (c) or (d) of this section'' for ''subsection (c) of this section''.

Pub. L. 100–203, § 4102(a)(1)(A), redesignated former subsec. (d) as (h).

1986—Subsec. (a)(1)(B)(ii)(I). Pub. L. 99–509, § 9320(h)(3), substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)''.

Subsec. (b). Pub. L. 99–272, § 9508(a)(2), inserted provision, following par. (4), that no waiver under this subsection may restrict the choice of the individual in receiving services under section 1396d(a)(4)(C) of this title.

Subsec. (c)(1). Pub. L. 99–509, § 9411(a)(1), inserted ''a hospital or'' after ''level of care provided in'', and struck out provision added by Pub. L. 99–272, § 9502(b)(1).

Pub. L. 99–272, § 9502(b)(1), inserted provision relating to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would continue to receive inpatient hospital services, skilled nursing facility services, or intermediate care facility services because they are dependent on ventilator support the cost of which is reimbursed under the State plan.

Subsec. (c)(2)(B). Pub. L. 99–509, § 9411(a)(2), substituted ''inpatient hospital, skilled nursing facility, or'' for ''skilled nursing facility or'' in cl. (i) and inserted ''inpatient hospital,'' after ''need for'' in concluding provision following cl. (iii).

Subsec. (c)(2)(C). Pub. L. 99–272, § 9502(b)(2), inserted ''hospital or'' after ''provided in a'', and ''inpatient hospital services or'' after ''the provision of''.

Subsec. (c)(2)(D). Pub. L. 99–272, § 9502(c)(1), inserted ''100 percent of'' after ''does not exceed''.

Subsec. (c)(3). Pub. L. 99–509, § 9411(c), substituted ''and section 1396a(a)(10)(B) of this title (relating to comparability)'' for ''and section 1396a(a)(10) of this title''.

Pub. L. 99–272, § 9502(g), substituted ''additional five-year periods'' for ''additional three-year periods'', and ''previous waiver period'' for ''previous three-year period''.

Pub. L. 99–272, § 9502(e), inserted at end ''A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under that waiver, that the maximum amount of the individ-

ual's income which may be disregarded for any month for the maintenance needs of the individual may be an amount greater than the maximum allowed for that purpose under regulations in effect on July 1, 1985.''

Subsec. (c)(4)(B). Pub. L. 99–509, § 9411(d), inserted before the period ''and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness''.

Subsec. (c)(5). Pub. L. 99–272, § 9502(a), added par. (5).

Subsec. (c)(6). Pub. L. 99–272, § 9502(c)(2), added par. (6).

Subsec. (c)(7). Pub. L. 99–509, § 9411(a)(3), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''In making estimates under paragraph (2)(D) in the case of a waiver which applies only to physically disabled individuals who are inpatients in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in a fiscal year for those individuals under the State plan separately from the expenditure for other individuals who are inpatients of those facilities.''

Pub. L. 99–272, § 9502(d), added par. (7).

Subsec. (c)(8). Pub. L. 99–272, § 9502(h), added par. (8).

Subsec. (c)(9). Pub. L. 99–272, § 9502(i), added par. (9).

Subsec. (g). Pub. L. 99–272, § 9508(a)(1), added subsec. (g).

Subsec. (g)(1). Pub. L. 99–509, § 9411(b), inserted provision at end allowing a State to limit case management services to AIDS victims or to individuals with chronic mental illness.

1984—Subsec. (c)(1). Pub. L. 98–369 substituted ''under this subchapter'' for ''under this part''.

1983—Subsec. (c)(2)(B). Pub. L. 97–448 substituted ''need for such skilled nursing facility or intermediate care facility services'' for ''need for such services'' in provisions following cl. (iii).

1982—Subsec. (b). Pub. L. 97–248, § 137(b)(19)(A), struck out ''and section 1396b(m) of this title'' after ''section 1396a of this title''.

Subsec. (b)(1). Pub. L. 97–248, § 137(b)(20), inserted ''primary care'' before ''case-management system'', and substituted ''medical care services'' for ''primary care services''.

Subsec. (c)(1). Pub. L. 97–248, § 137(b)(21), inserted ''payment for part or all of the cost of'' after ''may include as 'medical assistance' under such plan''.

Subsec. (c)(2)(B). Pub. L. 97–248, § 137(b)(22), redesignated existing provisions as cls. (i) and (ii) and added cl. (iii).

Subsec. (c)(3). Pub. L. 97–248, § 137(b)(23), substituted ''section 1396a(a)(1) of this title'' for ''subsection (a)(1) of this section'' and ''section 1396a(a)(10) of this title'' for ''subsection (a)(10) of section 1396a of this title''.

Subsec. (c)(4). Pub. L. 97–248, § 137(b)(24), substituted ''this subsection'' for ''this section''.

Subsec. (f). Pub. L. 97–248, § 137(b)(25), inserted ''approval of'' before ''a proposed State plan''.

1981—Subsecs. (c) to (e). Pub. L. 97–35, § 2176, added subsec. (c), redesignated former subsec. (c) as (d) and inserted ''(other than a waiver under subsection (c) of this section)'', and redesignated former subsec. (d) as (e).

Subsec. (f). Pub. L. 97–35, § 2177(a), added subsec. (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VI, § 6052(c), Feb. 8, 2006, 120 Stat. 95, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2006.''

Pub. L. 109–171, title VI, § 6086(c), Feb. 8, 2006, 120 Stat. 127, provided that: ''The amendments made by subsections (a) and (b) [amending this section] take effect on January 1, 2007, and apply to expenditures for medical assistance for home and community-based services provided in accordance with section 1915(i) of the Social Security Act [subsec. (i) of this section] (as added by subsections (a) and (b) [probably means subsec. (a)]) on or after that date.''

Pub. L. 109–171, title VI, § 6087(b), Feb. 8, 2006, 120 Stat. 130, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 2007.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–121 effective as if included in the enactment of section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 as enacted into law by section 1(a)(6) of Pub. L. 106–554, see section 2(c)(2) of Pub. L. 107–121, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective Jan. 1, 2001, and applicable to services furnished on or after such date, see section 1(a)(6) [title VII, § 702(e)] of Pub. L. 106–554, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(z)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398, provided that the amendment made by section 1000(a)(6) [title VI, § 608(z)] is effective Oct. 1, 2004.

Amendment by section 1000(a)(6) [title VI, § 608*o*] of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, § 608(bb)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4106(c) of Pub. L. 105–33 applicable to bone mass measurements performed on or after July 1, 1998, see section 4106(d) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Section 4743(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] apply to services furnished on or after October 1, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to medical assistance furnished on or after Jan. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13603 of Pub. L. 103–66 have been promulgated by such date, see section 13603(f) of Pub. L. 103–66, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 4604(c) of Pub. L. 101–508 effective with respect to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4604 of Pub. L. 101–508 have been promulgated by such date, see section 4604(d) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4704(b)(3) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4704(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4742(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4742(c)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35], but shall only apply to facilities the participation of which under a State plan under title XIX of the Social Security Act [this subchapter] is terminated on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4742(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this

section] shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Section 6411(c)(4) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (2) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8432(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to waiver years beginning during or after fiscal year 1989.''

Section 8437(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to waiver applications submitted before, on, or after the date of the enactment of this Act [Nov. 10, 1988].''

Amendment by section 608(d)(26)(M) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 608(f)(2) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 204(d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(3), (10)(A), (H), (I), (17)(A), (*l*)(3)(G) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Section 4102(a)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on January 1, 1988.''

Section 4118(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4118(i)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as though it were included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Section 4118(*l*)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to requests for continuation of waivers received after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4118(p)(10) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Amendment by section 4211(h)(10) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9320(h)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9411(e) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to applications for waivers (or renewals thereof) approved on or after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9502(j) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, § 9435(a), Oct. 21, 1986, 100 Stat. 2069; Pub. L. 100–203, title IV, § 4118(j), Dec. 22, 1987, 101 Stat. 1330–156, provided that:

''(1) HABILITATION SERVICES.—The amendment made by subsection (a) [amending this section] shall be effective for services furnished on or after the date of the enactment of this Act [Apr. 7, 1986] to individuals eligible for services under a waiver granted under section 1915(c) of the Social Security Act [subsec. (c) of this section], without regard to whether such individuals were receiving institutional services before their participation in the waiver.

''(2) HOSPITALIZED PATIENTS.—The amendments made by subsection (b) [amending this section] shall be effective for services furnished on or after October 1, 1985.

''(3) PROHIBITION OF REGULATORY LIMITS AND TREATMENT OF CERTAIN PHYSICALLY DISABLED INDIVIDUALS.—The amendments made by subsections (c) and (d) [amending this section] shall apply to applications for waivers (or renewals thereof) filed before, on, or after, the date of the enactment of this Act [Apr. 7, 1986] and for services furnished on or after August 13, 1981.

''(4) INCOME STANDARDS.—The amendment made by subsection (e) [amending this section] shall apply to waivers (or renewals thereof) approved before, on, or after the date of the enactment of this Act [Apr. 7, 1986].

''(5) WAIVER EXTENSIONS.—Subsection (f) [enacting provisions set out below] shall apply to waivers expiring on or after September 30, 1985, and before September 30, 1986.

''(6) WAIVER RENEWALS.—The amendments made by subsection (g) [amending this section] shall become effective on September 30, 1986.

''(7) COORDINATED SERVICES AND SUBSTITUTION OF PARTICIPANTS.—The amendments made by subsections (h) and (i) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9508(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, § 9435(d)(1), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Apr. 7, 1986], without regard to whether or not regulations to carry out the amendments have been promulgated by that date.''

[Section 4118(j) of Pub. L. 100–203 provided that the amendment made by that section to section 9502(j)(1) of Pub. L. 99–272, set out above, is effective as if included in the enactment of section 9502 of Pub. L. 99–272.]

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was

amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 137(b)(19)(B) of Pub. L. 97–248 provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply with respect to any waiver if such waiver was granted, and the arrangement covered by the waiver was in place, prior to August 10, 1982.''

Amendment by section 137(b)(20)–(25) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2177(b) of Pub. L. 97–35 provided that: ''The amendment made by this section [amending this section] shall become effective 90 days after the date of the enactment of this Act [Aug. 13, 1981]''.

REGULATIONS

Pub. L. 109–171, title VI, § 6052(b), Feb. 8, 2006, 120 Stat. 95, provided that: ''The Secretary shall promulgate regulations to carry out the amendment made by subsection (a) [amending this section] which may be effective and final immediately on an interim basis as of the date of publication of the interim final regulation. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comments on such regulation after the date of publication. The Secretary may change or revise such regulation after completion of the period of public comment.''

QUALITY OF CARE MEASURES

Pub. L. 109–171, title VI, § 6086(b), Feb. 8, 2006, 120 Stat. 127, provided that:

''(1) IN GENERAL.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall consult with consumers, health and social service providers and other professionals knowledgeable about long-term care services and supports to develop program performance indicators, client function indicators, and measures of client satisfaction with respect to home and community-based services offered under State Medicaid programs.

''(2) BEST PRACTICES.—The Secretary shall—

''(A) use the indicators and measures developed under paragraph (1) to assess such home and community-based services, the outcomes associated with the receipt of such services (particularly with respect to the health and welfare of the recipient of the services), and the overall system for providing home and community-based services under the Medicaid program under title XIX of the Social Security Act [this subchapter]; and

''(B) make publicly available the best practices identified through such assessment and a comparative analyses of the system features of each State.

''(3) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services, $1,000,000 for the period of fiscal years 2006 through 2010 to carry out this subsection.''

PERMITTING ADJUSTMENT IN ESTIMATES TO TAKE INTO ACCOUNT PREADMISSION SCREENING REQUIREMENT

Section 4742(e) of Pub. L. 101–508 provided that: ''In the case of a waiver under section 1915(c) of the Social Security Act [subsec. (c) of this section] for individuals with mental retardation or a related condition in a State, the Secretary of Health and Human Services shall permit the State to adjust the estimate of average per capita expenditures submitted under paragraph (2)(D) of such section, with respect to such expenditures made on or after January 1, 1989, to take into account increases in expenditures for, or utilization of, intermediate care facilities for the mentally retarded resulting from implementation of section 1919(e)(7)(A) of such Act [section 1396r(e)(7)(A) of this title].''

EXTENSIONS OF WAIVERS UNDER SUBSECTION (c)

Section 4102(c) of Pub. L. 100–203 provided that: ''In the case of a State which, as of December 1, 1987, has a waiver approved with respect to elderly individuals under section 1915(c) of the Social Security Act [subsec. (c) of this section], which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services of the State's intention to file an application for a waiver under section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c) of such Act, on the same terms and conditions through September 30, 1988.''

Section 9502(f) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall extend, upon request of the State, any waiver under section 1915(c) of the Social Security Act [subsec. (c) of this section] which expires on or after September 30, 1985, and before September 30, 1986. Such extension shall be for a period of not less than one year nor more than five years, subject to section 1915(e)(1) of such Act.''

§ 1396*o*. Use of enrollment fees, premiums, deductions, cost sharing, and similar charges

(a) Imposition of certain charges under plan in case of individuals described in section 1396a(a)(10)(A) or (E)

Subject to subsections (g) and (i) of this section, the State plan shall provide that in the case of individuals described in subparagraph (A) or (E)(i) of section 1396a(a)(10) of this title who are eligible under the plan—

(1) no enrollment fee, premium, or similar charge will be imposed under the plan (except for a premium imposed under subsection (c) of this section);

(2) no deduction, cost sharing or similar charge will be imposed under the plan with respect to—

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over),

(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy (or, at the option of the State, any services furnished to pregnant women),

(C) services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs,

(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1396d(a)(4)(C) of this title, or

(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(*o*) of this title); and

(3) any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations which shall, if the definition of ''nominal'' under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines to be appropriate); except that a deduction, cost-sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(b) Imposition of certain charges under plan in case of individuals other than those described in section 1396a(a)(10)(A) or (E)

The State plan shall provide that in the case of individuals other than those described in subparagraph (A) or (E) of section 1396a(a)(10) of this title who are eligible under the plan—

(1) there may be imposed an enrollment fee, premium, or similar charge, which (as determined in accordance with standards prescribed by the Secretary) is related to the individual's income,

(2) no deduction, cost sharing, or similar charge will be imposed under the plan with respect to—

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over),

(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy (or, at the option of the State, any services furnished to pregnant women),

(C) services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs,

(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1396d(a)(4)(C) of this title, or

(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(*o*) of this title); and

(3) any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations which shall, if the definition of ''nominal'' under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines to be appropriate); except that a deduction, cost-sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(c) Imposition of monthly premium; persons affected; amount; prepayment; failure to pay; use of funds from other programs

(1) The State plan of a State may at the option of the State provide for imposing a monthly premium (in an amount that does not exceed the limit established under paragraph (2)) with respect to an individual described in subparagraph (A) or (B) of section 1396a(*l*)(1) of this title who is receiving medical assistance on the basis of section 1396a(a)(10)(A)(ii)(IX) of this title and whose family income (as determined in accordance with the methodology specified in section 1396a(*l*)(3) of this title) equals or exceeds 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(2) In no case may the amount of any premium imposed under paragraph (1) exceed 10 percent of the amount by which the family income (less expenses for the care of a dependent child) of an individual exceeds 150 percent of the line described in paragraph (1).

(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of an individual for medical assistance under this subchapter on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(4) A State may permit State or local funds available under other programs to be used for payment of a premium imposed under paragraph (1). Payment of a premium with such funds shall not be counted as income to the individual with respect to whom such payment is made.

(d) Premiums for qualified disabled and working individuals described in section 1396d(s)

With respect to a qualified disabled and working individual described in section 1396d(s) of this title whose income (as determined under paragraph (3) of that section) exceeds 150 percent of the official poverty line referred to in that paragraph, the State plan of a State may provide for the charging of a premium (expressed as a percentage of the medicare cost-sharing described in section 1396d(p)(3)(A)(i) of

this title provided with respect to the individual) according to a sliding scale under which such percentage increases from 0 percent to 100 percent, in reasonable increments (as determined by the Secretary), as the individual's income increases from 150 percent of such poverty line to 200 percent of such poverty line.

(e) Prohibition of denial of services on basis of individual's inability to pay certain charges

The State plan shall require that no provider participating under the State plan may deny care or services to an individual eligible for such care or services under the plan on account of such individual's inability to pay a deduction, cost sharing, or similar charge. The requirements of this subsection shall not extinguish the liability of the individual to whom the care or services were furnished for payment of the deduction, cost sharing, or similar charge.

(f) Charges imposed under waiver authority of Secretary

No deduction, cost sharing, or similar charge may be imposed under any waiver authority of the Secretary, except as provided in subsections (a)(3) and (b)(3) of this section and section 1396*o*–1 of this title, unless such waiver is for a demonstration project which the Secretary finds after public notice and opportunity for comment—

(1) will test a unique and previously untested use of copayments,

(2) is limited to a period of not more than two years,

(3) will provide benefits to recipients of medical assistance which can reasonably be expected to be equivalent to the risks to the recipients,

(4) is based on a reasonable hypothesis which the demonstration is designed to test in a methodologically sound manner, including the use of control groups of similar recipients of medical assistance in the area, and

(5) is voluntary, or makes provision for assumption of liability for preventable damage to the health of recipients of medical assistance resulting from involuntary participation.

(g) Individuals provided medical assistance under section 1396a(a)(10)(A)(ii)(XV) or (XVI)

With respect to individuals provided medical assistance only under subclause (XV) or (XVI) of section 1396a(a)(10)(A)(ii) of this title—

(1) a State may (in a uniform manner for individuals described in either such subclause)—

(A) require such individuals to pay premiums or other cost-sharing charges set on a sliding scale based on income that the State may determine; and

(B) require payment of 100 percent of such premiums for such year in the case of such an individual who has income for a year that exceeds 250 percent of the income official poverty line (referred to in subsection (c)(1) of this section) applicable to a family of the size involved, except that in the case of such an individual who has income for a year that does not exceed 450 percent of such poverty line, such requirement may only apply to the extent such premiums do not exceed 7.5 percent of such income; and

(2) such State shall require payment of 100 percent of such premiums for a year by such an individual whose adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) for such year exceeds $75,000, except that a State may choose to subsidize such premiums by using State funds which may not be federally matched under this subchapter.

In the case of any calendar year beginning after 2000, the dollar amount specified in paragraph (2) shall be increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title.

(h) Indexing nominal cost sharing

In applying this section and subsections (c) and (e) of section 1396*o*–1 of this title, with respect to cost sharing that is ''nominal'' in amount, the Secretary shall increase such ''nominal'' amounts for each year (beginning with 2006) by the annual percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) as rounded up in an appropriate manner.

(i) State option to impose income-related premiums for families of disabled children

(1) With respect to disabled children provided medical assistance under section 1396a(a)(10)(A)(ii)(XIX) of this title, subject to paragraph (2), a State may (in a uniform manner for such children) require the families of such children to pay monthly premiums set on a sliding scale based on family income.

(2) A premium requirement imposed under paragraph (1) may only apply to the extent that—

(A) in the case of a disabled child described in that paragraph whose family income—

(i) does not exceed 200 percent of the poverty line, the aggregate amount of such premium and any premium that the parent is required to pay for family coverage under section 1396a(cc)(2)(A)(i) of this title and other cost-sharing charges do not exceed 5 percent of the family's income; and

(ii) exceeds 200, but does not exceed 300, percent of the poverty line, the aggregate amount of such premium and any premium that the parent is required to pay for family coverage under section 1396a(cc)(2)(A)(i) of this title and other cost-sharing charges do not exceed 7.5 percent of the family's income; and

(B) the requirement is imposed consistent with section 1396a(cc)(2)(A)(ii)(I) of this title.

(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of a child under section 1396a(a)(10)(A)(ii)(XIX) of this title for medical assistance under this subchapter on the basis of failure to pay any such premium until such failure continues for a period of at least 60 days from the date on which the premium became past due. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(Aug. 14, 1935, ch. 531, title XIX, § 1916, as added Pub. L. 97–248, title I, § 131(b), Sept. 3, 1982, 96

Stat. 367; amended Pub. L. 97–448, title III, § 309(b)(18)–(20), Jan. 12, 1983, 96 Stat. 2409, 2410; Pub. L. 99–272, title IX, § 9505(c)(2), Apr. 7, 1986, 100 Stat. 209; Pub. L. 99–509, title IX, § 9403(g)(4)(B), Oct. 21, 1986, 100 Stat. 2056; Pub. L. 100–203, title IV, §§ 4101(d)(1), 4211(h)(11), Dec. 22, 1987, 101 Stat. 1330–142, 1330–207; Pub. L. 100–360, title IV, § 411(k)(2), July 1, 1988, 102 Stat. 791; Pub. L. 101–239, title VI, § 6408(d)(3), Dec. 19, 1989, 103 Stat. 2269; Pub. L. 105–33, title IV, § 4708(b), Aug. 5, 1997, 111 Stat. 506; Pub. L. 106–170, title II, § 201(a)(3), Dec. 17, 1999, 113 Stat. 1893; Pub. L. 109–171, title VI, §§ 6041(b), 6062(b), Feb. 8, 2006, 120 Stat. 84, 98.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (g)(2), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–171, § 6062(b)(1), substituted ''subsections (g) and (i)'' for ''subsection (g)'' in introductory provisions.

Subsec. (f). Pub. L. 109–171, § 6041(b)(1), inserted ''and section 1396*o*–1 of this title'' after ''(b)(3) of this section''.

Subsec. (h). Pub. L. 109–171, § 6041(b)(2), added subsec. (h).

Subsec. (i). Pub. L. 109–171, § 6062(b)(2), added subsec. (i).

1999—Subsec. (a). Pub. L. 106–170, § 201(a)(3)(A), substituted ''Subject to subsection (g) of this section, the State plan'' for ''The State plan'' in introductory provisions.

Subsec. (g). Pub. L. 106–170, § 201(a)(3)(B), added subsec. (g).

1997—Subsec. (a)(2)(D). Pub. L. 105–33, § 4708(b)(1), struck out ''or services furnished to such an individual by a health maintenance organization (as defined in section 1396b(m) of this title) in which he is enrolled,'' after ''section 1396d(a)(4)(C) of this title,''.

Subsec. (b)(2)(D). Pub. L. 105–33, § 4708(b)(2), struck out ''or (at the option of the State) services furnished to such an individual by a health maintenance organization (as defined in section 1396b(m) of this title) in which he is enrolled,'' after ''section 1396d(a)(4)(C) of this title,''.

1989—Subsec. (a). Pub. L. 101–239, § 6408(d)(3)(A), substituted ''subparagraph (A) or (E)(i)'' for ''subparagraph (A) or (E)'' in introductory provisions.

Subsecs. (d) to (f). Pub. L. 101–239, § 6408(d)(3)(B), (C), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1988—Subsec. (c)(1). Pub. L. 100–360 struck out ''nonfarm'' after ''150 percent of the''.

1987—Subsec. (a)(1). Pub. L. 100–203, § 4101(d)(1)(A), inserted ''(except for a premium imposed under subsection (c) of this section)'' after ''plan''.

Subsecs. (a)(2)(C), (b)(2)(C). Pub. L. 100–203, § 4211(h)(11), substituted ''nursing facility, intermediate care facility for the mentally retarded'' for ''skilled nursing facility, intermediate care facility''.

Subsecs. (c) to (e). Pub. L. 100–203, § 4101(d)(1)(B), (C), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1986—Subsec. (a). Pub. L. 99–509 substituted ''subparagraph (A) or (E) of section 1396a(a)(10) of this title'' for ''section 1396a(a)(10)(A) of this title''.

Subsec. (a)(2)(E). Pub. L. 99–272 added subpar. (E).

Subsec. (b). Pub. L. 99–509 substituted ''subparagraph (A) or (E) of section 1396a(a)(10) of this title'' for ''section 1396a(a)(10)(A) of this title''.

Subsec. (b)(2)(E). Pub. L. 99–272 added subpar. (E).

1983—Subsec. (c). Pub. L. 97–448, § 309(b)(18), substituted ''subsection'' for ''subparagraph''.

Subsec. (d). Pub. L. 97–448, § 309(b)(19), (20), substituted in introductory text '', except as provided in subsections (a)(3) and (b)(3) of this section'' for ''unless authorized under this section'', and in cl. (5) substituted ''is voluntary, or makes provision'' for ''in which participation is voluntary, or in which provision is made''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VI, § 6041(c), Feb. 8, 2006, 120 Stat. 85, provided that: ''The amendments made by this section [enacting section 1396*o*–1 of this title and amending this section] shall apply to cost sharing imposed for items and services furnished on or after March 31, 2006.''

Amendment by section 6062(b) of Pub. L. 109–171 applicable to medical assistance for items and services furnished on or after Jan. 1, 2007, see section 6062(d) of Pub. L. 109–171, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, see section 201(d) of Pub. L. 106–170, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations have been promulgated by such date, see section 6408(d)(5) of Pub. L. 101–239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4101(d)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on July 1, 1988.''

Amendment by section 4211(h)(11) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by Pub. L. 99–272 applicable to medical assistance provided for hospice care furnished on or after Apr. 7, 1986, see section 9505(e) of Pub. L. 99–272, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was

added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE

Section 131(d), formerly §131(c), of Pub. L. 97–248, redesignated by section 309(a)(8) of Pub. L. 97–448, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1396a of this title] shall become effective on October 1, 1982.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Sept. 3, 1982].''

§ 1396*o*–1. State option for alternative premiums and cost sharing

(a) State flexibility

(1) In general

Notwithstanding sections 1396*o* and 1396a(a)(10)(B) of this title, but subject to paragraph (2), a State, at its option and through a State plan amendment, may impose premiums and cost sharing for any group of individuals (as specified by the State) and for any type of services (other than drugs for which cost sharing may be imposed under subsection (c) and non-emergency services furnished in a hospital emergency department for which cost sharing may be imposed under subsection (e)), and may vary such premiums and cost sharing among such groups or types, consistent with the limitations established under this section. Nothing in this section shall be construed as superseding (or preventing the application of) subsection (g) or (i) of section 1396*o* of this title.

(2) Exemption for individuals with family income not exceeding 100 percent of the poverty line

(A) In general

Paragraph (1) and subsection (d) shall not apply, and sections 1396*o* and 1396a(a)(10)(B) of this title shall continue to apply, in the case of an individual whose family income does not exceed 100 percent of the poverty line applicable to a family of the size involved.

(B) Limit on aggregate cost sharing

To the extent cost sharing under subsections (c) and (e) or under section 1396*o* of this title is imposed against individuals described in subparagraph (A), the limitation under subsection (b)(1)(B)(ii) on the total aggregate amount of cost sharing shall apply to such cost sharing for all individuals in a family described in subparagraph (A) in the same manner as such limitations apply to cost sharing and families described in subsection (b)(1)(B)(ii).

(3) Definitions

In this section:

(A) Premium

The term ''premium'' includes any enrollment fee or similar charge.

(B) Cost sharing

The term ''cost sharing'' includes any deduction, copayment, or similar charge.

(b) Limitations on exercise of authority

(1) Individuals with family income between 100 and 150 percent of the poverty line

In the case of an individual whose family income exceeds 100 percent, but does not exceed 150 percent, of the poverty line applicable to a family of the size involved—

(A) no premium may be imposed under the plan; and

(B) with respect to cost sharing—

(i) the cost sharing imposed under subsection (a) with respect to any item or service may not exceed 10 percent of the cost of such item or service; and

(ii) the total aggregate amount of cost sharing imposed under this section (including any cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent of the family income of the family involved, as applied on a quarterly or monthly basis (as specified by the State).

(2) Individuals with family income above 150 percent of the poverty line

In the case of an individual whose family income exceeds 150 percent of the poverty line applicable to a family of the size involved—

(A) the total aggregate amount of premiums and cost sharing imposed under this section (including any cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent of the family income of the family involved, as applied on a quarterly or monthly basis (as specified by the State); and

(B) with respect to cost sharing, the cost sharing imposed with respect to any item or service under subsection (a) may not exceed 20 percent of the cost of such item or service.

(3) Additional limitations

(A) Premiums

No premiums shall be imposed under this section with respect to the following:

(i) Individuals under 18 years of age that are required to be provided medical assistance under section 1396a(a)(10)(A)(i) of this title, and including individuals with respect to whom child welfare services are made available under part B of subchapter IV on the basis of being a child in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of such subchapter, without regard to age.

(ii) Pregnant women.

(iii) Any terminally ill individual who is receiving hospice care (as defined in section 1396d(*o*) of this title).

(iv) Any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

(v) Women who are receiving medical assistance by virtue of the application of sections 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa) of this title.

(vi) Disabled children who are receiving medical assistance by virtue of the application of sections 1396a(a)(10)(A)(ii)(XIX) and 1396a(cc) of this title.

(B) Cost sharing

Subject to the succeeding provisions of this section, no cost sharing shall be imposed under subsection (a) with respect to the following:

(i) Services furnished to individuals under 18 years of age that are required to be provided medical assistance under section 1396a(a)(10)(A)(i) of this title, and including services furnished to individuals with respect to whom child welfare services are made available under part B of subchapter IV on the basis of being a child in foster care or and[1] individuals with respect to whom adoption or foster care assistance is made available under part E of such subchapter, without regard to age.

(ii) Preventive services (such as well baby and well child care and immunizations) provided to children under 18 years of age regardless of family income.

(iii) Services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy.

(iv) Services furnished to a terminally ill individual who is receiving hospice care (as defined in section 1396d(*o*) of this title).

(v) Services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

(vi) Emergency services (as defined by the Secretary for purposes of section 1396*o*(a)(2)(D) of this title).

(vii) Family planning services and supplies described in section 1396d(a)(4)(C) of this title.

(viii) Services furnished to women who are receiving medical assistance by virtue of the application of sections 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa) of this title.

(ix) Services furnished to disabled children who are receiving medical assistance by virtue of the application of sections 1396a(a)(10)(A)(ii)(XIX) and 1396a(cc) of this title.

(C) Construction

Nothing in this paragraph shall be construed as preventing a State from exempting additional classes of individuals from premiums under this section or from exempting additional individuals or services from cost sharing under subsection (a).

(4) Determinations of family income

In applying this subsection, family income shall be determined in a manner specified by the State for purposes of this subsection, including the use of such disregards as the State may provide. Family income shall be determined for such period and at such periodicity as the State may provide under this subchapter.

(5) Poverty line defined

For purposes of this section, the term ''poverty line'' has the meaning given such term in section 9902(2) of this title, including any revision required by such section.

(6) Construction

Nothing in this section shall be construed—

(A) as preventing a State from further limiting the premiums and cost sharing imposed under this section beyond the limitations provided under this section;

(B) as affecting the authority of the Secretary through waiver to modify limitations on premiums and cost sharing under this section; or

(C) as affecting any such waiver of requirements in effect under this subchapter before February 8, 2006, with regard to the imposition of premiums and cost sharing.

(c) Special rules for cost sharing for prescription drugs

(1) In general

In order to encourage beneficiaries to use drugs (in this subsection referred to as ''preferred drugs'') identified by the State as the most (or more) cost effective prescription drugs within a class of drugs (as defined by the State), with respect to one or more groups of beneficiaries specified by the State, subject to paragraph (2), the State may—

(A) provide cost sharing (instead of the level of cost sharing otherwise permitted under section 1396*o* of this title, but subject to paragraphs (2) and (3)) with respect to drugs that are not preferred drugs within a class; and

(B) waive or reduce the cost sharing otherwise applicable for preferred drugs within such class and shall not apply any such cost sharing for such preferred drugs for individuals for whom cost sharing may not be imposed under subsection (a) due to the application of subsection (b)(3)(B).

(2) Limitations

(A) By income group

In no case may the cost sharing under paragraph (1)(A) with respect to a non-preferred drug exceed—

[1] So in original.

(i) in the case of an individual whose family income does not exceed 150 percent of the poverty line applicable to a family of the size involved, the amount of nominal cost sharing (as otherwise determined under section 1396*o* of this title); or

(ii) in the case of an individual whose family income exceeds 150 percent of the poverty line applicable to a family of the size involved, 20 percent of the cost of the drug.

(B) Limitation to nominal for exempt populations

In the case of an individual who is not subject to cost sharing under subsection (a) due to the application of paragraph (1)(B), any cost sharing under paragraph (1)(A) with respect to a non-preferred drug may not exceed a nominal amount (as otherwise determined under section 1396*o* of this title).

(C) Continued application of aggregate cap

In addition to the limitations imposed under subparagraphs (A) and (B), any cost sharing under paragraph (1)(A) continues to be subject to the aggregate cap on cost sharing applied under subsection (a)(2)(B) or under paragraph (1) or (2) of subsection (b), as the case may be.

(3) Waiver

In carrying out paragraph (1), a State shall provide for the application of cost sharing levels applicable to a preferred drug in the case of a drug that is not a preferred drug if the prescribing physician determines that the preferred drug for treatment of the same condition either would not be as effective for the individual or would have adverse effects for the individual or both.

(4) Exclusion authority

Nothing in this subsection shall be construed as preventing a State from excluding specified drugs or classes of drugs from the application of paragraph (1).

(d) Enforceability of premiums and other cost sharing

(1) Premiums

Notwithstanding section 1396*o*(c)(3) of this title and section 1396a(a)(10)(B) of this title, a State may, at its option, condition the provision of medical assistance for an individual upon prepayment of a premium authorized to be imposed under this section, or may terminate eligibility for such medical assistance on the basis of failure to pay such a premium but shall not terminate eligibility of an individual for medical assistance under this subchapter on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. A State may apply the previous sentence for some or all groups of beneficiaries as specified by the State and may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(2) Cost sharing

Notwithstanding section 1396*o*(e) of this title or any other provision of law, a State may permit a provider participating under the State plan to require, as a condition for the provision of care, items, or services to an individual entitled to medical assistance under this subchapter for such care, items, or services, the payment of any cost sharing authorized to be imposed under this section with respect to such care, items, or services. Nothing in this paragraph shall be construed as preventing a provider from reducing or waiving the application of such cost sharing on a case-by-case basis.

(e) State option for permitting hospitals to impose cost sharing for non-emergency care furnished in an emergency department

(1) In general

Notwithstanding section 1396*o* of this title and section 1396a(a)(1) of this title or the previous provisions of this section, but subject to the limitations of paragraph (2), a State may, by amendment to its State plan under this subchapter, permit a hospital to impose cost sharing for non-emergency services furnished to an individual (within one or more groups of individuals specified by the State) in the hospital emergency department under this subsection if the following conditions are met:

(A) Access to non-emergency room provider

The individual has actually available and accessible (as such terms are applied by the Secretary under section 1396*o*(b)(3) of this title) an alternate non-emergency services provider with respect to such services.

(B) Notice

The hospital must inform the beneficiary after receiving an appropriate medical screening examination under section 1395dd of this title and after a determination has been made that the individual does not have an emergency medical condition, but before providing the non-emergency services, of the following:

(i) The hospital may require the payment of the State specified cost sharing before the service can be provided.

(ii) The name and location of an alternate non-emergency services provider (described in subparagraph (A)) that is actually available and accessible (as described in such subparagraph).

(iii) The fact that such alternate provider can provide the services without the imposition of cost sharing described in clause (i).

(iv) The hospital provides a referral to coordinate scheduling of this treatment.

Nothing in this subsection shall be construed as preventing a State from applying (or waiving) cost sharing otherwise permissible under this section to services described in clause (iii).

(2) Limitations

(A) Individuals with family income between 100 and 150 percent of the poverty line

In the case of an individual described in subsection (b)(1) who is not described in subparagraph (B), the cost sharing imposed

under this subsection may not exceed twice the amount determined to be nominal under section 1396*o* of this title, subject to the percent of income limitation otherwise applicable under subsection (b)(1)(B)(ii).

(B) Application to exempt populations

In the case of an individual described in subsection (a)(2)(A) or who is not subject to cost sharing under subsection (b)(3)(B) with respect to non-emergency services described in paragraph (1), a State may impose cost sharing under paragraph (1) for care in an amount that does not exceed a nominal amount (as otherwise determined under section 1396*o* of this title) so long as no cost sharing is imposed to receive such care through an outpatient department or other alternative health care provider in the geographic area of the hospital emergency department involved.

(C) Continued application of aggregate cap; relation to other cost sharing

In addition to the limitations imposed under subparagraphs (A) and (B), any cost sharing under paragraph (1) is subject to the aggregate cap on cost sharing applied under subsection (a)(2)(B) or under paragraph (1) or (2) of subsection (b), as the case may be. Cost sharing imposed for services under this subsection shall be instead of any cost sharing that may be imposed for such services under subsection (a) or section 1396*o* of this title.

(3) Construction

Nothing in this section shall be construed—

(A) to limit a hospital's obligations with respect to screening and stabilizing treatment of an emergency medical condition under section 1395dd of this title; or

(B) to modify any obligations under either State or Federal standards relating to the application of a prudent-layperson standard with respect to payment or coverage of emergency services by any managed care organization.

(4) Definitions

For purposes of this subsection:

(A) Non-emergency services

The term ''non-emergency services'' means any care or services furnished in an emergency department of a hospital that do not constitute an appropriate medical screening examination or stabilizing examination and treatment required to be provided by the hospital under section 1395dd of this title.

(B) Alternate non-emergency services provider

The term ''alternative non-emergency services provider'' means, with respect to non-emergency services for the diagnosis or treatment of a condition, a health care provider, such as a physician's office, health care clinic, community health center, hospital outpatient department, or similar health care provider, that can provide clinically appropriate services for the diagnosis or treatment of a condition contemporaneously with the provision of the non-emergency services that would be provided in an emergency department of a hospital for the diagnosis or treatment of a condition, and that is participating in the program under this subchapter.

(Aug. 14, 1935, ch. 531, title XIX, § 1916A, as added and amended Pub. L. 109–171, title VI, §§ 6041(a), 6042(a), 6043(a), Feb. 8, 2006, 120 Stat. 81, 85, 86; Pub. L. 109–432, div. B, title IV, § 405(a)(1)–(5), Dec. 20, 2006, 120 Stat. 2996–2998.)

REFERENCES IN TEXT

Parts B and E of subchapter IV, referred to in subsec. (b)(3)(A)(i), (B)(i), are classified to sections 620 et seq. and 670 et seq., respectively, of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–432, § 405(a)(3)(A), substituted ''subsection (g) or (i) of section 1396*o*'' for ''section 1396*o*(g)'' in second sentence.

Pub. L. 109–432, § 405(a)(1)(A), inserted ''but subject to paragraph (2),'' after ''1396a(a)(10)(B) of this title,'' and ''and non-emergency services furnished in a hospital emergency department for which cost sharing may be imposed under subsection (e)'' after ''subsection (c)''.

Subsec. (a)(2), (3). Pub. L. 109–432, § 405(a)(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b)(1), (2). Pub. L. 109–432, § 405(a)(2)(A), struck out '', subject to subsections (c)(2) and (e)(2)(A)'' after ''involved'' in introductory provisions.

Subsec. (b)(3)(A)(i). Pub. L. 109–432, § 405(a)(4)(A), substituted ''child welfare services are made available under part B of subchapter IV on the basis of being a child in foster care'' for ''aid or assistance is made available under part B of subchapter IV to children in foster care''.

Subsec. (b)(3)(A)(vi). Pub. L. 109–432, § 405(a)(3)(B)(i), added cl. (vi).

Subsec. (b)(3)(B)(i). Pub. L. 109–432, § 405(a)(4)(B), substituted ''child welfare services are made available under part B of subchapter IV on the basis of being a child in foster care or'' for ''aid or assistance is made available under part B of subchapter IV to children in foster care''.

Subsec. (b)(3)(B)(ix). Pub. L. 109–432, § 405(a)(3)(B)(ii), added cl. (ix).

Subsec. (c). Pub. L. 109–171, § 6042(a), added subsec. (c).

Subsec. (c)(1). Pub. L. 109–432, § 405(a)(2)(B), substituted ''most (or more) cost effective'' for ''least (or less) costly effective'' in introductory provisions.

Subsec. (c)(1)(B). Pub. L. 109–432, § 405(a)(2)(C), substituted ''be imposed under subsection (a) due to the application of'' for ''otherwise be imposed under''.

Subsec. (c)(2)(B). Pub. L. 109–432, § 405(a)(2)(D), substituted ''not subject to cost sharing under subsection (a) due to the application of paragraph (1)(B)'' for ''otherwise not subject to cost sharing due to the application of subsection (b)(3)(B)''.

Subsec. (c)(2)(C). Pub. L. 109–432, § 405(a)(1)(D), inserted ''under subsection (a)(2)(B) or'' after ''cost sharing applied''.

Subsec. (e). Pub. L. 109–171, § 6043(a), added subsec. (e).

Subsec. (e)(2)(A). Pub. L. 109–432, § 405(a)(2)(E), substituted ''Individuals with family income between 100 and 150 percent of the poverty line'' for ''For poorest beneficiaries'' in heading and ''under subsection (b)(1)(B)(ii)'' for ''under subsection (b)(1)'' in text.

Pub. L. 109–432, § 405(a)(1)(E), inserted ''who is not described in subparagraph (B)'' after ''in subsection (b)(1)''.

Subsec. (e)(2)(B). Pub. L. 109–432, § 405(a)(2)(F), substituted ''described in subsection (a)(2)(A) or who is not subject to cost sharing under subsection (b)(3)(B) with respect to non-emergency services described in paragraph (1)'' for ''who is otherwise not subject to cost sharing under subsection (b)(3)''.

Subsec. (e)(2)(C). Pub. L. 109–432, § 405(a)(2)(G), inserted ''or section 1396*o* of this title'' after ''subsection (a)''.

Pub. L. 109–432, § 405(a)(1)(D), inserted ''under subsection (a)(2)(B) or'' after ''cost sharing applied''.

Subsec. (e)(4)(A). Pub. L. 109–432, § 405(a)(5), struck out ''the physician determines'' after ''a hospital that''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. B, title IV, § 405(a)(6), Dec. 20, 2006, 120 Stat. 2998, provided that: ''The amendments made by this subsection [amending this section] shall take effect as if included in the amendments made by sections [sic] 6041(a) of the Deficit Reduction Act of 2005 [Pub. L. 109–171], except that insofar as such amendments are to, or relate to, subsection (c) or (e) of section 1916A of the Social Security Act [this section], such amendments shall take effect as if included in the amendments made by section 6042 or 6043, respectively, of the Deficit Reduction Act of 2005 [Pub. L. 109–171].''

Pub. L. 109–171, title VI, § 6042(b), Feb. 8, 2006, 120 Stat. 86, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to cost sharing imposed for items and services furnished on or after March 31, 2006.''

Amendment by section 6043(a) of Pub. L. 109–171 applicable to non-emergency services furnished on or after Jan. 1, 2007, see section 6043(c) of Pub. L. 109–171, set out as a note under section 1396b of this title.

EFFECTIVE DATE

Section applicable to cost sharing imposed for items and services furnished on or after Mar. 31, 2006, see section 6041(c) of Pub. L. 109–171, set out as an Effective Date of 2006 Amendment note under section 1396*o* of this title.

§ 1396p. Liens, adjustments and recoveries, and transfers of assets

(a) Imposition of lien against property of an individual on account of medical assistance rendered to him under a State plan

(1) No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except—

(A) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or

(B) in the case of the real property of an individual—

(i) who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs, and

(ii) with respect to whom the State determines, after notice and opportunity for a hearing (in accordance with procedures established by the State), that he cannot reasonably be expected to be discharged from the medical institution and to return home,

except as provided in paragraph (2).

(2) No lien may be imposed under paragraph (1)(B) on such individual's home if—

(A) the spouse of such individual,

(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title, or

(C) a sibling of such individual (who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution),

is lawfully residing in such home.

(3) Any lien imposed with respect to an individual pursuant to paragraph (1)(B) shall dissolve upon that individual's discharge from the medical institution and return home.

(b) Adjustment or recovery of medical assistance correctly paid under a State plan

(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

(A) In the case of an individual described in subsection (a)(1)(B) of this section, the State shall seek adjustment or recovery from the individual's estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the individual.

(B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate, but only for medical assistance consisting of—

(i) nursing facility services, home and community-based services, and related hospital and prescription drug services, or

(ii) at the option of the State, any items or services under the State plan.

(C)(i) In the case of an individual who has received (or is entitled to receive) benefits under a long-term care insurance policy in connection with which assets or resources are disregarded in the manner described in clause (ii), except as provided in such clause, the State shall seek adjustment or recovery from the individual's estate on account of medical assistance paid on behalf of the individual for nursing facility and other long-term care services.

(ii) Clause (i) shall not apply in the case of an individual who received medical assistance under a State plan of a State which had a State plan amendment approved as of May 14, 1993, and which satisfies clause (iv), or which has a State plan amendment that provides for a qualified State long-term care insurance partnership (as defined in clause (iii)) which provided for the disregard of any assets or resources—

(I) to the extent that payments are made under a long-term care insurance policy; or

(II) because an individual has received (or is entitled to receive) benefits under a long-term care insurance policy.

(iii) For purposes of this paragraph, the term ''qualified State long-term care insurance partnership'' means an approved State plan amendment under this subchapter that provides for the disregard of any assets or resources in an amount equal to the insurance

benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy if the following requirements are met:

(I) The policy covers an insured who was a resident of such State when coverage first became effective under the policy.

(II) The policy is a qualified long-term care insurance policy (as defined in section 7702B(b) of the Internal Revenue Code of 1986) issued not earlier than the effective date of the State plan amendment.

(III) The policy meets the model regulations and the requirements of the model Act specified in paragraph (5).

(IV) If the policy is sold to an individual who—

(aa) has not attained age 61 as of the date of purchase, the policy provides compound annual inflation protection;

(bb) has attained age 61 but has not attained age 76 as of such date, the policy provides some level of inflation protection; and

(cc) has attained age 76 as of such date, the policy may (but is not required to) provide some level of inflation protection.

(V) The State Medicaid agency under section 1396a(a)(5) of this title provides information and technical assistance to the State insurance department on the insurance department's role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care.

(VI) The issuer of the policy provides regular reports to the Secretary, in accordance with regulations of the Secretary, that include notification regarding when benefits provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships.

(VII) The State does not impose any requirement affecting the terms or benefits of such a policy unless the State imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with such a partnership.

In the case of a long-term care insurance policy which is exchanged for another such policy, subclause (I) shall be applied based on the coverage of the first such policy that was exchanged. For purposes of this clause and paragraph (5), the term ''long-term care insurance policy'' includes a certificate issued under a group insurance contract.

(iv) With respect to a State which had a State plan amendment approved as of May 14, 1993, such a State satisfies this clause for purposes of clause (ii) if the Secretary determines that the State plan amendment provides for consumer protection standards which are no less stringent than the consumer protection standards which applied under such State plan amendment as of December 31, 2005.

(v) The regulations of the Secretary required under clause (iii)(VI) shall be promulgated after consultation with the National Association of Insurance Commissioners, issuers of long-term care insurance policies, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, and shall specify the type and format of the data and information to be reported and the frequency with which such reports are to be made. The Secretary, as appropriate, shall provide copies of the reports provided in accordance with that clause to the State involved.

(vi) The Secretary, in consultation with other appropriate Federal agencies, issuers of long-term care insurance, the National Association of Insurance Commissioners, State insurance commissioners, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, shall develop recommendations for Congress to authorize and fund a uniform minimum data set to be reported electronically by all issuers of long-term care insurance policies under qualified State long-term care insurance partnerships to a secure, centralized electronic query and report-generating mechanism that the State, the Secretary, and other Federal agencies can access.

(2) Any adjustment or recovery under paragraph (1) may be made only after the death of the individual's surviving spouse, if any, and only at a time—

(A) when he has no surviving child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title; and

(B) in the case of a lien on an individual's home under subsection (a)(1)(B) of this section, when—

(i) no sibling of the individual (who was residing in the individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution), and

(ii) no son or daughter of the individual (who was residing in the individual's home for a period of at least two years immediately before the date of the individual's admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution),

is lawfully residing in such home who has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution.

(3) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency shall waive the application of this subsection (other than paragraph (1)(C)) if such application would work an undue hardship as determined on the basis of criteria established by the Secretary.

(4) For purposes of this subsection, the term ''estate'', with respect to a deceased individual—

(A) shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law; and

(B) may include, at the option of the State (and shall include, in the case of an individual to whom paragraph (1)(C)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

(5)(A) For purposes of clause (iii)(III), the model regulations and the requirements of the model Act specified in this paragraph are:

(i) In the case of the model regulation, the following requirements:

(I) Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and the requirements of section 6B of the model Act relating to such section 6A.

(II) Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph (7) thereof.

(III) Section 6C (relating to extension of benefits).

(IV) Section 6D (relating to continuation or conversion of coverage).

(V) Section 6E (relating to discontinuance and replacement of policies).

(VI) Section 7 (relating to unintentional lapse).

(VII) Section 8 (relating to disclosure), other than sections 8F, 8G, 8H, and 8I thereof.

(VIII) Section 9 (relating to required disclosure of rating practices to consumer).

(IX) Section 11 (relating to prohibitions against post-claims underwriting).

(X) Section 12 (relating to minimum standards).

(XI) Section 14 (relating to application forms and replacement coverage).

(XII) Section 15 (relating to reporting requirements).

(XIII) Section 22 (relating to filing requirements for marketing).

(XIV) Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C.

(XV) Section 24 (relating to suitability).

(XVI) Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

(XVII) The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4).

(XVIII) Section 29 (relating to standard format outline of coverage).

(XIX) Section 30 (relating to requirement to deliver shopper's guide).

(ii) In the case of the model Act, the following:

(I) Section 6C (relating to preexisting conditions).

(II) Section 6D (relating to prior hospitalization).

(III) The provisions of section 8 relating to contingent nonforfeiture benefits.

(IV) Section 6F (relating to right to return).

(V) Section 6G (relating to outline of coverage).

(VI) Section 6H (relating to requirements for certificates under group plans).

(VII) Section 6J (relating to policy summary).

(VIII) Section 6K (relating to monthly reports on accelerated death benefits).

(IX) Section 7 (relating to incontestability period).

(B) For purposes of this paragraph and paragraph (1)(C)—

(i) the terms ''model regulation'' and ''model Act'' mean the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000);

(ii) any provision of the model regulation or model Act listed under subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision; and

(iii) with respect to a long-term care insurance policy issued in a State, the policy shall be deemed to meet applicable requirements of the model regulation or the model Act if the State plan amendment under paragraph (1)(C)(iii) provides that the State insurance commissioner for the State certifies (in a manner satisfactory to the Secretary) that the policy meets such requirements.

(C) Not later than 12 months after the National Association of Insurance Commissioners issues a revision, update, or other modification of a model regulation or model Act provision specified in subparagraph (A), or of any provision of such regulation or Act that is substantively related to a provision specified in such subparagraph, the Secretary shall review the changes made to the provision, determine whether incorporating such changes into the corresponding provision specified in such subparagraph would improve qualified State long-term care insurance partnerships, and if so, shall incorporate the changes into such provision.

(c) Taking into account certain transfers of assets

(1)(A) In order to meet the requirements of this subsection for purposes of section

1396a(a)(18) of this title, the State plan must provide that if an institutionalized individual or the spouse of such an individual (or, at the option of a State, a noninstitutionalized individual or the spouse of such an individual) disposes of assets for less than fair market value on or after the look-back date specified in subparagraph (B)(i), the individual is ineligible for medical assistance for services described in subparagraph (C)(i) (or, in the case of a noninstitutionalized individual, for the services described in subparagraph (C)(ii)) during the period beginning on the date specified in subparagraph (D) and equal to the number of months specified in subparagraph (E).

(B)(i) The look-back date specified in this subparagraph is a date that is 36 months (or, in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to paragraph (3)(A)(iii) or (3)(B)(ii) of subsection (d) of this section or in the case of any other disposal of assets made on or after February 8, 2006, 60 months) before the date specified in clause (ii).

(ii) The date specified in this clause, with respect to—

(I) an institutionalized individual is the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State plan, or

(II) a noninstitutionalized individual is the date on which the individual applies for medical assistance under the State plan or, if later, the date on which the individual disposes of assets for less than fair market value.

(C)(i) The services described in this subparagraph with respect to an institutionalized individual are the following:

(I) Nursing facility services.

(II) A level of care in any institution equivalent to that of nursing facility services.

(III) Home or community-based services furnished under a waiver granted under subsection (c) or (d) of section 1396n of this title.

(ii) The services described in this subparagraph with respect to a noninstitutionalized individual are services (not including any services described in clause (i)) that are described in paragraph (7), (22), or (24) of section 1396d(a) of this title, and, at the option of a State, other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care.

(D)(i) In the case of a transfer of asset made before February 8, 2006, the date specified in this subparagraph is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this subsection.

(ii) In the case of a transfer of asset made on or after February 8, 2006, the date specified in this subparagraph is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection.

(E)(i) With respect to an institutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall be equal to—

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(ii) With respect to a noninstitutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall not be greater than a number equal to—

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(iii) The number of months of ineligibility otherwise determined under clause (i) or (ii) with respect to the disposal of an asset shall be reduced—

(I) in the case of periods of ineligibility determined under clause (i), by the number of months of ineligibility applicable to the individual under clause (ii) as a result of such disposal, and

(II) in the case of periods of ineligibility determined under clause (ii), by the number of months of ineligibility applicable to the individual under clause (i) as a result of such disposal.

(iv) A State shall not round down, or otherwise disregard any fractional period of ineligibility determined under clause (i) or (ii) with respect to the disposal of assets.

(F) For purposes of this paragraph, the purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless—

(i) the State is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual under this subchapter; or

(ii) the State is named as such a beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.

(G) For purposes of this paragraph with respect to a transfer of assets, the term ''assets'' includes an annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or

other long-term care services under this subchapter unless—

(i) the annuity is—

(I) an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986; or

(II) purchased with proceeds from—

(aa) an account or trust described in subsection (a), (c), or (p) of section 408 of such Code;

(bb) a simplified employee pension (within the meaning of section 408(k) of such Code); or

(cc) a Roth IRA described in section 408A of such Code; or

(ii) the annuity—

(I) is irrevocable and nonassignable;

(II) is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and

(III) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

(H) Notwithstanding the preceding provisions of this paragraph, in the case of an individual (or individual's spouse) who makes multiple fractional transfers of assets in more than 1 month for less than fair market value on or after the applicable look-back date specified in subparagraph (B), a State may determine the period of ineligibility applicable to such individual under this paragraph by—

(i) treating the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) during all months on or after the look-back date specified in subparagraph (B) as 1 transfer for purposes of clause (i) or (ii) (as the case may be) of subparagraph (E); and

(ii) beginning such period on the earliest date which would apply under subparagraph (D) to any of such transfers.

(I) For purposes of this paragraph with respect to a transfer of assets, the term ''assets'' includes funds used to purchase a promissory note, loan, or mortgage unless such note, loan, or mortgage—

(i) has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration);

(ii) provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and

(iii) prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan, or mortgage that does not satisfy the requirements of clauses (i) through (iii), the value of such note, loan, or mortgage shall be the outstanding balance due as of the date of the individual's application for medical assistance for services described in subparagraph (C).

(J) For purposes of this paragraph with respect to a transfer of assets, the term ''assets'' includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least 1 year after the date of the purchase.

(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that—

(A) the assets transferred were a home and title to the home was transferred to—

(i) the spouse of such individual;

(ii) a child of such individual who (I) is under age 21, or (II) (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title;

(iii) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(iv) a son or daughter of such individual (other than a child described in clause (ii)) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

(B) the assets—

(i) were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse,

(ii) were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,

(iii) were transferred to, or to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of, the individual's child described in subparagraph (A)(ii)(II), or

(iv) were transferred to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1382c(a)(3) of this title);

(C) a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual; or

(D) the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary.

The procedures established under subparagraph (D) shall permit the facility in which the insti-

tutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual. While an application for an undue hardship waiver is pending under subparagraph (D) in the case of an individual who is a resident of a nursing facility, if the application meets such criteria as the Secretary specifies, the State may provide for payments for nursing facility services in order to hold the bed for the individual at the facility, but not in excess of payments for 30 days.

(3) For purposes of this subsection, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

(4) A State (including a State which has elected treatment under section 1396a(f) of this title) may not provide for any period of ineligibility for an individual due to transfer of resources for less than fair market value except in accordance with this subsection. In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.

(5) In this subsection, the term ''resources'' has the meaning given such term in section 1382b of this title, without regard to the exclusion described in subsection (a)(1) thereof.

(d) Treatment of trust amounts

(1) For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this subchapter, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual.

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

(i) The individual.

(ii) The individual's spouse.

(iii) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.

(iv) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(B) In the case of a trust the corpus of which includes assets of an individual (as determined under subparagraph (A)) and assets of any other person or persons, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual.

(C) Subject to paragraph (4), this subsection shall apply without regard to—

(i) the purposes for which a trust is established,

(ii) whether the trustees have or exercise any discretion under the trust,

(iii) any restrictions on when or whether distributions may be made from the trust, or

(iv) any restrictions on the use of distributions from the trust.

(3)(A) In the case of a revocable trust—

(i) the corpus of the trust shall be considered resources available to the individual,

(ii) payments from the trust to or for the benefit of the individual shall be considered income of the individual, and

(iii) any other payments from the trust shall be considered assets disposed of by the individual for purposes of subsection (c) of this section.

(B) In the case of an irrevocable trust—

(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income—

(I) to or for the benefit of the individual, shall be considered income of the individual, and

(II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c) of this section; and

(ii) any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of subsection (c) of this section, and the value of the trust shall be determined for purposes of such subsection by including the amount of any payments made from such portion of the trust after such date.

(4) This subsection shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.

(B) A trust established in a State for the benefit of an individual if—

(i) the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust),

(ii) the State will receive all amounts remaining in the trust upon the death of such

individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter; and

(iii) the State makes medical assistance available to individuals described in section 1396a(a)(10)(A)(ii)(V) of this title, but does not make such assistance available to individuals for nursing facility services under section 1396a(a)(10)(C) of this title.

(C) A trust containing the assets of an individual who is disabled (as defined in section 1382c(a)(3) of this title) that meets the following conditions:

(i) The trust is established and managed by a non-profit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter.

(5) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency waives the application of this subsection with respect to an individual if the individual establishes that such application would work an undue hardship on the individual as determined on the basis of criteria established by the Secretary.

(6) The term ''trust'' includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the Secretary specifies.

(e) Disclosure and treatment of annuities

(1) In order to meet the requirements of this section for purposes of section 1396a(a)(18) of this title, a State shall require, as a condition for the provision of medical assistance for services described in subsection (c)(1)(C)(i) (relating to long-term care services) for an individual, the application of the individual for such assistance (including any recertification of eligibility for such assistance) shall disclose a description of any interest the individual or community spouse has in an annuity (or similar financial instrument, as may be specified by the Secretary), regardless of whether the annuity is irrevocable or is treated as an asset. Such application or recertification form shall include a statement that under paragraph (2) the State becomes a remainder beneficiary under such an annuity or similar financial instrument by virtue of the provision of such medical assistance.

(2)(A) In the case of disclosure concerning an annuity under subsection (c)(1)(F), the State shall notify the issuer of the annuity of the right of the State under such subsection as a preferred remainder beneficiary in the annuity for medical assistance furnished to the individual. Nothing in this paragraph shall be construed as preventing such an issuer from notifying persons with any other remainder interest of the State's remainder interest under such subsection.

(B) In the case of such an issuer receiving notice under subparagraph (A), the State may require the issuer to notify the State when there is a change in the amount of income or principal being withdrawn from the amount that was being withdrawn at the time of the most recent disclosure described in paragraph (1). A State shall take such information into account in determining the amount of the State's obligations for medical assistance or in the individual's eligibility for such assistance.

(3) The Secretary may provide guidance to States on categories of transactions that may be treated as a transfer of asset for less than fair market value.

(4) Nothing in this subsection shall be construed as preventing a State from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity described in paragraph (1).

(f) Disqualification for long-term care assistance for individuals with substantial home equity

(1)(A) Notwithstanding any other provision of this subchapter, subject to subparagraphs (B) and (C) of this paragraph and paragraph (2), in determining eligibility of an individual for medical assistance with respect to nursing facility services or other long-term care services, the individual shall not be eligible for such assistance if the individual's equity interest in the individual's home exceeds $500,000.

(B) A State may elect, without regard to the requirements of section 1396a(a)(1) of this title (relating to statewideness) and section 1396a(a)(10)(B) of this title (relating to comparability), to apply subparagraph (A) by substituting for ''$500,000'', an amount that exceeds such amount, but does not exceed $750,000.

(C) The dollar amounts specified in this paragraph shall be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest $1,000.

(2) Paragraph (1) shall not apply with respect to an individual if—

(A) the spouse of such individual, or

(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title,

is lawfully residing in the individual's home.

(3) Nothing in this subsection shall be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.

(4) The Secretary shall establish a process whereby paragraph (1) is waived in the case of a demonstrated hardship.

(g) Treatment of entrance fees of individuals residing in continuing care retirement communities

(1) In general

For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this subchapter, the rules specified in paragraph (2) shall apply to individuals residing in continuing care retirement communities or life care communities that collect an entrance fee on admission from such individuals.

(2) Treatment of entrance fee

For purposes of this subsection, an individual's entrance fee in a continuing care retirement community or life care community shall be considered a resource available to the individual to the extent that—

(A) the individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;

(B) the individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

(C) the entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

(h) Definitions

In this section, the following definitions shall apply:

(1) The term ''assets'', with respect to an individual, includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action—

(A) by the individual or such individual's spouse,

(B) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse, or

(C) by any person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse.

(2) The term ''income'' has the meaning given such term in section 1382a of this title.

(3) The term ''institutionalized individual'' means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title.

(4) The term ''noninstitutionalized individual'' means an individual receiving any of the services specified in subsection (c)(1)(C)(ii) of this section.

(5) The term ''resources'' has the meaning given such term in section 1382b of this title, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

(Aug. 14, 1935, ch. 531, title XIX, § 1917, as added Pub. L. 97–248, title I, § 132(b), Sept. 3, 1982, 96 Stat. 370; amended Pub. L. 97–448, title III, § 309(b)(21), (22), Jan. 12, 1983, 96 Stat. 2410; Pub. L. 100–203, title IV, § 4211(h)(12), Dec. 22, 1987, 101 Stat. 1330–207; Pub. L. 100–360, title III, § 303(b), title IV, § 411(*l*)(3)(I), July 1, 1988, 102 Stat. 760, 803; Pub. L. 100–485, title VI, § 608(d)(16)(B), Oct. 13, 1988, 102 Stat. 2417; Pub. L. 101–239, title VI, § 6411(e)(1), Dec. 19, 1989, 103 Stat. 2271; Pub. L. 103–66, title XIII, §§ 13611(a)–(c), 13612(a)–(c), Aug. 10, 1993, 107 Stat. 622–628; Pub. L. 109–171, title VI, §§ 6011(a), (b), (e), 6012(a)–(c), 6014(a), 6015(b), 6016(a)–(d), 6021(a)(1), Feb. 8, 2006, 120 Stat. 61–68; Pub. L. 109–432, div. B, title IV, § 405(b)(1), Dec. 20, 2006, 120 Stat. 2998.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (b)(1)(C)(iii)(II) and (c)(1)(G)(i), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2006—Subsec. (b)(1)(C)(ii). Pub. L. 109–171, § 6021(a)(1)(A)(i), inserted ''and which satisfies clause (iv), or which has a State plan amendment that provides for a qualified State long-term care insurance partnership (as defined in clause (iii))'' after ''1993,'' in introductory provisions.

Subsec. (b)(1)(C)(iii) to (vi). Pub. L. 109–171, § 6021(a)(1)(A)(ii), added cls. (iii) to (vi).

Subsec. (b)(5). Pub. L. 109–171, § 6021(a)(1)(B), added par. (5).

Subsec. (c)(1)(B)(i). Pub. L. 109–171, § 6011(a), inserted ''or in the case of any other disposal of assets made on or after February 8, 2006'' before '', 60 months''.

Subsec. (c)(1)(D). Pub. L. 109–171, § 6011(b), designated existing provisions as cl. (i), substituted ''In the case of a transfer of asset made before February 8, 2006, the date'' for ''The date'', and added cl. (ii).

Subsec. (c)(1)(E)(iv). Pub. L. 109–171, § 6016(a), added cl. (iv).

Subsec. (c)(1)(F). Pub. L. 109–171, § 6012(b), added subpar. (F).

Subsec. (c)(1)(F)(i). Pub. L. 109–432 substituted ''institutionalized individual'' for ''annuitant''.

Subsec. (c)(1)(G). Pub. L. 109–171, § 6012(c), added subpar. (G).

Subsec. (c)(1)(H). Pub. L. 109–171, § 6016(b), added subpar. (H).

Subsec. (c)(1)(I). Pub. L. 109–171, § 6016(c), added subpar. (I).

Subsec. (c)(1)(J). Pub. L. 109–171, § 6016(d), added subpar. (J).

Subsec. (c)(2). Pub. L. 109–171, § 6011(e), substituted period for semicolon at end and inserted concluding provisions.

Subsec. (e). Pub. L. 109–171, § 6012(a), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109–171, § 6014(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 109–171, § 6012(a), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 109–171, § 6015(b), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 109–171, § 6014(a), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 109–171, § 6015(b), redesignated subsec. (g) as (h).

1993—Subsec. (b)(1). Pub. L. 103–66, § 13612(a), substituted ''except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:'' and subpars. (A) to (C) for ''except—'' and former subpars. (A) and (B) which read as follows:

''(A) in the case of an individual described in subsection (a)(1)(B) of this section, from his estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of such individual, and

''(B) in the case of any other individual who was 65 years of age or older when he received such assistance, from his estate.''

Subsec. (b)(3). Pub. L. 103–66, § 13612(b), added par. (3).

Subsec. (b)(4). Pub. L. 103–66, § 13612(c), added par. (4).

Subsec. (c)(1). Pub. L. 103–66, § 13611(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In order to meet the requirements of this subsection (for purposes of section 1396a(a)(51)(B) of this title), the State plan must provide for a period of ineligibility for nursing facility services and for a level of care in a medical institution equivalent to that of nursing facility services and for services under section 1396n(c) of this title in the case of an institutionalized individual (as defined in paragraph (3)) who, or whose spouse, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on such date) or, if the individual is not so entitled, the date the individual applies for such assistance while an institutionalized individual, disposed of resources for less than fair market value. The period of ineligibility shall begin with the month in which such resources were transferred and the number of months in such period shall be equal to the lesser of—

''(A) 30 months, or

''(B)(i) the total uncompensated value of the resources so transferred, divided by (ii) the average cost, to a private patient at the time of the application, of nursing facility services in the State or, at State option, in the community in which the individual is institutionalized.''

Subsec. (c)(2)(A). Pub. L. 103–66, § 13611(a)(2)(A), substituted ''assets'' for ''resources'' in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 103–66, § 13611(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the resources were transferred (i) to or from (or to another for the sole benefit of) the individual's spouse, or (ii) to the individual's child described in subparagraph (A)(ii)(II);''.

Subsec. (c)(2)(C). Pub. L. 103–66, § 13611(a)(2)(C), in introductory provisions, substituted ''with regulations'' for ''with any regulations'', in cl. (i), substituted ''assets'' for ''resources'' and struck out ''or'' at end, in cl. (ii), substituted ''assets'' for ''resources'' and '', or'' for ''; or'', and added cl. (iii).

Subsec. (c)(2)(D). Pub. L. 103–66, § 13611(a)(2)(D), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''the State determines that denial of eligibility would work an undue hardship.''

Subsec. (c)(3). Pub. L. 103–66, § 13611(a)(2)(E), added par. (3) and struck out former par. (3) which read as follows: ''In this subsection, the term 'institutionalized individual' means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title.''

Subsec. (c)(4). Pub. L. 103–66, § 13611(a)(2)(F), inserted at end ''In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.''

Subsec. (d). Pub. L. 103–66, § 13611(b), added subsec. (d).

Subsec. (e). Pub. L. 103–66, § 13611(c), added subsec. (e).

1989—Subsec. (c)(1). Pub. L. 101–239, § 6411(e)(1)(A), inserted ''or whose spouse,'' after ''an institutionalized individual (as defined in paragraph (3)) who,''.

Subsec. (c)(2)(B)(i). Pub. L. 101–239, § 6411(e)(1)(B)(i), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''to (or to another for the sole benefit of) the community spouse, as defined in section 1396r–5(h)(2) of this title,,''.

Subsec. (c)(2)(B)(ii), (iii). Pub. L. 101–239, § 6411(e)(1)(B)(ii), struck out '', or'' after ''subparagraph (A)(ii)(II)'' in cl. (ii) and struck out cl. (iii) which read as follows: ''to (or to another for the sole benefit of) the individual's spouse if such spouse does not transfer such resources to another person other than the spouse for less than fair market value''.

1988—Subsec. (c). Pub. L. 100–360, § 303(b), amended subsec. (c) generally, substituting pars. (1) to (4) relating to taking into account certain transfers of assets, for former pars. (1) to (3) relating to denial of medical assistance, period of eligibility, and exceptions.

Subsec. (c)(1). Pub. L. 100–485, § 608(d)(16)(B)(i), substituted ''period of ineligibility for nursing facility services and for a level of care in a medical institution equivalent to that of nursing facility services and for services under section 1396n(c) of this title in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on such date) or, if the individual is not so entitled, the date the individual applies for such assistance while an institutionalized individual'' for ''period of ineligibility in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during the 30-month period immediately before the individual's application for medical assistance under the State plan''.

Subsec. (c)(2)(A)(ii). Pub. L. 100–485, § 608(d)(16)(B)(ii), inserted subcl. (I) and (II) designations.

Subsec. (c)(2)(A)(iii). Pub. L. 100–485, § 608(d)(16)(B)(iii), substituted ''the individual becomes an institutionalized individual'' for ''of the individual's admission to the medical institution or nursing facility''.

Subsec. (c)(2)(A)(iv). Pub. L. 100–485, § 608(d)(16)(B)(iv), substituted ''the individual becomes an institutionalized individual'' for ''of such individual's admission to the medical institution or nursing facility''.

Subsec. (c)(2)(B). Pub. L. 100–485, § 608(d)(16)(B)(v), inserted cl. (i) designation, substituted ''section 1396r–5(h)(2) of this title,,'' for ''section 1396r–5(h)(2) of this title, or the individual's child who is blind or permanently and totally disabled'', and added cl. (ii).

Subsec. (c)(2)(B)(ii). Pub. L. 100–360, § 411(*l*)(3)(I), amended Pub. L. 100–203, § 4211(h)(12)(B), see 1987 Amendment note below.

Subsec. (c)(3). Pub. L. 100–485, § 608(d)(16)(B)(vi), substituted ''in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title'' for ''in a medical institution or nursing facility''.

Subsec. (c)(5). Pub. L. 100–485, § 608(d)(16)(B)(vii), added par. (5).

1987—Subsecs. (a)(1)(B)(i), (c)(2)(B)(i). Pub. L. 100–203, § 4211(h)(12)(A), substituted ''nursing facility, intermediate care facility for the mentally retarded'' for ''skilled nursing facility, intermediate care facility''.

Subsec. (c)(2)(B)(ii). Pub. L. 100–203, § 4211(h)(12)(B), as amended by Pub. L. 100–360, § 411(*l*)(3)(I), substituted ''a nursing facility'' for ''a skilled nursing facility'' in two places each in subcls. (I) and (II).

1983—Subsec. (b)(2)(B). Pub. L. 97–448, § 309(b)(21), substituted ''who'' for ''and'' before ''has lawfully resided''.

Subsec. (c)(2)(B)(iii). Pub. L. 97–448, § 309(b)(22), substituted in subcl. (I) ''can'' for ''cannot'' and struck out from subcl. (IV) the introductory word ''if''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. B, title IV, § 405(b)(2), Dec. 20, 2006, 120 Stat. 2998, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 6012 of the Deficit Reduction Act of 2005 [Pub. L. 109–171].''

Pub. L. 109–171, title VI, § 6011(c), Feb. 8, 2006, 120 Stat. 62, provided that: ''The amendments made by this section [amending this section] shall apply to transfers made on or after the date of the enactment of this Act [Feb. 8, 2006].''

Pub. L. 109–171, title VI, § 6012(d), Feb. 8, 2006, 120 Stat. 64, provided that: ''The amendments made by this section [amending this section] shall apply to transactions (including the purchase of an annuity) occurring on or after the date of the enactment of this Act [Feb. 8, 2006].''

Pub. L. 109–171, title VI, § 6014(b), Feb. 8, 2006, 120 Stat. 65, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to individuals who are determined eligible for medical assistance with respect to nursing facility services or other long-term care services based on an application filed on or after January 1, 2006.''

Pub. L. 109–171, title VI, § 6016(e), Feb. 8, 2006, 120 Stat. 67, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section] shall apply to payments under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for calendar quarters beginning on or after the date of enactment of this Act [Feb. 8, 2006], without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) EXCEPTIONS.—The amendments made by this section shall not apply—

''(A) to medical assistance provided for services furnished before the date of enactment;

''(B) with respect to assets disposed of on or before the date of enactment of this Act; or

''(C) with respect to trusts established on or before the date of enactment of this Act.

''(3) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by a provision of this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13611(e) of Pub. L. 103–66 provided that:

''(1) The amendments made by this section [amending this section and sections 1396a and 1396r–5 of this title] shall apply, except as provided in this subsection, to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) The amendments made by this section shall not apply—

''(A) to medical assistance provided for services furnished before October 1, 1993,

''(B) with respect to assets disposed of on or before the date of the enactment of this Act [Aug. 10, 1993], or

''(C) with respect to trusts established on or before the date of the enactment of this Act.

''(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendment made by subsection (b) [amending this section], the State plan shall not be regarded as failing to comply with the requirements imposed by such amendment solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 13612(d) of Pub. L. 103–66 provided that:

''(1)(A) Except as provided in subparagraph (B), the amendments made by this section [amending this section] shall apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements imposed by such amendments solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

''(2) The amendments made by this section shall not apply to individuals who died before October 1, 1993.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to transfers occurring after Dec. 19, 1989, see section 6411(e)(4) of Pub. L. 101–239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 303(b) of Pub. L. 100–360 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1988 (except in certain situations requiring State legislative action), without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, and subsection (c) of this section, as amended by section 303(b) of Pub. L. 100–360, applicable to resources disposed of on or after July 1, 1988, but not applicable with respect to inter-spousal transfers occurring before Oct. 1, 1989, see section 303(g)(2), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(*l*)(3)(I) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L.

100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE

Section 132(d) of Pub. L. 97–248 provided that: ''The amendments made by this section [enacting this section and amending section 1396a of this title] shall become effective on the date of the enactment of this Act [Sept. 3, 1982], but the provisions of section 1917(c)(2)(B) of the Social Security Act [subsec. (c)(2)(B) of this section] shall not apply with respect to a transfer of assets which took place prior to such date of enactment.''

AVAILABILITY OF HARDSHIP WAIVERS

Pub. L. 109–171, title VI, § 6011(d), Feb. 8, 2006, 120 Stat. 62, provided that: ''Each State shall provide for a hardship waiver process in accordance with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C. 1396p(c)(2)(D))—

''(1) under which an undue hardship exists when application of the transfer of assets provision would deprive the individual—

''(A) of medical care such that the individual's health or life would be endangered; or

''(B) of food, clothing, shelter, or other necessities of life; and

''(2) which provides for—

''(A) notice to recipients that an undue hardship exception exists;

''(B) a timely process for determining whether an undue hardship waiver will be granted; and

''(C) a process under which an adverse determination can be appealed.''

EXPANSION OF STATE LONG-TERM CARE PARTNERSHIP PROGRAM

Pub. L. 109–171, title VI, § 6021, Feb. 8, 2006, 120 Stat. 68, provided that:

''(a) EXPANSION AUTHORITY.—

''(1) IN GENERAL.—[Amended this section.]

''(2) STATE REPORTING REQUIREMENTS.—Nothing in clauses (iii)(VI) and (v) of section 1917(b)(1)(C) of the Social Security Act [subsec. (b)(1)(C)(iii)(VI), (v) of this section] (as added by paragraph (1)) shall be construed as prohibiting a State from requiring an issuer of a long-term care insurance policy sold in the State (regardless of whether the policy is issued under a qualified State long-term care insurance partnership under section 1917(b)(1)(C)(iii) of such Act) to require the issuer to report information or data to the State that is in addition to the information or data required under such clauses.

''(3) EFFECTIVE DATE.—A State plan amendment that provides for a qualified State long-term care insurance partnership under the amendments made by paragraph (1) may provide that such amendment is effective for long-term care insurance policies issued on or after a date, specified in the amendment, that is not earlier than the first day of the first calendar quarter in which the plan amendment was submitted to the Secretary of Health and Human Services.

''(b) STANDARDS FOR RECIPROCAL RECOGNITION AMONG PARTNERSHIP STATES.—In order to permit portability in long-term care insurance policies purchased under State long-term care insurance partnerships, the Secretary of Health and Human Services shall develop, not later than January 1, 2007, and in consultation with the National Association of Insurance Commissioners, issuers of long-term care insurance policies, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, standards for uniform reciprocal recognition of such policies among States with qualified State long-term care insurance partnerships under which—

''(1) benefits paid under such policies will be treated the same by all such States; and

''(2) States with such partnerships shall be subject to such standards unless the State notifies the Secretary in writing of the State's election to be exempt from such standards.

''(c) ANNUAL REPORTS TO CONGRESS.—

''(1) IN GENERAL.—The Secretary of Health and Human Services shall annually report to Congress on the long-term care insurance partnerships established in accordance with section 1917(b)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(ii)) (as amended by subsection (a)(1)). Such reports shall include analyses of the extent to which such partnerships expand or limit access of individuals to long-term care and the impact of such partnerships on Federal and State expenditures under the Medicare and Medicaid programs. Nothing in this section shall be construed as requiring the Secretary to conduct an independent review of each long-term care insurance policy offered under or in connection with such a partnership.

''(2) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services, $1,000,000 for the period of fiscal years 2006 through 2010 to carry out paragraph (1).

''(d) NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION.—

''(1) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a National Clearinghouse for Long-Term Care Information. The Clearinghouse may be established through a contract or interagency agreement.

''(2) DUTIES.—

''(A) IN GENERAL.—The National Clearinghouse for Long-Term Care Information shall—

''(i) educate consumers with respect to the availability and limitations of coverage for long-term care under the Medicaid program and provide contact information for obtaining State-specific information on long-term care coverage, including eligibility and estate recovery requirements under State Medicaid programs;

''(ii) provide objective information to assist consumers with the decisionmaking process for determining whether to purchase long-term care insurance or to pursue other private market alternatives for purchasing long-term care and provide contact information for additional objective resources on planning for long-term care needs; and

''(iii) maintain a list of States with State long-term care insurance partnerships under the Medicaid program that provide reciprocal recognition of long-term care insurance policies issued under such partnerships.

''(B) REQUIREMENT.—In providing information to consumers on long-term care in accordance with this subsection, the National Clearinghouse for Long-Term Care Information shall not advocate in favor of a specific long-term care insurance provider or a specific long-term care insurance policy.

''(3) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this subsection, $3,000,000 for each of fiscal years 2006 through 2010.''

§ 1396q. Application of provisions of subchapter II relating to subpoenas

The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter, except that, in so applying such subsections, and in applying section 405(*l*) of this title thereto, with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(Aug. 14, 1935, ch. 531, title XIX, § 1918, as added Pub. L. 98–369, div. B, title III, § 2370(a), July 18, 1984, 98 Stat. 1110; amended Pub. L. 103–296, title I, § 108(d)(5), Aug. 15, 1994, 108 Stat. 1486.)

AMENDMENTS

1994—Pub. L. 103–296 inserted before period at end ", except that, in so applying such subsections, and in applying section 405(*l*) of this title thereto, with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 2370(b) of Pub. L. 98–369 provided that: "The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

§ 1396r. Requirements for nursing facilities

(a) "Nursing facility" defined

In this subchapter, the term "nursing facility" means an institution (or a distinct part of an institution) which—

(1) is primarily engaged in providing to residents—

(A) skilled nursing care and related services for residents who require medical or nursing care,

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities,

and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1395x(*l*) of this title) with one or more hospitals having agreements in effect under section 1395cc of this title; and

(3) meets the requirements for a nursing facility described in subsections (b), (c), and (d) of this section.

Such term also includes any facility which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of paragraph (1) and subsections (b), (c), and (d) of this section.

(b) Requirements relating to provision of services

(1) Quality of life

(A) In general

A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

(B) Quality assessment and assurance

A nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) Scope of services and activities under plan of care

A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care which—

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) Residents' assessment

(A) Requirement

A nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment—

(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;

(iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and

(iv) includes the identification of medical problems.

(B) Certification

(i) In general

Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) Penalty for falsification

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

(III) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Use of independent assessors

If a State determines, under a survey under subsection (g) of this section or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) Frequency

(i) In general

Such an assessment must be conducted—

(I) promptly upon (but no later than 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident's physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) Resident review

The nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

(D) Use

The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

(E) Coordination

Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort. In addition, a nursing facility shall notify the State mental health authority or State mental retardation or developmental disability authority, as applicable, promptly after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded.

(F) Requirements relating to preadmission screening for mentally ill and mentally retarded individuals

Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A) of this section, a nursing facility must not admit, on or after January 1, 1989, any new resident who—

(i) is mentally ill (as defined in subsection (e)(7)(G)(i) of this section) unless the State mental health authority has determined (based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority) prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental illness, or

(ii) is mentally retarded (as defined in subsection (e)(7)(G)(ii) of this section) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental retardation.

A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(4) Provision of services and activities

(A) In general

To the extent needed to fulfill all plans of care described in paragraph (2), a nursing facility must provide (or arrange for the provision of)—

(i) nursing and related services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(ii) medically-related social services to attain or maintain the highest practicable

physical, mental, and psychosocial well-being of each resident;

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of each resident; and

(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality.

(B) Qualified persons providing services

Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

(C) Required nursing care; facility waivers

(i) General requirements

With respect to nursing facility services provided on or after October 1, 1990, a nursing facility—

(I) except as provided in clause (ii), must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents, and

(II) except as provided in clause (ii), must use the services of a registered professional nurse for at least 8 consecutive hours a day, 7 days a week.

(ii) Waiver by State

To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if—

(I) the facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel,

(II) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility,

(III) the State finds that, for any such periods in which licensed nursing services are not available, a registered professional nurse or a physician is obligated to respond immediately to telephone calls from the facility,

(IV) the State agency granting a waiver of such requirements provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12)[1] of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

(V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this clause shall be subject to annual review and to the review of the Secretary and subject to clause (iii) shall be accepted by the Secretary for purposes of this subchapter to the same extent as is the State's certification of the facility. In granting or renewing a waiver, a State may require the facility to use other qualified, licensed personnel.

(iii) Assumption of waiver authority by Secretary

If the Secretary determines that a State has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements, the Secretary shall assume and exercise the authority of the State to grant waivers.

(5) Required training of nurse aides

(A) In general

(i) Except as provided in clause (ii), a nursing facility must not use on a full-time basis any individual as a nurse aide in the facility on or after October 1, 1990, for more than 4 months unless the individual—

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A) of this section, and

(II) is competent to provide nursing or nursing-related services.

(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) Offering competency evaluation programs for current employees

A nursing facility must provide, for individuals used as a nurse aide by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) of this section and such preparation as may be necessary for the individual to complete such a program by October 1, 1990.

(C) Competency

The nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the

[1] See References in Text note below.

State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(D) Re-training required

For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program, or a new competency evaluation program.

(E) Regular in-service education

The nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(F) "Nurse aide" defined

In this paragraph, the term ''nurse aide'' means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or

(ii) who volunteers to provide such services without monetary compensation.

(G) Licensed health professional defined

In this paragraph, the term ''licensed health professional'' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(6) Physician supervision and clinical records

A nursing facility must—

(A) require that the health care of every resident be provided under the supervision of a physician (or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician);

(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)), as well as the results of any preadmission screening conducted under subsection (e)(7) of this section.

(7) Required social services

In the case of a nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

(8) Information on nurse staffing

(A) In general

A nursing facility shall post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. The information shall be displayed in a uniform manner (as specified by the Secretary) and in a clearly visible place.

(B) Publication of data

A nursing facility shall, upon request, make available to the public the nursing staff data described in subparagraph (A).

(c) Requirements relating to residents' rights

(1) General rights

(A) Specified rights

A nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) Free choice

The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) Free from restraints

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

(I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) Privacy

The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) Confidentiality

The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's

legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) Accommodation of needs

The right—

(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or roommate of the resident in the facility is changed.

(vi) Grievances

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(vii) Participation in resident and family groups

The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(viii) Participation in other activities

The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(ix) Examination of survey results

The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

(x) Refusal of certain transfers

The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of subchapter XVIII of this chapter) to a portion of the facility that is such a skilled nursing facility.

(xi) Other rights

Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this subchapter or a State's entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident.

(B) Notice of rights

A nursing facility must—

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility and of the requirements and procedures for establishing eligibility for medical assistance under this subchapter, including the right to request an assessment under section 1396r–5(c)(1)(B) of this title;

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under subsection (e)(6) of this section;

(iii) inform each resident who is entitled to medical assistance under this subchapter—

(I) at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services (including those specified under section 1396a(a)(28)(B) of this title) that are included in nursing facility services under the State plan and for which the resident may not be charged (except as permitted in section 1396*o* of this title), and of those other items and services that the facility offers and for which the resident may be charged and the amount of the charges for such items and services, and

(II) of changes in the items and services described in subclause (I) and of changes in the charges imposed for items and services described in that subclause; and

(iv) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under subchapter XVIII of this chapter or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) Rights of incompetent residents

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

(D) Use of psychopharmacologic drugs

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent, external consultant reviews the appro-

priateness of the drug plan of each resident receiving such drugs.

(2) Transfer and discharge rights

(A) In general

A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XVIII of this chapter on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this subchapter after admission to the facility, only charges which may be imposed under this subchapter shall be considered to be allowable.

(B) Pre-transfer and pre-discharge notice

(i) In general

Before effecting a transfer or discharge of a resident, a nursing facility must—

(I) notify the resident (and, if known, an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice

The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

(iii) Items included in notice

Each notice under clause (i) must include—

(I) for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section;

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]);

(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.]; and

(IV) in the case of mentally ill residents (as defined in subsection (e)(7)(G)(i) of this section), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act[2] [42 U.S.C. 10801 et seq.].

(C) Orientation

A nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(D) Notice on bed-hold policy and readmission

(i) Notice before transfer

Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning—

(I) the provisions of the State plan under this subchapter regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

(ii) Notice upon transfer

At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing

[2] See References in Text note below.

facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

(iii) Permitting resident to return

A nursing facility must establish and follow a written policy under which a resident—

(I) who is eligible for medical assistance for nursing facility services under a State plan,

(II) who is transferred from the facility for hospitalization or therapeutic leave, and

(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semiprivate room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

(E) Information respecting advance directives

A nursing facility must comply with the requirement of section 1396a(w) of this title (relating to maintaining written policies and procedures respecting advance directives).

(F) Continuing rights in case of voluntary withdrawal from participation

(i) In general

In the case of a nursing facility that voluntarily withdraws from participation in a State plan under this subchapter but continues to provide services of the type provided by nursing facilities—

(I) the facility's voluntary withdrawal from participation is not an acceptable basis for the transfer or discharge of residents of the facility who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to medical assistance as of such day);

(II) the provisions of this section continue to apply to such residents until the date of their discharge from the facility; and

(III) in the case of each individual who begins residence in the facility after the effective date of such withdrawal, the facility shall provide notice orally and in a prominent manner in writing on a separate page at the time the individual begins residence of the information described in clause (ii) and shall obtain from each such individual at such time an acknowledgment of receipt of such information that is in writing, signed by the individual, and separate from other documents signed by such individual.

Nothing in this subparagraph shall be construed as affecting any requirement of a participation agreement that a nursing facility provide advance notice to the State or the Secretary, or both, of its intention to terminate the agreement.

(ii) Information for new residents

The information described in this clause for a resident is the following:

(I) The facility is not participating in the program under this subchapter with respect to that resident.

(II) The facility may transfer or discharge the resident from the facility at such time as the resident is unable to pay the charges of the facility, even though the resident may have become eligible for medical assistance for nursing facility services under this subchapter.

(iii) Continuation of payments and oversight authority

Notwithstanding any other provision of this subchapter, with respect to the residents described in clause (i)(I), a participation agreement of a facility described in clause (i) is deemed to continue in effect under such plan after the effective date of the facility's voluntary withdrawal from participation under the State plan for purposes of—

(I) receiving payments under the State plan for nursing facility services provided to such residents;

(II) maintaining compliance with all applicable requirements of this subchapter; and

(III) continuing to apply the survey, certification, and enforcement authority provided under subsections (g) and (h) of this section (including involuntary termination of a participation agreement deemed continued under this clause).

(iv) No application to new residents

This paragraph (other than subclause (III) of clause (i)) shall not apply to an individual who begins residence in a facility on or after the effective date of the withdrawal from participation under this subparagraph.

(3) Access and visitation rights

A nursing facility must—

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident's individual physician;

(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representa-

tive) and consistent with State law, to examine a resident's clinical records.

(4) Equal access to quality care

(A) In general

A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

(B) Construction

(i) Nothing prohibiting any charges for non-medicaid patients

Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice in paragraph (1)(B) describing such charges.

(ii) No additional services required

Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

(5) Admissions policy

(A) Admissions

With respect to admissions practices, a nursing facility must—

(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or subchapter XVIII of this chapter, (II) subject to subparagraph (B)(v), not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or subchapter XVIII of this chapter, and (III) prominently display in the facility written information, and provide to such individuals oral and written information, about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits;

(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility; and

(iii) in the case of an individual who is entitled to medical assistance for nursing facility services, not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this subchapter, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay in the facility.

(B) Construction

(i) No preemption of stricter standards

Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under the State plan with respect to admissions practices of nursing facilities.

(ii) Contracts with legal representatives

Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(iii) Charges for additional services requested

Subparagraph (A)(iii) shall not be construed as preventing a facility from charging a resident, eligible for medical assistance under the State plan, for items or services the resident has requested and received and that are not specified in the State plan as included in the term ''nursing facility services''.

(iv) Bona fide contributions

Subparagraph (A)(iii) shall not be construed as prohibiting a nursing facility from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such contribution is not a condition of admission, expediting admission, or continued stay in the facility.

(v) Treatment of continuing care retirement communities admission contracts

Notwithstanding subclause (II) of subparagraph (A)(i), subject to subsections (c) and (d) of section 1396r–5 of this title, contracts for admission to a State licensed, registered, certified, or equivalent continuing care retirement community or life care community, including services in a nursing facility that is part of such community, may require residents to spend on their care resources declared for the purposes of admission before applying for medical assistance.

(6) Protection of resident funds

(A) In general

The nursing facility—

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) Management of personal funds

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit

The facility must deposit any amount of personal funds in excess of $50 with respect to a resident in an interest bearing account (or accounts) that is separate from

any of the facility's operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a noninterest bearing account or petty cash fund.

(ii) Accounting and records

The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Notice of certain balances

The facility must notify each resident receiving medical assistance under the State plan under this subchapter when the amount in the resident's account reaches $200 less than the dollar amount determined under section 1382(a)(3)(B) of this title and the fact that if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance or for benefits under subchapter XVI of this chapter.

(iv) Conveyance upon death

Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

(C) Assurance of financial security

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(D) Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XVIII of this chapter.

(7) Limitation on charges in case of medicaid-eligible individuals

(A) In general

A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan under this subchapter, that exceed the payment amounts established by the State for such services under this subchapter.

(B) "Certain medicaid-eligible individual" defined

In subparagraph (A), the term ''certain medicaid-eligible individual'' means an individual who is entitled to medical assistance for nursing facility services in the facility under this subchapter but with respect to whom such benefits are not being paid because, in determining the amount of the individual's income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this subchapter.

(8) Posting of survey results

A nursing facility must post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility conducted under subsection (g) of this section.

(d) Requirements relating to administration and other matters

(1) Administration

(A) In general

A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5) of this section).

(B) Required notices

If a change occurs in—

(i) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the facility,

(iii) the corporation, association, or other company responsible for the management of the facility, or

(iv) the individual who is the administrator or director of nursing of the facility,

the nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) Nursing facility administrator

The administrator of a nursing facility must meet standards established by the Secretary under subsection (f)(4) of this section.

(2) Licensing and Life Safety Code

(A) Licensing

A nursing facility must be licensed under applicable State and local law.

(B) Life Safety Code

A nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiv-

er would not adversely affect the health and safety of residents or personnel, and

(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in nursing facilities.

(3) Sanitary and infection control and physical environment

A nursing facility must—

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

(4) Miscellaneous

(A) Compliance with Federal, State, and local laws and professional standards

A nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

(B) Other

A nursing facility must meet such other requirements relating to the health and safety of residents or relating to the physical facilities thereof as the Secretary may find necessary.

(e) State requirements relating to nursing facility requirements

As a condition of approval of its plan under this subchapter, a State must provide for the following:

(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs

The State must—

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) of this section and that meet the requirements established under subsection (f)(2) of this section, and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii) of this section.

The failure of the Secretary to establish requirements under subsection (f)(2) of this section shall not relieve any State of its responsibility under this paragraph.

(2) Nurse aide registry

(A) In general

By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) Information in registry

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

(C) Prohibition against charges

A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) State appeals process for transfers and discharges

The State, for transfers and discharges from nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism, meeting the guidelines established under subsection (f)(3) of this section, for hearing appeals on transfers and discharges of residents of such facilities; but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph.

(4) Nursing facility administrator standards

By not later than July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of nursing facilities.

(5) Specification of resident assessment instrument

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii) of this section. Such instrument shall be—

(A) one of the instruments designated under subsection (f)(6)(B) of this section, or

(B) an instrument which the Secretary has approved as being consistent with the mini-

mum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A) of this section.

(6) Notice of medicaid rights

Each State, as a condition of approval of its plan under this subchapter, effective April 1, 1988, must develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this subchapter.

(7) State requirements for preadmission screening and resident review

(A) Preadmission screening

(i) In general

Effective January 1, 1989, the State must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (f)(8) of this section) described in subsection (b)(3)(F) of this section for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) of this section shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).

(ii) Clarification with respect to certain readmissions

The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

(iii) Exception for certain hospital discharges

The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual—

(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

(II) who requires nursing facility services for the condition for which the individual received care in the hospital, and

(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.

(B) State requirement for resident review

(i) For mentally ill residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) of this section and based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority)—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1396d(h) of this title) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and

(II) whether or not the resident requires specialized services for mental illness.

(ii) For mentally retarded residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8) of this section)—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1396d(d) of this title; and

(II) whether or not the resident requires specialized services for mental retardation.

(iii) Review required upon change in resident's condition

A review and determination under clause (i) or (ii) must be conducted promptly after a nursing facility has notified the State mental health authority or State mental retardation or developmental disability authority, as applicable, under subsection (b)(3)(E) of this section with respect to a mentally ill or mentally retarded resident, that there has been a significant change in the resident's physical or mental condition.

(iv) Prohibition of delegation

A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(C) Response to preadmission screening and resident review

As of April 1, 1990, the State must meet the following requirements:

(i) Long-term residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the

State must, in consultation with the resident's family or legal representative and care-givers—

(I) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

(II) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

(III) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

(IV) regardless of the resident's choice, provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

A State shall not be denied payment under this subchapter for nursing facility services for a resident described in this clause because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

(ii) Other residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2) of this section,

(II) prepare and orient the resident for such discharge, and

(III) provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

(iii) Residents not requiring nursing facility services and not requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility and not to require specialized services for mental illness or mental retardation, the State must—

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2) of this section, and

(II) prepare and orient the resident for such discharge.

(iv) Annual report

Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).

(D) Denial of payment

(i) For failure to conduct preadmission screening or review

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual for whom a determination is required under subsection (b)(3)(F) of this section or subparagraph (B) but for whom the determination is not made.

(ii) For certain residents not requiring nursing facility level of services

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility.

(E) Permitting alternative disposition plans

With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under subparagraph (B) not to require the level of services of such a facility, but who require specialized services for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirements of subparagraphs (A) through (C) of this paragraph if, before April 1, 1989, the State and the Secretary have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in subparagraph (C). The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.

(F) Appeals procedures

Each State, as a condition of approval of its plan under this subchapter, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (A) or (B).

(G) Definitions

In this paragraph and in subsection (b)(3)(F) of this section:

(i) An individual is considered to be ''mentally ill'' if the individual has a serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder) or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness.

(ii) An individual is considered to be ''mentally retarded'' if the individual is mentally retarded or a person with a related condition (as described in section 1396d(d) of this title).

(iii) The term ''specialized services'' has the meaning given such term by the Secretary in regulations, but does not include, in the case of a resident of a nursing facility, services within the scope of services which the facility must provide or arrange for its residents under subsection (b)(4) of this section.

(f) Responsibilities of Secretary relating to nursing facility requirements

(1) General responsibility

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in nursing facilities under State plans approved under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs

(A) In general

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall establish, by not later than September 1, 1988—

(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights) and content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights, and procedures for determination of competency;

(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs; and

(iv) requirements, under both such programs, that—

(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(iii)(I)),

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program, and

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.

(B) Approval of certain programs

Such requirements—

(i) may permit approval of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) subject to subparagraphs (C) and (D), shall prohibit approval of such a program—

(I) offered by or in a nursing facility which, within the previous 2 years—

(a) has operated under a waiver under subsection (b)(4)(C)(ii) of this section that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) of this section for a period in excess of 48 hours during a week;

(b) has been subject to an extended (or partial extended) survey under section 1395i–3(g)(2)(B)(i) of this title or subsection (g)(2)(B)(i) of this section; or

(c) has been assessed a civil money penalty described in section 1395i–3(h)(2)(B)(ii) of this title or subsection (h)(2)(A)(ii) of this section of not less than $5,000, or has been subject to a remedy described in subsection (h)(1)(B)(i) of this section, clauses[3] (i),

[3] So in original. Probably should be ''clause''.

(iii), or (iv) of subsection (h)(2)(A) of this section, clauses[3] (i) or (iii) of section 1395i–3(h)(2)(B) of this title, or section 1395i–3(h)(4) of this title, or

(II) offered by or in a nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the nursing facility.

(C) Waiver authorized

Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of subchapter XVIII of this chapter) in a State if the State—

(i) determines that there is no other such program offered within a reasonable distance of the facility,

(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

(iii) provides notice of such determination and assurances to the State long-term care ombudsman.

(D) Waiver of disapproval of nurse-aide training programs

Upon application of a nursing facility, the Secretary may waive the application of subparagraph (B)(iii)(I)(c) if the imposition of the civil monetary penalty was not related to the quality of care provided to residents of the facility. Nothing in this subparagraph shall be construed as eliminating any requirement upon a facility to pay a civil monetary penalty described in the preceding sentence.

(3) Federal guidelines for State appeals process for transfers and discharges

For purposes of subsections (c)(2)(B)(iii) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from nursing facilities.

(4) Secretarial standards qualification of administrators

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1988, standards to be applied in assuring the qualifications of administrators of nursing facilities.

(5) Criteria for administration

The Secretary shall establish criteria for assessing a nursing facility's compliance with the requirement of subsection (d)(1) of this section with respect to—

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) Specification of resident assessment data set and instruments

The Secretary shall—

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

(7) List of items and services furnished in nursing facilities not chargeable to the personal funds of a resident

(A) Regulations required

Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in nursing facilities who are individuals receiving medical assistance with respect to nursing facility services under this subchapter and those costs which are to be included in the payment amount under this subchapter for nursing facility services.

(B) Rule if failure to publish regulations

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in that subparagraph, in the case of a resident of a nursing facility who is eligible to receive benefits for nursing facility services under this subchapter, for purposes of section 1396a(a)(28)(B) of this title, the Secretary shall be deemed to have promulgated regulations under this paragraph which provide that the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(8) Federal minimum criteria and monitoring for preadmission screening and resident review

(A) Minimum criteria

The Secretary shall develop, by not later than October 1, 1988, minimum criteria for States to use in making determinations under subsections (b)(3)(F) and (e)(7)(B) of this section and in permitting individuals

adversely affected to appeal such determinations, and shall notify the States of such criteria.

(B) Monitoring compliance

The Secretary shall review, in a sufficient number of cases to allow reasonable inferences, each State's compliance with the requirements of subsection (e)(7)(C)(ii) of this section (relating to discharge and placement for active treatment of certain residents).

(9) Criteria for monitoring State waivers

The Secretary shall develop, by not later than October 1, 1988, criteria and procedures for monitoring State performances in granting waivers pursuant to subsection (b)(4)(C)(ii) of this section.

(g) Survey and certification process

(1) State and Federal responsibility

(A) In general

Under each State plan under this subchapter, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State nursing facilities with the requirements of such subsections.

(B) Educational program

Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of nursing facilities in order to present current regulations, procedures, and policies under this section.

(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property

The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(D) Removal of name from nurse aide registry

(i) In general

In the case of a finding of neglect under subparagraph (C), the State shall establish a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that—

(I) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

(II) the neglect involved in the original finding was a singular occurrence.

(ii) Timing of determination

In no case shall a determination on a petition submitted under clause (i) be made prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under subparagraph (C).

(E) Construction

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(2) Surveys

(A) Annual standard survey

(i) In general

Each nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall review each State's procedures for scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents

Each standard survey shall include, for a case-mix stratified sample of residents—

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(II) written plans of care provided under subsection (b)(2) of this section and an audit of the residents' assessments under subsection (b)(3) of this section to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents' rights under subsection (c) of this section.

(iii) Frequency

(I) In general

Each nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The statewide average interval between standard surveys of a nursing facility shall not exceed 12 months.

(II) Special surveys

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a nursing facility, or director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys

(i) In general

Each nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

(ii) Timing

The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents

In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d) of this section. Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) Construction

Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) of this section on the basis of findings in a standard survey.

(C) Survey protocol

Standard and extended surveys shall be conducted—

(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys

Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(E) Survey teams

(i) In general

Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(ii) Prohibition of conflicts of interest

A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d) of this section, or who has a personal or familial financial interest in the facility being surveyed.

(iii) Training

The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Validation surveys

(A) In general

The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(B) Scope

With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 per-

cent of the number of nursing facilities surveyed by the State in the year, but in no case less than 5 nursing facilities in the State.

(C) Reduction in administrative costs for substandard performance

If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary may provide for the training of survey teams in the State and shall provide for a reduction of the payment otherwise made to the State under section 1396b(a)(2)(D) of this title with respect to a quarter equal to 33 percent multiplied by a fraction, the denominator of which is equal to the total number of residents in nursing facilities surveyed by the Secretary that quarter and the numerator of which is equal to the total number of residents in nursing facilities which were found pursuant to such surveys to be not in compliance with any of the requirements of subsections (b), (c), and (d) of this section. A State that is dissatisfied with the Secretary's findings under this subparagraph may obtain reconsideration and review of the findings under section 1316 of this title in the same manner as a State may seek reconsideration and review under that section of the Secretary's determination under section 1316(a)(1) of this title.

(D) Special surveys of compliance

Where the Secretary has reason to question the compliance of a nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the nursing facility meets such requirements.

(4) Investigation of complaints and monitoring nursing facility compliance

Each State shall maintain procedures and adequate staff to—

(A) investigate complaints of violations of requirements by nursing facilities, and

(B) monitor, on-site, on a regular, as needed basis, a nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if—

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard nursing facilities.

(5) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys and certifications made respecting nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,

(ii) copies of cost reports of such facilities filed under this subchapter or under subchapter XVIII of this chapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and

(iv) information disclosed under section 1320a–5 of this title.

(B) Notice to ombudsman

Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d) of this section, or of any adverse action taken against a nursing facility under paragraphs[4] (1), (2), or (3) of subsection (h) of this section, with respect to a nursing facility in the State.

(C) Notice to physicians and nursing facility administrator licensing board

If a State finds that a nursing facility has provided substandard quality of care, the State shall notify—

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) any State board responsible for the licensing of the nursing facility administrator of the facility.

(D) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(h) Enforcement process

(1) In general

If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) of this section or otherwise, that a nursing facility no longer meets a requirement of subsection (b), (c), or (d) of this section, and further finds that the facility's deficiencies—

(A) immediately jeopardize the health or safety of its residents, the State shall take immediate action to remove the jeopardy and correct the deficiencies through the

[4] So in original. Probably should be "paragraph".

remedy specified in paragraph (2)(A)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); or

(B) do not immediately jeopardize the health or safety of its residents, the State may—

(i) terminate the facility's participation under the State plan,

(ii) provide for one or more of the remedies described in paragraph (2), or

(iii) do both.

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a nursing facility's deficiencies. If a State finds that a nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Specified remedies

(A) Listing

Except as provided in subparagraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:

(i) Denial of payment under the State plan with respect to any individual admitted to the nursing facility involved after such notice to the public and to the facility as may be provided for by the State.

(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d) of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or (g)(2)(A)(i) of this section) shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(iii) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the State has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

(iv) The authority, in the case of an emergency, to close the facility, to transfer residents in that facility to other facilities, or both.

The State also shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the State may provide for other specified remedies, such as directed plans of correction.

(B) Deadline and guidance

(i) Except as provided in clause (ii), as a condition for approval of a State plan for calendar quarters beginning on or after October 1, 1989, each State shall establish the remedies described in clauses (i) through (iv) of subparagraph (A) by not later than October 1, 1989. The Secretary shall provide, through regulations by not later than October 1, 1988, guidance to States in establishing such remedies; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedies.

(ii) A State may establish alternative remedies (other than termination of participation) other than those described in clauses (i) through (iv) of subparagraph (A), if the State demonstrates to the Secretary's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as those described in subparagraph (A).

(C) Assuring prompt compliance

If a nursing facility has not complied with any of the requirements of subsections (b), (c), and (d) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the State shall impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

(D) Repeated noncompliance

In the case of a nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2) of this section, has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided)—

(i) impose the remedy described in subparagraph (A)(i), and

(ii) monitor the facility under subsection (g)(4)(B) of this section,

until the facility has demonstrated, to the satisfaction of the State, that it is in compliance with the requirements of subsections (b), (c), and (d) of this section, and that it

will remain in compliance with such requirements.

(E) Funding

The reasonable expenditures of a State to provide for temporary management and other expenses associated with implementing the remedies described in clauses (iii) and (iv) of subparagraph (A) shall be considered, for purposes of section 1396b(a)(7) of this title, to be necessary for the proper and efficient administration of the State plan.

(F) Incentives for high quality care

In addition to the remedies specified in this paragraph, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to medical assistance under this subchapter. For purposes of section 1396b(a)(7) of this title, proper expenses incurred by a State in carrying out such a program shall be considered to be expenses necessary for the proper and efficient administration of the State plan under this subchapter.

(3) Secretarial authority

(A) For State nursing facilities

With respect to a State nursing facility, the Secretary shall have the authority and duties of a State under this subsection, including the authority to impose remedies described in clauses (i), (ii), and (iii) of paragraph (2)(A).

(B) Other nursing facilities

With respect to any other nursing facility in a State, if the Secretary finds that a nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility's deficiencies—

(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (C)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in subparagraph (C); or

(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies. If the Secretary finds that a nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

(C) Specified remedies

The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

(i) Denial of payment

The Secretary may deny any further payments to the State for medical assistance furnished by the facility to all individuals in the facility or to individuals admitted to the facility after the effective date of the finding.

(ii) Authority with respect to civil money penalties

The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Appointment of temporary management

In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

(D) Continuation of payments pending remediation

The Secretary may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this subchapter with respect to a nursing facility not in compliance with a requirement of subsection (b), (c), or (d) of this section, if—

(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility, and

(ii) the State has submitted a plan and timetable for corrective action to the Sec-

retary for approval and the Secretary approves the plan of corrective action.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

(4) Effective period of denial of payment

A finding to deny payment under this subsection shall terminate when the State or Secretary (or both, as the case may be) finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d) of this section.

(5) Immediate termination of participation for facility where State or Secretary finds noncompliance and immediate jeopardy

If either the State or the Secretary finds that a nursing facility has not met a requirement of subsection (b), (c), or (d) of this section, and finds that the failure immediately jeopardizes the health or safety of its residents, the State or the Secretary, respectively[5] shall notify the other of such finding, and the State or the Secretary, respectively, shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii) or (3)(C)(iii), or terminate the facility's participation under the State plan. If the facility's participation in the State plan is terminated by either the State or the Secretary, the State shall provide for the safe and orderly transfer of the residents eligible under the State plan consistent with the requirements of subsection (c)(2) of this section.

(6) Special rules where State and Secretary do not agree on finding of noncompliance

(A) State finding of noncompliance and no secretarial finding of noncompliance

If the Secretary finds that a nursing facility has met all the requirements of subsections (b), (c), and (d) of this section, but a State finds that the facility has not met such requirements and the failure does not immediately jeopardize the health or safety of its residents, the State's findings shall control and the remedies imposed by the State shall be applied.

(B) Secretarial finding of noncompliance and no State finding of noncompliance

If the Secretary finds that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and that the failure does not immediately jeopardize the health or safety of its residents, but the State has not made such a finding, the Secretary—

(i) may impose any remedies specified in paragraph (3)(C) with respect to the facility, and

(ii) shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D).

(7) Special rules for timing of termination of participation where remedies overlap

If both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and neither finds that the failure immediately jeopardizes the health or safety of its residents—

(A)(i) if both find that the facility's participation under the State plan should be terminated, the State's timing of any termination shall control so long as the termination date does not occur later than 6 months after the date of the finding to terminate;

(ii) if the Secretary, but not the State, finds that the facility's participation under the State plan should be terminated, the Secretary shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D); or

(iii) if the State, but not the Secretary, finds that the facility's participation under the State plan should be terminated, the State's decision to terminate, and timing of such termination, shall control; and

(B)(i) if the Secretary or the State, but not both, establishes one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, such additional or alternative remedies shall also be applied, or

(ii) if both the Secretary and the State establish one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, only the additional or alternative remedies of the Secretary shall apply.

(8) Construction

The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), (iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing. The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of subchapter XVIII of this chapter.

(9) Sharing of information

Notwithstanding any other provision of law, all information concerning nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or State employees for purposes consistent with the effective administration of programs established under this subchapter and subchapter XVIII of this chapter, including investigations by State medicaid fraud control units.

(i) Construction

Where requirements or obligations under this section are identical to those provided under section 1395i–3 of this title, the fulfillment of those requirements or obligations under section 1395i–3 of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

[5] So in original. Probably should be followed by a comma.

(Aug. 14, 1935, ch. 531, title XIX, § 1919, as added and amended Pub. L. 100–203, title IV, §§ 4211(a)(3), (c), 4212(a), (b), 4213(a), 4216, Dec. 22, 1987, 101 Stat. 1330–182, 1330–196, 1330–207, 1330–213, 1330–220, as amended Pub. L. 100–360, title IV, § 411(*l*)(3)(C)(ii), (6)(B), (8)(A), July 1, 1988, 102 Stat. 803–805; Pub. L. 100–360, title III, § 303(a)(2), title IV, § 411(*l*)(2)(A)–(D), (F)–(K), (L)(ii), (3)(A), (B), (C)(iii), (D), (5), (6)(A), (7), (8)(B), July 1, 1988, 102 Stat. 760, 801–805, as amended Pub. L. 100–485, title VI, § 608(d)(27)(C)–(E), (I), Oct. 13, 1988, 102 Stat. 2423; Pub. L. 101–239, title VI, § 6901(b)(1), (3), (4)(A), (d)(1), (4), Dec. 19, 1989, 103 Stat. 2298–2301; Pub. L. 101–508, title IV, §§ 4751(b)(2), 4801(a)(2)–(6)(A), (7), (b)(2)–(5)(A), (6)–(8), (d)(1), (e)(2)–(7)(A), (8)–(10), (12)–(15), (18), Nov. 5, 1990, 104 Stat. 1388–205, 1388–211 to 1388–219; Pub. L. 102–375, title VII, § 708(a)(1)(B), Sept. 30, 1992, 106 Stat. 1292; Pub. L. 104–315, §§ 1(a), 2(a), (b), Oct. 19, 1996, 110 Stat. 3824; Pub. L. 105–15, § 1, May 15, 1997, 111 Stat. 34; Pub. L. 105–33, title IV, §§ 4754(a), 4755(b), Aug. 5, 1997, 111 Stat. 526; Pub. L. 106–4, § 2(a), Mar. 25, 1999, 113 Stat. 7; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(p)], Nov. 29, 1999, 113 Stat. 1536, 1501A–397; Pub. L. 106–402, title IV, § 401(b)(6)(A), Oct. 30, 2000, 114 Stat. 1738; Pub. L. 106–554, § 1(a)(6) [title IX, § 941(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–586; Pub. L. 108–173, title IX, § 932(c)(2), Dec. 8, 2003, 117 Stat. 2401; Pub. L. 109–171, title VI, § 6015(a), Feb. 8, 2006, 120 Stat. 65; Pub. L. 109–432, div. B, title IV, § 405(c)(2)(B), Dec. 20, 2006, 120 Stat. 3000.)

References in Text

The Older Americans Act of 1965, referred to in subsecs. (b)(4)(C)(ii)(IV), (c)(2)(B)(iii)(II), and (g)(5)(B), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Section 307(a)(12) of the Act was repealed by Pub. L. 106–501, title III, § 306(5), Nov. 13, 2000, 114 Stat. 2244, and provisions formerly appearing in section 307(a)(12) of the Act are now contained in section 307(a)(9) of the Act, which is classified to section 3027(a)(9) of this title. Titles III and VII of the Act are classified generally to subchapters III (§ 3021 et seq.) and XI (§ 3058 et seq.), respectively, of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (c)(2)(B)(iii)(III), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§ 15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act [of 1986], referred to in subsec. (c)(2)(B)(iii)(IV), was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

Section 6901(b)(4)(B)–(D) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (e)(2)(A), is section 6901(b)(4)(B)–(D) of Pub. L. 101–239, which is set out as a note under section 1395i–3 of this title.

Section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, referred to in subsec. (f)(7)(A), probably means section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments, Pub. L. 95–142, which is set out as a note under section 1395x of this title.

Prior Provisions

A prior section 1919 of act Aug. 14, 1935, was renumbered section 1922 and is classified to section 1396r–3 of this title.

Amendments

2006—Subsec. (c)(5)(A)(i)(II). Pub. L. 109–432 substituted ''subparagraph (B)(v)'' for ''clause (v)''.

Pub. L. 109–171, § 6015(a)(1), inserted ''subject to clause (v)'' after ''(II)''.

Subsec. (c)(5)(B)(v). Pub. L. 109–171, § 6015(a)(2), added cl. (v).

2003—Subsec. (f)(2)(B)(iii). Pub. L. 108–173, § 932(c)(2)(A), substituted ''subparagraphs (C) and (D)'' for ''subparagraph (C)'' in introductory provisions.

Subsec. (f)(2)(D). Pub. L. 108–173, § 932(c)(2)(B), added subpar. (D).

2000—Subsec. (b)(8). Pub. L. 106–554 added par. (8).

Subsec. (c)(2)(B)(iii)(III). Pub. L. 106–402 substituted ''subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000'' for ''part C of the Developmental Disabilities Assistance and Bill of Rights Act''.

1999—Subsec. (b)(3)(C)(i)(I). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(p)(1)], struck out ''not later than'' before ''14 days''.

Subsec. (c)(2)(F). Pub. L. 106–4 added subpar. (F).

Subsec. (d)(4)(A). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(p)(2)], inserted closing parenthesis after ''section 1320a–3 of this title''.

1997—Subsec. (f)(2)(B)(iii). Pub. L. 105–15, § 1(1), inserted ''subject to subparagraph (C),'' after ''(iii)''.

Subsec. (f)(2)(C). Pub. L. 105–15, § 1(2), added subpar. (C).

Subsec. (g)(1)(D), (E). Pub. L. 105–33, § 4755(b), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (h)(3)(D). Pub. L. 105–33, § 4754(a), inserted ''and'' at end of cl. (i), substituted a period for '', and'' at end of cl. (ii), and struck out cl. (iii) which read as follows: ''the State agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.''

1996—Subsec. (b)(3)(E). Pub. L. 104–315, § 2(a), inserted at end ''In addition, a nursing facility shall notify the State mental health authority or State mental retardation or developmental disability authority, as applicable, promptly after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded.''

Subsec. (e)(7)(B). Pub. L. 104–315, § 1(a)(1)(A), struck out ''annual'' before ''resident review'' in heading.

Subsec. (e)(7)(B)(iii). Pub. L. 104–315, § 2(b), added cl. (iii).

Pub. L. 104–315, § 1(a)(1)(B), struck out cl. (iii) which related to frequency of reviews as annual, preadmission, and initial.

Subsec. (e)(7)(D)(i). Pub. L. 104–315, § 1(a)(2), struck out ''annual'' before ''review'' in heading.

1992—Subsecs. (c)(2)(B)(iii)(II), (g)(5)(B). Pub. L. 102–375 substituted ''title III or VII of the Older Americans Act of 1965 in accordance with section 712 of the Act'' for ''section 307(a)(12) of the Older Americans Act of 1965''.

1990—Subsec. (b)(1)(B). Pub. L. 101–508, § 4801(e)(2), inserted at end ''A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.''

Subsec. (b)(3)(C)(i)(I). Pub. L. 101–508, § 4801(e)(3), substituted ''not later than 14 days'' for ''4 days''.

Subsec. (b)(3)(F). Pub. L. 101–508, § 4801(b)(8), substituted ''specialized services'' for ''active treatment'' in cls. (i) and (ii).

Pub. L. 101–508, § 4801(b)(4)(A), inserted at end ''A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).''

Pub. L. 101–508, § 4801(b)(2)(A), substituted ''Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A) of this section, a nursing facility'' for ''A nursing facility'' in introductory provisions.

Subsec. (b)(4)(A)(vii). Pub. L. 101–508, § 4801(e)(4), added cl. (vii).

Subsec. (b)(4)(C)(ii). Pub. L. 101–508, § 4801(e)(5)(A), substituted ''To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if'' for ''A State may waive the requirement of subclause (I) or (II) of clause (i) with respect to a facility if'' in introductory provisions.

Subsec. (b)(4)(C)(ii)(IV), (V). Pub. L. 101–508, § 4801(e)(5)(B)–(D), which directed amendment of cl. (ii) by adding subcls. (IV) and (V) at the end, was executed by adding subcls. (IV) and (V) after subcl. (III) and before concluding provisions to reflect the probable intent of Congress.

Subsec. (b)(5)(A). Pub. L. 101–508, § 4801(a)(2), designated existing provision as cl. (i), substituted ''Except as provided in clause (ii), a nursing facility'' for ''A nursing facility'' and ''on a full-time basis'' for ''(on a full-time, temporary, per diem, or other basis)'', redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (b)(5)(C). Pub. L. 101–508, § 4801(a)(3), substituted ''any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information'' for ''the State registry established under subsection (e)(2)(A) of this section as to information in the registry''.

Subsec. (b)(5)(D). Pub. L. 101–508, § 4801(a)(4), inserted before period at end '', or a new competency evaluation program''.

Subsec. (b)(5)(F)(i). Pub. L. 101–508, § 4801(e)(6), substituted ''(G)) or a registered dietician'' for ''(G))''.

Subsec. (b)(6)(A). Pub. L. 101–508, § 4801(d)(1), inserted before semicolon at end ''(or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician)''.

Subsec. (c)(1)(A). Pub. L. 101–508, § 4801(e)(8)(B), inserted at end ''A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this subchapter or a State's entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident.''

Subsec. (c)(1)(A)(iv). Pub. L. 101–508, § 4801(e)(9), inserted before period at end ''and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request''.

Subsec. (c)(1)(A)(x), (xi). Pub. L. 101–508, § 4801(e)(8)(A), added cl. (x) and redesignated former cl. (x) as (xi).

Subsec. (c)(1)(B)(ii). Pub. L. 101–508, § 4801(e)(10), inserted ''including the notice (if any) of the State developed under subsection (e)(6) of this section'' after ''in such rights)''.

Subsec. (c)(2)(E). Pub. L. 101–508, § 4751(b)(2), added subpar. (E).

Subsec. (c)(7), (8). Pub. L. 101–508, § 4801(e)(7)(A), added par. (7) and redesignated former par. (7) as (8).

Subsec. (e)(1)(A). Pub. L. 101–508, § 4801(e)(18), substituted ''under subsection (f)(2) of this section'' for ''under clause (i) or (ii) of subsection (f)(2)(A) of this section''.

Subsec. (e)(2)(A). Pub. L. 101–508, § 4801(e)(12)(A), inserted '', or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989'' after ''in the State''.

Subsec. (e)(2)(C). Pub. L. 101–508, § 4801(e)(12)(B), added subpar. (C).

Subsec. (e)(7)(A). Pub. L. 101–508, § 4801(b)(2)(B), designated existing provision as cl. (i), inserted cl. (i) heading, and added cls. (ii) and (iii).

Subsec. (e)(7)(B)(i)(II), (ii)(II). Pub. L. 101–508, § 4801(b)(8), substituted ''specialized services'' for ''active treatment''.

Subsec. (e)(7)(B)(iv). Pub. L. 101–508, § 4801(b)(4)(B), added cl. (iv).

Subsec. (e)(7)(C)(i) to (iii). Pub. L. 101–508, § 4801(b)(8), substituted ''specialized services'' for ''active treatment'' wherever appearing.

Subsec. (e)(7)(C)(iv). Pub. L. 101–508, § 4801(b)(5)(A), added cl. (iv).

Subsec. (e)(7)(D). Pub. L. 101–508, § 4801(b)(3)(A), struck out ''where failure to conduct preadmission screening'' after ''Denial of payment'' in heading, designated existing provisions as cl. (i), inserted cl. (i) heading, and added cl. (ii).

Subsec. (e)(7)(E). Pub. L. 101–508, § 4801(b)(8), substituted ''specialized services'' for ''active treatment''.

Pub. L. 101–508, § 4801(b)(6), inserted at end ''The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.''

Pub. L. 101–508, § 4801(b)(3)(B), substituted ''the requirements of subparagraphs (A) through (C) of this paragraph'' for ''the requirement of this paragraph''.

Subsec. (e)(7)(G)(i). Pub. L. 101–508, § 4801(b)(7), substituted ''serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)'' for ''primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition)'' and inserted before period at end ''or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness''.

Subsec. (e)(7)(G)(iii). Pub. L. 101–508, § 4801(b)(8), substituted ''specialized services'' for ''active treatment''.

Subsec. (f)(2)(A)(iv)(II). Pub. L. 101–508, § 4801(a)(5)(B), inserted ''who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program'' after ''nurse aide''.

Subsec. (f)(2)(A)(iv)(III). Pub. L. 101–508, § 4801(a)(5)(A), (C), (D), added subcl. (III).

Subsec. (f)(2)(B). Pub. L. 101–508, § 4801(a)(7), inserted ''(through subcontract or otherwise)'' after ''may not delegate'' in last sentence.

Subsec. (f)(2)(B)(iii)(I). Pub. L. 101–508, § 4801(a)(6)(A), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''offered by or in a nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d) of this section, within the previous 2 years, or''.

Subsec. (g)(1)(C). Pub. L. 101–508, § 4801(e)(13), inserted at end ''A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.''

Subsec. (g)(5)(A)(i). Pub. L. 101–508, § 4801(e)(14), substituted ''deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans'' for ''deficiencies and plans''.

Subsec. (g)(5)(B). Pub. L. 101–508, § 4801(e)(15), substituted ''or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h) of this section, with respect'' for ''with respect''.

1989—Subsec. (b)(5)(A). Pub. L. 101–239, § 6901(b)(1)(A), substituted ''October 1, 1990'' for ''January 1, 1990'' in introductory provisions.

Subsec. (b)(5)(B). Pub. L. 101–239, § 6901(b)(1)(B), substituted ''January 1, 1990'' and ''October 1, 1990'' for ''July 1, 1989'' and ''January 1, 1990'', respectively.

Subsec. (c)(1)(A)(ii)(II). Pub. L. 101–239, § 6901(d)(4)(A), substituted ''Secretary until such an order could reasonably be obtained)'' for ''Secretary) until such an order could reasonably be obtained''.

Subsec. (c)(1)(A)(v)(I). Pub. L. 101–239, § 6901(d)(4)(B), substituted ''accommodation'' for ''accommodations''.

Subsec. (f)(2)(A)(i)(I). Pub. L. 101–239, § 6901(d)(4)(C), substituted ''and content of the curriculum'' for '', content of the curriculum''.

Pub. L. 101–239, § 6901(b)(3)(A), inserted ''care of cognitively impaired residents,'' after ''social service needs,''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–239, § 6901(b)(3)(B), substituted ''recognition of mental health and social service needs, care of cognitively impaired residents'' for ''cognitive, behavioral and social care''.

Subsec. (f)(2)(A)(iv). Pub. L. 101–239, § 6901(b)(3)(C), (D), added cl. (iv).

Subsec. (f)(2)(B)(ii). Pub. L. 101–239, § 6901(b)(4)(A), substituted ''July 1, 1989'' for ''January 1, 1989''.

Subsec. (h)(3)(D). Pub. L. 101–239, § 6901(d)(4)(D), substituted ''not longer than 6 months after the effective date of the findings'' for ''not longer than 6 months''.

Subsec. (h)(8). Pub. L. 101–239, § 6901(d)(1), inserted at end ''The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of subchapter XVIII of this chapter.''

1988—Subsec. (b)(3)(A)(iii). Pub. L. 100–360, § 411(*l*)(2)(B), struck out ''in the case of a resident eligible for benefits under this subchapter,'' before ''uses an instrument''.

Subsec. (b)(3)(A)(iv). Pub. L. 100–360, § 411(*l*)(2)(A), as amended by Pub. L. 100–485, § 608(d)(27)(C), struck out ''in the case of a resident eligible for benefits under part A of subchapter XVIII of this chapter,'' before ''includes the identification of medical problems''.

Subsec. (b)(3)(B)(ii)(III). Pub. L. 100–360, § 411(*l*)(2)(C), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (b)(4)(C)(i)(II). Pub. L. 100–360, § 411(*l*)(3)(A)(i), inserted ''professional'' after ''registered''.

Subsec. (b)(4)(C)(ii). Pub. L. 100–360, § 411(*l*)(3)(A)(i)–(iv), in heading, substituted ''(ii) Waiver'' for ''(ii) Facility waivers.—(i) Waiver'', in subcl. (III), inserted ''professional'' after ''registered'', and in concluding provisions, substituted ''clause (iii)'' for ''clause (ii)'' and ''use'' for ''employ''.

Subsec. (b)(4)(C)(iii). Pub. L. 100–360, § 411(*l*)(3)(A)(v), (vi), substituted ''(iii) Assumption'' for ''(ii) Assumption'' in heading and ''exercise'' for ''excercise'' in text.

Subsec. (b)(5)(A). Pub. L. 100–360, § 411(*l*)(3)(B), which directed amendment of subpar. (A) by striking ''subparagraph (E)'' and inserting ''subparagraph (F)'', could not be executed because of prior amendment by Pub. L. 100–360, § 411(*l*)(2)(D)(i), see Amendment note below.

Pub. L. 100–360, § 411(*l*)(2)(D)(i), as amended by Pub. L. 100–485, § 608(d)(27)(D), struck out '', who is not a licensed health professional (as defined in subparagraph (E)),'' after ''any individual'' in introductory provisions.

Subsec. (b)(5)(A)(ii). Pub. L. 100–360, § 411(*l*)(2)(D)(ii), substituted ''nursing or nursing-related services'' for ''such services''.

Subsec. (b)(5)(G). Pub. L. 100–360, § 411(*l*)(2)(D)(iii), inserted ''physical or occupational therapy assistant,'' after ''occupational therapist,''.

Subsec. (c)(1)(B)(i). Pub. L. 100–360, § 303(a)(2), inserted before semicolon at end ''and of the requirements and procedures for establishing eligibility for medical assistance under this subchapter, including the right to request an assessment under section 1396r–5(c)(1)(B) of this title''.

Subsec. (c)(2)(A)(v). Pub. L. 100–360, § 411(*l*)(2)(F), substituted ''for a stay at the facility'' for ''an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this subchapter and subchapter XVIII of this chapter''.

Subsec. (c)(2)(B)(iii)(III). Pub. L. 100–360, § 411(*l*)(3)(C)(iii), as added by Pub. L. 100–485, § 608(d)(27)(E), substituted ''responsible'' for ''responsibile''.

Subsec. (c)(6). Pub. L. 100–360, § 411(*l*)(2)(G), substituted ''upon the written'' for ''once the facility accepts the written'' in subpar. (A)(ii) and ''Upon written'' for ''Upon a facility's acceptance of written'' in subpar. (B).

Subsec. (c)(7). Pub. L. 100–360, § 411(*l*)(6)(B), amended Pub. L. 100–203, § 4212(b), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100–360, § 411(*l*)(3)(C)(ii), as added by Pub. L. 100–485, § 608(d)(27)(E), amended Pub. L. 100–203, § 4211, see 1987 Amendment note below.

Subsec. (e)(1). Pub. L. 100–360, § 411(*l*)(3)(D)(i), (ii), substituted ''January 1, 1989'' for ''September 1, 1988'' in subpar. (A) and ''January'' for ''September'' in subpar. (B).

Subsec. (e)(2)(B). Pub. L. 100–360, § 411(*l*)(2)(H), inserted after first sentence ''The State shall make available to the public information in the registry.''

Subsec. (e)(3). Pub. L. 100–360, § 411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and two places in text.

Subsec. (e)(7)(E). Pub. L. 100–360, § 411(*l*)(3)(D)(iii), substituted ''April 1, 1989'' for ''October 1, 1988''.

Subsec. (f). Pub. L. 100–360, § 411(*l*)(3)(C)(ii), as added by Pub. L. 100–485, § 608(d)(27)(E), amended Pub. L. 100–203, § 4211, see 1987 Amendment note below.

Subsec. (f)(2)(A). Pub. L. 100–360, § 411(*l*)(3)(D)(iv), substituted ''September'' for ''July'' in introductory provisions.

Subsec. (f)(2)(A)(i)(I). Pub. L. 100–360, § 411(*l*)(2)(J), substituted ''recognition of mental health and social service needs'' for ''cognitive, behavioral and social care''.

Subsec. (f)(3). Pub. L. 100–360, § 411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and in text.

Subsec. (f)(7)(A). Pub. L. 100–360, § 411(*l*)(2)(K), substituted ''residents'' for ''patients''.

Subsec. (f)(7)(B). Pub. L. 100–360, § 411(*l*)(2)(L)(ii), substituted ''include'' for ''do not include''.

Subsec. (g)(1)(C). Pub. L. 100–360, § 411(*l*)(5)(A)–(C), substituted ''and timely review'' for '', review,'', inserted ''or by another individual used by the facility in providing services to such a resident'' after ''a nursing facility'', and substituted ''The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority'' for ''If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding''.

Subsec. (g)(1)(D). Pub. L. 100–360, § 411(*l*)(5)(D), substituted ''to issue regulations to carry out this subsection'' for ''to establish standards under subsection (f) of this section''.

Subsec. (g)(2)(A)(i). Pub. L. 100–360, § 411(*l*)(5)(E), amended third sentence generally. Prior to amendment, third sentence read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the

imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (g)(2)(B)(ii). Pub. L. 100–360, § 411(*l*)(5)(F), as added by Pub. L. 100–485, § 608(d)(27)(I), substituted ''practicable'' for ''practical''.

Subsec. (g)(3)(C). Pub. L. 100–360, § 411(*l*)(6)(A), redesignated subpar. (C), relating to special surveys of compliance, as (D).

Subsec. (g)(3)(D). Pub. L. 100–360, § 411(*l*)(5)(G), formerly § 411(*l*)(5)(F), as redesignated by Pub. L. 100–485, § 608(d)(27)(I), substituted ''on the basis of that survey'' for ''on that basis''.

Subsec. (g)(4). Pub. L. 100–360, § 411(*l*)(5)(H), formerly § 411(*l*)(5)(G), as redesignated by Pub. L. 100–485, § 608(d)(27)(I), struck out ''chronically'' after ''enforcement actions against'' in last sentence.

Subsec. (h). Pub. L. 100–360, § 411(*l*)(8)(A), made technical correction to directory language of Pub. L. 100–203, § 4213(a), see 1987 Amendment note below.

Subsec. (h)(1). Pub. L. 100–360, § 411(*l*)(8)(B)(i), substituted ''paragraph (2)(A)(ii)''for ''paragraph (2)(A)(i)'' in last sentence.

Subsec. (h)(2)(B)(i). Pub. L. 100–360, § 411(*l*)(8)(B)(ii), struck out ''or otherwise'' after ''regulations''.

Subsec. (h)(3)(C)(ii). Pub. L. 100–360, § 411(*l*)(7)(A), substituted ''. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title'' for ''and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1320a–7a of this title''.

Subsec. (h)(5). Pub. L. 100–360, § 411(*l*)(8)(B)(iii), substituted ''State or the Secretary, respectively'' for ''State and the Secretary''.

Subsec. (h)(9). Pub. L. 100–360, § 411(*l*)(7)(B), inserted ''by such facilities'' after ''be made available''.

1987—Subsec. (c)(7). Pub. L. 100–203, § 4212(b), as amended by Pub. L. 100–360, § 411(*l*)(6)(B), added par. (7).

Subsecs. (e), (f). Pub. L. 100–203, § 4211, which contained two subsecs. (c), the first of which amended this section and the second of which enacted provisions set out as a note below, was amended by Pub. L. 100–360, § 411(*l*)(3)(C)(ii), to delete the designation, heading, and directory language of the first subsec. (c), resulting in subsecs. (e) and (f) being added by section 4211(a)(3) of Pub. L. 100–203, which enacted subsecs. (a) to (d) of this section.

Subsec. (g). Pub. L. 100–203, § 4212(a), added subsec. (g).

Subsec. (h). Pub. L. 100–203, § 4213(a), as amended by Pub. L. 100–360, § 411(*l*)(8)(A), added subsec. (h).

Subsec. (i). Pub. L. 100–203, § 4216, added subsec. (i).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. B, title IV, § 405(c)(2)(B), Dec. 20, 2006, 120 Stat. 3000, provided that the amendment made by section 405(c)(2)(B) is effective as if included in the amendment made by section 6015(a)(1) of the Deficit Reduction Act of 2005 [Pub. L. 109–171].

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to appeals filed on or after Oct. 1, 2004, see section 932(d) of Pub. L. 108–173, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective Jan. 1, 2003, see section 1(a)(6) [title IX, § 941(c)] of Pub. L. 106–554, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–4, § 2(b), Mar. 25, 1999, 113 Stat. 8, provided that: ''The amendment made by subsection (a) [amending this section] applies to voluntary withdrawals from participation occurring on or after the date of the enactment of this Act [Mar. 25, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4754(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1(b) of Pub. L. 104–315 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 19, 1996].''

Section 2(c) of Pub. L. 104–315 provided that: ''The amendments made by this section [amending this section] shall apply to changes in physical or mental condition occurring on or after the date of the enactment of this Act [Oct. 19, 1996].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4751(b)(2) of Pub. L. 101–508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4751(c) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4801(a)(6)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

''(i) had its participation terminated under title XVIII of the Social Security Act [subchapter XVIII of this chapter] or under the State plan under title XIX of such Act [this subchapter];

''(ii) was subject to a denial of payment under either such title;

''(iii) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

''(iv) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

''(v) pursuant to State action, was closed or had its residents transferred.''

Amendment by section 4801(a)(2)–(5), (7) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4801(a)(9) of Pub. L. 101–508, set out as a note under section 1396b of this title.

Section 4801(b)(9) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

''(B) EXCEPTION.—The amendments made by paragraphs (4), (6), and (8) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated.''

Section 4801(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] applies with respect to nursing facility services furnished on or after October 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.''

Section 4801(e)(7)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated.''

Amendment by section 4801(e)(2)–(6), (8)–(10), (12)–(15), and (18) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4801(e)(19) of Pub. L. 101–508, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6901(b)(1), (4)(A) of Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, and amendment by section 6901(b)(3) of Pub. L. 101–239 applicable to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after end of 90-day period beginning on Dec. 19, 1989, but not to affect competency evaluations conducted under programs offered before end of that period, see section 6901(b)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

Amendment by section 6901(d)(1) of Pub. L. 101–239 effective Dec. 19, 1989, and amendment by section 6901(d)(4) of Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 6901(d)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 303(a)(2) of Pub. L. 100–360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Sept. 30, 1989, without regard to whether or not final regulations to carry out such amendment has been promulgated by such date, see section 303(g)(1)(A), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(*l*)(2)(A)–(D), (F)–(K), (L)(ii), (3)(A), (B), (C)(ii), (iii), (D), (5), (6)(A), (B), (7), and (8)(A), (B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 4214 of title IV of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(*l*)(10), July 1, 1988, 102 Stat. 806, provided that:

''(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1919 of the Social Security Act [this section], the amendments made by sections 4211 [enacting this section, amending sections 1320a–7b, 1396a, 1396b, 1396d, 1396j, 1396*l*, 1396n, 1396*o*, 1396p, 1396r, and 1396s of this title, redesignating section 1396r of this title as section 1396r–3 of this title, and amending provisions set out as a note under section 1396r–3 of this title] and 4212 [amending sections 1395cc, 1396a, 1396b, 1396i, and 1396r of this title] (relating to nursing facility requirements and survey and certification requirements) shall apply to nursing facility services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date; except that section 1902(a)(28)(B) of the Social Security Act [section 1396a(a)(28)(B) of this title] (as amended by section 4211(b) of this Act), relating to requiring State medical assistance plans to specify the services included in nursing facility services, shall apply to calendar quarters beginning more than 6 months after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such section are promulgated by such date.

''(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1919 of the Social Security Act [this section], the amendments made by section 4213 of this Act [amending this section and sections 1396a and 1396b of this title] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such amendments are promulgated by such date.

''(2) In applying the amendments made by this part [part 2 of subtitle C (§§ 4211–4218) of title IV of Pub. L. 100–203, see Tables for classification] for services furnished before October 1, 1990—

''(A) any reference to a nursing facility is deemed a reference to a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded), and

''(B) with respect to such a skilled nursing facility or intermediate care facility, any reference to a requirement of subsection (b), (c), or (d) of section 1919 of the Social Security Act [subsec. (b), (c), or (d) of this section], is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act [section 1395x(j) or 1396d(c) of this title].

''(c) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.''

RETROACTIVE REVIEW

For requirement that procedures developed by a State permit individual to petition for review of any finding made by a State under subsec. (g)(1)(C) of this section or section 1395i–3(g)(1)(C) of this title after Jan. 1, 1995, see section 4755(c) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

NURSE AIDE TRAINING AND COMPETENCY EVALUATION; COMPLIANCE ACTIONS

Section 4801(a)(1) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act [section 1396c of this title] on the basis of the State's failure to meet the requirement of section 1919(e)(1)(A) of such Act [subsec. (e)(1)(A) of this section] before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1919(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.''

PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW; COMPLIANCE ACTIONS

Section 4801(b)(1) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act [section 1396c of this title and subsec. (e)(7)(D) of this section] on the basis of the State's failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.''

RESTRICTION ON ENFORCEMENT PROCESS

Section 4801(c) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act [section 1396c of this title] on the basis of the State's failure to meet the requirements of section 1919(h)(2) of such Act [subsec. (h)(2) of this section] before the effective date of guidelines, issued by the Secretary, regarding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date.''

STAFFING REQUIREMENTS

Pub. L. 101–508, title IV, § 4801(e)(17), Nov. 5, 1990, 104 Stat. 1388–218, as amended by Pub. L. 105–362, title VI, § 602(b)(1), Nov. 10, 1998, 112 Stat. 3286, provided that:

''(A) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] with respect to services described in clauses (ii), (iv), and (v) of section 1919(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A)(ii), (iv), (v) of this section] shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

''(B) STUDY ON STAFFING REQUIREMENTS IN NURSING FACILITIES.—The Secretary shall conduct a study and report to Congress no later than January 1, 1999, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for skilled nursing facilities serving as providers of services under title XVIII of the Social Security Act [subchapter XVIII of this chapter] and nursing facilities receiving payments under a State plan under title XIX of the Social Security Act [this subchapter], and shall include in such study recommendations regarding appropriate minimum ratios.''

NURSE AIDE TRAINING AND COMPETENCY EVALUATION; SATISFACTION OF REQUIREMENTS; WAIVER

For satisfaction of training and competency evaluation requirements of subsec. (b)(5)(A) of this section and section 1395i–3(b)(5)(A) of this title and authorization for a State to waive such competency evaluation requirements, see section 6901(b)(4)(B)–(D) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

PUBLICATION OF PROPOSED REGULATIONS RESPECTING PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW

Section 6901(c) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall issue proposed regulations to establish the criteria described in section 1919(f)(8)(A) of the Social Security Act [subsec. (f)(8)(A) of this section] by not later than 90 days after the date of the enactment of this Act [Dec. 19, 1989].''

EVALUATION AND REPORT ON IMPLEMENTATION OF RESIDENT ASSESSMENT PROCESS

Section 4211(c) of Pub. L. 100–203 directed Secretary of Health and Human Services to evaluate and report to Congress by not later than Jan. 1, 1993, on implementation of resident assessment process for residents of nursing facilities under amendments made by section 4211(c).

REPORT ON STAFFING REQUIREMENTS

Section 4211(k) of Pub. L. 100–203 directed Secretary of Health and Human Services to report to Congress, by not later than Jan. 1, 1993, on progress made in implementing the nursing facility staffing requirements of 42 U.S.C. 1396r(b)(4)(C), including the number and types of waivers approved under subparagraph (C)(ii) of such section and the number of facilities which received waivers.

ANNUAL REPORT ON STATUTORY COMPLIANCE AND ENFORCEMENT ACTIONS

Section 4215 of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, § 4801(b)(5)(B), Nov. 5, 1990, 104 Stat. 1388–214, provided that: ''The Secretary of Health and Human Services shall report to the Congress annually on the extent to which nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1919 of the Social Security Act [subsecs. (b), (c), and (d) of this section] (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1919(h) of such Act (as added by section 4213 of this Act). Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act.''

§ 1396r–1. Presumptive eligibility for pregnant women

(a) Ambulatory prenatal care

A State plan approved under section 1396a of this title may provide for making ambulatory prenatal care available to a pregnant woman during a presumptive eligibility period.

(b) Definitions

For purposes of this section—

(1) the term ''presumptive eligibility period'' means, with respect to a pregnant woman, the period that—

(A) begins with the date on which a qualified provider determines, on the basis of preliminary information, that the family income of the woman does not exceed the applicable income level of eligibility under the State plan, and

(B) ends with (and includes) the earlier of—

(i) the day on which a determination is made with respect to the eligibility of the woman for medical assistance under the State plan, or

(ii) in the case of a woman who does not file an application by the last day of the month following the month during which the provider makes the determination referred to in subparagraph (A), such last day; and

(2) the term ''qualified provider'' means any provider that—

(A) is eligible for payments under a State plan approved under this subchapter,

(B) provides services of the type described in subparagraph (A) or (B) of section 1396d(a)(2) of this title or in section 1396d(a)(9) of this title,

(C) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A), and

(D)(i) receives funds under—

(I) section 254b or 254c of this title,

(II) subchapter V of this chapter, or

(III) title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.];

(ii) participates in a program established under—

(I) section 1786 of this title, or

(II) section 4(a) of the Agriculture and Consumer Protection Act of 1973;

(iii) participates in a State perinatal program; or

(iv) is the Indian Health Service or is a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93–638) [25 U.S.C. 450f et seq.].

(c) Duties of State agency, qualified providers, and presumptively eligible pregnant women

(1) The State agency shall provide qualified providers with—

(A) such forms as are necessary for a pregnant woman to make application for medical assistance under the State plan, and

(B) information on how to assist such women in completing and filing such forms.

(2) A qualified provider that determines under subsection (b)(1)(A) of this section that a pregnant woman is presumptively eligible for medical assistance under a State plan shall—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

(B) inform the woman at the time the determination is made that she is required to make application for medical assistance under the State plan by not later than the last day of the month following the month during which the determination is made.

(3) A pregnant woman who is determined by a qualified provider to be presumptively eligible for medical assistance under a State plan shall make application for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made, which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(*l*)(1)(A) of this title.

(d) Ambulatory prenatal care as medical assistance

Notwithstanding any other provision of this subchapter, ambulatory prenatal care that—

(1) is furnished to a pregnant woman—

(A) during a presumptive eligibility period,

(B) by a provider that is eligible for payments under the State plan; and

(2) is included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1396b of this title.

(Aug. 14, 1935, ch. 531, title XIX, § 1920, as added Pub. L. 99–509, title IX, § 9407(b), Oct. 21, 1986, 100 Stat. 2058; amended Pub. L. 100–360, title IV, § 411(k)(16)(A), (B), July 1, 1988, 102 Stat. 799; Pub. L. 100–485, title VI, § 608(d)(26)(L), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 101–508, title IV, § 4605(a), (b), Nov. 5, 1990, 104 Stat. 1388–169; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(q)], Nov. 29, 1999, 113 Stat. 1536, 1501A–397.)

REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in subsec. (b)(2)(D)(i)(III), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Indian Health Care Improvement Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Section 4(a) of the Agriculture and Consumer Protection Act of 1973, referred to in subsec. (b)(2)(D)(ii)(II), is section 4(a) of Pub. L. 93–86, Aug. 10, 1973, 87 Stat. 249, as amended, which is set out as a note under section 612c of Title 7, Agriculture.

The Indian Self-Determination Act (Public Law 93–638), referred to in subsec. (b)(2)(D)(iv), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 1920 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

1999—Subsec. (b)(2)(D)(i)(I). Pub. L. 106–113 substituted ''section 254b or 254c of this title,'' for ''section 254b, 254c, or 256 of this title,''.

1990—Subsec. (b)(1)(B). Pub. L. 101–508, § 4605(a)(1), inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii) and amended it generally, and struck out former cl. (ii). Prior to amendment, cls. (ii) and (iii) read as follows:

''(ii) the day that is 45 days after the date on which the provider makes the determination referred to in subparagraph (A), or

''(iii) in the case of a woman who does not file an application for medical assistance within 14 calendar days after the date on which the provider makes the determination referred to in subparagraph (A), the fourteenth calendar day after such determination is made; and''.

Subsec. (c)(2)(B). Pub. L. 101–508, § 4605(a)(2), substituted ''by not later than the last day of the month following the month during which'' for ''within 14 calendar days after the date on which''.

Subsec. (c)(3). Pub. L. 101–508, § 4605(b), inserted before period at end '', which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(*l*)(1)(A) of this title''.

Pub. L. 101–508, § 4605(a)(2), substituted ''by not later than the last day of the month following the month during which'' for ''within 14 calendar days after the date on which''.

1988—Subsec. (b)(2)(D)(i). Pub. L. 100–360, § 411(k)(16)(B)(i), substituted ''section 254b, 254c, or 256 of this title,'' for ''section 254b of this title or section 254c of this title, or'' in subcl. (I), substituted ''chapter, or'' for ''chapter;'' in subcl. (II), and added subcl. (III).

Subsec. (b)(2)(D)(ii)(II). Pub. L. 100–360, § 411(k)(16)(B)(ii), as amended by Pub. L. 100–485, § 608(d)(26)(L)(i), struck out ''or'' after ''1973;''.

Subsec. (b)(2)(D)(iii). Pub. L. 100–360, § 411(k)(16)(B)(iii), as added by Pub. L. 100–485, § 608(d)(26)(L)(iii), substituted ''program; or'' for ''program.''

Subsec. (b)(2)(D)(iv). Pub. L. 100–360, § 411(k)(16)(B)(iv), formerly § 411(k)(16)(B)(iii), as redesignated by Pub. L. 100–485, § 608(d)(26)(L)(ii), added cl. (iv).

Subsec. (d)(1)(B). Pub. L. 100–360, § 411(k)(16)(A), substituted ''by a provider that is eligible for payments under the State plan'' for ''by a qualified provider''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4605(c) of Pub. L. 101–508 provided that:

''(1) The amendments made by subsection (a) [amending this section] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar

quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) The amendment made by subsection (b) [amending this section] shall be effective as if included in the enactment of section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509, enacting this section].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 411(k)(16)(C) of Pub. L. 100–360 provided that: ''The amendments made by this paragraph [amending this section] shall be effective as if they were included in section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

EFFECTIVE DATE

Section applicable to ambulatory prenatal care furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether or not final regulations to carry out such section have been promulgated, see section 9407(d) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1396a of this title.

§ 1396r–1a. Presumptive eligibility for children

(a) In general

A State plan approved under section 1396a of this title may provide for making medical assistance with respect to health care items and services covered under the State plan available to a child during a presumptive eligibility period.

(b) Definitions; regulations

For purposes of this section:

(1) The term ''child'' means an individual under 19 years of age.

(2) The term ''presumptive eligibility period'' means, with respect to a child, the period that—

(A) begins with the date on which a qualified entity determines, on the basis of preliminary information, that the family income of the child does not exceed the applicable income level of eligibility under the State plan, and

(B) ends with (and includes) the earlier of—

(i) the day on which a determination is made with respect to the eligibility of the child for medical assistance under the State plan, or

(ii) in the case of a child on whose behalf an application is not filed by the last day of the month following the month during which the entity makes the determination referred to in subparagraph (A), such last day.

(3)(A) Subject to subparagraph (B), the term ''qualified entity'' means any entity that—

(i)(I) is eligible for payments under a State plan approved under this subchapter and provides items and services described in subsection (a) of this section, (II) is authorized to determine eligibility of a child to participate in a Head Start program under the Head Start Act (42 U.S.C. 9831 et seq.), eligibility of a child to receive child care services for which financial assistance is provided under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), eligibility of an infant or child to receive assistance under the special supplemental nutrition program for women, infants, and children (WIC) under section 1786 of this title[1] eligibility of a child for medical assistance under the State plan under this subchapter, or eligibility of a child for child health assistance under the program funded under subchapter XXI of this chapter, (III) is an elementary school or secondary school, as such terms are defined in section 8801 of title 20,[2] an elementary or secondary school operated or supported by the Bureau of Indian Affairs, a State or tribal child support enforcement agency, an organization that is providing emergency food and shelter under a grant under the Stewart B. McKinney Homeless Assistance Act[2] [42 U.S.C. 11301 et seq.], or a State or tribal office or entity involved in enrollment in the program under this subchapter, under part A of subchapter IV of this chapter, under subchapter XXI of this chapter, or that determines eligibility for any assistance or benefits provided under any program of public or assisted housing that receives Federal funds, including the program under section 8 [42 U.S.C. 1437f] or any other section of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), or (IV) any other entity the State so deems, as approved by the Secretary; and

(ii) is determined by the State agency to be capable of making determinations of the type described in paragraph (2).

(B) The Secretary may issue regulations further limiting those entities that may become qualified entities in order to prevent fraud and abuse and for other reasons.

(C) Nothing in this section shall be construed as preventing a State from limiting the classes of entities that may become qualified entities, consistent with any limitations imposed under subparagraph (B).

(c) Application for medical assistance; procedure upon determination of presumptive eligibility

(1) The State agency shall provide qualified entities with—

(A) such forms as are necessary for an application to be made on behalf of a child for medical assistance under the State plan, and

(B) information on how to assist parents, guardians, and other persons in completing and filing such forms.

(2) A qualified entity that determines under subsection (b)(2) of this section that a child is presumptively eligible for medical assistance under a State plan shall—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

[1] So in original. A comma probably should appear after ''title''.

[2] See References in Text note below.

(B) inform the parent or custodian of the child at the time the determination is made that an application for medical assistance under the State plan is required to be made by not later than the last day of the month following the month during which the determination is made.

(3) In the case of a child who is determined by a qualified entity to be presumptively eligible for medical assistance under a State plan, the parent, guardian, or other person shall make application on behalf of the child for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made, which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(*l*)(1) of this title.

(d) Treatment of medical assistance

Notwithstanding any other provision of this subchapter, medical assistance for items and services described in subsection (a) of this section that—

(1) are furnished to a child—

(A) during a presumptive eligibility period,

(B) by an entity that is eligible for payments under the State plan; and

(2) are included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1396b of this title.

(Aug. 14, 1935, ch. 531, title XIX, § 1920A, as added Pub. L. 105–33, title IV, § 4912(a), Aug. 5, 1997, 111 Stat. 571; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(r)], Nov. 29, 1999, 113 Stat. 1536, 1501A–397; Pub. L. 106–554, § 1(a)(6) [title VII, § 708], Dec. 21, 2000, 114 Stat. 2763, 2763A–577.)

REFERENCES IN TEXT

Section 8801 of title 20, referred to in subsec. (b)(3)(A)(i)(III), was repealed by Pub. L. 107–110, title X, § 1011(5)(C), Jan. 8, 2002, 115 Stat. 1986. See section 7801 of Title 20, Education.

The Head Start Act, referred to in subsec. (b)(3)(A)(i)(II), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (b)(3)(A)(i)(II), is subchapter C (§§ 658A–658R) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–236, as amended, which is classified generally to subchapter II–B (§ 9858 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Stewart B. McKinney Homeless Assistance Act, referred to in subsec. (b)(3)(A)(i)(III), was Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended. Pub. L. 100–77 was renamed the McKinney-Vento Homeless Assistance Act by Pub. L. 106–400, § 1, Oct. 30, 2000, 114 Stat. 1675, and is classified principally to chapter 119 (§ 11301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

Part A of subchapter IV of this chapter, referred to in subsec. (b)(3)(A)(i)(III), is classified to section 601 et seq. of this title.

The United States Housing Act of 1937, referred to in subsec. (b)(3)(A)(i)(III), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (b)(3)(A)(i)(III), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

AMENDMENTS

2000—Subsec. (b)(3)(A)(i). Pub. L. 106–554, § 1(a)(6) [title VII, § 708(b)(1)], substituted ''42 U.S.C. 9831'' for ''42 U.S.C. 9821''.

Pub. L. 106–554, § 1(a)(6) [title VII, § 708(a)(2)], inserted before semicolon ''eligibility of a child for medical assistance under the State plan under this subchapter, or eligibility of a child for child health assistance under the program funded under subchapter XXI of this chapter, (III) is an elementary school or secondary school, as such terms are defined in section 8801 of title 20, an elementary or secondary school operated or supported by the Bureau of Indian Affairs, a State or tribal child support enforcement agency, an organization that is providing emergency food and shelter under a grant under the Stewart B. McKinney Homeless Assistance Act, or a State or tribal office or entity involved in enrollment in the program under this subchapter, under part A of subchapter IV of this chapter, under subchapter XXI of this chapter, or that determines eligibility for any assistance or benefits provided under any program of public or assisted housing that receives Federal funds, including the program under section 8 or any other section of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), or (IV) any other entity the State so deems, as approved by the Secretary''.

Pub. L. 106–554, § 1(a)(6) [title VII, § 708(a)(1)], substituted '', (II)'' for ''or (II)''.

Subsec. (b)(3)(A)(ii). Pub. L. 106–554, § 1(a)(6) [title VII, § 708(b)(2)], substituted ''paragraph (2)'' for ''paragraph (1)(A)''.

Subsec. (c)(2). Pub. L. 106–554, § 1(a)(6) [title VII, § 708(b)(3)], substituted ''subsection (b)(2)'' for ''subsection (b)(1)(A)'' in introductory provisions.

1999—Subsec. (d)(1)(B). Pub. L. 106–113 substituted ''an entity'' for ''a entity''.

§ 1396r–1b. Presumptive eligibility for certain breast or cervical cancer patients

(a) State option

A State plan approved under section 1396a of this title may provide for making medical assistance available to an individual described in section 1396a(aa) of this title (relating to certain breast or cervical cancer patients) during a presumptive eligibility period.

(b) Definitions

For purposes of this section:

(1) Presumptive eligibility period

The term ''presumptive eligibility period'' means, with respect to an individual described in subsection (a) of this section, the period that—

(A) begins with the date on which a qualified entity determines, on the basis of preliminary information, that the individual is

described in section 1396a(aa) of this title; and

(B) ends with (and includes) the earlier of—

(i) the day on which a determination is made with respect to the eligibility of such individual for services under the State plan; or

(ii) in the case of such an individual who does not file an application by the last day of the month following the month during which the entity makes the determination referred to in subparagraph (A), such last day.

(2) Qualified entity

(A) In general

Subject to subparagraph (B), the term ''qualified entity'' means any entity that—

(i) is eligible for payments under a State plan approved under this subchapter; and

(ii) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A).

(B) Regulations

The Secretary may issue regulations further limiting those entities that may become qualified entities in order to prevent fraud and abuse and for other reasons.

(C) Rule of construction

Nothing in this paragraph shall be construed as preventing a State from limiting the classes of entities that may become qualified entities, consistent with any limitations imposed under subparagraph (B).

(c) Administration

(1) In general

The State agency shall provide qualified entities with—

(A) such forms as are necessary for an application to be made by an individual described in subsection (a) of this section for medical assistance under the State plan; and

(B) information on how to assist such individuals in completing and filing such forms.

(2) Notification requirements

A qualified entity that determines under subsection (b)(1)(A) of this section that an individual described in subsection (a) of this section is presumptively eligible for medical assistance under a State plan shall—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made; and

(B) inform such individual at the time the determination is made that an application for medical assistance under the State plan is required to be made by not later than the last day of the month following the month during which the determination is made.

(3) Application for medical assistance

In the case of an individual described in subsection (a) of this section who is determined by a qualified entity to be presumptively eligible for medical assistance under a State plan, the individual shall apply for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made.

(d) Payment

Notwithstanding any other provision of this subchapter, medical assistance that—

(1) is furnished to an individual described in subsection (a) of this section—

(A) during a presumptive eligibility period;

(B) by a[1] entity that is eligible for payments under the State plan; and

(2) is included in the care and services covered by the State plan,

shall be treated as medical assistance provided by such plan for purposes of clause (4) of the first sentence of section 1396d(b) of this title.

(Aug. 14, 1935, ch. 531, title XIX, § 1920B, as added Pub. L. 106–354, § 2(b)(1), Oct. 24, 2000, 114 Stat. 1382.)

EFFECTIVE DATE

Section applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date, see section 2(d) of Pub. L. 106–354, set out as an Effective Date of 2000 Amendment note under section 1396a of this title.

§ 1396r–2. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers

(a) Information reporting requirement

The requirement referred to in section 1396a(a)(49) of this title is that the State must provide for the following:

(1) Information reporting system

The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by any authority of the State (or of a political subdivision thereof) responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities:

(A) Any adverse action taken by such licensing authority as a result of the proceeding, including any revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation.

(B) Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.

(C) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.

(D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.

(2) Access to documents

The State must provide the Secretary (or an entity designated by the Secretary) with access to such documents of the authority de-

[1] So in original. Probably should be ''an''.

scribed in paragraph (1) as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations described in such paragraph for the purpose of carrying out this chapter.

(b) Form of information

The information described in subsection (a)(1) of this section shall be provided to the Secretary (or to an appropriate private or public agency, under suitable arrangements made by the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of information) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this chapter and in order to provide, directly or through suitable arrangements made by the Secretary, information—

(1) to agencies administering Federal health care programs, including private entities administering such programs under contract,

(2) to licensing authorities described in subsection (a)(1) of this section,

(3) to State agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title),

(4) to utilization and quality control peer review organizations described in part B of subchapter XI of this chapter and to appropriate entities with contracts under section 1320c–3(a)(4)(C) of this title with respect to eligible organizations reviewed under the contracts,

(5) to State medicaid fraud control units (as defined in section 1396b(q) of this title),

(6) to hospitals and other health care entities (as defined in section 431 of the Health Care Quality Improvement Act of 1986 [42 U.S.C. 11151]), with respect to physicians or other licensed health care practitioners that have entered (or may be entering) into an employment or affiliation relationship with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities (and such information shall be deemed to be disclosed pursuant to section 427 [42 U.S.C. 11137] of, and be subject to the provisions of, that Act [42 U.S.C. 11101 et seq.]),

(7) to the Attorney General and such other law enforcement officials as the Secretary deems appropriate, and

(8) upon request, to the Comptroller General,

in order for such authorities to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care through such programs, and to protect the fiscal integrity of such programs.

(c) Confidentiality of information provided

The Secretary shall provide for suitable safeguards for the confidentiality of the information furnished under subsection (a) of this section. Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure.

(d) Appropriate coordination

The Secretary shall provide for the maximum appropriate coordination in the implementation of subsection (a) of this section and section 422 of the Health Care Quality Improvement Act of 1986 [42 U.S.C. 11132].

(Aug. 14, 1935, ch. 531, title XIX, § 1921, as added Pub. L. 100–93, § 5(b), Aug. 18, 1987, 101 Stat. 690; amended Pub. L. 101–508, title IV, § 4752(f)(1), Nov. 5, 1990, 104 Stat. 1388–208.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (b)(4), is classified to section 1320c et seq. of this title.

That Act, referred to in subsec. (b)(6), is title IV of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3784, as amended, known as the Health Care Quality Improvement Act of 1986, which is classified generally to chapter 117 (§ 11101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11101 of this title and Tables.

PRIOR PROVISIONS

A prior section 1921 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–508, § 4752(f)(1)(A), inserted "(or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners)" after "health care practitioners" in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 101–508, § 4752(f)(1)(B), added subpar. (D).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4752(f)(2) of Pub. L. 101–508 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to State information reporting systems as of January 1, 1992, without regard to whether or not the Secretary of Health and Human Services has promulgated any regulations to carry out such amendments by such date."

EFFECTIVE DATE

Section applicable, with certain exceptions, to payments under subchapter XIX of this chapter for calendar quarters beginning more than thirty days after Aug. 18, 1987, without regard to whether or not final regulations to carry out this section have been published by that date, see section 15(c)(1), (2) of Pub. L. 100–93 set out as an Effective Date of 1987 Amendment note under section 1320a–7 of this title.

§ 1396r–3. Correction and reduction plans for intermediate care facilities for mentally retarded

(a) Written plans to remedy substantial deficiencies; time for submission

If the Secretary finds that an intermediate care facility for the mentally retarded has substantial deficiencies which do not pose an immediate threat to the health and safety of residents (including failure to provide active treatment), the State may elect, subject to the limitations in this section, to—

(1) submit, within the number of days specified by the Secretary in regulations which apply to submission of compliance plans with respect to deficiencies of such type, a written plan of correction which details the extent of

the facility's current compliance with the standards promulgated by the Secretary, including all deficiencies identified during a validation survey, and which provides for a timetable for completion of necessary steps to correct all staffing deficiencies within 6 months, and a timetable for rectifying all physical plant deficiencies within 6 months; or

(2) submit, within a time period consisting of the number of days specified for submissions under paragraph (1) plus 35 days, a written plan for permanently reducing the number of certified beds, within a maximum of 36 months, in order to permit any noncomplying buildings (or distinct parts thereof) to be vacated and any staffing deficiencies to be corrected (hereinafter in this section referred to as a ''reduction plan'').

(b) Conditions for approval of reduction plans

As conditions of approval of any reduction plan submitted pursuant to subsection (a)(2) of this section, the State must—

(1) provide for a hearing to be held at the affected facility at least 35 days prior to submission of the reduction plan, with reasonable notice thereof to the staff and residents of the facility, responsible members of the residents' families, and the general public;

(2) demonstrate that the State has successfully provided home and community services similar to the services proposed to be provided under the reduction plan for similar individuals eligible for medical assistance; and

(3) provide assurances that the requirements of subsection (c) of this section shall be met with respect to the reduction plan.

(c) Contents of reduction plan

The reduction plan must—

(1) identify the number and service needs of existing facility residents to be provided home or community services and the timetable for providing such services, in 6 month intervals, within the 36-month period;

(2) describe the methods to be used to select such residents for home and community services and to develop the alternative home and community services to meet their needs effectively;

(3) describe the necessary safeguards that will be applied to protect the health and welfare of the former residents of the facility who are to receive home or community services, including adequate standards for consumer and provider participation and assurances that applicable State licensure and applicable State and Federal certification requirements will be met in providing such home or community services;

(4) provide that residents of the affected facility who are eligible for medical assistance while in the facility shall, at their option, be placed in another setting (or another part of the affected facility) so as to retain their eligibility for medical assistance;

(5) specify the actions which will be taken to protect the health and safety of, and to provide active treatment for, the residents who remain in the affected facility while the reduction plan is in effect;

(6) provide that the ratio of qualified staff to residents at the affected facility (or the part thereof) which is subject to the reduction plan will be the higher of—

(A) the ratio which the Secretary determines is necessary in order to assure the health and safety of the residents of such facility (or part thereof); or

(B) the ratio which was in effect at the time that the finding of substantial deficiencies (referred to in subsection (a) of this section) was made; and

(7) provide for the protection of the interests of employees affected by actions under the reduction plan, including—

(A) arrangements to preserve employee rights and benefits;

(B) training and retraining of such employees where necessary;

(C) redeployment of such employees to community settings under the reduction plan; and

(D) making maximum efforts to guarantee the employment of such employees (but this requirement shall not be construed to guarantee the employment of any employee).

(d) Notice and comment; approval of more than 15 reduction plans in any fiscal year; corrections costing $2,000,000 or more

(1) The Secretary must provide for a period of not less than 30 days after the submission of a reduction plan by a State, during which comments on such reduction plan may be submitted to the Secretary, before the Secretary approves or disapproves such reduction plan.

(2) If the Secretary approves more than 15 reduction plans under this section in any fiscal year, any reduction plans approved in addition to the first 15 such plans approved, must be for a facility (or part thereof) for which the costs of correcting the substantial deficiencies (referred to in subsection (a) of this section) are $2,000,000 or greater (as demonstrated by the State to the satisfaction of the Secretary).

(e) Termination of provider agreements; disallowance of percentage amounts for purposes of Federal financial participation

(1) If the Secretary, at the conclusion of the 6-month plan of correction described in subsection (a)(1) of this section, determines that the State has substantially failed to correct the deficiencies described in subsection (a) of this section, the Secretary may terminate the facility's provider agreement in accordance with the provisions of section 1396i(b) of this title.

(2) In the case of a reduction plan described in subsection (a)(2) of this section, if the Secretary determines, at the conclusion of the initial 6-month period or any 6-month interval thereafter, that the State has substantially failed to meet the requirements of subsection (c) of this section, the Secretary shall—

(A) terminate the facility's provider agreement in accordance with the provisions of section 1396i(b) of this title; or

(B) if the State has failed to meet such requirements despite good faith efforts, disallow, for purposes of Federal financial participation, an amount equal to 5 percent of the cost of care for all eligible individuals in the facility for each month for which the State fails to meet such requirements.

(f) Applicability of section limited to plans approved by January 1, 1990

The provisions of this section shall apply only to plans of correction and reduction plans approved by the Secretary by January 1, 1990.

(Aug. 14, 1935, ch. 531, title XIX, § 1922, formerly § 1919, as added Pub. L. 99–272, title IX, § 9516(a), Apr. 7, 1986, 100 Stat. 213; renumbered § 1922 and amended Pub. L. 100–203, title IV, §§ 4211(a)(2), 4212(e)(5), Dec. 22, 1987, 101 Stat. 1330–182; amended Pub. L. 100–360, title IV, § 411(*l*)(6)(E), July 1, 1988, 102 Stat. 804; Pub. L. 100–647, title VIII, § 8433(a), Nov. 10, 1988, 102 Stat. 3804.)

PRIOR PROVISIONS

A prior section 1922 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, § 8433(a)(1), inserted ''(including failure to provide active treatment)'' after ''residents'' in introductory provisions.

Subsec. (c)(5). Pub. L. 100–647, § 8433(a)(2), inserted '', and to provide active treatment for,'' after ''safety of''.

Subsec. (e)(1), (2)(A). Pub. L. 100–360, § 411(*l*)(6)(E), substituted ''1396i(b)'' for ''1396i(c)''.

Subsec. (f). Pub. L. 100–647, § 8433(a)(3), substituted ''by January 1, 1990'' for ''within 3 years after the effective date of final regulations implementing this section''.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8433(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Nov. 10, 1988], and shall apply to any proceeding where there has not yet been a final determination by the Secretary (as defined for purposes of judicial review) as of the date of the enactment of this Act.''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 9516(b) of Pub. L. 99–272 provided that:

''(1) The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].

''(2) The Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to section 1919 of the Social Security Act [this section] within 60 days after the date of the enactment of this Act, and shall allow a period of 30 days for comment thereon prior to promulgating final regulations implementing such section.''

REGULATIONS

Section 4217 of Pub. L. 100–203 provided that:

''(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act [Dec. 22, 1987], the Secretary of Health and Human Services shall promulgate final regulations to implement the amendments made by section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [enacting this section].

''(b) The regulations promulgated under paragraph (1) shall be effective as if promulgated on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Apr. 7, 1986].''

REPORT TO CONGRESS ON IMPLEMENTATION AND RESULTS OF THIS SECTION

Section 9516(c) of Pub. L. 99–272, as amended by Pub. L. 100–203, title IV, § 4211(*l*), Dec. 22, 1987, 101 Stat. 1330–207, directed Secretary of Health and Human Services to submit a report to Congress on implementation and results of this section, such report to be submitted not later than 30 months after the effective date of final regulations promulgated to implement this section.

§ 1396r–4. Adjustment in payment for inpatient hospital services furnished by disproportionate share hospitals

(a) Implementation of requirement

(1) A State plan under this subchapter shall not be considered to meet the requirement of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs), as of July 1, 1988, unless the State has submitted to the Secretary, by not later than such date, an amendment to such plan that—

(A) specifically defines the hospitals so described (and includes in such definition any disproportionate share hospital described in subsection (b)(1) of this section which meets the requirements of subsection (d) of this section), and

(B) provides, effective for inpatient hospital services provided not later than July 1, 1988, for an appropriate increase in the rate or amount of payment for such services provided by such hospitals, consistent with subsection (c) of this section.

(2)(A) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, the State plan amendment described in paragraph (1), consistent with subsection (c) of this section, effective for inpatient hospital services provided on or after July 1, 1989.

(B) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1990, the State must submit to the Secretary by not later than April 1, 1990, the State plan amendment described in paragraph (1), consistent with subsections (c) and (f) of this section, effective for inpatient hospital services provided on or after July 1, 1990.

(C) If a State plan under this subchapter provides for payments for inpatient hospital services on a prospective basis (whether per diem, per case, or otherwise), in order for the plan to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, a State plan amendment that provides, in the case of hospitals defined by the State as disproportionate share hospitals under paragraph (1)(A), for an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1989, involving exceptionally high costs or exceptionally long lengths of stay for individuals under one year of age.

(D) A State plan under this subchapter shall not be considered to meet the requirements of

section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs), as of October 1, 1998, unless the State has submitted to the Secretary by such date a description of the methodology used by the State to identify and to make payments to disproportionate share hospitals, including children's hospitals, on the basis of the proportion of low-income and medicaid patients (including such patients who receive benefits through a managed care entity) served by such hospitals. The State shall provide an annual report to the Secretary describing the disproportionate share payments to each such disproportionate share hospital.

(3) The Secretary shall, not later than 90 days after the date a State submits an amendment under this subsection, review each such amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement.

(4) The requirement of this subsection may not be waived under section 1396n(b)(4) of this title.

(b) Hospitals deemed disproportionate share

(1) For purposes of subsection (a)(1) of this section, a hospital which meets the requirements of subsection (d) of this section is deemed to be a disproportionate share hospital if—

(A) the hospital's medicaid inpatient utilization rate (as defined in paragraph (2)) is at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State; or

(B) the hospital's low-income utilization rate (as defined in paragraph (3)) exceeds 25 percent.

(2) For purposes of paragraph (1)(A), the term ''medicaid inpatient utilization rate'' means, for a hospital, a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under a State plan approved under this subchapter in a period (regardless of whether such patients receive medical assistance on a fee-for-service basis or through a managed care entity), and the denominator of which is the total number of the hospital's inpatient days in that period. In this paragraph, the term ''inpatient day'' includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

(3) For purposes of paragraph (1)(B), the term ''low-income utilization rate'' means, for a hospital, the sum of—

(A) the fraction (expressed as a percentage)—

(i) the numerator of which is the sum (for a period) of (I) the total revenues paid the hospital for patient services under a State plan under this subchapter (regardless of whether the services were furnished on a fee-for-service basis or through a managed care entity) and (II) the amount of the cash subsidies for patient services received directly from State and local governments, and

(ii) the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the period; and

(B) a fraction (expressed as a percentage)—

(i) the numerator of which is the total amount of the hospital's charges for inpatient hospital services which are attributable to charity care in a period, less the portion of any cash subsidies described in clause (i)(II) of subparagraph (A) in the period reasonably attributable to inpatient hospital services, and

(ii) the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the hospital in the period.

The numerator under subparagraph (B)(i) shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under a State plan approved under this subchapter).

(4) The Secretary may not restrict a State's authority to designate hospitals as disproportionate share hospitals under this section. The previous sentence shall not be construed to affect the authority of the Secretary to reduce payments pursuant to section 1396b(w)(1)(A)(iii) of this title if the Secretary determines that, as a result of such designations, there is in effect a hold harmless provision described in section 1396b(w)(4) of this title.

(c) Payment adjustment

Subject to subsections (f) and (g) of this section, in order to be consistent with this subsection, a payment adjustment for a disproportionate share hospital must either—

(1) be in an amount equal to at least the product of (A) the amount paid under the State plan to the hospital for operating costs for inpatient hospital services (of the kind described in section 1395ww(a)(4) of this title), and (B) the hospital's disproportionate share adjustment percentage (established under section 1395ww(d)(5)(F)(iv) of this title);

(2) provide for a minimum specified additional payment amount (or increased percentage payment) and (without regard to whether the hospital is described in subparagraph (A) or (B) of subsection (b)(1) of this section) for an increase in such a payment amount (or percentage payment) in proportion to the percentage by which the hospital's medicaid utilization rate (as defined in subsection (b)(2) of this section) exceeds one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State or the hospital's low-income utilization rate (as defined in paragraph [1] (b)(3) of this section); or

(3) provide for a minimum specified additional payment amount (or increased percent-

[1] So in original. Probably should be ''subsection''.

age payment) that varies according to type of hospital under a methodology that—

(A) applies equally to all hospitals of each type; and

(B) results in an adjustment for each type of hospital that is reasonably related to the costs, volume, or proportion of services provided to patients eligible for medical assistance under a State plan approved under this subchapter or to low-income patients,

except that, for purposes of paragraphs (1)(B) and (2)(A) of subsection (a) of this section, the payment adjustment for a disproportionate share hospital is consistent with this subsection if the appropriate increase in the rate or amount of payment is equal to at least one-third of the increase otherwise applicable under this subsection (in the case of such paragraph (1)(B)) and at least two-thirds of such increase (in the case of paragraph (2)(A)). In the case of a hospital described in subsection (d)(2)(A)(i) of this section (relating to children's hospitals), in computing the hospital's disproportionate share adjustment percentage for purposes of paragraph (1)(B) of this subsection, the disproportionate patient percentage (defined in section 1395ww(d)(5)(F)(vi) of this title) shall be computed by substituting for the fraction described in subclause (I) of such section the fraction described in subclause (II) of that section. If a State elects in a State plan amendment under subsection (a) of this section to provide the payment adjustment described in paragraph (2), the State must include in the amendment a detailed description of the specific methodology to be used in determining the specified additional payment amount (or increased percentage payment) to be made to each hospital qualifying for such a payment adjustment and must publish at least annually the name of each hospital qualifying for such a payment adjustment and the amount of such payment adjustment made for each such hospital.

(d) Requirements to qualify as disproportionate share hospital

(1) Except as provided in paragraph (2), no hospital may be defined or deemed as a disproportionate share hospital under a State plan under this subchapter or under subsection (b) of this section unless the hospital has at least 2 obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to individuals who are entitled to medical assistance for such services under such State plan.

(2)(A) Paragraph (1) shall not apply to a hospital—

(i) the inpatients of which are predominantly individuals under 18 years of age; or

(ii) which does not offer nonemergency obstetric services to the general population as of December 22, 1987.

(B) In the case of a hospital located in a rural area (as defined for purposes of section 1395ww of this title), in paragraph (1) the term ''obstetrician'' includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(3) No hospital may be defined or deemed as a disproportionate share hospital under a State plan under this subchapter or under subsection (b) or (e) of this section unless the hospital has a medicaid inpatient utilization rate (as defined in subsection (b)(2) of this section) of not less than 1 percent.

(e) Special rule

(1) A State plan shall be considered to meet the requirement of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs) without regard to the requirement of subsection (a) of this section if (A)(i) the plan provided for payment adjustments based on a pooling arrangement involving a majority of the hospitals participating under the plan for disproportionate share hospitals as of January 1, 1984, or (ii) the plan as of January 1, 1987, provided for payment adjustments based on a statewide pooling arrangement involving all acute care hospitals and the arrangement provides for reimbursement of the total amount of uncompensated care provided by each participating hospital, (B) the aggregate amount of the payment adjustments under the plan for such hospitals is not less than the aggregate amount of such adjustments otherwise required to be made under such subsection, and (C) the plan meets the requirement of subsection (d)(3) of this section and such payment adjustments are made consistent with the last sentence of subsection (c) of this section.

(2) In the case of a State that used a health insuring organization before January 1, 1986, to administer a portion of its plan on a statewide basis, beginning on July 1, 1988—

(A) the requirements of subsections (b) and (c) of this section (other than the last sentence of subsection (c) of this section) shall not apply if the aggregate amount of the payment adjustments under the plan for disproportionate share hospitals (as defined under the State plan) is not less than the aggregate amount of payment adjustments otherwise required to be made if such subsections applied,

(B) subsection (d)(2)(B) of this section shall apply to hospitals located in urban areas, as well as in rural areas,

(C) subsection (d)(3) of this section shall apply, and

(D) subsection (g) of this section shall apply.

(f) Limitation on Federal financial participation

(1) In general

Payment under section 1396b(a) of this title shall not be made to a State with respect to any payment adjustment made under this section for hospitals in a State for quarters in a fiscal year in excess of the disproportionate share hospital (in this subsection referred to as ''DSH'') allotment for the State for the fiscal year, as specified in paragraphs (2) and (3).

(2) State DSH allotments for fiscal years 1998 through 2002

Subject to paragraph (4), the DSH allotment for a State for each fiscal year during the period beginning with fiscal year 1998 and ending with fiscal year 2002 is determined in accordance with the following table:

State or District	DSH Allotment (in millions of dollars)				
	FY 98	FY 99	FY 00	FY 01	FY 02
Alabama	293	269	248	246	246
Alaska	10	10	10	9	9
Arizona	81	81	81	81	81
Arkansas	2	2	2	2	2
California	1,085	1,068	986	931	877
Colorado	93	85	79	74	74
Connecticut	200	194	164	160	160
Delaware	4	4	4	4	4
District of Columbia	23	23	49	49	49
Florida	207	203	197	188	160
Georgia	253	248	241	228	215
Hawaii	0	0	0	0	0
Idaho	1	1	1	1	1
Illinois	203	199	193	182	172
Indiana	201	197	191	181	171
Iowa	8	8	8	8	8
Kansas	51	49	42	36	33
Kentucky	137	134	130	123	116
Louisiana	880	795	713	658	631
Maine	103	99	84	84	84
Maryland	72	70	68	64	61
Massachusetts	288	282	273	259	244
Michigan	249	244	237	224	212
Minnesota	16	16	33	33	33
Mississippi	143	141	136	129	122
Missouri	436	423	379	379	379
Montana	0.2	0.2	0.2	0.2	0.2
Nebraska	5	5	5	5	5
Nevada	37	37	37	37	37
New Hampshire	140	136	130	130	130
New Jersey	600	582	515	515	515
New Mexico	5	5	9	9	9
New York	1,512	1,482	1,436	1,361	1,285
North Carolina	278	272	264	250	236
North Dakota	1	1	1	1	1
Ohio	382	374	363	344	325
Oklahoma	16	16	16	16	16
Oregon	20	20	20	20	20
Pennsylvania	529	518	502	476	449
Rhode Island	62	60	58	55	52
South Carolina	313	303	262	262	262
South Dakota	1	1	1	1	1
Tennessee	0	0	0	0	0
Texas	979	950	806	765	765
Utah	3	3	3	3	3
Vermont	18	18	18	18	18
Virginia	70	68	66	63	59
Washington	174	171	166	157	148
West Virginia	64	63	61	58	54
Wisconsin	7	7	7	7	7
Wyoming	0	0	0.1	0.1	0.1.

(3) State DSH allotments for fiscal year 2003 and thereafter

(A) In general

Except as provided in paragraph (6), the DSH allotment for any State for fiscal year 2003 and each succeeding fiscal year is equal to the DSH allotment for the State for the preceding fiscal year under paragraph (2) or this paragraph, increased, subject to subparagraphs (B) and (C) and paragraph (5) by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for the previous fiscal year.

(B) Limitation

The DSH allotment for a State shall not be increased under subparagraph (A) for a fiscal year to the extent that such an increase would result in the DSH allotment for the year exceeding the greater of—

(i) the DSH allotment for the previous year, or

(ii) 12 percent of the total amount of expenditures under the State plan for medical assistance during the fiscal year.

(C) Special, temporary increase in allotments on a one-time, non-cumulative basis

The DSH allotment for any State (other than a State with a DSH allotment determined under paragraph (5))—

(i) for fiscal year 2004 is equal to 116 percent of the DSH allotment for the State for fiscal year 2003 under this paragraph, notwithstanding subparagraph (B); and

(ii) for each succeeding fiscal year is equal to the DSH allotment for the State for fiscal year 2004 or, in the case of fiscal years beginning with the fiscal year specified in subparagraph (D) for that State, the DSH allotment for the State for the previous fiscal year increased by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for the previous fiscal year.

(D) Fiscal year specified

For purposes of subparagraph (C)(ii), the fiscal year specified in this subparagraph for a State is the first fiscal year for which the Secretary estimates that the DSH allotment for that State will equal (or no longer exceed) the DSH allotment for that State under the law as in effect before December 8, 2003.

(4) Special rule for fiscal years 2001 and 2002

(A) In general

Notwithstanding paragraph (2), the DSH allotment for any State for—

(i) fiscal year 2001, shall be the DSH allotment determined under paragraph (2) for fiscal year 2000 increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average) for fiscal year 2000; and

(ii) fiscal year 2002, shall be the DSH allotment determined under clause (i) increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average) for fiscal year 2001.

(B) Limitation

Subparagraph (B) of paragraph (3) shall apply to subparagraph (A) of this paragraph in the same manner as that subparagraph (B) applies to paragraph (3)(A).

(C) No application to allotments after fiscal year 2002

The DSH allotment for any State for fiscal year 2003 or any succeeding fiscal year shall be determined under paragraph (3) without regard to the DSH allotments determined under subparagraph (A) of this paragraph.

(5) Special rule for low DSH States

(A) For fiscal years 2001 through 2003 for extremely low DSH States

In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 1999, as reported to the Administrator of the Health Care Financing Administration as of August 31, 2000, is greater than 0 but less than 1 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for fiscal year 2001 shall be increased to 1 percent of the State's total amount of expenditures under such plan for such assistance during such fiscal year. In subsequent fiscal years before fiscal year 2004, such increased allotment is subject to an increase for inflation as provided in paragraph (3)(A).

(B) For fiscal year 2004 and subsequent fiscal years

In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 2000, as reported to the Administrator of the Centers for Medicare & Medicaid Services as of August 31, 2003, is greater than 0 but less than 3 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for the State with respect to—

(i) fiscal year 2004 shall be the DSH allotment for the State for fiscal year 2003 increased by 16 percent;

(ii) each succeeding fiscal year before fiscal year 2009 shall be the DSH allotment for the State for the previous fiscal year increased by 16 percent; and

(iii) fiscal year 2009 and any subsequent fiscal year, shall be the DSH allotment for the State for the previous year subject to an increase for inflation as provided in paragraph (3)(A).

(6) Allotment adjustments for fiscal year 2007

(A) Tennessee

(i) In general

Only with respect to fiscal year 2007, the DSH allotment for Tennessee for such fiscal year, notwithstanding the table set forth in paragraph (2) or the terms of the TennCare Demonstration Project in effect for the State, shall be the greater of—

(I) the amount that the Secretary determines is equal to the Federal medical assistance percentage component attributable to disproportionate share hospital payment adjustments for the demonstration year ending in 2006 that is reflected in the budget neutrality provision of the TennCare Demonstration Project; and

(II) $280,000,000.

(ii) Limitation on amount of payment adjustments eligible for Federal financial participation

Payment under section 1396b(a) of this title shall not be made to Tennessee with respect to the aggregate amount of any payment adjustments made under this section for hospitals in the State for fiscal year 2007 that is in excess of 30 percent of the DSH allotment for the State for such fiscal year determined pursuant to clause (i).

(iii) State plan amendment

The Secretary shall permit Tennessee to submit an amendment to its State plan under this subchapter that describes the methodology to be used by the State to identify and make payments to disproportionate share hospitals, including children's hospitals and institutions for mental diseases or other mental health facilities. The Secretary may not approve such plan amendment unless the methodology described in the amendment is consistent with the requirements under this section for making payment adjustments to disproportionate share hospitals. For purposes of demonstrating budget neutrality under the TennCare Demonstration Project, payment adjustments made pursuant to a State plan amendment approved in accordance with this subparagraph shall be considered expenditures under such project.

(iv) Offset of Federal share of payment adjustments for fiscal year 2007 against Essential Access Hospital supplemental pool payments under the TennCare Demonstration Project

(I) The total amount of Essential Access Hospital supplemental pool payments that may be made under the TennCare Demonstration Project for fiscal year 2007 shall be reduced on a dollar for dollar basis by the amount of any payments made under section 1396b(a) of this title to Tennessee with respect to payment adjustments made under this section for hospitals in the State for such fiscal year.

(II) The sum of the total amount of payments made under section 1396b(a) of this title to Tennessee with respect to payment adjustments made under this section for hospitals in the State for fiscal year 2007 and the total amount of Essential Access Hospital supplemental pool payments made under the TennCare Demonstration Project for such fiscal year shall not exceed the State's DSH allotment for such fiscal year established under clause (i).

(B) Hawaii

(i) In general

Only with respect to fiscal year 2007, the DSH allotment for Hawaii for such fiscal year, notwithstanding the table set forth in paragraph (2), shall be $10,000,000.

(ii) State plan amendment

The Secretary shall permit Hawaii to submit an amendment to its State plan under this subchapter that describes the methodology to be used by the State to identify and make payments to disproportionate share hospitals, including chil-

dren's hospitals and institutions for mental diseases or other mental health facilities. The Secretary may not approve such plan amendment unless the methodology described in the amendment is consistent with the requirements under this section for making payment adjustments to disproportionate share hospitals.

(7) "State" defined

In this subsection, the term ''State'' means the 50 States and the District of Columbia.

(g) Limit on amount of payment to hospital

(1) Amount of adjustment subject to uncompensated costs

(A) In general

A payment adjustment during a fiscal year shall not be considered to be consistent with subsection (c) of this section with respect to a hospital if the payment adjustment exceeds the costs incurred during the year of furnishing hospital services (as determined by the Secretary and net of payments under this subchapter, other than under this section, and by uninsured patients) by the hospital to individuals who either are eligible for medical assistance under the State plan or have no health insurance (or other source of third party coverage) for services provided during the year. For purposes of the preceding sentence, payments made to a hospital for services provided to indigent patients made by a State or a unit of local government within a State shall not be considered to be a source of third party payment.

(B) Limit to public hospitals during transition period

With respect to payment adjustments during a State fiscal year that begins before January 1, 1995, subparagraph (A) shall apply only to hospitals owned or operated by a State (or by an instrumentality or a unit of government within a State).

(C) Modifications for private hospitals

With respect to hospitals that are not owned or operated by a State (or by an instrumentality or a unit of government within a State), the Secretary may make such modifications to the manner in which the limitation on payment adjustments is applied to such hospitals as the Secretary considers appropriate.

(2) Additional amount during transition period for certain hospitals with high disproportionate share

(A) In general

In the case of a hospital with high disproportionate share (as defined in subparagraph (B)), a payment adjustment during a State fiscal year that begins before January 1, 1995, shall be considered consistent with subsection (c) of this section if the payment adjustment does not exceed 200 percent of the costs of furnishing hospital services described in paragraph (1)(A) during the year, but only if the Governor of the State certifies to the satisfaction of the Secretary that the hospital's applicable minimum amount is used for health services during the year. In determining the amount that is used for such services during a year, there shall be excluded any amounts received under the Public Health Service Act [42 U.S.C. 201 et seq.], subchapter V of this chapter, subchapter XVIII of this chapter, or from third party payors (not including the State plan under this subchapter) that are used for providing such services during the year.

(B) "Hospital with high disproportionate share" defined

In subparagraph (A), a hospital is a ''hospital with high disproportionate share'' if—

(i) the hospital is owned or operated by a State (or by an instrumentality or a unit of government within a State); and

(ii) the hospital—

(I) meets the requirement described in subsection (b)(1)(A) of this section, or

(II) has the largest number of inpatient days attributable to individuals entitled to benefits under the State plan of any hospital in such State for the previous State fiscal year.

(C) "Applicable minimum amount" defined

In subparagraph (A), the ''applicable minimum amount'' for a hospital for a fiscal year is equal to the difference between the amount of the hospital's payment adjustment for the fiscal year and the costs to the hospital of furnishing hospital services described in paragraph (1)(A) during the fiscal year.

(h) Limitation on certain State DSH expenditures

(1) In general

Payment under section 1396b(a) of this title shall not be made to a State with respect to any payment adjustments made under this section for quarters in a fiscal year (beginning with fiscal year 1998) to institutions for mental diseases or other mental health facilities, to the extent the aggregate of such adjustments in the fiscal year exceeds the lesser of the following:

(A) 1995 IMD DSH payment adjustments

The total State DSH expenditures that are attributable to fiscal year 1995 for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).

(B) Applicable percentage of 1995 total DSH payment allotment

The amount of such payment adjustments which are equal to the applicable percentage of the Federal share of payment adjustments made to hospitals in the State under subsection (c) of this section that are attributable to the 1995 DSH allotment for the State for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), the applicable percentage with respect to—

(i) each of fiscal years 1998, 1999, and 2000, is the percentage determined under subparagraph (B); or

(ii) a succeeding fiscal year is the lesser of the percentage determined under subparagraph (B) or the following percentage:

(I) For fiscal year 2001, 50 percent.

(II) For fiscal year 2002, 40 percent.

(III) For each succeeding fiscal year, 33 percent.

(B) 1995 percentage

The percentage determined under this subparagraph is the ratio (determined as a percentage) of—

(i) the Federal share of payment adjustments made to hospitals in the State under subsection (c) of this section that are attributable to the 1995 DSH allotment for the State (as reported by the State not later than January 1, 1997, on HCFA Form 64, and as approved by the Secretary) for payments to institutions for mental diseases and other mental health facilities, to

(ii) the State 1995 DSH spending amount.

(C) State 1995 DSH spending amount

For purposes of subparagraph (B)(ii), the ''State 1995 DSH spending amount'', with respect to a State, is the Federal medical assistance percentage (for fiscal year 1995) of the payment adjustments made under subsection (c) of this section under the State plan that are attributable to the fiscal year 1995 DSH allotment for the State (as reported by the State not later than January 1, 1997, on HCFA Form 64, and as approved by the Secretary).

(i) Requirement for direct payment

(1) In general

No payment may be made under section 1396b(a)(1) of this title with respect to a payment adjustment made under this section, for services furnished by a hospital on or after October 1, 1997, with respect to individuals eligible for medical assistance under the State plan who are enrolled with a managed care entity (as defined in section 1396u–2(a)(1)(B) of this title) or under any other managed care arrangement unless a payment, equal to the amount of the payment adjustment—

(A) is made directly to the hospital by the State; and

(B) is not used to determine the amount of a prepaid capitation payment under the State plan to the entity or arrangement with respect to such individuals.

(2) Exception for current arrangements

Paragraph (1) shall not apply to a payment adjustment provided pursuant to a payment arrangement in effect on July 1, 1997.

(j) Annual reports and other requirements regarding payment adjustments

With respect to fiscal year 2004 and each fiscal year thereafter, the Secretary shall require a State, as a condition of receiving a payment under section 1396b(a)(1) of this title with respect to a payment adjustment made under this section, to do the following:

(1) Report

The State shall submit an annual report that includes the following:

(A) An identification of each disproportionate share hospital that received a payment adjustment under this section for the preceding fiscal year and the amount of the payment adjustment made to such hospital for the preceding fiscal year.

(B) Such other information as the Secretary determines necessary to ensure the appropriateness of the payment adjustments made under this section for the preceding fiscal year.

(2) Independent certified audit

The State shall annually submit to the Secretary an independent certified audit that verifies each of the following:

(A) The extent to which hospitals in the State have reduced their uncompensated care costs to reflect the total amount of claimed expenditures made under this section.

(B) Payments under this section to hospitals that comply with the requirements of subsection (g) of this section.

(C) Only the uncompensated care costs of providing inpatient hospital and outpatient hospital services to individuals described in paragraph (1)(A) of such subsection are included in the calculation of the hospital-specific limits under such subsection.

(D) The State included all payments under this subchapter, including supplemental payments, in the calculation of such hospital-specific limits.

(E) The State has separately documented and retained a record of all of its costs under this subchapter, claimed expenditures under this subchapter, uninsured costs in determining payment adjustments under this section, and any payments made on behalf of the uninsured from payment adjustments under this section.

(Aug. 14, 1935, ch. 531, title XIX, § 1923, formerly Pub. L. 100–203, title IV, § 4112, Dec. 22, 1987, 101 Stat. 1330–148; renumbered § 1923 of act Aug. 14, 1935, and amended Pub. L. 100–360, title III, § 302(b)(2), title IV, § 411(k)(6)(A)–(B)(ix), July 1, 1988, 102 Stat. 752, 792–794; Pub. L. 100–485, title VI, § 608(d)(15)(C), (26)(A)–(F), Oct. 13, 1988, 102 Stat. 2417, 2421, 2422; Pub. L. 101–239, title VI, § 6411(c)(1), Dec. 19, 1989, 103 Stat. 2270; Pub. L. 101–508, title IV, §§ 4702(a), 4703(a)–(c), Nov. 5, 1990, 104 Stat. 1388–171; Pub. L. 102–234, §§ 3(b)(1), (2)(A), (c), Dec. 12, 1991, 105 Stat. 1799, 1802, 1803; Pub. L. 103–66, title XIII, § 13621(a)(1), (b)(1), (2), Aug. 10, 1993, 107 Stat. 629–631; Pub. L. 105–33, title IV, §§ 4711(c)(2), 4721(a)(1), (b)–(d), Aug. 5, 1997, 111 Stat. 508, 511, 513, 514; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, §§ 601(a), 608(s)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394, 1501A–397; Pub. L. 106–554, § 1(a)(6) [title VII, § 701(a)(1), (2), (b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–569, 2763A–570; Pub. L. 108–173, title X, § 1001(a)–(d),

Dec. 8, 2003, 117 Stat. 2428–2430; Pub. L. 109–171, title VI, §6054(a), Feb. 8, 2006, 120 Stat. 96; Pub. L. 109–432, div. B, title IV, §404, Dec. 20, 2006, 120 Stat. 2995.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (g)(2)(A), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Prior to redesignation by Pub. L. 100–360, section 4112 of Pub. L. 100–203, cited in the credits to this section, was classified as a note under section 1396a of this title.

PRIOR PROVISIONS

A prior section 1923 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2006—Subsec. (f)(2). Pub. L. 109–171 under each of the columns for FY 00, FY 01, and FY 02, substituted ''49'' for ''32'' in the entry for the District of Columbia.

Subsec. (f)(6). Pub. L. 109–432 amended heading and text of par. (6) generally, substituting provisions relating to allotment adjustments for fiscal year 2007 in Tennessee and Hawaii for provisions relating to allotment adjustments with respect to fiscal year 2004 or 2005 in any State if a statewide waiver had been revoked or terminated before the end of either such fiscal year and there had been no DSH allotment for the State.

2003—Subsec. (f)(3)(A). Pub. L. 108–173, §1001(a)(1), (c)(1), substituted ''Except as provided in paragraph (6), the DSH'' for ''The DSH'' and ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Subsec. (f)(3)(C), (D). Pub. L. 108–173, §1001(a)(2), added subpars. (C) and (D).

Subsec. (f)(5). Pub. L. 108–173, §1001(b)(1), (2), (4), struck out ''extremely'' before ''low DSH States'' in heading, designated existing provisions as subpar. (A) and inserted subpar. heading, and added subpar. (B).

Subsec. (f)(5)(A). Pub. L. 108–173, §1001(b)(3), which directed insertion of ''before fiscal year 2004'' after ''In subsequent years'', was executed by making the insertion after ''In subsequent fiscal years'' to reflect the probable intent of Congress.

Subsec. (f)(6), (7). Pub. L. 108–173, §1001(c)(2), (3), added par. (6) and redesignated former par. (6) as (7).

Subsec. (j). Pub. L. 108–173, §1001(d), added subsec. (j).

2000—Subsec. (a)(2)(D). Pub. L. 106–554, §1(a)(6) [title VII, §701(b)(2)(A)], inserted ''(including such patients who receive benefits through a managed care entity)'' after ''the proportion of low-income and medicaid patients''.

Subsec. (b)(2). Pub. L. 106–554, §1(a)(6) [title VII, §701(b)(2)(B)], inserted ''(regardless of whether such patients receive medical assistance on a fee-for-service basis or through a managed care entity)'' after ''a State plan approved under this subchapter in a period''.

Subsec. (b)(3)(A)(i)(I). Pub. L. 106–554, §1(a)(6) [title VII, §701(b)(2)(C)], inserted ''(regardless of whether the services were furnished on a fee-for-service basis or through a managed care entity)'' after ''under a State plan under this subchapter''.

Subsec. (f)(2). Pub. L. 106–554, §1(a)(6) [title VII, §701(a)(1)(A)(i)], substituted ''Subject to paragraph (4), the DSH allotment'' for ''The DSH allotment'' in introductory provisions.

Subsec. (f)(3)(A). Pub. L. 106–554, §1(a)(6) [title VII, §701(a)(2)(B)], inserted ''and paragraph (5)'' after ''subparagraph (B)''.

Subsec. (f)(4). Pub. L. 106–554, §1(a)(6) [title VII, §701(a)(1)(A)(iii)], added par. (4). Former par. (4) redesignated (6).

Subsec. (f)(5). Pub. L. 106–554, §1(a)(6) [title VII, §701(a)(2)(A)], added par. (5).

Subsec. (f)(6). Pub. L. 106–554, §1(a)(6) [title VII, §701(a)(1)(A)(ii)], redesignated par. (4) as (6).

1999—Subsec. (c)(3)(B). Pub. L. 106–113, §1000(a)(6) [title VI, §608(s)], substituted comma for period at end.

Subsec. (f)(2). Pub. L. 106–113, §1000(a)(6) [title VI, §601(a)], under each of the columns for FY 00, FY 01, and FY 02, substituted ''32'' for ''23'' in the entry for the District of Columbia, ''33'' for ''16'' in the entry for Minnesota, ''9'' for ''5'' in the entry for New Mexico, and ''0.1'' for ''0'' in the entry for Wyoming.

1997—Subsec. (a)(1). Pub. L. 105–33, §4711(c)(2), substituted ''1396a(a)(13)(A)(iv)'' for ''1396a(a)(13)(A)''.

Subsec. (a)(2)(D). Pub. L. 105–33, §4721(c), added subpar. (D).

Subsec. (e)(1). Pub. L. 105–33, §4711(c)(2), substituted ''1396a(a)(13)(A)(iv)'' for ''1396a(a)(13)(A)''.

Subsec. (f). Pub. L. 105–33, §4721(a)(1), amended heading and text of subsec. (f) generally. Prior to amendment, subsec. (f) related to denial of Federal financial participation for payments in excess of certain limits.

Subsec. (h). Pub. L. 105–33, §4721(b), added subsec. (h).

Subsec. (i). Pub. L. 105–33, §4721(d), added subsec. (i).

1993—Subsec. (a)(1)(A). Pub. L. 103–66, §13621(a)(1)(A), substituted ''requirements'' for ''requirement''.

Subsec. (b)(1). Pub. L. 103–66, §13621(a)(1)(B), substituted ''requirements'' for ''requirement'' in introductory provisions.

Subsec. (c). Pub. L. 103–66, §13621(b)(2)(A), substituted ''subsections (f) and (g)'' for ''subsection (f)'' in introductory provisions.

Subsec. (d). Pub. L. 103–66, §13621(a)(1)(C), substituted ''Requirements'' for ''Requirement'' in heading.

Subsec. (d)(3). Pub. L. 103–66, §13621(a)(1)(D), added par. (3).

Subsec. (e)(1)(C). Pub. L. 103–66, §13621(a)(1)(E), added cl. (C).

Subsec. (e)(2)(A). Pub. L. 103–66, §13621(a)(1)(F)(i), inserted ''(other than the last sentence of subsection (c) of this section)'' before ''shall not apply''.

Subsec. (e)(2)(C). Pub. L. 103–66, §13621(a)(1)(F)(ii)–(iv), added subpar. (C).

Subsec. (e)(2)(D). Pub. L. 103–66, §13621(b)(2)(B), added subpar. (D).

Subsec. (g). Pub. L. 103–66, §13621(b)(1), added subsec. (g).

1991—Subsec. (a)(2)(B). Pub. L. 102–234, §3(b)(2)(A)(i), substituted ''subsections (c) and (f)'' for ''subsection (c)''.

Subsec. (b)(4). Pub. L. 102–234, §3(c), added par. (4).

Subsec. (c). Pub. L. 102–234, §3(b)(2)(A)(ii), substituted ''Subject to subsection (f) of this section, in order'' for ''In order''.

Subsec. (f). Pub. L. 102–234, §3(b)(1), added subsec. (f).

1990—Subsec. (b)(2). Pub. L. 101–508, §4702(a), inserted at end ''In this paragraph, the term 'inpatient day' includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.''

Subsec. (c)(2). Pub. L. 101–508, §4703(c), inserted before semicolon at end ''or the hospital's low-income utilization rate (as defined in paragraph (b)(3) of this section)''.

Subsec. (c)(3). Pub. L. 101–508, §4703(a), added par. (3).

Subsec. (e)(2). Pub. L. 101–508, §4703(b), struck out ''during the 3-year period'' before ''beginning on''.

1989—Subsec. (e)(1). Pub. L. 101–239 designated portion of existing provisions as cls. (A) and (B), and in cl. (A) designated existing provisions as subcl. (i) and added subcl. (ii).

1988—Pub. L. 100–360, §411(k)(6)(A)–(B)(ix), as amended by Pub. L. 100–485, §608(d)(26)(F), amended Pub. L. 100–203, §4112, so as to redesignate section 4112 of Pub. L. 100–203 as this section.

Subsec. (a). Pub. L. 100–360, §411(k)(6)(B)(iv), struck out ''of Health and Human Services'' after ''to the Secretary'' wherever appearing in pars. (1) and (2).

Subsec. (a)(1). Pub. L. 100–360, § 411(k)(6)(B)(ii), (iii), substituted ''A State plan under this subchapter'' for ''A State's plan under title XIX of the Social Security Act'', and made technical amendment to reference to section 1396a(a)(13)(A) of this title involving underlying provisions of original act.

Subsec. (a)(2)(A). Pub. L. 100–360, § 411(k)(6)(A)(i), substituted ''April 1, 1989'' for ''such date'' and inserted before period at end '', effective for inpatient hospital services provided on or after July 1, 1989''.

Subsec. (a)(2)(B). Pub. L. 100–360, § 411(k)(6)(A)(ii), substituted ''April 1, 1990'' for ''such date'' and inserted before period at end '', effective for inpatient hospital services provided on or after July 1, 1990''.

Subsec. (a)(2)(C). Pub. L. 100–485, § 608(d)(15)(C), realigned the margin of subpar. (C).

Pub. L. 100–360, § 302(b)(2), added subpar. (C).

Subsec. (a)(3). Pub. L. 100–360, § 411(k)(6)(A)(iii), inserted par. (3) designation and substituted ''90 days after the date a State submits an amendment'' for ''June 30 of each year in which the State is required to submit an amendment''.

Subsec. (a)(4). Pub. L. 100–360, § 411(k)(6)(A)(iii)(II), (III), (B)(v), inserted par. (4) designation and made technical amendment to reference to section 1396n(b)(4) of this title involving underlying provisions of original act.

Subsec. (b)(2). Pub. L. 100–360, § 411(k)(6)(A)(iv), substituted ''a State plan'' for ''the State plan''.

Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter''.

Subsec. (b)(3). Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter'' in last sentence.

Subsec. (b)(3)(A)(i). Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter''.

Subsec. (b)(3)(B)(i). Pub. L. 100–485, § 608(d)(26)(D), inserted ''of subparagraph (A)'' after ''clause (i)(II)''.

Pub. L. 100–360, § 411(k)(6)(A)(v), inserted '', less the portion of any cash subsidies described in clause (i)(II) in the period reasonably attributable to inpatient hospital services'' after ''charity care in a period''.

Subsec. (c). Pub. L. 100–485, § 608(d)(26)(E), substituted ''this subsection'' for ''subsection (c)'' in concluding provisions.

Pub. L. 100–360, § 411(k)(6)(A)(vi)(I), (II), (V), in concluding provisions, substituted ''paragraphs (1)(B) and (2)(A) of subsection (a) of this section'' for ''paragraphs (2)(A) and (2)(B)'', ''such paragraph (1)(B)'' for ''paragraph (2)(A)'', and ''such paragraph (2)(A)'' for ''paragraph (2)(B)'' and inserted ''at least'' before ''one-third'' and ''two-thirds''.

Pub. L. 100–360, § 411(k)(6)(A)(vi)(VI), inserted at end ''In the case of a hospital described in subsection (d)(2)(A)(i) of this section (relating to children's hospitals), in computing the hospital's disproportionate share adjustment percentage for purposes of paragraph (1)(B) of this subsection, the disproportionate patient percentage (defined in section 1395ww(d)(5)(F)(vi) of this title) shall be computed by substituting for the fraction described in subclause (I) of such section the fraction described in subclause (II) of that section. If a State elects in a State plan amendment under subsection (a) of this section to provide the payment adjustment described in paragraph (2), the State must include in the amendment a detailed description of the specific methodology to be used in determining the specified additional payment amount (or increased percentage payment) to be made to each hospital qualifying for such a payment adjustment and must publish at least annually the name of each hospital qualifying for such a payment adjustment and the amount of such payment adjustment made for each such hospital.''

Subsec. (c)(1). Pub. L. 100–360, § 411(k)(6)(A)(vi)(III), inserted ''at least'' after ''equal to''.

Subsec. (c)(2). Pub. L. 100–360, § 411(k)(6)(A)(vi)(IV), as amended by Pub. L. 100–485, § 608(d)(26)(A), inserted ''(without regard to whether the hospital is described in subparagraph (A) or (B) of subsection (b)(1) of this section)'' after ''payment) and''.

Subsec. (d)(1). Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter''.

Subsec. (d)(2)(B). Pub. L. 100–360, § 411(k)(6)(B)(vii), made technical amendment to reference to section 1395ww of this title involving underlying provisions of original Act.

Subsec. (e). Pub. L. 100–360, § 411(k)(6)(A)(vii), as amended by Pub. L. 100–485, § 608(d)(26)(B), (C), designated existing provisions as par. (1), inserted ''based on a pooling arrangement involving a majority of the hospitals participating under the plan'' after first reference to ''payment adjustments'', added par. (2) and substituted ''statewide'' for ''Statewide'' in par. (2).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VI, § 6054(b), Feb. 8, 2006, 120 Stat. 96, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if enacted on October 1, 2005, and shall only apply to disproportionate share hospital adjustment expenditures applicable to fiscal year 2006 and subsequent fiscal years made on or after that date.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VII, § 701(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–570, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] take effect on the date the final regulation required under section 705(a) [114 Stat. 2763A–575] (relating to the application of an aggregate upper payment limit test for State medicaid spending for inpatient hospital services, outpatient hospital services, nursing facility services, intermediate care facility services for the mentally retarded, and clinic services provided by government facilities that are not State-owned or operated facilities) is published in the Federal Register.'' [The final regulation was published Jan. 12, 2001, 66 Fed. Reg. 3147.]

Pub. L. 106–554, § 1(a)(6) [title VII, § 701(b)(3)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A–571, provided that: ''The amendments made by paragraph (2) [amending this section] shall apply to payments made on or after January 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 601(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394, provided that: ''The amendments made by subsection (a) [amending this section] take effect on October 1, 1999, and applies [sic] to expenditures made on or after such date.''

Amendment by section 1000(a)(6) [title VI, § 608(s)] of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, § 608(bb)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4711(c)(2) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to payment for items and services furnished on or after Oct. 1, 1997, see section 4711(d) of Pub. L. 105–33, set out as a note under 1396a of this title.

Section 4721(a)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to payment adjustments attributable to DSH allotments for fiscal years beginning with fiscal year 1998.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13621(a)(2) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall apply to payments to States under section 1903(a) of the Social Security Act [section 1396b(a) of this title] for payments to hospitals made under State plans after—

''(A) the end of the State fiscal year that ends during 1994, or

''(B) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995;

without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.''

Section 13621(b)(3) of Pub. L. 103–66 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply to payments to States under section 1903(a) of the Social Security Act [section 1396b(a) of this title] for payments to hospitals made under State plans after—

''(i) the end of the State fiscal year that ends during 1994, or

''(ii) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995;

without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.

''(B) DELAY IN IMPLEMENTATION FOR PRIVATE HOSPITALS.—With respect to a hospital that is not owned or operated by a State (or by an instrumentality or a unit of government within a State), the amendments made by this subsection shall apply to payments to States under section 1903(a) for payments to hospitals made under State plans for State fiscal years that begin during or after 1995, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendments by Pub. L. 102–234 effective Jan. 1, 1992, see section 3(e)(1) of Pub. L. 102–234, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4702(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1990.''

Section 4703(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 412(a)(2)[4112(a)(2)] of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203, enacting this section].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 302(b)(2) of Pub. L. 100–360 effective July 1, 1988, see section 302(f)(2) of Pub. L. 100–360, set out as a note under section 1396a of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(6)(A)–(B)(ix) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

APPLICATION OF MEDICAID DSH TRANSITION RULE TO PUBLIC HOSPITALS IN ALL STATES

Pub. L. 106–554, §1(a)(6) [title VII, §701(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–571, provided that:

''(1) IN GENERAL.—During the period described in paragraph (3), with respect to a State, section 4721(e) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 514) [set out as a note below], as amended by section 607 of BBRA [Pub. L. 106–113, §1000(a)(6) [title VI, §607(a)]] (113 Stat. 1501A–396), shall be applied as though—

''(A) 'September 30, 2002' were substituted for 'July 1, 1997' each place it appears;

''(B) 'hospitals owned or operated by a State (as defined for purposes of title XIX of such Act [this subchapter]), or by an instrumentality or a unit of government within a State (as so defined)' were substituted for 'the State of California';

''(C) paragraph (3) were redesignated as paragraph (4);

''(D) 'and' were omitted from the end of paragraph (2); and

''(E) the following new paragraph were inserted after paragraph (2):

'(3) ''(as defined in subparagraph (B) but without regard to clause (ii) of that subparagraph and subject to subsection (d))'' were substituted for ''(as defined in subparagraph (B))'' in subparagraph (A) of such section; and'.

''(2) SPECIAL RULE.—With respect to California, section 4721(e) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 514), as so amended, shall be applied without regard to paragraph (1).

''(3) PERIOD DESCRIBED.—The period described in this paragraph is the period that begins, with respect to a State, on the first day of the first State fiscal year that begins after September 30, 2002, and ends on the last day of the succeeding State fiscal year.

''(4) APPLICATION TO WAIVERS.—With respect to a State operating under a waiver of the requirements of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) under section 1115 of such Act (42 U.S.C. 1315), the amount by which any payment adjustment made by the State under title XIX of such Act (42 U.S.C. 1396 et seq.), after the application of section 4721(e) of the Balanced Budget Act of 1997 under paragraph (1) to such State, exceeds the costs of furnishing hospital services provided by hospitals described in such section shall be fully reflected as an increase in the baseline expenditure limit for such waiver.''

ASSISTANCE FOR CERTAIN PUBLIC HOSPITALS

Pub. L. 106–554, §1(a)(6) [title VII, §701(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–571, provided that:

''(1) IN GENERAL.—Beginning with fiscal year 2002, notwithstanding section 1923(f) of the Social Security Act (42 U.S.C. 1396r–4(f)) and subject to paragraph (3), with respect to a State, payment adjustments made under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) [this subchapter] to a hospital described in paragraph (2) shall be made without regard to the DSH allotment limitation for the State determined under section 1923(f) of that Act (42 U.S.C. 1396r–4(f)).

''(2) HOSPITAL DESCRIBED.—A hospital is described in this paragraph if the hospital—

''(A) is owned or operated by a State (as defined for purposes of title XIX of the Social Security Act [this subchapter]), or by an instrumentality or a unit of government within a State (as so defined);

''(B) as of October 1, 2000—

''(i) is in existence and operating as a hospital described in subparagraph (A); and

''(ii) is not receiving disproportionate share hospital payments from the State in which it is located under title XIX of such Act [this subchapter]; and

''(C) has a low-income utilization rate (as defined in section 1923(b)(3) of the Social Security Act (42 U.S.C. 1396r–4(b)(3))) in excess of 65 percent.

''(3) LIMITATION ON EXPENDITURES.—

''(A) IN GENERAL.—With respect to any fiscal year, the aggregate amount of Federal financial participation that may be provided for payment adjustments described in paragraph (1) for that fiscal year for all States may not exceed the amount described in subparagraph (B) for the fiscal year.

''(B) AMOUNT DESCRIBED.—The amount described in this subparagraph for a fiscal year is as follows:

''(i) For fiscal year 2002, $15,000,000.
''(ii) For fiscal year 2003, $176,000,000.
''(iii) For fiscal year 2004, $269,000,000.
''(iv) For fiscal year 2005, $330,000,000.
''(v) For fiscal year 2006 and each fiscal year thereafter, $375,000,000.''

DSH PAYMENT ACCOUNTABILITY STANDARDS

Pub. L. 106–554, §1(a)(6) [title VII, §701(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–572, provided that: ''Not later than September 30, 2002, the Secretary of Health and Human Services shall implement accountability standards to ensure that Federal funds provided with respect to disproportionate share hospital adjustments made under section 1923 of the Social Security Act (42 U.S.C. 1396r–4) are used to reimburse States and hospitals eligible for such payment adjustments for providing uncompensated health care to low-income patients and are otherwise made in accordance with the requirements of section 1923 of that Act.''

DSH ALLOTMENTS FOR SPECIFIC YEARS

Pub. L. 105–277, div. A, §101(f) [title VII, §702], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389, provided that: ''The amount of the DSH allotment for the State of Minnesota for fiscal year 1999, specified in the table under section 1923(f)(2) of the Social Security Act [subsection (f)(2) of this section] (as amended by section 4721(a)(1) of Public Law 105–33) is deemed to be $33,000,000.''

Similar provisions were contained in the following prior appropriations act:

Pub. L. 105–78, title VI, §601, Nov. 13, 1997, 111 Stat. 1519.

Pub. L. 105–277, div. A, §101(f) [title VII, §703], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389, provided that: ''The amount of the DSH allotment for the State of New Mexico for fiscal year 1999, specified in the table under section 1923(f)(2) of the Social Security Act [subsection (f)(2) of this section] (as amended by section 4721(a)(1) of Public Law 105–33) is deemed to be $9,000,000.''

Pub. L. 105–277, div. A, §101(f) [title VII, §704], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389, provided that: ''Notwithstanding section 1923(f)(2) of the Social Security Act (42 U.S.C. 1396r–4(f)(2)) (as amended by section 4721(a)(1) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 511)[)], the amount of the DSH allotment for Wyoming for fiscal year 1999 is deemed to be $95,000.''

Similar provisions were contained in the following prior appropriations act:

Pub. L. 105–78, title VI, §602, Nov. 13, 1997, 111 Stat. 1519.

CALIFORNIA TRANSITION RULE

Pub. L. 105–33, title IV, §4721(e), Aug. 5, 1997, 111 Stat. 514, as amended by Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §607(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396, provided that: ''Effective July 1, 1997, section 1923(g)(2) of the Social Security Act (42 U.S.C. 1396r–4(g)(2)) shall be applied to the State of California as though—

''(1) '(or that begins on or after July 1, 1997)' were inserted in subparagraph (A) of such section after 'January 1, 1995,';

''(2) '(or 175 percent in the case of a State fiscal year that begins on or after July 1, 1997)' were inserted in subparagraph (A) of such section after '200 percent'; and

''(3) effective for State fiscal years that begin on or after July 1, 1999, 'or (b)(1)(B)' were inserted in section 1923(g)(2)(B)(ii)(I) after '(b)(1)(A)'.''

[Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §607(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396, provided that: ''The amendments made by subsection (a) [amending section 4721(e) of Pub. L. 105–33, set out above] shall take effect as if included in the enactment of section 4721(e) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].'']

STUDY OF DSH PAYMENT ADJUSTMENTS

Section 3(d) of Pub. L. 102–234 directed Prospective Payment Assessment Commission to conduct a study concerning feasibility and desirability of establishing maximum and minimum payment adjustments under subsec. (c) of this section for hospitals deemed disproportionate share hospitals under State medicaid plans, and criteria (other than criteria described in clause (i) or (ii) of subsec. (f)(1)(D)) that are appropriate for the designation of disproportionate share hospitals under this section, specified items to be included in study, and directed that, not later than Jan. 1, 1994, Commission submit a report on the study to Committee on Finance of Senate and Committee on Energy and Commerce of House of Representatives, such report to include such recommendations respecting designation of disproportionate share hospitals and the establishment of maximum and minimum payment adjustments for such hospitals under this section as may be appropriate.

§ 1396r–5. Treatment of income and resources for certain institutionalized spouses

(a) Special treatment for institutionalized spouses

(1) Supersedes other provisions

In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1) of this section), the provisions of this section supersede any other provision of this subchapter (including sections 1396a(a)(17) and 1396a(f) of this title) which is inconsistent with them.

(2) No comparable treatment required

Any different treatment provided under this section for institutionalized spouses shall not, by reason of paragraph (10) or (17) of section 1396a(a) of this title, require such treatment for other individuals.

(3) Does not affect certain determinations

Except as this section specifically provides, this section does not apply to—

(A) the determination of what constitutes income or resources, or

(B) the methodology and standards for determining and evaluating income and resources.

(4) Application in certain States and territories

(A) Application in States operating under demonstration projects

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(B) No application in commonwealths and territories

This section shall only apply to a State that is one of the 50 States or the District of Columbia.

(5) Application to individuals receiving services under PACE programs

This section applies to individuals receiving institutional or noninstitutional services under a PACE demonstration waiver program (as defined in section 1396u–4(a)(7) of this title) or under a PACE program under section 1396u–4 or 1395eee of this title.

(b) Rules for treatment of income

(1) Separate treatment of income

During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse.

(2) Attribution of income

In determining the income of an institutionalized spouse or community spouse for purposes of the post-eligibility income determination described in subsection (d) of this section, except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

(A) Non-trust property

Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides—

(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(B) Trust property

In the case of a trust—

(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this subchapter (including sections 1396a(a)(17) and 1396p(d) of this title), and

(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—

(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(C) Property with no instrument

In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

(D) Rebutting ownership

The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

(c) Rules for treatment of resources

(1) Computation of spousal share at time of institutionalization

(A) Total joint resources

There shall be computed (as of the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse)—

(i) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest, and

(ii) a spousal share which is equal to ½ of such total value.

(B) Assessment

At the request of an institutionalized spouse or community spouse, at the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse and upon the receipt of relevant documentation of resources, the State shall promptly assess and document the total value described in subparagraph (A)(i) and shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment for use under this section. If the request is not part of an application for medical assistance under this subchapter, the State may, at its option as a condition of providing the assessment, require payment of a fee not exceeding the reasonable expenses of providing and documenting the assessment. At the time of providing the copy of the assessment, the State shall include a notice indicating that the spouse will have a right to a fair hearing under subsection (e)(2) of this section.

(2) Attribution of resources at time of initial eligibility determination

In determining the resources of an institutionalized spouse at the time of application for benefits under this subchapter, regardless of any State laws relating to community property or the division of marital property—

(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and

(B) resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds the amount computed under subsection (f)(2)(A) of this section (as of the time of application for benefits).

(3) Assignment of support rights

The institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where—

(A) the institutionalized spouse has assigned to the State any rights to support from the community spouse;

(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or

(C) the State determines that denial of eligibility would work an undue hardship.

(4) Separate treatment of resources after eligibility for benefits established

During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for benefits under this subchapter, no resources of the community spouse shall be deemed available to the institutionalized spouse.

(5) Resources defined

In this section, the term ''resources'' does not include—

(A) resources excluded under subsection (a) or (d) of section 1382b of this title, and

(B) resources that would be excluded under section 1382b(a)(2)(A) of this title but for the limitation on total value described in such section.

(d) Protecting income for community spouse

(1) Allowances to be offset from income of institutionalized spouse

After an institutionalized spouse is determined or redetermined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

(A) A personal needs allowance (described in section 1396a(q)(1) of this title), in an amount not less than the amount specified in section 1396a(q)(2) of this title.

(B) A community spouse monthly income allowance (as defined in paragraph (2)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

(C) A family allowance, for each family member, equal to at least ⅓ of the amount by which the amount described in paragraph (3)(A)(i) exceeds the amount of the monthly income of that family member.

(D) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse (as provided under section 1396a(r) of this title).

In subparagraph (C), the term ''family member'' only includes minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse.

(2) Community spouse monthly income allowance defined

In this section (except as provided in paragraph (5)), the ''community spouse monthly income allowance'' for a community spouse is an amount by which—

(A) except as provided in subsection (e) of this section, the minimum monthly maintenance needs allowance (established under and in accordance with paragraph (3)) for the spouse, exceeds

(B) the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

(3) Establishment of minimum monthly maintenance needs allowance

(A) In general

Each State shall establish a minimum monthly maintenance needs allowance for each community spouse which, subject to subparagraph (C), is equal to or exceeds—

(i) the applicable percent (described in subparagraph (B)) of 1/12 of the income official poverty line (defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title) for a family unit of 2 members; plus

(ii) an excess shelter allowance (as defined in paragraph (4)).

A revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

(B) Applicable percent

For purposes of subparagraph (A)(i), the ''applicable percent'' described in this paragraph, effective as of—

(i) September 30, 1989, is 122 percent,

(ii) July 1, 1991, is 133 percent, and

(iii) July 1, 1992, is 150 percent.

(C) Cap on minimum monthly maintenance needs allowance

The minimum monthly maintenance needs allowance established under subparagraph (A) may not exceed $1,500 (subject to adjustment under subsections (e) and (g) of this section).

(4) Excess shelter allowance defined

In paragraph (3)(A)(ii), the term ''excess shelter allowance'' means, for a community spouse, the amount by which the sum of—

(A) the spouse's expenses for rent or mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge, for the community spouse's principal residence, and

(B) the standard utility allowance (used by the State under section 2014(e) of title 7) or,

if the State does not use such an allowance, the spouse's actual utility expenses,

exceeds 30 percent of the amount described in paragraph (3)(A)(i), except that, in the case of a condominium or cooperative, for which a maintenance charge is included under subparagraph (A), any allowance under subparagraph (B) shall be reduced to the extent the maintenance charge includes utility expenses.

(5) Court ordered support

If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

(6) Application of "income first" rule to revision of community spouse resource allowance

For purposes of this subsection and subsections (c) and (e), a State must consider that all income of the institutionalized spouse that could be made available to a community spouse, in accordance with the calculation of the community spouse monthly income allowance under this subsection, has been made available before the State allocates to the community spouse an amount of resources adequate to provide the difference between the minimum monthly maintenance needs allowance and all income available to the community spouse.

(e) Notice and fair hearing

(1) Notice

Upon—

(A) a determination of eligibility for medical assistance of an institutionalized spouse, or

(B) a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse,

each State shall notify both spouses (in the case described in subparagraph (A)) or the spouse making the request (in the case described in subparagraph (B)) of the amount of the community spouse monthly income allowance (described in subsection (d)(1)(B) of this section), of the amount of any family allowances (described in subsection (d)(1)(C) of this section), of the method for computing the amount of the community spouse resources allowance permitted under subsection (f) of this section, and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

(2) Fair hearing

(A) In general

If either the institutionalized spouse or the community spouse is dissatisfied with a determination of—

(i) the community spouse monthly income allowance;

(ii) the amount of monthly income otherwise available to the community spouse (as applied under subsection (d)(2)(B) of this section);

(iii) the computation of the spousal share of resources under subsection (c)(1) of this section;

(iv) the attribution of resources under subsection (c)(2) of this section; or

(v) the determination of the community spouse resource allowance (as defined in subsection (f)(2) of this section);

such spouse is entitled to a fair hearing described in section 1396a(a)(3) of this title with respect to such determination if an application for benefits under this subchapter has been made on behalf of the institutionalized spouse. Any such hearing respecting the determination of the community spouse resource allowance shall be held within 30 days of the date of the request for the hearing.

(B) Revision of minimum monthly maintenance needs allowance

If either such spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) of this section, an amount adequate to provide such additional income as is necessary.

(C) Revision of community spouse resource allowance

If either such spouse establishes that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance under subsection (f)(2) of this section, an amount adequate to provide such a minimum monthly maintenance needs allowance.

(f) Permitting transfer of resources to community spouse

(1) In general

An institutionalized spouse may, without regard to section 1396p(c)(1) of this title, transfer an amount equal to the community spouse resource allowance (as defined in paragraph (2)), but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer under the preceding sentence shall be made as soon as practicable after the date of the initial determination of eligibility, taking into account such time as may be necessary to obtain a court order under paragraph (3).

(2) Community spouse resource allowance defined

In paragraph (1), the ''community spouse resource allowance'' for a community spouse is an amount (if any) by which—

(A) the greatest of—

(i) $12,000 (subject to adjustment under subsection (g) of this section), or, if great-

er (but not to exceed the amount specified in clause (ii)(II)) an amount specified under the State plan,

(ii) the lesser of (I) the spousal share computed under subsection (c)(1) of this section, or (II) $60,000 (subject to adjustment under subsection (g) of this section),

(iii) the amount established under subsection (e)(2) of this section; or

(iv) the amount transferred under a court order under paragraph (3);

exceeds

(B) the amount of the resources otherwise available to the community spouse (determined without regard to such an allowance).

(3) Transfers under court orders

If a court has entered an order against an institutionalized spouse for the support of the community spouse, section 1396p of this title shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse or a family member (as defined in subsection (d)(1) of this section).

(g) Indexing dollar amounts

For services furnished during a calendar year after 1989, the dollar amounts specified in subsections (d)(3)(C), (f)(2)(A)(i), and (f)(2)(A)(ii)(II) of this section shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.

(h) Definitions

In this section:

(1) The term ''institutionalized spouse'' means an individual who—

(A) is in a medical institution or nursing facility or who (at the option of the State) is described in section 1396a(a)(10)(A)(ii)(VI) of this title, and

(B) is married to a spouse who is not in a medical institution or nursing facility;

but does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days.

(2) The term ''community spouse'' means the spouse of an institutionalized spouse.

(Aug. 14, 1935, ch. 531, title XIX, § 1924, as added Pub. L. 100–360, title III, § 303(a)(1)(B), July 1, 1988, 102 Stat. 754; amended Pub. L. 100–485, title VI, § 608(d)(16)(A), Oct. 13, 1988, 102 Stat. 2417; Pub. L. 101–239, title VI, § 6411(e)(3), Dec. 19, 1989, 103 Stat. 2271; Pub. L. 101–508, title IV, §§ 4714(a)–(c), 4744(b)(1), Nov. 5, 1990, 104 Stat. 1388–192, 1388–198; Pub. L. 103–66, title XIII, §§ 13611(d)(2), 13643(c)(1), Aug. 10, 1993, 107 Stat. 627, 647; Pub. L. 103–252, title I, § 125(b), May 18, 1994, 108 Stat. 650; Pub. L. 105–33, title IV, § 4802(b)(1), Aug. 5, 1997, 111 Stat. 548; Pub. L. 109–171, title VI, § 6013(a), Feb. 8, 2006, 120 Stat. 64.)

PRIOR PROVISIONS

A prior section 1924 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2006—Subsec. (d)(6). Pub. L. 109–171 added par. (6).

1997—Subsec. (a)(5). Pub. L. 105–33, in heading substituted ''under PACE programs'' for ''from organizations receiving certain waivers'' and in text substituted ''under a PACE demonstration waiver program (as defined in section 1396u–4(a)(7) of this title) or under a PACE program under section 1396u–4 or 1395eee of this title.'' for ''from any organization receiving a frail elderly demonstration project waiver under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 or a waiver under section 603(c) of the Social Security Amendments of 1983.''

1994—Subsec. (d)(3)(A)(i). Pub. L. 103–252 substituted ''section 9902(2)'' for ''sections 9847 and 9902(2)''.

1993—Subsec. (a)(5). Pub. L. 103–66, § 13643(c)(1), substituted ''1986 or a waiver under section 603(c) of the Social Security Amendments of 1983'' for ''1986''.

Subsec. (b)(2)(B)(i). Pub. L. 103–66, § 13611(d)(2), substituted ''1396p(d) of this title'' for ''1396a(k) of this title''.

1990—Subsec. (a)(5). Pub. L. 101–508, § 4744(b)(1), added par. (5).

Subsec. (b)(2). Pub. L. 101–508, § 4714(a), substituted ''for purposes of the post-eligibility income determination described in subsection (d) of this section'' for '', after the institutionalized spouse has been determined or redetermined to be eligible for medical assistance''.

Subsec. (c)(1). Pub. L. 101–508, § 4714(c), substituted ''the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse'' for ''the beginning of a continuous period of institutionalization of the institutionalized spouse'' in subpars. (A) and (B).

Subsec. (f)(1). Pub. L. 101–508, § 4714(b), substituted ''section 1396p(c)(1)'' for ''section 1396p''.

1989—Subsecs. (b)(2), (d)(1). Pub. L. 101–239 inserted ''or redetermined'' after ''determined''.

1988—Subsec. (c)(1)(B). Pub. L. 100–485, § 608(d)(16)(A)(i), substituted ''will have a right to a fair hearing under subsection (e)(2) of this section'' for ''has right to a fair hearing under subsection (e)(2)(E) of this section with respect to the determination of the community spouse resource allowance, to provide for an allowance adequate to raise the spouse's income to the minimum monthly maintenance needs allowance''.

Subsec. (c)(2)(B). Pub. L. 100–485, § 608(d)(16)(A)(ii), substituted ''resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds'' for ''resources shall not be considered to be available to an institutionalized spouse, to the extent that the amount of such resources does not exceed''.

Subsec. (d)(3)(A)(i). Pub. L. 100–485, § 608(d)(16)(A)(iii), struck out ''nonfarm'' before ''official poverty line''.

Subsec. (d)(4). Pub. L. 100–485, § 608(d)(16)(A)(iv), substituted ''subparagraph (B)'' for ''subparagraph (C)'' in concluding provisions.

Subsec. (e)(2)(A). Pub. L. 100–485, § 608(d)(16)(A)(v), inserted ''if an application for benefits under this subchapter has been made on behalf of the institutionalized spouse'' after ''with respect to such determination'' before period at end of first sentence.

Subsec. (f)(1). Pub. L. 100–485, § 608(d)(16)(A)(vi), substituted ''transfer an amount'' for ''transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount'' and ''as soon as practicable'' for ''as soon as pacticable''.

Subsec. (f)(3). Pub. L. 100–485, § 608(d)(16)(A)(vii), substituted ''spouse or a family member'' for ''spouse of a family member''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VI, § 6013(b), Feb. 8, 2006, 120 Stat. 64, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transfers and allocations made on or after the date of the enactment of this Act [Feb. 8, 2006] by individuals who become institutionalized spouses on or after such date.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other re-

cipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13611(d)(2) of Pub. L. 103–66 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 13611 of Pub. L. 103–66 have been promulgated by such date, see section 13611(e) of Pub. L. 103–66, set out as a note under section 1396p of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4714(d) of Pub. L. 101–508 provided that: ''The amendments made [by] this section [amending this section] shall take effect as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable as if included in the enactment of section 303 of Pub. L. 100–360, see section 6411(e)(4)(B) of Pub. L. 101–239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

EFFECTIVE DATE

Section 303(g) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(16)(D), Oct. 13, 1988, 102 Stat. 2418, provided that:

''(1)(A) The amendments made by this section [enacting this section and amending sections 1382, 1382b, 1396a, 1396p, 1396r, and 1396s of this title] apply (except as provided in this subsection) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after September 30, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) Section 1924 of the Social Security Act [this section] (as inserted by subsection (a)) shall only apply to institutionalized individuals who begin continuous periods of institutionalization on or after September 30, 1989, except that subsections (b) and (d) of such section (and so much of subsection (e) of such section as relates to such other subsections) shall apply as of such date to individuals institutionalized on or after such date.

''(2)(A) The amendment made by subsection (b) [amending section 1396p of this title] and section 1902(a)(51)(B) of the Social Security Act [section 1396a(a)(51)(B) of this title], apply (except as provided in paragraph (5)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1988, or the date of the enactment of this Act [July 1, 1988], without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) Section 1917(c) of the Social Security Act [section 1396p(c) of this title], as amended by subsection (b) of this section, shall apply to resources disposed of on or after July 1, 1988, except that such section shall not apply with respect to inter-spousal transfers occurring before October 1, 1989.

''(C) Notwithstanding subparagraphs (A) and (B), a State may continue to apply the policies contained in the State plan as of June 30, 1988, with respect to resources disposed of before July 1, 1988, and the laws and policies established by the State as of June 30, 1988, or provided for before July 1, 1988, shall continue to apply through September 30, 1989, (and may, at a State's option continue after such date) to inter-spousal transfers occurring before October 1, 1989.

''(3) The amendments made by subsection (c) [amending sections 1382 and 1382b of this title] shall apply to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(4) The amendment made by subsection (d) [amending section 1396a of this title] is effective on and after April 8, 1988. The final rule of the Health Care Financing Administration published on February 8, 1988 (53 Federal Register 3586) is superseded to the extent inconsistent with the amendment made by subsection (d).

''(5) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than paragraphs (1) and (5) of subsection (e) [amending section 1396a of this title]), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

''(6) The amendments made by paragraphs (1) and (5) of subsection (e) [amending section 1396a of this title] shall apply to medical assistance furnished on or after October 1, 1982.''

§ 1396r–6. Extension of eligibility for medical assistance

(a) Initial 6-month extension

(1) Requirement

Notwithstanding any other provision of this subchapter, each State plan approved under this subchapter must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of subchapter IV of this chapter in at least 3 of the 6 months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of, or income from, employment of the caretaker relative (as defined in subsection (e) of this section) or because of section 602(a)(8)(B)(ii)(II)[1] of this title (providing for a time-limited earned income disregard), shall, subject to paragraph (3) and without any reapplication for benefits under the plan, remain eligible for assistance under the plan approved under this subchapter during the immediately succeeding 6-month period in accordance with this subsection.

(2) Notice of benefits

Each State, in the notice of termination of aid under part A of subchapter IV of this chapter sent to a family meeting the requirements of paragraph (1)—

(A) shall notify the family of its right to extended medical assistance under this subsection and include in the notice a description of the reporting requirement of subsection (b)(2)(B)(i) of this section and of the circumstances (described in paragraph (3))

[1] See References in Text note below.

under which such extension may be terminated; and

(B) shall include a card or other evidence of the family's entitlement to assistance under this subchapter for the period provided in this subsection.

(3) Termination of extension

(A) No dependent child

Subject to subparagraphs (B) and (C), extension of assistance during the 6-month period described in paragraph (1) to a family shall terminate (during such period) at the close of the first month in which the family ceases to include a child, whether or not the child is (or would if needy be) a dependent child under part A of subchapter IV of this chapter.

(B) Notice before termination

No termination of assistance shall become effective under subparagraph (A) until the State has provided the family with notice of the grounds for the termination.

(C) Continuation in certain cases until redetermination

With respect to a child who would cease to receive medical assistance because of subparagraph (A) but who may be eligible for assistance under the State plan because the child is described in clause (i) of section 1396d(a) of this title or clause (i)(IV), (i)(VI), (i)(VII), or (ii)(IX) of section 1396a(a)(10)(A) of this title, the State may not discontinue such assistance under such subparagraph until the State has determined that the child is not eligible for assistance under the plan.

(4) Scope of coverage

(A) In general

Subject to subparagraph (B), during the 6-month extension period under this subsection, the amount, duration, and scope of medical assistance made available with respect to a family shall be the same as if the family were still receiving aid under the plan approved under part A of subchapter IV of this chapter.

(B) State medicaid "wrap-around" option

A State, at its option, may pay a family's expenses for premiums, deductibles, coinsurance, and similar costs for health insurance or other health coverage offered by an employer of the caretaker relative or by an employer of the absent parent of a dependent child. In the case of such coverage offered by an employer of the caretaker relative—

(i) the State may require the caretaker relative, as a condition of extension of coverage under this subsection for the caretaker and the caretaker's family, to make application for such employer coverage, but only if—

(I) the caretaker relative is not required to make financial contributions for such coverage (whether through payroll deduction, payment of deductibles, coinsurance, or similar costs, or otherwise), and

(II) the State provides, directly or otherwise, for payment of any of the premium amount, deductible, coinsurance, or similar expense that the employee is otherwise required to pay; and

(ii) the State shall treat the coverage under such an employer plan as a third party liability (under section 1396a(a)(25) of this title).

Payments for premiums, deductibles, coinsurance, and similar expenses under this subparagraph shall be considered, for purposes of section 1396b(a) of this title, to be payments for medical assistance.

(b) Additional 6-month extension

(1) Requirement

Notwithstanding any other provision of this subchapter, each State plan approved under this subchapter shall provide that the State shall offer to each family, which has received assistance during the entire 6-month period under subsection (a) of this section and which meets the requirement of paragraph (2)(B)(i), in the last month of the period the option of extending coverage under this subsection for the succeeding 6-month period, subject to paragraph (3).

(2) Notice and reporting requirements

(A) Notices

(i) Notice during initial extension period of option and requirements

Each State, during the 3rd and 6th month of any extended assistance furnished to a family under subsection (a) of this section, shall notify the family of the family's option for additional extended assistance under this subsection. Each such notice shall include (I) in the 3rd month notice, a statement of the reporting requirement under subparagraph (B)(i), and, in the 6th month notice, a statement of the reporting requirement under subparagraph (B)(ii), (II) a statement as to whether any premiums are required for such additional extended assistance, and (III) a description of other out-of-pocket expenses, benefits, reporting and payment procedures, and any pre-existing condition limitations, waiting periods, or other coverage limitations imposed under any alternative coverage options offered under paragraph (4)(D). The 6th month notice under this subparagraph shall describe the amount of any premium required of a particular family for each of the first 3 months of additional extended assistance under this subsection.

(ii) Notice during additional extension period of reporting requirements and premiums

Each State, during the 3rd month of any additional extended assistance furnished to a family under this subsection, shall notify the family of the reporting requirement under subparagraph (B)(ii) and a statement of the amount of any premium required for such extended assistance for the succeeding 3 months.

(B) Reporting requirements

(i) During initial extension period

Each State shall require (as a condition for additional extended assistance under this subsection) that a family receiving extended assistance under subsection (a) of this section report to the State, not later than the 21st day of the 4th month in the period of extended assistance under subsection (a) of this section, on the family's gross monthly earnings and on the family's costs for such child care as is necessary for the employment of the caretaker relative in each of the first 3 months of that period. A State may permit such additional extended assistance under this subsection notwithstanding a failure to report under this clause if the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis.

(ii) During additional extension period

Each State shall require that a family receiving extended assistance under this subsection report to the State, not later than the 21st day of the 1st month and of the 4th month in the period of additional extended assistance under this subsection, on the family's gross monthly earnings and on the family's costs for such child care as is necessary for the employment of the caretaker relative in each of the 3 preceding months.

(iii) Clarification on frequency of reporting

A State may not require that a family receiving extended assistance under this subsection or subsection (a) of this section report more frequently than as required under clause (i) or (ii).

(3) Termination of extension

(A) In general

Subject to subparagraphs (B) and (C), extension of assistance during the 6-month period described in paragraph (1) to a family shall terminate (during the period) as follows:

(i) No dependent child

The extension shall terminate at the close of the first month in which the family ceases to include a child, whether or not the child is (or would if needy be) a dependent child under part A of subchapter IV of this chapter.

(ii) Failure to pay any premium

If the family fails to pay any premium for a month under paragraph (5) by the 21st day of the following month, the extension shall terminate at the close of that following month, unless the family has established, to the satisfaction of the State, good cause for the failure to pay such premium on a timely basis.

(iii) Quarterly income reporting and test

The extension under this subsection shall terminate at the close of the 1st or 4th month of the 6-month period if—

(I) the family fails to report to the State, by the 21st day of such month, the information required under paragraph (2)(B)(ii), unless the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis;

(II) the caretaker relative had no earnings in one or more of the previous 3 months, unless such lack of any earnings was due to an involuntary loss of employment, illness, or other good cause, established to the satisfaction of the State; or

(III) the State determines that the family's average gross monthly earnings (less such costs for such child care as is necessary for the employment of the caretaker relative) during the immediately preceding 3-month period exceed 185 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

Information described in clause (iii)(I) shall be subject to the restrictions on use and disclosure of information provided under section 602(a)(9)[2] of this title. Instead of terminating a family's extension under clause (iii)(I), a State, at its option, may provide for suspension of the extension until the month after the month in which the family reports information required under paragraph (2)(B)(ii), but only if the family's extension has not otherwise been terminated under subclause (II) or (III) of clause (iii). The State shall make determinations under clause (iii)(III) for a family each time a report under paragraph (2)(B)(ii) for the family is received.

(B) Notice before termination

No termination of assistance shall become effective under subparagraph (A) until the State has provided the family with notice of the grounds for the termination, which notice shall include (in the case of termination under subparagraph (A)(iii)(II), relating to no continued earnings) a description of how the family may reestablish eligibility for medical assistance under the State plan. No such termination shall be effective earlier than 10 days after the date of mailing of such notice.

(C) Continuation in certain cases until redetermination

(i) Dependent children

With respect to a child who would cease to receive medical assistance because of subparagraph (A)(i) but who may be eligible for assistance under the State plan because the child is described in clause (i) of section 1396d(a) of this title or clause (i)(IV), (i)(VI), (i)(VII), or (ii)(IX) of section 1396a(a)(10)(A) of this title, the State may not discontinue such assistance under such

[2] See References in Text note below.

subparagraph until the State has determined that the child is not eligible for assistance under the plan.

(ii) Medically needy

With respect to an individual who would cease to receive medical assistance because of clause (ii) or (iii) of subparagraph (A) but who may be eligible for assistance under the State plan because the individual is within a category of person for which medical assistance under the State plan is available under section 1396a(a)(10)(C) of this title (relating to medically needy individuals), the State may not discontinue such assistance under such subparagraph until the State has determined that the individual is not eligible for assistance under the plan.

(4) Coverage

(A) In general

During the extension period under this subsection—

(i) the State plan shall offer to each family medical assistance which (subject to subparagraphs (B) and (C)) is the same amount, duration, and scope as would be made available to the family if it were still receiving aid under the plan approved under part A of subchapter IV of this chapter; and

(ii) the State plan may offer alternative coverage described in subparagraph (D).

(B) Elimination of most non-acute care benefits

At a State's option and notwithstanding any other provision of this subchapter, a State may choose not to provide medical assistance under this subsection with respect to any (or all) of the items and services described in paragraphs (4)(A), (6), (7), (8), (11), (13), (14), (15), (16), (18), (20), and (21)[2] of section 1396d(a) of this title.

(C) State medicaid "wrap-around" option

At a State's option, the State may elect to apply the option described in subsection (a)(4)(B) of this section (relating to ''wrap-around'' coverage) for families electing medical assistance under this subsection in the same manner as such option applies to families provided extended eligibility for medical assistance under subsection (a) of this section.

(D) Alternative assistance

At a State's option, the State may offer families a choice of health care coverage under one or more of the following, instead of the medical assistance otherwise made available under this subsection:

(i) Enrollment in family option of employer plan

Enrollment of the caretaker relative and dependent children in a family option of the group health plan offered to the caretaker relative.

(ii) Enrollment in family option of State employee plan

Enrollment of the caretaker relative and dependent children in a family option within the options of the group health plan or plans offered by the State to State employees.

(iii) Enrollment in State uninsured plan

Enrollment of the caretaker relative and dependent children in a basic State health plan offered by the State to individuals in the State (or areas of the State) otherwise unable to obtain health insurance coverage.

(iv) Enrollment in medicaid managed care organization

Enrollment of the caretaker relative and dependent children in a medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title).

If a State elects to offer an option to enroll a family under this subparagraph, the State shall pay any premiums and other costs for such enrollment imposed on the family and may pay deductibles and coinsurance imposed on the family. A State's payment of premiums for the enrollment of families under this subparagraph (not including any premiums otherwise payable by an employer and less the amount of premiums collected from such families under paragraph (5)) and payment of any deductibles and coinsurance shall be considered, for purposes of section 1396b(a)(1) of this title, to be payments for medical assistance.

(E) Prohibition on cost-sharing for maternity and preventive pediatric care

(i) In general

If a State offers any alternative option under subparagraph (D) for families, under each such option the State must assure that care described in clause (ii) is available without charge to the families through—

(I) payment of any deductibles, coinsurance, and other cost-sharing respecting such care, or

(II) providing coverage under the State plan for such care without any cost-sharing,

or any combination of such mechanisms.

(ii) Care described

The care described in this clause consists of—

(I) services related to pregnancy (including prenatal, delivery, and post partum services), and

(II) ambulatory preventive pediatric care (including ambulatory early and periodic screening, diagnosis, and treatment services under section 1396d(a)(4)(B) of this title) for each child who meets the age and date of birth requirements to be a qualified child under section 1396d(n)(2) of this title.

(5) Premium

(A) Permitted

Notwithstanding any other provision of this subchapter (including section 1396*o* of this title), a State may impose a premium

for a family for additional extended coverage under this subsection for a premium payment period (as defined in subparagraph (D)(i)), but only if the family's average gross monthly earnings (less the average monthly costs for such child care as is necessary for the employment of the caretaker relative) for the premium base period exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) Level may vary by option offered

The level of such premium may vary, for the same family, for each option offered by a State under paragraph (4)(D).

(C) Limit on premium

In no case may the amount of any premium under this paragraph for a family for a month in either of the premium payment periods described in subparagraph (D)(i) exceed 3 percent of the family's average gross monthly earnings (less the average monthly costs for such child care as is necessary for the employment of the caretaker relative) during the premium base period (as defined in subparagraph (D)(ii)).

(D) Definitions

In this paragraph:

(i) A ''premium payment period'' described in this clause is a 3-month period beginning with the 1st or 4th month of the 6-month additional extension period provided under this subsection.

(ii) The term ''premium base period'' means, with respect to a particular premium payment period, the period of 3 consecutive months the last of which is 4 months before the beginning of that premium payment period.

(c) Applicability in States and territories

(1) States operating under demonstration projects

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315(a) of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(2) Inapplicability in commonwealths and territories

The provisions of this section shall only apply to the 50 States and the District of Columbia.

(d) General disqualification for fraud

(1) Ineligibility for aid

This section shall not apply to an individual who is a member of a family which has received aid under part A of subchapter IV of this chapter if the State makes a finding that, at any time during the last 6 months in which the family was receiving such aid before otherwise being provided extended eligibility under this section, the individual was ineligible for such aid because of fraud.

(2) General disqualifications

For additional provisions relating to fraud and program abuse, see sections 1320a–7, 1320a–7a, and 1320a–7b of this title.

(e) "Caretaker relative" defined

In this section, the term ''caretaker relative'' has the meaning of such term as used in part A of subchapter IV of this chapter.

(f) Sunset

This section shall not apply with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter after September 30, 2003.

(Aug. 14, 1935, ch. 531, title XIX, § 1925, as added Pub. L. 100–485, title III, § 303(a)(1), Oct. 13, 1988, 102 Stat. 2385; amended Pub. L. 100–647, title VIII, § 8436(a), Nov. 10, 1988, 102 Stat. 3805; Pub. L. 101–239, title VI, § 6411(i)(1), (3), Dec. 19, 1989, 103 Stat. 2273; Pub. L. 101–508, title IV, §§ 4601(a)(3)(B), 4716(a), Nov. 5, 1990, 104 Stat. 1388–167, 1388–192; Pub. L. 104–193, title I, § 114(c), Aug. 22, 1996, 110 Stat. 2180; Pub. L. 105–33, title IV, §§ 4701(b)(2)(A)(ix), (D), 4703(b)(2), Aug. 5, 1997, 111 Stat. 493, 495; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(t)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398; Pub. L. 106–554, § 1(a)(6) [title VII, § 707(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–577; Pub. L. 108–40, § 7(a), June 30, 2003, 117 Stat. 837.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in text, is classified to section 601 et seq. of this title.

Section 602 of this title, referred to in subsecs. (a)(1) and (b)(3)(A), was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (a)(8)(B)(ii)(II) or (a)(9).

Paragraph (21) of section 1396d(a) of this title, referred to in subsec. (b)(4)(B), was redesignated paragraph (22) by Pub. L. 101–239, title VI, § 6405(a)(2), Dec. 19, 1989, 103 Stat. 2265.

PRIOR PROVISIONS

A prior section 1925 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2003—Subsec. (f). Pub. L. 108–40 substituted ''2003'' for ''2002''.

2000—Subsec. (f). Pub. L. 106–554 substituted ''2002'' for ''2001''.

1999—Subsec. (a)(3)(C). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(t)(1)], substituted ''(i)(VI), (i)(VII),'' for ''(i)(VI)(i)(VII),,''.

Subsec. (b)(3)(C)(i). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(t)(2)], which directed substitution of ''(i)(IV), (i)(VI), (i)(VII),'' for ''(i)(IV) (i)(VI) (i)(VII),,'', was executed by making the substitution for ''(i)(IV), (i)(VI) (i)(VII),,'' to reflect the probable intent of Congress.

1997—Subsec. (b)(4)(D)(iv). Pub. L. 105–33, § 4703(b)(2), struck out ''less than 50 percent of the membership (enrolled on a prepaid basis) of which consists of individuals who are eligible to receive benefits under this subchapter (other than because of the option offered under this clause). The option of enrollment under this clause is in addition to, and not in lieu of, any enrollment option that the State might offer under subparagraph (A)(i) with respect to receiving services through a med-

icaid managed care organization in accordance with section 1396b(m) of this title and the applicable requirements of section 1396u–2 of this title'' after ''(as defined in section 1396b(m)(1)(A) of this title)''.

Pub. L. 105–33, § 4701(b)(2)(A)(ix), substituted ''medicaid managed care organization'' for ''health maintenance organization'' in two places.

Pub. L. 105–33, § 4701(b)(2)(D), substituted ''medicaid managed care organization'' for ''HMO'' in heading and inserted ''and the applicable requirements of section 1396u–2 of this title'' before period at end of text.

1996—Subsec. (f). Pub. L. 104–193 substituted ''2001'' for ''1998''.

1990—Subsec. (a)(3)(C). Pub. L. 101–508, § 4601(a)(3)(B), inserted ''(i)(VII),'' after ''(i)(VI)''.

Subsec. (b)(2)(B)(i). Pub. L. 101–508, § 4716(a)(1), which directed amendment of subsection (f) of this section in subsection (b)(2)(B)(i) by inserting at the end ''A State may permit such additional extended assistance under this subsection notwithstanding a failure to report under this clause if the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis.'', was executed by making the insertion at the end of subsec. (b)(2)(B)(i) to reflect the probable intent of Congress.

Subsec. (b)(2)(B)(iii). Pub. L. 101–508, § 4716(a)(2), which directed amendment of subsection (f) of this section in subsection (b)(2)(B) by adding cl. (iii) at the end, was executed by adding cl. (iii) at the end of subsec. (b)(2)(B) to reflect the probable intent of Congress.

Subsec. (b)(3)(B). Pub. L. 101–508, § 4716(a)(3), which directed amendment of subsection (f) of this section in subsection (b)(3)(B) by inserting at the end ''No such termination shall be effective earlier than 10 days after the date of mailing of such notice.'', was executed by making the insertion at the end of subsec. (b)(3)(B) to reflect the probable intent of Congress.

Subsec. (b)(3)(C)(i). Pub. L. 101–508, § 4601(a)(3)(B), inserted ''(i)(VII),'' after ''(i)(VI)''.

1989—Subsec. (a)(3)(A). Pub. L. 101–239, § 6411(i)(1), substituted ''a child, whether or not the child is'' for ''a child who is''.

Subsec. (a)(3)(C). Pub. L. 101–239, § 6411(i)(3), substituted ''of section 1396d(a) of this title or clause (i)(IV), (i)(VI), or (ii)(IX) of section 1396a(a)(10)(A) of this title'' for ''or (v) of section 1396d(a) of this title''.

Subsec. (b)(3)(A)(i). Pub. L. 101–239, § 6411(i)(1), substituted ''a child, whether or not the child is'' for ''a child who is''.

Subsec. (b)(3)(C)(i). Pub. L. 101–239, § 6411(i)(3), substituted ''of section 1396d(a) of this title or clause (i)(IV), (i)(VI), or (ii)(IX) of section 1396a(a)(10)(A) of this title'' for ''or (v) of section 1396d(a) of this title''.

1988—Subsec. (b)(5)(C). Pub. L. 100–647, which directed the amendment of subsec. (d)(5)(C) by inserting ''(less the average monthly costs for such child care as is necessary for the employment of the caretaker relative)'' after ''gross monthly earnings'', was executed to subsec. (b)(5)(C) to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4701(b)(2)(A)(ix), (D) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710(a) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Amendment by section 4703(b)(2) of Pub. L. 105–33 applicable to contracts under section 1396b(m) of this title on and after June 20, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4710(b)(2) of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4601(a)(3)(B) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101–508 have been promulgated by such date, see section 4601(b) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4716(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6411(i)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note under section 602 of this title] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8436(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].''

EFFECTIVE DATE

Section applicable to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990 (or, in the case of the Commonwealth of Kentucky, Oct. 1, 1990) (without regard to whether implementing regulations are promulgated by that date), with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter on or after that date, see section 303(f)(1) of Pub. L. 100–485, set out as an Effective Date of 1988 Amendment note under section 1396a of this title.

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§ 601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u–1(a) of this title.

STUDY AND REPORT TO CONGRESS ON IMPACT OF MEDICAID EXTENSION PROVISIONS

Section 303(c) of Pub. L. 100–485 directed Secretary of Health and Human Services to conduct a study of impact of medicaid extension provisions under this section, with particular focus on costs of such provisions and impact on welfare dependency, and report to Congress on results of such study not later than Apr. 1, 1993.

§ 1396r–7. Repealed. Pub. L. 105–33, title IV, § 4713(a), Aug. 5, 1997, 111 Stat. 509

Section, act Aug. 14, 1935, ch. 531, title XIX, § 1926, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6402(b), 103 Stat. 2260, related to adequate payment levels for obstetrical and pediatric services.

EFFECTIVE DATE OF REPEAL

Section 4713(b) of Pub. L. 105–33 provided that: ''The repeal made by subsection (a) [repealing this section]

shall apply to services furnished on or after October 1, 1997.''

§ 1396r–8. Payment for covered outpatient drugs

(a) Requirement for rebate agreement

(1) In general

In order for payment to be available under section 1396b(a) of this title or under part B of subchapter XVIII of this chapter for covered outpatient drugs of a manufacturer, the manufacturer must have entered into and have in effect a rebate agreement described in subsection (b) of this section with the Secretary, on behalf of States (except that, the Secretary may authorize a State to enter directly into agreements with a manufacturer), and must meet the requirements of paragraph (5) (with respect to drugs purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992) and paragraph (6). Any agreement between a State and a manufacturer prior to April 1, 1991, shall be deemed to have been entered into on January 1, 1991, and payment to such manufacturer shall be retroactively calculated as if the agreement between the manufacturer and the State had been entered into on January 1, 1991. If a manufacturer has not entered into such an agreement before March 1, 1991, such an agreement, subsequently entered into, shall become effective as of the date on which the agreement is entered into or, at State option, on any date thereafter on or before the first day of the calendar quarter that begins more than 60 days after the date the agreement is entered into.

(2) Effective date

Paragraph (1) shall first apply to drugs dispensed under this subchapter on or after January 1, 1991.

(3) Authorizing payment for drugs not covered under rebate agreements

Paragraph (1), and section 1396b(i)(10)(A) of this title, shall not apply to the dispensing of a single source drug or innovator multiple source drug if (A)(i) the State has made a determination that the availability of the drug is essential to the health of beneficiaries under the State plan for medical assistance; (ii) such drug has been given a rating of 1–A by the Food and Drug Administration; and (iii)(I) the physician has obtained approval for use of the drug in advance of its dispensing in accordance with a prior authorization program described in subsection (d) of this section, or (II) the Secretary has reviewed and approved the State's determination under subparagraph (A); or (B) the Secretary determines that in the first calendar quarter of 1991, there were extenuating circumstances.

(4) Effect on existing agreements

In the case of a rebate agreement in effect between a State and a manufacturer on November 5, 1990, such agreement, for the initial agreement period specified therein, shall be considered to be a rebate agreement in compliance with this section with respect to that State, if the State agrees to report to the Secretary any rebates paid pursuant to the agreement and such agreement provides for a minimum aggregate rebate of 10 percent of the State's total expenditures under the State plan for coverage of the manufacturer's drugs under this subchapter. If, after the initial agreement period, the State establishes to the satisfaction of the Secretary that an agreement in effect on November 5, 1990, provides for rebates that are at least as large as the rebates otherwise required under this section, and the State agrees to report any rebates under the agreement to the Secretary, the agreement shall be considered to be a rebate agreement in compliance with the section for the renewal periods of such agreement.

(5) Limitation on prices of drugs purchased by covered entities

(A) Agreement with Secretary

A manufacturer meets the requirements of this paragraph if the manufacturer has entered into an agreement with the Secretary that meets the requirements of section 256b of this title with respect to covered outpatient drugs purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992.

(B) "Covered entity" defined

In this subsection, the term ''covered entity'' means an entity described in section 256b(a)(4) of this title and a children's hospital described in section 1395ww(d)(1)(B)(iii) of this title which meets the requirements of clauses (i) and (iii) of section 256b(b)(4)(L)[1] of this title and which would meet the requirements of clause (ii) of such section if that clause were applied by taking into account the percentage of care provided by the hospital to patients eligible for medical assistance under a State plan under this subchapter.

(C) Establishment of alternative mechanism to ensure against duplicate discounts or rebates

If the Secretary does not establish a mechanism under section 256b(a)(5)(A) of this title within 12 months of November 4, 1992, the following requirements shall apply:

(i) Entities

Each covered entity shall inform the single State agency under section 1396a(a)(5) of this title when it is seeking reimbursement from the State plan for medical assistance described in section 1396d(a)(12) of this title with respect to a unit of any covered outpatient drug which is subject to an agreement under section 256b(a) of this title.

(ii) State agency

Each such single State agency shall provide a means by which a covered entity shall indicate on any drug reimbursement claims form (or format, where electronic claims management is used) that a unit of the drug that is the subject of the form is

[1] See References in Text note below.

subject to an agreement under section 256b of this title, and not submit to any manufacturer a claim for a rebate payment under subsection (b) of this section with respect to such a drug.

(D) Effect of subsequent amendments

In determining whether an agreement under subparagraph (A) meets the requirements of section 256b of this title, the Secretary shall not take into account any amendments to such section that are enacted after November 4, 1992.

(E) Determination of compliance

A manufacturer is deemed to meet the requirements of this paragraph if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 256b of this title (as in effect immediately after November 4, 1992) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after November 4, 1992.

(6) Requirements relating to master agreements for drugs procured by Department of Veterans Affairs and certain other Federal agencies

(A) In general

A manufacturer meets the requirements of this paragraph if the manufacturer complies with the provisions of section 8126 of title 38, including the requirement of entering into a master agreement with the Secretary of Veterans Affairs under such section.

(B) Effect of subsequent amendments

In determining whether a master agreement described in subparagraph (A) meets the requirements of section 8126 of title 38, the Secretary shall not take into account any amendments to such section that are enacted after November 4, 1992.

(C) Determination of compliance

A manufacturer is deemed to meet the requirements of this paragraph if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 8126 of title 38, (as in effect immediately after November 4, 1992) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after November 4, 1992.

(7) Requirement for submission of utilization data for certain physician administered drugs

(A) Single source drugs

In order for payment to be available under section 1396b(a) of this title for a covered outpatient drug that is a single source drug that is physician administered under this subchapter (as determined by the Secretary), and that is administered on or after January 1, 2006, the State shall provide for the collection and submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug in order to secure rebates under this section for drugs administered for which payment is made under this subchapter.

(B) Multiple source drugs

(i) Identification of most frequently physician administered multiple source drugs

Not later than January 1, 2007, the Secretary shall publish a list of the 20 physician administered multiple source drugs that the Secretary determines have the highest dollar volume of physician administered drugs dispensed under this subchapter. The Secretary may modify such list from year to year to reflect changes in such volume.

(ii) Requirement

In order for payment to be available under section 1396b(a) of this title for a covered outpatient drug that is a multiple source drug that is physician administered (as determined by the Secretary), that is on the list published under clause (i), and that is administered on or after January 1, 2008, the State shall provide for the submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug in order to secure rebates under this section.

(C) Use of NDC codes

Not later than January 1, 2007, the information shall be submitted under subparagraphs (A) and (B)(ii) using National Drug Code codes unless the Secretary specifies that an alternative coding system should be used.

(D) Hardship waiver

The Secretary may delay the application of subparagraph (A) or (B)(ii), or both, in the case of a State to prevent hardship to States which require additional time to implement the reporting system required under the respective subparagraph.

(b) Terms of rebate agreement

(1) Periodic rebates

(A) In general

A rebate agreement under this subsection shall require the manufacturer to provide, to each State plan approved under this subchapter, a rebate for a rebate period in an amount specified in subsection (c) of this section for covered outpatient drugs of the manufacturer dispensed after December 31, 1990, for which payment was made under the State plan for such period. Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

(B) Offset against medical assistance

Amounts received by a State under this section (or under an agreement authorized

by the Secretary under subsection (a)(1) of this section or an agreement described in subsection (a)(4) of this section) in any quarter shall be considered to be a reduction in the amount expended under the State plan in the quarter for medical assistance for purposes of section 1396b(a)(1) of this title.

(2) State provision of information

(A) State responsibility

Each State agency under this subchapter shall report to each manufacturer not later than 60 days after the end of each rebate period and in a form consistent with a standard reporting format established by the Secretary, information on the total number of units of each dosage form and strength and package size of each covered outpatient drug dispensed after December 31, 1990, for which payment was made under the plan during the period, and shall promptly transmit a copy of such report to the Secretary.

(B) Audits

A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

(3) Manufacturer provision of price information

(A) In general

Each manufacturer with an agreement in effect under this section shall report to the Secretary—

(i) not later than 30 days after the last day of each rebate period under the agreement—

(I) on the average manufacturer price (as defined in subsection (k)(1)) for covered outpatient drugs for the rebate period under the agreement (including for all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(c)]); and

(II) for single source drugs and innovator multiple source drugs (including all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act), on the manufacturer's best price (as defined in subsection (c)(1)(C)) for such drugs for the rebate period under the agreement;

(ii) not later than 30 days after the date of entering into an agreement under this section on the average manufacturer price (as defined in subsection (k)(1) of this section) as of October 1, 1990[2] for each of the manufacturer's covered outpatient drugs (including for such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act); and

(iii) for calendar quarters beginning on or after January 1, 2004, in conjunction with reporting required under clause (i) and by National Drug Code (including package size)—

(I) the manufacturer's average sales price (as defined in section 1395w–3a(c) of this title) and the total number of units specified under section 1395w–3a(b)(2)(A) of this title;

(II) if required to make payment under section 1395w–3a of this title, the manufacturer's wholesale acquisition cost, as defined in subsection (c)(6) of such section; and

(III) information on those sales that were made at a nominal price or otherwise described in section 1395w–3a(c)(2)(B) of this title;

for a drug or biological described in subparagraph (C), (D), (E), or (G) of section 1395u(*o*)(1) of this title or section 1395rr(b)(13)(A)(ii) of this title, and, for calendar quarters beginning on or after January 1, 2007[2] and only with respect to the information described in subclause (III), for covered outpatient drugs.

Information reported under this subparagraph is subject to audit by the Inspector General of the Department of Health and Human Services. Beginning July 1, 2006, the Secretary shall provide on a monthly basis to States under subparagraph (D)(iv) the most recently reported average manufacturer prices for single source drugs and for multiple source drugs and shall, on at least a quarterly basis, update the information posted on the website under subparagraph (D)(v).

(B) Verification surveys of average manufacturer price and manufacturer's average sales price

The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices and manufacturer's average sales prices (including wholesale acquisition cost) if required to make payment reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed $100,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a request for information about charges or prices by the Secretary in connection with a survey under this subparagraph or knowingly provides false information. The provisions of section 1320a–7a of this title (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(C) Penalties

(i) Failure to provide timely information

In the case of a manufacturer with an agreement under this section that fails to

[2] So in original. Probably should be followed by a comma.

provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be increased by $10,000 for each day in which such information has not been provided and such amount shall be paid to the Treasury, and, if such information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

(ii) False information

Any manufacturer with an agreement under this section that knowingly provides false information is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Such civil money penalties are in addition to other penalties as may be prescribed by law. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(D) Confidentiality of information

Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph or under an agreement with the Secretary of Veterans Affairs described in subsection (a)(6)(A)(ii) of this section (other than the wholesale acquisition cost for purposes of carrying out section 1395w–3a of this title) is confidential and shall not be disclosed by the Secretary or the Secretary of Veterans Affairs or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler, prices charged for drugs by such manufacturer or wholesaler, except—

(i) as the Secretary determines to be necessary to carry out this section, to carry out section 1395w–3a of this title (including the determination and implementation of the payment amount), or to carry out section 1395w–3b of this title,

(ii) to permit the Comptroller General to review the information provided,

(iii) to permit the Director of the Congressional Budget Office to review the information provided,

(iv) to States to carry out this subchapter, and

(v) to the Secretary to disclose (through a website accessible to the public) average manufacturer prices.

The previous sentence shall also apply to information disclosed under section 1395w–102(d)(2) or 1395w–104(c)(2)(E) of this title and drug pricing data reported under the first sentence of section 1395w–141(i)(1) of this title.

(4) Length of agreement

(A) In general

A rebate agreement shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).

(B) Termination

(i) By the Secretary

The Secretary may provide for termination of a rebate agreement for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination.

(ii) By a manufacturer

A manufacturer may terminate a rebate agreement under this section for any reason. Any such termination shall not be effective until the calendar quarter beginning at least 60 days after the date the manufacturer provides notice to the Secretary.

(iii) Effectiveness of termination

Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

(iv) Notice to States

In the case of a termination under this subparagraph, the Secretary shall provide notice of such termination to the States within not less than 30 days before the effective date of such termination.

(v) Application to terminations of other agreements

The provisions of this subparagraph shall apply to the terminations of agreements described in section 256b(a)(1) of this title and master agreements described in section 8126(a) of title 38.

(C) Delay before reentry

In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

(c) Determination of amount of rebate

(1) Basic rebate for single source drugs and innovator multiple source drugs

(A) In general

Except as provided in paragraph (2), the amount of the rebate specified in this subsection for a rebate period (as defined in subsection (k)(8) of this section) with respect to each dosage form and strength of a single source drug or an innovator multiple source drug shall be equal to the product of—

(i) the total number of units of each dosage form and strength paid for under the

State plan in the rebate period (as reported by the State); and

(ii) subject to subparagraph (B)(ii), the greater of—

(I) the difference between the average manufacturer price and the best price (as defined in subparagraph (C)) for the dosage form and strength of the drug, or

(II) the minimum rebate percentage (specified in subparagraph (B)(i)) of such average manufacturer price,

for the rebate period.

(B) Range of rebates required

(i) Minimum rebate percentage

For purposes of subparagraph (A)(ii)(II), the ''minimum rebate percentage'' for rebate periods beginning—

(I) after December 31, 1990, and before October 1, 1992, is 12.5 percent;

(II) after September 30, 1992, and before January 1, 1994, is 15.7 percent;

(III) after December 31, 1993, and before January 1, 1995, is 15.4 percent;

(IV) after December 31, 1994, and before January 1, 1996, is 15.2 percent; and

(V) after December 31, 1995, is 15.1 percent.

(ii) Temporary limitation on maximum rebate amount

In no case shall the amount applied under subparagraph (A)(ii) for a rebate period beginning—

(I) before January 1, 1992, exceed 25 percent of the average manufacturer price; or

(II) after December 31, 1991, and before January 1, 1993, exceed 50 percent of the average manufacturer price.

(C) "Best price" defined

For purposes of this section—

(i) In general

The term ''best price'' means, with respect to a single source drug or innovator multiple source drug of a manufacturer (including the lowest price available to any entity for any such drug of a manufacturer that is sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(c)]), the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding—

(I) any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B) of this section (including inpatient prices charged to hospitals described in section 256b(a)(4)(L) of this title);

(II) any prices charged under the Federal Supply Schedule of the General Services Administration;

(III) any prices used under a State pharmaceutical assistance program;

(IV) any depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government;

(V) the prices negotiated from drug manufacturers for covered discount card drugs under an endorsed discount card program under section 1395w–141 of this title; and

(VI) any prices charged which are negotiated by a prescription drug plan under part D of subchapter XVIII of this chapter, by an MA–PD plan under part C of such subchapter with respect to covered part D drugs or by a qualified retiree prescription drug plan (as defined in section 1395w–132(a)(2) of this title) with respect to such drugs on behalf of individuals entitled to benefits under part A or enrolled under part B of such subchapter.

(ii) Special rules

The term ''best price''—

(I) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section);

(II) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package;

(III) shall not take into account prices that are merely nominal in amount; and

(IV) in the case of a manufacturer that approves, allows, or otherwise permits any other drug of the manufacturer to be sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(c)], shall be inclusive of the lowest price for such authorized drug available from the manufacturer during the rebate period to any manufacturer, wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding those prices described in subclauses (I) through (IV) of clause (i).

(iii) Application of auditing and recordkeeping requirements

With respect to a covered entity described in section 256b(a)(4)(L) of this title, any drug purchased for inpatient use shall be subject to the auditing and recordkeeping requirements described in section 256b(a)(5)(C) of this title.

(D) Limitation on sales at a nominal price

(i) In general

For purposes of subparagraph (C)(ii)(III) and subsection (b)(3)(A)(iii)(III), only sales by a manufacturer of covered outpatient drugs at nominal prices to the following shall be considered to be sales at a nominal price or merely nominal in amount:

(I) A covered entity described in section 256b(a)(4) of this title.

(II) An intermediate care facility for the mentally retarded.

(III) A State-owned or operated nursing facility.

(IV) Any other facility or entity that the Secretary determines is a safety net provider to which sales of such drugs at a nominal price would be appropriate based on the factors described in clause (ii).

(ii) Factors

The factors described in this clause with respect to a facility or entity are the following:

(I) The type of facility or entity.

(II) The services provided by the facility or entity.

(III) The patient population served by the facility or entity.

(IV) The number of other facilities or entities eligible to purchase at nominal prices in the same service area.

(iii) Nonapplication

Clause (i) shall not apply with respect to sales by a manufacturer at a nominal price of covered outpatient drugs pursuant to a master agreement under section 8126 of title 38.

(2) Additional rebate for single source and innovator multiple source drugs

(A) In general

The amount of the rebate specified in this subsection for a rebate period, with respect to each dosage form and strength of a single source drug or an innovator multiple source drug, shall be increased by an amount equal to the product of—

(i) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period; and

(ii) the amount (if any) by which—

(I) the average manufacturer price for the dosage form and strength of the drug for the period, exceeds

(II) the average manufacturer price for such dosage form and strength for the calendar quarter beginning July 1, 1990 (without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such quarter), increased by the percentage by which the consumer price index for all urban consumers (United States city average) for the month before the month in which the rebate period begins exceeds such index for September 1990.

(B) Treatment of subsequently approved drugs

In the case of a covered outpatient drug approved by the Food and Drug Administration after October 1, 1990, clause (ii)(II) of subparagraph (A) shall be applied by substituting ''the first full calendar quarter after the day on which the drug was first marketed'' for ''the calendar quarter beginning July 1, 1990'' and ''the month prior to the first month of the first full calendar quarter after the day on which the drug was first marketed'' for ''September 1990''.

(3) Rebate for other drugs

(A) In general

The amount of the rebate paid to a State for a rebate period with respect to each dosage form and strength of covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

(i) the applicable percentage (as described in subparagraph (B)) of the average manufacturer price for the dosage form and strength for the rebate period, and

(ii) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period.

(B) "Applicable percentage" defined

For purposes of subparagraph (A)(i), the ''applicable percentage'' for rebate periods beginning—

(i) before January 1, 1994, is 10 percent, and

(ii) after December 31, 1993, is 11 percent.

(d) Limitations on coverage of drugs

(1) Permissible restrictions

(A) A State may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of paragraph (5).

(B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if—

(i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6) of this section);

(ii) the drug is contained in the list referred to in paragraph (2);

(iii) the drug is subject to such restrictions pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) of this section or in effect pursuant to subsection (a)(4) of this section; or

(iv) the State has excluded coverage of the drug from its formulary established in accordance with paragraph (4).

(2) List of drugs subject to restriction

The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

(A) Agents when used for anorexia, weight loss, or weight gain.

(B) Agents when used to promote fertility.

(C) Agents when used for cosmetic purposes or hair growth.

(D) Agents when used for the symptomatic relief of cough and colds.

(E) Agents when used to promote smoking cessation.

(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

(G) Nonprescription drugs.

(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

(I) Barbiturates.

(J) Benzodiazepines.

(K) Agents when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration.

(3) Update of drug listings

The Secretary shall, by regulation, periodically update the list of drugs or classes of drugs described in paragraph (2) or their medical uses, which the Secretary has determined, based on data collected by surveillance and utilization review programs of State medical assistance programs, to be subject to clinical abuse or inappropriate use.

(4) Requirements for formularies

A State may establish a formulary if the formulary meets the following requirements:

(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State (or, at the option of the State, the State's drug use review board established under subsection (g)(3) of this section).

(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under subsection (a) of this section (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] but is a medically accepted indication, based on information from the appropriate compendia described in subsection (k)(6) of this section), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

(D) The State plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a prior authorization program that is consistent with paragraph (5).

(E) The formulary meets such other requirements as the Secretary may impose in order to achieve program savings consistent with protecting the health of program beneficiaries.

A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

(5) Requirements of prior authorization programs

A State plan under this subchapter may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, with respect to drugs dispensed on or after July 1, 1991, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6) of this section) only if the system providing for such approval—

(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

(6) Other permissible restrictions

A State may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, if such limitations are necessary to discourage waste, and may address instances of fraud or abuse by individuals in any manner authorized under this chapter.

(e) Treatment of pharmacy reimbursement limits

(1) In general

During the period beginning on January 1, 1991, and ending on December 31, 1994—

(A) a State may not reduce the payment limits established by regulation under this subchapter or any limitation described in paragraph (3) with respect to the ingredient cost of a covered outpatient drug or the dispensing fee for such a drug below the limits in effect as of January 1, 1991, and

(B) except as provided in paragraph (2), the Secretary may not modify by regulation the formula established under sections 447.331 through 447.334 of title 42, Code of Federal Regulations, in effect on November 5, 1990, to reduce the limits described in subparagraph (A).

(2) Special rule

If a State is not in compliance with the regulations described in paragraph (1)(B), paragraph (1)(A) shall not apply to such State until such State is in compliance with such regulations.

(3) Effect on State maximum allowable cost limitations

This section shall not supersede or affect provisions in effect prior to January 1, 1991, or after December 31, 1994, relating to any maximum allowable cost limitation established by a State for payment by the State for covered outpatient drugs, and rebates shall be made under this section without regard to whether

or not payment by the State for such drugs is subject to such a limitation or the amount of such a limitation.

[(4)][3] Establishment of upper payment limits

Subject to paragraph (5), the Secretary shall establish a Federal upper reimbursement limit for each multiple source drug for which the FDA has rated three or more (or, effective January 1, 2007, two or more) products therapeutically and pharmaceutically equivalent, regardless of whether all such additional formulations are rated as such and shall use only such formulations when determining any such upper limit.

(5) Use of amp in upper payment limits

Effective January 1, 2007, in applying the Federal upper reimbursement limit under paragraph (4)[4] and section 447.332(b) of title 42 of the Code of Federal Regulations, the Secretary shall substitute 250 percent of the average manufacturer price (as computed without regard to customary prompt pay discounts extended to wholesalers) for 150 percent of the published price.

(f) Survey of retail prices; State payment and utilization rates; and performance rankings

(1) Survey of retail prices

(A) Use of vendor

The Secretary may contract services for—

(i) the determination on a monthly basis of retail survey prices for covered outpatient drugs that represent a nationwide average of consumer purchase prices for such drugs, net of all discounts and rebates (to the extent any information with respect to such discounts and rebates is available); and

(ii) the notification of the Secretary when a drug product that is therapeutically and pharmaceutically equivalent and bioequivalent becomes generally available.

(B) Secretary response to notification of availability of multiple source products

If contractor notifies the Secretary under subparagraph (A)(ii) that a drug product described in such subparagraph has become generally available, the Secretary shall make a determination, within 7 days after receiving such notification, as to whether the product is now described in subsection (e)(4).[4]

(C) Use of competitive bidding

In contracting for such services, the Secretary shall competitively bid for an outside vendor that has a demonstrated history in—

(i) surveying and determining, on a representative nationwide basis, retail prices for ingredient costs of prescription drugs;

(ii) working with retail pharmacies, commercial payers, and States in obtaining and disseminating such price information; and

(iii) collecting and reporting such price information on at least a monthly basis.

In contracting for such services, the Secretary may waive such provisions of the Federal Acquisition Regulation as are necessary for the efficient implementation of this subsection, other than provisions relating to confidentiality of information and such other provisions as the Secretary determines appropriate.

(D) Additional provisions

A contract with a vendor under this paragraph shall include such terms and conditions as the Secretary shall specify, including the following:

(i) The vendor must monitor the marketplace and report to the Secretary each time there is a new covered outpatient drug generally available.

(ii) The vendor must update the Secretary no less often than monthly on the retail survey prices for covered outpatient drugs.

(iii) The contract shall be effective for a term of 2 years.

(E) Availability of information to States

Information on retail survey prices obtained under this paragraph, including applicable information on single source drugs, shall be provided to States on at least a monthly basis. The Secretary shall devise and implement a means for providing access to each State agency designated under section 1396a(a)(5) of this title with responsibility for the administration or supervision of the administration of the State plan under this subchapter of the retail survey price determined under this paragraph.

(2) Annual State report

Each State shall annually report to the Secretary information on—

(A) the payment rates under the State plan under this subchapter for covered outpatient drugs;

(B) the dispensing fees paid under such plan for such drugs; and

(C) utilization rates for noninnovator multiple source drugs under such plan.

(3) Annual State performance rankings

(A) Comparative analysis

The Secretary annually shall compare, for the 50 most widely prescribed drugs identified by the Secretary, the national retail sales price data (collected under paragraph (1)) for such drugs with data on prices under this subchapter for each such drug for each State.

(B) Availability of information

The Secretary shall submit to Congress and the States full information regarding the annual rankings made under subparagraph (A).

(4) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services $5,000,000 for each of fiscal years 2006 through 2010 to carry out this subsection.

[3] See 1993 Amendment note below.

[4] See References in Text note below.

(g) Drug use review

(1) In general

(A) In order to meet the requirement of section 1396b(i)(10)(B) of this title, a State shall provide, by not later than January 1, 1993, for a drug use review program described in paragraph (2) for covered outpatient drugs in order to assure that prescriptions (i) are appropriate, (ii) are medically necessary, and (iii) are not likely to result in adverse medical results. The program shall be designed to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs including education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse.

(B) The program shall assess data on drug use against predetermined standards, consistent with the following:

(i) compendia which shall consist of the following:

(I) American Hospital Formulary Service Drug Information;

(II) United States Pharmacopeia-Drug Information (or its successor publications); and

(III) the DRUGDEX Information System; and

(ii) the peer-reviewed medical literature.

(C) The Secretary, under the procedures established in section 1396b of this title, shall pay to each State an amount equal to 75 per centum of so much of the sums expended by the State plan during calendar years 1991 through 1993 as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of this subsection.

(D) States shall not be required to perform additional drug use reviews with respect to drugs dispensed to residents of nursing facilities which are in compliance with the drug regimen review procedures prescribed by the Secretary for such facilities in regulations implementing section 1396r of this title, currently at section 483.60 of title 42, Code of Federal Regulations.

(2) Description of program

Each drug use review program shall meet the following requirements for covered outpatient drugs:

(A) Prospective drug review

(i) The State plan shall provide for a review of drug therapy before each prescription is filled or delivered to an individual receiving benefits under this subchapter, typically at the point-of-sale or point of distribution. The review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Each State shall use the compendia and literature referred to in paragraph (1)(B) as its source of standards for such review.

(ii) As part of the State's prospective drug use review program under this subparagraph applicable State law shall establish standards for counseling of individuals receiving benefits under this subchapter by pharmacists which includes at least the following:

(I) The pharmacist must offer to discuss with each individual receiving benefits under this subchapter or caregiver of such individual (in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls) who presents a prescription, matters which in the exercise of the pharmacist's professional judgment (consistent with State law respecting the provision of such information), the pharmacist deems significant including the following:

(aa) The name and description of the medication.

(bb) The route, dosage form, dosage, route of administration, and duration of drug therapy.

(cc) Special directions and precautions for preparation, administration and use by the patient.

(dd) Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur.

(ee) Techniques for self-monitoring drug therapy.

(ff) Proper storage.

(gg) Prescription refill information.

(hh) Action to be taken in the event of a missed dose.

(II) A reasonable effort must be made by the pharmacist to obtain, record, and maintain at least the following information regarding individuals receiving benefits under this subchapter:

(aa) Name, address, telephone number, date of birth (or age) and gender.

(bb) Individual history where significant, including disease state or states, known allergies and drug reactions, and a comprehensive list of medications and relevant devices.

(cc) Pharmacist comments relevant to the individual's drug therapy.

Nothing in this clause shall be construed as requiring a pharmacist to provide consultation when an individual receiving benefits under this subchapter or caregiver of such individual refuses such consultation, or to require verification of the offer to provide consultation or a refusal of such offer.

(B) Retrospective drug use review

The program shall provide, through its mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1396b(r) of this title) or otherwise, for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving benefits under this subchapter, or associated with specific drugs or groups of drugs.

(C) Application of standards

The program shall, on an ongoing basis, assess data on drug use against explicit predetermined standards (using the compendia and literature referred to in subsection[5] (1)(B) as the source of standards for such assessment) including but not limited to monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, and clinical abuse/misuse and, as necessary, introduce remedial strategies, in order to improve the quality of care and to conserve program funds or personal expenditures.

(D) Educational program

The program shall, through its State drug use review board established under paragraph (3), either directly or through contracts with accredited health care educational institutions, State medical societies or State pharmacists associations/societies or other organizations as specified by the State, and using data provided by the State drug use review board on common drug therapy problems, provide for active and ongoing educational outreach programs (including the activities described in paragraph (3)(C)(iii) of this subsection) to educate practitioners on common drug therapy problems with the aim of improving prescribing or dispensing practices.

(3) State drug use review board

(A) Establishment

Each State shall provide for the establishment of a drug use review board (hereinafter referred to as the ''DUR Board'') either directly or through a contract with a private organization.

(B) Membership

The membership of the DUR Board shall include health care professionals who have recognized knowledge and expertise in one or more of the following:

(i) The clinically appropriate prescribing of covered outpatient drugs.

(ii) The clinically appropriate dispensing and monitoring of covered outpatient drugs.

(iii) Drug use review, evaluation, and intervention.

(iv) Medical quality assurance.

The membership of the DUR Board shall be made up at least ⅓ but no more than 51 percent licensed and actively practicing physicians and at least ⅓ * * *[6] licensed and actively practicing pharmacists.

(C) Activities

The activities of the DUR Board shall include but not be limited to the following:

(i) Retrospective DUR as defined in section[7] (2)(B).

(ii) Application of standards as defined in section[7] (2)(C).

(iii) Ongoing interventions for physicians and pharmacists, targeted toward therapy problems or individuals identified in the course of retrospective drug use reviews performed under this subsection. Intervention programs shall include, in appropriate instances, at least:

(I) information dissemination sufficient to ensure the ready availability to physicians and pharmacists in the State of information concerning its duties, powers, and basis for its standards;

(II) written, oral, or electronic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, communicated in a manner designed to ensure the privacy of patient-related information;

(III) use of face-to-face discussions between health care professionals who are experts in rational drug therapy and selected prescribers and pharmacists who have been targeted for educational intervention, including discussion of optimal prescribing, dispensing, or pharmacy care practices, and follow-up face-to-face discussions; and

(IV) intensified review or monitoring of selected prescribers or dispensers.

The Board shall re-evaluate interventions after an appropriate period of time to determine if the intervention improved the quality of drug therapy, to evaluate the success of the interventions and make modifications as necessary.

(D) Annual report

Each State shall require the DUR Board to prepare a report on an annual basis. The State shall submit a report on an annual basis to the Secretary which shall include a description of the activities of the Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary of the interventions used, an assessment of the impact of these educational interventions on quality of care, and an estimate of the cost savings generated as a result of such program. The Secretary shall utilize such report in evaluating the effectiveness of each State's drug use review program.

[5] So in original. Probably should be ''paragraph''.

[6] So in original.

[7] So in original. Probably should be ''paragraph''.

(h) Electronic claims management

(1) In general

In accordance with chapter 35 of title 44 (relating to coordination of Federal information policy), the Secretary shall encourage each State agency to establish, as its principal means of processing claims for covered outpatient drugs under this subchapter, a point-of-sale electronic claims management system, for the purpose of performing on-line, real time eligibility verifications, claims data capture, adjudication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

(2) Encouragement

In order to carry out paragraph (1)—

(A) for calendar quarters during fiscal years 1991 and 1992, expenditures under the State plan attributable to development of a system described in paragraph (1) shall receive Federal financial participation under section 1396b(a)(3)(A)(i) of this title (at a matching rate of 90 percent) if the State acquires, through applicable competitive procurement process in the State, the most cost-effective telecommunications network and automatic data processing services and equipment; and

(B) the Secretary may permit, in the procurement described in subparagraph (A) in the application of part 433 of title 42, Code of Federal Regulations, and parts 95, 205, and 307 of title 45, Code of Federal Regulations, the substitution of the State's request for proposal in competitive procurement for advance planning and implementation documents otherwise required.

(i) Omitted

(j) Exemption of organized health care settings

(1) Covered outpatient drugs dispensed by health maintenance organizations, including medicaid managed care organizations that contract under section 1396b(m) of this title, are not subject to the requirements of this section.

(2) The State plan shall provide that a hospital (providing medical assistance under such plan) that dispenses covered outpatient drugs using drug formulary systems, and bills the plan no more than the hospital's purchasing costs for covered outpatient drugs (as determined under the State plan) shall not be subject to the requirements of this section.

(3) Nothing in this subsection shall be construed as providing that amounts for covered outpatient drugs paid by the institutions described in this subsection should not be taken into account for purposes of determining the best price as described in subsection (c) of this section.

(k) Definitions

In this section—

(1) Average manufacturer price

(A) In general

Subject to subparagraph (B), the term ''average manufacturer price'' means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade.

(B) Exclusion of customary prompt pay discounts extended to wholesalers

The average manufacturer price for a covered outpatient drug shall be determined without regard to customary prompt pay discounts extended to wholesalers.

(C) Inclusion of section 505(c) drugs

In the case of a manufacturer that approves, allows, or otherwise permits any drug of the manufacturer to be sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(c)], such term shall be inclusive of the average price paid for such drug by wholesalers for drugs distributed to the retail pharmacy class of trade.

(2) Covered outpatient drug

Subject to the exceptions in paragraph (3), the term ''covered outpatient drug'' means—

(A) of those drugs which are treated as prescribed drugs for purposes of section 1396d(a)(12) of this title, a drug which may be dispensed only upon prescription (except as provided in paragraph (5)), and—

(i) which is approved for safety and effectiveness as a prescription drug under section 505 [21 U.S.C. 355] or 507[8] of the Federal Food, Drug, and Cosmetic Act or which is approved under section 505(j) of such Act [21 U.S.C. 355(j)];

(ii)(I) which was commercially used or sold in the United States before October 10, 1962, or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a ''new drug'' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(p)]) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act [21 U.S.C. 331, 332(a), 334(a)] to enforce section 502(f) or 505(a) of such Act [21 U.S.C. 352(f), 355(a)]; or

(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(e)] on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all condi-

[8] See References in Text note below.

tions of use prescribed, recommended, or suggested in its labeling; and

(B) a biological product, other than a vaccine which—

(i) may only be dispensed upon prescription,

(ii) is licensed under section 262 of this title, and

(iii) is produced at an establishment licensed under such section to produce such product; and

(C) insulin certified under section 506[8] of the Federal Food, Drug, and Cosmetic Act.

(3) Limiting definition

The term ''covered outpatient drug'' does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under this subchapter as part of payment for the following and not as direct reimbursement for the drug):

(A) Inpatient hospital services.

(B) Hospice services.

(C) Dental services, except that drugs for which the State plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

(D) Physicians' services.

(E) Outpatient hospital services.

(F) Nursing facility services and services provided by an intermediate care facility for the mentally retarded.

(G) Other laboratory and x-ray services.

(H) Renal dialysis.

Such term also does not include any such drug or product for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological[9] used for a medical indication which is not a medically accepted indication. Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C) of this section) for such drug, biological product, or insulin.

(4) Nonprescription drugs

If a State plan for medical assistance under this subchapter includes coverage of prescribed drugs as described in section 1396d(a)(12) of this title and permits coverage of drugs which may be sold without a prescription (commonly referred to as ''over-the-counter'' drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug shall be regarded as a covered outpatient drug.

(5) Manufacturer

The term ''manufacturer'' means any entity which is engaged in—

(A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

(B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

(6) Medically accepted indication

The term ''medically accepted indication'' means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] or the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(i) of this section.

(7) Multiple source drug; innovator multiple source drug; noninnovator multiple source drug; single source drug

(A) Defined

(i) Multiple source drug

The term ''multiple source drug'' means, with respect to a rebate period, a covered outpatient drug (not including any drug described in paragraph (5)) for which there[10] at least 1 other drug product which—

(I) is rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of ''Approved Drug Products with Therapeutic Equivalence Evaluations''),

(II) except as provided in subparagraph (B), is pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

(III) is sold or marketed in the State during the period.

(ii) Innovator multiple source drug

The term ''innovator multiple source drug'' means a multiple source drug that was originally marketed under an original new drug application approved by the Food and Drug Administration.

(iii) Noninnovator multiple source drug

The term ''noninnovator multiple source drug'' means a multiple source drug that is not an innovator multiple source drug.

(iv) Single source drug

The term ''single source drug'' means a covered outpatient drug which is produced or distributed under an original new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application.

(B) Exception

Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for pur-

[9] So in original. Probably should be ''biological product''.

[10] So in original. Probably should be followed by ''is''.

poses of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C).

(C) Definitions

For purposes of this paragraph—

(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity;

(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence; and

(iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, provided that the listed product is generally available to the public through retail pharmacies in that State.

(8) Rebate period

The term ''rebate period'' means, with respect to an agreement under subsection (a) of this section, a calendar quarter or other period specified by the Secretary with respect to the payment of rebates under such agreement.

(9) State agency

The term ''State agency'' means the agency designated under section 1396a(a)(5) of this title to administer or supervise the administration of the State plan for medical assistance.

(Aug. 14, 1935, ch. 531, title XIX, § 1927, as added Pub. L. 101–508, title IV, § 4401(a)(3), Nov. 5, 1990, 104 Stat. 1388–143; amended Pub. L. 102–585, title VI, § 601(a)–(c), Nov. 4, 1992, 106 Stat. 4962–4964; Pub. L. 103–18, § 2(a), Apr. 12, 1993, 107 Stat. 54; Pub. L. 103–66, title XIII, § 13602(a), Aug. 10, 1993, 107 Stat. 613; Pub. L. 105–33, title IV, §§ 4701(b)(2)(A)(x), 4756, Aug. 5, 1997, 111 Stat. 493, 527; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, §§ 606(a), 608(u)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396, 1501A–398; Pub. L. 108–173, title I, §§ 101(e)(4), (9), 103(e)(1), 105(b), title III, § 303(i)(4), title IX, § 900(e)(1)(K), (L), title X, § 1002, Dec. 8, 2003, 117 Stat. 2151, 2152, 2159, 2166, 2254, 2372, 2431; Pub. L. 109–91, title I, § 104(a), Oct. 20, 2005, 119 Stat. 2092; Pub. L. 109–171, title VI, §§ 6001(a)–(c)(2), (d)–(f)(2), 6002(a), 6003(a), (b), 6004(a), Feb. 8, 2006, 120 Stat. 54–61; Pub. L. 109–432, div. B, title IV, § 405(c)(2)(A)(ii), Dec. 20, 2006, 120 Stat. 3000.)

REFERENCES IN TEXT

Parts A, B, C, and D of subchapter XVIII of this chapter, referred to in subsecs. (a)(1) and (c)(1)(C)(i)(VI), are classified to sections 1395c et seq., 1395j et seq., 1395w–21 et seq., and 1395w–101 et seq., respectively, of this title.

Section 256b(b)(4)(L) of this title, referred to in subsec. (a)(5)(B), probably should be section 256b(a)(4)(L) of this title, relating to a subsection (d) hospital. Section 256b(b) of this title does not contain a par. (4).

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (d)(4)(C) and (k)(6), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Paragraph (4) and subsection (e)(4), referred to in subsecs. (e)(5) and (f)(1)(B), probably means text that was editorially designated as par. (4) of subsec. (e). See 1993 Amendment note below.

Section 507 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (k)(2)(A)(i), was repealed by Pub. L. 105–115, title I, § 125(b)(1), Nov. 21, 1997, 111 Stat. 2325.

Section 107(c)(3) of the Drug Amendments of 1962, referred to in subsec. (k)(2)(A)(iii)(I), is section 107(c)(3) of Pub. L. 87–781 which is set out in an Effective Date of 1962 Amendment note under section 321 of Title 21, Food and Drugs.

Section 506 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (k)(2)(C), was repealed and a new section 506 enacted by Pub. L. 105–115, title I, §§ 112(a), 125(a)(1), Nov. 21, 1997, 111 Stat. 2309, 2325, which no longer relates to insulin.

CODIFICATION

Subsec. (i) of this section, which required the Secretary to transmit to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives an annual report on the operation of this section in the preceding fiscal year, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 9 on page 93 of House Document No. 103–7.

PRIOR PROVISIONS

A prior section 1927 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2006—Subsec. (a)(5)(B). Pub. L. 109–171, § 6004(a), inserted before period at end ''and a children's hospital described in section 1395ww(d)(1)(B)(iii) of this title which meets the requirements of clauses (i) and (iii) of section 256b(b)(4)(L) of this title and which would meet the requirements of clause (ii) of such section if that clause were applied by taking into account the percentage of care provided by the hospital to patients eligible for medical assistance under a State plan under this subchapter''.

Subsec. (a)(7). Pub. L. 109–171, § 6002(a), added par. (7).

Subsec. (b)(3)(A). Pub. L. 109–171, § 6001(b)(1)(B), inserted ''Beginning July 1, 2006, the Secretary shall provide on a monthly basis to States under subparagraph (D)(iv) the most recently reported average manufacturer prices for single source drugs and for multiple source drugs and shall, on at least a quarterly basis, update the information posted on the website under subparagraph (D)(v).'' at end of concluding provisions.

Subsec. (b)(3)(A)(i). Pub. L. 109–171, § 6003(a)(1), added cl. (i) and struck out former cl. (i) which read as follows: ''not later than 30 days after the last day of each month of a rebate period under the agreement (beginning on or after January 1, 1991), on the average manufacturer price (as defined in subsection (k)(1) of this section), customary prompt pay discounts extended to wholesalers, and, (for single source drugs and innovator multiple source drugs), the manufacturer's best price (as defined in subsection (c)(2)(B) of this section) for covered outpatient drugs for the rebate period under the agreement,;''.

Pub. L. 109–171, § 6001(b)(1)(A), (c)(2), inserted ''month of a'' after ''last day of each'' and '', customary prompt pay discounts extended to wholesalers,'' after ''(k)(1) of this section)''.

Subsec. (b)(3)(A)(ii). Pub. L. 109–171, § 6003(a)(2), inserted ''(including for such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act)'' after ''drugs''.

Subsec. (b)(3)(A)(iii). Pub. L. 109–171, § 6001(d)(1), inserted '', and, for calendar quarters beginning on or after January 1, 2007 and only with respect to the information described in subclause (III), for covered outpatient drugs'' before period at end.

Subsec. (b)(3)(D)(iv), (v). Pub. L. 109–171, § 6001(b)(2), added cls. (iv) and (v).

Subsec. (c)(1)(C)(i). Pub. L. 109–171, § 6003(b)(1)(A), inserted ''(including the lowest price available to any entity for any such drug of a manufacturer that is sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act)'' after ''or innovator multiple source drug of a manufacturer'' in introductory provisions.

Subsec. (c)(1)(C)(ii)(IV). Pub. L. 109–171, § 6003(b)(1)(B), added subcl. (IV).

Subsec. (c)(1)(D). Pub. L. 109–171, § 6001(d)(2), added subpar. (D).

Subsec. (e)(4). Pub. L. 109–171, § 6001(a)(1), which directed substitution of ''Subject to paragraph (5), the Secretary'' for ''The Secretary'' and insertion of ''(or, effective January 1, 2007, two or more)'' after ''three or more'' in subsec. (e)(4), was executed to the last par. of subsec. (e) to reflect the probable intent of Congress. See 1993 Amendment note below.

Subsec. (e)(5). Pub. L. 109–171, § 6001(a)(2), added par. (5).

Subsec. (f). Pub. L. 109–171, § 6001(e), added subsec. (f).

Subsec. (g)(1)(B)(i)(II). Pub. L. 109–171, § 6001(f)(1), which directed insertion of ''(or its successor publications)'' after ''United States Pharmacopoeia-Drug Information'', was executed by making insertion after ''United States Pharmacopeia-Drug Information'' to reflect the probable intent of Congress.

Subsec. (g)(2)(A)(ii). Pub. L. 109–171, § 6001(f)(2), inserted '', or to require verification of the offer to provide consultation or a refusal of such offer'' before period at end of concluding provisions.

Subsec. (k)(1). Pub. L. 109–171, § 6001(c)(1), designated existing provisions as subpar. (A), inserted heading, substituted ''Subject to subparagraph (B), the term'' for ''The term'', struck out '', after deducting customary prompt pay discounts'' before period at end, and added subpar. (B).

Subsec. (k)(1)(C). Pub. L. 109–171, § 6003(b)(2), as amended by Pub. L. 109–432, added subpar. (C).

Subsec. (k)(7)(A)(i). Pub. L. 109–171, § 6001(a)(4), substituted ''is'' for ''are'' in subcls. (I), (II), and (III).

Pub. L. 109–171, § 6001(a)(3), substituted ''at least 1 other drug product'' for ''are 2 or more drug products'' in introductory provisions.

2005—Subsec. (d)(2)(K). Pub. L. 109–91 added subpar. (K).

2003—Subsec. (a)(1). Pub. L. 108–173, § 303(i)(4)(A), inserted ''or under part B of subchapter XVIII of this chapter'' after ''section 1396b(a) of this title''.

Subsec. (b)(3)(A). Pub. L. 108–173, § 303(i)(4)(B), added cl. (iii) and concluding provisions.

Subsec. (b)(3)(B). Pub. L. 108–173, § 303(i)(4)(C), inserted ''and manufacturer's average sales price'' after ''average manufacturer price'' in heading and ''and manufacturer's average sales prices (including wholesale acquisition cost) if required to make payment'' after ''manufacturer prices'' in text.

Subsec. (b)(3)(D). Pub. L. 108–173, § 303(i)(4)(D)(i), inserted ''(other than the wholesale acquisition cost for purposes of carrying out section 1395w–3a of this title)'' after ''subsection (a)(6)(A)(ii) of this section'' in introductory provisions.

Pub. L. 108–173, § 105(b), which directed insertion of ''and drug pricing data reported under the first sentence of section 1395w–141(i)(1) of this title'' after ''section 1395w–104(c)(2)(E) of this title'' in last sentence, was executed by making the insertion after ''or 1395w–104(c)(2)(E) of this title'' in concluding provisions to reflect the probable intent of Congress.

Pub. L. 108–173, § 101(e)(4), inserted concluding provisions.

Subsec. (b)(3)(D)(i). Pub. L. 108–173, § 303(i)(4)(D)(ii), inserted '', to carry out section 1395w–3a of this title (including the determination and implementation of the payment amount), or to carry out section 1395w–3b of this title'' after ''this section''.

Subsec. (c)(1)(C)(i)(I). Pub. L. 108–173, § 1002(a), inserted ''(including inpatient prices charged to hospitals described in section 256b(a)(4)(L) of this title)'' before semicolon at end.

Subsec. (c)(1)(C)(i)(V), (VI). Pub. L. 108–173, § 103(e)(1), added subcls. (V) and (VI).

Subsec. (c)(1)(C)(iii). Pub. L. 108–173, § 1002(b), added cl. (iii).

Subsec. (e)[(4)]. Pub. L. 108–173, § 900(e)(1)(K), (L), which directed substitution of ''The Secretary'' for ''HCFA'' in subsecs. (e)(4) and (f)(2), was executed to the last par. of subsec. (e) to reflect the probable intent of Congress. See 1993 Amendment note below.

Subsec. (g)(1)(B)(i)(II). Pub. L. 108–173, § 101(e)(9)(A), inserted ''and'' at end.

Subsec. (g)(1)(B)(i)(IV). Pub. L. 108–173, § 101(e)(9)(B), struck out subcl. (IV) which read as follows: ''American Medical Association Drug Evaluations; and''.

1999—Subsec. (a)(1). Pub. L. 106–113, § 1000(a)(6) [title VI, § 606(a)], substituted ''shall become effective as of the date on which the agreement is entered into or, at State option, on any date thereafter on or before'' for ''shall not be effective until''.

Subsec. (g)(2)(A)(ii)(II)(cc). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(u)(1)], substituted ''individual's'' for ''individuals''.

Subsec. (i)(1). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(u)(2)], substituted ''the operation of this section'' for ''the the operation of this section''.

Subsec. (k)(7)(A)(iv). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(u)(3)(A)], substituted ''distributors'' for ''distributers''.

Subsec. (k)(7)(C)(i). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(u)(3)(B)], substituted ''pharmaceutically'' for ''pharmaceuutically''.

1997—Subsec. (g)(1)(B)(i)(III), (IV). Pub. L. 105–33, § 4756, added subcl. (III) and redesignated former subcl. (III) as (IV).

Subsec. (j)(1). Pub. L. 105–33, § 4701(b)(2)(A)(x), substituted ''health maintenance organizations, including medicaid managed care organizations'' for ''* * * Health Maintenance Organizations, including those organizations''.

1993—Subsec. (b)(1)(A). Pub. L. 103–66, § 13602(a)(2)(A)(i)(II), which directed amendment of subpar. (A) by substituting ''dispensed after December 31, 1990, for which payment was made under the State plan for such period'' for ''dispensed under the plan during the quarter (or other period as the Secretary may specify)'', was executed by making the substitution for ''dispensed under the plan during the quarter (or such other period as the Secretary may specify)'' to reflect the probable intent of Congress.

Pub. L. 103–66, § 13602(a)(2)(A)(i)(I), substituted ''for a rebate period'' for ''each calendar quarter (or periodically in accordance with a schedule specified by the Secretary)''.

Subsec. (b)(2)(A). Pub. L. 103–66, § 13602(a)(2)(A)(ii), substituted ''each rebate period'' for ''each calendar quarter'' and ''units of each dosage form and strength and package size'' for ''dosage units'', inserted ''after December 31, 1990, for which payment was made'' after ''dispensed'', and substituted ''during the period'' for ''during the quarter''.

Subsec. (b)(3)(A)(i). Pub. L. 103–66, § 13602(a)(2)(A)(iii), substituted ''rebate period under the agreement'' for ''quarter'' in two places.

Subsec. (c). Pub. L. 103–66, § 13602(a)(1), added subsec. (c) and struck out former subsec. (c) which related to determination of amount of rebate for certain drugs.

Pub. L. 103–18 substituted ''such drug, except that for the calendar quarter beginning after September 30, 1992, and before January 1, 1993, the amount of the re-

bate may not exceed 50 percent of such average manufacturer price;'' for ''such drug;'' in par. (1)(B)(ii)(II).

Subsecs. (d) to (f). Pub. L. 103–66, §13602(a)(1), added subsecs. (d) and (e), struck out former subsecs. (d) consisting of pars. (1) to (8) relating to limitations on coverage of drugs, (e) relating to denial of Federal financial participation in certain cases, and (f)(1) relating to reductions in pharmacy reimbursement limits, and struck out par. designation for former par. (2) of subsec. (f) without supplying a new designation. The text of former subsec. (f)(2) is now the last par. of subsec. (e).

Subsec. (k)(1). Pub. L. 103–66, §13602(a)(2)(B)(i), substituted ''rebate period'' for ''calendar quarter'' and inserted before period at end '', after deducting customary prompt pay discounts''.

Subsec. (k)(3). Pub. L. 103–66, §13602(a)(2)(B)(ii)(III), in concluding provisions, substituted ''for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used'' for ''which is used'' and inserted at end ''Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C) of this section) for such drug, biological product, or insulin.''

Subsec. (k)(3)(E). Pub. L. 103–66, §13602(a)(2)(B)(ii)(I), struck out ''* * * *emergency room visits'' after ''services''.

Subsec. (k)(3)(F). Pub. L. 103–66, §13602(a)(2)(B)(ii)(II), which directed amendment of subpar. (F) by substituting ''services and services provided by an intermediate care facility for the mentally retarded'' for ''services''; was executed by making the substitution for ''sevices'' to reflect the probable intent of Congress because the word ''services'' did not appear.

Subsec. (k)(6). Pub. L. 103–66, §13602(a)(2)(B)(iii), substituted ''or the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(i) of this section.'' for '', which appears in peer-reviewed medical literature or which is accepted by one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, and the United States Pharmacopeia-Drug Information.''

Subsec. (k)(7)(A)(i). Pub. L. 103–66, §13602(a)(2)(B)(iv), substituted ''rebate period'' for ''calendar quarter'' in introductory provisions.

Subsec. (k)(8), (9). Pub. L. 103–66, §13602(a)(2)(B)(v), added par. (8) and redesignated former par. (8) as (9).

1992—Subsec. (a)(1). Pub. L. 102–585, §601(b)(1), substituted ''manufacturer), and must meet the requirements of paragraph (5) (with respect to drugs purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992) and paragraph (6)'' for ''manufacturer)''.

Subsec. (a)(5), (6). Pub. L. 102–585, §601(b)(2), added pars. (5) and (6).

Subsec. (b)(3)(D). Pub. L. 102–585, §601(b)(3), substituted ''this paragraph or under an agreement with the Secretary of Veterans Affairs described in subsection (a)(6)(A)(ii) of this section'' for ''this paragraph'', ''Secretary or the Secretary of Veterans Affairs'' for ''Secretary'', and ''except—'' and cls. (i) to (iii) for ''except as the Secretary determines to be necessary to carry out this section and to permit the Comptroller General to review the information provided.''

Subsec. (b)(4)(B)(ii). Pub. L. 102–585, §601(b)(4)(i), (ii), substituted ''the calendar quarter beginning at least 60 days'' for ''such period'' and ''the manufacturer provides notice to the Secretary.'' for ''of the notice as the Secretary may provide (but not beyond the term of the agreement).''

Subsec. (b)(4)(B)(iv), (v). Pub. L. 102–585, §601(b)(4)(iii), added cls. (iv) and (v).

Subsec. (c)(1)(B)(i). Pub. L. 102–585, §601(c)(1), which directed the substitution of ''October 1, 1992,'' for ''January 1, 1993,'', was executed by making the substitution in introductory provisions and in subcl. (II), to reflect the probable intent of Congress.

Subsec. (c)(1)(B)(ii) to (v). Pub. L. 102–585, §601(c)(2), (3), added cls. (ii) to (v) and struck out former cl. (ii) which read as follows: ''for quarters (or other periods) beginning after December 31, 1992, the greater of—

''(I) the difference between the average manufacturer price for a drug and 85 percent of such price, or

''(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug.''

Subsec. (c)(1)(C). Pub. L. 102–585, §601(a), substituted ''(excluding any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B) of this section, any prices charged under the Federal Supply Schedule of the General Services Administration, or any prices used under a State pharmaceutical assistance program, and excluding'' for ''(excluding''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. B, title IV, §405(c)(2)(A), Dec. 20, 2006, 120 Stat. 2999, provided that the amendment made by section 405(c)(2)(A) is effective as if included in the enactment of the Deficit Reduction Act of 2005 (Public Law 109–171).

Pub. L. 109–171, title VI, §6001(f)(3), Feb. 8, 2006, 120 Stat. 58, provided that: ''The amendments made by this subsection [amending this section and section 1395x of this title] shall take effect on the date of the enactment of this Act [Feb. 8, 2006].''

Pub. L. 109–171, title VI, §6001(g), Feb. 8, 2006, 120 Stat. 58, provided that: ''Except as otherwise provided, the amendments made by this section [amending this section and section 1395x of this title] shall take effect on January 1, 2007, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Pub. L. 109–171, title VI, §6003(c), Feb. 8, 2006, 120 Stat. 61, provided that: ''The amendments made by this section [amending this section] take effect on January 1, 2007.''

Pub. L. 109–171, title VI, §6004(b), Feb. 8, 2006, 120 Stat. 61, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to drugs purchased on or after the date of the enactment of this Act [Feb. 8, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–91 applicable to drugs dispensed on or after Jan. 1, 2006, see section 104(d) of Pub. L. 109–91, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title I, §103(e)(2), Dec. 8, 2003, 117 Stat. 2160, provided that: ''Section 1927(c)(1)(C)(i)(VI) of the Social Security Act [subsec. (c)(1)(C)(i)(VI) of this section], as added by paragraph (1), shall apply to prices charged for drugs dispensed on or after January 1, 2006.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §606(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396, provided that: ''The amendment made by subsection (a) [amending this section] applies to agreements entered into on or after the date of enactment of this Act [Nov. 29, 1999].''

Amendment by section 1000(a)(6) [title VI, §608(u)] of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, §608(bb)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on

or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1993 AMENDMENTS

Section 13602(d) of Pub. L. 103–66 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1396a and 1396b of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].

''(2) The amendment made by subsection (a)(1) [amending this section] (insofar as such subsection amends section 1927(d) of the Social Security Act [subsec. (d) of this section]) and the amendment made by subsection (c) [amending section 1396a of this title] shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not regulations to carry out such amendments have been promulgated by such date.''

Section 2(b) of Pub. L. 103–18 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 601(c) of the Veterans Health Care Act of 1992 [Pub. L. 102–585].''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 601(e) of Pub. L. 102–585 provided that: ''The amendments made by this section [amending this section] shall apply with respect to payments to State plans under title XIX of the Social Security Act [this subchapter] for calendar quarters (or periods) beginning on or after January 1, 1993 (without regard to whether or not regulations to carry out such amendments have been promulgated by such date).''

REGULATIONS

Pub. L. 109–171, title VI, § 6001(c)(3), Feb. 8, 2006, 120 Stat. 55, provided that:

''(A) INSPECTOR GENERAL RECOMMENDATIONS.—Not later than June 1, 2006, the Inspector General of the Department of Health and Human Services shall—

''(i) review the requirements for, and manner in which, average manufacturer prices are determined under section 1927 of the Social Security Act [this section], as amended by this section; and

''(ii) shall submit to the Secretary of Health and Human Services and Congress such recommendations for changes in such requirements or manner as the Inspector General determines to be appropriate.

''(B) DEADLINE FOR PROMULGATION.—Not later than July 1, 2007, the Secretary of Health and Human Services shall promulgate a regulation that clarifies the requirements for, and manner in which, average manufacturer prices are determined under section 1927 of the Social Security Act, taking into consideration the recommendations submitted to the Secretary in accordance with subparagraph (A)(ii).''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under subchapter XVIII of this chapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

REPORTS ON BEST PRICE CHANGES AND PAYMENT OF REBATES

Section 601(d) of Pub. L. 102–585 provided that not later than 90 days after the expiration of each calendar quarter beginning on or after Oct. 1, 1992, and ending on or before Dec. 31, 1995, Secretary of Health and Human Services was to submit to Congress a report containing information as to percentage of single source drugs whose best price either increased, decreased, or stayed the same in comparison to best price during previous calendar quarter, median and mean percentage increase or decrease of such price, and, with respect to drugs for which manufacturers were required to pay rebates under subsec. (c) of this section, Secretary's best estimate, on State-by-State and national aggregate basis, of total amount of rebates paid under subsec. (c) of this section and percentages of such total amounts attributable to rebates paid under pars. (1) to (3) of subsec. (c) of this section, limited consideration to drugs which are considered significant expenditures under medicaid program, and contained requirements for initial report.

DEMONSTRATION PROJECTS TO EVALUATE EFFICIENCY AND COST-EFFECTIVENESS OF PROSPECTIVE DRUG UTILIZATION REVIEW

Section 4401(c) of title IV of Pub. L. 101–508 directed Secretary of Health and Human Services to establish statewide demonstration projects to evaluate efficiency and cost-effectiveness of prospective drug utilization review and to evaluate impact on quality of care and cost-effectiveness of paying pharmacists under this subchapter whether or not drugs were dispensed for drug use review services, with two reports to be submitted to Congress, the first not later than Jan. 1, 1994, and the second not later than Jan. 1, 1995.

STUDY OF DRUG PURCHASING AND BILLING PRACTICES IN HEALTH CARE INDUSTRY; REPORT

Section 4401(d) of title IV of Pub. L. 101–508, as amended by Pub. L. 104–316, title I, § 122(i), Oct. 19, 1996, 110 Stat. 3837, provided for various studies and reports as follows: (1) directed Comptroller General to conduct study of drug purchasing and billing activities of various health care systems, and to submit report to Secretary of Health and Human Services and to Congress by not later than May 1, 1991; (2) directed Comptroller General to submit to Secretary and Congress report on changes in prices charged by manufacturers for prescription drugs to Department of Veterans Affairs, other Federal programs, hospital pharmacies, and other purchasing groups and managed care plans; (3) directed Secretary, acting in consultation with Comptroller General, to study prior approval procedures utilized by State medical assistance programs conducted under this subchapter, and to submit report to Congress by not later than Dec. 31, 1991; (4) directed Secretary to conduct study on adequacy of current reimbursement rates to pharmacists under each State medical assistance program conducted under this subchapter, and to submit report to Congress by not later than Dec. 31, 1991; and (5) directed Secretary to undertake study of relationship between State medical assistance plans and Federal and State acquisition and reimbursement policies for vaccines and accessibility of vaccinations and immunization to children, and to report to Congress not later than one year after Nov. 5, 1990.

§ 1396s. Program for distribution of pediatric vaccines

(a) Establishment of program

(1) In general

In order to meet the requirement of section 1396a(a)(62) of this title, each State shall establish a pediatric vaccine distribution program (which may be administered by the State department of health), consistent with the requirements of this section, under which—

(A) each vaccine-eligible child (as defined in subsection (b) of this section), in receiv-

ing an immunization with a qualified pediatric vaccine (as defined in subsection (h)(8) of this section) from a program-registered provider (as defined in subsection (c) of this section) on or after October 1, 1994, is entitled to receive the immunization without charge for the cost of such vaccine; and

(B)(i) each program-registered provider who administers such a pediatric vaccine to a vaccine-eligible child on or after such date is entitled to receive such vaccine under the program without charge either for the vaccine or its delivery to the provider, and (ii) no vaccine is distributed under the program to a provider unless the provider is a program-registered provider.

(2) Delivery of sufficient quantities of pediatric vaccines to immunize federally vaccine-eligible children

(A) In general

The Secretary shall provide under subsection (d) of this section for the purchase and delivery on behalf of each State meeting the requirement of section 1396a(a)(62) of this title (or, with respect to vaccines administered by an Indian tribe or tribal organization to Indian children, directly to the tribe or organization), without charge to the State, of such quantities of qualified pediatric vaccines as may be necessary for the administration of such vaccines to all federally vaccine-eligible children in the State on or after October 1, 1994. This paragraph constitutes budget authority in advance of appropriations Acts, and represents the obligation of the Federal Government to provide for the purchase and delivery to States of the vaccines (or payment under subparagraph (C)) in accordance with this paragraph.

(B) Special rules where vaccine is unavailable

To the extent that a sufficient quantity of a vaccine is not available for purchase or delivery under subsection (d) of this section, the Secretary shall provide for the purchase and delivery of the available vaccine in accordance with priorities established by the Secretary, with priority given to federally vaccine-eligible children unless the Secretary finds there are other public health considerations.

(C) Special rules where State is a manufacturer

(i) Payments in lieu of vaccines

In the case of a State that manufactures a pediatric vaccine the Secretary, instead of providing the vaccine on behalf of a State under subparagraph (A), shall provide to the State an amount equal to the value of the quantity of such vaccine that otherwise would have been delivered on behalf of the State under such subparagraph, but only if the State agrees that such payments will only be used for purposes relating to pediatric immunizations.

(ii) Determination of value

In determining the amount to pay a State under clause (i) with respect to a pediatric vaccine, the value of the quantity of vaccine shall be determined on the basis of the price in effect for the qualified pediatric vaccine under contracts under subsection (d) of this section. If more than 1 such contract is in effect, the Secretary shall determine such value on the basis of the average of the prices under the contracts, after weighting each such price in relation to the quantity of vaccine under the contract involved.

(b) Vaccine-eligible children

For purposes of this section:

(1) In general

The term ''vaccine-eligible child'' means a child who is a federally vaccine-eligible child (as defined in paragraph (2)) or a State vaccine-eligible child (as defined in paragraph (3)).

(2) Federally vaccine-eligible child

(A) In general

The term ''federally vaccine-eligible child'' means any of the following children:

(i) A medicaid-eligible child.

(ii) A child who is not insured.

(iii) A child who (I) is administered a qualified pediatric vaccine by a federally-qualified health center (as defined in section 1396d(*l*)(2)(B) of this title) or a rural health clinic (as defined in section 1396d(*l*)(1) of this title), and (II) is not insured with respect to the vaccine.

(iv) A child who is an Indian (as defined in subsection (h)(3) of this section).

(B) Definitions

In subparagraph (A):

(i) The term ''medicaid-eligible'' means, with respect to a child, a child who is entitled to medical assistance under a state[1] plan approved under this subchapter.

(ii) The term ''insured'' means, with respect to a child—

(I) for purposes of subparagraph (A)(ii), that the child is enrolled under, and entitled to benefits under, a health insurance policy or plan, including a group health plan, a prepaid health plan, or an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.]; and

(II) for purposes of subparagraph (A)(iii)(II) with respect to a pediatric vaccine, that the child is entitled to benefits under such a health insurance policy or plan, but such benefits are not available with respect to the cost of the pediatric vaccine.

(3) State vaccine-eligible child

The term ''State vaccine-eligible child'' means, with respect to a State and a qualified pediatric vaccine, a child who is within a class of children for which the State is purchasing the vaccine pursuant to subsection (d)(4)(B) of this section.

[1] So in original. Probably should be capitalized.

(c) Program-registered providers

(1) Defined

In this section, except as otherwise provided, the term ''program-registered provider'' means, with respect to a State, any health care provider that—

(A) is licensed or otherwise authorized for administration of pediatric vaccines under the law of the State in which the administration occurs (subject to section 254f(e) of this title), without regard to whether or not the provider participates in the plan under this subchapter;

(B) submits to the State an executed provider agreement described in paragraph (2); and

(C) has not been found, by the Secretary or the State, to have violated such agreement or other applicable requirements established by the Secretary or the State consistent with this section.

(2) Provider agreement

A provider agreement for a provider under this paragraph is an agreement (in such form and manner as the Secretary may require) that the provider agrees as follows:

(A)(i) Before administering a qualified pediatric vaccine to a child, the provider will ask a parent of the child such questions as are necessary to determine whether the child is a vaccine-eligible child, but the provider need not independently verify the answers to such questions.

(ii) The provider will, for a period of time specified by the Secretary, maintain records of responses made to the questions.

(iii) The provider will, upon request, make such records available to the State and to the Secretary, subject to section 1396a(a)(7) of this title.

(B)(i) Subject to clause (ii), the provider will comply with the schedule, regarding the appropriate periodicity, dosage, and contraindications applicable to pediatric vaccines, that is established and periodically reviewed and, as appropriate, revised by the advisory committee referred to in subsection (e) of this section, except in such cases as, in the provider's medical judgment subject to accepted medical practice, such compliance is medically inappropriate.

(ii) The provider will provide pediatric vaccines in compliance with applicable State law, including any such law relating to any religious or other exemption.

(C)(i) In administering a qualified pediatric vaccine to a vaccine-eligible child, the provider will not impose a charge for the cost of the vaccine. A program-registered provider is not required under this section to administer such a vaccine to each child for whom an immunization with the vaccine is sought from the provider.

(ii) The provider may impose a fee for the administration of a qualified pediatric vaccine so long as the fee in the case of a federally vaccine-eligible child does not exceed the costs of such administration (as determined by the Secretary based on actual regional costs for such administration).

(iii) The provider will not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child's parent to pay an administration fee.

(3) Encouraging involvement of providers

Each program under this section shall provide, in accordance with criteria established by the Secretary—

(A) for encouraging the following to become program-registered providers: private health care providers, the Indian Health Service, health care providers that receive funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.], and health programs or facilities operated by Indian tribes or tribal organizations; and

(B) for identifying, with respect to any population of vaccine-eligible children a substantial portion of whose parents have a limited ability to speak the English language, those program-registered providers who are able to communicate with the population involved in the language and cultural context that is most appropriate.

(4) State requirements

Except as the Secretary may permit in order to prevent fraud and abuse and for related purposes, a State may not impose additional qualifications or conditions, in addition to the requirements of paragraph (1), in order that a provider qualify as a program-registered provider under this section. This subsection does not limit the exercise of State authority under section 1396n(b) of this title.

(d) Negotiation of contracts with manufacturers

(1) In general

For the purpose of meeting obligations under this section, the Secretary shall negotiate and enter into contracts with manufacturers of pediatric vaccines consistent with the requirements of this subsection and, to the maximum extent practicable, consolidate such contracting with any other contracting activities conducted by the Secretary to purchase vaccines. The Secretary may enter into such contracts under which the Federal Government is obligated to make outlays, the budget authority for which is not provided for in advance in appropriations Acts, for the purchase and delivery of pediatric vaccines under subsection (a)(2)(A) of this section.

(2) Authority to decline contracts

The Secretary may decline to enter into such contracts and may modify or extend such contracts.

(3) Contract price

(A) In general

The Secretary, in negotiating the prices at which pediatric vaccines will be purchased and delivered from a manufacturer under this subsection, shall take into account quantities of vaccines to be purchased by States under the option under paragraph (4)(B).

(B) Negotiation of discounted price for current vaccines

With respect to contracts entered into under this subsection for a pediatric vaccine

for which the Centers for Disease Control and Prevention has a contract in effect under section 247b(j)(1) of this title as of May 1, 1993, no price for the purchase of such vaccine for vaccine-eligible children shall be agreed to by the Secretary under this subsection if the price per dose of such vaccine (including delivery costs and any applicable excise tax established under section 4131 of the Internal Revenue Code of 1986) exceeds the price per dose for the vaccine in effect under such a contract as of such date increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) from May 1993 to the month before the month in which such contract is entered into.

(C) Negotiation of discounted price for new vaccines

With respect to contracts entered into for a pediatric vaccine not described in subparagraph (B), the price for the purchase of such vaccine shall be a discounted price negotiated by the Secretary that may be established without regard to such subparagraph.

(4) Quantities and terms of delivery

Under such contracts—

(A) the Secretary shall provide, consistent with paragraph (6), for the purchase and delivery on behalf of States (and tribes and tribal organizations) of quantities of pediatric vaccines for federally vaccine-eligible children; and

(B) each State, at the option of the State, shall be permitted to obtain additional quantities of pediatric vaccines (subject to amounts specified to the Secretary by the State in advance of negotiations) through purchasing the vaccines from the manufacturers at the applicable price negotiated by the Secretary consistent with paragraph (3), if (i) the State agrees that the vaccines will be used to provide immunizations only for children who are not federally vaccine-eligible children and (ii) the State provides to the Secretary such information (at a time and manner specified by the Secretary, including in advance of negotiations under paragraph (1)) as the Secretary determines to be necessary, to provide for quantities of pediatric vaccines for the State to purchase pursuant to this subsection and to determine annually the percentage of the vaccine market that is purchased pursuant to this section and this subparagraph.

The Secretary shall enter into the initial negotiations under the preceding sentence not later than 180 days after August 10, 1993.

(5) Charges for shipping and handling

The Secretary may enter into a contract referred to in paragraph (1) only if the manufacturer involved agrees to submit to the Secretary such reports as the Secretary determines to be appropriate to assure compliance with the contract and if, with respect to a State program under this section that does not provide for the direct delivery of qualified pediatric vaccines, the manufacturer involved agrees that the manufacturer will provide for the delivery of the vaccines on behalf of the State in accordance with such program and will not impose any charges for the costs of such delivery (except to the extent such costs are provided for in the price established under paragraph (3)).

(6) Assuring adequate supply of vaccines

The Secretary, in negotiations under paragraph (1), shall negotiate for quantities of pediatric vaccines such that an adequate supply of such vaccines will be maintained to meet unanticipated needs for the vaccines. For purposes of the preceding sentence, the Secretary shall negotiate for a 6-month supply of vaccines in addition to the quantity that the Secretary otherwise would provide for in such negotiations. In carrying out this paragraph, the Secretary shall consider the potential for outbreaks of the diseases with respect to which the vaccines have been developed.

(7) Multiple suppliers

In the case of the pediatric vaccine involved, the Secretary shall, as appropriate, enter into a contract referred to in paragraph (1) with each manufacturer of the vaccine that meets the terms and conditions of the Secretary for an award of such a contract (including terms and conditions regarding safety and quality). With respect to multiple contracts entered into pursuant to this paragraph, the Secretary may have in effect different prices under each of such contracts and, with respect to a purchase by States pursuant to paragraph (4)(B), the Secretary shall determine which of such contracts will be applicable to the purchase.

(e) Use of pediatric vaccines list

The Secretary shall use, for the purpose of the purchase, delivery, and administration of pediatric vaccines under this section, the list established (and periodically reviewed and as appropriate revised) by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention).

(f) Requirement of State maintenance of immunization laws

In the case of a State that had in effect as of May 1, 1993, a law that requires some or all health insurance policies or plans to provide some coverage with respect to a pediatric vaccine, a State program under this section does not comply with the requirements of this section unless the State certifies to the Secretary that the State has not modified or repealed such law in a manner that reduces the amount of coverage so required.

(g) Termination

This section, and the requirement of section 1396a(a)(62) of this title, shall cease to be in effect beginning on such date as may be prescribed in Federal law providing for immunization services for all children as part of a broad-based reform of the national health care system.

(h) Definitions

For purposes of this section:

(1) The term ''child'' means an individual 18 years of age or younger.

(2) The term ''immunization'' means an immunization against a vaccine-preventable disease.

(3) The terms ''Indian'', ''Indian tribe'' and ''tribal organization'' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act [25 U.S.C. 1603].

(4) The term ''manufacturer'' means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any pediatric vaccine. The term ''manufacture'' means to manufacture, import, process, or distribute a vaccine.

(5) The term ''parent'' includes, with respect to a child, an individual who qualifies as a legal guardian under State law.

(6) The term ''pediatric vaccine'' means a vaccine included on the list under subsection (e) of this section.

(7) The term ''program-registered provider'' has the meaning given such term in subsection (c) of this section.

(8) The term ''qualified pediatric vaccine'' means a pediatric vaccine with respect to which a contract is in effect under subsection (d) of this section.

(9) The terms ''vaccine-eligible child'', ''federally vaccine-eligible child'', and ''State vaccine-eligible child'' have the meaning given such terms in subsection (b) of this section.

(Aug. 14, 1935, ch. 531, title XIX, § 1928, as added Pub. L. 103–66, title XIII, § 13631(b)(2), Aug. 10, 1993, 107 Stat. 637.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(2)(B)(ii)(I), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (c)(3)(A), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (d)(3)(B), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1396s, act Aug. 14, 1935, ch. 531, title XIX, § 1928, formerly § 1920, as added Apr. 7, 1986, Pub. L. 99–272, title IX, § 9526, 100 Stat. 218, and renumbered and amended, which related to references to laws directly affecting medicaid program, was renumbered section 1931 of act Aug. 14, 1935, by Pub. L. 103–66, title XIII, § 13631(b)(1), Aug. 10, 1993, 107 Stat. 637, and transferred to section 1396v of this title.

EFFECTIVE DATE

Section applicable to payments under State plans approved under this subchapter for calendar quarters beginning on or after Oct. 1, 1994, see section 13631(i) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 1396a of this title.

§ 1396t. Home and community care for functionally disabled elderly individuals

(a) "Home and community care" defined

In this subchapter, the term ''home and community care'' means one or more of the following services furnished to an individual who has been determined, after an assessment under subsection (c) of this section, to be a functionally disabled elderly individual, furnished in accordance with an individual community care plan (established and periodically reviewed and revised by a qualified community care case manager under subsection (d) of this section):

(1) Homemaker/home health aide services.

(2) Chore services.

(3) Personal care services.

(4) Nursing care services provided by, or under the supervision of, a registered nurse.

(5) Respite care.

(6) Training for family members in managing the individual.

(7) Adult day care.

(8) In the case of an individual with chronic mental illness, day treatment or other partial hospitalization, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility).

(9) Such other home and community-based services (other than room and board) as the Secretary may approve.

(b) "Functionally disabled elderly individual" defined

(1) In general

In this subchapter, the term ''functionally disabled elderly individual'' means an individual who—

(A) is 65 years of age or older,

(B) is determined to be a functionally disabled individual under subsection (c) of this section, and

(C) subject to section 1396a(f) of this title (as applied consistent with section 1396a(r)(2) of this title), is receiving supplemental security income benefits under subchapter XVI of this chapter (or under a State plan approved under subchapter XVI of this chapter) or, at the option of the State, is described in section 1396a(a)(10)(C) of this title.

(2) Treatment of certain individuals previously covered under a waiver

(A) In the case of a State which—

(i) at the time of its election to provide coverage for home and community care under this section has a waiver approved under section 1396n(c) or 1396n(d) of this title with respect to individuals 65 years of age or older, and

(ii) subsequently discontinues such waiver, individuals who were eligible for benefits under the waiver as of the date of its discontinuance and who would, but for income or resources, be eligible for medical assistance for home and community care under the plan shall, notwithstanding any other provision of this subchapter, be deemed a functionally disabled elderly individual for so long as the individual would have remained eligible for medical assistance under such waiver.

(B) In the case of a State which used a health insuring organization before January 1, 1986, and which, as of December 31, 1990, had in effect a waiver under section 1315 of this title that provides under the State plan under this subchapter for personal care services for functionally disabled individuals, the term ''functionally disabled elderly individual'' may include, at the option of the State, an individual who—

(i) is 65 years of age or older or is disabled (as determined under the supplemental security income program under subchapter XVI of this chapter);

(ii) is determined to meet the test of functional disability applied under the waiver as of such date; and

(iii) meets the resource requirement and income standard that apply in the State to individuals described in section 1396a(a)(10)(A)(ii)(V) of this title.

(3) Use of projected income

In applying section 1396b(f)(1) of this title in determining the eligibility of an individual (described in section 1396a(a)(10)(C) of this title) for medical assistance for home and community care, a State may, at its option, provide for the determination of the individual's anticipated medical expenses (to be deducted from income) over a period of up to 6 months.

(c) Determinations of functional disability

(1) In general

In this section, an individual is ''functionally disabled'' if the individual—

(A) is unable to perform without substantial assistance from another individual at least 2 of the following 3 activities of daily living: toileting, transferring, and eating; or

(B) has a primary or secondary diagnosis of Alzheimer's disease and is (i) unable to perform without substantial human assistance (including verbal reminding or physical cueing) or supervision at least 2 of the following 5 activities of daily living: bathing, dressing, toileting, transferring, and eating; or (ii) cognitively impaired so as to require substantial supervision from another individual because he or she engages in inappropriate behaviors that pose serious health or safety hazards to himself or herself or others.

(2) Assessments of functional disability

(A) Requests for assessments

If a State has elected to provide home and community care under this section, upon the request of an individual who is 65 years of age or older and who meets the requirements of subsection (b)(1)(C) of this section (or another person on such individual's behalf), the State shall provide for a comprehensive functional assessment under this subparagraph which—

(i) is used to determine whether or not the individual is functionally disabled,

(ii) is based on a uniform minimum data set specified by the Secretary under subparagraph (C)(i), and

(iii) uses an instrument which has been specified by the State under subparagraph (B).

No fee may be charged for such an assessment.

(B) Specification of assessment instrument

The State shall specify the instrument to be used in the State in complying with the requirement of subparagraph (A)(iii) which instrument shall be—

(i) one of the instruments designated under subparagraph (C)(ii); or

(ii) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary in subparagraph (C)(i).

(C) Specification of assessment data set and instruments

The Secretary shall—

(i) not later than July 1, 1991—

(I) specify a minimum data set of core elements and common definitions for use in conducting the assessments required under subparagraph (A); and

(II) establish guidelines for use of the data set; and

(ii) by not later than July 1, 1991, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subparagraph (B) for use in complying with the requirements of subparagraph (A).

(D) Periodic review

Each individual who qualifies as a functionally disabled elderly individual shall have the individual's assessment periodically reviewed and revised not less often than once every 12 months.

(E) Conduct of assessment by interdisciplinary teams

An assessment under subparagraph (A) and a review under subparagraph (D) must be conducted by an interdisciplinary team designated by the State. The Secretary shall permit a State to provide for assessments and reviews through teams under contracts—

(i) with public organizations; or

(ii) with nonpublic organizations which do not provide home and community care or nursing facility services and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, community care or nursing facility services.

(F) Contents of assessment

The interdisciplinary team must—

(i) identify in each such assessment or review each individual's functional disabilities and need for home and community care, including information about the individual's health status, home and community environment, and informal support system; and

(ii) based on such assessment or review, determine whether the individual is (or continues to be) functionally disabled.

The results of such an assessment or review shall be used in establishing, reviewing, and revising the individual's ICCP under subsection (d)(1) of this section.

(G) Appeal procedures

Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (F).

(d) Individual community care plan (ICCP)

(1) "Individual community care plan" defined

In this section, the terms ''individual community care plan'' and ''ICCP'' mean, with respect to a functionally disabled elderly individual, a written plan which—

(A) is established, and is periodically reviewed and revised, by a qualified case manager after a face-to-face interview with the individual or primary caregiver and based upon the most recent comprehensive functional assessment of such individual conducted under subsection (c)(2) of this section;

(B) specifies, within any amount, duration, and scope limitations imposed on home and community care provided under the State plan, the home and community care to be provided to such individual under the plan, and indicates the individual's preferences for the types and providers of services; and

(C) may specify other services required by such individual.

An ICCP may also designate the specific providers (qualified to provide home and community care under the State plan) which will provide the home and community care described in subparagraph (B). Nothing in this section shall be construed as authorizing an ICCP or the State to restrict the specific persons or individuals (who are competent to provide home and community care under the State plan) who will provide the home and community care described in subparagraph (B).

(2) "Qualified community care case manager" defined

In this section, the term ''qualified community care case manager'' means a nonprofit or public agency or organization which—

(A) has experience or has been trained in establishing, and in periodically reviewing and revising, individual community care plans and in the provision of case management services to the elderly;

(B) is responsible for (i) assuring that home and community care covered under the State plan and specified in the ICCP is being provided, (ii) visiting each individual's home or community setting where care is being provided not less often than once every 90 days, and (iii) informing the elderly individual or primary caregiver on how to contact the case manager if service providers fail to properly provide services or other similar problems occur;

(C) in the case of a nonpublic agency, does not provide home and community care or nursing facility services and does not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, home and community care or nursing facility services;

(D) has procedures for assuring the quality of case management services that includes a peer review process;

(E) completes the ICCP in a timely manner and reviews and discusses new and revised ICCPs with elderly individuals or primary caregivers; and

(F) meets such other standards, established by the Secretary, as to assure that—

(i) such a manager is competent to perform case management functions;

(ii) individuals whose home and community care they manage are not at risk of financial exploitation due to such a manager; and

(iii) meets such other standards as the State may establish.

The Secretary may waive the requirement of subparagraph (C) in the case of a nonprofit agency located in a rural area.

(3) Appeals process

Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals who disagree with the ICCP established.

(e) Ceiling on payment amounts and maintenance of effort

(1) Ceiling on payment amounts

Payments may not be made under section 1396b(a) of this title to a State for home and community care provided under this section in a quarter to the extent that the medical assistance for such care in the quarter exceeds 50 percent of the product of—

(A) the average number of individuals in the quarter receiving such care under this section;

(B) the average per diem rate of payment which the Secretary has determined (before the beginning of the quarter) will be payable under subchapter XVIII of this chapter (without regard to coinsurance) for extended care services to be provided in the State during such quarter; and

(C) the number of days in such quarter.

(2) Maintenance of effort

(A) Annual reports

As a condition for the receipt of payment under section 1396b(a) of this title with respect to medical assistance provided by a State for home and community care (other than a waiver under section 1396n(c) of this title and other than home health care services described in section 1396d(a)(7) of this title and personal care services specified under regulations under section 1396d(a)(23) of this title), the State shall report to the Secretary, with respect to each Federal fiscal year (beginning with fiscal year 1990) and in a format developed or approved by the

Secretary, the amount of funds obligated by the State with respect to the provision of home and community care to the functionally disabled elderly in that fiscal year.

(B) Reduction in payment if failure to maintain effort

If the amount reported under subparagraph (A) by a State with respect to a fiscal year is less than the amount reported under subparagraph (A) with respect to fiscal year 1989, the Secretary shall provide for a reduction in payments to the State under section 1396b(a) of this title in an amount equal to the difference between the amounts so reported.

(f) Minimum requirements for home and community care

(1) Requirements

Home and Community[1] care provided under this section must meet such requirements for individuals' rights and quality as are published or developed by the Secretary under subsection (k) of this section. Such requirements shall include—

(A) the requirement that individuals providing care are competent to provide such care; and

(B) the rights specified in paragraph (2).

(2) Specified rights

The rights specified in this paragraph are as follows:

(A) The right to be fully informed in advance, orally and in writing, of the care to be provided, to be fully informed in advance of any changes in care to be provided, and (except with respect to an individual determined incompetent) to participate in planning care or changes in care.

(B) The right to voice grievances with respect to services that are (or fail to be) furnished without discrimination or reprisal for voicing grievances, and to be told how to complain to State and local authorities.

(C) The right to confidentiality of personal and clinical records.

(D) The right to privacy and to have one's property treated with respect.

(E) The right to refuse all or part of any care and to be informed of the likely consequences of such refusal.

(F) The right to education or training for oneself and for members of one's family or household on the management of care.

(G) The right to be free from physical or mental abuse, corporal punishment, and any physical or chemical restraints imposed for purposes of discipline or convenience and not included in an individual's ICCP.

(H) The right to be fully informed orally and in writing of the individual's rights.

(I) Guidelines for such minimum compensation for individuals providing such care as will assure the availability and continuity of competent individuals to provide such care for functionally disabled individuals who have functional disabilities of varying levels of severity.

(J) Any other rights established by the Secretary.

(g) Minimum requirements for small community care settings

(1) "Small community care setting" defined

In this section, the term ''small community care setting'' means—

(A) a nonresidential setting that serves more than 2 and less than 8 individuals; or

(B) a residential setting in which more than 2 and less than 8 unrelated adults reside and in which personal services (other than merely board) are provided in conjunction with residing in the setting.

(2) Minimum requirements

A small community care setting in which community care is provided under this section must—

(A) meet such requirements as are published or developed by the Secretary under subsection (k) of this section;

(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1396r(c) of this title, to the extent applicable to such a setting;

(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting;

(D) meet any applicable State or local requirements regarding certification or licensure;

(E) meet any applicable State and local zoning, building, and housing codes, and State and local fire and safety regulations; and

(F) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents.

(h) Minimum requirements for large community care settings

(1) "Large community care setting" defined

In this section, the term ''large community care setting'' means—

(A) a nonresidential setting in which more than 8 individuals are served; or

(B) a residential setting in which more than 8 unrelated adults reside and in which personal services are provided in conjunction with residing in the setting in which home and community care under this section is provided.

(2) Minimum requirements

A large community care setting in which community care is provided under this section must—

(A) meet such requirements as are published or developed by the Secretary under subsection (k) of this section;

(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1396r(c) of this title, to the extent applicable to such a setting;

(C) inform each individual receiving community care under this section in the set-

[1] So in original. Probably should not be capitalized.

ting, orally and in writing at the time the individual first receives home and community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting; and

(D) meet the requirements of paragraphs (2) and (3) of section 1396r(d) of this title (relating to administration and other matters) in the same manner as such requirements apply to nursing facilities under such section; except that, in applying the requirement of section 1396r(d)(2) of this title (relating to life safety code), the Secretary shall provide for the application of such life safety requirements (if any) that are appropriate to the setting.

(3) Disclosure of ownership and control interests and exclusion of repeated violators

A community care setting—

(A) must disclose persons with an ownership or control interest (including such persons as defined in section 1320a–3(a)(3) of this title) in the setting; and

(B) may not have, as a person with an ownership or control interest in the setting, any individual or person who has been excluded from participation in the program under this subchapter or who has had such an ownership or control interest in one or more community care settings which have been found repeatedly to be substandard or to have failed to meet the requirements of paragraph (2).

(i) Survey and certification process

(1) Certifications

(A) Responsibilities of the State

Under each State plan under this subchapter, the State shall be responsible for certifying the compliance of providers of home and community care and community care settings with the applicable requirements of subsections (f), (g) and (h) of this section. The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(B) Responsibilities of the Secretary

The Secretary shall be responsible for certifying the compliance of State providers of home and community care, and of State community care settings in which such care is provided, with the requirements of subsections (f), (g) and (h) of this section.

(C) Frequency of certifications

Certification of providers and settings under this subsection shall occur no less frequently than once every 12 months.

(2) Reviews of providers

(A) In general

The certification under this subsection with respect to a provider of home or community care must be based on a periodic review of the provider's performance in providing the care required under ICCP's in accordance with the requirements of subsection (f) of this section.

(B) Special reviews of compliance

Where the Secretary has reason to question the compliance of a provider of home or community care with any of the requirements of subsection (f) of this section, the Secretary may conduct a review of the provider and, on the basis of that review, make independent and binding determinations concerning the extent to which the provider meets such requirements.

(3) Surveys of community care settings

(A) In general

The certification under this subsection with respect to community care settings must be based on a survey. Such survey for such a setting must be conducted without prior notice to the setting. Any individual who notifies (or causes to be notified) a community care setting of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall review each State's procedures for scheduling and conducting such surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(B) Survey protocol

Surveys under this paragraph shall be conducted based upon a protocol which the Secretary has provided for under subsection (k) of this section.

(C) Prohibition of conflict of interest in survey team membership

A State and the Secretary may not use as a member of a survey team under this paragraph an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the community care setting being surveyed (or the person responsible for such setting) respecting compliance with the requirements of subsection (g) or (h) of this section or who has a personal or familial financial interest in the setting being surveyed.

(D) Validation surveys of community care settings

The Secretary shall conduct onsite surveys of a representative sample of community care settings in each State, within 2 months of the date of surveys conducted under subparagraph (A) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under subparagraph (A). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under subparagraph (B). If the State has determined that an individual setting meets the requirements of subsection (g) of this section, but the Secretary determines that the setting does not meet such requirements, the Secretary's determination as to the setting's noncompliance with such re-

quirements is binding and supersedes that of the State survey.

(E) Special surveys of compliance

Where the Secretary has reason to question the compliance of a community care setting with any of the requirements of subsection (g) or (h) of this section, the Secretary may conduct a survey of the setting and, on the basis of that survey, make independent and binding determinations concerning the extent to which the setting meets such requirements.

(4) Investigation of complaints and monitoring of providers and settings

Each State and the Secretary shall maintain procedures and adequate staff to investigate complaints of violations of applicable requirements imposed on providers of community care or on community care settings under subsections (f), (g) and (h) of this section.

(5) Investigation of allegations of individual neglect and abuse and misappropriation of individual property

The State shall provide, through the agency responsible for surveys and certification of providers of home or community care and community care settings under this subsection, for a process for the receipt, review, and investigation of allegations of individual neglect and abuse (including injuries of unknown source) by individuals providing such care or in such setting and of misappropriation of individual property by such individuals. The State shall, after notice to the individual involved and a reasonable opportunity for hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that an individual has neglected or abused an individual receiving community care or misappropriated such individual's property, the State shall notify the individual against whom the finding is made. A State shall not make a finding that a person has neglected an individual receiving community care if the person demonstrates that such neglect was caused by factors beyond the control of the person. The State shall provide for public disclosure of findings under this paragraph upon request and for inclusion, in any such disclosure of such findings, of any brief statement (or of a clear and accurate summary thereof) of the individual disputing such findings.

(6) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys, reviews, and certifications made under this subsection respecting providers of home or community care and community care settings, including statements of deficiencies,

(ii) copies of cost reports (if any) of such providers and settings filed under this subchapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and

(iv) information disclosed under section 1320a–5 of this title.

(B) Notices of substandard care

If a State finds that—

(i) a provider of home or community care has provided care of substandard quality with respect to an individual, the State shall make a reasonable effort to notify promptly (I) an immediate family member of each such individual and (II) individuals receiving home or community care from that provider under this subchapter, or

(ii) a community care setting is substandard, the State shall make a reasonable effort to notify promptly (I) individuals receiving community care in that setting, and (II) immediate family members of such individuals.

(C) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys, reviews, and certifications under this subsection.

(j) Enforcement process for providers of community care

(1) State authority

(A) In general

If a State finds, on the basis of a review under subsection (i)(2) of this section or otherwise, that a provider of home or community care no longer meets the requirements of this section, the State may terminate the provider's participation under the State plan and may provide in addition for a civil money penalty. Nothing in this subparagraph shall be construed as restricting the remedies available to a State to remedy a provider's deficiencies. If the State finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A) for the period during which it finds that the provider was not in compliance with such requirements.

(B) Civil money penalty

(i) In general

Each State shall establish by law (whether statute or regulation) at least the following remedy: A civil money penalty assessed and collected, with interest, for each day in which the provider is or was out of compliance with a requirement of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty under subsection (i)(3)(A) of this section) may be applied to reimbursement of individuals for personal funds lost due to a failure of home or community care providers to meet the requirements of this section. The State also shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such

criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(ii) Deadline and guidance

Each State which elects to provide home and community care under this section must establish the civil money penalty remedy described in clause (i) applicable to all providers of community care covered under this section. The Secretary shall provide, through regulations or otherwise by not later than July 1, 1990, guidance to States in establishing such remedy; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedy.

(2) Secretarial authority

(A) For State providers

With respect to a State provider of home or community care, the Secretary shall have the authority and duties of a State under this subsection, except that the civil money penalty remedy described in subparagraph (C) shall be substituted for the civil money remedy described in paragraph (1)(B)(i).

(B) Other providers

With respect to any other provider of home or community care in a State, if the Secretary finds that a provider no longer meets a requirement of this section, the Secretary may terminate the provider's participation under the State plan and may provide, in addition, for a civil money penalty under subparagraph (C). If the Secretary finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C) for the period during which the Secretary finds that the provider was not in compliance with such requirements.

(C) Civil money penalty

If the Secretary finds on the basis of a review under subsection (i)(2) of this section or otherwise that a home or community care provider no longer meets the requirements of this section, the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(k) Secretarial responsibilities

(1) Publication of interim requirements

(A) In general

The Secretary shall publish, by December 1, 1991, a proposed regulation that sets forth interim requirements, consistent with subparagraph (B), for the provision of home and community care and for community care settings, including—

(i) the requirements of subsection (c)(2) of this section (relating to comprehensive functional assessments, including the use of assessment instruments), of subsection (d)(2)(E) of this section (relating to qualifications for qualified case managers), of subsection (f) of this section (relating to minimum requirements for home and community care), of subsection (g) of this section (relating to minimum requirements for small community care settings), and of subsection (h) of this section (relating to minimum requirements for large community care settings), and

(ii) survey protocols (for use under subsection (i)(3)(A) of this section) which relate to such requirements.

(B) Minimum protections

Interim requirements under subparagraph (A) and final requirements under paragraph (2) shall assure, through methods other than reliance on State licensure processes, that individuals receiving home and community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and the provision of health care services by unqualified personnel in community care settings.

(2) Development of final requirements

The Secretary shall develop, by not later than October 1, 1992—

(A) final requirements, consistent with paragraph (1)(B), respecting the provision of appropriate, quality home and community care and respecting community care settings under this section, and including at least the requirements referred to in paragraph (1)(A)(i), and

(B) survey protocols and methods for evaluating and assuring the quality of community care settings.

The Secretary may, from time to time, revise such requirements, protocols, and methods.

(3) No delegation to States

The Secretary's authority under this subsection shall not be delegated to States.

(4) No prevention of more stringent requirements by States

Nothing in this section shall be construed as preventing States from imposing requirements that are more stringent than the requirements published or developed by the Secretary under this subsection.

(*l*) Waiver of Statewideness

States may waive the requirement of section 1396a(a)(1) of this title (related to Statewideness) for a program of home and community care under this section.

(m) Limitation on amount of expenditures as medical assistance

(1) Limitation on amount

The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $40,000,000, for fiscal year 1992, $70,000,000, for fiscal year 1993, $130,000,000, for fiscal year 1994, $160,000,000, and for fiscal year 1995, $180,000,000.

(2) Assurance of entitlement to service

A State which receives Federal medical assistance for expenditures for home and community care under this section must provide home and community care specified under the Individual Community Care Plan under subsection (d) of this section to individuals described in subsection (b) of this section for the duration of the election period, without regard to the amount of funds available to the State under paragraph (1). For purposes of this paragraph, an election period is the period of 4 or more calendar quarters elected by the State, and approved by the Secretary, for the provision of home and community care under this section.

(3) Limitation on eligibility

The State may limit eligibility for home and community care under this section during an election period under paragraph (2) to reasonable classifications (based on age, degree of functional disability, and need for services).

(4) Allocation of medical assistance

The Secretary shall establish a limitation on the amount of Federal medical assistance available to any State during the State's election period under paragraph (2). The limitation under this paragraph shall take into account the limitation under paragraph (1) and the number of elderly individuals age 65 or over residing in such State in relation to the number of such elderly individuals in the United States during 1990. For purposes of the previous sentence, elderly individuals shall, to the maximum extent practicable, be low-income elderly individuals.

(Aug. 14, 1935, ch. 531, title XIX, § 1929, as added Pub. L. 101–508, title IV, § 4711(b), Nov. 5, 1990, 104 Stat. 1388–174; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(v)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398.)

CODIFICATION

Pub. L. 101–508, title IV, § 4711(b)(1), Nov. 5, 1990, 104 Stat. 1388–174, which directed renumbering of section 1929 of the Social Security Act, act Aug. 14, 1935, as section 1930, could not be executed because there was no section 1929.

AMENDMENTS

1999—Subsec. (c)(2)(E)(i), (ii). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(v)(1)], realigned margins.

Subsec. (k)(1)(A)(i). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(v)(2)], substituted ''large community care settings),'' for ''large community care settings,''.

Subsec. (*l*). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(v)(3)], substituted ''Statewideness'' for ''State wideness''.

EFFECTIVE DATE

Section applicable to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments made by section 4711 of Pub. L. 101–508 have been promulgated by such date, see section 4711(e) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 1396a of this title.

§ 1396u. Community supported living arrangements services

(a) Community supported living arrangements services

In this subchapter, the term ''community supported living arrangements services'' means one or more of the following services meeting the requirements of subsection (h) of this section provided in a State eligible to provide services under this section (as defined in subsection (d) of this section) to assist a developmentally disabled individual (as defined in subsection (b) of this section) in activities of daily living necessary to permit such individual to live in the individual's own home, apartment, family home, or rental unit furnished in a community supported living arrangement setting:

(1) Personal assistance.

(2) Training and habilitation services (necessary to assist the individual in achieving increased integration, independence and productivity).

(3) 24-hour emergency assistance (as defined by the Secretary).

(4) Assistive technology.

(5) Adaptive equipment.

(6) Other services (as approved by the Secretary, except those services described in subsection (g) of this section).

(7) Support services necessary to aid an individual to participate in community activities.

(b) "Developmentally disabled individual" defined

In this subchapter the term,[1] ''developmentally disabled individual'' means an individual who as defined by the Secretary is described within the term ''mental retardation and related conditions'' as defined in regulations as in effect on July 1, 1990, and who is residing with the individual's family or legal guardian in such individual's own home in which no more than 3 other recipients of services under this section are residing and without regard to whether or not such individual is at risk of institutionalization (as defined by the Secretary).

(c) Criteria for selection of participating States

The Secretary shall develop criteria to review the applications of States submitted under this section to provide community supported living arrangement services. The Secretary shall provide in such criteria that during the first 5 years of the provision of services under this section that no less than 2 and no more than 8 States shall be allowed to receive Federal financial participation for providing the services described in this section.

(d) Quality assurance

A State selected by the Secretary to provide services under this section shall in order to continue to receive Federal financial participation

[1] So in original. The comma probably should precede ''the term''.

for providing services under this section be required to establish and maintain a quality assurance program, that provides that—

(1) the State will certify and survey providers of services under this section (such surveys to be unannounced and average at least 1 a year);

(2) the State will adopt standards for survey and certification that include—

(A) minimum qualifications and training requirements for provider staff;

(B) financial operating standards; and

(C) a consumer grievance process;

(3) the State will provide a system that allows for monitoring boards consisting of providers, family members, consumers, and neighbors;

(4) the State will establish reporting procedures to make available information to the public;

(5) the State will provide ongoing monitoring of the health and well-being of each recipient;

(6) the State will provide the services defined in subsection (a) of this section in accordance with an individual support plan (as defined by the Secretary in regulations); and

(7) the State plan amendment under this section shall be reviewed by the State Council on Developmental Disabilities established under section 125 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. § 15025] and the protection and advocacy system established under subtitle C of that Act [42 U.S.C. 15041 et seq.].

The Secretary shall not approve a quality assurance plan under this subsection and allow a State to continue to receive Federal financial participation under this section unless the State provides for public hearings on the plan prior to adoption and implementation of its plan under this subsection.

(e) Maintenance of effort

States selected by the Secretary to receive Federal financial participation to provide services under this section shall maintain current levels of spending for such services in order to be eligible to continue to receive Federal financial participation for the provision of such services under this section.

(f) Excluded services

No Federal financial participation shall be allowed for the provision of the following services under this section:

(1) Room and board.

(2) Cost of prevocational, vocational and supported employment.

(g) Waiver of requirements

The Secretary may waive such provisions of this subchapter as necessary to carry out the provisions of this section including the following requirements of this subchapter—

(1) comparability of amount, duration, and scope of services; and

(2) statewideness.

(h) Minimum protections

(1) Publication of interim and final requirements

(A) In general

The Secretary shall publish, by July 1, 1991, a regulation (that shall be effective on an interim basis pending the promulgation of final regulations), and by October 1, 1992, a final regulation, that sets forth interim and final requirements, respectively, consistent with subparagraph (B), to protect the health, safety, and welfare of individuals receiving community supported living arrangements services.

(B) Minimum protections

Interim and final requirements under subparagraph (A) shall assure, through methods other than reliance on State licensure processes or the State quality assurance programs under subsection (d) of this section, that—

(i) individuals receiving community supported living arrangements services are protected from neglect, physical and sexual abuse, and financial exploitation;

(ii) a provider of community supported living arrangements services may not use individuals who have been convicted of child or client abuse, neglect, or mistreatment or of a felony involving physical harm to an individual and shall take all reasonable steps to determine whether applicants for employment by the provider have histories indicating involvement in child or client abuse, neglect, or mistreatment or a criminal record involving physical harm to an individual;

(iii) individuals or entities delivering such services are not unjustly enriched as a result of abusive financial arrangements (such as owner lease-backs); and

(iv) individuals or entities delivering such services to clients, or relatives of such individuals, are prohibited from being named beneficiaries of life insurance policies purchased by (or on behalf of) such clients.

(2) Specified remedies

If the Secretary finds that a provider has not met an applicable requirement under subsection (h) of this section, the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(i) Treatment of funds

Any funds expended under this section for medical assistance shall be in addition to funds expended for any existing services covered under the State plan, including any waiver services for which an individual receiving services under this program is already eligible.

(j) Limitation on amounts of expenditures as medical assistance

The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $5,000,000, for fiscal year 1992, $10,000,000, for fiscal year 1993, $20,000,000, for fiscal year 1994, $30,000,000, for fiscal year 1995, $35,000,000, and for fiscal years thereafter such sums as provided by Congress.

(Aug. 14, 1935, ch. 531, title XIX, § 1930, as added Pub. L. 101–508, title IV, § 4712(b), Nov. 5, 1990, 104 Stat. 1388–187; amended Pub. L. 106–402, title IV, § 401(b)(6)(B), Oct. 30, 2000, 114 Stat. 1738.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (d)(7), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§ 15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

CODIFICATION

Pub. L. 101–508, title IV, § 4712(b)(1), Nov. 5, 1990, 104 Stat. 1388–187, which directed renumbering of section 1930 of the Social Security Act, act Aug. 14, 1935, as section 1931, could not be executed because there was no section 1930.

AMENDMENTS

2000—Subsec. (d)(7). Pub. L. 106–402 substituted ''State Council on Developmental Disabilities established under section 125 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the protection and advocacy system established under subtitle C of that Act'' for ''State Planning Council established under section 6024 of this title, and the Protection and Advocacy System established under section 6042 of this title''.

EFFECTIVE DATE

Section 4712(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 1396d of this title] shall apply to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under subsection (h) [probably means subsec. (h) of this section] without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) APPLICATION PROCESS.—The Secretary of Health and Human Services shall provide that the applications required to be submitted by States under this section shall be received and approved prior to the effective date specified in paragraph (1).''

§ 1396u–1. Assuring coverage for certain low-income families

(a) References to subchapter IV–A are references to pre-welfare-reform provisions

Subject to the succeeding provisions of this section, with respect to a State any reference in this subchapter (or any other provision of law in relation to the operation of this subchapter) to a provision of part A of subchapter IV of this chapter, or a State plan under such part (or a provision of such a plan), including income and resource standards and income and resource methodologies under such part or plan, shall be considered a reference to such a provision or plan as in effect as of July 16, 1996, with respect to the State.

(b) Application of pre-welfare-reform eligibility criteria

(1) In general

For purposes of this subchapter, subject to paragraphs (2) and (3), in determining eligibility for medical assistance—

(A) an individual shall be treated as receiving aid or assistance under a State plan approved under part A of subchapter IV of this chapter only if the individual meets—

(i) the income and resource standards for determining eligibility under such plan, and

(ii) the eligibility requirements of such plan under subsections (a) through (c) of section 606 of this title and section 607(a) of this title,

as in effect as of July 16, 1996; and

(B) the income and resource methodologies under such plan as of such date shall be used in the determination of whether any individual meets income and resource standards under such plan.

(2) State option

For purposes of applying this section, a State—

(A) may lower its income standards applicable with respect to part A of subchapter IV of this chapter, but not below the income standards applicable under its State plan under such part on May 1, 1988;

(B) may increase income or resource standards under the State plan referred to in paragraph (1) over a period (beginning after July 16, 1996) by a percentage that does not exceed the percentage increase in the Consumer Price Index for all urban consumers (all items; United States city average) over such period; and

(C) may use income and resource methodologies that are less restrictive than the methodologies used under the State plan under such part as of July 16, 1996.

(3) Option to terminate medical assistance for failure to meet work requirement

(A) Individuals receiving cash assistance under TANF

In the case of an individual who—

(i) is receiving cash assistance under a State program funded under part A of subchapter IV of this chapter,

(ii) is eligible for medical assistance under this subchapter on a basis not related to section 1396a(*l*) of this title, and

(iii) has the cash assistance under such program terminated pursuant to section 607(e)(1)(B) of this title (as in effect on or after the welfare reform effective date) because of refusing to work,

the State may terminate such individual's eligibility for medical assistance under this subchapter until such time as there no longer is a basis for the termination of such cash assistance because of such refusal.

(B) Exception for children

Subparagraph (A) shall not be construed as permitting a State to terminate medical assistance for a minor child who is not the head of a household receiving assistance under a State program funded under part A of subchapter IV of this chapter.

(c) Treatment for purposes of transitional coverage provisions

(1) Transition in the case of child support collections

The provisions of section 606(h) of this title (as in effect on July 16, 1996) shall apply, in relation to this subchapter, with respect to individuals (and families composed of individuals) who are described in subsection (b)(1)(A) of this section, in the same manner as they applied before such date with respect to individuals who became ineligible for aid to families with dependent children as a result (wholly or partly) of the collection of child or spousal support under part D of subchapter IV of this chapter.

(2) Transition in the case of earnings from employment

For continued medical assistance in the case of individuals (and families composed of individuals) described in subsection (b)(1)(A) of this section who would otherwise become ineligible because of hours or income from employment, see sections 1396r–6 and 1396a(e)(1) of this title.

(d) Waivers

In the case of a waiver of a provision of part A of subchapter IV of this chapter in effect with respect to a State as of July 16, 1996, or which is submitted to the Secretary before August 22, 1996, and approved by the Secretary on or before July 1, 1997, if the waiver affects eligibility of individuals for medical assistance under this subchapter, such waiver may (but need not) continue to be applied, at the option of the State, in relation to this subchapter after the date the waiver would otherwise expire.

(e) State option to use 1 application form

Nothing in this section, or part A of subchapter IV of this chapter, shall be construed as preventing a State from providing for the same application form for assistance under a State program funded under part A of subchapter IV of this chapter (on or after the welfare reform effective date) and for medical assistance under this subchapter.

(f) Additional rules of construction

(1) With respect to the reference in section 1396a(a)(5) of this title to a State plan approved under part A of subchapter IV of this chapter, a State may treat such reference as a reference either to a State program funded under such part (as in effect on and after the welfare reform effective date) or to the State plan under this subchapter.

(2) Any reference in section 1396a(a)(55) of this title to a State plan approved under part A of subchapter IV of this chapter shall be deemed a reference to a State program funded under such part.

(3) In applying section 1396b(f) of this title, the applicable income limitation otherwise determined shall be subject to increase in the same manner as income or resource standards of a State may be increased under subsection (b)(2)(B) of this section.

(g) Relation to other provisions

The provisions of this section shall apply notwithstanding any other provision of this chapter.

(h) Transitional increased Federal matching rate for increased administrative costs

(1) In general

Subject to the succeeding provisions of this subsection, the Secretary shall provide that with respect to administrative expenditures described in paragraph (2) the per centum specified in section 1396b(a)(7) of this title shall be increased to such percentage as the Secretary specifies.

(2) Administrative expenditures described

The administrative expenditures described in this paragraph are expenditures described in section 1396b(a)(7) of this title that a State demonstrates to the satisfaction of the Secretary are attributable to administrative costs of eligibility determinations that (but for the enactment of this section) would not be incurred.

(3) Limitation

The total amount of additional Federal funds that are expended as a result of the application of this subsection for the period beginning with fiscal year 1997 shall not exceed $500,000,000. In applying this paragraph, the Secretary shall ensure the equitable distribution of additional funds among the States.

(i) Welfare reform effective date

In this section, the term ''welfare reform effective date'' means the effective date, with respect to a State, of title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (as specified in section 116 of such Act).

(Aug. 14, 1935, ch. 531, title XIX, § 1931, as added Pub. L. 104–193, title I, § 114(a)(2), Aug. 22, 1996, 110 Stat. 2177; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 602(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394.)

REFERENCES IN TEXT

Parts A and D of subchapter IV of this chapter, referred to in text, are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

For effective date, with respect to a State, of title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (as specified in section 116 of such Act), referred to in subsec. (i), see section 116 of Pub. L. 104–193, set out as an Effective Date note under section 601 of this title.

PRIOR PROVISIONS

A prior section 1931 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

1999—Subsec. (h)(3). Pub. L. 106–113, § 1000(a)(6) [title VI, § 602(a)(1)], struck out ''and ending with fiscal year 2000'' after ''fiscal year 1997''.

Subsec. (h)(4). Pub. L. 106–113, § 1000(a)(6) [title VI, § 602(a)(2)], struck out heading and text of par. (4). Prior to amendment, text read as follows: ''This subsection shall only apply with respect to a State for expenditures incurred during the first 12 calendar quarters in which the State program funded under part A of subchapter IV of this chapter (as in effect on and after the welfare reform effective date) is in effect.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 602(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 114 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2177).''

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 1396u–2. Provisions relating to managed care

(a) State option to use managed care

(1) Use of medicaid managed care organizations and primary care case managers

(A) In general

Subject to the succeeding provisions of this section, and notwithstanding paragraph (1), (10)(B), or (23)(A) of section 1396a(a) of this title, a State—

(i) may require an individual who is eligible for medical assistance under the State plan under this subchapter to enroll with a managed care entity as a condition of receiving such assistance (and, with respect to assistance furnished by or under arrangements with such entity, to receive such assistance through the entity), if—

(I) the entity and the contract with the State meet the applicable requirements of this section and section 1396b(m) of this title or section 1396d(t) of this title, and

(II) the requirements described in the succeeding paragraphs of this subsection are met; and

(ii) may restrict the number of provider agreements with managed care entities under the State plan if such restriction does not substantially impair access to services.

(B) "Managed care entity" defined

In this section, the term ''managed care entity'' means—

(i) a medicaid managed care organization, as defined in section 1396b(m)(1)(A) of this title, that provides or arranges for services for enrollees under a contract pursuant to section 1396b(m) of this title; and

(ii) a primary care case manager, as defined in section 1396d(t)(2) of this title.

(2) Special rules

(A) Exemption of certain children with special needs

A State may not require under paragraph (1) the enrollment in a managed care entity of an individual under 19 years of age who—

(i) is eligible for supplemental security income under subchapter XVI of this chapter;

(ii) is described in section 701(a)(1)(D) of this title;

(iii) is described in section 1396a(e)(3) of this title;

(iv) is receiving foster care or adoption assistance under part E of subchapter IV of this chapter; or

(v) is in foster care or otherwise in an out-of-home placement.

(B) Exemption of medicare beneficiaries

A State may not require under paragraph (1) the enrollment in a managed care entity of an individual who is a qualified medicare beneficiary (as defined in section 1396d(p)(1) of this title) or an individual otherwise eligible for benefits under subchapter XVIII of this chapter.

(C) Indian enrollment

A State may not require under paragraph (1) the enrollment in a managed care entity of an individual who is an Indian (as defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1603(c)) unless the entity is one of the following (and only if such entity is participating under the plan):

(i) The Indian Health Service.

(ii) An Indian health program operated by an Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement, or compact with the Indian Health Service pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(iii) An urban Indian health program operated by an urban Indian organization pursuant to a grant or contract with the Indian Health Service pursuant to title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(3) Choice of coverage

(A) In general

A State must permit an individual to choose a managed care entity from not less than two such entities that meet the applicable requirements of this section, and of section 1396b(m) of this title or section 1396d(t) of this title.

(B) State option

At the option of the State, a State shall be considered to meet the requirements of subparagraph (A) in the case of an individual residing in a rural area, if the State requires the individual to enroll with a managed care entity if such entity—

(i) permits the individual to receive such assistance through not less than two physicians or case managers (to the extent

that at least two physicians or case managers are available to provide such assistance in the area), and

(ii) permits the individual to obtain such assistance from any other provider in appropriate circumstances (as established by the State under regulations of the Secretary).

(C) Treatment of certain county-operated health insuring organizations

A State shall be considered to meet the requirement of subparagraph (A) if—

(i) the managed care entity in which the individual is enrolled is a health-insuring organization which—

(I) first became operational prior to January 1, 1986, or

(II) is described in section 9517(c)(3) of the Omnibus Budget Reconciliation Act of 1985 (as added by section 4734(2) of the Omnibus Budget Reconciliation Act of 1990), and

(ii) the individual is given a choice between at least two providers within such entity.

(4) Process for enrollment and termination and change of enrollment

As conditions under paragraph (1)(A)—

(A) In general

The State, enrollment broker (if any), and managed care entity shall permit an individual eligible for medical assistance under the State plan under this subchapter who is enrolled with the entity under this subchapter to terminate (or change) such enrollment—

(i) for cause at any time (consistent with section 1396b(m)(2)(A)(vi) of this title), and

(ii) without cause—

(I) during the 90-day period beginning on the date the individual receives notice of such enrollment, and

(II) at least every 12 months thereafter.

(B) Notice of termination rights

The State shall provide for notice to each such individual of the opportunity to terminate (or change) enrollment under such conditions. Such notice shall be provided at least 60 days before each annual enrollment opportunity described in subparagraph (A)(ii)(II).

(C) Enrollment priorities

In carrying out paragraph (1)(A), the State shall establish a method for establishing enrollment priorities in the case of a managed care entity that does not have sufficient capacity to enroll all such individuals seeking enrollment under which individuals already enrolled with the entity are given priority in continuing enrollment with the entity.

(D) Default enrollment process

In carrying out paragraph (1)(A), the State shall establish a default enrollment process—

(i) under which any such individual who does not enroll with a managed care entity during the enrollment period specified by the State shall be enrolled by the State with such an entity which has not been found to be out of substantial compliance with the applicable requirements of this section and of section 1396b(m) of this title or section 1396d(t) of this title; and

(ii) that takes into consideration—

(I) maintaining existing provider-individual relationships or relationships with providers that have traditionally served beneficiaries under this subchapter; and

(II) if maintaining such provider relationships is not possible, the equitable distribution of such individuals among qualified managed care entities available to enroll such individuals, consistent with the enrollment capacities of the entities.

(5) Provision of information

(A) Information in easily understood form

Each State, enrollment broker, or managed care entity shall provide all enrollment notices and informational and instructional materials relating to such an entity under this subchapter in a manner and form which may be easily understood by enrollees and potential enrollees of the entity who are eligible for medical assistance under the State plan under this subchapter.

(B) Information to enrollees and potential enrollees

Each managed care entity that is a medicaid managed care organization shall, upon request, make available to enrollees and potential enrollees in the organization's service area information concerning the following:

(i) Providers

The identity, locations, qualifications, and availability of health care providers that participate with the organization.

(ii) Enrollee rights and responsibilities

The rights and responsibilities of enrollees.

(iii) Grievance and appeal procedures

The procedures available to an enrollee and a health care provider to challenge or appeal the failure of the organization to cover a service.

(iv) Information on covered items and services

All items and services that are available to enrollees under the contract between the State and the organization that are covered either directly or through a method of referral and prior authorization. Each managed care entity that is a primary care case manager shall, upon request, make available to enrollees and potential enrollees in the organization's service area the information described in clause (iii).

(C) Comparative information

A State that requires individuals to enroll with managed care entities under paragraph

(1)(A) shall annually (and upon request) provide, directly or through the managed care entity, to such individuals a list identifying the managed care entities that are (or will be) available and information (presented in a comparative, chart-like form) relating to the following for each such entity offered:

(i) Benefits and cost-sharing

The benefits covered and cost-sharing imposed by the entity.

(ii) Service area

The service area of the entity.

(iii) Quality and performance

To the extent available, quality and performance indicators for the benefits under the entity.

(D) Information on benefits not covered under managed care arrangement

A State, directly or through managed care entities, shall, on or before an individual enrolls with such an entity under this subchapter, inform the enrollee in a written and prominent manner of any benefits to which the enrollee may be entitled to under this subchapter but which are not made available to the enrollee through the entity. Such information shall include information on where and how such enrollees may access benefits not made available to the enrollee through the entity.

(b) Beneficiary protections

(1) Specification of benefits

Each contract with a managed care entity under section 1396b(m) of this title or under section 1396d(t)(3) of this title shall specify the benefits the provision (or arrangement) for which the entity is responsible.

(2) Assuring coverage to emergency services

(A) In general

Each contract with a medicaid managed care organization under section 1396b(m) of this title and each contract with a primary care case manager under section 1396d(t)(3) of this title shall require the organization or manager—

(i) to provide coverage for emergency services (as defined in subparagraph (B)) without regard to prior authorization or the emergency care provider's contractual relationship with the organization or manager, and

(ii) to comply with guidelines established under section 1395w–22(d)(2) of this title (respecting coordination of post-stabilization care) in the same manner as such guidelines apply to Medicare+Choice plans offered under part C of subchapter XVIII of this chapter.

The requirement under clause (ii) shall first apply 30 days after the date of promulgation of the guidelines referred to in such clause.

(B) "Emergency services" defined

In subparagraph (A)(i), the term ''emergency services'' means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that—

(i) are furnished by a provider that is qualified to furnish such services under this subchapter, and

(ii) are needed to evaluate or stabilize an emergency medical condition (as defined in subparagraph (C)).

(C) "Emergency medical condition" defined

In subparagraph (B)(ii), the term ''emergency medical condition'' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part.

(D) Emergency services furnished by non-contract providers

Any provider of emergency services that does not have in effect a contract with a Medicaid managed care entity that establishes payment amounts for services furnished to a beneficiary enrolled in the entity's Medicaid managed care plan must accept as payment in full no more than the amounts (less any payments for indirect costs of medical education and direct costs of graduate medical education) that it could collect if the beneficiary received medical assistance under this subchapter other than through enrollment in such an entity. In a State where rates paid to hospitals under the State plan are negotiated by contract and not publicly released, the payment amount applicable under this subparagraph shall be the average contract rate that would apply under the State plan for general acute care hospitals or the average contract rate that would apply under such plan for tertiary hospitals.

(3) Protection of enrollee-provider communications

(A) In general

Subject to subparagraphs (B) and (C), under a contract under section 1396b(m) of this title a medicaid managed care organization (in relation to an individual enrolled under the contract) shall not prohibit or otherwise restrict a covered health care professional (as defined in subparagraph (D)) from advising such an individual who is a patient of the professional about the health status of the individual or medical care or treatment for the individual's condition or disease, regardless of whether benefits for such care or treatment are provided under the contract, if the professional is acting within the lawful scope of practice.

(B) Construction

Subparagraph (A) shall not be construed as requiring a medicaid managed care organization to provide, reimburse for, or provide coverage of, a counseling or referral service if the organization—

(i) objects to the provision of such service on moral or religious grounds; and

(ii) in the manner and through the written instrumentalities such organization deems appropriate, makes available information on its policies regarding such service to prospective enrollees before or during enrollment and to enrollees within 90 days after the date that the organization adopts a change in policy regarding such a counseling or referral service.

Nothing in this subparagraph shall be construed to affect disclosure requirements under State law or under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.].

(C) "Health care professional" defined

For purposes of this paragraph, the term ''health care professional'' means a physician (as defined in section 1395x(r) of this title) or other health care professional if coverage for the professional's services is provided under the contract referred to in subparagraph (A) for the services of the professional. Such term includes a podiatrist, optometrist, chiropractor, psychologist, dentist, physician assistant, physical or occupational therapist and therapy assistant, speech-language pathologist, audiologist, registered or licensed practical nurse (including nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, and certified nurse-midwife), licensed certified social worker, registered respiratory therapist, and certified respiratory therapy technician.

(4) Grievance procedures

Each medicaid managed care organization shall establish an internal grievance procedure under which an enrollee who is eligible for medical assistance under the State plan under this subchapter, or a provider on behalf of such an enrollee, may challenge the denial of coverage of or payment for such assistance.

(5) Demonstration of adequate capacity and services

Each medicaid managed care organization shall provide the State and the Secretary with adequate assurances (in a time and manner determined by the Secretary) that the organization, with respect to a service area, has the capacity to serve the expected enrollment in such service area, including assurances that the organization—

(A) offers an appropriate range of services and access to preventive and primary care services for the population expected to be enrolled in such service area, and

(B) maintains a sufficient number, mix, and geographic distribution of providers of services.

(6) Protecting enrollees against liability for payment

Each medicaid managed care organization shall provide that an individual eligible for medical assistance under the State plan under this subchapter who is enrolled with the organization may not be held liable—

(A) for the debts of the organization, in the event of the organization's insolvency,

(B) for services provided to the individual—

(i) in the event of the organization failing to receive payment from the State for such services; or

(ii) in the event of a health care provider with a contractual, referral, or other arrangement with the organization failing to receive payment from the State or the organization for such services, or

(C) for payments to a provider that furnishes covered services under a contractual, referral, or other arrangement with the organization in excess of the amount that would be owed by the individual if the organization had directly provided the services.

(7) Antidiscrimination

A medicaid managed care organization shall not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification. This paragraph shall not be construed to prohibit an organization from including providers only to the extent necessary to meet the needs of the organization's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the organization.

(8) Compliance with certain maternity and mental health requirements

Each medicaid managed care organization shall comply with the requirements of subpart 2 of part A of title XXVII of the Public Health Service Act [42 U.S.C. 300gg–4 et seq.] insofar as such requirements apply and are effective with respect to a health insurance issuer that offers group health insurance coverage.

(c) Quality assurance standards

(1) Quality assessment and improvement strategy

(A) In general

If a State provides for contracts with medicaid managed care organizations under section 1396b(m) of this title, the State shall develop and implement a quality assessment and improvement strategy consistent with this paragraph. Such strategy shall include the following:

(i) Access standards

Standards for access to care so that covered services are available within reasonable timeframes and in a manner that ensures continuity of care and adequate primary care and specialized services capacity.

(ii) Other measures

Examination of other aspects of care and service directly related to the improvement of quality of care (including grievance procedures and marketing and information standards).

(iii) Monitoring procedures

Procedures for monitoring and evaluating the quality and appropriateness of care and services to enrollees that reflect the full spectrum of populations enrolled under the contract and that includes requirements for provision of quality assurance data to the State using the data and information set that the Secretary has specified for use under part C of subchapter XVIII of this chapter or such alternative data as the Secretary approves, in consultation with the State.

(iv) Periodic review

Regular, periodic examinations of the scope and content of the strategy.

(B) Standards

The strategy developed under subparagraph (A) shall be consistent with standards that the Secretary first establishes within 1 year after August 5, 1997. Such standards shall not preempt any State standards that are more stringent than such standards. Guidelines relating to quality assurance that are applied under section 1396n(b)(1) of this title shall apply under this subsection until the effective date of standards for quality assurance established under this subparagraph.

(C) Monitoring

The Secretary shall monitor the development and implementation of strategies under subparagraph (A).

(D) Consultation

The Secretary shall conduct activities under subparagraphs (B) and (C) in consultation with the States.

(2) External independent review of managed care activities

(A) Review of contracts

(i) In general

Each contract under section 1396b(m) of this title with a medicaid managed care organization shall provide for an annual (as appropriate) external independent review conducted by a qualified independent entity of the quality outcomes and timeliness of, and access to, the items and services for which the organization is responsible under the contract. The requirement for such a review shall not apply until after the date that the Secretary establishes the identification method described in clause (ii).

(ii) Qualifications of reviewer

The Secretary, in consultation with the States, shall establish a method for the identification of entities that are qualified to conduct reviews under clause (i).

(iii) Use of protocols

The Secretary, in coordination with the National Governors' Association, shall contract with an independent quality review organization (such as the National Committee for Quality Assurance) to develop the protocols to be used in external independent reviews conducted under this paragraph on and after January 1, 1999.

(iv) Availability of results

The results of each external independent review conducted under this subparagraph shall be available to participating health care providers, enrollees, and potential enrollees of the organization, except that the results may not be made available in a manner that discloses the identity of any individual patient.

(B) Nonduplication of accreditation

A State may provide that, in the case of a medicaid managed care organization that is accredited by a private independent entity (such as those described in section 1395w–22(e)(4) of this title) or that has an external review conducted under section 1395w–22(e)(3) of this title, the external review activities conducted under subparagraph (A) with respect to the organization shall not be duplicative of review activities conducted as part of the accreditation process or the external review conducted under such section.

(C) Deemed compliance for medicare managed care organizations

At the option of a State, the requirements of subparagraph (A) shall not apply with respect to a medicaid managed care organization if the organization is an eligible organization with a contract in effect under section 1395mm of this title or a Medicare+Choice organization with a contract in effect under part C of subchapter XVIII of this chapter and the organization has had a contract in effect under section 1396b(m) of this title at least during the previous 2-year period.

(d) Protections against fraud and abuse

(1) Prohibiting affiliations with individuals debarred by Federal agencies

(A) In general

A managed care entity may not knowingly—

(i) have a person described in subparagraph (C) as a director, officer, partner, or person with beneficial ownership of more than 5 percent of the entity's equity, or

(ii) have an employment, consulting, or other agreement with a person described in such subparagraph for the provision of items and services that are significant and material to the entity's obligations under its contract with the State.

(B) Effect of noncompliance

If a State finds that a managed care entity is not in compliance with clause (i) or (ii) of subparagraph (A), the State—

(i) shall notify the Secretary of such noncompliance;

(ii) may continue an existing agreement with the entity unless the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) directs otherwise; and

(iii) may not renew or otherwise extend the duration of an existing agreement with the entity unless the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) provides to the State and to Congress a written statement describing compelling reasons that exist for renewing or extending the agreement.

(C) Persons described

A person is described in this subparagraph if such person—

(i) is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued pursuant to Executive Order No. 12549 or under guidelines implementing such order; or

(ii) is an affiliate (as defined in such Regulation) of a person described in clause (i).

(2) Restrictions on marketing

(A) Distribution of materials

(i) In general

A managed care entity, with respect to activities under this subchapter, may not distribute directly or through any agent or independent contractor marketing materials within any State—

(I) without the prior approval of the State, and

(II) that contain false or materially misleading information.

The requirement of subclause (I) shall not apply with respect to a State until such date as the Secretary specifies in consultation with such State.

(ii) Consultation in review of market materials

In the process of reviewing and approving such materials, the State shall provide for consultation with a medical care advisory committee.

(B) Service market

A managed care entity shall distribute marketing materials to the entire service area of such entity covered under the contract under section 1396b(m) of this title or section 1396d(t)(3) of this title.

(C) Prohibition of tie-ins

A managed care entity, or any agency of such entity, may not seek to influence an individual's enrollment with the entity in conjunction with the sale of any other insurance.

(D) Prohibiting marketing fraud

Each managed care entity shall comply with such procedures and conditions as the Secretary prescribes in order to ensure that, before an individual is enrolled with the entity, the individual is provided accurate oral and written information sufficient to make an informed decision whether or not to enroll.

(E) Prohibition of "cold-call" marketing

Each managed care entity shall not, directly or indirectly, conduct door-to-door, telephonic, or other ''cold-call'' marketing of enrollment under this subchapter.

(3) State conflict-of-interest safeguards in medicaid risk contracting

A medicaid managed care organization may not enter into a contract with any State under section 1396b(m) of this title unless the State has in effect conflict-of-interest safeguards with respect to officers and employees of the State with responsibilities relating to contracts with such organizations or to the default enrollment process described in subsection (a)(4)(C)(ii) of this section that are at least as effective as the Federal safeguards provided under section 423 of title 41, against conflicts of interest that apply with respect to Federal procurement officials with comparable responsibilities with respect to such contracts.

(4) Use of unique physician identifier for participating physicians

Each medicaid managed care organization shall require each physician providing services to enrollees eligible for medical assistance under the State plan under this subchapter to have a unique identifier in accordance with the system established under section 1320d–2(b) of this title.

(e) Sanctions for noncompliance

(1) Use of intermediate sanctions by the State to enforce requirements

(A) In general

A State may not enter into or renew a contract under section 1396b(m) of this title unless the State has established intermediate sanctions, which may include any of the types described in paragraph (2), other than the termination of a contract with a medicaid managed care organization, which the State may impose against a medicaid managed care organization with such a contract, if the organization—

(i) fails substantially to provide medically necessary items and services that are required (under law or under such organization's contract with the State) to be provided to an enrollee covered under the contract;

(ii) imposes premiums or charges on enrollees in excess of the premiums or charges permitted under this subchapter;

(iii) acts to discriminate among enrollees on the basis of their health status or requirements for health care services, including expulsion or refusal to reenroll an individual, except as permitted by this subchapter, or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment with the organization by eligible individuals whose medical condition or

history indicates a need for substantial future medical services;

(iv) misrepresents or falsifies information that is furnished—

(I) to the Secretary or the State under this subchapter; or

(II) to an enrollee, potential enrollee, or a health care provider under such subchapter; or

(v) fails to comply with the applicable requirements of section 1396b(m)(2)(A)(x) of this title.

The State may also impose such intermediate sanction against a managed care entity if the State determines that the entity distributed directly or through any agent or independent contractor marketing materials in violation of subsection (d)(2)(A)(i)(II) of this section.

(B) Rule of construction

Clause (i) of subparagraph (A) shall not apply to the provision of abortion services, except that a State may impose a sanction on any medicaid managed care organization that has a contract to provide abortion services if the organization does not provide such services as provided for under the contract.

(2) Intermediate sanctions

The sanctions described in this paragraph are as follows:

(A) Civil money penalties as follows:

(i) Except as provided in clause (ii), (iii), or (iv), not more than $25,000 for each determination under paragraph (1)(A).

(ii) With respect to a determination under clause (iii) or (iv)(I) of paragraph (1)(A), not more than $100,000 for each such determination.

(iii) With respect to a determination under paragraph (1)(A)(ii), double the excess amount charged in violation of such subsection (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned).

(iv) Subject to clause (ii), with respect to a determination under paragraph (1)(A)(iii), $15,000 for each individual not enrolled as a result of a practice described in such subsection.

(B) The appointment of temporary management—

(i) to oversee the operation of the medicaid managed care organization upon a finding by the State that there is continued egregious behavior by the organization or there is a substantial risk to the health of enrollees; or

(ii) to assure the health of the organization's enrollees, if there is a need for temporary management while—

(I) there is an orderly termination or reorganization of the organization; or

(II) improvements are made to remedy the violations found under paragraph (1),

except that temporary management under this subparagraph may not be terminated until the State has determined that the medicaid managed care organization has the capability to ensure that the violations shall not recur.

(C) Permitting individuals enrolled with the managed care entity to terminate enrollment without cause, and notifying such individuals of such right to terminate enrollment.

(D) Suspension or default of all enrollment of individuals under this subchapter after the date the Secretary or the State notifies the entity of a determination of a violation of any requirement of section 1396b(m) of this title or this section.

(E) Suspension of payment to the entity under this subchapter for individuals enrolled after the date the Secretary or State notifies the entity of such a determination and until the Secretary or State is satisfied that the basis for such determination has been corrected and is not likely to recur.

(3) Treatment of chronic substandard entities

In the case of a medicaid managed care organization which has repeatedly failed to meet the requirements of section 1396b(m) of this title and this section, the State shall (regardless of what other sanctions are provided) impose the sanctions described in subparagraphs (B) and (C) of paragraph (2).

(4) Authority to terminate contract

(A) In general

In the case of a managed care entity which has failed to meet the requirements of this part or a contract under section 1396b(m) or 1396d(t)(3) of this title, the State shall have the authority to terminate such contract with the entity and to enroll such entity's enrollees with other managed care entities (or to permit such enrollees to receive medical assistance under the State plan under this subchapter other than through a managed care entity).

(B) Availability of hearing prior to termination of contract

A State may not terminate a contract with a managed care entity under subparagraph (A) unless the entity is provided with a hearing prior to the termination.

(C) Notice and right to disenroll in cases of termination hearing

A State may—

(i) notify individuals enrolled with a managed care entity which is the subject of a hearing to terminate the entity's contract with the State of the hearing, and

(ii) in the case of such an entity, permit such enrollees to disenroll immediately with the entity without cause.

(5) Other protections for managed care entities against sanctions imposed by State

Before imposing any sanction against a managed care entity other than termination of the entity's contract, the State shall provide the entity with notice and such other due process protections as the State may provide, except that a State may not provide a managed care entity with a pre-termination hear-

ing before imposing the sanction described in paragraph (2)(B).

(f) Timeliness of payment

A contract under section 1396b(m) of this title with a medicaid managed care organization shall provide that the organization shall make payment to health care providers for items and services which are subject to the contract and that are furnished to individuals eligible for medical assistance under the State plan under this subchapter who are enrolled with the organization on a timely basis consistent with the claims payment procedures described in section 1396a(a)(37)(A) of this title, unless the health care provider and the organization agree to an alternate payment schedule.

(g) Identification of patients for purposes of making DSH payments

Each contract with a managed care entity under section 1396b(m) of this title or under section 1396d(t)(3) of this title shall require the entity either—

(1) to report to the State information necessary to determine the hospital services provided under the contract (and the identity of hospitals providing such services) for purposes of applying sections 1395ww(d)(5)(F) and 1396r–4 of this title; or

(2) to include a sponsorship code in the identification card issued to individuals covered under this subchapter in order that a hospital may identify a patient as being entitled to benefits under this subchapter.

(Aug. 14, 1935, ch. 531, title XIX, § 1932, as added and amended Pub. L. 105–33, title IV, §§ 4701(a), 4704(a), 4705(a), 4707(a), 4708(c), Aug. 5, 1997, 111 Stat. 489, 495, 498, 501, 506; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(w)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398; Pub. L. 106–554, § 1(a)(6) [title VII, § 701(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–570; Pub. L. 109–171, title VI, § 6085(a), Feb. 8, 2006, 120 Stat. 121.)

REFERENCES IN TEXT

Part E of subchapter IV of this chapter, referred to in subsec. (a)(2)(A)(iv), is classified to section 670 et seq. of this title.

The Indian Self-Determination Act, referred to in subsec. (a)(2)(C)(ii), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (a)(2)(C)(iii), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Section 9517(c)(3) of the Omnibus Budget Reconciliation Act of 1985, referred to in subsec. (a)(3)(C)(i)(II), is section 9517(c)(3) of Pub. L. 99–272, which is set out as a note under section 1396b of this title.

Part C of subchapter XVIII of this chapter, referred to in subsecs. (b)(2)(A)(ii) and (c)(1)(A)(iii), (2)(C), is classified to section 1395w–21 et seq. of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(3)(B), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (b)(8), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart 2 of part A of title XXVII of the Act is classified generally to subpart 2 (§ 300gg–4 et seq.) of part A of subchapter XXV of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Executive Order No. 12549, referred to in subsec. (d)(1)(C)(i), is set out as a note under section 6101 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 1932 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2006—Subsec. (b)(2)(D). Pub. L. 109–171 added subpar. (D).

2000—Subsec. (g). Pub. L. 106–554 added subsec. (g).

1999—Subsec. (c)(2)(C). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(w)(1)], inserted ''part'' before ''C of subchapter XVIII''.

Subsec. (d)(1)(C)(ii). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(w)(2)(A)], substituted ''Regulation'' for ''Act''.

Subsec. (d)(2)(B). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(w)(2)(B)], substituted ''1396d(t)(3) of this title'' for ''1396b(t)(3) of this title''.

1997—Subsec. (b). Pub. L. 105–33, § 4704(a), added subsec. (b).

Subsec. (c). Pub. L. 105–33, § 4705(a), added subsec. (c).

Subsecs. (d), (e). Pub. L. 105–33, § 4707(a), added subsecs. (d) and (e).

Subsec. (f). Pub. L. 105–33, § 4708(c), added subsec. (f).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VI, § 6085(b), Feb. 8, 2006, 120 Stat. 121, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2007.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VII, § 701(b)(3)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A–570, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts as of January 1, 2001.''

EFFECTIVE DATE

Section effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, except that, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, subsec. (c)(1) effective Jan. 1, 1999, and subsec. (e) applicable to contracts entered into or renewed on or after Apr. 1, 1998, see section 4710(a), (b)(3), (5) of Pub. L. 105–33, set out as an Effective Date of 1997 Amendment note under section 1396b of this title.

STUDIES AND REPORTS

Section 4705(c) of Pub. L. 105–33 provided that:

''(1) GAO STUDY AND REPORT ON QUALITY ASSURANCE AND ACCREDITATION STANDARDS.—

''(A) STUDY.—The Comptroller General of the United States shall conduct a study and analysis of the quality assurance programs and accreditation

standards applicable to managed care entities operating in the private sector, or to such entities that operate under contracts under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.). Such study shall determine—

''(i) if such programs and standards include consideration of the accessibility and quality of the health care items and services delivered under such contracts to low-income individuals; and

''(ii) the appropriateness of applying such programs and standards to medicaid managed care organizations under section 1932(c) of such Act [subsec. (c) of this section].

''(B) REPORT.—The Comptroller General shall submit a report to the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate on the study conducted under subparagraph (A).

''(2) STUDY AND REPORT ON SERVICES PROVIDED TO INDIVIDUALS WITH SPECIAL HEALTH CARE NEEDS.—

''(A) STUDY.—The Secretary of Health and Human Services, in consultation with States, managed care organizations, the National Academy of State Health Policy, representatives of beneficiaries with special health care needs, experts in specialized health care, and others, shall conduct a study concerning safeguards (if any) that may be needed to ensure that the health care needs of individuals with special health care needs and chronic conditions who are enrolled with medicaid managed care organizations are adequately met.

''(B) REPORT.—Not later than 2 years after the date of the enactment of this Act [Aug. 5, 1997], the Secretary shall submit to Committees described in paragraph (1)(B) a report on such study.''

§ 1396u–3. State coverage of medicare cost-sharing for additional low-income medicare beneficiaries

(a) In general

A State plan under this subchapter shall provide, under section 1396a(a)(10)(E)(iv) of this title and subject to the succeeding provisions of this section and through a plan amendment, for medical assistance for payment of the cost of medicare cost-sharing described in such section on behalf of all individuals described in such section (in this section referred to as ''qualifying individuals'') who are selected to receive such assistance under subsection (b) of this section.

(b) Selection of qualifying individuals

A State shall select qualifying individuals, and provide such individuals with assistance, under this section consistent with the following:

(1) All qualifying individuals may apply

The State shall permit all qualifying individuals to apply for assistance during a calendar year.

(2) Selection on first-come, first-served basis

(A) In general

For each calendar year (beginning with 1998), from (and to the extent of) the amount of the allocation under subsection (c) of this section for the State for the fiscal year ending in such calendar year, the State shall select qualifying individuals who apply for the assistance in the order in which they apply.

(B) Carryover

For calendar years after 1998, the State shall give preference to individuals who were provided such assistance (or other assistance described in section 1396a(a)(10)(E) of this title) in the last month of the previous year and who continue to be (or become) qualifying individuals.

(3) Limit on number of individuals based on allocation

The State shall limit the number of qualifying individuals selected with respect to assistance in a calendar year so that the aggregate amount of such assistance provided to such individuals in such year is estimated to be equal to (but not exceed) the State's allocation under subsection (c) of this section for the fiscal year ending in such calendar year.

(4) Receipt of assistance during duration of year

If a qualifying individual is selected to receive assistance under this section for a month in a year, the individual is entitled to receive such assistance for the remainder of the year if the individual continues to be a qualifying individual. The fact that an individual is selected to receive assistance under this section at any time during a year does not entitle the individual to continued assistance for any succeeding year.

(c) Allocation

(1) Total allocation

The total amount available for allocation under this section for—

(A) fiscal year 1998 is $200,000,000;

(B) fiscal year 1999 is $250,000,000;

(C) fiscal year 2000 is $300,000,000;

(D) fiscal year 2001 is $350,000,000; and

(E) each of fiscal years 2002 and 2003 is $400,000,000.

(2) Allocation to States

The Secretary shall provide for the allocation of the total amount described in paragraph (1) for a fiscal year, among the States that executed a plan amendment in accordance with subsection (a) of this section, based upon the Secretary's estimate of the ratio of—

(A) an amount equal to the total number of individuals described in section 1396a(a)(10)(E)(iv) of this title in the State; to

(B) the sum of the amounts computed under subparagraph (A) for all eligible States.

(d) Applicable FMAP

With respect to assistance described in section 1396a(a)(10)(E)(iv) of this title furnished in a State for calendar quarters in a calendar year—

(1) to the extent that such assistance does not exceed the State's allocation under subsection (c) of this section for the fiscal year ending in the calendar year, the Federal medical assistance percentage shall be equal to 100 percent; and

(2) to the extent that such assistance exceeds such allocation, the Federal medical assistance percentage is 0 percent.

(e) Limitation on entitlement

Except as specifically provided under this section, nothing in this subchapter shall be con-

strued as establishing any entitlement of individuals described in section 1396a(a)(10)(E)(iv) of this title to assistance described in such section.

(f) Coverage of costs through part B of medicare program

For each fiscal year, the Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title to the appropriate account in the Treasury that provides for payments under section 1396b(a) of this title with respect to medical assistance provided under this section, of an amount equivalent to the total of the amount of payments made under such section that is attributable to this section and such transfer shall be treated as an expenditure from such Trust Fund for purposes of section 1395r of this title.

(g) Special rules

(1) In general

With respect to each period described in paragraph (2), a State shall select qualifying individuals, subject to paragraph (3), and provide such individuals with assistance, in accordance with the provisions of this section as in effect with respect to calendar year 2003, except that for such purpose—

(A) references in the preceding subsections of this section to a year, whether fiscal or calendar, shall be deemed to be references to such period; and

(B) the total allocation amount under subsection (c) of this section for such period shall be the amount described in paragraph (2) for that period.

(2) Periods and total allocation amounts described

For purposes of this subsection—

(A) for the period that begins on January 1, 2004, and ends on September 30, 2004, the total allocation amount is $300,000,000;

(B) for the period that begins on October 1, 2004, and ends on December 31, 2004, the total allocation amount is $100,000,000;

(C) for the period that begins on January 1, 2005, and ends on September 30, 2005, the total allocation amount is $300,000,000;

(D) for the period that begins on October 1, 2005, and ends on December 31, 2005, the total allocation amount is $100,000,000;

(E) for the period that begins on January 1, 2006, and ends on September 30, 2006, the total allocation amount is $300,000,000;

(F) for the period that begins on October 1, 2006, and ends on December 31, 2006, the total allocation amount is $100,000,000; and

(G) for the period that begins on January 1, 2007, and ends on September 30, 2007, the total allocation amount is $300,000,000.

(3) Rules for periods that begin after January 1

For any specific period described in subparagraph (B), (D), or (F) of paragraph (2), the following applies:

(A) The specific period shall be treated as a continuation of the immediately preceding period in that calendar year for purposes of applying subsection (b)(2) of this section and qualifying individuals who received assistance in the last month of such immediately preceding period shall be deemed to be selected for the specific period (without the need to complete an application for assistance for such period).

(B) The limit to be applied under subsection (b)(3) of this section for the specific period shall be the same as the limit applied under such subsection for the immediately preceding period.

(C) The ratio to be applied under subsection (c)(2) of this section for the specific period shall be the same as the ratio applied under such subsection for the immediately preceding period.

(Aug. 14, 1935, ch. 531, title XIX, § 1933, as added Pub. L. 105–33, title IV, § 4732(c), Aug. 5, 1997, 111 Stat. 520; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(x)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398; Pub. L. 108–89, title IV, § 401(b), (c), Oct. 1, 2003, 117 Stat. 1134; Pub. L. 108–173, title I, § 103(f)(2), Dec. 8, 2003, 117 Stat. 2160; Pub. L. 108–448, § 1(b), Dec. 8, 2004, 118 Stat. 3467; Pub. L. 109–91, title I, § 101(b), Oct. 20, 2005, 119 Stat. 2091.)

PRIOR PROVISIONS

A prior section 1933 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2005—Subsec. (g)(2)(D) to (G). Pub. L. 109–91, § 101(b)(1), added subpars. (D) to (G).

Subsec. (g)(3). Pub. L. 109–91, § 101(b)(2), inserted ", (D), or (F)" after "subparagraph (B)" in introductory provisions.

2004—Subsec. (g). Pub. L. 108–448 amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: "With respect to the period that begins on January 1, 2004, and ends on September 30, 2004, a State shall select qualifying individuals, and provide such individuals with assistance, in accordance with the provisions of this section as in effect with respect to calendar year 2003, except that for such purpose—

"(1) references in the preceding subsections of this section to 'fiscal year' and 'calendar year' shall be deemed to be references to such period; and

"(2) the total allocation amount under subsection (c) of this section for such period shall be $300,000,000."

2003—Subsec. (c)(1)(E). Pub. L. 108–89, § 401(b)(1), substituted "each of fiscal years 2002 and 2003" for "fiscal year 2002".

Subsec. (c)(2)(A). Pub. L. 108–89, § 401(b)(2), substituted "the total number of individuals described in section 1396a(a)(10)(E)(iv) of this title in the State; to" for "the sum of—

"(i) twice the total number of individuals described in section 1396a(a)(10)(E)(iv)(I) of this title in the State, and

"(ii) the total number of individuals described in section 1396a(a)(10)(E)(iv)(II) of this title in the State; to".

Subsec. (g). Pub. L. 108–173, § 103(f)(2)(A), substituted "September 30, 2004" for "March 31, 2004" in introductory provisions.

Pub. L. 108–89, § 401(c), added subsec. (g).

Subsec. (g)(2). Pub. L. 108–173, § 103(f)(2)(B), substituted "$300,000,000" for "$100,000,000".

1999—Subsec. (b)(4). Pub. L. 106–113 inserted "a" after "for a month in".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–91 effective Sept. 30, 2005, see section 101(c) of Pub. L. 109–91, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to calendar quarters beginning on or after Apr. 1, 2004, see section 103(f)(3) of Pub. L. 108–173, set out as a note under section 1396a of this title.

§ 1396u–4. Program of all-inclusive care for elderly (PACE)

(a) State option

(1) In general

A State may elect to provide medical assistance under this section with respect to PACE program services to PACE program eligible individuals who are eligible for medical assistance under the State plan and who are enrolled in a PACE program under a PACE program agreement. Such individuals need not be eligible for benefits under part A, or enrolled under part B, of subchapter XVIII of this chapter to be eligible to enroll under this section. In the case of an individual enrolled with a PACE program pursuant to such an election—

(A) the individual shall receive benefits under the plan solely through such program, and

(B) the PACE provider shall receive payment in accordance with the PACE program agreement for provision of such benefits.

A State may establish a numerical limit on the number of individuals who may be enrolled in a PACE program under a PACE program agreement.

(2) "PACE program" defined

For purposes of this section, the term ''PACE program'' means a program of all-inclusive care for the elderly that meets the following requirements:

(A) Operation

The entity operating the program is a PACE provider (as defined in paragraph (3)).

(B) Comprehensive benefits

The program provides comprehensive health care services to PACE program eligible individuals in accordance with the PACE program agreement and regulations under this section.

(C) Transition

In the case of an individual who is enrolled under the program under this section and whose enrollment ceases for any reason (including that the individual no longer qualifies as a PACE program eligible individual, the termination of a PACE program agreement, or otherwise), the program provides assistance to the individual in obtaining necessary transitional care through appropriate referrals and making the individual's medical records available to new providers.

(3) "PACE provider" defined

(A) In general

For purposes of this section, the term ''PACE provider'' means an entity that—

(i) subject to subparagraph (B), is (or is a distinct part of) a public entity or a private, nonprofit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986, and

(ii) has entered into a PACE program agreement with respect to its operation of a PACE program.

(B) Treatment of private, for-profit providers

Clause (i) of subparagraph (A) shall not apply—

(i) to entities subject to a demonstration project waiver under subsection (h) of this section; and

(ii) after the date the report under section 4804(b) of the Balanced Budget Act of 1997 is submitted, unless the Secretary determines that any of the findings described in subparagraph (A), (B), (C), or (D) of paragraph (2) of such section are true.

(4) "PACE program agreement" defined

For purposes of this section, the term ''PACE program agreement'' means, with respect to a PACE provider, an agreement, consistent with this section, section 1395eee of this title (if applicable), and regulations promulgated to carry out such sections, among the PACE provider, the Secretary, and a State administering agency for the operation of a PACE program by the provider under such sections.

(5) "PACE program eligible individual" defined

For purposes of this section, the term ''PACE program eligible individual'' means, with respect to a PACE program, an individual who—

(A) is 55 years of age or older;

(B) subject to subsection (c)(4) of this section, is determined under subsection (c) of this section to require the level of care required under the State medicaid plan for coverage of nursing facility services;

(C) resides in the service area of the PACE program; and

(D) meets such other eligibility conditions as may be imposed under the PACE program agreement for the program under subsection (e)(2)(A)(ii) of this section.

(6) "PACE protocol" defined

For purposes of this section, the term ''PACE protocol'' means the Protocol for the Program of All-inclusive Care for the Elderly (PACE), as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon between the Secretary and On Lok, Inc.

(7) "PACE demonstration waiver program" defined

For purposes of this section, the term ''PACE demonstration waiver program'' means a demonstration program under either of the following sections (as in effect before the date of their repeal):

(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21), as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).

(B) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509).

(8) "State administering agency" defined

For purposes of this section, the term ''State administering agency'' means, with respect to the operation of a PACE program in a State, the agency of that State (which may be the single agency responsible for administration of the State plan under this subchapter in the State) responsible for administering PACE program agreements under this section and section 1395eee of this title in the State.

(9) "Trial period" defined

(A) In general

For purposes of this section, the term ''trial period'' means, with respect to a PACE program operated by a PACE provider under a PACE program agreement, the first 3 contract years under such agreement with respect to such program.

(B) Treatment of entities previously operating PACE demonstration waiver programs

Each contract year (including a year occurring before the effective date of this section) during which an entity has operated a PACE demonstration waiver program shall be counted under subparagraph (A) as a contract year during which the entity operated a PACE program as a PACE provider under a PACE program agreement.

(10) "Regulations" defined

For purposes of this section, the term ''regulations'' refers to interim final or final regulations promulgated under subsection (f) of this section to carry out this section and section 1395eee of this title.

(b) Scope of benefits; beneficiary safeguards

(1) In general

Under a PACE program agreement, a PACE provider shall—

(A) provide to PACE program eligible individuals, regardless of source of payment and directly or under contracts with other entities, at a minimum—

(i) all items and services covered under subchapter XVIII of this chapter (for individuals enrolled under section 1395eee of this title) and all items and services covered under this subchapter, but without any limitation or condition as to amount, duration, or scope and without application of deductibles, copayments, coinsurance, or other cost-sharing that would otherwise apply under such subchapter or this subchapter, respectively; and

(ii) all additional items and services specified in regulations, based upon those required under the PACE protocol;

(B) provide such enrollees access to necessary covered items and services 24 hours per day, every day of the year;

(C) provide services to such enrollees through a comprehensive, multidisciplinary health and social services delivery system which integrates acute and long-term care services pursuant to regulations; and

(D) specify the covered items and services that will not be provided directly by the entity, and to arrange for delivery of those items and services through contracts meeting the requirements of regulations.

(2) Quality assurance; patient safeguards

The PACE program agreement shall require the PACE provider to have in effect at a minimum—

(A) a written plan of quality assurance and improvement, and procedures implementing such plan, in accordance with regulations, and

(B) written safeguards of the rights of enrolled participants (including a patient bill of rights and procedures for grievances and appeals) in accordance with regulations and with other requirements of this subchapter and Federal and State law designed for the protection of patients.

(3) Treatment of medicare services furnished by noncontract physicians and other entities

(A) Application of medicare advantage requirement with respect to medicare services furnished by noncontract physicians and other entities

Section 1395w–22(k)(1) of this title (relating to limitations on balance billing against MA organizations for noncontract physicians and other entities with respect to services covered under subchapter XVIII of this chapter) shall apply to PACE providers, PACE program eligible individuals enrolled with such PACE providers, and physicians and other entities that do not have a contract or other agreement establishing payment amounts for services furnished to such an individual in the same manner as such section applies to MA organizations, individuals enrolled with such organizations, and physicians and other entities referred to in such section.

(B) Reference to related provision for noncontract providers of services

For the provision relating to limitations on balance billing against PACE providers for services covered under subchapter XVIII of this chapter furnished by noncontract providers of services, see section 1395cc(a)(1)(O) of this title.

(4) Reference to related provision for services covered under this subchapter but not under subchapter XVIII

For provisions relating to limitations on payments to providers participating under the State plan under this subchapter that do not have a contract or other agreement with a PACE provider establishing payment amounts for services covered under such plan (but not under subchapter XVIII of this chapter) when such services are furnished to enrollees of that PACE provider, see section 1396a(a)(67) of this title.

(c) Eligibility determinations

(1) In general

The determination of—

(A) whether an individual is a PACE program eligible individual shall be made under and in accordance with the PACE program agreement, and

(B) who is entitled to medical assistance under this subchapter shall be made (or who is not so entitled, may be made) by the State administering agency.

(2) Condition

An individual is not a PACE program eligible individual (with respect to payment under this section) unless the individual's health status has been determined by the Secretary or the State administering agency, in accordance with regulations, to be comparable to the health status of individuals who have participated in the PACE demonstration waiver programs. Such determination shall be based upon information on health status and related indicators (such as medical diagnoses and measures of activities of daily living, instrumental activities of daily living, and cognitive impairment) that are part of a uniform minimum data set collected by PACE providers on potential eligible individuals.

(3) Annual eligibility recertifications

(A) In general

Subject to subparagraph (B), the determination described in subsection (a)(5)(B) of this section for an individual shall be reevaluated at least annually.

(B) Exception

The requirement of annual reevaluation under subparagraph (A) may be waived during a period in accordance with regulations in those cases in which the State administering agency determines that there is no reasonable expectation of improvement or significant change in an individual's condition during the period because of the severity of chronic condition, or degree of impairment of functional capacity of the individual involved.

(4) Continuation of eligibility

An individual who is a PACE program eligible individual may be deemed to continue to be such an individual notwithstanding a determination that the individual no longer meets the requirement of subsection (a)(5)(B) of this section if, in accordance with regulations, in the absence of continued coverage under a PACE program the individual reasonably would be expected to meet such requirement within the succeeding 6-month period.

(5) Enrollment; disenrollment

(A) Voluntary disenrollment at any time

The enrollment and disenrollment of PACE program eligible individuals in a PACE program shall be pursuant to regulations and the PACE program agreement and shall permit enrollees to voluntarily disenroll without cause at any time.

(B) Limitations on disenrollment

(i) In general

Regulations promulgated by the Secretary under this section and section 1395eee of this title, and the PACE program agreement, shall provide that the PACE program may not disenroll a PACE program eligible individual except—

(I) for nonpayment of premiums (if applicable) on a timely basis; or

(II) for engaging in disruptive or threatening behavior, as defined in such regulations (developed in close consultation with State administering agencies).

(ii) No disenrollment for noncompliant behavior

Except as allowed under regulations promulgated to carry out clause (i)(II), a PACE program may not disenroll a PACE program eligible individual on the ground that the individual has engaged in noncompliant behavior if such behavior is related to a mental or physical condition of the individual. For purposes of the preceding sentence, the term ''noncompliant behavior'' includes repeated noncompliance with medical advice and repeated failure to appear for appointments.

(iii) Timely review of proposed nonvoluntary disenrollment

A proposed disenrollment, other than a voluntary disenrollment, shall be subject to timely review and final determination by the Secretary or by the State administering agency (as applicable), prior to the proposed disenrollment becoming effective.

(d) Payments to PACE providers on a capitated basis

(1) In general

In the case of a PACE provider with a PACE program agreement under this section, except as provided in this subsection or by regulations, the State shall make prospective monthly payments of a capitation amount for each PACE program eligible individual enrolled under the agreement under this section.

(2) Capitation amount

The capitation amount to be applied under this subsection for a provider for a contract year shall be an amount specified in the PACE program agreement for the year. Such amount shall be an amount, specified under the PACE agreement, which is less than the amount that would otherwise have been made under the State plan if the individuals were not so enrolled and shall be adjusted to take into account the comparative frailty of PACE enrollees and such other factors as the Secretary determines to be appropriate. The payment under this section shall be in addition to any payment made under section 1395eee of this title for individuals who are enrolled in a PACE program under such section.

(e) PACE program agreement

(1) Requirement

(A) In general

The Secretary, in close cooperation with the State administering agency, shall establish procedures for entering into, extending, and terminating PACE program agreements

for the operation of PACE programs by entities that meet the requirements for a PACE provider under this section, section 1395eee of this title, and regulations.

(B) Numerical limitation

(i) In general

The Secretary shall not permit the number of PACE providers with which agreements are in effect under this section or under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 to exceed—

(I) 40 as of August 5, 1997, or

(II) as of each succeeding anniversary of August 5, 1997, the numerical limitation under this subparagraph for the preceding year plus 20.

Subclause (II) shall apply without regard to the actual number of agreements in effect as of a previous anniversary date.

(ii) Treatment of certain private, for-profit providers

The numerical limitation in clause (i) shall not apply to a PACE provider that—

(I) is operating under a demonstration project waiver under subsection (h) of this section, or

(II) was operating under such a waiver and subsequently qualifies for PACE provider status pursuant to subsection (a)(3)(B)(ii) of this section.

(2) Service area and eligibility

(A) In general

A PACE program agreement for a PACE program—

(i) shall designate the service area of the program;

(ii) may provide additional requirements for individuals to qualify as PACE program eligible individuals with respect to the program;

(iii) shall be effective for a contract year, but may be extended for additional contract years in the absence of a notice by a party to terminate, and is subject to termination by the Secretary and the State administering agency at any time for cause (as provided under the agreement);

(iv) shall require a PACE provider to meet all applicable State and local laws and requirements; and

(v) shall contain such additional terms and conditions as the parties may agree to, so long as such terms and conditions are consistent with this section and regulations.

(B) Service area overlap

In designating a service area under a PACE program agreement under subparagraph (A)(i), the Secretary (in consultation with the State administering agency) may exclude from designation an area that is already covered under another PACE program agreement, in order to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program.

(3) Data collection; development of outcome measures

(A) Data collection

(i) In general

Under a PACE program agreement, the PACE provider shall—

(I) collect data;

(II) maintain, and afford the Secretary and the State administering agency access to, the records relating to the program, including pertinent financial, medical, and personnel records; and

(III) submit to the Secretary and the State administering agency such reports as the Secretary finds (in consultation with State administering agencies) necessary to monitor the operation, cost, and effectiveness of the PACE program.

(ii) Requirements during trial period

During the first 3 years of operation of a PACE program (either under this section or under a PACE demonstration waiver program), the PACE provider shall provide such additional data as the Secretary specifies in regulations in order to perform the oversight required under paragraph (4)(A).

(B) Development of outcome measures

Under a PACE program agreement, the PACE provider, the Secretary, and the State administering agency shall jointly cooperate in the development and implementation of health status and quality of life outcome measures with respect to PACE program eligible individuals.

(4) Oversight

(A) Annual, close oversight during trial period

During the trial period (as defined in subsection (a)(9) of this section) with respect to a PACE program operated by a PACE provider, the Secretary (in cooperation with the State administering agency) shall conduct a comprehensive annual review of the operation of the PACE program by the provider in order to assure compliance with the requirements of this section and regulations. Such a review shall include—

(i) an onsite visit to the program site;

(ii) comprehensive assessment of a provider's fiscal soundness;

(iii) comprehensive assessment of the provider's capacity to provide all PACE services to all enrolled participants;

(iv) detailed analysis of the entity's substantial compliance with all significant requirements of this section and regulations; and

(v) any other elements the Secretary or the State administering agency considers necessary or appropriate.

(B) Continuing oversight

After the trial period, the Secretary (in cooperation with the State administering agency) shall continue to conduct such review of the operation of PACE providers and PACE programs as may be appropriate, tak-

ing into account the performance level of a provider and compliance of a provider with all significant requirements of this section and regulations.

(C) Disclosure

The results of reviews under this paragraph shall be reported promptly to the PACE provider, along with any recommendations for changes to the provider's program, and shall be made available to the public upon request.

(5) Termination of PACE provider agreements

(A) In general

Under regulations—

(i) the Secretary or a State administering agency may terminate a PACE program agreement for cause, and

(ii) a PACE provider may terminate such an agreement after appropriate notice to the Secretary, the State administering agency, and enrollees.

(B) Causes for termination

In accordance with regulations establishing procedures for termination of PACE program agreements, the Secretary or a State administering agency may terminate a PACE program agreement with a PACE provider for, among other reasons, the fact that—

(i) the Secretary or State administering agency determines that—

(I) there are significant deficiencies in the quality of care provided to enrolled participants; or

(II) the provider has failed to comply substantially with conditions for a program or provider under this section or section 1395eee of this title; and

(ii) the entity has failed to develop and successfully initiate, within 30 days of the date of the receipt of written notice of such a determination, a plan to correct the deficiencies, or has failed to continue implementation of such a plan.

(C) Termination and transition procedures

An entity whose PACE provider agreement is terminated under this paragraph shall implement the transition procedures required under subsection (a)(2)(C) of this section.

(6) Secretary's oversight; enforcement authority

(A) In general

Under regulations, if the Secretary determines (after consultation with the State administering agency) that a PACE provider is failing substantially to comply with the requirements of this section and regulations, the Secretary (and the State administering agency) may take any or all of the following actions:

(i) Condition the continuation of the PACE program agreement upon timely execution of a corrective action plan.

(ii) Withhold some or all further payments under the PACE program agreement under this section or section 1395eee of this title with respect to PACE program services furnished by such provider until the deficiencies have been corrected.

(iii) Terminate such agreement.

(B) Application of intermediate sanctions

Under regulations, the Secretary may provide for the application against a PACE provider of remedies described in section 1395w–27(g)(2) (or, for periods before January 1, 1999, section 1395mm(i)(6)(B) of this title) or 1396b(m)(5)(B) of this title in the case of violations by the provider of the type described in section 1395w–27(g)(1) (or 1395mm(i)(6)(A) of this title for such periods) or 1396b(m)(5)(A) of this title, respectively (in relation to agreements, enrollees, and requirements under section 1395eee of this title or this section, respectively).

(7) Procedures for termination or imposition of sanctions

Under regulations, the provisions of section 1395w–27(h) of this title (or for periods before January 1, 1999, section 1395mm(i)(9) of this title) shall apply to termination and sanctions respecting a PACE program agreement and PACE provider under this subsection in the same manner as they apply to a termination and sanctions with respect to a contract and a Medicare+Choice organization under part C of subchapter XVIII of this chapter (or for such periods an eligible organization under section 1395mm of this title).

(8) Timely consideration of applications for PACE program provider status

In considering an application for PACE provider program status, the application shall be deemed approved unless the Secretary, within 90 days after the date of the submission of the application to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information that is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

(f) Regulations

(1) In general

The Secretary shall issue interim final or final regulations to carry out this section and section 1395eee of this title.

(2) Use of PACE protocol

(A) In general

In issuing such regulations, the Secretary shall, to the extent consistent with the provisions of this section, incorporate the requirements applied to PACE demonstration waiver programs under the PACE protocol.

(B) Flexibility

In order to provide for reasonable flexibility in adapting the PACE service delivery model to the needs of particular organizations (such as those in rural areas or those that may determine it appropriate to use nonstaff physicians according to State li-

censing law requirements) under this section and section 1395eee of this title, the Secretary (in close consultation with State administering agencies) may modify or waive provisions of the PACE protocol so long as any such modification or waiver is not inconsistent with and would not impair the essential elements, objectives, and requirements of this section, but may not modify or waive any of the following provisions:

(i) The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

(ii) The delivery of comprehensive, integrated acute and long-term care services.

(iii) The interdisciplinary team approach to care management and service delivery.

(iv) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

(v) The assumption by the provider of full financial risk.

(C) Continuation of modifications or waivers of operational requirements under demonstration status

If a PACE program operating under demonstration authority has contractual or other operating arrangements which are not otherwise recognized in regulation and which were in effect on July 1[1] 2000, the Secretary (in close consultation with, and with the concurrence of, the State administering agency) shall permit any such program to continue such arrangements so long as such arrangements are found by the Secretary and the State to be reasonably consistent with the objectives of the PACE program.

(3) Application of certain additional beneficiary and program protections

(A) In general

In issuing such regulations and subject to subparagraph (B), the Secretary may apply with respect to PACE programs, providers, and agreements such requirements of part C of subchapter XVIII of this chapter (or, for periods before January 1, 1999, section 1395mm of this title) and sections 1396b(m) and 1396u–2 of this title relating to protection of beneficiaries and program integrity as would apply to Medicare+Choice organizations under such part C (or for such periods eligible organizations under risk-sharing contracts under section 1395mm of this title) and to medicaid managed care organizations under prepaid capitation agreements under section 1396b(m) of this title.

(B) Considerations

In issuing such regulations, the Secretary shall—

(i) take into account the differences between populations served and benefits provided under this section and under part C of subchapter XVIII of this chapter (or, for periods before January 1, 1999, section 1395mm of this title) and section 1396b(m) of this title;

(ii) not include any requirement that conflicts with carrying out PACE programs under this section; and

(iii) not include any requirement restricting the proportion of enrollees who are eligible for benefits under this subchapter or subchapter XVIII of this chapter.

(4) Construction

Nothing in this subsection shall be construed as preventing the Secretary from including in regulations provisions to ensure the health and safety of individuals enrolled in a PACE program under this section that are in addition to those otherwise provided under paragraphs (2) and (3).

(g) Waivers of requirements

With respect to carrying out a PACE program under this section, the following requirements of this subchapter (and regulations relating to such requirements) shall not apply:

(1) Section 1396a(a)(1) of this title, relating to any requirement that PACE programs or PACE program services be provided in all areas of a State.

(2) Section 1396a(a)(10) of this title, insofar as such section relates to comparability of services among different population groups.

(3) Sections 1396a(a)(23) and 1396n(b)(4) of this title, relating to freedom of choice of providers under a PACE program.

(4) Section 1396b(m)(2)(A) of this title, insofar as it restricts a PACE provider from receiving prepaid capitation payments.

(5) Such other provisions of this subchapter that, as added or amended by the Balanced Budget Act of 1997, the Secretary determines are inapplicable to carrying out a PACE program under this section.

(h) Demonstration project for for-profit entities

(1) In general

In order to demonstrate the operation of a PACE program by a private, for-profit entity, the Secretary (in close consultation with State administering agencies) shall grant waivers from the requirement under subsection (a)(3) of this section that a PACE provider may not be a for-profit, private entity.

(2) Similar terms and conditions

(A) In general

Except as provided under subparagraph (B), and paragraph (1), the terms and conditions for operation of a PACE program by a provider under this subsection shall be the same as those for PACE providers that are nonprofit, private organizations.

(B) Numerical limitation

The number of programs for which waivers are granted under this subsection shall not exceed 10. Programs with waivers granted under this subsection shall not be counted against the numerical limitation specified in subsection (e)(1)(B) of this section.

(i) Post-eligibility treatment of income

A State may provide for post-eligibility treatment of income for individuals enrolled in PACE

[1] So in original. Probably should be followed by a comma.

programs under this section in the same manner as a State treats post-eligibility income for individuals receiving services under a waiver under section 1396n(c) of this title.

(j) Miscellaneous provisions

Nothing in this section or section 1395eee of this title shall be construed as preventing a PACE provider from entering into contracts with other governmental or nongovernmental payers for the care of PACE program eligible individuals who are not eligible for benefits under part A, or enrolled under part B, of subchapter XVIII of this chapter or eligible for medical assistance under this subchapter.

(Aug. 14, 1935, ch. 531, title XIX, § 1934, as added Pub. L. 105–33, title IV, § 4802(a)(3), Aug. 5, 1997, 111 Stat. 539; amended Pub. L. 106–554, § 1(a)(6) [title IX, § 902(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–583; Pub. L. 108–173, title II, § 236(b)(2), Dec. 8, 2003, 117 Stat. 2211.)

REFERENCES IN TEXT

Parts A, B, and C of subchapter XVIII of this chapter, referred to in subsecs. (a)(1), (e)(7), (f)(3), and (j), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsec. (a)(3)(A)(i), is classified generally to Title 26, Internal Revenue Code.

The Balanced Budget Act of 1997, referred to in subsecs. (a)(3)(B)(ii) and (g)(5), is Pub. L. 105–33, Aug. 5, 1997, 111 Stat. 251. Section 4804(b) of the Act is set out as a note under section 1395eee of this title. For complete classification of this Act to the Code, see Tables.

Section 603(c) of the Social Security Amendments of 1983, referred to in subsec. (a)(7)(A), is section 603(c) of Pub. L. 98–21, title VI, Apr. 20, 1983, 97 Stat. 168, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, § 4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

Section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985, referred to in subsec. (a)(7)(A), is section 9220 of Pub. L. 99–272, title IX, Apr. 7, 1986, 100 Stat. 183, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, § 4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, referred to in subsecs. (a)(7)(B) and (e)(1)(B)(i), is section 9412(b) of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 2062, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, § 4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

For the effective date of this section, referred to in subsec. (a)(9)(B), see section 4803 of Pub. L. 105–33, set out as a Transition; Regulations note under section 1395eee of this title.

PRIOR PROVISIONS

A prior section 1934 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2003—Subsec. (b)(3), (4). Pub. L. 108–173 added pars. (3) and (4).

2000—Subsec. (f)(2)(C). Pub. L. 106–554 added subpar. (C).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2004, see section 236(c) of Pub. L. 108–173, set out as a note under section 1395cc of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the enactment of Pub. L. 105–33, see section 1(a)(6) [title IX, § 902(c)] of Pub. L. 106–554, set out as a note under section 1395eee of this title.

§ 1396u–5. Special provisions relating to medicare prescription drug benefit

(a) Requirements relating to medicare prescription drug low-income subsidies and medicare transitional prescription drug assistance

As a condition of its State plan under this subchapter under section 1396a(a)(66) of this title and receipt of any Federal financial assistance under section 1396b(a) of this title subject to subsection (e) of this section, a State shall do the following:

(1) Information for transitional prescription drug assistance verification

The State shall provide the Secretary with information to carry out section 1395w–141(f)(3)(B)(i) of this title.

(2) Eligibility determinations for low-income subsidies

The State shall—

(A) make determinations of eligibility for premium and cost-sharing subsidies under and in accordance with section 1395w–114 of this title;

(B) inform the Secretary of such determinations in cases in which such eligibility is established; and

(C) otherwise provide the Secretary with such information as may be required to carry out part D, other than subpart 4, of subchapter XVIII of this chapter (including section 1395w–114 of this title).

(3) Screening for eligibility, and enrollment of, beneficiaries for medicare cost-sharing

As part of making an eligibility determination required under paragraph (2) for an individual, the State shall make a determination of the individual's eligibility for medical assistance for any medicare cost-sharing described in section 1396d(p)(3) of this title and, if the individual is eligible for any such medicare cost-sharing, offer enrollment to the individual under the State plan (or under a waiver of such plan).

(b) Regular Federal subsidy of administrative costs

The amounts expended by a State in carrying out subsection (a) of this section are expenditures reimbursable under the appropriate paragraph of section 1396b(a) of this title.

(c) Federal assumption of medicaid prescription drug costs for dually eligible individuals

(1) Phased-down State contribution

(A) In general

Each of the 50 States and the District of Columbia for each month beginning with

January 2006 shall provide for payment under this subsection to the Secretary of the product of—

(i) the amount computed under paragraph (2)(A) for the State and month;

(ii) the total number of full-benefit dual eligible individuals (as defined in paragraph (6)) for such State and month; and

(iii) the factor for the month specified in paragraph (5).

(B) Form and manner of payment

Payment under subparagraph (A) shall be made in a manner specified by the Secretary that is similar to the manner in which State payments are made under an agreement entered into under section 1395v of this title, except that all such payments shall be deposited into the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.

(C) Compliance

If a State fails to pay to the Secretary an amount required under subparagraph (A), interest shall accrue on such amount at the rate provided under section 1396b(d)(5) of this title. The amount so owed and applicable interest shall be immediately offset against amounts otherwise payable to the State under section 1396b(a) of this title subject to subsection (e) of this section, in accordance with the Federal Claims Collection Act of 1996[1] and applicable regulations.

(D) Data match

The Secretary shall perform such periodic data matches as may be necessary to identify and compute the number of full-benefit dual eligible individuals for purposes of computing the amount under subparagraph (A).

(2) Amount

(A) In general

The amount computed under this paragraph for a State described in paragraph (1) and for a month in a year is equal to—

(i) 1/12 of the product of—

(I) the base year State medicaid per capita expenditures for covered part D drugs for full-benefit dual eligible individuals (as computed under paragraph (3)); and

(II) a proportion equal to 100 percent minus the Federal medical assistance percentage (as defined in section 1396d(b) of this title) applicable to the State for the fiscal year in which the month occurs; and

(ii) increased for each year (beginning with 2004 up to and including the year involved) by the applicable growth factor specified in paragraph (4) for that year.

(B) Notice

The Secretary shall notify each State described in paragraph (1) not later than October 15 before the beginning of each year (beginning with 2006) of the amount computed under subparagraph (A) for the State for that year.

(3) Base year state medicaid per capita expenditures for covered part D drugs for full-benefit dual eligible individuals

(A) In general

For purposes of paragraph (2)(A), the ''base year State medicaid per capita expenditures for covered part D drugs for full-benefit dual eligible individuals'' for a State is equal to the weighted average (as weighted under subparagraph (C)) of—

(i) the gross per capita medicaid expenditures for prescription drugs for 2003, determined under subparagraph (B); and

(ii) the estimated actuarial value of prescription drug benefits provided under a capitated managed care plan per full-benefit dual eligible individual for 2003, as determined using such data as the Secretary determines appropriate.

(B) Gross per capita medicaid expenditures for prescription drugs

(i) In general

The gross per capita medicaid expenditures for prescription drugs for 2003 under this subparagraph is equal to the expenditures, including dispensing fees, for the State under this subchapter during 2003 for covered outpatient drugs, determined per full-benefit-dual-eligible-individual for such individuals not receiving medical assistance for such drugs through a medicaid managed care plan.

(ii) Determination

In determining the amount under clause (i), the Secretary shall—

(I) use data from the Medicaid Statistical Information System (MSIS) and other available data;

(II) exclude expenditures attributable to covered outpatient prescription drugs that are not covered part D drugs (as defined in section 1395w–102(e) of this title, including drugs described in subparagraph (K) of section 1396r–8(d)(2) of this title); and

(III) reduce such expenditures by the product of such portion and the adjustment factor (described in clause (iii)).

(iii) Adjustment factor

The adjustment factor described in this clause for a State is equal to the ratio for the State for 2003 of—

(I) aggregate payments under agreements under section 1396r–8 of this title; to

(II) the gross expenditures under this subchapter for covered outpatient drugs referred to in clause (i).

Such factor shall be determined based on information reported by the State in the medicaid financial management reports (form CMS–64) for the 4 quarters of calendar year 2003 and such other data as the Secretary may require.

(C) Weighted average

The weighted average under subparagraph (A) shall be determined taking into account—

[1] See References in Text note below.

(i) with respect to subparagraph (A)(i), the average number of full-benefit dual eligible individuals in 2003 who are not described in clause (ii); and

(ii) with respect to subparagraph (A)(ii), the average number of full-benefit dual eligible individuals in such year who received in 2003 medical assistance for covered outpatient drugs through a medicaid managed care plan.

(4) Applicable growth factor

The applicable growth factor under this paragraph for—

(A) each of 2004, 2005, and 2006, is the average annual percent change (to that year from the previous year) of the per capita amount of prescription drug expenditures (as determined based on the most recent National Health Expenditure projections for the years involved); and

(B) a succeeding year, is the annual percentage increase specified in section 1395w–102(b)(6) of this title for the year.

(5) Factor

The factor under this paragraph for a month—

(A) in 2006 is 90 percent;
(B) in 2007 is 88⅓ percent;
(C) in 2008 is 86⅔ percent;
(D) in 2009 is 85 percent;
(E) in 2010 is 83⅓ percent;
(F) in 2011 is 81⅔ percent;
(G) in 2012 is 80 percent;
(H) in 2013 is 78⅓ percent;
(I) in 2014 is 76⅔ percent; or
(J) after December 2014, is 75 percent.

(6) Full-benefit dual eligible individual defined

(A) In general

For purposes of this section, the term ''full-benefit dual eligible individual'' means for a State for a month an individual who—

(i) has coverage for the month for covered part D drugs under a prescription drug plan under part D of subchapter XVIII of this chapter, or under an MA–PD plan under part C of such subchapter; and

(ii) is determined eligible by the State for medical assistance for full benefits under this subchapter for such month under section 1396a(a)(10)(A) or 1396a(a)(10)(C) of this title, by reason of section 1396a(f) of this title, or under any other category of eligibility for medical assistance for full benefits under this subchapter, as determined by the Secretary.

(B) Treatment of medically needy and other individuals required to spend down

In applying subparagraph (A) in the case of an individual determined to be eligible by the State for medical assistance under section 1396a(a)(10)(C) of this title or by reason of section 1396a(f) of this title, the individual shall be treated as meeting the requirement of subparagraph (A)(ii) for any month if such medical assistance is provided for in any part of the month.

(d) Coordination of prescription drug benefits

(1) Medicare as primary payor

In the case of a part D eligible individual (as defined in section 1395w–101(a)(3)(A) of this title) who is described in subsection (c)(6)(A)(ii) of this section, notwithstanding any other provision of this subchapter, medical assistance is not available under this subchapter for such drugs (or for any cost-sharing respecting such drugs), and the rules under this subchapter relating to the provision of medical assistance for such drugs shall not apply. The provision of benefits with respect to such drugs shall not be considered as the provision of care or services under the plan under this subchapter. No payment may be made under section 1396b(a) of this title for prescribed drugs for which medical assistance is not available pursuant to this paragraph.

(2) Coverage of certain excludable drugs

In the case of medical assistance under this subchapter with respect to a covered outpatient drug (other than a covered part D drug) furnished to an individual who is enrolled in a prescription drug plan under part D of subchapter XVIII of this chapter or an MA–PD plan under part C of such subchapter, the State may elect to provide such medical assistance in the manner otherwise provided in the case of individuals who are not full-benefit dual eligible individuals or through an arrangement with such plan.

(e) Treatment of territories

(1) In general

In the case of a State, other than the 50 States and the District of Columbia—

(A) the previous provisions of this section shall not apply to residents of such State; and

(B) if the State establishes and submits to the Secretary a plan described in paragraph (2) (for providing medical assistance with respect to the provision of prescription drugs to part D eligible individuals), the amount otherwise determined under section 1308(f) of this title (as increased under section 1308(g) of this title) for the State shall be increased by the amount for the fiscal period specified in paragraph (3).

(2) Plan

The Secretary shall determine that a plan is described in this paragraph if the plan—

(A) provides medical assistance with respect to the provision of covered part D drugs (as defined in section 1395w–102(e) of this title) to low-income part D eligible individuals;

(B) provides assurances that additional amounts received by the State that are attributable to the operation of this subsection shall be used only for such assistance and related administrative expenses and that no more than 10 percent of the amount specified in paragraph (3)(A) for the State for any fiscal period shall be used for such administrative expenses; and

(C) meets such other criteria as the Secretary may establish.

(3) Increased amount

(A) In general

The amount specified in this paragraph for a State for a year is equal to the product of—

(i) the aggregate amount specified in subparagraph (B); and

(ii) the ratio (as estimated by the Secretary) of—

(I) the number of individuals who are entitled to benefits under part A[2] or enrolled under part B[2] and who reside in the State (as determined by the Secretary based on the most recent available data before the beginning of the year); to

(II) the sum of such numbers for all States that submit a plan described in paragraph (2).

(B) Aggregate amount

The aggregate amount specified in this subparagraph for—

(i) the last 3 quarters of fiscal year 2006, is equal to $28,125,000;

(ii) fiscal year 2007, is equal to $37,500,000; or

(iii) a subsequent year, is equal to the aggregate amount specified in this subparagraph for the previous year increased by annual percentage increase specified in section 1395w–102(b)(6) of this title for the year involved.

(4) Report

The Secretary shall submit to Congress a report on the application of this subsection and may include in the report such recommendations as the Secretary deems appropriate.

(Aug. 14, 1935, ch. 531, title XIX, § 1935, as added and amended Pub. L. 108–173, title I, § 103(a)(2)(B), (b)–(d)(1), Dec. 8, 2003, 117 Stat. 2154–2158; Pub. L. 109–91, title I, § 104(c), Oct. 20, 2005, 119 Stat. 2093.)

REFERENCES IN TEXT

Part D of subchapter XVIII of this chapter, referred to in subsecs. (a)(2)(C), (c)(6)(A)(i), and (d)(2), is classified to section 1395w–101 et seq. of this title.

No act with the title Federal Claims Collection Act of 1996, referred to in subsec. (c)(1)(C), has been enacted. However, Pub. L. 89–508, July 19, 1966, 80 Stat. 308, as amended, was known as the Federal Claims Collection Act of 1966. Sections 2, 3, and 5 of Pub. L. 89–508, which enacted sections 951, 952, and 954, respectively, of former Title 31, Money and Finance, were repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 877, the first section of which enacted Title 31, Money and Finance. For disposition of sections of former Title 31 into revised Title 31, see Table preceding section 101 of Title 31. For complete classification of Pub. L. 89–508 to the Code, see Tables.

Part C of subchapter XVIII of this chapter, referred to in subsecs. (c)(6)(A)(i) and (d)(2), is classified to section 1395w–21 et seq. of this title.

Parts A and B, referred to in subsec. (e)(3)(A)(ii)(I), probably means parts A and B of subchapter XVIII of this chapter. This subchapter does not contain parts.

PRIOR PROVISIONS

A prior section 1935 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2005—Subsec. (c)(3)(B)(ii)(II). Pub. L. 109–91 inserted ‘‘, including drugs described in subparagraph (K) of section 1396r–8(d)(2) of this title’’ after ‘‘section 1395w–102(e) of this title’’.

2003—Subsec. (a). Pub. L. 108–173, § 103(d)(1)(A), inserted ‘‘subject to subsection (e) of this section’’ after ‘‘section 1396b(a) of this title’’ in introductory provisions.

Subsec. (c). Pub. L. 108–173, § 103(b), added subsec. (c).

Subsec. (c)(1)(C). Pub. L. 108–173, § 103(d)(1)(B), which directed the amendment of subsec. (c)(1) by inserting ‘‘subject to subsection (e) of this section’’ after ‘‘section 1396b(a)(1) of this title’’, was executed by making the insertion after ‘‘section 1396b(a) of this title’’ in subpar. (C) to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 108–173, § 103(c), added subsec. (d).

Subsec. (e). Pub. L. 108–173, § 103(d)(1)(C), added subsec. (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–91 applicable to drugs dispensed on or after Jan. 1, 2006, see section 104(d) of Pub. L. 109–91, set out as a note under section 1396b of this title.

§ 1396u–6. Medicaid Integrity Program

(a) In general

There is hereby established the Medicaid Integrity Program (in this section referred to as the ‘‘Program’’) under which the Secretary shall promote the integrity of the program under this subchapter by entering into contracts in accordance with this section with eligible entities to carry out the activities described in subsection (b).

(b) Activities described

Activities described in this subsection are as follows:

(1) Review of the actions of individuals or entities furnishing items or services (whether on a fee-for-service, risk, or other basis) for which payment may be made under a State plan approved under this subchapter (or under any waiver of such plan approved under section 1315 of this title) to determine whether fraud, waste, or abuse has occurred, is likely to occur, or whether such actions have any potential for resulting in an expenditure of funds under this subchapter in a manner which is not intended under the provisions of this subchapter.

(2) Audit of claims for payment for items or services furnished, or administrative services rendered, under a State plan under this subchapter, including—

(A) cost reports;

(B) consulting contracts; and

(C) risk contracts under section 1396b(m) of this title.

(3) Identification of overpayments to individuals or entities receiving Federal funds under this subchapter.

(4) Education of providers of services, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care.

(c) Eligible entity and contracting requirements

(1) In general

An entity is eligible to enter into a contract under the Program to carry out any of the activities described in subsection (b) if the entity satisfies the requirements of paragraphs (2) and (3).

[2] See References in Text note below.

(2) Eligibility requirements

The requirements of this paragraph are the following:

(A) The entity has demonstrated capability to carry out the activities described in subsection (b).

(B) In carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to this subchapter and in other cases arising out of such activities.

(C) The entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

(D) The entity meets such other requirements as the Secretary may impose.

(3) Contracting requirements

The entity has contracted with the Secretary in accordance with such procedures as the Secretary shall by regulation establish, except that such procedures shall include the following:

(A) Procedures for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.

(B) Competitive procedures to be used—

(i) when entering into new contracts under this section;

(ii) when entering into contracts that may result in the elimination of responsibilities under section 202(b) of the Health Insurance Portability and Accountability Act of 1996; and

(iii) at any other time considered appropriate by the Secretary.

(C) Procedures under which a contract under this section may be renewed without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

The Secretary may enter into such contracts without regard to final rules having been promulgated.

(4) Limitation on contractor liability

The Secretary shall by regulation provide for the limitation of a contractor's liability for actions taken to carry out a contract under the Program, and such regulation shall, to the extent the Secretary finds appropriate, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1320c–6 of this title.

(d) Comprehensive plan for program integrity

(1) 5-year plan

With respect to the 5-fiscal year period beginning with fiscal year 2006, and each such 5-fiscal year period that begins thereafter, the Secretary shall establish a comprehensive plan for ensuring the integrity of the program established under this subchapter by combatting fraud, waste, and abuse.

(2) Consultation

Each 5-fiscal year plan established under paragraph (1) shall be developed by the Secretary in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, the Comptroller General of the United States, the Inspector General of the Department of Health and Human Services, and State officials with responsibility for controlling provider fraud and abuse under State plans under this subchapter.

(e) Appropriation

(1) In general

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to carry out the Medicaid Integrity Program under this section, without further appropriation—

(A) for fiscal year 2006, $5,000,000;

(B) for each of fiscal years 2007 and 2008, $50,000,000; and

(C) for each fiscal year thereafter, $75,000,000.

(2) Availability

Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

(3) Increase in cms staffing devoted to protecting Medicaid program integrity

From the amounts appropriated under paragraph (1), the Secretary shall increase by 100 the number of full-time equivalent employees whose duties consist solely of protecting the integrity of the Medicaid program established under this section by providing effective support and assistance to States to combat provider fraud and abuse.

(4) Annual report

Not later than 180 days after the end of each fiscal year (beginning with fiscal year 2006), the Secretary shall submit a report to Congress which identifies—

(A) the use of funds appropriated pursuant to paragraph (1); and

(B) the effectiveness of the use of such funds.

(Aug. 14, 1935, ch. 531, title XIX, § 1936, as added Pub. L. 109–171, title VI, § 6034(a)(2), Feb. 8, 2006, 120 Stat. 74.)

REFERENCES IN TEXT

Section 202(b) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (c)(3)(B)(ii), is section 202(b) of title II of Pub. L. 104–191, Aug. 21, 1996, 110 Stat. 1998, which amended sections 1395h and 1395u of this title.

PRIOR PROVISIONS

A prior section 1936 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

§ 1396u–7. State flexibility in benefit packages

(a) State option of providing benchmark benefits

(1) Authority

(A) In general

Notwithstanding any other provision of this subchapter, a State, at its option as a

State plan amendment, may provide for medical assistance under this subchapter to individuals within one or more groups of individuals specified by the State through enrollment in coverage that provides—

(i) benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2); and

(ii) for any child under 19 years of age who is covered under the State plan under section 1396a(a)(10)(A) of this title, wrap-around benefits to the benchmark coverage or benchmark equivalent coverage consisting of early and periodic screening, diagnostic, and treatment services defined in section 1396d(r) of this title.

(B) Limitation

The State may only exercise the option under subparagraph (A) for an individual eligible under an eligibility category that had been established under the State plan on or before February 8, 2006.

(C) Option of wrap-around benefits

In the case of coverage described in subparagraph (A), a State, at its option, may provide such wrap-around or additional benefits as the State may specify.

(D) Treatment as medical assistance

Payment of premiums for such coverage under this subsection shall be treated as payment of other insurance premiums described in the third sentence of section 1396d(a) of this title.

(2) Application

(A) In general

Except as provided in subparagraph (B), a State may require that a full-benefit eligible individual (as defined in subparagraph (C)) within a group obtain benefits under this subchapter through enrollment in coverage described in paragraph (1)(A). A State may apply the previous sentence to individuals within 1 or more groups of such individuals.

(B) Limitation on application

A State may not require under subparagraph (A) an individual to obtain benefits through enrollment described in paragraph (1)(A) if the individual is within one of the following categories of individuals:

(i) Mandatory pregnant women

The individual is a pregnant woman who is required to be covered under the State plan under section 1396a(a)(10)(A)(i) of this title.

(ii) Blind or disabled individuals

The individual qualifies for medical assistance under the State plan on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the individual is eligible for supplemental security income benefits under subchapter XVI on the basis of being blind or disabled and including an individual who is eligible for medical assistance on the basis of section 1396a(e)(3) of this title.

(iii) Dual eligibles

The individual is entitled to benefits under any part of subchapter XVIII.

(iv) Terminally ill hospice patients

The individual is terminally ill and is receiving benefits for hospice care under this subchapter.

(v) Eligible on basis of institutionalization

The individual is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

(vi) Medically frail and special medical needs individuals

The individual is medically frail or otherwise an individual with special medical needs (as identified in accordance with regulations of the Secretary).

(vii) Beneficiaries qualifying for long-term care services

The individual qualifies based on medical condition for medical assistance for long-term care services described in section 1396p(c)(1)(C) of this title.

(viii) Children in foster care receiving child welfare services and children receiving foster care or adoption assistance

The individual is an individual with respect to whom aid or assistance is made available under part B of subchapter IV to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of such subchapter, without regard to age.

(ix) TANF and section 1396u–1 parents

The individual qualifies for medical assistance on the basis of eligibility to receive assistance under a State plan funded under part A of subchapter IV (as in effect on or after the welfare reform effective date defined in section 1396u–1(i) of this title).

(x) Women in the breast or cervical cancer program

The individual is a woman who is receiving medical assistance by virtue of the application of sections 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa) of this title.

(xi) Limited services beneficiaries

The individual—

(I) qualifies for medical assistance on the basis of section 1396a(a)(10)(A)(ii)(XII) of this title; or

(II) is not a qualified alien (as defined in section 1641 of title 8) and receives care and services necessary for the treatment of an emergency medical condition

in accordance with section 1396b(v) of this title.

(C) Full-benefit eligible individuals

(i) In general

For purposes of this paragraph, subject to clause (ii), the term ''full-benefit eligible individual'' means for a State for a month an individual who is determined eligible by the State for medical assistance for all services defined in section 1396d(a) of this title which are covered under the State plan under this subchapter for such month under section 1396a(a)(10)(A) of this title or under any other category of eligibility for medical assistance for all such services under this subchapter, as determined by the Secretary.

(ii) Exclusion of medically needy and spend-down populations

Such term shall not include an individual determined to be eligible by the State for medical assistance under section 1396a(a)(10)(C) of this title or by reason of section 1396a(f) of this title or otherwise eligible based on a reduction of income based on costs incurred for medical or other remedial care.

(b) Benchmark benefit packages

(1) In general

For purposes of subsection (a)(1), each of the following coverages shall be considered to be benchmark coverage:

(A) FEHBP-equivalent health insurance coverage

The standard Blue Cross/Blue Shield preferred provider option service benefit plan, described in and offered under section 8903(1) of title 5.

(B) State employee coverage

A health benefits coverage plan that is offered and generally available to State employees in the State involved.

(C) Coverage offered through HMO

The health insurance coverage plan that—

(i) is offered by a health maintenance organization (as defined in section 300gg–91(b)(3) of this title), and

(ii) has the largest insured commercial, non-medicaid enrollment of covered lives of such coverage plans offered by such a health maintenance organization in the State involved.

(D) Secretary-approved coverage

Any other health benefits coverage that the Secretary determines, upon application by a State, provides appropriate coverage for the population proposed to be provided such coverage.

(2) Benchmark-equivalent coverage

For purposes of subsection (a)(1), coverage that meets the following requirement shall be considered to be benchmark-equivalent coverage:

(A) Inclusion of basic services

The coverage includes benefits for items and services within each of the following categories of basic services:

(i) Inpatient and outpatient hospital services.

(ii) Physicians' surgical and medical services.

(iii) Laboratory and x-ray services.

(iv) Well-baby and well-child care, including age-appropriate immunizations.

(v) Other appropriate preventive services, as designated by the Secretary.

(B) Aggregate actuarial value equivalent to benchmark package

The coverage has an aggregate actuarial value that is at least actuarially equivalent to one of the benchmark benefit packages described in paragraph (1).

(C) Substantial actuarial value for additional services included in benchmark package

With respect to each of the following categories of additional services for which coverage is provided under the benchmark benefit package used under subparagraph (B), the coverage has an actuarial value that is equal to at least 75 percent of the actuarial value of the coverage of that category of services in such package:

(i) Coverage of prescription drugs.

(ii) Mental health services.

(iii) Vision services.

(iv) Hearing services.

(3) Determination of actuarial value

The actuarial value of coverage of benchmark benefit packages shall be set forth in an actuarial opinion in an actuarial report that has been prepared—

(A) by an individual who is a member of the American Academy of Actuaries;

(B) using generally accepted actuarial principles and methodologies;

(C) using a standardized set of utilization and price factors;

(D) using a standardized population that is representative of the population involved;

(E) applying the same principles and factors in comparing the value of different coverage (or categories of services);

(F) without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used; and

(G) taking into account the ability of a State to reduce benefits by taking into account the increase in actuarial value of benefits coverage offered under this subchapter that results from the limitations on cost sharing under such coverage.

The actuary preparing the opinion shall select and specify in the memorandum the standardized set and population to be used under subparagraphs (C) and (D).

(4) Coverage of rural health clinic and FQHC services

Notwithstanding the previous provisions of this section, a State may not provide for medical assistance through enrollment of an individual with benchmark coverage or benchmark equivalent coverage under this section unless—

(A) the individual has access, through such coverage or otherwise, to services described

in subparagraphs (B) and (C) of section 1396d(a)(2) of this title; and

(B) payment for such services is made in accordance with the requirements of section 1396a(bb) of this title.

(Aug. 14, 1935, ch. 531, title XIX, § 1937, as added Pub. L. 109–171, title VI, § 6044(a), Feb. 8, 2006, 120 Stat. 88.)

REFERENCES IN TEXT

Parts A, B, and E of subchapter IV, referred to in subsec. (a)(2)(B)(viii), (ix), are classified to sections 601 et seq., 620 et seq., and 670 et seq., respectively, of this title.

PRIOR PROVISIONS

A prior section 1937 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

EFFECTIVE DATE

Pub. L. 109–171, title VI, § 6044(b), Feb. 8, 2006, 120 Stat. 92, provided that: ''The amendment made by subsection (a) [enacting this section] takes effect on March 31, 2006.''

§ 1396u–8. Health opportunity accounts

(a) Authority

(1) In general

Notwithstanding any other provision of this subchapter, the Secretary shall establish a demonstration program under which States may provide under their State plans under this subchapter (including such a plan operating under a statewide waiver under section 1315 of this title) in accordance with this section for the provision of alternative benefits consistent with subsection (c) for eligible population groups in one or more geographic areas of the State specified by the State. An amendment under the previous sentence is referred to in this section as a ''State demonstration program''.

(2) Initial demonstration

(A) In general

The demonstration program under this section shall begin on January 1, 2007. During the first 5 years of such program, the Secretary shall not approve more than 10 States to conduct demonstration programs under this section, with each State demonstration program covering 1 or more geographic areas specified by the State. After such 5-year period—

(i) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that a State demonstration program previously implemented has been unsuccessful, such a demonstration program may be extended or made permanent in the State; and

(ii) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that all State demonstration programs previously implemented were unsuccessful, other States may implement State demonstration programs.

(B) GAO report

(i) In general

Not later than 3 months after the end of the 5-year period described in subparagraph (A), the Comptroller General of the United States shall submit a report to Congress evaluating the demonstration programs conducted under this section during such period.

(ii) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Comptroller General of the United States, $550,000 for the period of fiscal years 2007 through 2010 to carry out clause (i).

(3) Approval

The Secretary shall not approve a State demonstration program under paragraph (1) unless the program includes the following:

(A) Creating patient awareness of the high cost of medical care.

(B) Providing incentives to patients to seek preventive care services.

(C) Reducing inappropriate use of health care services.

(D) Enabling patients to take responsibility for health outcomes.

(E) Providing enrollment counselors and ongoing education activities.

(F) Providing transactions involving health opportunity accounts to be conducted electronically and without cash.

(G) Providing access to negotiated provider payment rates consistent with this section.

Nothing in this section shall be construed as preventing a State demonstration program from providing incentives for patients obtaining appropriate preventive care (as defined for purposes of section 223(c)(2)(C) of the Internal Revenue Code of 1986), such as additional account contributions for an individual demonstrating healthy prevention practices.

(4) No requirement for statewideness

Nothing in this section or any other provision of law shall be construed to require that a State must provide for the implementation of a State demonstration program on a Statewide[1] basis.

(b) Eligible population groups

(1) In general

A State demonstration program under this section shall specify the eligible population groups consistent with paragraphs (2) and (3).

(2) Eligibility limitations during initial demonstration period

During the initial 5 years of the demonstration program under this section, a State demonstration program shall not apply to any of the following individuals:

(A) Individuals who are 65 years of age or older.

(B) Individuals who are disabled, regardless of whether or not their eligibility for

[1] So in original. Probably should not be capitalized.

medical assistance under this subchapter is based on such disability.

(C) Individuals who are eligible for medical assistance under this subchapter only because they are (or were within the previous 60 days) pregnant.

(D) Individuals who have been eligible for medical assistance for a continuous period of less than 3 months.

(3) Additional limitations

A State demonstration program shall not apply to any individual within a category of individuals described in section 1396u–7(a)(2)(B) of this title.

(4) Limitations

(A) State option

This subsection shall not be construed as preventing a State from further limiting eligibility.

(B) On enrollees in Medicaid managed care organizations

Insofar as the State provides for eligibility of individuals who are enrolled in Medicaid managed care organizations, such individuals may participate in the State demonstration program only if the State provides assurances satisfactory to the Secretary that the following conditions are met with respect to any such organization:

(i) In no case may the number of such individuals enrolled in the organization who participate in the program exceed 5 percent of the total number of individuals enrolled in such organization.

(ii) The proportion of enrollees in the organization who so participate is not significantly disproportionate to the proportion of such enrollees in other such organizations who participate.

(iii) The State has provided for an appropriate adjustment in the per capita payments to the organization to account for such participation, taking into account differences in the likely use of health services between enrollees who so participate and enrollees who do not so participate.

(5) Voluntary participation

An eligible individual shall be enrolled in a State demonstration program only if the individual voluntarily enrolls. Except in such hardship cases as the Secretary shall specify, such an enrollment shall be effective for a period of 12 months, but may be extended for additional periods of 12 months each with the consent of the individual.

(6) 1-year moratorium for reenrollment

An eligible individual who, for any reason, is disenrolled from a State demonstration program conducted under this section shall not be permitted to reenroll in such program before the end of the 1-year period that begins on the effective date of such disenrollment.

(c) Alternative benefits

(1) In general

The alternative benefits provided under this section shall consist, consistent with this subsection, of at least—

(A) coverage for medical expenses in a year for items and services for which benefits are otherwise provided under this subchapter after an annual deductible described in paragraph (2) has been met; and

(B) contribution into a health opportunity account.

Nothing in subparagraph (A) shall be construed as preventing a State from providing for coverage of preventive care (referred to in subsection (a)(3)) within the alternative benefits without regard to the annual deductible.

(2) Annual deductible

The amount of the annual deductible described in paragraph (1)(A) shall be at least 100 percent, but no more than 110 percent, of the annualized amount of contributions to the health opportunity account under subsection (d)(2)(A)(i), determined without regard to any limitation described in subsection (d)(2)(C)(i)(II).

(3) Access to negotiated provider payment rates

(A) Fee-for-service enrollees

In the case of an individual who is participating in a State demonstration program and who is not enrolled with a Medicaid managed care organization, the State shall provide that the individual may obtain demonstration program Medicaid services from—

(i) any participating provider under this subchapter at the same payment rates that would be applicable to such services if the deductible described in paragraph (1)(A) was not applicable; or

(ii) any other provider at payment rates that do not exceed 125 percent of the payment rate that would be applicable to such services furnished by a participating provider under this subchapter if the deductible described in paragraph (1)(A) was not applicable.

(B) Treatment under medicaid managed care plans

In the case of an individual who is participating in a State demonstration program and is enrolled with a Medicaid managed care organization, the State shall enter into an arrangement with the organization under which the individual may obtain demonstration program Medicaid services from any provider described in clause (ii) of subparagraph (A) at payment rates that do not exceed the payment rates that may be imposed under that clause.

(C) Computation

The payment rates described in subparagraphs (A) and (B) shall be computed without regard to any cost sharing that would be otherwise applicable under sections 1396*o* and 1396*o*–1 of this title.

(D) Definitions

For purposes of this paragraph:

(i) The term ''demonstration program Medicaid services'' means, with respect to an individual participating in a State demonstration program, services for which the

individual would be provided medical assistance under this subchapter but for the application of the deductible described in paragraph (1)(A).

(ii) The term ''participating provider'' means—

(I) with respect to an individual described in subparagraph (A), a health care provider that has entered into a participation agreement with the State for the provision of services to individuals entitled to benefits under the State plan; or

(II) with respect to an individual described in subparagraph (B) who is enrolled in a Medicaid managed care organization, a health care provider that has entered into an arrangement for the provision of services to enrollees of the organization under this subchapter.

(4) No effect on subsequent benefits

Except as provided under paragraphs (1) and (2), alternative benefits for an eligible individual shall consist of the benefits otherwise provided to the individual, including cost sharing relating to such benefits.

(5) Overriding cost sharing and comparability requirements for alternative benefits

The provisions of this subchapter relating to cost sharing for benefits (including sections 1396*o* and 1396*o*–1 of this title) shall not apply with respect to benefits to which the annual deductible under paragraph (1)(A) applies. The provisions of section 1396a(a)(10)(B) of this title (relating to comparability) shall not apply with respect to the provision of alternative benefits (as described in this subsection).

(6) Treatment as medical assistance

Subject to subparagraphs (D) and (E) of subsection (d)(2), payments for alternative benefits under this section (including contributions into a health opportunity account) shall be treated as medical assistance for purposes of section 1396b(a) of this title.

(7) Use of tiered deductible and cost sharing

(A) In general

A State—

(i) may vary the amount of the annual deductible applied under paragraph (1)(A) based on the income of the family involved so long as it does not favor families with higher income over those with lower income; and

(ii) may vary the amount of the maximum out-of-pocket cost sharing (as defined in subparagraph (B)) based on the income of the family involved so long as it does not favor families with higher income over those with lower income.

(B) Maximum out-of-pocket cost sharing

For purposes of subparagraph (A)(ii), the term ''maximum out-of-pocket cost sharing'' means, for an individual or family, the amount by which the annual deductible level applied under paragraph (1)(A) to the individual or family exceeds the balance in the health opportunity account for the individual or family.

(8) Contributions by employers

Nothing in this section shall be construed as preventing an employer from providing health benefits coverage consisting of the coverage described in paragraph (1)(A) to individuals who are provided alternative benefits under this section.

(d) Health opportunity account

(1) In general

For purposes of this section, the term ''health opportunity account'' means an account that meets the requirements of this subsection.

(2) Contributions

(A) In general

No contribution may be made into a health opportunity account except—

(i) contributions by the State under this subchapter; and

(ii) contributions by other persons and entities, such as charitable organizations, as permitted under section 1396b(w) of this title.

(B) State contribution

A State shall specify the contribution amount that shall be deposited under subparagraph (A)(i) into a health opportunity account.

(C) Limitation on annual State contribution provided and permitting imposition of maximum account balance

(i) In general

A State—

(I) may impose limitations on the maximum contributions that may be deposited under subparagraph (A)(i) into a health opportunity account in a year;

(II) may limit contributions into such an account once the balance in the account reaches a level specified by the State; and

(III) subject to clauses (ii) and (iii) and subparagraph (D)(i), may not provide contributions described in subparagraph (A)(i) to a health opportunity account on behalf of an individual or family to the extent the amount of such contributions (including both State and Federal shares) exceeds, on an annual basis, $2,500 for each individual (or family member) who is an adult and $1,000 for each individual (or family member) who is a child.

(ii) Indexing of dollar limitations

For each year after 2006, the dollar amounts specified in clause (i)(III) shall be annually increased by the Secretary by a percentage that reflects the annual percentage increase in the medical care component of the consumer price index for all urban consumers.

(iii) Budget neutral adjustment

A State may provide for dollar limitations in excess of those specified in clause

(i)(III) (as increased under clause (ii)) for specified individuals if the State provides assurances satisfactory to the Secretary that contributions otherwise made to other individuals will be reduced in a manner so as to provide for aggregate contributions that do not exceed the aggregate contributions that would otherwise be permitted under this subparagraph.

(D) Limitations on Federal matching

(i) State contribution

A State may contribute under subparagraph (A)(i) amounts to a health opportunity account in excess of the limitations provided under subparagraph (C)(i)(III), but no Federal financial participation shall be provided under section 1396b(a) of this title with respect to contributions in excess of such limitations.

(ii) No FFP for private contributions

No Federal financial participation shall be provided under section 1396b(a) of this title with respect to any contributions described in subparagraph (A)(ii) to a health opportunity account.

(E) Application of different matching rates

The Secretary shall provide a method under which, for expenditures made from a health opportunity account for medical care for which the Federal matching rate under section 1396b(a) of this title exceeds the Federal medical assistance percentage, a State may obtain payment under such section at such higher matching rate for such expenditures.

(3) Use

(A) General uses

(i) In general

Subject to the succeeding provisions of this paragraph, amounts in a health opportunity account may be used for payment of such health care expenditures as the State specifies.

(ii) General limitation

Subject to subparagraph (B)(ii), in no case shall such account be used for payment for health care expenditures that are not payment of medical care (as defined by section 213(d) of the Internal Revenue Code of 1986).

(iii) State restrictions

In applying clause (i), a State may restrict payment for—

(I) providers of items and services to providers that are licensed or otherwise authorized under State law to provide the item or service and may deny payment for such a provider on the basis that the provider has been found, whether with respect to this subchapter or any other health benefit program, to have failed to meet quality standards or to have committed 1 or more acts of fraud or abuse; and

(II) items and services insofar as the State finds they are not medically appropriate or necessary.

(iv) Electronic withdrawals

The State demonstration program shall provide for a method whereby withdrawals may be made from the account for such purposes using an electronic system and shall not permit withdrawals from the account in cash.

(B) Maintenance of health opportunity account after becoming ineligible for public benefit

(i) In general

Notwithstanding any other provision of law, if an account holder of a health opportunity account becomes ineligible for benefits under this subchapter because of an increase in income or assets—

(I) no additional contribution shall be made into the account under paragraph (2)(A)(i);

(II) subject to clause (iii), the balance in the account shall be reduced by 25 percent; and

(III) subject to the succeeding provisions of this subparagraph, the account shall remain available to the account holder for 3 years after the date on which the individual becomes ineligible for such benefits for withdrawals under the same terms and conditions as if the account holder remained eligible for such benefits, and such withdrawals shall be treated as medical assistance in accordance with subsection (c)(6).

(ii) Special rules

Withdrawals under this subparagraph from an account—

(I) shall be available for the purchase of health insurance coverage; and

(II) may, subject to clause (iv), be made available (at the option of the State) for such additional expenditures (such as job training and tuition expenses) specified by the State (and approved by the Secretary) as the State may specify.

(iii) Exception from 25 percent savings to Government for private contributions

Clause (i)(II) shall not apply to the portion of the account that is attributable to contributions described in paragraph (2)(A)(ii). For purposes of accounting for such contributions, withdrawals from a health opportunity account shall first be attributed to contributions described in paragraph (2)(A)(i).

(iv) Condition for non-health withdrawals

No withdrawal may be made from an account under clause (ii)(II) unless the account holder has participated in the program under this section for at least 1 year.

(v) No requirement for continuation of coverage

An account holder of a health opportunity account, after becoming ineligible for medical assistance under this subchapter, is not required to purchase high-deductible or other insurance as a condition of maintaining or using the account.

(4) Administration

A State may coordinate administration of health opportunity accounts through the use of a third party administrator and reasonable expenditures for the use of such administrator shall be reimbursable to the State in the same manner as other administrative expenditures under section 1396b(a)(7) of this title.

(5) Treatment

Amounts in, or contributed to, a health opportunity account shall not be counted as income or assets for purposes of determining eligibility for benefits under this subchapter.

(6) Unauthorized withdrawals

A State may establish procedures—

(A) to penalize or remove an individual from the health opportunity account based on nonqualified withdrawals by the individual from such an account; and

(B) to recoup costs that derive from such nonqualified withdrawals.

(Aug. 14, 1935, ch. 531, title XIX, § 1938, as added Pub. L. 109–171, title VI, § 6082(2), Feb. 8, 2006, 120 Stat. 113.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(3) and (d)(3)(A)(ii), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1938 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

§ 1396v. References to laws directly affecting medicaid program

(a) Authority or requirements to cover additional individuals

For provisions of law which make additional individuals eligible for medical assistance under this subchapter, see the following:

(1) AFDC

(A) Section 602(a)(32)[1] of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made).

(B) Section 602(a)(37)[1] of this title (relating to individuals who lose AFDC eligibility due to increased earnings).

(C) Section 606(h)[1] of this title (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

(D) Section 682(e)(6)[1] of this title (relating to certain individuals participating in work supplementation programs).

(2) SSI

(A) Section 1382(e) of this title (relating to treatment of couples sharing an accommodation in a facility).

(B) Section 1382h of this title (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

(C) Section 1383c(b) of this title (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).

(D) Section 1383c(c) of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 402(d) of this title).

(E) Section 1383c(d) of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's insurance benefits under section 602(e) or (f)[1] of this title).

(3) Foster care and adoption assistance

Sections 672(h) and 673(b) of this title (relating to medical assistance for children in foster care and for adopted children).

(4) Refugee assistance

Section 1522(e)(5) of title 8 (relating to medical assistance for certain refugees).

(5) Miscellaneous

(A) Section 230 of Public Law 93–66 (relating to deeming eligible for medical assistance certain essential persons).

(B) Section 231 of Public Law 93–66 (relating to deeming eligible for medical assistance certain persons in medical institutions).

(C) Section 232 of Public Law 93–66 (relating to deeming eligible for medical assistance certain blind and disabled medically indigent persons).

(D) Section 13(c) of Public Law 93–233 (relating to deeming eligible for medical assistance certain individuals receiving mandatory State supplementary payments).

(E) Section 503 of Public Law 94–566 (relating to deeming eligible for medical assistance certain individuals who would be eligible for supplemental security income benefits but for cost-of-living increases in social security benefits).

(F) Section 310(b)(1) of Public Law 96–272 (relating to continuing medicaid eligibility for certain recipients of Department of Veterans Affairs pensions).

(b) Additional State plan requirements

For other provisions of law that establish additional requirements for State plans to be approved under this subchapter, see the following:

(1) Section 1382g of this title (relating to requirement for operation of certain State supplementation programs).

(2) Section 212(a) of Public Law 93–66 (relating to requiring mandatory minimum State supplementation of SSI benefits program).

(Aug. 14, 1935, ch. 531, title XIX, § 1939, formerly § 1920, as added Pub. L. 99–272, title IX, § 9526, Apr. 7, 1986, 100 Stat. 218; renumbered § 1921, Pub. L. 99–509, title IX, § 9407(b), Oct. 21, 1986, 100 Stat. 2058; amended Pub. L. 99–514, title XVIII, § 1895(c)(5), Oct. 22, 1986, 100 Stat. 2936; Pub. L. 99–643, § 6(c), Nov. 10, 1986, 100 Stat. 3578; renumbered § 1922, Pub. L. 100–93, § 5(b), Aug. 18, 1987, 101 Stat. 690; renumbered § 1923 and § 1924 and amended Pub. L. 100–203, title IV, §§ 4112(a)(1), 4118(p)(9), 4211(a)(1), title IX, § 9116(d), Dec. 22, 1987, 101 Stat. 1330–148, 1330–159, 1330–182, 1330–306, as amended Pub. L. 100–360, title IV, § 411(k)(6)(B)(i), (10)(L), (n)(3), July 1, 1988, 102

[1] See References in Text note below.

Stat. 793, 797, as amended Pub. L. 100–485, title VI, §608(d)(28), Oct. 13, 1988, 102 Stat. 2423; renumbered §1925, Pub. L. 100–360, title III, §303(a)(1)(A), July 1, 1988, 102 Stat. 754; renumbered §1926 and amended Pub. L. 100–485, title II, §202(c)(5), title III, §303(a)(1), Oct. 13, 1988, 102 Stat. 2378, 2385; renumbered §1927, Pub. L. 101–239, title VI, §6402(b), Dec. 19, 1989, 103 Stat. 2260; renumbered §1928, Pub. L. 101–508, title IV, §4401(a)(3), Nov. 5, 1990, 104 Stat. 1388–143; Pub. L. 102–54, §13(q)(3)(A)(v), June 13, 1991, 105 Stat. 279; renumbered §1931, Pub. L. 103–66, title XIII, §13631(b)(1), Aug. 10, 1993, 107 Stat. 637; renumbered §1932, Pub. L. 104–193, title I, §114(a)(1), Aug. 22, 1996, 110 Stat. 2177; renumbered §§1933, 1934, and 1935, Pub. L. 105–33, title IV, §§4701(a), 4732(c), 4802(a)(2), Aug. 5, 1997, 111 Stat. 489, 520, 538; renumbered §1936, Pub. L. 108–173, title I, §103(a)(2)(A), Dec. 8, 2003, 117 Stat. 2154; renumbered §1937, renumbered §1938, renumbered §1939, Pub. L. 109–171, title VI, §§6034(a)(1), 6044(a), 6082(1), Feb. 8, 2006, 120 Stat. 74, 88, 113.)

REFERENCES IN TEXT

Section 602 of this title, referred to in subsec. (a)(1)(A), (B), (2)(E), was repealed and a new section 602 enacted by Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains subsecs. (a)(32), (37), (e), or (f).

Section 606 of this title, referred to in subsec. (a)(1)(C), was repealed and a new section 606 enacted by Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (h).

Section 682 of this title, referred to in subsec. (a)(1)(D), was repealed by Pub. L. 104–193, title I, §108(e), Aug. 22, 1996, 110 Stat. 2167.

Sections 230, 231, and 232 of Public Law 93–66, referred to in subsec. (a)(5)(A) to (C), are sections 230, 231, and 232 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 159, 160, as amended, which are set out as notes under section 1396a of this title.

Section 13(c) of Public Law 93–233, referred to in subsec. (a)(5)(D), is section 13(c) of Pub. L. 93–233, Dec. 31, 1973, 87 Stat. 965, which is set out as a note under section 1396a of this title.

Section 503 of Public Law 94–566, referred to in subsec. (a)(5)(E), is section 503 of Pub. L. 94–566, title V, Oct. 20, 1976, 90 Stat. 2685, which is set out as a note under section 1396a of this title.

Section 310(b)(1) of Public Law 96–272, referred to in subsec. (a)(5)(F), is section 310(b)(1) of Pub. L. 96–272, title III, June 17, 1980, 94 Stat. 533, which is set out as a note under section 1396a of this title.

Section 212(a) of Public Law 93–66, referred to in subsec. (b)(2), is section 212(a) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

CODIFICATION

Section was formerly classified to section 1396s of this title prior to renumbering by Pub. L. 103–66.

AMENDMENTS

1991—Subsec. (a)(5)(F). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1988—Subsec. (a)(1). Pub. L. 100–360, §411(k)(10)(L), made technical correction to directory language of Pub. L. 100–203, §4118(p)(9), see 1987 Amendment note below.

Subsec. (a)(1)(D). Pub. L. 100–485, §202(c)(5), substituted ''section 682(e)(6) of this title'' for ''section 614(g) of this title''.

Subsec. (a)(2). Pub. L. 100–360, §411(k)(10)(L), made technical correction to directory language of Pub. L. 100–203, §4118(p)(9), see 1987 Amendment note below.

Subsec. (a)(2)(E). Pub. L. 100–360, §411(n)(3), as added by Pub. L. 100–485, §608(d)(28), amended Pub. L. 100–203, §9116(d), see 1987 Amendment note below.

1987—Subsec. (a)(1). Pub. L. 100–203, §4118(p)(9), as amended by Pub. L. 100–360, §411(k)(10)(L), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) AFDC.—(A) Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made). Section 602(a)(37) of this title (relating to individuals who lose AFDC eligibility due to increased earnings).

''(C) Section 606(h) of this title (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

''(D) Section 614(g) of this title (relating to certain individuals participating in work supplementation programs).''

Subsec. (a)(2). Pub. L. 100–203, §4118(p)(9), as amended by Pub. L. 100–360, §411(k)(10)(L), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2) SSI.—(A) Section 1382h of this title (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

''(B) Section 1383c(b) of this title (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).

''(B)[(C)] Section 1383c of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 402(d) of this title).''

Subsec. (a)(2)(E). Pub. L. 100–203, §9116(d), as amended generally by Pub. L. 100–360, §411(n)(3), as added by Pub. L. 100–485, §608(d)(28), added subpar. (E).

1986—Subsec. (a)(1). Pub. L. 99–514, §1895(c)(5)(A), redesignated subpars. (B) and (C) as (C) and (D), respectively, and inserted at beginning of subpar. (A) ''Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made).''

Subsec. (a)(2). Pub. L. 99–643, which directed amendment of section 1920(a)(2) of the Social Security Act by designating existing provisions as subpar. (A) and adding subpar. (B) relating to section 1383c of this title as it relates to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits, was executed to this section, section 1921 of the Social Security Act, to reflect the probable intent of Congress and the redesignation of section 1920 of the Social Security Act as section 1921 by Pub. L. 99–509.

Pub. L. 99–514, §1895(c)(5)(B), designated existing provisions as subpar. (A) and added subpar. (B) relating to section 1383c(b) of this title as it relates to preservation of benefit status for certain disabled widows and widowers.

Subsec. (a)(3). Pub. L. 99–514, §1895(c)(5)(C), substituted ''Sections 672(h) and 673(b) of this title'' for ''Section 673(b) of this title''.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 202(c)(5) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204 of Pub. L. 100–485, set out as a note under section 671 of this title.

Amendment by section 608(d)(28) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(6)(B)(i), (10)(L), (n)(3) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L.

100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§ 601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u–1(a) of this title.

SUBCHAPTER XX—BLOCK GRANTS TO STATES FOR SOCIAL SERVICES

§ 1397. Purposes; authorization of appropriations

For the purposes of consolidating Federal assistance to States for social services into a single grant, increasing State flexibility in using social service grants, and encouraging each State, as far as practicable under the conditions in that State, to furnish services directed at the goals of—

(1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

(3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families;

(4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and

(5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions,

there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title XX, § 2001, as added Pub. L. 97–35, title XXIII, § 2352(a), Aug. 13, 1981, 95 Stat. 867.)

PRIOR PROVISIONS

A prior section 1397, act Aug. 14, 1935, ch. 531, title XX, § 2001, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2337; amended June 17, 1980, Pub. L. 96–272, title II, § 207(b), 94 Stat. 526, authorized appropriations to carry out former provisions of this subchapter, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

EFFECTIVE DATE

Section 2354 of Pub. L. 97–35 provided that: ''Except as otherwise explicitly provided, the provisions of this subtitle [subtitle C (§§ 2351–2355) of title XXIII of Pub. L. 97–35, see Short Title of 1981 Amendment note set out under section 1305 of this title] and the repeals and amendments made by this subtitle, shall become effective on October 1, 1981.''

STUDY OF STATE SOCIAL SERVICE PROGRAMS; REPORT TO CONGRESS

Section 2355 of Pub. L. 97–35 required Secretary of Health and Human Services to conduct a study to identify criteria and mechanisms which may be useful for States in assessing effectiveness and efficiency of State social service programs carried out with funds made available under this subchapter, such study to include consideration of Federal incentive payments as an option in rewarding States having high performance social service programs, and to report results of such study to Congress within one year after Aug. 13, 1981.

§ 1397a. Payments to States

(a) Amount; covered services

(1) Each State shall be entitled to payment under this subchapter for each fiscal year in an amount equal to its allotment for such fiscal year, to be used by such State for services directed at the goals set forth in section 1397 of this title, subject to the requirements of this subchapter.

(2) For purposes of paragraph (1)—

(A) services which are directed at the goals set forth in section 1397 of this title include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, family planning services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts; and

(B) expenditures for such services may include expenditures for—

(i) administration (including planning and evaluation);

(ii) personnel training and retraining directly related to the provision of those services (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions); and

(iii) conferences or workshops, and training or retraining through grants to nonprofit organizations within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 or to individuals with social services expertise, or through financial assistance to individuals participating in such conferences, workshops, and training or retraining (and this clause shall apply with respect to all persons involved in the delivery of such services).

(b) Funding requirements

The Secretary shall make payments in accordance with section 6503 of title 31 to each State from its allotment for use under this subchapter.

(c) Expenditure of funds

Payments to a State from its allotment for any fiscal year must be expended by the State in such fiscal year or in the succeeding fiscal year.

(d) Transfers of funds

A State may transfer up to 10 percent of its allotment under section 1397b of this title for any fiscal year for its use for that year under other provisions of Federal law providing block grants for support of health services, health promotion and disease prevention activities, or low-income home energy assistance (or any combination of those activities). Amounts allotted to a State under any provisions of Federal law referred to in the preceding sentence and transferred by a State for use in carrying out the purposes of this subchapter shall be treated as if they were paid to the State under this subchapter but shall not affect the computation of the State's allotment under this subchapter. The State shall inform the Secretary of any such transfer of funds.

(e) Use of portion of funds

A State may use a portion of the amounts described in subsection (a) of this section for the purpose of purchasing technical assistance from public or private entities if the State determines that such assistance is required in developing, implementing, or administering programs funded under this subchapter.

(f) Authority to use vouchers

A State may use funds provided under this subchapter to provide vouchers, for services directed at the goals set forth in section 1397 of this title, to families, including—

(1) families who have become ineligible for assistance under a State program funded under part A of subchapter IV of this chapter by reason of a durational limit on the provision of such assistance; and

(2) families denied cash assistance under the State program funded under part A of subchapter IV of this chapter for a child who is born to a member of the family who is—

(A) a recipient of assistance under the program; or

(B) a person who received such assistance at any time during the 10-month period ending with the birth of the child.

(Aug. 14, 1935, ch. 531, title XX, §2002, as added Pub. L. 97–35, title XXIII, §2352(a), Aug. 13, 1981, 95 Stat. 867; amended Pub. L. 98–369, div. B, title VI, §2663(h)(1), July 18, 1984, 98 Stat. 1169; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–193, title IX, §908(b), Aug. 22, 1996, 110 Stat. 2351.)

REFERENCES IN TEXT

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B)(iii), is classified to section 501 of Title 26, Internal Revenue Code.

Part A of subchapter IV of this chapter, referred to in subsec. (f), is classified to section 601 et seq. of this title.

PRIOR PROVISIONS

A prior section 1397a, acts Aug. 14, 1935, ch. 531, title XX, §2002, as added Jan. 4, 1975, Pub. L. 93–647, §2, 88 Stat. 2337; amended Oct. 21, 1975, Pub. L. 94–120, §4(b), 89 Stat. 609; Sept. 7, 1976, Pub. L. 94–401, §§1(a)–(c), 5(a), 90 Stat. 1215, 1218; June 30, 1977, Pub. L. 95–59, §5, 91 Stat. 255; Oct. 25, 1977, Pub. L. 95–142, §§3(d)(2), 8(d), 91 Stat. 1179, 1195; Nov. 6, 1978, Pub. L. 95–600, title VIII, §801(a), 92 Stat. 2944; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695; Jan. 2, 1980, Pub. L. 96–178, §4(a), (c), 93 Stat. 1296, 1297; June 17, 1980, Pub. L. 96–272, title I, §103(e), title II, §§201–204(a), 205(a), 206(e), 207(a), 94 Stat. 521–525; Dec. 5, 1980, Pub. L. 96–499, title X, §1001(a), 94 Stat. 2655, related to payments to States and computation of amounts, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–193 added subsec. (f).

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''section 6503 of title 31'' for ''section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TEMPORARY SUSPENSION OF CHILD DAY CARE SERVICES REQUIREMENTS

Pub. L. 96–499, title X, §1001(b), Dec. 5, 1980, 94 Stat. 2655, provided that the provisions of Pub. L. 93–647, §3(f), Jan. 4, 1975, 88 Stat. 2349, set out as a note below, not apply with respect to child day care services provided after June 30, 1980, and prior to July 1, 1981, which met applicable standards of State and local law.

REIMBURSEMENT OF EXPENDITURES FOR SOCIAL SERVICES PROVIDED BY STATES PRIOR TO OCTOBER 1, 1975; AUTHORIZATION OF APPROPRIATIONS; PROCEDURES APPLICABLE TO PAYMENT OF UNPAID CLAIMS OF STATES

Pub. L. 95–291, June 12, 1978, 92 Stat. 304, authorized appropriations for payments to States in settlement of unpaid claims of States against the United States for reimbursement of expenditures made by States prior to Oct. 1, 1975, for services and administrative costs under a State plan pursuant to specific subchapters of this chapter, provided schedules for payment of a claim asserted prior to the ninety-first day after June 12, 1978, depending on when the claim was asserted, barred other claims and certain claims of the United States for recovery, provided for review of determinations, barred judicial review, and provided for allotment of appropriations for claims.

PAYMENTS TO STATES FOR FISCAL PERIOD BEGINNING JULY 1, 1976, AND ENDING SEPTEMBER 30, 1976, AND FISCAL YEARS ENDING SEPTEMBER 30, 1977, 1978, AND 1979, COMPUTATION AMOUNTS, LIMITATIONS, ETC.

Pub. L. 94–401, §3, Sept. 7, 1976, 90 Stat. 1215, as amended by Pub. L. 95–171, §1(a), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95–600, title VIII, §801(b), Nov. 6, 1978, 92 Stat. 2944; Pub. L. 96–178, §3(b)–(f), Jan. 2, 1980, 93 Stat. 1296, provided for computation of amounts of payments to States under this subchapter for the fiscal period beginning July 1, 1976, and ending Sept. 30, 1976, and fiscal years ending Sept. 30, 1977, 1978, and 1979, limitations on such amounts, and a limit on the total amount of Federal payments made to States in any such fiscal year under this subchapter.

REQUIREMENTS OF CHILD DAY CARE SERVICES

Pub. L. 93–647, §3(f), Jan. 4, 1975, 88 Stat. 2349, which provided for requirements of child day care services, was repealed by Pub. L. 97–35, title XXIII, §2353(s), Aug. 13, 1981, 97 Stat. 874.

§ 1397b. Allotments

(a) Computation of amounts for jurisdictions of Puerto Rico, Guam, etc.

The allotment for any fiscal year to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands shall be an amount which bears the same ratio to the amount specified in subsection (c) of this section as the amount which was specified for allocation to the particular jurisdiction involved for the fiscal year 1981 under section 1397a(a)(2)(C) of this title (as in effect prior to Aug. 13, 1981) bore to $2,900,000,000. The allotment for fiscal year 1989 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(b) Computation of amounts for each State other than jurisdictions of Puerto Rico, Guam, etc.

The allotment for any fiscal year for each State other than the jurisdictions of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands shall be an amount which bears the same ratio to—

(1) the amount specified in subsection (c) of this section, reduced by

(2) the total amount allotted to those jurisdictions for that fiscal year under subsection (a) of this section,

as the population of that State bears to the population of all the States (other than Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands) as determined by the Secretary (on the basis of the most recent data available from the Department of Commerce) and promulgated prior to the first day of the third month of the preceding fiscal year.

(c) Appropriations

The amount specified for purposes of subsections (a) and (b) of this section shall be—

(1) $2,400,000,000 for the fiscal year 1982;

(2) $2,450,000,000 for the fiscal year 1983;

(3) $2,700,000,000 for the fiscal years 1984, 1985, 1986, 1987, and 1989;

(4) $2,750,000,000 for the fiscal year 1988;

(5) $2,800,000,000 for each of the fiscal years 1990 through 1995;

(6) $2,381,000,000 for the fiscal year 1996;

(7) $2,380,000,000 for the fiscal year 1997;

(8) $2,299,000,000 for the fiscal year 1998;

(9) $2,380,000,000 for the fiscal year 1999;

(10) $2,380,000,000 for the fiscal year 2000; and

(11) $1,700,000,000 for the fiscal year 2001 and each fiscal year thereafter.

(Aug. 14, 1935, ch. 531, title XX, § 2003, as added Pub. L. 97–35, title XXIII, § 2352(a), Aug. 13, 1981, 95 Stat. 868; amended Pub. L. 97–248, title I, § 160(b), Sept. 3, 1982, 96 Stat. 400; Pub. L. 98–135, title II, § 204, Oct. 24, 1983, 97 Stat. 861; Pub. L. 99–514, title XVIII, § 1883(e)(1), Oct. 22, 1986, 100 Stat. 2919; Pub. L. 100–203, title IX, §§ 9134(a), 9135(a)(2), Dec. 22, 1987, 101 Stat. 1330–315; Pub. L. 101–239, title VIII, § 8016, Dec. 19, 1989, 103 Stat. 2470; Pub. L. 104–193, title IX, § 908(a), Aug. 22, 1996, 110 Stat. 2350; Pub. L. 105–178, title VIII, § 8401(a), June 9, 1998, 112 Stat. 498; Pub. L. 105–277, div. A, § 101(f) [title II, § 214(a)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–361.)

PRIOR PROVISIONS

A prior section 1397b, act Aug. 14, 1935, ch. 531, title XX, § 2003, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2343; amended Oct. 21, 1975, Pub. L. 94–120, § 4(a), 89 Stat. 609; Oct. 25, 1977, Pub. L. 95–142, § 3(d)(1), 91 Stat. 1179; June 9, 1980, Pub. L. 96–265, title IV, § 403(b), 94 Stat. 462; June 17, 1980, Pub. L. 96–272, title II, § 206(c), (d), 94 Stat. 525; Oct. 19, 1980, Pub. L. 96–473, § 6(*l*), 94 Stat. 2266; Dec. 5, 1980, Pub. L. 96–499, title IX, § 913(e), 94 Stat. 2620, related to State programs for social services assistance, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1998—Subsec. (c)(7). Pub. L. 105–178 added par. (7) and struck out former par. (7) which read as follows: ''$2,380,000,000 for each of the fiscal years 1997 through 2002; and''.

Subsec. (c)(8). Pub. L. 105–277 added par. (8) and struck out former par. (8) which read as follows: ''$2,380,000,000 for the fiscal year 1998;''.

Pub. L. 105–178 added par. (8) and struck out former par. (8) which read as follows: ''$2,800,000,000 for the fiscal year 2003 and each succeeding fiscal year.''

Subsec. (c)(9) to (11). Pub. L. 105–178 added pars. (9) to (11).

1996—Subsec. (c)(5) to (8). Pub. L. 104–193 added pars. (5) to (8) and struck out former par. (5) which read as follows: ''$2,800,000,000 for each fiscal year after fiscal year 1989.''

1989—Subsec. (c)(3). Pub. L. 101–239, § 8016(1), substituted ''1987, and 1989;'' for ''and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and''.

Subsec. (c)(5). Pub. L. 101–239, § 8016(2), (3), added par. (5).

1987—Subsec. (a). Pub. L. 100–203, § 9135(a)(2)(A), inserted at end ''The allotment for fiscal year 1989 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.''

Subsec. (b). Pub. L. 100–203, § 9135(a)(2)(B), inserted ''American Samoa,'' after ''the Virgin Islands,'' in two places.

Subsec. (c)(2). Pub. L. 100–203, § 9134(a)(A), struck out ''and'' after ''1983;''.

Subsec. (c)(3). Pub. L. 100–203, § 9134(a)(B), substituted ''years 1984, 1985, 1986, and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and'' for ''year 1984 and each succeeding fiscal year.''

Subsec. (c)(4). Pub. L. 100–203, § 9134(a)(C), added par. (4).

1986—Subsec. (b). Pub. L. 99–514, § 1883(e)(1)(B), struck out ''(subject to subsection (d) of this section)'' after ''promulgated''.

Subsec. (d). Pub. L. 99–514, § 1883(e)(1)(A), struck out subsec. (d) which read as follows: ''The determination and promulgation required by subsection (b) of this section with respect to the fiscal year 1982 shall be made as soon as possible after August 13, 1981.''

1983—Subsec. (c)(3). Pub. L. 98–135 substituted ''$2,700,000,000 for the fiscal year 1984 and each succeeding fiscal year.'' for ''$2,500,000,000 for the fiscal year 1984;''.

Subsec. (c)(4), (5). Pub. L. 98–135 struck out pars. (4) and (5) which provided, respectively, for an amount of $2,600,000,000 for fiscal year 1985 and $2,700,000,000 for fiscal year 1986 and succeeding fiscal years.

1982—Subsec. (b). Pub. L. 97–248 inserted ''(other than Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands)'' in provisions following cl. (2).

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. A, § 101(f) [title II, § 214(b)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–361, provided that: ''The amendment made by this section [amending this section] takes effect immediately after the amendments made by section 8401 of the Transportation Equity Act for the 21st Century take effect [Pub. L. 105–178].''

Amendment by Pub. L. 105–178 effective Oct. 1, 1998, see section 8401(c) of Pub. L. 105–178, set out as a note under section 604 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9135(a)(2) of Pub. L. 100–203 applicable with respect to fiscal years beginning on or after Oct. 1, 1988, see section 9135(c) of Pub. L. 100–203, set out as a note under section 623 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 1, 1981, see section 160(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

REQUIREMENT THAT ADDITIONAL FUNDS SUPPLEMENT AND NOT SUPPLANT FUNDS AVAILABLE FROM OTHER SOURCES

Section 9134(b) of Pub. L. 100–203 provided that: ''The additional $50,000,000 made available to the States for the fiscal year 1988 pursuant to the amendments made by subsection (a) [amending this section] shall—

''(A) be used only for the purpose of providing additional services under title XX of the Social Security Act [this subchapter]; and

''(B) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated pursuant to such amendments, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to such amendments) for services in accordance with such title, and shall in no case supplant such funds from other sources or reduce the level thereof.''

APPROPRIATIONS

Pub. L. 98–473, title IV, § 401, Oct. 12, 1984, 98 Stat. 2195, provided that:

''(a)(1) Notwithstanding any provision of title XX of the Social Security Act [this subchapter], the amount applicable under section 2003(c)(3) of such Act [subsec. (c)(3) of this section] shall be $2,725,000,000 for fiscal year 1985. Of such amount, $25,000,000 shall be allotted and used in accordance with this section.

''(2) In addition to any other amounts appropriated under this resolution [Pub. L. 98–473] or any Act, there are hereby appropriated $25,000,000 for fiscal year 1985, for carrying out title XX of the Social Security Act, to be used in accordance with the provisions of this section.

''(3) Amounts appropriated under this section shall remain available until September 30, 1985, without regard to section 102 of this resolution.

''(4) Except as otherwise provided in this section, each State's allotment of the additional amounts authorized and appropriated under this section shall be the same proportion of $25,000,000 as such State's proportional allotment of other title XX funds for fiscal year 1985, as determined under section 2003 of the Social Security Act [this section].

''(b) The additional $25,000,000 made available to the States for fiscal year 1985 pursuant to subsection (a) shall—

''(1) be used only for the purpose of providing training and retraining (including training in the prevention of child abuse in child care settings) to providers of licensed or registered child care services, operators and staffs (including those receiving in-service training) of facilities where licensed or registered child care services are provided, State licensing and enforcement officials, and parents;

''(2) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated under this section, be available from other sources (including any amounts available under title XX of the Social Security Act [this subchapter] without regard to this section) for the purpose specified in paragraph (1), and shall in no case supplant such funds from other sources or reduce the level thereof; and

''(3) be separately accounted for in the reports and audits provided for in section 2006 of the Social Security Act [section 1397e of this title].

''(c)(1) In order to provide guidance and assistance to the States in utilizing funds allocated pursuant to title XX of the Social Security Act [this subchapter], not later than 3 months after the date of enactment of this section [Oct. 12, 1984], the Secretary shall draft and distribute to the States for their consideration, a Model Child Care Standards Act containing—

''(A) minimum licensing or registration standards for day care centers, group homes, and family day care homes regarding matters including—

''(i) the training, development, supervision, and evaluation of staff;

''(ii) staff qualification requirements, by job classification;

''(iii) staff-child ratios;

''(iv) probation periods for new staff;

''(v) employment history checks for staff; and

''(vi) parent visitation; and

''(2)(A) Any State receiving an allotment under such title from the funds made available as a result of subsection (a) shall have in effect, not later than September 30, 1985—

''(i) procedures, established by State law or regulation, to provide for employment history and background checks; and

''(ii) provisions of State law, enacted in accordance with the provisions of Public Law 92–544 (86 Stat. 115) [86 Stat. 1115, 28 U.S.C. 534 note] requiring nationwide criminal record checks

for all operators, staff or employees, or prospective operators, staff or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), juvenile detention, correction or treatment facilities, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or programs.

''(B) In the case of any State not meeting the requirements of subparagraph (A) by September 30, 1985, such State's allotment for fiscal year 1986 or 1987 shall be reduced in the aggregate by an amount equal to one-half of the amount by which such State's allotment under such title was increased for fiscal year 1985 as a result of subsection (a).

''(d) The determination and promulgation required by section 2003(b) of the Social Security Act [subsec. (b) of this section] with respect to the fiscal year 1985 (to take into account the preceding provisions of this section) shall be made as soon as possible after the date of the enactment of this Act [Oct. 12, 1984].''

§ 1397c. State reporting requirements

Prior to expenditure by a State of payments made to it under section 1397a of this title for any fiscal year, the State shall report on the intended use of the payments the State is to receive under this subchapter, including information on the types of activities to be supported and the categories or characteristics of individuals to be served. The report shall be transmitted to the Secretary and made public within the State in such manner as to facilitate comment by any person (including any Federal or other

public agency) during development of the report and after its completion. The report shall be revised throughout the year as may be necessary to reflect substantial changes in the activities assisted under this subchapter, and any revision shall be subject to the requirements of the previous sentence.

(Aug. 14, 1935, ch. 531, title XX, § 2004, as added Pub. L. 97–35, title XXIII, § 2352(a), Aug. 13, 1981, 95 Stat. 869.)

PRIOR PROVISIONS

A prior section 1397c, act Aug. 14, 1935, ch. 531, title XX, § 2004, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2346; amended June 17, 1980, Pub. L. 96–272, title II, § 206(a), (b), 94 Stat. 525, related to services program planning, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

§ 1397d. Limitation on use of grants; waiver

(a) Except as provided in subsection (b) of this section, grants made under this subchapter may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this subchapter—

(1) for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;

(2) for the provision of cash payments for costs of subsistence or for the provision of room and board (other than costs of subsistence during rehabilitation, room and board provided for a short term as an integral but subordinate part of a social service, or temporary emergency shelter provided as a protective service);

(3) for payment of the wages of any individual as a social service (other than payment of the wages of welfare recipients employed in the provision of child day care services);

(4) for the provision of medical care (other than family planning services, rehabilitation services, or initial detoxification of an alcoholic or drug dependent individual) unless it is an integral but subordinate part of a social service for which grants may be used under this subchapter;

(5) for social services (except services to an alcoholic or drug dependent individual or rehabilitation services) provided in and by employees of any hospital, skilled nursing facility, intermediate care facility, or prison, to any individual living in such institution;

(6) for the provision of any educational service which the State makes generally available to its residents without cost and without regard to their income;

(7) for any child day care services unless such services meet applicable standards of State and local law;

(8) for the provision of cash payments as a service (except as otherwise provided in this section);

(9) for payment for any item or service (other than an emergency item or service) furnished—

(A) by an individual or entity during the period when such individual or entity is excluded under this subchapter or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title, or

(B) at the medical direction or on the prescription of a physician during the period when the physician is excluded under this subchapter or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person); or

(10) in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(b) The Secretary may waive the limitation contained in subsection (a)(1) and (4) of this section upon the State's request for such a waiver if he finds that the request describes extraordinary circumstances to justify the waiver and that permitting the waiver will contribute to the State's ability to carry out the purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title XX, § 2005, as added Pub. L. 97–35, title XXIII, § 2352(a), Aug. 13, 1981, 95 Stat. 869; amended Pub. L. 100–93, § 8(i), Aug. 18, 1987, 101 Stat. 695; Pub. L. 100–203, title IV, § 4118(e)(13), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(k)(10)(D), July 1, 1988, 102 Stat. 796; Pub. L. 100–485, title VI, § 608(d)(26)(K)(ii), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 105–12, § 9(c), Apr. 30, 1997, 111 Stat. 27.)

REFERENCES IN TEXT

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (a)(10), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

PRIOR PROVISIONS

A prior section 1397d, act Aug. 14, 1935, ch. 531, title XX, § 2005, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2347; amended June 17, 1980, Pub. L. 96–272, title II, § 206(d), 94 Stat. 525, related to effective date of implementing regulations, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1997—Subsec. (a)(10). Pub. L. 105–12 added par. (10).

1988—Subsec. (a)(9)(A), (B). Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(ii), added Pub. L. 100–203, § 4118(e)(13), see 1987 Amendment note below.

1987—Subsec. (a)(9). Pub. L. 100–93 added par. (9).

Subsec. (a)(9)(A), (B). Pub. L. 100–203, § 4118(e)(13), as added by Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(ii), substituted "under this subchapter or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title" for "pursuant to section 1320a–7 of this title or section 1320a–7a of this title from participation in the program under this subchapter".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as con-

tracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

§ 1397e. Administrative and fiscal accountability

(a) Reporting requirements; form, contents, etc.

Each State shall prepare reports on its activities carried out with funds made available (or transferred for use) under this subchapter. Reports shall be prepared annually, covering the most recently completed fiscal year, and shall be in such form and contain such information (including but not limited to the information specified in subsection (c) of this section) as the State finds necessary to provide an accurate description of such activities, to secure a complete record of the purposes for which funds were spent, and to determine the extent to which funds were spent in a manner consistent with the reports required by section 1397c of this title. The State shall make copies of the reports required by this section available for public inspection within the State and shall transmit a copy to the Secretary. Copies shall also be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(b) Audits; implementation, etc.

Each State shall, not less often than every two years, audit its expenditures from amounts received (or transferred for use) under this subchapter. Such State audits shall be conducted by an entity independent of any agency administering activities funded under this subchapter, in accordance with generally accepted auditing principles. Within 30 days following the completion of each audit, the State shall submit a copy of that audit to the legislature of the State and to the Secretary. Each State shall repay to the United States amounts ultimately found not to have been expended in accordance with this subchapter, or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this subchapter.

(c) State reports on expenditure and use of social services funds

Each report prepared and transmitted by a State under subsection (a) of this section shall set forth (with respect to the fiscal year covered by the report)—

(1) the number of individuals who received services paid for in whole or in part with funds made available under this subchapter, showing separately the number of children and the number of adults who received such services, and broken down in each case to reflect the types of services and circumstances involved;

(2) the amount spent in providing each such type of service, showing separately for each type of service the amount spent per child recipient and the amount spent per adult recipient;

(3) the criteria applied in determining eligibility for services (such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs); and

(4) the methods by which services were provided, showing separately the services provided by public agencies and those provided by private agencies, and broken down in each case to reflect the types of services and circumstances involved.

The Secretary shall establish uniform definitions of services for use by the States in preparing the information required by this subsection, and make such other provision as may be necessary or appropriate to assure that compliance with the requirements of this subsection will not be unduly burdensome on the States.

(d) Additional accounting requirements

For other provisions requiring States to account for Federal grants, see section 6503 of title 31.

(Aug. 14, 1935, ch. 531, title XX, § 2006, as added Pub. L. 97–35, title XXIII, § 2352(a), Aug. 13, 1981, 95 Stat. 870; amended Pub. L. 98–369, div. B, title VI, § 2663(h)(2), July 18, 1984, 98 Stat. 1169; Pub. L. 100–485, title VI, § 607, Oct. 13, 1988, 102 Stat. 2410.)

PRIOR PROVISIONS

A prior section 1397e, act Aug. 14, 1935, ch. 531, title XX, § 2006, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2347, related to program evaluation and assistance, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

A prior section 1397e–1, act Aug. 14, 1935, ch. 531, title XX, § 2007, as added Jan. 2, 1980, Pub. L. 96–178, § 4(b), 93 Stat. 1296, related to child day care services, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35. See section 1397f of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–485, § 607(1), substituted ''Reports shall be prepared annually, covering the most recently completed fiscal year, and shall be in such form and contain such information (including but not limited to the information specified in subsection (c) of this section)'' for ''Reports shall be in such form, contain such information, and be of such frequency (but not less often than every two years)'' in second sentence.

Subsecs. (c), (d). Pub. L. 100–485, § 607(3), added subsec. (c) and redesignated former subsec. (c) as (d).

1984—Subsec. (c). Pub. L. 98–369 substituted ''section 6503 of title 31'' for ''section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 1397f. Additional grants

(a) Entitlement

(1) In general

In addition to any payment under section 1397a of this title, each State shall be entitled to—

(A) 2 grants under this section for each qualified empowerment zone in the State; and

(B) 1 grant under this section for each qualified enterprise community in the State.

(2) Amount of grants

(A) Empowerment grants

The amount of each grant to a State under this section for a qualified empowerment zone shall be—

(i) if the zone is designated in an urban area, $50,000,000, multiplied by that proportion of the population of the zone that resides in the State; or

(ii) if the zone is designated in a rural area, $20,000,000, multiplied by such proportion.

(B) Enterprise grants

The amount of the grant to a State under this section for a qualified enterprise community shall be 1/95 of $280,000,000, multiplied by that proportion of the population of the community that resides in the State.

(C) Population determinations

The Secretary shall make population determinations for purposes of this paragraph based on the most recent decennial census data available.

(3) Timing of grants

(A) Qualified empowerment zones

With respect to each qualified empowerment zone, the Secretary shall make—

(i) 1 grant under this section to each State in which the zone lies, on the date of the designation of the zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986; and

(ii) 1 grant under this section to each such State, on the 1st day of the 1st fiscal year that begins after the date of the designation.

(B) Qualified enterprise communities

With respect to each qualified enterprise community, the Secretary shall make 1 grant under this section to each State in which the community lies, on the date of the designation of the community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

(4) Funding

$1,000,000,000 shall be made available to the Secretary for grants under this section.

(b) Program options

Notwithstanding section 1397d(a) of this title:

(1) In order to prevent and remedy the neglect and abuse of children, a State may use amounts paid under this section to make grants to, or enter into contracts with, entities to provide residential or nonresidential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women and mothers, and their children.

(2) In order to assist disadvantaged adults and youths in achieving and maintaining self-sufficiency, a State may use amounts paid under this section to make grants to, or enter into contracts with—

(A) organizations operated for profit or not for profit, for the purpose of training and employing disadvantaged adults and youths in construction, rehabilitation, or improvement of affordable housing, public infrastructure, and community facilities; and

(B) nonprofit organizations and community or junior colleges, for the purpose of enabling such entities to provide short-term training courses in entrepreneurism and self-employment, and other training that will promote individual self-sufficiency and the interests of the community.

(3) A State may use amounts paid under this section to make grants to, or enter into contracts with, nonprofit community-based organizations to enable such organizations to provide activities designed to promote and protect the interests of children and families, outside of school hours, including keeping schools open during evenings and weekends for mentoring and study.

(4) In order to assist disadvantaged adults and youths in achieving and maintaining economic self-support, a State may use amounts paid under this section to—

(A) fund services designed to promote community and economic development in qualified empowerment zones and qualified enterprise communities, such as skills training, job counseling, transportation services, housing counseling, financial management, and business counseling;

(B) assist in emergency and transitional shelter for disadvantaged families and individuals; or

(C) support programs that promote home ownership, education, or other routes to economic independence for low-income families and individuals.

(c) Use of grants

(1) In general

Subject to subsection (d) of this section, each State that receives a grant under this section with respect to an area shall use the grant—

(A) for services directed only at the goals set forth in paragraphs (1), (2), and (3) of section 1397 of this title;

(B) in accordance with the strategic plan for the area; and

(C) for activities that benefit residents of the area for which the grant is made.

(2) Technical assistance

A State may use a portion of any grant made under this section in the manner described in section 1397a(e) of this title.

(d) Remittance of certain amounts

(1) Portion of grant upon termination of designation

Each State to which an amount is paid under this subsection during a fiscal year with respect to an area the designation of which under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986 ends before the end of the fiscal year shall remit to the Secretary an amount equal to the total of the amounts so paid with respect to the area, multiplied by that proportion of the fiscal year remaining after the designation ends.

(2) Amounts paid to the States and not obligated within 2 years

Each State shall remit to the Secretary any amount paid to the State under this section that is not obligated by the end of the 2-year period that begins with the date of the payment.

(e) Reallocation of remaining funds

(1) Remitted amounts

The amount specified in section 1397b(c) of this title for any fiscal year is hereby increased by the total of the amounts remitted during the fiscal year pursuant to subsection (d) of this section.

(2) Amounts not paid to the States

The amount specified in section 1397b(c) of this title for fiscal year 1998 is hereby increased by the amount made available for grants under this section that has not been paid to any State by the end of fiscal year 1997.

(f) Definitions

As used in this section:

(1) Qualified empowerment zone

The term ''qualified empowerment zone'' means, with respect to a State, an area—

(A) which has been designated (other than by the Secretary of the Interior) as an empowerment zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;

(B) with respect to which the designation is in effect;

(C) the strategic plan for which is a qualified plan; and

(D) part or all of which is in the State.

(2) Qualified enterprise community

The term ''qualified enterprise community'' means, with respect to a State, an area—

(A) which has been designated (other than by the Secretary of the Interior) as an enterprise community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;

(B) with respect to which the designation is in effect;

(C) the strategic plan for which is a qualified plan; and

(D) part or all of which is in the State.

(3) Strategic plan

The term ''strategic plan'' means, with respect to an area, the plan contained in the application for designation of the area under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

(4) Qualified plan

The term ''qualified plan'' means, with respect to an area, a plan that—

(A) includes a detailed description of the activities proposed for the area that are to be funded with amounts provided under this section;

(B) contains a commitment that the amounts provided under this section to any State for the area will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of this section;

(C) was developed in cooperation with the local government or governments with jurisdiction over the area; and

(D) to the extent that any State will not use the amounts provided under this section for the area in the manner described in subsection (b) of this section, explains the reasons why not.

(5) Rural area

The term ''rural area'' has the meaning given such term in section 1393(a)(2) of the Internal Revenue Code of 1986.

(6) Urban area

The term ''urban area'' has the meaning given such term in section 1393(a)(3) of the Internal Revenue Code of 1986.

(Aug. 14, 1935, ch. 531, title XX, § 2007, as added Pub. L. 103–66, title XIII, § 13761, Aug. 10, 1993, 107 Stat. 664; amended Pub. L. 103–432, title II, § 263, Oct. 31, 1994, 108 Stat. 4467.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(3), (d)(1), and (f), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1397f, act Aug. 14, 1935, ch. 531, title XX, § 2007, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2352(a), 95 Stat. 871, related to child day care services, prior to repeal by Pub. L. 99–514, title XVIII, § 1883(e)(2), Oct. 22, 1986, 100 Stat. 2919.

Another prior section 1397f, act Aug. 14, 1935, ch. 531, title XX, § 2008, formerly § 2007, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2348; renumbered § 2008, Jan. 2, 1980, Pub. L. 96–178, § 4(b), 93 Stat. 1296, defined ''State supplementary payment'' and ''State'', prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1994—Subsecs. (e), (f). Pub. L. 103–432 added subsec. (e) and redesignated former subsec. (e) as (f).

SUBCHAPTER XXI—STATE CHILDREN'S HEALTH INSURANCE PROGRAM

§ 1397aa. Purpose; State child health plans

(a) Purpose

The purpose of this subchapter is to provide funds to States to enable them to initiate and

expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Such assistance shall be provided primarily for obtaining health benefits coverage through—

(1) obtaining coverage that meets the requirements of section 1397cc of this title, or

(2) providing benefits under the State's medicaid plan under subchapter XIX of this chapter,

or a combination of both.

(b) State child health plan required

A State is not eligible for payment under section 1397ee of this title unless the State has submitted to the Secretary under section 1397ff of this title a plan that—

(1) sets forth how the State intends to use the funds provided under this subchapter to provide child health assistance to needy children consistent with the provisions of this subchapter, and

(2) has been approved under section 1397ff of this title.

(c) State entitlement

This subchapter constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under section 1397dd of this title.

(d) Effective date

No State is eligible for payments under section 1397ee of this title for child health assistance for coverage provided for periods beginning before October 1, 1997.

(Aug. 14, 1935, ch. 531, title XXI, § 2101, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 552.)

REFERENCES TO SCHIP AND STATE CHILDREN'S HEALTH INSURANCE PROGRAM

Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, § 704], Nov. 29, 1999, 113 Stat. 1536, 1501A–402, provided that: ''The Secretary of Health and Human Services or any other Federal officer or employee, with respect to any reference to the program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) in any publication or other official communication, shall use—

''(1) the term 'SCHIP' instead of the term 'CHIP'; and

''(2) the term 'State children's health insurance program' instead of the term 'children's health insurance program'.''

§ 1397bb. General contents of State child health plan; eligibility; outreach

(a) General background and description

A State child health plan shall include a description, consistent with the requirements of this subchapter, of—

(1) the extent to which, and manner in which, children in the State, including targeted low-income children and other classes of children classified by income and other relevant factors, currently have creditable health coverage (as defined in section 1397jj(c)(2) of this title);

(2) current State efforts to provide or obtain creditable health coverage for uncovered children, including the steps the State is taking to identify and enroll all uncovered children who are eligible to participate in public health insurance programs and health insurance programs that involve public-private partnerships;

(3) how the plan is designed to be coordinated with such efforts to increase coverage of children under creditable health coverage;

(4) the child health assistance provided under the plan for targeted low-income children, including the proposed methods of delivery, and utilization control systems;

(5) eligibility standards consistent with subsection (b) of this section;

(6) outreach activities consistent with subsection (c) of this section; and

(7) methods (including monitoring) used—

(A) to assure the quality and appropriateness of care, particularly with respect to well-baby care, well-child care, and immunizations provided under the plan, and

(B) to assure access to covered services, including emergency services.

(b) General description of eligibility standards and methodology

(1) Eligibility standards

(A) In general

The plan shall include a description of the standards used to determine the eligibility of targeted low-income children for child health assistance under the plan. Such standards may include (to the extent consistent with this subchapter) those relating to the geographic areas to be served by the plan, age, income and resources (including any standards relating to spenddowns and disposition of resources), residency, disability status (so long as any standard relating to such status does not restrict eligibility), access to or coverage under other health coverage, and duration of eligibility. Such standards may not discriminate on the basis of diagnosis.

(B) Limitations on eligibility standards

Such eligibility standards—

(i) shall, within any defined group of covered targeted low-income children, not cover such children with higher family income without covering children with a lower family income, and

(ii) may not deny eligibility based on a child having a preexisting medical condition.

(2) Methodology

The plan shall include a description of methods of establishing and continuing eligibility and enrollment.

(3) Eligibility screening; coordination with other health coverage programs

The plan shall include a description of procedures to be used to ensure—

(A) through both intake and followup screening, that only targeted low-income children are furnished child health assistance under the State child health plan;

(B) that children found through the screening to be eligible for medical assistance

under the State medicaid plan under subchapter XIX of this chapter are enrolled for such assistance under such plan;

(C) that the insurance provided under the State child health plan does not substitute for coverage under group health plans;

(D) the provision of child health assistance to targeted low-income children in the State who are Indians (as defined in section 1603(c) of title 25); and

(E) coordination with other public and private programs providing creditable coverage for low-income children.

(4) Nonentitlement

Nothing in this subchapter shall be construed as providing an individual with an entitlement to child health assistance under a State child health plan.

(c) Outreach and coordination

A State child health plan shall include a description of the procedures to be used by the State to accomplish the following:

(1) Outreach

Outreach to families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs to inform these families of the availability of, and to assist them in enrolling their children in, such a program.

(2) Coordination with other health insurance programs

Coordination of the administration of the State program under this subchapter with other public and private health insurance programs.

(Aug. 14, 1935, ch. 531, title XXI, § 2102, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 552.)

§ 1397cc. Coverage requirements for children's health insurance

(a) Required scope of health insurance coverage

The child health assistance provided to a targeted low-income child under the plan in the form described in paragraph (1) of section 1397aa(a) of this title shall consist, consistent with subsection (c)(5) of this section, of any of the following:

(1) Benchmark coverage

Health benefits coverage that is equivalent to the benefits coverage in a benchmark benefit package described in subsection (b) of this section.

(2) Benchmark-equivalent coverage

Health benefits coverage that meets the following requirements:

(A) Inclusion of basic services

The coverage includes benefits for items and services within each of the categories of basic services described in subsection (c)(1) of this section.

(B) Aggregate actuarial value equivalent to benchmark package

The coverage has an aggregate actuarial value that is at least actuarially equivalent to one of the benchmark benefit packages.

(C) Substantial actuarial value for additional services included in benchmark package

With respect to each of the categories of additional services described in subsection (c)(2) of this section for which coverage is provided under the benchmark benefit package used under subparagraph (B), the coverage has an actuarial value that is equal to at least 75 percent of the actuarial value of the coverage of that category of services in such package.

(3) Existing comprehensive State-based coverage

Health benefits coverage under an existing comprehensive State-based program, described in subsection (d)(1) of this section.

(4) Secretary-approved coverage

Any other health benefits coverage that the Secretary determines, upon application by a State, provides appropriate coverage for the population of targeted low-income children proposed to be provided such coverage.

(b) Benchmark benefit packages

The benchmark benefit packages are as follows:

(1) FEHBP-equivalent children's health insurance coverage

The standard Blue Cross/Blue Shield preferred provider option service benefit plan, described in and offered under section 8903(1) of title 5.

(2) State employee coverage

A health benefits coverage plan that is offered and generally available to State employees in the State involved.

(3) Coverage offered through HMO

The health insurance coverage plan that—

(A) is offered by a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act [42 U.S.C. 300gg–91(b)(3)]), and

(B) has the largest insured commercial, non-medicaid enrollment of covered lives of such coverage plans offered by such a health maintenance organization in the State involved.

(c) Categories of services; determination of actuarial value of coverage

(1) Categories of basic services

For purposes of this section, the categories of basic services described in this paragraph are as follows:

(A) Inpatient and outpatient hospital services.

(B) Physicians' surgical and medical services.

(C) Laboratory and x-ray services.

(D) Well-baby and well-child care, including age-appropriate immunizations.

(2) Categories of additional services

For purposes of this section, the categories of additional services described in this paragraph are as follows:

(A) Coverage of prescription drugs.

(B) Mental health services.

(C) Vision services.

(D) Hearing services.

(3) Treatment of other categories

Nothing in this subsection shall be construed as preventing a State child health plan from providing coverage of benefits that are not within a category of services described in paragraph (1) or (2).

(4) Determination of actuarial value

The actuarial value of coverage of benchmark benefit packages, coverage offered under the State child health plan, and coverage of any categories of additional services under benchmark benefit packages and under coverage offered by such a plan, shall be set forth in an actuarial opinion in an actuarial report that has been prepared—

(A) by an individual who is a member of the American Academy of Actuaries;

(B) using generally accepted actuarial principles and methodologies;

(C) using a standardized set of utilization and price factors;

(D) using a standardized population that is representative of privately insured children of the age of children who are expected to be covered under the State child health plan;

(E) applying the same principles and factors in comparing the value of different coverage (or categories of services);

(F) without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used; and

(G) taking into account the ability of a State to reduce benefits by taking into account the increase in actuarial value of benefits coverage offered under the State child health plan that results from the limitations on cost sharing under such coverage.

The actuary preparing the opinion shall select and specify in the memorandum the standardized set and population to be used under subparagraphs (C) and (D).

(5) Construction on prohibited coverage

Nothing in this section shall be construed as requiring any health benefits coverage offered under the plan to provide coverage for items or services for which payment is prohibited under this subchapter, notwithstanding that any benchmark benefit package includes coverage for such an item or service.

(d) Description of existing comprehensive State-based coverage

(1) In general

A program described in this paragraph is a child health coverage program that—

(A) includes coverage of a range of benefits;

(B) is administered or overseen by the State and receives funds from the State;

(C) is offered in New York, Florida, or Pennsylvania; and

(D) was offered as of August 5, 1997.

(2) Modifications

A State may modify a program described in paragraph (1) from time to time so long as it continues to meet the requirement of subparagraph (A) and does not reduce the actuarial value of the coverage under the program below the lower of—

(A) the actuarial value of the coverage under the program as of August 5, 1997, or

(B) the actuarial value described in subsection (a)(2)(B) of this section,

evaluated as of the time of the modification.

(e) Cost-sharing

(1) Description; general conditions

(A) Description

A State child health plan shall include a description, consistent with this subsection, of the amount (if any) of premiums, deductibles, coinsurance, and other cost sharing imposed. Any such charges shall be imposed pursuant to a public schedule.

(B) Protection for lower income children

The State child health plan may only vary premiums, deductibles, coinsurance, and other cost sharing based on the family income of targeted low-income children in a manner that does not favor children from families with higher income over children from families with lower income.

(2) No cost sharing on benefits for preventive services

The State child health plan may not impose deductibles, coinsurance, or other cost sharing with respect to benefits for services within the category of services described in subsection (c)(1)(D) of this section.

(3) Limitations on premiums and cost-sharing

(A) Children in families with income below 150 percent of poverty line

In the case of a targeted low-income child whose family income is at or below 150 percent of the poverty line, the State child health plan may not impose—

(i) an enrollment fee, premium, or similar charge that exceeds the maximum monthly charge permitted consistent with standards established to carry out section 1396*o*(b)(1) of this title (with respect to individuals described in such section); and

(ii) a deductible, cost sharing, or similar charge that exceeds an amount that is nominal (as determined consistent with regulations referred to in section 1396*o*(a)(3) of this title, with such appropriate adjustment for inflation or other reasons as the Secretary determines to be reasonable).

(B) Other children

For children not described in subparagraph (A), subject to paragraphs (1)(B) and (2), any premiums, deductibles, cost sharing or similar charges imposed under the State child health plan may be imposed on a sliding scale related to income, except that the total annual aggregate cost-sharing with respect to all targeted low-income children in a family under this subchapter may not exceed 5 percent of such family's income for the year involved.

(4) Relation to medicaid requirements

Nothing in this subsection shall be construed as affecting the rules relating to the use of enrollment fees, premiums, deductions, cost sharing, and similar charges in the case of targeted low-income children who are provided child health assistance in the form of coverage under a medicaid program under section 1397aa(a)(2) of this title.

(f) Application of certain requirements

(1) Restriction on application of preexisting condition exclusions

(A) In general

Subject to subparagraph (B), the State child health plan shall not permit the imposition of any preexisting condition exclusion for covered benefits under the plan.

(B) Group health plans and group health insurance coverage

If the State child health plan provides for benefits through payment for, or a contract with, a group health plan or group health insurance coverage, the plan may permit the imposition of a preexisting condition exclusion but only insofar as it is permitted under the applicable provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181 et seq.] and title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.].

(2) Compliance with other requirements

Coverage offered under this section shall comply with the requirements of subpart 2 of part A of title XXVII of the Public Health Service Act [42 U.S.C. 300gg–4 et seq.] insofar as such requirements apply with respect to a health insurance issuer that offers group health insurance coverage.

(Aug. 14, 1935, ch. 531, title XXI, § 2103, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 554.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(1)(B), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended. Part 7 of subtitle B of title I of the Act is classified generally to part 7 (§ 1181 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (f), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XXVII of the Act is classified generally to subchapter XXV (§ 300gg et seq.) of chapter 6A of this title. Subpart 2 of part A of title XXVII of the Act is classified generally to subpart 2 (§ 300gg–4 et seq.) of part A of subchapter XXV of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

§ 1397dd. Allotments

(a) Appropriation; total allotment

For the purpose of providing allotments to States under this section, subject to subsection (d), there is appropriated, out of any money in the Treasury not otherwise appropriated—

(1) for fiscal year 1998, $4,295,000,000;
(2) for fiscal year 1999, $4,275,000,000;
(3) for fiscal year 2000, $4,275,000,000;
(4) for fiscal year 2001, $4,275,000,000;
(5) for fiscal year 2002, $3,150,000,000;
(6) for fiscal year 2003, $3,150,000,000;
(7) for fiscal year 2004, $3,150,000,000;
(8) for fiscal year 2005, $4,050,000,000;
(9) for fiscal year 2006, $4,050,000,000; and
(10) for fiscal year 2007, $5,000,000,000.

(b) Allotments to 50 States and District of Columbia

(1) In general

Subject to paragraph (4) and subsection (d), of the amount available for allotment under subsection (a) of this section for a fiscal year, reduced by the amount of allotments made under subsection (c) of this section (determined without regard to paragraph (4) thereof) for the fiscal year, the Secretary shall allot to each State (other than a State described in such subsection) with a State child health plan approved under this subchapter the same proportion as the ratio of—

(A) the product of (i) the number of children described in paragraph (2) for the State for the fiscal year and (ii) the State cost factor for that State (established under paragraph (3)); to

(B) the sum of the products computed under subparagraph (A).

(2) Number of children

(A) In general

The number of children described in this paragraph for a State for—

(i) each of fiscal years 1998 and 1999 is equal to the number of low-income children in the State with no health insurance coverage for the fiscal year;

(ii) fiscal year 2000 is equal to—

(I) 75 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage, plus

(II) 25 percent of the number of low-income children in the State for the fiscal year; and

(iii) each succeeding fiscal year is equal to—

(I) 50 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage, plus

(II) 50 percent of the number of low-income children in the State for the fiscal year.

(B) Determination of number of children

For purposes of subparagraph (A), a determination of the number of low-income children (and of such children who have no health insurance coverage) for a State for a fiscal year shall be made on the basis of the arithmetic average of the number of such children, as reported and defined in the 3 most recent March supplements to the Current Population Survey of the Bureau of the Census before the beginning of the calendar year in which such fiscal year begins.

(3) Adjustment for geographic variations in health costs

(A) In general

For purposes of paragraph (1)(A)(ii), the ''State cost factor'' for a State for a fiscal year equal to the sum of—

(i) 0.15, and

(ii) 0.85 multiplied by the ratio of—

(I) the annual average wages per employee for the State for such year (as determined under subparagraph (B)), to

(II) the annual average wages per employee for the 50 States and the District of Columbia.

(B) Annual average wages per employee

For purposes of subparagraph (A), the ''annual average wages per employee'' for a State, or for all the States, for a fiscal year is equal to the average of the annual wages per employee for the State or for the 50 States and the District of Columbia for employees in the health services industry (SIC code 8000), as reported by the Bureau of Labor Statistics of the Department of Labor for each of the most recent 3 years before the beginning of the calendar year in which such fiscal year begins.

(4) Floors and ceilings in State allotments

(A) In general

The proportion of the allotment under this subsection for a subsection (b) State (as defined in subparagraph (D)) for fiscal year 2000 and each fiscal year thereafter shall be subject to the following floors and ceilings:

(i) Floor of $2,000,000

A floor equal to $2,000,000 divided by the total of the amount available under this subsection for all such allotments for the fiscal year.

(ii) Annual floor of 10 percent below preceding fiscal year's proportion

A floor of 90 percent of the proportion for the State for the preceding fiscal year.

(iii) Cumulative floor of 30 percent below the FY 1999 proportion

A floor of 70 percent of the proportion for the State for fiscal year 1999.

(iv) Cumulative ceiling of 45 percent above FY 1999 proportion

A ceiling of 145 percent of the proportion for the State for fiscal year 1999.

(B) Reconciliation

(i) Elimination of any deficit by establishing a percentage increase ceiling for States with highest annual percentage increases

To the extent that the application of subparagraph (A) would result in the sum of the proportions of the allotments for all subsection (b) States exceeding 1.0, the Secretary shall establish a maximum percentage increase in such proportions for all subsection (b) States for the fiscal year in a manner so that such sum equals 1.0.

(ii) Allocation of surplus through pro rata increase

To the extent that the application of subparagraph (A) would result in the sum of the proportions of the allotments for all subsection (b) States being less than 1.0, the proportions of such allotments (as computed before the application of floors under clauses (i), (ii), and (iii) of subparagraph (A)) for all subsection (b) States shall be increased in a pro rata manner (but not to exceed the ceiling established under subparagraph (A)(iv)) so that (after the application of such floors and ceiling) such sum equals 1.0.

(C) Construction

This paragraph shall not be construed as applying to (or taking into account) amounts of allotments redistributed under subsection (f) of this section.

(D) Definitions

In this paragraph:

(i) Proportion of allotment

The term ''proportion'' means, with respect to the allotment of a subsection (b) State for a fiscal year, the amount of the allotment of such State under this subsection for the fiscal year divided by the total of the amount available under this subsection for all such allotments for the fiscal year.

(ii) Subsection (b) State

The term ''subsection (b) State'' means one of the 50 States or the District of Columbia.

(c) Allotments to territories

(1) In general

Of the amount available for allotment under subsection (a) of this section for a fiscal year, subject to subsection (d), the Secretary shall allot 0.25 percent among each of the commonwealths and territories described in paragraph (3) in the same proportion as the percentage specified in paragraph (2) for such commonwealth or territory bears to the sum of such percentages for all such commonwealths or territories so described.

(2) Percentage

The percentage specified in this paragraph for—

(A) Puerto Rico is 91.6 percent,

(B) Guam is 3.5 percent,

(C) the Virgin Islands is 2.6 percent,

(D) American Samoa is 1.2 percent, and

(E) the Northern Mariana Islands is 1.1 percent.

(3) Commonwealths and territories

A commonwealth or territory described in this paragraph is any of the following if it has a State child health plan approved under this subchapter:

(A) Puerto Rico.

(B) Guam.

(C) The Virgin Islands.

(D) American Samoa.

(E) The Northern Mariana Islands.

(4) Additional allotment

(A) In general

In addition to the allotment under paragraph (1), the Secretary shall allot each commonwealth and territory described in paragraph (3) the applicable percentage specified in paragraph (2) of the amount appropriated under subparagraph (B).

(B) Appropriations

For purposes of providing allotments pursuant to subparagraph (A), there is appropriated, out of any money in the Treasury not otherwise appropriated $32,000,000 for fiscal year 1999, $34,200,000 for each of fiscal years 2000 and 2001, $25,200,000 for each of fiscal years 2002 through 2004, $32,400,000 for each of fiscal years 2005 and 2006, and $40,000,000 for fiscal year 2007.

(d) Additional allotments to eliminate funding shortfalls

(1) Appropriation; allotment authority

For the purpose of providing additional allotments to shortfall States described in paragraph (2), there is appropriated, out of any money in the Treasury not otherwise appropriated, $283,000,000 for fiscal year 2006.

(2) Shortfall States described

For purposes of paragraph (1), a shortfall State described in this paragraph is a State with a State child health plan approved under this subchapter for which the Secretary estimates, on the basis of the most recent data available to the Secretary as of December 16, 2005, that the projected expenditures under such plan for such State for fiscal year 2006 will exceed the sum of—

(A) the amount of the State's allotments for each of fiscal years 2004 and 2005 that will not be expended by the end of fiscal year 2005;

(B) the amount, if any, that is to be redistributed to the State during fiscal year 2006 in accordance with subsection (f); and

(C) the amount of the State's allotment for fiscal year 2006.

(3) Allotments

In addition to the allotments provided under subsections (b) and (c), subject to paragraph (4), of the amount available for the additional allotments under paragraph (1) for fiscal year 2006, the Secretary shall allot—

(A) to each shortfall State described in paragraph (2) such amount as the Secretary determines will eliminate the estimated shortfall described in such paragraph for the State; and

(B) to each commonwealth or territory described in subsection (c)(3), the same proportion as the proportion of the commonwealth's or territory's allotment under subsection (c) (determined without regard to subsection (f)) to 1.05 percent of the amount appropriated under paragraph (1).

(4) Use of additional allotment

Additional allotments provided under this subsection are only available for amounts expended under a State plan approved under this subchapter for child health assistance for targeted low-income children.

(5) 1-year availability; no redistribution of unexpended additional allotments

Notwithstanding subsections (e) and (f), amounts allotted to a State pursuant to this subsection for fiscal year 2006 shall only remain available for expenditure by the State through September 30, 2006. Any amounts of such allotments that remain unexpended as of such date shall not be subject to redistribution under subsection (f) and shall revert to the Treasury on October 1, 2006.

(e) 3-year availability of amounts allotted

Amounts allotted to a State pursuant to this section for a fiscal year shall remain available for expenditure by the State through the end of the second succeeding fiscal year; except that amounts reallotted to a State under subsection (f) of this section shall be available for expenditure by the State through the end of the fiscal year in which they are reallotted.

(f) Procedure for redistribution of unused allotments

The Secretary shall determine an appropriate procedure for redistribution of allotments from States that were provided allotments under this section for a fiscal year but that do not expend all of the amount of such allotments during the period in which such allotments are available for expenditure under subsection (e) of this section, to States that have fully expended the amount of their allotments under this section.

(g) Rule for redistribution and extended availability of fiscal years 1998, 1999, 2000, and 2001 allotments

(1) Amount redistributed

(A) In general

In the case of a State that expends all of its allotment under subsection (b) or (c) of this section for fiscal year 1998 by the end of fiscal year 2000, or for fiscal year 1999 by the end of fiscal year 2001, or for fiscal year 2000 by the end of fiscal year 2002, or for fiscal year 2001 by the end of fiscal year 2003, the Secretary shall redistribute to the State under subsection (f) of this section (from the fiscal year 1998, 1999, 2000, or 2001 allotments of other States, respectively, as determined by the application of paragraphs (2) and (3) with respect to the respective fiscal year) the following amount:

(i) State

In the case of one of the 50 States or the District of Columbia, with respect to—

(I) the fiscal year 1998 allotment, the amount by which the State's expenditures under this subchapter in fiscal years 1998, 1999, and 2000 exceed the State's allotment for fiscal year 1998 under subsection (b) of this section;

(II) the fiscal year 1999 allotment, the amount by which the State's expenditures under this subchapter in fiscal years 1999, 2000, and 2001 exceed the State's allotment for fiscal year 1999 under subsection (b) of this section;

(III) the fiscal year 2000 allotment, the amount specified in subparagraph (C)(i) (less the total of the amounts under clause (ii) for such fiscal year), multiplied by the ratio of the amount specified in subparagraph (C)(ii) for the State to the amount specified in subparagraph (C)(iii); or

(IV) the fiscal year 2001 allotment, the amount specified in subparagraph (D)(i) (less the total of the amounts under clause (ii) for such fiscal year), multiplied by the ratio of the amount specified in subparagraph (D)(ii) for the State to the amount specified in subparagraph (D)(iii).

(ii) Territory

In the case of a commonwealth or territory described in subsection (c)(3) of this section, an amount that bears the same ratio to 1.05 percent of the total amount described in paragraph (2)(B)(i)(I) as the ratio of the commonwealth's or territory's fiscal year 1998, 1999, 2000, or 2001 allotment under subsection (c) of this section (as the case may be) bears to the total of all such allotments for such fiscal year under such subsection.

(B) Expenditure rules

An amount redistributed to a State under this paragraph—

(i) shall not be included in the determination of the State's allotment for any fiscal year under this section;

(ii) notwithstanding subsection (e) of this section, with respect to fiscal year 1998, 1999, or 2000, shall remain available for expenditure by the State through the end of fiscal year 2004;

(iii) notwithstanding subsection (e) of this section, with respect to fiscal year 2001, shall remain available for expenditure by the State through the end of fiscal year 2005; and

(iv) shall be counted as being expended with respect to a fiscal year allotment in accordance with applicable regulations of the Secretary.

(C) Amounts used in computing redistributions for fiscal year 2000

For purposes of subparagraph (A)(i)(III)—

(i) the amount specified in this clause is the amount specified in paragraph (2)(B)(i)(I) for fiscal year 2000, less the total amount remaining available pursuant to paragraph (2)(A)(iii);

(ii) the amount specified in this clause for a State is the amount by which the State's expenditures under this subchapter in fiscal years 2000, 2001, and 2002 exceed the State's allotment for fiscal year 2000 under subsection (b) of this section; and

(iii) the amount specified in this clause is the sum, for all States entitled to a redistribution under subparagraph (A) from the allotments for fiscal year 2000, of the amounts specified in clause (ii).

(D) Amounts used in computing redistributions for fiscal year 2001

For purposes of subparagraph (A)(i)(IV)—

(i) the amount specified in this clause is the amount specified in paragraph (2)(B)(i)(I) for fiscal year 2001, less the total amount remaining available pursuant to paragraph (2)(A)(iv);

(ii) the amount specified in this clause for a State is the amount by which the State's expenditures under this subchapter in fiscal years 2001, 2002, and 2003 exceed the State's allotment for fiscal year 2001 under subsection (b) of this section; and

(iii) the amount specified in this clause is the sum, for all States entitled to a redistribution under subparagraph (A) from the allotments for fiscal year 2001, of the amounts specified in clause (ii).

(2) Extension of availability of portion of unexpended fiscal years 1998 through 2001 allotments

(A) In general

Notwithstanding subsection (e) of this section:

(i) Fiscal year 1998 allotment

Of the amounts allotted to a State pursuant to this section for fiscal year 1998 that were not expended by the State by the end of fiscal year 2000, the amount specified in subparagraph (B) for fiscal year 1998 for such State shall remain available for expenditure by the State through the end of fiscal year 2004.

(ii) Fiscal year 1999 allotment

Of the amounts allotted to a State pursuant to this subsection for fiscal year 1999 that were not expended by the State by the end of fiscal year 2001, the amount specified in subparagraph (B) for fiscal year 1999 for such State shall remain available for expenditure by the State through the end of fiscal year 2004.

(iii) Fiscal year 2000 allotment

Of the amounts allotted to a State pursuant to this section for fiscal year 2000 that were not expended by the State by the end of fiscal year 2002, 50 percent of that amount shall remain available for expenditure by the State through the end of fiscal year 2004.

(iv) Fiscal year 2001 allotment

Of the amounts allotted to a State pursuant to this section for fiscal year 2001 that were not expended by the State by the end of fiscal year 2003, 50 percent of that amount shall remain available for expenditure by the State through the end of fiscal year 2005.

(B) Amount remaining available for expenditure

The amount specified in this subparagraph for a State for a fiscal year is equal to—

(i) the amount by which (I) the total amount available for redistribution under subsection (f) of this section from the allotments for that fiscal year, exceeds (II) the total amounts redistributed under paragraph (1) for that fiscal year; multiplied by

(ii) the ratio of the amount of such State's unexpended allotment for that fiscal year to the total amount described in clause (i)(I) for that fiscal year.

(C) Use of up to 10 percent of retained 1998 allotments for outreach activities

Notwithstanding section 1397ee(c)(2)(A) of this title, with respect to any State described in subparagraph (A)(i), the State may use up to 10 percent of the amount specified in subparagraph (B) for fiscal year 1998 for expenditures for outreach activities approved by the Secretary.

(3) Determination of amounts

For purposes of calculating the amounts described in paragraphs (1) and (2) relating to the allotment for fiscal year 1998, fiscal year 1999, fiscal year 2000, or fiscal year 2001, the Secretary shall use the amounts reported by the States not later than December 15, 2000, November 30, 2001, November 30, 2002, or November 30, 2003, respectively, on HCFA Form 64 or HCFA Form 21 or CMS Form 64 or CMS Form 21, as the case may be,,[1] as approved by the Secretary.

(h) Special rules to address fiscal year 2007 shortfalls

(1) Redistribution of unused fiscal year 2004 allotments

(A) In general

Notwithstanding subsection (f) and subject to subparagraphs (C) and (D), with respect to months beginning during fiscal year 2007, the Secretary shall provide for a redistribution under such subsection from the allotments for fiscal year 2004 under subsection (b) that are not expended by the end of fiscal year 2006, to a shortfall State described in subparagraph (B), such amount as the Secretary determines will eliminate the estimated shortfall described in such subparagraph for such State for the month.

(B) Shortfall State described

For purposes of this paragraph, a shortfall State described in this subparagraph is a State with a State child health plan approved under this subchapter for which the Secretary estimates, subject to paragraph (4)(B) and on a monthly basis using the most recent data available to the Secretary as of such month, that the projected expenditures under such plan for such State for fiscal year 2007 will exceed the sum of—

(i) the amount of the State's allotments for each of fiscal years 2005 and 2006 that was not expended by the end of fiscal year 2006; and

(ii) the amount of the State's allotment for fiscal year 2007.

(C) Funds redistributed in the order in which States realize funding shortfalls

The Secretary shall redistribute the amounts available for redistribution under subparagraph (A) to shortfall States described in subparagraph (B) in the order in which such States realize monthly funding shortfalls under this subchapter for fiscal year 2007. The Secretary shall only make redistributions under this paragraph to the extent that there are unexpended fiscal year 2004 allotments under subsection (b) available for such redistributions.

(D) Proration rule

If the amounts available for redistribution under subparagraph (A) for a month are less than the total amounts of the estimated shortfalls determined for the month under that subparagraph, the amount computed under such subparagraph for each shortfall State shall be reduced proportionally.

(2) Funding remainder of reduction of shortfall for fiscal year 2007 through redistribution of certain unused fiscal year 2005 allotments

(A) In general

Subject to subparagraphs (C) and (D) and paragraph (5)(B), with respect to months beginning during fiscal year 2007 after March 31, 2007, the Secretary shall provide for a redistribution under subsection (f) from amounts made available for redistribution under paragraph (3) to each shortfall State described in subparagraph (B), such amount as the Secretary determines will eliminate the estimated shortfall described in such subparagraph for such State for the month.

(B) Shortfall State described

For purposes of this paragraph, a shortfall State described in this subparagraph is a State with a State child health plan approved under this subchapter for which the Secretary estimates, subject to paragraph (4)(B) and on a monthly basis using the most recent data available to the Secretary as of March 31, 2007, that the projected expenditures under such plan for such State for fiscal year 2007 will exceed the sum of—

(i) the amount of the State's allotments for each of fiscal years 2005 and 2006 that was not expended by the end of fiscal year 2006;

(ii) the amount, if any, that is to be redistributed to the State in accordance with paragraph (1); and

(iii) the amount of the State's allotment for fiscal year 2007.

(C) Funds redistributed in the order in which States realize funding shortfalls

The Secretary shall redistribute the amounts available for redistribution under subparagraph (A) to shortfall States described in subparagraph (B) in the order in which such States realize monthly funding shortfalls under this subchapter for fiscal year 2007. The Secretary shall only make redistributions under this paragraph to the extent that such amounts are available for such redistributions.

(D) Proration rule

If the amounts available for redistribution under paragraph (3) for a month are less than the total amounts of the estimated

[1] So in original.

shortfalls determined for the month under subparagraph (A), the amount computed under such subparagraph for each shortfall State shall be reduced proportionally.

(3) Treatment of certain States with fiscal year 2005 allotments unexpended at the end of the first half of fiscal year 2007

(A) Identification of States

The Secretary, on the basis of the most recent data available to the Secretary as of March 31, 2007—

(i) shall identify those States that received an allotment for fiscal year 2005 under subsection (b) which have not expended all of such allotment by March 31, 2007; and

(ii) for each such State shall estimate—

(I) the portion of such allotment that was not so expended by such date; and

(II) whether the State is described in subparagraph (B).

(B) States with funds in excess of 200 percent of need

A State described in this subparagraph is a State for which the Secretary determines, on the basis of the most recent data available to the Secretary as of March 31, 2007, that the total of all available allotments under this subchapter to the State as of such date,[2] is at least equal to 200 percent of the total projected expenditures under this subchapter for the State for fiscal year 2007.

(C) Redistribution and limitation on availability of portion of unused allotments for certain States

(i) In general

In the case of a State identified under subparagraph (A)(i) that is also described in subparagraph (B), notwithstanding subsection (e), the applicable amount described in clause (ii) shall not be available for expenditure by the State on or after April 1, 2007, and shall be redistributed in accordance with paragraph (2).

(ii) Applicable amount

For purposes of clause (i), the applicable amount described in this clause is the lesser of—

(I) 50 percent of the amount described in subparagraph (A)(ii)(I); or

(II) $20,000,000.

(4) Special rules

(A) Expenditures limited to coverage for populations eligible on October 1, 2006

A State shall use amounts redistributed under this subsection only for expenditures for providing child health assistance or other health benefits coverage for populations eligible for such assistance or benefits under the State child health plan (including under a waiver of such plan) on October 1, 2006.

(B) Regular FMAP for expenditures for coverage of nonchild populations

To the extent a State uses amounts redistributed under this subsection for expenditures for providing child health assistance or other health benefits coverage to an individual who is not a child or a pregnant woman, the Federal medical assistance percentage (as defined in the first sentence of section 1396d(b) of this title) applicable to the State for the fiscal year shall apply to such expenditures for purposes of making payments to the State under subsection (a) of section 1397ee of this title from such amounts.

(5) Retrospective adjustment

(A) In general

The Secretary may adjust the estimates and determinations made under paragraphs (1), (2), and (3) as necessary on the basis of the amounts reported by States not later than November 30, 2007, on CMS Form 64 or CMS Form 21, as the case may be and as approved by the Secretary, but in no case may the applicable amount described in paragraph (3)(C)(ii) exceed the amount determined by the Secretary on the basis of the most recent data available to the Secretary as of March 31, 2007.

(B) Funding of any retrospective adjustments only from unexpended 2005 allotments

Notwithstanding subsections (e) and (f), to the extent the Secretary determines it necessary to adjust the estimates and determinations made for purposes of paragraphs (1), (2), and (3), the Secretary may use only the allotments for fiscal year 2005 under subsection (b) that remain unexpended through the end of fiscal year 2007 for providing any additional amounts to States described in paragraph (2)(B) (without regard to whether such unexpended allotments are from States described in paragraph (3)(B)).

(C) Rules of construction

Nothing in this subsection shall be construed as—

(i) authorizing the Secretary to use the allotments for fiscal year 2006 or 2007 under subsection (b) of States described in paragraph (3)(B) to provide additional amounts to States described in paragraph (2)(B) for purposes of eliminating the funding shortfall for such States for fiscal year 2007; or

(ii) limiting the authority of the Secretary to redistribute the allotments for fiscal year 2005 under subsection (b) that remain unexpended through the end of fiscal year 2007 and are available for redistribution under subsection (f) after the application of subparagraph (B).

(6) 1-year availability; no further redistribution

Notwithstanding subsections (e) and (f), amounts redistributed to a State pursuant to this subsection for fiscal year 2007 shall only remain available for expenditure by the State through September 30, 2007, and any amounts of such redistributions that remain unexpended as of such date,[2] shall not be subject to redistribution under subsection (f). Nothing in the preceding sentence shall be construed as limiting the ability of the Secretary to adjust

[2] So in original. The comma probably should not appear.

the determinations made under paragraphs (1), (2), and (3) in accordance with paragraph (5).

(7) Definition of State

For purposes of this subsection, the term ''State'' means a State that receives an allotment for fiscal year 2007 under subsection (b).

(Aug. 14, 1935, ch. 531, title XXI, § 2104, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 558; amended Pub. L. 105–100, title I, § 162(6), (8), Nov. 19, 1997, 111 Stat. 2189, 2190; Pub. L. 105–277, div. A, § 101(f) [title VII, § 706], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389; Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, §§ 701(a), 702, 705(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–399, 1501A–400, 1501A–402; Pub. L. 106–554, § 1(a)(6) [title VIII, §§ 801(a), 802(b), (d)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–578, 2763A–581; Pub. L. 108–74, § 1(a)(1)–(3), Aug. 15, 2003, 117 Stat. 892, 893; Pub. L. 108–173, title IX, § 900(e)(1)(M), Dec. 8, 2003, 117 Stat. 2372; Pub. L. 109–171, title VI, § 6101(a), (b), Feb. 8, 2006, 120 Stat. 130, 131; Pub. L. 109–482, title II, § 201(a), Jan. 15, 2007, 120 Stat. 3698.)

AMENDMENTS

2007—Subsec. (h). Pub. L. 109–482 added subsec. (h).

2006—Subsec. (a). Pub. L. 109–171, § 6101(b)(1), inserted ''subject to subsection (d),'' after ''under this section,'' in introductory provisions.

Subsec. (b)(1). Pub. L. 109–171, § 6101(b)(2), inserted ''and subsection (d)'' after ''Subject to paragraph (4)'' in introductory provisions.

Subsec. (c)(1). Pub. L. 109–171, § 6101(b)(3), inserted ''subject to subsection (d),'' after ''for a fiscal year,''.

Subsec. (d). Pub. L. 109–171, § 6101(a), added subsec. (d).

2003—Subsec. (g). Pub. L. 108–74, § 1(a)(2)(C)(i), (3)(C)(i), substituted '', 1999, 2000, and 2001'' for ''and 1999'' in heading.

Subsec. (g)(1)(A). Pub. L. 108–74, § 1(a)(3)(B)(i), (ii), inserted ''or for fiscal year 2001 by the end of fiscal year 2003,'' after ''fiscal year 2002,'' and substituted ''1999, 2000, or 2001'' for ''1999, or 2000''.

Pub. L. 108–74, § 1(a)(2)(B)(i), (ii), inserted ''or for fiscal year 2000 by the end of fiscal year 2002,'' after ''fiscal year 2001,'' and substituted ''1998, 1999, or 2000'' for ''1998 or 1999''.

Subsec. (g)(1)(A)(i)(III). Pub. L. 108–74, § 1(a)(2)(B)(iii), added subclause (III).

Subsec. (g)(1)(A)(i)(IV). Pub. L. 108–74, § 1(a)(3)(B)(iii), added subcl. (IV).

Subsec. (g)(1)(A)(ii). Pub. L. 108–74, § 1(a)(3)(B)(iv), substituted ''2000, or 2001'' for ''or 2000''.

Pub. L. 108–74, § 1(a)(2)(B)(iv), substituted '', 1999, or 2000'' for ''or 1999''.

Subsec. (g)(1)(B). Pub. L. 108–74, § 1(a)(2)(B)(v), struck out ''with respect to fiscal year 1998 or 1999'' after ''paragraph'' in introductory provisions.

Subsec. (g)(1)(B)(ii). Pub. L. 108–74, § 1(a)(2)(B)(vi), inserted ''with respect to fiscal year 1998, 1999, or 2000'' after ''subsection (e) of this section,'' and substituted ''2004'' for ''2002''.

Subsec. (g)(1)(B)(iii), (iv). Pub. L. 108–74, § 1(a)(3)(B)(v), added clause (iii) and redesignated former cl. (iii) as (iv).

Subsec. (g)(1)(C). Pub. L. 108–74, § 1(a)(2)(B)(vii), added subpar. (C).

Subsec. (g)(1)(D). Pub. L. 108–74, § 1(a)(3)(B)(vi), added subpar. (D).

Subsec. (g)(2). Pub. L. 108–74, § 1(a)(2)(A)(i), (3)(A)(i), substituted ''through 2001'' for ''and 1999'' in heading.

Subsec. (g)(2)(A)(i), (ii). Pub. L. 108–74, § 1(a)(1), substituted ''fiscal year 2004'' for ''fiscal year 2002''.

Subsec. (g)(2)(A)(iii). Pub. L. 108–74, § 1(a)(2)(A)(ii), added cl. (iii).

Subsec. (g)(2)(A)(iv). Pub. L. 108–74, § 1(a)(3)(A)(ii), added cl. (iv).

Subsec. (g)(3). Pub. L. 108–173 inserted ''or CMS Form 64 or CMS Form 21, as the case may be,'' after ''HCFA Form 64 or HCFA Form 21''.

Pub. L. 108–74, § 1(a)(3)(C)(ii), substituted ''fiscal year 2000, or fiscal year 2001'' for ''or fiscal year 2000'' and ''November 30, 2002, or November 30, 2003,'' for ''or November 30, 2002,''.

Pub. L. 108–74, § 1(a)(2)(C)(ii), substituted '', fiscal year 1999, or fiscal year 2000'' for ''or fiscal year 1999'' and ''November 30, 2001, or November 30, 2002'' for ''or November 30, 2001''.

2000—Subsec. (b)(1). Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(d)(3)(A)], in introductory provisions, struck out ''and subsection (d) of this section'' after ''Subject to paragraph (4)''.

Subsec. (c)(1). Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(d)(3)(B)], struck out ''subject to subsection (d) of this section,'' after ''for a fiscal year,''.

Subsec. (d). Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(b)], struck out heading and text of subsec. (d). Text read as follows: ''The amount of the allotment otherwise provided to a State under subsection (b) or (c) of this section for a fiscal year shall be reduced by the sum of—

''(1) the amount (if any) of the payments made to that State under section 1396b(a) of this title for expenditures claimed by the State during such fiscal year that is attributable to the provision of medical assistance to a child during a presumptive eligibility period under section 1396r–1a of this title, and

''(2) the amount (if any) of the payments made to that State under section 1396b(a) of this title for expenditures claimed by the State during such fiscal year that is attributable to the provision of medical assistance to a child for which payment is made under section 1396b(a)(1) of this title on the basis of an enhanced FMAP under the fourth sentence of section 1396d(b) of this title.''

Subsec. (g). Pub. L. 106–554, § 1(a)(6) [title VIII, § 801(a)], added subsec. (g).

1999—Subsec. (b)(2)(A)(i). Pub. L. 106–113, § 1000(a)(6) [title VII, § 701(a)(1)(A)], substituted ''and 1999'' for ''through 2000''.

Subsec. (b)(2)(A)(ii). Pub. L. 106–113, § 1000(a)(6) [title VII, § 701(a)(1)(B)], substituted ''2000'' for ''2001'' in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 106–113, § 1000(a)(6) [title VII, § 701(a)(3)], substituted ''the calendar year in which such fiscal year begins'' for ''the fiscal year''.

Subsec. (b)(3)(B). Pub. L. 106–113, § 1000(a)(6) [title VII, § 705(a)], substituted ''all the States,'' for ''all the States.''

Pub. L. 106–113, § 1000(a)(6) [title VII, § 701(a)(4)], substituted ''the calendar year in which such fiscal year begins'' for ''the fiscal year involved''.

Subsec. (b)(4). Pub. L. 106–113, § 1000(a)(6) [title VII, § 701(a)(2)], amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''In no case shall the amount of the allotment under this subsection for one of the 50 States or the District of Columbia for a year be less than $2,000,000. To the extent that the application of the previous sentence results in an increase in the allotment to a State above the amount otherwise provided, the allotments for the other States and the District of Columbia under this subsection shall be reduced in a pro rata manner (but not below $2,000,000) so that the total of such allotments in a fiscal year does not exceed the amount otherwise provided for allotment under paragraph (1) for that fiscal year.''

Subsec. (c)(4)(B). Pub. L. 106–113, § 1000(a)(6) [title VII, § 702], inserted before period at end '', $34,200,000 for each of fiscal years 2000 and 2001, $25,200,000 for each of fiscal years 2002 through 2004, $32,400,000 for each of fiscal years 2005 and 2006, and $40,000,000 for fiscal year 2007''.

1998—Subsec. (b)(1). Pub. L. 105–277, § 101(f) [title VII, § 706(b)], inserted ''(determined without regard to paragraph (4) thereof)'' after ''subsection (c) of this section''.

Subsec. (c)(4). Pub. L. 105–277, § 101(f) [title VII, § 706(a)], added par. (4).

1997—Subsec. (a)(1). Pub. L. 105–100, § 162(8)(A), substituted ''$4,295,000,000'' for ''$4,275,000,000''.

Subsec. (b)(4). Pub. L. 105–100, § 162(8)(B), substituted ''In'' for ''Subject to paragraph (5), in''.

Subsec. (c)(2)(C). Pub. L. 105–100, § 162(8)(C), inserted ''the'' before ''Virgin Islands''.

Subsec. (c)(3)(C), (E). Pub. L. 105–100, § 162(8)(C), substituted ''The'' for ''the''.

Subsec. (d)(1). Pub. L. 105–100, § 162(6)(A), substituted ''for expenditures claimed by the State'' for ''for calendar quarters''.

Subsec. (d)(2). Pub. L. 105–100, § 162(6)(B), added par. (2) and struck out former par. (2) which read as follows: ''the amount of payments under such section during such period that is attributable to the provision of medical assistance to a child for which payment is made under section 1396b(a)(1) of this title on the basis of an enhanced FMAP under section 1396d(b) of this title.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VI, § 6101(c), Feb. 8, 2006, 120 Stat. 131, provided that: ''The amendments made by this section [amending this section] apply to items and services furnished on or after October 1, 2005, without regard to whether or not regulations implementing such amendments have been issued.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–74, § 1(a)(4), Aug. 15, 2003, 117 Stat. 895, provided that: ''This subsection [amending this section], and the amendments made by this subsection, shall be effective as if this subsection had been enacted on September 30, 2002, and amounts under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) from allotments for fiscal years 1998 through 2000 are available for expenditure on and after October 1, 2002, under the amendments made by this subsection as if this subsection had been enacted on September 30, 2002.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VIII, § 801(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–580, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 4901 of BBA [Pub. L. 105–33] (111 Stat. 552).''

Amendment by section 802(b), (d)(3) of Pub. L. 106–554 effective as if included in the enactment of section 4901 of Pub. L. 105–33, see section 1(a)(6) [title VIII, § 802(f)] of Pub. L. 106–554, set out as a note under section 1396d of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, § 701(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–400, provided that: ''The amendments made by this section [amending this section] apply to allotments determined under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) for fiscal year 2000 and each fiscal year thereafter.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 162 of Pub. L. 105–100 provided that the amendment made by that section is effective as if included in the enactment of subtitle J (§§ 4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

AUTHORITY TO TRANSFER SUBCHAPTER XXI APPROPRIATIONS TO SUBCHAPTER XIX APPROPRIATION ACCOUNT AS REIMBURSEMENT FOR MEDICAID EXPENDITURES FOR MEDICAID EXPANSION SCHIP SERVICES

Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–581, provided that: ''Notwithstanding any other provision of law, all amounts appropriated under title XXI [of the Social Security Act, this subchapter] and allotted to a State pursuant to subsection (b) or (c) of section 2104 of the Social Security Act (42 U.S.C. 1397dd) for fiscal years 1998 through 2000 (including any amounts that, but for this provision, would be considered to have expired) and not expended in providing child health assistance or related services for which payment may be made pursuant to subparagraph (C) or (D) of section 2105(a)(1) of such Act (42 U.S.C. 1397ee(a)(1)) (as amended by subsection (a)), shall be available to reimburse the Grants to States for Medicaid account in an amount equal to the total payments made to such State under section 1903(a) of such Act (42 U.S.C. 1396b(a)) for expenditures in such years for medical assistance described in subparagraphs (A) and (B) of section 2105(a)(1) of such Act (42 U.S.C. 1397ee(a)(1)) (as so amended).''

DETERMINATION OF NUMBER OF CHILDREN AND STATE COST FACTORS FOR FISCAL YEARS 1998 AND 1999

Pub. L. 105–277, div. A, § 101(f) [title VII, § 707], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389, provided that: ''Notwithstanding any other provision of law, for purposes of determining the product under section 2104(b)(1)(A) of the Social Security Act (42 U.S.C. 1397dd(b)(1)(A)) for a State for each of fiscal years 1998 and 1999—

''(1) the number of children under clause (i) of such section shall be the number of low-income children specified for the State in Column B of the table on pages 48101–48102 of the Federal Register published on September 12, 1997, adjusted by the Census Bureau as necessary to treat children as being without health insurance if they have access to health care funded by the Indian Health Service but do not have health insurance; and

''(2) the State cost factor under clause (ii) of such section shall be the State cost factor specified for the State in Column C of such table.''

§ 1397ee. Payments to States

(a) Payments

(1) In general

Subject to the succeeding provisions of this section, the Secretary shall pay to each State with a plan approved under this subchapter, from its allotment under section 1397dd of this title, an amount for each quarter equal to the enhanced FMAP (or, in the case of expenditures described in subparagraph (B), the Federal medical assistance percentage (as defined in the first sentence of section 1396d(b) of this title)) of expenditures in the quarter—

(A) for child health assistance under the plan for targeted low-income children in the form of providing medical assistance for which payment is made on the basis of an enhanced FMAP under the fourth sentence of section 1396d(b) of this title;

(B) for the provision of medical assistance on behalf of a child during a presumptive eligibility period under section 1396r–1a of this title;

(C) for child health assistance under the plan for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 1397cc of this title; and

(D) only to the extent permitted consistent with subsection (c) of this section—

(i) for payment for other child health assistance for targeted low-income children;

(ii) for expenditures for health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children);

(iii) for expenditures for outreach activities as provided in section 1397bb(c)(1) of this title under the plan; and

(iv) for other reasonable costs incurred by the State to administer the plan.

(2) Order of payments

Payments under paragraph (1) from a State's allotment shall be made in the following order:

(A) First, for expenditures for items described in paragraph (1)(A).

(B) Second, for expenditures for items described in paragraph (1)(B).

(C) Third, for expenditures for items described in paragraph (1)(C).

(D) Fourth, for expenditures for items described in paragraph (1)(D).

(b) Enhanced FMAP

For purposes of subsection (a) of this section, the ''enhanced FMAP'', for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1396d(b) of this title) for the State increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the State, is less than (2) 100 percent; but in no case shall the enhanced FMAP for a State exceed 85 percent.

(c) Limitation on certain payments for certain expenditures

(1) General limitations

Funds provided to a State under this subchapter shall only be used to carry out the purposes of this subchapter (as described in section 1397aa of this title) and may not include coverage of a nonpregnant childless adult, and any health insurance coverage provided with such funds may include coverage of abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest. For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1396u–1 of this title) shall not be considered a childless adult.

(2) Limitation on expenditures not used for medicaid or health insurance assistance

(A) In general

Except as provided in this paragraph, the amount of payment that may be made under subsection (a) of this section for a fiscal year for expenditures for items described in paragraph (1)(D) of such subsection shall not exceed 10 percent of the total amount of expenditures for which payment is made under subparagraphs (A), (C), and (D) of paragraph (1) of such subsection.

(B) Waiver authorized for cost-effective alternative

The limitation under subparagraph (A) on expenditures for items described in subsection (a)(1)(D) of this section shall not apply to the extent that a State establishes to the satisfaction of the Secretary that—

(i) coverage provided to targeted low-income children through such expenditures meets the requirements of section 1397cc of this title;

(ii) the cost of such coverage is not greater, on an average per child basis, than the cost of coverage that would otherwise be provided under section 1397cc of this title; and

(iii) such coverage is provided through the use of a community-based health delivery system, such as through contracts with health centers receiving funds under section 254b of this title or with hospitals such as those that receive disproportionate share payment adjustments under section 1395ww(d)(5)(F) or 1396r–4 of this title.

(3) Waiver for purchase of family coverage

Payment may be made to a State under subsection (a)(1) of this section for the purchase of family coverage under a group health plan or health insurance coverage that includes coverage of targeted low-income children only if the State establishes to the satisfaction of the Secretary that—

(A) purchase of such coverage is cost-effective relative to the amounts that the State would have paid to obtain comparable coverage only of the targeted low-income children involved, and

(B) such coverage shall not be provided if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage.

(4) Use of non-Federal funds for State matching requirement

Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of non-Federal contributions required under subsection (a) of this section.

(5) Offset of receipts attributable to premiums and other cost-sharing

For purposes of subsection (a) of this section, the amount of the expenditures under the plan shall be reduced by the amount of any premiums and other cost-sharing received by the State.

(6) Prevention of duplicative payments

(A) Other health plans

No payment shall be made to a State under this section for expenditures for child health assistance provided for a targeted low-income child under its plan to the extent that a private insurer (as defined by the Secretary by regulation and including a group health plan (as defined in section 1167(1) of title 29), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided child health assistance under the plan.

(B) Other Federal governmental programs

Except as provided in subparagraph (A) or (B) of subsection (a)(1) of this section or any other provision of law, no payment shall be made to a State under this section for expenditures for child health assistance pro-

vided for a targeted low-income child under its plan to the extent that payment has been made or can reasonably be expected to be made promptly (as determined in accordance with regulations) under any other federally operated or financed health care insurance program, other than an insurance program operated or financed by the Indian Health Service, as identified by the Secretary. For purposes of this paragraph, rules similar to the rules for overpayments under section 1396b(d)(2) of this title shall apply.

(7) Limitation on payment for abortions

(A) In general

Payment shall not be made to a State under this section for any amount expended under the State plan to pay for any abortion or to assist in the purchase, in whole or in part, of health benefit coverage that includes coverage of abortion.

(B) Exception

Subparagraph (A) shall not apply to an abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.

(C) Rule of construction

Nothing in this section shall be construed as affecting the expenditure by a State, locality, or private person or entity of State, local, or private funds (other than funds expended under the State plan) for any abortion or for health benefits coverage that includes coverage of abortion.

(d) Maintenance of effort

(1) In medicaid eligibility standards

No payment may be made under subsection (a) of this section with respect to child health assistance provided under a State child health plan if the State adopts income and resource standards and methodologies for purposes of determining a child's eligibility for medical assistance under the State plan under subchapter XIX of this chapter that are more restrictive than those applied as of June 1, 1997.

(2) In amounts of payment expended for certain State-funded health insurance programs for children

(A) In general

The amount of the allotment for a State in a fiscal year (beginning with fiscal year 1999) shall be reduced by the amount by which—

(i) the total of the State children's health insurance expenditures in the preceding fiscal year, is less than

(ii) the total of such expenditures in fiscal year 1996.

(B) State children's health insurance expenditures

The term ''State children's health insurance expenditures'' means the following:

(i) The State share of expenditures under this subchapter.

(ii) The State share of expenditures under subchapter XIX of this chapter that are attributable to an enhanced FMAP under the fourth sentence of section 1396d(b) of this title.

(iii) State expenditures under health benefits coverage under an existing comprehensive State-based program, described in section 1397cc(d) of this title.

(e) Advance payment; retrospective adjustment

The Secretary may make payments under this section for each quarter on the basis of advance estimates of expenditures submitted by the State and such other investigation as the Secretary may find necessary, and may reduce or increase the payments as necessary to adjust for any overpayment or underpayment for prior quarters.

(f) Flexibility in submittal of claims

Nothing in this section or subsections (e) and (f) of section 1397dd of this title shall be construed as preventing a State from claiming as expenditures in the quarter expenditures that were incurred in a previous quarter.

(g) Authority for qualifying States to use certain funds for medicaid expenditures

(1) State option

(A) In general

Notwithstanding any other provision of law, a qualifying State (as defined in paragraph (2)) may elect to use not more than 20 percent of any allotment under section 1397dd of this title for fiscal year 1998, 1999, 2000, 2001, 2004, 2005, 2006, or 2007 (insofar as it is available under subsections (e) and (g) of such section) for payments under subchapter XIX of this chapter in accordance with subparagraph (B), instead of for expenditures under this subchapter.

(B) Payments to States

(i) In general

In the case of a qualifying State that has elected the option described in subparagraph (A), subject to the availability of funds under such subparagraph with respect to the State, the Secretary shall pay the State an amount each quarter equal to the additional amount that would have been paid to the State under subchapter XIX of this chapter with respect to expenditures described in clause (ii) if the enhanced FMAP (as determined under subsection (b) of this section) had been substituted for the Federal medical assistance percentage (as defined in section 1396d(b) of this title).

(ii) Expenditures described

For purposes of this subparagraph, the expenditures described in this clause are expenditures, made after August 15, 2003, and during the period in which funds are available to the qualifying State for use under subparagraph (A), for medical assistance under subchapter XIX of this chapter to individuals who have not attained age 19 and whose family income exceeds 150 percent of the poverty line.

(iii) No impact on determination of budget neutrality for waivers

In the case of a qualifying State that uses amounts paid under this subsection

for expenditures described in clause (ii) that are incurred under a waiver approved for the State, any budget neutrality determinations with respect to such waiver shall be determined without regard to such amounts paid.

(2) Qualifying State

In this subsection, the term ''qualifying State'' means a State that, on and after April 15, 1997, has an income eligibility standard that is at least 184 percent of the poverty line with respect to any 1 or more categories of children (other than infants) who are eligible for medical assistance under section 1396a(a)(10)(A) of this title or, in the case of a State that has a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on August 1, 1994, or July 1, 1995, has an income eligibility standard under such waiver for children that is at least 185 percent of the poverty line, or, in the case of a State that has a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on January 1, 1994, has an income eligibility standard under such waiver for children who lack health insurance that is at least 185 percent of the poverty line, or, in the case of a State that had a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on October 1, 1993, had an income eligibility standard under such waiver for children that was at least 185 percent of the poverty line and on and after July 1, 1998, has an income eligibility standard for children under section 1396a(a)(10)(A) of this title or a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that is at least 185 percent of the poverty line.

(3) Construction

Nothing in paragraphs (1) and (2) shall be construed as modifying the requirements applicable to States implementing State child health plans under this subchapter.

(Aug. 14, 1935, ch. 531, title XXI, § 2105, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 560; amended Pub. L. 105–100, title I, § 162(5), (7), Nov. 19, 1997, 111 Stat. 2189, 2190; Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, § 705(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–402; Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(a), (d)(4), (e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–580 to 2763A–582; Pub. L. 108–74, § 1(b), Aug. 15, 2003, 117 Stat. 895; Pub. L. 108–127, § 1, Nov. 17, 2003, 117 Stat. 1354; Pub. L. 109–171, title VI, §§ 6102(b), 6103(a), Feb. 8, 2006, 120 Stat. 131, 132; Pub. L. 109–482, title II, § 201(b), Jan. 15, 2007, 120 Stat. 3701.)

AMENDMENTS

2007—Subsec. (g)(1)(A). Pub. L. 109–482 substituted ''2005, 2006, or 2007'' for ''or 2005''.

2006—Subsec. (c)(1). Pub. L. 109–171, § 6102(b), inserted ''and may not include coverage of a nonpregnant childless adult'' after ''section 1397aa of this title)'' and ''For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1396u–1 of this title) shall not be considered a childless adult.'' at end.

Subsec. (g)(1)(A). Pub. L. 109–171 substituted ''2001, 2004, or 2005'' for ''or 2001''.

2003—Subsec. (g). Pub. L. 108–74 added subsec. (g).

Subsec. (g)(2). Pub. L. 108–127 substituted ''184'' for ''185'' the first place appearing, inserted ''August 1, 1994, or'' before ''July 1, 1995'', and inserted before period at end '', or, in the case of a State that had a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on October 1, 1993, had an income eligibility standard under such waiver for children that was at least 185 percent of the poverty line and on and after July 1, 1998, has an income eligibility standard for children under section 1396a(a)(10)(A) of this title or a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that is at least 185 percent of the poverty line''.

2000—Subsec. (a). Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(a)], added subsec. heading, par. (1) heading, introductory provisions, and subpars. (A) and (B), struck out former subsec. heading and introductory provisions, redesignated former pars. (1) and (2) as subpars. (C) and (D), respectively, of par. (1) and realigned margins, redesignated subpars. (A) to (D) of former par. (2) as cls. (i) to (iv), respectively, of subpar. (D) of par. (1) and realigned margins, and added par. (2). Prior to amendment, introductory provisions read as follows: ''Subject to the succeeding provisions of this section, the Secretary shall pay to each State with a plan approved under this subchapter, from its allotment under section 1397dd of this title (taking into account any adjustment under section 1397dd(d) of this title), an amount for each quarter equal to the enhanced FMAP of expenditures in the quarter—''.

Subsec. (c)(2)(A). Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(d)(4)(A)], substituted ''the amount of payment that may be made under subsection (a) of this section for a fiscal year for expenditures for items described in paragraph (1)(D) of such subsection shall not exceed 10 percent of the total amount of expenditures for which payment is made under subparagraphs (A), (C), and (D) of paragraph (1) of such subsection.'' for ''payment shall not be made under subsection (a) of this section for expenditures for items described in subsection (a) of this section (other than paragraph (1)) for a fiscal year to the extent the total of such expenditures (for which payment is made under such subsection) exceeds 10 percent of the sum of—

''(i) the total of such expenditures for such fiscal year, and

''(ii) the total expenditures for medical assistance by the State under subchapter XIX of this chapter for which Federal payments made under section 1396b(a)(1) of this title are based on an enhanced FMAP described in subsection (b) of this section for such fiscal year.''

Subsec. (c)(2)(B). Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(d)(4)(B)], substituted ''described in subsection (a)(1)(D)'' for ''described in subsection (a)(2)'' in introductory provisions.

Subsec. (c)(6)(B). Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(d)(4)(C)], substituted ''Except as provided in subparagraph (A) or (B) of subsection (a)(1) of this section or any other provision of law,'' for ''Except as otherwise provided by law,''.

Subsec. (d)(2)(B)(ii). Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(e)], substituted ''enhanced FMAP under the fourth sentence of section 1396d(b) of this title'' for ''enhanced FMAP under section 1396d(u) of this title''.

1999—Subsec. (d)(2)(B)(iii). Pub. L. 106–113 inserted ''in'' after ''described''.

1997—Subsec. (c)(2)(A). Pub. L. 105–100, § 162(5), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Except as provided in this paragraph, payment shall not be made under subsection (a) of this section for expenditures for items described in subsection (a) of this section (other than paragraph (1)) for a quarter in a fiscal

year to the extent the total of such expenditures exceeds 10 percent of the sum of—

''(i) the total Federal payments made under subsection (a) of this section for such quarter in the fiscal year, and

''(ii) the total Federal payments made under section 1396b(a)(1) of this title based on an enhanced FMAP described in section 1396d(u)(2) of this title for such quarter.''

Subsec. (f). Pub. L. 105–100, § 162(7), added subsec. (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 6102(b) of Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, and applicable to any waiver, experimental, pilot, or demonstration project that is approved on or after that date, see section 6102(d) of Pub. L. 109–171, set out as a note under section 1397gg of this title.

Pub. L. 109–171, title VI, § 6103(b), Feb. 8, 2006, 120 Stat. 132, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenditures made under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after October 1, 2005.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–127, § 1, Nov. 17, 2003, 117 Stat. 1354, provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 108–74.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the enactment of section 4901 of Pub. L. 105–33, see section 1(a)(6) [title VIII, § 802(f)] of Pub. L. 106–554, set out as a note under section 1396d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 162 of Pub. L. 105–100 provided in part that the amendment made by that section is effective as if included in the enactment of subtitle J (§§ 4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

§ 1397ff. Process for submission, approval, and amendment of State child health plans

(a) Initial plan

(1) In general

As a condition of receiving payment under section 1397ee of this title, a State shall submit to the Secretary a State child health plan that meets the applicable requirements of this subchapter.

(2) Approval

Except as the Secretary may provide under subsection (e) of this section, a State plan submitted under paragraph (1)—

(A) shall be approved for purposes of this subchapter, and

(B) shall be effective beginning with a calendar quarter that is specified in the plan, but in no case earlier than October 1, 1997.

(b) Plan amendments

(1) In general

A State may amend, in whole or in part, its State child health plan at any time through transmittal of a plan amendment.

(2) Approval

Except as the Secretary may provide under subsection (e) of this section, an amendment to a State plan submitted under paragraph (1)—

(A) shall be approved for purposes of this subchapter, and

(B) shall be effective as provided in paragraph (3).

(3) Effective dates for amendments

(A) In general

Subject to the succeeding provisions of this paragraph, an amendment to a State plan shall take effect on one or more effective dates specified in the amendment.

(B) Amendments relating to eligibility or benefits

(i) Notice requirement

Any plan amendment that eliminates or restricts eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior public notice of the change, in a form and manner provided under applicable State law.

(ii) Timely transmittal

Any plan amendment that eliminates or restricts eligibility or benefits under the plan shall not be effective for longer than a 60-day period unless the amendment has been transmitted to the Secretary before the end of such period.

(C) Other amendments

Any plan amendment that is not described in subparagraph (B) and that becomes effective in a State fiscal year may not remain in effect after the end of such fiscal year (or, if later, the end of the 90-day period on which it becomes effective) unless the amendment has been transmitted to the Secretary.

(c) Disapproval of plans and plan amendments

(1) Prompt review of plan submittals

The Secretary shall promptly review State plans and plan amendments submitted under this section to determine if they substantially comply with the requirements of this subchapter.

(2) 90-day approval deadlines

A State plan or plan amendment is considered approved unless the Secretary notifies the State in writing, within 90 days after receipt of the plan or amendment, that the plan or amendment is disapproved (and the reasons for disapproval) or that specified additional information is needed.

(3) Correction

In the case of a disapproval of a plan or plan amendment, the Secretary shall provide a State with a reasonable opportunity for correction before taking financial sanctions against the State on the basis of such disapproval.

(d) Program operation

(1) In general

The State shall conduct the program in accordance with the plan (and any amendments) approved under subsection (c) of this section and with the requirements of this subchapter.

(2) Violations

The Secretary shall establish a process for enforcing requirements under this subchapter. Such process shall provide for the withholding

of funds in the case of substantial noncompliance with such requirements. In the case of an enforcement action against a State under this paragraph, the Secretary shall provide a State with a reasonable opportunity for correction before taking financial sanctions against the State on the basis of such an action.

(e) Continued approval

An approved State child health plan shall continue in effect unless and until the State amends the plan under subsection (b) of this section or the Secretary finds, under subsection (d) of this section, substantial noncompliance of the plan with the requirements of this subchapter.

(Aug. 14, 1935, ch. 531, title XXI, § 2106, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 563.)

§ 1397gg. Strategic objectives and performance goals; plan administration

(a) Strategic objectives and performance goals

(1) Description

A State child health plan shall include a description of—

(A) the strategic objectives,

(B) the performance goals, and

(C) the performance measures,

the State has established for providing child health assistance to targeted low-income children under the plan and otherwise for maximizing health benefits coverage for other low-income children and children generally in the State.

(2) Strategic objectives

Such plan shall identify specific strategic objectives relating to increasing the extent of creditable health coverage among targeted low-income children and other low-income children.

(3) Performance goals

Such plan shall specify one or more performance goals for each such strategic objective so identified.

(4) Performance measures

Such plan shall describe how performance under the plan will be—

(A) measured through objective, independently verifiable means, and

(B) compared against performance goals, in order to determine the State's performance under this subchapter.

(b) Records, reports, audits, and evaluation

(1) Data collection, records, and reports

A State child health plan shall include an assurance that the State will collect the data, maintain the records, and furnish the reports to the Secretary, at the times and in the standardized format the Secretary may require in order to enable the Secretary to monitor State program administration and compliance and to evaluate and compare the effectiveness of State plans under this subchapter.

(2) State assessment and study

A State child health plan shall include a description of the State's plan for the annual assessments and reports under section 1397hh(a) of this title and the evaluation required by section 1397hh(b) of this title.

(3) Audits

A State child health plan shall include an assurance that the State will afford the Secretary access to any records or information relating to the plan for the purposes of review or audit.

(c) Program development process

A State child health plan shall include a description of the process used to involve the public in the design and implementation of the plan and the method for ensuring ongoing public involvement.

(d) Program budget

A State child health plan shall include a description of the budget for the plan. The description shall be updated periodically as necessary and shall include details on the planned use of funds and the sources of the non-Federal share of plan expenditures, including any requirements for cost-sharing by beneficiaries.

(e) Application of certain general provisions

The following sections of this chapter shall apply to States under this subchapter in the same manner as they apply to a State under subchapter XIX of this chapter:

(1) Subchapter XIX provisions

(A) Section 1396a(a)(4)(C) of this title (relating to conflict of interest standards).

(B) Paragraphs (2), (16), and (17) of section 1396b(i) of this title (relating to limitations on payment).

(C) Section 1396b(w) of this title (relating to limitations on provider taxes and donations).

(D) Section 1396r–1a of this title (relating to presumptive eligibility for children).

(2) Subchapter XI provisions

(A) Section 1315 of this title (relating to waiver authority).

(B) Section 1316 of this title (relating to administrative and judicial review), but only insofar as consistent with this subchapter.

(C) Section 1320a–3 of this title (relating to disclosure of ownership and related information).

(D) Section 1320a–5 of this title (relating to disclosure of information about certain convicted individuals).

(E) Section 1320a–7a of this title (relating to civil monetary penalties).

(F) Section 1320a–7b(d) of this title (relating to criminal penalties for certain additional charges).

(G) Section 1320b–2 of this title (relating to periods within which claims must be filed).

(f) Limitation of waiver authority

Notwithstanding subsection (e)(2)(A) and section 1315(a) of this title, the Secretary may not approve a waiver, experimental, pilot, or demonstration project that would allow funds made available under this subchapter to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult. For purposes of the preceding sentence, a

caretaker relative (as such term is defined for purposes of carrying out section 1396u–1 of this title) shall not be considered a childless adult.

(Aug. 14, 1935, ch. 531, title XXI, § 2107, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 565; amended Pub. L. 106–554, § 1(a)(6) [title VIII, § 803], Dec. 21, 2000, 114 Stat. 2763, 2763A–582; Pub. L. 109–171, title VI, § 6102(a), Feb. 8, 2006, 120 Stat. 131.)

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–171 added subsec. (f).

2000—Subsec. (e)(1)(D). Pub. L. 106–554 added subpar. (D).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VI, § 6102(d), Feb. 8, 2006, 120 Stat. 132, provided that: ''This section [amending this section and section 1397ee of this title and enacting provisions set out as a note below] and the amendments made by this section shall take effect as if enacted on October 1, 2005, and shall apply to any waiver, experimental, pilot, or demonstration project that is approved on or after that date.''

RULE OF CONSTRUCTION

Pub. L. 109–171, title VI, § 6102(c), Feb. 8, 2006, 120 Stat. 131, provided that: ''Nothing in this section [amending this section and section 1397ee of this title and enacting provisions set out as a note above] or the amendments made by this section shall be construed to—

''(1) authorize the waiver of any provision of title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.) that is not otherwise authorized to be waived under such titles or under title XI of such Act (42 U.S.C. 1301 et seq.) as of the date of enactment of this Act [Feb. 8, 2006];

''(2) imply congressional approval of any waiver, experimental, pilot, or demonstration project affecting funds made available under the State children's health insurance program under title XXI of the Social Security Act (42 U.S.C. 1397aa et. seq.) or any amendment to such a waiver or project that has been approved as of such date of enactment; or

''(3) apply to any waiver, experimental, pilot, or demonstration project that would allow funds made available under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult that is approved before the date of enactment of this Act or to any extension, renewal, or amendment of such a waiver or project that is approved on or after such date of enactment.''

§ 1397hh. Annual reports; evaluations

(a) Annual report

The State shall—

(1) assess the operation of the State plan under this subchapter in each fiscal year, including the progress made in reducing the number of uncovered low-income children; and

(2) report to the Secretary, by January 1 following the end of the fiscal year, on the result of the assessment.

(b) State evaluations

(1) In general

By March 31, 2000, each State that has a State child health plan shall submit to the Secretary an evaluation that includes each of the following:

(A) An assessment of the effectiveness of the State plan in increasing the number of children with creditable health coverage.

(B) A description and analysis of the effectiveness of elements of the State plan, including—

(i) the characteristics of the children and families assisted under the State plan including age of the children, family income, and the assisted child's access to or coverage by other health insurance prior to the State plan and after eligibility for the State plan ends,

(ii) the quality of health coverage provided including the types of benefits provided,

(iii) the amount and level (including payment of part or all of any premium) of assistance provided by the State,

(iv) the service area of the State plan,

(v) the time limits for coverage of a child under the State plan,

(vi) the State's choice of health benefits coverage and other methods used for providing child health assistance, and

(vii) the sources of non-Federal funding used in the State plan.

(C) An assessment of the effectiveness of other public and private programs in the State in increasing the availability of affordable quality individual and family health insurance for children.

(D) A review and assessment of State activities to coordinate the plan under this subchapter with other public and private programs providing health care and health care financing, including medicaid and maternal and child health services.

(E) An analysis of changes and trends in the State that affect the provision of accessible, affordable, quality health insurance and health care to children.

(F) A description of any plans the State has for improving the availability of health insurance and health care for children.

(G) Recommendations for improving the program under this subchapter.

(H) Any other matters the State and the Secretary consider appropriate.

(2) Report of the Secretary

The Secretary shall submit to Congress and make available to the public by December 31, 2001, a report based on the evaluations submitted by States under paragraph (1), containing any conclusions and recommendations the Secretary considers appropriate.

(c) Federal evaluation

(1) In general

The Secretary, directly or through contracts or interagency agreements, shall conduct an independent evaluation of 10 States with approved child health plans.

(2) Selection of States

In selecting States for the evaluation conducted under this subsection, the Secretary shall choose 10 States that utilize diverse approaches to providing child health assistance, represent various geographic areas (including a mix of rural and urban areas), and contain a significant portion of uncovered children.

(3) Matters included

In addition to the elements described in subsection (b)(1) of this section, the evaluation

conducted under this subsection shall include each of the following:

(A) Surveys of the target population (enrollees, disenrollees, and individuals eligible for but not enrolled in the program under this subchapter).

(B) Evaluation of effective and ineffective outreach and enrollment practices with respect to children (for both the program under this subchapter and the medicaid program under subchapter XIX of this chapter), and identification of enrollment barriers and key elements of effective outreach and enrollment practices, including practices that have successfully enrolled hard-to-reach populations such as children who are eligible for medical assistance under subchapter XIX of this chapter but have not been enrolled previously in the medicaid program under that subchapter.

(C) Evaluation of the extent to which State medicaid eligibility practices and procedures under the medicaid program under subchapter XIX of this chapter are a barrier to the enrollment of children under that program, and the extent to which coordination (or lack of coordination) between that program and the program under this subchapter affects the enrollment of children under both programs.

(D) An assessment of the effect of cost-sharing on utilization, enrollment, and coverage retention.

(E) Evaluation of disenrollment or other retention issues, such as switching to private coverage, failure to pay premiums, or barriers in the recertification process.

(4) Submission to Congress

Not later than December 31, 2001, the Secretary shall submit to Congress the results of the evaluation conducted under this subsection.

(5) Funding

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for fiscal year 2000 for the purpose of conducting the evaluation authorized under this subsection. Amounts appropriated under this paragraph shall remain available for expenditure through fiscal year 2002.

(d) Inspector General audit and GAO report

(1) Audit

Beginning with fiscal year 2000, and every third fiscal year thereafter, the Secretary, through the Inspector General of the Department of Health and Human Services, shall audit a sample from among the States described in paragraph (2) in order to—

(A) determine the number, if any, of enrollees under the plan under this subchapter who are eligible for medical assistance under subchapter XIX of this chapter (other than as optional targeted low-income children under section 1396a(a)(10)(A)(ii)(XIV) of this title); and

(B) assess the progress made in reducing the number of uncovered low-income children, including the progress made to achieve the strategic objectives and performance goals included in the State child health plan under section 1397gg(a) of this title.

(2) State described

A State described in this paragraph is a State with an approved State child health plan under this subchapter that does not, as part of such plan, provide health benefits coverage under the State's medicaid program under subchapter XIX of this chapter.

(3) Monitoring and report from GAO

The Comptroller General of the United States shall monitor the audits conducted under this subsection and, not later than March 1 of each fiscal year after a fiscal year in which an audit is conducted under this subsection, shall submit a report to Congress on the results of the audit conducted during the prior fiscal year.

(Aug. 14, 1935, ch. 531, title XXI, § 2108, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 566; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, § 703(b), (c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–401.)

AMENDMENTS

1999—Subsecs. (c), (d). Pub. L. 106–113 added subsecs. (c) and (d).

§ 1397ii. Miscellaneous provisions

(a) Relation to other laws

(1) HIPAA

Health benefits coverage provided under section 1397aa(a)(1) of this title (and coverage provided under a waiver under section 1397ee(c)(2)(B) of this title) shall be treated as creditable coverage for purposes of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181 et seq.], title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.], and subtitle K of the Internal Revenue Code of 1986.

(2) ERISA

Nothing in this subchapter shall be construed as affecting or modifying section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) with respect to a group health plan (as defined in section 2791(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(1))).

(b) Adjustment to Current Population Survey to include State-by-State data relating to children without health insurance coverage

(1) In general

The Secretary of Commerce shall make appropriate adjustments to the annual Current Population Survey conducted by the Bureau of the Census in order to produce statistically reliable annual State data on the number of low-income children who do not have health insurance coverage, so that real changes in the uninsurance rates of children can reasonably be detected. The Current Population Survey should produce data under this subsection that categorizes such children by family income, age, and race or ethnicity. The adjustments made to produce such data shall include,

where appropriate, expanding the sample size used in the State sampling units, expanding the number of sampling units in a State, and an appropriate verification element.

(2) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for fiscal year 2000 and each fiscal year thereafter for the purpose of carrying out this subsection.

(Aug. 14, 1935, ch. 531, title XXI, § 2109, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 567; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, §§ 703(a), 705(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–400, 1501A–403.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(1), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended. Part 7 of subtitle B of title I of the Act is classified generally to part 7 (§ 1181 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (a)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XXVII of the Act is classified generally to subchapter XXV (§ 300gg et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (a)(1), is classified generally to Title 26, Internal Revenue Code. Subtitle K of such Code appears at section 9801 et seq. of Title 26.

AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106–113, § 1000(a)(6) [title VII, § 705(c)(1)], substituted ''title I'' for ''title II'' before ''of the Employee Retirement Income Security Act of 1974,''.

Subsec. (a)(2). Pub. L. 106–113, § 1000(a)(6) [title VII, § 705(c)(2)], inserted closing parenthesis before period at end.

Subsec. (b). Pub. L. 106–113, § 1000(a)(6) [title VII, § 703(a)], added subsec. (b).

§ 1397jj. Definitions

(a) Child health assistance

For purposes of this subchapter, the term ''child health assistance'' means payment for part or all of the cost of health benefits coverage for targeted low-income children that includes any of the following (and includes, in the case described in section 1397ee(a)(1)(D)(i) of this title, payment for part or all of the cost of providing any of the following), as specified under the State plan:

(1) Inpatient hospital services.

(2) Outpatient hospital services.

(3) Physician services.

(4) Surgical services.

(5) Clinic services (including health center services) and other ambulatory health care services.

(6) Prescription drugs and biologicals and the administration of such drugs and biologicals, only if such drugs and biologicals are not furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.

(7) Over-the-counter medications.

(8) Laboratory and radiological services.

(9) Prenatal care and prepregnancy family planning services and supplies.

(10) Inpatient mental health services, other than services described in paragraph (18) but including services furnished in a State-operated mental hospital and including residential or other 24-hour therapeutically planned structured services.

(11) Outpatient mental health services, other than services described in paragraph (19) but including services furnished in a State-operated mental hospital and including community-based services.

(12) Durable medical equipment and other medically-related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices, and adaptive devices).

(13) Disposable medical supplies.

(14) Home and community-based health care services and related supportive services (such as home health nursing services, home health aide services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, training for family members, and minor modifications to the home).

(15) Nursing care services (such as nurse practitioner services, nurse midwife services, advanced practice nurse services, private duty nursing care, pediatric nurse services, and respiratory care services) in a home, school, or other setting.

(16) Abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.

(17) Dental services.

(18) Inpatient substance abuse treatment services and residential substance abuse treatment services.

(19) Outpatient substance abuse treatment services.

(20) Case management services.

(21) Care coordination services.

(22) Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

(23) Hospice care.

(24) Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and only if the service is—

(A) prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law,

(B) performed under the general supervision or at the direction of a physician, or

(C) furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.

(25) Premiums for private health care insurance coverage.

(26) Medical transportation.

(27) Enabling services (such as transportation, translation, and outreach services) only if designed to increase the accessibility of

primary and preventive health care services for eligible low-income individuals.

(28) Any other health care services or items specified by the Secretary and not excluded under this section.

(b) "Targeted low-income child" defined

For purposes of this subchapter—

(1) In general

Subject to paragraph (2), the term ''targeted low-income child'' means a child—

(A) who has been determined eligible by the State for child health assistance under the State plan;

(B)(i) who is a low-income child, or

(ii) is a child—

(I) whose family income (as determined under the State child health plan) exceeds the medicaid applicable income level (as defined in paragraph (4)), but does not exceed 50 percentage points above the medicaid applicable income level;

(II) whose family income (as so determined) does not exceed the medicaid applicable income level (as defined in paragraph (4) but determined as if ''June 1, 1997'' were substituted for ''March 31, 1997''); or

(III) who resides in a State that does not have a medicaid applicable income level (as defined in paragraph (4)); and

(C) who is not found to be eligible for medical assistance under subchapter XIX of this chapter or covered under a group health plan or under health insurance coverage (as such terms are defined in section 300gg–91 of this title).

(2) Children excluded

Such term does not include—

(A) a child who is an inmate of a public institution or a patient in an institution for mental diseases; or

(B) a child who is a member of a family that is eligible for health benefits coverage under a State health benefits plan on the basis of a family member's employment with a public agency in the State.

(3) Special rule

A child shall not be considered to be described in paragraph (1)(C) notwithstanding that the child is covered under a health insurance coverage program that has been in operation since before July 1, 1997, and that is offered by a State which receives no Federal funds for the program's operation.

(4) Medicaid applicable income level

The term ''medicaid applicable income level'' means, with respect to a child, the effective income level (expressed as a percent of the poverty line) that has been specified under the State plan under subchapter XIX of this chapter (including under a waiver authorized by the Secretary or under section 1396a(r)(2) of this title), as of March 31, 1997, for the child to be eligible for medical assistance under section 1396a(*l*)(2) or 1396d(n)(2) of this title (as selected by a State) for the age of such child.

(c) Additional definitions

For purposes of this subchapter:

(1) Child

The term ''child'' means an individual under 19 years of age.

(2) Creditable health coverage

The term ''creditable health coverage'' has the meaning given the term ''creditable coverage'' under section 300gg(c) of this title and includes coverage that meets the requirements of section 1397cc of this title provided to a targeted low-income child under this subchapter or under a waiver approved under section 1397ee(c)(2)(B) of this title (relating to a direct service waiver).

(3) Group health plan; health insurance coverage; etc.

The terms ''group health plan'', ''group health insurance coverage'', and ''health insurance coverage'' have the meanings given such terms in section 300gg–91 of this title.

(4) Low-income child

The term ''low-income child'' means a child whose family income is at or below 200 percent of the poverty line for a family of the size involved.

(5) Poverty line defined

The term ''poverty line'' has the meaning given such term in section 9902(2) of this title, including any revision required by such section.

(6) Preexisting condition exclusion

The term ''preexisting condition exclusion'' has the meaning given such term in section 300gg(b)(1)(A) of this title.

(7) State child health plan; plan

Unless the context otherwise requires, the terms ''State child health plan'' and ''plan'' mean a State child health plan approved under section 1397ff of this title.

(8) Uncovered child

The term ''uncovered child'' means a child that does not have creditable health coverage.

(Aug. 14, 1935, ch. 531, title XXI, § 2110, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 567; amended Pub. L. 105–100, title I, § 162(3), (9), Nov. 19, 1997, 111 Stat. 2189, 2190; Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(d)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–582.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554 substituted ''section 1397ee(a)(1)(D)(i)'' for ''section 1397ee(a)(2)(A)'' in introductory provisions.

1997—Subsec. (b)(1)(B)(ii). Pub. L. 105–100, § 162(3)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''is a child whose family income (as determined under the State child health plan) exceeds the medicaid applicable income level (as defined in paragraph (4)), but does not exceed 50 percentage points above the medicaid applicable income level; and''.

Subsec. (b)(4). Pub. L. 105–100, § 162(3)(B), substituted ''March 31, 1997'' for ''June 1, 1997'' and ''1396a(*l*)(2) or 1396d(n)(2) of this title (as selected by a State)'' for ''1396a(*l*)(2) of this title''.

Subsec. (c)(3). Pub. L. 105–100, § 162(9), made technical amendment to reference in original act which appears in text as reference to section 300gg–91 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the enactment of section 4901 of Pub. L. 105–33, see

section 1(a)(6) [title VIII, § 802(f)] of Pub. L. 106–554, set out as a note under section 1396d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 162 of Pub. L. 105–100 provided in part that the amendment made by that section is effective as if included in the enactment of subtitle J (§§ 4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

CHAPTER 7A—TEMPORARY UNEMPLOYMENT COMPENSATION PROGRAM

§§ 1400 to 1400v. Omitted

Section 1400, Pub. L. 85–441, title I, § 101, June 4, 1958, 72 Stat. 171; Pub. L. 86–7, Mar. 31, 1959, 73 Stat. 14, authorized payment of temporary unemployment compensation under sections 1400 to 1400k of this title to persons who exhausted their rights under other unemployment compensation laws.

Section 1400a, Pub. L. 85–441, title I, § 102, June 4, 1958, 72 Stat. 172, authorized Secretary to enter into agreements with States for payment of temporary unemployment compensation provided for in sections 1400 to 1400k of this title.

Section 1400b, Pub. L. 85–441, title I, § 103, June 4, 1958, 72 Stat. 173, made special provision for veterans and Federal employees and for fair hearing and review in denial of such benefits.

Section 1400c, Pub. L. 85–441, title I, § 104, June 4, 1958, 72 Stat. 173; Pub. L. 86–778, title V, § 524(b), Sept. 13, 1960, 74 Stat. 982; Pub. L. 88–173, § 2, Nov. 7, 1963, 77 Stat. 306, provided for repayment of amounts of any temporary unemployment compensation benefits, except benefits paid to veterans and Federal employees, paid under sections 1400 to 1400k of this title through device of reduction of credits allowed under section 3302 of Title 26, Internal Revenue Code.

Section 1400d, Pub. L. 85–441, title II, § 201, June 4, 1958, 72 Stat. 174, defined ''Secretary'', ''State'', and ''first claim'' as used in sections 1400 to 1400k of this title.

Section 1400e, Pub. L. 85–441, title II, § 202, June 4, 1958, 72 Stat. 174, provided for review by appropriate State agency with respect to determinations of entitlement to temporary unemployment compensation under sections 1400 to 1400k of this title.

Section 1400f, Pub. L. 85–441, title II, § 203, June 4, 1958, 72 Stat. 174, set out penalties for false statements or representations in connection with payments under sections 1400 to 1400k of this title and provided for recovery of overpayments.

Section 1400g, Pub. L. 85–441, title II, § 204, June 4, 1958, 72 Stat. 175, required each State to provide Secretary with whatever information he might require in administering sections 1400 to 1400k of this title.

Section 1400h, Pub. L. 85–441, title II, § 205, June 4, 1958, 72 Stat. 175, provided for payments to States of funds for benefits under sections 1400 to 1400k of this title, posting of requisite bonds in connection therewith, and liability of certifying and disbursing officers.

Section 1400i, Pub. L. 85–441, title II, § 206, June 4, 1958, 72 Stat. 176, provided for denial of benefits under sections 1400 to 1400k of this title to aliens employed by Communist governments or organizations.

Section 1400j, Pub. L. 85–441, title II, § 207, June 4, 1958, 72 Stat. 176, authorized promulgation of rules and regulations by Secretary to carry out provisions of sections 1400 to 1400k of this title.

Section 1400k, Pub. L. 85–441, title II, § 208, June 4, 1958, 72 Stat. 176, authorized appropriation of funds necessary to carry out sections 1400 to 1400k of this title.

Section 1400*l*, Pub. L. 87–6, § 2, Mar. 24, 1961, 75 Stat. 8, defined ''compensation period'', ''first claim'', ''State unemployment compensation'', ''Secretary'', ''State'', ''State agency'', ''State law'', ''temporary extended unemployment compensation'', ''title XV'', and ''week'' as used in sections 1400*l* to 1400v of this title.

Section 1400m, Pub. L. 87–6, § 3, Mar. 24, 1961, 75 Stat. 8, provided for payment of temporary extended unemployment compensation benefits under sections 1400*l* to 1400v of this title for any period of unemployment between March 24, 1961, and June 30, 1962.

Section 1400n, Pub. L. 87–6, § 4, Mar. 24, 1961, 75 Stat. 9, provided for reimbursement by the Federal government of any State unemployment compensation paid under sections 1400*l* to 1400v of this title in excess of formula amount.

Section 1400*o*, Pub. L. 87–6, § 5, Mar. 24, 1961, 75 Stat. 9, placed limitations on total payments and reimbursements under sections 1400*l* to 1400v of this title.

Section 1400p, Pub. L. 87–6, § 6, Mar. 24, 1961, 75 Stat. 10, set out the covered period for benefits under sections 1400*l* to 1400v of this title as Mar. 24, 1961, to June 30, 1962.

Section 1400q, Pub. L. 87–6, § 7, Mar. 24, 1961, 75 Stat. 10, covered agreements with States for payment and reimbursement of temporary unemployment compensation under sections 1400*l* to 1400v of this title, amendment, suspension, or termination of such an agreement, denial of benefits, review of determinations by State agencies, and reduction of benefits in certain cases.

Section 1400r, Pub. L. 87–6, § 8, Mar. 24, 1961, 75 Stat. 12, provided for payment of benefits under sections 1400*l* to 1400v of this title to veterans and Federal employees.

Section 1400s, Pub. L. 87–6, § 9, Mar. 24, 1961, 75 Stat. 12, set out penalties for making false statements or representations in connection with benefits under sections 1400*l* to 1400v of this title and provided for recovery of overpayments.

Section 1400t, Pub. L. 87–6, § 10, Mar. 24, 1961, 75 Stat. 13, required each State to furnish Secretary with information required to administer program under sections 1400*l* to 1400v of this title.

Section 1400u, Pub. L. 87–6, § 11, Mar. 24, 1961, 75 Stat. 13, made provision for payments to States under sections 1400*l* to 1400v of this title, certification by Secretary to Secretary of the Treasury for payment of sums to each State, surety bonds, liability of certifying and disbursing officers, and costs of administration.

Section 1400v, Pub. L. 87–6, § 12, Mar. 24, 1961, 75 Stat. 14, authorized promulgation by Secretary of rules and regulations necessary to carry out sections 1400*l* to 1400v of this title.

CHAPTER 8—LOW-INCOME HOUSING

Sec.	
1401 to 1404.	Omitted.
1404a.	Secretary of Housing and Urban Development; right to sue; expenses.
1405, 1406.	Omitted.
1406a.	Expenses of management and operation of transferred projects as nonadministrative; payment.
1406b.	Expenses of uncompensated advisers serving United States Housing Authority away from home.
1406c to 1433.	Omitted or Repealed.
1434.	Records; contents; examination and audit.
1435.	Access to books, documents, etc., for purpose of audit.
1436.	Repealed.
1436a.	Restriction on use of assisted housing by non-resident aliens.
1436b.	Financial assistance in impacted areas.
1436c.	Insurance for public housing agencies and Indian housing authorities.
1436d.	Consultation with affected areas in settlement of litigation.

SUBCHAPTER I—GENERAL PROGRAM OF ASSISTED HOUSING

1437.	Declaration of policy and public housing agency organization.
1437a.	Rental payments.
1437a–1.	Repealed.
1437b.	Loans and commitments to make loans for low-income housing projects.

Sec.
1437c. Contributions for low-income housing projects.
1437c–1. Public housing agency plans.
1437d. Contract provisions and requirements; loans and annual contributions.
1437e. Designated housing for elderly and disabled families.
1437f. Low-income housing assistance.
1437g. Public housing Capital and Operating Funds.
1437h. Implementation of provisions by Secretary.
1437i. Obligations of public housing agencies; contestability; full faith and credit of United States pledged as security; tax exemption.
1437j. Labor standards and community service requirement.
1437j–1. Repealed.
1437k. Consortia, joint ventures, affiliates, and subsidiaries of public housing agencies.
1437*l*. Repealed.
1437m. Payment of non-Federal share.
1437n. Eligibility for assisted housing.
1437*o*. Repealed.
1437p. Demolition and disposition of public housing.
1437q. Financing limitations.
1437r. Public housing resident management.
1437s. Public housing homeownership and management opportunities.
1437t. Authority to convert public housing to vouchers.
1437u. Family Self-Sufficiency program.
1437v. Demolition, site revitalization, replacement housing, and tenant-based assistance grants for projects.
1437w. Transfer of management of certain housing to independent manager at request of residents.
1437x. Environmental reviews.
1437y. Provision of information to law enforcement and other agencies.
1437z. Exchange of information with law enforcement agencies.
1437z–1. Civil money penalties against section 1437f owners.
1437z–2. Public housing mortgages and security interests.
1437z–3. Pet ownership in public housing.
1437z–4. Resident homeownership programs.
1437z–5. Required conversion of distressed public housing to tenant-based assistance.
1437z–6. Services for public and Indian housing residents.
1437z–7. Mixed-finance public housing.

SUBCHAPTER II—ASSISTED HOUSING FOR INDIANS AND ALASKA NATIVES

1437aa to 1437ee. Repealed.
1437ff. Transferred.

SUBCHAPTER II–A—HOPE FOR PUBLIC HOUSING HOMEOWNERSHIP

1437aaa. Program authority.
1437aaa–1. Planning grants.
1437aaa–2. Implementation grants.
1437aaa–3. Homeownership program requirements.
1437aaa–4. Other program requirements.
1437aaa–5. Definitions.
1437aaa–6. Relationship to other homeownership opportunities.
1437aaa–7. Limitation on selection criteria.
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SUBCHAPTER II–B—HOME RULE FLEXIBLE GRANT DEMONSTRATION

1437bbb. Purpose.
1437bbb–1. Flexible grant program.
1437bbb–2. Program allocation and covered housing assistance.
1437bbb–3. Applicability of requirements under programs for covered housing assistance.
1437bbb–4. Program requirements.
1437bbb–5. Application.
1437bbb–6. Training.
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1437bbb–8. Definitions.
1437bbb–9. Termination and evaluation.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

1438. Repealed.
1439. Local housing assistance plan.
1440. State housing finance and development agencies.

§§ 1401 to 1404. Omitted

CODIFICATION

Sections 1401 to 1404 were omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1401, acts Sept. 1, 1937, ch. 896, §1, 50 Stat. 888; July 15, 1949, 338, title III, §307(a), 63 Stat. 429; Sept. 23, 1959, Pub. L. 86–372, title V, §501, 73 Stat. 679; Aug. 1, 1968, Pub. L. 90–448, title II, §206(a), 82 Stat. 504; Dec. 31, 1970, Pub. L. 91–609, title II, §211, 84 Stat. 1779, set out declaration of policy. See section 1437 of this title.

Section 1402, acts, Sept. 1, 1937, ch. 896, §2, 50 Stat. 888; July 15, 1949, ch. 338, title III, §§302(b), 304(c), (i), 306, 307(b), 63 Stat. 424, 425, 429; Oct. 26, 1951, ch. 577, §1, 65 Stat. 647; June 30, 1953, 170, §24(c), 67 Stat. 128; Aug. 7, 1956, ch. 1029, title IV, §404(a), 70 Stat. 1104; July 12, 1957, Pub. L. 85–104, title III, §307, title IV, §401(a), 71 Stat. 301; Sept. 23, 1959, Pub. L. 86–372, title V, §§502, 503(a), 504, 73 Stat. 680; June 30, 1961, Pub. L. 87–70, title II, §202, 75 Stat. 163; Sept. 2, 1964, Pub. L. 88–560, title II, §203(d), title IV, §401(a), 78 Stat. 784, 794; Aug. 10, 1965, Pub. L. 89–117, title I, §§103(b), 104, 79 Stat. 457; Aug. 1, 1968, Pub. L. 90–448, title II, §209(a), 82 Stat. 505; Dec. 24, 1969, Pub. L. 91–152, title II, §213(a), title IV, §403(a), 83 Stat. 389, 395; Dec. 31, 1970, Pub. L. 91–609, title II, §208(a), title IX, §903(c), 84 Stat. 1778, 1808; Dec. 22, 1971, Pub. L. 92–213, §9, 85 Stat. 776, defined applicable terms. See section 1437a of this title.

Section 1403, acts Sept. 1, 1937, ch. 896, §3, 50 Stat. 889; May 25, 1967, Pub. L. 90–19, §2(b), 81 Stat. 20; Aug. 1, 1968, Pub. L. 90–448, title XVII, §1719(a), 82 Stat. 610, created the United States Housing Authority in the Department of Housing and Urban Development.

Section 1404, acts Sept. 1, 1937, ch. 896, §4, 50 Stat. 889; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; May 25, 1967, Pub. L. 90–19, §2(a), (c), 81 Stat. 19, 20, provided for assistance of officers, etc., of other agencies and transfer of property to the Authority.

EFFECTIVE DATE OF 1969 AMENDMENT; APPLICABILITY

Section 213(b) of Pub. L. 91–152 provided that the rents fixed by public housing agencies not exceed one-fourth of a low-rent housing tenant's income be effective not later than ninety days after Dec. 24, 1969, and that the requirements not apply in any case in which the Secretary of Housing and Urban Development determined that limiting the rent of any tenant or class of tenants would have resulted in a deduction in the amount of welfare assistance which would otherwise have been provided to the tenant or class of tenants by a public agency.

§1404a. Secretary of Housing and Urban Development; right to sue; expenses

The Secretary of Housing and Urban Development may sue and be sued only with respect to its functions under the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.], and title II of Public Law 671, Seventy-sixth

Congress, approved June 28, 1940, as amended [42 U.S.C. 1501 et seq.]. Funds made available for carrying out the functions, powers, and duties of the Secretary of Housing and Urban Development (including appropriations therefor, which are authorized) shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Secretary of Housing and Urban Development. Notwithstanding any other provisions of law except provisions of law enacted after August 10, 1948 expressly in limitation hereof, the Secretary of Housing and Urban Development, or any State or local public agency administering a low-rent housing project assisted pursuant to the United States Housing Act of 1937 or title II of Public Law 671, Seventy-sixth Congress, approved June 38, 1940, shall continue to have the right to maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action is authorized by the statute or regulations under which such housing accommodations are administered, and, in determining net income for the purposes of tenant eligibility with respect to low-rent housing projects assisted pursuant to said Acts, the Secretary of Housing and Urban Development is authorized, where it finds such action equitable and in the public interest, to exclude amounts or portions thereof paid by the United States Government for disability or death occurring in connection with military service.

(Aug. 10, 1948, ch. 832, title V, § 502(b), 62 Stat. 1284; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Pub. L. 90–19, § 5(d)(4)–(7), May 25, 1967, 81 Stat. 21; Pub. L. 100–242, title V, § 570(a)(2), Feb. 5, 1988, 101 Stat. 1949.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to this chapter (§ 1437 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Public Law 671, Seventy-sixth Congress, approved June 28, 1940, referred to in text, is act June 28, 1940, ch. 440, 54 Stat. 676, as amended. Title II of that Act is classified generally to subchapter I (§ 1501 et seq.) of chapter 9 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Housing Act of 1948, and not as part of the United States Housing Act of 1937 which comprises this chapter.

Section 502 of act Aug. 10, 1948, is classified generally to section 1701c of Title 12, Banks and Banking.

AMENDMENTS

1988—Pub. L. 100–242 substituted ''Secretary of Housing and Urban Development'' for ''United States Housing Authority'' in three places and for ''Authority'' in two places.

1967—Pub. L. 90–19 substituted ''United States Housing Authority'' for ''Public Housing Administration'' wherever appearing in first and fourth sentences, ''Authority'' for ''Administration'' wherever appearing in third sentence, and ''may sue'' for ''shall sue'' in first sentence, and struck out former second sentence authorizing the Public Housing Commissioner to appoint necessary officers and employees subject to the civil-service and classification laws, to delegate his functions and powers, and to make rules and regulations, respectively.

1949—Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

§§ 1405, 1406. Omitted

Section 1405, acts Sept. 1, 1937, ch. 896, § 5, 50 Stat. 890; May 25, 1967, Pub. L. 90–19, § 2(d), (e), 81 Stat. 20, which enumerated miscellaneous powers and functions of the Authority, was omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1406, acts Sept. 1, 1937, ch. 896, § 6, 50 Stat. 890; July 15, 1949, ch. 338, title III, § 307(c), 63 Stat. 429; Oct. 31, 1951, ch. 654, § 1(112), 65 Stat. 705; May 25, 1967, Pub. L. 90–19, § 2(a), 81 Stat. 19, which enumerated financial provisions applicable to the Authority, was omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653. Subsec. (b) of this section, which provided that section 5 of title 41 not apply to contracts for services or to purchases of supplies except when the aggregate amount involved was less than $300, was repealed by act Oct. 31, 1951, ch. 654, § 1(112), 65 Stat. 705.

§ 1406a. Expenses of management and operation of transferred projects as nonadministrative; payment

On and after May 10, 1939 all necessary expenses in connection with the management and operation of projects transferred to the Authority by Executive Order Numbered 7732 of October 27, 1937, as modified by Executive Order Numbered 7839 of March 12, 1938, may be considered as nonadministrative expenses, notwithstanding the provisions of section 712a of title 15, and be paid from the rents received from each transferred project.

(May 10, 1939, ch. 119, § 1, 53 Stat. 690.)

CODIFICATION

Section was not enacted as part of the United States Housing Act of 1937 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act June 25, 1938, ch. 681, title I, 52 Stat. 1129.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Housing Authority to Secretary of Housing and Urban Development, see note set out under section 1404a of this title.

Executive Order No. 7732, Oct. 27, 1937, 2 FR 2324, 44 CFR 201.11, effective Nov. 1, 1937, transferred to the United States Housing Authority all right, interest, and title held by the Federal Emergency Administration of Public Works in any housing or slum-clearance projects constructed or in the process of construction on Sept. 1, 1937.

§ 1406b. Expenses of uncompensated advisers serving United States Housing Authority away from home

On and after May 10, 1939, the funds made available for administrative expenses of the United States Housing Authority shall be available for the payment, when specifically authorized by the Administrator, of actual transportation expenses and not to exceed $10 per diem

in lieu of subsistence and other expenses to persons serving, while away from their homes, without other compensation from the United States, in an advisory capacity to the Authority.

(May 10, 1939, ch. 119, § 1, 53 Stat. 690.)

CODIFICATION

Section was not enacted as part of the United States Housing Act of 1937 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act June 25, 1938, ch. 681, title I, 52 Stat. 1128.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Housing Authority and Administrator to Secretary of Housing and Urban Development, see note set out under section 1404a of this title.

§§ 1406c to 1411a. Omitted

CODIFICATION

Section 1406c, act June 27, 1942, ch. 450, § 1, 56 Stat. 410, which related to expenses for construction advisers on non-Federal projects, was from the Independent Offices Appropriation Act, 1943, and was not repeated in subsequent appropriation acts. Prior similar provisions were contained in acts Apr. 5, 1941, ch. 40, § 1, 55 Stat. 111; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 130.

Section 1407, acts Sept. 1, 1937, ch. 896, § 7, 50 Stat. 891; Aug. 2, 1954, ch. 649, title VIII, § 802(d), 68 Stat. 643; May 25, 1967, Pub. L. 90–19, § 2(f), 81 Stat. 20, provided for publication of information and submission of annual report by the Authority, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1408, act Sept. 1, 1937, ch. 896, § 8, 50 Stat. 891, authorized promulgation of rules and regulations by the Authority, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1409, acts Sept. 1, 1937, ch. 896, § 9, 50 Stat. 891; July 15, 1949, ch. 338, title III, § 304(c), (d), 63 Stat. 425; Dec. 24, 1969, Pub. L. 91–152, title II, § 211, 83 Stat. 388, authorized loans for low-rent-housing and slum clearance projects, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653. See section 1437b of this title.

Section 1410, acts Sept. 1, 1937, ch. 896, § 10, 50 Stat. 891; June 21, 1938, ch. 554, title VI, § 601, 52 Stat. 820; July 15, 1949, ch. 338, title III, §§ 302(a), 304(a), (c), (e), (f), 305, 307(d), 63 Stat. 423 to 427, 430; Aug. 2, 1954, ch. 649, title IV, §§ 401(1), (2), 402, 403, 405, 406, 68 Stat. 630; June 30, 1955, ch. 251, § 3, 69 Stat. 225; Aug. 11, 1955, ch. 783, title I, § 108(b), 69 Stat. 638; Aug. 7, 1956, ch. 1029, title IV, §§ 401(a), 404(b), 70 Stat. 1103, 1104; Sept. 23, 1959, Pub. L. 86–372, title V, §§ 505(a), 507, 73 Stat. 680, 681; June 30, 1961, Pub. L. 87–70, title II, §§ 203, 204(a), (b), 205, 206(b), (c), 75 Stat. 163 to 165; Sept. 2, 1964, Pub. L. 88–560, title IV, §§ 401(b), 402 to 404, 78 Stat. 794, 795; Aug. 10, 1965, Pub. L. 89–117, title V, §§ 501 to 504, 507(b)(1), (2); 79 Stat. 486 to 488; May 25, 1967, Pub. L. 90–19, § 2(a), 81 Stat. 19; Aug. 1, 1968, Pub. L. 90–448, title II, §§ 203(a), 206(b), 209(b), 82 Stat. 503, 505; Dec. 24, 1969, Pub. L. 91–152, title II, §§ 212, 214, 217(b), 83 Stat. 388–390; Dec. 31, 1970, Pub. L. 91–609, title II, §§ 202, 203, 204(a)(2), 210, 84 Stat. 1776 to 1778; Oct. 18, 1972, Pub. L. 92–503, § 3 (1) to (3), 86 Stat. 906; Oct. 2, 1973, Pub. L. 93–117, § 2, 87 Stat. 422, authorized annual contributions in assistance of low rentals for housing projects, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653. See section 1437c of this title. Subsec. (j) of this section, which related to self-liquidation of projects, was repealed by Pub. L. 87–70, title II, § 206(c), June 30, 1961, 75 Stat. 164.

Section 1411, acts Sept. 1, 1937, ch. 896, § 11, 50 Stat. 893; July 15, 1949, ch. 338, title III, § 307(d), 63 Stat. 430, authorized capital grants to public housing agencies in assistance of low rentals, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1411a, act July 31, 1953, ch. 302, title I, § 101, 67 Stat. 306, which related to prohibition of projects in localities where rejected by public vote or governing body, was from the Independent Offices Appropriation Act, 1954, and was not repeated in subsequent appropriation acts.

RETROACTIVE EFFECT OF REPEAL OF RIGHTS OF UNITED STATES RELATING TO SELF-LIQUIDATION OF PROJECTS

Section 206(c) of Pub. L. 87–70, as amended by Pub. L. 93–383, title II, § 205, Aug. 22, 1974, 88 Stat. 668, provided in part that: ''The Secretary of Housing and Urban Development is authorized to agree with a public housing agency to the amendment of any annual contributions contract containing the provision prescribed in section 10(j) of the United States Housing Act of 1937 [subsec. (j) of section 1410 of this title] (as in effect prior to the enactment of the Housing and Community Development Act of 1974) so as to delete such provision and waive any rights of the United States that are accrued or may accrue under such provision.''

§ 1411b. Repealed. Aug. 7, 1956, ch. 1029, title IV, § 401(b), 70 Stat. 1103

Section, acts July 5, 1952, ch. 578, title I, § 101, 66 Stat. 403; July 31, 1953 ch. 302 title I, § 101, 67 Stat. 307, limited number of housing units to be constructed during fiscal year.

§ 1411c. Omitted

CODIFICATION

Section, act July 31, 1953, ch. 302, title I, § 101, 67 Stat. 307, which barred subversives from occupancy of housing units and which provided for enforcement of such prohibition and affect of such prohibition on loans and contributions by the Public Housing Administration, was from the Independent Offices Appropriation Act, 1954, and was not repeated in subsequent appropriation acts.

§ 1411d. Repealed. Pub. L. 93–383, title II, § 204, Aug. 22, 1974, 88 Stat. 668

Section, act Aug. 2, 1954, ch. 649, title VIII, § 815, 68 Stat. 647, required submission of specifications by applicants prior to award of any contract for construction of a project and submission of data with respect to acquisition of land prior to authorization to purchase such land.

§§ 1412 to 1416. Omitted

Section 1412, acts Sept. 1, 1937, ch. 896, § 12, 50 Stat. 894; Apr. 20, 1950, ch. 94, title II, § 205(b), 64 Stat. 73; Aug. 7, 1956, ch. 1029, title IV, § 405, 70 Stat. 1104; Aug. 10, 1965, Pub. L. 89–117, title V, § 505, 79 Stat. 487, authorized disposal of low-rent-housing projects transferred to or acquired by the Authority, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1413, acts Sept. 1, 1937, ch. 896, § 13, 50 Stat. 894; July 15, 1949, ch. 338, title III, § 307(e), 63 Stat. 430; May 25, 1967, Pub. L. 90–19, § 2(g), 81 Stat. 20, enumerated powers of the Authority, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1413a, acts July 31, 1947, ch. 418, § 2, 61 Stat. 705; Feb. 27, 1948, ch. 77, § 3, 62 Stat. 37; Mar. 30, 1948, ch. 161, title III, § 304, 62 Stat. 100, postponed until April 1, 1949, the institution of any eviction actions or proceedings in connection with publicly operated housing accommodations.

Section 1414, acts Sept. 1, 1937, ch. 896, § 14, 50 Stat. 895; July 15, 1949, 338, title III, § 304(g), 63 Stat. 426; Dec. 24, 1969, Pub. L. 91–152, title II, § 213(c), 83 Stat. 389, authorized modification, amendment, or supersedure of contracts by the Authority, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653. See section 1437c of this title.

Section 1415, acts Sept. 1, 1937, ch. 896, § 15, 50 Stat. 895; July 31, 1947, ch. 418, § 1, 61 Stat. 704; July 15, 1949, ch. 338, title III, §§ 301, 303, 304(j), 63 Stat. 422, 424, 427; Aug. 2, 1954, ch. 649, title IV, § 401(3), (4), 68 Stat. 631; Aug. 7, 1956, ch. 1029, title IV, § 404(c), 70 Stat. 1104; July 12, 1957, Pub. L. 85–104, title IV, § 401(b), (c), 71 Stat. 302; Sept. 23, 1959. Pub. L. 86–372, title V, §§ 503(b), 506, 507, 73 Stat. 680, 681; June 30, 1961, Pub. L. 87–70, title II, §§ 204(b), 205(b), 206(a), 75 Stat. 164; Sept. 2, 1964, Pub. L. 88–560, title IV, §§ 401(c), 405(a), 406, 78 Stat. 794, 795; Aug. 10, 1965, Pub. L. 89–117, title IV, § 404(c)(2), title V, §§ 506, 507(a), (b)(3), 79 Stat. 486–488; May 25, 1967, Pub. L. 90–19, § 2(a), 81 Stat. 19; Aug. 1, 1968, Pub. L. 90–448, title II, §§ 204, 205, 207, 82 Stat. 503, 504; Dec. 24, 1969, Pub. L. 91–152, title II, §§ 215, 216, 83 Stat. 389, 390; Dec. 31, 1970, Pub. L. 91–609, title II, §§ 207, 209(a), title IX, § 903(d), 84 Stat. 1777, 1778, 1809; Jan. 2, 1971, Pub. L. 91–646, title II, § 220(a)(6), 84 Stat. 1903, set forth provisions relating to preservation of low rents in housing projects, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653. See sections 1437c, 1437d, and 1437f of this title.

Section 1416, acts Sept. 1, 1937, ch. 896, § 16, 50 Stat. 896; July 15, 1949, 338, title III, § 307(f) 63 Stat. 430; Aug. 2, 1954, ch. 649, title IV, § 404, 68 Stat. 633; Nov. 3, 1966, Pub. L. 89–754, title X, § 1003, 80 Stat. 1284; May 25, 1967, Pub. L. 90–19, § 2(h), (i), 81 Stat. 20, provided for application of labor standards to contracts, etc., involving Federal projects, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653. See section 1437 of this title.

APPLICATION FOR PRELIMINARY LOANS APPROVED PRIOR TO SEPTEMBER 2, 1964

Pub. L. 88–560, title IV, § 405(b), Sept. 2, 1964, 78 Stat. 795, provided that the amendments made by subsection (a) to subsec. (b)(7) of section 1415 of this title were not to be applicable to any project for which an application for a preliminary loan had been approved by the local governing body prior to Sept. 2, 1964.

TRANSFERRED FUNDS; AVAILABILITY FOR EXPENDITURE

Act Apr. 20, 1950, ch. 94, title II, § 205(c), 64 Stat. 73, provided that all unexpended receipts, notwithstanding any limitations contained in the second proviso of act May 26, 1947, ch. 82, title I, 61 Stat. 109, derived from the sale of labor supply centers, labor homes, labor camps, and facilities, and all other unexpended balances of funds available for the maintenance, operation, and liquidation of the properties transferred and for the administrative expenses of transfer were transferred to the Public Housing Administration, to be available until expended, in accordance with the provisions of this chapter.

§ 1417. Repealed. Pub. L. 90–448, title XVII, § 1719(b), Aug. 1, 1968, 82 Stat. 610

Section, act Sept. 1, 1937, ch. 896, § 17, 50 Stat. 897, related to capital stock of the Authority.

RETIREMENT OF CAPITAL STOCK

Section 1719(b) of Pub. L. 90–448 provided in part that the capital stock referred to in this section be retired and the sum of $1,000,000 represented by such stock returned to the Treasury of the United States.

§§ 1417a to 1422. Omitted

CODIFICATION

Sections 1417a to 1422 were omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1417a, act Sept. 1, 1937, ch. 896, § 17, as added Aug. 1, 1968, Pub. L. 90–448, title XVII, § 1719(c), 82 Stat. 610, set forth additional functions, powers, and duties of the Secretary. See section 1437h of this title.

Section 1418, act Sept. 1, 1937, ch. 896, § 18, 50 Stat. 897, authorized all assets and receipts of the Authority to remain available until expended. See section 1437h of this title.

Section 1419, act Sept. 1, 1937, ch. 896, § 19, 50 Stat. 897, authorized the allocation of funds available for similar purposes to the Authority.

Section 1420, acts Sept. 1, 1937, ch. 896, § 20, 50 Stat. 898; June 21, 1938, ch. 554, title VI, § 602, 52 Stat. 820; Oct. 30, 1941, ch. 467, 55 Stat. 759; July 15, 1949, ch. 338, title III, § 304(h), 63 Stat. 427; Aug. 1, 1968, Pub. L. 90–448, title II, § 203(b), 82 Stat. 503, authorized the Authority to issue obligations for purchase and sale by the Secretary of the Treasury. See section 1437b of this title.

Section 1421, acts Sept. 1, 1937, ch. 896, § 21, 50 Stat. 898; July 15, 1949, ch. 338, title III, § 307(g), 63 Stat. 431; Aug. 7, 1956, ch. 1029, title IV, § 403, 70 Stat. 1103; June 30, 1961, Pub. L. 87–70, title II, § 204(c), 75 Stat. 164, set forth depository and other banking requirements applicable to the Authority. See section 1437h of this title.

Section 1421a, act Sept. 1, 1937, ch. 896, § 22, as added July 15, 1949, ch. 338, title III, § 304(b), 63 Stat. 424; amended June 30, 1961, Pub. L. 87–70, title III, § 302(b), 75 Stat. 166; Aug. 10, 1965, Pub. L. 89–117, title V, § 507(b)(4), 79 Stat. 489; May 25, 1967, Pub. L. 90–19, § 2(j), 81 Stat. 20, set forth provisions for private financing of low-rent-housing projects. See sections 1437d and 1437i of this title.

Section 1421b, act Sept. 1, 1937, ch. 896, § 23, as added Aug. 10, 1965, Pub. L. 89–117, title I, § 103(a), 79 Stat. 455; amended Nov. 3, 1966, Pub. L. 89–754, title X, § 1002, 80 Stat. 1284; Aug. 1, 1968, Pub. L. 90–448, title II, §§ 208, 210, 82 Stat. 504, 505; Dec. 24, 1969, Pub. L. 91–152, title II, § 217(c), 83 Stat. 390; Dec. 31, 1970, Pub. L. 91–609, title II, § 204(a)(1), (b), 84 Stat. 1777, set forth provisions authorizing low-rent housing in private accommodations. See section 1437f of this title.

Section 1422, acts Sept. 1, 1937, ch. 896, § 24, formerly § 22, 50 Stat. 899; renumbered, § 23, July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431; renumbered § 24, Aug. 10, 1965, Pub. L. 87–117, title I, § 103(a), 79 Stat. 455, provided for applicability of all general penal statutes relating to larceny etc., of moneys and properties of the Authority.

RETROACTIVE APPLICATION OF POLICIES OR PROCEDURES ESTABLISHED BY SECRETARY OF HOUSING AND URBAN DEVELOPMENT TO RIGHTS OF OWNERS OF LEASED HOUSING, INCLUDING RIGHT OF RENEWAL

Pub. L. 93–383, title II, § 208, Aug. 22, 1974, 88 Stat. 669, as amended by Pub. L. 95–128, title II, § 201(h), Oct. 12, 1977, 91 Stat. 1129, provided that: ''Nothing in this title [see Tables for classification] or any other provision of law authorizes the Secretary of Housing and Urban Development to apply any policy or procedure established by him with respect to the rights of an owner under a lease entered into under section 23 of the United States Housing Act of 1937 [section 1421b of this title], including the right to renewal of such lease to the maximum term permitted by law, if such lease was entered into prior to the effective date of such policy or procedure.''

§§ 1423 to 1426. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section 1423, act Sept. 1, 1937, ch. 896, § 24, formerly § 23, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, related to penalties for false entries and reports.

Section 1424, act Sept. 1, 1937, ch. 896, § 25, formerly § 24, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, related to penalties for defrauding or hindering the Authority.

Section 1425, act Sept. 1, 1937, ch. 896, § 26, formerly § 25, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, related to penalties for concealment of interest in property.

Section 1426, act Sept. 1, 1937, ch. 896, § 27, formerly § 26, 50 Stat. 899, renumbered July 15, 1949, ch. 388, title III, § 307(h), 63 Stat. 431, related to penalties for unlawful use of the name ''United States Housing Authority''.

Sections 1423 to 1426 of this title are covered by section 1012 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 1, 1948, see section 20 of act June 25, 1948, set out as an Effective Date note preceding section 1 of Title 18, Crimes and Criminal Procedure.

§§ 1427 to 1431. Omitted

CODIFICATION

Sections 1427 to 1431 were omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1427, act Sept. 1, 1937, ch. 896, § 28, formerly § 27, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, provided for application of provisions when conflicting with other laws relating to housing or slum clearance.

Section 1428, act Sept. 1, 1937, ch. 896, § 29, formerly § 28, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, made available funds for the District of Columbia.

Section 1429, act Sept. 1, 1937, ch. 896, § 30, formerly § 29, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, provided for separability of provisions.

Section 1430, act Sept. 1, 1937, ch. 896, § 31, formerly § 30, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, set forth short title of provisions as ''United States Housing Act of 1937''. See section 1 of act Sept. 1, 1937, as added by section 201(a) of Pub. L. 93–383, set out as a Short Title note under section 1437 of this title.

Section 1431, Pub. L. 91–556, title IV, Dec. 17, 1970, 84 Stat. 1463, which provided that the necessary expenses of providing representatives at sites of non-Federal projects in connection with construction of these projects by public housing agencies with aid under this chapter, be compensated by these agencies by payments of fixed fees, was from the Independent Offices and Department of Housing and Urban Development Appropriations Act, 1971, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation acts:

Nov. 26, 1969, Pub. L. 91–126, title III, 83 Stat. 242.
Oct. 4, 1968, Pub. L. 90–550, title III, 82 Stat. 956.
Nov. 3, 1967, Pub. L. 90–121, title II, 81 Stat. 360.
Sept. 6, 1966, Pub. L. 89–555, title II, 80 Stat. 688.
Aug. 16, 1965, Pub. L. 89–128, title II, 79 Stat. 542.
Aug. 30, 1964, Pub. L. 88–507, title II, 78 Stat. 665.
Dec. 19, 1963, Pub. L. 88–215, title II, 77 Stat. 447.
Oct. 3, 1962, Pub. L. 87–741, title II, 76 Stat. 739.
Aug. 17, 1961, Pub. L. 87–141, title II, 75 Stat. 363.
July 12, 1960, Pub. L. 86–626, title II, 74 Stat. 444.
Sept. 14, 1959, Pub. L. 86–255, title II, 73 Stat. 517.
Aug. 28, 1958, Pub. L. 85–844, title II, 72 Stat. 1081.
June 29, 1957, Pub. L. 85–69, title II, 71 Stat. 241.
June 27, 1956, ch. 452, title II, 70 Stat. 355.
June 30, 1955, ch. 244, title II, 69 Stat. 215.
June 24, 1954, ch. 359, title II, 68 Stat. 297.
July 31, 1953, ch. 302, title II, 67 Stat. 315.
July 5, 1952, ch. 578, title III, 66 Stat. 417.
Aug. 31, 1951, ch. 376, title IV, 65 Stat. 299.
Sept. 6, 1950, ch. 896, Ch. VIII, title II, 64 Stat. 723.
Aug. 24, 1949, ch. 506, title II, 63 Stat. 659.
June 30, 1948, ch. 773, title II, 62 Stat. 1190.
July 30, 1947, ch. 358, title II, 61 Stat. 579.
July 20, 1946, ch. 589, title II, 60 Stat. 592.
May 3, 1945, ch. 106, title I, 59 Stat. 124.

§ 1432. Repealed. July 15, 1949, ch. 338, title VI, § 606, 63 Stat. 441

Section, act Aug. 10, 1948, ch. 832, title V, § 503, 62 Stat. 1285, related to State low-rent or veterans' housing projects.

§ 1433. Omitted

CODIFICATION

Section, act July 15, 1949, ch. 338, title VI, § 606, 63 Stat. 440, provided for conversion of State and local low-rent or veterans' housing projects to Federal projects if the contract for State financial assistance for such project was entered into on or after Jan. 1, 1948, and prior to Jan. 1, 1950.

§ 1434. Records; contents; examination and audit

Every contract between the Department of Housing and Urban Development and any person or local body (including any corporation or public or private agency or body) for a loan, advance, grant, or contribution under the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.], the Housing Act of 1949, as amended [42 U.S.C. 1441 et seq.], or any other Act shall provide that such person or local body shall keep such records as the Department of Housing and Urban Development shall from time to time prescribe, including records which permit a speedy and effective audit and will fully disclose the amount and the disposition by such person or local body of the proceeds of the loan, advance, grant, or contribution, or any supplement thereto, the capital cost of any construction project for which any such loan, advance, grant, or contribution is made, and the amount of any private or other non-Federal funds used or grants-in-aid made for or in connection with any such project. No mortgage covering new or rehabilitated multifamily housing (as defined in section 1715r of title 12) shall be insured unless the mortgagor certifies that he will keep such records as are prescribed by the Secretary of Housing and Urban Development at the time of the certification and that they will be kept in such form as to permit a speedy and effective audit. The Department of Housing and Urban Development and the Comptroller General of the United States shall have access to and the right to examine and audit such records. This section shall become effective on the first day after the first full calendar month following the date of approval of the Housing Act of 1961.

(Aug. 2, 1954, ch. 649, title VIII, § 814, 68 Stat. 647; Pub. L. 87–70, title IX, § 908, June 30, 1961, 75 Stat. 191; Pub. L. 90–19, § 10(h), May 25, 1967, 81 Stat. 23.)

REFERENCES IN TEXT

The United States Housing Act of 1937, as amended, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to this chapter (§ 1437 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Housing Act of 1949, as amended, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to chapter 8A (§ 1441 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The first day after the first full calendar month following the date of approval of the Housing Act of 1961, referred to in text, probably means Aug. 1, 1961, which is the first day after the first full calendar month following approval of Pub. L. 87–70, which was approved on June 30, 1961.

CODIFICATION

Section was not enacted as part of the United States Housing Act of 1937 which comprises this chapter.

Section was formerly classified to sections 1446 of this title and 1715s of Title 12, Banks and Banking.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner'' in second sentence and ''Department of Housing and Urban Development'' for ''Housing and Home Finance Agency (or any official or constituent thereof)'' and ''Housing and Home Finance Agency (or such official or constituent thereof)'' in first sentence and for ''Housing and Home Finance Agency or any official or constituent agency thereof'' in third sentence, respectively.

1961—Pub. L. 87–70 required record keeping provisions in contracts under the Housing Act of 1949 and in contracts under any other act, prohibited insurance of mortgages covering new or rehabilitated multifamily housing unless the mortgagor certifies that he will keep records, and empowered the Comptroller General to examine and audit records, and substituted ''Housing Act of 1961'' for ''Housing Act of 1954''.

EFFECTIVE DATE

The fourth sentence of section 814 of act Aug. 2, 1954 (prior to the amendment by section 908 of act June 30, 1961) provided that this section is effective on first day after first calendar month following the date of approval of the act (Aug. 2, 1954).

§ 1435. Access to books, documents, etc., for purpose of audit

Every contract for loans or annual contributions under this chapter shall provide that the Secretary of Housing and Urban Development and the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination, have access to any books, documents, papers, and records of the public housing agency entering into such contract that are pertinent to its operations with respect to financial assistance under this chapter.

(Aug. 2, 1954, ch. 649, title VIII, § 816, 68 Stat. 647; Pub. L. 90–19, § 10(i), May 25, 1967, 81 Stat. 23.)

CODIFICATION

Section was not enacted as part of the United States Housing Act of 1937 which comprises this chapter.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Public Housing Commissioner''.

§ 1436. Repealed. Pub. L. 91–609, title V, § 503(4), Dec. 31, 1970, 84 Stat. 1786

Section, Pub. L. 87–70, title II, § 207, June 30, 1961, 75 Stat. 165; Pub. L. 88–560, title II, § 203(e), title IV, § 407, Sept. 2, 1964, 78 Stat. 784, 796; Pub. L. 89–117, title XI, § 1105, Aug. 10, 1965, 79 Stat. 503; Pub. L. 90–19, § 18(a), May 25, 1967, 81 Stat. 25; Pub. L. 90–448, title XVII, § 1714(a), Aug. 1, 1968, 82 Stat. 607, provided for low-rent housing demonstration programs and development grants. See section 1701z–1 et seq. of Title 12, Banks and Banking.

EFFECTIVE DATE OF REPEAL: SAVINGS PROVISION

Section 503 of Pub. L. 91–609 provided in part for repeal of sections 1701d–3, 1701e, 1701e note, and 1701f of Title 12, Banks and Banking, this section, note below, section 1452a, section 1456 note, and sections 3372, 3373 of this title, effective July 1, 1971, except that the repeal shall not affect contracts, commitments, reservations, or other obligations entered pursuant to such provisions prior to July 1, 1971.

REPORT OF SELF-HELP STUDIES AND DEMONSTRATIONS

Pub. L. 90–448, title XVII, § 1714(b), Aug. 1, 1968, 82 Stat. 607, providing for report to Congress within one year after Aug. 1, 1968, respecting self-help studies and demonstrations, was repealed by section 503(7) of Pub. L. 91–609.

§ 1436a. Restriction on use of assisted housing by non-resident aliens

(a) Conditions for assistance

Notwithstanding any other provision of law, the applicable Secretary may not make financial assistance available for the benefit of any alien unless that alien is a resident of the United States and is—

(1) an alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(15) and (20) of title 8, excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country;

(2) an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 1259 of title 8;

(3) an alien who is lawfully present in the United States pursuant to an admission under section 1157 of title 8 or pursuant to the granting of asylum (which has not been terminated) under section 1158 of title 8;

(4) an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 1182(d)(5) of title 8;

(5) an alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation pursuant to section 1231(b)(3) of title 8;

(6) an alien lawfully admitted for temporary or permanent residence under section 1255a of title 8; or

(7) an alien who is lawfully resident in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the Government of the United States and the Governments of the Marshall Islands, the Federated States of Mi-

cronesia (48 U.S.C. 1901 note) and Palau (48 U.S.C. 1931 note) while the applicable section is in effect: *Provided*, That, within Guam any such alien shall not be entitled to a preference in receiving assistance under this Act over any United States citizen or national resident therein who is otherwise eligible for such assistance.

(b) "Financial assistance" defined

(1) For purposes of this section the term ''financial assistance'' means financial assistance made available pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], section 1715z or 1715z–1 of title 12, the direct loan program under section 1472 of this title or section 1472(c)(5)(D), 1474, 1490a(a)(2)(A), or 1490r of this title, subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12851 et seq.], or section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s].

(2) If the eligibility for financial assistance of at least one member of a family has been affirmatively established under the program of financial assistance and under this section, and the ineligibility of one or more family members has not been affirmatively established under this section, any financial assistance made available to that family by the applicable Secretary shall be prorated, based on the number of individuals in the family for whom eligibility has been affirmatively established under the program of financial assistance and under this section, as compared with the total number of individuals who are members of the family.

(c) Preservation of families; students

(1) If, following completion of the applicable hearing process, financial assistance for any individual receiving such assistance on February 5, 1988, is to be terminated, the public housing agency or other local governmental entity involved (in the case of public housing or assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f]) or the applicable Secretary (in the case of any other financial assistance) shall take one of the following actions:

(A) Permit the continued provision of financial assistance, if necessary to avoid the division of a family in which the head of household or spouse is a citizen of the United States, a national of the United States, or an alien resident of the United States described in any of paragraphs (1) through (6) of subsection (a) of this section. For purposes of this paragraph, the term ''family'' means a head of household, any spouse, any parents of the head of household, any parents of the spouse, and any children of the head of household or spouse. Financial assistance continued under this subparagraph for a family may be provided only on a prorated basis, under which the amount of financial assistance is based on the percentage of the total number of members of the family that are eligible for that assistance under the program of financial assistance and under this section.

(B)(i) Defer the termination of financial assistance, if necessary to permit the orderly transition of the individual and any family members involved to other affordable housing.

(ii) Except as provided in clause (iii), any deferral under this subparagraph shall be for a 6-month period and may be renewed by the public housing agency or other entity involved for an aggregate period of 18-months. At the beginning of each deferral period, the public housing agency or other entity involved shall inform the individual and family members of their ineligibility for financial assistance and offer them other assistance in finding other affordable housing.

(iii) The time period described in clause (ii) shall not apply in the case of a refugee under section 1157 of title 8 or an individual seeking asylum under section 1158 of title 8.

(2) Notwithstanding any other provision of law, the applicable Secretary may not make financial assistance available for the benefit of—

(A) any alien who—

(i) has a residence in a foreign country that such alien has no intention of abandoning;

(ii) is a bona fide student qualified to pursue a full course of study; and

(iii) is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and

(B) the alien spouse and minor children of any alien described in subparagraph (A), if accompanying such alien or following to join such alien.

(d) Conditions for provision of financial assistance for individuals

The following conditions apply with respect to financial assistance being or to be provided for the benefit of an individual:

(1)(A) There must be a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status. If the declaration states that the individual is not a citizen or national of the United States and that the individual is younger than 62 years of age, the declaration shall be verified by the Immigration and Naturalization Service. If the declaration states that the individual is a citizen or national of the United States, the applicable Secretary, or the agency administering assistance covered by this section, may request verification of the declaration by requiring presentation of documentation that the applicable Secretary considers appropriate, includ-

ing a United States passport, resident alien card, alien registration card, social security card, or other documentation.

(B) In this subsection, the term ''satisfactory immigration status'' means an immigration status which does not make the individual ineligible for financial assistance.

(2) If such an individual is not a citizen or national of the United States, is not 62 years of age or older, and is receiving financial assistance on September 30, 1996, or applying for financial assistance on or after September 30, 1996, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the applicable Secretary determines constitutes reasonable evidence indicating a satisfactory immigration status.

In the case of an individual applying for financial assistance on or after September 30, 1996, the applicable Secretary may not provide any such assistance for the benefit of that individual before documentation is presented and verified under paragraph (3) or (4).

(3) If the documentation described in paragraph (2)(A) is presented, the applicable Secretary shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, is not 62 years of age or older, and is receiving financial assistance on September 30, 1996, or applying for financial assistance on or after September 30, 1996, if, at the time of application or recertification for financial assistance, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the applicable Secretary—

(i) shall provide a reasonable opportunity, not to exceed 30 days, to submit to the applicable Secretary evidence indicating a satisfactory immigration status, or to appeal to the Immigration and Naturalization Service the verification determination of the Immigration and Naturalization Service under paragraph (3),

(ii) in the case of any individual receiving assistance on September 30, 1996, may not delay, deny, reduce, or terminate the eligibility of that individual for financial assistance on the basis of the immigration status of that individual until the expiration of that 30-day period; and

(iii) in the case of any individual applying for financial assistance on or after September 30, 1996, may not deny the application for such assistance on the basis of the immigration status of that individual until the expiration of that 30-day period; and

(B) if any documents or additional information are submitted as evidence under subparagraph (A), or if appeal is made to the Immigration and Naturalization Service with respect to the verification determination of the Service under paragraph (3)—

(i) the applicable Secretary shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents or additional information for official verification,

(ii) pending such verification or appeal, the applicable Secretary may not—

(I) in the case of any individual receiving assistance on September 30, 1996, delay, deny, reduce, or terminate the eligibility of that individual for financial assistance on the basis of the immigration status of that individual; and

(II) in the case of any individual applying for financial assistance on or after September 30, 1996, deny the application for such assistance on the basis of the immigration status of that individual; and

(iii) the applicable Secretary shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the applicable Secretary determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status, the applicable Secretary shall—

(A) deny the application of that individual for financial assistance or terminate the eligibility of that individual for financial assistance, as applicable;

(B) provide that the individual may request a fair hearing during the 30-day period beginning upon receipt of the notice under subparagraph (C); and

(C) provide to the individual written notice of the determination under this paragraph, the right to a fair hearing process, and the time limitation for requesting a hearing under subparagraph (C).

(6) The applicable Secretary shall terminate the eligibility for financial assistance of an individual and the members of the household of the individual, for a period of not less than 24 months, upon determining that such individual has knowingly permitted another individual who is not eligible for such assistance to reside in the public or assisted housing unit of the individual. This provision shall not apply to a family if the ineligibility of the ineligible individual at issue was considered in calculating any proration of assistance provided for the family.

For purposes of this subsection, the term ''applicable Secretary'' means the applicable Secretary, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance.

(e) Regulatory actions against entities for erroneous determinations regarding eligibility based upon citizenship or immigration status

The applicable Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an entity with respect to any error in the entity's determination to make an individual eligible for financial assistance based on citizenship or immigration status—

(1) if the entity has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the entity, under subsection (d)(4)(A)(ii) of this section (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603)), was required to provide a reasonable opportunity to submit documentation, or

(3) because the entity, under subsection (d)(4)(B)(ii) of this section (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603)), was required to wait for the response of the Immigration and Naturalization Service to the entity's request for official verification of the immigration status of the individual, or the response from the Immigration and Naturalization Service to the appeal of that individual.

(f) Verification system; liability of State or local government agencies or officials; prior consent agreements, court decrees or court orders unaffected

(1) Notwithstanding any other provision of law, no agency or official of a State or local government shall have any liability for the design or implementation of the Federal verification system described in subsection (d) of this section if the implementation by the State or local agency or official is in accordance with Federal rules and regulations.

(2) The verification system of the Department of Housing and Urban Development shall not supersede or affect any consent agreement entered into or court decree or court order entered prior to February 5, 1988.

(g) Reimbursement for costs of implementation

The applicable Secretary is authorized to pay to each public housing agency or other entity an amount equal to 100 percent of the costs incurred by the public housing agency or other entity in implementing and operating an immigration status verification system under subsection (d) of this section (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603)).

(h) "Applicable Secretary" defined

For purposes of this section, the term ''applicable Secretary'' means—

(1) the Secretary of Housing and Urban Development, with respect to financial assistance administered by such Secretary and financial assistance under subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12851 et seq.]; and

(2) the Secretary of Agriculture, with respect to financial assistance administered by such Secretary.

(i) Verification of eligibility

(1) In general

No individual or family applying for financial assistance may receive such financial assistance prior to the affirmative establishment and verification of eligibility of at least the individual or one family member under subsection (d) of this section by the applicable Secretary or other appropriate entity.

(2) Rules applicable to public housing agencies

A public housing agency (as that term is defined in section 3 of the United States Housing Act of 1937 [42 U.S.C. 1437a])—

(A) may, notwithstanding paragraph (1) of this subsection, elect not to affirmatively establish and verify eligibility before providing financial assistance[1]

(B) in carrying out subsection (d) of this section—

(i) may initiate procedures to affirmatively establish or verify the eligibility of an individual or family under this section at any time at which the public housing agency determines that such eligibility is in question, regardless of whether or not that individual or family is at or near the top of the waiting list of the public housing agency;

(ii) may affirmatively establish or verify the eligibility of an individual or family under this section in accordance with the procedures set forth in section 1324a(b)(1) of title 8; and

(iii) shall have access to any relevant information contained in the SAVE system (or any successor thereto) that relates to any individual or family applying for financial assistance.

(3) Eligibility of families

For purposes of this subsection, with respect to a family, the term ''eligibility'' means the eligibility of each family member.

(Pub. L. 96–399, title II, §214, Oct. 8, 1980, 94 Stat. 1637; Pub. L. 97–35, title III, §329(a), Aug. 13, 1981, 95 Stat. 408; Pub. L. 99–603, title I, §121(a)(2), Nov. 6, 1986, 100 Stat. 3386; Pub. L. 100–242, title I, §164(a)–(f)(1), Feb. 5, 1988, 101 Stat. 1860–1863; Pub. L. 104–193, title IV, §441(a), Aug. 22, 1996, 110 Stat. 2276; Pub. L. 104–208, div. C, title III, §308(g)(7)(D)(ii), title V, §§572–576, Sept. 30, 1996, 110 Stat. 3009–624, 3009–684, 3009–685, 3009–687; Pub. L. 105–276, title V, §592(a), Oct. 21, 1998, 112 Stat. 2653; Pub. L. 106–504, §3(b), Nov. 13, 2000, 114 Stat. 2312.)

[1] So in original. Probably should be followed by ''; and''.

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(7), is Pub. L. 96–399, Oct. 8, 1980, 94 Stat. 1614, as amended, known as the Housing and Community Development Act of 1980. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 5301 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to this chapter (§ 1437 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsecs. (b)(1) and (h)(1), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, as amended. Subtitle A of title III of the Act, known as the National Homeownership Trust Act, is classified generally to subchapter III (§ 12851 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (b), is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, which enacted section 1701s of Title 12, Banks and Banking, and amended sections 1451 and 1465 of this title.

The Immigration Reform and Control Act of 1986, referred to in subsecs. (e)(2), (3) and (g), is Pub. L. 99–603, Nov. 6, 1986, 100 Stat. 3359. For complete classification of this Act to the Code, see Short Title of 1986 Amendments note set out under section 1101 of Title 8, Aliens and Nationality, and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1980, and not as part of the United States Housing Act of 1937 which comprises this chapter.

AMENDMENTS

2000—Subsec. (a)(7). Pub. L. 106–504 added par. (7).

1998—Subsec. (b)(2). Pub. L. 105–276, § 592(a)(1), substituted ''applicable Secretary'' for ''Secretary of Housing and Urban Development''.

Subsec. (c)(1)(B). Pub. L. 105–276, § 592(a)(2), aligned cls. (ii) and (iii) with cl. (i).

Subsec. (d)(1)(A). Pub. L. 105–276, § 592(a)(3)(A), in last sentence, substituted ''applicable Secretary, or'' for ''Secretary of Housing and Urban Development, or'' and ''applicable Secretary considers'' for ''Secretary considers''.

Subsec. (d)(2). Pub. L. 105–276, § 592(a)(3)(B), aligned concluding provisions with par. (2) and inserted ''applicable'' before ''Secretary'' in concluding provisions.

Subsec. (d)(4)(B)(ii). Pub. L. 105–276, § 592(a)(3)(C), inserted ''applicable'' before ''Secretary'' in introductory provisions.

Subsec. (d)(5). Pub. L. 105–276, § 592(a)(3)(D), substituted ''the applicable Secretary shall'' for ''the Secretary shall'' in introductory provisions.

Subsec. (d)(6). Pub. L. 105–276, § 592(a)(3)(E), inserted ''applicable'' before ''Secretary''.

Subsec. (h). Pub. L. 105–276, § 592(a)(5), redesignated subsec. (h), relating to verification of eligibility, as (i).

Subsec. (h)(1). Pub. L. 105–276, § 592(a)(4)(A), substituted ''No'' for ''Except in the case of an election under paragraph (2)(A), no'' and ''subsection (d) of this section'' for ''this section'' and inserted ''applicable'' before ''Secretary''.

Subsec. (h)(2)(A). Pub. L. 105–276, § 592(a)(4)(B)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: ''may elect not to comply with this section; and''.

Subsec. (h)(2)(B). Pub. L. 105–276, § 592(a)(4)(B)(ii), substituted ''in carrying out subsection (d) of this section'' for ''in complying with this section'' in introductory provisions.

Subsec. (i). Pub. L. 105–276, § 592(a)(5), redesignated subsec. (h), relating to verification of eligibility, as (i).

1996—Subsec. (a). Pub. L. 104–193, § 441(a)(1), substituted ''applicable Secretary'' for ''Secretary of Housing and Urban Development'' in introductory provisions.

Subsec. (a)(5). Pub. L. 104–208, § 308(g)(7)(D)(ii), substituted ''section 1231(b)(3)'' for ''section 1253(h)''.

Subsec. (b). Pub. L. 104–208, § 572, designated existing provisions as par. (1) and added par. (2).

Pub. L. 104–193, § 441(a)(2), inserted ''the direct loan program under section 1472 of this title or section 1472(c)(5)(D), 1474, 1490a(a)(2)(A), or 1490r of this title, subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act,'' after ''1715z–1 of title 12,''.

Subsec. (c). Pub. L. 104–193, § 441(a)(1), substituted ''applicable Secretary'' for ''Secretary of Housing and Urban Development'' in two places.

Subsec. (c)(1). Pub. L. 104–208, § 573(1), substituted ''shall'' for ''may, in its discretion,'' in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 104–208, § 573(2), inserted at end ''Financial assistance continued under this subparagraph for a family may be provided only on a prorated basis, under which the amount of financial assistance is based on the percentage of the total number of members of the family that are eligible for that assistance under the program of financial assistance and under this section.''

Subsec. (c)(1)(B). Pub. L. 104–208, § 573(3), designated first sentence of existing provisions as cl. (i), designated second and third sentences of existing provisions as cl. (ii) and substituted ''Except as provided in clause (iii), any deferral'' for ''Any deferral'' and ''18-months'' for ''3 years'', and added cl. (iii).

Subsec. (d). Pub. L. 104–208, § 574(1), inserted ''or to be'' after ''being'' in introductory provisions.

Pub. L. 104–193, § 441(a)(3), substituted ''applicable Secretary'' for ''Secretary'' wherever appearing in pars. (2) to (6).

Pub. L. 104–193, § 441(a)(1), (4), substituted ''the term 'applicable Secretary' '' for ''the term 'Secretary' '' and ''applicable Secretary'' for ''Secretary of Housing and Urban Development'' in closing provisions.

Subsec. (d)(1)(A). Pub. L. 104–208, § 574(2), inserted at end ''If the declaration states that the individual is not a citizen or national of the United States and that the individual is younger than 62 years of age, the declaration shall be verified by the Immigration and Naturalization Service. If the declaration states that the individual is a citizen or national of the United States, the Secretary of Housing and Urban Development, or the agency administering assistance covered by this section, may request verification of the declaration by requiring presentation of documentation that the Secretary considers appropriate, including a United States passport, resident alien card, alien registration card, social security card, or other documentation.''

Subsec. (d)(2). Pub. L. 104–208, § 574(3), substituted ''on September 30, 1996, or applying for financial assistance on or after September 30, 1996'' for ''on February 5, 1988'' in introductory provisions and added concluding provisions.

Subsec. (d)(4). Pub. L. 104–208, § 574(4)(A), substituted ''on September 30, 1996, or applying for financial assistance on or after September 30, 1996'' for ''on February 5, 1988'' in introductory provisions.

Subsec. (d)(4)(A)(i). Pub. L. 104–208, § 574(4)(B)(i)(I), inserted '', not to exceed 30 days,'' after ''reasonable opportunity''.

Subsec. (d)(4)(A)(ii), (iii). Pub. L. 104–208, § 574(4)(B)(i)(II), (ii), added cls. (ii) and (iii) and struck out former cl. (ii) which read as follows: ''may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and''.

Subsec. (d)(4)(B)(ii). Pub. L. 104–208, § 574(4)(C), added cl. (ii) and struck out former cl. (ii) which read as follows: ''pending such verification or appeal, the applica-

ble Secretary may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status, and''.

Subsec. (d)(5). Pub. L. 104–208, §574(5), inserted '', the Secretary shall'' after ''status'' in introductory provisions, added subpars. (A) to (C), and struck out former subpars. (A) and (B) which read as follows:

''(A) the applicable Secretary shall deny or terminate the individual's eligibility for financial assistance, and

''(B) the applicable fair hearing process shall be made available with respect to the individual.''

Subsec. (d)(6). Pub. L. 104–208, §574(6), added par. (6) and struck out former par. (6) which read as follows: ''For purposes of paragraph (5)(B), the applicable fair hearing process made available with respect to any individual shall include not less than the following procedural protections:

''(A) The applicable Secretary shall provide the individual with written notice of the determination described in paragraph (5) and of the opportunity for a hearing with respect to the determination.

''(B) Upon timely request by the individual, the applicable Secretary shall provide a hearing before an impartial hearing officer designated by the applicable Secretary, at which hearing the individual may produce evidence of a satisfactory immigration status.

''(C) The applicable Secretary shall notify the individual in writing of the decision of the hearing officer on the appeal of the determination in a timely manner.

''(D) Financial assistance may not be denied or terminated until the completion of the hearing process.''

Subsec. (e). Pub. L. 104–193, §441(a)(1), substituted ''applicable Secretary'' for ''Secretary of Housing and Urban Development'' in introductory provisions.

Subsec. (e)(3). Pub. L. 104–208, §575(2), inserted at end ''the response from the Immigration and Naturalization Service to the appeal of that individual.''

Subsec. (e)(4). Pub. L. 104–208, §575(1), (3), struck out par. (4) which read as follows: ''because of a fair hearing process described in subsection (d)(5)(B) of this section (or provided for under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603)).''

Subsec. (g). Pub. L. 104–193, §441(a)(1), substituted ''applicable Secretary'' for ''Secretary of Housing and Urban Development''.

Subsec. (h). Pub. L. 104–208, §576, added subsec. (h) relating to verification of eligibility.

Pub. L. 104–193, §441(a)(5), added subsec. (h) defining ''applicable Secretary''.

1988—Subsec. (a)(6). Pub. L. 100–242, §164(a), added par. (6).

Subsec. (c). Pub. L. 100–242, §164(b), added subsec. (c).

Subsec. (d). Pub. L. 100–242, §164(c)(8), amended last sentence generally. Prior to amendment, last sentence read as follows: ''In this subsection and subsection (e) of this section, the term 'Secretary' refers to the Secretary and to a public housing authority or other entity which makes financial assistance available.''

Subsec. (d)(2). Pub. L. 100–242, §164(c)(1), inserted '', is not 62 years of age or older, and is receiving financial assistance on February 5, 1988'' after ''States''.

Subsec. (d)(4). Pub. L. 100–242, §164(c)(2), in introductory provisions, inserted '', is not 62 years of age or older, and is receiving financial assistance on February 5, 1988'' after ''States'', and ''or recertification'' after ''application''.

Subsec. (d)(4)(A)(i). Pub. L. 100–242, §164(c)(3), inserted after comma ''or to appeal to the Immigration and Naturalization Service the verification determination of the Immigration and Naturalization Service under paragraph (3),''.

Subsec. (d)(4)(B). Pub. L. 100–242, §164(c)(4), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''if there are submitted documents which the Secretary determines constitutes reasonable evidence indicating such status—''.

Subsec. (d)(4)(B)(i), (ii). Pub. L. 100–242, §164(c)(5), (6), inserted ''or additional information'' after ''documents'' in cl. (i), and ''or appeal'' after ''verification'' in cl. (ii).

Subsec. (d)(6). Pub. L. 100–242, §164(c)(7), added par. (6).

Subsec. (e). Pub. L. 100–242, §164(d)(1), in introductory provisions, inserted ''of Housing and Urban Development'' after ''Secretary''.

Subsec. (e)(2), (3). Pub. L. 100–242, §164(d)(2), (3), inserted ''(or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603))''.

Subsec. (e)(4). Pub. L. 100–242, §164(d)(4), inserted ''(or provided for under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603))''.

Subsec. (f). Pub. L. 100–242, §164(e), added subsec. (f).

Subsec. (g). Pub. L. 100–242, §164(f)(1), added subsec. (g).

1986—Subsecs. (d), (e). Pub. L. 99–603 added subsecs. (d) and (e).

1981—Subsec. (a). Pub. L. 97–35 substituted provisions relating to restrictions on use of assisted housing by resident aliens meeting further conditions for provisions relating to prohibition on financial assistance to nonimmigrant student-aliens.

Subsec. (b). Pub. L. 97–35 struck out ''(1)'' after ''(b)'' and par. (2) which defined ''nonimmigrant student-alien''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, §592(b), Oct. 21, 1998, 112 Stat. 2654, provided that: ''The amendments made by this section [amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(7)(D)(ii) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Amendment by sections 572–576 of Pub. L. 104–208 effective Sept. 30, 1996, see section 591 of Pub. L. 104–208, set out as a note under section 1101 of Title 8.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 164(h) of Pub. L. 100–242 provided that:

''(1) The provisions of, and amendments made by, subsections (a), (b), (e), (f), and (g) [amending this section, repealing section 1437r of this title, and enacting provisions set out below] shall take effect on the date of the enactment of this Act [Feb. 5, 1988].

''(2) The amendments made by subsections (c) and (d) [amending this section] shall take effect on October 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective on Oct. 1, 1988, with certain exceptions and qualifications, see section 121(c)(3), (4) of Pub. L. 99–603, set out as a note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

SHORT TITLE OF 1996 AMENDMENT

Section 571 of div. C of Pub. L. 104–208 provided that: ''This subtitle [subtitle E (§§571–577) of title V of div. C

of Pub. L. 104–208, amending this section and enacting provisions set out as a note below] may be cited as the 'Use of Assisted Housing by Aliens Act of 1996'.''

REGULATIONS

Section 577 of div. C of Pub. L. 104–208 provided that:

''(a) ISSUANCE.—Not later than the 60 days after the date of enactment of this Act [Sept. 30, 1996], the Secretary of Housing and Urban Development shall issue any regulations necessary to implement the amendments made by this part [probably means this subtitle, subtitle E (§§ 571–577) of title V of div. C of Pub. L. 104–208, see Short Title of 1996 Amendment note above]. Such regulations shall be issued in the form of an interim final rule, which shall take effect upon issuance and shall not be subject to the provisions of section 533 of title 5, United States Code, regarding notice or opportunity for comment.

''(b) FAILURE TO ISSUE.—If the Secretary fails to issue the regulations required under subsection (a) before the date specified in that subsection, the regulations relating to restrictions on assistance to noncitizens, contained in the final rule issued by the Secretary of Housing and Urban Development in RIN–2501–AA63 (Docket No. R–95–1409; FR–2383–F–050), published in the Federal Register on March 20, 1995 (Vol. 60, No. 53; pp. 14824–14861), shall not apply after that date.''

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

TRANSITIONAL CERTIFICATION AND DOCUMENTATION PROVISIONS

Section 164(g) of Pub. L. 100–242 provided that: ''In carrying out section 214 of the Housing and Community Development Act of 1980 [this section] during fiscal year 1988, the Secretary of Housing and Urban Development shall require, as a condition of providing financial assistance for the benefit of any individual, that such individual—

''(1) declare in writing, under penalty of perjury, whether or not such individual is a citizen or national of the United States; and

''(2) if not a citizen or national—

''(A) declare in writing, under penalty of perjury, the immigration status of such individual, if such individual is not less than 62 years of age 'and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987' [Feb. 5, 1988]; or

''(B) provide such documentation regarding the immigration status of such individual as the Secretary may require by regulation.''

DELAYED IMPLEMENTATION OF 1981 AMENDMENT

Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239, provided in part that: ''The Secretary may not implement the amendment to section 214 of the Housing and Community Development Act of 1980 [this section], made by section 329(a) of the Housing and Community Development Amendments of 1981 [Pub. L. 97–35], before the expiration of the one-year period following the date of the enactment of this Act [Nov. 30, 1983].''

ALIENS GRANTED CONDITIONAL ENTRY ELIGIBLE FOR ASSISTED HOUSING

Section 329(b) of Pub. L. 97–35 provided that: ''An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity shall be deemed, for purposes of section 214 of the Housing and Community Development Act of 1980 [this section], to be an alien described in section 214(a)(3) of such Act [subsec. (a)(3) of this section].''

§ 1436b. Financial assistance in impacted areas

The Secretary of Housing and Urban Development shall not exclude from consideration for financial assistance under federally assisted housing programs proposals for housing projects solely because the site proposed is located within an impacted area. For the purposes of this section, the term ''federally assisted housing programs'' means any program authorized by the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], sections 1715z and 1715z–1 of title 12, section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], or section 1701q of title 12.

(Pub. L. 96–399, title II, § 216, Oct. 8, 1980, 94 Stat. 1638.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to this chapter (§ 1437 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in text, is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, as amended, which enacted section 1701s of Title 12, Banks and Banking, and amended sections 1451 and 1465 of this title.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1980, and not as part of the United States Housing Act of 1937 which comprises this chapter.

§ 1436c. Insurance for public housing agencies and Indian housing authorities

On and after October 28, 1991, notwithstanding any other provision of State or Federal law, regulation or other requirement, any public housing agency or Indian housing authority that purchases any line of insurance from a nonprofit insurance entity, owned and controlled by public housing agencies or Indian housing authorities, and approved by the Secretary, may purchase such insurance without regard to competitive procurement.

On and after October 28, 1991, the Secretary shall establish standards as set forth herein, by regulation, adopted after notice and comment rulemaking pursuant to subchapter II of chapter 5 of title 5, which will become effective not later than one year from October 28, 1991.

On and after October 28, 1991, in establishing standards for approval of such nonprofit insurance entities, the Secretary shall be assured that such entities have sufficient surplus capital to meet reasonably expected losses, reliable accounting systems, sound actuarial projections, and employees experienced in the insurance industry. The Secretary shall not place restrictions on the investment of funds of any such entity that is regulated by the insurance department of any State that describes the types of investments insurance companies licensed in such

State may make. With regard to such entities that are not so regulated, the Secretary shall establish investment guidelines that are comparable to State law regulating the investments of insurance companies.

On and after October 28, 1991, the Secretary shall not approve additional nonprofit insurance entities until such standards have become final, nor shall the Secretary revoke the approval of any nonprofit insurance entity previously approved by the Department unless for cause and after a due process hearing.

On and after October 28, 1991, until the Department of Housing and Urban Development has adopted regulations specifying the nature and quality of insurance covering the potential personal injury liability exposure of public housing authorities and Indian housing authorities (and their contractors, including architectural and engineering services) as a result of testing and abatement of lead-based paint in federally subsidized public and Indian housing units, said authorities shall be permitted to purchase insurance for such risk, as an allowable expense against amounts available for capital improvements (modernization): *Provided*, That such insurance is competitively selected and that coverage provided under such policies, as certified by the authority, provides reasonable coverage for the risk of liability exposure, taking into consideration the potential liability concerns inherent in the testing and abatement of lead-based paint, and the managerial and quality assurance responsibilities associated with the conduct of such activities.

(Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 758.)

REFERENCES IN TEXT

Herein, referred to in text, probably means Pub. L. 102–139, Oct. 28, 1991, 105 Stat. 736, known as the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In the second undesignated par., ''subchapter II of chapter 5 of title 5'' was substituted for ''the Administrative Procedures Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, and not as part of the United States Housing Act of 1937 which comprises this chapter.

§ 1436d. Consultation with affected areas in settlement of litigation

In negotiating any settlement of, or consent decree for, significant litigation regarding public housing or section 8 [42 U.S.C. 1437f] tenant-based assistance that involves the Secretary and any public housing agency or any unit of general local government, the Secretary shall seek the views of any units of general local government and public housing agencies having jurisdictions that are adjacent to the jurisdiction of the public housing agency involved, if the resolution of such litigation would involve the acquisition or development of public housing dwelling units or the use of vouchers under section 1437f of this title in jurisdictions that are adjacent to the jurisdiction of the public housing agency involved in the litigation.

(Pub. L. 105–276, title V, § 599H(b), Oct. 21, 1998, 112 Stat. 2668.)

REFERENCES IN TEXT

Secretary, referred to in text, means the Secretary of Housing and Urban Development.

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of the United States Housing Act of 1937 which comprises this chapter.

EFFECTIVE DATE

Pub. L. 105–276, title V, § 599H(m), Oct. 21, 1998, 112 Stat. 2670, provided that: ''This section [enacting this section and amending section 1490 of this title] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

SUBCHAPTER I—GENERAL PROGRAM OF ASSISTED HOUSING

AMENDMENTS

1988—Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681, added subchapter heading.

§ 1437. Declaration of policy and public housing agency organization

(a) Declaration of policy

It is the policy of the United States—

(1) to promote the general welfare of the Nation by employing the funds and credit of the Nation, as provided in this chapter—

(A) to assist States and political subdivisions of States to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families;

(B) to assist States and political subdivisions of States to address the shortage of housing affordable to low-income families; and

(C) consistent with the objectives of this subchapter, to vest in public housing agencies that perform well, the maximum amount of responsibility and flexibility in program administration, with appropriate accountability to public housing residents, localities, and the general public;

(2) that the Federal Government cannot through its direct action alone provide for the housing of every American citizen, or even a majority of its citizens, but it is the responsibility of the Government to promote and protect the independent and collective actions of private citizens to develop housing and strengthen their own neighborhoods;

(3) that the Federal Government should act where there is a serious need that private citizens or groups cannot or are not addressing responsibly; and

(4) that our Nation should promote the goal of providing decent and affordable housing for all citizens through the efforts and encouragement of Federal, State, and local govern-

ments, and by the independent and collective actions of private citizens, organizations, and the private sector.

(b) Public housing agency organization

(1) Required membership

Except as provided in paragraph (2), the membership of the board of directors or similar governing body of each public housing agency shall contain not less than 1 member—

(A) who is directly assisted by the public housing agency; and

(B) who may, if provided for in the public housing agency plan, be elected by the residents directly assisted by the public housing agency.

(2) Exception

Paragraph (1) shall not apply to any public housing agency—

(A) that is located in a State that requires the members of the board of directors or similar governing body of a public housing agency to be salaried and to serve on a full-time basis; or

(B) with less than 300 public housing units, if—

(i) the agency has provided reasonable notice to the resident advisory board of the opportunity of not less than 1 resident described in paragraph (1) to serve on the board of directors or similar governing body of the public housing agency pursuant to such paragraph; and

(ii) within a reasonable time after receipt by the resident advisory board established by the agency pursuant to section 1437c–1(e) of this title of notice under clause (i), the public housing agency has not been notified of the intention of any resident to participate on the board of directors.

(3) Nondiscrimination

No person shall be prohibited from serving on the board of directors or similar governing body of a public housing agency because of the residence of that person in a public housing project or status as assisted under section 1437f of this title.

(Sept. 1, 1937, ch. 896, title I, § 2, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653; amended Pub. L. 97–35, title III, § 322(c), Aug. 13, 1981, 95 Stat. 402; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title V, § 572(2), Nov. 28, 1990, 104 Stat. 4236; Pub. L. 105–276, title V, § 505, Oct. 21, 1998, 112 Stat. 2522.)

PRIOR PROVISIONS

A prior section 2 of act Sept. 1, 1937, ch. 896, 50 Stat. 888, related to definitions and was classified to section 1402 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

Prior similar provisions were contained in section 1 of act Sept. 1, 1937, ch. 896, 50 Stat. 888, which was classified to section 1401 of this title prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1998—Pub. L. 105–276 amended section catchline and text generally. Prior to amendment, text read as follows: ''It is the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income and, consistent with the objectives of this chapter, to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs. No person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-income housing project.''

1990—Pub. L. 101–625 substituted ''low-income housing'' for ''lower income housing''.

1981—Pub. L. 97–35 substituted reference to lower income for reference to low income in two places.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 503, Oct. 21, 1998, 112 Stat. 2521, provided that:

''(a) IN GENERAL.—The amendments under this title [see Tables for classification] are made on the date of the enactment of this Act [Oct. 21, 1998], but this title shall take effect, and the amendments made by this title shall apply beginning upon, October 1, 1999, except—

''(1) as otherwise specifically provided in this title; or

''(2) as otherwise specifically provided in any amendment made by this title.

The Secretary may, by notice, implement any provision of this title or any amendment made by this title before such date, except to the extent that such provision or amendment specifically provides otherwise.

''(b) SAVINGS PROVISION.—Notwithstanding any amendment under this title that is made (in accordance with subsection (a)) on the date of the enactment of this Act [Oct. 21, 1998] but applies beginning on October 1, 1999, the provisions of law amended by such amendment, as such provisions were in effect immediately before the making of such amendment, shall continue to apply during the period beginning on the date of the enactment of this Act and ending upon October 1, 1999, unless otherwise specifically provided by this title.

''(c) TECHNICAL RECOMMENDATIONS.—Not later than 9 months after the date of the enactment of this Act [Oct. 21, 1998], the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives, recommended technical and conforming legislative changes necessary to carry out this title and the amendments made by this title.

''(d) LIST OF OBSOLETE DOCUMENTS.—Not later than October 1, 1999, the Secretary of Housing and Urban Development shall cause to be published in the Federal Register a list of all rules, regulations, and orders (including all handbooks, notices, and related requirements) pertaining to public housing or section 8 [42 U.S.C. 1437f] tenant-based programs issued or promulgated under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] before the date of the enactment of this Act [Oct. 21, 1998] that are or will be obsolete because of the enactment of this Act or are otherwise obsolete.

''(e) PROTECTION OF CERTAIN REGULATIONS.—No provision of this title may be construed to repeal the regulations of the Secretary regarding tenant participation and tenant opportunities in public housing (24 C.F.R. 964).

''(g)[(f)] EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section 201(b) of Pub. L. 93–383 provided that: ''The provisions of subsection (a) of this section [enacting sections 1437 to 1437j of this title] shall be effective on such date or dates as the Secretary of Housing and Urban Development shall prescribe, but not later than eighteen months after the date of the enactment of this Act [Aug. 22, 1974]; except that (1) all of the provisions of section 3(1) of the United States Housing Act of 1937, as amended by subsection (a) of this section [section 1437a(1) of this title], shall become effective on the same date, (2) all of the provisions of sections 5 and 9(c) of such Act as so amended [sections 1437c and 1437g(c) of this title] shall become effective on the same date, and (3) section 8 of such Act [section 1437f of this title] as so amended shall be effective not later than January 1, 1975.''

Section 3(1) of the United States Housing Act of 1937, as amended, effective Sept. 26, 1975, see Effective Date note set out under section 1437a of this title.

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–186, title IV, § 401, Dec. 16, 2003, 117 Stat. 2693, provided that: ''This title [amending section 1437v of this title and enacting provisions set out as a note under section 1437v of this title] may be cited as the 'HOPE VI Program Reauthorization and Small Community Mainstreet Rejuvenation and Housing Act of 2003'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–116, title VI, § 601(a), Jan. 10, 2002, 115 Stat. 2220, provided that: ''This title [amending sections 1437f and 5305 of this title and section 1715n of Title 12, Banks and Banking, enacting provisions set out as notes under sections 1437f and 11301 of this title and sections 1701q and 1715n of Title 12, and amending provisions set out as notes under sections 1437f and 11301 of this title and section 1701q of Title 12] may be cited as the 'Mark-to-Market Extension Act of 2001'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 501(a), Oct. 21, 1998, 112 Stat. 2518, provided that: ''This title [see Tables for classification] may be cited as the 'Quality Housing and Work Responsibility Act of 1998'.''

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100–358 provided that: ''This Act [enacting sections 1437aa to 1437ee of this title, amending sections 1437a and 1437c of this title, and enacting provisions set out as a note under section 1437a of this title] may be cited as the 'Indian Housing Act of 1988'.''

SHORT TITLE

Section 1 of title I of act Sept. 1, 1937, ch. 896, as added by section 201(a) of Pub. L. 93–383; renumbered title I, June 29, 1988, Pub. L. 100–358, § 5, 102 Stat. 681, provided that: ''This Act [enacting this chapter] may be cited as the 'United States Housing Act of 1937'.''

APPLICABILITY OF 1996 AMENDMENTS; INDIAN HOUSING

Pub. L. 104–204, title II, § 201(d), Sept. 26, 1996, 110 Stat. 2893, provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former 42 U.S.C. 1437aa(b)(2)], the amendments made by subsections (a), (b), and (c) [amending provisions set out as notes under sections 1437a, 1437c, and 1437*l* of this title] shall apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

Pub. L. 104–134, title I, § 101(e) [title II, § 201(a)(3)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–278; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former 42 U.S.C. 1437aa(b)(2)], the amendment made by this subsection [amending section 1437*l* of this title] shall apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

Pub. L. 104–134, title I, § 101(e) [title II, § 201(b)(3)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–278; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former 42 U.S.C. 1437aa(b)(2)], the amendments made by this subsection [amending section 1437p of this title and provisions set out as a note under section 1437c of this title] and by sections 1002(a), (b), and (c) of Public Law 104–19 [amending sections 1437c, 1437p, and 1437aaa–3 of this title] shall apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

Pub. L. 104–99, title IV, § 402(e), Jan. 26, 1996, 110 Stat. 43, which provided that amendments made by section 402(a) to (d) and (f) of Pub. L. 104–99 were also to apply to public housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and an Indian housing authority, was repealed by Pub. L. 105–276, title V, § 595(e)(16), Oct. 21, 1998, 112 Stat. 2659.

APPLICABILITY OF 1990 AMENDMENTS; INDIAN HOUSING

Section 103(b) of Pub. L. 102–550 provided that:

''(1) IN GENERAL.—In accordance with section 201(b)(2) of the United States Housing Act of 1937 ([former] 42 U.S.C. 1437aa(b)(2)), the provisions of sections 572, 573, and 574 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, amending this section and sections 1437a, 1437b to 1437d, 1437f, 1437g, 1437i, 1437j, 1437*l*, 1437n, 1437p, 1437r, 1437s, and 1437aa to 1437dd of this title, repealing section 1437*o* of this title, and enacting provisions set out as notes under section 1437a of this title] shall apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian Housing Authority.

''(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if such provision were enacted upon the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990].''

Section 419 of title IV of Pub. L. 101–625 provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former 42 U.S.C. 1437aa(b)(2)], the amendments made by this subtitle [subtitle A (§§ 411–419) of title IV of Pub. L. 101–625, enacting subchapter II–A of this chapter and amending sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title] shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority, except that nothing in this title [see Short Title note set out under section 1437aaa of this title] affects the program under section 202 of such Act [former 42 U.S.C. 1437bb].''

Section 527 of Pub. L. 101–625 provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 ([former] 42 U.S.C. 1437aa(b)(2)), the provisions of this subtitle [subtitle A (§§ 501–527) of title V of Pub. L. 101–625, see Tables for classification] that modify the public housing program under title I of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority, except that sections 502 and 510 [amending sections 1437d and 1437*l* of this title and enacting provisions set out as notes under section 1437d of this title] shall not apply.''

APPLICABILITY OF 1989 AMENDMENTS; INDIAN HOUSING

Pub. L. 101–235, title I, § 101(d), Dec. 15, 1989, 103 Stat. 1990, provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937

[former 42 U.S.C. 1437aa(b)(2)], the amendments made by subsections (a), (b), and (c) of this section [amending section 1439 of this title] shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

Pub. L. 101–235, title I, § 104(c), Dec. 15, 1989, 103 Stat. 1998, provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former 42 U.S.C. 1437aa(b)(2)], the amendment made by subsection (a) [amending section 1439 of this title] and the provisions of subsection (b) of this section [set out as an Effective Date of 1989 Amendment note under section 1439 of this title] shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

REPORTS ON NUMBER AND COST OF FEDERALLY ASSISTED UNITS

Pub. L. 109–115, div. A, title III, § 314, Nov. 30, 2005, 119 Stat. 2463, provided that: ''The Secretary of Housing and Urban Development shall submit an annual report no later than August 30, 2006 and annually thereafter to the House and Senate Committees on Appropriations regarding the number of Federally assisted units under lease and the per unit cost of these units to the Department of Housing and Urban Development.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. I, title II, § 214, Dec. 8, 2004, 118 Stat. 3318.

Pub. L. 108–199, div. G, title II, § 213, Jan. 23, 2004, 118 Stat. 393.

Pub. L. 108–7, div. K, title II, § 217, Feb. 20, 2003, 117 Stat. 504.

FUNDING OF CERTAIN PUBLIC HOUSING

Pub. L. 105–276, title II, § 226, Oct. 21, 1998, 112 Stat. 2490, which provided that no funds in this Act or any other Act may hereafter be used by the Secretary of Housing and Urban Development to determine allocations or provide assistance for operating subsidies or modernization for certain State and city funded and locally developed public housing units unless such unit was so assisted before Oct. 1, 1998, was repealed by Pub. L. 108–7, div. K, title II, § 212(b), Feb. 20, 2003, 117 Stat. 504.

[Pub. L. 108–7, div. K, title II, § 212(d), Feb. 20, 2003, 117 Stat. 504, provided that: ''The amendment made by subsection (b) [repealing section 226 of Pub. L. 105–276, set out above] shall be deemed to have taken effect on October 21, 1998.'']

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Pub. L. 105–276, title V, § 502, Oct. 21, 1998, 112 Stat. 2520, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) there exists throughout the Nation a need for decent, safe, and affordable housing;

''(2) the inventory of public housing units owned, assisted, or operated by public housing agencies, an asset in which the Federal Government has invested over $90,000,000,000, has traditionally provided rental housing that is affordable to low-income persons;

''(3) despite serving this critical function, the public housing system is plagued by a series of problems, including the concentration of very poor people in very poor neighborhoods and disincentives for economic self-sufficiency;

''(4) the Federal method of overseeing every aspect of public housing by detailed and complex statutes and regulations has aggravated the problem and has placed excessive administrative burdens on public housing agencies; and

''(5) the interests of low-income persons, and the public interest, will best be served by a reformed public housing program that—

''(A) consolidates many public housing programs into programs for the operation and capital needs of public housing;

''(B) streamlines program requirements;

''(C) vests in public housing agencies that perform well the maximum feasible authority, discretion, and control with appropriate accountability to public housing residents, localities, and the general public; and

''(D) rewards employment and economic self-sufficiency of public housing residents.

''(b) PURPOSES.—The purpose of this title [see Tables for classification] is to promote homes that are affordable to low-income families in safe and healthy environments, and thereby contribute to the supply of affordable housing, by—

''(1) deregulating and decontrolling public housing agencies, thereby enabling them to perform as property and asset managers;

''(2) providing for more flexible use of Federal assistance to public housing agencies, allowing the authorities to leverage and combine assistance amounts with amounts obtained from other sources;

''(3) facilitating mixed income communities and decreasing concentrations of poverty in public housing;

''(4) increasing accountability and rewarding effective management of public housing agencies;

''(5) creating incentives and economic opportunities for residents of dwelling units assisted by public housing agencies to work, become self-sufficient, and transition out of public housing and federally assisted dwelling units;

''(6) consolidating the voucher and certificate programs for rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] into a single market-driven program that will assist in making tenant-based rental assistance under such section more successful at helping low-income families obtain affordable housing and will increase housing choice for low-income families; and

''(7) remedying the problems of troubled public housing agencies and replacing or revitalizing severely distressed public housing projects.''

MENTAL HEALTH ACTION PLAN

Pub. L. 105–276, title V, § 517, Oct. 21, 1998, 112 Stat. 2550, provided that: ''The Secretary of Housing and Urban Development, in consultation with the Secretary of Health and Human Services, the Secretary of Labor, and appropriate State and local officials and representatives, shall—

''(1) develop an action plan and list of recommendations for the improvement of means of providing severe mental illness treatment to families and individuals receiving housing assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], including public housing residents, residents of multifamily housing assisted with project-based assistance under section 8 of such Act [42 U.S.C. 1437f], and recipients of tenant-based assistance under such section; and

''(2) develop and disseminate a list of current practices among public housing agencies and owners of assisted housing that serve to benefit persons in need of mental health care.''

ANNUAL REPORT

Pub. L. 105–276, title V, § 581, Oct. 21, 1998, 112 Stat. 2643, provided that:

''(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Oct. 21, 1998], and annually thereafter, the Secretary shall submit a report to the Congress on—

''(1) the impact of the amendments made by this Act [Pub. L. 105–276, see Tables for classification] on—

''(A) the demographics of public housing residents and families receiving tenant-based assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]; and

''(B) the economic viability of public housing agencies; and

''(2) the effectiveness of the rent policies established by this Act and the amendments made by this Act on the employment status and earned income of public housing residents.

''(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

USE OF AMERICAN PRODUCTS

Pub. L. 105–276, title V, § 584, Oct. 21, 1998, 112 Stat. 2645, provided that:

''(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act [Pub. L. 105–276, see Tables for classification] should be American made.

''(b) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

''(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

GAO STUDY ON HOUSING ASSISTANCE PROGRAM COSTS

Pub. L. 105–276, title V, § 585, Oct. 21, 1998, 112 Stat. 2645, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study that provides an objective and independent accounting and analysis of the full cost to the Federal Government, public housing agencies, State and local governments, and other entities, per assisted household, of the Federal assisted housing programs, taking into account the qualitative differences among Federal assisted housing programs in accordance with applicable standards of the Department of Housing and Urban Development.

''(b) CONTENTS.—The study under this section shall—

''(1) analyze the full cost to the Federal Government, public housing agencies, State and local governments, and other parties, per assisted household, of the Federal assisted housing programs, in accordance with generally accepted accounting principles, and shall conduct the analysis on a nationwide and regional basis and in a manner such that accurate per unit cost comparisons may be made between Federal assisted housing programs, including grants, direct subsidies, tax concessions, Federal mortgage insurance liability, periodic renovation and rehabilitation, and modernization costs, demolition costs, and other ancillary costs such as security; and

''(2) measure and evaluate qualitative differences among Federal assisted housing programs in accordance with applicable standards of the Department of Housing and Urban Development.

''(c) PROHIBITION OF RECOMMENDATIONS.—In conducting the study under this section and reporting under subsection (e), the Comptroller General may not make any recommendations regarding Federal housing policy.

''(d) FEDERAL ASSISTED HOUSING PROGRAMS.—For purposes of this section, the term 'Federal assisted housing programs' means—

''(1) the public housing program under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], except that the study under this section shall differentiate between and compare the development and construction of new public housing and the assistance of existing public housing structures;

''(2) the certificate program for rental assistance under section 8(b)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(1)];

''(3) the voucher program for rental assistance under section 8(*o*) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)];

''(4) the programs for project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

''(5) the rental assistance payments program under section 521(a)(2)(A) of the Housing Act of 1949 [42 U.S.C. 1490a(a)(2)(A)];

''(6) the program for housing for the elderly under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q];

''(7) the program for housing for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8013];

''(8) the program for financing housing by a loan or mortgage insured under section 221(d)(3) of the National Housing Act [12 U.S.C. 1715*l*(d)(3)] that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act [12 U.S.C. 1715*l*(d)(5)];

''(9) the program under section 236 of the National Housing Act [12 U.S.C. 1715z–1];

''(10) the program for construction or substantial rehabilitation under section 8(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)], as in effect before October 1, 1983; and

''(11) any other program for housing assistance administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture, under which occupancy in the housing assisted or housing assistance provided is based on income, as the Comptroller General may determine.

''(e) REPORT.—Not later than 12 months after the date of the enactment of this Act [Oct. 21, 1998], the Comptroller General shall submit to the Congress a final report which shall contain the results of the study under this section, including the analysis and estimates required under subsection (b).

''(f) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

Assistance provided for in Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.], National Housing Act [12 U.S.C. 1701 et seq.], United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], Housing Act of 1949 [see Short Title note set out under section 1441 of this title], Demonstration Cities and Metropolitan Development Act of 1966 [see Short Title note set out under section 3331 of this title], and Housing and Urban Development Acts of 1965, 1968, 1969, and 1970 not to be withheld or made subject to conditions by reason of tax-exempt status of obligations issued or to be issued for financing of assistance, except as otherwise provided by law, see section 817 of Pub. L. 93–383, set out as a note under section 5301 of this title.

§ 1437a. Rental payments

(a) Families included; rent options; minimum amount; occupancy by police officers and over-income families

(1) Dwelling units assisted under this chapter shall be rented only to families who are low-income families at the time of their initial occupancy of such units. Reviews of family income shall be made at least annually. Except as provided in paragraph (2) and subject to the requirement under paragraph (3), a family shall pay as rent for a dwelling unit assisted under this chapter (other than a family assisted under section 1437f(*o*) or (y) of this title or paying rent under section 1437f(c)(3)(B)[1] of this title) the highest of the following amounts, rounded to the nearest dollar:

(A) 30 per centum of the family's monthly adjusted income;

(B) 10 per centum of the family's monthly income; or

(C) if the family is receiving payments for welfare assistance from a public agency and a

[1] See References in Text note below.

part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

(2) RENTAL PAYMENTS FOR PUBLIC HOUSING FAMILIES.—

(A) AUTHORITY FOR FAMILY TO SELECT.—

(i) IN GENERAL.—A family residing in a public housing dwelling shall pay as monthly rent for the unit the amount determined under clause (i) or (ii) of subparagraph (B), subject to the requirement under paragraph (3) (relating to minimum rents). Each public housing agency shall provide for each family residing in a public housing dwelling unit owned, assisted, or operated by the agency to elect annually whether the rent paid by such family shall be determined under clause (i) or (ii) of subparagraph (B). A public housing agency may not at any time fail to provide both such rent options for any public housing dwelling unit owned, assisted, or operated by the agency.

(ii) AUTHORITY TO RETAIN FLAT AND CEILING RENTS.—Notwithstanding clause (i) or any other provision of law, any public housing agency that is administering flat rents or ceiling rents pursuant to any authority referred to in section 519(d) of the Quality Housing and Work Responsibility Act of 1998 before the effective day of such Act may continue to charge rent in accordance with such rent provisions after such effective date, except that the agency shall provide for families residing in public housing dwelling units owned or operated by the agency to elect annually whether to pay rent under such provisions or in accordance with one of the rent options referred to in subparagraph (A).

(B) ALLOWABLE RENT STRUCTURES.—

(i) FLAT RENTS.—Except as otherwise provided under this clause, each public housing agency shall establish, for each dwelling unit in public housing owned or operated by the agency, a flat rental amount for the dwelling unit, which shall—

(I) be based on the rental value of the unit, as determined by the public housing agency; and

(II) be designed in accordance with subparagraph (D) so that the rent structures do not create a disincentive for continued residency in public housing by families who are attempting to become economically self-sufficient through employment or who have attained a level of self-sufficiency through their own efforts.

The rental amount for a dwelling unit shall be considered to comply with the requirements of this clause if such amount does not exceed the actual monthly costs to the public housing agency attributable to providing and operating the dwelling unit. The preceding sentence may not be construed to require establishment of rental amounts equal to or based on operating costs or to prevent public housing agencies from developing flat rents required under this clause in any other manner that may comply with this clause.

(ii) INCOME-BASED RENTS.—

(I) IN GENERAL.—The monthly rental amount determined under this clause for a family shall be an amount, determined by the public housing agency, that does not exceed the greatest of the amounts (rounded to the nearest dollar) determined under subparagraphs (A), (B), and (C) of paragraph (1). This clause may not be construed to require a public housing agency to charge a monthly rent in the maximum amount permitted under this clause.

(II) DISCRETION.—Subject to the limitation on monthly rental amount under subclause (I), a public housing agency may, in its discretion, implement a rent structure under this clause requiring that a portion of the rent be deposited to an escrow or savings account, imposing ceiling rents, or adopting income exclusions (such as those set forth in subsection (b)(5)(B) of this section), or may establish another reasonable rent structure or amount.

(C) SWITCHING RENT DETERMINATION METHODS BECAUSE OF HARDSHIP CIRCUMSTANCES.—Notwithstanding subparagraph (A), in the case of a family that has elected to pay rent in the amount determined under subparagraph (B)(i), a public housing agency shall immediately provide for the family to pay rent in the amount determined under subparagraph (B)(ii) during the period for which such election was made upon a determination that the family is unable to pay the amount determined under subparagraph (B)(i) because of financial hardship, including—

(i) situations in which the income of the family has decreased because of changed circumstances, loss of[2] reduction of employment, death in the family, and reduction in or loss of income or other assistance;

(ii) an increase, because of changed circumstances, in the family's expenses for medical costs, child care, transportation, education, or similar items; and

(iii) such other situations as may be determined by the agency.

(D) ENCOURAGEMENT OF SELF-SUFFICIENCY.—The rental policy developed by each public housing agency shall encourage and reward employment and economic self-sufficiency.

(E) INCOME REVIEWS.—Notwithstanding the second sentence of paragraph (1), in the case of families that are paying rent in the amount determined under subparagraph (B)(i), the agency shall review the income of such family not less than once every 3 years.

(3) MINIMUM RENTAL AMOUNT.—

(A) REQUIREMENT.—Notwithstanding paragraph (1) of this subsection, the method for rent determination elected pursuant to paragraph (2)(A) of this subsection by a family residing in public housing, section 1437f(*o*)(2) of this title, or section 206(d) of the Housing and Urban-Rural Recovery Act of 1983 (including paragraph (5) of such section), the following entities shall require the following families to pay a minimum monthly rental amount

[2] So in original. Probably should be "or".

(which amount shall include any amount allowed for utilities) of not more than $50 per month, as follows:

(i) Each public housing agency shall require the payment of such minimum monthly rental amount, which amount shall be determined by the agency, by—

(I) each family residing in a dwelling unit in public housing by the agency;

(II) each family who is assisted under the certificate or moderate rehabilitation program under section 1437f of this title; and

(III) each family who is assisted under the voucher program under section 1437f of this title, and the agency shall reduce the monthly assistance payment on behalf of such family as may be necessary to ensure payment of such minimum monthly rental amount.

(ii) The Secretary shall require each family who is assisted under any other program for rental assistance under section 1437f of this title to pay such minimum monthly rental amount, which amount shall be determined by the Secretary.

(B) EXCEPTION FOR HARDSHIP CIRCUMSTANCES.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), a public housing agency (or the Secretary, in the case of a family described in subparagraph (A)(ii)) shall immediately grant an exemption from application of the minimum monthly rental under such subparagraph to any family unable to pay such amount because of financial hardship, which shall include situations in which (I) the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.]; (II) the family would be evicted as a result of the imposition of the minimum rent requirement under subparagraph (A); (III) the income of the family has decreased because of changed circumstance, including loss of employment; (IV) a death in the family has occurred; and (V) other situations as may be determined by the agency (or the Secretary, in the case of a family described in subparagraph (A)(ii)).

(ii) WAITING PERIOD.—If a resident requests a hardship exemption under this subparagraph and the public housing agency (or the Secretary, in the case of a family described in subparagraph (A)(ii)) reasonably determines the hardship to be of a temporary nature, an exemption shall not be granted during the 90-day period beginning upon the making of a request for the exemption. A resident may not be evicted during such 90-day period for nonpayment of rent. In such a case, if the resident thereafter demonstrates that the financial hardship is of a long-term basis, the agency (or the Secretary) shall retroactively exempt the resident from the applicability of the minimum rent requirement for such 90-day period.

(4) OCCUPANCY BY POLICE OFFICERS.—

(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding any other provision of law, a public housing agency may, in accordance with the public housing agency plan for the agency, allow a police officer who is not otherwise eligible for residence in public housing to reside in a public housing dwelling unit. The number and location of units occupied by police officers under this paragraph and the terms and conditions of their tenancies shall be determined by the public housing agency.

(B) INCREASED SECURITY.—A public housing agency may take the actions authorized in subparagraph (A) only for the purpose of increasing security for the residents of a public housing project.

(C) DEFINITION.—In this paragraph, the term ''police officer'' means any person determined by a public housing agency to be, during the period of residence of that person in public housing, employed on a full-time basis as a duly licensed professional police officer by a Federal, State, or local government or by any agency thereof (including a public housing agency having an accredited police force).

(5) OCCUPANCY BY OVER-INCOME FAMILIES IN CERTAIN PUBLIC HOUSING.—

(A) AUTHORITY.—Notwithstanding any other provision of law, a public housing agency that owns or operates less than 250 units may, on a month-to-month basis, lease a dwelling unit in a public housing project to an over-income family in accordance with this paragraph, but only if there are no eligible families applying for housing assistance from the public housing agency for that month and the agency provides not less than 30-day public notice of the availability of such assistance.

(B) TERMS AND CONDITIONS.—The number and location of dwelling units of a public housing agency occupied under this paragraph by over-income families, and the terms and conditions of those tenancies, shall be determined by the public housing agency, except that—

(i) notwithstanding paragraph (2), rent for a unit shall be in an amount that is not less than the costs to operate the unit;

(ii) if an eligible family applies for residence after an over-income family moves in to the last available unit, the over-income family shall vacate the unit in accordance with notice of termination of tenancy provided by the agency, which shall be provided not less than 30 days before such termination; and

(iii) if a unit is vacant and there is no one on the waiting list, the public housing agency may allow an over-income family to gain immediate occupancy in the unit, while simultaneously providing reasonable public notice and outreach with regard to availability of the unit.

(C) DEFINITION.—For purposes of this paragraph, the term ''over-income family'' means an individual or family that is not a low-income family at the time of initial occupancy.

(b) Definition of terms under this chapter

When used in this chapter:

(1) The term ''low-income housing'' means decent, safe, and sanitary dwellings assisted under this chapter. The term ''public housing'' means low-income housing, and all necessary appurtenances thereto, assisted under this chapter other than under section 1437f of this title. The term ''public housing'' includes dwelling units in a mixed finance project that are assisted by a public housing agency with capital or operating assistance. When used in reference to public housing, the term ''low-income housing project'' or ''project'' means (A) housing developed, acquired, or assisted by a public housing agency under this chapter, and (B) the improvement of any such housing.

(2) The term ''low-income families'' means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. The term ''very low-income families'' means low-income families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes. Such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in section 1490 of this title, taking into account the subsidy characteristics and types of programs to which such ceilings apply. In determining median incomes (of persons, families, or households) for an area or establishing any ceilings or limits based on income under this chapter, the Secretary shall determine or establish area median incomes and income ceilings and limits for Westchester and Rockland Counties, in the State of New York, as if each such county were an area not contained within the metropolitan statistical area in which it is located. In determining such area median incomes or establishing such income ceilings or limits for the portion of such metropolitan statistical area that does not include Westchester or Rockland Counties, the Secretary shall determine or establish area median incomes and income ceilings and limits as if such portion included Westchester and Rockland Counties. In determining areas that are designated as difficult development areas for purposes of the low-income housing tax credit, the Secretary shall include Westchester and Rockland Counties, New York, in the New York City metropolitan area.

(3) PERSONS AND FAMILIES.—

(A) SINGLE PERSONS.—The term ''families'' includes families consisting of a single person in the case of (i) an elderly person, (ii) a disabled person, (iii) a displaced person, (iv) the remaining member of a tenant family, and (v) any other single persons. In no event may any single person under clause (v) of the first sentence be provided a housing unit assisted under this chapter of 2 or more bedrooms.

(B) FAMILIES.—The term ''families'' includes families with children and, in the cases of elderly families, near-elderly families, and disabled families, means families whose heads (or their spouses), or whose sole members, are elderly, near-elderly, or persons with disabilities, respectively. The term includes, in the cases of elderly families, near-elderly families, and disabled families, 2 or more elderly persons, near-elderly persons, or persons with disabilities living together, and 1 or more such persons living with 1 or more persons determined under the public housing agency plan to be essential to their care or well-being.

(C) ABSENCE OF CHILDREN.—The temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size.

(D) ELDERLY PERSON.—The term ''elderly person'' means a person who is at least 62 years of age.

(E) PERSON WITH DISABILITIES.—The term ''person with disabilities'' means a person who—

(i) has a disability as defined in section 423 of this title,

(ii) is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which (I) is expected to be of long-continued and indefinite duration, (II) substantially impedes his or her ability to live independently, and (III) is of such a nature that such ability could be improved by more suitable housing conditions, or

(iii) has a developmental disability as defined in section 15002 of this title.

Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing under this subchapter, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with other appropriate Federal agencies to implement the preceding sentence.

(F) DISPLACED PERSON.—The term ''displaced person'' means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

(G) NEAR-ELDERLY PERSON.—The term ''near-elderly person'' means a person who is at least 50 years of age but below the age of 62.

(4) The term ''income'' means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, in consultation with the Secretary of Agriculture, except that any amounts

not actually received by the family and any amounts which would be eligible for exclusion under section 1382b(a)(7) of this title may not be considered as income under this paragraph.

(5) ADJUSTED INCOME.—The term ''adjusted income'' means, with respect to a family, the amount (as determined by the public housing agency) of the income of the members of the family residing in a dwelling unit or the persons on a lease, after any income exclusions as follows:

(A) MANDATORY EXCLUSIONS.—In determining adjusted income, a public housing agency shall exclude from the annual income of a family the following amounts:

(i) ELDERLY AND DISABLED FAMILIES.—$400 for any elderly or disabled family.

(ii) MEDICAL EXPENSES.—The amount by which 3 percent of the annual family income is exceeded by the sum of—

(I) unreimbursed medical expenses of any elderly family or disabled family;

(II) unreimbursed medical expenses of any family that is not covered under subclause (I), except that this subclause shall apply only to the extent approved in appropriation Acts; and

(III) unreimbursed reasonable attendant care and auxiliary apparatus expenses for each handicapped member of the family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed.

(iii) CHILD CARE EXPENSES.—Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(iv) MINORS, STUDENTS, AND PERSONS WITH DISABILITIES.—$480 for each member of the family residing in the household (other than the head of the household or his or her spouse) who is less than 18 years of age or is attending school or vocational training on a full-time basis, or who is 18 years of age or older and is a person with disabilities.

(v) CHILD SUPPORT PAYMENTS.—Any payment made by a member of the family for the support and maintenance of any child who does not reside in the household, except that the amount excluded under this clause may not exceed $480 for each child for whom such payment is made; except that this clause shall apply only to the extent approved in appropriations Acts.

(vi) SPOUSAL SUPPORT EXPENSES.—Any payment made by a member of the family for the support and maintenance of any spouse or former spouse who does not reside in the household, except that the amount excluded under this clause shall not exceed the lesser of (I) the amount that such family member has a legal obligation to pay, or (II) $550 for each individual for whom such payment is made; except that this clause shall apply only to the extent approved in appropriations Acts.

(vii) EARNED INCOME OF MINORS.—The amount of any earned income of a member of the family who is not—

(I) 18 years of age or older; and

(II) the head of the household (or the spouse of the head of the household).

(B) PERMISSIVE EXCLUSIONS FOR PUBLIC HOUSING.—In determining adjusted income, a public housing agency may, in the discretion of the agency, establish exclusions from the annual income of a family residing in a public housing dwelling unit. Such exclusions may include the following amounts:

(i) EXCESSIVE TRAVEL EXPENSES.—Excessive travel expenses in an amount not to exceed $25 per family per week, for employment- or education-related travel.

(ii) EARNED INCOME.—An amount of any earned income of the family, established at the discretion of the public housing agency, which may be based on—

(I) all earned income of the family,[3]

(II) the amount earned by particular members of the family;

(III) the amount earned by families having certain characteristics; or

(IV) the amount earned by families or members during certain periods or from certain sources.

(iii) OTHERS.—Such other amounts for other purposes, as the public housing agency may establish.

(6) PUBLIC HOUSING AGENCY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''public housing agency'' means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of public housing.

(B) SECTION 1437f PROGRAM.—For purposes of the program for tenant-based assistance under section 1437f of this title, such term includes—

(i) a consortia of public housing agencies that the Secretary determines has the capacity and capability to administer a program for assistance under such section in an efficient manner;

(ii) any other public or private nonprofit entity that, upon the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, was administering any program for tenant-based assistance under section 1437f of this title (as in effect before the effective date of such Act), pursuant to a contract with the Secretary or a public housing agency; and

(iii) with respect to any area in which no public housing agency has been organized or where the Secretary determines that a public housing agency is unwilling or unable to implement a program for tenant-based assistance[4] section 1437f of this title, or is not performing effectively—

(I) the Secretary or another public or private nonprofit entity that by contract agrees to receive assistance amounts under section 1437f of this title and enter into housing assistance payments contracts with owners and perform the other functions of public housing agency under section 1437f of this title; or

(II) notwithstanding any provision of State or local law, a public housing agency

[3] So in original. The comma probably should be a semicolon.

[4] So in original. Probably should be ''assistance under''.

for another area that contracts with the Secretary to administer a program for housing assistance under section 1437f of this title, without regard to any otherwise applicable limitations on its area of operation.

(7) The term ''State'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(8) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(9) DRUG-RELATED CRIMINAL ACTIVITY.—The term ''drug-related criminal activity'' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as such term is defined in section 802 of title 21).

(10) MIXED-FINANCE PROJECT.—The term ''mixed-finance project'' means a public housing project that meets the requirements of section 1437z–7 of this title.

(11) PUBLIC HOUSING AGENCY PLAN.—The term ''public housing agency plan'' means the plan of a public housing agency prepared in accordance with section 1437c–1 of this title.

(12) CAPITAL FUND.—The term ''Capital Fund'' means the fund established under section 1437g(d) of this title.

(13) OPERATING FUND.—The term ''Operating Fund'' means the fund established under section 1437g(e) of this title.

(c) Definition of terms used in reference to public housing

When used in reference to public housing:

(1) The term ''development'' means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-income housing project. The term ''development cost'' comprises the costs incurred by a public housing agency in such undertakings and their necessary financing (including the payment of carrying charges), and in otherwise carrying out the development of such project, but does not include the costs associated with the demolition of or remediation of environmental hazards associated with public housing units that will not be replaced on the project site, or other extraordinary site costs as determined by the Secretary. Construction activity in connection with a low-income housing project may be confined to the reconstruction, remodeling, or repair of existing buildings.

(2) The term ''operation'' means any or all undertakings appropriate for management, operation, services, maintenance, security (including the cost of security personnel), or financing in connection with a low-income housing project. The term also means the financing of tenant programs and services for families residing in low-income housing projects, particularly where there is maximum feasible participation of the tenants in the development and operation of such tenant programs and services. As used in this paragraph, the term ''tenant programs and services'' includes the development and maintenance of tenant organizations which participate in the management of low-income housing projects; the training of tenants to manage and operate such projects and the utilization of their services in project management and operation; counseling on household management, housekeeping, budgeting, money management, child care, and similar matters; advice as to resources for job training and placement, education, welfare, health, and other community services; services which are directly related to meeting tenant needs and providing a wholesome living environment; and referral to appropriate agencies in the community when necessary for the provision of such services. To the maximum extent available and appropriate, existing public and private agencies in the community shall be used for the provision of such services.

(3) The term ''acquisition cost'' means the amount prudently required to be expended by a public housing agency in acquiring property for a low-income housing project.

(4) The term ''congregate housing'' means low-rent housing with which there is connected a central dining facility where wholesome and economical meals can be served to occupants. Expenditures incurred by a public housing agency in the operation of a central dining facility in connection with congregate housing (other than the cost of providing food and service) shall be considered a cost of operation of the project.

(5) The terms ''group home'' and ''independent living facility'' have the meanings given such terms in section 8013(k) of this title.

(d) Disallowance of earned income from rent determinations

(1) In general

Notwithstanding any other provision of law, the rent payable under subsection (a) of this section by a family described in paragraph (3) of this subsection may not be increased as a result of the increased income due to such employment during the 12-month period beginning on the date on which the employment is commenced.

(2) Phase-in of rent increases

Upon the expiration of the 12-month period referred to in paragraph (1), the rent payable by a family described in paragraph (3) may be increased due to the continued employment of the family member described in paragraph (3)(B), except that during the 12-month period beginning upon such expiration the amount of the increase may not be greater than 50 percent of the amount of the total rent increase that would be applicable but for this paragraph.

(3) Eligible families

A family described in this paragraph is a family—

(A) that—

(i) occupies a dwelling unit in a public housing project; or

(ii) receives assistance under section 1437f of this title; and

(B)(i) whose income increases as a result of employment of a member of the family who was previously unemployed for 1 or more years;

(ii) whose earned income increases during the participation of a family member in any

family self-sufficiency or other job training program; or

(iii) who is or was, within 6 months, assisted under any State program for temporary assistance for needy families funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] and whose earned income increases.

(4) Applicability

This subsection and subsection (e) of this section shall apply beginning upon October 1, 1999, except that this subsection and subsection (e) of this section shall apply with respect to any family described in paragraph 3(A)(ii)[5] only to the extent provided in advance in appropriations Acts.

(e) Individual savings accounts

(1) In general

In lieu of a disallowance of earned income under subsection (d) of this section, upon the request of a family that qualifies under subsection (d) of this section, a public housing agency may establish an individual savings account in accordance with this subsection for that family.

(2) Deposits to account

The public housing agency shall deposit in any savings account established under this subsection an amount equal to the total amount that otherwise would be applied to the family's rent payment under subsection (a) of this section as a result of employment.

(3) Withdrawal from account

Amounts deposited in a savings account established under this subsection may only be withdrawn by the family for the purpose of—

(A) purchasing a home;

(B) paying education costs of family members;

(C) moving out of public or assisted housing; or

(D) paying any other expense authorized by the public housing agency for the purpose of promoting the economic self-sufficiency of residents of public and assisted housing.

(f) Availability of income matching information

(1) Disclosure to PHA

A public housing agency, or the owner responsible for determining the participant's eligibility or level of benefits, shall require any family described in paragraph (2) who receives information regarding income, earnings, wages, or unemployment compensation from the Department of Housing and Urban Development pursuant to income verification procedures of the Department to disclose such information, upon receipt of the information, to the public housing agency that owns or operates the public housing dwelling unit in which such family resides or that provides the housing assistance under this chapter on behalf of such family, as applicable, or to the owner responsible for determining the participant's eligibility or level of benefits.

(2) Families covered

A family described in this paragraph is a family that resides in a dwelling unit—

(A) that is a public housing dwelling unit;

(B) for which tenant-based assistance is provided under section 1437f of this title,[6] or

(C) for which project-based assistance is provided under section 1437f of this title, section 1437bb[7] of this title, or section 811.[7]

(Sept. 1, 1937, ch. 896, title I, §3, as added Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 654; amended Pub. L. 94–375, §2(f), Aug. 3, 1976, 90 Stat. 1068; Pub. L. 95–557, title II, §206(c), Oct. 31, 1978, 92 Stat. 2091; Pub. L. 96–153, title II, §202(a), Dec. 21, 1979, 93 Stat. 1106; Pub. L. 97–35, title III, §322(a), Aug. 13, 1981, 95 Stat. 400; Pub. L. 98–181, title II, §§202, 206(a)–(c), Nov. 30, 1983, 97 Stat. 1178, 1179; Pub. L. 98–479, title I, §102(b)(1)–(3), Oct. 17, 1984, 98 Stat. 2221; Pub. L. 100–242, title I, §§102(a), 111, 170(c), Feb. 5, 1988, 101 Stat. 1821, 1823, 1867; renumbered title I and amended Pub. L. 100–358, §§4, 5, June 29, 1988, 102 Stat. 680, 681; Pub. L. 101–235, title III, §302, Dec. 15, 1989, 103 Stat. 2043; Pub. L. 101–625, title V, §§515(b), 572, 573(a)–(d), 574, Nov. 28, 1990, 104 Stat. 4199, 4236–4238; Pub. L. 102–550, title I, §§102–103(a)(2), 185(c)(4), title VI, §§621, 622(c), 625(a)(1), Oct. 28, 1992, 106 Stat. 3683, 3748, 3812, 3817, 3820; Pub. L. 103–233, title III, §301, Apr. 11, 1994, 108 Stat. 369; Pub. L. 104–99, title IV, §402(b)(1), (c), Jan. 26, 1996, 110 Stat. 40, 41; Pub. L. 104–330, title V, §501(b)(1), Oct. 26, 1996, 110 Stat. 4041; Pub. L. 105–276, title V, §§506, 507(a), (c), 508(a), (b)(1), (c)(1), (d)(1), 520(a), 523, 524(a), 546, Oct. 21, 1998, 112 Stat. 2523–2529, 2562, 2565–2567, 2604; Pub. L. 106–74, title II, §214(a), Oct. 20, 1999, 113 Stat. 1074; Pub. L. 106–402, title IV, §401(b)(7), Oct. 30, 2000, 114 Stat. 1738.)

REFERENCES IN TEXT

Section 1437f(c)(3)(B) of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 105–276, title V, §550(a)(3)(A)(ii), Oct. 21, 1998, 112 Stat. 2609.

Section 519(d) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (a)(2)(A)(ii), is section 519(d) of Pub. L. 105–276 which is set out as a note below.

The effective day of such Act and the effective date of such Act, referred to in subsecs. (a)(2)(A)(ii) and (b)(6)(B)(ii), probably means the general effective date for the Quality Housing and Work Responsibility Act of 1998, Pub. L. 105–276, title V, included in section 503 of the Act which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

Section 206(d) of the Housing and Urban-Rural Recovery Act of 1983, referred to in subsec. (a)(3)(A), is section 206(d) of Pub. L. 98–181, which is set out as a note below.

The Immigration and Nationality Act, referred to in subsec. (a)(3)(B)(i)(I), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(3)(B)(i)(I), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. Title IV of the Act is classified principally to chapter 14 (§1601 et seq.) of Title 8, Aliens and Nationality. For complete classification of title IV to the Code, see Tables.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec.

[5] So in original. Probably should be paragraph "(3)(A)(ii)".

[6] So in original. The comma probably should be a semicolon.

[7] See References in Text notes below.

(b)(6)(B)(ii), is section 503(a) of Pub. L. 105–276 which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

The Social Security Act, referred to in subsec. (d)(3)(B)(iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 1437bb of this title, referred to in subsec. (f)(2)(C), was repealed by Pub. L. 104–330, title V, § 501(a), Oct. 26, 1996, 110 Stat. 4041.

Section 811, referred to in subsec. (f)(2)(C), means section 811 of the United States Housing Act of 1937, but that Act does not contain a section 811.

PRIOR PROVISIONS

A prior section 3 of act Sept. 1, 1937, ch. 896, 50 Stat. 889, as amended, established the United States Housing Authority and was classified to section 1403 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

Prior similar provisions were contained in section 2 of act Sept. 1, 1937, ch. 896, 50 Stat. 888, which was classified to section 1402 of this title prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

2000—Subsec. (b)(3)(E)(iii). Pub. L. 106–402 substituted ''section 15002 of this title'' for ''section 6001 of this title''.

1999—Subsec. (f)(1). Pub. L. 106–74, § 214(a)(1), inserted '', or the owner responsible for determining the participant's eligibility or level of benefits,'' after ''A public housing agency'' and '', or to the owner responsible for determining the participant's eligibility or level of benefits'' before period at end.

Subsec. (f)(2)(C). Pub. L. 106–74, § 214(a)(2), added subpar. (C).

1998—Subsec. (a)(1). Pub. L. 105–276, § 507(c), inserted ''and subject to the requirement under paragraph (3)'' after ''paragraph (2)'' in third sentence.

Subsec. (a)(2). Pub. L. 105–276, § 523, amended par. (2) generally. For prior text, see 1996 Amendment note below.

Subsec. (a)(3). Pub. L. 105–276, § 507(a), added par. (3).

Subsec. (a)(4), (5). Pub. L. 105–276, § 524(a), added pars. (4) and (5).

Subsec. (b)(1). Pub. L. 105–276, § 506(1), inserted after second sentence ''The term 'public housing' includes dwelling units in a mixed finance project that are assisted by a public housing agency with capital or operating assistance.''

Subsec. (b)(2). Pub. L. 105–276, § 508(c)(1), substituted ''limits for Westchester and Rockland Counties'' for ''limits for Westchester County'', inserted ''each'' before ''such county'', substituted ''include Westchester or Rockland Counties'' for ''include Westchester County'' and ''included Westchester and Rockland Counties'' for ''included Westchester County'', and inserted at end ''In determining areas that are designated as difficult development areas for purposes of the low-income housing tax credit, the Secretary shall include Westchester and Rockland Counties, New York, in the New York City metropolitan area.''

Subsec. (b)(3)(A). Pub. L. 105–276, § 506(2)(A), struck out at end ''In determining priority for admission to housing under this chapter, the Secretary shall give preference to single persons who are elderly, disabled, or displaced persons before single persons who are eligible under clause (v) of the first sentence.''

Subsec. (b)(3)(B). Pub. L. 105–276, § 506(2)(B), substituted ''public housing agency plan'' for ''regulations of the Secretary'' in second sentence.

Subsec. (b)(3)(E). Pub. L. 105–276, § 506(3), inserted at end ''Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing under this subchapter, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with other appropriate Federal agencies to implement the preceding sentence.''

Subsec. (b)(5). Pub. L. 105–276, § 508(a), amended par. (5) generally, substituting present provisions for provisions which had defined ''adjusted income'' as income which remained after excluding $550 for each member of family in household under 18 years of age, disabled, or a student, $400 for any elderly or disabled family, the amount by which medical and related expenses exceeded 3 percent of income, child care expenses, 10 percent of earned income, and any payment made for support and maintenance of nonresident child, spouse, or former spouse.

Subsec. (b)(6). Pub. L. 105–276, § 546, amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The term 'public housing agency' means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.''

Subsec. (b)(9) to (13). Pub. L. 105–276, § 506(4), added pars. (9) to (13).

Subsec. (c). Pub. L. 105–276, § 508(b)(1)(A), which directed the amendment of subsec. (c) by striking out the undesignated par. after par. (3), was executed by striking out concluding provisions after par. (5), to reflect the probable intent of Congress. Concluding provisions read as follows: ''The earnings of and benefits to any public housing resident resulting from participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 1437t of this title, or any comparable Federal, State, or local law shall not be considered as income for the purposes of determining a limitation on the amount of rent paid by the resident during—

''(1) the period that the resident participates in such program; and

''(2) the period that—

''(A) begins with the commencement of employment of the resident in the first job acquired by the person after completion of such program that is not funded by assistance under this chapter; and

''(B) ends on the earlier of—

''(i) the date the resident ceases to continue employment without good cause as the Secretary shall determine; or

''(ii) the expiration of the 18-month period beginning on the date referred to in subparagraph (A).''

Subsec. (c)(1). Pub. L. 105–276, § 520(a), inserted before period at end of second sentence '', but does not include the costs associated with the demolition of or remediation of environmental hazards associated with public housing units that will not be replaced on the project site, or other extraordinary site costs as determined by the Secretary''.

Subsecs. (d), (e). Pub. L. 105–276, § 508(b)(1)(B), added subsecs. (d) and (e).

Subsec. (f). Pub. L. 105–276, § 508(d)(1), added subsec. (f).

1996—Subsec. (a)(2). Pub. L. 104–99, § 402(b)(1), (f), temporarily amended par. (2) generally, substituting

''(2) Notwithstanding paragraph (1), a public housing agency may—

''(A) adopt ceiling rents that reflect the reasonable market value of the housing, but that are not less than the monthly costs—

''(i) to operate the housing of the agency; and

''(ii) to make a deposit to a replacement reserve (in the sole discretion of the public housing agency); and

''(B) allow families to pay ceiling rents referred to in subparagraph (A), unless, with respect to any family, the ceiling rent established under this paragraph would exceed the amount payable as rent by that family under paragraph (1).'' for

''(2)(A) Any public housing agency may provide that each family residing in a public housing project owned

and operated by such agency (or in low-income housing assisted under section 1437f of this title that contains more than 2,000 dwelling units) shall pay as monthly rent an amount determined by such agency to be appropriate that does not exceed a maximum amount that—

''(i) is established by such agency and approved by the Secretary;

''(ii) is not more than the amount payable as rent by such family under paragraph (1); and

''(iii) is not less than the average monthly amount of debt service and operating expenses attributable to dwelling units of similar size in public housing projects owned and operated by such agency.

''(B) The terms of all ceiling rents established prior to December 15, 1989, shall be extended without time limitation.'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (b)(5)(F). Pub. L. 104–330, § 501(b)(1)(A)(i), inserted ''and'' after semicolon.

Subsec. (b)(5)(G). Pub. L. 104–330, § 501(b)(1)(A)(ii), (iii), redesignated subpar. (H) as (G) and struck out former subpar. (G) which read as follows: ''excessive travel expenses, not to exceed $25 per family per week, for employment- or education-related travel, except that this subparagraph shall apply only to families assisted by Indian housing authorities; and''.

Subsec. (b)(5)(H). Pub. L. 104–330, § 501(b)(1)(A)(iii), redesignated subpar. (H) as (G).

Pub. L. 104–99, § 402(c), (f), temporarily added subpar. (H) which read ''for public housing, any other adjustments to earned income established by the public housing agency. If a public housing agency adopts other adjustments to income pursuant to subparagraph (H), the Secretary shall not take into account any reduction of or increase in the public housing agency's per unit dwelling rental income resulting from those adjustments when calculating the contributions under section 1437g of this title for the public housing agency for the operation of the public housing.'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (b)(6). Pub. L. 104–330, § 501(b)(1)(B), struck out at end ''The term includes any Indian housing authority.''

Subsec. (b)(7). Pub. L. 104–330, § 501(b)(1)(C), inserted ''and'' before ''the Trust'' and struck out '', and Indian tribes'' after ''Pacific Islands''.

Subsec. (b)(9) to (12). Pub. L. 104–330, § 501(b)(1)(D), struck out pars. (9) to (12) which read as follows:

''(9) The term 'Indian' means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

''(10) The term 'Indian area' means the area within which an Indian housing authority is authorized to provide low-income housing.

''(11) The term 'Indian housing authority' means any entity that—

''(A) is authorized to engage in or assist in the development or operation of low-income housing for Indians; and

''(B) is established—

''(i) by exercise of the power of self-government of an Indian tribe independent of State law; or

''(ii) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

''(12) The term 'Indian tribe' means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.''

1994—Subsec. (b)(3)(B). Pub. L. 103–233 substituted ''includes families with children and'' for ''means families with children''.

1992—Subsec. (a)(1). Pub. L. 102–550, § 185(c)(4), substituted ''section 1437f(*o*) or (y) of this title or paying rent under section 1437f(c)(3)(B) of this title'' for ''section 1437f(*o*) of this title''.

Subsec. (a)(2)(A). Pub. L. 102–550, § 102(a), struck out ''for not more than a 5-year period'' after ''monthly rent''.

Subsec. (a)(2)(B). Pub. L. 102–550, § 102(b), struck out first sentence which read as follows: ''The 5-year limitation established in subparagraph (A) shall not apply to any family residing in a public housing project administered by an Indian public housing agency.'' and substituted ''without time limitation'' for ''for the 5-year period beginning on December 15, 1989''.

Subsec. (b)(3). Pub. L. 102–550, § 621, amended par. (3) generally, substituting present provisions for provisions relating to families consisting of single persons, elderly families, handicapped persons, displaced persons, and families with household heads 50 years old or older and the priorities for admission of such families and persons to housing under this chapter.

Subsec. (b)(4). Pub. L. 102–550, § 103(a)(1), inserted ''and any amounts which would be eligible for exclusion under section 1382b(a)(7) of this title'' after ''family''.

Subsec. (b)(5)(B). Pub. L. 102–550, § 625(a)(1), inserted ''or disabled'' after ''elderly''.

Subsec. (b)(5)(D). Pub. L. 102–550, § 103(a)(2)(A), added subpar. (D) and struck out former subpar. (D) which read as follows: ''(i) child care expenses to the extent necessary to enable another member of the family to be employed or to further his or her education; or (ii) excessive travel expenses, not to exceed $25 per family per week, for employment or education related travel, except that this clause shall apply only to families assisted by Indian housing authorities;''.

Subsec. (b)(5)(G). Pub. L. 102–550, § 103(a)(2)(B)–(D), added subpar. (G).

Subsec. (c)(4), (5). Pub. L. 102–550, § 622(c), which directed the amendment of subsec. (c) by inserting pars. (4) and (5) after ''project.'', was executed by making the insertion after ''project.'' at the end of par. (3), to reflect the probable intent of Congress.

1990—Pub. L. 101–625, § 515(b), added concluding undesignated par. directing that earnings and benefits to public housing residents resulting from participation in programs providing employment training and supportive services not be considered as income.

Subsec. (a)(1). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families'' in introductory provisions.

Subsecs. (a)(2)(A), (b)(1). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

Subsec. (b)(2). Pub. L. 101–625, § 573(d), inserted sentences at end relating to determination or establishment of median incomes and income ceilings and limits for Westchester County and for metropolitan statistical areas outside Westchester County.

Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families'' wherever appearing.

Subsec. (b)(3). Pub. L. 101–625, § 574, inserted sentence at end relating to effect of temporary absence of child from the home due to placement in foster care on considerations of family composition and size.

Pub. L. 101–625, § 573(a), substituted ''(D) and any other single persons. In no event may any single person under clause (D) be provided a housing unit assisted under this chapter of 2 bedrooms or more.'' for ''(D) other single persons in circumstances described in regulations of the Secretary.'' in first sentence, struck out after first sentence ''In no event shall more than 15 per centum of the units under the jurisdiction of any public housing agency be occupied by single persons under clause (D).'', and struck out third from last sentence which was executed (to reflect the probable intent of Congress) by striking out third sentence from end which read as follows: ''The Secretary may increase the limitation described in the second sentence of this paragraph to not more than 30 per centum if, following consultation with the public housing agency involved, the Secretary determines that the dwelling units involved are neither being occupied, nor are likely to be occupied within the next 12 months, by families or persons described in clauses (A), (B), and (C), due to the condition or location of such dwelling units, and that such dwelling units may be occupied if made available to single persons described in clause (D).''

Subsec. (b)(4). Pub. L. 101–625, § 573(b), inserted before period at end '', except that any amounts not actually

received by the family may not be considered as income under this paragraph''.

Subsec. (b)(5)(A). Pub. L. 101–625, § 573(c)(1), substituted ''$550'' for ''$480''.

Subsec. (b)(5)(C). Pub. L. 101–625, § 573(c)(2), struck out ''elderly'' before ''family'' in cl. (i) and struck out ''and'' at end.

Subsec. (b)(5)(E), (F). Pub. L. 101–625, § 573(c)(3), added subpars. (E) and (F).

Subsecs. (b)(6), (10), (11)(A), (c). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

1989—Subsec. (a)(2)(A). Pub. L. 101–235, § 302(1), substituted ''5-year period'' for ''3-year period''.

Subsec. (a)(2)(B). Pub. L. 101–235, § 302(2), substituted ''5-year limitation'' for ''3-year limitation'' and inserted at end ''The terms of all ceiling rents established prior to December 15, 1989, shall be extended for the 5-year period beginning on December 15, 1989.''

1988—Subsec. (a). Pub. L. 100–242, § 102(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), a'' for ''A'', redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2).

Subsec. (b)(3). Pub. L. 100–242, § 170(c), in cl. (A), substituted ''sixty-two years of age,'' for ''sixty-two years of age or'', and '', has a developmental disability as defined in section 6001(7) of this title'' for ''or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970''.

Pub. L. 100–242, § 111, inserted provisions relating to determination of priority admission to public housing projects designed for elderly families.

Subsec. (b)(5)(D). Pub. L. 100–358, § 4(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(6). Pub. L. 100–358, § 4(b), inserted at end ''The term includes any Indian housing authority.''

Subsec. (b)(7). Pub. L. 100–358, § 4(c), struck out '', bands, groups, and Nations, including Alaska Indians, Aleuts, and Eskimos, of the United States'' after ''and Indian tribes''.

Subsec. (b)(9) to (12). Pub. L. 100–358, § 4(d)–(g), added pars. (9) to (12).

1984—Subsec. (b)(2). Pub. L. 98–479, § 102(b)(1), inserted provision at end that such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in section 1490 of this title, taking into account the subsidy characteristics and types of programs to which such ceilings apply.

Subsec. (b)(4). Pub. L. 98–479, § 102(b)(2), inserted '', in consultation with the Secretary of Agriculture'' at end.

Subsec. (b)(5)(C). Pub. L. 98–479, § 102(b)(3), designated existing provision as cl. (i), added cl. (ii), and inserted ''the amount by which the aggregate of the following expenses of the family'' in provisions preceding cl. (i).

1983—Subsec. (a). Pub. L. 98–181, § 206(a), in provisions preceding par. (1), inserted provision requiring annual review of family income, and inserted ''(other than a family assisted under section 1437f(*o*) of this title)''.

Subsec. (b)(2). Pub. L. 98–181, § 206(b), qualified the term ''very low-income families'' in authorizing the Secretary to establish, where necessary, variations in income ceilings higher or lower than 50 per centum of the median for the area.

Subsec. (b)(3). Pub. L. 98–181, § 202, inserted provision at end of par. (3) authorizing increase from 15 to 30 per centum in the single person occupancy limitation for nonoccupancy of the involved dwelling units.

Subsec. (b)(5). Pub. L. 98–181, § 206(c), amended par. (5) generally, substituting provisions designating cls. (A) to (D) for prior exclusion from ''adjusted income'' of such amounts or types of income as the Secretary might prescribe, taking into account the number of minor children and other appropriate factors.

1981—Pub. L. 97–35 added subsecs. (a) and (c) and designated provisions constituting former section as subsec. (b), and in subsec. (b) as so designated, substituted provisions defining ''lower income housing'', ''lower income families'', ''families'', ''income'', ''adjusted income'', ''public housing agency'', ''State'', and ''Secretary'' for provisions defining ''low-income housing'', ''low-income families'', ''development'', ''operation'', ''acquisition cost'', ''public housing agency'', ''State'', ''Secretary'', and ''low-income housing project''.

1979—Par. (1). Pub. L. 96–153 substituted provisions that the rental for a dwelling shall not exceed certain portion of the resident family's income to be established by the Secretary, and that in the case of a very low income family 25 per centum and in other cases 30 per centum of family income for provisions that such rental shall not exceed one-fourth of the family's income as defined by the Secretary.

1978—Par. (2)(D). Pub. L. 95–557 substituted ''15 per cent'' for ''10 per cent''.

1976—Par. (2). Pub. L. 94–375 struck out ''and'' before cl. (C), added cl. (D), and two provisos relating to the percentage of units to be occupied by single persons and the priority to be given to single persons who are elderly, handicapped, or displaced, following cl. (D).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Pub. L. 105–276, title V, § 507(d), Oct. 21, 1998, 112 Stat. 2526, provided that: ''The amendments under this section [amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

Pub. L. 105–276, title V, § 508(c)(2), Oct. 21, 1998, 112 Stat. 2529, provided that: ''The amendments made by this paragraph [probably means this subsection, amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

Pub. L. 105–276, title V, § 524(b), Oct. 21, 1998, 112 Stat. 2568, provided that: ''The amendment made by this paragraph [probably means this section, amending this section] is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Pub. L. 105–276, title V, § 514(f), Oct. 21, 1998, 112 Stat. 2548, provided that: ''Section 402 of The Balanced Budget Downpayment Act, I [Pub. L. 104–99, see note below], and the amendments made by such section shall cease to be effective on the date of the enactment of this Act [Oct. 21, 1998]. Notwithstanding the inclusion in this Act [see Tables for classification] of any provision extending the effectiveness of such section or such amendments, such provision included in this Act shall not take effect.''

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Section 402(f) of Pub. L. 104–99, as amended by Pub. L. 104–204, title II, § 201(c)(2), Sept. 26, 1996, 110 Stat. 2893; Pub. L. 105–65, title II, § 201(d)(2), Oct. 27, 1997, 111 Stat. 1364, provided that: ''This section [amending this section, sections 1437d to 1437f, 1437n, 1437v, and 13615 of this title, and section 1701s of Title 12, Banks and Banking, enacting provisions set out as notes under this section and sections 1437 and 1437d of this title, and amending provisions set out as a note under section 1437f of this title] shall be effective upon the enactment of this Act [Jan. 26, 1996] and only for fiscal years 1996, 1997, and 1998.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 103(a)(3) of title I of Pub. L. 102–550 provided that: ''To the extent that the amendments made by paragraphs (1) and (2) [amending this section] result in additional costs under this title [see Tables for classi-

fication], such amendments shall be effective only to the extent that amounts to cover such additional costs are provided in advance in appropriation Acts.''

Amendment by subtitles B through F of title VI [§§621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 573(f) of Pub. L. 101–625 provided that: ''The Secretary shall issue regulations implementing subsections (a) and (d) [sic] the amendments made by this section [amending this section] not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Nov. 28, 1990]. The regulations may not take effect until after September 30, 1991.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6 of Pub. L. 100–358 provided that: ''The Secretary of Housing and Urban Development may carry out programs to provide lower income housing on Indian reservations and other Indian areas only in accordance with the amendments made by this Act [enacting sections 1437aa to 1437ee of this title, amending this section and section 1437c of this title, and enacting provisions set out as a note under section 1437 of this title], commencing on whichever of the following occurs earlier:

''(1) EFFECTIVE DATE OF REGULATIONS.—The effective date of regulations issued under section 205 of the United States Housing Act of 1937 [former section 1437ee of this title].

''(2) 90 DAYS.—The expiration of the 90-day period beginning on the date of the enactment of this Act [June 29, 1988].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 202(c) of Pub. L. 96–153, which provided that amendment by section 202(a) of Pub. L. 96–153 (amending this section and section 1437f of this title) shall become effective on Jan. 1, 1980, except that the amount of the tenant contribution required of families whose occupancy of housing units assisted under this chapter commenced prior to that date shall be determined in accordance with the provisions of this chapter in effect on Dec. 31, 1979, so long as such occupancy was continuous thereafter, was repealed by Pub. L. 97–35, title III, §322(h)(1), Aug. 13, 1981, 95 Stat. 404.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–557 effective Oct. 1, 1978, see section 206(h) of Pub. L. 95–557, set out as a note under section 1437c of this title.

EFFECTIVE DATE

Section effective on such date or dates as the Secretary of Housing and Urban Development shall prescribe, but not later than eighteen months after Aug. 22, 1974, except that all of the provisions of par. (1) shall become effective on the same date, see section 201(b) of Pub. L. 93–383, set out as a note under section 1437 of this title.

The Department of Housing and Urban Development adopted an interim rule, 24 CFR 860.409, Sept. 26, 1975, 40 F.R. 44326, which provided: ''The effective date of section 3(1) of the United States Housing Act of 1937, as amended [par. (1) of this section], shall be the date that these regulations [sections 860.401 to 860.409 of Title 24, CFR] are published in the Federal Register (September 26, 1975).''

REGULATIONS

Section 402(b)(2) of Pub. L. 104–99 provided that:

''(A) IN GENERAL.—The Secretary shall, by regulation, after notice and an opportunity for public comment, establish such requirements as may be necessary to carry out section 3(a)(2)(A) of the United States Housing Act of 1937 [42 U.S.C. 1437a(a)(2)(A)], as amended by paragraph (1).

''(B) TRANSITION RULE.—Prior to the issuance of final regulations under paragraph (1), a public housing agency may implement ceiling rents, which shall be not less than the monthly costs to operate the housing of the agency and—

''(i) determined in accordance with section 3(a)(2)(A) of the United States Housing Act of 1937, as that section existed on the day before enactment of this Act [Jan. 26, 1996];

''(ii) equal to the 95th percentile of the rent paid for a unit of comparable size by tenants in the same public housing project or a group of comparable projects totaling 50 units or more; or

''(iii) equal to the fair market rent for the area in which the unit is located.''

[Section 402(b)(2) of Pub. L. 104–99, set out above, effective Jan. 26, 1996, and only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see Effective and Termination Dates of 1996 Amendments notes above.]

Section 191 of title I of Pub. L. 102–550 provided that: ''The Secretary of Housing and Urban Development shall issue any final regulations necessary to implement the provisions of this title [see Tables for classification] and the amendments made by this title not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], except as expressly provided otherwise in this title and the amendments made by this title. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).''

SAVINGS PROVISION

Pub. L. 105–276, title V, §508(b)(2), Oct. 21, 1998, 112 Stat. 2528, provided that: ''Notwithstanding the amendment made by paragraph (1) [amending this section], the provisions of the undesignated paragraph at the end of section 3(c)(3) of the United States Housing Act of 1937 [see 1998 and 1992 Amendment notes above], as such section was in effect immediately before the enactment of this Act [Oct. 21, 1998], shall continue to apply until the effective date under section 503 of this Act [set out as a note under section 1437 of this title]. Notwithstanding the amendment made by subsection (a) of this section [amending this section], nor the applicability under section 402(f) of The Balanced Budget Downpayment Act, I [Pub. L. 104–99] (42 U.S.C. 1437a note) of the amendments made by such section 402 [see Effective and Termination Dates of 1996 Amendments note set out above], nor any repeal of such section 402(f), the provisions of section 3(b)(5)(G) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(5)(G)), as such section was in effect immediately before the date of the enactment of this Act, shall continue to apply until the effective date under section 503 of this Act.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TRANSITIONAL CEILING RENTS

Pub. L. 105–276, title V, §519(d), Oct. 21, 1998, 112 Stat. 2561, provided that: ''Notwithstanding section 3(a)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437a[(a)](1)), during the period ending upon the later of the implementation of the formulas established pursuant to subsections (d)(2) and (e)(2) of [section 9 of] such Act [42 U.S.C. 1437g(d)(2), (e)(2)] (as amended by this section) and October 1, 1999, a public housing agency

may take any of the following actions with respect to public housing:

''(1) NEW PROVISIONS.—An agency may—

''(A) adopt and apply ceiling rents that reflect the reasonable market value of the housing, but that are not less than—

''(i) for housing other than housing predominantly for elderly or disabled families (or both), 75 percent of the monthly cost to operate the housing of the agency;

''(ii) for housing predominantly for elderly or disabled families (or both), 100 percent of the monthly cost to operate the housing of the agency; and

''(iii) the monthly cost to make a deposit to a replacement reserve (in the sole discretion of the public housing agency); and

''(B) allow families to pay ceiling rents referred to in subparagraph (A), unless, with respect to any family, the ceiling rent established under this paragraph would exceed the amount payable as rent by that family under paragraph (1).

''(2) CEILING RENTS FROM BALANCED BUDGET ACT, I.—An agency may utilize the authority under section 3(a)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)(2)), as in effect immediately before the enactment of this Act [Oct. 21, 1998], notwithstanding any amendment to such section made by this Act.

''(3) TRANSITIONAL CEILING RENTS FOR BALANCED BUDGET ACT, I.—An agency may utilize the authority with respect to ceiling rents under section 402(b)(2) of The Balanced Budget Downpayment Act, I [Pub. L. 104–99] (42 U.S.C. 1437a note), notwithstanding any other provision of law (including the expiration of the applicability of such section or the repeal of such section).''

CERTAIN PAYMENTS MADE TO VICTIMS OF NAZI PERSECUTION DISREGARDED IN DETERMINING ELIGIBILITY FOR AND AMOUNT OF NEED-BASED BENEFITS AND SERVICES

Pub. L. 103–286, §1, Aug. 1, 1994, 108 Stat. 1450, provided that:

''(a) IN GENERAL.—Payments made to individuals because of their status as victims of Nazi persecution shall be disregarded in determining eligibility for and the amount of benefits or services to be provided under any Federal or federally assisted program which provides benefits or services based, in whole or in part, on need.

''(b) APPLICABILITY.—Subsection (a) shall apply to determinations made on or after the date of the enactment of this Act [Aug. 1, 1994] with respect to payments referred to in subsection (a) made before, on, or after such date.

''(c) PROHIBITION AGAINST RECOVERY OF VALUE OF EXCESSIVE BENEFITS OR SERVICES PROVIDED DUE TO FAILURE TO TAKE ACCOUNT OF CERTAIN PAYMENTS MADE TO VICTIMS OF NAZI PERSECUTION.—No officer, agency, or instrumentality of any government may attempt to recover the value of excessive benefits or services provided before the date of the enactment of this Act [Aug. 1, 1994] under any program referred to in subsection (a) by reason of any failure to take account of payments referred to in subsection (a).

''(d) NOTICE TO INDIVIDUALS WHO MAY HAVE BEEN DENIED ELIGIBILITY FOR BENEFITS OR SERVICES DUE TO THE FAILURE TO DISREGARD CERTAIN PAYMENTS MADE TO VICTIMS OF NAZI PERSECUTION.—Any agency of government that has not disregarded payments referred to in subsection (a) in determining eligibility for a program referred to in subsection (a) shall make a good faith effort to notify any individual who may have been denied eligibility for benefits or services under the program of the potential eligibility of the individual for such benefits or services.

''(e) REPAYMENT OF ADDITIONAL RENT PAID UNDER HUD HOUSING PROGRAMS BECAUSE OF FAILURE TO DISREGARD REPARATION PAYMENTS.—

''(1) AUTHORITY.—To the extent that amounts are provided in appropriation Acts for payments under this subsection, the Secretary of Housing and Urban Development shall make payments to qualified individuals in the amount determined under paragraph (3).

''(2) QUALIFIED INDIVIDUALS.—For purposes of this subsection, the term 'qualified individual' means an individual who—

''(A) has received any payment because of the individual's status as a victim of Nazi persecution;

''(B) at any time during the period beginning on February 1, 1993 and ending on April 30, 1993, resided in a dwelling unit in housing assisted under any program for housing assistance of the Department of Housing and Urban Development under which rent payments for the unit were determined based on or taking into consideration the income of the occupant of the unit;

''(C) paid rent for such dwelling unit for any portion of the period referred to in subparagraph (B) in an amount determined in a manner that did not disregard the payment referred to in subparagraph (A); and

''(D) has submitted a claim for payment under this subsection as required under paragraph (4).

The term does not include the successors, heirs, or estate of an individual meeting the requirements of the preceding sentence.

''(3) AMOUNT OF PAYMENT.—The amount of a payment under this subsection for a qualified individual shall be equal to the difference between—

''(A) the sum of the amount of rent paid by the individual for rental of the dwelling unit of the individual assisted under a program for housing assistance of the Department of Housing and Urban Development, for the period referred to in paragraph (2)(B), and

''(B) the sum of the amount of rent that would have been payable by the individual for rental of such dwelling unit for such period if the payments referred to in paragraph (2)(A) were disregarded in determining the amount of rent payable by the individual for such period.

''(4) SUBMISSION OF CLAIMS.—A payment under this subsection for an individual may be made only pursuant to a written claim for such payment by such individual submitted to the Secretary of Housing and Urban Development in the form and manner required by the Secretary before—

''(A) in the case of any individual notified by the Department of Housing and Urban Development orally or in writing that such specific individual is eligible for a payment under this subsection, the expiration of the 6-month period beginning on the date of receipt of such notice; and

''(B) in the case of any other individual, the expiration of the 12-month period beginning on the date of the enactment of this Act [Aug. 1, 1994].''

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Section 626 of Pub. L. 102–550 provided that: ''The amendments made by this subtitle [subtitle B (§§ 621–626) of title VI of Pub. L. 102–550, amending this section and sections 1437c to 1437f, 1437*l*, 1437*o*, 1438, and 8013 of this title] shall not apply with respect to lower income housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

BUDGET COMPLIANCE

Section 573(e) of Pub. L. 101–625 provided that: ''The amendments made by subsections (b) and (c) [amending this section] shall apply only to the extent approved in appropriations Acts.''

MEDIAN AREA INCOME

Section 567 of Pub. L. 100–242 provided that: ''For purposes of calculating the median income for any area that is not within a metropolitan statistical area (as

established by the Office of Management and Budget) for programs under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], the Secretary of Housing and Urban Development or the Secretary of Agriculture (as appropriate) shall use whichever of the following is higher:

''(1) the median income of the county in which the area is located; or

''(2) the median income of the entire nonmetropolitan area of the State.''

DETERMINATION OF RENT PAYABLE BY TENANTS OCCUPYING ASSISTED HOUSING; DELAYED APPLICATION OR STAGED IMPLEMENTATION OF AMENDED PROVISIONS

Section 206(d) of Pub. L. 98–181 provided that:

''(1) The following provisions of this paragraph apply to determinations of the rent to be paid by or the contribution required of a tenant occupying housing assisted under the authorities amended by this section [amending this section] or subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981 [amending sections 1437 to 1437d, 1437f, 1437g, 1437i, 1437j, and 1437*l* of this title and sections 1701s and 1715z–1 of Title 12, Banks and Banking, and repealing provisions set out as notes under this section and section 1701s of Title 12] (hereinafter referred to as 'assisted housing') on or before the effective date of regulations implementing this section:

''(A) Notwithstanding any other provision of this section or subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981, the Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary') may provide for delayed applicability, or for staged implementation, of the procedures for determining rents or contributions, as appropriate, required by such provisions if the Secretary determines that immediate application of such procedures would be impracticable, would violate the terms of existing leases, or would result in extraordinary hardship for any class of tenants.

''(B) The Secretary shall provide that the rent or contribution, as appropriate, required to be paid by a tenant shall not increase as a result of the amendments made by this section and subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981, and as a result of any other provision of Federal law or regulation, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such amendments, law, or regulation.

''(2) Tenants of assisted housing other than those referred to in paragraph (1) shall be subject to immediate rent payment or contribution determinations in accordance with applicable law and without regard to the provisions of paragraph (1), but the Secretary shall provide that the rent or contribution payable by any such tenant who is occupying assisted housing on the effective date of any provision of Federal law or regulation shall not increase, as a result of any such provision of Federal law or regulation, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such law or regulation.

''(3) In the case of tenants receiving rental assistance under section 521(a)(1) of the Housing Act of 1949 [section 1490a(a)(1) of this title] on the effective date of this section [Nov. 30, 1983] whose assistance is converted to assistance under section 8 of the United States Housing Act of 1937 [section 1437f of this title] on or after such date, the Secretary shall provide that the rent or contribution payable by any such tenant shall not increase, as a result of such conversion, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such conversion or to any provision of Federal law or regulation.

''(4)(A) Notwithstanding any other provision of law, in the case of the conversion of any assistance under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], section 236(f)(2) of the National Housing Act [12 U.S.C. 1715z–1(f)(2)], or section 23 of the United States Housing Act of 1937 [section 1421b of this title] (as in effect before the date of the enactment of the Housing and Community Development Act of 1974 [Aug. 22, 1974]) to assistance under section 8 of the United States Housing Act of 1937, any increase in rent payments or contributions resulting from such conversion, and from the amendments made by this section of any tenant benefiting from such assistance who is sixty-two years of age or older may not exceed 10 per centum per annum.

''(B) In the case of any such conversion of assistance occurring on or after October 1, 1981, and before the date of the enactment of this section [Nov. 30, 1983], the rental payments due after such date of enactment by any tenant benefiting from such assistance who was sixty-two years of age or older on the date of such conversion shall be computed as if the tenant's rental payment or contribution had, on the date of conversion, been the lesser of the actual rental payment or contribution required, or 25 per centum of the tenant's income.

''(5) The limitations on increases in rent contained in paragraphs (1)(B), (2), (3), and (4) shall remain in effect and may not be changed or superseded except by another provision of law which amends this subsection.

''(6) As used in this subsection, the term 'contribution' means an amount representing 30 per centum of a tenant's monthly adjusted income, 10 per centum of the tenant's monthly income, or the designated amount of welfare assistance, whichever amount is used to determine the monthly assistance payment for the tenant under section 3(a) of the United States Housing Act of 1937 [subsec. (a) of this section].

''(7) The provisions of subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981 shall be implemented and fully applicable to all affected tenants no later than five years following the date of enactment of such amendments [Aug. 13, 1981], except that the Secretary may extend the time for implementation if the Secretary determines that full implementation would result in extraordinary hardship for any class of tenants.''

Prior provisions for determining rent payable by tenants occupying assisted housing under and authorizing delayed application or staged implementation of provisions amended by section 322 of Pub. L. 97–35 were contained in Pub. L. 97–35, title III, §322(i), Aug. 13, 1981, 95 Stat. 404, which was repealed by Pub. L. 98–181, title II, §206(e), Nov. 30, 1983, 97 Stat. 1181.

ESTABLISHMENT OF INCREASED MONTHLY RENTAL CHARGE FOR FAMILY OCCUPYING LOW-INCOME HOUSING UNIT; ADJUSTMENT FACTORS

Section 202 of Pub. L. 93–383 provided that: ''To the extent that section 3(1) of the United States Housing Act of 1937, as amended by section 201(a) of this Act [par. (1) of this section], would require the establishment of an increased monthly rental charge for any family which occupies a low-income housing unit as of the effective date of such section 3(1) (other than by reason of the provisions relating to welfare assistance payments) [see Effective Date note set out above], the required adjustment shall be made, in accordance with regulations of the Secretary, as follows: (A) the first adjustment shall not exceed $5 and shall become effective as of the month following the month of the first review of the family's income pursuant to section 6(c)(2) of such Act [section 1437d(c)(2) of this title] which occurs at least six months after the effective date of such section 3(1), and (B) subsequent adjustments, each of which shall not exceed $5, shall be made at six-month intervals over whatever period is necessary to effect the full required increase in the family's rental charge.''

§ 1437a–1. Repealed. Pub. L. 105–276, title V, § 582(a)(1), Oct. 21, 1998, 112 Stat. 2643

Section, Pub. L. 101–625, title V, § 519, Nov. 28, 1990, 104 Stat. 4202, authorized public housing rent waiver for police officers. See section 1437a(a)(4) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, and with savings provision, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437b. Loans and commitments to make loans for low-income housing projects

(a) Authority of Secretary; interest rates; repayment date; use as security for obligations of public housing agency

The Secretary may make loans or commitments to make loans to public housing agencies to help finance or refinance the development, acquisition, or operation of low-income housing projects by such agencies. Any contract for such loans and any amendment to a contract for such loans shall provide that such loans shall bear interest at a rate specified by the Secretary which shall not be less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus one-eighth of 1 per centum. Such loans shall be secured in such manner and shall be repaid within such period not exceeding forty years, or not exceeding forty years from the date of the bonds evidencing the loan, as the Secretary may determine. The Secretary may require loans or commitments to make loans under this section to be pledged as security for obligations issued by a public housing agency in connection with a low-income housing project.

(b) Issuance of obligations by Secretary; limitation on amounts; forms and denominations; terms and conditions; purchase, establishment of maturities and rates of interest, and sale by Secretary of the Treasury

The Secretary may issue and have outstanding at any one time notes and other obligations for purchase by the Secretary of the Treasury in an amount which will not, unless authorized by the President, exceed $1,500,000,000. For the purpose of determining obligations incurred to make loans pursuant to this chapter against any limitation otherwise applicable with respect to such loans, the Secretary shall estimate the maximum amount to be loaned at any one time pursuant to loan agreements then outstanding with public housing agencies. Such notes or other obligations shall be in such forms and denominations and shall be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. The notes or other obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations of the Secretary issued hereunder and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(c) Public and Indian housing financing reforms

(1) At such times as the Secretary may determine, and in accordance with such accounting and other procedures as the Secretary may prescribe, each loan made by the Secretary under subsection (a) of this section that has any principal amount outstanding or any interest amount outstanding or accrued shall be forgiven; and the terms and conditions of any contract, or any amendment to a contract, for such loan with respect to any promise to repay such principal and interest shall be canceled. Such cancellation shall not affect any other terms and conditions of such contract, which shall remain in effect as if the cancellation had not occurred. This paragraph shall not apply to any loan the repayment of which was not to be made using annual contributions, or to any loan all or part of the proceeds of which are due a public housing agency from contractors or others.

(2)(A) On April 7, 1986, each note or other obligation issued by the Secretary to the Secretary of the Treasury pursuant to subsection (b) of this section, together with any promise to repay the principal and unpaid interest that has accrued on each note or obligation, shall be forgiven; and any other term or condition specified by each such obligation shall be canceled.

(B) On September 30, 1986, and on any subsequent September 30, each such note or other obligation issued by the Secretary to the Secretary of the Treasury pursuant to subsection (b) of this section during the fiscal year ending on such date, together with any promise to repay the principal and unpaid interest that has accrued on each note or obligation, shall be forgiven; and any other term or condition specified by each such obligation shall be canceled.

(3) Any amount of budget authority (and contract authority) that becomes available during any fiscal year as a result of the forgiveness of any loan, note, or obligation under this subsection shall be rescinded.

(Sept. 1, 1937, ch. 896, title I, § 4, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 656; amended Pub. L. 97–35, title III, § 322(c), Aug. 13, 1981, 95 Stat. 402; Pub. L. 98–479, title II, § 203(b)(1), Oct. 17, 1984, 98 Stat. 2229; Pub. L. 99–272, title III, § 3004, Apr. 7, 1986, 100 Stat. 102; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title V, § 572(2), Nov. 28, 1990, 104 Stat. 4236.)

PRIOR PROVISIONS

A prior section 4 of act Sept. 1, 1937, ch. 896, 50 Stat. 889, as amended, provided for assistance of officers, etc.,

of other agencies and transfer of property to the Authority and was classified to section 1404 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–625 substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

1986—Subsec. (c). Pub. L. 99–272 added subsec. (c).

1984—Subsec. (b). Pub. L. 98–479 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'' and ''such chapter'' for ''such Act''.

1981—Subsec. (a). Pub. L. 97–35 substituted reference to lower income for reference to low-income in two places.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

CARRYOVER OF AMOUNTS OF BUDGET AUTHORITY; AVAILABILITY AS APPROPRIATION OF FUNDS FOR GRANTS

Pub. L. 99–500, § 101(g) [H.R. 5313, title I], Oct. 18, 1986, 100 Stat. 1783–242, and Pub. L. 99–591, § 101(g) [H.R. 5313, title I], Oct. 30, 1986, 100 Stat. 3341–242; Pub. L. 100–202, § 106, Dec. 22, 1987, 101 Stat. 1329–433, provided in part: ''That the budget authority obligated under contracts for annual contributions shall be increased above amounts heretofore provided in appropriations Acts by $7,805,668,000: *Provided further*, That any part of the amount of the increase in budget authority provided for in the immediately foregoing proviso that is available under this Act for public housing development and acquisition costs or which is to be used for amendments for such costs, shall be available as an appropriation of funds, to remain available until expended, for grants, which are hereby authorized in lieu of loans under section 4(a) of the United States Housing Act of 1937 (42 U.S.C. 1437b), and which the Secretary may make on substantially the same terms (except for repayment unless repayment is a properly imposed sanction) as those heretofore set forth in annual contributions contracts for loans and annual contributions: *Provided further*, That during 1987 and thereafter, any amounts of budget authority which are carried over from a prior year, or which are otherwise available for obligation, and which are available for public housing development and acquisition costs, together with any amounts of budget authority which are to be used for amendments for such costs, in accordance with any Act, shall also be made available as an appropriation of funds for grants, under the same terms as those applying under the immediately preceding proviso''.

§ 1437c. Contributions for low-income housing projects

(a) Contract authorization; amounts; use as security for obligations of public housing agency; use of existing structures

(1) The Secretary may make annual contributions to public housing agencies to assist in achieving and maintaining the lower income character of their projects. The Secretary shall embody the provisions for such annual contributions in a contract guaranteeing their payment. The contribution payable annually under this section shall in no case exceed a sum equal to the annual amount of principal and interest payable on obligations issued by the public housing agency to finance the development or acquisition cost of the lower income project involved. Annual contributions payable under this section shall be pledged, if the Secretary so requires, as security for obligations issued by a public housing agency to assist the development or acquisition of the project to which annual contributions relate and shall be paid over a period not to exceed 40 years.

(2) The Secretary may make contributions (in the form of grants) to public housing agencies to cover the development cost of public housing projects. The contract under which such contributions shall be made shall specify the amount of capital contributions required for each project to which the contract pertains, and that the terms and conditions of such contract shall remain in effect for a 40-year period.

(3) The amount of contributions that would be established for a newly constructed project by a public housing agency designed to accommodate a number of families of a given size and kind may be established under this section for a project by such public housing agency that would provide housing for the comparable number, sizes, and kinds of families through the acquisition and rehabilitation, or use under lease, of structures that are suitable for low-income housing use and obtained in the local market.

(b) Maximum amount of contributions; regulations; criteria for rates of contribution

The Secretary may prescribe regulations fixing the maximum contributions available under different circumstances, giving consideration to cost, location, size, rent-paying ability of prospective tenants, or other factors bearing upon the amounts and periods of assistance needed to achieve and maintain low rentals. Such regulations may provide for rates of contribution based upon development, acquisition, or operation costs, number of dwelling units, number of persons housed, interest charges, or other appropriate factors.

(c) Limitation on aggregate contractual contributions; contracts for preliminary loans; payments of annual contributions; limitations on specific authorities

(1) The Secretary may enter into contracts for annual contributions aggregating not more than $7,875,049,000 per annum, which amount shall be increased by $1,494,400,000 on October 1, 1980, and by $906,985,000 on October 1, 1981. The additional authority to enter into such contracts provided on or after October 1, 1980, shall be effective only in such amounts as may be approved in appropriation Acts. In addition, the aggregate amount which may be obligated over the duration of the contracts may not exceed $31,200,000,000 with respect to the additional authority provided on October 1, 1980, and $18,087,370,000 with respect to the additional authority provided on October 1, 1981.

(2) The Secretary shall enter into only such new contracts for preliminary loans as are consistent with the number of dwelling units for which contracts for annual contributions may be entered into.

(3) The full faith and credit of the United States is solemnly pledged to the payment of all annual contributions contracted for pursuant to this section, and there are hereby authorized to be appropriated in each fiscal year, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such payments.

(4) All payments of annual contributions pursuant to this section shall be made out of any funds available for purposes of this chapter when such payments are due, except that funds obtained through the issuance of obligations pursuant to section 1437b(b) of this title (including repayments or other realizations of the principal of loans made out of such funds) shall not be available for the payment of such annual contributions.

(5) During such period as the Secretary may prescribe for starting construction, the Secretary may approve the conversion of public housing development authority for use under section 1437g of this title or for use for the acquisition and rehabilitation of property to be used in public housing, if the public housing agency, after consultation with the unit of local government, certifies that such assistance would be more effectively used for such purpose, and if the total number of units assisted will not be less than 90 per centum of the units covered by the original reservation.

(6) The aggregate amount of budget authority which may be obligated for contracts for annual contributions and for grants under section 1437*o* of this title is increased by $9,912,928,000 on October 1, 1983, and by such sums as may be approved in appropriation Acts on October 1, 1984. The aggregate amount of budget authority that may be obligated for contracts for annual contributions for assistance under section 1437f of this title, for contracts referred to in paragraphs (7)(A)(iv) and (7)(B)(iv), for grants for public housing, for comprehensive improvement assistance, and for amendments to existing contracts, is increased (to the extent approved in appropriation Acts) by $7,167,000,000 on October 1, 1987, and by $7,300,945,000 on October 1, 1988. The aggregate amount of budget authority that may be obligated for assistance referred to in paragraph (7) is increased (to the extent approved in appropriation Acts) by $16,194,000,000 on October 1, 1990, and by $14,709,400,000 on October 1, 1991. The aggregate amount of budget authority that may be obligated for assistance referred to in paragraph (7) is increased (to the extent approved in appropriation Acts) by $14,710,990,520 on October 1, 1992, and by $15,328,852,122 on October 1993.

(7)(A) Using the additional budget authority provided under paragraph (6) and the balances of budget authority that become available during fiscal year 1993, the Secretary shall, to the extent approved in appropriation Acts, reserve authority to enter into obligations aggregating—

(i) for public housing grants under subsection (a)(2) of this section, not more than $830,900,800, of which amount not more than $257,320,000 shall be available for Indian housing;

(ii) for assistance under section 1437f of this title, not more than $1,977,662,720, of which $20,000,000 shall be available for 15-year contracts for project-based assistance to be used for a multicultural tenant empowerment and homeownership project located in the District of Columbia, except that assistance provided for such project shall not be considered for purposes of the percentage limitations under section 1437f(i)(2) of this title; except that not more than 49 percent of any amounts appropriated under this clause may be used for vouchers under section 1437f(*o*) of this title;

(iii) for comprehensive improvement assistance grants under section 1437*l*(k) of this title, not more than $3,100,000,000;

(iv) for assistance under section 1437f of this title for property disposition, not more than $93,032,000;

(v) for assistance under section 1437f of this title for loan management, not more than $202,000,000;

(vi) for extensions of contracts expiring under section 1437f of this title, not more than $6,746,135,000, which shall be for 5-year contracts for assistance under section 1437f of this title and for loan management assistance under such section;

(vii) for amendments to contracts under section 1437f of this title, not more than $1,350,000,000;

(viii) for public housing lease adjustments and amendments, not more than $83,055,000;

(ix) for conversions from leased housing contracts under section 1421b of this title (as in effect immediately before August 22, 1974) to assistance under section 1437f of this title, not more than $12,767,000; and

(x) for grants under section 1437v of this title for revitalization of severely distressed public housing, not more than $300,000,000.

(B) Using the additional budget authority provided under paragraph (6) and the balances of budget authority that become available during fiscal year 1994, the Secretary shall, to the extent approved in appropriation Acts, reserve authority to enter into obligations aggregating—

(i) for public housing grants under subsection (a)(2) of this section, not more than $865,798,634, of which amount not more than $268,127,440 shall be available for Indian housing;

(ii) for assistance under section 1437f of this title, not more than $2,060,724,554, of which $20,000,000 shall be available for 15-year contracts for project-based assistance to be used for a multicultural tenant empowerment and homeownership project located in the District of Columbia, except that assistance provided for such project shall not be considered for purposes of the percentage limitations under section 1437f(i)(2) of this title; except that not more than 49 percent of any amounts appropriated under this clause may be used for vouchers under section 1437f(*o*) of this title;

(iii) for comprehensive improvement assistance grants under section 1437*l*(k) of this title, not more than $3,230,200,000;

(iv) for assistance under section 1437f of this title for property disposition, not more than $96,939,344;

(v) for assistance under section 1437f of this title for loan management, not more than $210,484,000;

(vi) for extensions of contracts expiring under section 1437f of this title, not more than $7,029,472,670, which shall be for 5-year contracts for assistance under section 1437f of this title and for loan management assistance under such section;

(vii) for amendments to contracts under section 1437f of this title, not more than $1,406,700,000;

(viii) for public housing lease adjustments and amendments, not more than $86,543,310;

(ix) for conversions from leased housing contracts under section 1421b of this title (as in effect immediately before August 22, 1974) to assistance under section 1437f of this title, not more than $13,303,214; and

(x) for grants under section 1437v of this title for revitalization of severely distressed public housing, not more than $312,600,000.

(C)(i) Any amount available for the conversion of a project to assistance under section 1437f(b)(1) of this title, if not required for such purpose, shall be used for assistance under section 1437f(b)(1) of this title.

(ii) Any amount available for assistance under section 1437f of this title for property disposition, if not required for such purpose, shall be used for assistance under section 1437f(b)(1) of this title.

(8) Any amount available for Indian housing under subsection (a) of this section that is recaptured shall be used only for such housing.

(d) Scope of contracts for loans or annual contributions

Any contract for loans or annual contributions, or both, entered into by the Secretary with a public housing agency, may cover one or more than one low-income housing project owned by such public housing agency; in the event the contract covers two or more projects, such projects may, for any of the purposes of this chapter and of such contract (including, but not limited to, the determination of the amount of the loan, annual contributions, or payments in lieu of taxes, specified in such contract), be treated collectively as one project.

(e) Local determination of need as prerequisite for contracts for preliminary loans, and contracts for loans or annual contributions; notice

In recognition that there should be local determination of the need for low-income housing to meet needs not being adequately met by private enterprise—

(1) the Secretary shall not make any contract with a public housing agency for preliminary loans (all of which shall be repaid out of any moneys which become available to such agency for the development of the projects involved) for surveys and planning in respect to any low-income housing projects (i) unless the governing body of the locality involved has by resolution approved the application of the public housing agency for such preliminary loan; and (ii) unless the public housing agency has demonstrated to the satisfaction of the Secretary that there is need for such low-income housing which is not being met by private enterprise; and

(2) the Secretary shall not make any contract for loans (other than preliminary loans) or for contributions pursuant to this chapter unless the governing body of the locality involved has entered into an agreement with the public housing agency providing for the local cooperation required by the Secretary pursuant to this chapter; the Secretary shall require that each such agreement shall provide that, notwithstanding any order, judgment, or decree of any court (including any settlement order), before making any amounts that are provided pursuant to any contract for contributions under this subchapter available for use for the development of any housing or other property not previously used as public housing, the public housing agency shall (A) notify the chief executive officer (or other appropriate official) of the unit of general local government in which the public housing for which such amounts are to be so used is located (or to be located) of such use, and (B) pursuant to the request of such unit of general local government, provide such information as may reasonably be requested by such unit of general local government regarding the public housing to be so assisted (except to the extent otherwise prohibited by law).

(f) Modification by Secretary of terms of contracts, etc.; limitations; amendment or supersedure of contracts for annual contributions or loans

Subject to the specific limitations or standards in this chapter governing the terms of sales, rentals, leases, loans, contracts for annual contributions, or other agreements, the Secretary may, whenever he deems it necessary or desirable in the fulfillment of the purposes of this chapter, consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, amount of annual contribution, or any other term, of any contract or agreement of any kind to which the Secretary is a party. When the Secretary finds that it would promote economy or be in the financial interest of the Federal Government or is necessary to assure or maintain the lower income character of the project or projects involved, any contract heretofore or hereafter made for annual contributions, loans, or both, may be amended or superseded by a contract entered into by mutual agreement between the public housing agency and the Secretary. Contracts may not be amended or superseded in a manner which would impair the rights of the holders of any outstanding obligations of the public housing agency involved for which annual contributions have been pledged. Any rule of law contrary to this provision shall be deemed inapplicable.

(g) Pledge of annual contributions as guarantee of payment of obligations issued by public housing agency; exception

In addition to the authority of the Secretary under subsection (a) of this section to pledge annual contributions as security for obligations issued by a public housing agency, the Secretary is authorized to pledge annual contributions as a guarantee of payment by a public housing agency of all principal and interest on obligations issued by it to assist the development or acquisition of the project to which the annual contributions relate, except that no obligation shall be guaranteed under this subsection if the income thereon is exempt from Federal taxation.

(h) Audits

(1) By Secretary and Comptroller General

Each contract for contributions for any assistance under this chapter to a public housing agency shall provide that the Secretary, the Inspector General of the Department of Housing and Urban Development, and the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination, have access to any books, documents, papers, and records of the public housing agency that are pertinent to this chapter and to its operations with respect to financial assistance under the this[1] chapter.

(2) Withholding of amounts for audits under Single Audit Act

The Secretary may, in the sole discretion of the Secretary, arrange for and pay the costs of an audit required under chapter 75 of title 31. In such circumstances, the Secretary may withhold, from assistance otherwise payable to the agency under this chapter, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the agency's books and records in auditable condition. As agreed to by the Secretary and the Inspector General, the Inspector General may arrange for an audit under this paragraph.

(i) Prohibition on use of funds

None of the funds made available to the Department of Housing and Urban Development to carry out this chapter, which are obligated to State or local governments, public housing agencies, housing finance agencies, or other public or quasi-public housing agencies, shall be used to indemnify contractors or subcontractors of the government or agency against costs associated with judgments of infringement of intellectual property rights.

(Sept. 1, 1937, ch. 896, title I, § 5, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 656; amended Pub. L. 94–375, § 2(a), (b), Aug. 3, 1976, 90 Stat. 1067; Pub. L. 95–24, title I, § 101(a), Apr. 30, 1977, 91 Stat. 55; Pub. L. 95–128, title II, § 201(a), (b), Oct. 12, 1977, 91 Stat. 1128; Pub. L. 95–557, title II, § 206(a), (b), Oct. 31, 1978, 92 Stat. 2091; Pub. L. 95–619, title II, § 251(a), Nov. 9, 1978, 92 Stat. 3235; Pub. L. 96–153, title II, § 201(a), (b), Dec. 21, 1979, 93 Stat. 1105; Pub. L. 96–399, title II, §§ 201(a), 210, Oct. 8, 1980, 94 Stat. 1624, 1636; Pub. L. 97–35, title III, §§ 321(a)–(c), 322(c), Aug. 13, 1981, 95 Stat. 398, 402; Pub. L. 98–181, title II, § 201(b), Nov. 30, 1983, 97 Stat. 1176; Pub. L. 100–242, title I, §§ 101, 112(a), (b)(1), 113–115, Feb. 5, 1988, 101 Stat. 1820, 1823–1825; renumbered title I and amended Pub. L. 100–358, §§ 3, 5, June 29, 1988, 102 Stat. 680, 681; Pub. L. 101–625, title IV, § 417(a), title V, §§ 571, 572(2), Nov. 28, 1990, 104 Stat. 4161, 4235, 4236; Pub. L. 102–550, title I, §§ 101, 111(a), title VI, § 624, Oct. 28, 1992, 106 Stat. 3681, 3687, 3819; Pub. L. 104–19, title I, § 1002(c), July 27, 1995, 109 Stat. 236; Pub. L. 104–330, title V, § 501(b)(2), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, §§ 510, 518(a)(1), (b), 522(b)(1), 566, Oct. 21, 1998, 112 Stat. 2531, 2551, 2564, 2632.)

[1] So in original.

REFERENCES IN TEXT

Section 1437*o* of this title, referred to in subsec. (c)(6), was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

Section 1437*l* of this title, referred to in subsec. (c)(7)(A)(iii), (B)(iii), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

Section 1421b of this title, referred to in subsec. (c)(7)(A)(ix), (B)(ix), was omitted in the general revision of this chapter by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

The Single Audit Act, referred to in subsec. (h)(2) heading, probably means the Single Audit Act of 1984, Pub. L. 98–502, Oct. 19, 1984, 98 Stat. 2327, which is classified generally to chapter 75 (§ 7501 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 31 and Tables.

PRIOR PROVISIONS

A prior section 5 of act Sept. 1, 1937, ch. 896, 50 Stat. 890, as amended, enumerated miscellaneous powers and functions of the Authority and was classified to section 1405 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1998—Subsec. (c)(5). Pub. L. 105–276, § 522(b)(1), substituted "for use under section 1437g of this title" for "for use under section 1437*l* of this title".

Subsec. (e)(2). Pub. L. 105–276, § 518(b), inserted before period at end "; the Secretary shall require that each such agreement shall provide that, notwithstanding any order, judgment, or decree of any court (including any settlement order), before making any amounts that are provided pursuant to any contract for contributions under this subchapter available for use for the development of any housing or other property not previously used as public housing, the public housing agency shall (A) notify the chief executive officer (or other appropriate official) of the unit of general local government in which the public housing for which such amounts are to be so used is located (or to be located) of such use, and (B) pursuant to the request of such unit of general local government, provide such information as may reasonably be requested by such unit of general local government regarding the public housing to be so assisted (except to the extent otherwise prohibited by law)".

Subsec. (h). Pub. L. 105–276, § 566, added subsec. (h).

Pub. L. 105–276, § 518(a)(1)(A), struck out subsec. (h) which read as follows: "Notwithstanding any other provision of law, a public housing agency may sell a low-income housing project to its lower income tenants, on such terms and conditions as the agency may determine, without affecting the Secretary's commitment to pay annual contributions with respect to that project, but such contributions shall not exceed the maximum contributions authorized under subsection (a) of this section."

Subsec. (i). Pub. L. 105–276, § 518(a)(1), redesignated subsec. (*l*) as (i) and struck out former subsec. (i) which read as follows: "In entering into contracts for assistance with respect to newly constructed or substantially rehabilitated projects under this section (other than for projects assisted pursuant to section 1437f of this title), the Secretary shall require the installation of a passive or active solar energy system in any such project where the Secretary determines that such installation would be cost effective over the estimated life of the system."

Subsecs. (j), (k). Pub. L. 105–276, § 518(a)(1)(A), struck out subsecs. (j) and (k), which had: in subsec. (j), placed conditions upon reservation of funds for development of public housing after Sept. 30, 1987, and placed limitations on amounts used for redesign, reconstruction, redevelopment, or operational improvement of existing

projects, but directed that not less than 5 percent of certain amounts appropriated in fiscal years 1993 and 1994 be reserved for public housing projects designated for elderly or disabled families; and in subsec. (k), prohibited recapture of amounts of public housing development funds reserved to a public housing agency for failure to begin construction or rehabilitation, or to complete acquisition, during 30-month period following date of reservation.

Subsec. (*l*). Pub. L. 105–276, § 518(a)(1)(B), redesignated subsec. (*l*) as (i).

Pub. L. 105–276, § 510, added subsec. (*l*).

1996—Subsec. (j)(1). Pub. L. 104–330, § 501(b)(2)(A), struck out ''(other than for Indian families)'' after ''for public housing'' in introductory provisions.

Subsec. (*l*). Pub. L. 104–330, § 501(b)(2)(B), struck out subsec. (*l*) which read as follows: ''The Secretary may not use as a criterion for distributing assistance under this section the progress made by an Indian public housing agency in collecting rents owed by tenants unless—

''(1) such criterion is used as 1 of several criteria that are weighted proportionally and is established by regulations issued after public notice and opportunity to comment in accordance with section 553 of title 5; or

''(2) the Secretary determines that the Indian public housing agency has demonstrated a pattern of substantial noncompliance with requirements governing the collection of rents.''

1995—Subsec. (h). Pub. L. 104–19 struck out at end ''Any such sale shall be subject to the restrictions contained in section 1437aaa–3(g) of this title.''

1992—Subsec. (c)(6). Pub. L. 102–550, § 101(a), inserted at end ''The aggregate amount of budget authority that may be obligated for assistance referred to in paragraph (7) is increased (to the extent approved in appropriation Acts) by $14,710,990,520 on October 1, 1992, and by $15,328,852,122 on October 1993.''

Subsec. (c)(7)(A), (B). Pub. L. 102–550, § 101(b), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which directed Secretary to reserve authority to enter into certain obligations aggregating specified amounts using par. (6) budget authority and balances of such authority available in fiscal years 1991 and 1992.

Subsec. (j)(1)(D). Pub. L. 102–550, § 624(c)(1), which directed the striking of ''and'' at end, was executed by striking ''or'' at end to reflect the probable intent of Congress.

Subsec. (j)(1)(E). Pub. L. 102–550, § 624(c)(3), which directed amendment of subsec. (j)(1) by adding at the end a new subpar. (E), was executed by adding subsec. (E) after subpar. (D) to reflect the probable intent of Congress. Former subpar. (E) redesignated (F).

Subsec. (j)(1)(F). Pub. L. 102–550, § 624(c)(2), redesignated subpar. (E) as (F).

Subsec. (j)(2). Pub. L. 102–550, § 624(a), added subpar. (G).

Pub. L. 102–550, § 111(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Notwithstanding any other provision of law, not more than 20 percent of the funds appropriated for development of public housing also may be committed by the Secretary for the substantial redesign, reconstruction, or redevelopment of existing public housing projects or units, which work shall be carried out pursuant to the rules and regulations applicable to the development of public housing.''

Subsec. (j)(3). Pub. L. 102–550, § 624(b), added par. (3).

1990—Subsec. (a)(3). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing''.

Subsec. (c)(6). Pub. L. 101–625, § 571(a), inserted at end ''The aggregate amount of budget authority that may be obligated for assistance referred to in paragraph (7) is increased (to the extent approved in appropriation Acts) by $16,194,000,000 on October 1, 1990, and by $14,709,400,000 on October 1, 1991.''

Subsec. (c)(7)(A), (B). Pub. L. 101–625, § 571(b), amended subpars. (A) and (B) generally, substituting present provisions for provisions directing Secretary to reserve authority to enter into certain obligations aggregating specified amounts using par. (6) budget authority and balances of such authority available in fiscal years 1988 and 1989.

Subsecs. (d), (e). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

Subsec. (h). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing''.

Pub. L. 101–625, § 417(a), inserted at end ''Any such sale shall be subject to the restrictions contained in section 1437aaa–3(g) of this title.''

1988—Pub. L. 100–242, § 112(b)(1)(A), substituted ''Contributions'' for ''Annual contributions'' in section catchline.

Subsec. (a). Pub. L. 100–242, § 112(a), amended subsec. (a) generally, revising and restating as pars. (1) to (3) provisions formerly contained in a single unnumbered par.

Subsec. (c)(6). Pub. L. 100–242, § 101(a), inserted sentence at end providing for increases on Oct. 1, 1987, and Oct. 1, 1988, of aggregate amount of budget authority that may be obligated for specified purposes.

Subsec. (c)(7). Pub. L. 100–242, § 101(b), amended par. (7) generally, substituting provisions relating to Secretary's authority to enter into obligations under this section for fiscal years 1988 and 1989, for provisions relating to Secretary's authority for fiscal years 1984 and 1985 and substituting provisions whereby amounts available for conversion of project to assistance under section 1437f(b)(1) of this title and amounts available for assistance under section 1437f for property disposition, if not required for such purpose, shall be used for assistance under section 1437f(b)(1) of this title, for provisions wherein specific authorities under this paragraph would be subject to adjustments under par. (5) of this subsection.

Subsec. (c)(8). Pub. L. 100–358, § 3, added par. (8).

Subsec. (e)(2). Pub. L. 100–242, § 112(b)(1)(B), struck out ''annual'' before ''contributions''.

Subsecs. (j) to (*l*). Pub. L. 100–242, §§ 113–115, added subsecs. (j) to (*l*).

1983—Subsec. (c)(1). Pub. L. 98–181, § 201(b)(1), struck out concluding provision requiring the Secretary, in utilizing the additional authority to enter into contracts on and after Oct. 1, 1980, to administer the authorized programs to provide assistance, to the maximum extent practicable, consistent with section 1439(d) of this title.

Subsec. (c)(2). Pub. L. 98–181, § 201(b)(2), redesignated par. (4) as (2), and struck out former par. (2) which from funds made available on Oct. 1, 1980, had required at least $100,000,000 be available for section 1437*l* projects, and from remaining difference limited use of funds to 37.5 and 62.5 per centum for existing section 1437f projects and for newly constructed and substantially rehabilitated units.

Subsec. (c)(3). Pub. L. 98–181, § 201(b)(2), redesignated par. (5) as (3), and struck out former par. (3) which from funds made available on Oct. 1, 1981, had required at least $75,000,000 be available for section 1437*l* projects, from remaining difference allocated sums as provided in section 1439(d) for different community and area uses, and from remaining difference required the accommodation of preferences of units of local government based on stated factors.

Subsec. (c)(4). Pub. L. 98–181, § 201(b)(2), redesignated par. (6) as (4). Former par. (4) redesignated (2).

Subsec. (c)(5) to (7). Pub. L. 98–181, § 201(b)(3), added pars. (5) to (7). Former pars. (5) and (6) redesignated (3) and (4), respectively.

1981—Subsec. (a). Pub. L. 97–35, § 322(c), substituted references to lower income for references to low-income wherever appearing.

Subsec. (c). Pub. L. 97–35, § 321(a)–(c), in par. (1) inserted provisions relating to increases on Oct. 1, 1981, and amount respecting additional authority as of Oct. 1, 1981, added par. (3), and redesignated former pars. (3) to (5) as (4) to (6), respectively.

Subsecs. (d) to (f), (h). Pub. L. 97–35, § 322(c), substituted references to lower income for references to low-income wherever appearing.

1980—Subsec. (c). Pub. L. 96–399, § 201(a), redesignated existing provisions as par. (1), among other changes, substituted provisions relating to the discretionary power of the Secretary to enter into contracts for annual contributions for provisions authorizing the Secretary to enter into such contracts, deleted references to contributions for assistance to Indian tribes, and added pars. (2) to (5).

Subsec. (i). Pub. L. 96–399, § 210, added subsec. (i).

1979—Subsec. (c). Pub. L. 96–153 authorized increase in aggregate contractual contributions by $1,140,661,000 on Oct. 1, 1979, and inserted requirements that out of such additional authority not more than $195,053,000 be authorized to be approved in appropriation acts for units assisted under this chapter other than under section 1437f of this title and that not less than $50,000,000 of the later amount be authorized to be approved for modernization of the units.

1978—Subsec. (c). Pub. L. 95–619 authorized the Secretary to enter into annual contribution contracts aggregating not more than $10,000,000 per annum for financing the purchase and installation of energy conserving improvement in existing low-income housing projects which the Secretary determined had the greatest need for such improvements.

Pub. L. 95–557 inserted ''and by $1,195,043,000 on October 1, 1978'' after ''October 1, 1977'', ''and on and after October 1, 1978'' after ''October 1, 1976'' and ''Of the additional authority to enter into contracts for annual contributions provided on October 1, 1978, and approved in appropriation Acts, the Secretary shall make available not less than $50,000,000 for modernization of low-income housing projects'' after ''pursuant to section 5304(a)(4) of this title'', and struck out provisions after ''only such amounts as may be approved in appropriations Acts'' mandating that of the additional authority to enter into contracts provided on October 1, 1976, at least $60,000,000 be made available for modernization of low-income housing projects and at least $140,000,000 to assist in financing low-income housing projects for ownership by public housing agencies other than under section 1437f, of which not less than $100,000,000 shall be available only for the purpose of financing the construction or rehabilitation of low-income housing projects, and provision after ''plans prepared pursuant to section 5304(a)(4) of this title'' mandating that of the additional authority to enter into contracts for annual contributions provided on Oct. 1, 1977, not less than $42,500,000 shall be made available for low-income housing projects, not less than $197,139,200 for low-income housing projects permanently financed by loans from State housing finance or State development agencies, and not less than $120,000,000 for low-income housing projects permanently financed by loans pursuant to section 1701q of title 12.

1977—Subsec. (c). Pub. L. 95–128 authorized increase in aggregate contractual contributions by $1,159,995,000 on Oct. 1, 1977, and required the Secretary to make available therefrom minimum amounts of $42,500,000 for modernization of low-income housing projects, $197,139,200 for such projects financed by loans from State housing finance or State development agencies, and $120,000,000 for such projects financed by loans pursuant to section 1701q of title 12.

Pub. L. 95–24 substituted ''and by $1,228,050,000 on October 1, 1976'' for ''and by $850,000,000 on October 1, 1976''.

1976—Subsec. (c). Pub. L. 94–375 substituted ''$1,524,000,000 per annum, which limit shall be increased by $965,000,000 on July 1, 1974, by $662,300,000 on July 1, 1975, and by $850,000,000 on October 1, 1976, except that the additional authority to enter into contracts for annual contributions provided on or after July 1, 1975, shall be effective only in such amounts as may be approved in appropriation Acts'' for ''$1,199,250,000 per annum, which limit shall be increased by $225,000,000 on July 1, 1971, by $150,000,000 on July 1, 1972, by $400,000,000 on July 1, 1973, and by $965,000,000 on July 1, 1974'', provision requiring the Secretary make available a total of at least $200,000,000 for modernization and financing of low-income housing projects under the additional authority to enter into contracts for annual contributions provided on Oct. 1, 1976, for provision which required the Secretary to enter into contracts for annual contributions of at least $150,000,000 to assist in financing the development or acquisition cost of low-income housing projects, inserted ''and by not less than $17,000,000 per annum on October 1, 1976,'' after ''not less than $15,000,000 per annum, on July 1, 1975'', and struck out ''to the amounts of contracts for annual contributions required to be entered into by the Secretary under the second sentence of this subsection'' after ''In addition''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

EFFECTIVE DATE OF 1995 AMENDMENT

Section 1002(d) of Pub. L. 104–19, as amended by Pub. L. 104–134, title I, § 101(e) [title II, § 201(b)(1)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–278; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–204, title II, § 201(b), Sept. 26, 1996, 110 Stat. 2892; Pub. L. 105–65, title II, § 201(a), Oct. 27, 1997, 111 Stat. 1364, provided that: Subsections (a), (b), and (c) [amending this section and sections 1437p and 1437aaa–3 of this title] shall be effective for applications for the demolition, disposition, or conversion to homeownership of public housing approved by the Secretary, and other consolidation and relocation activities of public housing agencies undertaken, on, before, or after September 30, 1995 and on or before September 30, 1998.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 417(b) of Pub. L. 101–625 provided that: ''The amendment made by subsection (a) [amending this section] shall not apply to applications submitted under section 5(h) of the United States Housing Act of 1937 [subsec. (h) of this section] prior to October 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

For date on which Secretary of Housing and Urban Development may carry out programs to provide lower income housing on Indian reservations and other Indian areas only in accordance with amendment by Pub. L. 100–358, see section 6 of Pub. L. 100–358, set out as a note under section 1437a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 206(h) of Pub. L. 95–557 provided that: ''The amendments made by this section [amending this section and sections 1437a, 1437f, and 1437g of this title], ex-

cept the amendment made by subsection (d) [amending section 1437f of this title], shall become effective on October 1, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(b)(1), (2) of Pub. L. 94–375 provided that the amendment of subsec. (c), which required the Secretary to make available a total of $200,000,000 for modernization and financing of low-income housing and which struck out reference to the amount of contracts the Secretary was required to enter into under the second sentence of this subsection, is effective Oct. 1, 1976.

EFFECTIVE DATE

Section effective on such date or dates as the Secretary of Housing and Urban Development shall prescribe, but not later than eighteen months after Aug. 22, 1974, except that all of the provisions of this section shall become effective on the same date, see section 201(b) of Pub. L. 93–383, set out as a note under section 1437 of this title.

REGULATIONS

Section 111(c) of Pub. L. 102–550 provided that: ''The Secretary shall issue regulations necessary to carry out the amendments made by this section [amending this section and sections 1437*l* and 1437p of this title] as provided under section 191 of this Act [42 U.S.C. 1437a note].''

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Amendment by section 624 of Pub. L. 102–550 not applicable with respect to lower income housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and Indian housing authority, see section 626 of Pub. L. 102–550, set out as a note under section 1437a of this title.

INCREASE IN BUDGET AUTHORITY FOR CERTIFICATE AND VOUCHER PROGRAMS FOR DISASTER RELIEF

Section 931 of Pub. L. 101–625, as amended by Pub. L. 105–276, title V, § 550(c), Oct. 21, 1998, 112 Stat. 2609, provided that: ''The budget authority available under section 5(c) of the United States Housing Act of 1937 (42 U.S.C. 1437c(c)) for tenant-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] is authorized to be increased in any fiscal year in which a major disaster is declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] in such amounts as may be necessary to provide assistance under such programs for individuals and families whose housing has been damaged or destroyed as a result of such disaster, except that in implementing this section, the Secretary shall evaluate the natural hazards to which any permanent replacement housing is exposed and shall take appropriate action to mitigate such hazards.''

INCREASE IN BUDGET AUTHORITY FOR MODERATE REHABILITATION PROGRAM FOR DISASTER RELIEF

Section 932 of Pub. L. 101–625 provided that: ''The budget authority available under section 5(c) of the United States Housing Act of 1937 (42 U.S.C. 1437c(c)) for assistance under the moderate rehabilitation program under section 8(e)(2) of such Act [42 U.S.C. 1437f(e)(2)] is authorized to be increased in any fiscal year in which a major disaster is declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] in such amount as may be necessary to provide assistance under such program for individuals and families whose housing has been damaged or destroyed as a result of such disaster, except that in implementing this section, the Secretary shall evaluate the natural hazards to which any permanent replacement housing is exposed and shall take appropriate action to mitigate such hazards.''

§ 1437c–1. Public housing agency plans

(a) 5-year plan

(1) In general

Subject to paragraph (3), not less than once every 5 fiscal years, each public housing agency shall submit to the Secretary a plan that includes, with respect to the 5 fiscal years immediately following the date on which the plan is submitted—

(A) a statement of the mission of the public housing agency for serving the needs of low-income and very low-income families in the jurisdiction of the public housing agency during such fiscal years; and

(B) a statement of the goals and objectives of the public housing agency that will enable the public housing agency to serve the needs identified pursuant to subparagraph (A) during those fiscal years.

(2) Statement of goals

The 5-year plan shall include a statement by any public housing agency of the goals, objectives, policies, or programs that will enable the housing authority to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.

(3) Initial plan

The initial 5-year plan submitted by a public housing agency under this subsection shall be submitted for the 5-year period beginning on October 1, 1999, or the first fiscal year thereafter for which the public housing agency initially receives assistance under this chapter.

(b) Annual plan

(1) In general

Effective beginning upon October 1, 1999, each public housing agency shall submit to the Secretary an annual public housing agency plan under this subsection for each fiscal year for which the public housing agency receives assistance under section 1437f(*o*) or 1437g of this title.

(2) Updates

For each fiscal year after the initial submission of an annual plan under this subsection by a public housing agency, the public housing agency may comply with requirements for submission of a plan under this subsection by submitting an update of the plan for the fiscal year.

(c) Procedures

(1) In general

The Secretary shall establish requirements and procedures for submission and review of plans, including requirements for timing and form of submission, and for the contents of such plans.

(2) Contents

The procedures established under paragraph (1) shall provide that a public housing agency shall—

(A) in developing the plan consult with the resident advisory board established under subsection (e) of this section; and

(B) ensure that the plan under this section is consistent with the applicable comprehen-

sive housing affordability strategy (or any consolidated plan incorporating such strategy) for the jurisdiction in which the public housing agency is located, in accordance with title I of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12701 et seq.], and contains a certification by the appropriate State or local official that the plan meets the requirements of this paragraph and a description of the manner in which the applicable contents of the public housing agency plan are consistent with the comprehensive housing affordability strategy.

(d) Contents

An annual public housing agency plan under subsection (b) of this section for a public housing agency shall contain the following information relating to the upcoming fiscal year for which the assistance under this chapter is to be made available:

(1) Needs

A statement of the housing needs of low-income and very low-income families residing in the jurisdiction served by the public housing agency, and of other low-income and very low-income families on the waiting list of the agency (including housing needs of elderly families and disabled families), and the means by which the public housing agency intends, to the maximum extent practicable, to address those needs.

(2) Financial resources

A statement of financial resources available to the agency and the planned uses of those resources.

(3) Eligibility, selection, and admissions policies

A statement of the policies governing eligibility, selection, admissions (including any preferences), assignment, and occupancy of families with respect to public housing dwelling units and housing assistance under section 1437f(*o*) of this title, including—

(A) the procedures for maintaining waiting lists for admissions to public housing projects of the agency, which may include a system of site-based waiting lists under section 1437d(r) of this title; and

(B) the admissions policy under section 1437n(a)(3)(B) of this title for deconcentration of lower-income families.

(4) Rent determination

A statement of the policies of the public housing agency governing rents charged for public housing dwelling units and rental contributions of families assisted under section 1437f(*o*) of this title.

(5) Operation and management

A statement of the rules, standards, and policies of the public housing agency governing maintenance and management of housing owned, assisted, or operated by the public housing agency (which shall include measures necessary for the prevention or eradication of pest infestation, including by cockroaches), and management of the public housing agency and programs of the public housing agency.

(6) Grievance procedure

A statement of the grievance procedures of the public housing agency.

(7) Capital improvements

With respect to public housing projects owned, assisted, or operated by the public housing agency, a plan describing the capital improvements necessary to ensure long-term physical and social viability of the projects.

(8) Demolition and disposition

With respect to public housing projects owned by the public housing agency—

(A) a description of any housing for which the PHA will apply for demolition or disposition under section 1437p of this title; and

(B) a timetable for the demolition or disposition.

(9) Designation of housing for elderly and disabled families

With respect to public housing projects owned, assisted, or operated by the public housing agency, a description of any projects (or portions thereof) that the public housing agency has designated or will apply for designation for occupancy by elderly and disabled families in accordance with section 1437e of this title.

(10) Conversion of public housing

With respect to public housing owned by a public housing agency—

(A) a description of any building or buildings that the public housing agency is required to convert to tenant-based assistance under section 1437z–5 of this title or that the public housing agency plans to voluntarily convert under section 1437t of this title;

(B) an analysis of the projects or buildings required to be converted under section 1437z–5 of this title; and

(C) a statement of the amount of assistance received under this chapter to be used for rental assistance or other housing assistance in connection with such conversion.

(11) Homeownership

A description of any homeownership programs of the agency under section 1437f(y) of this title or for which the public housing agency has applied or will apply for approval under section 1437z–4 of this title.

(12) Community service and self-sufficiency

A description of—

(A) any programs relating to services and amenities provided or offered to assisted families;

(B) any policies or programs of the public housing agency for the enhancement of the economic and social self-sufficiency of assisted families;

(C) how the public housing agency will comply with the requirements of subsections (c) and (d) of section 1437j of this title (relating to community service and treatment of income changes resulting from welfare program requirements).

(13) Domestic violence, dating violence, sexual assault, or stalking programs

A description of—

(A) any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;

(B) any activities, services, or programs provided or offered by a public housing agency that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and

(C) any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.

(14) Safety and crime prevention

A plan established by the public housing agency, which shall be subject to the following requirements:

(A) Safety measures

The plan shall provide, on a project-by-project or jurisdiction-wide basis, for measures to ensure the safety of public housing residents.

(B) Establishment

The plan shall be established in consultation with the police officer or officers in command for the appropriate precinct or police department.

(C) Content

The plan shall describe the need for measures to ensure the safety of public housing residents and for crime prevention measures, describe any such activities conducted or to be conducted by the agency, and provide for coordination between the agency and the appropriate police precincts for carrying out such measures and activities.

(D) Secretarial action

If the Secretary determines, at any time, that the security needs of a project are not being adequately addressed by the plan, or that the local police precinct is not complying with the plan, the Secretary may mediate between the public housing agency and the local precinct to resolve any issues of conflict.

(15) Pets

The requirements of the agency, pursuant to section 1437z–3 of this title, relating to pet ownership in public housing.

(16) Civil rights certification

A certification by the public housing agency that the public housing agency will carry out the public housing agency plan in conformity with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and title II of the Americans with Disabilities Act of 1990 [42 U.S.C. 12131 et seq.], and will affirmatively further fair housing.

(17) Annual audit

The results of the most recent fiscal year audit of the public housing agency under section 1437c(h)(2) of this title.

(18) Asset management

A statement of how the agency will carry out its asset management functions with respect to the public housing inventory of the agency, including how the agency will plan for the long-term operating, capital investment, rehabilitation, modernization, disposition, and other needs for such inventory.

(19) Other

Any other information required by law to be included in a public housing agency plan.

(e) Resident advisory board

(1) In general

Except as provided in paragraph (3), each public housing agency shall establish 1 or more resident advisory boards in accordance with this subsection, the membership of which shall adequately reflect and represent the residents assisted by the public housing agency.

(2) Functions

Each resident advisory board established under this subsection by a public housing agency shall assist and make recommendations regarding the development of the public housing agency plan for the agency. The agency shall consider the recommendations of the resident advisory boards in preparing the final public housing agency plan, and shall include, in the public housing agency plan submitted to the Secretary under this section, a copy of the recommendations and a description of the manner in which the recommendations were addressed.

(3) Waiver

The Secretary may waive the requirements of this subsection with respect to the establishment of resident advisory boards for a public housing agency if the agency demonstrates to the satisfaction of the Secretary that there exist resident councils or other resident organizations of the public housing agency that—

(A) adequately represent the interests of the residents of the public housing agency; and

(B) have the ability to perform the functions described in paragraph (2).

(f)[1] Notice and hearing

(1) In general

In developing a public housing agency plan under this section, the board of directors or similar governing body of a public housing agency shall conduct a public hearing to discuss the public housing agency plan and to invite public comment regarding that plan. The hearing shall be conducted at a location that is convenient to residents.

(2) Availability of information and notice

Not later than 45 days before the date of a hearing conducted under paragraph (1), the public housing agency shall—

(A) make the proposed public housing agency plan and all information relevant to the hearing and proposed plan available for inspection by the public at the principal of-

[1] Subsection designation editorially supplied.

fice of the public housing agency during normal business hours; and

(B) publish a notice informing the public that—

(i) that the information is available as required under subparagraph (A); and

(ii) that a public hearing under paragraph (1) will be conducted.

(3) Adoption of plan

A public housing agency may adopt a public housing agency plan and submit the plan to the Secretary in accordance with this section only after—

(A) conducting a public hearing under paragraph (1);

(B) considering all public comments received; and

(C) making any appropriate changes in the public housing agency plan, in consultation with the resident advisory board.

(4) Advisory board consultation enforcement

Pursuant to a written request made by the resident advisory board for a public housing agency that documents a failure on the part of the agency to provide adequate notice and opportunity for comment under this subsection and a finding by the Secretary of good cause within the time period provided for in subsection (i)(4) of this section, the Secretary may require the public housing agency to adequately remedy such failure before final approval of the public housing agency plan under this section.

(g) Amendments and modifications to plans

(1) In general

Except as provided in paragraph (2), nothing in this section shall preclude a public housing agency, after submitting a plan to the Secretary in accordance with this section, from amending or modifying any policy, rule, regulation, or plan of the public housing agency, except that a significant amendment or modification may not—

(A) be adopted, other than at a duly called meeting of board of directors (or similar governing body) of the public housing agency that is open to the public; and

(B) be implemented, until notification of the amendment or modification is provided to the Secretary and approved in accordance with subsection (i) of this section.

(2) Consistency and notice

Each significant amendment or modification to a public housing agency plan submitted to the Secretary under this section shall—

(A) meet the requirements under subsection (c)(2) of this section (relating to consultation with resident advisory board and consistency with comprehensive housing affordability strategies); and

(B) be subject to the notice and public hearing requirements of subsection (f) of this section.

(h) Submission of plans

(1) Initial submission

Each public housing agency shall submit the initial plan required by this section, and any amendment or modification to the initial plan, to the Secretary at such time and in such form as the Secretary shall require.

(2) Annual submission

Not later than 75 days before the start of the fiscal year of the public housing agency, after submission of the initial plan required by this section in accordance with subparagraph (A), each public housing agency shall annually submit to the Secretary a plan update, including any amendments or modifications to the public housing agency plan.

(i) Review and determination of compliance

(1) Review

Subject to paragraph (2), after submission of the public housing agency plan or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make determinations under this paragraph, the Secretary shall review the public housing agency plan (including any amendments or modifications thereto) and determine whether the contents of the plan—

(A) set forth the information required by this section and this chapter to be contained in a public housing agency plan;

(B) are consistent with information and data available to the Secretary, including the approved comprehensive housing affordability strategy under title I of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12701 et seq.] for the jurisdiction in which the public housing agency is located; and

(C) are not prohibited by or inconsistent with any provision of this subchapter or other applicable law.

(2) Elements exempted from review

The Secretary may, by regulation, provide that one or more elements of a public housing agency plan shall be reviewed only if the element is challenged, except that the Secretary shall review the information submitted in each plan pursuant to paragraphs (3)(B), (8), and (15) of subsection (d) of this section.

(3) Disapproval

The Secretary may disapprove a public housing agency plan (or any amendment or modification thereto) only if Secretary determines that the contents of the plan (or amendment or modification) do not comply with the requirements under subparagraph (A) through (C) of paragraph (1).

(4) Determination of compliance

(A) In general

Except as provided in subsection (j)(2) of this section, not later than 75 days after the date on which a public housing agency plan is submitted in accordance with this section, the Secretary shall make the determination under paragraph (1) and provide written notice to the public housing agency if the plan has been disapproved. If the Secretary disapproves the plan, the notice shall state with specificity the reasons for the disapproval.

(B) Failure to provide notice of disapproval

In the case of a plan disapproved, if the Secretary does not provide notice of disapproval under subparagraph (A) before the expiration of the period described in subparagraph (A), the Secretary shall be considered, for purposes of this chapter, to have made a determination that the plan complies with the requirements under this section and the agency shall be considered to have been notified of compliance upon the expiration of such period. The preceding sentence shall not preclude judicial review regarding such compliance pursuant to chapter 7 of title 5 or an action regarding such compliance under section 1983 of this title.

(5) Public availability

A public housing agency shall make the approved plan of the agency available to the general public.

(j) Troubled and at-risk PHAs

(1) In general

The Secretary may require, for each public housing agency that is at risk of being designated as troubled under section 1437d(j)(2) of this title or is designated as troubled under section 1437d(j)(2) of this title, that the public housing agency plan for such agency include such additional information as the Secretary determines to be appropriate, in accordance with such standards as the Secretary may establish or in accordance with such determinations as the Secretary may make on an agency-by-agency basis.

(2) Troubled agencies

The Secretary shall provide explicit written approval or disapproval, in a timely manner, for a public housing agency plan submitted by any public housing agency designated by the Secretary as a troubled public housing agency under section 1437d(j)(2) of this title.

(k) Streamlined plan

In carrying out this section, the Secretary may establish a streamlined public housing agency plan for—

(A) public housing agencies that are determined by the Secretary to be high performing public housing agencies;

(B) public housing agencies with less than 250 public housing units that have not been designated as troubled under section 1437d(j)(2) of this title; and

(C) public housing agencies that only administer tenant-based assistance and that do not own or operate public housing.

(*l*) Compliance with plan

(1) In general

In providing assistance under this subchapter, a public housing agency shall comply with the rules, standards, and policies established in the public housing agency plan of the public housing agency approved under this section.

(2) Investigation and enforcement

In carrying out this subchapter, the Secretary shall—

(A) provide an appropriate response to any complaint concerning noncompliance by a public housing agency with the applicable public housing agency plan; and

(B) if the Secretary determines, based on a finding of the Secretary or other information available to the Secretary, that a public housing agency is not complying with the applicable public housing agency plan, take such actions as the Secretary determines to be appropriate to ensure such compliance.

(Sept. 1, 1937, ch. 896, title I, §5A, as added Pub. L. 105–276, title V, §511(a), Oct. 21, 1998, 112 Stat. 2531; amended Pub. L. 109–162, title VI, §603, Jan. 5, 2006, 119 Stat. 3040.)

REFERENCES IN TEXT

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsecs. (c)(2)(B) and (i)(1)(B), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title I of the Act is classified generally to subchapter I (§12701 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(16), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (d)(16), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (d)(16), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended. Title II of the Act is classified generally to subchapter II (§12131 et seq.) of chapter 126 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–162, §603(1)(A), substituted ''paragraph (3)'' for ''paragraph (2)''.

Subsec. (a)(2), (3). Pub. L. 109–162, §603(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(13) to (19). Pub. L. 109–162, §603(2), (3), added par. (13) and redesignated former pars. (13) to (18) as (14) to (19), respectively.

EFFECTIVE DATE

Pub. L. 105–276, title V, §511(e), Oct. 21, 1998, 112 Stat. 2539, provided that: ''This section [enacting this section, amending section 1437d of this title, and enacting provisions set out as notes under this section] shall take effect, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

REGULATIONS

Pub. L. 105–276, title V, §511(b), Oct. 21, 1998, 112 Stat. 2538, provided that:

''(1) INTERIM RULE.—Not later than 120 days after the date of the enactment of this Act [Oct. 21, 1998], the Secretary shall issue an interim rule to require the submission of an interim public housing agency plan by each public housing agency, as required by section 5A of the United States Housing Act of 1937 [42 U.S.C. 1437c–1] (as added by subsection (a) of this section). The interim rule shall provide for a public comment period of not less than 60 days.

''(2) FINAL REGULATIONS.—Not later than 1 year after the date of the enactment of this Act [Oct. 21, 1998], the

Secretary shall issue final regulations implementing section 5A of the United States Housing Act of 1937 [42 U.S.C. 1437c–1] (as added by subsection (a) of this section).

''(3) FACTORS FOR CONSIDERATION.—Before the publication of the final regulations under paragraph (2), in addition to public comments invited in connection with the publication of the interim rule, the Secretary shall—

''(A) seek recommendations on the implementation of section 5A of the United States Housing Act of 1937 [42 U.S.C. 1437c–1] (as added by this [sic] subsection (a) of this section) from organizations representing—

''(i) State or local public housing agencies;

''(ii) residents, including resident management corporations; and

''(iii) other appropriate parties; and

''(B) convene not less than 2 public forums at which the persons or organizations making recommendations under subparagraph (A) may express views concerning the proposed disposition of the recommendations.

The Secretary shall publish in the final rule a summary of the recommendations made and public comments received and the Department of Housing and Urban Development's response to such recommendations and comments.''

AUDIT AND REVIEW; REPORT

Pub. L. 105–276, title V, § 511(c), Oct. 21, 1998, 112 Stat. 2538, provided that:

''(1) AUDIT AND REVIEW.—Not later than 1 year after the effective date of final regulations issued under subsection (b)(2) [set out as a note above], in order to determine the degree of compliance, by public housing agencies, with public housing agency plans approved under section 5A of the United States Housing Act of 1937 [42 U.S.C. 1437c–1] (as added by subsection (a) of this section), the Comptroller General of the United States shall conduct—

''(A) a review of a representative sample of the public housing agency plans approved under such section 5A before such date; and

''(B) an audit and review of the public housing agencies submitting such plans.

''(2) REPORT.—Not later than 2 years after the date on which public housing agency plans are initially required to be submitted under section 5A of the United States Housing Act of 1937 [42 U.S.C. 1437c–1] (as added by subsection (a) of this section) the Comptroller General of the United States shall submit to the Congress a report, which shall include—

''(A) a description of the results of each audit and review under paragraph (1); and

''(B) any recommendations for increasing compliance by public housing agencies with their public housing agency plans approved under section 5A of the United States Housing Act of 1937 (as added by subsection (a) of this section).''

§ 1437d. Contract provisions and requirements; loans and annual contributions

(a) Conditions; elevators

The Secretary may include in any contract for loans, contributions, sale, lease, mortgage, or any other agreement or instrument made pursuant to this chapter, such covenants, conditions, or provisions as he may deem necessary in order to insure the lower income character of the project involved, in a manner consistent with the public housing agency plan. Any such contract shall require that, except in the case of housing predominantly for elderly or disabled families, high-rise elevator projects shall not be provided for families with children unless the Secretary makes a determination that there is no practical alternative.

(b) Limitation on development costs

(1) Each contract for loans (other than preliminary loans) or contributions for the development, acquisition, or operation of public housing shall provide that the total development cost of the project on which the computation of any annual contributions under this chapter may be based may not exceed the amount determined under paragraph (2) (for the appropriate structure type) unless the Secretary provides otherwise, and in any case may not exceed 110 per centum of such amount unless the Secretary for good cause determines otherwise.

(2) For purposes of paragraph (1), the Secretary shall determine the total development cost by multiplying the construction cost guideline for the project (which shall be determined by averaging the current construction costs, as listed by not less than 2 nationally recognized residential construction cost indices, for publicly bid construction of a good and sound quality) by—

(A) in the case of elevator type structures, 1.6; and

(B) in the case of nonelevator type structures, 1.75.

(3) In calculating the total development cost of a project under paragraph (2), the Secretary shall consider only capital assistance provided by the Secretary to a public housing agency that are[1] authorized for use in connection with the development of public housing, and shall exclude all other amounts, including amounts provided under—

(A) the HOME investment partnerships program authorized under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.]; or

(B) the community development block grants program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(4) The Secretary may restrict the amount of capital funds that a public housing agency may use to pay for housing construction costs. For purposes of this paragraph, housing construction costs include the actual hard costs for the construction of units, builders' overhead and profit, utilities from the street, and finish landscaping.

(c) Revision of maximum income limits; certification of compliance with requirements; notification of eligibility; informal hearing; compliance with procedures for sound management

Every contract for contributions shall provide that—

(1) the Secretary may require the public housing agency to review and revise its maximum income limits if the Secretary determines that changed conditions in the locality make such revision necessary in achieving the purposes of this chapter;

(2) the public housing agency shall determine, and so certify to the Secretary, that each family in the project was admitted in accordance with duly adopted regulations and approved income limits; and the public hous-

[1] So in original. Probably should be ''is''.

ing agency shall review the incomes of families living in the project no less frequently than annually;

(3) the public housing agency shall not deny admission to the project to any applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking if the applicant otherwise qualifies for assistance or admission, and that nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking[2]

(4) the public housing agency shall promptly notify (i) any applicant determined to be ineligible for admission to the project of the basis for such determination and provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination, and (ii) any applicant determined to be eligible for admission to the project of the approximate date of occupancy insofar as such date can be reasonably determined; and

(5) the public housing agency shall comply with such procedures and requirements as the Secretary may prescribe to assure that sound management practices will be followed in the operation of the project, including requirements pertaining to—

(A) making dwelling units in public housing available for occupancy, which shall provide that the public housing agency may establish a system for making dwelling units available that provides preference for such occupancy to families having certain characteristics; each system of preferences established pursuant to this subparagraph shall be based upon local housing needs and priorities, as determined by the public housing agency using generally accepted data sources, including any information obtained pursuant to an opportunity for public comment as provided under section 1437c–1(f) of this title and under the requirements applicable to the comprehensive housing affordability strategy for the relevant jurisdiction;

(B) the establishment of satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent;

(C) the establishment of effective tenant-management relationships designed to assure that satisfactory standards of tenant security and project maintenance are formulated and that the public housing agency (together with tenant councils where they exist) enforces those standards fully and effectively;

(D) the development by local housing authority managements of viable homeownership opportunity programs for low-income families capable of assuming the responsibilities of homeownership;

(E) for each agency that receives assistance under this subchapter, the establishment and maintenance of a system of accounting for rental collections and costs (including administrative, utility, maintenance, repair and other operating costs) for each project or operating cost center (as determined by the Secretary), which collections and costs shall be made available to the general public and submitted to the appropriate local public official (as determined by the Secretary); except that the Secretary may permit agencies owning or operating less than 500 units to comply with the requirements of this subparagraph by accounting on an agency-wide basis; and

(F) requiring the public housing agency to ensure and maintain compliance with subtitle C of title VI of the Housing and Community Development Act of 1992 [42 U.S.C. 13601 et seq.] and any regulations issued under such subtitle.

(d) Exemption from personal and real property taxes; payments in lieu of taxes; cash contribution or tax remission

Every contract for contributions with respect to a low-income housing project shall provide that no contributions by the Secretary shall be made available for such project unless such project (exclusive of any portion thereof which is not assisted by contributions under this chapter) is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision; and such contract shall require the public housing agency to make payments in lieu of taxes equal to 10 per centum of the sum of the shelter rents charged in such project, or such lesser amount as (i) is prescribed by State law, or (ii) is agreed to by the local governing body in its agreement for local cooperation with the public housing agency required under section 1437c(e)(2) of this title, or (iii) is due to failure of a local public body or bodies other than the public housing agency to perform any obligation under such agreement. If any such project is not exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision, such contract shall provide, in lieu of the requirement for tax exemption and payments in lieu of taxes, that no contributions by the Secretary shall be made available for such project unless and until the State, city, county, or other political subdivision in which such project is situated shall contribute, in the form of cash or tax remission, the amount by which the taxes paid with respect to the project exceed 10 per centum of the shelter rents charged in such project.

(e) Repealed. Pub. L. 105–276, title V, § 529(2), Oct. 21, 1998, 112 Stat. 2569

(f) Housing quality requirements

(1) In general

Each contract for contributions for a public housing agency shall require that the agency maintain its public housing in a condition that complies with standards which meet or exceed the housing quality standards established under paragraph (2).

(2) Federal standards

The Secretary shall establish housing quality standards under this paragraph that ensure

[2] So in original. Probably should be followed by a semicolon.

that public housing dwelling units are safe and habitable. Such standards shall include requirements relating to habitability, including maintenance, health and sanitation factors, condition, and construction of dwellings, and shall, to the greatest extent practicable, be consistent with the standards established under section 1437f(*o*)(8)(B)(i) of this title. The Secretary may determine whether the laws, regulations, standards, or codes of any State or local jurisdiction meet or exceed these standards, for purposes of this subsection.

(3) Annual inspections

Each public housing agency that owns or operates public housing shall make an annual inspection of each public housing project to determine whether units in the project are maintained in accordance with the requirements under paragraph (1). The agency shall retain the results of such inspections and, upon the request of the Secretary, the Inspector General for the Department of Housing and Urban Development, or any auditor conducting an audit under section 1437c(h) of this title, shall make such results available.

(g) Substantial default; conveyance of title and delivery of possession; reconveyance and redelivery; payments for outstanding obligations

Every contract for contributions (including contracts which amend or supersede contracts previously made) may provide that—

(1) upon the occurrence of a substantial default in respect to the covenants or conditions to which the public housing agency is subject (as such substantial default shall be defined in such contract), the public housing agency shall be obligated at the option of the Secretary either to convey title in any case where, in the determination of the Secretary (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of this chapter, or to deliver to the Secretary possession of the project, as then constituted, to which such contract relates; and

(2) the Secretary shall be obligated to reconvey or redeliver possession of the project as constituted at the time of reconveyance or redelivery, to such public housing agency or to its successor (if such public housing agency or a successor exists) upon such terms as shall be prescribed in such contract, and as soon as practicable (i) after the Secretary is satisfied that all defaults with respect to the project have been cured, and that the project will, in order to fulfill the purposes of this chapter, thereafter be operated in accordance with the terms of such contract; or (ii) after the termination of the obligation to make annual contributions available unless there are any obligations or covenants of the public housing agency to the Secretary which are then in default. Any prior conveyances and reconveyances or deliveries and redeliveries of possession shall not exhaust the right to require a conveyance or delivery of possession of the project to the Secretary pursuant to subparagraph (1) upon the subsequent occurrence of a substantial default.

Whenever such a contract for annual contributions includes provisions which the Secretary in such contract determines are in accordance with this subsection, and the portion of the annual contribution payable for debt service requirements pursuant to such contract has been pledged by the public housing agency as security for the payment of the principal and interest on any of its obligations, the Secretary (notwithstanding any other provisions of this chapter) shall continue to make such annual contributions available for the project so long as any of such obligations remain outstanding, and may covenant in such contract that in any event such annual contributions shall in each year be at least equal to an amount which, together with such income or other funds as are actually available from the project for the purpose at the time such annual contribution is made, will suffice for the payment of all installments, falling due within the next succeeding twelve months, of principal and interest on the obligations for which the annual contributions provided for in the contract shall have been pledged as security. In no case shall such annual contributions be in excess of the maximum sum specified in the contract involved, nor for longer than the remainder of the maximum period fixed by the contract.

(h) New construction contracts

On or after October 1, 1983, the Secretary may enter into a contract involving new construction only if the public housing agency demonstrates to the satisfaction of the Secretary that the cost of new construction in the neighborhood where the public housing agency determines the housing is needed is less than the cost of acquisition or acquisition and rehabilitation in such neighborhood, including any reserve fund under subsection (i) of this section, would be.

(i) Reserve fund; major repairs

The Secretary may, upon application by a public housing agency in connection with the acquisition of housing for use as public housing, establish and set aside a reserve fund in an amount not to exceed 30 per centum of the acquisition cost which shall be available for use for major repairs to such housing.

(j) Performance indicators for public housing agencies

(1) The Secretary shall develop and publish in the Federal Register indicators to assess the management performance of public housing agencies and resident management corporations. The indicators shall be established by rule under section 553 of title 5. Such indicators shall enable the Secretary to evaluate the performance of public housing agencies and resident management corporations in all major areas of management operations. The Secretary shall, in particular, use the following indicators for public housing agencies, to the extent practicable:

(A) The number and percentage of vacancies within an agency's inventory, including the progress that an agency has made within the previous 3 years to reduce such vacancies.

(B) The amount and percentage of funds provided to the public housing agency from the

Capital Fund under section 1437g(d) of this title which remain unobligated by the public housing agency after 3 years.

(C) The percentage of rents uncollected.

(D) The utility consumption (with appropriate adjustments to reflect different regions and unit sizes).

(E) The average period of time that an agency requires to repair and turn-around vacant units.

(F) The proportion of maintenance work orders outstanding, including any progress that an agency has made during the preceding 3 years to reduce the period of time required to complete maintenance work orders.

(G) The percentage of units that an agency fails to inspect to ascertain maintenance or modernization needs within such period of time as the Secretary deems appropriate (with appropriate adjustments, if any, for large and small agencies).

(H) The extent to which the public housing agency—

(i) coordinates, promotes, or provides effective programs and activities to promote the economic self-sufficiency of public housing residents; and

(ii) provides public housing residents with opportunities for involvement in the administration of the public housing.

(I)[3] The extent to which the public housing agency—

(i) implements effective screening and eviction policies and other anticrime strategies; and

(ii) coordinates with local government officials and residents in the project and implementation of such strategies.

(J) The extent to which the public housing agency is providing acceptable basic housing conditions.

(K) Any other factors as the Secretary deems appropriate which shall not exceed the seven factors in the statute, plus an additional five.

(I)[4] The Secretary shall:

(1) administer the system of evaluating public housing agencies flexibly to ensure that such agencies are not penalized as result of circumstances beyond their control;

(2) reflect in the weights assigned to the various indicators the differences in the difficulty of managing individual projects that result from their physical condition and their neighborhood environment; and

(3) determine a public housing agency's status as ''troubled with respect to the program under section 1437*l*[5] of this title'' based upon factors solely related to its ability to carry out that program.

(2)(A)(i) The Secretary shall, under the rulemaking procedures under section 553 of title 5, establish procedures for designating troubled public housing agencies, which procedures shall include identification of serious and substantial failure to perform as measured by the performance indicators specified under paragraph (1) and such other factors as the Secretary may deem to be appropriate. Such procedures shall provide that an agency that fails on a widespread basis to provide acceptable basic housing conditions for its residents shall be designated as a troubled public housing agency. The Secretary may use a simplified set of indicators for public housing agencies with less than 250 public housing units. The Secretary shall also designate, by rule under section 553 of title 5, agencies that are troubled with respect to the program for assistance from the Capital Fund under section 1437g(d) of this title.

(ii) The Secretary may also, in consultation with national organizations representing public housing agencies and public officials (as the Secretary determines appropriate), identify and commend public housing agencies that meet the performance standards established under paragraph (1) in an exemplary manner.

(iii) The Secretary shall establish procedures for public housing agencies to appeal designation as a troubled agency (including designation as a troubled agency for purposes of the program for assistance from the Capital Fund under section 1437g(d) of this title), to petition for removal of such designation, and to appeal any refusal to remove such designation.

(B)(i) Upon designating a public housing agency with more than 250 units as troubled pursuant to subparagraph (A) and determining that an assessment under this subparagraph will not duplicate any comparable and recent review, the Secretary shall provide for an on-site, independent assessment of the management of the agency.

(ii) To the extent the Secretary deems appropriate (taking into account an agency's performance under the indicators specified under paragraph (1)), the assessment team shall also consider issues relating to the agency's resident population and physical inventory, including the extent to which (I) the agency's comprehensive plan prepared pursuant to section 1437*l*[5] of this title adequately and appropriately addresses the rehabilitation needs of the agency's inventory, (II) residents of the agency are involved in and informed of significant management decisions, and (III) any projects in the agency's inventory are severely distressed and eligible for assistance pursuant to section 1437v of this title.

(iii) An independent assessment under this subparagraph shall be carried out by a team of knowledgeable individuals selected by the Secretary (referred to in this section as the ''assessment team'') with expertise in public housing and real estate management. In conducting an assessment, the assessment team shall consult with the residents and with public and private entities in the jurisdiction in which the public housing is located. The assessment team shall provide to the Secretary and the public housing agency a written report, which shall contain, at a minimum, recommendations for such management improvements as are necessary to eliminate or substantially remedy existing deficiencies.

(C) The Secretary shall seek to enter into an agreement with each troubled public housing agency, after reviewing the report submitted

[3] Another subpar. (I) is set out after subpar. (K).

[4] Another subpar. (I) is set out before subpar. (J).

[5] See References in Text note below.

pursuant to subparagraph (B) (if applicable) and consulting with the agency's assessment team. Such agreement shall set forth—

(i) targets for improving performance as measured by the performance indicators specified under paragraph (1) and other requirements within a specified period of time;

(ii) strategies for meeting such targets, including a description of the technical assistance that the Secretary will make available to the agency; and

(iii) incentives or sanctions for effective implementation of such strategies, which may include any constraints on the use of funds that the Secretary determines are appropriate.

To the extent the Secretary deems appropriate (taking into account an agency's performance under the indicators specified under paragraph (1)), such agreement shall also set forth a plan for enhancing resident involvement in the management of the public housing agency. The Secretary and the public housing agency shall, to the maximum extent practicable, seek the assistance of local public and private entities in carrying out the agreement.

(D) The Secretary shall apply the provisions of this paragraph to resident management corporations as well as public housing agencies.

(3)(A) Notwithstanding any other provision of law or of any contract for contributions, upon the occurrence of events or conditions that constitute a substantial default by a public housing agency with respect to the covenants or conditions to which the public housing agency is subject or an agreement entered into under paragraph (2), the Secretary may—

(i) solicit competitive proposals from other public housing agencies and private housing management agents which (I) in the discretion of the Secretary, may be selected by existing public housing residents through administrative procedures established by the Secretary, and (II) if appropriate, shall provide for such agents to manage all, or part, of the housing administered by the public housing agency or all or part of the other programs of the agency;

(ii) petition for the appointment of a receiver (which may be another public housing agency or a private management corporation) of the public housing agency to any district court of the United States or to any court of the State in which the real property of the public housing agency is situated, that is authorized to appoint a receiver for the purposes and having the powers prescribed in this subsection;

(iii) solicit competitive proposals from other public housing agencies and private entities with experience in construction management in the eventuality that such agencies or firms may be needed to oversee implementation of assistance made available from the Capital Fund under section 1437g(d) of this title for the housing; and[6]

(iv) take possession of all or part of the public housing agency, including all or part of any project or program of the agency, including any project or program under any other provision of this subchapter; and

(v) require the agency to make other arrangements acceptable to the Secretary and in the best interests of the public housing residents and families assisted under section 1437f of this title for managing all, or part, of the public housing administered by the agency or of the programs of the agency.

Residents of a public housing agency designated as troubled pursuant to paragraph (2)(A) may petition the Secretary in writing to take 1 or more of the actions referred to in this subparagraph. The Secretary shall respond to such petitions in a timely manner with a written description of the actions, if any, the Secretary plans to take and, where applicable, the reasons why such actions differ from the course proposed by the residents.

(B)(i) If a public housing agency is identified as troubled under this subsection, the Secretary shall notify the agency of the troubled status of the agency.

(ii)(I) Upon the expiration of the 1-year period beginning on the later of the date on which the agency receives initial notice from the Secretary of the troubled status of the agency under clause (i) and October 21, 1998, the agency shall improve its performance, as measured by the performance indicators established pursuant to paragraph (1), by at least 50 percent of the difference between the most recent performance measurement and the measurement necessary to remove that agency's designation as troubled.

(II) Upon the expiration of the 2-year period beginning on the later of the date on which the agency receives initial notice from the Secretary of the troubled status of the agency under clause (i) and October 21, 1998, the agency shall improve its performance, as measured by the performance indicators established pursuant to paragraph (1), such that the agency is no longer designated as troubled.

(III) In the event that a public housing agency designated as troubled under this subsection fails to comply with the requirements set forth in subclause (I) or (II), the Secretary shall—

(aa) in the case of a troubled public housing agency with 1,250 or more units, petition for the appointment of a receiver pursuant to subparagraph (A)(ii); or

(bb) in the case of a troubled public housing agency with fewer than 1,250 units, either petition for the appointment of a receiver pursuant to subparagraph (A)(ii), or take possession of the public housing agency (including all or part of any project or program of the agency) pursuant to subparagraph (A)(iv) and appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the public housing agency (including all or part of any project or program of the agency).

This subparagraph shall not be construed to limit the courses of action available to the Secretary under subparagraph (A).

(IV) During the period between the date on which a petition is filed under subclause (III)(aa)

[6] So in original. The word ''and'' probably should not appear.

and the date on which a receiver assumes responsibility for the management of the public housing agency under such subclause, the Secretary may take possession of the public housing agency (including all or part of any project or program of the agency) pursuant to subparagraph (A)(iv) and may appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the public housing agency (including all or part of any project or program of the agency).

(C) If a receiver is appointed pursuant to subparagraph (A)(ii), in addition to the powers accorded by the court appointing the receiver, the receiver—

(i) may abrogate any contract to which the United States or an agency of the United States is not a party that, in the receiver's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default, but only after the receiver determines that reasonable efforts to renegotiate such contract have failed;

(ii) may demolish and dispose of all or part of the assets of the public housing agency (including all or part of any project of the agency) in accordance with section 1437p of this title, including disposition by transfer of properties to resident-supported nonprofit entities;

(iii) if determined to be appropriate by the Secretary, may seek the establishment, as permitted by applicable State and local law, of 1 or more new public housing agencies;

(iv) if determined to be appropriate by the Secretary, may seek consolidation of all or part of the agency (including all or part of any project or program of the agency), as permitted by applicable State and local laws, into other well-managed public housing agencies with the consent of such well-managed agencies; and

(v) shall not be required to comply with any State or local law relating to civil service requirements, employee rights (except civil rights), procurement, or financial or administrative controls that, in the receiver's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default.

(D)(i) If, pursuant to subparagraph (A)(iv), the Secretary takes possession of all or part of the public housing agency, including all or part of any project or program of the agency, the Secretary—

(I) may abrogate any contract to which the United States or an agency of the United States is not a party that, in the written determination of the Secretary (which shall include the basis for such determination), substantially impedes correction of the substantial default, but only after the Secretary determines that reasonable efforts to renegotiate such contract have failed;

(II) may demolish and dispose of all or part of the assets of the public housing agency (including all or part of any project of the agency) in accordance with section 1437p of this title, including disposition by transfer of properties to resident-supported nonprofit entities;

(III) may seek the establishment, as permitted by applicable State and local law, of 1 or more new public housing agencies;

(IV) may seek consolidation of all or part of the agency (including all or part of any project or program of the agency), as permitted by applicable State and local laws, into other well-managed public housing agencies with the consent of such well-managed agencies;

(V) shall not be required to comply with any State or local law relating to civil service requirements, employee rights (except civil rights), procurement, or financial or administrative controls that, in the Secretary's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default; and

(VI) shall, without any action by a district court of the United States, have such additional authority as a district court of the United States would have the authority to confer upon a receiver to achieve the purposes of the receivership.

(ii) If, pursuant to subparagraph (B)(ii)(III)(bb), the Secretary appoints an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the public housing agency (including all or part of any project or program of the agency), the Secretary may delegate to the administrative receiver any or all of the powers given the Secretary by this subparagraph, as the Secretary determines to be appropriate and subject to clause (iii).

(iii) An administrative receiver may not take an action described in subclause (III) or (IV) of clause (i) unless the Secretary first approves an application by the administrative receiver to authorize such action.

(E) The Secretary may make available to receivers and other entities selected or appointed pursuant to this paragraph such assistance as the Secretary determines in the discretion of the Secretary is necessary and available to remedy the substantial deterioration of living conditions in individual public housing projects or other related emergencies that endanger the health, safety, and welfare of public housing residents or families assisted under section 1437f of this title. A decision made by the Secretary under this paragraph shall not be subject to review in any court of the United States, or in any court of any State, territory, or possession of the United States.

(F) In any proceeding under subparagraph (A)(ii), upon a determination that a substantial default has occurred and without regard to the availability of alternative remedies, the court shall appoint a receiver to conduct the affairs of all or part of the public housing agency in a manner consistent with this chapter and in accordance with such further terms and conditions as the court may provide. The receiver appointed may be another public housing agency, a private management corporation, or any other person or appropriate entity. The court shall have power to grant appropriate temporary or preliminary relief pending final disposition of the petition by the Secretary.

(G) The appointment of a receiver pursuant to this paragraph may be terminated, upon the petition of any party, when the court determines that all defaults have been cured or the public housing agency is capable again of discharging its duties.

(H) If the Secretary (or an administrative receiver appointed by the Secretary) takes possession of a public housing agency (including all or part of any project or program of the agency), or if a receiver is appointed by a court, the Secretary or receiver shall be deemed to be acting not in the official capacity of that person or entity, but rather in the capacity of the public housing agency, and any liability incurred, regardless of whether the incident giving rise to that liability occurred while the Secretary or receiver was in possession of all or part of the public housing agency (including all or part of any project or program of the agency), shall be the liability of the public housing agency.

(4) SANCTIONS FOR IMPROPER USE OF AMOUNTS.—

(A) IN GENERAL.—In addition to any other actions authorized under this chapter, if the Secretary finds that a public housing agency receiving assistance amounts under section 1437g of this title for public housing has failed to comply substantially with any provision of this chapter relating to the public housing program, the Secretary may—

(i) terminate assistance payments under this[7] section 1437g of this title to the agency;

(ii) withhold from the agency amounts from the total allocations for the agency pursuant to section 1437g of this title;

(iii) reduce the amount of future assistance payments under section 1437g of this title to the agency by an amount equal to the amount of such payments that were not expended in accordance with this chapter;

(iv) limit the availability of assistance amounts provided to the agency under section 1437g of this title to programs, projects, or activities not affected by such failure to comply;

(v) withhold from the agency amounts allocated for the agency under section 1437f of this title; or

(vi) order other corrective action with respect to the agency.

(B) TERMINATION OF COMPLIANCE ACTION.—If the Secretary takes action under subparagraph (A) with respect to a public housing agency, the Secretary shall—

(i) in the case of action under subparagraph (A)(i), resume payments of assistance amounts under section 1437g of this title to the agency in the full amount of the total allocations under section 1437g of this title for the agency at the time that the Secretary first determines that the agency will comply with the provisions of this chapter relating to the public housing program;

(ii) in the case of action under clause (ii) or (v) of subparagraph (A), make withheld amounts available as the Secretary considers appropriate to ensure that the agency complies with the provisions of this chapter relating to such program;

(iii) in the case of action under subparagraph (A)(iv), release such restrictions at the time that the Secretary first determines that the agency will comply with the provisions of this chapter relating to such program; or

(iv) in the case of action under subparagraph (vi), cease such action at the time that the Secretary first determines that the agency will comply with the provisions of this chapter relating to such program.

(5) The Secretary shall submit to the Congress annually, as a part of the report of the Secretary under section 3536 of this title, a report that—

(A) identifies the public housing agencies that have been designated as troubled under paragraph (2);

(B) describes the grounds on which such public housing agencies were designated as troubled and continue to be so designated;

(C) describes the agreements that have been entered into with such agencies under such paragraph;

(D) describes the status of progress under such agreements;

(E) describes any action that has been taken in accordance with paragraph (3), including an accounting of the authorized funds that have been expended to support such actions; and

(F) describes the status of any public housing agency designated as troubled with respect to the program for assistance from the Capital Fund under section 1437g(d) of this title and specifies the amount of assistance the agency received under such program.

(6)(A) To the extent that the Secretary determines such action to be necessary in order to ensure the accuracy of any certification made under this section, the Secretary shall require an independent auditor to review documentation or other information maintained by a public housing agency pursuant to this section to substantiate each certification submitted by the agency or corporation relating to the performance of that agency or corporation.

(B) The Secretary may withhold, from assistance otherwise payable to the agency or corporation under section 1437g of this title, amounts sufficient to pay for the reasonable costs of any review under this paragraph.

(7) The Secretary shall apply the provisions of this subsection to resident management corporations in the same manner as applied to public housing agencies.

(k) Administrative grievance procedure regulations: grounds of adverse action, hearing, examination of documents, representation, evidence, decision; judicial hearing; eviction and termination procedures

The Secretary shall by regulation require each public housing agency receiving assistance under this chapter to establish and implement an administrative grievance procedure under which tenants will—

(1) be advised of the specific grounds of any proposed adverse public housing agency action;

[7] So in original. The word ''this'' probably should not appear.

(2) have an opportunity for a hearing before an impartial party upon timely request within any period applicable under subsection (*l*) of this section;

(3) have an opportunity to examine any documents or records or regulations related to the proposed action;

(4) be entitled to be represented by another person of their choice at any hearing;

(5) be entitled to ask questions of witnesses and have others make statements on their behalf; and

(6) be entitled to receive a written decision by the public housing agency on the proposed action.

For any grievance concerning an eviction or termination of tenancy that involves any activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency or any violent or drug-related criminal activity on or off such premises, or any activity resulting in a felony conviction, the agency may (A) establish an expedited grievance procedure as the Secretary shall provide by rule under section 553 of title 5, or (B) exclude from its grievance procedure any such grievance, in any jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process (which the Secretary shall establish by rule under section 553 of title 5). Such elements of due process shall not include a requirement that the tenant be provided an opportunity to examine relevant documents within the possession of the public housing agency. The agency shall provide to the tenant a reasonable opportunity, prior to hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination.

(*l*) Leases; terms and conditions; maintenance; termination

Each public housing agency shall utilize leases which—

(1) have a term of 12 months and shall be automatically renewed for all purposes except for noncompliance with the requirements under section 1437j(c) of this title (relating to community service requirements); except that nothing in this subchapter shall prevent a resident from seeking timely redress in court for failure to renew based on such noncompliance;

(2) do not contain unreasonable terms and conditions;

(3) obligate the public housing agency to maintain the project in a decent, safe, and sanitary condition;

(4) require the public housing agency to give adequate written notice of termination of the lease which shall not be less than—

(A) a reasonable period of time, but not to exceed 30 days—

(i) if the health or safety of other tenants, public housing agency employees, or persons residing in the immediate vicinity of the premises is threatened; or

(ii) in the event of any drug-related or violent criminal activity or any felony conviction;

(B) 14 days in the case of nonpayment of rent; and

(C) 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply;

(5) require that the public housing agency may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence;

(6) provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy; except that: (A) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (B) notwithstanding subparagraph (A) or any Federal, State, or local law to the contrary, a public housing agency may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant and such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing; (C) nothing in subparagraph (A) may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (D) nothing in subparagraph (A) limits any otherwise available authority of a public housing agency to evict a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided

that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (E) nothing in subparagraph (A) may be construed to limit the authority of a public housing agency to terminate the tenancy of any tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated; and (F) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.;[8]

(7) specify that with respect to any notice of eviction or termination, notwithstanding any State law, a public housing tenant shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination;

(7)[9] provide that any occupancy in violation of section 13661(b) of this title (relating to ineligibility of illegal drug users and alcohol abusers) or the furnishing of any false or misleading information pursuant to section 13662 of this title (relating to termination of tenancy and assistance for illegal drug users and alcohol abusers) shall be cause for termination of tenancy;[10]

(9) provide that it shall be cause for immediate termination of the tenancy of a public housing tenant if such tenant—

(A) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(2)[11] is violating a condition of probation or parole imposed under Federal or State law.

For purposes of paragraph (5),[12] the term ''drug-related criminal activity'' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 802 of title 21).

(m) Reporting requirements; limitation

The Secretary shall not impose any unnecessarily duplicative or burdensome reporting requirements on tenants or public housing agencies assisted under this chapter.

(n) Notice to post office regarding eviction for criminal activity

When a public housing agency evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the public housing agency shall notify the local post office serving that dwelling unit that such individual or family is no longer residing in the dwelling unit.

(*o*) Public housing assistance for foster care children

In providing housing in low-income housing projects, each public housing agency may coordinate with any local public agencies involved in providing for the welfare of children to make available dwelling units to—

(1) families identified by the agencies as having a lack of adequate housing that is a primary factor—

(A) in the imminent placement of a child in foster care; or

(B) in preventing the discharge of a child from foster care and reunification with his or her family; and

(2) youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available.

(p) Repealed. Pub. L. 105–276, title V, § 519(b), Oct. 21, 1998, 112 Stat. 2561

(q) Availability of records

(1) In general

(A) Provision of information

Notwithstanding any other provision of law, except as provided in subparagraph (C), the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction.

(B) Requests by owners of project-based section 8 [42 U.S.C. 1437f] housing

A public housing agency may make a request under subparagraph (A) for information regarding applicants for, or tenants of, housing that is provided project-based assistance under section 1437f of this title only if the housing is located within the jurisdiction of the agency and the owner of such housing has requested that the agency obtain such information on behalf of the owner. Upon such a request by the owner, the agency shall make a request under subparagraph (A) for the information. The agency may not make such information available to the owner but shall perform determinations for the owner regarding screening, lease enforcement, and eviction based on criteria supplied by the owner.

(C) Exception

A law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.

(2) Opportunity to dispute

Before an adverse action is taken with regard to assistance under this subchapter on

[8] So in original. The period probably should not appear.

[9] So in original. Probably should be ''(8)''.

[10] So in original. Probably should be followed by ''and''.

[11] So in original. Probably should be ''(B)''.

[12] See References in Text note below.

the basis of a criminal record, the public housing agency shall provide the tenant or applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record.

(3) Fees

A public housing agency may be charged a reasonable fee for information provided under paragraph (1). In the case of a public housing agency obtaining information pursuant to paragraph (1)(B) for another owner of housing, the agency may pass such fee on to the owner initiating the request and may charge additional reasonable fees for making the request on behalf of the owner and taking other actions for owners under this subsection.

(4) Records management

Each public housing agency shall establish and implement a system of records management that ensures that any criminal record received by the public housing agency is—

(A) maintained confidentially;

(B) not misused or improperly disseminated; and

(C) destroyed, once the purpose for which the record was requested has been accomplished.

(5) Confidentiality

A public housing agency receiving information under this subsection may use such information only for the purposes provided in this subsection and such information may not be disclosed to any person who is not an officer, employee, or authorized representative of the agency and who has a job-related need to have access to the information in connection with admission of applicants, eviction of tenants, or termination of assistance. For judicial eviction proceedings, disclosures may be made to the extent necessary. The Secretary shall, by regulation, establish procedures necessary to ensure that information provided under this subsection to a public housing agency is used, and confidentiality of such information is maintained, as required under this subsection. The Secretary shall establish standards for confidentiality of information obtained under this subsection by public housing agencies on behalf of owners.

(6) Penalty

Any person who knowingly and willfully requests or obtains any information concerning an applicant for, or tenant of, covered housing assistance pursuant to the authority under this subsection under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. The term ''person'' as used in this paragraph include[13] an officer, employee, or authorized representative of any public housing agency.

(7) Civil action

Any applicant for, or tenant of, covered housing assistance affected by (A) a negligent or knowing disclosure of information referred to in this subsection about such person by an officer, employee, or authorized representative of any public housing agency, which disclosure is not authorized by this subsection, or (B) any other negligent or knowing action that is inconsistent with this subsection, may bring a civil action for damages and such other relief as may be appropriate against any public housing agency responsible for such unauthorized action. The district court of the United States in the district in which the affected applicant or tenant resides, in which such unauthorized action occurred, or in which the officer, employee, or representative alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney's fees and other litigation costs.

(8) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Adult

The term ''adult'' means a person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State, or tribal law.

(B) Covered housing assistance

The term ''covered housing assistance'' means—

(i) a dwelling unit in public housing;

(ii) a dwelling unit in housing that is provided project-based assistance under section 1437f of this title, including new construction and substantial rehabilitation projects; and

(iii) tenant-based assistance under section 1437f of this title.

(C) Owner

The term ''owner'' means, with respect to covered housing assistance described in subparagraph (B)(ii), the entity or private person (including a cooperative or public housing agency) that has the legal right to lease or sublease dwelling units in the housing assisted.

(r) Site-based waiting lists

(1) Authority

A public housing agency may establish procedures for maintaining waiting lists for admissions to public housing projects of the agency, which may include (notwithstanding any other law, regulation, handbook, or notice to the contrary) a system of site-based waiting lists under which applicants may apply directly at or otherwise designate the project or projects in which they seek to reside. All such procedures shall comply with all provisions of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.], and other applicable civil rights laws.

(2) Notice

Any system described in paragraph (1) shall provide for the full disclosure by the public housing agency to each applicant of any op-

[13] So in original. Probably should be ''includes''.

tion available to the applicant in the selection of the project in which to reside.

(s) Authority to require access to criminal records

A public housing agency may require, as a condition of providing admission to the public housing program or assisted housing program under the jurisdiction of the public housing agency, that each adult member of the household provide a signed, written authorization for the public housing agency to obtain records described in subsection (q)(1) of this section regarding such member of the household from the National Crime Information Center, police departments, and other law enforcement agencies.

(t) Obtaining information from drug abuse treatment facilities

(1) Authority

Notwithstanding any other provision of law other than the Public Health Service Act (42 U.S.C. 201 et seq.), a public housing agency may require each person who applies for admission to public housing to sign one or more forms of written consent authorizing the agency to receive information from a drug abuse treatment facility that is solely related to whether the applicant is currently engaging in the illegal use of a controlled substance.

(2) Confidentiality of applicant's records

(A) Limitation on information requested

In a form of written consent, a public housing agency may request only whether the drug abuse treatment facility has reasonable cause to believe that the applicant is currently engaging in the illegal use of a controlled substance.

(B) Records management

Each public housing agency that receives information under this subsection from a drug abuse treatment facility shall establish and implement a system of records management that ensures that any information received by the public housing agency under this subsection—

(i) is maintained confidentially in accordance with section 543 of the Public Health Service Act [42 U.S.C. 290dd–2];

(ii) is not misused or improperly disseminated; and

(iii) is destroyed, as applicable—

(I) not later than 5 business days after the date on which the public housing agency gives final approval for an application for admission; or

(II) if the public housing agency denies the application for admission, in a timely manner after the date on which the statute of limitations for the commencement of a civil action from the applicant based upon that denial of admission has expired.

(C) Expiration of written consent

In addition to the requirements of subparagraph (B), an applicant's signed written consent shall expire automatically after the public housing agency has made a final decision to either approve or deny the applicant's application for admittance to public housing.

(3) Prohibition of discriminatory treatment of applicants

(A) Forms signed

A public housing agency may only require an applicant for admission to public housing to sign one or more forms of written consent under this subsection if the public housing agency requires all such applicants to sign the same form or forms of written consent.

(B) Circumstances of inquiry

A public housing agency may only make an inquiry to a drug abuse treatment facility under this subsection if—

(i) the public housing agency makes the same inquiry with respect to all applicants; or

(ii) the public housing agency only makes the same inquiry with respect to each and every applicant with respect to whom—

(I) the public housing agency receives information from the criminal record of the applicant that indicates evidence of a prior arrest or conviction; or

(II) the public housing agency receives information from the records of prior tenancy of the applicant that demonstrates that the applicant—

(aa) engaged in the destruction of property;

(bb) engaged in violent activity against another person; or

(cc) interfered with the right of peaceful enjoyment of the premises of another tenant.

(4) Fee permitted

A drug abuse treatment facility may charge a public housing agency a reasonable fee for information provided under this subsection.

(5) Disclosure permitted by treatment facilities

A drug abuse treatment facility shall not be liable for damages based on any information required to be disclosed pursuant to this subsection if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd–2).

(6) Option to not request information

A public housing agency shall not be liable for damages based on its decision not to require each person who applies for admission to public housing to sign one or more forms of written consent authorizing the public housing agency to receive information from a drug abuse treatment facility under this subsection.

(7) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Drug abuse treatment facility

The term ''drug abuse treatment facility'' means an entity that—

(i) is—

(I) an identified unit within a general medical care facility; or

(II) an entity other than a general medical care facility; and

(ii) holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal use of a controlled substance.

(B) Controlled substance

The term ''controlled substance'' has the meaning given the term in section 802 of title 21.

(C) Currently engaging in the illegal use of a controlled substance

The term ''currently engaging in the illegal use of a controlled substance'' means the illegal use of a controlled substance that occurred recently enough to justify a reasonable belief that an applicant's illegal use of a controlled substance is current or that continuing illegal use of a controlled substance by the applicant is a real and ongoing problem.

(8) Effective date

This subsection shall take effect on October 21, 1998, and without the necessity of guidance from, or any regulation issued by, the Secretary.

(u) Certification and confidentiality

(1) Certification

(A) In general

A public housing agency responding to subsection (*l*)(5) and (6) of this section may request that an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the aforementioned paragraphs. Such certification shall include the name of the perpetrator. The individual shall provide such certification within 14 business days after the individual receives a request for such certification from the public housing agency.

(B) Failure to provide certification

If the individual does not provide the certification within 14 business days after the individual has received a request in writing for such certification from the public housing agency, nothing in this subsection, or in paragraph (5) or (6) of subsection (*l*) of this section, may be construed to limit the authority of the public housing agency to evict any tenant or lawful occupant that commits violations of a lease. The public housing agency may extend the 14-day deadline at its discretion.

(C) Contents

An individual may satisfy the certification requirement of subparagraph (A) by—

(i) providing the requesting public housing agency with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or

(ii) producing a Federal, State, tribal, territorial, or local police or court record.

(D) Limitation

Nothing in this subsection shall be construed to require any public housing agency to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this section. At the public housing agency's discretion, a public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.

(E) Preemption

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(F) Compliance not sufficient to constitute evidence of unreasonable act

Compliance with this statute by a public housing agency, or assisted housing provider based on the certification specified in subparagraphs (A) and (B) of this subsection[14] or based solely on the victim's statement or other corroborating evidence, as permitted by subparagraph (D) of this subsection,[14] shall not alone be sufficient to constitute evidence of an unreasonable act or omission by a public housing agency or employee thereof. Nothing in this subparagraph shall be construed to limit liability for failure to comply with the requirements of subsection (*l*)(5) and (6) of this section.

(2) Confidentiality

(A) In general

All information provided to any public housing agency pursuant to paragraph (1), including the fact that an individual is a victim of domestic violence, dating violence, or stalking, shall be retained in confidence by such public housing agency, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is—

(i) requested or consented to by the individual in writing;

(ii) required for use in an eviction proceeding under subsection (*l*)(5) or (6) of this section; or

(iii) otherwise required by applicable law.

(B) Notification

Public housing agencies must provide notice to tenants assisted under this section of

[14] So in original. Probably should be ''of this paragraph''.

their rights under this subsection and subsection (*l*)(5) and (6) of this section, including their right to confidentiality and the limits thereof.

(3) Definitions

For purposes of this subsection, subsection (c)(3) of this section, and subsection (*l*)(5) and (6) of this section—

(A) the term ''domestic violence'' has the same meaning given the term in section 13925 of this title;

(B) the term ''dating violence'' has the same meaning given the term in section 13925 of this title;

(C) the term ''stalking'' means—

(i)(I) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or

(II) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and

(ii) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to—

(I) that person;

(II) a member of the immediate family of that person; or

(III) the spouse or intimate partner of that person; and

(D) the term ''immediate family member'' means, with respect to a person—

(i) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or

(ii) any other person living in the household of that person and related to that person by blood or marriage.

(Sept. 1, 1937, ch. 896, title I, § 6, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 659; amended Pub. L. 96–153, title II, § 206(a), Dec. 21, 1979, 93 Stat. 1108; Pub. L. 96–399, title II, §§ 201(c), (e), 202(c), Oct. 8, 1980, 94 Stat. 1625, 1629; Pub. L. 97–35, title III, § 322(c), (d), Aug. 13, 1981, 95 Stat. 402; Pub. L. 98–181, title II, §§ 201(c), 203(a), 204, 205, 214(b), Nov. 30, 1983, 97 Stat. 1177–1179, 1185; Pub. L. 98–479, title I, § 102(b)(4), (5), title II, § 204(b)(1), Oct. 17, 1984, 98 Stat. 2221, 2233; Pub. L. 99–160, title I, § 101, Nov. 25, 1985, 99 Stat. 910; Pub. L. 100–242, title I, §§ 112(b)(2), 116, 170(d), Feb. 5, 1988, 101 Stat. 1824, 1826, 1867; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 100–628, title X, §§ 1001(b), 1014(a)(1), Nov. 7, 1988, 102 Stat. 3263, 3269; Pub. L. 100–690, title V, § 5101, Nov. 18, 1988, 102 Stat. 4300; Pub. L. 101–144, title II, Nov. 9, 1989, 103 Stat. 846; Pub. L. 101–625, title V, §§ 501, 502(a), (c)(1), 503(a), (b), 504–506, 572, Nov. 28, 1990, 104 Stat. 4180, 4181, 4183–4185, 4236; Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 756, 757; Pub. L. 102–550, title I, §§ 112, 113, title VI, §§ 622(b), 625(a)(2), 682(a), Oct. 28, 1992, 106 Stat. 3689, 3817, 3820, 3830; Pub. L. 103–233, title I, § 101(c)(1), title III, § 303, Apr. 11, 1994, 108 Stat. 357, 370; Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2315; Pub. L. 104–99, title IV, § 402(d)(1), (6)(A)(i), Jan. 26, 1996, 110 Stat. 41, 42; Pub. L. 104–120, § 9(a)–(c), Mar. 28, 1996, 110 Stat. 836, 837; Pub. L. 104–193, title IX, § 903(a)(1), Aug. 22, 1996, 110 Stat. 2348; Pub. L. 104–330, title V, § 501(b)(3), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, §§ 511(d), 512(b), 514(a)(1), (2)(A), 519(b), 520(b), 521, 525, 529, 530, 564, 565(a), 575, 576(d)(1), Oct. 21, 1998, 112 Stat. 2539, 2543, 2547, 2561, 2563, 2568, 2569, 2627, 2628, 2634, 2640; Pub. L. 109–162, title VI, § 607, Jan. 5, 2006, 119 Stat. 3048; Pub. L. 109–271, § 5(f), Aug. 12, 2006, 120 Stat. 761.)

REFERENCES IN TEXT

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (b)(3)(A), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the ''HOME Investments Partnership Act'', is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (b)(3)(B), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Act is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Housing and Community Development Act of 1992, referred to in subsec. (c)(5)(F), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672. Subtitle C of title VI of the Act is classified generally to subchapter I (§ 13601 et seq.) of chapter 135 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of this title and Tables.

Section 1437*l* of this title, referred to in subsec. (j)(1)(I)(3), (2)(B)(ii), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

Paragraph (5), referred to in the concluding provisions of subsec. (*l*), was redesignated as par. (6) by Pub. L. 105–276, title V, § 512(b)(1), Oct. 21, 1998, 112 Stat. 2543.

The Civil Rights Act of 1964, referred to in subsec. (r)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (r)(1), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The civil rights laws, referred to in subsec. (r)(1), are classified generally to chapter 21 (§ 1981 et seq.) of this title.

The Public Health Service Act, referred to in subsec. (t)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

PRIOR PROVISIONS

A prior section 6 of act Sept. 1, 1937, ch. 896, 50 Stat. 890, as amended, enumerated financial provisions applicable to the Authority and was classified to section 1406 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

2006—Subsec. (c)(3) to (5). Pub. L. 109–162, § 607(1), (2), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (*l*)(5). Pub. L. 109–162, § 607(3), inserted '', and that an incident or incidents of actual or threatened

domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence'' before semicolon at end.

Subsec. (*l*)(6). Pub. L. 109–162, § 607(4), inserted before semicolon at end ''; except that: (A) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (B) notwithstanding subparagraph (A), a public housing agency under this section may bifurcate a lease under this section, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant; (C) nothing in subparagraph (A) may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (D) nothing in subparagraph (A) limits any otherwise available authority of a public housing agency to evict a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (E) nothing in subparagraph (A) may be construed to limit the authority of a public housing agency to terminate the tenancy of any tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated; and (F) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.''

Subsec. (*l*)(6)(B). Pub. L. 109–271, § 5(f)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''notwithstanding subparagraph (A), a public housing agency under this section may bifurcate a lease under this section, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant;''.

Subsec. (u). Pub. L. 109–162, § 607(5), added subsec. (u).

Subsec. (u)(1)(A). Pub. L. 109–271, § 5(f)(2)(A), substituted ''the individual receives a request for such certification from the public housing agency'' for ''the public housing agency requests such certification''.

Subsec. (u)(1)(B). Pub. L. 109–271, § 5(f)(2)(B), substituted ''the individual has received a request in writing for such certification from the public housing agency'' for ''the public housing agency has requested such certification in writing''.

Subsec. (u)(3)(D)(ii). Pub. L. 109–271, § 5(f)(2)(C), substituted ''blood or marriage'' for ''blood and marriage''.

1998—Subsec. (a). Pub. L. 105–276, § 511(d), in first sentence, inserted '', in a manner consistent with the public housing agency plan'' before the period at end and struck out after first sentence ''Any such contract may contain a condition requiring the maintenance of an open space or playground in connection with the housing project involved if deemed necessary by the Secretary for the safety or health of children.''

Subsec. (b)(3), (4). Pub. L. 105–276, § 520(b), added pars. (3) and (4).

Subsec. (c)(4)(A). Pub. L. 105–276, § 514(a)(1), amended subpar. (A) generally. For former text of subpar. (A), see 1996 Amendment note below.

Subsec. (c)(4)(E). Pub. L. 105–276, § 529(1), substituted ''for each agency that receives assistance under this subchapter'' for ''except in the case of agencies not receiving operating assistance under section 1437g of this title''.

Subsec. (e). Pub. L. 105–276, § 529(2), struck out subsec. (e) which read as follows: ''Every contract for annual contributions shall provide that whenever in any year the receipts of a public housing agency in connection with a low-income housing project exceed its expenditures (including debt service, operation, maintenance, establishment of reserves, and other costs and charges), an amount equal to such excess shall be applied, or set aside for application, to purposes, which, in the determination of the Secretary, will effect a reduction in the amount of subsequent annual contributions.''

Subsec. (f). Pub. L. 105–276, § 530, added subsec. (f).

Subsec. (j)(1)(B). Pub. L. 105–276, § 564(1)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: ''The amount and percentage of funds obligated to the public housing agency under section 1437*l* of this title which remain unexpended after 3 years.''

Subsec. (j)(1)(D). Pub. L. 105–276, § 564(1)(B), substituted ''utility'' for ''energy''.

Subsec. (j)(1)(E). Pub. L. 105–276, § 564(1)(C), which directed the transfer and insertion of subpar. (E) after subpar. (D), required no change in text.

Subsec. (j)(1)(H) to (K). Pub. L. 105–276, § 564(1)(D), (E), added subpars. (H), (I), relating to extent to which agency implements and coordinates strategies, and (J), and redesignated former subpar. (H) as (K).

Subsec. (j)(2)(A)(i). Pub. L. 105–276, § 564(2)(A), inserted after first sentence ''Such procedures shall provide that an agency that fails on a widespread basis to provide acceptable basic housing conditions for its residents shall be designated as a troubled public housing agency. The Secretary may use a simplified set of indicators for public housing agencies with less than 250 public housing units.'' and, in last sentence, substituted ''for assistance from the Capital Fund under section 1437g(d) of this title'' for ''under section 1437*l* of this title''.

Subsec. (j)(2)(A)(iii). Pub. L. 105–276, § 564(2)(B), substituted ''for assistance from the Capital Fund under section 1437g(d) of this title'' for ''under section 1437*l* of this title''.

Subsec. (j)(2)(B)(i). Pub. L. 105–276, § 564(2)(C), inserted ''with more than 250 units'' after ''public housing agency'' and substituted ''comparable and recent review'' for ''review conducted under section 1437*l*(p) of this title''.

Subsec. (j)(2)(C). Pub. L. 105–276, § 564(2)(D), inserted ''(if applicable)'' after ''subparagraph (B)'' in first sentence.

Subsec. (j)(3)(A)(i). Pub. L. 105–276, § 565(a)(1)(A), added cl. (i) and struck out former cl. (i) which read as follows: ''solicit competitive proposals from other public housing agencies and private housing management agents (which may be selected by existing tenants through administrative procedures established by the Secretary) in the eventuality that these agents may be needed for managing all, or part, of the housing administered by a public housing agency;''.

Subsec. (j)(3)(A)(iii). Pub. L. 105–276, § 565(a)(1)(B), substituted ''from the Capital Fund under section 1437g(d) of this title'' for ''under section 1437*l* of this title''.

Subsec. (j)(3)(A)(iv), (v). Pub. L. 105–276, § 565(a)(1)(C), added cls. (iv) and (v) and struck out former cl. (iv) which read as follows: ''require the agency to make other arrangements acceptable to the Secretary and in the best interests of the public housing residents for managing all, or part of, such housing.''

Subsec. (j)(3)(B) to (H). Pub. L. 105–276, § 565(a)(2), added subpars. (B) to (H) and struck out former subpars. (B) to (D) which read as follows:

''(B) The Secretary may make available to receivers and other entities selected or appointed pursuant to this paragraph such assistance as is necessary to remedy the substantial deterioration of living conditions in individual public housing developments or other related emergencies that endanger the health, safety and welfare of the residents.

''(C) In any proceeding under subparagraph (A)(ii), upon a determination that a substantial default has occurred, and without regard to the availability of alternative remedies, the court shall appoint a receiver to conduct the affairs of the public housing agency in a manner consistent with this chapter and in accordance with such further terms and conditions as the court may provide. The court shall have power to grant appropriate temporary or preliminary relief pending final disposition of the petition by the Secretary.

''(D) The appointment of a receiver pursuant to this subsection may be terminated, upon the petition of any party, when the court determines that all defaults have been cured and the housing operated by the public housing agency will thereafter be operated in accordance with the covenants and conditions to which the public housing agency is subject.''

Subsec. (j)(4), (5). Pub. L. 105–276, § 521, added par. (4) and redesignated former par. (4) as (5).

Subsec. (j)(5)(F). Pub. L. 105–276, § 564(3), substituted ''program for assistance from the Capital Fund under section 1437g(d) of this title and specifies the amount of assistance the agency received under such program.'' for ''program under section 1437*l* of this title and specifies the amount of assistance the agency received under section 1437*l* of this title and any credits accumulated by the agency under section 1437*l*(k)(5)(D) of this title.''

Subsec. (j)(6), (7). Pub. L. 105–276, § 564(4), added pars. (6) and (7).

Subsec. (k). Pub. L. 105–276, § 575(a), in first sentence of concluding provisions, inserted ''violent or'' before ''drug-related'' and ''or any activity resulting in a felony conviction,'' after ''on or off such premises,''.

Subsec. (*l*)(1) to (3). Pub. L. 105–276, § 512(b)(1), (3), added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively.

Subsec. (*l*)(4). Pub. L. 105–276, § 512(b)(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (*l*)(4)(A). Pub. L. 105–276, § 575(b)(1)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''a reasonable time, but not to exceed 30 days, when the health or safety of other tenants or public housing agency employees is threatened;''.

Subsec. (*l*)(4)(C). Pub. L. 105–276, § 575(b)(1)(B), inserted '', except that if a State or local law provides for a shorter period of time, such shorter period shall apply'' before semicolon at end.

Subsec. (*l*)(5), (6). Pub. L. 105–276, § 512(b)(1), redesignated pars. (4) and (5) as (5) and (6), respectively. Former par. (6) redesignated (7), relating to specification that tenant be informed of opportunity to examine documents.

Subsec. (*l*)(7). Pub. L. 105–276, § 575(b)(4), added par. (7) relating to termination for illegal drug use and alcohol abuse.

Pub. L. 105–276, § 575(b)(2), struck out ''and'' at end.

Pub. L. 105–276, § 512(b)(2), which directed the redesignation of par. (7) as (9), was executed by redesignating the par. (7), relating to termination of tenancy if tenant is fleeing prosecution or in violation of parole, as (9), to reflect the probable intent of Congress.

Pub. L. 105–276, § 512(b)(1), redesignated par. (6) as (7), relating to specification that tenant be informed of opportunity to examine documents.

Subsec. (*l*)(9). Pub. L. 105–276, § 512(b)(2), which directed the redesignation of par. (7) as (9), was executed by redesignating the par. (7), relating to termination of tenancy if tenant is fleeing prosecution or in violation of parole, as (9), to reflect the probable intent of Congress.

Subsec. (*o*). Pub. L. 105–276, § 514(a)(2)(A), substituted ''In'' for ''Subject'' and all that follows through '', in'' in introductory provisions.

Subsec. (p). Pub. L. 105–276, § 519(b), struck out subsec. (p) which read as follows: ''With respect to amounts available for obligation on or after October 1, 1991, the criteria established under section 1439(d)(5)(B) of this title for any competition for assistance for new construction, acquisition, or acquisition and rehabilitation of public housing shall give preference to applications for housing to be located in a local market area that has an inadequate supply of housing available for use by very low-income families. The Secretary shall establish criteria for determining that the housing supply of a local market area is inadequate, which shall require—

''(1)(A) information regarding housing market conditions showing that the supply of rental housing affordable by very low-income families is inadequate, taking into account vacancy rates in such housing and other market indicators; and

''(B) evidence that significant numbers of families in the local market area holding certificates and vouchers under section 1437f of this title are experiencing significant difficulty in leasing housing meeting program and family-size requirements; or

''(2) evidence that the proposed development would provide increased housing opportunities for minorities or address special housing needs.''

Subsec. (q)(1)(A). Pub. L. 105–276, § 575(c)(1)(A)(ii), which directed the substitution of ''covered housing assistance'' for ''public housing'', was executed by making the substitution in the second place that ''public housing'' appeared, to reflect the probable intent of Congress.

Pub. L. 105–276, § 575(c)(1)(A)(i), substituted ''subparagraph (C)'' for ''subparagraph (B)''.

Subsec. (q)(1)(B), (C). Pub. L. 105–276, § 575(c)(1)(B), (C), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (q)(3). Pub. L. 105–276, § 575(c)(2), substituted ''Fees'' for ''Fee'' in heading and inserted at end ''In the case of a public housing agency obtaining information pursuant to paragraph (1)(B) for another owner of housing, the agency may pass such fee on to the owner initiating the request and may charge additional reasonable fees for making the request on behalf of the owner and taking other actions for owners under this subsection.''

Subsec. (q)(5) to (8). Pub. L. 105–276, § 575(c)(3), (4), added pars. (5) to (8) and struck out heading and text of former par. (5). Text read as follows: ''For purposes of this subsection, the term 'adult' means a person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State, or tribal law.''

Subsec. (r). Pub. L. 105–276, § 576(d)(1), redesignated subsec. (s) as (r) and struck out heading and text of former subsec. (r). Text read as follows: ''Any tenant evicted from housing assisted under this subchapter by reason of drug-related criminal activity (as that term is defined in section 1437f(f) of this title) shall not be eligible for housing assistance under this subchapter during the 3-year period beginning on the date of such eviction, unless the evicted tenant successfully completes a rehabilitation program approved by the public housing agency (which shall include a waiver of this subsection if the circumstances leading to eviction no longer exist).''

Subsec. (s). Pub. L. 105–276, § 576(d)(1)(B), redesignated subsec. (t) as (s). Former subsec. (s) redesignated (r).

Pub. L. 105–276, § 525, added subsec. (s).

Subsec. (t). Pub. L. 105–276, § 576(d)(1)(B), redesignated subsec. (u) as (t). Former subsec. (t) redesignated (s).

Pub. L. 105–276, § 575(d), added subsec. (t).

Subsec. (u). Pub. L. 105–276, § 576(d)(1)(B), redesignated subsec. (u) as (t).

Pub. L. 105–276, § 575(e), added subsec. (u).

1996—Subsec. (b)(1). Pub. L. 104–330 struck out ''and public housing for Indians and Alaska Natives in ac-

cordance with the Indian Housing Act of 1988'' after ''operation of public housing''.

Subsec. (c)(4)(A). Pub. L. 104–99, § 402(d)(1), (f), temporarily amended subpar. (A) generally, substituting

''(A) the establishment, after public notice and an opportunity for public comment, of a written system of preferences for admission to public housing, if any, that is not inconsistent with the comprehensive housing affordability strategy under title I of the Cranston-Gonzalez National Affordable Housing Act;'' for

''(A) except for projects or portions of projects designated for occupancy pursuant to section 1437e(a) of this title with respect to which the Secretary has determined that application of this subparagraph would result in excessive delays in meeting the housing need of such families, the establishment of tenant selection criteria which—

''(i) for not less than 50 percent of the units that are made available for occupancy in a given fiscal year, give preference to families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families), are paying more than 50 percent of family income for rent, or are involuntarily displaced (including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12) at the time they are seeking assistance under this chapter;

''(ii) for any remaining units to be made available for occupancy, give preference in accordance with a system of preferences established by the public housing agency in writing and after public hearing to respond to local housing needs and priorities, which may include (I) assisting very low-income families who either reside in transitional housing assisted under title IV of the Stewart B. McKinney Homeless Assistance Act, or participate in a program designed to provide public assistance recipients with greater access to employment and educational opportunities; (II) assisting families in accordance with subsection (u)(2); (III) assisting families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care, or in preventing the discharge of a child from foster care and reunification with his or her family; (IV) assisting youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available; (V) assisting families that include one or more adult members who are employed; and (VI) achieving other objectives of national housing policy as affirmed by Congress; subclause (V) shall be effective only during fiscal year 1995;

''(iii) prohibit any individual or family evicted from housing assisted under the chapter by reason of drug-related criminal activity from having a preference under any provision of this subparagraph for 3 years unless the evicted tenant successfully completes a rehabilitation program approved by the agency, except that the agency may waive the application of this clause under standards established by the Secretary (which shall include waiver for any member of a family of an individual prohibited from tenancy under this clause who the agency determines clearly did not participate in and had no knowledge of such criminal activity or when circumstances leading to eviction no longer exist); and

''(iv) are designed to ensure that, to the maximum extent feasible, the projects of an agency will include families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems.''

See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (k). Pub. L. 104–120, § 9(a)(1), in concluding provisions, substituted ''involves any activity'' for ''involves any criminal activity'' and ''on or off such premises'' for ''on or near such premises''.

Subsec. (*l*)(5). Pub. L. 104–120, § 9(a)(2), substituted ''on or off such premises'' for ''on or near such premises''.

Subsec. (*l*)(7). Pub. L. 104–193 added par. (7).

Subsec. (*o*). Pub. L. 104–99, § 402(d)(6)(A)(i), (f), in introductory provisions, temporarily substituted ''written system of preferences for selection established pursuant to'' for ''preference rules specified in''. See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (q). Pub. L. 104–120, § 9(b), added subsec. (q).

Subsec. (r). Pub. L. 104–120, § 9(c), added subsec. (r).

1994—Subsec. (c)(4)(A)(i). Pub. L. 103–233, § 101(c)(1), inserted ''(including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12)'' after ''displaced''.

Subsec. (c)(4)(A)(ii). Pub. L. 103–327 added subcl. (V), redesignated former subcl. (V) as (VI), and inserted ''subclause (V) shall be effective only during fiscal year 1995;'' after semicolon at end.

Subsec. (c)(4)(E). Pub. L. 103–233, § 303, substituted ''500 units'' for ''250 units''.

1992—Subsec. (a). Pub. L. 102–550, § 625(a)(2), substituted ''elderly or disabled families'' for ''the elderly'' in last sentence.

Subsec. (c)(4)(A). Pub. L. 102–550, § 622(b), substituted ''designated for occupancy pursuant to section 1437e(a) of this title'' for ''specifically designated for elderly families'' in introductory provisions.

Subsec. (c)(4)(A)(i). Pub. L. 102–550, § 112, substituted ''50 percent'' for ''70 percent'' after ''not less than''.

Subsec. (c)(4)(F). Pub. L. 102–550, § 682(a), added subpar. (F).

Subsec. (j)(1). Pub. L. 102–550, § 113(e)(1)(C), which directed the substitution of ''indicators for public housing agencies, to the extent practicable:'' for ''indicators.'' in fourth sentence, was executed by making the substitution for ''indicators:'' to reflect the probable intent of Congress.

Pub. L. 102–550, § 113(e)(1)(A), (B), in introductory provisions, inserted ''and resident management corporations'' before period in first sentence and after ''agencies'' in third sentence.

Subsec. (j)(2)(B). Pub. L. 102–550, § 113(a)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (j)(2)(C). Pub. L. 102–550, § 113(a)(1), (3), redesignated subpar. (B) as (C), substituted ''agency, after reviewing the report submitted pursuant to subparagraph (B) and consulting with the agency's assessment team. Such agreement shall set forth'' for ''agency setting forth'' in introductory provisions, and inserted ''To the extent the Secretary deems appropriate (taking into account an agency's performance under the indicators specified under paragraph (1)), such agreement shall also set forth a plan for enhancing resident involvement in the management of the public housing agency.'' before ''The Secretary and the public'' in concluding provisions.

Subsec. (j)(2)(D). Pub. L. 102–550, § 113(e)(2), added subpar. (D).

Subsec. (j)(3)(A). Pub. L. 102–550, § 113(b)(5), inserted concluding provisions.

Subsec. (j)(3)(A)(i). Pub. L. 102–550, § 113(b)(1), inserted ''(which may be selected by existing tenants through administrative procedures established by the Secretary)'' after ''management agents''.

Subsec. (j)(3)(A)(iii), (iv). Pub. L. 102–550, § 113(b)(2)–(4), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (j)(3)(B) to (D). Pub. L. 102–550, § 113(c), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (j)(4)(E). Pub. L. 102–550, § 113(d), which directed the insertion of '', including an accounting of the authorized funds that have been expended to support such actions'' before semicolon in par. (5)(E) of subsec. (j), was executed by making the insertion in par. (4)(E) to reflect the probable intent of Congress, because subsec. (j) does not contain a par. (5).

1991—Subsec. (j)(1)(H), (I). Pub. L. 102–139, which directed amendment of ''Section 6(j)(1) of the Housing Act of 1937, 42 U.S.C. 1437d(j)(1) section 502(a) of the National Affordable Housing Act,'' by adding ''which shall

not exceed the seven factors in the statute, plus an additional five'' at the end of subpar. (H) and by adding subpar. (I), requiring Secretary to administer evaluation system, reflect in weights assigned indicators, and determine status, was executed to subsec. (j)(1) of this section, which is section 6 of the United States Housing Act of 1937, to reflect the probable intent of Congress.

Subsec. (p). Pub. L. 102–139 added subsec. (p).

1990—Subsec. (c)(4)(A). Pub. L. 101–625, § 501, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''except for projects or portions of projects specifically designated for elderly families with respect to which the Secretary has determined that application of this clause would result in excessive delays in meeting the housing needs of such families, the establishment of tenant selection criteria which gives preference to families which occupy substandard housing, are paying more than 50 percent of family income for rent, or are involuntarily displaced at the time they are seeking assistance under this chapter and which is designed to assure that, within a reasonable period of time, the project will include families with a broad range of incomes and will avoid concentrations of lower income and deprived families with serious social problems, but (i) this shall not permit maintenance of vacancies to await higher income tenants where lower income tenants are available and shall not permit public housing agencies to select families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence; and (ii) the public housing agency may provide for circumstances in which families who do not qualify for any preference established in this subparagraph are provided assistance before families who do qualify for such preference, except that not more than 10 percent of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this clause) may be families who do not qualify for such preference;''.

Subsec. (c)(4)(D). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families''.

Subsec. (c)(4)(E). Pub. L. 101–625, § 502(c)(1), added subpar. (E).

Subsecs. (d), (e). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

Subsec. (j). Pub. L. 101–625, § 502(a), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''On or after October 1, 1983, in entering into commitments for the development of public housing, the Secretary shall give a priority to projects for the construction, acquisition, or acquisition and rehabilitation of housing suitable for occupancy by families requiring three or more bedrooms.''

Subsec. (k). Pub. L. 101–625, § 503(a), added concluding provisions and struck out former concluding provisions which read as follows: ''An agency may exclude from its procedure any grievance concerning an eviction or termination of tenancy in any jurisdiction which requires that, prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process.''

Subsec. (*l*)(5). Pub. L. 101–625, § 504, amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''provide that a public housing tenant, any member of the tenant's household, or a guest or other person under the tenant's control shall not engage in criminal activity, including drug-related criminal activity, on or near public housing premises, while the tenant is a tenant in public housing, and such criminal activity shall be cause for termination of tenancy.''

Subsec. (*l*)(6). Pub. L. 101–625, § 503(b), added par. (6).

Subsecs. (n), (*o*). Pub. L. 101–625, §§ 505, 506, added subsecs. (n) and (*o*).

1989—Subsec. (b). Pub. L. 101–144 added subsec. (b).

1988—Subsec. (a). Pub. L. 100–242, § 170(d)(1), substituted ''The Secretary'' for ''Secretary'' at beginning.

Pub. L. 100–242, § 112(b)(2), struck out ''annual'' before ''contributions''.

Subsec. (c). Pub. L. 100–242, § 112(b)(2), struck out ''annual'' before ''contributions'' in introductory provisions.

Subsec. (c)(4)(A). Pub. L. 100–628, § 1014(a)(1), inserted cl. (i) designation after '', but'' and added cl. (ii) before semicolon at end.

Pub. L. 100–628, § 1001(b), inserted before semicolon at end ''and shall not permit public housing agencies to select families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence''.

Pub. L. 100–242, § 170(d)(2), inserted '', are paying more than 50 percent of family income for rent,'' after ''substandard housing'', and struck out ''or are paying more than 50 per centum of family income for rent'' after ''under this chapter''.

Subsec. (d). Pub. L. 100–242, § 112(b)(2), struck out ''annual'' before ''contributions'' in four places and before ''shelter'' in two places.

Subsec. (g). Pub. L. 100–242, § 112(b)(2), struck out ''annual'' before ''contributions'' in introductory provisions.

Subsec. (h). Pub. L. 100–242, § 116, inserted ''in the neighborhood where the public housing agency determines the housing is needed'' after ''is'' and ''in such neighborhood'' after ''rehabilitation''.

Subsec. (k)(4), (5). Pub. L. 100–242, § 170(d)(3), substituted ''their'' for ''his''.

Subsec. (*l*). Pub. L. 100–690 added par. (5) and concluding provisions defining term ''drug-related criminal activity'' for purposes of par. (5).

1985—Subsec. (b). Pub. L. 99–160 struck out subsec. (b) which related to cost of construction and equipment of a project, and prototype costs.

1984—Subsec. (a). Pub. L. 98–479, § 204(b)(1), substituted ''covenants'' for ''convenants''.

Subsec. (j). Pub. L. 98–479, § 102(b)(4), inserted '', acquisition, or acquisition and rehabilitation'' and substituted ''families requiring three or more bedrooms'' for ''large families''.

Subsec. (m). Pub. L. 98–479, § 102(b)(5), substituted ''housing'' for ''hearing''.

1983—Subsec. (c)(4)(A). Pub. L. 98–181, § 203(a), inserted ''or are paying more than 50 per centum of family income for rent''.

Subsec. (f). Pub. L. 98–181, § 214(b), repealed subsec. (f) which provided for modification or closeout of housing project.

Subsecs. (h) to (j). Pub. L. 98–181, § 201(c), added subsecs. (h) to (j).

Subsecs. (k), (*l*). Pub. L. 98–181, § 204, added subsecs. (k) and (*l*).

Subsec. (m). Pub. L. 98–181, § 205, added subsec. (m).

1981—Subsec. (a). Pub. L. 97–35, § 322(c), substituted reference to lower income for reference to low-income.

Subsec. (c). Pub. L. 97–35, § 322(c), (d), substituted provision in par. (2) requiring review at least annually for provision requiring review at least within two year intervals, or shorter where deemed desirable, in par. (4)(A) ''lower income and'' for ''low-income and'', and in par. (4)(D) reference to lower income for reference to low-income.

Subsecs. (d), (e). Pub. L. 97–35, § 322(c), substituted references to lower income for references to low-income wherever appearing.

1980—Subsec. (b). Pub. L. 96–399, § 201(c), inserted exception relating to availability of prototype costs for projects to be located on Indian reservations or in Alaskan Native villages, and added cl. (8).

Subsec. (c)(4)(A). Pub. L. 96–399, § 201(e), inserted exception relating to application of this clause to projects specifically designated for elderly families.

Subsec. (f). Pub. L. 96–399, § 202(c), inserted ''pursuant to section 1437*l* of this title'' wherever appearing.

1979—Subsec. (c)(4)(A). Pub. L. 96–153 substituted ''tenant selection criteria which gives preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance under this chapter and which is designed'' for ''tenant selection criteria designed''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Amendment by section 511 of Pub. L. 105–276 effective and applicable beginning upon Oct. 21, 1998, see section 511(e) of Pub. L. 105–276, set out as a note under section 1437c–1 of this title.

Amendment by section 514(a)(1), (2)(A) of Pub. L. 105–276 effective and applicable beginning upon Oct. 21, 1998, see section 514(g) of Pub. L. 105–276, set out as a note under section 1701s of Title 12, Banks and Banking.

Pub. L. 105–276, title V, § 565(b), Oct. 21, 1998, 112 Stat. 2631, provided that: ''The provisions of, and duties and authorities conferred or confirmed by, the amendments made by subsection (a) [amending this section] shall apply with respect to any action taken before, on, or after the effective date of this Act [probably means the general effective date for title V of Pub. L. 105–276 included in section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title] and shall apply to any receiver appointed for a public housing agency before the date of the enactment of this Act [Oct. 21, 1998].''

Pub. L. 105–276, title V, § 565(e), Oct. 21, 1998, 112 Stat. 2632, provided that: ''This section [amending this section and section 1437f of this title and enacting provisions set out as notes under this section] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Pub. L. 104–120, § 13, Mar. 28, 1996, 110 Stat. 845, provided that:

''(a) APPLICABILITY.—This Act [enacting section 1490p–2 of this title, amending this section, sections 1437e, 1437n, 1479, 1485, 1490p–2, and 5308 of this title, and sections 1715z–20, 1715z–22, and 1721 of Title 12, Banks and Banking, and enacting provisions set out as notes under sections 1437f, 5305, and 12805 of this title and sections 1701 and 4101 of Title 12] and the amendments made by this Act shall be construed to have become effective on October 1, 1995.

''(b) IMPLEMENTATION.—The amendments made by sections 9 and 10 [amending this section and sections 1437e and 1437n of this title] shall apply as provided in subsection (a) of this section, notwithstanding the effective date of any regulations issued by the Secretary of Housing and Urban Development to implement such amendments or any failure by the Secretary to issue any such regulations.''

Amendment by Pub. L. 104–99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

IMPLEMENTATION

Pub. L. 105–276, title V, § 565(d), Oct. 21, 1998, 112 Stat. 2632, provided that: ''The Secretary may administer the amendments made by subsection (a) [amending this section] as necessary to ensure the efficient and effective initial implementation of this section [amending this section and section 1437f of this title and enacting provisions set out as notes under this section].''

Section 502(c)(2) of Pub. L. 101–625, as amended by Pub. L. 102–550, title I, § 130, Oct. 28, 1992, 106 Stat. 3712, provided that: ''The Secretary of Housing and Urban Development shall, under the rulemaking procedures under section 553 of title 5, United States Code, establish guidelines and timetables appropriate to implement the amendment made by paragraph (1)(C) [amending this section], taking into account the requirements of public housing agencies of different sizes and characteristics, to achieve compliance with requirements established by such amendment not later than January 1, 1993 for public housing agencies with 500 or more units and not later than January 1, 1994 for public housing agencies with less than 500 units.''

REGULATIONS

For provisions requiring Secretary of Housing and Urban Development to issue regulations necessary to implement amendment to this section by section 101(c) of Pub. L. 103–233, see section 101(f) of Pub. L. 103–233, set out as a note under section 1701z–11 of Title 12, Banks and Banking.

Section 104 of Pub. L. 102–550 provided that: ''Not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development shall issue regulations implementing the amendments made by sections 501 and 545 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, amending this section and section 1437f of this title]. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section) and shall take effect upon issuance.''

Section 503(c) of Pub. L. 101–625 provided that: ''The Secretary of Housing and Urban Development shall issue, and publish in the Federal Register for comment, proposed rules implementing the amendments made by this section [amending this section] not later than the expiration of the 60-day period beginning on the date of the enactment of this Act [Nov. 28, 1990] and shall issue final rules implementing the amendments not later than the expiration of the 180-day period beginning on the date of the enactment of this Act.''

STUDY OF ALTERNATIVE METHODS FOR EVALUATING PUBLIC HOUSING AGENCIES

Pub. L. 105–276, title V, § 563, Oct. 21, 1998, 112 Stat. 2624, provided that:

''(a) IN GENERAL.—The Secretary of Housing and Urban Development shall provide under subsection (e) for a study to be conducted to determine the effectiveness of various alternative methods of evaluating the performance of public housing agencies and other providers of federally assisted housing.

''(b) PURPOSES.—The purposes of the study under this section shall be—

''(1) to identify and examine various methods of evaluating and improving the performance of public housing agencies in administering public housing and tenant-based rental assistance programs and of other providers of federally assisted housing, which are alternatives to oversight by the Department of Housing and Urban Development; and

''(2) to identify specific monitoring and oversight activities currently conducted by the Department of Housing and Urban Development and to evaluate whether such activities should be eliminated, expanded, modified, or transferred to other entities (including governmental and private entities) to in-

crease accuracy and effectiveness and improve monitoring.

''(c) EVALUATION OF VARIOUS PERFORMANCE EVALUATION SYSTEMS.—To carry out the purposes under subsection (b), the study under this section shall identify, and analyze the advantages and disadvantages of various methods of regulating and evaluating the performance of public housing agencies and other providers of federally assisted housing, including the following methods:

''(1) CURRENT SYSTEM.—The system pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], including the methods and requirements under such system for reporting, auditing, reviewing, sanctioning, and monitoring of such agencies and housing providers and the public housing management assessment program pursuant to section 6(j) of the United States Housing Act of 1937 [42 U.S.C. 1437d(j)].

''(2) ACCREDITATION MODELS.—Various models that are based upon accreditation of such agencies and housing providers, subject to the following requirements:

''(A) The study shall identify and analyze various models used in other industries and professions for accreditation and determine the extent of their applicability to the programs for public housing and federally assisted housing.

''(B) If any accreditation models are determined to be applicable to the public and federally assisted housing programs, the study shall identify appropriate goals, objectives, and procedures for an accreditation program for such agencies and housing providers.

''(C) The study shall evaluate the feasibility and merit of establishing an independent accreditation and evaluation entity to assist, supplement, or replace the role of the Department of Housing and Urban Development in assessing and monitoring the performance of such agencies and housing providers.

''(D) The study shall identify the necessary and appropriate roles and responsibilities of various entities that would be involved in an accreditation program, including the Department of Housing and Urban Development, the Inspector General of the Department, an accreditation entity, independent auditors and examiners, local entities, and public housing agencies.

''(E) The study shall estimate the costs involved in developing and maintaining such an independent accreditation program.

''(3) PERFORMANCE BASED MODELS.—Various performance-based models, including systems that establish performance goals or targets, assess the compliance with such goals or targets, and provide for incentives or sanctions based on performance relative to such goals or targets.

''(4) LOCAL REVIEW AND MONITORING MODELS.—Various models providing for local, resident, and community review and monitoring of such agencies and housing providers, including systems for review and monitoring by local and State governmental bodies and agencies.

''(5) PRIVATE MODELS.—Various models using private contractors for review and monitoring of such agencies and housing providers.

''(6) OTHER MODELS.—Various models of any other systems that may be more effective and efficient in regulating and evaluating such agencies and housing providers.

''(d) CONSULTATION.—The entity that, pursuant to subsection (e), carries out the study under this section shall, in carrying out the study, consult with individuals and organizations experienced in managing public housing, private real estate managers, representatives from State and local governments, residents of public housing, families and individuals receiving tenant-based assistance, the Secretary of Housing and Urban Development, the Inspector General of the Department of Housing and Urban Development, and the Comptroller General of the United States.

''(e) CONTRACT TO CONDUCT STUDY.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall enter into a contract, within 90 days of the enactment of this Act [Oct. 21, 1998], with a public or nonprofit private entity to conduct the study under this section, using amounts made available pursuant to subsection (g).

''(2) NATIONAL ACADEMY OF PUBLIC ADMINISTRATION.—The Secretary shall request the National Academy of Public Administration to enter into the contract under paragraph (1) to conduct the study under this section. If such Academy declines to conduct the study, the Secretary shall carry out such paragraph through other public or nonprofit private entities, selected through a competitive process.

''(f) REPORT.—

''(1) INTERIM REPORT.—The Secretary shall ensure that, not later than the expiration of the 6-month period beginning on the date of the execution of the contract under subsection (e)(1), the entity conducting the study under this section submits to the Congress an interim report describing the actions taken to carry out the study, the actions to be taken to complete the study, and any findings and recommendations available at the time.

''(2) FINAL REPORT.—The Secretary shall ensure that—

''(A) not later than the expiration of the 12-month period beginning on the date of the execution of the contract under subsection (e)(1), the study required under this section is completed and a report describing the findings and recommendations as a result of the study is submitted to the Congress; and

''(B) before submitting the report under this paragraph to the Congress, the report is submitted to the Secretary, national organizations for public housing agencies, and other appropriate national organizations at such time to provide the Secretary and such agencies an opportunity to review the report and provide written comments on the report, which shall be included together with the report upon submission to the Congress under subparagraph (A).

''(g) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

REFERENCES IN OTHER LAWS TO PREFERENCES FOR ASSISTANCE

Section 402(d)(6)(D) of Pub. L. 104–99, which provided that certain references to preferences for assistance under sections 1437d(c)(4)(A)(i) and 1437f(d)(1)(A)(i), (*o*)(3)(B) of this title, as such sections existed on the day before Jan. 26, 1996, were to be considered to refer to the written system of preferences for selection established pursuant to sections 1437d(c)(4)(A) and 1437f(d)(1)(A), (*o*)(3)(B) of this title, respectively, as amended by section 402 of Pub. L. 104–99, was repealed by Pub. L. 105–276, title V, § 514(b)(2)(D), Oct. 21, 1998, 112 Stat. 2548.

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Amendment by sections 622(b) and 625(a)(2) of Pub. L. 102–550 not applicable with respect to lower income housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and Indian housing authority, see section 626 of Pub. L. 102–550, set out as a note under section 1437a of this title.

REPORT ON TRAINING AND CERTIFICATION STANDARDS

Section 502(b) of Pub. L. 101–625 directed Secretary to submit to Congress, not later than 12 months after Nov. 28, 1990, a report regarding the feasibility and effectiveness of establishing uniform standards for training and certification of executive directors and other officers and members of local, regional, and State public housing agencies.

APPLICABILITY

Section 503(d) of Pub. L. 101–625 provided that: ''Any exclusion of grievances by a public housing agency pursuant to a determination or waiver by the Secretary (under section 6(k) of the United States Housing Act of 1937 [42 U.S.C. 1437d(k)], as such section existed before the date of the enactment of this Act [Nov. 28, 1990]) that a jurisdiction requires a hearing in court providing the basic elements of due process shall be effective after the date of the enactment of this Act only to the extent that the exclusion complies with the amendments made by this section, except that any such waiver provided before the date of the enactment of this Act shall remain in effect until the earlier of the effective date of the final rules implementing the amendments made by this section or 180 days after the date of the enactment.''

REPORT ON IMPACT OF PUBLIC HOUSING LEASE AND GRIEVANCE REGULATION ON ABILITY OF PUBLIC HOUSING AGENCIES TO TAKE ACTION AGAINST TENANTS ENGAGING IN DRUG CRIMES

Section 5103 of Pub. L. 100–690 provided that: ''The Secretary of Housing and Urban Development shall submit to the Congress a report on the impact of the implementation of the public housing tenancy and administrative grievance procedure regulations issued under section 6(k) of the United States Housing Act of 1937 (42 U.S.C. 1437d(k)) on the ability of public housing agencies to evict or take other appropriate action against tenants engaging in criminal activity, especially with respect to the manufacture, sale, distribution, use, or possession of controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). The report shall be submitted not later than 12 months after the date of the enactment of this Act [Nov. 18, 1988].''

INDIAN HOUSING

Section 1014(a)(2) of Pub. L. 100–628 provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former section 1437aa(b)(2) of this title], the amendments made by paragraph (1) [amending this section] shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

STUDY OF PAYMENTS IN LIEU OF TAXES; REPORT TO CONGRESS

Pub. L. 95–128, title II, § 201(g), Oct. 12, 1977, 91 Stat. 1129, provided that the Secretary of Housing and Urban Development conduct a study of payment in lieu of taxes made under subsec. (d) of this section and report to the Congress on the status and adequacy of such payments not later than 12 months after Oct. 12, 1977.

§ 1437e. Designated housing for elderly and disabled families

(a) Authority to provide designated housing

(1) In general

Subject only to provisions of this section and notwithstanding any other provision of law, a public housing agency for which a plan under subsection (d) of this section is in effect may provide public housing projects (or portions of projects) designated for occupancy by (A) only elderly families, (B) only disabled families, or (C) elderly and disabled families.

(2) Priority for occupancy

In determining priority for admission to public housing projects (or portions of projects) that are designated for occupancy as provided in paragraph (1), the public housing agency may make units in such projects (or portions) available only to the types of families for whom the project is designated.

(3) Eligibility of near-elderly families

If a public housing agency determines that there are insufficient numbers of elderly families to fill all the units in a project (or portion of a project) designated under paragraph (1) for occupancy by only elderly families, the agency may provide that near-elderly families may occupy dwelling units in the project (or portion).

(b) Standards regarding evictions

Except as provided in section 1437n(e)(1)(B)[1] of this title, any tenant who is lawfully residing in a dwelling unit in a public housing project may not be evicted or otherwise required to vacate such unit because of the designation of the project (or portion of a project) pursuant to this section or because of any action taken by the Secretary or any public housing agency pursuant to this section.

(c) Relocation assistance

A public housing agency that designates any existing project or building, or portion thereof, for occupancy as provided under subsection (a)(1) of this section shall provide, to each person and family who agrees to be relocated in connection with such designation—

(1) notice of the designation and an explanation of available relocation benefits, as soon as is practicable for the agency and the person or family;

(2) access to comparable housing (including appropriate services and design features), which may include tenant-based rental assistance under section 1437f of this title, at a rental rate paid by the tenant that is comparable to that applicable to the unit from which the person or family has vacated; and

(3) payment of actual, reasonable moving expenses.

(d) Required plan

A plan under this subsection for designating a project (or portion of a project) for occupancy under subsection (a)(1) of this section is a plan, prepared by the public housing agency for the project and submitted to the Secretary, that—

(1) establishes that the designation of the project is necessary—

(A) to achieve the housing goals for the jurisdiction under the comprehensive housing affordability strategy under section 12705 of this title; and

(B) to meet the housing needs of the low-income population of the jurisdiction; and

(2) includes a description of—

(A) the project (or portion of a project) to be designated;

(B) the types of tenants for which the project is to be designated;

(C) any supportive services to be provided to tenants of the designated project (or portion);

(D) how the design and related facilities (as such term is defined in section

[1] See References in Text note below.

1701q(d)(8)[1] of title 12) of the project accommodate the special environmental needs of the intended occupants; and

(E) any plans to secure additional resources or housing assistance to provide assistance to families that may have been housed if occupancy in the project were not restricted pursuant to this section.

For purposes of this subsection, the term ''supportive services'' means services designed to meet the special needs of residents.

(e) Review of plans

(1) Review and notification

The Secretary shall conduct a limited review of each plan under subsection (d) of this section that is submitted to the Secretary to ensure that the plan is complete and complies with the requirements of subsection (d) of this section. The Secretary shall notify each public housing agency submitting a plan whether the plan complies with such requirements not later than 60 days after receiving the plan. If the Secretary does not notify the public housing agency, as required under this paragraph or paragraph (2), the plan shall be considered, for purposes of this section, to comply with the requirements under subsection (d) of this section and the Secretary shall be considered to have notified the agency of such compliance upon the expiration of such 60-day period.

(2) Notice of reasons for determination of noncompliance

If the Secretary determines that a plan, as submitted, does not comply with the requirements under subsection (d) of this section, the Secretary shall specify in the notice under paragraph (1) the reasons for the noncompliance and any modifications necessary for the plan to meet such requirements.

(3) Standards for determination of noncompliance

The Secretary may determine that a plan does not comply with the requirements under subsection (d) of this section only if—

(A) the plan is incomplete in significant matters required under such subsection; or

(B) there is evidence available to the Secretary that challenges, in a substantial manner, any information provided in the plan.

(4) Treatment of existing plans

Notwithstanding any other provision of this section, a public housing agency shall be considered to have submitted a plan under this subsection if the agency has submitted to the Secretary an application and allocation plan under this section (as in effect before March 28, 1996) that have not been approved or disapproved before March 28, 1996.

(f) Effectiveness

(1) 5-year effectiveness of original plan

A plan under subsection (d) of this section shall be in effect for purposes of this section during the 5-year period that begins upon notification under subsection (e)(1) of this section of the public housing agency that the plan complies with the requirements under subsection (d) of this section.

(2) Renewal of plan

Upon the expiration of the 5-year period under paragraph (1) or any 2-year period under this paragraph, an agency may extend the effectiveness of the designation and plan for an additional 2-year period (that begins upon such expiration) by submitting to the Secretary any information needed to update the plan. The Secretary may not limit the number of times a public housing agency extends the effectiveness of a designation and plan under this paragraph.

(3) Transition provision

Any application and allocation plan approved under this section (as in effect before March 28, 1996) before March 28, 1996, shall be considered to be a plan under subsection (d) of this section that is in effect for purposes of this section for the 5-year period beginning upon such approval.

(g) Inapplicability of Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970

No tenant of a public housing project shall be considered to be displaced for purposes of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970 [42 U.S.C. 4601 et seq.] because of the designation of any existing project or building, or portion thereof, for occupancy as provided under subsection (a) of this section.

(Sept. 1, 1937, ch. 896, title I, § 7, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 662; amended Pub. L. 95–557, title IV, § 412, Oct. 31, 1978, 92 Stat. 2110; Pub. L. 100–242, title I, § 112(b)(3), Feb. 5, 1988, 101 Stat. 1824; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; amended Pub. L. 102–550, title VI, § 622(a), Oct. 28, 1992, 106 Stat. 3813; Pub. L. 104–99, title IV, § 402(d)(6)(A)(ii), Jan. 26, 1996, 110 Stat. 42; Pub. L. 104–120, § 10(a), Mar. 28, 1996, 110 Stat. 838; Pub. L. 104–330, title V, § 501(b)(4), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, § 595(d), Oct. 21, 1998, 112 Stat. 2656.)

REFERENCES IN TEXT

Section 1437n(e)(1)(B) of this title, referred to in subsec. (b), was repealed by Pub. L. 105–276, title V, § 576(d)(2), Oct. 21, 1998, 112 Stat. 2640.

Section 1701q of title 12, referred to in subsec. (d)(2)(D), was amended generally by Pub. L. 101–625, title VIII, § 801(a), Nov. 28, 1990, 104 Stat. 4297, and, as so amended, does not contain a subsec. (d)(8) or a definition of the term ''related facilities''.

The Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, referred to in subsec. (g), probably means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (§ 4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

PRIOR PROVISIONS

A prior section 7 of act Sept. 1, 1937, ch. 896, 50 Stat. 891, as amended, required publication of information and submission of annual report by the Authority and was classified to section 1407 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1998—Subsec. (h). Pub. L. 105–276 struck out heading and text of subsec. (h). Text read as follows: ''The pro-

visions of this section shall not apply with respect to low-income housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority.''

1996—Pub. L. 104–330, § 501(b)(4), which directed amendment of ''subsection 7'' of the United States Housing Act of 1937, probably meaning this section, by striking subsec. (*l*), could not be executed because this section does not contain a subsec. (*l*).

Pub. L. 104–120 amended section generally, restating former subsecs. (a) to (g) relating to designated housing as subsecs. (a) to (h) relating to designated housing for elderly and disabled families.

Subsec. (a)(2). Pub. L. 104–99, which directed the temporary amendment of par. (2) by substituting ''in accordance with the written system of preferences for selection established pursuant to'' for ''according to the preferences for occupancy under'', could not be executed because of the amendment by Pub. L. 104–120 which amended section generally retroactive to Oct. 1, 1995. See Effective and Termination Dates of 1996 Amendments note below.

1992—Pub. L. 102–550 amended section generally, substituting present provisions for provisions relating to and defining ''congregate housing'' and providing for design, development, and acquisition of congregate housing for displaced or elderly families, limitation on amounts for contracts for congregate housing, and costs for central dining facilities.

1988—Pub. L. 100–242 struck out ''annual'' before ''contributions'' in proviso.

1978—Pub. L. 95–557 substituted ''(1) low-rent housing which, as of January 1, 1979, was built or under construction, with which there is connected a central dining facility where wholesome and economical meals can be served to such occupants; or (2) low-rent housing constructed after, but not under construction prior to, January 1, 1979, connected with which there is a central dining facility to provide wholesome and economical meals for such occupants. Such occupants of congregate housing may also be provided with other supportive services appropriate to their needs under title IV of the Housing and Community Development Amendments of 1978'' for ''low-income housing (A) in which some or all of the dwelling units do not have kitchen facilities, and (B) connected with which there is a central dining facility to provide wholesome and economical meals for elderly and displaced families under terms and conditions prescribed by the public housing agency to permit a generally self-supporting operation''.

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, notwithstanding the effective date of any regulations issued by Secretary of Housing and Urban Development to implement amendments by sections 9 and 10 of Pub. L. 104–120 or any failure by Secretary to issue any such regulations, see section 13 of Pub. L. 104–120, set out as a note under section 1437d of this title.

Amendment by Pub. L. 104–99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Amendment by Pub. L. 102–550 not applicable with respect to lower income housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and Indian housing authority, see section 626 of Pub. L. 102–550, set out as a note under section 1437a of this title.

§ 1437f. Low-income housing assistance

(a) Authorization for assistance payments

For the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section.

(b) Other existing housing programs

(1) IN GENERAL.—The Secretary is authorized to enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this section. In areas where no public housing agency has been organized or where the Secretary determines that a public housing agency is unable to implement the provisions of this section, the Secretary is authorized to enter into such contracts and to perform the other functions assigned to a public housing agency by this section.

(2) The Secretary is authorized to enter into annual contributions contracts with public housing agencies for the purpose of replacing public housing transferred in accordance with subchapter II–A of this chapter. Each contract entered into under this subsection shall be for a term of not more than 60 months.

(c) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments

(1) An assistance contract entered into pursuant to this section shall establish the maximum monthly rent (including utilities and all maintenance and management charges) which the owner is entitled to receive for each dwelling unit with respect to which such assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically but not less than annually for existing or newly constructed rental dwelling units of various sizes and types in the market area suitable for occupancy by persons assisted under this section, except that the maximum monthly rent may exceed the fair market rental (A) by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent or that such higher rent is necessary to the implementation of a housing strategy as defined in section 12705 of this title, or (B) by such higher amount as may be requested by a tenant and approved by the public housing agency in accordance with paragraph (3)(B). In the case of newly constructed and substantially rehabilitated units, the exception in the preceding sentence shall not apply to more than 20 per centum of the total amount of authority to

enter into annual contributions contracts for such units which is allocated to an area and obligated with respect to any fiscal year beginning on or after October 1, 1980. Proposed fair market rentals for an area shall be published in the Federal Register with reasonable time for public comment, and shall become effective upon the date of publication in final form in the Federal Register. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section. Notwithstanding any other provision of this section, after October 12, 1977, the Secretary shall prohibit high-rise elevator projects for families with children unless there is no practical alternative. The Secretary shall establish separate fair market rentals under this paragraph for Westchester County in the State of New York. The Secretary shall also establish separate fair market rentals under this paragraph for Monroe County in the Commonwealth of Pennsylvania. In establishing fair market rentals for the remaining portion of the market area in which Monroe County is located, the Secretary shall establish the fair market rentals as if such portion included Monroe County. If units assisted under this section are exempt from local rent control while they are so assisted or otherwise, the maximum monthly rent for such units shall be reasonable in comparison with other units in the market area that are exempt from local rent control.

(2)(A) The assistance contract shall provide for adjustment annually or more frequently in the maximum monthly rents for units covered by the contract to reflect changes in the fair market rentals established in the housing area for similar types and sizes of dwelling units or, if the Secretary determines, on the basis of a reasonable formula. However, where the maximum monthly rent, for a unit in a new construction, substantial rehabilitation, or moderate rehabilitation project, to be adjusted using an annual adjustment factor exceeds the fair market rental for an existing dwelling unit in the market area, the Secretary shall adjust the rent only to the extent that the owner demonstrates that the adjusted rent would not exceed the rent for an unassisted unit of similar quality, type, and age in the same market area, as determined by the Secretary. The immediately foregoing sentence shall be effective only during fiscal year 1995, fiscal year 1996 prior to April 26, 1996, and fiscal years 1997 and 1998, and during fiscal year 1999 and thereafter. Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. The immediately foregoing two sentences shall be effective only during fiscal year 1995, fiscal year 1996 prior to April 26, 1996, and fiscal years 1997 and 1998, and during fiscal year 1999 and thereafter. In establishing annual adjustment factors for units in new construction and substantial rehabilitation projects, the Secretary shall take into account the fact that debt service is a fixed expense. The immediately foregoing sentence shall be effective only during fiscal year 1998.

(B) The contract shall further provide for the Secretary to make additional adjustments in the maximum monthly rent for units under contract to the extent he determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs which are not adequately compensated for by the adjustment in the maximum monthly rent authorized by subparagraph (A). The Secretary shall make additional adjustments in the maximum monthly rent for units under contract (subject to the availability of appropriations for contract amendments) to the extent the Secretary determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units that have resulted from the expiration of a real property tax exemption. Where the Secretary determines that a project assisted under this section is located in a community where drug-related criminal activity is generally prevalent and the project's operating, maintenance, and capital repair expenses have been substantially increased primarily as a result of the prevalence of such drug-related activity, the Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments for this purpose), on a project by project basis, provide adjustments to the maximum monthly rents, to a level no greater than 120 percent of the project rents, to cover the costs of maintenance, security, capital repairs, and reserves required for the owner to carry out a strategy acceptable to the Secretary for addressing the problem of drug-related criminal activity. Any rent comparability standard required under this paragraph may be waived by the Secretary to so implement the preceding sentence. The Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments), on a project by project basis for projects receiving project-based assistance, provide adjustments to the maximum monthly rents to cover the costs of evaluating and reducing lead-based paint hazards, as defined in section 4851b of this title.

(C) Adjustments in the maximum rents under subparagraphs (A) and (B) shall not result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area,

as determined by the Secretary. In implementing the limitation established under the preceding sentence, the Secretary shall establish regulations for conducting comparability studies for projects where the Secretary has reason to believe that the application of the formula adjustments under subparagraph (A) would result in such material differences. The Secretary shall conduct such studies upon the request of any owner of any project, or as the Secretary determines to be appropriate by establishing, to the extent practicable, a modified annual adjustment factor for such market area, as the Secretary shall designate, that is geographically smaller than the applicable housing area used for the establishment of the annual adjustment factor under subparagraph (A). The Secretary shall establish such modified annual adjustment factor on the basis of the results of a study conducted by the Secretary of the rents charged, and any change in such rents over the previous year, for assisted units and unassisted units of similar quality, type, and age in the smaller market area. Where the Secretary determines that such modified annual adjustment factor cannot be established or that such factor when applied to a particular project would result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, the Secretary may apply an alternative methodology for conducting comparability studies in order to establish rents that are not materially different from rents charged for comparable unassisted units. If the Secretary or appropriate State agency does not complete and submit to the project owner a comparability study not later than 60 days before the anniversary date of the assistance contract under this section, the automatic annual adjustment factor shall be applied. The Secretary may not reduce the contract rents in effect on or after April 15, 1987, for newly constructed, substantially rehabilitated, or moderately rehabilitated projects assisted under this section (including projects assisted under this section as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payments of the owner. Any maximum monthly rent that has been reduced by the Secretary after April 14, 1987, and prior to November 7, 1988, shall be restored to the maximum monthly rent in effect on April 15, 1987. For any project which has had its maximum monthly rents reduced after April 14, 1987, the Secretary shall make assistance payments (from amounts reserved for the original contract) to the owner of such project in an amount equal to the difference between the maximum monthly rents in effect on April 15, 1987, and the reduced maximum monthly rents, multiplied by the number of months that the reduced maximum monthly rents were in effect.

(3) The amount of the monthly assistance payment with respect to any dwelling unit shall be the difference between the maximum monthly rent which the contract provides that the owner is to receive for the unit and the rent the family is required to pay under section 1437a(a) of this title. Reviews of family income shall be made no less frequently than annually.

(4) The assistance contract shall provide that assistance payments may be made only with respect to a dwelling unit under lease for occupancy by a family determined to be a lower income family at the time it initially occupied such dwelling unit, except that such payments may be made with respect to unoccupied units for a period not exceeding sixty days (A) in the event that a family vacates a dwelling unit before the expiration date of the lease for occupancy or (B) where a good faith effort is being made to fill an unoccupied unit, and, subject to the provisions of the following sentence, such payments may be made, in the case of a newly constructed or substantially rehabilitated project, after such sixty-day period in an amount equal to the debt service attributable to such an unoccupied dwelling unit for a period not to exceed one year, if a good faith effort is being made to fill the unit and the unit provides decent, safe, and sanitary housing. No such payment may be made after such sixty-day period if the Secretary determines that the dwelling unit is in a project which provides the owner with revenues exceeding the costs incurred by such owner with respect to such project.

(5) The Secretary shall take such steps as may be necessary, including the making of contracts for assistance payments in amounts in excess of the amounts required at the time of the initial renting of dwelling units, the reservation of annual contributions authority for the purpose of amending housing assistance contracts, or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts, to assure that assistance payments are increased on a timely basis to cover increases in maximum monthly rents or decreases in family incomes.

(6) Redesignated (5).

(7) Repealed. Pub. L. 105–276, title V, § 550(a)(3)(C), Oct. 21, 1998, 112 Stat. 2609.

(8)(A) Not less than one year before termination of any contract under which assistance payments are received under this section, other than a contract for tenant-based assistance under this section, an owner shall provide written notice to the Secretary and the tenants involved of the proposed termination. The notice shall also include a statement that, if the Congress makes funds available, the owner and the Secretary may agree to a renewal of the contract, thus avoiding termination, and that in the event of termination the Department of Housing and Urban Development will provide tenant-based rental assistance to all eligible residents, enabling them to choose the place they wish to rent, which is likely to include the dwelling unit in which they currently reside. Any contract covered by this paragraph that is renewed may be renewed for a period of up to 1 year or any number or years, with payments subject to the availability of appropriations for any year.

(B) In the event the owner does not provide the notice required, the owner may not evict the tenants or increase the tenants' rent payment until such time as the owner has provided the notice and 1 year has elapsed. The Secretary may allow the owner to renew the terminating contract for a period of time sufficient to give tenants 1 year of advance notice under such terms and conditions as the Secretary may require.

(C) Any notice under this paragraph shall also comply with any additional requirements established by the Secretary.

(D) For purposes of this paragraph, the term ''termination'' means the expiration of the assistance contract or an owner's refusal to renew the assistance contract, and such term shall include termination of the contract for business reasons.

(9)(A) That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.

(B) An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.

(C)(i) Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking.

(ii) Notwithstanding clause (i) or any Federal, State, or local law to the contrary, an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.

(iii) Nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.

(iv) Nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.

(v) Nothing in clause (i) may be construed to limit the authority of an owner, manager, or public housing agency to evict or terminate from assistance any tenant or lawful occupant if the owner, manager or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance.

(vi) Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(d) Required provisions and duration of contracts for assistance payments; waiver of limitation

(1) Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that—

(A) the selection of tenants shall be the function of the owner, subject to the annual contributions contract between the Secretary and the agency, except that with respect to the certificate and moderate rehabilitation programs only, for the purpose of selecting families to be assisted, the public housing agency may establish local preferences, consistent with the public housing agency plan submitted under section 1437c–1 of this title by the public housing agency and that an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission;

(B)(i) the lease between the tenant and the owner shall be for at least one year or the term of such contract, whichever is shorter, and shall contain other terms and conditions specified by the Secretary;

(ii) during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence;

(iii) during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for

termination of tenancy, except that: (I) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights or program assistance, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (II) Notwithstanding[1] subclause (I) or any Federal, State, or local law to the contrary, a public housing agency may terminate assistance to, or an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.[2] (III) nothing in subclause (I) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (IV) nothing in subclause (I) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (V) nothing in subclause (I) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance,[3] to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (VI) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.;[4]

(iv) any termination of tenancy shall be preceded by the owner's provision of written notice to the tenant specifying the grounds for such action; and

(v) it shall be cause for termination of the tenancy of a tenant if such tenant—

(I) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(II) is violating a condition of probation or parole imposed under Federal or State law;

(C) maintenance and replacement (including redecoration) shall be in accordance with the standard practice for the building concerned as established by the owner and agreed to by the agency; and

(D) the agency and the owner shall carry out such other appropriate terms and conditions as may be mutually agreed to by them.

(2)(A) Each contract for an existing structure entered into under this section shall be for a term of not less than one month nor more than one hundred and eighty months. The Secretary shall permit public housing agencies to enter into contracts for assistance payments of less than 12 months duration in order to avoid disruption in assistance to eligible families if the annual contributions contract is within 1 year of its expiration date.

(B)(i) In determining the amount of assistance provided under an assistance contract for project-based assistance under this paragraph or a contract for assistance for housing constructed or substantially rehabilitated pursuant to assistance provided under subsection (b)(2) of this section (as such subsection existed immediately before October 1, 1983), the Secretary may consider and annually adjust, with respect to such project, for the cost of employing or otherwise retaining the services of one or more service coordinators under section 661[5] of the Housing and Community Development Act of 1992 [42 U.S.C. 13631] to coordinate the provision of any services within the project for residents of the project who are elderly or disabled families.

(ii) The budget authority available under section 1437c(c) of this title for assistance under this section is authorized to be increased by $15,000,000 on or after October 1, 1992, and by $15,000,000 on or after October 1, 1993. Amounts made available under this subparagraph shall be used to provide additional amounts under annual contributions contracts for assistance under this section which shall be made available through assistance contracts only for the purpose of providing service coordinators under clause (i) for projects receiving project-based assistance under this paragraph and to provide ad-

[1] So in original. "Notwithstanding" probably should not be capitalized.

[2] So in original. The period probably should be a semicolon.

[3] So in original. The comma probably should follow "to".

[4] So in original. The period probably should not appear.

[5] So in original. Probably should be section "671".

ditional amounts under contracts for assistance for projects constructed or substantially rehabilitated pursuant to assistance provided under subsection (b)(2) of this section (as such subsection existed immediately before October 1, 1983) only for such purpose.

(C) An assistance contract for project-based assistance under this paragraph shall provide that the owner shall ensure and maintain compliance with subtitle C of title VI of the Housing and Community Development Act of 1992 [42 U.S.C. 13601 et seq.] and any regulations issued under such subtitle.

(D) An owner of a covered section 8 housing project (as such term is defined in section 659 of the Housing and Community Development Act of 1992 [42 U.S.C. 13619]) may give preference for occupancy of dwelling units in the project, and reserve units for occupancy, in accordance with subtitle D of title VI of the Housing and Community Development Act of 1992 [42 U.S.C. 13611 et seq.].

(3) Notwithstanding any other provision of law, with the approval of the Secretary the public housing agency administering a contract under this section with respect to existing housing units may exercise all management and maintenance responsibilities with respect to those units pursuant to a contract between such agency and the owner of such units.

(4) A public housing agency that serves more than one unit of general local government may, at the discretion of the agency, in allocating assistance under this section, give priority to disabled families that are not elderly families.

(5) CALCULATION OF LIMIT.—Any contract entered into under section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 shall be excluded in computing the limit on project-based assistance under this subsection.

(6) TREATMENT OF COMMON AREAS.—The Secretary may not provide any assistance amounts pursuant to an existing contract for project-based assistance under this section for a housing project and may not enter into a new or renewal contract for such assistance for a project unless the owner of the project provides consent, to such local law enforcement agencies as the Secretary determines appropriate, for law enforcement officers of such agencies to enter common areas of the project at any time and without advance notice upon a determination of probable cause by such officers that criminal activity is taking place in such areas.

(e) Restrictions on contracts for assistance payments

(1) Nothing in this chapter shall be deemed to prohibit an owner from pledging, or offering as security for any loan or obligation, a contract for assistance payments entered into pursuant to this section: *Provided*, That such security is in connection with a project constructed or rehabilitated pursuant to authority granted in this section, and the terms of the financing or any refinancing have been approved by the Secretary.

(2) Repealed. Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

(f) Definitions

As used in this section—

(1) the term ''owner'' means any private person or entity, including a cooperative, an agency of the Federal Government, or a public housing agency, having the legal right to lease or sublease dwelling units;

(2) the terms ''rent'' or ''rental'' mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative;

(3) the term ''debt service'' means the required payments for principal and interest made with respect to a mortgage secured by housing assisted under this chapter;

(4) the term ''participating jurisdiction'' means a State or unit of general local government designated by the Secretary to be a participating jurisdiction under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.];

(5) the term ''drug-related criminal activity'' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 802 of title 21);

(6) the term ''project-based assistance'' means rental assistance under subsection (b) of this section that is attached to the structure pursuant to subsection (d)(2) or (*o*)(13) of this section;

(7) the term ''tenant-based assistance'' means rental assistance under subsection (*o*) of this section that is not project-based assistance and that provides for the eligible family to select suitable housing and to move to other suitable housing;

(8) the term ''domestic violence'' has the same meaning given the term in section 13925 of this title;

(9) the term ''dating violence'' has the same meaning given the term in section 13925 of this title;

(10) the term ''stalking'' means—

(A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or

(ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and

(B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to—

(i) that person;

(ii) a member of the immediate family of that person; or

(iii) the spouse or intimate partner of that person; and

(11) the term ''immediate family member'' means, with respect to a person—

(A) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or

(B) any other person living in the household of that person and related to that person by blood or marriage.

(g) Regulations applicable for implementation of assistance payments

Notwithstanding any other provision of this chapter, assistance payments under this section

may be provided, in accordance with regulations prescribed by the Secretary, with respect to some or all of the units in any project approved pursuant to section 1701q of title 12.

(h) Nonapplicability of inconsistent provisions to contracts for assistance payments

Sections 1437c(e) and 1437d of this title (except as provided in section 1437d(j)(3) of this title), and any other provisions of this chapter which are inconsistent with the provisions of this section shall not apply to contracts for assistance entered into under this section.

(i) Receipt of assistance by public housing agency under other law not to be considered

The Secretary may not consider the receipt by a public housing agency of assistance under section 811(b)(1) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8013(b)(1)], or the amount received, in approving assistance for the agency under this section or determining the amount of such assistance to be provided.

(j) Repealed. Pub. L. 105–276, title V, § 550(a)(6), Oct. 21, 1998, 112 Stat. 2609

(k) Verification of income

The Secretary shall establish procedures which are appropriate and necessary to assure that income data provided to public housing agencies and owners by families applying for or receiving assistance under this section is complete and accurate. In establishing such procedures, the Secretary shall randomly, regularly, and periodically select a sample of families to authorize the Secretary to obtain information on these families for the purpose of income verification, or to allow those families to provide such information themselves. Such information may include, but is not limited to, data concerning unemployment compensation and Federal income taxation and data relating to benefits made available under the Social Security Act [42 U.S.C. 301 et seq.], the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], or title 38. Any such information received pursuant to this subsection shall remain confidential and shall be used only for the purpose of verifying incomes in order to determine eligibility of families for benefits (and the amount of such benefits, if any) under this section.

(*l*), (m) Repealed. Pub. L. 98–181, title II, § 209(a)(5), Nov. 30, 1983, 97 Stat. 1183

(n) Repealed. Pub. L. 105–276, title V, § 550(a)(7), Oct. 21, 1998, 112 Stat. 2609

(*o*) Voucher program

(1) Authority

(A) In general

The Secretary may provide assistance to public housing agencies for tenant-based assistance using a payment standard established in accordance with subparagraph (B). The payment standard shall be used to determine the monthly assistance that may be paid for any family, as provided in paragraph (2).

(B) Establishment of payment standard

Except as provided under subparagraph (D), the payment standard for each size of dwelling unit in a market area shall not exceed 110 percent of the fair market rental established under subsection (c) of this section for the same size of dwelling unit in the same market area and shall be not less than 90 percent of that fair market rental.

(C) Set-aside

The Secretary may set aside not more than 5 percent of the budget authority made available for assistance under this subsection as an adjustment pool. The Secretary shall use amounts in the adjustment pool to make adjusted payments to public housing agencies under subparagraph (A), to ensure continued affordability, if the Secretary determines that additional assistance for such purpose is necessary, based on documentation submitted by a public housing agency.

(D) Approval

The Secretary may require a public housing agency to submit the payment standard of the public housing agency to the Secretary for approval, if the payment standard is less than 90 percent of the fair market rental or exceeds 110 percent of the fair market rental.

(E) Review

The Secretary—

(i) shall monitor rent burdens and review any payment standard that results in a significant percentage of the families occupying units of any size paying more than 30 percent of adjusted income for rent; and

(ii) may require a public housing agency to modify the payment standard of the public housing agency based on the results of that review.

(2) Amount of monthly assistance payment

Subject to the requirement under section 1437a(a)(3) of this title (relating to minimum rental amount), the monthly assistance payment for a family receiving assistance under this subsection shall be determined as follows:

(A) Tenant-based assistance; rent not exceeding payment standard

For a family receiving tenant-based assistance, if the rent for the family (including the amount allowed for tenant-paid utilities) does not exceed the applicable payment standard established under paragraph (1), the monthly assistance payment for the family shall be equal to the amount by which the rent (including the amount allowed for tenant-paid utilities) exceeds the greatest of the following amounts, rounded to the nearest dollar:

(i) 30 percent of the monthly adjusted income of the family.

(ii) 10 percent of the monthly income of the family.

(iii) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the actual housing costs of the family, is specifically designated by that agency to meet the housing costs of the family, the portion of those payments that is so designated.

(B) Tenant-based assistance; rent exceeding payment standard

For a family receiving tenant-based assistance, if the rent for the family (including the amount allowed for tenant-paid utilities) exceeds the applicable payment standard established under paragraph (1), the monthly assistance payment for the family shall be equal to the amount by which the applicable payment standard exceeds the greatest of amounts under clauses (i), (ii), and (iii) of subparagraph (A).

(C) Families receiving project-based assistance

For a family receiving project-based assistance, the rent that the family is required to pay shall be determined in accordance with section 1437a(a)(1) of this title, and the amount of the housing assistance payment shall be determined in accordance with subsection (c)(3) of this section.

(3) 40 percent limit

At the time a family initially receives tenant-based assistance under this section with respect to any dwelling unit, the total amount that a family may be required to pay for rent may not exceed 40 percent of the monthly adjusted income of the family.

(4) Eligible families

To be eligible to receive assistance under this subsection, a family shall, at the time a family initially receives assistance under this subsection, be a low-income family that is—

(A) a very low-income family;

(B) a family previously assisted under this subchapter;

(C) a low-income family that meets eligibility criteria specified by the public housing agency;

(D) a family that qualifies to receive a voucher in connection with a homeownership program approved under title IV of the Cranston-Gonzalez National Affordable Housing Act; or

(E) a family that qualifies to receive a voucher under section 223 or 226 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4113, 4116].

(5) Annual review of family income

(A) In general

Reviews of family incomes for purposes of this section shall be subject to the provisions of section 3544 of this title and shall be conducted upon the initial provision of housing assistance for the family and thereafter not less than annually.

(B) Procedures

Each public housing agency administering assistance under this subsection shall establish procedures that are appropriate and necessary to ensure that income data provided to the agency and owners by families applying for or receiving assistance from the agency is complete and accurate. Each public housing agency shall, not less frequently than annually, conduct a review of the family income of each family receiving assistance under this subsection.

(6) Selection of families and disapproval of owners

(A) Preferences

(i) Authority to establish

Each public housing agency may establish a system for making tenant-based assistance under this subsection available on behalf of eligible families that provides preference for such assistance to eligible families having certain characteristics, which may include a preference for families residing in public housing who are victims of a crime of violence (as such term is defined in section 16 of title 18) that has been reported to an appropriate law enforcement agency.

(ii) Content

Each system of preferences established pursuant to this subparagraph shall be based upon local housing needs and priorities, as determined by the public housing agency using generally accepted data sources, including any information obtained pursuant to an opportunity for public comment as provided under section 1437c–1(f) of this title and under the requirements applicable to the comprehensive housing affordability strategy for the relevant jurisdiction.

(B) Selection of tenants

Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit)[6] shall provide that the screening and selection of families for those units shall be the function of the owner. In addition, the public housing agency may elect to screen applicants for the program in accordance with such requirements as the Secretary may establish. That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission. Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(C) PHA disapproval of owners

In addition to other grounds authorized by the Secretary, a public housing agency may elect not to enter into a housing assistance payments contract under this subsection with an owner who refuses, or has a history of refusing, to take action to terminate tenancy for activity engaged in by the tenant, any member of the tenant's household, any guest, or any other person under the control of any member of the household that—

(i) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other tenants or employees of the

[6] So in original. No opening parenthesis was enacted.

public housing agency, owner, or other manager of the housing;

(ii) threatens the health or safety of, or right to peaceful enjoyment of the residences by, persons residing in the immediate vicinity of the premises; or

(iii) is drug-related or violent criminal activity.

(7) Leases and tenancy

Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit—

(A) shall provide that the lease between the tenant and the owner shall be for a term of not less than 1 year, except that the public housing agency may approve a shorter term for an initial lease between the tenant and the dwelling unit owner if the public housing agency determines that such shorter term would improve housing opportunities for the tenant and if such shorter term is considered to be a prevailing local market practice;

(B) shall provide that the dwelling unit owner shall offer leases to tenants assisted under this subsection that—

(i) are in a standard form used in the locality by the dwelling unit owner; and

(ii) contain terms and conditions that—

(I) are consistent with State and local law; and

(II) apply generally to tenants in the property who are not assisted under this section;

(C) shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence;

(D) shall provide that during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any violent or drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy; except that (i) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (ii) LIMITATION.—Notwithstanding[7] clause (i) or any Federal, State, or local law to the contrary, a public housing agency may terminate assistance to, or an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.[8] (iii) nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (iv) nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (v) nothing in clause (i) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance to[9] any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (vi) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.;[10]

(E) shall provide that any termination of tenancy under this subsection shall be preceded by the provision of written notice by the owner to the tenant specifying the

[7] So in original. There probably should be no heading or capitalization of ''Notwithstanding''.

[8] So in original. The period probably should be a semicolon.

[9] So in original. A comma probably should follow ''assistance to''.

[10] So in original. The period probably should not appear.

grounds for that action, and any relief shall be consistent with applicable State and local law; and

(F) may include any addenda required by the Secretary to set forth the provisions of this subsection.

(8) Inspection of units by PHAs

(A) In general

Except as provided in paragraph (11), for each dwelling unit for which a housing assistance payment contract is established under this subsection, the public housing agency shall inspect the unit before any assistance payment is made to determine whether the dwelling unit meets the housing quality standards under subparagraph (B).

(B) Housing quality standards

The housing quality standards under this subparagraph are standards for safe and habitable housing established—

(i) by the Secretary for purposes of this subsection; or

(ii) by local housing codes or by codes adopted by public housing agencies that—

(I) meet or exceed housing quality standards, except that the Secretary may waive the requirement under this subclause to significantly increase access to affordable housing and to expand housing opportunities for families assisted under this subsection, except where such waiver could adversely affect the health or safety of families assisted under this subsection; and

(II) do not severely restrict housing choice [11]

(C) Inspection

The determination required under subparagraph (A) shall be made by the public housing agency (or other entity, as provided in paragraph (11)) pursuant to an inspection of the dwelling unit conducted before any assistance payment is made for the unit. Inspections of dwelling units under this subparagraph shall be made before the expiration of the 15-day period beginning upon a request by the resident or landlord to the public housing agency or, in the case of any public housing agency that provides assistance under this subsection on behalf of more than 1250 families, before the expiration of a reasonable period beginning upon such request. The performance of the agency in meeting the 15-day inspection deadline shall be taken into consideration in assessing the performance of the agency.

(D) Annual inspections

Each public housing agency providing assistance under this subsection (or other entity, as provided in paragraph (11)) shall make an annual inspection of each assisted dwelling unit during the term of the housing assistance payments contract for the unit to determine whether the unit is maintained in accordance with the requirements under subparagraph (A). The agency (or other entity) shall retain the records of the inspection for a reasonable time and shall make the records available upon request to the Secretary, the Inspector General for the Department of Housing and Urban Development, and any auditor conducting an audit under section 1437c(h) of this title.

(E) Inspection guidelines

The Secretary shall establish procedural guidelines and performance standards to facilitate inspections of dwelling units and conform such inspections with practices utilized in the private housing market. Such guidelines and standards shall take into consideration variations in local laws and practices of public housing agencies and shall provide flexibility to authorities appropriate to facilitate efficient provision of assistance under this subsection.

(9) Vacated units

If an assisted family vacates a dwelling unit for which rental assistance is provided under a housing assistance payment contract before the expiration of the term of the lease for the unit, rental assistance pursuant to such contract may not be provided for the unit after the month during which the unit was vacated.

(10) Rent

(A) Reasonableness

The rent for dwelling units for which a housing assistance payment contract is established under this subsection shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted local market.

(B) Negotiations

A public housing agency (or other entity, as provided in paragraph (11)) shall, at the request of a family receiving tenant-based assistance under this subsection, assist that family in negotiating a reasonable rent with a dwelling unit owner. A public housing agency (or such other entity) shall review the rent for a unit under consideration by the family (and all rent increases for units under lease by the family) to determine whether the rent (or rent increase) requested by the owner is reasonable. If a public housing agency (or other such entity) determines that the rent (or rent increase) for a dwelling unit is not reasonable, the public housing agency (or other such entity) shall not make housing assistance payments to the owner under this subsection with respect to that unit.

(C) Units exempt from local rent control

If a dwelling unit for which a housing assistance payment contract is established under this subsection is exempt from local rent control provisions during the term of that contract, the rent for that unit shall be reasonable in comparison with other units in the market area that are exempt from local rent control provisions.

(D) Timely payments

Each public housing agency shall make timely payment of any amounts due to a

[11] So in original. Probably should be followed by a period.

dwelling unit owner under this subsection. The housing assistance payment contract between the owner and the public housing agency may provide for penalties for the late payment of amounts due under the contract, which shall be imposed on the public housing agency in accordance with generally accepted practices in the local housing market.

(E) Penalties

Unless otherwise authorized by the Secretary, each public housing agency shall pay any penalties from administrative fees collected by the public housing agency, except that no penalty shall be imposed if the late payment is due to factors that the Secretary determines are beyond the control of the public housing agency.

(11) Leasing of units owned by PHA

If an eligible family assisted under this subsection leases a dwelling unit (other than a public housing dwelling unit) that is owned by a public housing agency administering assistance under this subsection, the Secretary shall require the unit of general local government or another entity approved by the Secretary, to make inspections required under paragraph (8) and rent determinations required under paragraph (10). The agency shall be responsible for any expenses of such inspections and determinations.

(12) Assistance for rental of manufactured housing

(A) In general

A public housing agency may make assistance payments in accordance with this subsection on behalf of a family that utilizes a manufactured home as a principal place of residence. Such payments may be made only for the rental of the real property on which the manufactured home owned by any such family is located.

(B) Rent calculation

(i) Charges included

For assistance pursuant to this paragraph, the rent for the space on which a manufactured home is located and with respect to which assistance payments are to be made shall include maintenance and management charges and tenant-paid utilities.

(ii) Payment standard

The public housing agency shall establish a payment standard for the purpose of determining the monthly assistance that may be paid for any family under this paragraph. The payment standard may not exceed an amount approved or established by the Secretary.

(iii) Monthly assistance payment

The monthly assistance payment for a family assisted under this paragraph shall be determined in accordance with paragraph (2).

(13) PHA project-based assistance

(A) In general

A public housing agency may use amounts provided under an annual contributions contract under this subsection to enter into a housing assistance payment contract with respect to an existing, newly constructed, or rehabilitated structure, that is attached to the structure, subject to the limitations and requirements of this paragraph.

(B) Percentage limitation

Not more than 20 percent of the funding available for tenant-based assistance under this section that is administered by the agency may be attached to structures pursuant to this paragraph.

(C) Consistency with PHA plan and other goals

A public housing agency may approve a housing assistance payment contract pursuant to this paragraph only if the contract is consistent with—

(i) the public housing agency plan for the agency approved under section 1437c–1 of this title; and

(ii) the goal of deconcentrating poverty and expanding housing and economic opportunities.

(D) Income mixing requirement

(i) In general

Not more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payment contract for project-based assistance pursuant to this paragraph.

(ii) Exceptions

The limitation under clause (i) shall not apply in the case of assistance under a contract for housing consisting of single family properties or for dwelling units that are specifically made available for households comprised of elderly families, disabled families, and families receiving supportive services.

(E) Resident choice requirement

A housing assistance payment contract pursuant to this paragraph shall provide as follows:

(i) Mobility

Each low-income family occupying a dwelling unit assisted under the contract may move from the housing at any time after the family has occupied the dwelling unit for 12 months.

(ii) Continued assistance

Upon such a move, the public housing agency shall provide the low-income family with tenant-based rental assistance under this section or such other tenant-based rental assistance that is subject to comparable income, assistance, rent contribution, affordability, and other requirements, as the Secretary shall provide by regulation. If such rental assistance is not immediately available to fulfill the requirement under the preceding sentence with respect to a low-income family, such requirement may be met by providing the family priority to receive the next voucher or other tenant-based rental assistance

amounts that become available under the program used to fulfill such requirement.

(F) Contract term

A housing assistance payment contract pursuant to this paragraph between a public housing agency and the owner of a structure may have a term of up to 10 years, subject to the availability of sufficient appropriated funds for the purpose of renewing expiring contracts for assistance payments, as provided in appropriations Acts and in the agency's annual contributions contract with the Secretary, and to annual compliance with the inspection requirements under paragraph (8), except that the agency shall not be required to make annual inspections of each assisted unit in the development. The contract may specify additional conditions for its continuation. If the units covered by the contract are owned by the agency, the term of the contract shall be agreed upon by the agency and the unit of general local government or other entity approved by the Secretary in the manner provided under paragraph (11).

(G) Extension of contract term

A public housing agency may enter into a contract with the owner of a structure assisted under a housing assistance payment contract pursuant to this paragraph to extend the term of the underlying housing assistance payment contract for such period as the agency determines to be appropriate to achieve long-term affordability of the housing or to expand housing opportunities. Such a contract shall provide that the extension of such term shall be contingent upon the future availability of appropriated funds for the purpose of renewing expiring contracts for assistance payments, as provided in appropriations Acts, and may obligate the owner to have such extensions of the underlying housing assistance payment contract accepted by the owner and the successors in interest of the owner.

(H) Rent calculation

A housing assistance payment contract pursuant to this paragraph shall establish rents for each unit assisted in an amount that does not exceed 110 percent of the applicable fair market rental (or any exception payment standard approved by the Secretary pursuant to paragraph (1)(D)), except that if a contract covers a dwelling unit that has been allocated low-income housing tax credits pursuant to section 42 of title 26 and is not located in a qualified census tract (as such term is defined in subsection (d) of such section 42), the rent for such unit may be established at any level that does not exceed the rent charged for comparable units in the building that also receive the low-income housing tax credit but do not have additional rental assistance. The rents established by housing assistance payment contracts pursuant to this paragraph may vary from the payment standards established by the public housing agency pursuant to paragraph (1)(B), but shall be subject to paragraph (10)(A).

(I) Rent adjustments

A housing assistance payments contract pursuant to this paragraph shall provide for rent adjustments, except that—

(i) the adjusted rent for any unit assisted shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted, local market and may not exceed the maximum rent permitted under subparagraph (H); and

(ii) the provisions of subsection (c)(2)(C) of this section shall not apply.

(J) Tenant selection

A public housing agency shall select families to receive project-based assistance pursuant to this paragraph from its waiting list for assistance under this subsection. Eligibility for such project-based assistance shall be subject to the provisions of section 1437n(b) of this title that apply to tenant-based assistance. The agency may establish preferences or criteria for selection for a unit assisted under this paragraph that are consistent with the public housing agency plan for the agency approved under section 1437c–1 of this title. Any family that rejects an offer of project-based assistance under this paragraph or that is rejected for admission to a structure by the owner or manager of a structure assisted under this paragraph shall retain its place on the waiting list as if the offer had not been made. The owner or manager of a structure assisted under this paragraph shall not admit any family to a dwelling unit assisted under a contract pursuant to this paragraph other than a family referred by the public housing agency from its waiting list. Subject to its waiting list policies and selection preferences, a public housing agency may place on its waiting list a family referred by the owner or manager of a structure and may maintain a separate waiting list for assistance under this paragraph, but only if all families on the agency's waiting list for assistance under this subsection are permitted to place their names on the separate list.

(K) Vacated units

Notwithstanding paragraph (9), a housing assistance payment contract pursuant to this paragraph may provide as follows:

(i) Payment for vacant units

That the public housing agency may, in its discretion, continue to provide assistance under the contract, for a reasonable period not exceeding 60 days, for a dwelling unit that becomes vacant, but only: (I) if the vacancy was not the fault of the owner of the dwelling unit; and (II) the agency and the owner take every reasonable action to minimize the likelihood and extent of any such vacancy. Rental assistance may not be provided for a vacant unit after the expiration of such period.

(ii) Reduction of contract

That, if despite reasonable efforts of the agency and the owner to fill a vacant unit, no eligible family has agreed to rent the

unit within 120 days after the owner has notified the agency of the vacancy, the agency may reduce its housing assistance payments contract with the owner by the amount equivalent to the remaining months of subsidy attributable to the vacant unit. Amounts deobligated pursuant to such a contract provision shall be available to the agency to provide assistance under this subsection.

Eligible applicants for assistance under this subsection may enforce provisions authorized by this subparagraph.

(14) Inapplicability to tenant-based assistance

Subsection (c) of this section shall not apply to tenant-based assistance under this subsection.

(15) Homeownership option

(A) In general

A public housing agency providing assistance under this subsection may, at the option of the agency, provide assistance for homeownership under subsection (y) of this section.

(B) Alternative administration

A public housing agency may contract with a nonprofit organization to administer a homeownership program under subsection (y) of this section.

(16) Rental vouchers for relocation of witnesses and victims of crime

(A) Witnesses

Of amounts made available for assistance under this subsection in each fiscal year, the Secretary, in consultation with the Inspector General, shall make available such sums as may be necessary for the relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to requests from law enforcement or prosecution agencies.

(B) Victims of crime

(i) In general

Of amounts made available for assistance under this section in each fiscal year, the Secretary shall make available such sums as may be necessary for the relocation of families residing in public housing who are victims of a crime of violence (as that term is defined in section 16 of title 18) that has been reported to an appropriate law enforcement agency.

(ii) Notice

A public housing agency that receives amounts under this subparagraph shall establish procedures for providing notice of the availability of that assistance to families that may be eligible for that assistance.

(17) Deed restrictions

Assistance under this subsection may not be used in any manner that abrogates any local deed restriction that applies to any housing consisting of 1 to 4 dwelling units. This paragraph may not be construed to affect the provisions or applicability of the Fair Housing Act [42 U.S.C. 3601 et seq.].

(18) Rental assistance for assisted living facilities

(A) In general

A public housing agency may make assistance payments on behalf of a family that uses an assisted living facility as a principal place of residence and that uses such supportive services made available in the facility as the agency may require. Such payments may be made only for covering costs of rental of the dwelling unit in the assisted living facility and not for covering any portion of the cost of residing in such facility that is attributable to service relating to assisted living.

(B) Rent calculation

(i) Charges included

For assistance pursuant to this paragraph, the rent of the dwelling unit that is an assisted living facility with respect to which assistance payments are made shall include maintenance and management charges related to the dwelling unit and tenant-paid utilities. Such rent shall not include any charges attributable to services relating to assisted living.

(ii) Payment standard

In determining the monthly assistance that may be paid under this paragraph on behalf of any family residing in an assisted living facility, the public housing agency shall utilize the payment standard established under paragraph (1), for the market area in which the assisted living facility is located, for the applicable size dwelling unit.

(iii) Monthly assistance payment

The monthly assistance payment for a family assisted under this paragraph shall be determined in accordance with paragraph (2) (using the rent and payment standard for the dwelling unit as determined in accordance with this subsection).

(C) Definition

For the purposes of this paragraph, the term ''assisted living facility'' has the meaning given that term in section 232(b) of the National Housing Act (12 U.S.C. 1715w(b)), except that such a facility may be contained within a portion of a larger multifamily housing project.

(19) Rental vouchers for Veterans Affairs supported housing program

(A) Set aside

Subject to subparagraph (C), the Secretary shall set aside, from amounts made available for rental assistance under this subsection, the amounts specified in subparagraph (B) for use only for providing such assistance through a supported housing program administered in conjunction with the Department of Veterans Affairs. Such program shall provide rental assistance on behalf of homeless veterans who have chronic mental

illnesses or chronic substance use disorders, shall require agreement of the veteran to continued treatment for such mental illness or substance use disorder as a condition of receipt of such rental assistance, and shall ensure such treatment and appropriate case management for each veteran receiving such rental assistance.

(B) Amount

The amount specified in this subparagraph is—

(i) for fiscal year 2007, the amount necessary to provide 500 vouchers for rental assistance under this subsection;

(ii) for fiscal year 2008, the amount necessary to provide 1,000 vouchers for rental assistance under this subsection;

(iii) for fiscal year 2009, the amount necessary to provide 1,500 vouchers for rental assistance under this subsection;

(iv) for fiscal year 2010, the amount necessary to provide 2,000 vouchers for rental assistance under this subsection; and

(v) for fiscal year 2011, the amount necessary to provide 2,500 vouchers for rental assistance under this subsection.

(C) Funding through incremental assistance

In any fiscal year, to the extent that this paragraph requires the Secretary to set aside rental assistance amounts for use under this paragraph in an amount that exceeds the amount set aside in the preceding fiscal year, such requirement shall be effective only to such extent or in such amounts as are or have been provided in appropriation Acts for such fiscal year for incremental rental assistance under this subsection.

(20) Prohibited basis for termination of assistance

(A) In general

A public housing agency may not terminate assistance to a participant in the voucher program on the basis of an incident or incidents of actual or threatened domestic violence, dating violence, or stalking against that participant.

(B) Construal of lease provisions

Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered a serious or repeated violation of the lease by the victim or threatened victim of that criminal activity justifying termination of assistance to the victim or threatened victim.

(C) Termination on the basis of criminal activity

Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered cause for termination of assistance for any participant or immediate member of a participant's family who is a victim of the domestic violence, dating violence, or stalking.

(D) Exceptions

(i) Public housing authority right to terminate for criminal acts

Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of the public housing agency to terminate voucher assistance to individuals who engage in criminal acts of physical violence against family members or others.

(ii) Compliance with court orders

Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.

(iii) Public housing authority right to terminate voucher assistance for lease violations

Nothing in subparagraph (A), (B), or (C) limit[12] any otherwise available authority of the public housing agency to terminate voucher assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to terminate.

(iv) Public housing authority right to terminate voucher assistance for imminent threat

Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of the public housing agency to terminate voucher assistance to a tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property or public housing agency if that tenant is not evicted or terminated from assistance.

(v) Preemption

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(p) Shared housing for elderly and handicapped

In order to assist elderly families (as defined in section 1437a(b)(3) of this title who elect to live in a shared housing arrangement in which they benefit as a result of sharing the facilities of a dwelling with others in a manner that effectively and efficiently meets their housing needs and thereby reduces their cost of housing, the Secretary shall permit assistance provided under the existing housing and moderate rehabilitation programs to be used by such families in such arrangements. In carrying out this subsection, the Secretary shall issue minimum habitability standards for the purpose of assuring decent, safe, and sanitary housing for such fami-

[12] So in original. Probably should be ''limits''.

lies while taking into account the special circumstances of shared housing.

(q) Administrative fees

(1) Fee for ongoing costs of administration

(A) In general

The Secretary shall establish fees for the costs of administering the tenant-based assistance, certificate, voucher, and moderate rehabilitation programs under this section.

(B) Fiscal year 1999

(i) Calculation

For fiscal year 1999, the fee for each month for which a dwelling unit is covered by an assistance contract shall be—

(I) in the case of a public housing agency that, on an annual basis, is administering a program for not more than 600 dwelling units, 7.65 percent of the base amount; and

(II) in the case of an agency that, on an annual basis, is administering a program for more than 600 dwelling units (aa) for the first 600 units, 7.65 percent of the base amount, and (bb) for any additional dwelling units under the program, 7.0 percent of the base amount.

(ii) Base amount

For purposes of this subparagraph, the base amount shall be the higher of—

(I) the fair market rental established under subsection (c) of this section (as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998) for fiscal year 1993 for a 2-bedroom existing rental dwelling unit in the market area of the agency, and

(II) the amount that is the lesser of (aa) such fair market rental for fiscal year 1994, or (bb) 103.5 percent of the amount determined under clause (i),

adjusted based on changes in wage data or other objectively measurable data that reflect the costs of administering the program, as determined by the Secretary. The Secretary may require that the base amount be not less than a minimum amount and not more than a maximum amount.

(C) Subsequent fiscal years

For subsequent fiscal years, the Secretary shall publish a notice in the Federal Register, for each geographic area, establishing the amount of the fee that would apply for public housing agencies administering the program, based on changes in wage data or other objectively measurable data that reflect the costs of administering the program, as determined by the Secretary.

(D) Increase

The Secretary may increase the fee if necessary to reflect the higher costs of administering small programs and programs operating over large geographic areas.

(E) Decrease

The Secretary may decrease the fee for units owned by a public housing agency to reflect reasonable costs of administration.

(2) Fee for preliminary expenses

The Secretary shall also establish reasonable fees (as determined by the Secretary) for—

(A) the costs of preliminary expenses, in the amount of $500, for a public housing agency, except that such fee shall apply to an agency only in the first year that the agency administers a tenant-based assistance program under this section, and only if, immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, the agency was not administering a tenant-based assistance program under this chapter (as in effect immediately before such effective date), in connection with its initial increment of assistance received;

(B) the costs incurred in assisting families who experience difficulty (as determined by the Secretary) in obtaining appropriate housing under the programs; and

(C) extraordinary costs approved by the Secretary.

(3) Transfer of fees in cases of concurrent geographical jurisdiction

In each fiscal year, if any public housing agency provides tenant-based assistance under this section on behalf of a family who uses such assistance for a dwelling unit that is located within the jurisdiction of such agency but is also within the jurisdiction of another public housing agency, the Secretary shall take such steps as may be necessary to ensure that the public housing agency that provides the services for a family receives all or part of the administrative fee under this section (as appropriate).

(4) Applicability

This subsection shall apply to fiscal year 1999 and fiscal years thereafter.

(r) Portability

(1) IN GENERAL.—(A) Any family receiving tenant-based assistance under subsection (*o*) of this section may receive such assistance to rent an eligible dwelling unit if the dwelling unit to which the family moves is within any area in which a program is being administered under this section.

(B)(i) Notwithstanding subparagraph (A) and subject to any exceptions established under clause (ii) of this subparagraph, a public housing agency may require that any family not living within the jurisdiction of the public housing agency at the time the family applies for assistance from the agency shall, during the 12-month period beginning on the date of initial receipt of housing assistance made available on behalf of the family from such agency, lease and occupy an eligible dwelling unit located within the jurisdiction served by the agency.

(ii) The Secretary may establish such exceptions to the authority of public housing agencies established under clause (i).

(2) The public housing agency having authority with respect to the dwelling unit to which a family moves under this subsection shall have the responsibility of carrying out the provisions of this subsection with respect to the family.

(3) In providing assistance under subsection (*o*) of this section for any fiscal year, the Secretary shall give consideration to any reduction in the number of resident families incurred by a public housing agency in the preceding fiscal year as a result of the provisions of this subsection. The Secretary shall establish procedures for the compensation of public housing agencies that issue vouchers to families that move into or out of the jurisdiction of the public housing agency under portability procedures. The Secretary may reserve amounts available for assistance under subsection (*o*) of this section to compensate those public housing agencies.

(4) The provisions of this subsection may not be construed to restrict any authority of the Secretary under any other provision of law to provide for the portability of assistance under this section.

(5) LEASE VIOLATIONS.—A family may not receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has moved out of the assisted dwelling unit of the family in violation of a lease, except that a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 [42 U.S.C. 1437f] program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

(s) Prohibition of denial of certificates and vouchers to residents of public housing

In selecting families for the provision of assistance under this section (including subsection (*o*) of this section), a public housing agency may not exclude or penalize a family solely because the family resides in a public housing project.

(t) Enhanced vouchers

(1) In general

Enhanced voucher assistance under this subsection for a family shall be voucher assistance under subsection (*o*) of this section, except that under such enhanced voucher assistance—

(A) subject only to subparagraph (D), the assisted family shall pay as rent no less than the amount the family was paying on the date of the eligibility event for the project in which the family was residing on such date;

(B) the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project, and if, during any period the family makes such an election and continues to so reside, the rent for the dwelling unit of the family in such project exceeds the applicable payment standard established pursuant to subsection (*o*) of this section for the unit, the amount of rental assistance provided on behalf of the family shall be determined using a payment standard that is equal to the rent for the dwelling unit (as such rent may be increased from time-to-time), subject to paragraph (10)(A) of subsection (*o*) of this section and any other reasonable limit prescribed by the Secretary, except that a limit shall not be considered reasonable for purposes of this subparagraph if it adversely affects such assisted families;

(C) subparagraph (B) of this paragraph shall not apply and the payment standard for the dwelling unit occupied by the family shall be determined in accordance with subsection (*o*) of this section if—

(i) the assisted family moves, at any time, from such project; or

(ii) the voucher is made available for use by any family other than the original family on behalf of whom the voucher was provided; and

(D) if the income of the assisted family declines to a significant extent, the percentage of income paid by the family for rent shall not exceed the greater of 30 percent or the percentage of income paid at the time of the eligibility event for the project.

(2) Eligibility event

For purposes of this subsection, the term ''eligibility event'' means, with respect to a multifamily housing project, the prepayment of the mortgage on such housing project, the voluntary termination of the insurance contract for the mortgage for such housing project (including any such mortgage prepayment during fiscal year 1996 or a fiscal year thereafter or any insurance contract voluntary termination during fiscal year 1996 or a fiscal year thereafter), the termination or expiration of the contract for rental assistance under this section for such housing project (including any such termination or expiration during fiscal years after fiscal year 1994 prior to the effective date of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001), or the transaction under which the project is preserved as affordable housing, that, under paragraphs (3) and (4) of section 515(c), section 524(d) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), section 4113(f) of title 12, or section 1715z–1a(p) of title 12, results in tenants in such housing project being eligible for enhanced voucher assistance under this subsection.

(3) Treatment of enhanced vouchers provided under other authority

(A) In general

Notwithstanding any other provision of law, any enhanced voucher assistance provided under any authority specified in subparagraph (B) shall (regardless of the date that the amounts for providing such assistance were made available) be treated, and subject to the same requirements, as enhanced voucher assistance under this subsection.

(B) Identification of other authority

The authority specified in this subparagraph is the authority under—

(i) the 10th, 11th, and 12th provisos under the ''Preserving Existing Housing Investment'' account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104–204; 110 Stat. 2884), pursuant to such provisos, the first proviso under the ''Housing Certificate Fund'' account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Public Law 105–65; 111 Stat. 1351), or the first proviso under the ''Housing Certificate Fund'' account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105–276; 112 Stat. 2469); and

(ii) paragraphs (3) and (4) of section 515(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), as in effect before October 20, 1999.

(4) Authorization of appropriations

There are authorized to be appropriated for each of fiscal years 2000, 2001, 2002, 2003, and 2004 such sums as may be necessary for enhanced voucher assistance under this subsection.

(u) Assistance for residents of rental rehabilitation projects

In the case of low-income families living in rental projects rehabilitated under section 1437*o*[13] of this title or section 1490m of this title before rehabilitation—

(1) vouchers under this section shall be made for families who are required to move out of their units because of the physical rehabilitation activities or because of overcrowding;

(2) at the discretion of each public housing agency or other agency administering the allocation of assistance or vouchers under this section may be made for families who would have to pay more than 30 percent of their adjusted income for rent after rehabilitation whether they choose to remain in, or to move from, the project; and

(3) the Secretary shall allocate assistance for vouchers under this section to ensure that sufficient resources are available to address the physical or economic displacement, or potential economic displacement, of existing tenants pursuant to paragraphs (1) and (2).

(v) Extension of expiring contracts

The Secretary may extend expiring contracts entered into under this section for project-based loan management assistance to the extent necessary to prevent displacement of low-income families receiving such assistance as of September 30, 1996.

(w) Repealed. Pub. L. 106–74, title V, § 531(d)(2), Oct. 20, 1999, 113 Stat. 1116

(x) Family unification

(1) Increase in budget authority

The budget authority available under section 1437c(c) of this title for assistance under subsection (b) of this section is authorized to be increased by $100,000,000 on or after October 1, 1992, and by $104,200,000 on or after October 1, 1993.

(2) Use of funds

The amounts made available under this subsection shall be used only in connection with tenant-based assistance under this section on behalf of (A) any family (i) who is otherwise eligible for such assistance, and (ii) who the public child welfare agency for the jurisdiction has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child or children in out-of-home care or the delayed discharge of a child or children to the family from out-of-home care and (B) for a period not to exceed 18 months, otherwise eligible youths who have attained at least 18 years of age and not more than 21 years of age and who have left foster care at age 16 or older.

(3) Allocation

The amounts made available under this subsection shall be allocated by the Secretary through a national competition among applicants based on demonstrated need for the assistance under this subsection. To be considered for assistance, an applicant shall submit to the Secretary a written proposal containing a report from the public child welfare agency serving the jurisdiction of the applicant that describes how a lack of adequate housing in the jurisdiction is resulting in the initial or prolonged separation of children from their families, and how the applicant will coordinate with the public child welfare agency to identify eligible families and provide the families with assistance under this subsection.

(4) Definitions

For purposes of this subsection:

(A) Applicant

The term ''applicant'' means a public housing agency or any other agency responsible for administering assistance under this section.

(B) Public child welfare agency

The term ''public child welfare agency'' means the public agency responsible under applicable State law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family.

(y) Homeownership option

(1) Use of assistance for homeownership

A public housing agency providing tenant-based assistance on behalf of an eligible family under this section may provide assistance for an eligible family that purchases a dwelling unit (including a unit under a lease-purchase agreement) that will be owned by 1 or more members of the family, and will be occupied by the family, if the family—

(A) is a first-time homeowner, or owns or is acquiring shares in a cooperative;

(B) demonstrates that the family has income from employment or other sources

[13] See References in Text note below.

(other than public assistance, except that the Secretary may provide for the consideration of public assistance in the case of an elderly family or a disabled family), as determined in accordance with requirements of the Secretary, that is not less than twice the payment standard established by the public housing agency (or such other amount as may be established by the Secretary);

(C) except as provided by the Secretary, demonstrates at the time the family initially receives tenant-based assistance under this subsection that one or more adult members of the family have achieved employment for the period as the Secretary shall require;

(D) participates in a homeownership and housing counseling program provided by the agency; and

(E) meets any other initial or continuing requirements established by the public housing agency in accordance with requirements established by the Secretary.

(2) Determination of amount of assistance

(A) Monthly expenses not exceeding payment standard

If the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, do not exceed the payment standard, the monthly assistance payment shall be the amount by which the homeownership expenses exceed the highest of the following amounts, rounded to the nearest dollar:

(i) 30 percent of the monthly adjusted income of the family.

(ii) 10 percent of the monthly income of the family.

(iii) If the family is receiving payments for welfare assistance from a public agency, and a portion of those payments, adjusted in accordance with the actual housing costs of the family, is specifically designated by that agency to meet the housing costs of the family, the portion of those payments that is so designated.

(B) Monthly expenses exceed payment standard

If the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, exceed the payment standard, the monthly assistance payment shall be the amount by which the applicable payment standard exceeds the highest of the amounts under clauses (i), (ii), and (iii) of subparagraph (A).

(3) Inspections and contract conditions

(A) In general

Each contract for the purchase of a unit to be assisted under this section shall—

(i) provide for pre-purchase inspection of the unit by an independent professional; and

(ii) require that any cost of necessary repairs be paid by the seller.

(B) Annual inspections not required

The requirement under subsection (*o*)(8)(A)(ii)[14] of this section for annual inspections shall not apply to units assisted under this section.

(4) Other authority of the Secretary

The Secretary may—

(A) limit the term of assistance for a family assisted under this subsection; and

(B) modify the requirements of this subsection as the Secretary determines to be necessary to make appropriate adaptations for lease-purchase agreements.

(5) Inapplicability of certain provisions

Assistance under this subsection shall not be subject to the requirements of the following provisions:

(A) Subsection (c)(3)(B)[14] of this section.

(B) Subsection (d)(1)(B)(i) of this section.

(C) Any other provisions of this section governing maximum amounts payable to owners and amounts payable by assisted families.

(D) Any other provisions of this section concerning contracts between public housing agencies and owners.

(E) Any other provisions of this chapter that are inconsistent with the provisions of this subsection.

(6) Reversion to rental status

(A) FHA-insured mortgages

If a family receiving assistance under this subsection for occupancy of a dwelling defaults under a mortgage for the dwelling insured by the Secretary under the National Housing Act [12 U.S.C. 1701 et seq.], the family may not continue to receive rental assistance under this section unless the family (i) transfers to the Secretary marketable title to the dwelling, (ii) moves from the dwelling within the period established or approved by the Secretary, and (iii) agrees that any amounts the family is required to pay to reimburse the escrow account under section 1437u(d)(3)[14] of this title may be deducted by the public housing agency from the assistance payment otherwise payable on behalf of the family.

(B) Other mortgages

If a family receiving assistance under this subsection defaults under a mortgage not insured under the National Housing Act [12 U.S.C. 1701 et seq.], the family may not continue to receive rental assistance under this section unless it complies with requirements established by the Secretary.

(C) All mortgages

A family receiving assistance under this subsection that defaults under a mortgage may not receive assistance under this subsection for occupancy of another dwelling owned by one or more members of the family.

(7) Downpayment assistance

(A) Authority

A public housing agency may, in lieu of providing monthly assistance payments under this subsection on behalf of a family eligible for such assistance and at the discre-

[14] See References in Text note below.

tion of the public housing agency, provide assistance for the family in the form of a single grant to be used only as a contribution toward the downpayment required in connection with the purchase of a dwelling for fiscal year 2000 and each fiscal year thereafter to the extent provided in advance in appropriations Acts.

(B) Amount

The amount of a downpayment grant on behalf of an assisted family may not exceed the amount that is equal to the sum of the assistance payments that would be made during the first year of assistance on behalf of the family, based upon the income of the family at the time the grant is to be made.

(8) "First-time homeowner" defined

For purposes of this subsection, the term ''first-time homeowner'' means—

(A) a family, no member of which has had a present ownership interest in a principal residence during the 3 years preceding the date on which the family initially receives assistance for homeownership under this subsection; and

(B) any other family, as the Secretary may prescribe.

(z) Termination of section 1437f contracts and reuse of recaptured budget authority

(1) General authority

The Secretary may reuse any budget authority, in whole or part, that is recaptured on account of expiration or termination of a housing assistance payments contract only for one or more of the following:

(A) Tenant-based assistance

Pursuant to a contract with a public housing agency, to provide tenant-based assistance under this section to families occupying units formerly assisted under the terminated contract.

(B) Project-based assistance

Pursuant to a contract with an owner, to attach assistance to one or more structures under this section, for relocation of families occupying units formerly assisted under the terminated contract.

(2) Families occupying units formerly assisted under terminated contract

Pursuant to paragraph (1), the Secretary shall first make available tenant- or project-based assistance to families occupying units formerly assisted under the terminated contract. The Secretary shall provide project-based assistance in instances only where the use of tenant-based assistance is determined to be infeasible by the Secretary.

(aa) Omitted

(bb) Transfer, reuse, and rescission of budget authority

(1) Transfer of budget authority

If an assistance contract under this section, other than a contract for tenant-based assistance, is terminated or is not renewed, or if the contract expires, the Secretary shall, in order to provide continued assistance to eligible families, including eligible families receiving the benefit of the project-based assistance at the time of the termination, transfer any budget authority remaining in the contract to another contract. The transfer shall be under such terms as the Secretary may prescribe.

(2) Reuse and rescission of certain recaptured budget authority

Notwithstanding paragraph (1), if a project-based assistance contract for an eligible multifamily housing project subject to actions authorized under this subchapter is terminated or amended as part of restructuring under section 517 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, the Secretary shall recapture the budget authority not required for the terminated or amended contract and use such amounts as are necessary to provide housing assistance for the same number of families covered by such contract for the remaining term of such contract, under a contract providing for project-based or tenant-based assistance. The amount of budget authority saved as a result of the shift to project-based or tenant-based assistance shall be rescinded.

(cc) Law enforcement and security personnel

(1) In general

Notwithstanding any other provision of this chapter, in the case of assistance attached to a structure, for the purpose of increasing security for the residents of a project, an owner may admit, and assistance under this section may be provided to, police officers and other security personnel who are not otherwise eligible for assistance under the chapter.

(2) Rent requirements

With respect to any assistance provided by an owner under this subsection, the Secretary may—

(A) permit the owner to establish such rent requirements and other terms and conditions of occupancy that the Secretary considers to be appropriate; and

(B) require the owner to submit an application for those rent requirements, which application shall include such information as the Secretary, in the discretion of the Secretary, determines to be necessary.

(3) Applicability

This subsection shall apply to fiscal year 1999 and fiscal years thereafter.

(dd) Tenant-based contract renewals

Subject to amounts provided in appropriation Acts, starting in fiscal year 1999, the Secretary shall renew all expiring tenant-based annual contribution contracts under this section by applying an inflation factor based on local or regional factors to an allocation baseline. The allocation baseline shall be calculated by including, at a minimum, amounts sufficient to ensure continued assistance for the actual number of families assisted as of October 1, 1997, with appropriate upward adjustments for incremental assistance and additional families authorized subsequent to that date.

(ee) Certification and confidentiality

(1) Certification

(A) In general

An owner, manager, or public housing agency responding to subsections (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), (*o*)(20), and (r)(5) of this section may request that an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the aforementioned paragraphs. Such certification shall include the name of the perpetrator. The individual shall provide such certification within 14 business days after the individual receives a request for such certification from the owner, manager, or public housing agency.

(B) Failure to provide certification

If the individual does not provide the certification within 14 business days after the individual has received a request in writing for such certification for the owner, manager, or public housing agency, nothing in this subsection or in subsection (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), (*o*)(20), or (r)(5) of this section may be construed to limit the authority of an owner or manager to evict, or the public housing agency or assisted housing provider to terminate voucher assistance for, any tenant or lawful occupant that commits violations of a lease. The owner, manager or public housing agency may extend the 14-day deadline at their discretion.

(C) Contents

An individual may satisfy the certification requirement of subparagraph (A) by—

(i) providing the requesting owner, manager, or public housing agency with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or

(ii) producing a Federal, State, tribal, territorial, or local police or court record.

(D) Limitation

Nothing in this subsection shall be construed to require an owner, manager, or public housing agency to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this section. At their discretion, the owner, manager, or public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.

(E) Compliance not sufficient to constitute evidence of unreasonable act

Compliance with this statute by an owner, manager or public housing agency based on the certification specified in paragraphs (1)(A) and (B) of this subsection or based solely on the victim's statement or other corroborating evidence, as permitted by paragraph (1)(C) of this subsection, shall not alone be sufficient to constitute evidence of an unreasonable act or omission by an owner, manager or public housing agency, or employee thereof. Nothing in this subparagraph shall be construed to limit liability for failure to comply with the requirements of subsection (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), (*o*)(20), or (r)(5) of this section.

(F) Preemption

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(2) Confidentiality

(A) In general

All information provided to an owner, manager, or public housing agency pursuant to paragraph (1), including the fact that an individual is a victim of domestic violence, dating violence, or stalking, shall be retained in confidence by an owner, manager, or public housing agency, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is—

(i) requested or consented to by the individual in writing;

(ii) required for use in an eviction proceeding under subsection (c)(9), (d)(1)(B(ii),[15] (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), or (*o*)(20) of this section,;[16] or

(iii) otherwise required by applicable law.

(B) Notification

Public housing agencies must provide notice to tenants assisted under this section of their rights under this subsection and subsections (c)(9), (d)(1)(B(ii),[15] (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), (*o*)(20), and (r)(5) of this section, including their right to confidentiality and the limits thereof, and to owners and managers of their rights and obligations under this subsection and subsections (c)(9), (d)(1)(B(ii),[15] (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), (*o*)(20), and (r)(5) of this section.

(Sept. 1, 1937, ch. 896, title I, § 8, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 662; amended Pub. L. 94–375, § 2(d), (e), (g), Aug. 3, 1976, 90 Stat. 1068; Pub. L. 95–24, title I, § 101(c), Apr. 30, 1977, 91 Stat. 55; Pub. L. 95–128, title II,

[15] So in original. Probably should be ''(d)(1)(B)(ii),''.

[16] So in original. The comma probably should not appear.

§ 201(c)–(e), Oct. 12, 1977, 91 Stat. 1128; Pub. L. 95–557, title II, § 206(d)(1), (e), (f), Oct. 31, 1978, 92 Stat. 2091, 2092; Pub. L. 96–153, title II, §§ 202(b), 206(b), 210, 211(b), Dec. 21, 1979, 93 Stat. 1106, 1108–1110; Pub. L. 96–399, title II, § 203, title III, § 308(c)(3), Oct. 8, 1980, 94 Stat. 1629, 1641; Pub. L. 97–35, title III, §§ 322(e), 324–326(a), (e)(1), 329H(a), Aug. 13, 1981, 95 Stat. 402, 405–407, 410; Pub. L. 98–181, title II, §§ 203(b)(1), (2), 207–209(a), 210, 211, Nov. 30, 1983, 97 Stat. 1178, 1181–1183; Pub. L. 98–479, title I, § 102(b)(6)–(10), Oct. 17, 1984, 98 Stat. 2221, 2222; Pub. L. 100–242, title I, §§ 141–149, title II, § 262, Feb. 5, 1988, 101 Stat. 1849–1853, 1890; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 100–628, title X, §§ 1004(a), 1005(b)(1), (c), 1006, 1014(b), (c), 1029, Nov. 7, 1988, 102 Stat. 3264, 3265, 3269, 3272; Pub. L. 101–235, title I, § 127, title VIII, § 801(c), (g), Dec. 15, 1989, 103 Stat. 2025, 2058, 2059; Pub. L. 101–625, title II, § 289(b), title IV, § 413, title V, §§ 541–545(a), 545(2)[(b)], 546–549, 550(a), (c), 551–553, 572, title VI, §§ 603, 613(a), Nov. 28, 1990, 104 Stat. 4128, 4160, 4216–4224, 4236, 4277, 4280; Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 756; Pub. L. 102–550, title I, §§ 141–148, 185(a), title VI, §§ 623(b), 660, 674, 675, 682(b), title X, § 1012(g), Oct. 28, 1992, 106 Stat. 3713–3715, 3745, 3819, 3825, 3827, 3828, 3830, 3905; Pub. L. 103–233, title I, § 101(c)(2), (3), (d), Apr. 11, 1994, 108 Stat. 357; Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2315; Pub. L. 104–19, title I, § 1003, July 27, 1995, 109 Stat. 236; Pub. L. 104–99, title IV, §§ 402(d)(2), (3), (6)(A)(iii), (iv), 405(c), Jan. 26, 1996, 110 Stat. 41, 42, 44; Pub. L. 104–134, title I, § 101(e) [title II, §§ 203(a)–(c), 208], Apr. 26, 1996, 110 Stat. 1321–257, 1321–281, 1321–284; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–193, title IX, § 903(a)(2), Aug. 22, 1996, 110 Stat. 2348; Pub. L. 104–204, title II, § 201(g), Sept. 26, 1996, 110 Stat. 2893; Pub. L. 105–18, title II, § 10002, June 12, 1997, 111 Stat. 201; Pub. L. 105–33, title II, §§ 2003, 2004, Aug. 5, 1997, 111 Stat. 257; Pub. L. 105–65, title II, §§ 201(c), 205, title V, § 523(a), (c), Oct. 27, 1997, 111 Stat. 1364, 1365, 1406, 1407; Pub. L. 105–276, title II, § 209(a), title V, §§ 514(b)(1), 545(a), (b), 547–549(a)(2), (b), 550(a), 552–555(a), 556(a), 565(c), Oct. 21, 1998, 112 Stat. 2485, 2547, 2596–2607, 2609–2611, 2613, 2631; Pub. L. 106–74, title II, § 223, title V, §§ 523(a), 531(d), 535, 538(a), Oct. 20, 1999, 113 Stat. 1076, 1104, 1116, 1121, 1122; Pub. L. 106–246, div. B, title II, § 2801, July 13, 2000, 114 Stat. 569; Pub. L. 106–377, § 1(a)(1) [title II, §§ 205, 228, 232(a), 234], Oct. 27, 2000, 114 Stat. 1441, 1441A–24, 1441A–30, 1441A–31, 1441A–35; Pub. L. 106–569, title III, § 301(a), title IX, §§ 902(a), 903(a), Dec. 27, 2000, 114 Stat. 2952, 3026; Pub. L. 107–95, § 12, Dec. 21, 2001, 115 Stat. 921; Pub. L. 107–116, title VI, § 632, Jan. 10, 2002, 115 Stat. 2227; Pub. L. 109–162, title VI, § 606, Jan. 5, 2006, 119 Stat. 3041; Pub. L. 109–271, § 5(d), (e), Aug. 12, 2006, 120 Stat. 759; Pub. L. 109–461, title VII, § 710, Dec. 22, 2006, 120 Stat. 3441.)

REFERENCES IN TEXT

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsecs. (f)(4) and (*o*)(4)(D), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, also known as the ''HOME Investment Partnerships Act'', is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of this title. Title IV of the Act, also known as the ''Homeownership and Opportunity Through HOPE Act'', enacted subchapter II–A (§ 1437aaa et seq.) of this chapter and subchapter IV (§ 12871 et seq.) of chapter 130 of this title, amended sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, Banks and Banking, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Housing and Community Development Act of 1992, referred to in subsec. (d)(2)(C), (D), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672. Subtitle C of title VI of the Act is classified generally to subchapter I (§ 13601 et seq.) of chapter 135 of this title. Subtitle D of title VI of the Act is classified principally to subchapter II (§ 13611 et seq.) of chapter 135 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of this title and Tables.

Sections 514 and 517 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsecs. (d)(5) and (bb)(2), are sections 514 and 517 of Pub. L. 105–65, and are set out as a note under this section.

The Social Security Act, referred to in subsec. (k), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (k), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under 2011 of Title 7 and Tables.

The Fair Housing Act, referred to in subsec. (*o*)(17), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (q)(1)(B)(ii)(I), (2)(A), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

The effective date of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, referred to in subsec. (t)(2), means the effective date of H.R. 5482, as enacted by section 1(a)(1) of Pub. L. 106–377, which was approved Oct. 27, 2000.

Section 1437*o* of this title, referred to in subsec. (u), was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

Subsection (*o*)(8)(A) of this section, referred to in subsec. (y)(3)(B), does not contain a cl. (ii) and does not relate to annual inspections. For provisions of subsec. (*o*)(8) which relate to annual inspections, see subpar. (D).

Subsection (c)(3)(B) of this section, referred to in subsec. (y)(5), was repealed by Pub. L. 105–276, title V, § 550(a)(3)(A)(ii), Oct. 21, 1998, 112 Stat. 2609.

The National Housing Act, referred to in subsec. (y)(6), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 1437u(d)(3) of this title, relating to reimbursement of escrow accounts, referred to in subsec. (y)(6)(A), was repealed by Pub. L. 105–276, title V, § 509(a)(2), Oct. 21, 1998, 112 Stat. 2531.

CODIFICATION

October 20, 1999, referred to in subsec. (t)(3)(B)(ii), was in the original ''the enactment of this Act'', which was translated as meaning the enactment of Pub. L. 106–74, which enacted subsec. (t) of this section, to reflect the probable intent of Congress.

Section 203(a) of Pub. L. 100–242, as amended, which was formerly set out in a note under section 1715*l* of

Title 12, Banks and Banking, and which provided that on Nov. 28, 1990, the amendment made by section 262 of Pub. L. 100–242 is repealed and section is to read as it would without such amendment, was omitted in the general amendment of subtitle A of title II of Pub. L. 100–242 by Pub. L. 101–625.

PRIOR PROVISIONS

A prior section 8 of act Sept. 1, 1937, ch. 896, 50 Stat. 891, as amended, authorized promulgation of rules and regulations by the Authority and was classified to section 1408 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

2006—Subsec. (c)(9). Pub. L. 109–162, § 606(1), added par. (9).

Subsec. (c)(9)(C)(ii). Pub. L. 109–271, § 5(e)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: ''Notwithstanding clause (i), an owner or manager may bifurcate a lease under this section, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant.''

Subsec. (d)(1)(A). Pub. L. 109–271, § 5(d), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the selection of tenants shall be the function of the owner, subject to the annual contributions contract between the Secretary and the agency, except that with respect to the certificate and moderate rehabilitation programs only, for the purpose of selecting families to be assisted, the public housing agency may establish local preferences, consistent with the public housing agency plan submitted under section 1437c–1 of this title by the public housing agency and that an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission;''.

Pub. L. 109–162, § 606(2)(A), which directed insertion of ''and that an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission'' after ''public housing agency'', was executed by making the insertion after ''public housing agency'' the last place appearing to reflect the probable intent of Congress.

Subsec. (d)(1)(B)(ii). Pub. L. 109–162, § 606(2)(B), inserted '', and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence'' before semicolon at end.

Subsec. (d)(1)(B)(iii). Pub. L. 109–162, § 606(2)(C), inserted before semicolon at end '', except that: (I) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights or program assistance, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (II) notwithstanding subclause (I), a public housing agency may terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, or an owner or manager under this section may bifurcate a lease, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant; (III) nothing in subclause (I) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (IV) nothing in subclause (I) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (V) nothing in subclause (I) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance, to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (VI) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.''

Subsec. (d)(1)(B)(iii)(II). Pub. L. 109–271, § 5(e)(2), added subcl. (II) and struck out former subcl. (II) which read as follows: ''notwithstanding subclause (I), a public housing agency may terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, or an owner or manager under this section may bifurcate a lease, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant;''.

Subsec. (f)(8). Pub. L. 109–162, § 606(3), added par. (8).

Subsec. (f)(9). Pub. L. 109–271, § 5(e)(3)(A), struck out ''and'' after semicolon at end.

Pub. L. 109–162, § 606(3), added par. (9).

Subsec. (f)(10). Pub. L. 109–162, § 606(3), added par. (10).

Subsec. (f)(10)(A)(i). Pub. L. 109–271, § 5(e)(3)(B), substituted ''or'' for ''and'' at end.

Subsec. (f)(11). Pub. L. 109–162, § 606(3), added par. (11).

Subsec. (f)(11)(B). Pub. L. 109–271, § 5(e)(3)(C), substituted ''blood or marriage'' for ''blood and marriage''.

Subsec. (*o*)(6)(B). Pub. L. 109–271, § 5(e)(4)(A)(iii), which directed the substitution of ''admission. Nothing'' for ''admission, and that nothing'' in second sentence, was executed by making the substitution in third sentence, to reflect the probable intent of Congress.

Pub. L. 109–271, § 5(e)(4)(A)(ii), which directed the substitution of ''for admission or'' for ''for admission for'' in second sentence, was executed by substituting ''for assistance or'' for ''for assistance for'' in third sentence, to reflect the probable intent of Congress.

Pub. L. 109–271, § 5(e)(4)(A)(i), which directed amendment of second sentence of subpar. (B) by striking ''by'' after ''denial of program assistance'', was executed by striking that language in third sentence, to reflect the probable intent of Congress.

Pub. L. 109–162, § 606(4)(A), inserted ''That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance by or for denial of admission if the applicant otherwise qualifies for assistance for admission, and that nothing in this

section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.'' at end.

Subsec. (*o*)(7)(C). Pub. L. 109–162, § 606(4)(B), inserted '', and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence'' before semicolon at end.

Subsec. (*o*)(7)(D). Pub. L. 109–162, § 606(4)(C), inserted at end ''; except that (i) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (ii) notwithstanding clause (i), a public housing agency may terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, or an owner or manager may bifurcate a lease under this section, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant; (iii) nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (iv) nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (v) nothing in clause (i) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate, assistance to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (vi) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.''

Subsec. (*o*)(7)(D)(ii). Pub. L. 109–271, § 5(e)(4)(B)(i), added cl. (ii) and struck out former cl. (ii) which read as follows: ''notwithstanding clause (i), a public housing agency may terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, or an owner or manager may bifurcate a lease under this section, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant;''.

Subsec. (*o*)(7)(D)(iii). Pub. L. 109–271, § 5(e)(4)(B)(ii), substituted ''access or control'' for ''access to control''.

Subsec. (*o*)(7)(D)(v). Pub. L. 109–271, § 5(e)(4)(B)(iii), substituted ''terminate'' for ''terminate,''.

Subsec. (*o*)(19)(B). Pub. L. 109–461 reenacted heading without change and amended text generally, substituting cls. (i) to (v) relating to amounts necessary to provide vouchers for rental assistance for fiscal years 2007 to 2011 for former cls. (i) through (iv) relating to amounts necessary to provide vouchers for rental assistance for fiscal years 2003 to 2006.

Subsec. (*o*)(20). Pub. L. 109–162, § 606(4)(D), added par. (20).

Subsec. (*o*)(20)(D)(ii). Pub. L. 109–271, § 5(e)(4)(C), substituted ''distribution or'' for ''distribution''.

Subsec. (r)(5). Pub. L. 109–162, § 606(5), inserted '', except that a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit'' before period at end.

Subsec. (ee). Pub. L. 109–162, § 606(6), added subsec. (ee).

Subsec. (ee)(1)(A). Pub. L. 109–271, § 5(e)(5)(A), substituted ''the individual receives a request for such certification from the owner, manager, or public housing agency'' for ''the owner, manager, or public housing agency requests such certification''.

Subsec. (ee)(1)(B). Pub. L. 109–271, § 5(e)(5)(B), substituted ''the individual has received a request in writing for such certification for the owner, manager, or public housing agency'' for ''the owner, manager, public housing agency, or assisted housing provider has requested such certification in writing'' and ''The owner, manager or public housing'' for ''The owner, manager, public housing'' and struck out '', or assisted housing provider'' before ''may extend the 14-day deadline''.

Subsec. (ee)(1)(C)(i). Pub. L. 109–271, § 5(e)(5)(C), struck out ''sexual assault,'' after ''addressing domestic violence, dating violence,''.

Subsec. (ee)(1)(D). Pub. L. 109–271, § 5(e)(5)(D), struck out ''sexual assault,'' after ''dating violence,''.

Subsec. (ee)(1)(E). Pub. L. 109–271, § 5(e)(5)(E)(ii), struck out '', or assisted housing provider'' in two places after ''public housing agency''.

Pub. L. 109–271, § 5(e)(5)(E)(i), which directed the substitution of ''manager or public housing'' for ''manager, public housing'' wherever appearing, was executed by making the substitution for ''manager, public housing'' and ''manger, public housing'', to reflect the probable intent of Congress.

2002—Subsec. (t)(2). Pub. L. 107–116 inserted ''(including any such mortgage prepayment during fiscal year 1996 or a fiscal year thereafter or any insurance contract voluntary termination during fiscal year 1996 or a fiscal year thereafter)'' after ''insurance contract for the mortgage for such housing project''.

2001—Subsec. (*o*)(19). Pub. L. 107–95 added par. (19).

2000—Subsec. (*o*)(13). Pub. L. 106–377, § 1(a)(1) [title II, § 232(a)], reenacted heading without change and amended text generally, substituting subpars. (A) to (K) providing for funding percentage limitation, consistency of contracts with public housing agency plan and goals, income mixing requirement, resident choice requirement, contract term and its extension, rent calculation and adjustments, tenant selection, and vacated units for former subpars. (A) to (D) providing for extension of contract term, rent calculation, and adjusted rents.

Subsec. (t)(1)(B). Pub. L. 106–569, § 903(a), inserted before semicolon at end '', except that a limit shall not be considered reasonable for purposes of this subparagraph if it adversely affects such assisted families''.

Pub. L. 106–377, § 1(a)(1) [title II, § 205], inserted ''and any other reasonable limit prescribed by the Secretary'' before semicolon at end.

Pub. L. 106–246, which directed the substitution of ''the assisted family may elect to remain in the same project in which the family was residing on the date of

the eligibility event for the project, and if, during any period the family makes such an election and continues to so reside,'' for ''during any period that the assisted family continues residing in the same project in which the family was residing on the date of the eligibility event for the project, if'' in section 538 of Pub. L. 106–74, was executed by making the substitution in subsec. (t)(1)(B) of this section, which was enacted by section 538 of Pub. L. 106–74, to reflect the probable intent of Congress.

Subsec. (t)(2). Pub. L. 106–569, § 902(a), substituted ''fiscal year 1994'' for ''fiscal year 1996''.

Pub. L. 106–377, § 1(a)(1) [title II, § 228], inserted ''(including any such termination or expiration during fiscal years after fiscal year 1996 prior to the effective date of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001)'' after ''contract for rental assistance under this section for such housing project''.

Subsec. (x)(2). Pub. L. 106–377, § 1(a)(1) [title II, § 234], substituted ''(A) any family (i) who is otherwise eligible for such assistance, and (ii)'' for ''any family (A) who is otherwise eligible for such assistance, and (B)'' and inserted before period at end ''and (B) for a period not to exceed 18 months, otherwise eligible youths who have attained at least 18 years of age and not more than 21 years of age and who have left foster care at age 16 or older''.

Subsec. (y)(7), (8). Pub. L. 106–569, § 301(a), added par. (7) and redesignated former par. (7) as (8).

1999—Subsec. (c)(8)(A). Pub. L. 106–74, § 535(1), substituted ''termination of'' for ''terminating'' after ''Not less than one year before'' and ''. The notice shall also include a statement that, if the Congress makes funds available, the owner and the Secretary may agree to a renewal of the contract, thus avoiding termination, and that in the event of termination the Department of Housing and Urban Development will provide tenant-based rental assistance to all eligible residents, enabling them to choose the place they wish to rent, which is likely to include the dwelling unit in which they currently reside. Any contract covered by this paragraph that is renewed may be renewed for a period of up to 1 year or any number or years, with payments subject to the availability of appropriations for any year.'' for ''. specifying the reasons for the termination with sufficient detail to enable the Secretary to evaluate whether the termination is lawful and whether there are additional actions that can be taken by the Secretary to avoid the termination. The owner's notice shall include a statement that the owner and the Secretary may agree to a renewal of the contract, thus avoiding the termination.''

Subsec. (c)(8)(B). Pub. L. 106–74, § 535(2), (4), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''In the case of owner who has requested that the Secretary renew the contract, the owner's notice under subparagraph (A) to the tenants shall include statements that—

''(i) the owner currently has a contract with the Department of Housing and Urban Development that pays the Government's share of the tenant's rent and the date on which the contract will expire;

''(ii) the owner intends to renew the contract for another year;

''(iii) renewal of the contract may depend upon the Congress making funds available for such renewal;

''(iv) the owner is required by law to notify tenants of the possibility that the contract may not be renewed if Congress does not provide funding for such renewals;

''(v) in the event of nonrenewal, the Department of Housing and Urban Development will provide tenant-based rental assistance to all eligible residents, enabling them to choose the place they wish to rent; and

''(vi) the notice itself does not indicate an intent to terminate the contract by either the owner or the Department of Housing and Urban Development, provided there is Congressional approval of funding availability.''

Subsec. (c)(8)(C). Pub. L. 106–74, § 535(4), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Pub. L. 106–74, § 535(3), struck out ''Notwithstanding the preceding provisions of this paragraph, if the owner agrees to a 5-year contract renewal offered by the Secretary, payments under which shall be subject to the availability of appropriations for any year, the owner shall provide a written notice to the Secretary and the tenants not less than 180 days before the termination of such contract.'' after ''(C)'' and ''in the immediately preceding sentence'' before '', the owner may not evict the tenants'', struck out ''180-day'' before ''notice'' in two places, and substituted ''1 year has elapsed'' for ''such period has elapsed'' and ''1 year of advance notice'' for ''180 days of advance notice''.

Subsec. (c)(8)(D), (E). Pub. L. 106–74, § 535(4), redesignated subpars. (D) and (E) as (C) and (D), respectively.

Subsec. (*o*)(18). Pub. L. 106–74, § 523(a), added par. (18).

Subsec. (t). Pub. L. 106–74, § 538(a), added subsec. (t).

Subsec. (v). Pub. L. 106–74, § 531(d)(1), designated sentence enacted by Pub. L. 104–99, § 405(c), as subsec. (v).

Subsec. (w). Pub. L. 106–74, § 531(d)(2), struck out heading and text of subsec. (w). Text read as follows: ''Not later than 30 days after the beginning of each fiscal year, the Secretary shall publish in the Federal Register a plan for reducing, to the extent feasible, year-to-year fluctuations in the levels of budget authority that will be required over the succeeding 5-year period to renew expiring rental assistance contracts entered into under this section since August 22, 1974. To the extent necessary to carry out such plan and to the extent approved in appropriations Acts, the Secretary is authorized to enter into annual contributions contracts with terms of less than 60 months.''

Subsec. (z)(1). Pub. L. 106–74, § 223(1), in introductory provisions, inserted ''expiration or'' after ''on account of'' and struck out ''(other than a contract for tenant-based assistance)'' after ''payments contract''.

Subsec. (z)(3). Pub. L. 106–74, § 223(2), struck out heading and text of par. (3). Text read as follows: ''This subsection shall be effective for actions initiated by the Secretary on or before September 30, 1995.''

1998—Subsec. (a). Pub. L. 105–276, § 550(a)(1), struck out at end ''A public housing agency may contract to make assistance payments to itself (or any agency or instrumentality thereof) as the owner of dwelling units if such agency is subject to the same program requirements as are applied to other owners. In such cases, the Secretary may establish initial rents within applicable limits.''

Subsec. (b). Pub. L. 105–276, § 550(a)(2), substituted ''Other'' for ''Rental certificates and other'' in subsec. heading, inserted par. (1) designation and heading, and struck out after first sentence ''The Secretary shall enter into a separate annual contributions contract with each public housing agency to obligate the authority approved each year, beginning with the authority approved in appropriations Acts for fiscal year 1988 (other than amendment authority to increase assistance payments being made using authority approved prior to the appropriations Acts for fiscal year 1988), and such annual contributions contract (other than for annual contributions under subsection (*o*) of this section) shall bind the Secretary to make such authority, and any amendments increasing such authority, available to the public housing agency for a specified period.''

Subsec. (c)(3). Pub. L. 105–276, § 550(a)(3)(A), struck out ''(A)'' after par. designation, and struck out subpar. (B), which authorized payment of higher percentage of income as rent than that specified under section 1437a(a) of this title if family receiving tenant-based rental assistance notified public housing agency of its interest in a unit renting for an excess rent and agency determined that the rent was reasonable, and set forth provisions which limited agency approval of such excess rentals to 10 percent of annual allocation, required report to Secretary where such rentals exceeded 5 percent of allocation, and required Secretary to report to Congress annually on agencies which had submitted

such reports and include recommendations deemed appropriate to correct problems identified in reports.

Subsec. (c)(4). Pub. L. 105–276, § 550(a)(3)(B), struck out ''or by a family that qualifies to receive assistance under subsection (b) of this section pursuant to section 223 or 226 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990'' after ''such dwelling unit'' in first sentence.

Subsec. (c)(5), (6). Pub. L. 105–276, § 550(a)(3)(C), (D), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''Assistance payments may be made with respect to up to 100 per centum of the dwelling units in any structure upon the application of the owner or prospective owner. Within the category of projects containing more than fifty units and designed for use primarily by nonelderly and nonhandicapped persons which are not subject to mortgages purchased under section 305 of the National Housing Act, the Secretary may give preference to applications for assistance involving not more than 20 per centum of the dwelling units in a project. In according any such preference, the Secretary shall compare applications received during distinct time periods not exceeding sixty days in duration.''

Subsec. (c)(7). Pub. L. 105–276, § 550(a)(3)(C), struck out par. (7) which read as follows: ''To the extent authorized in contracts entered into by the Secretary with a public housing agency, such agency may purchase any structure containing one or more dwelling units assisted under this section for the purpose of reselling the structure to the tenant or tenants occupying units aggregating in value at least 80 per centum of the structure's total value. Any such resale may be made on the terms and conditions prescribed under section 1437c(h) of this title and subject to the limitation contained in such section.''

Subsec. (c)(8). Pub. L. 105–276, § 549(b), redesignated par. (9) as (8)(A) and substituted subpars. (B) to (E) for ''The Secretary shall review the owner's notice, shall consider whether there are additional actions that can be taken by the Secretary to avoid the termination, and shall ensure a proper adjustment of the contract rents for the project in conformity with the requirements of paragraph (2). The Secretary shall issue a written finding of the legality of the termination and the reasons for the termination, including the actions considered or taken to avoid the termination. Within 30 days of the Secretary's finding, the owner shall provide written notice to each tenant of the Secretary's decision. For purposes of this paragraph, the term 'termination' means the expiration of the assistance contract or an owner's refusal to renew the assistance contract, and such term shall include termination of the contract for business reasons.''

Pub. L. 105–276, § 549(a)(1)(A), struck out par. (8) which read as follows: ''Each contract under this section shall provide that the owner will notify tenants at least 90 days prior to the expiration of the contract of any rent increase which may occur as a result of the expiration of such contract.''

Subsec. (c)(9). Pub. L. 105–276, § 549(b)(1), redesignated par. (9) as (8)(A).

Pub. L. 105–276, § 549(a)(1)(B), substituted ''Not less than one year before terminating any contract under which assistance payments are received under this section, other than a contract for tenant-based assistance under this section, an owner shall provide written notice to the Secretary and the tenants involved of the proposed termination, specifying the reasons for the termination with sufficient detail to enable the Secretary to evaluate whether the termination is lawful and whether there are additional actions that can be taken by the Secretary to avoid the termination.'' for ''Not less than 180 days prior to terminating any contract under which assistance payments are received under this section (but not less than 90 days in the case of housing certificates or vouchers under subsection (b) or (*o*) of this section), an owner shall provide written notice to the Secretary and the tenants involved of the proposed termination, specifying the reasons for the termination with sufficient detail to enable the Secretary to evaluate whether the termination is lawful and whether there are additional actions that can be taken by the Secretary to avoid the termination.''

Subsec. (c)(10). Pub. L. 105–276, § 549(a)(1)(A), struck out par. (10) which read as follows: ''If an owner provides notice of proposed termination under paragraph (9) and the contract rent is lower than the maximum monthly rent for units assisted under subsection (b)(1) of this section, the Secretary shall adjust the contract rent based on the maximum monthly rent for units assisted under subsection (b)(1) of this section and the value of the low-income housing after rehabilitation.''

Subsec. (d)(1)(A). Pub. L. 105–276, § 514(b)(1), amended subpar. (A) generally. For former text of subpar. (A), see 1996 Amendment note below.

Subsec. (d)(1)(B)(ii). Pub. L. 105–276, § 549(a)(2)(A), substituted ''during the term of the lease, the owner'' for ''the owner''.

Subsec. (d)(1)(B)(iii). Pub. L. 105–276, § 549(a)(2)(B), substituted ''during the term of the lease, any criminal activity'' for ''provide that any criminal activity''.

Subsec. (d)(2)(A). Pub. L. 105–276, § 550(a)(4)(A), struck out at end ''Where the Secretary enters into an annual contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the contract for assistance payments may not be attached to the structure unless (i) the Secretary and the public housing agency approve such action, and (ii) the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section, except that the Secretary shall permit the public housing agency to approve such attachment with respect to not more than 15 percent of the assistance provided by the public housing agency if the requirements of clause (ii) are met. Notwithstanding any other provision of this section, a public housing agency and an applicable State agency may, on a priority basis, attach to structures not more than an additional 15 percent of the assistance provided by the public housing agency or the applicable State agency only with respect to projects assisted under a State program that permits the owner of the projects to prepay a State assisted or subsidized mortgage on the structure, except that attachment of assistance under this sentence shall be for the purpose of (i) providing incentives to owners to preserve such projects for occupancy by lower and moderate income families (for the period that assistance under this sentence is available), and (ii) to assist lower income tenants to afford any increases in rent that may be required to induce the owner to maintain occupancy in the project by lower and moderate income tenants. Any assistance provided to lower income tenants under the preceding sentence shall not be considered for purposes of the limitation under paragraph (1)(A) regarding the percentage of families that may receive assistance under this section who do not qualify for preferences under such paragraph.''

Subsec. (d)(2)(B) to (G). Pub. L. 105–276, § 550(a)(4)(C), redesignated subpars. (F) to (H) as (B) to (D), respectively, and struck out former subpars. (B) to (E). Prior to repeal, former subpar. (B) required the Secretary to permit a public housing agency to approve attachment of assistance with respect to any newly constructed structure if certain conditions were met, former subpar. (C) required a public housing agency to enter into a contract with an owner of a structure to which a contract for assistance was attached under this par. to provide for renewal of expiring assistance payment contracts, former subpar. (D) required owners of structures to which a contract for assistance was attached to adopt certain tenant selection procedures, and former subpar. (E) required the Secretary to annually survey public housing agencies to determine which have reached certain limitations in providing assistance and to report the survey results to Congress.

Subsec. (d)(2)(H). Pub. L. 105–276, § 550(a)(4)(C), redesignated subpar. (H) as (D).

Pub. L. 105–276, § 550(a)(4)(B), substituted ''An owner'' for ''Notwithstanding subsection (d)(1)(A)(i) of this section, an owner''.

Subsec. (d)(6). Pub. L. 105–276, § 552, added par. (6).

Subsec. (f)(6). Pub. L. 105–276, § 545(b), inserted ''or (*o*)(13)'' after ''(d)(2)''.

Subsec. (f)(7). Pub. L. 105–276, § 550(a)(5), struck out ''(b) or'' after ''under subsection'' and inserted before period at end ''and that provides for the eligible family to select suitable housing and to move to other suitable housing''.

Subsec. (h). Pub. L. 105–276, § 565(c), which directed insertion of ''(except as provided in section 1437d(j)(3) of this title)'' after ''section 1437d of this title'', was executed by making the insertion after ''Sections 1437c(e) and 1437d of this title'', to reflect the probable intent of Congress.

Subsec. (j). Pub. L. 105–276, § 550(a)(6), struck out subsec. (j), which authorized contracts for making rental assistance payments on behalf of low-income families utilizing manufactured homes as principal places of residence, directed that contract establish maximum monthly rent permitted with respect to home and real property on which it was located and provided formula for calculating amount of monthly assistance, provided for adjustments, set forth minimum and maximum terms, in the case of substantially rehabilitated or newly constructed park, provided limit on principal amount of mortgage attributable to rental spaces within park, and authorized Secretary to prescribe other terms and conditions necessary for purpose of carrying out subsection.

Subsec. (n). Pub. L. 105–276, § 550(a)(7), struck out subsec. (n) which read as follows: ''In making assistance available under subsections (b)(1) and (e)(2) of this section, the Secretary may provide assistance with respect to residential properties in which some or all of the dwelling units do not contain bathroom or kitchen facilities, if—

''(1) the property is located in an area in which there is a significant demand for such units, as determined by the Secretary;

''(2) the unit of general local government in which the property is located and the local public housing agency approve of such units being utilized for such purpose; and

''(3) in the case of assistance under subsection (b)(1) of this section, the unit of general local government in which the property is located and the local public housing agency certify to the Secretary that the property complies with local health and safety standards.

The Secretary may waive, in appropriate cases, the limitation and preference described in the second and third sentences of section 1437a(b)(3) of this title with respect to the assistance made available under this subsection.''

Subsec. (*o*). Pub. L. 105–276, § 545(a), amended subsec. (*o*) generally. Prior to amendment, subsec. (*o*) contained provisions relating to assistance using a payment standard based upon fair market rental, categories of families eligible for assistance and preferences, contracts with public housing agencies for annual contributions, annual adjustments of assistance payment amounts, assistance with respect to certain cooperative and mutual housing, contracts to provide rental vouchers, set asides of budget authority for an adjustment pool, reasonable rent requirements and disapproval of leases with unreasonable rents, and assistance on behalf of families utilizing manufactured homes as principal places of residence.

Subsec. (*o*)(2). Pub. L. 105–276, § 209(a), inserted at end ''Notwithstanding the preceding sentence, for families being admitted to the voucher program who remain in the same unit or complex, where the rent (including the amount allowed for utilities) does not exceed the payment standard, the monthly assistance payment for any family shall be the amount by which such rent exceeds the greater of 30 percent of the family's monthly adjusted income or 10 percent of the family's monthly income.'' Notwithstanding sections 209(b) and 503 of Pub. L. 105–276, set out as Effective Date of 1998 Amendment notes below and under section 1437 of this title, this amendment was executed before the amendment by section 545(a) of Pub. L. 105–276 to reflect the probable intent of Congress and the provisions of section 545(c) of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note below, and section 559 of Pub. L. 105–276, set out as a Regulations note below.

Subsec. (q). Pub. L. 105–276, § 547, amended subsec. (q) generally, substituting present provisions for provisions which authorized establishment of fee for costs incurred in administering certificate and housing voucher programs under subsecs. (b) and (*o*) of this section, costs of preliminary expenses in connection with new allocations of assistance, costs incurred in assisting families who experienced difficulty in obtaining appropriate housing under the programs, and extraordinary costs; provisions which set forth use of fees for employing one or more service coordinators to coordinate provision of supportive services for elderly or disabled families on whose behalf assistance was provided; and provision which limited establishment or increase of fees to amounts provided in appropriation Acts.

Subsec. (r). Pub. L. 105–276, § 553(3), inserted heading, added par. (1), and struck out former par. (1) which read as follows: ''Any family assisted under subsection (b) or (*o*) of this section may receive such assistance to rent an eligible dwelling unit if the dwelling unit to which the family moves is within the same State, or the same or a contiguous metropolitan statistical area as the metropolitan statistical area within which is located the area of jurisdiction of the public housing agency approving such assistance; except that any family not living within the jurisdiction of a public housing agency at the time that such family applies for assistance from such agency shall, during the 12-month period beginning upon the receipt of any tenant-based rental assistance made available on behalf of the family, use such assistance to rent an eligible dwelling unit located within the jurisdiction served by such public housing agency.''

Subsec. (r)(2). Pub. L. 105–276, § 553(1), struck out at end ''If no public housing agency has authority with respect to the dwelling unit to which a family moves under this subsection, the public housing agency approving the assistance shall have such responsibility.''

Subsec. (r)(3). Pub. L. 105–276, § 553(2), struck out ''(b) or'' before ''(*o*) of this section for'' and inserted at end ''The Secretary shall establish procedures for the compensation of public housing agencies that issue vouchers to families that move into or out of the jurisdiction of the public housing agency under portability procedures. The Secretary may reserve amounts available for assistance under subsection (*o*) of this section to compensate those public housing agencies.''

Subsec. (r)(5). Pub. L. 105–276, § 553(5), added par. (5).

Subsec. (t). Pub. L. 105–276, § 554, struck out subsec. (t). For text, see 1996 Amendment note below.

Subsec. (u). Pub. L. 105–276, § 550(a)(8), in pars. (1) and (3), struck out ''certificates or'' before ''vouchers'' and, in par. (2), struck out '', certificates'' before ''or vouchers''.

Subsec. (x)(2). Pub. L. 105–276, § 550(a)(9), substituted ''tenant-based assistance'' for ''housing certificate assistance''.

Subsec. (y)(1). Pub. L. 105–276, § 555(a)(1)(A), in introductory provisions, substituted ''A public housing agency providing tenant-based assistance on behalf of an eligible family under this section may provide assistance for an eligible family that purchases a dwelling unit (including a unit under a lease-purchase agreement) that will be owned by 1 or more members of the family, and will be occupied by the family, if the family'' for ''A family receiving tenant-based assistance under this section may receive assistance for occupancy of a dwelling owned by one or more members of the family if the family''.

Subsec. (y)(1)(A). Pub. L. 105–276, § 555(a)(1)(B), inserted '', or owns or is acquiring shares in a cooperative'' before semicolon at end.

Subsec. (y)(1)(B). Pub. L. 105–276, § 555(a)(1)(C), struck out cl. (i), redesignated cl. (ii) as entire subpar., and inserted ", except that the Secretary may provide for the consideration of public assistance in the case of an elderly family or a disabled family" after "public assistance". Prior to amendment, cl. (i) read as follows: "participates in the family self-sufficiency program under section 1437u of this title of the public housing agency providing the assistance; or".

Subsec. (y)(2). Pub. L. 105–276, § 555(a)(2), added par. (2) and struck out heading and text of former par. (2). Text read as follows:

"(A) IN GENERAL.—Notwithstanding any other provisions of this section governing determination of the amount of assistance payments under this section on behalf of a family, the monthly assistance payment for any family assisted under this subsection shall be the amount by which the fair market rental for the area established under subsection (c)(1) of this section exceeds 30 percent of the family's monthly adjusted income; except that the monthly assistance payment shall not exceed the amount by which the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, exceeds 10 percent of the family's monthly income.

"(B) EXCLUSION OF EQUITY FROM INCOME.—For purposes of determining the monthly assistance payment for a family, the Secretary shall not include in family income an amount imputed from the equity of the family in a dwelling occupied by the family with assistance under this subsection."

Subsec. (y)(3), (4). Pub. L. 105–276, § 555(a)(3), added pars. (3) and (4) and struck out former pars. (3) and (4) which read as follows:

"(3) RECAPTURE OF CERTAIN AMOUNTS.—Upon sale of the dwelling by the family, the Secretary shall recapture from any net proceeds the amount of additional assistance (as determined in accordance with requirements established by the Secretary) paid to or on behalf of the eligible family as a result of paragraph (2)(B).

"(4) DOWNPAYMENT REQUIREMENT.—Each public housing agency providing assistance under this subsection shall ensure that each family assisted shall provide from its own resources not less than 80 percent of any downpayment in connection with a loan made for the purchase of a dwelling. Such resources may include amounts from any escrow account for the family established under section 1437u(d) of this title. Not more than 20 percent of the downpayment may be provided from other sources, such as from nonprofit entities and programs of States and units of general local government."

Subsec. (y)(5). Pub. L. 105–276, § 555(a)(3), (4), redesignated par. (6) as (5) and struck out heading and text of former par. (5). Text read as follows: "A family may not receive assistance under this subsection during any period when assistance is being provided for the family under other Federal homeownership assistance programs, as determined by the Secretary, including assistance under the HOME Investment Partnerships Act, the Homeownership and Opportunity Through HOPE Act, title II of the Housing and Community Development Act of 1987, and section 1472 of this title."

Subsec. (y)(6) to (8). Pub. L. 105–276, § 555(a)(4), redesignated pars. (7) and (8) as (6) and (7), respectively. Former par. (6) redesignated (5).

Subsec. (z). Pub. L. 105–276, § 548(1), made technical amendment relating to placement of subsection.

Subsec. (cc). Pub. L. 105–276, § 548(2), added subsec. (cc).

Subsec. (dd). Pub. L. 105–276, § 556(a), added subsec. (dd).

1997—Subsec. (c)(2)(A). Pub. L. 105–65, §§ 201(c), 205, substituted "fiscal years 1997 and 1998" for "fiscal year 1997" in third and sixth sentences and inserted at end "In establishing annual adjustment factors for units in new construction and substantial rehabilitation projects, the Secretary shall take into account the fact that debt service is a fixed expense. The immediately foregoing sentence shall be effective only during fiscal year 1998."

Pub. L. 105–33, §§ 2003, 2004, inserted ", and during fiscal year 1999 and thereafter" before period at end of third and sixth sentences.

Subsec. (c)(9). Pub. L. 105–18, which directed substitution of "Not less than 180 days prior to terminating any contract" for "Not less than one year prior to terminating any contract", was executed by making the substitution for "Not less than 1 year prior to terminating any contract" to reflect the probable intent of Congress.

Subsec. (d)(5). Pub. L. 105–65, § 523(a), added par. (5).

Subsec. (bb). Pub. L. 105–65, § 523(c), inserted heading, designated existing provisions as par. (1) and former subsec. heading as par. (1) heading, and added par. (2).

1996—Subsec. (c)(2)(A). Pub. L. 104–204 inserted ", fiscal year 1996 prior to April 26, 1996, and fiscal year 1997" after "fiscal year 1995" in two places, substituted "Except for assistance under the certificate program, for" for "For", inserted after fourth sentence "In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area.", and substituted "The immediately foregoing two sentences" for "The immediately foregoing sentence".

Subsec. (c)(8). Pub. L. 104–134, § 101(e) [title II, § 203(b)(1), (d)], temporarily inserted "(other than a contract for assistance under the certificate or voucher program)" after "section". See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (c)(9). Pub. L. 104–134, § 101(e) [title II, § 203(b)(2), (d)], temporarily substituted ", other than a contract under the certificate or voucher program" for "(but not less than 90 days in the case of housing certificates or vouchers under subsection (b) or (*o*) of this section)". See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (d)(1)(A). Pub. L. 104–99, § 402(d)(2), (f), temporarily amended subpar. (A) generally, substituting "the selection of tenants shall be the function of the owner, subject to the provisions of the annual contributions contract between the Secretary and the agency, except that for the certificate and moderate rehabilitation programs only, for the purpose of selecting families to be assisted, the public housing agency may establish, after public notice and an opportunity for public comment, a written system of preferences for selection that is not inconsistent with the comprehensive housing affordability strategy under title I of the Cranston-Gonzalez National Affordable Housing Act;" for "the selection of tenants for such units shall be the function of the owner, subject to the provisions of the annual contributions contract between the Secretary and the agency, except that the tenant selection criteria used by the owner shall—

"(i) for not less than (I) 70 percent of the families who initially receive assistance in any 1-year period in the case of assistance attached to a structure and (II) 90 percent of such families in the case of assistance not attached to a structure, give preference to families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families), are paying more than 50 percent of family income for rent, or are involuntarily displaced (including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12) at the time they are seeking assistance under this section; except that any family otherwise eligible for assistance under this section may not be denied preference for assistance not attached to a structure (or delayed or otherwise adversely affected in the provision of such assistance) solely because the family resides in public housing;

"(ii) for any remaining assistance in any 1-year period, give preference to families who qualify under a system of local preferences established by the public

housing agency in writing and after public hearing to respond to local housing needs and priorities, which may include (I) assisting very low-income families who either reside in transitional housing assisted under title IV of the Stewart B. McKinney Homeless Assistance Act, or participate in a program designed to provide public assistance recipients with greater access to employment and educational opportunities; (II) assisting families in accordance with subsection (u)(2) of this section; (III) assisting families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care, or in preventing the discharge of a child from foster care and reunification with his or her family; (IV) assisting youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available; (V) assisting veterans who are eligible and have applied for assistance, will use the assistance for a dwelling unit designed for the handicapped, and, upon discharge or eligibility for discharge from a hospital or nursing home, have physical disability which, because of the configuration of their homes, prevents them from access to or use of their homes; and (VI) achieving other objectives of national housing policy as affirmed by Congress; and

''(iii) prohibit any individual or family evicted from housing assisted under the chapter by reason of drug-related criminal activity from having a preference under any provision of this subparagraph for 3 years unless the evicted tenant successfully completes a rehabilitation program approved by the agency, except that the agency may waive the application of this clause under standards established by the Secretary (which shall include waiver for any member of a family of an individual prohibited from tenancy under this clause who the agency determines clearly did not participate in and had no knowledge of such criminal activity or when circumstances leading to eviction no longer exist);''.

See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (d)(1)(B)(ii), (iii). Pub. L. 104–134, § 101(e) [title II, § 203(c), (d)], in cl. (ii) temporarily inserted ''during the term of the lease,'' after ''(ii)'' and in cl. (iii) temporarily substituted ''during the term of the lease,'' for ''provide that''. See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (d)(1)(B)(v). Pub. L. 104–193, § 903(a)(2), added cl. (v).

Subsec. (d)(2)(A). Pub. L. 104–99, § 402(d)(6)(A)(iii), (f), temporarily struck out at end ''Any assistance provided to lower income tenants under the preceding sentence shall not be considered for purposes of the limitation under paragraph (1)(A) regarding the percentage of families that may receive assistance under this section who do not qualify for preferences under such paragraph.'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (d)(2)(H). Pub. L. 104–99, § 402(d)(6)(A)(iv), (f), temporarily substituted ''An owner'' for ''Notwithstanding subsection (d)(1)(A)(i) of this section, an owner''. See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (*o*)(3)(B). Pub. L. 104–99, § 402(d)(3), (f), temporarily amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''In selecting families to be assisted, preference shall be given to families which, at the time they are seeking assistance, occupy substandard housing (including families that are homeless or living in a shelter for homeless families), are involuntarily displaced (including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12), or are paying more than 50 per centum of family income for rent. A public housing agency may provide for circumstances in which families who do not qualify for any preference established in the preceding sentence are provided assistance under this subsection before families who do qualify for such preference, except that not more than 10 percent (or such higher percentage determined by the Secretary to be necessary to ensure that public housing agencies can assist families in accordance with subsection (u)(2) of this section or determined by the Secretary to be appropriate for other good cause) of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this sentence) may be families who do not qualify for such preference. The public housing agency shall in implementing the preceding sentence establish a system of preferences in writing and after public hearing to respond to local housing needs and priorities which may include (i) assisting very low-income families who either reside in transitional housing assisted under title IV of the Stewart B. McKinney Homeless Assistance Act, or participate in a program designed to provide public assistance recipients with greater access to employment and educational opportunities, (ii) assisting families in accordance with subsection (u)(2) of this section; (iii) assisting families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care, or in preventing the discharge of a child from foster care and reunification and his or her family; (iv) assisting youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available; (v) assisting veterans who are eligible and have applied for assistance, will use the assistance for a dwelling unit designed for the handicapped, and, upon discharge or eligibility for discharge from a hospital or nursing home, have physical disability which, because of the configuration of their homes, prevents them from access to or use of their homes; and (vi) achieving other objectives of national housing policy as affirmed by Congress. Any individual or family evicted from housing assisted under the chapter by reason of drug-related criminal activity (as defined in subsection (f)(5) of this section) shall not be eligible for a preference under any provision of this subparagraph for 3 years unless the evicted tenant successfully completes a rehabilitation program approved by the Secretary (which shall include waiver for any member of a family of an individual prohibited from tenancy under this clause who the agency determines clearly did not participate in and had no knowledge of such criminal activity or when circumstances leading to eviction no longer exist).'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (t). Pub. L. 104–134, § 101(e) [title II, § 203(a), (d)], temporarily repealed subsec. (t) which read as follows:

''(1) No owner who has entered into a contract for housing assistance payments under this section on behalf of any tenant in a multifamily housing project shall refuse—

''(A) to lease any available dwelling unit in any multifamily housing project of such owner that rents for an amount not greater than the fair market rent for a comparable unit, as determined by the Secretary under this section, to a holder of a certificate of eligibility under this section a proximate cause of which is the status of such prospective tenant as a holder of such certificate, and to enter into a housing assistance payments contract respecting such unit; or

''(B) to lease any available dwelling unit in any multifamily housing project of such owner to a holder of a voucher under subsection (*o*) of this section, and to enter into a voucher contract respecting such unit, a proximate cause of which is the status of such prospective tenant as holder of such voucher.

''(2) For purposes of this subsection, the term 'multifamily housing project' means a residential building containing more than 4 dwelling units.'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (v). Pub. L. 104–99, § 405(c), amended subsec. (v) generally. Prior to amendment, subsec. (v) read as follows:

''(1) The Secretary shall extend any expiring contract entered into under this section for loan management assistance or execute a new contract for project-based loan management assistance, if the owner agrees to continue providing housing for low-income families during the term of the contract.

''(2)(A) The eligiblity of a multifamily residential project for loan management assistance under this section shall be determined without regard to whether the project is subsidized or unsubsidized.

''(B) In allocating loan management assistance under this section, the Secretary may give a priority to any project only on the basis that the project has serious financial problems that are likely to result in a claim on the insurance fund in the near future or the project is eligible to receive incentives under subtitle B of the Low-Income Housing Preservation and Resident Homeownership Act of 1990.''

Subsec. (bb). Pub. L. 104–134, § 101[(e)] [title II, § 208], added subsec. (bb).

1995—Subsec. (z). Pub. L. 104–19 added subsec. (z).

1994—Subsec. (c)(2)(A). Pub. L. 103–327 inserted at end: ''However, where the maximum monthly rent, for a unit in a new construction, substantial rehabilitation, or moderate rehabilitation project, to be adjusted using an annual adjustment factor exceeds the fair market rental for an existing dwelling unit in the market area, the Secretary shall adjust the rent only to the extent that the owner demonstrates that the adjusted rent would not exceed the rent for an unassisted unit of similar quality, type, and age in the same market area, as determined by the Secretary. The immediately foregoing sentence shall be effective only during fiscal year 1995. For any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. The immediately foregoing sentence shall be effective only during fiscal year 1995.''

Subsec. (d)(1)(A)(i). Pub. L. 103–233, § 101(c)(2), inserted ''(including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12)'' after ''displaced''.

Subsec. (d)(1)(A)(ii). Pub. L. 103–327 which directed the amendment of cl. (ii) by striking ''and (V)'' and inserting in lieu thereof ''(V) assisting families that include one or more adult members who are employed; and (VI)'', and inserting after the final semicolon ''subclause (V) shall be effective only during fiscal year 1995;'', was not executed because the words ''and (V)'' did not appear and cl. (ii) already contains subcls. (V) and (VI). See 1992 Amendment note below.

Subsec. (f)(1). Pub. L. 103–233, § 101(d), inserted ''an agency of the Federal Government,'' after ''cooperative,''.

Subsec. (*o*)(3)(B). Pub. L. 103–233, § 101(c)(3), inserted ''(including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12)'' after ''displaced''.

Subsec. (aa). Pub. L. 103–327 temporarily added subsec. (aa), ''Refinancing incentive'', which read as follows:

''(1) IN GENERAL.—The Secretary may pay all or a part of the up front costs of refinancing for each project that—

''(A) is constructed, substantially rehabilitated, or moderately rehabilitated under this section;

''(B) is subject to an assistance contract under this section; and

''(C) was subject to a mortgage that has been refinanced under section 223(a)(7) or section 223(f) of the National Housing Act to lower the periodic debt service payments of the owner.

''(2) SHARE FROM REDUCED ASSISTANCE PAYMENTS.—The Secretary may pay the up front cost of refinancing only—

''(A) to the extent that funds accrue to the Secretary from the reduced assistance payments that results from the refinancing; and

''(B) after the application of amounts in accordance with section 1012 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.''

See Effective and Termination Dates of 1994 Amendment note below.

1992—Subsec. (c)(2)(B). Pub. L. 102–550, § 1012(g), inserted at end ''The Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments), on a project by project basis for projects receiving project-based assistance, provide adjustments to the maximum monthly rents to cover the costs of evaluating and reducing lead-based paint hazards, as defined in section 4851b of this title.''

Pub. L. 102–550, § 142, inserted after first sentence ''The Secretary shall make additional adjustments in the maximum monthly rent for units under contract (subject to the availability of appropriations for contract amendments) to the extent the Secretary determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units that have resulted from the expiration of a real property tax exemption.''

Subsec. (c)(4). Pub. L. 102–550, § 141(a), inserted ''or by a family that qualifies to receive assistance under subsection (b) of this section pursuant to section 223 or 226 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990'' after first comma in first sentence.

Subsec. (c)(9). Pub. L. 102–550, § 143, inserted before period at end '', and such term shall include termination of the contract for business reasons''.

Subsec. (d)(1)(A)(ii)(V), (VI). Pub. L. 102–550, § 144(a), added subcl. (V) and redesignated former subcl. (V) as (VI).

Subsec. (d)(1)(B)(iii). Pub. L. 102–550, § 145, inserted '', any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises,'' before ''or any drug-related'' and substituted ''tenant of any unit'' for ''public housing tenant''.

Subsec. (d)(2)(F). Pub. L. 102–550, § 674, added subpar. (F).

Subsec. (d)(2)(G), (H). Pub. L. 102–550, § 682(b), added subpars. (G) and (H).

Subsec. (d)(4). Pub. L. 102–550, § 660, added par. (4).

Subsec. (f)(6), (7). Pub. L. 102–550, § 146, added pars. (6) and (7).

Subsec. (i). Pub. L. 102–550, § 623(b), added subsec. (i).

Subsec. (*o*)(3)(A). Pub. L. 102–550, § 141(b), struck out ''or'' before ''(iv)'' and inserted before period at end '', or'' and cl. (v).

Subsec. (*o*)(3)(B)(v), (vi). Pub. L. 102–550, § 144(b), in third sentence, added cl. (v) and redesignated former cl. (v) as (vi).

Subsec. (q)(3), (4). Pub. L. 102–550, § 675, added par. (3) and redesignated former par. (3) as (4).

Subsec. (r)(1). Pub. L. 102–550, § 147, inserted before period at end ''; except that any family not living within the jurisdiction of a public housing agency at the time that such family applies for assistance from such agency shall, during the 12-month period beginning upon the receipt of any tenant-based rental assistance made available on behalf of the family, use such assistance to rent an eligible dwelling unit located within the jurisdiction served by such public housing agency''.

Subsec. (x)(1). Pub. L. 102–550, § 148, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The budget authority available under section 1437c(c) of this title for assistance under subsection (b) of this section is authorized to be increased by $35,000,000 on or after October 1, 1990, by $35,000,000 on or after October 1, 1991.''

Subsec. (y). Pub. L. 102–550, § 185(a), added subsec. (y).

1991—Subsec. (c)(1). Pub. L. 102–139 inserted provisions relating to separate fair market rentals for Monroe County, Pennsylvania.

1990—Subsec. (a). Pub. L. 101–625, § 572(1), which directed the substitution of ''low-income families'' for ''lower income families'', was executed by making the substitution for ''lower-income families'' to reflect the probable intent of Congress.

Pub. L. 101–625, § 548(b), inserted at end ''A public housing agency may contract to make assistance payments to itself (or any agency or instrumentality thereof) as the owner of dwelling units if such agency is subject to the same program requirements as are applied to other owners. In such cases, the Secretary may establish initial rents within applicable limits.''

Subsec. (b). Pub. L. 101–625, § 541(a), inserted heading and struck out par. (1) designation preceding text.

Subsec. (b)(2). Pub. L. 101–625, § 413(b)(1), added par. (2).

Subsec. (c)(1). Pub. L. 101–625, § 543(b), inserted ''(A)'' after second reference to ''fair market rental'' and substituted ''a housing strategy as defined in section 12705 of this title, or (B) by such higher amount as may be requested by a tenant and approved by the public housing agency in accordance with paragraph (3)(B).'' for ''a local housing assistance plan as defined in section 1439(a)(5) of this title.''

Subsec. (c)(2)(B). Pub. L. 101–625, § 542, inserted at end ''Where the Secretary determines that a project assisted under this section is located in a community where drug-related criminal activity is generally prevalent and the project's operating, maintenance, and capital repair expenses have been substantially increased primarily as a result of the prevalence of such drug-related activity, the Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments for this purpose), on a project by project basis, provide adjustments to the maximum monthly rents, to a level no greater than 120 percent of the project rents, to cover the costs of maintenance, security, capital repairs, and reserves required for the owner to carry out a strategy acceptable to the Secretary for addressing the problem of drug-related criminal activity. Any rent comparability standard required under this paragraph may be waived by the Secretary to so implement the preceding sentence.''

Subsec. (c)(3). Pub. L. 101–625, § 543(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(9). Pub. L. 101–625, § 544, inserted after first sentence ''The owner's notice shall include a statement that the owner and the Secretary may agree to a renewal of the contract, thus avoiding the termination.'' and inserted at end ''Within 30 days of the Secretary's finding, the owner shall provide written notice to each tenant of the Secretary's decision.''

Subsec. (c)(10). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing''.

Subsec. (d)(1)(A). Pub. L. 101–625, § 545(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the selection of tenants for such unit shall be the function of the owner, subject to the provisions of the annual contributions contract between the Secretary and the agency, except that (i) the tenant selection criteria used by the owner shall give preference to families which occupy substandard housing, are paying more than 50 per centum of family income for rent, or are involuntarily displaced at the time they are seeking assistance under this section; and (ii) the public housing agency may provide for circumstances in which families who do not qualify for any preference established in clause (i) are provided assistance before families who do qualify for such preference, except that not more than 10 percent (or such higher percentage determined by the Secretary to be necessary to ensure that public housing agencies can assist families in accordance with subsection (u)(2) of this section or determined by the Secretary to be appropriate for other good cause) of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this clause) may be families who do not qualify for such preference;''.

Subsec. (d)(1)(B)(iii), (iv). Pub. L. 101–625, § 546, added cls. (iii) and (iv).

Subsec. (d)(2)(A). Pub. L. 101–625, § 552(b), inserted after first sentence ''The Secretary shall permit public housing agencies to enter into contracts for assistance payments of less than 12 months duration in order to avoid disruption in assistance to eligible families if the annual contributions contract is within 1 year of its expiration date.''

Pub. L. 101–625, § 613(a)(1), inserted at end ''Notwithstanding any other provision of this section, a public housing agency and an applicable State agency may, on a priority basis, attach to structures not more than an additional 15 percent of the assistance provided by the public housing agency or the applicable State agency only with respect to projects assisted under a State program that permits the owner of the projects to prepay a State assisted or subsidized mortgage on the structure, except that attachment of assistance under this sentence shall be for the purpose of (i) providing incentives to owners to preserve such projects for occupancy by lower and moderate income families (for the period that assistance under this sentence is available), and (ii) to assist lower income tenants to afford any increases in rent that may be required to induce the owner to maintain occupancy in the project by lower and moderate income tenants. Any assistance provided to lower income tenants under the preceding sentence shall not be considered for purposes of the limitation under paragraph (1)(A) regarding the percentage of families that may receive assistance under this section who do not qualify for preferences under such paragraph.''

Subsec. (d)(2)(C). Pub. L. 101–625, § 613(a)(2), inserted at end ''To the extent assistance is used as provided in the penultimate sentence of subparagraph (A), the contract for assistance may, at the option of the public housing agency, have an initial term not exceeding 15 years.''

Pub. L. 101–625, § 547(c), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Any contract for assistance payments that is attached to a structure under this paragraph shall (at the option of the public housing agency but subject to available funds) be renewable for 2 additional 5-year terms, except that the aggregate term of the initial contract and renewals shall not exceed 15 years.''

Subsec. (d)(2)(D), (E). Pub. L. 101–625, § 547(a), (b), added subpars. (D) and (E).

Subsec. (e)(2). Pub. L. 101–625, § 289(b), struck out par. (2) which read as follows: ''For the purpose of upgrading and thereby preserving the Nation's housing stock, the Secretary is authorized to make assistance payments under this section directly or through public housing agencies pursuant to contracts with owners or prospective owners who agree to upgrade housing so as to make and keep such housing decent, safe, and sanitary through upgrading which involves less than substantial rehabilitation, as such upgrading and rehabilitation are defined by the Secretary, and which shall involve a minimum expenditure of $3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems. The Secretary is authorized to prescribe such terms and conditions for contracts entered into under this section pursuant to this paragraph as the Secretary determines to be necessary and appropriate, except that such terms and conditions, to the maximum extent feasible, shall be consistent with terms and conditions otherwise applicable with respect to other dwelling units assisted under this section. Notwithstanding subsection (c)(1) of this section, the Secretary may, in carrying out the preceding sentence, establish a maximum monthly rent (for units upgraded pursuant to this paragraph) which exceeds the fair market rental by not more than 20 per centum if such units are located in an area where the Secretary finds cost levels so require, except that the Secretary may approve maximum monthly rents which exceed the fair market rentals by more than 20 but not more than 30 per centum where the Secretary determines that spe-

cial circumstances warrant such higher rent or where necessary to the implementation of a local housing assistance plan. The Secretary is also authorized to make assistance available under this section pursuant to this paragraph to any unit in a housing project which, on an overall basis, reflects the need for such upgrading. The Secretary shall increase the amount of assistance provided under this paragraph above the amount of assistance otherwise permitted by this paragraph and subsection (c)(1) of this section, if the Secretary determines such increase necessary to assist in the sale of multifamily housing projects owned by the Department of Housing and Urban Development. In order to maximize the availability of low-income housing, in providing assistance under this paragraph, the Secretary shall include in any calculation or determination regarding the amount of the assistance to be made available the extent to which any proceeds are available from any tax credits provided under section 42 of title 26 (or from any syndication of such credits) with respect to the housing. For each fiscal year, the Secretary may not provide assistance pursuant to this paragraph to any project for rehabilitation of more than 100 units. Assistance pursuant to this paragraph shall be allocated according to the formula established pursuant to section 1439(d) of this title, and awarded pursuant to a competition under such section. The Secretary shall maintain a single listing of any assistance provided pursuant to this paragraph, which shall include a statement identifying the owner and location of the project to which assistance was made, the amount of the assistance, and the number of units assisted.''

Subsec. (f)(1). Pub. L. 101–625, § 548(a), substituted ''dwelling units'' for ''newly constructed or substantially rehabilitated dwelling units as described in this section''.

Subsec. (f)(4), (5). Pub. L. 101–625, § 549, added pars. (4) and (5).

Subsec. (j)(1). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families'' in introductory provisions.

Subsec. (*o*). Pub. L. 101–625, § 541(b), inserted heading.

Subsec. (*o*)(3). Pub. L. 101–625, § 545(2)[(b)], inserted ''(A)'' after ''(3)'', redesignated former cls. (A) to (D) as cls. (i) to (iv), respectively, inserted ''(B)'' before ''In selecting families'', ''(including families that are homeless or living in a shelter for homeless families)'' after ''substandard housing'', and inserted at end ''The public housing agency shall in implementing the preceding sentence establish a system of preferences in writing and after public hearing to respond to local housing needs and priorities which may include (i) assisting very low-income families who either reside in transitional housing assisted under title IV of the Stewart B. McKinney Homeless Assistance Act, or participate in a program designed to provide public assistance recipients with greater access to employment and educational opportunities, (ii) assisting families in accordance with subsection (u)(2) of this section; (iii) assisting families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care, or in preventing the discharge of a child from foster care and reunification and his or her family; (iv) assisting youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available; and (v) achieving other objectives of national housing policy as affirmed by Congress. Any individual or family evicted from housing assisted under the chapter by reason of drug-related criminal activity (as defined in subsection (f)(5) of this section) shall not be eligible for a preference under any provision of this subparagraph for 3 years unless the evicted tenant successfully completes a rehabilitation program approved by the Secretary (which shall include waiver for any member of a family of an individual prohibited from tenancy under this clause who the agency determines clearly did not participate in and had no knowledge of such criminal activity or when circumstances leading to eviction no longer exist).''

Pub. L. 101–625, § 413(a), added cl. (D).

Subsec. (*o*)(7). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families''.

Subsec. (*o*)(9). Pub. L. 101–625, § 413(b)(2), added par. (9).

Subsec. (*o*)(10), (11). Pub. L. 101–625, § 550(a), (c), added pars. (10) and (11).

Subsec. (r)(1). Pub. L. 101–625, § 551, substituted ''the same State, or the same or a contiguous'' for ''the same, or a contiguous,''.

Subsec. (u). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families'' in introductory provisions.

Subsec. (v)(1). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families''.

Subsec. (v)(2)(B). Pub. L. 101–625, § 603, which directed the substitution of ''Low-Income Housing Preservation and Resident Homeownership Act of 1990'' for ''Emergency Low Income Housing Preservation Act of 1987'' in section ''89(v)(2) of the United States Housing Act of 1937'', was executed to subsec. (v)(2)(B) of this section (section 8 of the United States Housing Act of 1937) to reflect the probable intent of Congress.

Subsecs. (w), (x). Pub. L. 101–625, §§ 552(a), 553, added subsecs. (w) and (x).

1989—Subsec. (c)(2)(C). Pub. L. 101–235, § 702(g), substituted ''quality, type, and age'' for ''quality and age''.

Pub. L. 101–235, § 702(c), inserted after first sentence ''In implementing the limitation established under the preceding sentence, the Secretary shall establish regulations for conducting comparability studies for projects where the Secretary has reason to believe that the application of the formula adjustments under subparagraph (A) would result in such material differences. The Secretary shall conduct such studies upon the request of any owner of any project, or as the Secretary determines to be appropriate by establishing, to the extent practicable, a modified annual adjustment factor for such market area, as the Secretary shall designate, that is geographically smaller than the applicable housing area used for the establishment of the annual adjustment factor under subparagraph (A). The Secretary shall establish such modified annual adjustment factor on the basis of the results of a study conducted by the Secretary of the rents charged, and any change in such rents over the previous year, for assisted units and unassisted units of similar quality, type, and age in the smaller market area. Where the Secretary determines that such modified annual adjustment factor cannot be established or that such factor when applied to a particular project would result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, the Secretary may apply an alternative methodology for conducting comparability studies in order to establish rents that are not materially different from rents charged for comparable unassisted units.''

Subsec. (e)(2). Pub. L. 101–235, § 127(1), inserted before period at end of first sentence '', and which shall involve a minimum expenditure of $3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems''.

Pub. L. 101–235, § 127(2), (3), inserted at end ''In order to maximize the availability of low-income housing, in providing assistance under this paragraph, the Secretary shall include in any calculation or determination regarding the amount of the assistance to be made available the extent to which any proceeds are available from any tax credits provided under section 42 of title 26 (or from any syndication of such credits) with respect to the housing. For each fiscal year, the Secretary may not provide assistance pursuant to this paragraph to any project for rehabilitation of more than 100 units. Assistance pursuant to this paragraph shall be allocated according to the formula established pursuant to section 1439(d) of this title, and awarded pursuant to a competition under such section. The Secretary shall maintain a single listing of any assistance provided pursuant to this paragraph, which shall in-

clude a statement identifying the owner and location of the project to which assistance was made, the amount of the assistance, and the number of units assisted.''

1988—Subsec. (b)(1). Pub. L. 100–242, § 141, inserted provisions at end authorizing Secretary to enter into separate contributions contracts with each public housing agency to obligate authority approved each year, beginning with fiscal year 1988.

Subsec. (c)(1). Pub. L. 100–242, § 142(a), inserted before last sentence ''Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section.''

Pub. L. 100–242, § 142(b), inserted at end ''The Secretary shall establish separate fair market rentals under this paragraph for Westchester County in the State of New York.''

Pub. L. 100–242, § 142(c)(1), inserted at end ''If units assisted under this section are exempt from local rent control while they are so assisted or otherwise, the maximum monthly rent for such units shall be reasonable in comparison with other units in the market area that are exempt from local rent control.''

Subsec. (c)(2)(C). Pub. L. 100–628, § 1004(a)(1), substituted ''under subparagraphs (A) and (B)'' for ''as hereinbefore provided''.

Pub. L. 100–628, § 1004(a)(2), inserted at end ''Any maximum monthly rent that has been reduced by the Secretary after April 14, 1987, and prior to November 7, 1988, shall be restored to the maximum monthly rent in effect on April 15, 1987. For any project which has had its maximum monthly rents reduced after April 14, 1987, the Secretary shall make assistance payments (from amounts reserved for the original contract) to the owner of such project in an amount equal to the difference between the maximum monthly rents in effect on April 15, 1987, and the reduced maximum monthly rents, multiplied by the number of months that the reduced maximum monthly rents were in effect.''

Pub. L. 100–242, § 142(c)(2), substituted ''assisted units and unassisted units of similar quality and age in the same market area'' for ''assisted and comparable unassisted units'' and inserted at end ''If the Secretary or appropriate State agency does not complete and submit to the project owner a comparability study not later than 60 days before the anniversary date of the assistance contract under this section, the automatic annual adjustment factor shall be applied.''

Pub. L. 100–242, § 142(d), inserted at end ''The Secretary may not reduce the contract rents in effect on or after April 15, 1987, for newly constructed, substantially rehabilitated, or moderately rehabilitated projects assisted under this section (including projects assisted under this section as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payments of the owner.''

Subsec. (c)(2)(D). Pub. L. 100–242, § 142(e), struck out subpar. (D) which read as follows: ''Notwithstanding the foregoing, the Secretary shall limit increases in contract rents for newly constructed or substantially rehabilitated projects assisted under this section to the amount of operating cost increases incurred with respect to comparable rental dwelling units of various sizes and types in the same market area which are suitable for occupancy by families assisted under this section. Where no comparable dwelling units exist in the same market area, the Secretary shall have authority to approve such increases in accordance with the best available data regarding operating cost increases in rental dwelling units.''

Subsec. (c)(9), (10). Pub. L. 100–242, § 262(a), (b), added pars. (9) and (10).

Subsec. (d)(1)(A). Pub. L. 100–628, § 1014(b), inserted cl. (i) designation after ''except that'' and added cl. (ii) before semicolon at end.

Subsec. (d)(2). Pub. L. 100–628, § 1005(b)(1), designated existing provisions as subpar. (A), substituted ''(i)'' and ''(ii)'' for ''(A)'' and ''(B)'' wherever appearing, and added subpar. (B).

Pub. L. 100–628, § 1005(c), added subpar. (C).

Pub. L. 100–242, § 148, inserted exception authorizing Secretary to permit public housing authority to approve attachment with respect to not more than 15 percent of assistance provided by public housing agency if requirements of cl. (B) are met.

Subsec. (*o*)(1). Pub. L. 100–242, § 143(a)(1), substituted ''The Secretary may provide assistance'' for ''In connection with the rental rehabilitation and development program under section 1437*o* of this title or the rural housing preservation grant program under section 1490m of this title, or for other purposes, the Secretary is authorized to conduct a demonstration program''.

Subsec. (*o*)(3). Pub. L. 100–628, § 1014(c), inserted sentence at end authorizing public housing agencies to provide for circumstances in which families who do not qualify for any preference are provided assistance under this subsection before families who do qualify for such preference.

Subsec. (*o*)(4). Pub. L. 100–242, § 143(a)(2), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''The Secretary shall use substantially all of the authority to enter into contracts under this subsection to make assistance payments for families residing in dwellings to be rehabilitated with assistance under section 1437*o* of this title and for families displaced as a result of rental housing development assisted under such section or as a result of activities assisted under section 1490m of this title.''

Subsec. (*o*)(5). Pub. L. 100–242, § 143(a)(3), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (*o*)(6). Pub. L. 100–242, § 143(a)(3), (b), redesignated par. (7) as (6), substituted ''annually'' for ''as frequently as twice during any five-year period'' in subpar. (A), and struck out subpar. (D) which directed that public housing agency consult with public and units of local government regarding impact of adjustments made under this section on the number of families that can be assisted. Former par. (6) redesignated (5).

Subsec. (*o*)(7). Pub. L. 100–242, § 143(a)(3), (c), redesignated par. (8) as (7), and struck out ''not to exceed 5 per centum of the amount of'' after ''utilize''. Former par. (7) redesignated (6).

Subsec. (*o*)(8). Pub. L. 100–242, § 143(a)(3), (d), added par. (8). Former par. (8) redesignated (7).

Subsecs. (q) to (u). Pub. L. 100–242, §§ 144–149, added subsecs. (q) to (u).

Subsec. (u)(3). Pub. L. 100–628, § 1006, added par. (3).

Subsec. (v). Pub. L. 100–628, § 1029, redesignated par. (2) as (1) and inserted ''for project-based loan management assistance'', added par. (2), and struck out former par. (1) which required that each contract entered into by Secretary for loan management assistance be for a term of 180 months.

Pub. L. 100–242, § 262(c), added subsec. (v).

1984—Subsec. (d)(2). Pub. L. 98–479, § 102(b)(6), substituted ''Where the Secretary enters into an annual contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the contract for assistance payments may not be attached to the structure unless (A) the Secretary and the public housing agency approve such action, and (B) the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section.'' for ''A contract under this section may not be attached to the structure except where the Secretary specifically waives the foregoing limitation and the public housing agency approves such action, and the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section. The aggregate term of such contract and any contract extension may not be more than 180 months.''

Subsec. (e)(2). Pub. L. 98–479, § 102(b)(7), inserted at end ''The Secretary shall increase the amount of assist-

ance provided under this paragraph above the amount of assistance otherwise permitted by this paragraph and subsection (c)(1) of this section, if the Secretary determines such increase necessary to assist in the sale of multifamily housing projects owned by the Department of Housing and Urban Development.''

Subsec. (n). Pub. L. 98–479, § 102(b)(8), substituted ''subsections (b)(1) and (e)(2) of this section'' for ''subsection (b)(1), subsection (e)(2) of this section''.

Subsec. (*o*)(3)(C). Pub. L. 98–479, § 102(b)(9), added cl. (C).

Subsec. (*o*)(7)(D). Pub. L. 98–479, § 102(b)(10), inserted ''unit of'' before ''general''.

1983—Subsec. (a). Pub. L. 98–181, § 209(a)(1), substituted ''existing housing'' for ''existing, newly constructed, and substantially rehabilitated housing''.

Subsec. (b)(2). Pub. L. 98–181, § 209(a)(2), repealed par. (2) which related to authorization of assistance payments by the Secretary and contractually obligated public housing agencies for construction or substantial rehabilitation of housing, modest in design, with units for occupancy by low-income families and requirement that contracts providing housing assistance and entered into after Aug. 13, 1981, specify the number of units available for occupancy by eligible families.

Subsec. (d)(1)(A). Pub. L. 98–181, § 203(b)(1), inserted '', are paying more than 50 per centum of family income for rent,''.

Subsec. (d)(2). Pub. L. 98–181, § 208, inserted second and third sentences respecting waiver of limitation and limitation of contract and any extension to prescribed period.

Subsec. (e)(1). Pub. L. 98–181, § 209(a)(3), redesignated par. (4) as (1) and struck out former par. (1) which prescribed terms of 20 to 30 years for newly constructed or substantially rehabilitated dwelling units.

Subsec. (e)(2). Pub. L. 98–181, § 209(a)(3), redesignated par. (5) as (2) and struck out former par. (2) which required owners to assume ownership, management, and maintenance responsibilities, including selection of tenants and termination of tenancy for newly constructed or substantially rehabilitated dwelling units.

Pub. L. 98–181, § 203(b)(2), inserted '', are paying more than 50 per centum of family income for rent,'' after ''substandard housing''.

Subsec. (e)(3). Pub. L. 98–181, § 209(a)(3), struck out par. (3) which required that construction or substantial rehabilitation of dwelling units be eligible for mortgages insured under the National Housing Act and that assistance not be withheld by reason of availability of mortgage insurance under section 1715z–9 of title 12 or tax-exempt status obligations used to finance the construction or rehabilitation.

Subsec. (e)(4), (5). Pub. L. 98–181, § 209(a)(3), redesignated pars. (4) and (5) as (1) and (2), respectively.

Subsec. (i). Pub. L. 98–181, § 209(a)(4), repealed subsec. (i) which related to contracts with respect to substantially rehabilitated dwelling units.

Subsecs. (*l*), (m). Pub. L. 98–181, § 209(a)(5), repealed subsec. (*l*) relating to limitation of cost and rent increases, and subsec. (m) relating to preference for projects on suitable State and local government tracts.

Subsec. (n). Pub. L. 98–181, § 209(a)(6), substituted ''subsection (e)(2) of this section'' for ''subsection (e)(5) and subsection (i) of this section''.

Pub. L. 98–181, § 210(1), (2), inserted ''subsection (b)(1) of this section,'' before ''subsection (e)(5)'' and a comma after ''subsection (e)(5) of this section''.

Subsec. (n)(3). Pub. L. 98–181, § 210(3)–(5), added par. (3).

Subsec. (*o*). Pub. L. 98–181, § 207, added subsec. (*o*).

Subsec. (p). Pub. L. 98–181, § 211, added subsec. (p).

1981—Subsec. (b)(2). Pub. L. 97–35, §§ 324(1), 325(1), inserted provisions relating to increasing housing opportunities for very low-income families and provisions relating to availability for occupancy the number of units for which assistance is committed.

Subsec. (c)(2)(D). Pub. L. 97–35, § 324(2), added par. (D).

Subsec. (c)(3). Pub. L. 97–35, § 322(e)(1), revised formula for computation of amount of monthly assistance and struck out authority to make reviews at least every two years in cases of elderly families.

Subsec. (c)(5). Pub. L. 97–35, § 325(2), inserted reference to mortgages under section 1720 of title 12.

Subsec. (c)(7). Pub. L. 97–35, § 322(e)(2), struck out par. (7) relating to percentage requirement for families with very low income and redesignated former par. (8) as (7).

Subsec. (c)(8). Pub. L. 97–35, § 326(a), added par. (8). Former par. (8) redesignated (7).

Subsec. (d)(1)(B). Pub. L. 97–35, § 326(e)(1), substituted provisions relating to terms and conditions, and termination of the lease by the owner for provisions relating to right of the agency to give notice to terminate and owner the right to make representation to agency for termination of the tenancy.

Subsec. (f). Pub. L. 97–35, § 322(e)(3), struck out pars. (1) to (3) which defined ''lower income families'', ''very low-income families'' and ''income'', respectively, and redesignated pars. (4) to (6) as (1) to (3), respectively.

Subsec. (h). Pub. L. 97–35, § 322(e)(4), (5), struck out reference to section 1437a(1) of this title.

Subsec. (j). Pub. L. 97–35, § 329H(a), generally revised and reorganized provisions and, as so revised and reorganized, substituted provisions relating to contracts to make assistance payments to assist lower income families by making rental assistance payments on behalf of such family, for provisions relating to annual contributions contracts to assist lower income families by making rental assistance payments.

Subsec. (j)(3). Pub. L. 97–35, § 322(e)(6), substituted in par. (3) ''the rent the family is required to pay under section 1437a(a) of this title'' for ''25 per centum of one-twelfth of the annual income of such family''.

Subsecs. (*l*) to (n). Pub. L. 97–35, § 324(3), added subsecs. (*l*) to (n).

1980—Subsec. (c)(1). Pub. L. 96–399, § 203(a), inserted provision that in the case of newly constructed and substantially rehabilitated units, the exception in the preceding sentence shall not apply to more than 20 per centum of the total amount of authority to enter into annual contributions contracts for such units which is allocated to an area and obligated with respect to any fiscal year beginning on or after Oct. 1, 1980.

Subsec. (e)(5). Pub. L. 96–399, § 203(b), inserted provision relating to the authority of the Secretary, notwithstanding subsec. (c)(1) of this section, to establish monthly rent exceeding fair market rental where cost levels so require or where necessary to the implementation of a local housing assistance plan.

Subsec. (j). Pub. L. 96–399, § 308(c)(3), substituted ''manufactured home'' for ''mobile home'' wherever appearing.

1979—Subsec. (c)(3). Pub. L. 96–153, § 202(b), substituted new provisions for computation of the amount of monthly assistance payments with respect to dwelling units and laid down criteria to be followed by the Secretary in regard to payments to families with different income levels.

Subsec. (d)(1)(A). Pub. L. 96–153, § 206(b)(1), substituted ''Secretary and the agency, except that the tenant selection criteria used by the owner shall give preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance under this section.'' for ''Secretary and the agency;''.

Subsec. (e)(1). Pub. L. 96–153, § 211(b), substituted ''term of less than two hundred and forty months'' for ''term of less than one month''.

Subsec. (e)(2). Pub. L. 96–153, § 206(b)(2), substituted ''performance of such responsibilities), except that the tenant selection criteria shall give preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking housing assistance under this section'' for ''performance of such responsibilities)''.

Subsec. (k). Pub. L. 96–153, § 210, added subsec. (k).

1978—Subsec. (e)(5). Pub. L. 95–557, § 206(e), added par. (5).

Subsec. (i). Pub. L. 95–557, § 206(d)(1), added subsec. (i).

Subsec. (j). Pub. L. 95–557, § 206(f), added subsec. (j).

1977—Subsec. (c), Pub. L. 95–128, § 201(c), (d), inserted in par. (1) prohibition against high-rise elevator projects for families with children after Oct. 12, 1977, and struck out from par. (4) provision which prohibited payment after the sixty-day period if the unoccupied unit was in a project insured under the National Housing Act, except pursuant to section 1715z–9 of title 12.

Subsec. (d)(3). Pub. L. 95–128, § 201(e)(1), added par. (3).

Subsec. (e)(1). Pub. L. 95–24 substituted ''three hundred and sixty months, except that such term may not exceed two hundred and forty months in the case of a project financed with assistance of a loan made by, or insured, guaranteed or intended for purchase by, the Federal Government, other than pursuant to section 1715z–9 of title 12'' for ''two hundred and forty months'' and ''Notwithstanding the preceding sentence, in the case of'' for ''In the case of''.

Subsec. (e)(2). Pub. L. 95–128, § 201(e)(2), inserted provision respecting the Secretary's approval of any public housing agency for assumption of management and maintenance responsibilities of dwelling units under the preceding sentence.

1976—Subsec. (c)(4). Pub. L. 94–375, § 2(d), inserted provision extending payments to newly constructed or substantially rehabilitated unoccupied units in an amount equal to the debt service of such unit for a period not to exceed one year, provided that a good faith effort is being made to fill the unit, the unit provides decent and safe housing, the unit is not insured under the National Housing Act, except pursuant to section 1715z–9 of title 12, and the revenues from the project do not exceed the cost.

Subsec. (e)(1). Pub. L. 94–375, § 2(g), inserted ''or the Farmers' Home Administration'' after ''State or local agency''.

Subsec. (f)(6). Pub. L. 94–375, § 2(e), added par. (6).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–116 effective Sept. 30, 2001, see section 603 of Pub. L. 107–116, set out as a note under section 1715n of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–569, title III, § 301(b), Dec. 27, 2000, 114 Stat. 2952, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect immediately after the amendments made by section 555(c) of the Quality Housing and Work Responsibility Act of 1998 [Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note below] take effect pursuant to such section.''

Pub. L. 106–569, title IX, § 902(b), Dec. 27, 2000, 114 Stat. 3026, provided that: ''The amendment under subsection (a) [amending this section] shall be made and shall apply—

''(1) upon the enactment of this Act, if the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001 [H.R. 5482, as enacted by section 1(a)(1) of Pub. L. 106–377], is enacted before the enactment of this Act; and

''(2) immediately after the enactment of such appropriations Act, if such appropriations Act is enacted after the enactment of this Act.''

Pub. L. 106–569, title IX, § 903(b), Dec. 27, 2000, 114 Stat. 3026, provided that: ''The amendment under subsection (a) [amending this section] shall be made and shall apply—

''(1) upon the enactment of this Act, if the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001 [H.R. 5482, as enacted by section 1(a)(1) of Pub. L. 106–377], is enacted before the enactment of this Act; and

''(2) immediately after the enactment of such appropriations Act, if such appropriations Act is enacted after the enactment of this Act.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title II, § 209(b), Oct. 21, 1998, 112 Stat. 2485, provided that: ''This section [amending this section] shall take effect 60 days after the later of October 1, 1998 or the date of the enactment of this Act [Oct. 21, 1998].''

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Amendment by section 514(b)(1) of Pub. L. 105–276 effective and applicable beginning upon Oct. 21, 1998, see section 514(g) of Pub. L. 105–276, set out as a note under section 1701s of Title 12, Banks and Banking.

Pub. L. 105–276, title V, § 545(c), Oct. 21, 1998, 112 Stat. 2604, provided that: ''Notwithstanding the amendment made by subsection (a) of this section [amending this section], any amendments to section 8(*o*) of the United States Housing Act of 1937 (42 U.S.C. 1437f(*o*)) that are contained in title II of this Act [see Tables for classification] shall apply with respect to the provision of assistance under such section during the period before implementation (pursuant to section 559 of this title [set out as a Regulations and Transition Provisions note below]) of such section 8(*o*) as amended by subsection (a) of this section.''

Pub. L. 105–276, title V, § 549(a)(3), Oct. 21, 1998, 112 Stat. 2607, provided that: ''The amendments under this subsection [amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998], and shall apply thereafter, notwithstanding section 203 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 [section 101(e) [title II, § 203] of Pub. L. 104–134, amending this section and enacting provisions set out as an Effective and Termination Dates of 1996 Amendments note below] (42 U.S.C. 1437f note) or any other provision of law (including the expiration of the applicability of such section 203 or any repeal of such section 203).''

Pub. L. 105–276, title V, § 554, Oct. 21, 1998, 112 Stat. 2611, provided that: ''Notwithstanding section 203(d) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (as contained in section 101(e) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134; 42 U.S.C. 1437f note) [see Effective and Termination Dates of 1996 Amendments note below]), section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) is amended by striking subsection (t). This section shall apply beginning upon, and the amendment made by this section is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

Pub. L. 105–276, title V, § 555(c), Oct. 21, 1998, 112 Stat. 2613, provided that: ''This section [amending this section and enacting provisions set out as a note below] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

Amendment by section 565(c) of Pub. L. 105–276 effective and applicable beginning upon Oct. 21, 1998, see section 565(e) of Pub. L. 105–276, set out as a note under section 1437d of this title.

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Section 101(e) [title II, § 203(d)] of Pub. L. 104–134, as amended by Pub. L. 104–204, title II, § 201(e), Sept. 26, 1996, 110 Stat. 2893; Pub. L. 105–65, title II, § 201(b), Oct. 27, 1997, 111 Stat. 1364, provided that: ''The provisions of this section [amending this section] shall be effective for fiscal years 1996, 1997, and 1998 only.''

Amendment by section 402(d)(2), (3), (6)(A)(iii), (iv) of Pub. L. 104–99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of this title.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Amendment by Pub. L. 103–327 enacting subsec. (aa), effective only during fiscal year 1995, see title II in part of Pub. L. 103–327, set out as a note under section 1715n of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 289(b)(1) of Pub. L. 101–625, repealing subsec. (e)(2) of this section, effective Oct. 1, 1991; however, provisions of subsec. (e)(2) to remain in effect with respect to single room occupancy dwellings as authorized by subchapter IV (§ 11361 et seq.) of chapter 119 of this title, see section 12839(a)(4), (b) of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; SAVINGS PROVISION

Section 209(b) Pub. L. 98–181 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1983, except that the provisions repealed shall remain in effect—

''(1) with respect to any funds obligated for a viable project under section 8 of the United States Housing Act of 1937 [this section] prior to January 1, 1984; and

''(2) with respect to any project financed under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendments by sections 322(e) and 329H(a) of Pub. L. 97–35 effective Oct. 1, 1981, and amendments by sections 324, 325, and 326(a) of Pub. L. 97–35 applicable with respect to contracts entered into on or after Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

Section 326(e)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to leases entered into on or after October 1, 1981.''

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by section 202(b) of Pub. L. 96–153 effective Jan. 1, 1980, except with respect to amount of tenant contribution required of families whose occupancy commenced prior to such date, see section 202(c) of Pub. L. 96–153, set out as a note under section 1437a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 206(d)(2) of Pub. L. 95–557 provided that: ''The amendment made by this subsection [amending this section] shall become effective with respect to contracts entered into on or after 270 days following the date of enactment of this Act [Oct. 31, 1978].''

Amendment by section 206(e), (f) of Pub. L. 95–557 effective Oct. 1, 1978, see section 206(h) of Pub. L. 95–557, set out as a note under section 1437c of this title.

EFFECTIVE DATE

Section effective not later than Jan. 1, 1975, see section 201(b) of Pub. L. 93–383, set out as a note under section 1437 of this title.

APPLICABILITY OF 1994 AMENDMENTS

Title II of Pub. L. 103–327, 108 Stat. 2315, third par., provided that: ''The immediately foregoing amendment [amending subsec. (c)(2)(A) of this section by authorizing modification of rent adjustment where adjusted rent exceeds fair market rental] shall apply to all contracts for new construction, substantial rehabilitation, and moderate rehabilitation projects under which rents are adjusted under section 8(c)(2)(A) of such Act [subsec. (c)(2)(A) of this section] by applying an annual adjustment factor.''

Title II of Pub. L. 103–327, 108 Stat. 2315, fifth par., provided that: ''The immediately foregoing [amending subsec. (c)(2)(A) of this section by inserting two sentences at end authorizing reduction of annual adjustment factor in certain circumstances] shall hereafter apply to all contracts that are subject to section 8(c)(2)(A) of such Act [subsec. (c)(2)(A) of this section] and that provide for rent adjustments using an annual adjustment factor.''

REGULATIONS AND TRANSITION PROVISIONS

Pub. L. 105–276, title V, § 559, Oct. 21, 1998, 112 Stat. 2615, provided that:

''(a) INTERIM REGULATIONS.—The Secretary of Housing and Urban Development shall issue such interim regulations as may be necessary to implement the amendments made by this subtitle [subtitle C (§§ 545–559) of title V of Pub. L. 105–276, see Tables for classification] and other provisions in this title [see Tables for classification] which relate to section 8(*o*) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)].

''(b) FINAL REGULATIONS.—The Secretary shall issue final regulations necessary to implement the amendments made by this subtitle and other provisions in this title which relate to section 8(*o*) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)] not later then 1 year after the date of the enactment of this Act [Oct. 21, 1998].

''(c) FACTORS FOR CONSIDERATION.—Before the publication of the final regulations under subsection (b), in addition to public comments invited in connection with the publication of the interim rule, the Secretary shall—

''(1) seek recommendations on the implementation of sections 8(*o*)(6)(B), 8(*o*)(7)(B), and 8(*o*)(10)(D) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)(6)(B), (7)(B), (10)(D)] and of renewals of expiring tenant-based assistance from organizations representing—

''(A) State or local public housing agencies;

''(B) owners and managers of tenant-based housing assisted under section 8 of the United States Housing Act of 1937;

''(C) families receiving tenant-based assistance under section 8 of the United States Housing Act of 1937; and

''(D) legal service organizations; and

''(2) convene not less than 2 public forums at which the persons or organizations making recommendations under paragraph (1) may express views concerning the proposed disposition of the recommendations.

''(d) CONVERSION ASSISTANCE.—

''(1) IN GENERAL.—The Secretary may provide for the conversion of assistance under the certificate and voucher programs under subsections (b) and (*o*) of section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f(b), (*o*)], as in effect before the applicability of the amendments made by this subtitle, to the voucher program established by the amendments made by this subtitle.

''(2) CONTINUED APPLICABILITY.—The Secretary may apply the provisions of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], or any other provision of law amended by this subtitle, as those provisions were in effect immediately before the date of the enactment of this Act [Oct. 21, 1998] (except that such provisions shall be subject to any amendments to such provisions that may be contained in title II of this Act [see Tables for classification]), to assistance obligated by the Secretary before October 1, 1999, for the certificate or voucher program under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], if the Secretary determines that such action is necessary for simplification of program administration, avoidance of hardship, or other good cause.

''(e) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

REGULATIONS

Pub. L. 105–276, title V, § 556(b), Oct. 21, 1998, 112 Stat. 2613, provided that: ''The Secretary of Housing and Urban Development shall implement the provision added by the amendment made by subsection (a) [amending this section] through notice, not later than December 31, 1998, and shall issue final regulations which shall be developed pursuant to the procedures for issuance of regulations under the negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code, not later than one year after the date of the enactment of this Act [Oct. 21, 1998].''

For provisions requiring Secretary of Housing and Urban Development to issue regulations necessary to implement amendment to this section by Pub. L. 103–233, see section 101(f) of Pub. L. 103–233, set out as a note under section 1701z–11 of Title 12, Banks and Banking.

For provision requiring that not later than expiration of the 180-day period beginning Oct. 28, 1992, the Secretary of Housing and Urban Development shall issue regulations implementing amendments to this section by section 545 of Pub. L. 101–625, see section 104 of Pub. L. 102–550, set out as a note under section 1437d of this title.

Section 149 of Pub. L. 102–550 provided that: ''The Secretary of Housing and Urban Development shall issue any final regulations necessary to carry out the amendments made by section 547 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, amending this section] not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section) and shall take effect upon the expiration of the 30-day period beginning upon issuance.''

Section 151 of Pub. L. 102–550 provided that: ''The Secretary of Housing and Urban Development shall issue any final regulations necessary to carry out the provisions of section 555 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625] (42 U.S.C. 1437f note) not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section) and shall take effect upon the expiration of the 30-day period beginning upon issuance.''

SAVINGS PROVISION

Pub. L. 106–377, § 1(a)(1) [title II, § 232(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–34, provided that: ''In the case of any dwelling unit that, upon the date of the enactment of this Act [Oct. 27, 2000], is assisted under a housing assistance payment contract under section 8(*o*)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f(*o*)(13)) as in effect before such enactment, such assistance may be extended or renewed notwithstanding the requirements under subparagraphs (C), (D), and (E) of such section 8(*o*)(13), as amended by subsection (a).''

PURPOSES OF MARK-TO-MARKET EXTENSION ACT OF 2001

Pub. L. 107–116, title VI, § 602, Jan. 10, 2002, 115 Stat. 2221, provided that: ''The purposes of this title [see Short Title of 2002 Amendment note set out under section 1437 of this title] are—

''(1) to continue the progress of the Multifamily Assisted Housing Reform and Affordability Act of 1997 [title V of Pub. L. 105–65, see Short Title of 1997 Amendment note set out under section 1701 of Title 12, Banks and Banking] (referred to in this section as 'that Act');

''(2) to ensure that properties that undergo mortgage restructurings pursuant to that Act are rehabilitated to a standard that allows the properties to meet their long-term affordability requirements;

''(3) to ensure that, for properties that undergo mortgage restructurings pursuant to that Act, reserves are set at adequate levels to allow the properties to meet their long-term affordability requirements;

''(4) to ensure that properties that undergo mortgage restructurings pursuant to that Act are operated efficiently, and that operating expenses are sufficient to ensure the long-term financial and physical integrity of the properties;

''(5) to ensure that properties that undergo rent restructurings have adequate resources to maintain the properties in good condition;

''(6) to ensure that the Office of Multifamily Housing Assistance Restructuring of the Department of Housing and Urban Development continues to focus on the portfolio of properties eligible for restructuring under that Act;

''(7) to ensure that the Department of Housing and Urban Development carefully tracks the condition of those properties on an ongoing basis;

''(8) to ensure that tenant groups, nonprofit organizations, and public entities continue to have the resources for building the capacity of tenant organizations in furtherance of the purposes of subtitle A of that Act [subtitle A of title V of Pub. L. 105–65, set out in a note below]; and

''(9) to encourage the Office of Multifamily Housing Assistance Restructuring to continue to provide participating administrative entities, including public participating administrative entities, with the flexibility to respond to specific problems that individual cases may present, while ensuring consistent outcomes around the country.''

PILOT PROGRAM FOR HOMEOWNERSHIP ASSISTANCE FOR DISABLED FAMILIES

Pub. L. 106–569, title III, § 302, Dec. 27, 2000, 114 Stat. 2953, provided that:

''(a) IN GENERAL.—A public housing agency providing tenant-based assistance on behalf of an eligible family under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) may provide assistance for a disabled family that purchases a dwelling unit (including a dwelling unit under a lease-purchase agreement) that will be owned by one or more members of the disabled family and will be occupied by the disabled family, if the disabled family—

''(1) purchases the dwelling unit before the expiration of the 3-year period beginning on the date that the Secretary first implements the pilot program under this section;

''(2) demonstrates that the disabled family has income from employment or other sources (including public assistance), as determined in accordance with requirements of the Secretary, that is not less than twice the payment standard established by the public housing agency (or such other amount as may be established by the Secretary);

''(3) except as provided by the Secretary, demonstrates at the time the disabled family initially receives tenant-based assistance under this section that one or more adult members of the disabled family have achieved employment for the period as the Secretary shall require;

''(4) participates in a homeownership and housing counseling program provided by the agency; and

''(5) meets any other initial or continuing requirements established by the public housing agency in accordance with requirements established by the Secretary.

''(b) DETERMINATION OF AMOUNT OF ASSISTANCE.—

''(1) IN GENERAL.—

''(A) MONTHLY EXPENSES NOT EXCEEDING PAYMENT STANDARD.—If the monthly homeownership ex-

penses, as determined in accordance with requirements established by the Secretary, do not exceed the payment standard, the monthly assistance payment shall be the amount by which the homeownership expenses exceed the highest of the following amounts, rounded to the nearest dollar:

''(i) Thirty percent of the monthly adjusted income of the disabled family.

''(ii) Ten percent of the monthly income of the disabled family.

''(iii) If the disabled family is receiving payments for welfare assistance from a public agency, and a portion of those payments, adjusted in accordance with the actual housing costs of the disabled family, is specifically designated by that agency to meet the housing costs of the disabled family, the portion of those payments that is so designated.

''(B) MONTHLY EXPENSES EXCEED PAYMENT STANDARD.—If the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, exceed the payment standard, the monthly assistance payment shall be the amount by which the applicable payment standard exceeds the highest of the amounts under clauses (i), (ii), and (iii) of subparagraph (A).

''(2) CALCULATION OF AMOUNT.—

''(A) LOW-INCOME FAMILIES.—A disabled family that is a low-income family shall be eligible to receive 100 percent of the amount calculated under paragraph (1).

''(B) INCOME BETWEEN 81 AND 89 PERCENT OF MEDIAN.—A disabled family whose income is between 81 and 89 percent of the median for the area shall be eligible to receive 66 percent of the amount calculated under paragraph (1).

''(C) INCOME BETWEEN 90 AND 99 PERCENT OF MEDIAN.—A disabled family whose income is between 90 and 99 percent of the median for the area shall be eligible to receive 33 percent of the amount calculated under paragraph (1).

''(D) INCOME MORE THAN 99 PERCENT OF MEDIAN.—A disabled family whose income is more than 99 percent of the median for the area shall not be eligible to receive assistance under this section.

''(c) INSPECTIONS AND CONTRACT CONDITIONS.—

''(1) IN GENERAL.—Each contract for the purchase of a dwelling unit to be assisted under this section shall—

''(A) provide for pre-purchase inspection of the dwelling unit by an independent professional; and

''(B) require that any cost of necessary repairs be paid by the seller.

''(2) ANNUAL INSPECTIONS NOT REQUIRED.—The requirement under subsection (*o*)(8)(A)(ii) of section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)(8)(A)(ii)] for annual inspections shall not apply to dwelling units assisted under this section.

''(d) OTHER AUTHORITY OF THE SECRETARY.—The Secretary may—

''(1) limit the term of assistance for a disabled family assisted under this section;

''(2) provide assistance for a disabled family for the entire term of a mortgage for a dwelling unit if the disabled family remains eligible for such assistance for such term; and

''(3) modify the requirements of this section as the Secretary determines to be necessary to make appropriate adaptations for lease-purchase agreements.

''(e) ASSISTANCE PAYMENTS SENT TO LENDER.—The Secretary shall remit assistance payments under this section directly to the mortgagee of the dwelling unit purchased by the disabled family receiving such assistance payments.

''(f) INAPPLICABILITY OF CERTAIN PROVISIONS.—Assistance under this section shall not be subject to the requirements of the following provisions:

''(1) Subsection (c)(3)(B) of section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f(c)(3)(B)].

''(2) Subsection (d)(1)(B)(i) of section 8 of the United States Housing Act of 1937.

''(3) Any other provisions of section 8 of the United States Housing Act of 1937 governing maximum amounts payable to owners and amounts payable by assisted families.

''(4) Any other provisions of section 8 of the United States Housing Act of 1937 concerning contracts between public housing agencies and owners.

''(5) Any other provisions of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] that are inconsistent with the provisions of this section.

''(g) REVERSION TO RENTAL STATUS.—

''(1) NON-FHA MORTGAGES.—If a disabled family receiving assistance under this section defaults under a mortgage not insured under the National Housing Act [12 U.S.C. 1701 et seq.], the disabled family may not continue to receive rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] unless it complies with requirements established by the Secretary.

''(2) ALL MORTGAGES.—A disabled family receiving assistance under this section that defaults under a mortgage may not receive assistance under this section for occupancy of another dwelling unit owned by one or more members of the disabled family.

''(3) EXCEPTION.—This subsection shall not apply if the Secretary determines that the disabled family receiving assistance under this section defaulted under a mortgage due to catastrophic medical reasons or due to the impact of a federally declared major disaster or emergency.

''(h) REGULATIONS.—Not later than 90 days after the date of the enactment of this Act [Dec. 27, 2000], the Secretary shall issue regulations to implement this section. Such regulations may not prohibit any public housing agency providing tenant-based assistance on behalf of an eligible family under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] from participating in the pilot program under this section.

''(i) DEFINITION OF DISABLED FAMILY.—For the purposes of this section, the term 'disabled family' has the meaning given the term 'person with disabilities' in section 811(k)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013(k)(2)).''

DETERMINATION OF ADMINISTRATIVE FEES

Pub. L. 108–7, div. K, title II, [(5)], Feb. 20, 2003, 117 Stat. 485, which provided that the fee otherwise authorized under subsec. (q) of this section was to be determined in accordance with subsec. (q) as in effect immediately before Oct. 21, 1998, was from the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2003 and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–73, title II, Nov. 26, 2001, 115 Stat. 660.

Pub. L. 106–377, § 1(a)(1) [title II], Oct. 27, 2000, 114 Stat. 1441, 1441A–12.

Pub. L. 106–74, title II, Oct. 20, 1999, 113 Stat. 1056.

HOMEOWNERSHIP OPPORTUNITIES DEMONSTRATION PROGRAM

Pub. L. 105–276, title V, § 555(b), Oct. 21, 1998, 112 Stat. 2613, provided that:

''(1) IN GENERAL.—With the consent of the affected public housing agencies, the Secretary may carry out (or contract with 1 or more entities to carry out) a demonstration program under section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437f(y)) to expand homeownership opportunities for low-income families.

''(2) REPORT.—The Secretary shall report annually to Congress on activities conducted under this subsection.''

MULTIFAMILY HOUSING ASSISTANCE

Subtitles A (§§ 511–524) and D (§§ 571–579) of title V of Pub. L. 105–65, as amended by Pub. L. 105–276, title V, §§ 549(c), 597(b), Oct. 21, 1998, 112 Stat. 2608, 2659; Pub. L.

106–74, title II, §§ 213(b), 219, title V, §§ 531(a)–(c), 534, 538(b), Oct. 20, 1999, 113 Stat. 1074, 1075, 1109–1116, 1120, 1123; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107–116, title VI, §§ 611–614, 616(a)(1), (b), 621, 622(a), 623(a), 624, 625, Jan. 10, 2002, 115 Stat. 2222–2227, provided that:

''SUBTITLE A—FHA-INSURED MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING

''SEC. 511. FINDINGS AND PURPOSES.

''(a) FINDINGS.—Congress finds that—

''(1) there exists throughout the Nation a need for decent, safe, and affordable housing;

''(2) as of the date of enactment of this Act [Oct. 27, 1997], it is estimated that—

''(A) the insured multifamily housing portfolio of the Federal Housing Administration consists of 14,000 rental properties, with an aggregate unpaid principal mortgage balance of $38,000,000,000; and

''(B) approximately 10,000 of these properties contain housing units that are assisted with project-based rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

''(3) FHA-insured multifamily rental properties are a major Federal investment, providing affordable rental housing to an estimated 2,000,000 low- and very low-income families;

''(4) approximately 1,600,000 of these families live in dwelling units that are assisted with project-based rental assistance under section 8 of the United States Housing Act of 1937;

''(5) a substantial number of housing units receiving project-based assistance have rents that are higher than the rents of comparable, unassisted rental units in the same housing rental market;

''(6) many of the contracts for project-based assistance will expire during the several years following the date of enactment of this Act;

''(7) it is estimated that—

''(A) if no changes in the terms and conditions of the contracts for project-based assistance are made before fiscal year 2000, the cost of renewing all expiring rental assistance contracts under section 8 of the United States Housing Act of 1937 for both project-based and tenant-based rental assistance will increase from approximately $3,600,000,000 in fiscal year 1997 to over $14,300,000,000 by fiscal year 2000 and some $22,400,000,000 in fiscal year 2006;

''(B) of those renewal amounts, the cost of renewing project-based assistance will increase from $1,200,000,000 in fiscal year 1997 to almost $7,400,000,000 by fiscal year 2006; and

''(C) without changes in the manner in which project-based rental assistance is provided, renewals of expiring contracts for project-based rental assistance will require an increasingly larger portion of the discretionary budget authority of the Department of Housing and Urban Development in each subsequent fiscal year for the foreseeable future;

''(8) absent new budget authority for the renewal of expiring rental contracts for project-based assistance, many of the FHA-insured multifamily housing projects that are assisted with project-based assistance are likely to default on their FHA-insured mortgage payments, resulting in substantial claims to the FHA General Insurance Fund and Special Risk Insurance Fund;

''(9) more than 15 percent of federally assisted multifamily housing projects are physically or financially distressed, including a number which suffer from mismanagement;

''(10) due to Federal budget constraints, the downsizing of the Department of Housing and Urban Development, and diminished administrative capacity, the Department lacks the ability to ensure the continued economic and physical well-being of the stock of federally insured and assisted multifamily housing projects;

''(11) the economic, physical, and management problems facing the stock of federally insured and assisted multifamily housing projects will be best served by reforms that—

''(A) reduce the cost of Federal rental assistance, including project-based assistance, to these projects by reducing the debt service and operating costs of these projects while retaining the low-income affordability and availability of this housing;

''(B) address physical and economic distress of this housing and the failure of some project managers and owners of projects to comply with management and ownership rules and requirements; and

''(C) transfer and share many of the loan and contract administration functions and responsibilities of the Secretary to and with capable State, local, and other entities; and

''(12) the authority and duties of the Secretary, not including the control by the Secretary of applicable accounts in the Treasury of the United States, may be delegated to State, local or other entities at the discretion of the Secretary, to the extent the Secretary determines, and for the purpose of carrying out this title [see Short Title of 1997 Amendment note set out under section 1701 of Title 12, Banks and Banking], so that the Secretary has the discretion to be relieved of processing and approving any document or action required by these reforms.

''(b) PURPOSES.—Consistent with the purposes and requirements of the Government Performance and Results Act of 1993 [Pub. L. 103–62, see Short Title of 1993 Amendment note set out under section 1101 of Title 31, Money and Finance], the purposes of this subtitle are—

''(1) to preserve low-income rental housing affordability and availability while reducing the long-term costs of project-based assistance;

''(2) to reform the design and operation of Federal rental housing assistance programs, administered by the Secretary, to promote greater multifamily housing project operating and cost efficiencies;

''(3) to encourage owners of eligible multifamily housing projects to restructure their FHA-insured mortgages and project-based assistance contracts in a manner that is consistent with this subtitle before the year in which the contract expires;

''(4) to reduce the cost of insurance claims under the National Housing Act [12 U.S.C. 1701 et seq.] related to mortgages insured by the Secretary and used to finance eligible multifamily housing projects;

''(5) to streamline and improve federally insured and assisted multifamily housing project oversight and administration;

''(6) to resolve the problems affecting financially and physically troubled federally insured and assisted multifamily housing projects through cooperation with residents, owners, State and local governments, and other interested entities and individuals;

''(7) to protect the interest of project owners and managers, because they are partners of the Federal Government in meeting the affordable housing needs of the Nation through the section 8 rental housing assistance program;

''(8) to protect the interest of tenants residing in the multifamily housing projects at the time of the restructuring for the housing; and

''(9) to grant additional enforcement tools to use against those who violate agreements and program requirements, in order to ensure that the public interest is safeguarded and that Federal multifamily housing programs serve their intended purposes.

''SEC. 512. DEFINITIONS.

''In this subtitle:

''(1) COMPARABLE PROPERTIES.—The term 'comparable properties' means properties in the same market areas, where practicable, that—

''(A) are similar to the eligible multifamily housing project as to neighborhood (including risk of crime), type of location, access, street appeal, age, property size, apartment mix, physical configura-

tion, property and unit amenities, utilities, and other relevant characteristics; and

''(B) are not receiving project-based assistance.

''(2) ELIGIBLE MULTIFAMILY HOUSING PROJECT.—The term 'eligible multifamily housing project' means a property consisting of more than 4 dwelling units—

''(A) with rents that, on an average per unit or per room basis, exceed the rent of comparable properties in the same market area, determined in accordance with guidelines established by the Secretary;

''(B) that is covered in whole or in part by a contract for project-based assistance under—

''(i) the new construction or substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)] (as in effect before October 1, 1983);

''(ii) the property disposition program under section 8(b) of the United States Housing Act of 1937;

''(iii) the moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937;

''(iv) the loan management assistance program under section 8 of the United States Housing Act of 1937;

''(v) section 23 of the United States Housing Act of 1937 [42 U.S.C. 1437u] (as in effect before January 1, 1975);

''(vi) the rent supplement program under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s]; or

''(vii) section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965; and

''(C) financed by a mortgage insured or held by the Secretary under the National Housing Act [12 U.S.C. 1701 et seq.].

Such term does not include any project with an expiring contract described in paragraph (1) or (2) of section 524(e), but does include a project described in section 524(e)(3). Notwithstanding any other provision of this title, the Secretary may treat a project as an eligible multifamily housing project for purposes of this title if (I) the project is assisted pursuant to a contract for project-based assistance under section 8 of the United States Housing Act of 1937 renewed under section 524 of this Act, (II) the owner consents to such treatment, and (III) the project met the requirements of the first sentence of this paragraph for eligibility as an eligible multifamily housing project before the initial renewal of the contract under section 524.

''(3) EXPIRING CONTRACT.—The term 'expiring contract' means a project-based assistance contract attached to an eligible multifamily housing project which, under the terms of the contract, will expire.

''(4) EXPIRATION DATE.—The term 'expiration date' means the date on which an expiring contract expires.

''(5) FAIR MARKET RENT.—The term 'fair market rent' means the fair market rental established under section 8(c) of the United States Housing Act of 1937.

''(6) LOW-INCOME FAMILIES.—The term 'low-income families' has the same meaning as provided under section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)].

''(7) MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLAN.—The term 'mortgage restructuring and rental assistance sufficiency plan' means the plan as provided under section 514.

''(8) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means any private nonprofit organization that—

''(A) is organized under State or local laws;

''(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

''(C) has a long-term record of service in providing or financing quality affordable housing for low-income families through relationships with public entities.

''(9) PORTFOLIO RESTRUCTURING AGREEMENT.—The term 'portfolio restructuring agreement' means the agreement entered into between the Secretary and a participating administrative entity, as provided under section 513.

''(10) PARTICIPATING ADMINISTRATIVE ENTITY.—The term 'participating administrative entity' means a public agency (including a State housing finance agency or a local housing agency), a nonprofit organization, or any other entity (including a law firm or an accounting firm) or a combination of such entities, that meets the requirements under section 513(b).

''(11) PROJECT-BASED ASSISTANCE.—The term 'project-based assistance' means rental assistance described in paragraph (2)(B) of this section that is attached to a multifamily housing project.

''(12) RENEWAL.—The term 'renewal' means the replacement of an expiring Federal rental contract with a new contract under section 8 of the United States Housing Act of 1937, consistent with the requirements of this subtitle.

''(13) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

''(14) STATE.—The term 'State' has the same meaning as in section 104 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12704].

''(15) TENANT-BASED ASSISTANCE.—The term 'tenant-based assistance' has the same meaning as in section 8(f) of the United States Housing Act of 1937.

''(16) UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'unit of general local government' has the same meaning as in section 104 of the Cranston-Gonzalez National Affordable Housing Act.

''(17) VERY LOW-INCOME FAMILY.—The term 'very low-income family' has the same meaning as in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)].

''(18) QUALIFIED MORTGAGEE.—The term 'qualified mortgagee' means an entity approved by the Secretary that is capable of servicing, as well as originating, FHA-insured mortgages, and that—

''(A) is not suspended or debarred by the Secretary;

''(B) is not suspended or on probation imposed by the Mortgagee Review Board; and

''(C) is not in default under any Government National Mortgage Association obligation.

''(19) OFFICE.—The term 'Office' means the Office of Multifamily Housing Assistance Restructuring established under section 571.

''SEC. 513. AUTHORITY OF PARTICIPATING ADMINISTRATIVE ENTITIES.

''(a) PARTICIPATING ADMINISTRATIVE ENTITIES.—

''(1) IN GENERAL.—Subject to subsection (b)(3), the Secretary shall enter into portfolio restructuring agreements with participating administrative entities for the implementation of mortgage restructuring and rental assistance sufficiency plans to restructure multifamily housing mortgages insured or held by the Secretary under the National Housing Act [12 U.S.C. 1701 et seq.], in order to—

''(A) reduce the costs of expiring contracts for assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

''(B) address financially and physically troubled projects; and

''(C) correct management and ownership deficiencies.

''(2) PORTFOLIO RESTRUCTURING AGREEMENTS.—Each portfolio restructuring agreement entered into under this subsection shall—

''(A) be a cooperative agreement to establish the obligations and requirements between the Secretary and the participating administrative entity;

''(B) identify the eligible multifamily housing projects or groups of projects for which the partici-

pating administrative entity is responsible for assisting in developing and implementing approved mortgage restructuring and rental assistance sufficiency plans under section 514;

''(C) require the participating administrative entity to review and certify to the accuracy and completeness of the evaluation of rehabilitation needs required under section 514(e)(3) for each eligible multifamily housing project included in the portfolio restructuring agreement, in accordance with regulations promulgated by the Secretary;

''(D) identify the responsibilities of both the participating administrative entity and the Secretary in implementing a mortgage restructuring and rental assistance sufficiency plan, including any actions proposed to be taken under section 516 or 517;

''(E) require each mortgage restructuring and rental assistance sufficiency plan to be prepared in accordance with the requirements of section 514 for each eligible multifamily housing project;

''(F) include other requirements established by the Secretary, including a right of the Secretary to terminate the contract immediately for failure of the participating administrative entity to comply with any applicable requirement;

''(G) if the participating administrative entity is a State housing finance agency or a local housing agency, indemnify the participating administrative entity against lawsuits and penalties for actions taken pursuant to the agreement, excluding actions involving willful misconduct or negligence;

''(H) include compensation for all reasonable expenses incurred by the participating administrative entity necessary to perform its duties under this subtitle; and

''(I) include, where appropriate, incentive agreements with the participating administrative entity to reward superior performance in meeting the purposes of this title.

''(b) SELECTION OF PARTICIPATING ADMINISTRATIVE ENTITY.—

''(1) SELECTION CRITERIA.—The Secretary shall select a participating administrative entity based on whether, in the determination of the Secretary, the participating administrative entity—

''(A) has demonstrated experience in working directly with residents of low-income housing projects and with tenants and other community-based organizations;

''(B) has demonstrated experience with and capacity for multifamily restructuring and multifamily financing (which may include risk-sharing arrangements and restructuring eligible multifamily housing properties under the fiscal year 1997 Federal Housing Administration multifamily housing demonstration program);

''(C) has a history of stable, financially sound, and responsible administrative performance (which may include the management of affordable low-income rental housing);

''(D) has demonstrated financial strength in terms of asset quality, capital adequacy, and liquidity;

''(E) has demonstrated that it will carry out the specific transactions and other responsibilities under this subtitle in a timely, efficient, and cost-effective manner; and

''(F) meets other criteria, as determined by the Secretary.

''(2) SELECTION.—If more than 1 interested entity meets the qualifications and selection criteria for a participating administrative entity, the Secretary may select the entity that demonstrates, as determined by the Secretary, that it will—

''(A) provide the most timely, efficient, and cost-effective—

''(i) restructuring of the mortgages covered by the portfolio restructuring agreement; and

''(ii) administration of the section 8 project-based assistance contract, if applicable; and

''(B) protect the public interest (including the long-term provision of decent low-income affordable rental housing and protection of residents, communities, and the American taxpayer).

''(3) PARTNERSHIPS.—For the purposes of any participating administrative entity applying under this subsection, participating administrative entities are encouraged to develop partnerships with each other and with nonprofit organizations, if such partnerships will further the participating administrative entity's ability to meet the purposes of this title.

''(4) ALTERNATIVE ADMINISTRATORS.—With respect to any eligible multifamily housing project for which a participating administrative entity is unavailable, or should not be selected to carry out the requirements of this subtitle with respect to that multifamily housing project for reasons relating to the selection criteria under paragraph (1), the Secretary shall—

''(A) carry out the requirements of this subtitle with respect to that eligible multifamily housing project; or

''(B) contract with other qualified entities that meet the requirements of paragraph (1) to provide the authority to carry out all or a portion of the requirements of this subtitle with respect to that eligible multifamily housing project.

''(5) PRIORITY FOR PUBLIC AGENCIES AS PARTICIPATING ADMINISTRATIVE ENTITIES.—The Secretary shall provide a reasonable period during which the Secretary will consider proposals only from State housing finance agencies or local housing agencies, and the Secretary shall select such an agency without considering other applicants if the Secretary determines that the agency is qualified. The period shall be of sufficient duration for the Secretary to determine whether any State housing finance agencies or local housing agencies are interested and qualified. Not later than the end of the period, the Secretary shall notify the State housing finance agency or the local housing agency regarding the status of the proposal and, if the proposal is rejected, the reasons for the rejection and an opportunity for the applicant to respond.

''(6) STATE AND LOCAL PORTFOLIO REQUIREMENTS.—

''(A) IN GENERAL.—If the housing finance agency of a State is selected as the participating administrative entity, that agency shall be responsible for such eligible multifamily housing projects in that State as may be agreed upon by the participating administrative entity and the Secretary. If a local housing agency is selected as the participating administrative entity, that agency shall be responsible for such eligible multifamily housing projects in the jurisdiction of the agency as may be agreed upon by the participating administrative entity and the Secretary.

''(B) NONDELEGATION.—Except with the prior approval of the Secretary, a participating administrative entity may not delegate or transfer responsibilities and functions under this subtitle to 1 or more entities.

''(7) PRIVATE ENTITY REQUIREMENTS.—

''(A) IN GENERAL.—If a for-profit entity is selected as the participating administrative entity, that entity shall be required to enter into a partnership with a public purpose entity (including the Department).

''(B) PROHIBITION.—No private entity shall share, participate in, or otherwise benefit from any equity created, received, or restructured as a result of the portfolio restructuring agreement.

''SEC. 514. MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLAN.

''(a) IN GENERAL.—

''(1) DEVELOPMENT OF PROCEDURES AND REQUIREMENTS.—The Secretary shall develop procedures and requirements for the submission of a mortgage restructuring and rental assistance sufficiency plan for

each eligible multifamily housing project with an expiring contract.

''(2) TERMS AND CONDITIONS.—Each mortgage restructuring and rental assistance sufficiency plan submitted under this subsection shall be developed by the participating administrative entity, in cooperation with an owner of an eligible multifamily housing project and any servicer for the mortgage that is a qualified mortgagee, under such terms and conditions as the Secretary shall require.

''(3) CONSOLIDATION.—Mortgage restructuring and rental assistance sufficiency plans submitted under this subsection may be consolidated as part of an overall strategy for more than 1 property.

''(b) NOTICE REQUIREMENTS.—The Secretary shall establish notice procedures and hearing requirements for tenants and owners concerning the dates for the expiration of project-based assistance contracts for any eligible multifamily housing project.

''(c) EXTENSION OF CONTRACT TERM.—Subject to agreement by a project owner, the Secretary may extend the term of any expiring contract or provide a section 8 contract with rent levels set in accordance with subsection (g) for a period sufficient to facilitate the implementation of a mortgage restructuring and rental assistance sufficiency plan, as determined by the Secretary.

''(d) TENANT RENT PROTECTION.—If the owner of a project with an expiring Federal rental assistance contract does not agree to extend the contract, not less than 12 months prior to terminating the contract, the project owner shall provide written notice to the Secretary and the tenants and the Secretary shall make tenant-based assistance available to tenants residing in units assisted under the expiring contract at the time of expiration. In addition, if after giving the notice required in the first sentence, an owner determines to terminate a contract, an owner shall provide an additional written notice with respect to the termination, in a form prescribed by the Secretary, not less than 120 days prior to the termination. In the event the owner does not provide the 120-day notice required in the preceding sentence, the owner may not evict the tenants or increase the tenants' rent payment until such time as the owner has provided the 120-day notice and such period has elapsed. The Secretary may allow the owner to renew the terminating contract for a period of time sufficient to give tenants 120 days of advance notice in accordance with section 524 of this Act.

''(e) MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLAN.—Each mortgage restructuring and rental assistance sufficiency plan shall—

''(1) except as otherwise provided, restructure the project-based assistance rents for the eligible multifamily housing project in a manner consistent with subsection (g), or provide for tenant-based assistance in accordance with section 515;

''(2) allow for rent adjustments by applying an operating cost adjustment factor established under guidelines established by the Secretary;

''(3) require the owner or purchaser of an eligible multifamily housing project to evaluate the rehabilitation needs of the project, in accordance with regulations of the Secretary, and notify the participating administrative entity of the rehabilitation needs;

''(4) require the owner or purchaser of the project to provide or contract for competent management of the project;

''(5) require the owner or purchaser of the project to take such actions as may be necessary to rehabilitate, maintain adequate reserves, and to maintain the project in decent and safe condition, based on housing quality standards established by—

''(A) the Secretary; or

''(B) local housing codes or codes adopted by public housing agencies that—

''(i) meet or exceed housing quality standards established by the Secretary; and

''(ii) do not severely restrict housing choice;

''(6) require the owner or purchaser of the project to maintain affordability and use restrictions in accordance with regulations promulgated by the Secretary, for a term of not less than 30 years which restrictions shall be—

''(A) contained in a legally enforceable document recorded in the appropriate records; and

''(B) consistent with the long-term physical and financial viability and character of the project as affordable housing;

''(7) include a certification by the participating administrative entity that the restructuring meets subsidy layering requirements established by the Secretary by regulation for purposes of this subtitle;

''(8) require the owner or purchaser of the project to meet such other requirements as the Secretary determines to be appropriate; and

''(9) prohibit the owner from refusing to lease a reasonable number of units to holders of certificates and vouchers under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] because of the status of the prospective tenants as certificate and voucher holders.

''(f) TENANT AND OTHER PARTICIPATION AND CAPACITY BUILDING.—

''(1) PROCEDURES.—

''(A) IN GENERAL.—The Secretary shall establish procedures to provide an opportunity for tenants of the project, residents of the neighborhood, the local government, and other affected parties to participate effectively and on a timely basis in the restructuring process established by this subtitle.

''(B) COVERAGE.—These procedures shall take into account the need to provide tenants of the project, residents of the neighborhood, the local government, and other affected parties timely notice of proposed restructuring actions and appropriate access to relevant information about restructuring activities. To the extent practicable and consistent with the need to accomplish project restructuring in an efficient manner, the procedures shall give all such parties an opportunity to provide comments to the participating administrative entity in writing, in meetings, or in another appropriate manner (which comments shall be taken into consideration by the participating administrative entity).

''(2) REQUIRED CONSULTATION.—The procedures developed pursuant to paragraph (1) shall require consultation with tenants of the project, residents of the neighborhood, the local government, and other affected parties, in connection with at least the following:

''(A) the mortgage restructuring and rental assistance sufficiency plan;

''(B) any proposed transfer of the project; and

''(C) the rental assistance assessment plan pursuant to section 515(c).

''(3) FUNDING.—

''(A) IN GENERAL.—The Secretary shall make available not more than $10,000,000 annually in funding, which amount shall be in addition to any amounts made available under this subparagraph and carried over from previous years, from which the Secretary may make obligations to tenant groups, nonprofit organizations, and public entities for building the capacity of tenant organizations, for technical assistance in furthering any of the purposes of this subtitle (including transfer of developments to new owners), for technical assistance for preservation of low-income housing for which project-based rental assistance is provided at below market rent levels and may not be renewed (including transfer of developments to tenant groups, nonprofit organizations, and public entities), for tenant services, and for tenant groups, nonprofit organizations, and public entities described in section 517(a)(5), from those amounts made available under appropriations Acts for implementing this subtitle or previously made available for technical assistance in connection with the preservation of affordable rental housing for low-income persons.

''(B) MANNER OF PROVIDING.—Notwithstanding any other provision of law restricting the use of

preservation technical assistance funds, the Secretary may provide any funds made available under subparagraph (A) through existing technical assistance programs pursuant to any other Federal law, including the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.] and the Multifamily Housing Property Disposition Reform Act of 1994 [Pub. L. 103–233, see Short Title of 1994 Amendment note set out under section 1701 of Title 12, Banks and Banking], or through any other means that the Secretary considers consistent with the purposes of this subtitle, without regard to any set-aside requirement otherwise applicable to those funds.

''(C) PROHIBITION.—None of the funds made available under subparagraph (A) may be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation.

''(g) RENT LEVELS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), each mortgage restructuring and rental assistance sufficiency plan pursuant to the terms, conditions, and requirements of this subtitle shall establish for units assisted with project-based assistance in eligible multifamily housing projects adjusted rent levels that—

''(A) are equivalent to rents derived from comparable properties, if—

''(i) the participating administrative entity makes the rent determination within a reasonable period of time; and

''(ii) the market rent determination is based on not less than 2 comparable properties; or

''(B) if those rents cannot be determined, are equal to 90 percent of the fair market rents for the relevant market area.

''(2) EXCEPTIONS.—

''(A) IN GENERAL.—A contract under this section may include rent levels that exceed the rent level described in paragraph (1) at rent levels that do not exceed 120 percent of the fair market rent for the market area (except that the Secretary may waive this limit for not more than five percent of all units subject to portfolio restructuring agreements, based on a finding of special need), if the participating administrative entity—

''(i) determines that the housing needs of the tenants and the community cannot be adequately addressed through implementation of the rent limitation required to be established through a mortgage restructuring and rental assistance sufficiency plan under paragraph (1); and

''(ii) follows the procedures under paragraph (3).

''(B) EXCEPTION RENTS.—In any fiscal year, a participating administrative entity may approve exception rents on not more than 20 percent of all units covered by the portfolio restructuring agreement with expiring contracts in that fiscal year, except that the Secretary may waive this ceiling upon a finding of special need.

''(3) RENT LEVELS FOR EXCEPTION PROJECTS.—For purposes of this section, a project eligible for an exception rent shall receive a rent calculated on the actual and projected costs of operating the project, at a level that provides income sufficient to support a budget-based rent that consists of—

''(A) the debt service of the project;

''(B) the operating expenses of the project, as determined by the participating administrative entity, including—

''(i) contributions to adequate reserves;

''(ii) the costs of maintenance and necessary rehabilitation; and

''(iii) other eligible costs permitted under section 8 of the United States Housing Act of 1937;

''(C) an adequate allowance for potential operating losses due to vacancies and failure to collect rents, as determined by the participating administrative entity;

''(D) an allowance for a reasonable rate of return to the owner or purchaser of the project, as determined by the participating administrative entity, which may be established to provide incentives for owners or purchasers to meet benchmarks of quality for management and housing quality; and

''(E) other expenses determined by the participating administrative entity to be necessary for the operation of the project.

''(h) EXEMPTIONS FROM RESTRUCTURING.—The following categories of projects shall not be covered by a mortgage restructuring and rental assistance sufficiency plan if—

''(1) the primary financing or mortgage insurance for the multifamily housing project that is covered by that expiring contract was provided by a unit of State government or a unit of general local government (or an agency or instrumentality of a unit of a State government or unit of general local government) and the financing involves mortgage insurance under the National Housing Act [42 U.S.C. 1701 et seq.], such that the implementation of a mortgage restructuring and rental assistance sufficiency plan under this subtitle is in conflict with applicable law or agreements governing such financing;

''(2) the project is a project financed under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] or section 515 of the Housing Act of 1949 [42 U.S.C. 1485], or refinanced pursuant to section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note); or

''(3) the project has an expiring contract under section 8 of the United States Housing Act of 1937 entered into pursuant to section 441 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11401].

''SEC. 515. SECTION 8 RENEWALS AND LONG-TERM AFFORDABILITY COMMITMENT BY OWNER OF PROJECT.

''(a) SECTION 8 RENEWALS OF RESTRUCTURED PROJECTS.—

''(1) PROJECT-BASED ASSISTANCE.—Subject to the availability of amounts provided in advance in appropriations Acts, and to the control of the Secretary of applicable accounts in the Treasury of the United States, with respect to an expiring section 8 contract on an eligible multifamily housing project to be renewed with project-based assistance (based on a determination under subsection (c)), the Secretary shall enter into contracts with participating administrative entities pursuant to which the participating administrative entity shall offer to renew or extend the contract, or the Secretary shall offer to renew such contract, and the owner of the project shall accept the offer, if the initial renewal is in accordance with the terms and conditions specified in the mortgage restructuring and rental assistance sufficiency plan and the rental assistance assessment plan.

''(2) TENANT-BASED ASSISTANCE.—Subject to the availability of amounts provided in advance in appropriations Acts and to the control of the Secretary of applicable accounts in the Treasury of the United States, with respect to an expiring section 8 contract on an eligible multifamily housing project to be renewed with tenant-based assistance (based on a determination under subsection (c)), the Secretary shall enter into contracts with participating administrative entities pursuant to which the participating administrative entity shall provide for the renewal of section 8 assistance on an eligible multifamily housing project with tenant-based assistance, or the Secretary shall provide for such renewal, in accordance with the terms and conditions specified in the mortgage restructuring and rental assistance sufficiency plan and the rental assistance assessment plan.

''(b) REQUIRED COMMITMENT.—After the initial renewal of a section 8 contract pursuant to this section, the owner shall accept each offer made pursuant to subsection (a) to renew the contract, for the term of the affordability and use restrictions required by section 514(e)(6), if the offer to renew is on terms and conditions specified in the mortgage restructuring and rental assistance sufficiency plan.

''(c) DETERMINATION OF WHETHER TO RENEW WITH PROJECT-BASED OR TENANT-BASED ASSISTANCE.—

''(1) MANDATORY RENEWAL OF PROJECT-BASED ASSISTANCE.—Section 8 assistance shall be renewed with project-based assistance, if—

''(A) the project is located in an area in which the participating administrative entity determines, based on housing market indicators, such as low vacancy rates or high absorption rates, that there is not adequate available and affordable housing or that the tenants of the project would not be able to locate suitable units or use the tenant-based assistance successfully;

''(B) a predominant number of the units in the project are occupied by elderly families, disabled families, or elderly and disabled families; or

''(C) the project is held by a nonprofit cooperative ownership housing corporation or nonprofit cooperative housing trust.

''(2) RENTAL ASSISTANCE ASSESSMENT PLAN.—

''(A) IN GENERAL.—With respect to any project that is not described in paragraph (1), the participating administrative entity shall, after consultation with the owner of the project, develop a rental assistance assessment plan to determine whether to renew assistance for the project with tenant-based assistance or project-based assistance.

''(B) RENTAL ASSISTANCE ASSESSMENT PLAN REQUIREMENTS.—Each rental assistance assessment plan developed under this paragraph shall include an assessment of the impact of converting to tenant-based assistance and the impact of extending project-based assistance on—

''(i) the ability of the tenants to find adequate, available, decent, comparable, and affordable housing in the local market;

''(ii) the types of tenants residing in the project (such as elderly families, disabled families, large families, and cooperative homeowners);

''(iii) the local housing needs identified in the comprehensive housing affordability strategy, and local market vacancy trends;

''(iv) the cost of providing assistance, comparing the applicable payment standard to the project's adjusted rent levels determined under section 514(g);

''(v) the long-term financial stability of the project;

''(vi) the ability of residents to make reasonable choices about their individual living situations;

''(vii) the quality of the neighborhood in which the tenants would reside; and

''(viii) the project's ability to compete in the marketplace.

''(C) REPORTS TO DIRECTOR.—Each participating administrative entity shall report regularly to the Director as defined in subtitle D, as the Director shall require, identifying—

''(i) each eligible multifamily housing project for which the entity has developed a rental assistance assessment plan under this paragraph that determined that the tenants of the project generally supported renewal of assistance with tenant-based assistance, but under which assistance for the project was renewed with project-based assistance; and

''(ii) each project for which the entity has developed such a plan under which the assistance is renewed using tenant-based assistance.

''(3) ELIGIBILITY FOR TENANT-BASED ASSISTANCE.—Subject to paragraph (4), with respect to any project that is not described in paragraph (1), if a participating administrative entity approves the use of tenant-based assistance based on a rental assistance assessment plan developed under paragraph (2), tenant-based assistance shall be provided to each assisted family (other than a family already receiving tenant-based assistance) residing in the project at the time the assistance described in section 512(2)(B) terminates.

''(4) ASSISTANCE THROUGH ENHANCED VOUCHERS.—In the case of any family described in paragraph (3) that resides in a project described in section 512(2)(B), the tenant-based assistance provided shall be enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)).

''(5) INAPPLICABILITY OF CERTAIN PROVISION.—If a participating administrative entity approves renewal with project-based assistance under this subsection, section 8(d)(2) of the United States Housing Act of 1937 shall not apply.

''SEC. 516. PROHIBITION ON RESTRUCTURING.

''(a) PROHIBITION ON RESTRUCTURING.—The Secretary may elect not to consider any mortgage restructuring and rental assistance sufficiency plan or request for contract renewal if the Secretary or the participating administrative entity determines that—

''(1)(A) the owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to such project; or

''(B) the owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to other projects of such owner or purchaser that are federally assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the Federal Government;

''(2) material adverse financial or managerial actions or omissions include—

''(A) materially violating any Federal, State, or local law or regulation with regard to this project or any other federally assisted project, after receipt of notice and an opportunity to cure;

''(B) materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], after receipt of notice and an opportunity to cure;

''(C) materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity, after receipt of notice and an opportunity to cure;

''(D) repeatedly and materially violating any Federal, State, or local law or regulation with regard to the project or any other federally assisted project;

''(E) repeatedly and materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937;

''(F) repeatedly and materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity;

''(G) repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the property;

''(H) materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure; or

''(I) committing any actions or omissions that would warrant suspension or debarment by the Secretary;

''(3) the owner or purchaser of the property materially failed to follow the procedures and requirements of this subtitle, after receipt of notice and an opportunity to cure; or

''(4) the poor condition of the project cannot be remedied in a cost effective manner, as determined by the participating administrative entity.

The term 'owner' as used in this subsection, in addition to it having the same meaning as in section 8(f) of the United States Housing Act of 1937, also means an affiliate of the owner. The term 'purchaser' as used in this

subsection means any private person or entity, including a cooperative, an agency of the Federal Government, or a public housing agency, that, upon purchase of the project, would have the legal right to lease or sublease dwelling units in the project, and also means an affiliate of the purchaser. The terms 'affiliate of the owner' and 'affiliate of the purchaser' means any person or entity (including, but not limited to, a general partner or managing member, or an officer of either) that controls an owner or purchaser, is controlled by an owner or purchaser, or is under common control with the owner or purchaser. The term 'control' means the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of the owner or purchaser.

''(b) OPPORTUNITY TO DISPUTE FINDINGS.—

''(1) IN GENERAL.—During the 30-day period beginning on the date on which the owner or purchaser of an eligible multifamily housing project receives notice of a rejection under subsection (a) or of a mortgage restructuring and rental assistance sufficiency plan under section 514, the Secretary or participating administrative entity shall provide that owner or purchaser with an opportunity to dispute the basis for the rejection and an opportunity to cure.

''(2) AFFIRMATION, MODIFICATION, OR REVERSAL.—

''(A) IN GENERAL.—After providing an opportunity to dispute under paragraph (1), the Secretary or the participating administrative entity may affirm, modify, or reverse any rejection under subsection (a) or rejection of a mortgage restructuring and rental assistance sufficiency plan under section 514.

''(B) REASONS FOR DECISION.—The Secretary or the participating administrative entity, as applicable, shall identify the reasons for any final decision under this paragraph.

''(C) REVIEW PROCESS.—The Secretary shall establish an administrative review process to appeal any final decision under this paragraph.

''(c) FINAL DETERMINATION.—Any final determination under this section shall not be subject to judicial review.

''(d) DISPLACED TENANTS.—

''(1) NOTICE TO CERTAIN RESIDENTS.—The Office shall notify any tenant that is residing in a project or receiving assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) at the time of rejection under this section, of such rejection, except that the Office may delegate the responsibility to provide notice under this paragraph to the participating administrative entity.

''(2) ASSISTANCE AND MOVING EXPENSES.—Subject to the availability of amounts provided in advance in appropriations Acts, for any low-income tenant that is residing in a project or receiving assistance under section 8 of the United States Housing Act of 1937 at the time of rejection under this section, that tenant shall be provided with tenant-based assistance and reasonable moving expenses, as determined by the Secretary.

''(e) TRANSFER OF PROPERTY.—For properties disqualified from the consideration of a mortgage restructuring and rental assistance sufficiency plan under this section in accordance with paragraph (1) or (2) of subsection (a) because of actions by an owner or purchaser, the Secretary shall establish procedures to facilitate the voluntary sale or transfer of a property as part of a mortgage restructuring and rental assistance sufficiency plan, with a preference for tenant organizations and tenant-endorsed community-based nonprofit and public agency purchasers meeting such reasonable qualifications as may be established by the Secretary.

''SEC. 517. RESTRUCTURING TOOLS.

''(a) MORTGAGE RESTRUCTURING.—

''(1) In this subtitle, an approved mortgage restructuring and rental assistance sufficiency plan shall include restructuring mortgages in accordance with this subsection to provide—

''(A) a restructured or new first mortgage that is sustainable at rents at levels that are established in section 514(g); and

''(B) a second mortgage that is in an amount equal to not more than the greater of—

''(i) the full or partial payment of claim made under this subtitle; or

''(ii) the difference between the restructured or new first mortgage and the indebtedness under the existing insured mortgage immediately before it is restructured or refinanced, provided that the amount of the second mortgage shall be in an amount that the Secretary or participating administrative entity determines can reasonably be expected to be repaid.

''(2) The second mortgage shall bear interest at a rate not to exceed the applicable Federal rate as defined in section 1274(d) of the Internal Revenue Code of 1986 [26 U.S.C. 1274(d)]. The term of the second mortgage shall be equal to the term of the restructured or new first mortgage.

''(3) Payments on the second mortgage shall be deferred when the first mortgage remains outstanding, except to the extent there is excess project income remaining after payment of all reasonable and necessary operating expenses (including deposits in a reserve for replacement), debt service on the first mortgage, and any other expenditures approved by the Secretary. At least 75 percent of any excess project income shall be applied to payments on the second mortgage, and the Secretary or the participating administrative entity may permit up to 25 percent to be paid to the project owner if the Secretary or participating administrative entity determines that the project owner meets benchmarks for management and housing quality.

''(4) The full amount of the second mortgage shall be immediately due and payable if—

''(A) the first mortgage is terminated or paid in full, except as otherwise provided by the holder of the second mortgage;

''(B) the project is purchased and the second mortgage is assumed by any subsequent purchaser in violation of guidelines established by the Secretary; or

''(C) the Secretary provides notice to the project owner that such owner has failed to materially comply with any requirements of this section or the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] as those requirements apply to the project, with a reasonable opportunity for such owner to cure such failure.

''(5) The Secretary may modify the terms of the second mortgage, assign the second mortgage to the acquiring organization or agency, or forgive all or part of the second mortgage if the Secretary holds the second mortgage and if the project is acquired by a tenant organization or tenant-endorsed community-based nonprofit or public agency, pursuant to guidelines established by the Secretary.

''(6) The second mortgage under this section may be a first mortgage if no restructured or new first mortgage will meet the requirement of paragraph (1)(A).

''(b) RESTRUCTURING TOOLS.—In addition to the requirements of subsection (a) and to the extent these actions are consistent with this section and with the control of the Secretary of applicable accounts in the Treasury of the United States, an approved mortgage restructuring and rental assistance sufficiency plan under this subtitle may include one or more of the following actions:

''(1) FULL OR PARTIAL PAYMENT OF CLAIM.—Making a full payment of claim or partial payment of claim under section 541(b) of the National Housing Act [12 U.S.C. 1735f–19(b)], as amended by section 523(b) of this Act. Any payment under this paragraph shall not require the approval of a mortgagee.

''(2) REFINANCING OF DEBT.—Refinancing of all or part of the debt on a project. If the refinancing involves a mortgage that will continue to be insured

under the National Housing Act [12 U.S.C. 1701 et seq.], the refinancing shall be documented through amendment of the existing insurance contract and not through a new insurance contract.

''(3) MORTGAGE INSURANCE.—Providing FHA multifamily mortgage insurance, reinsurance or other credit enhancement alternatives, including multifamily risk-sharing mortgage programs, as provided under section 542 of the Housing and Community Development Act of 1992 [Pub. L. 102–550, 12 U.S.C. 1707 note]. The Secretary shall use risk-shared financing under section 542(c) of the Housing and Community Development Act of 1992 for any mortgage restructuring, rehabilitation financing, or debt refinancing included as part of a mortgage restructuring and rental assistance sufficiency plan if the terms and conditions are considered to be the best available financing in terms of financial savings to the FHA insurance funds and will result in reduced risk of loss to the Federal Government. Any limitations on the number of units available for mortgage insurance under section 542 shall not apply to eligible multifamily housing projects. Any credit subsidy costs of providing mortgage insurance shall be paid from the Liquidating Accounts of the General Insurance Fund or the Special Risk Insurance Fund and shall not be subject to any limitation on appropriations.

''(4) CREDIT ENHANCEMENT.—Providing any additional State or local mortgage credit enhancements and risk-sharing arrangements that may be established with State or local housing finance agencies, the Federal Housing Finance Board, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, to a modified or refinanced first mortgage.

''(5) COMPENSATION OF THIRD PARTIES.—Consistent with the portfolio restructuring agreement, entering into agreements, incurring costs, or making payments, including incentive agreements designed to reward superior performance in meeting the purposes of this Act, as may be reasonably necessary, to compensate the participation of participating administrative entities and other parties in undertaking actions authorized by this subtitle. Upon request to the Secretary, participating administrative entities that are qualified under the United States Housing Act of 1937 to serve as contract administrators shall be the contract administrators under section 8 of the United States Housing Act of 1937 [12 U.S.C. 1437f] for purposes of any contracts entered into as part of an approved mortgage restructuring and rental assistance sufficiency plan. Subject to the availability of amounts provided in advance in appropriations Acts for administrative fees under section 8 of the United States Housing Act of 1937, such amounts may be used to compensate participating administrative entities for compliance monitoring costs incurred under section 519.

''(6) USE OF PROJECT ACCOUNTS.—Applying any residual receipts, replacement reserves, and any other project accounts not required for project operations, to maintain the long-term affordability and physical condition of the property or of other eligible multifamily housing projects. The participating administrative entity may expedite the acquisition of residual receipts, replacement reserves, or other such accounts, by entering into agreements with owners of housing covered by an expiring contract to provide an owner with a share of the receipts, not to exceed 10 percent, in accordance with guidelines established by the Secretary.

''(c) REHABILITATION NEEDS AND ADDITION OF SIGNIFICANT FEATURES.—

''(1) REHABILITATION NEEDS.—

''(A) IN GENERAL.—Rehabilitation may be paid from the residual receipts, replacement reserves, or any other project accounts not required for project operations, or, as provided in appropriations Acts and subject to the control of the Secretary of applicable accounts in the Treasury of the United States, from budget authority provided for increases in the budget authority for assistance contracts under section 8 of the United States Housing Act of 1937, the rehabilitation grant program established under section 236 of the National Housing Act [12 U.S.C. 1715z–1], as amended by section 531 of subtitle B of this Act, or through the debt restructuring transaction. Rehabilitation under this paragraph shall only be for the purpose of restoring the project to a non-luxury standard adequate for the rental market intended at the original approval of the project-based assistance.

''(B) CONTRIBUTION.—Each owner or purchaser of a project to be rehabilitated under an approved mortgage restructuring and rental assistance sufficiency plan shall contribute, from non-project resources, not less than 25 percent of the amount of rehabilitation assistance received, except that the participating administrative entity may provide an exception from the requirement of this subparagraph for housing cooperatives.

''(2) ADDITION OF SIGNIFICANT FEATURES.—

''(A) AUTHORITY.—An approved mortgage restructuring and rental assistance sufficiency plan may require the improvement of the project by the addition of significant features that are not necessary for rehabilitation to the standard provided under paragraph (1), such as air conditioning, an elevator, and additional community space. The Secretary shall establish guidelines regarding the inclusion of requirements regarding such additional significant features under such plans.

''(B) FUNDING.—Significant features added pursuant to an approved mortgage restructuring and rental assistance sufficiency plan may be paid from the funding sources specified in the first sentence of paragraph (1)(A).

''(C) LIMITATION ON OWNER CONTRIBUTION.—An owner of a project may not be required to contribute from non-project resources, toward the cost of any additional significant features required pursuant to this paragraph, more than 25 percent of the amount of any assistance received for the inclusion of such features.

''(D) APPLICABILITY.—This paragraph shall apply to all eligible multifamily housing projects, except projects for which the Secretary and the project owner executed a mortgage restructuring and rental assistance sufficiency plan on or before the date of the enactment of the Mark-to-Market Extension Act of 2001 [Jan. 10, 2002].

''(d) PROHIBITION ON EQUITY SHARING BY THE SECRETARY.—The Secretary is prohibited from participating in any equity agreement or profit-sharing agreement in conjunction with any eligible multifamily housing project.

''(e) CONFLICT OF INTEREST GUIDELINES.—The Secretary may establish guidelines to prevent conflicts of interest by a participating administrative entity that provides, directly or through risk-sharing arrangements, any form of credit enhancement or financing pursuant to subsections [sic] (b)(3) or (b)(4) or to prevent conflicts of interest by any other person or entity under this subtitle.

''SEC. 518. MANAGEMENT STANDARDS.

''Each participating administrative entity shall establish management standards, including requirements governing conflicts of interest between owners, managers, contractors with an identity of interest, pursuant to guidelines established by the Secretary and consistent with industry standards.

''SEC. 519. MONITORING OF COMPLIANCE.

''(a) COMPLIANCE AGREEMENTS.—(1) Pursuant to regulations issued by the Secretary under section 522(a), each participating administrative entity, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this subtitle. Each agreement shall, at a minimum, provide for—

''(A) enforcement of the provisions of this subtitle; and

''(B) remedies for the breach of those provisions.

''(2) If the participating administrative entity is not qualified under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] to be a section 8 contract administrator or fails to perform its duties under the portfolio restructuring agreement, the Secretary shall have the right to enforce the agreement.

''(b) PERIODIC MONITORING.—

''(1) IN GENERAL.—Not less than annually, each participating administrative entity that is qualified to be the section 8 contract administrator shall review the status of all multifamily housing projects for which a mortgage restructuring and rental assistance sufficiency plan has been implemented.

''(2) INSPECTIONS.—Each review under this subsection shall include onsite inspection to determine compliance with housing codes and other requirements as provided in this subtitle and the portfolio restructuring agreements.

''(3) ADMINISTRATION.—If the participating administrative entity is not qualified under the United States Housing Act of 1937 to be a section 8 contract administrator, either the Secretary or a qualified State or local housing agency shall be responsible for the review required by this subsection.

''(c) AUDIT BY THE SECRETARY.—The Comptroller General of the United States, the Secretary, and the Inspector General of the Department of Housing and Urban Development may conduct an audit at any time of any multifamily housing project for which a mortgage restructuring and rental assistance sufficiency plan has been implemented.

''SEC. 520. REPORTS TO CONGRESS.

''(a) ANNUAL REVIEW.—In order to ensure compliance with this subtitle, the Secretary shall conduct an annual review and report to the Congress on actions taken under this subtitle and the status of eligible multifamily housing projects.

''(b) SEMIANNUAL REVIEW.—Not less than semiannually during the 2-year period beginning on the date of the enactment of this Act [Oct. 27, 1997] and not less than annually thereafter, the Secretary shall submit reports to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate stating, for such periods, the total number of projects identified by participating administrative entities under each of clauses (i) and (ii) of section 515(c)(2)(C).

''SEC. 521. GAO AUDIT AND REVIEW.

''(a) INITIAL AUDIT.—Not later than 18 months after the effective date of final regulations promulgated under this subtitle, the Comptroller General of the United States shall conduct an audit to evaluate eligible multifamily housing projects and the implementation of mortgage restructuring and rental assistance sufficiency plans.

''(b) REPORT.—

''(1) IN GENERAL.—Not later than 18 months after the audit conducted under subsection (a), the Comptroller General of the United States shall submit to Congress a report on the status of eligible multifamily housing projects and the implementation of mortgage restructuring and rental assistance sufficiency plans.

''(2) CONTENTS.—The report submitted under paragraph (1) shall include—

''(A) a description of the initial audit conducted under subsection (a); and

''(B) recommendations for any legislative action to increase the financial savings to the Federal Government of the restructuring of eligible multifamily housing projects balanced with the continued availability of the maximum number of affordable low-income housing units.

''SEC. 522. REGULATIONS.

''(a) RULEMAKING AND IMPLEMENTATION.—

''(1) INTERIM REGULATIONS.—The Director shall issue such interim regulations as may be necessary to implement this subtitle and the amendments made by this subtitle with respect to eligible multifamily housing projects covered by contracts described in section 512(2)(B) that expire in fiscal year 1999 or thereafter. If, before the expiration of such period, the Director has not been appointed, the Secretary shall issue such interim regulations.

''(2) FINAL REGULATIONS.—The Director shall issue final regulations necessary to implement this subtitle and the amendments made by this subtitle with respect to eligible multifamily housing projects covered by contracts described in section 512(2)(B) that expire in fiscal year 1999 or thereafter before the later of: (A) the expiration of the 12-month period beginning upon the date of the enactment of this Act [Oct. 27, 1997]; and (B) the 3-month period beginning upon the appointment of the Director under subtitle D.

''(3) FACTORS FOR CONSIDERATION.—Before the publication of the final regulations under paragraph (2), in addition to public comments invited in connection with publication of the interim rule, the Secretary shall—

''(A) seek recommendations on the implementation of sections 513(b) and 515(c)(1) from organizations representing—

''(i) State housing finance agencies and local housing agencies;

''(ii) other potential participating administering entities;

''(iii) tenants;

''(iv) owners and managers of eligible multifamily housing projects;

''(v) States and units of general local government; and

''(vi) qualified mortgagees; and

''(B) convene not less than 3 public forums at which the organizations making recommendations under subparagraph (A) may express views concerning the proposed disposition of the recommendations.

''(b) TRANSITION PROVISION FOR CONTRACTS EXPIRING IN FISCAL YEAR 1998.—Notwithstanding any other provision of law, the Secretary shall apply all the terms of section 211 and section 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 [Pub. L. 104–204, set out below] (except for section 212(h)(1)(G) and the limitation in section 212(k)) contracts for project-based assistance that expire during fiscal year 1998 (in the same manner that such provisions apply to expiring contracts defined in section 212(a)(3) of such Act), except that section 517(a) of the Act shall apply to mortgages on projects subject to such contracts.

''SEC. 523. TECHNICAL AND CONFORMING AMENDMENTS.

''(a) CALCULATION OF LIMIT ON PROJECT-BASED ASSISTANCE.—[Amended this section.]

''(b) PARTIAL PAYMENT OF CLAIMS ON MULTIFAMILY HOUSING PROJECTS.—[Amended section 1735f–19 of Title 12, Banks and Banking.]

''(c) REUSE AND RESCISSION OF CERTAIN RECAPTURED BUDGET AUTHORITY.—[Amended this section.]

''(d) SECTION 8 CONTRACT RENEWALS.—[Amended section 405(a) of Pub. L. 104–99, set out below.]

''(e) RENEWAL UPON REQUEST OF OWNER.—[Amended section 211 of Pub. L. 104–204, set out below.]

''(f) EXTENSION OF DEMONSTRATION CONTRACT PERIOD.—[Amended section 212 of Pub. L. 104–204, set out below.]

''SEC. 524. RENEWAL OF EXPIRING PROJECT-BASED SECTION 8 CONTRACTS.

''(a) IN GENERAL.—

''(1) RENEWAL.—Subject to paragraph (2), upon termination or expiration of a contract for project-based assistance under section 8 for a multifamily housing project (and notwithstanding section 8(v) of the United States Housing Act of 1937 [42 U.S.C. 1437f] for

loan management assistance), the Secretary shall, at the request of the owner of the project and to the extent sufficient amounts are made available in appropriation Acts, use amounts available for the renewal of assistance under section 8 of such Act to provide such assistance for the project. The assistance shall be provided under a contract having such terms and conditions as the Secretary considers appropriate, subject to the requirements of this section. This section shall not require contract renewal for a project that is eligible under this subtitle for a mortgage restructuring and rental assistance sufficiency plan, if there is no approved plan for the project and the Secretary determines that such an approved plan is necessary.

''(2) PROHIBITION ON RENEWAL.—Notwithstanding part 24 of title 24 of the Code of Federal Regulations, the Secretary may elect not to renew assistance for a project otherwise required to be renewed under paragraph (1) or provide comparable benefits under paragraph (1) or (2) of subsection (e) for a project described in either such paragraph, if the Secretary determines that a violation under paragraphs (1) through (4) of section 516(a) has occurred with respect to the project. For purposes of such a determination, the provisions of section 516 shall apply to a project under this section in the same manner and to the same extent that the provisions of such section apply to eligible multifamily housing projects, except that the Secretary shall make the determination under section 516(a)(4).

''(3) CONTRACT TERM FOR MARK-UP-TO-MARKET CONTRACTS.—In the case of an expiring or terminating contract that has rent levels less than comparable market rents for the market area, if the rent levels under the renewal contract under this section are equal to comparable market rents for the market area, the contract shall have a term of not less than 5 years, subject to the availability of sufficient amounts in appropriation Acts.

''(4) RENEWAL RENTS.—Except as provided in subsection (b), the contract for assistance shall provide assistance at the following rent levels:

''(A) MARKET RENTS.—At the request of the owner of the project, at rent levels equal to the lesser of comparable market rents for the market area or 150 percent of the fair market rents, in the case only of a project that—

''(i) has rent levels under the expiring or terminating contract that do not exceed such comparable market rents;

''(ii) does not have a low- and moderate-income use restriction that can not be eliminated by unilateral action by the owner;

''(iii) is decent, safe, and sanitary housing, as determined by the Secretary;

''(iv) is not—

''(I) owned by a nonprofit entity;

''(II) subject to a contract for moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937, as in effect before October 1, 1991; or

''(III) a project for which the public housing agency provided voucher assistance to one or more of the tenants after the owner has provided notice of termination of the contract covering the tenant's unit; and

''(v) has units assisted under the contract for which the comparable market rent exceeds 110 percent of the fair market rent.

The Secretary may adjust the percentages of fair market rent (as specified in the matter preceding clause (i) and in clause (v)), but only upon a determination and written notification to the Congress within 10 days of making such determination, that such adjustment is necessary to ensure that this subparagraph covers projects with a high risk of nonrenewal of expiring contracts for project-based assistance.

''(B) REDUCTION TO MARKET RENTS.—In the case of a project that has rent levels under the expiring or terminating contract that exceed comparable market rents for the market area, at rent levels equal to such comparable market rents.

''(C) RENTS NOT EXCEEDING MARKET RENTS.—In the case of a project that is not subject to subparagraph (A) or (B), at rent levels that—

''(i) are not less than the existing rents under the terminated or expiring contract, as adjusted by an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment), if such adjusted rents do not exceed comparable market rents for the market area; and

''(ii) do not exceed comparable market rents for the market area.

In determining the rent level for a contract under this subparagraph, the Secretary shall approve rents sufficient to cover budget-based cost increases and shall give greater consideration to providing rent at a level up to comparable market rents for the market area based on the number of the criteria under clauses (i) through (iii) of subparagraph (D) that the project meets. Notwithstanding any other provision of law, the Secretary shall include in such budget-based cost increases costs relating to the project as a whole (including costs incurred with respect to units not covered by the contract for assistance), but only (I) if inclusion of such costs is requested by the owner or purchaser of the project, (II) if inclusion of such costs will permit capital repairs to the project or acquisition of the project by a nonprofit organization, and (III) to the extent that inclusion of such costs (or a portion thereof) complies with the requirement under clause (ii).

''(D) WAIVER OF 150 PERCENT LIMITATION.—Notwithstanding subparagraph (A), at rent levels up to comparable market rents for the market area, in the case of a project that meets the requirements under clauses (i) through (v) of subparagraph (A) and—

''(i) has residents who are a particularly vulnerable population, as demonstrated by a high percentage of units being rented to elderly families, disabled families, or large families;

''(ii) is located in an area in which tenant-based assistance would be difficult to use, as demonstrated by a low vacancy rate for affordable housing, a high turnback rate for vouchers, or a lack of comparable rental housing; or

''(iii) is a high priority for the local community, as demonstrated by a contribution of State or local funds to the property.

In determining the rent level for a contract under this subparagraph, the Secretary shall approve rents sufficient to cover budget-based cost increases and shall give greater consideration to providing rent at a level up to comparable market rents for the market area based on the number of the criteria under clauses (i) through (iv) that the project meets.

''(5) COMPARABLE MARKET RENTS AND COMPARISON WITH FAIR MARKET RENTS.—The Secretary shall prescribe the method for determining comparable market rent by comparison with rents charged for comparable properties (as such term is defined in section 512), which may include appropriate adjustments for utility allowances and adjustments to reflect the value of any subsidy (other than section 8 assistance) provided by the Department of Housing and Urban Development.

''(b) EXCEPTION RENTS.—

''(1) RENEWAL.—In the case of a multifamily housing project described in paragraph (2), pursuant to the request of the owner of the project, the contract for assistance for the project pursuant to subsection (a) shall provide assistance at the lesser of the following rent levels:

''(A) ADJUSTED EXISTING RENTS.—The existing rents under the expiring contract, as adjusted by an

operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment).

''(B) BUDGET-BASED RENTS.—Subject to a determination by the Secretary that a rent level under this subparagraph is appropriate for a project, a rent level that provides income sufficient to support a budget-based rent (including a budget-based rent adjustment if justified by reasonable and expected operating expenses).

''(2) PROJECTS COVERED.—A multifamily housing project described in this paragraph is a multifamily housing project that—

''(A) is not an eligible multifamily housing project under section 512(2); or

''(B) is exempt from mortgage restructuring under this subtitle pursuant to section 514(h).

''(3) MODERATE REHABILITATION PROJECTS.—In the case of a project with a contract under the moderate rehabilitation program, other than a moderate rehabilitation contract under section 441 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11401], pursuant to the request of the owner of the project, the contract for assistance for the project pursuant to subsection (a) shall provide assistance at the lesser of the following rent levels:

''(A) ADJUSTED EXISTING RENTS.—The existing rents under the expiring contract, as adjusted by an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment).

''(B) FAIR MARKET RENTS.—Fair market rents (less any amounts allowed for tenant-purchased utilities).

''(C) MARKET RENTS.—Comparable market rents for the market area.

''(c) RENT ADJUSTMENTS AFTER RENEWAL OF CONTRACT.—

''(1) REQUIRED.—After the initial renewal of a contract for assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] pursuant to subsection (a), (b)(1), or (e)(2), the Secretary shall annually adjust the rents using an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment) or, upon the request of the owner and subject to approval of the Secretary, on a budget basis. In the case of projects with contracts renewed pursuant to subsection (a) or pursuant to subsection (e)(2) at rent levels equal to comparable market rents for the market area, at the expiration of each 5-year period, the Secretary shall compare existing rents with comparable market rents for the market area and may make any adjustments in the rent necessary to maintain the contract rents at a level not greater than comparable market rents or to increase rents to comparable market rents.

''(2) DISCRETIONARY.—In addition to review and adjustment required under paragraph (1), in the case of projects with contracts renewed pursuant to subsection (a) or pursuant to subsection (e)(2) at rent levels equal to comparable market rents for the market area, the Secretary may, at the discretion of the Secretary but only once within each 5-year period referred to in paragraph (1), conduct a comparison of rents for a project and adjust the rents accordingly to maintain the contract rents at a level not greater than comparable market rents or to increase rents to comparable market rents.

''(d) ENHANCED VOUCHERS UPON CONTRACT EXPIRATION.—

''(1) IN GENERAL.—In the case of a contract for project-based assistance under section 8 for a covered project that is not renewed under subsection (a) or (b) of this section (or any other authority), to the extent that amounts for assistance under this subsection are provided in advance in appropriation Acts, upon the date of the expiration of such contract the Secretary shall make enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)) available on behalf of each low-income family who, upon the date of such expiration, is residing in an assisted dwelling unit in the covered project.

''(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) ASSISTED DWELLING UNIT.—The term 'assisted dwelling unit' means a dwelling unit that—

''(i) is in a covered project; and

''(ii) is covered by rental assistance provided under the contract for project-based assistance for the covered project.

''(B) COVERED PROJECT.—The term 'covered project' means any housing that—

''(i) consists of more than four dwelling units;

''(ii) is covered in whole or in part by a contract for project-based assistance under—

''(I) the new construction or substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983);

''(II) the property disposition program under section 8(b) of the United States Housing Act of 1937;

''(III) the moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1991);

''(IV) the loan management assistance program under section 8 of the United States Housing Act of 1937;

''(V) section 23 of the United States Housing Act of 1937 [42 U.S.C. 1437u] (as in effect before January 1, 1975);

''(VI) the rent supplement program under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s]; or

''(VII) section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965,

which contract will (under its own terms) expire during the period consisting of fiscal years 2000 through 2004; and

''(iii) is not housing for which residents are eligible for enhanced voucher assistance as provided, pursuant to the 'Preserving Existing Housing Investment' account in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104–204; 110 Stat. 2884) or any other subsequently enacted provision of law, in lieu of any benefits under section 223 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113).

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 2000, 2001, 2002, 2003, and 2004 such sums as may be necessary for enhanced voucher assistance under this subsection.

''(e) CONTRACTUAL COMMITMENTS UNDER PRESERVATION LAWS.—Except as provided in subsection (a)(2) and notwithstanding any other provision of this subtitle, the following shall apply:

''(1) PRESERVATION PROJECTS.—Upon expiration of a contract for assistance under section 8 [42 U.S.C. 1437f] for a project that is subject to an approved plan of action under the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 1715*l* note) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4101 et seq.), to the extent amounts are specifically made available in appropriation Acts, the Secretary shall provide to the owner benefits comparable to those provided under such plan of action, including distributions, rent increase procedures, and duration of low-income affordability restrictions. This paragraph shall apply to projects with contracts expiring before, on, or after the date of the enactment of this section [Oct. 27, 1997].

''(2) DEMONSTRATION PROJECTS.—

''(A) IN GENERAL.—Upon expiration of a contract for assistance under section 8 for a project entered into pursuant to any authority specified in subparagraph (B) for which the Secretary determines that debt restructuring is inappropriate, the Secretary shall, at the request of the owner of the project and to the extent sufficient amounts are made available in appropriation Acts, provide benefits to the owner comparable to those provided under such contract, including annual distributions, rent increase procedures, and duration of low-income affordability restrictions. This paragraph shall apply to projects with contracts expiring before, on, or after the date of the enactment of this section [Oct. 27, 1997].

''(B) DEMONSTRATION PROGRAMS.—The authority specified in this subparagraph is the authority under—

''(i) section 210 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (Public Law 104–134; 110 Stat. 1321–285; 42 U.S.C. 1437f note);

''(ii) section 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104–204; 110 Stat. 2897; 42 U.S.C. 1437f note); and

''(iii) either of such sections, pursuant to any provision of this title [see Short Title of 1997 Amendment note set out under section 1701 of title 12].

''(3) MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLANS.—Notwithstanding paragraph (1), the owner of the project may request, and the Secretary may consider, mortgage restructuring and rental assistance sufficiency plans to facilitate sales or transfers of properties under this subtitle, subject to an approved plan of action under the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 1715*l* note) [see Codification note preceding section 4101 of Title 12, Banks and Banking] or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4101 et seq.), which plans shall result in a sale or transfer of those properties.

''(f) PREEMPTION OF CONFLICTING STATE LAWS LIMITING DISTRIBUTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that limits or restricts, to an amount that is less than the amount provided for under the regulations of the Secretary establishing allowable project distributions to provide a return on investment, the amount of surplus funds accruing after the date of the enactment of this section [Oct. 27, 1997] that may be distributed from any multifamily housing project assisted under a contract for rental assistance renewed under any provision of this section (except subsection (b)) to the owner of the project.

''(2) EXCEPTION AND WAIVER.—Paragraph (1) shall not apply to any law or regulation to the extent such law or regulation applies to—

''(A) a State-financed multifamily housing project; or

''(B) a multifamily housing project for which the owner has elected to waive the applicability of paragraph (1).

''(3) TREATMENT OF LOW-INCOME USE RESTRICTIONS.—This subsection may not be construed to provide for, allow, or result in the release or termination, for any project, of any low- or moderate-income use restrictions that can not be eliminated by unilateral action of the owner of the project.

''(g) APPLICABILITY.—Except to the extent otherwise specifically provided in this section, this section shall apply with respect to any multifamily housing project having a contract for project-based assistance under section 8 [42 U.S.C. 1437f] that terminates or expires during fiscal year 2000 or thereafter.

''SEC. 525. CONSISTENCY OF RENT LEVELS UNDER ENHANCED VOUCHER ASSISTANCE AND RENT RESTRUCTURINGS.

''(a) IN GENERAL.—The Secretary shall examine the standards and procedures for determining and establishing the rent standards described under subsection (b). Pursuant to such examination, the Secretary shall establish procedures and guidelines that are designed to ensure that the amounts determined by the various rent standards for the same dwelling units are reasonably consistent and reflect rents for comparable unassisted units in the same area as such dwelling units.

''(b) RENT STANDARDS.—The rent standards described in this subsection are as follows:

''(1) ENHANCED VOUCHERS.—The payment standard for enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)).

''(2) MARK-TO-MARKET.—The rents derived from comparable properties, for purposes of section 514(g) of this Act.

''(3) CONTRACT RENEWAL.—The comparable market rents for the market area, for purposes of section 524(a)(4) of this Act.

''SUBTITLE D—OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING

''[SECS. 571 to 578. Repealed. Pub. L. 105–65, title V, § 579(a)(2), as added by Pub. L. 107–116, title VI, § 621(1), Jan. 10, 2002, 115 Stat. 2226.]

''SEC. 579. TERMINATION.

''(a) REPEALS.—

''(1) MARK-TO-MARKET PROGRAM.—Subtitle A (except for section 524) is repealed effective October 1, 2006.

''(2) OMHAR.—Subtitle D (except for this section) is repealed effective October 1, 2004.

''(b) EXCEPTION.—Notwithstanding the repeal under subsection (a), the provisions of subtitle A (as in effect immediately before such repeal) shall apply with respect to projects and programs for which binding commitments have been entered into under this Act before October 1, 2006.

''(c) TERMINATION OF DIRECTOR AND OFFICE.—The Office of Multifamily Housing Assistance Restructuring and the position of Director of such Office shall terminate at the end of September 30, 2004.

''(d) TRANSFER OF AUTHORITY.—Effective upon the repeal of subtitle D under subsection (a)(2) of this section, all authority and responsibilities to administer the program under subtitle A are transferred to the Secretary.''

[Pub. L. 107–116, title VI, § 616(a)(2), Jan. 10, 2002, 115 Stat. 2225, provided that: ''The amendment made by paragraph (1) of this subsection [amending section 514 of Pub. L. 105–65, set out above] is deemed to have taken effect on the date of the enactment of Public Law 106–74 [Oct. 20, 1999] (113 Stat. 1109).'']

[Pub. L. 107–116, title VI, § 622(b), Jan. 10, 2002, 115 Stat. 2227, provided that: ''The amendment made by subsection (a) [amending section 572(a) of Pub. L. 105–65, set out above] shall apply to the first Director of the Office of Multifamily Housing Assistance Restructuring of the Department of Housing and Urban Development appointed after the date of the enactment of this Act [Jan. 10, 2002], and any such Director appointed thereafter.'']

[Pub. L. 107–116, title VI, § 623(b), Jan. 10, 2002, 115 Stat. 2227, provided that: ''The amendment made by subsection (a) [amending section 572(b) of Pub. L. 105–65, set out above] shall apply to any vacancy in the position of Director of the Office of Multifamily Housing Assistance Restructuring of the Department of Housing and Urban Development which occurs or exists after the date of the enactment of this Act [Jan. 10, 2002].'']

[Pub. L. 105–276, title V, § 597(c), Oct. 21, 1998, 112 Stat. 2659, provided that: ''This section [amending section

524(a)(2) of Pub. L. 105–65, set out above] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''']

GAO REPORT ON SECTION 8 RENTAL ASSISTANCE FOR MULTIFAMILY HOUSING PROJECTS

Section 532 of Pub. L. 105–65 provided that: ''Not later than the expiration of the 18-month period beginning on the date of the enactment of this Act [Oct. 27, 1997], the Comptroller General of the United States shall submit a report to the Congress analyzing—

''(1) the housing projects for which project-based assistance is provided under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], but which are not subject to a mortgage insured or held by the Secretary under the National Housing Act [12 U.S.C. 1701 et seq.];

''(2) how State and local housing finance agencies have benefited financially from the rental assistance program under section 8 of the United States Housing Act of 1937, including any benefits from fees, bond financings, and mortgage refinancings; and

''(3) the extent and effectiveness of State and local housing finance agencies oversight of the physical and financial management and condition of multifamily housing projects for which project-based assistance is provided under section 8 of the United States Housing Act of 1937.''

ADMINISTRATIVE FEES FOR CERTIFICATE AND HOUSING VOUCHER PROGRAMS

Section 202 of Pub. L. 104–204 provided that: ''Notwithstanding section 8(q) of the United States Housing Act of 1937 [42 U.S.C. 1437f(q)], as amended—

''(a) The Secretary shall establish fees for the cost of administering the certificate, voucher and moderate rehabilitation programs.

''(1)(A) For fiscal year 1997, the fee for each month for which a dwelling unit is covered by an assistance contract shall be 7.5 percent of the base amount, adjusted as provided herein, in the case of an agency that, on an annual basis, is administering a program of no more than 600 units, and 7 percent of the base amount, adjusted as provided herein, for each additional unit above 600.

''(B) The base amount shall be the higher of—

''(i) the fair market rental for fiscal year 1993 for a 2-bedroom existing rental dwelling unit in the market area of the agency; and

''(ii) such fair market rental for fiscal year 1994, but not more than 103.5 percent of the amount determined under clause (i).

''(C) The base amount shall be adjusted to reflect changes in the wage data or other objectively measurable data that reflect the costs of administering the program during fiscal year 1996; except that the Secretary may require that the base amount be not less than a minimum amount and not more than a maximum amount.

''(2) For subsequent fiscal years, the Secretary shall publish a notice in the Federal Register, for each geographic area, establishing the amount of the fee that would apply for the agencies administering the program, based on changes in wage data or other objectively measurable data that reflect the cost of administering the program, as determined by the Secretary.

''(3) The Secretary may increase the fee if necessary to reflect higher costs of administering small programs and programs operating over large geographic areas.

''(4) The Secretary may decrease the fee for PHA-owned units.

''(b) Beginning in fiscal year 1997 and thereafter, the Secretary shall also establish reasonable fees (as determined by the Secretary) for—

''(1) the costs of preliminary expenses, in the amount of $500, for a public housing agency, but only in the first year it administers a tenant-based assistance program under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and only if, immediately before the effective date of this Act [Sept. 26, 1996], it was not administering a tenant-based assistance program under the 1937 Act (as in effect immediately before the effective date of this Act), in connection with its initial increment of assistance received;

''(2) the costs incurred in assisting families who experience difficulty (as determined by the Secretary) in obtaining appropriate housing under the program; and

''(3) extraordinary costs approved by the Secretary.''

Similar provisions were contained in the following prior appropriations Acts:

Pub. L. 104–99, title IV, § 403(b), Jan. 26, 1996, 110 Stat. 43.

Pub. L. 103–120, § 11(a), Oct. 27, 1993, 107 Stat. 1151.

CONTRACT RENEWALS

Section 211 of Pub. L. 104–204, as amended by Pub. L. 105–18, title II, § 10006, June 12, 1997, 111 Stat. 201; Pub. L. 105–65, title V, § 523(e), Oct. 27, 1997, 111 Stat. 1407; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that:

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'expiring contract' means a contract for project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] that expires during fiscal year 1997;

''(2) the term 'family' has the same meaning as in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)];

''(3) the term 'multifamily housing project' means a property consisting of more than 4 dwelling units that is covered in whole or in part by a contract for project-based assistance under section 8 of the United States Housing Act of 1937;

''(4) the term 'owner' has the same meaning as in section 8(f) of the United States Housing Act of 1937;

''(5) the term 'project-based assistance' means rental assistance under section 8 of the United States Housing Act of 1937 that is attached to a multifamily housing project;

''(6) the term 'public agency' means a State housing finance agency, a local housing agency, or other agency with a public purpose and status;

''(7) the term 'Secretary' means the Secretary of Housing and Urban Development; and

''(8) the term 'tenant-based assistance' has the same meaning as in section 8(f) of the United States Housing Act of 1937.

''(b) SECTION 8 CONTRACT RENEWAL AUTHORITY.—

''(1) IN GENERAL.—Notwithstanding section 405(a) of the Balanced Budget Downpayment Act, I [Pub. L. 104–99, set out below], upon the request of the owner of a multifamily housing project that is covered by an expiring contract, the Secretary shall use amounts made available for the renewal of assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] to renew the expiring contract as project-based assistance for a period of not more than one year, at rent levels that are equal to those under the expiring contract as of the date on which the contract expires: *Provided*, That those rent levels do not exceed 120 percent of the fair market rent for the market area in which the project is located. For an FHA-insured multifamily housing project with an expiring contract at rent levels that exceed 120 percent of the fair market rent for the market area, the Secretary shall provide, at the request of the owner, section 8 project-based assistance, for a period of not more than one year, at rent levels that do not exceed 120 percent of the fair market rent.

''(2) EXEMPTION FOR STATE AND LOCAL HOUSING AGENCY PROJECTS.—Notwithstanding paragraph (1), upon the expiration of a contract with rent levels that exceed the percentage described in that paragraph, if the Secretary determines that the primary financing

or mortgage insurance for the multifamily housing project that is covered by that expiring contract was provided by a public agency, the Secretary shall, at the request of the owner and the public agency, renew the expiring contract—

''(A) for a period of not more than one year; and

''(B) at rent levels that are equal to those under the expiring contract as of the date on which the contract expires.

''(3) EXEMPTION OF CERTAIN OTHER PROJECTS.—Notwithstanding paragraph (1), for section 202 projects, section 515 projects, projects with contracts entered into pursuant to section 441 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11401], and projects with rents that exceed 100 percent of fair market rent for the market area, but that are less than rents for comparable projects, upon the expiration of a section 8 contract, the Secretary shall, at the request of the owner, renew the expiring contract—

''(A) for a period of not more than one year; and

''(B) at rent levels that are equal to those under the expiring contract as of the date on which the contract expires.

''(4) OTHER CONTRACTS.—

''(A) PARTICIPATION IN DEMONSTRATION.—For a contract covering an FHA-insured multifamily housing project that expires during fiscal year 1997 with rent levels that exceed the percentage described in paragraph (1) and after notice to the tenants, the Secretary shall, at the request of the owner of the project and after notice to the tenants, include that multifamily housing project in the demonstration program under section 212 of this Act [set out below]. The Secretary shall ensure that a multifamily housing project with an expiring contract in fiscal year 1997 shall be allowed to be included in the demonstration.

''(B) EFFECT OF MATERIAL ADVERSE ACTIONS AND OMISSIONS.—Notwithstanding paragraph (1) or any other provision of law, the Secretary shall not renew an expiring contract if the Secretary determines that the owner of the multifamily housing project has engaged in material adverse financial or managerial actions or omissions with regard to the project (or with regard to other similar projects if the Secretary determines that such actions or omissions constitute a pattern of mismanagement that would warrant suspension or debarment by the Secretary). The term 'owner', as used in this subparagraph, in addition to it having the same meaning as in section 8(f) of the United States Housing Act of 1937 [42 U.S.C. 1437f(f)], also means an affiliate of the owner. The term 'affiliate of the owner' means any person or entity (including, but not limited to, a general partner or managing member, or an officer of either) that controls an owner, is controlled by an owner, or is under common control with the owner. The term 'control' means the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial, or other interests of the owner.

''(C) TRANSFER OF PROPERTY.—For properties disqualified from the demonstration program because of actions by an owner or purchaser in accordance with subparagraph (B), the Secretary shall establish procedures to facilitate the voluntary sale or transfer of the property, with a preference for tenant organizations and tenant-endorsed community-based nonprofit and public agency purchasers meeting such reasonable qualifications as may be established by the Secretary. The Secretary may include the transfer of section 8 project-based assistance.

''(5) TENANT PROTECTIONS.—Any family residing in an assisted unit in a multifamily housing project that is covered by an expiring contract that is not renewed, shall be offered tenant-based assistance before the date on which the contract expires or is not renewed.''

Pub. L. 104–120, §2(a), Mar. 28, 1996, 110 Stat. 834, provided that: ''Notwithstanding section 405(b) of the Balanced Budget Downpayment Act, I (Public Law 104–99; 110 Stat. 44) [set out below], at the request of the owner of any project assisted under section 8(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(e)(2)] (as such section existed immediately before October 1, 1991), the Secretary of Housing and Urban Development may renew, for a period of 1 year, the contract for assistance under such section for such project that expires or terminates during fiscal year 1996 at current rent levels.''

Section 405(a), (b) of Pub. L. 104–99, as amended by Pub. L. 105–65, title V, §523(d), Oct. 27, 1997, 111 Stat. 1407, provided that:

''(a) Notwithstanding part 24 of title 24 of the Code of Federal Regulations, for fiscal year 1996 and henceforth, the Secretary of Housing and Urban Development may use amounts available for the renewal of assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], upon termination or expiration of a contract for assistance under section 8 of such Act of 1937 (other than a contract for tenant-based assistance and notwithstanding section 8(v) of such Act for loan management assistance), to provide assistance under section 8 of such Act, subject to the Section 8 Existing Fair Market Rents, for the eligible families assisted under the contracts at expiration or termination, which assistance shall be in accordance with terms and conditions prescribed by the Secretary.

''(b) Notwithstanding subsection (a) and except for projects assisted under section 8(e)(2) of the United States Housing Act of 1937 (as it existed immediately prior to October 1, 1991), at the request of the owner, the Secretary shall renew for a period of one year contracts for assistance under section 8 that expire or terminate during fiscal year 1996 at the current rent levels.''

FHA MULTIFAMILY DEMONSTRATION AUTHORITY

Section 212 of title II of Pub. L. 104–204, as amended by Pub. L. 105–65, title V, §523(f), Oct. 27, 1997, 111 Stat. 1407, provided that:

''(a) IN GENERAL.—

''(1) REPEAL.—

''(A) IN GENERAL.—Section 210 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (110 Stat. 1321) [section 101(e) [title II, §210] of Pub. L. 104–134, formerly set out as a note below] is repealed.

''(B) EXCEPTION.—Notwithstanding the repeal under subparagraph (A), amounts made available under section 210(f) [of] the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 shall remain available for the demonstration program under this section through the end of fiscal year 1997.

''(2) SAVINGS PROVISIONS.—Nothing in this section shall be construed to affect any commitment entered into before the date of enactment of this Act [Sept. 26, 1996] under the demonstration program under section 210 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996.

''(3) DEFINITIONS.—For purposes of this section—

''(A) the term 'demonstration program' means the program established under subsection (b);

''(B) the term 'expiring contract' means a contract for project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] that expires during fiscal year 1997;

''(C) the term 'family' has the same meaning as in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)];

''(D) the term 'multifamily housing project' means a property consisting of more than 4 dwelling units that is covered in whole or in part by a contract for project-based assistance;

''(E) the term 'owner' has the same meaning as in section 8(f) of the United States Housing Act of 1937;

''(F) the term 'project-based assistance' means rental assistance under section 8 of the United States Housing Act of 1937 that is attached to a multifamily housing project;

''(G) the term 'Secretary' means the Secretary of Housing and Urban Development; and

''(H) the term 'tenant-based assistance' has the same meaning as in section 8(f) of the United States Housing Act of 1937.

''(b) DEMONSTRATION AUTHORITY.—

''(1) IN GENERAL.—Subject to the funding limitation in subsection (*l*), the Secretary shall administer a demonstration program with respect to multifamily projects—

''(A) whose owners agree to participate;

''(B) with rents on units assisted under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] that are, in the aggregate, in excess of 120 percent of the fair market rent of the market area in which the project is located; and

''(C) the mortgages of which are insured under the National Housing Act [12 U.S.C. 1701 et seq.].

''(2) PURPOSE.—The demonstration program shall be designed to obtain as much information as is feasible on the economic viability and rehabilitation needs of the multifamily housing projects in the demonstration, to test various approaches for restructuring mortgages to reduce the financial risk to the FHA Insurance Fund while reducing the cost of section 8 subsidies, and to test the feasibility and desirability of—

''(A) ensuring, to the maximum extent practicable, that the debt service and operating expenses, including adequate reserves, attributable to such multifamily projects can be supported at the comparable market rent with or without mortgage insurance under the National Housing Act and with or without additional section 8 rental subsidies;

''(B) utilizing section 8 rental assistance, while taking into account the capital needs of the projects and the need for adequate rental assistance to support the low- and very low-income families residing in such projects; and

''(C) preserving low-income rental housing affordability and availability while reducing the long-term cost of section 8 rental assistance.

''(c) GOALS.—

''(1) IN GENERAL.—The Secretary shall carry out the demonstration program in a manner that will protect the financial interests of the Federal Government through debt restructuring and subsidy reduction and, in the least costly fashion, address the goals of—

''(A) maintaining existing affordable housing stock in a decent, safe, and sanitary condition;

''(B) minimizing the involuntary displacement of tenants;

''(C) taking into account housing market conditions;

''(D) encouraging responsible ownership and management of property;

''(E) minimizing any adverse income tax impact on property owners; and

''(F) minimizing any adverse impacts on residential neighborhoods and local communities.

''(2) BALANCE OF COMPETING GOALS.—In determining the manner in which a mortgage is to be restructured or a subsidy reduced under this subsection, the Secretary may balance competing goals relating to individual projects in a manner that will further the purposes of this section.

''(d) PARTICIPATION ARRANGEMENTS.—

''(1) IN GENERAL.—In carrying out the demonstration program, the Secretary may enter into participation arrangements with designees, under which the Secretary may provide for the assumption by designees (by delegation, by contract, or otherwise) of some or all of the functions, obligations, responsibilities and benefits of the Secretary.

''(2) DESIGNEES.—In entering into any arrangement under this subsection, the Secretary shall select state housing finance agencies, housing agencies or nonprofits (separately or in conjunction with each other) to act as designees to the extent such agencies are determined to be qualified by the Secretary. In locations where there is no qualified State housing finance agency, housing agency or nonprofit to act as a designee, the Secretary may act as a designee. Each participation arrangement entered into under this subsection shall include a designee as the primary partner. Any organization selected by the Secretary under this section shall have a long-term record of service in providing low-income housing and meet standards of fiscal responsibility, as determined by the Secretary.

''(3) DESIGNEE PARTNERSHIPS.—For purposes of any participation arrangement under this subsection, designees are encouraged to develop partnerships with each other, and to contract or subcontract with other entities, including—

''(A) public housing agencies;

''(B) financial institutions;

''(C) mortgage servicers;

''(D) nonprofit and for-profit housing organizations;

''(E) the Federal National Mortgage Association;

''(F) the Federal Home Loan Mortgage Corporation;

''(G) Federal Home Loan Banks; and

''(H) other State or local mortgage insurance companies or bank lending consortia.

''(e) LONG-TERM AFFORDABILITY.—

''(1) IN GENERAL.—After the renewal of a section 8 contract pursuant to a restructuring under this section, the owner shall accept each offer to renew the section 8 contract, for a period of 20 years from the date of the renewal under the demonstration, if the offer to renew is on terms and conditions, as agreed to by the Secretary or designee and the owner under a restructuring.

''(2) AFFORDABILITY REQUIREMENTS.—Except as otherwise provided by the Secretary, in exchange for any mortgage restructuring under this section, a project shall remain affordable for a period of not less than 20 years. Affordability requirements shall be determined in accordance with guidelines established by the Secretary or designee. The Secretary or designee may waive these requirements for good cause.

''(f) PROCEDURES.—

''(1) NOTICE OF PARTICIPATION IN DEMONSTRATION.—Not later than 45 days before the date of expiration of an expiring contract (or such later date, as determined by the Secretary, for good cause), the owner of the multifamily housing project covered by that expiring contract shall notify the Secretary or designee and the residents of the owner's intent to participate in the demonstration program.

''(2) DEMONSTRATION CONTRACT.—Upon receipt of a notice under paragraph (1), the owner and the Secretary or designee shall enter into a demonstration contract, which shall provide for initial section 8 project-based rents at the same rent levels as those under the expiring contract or, if practical, the budget-based rent to cover debt service, reasonable operating expenses (including reasonable and appropriate services), and a reasonable return to the owner, as determined solely by the Secretary. The demonstration contract shall be for the minimum term necessary for the rents and mortgages of the multifamily housing project to be restructured under the demonstration program, but shall not be for a period of time to exceed 180 days, unless extended for good cause by the Secretary.

''(g)(1) PROJECT-BASED SECTION 8.—The Secretary shall renew all expiring contracts under the demonstration as section 8 project-based contracts, for a period of time not to exceed one year, unless otherwise provided under subsection (h) or in paragraph (2).

''(2) The Secretary may renew a demonstration contract for an additional period of not to exceed 120 days, if—

''(A) the contract was originally executed before February 1, 1997, and the Secretary determines, in the sole discretion of the Secretary, that the renewal period for the contract needs to exceed 1 year, due to delay of publication of the Secretary's demonstration program guidelines until January 23, 1997 (not to exceed 21 projects); or

''(B) the contract was originally executed before October 1, 1997, in connection with a project that has been identified for restructuring under the joint venture approach described in section VII.B.2. of the Secretary's demonstration program guidelines, and the Secretary determines, in the sole discretion of the Secretary, that the renewal period for the contract needs to exceed 1 year, due to delay in implementation of the joint venture agreement required by the guidelines (not to exceed 25 projects).

''(h) DEMONSTRATION ACTIONS.—

''(1) DEMONSTRATION ACTIONS.—For purposes of carrying out the demonstration program, and in order to ensure that contract rights are not abrogated, subject to such third party consents as are necessary (if any), including consent by the Government National Mortgage Association if it owns a mortgage insured by the Secretary, consent by an issuer under the mortgage-backed securities program of the Association, subject to the responsibilities of the issuer to its security holders and the Association under such program, and consent by parties to any contractual agreement which the Secretary proposes to modify or discontinue, the Secretary or, except with respect to subparagraph (B), designee, subject to the funding limitation in subsection (*l*), shall take not less than one of the actions specified in subparagraphs (G), (H), and (I) and may take any of the following actions:

''(A) REMOVAL OF RESTRICTIONS.—

''(i) IN GENERAL.—Consistent with the purposes of this section, subject to the agreement of the owner of the project and after consultation with the tenants of the project, the Secretary or designee may remove, relinquish, extinguish, modify, or agree to the removal of any mortgage, regulatory agreement, project-based assistance contract, use agreement, or restriction that had been imposed or required by the Secretary, including restrictions on distributions of income which the Secretary or designee determines would interfere with the ability of the project to operate without above-market rents.

''(ii) ACCUMULATED RESIDUAL RECEIPTS.—The Secretary or designee may require an owner of a property assisted under the section 8 new construction/substantial rehabilitation program under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] to apply any accumulated residual receipts toward effecting the purposes of this section.

''(B) REINSURANCE.—With respect to not more than 5,000 units within the demonstration during fiscal year 1997, the Secretary may enter into contracts to purchase reinsurance, or enter into participations or otherwise transfer economic interest in contracts of insurance or in the premiums paid, or due to be paid, on such insurance, on such terms and conditions as the Secretary may determine. Any contract entered into under this paragraph shall require that any associated units be maintained as low-income units for the life of the mortgage, unless waived by the Secretary for good cause.

''(C) PARTICIPATION BY THIRD PARTIES.—The Secretary or designee may enter into such agreements, provide such concessions, incur such costs, make such grants (including grants to cover all or a portion of the rehabilitation costs for a project) and other payments, and provide other valuable consideration as may reasonably be necessary for owners, lenders, servicers, third parties, and other entities to participate in the demonstration program. The Secretary may establish performance incentives for designees.

''(D) SECTION 8 ADMINISTRATIVE FEES.—Notwithstanding any other provision of law, the Secretary may make fees available from the section 8 contract renewal appropriation to a designee for contract administration under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] for purposes of any contract restructured or renewed under the demonstration program.

''(E) FULL OR PARTIAL PAYMENT OF CLAIM.—Notwithstanding any other provision of law, the Secretary may make a full payment of claim or partial payment of claim prior to default.

''(F) CREDIT ENHANCEMENT.—

''(i) IN GENERAL.—The Secretary or designee may provide FHA multifamily mortgage insurance, reinsurance, or other credit enhancement alternatives, including retaining the existing FHA mortgage insurance on a restructured first mortgage at market value or using the multifamily risk-sharing mortgage programs, as provided under section 542 of the Housing and Community Development Act of 1992 [12 U.S.C. 1707 note]. Any limitations on the number of units available for mortgage insurance under section 542 shall not apply to insurance issued for purposes of the demonstration program.

''(ii) MAXIMUM PERCENTAGE.—During fiscal year 1997, not more than 25 percent of the units in multifamily housing projects with expiring contracts in the demonstration, in the aggregate, may be restructured without FHA insurance, unless otherwise agreed to by the owner of a project.

''(iii) CREDIT SUBSIDY.—Any credit subsidy costs of providing mortgage insurance shall be paid from amounts made available under subsection (*l*).

''(G) MORTGAGE RESTRUCTURING.—

''(i) IN GENERAL.—The Secretary or designee may restructure mortgages to provide a restructured first mortgage to cover debt service and operating expenses (including a reasonable rate of return to the owner) at the market rent, and a second mortgage equal to the difference between the restructured first mortgage and the mortgage balance of the eligible multifamily housing project at the time of restructuring.

''(ii) CREDIT SUBSIDY.—Any credit subsidy costs of providing a second mortgage shall be paid from amounts made available under subsection (*l*).

''(H) DEBT FORGIVENESS.—The Secretary or designee, for good cause and at the request of the owner of a multifamily housing project, may forgive at the time of the restructuring of a mortgage any portion of a debt on the project that exceeds the market value of the project.

''(I) BUDGET-BASED RENTS.—The Secretary or designee may renew an expiring contract, including a contract for a project in which operating costs exceed comparable market rents, for a period of not more than one year, at a budget-based rent that covers debt service, reasonable operating expenses (including all reasonable and appropriate services), and a reasonable rate of return to the owner, as determined solely by the Secretary, provided that the contract does not exceed the rent levels under the expiring contract. The Secretary may establish a preference under the demonstration program for budget-based rents for unique housing projects, such as projects designated for occupancy by elderly families and projects in rural areas.

''(J) SECTION 8 TENANT-BASED ASSISTANCE.—For not more than 10 percent of units in multifamily housing projects that have had their mortgages restructured in any fiscal year under the demonstration, the Secretary or designee may provide, with the agreement of an owner and in consultation with the tenants of the housing, section 8 tenant-based assistance for some or all of the assisted units in a multifamily housing project in lieu of section 8 project-based assistance. Section 8 tenant-based as-

sistance may only be provided where the Secretary determines and certifies that there is adequate available and affordable housing within the local area and that tenants will be able to use the section 8 tenant-based assistance successfully.

''(2) OFFER AND ACCEPTANCE.—Notwithstanding any other provision of law, an owner of a project in the demonstration must accept any reasonable offer made by the Secretary or a designee under this subsection. An owner may appeal the reasonableness of any offer to the Secretary and the Secretary shall respond within 30 days of the date of appeal with a final offer. If the final offer is not acceptable, the owner may opt out of the program.

''(i) COMMUNITY AND TENANT INPUT.—In carrying out this section, the Secretary shall develop procedures to provide appropriate and timely notice, including an opportunity for comment and timely access to all relevant information, to officials of the unit of general local government affected, the community in which the project is situated, and the tenants of the project.

''(j) TRANSFER OF PROPERTY.—The Secretary shall establish procedures to facilitate the voluntary sale or transfer of multifamily housing projects under the demonstration to tenant organizations and tenant-endorsed community-based nonprofit and public agency purchasers meeting such reasonable qualifications as may be established by the Secretary.

''(k) LIMITATION ON DEMONSTRATION AUTHORITY.—The Secretary shall carry out the demonstration program with respect to mortgages not to exceed 50,000 units.

''(*l*) FUNDING.—In addition to the $30,000,000 made available under section 210 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (110 Stat. 1321) [section 101(e) [title II, § 210] of Pub. L. 104–134, formerly set out as a note below], for the costs (including any credit subsidy costs associated with providing direct loans or mortgage insurance) of modifying and restructuring loans held or guaranteed by the Federal Housing Administration, as authorized under this section, $10,000,000 is hereby appropriated, to remain available until September 30, 1998.

''(m) REPORT TO CONGRESS.—

''(1) IN GENERAL.—

''(A) QUARTERLY REPORTS.—Not less than every 3 months, the Secretary shall submit to the Congress a report describing and assessing the status of the projects in the demonstration program.

''(B) FINAL REPORT.—Not later than 6 months after the end of the demonstration program, the Secretary shall submit to the Congress a final report on the demonstration program.

''(2) CONTENTS.—Each report submitted under paragraph (1)(A) shall include a description of—

''(A) each restructuring proposal submitted by an owner of a multifamily housing project, including a description of the physical, financial, tenancy, and market characteristics of the project;

''(B) the Secretary's evaluation and reasons for each multifamily housing project selected or rejected for participation in the demonstration program;

''(C) the costs to the FHA General Insurance and Special Risk Insurance funds;

''(D) the subsidy costs provided before and after restructuring;

''(E) the actions undertaken in the demonstration program, including the third-party arrangements made; and

''(F) the demonstration program's impact on the owners of the projects, including any tax consequences.

''(3) CONTENTS OF FINAL REPORT.—The report submitted under paragraph (1)(B) shall include—

''(A) the required contents under paragraph (2); and

''(B) any findings and recommendations for legislative action.''

Section 101(e) [title II, § 210] of title I of Pub. L. 104–134, Apr. 26, 1996, 110 Stat. 1321–257, 1321–285; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, which authorized the Secretary of Housing and Urban Development on and after Oct. 1, 1995, and before Oct. 1, 1997, to initiate a FHA multifamily demonstration program, was repealed by Pub. L. 104–204, title II, § 212(a)(1)(A), Sept. 26, 1996, 110 Stat. 2897.

PUBLIC HOUSING MOVING TO WORK DEMONSTRATION

Section 101(e) [title II, § 204] of Pub. L. 104–134, as amended by Pub. L. 105–276, title V, § 522(b)(3), Oct. 21, 1998, 112 Stat. 2564, provided that:

''(a) PURPOSE.—The purpose of this demonstration is to give public housing agencies and the Secretary of Housing and Urban Development the flexibility to design and test various approaches for providing and administering housing assistance that: reduce cost and achieve greater cost effectiveness in Federal expenditures; give incentives to families with children where the head of household is working, seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and increase housing choices for low-income families.

''(b) PROGRAM AUTHORITY.—The Secretary of Housing and Urban Development shall conduct a demonstration program under this section beginning in fiscal year 1996 under which up to 30 public housing agencies (including Indian housing authorities) administering the public or Indian housing program and the section 8 [42 U.S.C. 1437f] housing assistance payments program may be selected by the Secretary to participate. The Secretary shall provide training and technical assistance during the demonstration and conduct detailed evaluations of up to 15 such agencies in an effort to identify replicable program models promoting the purpose of the demonstration. Under the demonstration, notwithstanding any provision of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] except as provided in subsection (e), an agency may combine operating assistance provided under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g], modernization assistance provided under section 14 of such Act [42 U.S.C. 1437*l*], and assistance provided under section 8 of such Act for the certificate and voucher programs, to provide housing assistance for low-income families, as defined in section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)], and services to facilitate the transition to work on such terms and conditions as the agency may propose and the Secretary may approve.

''(c) APPLICATION.—An application to participate in the demonstration—

''(1) shall request authority to combine assistance under sections 8, 9, and 14 of the United States Housing Act of 1937 [42 U.S.C. 1437f, 1437g, 1437*l*];

''(2) shall be submitted only after the public housing agency provides for citizen participation through a public hearing and, if appropriate, other means;

''(3) shall include a plan developed by the agency that takes into account comments from the public hearing and any other public comments on the proposed program, and comments from current and prospective residents who would be affected, and that includes criteria for—

''(A) families to be assisted, which shall require that at least 75 percent of the families assisted by participating demonstration public housing authorities shall be very low-income families, as defined in section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)];

''(B) establishing a reasonable rent policy, which shall be designed to encourage employment and self-sufficiency by participating families, consistent with the purpose of this demonstration, such as by excluding some or all of a family's earned income for purposes of determining rent;

''(C) continuing to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined;

''(D) maintaining a comparable mix of families (by family size) as would have been provided had the amounts not been used under the demonstration; and

''(E) assuring that housing assisted under the demonstration program meets housing quality standards established or approved by the Secretary; and

''(4) may request assistance for training and technical assistance to assist with design of the demonstration and to participate in a detailed evaluation.

''(d) SELECTION.—In selecting among applications, the Secretary shall take into account the potential of each agency to plan and carry out a program under the demonstration, the relative performance by an agency under the public housing management assessment program under section 6(j) of the United States Housing Act of 1937 [42 U.S.C. 1437d(j)], and other appropriate factors as determined by the Secretary.

''(e) APPLICABILITY OF 1937 ACT PROVISIONS.—

''(1) Section 18 of the United States Housing Act of 1937 [42 U.S.C. 1437p] shall continue to apply to public housing notwithstanding any use of the housing under this demonstration.

''(2) Section 12 of such Act [42 U.S.C. 1437j] shall apply to housing assisted under the demonstration, other than housing assisted solely due to occupancy by families receiving tenant-based assistance.

''(f) EFFECT ON SECTION 8, OPERATING SUBSIDIES, AND COMPREHENSIVE GRANT PROGRAM ALLOCATIONS.—The amount of assistance received under section 8, section 9, or pursuant to section 14 [42 U.S.C. 1437f, 1437g, 1437*l*] by a public housing agency participating in the demonstration under this part [section] shall not be diminished by its participation.

''(g) RECORDS, REPORTS, AND AUDITS.—

''(1) KEEPING OF RECORDS.—Each agency shall keep such records as the Secretary may prescribe as reasonably necessary to disclose the amounts and the disposition of amounts under this demonstration, to ensure compliance with the requirements of this section, and to measure performance.

''(2) REPORTS.—Each agency shall submit to the Secretary a report, or series of reports, in a form and at a time specified by the Secretary. Each report shall—

''(A) document the use of funds made available under this section;

''(B) provide such data as the Secretary may request to assist the Secretary in assessing the demonstration; and

''(C) describe and analyze the effect of assisted activities in addressing the objectives of this part [section].

''(3) ACCESS TO DOCUMENTS BY THE SECRETARY.—The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to assistance in connection with, and the requirements of, this section.

''(4) ACCESS TO DOCUMENTS BY THE COMPTROLLER GENERAL.—The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to assistance in connection with, and the requirements of, this section.

''(h) EVALUATION AND REPORT.—

''(1) CONSULTATION WITH PHA AND FAMILY REPRESENTATIVES.—In making assessments throughout the demonstration, the Secretary shall consult with representatives of public housing agencies and residents.

''(2) REPORT TO CONGRESS.—Not later than 180 days after the end of the third year of the demonstration, the Secretary shall submit to the Congress a report evaluating the programs carried out under the demonstration. The report shall also include findings and recommendations for any appropriate legislative action.

''(i) FUNDING FOR TECHNICAL ASSISTANCE AND EVALUATION.—From amounts appropriated for assistance under section 14 of the United States Housing Act of 1937 [42 U.S.C. 1437*l*] for fiscal years 1996, 1997, and 1998, the Secretary may use up to a total of $5,000,000—

''(1) to provide, directly or by contract, training and technical assistance—

''(A) to public housing agencies that express an interest to apply for training and technical assistance pursuant to subsection (c)(4), to assist them in designing programs to be proposed for the demonstration; and

''(B) to up to 10 agencies selected to receive training and technical assistance pursuant to subsection (c)(4), to assist them in implementing the approved program; and

''(2) to conduct detailed evaluations of the activities of the public housing agencies under paragraph (1)(B), directly or by contract.

''(j) CAPITAL AND OPERATING FUND ASSISTANCE.—With respect to any public housing agency participating in the demonstration under this section that receives assistance from the Capital or Operating Fund under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g] (as amended by the Quality Housing and Work Responsibility Act of 1998), for purposes of this section—

''(1) any reference to assistance under section 9 of the United States Housing Act of 1937 shall be considered to refer also to assistance provided from the Operating Fund under section 9(e) of such Act (as so amended); and

''(2) any reference to assistance under section 14 of the United States Housing Act of 1937 [former 42 U.S.C. 1437*l*] shall be considered to refer also to assistance provided from the Capital Fund under section 9(d) of such Act (as so amended).''

PROHIBITION AGAINST PREFERENCES WITH RESPECT TO CERTAIN PROJECTS

Pub. L. 104–99, title IV, § 402(d)(4)(B), Jan. 26, 1996, 110 Stat. 42, provided that: ''Notwithstanding any other provision of law, no Federal tenant selection preferences under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall apply with respect to—

''(i) housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)] (as such section existed on the day before October 1, 1983); or

''(ii) projects financed under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] (as such section existed on the day before the date of enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990]).''

[Pub. L. 105–276, title V, § 514(c)(2), Oct. 21, 1998, 112 Stat. 2548, provided that: ''Notwithstanding any other provision of law (including subsection (f) of this section [set out as an Effective and Termination Dates of 1996 Amendments note under section 1437a of this title]), section 402(d)(4)(B) of The Balanced Budget Downpayment Act, I [Pub. L. 104–99, set out above] (42 U.S.C. 1437a note) shall apply to fiscal year 1999 and thereafter.'']

[Section 402(d)(4)(B) of Pub. L. 104–99, set out above, effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as Effective and Termination Dates of 1996 Amendments notes under section 1437a of this title.]

COMMUNITY INVESTMENT DEMONSTRATION PROGRAM

Pub. L. 103–120, § 6, Oct. 27, 1993, 107 Stat. 1148, as amended by Pub. L. 104–316, title I, § 122(j), Oct. 19, 1996, 110 Stat. 3837, provided that:

''(a) DEMONSTRATION PROGRAM.—The Secretary shall carry out a demonstration program to attract pension fund investment in affordable housing through the use

of project-based rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f].

''(b) FUNDING REQUIREMENTS.—In carrying out this section, the Secretary shall ensure that not less than 50 percent of the funds appropriated for the demonstration program each year are used in conjunction with the disposition of either—

''(1) multifamily properties owned by the Department; or

''(2) multifamily properties securing mortgages held by the Department.

''(c) CONTRACT TERMS.—

''(1) IN GENERAL.—Project-based assistance under this section shall be provided pursuant to a contract entered into by the Secretary and the owner of the eligible housing that—

''(A) provides assistance for a term of not less than 60 months and not greater than 180 months; and

''(B) provides for contract rents, to be determined by the Secretary, which shall not exceed contract rents permitted under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], taking into consideration any costs for the construction, rehabilitation, or acquisition of the housing.

''(2) AMENDMENT TO SECTION 203.—[Amended section 1701z–11 of Title 12, Banks and Banking.]

''(d) LIMITATION.—(1) The Secretary may not provide (or make a commitment to provide) more than 50 percent of the funding for housing financed by any single pension fund, except that this limitation shall not apply if the Secretary, after the end of the 6-month period beginning on the date notice is issued under subsection (e)—

''(A) determines that—

''(i) there are no expressions of interest that are likely to result in approvable applications in the reasonably foreseeable future; or

''(ii) any such expressions of interest are not likely to use all funding under this section; and

''(B) so informs the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(2) If the Secretary determines that there are expressions of interest referred to in paragraph (1)(A)(ii), the Secretary may reserve funding sufficient in the Secretary's determination to fund such applications and may use any remaining funding for other pension funds in accordance with this section.

''(e) IMPLEMENTATION.—The Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this section. The notice shall take effect upon issuance.

''(f) APPLICABILITY OF ERISA.—Notwithstanding section 514(d) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1144(d)], nothing in this section shall be construed to authorize any action or failure to act that would constitute a violation of such Act [29 U.S.C. 1001 et seq.].

''(g) REPORT.—Not later than 3 months after the last day of each fiscal year, the Secretary shall submit to the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report summarizing the activities carried out under this section during that fiscal year.

''(h) ESTABLISHMENT OF STANDARDS.—Mortgages secured by housing assisted under this demonstration shall meet such standards regarding financing and securitization as the Secretary may establish.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $100,000,000 for fiscal year 1994 to carry out this section.

''[(j) Redesignated (i).]

''(k) TERMINATION DATE.—The Secretary shall not enter into any new commitment to provide assistance under this section after September 30, 1998.''

ADMINISTRATIVE FEES FOR CERTIFICATE AND HOUSING VOUCHER PROGRAMS DURING FISCAL YEAR 1994

Pub. L. 103–120, § 11(a), Oct. 27, 1993, 107 Stat. 1151, provided that: ''Notwithstanding the second sentence of section 8(q)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437f(q)(1)], other applicable law, or any implementing regulations and related requirements, the fee for the ongoing costs of administering the certificate and housing voucher programs under subsections (b) and (*o*) of section 8 of such Act during fiscal year 1994 shall be—

''(1) not less than a fee calculated in accordance with the fair market rents for Federal fiscal year 1993; or

''(2) not more than—

''(A) a fee calculated in accordance with section 8(q) of such Act, except that such fee shall not be in excess of 3.5 percent above the fee calculated in accordance with paragraph (1); or

''(B) to the extent approved in an appropriation Act, a fee calculated in accordance with such section 8(q).''

EFFECTIVENESS OF ASSISTANCE FOR PHA-OWNED UNITS

Section 150 of Pub. L. 102–550 provided that: ''The amendments made by section 548 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, amending this section] shall be effective notwithstanding the absence of any regulations issued by the Secretary of Housing and Urban Development.''

MOVING TO OPPORTUNITY FOR FAIR HOUSING

Section 152 of Pub. L. 102–550, as amended by Pub. L. 103–120, § 3, Oct. 27, 1993, 107 Stat. 1148, which directed Secretary of Housing and Urban Development to carry out demonstration program in eligible cities to provide tenant-based assistance to very low-income families with children to move out of areas of high concentrations of persons living in poverty to areas with low concentrations of such persons, required biennial report to Congress evaluating effectiveness and final report not later than Sept. 30, 2004, provided for increased funding under section 1437c(c) of this title to carry out demonstration, and authorized implementation by notice of requirements necessary to carry out program, was repealed by Pub. L. 105–276, title V, § 550(f), Oct. 21, 1998, 112 Stat. 2610.

DIRECTIVE TO FURTHER FAIR HOUSING OBJECTIVES UNDER CERTIFICATE AND VOUCHER PROGRAMS

Section 153 of Pub. L. 102–550, which directed Secretary of Housing and Urban Development, not later than 2 years after Oct. 28, 1992, to review and comment upon study prepared pursuant to section 558(3) of Pub. L. 101–625, formerly set out as a note below, to evaluate implementation and effects of existing demonstration and judicially mandated programs, to assess factors that might impede geographic dispersion of families receiving section 8 certificates and vouchers, to identify and implement administrative revisions that would enhance dispersion and tenant choice, and to submit report to Congress describing findings, actions taken, and recommendations, was repealed by Pub. L. 105–276, title V, § 582(a)(3), Oct. 21, 1998, 112 Stat. 2643.

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Amendment by section 623(b) of Pub. L. 102–550 not applicable with respect to lower income housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and Indian housing authority, see section 626 of Pub. L. 102–550, set out as a note under section 1437a of this title.

TERMINATION OF EXISTING HOUSING PROGRAMS

Except with respect to projects and programs for which binding commitments have been entered into prior to Oct. 1, 1991, no new grants or loans to be made

after Oct. 1, 1991, under subsec. (e)(2) of this section except for funds allocated under such section for single room occupancy dwellings as authorized by subchapter IV (§ 11361 et seq.) of chapter 119 of this title, see section 12839(a)(4) of this title.

PUBLIC HOUSING MIXED INCOME NEW COMMUNITIES STRATEGY DEMONSTRATION

Section 522 of Pub. L. 101–625, as amended by Pub. L. 104–66, title I, § 1071(b), Dec. 21, 1995, 109 Stat. 720; Pub. L. 104–99, title IV, § 402(d)(6)(B), Jan. 26, 1996, 110 Stat. 43, which directed Secretary of Housing and Urban Development to carry out program to demonstrate effectiveness of promoting revitalization of troubled urban communities through provision of public housing in socioeconomically mixed settings, directed appointment of coordinating committees to develop implementation plans, set forth scope of program including provision of supportive services, required report to Congress evaluating program's effectiveness and including findings and recommendations, and provided for termination of the program 10 years after Nov. 28, 1990, was repealed by Pub. L. 105–276, title V, § 582(a)(10), Oct. 21, 1998, 112 Stat. 2644.

STUDY OF PUBLIC HOUSING FUNDING SYSTEM

Section 524 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to conduct a study assessing one or more revised methods of providing sufficient Federal funds to public housing agencies for operation, maintenance and modernization of public housing, which study was to include a comparison of existing methods of funding in public housing with those used by Department of Housing and Urban Development in housing assisted under this section and a review of results of study entitled ''Alternative Operating Subsidies Systems for the Public Housing Program'', with an update of such study as necessary, and to submit a report to Congress not later than 12 months after Nov. 28, 1990, detailing the findings of this study.

STUDY OF PROSPECTIVE PAYMENT SYSTEM FOR PUBLIC HOUSING

Section 525 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to conduct a study assessing one or more revised methods of providing Federal housing assistance through local public housing agencies, examining methods of prospective payment, including the conversion of PHA operating assistance, modernization, and other Federal housing assistance to a schedule of steady and predictable capitated Federal payments on behalf of low income public housing tenants, and making specific assessments and to submit a report to Congress not later than 12 months after Nov. 28, 1990.

GAO STUDY OF ALTERNATIVES IN PUBLIC HOUSING DEVELOPMENT

Section 526 of Pub. L. 101–625 directed Comptroller General to conduct a study assessing alternative methods of developing public housing dwelling units, other than under the existing public housing development program under this chapter, and submit a report to Congress regarding the findings and conclusions of the study not later than 12 months after Nov. 28, 1990.

PREFERENCE FOR NEW CONSTRUCTION UNDER THIS SECTION

Section 545(c) of Pub. L. 101–625, as amended by Pub. L. 104–99, title IV, § 402(d)(4)(A), Jan. 26, 1996, 110 Stat. 42, which provided that, with respect to housing constructed or substantially rehabilitated pursuant to assistance provided under subsec. (b)(2) of this section, as such provisions existed before Oct. 1, 1983, and projects financed under section 1701q of Title 12, Banks and Banking, notwithstanding tenant selection criteria under contract between Secretary and owner pursuant to first sentence of such section, for at least 70 percent of units becoming available, tenant selection criteria for such housing was to give preference to families occupying substandard housing (including homeless families and those living in shelters), paying more than 50 percent of family income for rent, or involuntarily displaced, and system of local preferences established under subsec. (d)(1)(A)(ii) of this section by public housing agency was to apply to remaining units that became available, to extent that such preferences were applicable with respect to tenant eligibility limitations, was repealed by Pub. L. 105–276, title V, § 514(c)(1), Oct. 21, 1998, 112 Stat. 2548.

DOCUMENTATION OF EXCESSIVE RENT BURDENS

Section 550(b) of Pub. L. 101–625 provided that:

''(1) DATA.—The Secretary of Housing and Urban Development shall collect and maintain, in an automated system, data describing the characteristics of families assisted under the certificate and voucher programs established under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], which data shall include the share of family income paid toward rent.

''(2) REPORT.—Not less than annually, the Secretary shall submit a report to the Congress setting forth, for each of the certificate program and the voucher program, the percentage of families participating in the program who are paying for rent more than the amount determined under section 3(a)(1) of such Act [42 U.S.C. 1437a(a)(1)]. The report shall set forth data in appropriate categories, such as various areas of the country, types and sizes of public housing agencies, types of families, and types or markets. The data shall identify the jurisdictions in which more than 10 percent of the families assisted under section 8 of such Act pay for rent more than the amount determined under section 3(a)(1) of such Act and the report shall include an examination of whether the fair market rent for such areas is appropriate. The report shall also include any recommendations of the Secretary for legislative and administrative actions appropriate as a result of analysis of the data.

''(3) AVAILABILITY OF DATA.—The Secretary shall make available to each public housing agency administering assistance under the certificate or voucher program any data maintained under this subsection that relates to the public housing agency.''

[For termination, effective May 15, 2000, of reporting provisions in section 550(b)(2) of Pub. L. 101–625, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 16 on page 103 of House Document No. 103–7.]

INCOME ELIGIBILITY FOR TENANCY IN NEW CONSTRUCTION UNITS

Section 555 of Pub. L. 101–625 provided that: ''Any dwelling units in any housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)], as such section existed before October 1, 1983, and with a contract for assistance under such section, shall be reserved for occupancy by low-income families and very low-income families.''

GAO STUDY REGARDING FAIR MARKET RENT CALCULATION

Section 558 of Pub. L. 101–625 directed Comptroller General to conduct a study to examine fair market rentals under subsec. (c)(1) of this section which are wholly contained within such market areas and submit a report to Congress not later than 18 months after Nov. 28, 1990, regarding findings and conclusions.

STUDY OF UTILIZATION RATES

Section 559 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to conduct a study of reasons for success or failure, within appropriate cities and localities, in utilizing assistance made available for such areas under this section and submit a report to Congress concerning this study not later than the expiration of the 1-year period beginning on Nov. 28, 1990.

FEASIBILITY STUDY REGARDING INDIAN TRIBE ELIGIBILITY FOR VOUCHER PROGRAM

Section 561 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to conduct a study to determine feasibility and effectiveness of entering into contracts with Indian housing authorities to provide voucher assistance under subsec. (*o*) of this section and submit a report to Congress regarding findings and conclusions not later than the expiration of the 1-year period beginning on Nov. 28, 1990.

STUDY OF PRIVATE NONPROFIT INITIATIVES

Section 582 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to conduct a study to examine how private nonprofit initiatives to provide low-income housing development in local communities across the country have succeeded, with particular emphasis on how Federal housing policy and tax structures can best promote local private nonprofit organizations involvement in low-income housing development, and submit a report to Congress regarding findings not later than 1-year after Nov. 28, 1990.

PREFERENCES FOR NATIVE HAWAIIANS ON HAWAIIAN HOMELANDS UNDER HUD PROGRAMS

Section 958 of Pub. L. 101–625, which directed Secretary of Housing and Urban Development to provide preferences for housing assistance programs to native Hawaiians in subsec. (a), described assistance programs available in subsec. (b), authorized Secretary to provide mortgage insurance in certain situations in subsec. (c), and defined pertinent terms in subsec. (d), was repealed by Pub. L. 102–238, § 5(b), Dec. 17, 1991, 105 Stat. 1910.

AUTHORIZATION FOR PROVISION OF ASSISTANCE TO PROGRAMS ADMINISTERED BY STATE OF HAWAII UNDER ACT OF JULY 9, 1921

Section 962 of Pub. L. 101–625, as added by Pub. L. 102–238, § 5(a), Dec. 17, 1991, 105 Stat. 1909, provided that:

''(a) ASSISTANCE AUTHORIZED.—The Secretary of Housing and Urban Development is authorized to provide assistance, under any housing assistance program administered by the Secretary, to the State of Hawaii, for use by the State in meeting the responsibilities with which it has been charged under the provisions of the Act of July 9, 1921 (42 Stat. 108) [formerly 48 U.S.C. 691–718].

''(b) MORTGAGE INSURANCE.—

''(1) IN GENERAL.—Notwithstanding any other provision or limitation of this Act [see Short Title note set out under section 12701 of this title], or the National Housing Act [12 U.S.C. 1701 et seq.], including those relating to marketability of title, the Secretary of Housing and Urban Development may provide mortgage insurance covering any property on lands set aside under the provisions of the Act of July 9, 1921 (42 Stat. 108), upon which there is or will be located a multifamily residence, for which the Department of the Hawaiian Home Lands of the State of Hawaii—

''(A) is the mortgagor or co-mortgagor;

''(B) guarantees in writing to reimburse the Secretary for any mortgage insurance claim paid in connection with such property; or

''(C) offers other security that is acceptable to the Secretary, subject to appropriate conditions prescribed by the Secretary.

''(2) SALE ON DEFAULT.—In the event of a default on a mortgage insured pursuant to paragraph (1), the Department of Hawaiian Home Lands of the State of Hawaii may sell the insured property or housing unit to an eligible beneficiary as defined in the Act of July 9, 1921 (42 Stat. 108).''

ANNUAL ADJUSTMENT FACTORS FOR RENTS UNDER LOWER-INCOME HOUSING ASSISTANCE PROGRAM

Section 801(a), (b), (d), (e) of Pub. L. 101–235 provided that:

''(a) EFFECT OF PRIOR COMPARABILITY STUDIES.—

''(1) IN GENERAL.—In any case in which, in implementing section 8(c)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(c)(2)]—

''(A) the use of comparability studies by the Secretary of Housing and Urban Development or the appropriate State agency as an independent limitation on the amount of rental adjustments resulting from the application of an annual adjustment factor under such section has resulted in the reduction of the maximum monthly rent for units covered by the contract or the failure to increase such contract rent to the full amount otherwise permitted under the annual adjustment factor, or

''(B) an assistance contract requires a project owner to make a request before becoming eligible for a rent adjustment under the annual adjustment factor and the project owner certifies that such a request was not made because of anticipated negative adjustment to the project rents,

for fiscal year 1980, and annually thereafter until regulations implementing this section take effect, rental adjustments shall be calculated as an amount equal to the annual adjustment factor multiplied by a figure equal to the contract rent minus the amount of contract rent attributable to debt service. Upon the request of the project owner, the Secretary shall pay to the project owner the amount, if any, by which the total rental adjustment calculated under the preceding sentence exceeds the total adjustments the Secretary or appropriate State agency actually approved, except that solely for purposes of calculating retroactive payments under this subsection, in no event shall any project owner be paid an amount less than 30 percent of a figure equal to the aggregate of the annual adjustment factor multiplied by the full contract rent for each year on or after fiscal year 1980, minus the sum of the rental payments the Secretary or appropriate State agency actually approved for those years. The method provided by this subsection shall be the exclusive method by which retroactive payments, whether or not requested, may be made for projects subject to this subsection for the period from fiscal year 1980 until the regulations issued under subsection (e) take effect. For purposes of this paragraph, 'debt service' shall include interest, principal, and mortgage insurance premium if any.

''(2) APPLICABILITY.—

''(A) IN GENERAL.—Subsection (a) shall apply with respect to any use of comparability studies referred to in such subsection occurring before the effective date of the regulations issued under subsection (e).

''(B) FINAL LITIGATION.—Subsection (a) shall not apply to any project with respect to which litigation regarding the authority of the Secretary to use comparability studies to limit rental adjustments under section 8(c)(2) of the United States Housing Act of 1937 has resulted in a judgment before the effective date of this Act [Dec. 15, 1989] that is final and not appealable (including any settlement agreement).

''(b) 3-YEAR PAYMENTS.—The Secretary shall provide the amounts under subsection (a) over the 3-year period beginning on the effective date of the regulations issued under subsection (e). The Secretary shall provide the payments authorized under subsection (a) only to the extent approved in subsequent appropriations Acts. There are authorized to be appropriated such sums as may be necessary for this purpose.

''(d) DETERMINATION OF CONTRACT RENT.—(1) The Secretary shall upon the request of the project owner, make a one-time determination of the contract rent for each project owner referred to in subsection (a). The contract rent shall be the greater of the contract rent—

''(A) currently approved by the Secretary under section 8(c)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(c)(2)], or

''(B) calculated in accordance with the first sentence of subsection (a)(1).

''(2) All adjustments in contract rents under section 8(c)(2) of the United States Housing Act of 1937, includ-

ing adjustments involving projects referred to in subsection (a), that occur beginning with the first anniversary date of the contract after the regulations issued under subsection (e) take effect shall be made in accordance with the annual adjustment and comparability provisions of sections 8(c)(2)(A) and 8(c)(2)(C) of such Act, respectively, using the one-time contract rent determination under paragraph (1).

''(e) REGULATIONS.—The Secretary shall issue regulations to carry out this section and the amendments made by this section [amending this section], including the amendments made by subsection (c) with regard to annual adjustment factors and comparability studies. The Secretary shall issue such regulations not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 15, 1989].''

PROHIBITION OF REDUCTION OF CONTRACT RENTS; BUDGET COMPLIANCE

Section 1004(b) of Pub. L. 100–628 provided that: ''During fiscal year 1989, the amendment made by subsection (a)(2) [amending this section] shall be effective only to such extent or in such amounts as are provided in appropriation Acts. For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119) [2 U.S.C. 909], to the extent that this section has the effect of transferring an outlay of the United States from one fiscal year to an adjacent fiscal year, the transfer is a necessary (but secondary) result of a significant policy change.''

PROJECT-BASED LOWER-INCOME HOUSING ASSISTANCE; IMPLEMENTATION OF PROGRAM

Section 1005(a) of Pub. L. 100–628 provided that: ''To implement the amendment made by section 148 of the Housing and Community Development Act of 1987 [Pub. L. 100–242, see 1988 Amendment note above], the Secretary of Housing and Urban Development shall issue regulations that take effect not later than 30 days after the date of the enactment of this Act [Nov. 7, 1988]. Until the effective date of the regulations, the Secretary of Housing and Urban Development shall consider each application from a public housing agency to attach a contract for assistance payments to a structure, in accordance with the amendment made by such section 148 to section 8(d)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(2)), and shall promptly approve such application if it meets the requirements of such section 8(d)(2).''

PROJECT-BASED LOWER-INCOME HOUSING ASSISTANCE IN NEW CONSTRUCTION; REGULATIONS IMPLEMENTING PROGRAM

Section 1005(b)(2) of Pub. L. 100–628 provided that: ''To implement the amendments made by this subsection [amending this section], the Secretary of Housing and Urban Development shall issue regulations that take effect not later than 90 days after the date of the enactment of this Act [Nov. 7, 1988].''

USE OF FUNDS RECAPTURED FROM REFINANCING STATE AND LOCAL FINANCE PROJECTS

Section 1012 of Pub. L. 100–628, as amended by Pub. L. 102–273, § 2(a), (c)(1), Apr. 21, 1992, 106 Stat. 113; Pub. L. 102–550, title I, § 163, Oct. 28, 1992, 106 Stat. 3722, provided that:

''(a) DEFINITION OF QUALIFIED PROJECT.—For purposes of this section, the term 'qualified project' means any State financed project or local government or local housing agency financed project, that—

''(1) was—

''(A) provided a financial adjustment factor under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f]; or

''(B) constructed or substantially rehabilitated pursuant to assistance provided under a contract under section 8(b)(2) of the United States Housing Act of 1937 (as in effect on September 30, 1983) entered into during any of calendar years 1979 through 1984; and

''(2) is being refinanced.

''(b) AVAILABILITY OF FUNDS.—The Secretary shall make available to the State housing finance agency in the State in which a qualified project is located, or the local government or local housing agency initiating the refinancing of the qualified project, as applicable, an amount equal to 50 percent of the amounts recaptured from the project (as determined by the Secretary on a project-by-project basis). Notwithstanding any other provision of law, such amounts shall be used only for providing decent, safe, and sanitary housing affordable for very low-income families and persons.

''(c) APPLICABILITY AND BUDGET COMPLIANCE.—

''(1) RETROACTIVITY.—This section shall apply to refinancings of projects for which settlement occurred or occurs before, on, or after the date of the enactment of the Housing and Community Development Act of 1992 [Oct. 28, 1992], subject to the provisions of paragraph (2).

''(2) BUDGET COMPLIANCE.—This section shall apply only to the extent or in such amounts as are provided in appropriation Acts.''

[Section 2(b) of Pub. L. 102–273 provided that: ''The amendments made by subsection (a) [amending section 1012 of Pub. L. 100–628, set out above] shall apply to any refinancing of a local government or local housing agency financed project approved by the Secretary of Housing and Urban Development for which settlement occurred after January 1, 1992.'']

PUBLIC HOUSING COMPREHENSIVE TRANSITION DEMONSTRATION

Section 126 of Pub. L. 100–242, which directed Secretary of Housing and Urban Development to carry out program in 11 public housing agencies to demonstrate effectiveness of providing services to ensure transition of public housing residents to private housing, set forth requirements of program, and required interim report to Congress not later than 2 years after Feb. 5, 1988, and final report not later than 60 days after termination of program 7 years after such date, was repealed by Pub. L. 105–276, title V, § 582(a)(8), Oct. 21, 1998, 112 Stat. 2644.

NONDISCRIMINATION AGAINST SECTION 8 CERTIFICATE HOLDERS AND VOUCHER HOLDERS

Section 183(c) of Pub. L. 100–242, which prohibited owner of subsidized project to refuse to lease dwelling unit to holder of certificate of eligibility or voucher under this section, where proximate cause of refusal was status of prospective tenant as holder of such certificate or voucher, was repealed by Pub. L. 105–276, title V, § 582(a)(2), Oct. 21, 1998, 112 Stat. 2643.

WITHDRAWAL BY OWNERS, DEVELOPERS, AND SPONSORS FROM PROGRAMS UNDER THIS SECTION; SURVEY AND DETERMINATION OF NUMBER; NOTIFICATION OF RENT INCREASES; REPORT TO CONGRESS; REGULATIONS TO PREVENT CONFLICT OF INTEREST ON THE PART OF FEDERAL, STATE, AND LOCAL OFFICIALS; RECOVERY OF LEGAL EXPENSES; CONTENTS OF ANNUAL REPORT

Section 326(b)–(d) of Pub. L. 97–35, as amended by Pub. L. 102–550, title I, § 129(a), Oct. 28, 1992, 106 Stat. 3711; Pub. L. 105–276, title V, § 582(a)(4), Oct. 21, 1998, 112 Stat. 2643, provided that:

''(b)[(1) Repealed. Pub. L. 105–276, title V, § 582(a)(4), Oct. 21, 1998, 112 Stat. 2643.]

''(2) Not later than one year after the date of the enactment of this Act [Aug. 13, 1981], the Secretary shall transmit to the Congress a report indicating alternative methods which may be utilized for recapturing the cost to the Federal Government of front-end investment in those units which are removed from the section 8 program.

''[(c) Repealed. Pub. L. 105–276, title V, § 582(a)(4), Oct. 21, 1998, 112 Stat. 2643.]

''(d) RENTAL ASSISTANCE FRAUD RECOVERIES.—

''(1) AUTHORITY TO RETAIN RECOVERED AMOUNTS.—The Secretary of Housing and Urban Development shall permit public housing agencies administering

the housing assistance payments program under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] to retain, out of amounts obtained by the agencies from tenants that are due as a result of fraud and abuse, an amount (determined in accordance with regulations issued by the Secretary) equal to the greater of—

''(A) 50 percent of the amount actually collected, or

''(B) the actual, reasonable, and necessary expenses related to the collection, including costs of investigation, legal fees, and collection agency fees.

''(2) USE.—Amounts retained by an agency shall be made available for use in support of the affected program or project, in accordance with regulations issued by the Secretary. Where the Secretary is the principal party initiating or sustaining an action to recover amounts from families or owners, the provisions of this section shall not apply.

''(3) RECOVERY.—Amounts may be recovered under this paragraph—

''(A) by an agency through a lawsuit (including settlement of the lawsuit) brought by the agency or through court-ordered restitution pursuant to a criminal proceeding resulting from an agency's investigation where the agency seeks prosecution of a family or where an agency seeks prosecution of an owner; or

''(B) through administrative repayment agreements with a family or owner entered into as a result of an administrative grievance procedure conducted by an impartial decisionmaker in accordance with section 6(k) of the United States Housing Act of 1937 [42 U.S.C. 1437d(k)].''

[Section 129(b) of Pub. L. 102–550, provided that: ''Subsection (a) [amending section 326(d) of Pub. L. 97–35, set out above] shall apply with respect to actions by public housing agencies initiated on or after the date of the enactment of this Act [Oct. 28, 1992].''

STUDY BY SECRETARY CONCERNING FEASIBILITY OF MINIMUM RENT PAYMENT REQUIREMENTS

Section 212 of Pub. L. 96–153 directed the Secretary of Housing and Urban Development to conduct a study of the feasibility and financial desirability of requiring minimum rent payments from tenants in low-income housing assisted under this chapter, and to submit a report to the Congress containing the findings and conclusions of such study not later than ten days after the Budget for fiscal year 1981 is transmitted pursuant to section 11 of former Title 31, Money and Finance, and directed the Secretary of Housing and Urban Development to conduct a study to provide detailed comparisons between the rents paid by tenants occupying low-income housing assisted under this chapter and the rents paid by tenants at the same income level who are not in assisted housing and to transmit a report on such study to the Congress not later than Mar. 1, 1980.

STUDY OF ALTERNATIVE MEANS OF ENCOURAGING THE DEVELOPMENT OF HOUSING

Section 208 of Pub. L. 95–557 directed that Secretary of Housing and Urban Development conduct a study for purpose of examining alternative means of encouraging development of housing to be assisted under this section for occupancy by large families which reside in areas with a low-vacancy rate in rental housing and report to Congress no later than one year after Oct. 31, 1978, for purpose of providing legislative recommendations with respect to this study.

TAXATION OF INTEREST PAID ON OBLIGATIONS SECURED BY INSURED MORTGAGE AND ISSUED BY PUBLIC AGENCY

Section 319(b) of Pub. L. 93–383, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''With respect to any obligation secured by a mortgage which is insured under section 221(d)(3) of the National Housing Act [section 1715*l*(d)(3) of Title 12, Banks and Banking] and issued by a public agency as mortgagor in connection with the financing of a project assisted under section 8 of the United States Housing Act of 1937 [this section], the interest paid on such obligation shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [chapter 1 of Title 26, Internal Revenue Code].''

RENTAL OR INCOME CONTRIBUTIONS; USE OF SPECIAL SCHEDULES OF REQUIRED PAYMENTS FOR PARTICIPANTS IN MUTUAL HELP PROJECTS CONTRIBUTING LABOR, ETC.

Section 203 of Pub. L. 93–383 provided that: ''The rental or income contribution provisions of the United States Housing Act of 1937 [sections 1437 to 1437j of this title], as amended by section 201 of this Act, shall not preclude the use of special schedules of required payments as approved by the Secretary for participants in mutual help housing projects who contribute labor, land, or materials to the development of such projects.''

§ 1437g. Public housing Capital and Operating Funds

(a) Merger into Capital Fund

Except as otherwise provided in the Quality Housing and Work Responsibility Act of 1998, any assistance made available for public housing under section 1437*l* of this title before October 1, 1999, shall be merged into the Capital Fund established under subsection (d) of this section.

(b) Merger into Operating Fund

Except as otherwise provided in the Quality Housing and Work Responsibility Act of 1998, any assistance made available for public housing under this section before October 1, 1999, shall be merged into the Operating Fund established under subsection (e) of this section.

(c) Allocation amount

(1) In general

For fiscal year 2000 and each fiscal year thereafter, the Secretary shall allocate amounts in the Capital Fund and Operating Funds[1] for assistance for public housing agencies eligible for such assistance. The Secretary shall determine the amount of the allocation for each eligible agency, which shall be, for any fiscal year beginning after the effective date of the formulas described in subsections (d)(2) and (e)(2) of this section—

(A) for assistance from the Capital Fund, the amount determined for the agency under the formula under subsection (d)(2) of this section; and

(B) for assistance from the Operating Fund, the amount determined for the agency under the formula under subsection (e)(2) of this section.

(2) Funding

There are authorized to be appropriated for assistance for public housing agencies under this section the following amounts:

(A) Capital Fund

For allocations of assistance from the Capital Fund, $3,000,000,000 for fiscal year 1999, and such sums as may be necessary for fiscal years 2000, 2001, 2002, and 2003.

(B) Operating Fund

For allocations of assistance from the Operating Fund, $2,900,000,000 for fiscal year

[1] So in original. Probably should be ''Fund''.

1999, and such sums as may be necessary for each of fiscal years 2000, 2001, 2002, and 2003.

(d) Capital Fund

(1) In general

The Secretary shall establish a Capital Fund for the purpose of making assistance available to public housing agencies to carry out capital and management activities, including—

(A) the development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessibility improvements) and the development of mixed-finance projects;

(B) vacancy reduction;

(C) addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment;

(D) planned code compliance;

(E) management improvements, including the establishment and initial operation of computer centers in and around public housing through a Neighborhood Networks initiative, for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources;

(F) demolition and replacement;

(G) resident relocation;

(H) capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents and to improve resident participation;

(I) capital expenditures to improve the security and safety of residents;

(J) homeownership activities, including programs under section 1437z–4 of this title;

(K) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate; and

(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.

(2) Formula

The Secretary shall develop a formula for determining the amount of assistance provided to public housing agencies from the Capital Fund for a fiscal year, which shall include a mechanism to reward performance. The formula may take into account such factors as—

(A) the number of public housing dwelling units owned, assisted, or operated by the public housing agency, the characteristics and locations of the projects, and the characteristics of the families served and to be served (including the incomes of the families);

(B) the need of the public housing agency to carry out rehabilitation and modernization activities, replacement housing, and reconstruction, construction, and demolition activities related to public housing dwelling units owned, assisted, or operated by the public housing agency, including backlog and projected future needs of the agency;

(C) the cost of constructing and rehabilitating property in the area;

(D) the need of the public housing agency to carry out activities that provide a safe and secure environment in public housing units owned, assisted, or operated by the public housing agency;

(E) any record by the public housing agency of exemplary performance in the operation of public housing, as indicated by the system of performance indicators established pursuant to section 1437d(j) of this title; and

(F) any other factors that the Secretary determines to be appropriate.

(3) Conditions on use for development and modernization

(A) Development

Except as otherwise provided in this chapter, any public housing developed using amounts provided under this subsection, or under section 1437*l* of this title as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, shall be operated under the terms and conditions applicable to public housing during the 40-year period that begins on the date on which the project (or stage of the project) becomes available for occupancy.

(B) Modernization

Except as otherwise provided in this chapter, any public housing or portion thereof that is modernized using amounts provided under this subsection or under section 1437*l* of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998) shall be maintained and operated under the terms and conditions applicable to public housing during the 20-year period that begins on the latest date on which modernization is completed.

(C) Applicability of latest expiration date

Public housing subject to this paragraph or to any other provision of law mandating the operation of the housing as public housing or under the terms and conditions applicable to public housing for a specified length of time, shall be maintained and operated as required until the latest such expiration date.

(e) Operating Fund

(1) In general

The Secretary shall establish an Operating Fund for the purpose of making assistance available to public housing agencies for the operation and management of public housing, including—

(A) procedures and systems to maintain and ensure the efficient management and operation of public housing units (including amounts sufficient to pay for the reasonable

costs of review by an independent auditor of the documentation or other information maintained pursuant to section 1437d(j)(6) of this title by a public housing agency or resident management corporation to substantiate the performance of that agency or corporation);

(B) activities to ensure a program of routine preventative maintenance;

(C) anticrime and antidrug activities, including the costs of providing adequate security for public housing residents, including above-baseline police service agreements;

(D) activities related to the provision of services, including service coordinators for elderly persons or persons with disabilities;

(E) activities to provide for management and participation in the management and policymaking of public housing by public housing residents;

(F) the costs of insurance;

(G) the energy costs associated with public housing units, with an emphasis on energy conservation;

(H) the costs of administering a public housing work program under section 1437j of this title, including the costs of any related insurance needs;

(I) the costs of repaying, together with rent contributions, debt incurred to finance the rehabilitation and development of public housing units, which shall be subject to such reasonable requirements as the Secretary may establish;

(J) the costs associated with the operation and management of mixed finance projects, to the extent appropriate; and

(K) the costs of operating computer centers in public housing through a Neighborhood Networks initiative described in subsection (d)(1)(E) of this section, and of activities related to that initiative.

(2) Formula

(A) In general

The Secretary shall establish a formula for determining the amount of assistance provided to public housing agencies from the Operating Fund for a fiscal year. The formula may take into account—

(i) standards for the costs of operating and reasonable projections of income, taking into account the characteristics and locations of the public housing projects and characteristics of the families served and to be served (including the incomes of the families), or the costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed public housing project;

(ii) the number of public housing dwelling units owned, assisted, or operated by the public housing agency;

(iii) the number of public housing dwelling units owned, assisted, or operated by the public housing agency that are chronically vacant and the amount of assistance appropriate for those units;

(iv) to the extent quantifiable, the extent to which the public housing agency provides programs and activities designed to promote the economic self-sufficiency and management skills of public housing residents;

(v) the need of the public housing agency to carry out anti-crime and anti-drug activities, including providing adequate security for public housing residents;

(vi) the amount of public housing rental income foregone by the public housing agency as a result of escrow savings accounts under section 1437u(d)(2) of this title for families participating in a family self-sufficiency program of the agency under such section 1437u of this title; and

(vii) any other factors that the Secretary determines to be appropriate.

(B) Incentive to increase certain rental income

The formula shall provide an incentive to encourage public housing agencies to facilitate increases in earned income by families in occupancy. Any such incentive shall provide that the agency shall benefit from increases in such rental income and that such amounts accruing to the agency pursuant to such benefit may be used only for low-income housing or to benefit the residents of the public housing agency.

(C) Treatment of savings

(i) In general

The treatment of utility and waste management costs under the formula shall provide that a public housing agency shall receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more of its public housing projects.

(ii) Third party contracts

Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

(iii) Term of contract

The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.

(3) Condition on use

No portion of any public housing project operated using amounts provided under this subsection, or under this section as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, may be disposed of before the expiration of the 10-year period beginning upon

the conclusion of the fiscal year for which such amounts were provided, except as otherwise provided in this chapter.

(f) Negotiated rulemaking procedure

The formulas under subsections (d)(2) and (e)(2) of this section shall be developed according to procedures for issuance of regulations under the negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(g) Limitations on use of funds

(1) Flexibility for Capital Fund amounts

Of any amounts appropriated for fiscal year 2000 or any fiscal year thereafter that are allocated for fiscal year 2000 or any fiscal year thereafter from the Capital Fund for any public housing agency, the agency may use not more than 20 percent for activities that are eligible under subsection (e) of this section for assistance with amounts from the Operating Fund, but only if the public housing agency plan for the agency provides for such use.

(2) Full flexibility for small PHAs

Of any amounts allocated for any fiscal year for any public housing agency that owns or operates less than 250 public housing dwelling units, is not designated pursuant to section 1437d(j)(2) of this title as a troubled public housing agency, and (in the determination of the Secretary) is operating and maintaining its public housing in a safe, clean, and healthy condition, the agency may use any such amounts for any eligible activities under subsections (d)(1) and (e)(1) of this section, regardless of the fund from which the amounts were allocated and provided. This subsection shall take effect on October 21, 1998.

(3) Limitation on new construction

(A) In general

Except as provided in subparagraphs (B) and (C), a public housing agency may not use any of the amounts allocated for the agency from the Capital Fund or Operating Fund for the purpose of constructing any public housing unit, if such construction would result in a net increase from the number of public housing units owned, assisted, or operated by the public housing agency on October 1, 1999, including any public housing units demolished as part of any revitalization effort.

(B) Exception regarding use of assistance

A public housing agency may use amounts allocated for the agency from the Capital Fund or Operating Fund for the construction and operation of housing units that are available and affordable to low-income families in excess of the limitations on new construction set forth in subparagraph (A), but the formulas established under subsections (d)(2) and (e)(2) of this section shall not provide additional funding for the specific purpose of allowing construction and operation of housing in excess of those limitations (except to the extent provided in subparagraph (C)).

(C) Exception regarding formulas

Subject to reasonable limitations set by the Secretary, the formulas established under subsections (d)(2) and (e)(2) of this section may provide additional funding for the operation and modernization costs (but not the initial development costs) of housing in excess of amounts otherwise permitted under this paragraph, and such amounts may be so used, if—

(i) such units are part of a mixed-finance project or otherwise leverage significant additional private or public investment; and

(ii) the estimated cost of the useful life of the project is less than the estimated cost of providing tenant-based assistance under section 1437f(*o*) of this title for the same period of time.

(h) Technical assistance

To the extent amounts are provided in advance in appropriations Acts, the Secretary may make grants or enter into contracts or cooperative agreements in accordance with this subsection for purposes of providing, either directly or indirectly—

(1) technical assistance to public housing agencies, resident councils, resident organizations, and resident management corporations, including assistance relating to monitoring and inspections;

(2) training for public housing agency employees and residents;

(3) data collection and analysis;

(4) training, technical assistance, and education to public housing agencies that are—

(A) at risk of being designated as troubled under section 1437d(j) of this title, to assist such agencies from being so designated; and

(B) designated as troubled under section 1437d(j) of this title, to assist such agencies in achieving the removal of that designation;

(5) contract expertise;

(6) training and technical assistance to assist in the oversight and management of public housing or tenant-based assistance;

(7) clearinghouse services in furtherance of the goals and activities of this subsection; and

(8) assistance in connection with the establishment and operation of computer centers in public housing through a Neighborhood Networks initiative described in subsection (d)(1)(E) of this section.

As used in this subsection, the terms ''training'' and ''technical assistance'' shall include training or technical assistance and the cost of necessary travel for participants in such training or technical assistance, by or to officials and employees of the Department and of public housing agencies, and to residents and to other eligible grantees.

(i) Eligibility of units acquired from proceeds of sales under demolition or disposition plan

If a public housing agency uses proceeds from the sale of units under a homeownership program in accordance with section 1437z–4 of this title to acquire additional units to be sold to low-income families, the additional units shall be counted as public housing for purposes of determining the amount of the allocation to the agency under this section until sale by the agency, but in no case longer than 5 years.

(j) Penalty for slow expenditure of capital funds

(1) Obligation of amounts

Except as provided in paragraph (4) and subject to paragraph (2), a public housing agency shall obligate any assistance received under this section not later than 24 months after, as applicable—

(A) the date on which the funds become available to the agency for obligation in the case of modernization; or

(B) the date on which the agency accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units.

(2) Extension of time period for obligation

The Secretary—

(A) may, extend the time period under paragraph (1) for a public housing agency, for such period as the Secretary determines to be necessary, if the Secretary determines that the failure of the agency to obligate assistance in a timely manner is attributable to—

(i) litigation;

(ii) obtaining approvals of the Federal Government or a State or local government;

(iii) complying with environmental assessment and abatement requirements;

(iv) relocating residents;

(v) an event beyond the control of the public housing agency; or

(vi) any other reason established by the Secretary by notice published in the Federal Register;

(B) shall disregard the requirements of paragraph (1) with respect to any unobligated amounts made available to a public housing agency, to the extent that the total of such amounts does not exceed 10 percent of the original amount made available to the public housing agency; and

(C) may, with the prior approval of the Secretary, extend the time period under paragraph (1), for an additional period not to exceed 12 months, based on—

(i) the size of the public housing agency;

(ii) the complexity of capital program of the public housing agency;

(iii) any limitation on the ability of the public housing agency to obligate the amounts allocated for the agency from the Capital Fund in a timely manner as a result of State or local law; or

(iv) such other factors as the Secretary determines to be relevant.

(3) Effect of failure to comply

(A) Prohibition of new assistance

A public housing agency shall not be awarded assistance under this section for any month during any fiscal year in which the public housing agency has funds unobligated in violation of paragraph (1) or (2).

(B) Withholding of assistance

During any fiscal year described in subparagraph (A), the Secretary shall withhold all assistance that would otherwise be provided to the public housing agency. If the public housing agency cures its failure to comply during the year, it shall be provided with the share attributable to the months remaining in the year.

(C) Redistribution

The total amount of any funds not provided public housing agencies by operation of this paragraph shall be allocated for agencies determined under section 1437d(j) of this title to be high-performing.

(4) Exception to obligation requirements

(A) In general

Subject to subparagraph (B), if the Secretary has consented, before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, to an obligation period for any agency longer than provided under paragraph (1), a public housing agency that obligates its funds before the expiration of that period shall not be considered to be in violation of paragraph (1).

(B) Prior fiscal years

Notwithstanding subparagraph (A), any funds appropriated to a public housing agency for fiscal year 1997 or prior fiscal years shall be fully obligated by the public housing agency not later than September 30, 1999.

(5) Expenditure of amounts

(A) In general

A public housing agency shall spend any assistance received under this section not later than 4 years (plus the period of any extension approved by the Secretary under paragraph (2)) after the date on which funds become available to the agency for obligation.

(B) Enforcement

The Secretary shall enforce the requirement of subparagraph (A) through default remedies up to and including withdrawal of the funding.

(6) Right of recapture

Any obligation entered into by a public housing agency shall be subject to the right of the Secretary to recapture the obligated amounts for violation by the public housing agency of the requirements of this subsection.

(k) Emergency reserve and use of amounts

(1) Set-asides

In each fiscal year after fiscal year 1999, the Secretary shall set aside, for use in accordance with this subsection, not more than 2 percent of the total amount made available to carry out this section for such fiscal year. In addition to amounts set aside under the preceding sentence, in each fiscal year the Secretary may set from the total amount made available to carry out this section for such fiscal year not more than $20,000,000 for the Operation Safe Home program administered by the Office of the Inspector General of the Department of Housing and Urban Development, for law enforcement efforts to combat violent crime on or near the premises of public and federally assisted housing.

(2) Use of funds

Amounts set aside under paragraph (1) shall be available to the Secretary for use for assistance, as provided in paragraph (3), in connection with—

(A) emergencies and other disasters; and

(C)[2] housing needs resulting from any settlement of litigation; and

(3) Eligible uses

In carrying out this subsection, the Secretary may use amounts set aside under this subsection to provide—

(A) assistance for any eligible use under the Operating Fund or the Capital Fund established by this section; or

(B) tenant-based assistance in accordance with section 1437f of this title.

(4) Limitation

With respect to any fiscal year, the Secretary may carry over not more than a total of $25,000,000 in unobligated amounts set aside under this subsection for use in connection with the activities described in paragraph (2) during the succeeding fiscal year.

(5) Publication

The Secretary shall publish the use of any amounts allocated under this subsection relating to emergencies (other than disasters and housing needs resulting from any settlement of litigation) in the Federal Register.

(*l*) Treatment of nonrental income

A public housing agency that receives income from nonrental sources (as determined by the Secretary) may retain and use such amounts without any decrease in the amounts received under this section from the Capital or Operating Fund. Any such nonrental amounts retained shall be used only for low-income housing or to benefit the residents assisted by the public housing agency.

(m) Provision of only capital or operating assistance

(1) Authority

In appropriate circumstances, as determined by the Secretary, a public housing agency may commit capital assistance only, or operating assistance only, for public housing units, which assistance shall be subject to all of the requirements applicable to public housing except as otherwise provided in this subsection.

(2) Exemptions

In the case of any public housing unit assisted pursuant to the authority under paragraph (1), the Secretary may, by regulation, reduce the period under subsection (d)(3) or (e)(3) of this section, as applicable, during which such units must be operated under requirements applicable to public housing. In cases in which there is commitment of operating assistance but no commitment of capital assistance, the Secretary may make section 8 [42 U.S.C. 1437f] requirements applicable, as appropriate, by regulation.

(n) Treatment of public housing

(1) Repealed. Pub. L. 108–7, div. K, title II, §212(a), Feb. 20, 2003, 117 Stat. 503

(2) Reduction of asthma incidence

Notwithstanding any other provision of this section, the New York City Housing Authority may, in its sole discretion, from amounts provided from the Operating and Capital Funds, or from amounts provided for public housing before amounts are made available from such Funds, use not more than exceeding[3] $500,000 per year for the purpose of initiating, expanding or continuing a program for the reduction of the incidence of asthma among residents. The Secretary shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Health and Human Services to identify and consider sources of funding for the reduction of the incidence of asthma among recipients of assistance under this subchapter.

(3) Services for elderly residents

Notwithstanding any other provision of this section, the New York City Housing Authority may, in its sole discretion, from amounts provided from the Operating and Capital Funds, or from amounts provided for public housing before the amounts are made available from such Funds, use not more than $600,000 per year for the purpose of developing a comprehensive plan to address the need for services for elderly residents. Such plan may be developed by a partnership created by such Housing Authority and may include the creation of a model project for assisted living at one or more developments. The model project may provide for contracting with private parties for the delivery of services.

(4) Effective date

This subsection shall apply to fiscal year 1999 and each fiscal year thereafter.

(Sept. 1, 1937, ch. 896, title I, §9, as added Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 666; amended Pub. L. 94–375, §2(c), Aug. 3, 1976, 90 Stat. 1068; Pub. L. 95–24, title I, §101(b), Apr. 30, 1977, 91 Stat. 55; Pub. L. 95–128, title II, §201(f), Oct. 12, 1977, 91 Stat. 1129; Pub. L. 95–557, title II, §206(g), Oct. 31, 1978, 92 Stat. 2093; Pub. L. 96–153, title II, §§201(c), 207, 211(a), Dec. 21, 1979, 93 Stat. 1106, 1109, 1110; Pub. L. 96–399, title II, §201(b), (d), Oct. 8, 1980, 94 Stat. 1625; Pub. L. 97–35, title III, §§321(d), 322(c), Aug. 13, 1981, 95 Stat. 399, 402; Pub. L. 98–181, title II, §212, Nov. 30, 1983, 97 Stat. 1184; Pub. L. 99–272, title III, §3003, Apr. 7, 1986, 100 Stat. 102; Pub. L. 100–242, title I, §§112(b)(4), 118, Feb. 5, 1988, 101 Stat. 1824, 1828; renumbered title I, Pub. L. 100–358, §5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title V, §§507, 572(2), title VIII, §802(p), Nov. 28, 1990, 104 Stat. 4186, 4236, 4317; Pub. L. 102–550, title I, §114, title VI, §673, Oct. 28, 1992, 106 Stat. 3691, 3827; Pub. L. 103–233, title III, §304, Apr. 11, 1994, 108 Stat. 370; Pub. L. 104–134, title I, §101(e) [title II, §218], Apr. 26, 1996, 110 Stat. 1321–257, 1321–290; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–330, title V, §501(b)(5),

[2] So in original. No subpar. (B) has been enacted.

[3] So in original.

Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title II, § 210, title V, § 519(a), Oct. 21, 1998, 112 Stat. 2485, 2551; Pub. L. 106–377, § 1(a)(1) [title II, § 214(a)], Oct. 27, 2000, 114 Stat. 1441, 1441A–27; Pub. L. 108–7, div. K, title II, § 212(a), Feb. 20, 2003, 117 Stat. 503; Pub. L. 109–58, title I, § 151, Aug. 8, 2005, 119 Stat. 648.)

REFERENCES IN TEXT

The Quality Housing and Work Responsibility Act of 1998, referred to in subsecs. (a) and (b), is title V of Pub. L. 105–276, Oct. 21, 1998, 112 Stat. 2518. Section 503(a) of the Act is set out as an Effective Date of 1998 Amendment note under section 1437 of this title. Section 519(e) of the Act is set out as a note below. For complete classification of this Act to the Code, see Short Title of 1998 Amendment note set out under section 1437 of this title and Tables.

Section 1437*l* of this title, referred to in subsecs. (a) and (d)(3)(A), (B), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

PRIOR PROVISIONS

A prior section 9 of act Sept. 1, 1937, ch. 896, 50 Stat. 891, as amended, authorized loans for low-rent housing and slum clearance projects and was classified to section 1409 of this title, prior to the general revision of this chapter by Pub. L. 93–383. Similar provisions are contained in section 1437b of this title.

AMENDMENTS

2005—Subsec. (d)(1)(K), (L). Pub. L. 109–58, § 151(1), added subpars. (K) and (L).

Subsec. (e)(2)(C). Pub. L. 109–58, § 151(2), designated existing provisions as cl. (i), inserted heading, and added cls. (ii) and (iii).

2003—Subsec. (n)(1). Pub. L. 108–7 struck out par. (1) which related to treatment of certain covered locally developed public housing units as eligible public housing units.

2000—Subsec. (d)(1)(E). Pub. L. 106–377, § 1(a)(1) [title II, § 214(a)(1)], inserted before semicolon ", including the establishment and initial operation of computer centers in and around public housing through a Neighborhood Networks initiative, for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources".

Subsec. (e)(1)(K). Pub. L. 106–377, § 1(a)(1) [title II, § 214(a)(2)], added subpar. (K).

Subsec. (h)(8). Pub. L. 106–377, § 1(a)(1) [title II, § 214(a)(3)], added par. (8).

1998—Pub. L. 105–276, § 519(a), amended section generally, substituting present provisions for provisions which had: in subsec. (a), authorized annual contributions for operation of low-income housing, and provided for determination of the amounts and use of those contributions, contract authorization, standards for payments, necessity of contribution contracts, performance funding system, and audits; in subsec. (b), set forth limitation on amount of aggregate rentals paid by families residing in dwelling units receiving annual contributions; in subsec. (c), authorized appropriations for fiscal years 1993 and 1994; in subsec. (d), required distribution of remaining appropriated funds to projects incurring excessive costs; and in subsec. (e), set forth time of payment of assistance to public housing agency.

Subsec. (a)(3)(A). Pub. L. 105–276, § 210, inserted after third sentence "Notwithstanding the preceding sentences, the Secretary may revise the performance funding system in a manner that takes into account equity among public housing agencies and that includes appropriate incentives for sound management." and, in last sentence, inserted ", or any substantial change under the preceding sentence," after "vacant public housing units".

1996—Subsec. (a)(1)(A). Pub. L. 104–330, in second sentence, inserted "and" after comma at end of cl. (i), struck out ", and" after "reserve funds" in cl. (ii), and struck out cl. (iii) which read as follows: "with respect to housing projects developed under the Indian and Alaskan Native housing program assisted under this chapter, to provide funds (in addition to any other operating costs contributions approved by the Secretary under this section) as determined by the Secretary to be required to cover the administrative costs to an Indian housing authority during the development period of a project approved pursuant to section 1437c of this title and until such time as the project is occupied".

Subsec. (a)(3)(B)(i). Pub. L. 104–134 struck out "for a period not to exceed 6 years" after "with the public housing agency".

1994—Subsec. (a)(4). Pub. L. 103–233 added par. (4).

1992—Subsec. (a)(1)(B). Pub. L. 102–550, § 673, designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, substituted "this clause" for "this subparagraph", inserted reference to section 8011 of this title and a period after "section 8013 of this title", and added cl. (ii).

Subsec. (a)(3)(A). Pub. L. 102–550, § 114(b), inserted at end "Notwithstanding sections 583(a) and 585(a) of title 5 (as added by section 3(a) of the Negotiated Rulemaking Act of 1990), any proposed regulation providing for amendment, alteration, adjustment, or other change to the performance funding system relating to vacant public housing units shall be issued pursuant to a negotiated rulemaking procedure under subchapter IV of chapter 5 of such title (as added by section 3(a) of the Negotiated Rulemaking Act of 1990), and the Secretary shall establish a negotiated rulemaking committee for development of any such proposed regulations."

Subsec. (a)(3)(B)(i). Pub. L. 102–550, § 114(c), inserted before semicolon at end ", and in subsequent years, if the energy savings are cost-effective, the Secretary may continue the sharing arrangement with the public housing agency for a period not to exceed 6 years".

Subsec. (c). Pub. L. 102–550, § 114(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "There are authorized to be appropriated for purposes of providing annual contributions under this section $2,000,000,000 for fiscal year 1991 and $2,086,000,000 in fiscal year 1992."

1990—Subsec. (a)(1). Pub. L. 101–625, § 572(2), substituted "low-income housing" for "lower income housing" wherever appearing.

Pub. L. 101–625, § 507(b)(1), designated existing provisions as subpar. (A), redesignated former cls. (A) to (C) as cls. (i) to (iii), respectively, and added subpar. (B).

Subsec. (a)(2). Pub. L. 101–625, § 572(2), substituted "low-income housing" for "lower income housing" wherever appearing.

Subsec. (a)(3)(A). Pub. L. 101–625, § 507(b)(2), inserted after first comma "(except for payments under paragraph (1)(B))".

Subsec. (a)(3)(B)(v). Pub. L. 101–625, § 802(p), added cl. (v).

Subsec. (c). Pub. L. 101–625, § 507(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "There are authorized to be appropriated for purposes of providing annual contributions under this section $1,500,000,000 for fiscal year 1988 and $1,530,000,000 for fiscal year 1989."

Subsec. (d). Pub. L. 101–625, § 572(2), substituted "low-income housing" for "lower income housing".

1988—Subsec. (a)(1). Pub. L. 100–242, § 118(a)(1), struck out last sentence directing Secretary to establish standards for costs of operation and reasonable projections of income, for purposes of making payments under this section.

Pub. L. 100–242, § 118(d), inserted at end "If the Secretary determines that a public housing agency has failed to take the actions required to submit an acceptable audit on a timely basis in accordance with chapter 75 of title 31, the Secretary may arrange for, and pay the costs of, the audit. In such circumstances, the Sec-

retary may withhold, from assistance otherwise payable to the agency under this section, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the agency's books and records in auditable condition.''

Subsec. (a)(2). Pub. L. 100–242, §112(b)(4), substituted ''one developed pursuant to a contributions contract authorized by section 1437c'' for ''being assisted by an annual contributions contract authorized by section 1437c(c)'' and ''any such'' for ''any such annual''.

Subsec. (a)(3). Pub. L. 100–242, §118(a)(2), added par. (3).

Subsec. (c). Pub. L. 100–242, §118(b), amended subsec. (c) generally, substituting provisions authorizing appropriations under this section for fiscal years 1988 and 1989 for provisions authorizing appropriations for the period beginning on or after July 1, 1975, through the period beginning on or after Oct. 1, 1985.

Subsec. (e). Pub. L. 100–242, §118(c), added subsec. (e).

1986—Subsec. (c). Pub. L. 99–272 struck out ''and by'' after ''1983,'' and inserted '', and not to exceed $1,279,000,000 on or after October 1, 1985'' after ''1984''.

1983—Subsec. (c). Pub. L. 98–181 substituted ''October 1, 1980, and'' for ''October 1, 1980,'' and authorized appropriations of not to exceed $1,500,000,000 on or after Oct. 1, 1983, and of such sums as may be necessary on or after Oct. 1, 1984.

1981—Subsec. (a). Pub. L. 97–35, §322(c), substituted reference to lower income for reference to low-income wherever appearing.

Subsec. (c). Pub. L. 97–35, §321(d), inserted provisions respecting authorization on or after Oct. 1, 1981.

Subsec. (d). Pub. L. 97–35, §322(c), substituted reference to lower income for reference to low-income.

1980—Subsec. (a)(1)(C). Pub. L. 96–399, §201(d), added cl. (C).

Subsec. (c). Pub. L. 96–399, §201(b), authorized appropriation of not to exceed $826,000,000 on or after Oct. 1, 1980.

1979—Subsec. (a). Pub. L. 96–153, §211(a), designated existing provisions as par. (1) and cls. (1) and (2) thereof as (A) and (B), inserted provisions that such contract shall provide that no disposition of low-income housing project, with respect to which the contract is entered into, shall occur during and for ten years after the period when contributions were made pursuant to such contract unless approved by the Secretary, and added par. (2).

Subsec. (c). Pub. L. 96–153, §201(c), authorized appropriation for annual contributions of $741,500,000 on or after Oct. 1, 1979.

Subsec. (d). Pub. L. 96–153, §207, added subsec. (d).

1978—Subsec. (c). Pub. L. 95–557 inserted ''and not to exceed $729,000,000 on or after October 1, 1978''.

1977—Subsec. (c). Pub. L. 95–128 authorized appropriation for annual contributions of $685,000,000 on or after Oct. 1, 1977.

Pub. L. 95–24 substituted ''and not to exceed $595,600,000 on or after October 1, 1976'' for ''and not to exceed $576,000,000 on or after October 1, 1976''.

1976—Subsec. (c). Pub. L. 94–375 substituted provision authorizing appropriations for annual contributions not to exceed $535,000,000 on or after July 1, 1975, not to exceed $80,000,000 on or after July 1, 1976, and not to exceed $576,000,000 on or after October 1, 1976 for provision which authorized annual contributions for contracts entered into on or after July 1, 1974 of not more than $500,000,000 per annum, which amount was to be increased by $60,000,000 on July 1, 1975.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–7, div. K, title II, §212(c), Feb. 20, 2003, 117 Stat. 504, provided that: ''The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect on October 1, 1998.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Pub. L. 105–276, title V, §519(e)–(g), Oct. 21, 1998, 112 Stat. 2561, 2562, provided that:

''(e) TRANSITIONAL PROVISION OF ASSISTANCE.—

''(1) IN GENERAL.—Subject to paragraph (2), before the implementation of formulas pursuant to sections 9(d)(2) and 9(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437g(d)(2), (e)(2)] (as amended by subsection (a) of this section), the Secretary shall provide that each public housing agency shall receive funding under sections 9 and 14 of the United States Housing Act of 1937 [42 U.S.C. 1437g, 1437*l*], as those sections existed immediately before the enactment of this Act [Oct. 21, 1998] (except that such sections shall be subject to any amendments to such sections that may be contained in title II of this Act [see Tables for classification]).

''(2) QUALIFICATIONS.—Before the implementation of formulas pursuant to sections 9(d)(2) and 9(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437g(d)(2), (e)(2)] (as amended by subsection (a) of this section)—

''(A) if a public housing agency establishes a rental amount that is based on a ceiling rent established pursuant to subsection (d)(1) of this section [42 U.S.C. 1437a note], the Secretary shall take into account any reduction of the per unit dwelling rental income of the public housing agency resulting from the use of that rental amount in calculating the contributions for the public housing agency for the operation of the public housing under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g];

''(B) if a public housing agency establishes a rental amount that is based on an adjustment to income under section 3(b)(5)(G) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(5)(G)] (as in effect immediately before the enactment of this Act [Oct. 21, 1998]), the Secretary shall not take into account any reduction of or any increase in the per unit dwelling rental income of the public housing agency resulting from the use of that rental amount in calculating the contributions for the public housing agency for the operation of the public housing under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g]; and

''(C) if a public housing agency establishes a rental amount other than as provided under subparagraph (A) or (B) that is less than the greatest of the amounts determined under subparagraphs (A), (B), and (C) of section 3(a)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437a(a)(1)(A), (B), (C)], the Secretary shall not take into account any reduction of the per unit dwelling rental income of the public housing agency resulting from the use of that rental amount in calculating the contributions for the public housing agency for the operation of the public housing under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g].

''(f) EFFECTIVE DATE OF OPERATING FORMULA.—Notwithstanding the effective date under section 503(a) [42 U.S.C. 1437 note], the Secretary may extend the effective date of the formula under section 9(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437g(e)(2)] (as amended by subsection (a) of this section) for up to 6 months if such additional time is necessary to implement such formula.

''(g) EFFECTIVE DATE.—Subsections (d) [42 U.S.C. 1437a note], (e), and (f) shall take effect upon the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 802(p) of Pub. L. 101–625 deemed enacted Nov. 5, 1990, see title II of Pub. L. 101–507, set out as a note under section 1701q of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–557 effective Oct. 1, 1978, see section 206(h) of Pub. L. 95–557, set out as a note under section 1437c of this title.

EFFECTIVE DATE

Section effective on such date or dates as the Secretary of Housing and Urban Development shall prescribe, but not later than eighteen months after Aug. 22, 1974, except that all of the provisions of subsec. (c) shall become effective on the same date, see section 201(b) of Pub. L. 93–383, set out as a note under section 1437 of this title.

REGULATIONS

Pub. L. 108–199, div. G, title II, § 222, Jan. 23, 2004, 118 Stat. 398, provided that: ''The Secretary of Housing and Urban Development shall conduct negotiated rulemaking with representatives from interested parties for purposes of any changes to the formula governing the Public Housing Operating Fund. A final rule shall be issued no later than July 1, 2004.''

Pub. L. 108–7, div. K, title II, Feb. 20, 2003, 117 Stat. 487, provided in part: ''That the Secretary shall issue final regulations to carry out section 9(j) of the United States Housing Act of 1937 (42 U.S.C. 1437g(j)), not later than August 1, 2003''.

PAYMENTS FOR COSTS OF OPERATION AND MANAGEMENT OF PUBLIC HOUSING PROHIBITED

Pub. L. 108–447, div. I, title II, Dec. 8, 2004, 118 Stat. 3298, provided in part: ''That for fiscal year 2006 and all fiscal years thereafter, the Secretary shall provide assistance under this heading [PUBLIC HOUSING OPERATING FUND] to public housing agencies on a calendar year basis: *Provided further*, That, in fiscal year 2005 and all fiscal years hereafter, no amounts under this heading in any appropriations Act may be used for payments to public housing agencies for the costs of operation and management of public housing for any year prior to the current year of such Act''.

Similar provisions were contained in the following appropriation acts:

Pub. L. 109–115, div. A, title III, Nov. 30, 2005, 119 Stat. 2444.

Pub. L. 108–199, div. G, title II, Jan. 23, 2004, 118 Stat. 375.

Pub. L. 108–7, div. K, title II, Feb. 20, 2003, 117 Stat. 488.

FUNDING OF COVERED LOCALLY DEVELOPED PUBLIC HOUSING UNITS PROHIBITED

Pub. L. 108–7, div. K, title II, § 207, Feb. 20, 2003, 117 Stat. 502, provided that: ''Notwithstanding any other provision of law, no funds in this Act or in any other Act in any fiscal year, including all future and prior fiscal years, may be used hereafter by the Secretary of Housing and Urban Development to provide any assistance or other funds for housing units defined in section 9(n) of the United States Housing Act of 1937 [42 U.S.C. 1437g(n)] (as in effect immediately before the enactment of this Act [Feb. 20, 2003]) as 'covered locally developed public housing units'. The States of New York and Massachusetts shall reimburse any funds already made available under any appropriations Act for these units to the Secretary of Housing and Urban Development for reallocation to public housing agencies: *Provided*, That, if either State fails to make such reimbursement within 12 months, the Secretary shall recapture such funds through reductions from the amounts allocated to each State under section 106 of the Housing and Community Development Act of 1974 [42 U.S.C. 5306].''

APPLICABILITY OF PENALTIES FOR SLOW EXPENDITURE OF CAPITAL FUNDS

Pub. L. 107–73, title II, Nov. 26, 2001, 115 Stat. 660, provided in part: ''That, hereafter, notwithstanding any other provision of law or any failure of the Secretary of Housing and Urban Development to issue regulations to carry out section 9(j) of the United States Housing Act of 1937 (42 U.S.C. 1437g(j)), such section is deemed to have taken effect on October 1, 1998, and, except as otherwise provided in this heading [''PUBLIC HOUSING CAPITAL FUND (INCLUDING TRANSFER OF FUNDS)''], shall apply to all assistance made available under this same heading on or after such date''.

COOLING DEGREE DAY ADJUSTMENT UNDER PERFORMANCE FUNDING SYSTEM

Section 508 of Pub. L. 101–625 provided that: ''In determining the Performance Funding System utility subsidy for public housing agencies pursuant to section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g], the Secretary of Housing and Urban Development shall include a cooling degree day adjustment factor. The method by which a cooling degree day adjustment factor is included shall be identical to the method by which the heating degree day adjustment factor is included.''

ENERGY EFFICIENCY DEMONSTRATION

Section 523 of Pub. L. 101–625, which directed Secretary of Housing and Urban Development to carry out demonstration program to encourage use of private energy service companies and demonstrate opportunities for energy cost reduction through energy services contracts, and to report findings and recommendations to Congress as soon as practicable after expiration of 1-year period beginning on Nov. 28, 1990, was repealed by Pub. L. 105–276, title V, § 582(a)(11), Oct. 21, 1998, 112 Stat. 2644.

§ 1437h. Implementation of provisions by Secretary

(a) Preparation and submission of annual budget program; maintenance of accounts; audit by Government Accountability Office

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter, the Secretary, notwithstanding the provisions of any other law, shall—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31; and

(2) maintain an integral set of accounts which may be audited by the Government Accountability Office as provided by chapter 91 of title 31.

(b) Availability of receipts and assets

All receipts and assets of the Secretary under this chapter shall be available for the purposes of this chapter until expended.

(c) Federal Reserve banks to act as depositories, custodians and fiscal agents; reimbursement for services

The Federal Reserve banks are authorized and directed to act as depositories, custodians, and fiscal agents for the Secretary in the general exercise of his powers under this chapter, and the Secretary may reimburse any such bank for its services in such manner as may be agreed upon.

(Sept. 1, 1937, ch. 896, title I, § 10, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 666; amended Pub. L. 98–479, title II, § 203(b)(2), Oct. 17, 1984, 98 Stat. 2229; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 104–316, title I, § 122(k), Oct. 19, 1996, 110 Stat. 3837; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 10 of act Sept. 1, 1937, ch. 896, 50 Stat. 891, as amended, authorized annual contributions in assistance of low rentals for housing projects and was classified to section 1410 of this title, prior to the general revision of this chapter by Pub. L. 93–383. Similar provisions are contained in section 1437c of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Subsec. (a)(2). Pub. L. 104–316 substituted ''maintain an integral set of accounts which may be audited by the General Accounting Office as provided by chapter 91 of title 31.'' for ''maintain an integral set of accounts which shall be audited annually by the General Accounting Office in accordance with the principles and procedures applicable to commercial transactions as provided by chapter 91 of title 31, and no other audit shall be required.''

1984—Subsec. (a)(1), (2). Pub. L. 98–479 substituted ''chapter 91 of title 31'' for ''the Government Corporations Control Act, as amended''.

§ 1437i. Obligations of public housing agencies; contestability; full faith and credit of United States pledged as security; tax exemption

(a) Obligations issued by a public housing agency in connection with low-income housing projects which (1) are secured (A) by a pledge of a loan under any agreement between such public housing agency and the Secretary, or (B) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary, or (C) by a pledge of both annual contributions under an annual contributions contract and a loan under an agreement between such public housing agency and the Secretary, and (2) bear, or are accompanied by, a certificate of the Secretary that such obligations are so secured, shall be incontestable in the hands of a bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary as security for such obligations.

(b) Except as provided in section 1437c(g) of this title, obligations, including interest thereon, issued by public housing agencies in connection with low-income housing projects shall be exempt from all taxation now or hereafter imposed by the United States whether paid by such agencies or by the Secretary. The income derived by such agencies from such projects shall be exempt from all taxation now or hereafter imposed by the United States.

(Sept. 1, 1937, ch. 896, title I, § 11, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 667; amended Pub. L. 97–35, title III, § 322(c), Aug. 13, 1981, 95 Stat. 402; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title V, § 572(2), Nov. 28, 1990, 104 Stat. 4236.)

PRIOR PROVISIONS

A prior section 11 of act Sept. 1, 1937, ch. 896, 50 Stat. 893, as amended, authorized capital grants to public housing agencies in assistance of low rentals and was classified to section 1411 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1990—Pub. L. 101–625 substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

1981—Pub. L. 97–35 substituted reference to lower income for reference to low-income wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1437j. Labor standards and community service requirement

(a) Payment of wages prevailing in locality

Any contract for loans, contributions, sale, or lease pursuant to this chapter shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the low-income housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141–3144, 3146, and 3147 of title 40, shall be paid to all laborers and mechanics employed in the development of the project involved (including a project with nine or more units assisted under section 1437f of this title, where the public housing agency or the Secretary and the builder or sponsor enter into agreement for such use before construction or rehabilitation is commenced), and the Secretary shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

(b) Exception for volunteers

Subsection (a) of this section and the provisions relating to wages (pursuant to subsection (a) of this section) in any contract for loans, annual contributions, sale, or lease pursuant to this chapter, shall not apply to any individual that—

(1) performs services for which the individual volunteered;

(2)(A) does not receive compensation for such services; or

(B) is paid expenses, reasonable benefits, or a nominal fee for such services; and

(3) is not otherwise employed at any time in the construction work.

(c) Community service requirement

(1) In general

Except as provided in paragraph (2) and notwithstanding any other provision of law, each adult resident of a public housing project shall—

(A) contribute 8 hours per month of community service (not including political activities) within the community in which that adult resides; or

(B) participate in an economic self-sufficiency program (as that term is defined in subsection (g) of this section) for 8 hours per month.

(2) Exemptions

The Secretary shall provide an exemption from the applicability of paragraph (1) for any individual who—

(A) is 62 years of age or older;

(B) is a blind or disabled individual, as defined under section 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. 416(i)(1); 1382c), and who is unable to comply with this section, or is a primary caretaker of such individual;

(C) is engaged in a work activity (as such term is defined in section 407(d) of the Social Security Act (42 U.S.C. 607(d)), as in effect on and after July 1, 1997));[1]

(D) meets the requirements for being exempted from having to engage in a work activity under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) or under any other welfare program of the State in which the public housing agency is located, including a State-administered welfare-to-work program; or

(E) is in a family receiving assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) or under any other welfare program of the State in which the public housing agency is located, including a State-administered welfare-to-work program, and has not been found by the State or other administering entity to be in noncompliance with such program.

(3) Annual determinations

(A) Requirement

For each public housing resident subject to the requirement under paragraph (1), the public housing agency shall, 30 days before the expiration of each lease term of the resident under section 1437d(*l*)(1) of this title, review and determine the compliance of the resident with the requirement under paragraph (1) of this subsection.

(B) Due process

Such determinations shall be made in accordance with the principles of due process and on a nondiscriminatory basis.

(C) Noncompliance

If an agency determines that a resident subject to the requirement under paragraph (1) has not complied with the requirement, the agency—

(i) shall notify the resident—

(I) of such noncompliance;

(II) that the determination of noncompliance is subject to the administrative grievance procedure under subsection (k);[2] and

(III) that, unless the resident enters into an agreement under clause (ii) of this subparagraph, the resident's lease will not be renewed; and

(ii) may not renew or extend the resident's lease upon expiration of the lease term and shall take such action as is necessary to terminate the tenancy of the household, unless the agency enters into an agreement, before the expiration of the lease term, with the resident providing for the resident to cure any noncompliance with the requirement under paragraph (1), by participating in an economic self-sufficiency program for or contributing to community service as many additional hours as the resident needs to comply in the aggregate with such requirement over the 12-month term of the lease.

(4) Ineligibility for occupancy for noncompliance

A public housing agency may not renew or extend any lease, or provide any new lease, for a dwelling unit in public housing for any household that includes an adult member who was subject to the requirement under paragraph (1) and failed to comply with the requirement.

(5) Inclusion in plan

Each public housing agency shall include in its public housing agency plan a detailed description of the manner in which the agency intends to implement and administer this subsection.

(6) Geographic location

The requirement under paragraph (1) may include community service or participation in an economic self-sufficiency program performed at a location not owned by the public housing agency.

(7) Prohibition against replacement of employees

In carrying out this subsection, a public housing agency may not—

(A) substitute community service or participation in an economic self-sufficiency program, as described in paragraph (1), for work performed by a public housing employee; or

(B) supplant a job at any location at which community work requirements are fulfilled.

(8) Third-party coordinating

A public housing agency may administer the community service requirement under this subsection directly, through a resident organization, or through a contractor having experience in administering volunteer-based commu-

[1] So in original. Probably should be only one closing parenthesis.

[2] See References in Text note below.

nity service programs within the service area of the public housing agency. The Secretary may establish qualifications for such organizations and contractors.

(d) Treatment of income changes resulting from welfare program requirements

(1) Covered family

For purposes of this subsection, the term ''covered family'' means a family that (A) receives benefits for welfare or public assistance from a State or other public agency under a program for which the Federal, State, or local law relating to the program requires, as a condition of eligibility for assistance under the program, participation of a member of the family in an economic self-sufficiency program, and (B) resides in a public housing dwelling unit or is provided tenant-based assistance under section 1437f of this title.

(2) Decreases in income for failure to comply

(A) In general

Notwithstanding the provisions of section 1437a(a) of this title (relating to family rental contributions) or paragraph (4) or (5) of section 1437a(b) of this title (relating to definition of income and adjusted income), if the welfare or public assistance benefits of a covered family are reduced under a Federal, State, or local law regarding such an assistance program because of any failure of any member of the family to comply with the conditions under the assistance program requiring participation in an economic self-sufficiency program or imposing a work activities requirement, the amount required to be paid by the family as a monthly contribution toward rent may not be decreased, during the period of the reduction, as a result of any decrease in the income of the family (to the extent that the decrease in income is a result of the benefits reduction).

(B) No reduction based on time limit for assistance

For purposes of this paragraph, a reduction in benefits as a result of the expiration of a lifetime time limit for a family receiving welfare or public assistance benefits shall not be considered to be a failure to comply with the conditions under the assistance program requiring participation in an economic self-sufficiency program or imposing a work activities requirement. This paragraph shall apply beginning on October 21, 1998.

(3) Effect of fraud

Notwithstanding the provisions of section 1437a(a) of this title (relating to family rental contributions) or paragraph (4) or (5) of section 1437a(b) of this title (relating to definition of income and adjusted income), if the welfare or public assistance benefits of a covered family are reduced because of an act of fraud by a member of the family under the law or program, the amount required to be paid by the covered family as a monthly contribution toward rent may not be decreased, during the period of the reduction, as a result of any decrease in the income of the family (to the extent that the decrease in income is a result of the benefits reduction). This paragraph shall apply beginning on October 21, 1998.

(4) Notice

Paragraphs (2) and (3) shall not apply to any covered family before the public housing agency providing assistance under this chapter on behalf of the family obtains written notification from the relevant welfare or public assistance agency specifying that the family's benefits have been reduced because of noncompliance with economic self-sufficiency program or work activities requirements or fraud, and the level of such reduction.

(5) Occupancy rights

This subsection may not be construed to authorize any public housing agency to establish any time limit on tenancy in a public housing dwelling unit or on receipt of tenant-based assistance under section 1437f of this title.

(6) Review

Any covered family residing in public housing that is affected by the operation of this subsection shall have the right to review the determination under this subsection through the administrative grievance procedure established pursuant to section 1437d(k) of this title for the public housing agency.

(7) Cooperation agreements for economic self-sufficiency activities

(A) Requirement

A public housing agency providing public housing dwelling units or tenant-based assistance under section 1437f of this title for covered families shall make its best efforts to enter into such cooperation agreements, with State, local, and other agencies providing assistance to covered families under welfare or public assistance programs, as may be necessary, to provide for such agencies to transfer information to facilitate administration of subsection (c) of this section and paragraphs (2), (3), and (4) of this subsection and other information regarding rents, income, and assistance that may assist a public housing agency or welfare or public assistance agency in carrying out its functions.

(B) Contents

A public housing agency shall seek to include in a cooperation agreement under this paragraph requirements and provisions designed to target assistance under welfare and public assistance programs to families residing in public housing projects and families receiving tenant-based assistance under section 1437f of this title, which may include providing for economic self-sufficiency services within such housing, providing for services designed to meet the unique employment-related needs of residents of such housing and recipients of such assistance, providing for placement of workfare positions on-site in such housing, and such other elements as may be appropriate.

(C) Confidentiality

This paragraph may not be construed to authorize any release of information prohib-

ited by, or in contravention of, any other provision of Federal, State, or local law.

(e) Lease provisions

A public housing agency shall incorporate into leases under section 1437d(*l*) of this title and into agreements for the provision of tenant-based assistance under section 1437f of this title, provisions incorporating the conditions under subsection (d) of this section.

(f) Treatment of income

Notwithstanding any other provision of this section, in determining the income of a family who resides in public housing or receives tenant-based assistance under section 1437f of this title, a public housing agency shall consider any decrease in the income of a family that results from the reduction of any welfare or public assistance benefits received by the family under any Federal, State, or local law regarding a program for such assistance if the family (or a member thereof, as applicable) has complied with the conditions for receiving such assistance and is unable to obtain employment notwithstanding such compliance.

(g) Definition

For purposes of this section, the term ''economic self-sufficiency program'' means any program designed to encourage, assist, train, or facilitate the economic independence of participants and their families or to provide work for participants, including programs for job training, employment counseling, work placement, basic skills training, education, workfare, financial or household management, apprenticeship, or other activities as the Secretary may provide.

(Sept. 1, 1937, ch. 896, title I, § 12, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 667; amended Pub. L. 97–35, title III, § 322(c), Aug. 13, 1981, 95 Stat. 402; Pub. L. 100–242, title I, § 112(b)(5), Feb. 5, 1988, 101 Stat. 1824; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title V, § 572(2), title IX, § 955(b), Nov. 28, 1990, 104 Stat. 4236, 4421; Pub. L. 105–276, title V, § 512(a), Oct. 21, 1998, 112 Stat. 2539.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2)(D), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Subsection (k), referred to in subsec. (c)(3)(C)(i)(II), probably means section 1437d(k) of this title, which relates to administrative grievance procedures. This section does not contain a subsec. (k).

CODIFICATION

In subsec. (a), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act (49 Stat. 1011)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 12 of act Sept. 1, 1937, ch. 896, 50 Stat. 894, as amended, authorized the disposal of low-rent housing projects transferred to or acquired by the Authority and was classified to section 1412 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1998—Pub. L. 105–276, § 512(a)(1), inserted ''and community service requirement'' after ''Labor standards'' in section catchline.

Subsecs. (c) to (g). Pub. L. 105–276, § 512(a)(2), added subsecs. (c) to (g).

1990—Pub. L. 101–625, § 955(b), designated existing provisions as subsec. (a) and added subsec. (b).

Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing''.

1988—Pub. L. 100–242 struck out ''annual'' before ''contributions''.

1981—Pub. L. 97–35 substituted reference to lower income for reference to low-income.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 955(d) of Pub. L. 101–625 provided that: ''The amendments made by this section [amending this section, section 5310 of this title, and section 1701q of Title 12, Banks and Banking] shall apply to any volunteer services provided before, on, or after the date of the enactment of this Act [Nov. 28, 1990], except that such amendments may not be construed to require the repayment of any wages paid before the date of the enactment of this Act for services provided before such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1437j–1. Repealed. Pub. L. 105–276, title V, § 582(a)(5), Oct. 21, 1998, 112 Stat. 2643

Section, Pub. L. 97–35, title III, § 329A, Aug. 13, 1981, 95 Stat. 409, related to payment for development managers of projects assisted under this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, and with savings provision, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437k. Consortia, joint ventures, affiliates, and subsidiaries of public housing agencies

(a) Consortia

(1) In general

Any 2 or more public housing agencies may participate in a consortium for the purpose of administering any or all of the housing programs of those public housing agencies in accordance with this section.

(2) Effect

With respect to any consortium described in paragraph (1)—

(A) any assistance made available under this subchapter to each of the public housing agencies participating in the consortium shall be paid to the consortium; and

(B) all planning and reporting requirements imposed upon each public housing agency participating in the consortium with respect to the programs operated by the consortium shall be consolidated.

(3) Restrictions

(A) Agreement

Each consortium described in paragraph (1) shall be formed and operated in accordance with a consortium agreement, and shall be subject to the requirements of a joint public housing agency plan, which shall be submitted by the consortium in accordance with section 1437c–1 of this title.

(B) Minimum requirements

The Secretary shall specify minimum requirements relating to the formation and operation of consortia and the minimum contents of consortium agreements under this paragraph.

(b) Joint ventures

(1) In general

Notwithstanding any other provision of law, a public housing agency, in accordance with the public housing agency plan, may—

(A) form and operate wholly owned or controlled subsidiaries (which may be nonprofit corporations) and other affiliates, any of which may be directed, managed, or controlled by the same persons who constitute the board of directors or similar governing body of the public housing agency, or who serve as employees or staff of the public housing agency; or

(B) enter into joint ventures, partnerships, or other business arrangements with, or contract with, any person, organization, entity, or governmental unit—

(i) with respect to the administration of the programs of the public housing agency, including any program that is subject to this subchapter; or

(ii) for the purpose of providing or arranging for the provision of supportive or social services.

(2) Use and treatment of income

Any income generated under paragraph (1)—

(A) shall be used for low-income housing or to benefit the residents assisted by the public housing agency; and

(B) shall not result in any decrease in any amount provided to the public housing agency under this subchapter, except as otherwise provided under the formulas established under section 1437g(d)(2) and 1437g(e)(2) of this title.

(3) Audits

The Comptroller General of the United States, the Secretary, or the Inspector General of the Department of Housing and Urban Development may conduct an audit of any activity undertaken under paragraph (1) at any time.

(Sept. 1, 1937, ch. 896, title I, § 13, as added Pub. L. 96–153, title II, § 209, Dec. 21, 1979, 93 Stat. 1109; amended Pub. L. 96–399, title II, § 202(b), Oct. 8, 1980, 94 Stat. 1629; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 105–276, title V, § 515, Oct. 21, 1998, 112 Stat. 2549.)

PRIOR PROVISIONS

A prior section 13 of act Sept. 1, 1937, ch. 896, 50 Stat. 894, as amended, enumerated powers of the Authority and was classified to section 1413 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1998—Pub. L. 105–276 amended section catchline and text of section generally. Prior to amendment, text read as follows: ''The Secretary shall, to the maximum extent practicable, require that newly constructed and substantially rehabilitated projects assisted under this chapter with authority provided on or after October 1, 1979, shall be equipped with heating and cooling systems selected on the basis of criteria which include a life-cycle cost analysis of such systems.''

1980—Pub. L. 96–399 struck out subsec. (a) which related to consideration by the Secretary, in utilizing contract authority, of projects which will be modernized to a substantial extent with weatherization materials as defined in section 6862(9) of this title, and redesignated former subsec. (b) as entire section.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

ENERGY EFFICIENT PUBLIC HOUSING DEMONSTRATION

Pub. L. 100–242, title I, § 125, Feb. 5, 1988, 101 Stat. 1847, provided that:

''(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development shall establish a demonstration program through the assistance of an appropriate technology transfer organization that specializes in producing detailed energy-efficient designs and in conducting local and statewide, public participation tests for energy efficient, needs-oriented housing. The appropriate technology organization shall carry out the demonstration working through and with public housing agencies to build and test a variety of energy-efficient housing designs in 100 separate housing units in 4 different States that meet local lower income housing needs (including single parent, disabled, and elderly concerns) through a composite ranging from single to 12-plex units in the cluster approach on vacant lots and open areas.

''(b) REPORT.—As soon as practicable following September 30, 1988, the Secretary of Housing and Urban Development shall submit to the Congress a report setting forth the findings and recommendations of the Secretary as a result of the demonstration under this section.

''(c) FUNDING.—Of the budget authority authorized to be provided for the development of public housing, there is authorized to be appropriated to carry out this section $4,700,000 for fiscal year 1988.''

§ 1437*l*. Repealed. Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564

Section, act Sept. 1, 1937, ch. 896, title I, § 14, as added Pub. L. 96–399, title II, § 202(a), Oct. 8, 1980, 94 Stat. 1625; amended Pub. L. 97–35, title III, §§ 322(c), 329G, Aug. 13, 1981, 95 Stat. 402, 410; Pub. L. 98–181, title II, § 214(b), Nov. 30, 1983, 97 Stat. 1185; Pub. L. 98–479, title II, § 204(b)(2), Oct. 17, 1984, 98 Stat. 2233; Pub. L. 100–242, title I, §§ 112(b)(6), 119(b)–(i), 120, Feb. 5, 1988, 101 Stat. 1824, 1830–1837; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title IV, § 414, title V, §§ 509(a)–(g), 510, 572, Nov. 28, 1990, 104 Stat. 4160, 4187, 4191–4193, 4236; Pub. L. 102–139, title II, Oct. 28,

1991, 105 Stat. 757, 759; Pub. L. 102–550, title I, §§ 111(b)(1), 115, title VI, § 625(a)(3), Oct. 28, 1992, 106 Stat. 3688, 3692, 3820; Pub. L. 103–233, title III, § 302, Apr. 11, 1994, 108 Stat. 369; Pub. L. 104–19, title I, §§ 1001(a), 1003A, July 27, 1995, 109 Stat. 235, 236; Pub. L. 104–134, title I, § 101(e) [title II, § 201(a)(1)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–277; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–330, title V, § 501(b)(6), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title II, § 208, Oct. 21, 1998, 112 Stat. 2485, related to assistance for public housing modernization. See section 1437g(a) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, and with savings provision, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

SAVINGS PROVISION

Pub. L. 105–276, title V, § 522(c), Oct. 21, 1998, 112 Stat. 2565, provided that:

''(1) IN GENERAL.—Section 14 of the United States Housing Act of 1937 [42 U.S.C. 1437*l*] shall apply as provided in section 519(e) of this Act [42 U.S.C. 1437g note].

''(2) EXPANSION OF USE OF MODERNIZATION FUNDING.—Before the implementation of formulas pursuant to sections 9(d)(2) and 9(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437g(d)(2), (e)(2)] (as amended by section 519(a) of this Act) an agency may utilize any authority provided under or pursuant to section 14(q) of such Act [42 U.S.C. 1437*l*(q)] (including the authority under section 201(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 [see Tables for classification] (Public Law 104–134; 110 Stat. 1321–277)), as such provisions (including such section 201(a)) may be amended thereafter, including any amendment made by title II of this Act [see Tables for classification]), notwithstanding any other provision of law (including the repeal made under this section, the expiration of the applicability of such section 201 [see Tables for classification], or any repeal of such section 201).

''(3) EFFECTIVE DATE.—This subsection shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

CONVERSION OF CERTAIN PUBLIC HOUSING TO VOUCHERS

Pub. L. 104–134, title I, § 101(e) [title II, § 202], Apr. 26, 1996, 110 Stat. 1321–257, 1321–279; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, which required identification for removal from the inventory of a public housing agency of developments on same or contiguous sites which had more than 300 units and vacancy rate of at least 10 percent, were identified as distressed, and for which estimated cost of continued operation exceeded cost of providing tenant-based assistance under section 1437f of this title, provided for implementation and enforcement of provisions requiring identification, required each agency to develop and carry out plan for removal over 5-year period, and required provision of tenant-based assistance to families residing in any removed development, was repealed by Pub. L. 105–276, title V, § 537(b), Oct. 21, 1998, 112 Stat. 2592. Amounts made available to carry out section 101(e) [title II, § 202] of Pub. L. 104–134 authorized to be used, to extent provided in advance in appropriations Acts, to carry out section 1437z–5 of this title, and section 101(e) [title II, § 202] of Pub. L. 104–134 as in effect immediately before Oct. 21, 1998, to continue to apply to public housing developments identified for conversion, or assessment of whether conversion is required, prior to such date, see section 537(c) of Pub. L. 105–276, set out as a Transition note under section 1437z–5 of this title.

§ 1437m. Payment of non-Federal share

Any of the following may be used as the non-Federal share required in connection with activities undertaken under Federal grant-in-aid programs which provide social, educational, employment, and other services to the tenants in a project assisted under this chapter, other than under section 1437f of this title;

(1) annual contributions under this chapter for operation of the project; or

(2) rental or use-value of buildings or facilities paid for, in whole or in part, from development, modernization, or operation cost financed under this chapter.

(Sept. 1, 1937, ch. 896, title I, § 15, as added Pub. L. 96–399, title II, § 212, Oct. 8, 1980, 94 Stat. 1636; amended Pub. L. 100–242, title I, § 112(b)(7), Feb. 5, 1988, 101 Stat. 1824; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681.)

AMENDMENTS

1988—Cl. (2). Pub. L. 100–242 struck out ''with loans or debt service annual contributions'' after ''cost financed''.

§ 1437n. Eligibility for assisted housing

(a) Income eligibility for public housing

(1) Income mix within projects

A public housing agency may establish and utilize income-mix criteria for the selection of residents for dwelling units in public housing projects, subject to the requirements of this section.

(2) PHA income mix

(A)[1] TARGETING.—Except as provided in paragraph (4), of the public housing dwelling units of a public housing agency made available for occupancy in any fiscal year by eligible families, not less than 40 percent shall be occupied by families whose incomes at the time of commencement of occupancy do not exceed 30 percent of the area median income, as determined by the Secretary with adjustments for smaller and larger families; except that the Secretary may establish income ceilings higher or lower than 30 percent of the area median income on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(3) Prohibition of concentration of low-income families

(A) Prohibition

A public housing agency may not, in complying with the requirements under paragraph (2), concentrate very low-income families (or other families with relatively low incomes) in public housing dwelling units in certain public housing projects or certain buildings within projects. The Secretary shall review the income and occupancy characteristics of the public housing projects and the buildings of such projects of such agencies to ensure compliance with the provisions of this paragraph and paragraph (2).

[1] So in original. No subpar. (B) has been enacted.

(B) Deconcentration

(i) In general

A public housing agency shall submit with its annual public housing agency plan under section 1437c–1 of this title an admissions policy designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects. This clause may not be construed to impose or require any specific income or racial quotas for any project or projects.

(ii) Incentives

In implementing the policy under clause (i), a public housing agency may offer incentives for eligible families having higher incomes to occupy dwelling unit in projects predominantly occupied by eligible families having lower incomes, and provide for occupancy of eligible families having lower incomes in projects predominantly occupied by eligible families having higher incomes.

(iii) Family choice

Incentives referred to in clause (ii) may be made available by a public housing agency only in a manner that allows for the eligible family to have the sole discretion in determining whether to accept the incentive and an agency may not take any adverse action toward any eligible family for choosing not to accept an incentive and occupancy of a project described in clause (i)(II),[2] *Provided*, That the skipping of a family on a waiting list to reach another family to implement the policy under clause (i) shall not be considered an adverse action. An agency implementing an admissions policy under this subparagraph shall implement the policy in a manner that does not prevent or interfere with the use of site-based waiting lists authorized under section 1437d(s)[3] of this title.

(4) Fungibility with tenant-based assistance

(A) Authority

Except as provided under subparagraph (D), the number of public housing dwelling units that a public housing agency shall otherwise make available in accordance with paragraph (2)(A) to comply with the percentage requirement under such paragraph for a fiscal year shall be reduced by the credit number for the agency under subparagraph (B).

(B) Credit for exceeding tenant-based assistance targeting requirement

Subject to subparagraph (C), the credit number under this subparagraph for a public housing agency for a fiscal year shall be the number by which—

(i) the aggregate number of qualified families who, in such fiscal year, are initially provided tenant-based assistance under section 1437f of this title by the agency; exceeds

(ii) the number of qualified families that is required for the agency to comply with the percentage requirement under subsection (b)(1) of this section for such fiscal year.

(C) Limitations on credit number

The credit number under subparagraph (B) for a public housing agency for a fiscal year may not in any case exceed the lesser of—

(i) the number of dwelling units that is equivalent to 10 percent of the aggregate number of families initially provided tenant-based assistance under section 1437f of this title by the agency in such fiscal year; or

(ii) the number of public housing dwelling units of the agency that—

(I) are in projects that are located in census tracts having a poverty rate of 30 percent or more; and

(II) are made available for occupancy during such fiscal year and are actually filled only by families whose incomes at the time of commencement of such occupancy exceed 30 percent of the area median income, as determined by the Secretary with adjustments for smaller and larger families.

(D) Fungibility floor

Notwithstanding any authority under subparagraph (A), of the public housing dwelling units of a public housing agency made available for occupancy in any fiscal year by eligible families, not less than 30 percent shall be occupied by families whose incomes at the time of commencement of occupancy do not exceed 30 percent of the area median income, as determined by the Secretary with adjustments for smaller and larger families.

(E) Qualified family

For purposes of this paragraph, the term ''qualified family'' means a family having an income described in subsection (b)(1) of this section.

(b) Income eligibility for tenant-based section 1437f assistance

(1) In general

Of the families initially provided tenant-based assistance under section 1437f of this title by a public housing agency in any fiscal year, not less than 75 percent shall be families whose incomes do not exceed 30 percent of the area median income, as determined by the Secretary with adjustments for smaller and larger families; except that the Secretary may establish income ceilings higher or lower than 30 percent of the area median income on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(2) Jurisdictions served by multiple PHAs

In the case of any 2 or more public housing agencies that administer tenant-based assistance under section 1437f of this title with respect solely to identical geographical areas,

[2] So in original. Cl. (i) does not contain subclauses.

[3] See References in Text note below.

such agencies shall be treated as a single public housing agency for purposes of paragraph (1).

(c) Income eligibility for project-based section 1437f assistance

(1) Pre-1981 act projects

Not more than 25 percent of the dwelling units that were available for occupancy under section 8 [42 U.S.C. 1437f] housing assistance payments contracts under this chapter before October 1, 1981, and which will be leased on or after October 1, 1981, shall be available for leasing by low-income families other than very low-income families.

(2) Post-1981 act projects

Not more than 15 percent of the dwelling units which become available for occupancy under section 8 [42 U.S.C. 1437f] housing assistance payments contracts under this chapter on or after October 1, 1981, shall be available for leasing by low-income families other than very low-income families.

(3) Targeting

For each project assisted under a contract for project-based assistance, of the dwelling units that become available for occupancy in any fiscal year that are assisted under the contract, not less than 40 percent shall be available for leasing only by families whose incomes at the time of commencement of occupancy do not exceed 30 percent of the area median income, as determined by the Secretary with adjustments for smaller and larger families; except that the Secretary may establish income ceilings higher or lower than 30 percent of the area median income on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(4) Prohibition of skipping

In developing admission procedures implementing paragraphs (1), (2), and (3), the Secretary shall prohibit project owners from selecting families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence. Nothing in this paragraph or this subsection may be construed to prevent an owner of housing assisted under a contract for project-based assistance from establishing a preference for occupancy in such housing for families containing a member who is employed.

(5) Exception

The limitations established in paragraphs (1), (2), and (3) shall not apply to dwelling units made available under project-based contracts under section 1437f of this title for the purpose of preventing displacement, or ameliorating the effects of displacement.

(6) Definition

For purposes of this subsection, the term ''project-based assistance'' means assistance under any of the following programs:

(A) The new construction or substantial rehabilitation program under section 1437f(b)(2) of this title (as in effect before October 1, 1983).

(B) The property disposition program under section 1437f(b) of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998).

(C) The loan management set-aside program under subsections (b) and (v) of section 1437f of this title.

(D) The project-based certificate program under section 1437f(d)(2) of this title.

(E) The moderate rehabilitation program under section 1437f(e)(2) of this title (as in effect before October 1, 1991).

(F) The low-income housing preservation program under Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.] or the provisions of the Emergency Low Income Housing Preservation Act of 1987 (as in effect before November 28, 1990).

(G) Section 1437f of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998), following conversion from assistance under section 1701s of title 12 or section 1715z–1(f)(2) of title 12.

(d) Establishment of different standards

Notwithstanding subsection (a)(2) or (b)(1) of this section, if approved by the Secretary, a public housing agency may for good cause establish and implement, in accordance with the public housing agency plan, an admission standard other than the standard under such subsection.

(e) Repealed. Pub. L. 105–276, title V, § 576(d)(2), Oct. 21, 1998, 112 Stat. 2640

(f) Ineligibility of individuals convicted of manufacturing or producing methamphetamine on the premises

Notwithstanding any other provision of law, a public housing agency shall establish standards for occupancy in public housing dwelling units and assistance under section 1437f of this title that—

(1) permanently prohibit occupancy in any public housing dwelling unit by, and assistance under section 1437f of this title for, any person who has been convicted of manufacturing or otherwise producing methamphetamine on the premises in violation of any Federal or State law; and

(2) immediately and permanently terminate the tenancy in any public housing unit of, and the assistance under section 1437f of this title for, any person who is convicted of manufacturing or otherwise producing methamphetamine on the premises in violation of any Federal or State law.

(Sept. 1, 1937, ch. 896, title I, § 16, as added Pub. L. 97–35, title III, § 323, Aug. 13, 1981, 95 Stat. 404; amended Pub. L. 98–181, title II, § 213, Nov. 30, 1983, 97 Stat. 1184; Pub. L. 100–242, title I, §§ 103, 112(b)(8), Feb. 5, 1988, 101 Stat. 1822, 1824; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 100–628, title X, § 1001(a), Nov. 7, 1988, 102 Stat. 3263; Pub. L. 101–625, title V, §§ 511, 572(1), Nov. 28, 1990, 104 Stat. 4194, 4236; Pub. L. 102–550, title I, § 105, Oct. 28, 1992, 106 Stat. 3684; Pub. L. 104–99, title IV,

§ 402(d)(6)(A)(v), Jan. 26, 1996, 110 Stat. 42; Pub. L. 104–120, § 9(d), Mar. 28, 1996, 110 Stat. 837; Pub. L. 104–330, title V, § 501(b)(7), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title IV, § 428, title V, §§ 513(a), 576(d)(2), Oct. 21, 1998, 112 Stat. 2511, 2543, 2640; Pub. L. 105–277, div. A, § 123, Oct. 21, 1998, 112 Stat. 2681–546; Pub. L. 106–74, title II, § 205, Oct. 20, 1999, 113 Stat. 1069.)

REFERENCES IN TEXT

Section 1437d(s) of this title, referred to in subsec. (a)(3)(B)(iii), probably should be a reference to section 1437d(r) of this title. Pub. L. 105–276, title V, §§ 525, 575(d), 576(d)(1)(B), Oct. 21, 1998, 112 Stat. 2568, 2637, 2640, amended section 1437d by adding a subsec. (s) relating to site-based waiting lists and a subsec. (t) relating to authority to require access to criminal records and then redesignated those subsecs. (s) and (t) as (r) and (s), respectively.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (c)(6)(B), (G), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

The Low-Income Housing Preservation and Resident Homeownership Act of 1990, referred to in subsec. (c)(6)(F), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, as amended, which is classified principally to chapter 42 (§ 4101 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (c)(6)(F), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101–625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Subtitles A and B of title II, which were formerly set out as a note under section 1715*l* of Title 12, Banks and Banking, and which amended section 1715z–6 of Title 12, were amended generally by Pub. L. 101–625 and are classified to subchapter I (§ 4101 et seq.) of chapter 42 of Title 12. Subtitles C and D of title II amended section 1715z–15 of Title 12 and sections 1437f, 1472, 1485, and 1487 of this title. Another subtitle C of title II of Pub. L. 100–242, as added by Pub. L. 102–550, is classified generally to subchapter II (§ 4141 et seq.) of chapter 42 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

CODIFICATION

October 1, 1981, referred to in subsec. (c)(1), (2), was in the original ''the effective date of the Housing and Community Development Amendments of 1981'' and ''such effective date'', meaning the effective date of subtitle A of title III of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 384, which was generally effective Oct. 1, 1981. See Effective Date note below.

AMENDMENTS

1999—Subsecs. (a)(2)(A), (c)(3). Pub. L. 106–74, § 205(1), inserted before the period at end ''; except that the Secretary may establish income ceilings higher or lower than 30 percent of the area median income on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes''.

1998—Subsecs. (a) to (d). Pub. L. 105–276, § 513(a), as amended by Pub. L. 105–277, § 123, added subsecs. (a) to (d) and struck out former subsecs. (a) to (d). Prior to amendment, subsec. (a) related to percentage availability under contracts prior to Oct. 1, 1981, subsec. (b) related to percentage availability under contracts on or after Oct. 1, 1981, subsec. (c) related to admission procedures implementing subsec. (b), and subsec. (d) related to applicability of admission procedures limitations.

Subsec. (e). Pub. L. 105–276, § 576(d)(2), struck out heading and text of subsec. (e), which directed public housing agency to establish standards to prohibit occupancy by and terminate tenancy of any person illegally using controlled substance or whose use of controlled substance or abuse of alcohol might interfere with peaceful enjoyment of premises by other residents, and authorized agency to consider rehabilitation of person in making determination to deny occupancy.

Subsec. (f). Pub. L. 105–276, § 428, added subsec. (f).

1996—Pub. L. 104–120, § 9(d)(1), substituted ''Eligibility'' for ''Income eligibility'' in section catchline.

Subsec. (c). Pub. L. 104–99 temporarily substituted ''the written system of preferences for selection established by the public housing agency pursuant to section 1437d(c)(4)(A)'' for ''the system of preferences established by the agency pursuant to section 1437d(c)(4)(A)(ii)''. See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (d). Pub. L. 104–330, § 501(b)(7)(A), redesignated par. (1) as entire subsec. and struck out par. (2) which read as follows: ''The limitations established in subsections (a) and (b) of this section shall not apply to dwelling units assisted by Indian public housing agencies, to scattered site public housing dwelling units sold or intended to be sold to public housing tenants under section 1437c(h) of this title..''

Subsec. (e). Pub. L. 104–120, § 9(d)(2), added subsec. (e).

Subsec. (e)(3). Pub. L. 104–330, § 501(b)(7)(B), struck out heading and text of par. (3). Text read as follows: ''This subsection does not apply to any dwelling unit assisted by an Indian housing authority.''

1992—Subsec. (c). Pub. L. 102–550, § 105(a), substituted ''very low-income families and shall'' for ''very low-income families, shall'' and ''. In developing such admission procedures, the Secretary shall'' for '', and shall'' and inserted ''; except that such prohibition shall not apply with respect to families selected for occupancy in public housing under the system of preferences established by the agency pursuant to section 1437d(c)(4)(A)(ii) of this title'' after ''higher income families for residence''.

Subsec. (d)(2). Pub. L. 102–550, § 105(b), inserted before period at end '', to scattered site public housing dwelling units sold or intended to be sold to public housing tenants under section 1437c(h) of this title.''

1990—Subsec. (a). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families''.

Subsec. (b). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families'' in par. (1).

Pub. L. 101–625, § 511, designated existing provisions as par. (1), substituted ''15 percent'' for ''5 per centum'', and added par. (2).

Subsecs. (c), (d)(1). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families'' wherever appearing.

1988—Subsec. (b). Pub. L. 100–242, § 112(b)(8), struck out ''annual'' before ''contributions''.

Subsec. (c). Pub. L. 100–628 substituted ''shall establish an appropriate specific percentage of lower income families other than very-low income families that may be assisted in each assisted housing program'' for ''and shall establish, as appropriate, differing percentage limitations on admission of lower income families in separate assisted housing programs'' and inserted before period at end of first sentence '', and shall prohibit project owners from selecting families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence''.

Pub. L. 100–242, § 103, added subsec. (c).

Subsec. (d). Pub. L. 100–242, § 103, added subsec. (d).

1983—Subsec. (a). Pub. L. 98–181 increased to 25 from 10 the percentage of dwelling units available for leasing.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. A, § 123, Oct. 21, 1998, 112 Stat. 2681–546, provided that the amendment made by section 123 of Pub. L. 105–277 is effective upon enactment of Pub. L. 105–276.

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Pub. L. 105–276, title V, § 513(b), Oct. 21, 1998, 112 Stat. 2547, provided that: ''This section [amending this section] shall take effect on, and the amendments under this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, notwithstanding the effective date of any regulations issued by Secretary of Housing and Urban Development to implement amendments by sections 9 and 10 of Pub. L. 104–120 or any failure by Secretary to issue any such regulations, see section 13 of Pub. L. 104–120, set out as a note under section 1437d of this title.

Amendment by Pub. L. 104–99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as a note under section 3701 of Title 12, Banks and Banking.

§ 1437*o*. Repealed. Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128

Section, act Sept. 1, 1937, ch. 896, title I, § 17, as added Nov. 30, 1983, Pub. L. 98–181, title III, § 301, 97 Stat. 1196; amended Oct. 17, 1984, Pub. L. 98–479, title I, § 103, 98 Stat. 2223; Oct. 18, 1986, Pub. L. 99–500, § 101(g), 100 Stat. 1783–242, and Oct. 30, 1986, Pub. L. 99–591, § 101(g), 100 Stat. 3341–242; Dec. 22, 1987, Pub. L. 100–202, §§ 101(f) [title I, § 101], 106, 101 Stat. 1329–187, 1329–189, 1329–433; Feb. 5, 1988, Pub. L. 100–242, title I, §§ 150, 151, 170(e), 101 Stat. 1853, 1854, 1867; renumbered title I, June 29, 1988, Pub. L. 100–358, § 5, 102 Stat. 681; Nov. 7, 1988, Pub. L. 100–628, title X, § 1007, 102 Stat. 3266; June 30, 1989, Pub. L. 101–45, title I, 103 Stat. 112; Dec. 15, 1989, Pub. L. 101–235, title III, § 304, 103 Stat. 2044; May 25, 1990, Pub. L. 101–302, title II, 104 Stat. 238; Nov. 5, 1990, Pub. L. 101–507, title II, 104 Stat. 1369; Nov. 28, 1990, Pub. L. 101–625, title V, § 572(1), 104 Stat. 4236; Apr. 10, 1991, Pub. L. 102–27, title II, 105 Stat. 150; Oct. 28, 1992, Pub. L. 102–550, title VI, § 625(a)(4), 106 Stat. 3820, authorized Secretary to make rental rehabilitation and development grants.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1991, and except with respect to projects and programs for which binding commitments have been entered into prior to Oct. 1, 1991, no new grants or loans to be made after Oct. 1, 1991, under this section, see section 12839(a)(1), (b)(1) of this title.

§ 1437p. Demolition and disposition of public housing

(a) Applications for demolition and disposition

Except as provided in subsection (b) of this section, upon receiving an application by a public housing agency for authorization, with or without financial assistance under this subchapter, to demolish or dispose of a public housing project or a portion of a public housing project (including any transfer to a resident-supported nonprofit entity), the Secretary shall approve the application, if the public housing agency certifies—

(1) in the case of—

(A) an application proposing demolition of a public housing project or a portion of a public housing project, that—

(i) the project or portion of the public housing project is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes; and

(ii) no reasonable program of modifications is cost-effective to return the public housing project or portion of the project to useful life; and

(B) an application proposing the demolition of only a portion of a public housing project, that the demolition will help to ensure the viability of the remaining portion of the project;

(2) in the case of an application proposing disposition by sale or other transfer of a public housing project or other real property subject to this subchapter—

(A) the retention of the property is not in the best interests of the residents or the public housing agency because—

(i) conditions in the area surrounding the public housing project adversely affect the health or safety of the residents or the feasible operation of the project by the public housing agency; or

(ii) disposition allows the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing;

(B) the public housing agency has otherwise determined the disposition to be appropriate for reasons that are—

(i) in the best interests of the residents and the public housing agency;

(ii) consistent with the goals of the public housing agency and the public housing agency plan; and

(iii) otherwise consistent with this subchapter; or

(C) for property other than dwelling units, the property is excess to the needs of a public housing project or the disposition is incidental to, or does not interfere with, continued operation of a public housing project;

(3) that the public housing agency has specifically authorized the demolition or disposition in the public housing agency plan, and has certified that the actions contemplated in the public housing agency plan comply with this section;

(4) that the public housing agency—

(A) will notify each family residing in a project subject to demolition or disposition 90 days prior to the displacement date, except in cases of imminent threat to health or safety, consistent with any guidelines issued by the Secretary governing such notifications, that—

(i) the public housing project will be demolished or disposed of;

(ii) the demolition of the building in which the family resides will not commence until each resident of the building is relocated; and

(iii) each family displaced by such action will be offered comparable housing—

(I) that meets housing quality standards;

(II) that is located in an area that is generally not less desirable than the location of the displaced person's housing; and

(III) which may include—

(aa) tenant-based assistance, except that the requirement under this clause regarding offering of comparable housing shall be fulfilled by use of tenant-based assistance only upon the relocation of such family into such housing;

(bb) project-based assistance; or

(cc) occupancy in a unit operated or assisted by the public housing agency at a rental rate paid by the family that is comparable to the rental rate applicable to the unit from which the family is vacated;

(B) will provide for the payment of the actual and reasonable relocation expenses of each resident to be displaced;

(C) will ensure that each displaced resident is offered comparable housing in accordance with the notice under subparagraph (A); and[1]

(D) will provide any necessary counseling for residents who are displaced; and

(E) will not commence demolition or complete disposition until all residents residing in the building are relocated;

(5) that the net proceeds of any disposition will be used—

(A) unless waived by the Secretary, for the retirement of outstanding obligations issued to finance the original public housing project or modernization of the project; and

(B) to the extent that any proceeds remain after the application of proceeds in accordance with subparagraph (A), for—

(i) the provision of low-income housing or to benefit the residents of the public housing agency; or

(ii) leveraging amounts for securing commercial enterprises, on-site in public housing projects of the public housing agency, appropriate to serve the needs of the residents; and

(6) that the public housing agency has complied with subsection (c) of this section.

(b) Disapproval of applications

The Secretary shall disapprove an application submitted under subsection (a) of this section if the Secretary determines that—

(1) any certification made by the public housing agency under that subsection is clearly inconsistent with information and data available to the Secretary or information or data requested by the Secretary; or

(2) the application was not developed in consultation with—

(A) residents who will be affected by the proposed demolition or disposition;

(B) each resident advisory board and resident council, if any, of the project (or portion thereof) that will be affected by the proposed demolition or disposition; and

(C) appropriate government officials.

(c) Resident opportunity to purchase in case of proposed disposition

(1) In general

In the case of a proposed disposition of a public housing project or portion of a project, the public housing agency shall, in appropriate circumstances, as determined by the Secretary, initially offer the property to any eligible resident organization, eligible resident management corporation, or nonprofit organization acting on behalf of the residents, if that entity has expressed an interest, in writing, to the public housing agency in a timely manner, in purchasing the property for continued use as low-income housing.

(2) Timing

(A) Expression of interest

A resident organization, resident management corporation, or other resident-supported nonprofit entity referred to in paragraph (1) may express interest in purchasing property that is the subject of a disposition, as described in paragraph (1), during the 30-day period beginning on the date of notification of a proposed sale of the property.

(B) Opportunity to arrange purchase

If an entity expresses written interest in purchasing a property, as provided in subparagraph (A), no disposition of the property shall occur during the 60-day period beginning on the date of receipt of that written notice (other than to the entity providing the notice), during which time that entity shall be given the opportunity to obtain a firm commitment for financing the purchase of the property.

(d) Replacement units

Notwithstanding any other provision of law, replacement public housing units for public housing units demolished in accordance with this section may be built on the original public housing location or in the same neighborhood as the original public housing location if the number of the replacement public housing units is significantly fewer than the number of units demolished.

(e) Consolidation of occupancy within or among buildings

Nothing in this section may be construed to prevent a public housing agency from consolidating occupancy within or among buildings of a public housing project, or among projects, or with other housing for the purpose of improving living conditions of, or providing more efficient services to, residents.

(f) De minimis exception to demolition requirements

Notwithstanding any other provision of this section, in any 5-year period a public housing

[1] So in original. The word ''and'' probably should not appear.

agency may demolish not more than the lesser of 5 dwelling units or 5 percent of the total dwelling units owned by the public housing agency, but only if the space occupied by the demolished unit is used for meeting the service or other needs of public housing residents or the demolished unit was beyond repair.

(g) Uniform Relocation and Real Property Acquisition Act

The Uniform Relocation and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.] shall not apply to activities under this section.

(h) Relocation and replacement

Of the amounts appropriated for tenant-based assistance under section 1437f of this title in any fiscal year, the Secretary may use such sums as are necessary for relocation and replacement housing for dwelling units that are demolished and disposed of from the public housing inventory (in addition to other amounts that may be available for such purposes).

(Sept. 1, 1937, ch. 896, title I, § 18, as added Pub. L. 98–181, title II, § 214(a), Nov. 30, 1983, 97 Stat. 1184; amended Pub. L. 100–242, title I, §§ 112(b)(9), 121, 170(f), Feb. 5, 1988, 101 Stat. 1824, 1837, 1867; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title IV, § 412, title V, §§ 512(a), 513(b), (c), 572, Nov. 28, 1990, 104 Stat. 4159, 4194–4196, 4236; Pub. L. 102–550, title I, §§ 111(b)(2), 116(a)–(c), Oct. 28, 1992, 106 Stat. 3688, 3693, 3694; Pub. L. 104–19, title I, § 1002(a), July 27, 1995, 109 Stat. 235; Pub. L. 104–134, title I, § 101(e) [title II, § 201(b)(2)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–278; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–276, title V, § 531(a), Oct. 21, 1998, 112 Stat. 2570.)

REFERENCES IN TEXT

The Uniform Relocation and Real Property Acquisition Policies Act of 1970, referred to in subsec. (g), probably means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended, and which is classified principally to chapter 61 (§ 4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

AMENDMENTS

1998—Pub. L. 105–276 amended section generally. Prior to amendment, subsec. (a) required the Secretary to make certain determinations before approving the demolition or disposition of all or part of a public housing project; subsec. (b) required public housing agency consultation with tenants and provision of relocation assistance; subsec. (c) authorized financial assistance using section 1437c contributions; subsec. (d) provided that agency would not be prevented from consolidating occupancy within or among buildings or projects; subsec. (e) provided set-asides for replacement housing in fiscal years 1993 and 1994; subsec. (f) authorized construction on original site if number of new units would be less than number of demolished units; and subsec. (g) declared that this section did not apply to dispositions in accordance with approved homeownership program under subchapter II–A of this chapter.

1996—Subsec. (f). Pub. L. 104–134 inserted at end ''No one may rely on the preceding sentence as the basis for reconsidering a final order of a court issued, or a settlement approved, by a court.''

1995—Subsec. (b)(1). Pub. L. 104–19, § 1002(a)(1), inserted ''and'' after ''housing assistance plan;''.

Subsec. (b)(2). Pub. L. 104–19, § 1002(a)(2), substituted '', and the public housing agency provides for the payment of the relocation expenses of each tenant to be displaced, ensures that the rent paid by the tenant following relocation will not exceed the amount permitted under this chapter and shall not commence demolition or disposition of any unit until the tenant of the unit is relocated.'' for ''; and''.

Subsec. (b)(3). Pub. L. 104–19, § 1002(a)(3), struck out par. (3) which made approval conditional upon development of plan for provision of additional unit for each unit to be demolished or disposed of.

Subsec. (c). Pub. L. 104–19, § 1002(a)(4), (5), struck out par. (1) designation and text of par. (2), which read as follows: ''The Secretary shall, upon approving a plan under subsection (b)(3) of this section, agree to commit (subject to the availability of future appropriations) the funds necessary to carry out the plan over the approved schedule of the plan. As part of each annual budget request for the Department of Housing and Urban Development, the Secretary shall submit to the Congress a report—

''(A) outlining the commitments the Secretary entered into during the preceding year to fund plans approved under subsection (b)(3) of this section; and

''(B) specifying, by fiscal year, the budget authority required to carry out the commitments specified in subparagraph (A).''

Subsec. (d). Pub. L. 104–19, § 1002(a)(6), inserted before period at end '': *Provided*, That nothing in this section shall prevent a public housing agency from consolidating occupancy within or among buildings of a public housing project, or among projects, or with other housing for the purpose of improving the living conditions of or providing more efficient services to its tenants''.

Subsec. (e). Pub. L. 104–19, § 1002(a)(7), which directed the striking of ''under section (b)(3)(A) of this section'' each place it occurred, was executed by striking out ''under subsection (b)(3)(A) of this section'' before ''for units demolished or disposed of'' in two places, to reflect the probable intent of Congress.

Subsecs. (f), (g). Pub. L. 104–19, § 1002(a)(8), (9), added subsec. (f) and redesignated former subsec. (f) as (g).

1992—Subsec. (a)(3). Pub. L. 102–550, § 111(b)(2), added par. (3).

Subsec. (b)(1). Pub. L. 102–550, § 116(a), inserted ''of the project or portion of the project covered by the application'' after ''tenant cooperative''.

Subsec. (b)(3). Pub. L. 102–550, § 116(b)(5), inserted at end ''except that, in any 5-year period, a public housing agency may demolish not more than the lesser of 5 dwelling units or 5 percent of the total dwelling units owned and operated by the public housing agency, without providing an additional dwelling unit for each such public housing dwelling unit to be demolished, but only if the space occupied by the demolished unit is used for meeting the service or other needs of public housing residents.''

Subsec. (b)(3)(A)(ii). Pub. L. 102–550, § 116(b)(1)(A), inserted before semicolon at end ''to the extent available; or if such assistance is not available, in the case of an application proposing demolition or disposition of 200 or more units, the use of available project-based assistance under section 1437f of this title having a term of not less than 5 years''.

Subsec. (b)(3)(A)(iii). Pub. L. 102–550, § 116(b)(1)(B), inserted before semicolon at end ''to the extent available; or if such assistance is not available, in the case of an application proposing demolition or disposition of 200 or more units, the use of available project-based assistance under other Federal programs having a term of not less than 5 years''.

Subsec. (b)(3)(A)(v). Pub. L. 102–550, § 116(b)(1)(C), inserted before semicolon ''to the extent available; or if such assistance is not available, in the case of an application proposing demolition or disposition of 200 or more units, the use of tenant-based assistance under section 1437f of this title (excluding vouchers under section 1437f(*o*) of this title) having a term of not less than 5 years''.

Subsec. (b)(3)(B). Pub. L. 102–550, § 116(b)(4), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (b)(3)(C) to (F). Pub. L. 102–550, § 116(b)(3), redesignated subpars. (B) to (E) as (C) to (F), respectively. Former subpar. (F) redesignated (G).

Subsec. (b)(3)(G). Pub. L. 102–550, § 116(b)(3), redesignated subpar. (F) as (G). Former subpar. (G) redesignated (H).

Pub. L. 102–550, § 116(b)(2), substituted ''tenant's choice;'' for ''tenant's choice.''

Subsec. (b)(3)(H). Pub. L. 102–550, § 116(b)(3), redesignated subpar. (G) as (H).

Subsecs. (e), (f). Pub. L. 102–550, § 116(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1990—Subsec. (a)(2)(A)(i). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

Subsec. (a)(2)(B). Pub. L. 101–625, § 572, substituted ''low-income families'' for ''lower income families'' and ''low-income housing'' for ''lower income housing'' wherever appearing.

Pub. L. 101–625, § 512(a), inserted before first comma '', which, in the case of scattered-site housing of a public housing agency, shall be in an amount that bears the same ratio to the total of such costs and obligations as the number of units disposed of bears to the total number of units of the project at the time of disposition''.

Subsec. (b)(1). Pub. L. 101–625, § 412(a), substituted ''disposition, and the tenant councils, resident management corporation, and tenant cooperative, if any, have been given appropriate opportunities to purchase the project or portion of the project covered by the application,'' for ''disposition''.

Subsec. (c)(2). Pub. L. 101–625, § 513(b), inserted at end ''As part of each annual budget request for the Department of Housing and Urban Development, the Secretary shall submit to the Congress a report—'', and added subpars. (A) and (B).

Subsec. (c)(3). Pub. L. 101–625, § 513(c), struck out par. (3) which read as follows: ''The Secretary shall, in allocating assistance for the acquisition or development of public housing or for moderate rehabilitation under section 1437f(e)(2) of this title, give consideration to housing that replaces demolished public housing units in accordance with a plan under subsection (b)(3) of this section.''

Subsec. (e). Pub. L. 101–625, § 412(b), added subsec. (e).

1988—Subsec. (a)(1). Pub. L. 100–242, § 121(a), substituted ''and'' for ''or'' after ''purposes,''.

Subsec. (b). Pub. L. 100–242, § 170(f), inserted ''or'' after ''under this section''.

Subsec. (b)(3). Pub. L. 100–242, § 121(b), added par. (3).

Subsec. (c). Pub. L. 100–242, § 121(c), designated existing provisions as par. (1) and added pars. (2) and (3).

Pub. L. 100–242, § 112(b)(9), substituted ''contributions authorized under section 1437c'' for ''annual contributions authorized under section 1437c(c)''.

Subsec. (d). Pub. L. 100–242, § 121(d), added subsec. (d) and struck out former subsec. (d) which read as follows: ''The provisions of this section shall not apply to the conveyance of units in a public housing project for the purpose of providing homeownership opportunities for lower income families capable of assuming the responsibilities of homeownership.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 531(c), Oct. 21, 1998, 112 Stat. 2574, provided that: ''This section [amending this section and section 1437aaa–3 of this title and enacting provisions set out as a note under section 1437aaa–3 of this title] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–19 effective for applications for demolition, disposition, or conversion to homeownership of public housing approved by the Secretary, and other consolidation and relocation activities of public housing agencies undertaken on, before, or after Sept. 30, 1995 and on or before Sept. 30, 1998, see section 1002(d) of Pub. L. 104–19, as amended, set out as a note under section 1437c of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 512(b) of Pub. L. 101–625 provided that: ''The amendment made by this section [amending this section] shall apply to any scattered-site public housing project or portion of such project disposed of after the date of the enactment of this Act [Nov. 28, 1990].''

REPLACEMENT HOUSING DEMONSTRATION PROGRAM

Section 513(a) of Pub. L. 101–625 directed Secretary of Housing and Urban Development to carry out a program to demonstrate the effectiveness of replacing public housing dwelling units eligible for demolition or disposition with 5-year certificate assistance provided under 42 U.S.C. 1437f, with Secretary to carry out the demonstration only with respect to public housing dwelling units owned or operated by the public housing authority for Saint Louis, Missouri, that before the termination of the demonstration program under this subsection are approved for demolition or disposition, and with the demonstration program to terminate at end of Sept. 30, 1992.

§ 1437q. Financing limitations

On and after October 1, 1983, the Secretary—

(1) may only enter into contracts for annual contributions regarding obligations financing public housing projects authorized by section 1437c(c) of this title if such obligations are exempt from taxation under section 1437i(b) of this title, or if such obligations are issued under section 1437b of this title and such obligations are exempt from taxation; and

(2) may not enter into contracts for periodic payments to the Federal Financing Bank to offset the costs to the Bank of purchasing obligations (as described in the first sentence of section 2294(b) of title 12) issued by local public housing agencies for purposes of financing public housing projects authorized by section 1437c(c) of this title.

(Sept. 1, 1937, ch. 896, title I, § 19, as added Pub. L. 98–181, title II, § 215, Nov. 30, 1983, 97 Stat. 1185; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681.)

§ 1437r. Public housing resident management

(a) Purpose

The purpose of this section is to encourage increased resident management of public housing projects, as a means of improving existing living conditions in public housing projects, by providing increased flexibility for public housing projects that are managed by residents by—

(1) permitting the retention, and use for certain purposes, of any revenues exceeding operating and project costs; and

(2) providing funding, from amounts otherwise available, for technical assistance to promote formation and development of resident management entities.

For purposes of this section, the term ''public housing project'' includes one or more contiguous buildings or an area of contiguous row houses the elected resident councils of which approve the establishment of a resident manage-

ment corporation and otherwise meet the requirements of this section.

(b) Program requirements

(1) Resident council

As a condition of entering into a resident management program, the elected resident council of a public housing project shall approve the establishment of a resident management corporation. When such approval is made by the elected resident council of a building or row house area, the resident management program shall not interfere with the rights of other families residing in the project or harm the efficient operation of the project. The resident management corporation and the resident council may be the same organization, if the organization complies with the requirements applicable to both the corporation and council. The corporation shall be a nonprofit corporation organized under the laws of the State in which the project is located, and the tenants of the project shall be the sole voting members of the corporation. If there is no elected resident council, a majority of the households of the public housing project shall approve the establishment of a resident council to determine the feasibility of establishing a resident management corporation to manage the project.

(2) Public housing management specialist

The resident council of a public housing project, in cooperation with the public housing agency, shall select a qualified public housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties agreed to in the daily operations of the project.

(3) Bonding and insurance

Before assuming any management responsibility for a public housing project, the resident management corporation shall provide fidelity bonding and insurance, or equivalent protection, in accordance with regulations and requirements of the Secretary and the public housing agency. Such bonding and insurance, or its equivalent, shall be adequate to protect the Secretary and the public housing agency against loss, theft, embezzlement, or fraudulent acts on the part of the resident management corporation or its employees.

(4) Management responsibilities

A resident management corporation that qualifies under this section, and that supplies insurance and bonding or equivalent protection sufficient to the Secretary and the public housing agency, shall enter into a contract with the public housing agency establishing the respective management rights and responsibilities of the corporation and the public housing agency. Such contract shall be consistent with the requirements of this chapter applicable to public housing projects and may include specific terms governing management personnel and compensation, access to public housing project records, submission of and adherence to budgets, rent collection procedures, tenant income verification, tenant eligibility determinations, tenant eviction, the acquisition of supplies and materials, rent determination, community service requirements,,[1] and such other matters as may be appropriate. The contract shall be treated as a contracting out of services and shall be subject to any provision of a collective bargaining agreement regarding contracting out to which the public housing agency is subject.

(5) Annual audit

The books and records of a resident management corporation operating a public housing project shall be audited annually by a certified public accountant. A written report of each audit shall be forwarded to the public housing agency and the Secretary.

(c) Assistance amounts

A contract under this section for management of a public housing project by a resident management corporation shall provide for—

(1) the public housing agency to provide a portion of the assistance to agency from the Capital and Operating Funds to the resident management corporation in accordance with subsection (e) of this section for purposes of operating the public housing project covered by the contract and performing such other eligible activities with respect to the project as may be provided under the contract;

(2) the amount of income expected to be derived from the project itself (from sources such as rents and charges);

(3) the amount of income to be provided to the project from the other sources of income of the public housing agency (such as interest income, administrative fees, and rents); and

(4) any income generated by a resident management corporation of a public housing project that exceeds the income estimated under the contract shall be used for eligible activities under subsections (d)(1) and (e)(1) of section 1437g of this title.

(d) Waiver of Federal requirements

(1) Waiver of regulatory requirements

Upon the request of any resident management corporation and public housing agency, and after notice and an opportunity to comment is afforded to the affected tenants, the Secretary may waive (for both the resident management corporation and the public housing agency) any requirement established by the Secretary (and not specified in any statute) that the Secretary determines to unnecessarily increase the costs or restrict the income of a public housing project.

(2) Waiver to permit employment

Upon the request of any resident management corporation, the Secretary may, subject to applicable collective bargaining agreements, permit residents of such project to volunteer a portion of their labor.

(3) Exceptions

The Secretary may not waive under this subsection any requirement with respect to income eligibility for purposes of section 1437n

[1] So in original.

of this title, rental payments under section 1437a(a) of this title, tenant or applicant protections, employee organizing rights, or rights of employees under collective bargaining agreements.

(e) Direct provision of operating and capital assistance

(1) In general

The Secretary shall directly provide assistance from the Operating and Capital Funds to a resident management corporation managing a public housing development pursuant to a contract under this section, but only if—

(A) the resident management corporation petitions the Secretary for the release of the funds;

(B) the contract provides for the resident management corporation to assume the primary management responsibilities of the public housing agency; and

(C) the Secretary determines that the corporation has the capability to effectively discharge such responsibilities.

(2) Use of assistance

Any assistance from the Operating and Capital Funds provided to a resident management corporation pursuant to this subsection shall be used for purposes of operating the public housing developments of the agency and performing such other eligible activities with respect to public housing as may be provided under the contract.

(3) Responsibility of public housing agency

If the Secretary provides direct funding to a resident management corporation under this subsection, the public housing agency shall not be responsible for the actions of the resident management corporation.

(4) Calculation of Operating Fund allocation

Notwithstanding any provision of section 1437g of this title or any regulation under such section, and subject to the exception provided in paragraph (3), the portion of the amount received by a public housing agency under section 1437g of this title that is due to an allocation from the Operating Fund and that is allocated to a public housing project managed by a resident management corporation shall not be less than the public housing agency per unit monthly amount provided in the previous year as determined on an individual project basis.

(5) Calculation of total income

(A) Subject to subparagraph (B), the amount of funds provided by a public housing agency to a public housing project managed by a resident management corporation may not be reduced during the 3-year period beginning on February 5, 1988, or on any later date on which a resident management corporation is first established for the project.

(B) If the total income of a public housing agency (including any amounts from the Capital or Operating Funds provided to the public housing agency under section 1437g of this title) is reduced or increased, the income provided by the public housing agency to a public housing project managed by a resident management corporation shall be reduced or increased in proportion to the reduction or increase in the total income of the public housing agency, except that any reduction in amounts from the Operating Fund that occurs as a result of fraud, waste, or mismanagement by the public housing agency shall not affect the funds provided to the resident management corporation.

(6) Retention of excess revenues

(A) Any income generated by a resident management corporation of a public housing project that exceeds the income estimated for purposes of this subsection shall be excluded in subsequent years in calculating (i) the allocations from the Operating Fund for the public housing agency under section 1437g of this title; and (ii) the funds provided by the public housing agency to the resident management corporation.

(B) Any revenues retained by a resident management corporation under subparagraph (A) shall be used for purposes of improving the maintenance and operation of the public housing project, for establishing business enterprises that employ residents of public housing, or for acquiring additional dwelling units for low-income families.

(f), (g) Repealed. Pub. L. 105–276, title V, § 532(a)(5), Oct. 21, 1998, 112 Stat. 2575

(h) Applicability

Any management contract between a public housing agency and a resident management corporation that is entered into after November 7, 1988, shall be subject to this section and the regulations issued to carry out this section.

(Sept. 1, 1937, ch. 896, title I, § 20, as added Pub. L. 100–242, title I, § 122, Feb. 5, 1988, 101 Stat. 1839; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; amended Pub. L. 100–628, title X, § 1003, Nov. 7, 1988, 102 Stat. 3263; Pub. L. 101–625, title IV, § 415, title V, §§ 514, 572(1), Nov. 28, 1990, 104 Stat. 4160, 4196, 4236; Pub. L. 102–550, title I, § 117, Oct. 28, 1992, 106 Stat. 3695; Pub. L. 105–276, title V, § 532(a), Oct. 21, 1998, 112 Stat. 2574.)

PRIOR PROVISIONS

A prior section 1437r, act Sept. 1, 1937, ch. 896, § 20, as added Nov. 6, 1986, Pub. L. 99–603, title I, § 121(b)(6), 100 Stat. 3391, related to payment for implementation of immigration status verification system, prior to repeal by Pub. L. 100–242, § 164(f)(2).

AMENDMENTS

1998—Subsec. (b)(4). Pub. L. 105–276, § 532(a)(1), inserted ‘‘, rent determination, community service requirements,’’ after ‘‘materials’’.

Subsec. (c). Pub. L. 105–276, § 532(a)(2), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ‘‘Public housing projects managed by resident management corporations may be provided with comprehensive improvement assistance under section 1437*l* of this title for purposes of renovating such projects in accordance with such section. If such renovation activities (including the planning and architectural design of the rehabilitation) are administered by a resident management corporation, the public housing agency involved may not retain, for any administrative or other reason, any portion of the assist-

ance provided pursuant to this subsection unless otherwise provided by contract.''

Subsec. (d)(3), (4). Pub. L. 105–276, § 532(a)(3), redesignated par. (4) as (3) and struck out heading and text of former par. (3). Text read as follows: ''Not later than 6 months after February 5, 1988, the Secretary shall submit to the Congress a report setting forth any additional waivers of Federal law that the Secretary determines are necessary or appropriate to carry out the provisions of this section. In preparing the report, the Secretary shall consult with resident management corporations and public housing agencies.''

Subsec. (e)(1) to (3). Pub. L. 105–276, § 532(a)(4)(B), added subsec. heading and pars. (1) to (3) and struck out former subsec. heading and former pars. (1) to (3), which in par. (1), specified amount of operating subsidy to be allocated to a public housing project managed by a resident management corporation; in par. (2), set forth requirements for any contract for management of a project entered into by a public housing agency and a resident management corporation; and in par. (3), prohibited reduction of funds provided by an agency to a project during 3-year period beginning on date on which resident management corporation is first established for the project, and provided for proportional reduction or increase if total income of agency is reduced or increased.

Subsec. (e)(4), (5). Pub. L. 105–276, § 532(a)(4)(B), added pars. (4) and (5). Former par. (4) redesignated (6).

Subsec. (e)(6). Pub. L. 105–276, § 532(a)(4)(A), redesignated par. (4) as (6).

Subsec. (e)(6)(A)(i). Pub. L. 105–276, § 532(a)(4)(C), substituted ''the allocations from the Operating Fund for'' for ''the operating subsidies provided to''.

Subsec. (f). Pub. L. 105–276, § 532(a)(5), struck out heading and text of subsec. (f) which required Secretary to provide financial assistance to resident management corporations or resident councils that obtain technical assistance for the development of resident management entities, limited assistance to $100,000 with respect to any public housing project, authorized appropriations for fiscal years 1993 and 1994, and limited assistance to corporations or councils where assistance was provided under subchapter II–A of this chapter.

Subsec. (g). Pub. L. 105–276, § 532(a)(5), struck out heading and text of subsec. (g). Text read as follows: ''Not later than 3 years after February 5, 1988, the Secretary shall—

''(1) conduct an evaluation and assessment of resident management, and particularly of the effect of resident management on living conditions in public housing; and

''(2) submit to the Congress a report setting forth the findings of the Secretary as a result of the evaluation and assessment and including any recommendations the Secretary determines to be appropriate.''

1992—Subsec. (f)(3). Pub. L. 102–550 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''(3) FUNDING.—Of amounts made available for financial assistance under section 1437*l* of this title, the Secretary may use to carry out this subsection not more than $5,000,000 for each of fiscal years 1991 and 1992.''

1990—Subsec. (e)(4)(B). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families''.

Subsec. (f)(3). Pub. L. 101–625, § 514, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Of the amounts available for financial assistance under section 1437*l* of this title, the Secretary may use to carry out this subsection not more than $2,500,000 for fiscal year 1988 and not more than $2,500,000 for fiscal year 1989.''

Subsec. (f)(4). Pub. L. 101–625, § 415, added par. (4).

1988—Subsec. (h). Pub. L. 100–628 added subsec. (h).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

§ 1437s. Public housing homeownership and management opportunities

(a) Homeownership opportunities in general

Low-income families residing in a public housing project shall be provided with the opportunity to purchase the dwelling units in the project through a qualifying resident management corporation as follows:

(1) Formation of resident management corporation

As a condition for public housing homeownership—

(A) the adult residents of a public housing project shall have formed a resident management corporation in accordance with regulations and requirements of the Secretary prescribed under this section and section 1437r of this title;

(B) the resident management corporation shall have entered into a contract with the public housing agency establishing the respective management rights and responsibilities of the resident management corporation and the public housing agency; and

(C) the resident management corporation shall have demonstrated its ability to manage public housing effectively and efficiently for a period of not less than 3 years.

(2) Homeownership assistance

(A) The Secretary may provide assistance from the Capital Fund to a public housing project in which homeownership activities under this section are conducted.

(B) The Secretary may provide financial assistance to public housing agencies, resident management corporations, or resident councils that obtain, by contract or otherwise, training, technical assistance, and educational assistance as the Secretary determines to be necessary to promote homeownership opportunities under this section.

(C) This paragraph shall not have effect after February 4, 1991. The Secretary may not provide financial assistance under subparagraph (B), after such date, unless the Secretary determines that such assistance is necessary for the development of a homeownership program that was initiated, as determined by the Secretary, before November 28, 1990.

(3) Conditions of purchase by a resident management corporation

(A) A resident management corporation may purchase from a public housing agency one or more multifamily buildings in a public housing project following a determination by the Secretary that—

(i) the resident management corporation has met the conditions of paragraph (1);

(ii) the resident management corporation has applied for and is prepared to undertake the ownership, management, and maintenance of the building or buildings with continued assistance from the Secretary;

(iii) the public housing agency has held one or more public hearings to obtain the views of citizens regarding the proposed purchase and, in consultation with the Secretary, has certified that the purchase will not interfere with the rights of other families residing in public housing, will not harm the efficient operation of other public housing, and is in the interest of the community;

(iv) the public housing agency has certified that it has and will implement a plan to replace public housing units sold under this section within 30 months of the sale, which plan shall provide for replacement of 100 percent of the units sold under this section by—

(I) production, acquisition, or rehabilitation of vacant public housing units by the public housing agency; and

(II) acquisition by the resident management corporation of nonpublicly owned, decent, and affordable housing units, which the resident management corporation shall operate as rental housing subject to tenant income and rent limitations comparable to the limitations applicable to public housing; and

(v) the building or buildings meet the housing quality standards applicable under section 1437d(f) of this title, and the physical condition, management, and operation of the building or buildings are sufficient to permit affordable homeownership by the families residing in the project.

(B) The price of a building purchased under the preceding sentence shall be approved by the Secretary, in consultation with the public housing agency and resident management corporation, taking into account the fair market value of the property, the ability of resident families to afford and maintain the property, and such other factors as the Secretary determines to be consistent with increasing the supply of dwelling units affordable to very low income families.

(C) This paragraph shall not have effect after February 4, 1991. The authority for a resident management corporation to purchase 1 or more multifamily buildings in a public housing project from a public housing agency shall terminate after such date, unless the Secretary determines that such purchase is necessary for the development of a homeownership program that was initiated, as determined by the Secretary, before November 28, 1990.

(4) Conditions of resale

(A)(i) A resident management corporation may sell a dwelling unit or ownership rights in a dwelling unit only to a lower income family residing in, or eligible to reside in, public housing and only if the Secretary determines that the purchase will not interfere with the rights of other families residing in the housing project or harm the efficient operation of the project, and the family will be able to purchase and maintain the property.

(ii) The sale of dwelling units or ownership rights in dwelling units under clause (i) shall be made to families in the following order of priority:

(I) a lower income family residing in the public housing project in which the dwelling unit is located;

(II) a lower income family residing in any public housing project within the jurisdiction of the public housing agency having jurisdiction with respect to the project in which the dwelling unit is located;

(III) a lower income family receiving Federal housing assistance and residing in the jurisdiction of such public housing agency; and

(IV) a lower income family on the waiting list of such public housing agency for public housing or assistance under section 1437f of this title, with priority given in the order in which the family appears on the waiting list.

(iii) Each resident management corporation shall provide each family described in clause (ii) with a notice of the eligibility of the family to purchase a dwelling unit under this paragraph.

(B) A purchase under subparagraph (A) may be made under any of the following arrangements:

(i) Limited dividend cooperative ownership.

(ii) Condominium ownership.

(iii) Fee simple ownership.

(iv) Shared appreciation with a public housing agency providing financing under paragraph (6).

(v) Any other arrangement determined by the Secretary to be appropriate.

(C) Property purchased under this section shall be resold only to the resident management corporation, a lower income family residing in or eligible to reside in public housing or housing assisted under section 1437f of this title, or to the public housing agency.

(D) In no case may the owner receive consideration for his or her interest in the property that exceeds the total of—

(i) the contribution to equity paid by the owner;

(ii) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the owner during the owner's tenure as owner; and

(iii) the appreciated value determined by an inflation allowance at a rate which may be based on a cost of living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the resident management corporation or the public housing agency, whichever is appropriate, at the time of initial sale, and applied against the contribution to equity; the resident management corporation or the public housing agency may, at the time of initial sale, enter into an agreement with the owner to set a maximum amount which this appreciation may not exceed.

(E) Upon sale, the resident management corporation or the public housing agency, whichever is appropriate, shall ensure that subsequent owners are bound by the same limitations on resale and further restrictions on equity appreciation.

(5) Use of proceeds

Notwithstanding any other provision of this chapter or other law to the contrary, proceeds from the sale of a building or buildings under paragraph (3) and amounts recaptured under paragraph (4) shall be paid to the public housing agency and shall be retained and used by the public housing agency only to increase the number of public housing units available for occupancy. The resident management corporation shall keep and make available to the public housing agency and the Secretary all records necessary to calculate accurately payments due the local housing agency under this section. The Secretary shall not reduce or delay payments under other provisions of law as a result of amounts made available to the local housing agency under this section.

(6) Financing

When financing for the purchase of the property is not otherwise available for purposes of assisting any purchase by a family or resident management corporation under this section, the public housing agency involved may make a loan on the security of the property involved to the family or resident management corporation at a rate of interest that shall not be lower than 70 percent of the market interest rate for conventional mortgages on the date on which the loan is made.

(7) Capital and operating assistance

Notwithstanding the purchase of a building in a public housing project under this section, the Secretary shall continue to provide assistance under section 1437g of this title with respect to the project. Such assistance may not exceed the allocation for the project under section 1437g of this title.

(8) Operating Fund allocation

Amounts from the Operating Fund shall not be available with respect to a building after the date of its sale by the public housing agency.

(b) Protection of nonpurchasing families

(1) Eviction prohibition

No family residing in a dwelling unit in a public housing project may be evicted by reason of the sale of the project to a resident management corporation under this section.

(2) Tenants rights

Families renting a dwelling unit purchased by a resident management corporation shall have all rights provided to tenants of public housing under this chapter.

(3) Rental assistance

If any family resides in a dwelling unit in a building purchased by a resident management corporation, and the family decides not to purchase the dwelling unit, the Secretary shall offer to provide to the family (at the option of the family) tenant-based assistance under section 1437f(*o*) of this title for as long as the family continues to reside in the building. The Secretary may adjust the payment standard for such assistance to take into account conditions under which the building was purchased.

(4) Rental and relocation assistance

If any family resides in a dwelling unit in a public housing project in which other dwelling units are purchased under this section, and the family decides not to purchase the dwelling unit, the Secretary shall offer (to be selected by the family, at its option)—

(A) to assist the family in relocating to a comparable appropriate sized dwelling unit in another public housing project, and to reimburse the family for their cost of relocation; and

(B) to provide to the family the financial assistance necessary to permit the family to stay in the dwelling unit or to move to another comparable dwelling unit and to pay no more for rent than required under subparagraph (A), (B), or (C) of section 1437a(a)(1) of this title.

(c) Financial assistance for public housing agencies

The Secretary shall provide to public housing agencies such financial assistance as is necessary to permit such agencies to carry out the provisions of this section.

(d) Additional homeownership and management opportunities

This section shall not apply to the turnkey III, the mutual help, or any other homeownership program established under section 1437d(c)(4)(D) of this title, as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, and in existence before February 5, 1988.

(e) Regulations

The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section. Such regulations may establish any additional terms and conditions for homeownership or resident management under this section that are determined by the Secretary to be appropriate.

(f) Repealed. Pub. L. 104–66, title I, § 1071(a), Dec. 21, 1995, 109 Stat. 720

(g) Limitation

Any authority of the Secretary under this section to provide financial assistance, or to enter into contracts to provide financial assistance, shall be effective only to such extent or in such amounts as are or have been provided in advance in an appropriation Act.

(Sept. 1, 1937, ch. 896, title I, § 21, as added Pub. L. 100–242, title I, § 123, Feb. 5, 1988, 101 Stat. 1842; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; amended Pub. L. 101–625, title IV, § 416, title V, § 572(1), Nov. 28, 1990, 104 Stat. 4161, 4236; Pub. L. 102–550, title I, § 118, Oct. 28, 1992, 106 Stat. 3695; Pub. L. 104–66, title I, § 1071(a), Dec. 21, 1995, 109 Stat. 720; Pub. L. 105–276, title V, §§ 518(a)(2)(A), 532(b), Oct. 21, 1998, 112 Stat. 2551, 2575.)

REFERENCES IN TEXT

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (d), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

AMENDMENTS

1998—Subsec. (a)(2)(A). Pub. L. 105–276, § 532(b)(1)(A), substituted ''assistance from the Capital Fund'' for ''comprehensive improvement assistance under section 1437*l* of this title''.

Subsec. (a)(3)(A)(v). Pub. L. 105–276, § 532(b)(1)(B), substituted ''housing quality standards applicable under section 1437d(f) of this title'' for ''minimum safety and livability standards applicable under section 1437*l* of this title''.

Subsec. (a)(7). Pub. L. 105–276, § 532(b)(1)(C), in heading, substituted ''Capital and operating assistance'' for ''Annual contributions'', in first sentence, substituted ''provide assistance under section 1437g of this title'' for ''pay annual contributions'', and at end, substituted ''Such assistance may not exceed the allocation for the project under section 1437g of this title'' for ''Such contributions may not exceed the maximum contributions authorized in section 1437c(a) of this title.''

Subsec. (a)(8). Pub. L. 105–276, § 532(b)(1)(D), in heading substituted ''fund allocation'' for ''subsidies'' and in text substituted ''Amounts from the Operating Fund'' for ''Operating subsidies''.

Subsec. (b)(3). Pub. L. 105–276, § 532(b)(2), in first sentence, substituted ''tenant-based assistance'' for ''a certificate under section 1437f(b)(1) of this title or a housing voucher'' and, in second sentence, substituted ''payment standard for such assistance'' for ''fair market rent for such certificate''.

Subsec. (d). Pub. L. 105–276, § 532(b)(3), inserted '', as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998,'' after ''section 1437d(c)(4)(D) of this title''.

Pub. L. 105–276, § 518(a)(2)(A), struck out ''section 1437c(h) of this title or'' after ''program established under''.

1995—Subsec. (f). Pub. L. 104–66 struck out heading and text of subsec. (f). Text read as follows: ''The Secretary shall annually submit to the Congress a report setting forth—

''(1) the number, type, and cost of units sold;

''(2) the income, race, gender, children, and other characteristics of families purchasing or moving and not purchasing;

''(3) the amount and type of financial assistance provided;

''(4) the need for subsidy to ensure continued affordability and meet future maintenance and repair costs;

''(5) any need for the development of additional public housing dwelling units as a result of the sale of public housing dwelling units under this section;

''(6) recommendations of the Secretary for additional budget authority to carry out such development;

''(7) recommendations of the Secretary to ensure decent homes and decent neighborhoods for low-income families; and

''(8) the recommendations of the Secretary for statutory and regulatory improvements to the program.''

1992—Subsec. (a)(2)(C), (3)(C). Pub. L. 102–550 substituted ''February 4, 1991'' for ''the effective date of the regulations implementing subchapter II–A of this chapter'' and ''after such date'' for ''after such effective date'' and made technical amendment to reference to November 28, 1990, to reflect correction of corresponding provisions of original act.

1990—Subsec. (a). Pub. L. 101–625, § 572(1), which directed substitution of ''low-income families'' for ''lower income families'', was executed by substituting ''Low-income families'' for ''Lower income families'' in introductory provisions to reflect the probable intent of Congress.

Subsec. (a)(2)(B). Pub. L. 101–625, § 416(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The Secretary, and the public housing agency owning and operating a public housing project, shall provide such training, technical assistance, and educational assistance as the Secretary determines to be necessary to prepare the families residing in the project, and any resident management corporation established under paragraph (1), for homeownership.''

Subsec. (a)(2)(C). Pub. L. 101–625, § 416(2), substituted ''the effective date of the regulations implementing subchapter II–A of this chapter. The Secretary may not provide financial assistance under subparagraph (B), after such effective date, unless the Secretary determines that such assistance is necessary for the development of a homeownership program that was initiated, as determined by the Secretary, before November 28, 1990'' for ''September 30, 1990''.

Subsec. (a)(3)(C). Pub. L. 101–625, § 416(3), substituted ''the effective date of the regulations implementing subchapter II–A of this chapter. The authority for a resident management corporation to purchase 1 or more multifamily buildings in a public housing project from a public housing agency shall terminate after such effective date, unless the Secretary determines that such purchase is necessary for the development of a homeownership program that was initiated, as determined by the Secretary, before November 28, 1990'' for ''September 30, 1990''.

Subsec. (f)(7). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

§ 1437t. Authority to convert public housing to vouchers

(a) Authority

A public housing agency may convert any public housing project (or portion thereof) owned by the public housing agency to tenant-based assistance, but only in accordance with the requirements of this section.

(b) Conversion assessment

(1) In general

To convert public housing under this section, a public housing agency shall conduct an assessment of the public housing that includes—

(A) a cost analysis that demonstrates whether or not the cost (both on a net present value basis and in terms of new budget authority requirements) of providing tenant-based assistance under section 1437f of this title for the same families in substantially similar dwellings over the same period of time is less expensive than continuing public housing assistance in the public housing project for the remaining useful life of the project;

(B) an analysis of the market value of the public housing project both before and after rehabilitation, and before and after conversion;

(C) an analysis of the rental market conditions with respect to the likely success of the use of tenant-based assistance under section 1437f of this title in that market for the specific residents of the public housing project, including an assessment of the availability of decent and safe dwellings renting at or below the payment standard established for tenant-based assistance

under section 1437f of this title by the agency;

(D) the impact of the conversion to tenant-based assistance under this section on the neighborhood in which the public housing project is located; and

(E) a plan that identifies actions, if any, that the public housing agency would take with regard to converting any public housing project or projects (or portions thereof) of the public housing agency to tenant-based assistance.

(2) Timing

Not later than 2 years after the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, each public housing agency shall conduct an assessment under paragraph (1) or (3) of the status of each public housing project owned by such agency and shall submit to the Secretary such assessment. A public housing agency may otherwise undertake an assessment under this subsection at any time and for any public housing project (or portion thereof) owned by the agency. A public housing agency may update a previously conducted assessment for a project (or portion thereof) for purposes of compliance with the one-year limitation under subsection (c) of this section.

(3) Streamlined assessment

At the discretion of the Secretary or at the request of a public housing agency, the Secretary may waive any or all of the requirements of paragraph (1) or (3) or otherwise require a streamlined assessment with respect to any public housing project or class of public housing projects.

(c) Criteria for implementation of conversion plan

A public housing agency may convert a public housing project (or portion thereof) owned by the agency to tenant-based assistance only pursuant to a conversion assessment under subsection (b) of this section that one year[1] and that demonstrates that the conversion—

(1) will not be more expensive than continuing to operate the public housing project (or portion thereof) as public housing;

(2) will principally benefit the residents of the public housing project (or portion thereof) to be converted, the public housing agency, and the community; and

(3) will not adversely affect the availability of affordable housing in such community.

(d) Conversion plan requirement

A public housing project may be converted under this section to tenant-based assistance only as provided in a conversion plan under this subsection, which has not been disapproved by the Secretary pursuant to subsection (e) of this section. Each conversion plan shall—

(1) be developed by the public housing agency, in consultation with the appropriate public officials, with significant participation by the residents of the project (or portion thereof) to be converted;

(2) be consistent with and part of the public housing agency plan;

(3) describe the conversion and future use or disposition of the project (or portion thereof) and include an impact analysis on the affected community;

(4) provide that the public housing agency shall—

(A) notify each family residing in a public housing project (or portion) to be converted under the plan 90 days prior to the displacement date except in cases of imminent threat to health or safety, consistent with any guidelines issued by the Secretary governing such notifications, that—

(i) the public housing project (or portion) will be removed from the inventory of the public housing agency; and

(ii) each family displaced by such action will be offered comparable housing—

(I) that meets housing quality standards;

(II) that is located in an area that is generally not less desirable than the location of the displaced person's housing; and

(III) which may include—

(aa) tenant-based assistance, except that the requirement under this clause regarding offering of comparable housing shall be fulfilled by use of tenant-based assistance only upon the relocation of such family into such housing;

(bb) project-based assistance; or

(cc) occupancy in a unit operated or assisted by the public housing agency at a rental rate paid by the family that is comparable to the rental rate applicable to the unit from which the family is vacated;

(B) provide any necessary counseling for families displaced by such action;

(C) ensure that, if the project (or portion) converted is used as housing after such conversion, each resident may choose to remain in their dwelling unit in the project and use the tenant-based assistance toward rent for that unit; and

(D) provide any actual and reasonable relocation expenses for families displaced by the conversion; and

(5) provide that any proceeds to the agency from the conversion will be used subject to the limitations that are applicable under section 1437p(a)(5) of this title to proceeds resulting from the disposition or demolition of public housing.

(e) Review and approval of conversion plans

The Secretary shall disapprove a conversion plan only if—

(1) the plan is plainly inconsistent with the conversion assessment for the agency developed under subsection (b) of this section;

(2) there is reliable information and data available to the Secretary that contradicts that conversion assessment; or

(3) the plan otherwise fails to meet the requirements of this section.

(f) Tenant-based assistance

To the extent approved by the Secretary, the funds used by the public housing agency to pro-

[1] So in original.

vide tenant-based assistance under section 1437f of this title shall be added to the annual contribution contract administered by the public housing agency.

(Sept. 1, 1937, ch. 896, title I, § 22, as added Pub. L. 101–625, title V, § 515(a), Nov. 28, 1990, 104 Stat. 4196; amended Pub. L. 102–550, title I, § 119, Oct. 28, 1992, 106 Stat. 3695; Pub. L. 105–276, title V, § 533(a), Oct. 21, 1998, 112 Stat. 2576.)

REFERENCES IN TEXT

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (b)(2), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

AMENDMENTS

1998—Pub. L. 105–276 amended section generally. Prior to amendment, section related to award of grants to public housing agencies to adapt public housing to help families gain better access to educational and job opportunities, use of funds for supportive services, development of facilities to accommodate them, and employment of service coordinators, applications, selection for grants, reports to Secretary and Congress, and appropriations for fiscal years 1993 and 1994.

1992—Subsec. (k). Pub. L. 102–550 amended subsec. (k) generally, substituting present provisions for provisions authorizing $25,000,000 in fiscal year 1991 and $26,100,000 in fiscal year 1992.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

SAVINGS PROVISION

Pub. L. 105–276, title V, § 533(b), Oct. 21, 1998, 112 Stat. 2578, provided that: ''The amendment made by subsection (a) [amending this section] shall not affect any contract or other agreement entered into under section 22 of the United States Housing Act of 1937 [42 U.S.C. 1437t], as such section existed immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998 [Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title].''

PUBLIC HOUSING ONE-STOP PERINATAL SERVICES DEMONSTRATION

Section 521 of Pub. L. 101–625, as amended by Pub. L. 102–550, title I, § 125, Oct. 28, 1992, 106 Stat. 3710, which directed Secretary of Housing and Urban Development to carry out program to demonstrate effectiveness of providing grants to public housing agencies to assist such agencies in providing facilities for making one-stop perinatal services programs available for pregnant women residing in public housing, set forth preferences, limitation on grant amount, and program requirements, and required report to Congress not later than 1 year after amounts were first made available setting forth findings and conclusions and including recommendations with respect to establishment of permanent program, was repealed by Pub. L. 105–276, title V, § 582(a)(9), Oct. 21, 1998, 112 Stat. 2644.

§ 1437u. Family Self-Sufficiency program

(a) Purpose

The purpose of the Family Self-Sufficiency program established under this section is to promote the development of local strategies to coordinate use of public housing and assistance under the certificate and voucher programs under section 1437f of this title with public and private resources, to enable eligible families to achieve economic independence and self-sufficiency.

(b) Establishment of program

(1) Required programs

Except as provided in paragraph (2), the Secretary shall carry out a program under which each public housing agency that administers assistance under subsection (b) or (*o*) of section 1437f of this title or makes available new public housing dwelling units—

(A) may, during fiscal years 1991 and 1992, carry out a local Family Self-Sufficiency program under this section;

(B) effective on October 1, 1992, the Secretary shall require each such agency to carry out a local Family Self-Sufficiency program under this section, subject to the limitations in paragraph (4); and

(C) effective on October 21, 1998, to the extent an agency is not required to carry out a program pursuant to subparagraph (B) of this paragraph and paragraph (4), may carry out a local Family Self-Sufficiency program under this section.

Each local program shall, subject to availability of supportive services, include an action plan under subsection (g) of this section and shall provide comprehensive supportive services for families electing to participate in the program. In carrying out the self-sufficiency program under this section, the Secretary shall consult with the heads of other appropriate Federal agencies and provide for cooperative actions and funding agreements with such agencies. Each public housing agency administering an approved local program may employ a service coordinator to administer the local program.

(2) Exception

The Secretary shall not require a public housing agency to carry out a local program under subsection (a) of this section if the public housing agency provides certification (as such term is defined under title I of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12701 et seq.]) to the Secretary, that the establishment and operation of the program is not feasible because of local circumstances, which may include—

(A) lack of supportive services accessible to eligible families, which shall include insufficient availability of resources for programs under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or the Job Opportunities and Basic Skills Training Program under part F[1] of title IV of the Social Security Act;

(B) lack of funding for reasonable administrative costs;

(C) lack of cooperation by other units of State or local government; or

(D) any other circumstances that the Secretary may consider appropriate.

[1] See References in Text note below.

In allocating assistance available for reservation under this chapter, the Secretary may not refuse to provide assistance or decrease the amount of assistance that would otherwise be provided to any public housing agency because the agency has provided a certification under this paragraph or because, pursuant to a certification, the agency has failed to carry out a self-sufficiency program.

(3) Scope

Subject to paragraph (4), each public housing agency required to carry out a local program under this section shall make the following housing assistance available under the program in each fiscal year:

(A) Certificate and voucher assistance under section 1437f(b) and (*o*) of this title, in an amount equivalent to the increase for such year in the number of families so assisted by the agency (as compared to the preceding year).

(B) Public housing dwelling units, in the number equal to the increase for such year in units made available by the agency (as compared to the preceding year).

Each such public housing agency shall continue to operate a local program for the number of families determined under this paragraph subject only to the availability under appropriations Acts of sufficient amounts for assistance.

(4) Termination of requirement to expand program

(A) In general

Notwithstanding any other provision of law, a public housing agency that receives incremental assistance under subsection (b) or (*o*) of section 1437f of this title or that makes available new public housing dwelling units shall not be required, after October 21, 1998, to provide assistance under a local Family Self-Sufficiency program under this section to any families not required to be assisted under subparagraph (B) of this paragraph.

(B) Continuation of existing obligations

(i) In general

Each public housing agency that, before October 21, 1998, was required under this section to carry out a local Family Self-Sufficiency program shall continue to operate such local program for the number of families determined under paragraph (3), subject only to the availability under appropriations Acts of sufficient amounts for housing assistance.

(ii) Reduction

The number of families for which an agency is required under clause (i) to operate such local program shall be decreased by one for each family that, after October 21, 1998, fulfills its obligations under the contract of participation.

(5) Nonparticipation

Assistance under the certificate or voucher programs under section 1437f of this title for a family that elects not to participate in a local program shall not be delayed by reason of such election.

(c) Contract of participation

(1) In general

Each public housing agency carrying out a local program under this section shall enter into a contract with each leaseholder receiving assistance under the certificate and voucher programs of the public housing agency under section 1437f of this title or residing in public housing administered by the agency, that elects to participate in the self-sufficiency program under this section. The contract shall set forth the provisions of the local program, shall establish specific interim and final goals by which compliance with and performance of the contract may be measured, and shall specify the resources and supportive services to be made available to the participating family pursuant to paragraph (2) and the responsibilities of the participating family. The contract shall provide that the public housing agency may terminate or withhold assistance under section 1437f of this title and services under paragraph (2) of this subsection if the public housing agency determines, through an administrative grievance procedure in accordance with the requirements of section 1437d(k) of this title, that the family has failed to comply with the requirements of the contract without good cause (which may include a loss or reduction in access to supportive services, or a change in circumstances that makes the family or individual unsuitable for participation).

(2) Supportive services

A local program under this section shall provide appropriate supportive services under this paragraph to each participating family entering into a contract of participation under paragraph (1). The supportive services shall be provided during the period the family is receiving assistance under section 1437f of this title or residing in public housing, and may include—

(A) child care;

(B) transportation necessary to receive services;

(C) remedial education;

(D) education for completion of high school;

(E) job training and preparation;

(F) substance abuse treatment and counseling;

(G) training in homemaking and parenting skills;

(H) training in money management;

(I) training in household management; and

(J) any other services and resources appropriate to assist eligible families to achieve economic independence and self-sufficiency.

(3) Term and extension

Each family participating in a local program shall be required to fulfill its obligations under the contract of participation not later than 5 years after entering into the contract. The public housing agency shall extend the term of the contract for any family that requests an extension, upon a finding of the agency of good cause.

(4) Employment and counseling

The contract of participation shall require the head of the participating family to seek suitable employment during the term of the contract. The public housing agency may, during such period, provide counseling for the family with respect to affordable rental and homeownership opportunities in the private housing market and money management counseling.

(d) Incentives for participation

(1) Maximum rents

During the term of the contract of participation, the amount of rent paid by any participating family whose monthly adjusted income does not exceed 50 percent of the area median income for occupancy in the public housing unit or dwelling unit assisted under section 1437f of this title may not be increased on the basis of any increase in the earned income of the family, unless the increase results in an income exceeding 50 percent of the area median income. The Secretary shall provide for increased rents for participating families whose incomes are between 50 and 80 percent of the area median income, so that any family whose income increases to 80 percent or more of the area median income pays 30 percent of the family's monthly adjusted income for rent. Upon completion of the contract of participation, if the participating family continues to qualify for and reside in a dwelling unit in public housing or housing assisted under section 1437f of this title, the rent charged the participating family shall be increased (if applicable) to 30 percent of the monthly adjusted income of the family.

(2) Escrow savings accounts

For each participating family whose monthly adjusted income is less than 50 percent of the area median income, the difference between 30 percent of the adjusted income of the participating family and the amount of rent paid by a participating family shall be placed in an interest-bearing escrow account established by the public housing agency on behalf of the participating family. For families with incomes between 50 and 80 percent of the area median income, the Secretary shall provide for escrow of the difference between 30 percent of the family income and the amount paid by the family for rent as determined by the Secretary under paragraph (1). The Secretary shall not escrow any amounts for any family whose adjusted income exceeds 80 percent of the area median income. Amounts in the escrow account may be withdrawn by the participating family after the family ceases to receive income assistance under Federal or State welfare programs, upon successful performance of the obligations of the family under the contract of participation entered into by the family under subsection (c) of this section, as determined according to the specific goals and terms included in the contract, and under other circumstances in which the Secretary determines an exception for good cause is warranted. A public housing agency establishing such escrow accounts may make certain amounts in the accounts available to the participating families before full performance of the contract obligations based on compliance with, and completion of, specific interim goals included in the contract; except that any such amounts shall be used by the participating families for purposes consistent with the contracts of participation, as determined by the public housing agency.

(3) Plan

Each public housing agency carrying out a local program under this section shall establish a plan to offer incentives to families to encourage families to participate in the program. The plan shall require the establishment of escrow savings accounts under paragraph (2) and may include any other incentives designed by the public housing agency.

(e) Effect of increases in family income

Any increase in the earned income of a family during the participation of the family in a local program established under this section may not be considered as income or a resource for purposes of eligibility of the family for other benefits, or amount of benefits payable to the family, under any program administered by the Secretary, unless the income of the family equals or exceeds 80 percent of the median income of the area (as determined by the Secretary with adjustments for smaller and larger families).

(f) Program coordinating committee

(1) Functions

Each public housing agency carrying out a local program under this section shall, in consultation with the chief executive officer of the unit of general local government, develop an action plan under subsection (g) of this section, carry out activities under the local program, and secure commitments of public and private resources through a program coordinating committee established by the public housing agency under this subsection.

(2) Membership

The program coordinating committee may consist of representatives of the public housing agency, the unit of general local government, the local agencies (if any) responsible for carrying out programs under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or the Job Opportunities and Basic Skills Training Program under part F[2] of title IV of the Social Security Act, and other organizations, such as other State and local welfare and employment agencies, public and private education or training institutions, nonprofit service providers, and private businesses. The public housing agency may, in consultation with the chief executive officer of the unit of general local government, utilize an existing entity as the program coordinating committee if it meets the requirements of this subsection.

(g) Action plan

(1) Required submission

The Secretary shall require each public housing agency participating in the self-suffi-

[2] See References in Text note below.

ciency program under this section to submit to the Secretary, for approval by the Secretary, an action plan under this subsection in such form and in accordance with such procedures as the Secretary shall require.

(2) Development of plan

In developing the plan, the public housing agency shall consult with the chief executive officer of the applicable unit of general local government, the program coordinating committee established under subsection (f) of this section, representatives of residents of the public housing, any local agencies responsible for programs under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or the Job Opportunities and Basic Skills Training Program under part F[2] of title IV of the Social Security Act, other appropriate organizations (such as other State and local welfare and employment or training institutions, child care providers, nonprofit service providers, and private businesses), and any other public and private service providers affected by the operation of the local program.

(3) Contents of plan

The Secretary shall require that the action plan contain at a minimum—

(A) a description of the size, characteristics, and needs of the population of the families expected to participate in the local self-sufficiency program;

(B) a description of the number of eligible participating families who can reasonably be expected to receive supportive services under the program, based on available and anticipated Federal, State, local, and private resources;

(C) a description of the services and activities under subsection (c)(2) of this section to be provided to families receiving assistance under this section through the section 8 [42 U.S.C. 1437f] and public housing programs, which shall be provided by both public and private resources;

(D) a description of the incentives pursuant to subsection (d) of this section offered by the public housing agency to families to encourage participation in the program;

(E) a description of how the local program will deliver services and activities according to the needs of the families participating in the program;

(F) a description of both the public and private resources that are expected to be made available to provide the activities and services under the local program;

(G) a timetable for implementation of the local program;

(H) assurances satisfactory to the Secretary that development of the services and activities under the local program has been coordinated with the Job Opportunities and Basic Skills Training Program under part F[2] of title IV of the Social Security Act and programs under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and any other relevant employment, child care, transportation, training, and education programs in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities; and

(I) assurances satisfactory to the Secretary that nonparticipating families will retain their rights to public housing or section 8 [42 U.S.C. 1437f] assistance notwithstanding the provisions of this section.

(h) Allowable public housing agency administrative fees and costs

(1) Fees under section 1437f

The Secretary shall establish a fee under section 1437f(q) of this title for the costs incurred in administering the provision of certificate and voucher assistance under section 1437f of this title through the self-sufficiency program under this section. The fee shall be the fee in effect under such section on June 1, 1990, except that for purposes of the fee under this paragraph the applicable dollar amount for preliminary expenses under section 1437f(q)(2)(A)(i)[2] of this title shall, subject to approval in appropriations Acts, be $300. Upon the submission by the Comptroller General of the United States of the report required under section 554(b) of the Cranston-Gonzalez National Affordable Housing Act, the Secretary shall revise the fee under this paragraph, taking into consideration the report of the Comptroller General.

(2) Performance funding system

Notwithstanding any provision of section 1437g of this title, the Secretary shall provide for inclusion under the performance funding system under section 1437g of this title of reasonable and eligible administrative costs (including the costs of employing a full-time service coordinator) incurred by public housing agencies carrying out local programs under this section. The Secretary shall include an estimate of the administrative costs likely to be incurred by participating public housing agencies in the annual budget request for the Department of Housing and Urban Development for public housing operating assistance under section 1437g of this title and shall include a request for such amounts in the budget request. Of any amounts appropriated under section 1437g(c) of this title for fiscal year 1993, $25,000,000 is authorized to be used for costs under this paragraph, and of any amounts appropriated under such section for fiscal year 1994, $25,900,000 is authorized to be used for costs under this paragraph.

(i) Public housing agency incentive award allocation

(1) In general

The Secretary shall carry out a competition for budget authority for certificate and voucher assistance under section 1437f of this title and public housing development assistance under section 1437c(a)(2) of this title reserved under paragraph (4) and shall allocate such budget authority to public housing agencies pursuant to the competition.

(2) Criteria

The competition shall be based on successful and outstanding implementation by public housing agencies of a local self-sufficiency

program under this section. The Secretary shall establish perfomance[3] criteria for public housing agencies carrying out such local programs and the Secretary shall cause such criteria to be published in the Federal Register.

(3) Use

Each public housing agency that receives an allocation of budget authority under this subsection shall use such authority to provide assistance under the local self-sufficiency program established by the public housing agency under this section.

(4) Reservation of budget authority

Notwithstanding section 1439(d) of this title, the Secretary shall reserve for allocation under this subsection not less than 10 percent of the portion of budget authority appropriated in each of fiscal years 1991 and 1992 for section 1437f of this title that is available for purposes of providing assistance under the existing housing certificate and housing voucher programs for families not currently receiving assistance, and not less than 10 percent of the public housing development assistance available in such fiscal years for the purpose under section 1437c(a)(2) of this title (excluding amounts for major reconstruction of obsolete projects).

(j) On-site facilities

Each public housing agency carrying out a local program may, subject to the approval of the Secretary, make available and utilize common areas or unoccupied public housing units in public housing projects administered by the agency for the provision of supportive services under the local program. The use of the facilities of a public housing agency under this subsection shall not affect the amount of assistance provided to the agency under section 1437g of this title.

(k) Flexibility

In establishing and carrying out the self-sufficiency program under this section, the Secretary shall allow public housing agencies, units of general local government, and other organizations discretion and flexibility, to the extent practicable, in developing and carrying out local programs.

(*l*) Reports

(1) To Secretary

Each public housing agency that carries out a local self-sufficiency program approved by the Secretary under this section shall submit to the Secretary, not less than annually a report regarding the program. The report shall include—

(A) a description of the activities carried out under the program;

(B) a description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;

(C) a description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and

(D) any recommendations of the public housing agency or the appropriate local program coordinating committee for legislative or administrative action that would improve the self-sufficiency program carried out by the Secretary and ensure the effectiveness of the program.

(2) HUD annual report

The Secretary shall submit to the Congress annually, as a part of the report of the Secretary under section 3536 of this title, a report summarizing the information submitted by public housing agencies under paragraph (1). The report under this paragraph shall also include any recommendations of the Secretary for improving the effectiveness of the self-sufficiency program under this section.

(m) GAO report

The Comptroller General of the United States may submit to the Congress reports under this subsection evaluating and describing the Family Self-Sufficiency program carried out by the Secretary under this section.

(n) Definitions

As used in this section:

(1) The term ''contract of participation'' means a contract under subsection (c) of this section entered into by a public housing agency carrying out a local program under this section and a participating family.

(2) The term ''earned income'' means income from wages, tips, salaries, and other employee compensation, and any earnings from self-employment. The term does not include any pension or annuity, transfer payments, or any cash or in-kind benefits.

(3) The term ''eligible family'' means a family whose head of household is not elderly, disabled, pregnant, a primary caregiver for children under the age of 3, or for whom the family self-sufficiency program would otherwise be unsuitable. Notwithstanding the preceding sentence, a public housing agency may enroll such families if they choose to participate in the program.

(4) The term ''local program'' means a program for providing supportive services to participating families carried out by a public housing agency within the jurisdiction of the public housing agency.

(5) The term ''participating family'' means a family that resides in public housing or housing assisted under section 1437f of this title and elects to participate in a local self-sufficiency program under this section.

(6) The term ''vacant unit'' means a dwelling unit that has been vacant for not less than 9 consecutive months.

(*o*) Effective date and regulations

(1) Regulations

Not later than the expiration of the 180-day period beginning on November 28, 1990, the Secretary shall by notice establish any requirements necessary to carry out this section. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue final regulations based on the notice not later than the expiration of the 8-month period be-

[3] So in original. Probably should be ''performance''.

ginning on the date of the notice. Such regulations shall become effective upon the expiration of the 1-year period beginning on the date of the publication of the final regulations.

(2) Repealed. Pub. L. 104–330, title V, § 501(b)(8), Oct. 26, 1996, 110 Stat. 4042

(Sept. 1, 1937, ch. 896, title I, § 23, as added Pub. L. 101–625, title V, § 554(a), Nov. 28, 1990, 104 Stat. 4225; amended Pub. L. 102–550, title I, §§ 106, 185(b), Oct. 28, 1992, 106 Stat. 3684, 3747; Pub. L. 104–316, title I, § 122(*l*), Oct. 19, 1996, 110 Stat. 3837; Pub. L. 104–330, title V, § 501(b)(8), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, § 509(a), Oct. 21, 1998, 112 Stat. 2530; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(31), (f)(23)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–425, 2681–433.)

REFERENCES IN TEXT

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (b)(2), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title I of the Act is classified generally to subchapter I (§ 12701 et seq.) of chapter 130 of this title. Section 554(b) of the Act is set out below. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Workforce Investment Act of 1998, referred to in subsecs. (b)(2)(A), (f)(2), and (g)(2), (3)(H), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Social Security Act, referred to in subsecs. (b)(2)(A), (f)(2), and (g)(2), (3)(H), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part F of title IV of the Act was classified generally to part F (§ 681 et seq.) of subchapter IV of chapter 7 of this title, prior to repeal by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 1437f(q)(2)(A) of this title, referred to in subsec. (h)(1), was amended generally by Pub. L. 105–276, title V, § 547, Oct. 21, 1998, 112 Stat. 2605, and, as so amended, does not contain a cl. (i).

Section 1437g(c) of this title, referred to in subsec. (h)(2), was amended generally by Pub. L. 105–276, title V, § 519(a), Oct. 21, 1998, 112 Stat. 2551, and, as so amended, does not relate to appropriations for fiscal years 1993 and 1994.

AMENDMENTS

1998—Subsec. (b)(1)(A). Pub. L. 105–276, § 509(a)(1)(A)(i), struck out ''and'' at end.

Subsec. (b)(1)(B). Pub. L. 105–276, § 509(a)(1)(A)(ii), substituted '', subject to the limitations in paragraph (4); and'' for period at end.

Subsec. (b)(1)(C). Pub. L. 105–276, § 509(a)(1)(A)(iii), added subpar. (C).

Subsec. (b)(2)(A). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(23)(A)], struck out ''the Job Training Partnership Act or'' after ''programs under''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(31)(A)], substituted ''the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 or the'' for ''the Job Training Partnerships Act or the''.

Subsec. (b)(3). Pub. L. 105–276, § 509(a)(1)(B), substituted ''Subject to paragraph (4), each'' for ''Each'' in introductory provisions.

Subsec. (b)(4), (5). Pub. L. 105–276, § 509(a)(1)(C), (D), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(3). Pub. L. 105–276, § 509(a)(2), struck out heading and text of par. (3) relating to use of escrow savings accounts. Text read as follows: ''Notwithstanding paragraph (3), a family that uses assistance under section 1437f(y) of this title to purchase a dwelling may use up to 50 percent of the amount in its escrow account established under paragraph (3) for a downpayment on the dwelling. In addition, after the family purchases the dwelling, the family may use any amounts remaining in the escrow account to cover the costs of major repair and replacement needs of the dwelling. If a family defaults in connection with the loan to purchase a dwelling and the mortgage is foreclosed, the remaining amounts in the escrow account shall be recaptured by the Secretary.''

Subsec. (f)(1). Pub. L. 105–276, § 509(a)(3), inserted ''carrying out a local program under this section'' after ''Each public housing agency''.

Subsec. (f)(2). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(23)(B)], struck out ''the Job Training Partnership Act or'' after ''programs under''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(31)(B)], substituted ''programs under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 or the'' for ''programs under the Job Training Partnership Act and the''.

Subsec. (g)(2). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(23)(C)(i)], struck out ''the Job Training Partnership Act or'' after ''programs under''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(31)(C)(i)], substituted ''programs under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 or the'' for ''for programs under the Job Training Partnership Act and the''.

Subsec. (g)(3)(H). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(23)(C)(ii)], struck out ''the Job Training Partnership Act or'' after ''programs under''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(31)(C)(ii)], substituted ''programs under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 and any other'' for ''program under the Job Training Partnership Act and any other''.

1996—Subsec. (m). Pub. L. 104–316 substituted ''may'' for ''shall'' after ''United States'', struck out ''(1) IN GENERAL.—'' before ''The Comptroller General'', and struck out par. (2) which read as follows:

''(2) TIMING.—The Comptroller General shall submit the following reports under this subsection:

''(A) An interim report, not later than the expiration of the 2-year period beginning on November 28, 1990.

''(B) A final report, not later than the expiration of the 5-year period beginning on November 28, 1990.''

Subsec. (*o*)(2). Pub. L. 104–330 struck out heading and text of par. (2). Text read as follows: ''Notwithstanding any other provision of law, the provisions of this section shall be optional for Indian housing authorities.''

1992—Subsec. (b)(2). Pub. L. 102–550, § 106(b), added subpars. (A) to (D) and concluding provisions and struck out former subpars. (A) to (D) which read as follows:

''(A) lack of supportive services funding;

''(B) lack of funding for reasonable administrative costs;

''(C) lack of cooperation by other units of State or local government; or

''(D) any other circumstances that the Secretary may consider appropriate.''

Subsec. (b)(4). Pub. L. 102–550, § 106(c), added par. (4).

Subsec. (c)(1). Pub. L. 102–550, § 106(d), in second sentence, inserted '', shall establish specific interim and final goals by which compliance with and performance of the contract may be measured,'' after ''program'' and substituted last sentence for former last sentence which read as follows: ''The contract shall provide that the public housing agency may terminate or withhold assistance under section 1437f of this title and services under paragraph (2) of this section if the family fails to comply with the requirements under the contract.''

Subsec. (c)(2). Pub. L. 102–550, § 106(e), struck out ''to each participating family'' after ''paragraph (1)'' in introductory provisions.

Subsec. (d). Pub. L. 102–550, § 106(g)(1), substituted ''Incentives for participation'' for ''Maximum rents and escrow savings accounts'' in heading.

Subsec. (d)(2). Pub. L. 102–550, § 106(f), substituted ''after the family ceases to receive income assistance under Federal or State welfare programs, upon successful performance of the obligations of the family under the contract of participation entered into by the family under subsection (c) of this section, as determined according to the specific goals and terms included in the contract, and under other circumstances in which the Secretary determines an exception for good cause is warranted. A public housing agency establishing such escrow accounts may make certain amounts in the accounts available to the participating families before full performance of the contract obligations based on compliance with, and completion of, specific interim goals included in the contract; except that any such amounts shall be used by the participating families for purposes consistent with the contracts of participation, as determined by the public housing agency.'' for ''only after the family is no longer a recipient of any Federal, State, or other public assistance for housing.''

Subsec. (d)(3). Pub. L. 102–550, § 185(b), added par. (3) relating to use of escrow savings accounts.

Pub. L. 102–550, § 106(g)(2), added par. (3) relating to a plan to offer incentives.

Subsec. (g)(3)(D) to (I). Pub. L. 102–550, § 106(h), added subpars. (D) and (I) and redesignated former subpars (D) to (G) as (E) to (H), respectively.

Subsec. (h)(2). Pub. L. 102–550, § 106(a), amended last sentence generally. Prior to amendment, last sentence read as follows: ''Of any amounts appropriated under section 1437g(c) of this title for each of fiscal years 1991 and 1992, $25,000,000 is authorized to be used for costs under this paragraph.''

Subsec. (n)(3) to (6). Pub. L. 102–550, § 106(i), added par. (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and added par. (6).

Subsec. (*o*)(2). Pub. L. 102–550, § 106(j), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''(2) APPLICABILITY TO INDIAN PUBLIC HOUSING.—In accordance with section 1437aa(b)(2) of this title, the provisions of this section shall also apply to public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority.''

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by section 101(f) [title VIII, § 405(d)(31)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(23)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

Pub. L. 105–276, title V, § 509(b), Oct. 21, 1998, 112 Stat. 2531, provided that: ''The amendments made by this subsection [probably means subsec. (a), amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

GAO STUDY ON LINKING FEDERAL HOUSING ASSISTANCE TO ECONOMIC SELF-SUFFICIENCY PROGRAMS

Section 554(b) of Pub. L. 101–625 directed Comptroller General to submit to Congress, not later than 18 months after Nov. 28, 1990, a report (1) evaluating the policy and administrative implications of requiring State and local governments to require participation in an economic self-sufficiency program as a condition of the receipt of rental assistance under 42 U.S.C. 1437f and public housing assistance, (2) determining the additional costs to public housing agencies under such programs and recommending a change in the amount of the administrative fee under 42 U.S.C. 1437f(q) to cover the additional costs of carrying out the Family Self-Sufficiency Program under this section, and (3) examining how housing and social service policies affect beneficiaries, particularly persons receiving public assistance, when such beneficiaries gain employment and experience a rise in income.

§ 1437v. Demolition, site revitalization, replacement housing, and tenant-based assistance grants for projects

(a) Purposes

The purpose of this section is to provide assistance to public housing agencies for the purposes of—

(1) improving the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);

(2) revitalizing sites (including remaining public housing dwelling units) on which such public housing projects are located and contributing to the improvement of the surrounding neighborhood;

(3) providing housing that will avoid or decrease the concentration of very low-income families; and

(4) building sustainable communities.

It is also the purpose of this section to provide assistance to smaller communities for the purpose of facilitating the development of affordable housing for low-income families that is undertaken in connection with a main street revitalization or redevelopment project in such communities.

(b) Grant authority

The Secretary may make grants as provided in this section to applicants whose applications for such grants are approved by the Secretary under this section.

(c) Contribution requirement

(1) In general

The Secretary may not make any grant under this section to any applicant unless the applicant certifies to the Secretary that the applicant will—

(A) supplement the aggregate amount of assistance provided under this section with an amount of funds from sources other than this section equal to not less than 5 percent of the amount provided under this section; and

(B) in addition to supplemental amounts provided in accordance with subparagraph (A), if the applicant uses more than 5 percent of the amount of assistance provided under this section for services under subsection (d)(1)(L) of this section, provide supplemental funds from sources other than this section in an amount equal to the amount so used in excess of 5 percent.

(2) Supplemental funds

In calculating the amount of supplemental funds provided by a grantee for purposes of paragraph (1), the grantee may include amounts from other Federal sources, any State or local government sources, any private contributions, the value of any donated material or building, the value of any lease on

a building, the value of the time and services contributed by volunteers, and the value of any other in-kind services or administrative costs provided.

(3) Exemption

If assistance provided under this subchapter will be used only for providing tenant-based assistance under section 1437f of this title or demolition of public housing (without replacement), the Secretary may exempt the applicant from the requirements under paragraph (1)(A).

(d) Eligible activities

(1) In general

Grants under this section may be used for activities to carry out revitalization programs for severely distressed public housing, including—

(A) architectural and engineering work;

(B) redesign, rehabilitation, or reconfiguration of a severely distressed public housing project, including the site on which the project is located;

(C) the demolition, sale, or lease of the site, in whole or in part;

(D) covering the administrative costs of the applicant, which may not exceed such portion of the assistance provided under this section as the Secretary may prescribe;

(E) payment of reasonable legal fees;

(F) providing reasonable moving expenses for residents displaced as a result of the revitalization of the project;

(G) economic development activities that promote the economic self-sufficiency of residents under the revitalization program, including a Neighborhood Networks initiative for the establishment and operation of computer centers in public housing for the purpose of enhancing the self-sufficiency, employability, an[1] economic self-reliance of public housing residents by providing them with onsite computer access and training resources;

(H) necessary management improvements;

(I) leveraging other resources, including additional housing resources, retail supportive services, jobs, and other economic development uses on or near the project that will benefit future residents of the site;

(J) replacement housing (including appropriate homeownership downpayment assistance for displaced residents or other appropriate replacement homeownership activities) and rental assistance under section 1437f of this title;

(K) transitional security activities; and

(L) necessary supportive services, except that not more than 15 percent of the amount of any grant may be used for activities under this paragraph.

(2) Endowment trust for supportive services

In using grant amounts under this section made available in fiscal year 2000 or thereafter for supportive services under paragraph (1)(L), a public housing agency may deposit such amounts in an endowment trust to provide supportive services over such period of time as the agency determines. Such amounts shall be provided to the agency by the Secretary in a lump sum when requested by the agency, shall be invested in a wise and prudent manner, and shall be used (together with any interest thereon earned) only for eligible uses pursuant to paragraph (1)(L). A public housing agency may use amounts in an endowment trust under this paragraph in conjunction with other amounts donated or otherwise made available to the trust for similar purposes.

(e) Application and selection

(1) Application

An application for a grant under this section shall demonstrate the appropriateness of the proposal in the context of the local housing market relative to other alternatives, and shall include such other information and be submitted at such time and in accordance with such procedures, as the Secretary shall prescribe.

(2) Selection criteria

The Secretary shall establish criteria for the award of grants under this section and shall include among the factors—

(A) the relationship of the grant to the public housing agency plan for the applicant and how the grant will result in a revitalized site that will enhance the neighborhood in which the project is located and enhance economic opportunities for residents;

(B) the capability and record of the applicant public housing agency, or any alternative management entity for the agency, for managing redevelopment or modernization projects, meeting construction timetables, and obligating amounts in a timely manner;

(C) the extent to which the applicant could undertake such activities without a grant under this section;

(D) the extent of involvement of residents, State and local governments, private service providers, financing entities, and developers, in the development and ongoing implementation of a revitalization program for the project, except that the Secretary may not award a grant under this section unless the applicant has involved affected public housing residents at the beginning and during the planning process for the revitalization program, prior to submission of an application;

(E) the need for affordable housing in the community;

(F) the supply of other housing available and affordable to families receiving tenant-based assistance under section 1437f of this title;

(G) the amount of funds and other resources to be leveraged by the grant;

(H) the extent of the need for, and the potential impact of, the revitalization program;

(I) the extent to which the plan minimizes permanent displacement of current residents of the public housing site who wish to remain in or return to the revitalized commu-

[1] So in original. Probably should be ''and''.

nity and provides for community and supportive services to residents prior to any relocation;

(J) the extent to which the plan sustains or creates more project-based housing units available to persons eligible for public housing in markets where the plan shows there is demand for the maintenance or creation of such units;

(K) the extent to which the plan gives to existing residents priority for occupancy in dwelling units which are public housing dwelling units, or for residents who can afford to live in other units, priority for those units in the revitalized community; and

(L) such other factors as the Secretary considers appropriate.

(3) Applicability of selection criteria

The Secretary may determine not to apply certain of the selection criteria established pursuant to paragraph (2) when awarding grants for demolition only, tenant-based assistance only, or other specific categories of revitalization activities. This section may not be construed to require any application for a grant under this section to include demolition of public housing or to preclude use of grant amounts for rehabilitation or rebuilding of any housing on an existing site.

(f) Cost limits

Subject to the provisions of this section, the Secretary—

(1) shall establish cost limits on eligible activities under this section sufficient to provide for effective revitalization programs; and

(2) may establish other cost limits on eligible activities under this section.

(g) Disposition and replacement

Any severely distressed public housing disposed of pursuant to a revitalization plan and any public housing developed in lieu of such severely distressed housing, shall be subject to the provisions of section 1437p of this title. Severely distressed public housing demolished pursuant to a revitalization plan shall not be subject to the provisions of section 1437p of this title.

(h) Administration by other entities

The Secretary may require a grantee under this section to make arrangements satisfactory to the Secretary for use of an entity other than the public housing agency to carry out activities assisted under the revitalization plan, if the Secretary determines that such action will help to effectuate the purposes of this section.

(i) Withdrawal of funding

If a grantee under this section does not proceed within a reasonable timeframe, in the determination of the Secretary, the Secretary shall withdraw any grant amounts under this section that have not been obligated by the public housing agency. The Secretary shall redistribute any withdrawn amounts to one or more other applicants eligible for assistance under this section or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the revitalization plan of the original grantee.

(j) Definitions

For purposes of this section, the following definitions shall apply:

(1) Applicant

The term ''applicant'' means—

(A) any public housing agency that is not designated as troubled pursuant to section 1437d(j)(2) of this title;

(B) any public housing agency for which a private housing management agent has been selected, or a receiver has been appointed, pursuant to section 1437d(j)(3) of this title; and

(C) any public housing agency that is designated as troubled pursuant to section 1437d(j)(2) of this title and that—

(i) is so designated principally for reasons that will not affect the capacity of the agency to carry out a revitalization program;

(ii) is making substantial progress toward eliminating the deficiencies of the agency; or

(iii) is otherwise determined by the Secretary to be capable of carrying out a revitalization program.

(2) Severely distressed public housing

The term ''severely distressed public housing'' means a public housing project (or building in a project)—

(A) that—

(i) requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems and other deficiencies in the physical plant of the project;

(ii) is a significant contributing factor to the physical decline of and disinvestment by public and private entities in the surrounding neighborhood;

(iii)(I) is occupied predominantly by families who are very low-income families with children, are unemployed, and dependent on various forms of public assistance;

(II) has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area; or

(III) is lacking in sufficient appropriate transportation, supportive services, economic opportunity, schools, civic and religious institutions, and public services, resulting in severe social distress in the project;

(iv) cannot be revitalized through assistance under other programs, such as the program for capital and operating assistance for public housing under this chapter, or the programs under sections 1437g and 1437*l* of this title (as in effect before the effective date under under[2] section 503(a)[2] the Quality Housing and Work Respon-

[2] So in original.

sibility Act of 1998), because of cost constraints and inadequacy of available amounts; and

(v) in the case of individual buildings, is, in the Secretary's determination, sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for purposes of this section; or

(B) that was a project described in subparagraph (A) that has been legally vacated or demolished, but for which the Secretary has not yet provided replacement housing assistance (other than tenant-based assistance).

(3) Supportive services

The term ''supportive services'' includes all activities that will promote upward mobility, self-sufficiency, and improved quality of life for the residents of the public housing project involved, including literacy training, job training, day care, transportation, and economic development activities.

(k) Grantee reporting

The Secretary shall require grantees of assistance under this section to report the sources and uses of all amounts expended for revitalization plans.

(*l*) Annual report

The Secretary shall submit to the Congress an annual report setting forth—

(1) the number, type, and cost of public housing units revitalized pursuant to this section;

(2) the status of projects identified as severely distressed public housing;

(3) the amount and type of financial assistance provided under and in conjunction with this section, including a specification of the amount and type of assistance provided under subsection (n) of this section;

(4) the types of projects funded, and number of affordable housing dwelling units developed with, grants under subsection (n) of this section; and

(5) the recommendations of the Secretary for statutory and regulatory improvements to the program established by this section.

(m) Funding

(1) Authorization of appropriations

There are authorized to be appropriated for grants under this section $574,000,000 for fiscal year 2003.

(2) Technical assistance and program oversight

Of the amount appropriated pursuant to paragraph (1) for any fiscal year, the Secretary may use up to 2 percent for technical assistance or contract expertise, including assistance in connection with the establishment and operation of computer centers in public housing through the Neighborhoods[3] Networks initiative described in subsection (d)(1)(G) of this section. Such assistance or contract expertise may be provided directly or indirectly by grants, contracts, or cooperative agreements, and shall include training, and the cost of necessary travel for participants in such training, by or to officials of the Department of Housing and Urban Development, of public housing agencies, and of residents.

(3) Set-aside for main street housing grants

Of the amount appropriated pursuant to paragraph (1) for any fiscal year, the Secretary shall provide up to 5 percent for use only for grants under subsection (n) of this section.

(n) Grants for assisting affordable housing developed through main street projects in smaller communities

(1) Authority and use of grant amounts

The Secretary may make grants under this subsection to smaller communities. Such grant amounts shall be used by smaller communities only to provide assistance to carry out eligible affordable housing activities under paragraph (4) in connection with an eligible project under paragraph (2).

(2) Eligible project

For purposes of this subsection, the term ''eligible project'' means a project that—

(A) the Secretary determines, under the criteria established pursuant to paragraph (3), is a main street project;

(B) is carried out within the jurisdiction of a smaller community receiving the grant; and

(C) involves the development of affordable housing that is located in the commercial area that is the subject of the project.

(3) Main street projects

The Secretary shall establish requirements for a project to be considered a main street project for purposes of this section, which shall require that the project—

(A) has as its purpose the revitalization or redevelopment of a historic or traditional commercial area;

(B) involves investment, or other participation, by the government for, and private entities in, the community in which the project is carried out; and

(C) complies with such historic preservation guidelines or principles as the Secretary shall identify to preserve significant historic or traditional architectural and design features in the structures or area involved in the project.

(4) Eligible affordable housing activities

For purposes of this subsection, the activities described in subsection (d)(1) of this section shall be considered eligible affordable housing activities, except that—

(A) such activities shall be conducted with respect to affordable housing rather than with respect to severely distressed public housing projects; and

(B) eligible affordable housing activities under this subsection shall not include the activities described in subparagraphs (B) through (E), (J), or (K) of subsection (d)(1) of this section.

(5) Maximum grant amount

A grant under this subsection for a fiscal year for a single smaller community may not exceed $1,000,000.

[3] So in original. Probably should be ''Neighborhood''.

(6) Contribution requirement

A smaller community applying for a grant under this subsection shall be considered an applicant for purposes of subsection (c) of this section (relating to contributions by applicants), except that—

(A) such supplemental amounts shall be used only for carrying out eligible affordable housing activities; and

(B) paragraphs (1)(B) and (3) shall not apply to grants under this subsection.

(7) Applications and selection

(A) Application

Pursuant to subsection (e)(1) of this section, the Secretary shall provide for smaller communities to apply for grants under this subsection, except that the Secretary may establish such separate or additional criteria for applications for such grants as may be appropriate to carry out this subsection.

(B) Selection criteria

The Secretary shall establish selection criteria for the award of grants under this subsection, which shall be based on the selection criteria established pursuant to subsection (e)(2) of this section, with such changes as may be appropriate to carry out the purposes of this subsection.

(8) Cost limits

The cost limits established pursuant to subsection (f) of this section shall apply to eligible affordable housing activities assisted with grant amounts under this subsection.

(9) Inapplicability of other provisions

The provisions of subsections (g) (relating to disposition and replacement of severely distressed public housing), and (h) (relating to administration of grants by other entities) of this section, shall not apply to grants under this subsection.

(10) Reporting

The Secretary shall require each smaller community receiving a grant under this subsection to submit a report regarding the use of all amounts provided under the grant.

(11) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Affordable housing

The term ''affordable housing'' means rental or homeownership dwelling units that—

(i) are made available for initial occupancy to low-income families, with a subset of units made available to very- and extremely-low income families; and

(ii) are subject to the same rules regarding occupant contribution toward rent or purchase and terms of rental or purchase as dwelling units in public housing projects assisted with a grant under this section.

(B) Smaller community

The term ''smaller community'' means a unit of general local government (as such term is defined in section 5302 of this title) that—

(i) has a population of 50,000 or fewer; and

(ii)(I) is not served by a public housing agency; or

(II) is served by a single public housing agency, which agency administers 100 or fewer public housing dwelling units.

***(o)* Sunset**

No assistance may be provided under this section after September 30, 2006.

(Sept. 1, 1937, ch. 896, title I, §24, as added Pub. L. 102–550, title I, §120, Oct. 28, 1992, 106 Stat. 3695; amended Pub. L. 104–99, title IV, §402(d)(6)(A)(vi), Jan. 26, 1996, 110 Stat. 43; Pub. L. 104–330, title V, §501(b)(9), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, §535(a), Oct. 21, 1998, 112 Stat. 2581; Pub. L. 106–377, §1(a)(1) [title II, §214(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–27; Pub. L. 108–7, div. K, title II, §215, Feb. 20, 2003, 117 Stat. 504; Pub. L. 108–186, title IV, §§402(a), (b), (d), (e), 403, Dec. 16, 2003, 117 Stat. 2693, 2694.)

REFERENCES IN TEXT

Section 1437*l* of this title, referred to in subsec. (j)(2)(A)(iv), was repealed by Pub. L. 105–276, title V, §522(a), Oct. 21, 1998, 112 Stat. 2564.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (j)(2)(A)(iv), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–186, §403(a), inserted concluding provisions.

Subsec. (e)(2). Pub. L. 108–186, §402(a)(1), substituted ''The Secretary shall establish criteria for the award of grants under this section and shall include among the factors—'' for ''The Secretary shall establish selection criteria for the award of grants under this section and shall include such factors as—'' in introductory provisions.

Subsec. (e)(2)(B). Pub. L. 108–186, §402(a)(2), struck out ''large-scale'' after ''for managing''.

Subsec. (e)(2)(D). Pub. L. 108–186, §402(a)(3), inserted ''and ongoing implementation'' after ''development'' and '', except that the Secretary may not award a grant under this section unless the applicant has involved affected public housing residents at the beginning and during the planning process for the revitalization program, prior to submission of an application'' before semicolon at end.

Subsec. (e)(2)(I) to (L). Pub. L. 108–186, §402(a)(4)–(6), added subpars. (I) to (K) and redesignated former subpar. (I) as (L).

Subsec. (j)(2)(A)(iii)(III). Pub. L. 108–186, §402(b), added subcl. (III).

Subsec. (*l*)(3). Pub. L. 108–186, §403(c)(1), substituted '', including a specification of the amount and type of assistance provided under subsection (n) of this section;'' for ''; and''.

Subsec. (*l*)(4), (5). Pub. L. 108–186, §403(c)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (m)(1). Pub. L. 108–186, §402(d), which directed substitution of ''through 2006'' for '', 2001, and 2002'' could not be executed because the words '', 2001, and 2002'' did not appear subsequent to amendment by Pub. L. 108–7, §215(a). See below.

Pub. L. 108–7, §215(a), substituted ''$574,000,000 for fiscal year 2003'' for ''$600,000,000 for fiscal year 1999 and such sums as may be necessary for each of fiscal years 2000, 2001, and 2002''.

Subsec. (m)(3). Pub. L. 108–186, § 403(d), added par. (3).

Subsec. (n). Pub. L. 108–186, § 403(b)(2), added subsec. (n). Former subsec. (n) redesignated (*o*).

Pub. L. 108–186, § 402(e), substituted ''September 30, 2006'' for ''September 30, 2004''.

Pub. L. 108–7, § 215(b), substituted ''September 30, 2004'' for ''September 30, 2002''.

Subsec. (*o*) Pub. L. 108–186, § 403(b)(1), redesignated subsec. (n) as (*o*).

2000—Subsec. (d)(1)(G). Pub. L. 106–377, § 1(a)(1) [title II, § 214(b)(1)], inserted before semicolon '', including a Neighborhood Networks initiative for the establishment and operation of computer centers in public housing for the purpose of enhancing the self-sufficiency, employability, an economic self-reliance of public housing residents by providing them with onsite computer access and training resources''.

Subsec. (m)(2). Pub. L. 106–377, § 1(a)(1) [title II, § 214(b)(2)], inserted before period at end of first sentence '', including assistance in connection with the establishment and operation of computer centers in public housing through the Neighborhoods Networks initiative described in subsection (d)(1)(G) of this section''.

1998—Pub. L. 105–276 amended section generally. Prior to amendment, section authorized planning grants for development of revitalization programs for severely distressed public housing and implementation grants to carry out revitalization programs for such housing, authorized exceptions to general program rules, established Office of Severely Distressed Public Housing Revitalization, and required annual report to Congress.

1996—Subsec. (e). Pub. L. 104–99 temporarily substituted ''Exception'' for ''Exceptions'' in subsec. heading and struck out ''(1) LONG-TERM VIABILITY.—'' before ''The Secretary may waive'' and par. (2) which read as follows:

''(2) SELECTION OF TENANTS.—For projects revitalized under this section, a public housing agency may select tenants pursuant to a local system of preferences, in lieu of selecting tenants pursuant to the preferences specified under section 1437d(c)(4)(A)(i) of this title. Such local system shall be established in writing and shall respond to local housing needs and priorities as determined by the public housing agency. The public housing agency shall hold 1 or more public hearings to obtain the views of low-income tenants and other interested parties on the housing needs and priorities of the agency's jurisdiction.'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (h)(3). Pub. L. 104–330 struck out '', except that it does not include any Indian housing authority'' after ''section 1437a(b) of this title''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 535(b), Oct. 21, 1998, 112 Stat. 2586, provided that: ''The amendment made by this section [amending this section] is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 11 on page 104 identifies a reporting provision which, as subsequently amended, is contained in subsec. (*l*) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

STUDY OF ELDERLY AND DISABLED PUBLIC HOUSING NEEDS

Pub. L. 108–186, title IV, § 402(c), Dec. 16, 2003, 117 Stat. 2694, provided that: ''Not later than 18 months after the date of enactment of this Act [Dec. 16, 2003], the Comptroller General of the United States shall submit a report to Congress regarding the extent of severely distressed elderly and non-elderly disabled public housing, and recommendations for improving that housing through the HOPE VI program or other means, taking into account the special needs of the residents.''

§ 1437w. Transfer of management of certain housing to independent manager at request of residents

(a) Authority

The Secretary may transfer the responsibility and authority for management of specified housing (as such term is defined in subsection (h) of this section) from a public housing agency to an eligible management entity, in accordance with the requirements of this section, if—

(1) a request for transfer of management of such housing is made and approved in accordance with subsection (b) of this section; and

(2) the Secretary or the public housing agency, as appropriate pursuant to subsection (b) of this section, determines that—

(A) due to the mismanagement of the agency, such housing has deferred maintenance, physical deterioration, or obsolescence of major systems and other deficiencies in the physical plant of the project;

(B) such housing is located in an area such that the housing is subject to recurrent vandalism and criminal activity (including drug-related criminal activity); and

(C) the residents can demonstrate that the elements of distress for such housing specified in subparagraphs (A) and (B) can be remedied by an entity or entities, identified by the residents, that has or have a demonstrated capacity to manage, with reasonable expenses for modernization.

(b) Request for transfer

The responsibility and authority for managing specified housing may be transferred only pursuant to a request made by a majority vote of the residents for the specified housing that—

(1) in the case of specified housing that is owned by a public housing agency that is designated as a troubled agency under section 1437d(j)(2) of this title—

(A) is made to the public housing agency or the Secretary; and

(B) is approved by the agency or the Secretary; or

(2) in the case of specified housing that is owned by a public housing agency that is not designated as a troubled agency under section 1437d(j)(2) of this title—

(A) is made to and approved by the public housing agency; or

(B) if a request is made to the agency pursuant to subparagraph (A) and is not approved, is subsequently made to and approved by the Secretary.

(c) Capital and operating assistance

Pursuant to a contract under subsection (d) of this section, the Secretary shall require the public housing agency for specified housing to provide to the manager for the housing, from any assistance from the Capital and Operating Funds under section 1437g of this title for the agency, fair and reasonable amounts for the housing for eligible capital and operating activities under subsection (d)(1) and (e)(1) of section 1437g of this title. The amount made available under this subsection to a manager shall be determined by the Secretary based on the share for the specified housing of the aggregate amount of assistance from such Funds for the public housing agency transferring the housing, taking into consideration the operating and capital improvement needs of the specified housing, the operating and capital improvement needs of the remaining public housing units managed by the public housing agency, and the public housing agency plan of such agency.

(d) Contract between Secretary and manager

(1) Requirements

Pursuant to the approval of a request under this section for transfer of the management of specified housing, the Secretary shall enter into a contract with the eligible management entity.

(2) Terms

A contract under this subsection shall contain provisions establishing the rights and responsibilities of the manager with respect to the specified housing and the Secretary and shall be consistent with the requirements of this chapter applicable to public housing projects.

(e) Compliance with public housing agency plan

A manager of specified housing under this section shall comply with the approved public housing agency plan applicable to the housing and shall submit such information to the public housing agency from which management was transferred as may be necessary for such agency to prepare and update its public housing agency plan.

(f) Demolition and disposition by manager

A manager under this section may demolish or dispose of specified housing only if, and in the manner, provided for in the public housing agency plan for the agency transferring management of the housing.

(g) Limitation on PHA liability

A public housing agency that is not a manager for specified housing shall not be liable for any act or failure to act by a manager or resident council for the specified housing.

(h) Definitions

For purposes of this section, the following definitions shall apply:

(1) Eligible management entity

The term ''eligible management entity'' means, with respect to any public housing project, any of the following entities:

(A) Nonprofit organization

A public or private nonprofit organization, which may—

(i) include a resident management corporation; and

(ii) not include the public housing agency that owns or operates the project.

(B) For-profit entity

A for-profit entity that has demonstrated experience in providing low-income housing.

(C) State or local government

A State or local government, including an agency or instrumentality thereof.

(D) Public housing agency

A public housing agency (other than the public housing agency that owns or operates the project).

The term does not include a resident council.

(2) Manager

The term ''manager'' means any eligible management entity that has entered into a contract under this section with the Secretary for the management of specified housing.

(3) Nonprofit

The term ''nonprofit'' means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.

(4) Private nonprofit organization

The term ''private nonprofit organization'' means any private organization (including a State or locally chartered organization) that—

(A) is incorporated under State or local law;

(B) is nonprofit in character;

(C) complies with standards of financial accountability acceptable to the Secretary; and

(D) has among its purposes significant activities related to the provision of decent housing that is affordable to low-income families.

(5) Public nonprofit organization

The term ''public nonprofit organization'' means any public entity that is nonprofit in character.

(6) Specified housing

The term ''specified housing'' means a public housing project or projects, or a portion of a project or projects, for which the transfer of management is requested under this section. The term includes one or more contiguous buildings and an area of contiguous row houses, but in the case of a single building, the building shall be sufficiently separable from the remainder of the project of which it is part to make transfer of the management of the building feasible for purposes of this section.

(Sept. 1, 1937, ch. 896, title I, § 25, as added Pub. L. 105–276, title V, § 534, Oct. 21, 1998, 112 Stat. 2579.)

PRIOR PROVISIONS

A prior section 1437w, act Sept. 1, 1937, ch. 896, title I, § 25, as added Pub. L. 102–550, title I, § 121(b), Oct. 28, 1992, 106 Stat. 3701; amended Pub. L. 104–330, title V, § 501(b)(10), Oct. 26, 1996, 110 Stat. 4042, known as the

Choice in Public Housing Management Act of 1992, related to choice in public housing management, prior to repeal by Pub. L. 105–276, title V, §§ 503, 534, Oct. 21, 1998, 112 Stat. 2521, 2579, effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement repeal before such date, and with savings provision.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437x. Environmental reviews

(a) In general

(1) Release of funds

In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this subchapter, and to assure to the public undiminished protection of the environment, the Secretary may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for the release of funds for projects or activities under this subchapter, as specified by the Secretary upon the request of a public housing agency under this section, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary may specify, which would otherwise apply to the Secretary with respect to the release of funds.

(2) Implementation

The Secretary, after consultation with the Council on Environmental Quality, shall issue such regulations as may be necessary to carry out this section. Such regulations shall specify the programs to be covered.

(b) Procedure

The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects or activities, the public housing agency has submitted to the Secretary a request for such release accompanied by a certification of the State or unit of general local government which meets the requirements of subsection (c) of this section. The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the release of funds which are covered by such certification.

(c) Certification

A certification under the procedures authorized by this section shall—

(1) be in a form acceptable to the Secretary;

(2) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

(3) specify that the State or unit of general local government under this section has fully carried out its responsibilities as described under subsection (a) of this section; and

(4) specify that the certifying officer—

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to subsection (a) of this section; and

(B) is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his or her responsibilities as such an official.

(d) Approval by States

In cases in which a unit of general local government carries out the responsibilities described in subsection (c) of this section, the Secretary may permit the State to perform those actions of the Secretary described in subsection (b) of this section and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of subsection (b) of this section.

(Sept. 1, 1937, ch. 896, title I, § 26, as added Pub. L. 103–233, title III, § 305(b), Apr. 11, 1994, 108 Stat. 371; amended Pub. L. 104–330, title V, § 501(b)(11), Oct. 26, 1996, 110 Stat. 4042.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(1), (b), and (c)(4)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1996—Subsecs. (a)(1), (b). Pub. L. 104–330 struck out ''(including an Indian housing authority)'' after ''public housing agency''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 1437y. Provision of information to law enforcement and other agencies

Notwithstanding any other provision of law, the Secretary shall, at least 4 times annually and upon request of the Immigration and Naturalization Service (hereafter in this section referred to as the ''Service''), furnish the Service with the name and address of, and other identi-

fying information on, any individual who the Secretary knows is not lawfully present in the United States, and shall ensure that each contract for assistance entered into under section 1437d or 1437f of this title with a public housing agency provides that the public housing agency shall furnish such information at such times with respect to any individual who the public housing agency knows is not lawfully present in the United States.

(Sept. 1, 1937, ch. 896, title I, § 27, as added Pub. L. 104–193, title IV, § 404(d), Aug. 22, 1996, 110 Stat. 2267; amended Pub. L. 105–33, title V, § 5564, Aug. 5, 1997, 111 Stat. 639.)

CODIFICATION

Another section 27 of act Sept. 1, 1937, was renumbered section 28, and is classified to section 1437z of this title.

AMENDMENTS

1997—Pub. L. 105–33 substituted ''not lawfully present in the United States'' for ''unlawfully in the United States'' in two places.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5582 of Pub. L. 105–33, set out as a note under section 1367 of Title 8, Aliens and Nationality.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 1437z. Exchange of information with law enforcement agencies

Notwithstanding any other provision of law, each public housing agency that enters into a contract for assistance under section 1437d or 1437f of this title with the Secretary shall furnish any Federal, State, or local law enforcement officer, upon the request of the officer, with the current address, Social Security number, and photograph (if applicable) of any recipient of assistance under this chapter, if the officer—

(1) furnishes the public housing agency with the name of the recipient; and

(2) notifies the agency that—

(A) such recipient—

(i) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(ii) is violating a condition of probation or parole imposed under Federal or State law; or

(iii) has information that is necessary for the officer to conduct the officer's official duties;

(B) the location or apprehension of the recipient is within such officer's official duties; and

(C) the request is made in the proper exercise of the officer's official duties.

(Sept. 1, 1937, ch. 896, title I, § 28, formerly § 27, as added Pub. L. 104–193, title IX, § 903(b), Aug. 22, 1996, 110 Stat. 2348; renumbered § 28, Pub. L. 105–65, title V, § 562(a)(1), Oct. 27, 1997, 111 Stat. 1416.)

§ 1437z–1. Civil money penalties against section 1437f owners

(a) In general

(1) Effect on other remedies

The penalties set forth in this section shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed regardless of whether the Secretary imposes other administrative sanctions.

(2) Failure of Secretary

The Secretary may not impose penalties under this section for a violation, if a material cause of the violation is the failure of the Secretary, an agent of the Secretary, or a public housing agency to comply with an existing agreement.

(b) Violations of housing assistance payment contracts for which penalty may be imposed

(1) Liable parties

The Secretary may impose a civil money penalty under this section on—

(A) any owner of a property receiving project-based assistance under section 8 [42 U.S.C. 1437f];

(B) any general partner of a partnership owner of that property; and

(C) any agent employed to manage the property that has an identity of interest with the owner or the general partner of a partnership owner of the property.

(2) Violations

A penalty may be imposed under this section for a knowing and material breach of a housing assistance payments contract, including the following—

(A) failure to provide decent, safe, and sanitary housing pursuant to section 8 [42 U.S.C. 1437f]; or

(B) knowing or willful submission of false, fictitious, or fraudulent statements or requests for housing assistance payments to the Secretary or to any department or agency of the United States.

(3) Amount of penalty

The amount of a penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed $25,000 per violation.

(c) Agency procedures

(1) Establishment

The Secretary shall issue regulations establishing standards and procedures governing the imposition of civil money penalties under subsection (b) of this section. These standards and procedures—

(A) shall provide for the Secretary or other department official to make the determination to impose the penalty;

(B) shall provide for the imposition of a penalty only after the liable party has received notice and the opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing and judicial review, as provided under subsection (d) of this section.

(2) Final orders

(A) In general

If a hearing is not requested before the expiration of the 15-day period beginning on the date on which the notice of opportunity for hearing is received, the imposition of a penalty under subsection (b) of this section shall constitute a final and unappealable determination.

(B) Effect of review

If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order.

(C) Failure to review

If the Secretary does not review that determination or order before the expiration of the 90-day period beginning on the date on which the determination or order is issued, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (b) of this section, the Secretary shall take into consideration—

(A) the gravity of the offense;

(B) any history of prior offenses by the violator (including offenses occurring before the enactment of this section);

(C) the ability of the violator to pay the penalty;

(D) any injury to tenants;

(E) any injury to the public;

(F) any benefits received by the violator as a result of the violation;

(G) deterrence of future violations; and

(H) such other factors as the Secretary may establish by regulation.

(4) Payment of penalty

No payment of a civil money penalty levied under this section shall be payable out of project income.

(d) Judicial review of agency determination

Judicial review of determinations made under this section shall be carried out in accordance with section 1735f–15(e) of title 12.

(e) Remedies for noncompliance

(1) Judicial intervention

(A) In general

If a person or entity fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (b) of this section, after the determination or order is no longer subject to review as provided by subsections (c) and (d) of this section, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against that person or entity and such other relief as may be available.

(B) Fees and expenses

Any monetary judgment awarded in an action brought under this paragraph may, in the discretion of the court, include the attorney's fees and other expenses incurred by the United States in connection with the action.

(2) Nonreviewability of determination or order

In an action under this subsection, the validity and appropriateness of the determination or order of the Secretary imposing the penalty shall not be subject to review.

(f) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(g) Deposit of penalties

(1) In general

Notwithstanding any other provision of law, if the mortgage covering the property receiving assistance under section 8 [42 U.S.C. 1437f] is insured or was formerly insured by the Secretary, the Secretary shall apply all civil money penalties collected under this section to the appropriate insurance fund or funds established under this chapter, as determined by the Secretary.

(2) Exception

Notwithstanding any other provision of law, if the mortgage covering the property receiving assistance under section 8 [42 U.S.C. 1437f] is neither insured nor formerly insured by the Secretary, the Secretary shall make all civil money penalties collected under this section available for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary.

(h) Definitions

In this section—

(1) the term ''agent employed to manage the property that has an identity of interest'' means an entity—

(A) that has management responsibility for a project;

(B) in which the ownership entity, including its general partner or partners (if applicable), has an ownership interest; and

(C) over which such ownership entity exerts effective control; and

(2) the term ''knowing'' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(Sept. 1, 1937, ch. 896, title I, § 29, as added Pub. L. 105–65, title V, § 562(a)(2), Oct. 27, 1997, 111 Stat. 1416.)

EFFECTIVE DATE

Section 562(b) of Pub. L. 105–65 provided that: ''The amendments made by subsection (a) [enacting this section and amending section 1437z of this title] shall apply only with respect to—

''(1) violations that occur on or after the effective date of final regulations implementing the amendments made by this section; and

''(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation that occurs on or after such date.''

REGULATIONS

Section 562(c) of Pub. L. 105–65 provided that:

''(1) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall implement the amendments made by this section [enacting this section and amending section 1437z of this title] by regulation issued after notice and opportunity for public comment.

''(B) COMMENTS SOUGHT.—The notice under subparagraph (A) shall seek comments as to the definitions of the terms 'ownership interest in' and 'effective control', as such terms are used in the definition of the term 'agent employed to manage such property that has an identity of interest'.

''(2) TIMING.—A proposed rule implementing the amendments made by this section shall be published not later than 1 year after the date of enactment of this Act [Oct. 27, 1997].''

§ 1437z–2. Public housing mortgages and security interests

(a) General authorization

The Secretary may, upon such terms and conditions as the Secretary may prescribe, authorize a public housing agency to mortgage or otherwise grant a security interest in any public housing project or other property of the public housing agency.

(b) Terms and conditions

In making any authorization under subsection (a) of this section, the Secretary may consider—

(1) the ability of the public housing agency to use the proceeds of the mortgage or security interest for low-income housing uses;

(2) the ability of the public housing agency to make payments on the mortgage or security interest; and

(3) such other criteria as the Secretary may specify.

(c) No Federal liability

No action taken under this section shall result in any liability to the Federal Government.

(Sept. 1, 1937, ch. 896, title I, § 30, as added Pub. L. 105–276, title V, § 516, Oct. 21, 1998, 112 Stat. 2550.)

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437z–3. Pet ownership in public housing

(a) Ownership conditions

A resident of a dwelling unit in public housing (as such term is defined in subsection (c) of this section) may own 1 or more common household pets or have 1 or more common household pets present in the dwelling unit of such resident, subject to the reasonable requirements of the public housing agency, if the resident maintains each pet responsibly and in accordance with applicable State and local public health, animal control, and animal anti-cruelty laws and regulations and with the policies established in the public housing agency plan for the agency.

(b) Reasonable requirements

The reasonable requirements referred to in subsection (a) of this section may include—

(1) requiring payment of a nominal fee, a pet deposit, or both, by residents owning or having pets present, to cover the reasonable operating costs to the project relating to the presence of pets and to establish an escrow account for additional costs not otherwise covered, respectively;

(2) limitations on the number of animals in a unit, based on unit size;

(3) prohibitions on—

(A) types of animals that are classified as dangerous; and

(B) individual animals, based on certain factors, including the size and weight of the animal; and

(4) restrictions or prohibitions based on size and type of building or project, or other relevant conditions.

(c) Pet ownership in public housing designated for occupancy by elderly or handicapped families

For purposes of this section, the term ''public housing'' has the meaning given the term in section 1437a(b) of this title, except that such term does not include any public housing that is federally assisted rental housing for the elderly or handicapped, as such term is defined in section 1701r–1(d) of title 12.

(d) Regulations

This section shall take effect upon the date of the effectiveness of regulations issued by the Secretary to carry out this section. Such regulations shall be issued after notice and opportunity for public comment in accordance with the procedure under section 553 of title 5 applicable to substantive rules (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

(Sept. 1, 1937, ch. 896, title I, § 31, as added Pub. L. 105–276, title V, § 526, Oct. 21, 1998, 112 Stat. 2568.)

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437z–4. Resident homeownership programs

(a) In general

A public housing agency may carry out a homeownership program in accordance with this section and the public housing agency plan of the agency to make public housing dwelling units, public housing projects, and other housing projects available for purchase by low-income families for use only as principal residences for such families. An agency may transfer a unit pursuant to a homeownership program only if

the program is authorized under this section and approved by the Secretary.

(b) Participating units

A program under this section may cover any existing public housing dwelling units or projects, and may include other dwelling units and housing owned, assisted, or operated, or otherwise acquired for use under such program, by the public housing agency.

(c) Eligible purchasers

(1) Low-income requirement

Only low-income families assisted by a public housing agency, other low-income families, and entities formed to facilitate such sales by purchasing units for resale to low-income families shall be eligible to purchase housing under a homeownership program under this section.

(2) Other requirements

A public housing agency may establish other requirements or limitations for families to purchase housing under a homeownership program under this section, including requirements or limitations regarding employment or participation in employment counseling or training activities, criminal activity, participation in homeownership counseling programs, evidence of regular income, and other requirements. In the case of purchase by an entity for resale to low-income families, the entity shall sell the units to low-income families within 5 years from the date of its acquisition of the units. The entity shall use any net proceeds from the resale and from managing the units, as determined in accordance with guidelines of the Secretary, for housing purposes, such as funding resident organizations and reserves for capital replacements.

(d) Right of first refusal

In making any sale under this section, the public housing agency shall initially offer the public housing unit at issue to the resident or residents occupying that unit, if any, or to an organization serving as a conduit for sales to any such resident.

(e) Protection of nonpurchasing residents

If a public housing resident does not exercise the right of first refusal under subsection (d) of this section with respect to the public housing unit in which the resident resides, the public housing agency—

(1) shall notify the resident residing in the unit 90 days prior to the displacement date except in cases of imminent threat to health or safety, consistent with any guidelines issued by the Secretary governing such notifications, that—

(A) the public housing unit will be sold;

(B) the transfer of possession of the unit will occur until the resident is relocated; and

(C) each resident displaced by such action will be offered comparable housing—

(i) that meets housing quality standards;

(ii) that is located in an area that is generally not less desirable than the location of the displaced resident's housing; and

(iii) which may include—

(I) tenant-based assistance, except that the requirement under this subclause regarding offering of comparable housing shall be fulfilled by use of tenant-based assistance only upon the relocation of such resident into such housing;

(II) project-based assistance; or

(III) occupancy in a unit owned, operated, or assisted by the public housing agency at a rental rate paid by the resident that is comparable to the rental rate applicable to the unit from which the resident is vacated;

(2) shall provide for the payment of the actual and reasonable relocation expenses of the resident to be displaced;

(3) shall ensure that the displaced resident is offered comparable housing in accordance with the notice under paragraph (1);

(4) shall provide any necessary counseling for the displaced resident; and

(5) shall not transfer possession of the unit until the resident is relocated.

(f) Financing and assistance

A homeownership program under this section may provide financing for acquisition of housing by families purchasing under the program, or for acquisition of housing by the public housing agency for sale under the program, in any manner considered appropriate by the agency (including sale to a resident management corporation).

(g) Downpayment requirement

(1) In general

Each family purchasing housing under a homeownership program under this section shall be required to provide from its own resources a downpayment in connection with any loan for acquisition of the housing, in an amount determined by the public housing agency. Except as provided in paragraph (2), the agency shall permit the family to use grant amounts, gifts from relatives, contributions from private sources, and similar amounts as downpayment amounts in such purchase.

(2) Direct family contribution

In purchasing housing pursuant to this section, each family shall contribute an amount of the downpayment, from resources of the family other than grants, gifts, contributions, or other similar amounts referred to in paragraph (1), that is not less than 1 percent of the purchase price.

(h) Ownership interests

A homeownership program under this section may provide for sale to the purchasing family of any ownership interest that the public housing agency considers appropriate under the program, including ownership in fee simple, a condominium interest, an interest in a limited dividend cooperative, a shared appreciation interest with a public housing agency providing financing.

(i) Resale

(1) Authority and limitation

A homeownership program under this section shall permit the resale of a dwelling unit

purchased under the program by an eligible family, but shall provide such limitations on resale as the agency considers appropriate (whether the family purchases directly from the agency or from another entity) for the agency to recapture—

(A) some or all of the economic gain derived from any such resale occurring during the 5-year period beginning upon purchase of the dwelling unit by the eligible family; and

(B) after the expiration of such 5-year period, only such amounts as are equivalent to the assistance provided under this section by the agency to the purchaser.

(2) Considerations

The limitations referred to in paragraph (1)(A) may provide for consideration of the aggregate amount of assistance provided under the program to the family, the contribution to equity provided by the purchasing eligible family, the period of time elapsed between purchase under the homeownership program and resale, the reason for resale, any improvements to the property made by the eligible family, any appreciation in the value of the property, and any other factors that the agency considers appropriate.

(j) Net proceeds

The net proceeds of any sales under a homeownership program under this section remaining after payment of all costs of the sale shall be used for purposes relating to low-income housing and in accordance with the public housing agency plan of the agency carrying out the program.

(k) Homeownership assistance

From amounts distributed to a public housing agency under the Capital Fund under section 1437g(d) of this title, or from other income earned by the public housing agency, the public housing agency may provide assistance to public housing residents to facilitate the ability of those residents to purchase a principal residence, including a residence other than a residence located in a public housing project.

***(l)* Inapplicability of disposition requirements**

The provisions of section 1437p of this title shall not apply to disposition of public housing dwelling units under a homeownership program under this section.

(Sept. 1, 1937, ch. 896, title I, § 32, as added Pub. L. 105–276, title V, § 536, Oct. 21, 1998, 112 Stat. 2586.)

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437z–5. Required conversion of distressed public housing to tenant-based assistance

(a) Identification of units

Each public housing agency shall identify all public housing projects of the public housing agency that meet all of the following requirements:

(1) The project is on the same or contiguous sites.

(2) The project is determined by the public housing agency to be distressed, which determination shall be made in accordance with guidelines established by the Secretary, which guidelines shall take into account the criteria established in the Final Report of the National Commission on Severely Distressed Public Housing (August 1992).

(3) The project—

(A) is identified as distressed housing under paragraph (2) for which the public housing agency cannot assure the long-term viability as public housing through reasonable modernization expenses, density reduction, achievement of a broader range of family income, or other measures; or

(B) has an estimated cost, during the remaining useful life of the project, of continued operation and modernization as public housing that exceeds the estimated cost, during the remaining useful life of the project, of providing tenant-based assistance under section 1437f of this title for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development costs required for modernization).

(b) Consultation

Each public housing agency shall consult with the appropriate public housing residents and the appropriate unit of general local government in identifying any public housing projects under subsection (a) of this section.

(c) Plan for removal of units from inventories of PHAs

(1) Development

Each public housing agency shall develop and carry out a 5-year plan in conjunction with the Secretary for the removal of public housing units identified under subsection (a) of this section from the inventory of the public housing agency and the annual contributions contract.

(2) Approval

Each plan required under paragraph (1) shall—

(A) be included as part of the public housing agency plan;

(B) be certified by the relevant local official to be in accordance with the comprehensive housing affordability strategy under title I of the Housing and Community Development Act of 1992; and

(C) include a description of any disposition and demolition plan for the public housing units.

(3) Extensions

The Secretary may extend the 5-year deadline described in paragraph (1) by not more than an additional 5 years if the Secretary makes a determination that the deadline is impracticable.

(4) Review by Secretary

(A) Failure to identify projects

If the Secretary determines, based on a plan submitted under this subsection, that a

public housing agency has failed to identify 1 or more public housing projects that the Secretary determines should have been identified under subsection (a) of this section, the Secretary may designate the public housing projects to be removed from the inventory of the public housing agency pursuant to this section.

(B) Erroneous identification of projects

If the Secretary determines, based on a plan submitted under this subsection, that a public housing agency has identified 1 or more public housing projects that should not have been identified pursuant to subsection (a) of this section, the Secretary shall—

(i) require the public housing agency to revise the plan of the public housing agency under this subsection; and

(ii) prohibit the removal of any such public housing project from the inventory of the public housing agency under this section.

(d) Conversion to tenant-based assistance

(1) In general

To the extent approved in advance in appropriations Acts, the Secretary shall make budget authority available to a public housing agency to provide assistance under this chapter to families residing in any public housing project that, pursuant to this section, is removed from the inventory of the agency and the annual contributions contract of the agency.

(2) Conversion requirements

Each agency carrying out a plan under subsection (c) of this section for removal of public housing dwelling units from the inventory of the agency shall—

(A) notify each family residing in a public housing project to be converted under the plan 90 days prior to the displacement date, except in cases of imminent threat to health or safety, consistent with any guidelines issued by the Secretary governing such notifications, that—

(i) the public housing project will be removed from the inventory of the public housing agency; and

(ii) each family displaced by such action will be offered comparable housing—

(I) that meets housing quality standards; and

(II) which may include—

(aa) tenant-based assistance, except that the requirement under this clause regarding offering of comparable housing shall be fulfilled by use of tenant-based assistance only upon the relocation of such family into such housing;

(bb) project-based assistance; or

(cc) occupancy in a unit operated or assisted by the public housing agency at a rental rate paid by the family that is comparable to the rental rate applicable to the unit from which the family is vacated.

(B) provide any necessary counseling for families displaced by such action;

(C) ensure that, if the project (or portion) converted is used as housing after such conversion, each resident may choose to remain in their dwelling unit in the project and use the tenant-based assistance toward rent for that unit;

(D) ensure that each displaced resident is offered comparable housing in accordance with the notice under subparagraph (A); and

(E) provide any actual and reasonable relocation expenses for families displaced by such action.

(e) Cessation of unnecessary spending

Notwithstanding any other provision of law, if, in the determination of the Secretary, a project or projects of a public housing agency meet or are likely to meet the criteria set forth in subsection (a) of this section, the Secretary may direct the agency to cease additional spending in connection with such project or projects until the Secretary determines or approves an appropriate course of action with respect to such project or projects under this section, except to the extent that failure to expend such amounts would endanger the health or safety of residents in the project or projects.

(f) Use of budget authority

Notwithstanding any other provision of law, if a project or projects are identified pursuant to subsection (a) of this section, the Secretary may authorize or direct the transfer, to the tenant-based assistance program of such agency or to appropriate site revitalization or other capital improvements approved by the Secretary, of—

(1) in the case of an agency receiving assistance under the comprehensive improvement assistance program, any amounts obligated by the Secretary for the modernization of such project or projects pursuant to section 1437*l* of this title (as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998);

(2) in the case of an agency receiving public housing modernization assistance by formula pursuant to such section 1437*l* of this title, any amounts provided to the agency which are attributable pursuant to the formula for allocating such assistance to such project or projects;

(3) in the case of an agency receiving assistance for the major reconstruction of obsolete projects, any amounts obligated by the Secretary for the major reconstruction of such project or projects pursuant to section 1437c(j)(2) of this title, as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998; and

(4) in the case of an agency receiving assistance pursuant to the formulas under section 1437g of this title, any amounts provided to the agency which are attributable pursuant to the formulas for allocating such assistance to such project or projects.

(g) Removal by Secretary

The Secretary shall take appropriate actions to ensure removal of any public housing project identified under subsection (a) of this section from the inventory of a public housing agency,

if the public housing agency fails to adequately develop a plan under subsection (c) of this section with respect to that project, or fails to adequately implement such plan in accordance with the terms of the plan.

(h) Administration

(1) In general

The Secretary may require a public housing agency to provide to the Secretary or to public housing residents such information as the Secretary considers to be necessary for the administration of this section.

(2) Applicability of section 1437p

Section 1437p of this title shall not apply to the demolition of public housing projects removed from the inventory of the public housing agency under this section.

(Sept. 1, 1937, ch. 896, title I, § 33, as added Pub. L. 105–276, title V, § 537(a), Oct. 21, 1998, 112 Stat. 2588.)

REFERENCES IN TEXT

Title I of the Housing and Community Development Act of 1992, referred to in subsec. (c)(2)(B), is title I of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3681. For complete classification of title I to the Code, see Tables.

Section 1437*l* of this title, referred to in subsec. (f)(1), (2), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (f)(1), (3), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

TRANSITION

Pub. L. 105–276, title V, § 537(c), Oct. 21, 1998, 112 Stat. 2592, provided that:

''(1) USE OF AMOUNTS.—Any amounts made available to a public housing agency to carry out section 202 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (enacted as section 101(e) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134; 110 Stat. 1321–279)) [former 42 U.S.C. 1437*l* note] may be used, to the extent or in such amounts as are or have been provided in advance in appropriation Acts, to carry out section 33 of the United States Housing Act of 1937 [42 U.S.C. 1437z–5] (as added by subsection (a) of this section).

''(2) SAVINGS PROVISION.—Notwithstanding the amendments made by this section [enacting this section and repealing provisions set out as a note under section 1437*l* of this title], section 202 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (42 U.S.C. 14371 [1437*l*] note) and any regulations implementing such section, as in effect immediately before the enactment of this Act [Oct. 21, 1998], shall continue to apply to public housing developments identified by the Secretary or a public housing agency for conversion pursuant to that section or for assessment of whether such conversion is required prior to enactment of this Act.''

§ 1437z–6. Services for public and Indian housing residents

(a) In general

To the extent that amounts are provided in advance in appropriations Acts, the Secretary may make grants to public housing agencies on behalf of public housing residents, recipients under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.] (notwithstanding section 502 of such Act [25 U.S.C. 4181]) on behalf of residents of housing assisted under such Act, or directly to resident management corporations, resident councils, or resident organizations (including nonprofit entities supported by residents), for the purposes of providing a program of supportive services and resident empowerment activities to provide supportive services to public housing residents and residents of housing assisted under such Act or assist such residents in becoming economically self-sufficient.

(b) Eligible activities

Grantees under this section may use such amounts only for activities on or near the property of the public housing agency or public housing project or the property of a recipient under such Act or housing assisted under such Act that are designed to promote the self-sufficiency of public housing residents or residents of housing assisted under such Act or provide supportive services for such residents, including activities relating to—

(1) physical improvements to a public housing project or residents of housing assisted under such Act in order to provide space for supportive services for residents;

(2) the provision of service coordinators or a congregate housing services program for elderly individuals, elderly disabled individuals, nonelderly disabled individuals, or temporarily disabled individuals;

(3) the provision of services related to work readiness, including education, job training and counseling, job search skills, business development training and planning, tutoring, mentoring, adult literacy, computer access, personal and family counseling, health screening, work readiness health services, transportation, and child care;

(4) economic and job development, including employer linkages and job placement, and the start-up of resident microenterprises, community credit unions, and revolving loan funds, including the licensing, bonding, and insurance needed to operate such enterprises;

(5) resident management activities and resident participation activities; and

(6) other activities designed to improve the economic self-sufficiency of residents.

(c) Funding distribution

(1) In general

Except for amounts provided under subsection (d) of this section, the Secretary may distribute amounts made available under this section on the basis of a competition or a formula, as appropriate.

(2) Factors for distribution

Factors for distribution under paragraph (1) shall include—

(A) the demonstrated capacity of the applicant to carry out a program of supportive services or resident empowerment activities;

(B) the ability of the applicant to leverage additional resources for the provision of services; and

(C) the extent to which the grant will result in a high quality program of supportive services or resident empowerment activities.

(d) Matching requirement

The Secretary may not make any grant under this section to any applicant unless the applicant supplements amounts made available under this section with funds from sources other than this section in an amount equal to not less than 25 percent of the grant amount. Such supplemental amounts may include—

(1) funds from other Federal sources;

(2) funds from any State, local, or tribal government sources;

(3) funds from private contributions; and

(4) the value of any in-kind services or administrative costs provided to the applicant.

(e) Funding for resident organizations

To the extent that there are a sufficient number of qualified applications for assistance under this section, not less than 25 percent of any amounts appropriated to carry out this section shall be provided directly to resident councils, resident organizations, and resident management corporations. In any case in which a resident council, resident organization, or resident management corporation lacks adequate expertise, the Secretary may require the council, organization, or corporation to utilize other qualified organizations as contract administrators with respect to financial assistance provided under this section.

(Sept. 1, 1937, ch. 896, title I, § 34, as added Pub. L. 105–276, title V, § 538(a), Oct. 21, 1998, 112 Stat. 2592; amended Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)], Oct. 27, 2000, 114 Stat. 1441, 1441A–29.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsecs. (a) and (b), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

AMENDMENTS

2000—Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)(1)], substituted ''public and Indian housing'' for ''public housing'' in section catchline.

Subsec. (a). Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)(2)], inserted ''recipients under the Native American Housing Assistance and Self-Determination Act of 1996 (notwithstanding section 502 of such Act) on behalf of residents of housing assisted under such Act,'' after ''on behalf of public housing residents,'' and inserted ''and residents of housing assisted under such Act'' after ''supportive services to public housing residents''.

Subsec. (b). Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)(3)(A), (B)], in introductory provisions, inserted ''or the property of a recipient under such Act or housing assisted under such Act'' after ''public housing project'' and ''or residents of housing assisted under such Act'' after ''public housing residents''.

Subsec. (b)(1). Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)(3)(C)], inserted ''or residents of housing assisted under such Act'' after ''public housing project''.

Subsec. (d)(2). Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)(4)], substituted ''State, local, or tribal government'' for ''State or local government''.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

ASSESSMENT AND REPORT BY SECRETARY

Pub. L. 105–276, title V, § 538(b), Oct. 21, 1998, 112 Stat. 2594, as amended by Pub. L. 106–377, § 1(a)(1) [title II, § 221(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–29, provided that: ''Not later than 3 years after the date of the enactment of the Quality Housing and Work Responsibility Act of 1998 [Oct. 21, 1998], the Secretary of Housing and Urban Development shall—

''(1) conduct an evaluation and assessment of grants carried out by resident organizations, and particularly of the effect of the grants on living conditions in public housing and housing assisted under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.]; and

''(2) submit to the Congress a report setting forth the findings of the Secretary as a result of the evaluation and assessment and including any recommendations the Secretary determines to be appropriate.

''This subsection shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

§ 1437z–7. Mixed-finance public housing

(a) Authority

A public housing agency may own, operate, assist, or otherwise participate in 1 or more mixed-finance projects in accordance with this section.

(b) Assistance

(1) Forms

A public housing agency may provide to a mixed-finance project assistance from the Operating Fund under section 1437g of this title, assistance from the Capital Fund under such section, or both forms of assistance. A public housing agency may, in accordance with regulations established by the Secretary, provide capital assistance to a mixed-finance project in the form of a grant, loan, guarantee, or other form of investment in the project, which may involve drawdown of funds on a schedule commensurate with construction draws for deposit into an interest-bearing escrow account to serve as collateral or credit enhancement for bonds issued by a public agency, or for other forms of public or private borrowings, for the construction or rehabilitation of the development.

(2) Use

To the extent deemed appropriate by the Secretary, assistance used in connection with the costs associated with the operation and management of mixed-finance projects may be used for funding of an operating reserve to ensure affordability for low-income and very low-income families in lieu of the availability of operating funds for public housing units in a mixed-finance project.

(c) Compliance with public housing requirements

The units assisted with capital or operating assistance in a mixed-finance project shall be

developed, operated, and maintained in accordance with the requirements of this chapter relating to public housing during the period required by under[1] this chapter, unless otherwise specified in this section. For purposes of this chapter, any reference to public housing owned or operated by a public housing agency shall include dwelling units in a mixed finance project that are assisted by the agency with capital or operating assistance.

(d) Mixed-finance projects

(1) In general

For purposes of this section, the term ''mixed-finance project'' means a project that meets the requirements of paragraph (2) and is financially assisted by private resources, which may include low-income housing tax credits, in addition to amounts provided under this chapter.

(2) Types of projects

The term includes a project that is developed—

(A) by a public housing agency or by an entity affiliated with a public housing agency;

(B) by a partnership, a limited liability company, or other entity in which the public housing agency (or an entity affiliated with a public housing agency) is a general partner, managing member, or otherwise participates in the activities of that entity;

(C) by any entity that grants to the public housing agency the right of first refusal and first option to purchase, after the close of the compliance period, of the qualified low-income building in which the public housing units exist in accordance with section 42(i)(7) of title 26; or

(D) in accordance with such other terms and conditions as the Secretary may prescribe by regulation.

(e) Structure of projects

Each mixed-finance project shall be developed—

(1) in a manner that ensures that public housing units are made available in the project, by regulatory and operating agreement, master contract, individual lease, condominium or cooperative agreement, or equity interest;

(2) in a manner that ensures that the number of public housing units bears approximately the same proportion to the total number of units in the mixed-finance project as the value of the total financial commitment provided by the public housing agency bears to the value of the total financial commitment in the project, or shall not be less than the number of units that could have been developed under the conventional public housing program with the assistance, or as may otherwise be approved by the Secretary; and

(3) in accordance with such other requirements as the Secretary may prescribe by regulation.

[1] So in original.

(f) Taxation

(1) In general

A public housing agency may elect to exempt all public housing units in a mixed-finance project—

(A) from the provisions of section 1437d(d) of this title, and instead subject such units to local real estate taxes; and

(B) from the finding of need and cooperative agreement provisions under section 1437c(e)(1)(ii) and 1437c(e)(2) of this title, but only if the development of the units is not inconsistent with the jurisdiction's comprehensive housing affordability strategy.

(2) Low-income housing tax credit

With respect to any unit in a mixed-finance project that is assisted pursuant to the low-income housing tax credit under section 42 of title 26, the rents charged to the residents may be set at levels not to exceed the amounts allowable under that section, provided that such levels for public housing residents do not exceed the amounts allowable under section 1437a of this title.

(g) Use of savings

Notwithstanding any other provision of this chapter, to the extent deemed appropriate by the Secretary, to facilitate the establishment of socioeconomically mixed communities, a public housing agency that uses assistance from the Capital Fund for a mixed-finance project, to the extent that income from such a project reduces the amount of assistance used for operating or other costs relating to public housing, may use such resulting savings to rent privately developed dwelling units in the neighborhood of the mixed-finance project. Such units shall be made available for occupancy only by low-income families eligible for residency in public housing.

(h) Effect of certain contract terms

If an entity that owns or operates a mixed-finance project, that includes a significant number of units other than public housing units enters into a contract with a public housing agency, the terms of which obligate the entity to operate and maintain a specified number of units in the project as public housing units in accordance with the requirements of this chapter for the period required by law, such contractual terms may provide that, if, as a result of a reduction in appropriations under section 1437g of this title or any other change in applicable law, the public housing agency is unable to fulfill its contractual obligations with respect to those public housing units, that entity may deviate, under procedures and requirements developed through regulations by the Secretary, from otherwise applicable restrictions under this chapter regarding rents, income eligibility, and other areas of public housing management with respect to a portion or all of those public housing units, to the extent necessary to preserve the viability of those units while maintaining the low-income character of the units to the maximum extent practicable.

(Sept. 1, 1937, ch. 896, title I, § 35, as added Pub. L. 105–276, title V, § 539[(a)], Oct. 21, 1998, 112 Stat. 2594.)

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

REGULATIONS

Pub. L. 105–276, title V, § 539(b), Oct. 21, 1998, 112 Stat. 2596, provided that: ''The Secretary shall issue such regulations as may be necessary to promote the development of mixed-finance projects, as that term is defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)] (as amended by this Act).''

SUBCHAPTER II—ASSISTED HOUSING FOR INDIANS AND ALASKA NATIVES

§§ 1437aa to 1437ee. Repealed. Pub. L. 104–330, title V, § 501(a), Oct. 26, 1996, 110 Stat. 4041

Section 1437aa, act Sept. 1, 1937, ch. 896, title II, § 201, as added June 29, 1988, Pub. L. 100–358, § 2, 102 Stat. 676; amended Nov. 28, 1990, Pub. L. 101–625, title V, § 572(2), 104 Stat. 4236; Oct. 28, 1992, Pub. L. 102–550, title I, § 122(a), 106 Stat. 3708, related to establishment of separate program of assisted housing for Indians and Alaska Natives.

Section 1437bb, act Sept. 1, 1937, ch. 896, title II, § 202, as added June 29, 1988, Pub. L. 100–358, § 2, 102 Stat. 676; amended Nov. 28, 1990, Pub. L. 101–625, title V, §§ 516, 572(1), 104 Stat. 4199, 4236; Oct. 28, 1992, Pub. L. 102–550, title I, § 122(b), 106 Stat. 3709, related to mutual help homeownership opportunity program.

Section 1437cc, act Sept. 1, 1937, ch. 896, title II, § 203, as added June 29, 1988, Pub. L. 100–358, § 2, 102 Stat. 679; amended Nov. 28, 1990, Pub. L. 101–625, title V, § 572(2), 104 Stat. 4236; Oct. 28, 1992, Pub. L. 102–550, title I, § 122(c), 106 Stat. 3709, related to public housing maximum contributions, provision of related facilities and services, and accessibility to physically handicapped persons.

Section 1437dd, act Sept. 1, 1937, ch. 896, title II, § 204, as added June 29, 1988, Pub. L. 100–358, § 2, 102 Stat. 679; amended Nov. 28, 1990, Pub. L. 101–625, title V, § 572(1), 104 Stat. 4236, related to annual report under section 3536 of this title.

Section 1437ee, act Sept. 1, 1937, ch. 896, title II, § 205, as added June 29, 1988, Pub. L. 100–358, § 2, 102 Stat. 680, related to issuance of regulations to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 1437ff. Transferred

CODIFICATION

Section, Pub. L. 101–625, title IX, § 959, Nov. 28, 1990, 104 Stat. 4423, which related to waiver of matching funds requirements in Indian housing programs, was transferred to section 4104 of Title 25, Indians.

SUBCHAPTER II–A—HOPE FOR PUBLIC HOUSING HOMEOWNERSHIP

AMENDMENTS

1996—Pub. L. 104–330, title V, § 501(c)(1), Oct. 26, 1996, 110 Stat. 4042, added subchapter heading and struck out former subchapter heading which read as follows: ''HOPE FOR PUBLIC AND INDIAN HOUSING HOMEOWNERSHIP''.

§ 1437aaa. Program authority

(a) In general

The Secretary is authorized to make—

(1) planning grants to help applicants to develop homeownership programs in accordance with this subchapter; and

(2) implementation grants to carry out homeownership programs in accordance with this subchapter.

(b) Authority to reserve housing assistance

In connection with a grant under this subchapter, the Secretary may reserve authority to provide assistance under section 1437f of this title to the extent necessary to provide replacement housing and rental assistance for a nonpurchasing tenant who resides in the project on the date the Secretary approves the application for an implementation grant, for use by the tenant in another project.

(Sept. 1, 1937, ch. 896, title III, § 301, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4148; amended Pub. L. 102–550, title I, § 181(a)(2)(A), Oct. 28, 1992, 106 Stat. 3735.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–550 struck out subsec. (c) which read as follows: ''There are authorized to be appropriated for grants under this subchapter $68,000,000 for fiscal year 1991 and $380,000,000 for fiscal year 1992. Any amount appropriated pursuant to this subsection shall remain available until expended.''

SHORT TITLE

Section 401 of title IV of Pub. L. 101–625 provided that: ''This title [enacting this subchapter and subchapter IV (§ 12871 et seq.) of chapter 130 of this title, amending sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, Banks and Banking, and enacting provisions set out as notes under this section and sections 1437c and 1437aa of this title] may be cited as the 'Homeownership and Opportunity Through HOPE Act'.''

ESTABLISHMENT AND IMPLEMENTATION OF REQUIREMENTS BY SECRETARY

Section 418 of Pub. L. 101–625 provided that: ''Not later than the expiration of the 180-day period beginning on the date that funds authorized under title III of the United States Housing Act of 1937 [this subchapter] first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this subtitle [subtitle A (§§ 411–419) of title IV of Pub. L. 101–625, enacting this subchapter, amending sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title, and enacting provisions set out as notes under sections 1437c and 1437aa of this title]. Such requirements shall be subject to section 553 of title 5, United States Code. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period beginning on the date of the notice.''

§ 1437aaa–1. Planning grants

(a) Grants

The Secretary is authorized to make planning grants to applicants for the purpose of developing homeownership programs under this subchapter. The amount of a planning grant under this section may not exceed $200,000, except that the Secretary may for good cause approve a grant in a higher amount.

(b) Eligible activities

Planning grants may be used for activities to develop homeownership programs (which may include programs for cooperative ownership), including—

(1) development of resident management corporations and resident councils;

(2) training and technical assistance for applicants related to development of a specific homeownership program;

(3) studies of the feasibility of a homeownership program;

(4) inspection for lead-based paint hazards, as required by section 4822(a) of this title;

(5) preliminary architectural and engineering work;

(6) tenant and homebuyer counseling and training;

(7) planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency of homebuyers and homeowners under the homeownership program;

(8) development of security plans; and

(9) preparation of an application for an implementation grant under this subchapter.

(c) Application

(1) Form and procedures

An application for a planning grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for a planning grant, specifying the activities proposed to be carried out, the schedule for completing the activities, the personnel necessary to complete the activities, and the amount of the grant requested;

(B) a description of the applicant and a statement of its qualifications;

(C) identification and description of the public housing project or projects involved, and a description of the composition of the tenants, including family size and income;

(D) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(E) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 794 of title 29, and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall, by regulation, establish selection criteria for a national competition for assistance under this section, which shall include—

(1) the qualifications or potential capabilities of the applicant;

(2) the extent of tenant interest in the development of a homeownership program for the project;

(3) the potential of the applicant for developing a successful and affordable homeownership program and the suitability of the project for homeownership;

(4) national geographic diversity among projects for which applicants are selected to receive assistance; and

(5) such other factors that the Secretary shall require that (in the determination of the Secretary) are appropriate for purposes of carrying out the program established by this subchapter in an effective and efficient manner.

(Sept. 1, 1937, ch. 896, title III, § 302, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4149; amended Pub. L. 102–550, title X, § 1012(h)(1), Oct. 28, 1992, 106 Stat. 3906.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (c)(2)(E), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(E), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(E), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(4) to (9). Pub. L. 102–550 added par. (4) and redesignated former pars. (4) to (8) as (5) to (9), respectively.

§ 1437aaa–2. Implementation grants

(a) Grants

The Secretary is authorized to make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this subchapter.

(b) Eligible activities

Implementation grants may be used for activities to carry out homeownership programs (including programs for cooperative ownership) that meet the requirements under this subchapter, including the following activities:

(1) Architectural and engineering work.

(2) Implementation of the homeownership program, including acquisition of the public housing project from a public housing agency for the purpose of transferring ownership to eligible families in accordance with a homeownership program that meets the requirements under this subchapter.

(3) Rehabilitation of any public housing project covered by the homeownership program, in accordance with standards established by the Secretary.

(4) Abatement of lead-based paint hazards, as required by section 4822(a) of this title.

(5) Administrative costs of the applicant, which may not exceed 15 percent of the amount of assistance provided under this section.

(6) Development of resident management corporations and resident management councils, but only if the applicant has not received assistance under section 1437aaa–1 of this title for such activities.

(7) Counseling and training of homebuyers and homeowners under the homeownership program.

(8) Relocation of tenants who elect to move.

(9) Any necessary temporary relocation of tenants during rehabilitation.

(10) Funding of operating expenses and replacement reserves of the project covered by the homeownership program, except that the amount of assistance for operating expenses shall not exceed the amount the project would have received if it had continued to receive such assistance from the Operating Fund, with adjustments comparable to those that would have been made under section 1437g of this title, and except that implementation grants may not be used under this paragraph to fund operating expenses for scattered site public housing acquired under a homeownership program.

(11) Implementation of a replacement housing plan.

(12) Legal fees.

(13) Defraying costs for the ongoing training needs of the recipient that are related to developing and carrying out the homeownership program.

(14) Economic development activities that promote economic self-sufficiency of homebuyers, residents, and homeowners under the homeownership program.

(c) Matching funding

(1) In general

Each recipient shall assure that contributions equal to not less than 25 percent of the grant amount made available under this section, excluding any amounts provided for post-sale operating expenses and replacement housing, shall be provided from non-Federal sources to carry out the homeownership program.

(2) Form

Such contributions may be in the form of—

(A) cash contributions from non-Federal resources, which may not include Federal tax expenditures or funds from a grant made under section 5306(b) of this title or section 5306(d) of this title;

(B) payment of administrative expenses, as defined by the Secretary, from non-Federal resources, including funds from a grant made under section 5306(b) of this title or section 5306(d) of this title;

(C) the value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this subchapter;

(D) the value of land or other real property as appraised according to procedures acceptable to the Secretary;

(E) the value of investment in on-site and off-site infrastructure required for a homeownership program assisted under this subchapter; or

(F) such other in-kind contributions as the Secretary may approve.

Contributions for administrative expenses shall be recognized only up to an amount equal to 7 percent of the total amount of grants made available under this section.

(3) Reduction of requirement

The Secretary shall reduce the matching requirement for homeownership programs carried out under this section in accordance with the formula established under section 220(d) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12750(d)].

(d) Application

(1) Form and procedure

An application for an implementation grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for an implementation grant, specifying the amount of the grant requested and its proposed uses;

(B) if applicable, an application for assistance under section 1437f of this title, which shall specify the proposed uses of such assistance and the period during which the assistance will be needed;

(C) a description of the qualifications and experience of the applicant in providing housing for low-income families;

(D) a description of the proposed homeownership program, consistent with section 1437aaa–3 of this title and the other requirements of this subchapter, which shall specify the activities proposed to be carried out and their estimated costs, identifying reasonable schedules for carrying it out, and demonstrating that the program will comply with the affordability requirements under section 1437aaa–3(b) of this title;

(E) identification and description of the public housing project or projects involved, and a description of the composition of the tenants, including family size and income;

(F) a description of and commitment for the resources that are expected to be made available to provide the matching funding required under subsection (c) of this section and of other resources that are expected to be made available in support of the homeownership program;

(G) identification and description of the financing proposed for any (i) rehabilitation and (ii) acquisition (I) of the property, where applicable, by a resident council or other entity for transfer to eligible families, and (II) by eligible families of ownership interests in, or shares representing, units in the project;

(H) if the applicant is not a public housing agency, the proposed sales price, if any, the basis for such price determination, and terms to the applicant;

(I) the estimated sales prices, if any, and terms to eligible families;

(J) any proposed restrictions on the resale of units under a homeownership program;

(K) identification and description of the entity that will operate and manage the property;

(L) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 105 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12705] that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(M) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 794 of title 29, and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(e) Selection criteria

The Secretary shall establish selection criteria for a national competition for assistance under this section, which shall include—

(1) the ability of the applicant to develop and carry out the proposed homeownership program, taking into account the quality of any related ongoing program of the applicant, and the extent of tenant interest in the development of a homeownership program and community support;

(2) the feasibility of the homeownership program;

(3) the extent to which current tenants and other eligible families will be able to afford the purchase;

(4) the quality and viability of the proposed homeownership program, including the viability of the economic self-sufficiency plan;

(5) the extent to which funds for activities that do not qualify as eligible activities will be provided in support of the homeownership program;

(6) whether the approved comprehensive housing affordability strategy for the jurisdiction within which the public housing project is located includes the proposed homeownership program as one of the general priorities identified pursuant to section 105(b)(7) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12705(b)(7)];

(7) national geographic diversity among housing for which applicants are selected to receive assistance; and

(8) the extent to which a sufficient supply of affordable rental housing exists in the locality, so that the implementation of the homeownership program will not reduce the number of such rental units available to residents currently residing in such units or eligible for residency in such units.

(f) Location within participating jurisdictions

The Secretary may approve applications for grants under this subchapter only for public housing projects located within the boundaries of jurisdictions—

(1) which are participating jurisdictions under title III of the Cranston-Gonzalez National Affordable Housing Act; or

(2) on behalf of which the agency responsible for affordable housing has submitted a housing strategy or plan.

(g) Approval

The Secretary shall notify each applicant, not later than 6 months after the date of the submission of the application, whether the application is approved or not approved. The Secretary may approve the application for an implementation grant with a statement that the application for the section 8 [42 U.S.C. 1437f] assistance for replacement housing and for residents of the project not purchasing units is conditionally approved, subject to the availability of appropriations in subsequent fiscal years.

(Sept. 1, 1937, ch. 896, title III, §303, as added Pub. L. 101–625, title IV, §411, Nov. 28, 1990, 104 Stat. 4150; amended Pub. L. 102–550, title I, §181(b), (c), (g)(1), title X, §1012(h)(2), Oct. 28, 1992, 106 Stat. 3735, 3736, 3906; Pub. L. 105–276, title V, §519(c)(1), Oct. 21, 1998, 112 Stat. 2561.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (b) (introductory provisions) and (c)(2)(C), (E), was in the original ''this subtitle'', and was translated as reading ''this title'', meaning title III of act Sept. 1, 1937, ch. 896, as added by Pub. L. 101–625, to reflect the probable intent of Congress, because title III of act Sept. 1, 1937, does not contain subtitles.

The Fair Housing Act, referred to in subsec. (d)(2)(M), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I of chapter 45 (§3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(2)(M), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (d)(2)(M), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (f)(1), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title III of the Act enacted subchapter III (§12851 et seq.) of chapter 130 of this title and sections 1735f–17 and 1735f–18 of Title 12, Banks and Banking, amended sections 1703, 1708, 1709, 1715d, 1715z–20, 1721, and 1735f–9 of Title 12, and enacted provisions set out as notes under sections 1703, 1709, 1713, and 1735f–18 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(10). Pub. L. 105–276 substituted ''such assistance from the Operating Fund'' for ''such assistance under section 1437g of this title''.

1992—Subsec. (b)(2). Pub. L. 102–550, § 181(g)(1)(A), struck out ''(not including scattered site single family housing of a public housing agency)'' after ''public housing project''.

Subsec. (b)(4) to (8). Pub. L. 102–550, § 1012(h)(2), added par. (4) and redesignated former pars. (4) to (7) as (5) to (8), respectively. Former par. (8) redesignated (9).

Subsec. (b)(9). Pub. L. 102–550, § 1012(h)(2)(A), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Pub. L. 102–550, § 181(g)(1)(B), which directed insertion of '', and except that implementation grants may not be used under this paragraph to fund operating expenses for scattered site public housing acquired under a homeownership program'' before period at end of section ''303(b)(9) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437aaa–2(b)(9))'', was executed by making the insertion before period at end of subsec. (b)(9) of this section, which is section 303 of the United States Housing Act of 1937, to reflect the probable intent of Congress.

Subsec. (b)(10) to (14). Pub. L. 102–550, § 1012(h)(2)(A), redesignated pars. (9) to (13) as (10) to (14), respectively.

Subsec. (c)(1). Pub. L. 102–550, § 181(b)(1), inserted ''and replacement housing'' after ''expenses''.

Subsec. (c)(3). Pub. L. 102–550, § 181(b)(2), added par. (3).

Subsec. (e)(8). Pub. L. 102–550, § 181(c), struck out ''of the type assisted under this subchapter'' after ''rental housing'' and ''appreciably'' before ''reduce''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

§ 1437aaa–3. Homeownership program requirements

(a) In general

A homeownership program under this subchapter shall provide for acquisition by eligible families of ownership interests in, or shares representing, at least one-half of the units in a public housing project under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership), for occupancy by the eligible families.

(b) Affordability

A homeownership program under this subchapter shall provide for the establishment of sales prices (including principal, insurance, taxes, and interest and closing costs) for initial acquisition of the property from the public housing agency if the applicant is not a public housing agency, and for sales to eligible families, such that an eligible family shall not be required to expend more than 30 percent of the adjusted income of the family per month to complete a sale under the homeownership program.

(c) Plan

A homeownership program under this subchapter shall provide, and include a plan, for—

(1) identifying and selecting eligible families to participate in the homeownership program;

(2) providing relocation assistance to families who elect to move;

(3) ensuring continued affordability by tenants, homebuyers, and homeowners in the project;

(4) providing ongoing training and counseling for homebuyers and homeowners; and

(5) replacing units in eligible projects covered by a homeownership program.

(d) Acquisition and rehabilitation limitations

Acquisition or rehabilitation of public housing projects under a homeownership program under this subchapter may not consist of acquisition or rehabilitation of less than the whole public housing project in a project consisting of more than 1 building. The provisions of this subsection may be waived upon a finding by the Secretary that the sale of less than all the buildings in a project is feasible and will not result in a hardship to any tenants of the project who are not included in the homeownership program.

(e) Financing

(1) In general

The application shall identify and describe the proposed financing for (A) any rehabilitation, and (B) acquisition (i) of the project, where applicable, by an entity other than the public housing agency for transfer to eligible families, and (ii) by eligible families of ownership interests in, or shares representing, units in the project. Financing may include use of the implementation grant, sale for cash, or other sources of financing (subject to applicable requirements), including conventional mortgage loans and mortgage loans insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

(2) Prohibition against pledges

Property transferred under this subchapter shall not be pledged as collateral for debt or otherwise encumbered except when the Secretary determines that—

(A) such encumbrance will not threaten the long-term availability of the property for occupancy by low-income families;

(B) neither the Federal Government nor the public housing agency will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (3);

(C) any debt obligation can be serviced from project income, including operating assistance; and

(D) the proceeds of such encumbrance will be used only to meet housing standards in accordance with subsection (f) of this section or to make such additional capital improvements as the Secretary determines to be consistent with the purposes of this subchapter.

(3) Opportunity to cure

Any lender that provides financing in connection with a homeownership program under this subchapter shall give the public housing agency, resident management corporation, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default.

(f) Housing quality standards

The application shall include a plan ensuring that the unit—

(1) will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in, or shares representing, a unit to an eligible family; and

(2) will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards established by the Secretary for the purposes of this subchapter.

(g) Repealed. Pub. L. 105–276, title V, § 531(b)(1), Oct. 21, 1998, 112 Stat. 2573

(h) Protection of non-purchasing families

(1) In general

No tenant residing in a dwelling unit in a public housing project on the date the Secretary approves an application for an implementation grant may be evicted by reason of a homeownership program approved under this subchapter.

(2) Replacement assistance

If the tenant decides not to purchase a unit, or is not qualified to do so, the recipient shall, during the term of any operating assistance under the implementation grant, permit each otherwise qualified tenant to continue to reside in the project at rents that do not exceed levels consistent with section 1437a(a) of this title or, if an otherwise qualified tenant chooses to move (at any time during the term of such operating assistance contract), the public housing agency shall, to the extent approved in appropriations Acts, offer such tenant (A) a unit in another public housing project, or (B) section 8 [42 U.S.C. 1437f] assistance for use in other housing.

(3) Relocation assistance

The recipient shall also inform each such tenant that if the tenant chooses to move, the recipient will pay relocation assistance in accordance with the approved homeownership program.

(4) Other rights

Tenants renting a unit in a project transferred under this subchapter shall have all rights provided to tenants of public housing under this chapter.

(Sept. 1, 1937, ch. 896, title III, § 304, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4153; amended Pub. L. 102–550, title I, § 181(g)(1)(A), Oct. 28, 1992, 106 Stat. 3736; Pub. L. 104–19, title I, § 1002(b), July 27, 1995, 109 Stat. 236; Pub. L. 105–276, title V, § 531(b)(1), Oct. 21, 1998, 112 Stat. 2573.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (e)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

This subchapter, referred to in subsec. (e)(3), was in the original ''this subtitle'', and was translated as reading ''this title'', meaning title III of act Sept. 1, 1937, ch. 896, as added by Pub. L. 101–625, to reflect the probable intent of Congress, because title III of act Sept. 1, 1937, does not contain subtitles.

AMENDMENTS

1998—Subsec. (g). Pub. L. 105–276 struck out subsec. (g) which prohibited transfer of projects without plan for replacement housing. See 1995 Amendment note below.

1995—Subsec. (g). Pub. L. 104–19 struck out subsec. (g) which prohibited transfer of projects without plan for replacement housing.

1992—Subsec. (d). Pub. L. 102–550 struck out ''(not including scattered site single family housing of a public housing agency)'' after ''housing project''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 531(b)(1) of Pub. L. 105–276 effective with respect to any plan for the demolition, disposition, or conversion to homeownership of public housing that is approved by Secretary after Sept. 30, 1995, see section 531(b)(2) of Pub. L. 105–276, set out as a note below.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–19 effective for applications for demolition, disposition, or conversion to homeownership of public housing approved by the Secretary, and other consolidation and relocation activities of public housing agencies undertaken on, before, or after Sept. 30, 1995, and on or before Sept. 30, 1998, see section 1002(d) of Pub. L. 104–19, as amended, set out as a note under section 1437c of this title.

HOMEOWNERSHIP REPLACEMENT PLAN

Pub. L. 105–276, title V, § 531(b), Oct. 21, 1998, 112 Stat. 2573, provided that:

''(1) IN GENERAL.—Notwithstanding subsections (b) and (c) of section 1002 of the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred At Oklahoma City, and Rescissions Act, 1995 [amending this section and enacting provision set out as a note under section 1437c of this title] (Public Law 104–19; 109 Stat. 236), subsection (g) of section 304 of the United States Housing Act of 1937 (42 U.S.C. 1437aaa–3(g)) is repealed.

''(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective with respect to any plan for the demolition, disposition, or conversion to homeownership of public housing that is approved by the Secretary after September 30, 1995.''

§ 1437aaa–4. Other program requirements

(a) Sale by public housing agency to applicant or other entity required

Where the Secretary approves an application providing for the transfer of the eligible project from the public housing agency to another applicant, the public housing agency shall transfer the project to such other applicant, in accordance with the approved homeownership program.

(b) Preferences

In selecting eligible families for homeownership, the recipient shall give a first preference to otherwise qualified current tenants and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program specified by the Secretary.

(c) Cost limitations

The Secretary may establish cost limitations on eligible activities under this subchapter, subject to the provisions of this subchapter.

(d) Annual contributions

Notwithstanding the purchase of a public housing project under this section, or the pur-

chase of a unit in a public housing project by an eligible family, the Secretary shall continue to pay annual contributions with respect to the project. Such contributions may not exceed the maximum contributions authorized in section 1437c(a) of this title.

(e) Amounts from Operating Fund allocation

Amounts from an allocation from the Operating Fund under section 1437g of this title shall not be available with respect to a public housing project after the date of its sale by the public housing agency.

(f) Use of proceeds from sales to eligible families

The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary.

(g) Restrictions on resale by homeowners

(1) In general

(A) Transfer permitted

A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

(B) Right to purchase

Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. If such an entity does not have jurisdiction over the unit or elects not to purchase and if the prospective buyer is not a low-income family, the public housing agency or the implementation grant recipient shall have the right to purchase the ownership interest in, or shares representing, the unit for the same amount.

(C) Promissory note required

The homeowner shall execute a promissory note equal to the difference between the market value and the purchase price, payable to the public housing agency or other entity designated in the homeownership plan, together with a mortgage securing the obligation of the note.

(2) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the homeownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(A) the contribution to equity paid by the family;

(B) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(C) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of initial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) 6–20 years

In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in paragraph (1)(C).

(4) Use of recaptured funds

Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this subsection shall be paid to the entity that transferred ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary. The remaining 50 percent shall be returned to the Secretary for use under this subchapter, subject to limitations contained in appropriations Acts. Such entity shall keep and make available to the Secretary all records necessary to calculate accurately payments due the Secretary under this subsection.

(h) Third party rights

The requirements under this subchapter regarding quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the grant recipient with respect to actions involving rehabilitation, and against purchasers of property under this subsection or their successors in interest with respect to other actions by affected low-income families, resident management corporations, resident councils, public housing agencies, and any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(i) Dollar limitation on economic development activities

Not more than an aggregate of $250,000 from amounts made available under sections 1437aaa–1 and 1437aaa–2 of this title may be used for economic development activities under sections 1437aaa–1(b)(6)[1] and 1437aaa–2(b)(9)[1] of this title for any project.

(j) Timely homeownership

Recipients shall transfer ownership of the property to tenants within a specified period of time that the Secretary determines to be reasonable. During the interim period when the property continues to be operated and managed as rental housing, the recipient shall utilize written tenant selection policies and criteria that are consistent with the public housing program and that are approved by the Secretary as consistent with the purpose of improving housing opportunities for low-income families. The recipient shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(k) Capability of resident management corporations and resident councils

To be eligible to receive a grant under section 1437aaa–2 of this title, a resident management corporation or resident council shall demonstrate to the Secretary its ability to manage public housing by having done so effectively and efficiently for a period of not less than 3 years or by arranging for management by a qualified management entity.

(*l*) Records and audit of recipients of assistance

(1) In general

Each recipient shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of assistance received under this subchapter (and any proceeds from financing obtained in accordance with subsection (b) of this section or sales under subsections (f) and (g)(4) of this section), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(2) Access by the Secretary

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subchapter.

(3) Access by the Comptroller General

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subchapter.

(Sept. 1, 1937, ch. 896, title III, § 305, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4155; amended Pub. L. 105–276, title V, § 519(c)(2), Oct. 21, 1998, 112 Stat. 2561.)

[1] See References in Text note below.

REFERENCES IN TEXT

This subchapter, referred to in subsec. (g)(4), was in the original ''this subtitle'', and was translated as reading ''this title'', meaning title III of act Sept. 1, 1937, ch. 896, as added by Pub. L. 101–625, to reflect the probable intent of Congress, because title III of act Sept. 1, 1937, does not contain subtitles.

Section 1437aaa–1(b)(6) of this title, referred to in subsec. (i), was redesignated section 1437aaa–1(b)(7) of this title by Pub. L. 102–550, title X, § 1012(h)(1)(A), Oct. 28, 1992, 106 Stat. 3906.

Section 1437aaa–2(b)(9) of this title, referred to in subsec. (i), was redesignated section 1437aaa–2(b)(10) of this title by Pub. L. 102–550, title X, § 1012(h)(2)(A), Oct. 28, 1992, 106 Stat. 3906.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–276 substituted ''Amounts from an allocation from the Operating Fund'' for ''Operating subsidies''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

§ 1437aaa–5. Definitions

For purposes of this subchapter:

(1) The term ''applicant'' means the following entities that may represent the tenants of the project:

(A) A public housing agency.

(B) A resident management corporation, established in accordance with requirements of the Secretary under section 1437r of this title.

(C) A resident council.

(D) A cooperative association.

(E) A public or private nonprofit organization.

(F) A public body, including an agency or instrumentality thereof.

(2) The term ''eligible family'' means—

(A) a family or individual who is a tenant in the public housing project on the date the Secretary approves an implementation grant;

(B) a low-income family; or

(C) a family or individual who is assisted under a housing program administered by the Secretary or the Secretary of Agriculture (not including any non-low income families assisted under any mortgage insurance program administered by either Secretary).

(3) The term ''homeownership program'' means a program for homeownership meeting the requirements under this subchapter.

(4) The term ''recipient'' means an applicant approved to receive a grant under this subchapter or such other entity specified in the approved application that will assume the obligations of the recipient under this subchapter.

(5) The term ''resident council'' means any incorporated nonprofit organization or association that—

(A) is representative of the tenants of the housing;

(B) adopts written procedures providing for the election of officers on a regular basis; and

(C) has a democratically elected governing board, elected by the tenants of the housing.

(Sept. 1, 1937, ch. 896, title III, § 306, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4158; amended Pub. L. 104–330, title V, § 501(c)(2), Oct. 26, 1996, 110 Stat. 4042.)

AMENDMENTS

1996—Par. (1)(A). Pub. L. 104–330, § 501(c)(2)(A), struck out ''(including an Indian housing authority)'' after ''agency''.

Par. (2)(A). Pub. L. 104–330, § 501(c)(2)(B), struck out ''or Indian'' after ''public''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 1437aaa–6. Relationship to other homeownership opportunities

The program authorized under this subchapter shall be in addition to any other public housing homeownership and management opportunities, including opportunities under section 1437c(h)[1] of this title.

(Sept. 1, 1937, ch. 896, title III, § 307, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4159; amended Pub. L. 104–330, title V, § 501(c)(3), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, § 518(a)(2)(C), Oct. 21, 1998, 112 Stat. 2551.)

REFERENCES IN TEXT

Section 1437c(h) of this title, referred to in text, was repealed and a new section 1437c(h), relating to audits, was added by Pub. L. 105–276, title V, §§ 518(a)(1)(A), 566, Oct. 21, 1998, 112 Stat. 2551, 2632. See 1998 Amendment note below.

AMENDMENTS

1998—Pub. L. 105–276, which directed amendment of text by striking out ''section 5(h) and'' in original (a reference to section 1437c(h) of this title), could not be executed because the word ''and'' does not appear.

1996—Pub. L. 104–330 struck out ''and subchapter II of this chapter'' after ''section 1437c(h) of this title''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 1437aaa–7. Limitation on selection criteria

In establishing criteria for selecting applicants to receive assistance under this subchapter, the Secretary may not establish any selection criterion or criteria that grant or deny such assistance to an applicant (or have the effect of granting or denying assistance) based on the implementation, continuation, or discontinuation of any public policy, regulation, or law of any jurisdiction in which the applicant or project is located.

(Sept. 1, 1937, ch. 896, title III, § 308, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4159.)

§ 1437aaa–8. Annual report

The Secretary shall annually submit to the Congress a report setting forth—

(1) the number, type, and cost of public housing units sold pursuant to this subchapter;

(2) the income, race, gender, children, and other characteristics of families participating (or not participating) in homeownership programs funded under this subchapter;

(3) the amount and type of financial assistance provided under and in conjunction with this subchapter;

(4) the amount of financial assistance provided under this subchapter that was needed to ensure continued affordability and meet future maintenance and repair costs; and

(5) the recommendations of the Secretary for statutory and regulatory improvements to the program.

(Sept. 1, 1937, ch. 896, title III, § 309, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4159.)

SUBCHAPTER II–B—HOME RULE FLEXIBLE GRANT DEMONSTRATION

§ 1437bbb. Purpose

The purpose of this subchapter is to demonstrate the effectiveness of authorizing local governments and municipalities, in coordination with the public housing agencies for such jurisdictions—

(1) to receive and combine program allocations of covered housing assistance; and

(2) to design creative approaches for providing and administering Federal housing assistance based on the particular needs of the jurisdictions that—

(A) provide incentives to low-income families with children whose head of the household is employed, seeking employment, or preparing for employment by participating in a job training or educational program, or any program that otherwise assists individuals in obtaining employment and attaining economic self-sufficiency;

(B) reduce costs of Federal housing assistance and achieve greater cost-effectiveness in Federal housing assistance expenditures;

(C) increase the stock of affordable housing and housing choices for low-income families;

(D) increase homeownership among low-income families;

(E) reduce geographic concentration of assisted families;

(F) reduce homelessness through providing permanent housing solutions;

[1] See References in Text note below.

(G) improve program management; and

(H) achieve such other purposes with respect to low-income families, as determined by the participating local governments and municipalities in coordination with the public housing agencies;[1]

(Sept. 1, 1937, ch. 896, title IV, § 401, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2616.)

EFFECTIVE DATE

Act Sept. 1, 1937, ch. 896, title IV, § 411, as added by Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2624, provided that: ''This title [enacting this subchapter] shall take effect on the date of the enactment of the Quality Housing and Work Responsibility Act of 1998 [Oct. 21, 1998].''

§ 1437bbb–1. Flexible grant program

(a) Authority and use

The Secretary shall carry out a demonstration program in accordance with the purposes under section 1437bbb of this title and the provisions of this subchapter. A jurisdiction approved by the Secretary for participation in the program may receive and combine and enter into performance-based contracts for the use of amounts of covered housing assistance, in the manner determined appropriate by the participating jurisdiction, during the period of the jurisdiction's participation—

(1) to provide housing assistance and services for low-income families in a manner that facilitates the transition of such families to work;

(2) to reduce homelessness through providing permanent housing solutions;

(3) to increase homeownership among low-income families; or

(4) for other housing purposes for low-income families determined by the participating jurisdiction.

(b) Period of participation

A jurisdiction may participate in the demonstration program under this subchapter for a period consisting of not less than 1 nor more than 5 fiscal years.

(c) Participating jurisdictions

(1) In general

Subject to paragraph (2), during the 4-year period consisting of fiscal years 1999 through 2002, the Secretary may approve for participation in the program under this subchapter not more than an aggregate of 100 jurisdictions over the entire term of the demonstration program. A jurisdiction that was approved for participation in the demonstration program under this subchapter in a fiscal year and that is continuing such participation in any subsequent fiscal year shall count as a single jurisdiction for purposes of the numerical limitation under this paragraph.

(2) Exclusion of high performing agencies

Notwithstanding any other provision of this subchapter other than paragraph (4) of this subsection, the Secretary may approve for participation in the demonstration program under this subchapter only jurisdictions served by public housing agencies that—

(A) are not designated as high-performing agencies, pursuant to their most recent scores under the public housing management assessment program under section 1437d(j)(2) of this title (or any successor assessment program for public housing agencies), as of the time of approval; and

(B) have a most recent score under the public housing management assessment program under section 1437d(j)(2) of this title (or any successor assessment program for public housing agencies), as of the time of approval, that is among the lowest 40 percent of the scores of all agencies.

(3) Limitation on troubled and non-troubled PHAs

Of the jurisdictions approved by the Secretary for participation in the demonstration program under this subchapter—

(A) not more than 55 may be jurisdictions served by a public housing agency that, at the time of approval, is designated as a troubled agency under the public housing management assessment program under section 1437d(j)(2) of this title (or any successor assessment program for public housing agencies); and

(B) not more than 45 may be jurisdictions served by a public housing agency that, at the time of approval, is not designated as a troubled agency under the public housing management assessment program under section 1437d(j)(2) of this title (or any successor assessment program for public housing agencies).

(4) Exception

If the City of Indianapolis, Indiana submits an application for participation in the program under this subchapter and, upon review of the application under section 1437bbb–5(b) of this title, the Secretary determines that such application is approvable under this subchapter, the Secretary shall approve such application, notwithstanding the second sentence of section 1437bbb–5(b)(2) of this title. Such City shall count for purposes of the numerical limitations on jurisdictions under paragraphs (1) and (3) of this subsection, but the provisions of paragraph (2) of this subsection (relating to exclusion of high-performing agencies) shall not apply to such City.

(Sept. 1, 1937, ch. 896, title IV, § 402, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2617.)

§ 1437bbb–2. Program allocation and covered housing assistance

(a) Program allocation

In each fiscal year, the amount made available to each participating jurisdiction under the demonstration program under this subchapter shall be equal to the sum of the amounts of covered housing assistance that would otherwise be made available under the provisions of this chapter to the public housing agency for the jurisdiction.

[1] So in original. The semicolon probably should be a period.

(b) Covered housing assistance

For purposes of this subchapter, the term ''covered housing assistance'' means—

(1) operating assistance under section 1437g of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998);

(2) modernization assistance under section 1437*l* of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998);

(3) assistance for the certificate and voucher programs under section 1437f of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998);

(4) assistance from the Operating Fund under section 1437g(e) of this title;

(5) assistance from the Capital Fund under section 1437g(d) of this title; and

(6) tenant-based assistance under section 1437f of this title (as amended by the Quality Housing and Work Responsibility Act of 1998).

(Sept. 1, 1937, ch. 896, title IV, § 403, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2618.)

REFERENCES IN TEXT

The Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (b), is title V of Pub. L. 105–276, Oct. 21, 1998, 112 Stat. 2518. Section 503(a) of the Act is set out as an Effective Date of 1998 Amendment note under section 1437 of this title. For complete classification of this Act to the Code, see Tables.

Section 1437*l* of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

§ 1437bbb–3. Applicability of requirements under programs for covered housing assistance

(a) In general

In each fiscal year of the demonstration program under this subchapter, amounts made available to a participating jurisdiction under the demonstration program shall be subject to the same terms and conditions as such amounts would be subject to if made available under the provisions of this chapter pursuant to which covered housing assistance is otherwise made available under this chapter to the public housing agency for the jurisdiction, except that—

(1) the Secretary may waive any such term or condition identified by the jurisdiction to the extent that the Secretary determines such action to be appropriate to carry out the purposes of the demonstration program under this subchapter; and

(2) the participating jurisdiction may combine the amounts made available and use the amounts for any activity eligible under the programs under sections 1437f and 1437g of this title.

(b) Number of families assisted

In carrying out the demonstration program under this subchapter, each participating jurisdiction shall assist substantially the same total number of eligible low-income families as would have otherwise been served by the public housing agency for the jurisdiction had the jurisdiction not participated in the demonstration program under this subchapter.

(c) Protection of recipients

This subchapter may not be construed to authorize the termination of assistance to any recipient receiving assistance under this chapter before October 21, 1998, as a result of the implementation of the demonstration program under this subchapter.

(d) Effect on ability to compete for other programs

This subchapter may not be construed to affect the ability of any applying or participating jurisdiction (or a public housing agency for any such jurisdiction) to compete or otherwise apply for or receive assistance under any other housing assistance program administered by the Secretary.

(Sept. 1, 1937, ch. 896, title IV, § 404, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2619.)

§ 1437bbb–4. Program requirements

(a) Applicability of certain provisions

Notwithstanding section 1437bbb–3(a)(1) of this title, the Secretary may not waive, with respect to any participating jurisdiction, any of the following provisions:

(1) The first sentence of paragraph (1) of section 1437a(a) of this title (relating to eligibility of low-income families).

(2) Section 1437n of this title (relating to income eligibility and targeting of assistance).

(3) Paragraph (2) of section 1437a(a) of this title (relating to rental payments for public housing families).

(4) Paragraphs (2) and (3) of section 1437f(*o*) of this title (to the extent such paragraphs limit the amount of rent paid by families assisted with tenant-based assistance).

(5) Section 1437p of this title (relating to demolition or disposition of public housing).

(b) Compliance with assistance plan

A participating jurisdiction shall provide assistance using amounts received pursuant to this subchapter in the manner set forth in the plan of the jurisdiction approved by the Secretary under section 1437bbb–5(a)(2) of this title.

(Sept. 1, 1937, ch. 896, title IV, § 405, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2619.)

§ 1437bbb–5. Application

(a) In general

The Secretary shall provide for jurisdictions to submit applications for approval to participate in the demonstration program under this subchapter. An application—

(1) shall be submitted only after the jurisdiction provides for citizen participation through a public hearing and, if appropriate, other means;

(2) shall include a plan for the provision of housing assistance with amounts received pursuant to this subchapter that—

(A) is developed by the jurisdiction;

(B) takes into consideration comments from the public hearing, any other public comments on the proposed program, and

comments from current and prospective residents who would be affected; and

(C) identifies each term or condition for which the jurisdiction is requesting waiver under section 1437bbb–3(a)(1) of this title;

(3) shall describe how the plan for use of amounts will assist in meeting the purposes of, and be used in accordance with, sections 1437bbb and 1437bbb–1(a) of this title, respectively;

(4) shall propose standards for measuring performance in using assistance provided pursuant to this subchapter based on the performance standards under subsection (b)(4) of this section;

(5) shall propose the length of the period for participation of the jurisdiction is[1] in the demonstration program under this subchapter;

(6) shall—

(A) in the case of the application of any jurisdiction within whose boundaries are areas subject to any other unit of general local government, include the signed consent of the appropriate executive official of such unit to the application; and

(B) in the case of the application of a consortia of units of general local government (as provided under section 1437bbb–8(1)(B) of this title), include the signed consent of the appropriate executive officials of each unit included in the consortia;

(7) shall include information sufficient, in the determination of the Secretary—

(A) to demonstrate that the jurisdiction has or will have management and administrative capacity sufficient to carry out the plan under paragraph (2), including a demonstration that the applicant has a history of effectively administering amounts provided under other programs of the Department of Housing and Urban Development, such as the community development block grant program, the HOME investment partnerships program, and the programs for assistance for the homeless under the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11301 et seq.];

(B) to demonstrate that carrying out the plan will not result in excessive duplication of administrative efforts and costs, particularly with respect to activities performed by public housing agencies operating within the boundaries of the jurisdiction;

(C) to describe the function and activities to be carried out by such public housing agencies affected by the plan; and

(D) to demonstrate that the amounts received by the jurisdiction will be maintained separate from other funds available to the jurisdiction and will be used only to carry out the plan;

(8) shall include information describing how the jurisdiction will make decisions regarding asset management of housing for low-income families under programs for covered housing assistance or assisted with grant amounts under this subchapter;

(9) shall—

(A) clearly identify any State or local laws that will affect implementation of the plan under paragraph (2) and any contractual rights and property interests that may be affected by the plan;

(B) describe how the plan will be carried out with respect to such laws, rights, and interests; and

(C) contain a legal memorandum sufficient to describe how the plan will comply with such laws and how the plan will be carried out without violating or impairing such rights and interests; and

(10) shall identify procedures for how the jurisdiction shall return to providing covered assistance for the jurisdiction under the provisions of subchapter I of this chapter, in the case of determination under subsection (b)(4)(B) of this section.

A plan required under paragraph (2) to be included in the application may be contained in a memorandum of agreement or other document executed by a jurisdiction and public housing agency, if such document is submitted together with the application.

(b) Review, approval, and performance standards

(1) Review

The Secretary shall review each application for participation in the demonstration program under this subchapter and shall determine and notify the jurisdiction submitting the application, not later than 90 days after its submission, of whether the application is approvable under this subchapter. If the Secretary determines that the application of a jurisdiction is approvable under this subchapter, the Secretary shall provide affected public housing agencies an opportunity to review and to provide written comments on the application for a period of not less than 30 days after notification under the preceding sentence. If the Secretary determines that an application is not approvable under this subchapter, the Secretary shall notify the jurisdiction submitting the application of the reasons for such determination. Upon making a determination of whether an application is approvable or nonapprovable under this subchapter, the Secretary shall make such determination publicly available in writing together with a written statement of the reasons for such determination.

(2) Approval

The Secretary may approve jurisdictions for participation in the demonstration program under this subchapter, but only from among applications that the Secretary has determined under paragraph[2] are approvable under this subchapter and only in accordance with section 1437bbb–1(c) of this title. The Secretary shall base the selection of jurisdictions to approve on the potential success, as evidenced by the application, in—

(A) achieving the goals set forth in the performance standards under paragraph (4)(A); and

[1] So in original.

[2] So in original. Probably should be preceded by ''this''.

(B) increasing housing choices for low-income families.

(3) Agreement

The Secretary shall offer to enter into an agreement with each jurisdiction approved for participation in the program under this subchapter providing for assistance pursuant to this subchapter for a period in accordance with section 1437bbb–1(b) of this title and incorporating a requirement that the jurisdiction achieve a particular level of performance in each of the areas for which performance standards are established under paragraph (4)(A) of this subsection. If the Secretary and the jurisdiction enter into an agreement, the Secretary shall provide any covered housing assistance for the jurisdiction in the manner authorized under this subchapter. The Secretary may not provide covered housing assistance for a jurisdiction in the manner authorized under this subchapter unless the Secretary and jurisdiction enter into an agreement under this paragraph.

(4) Performance standards

(A) Establishment

The Secretary and each participating jurisdiction may collectively establish standards for evaluating the performance of the participating jurisdiction in meeting the purposes under section 1437bbb of this title, which may include standards for—

(i) moving dependent low-income families to economic self-sufficiency;

(ii) reducing the per-family cost of providing housing assistance;

(iii) expanding the stock of affordable housing and housing choices for low-income families;

(iv) improving program management;

(v) increasing the number of homeownership opportunities for low-income families;

(vi) reducing homelessness through providing permanent housing resources;

(vii) reducing geographic concentration of assisted families; and

(viii) any other performance goals that the Secretary and the participating jurisdiction may establish.

(B) Failure to comply

If, at any time during the participation of a jurisdiction in the program under this subchapter, the Secretary determines that the jurisdiction is not sufficiently meeting, or making progress toward meeting, the levels of performance incorporated into the agreement of the jurisdiction pursuant to subparagraph (A), the Secretary shall terminate the participation of the jurisdiction in the program under this subchapter and require the implementation of the procedures included in the application of the jurisdiction pursuant to subsection (a)(10) of this section.

(5) Troubled agencies

The Secretary may establish requirements for the approval of applications under this section submitted by public housing agencies designated under section 1437d(j)(2) of this title as troubled, which may include additional or different criteria determined by the Secretary to be more appropriate for such agencies.

(c) Status of PHAs

This subchapter may not be construed to require any change in the legal status of any public housing agency or in any legal relationship between a jurisdiction and a public housing agency as a condition of participation in the program under this subchapter.

(d) PHA plans

In carrying out this subchapter, the Secretary may provide for a streamlined public housing agency plan and planning process under section 1437c–1 of this title for participating jurisdictions.

(Sept. 1, 1937, ch. 896, title IV, § 406, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2620; amended Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(7)(A), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§ 11301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(7)(A). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

§ 1437bbb–6. Training

The Secretary, in consultation with representatives of public and assisted housing interests, may provide training and technical assistance relating to providing assistance under this subchapter and may conduct detailed evaluations of up to 30 jurisdictions for the purpose of identifying replicable program models that are successful at carrying out the purposes of this subchapter.

(Sept. 1, 1937, ch. 896, title IV, § 407, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2623.)

§ 1437bbb–7. Accountability

(a) Maintenance of records

Each participating jurisdiction shall maintain such records as the Secretary may require to—

(1) document the amounts received by the jurisdiction under this chapter and the disposition of such amounts under the demonstration program under this subchapter;

(2) ensure compliance by the jurisdiction with this subchapter; and

(3) evaluate the performance of the jurisdiction under the demonstration program under this subchapter.

(b) Reports

Each participating jurisdiction shall annually submit to the Secretary a report in a form and at a time specified by the Secretary, which shall include—

(1) documentation of the use of amounts made available to the jurisdiction under this subchapter;

(2) any information as the Secretary may request to assist the Secretary in evaluating the demonstration program under this subchapter; and

(3) a description and analysis of the effect of assisted activities in addressing the objectives of the demonstration program under this subchapter.

(c) Access to documents by Secretary and Comptroller General

The Secretary and the Comptroller General of the United States, or any duly authorized representative of the Secretary or the Comptroller General, shall have access for the purpose of audit and examination to any books, documents, papers, and records maintained by a participating jurisdiction that relate to the demonstration program under this subchapter.

(d) Performance review and evaluation

(1) Performance review

Based on the performance standards established under section 1437bbb–5(b)(4) of this title, the Secretary shall monitor the performance of participating jurisdictions in providing assistance under this subchapter.

(2) Status report

Not later than 60 days after the conclusion of the second year of the demonstration program under this subchapter, the Secretary shall submit to Congress an interim report on the status of the demonstration program and the progress each participating jurisdiction in achieving the purposes of the demonstration program under section 1437bbb of this title.

(Sept. 1, 1937, ch. 896, title IV, § 408, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2623.)

§ 1437bbb–8. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Jurisdiction

The term ''jurisdiction'' means—

(A) a unit of general local government (as such term is defined in section 12704 of this title) that has boundaries, for purposes of carrying out this subchapter, that—

(i) wholly contain the area within which a public housing agency is authorized to operate; and

(ii) do not contain any areas contained within the boundaries of any other participating jurisdiction; and

(B) a consortia of such units of general local government, organized for purposes of this subchapter.

(2) Participating jurisdiction

The term ''participating jurisdiction'' means, with respect to a period for which such an agreement is made, a jurisdiction that has entered into an agreement under section 1437bbb–5(b)(3) of this title to receive assistance pursuant to this subchapter for such fiscal year.

(Sept. 1, 1937, ch. 896, title IV, § 409, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2624.)

§ 1437bbb–9. Termination and evaluation

(a) Termination

The demonstration program under this subchapter shall terminate not less than 2 and not more than 5 years after the date on which the demonstration program is commenced.

(b) Evaluation

Not later than 6 months after the termination of the demonstration program under this subchapter, the Secretary shall submit to the Congress a final report, which shall include—

(1) an evaluation[1] the effectiveness of the activities carried out under the demonstration program; and

(2) any findings and recommendations of the Secretary for any appropriate legislative action.

(Sept. 1, 1937, ch. 896, title IV, § 410, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2624.)

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 1438. Repealed. Pub. L. 105–276, title V, § 582(a)(15), Oct. 21, 1998, 112 Stat. 2644

Section, Pub. L. 93–383, title II, § 209, Aug. 22, 1974, 88 Stat. 669; Pub. L. 98–479, title II, § 201(g), Oct. 17, 1984, 98 Stat. 2228; Pub. L. 102–550, title VI, § 625(b), Oct. 28, 1992, 106 Stat. 3820, related to special low-income housing projects for elderly or disabled families.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement repeal before such date, and with savings provision, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1439. Local housing assistance plan

(a) Applicability of approved plan to housing assistance application; procedure upon receipt of application by Secretary of Housing and Urban Development; definitions

(1) The Secretary of Housing and Urban Development, upon receiving an application for housing assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.],[1] section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], or,[2] if the unit of general local government in which the proposed assistance is to be provided has an approved housing assistance plan, shall—

(A) not later than ten days after receipt of the application, notify the chief executive officer of such unit of general local government that such application is under consideration; and

(B) afford such unit of general local government the opportunity, during the thirty-day period beginning on the date of such notification, to object to the approval of the application on the grounds that the application is inconsistent with its housing assistance plan.

[1] So in original. Probably should be followed by ''of''.

[1] So in original. The comma probably should be ''or''.

[2] So in original. The word ''or'' and the comma probably should not appear.

Upon receiving an application for such housing assistance, the Secretary shall assure that funds made available under this section shall be utilized to the maximum extent practicable to meet the needs and goals identified in the unit of local government's housing assistance plan.

(2) If the unit of general local government objects to the application on the grounds that it is inconsistent with its housing assistance plan, the Secretary may not approve the application unless he determines that the application is consistent with such housing assistance plan. If the Secretary determines, that such application is consistent with the housing assistance plan, he shall notify the chief executive officer of the unit of general local government of his determination and the reasons therefor in writing. If the Secretary concurs with the objection of the unit of local government, he shall notify the applicant stating the reasons therefor in writing.

(3) If the Secretary does not receive an objection by the close of the period referred to in paragraph (1)(B), he may approve the application unless he finds it inconsistent with the housing assistance plan. If the Secretary determines that an application is inconsistent with a housing assistance plan, he shall notify the applicant stating the reasons therefor in writing.

(4) The Secretary shall make the determinations referred to in paragraphs (2) and (3) within thirty days after he receives an objection pursuant to paragraph (1)(B) or within thirty days after the close of the period referred to in paragraph (1)(B), whichever is earlier.

(5) As used in this section, the term ''housing assistance plan'' means a housing assistance plan submitted and approved under section 5304 of this title or, in the case of a unit of general local government not participating under title I of this Act [42 U.S.C. 5301 et seq.], a housing plan approved by the Secretary as meeting the requirements of this section. In developing a housing assistance plan under this paragraph a unit of general local government shall consult with local public agencies involved in providing for the welfare of children to determine the housing needs of (A) families identified by the agencies as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care or in preventing the discharge of a child from foster care and reunification with his or her family; and (B) children who, upon discharge of the child from foster care, cannot return to their family or extended family and for which adoption is not available. The unit of general local government shall include in the housing assistance plan needs and goals with respect to such families and children.

(b) Housing assistance applications subject to procedures

The provisions of subsection (a) of this section shall not apply to—

(1) applications for assistance involving 12 or fewer units in a single project or development;

(2) applications for assistance with respect to housing in new community developments approved under title IV of the Housing and Urban Development Act of 1968 [42 U.S.C. 3901 et seq.] or title VII of the Housing and Urban Development Act of 1970 [42 U.S.C. 4501 et seq.] which the Secretary determines are necessary to meet the housing requirements under such title; or

(3) applications for assistance with respect to housing financed by loans or loan guarantees from a State or agency thereof, except that the provisions of subsection (a) of this section shall apply where the unit of general local government in which the assistance is to be provided objects in its housing assistance plan to the exemption provided by this paragraph.

(c) Repealed. Pub. L. 105–276, title V, § 551(1), Oct. 21, 1998, 112 Stat. 2610

(d) Allocation and reservation of housing assistance funds; purposes; prohibited reallocation of unutilized funds; enumerated uses for retained funds; competition for reservation and obligation of funds

(1)(A)(i) Except as provided by subparagraph (B), the Secretary shall allocate assistance referred to in subsection (a)(1) of this section the first time it is available for reservation on the basis of a formula that is contained in a regulation prescribed by the Secretary, and that is based on the relative needs of different States, areas, and communities, as reflected in data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other objectively measurable conditions specified in the regulation. The Secretary may allocate assistance under the preceding sentence in such a manner that each State shall receive not less than one-half of one percent of the amount of funds available for each program referred to in subsection (a)(1) of this section in each fiscal year. In allocating assistance under this paragraph for each program of housing assistance under subsection (a)(1) of this section, the Secretary shall apply the formula, to the extent practicable, in a manner so that the assistance under the program is allocated according to the particular relative needs under the preceding sentence that are characteristic of and related to the particular type of assistance provided under the program. Assistance under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] shall be allocated in a manner that ensures that awards of the assistance under such section are made for projects of sufficient size to accommodate facilities for supportive services appropriate to the needs of frail elderly residents. The preceding sentence shall not apply to projects acquired from the Resolution Trust Corporation under section 1441a(c) of title 12. Amounts for tenant-based assistance under section 8(*o*) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)] may not be provided to any public housing agency that has been disqualified from providing such assistance.

(ii) Assistance under section 8(*o*) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)] shall be allocated in a manner that enables participating jurisdictions to carry out, to the maximum extent practicable, comprehensive housing affordability strategies approved in accordance with section 105 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12705]. Such jurisdictions shall submit recommendations for allocating assistance under such

section 8(*o*) to the Secretary in accordance with procedures that the Secretary determines to be appropriate to permit allocations of such assistance to be made on the basis of timely and complete information. This clause may not be construed to prevent, alter, or otherwise affect the application of the formula established pursuant to clause (i) for purposes of allocating such assistance. For purposes of this clause, the term ''participating jurisdiction'' means a State or unit of general local government designated by the Secretary to be a participating jurisdiction under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.].

(B) The formula allocation requirements of subparagraph (A) shall not apply to—

(i) assistance that is approved in appropriation Acts for use under sections[3] 9 [42 U.S.C. 1437g], or the rental rehabilitation grant program under section 17,[4] of the United States Housing Act of 1937, except that the Secretary shall comply with section 102 of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545] with respect to such assistance; or

(ii) other assistance referred to in subsection (a) of this section that is approved in appropriation Acts for uses that the Secretary determines are incapable of geographic allocation, including amendments of existing contracts, renewal of assistance contracts, assistance to families that would otherwise lose assistance due to the decision of the project owner to prepay the project mortgage or not to renew the assistance contract, assistance to prevent displacement or to provide replacement housing in connection with the demolition or disposition of public housing, and assistance in support of the property disposition and loan management functions of the Secretary.

(C) Any allocation of assistance under subparagraph (A) shall, as determined by the Secretary, be made to the smallest practicable area, consistent with the delivery of assistance through a meaningful competitive process designed to serve areas with greater needs.

(D) Any amounts allocated to a State or areas or communities within a State that are not likely to be used within a fiscal year shall not be reallocated for use in another State, unless the Secretary determines that other areas or communities (that are eligible for assistance under the program) within the same State cannot use the amounts within that same fiscal year.

(2) The Secretary may reserve such housing assistance funds as he deems appropriate for use by a State or agency thereof.

(3)(A) Notwithstanding any other provision of law, with respect to fiscal years beginning after September 30, 1990, the Secretary may retain not more than 5 percent of the financial assistance that becomes available under programs described in subsection (a)(1) of this section during any fiscal year. Any such financial assistance that is retained shall be available for subsequent allocation to specific areas and communities, and may only be used for—

(i) unforeseen housing needs resulting from natural and other disasters;

(ii) housing needs resulting from emergencies, as certified by the Secretary, other than such disasters;

(iii) housing needs resulting from the settlement of litigation; and

(iv) housing in support of desegregation efforts.

(B) Any amounts retained in any fiscal year under subparagraph (A) that are unexpended at the end of such fiscal year shall remain available for the following fiscal year under the program under subsection (a)(1) of this section from which the amount was retained. Such amounts shall be allocated on the basis of the formula under subsection (d)(1) of this section.

(4)(A) The Secretary shall not reserve or obligate assistance subject to allocation under paragraph (1)(A) to specific recipients, unless the assistance is first allocated on the basis of the formula contained in that paragraph and then is reserved and obligated pursuant to a competition.

(B) Any competition referred to in subparagraph (A) shall be conducted pursuant to specific criteria for the selection of recipients of assistance. The criteria shall be contained in—

(i) a regulation promulgated by the Secretary after notice and public comment; or

(ii) to the extent authorized by law, a notice published in the Federal Register.

(C) Subject to the times at which appropriations for assistance subject to paragraph (1)(A) may become available for reservation in any fiscal year, the Secretary shall take such steps as the Secretary deems appropriate to ensure that, to the maximum extent practicable, the process referred to in subparagraph (A) is carried out with similar frequency and at similar times for each fiscal year.

(D) This paragraph shall not apply to assistance referred to in paragraph (4).[4]

(e) Assistance payments for properties in Jefferson County, Texas

From budget authority made available in appropriation Acts for fiscal year 1988, the Secretary shall enter into an annual contributions contract for a term of 180 months to obligate sufficient funds to provide assistance payments pursuant to section 8(b)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(1)] on behalf of 500 lower income families from budget authority made available for fiscal year 1988, so long as such families occupy properties in Jefferson County, Texas. If a lower income family receiving assistance payments pursuant to this subsection ceases to qualify for assistance payments pursuant to the provisions of section 8 of such Act [42 U.S.C. 1437f] or of this subsection during the 180-month term of the annual contributions contract, assistance payments shall be made on behalf of another lower income family who occupies a unit identified in the previous sentence.

(Pub. L. 93–383, title II, § 213, Aug. 22, 1974, 88 Stat. 674; Pub. L. 95–128, title II, § 207, Oct. 12, 1977, 91 Stat. 1130; Pub. L. 96–153, title II, § 204, Dec. 21, 1979, 93 Stat. 1108; Pub. L. 96–399, title II, § 202(d), Oct. 8, 1980, 94 Stat. 1629; Pub. L. 97–35,

[3] So in original. Probably should be ''section''.

[4] See References in Text note below.

title III, § 321(e), Aug. 13, 1981, 95 Stat. 399; Pub. L. 98–181, title II, § 201(a)(1), (2), Nov. 30, 1983, 97 Stat. 1175; Pub. L. 98–479, title I, § 102(e), Oct. 17, 1984, 98 Stat. 2222; Pub. L. 100–242, title V, § 522(a), Feb. 5, 1988, 101 Stat. 1938; Pub. L. 101–235, title I, §§ 101(a)–(c), (e), 104(a), Dec. 15, 1989, 103 Stat. 1988–1990, 1998; Pub. L. 101–494, § 5, Oct. 31, 1990, 104 Stat. 1186; Pub. L. 101–625, title V, §§ 556, 576, title VIII, §§ 801(b), 804(e), Nov. 28, 1990, 104 Stat. 4233, 4238, 4303, 4323; Pub. L. 102–389, title II, Oct. 6, 1992, 106 Stat. 1591; Pub. L. 102–550, title I, § 154, Oct. 28, 1992, 106 Stat. 3718; Pub. L. 104–330, title V, § 501(d)(3), Oct. 26, 1996, 110 Stat. 4043; Pub. L. 105–276, title V, §§ 522(b)(2), 551, Oct. 21, 1998, 112 Stat. 2564, 2610.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to this chapter (§ 1437 et seq.). Section 17 of the United States Housing Act of 1937, referred to in subsec. (d)(1)(B)(i), which was classified to section 1437*o* of this title, was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128. For complete classification of this Act to the Code, see Short Title note under section 1437 of this title and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (a)(1), is section 101 of Pub. L. 89–117, Aug. 10, 1965, 79 Stat. 451, as amended, which enacted section 1701s of Title 12, Banks and Banking, and amended sections 1451 and 1465 of this title.

This Act, referred to in subsec. (a)(5), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended, known as the Housing and Community Development Act of 1974. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Housing and Urban Development Act of 1968, referred to in subsec. (b)(2), is Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IV of the Housing and Urban Development Act of 1968 which was classified principally to chapter 48 (§ 3901 et seq.) of this title, was omitted from the Code pursuant to section 4528 of this title, which terminated the authority to guarantee bonds, debentures, notes, or other obligations under such title IV, after Dec. 31, 1970. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 12, Banks and Banking, and Tables.

The Housing and Urban Development Act of 1970, referred to in subsec. (b)(2), is Pub. L. 91–609, Dec. 31, 1970, 84 Stat. 1770, as amended. Title VII of the Housing and Urban Development Act of 1970, known as the Urban Growth and New Community Development Act of 1970, is classified principally to chapter 59 (§ 4501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1701 of Title 12.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (d)(1)(A)(ii), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the ''HOME Investments Partnership Act'', is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

Paragraph (4), referred to in subsec. (d)(4)(D), was redesignated paragraph (3) of subsec. (d) by Pub. L. 105–276, title V, § 551(2)(C), Oct. 21, 1998, 112 Stat. 2610.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1974, and not as part of the United States Housing Act of 1937 which comprises this chapter.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–276, § 551(1), struck out subsec. (c) which read as follows: ''For areas in which an approved local housing assistance plan is not applicable the Secretary shall not approve an application for housing assistance unless he determines that there is a need for such assistance, taking into consideration any applicable State housing plans, and that there is or will be available in the area public facilities and services adequate to serve the housing proposed to be assisted. The Secretary shall afford the unit of general local government in which the assistance is to be provided an opportunity, during a 30-day period following receipt of an application by him, to provide comments or information relevant to the determination required to be made by the Secretary under this subsection.''

Subsec. (d)(1)(A)(i). Pub. L. 105–276, § 551(2)(A)(i), inserted at end ''Amounts for tenant-based assistance under section 8(*o*) of the United States Housing Act of 1937 may not be provided to any public housing agency that has been disqualified from providing such assistance.''

Subsec. (d)(1)(A)(ii). Pub. L. 105–276, § 551(2)(A)(ii), substituted ''8(*o*)'' for ''8(b)(1)'' in two places.

Subsec. (d)(1)(B)(i). Pub. L. 105–276, § 522(b)(2), which directed the amendment of subsec. (d)(1)(B)(ii), by striking out ''or 14'', was executed by striking out ''or 14'' after ''9'' in subsec. (d)(1)(B)(i) to reflect the probable intent of Congress.

Subsec. (d)(2) to (5). Pub. L. 105–276, § 551(2)(B), (C), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''Not later than sixty days after approval in an appropriation Act, the Secretary shall allocate from the amounts available for use in nonmetropolitan areas an amount of authority for assistance under section 8(d) of the United States Housing Act of 1937 determined in consultation with the Secretary of Agriculture for use in connection with section 1490m of this title during the fiscal year for which such authority is approved. The amount of assistance allocated to nonmetropolitan areas pursuant to this section in any fiscal year shall not be less than 20 nor more than 25 per centum of the total amount of the assistance that is subject to allocation under paragraph (1)(A).''

1996—Subsec. (d)(1)(B)(ii). Pub. L. 104–330 substituted ''public housing'' for ''public and Indian housing''.

1992—Subsec. (e). Pub. L. 102–389 and Pub. L. 102–550 amended subsec. (e) identically, substituting ''Jefferson County, Texas'' for ''the Park Central New Community Project or in adjacent areas that are recognized by the unit of general local government in which such Project is located as being included within the Park Central New Town In Town Project''.

1990—Subsec. (a)(1). Pub. L. 101–625, § 801(b), struck out ''section 202 of the Housing Act of 1959'' before '', if the unit''.

Subsec. (a)(5). Pub. L. 101–625, § 576, inserted at end ''In developing a housing assistance plan under this paragraph a unit of general local government shall consult with local public agencies involved in providing for the welfare of children to determine the housing needs of (A) families identified by the agencies as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care or in preventing the discharge of a child from foster care and reunification with his or her family; and (B) children who, upon discharge of the child from foster care, cannot return to their family or extended family and for which adoption is not available. The unit of general local government shall include in the housing assistance plan needs and goals with respect to such families and children.''

Subsec. (d)(1)(A). Pub. L. 101–625, § 556, designated existing provisions as cl. (i) and added cl. (ii).

Pub. L. 101–494 inserted after first sentence ''The Secretary may allocate assistance under the preceding

sentence in such a manner that each State shall receive not less than one-half of one percent of the amount of funds available for each program referred to in subsection (a)(1) of this section in each fiscal year.''

Subsec. (d)(1)(A)(i). Pub. L. 101–625, § 804(e), which directed amendment of subpar. (A) by inserting after the period at end ''The preceding sentence shall not apply to projects acquired from the Resolution Trust Corporation under section 1441a(c) of title 12.'', was executed by making the insertion after the period at end of cl. (i), to reflect the probable intent of Congress and the intervening amendment by Pub. L. 101–625, § 556. See above.

1989—Subsec. (a)(1). Pub. L. 101–235, § 101(e), struck out ''section 235 or 236 of the National Housing Act,'' before ''section 101 of the Housing and Urban Development Act of 1965''.

Subsec. (d)(1). Pub. L. 101–235, § 101(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary shall allocate assistance referred to in subsection (a) of this section (other than assistance approved in appropriation Acts for use under sections 9, 14, and 17 of the United States Housing Act of 1937) the first time it is available for reservation on the basis of a formula which is contained in a regulation prescribed by the Secretary, and which is based on the relative needs of different States, areas, and communities as reflected in data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other objectively measurable conditions specified in such regulation. Any amounts allocated to a State or areas or communities within a State which are not likely to be utilized within a fiscal year shall not be reallocated for use in another State unless the Secretary determines that other areas or communities within the same State cannot utilize the amounts within that same fiscal year.''

Subsec. (d)(2). Pub. L. 101–235, § 101(b), substituted ''of the assistance that is subject to allocation under paragraph (1)(A)'' for ''of such assistance''.

Subsec. (d)(4). Pub. L. 101–235, § 104(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Notwithstanding any other provision of law, with respect to fiscal years beginning after September 30, 1981, the Secretary of Housing and Urban Development may not retain more than 15 per centum of the financial assistance which becomes available under programs described in subsection (a)(1) of this section during any fiscal year. Any such financial assistance which is retained shall be available for subsequent allocation to specific areas and communities, and may only be used for—

''(A) unforeseeable housing needs, especially those brought on by natural disasters or special relocation requirements;

''(B) support for the needs of the handicapped or for minority enterprise;

''(C) providing for assisted housing as a result of the settlement of litigation;

''(D) small research and demonstration projects;

''(E) lower-income housing needs described in housing assistance plans, including activities carried out under areawide housing opportunity plans; and

''(F) innovative housing programs or alternative methods for meeting lower-income housing needs approved by the Secretary, including assistance for infrastructure in connection with the Indian Housing Program.''

Subsec. (d)(5). Pub. L. 101–235, § 101(c), added par. (5).

1988—Subsec. (e). Pub. L. 100–242 added subsec. (e).

1984—Subsec. (d)(2). Pub. L. 98–479 substituted ''section 1490m of this title'' for ''section 1490*l* of this title''.

1983—Subsec. (a)(1). Pub. L. 98–181, § 201(a)(1), inserted provision following subpar. (B) requiring that funds be utilized to meet the needs and goals identified in the unit of local government's housing assistance plan.

Subsec. (d)(1). Pub. L. 98–181, § 201(a)(2), amended par. (1) generally, inserting provision respecting assistance approved in appropriation Acts for sections 9 and 17 of the United States Housing Act of 1937 uses, requiring allocation of assistance to be based on a formula contained in a regulation, making the relative needs provision applicable to different States, striking out requirement that Secretary assure, in carrying out national housing and community development objectives, that funds available for housing assistance programs be allocated or reserved in accordance with goals described in approved housing assistance plans, and striking out provision respecting allocation of funds for nonmetropolitan areas, which was reenacted as last sentence of par. (2).

Subsec. (d)(2). Pub. L. 98–181, § 201(a)(2), amended par. (2) generally, inserting provision respecting allocation of nonmetropolitan area funds for use in connection with section 1490*l* of this title; reenacting as second sentence provision respecting amount of funds allocated for nonmetropolitan areas, which formerly constituted last sentence of par. (1); and striking out former provision respecting reservation of housing assistance funds for new community developments approved under title IV of the Housing and Urban Development Act of 1968 and title VII of the Housing and Urban Development Act of 1970 for persons of low- and moderate-income.

1981—Subsec. (d)(4). Pub. L. 97–35 added par. (4).

1980—Subsec. (d)(1). Pub. L. 96–399 substituted ''carrying out section 14 of such Act'' for ''modernization of low-income housing projects''.

1979—Subsec. (d)(1). Pub. L. 96–153 inserted provisions limiting allocation of assistance other than that approved in appropriation acts for use on and after Oct. 1, 1979 for modernization of low-income housing projects and inserted provision that any amounts allocated to a State or to areas or communities within a State which are not likely to be utilized within a fiscal year shall not be reallocated for use in another State unless the Secretary determines that other areas or communities within the same State cannot utilize the amounts in accordance with the appropriate housing assistance plans within that fiscal year.

1977—Subsec. (d)(1). Pub. L. 95–128 inserted provision requiring the Secretary to assure that funds available for subsec. (a) housing assistance programs shall be allocated or reserved in accordance with goals described in local, State, or other housing assistance plans approved by the Secretary pursuant to section 5304 of this title and shall be utilized to meet needs reflected in data referred to in the preceding sentence.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 801(b) of Pub. L. 101–625 effective Oct. 1, 1991, with respect to projects approved on or after such date, and subject to issuance of regulations, see section 801(c) of Pub. L. 101–625, set out as a note under section 1701q of Title 12, Banks and Banking.

Amendment by section 801(b) of Pub. L. 101–625 deemed enacted Nov. 5, 1990, see title II of Pub. L. 101–507, set out as a note under section 1701q of Title 12.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 104(b) of Pub. L. 101–235 provided that: ''Any assistance made available under section 213(d)(4) of the Housing and Community Development Act of 1974 [42 U.S.C. 1439(d)(4)] before October 1, 1990, or pursuant to

a commitment for such assistance entered into before such date, shall be governed by the provisions of section 213(d)(4) as such section existed before the date of the enactment of this Act [Dec. 15, 1989].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1440. State housing finance and development agencies

(a) Statement of purpose; participation by private and nonprofit developers in activities assisted

It is the purpose of this section to encourage the formation and effective operation of State housing finance agencies and State development agencies which have authority to finance, to assist in carrying out, or to carry out activities designed to (1) provide housing and related facilities through land acquisition, construction, or rehabilitation, for persons and families of low, moderate, and middle income, (2) promote the sound growth and development of neighborhoods through the revitalization of slum and blighted areas, (3) increase and improve employment opportunities for the unemployed and underemployed through the development and redevelopment of industrial, manufacturing, and commercial facilities, or (4) implement the development aspects of State land use and preservation policies, including the advance acquisition of land where it is consistent with such policies. The Secretary of Housing and Urban Development shall encourage maximum participation by private and nonprofit developers in activities assisted under this section.

(b) Determination of eligibility for assistance; definitions

(1) A State housing finance or State development agency is eligible for assistance under this section only if the Secretary determines that it is fully empowered and has adequate authority to at least carry out or assist in carrying out the purposes specified in clause (1) of subsection (a) of this section.

(2) For the purpose of this section—

(A) the term ''State housing finance or State development agency'' means any public body or agency, publicly sponsored corporation, or instrumentality of one or more States which is designated by the Governor (or Governors in the case of an interstate development agency) for purposes of this section;

(B) the term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and

(C) the term ''Secretary'' means the Secretary of Housing and Urban Development.

(c) Guarantee of obligations issued by agencies; grants to agencies for interest payments on obligations; maximum amount of grants; prerequisites for guarantee; full faith and credit pledged for payment of guarantee; effect and validity of guarantee; fees and charges for guarantee; authorization of appropriations for grants; maximum amount of obligations guaranteed

(1) The Secretary is authorized to guarantee, and enter into commitments to guarantee, the bonds, debentures, notes, and other obligations issued by State housing finance or State development agencies to finance development activities as determined by him to be in furtherance of the purpose of clause (1) or (2) of subsection (a) of this section, except that obligations issued to finance activities solely in furtherance of the purpose of clause (1) of subsection (a) of this section may be guaranteed only if the activities are in connection with the revitalization of slum or blighted areas under title I of this Act [42 U.S.C. 5301 et seq.] or under any other program determined to be acceptable by the Secretary for this purpose.

(2) The Secretary is authorized to make, and to contract to make, grants to or on behalf of a State housing finance or State development agency to cover not to exceed 33⅓ per centum of the interest payable on bonds, debentures, notes, and other obligations issued by such agency to finance development activities in furtherance of the purposes of this section.

(3) No obligation shall be guaranteed or otherwise assisted under this section unless the interest income thereon is subject to Federal taxation as provided in subsection (h)(2) of this section, except that use of guarantees provided for in this subsection shall not be made a condition to nor preclude receipt of any other Federal assistance.

(4) The full faith and credit of the United States is pledged to the payment of all guarantees made under this section with respect to principal, interest, and any redemption premiums. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligation involved for such guarantee, and the validity of any guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligation.

(5) The Secretary is authorized to establish and collect such fees and charges for and in connection with guarantees made under this section as he considers reasonable.

(6) There are authorized to be appropriated such sums as may be necessary to make payments as provided for in contracts entered into by the Secretary under paragraph (2) of this subsection, and payments pursuant to such contracts shall not exceed $50,000,000 per annum prior to July 1, 1975, which maximum dollar amount shall be increased by $60,000,000 on July 1, 1975. The aggregate principal amount of the obligations which may be guaranteed under this section and outstanding at any one time shall not exceed $500,000,000.

(d) Requirements for guaranteed obligations

The Secretary shall take such steps as he considers reasonable to assure that bonds, debentures, notes, and other obligations which are guaranteed under subsection (c) of this section will—

(1) be issued only to investors approved by, or meeting requirements prescribed by, the Secretary, or, if an offering to the public is contemplated, be underwritten upon terms and conditions approved by the Secretary;

(2) bear interest at a rate satisfactory to the Secretary;

(3) contain or be subject to repayment, maturity, and other provisions satisfactory to the Secretary; and

(4) contain or be subject to provisions with respect to the protection of the security interests of the United States, including any provisions deemed appropriate by the Secretary relating to subrogation, liens, and releases of liens, payment of taxes, cost certification procedures, escrow or trusteeship requirements, or other matters.

(e) Revolving fund for payment of liabilities incurred pursuant to guarantees and payment of obligations issued to Secretary of the Treasury; composition; availability, issuance of obligations to Secretary of the Treasury for implementation of guarantees; amount, maturity, rate of interest, and purchase by Secretary of the Treasury of obligations; payment of expenses and charges

(1) The Secretary is authorized to establish a revolving fund to provide for the timely payment of any liabilities incurred as a result of guarantees under subsection (c) of this section and for the payment of obligations issued to the Secretary of the Treasury under paragraph (2) of this subsection. Such revolving fund shall be comprised of (A) receipts from fees and charges; (B) recoveries under security, subrogation, and other rights; (C) repayments, interest income, and any other receipts obtained in connection with guarantees made under subsection (c) of this section; (D) proceeds of the obligations issued to the Secretary of the Treasury pursuant to paragraph (2) of this subsection; and (E) such sums, which are hereby authorized to be appropriated, as may be required for such purposes. Money in the revolving fund not currently needed for the purpose of this section shall be kept on hand or on deposit, or invested in obligations of the United States or guaranteed thereby, or in obligations, participations, or other instruments which are lawful investments for fiduciary, trust, or public funds.

(2) The Secretary may issue obligations to the Secretary of the Treasury in an amount sufficient to enable the Secretary to carry out his functions with respect to the guarantees authorized by subsection (c) of this section. The obligations issued under this paragraph shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations so issued, and for that purpose he is authorized to use a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include purchases of the obligations hereunder.

(3) Notwithstanding any other provision of law relating to the acquisition, handling, improvement, or disposal of real and other property by the United States, the Secretary shall have power, for the protection of the interests of the fund authorized under this subsection, to pay out of such fund all expenses or charges in connection with the acquisition, handling, improvement, or disposal of any property, real or personal, acquired by him as a result of recoveries under security, subrogation, or other rights.

(f) Technical assistance to agencies for planning and execution of development activities

The Secretary is authorized to provide, either directly or by contract or other arrangements, technical assistance to State housing finance or State development agencies to assist them in connection with planning and carrying out development activities in furtherance of the purpose of this section.

(g) Labor standards

All laborers and mechanics employed by contractors or subcontractors in housing or development activities assisted under this section shall be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40: *Provided*, That this section shall apply to the construction of residential property only if such property is designed for residential use for eight or more families. No assistance shall be extended under this section with respect to any development activities without first obtaining adequate assurance that these labor standards will be maintained upon the work involved in such activities. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267), and section 3145 of title 40.

(h) Protection of guarantees issued by United States; inclusion by purchaser in gross income of interest paid on obligations issued by agencies

(1) In the performance of, and with respect to, the functions, powers, and duties vested in him by this section, the Secretary, in addition to any authority otherwise vested to him, shall—

(A) have the power, notwithstanding any other provision of law, in connection with any guarantee under this section, whether before or after default, to provide by contract for the extinguishment upon default of any redemption, equitable, legal, or other right, title, or interest of a State housing finance or State development agency in any mortgage, deed, trust, or other instrument held by or on behalf of the Secretary for the protection of the security interests of the United States; and

(B) have the power to foreclose on any property or commence any action to protect or enforce any right conferred upon him by law, contract, or other agreement, and bid for and purchase at any foreclosure or other sale any property in connection with which he has provided a guarantee pursuant to this section. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease, and otherwise deal with, such property. Notwithstanding any other provision of law, the Secretary shall also have power to pursue to final collection by way of compromise or otherwise all claims acquired by him in connection with any security, subrogation, or other rights obtained by him in administering this section.

(2) With respect to any obligation issued by a State housing finance or State development agency for which the issuer has elected to receive the benefits of the assistance provided under this section, the interest paid on such obligation and received by the purchaser thereof (or his successor in interest) shall be included in gross income for the purposes of chapter 1 of title 26.

(Pub. L. 93–383, title VIII, §802(a)–(h), Aug. 22, 1974, 88 Stat. 722–724; Pub. L. 98–479, title II, §203(*l*)(4), Oct. 17, 1984, 98 Stat. 2231.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(1), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended, known as the Housing and Community Development Act of 1974. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (g), is Reorg. Plan No. 14 of 1950, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (g), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Section was enacted as part of the Housing and Community Development Act of 1974, and not as part of the United States Housing Act of 1937 which comprises this chapter.

AMENDMENTS

1984—Subsec. (e)(2). Pub. L. 98–479 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act'' and ''such chapter'' for ''that Act''.

CHAPTER 8A—SLUM CLEARANCE, URBAN RENEWAL, AND FARM HOUSING

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
1441. Congressional declaration of national housing policy.
1441a. National housing goals.
1441b. Plan for elimination of all substandard housing and realization of national housing goal; report by President to Congress.
1441c. Omitted.
1442. Repealed.
1443. Provisions as controlling over other laws.
1444. Separability.
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1452c. Nullification of right of redemption of single family mortgagors under rehabilitation loan program.
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Sec.
1454 to 1468a. Omitted or Repealed.

PART B—NEIGHBORHOOD DEVELOPMENT PROGRAMS

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1490k. FHA insurance.
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1490p. Accountability.
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SUBCHAPTER I—GENERAL PROVISIONS

§ 1441. Congressional declaration of national housing policy

The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be: (1) private enterprise shall be encouraged to serve as large a part of the total need as it can; (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need; (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life; (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural nonfarm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and (5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill. The Department of Housing and Urban Development, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established, and in such manner as will encourage and assist (1) the production of housing of sound standards of design, construction, livability, and size for adequate family life; (2) the reduction of the costs of housing without sacrifice of such sound standards; (3) the use of new designs, materials, techniques, and methods in residential construction, the use of standardized dimensions and methods of assembly of homebuilding materials and equipment, and the increase of efficiency in residential construction and maintenance; (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities; and (5) the stabilization of the housing industry at a high annual volume of residential construction.

(July 15, 1949, ch. 338, § 2, 63 Stat. 413; Pub. L. 90–19, § 6(a), May 25, 1967, 81 Stat. 21.)

REFERENCES IN TEXT

This Act, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, known as the Housing Act of 1949, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''The Department of Housing and Urban Development'' for ''The Housing and Home Finance Agency and its constituent agencies''.

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–285, § 1, Aug. 2, 2004, 118 Stat. 917, provided that: ''This Act [amending section 1472 of this title, enacting provisions set out as a note under section 1472 of this title, and amending provisions set out as a note under section 12805 of this title] may be cited as the 'Helping Hands for Homeownership Act of 2004'.''

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–181, title V, § 501, Nov. 30, 1983, 97 Stat. 1240, provided that: ''This title [enacting sections 1490k to 1490*o* of this title, amending sections 1471, 1472, 1474, 1476, 1479 to 1481, 1483 to 1487, 1490, 1490a, 1490c, 1490e, 1490f, and 1490j of this title, repealing sections 1482, 1490g, and 1490i of this title, and enacting provisions set out as notes under sections 1472 and 1490a of this title] may be cited as the 'Rural Housing Amendments of 1983'.''

SHORT TITLE

Section 1 of act July 15, 1949, provided: ''That this Act [enacting this chapter, sections 1421a and 1433 of this title, and sections 1701d–1, 1701f–1, 1701h, and 1701i of Title 12, Banks and Banking, amending sections 1401, 1402, 1406, 1409 to 1411, 1413 to 1416, and 1422 to 1430 of this title and sections 1701e, 1701f, 1703, 1709, and 1738 of Title 12, and amending provisions set out as a note under section 1701e of Title 12] may be cited as the 'Housing Act of 1949'.''

NATIONAL COMMISSION ON NEIGHBORHOODS

Pub. L. 95–24, title II, §§ 201–208, Apr. 30, 1977, 91 Stat. 56–59, as amended by Pub. L. 95–557, title III, § 315, Oct. 31, 1978, 92 Stat. 2099, known as the ''National Neighborhood Policy Act'', established the National Commission on Neighborhoods, which was to undertake a comprehensive study and investigation of the factors contributing to the decline of city neighborhoods and of the factors necessary to neighborhood survival and revitalization, and to make recommendations for modifications in Federal, State, and local laws, policies and programs necessary to facilitate neighborhood preservation and revitalization. The Commission was to submit to the Congress and the President a comprehensive report on its study and investigation not later than fifteen months after the date on which funds first became available to carry out the Act, and was to cease to exist thirty days after the submission of that report.

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

Assistance provided for in Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.], National Housing Act [12 U.S.C. 1701 et seq.], United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], Housing Act of 1949 [see Short Title note set out above], Demonstration Cities and Metropolitan Development Act of 1966 [see Short Title note set out under section 3331 of this title], and Housing and Urban Development Acts of 1965, 1968, 1969, and 1970 not to be withheld or made subject to conditions by reason of tax-exempt status of obligations issued or to be issued for financing of assistance, except as otherwise provided by law, see section 817 of Pub. L. 93–383, set out as a note under section 5301 of this title.

EQUAL OPPORTUNITY IN HOUSING

Executive order relating to equal opportunity in housing, see Ex. Ord. No. 11063, Nov. 20, 1962, 27 F.R. 11527, as amended, set out as a note under section 1982 of this title.

§ 1441a. National housing goals

(a) Congressional findings and reaffirmation of goals

The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal, established in the Housing Act of 1949 [42 U.S.C. 1441 et seq.], of the ''realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family''. The Congress reaffirms this national housing goal and determines that it can be substantially achieved within the next decade by the construction or rehabilitation of twenty-six million housing units, six million of these for low and moderate income families.

(b) Additional Congressional findings

The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing and neighborhoods, that the deterioration and abandonment of housing for the Nation's lower income families has accelerated over the last decade, and that this acceleration has contributed to neighborhood disintegration and has partially negated the progress toward achieving the national housing goal which has been made primarily through new housing construction.

(c) Congressional declaration of purposes

The Congress declares that if the national housing goal is to be achieved, a greater effort must be made to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance, in conjunction with the provision of adequate municipal services. Such an effort should concentrate, to a greater extent than it has in the past, on housing and neighborhoods where deterioration is evident but has not yet become acute.

(Pub. L. 90–448, title XVI, § 1601, Aug. 1, 1968, 82 Stat. 601; Pub. L. 93–383, title VIII, § 801(1), (2), Aug. 22, 1974, 88 Stat. 721.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsec. (a), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Housing Act of 1949 which comprises this chapter.

AMENDMENTS

1974—Pub. L. 93–383 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

§ 1441b. Plan for elimination of all substandard housing and realization of national housing goal; report by President to Congress

Not later than January 15, 1969, the President shall make a report to the Congress setting forth a plan, to be carried out over a period of ten years (June 30, 1968, to June 30, 1978), for the elimination of all substandard housing and the realization of the goal referred to in section 1441a of this title. Such plan shall—

(1) indicate the number of new or rehabilitated housing units which it is anticipated will have to be provided, with or without Government assistance, during each fiscal year of the ten-year period, in order to achieve the objectives of the plan, showing the number of such units which it is anticipated will have to be provided under each of the various Federal programs designed to assist in the provision of housing;

(2) indicate the reduction in the number of occupied substandard housing units which it is anticipated will have to occur during each fiscal year of the ten-year period in order to achieve the objectives of the plan;

(3) provide an estimate of the cost of carrying out the plan for each of the various Federal programs and for each fiscal year during the ten-year period to the extent that such costs will be reflected in the Federal budget;

(4) make recommendations with respect to the legislative and administrative actions necessary or desirable to achieve the objectives of the plan; and

(5) provide such other pertinent data, estimates, and recommendations as the President deems advisable.

Such report shall, in addition, contain a projection of the residential mortgage market needs and prospects during the coming year, including an estimate of the requirements with respect to the availability, need, and flow of mortgage funds (particularly in declining urban and rural areas) during such year, together with such recommendations as may be deemed appropriate for encouraging the availability of such funds.

(Pub. L. 90–448, title XVI, § 1602, Aug. 1, 1968, 82 Stat. 601.)

CODIFICATION

Section was not enacted as part of the Housing Act of 1949 which comprises this chapter.

§ 1441c. Omitted

CODIFICATION

Section, Pub. L. 90–448, title XVI, § 1603, Aug. 1, 1968, 82 Stat. 602; Pub. L. 91–152, title IV, § 412(a), Dec. 24,

1969, 83 Stat. 398; Pub. L. 93–383, title VIII, § 801(3), Aug. 22, 1974, 88 Stat. 722; Pub. L. 95–557, title IX, § 906, Oct. 31, 1978, 92 Stat. 2127; Pub. L. 96–399, title III, § 312, Oct. 8, 1980, 94 Stat. 1644, which required the President to transmit to Congress an annual report on housing needs, conservation, production, and rehabilitation, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 13 on page 31 of House Document No. 103–7.

§ 1442. Repealed. Aug. 31, 1954, ch. 1158, § 7, 68 Stat. 1026

Section, act July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441, related to housing census. See section 141 of Title 13, Census.

§ 1443. Provisions as controlling over other laws

Insofar as the provisions of any other law are inconsistent with the provisions of this Act, the provisions of this Act shall be controlling.

(July 15, 1949, ch. 338, title VI, § 610, 63 Stat. 443.)

REFERENCES IN TEXT

This Act, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, known as the Housing Act of 1949, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

§ 1444. Separability

Except as may be otherwise expressly provided in this Act, all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing. Notwithstanding any other evidences of the intention of Congress, it is declared to be the controlling intent of Congress that if any provisions of this Act, or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its applications to other persons and circumstances, but shall be confined in its operation to the provision of this Act, or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered.

(July 15, 1949, ch. 338, title VI, § 611, 63 Stat. 443.)

REFERENCES IN TEXT

This Act, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, known as the Housing Act of 1949, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

§ 1445. Repealed. Aug. 9, 1955, ch. 690, § 4(1), 69 Stat. 625

Section, act July 15, 1949, ch. 338, title VI, § 612, 63 Stat. 444, related to striking or subversive employees of the Housing and Home Finance Agency and the Department of Agriculture, withholding of their wages, and penalties. See sections 3333 and 7311 of Title 5, Government Organization and Employees, and section 1918 of Title 18, Crimes and Criminal Procedure.

§ 1446. Transferred

CODIFICATION

Section, act Aug. 2, 1954, ch. 649, title VIII, § 814, 68 Stat. 647, as amended, which related to keeping of records, provided for their contents, and authorized examination and audit thereof, was transferred to section 1434 of this title.

SUBCHAPTER II—SLUM CLEARANCE AND URBAN RENEWAL

PART A—URBAN RENEWAL PROJECTS, DEMOLITION PROGRAMS, AND CODE ENFORCEMENT PROGRAMS

§§ 1450, 1451. Omitted

CODIFICATION

Section 1450, act July 15, 1949, ch. 338, title I, § 100, as added Aug. 2, 1954, ch. 649, title III, § 302, 68 Stat. 622; amended Sept. 23, 1959, Pub. L. 86–372, title IV, § 417(1), 73 Stat. 676, which related to the Urban Renewal Fund, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1451, acts July 15, 1949, ch. 338, title I, § 101, 63 Stat. 414; Aug. 2, 1954, ch. 649, title III, § 303, 68 Stat. 623; Aug. 11, 1955, ch. 783, title I, § 108(a), 69 Stat. 638; Aug. 7, 1956, ch. 1029, title IV, § 402, 70 Stat. 1103; Sept. 23, 1959, Pub. L. 86–372, title I, § 110(a)(3), (4), title IV, §§ 401, 417(2), 73 Stat. 659, 670, 677; June 30, 1961, Pub. L. 87–70, title I, § 101(b), title III, § 314(a), 75 Stat. 153, 172; Sept. 2, 1964, Pub. L. 88–560, title III, §§ 301(a), 302, 78 Stat. 785; Aug. 10, 1965, Pub. L. 89–117, title I, § 101(f), title III, §§ 302(a)(1), (b), 305(b), 79 Stat. 453, 474, 476; Sept. 9, 1965, Pub. L. 89–174, § 7(d), 79 Stat. 670; May 25, 1967, Pub. L. 90–19, § 6(b), (c), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 513, 82 Stat. 525; Dec. 24, 1969, Pub. L. 91–152, title II, § 217(a), 83 Stat. 390; Apr. 30, 1977, Pub. L. 95–24, title I, § 105(a), 91 Stat. 56, which related to local programs under this subchapter, was omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this subchapter after Jan. 1, 1975.

AMENDMENT OF CONTRACTS FOR INCORPORATION OF CERTAIN COST PROVISIONS

Pub. L. 88–560, title III, § 301(d), Sept. 2, 1964, 78 Stat. 785, provided that any contract for a capital grant under this subchapter executed prior to Sept. 2, 1964, could be amended to incorporate the provisions of section 1460(c) of this title for costs incurred on or after such date.

COMPLETION OF PROJECTS ENTERED INTO PRIOR TO AUGUST 2, 1954

Act Aug. 2, 1954, ch. 649, title III, § 312, 68 Stat. 629, as amended by Pub. L. 90–19, § 10(a), May 25, 1967, 81 Stat. 22, provided that notwithstanding the amendments by title III of the 1954 Act to this subchapter, the Secretary of Housing and Urban Development was required to continue to extend financial assistance for the completion of any project covered by any Federal aid contract executed, or prior approval granted, by him under this subchapter before Aug. 2, 1954, in accordance with the provisions of this subchapter in force immediately prior to Aug. 2, 1954.

EXECUTIVE ORDER NO. 12075

Ex. Ord. No. 12075, Aug. 16, 1978, 43 F.R. 36877, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which established the Interagency Coordinating Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, § 14, Aug. 17, 1982, 47 F.R. 36099, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 1451a. Repealed. Aug. 2, 1954, ch. 649, title III, § 313, 68 Stat. 629

Section, acts July 31, 1953, ch. 302, title I, § 101, 67 Stat. 305; June 24, 1954, ch. 359, title I, § 101, 68 Stat. 283, provided that the authority under this subchapter should be used to the utmost in connection with slum rehabilitation needs.

§ 1452. Omitted

CODIFICATION

Section, acts July 15, 1949, ch. 338, title I, § 102, 63 Stat. 414; Aug. 2, 1954, ch. 649, title III, § 304, 68 Stat. 624; Aug. 7, 1956, ch. 1029, title III, §§ 301, 303, 70 Stat. 1097, 1099; Sept. 23, 1959, Pub. L. 86–372, title IV, §§ 402–404, 73 Stat. 671; June 30, 1961, Pub. L. 87–70, title III, §§ 302(a), 314(b), 75 Stat. 166, 172; Sept. 2, 1964, Pub. L. 88–560, title III, § 303(a), 78 Stat. 785; Aug. 10, 1965, Pub. L. 89–117, title III, § 303, 79 Stat. 475; May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 507(a), 82 Stat. 522; Dec. 24, 1969, Pub. L. 91–152, title II, § 208, 83 Stat. 387; Oct. 17, 1984, Pub. L. 98–479, title II, § 203(d)(1), 98 Stat. 2229, which provided for temporary and definitive loans and advances for surveys and plans to local public agencies under this subchapter, as well as establishing requirements for advances for General Neighborhood Renewal Plans and the issuance and sale of notes and obligations under this subchapter, was omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this subchapter after Jan. 1, 1975.

AMENDMENT OF LOAN CONTRACTS OUTSTANDING ON AUGUST 1, 1968

Pub. L. 90–448, title V, § 507(b), Aug. 1, 1968, 82 Stat. 522, provided that loan contracts under this subchapter outstanding on Aug. 1, 1968, could be amended to incorporate the amendment to this section by section 507(a) of Pub. L. 90–448, without regard to the provision in section 1460(g) of this title.

TEMPORARY RELIEF FROM INTEREST RATE CONFLICT BETWEEN FEDERAL AND STATE LAW

Pub. L. 91–351, title VII, § 702, July 24, 1970, 84 Stat. 462, provided that notwithstanding any other law, from July 24, 1970, until July 1, 1972, loans to local public agencies under this subchapter and to local public housing agencies under the United States Housing Act of 1937, section 1401 et seq. of this title, may, when determined by the Secretary of Housing and Urban Development to be necessary because of interest rate limitations of State laws, bear interest at a rate less than the applicable going Federal rate but not less than 6 percent per year.

§ 1452a. Repealed. Pub. L. 91–609, title V, § 503(2), Dec. 31, 1970, 84 Stat. 1785

Section, acts Aug. 2, 1954, ch. 649, title III, § 314, 68 Stat. 629; Sept. 2, 1964, Pub. L. 88–560, title III, § 313, 78 Stat. 792; May 25, 1967, Pub. L. 90–19, § 10(a), (c), 81 Stat. 22; Aug. 1, 1968, Pub. L. 90–448, title XVII, § 1702, 82 Stat. 603, provided for grants for preventing and eliminating slums and urban blight; preferences; reports, summaries, and information material; aggregate amount; and advance or progress payments. See sections 1701z–1 to 1701z–4 of Title 12, Banks and Banking.

EFFECTIVE DATE OF REPEAL

Section 503 of Pub. L. 91–609 provided that the repeal of this section is effective July 1, 1971, except that such repeal shall not affect contracts, commitments, reservations, or other obligations entered into pursuant to this section prior to that date.

§ 1452b. Repealed. Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128

Section, Pub. L. 88–560, title III, § 312, Sept. 2, 1964, 78 Stat. 790; Pub. L. 89–117, title III, §§ 311(e), 312, Aug. 10, 1965, 79 Stat. 479; Pub. L. 90–19, § 21(b), May 25, 1967, 81 Stat. 25; Pub. L. 90–448, title V, § 509, title VIII, § 807(b), Aug. 1, 1968, 82 Stat. 523, 544; Pub. L. 91–152, title II, § 207, Dec. 24, 1969, 83 Stat. 387; Pub. L. 93–85, § 4, Aug. 10, 1973, 87 Stat. 221; Pub. L. 93–117, § 10, Oct. 2, 1973, 87 Stat. 423; Pub. L. 93–383, title I, § 116(e), Aug. 22, 1974, 88 Stat. 652; Pub. L. 94–50, title III, § 301, July 2, 1975, 89 Stat. 256; Pub. L. 94–375, § 12, Aug. 3, 1976, 90 Stat. 1074; Pub. L. 95–128, title I, § 111, Oct. 12, 1977, 91 Stat. 1127; Pub. L. 95–557, title I, § 101(a), (b), Oct. 31, 1978, 92 Stat. 2080, 2081; Pub. L. 96–71, § 4, Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, § 4, Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title I, § 101, Dec. 21, 1979, 93 Stat. 1101; Pub. L. 96–372, § 5, Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title I, § 114, Oct. 8, 1980, 94 Stat. 1622; Pub. L. 97–35, title III, § 311, Aug. 13, 1981, 95 Stat. 397; Pub. L. 98–109, § 3, Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–181, title I, § 124, Nov. 30, 1983, 97 Stat. 1174; Pub. L. 99–120, § 2, Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, § 2, Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 2, Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 2, Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3008, Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title V, § 518, Feb. 5, 1988, 101 Stat. 1937, authorized Secretary to make loans to owners and tenants of property to finance rehabilitation of such property.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1991, and except with respect to projects and programs for which binding commitments have been entered into prior to Oct. 1, 1991, no new grants or loans to be made after Oct. 1, 1991, under this section, see section 12839(a)(2), (b)(1) of this title.

§ 1452c. Nullification of right of redemption of single family mortgagors under rehabilitation loan program

(a) In general

Whenever with respect to a single family mortgage securing a loan under section 1452b[1] of this title, the Secretary of Housing and Urban Development or its foreclosure agent forecloses in any Federal or State court or pursuant to a power of sale in a mortgage, the purchaser at the foreclosure sale shall be entitled to receive a conveyance of title to, and possession of, the property, subject to any interests senior to the interests of the Secretary. With respect to properties that are vacant and abandoned, notwithstanding any State law to the contrary, there shall be no right of redemption (including all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale in connection with such single family mortgage. The appropriate State official or the trustee, as the case may be, shall execute and deliver a deed or other appropriate instrument conveying title to the purchaser at the foreclosure sale, consistent with applicable procedures in the jurisdiction and without regard to any such right of redemption.

(b) Foreclosure by others

Whenever with respect to a single family mortgage on a property that also has a single family mortgage securing a loan under section

[1] See References in Text note below.

1452b[1] of this title, a mortgagee forecloses in any Federal or State court or pursuant to a power of sale in a mortgage, the Secretary of Housing and Urban Development, if the Secretary is purchaser at the foreclosure sale, shall be entitled to receive a conveyance of title to, and possession of, the property, subject to the interests senior to the interests of the mortgagee. Notwithstanding any State law to the contrary, there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) if the mortgagor or any other person subsequent to the foreclosure sale to the Secretary in connection with a property that secured a single family mortgage for a loan under section 1452b[1] of this title. The appropriate State official or the trustee, as the case may be, shall execute and deliver a deed or other appropriate instrument conveying title to the Secretary, who is the purchaser at the foreclosure sale, consistent with applicable procedures in the jurisdiction and without regard to any such right of redemption.

(c) Verification of title

The following actions shall be taken in order to verify title in the purchaser at the foreclosure sale:

(1) In the case of a judicial foreclosure in any Federal or State court, there shall be included in the petition and in the judgment of foreclosure a statement that the foreclosure is in accordance with this subsection and that there is no right of redemption in the mortgagor or any other person.

(2) In the case of a foreclosure pursuant to a power of sale provision in the mortgage, the statement required in paragraph (1) shall be included in the advertisement of the sale and either in the recitals of the deed or other appropriate instrument conveying title to the purchaser at the foreclosure sale or in an affidavit or addendum to the deed.

(d) Definitions

For purposes of this section:

(1) The term ''mortgage'' means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any interest in property, real, personal, or mixed, or any interest in property, including leaseholds, life estates, reversionary interests, and any other estates under applicable State law, is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien, for the purpose of securing the payment of money or the performance of an obligation.

(2) The term ''single family mortgage'' means a mortgage that covers property that includes a 1- to 4-family residence.

(Pub. L. 101–235, title VII, § 701, Dec. 15, 1989, 103 Stat. 2055.)

REFERENCES IN TEXT

Section 1452b of this title, referred to in subsecs. (a) and (b), was repealed by Pub. L. 101–625, title II, § 289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

CODIFICATION

Section was enacted as part of the Department of Housing and Urban Development Reform Act of 1989, and not as part of the Housing Act of 1949 which comprises this chapter.

§ 1453. Omitted

CODIFICATION

Section, acts July 15, 1949, ch. 338, title I, § 103, 63 Stat. 416; Aug. 2, 1954, ch. 649, title III, § 305, 68 Stat. 625; Aug. 11, 1955, ch. 783, title I, § 106(a), 69 Stat. 637; July 12, 1957, Pub. L. 85–104, title III, §§ 301, 302(1), 71 Stat. 299; Sept. 23, 1959, Pub. L. 86–372, title IV, §§ 405, 417(1), 73 Stat. 672, 676; June 30, 1961, Pub. L. 87–70, title III, §§ 301(a), 303, 75 Stat. 165, 166; Sept. 2, 1964, Pub. L. 88–560, title III, § 304, 78 Stat. 785; Aug. 10, 1965, Pub. L. 89–117, title III, §§ 304, 313(a), 79 Stat. 475, 479; Nov. 3, 1966, Pub. L. 89–754, title I, § 113, title VII, § 704, 80 Stat. 1260, 1281; May 25, 1967, Pub. L. 90–19, § 6(b), (d), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, §§ 502, 506, 82 Stat. 521, 522; Dec. 24, 1969, Pub. L. 91–152, title II, § 201, 83 Stat. 385; Dec. 31, 1970, Pub. L. 91–609, title II, § 201, title VII, § 741(a), 84 Stat. 1776, 1805; Oct. 18, 1972, Pub. L. 92–503, § 4, 86 Stat. 906; Oct. 2, 1973, Pub. L. 93–117, § 5, 87 Stat. 422; Aug. 22, 1974, Pub. L. 93–383, title I, § 116(c), 88 Stat. 652, which related to grants for urban renewal projects, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

§ 1453a. Administrative priority for applications relating to activities in areas affected by base closings

The Secretary of Housing and Urban Development, in processing applications for assistance under section 103 of the Housing Act of 1949 [42 U.S.C. 1453], section 111 of the Demonstration Cities and Metropolitan Development Act of 1966 [42 U.S.C. 3311], section 708(a)(1) and (2) of the Housing and Urban Development Act of 1965 [42 U.S.C. 3108(a)(1), (2)] (for grants authorized under sections 702 and 703 of such Act) [42 U.S.C. 3102, 3103], section 312 of the Housing Act of 1964 [42 U.S.C. 1452b], section 701(b) of the Housing Act of 1954,[1] and section 708 of the Housing Act of 1961 [42 U.S.C. 1500d], shall give a priority to any State or unit of local government or agency thereof which is severely and adversely affected by a reduction in the level of expenditure or employment at any Department of Defense installation located in or near such State or unit of local government.

(Pub. L. 93–117, § 14, Oct. 2, 1973, 87 Stat. 423.)

REFERENCES IN TEXT

Section 103 of the Housing Act of 1949 [42 U.S.C. 1453], section 111 of the Demonstration Cities and Metropolitan Development Act of 1966 [42 U.S.C. 3311], sections 702 and 703 of the Housing and Urban Development Act of 1965 [42 U.S.C. 3102, 3103], and section 708 of the Housing Act of 1961 [42 U.S.C. 1500d], referred to in text, were omitted from the Code pursuant to section 5316 of this title which terminated the authority to make grants or loans under those sections after Jan. 1, 1975.

Section 701 of the Housing Act of 1954, referred to in text, is section 701 of act Aug. 2, 1954, ch. 649, 68 Stat. 640, as amended, which was classified to section 461 of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97–35, title III, § 313(b), Aug. 13, 1981, 95 Stat. 398.

CODIFICATION

Section was not enacted as part of title I of the Housing Act of 1949 which comprises this subchapter.

[1] See References in Text note below.

§§ 1454, 1455. Omitted

CODIFICATION

Section 1454, acts July 15, 1949, ch. 338, title I, § 104, 63 Stat. 416; Aug. 2, 1954, ch. 649, title III, § 306, 68 Stat. 625; Aug. 7, 1956, ch. 1029, title III, § 306, 70 Stat. 1101; July 12, 1957, Pub. L. 85–104, title III, § 302(2), 71 Stat. 300; June 30, 1961, Pub. L. 87–70, title III, § 301(b), 75 Stat. 166, which related to requirements for local grants-in-aid, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1455, acts July 15, 1949, ch. 338, title I, § 105, 63 Stat. 416; Aug. 2, 1954, ch. 649, title III, § 307, 68 Stat. 625; Aug. 7, 1956, ch. 1029, title III, § 302(a)(1), 70 Stat. 1097; Sept. 23, 1959, Pub. L. 86–372, title IV, §§ 406, 407, 73 Stat. 673; June 30, 1961, Pub. L. 87–70, title III, § 315, 75 Stat. 172; Sept. 2, 1964, Pub. L. 88–560, title III, § 305(a)(1), (b), 78 Stat. 786; Aug. 10, 1965, Pub. L. 89–117, title III, § 305(a), 79 Stat. 475; Nov. 3, 1966, Pub. L. 89–754, title VII, §§ 703(a), 706, 80 Stat. 1281; May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 512, 82 Stat. 524; Dec. 24, 1969, Pub. L. 91–152, title II, §§ 209, 210, 83 Stat. 388; Oct. 17, 1984, Pub. L. 98–479, title II, § 204(c)(1), 98 Stat. 2233, which related to requirements for loan or capital grant contracts, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

§ 1455a. Repealed. Pub. L. 93–383, title II, § 204, Aug. 22, 1974, 88 Stat. 668

Section, act Aug. 2, 1954, ch. 649, title VIII, § 815, 68 Stat. 647, required submission of specifications by applicants prior to award of any contract for construction of a project and submission of data with respect to acquisition of land prior to authorization to purchase such land.

§§ 1456 to 1460. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1456, acts July 15, 1949, ch. 338, title I, § 106, 63 Stat. 417; June 3, 1952, ch. 362, 66 Stat. 98; June 30, 1953, ch. 170, § 22, 67 Stat. 127; Aug. 2, 1954, ch. 649, title III, § 308, title VIII, § 802(e), 68 Stat. 625, 643; Aug. 11, 1955, ch. 783, title I, § 106(b), 69 Stat. 637; Aug. 7, 1956, ch. 1029, title III, §§ 304, 305, 70 Stat. 1100; July 12, 1957, Pub. L. 85–104, title III, §§ 303, 304, 71 Stat. 300; Sept. 23, 1959, Pub. L. 86–372, title IV, §§ 408, 409(a)(1), (b), 410, 417(1), 73 Stat. 673, 674, 676; June 30, 1961, Pub. L. 87–70, title III, § 304, 75 Stat. 167; Sept. 2, 1964, Pub. L. 88–560, title III, § 310(c), 78 Stat. 790; Aug. 10, 1965, Pub. L. 89–117, title III, § 306, 79 Stat. 476; Nov. 3, 1966, Pub. L. 89–754, title X, § 1020(a), 80 Stat. 1295; May 25, 1967, Pub. L. 90–19, § 6(b), (e), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 508(a), 82 Stat. 522; Dec. 31, 1970, Pub. L. 91–609, title II, § 213(a), 84 Stat. 1779; Nov. 30, 1983, Pub. L. 98–181, title I, § 126(b)(1), 97 Stat. 1175; Oct. 17, 1984, Pub. L. 98–479, title II, § 203(d)(2), 98 Stat. 2229, related to duties of Secretary of Housing and Urban Development under this subchapter.

Section 1457, acts July 15, 1949, ch. 338, title I, § 107, 63 Stat. 419; Aug. 2, 1954, ch. 649, title III, § 309, 68 Stat. 626; Sept. 23, 1959, Pub. L. 86–372, title IV, § 411, 73 Stat. 674; June 30, 1961, Pub. L. 87–70, title III, § 306(a), 75 Stat. 168; Sept. 2, 1964, Pub. L. 88–560, title III, § 306, 78 Stat. 786; May 25, 1967, Pub. L. 90–19, § 6(b), (f), 81 Stat. 21, 22; Aug. 1, 1968, Pub. L. 90–448, title V, § 505, 82 Stat. 522, related to property to be used for public housing or housing for low or moderate income families or individuals.

Section 1458, acts July 15, 1949, ch. 338, title I, § 108, 63 Stat. 419; May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Dec. 31, 1970, Pub. L. 91–609, title II, § 206, 84 Stat. 1777, related to disposition of surplus Federal real property, sale at fair market value, and disposition of net proceeds thereof.

Section 1459, acts July 15, 1949, ch. 338, title I, § 109, 63 Stat. 419; Aug. 2, 1954, ch. 649, title III, § 310, 68 Stat. 626; May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21, related to protection of labor standards.

Section 1460, acts July 15, 1949, ch. 338, title I, § 110, 63 Stat. 420; June 30, 1953, ch. 170, § 24(a), 67 Stat. 127; Aug. 2, 1954, ch. 649, title III, § 311, 68 Stat. 626; Aug. 11, 1955, ch. 783, title I, § 166(c), 69 Stat. 637; Aug. 7, 1956, ch. 1029, title III, 302(a)(2), (b)–(d), 70 Stat. 1097; July 12, 1957, Pub. L. 85–104, title III, §§ 302(3)–(5), 305, 306, 71 Stat. 300, 301; Sept. 23, 1959, Pub. L. 86–372, title IV, §§ 412–414(a), 415, 416, 417(3), 73 Stat. 675, 677; June 30, 1961, Pub. L. 87–70, title III, §§ 301(c), 306(b), 307, 308, 314(c), 75 Stat. 166, 168, 172; Sept. 2, 1964, Pub. L. 88–560, title III, §§ 301(b), (c), 303(b), 307–309, 311(a), 78 Stat. 785, 787, 788, 790; Aug. 10, 1965, Pub. L. 89–117, title III, §§ 307–309, 310(a), 311(b), 314(a), 79 Stat. 476–479; Nov. 3, 1966, Pub. L. 89–754, title VI, §§ 601, 602, title VII, §§ 701, 702, 80 Stat. 1278, 1280, 1281; May 25, 1967, Pub. L. 90–19, § 6(b), (g), 81 Stat. 21, 22; Aug. 1, 1968, Pub. L. 90–448, title V, §§ 504, 508(b), 511, title XVII, § 1722(a)–(c), 82 Stat. 521, 523, 524, 610; Dec. 24, 1969, Pub. L. 91–152, title II, §§ 202(a), 203(a), 204, 206, 83 Stat. 385–387; Dec. 31, 1970, Pub. L. 91–609, title II, § 213(b), title VII, § 741(c), title VIII, § 801(b), 84 Stat. 1779, 1805, defined terms as used in this subchapter.

STUDY OF HOUSING AND BUILDING CODES, ZONING, TAX POLICIES, AND DEVELOPMENT STANDARDS

Pub. L. 89–117, title III, § 301, Aug. 10, 1965, 79 Stat. 474, as amended by Pub. L. 90–19, § 22(a), (d), May 25, 1967, 81 Stat. 26, 27; Pub. L. 90–118, Oct. 31, 1967, 81 Stat. 338, which provided for study of housing and building codes, zoning, tax policies, and development standards, was repealed effective July 1, 1971, by Pub. L. 91–609, title V, § 503(5), Dec. 31, 1970, 84 Stat. 1786.

AMENDMENT OF CONTRACTS

Pub. L. 89–117, title III, § 310(b), Aug. 10, 1965, 79 Stat. 477, provided that any contract for a capital grant under this subchapter, executed prior to Aug. 10, 1965, could be amended to incorporate amendment to section 1460(e) of this title by section 310(a) of Pub. L. 89–117 as to costs incurred on or after Aug. 10, 1965.

Pub. L. 89–117, title III, § 314(b), Aug. 10, 1965, 79 Stat. 480, provided that any contract under this subchapter executed prior to Aug. 10, 1965, would, at request of municipality involved, be amended to reflect amendment to section 1460(d) of this title by section 314(a) of Pub. L. 89–117.

Pub. L. 88–560, title III, § 311(b), Sept. 2, 1964, 78 Stat. 790, provided that any contract under this subchapter executed prior to Sept. 2, 1964, could be amended to provide for payment of increased amounts authorized by section 311(a) of Pub. L. 88–560, which amended section 1460(e) of this title, with respect to any uncompleted project, including acquisitions involving expenditures by local public agencies that could not otherwise be included in costs of such project.

RELOCATION PAYMENTS FOR EXPENSES OR LOSSES INCURRED PRIOR TO SEPTEMBER 23, 1959

Pub. L. 86–372, title IV, § 409(a)(2), Sept. 23, 1959, 73 Stat. 674, prohibited relocation payments under section 1456(f) of this title for expenses or losses incurred prior to Sept. 23, 1959, except to the extent that such payments were authorized by such section as it existed prior to such date.

WAIVER OF REQUIREMENTS OF SECTION 1460(d) FOR CERTAIN ASSISTANCE PROVIDED DURING THE PERIOD FROM JULY 1, 1957, THROUGH DECEMBER 31, 1957

Pub. L. 86–372, title IV, § 414(b), Sept. 23, 1959, 73 Stat. 675, provided that the requirement of section 1460(d) of this title that the assistance provided by a State, municipality, or other public body under that subsection, in order to qualify as a local grant-in-aid, had to be in

connection with a project on which a contract for capital grant had been made under this subchapter, did not apply to assistance provided from July 1, 1957, through Dec. 31, 1957, in connection with urban renewal activities which were extended Federal recognition within 60 days after the provision of such assistance was initiated.

§ 1461. Repealed. Aug. 2, 1954, ch. 649, title III, § 313, 68 Stat. 629

Section, acts July 31, 1953, ch. 302, title I, § 101, 67 Stat. 305; June 24, 1954, ch. 359, title I, § 101, 68 Stat. 283, related to conditions precedent to approval of local slum clearance programs.

§§ 1462 to 1464. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1462, act July 15, 1949, ch. 338, title I, § 111, as added Aug. 7, 1956, ch. 1029, title III, § 307(a), 70 Stat. 1101; amended May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title XI, § 1106(c), 82 Stat. 567, related to disaster areas, urban renewal assistance, and nonapplicability of certain requirements under this subchapter.

Section 1463, act July 15, 1949, ch. 338, title I, § 112, as added Sept. 23, 1959, Pub. L. 86–372, title IV, § 418, 73 Stat. 677; amended June 30, 1961, Pub. L. 87–70, title III, § 309, 75 Stat. 169; Nov. 3, 1966, Pub. L. 89–754, title VII, § 705, 80 Stat. 1281; May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Dec. 24, 1969, Pub. L. 91–152, title II, § 203(b), 83 Stat. 386, related to financial assistance for urban renewal projects in areas involving colleges, universities, or hospitals.

Section 1464, act July 15, 1949, ch. 338, title I, § 113, as added May 1, 1961, Pub. L. 87–27, § 14, 75 Stat. 57; amended May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21, related to redevelopment areas.

§ 1465. Repealed. Pub. L. 91–646, title II, § 220(a)(5), Jan. 2, 1971, 84 Stat. 1903

Section, act July 15, 1949, ch. 338, title I, § 114, as added Sept. 2, 1964, Pub. L. 88–560, title III, § 310(a), 78 Stat. 788; amended Aug. 10, 1965, Pub. L. 89–117, title I, § 101(i), title IV, § 404(b), (c)(1), 79 Stat. 453, 486; May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 516, 82 Stat. 526; Dec. 31, 1970, Pub. L. 91–609, title II, § 212, 84 Stat. 1779, related to relocation assistance, providing as follows: subsec. (a), financial assistance to displaced individuals, families, businesses, and nonprofit organizations; subsec. (b), payments to business concerns or nonprofit organizations, considerations, and maximum amounts; subsec. (c), payments to individuals and families, considerations, computation of amount, maximum amounts, and restrictions; subsec. (d), payments to individuals, families, business concerns, and nonprofit organizations for recording fees, transfer taxes, incidental expenses, penalty costs, and pro rata taxes; and subsec. (e), rules and regulations, finality of administrative decisions, and promptness of payments. See chapter 61 (section 4601 et seq.) of this title.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any State so long as sections 4630 and 4655 of this title are not applicable in such State; but such sections completely applicable to all States after July 1, 1972, but until such date applicable to a State to extent the State is able under its laws to comply with such sections, see section 221 of Pub. L. 91–646, set out as an Effective Date note under section 4601 of this title.

SAVINGS PROVISION

Any rights or liabilities existing under provisions repealed by section 220(a) of Pub. L. 91–646 as not affected by such repeal, see section 220(b) of Pub. L. 91–646, set out as a note under section 4621 of this title.

§ 1466. Omitted

CODIFICATION

Section, act July 15, 1949, ch. 338, title I, § 115, as added Aug. 10, 1965, Pub. L. 89–117, title I, § 106(a), 79 Stat. 457; amended May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 503, 82 Stat. 521; Dec. 24, 1969, Pub. L. 91–152, title II, § 205, 83 Stat. 387, which related to rehabilitation grants, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

AMENDMENT OF CONTRACTS EXECUTED PRIOR TO ENACTMENT OF SECTION

Pub. L. 89–117, title I, § 106(b), Aug. 10, 1965, 79 Stat. 458, provided that any contract with a local public agency executed under this subchapter before Aug. 10, 1965, could be amended to provide for grants authorized by this section.

§§ 1467 to 1468a. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1467, act July 15, 1949, ch. 388, title I, § 116, as added Aug. 10, 1965, Pub. L. 89–117, title III, § 311(a), 79 Stat. 477; amended May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 510, 82 Stat. 524; Dec. 24, 1969, Pub. L. 91–152, title II, § 202(b), 83 Stat. 386, related to grants to cities, other municipalities, counties, and Indian tribes, etc., for demolition of unsafe structures.

Section 1468, act July 15, 1949, ch. 338, title I, § 117, as added Aug. 10, 1965, Pub. L. 89–117, title III, § 311(a), 79 Stat. 478; amended May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 515, 82 Stat. 525; Dec. 24, 1969, Pub. L. 91–152, title II, § 202(c), 83 Stat. 386, related to grants to cities, other municipalities, counties, and Indian tribes, etc., for code enforcement.

Section 1468a, act July 15, 1949, ch. 338, title I, § 118, as added Aug. 1, 1968, Pub. L. 90–448, title V, § 514, 82 Stat. 525; amended Dec. 24, 1969, Pub. L. 91–152, title II, § 202(d), 83 Stat. 386, related to interim assistance for blighted areas, grants to cities, other municipalities, counties, and Indian tribes, etc., and encouragement of employment of unemployed and underemployed residents.

PART B—NEIGHBORHOOD DEVELOPMENT PROGRAMS

§§ 1469 to 1469c. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1469, act July 15, 1949, ch. 338, title I, § 131, as added Aug. 1, 1968, Pub. L. 90–448, title V, § 501(b), 82 Stat. 518, set forth the declaration of this part.

Section 1469a, act July 15, 1949, ch. 338, title I, § 132, as added Aug. 1, 1968, Pub. L. 90–448, title V, § 501(b), 82 Stat. 519, related to financing of undertakings and activities and the payment of excess of sale price and imputed capital value of land or other property leased or retained over the gross project cost.

Section 1469b, acts July 15, 1949, ch. 338, title I, § 133, as added Aug. 1, 1968, Pub. L. 90–448, title V, § 501(b), 82 Stat. 519; amended Dec. 24, 1969, Pub. L. 91–152, title II, § 203(c), 83 Stat. 386, related to local grants-in-aid.

Section 1469c, act July 15, 1949, ch. 338, title I, § 134, as added Aug. 1, 1968, Pub. L. 90–448, title V, § 501(b), 82

Stat. 520, contained general provisions relating to workable program requirements, transient housing, removal of buildings, financial assistance for subsequent annual increments, and modification of urban renewal plans.

NEIGHBORHOOD DEVELOPMENT PROGRAMS BY DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

Pub. L. 90–448, title V, § 501(c), Aug. 1, 1968, 82 Stat. 520, provided that notwithstanding any requirement or condition to the contrary in section 6 or 20(i) of the District of Columbia Redevelopment Act of 1945 (act Aug. 2, 1946, ch. 736, 60 Stat. 790, as amended), or any other law, the District of Columbia Redevelopment Land Agency was authorized to plan and undertake neighborhood development programs under this part, which programs would be regarded as complying with sections 6 and 20(i) of that Act and any other provision of law, if those programs were in compliance with this part.

SUBCHAPTER III—FARM HOUSING

§ 1471. Financial assistance by Secretary of Agriculture

(a) Authorization and purposes of assistance

The Secretary of Agriculture (hereinafter referred to as the ''Secretary'') is authorized, subject to the terms and conditions of this subchapter, to extend financial assistance, through the Farmers Home Administration, (1) to owners of farms in the United States and in the Territories of Alaska and Hawaii and in the Commonwealth of Puerto Rico, the Virgin Islands, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands, to enable them to construct, improve, alter, repair, or replace dwellings and other farm buildings on their farms, and to purchase buildings and land constituting a minimum adequate site, in order to provide them, their tenants, lessees, sharecroppers, and laborers with decent, safe, and sanitary living conditions and adequate farm buildings as specified in this subchapter, and (2) to owners of other real estate in rural areas for the construction, improvement, alteration, or repair of dwellings, related facilities, and farm buildings and to rural residents, including persons who reside in reservations or villages of Indian tribes, for such purposes and for the purchase of buildings and the purchase of land constituting a minimum adequate site, in order to enable them to provide dwellings and related facilities for their own use and buildings adequate for their farming operations, and (3) to elderly or handicapped persons or families who are or will be the owners of land in rural areas for the construction, improvement, alteration, or repair of dwellings and related facilities, the purchase of dwellings and related facilities and the purchase of land constituting a minimum adequate site, in order to provide them with adequate dwellings and related facilities for their own use, and (4) to an owner described in clause (1), (2), or (3) for refinancing indebtedness which—

(A) was incurred for an eligible purpose described in such clause, and

(B)(i) if not refinanced, is likely to result (because of circumstances beyond the control of the applicant) at an early date in the loss of the applicant's necessary dwelling or essential farm service buildings, or

(ii) if combined (in the case of a dwelling that the Secretary finds not to be decent, safe, and sanitary) with a loan for improvement, rehabilitation, or repairs and not refinanced, is likely to result in the applicant's continuing to be deprived of a decent, safe, and sanitary dwelling.

(5)[1] DEFINITIONS.—For purposes of this subchapter, the terms ''repair'', ''repairs'', ''rehabilitate'', and ''rehabilitation'' include measures to evaluate and reduce lead-based paint hazards, as such terms are defined in section 4851b of this title.

(b) Definitions

(1) For the purpose of this subchapter, the term ''farm'' shall mean a parcel or parcels of land operated as a single unit which is used for the production of one or more agricultural commodities and which customarily produces or is capable of producing such commodities for sale and for home use of a gross annual value of not less than the equivalent of a gross annual value of $400 in 1944, as determined by the Secretary. The Secretary shall promptly determine whether any parcel or parcels of land constitute a farm for the purposes of this subchapter whenever requested to do so by any interested Federal, State, or local public agency, and his determination shall be conclusive.

(2) For the purposes of this subchapter, the terms ''owner'' and ''mortgage'' shall be deemed to include, respectively, the lessee of, and other security interest in, any leasehold interest which the Secretary determines has an unexpired term (A) in the case of a loan, for a period sufficiently beyond the repayment period of the loan to provide adequate security and a reasonable probability of accomplishing the objectives for which the loan is made, and (B) in the case of a grant for a period sufficient to accomplish the objectives for which the grant is made.

(3) For the purposes of this subchapter, the term ''elderly or handicapped persons or families'' means families which consist of two or more persons, the head of which (or his or her spouse) is at least sixty-two years of age or is handicapped. Such term also means a single person who is at least sixty-two years of age or is handicapped. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions, or if such person has a developmental disability as defined in section 15002 of this title. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, eligibility of families and persons for admission to and occupancy of housing constructed with assistance under this subchapter. Notwithstanding the preceding provisions of this paragraph, such term also includes two or more elderly (sixty-two years of age or over) or handicapped persons living together, one or more such persons living with another person who is determined (under regulations prescribed

[1] So in original.

by the Secretary) to be essential to the care or well-being of such persons, and the surviving member or members of any family described in the first sentence of this paragraph who were living, in a unit assisted under this subchapter, with the deceased member of the family at the time of his or her death.

(4) For the purpose of this subchapter, the terms ''low income families or persons'' and ''very low-income families or persons'' means those families and persons whose incomes do not exceed the respective levels established for lower income families and very low-income families under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]. Notwithstanding the preceding sentence, the maximum income levels established for purposes of this subchapter for such families and persons in the Virgin Islands shall not be less than the highest such levels established for purposes of this subchapter for such families and persons in American Samoa, Guam, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The temporary absence of a child from the home due to placement in foster care should not be considered in considering family composition and family size.

(5)(A) For the purpose of this subchapter, the terms ''income'' and ''adjusted income'' have the meanings given by sections 3(b)(4) and 3(b)(5), respectively, of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(4), (5)].

(B) For purposes of this subchapter, the term ''income'' does not include dividends received from the Alaska Permanent Fund by a person who was under the age of 18 years when that person qualified for the dividend.

(6) For the purposes of this subchapter, the term ''Indian tribe'' means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) [25 U.S.C. 450 et seq.] or was considered an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter.

(7) For the purposes of this subchapter, the term ''rural resident'' shall include a family or a person who is a renter of a dwelling unit in a rural area.

(8) For the purposes of this subchapter, the term ''adequate dwelling'' means a decent, safe, and sanitary dwelling unit.

(c) Conditions of eligibility

In order to be eligible for the assistance authorized by subsection (a) of this section, the applicant must show (1) that he is the owner of a farm which is without a decent, safe, and sanitary dwelling for himself and his family and necessary resident farm labor, or for the family of the operating tenant, lessee, or sharecropper, or without other farm buildings adequate for the type of farming in which he engages or desires to engage, or that he is the owner of other real estate in a rural area or a rural resident without an adequate dwelling or related facilities for his own use or buildings adequate for his farming operations, or that the applicant is an elderly or handicapped person or family in a rural area without an adequate dwelling or related facility for its own use, or that he is the owner of a farm or other real estate in a rural area who needs refinancing of indebtedness described in clause (4) of subsection (a) of this section; (2) that he is without sufficient resources to provide the necessary housing and buildings on his own account; and (3) that he is unable to secure the credit necessary for such housing and buildings from other sources upon terms and conditions which he could reasonably be expected to fulfill. If an applicant is a State or local public agency or Indian tribe—

(A) the provisions of clause (3) shall not apply to its application; and

(B) the applicant shall be eligible to participate in any program under this subchapter if the persons or families to be served by the applicant with the assistance being sought would be eligible to participate in such program.

(d) Additional definitions

As used in this subchapter (except in sections 1473 and 1474(b) of this title) the terms ''farm'', ''farm dwelling'', and ''farm housing'' shall include dwellings or other essential buildings of eligible applicants.

(e) Prepayment of taxes, insurance, and other expenses; advances to account of borrower: interest, time for repayment

The Secretary shall establish procedures under which borrowers under this subchapter are required to make periodic payments for the purpose of taxes, insurance, and other necessary expenses as the Secretary may deem appropriate. Notwithstanding any other provision of law, such payments shall not be considered public funds. The Secretary shall direct the disbursement of the funds at the appropriate time or times for the purposes for which the funds were escrowed. The Secretary shall pay the same rate of interest on escrowed funds as is required to be paid on escrowed funds held by other lenders in any State where State law requires payment of interest on escrowed funds, subject to appropriations to the extent that additional budget authority is necessary to carry out this sentence. If the prepayments made by the borrower are not sufficient to pay the amount due, advances may be made by the Secretary to pay the costs in full, which advances shall be charged to the account of the borrower, bear interest, and be payable in a timely fashion as determined by the Secretary. The Secretary shall notify a borrower in writing when loan payments are delinquent.

(f) Increase in loan limits

With respect to any limitation on the amount of any loan which may be made, insured, or guaranteed under this subchapter for the purchase of a dwelling unit, the Secretary may increase such amount by up to 20 percent if such increase is necessary to account for the increased cost of the dwelling unit due to the installation of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of title 12) therein.

(g) Avoidance of involuntary displacement of families and businesses

The programs authorized by this subchapter shall be carried out, consistent with program goals and objectives, so that the involuntary displacement of families and businesses is avoided.

(h) Eligibility of resident aliens

The Secretary may not restrict the availability of assistance under this subchapter for any alien for whom assistance may not be restricted under section 1436a of this title.

(i) Loan packaging by nonprofit organizations as a "development cost"

For the purposes of this subchapter, the term ''development cost'' shall include the packaging of loan and grant applications and actions related thereto by public and private nonprofit organizations tax exempt under title 26.

(j) Program transfers

Notwithstanding any other provision of law, the Secretary shall not transfer any program authorized by this subchapter to the Rural Development Administration.

(July 15, 1949, ch. 338, title V, § 501, 63 Stat. 432; Pub. L. 87–70, title VIII, §§ 801(a), 803, June 30, 1961, 75 Stat. 186; Pub. L. 87–723, § 4(a)(1), Sept. 28, 1962, 76 Stat. 670; Pub. L. 89–117, title X, § 1001, Aug. 10, 1965, 79 Stat. 497; Pub. L. 89–754, title VIII, §§ 801, 807, Nov. 3, 1966, 80 Stat. 1282; Pub. L. 91–609, title VIII, § 802, Dec. 31, 1970, 84 Stat. 1806; Pub. L. 93–383, title V, §§ 501–503, 505(a), 520, Aug. 22, 1974, 88 Stat. 692, 693, 699; Pub. L. 95–128, title V, §§ 503, 507(a)(1), (2), (b), Oct. 12, 1977, 91 Stat. 1139–1141; Pub. L. 95–619, title II, § 248(c), Nov. 9, 1978, 92 Stat. 3235; Pub. L. 96–153, title V, §§ 502(b), 506, Dec. 21, 1979, 93 Stat. 1134, 1136; Pub. L. 96–399, title V, §§ 506, 507(a), (h), 512, Oct. 8, 1980, 94 Stat. 1669–1671; Pub. L. 98–181, title V, § 502, Nov. 30, 1983, 97 Stat. 1240; Pub. L. 98–479, title I, § 105(a), title II, § 203(d)(3), Oct. 17, 1984, 98 Stat. 2226, 2229; Pub. L. 99–272, title XIV, § 14001(b)(3), Apr. 7, 1986, 100 Stat. 328; Pub. L. 100–242, title III, §§ 302(a), (b)(1), 303, 315, 316(a), Feb. 5, 1988, 101 Stat. 1893, 1894, 1897; Pub. L. 101–625, title VII, §§ 702, 703, Nov. 28, 1990, 104 Stat. 4282, 4283; Pub. L. 102–550, title VII, § 714, title X, § 1012(m), Oct. 28, 1992, 106 Stat. 3842, 3907; Pub. L. 104–193, title IV, § 441(b), Aug. 22, 1996, 110 Stat. 2276; Pub. L. 106–402, title IV, § 401(b)(8), Oct. 30, 2000, 114 Stat. 1738; Pub. L. 107–76, title VII, § 752, Nov. 28, 2001, 115 Stat. 740; Pub. L. 108–199, div. A, title VII, § 768, Jan. 23, 2004, 118 Stat. 40.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a)(4), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (b)(6), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

Chapter 67 of title 31, referred to in subsec. (b)(6), was repealed by Pub. L. 99–272, title XIV, § 14001(a)(1), Apr. 7, 1986, 100 Stat. 327, effective Oct. 18, 1986.

AMENDMENTS

2004—Subsec. (b)(5)(B). Pub. L. 108–199 struck out ''for fiscal years 2002 and 2003,'' after ''this subchapter,''.

2001—Subsec. (b)(5). Pub. L. 107–76 designated existing provisions as subpar. (A) and added subpar. (B).

2000—Subsec. (b)(3). Pub. L. 106–402 substituted ''developmental disability as defined in section 15002 of this title'' for ''developmental disability as defined in section 6001(7) of this title''.

1996—Subsec. (h). Pub. L. 104–193 struck out par. (1) designation, struck out ''by the Secretary of Housing and Urban Development'' before ''under section 1436a of this title'', and struck out par. (2) which read as follows: ''In carrying out any restriction established by the Secretary on the availability of assistance under this subchapter for any alien, the Secretary shall follow procedures comparable to the procedures established in section 1436a of this title.''

1992—Subsec. (a). Pub. L. 102–550, § 1012(m), added par. (5).

Subsec. (j). Pub. L. 102–550, § 714, added subsec. (j).

1990—Subsec. (b)(4). Pub. L. 101–625, § 702, inserted at end ''The temporary absence of a child from the home due to placement in foster care should not be considered in considering family composition and family size.''

Subsec. (e). Pub. L. 101–625, § 703, inserted after third sentence ''The Secretary shall pay the same rate of interest on escrowed funds as is required to be paid on escrowed funds held by other lenders in any State where State law requires payment of interest on escrowed funds, subject to appropriations to the extent that additional budget authority is necessary to carry out this sentence.''

1988—Subsec. (b)(3). Pub. L. 100–242, § 316(a), substituted ''has a developmental disability as defined in section 6001(7) of this title'' for ''is a developmentally disabled individual as defined in section 6001(7) of this title''.

Subsec. (b)(4). Pub. L. 100–242, § 302(b)(1), inserted provisions at end relating to maximum income levels established for families and persons in the Virgin Islands to be not less than the highest such levels established for families and persons in American Samoa, Guam, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Subsec. (e). Pub. L. 100–242, § 303, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Secretary may establish procedures whereby borrowers under this subchapter may make periodic payments for the purpose of taxes, insurance, and such other necessary expenses as the Secretary may deem appropriate. Such payments shall be disbursed by the Secretary at the appropriate time or times for the purposes for which such payments are made, and after October 1, 1977, if the prepayments made by the borrower are not sufficient to pay the amount due, advances may be made by the Secretary to pay these costs in full, which advances shall be charged to the account of the borrower and bear interest and be payable in a timely fashion not to exceed two years, as determined by the Secretary. The Secretary shall notify a borrower in writing when his loan payments are delinquent.''

Subsec. (h). Pub. L. 100–242, § 302(a), added subsec. (h).

Subsec. (i). Pub. L. 100–242, § 315, added subsec. (i).

1986—Subsec. (b)(6). Pub. L. 99–272 substituted ''or was considered an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter'' for ''or under chapter 67 of title 31''.

1984—Subsec. (b)(4). Pub. L. 98–479, § 105(a), struck out ''by the Secretary of Housing and Urban Development'' before ''under the United States Housing Act of 1937.''

Subsec. (b)(6). Pub. L. 98–479, § 203(d)(3), substituted ''chapter 67 of title 31'' for ''the State and Local Fiscal Assistance Act of 1972 (Public Law 92–512)''.

1983—Subsec. (b)(4). Pub. L. 98–181, § 502(a), amended par. (4) generally, substituting definition of low and

very low-income families or persons as those whose incomes do not exceed levels established by the Secretary under the United States Housing Act of 1937 for definition of persons of low income as those whose incomes do not exceed 80 per centum of the area median income, except when it is impracticable to use such median income or variations are necessary because of other factors.

Subsec. (b)(5). Pub. L. 98–181, §502(b), amended par. (5) generally, substituting definition of income and adjusted income as having the meanings given by sections 3(b)(4) and 3(b)(5) of the United States Housing Act of 1937 for definition of income as income from all sources of each household member, as determined in accordance with criteria prescribed by the Secretary.

1980—Subsec. (a)(2). Pub. L. 96–399, §507(a), inserted reference to persons residing in reservations or villages of Indian tribes.

Subsec. (b)(6) to (8). Pub. L. 96–399, §506, added pars. (6) to (8).

Subsec. (c). Pub. L. 96–399, §507(h), inserted ''or Indian tribe'' after ''local public agency'' in second sentence.

Subsec. (g). Pub. L. 96–399, §512, added subsec. (g).

1979—Subsec. (a)(4). Pub. L. 96–153, §506, redesignated former subpar. (B) as (B)(i) and (ii), and in subpar. (B)(i) as so redesignated, inserted reference to circumstances beyond the applicant's control, and in subpar. (B)(ii) as so redesignated, substituted reference to deprivation of decent, safe, and sanitary dwelling for reference to continuing hardship, and struck out subpar. (C) which authorized refinancing indebtedness provided the indebtedness was incurred at least 5 years prior to the application for assistance.

Subsec. (b)(4), (5). Pub. L. 96–153, §502(b), added pars. (4) and (5).

1978—Subsec. (f). Pub. L. 95–619 added subsec. (f).

1977—Subsec. (a)(3). Pub. L. 95–128, §507(a)(1), substituted ''elderly or handicapped persons or families'' for ''elderly persons''.

Subsec. (b)(3). Pub. L. 95–128, §507(b), substituted definition of ''elderly or handicapped persons or families'' for prior definition of ''elderly persons'' as persons who are 62 years of age or over.

Subsec. (c)(1). Pub. L. 95–128, §507(a)(2), substituted ''the applicant is an elderly or handicapped person or family in a rural area without an adequate dwelling or related facility for its own use'' for ''he is an elderly person in a rural area without an adequate dwelling or related facilities for his own use''.

Subsec. (e). Pub. L. 95–128, §503, substituted as a second sentence ''Such payments shall be disbursed by the Secretary at the appropriate time or times for the purposes for which such payments are made, and after October 1, 1977, if the prepayments made by the borrower are not sufficient to pay the amount due, advances may be made by the Secretary to pay these costs in full, which advances shall be charged to the account of the borrower and bear interest and be payable in a timely fashion not to exceed two years, as determined by the Secretary'' for ''Such payments shall be held in escrow by the Secretary and paid out by him at the appropriate time or times for the purposes for which such payments are made''.

1974—Subsec. (a)(1). Pub. L. 93–383, §501, inserted references to the territories and possessions of the United States and the Trust Territory of the Pacific Islands.

Subsec. (a)(4)(B). Pub. L. 93–383, §502(1), inserted provisions relating to combining of indebtedness with a loan for improvement, rehabilitation, or repairs.

Subsec. (a)(4)(C). Pub. L. 93–383, §502(2), substituted provisions relating to incursion of indebtedness by the applicant at least five years prior to his applying under this clause for provisions relating to indebtedness not held or insured by the United States or any agency.

Subsec. (a)(4)(D). Pub. L. 93–383, §502(2), struck out subpar. (D) which related to indebtedness incurred prior to enactment of clause.

Subsec. (b)(2). Pub. L. 93–383, §503, substituted ''this subchapter'' for ''sections 1472 and 1474 of this title''.

Subsec. (c). Pub. L. 93–383, §520, inserted provisions relating to applications of a State or local public agency.

Subsec. (e). Pub. L. 93–383, §505(a), added subsec. (e).

1970—Subsec. (b)(2). Pub. L. 91–609 substituted ''sections 1472 and 1473 of this title, the terms 'owner' and 'mortgage' shall be deemed to include, respectively, the lessee of'' for ''this subchapter, the terms 'owner', 'farm', and 'mortgage' shall be deemed to include, respectively, the lessee of, the land included in''. The words '', the land included in'' were improvidently omitted.

1966—Subsec. (a)(1) to (3). Pub. L. 89–754, §801, struck out ''previously occupied'' before ''buildings and land'' in cl. (1), ''buildings and the purchase of land'' in cl. (2), and ''dwellings and related facilities'' in cl. (3).

Subsec. (a)(4). Pub. L. 89–754, §807(a), added cl. (4).

Subsec. (c)(1). Pub. L. 89–754, §807(b), inserted as a condition of eligibility that the applicant be the owner of a farm or other real estate in a rural area who needs refinancing of indebtedness described in subsec. (a)(4) of this section.

1965—Subsec. (a). Pub. L. 89–117, §1001(a), authorized the extension of formal assistance to owners of farms to purchase previously occupied buildings and land constituting a minimum adequate site, to owners of other real estate in rural areas for the construction, improvement, alteration, or repair of dwellings, related facilities, and farm buildings, and to rural residents for such purposes and for the purchase of previously occupied buildings and the purchase of land constituting a minimum adequate site.

Subsec. (c). Pub. L. 89–117, §1001(b), inserted ''or a rural resident'' in cl. (1) after ''or that he is the owner of other real estate in a rural area''.

1962—Subsec. (a)(3). Pub. L. 87–723, §4(a)(1)(A), added cl. (3).

Subsec. (b)(3). Pub. L. 87–723, §4(a)(1)(B), added par. (3).

Subsec. (c)(1). Pub. L. 87–723, §4(a)(1)(C), inserted provisions requiring the applicant for assistance to show in the alternative that he is an elderly person in a rural area without an adequate dwelling or related facilities for his own use.

1961—Subsec. (a). Pub. L. 87–70, §803(a), authorized assistance to owners of other real estate in rural areas to enable them to provide dwellings and related facilities for their own use and buildings adequate for their farming operations.

Subsec. (b). Pub. L. 87–70, §801(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 87–70, §803(b), permitted the applicant to show that he is the owner of other real estate in a rural area without an adequate dwelling or related facilities for his own use or buildings adequate for his farming operations.

Subsec. (d). Pub. L. 87–70, §803(c), added subsec. (d).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 302(b)(2) of Pub. L. 100–242 provided that: ''The amendment made by paragraph (1) [amending this section] shall be applicable to any determination of eligibility for assistance under title V of the Housing Act of 1949 [this subchapter] made on or after the date of the enactment of this Act [Feb. 5, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99–272.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PERFORMANCE GOALS FOR FARMERS HOME ADMINISTRATION

Section 925(b) of Pub. L. 102–550 provided that:

''(1) IN GENERAL.—The Secretary of Agriculture may establish performance goals for the major housing programs of the Farmers Home Administration in order to

measure progress towards meeting the objectives of national housing policy.

''(2) FORM OF GOALS.—The performance goals referred to in paragraph (1) shall be expressed in terms sufficient to measure progress.

''(3) REPORT.—The Secretary of Agriculture shall prepare a report to the Congress on the progress made in attaining the performance goals for each program, citing the actual results achieved in such program for the previous year.

''(4) FAILURE TO MEET GOALS.—If a performance standard or goal has not been met, the report under paragraph (3) shall include an explanation of why the goal was not met, propose plans for achieving the performance goal, and recommend any legislative or regulatory changes necessary for achievement of the goal.''

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under section 925(b)(3) of Pub. L. 102–550, set out above, is listed in item 12 on page 47), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

§ 1472. Loans for housing and buildings on adequate farms

(a) Terms of loan

(1) If the Secretary determines that an applicant is eligible for assistance as provided in section 1471 of this title and that the applicant has the ability to repay in full the sum to be loaned, with interest, giving due consideration to the income and earning capacity of the applicant and his family from the farm and other sources, and the maintenance of a reasonable standard of living for the owner and the occupants of said farm, a loan may be made by the Secretary to said applicant for a period of not to exceed thirty-three years from the making of the loan with interest. The Secretary may accept the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability. At the borrower's option, the borrower may prepay to the Secretary as escrow agent, on terms and conditions prescribed by him, such taxes, insurance, and other expenses as the Secretary may require in accordance with section 1471(e) of this title.

(2) The Secretary may extend the period of any loan made under this section if the Secretary determines that such extension is necessary to permit the making of such loan to any person whose income does not exceed 60 per centum of the median income for the area and who would otherwise be denied such loan because the payments required under a shorter period would exceed the financial capacity of such person. The aggregate period for which any loan may be extended under this paragraph may not exceed 5 years.

(3)(A) Notwithstanding any other provision of this subchapter, a loan may be made under this section for the purchase of a dwelling located on land owned by a community land trust, if the borrower and the loan otherwise meet the requirements applicable to loans under this section.

(B) For purposes of this paragraph, the term ''community land trust'' means a community housing development organization as such term is defined in section 12704 of this title (except that the requirements under section 12704(6)(C) of this title and section 12704(6)(D) of this title shall not apply for purposes of this paragraph)—

(i) that is not sponsored by a for-profit organization;

(ii) that is established to carry out the activities under clause (iii);

(iii) that—

(I) acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

(II) transfers ownership of any structural improvements located on such leased parcels to the lessees; and

(III) retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity; and

(iv) that has its corporate membership open to any adult resident of a particular geographic area specified in the bylaws of the organization.

(b) Provisions of loan instrument

The instruments under which the loan is made and the security given shall—

(1) provide for security upon the applicant's equity in the farm or such other security or collateral, if any, as may be found necessary by the Secretary reasonably to assure repayment of the indebtedness;

(2) provide for the repayment of principal and interest in accordance with schedules and repayment plans prescribed by the Secretary, except that any prepayment of a loan made or insured under section 1484 or 1485 of this title shall be subject to the provisions of subsection (c) of this section;

(3) except for guaranteed loans, contain the agreement of the borrower that he will, at the request of the Secretary, proceed with diligence to refinance the balance of the indebtedness through cooperative or other responsible private credit sources whenever the Secretary determines, in the light of the borrower's circumstances, including his earning capacity and the income from the farm, that he is able to do so upon reasonable terms and conditions;

(4) be in such form and contain such covenants as the Secretary shall prescribe to secure the payment of the loan with interest, protect the security, and assure that the farm will be maintained in repair and that waste and exhaustion of the farm will be prevented.

(c) Prepayment and refinancing provisions

(1)(A) The Secretary may not accept an offer to prepay, or request refinancing in accordance

with subsection (b)(3) of this section of, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into after December 21, 1979, but before December 15, 1989, unless the Secretary takes appropriate action which will obligate the borrower (and successors in interest thereof) to utilize the assisted housing and related facilities for the purposes specified in section 1484 or 1485 of this title, as the case may be, for a period of—

(i) fifteen years from the date on which the loan was made in the case of a loan made or insured pursuant to a contract entered into after December 21, 1979, but before December 15, 1989, and utilized for housing and related facilities which have not received assistance under section 1490a(a)(1)(B), (a)(2), or (5) of this title or section 1437f of this title; or

(ii) twenty years from the date on which the loan was made in the case of any other such loan;

or until the Secretary determines (prior to the end of such period) that there is no longer a need for such housing and related facilities to be so utilized or that Federal or other financial assistance provided to the residents of such housing will no longer be provided.

(B) The Secretary may not accept an offer to prepay, or request refinancing in accordance with subsection (b)(3) of this section of, any initial loan made or insured under section 1485 of this title pursuant to a contract entered into on or after December 15, 1989.

(2) If any loan which was made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, is prepaid or refinanced on or after October 8, 1980, and tenants of the housing and related facilities financed with such loan are displaced due to a change in the use of the housing, or to an increase in rental or other charges, as a result of such prepayment or refinancing, the Secretary shall provide such tenants a priority for relocation in alternative housing assisted pursuant to this subchapter.

(3) NOTICE OF OFFER TO PREPAY.—Not less than 30 days after receiving an offer to prepay any loan made or insured under section 1484 or 1485 of this title, the Secretary shall provide written notice of the offer or request to the tenants of the housing and related facilities involved, to interested nonprofit organizations, and to any appropriate State and local agencies.

(4)(A) AGREEMENT BY BORROWER TO EXTEND LOW INCOME USE.—Before accepting any offer to prepay, or requesting refinancing in accordance with subsection (b)(3) of this section of, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, the Secretary shall make reasonable efforts to enter into an agreement with the borrower under which the borrower will make a binding commitment to extend the low income use of the assisted housing and related facilities involved for not less than the 20-year period beginning on the date on which the agreement is executed.

(B) ASSISTANCE AVAILABLE TO BORROWER TO EXTEND LOW INCOME USE.—To the extent of amounts provided in appropriation Acts, the agreement under subparagraph (A) may provide for 1 or more of the following forms of assistance that the Secretary, after taking into account local market conditions, determines to be necessary to extend the low income use of the housing and related facilities involved:

(i) Increase in the rate of return on investment.

(ii) Reduction of the interest rate on the loan through the provision of interest credits under section 1490a(a)(1)(B) of this title, or additional assistance or an increase in assistance provided under section 1490a(a)(5) of this title.

(iii) Additional rental assistance, or an increase in assistance provided under existing contracts, under section 1490a(a)(2) or 1490a(a)(5) of this title or under section 1437f of this title.

(iv) An equity loan to the borrower under paragraphs (1) and (2) of section 1485(c) of this title or under paragraphs (1) and (2) of section 1484(j)[1] of this title, except that an equity loan referred to in this clause may not be made available after August 6, 1996, unless the Secretary determines that the other incentives available under this subparagraph are not adequate to provide a fair return on the investment of the borrower, to prevent prepayment of the loan insured under section 1484 or 1485 of this title, or to prevent the displacement of tenants of the housing for which the loan was made.

(v) Incremental rental assistance in connection with loans under clauses (ii) and (iv) to the extent necessary to avoid increases in the rental payments of current tenants not receiving rental assistance under section 1490a(a)(2) of this title or under section 1437f of this title, or current tenants of projects not assisted under section 1490a(a)(5) of this title.

(vi) In the case of a project that has received rental assistance under section 1437f of this title, permitting the owner to receive rent in excess of the amount determined necessary by the Secretary to defray the cost of long-term repair or maintenance of such a project.

(C) APPROVAL OF ASSISTANCE.—The Secretary may approve assistance under subparagraph (B) for assisted housing only if the restrictive period has expired for any loan for the housing made or insured under section 1484 or 1485 of this title pursuant to a contract entered into after December 21, 1979, but before December 15, 1989, and the Secretary determines that the combination of assistance provided—

(i) is necessary to provide a fair return on the investment of the borrower; and

(ii) is the least costly alternative for the Federal Government that is consistent with carrying out the purposes of this subsection.

(5)(A) OFFER TO SELL TO NONPROFIT ORGANIZATIONS AND PUBLIC AGENCIES.—

(i) IN GENERAL.—If the Secretary determines after a reasonable period that an agreement will not be entered into with a borrower under paragraph (4), the Secretary shall require the borrower (except as provided in subparagraph (G)) to offer to sell the assisted housing and related facilities involved to any qualified

[1] See References in Text note below.

nonprofit organization or public agency at a fair market value determined by 2 independent appraisers, one of whom shall be selected by the Secretary and one of whom shall be selected by the borrower. If the 2 appraisers fail to agree on the fair market value, the Secretary and the borrower shall jointly select a third appraiser, whose appraisal shall be binding on the Secretary and the borrower.

(ii) PERIOD FOR WHICH REQUIREMENT APPLICABLE.—If, upon the expiration of 180 days after an offer is made to sell housing and related facilities under clause (i), no qualified nonprofit organization or public agency has made a bona fide offer to purchase, the Secretary may accept the offer to prepay, or may request refinancing in accordance with subsection (b)(3) of this section of, the loan. This clause shall apply only when funds are available for purposes of carrying out a transfer under this paragraph.

(B) QUALIFIED NONPROFIT ORGANIZATIONS AND PUBLIC AGENCIES.—

(i) LOCAL NONPROFIT ORGANIZATION OR PUBLIC AGENCY.—A local nonprofit organization or public agency may purchase housing and related facilities under this paragraph only if—

(I) the organization or agency is determined by the Secretary to be capable of managing the housing and related facilities (either directly or through a contract) for the remaining useful life of the housing and related facilities; and

(II) the organization or agency has entered into an agreement that obligates it (and successors in interest thereof) to maintain the housing and related facilities as affordable for very low-income families or persons and low income families or persons for the remaining useful life of the housing and related facilities.

(ii) NATIONAL OR REGIONAL NONPROFIT ORGANIZATION.—If the Secretary determines that there is no local nonprofit organization or public agency qualified to purchase the housing and related facilities involved, the Secretary shall require the borrower to offer to sell the assisted housing and related facilities to an existing qualified national or regional nonprofit organization.

(iii) SELECTION OF QUALIFIED PURCHASER.—The Secretary shall promulgate regulations that establish criteria for selecting a qualified nonprofit organization or public agency to purchase housing and related facilities when more than 1 such organization or agency has made a bona fide offer. Such regulations shall give a priority to those organizations or agencies with the greatest experience in developing or managing low income housing or community development projects and with the longest record of service to the community.

(C) FINANCING OF SALE.—To facilitate the sale described in subparagraph (A), the Secretary shall—

(i) to the extent provided in appropriation Acts, make an advance to the nonprofit organization or public agency whose offer to purchase is accepted under this paragraph to cover any direct costs (other than the purchase price) incurred by the organization or agency in purchasing and assuming responsibility for the housing and related facilities involved;

(ii) approve the assumption, by the nonprofit organization or public agency involved, of the loan made or insured under section 1484 or 1485 of this title;

(iii) to the extent provided in appropriation Acts, transfer any rental assistance payments that are received under section 1490a(a)(2)(A) of this title or under section 1437f of this title, or any assistance payments received under section 1490a(a)(5) of this title, with respect to the housing and related facilities involved; and

(iv) to the extent provided in appropriation Acts, provide a loan under section 1485(c)(3) of this title to the nonprofit organization or public agency whose offer to purchase is accepted under this paragraph to enable the organization or agency to purchase the housing and related facilities involved.

(D) RENT LIMITATION AND ASSISTANCE.—The Secretary shall, to the extent provided in appropriation Acts, provide to each nonprofit organization or public agency purchasing housing and related facilities under this paragraph financial assistance (in the form of monthly payments or forgiveness of debt) in an amount necessary to ensure that the monthly rent payment made by each low income family or person residing in the housing does not exceed the maximum rent permitted under section 1490a(a)(2)(A) of this title or, in the case of housing assisted under section 1490a(a)(5) of this title, does not exceed the rents established for the project under such section.

(E) RESTRICTION ON SUBSEQUENT TRANSFERS.—Except as provided in subparagraph (B)(ii), the Secretary may not approve the transfer of any housing and related facilities purchased under this paragraph during the remaining useful life of the housing and related facilities, unless the Secretary determines that—

(i) the transfer will further the provision of housing and related facilities for low income families or persons; or

(ii) there is no longer a need for such housing and related facilities by low income families or persons.

(F) GENERAL RESTRICTION ON PREPAYMENTS AND REFINANCINGS.—Following the transfer of the maximum number of dwelling units set forth in subparagraph (H)(i) in any fiscal year or the maximum number of dwelling units for which budget authority is available in any fiscal year, the Secretary may not accept in such fiscal year any offer to prepay, or request refinancing in accordance with subsection (b)(3) of this section of, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, except in accordance with subparagraph (G). The limitation established in this subparagraph shall not apply to an offer to prepay, or request to refinance, if, following the date on which such offer or request is made (or following February 5, 1988, whichever occurs later) a 15-month period expires during which no budget authority is available to carry out this paragraph. For purposes of

this subparagraph, the Secretary shall allocate budget authority under this paragraph in the order in which offers to prepay, or request to refinance, are made.

(G) EXCEPTION.—This paragraph shall not apply to any offer to prepay, or any request to refinance in accordance with subsection (b)(3) of this section, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, if—

(i) the borrower enters into an agreement with the Secretary that obligates the borrower (and successors in interest thereof)—

(I) to utilize the assisted housing and related facilities for the purposes specified in section 1484 or 1485 of this title, as the case may be, for a period determined by the Secretary (but not less than the period described in paragraph (1)(B) calculated from the date on which the loan is made or insured); and

(II) upon termination of the period described in paragraph (1)(B), to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public agency in accordance with this paragraph; or

(ii) the Secretary determines that housing opportunities of minorities will not be materially affected as a result of the prepayment or refinancing, and that—

(I) the borrower (and any successor in interest thereof) are obligated to ensure that tenants of the housing and related facilities financed with the loan will not be displaced due to a change in the use of the housing, or to an increase in rental or other charges, as a result of the prepayment or refinancing; or

(II) there is an adequate supply of safe, decent, and affordable rental housing within the market area of the housing and related facilities and sufficient actions have been taken to ensure that the rental housing will be made available to each tenant upon displacement.

(H) FUNDING.—

(i) BUDGET LIMITATION.—Not more than 5,000 dwelling units may be transferred under this paragraph in any fiscal year, and the budget authority that may be provided under this paragraph for any fiscal year may not exceed the amounts required to carry out this paragraph with respect to such number.

(ii) REIMBURSEMENT OF RURAL HOUSING INSURANCE FUND.—There are authorized to be appropriated to the Rural Housing Insurance Fund such sums as may be necessary to reimburse the Fund for financial assistance provided under this paragraph, paragraph (4), and section 1487(j)(7) of this title.

(I) DEFINITIONS.—For purposes of this paragraph:

(i) LOCAL NONPROFIT ORGANIZATION.—The term ''local nonprofit organization'' means a nonprofit organization that—

(I) has a broad based board reflecting various interests in the community or trade area; and

(II) is a not-for-profit charitable organization whose principal purposes include developing or managing low income housing or community development projects.

(ii) NONPROFIT ORGANIZATION.—The term ''nonprofit organization'' means any private organization—

(I) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(II) that is approved by the Secretary as to financial responsibility; and

(III) that does not have among its officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such an interest) in loans financed under section 1485 of this title that have been prepaid.

(J) REGULATIONS.—Notwithstanding section 1490n of this title, the Secretary shall issue final regulations to carry out this paragraph not later than 60 days after February 5, 1988. The Secretary shall provide for the regulations to take effect not later than 45 days after the date on which the regulations are issued.

(d) Dwelling units available to very low-income families or persons

On and after November 30, 1983—

(1) not less than 40 percent of the funds approved in appropriation Acts for use under this section shall be set aside and made available only for very low-income families or persons; and

(2) not less than 30 percent of the funds allocated to each State under this section shall be available only for very low-income families or persons.

(e) Manufactured homes; qualifications for loans made or insured; energy conservation requirements

(1) A loan which may be made or insured under this section with respect to housing shall be made or insured with respect to a manufactured home or with respect to a manufactured home and lot, whether such home or such home and lot is real property, personal property, or mixed real and personal property, if—

(A) the manufactured home meets the standards prescribed pursuant to title VI of the Housing and Community Development Act of 1974 [42 U.S.C. 5401 et seq.];

(B) the manufactured home, or the manufactured home and lot, meets the installation, structural, and site requirements which would apply under title II of the National Housing Act [12 U.S.C. 1707 et seq.]; and

(C) the manufactured home meets the energy conserving requirements established under paragraph (2), or until the energy conserving requirements are established under paragraph (2), the manufactured home meets the energy conserving requirements applicable to housing other than manufactured housing financed under this subchapter.

(2) Energy conserving requirements established by the Secretary for the purpose of paragraph (1)(C) shall—

(A) reduce the operating costs for a borrower by maximizing the energy savings and be cost-effective over the life of the manufactured

home or the term of the loan, whichever is shorter, taking into account variations in climate, types of energy used, the cost to modify the home to meet such requirements, and the estimated value of the energy saved over the term of the mortgage; and

(B) be established so that the increase in the annual loan payment resulting from the added energy conserving requirements in excess of those required by the standards prescribed under title VI of the Housing and Community Development Act of 1974 [42 U.S.C. 5401 et seq.] shall not exceed the projected savings in annual energy costs.

(3) A loan that may be made or insured under this section with respect to a manufactured home on a permanent foundation, or a manufactured home on a permanent foundation and a lot, shall be repayable over the same period as would be applicable under section 203(b) of the National Housing Act [12 U.S.C. 1709(b)].

(f) Remote rural areas

(1) Loan supplements

The Secretary may supplement any loan under this section to finance housing located in a remote rural area or on tribal allotted or Indian trust land with a grant in an amount not greater than the amount by which the reasonable land acquisition and construction costs of the security property exceeds the appraised value of such property.

(2) Prohibition

The Secretary may not refuse to make, insure, or guarantee a loan that otherwise meets the requirements under this section solely on the basis that the housing involved is located in an area that is excessively rural in character or excessively remote or on tribal allotted or Indian trust land.

(g) Deferred mortgage demonstration

(1) Authority

With respect to families or persons otherwise eligible for assistance under subsection (d) of this section but having incomes below the amount determined to qualify for a loan under this section, the Secretary may defer mortgage payments beyond the amount affordable at 1 percent interest, taking into consideration income, taxes and insurance. Deferred mortgage payments shall be converted to payment status when the ability of the borrower to repay improves. Deferred amounts shall not exceed 25 percent of the amount of the payment due at 1 percent interest and shall be subject to recapture.

(2) Interest

Interest on principal deferred shall be set at 1 percent and any interest payments deferred under this subsection shall not be treated as principal in calculating indebtedness.

(3) Funding

Subject to approval in appropriations Acts, not more than 10 percent of the amount approved for each of fiscal years 1993 and 1994 for loans under this section may be used to carry out this subsection.

(h) Doug Bereuter section 502 single family housing loan guarantee program

(1) Short title

This subsection may be cited as the ''Doug Bereuter Section 502 Single Family Housing Loan Guarantee Act''.

(2) Authority

The Secretary shall, to the extent provided in appropriation Acts, provide guaranteed loans in accordance with this section, section 1487(d) of this title, and the last sentence of section 1490a(a)(1)(A) of this title, except as modified by the provisions of this subsection. Loans shall be guaranteed under this subsection in an amount equal to 90 percent of the loan.

(3) Eligible borrowers

Loans guaranteed pursuant to this subsection shall be made only to borrowers who are low or moderate income families or persons, whose incomes do not exceed 115 percent of the median income of the area, as determined by the Secretary.

(4) Eligible housing

Loans may be guaranteed pursuant to this subsection only if the loan is used to acquire or construct a single-family residence that is—

(A) to be used as the principal residence of the borrower;

(B) eligible for assistance under this section, section 203(b) of the National Housing Act [12 U.S.C. 1709(b)], or chapter 37 of title 38; and

(C) located in a rural area.

(5) Priority and counseling for first-time homebuyers

(A) In providing guaranteed loans under this subsection, the Secretary shall give priority to first-time homebuyers (as defined in paragraph (13)).

(B) The Secretary may require that, as a condition of receiving a guaranteed loan pursuant to this subsection, a borrower who is a first-time homebuyer successfully complete a program of homeownership counseling under section 1701x(a)(1)(iii) of title 12 and obtain certification from the provider of the program that the borrower is adequately prepared for the obligations of homeownership.

(6) Eligible lenders

Guaranteed loans pursuant to this subsection may be made only by lenders approved by and meeting qualifications established by the Secretary.

(7) Loan terms

Loans guaranteed pursuant to this subsection shall—

(A) be made for a term not to exceed 30 years;

(B) involve a rate of interest that is fixed over the term of the loan and does not exceed the rate for loans guaranteed under chapter 37 of title 38 or comparable loans in the area that are not guaranteed; and

(C) involve a principal obligation (including initial service charges, appraisal, inspec-

tion, and other fees as the Secretary may approve)—

(i) for a first-time homebuyer, in any amount not in excess of 100 percent of the appraised value of the property as of the date the loan is accepted or the acquisition cost of the property, whichever is less, plus the guarantee fee as authorized by subsection (h)(7)[2] of this section; and

(ii) for any borrower other than a first-time homebuyer, in an amount not in excess of the percentage of the property or the acquisition cost of the property that the Secretary shall determine, such percentage or cost in any event not to exceed 100 percent of the appraised value of the property as of the date the loan is accepted or the acquisition cost of the property, whichever is less, plus the guarantee fee as authorized by subsection (h)(7)[2] of this section.

(8) Guarantee fee

With respect to a guaranteed loan under this subsection, the Secretary may collect from the lender at the time of issuance of the guarantee a fee equal to not more than 1 percent of the principal obligation of the loan.

(9) Refinancing

Any guaranteed loan under this subsection may be refinanced and extended in accordance with terms and conditions that the Secretary shall prescribe, but in no event for an additional amount or term which exceeds the limitations under this subsection.

(10) Nonassumption

Notwithstanding the transfer of property for which a guaranteed loan under this subsection was made, the borrower of a guaranteed loan under this subsection may not be relieved of liability with respect to the loan.

(11) Geographical targeting

In providing guaranteed loans under this subsection, the Secretary shall establish standards to target and give priority to areas that have a demonstrated need for additional sources of mortgage financing for low and moderate income families.

(12) Allocation

The Secretary shall provide that, in each fiscal year, guaranteed loans under this subsection shall be allocated among the States on the basis of the need of eligible borrowers in each State for such loans in comparison with the need of eligible borrowers for such loans among all States.

(13) Definitions

For purposes of this subsection:

(A) The term ''displaced homemaker'' means an individual who—

(i) is an adult;

(ii) has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(iii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(B) The term ''first-time homebuyer'' means any individual who (and whose spouse) has had no present ownership in a principal residence during the 3-year period ending on the date of purchase of the property acquired with a guaranteed loan under this subsection except that—

(i) any individual who is a displaced homemaker may not be excluded from consideration as a first-time homebuyer under this subparagraph on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse; and

(ii) any individual who is a single parent may not be excluded from consideration as a first-time homebuyer under this subparagraph on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

(C) The term ''single parent'' means an individual who—

(i) is unmarried or legally separated from a spouse; and

(ii)(I) has 1 or more minor children for whom the individual has custody or joint custody; or

(II) is pregnant.

(D) The term ''State'' means the States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, and any other possession of the United States.

(14) Guarantees for refinancing loans

(A) In general

Upon the request of the borrower, the Secretary shall, to the extent provided in appropriation Acts and subject to subparagraph (F), guarantee a loan that is made to refinance an existing loan that is made under this section or guaranteed under this subsection, and that the Secretary determines complies with the requirements of this paragraph.

(B) Interest rate

To be eligible for a guarantee under this paragraph, the refinancing loan shall have a rate of interest that is fixed over the term of the loan and does not exceed the interest rate of the loan being refinanced.

(C) Security

To be eligible for a guarantee under this paragraph, the refinancing loan shall be secured by the same single-family residence as was the loan being refinanced, which shall be owned by the borrower and occupied by the borrower as the principal residence of the borrower.

(D) Amount

To be eligible for a guarantee under this paragraph, the principal obligation under

[2] So in original. Probably should be subsection ''(h)(8)''.

the refinancing loan shall not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs as may be authorized by the Secretary, which shall include a discount not exceeding 200 basis points and an origination fee not exceeding such amount as the Secretary shall prescribe.

(E) Other requirements

The provisions of the last sentence of paragraph (2) and paragraphs (3), (6), (7)(A), (8), and (10) shall apply to loans guaranteed under this paragraph, and no other provisions of paragraphs (2) through (13) shall apply to such loans.

(F) Authority to establish limitation

The Secretary may establish limitations on the number of loans guaranteed under this paragraph, which shall be based on market conditions and other factors as the Secretary considers appropriate.

(July 15, 1949, ch. 338, title V, § 502, 63 Stat. 433; Pub. L. 87–70, title VIII, § 801(b), June 30, 1961, 75 Stat. 186; Pub. L. 87–723, § 4(a)(2), Sept. 28, 1962, 76 Stat. 671; Pub. L. 89–117, title X, § 1002, Aug. 10, 1965, 79 Stat. 497; Pub. L. 89–754, title VIII, § 802, Nov. 3, 1966, 80 Stat. 1282; Pub. L. 93–383, title V, § 505(b), Aug. 22, 1974, 88 Stat. 693; Pub. L. 95–128, title V, § 502(a), Oct. 12, 1977, 91 Stat. 1139; Pub. L. 96–153, title V, § 503, Dec. 21, 1979, 93 Stat. 1134; Pub. L. 96–399, title V, § 514(a), Oct. 8, 1980, 94 Stat. 1671; Pub. L. 98–181, title V, § 503(a), (d), Nov. 30, 1983, 97 Stat. 1240, 1241; Pub. L. 98–479, title I, § 105(b)(1), Oct. 17, 1984, 98 Stat. 2226; Pub. L. 100–242, title II, § 241, title III, § 314, Feb. 5, 1988, 101 Stat. 1886, 1897; Pub. L. 100–628, title X, § 1028, Nov. 7, 1988, 102 Stat. 3271; Pub. L. 101–235, title II, § 206, Dec. 15, 1989, 103 Stat. 2041; Pub. L. 101–625, title VII, §§ 704(a), 705(a), 706(b), 719(b), Nov. 28, 1990, 104 Stat. 4283, 4284, 4297; Pub. L. 102–142, title VII, § 743(b), Oct. 28, 1991, 105 Stat. 915; Pub. L. 102–550, title VII, §§ 701(g), 702(a), 703, 704, 712(a), (b), Oct. 28, 1992, 106 Stat. 3834, 3835, 3841; Pub. L. 104–180, title VII, § 734(c)(3)(A), (B), Aug. 6, 1996, 110 Stat. 1602; Pub. L. 105–276, title V, § 599C(e)(2)(A), (f), Oct. 21, 1998, 112 Stat. 2662, 2663; Pub. L. 106–569, title VII, § 701, Dec. 27, 2000, 114 Stat. 3013; Pub. L. 108–285, § 3(b), (c), Aug. 2, 2004, 118 Stat. 917, 918; Pub. L. 108–447, div. A, title VII, § 726(b), Dec. 8, 2004, 118 Stat. 2842.)

REFERENCES IN TEXT

Section 1484(j) of this title, referred to in subsec. (c)(4)(B)(iv), was repealed by Pub. L. 106–569, title VII, § 708(b), Dec. 27, 2000, 114 Stat. 3018.

The Housing and Community Development Act of 1974, referred to in subsec. (e)(1)(A), (2)(B), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title VI of the Housing and Community Development Act of 1974 is known as the National Manufactured Housing Construction and Safety Standards Act of 1974 and is classified generally to chapter 70 (§ 5401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The National Housing Act, referred to in subsec. (e)(1)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the National Housing Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 502, referred to in subsec. (h), means section 502 of act July 15, 1949, ch. 338, which is classifed to this section.

AMENDMENTS

2004—Subsec. (h). Pub. L. 108–285, § 3(b)(3), substituted ''Doug Bereuter section 502 single family housing loan guarantee program'' for ''Guaranteed loans'' in heading.

Subsec. (h)(1) to (4). Pub. L. 108–285, § 3(b)(1), (2), added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively. Former par. (4) redesignated (5).

Subsec. (h)(5). Pub. L. 108–285, § 3(b)(1), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (h)(5)(A). Pub. L. 108–285, § 3(c)(1), substituted ''paragraph (13)'' for ''paragraph (12)(A)''.

Subsec. (h)(6). Pub. L. 108–285, § 3(b)(1), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (h)(7). Pub. L. 108–285, § 3(b)(1), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (h)(7)(C). Pub. L. 108–447, which directed insertion of '', plus the guarantee fee as authorized by subsection (h)(7) of this section'' after ''whichever is less'' in pars. (i) and (ii) of subsec. (h)(6)(C), was executed by making the insertion in cls. (i) and (ii) of par. (7)(C), to reflect the probable intent of Congress and the amendment by Pub. L. 108–285, § 3(b)(1). See above.

Subsec. (h)(8) to (13). Pub. L. 108–285, § 3(b)(1), redesignated pars. (7) to (12) as (8) to (13), respectively. Former par. (13) redesignated (14).

Subsec. (h)(14). Pub. L. 108–285, § 3(b)(1), redesignated par. (13) as (14).

Subsec. (h)(14)(A). Pub. L. 108–285, § 3(c)(2)(A), made technical amendment to heading in original Act.

Subsec. (h)(14)(E). Pub. L. 108–285, § 3(c)(2)(B), substituted ''paragraph (2) and paragraphs (3), (6), (7)(A), (8), and (10)'' for ''paragraph (1) and paragraphs (2), (5), (6)(A), (7), and (9)'' and ''paragraphs (2) through (13)'' for ''paragraphs (1) through (12)''.

2000—Subsec. (h)(13). Pub. L. 106–569 added par. (13).

1998—Subsec. (c)(1)(A)(i). Pub. L. 105–276, § 599C(e)(2)(A)(i), substituted '', (a)(2), or (5)'' for ''or (a)(2)''.

Subsec. (c)(4)(B)(ii). Pub. L. 105–276, § 599C(e)(2)(A)(ii), inserted before period at end '', or additional assistance or an increase in assistance provided under section 1490a(a)(5) of this title''.

Subsec. (c)(4)(B)(iii). Pub. L. 105–276, § 599C(e)(2)(A)(iii), was executed by inserting ''or 1490a(a)(5)'' after ''section 1490a(a)(2)'' to reflect the probable intent of Congress, notwithstanding the fact that the verb ''inserting'' was missing from the directory language.

Subsec. (c)(4)(B)(v). Pub. L. 105–276, § 599C(e)(2)(A)(iv), inserted before period at end '', or current tenants of projects not assisted under section 1490a(a)(5) of this title''.

Subsec. (c)(5)(C)(iii). Pub. L. 105–276, § 599C(e)(2)(A)(v), struck out comma after ''1490a(a)(2)(A) of this title'' and inserted ''or any assistance payments received under section 1490a(a)(5) of this title,'' before ''with respect''.

Subsec. (c)(5)(D). Pub. L. 105–276, § 599C(e)(2)(A)(vi), inserted before period at end ''or, in the case of housing assisted under section 1490a(a)(5) of this title, does not exceed the rents established for the project under such section''.

Subsec. (h)(6)(C). Pub. L. 105–276, § 599C(f), which directed the striking out of '', subject to the maximum dollar amount limitation of section 203(b)(2) of the National Housing Act'' each place it appeared, was executed by striking out '', subject to the maximum dollar limitation of section 203(b)(2) of the National Housing Act'' after ''whichever is less'' in cl. (i) and after ''Secretary shall determine'' in cl. (ii), to reflect the probable intent of Congress.

1996—Subsec. (c)(4)(B)(iv). Pub. L. 104–180, § 734(c)(3)(A), inserted before period at end ''or under paragraphs (1) and (2) of section 1484(j) of this title, except that an equity loan referred to in this clause may

not be made available after August 6, 1996, unless the Secretary determines that the other incentives available under this subparagraph are not adequate to provide a fair return on the investment of the borrower, to prevent prepayment of the loan insured under section 1484 or 1485 of this title, or to prevent the displacement of tenants of the housing for which the loan was made''.

Subsec. (c)(4)(C). Pub. L. 104–180, §734(c)(3)(B), in introductory provisions substituted ''The Secretary may approve assistance under subparagraph (B) for assisted housing only if the restrictive period has expired for any loan for the housing made or insured under section 1484 or 1485 of this title pursuant to a contract entered into after December 21, 1979, but before December 15, 1989, and the Secretary determines that the combination of assistance provided—'' for ''The Secretary may approve assistance under subparagraph (B) only if the Secretary determines that the combination of assistance provided—''.

1992—Subsec. (a)(3). Pub. L. 102–550, §702(a), added par. (3).

Subsec. (c)(2), (4)(A). Pub. L. 102–550, §712(a)(1), (2), substituted ''prior to December 15, 1989'' for ''before December 21, 1979''.

Subsec. (e)(4)(B)(vi). Pub. L. 102–550, §712(b), added cl. (vi).

Subsec. (e)(5)(F), (G). Pub. L. 102–550, §712(a)(3), (4), substituted ''prior to December 15, 1989'' for ''before December 21, 1979''.

Subsec. (f). Pub. L. 102–550, §704, inserted ''or on tribal allotted or Indian trust land'' in pars. (1) and (2).

Subsec. (g)(3). Pub. L. 102–550, §701(g), substituted ''1993 and 1994'' for ''1991 and 1992''.

Subsec. (h)(2). Pub. L. 102–550, §703, inserted ''115 percent of'' after ''exceed''.

1991—Subsec. (h)(3)(C). Pub. L. 102–142 struck out before period at end ''that is more than 25 miles from an urban area or densely populated area''.

1990—Subsec. (c)(1)(B). Pub. L. 101–625, §719(b), inserted ''initial'' after ''any''.

Subsec. (f). Pub. L. 101–625, §704(a), added subsec. (f).

Subsec. (g). Pub. L. 101–625, §705(a), added subsec. (g).

Subsec. (h). Pub. L. 101–625, §706(b), added subsec. (h).

1989—Subsec. (c)(1). Pub. L. 101–235, §206, designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, inserted ''but before December 15, 1989,'' after ''December 21, 1979,'' in introductory provisions and cl. (i), and added subpar. (B).

1988—Subsec. (c)(3). Pub. L. 100–242, §241, added par. (3).

Subsec. (c)(4). Pub. L. 100–242, §241, added par. (4).

Subsec. (c)(4)(B)(iv). Pub. L. 100–628, §1028(a), substituted ''paragraphs (1) and (2) of section 1485(c)'' for ''paragraphs (7) and (8) of section 1485(b)''.

Subsec. (c)(5). Pub. L. 100–242, §241, added par. (5).

Subsec. (c)(5)(B)(iii). Pub. L. 100–628, §1028(b), added cl. (iii).

Subsec. (c)(5)(I). Pub. L. 100–628, §1028(c), substituted ''Definitions'' for ''Definition'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the term 'nonprofit organization' means any private organization—

''(i) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; and

''(ii) that is approved by the Secretary as to financial responsibility.''

Subsec. (e)(3). Pub. L. 100–242, §314, added par. (3).

1984—Subsec. (d)(1). Pub. L. 98–479 substituted ''percent of the funds approved in appropriation Acts for use under this section shall be set aside and made available only for very low-income families or persons'' for ''per centum of the dwelling units financed under this section shall be available only for occupancy by very low-income families or persons''.

Subsec. (d)(2). Pub. L. 98–479 substituted ''percent of the funds allocated to each State under this section shall be available only for very low-income families or persons'' for ''per centum of the dwelling units in each State financed under this section shall be available only for occupancy by very low-income families or persons''.

1983—Subsec. (a)(1). Pub. L. 98–181, §503(d)(1), (2), designated existing provisions as par. (1) and substituted ''The Secretary may accept the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability. At the borrower's option, the borrower may prepay to the Secretary as escrow agent, on terms and conditions prescribed by him, such taxes, insurance, and other expenses as the Secretary may require in accordance with section 1471(e) of this title'' for ''in the case of applicants described in clauses (1) and (2) of section 1471(a) of this title, at a rate not to exceed 5 per centum per annum on the unpaid balance of principal, and, in the case of applicants described in clause (3) of section 1471(a) of this title and applicants under sections 1473 and 1474 of this title, at a rate not to exceed 4 per centum per annum on such unpaid balance. Loans made or insured under this subchapter shall be conditioned on the borrower paying such fees and other charges as the Secretary may require and on the borrower prepaying to the Secretary as escrow agent, on terms and conditions prescribed by him, such taxes, insurance, and other expenses as the Secretary may require in accordance with section 1471(e) of this title. The Secretary may accept the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability''.

Subsec. (a)(2). Pub. L. 98–181, §503(d)(3), added par. (2).

Subsecs. (d), (e). Pub. L. 98–181, §503(a), added subsecs. (d) and (e).

1980—Subsec. (c). Pub. L. 96–399, in par. (1), substituted ''The Secretary may not accept'' for ''Except as provided in paragraph (2), the Secretary may not accept'', and ''entered into after'' for ''entered into before or after'' in two places, and in par. (2) substituted provisions granting priority for relocation to tenants displaced by virtue of prepayment or refinancing of loans on or after Oct. 8, 1980, for provisions relating to acceptance of an offer to prepay unless, after examination of the consequences of such offer, the Secretary determines that prepayment will result in displacement of tenants, and in the case of facilities containing more than ten units, will have an adverse effect on the supply of affordable and decent housing for low and moderate income and elderly persons.

1979—Subsec. (b)(2). Pub. L. 96–153, §503(a), inserted provisions that prepayment of loans made or insured under section 1484 or 1485 of this title shall be subject to the provisions of subsec. (c) of this section.

Subsec. (c). Pub. L. 96–153, §503(b), added subsec. (c).

1977—Subsec. (b)(3). Pub. L. 95–128 inserted introductory phrase ''except for guaranteed loans,''.

1974—Subsec. (a). Pub. L. 93–383 inserted provisions relating to the borrower prepaying to the Secretary as escrow agent taxes, insurance, and other expenses required by the Secretary in accordance with section 1471(e) of this title.

1966—Subsec. (a). Pub. L. 89–754 substituted ''The'' for ''In cases of applicants who are elderly persons, the'' in third sentence.

1965—Subsec. (a). Pub. L. 89–117 increased to 5 per centum the interest rate in the case of applicants described in clauses (1) and (2) of section 1471(a) of this title and also authorized the Secretary to charge fees on loans made or insured under this subchapter.

1962—Subsec. (a). Pub. L. 87–723 authorized the Secretary to accept, in the case of applicant's who are elderly persons, the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability.

1961—Subsec. (b)(1). Pub. L. 87–70 substituted ''or such other security'' for ''and such additional security''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, §599C(g), Oct. 21, 1998, 112 Stat. 2663, provided that: ''The amendments made by

this section [amending this section and sections 1479, 1483 to 1485, 1490a, 1490j, and 1490p–2 of this title] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 105(b)(2) of Pub. L. 98–479 provided that: ''Notwithstanding any other provision of law, the provisions of section 502(d) of the Housing Act of 1949 [subsec. (d) of this section], as amended by paragraph (1), shall apply with respect to fiscal year 1985 and thereafter, and the provisions of such section, as so amended, may not be changed or superseded except by another provision of law which amends such section.''

REGULATIONS

Section 704(b) of Pub. L. 101–625 provided that: ''Not later than the expiration of the 120-day period beginning on the date of enactment of this Act [Nov. 28, 1990], the Secretary of Agriculture shall issue any regulations necessary to carry out the amendment made by subsection (a) [amending this section].''

Section 705(b) of Pub. L. 101–625 provided that: ''Not later than the expiration of the 120-day period beginning on the date of enactment of this Act [Nov. 28, 1990], the Secretary of Agriculture shall issue any regulations necessary to carry out the amendment made by subsection (a) [amending this section].''

Section 706(d) of Pub. L. 101–625 provided that:

''(1) PROPOSED REGULATIONS AND COMMENT PERIOD.—Not later than 120 days after the date of the enactment of this Act [Nov. 28, 1990], the Secretary of Agriculture shall publish in the Federal Register proposed regulations to implement the amendments made by this section [amending this section and section 1701x of Title 12, Banks and Banking]. The Secretary shall receive comments regarding the regulations during the 30-day period beginning on the date of the publication of the proposed regulations.

''(2) IMPLEMENTATION.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Agriculture shall issue final regulations to implement the amendments made by this section. The Secretary shall provide for the regulations to take effect not later than 30 days after the date on which the regulations are issued.

''(3) APPLICABILITY.—The amendments made by this section shall not apply to guaranteed loans under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) made before the date on which the final regulations issued by the Secretary under paragraph (2) take effect.

''(4) CONSULTATION.—In developing and promulgating the regulations under paragraphs (1) and (2), the Secretary of Agriculture shall consult with the chairperson of the Federal Agricultural Mortgage Corporation and shall solicit the views of borrowers, lenders, realtors, and homebuilders experienced and knowledgeable regarding housing in rural areas to provide that the regulations promulgated ensure that guaranteed loans pursuant to the amendments made by this section—

''(A) are made in a manner that is cost-effective; and

''(B) are made in a manner that reduces, to the extent practicable, the burden of administration and paperwork for borrowers and lenders.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CONGRESSIONAL FINDINGS FOR 2004 AMENDMENT

Pub. L. 108–285, § 3(a), Aug. 2, 2004, 118 Stat. 917, provided that: ''The Congress finds that—

''(1) the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, see Tables for classification], enacted November 28, 1990, established the section 502 single family housing loan guarantee program of the Rural Housing Service of the United States Department of Agriculture;

''(2) Congressman Doug Bereuter of Nebraska was the legislative author of the single family housing loan guarantee program;

''(3) 316,625 single family loans have been guaranteed under the program since its implementation in 1991;

''(4) the program facilitates home ownership for low- to moderate-income borrowers in rural areas and nonmetropolitan communities who are unable to obtain conventional home mortgage financing; and

''(5) in 2003, the average income of a borrower with a loan guaranteed under the section 502 guarantee program was $34,124.''

MAXIMUM LEVEL FOR RURAL SINGLE FAMILY HOUSING ASSISTANCE

Pub. L. 108–447, div. A, title VII, § 765, Dec. 8, 2004, 118 Stat. 2847, provided that: ''Notwithstanding any other provision of law, for any fiscal year and hereafter, in the case of a high cost isolated rural area in Alaska that is not connected to a road system, the maximum level for the single family housing assistance shall be 150 percent of the average income level in the metropolitan areas of the State and 115 percent of all other eligible areas of the State.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 109–97, title VII, § 754(3), Nov. 10, 2005, 119 Stat. 2157.

Pub. L. 108–199, div. A, title VII, § 763, Jan. 23, 2004, 118 Stat. 39.

FEE FOR GUARANTEED LOANS

Pub. L. 106–387, § 1(a) [title VII, § 739], Oct. 28, 2000, 114 Stat. 1549, 1549A–34, provided that: ''Hereafter, notwithstanding section 502(h)(7) of the Housing Act of 1949 (42 U.S.C. 1472(h)(7)), the fee collected by the Secretary of Agriculture with respect to a guaranteed loan under such section 502(h) at the time of the issuance of such guarantee may be in an amount equal to not more than 2 percent of the principal obligation of the loan.''

INCOME LIMIT FOR BORROWERS

Pub. L. 106–387, § 1(a) [title VII, § 751], Oct. 28, 2000, 114 Stat. 1549, 1549A–41, provided that: ''Hereafter, the Secretary of Agriculture shall consider any borrower whose income does not exceed 115 percent of the median family income of the United States as meeting the eligibility requirements for a borrower contained in section 502(h)(2) of the Housing Act of 1949 (42 U.S.C. 1472(h)(2)).''

RURAL HOUSING LOAN GUARANTEES; FINDINGS AND PURPOSE

Section 706(a) of Pub. L. 101–625 provided that:

''(1) FINDINGS.—The Congress finds that—

''(A) the Federal Government should encourage support for homeownership through nonsubsidized mortgage loans guaranteed by the Secretary of Agriculture for the purchase of modest homes located in rural areas and small communities of the country that are not adequately served by private conventional, federally insured, or guaranteed mortgage credit providers; and

''(B) many rural areas contain disproportionate amounts of substandard housing in need of repair, but lack the necessary funding and support to modernize such housing through preservation.

''(2) PURPOSE.—The purpose of this section [amending this section and section 1701x of Title 12, Banks and Banking, and enacting provisions set out above] is to expand homeownership opportunities to low- and moderate-income residents of rural areas of the country through the establishment of guaranteed rural housing loans to be made available in rural locations where there is an insufficient availability of mortgage financing from other sources.''

RURAL HOUSING GUARANTEED LOAN DEMONSTRATION

Section 304 of Pub. L. 100–242, as amended by Pub. L. 100–628, title X, § 1041(a), (b), Nov. 7, 1988, 102 Stat. 3272, provided for establishment by Secretary of Agriculture of a rural housing guaranteed loan demonstration to provide guaranteed loans in accordance with section 1487(d) of this title and last sentence of section 1490(a)(1)(A) of this title, authorized amount available for such loans, established loan criteria, directed Secretary to submit to Congress, as soon as practicable after Sept. 30, 1989, an interim report setting forth findings and recommendations as a result of the demonstration and a final report on such findings and recommendations as soon as practicable after Sept. 30, 1991, prohibited Secretary from providing any guaranteed loans after Sept. 30, 1991, except pursuant to a commitment entered into on or before such date, and excluded applicability of subsec. (d) of this section and second sentence of section 1487(e) of this title to loan demonstration.

PROHIBITION ON ACCEPTANCE OF PREPAYMENT OF CERTAIN LOANS

Pub. L. 100–71, title I, July 11, 1987, 101 Stat. 428, as amended by Pub. L. 100–122, § 2(d), Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327, provided that: ''The limitations on loan prepayments contained in section 634 of the Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987 [section 101(a) [title VI, § 634] of Pub. L. 99–500 and 99–591, set out below] shall remain in effect through March 15, 1988.''

Pub. L. 99–500, § 101(a) [title VI, § 634], Oct. 18, 1986, 100 Stat. 1783, 1783–34, and Pub. L. 99–591, § 101(a) [title VI, § 634], Oct. 30, 1986, 100 Stat. 3341, 3341–34, provided that: ''Notwithstanding any other provision of law, including section 502(c)(2) of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) [subsec. (c)(2) of this section], none of the funds appropriated under this or any other Act shall be used prior to June 30, 1987 to accept prepayment of any loan made under section 515 of the Housing Act of 1949 [section 1485 of this title], unless such loan was made at least twenty years prior to the date of prepayment or, for loans made before December 21, 1979, the Secretary makes a determination that a supply of adequate, comparable housing is available in the community, or that prepayment of such loans will not result in a substantial increase in rents to tenants in residence upon date of prepayment or displacement of such tenants.''

STUDY AND REPORT OF COMPARISON OF CONSTRUCTION COSTS AND ENERGY SAVINGS BETWEEN MANUFACTURED HOMES BUILT UNDER NATIONAL MANUFACTURED HOUSING SAFETY STANDARDS AND OTHER HOMES

Section 503(b) of Pub. L. 98–181 provided that: ''Within 18 months from the issuance by the Secretary of Agriculture of regulations under section 502(e)(2) of the Housing Act of 1949 [subsec. (e)(2) of this section], the Secretary of Energy, in consultation with the Secretary of Housing and Urban Development and the Secretary of Agriculture, shall conduct a study and transmit to the Congress a report that compares the increased construction costs, actual annual energy use, and the projected value of energy saved over the expected life of the home or the mortgage term, whichever is shorter, of manufactured homes which are financed under titles I and II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.], or under title V of the Housing Act of 1949 [this subchapter] and which are built according to national manufactured housing safety standards with other homes insured under either such Act.''

STUDY AND REPORT TO CONGRESS OF ADVERSE EFFECTS ON HOUSING OF PREPAYMENT OF LOANS

Section 514(b) of Pub. L. 96–399 required Secretary of Agriculture to conduct a study of, and report to Congress not later than 6 months after Oct. 8, 1980, on any adverse effects the amendments made by subsection (a) [amending this section] may have on housing, particularly for the elderly and persons of low income.

§ 1473. Loans for housing and buildings on potentially adequate farms; conditions and terms

If the Secretary determines (a) that, because of the inadequacy of the income of an eligible applicant from the farm to be improved and from other sources, said applicant may not reasonably be expected to make annual repayments of principal and interest in an amount sufficient to repay the loan in full within the period of time prescribed by the Secretary as authorized in this subchapter; (b) that the income of the applicant may be sufficiently increased within a period of not to exceed five years by improvement or enlargement of the farm or an adjustment of the farm practices or methods; and (c) that the applicant has adopted and may reasonably be expected to put into effect a plan of farm improvement, enlargement, or adjusted practices or production which, in the opinion of the Secretary, will increase the applicant's income from said farm within a period of not to exceed five years to the extent that the applicant may be expected thereafter to make annual repayments of principal and interest sufficient to repay the balance of the indebtedness less payments in cash and credits for the contributions to be made by the Secretary as hereinafter provided, the Secretary may make a loan in an amount necessary to provide adequate farm dwellings and buildings on said farm under the terms and conditions prescribed in section 1472 of this title. In addition, the Secretary may agree with the borrower to make annual contributions during the said five-year period in the form of credits on the borrower's indebtedness in an amount not to exceed the annual installment of interest and 50 per centum of the principal payments accruing during any installment year up to and including the fifth installment year, subject to the conditions that the borrower's income is, in fact, insufficient to enable the borrower to make payments in accordance with the plan or schedule prescribed by the Secretary and that the borrower pursues his plan of farm reorganization and improvements or enlargement with due diligence.

Except as provided in title 11, this agreement with respect to credits or principal and interest upon the borrower's indebtedness shall not be assignable nor accrue to the benefit of any third party without the written consent of the Secretary and the Secretary shall have the right, at his option, to cancel the agreement upon the sale of the farm or the execution or creation of any lien thereon subsequent to the lien given to the Secretary, or to refuse to release the lien given to the Secretary except upon payment in cash of the entire original principal plus accrued interest thereon less actual cash payments of principal and interest when the Secretary determines that the release of the lien would permit the benefits of this section to accrue to a person not eligible to receive such benefits.

(July 15, 1949, ch. 338, title V, § 503, 63 Stat. 434; Pub. L. 95–598, title III, § 329, Nov. 6, 1978, 92 Stat. 2679.)

AMENDMENTS

1978—Pub. L. 95–598 inserted introductory phrase ''Except as provided in title 11''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1474. Loans and grants for repairs or improvements of rural dwellings

(a) Prerequisites; purposes; amounts; terms

The Secretary may make a loan, grant, or combined loan and grant to an eligible very low-income applicant in order to improve or modernize a rural dwelling, to make the dwelling safer or more sanitary, or to remove hazards. The Secretary may make a loan or grant under this subsection to the applicant to cover the cost of any or all repairs, improvements, or additions such as repairing roofs, providing sanitary waste facilities, providing a convenient and sanitary water supply, repairing or providing structural supports, or making similar repairs, additions, improvements, including all preliminary and installation costs in obtaining central water and sewer service. The maximum amount of a grant, a loan, or a loan and grant shall not exceed such limitations as the Secretary determines to be appropriate. Any portion of the sums advanced to the borrower treated as a loan shall be secured and be repayable within twenty years in accordance with the principles and conditions set forth in this subchapter, except that a loan for less than $7,500 need be evidenced only by a promissory note. Sums made available by grant may be made subject to the conditions set forth in this subchapter for the protection of the Government with respect to contributions made on loans made by the Secretary.

(b) Additional purposes

In order to encourage adequate family-size farms the Secretary may make loans under this section and section 1473 of this title to any applicant whose farm needs enlargement or development in order to provide income sufficient to support decent, safe, and sanitary housing and other farm buildings, and may use the funds made available under clause (b) of section 1483 of this title for such purposes.

(c) Weatherization program; development, etc.

(1) In addition to other duties specified in this section, the Secretary shall develop and conduct a weatherization program for the purpose of making grants to finance the purchase or installation, or both, of weatherization materials in dwelling units occupied by low-income families. Such grants shall be made to low-income families who own dwelling units or, subject to the provisions of paragraph (2), to owners of such units for the benefit of the low-income tenants residing therein. In making grants under this subsection, the Secretary shall give priority to the weatherization of dwelling units occupied by low-income elderly or handicapped persons. The Secretary shall, in carrying out this section, consult with the Director of the Community Services Administration and the Secretary of Energy for the purpose of coordinating the weatherization program under this subsection, section 2809(a)(12) of this title, and part A of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6861 et seq.].

(2) In the case of any grant made under this subsection to an owner of a rental dwelling unit the Secretary shall provide that (A) the benefits of weatherization assistance in connection with such unit will accrue primarily to the low-income family residing therein, (B) the rents on such dwelling unit will not be raised because of any increase in value thereof due solely to weatherization assistance provided under this subsection, and (C) no undue or excessive enhancement will occur to the value of such unit.

(3) In carrying out this subsection, the Secretary shall (A) implement the weatherization standards described in paragraphs (2)(A) and (3) of section 413(b) of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6863(b)], and (B) provide that, with respect to any dwelling unit, not more than $800 of any grant made under this section be expended on weatherization materials and related matters described in section 415(c) of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6865(c)], except that the Secretary shall increase such amount to not more than $1,500 to cover labor costs in areas where the Secretary, in consultation with the Secretary of Labor, determines there is an insufficient number of volunteers and training participants and public service employment workers, assisted pursuant to title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or the Older American Community Service Employment Act [42 U.S.C. 3056 et seq.],[1] available to work on weatherization projects under the supervision of qualified supervisors.

(4) For purposes of this subsection, the terms ''elderly,'' ''handicapped person,'' ''low income,'' and ''weatherization materials'' shall have the same meanings given such terms in paragraphs (3), (5), (7), and (9), respectively, of section 412 of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6862].

(July 15, 1949, ch. 338, title V, § 504, 63 Stat. 434; Pub. L. 87–723, § 4(c)(3), Sept. 28, 1962, 76 Stat. 672; Pub. L. 89–754, title VIII, § 803, Nov. 3, 1966, 80 Stat. 1282; Pub. L. 91–609, title VIII, § 803(a), Dec. 31, 1970, 84 Stat. 1806; Pub. L. 93–383, title V, § 504, Aug. 22, 1974, 88 Stat. 693; Pub. L. 95–619, title II, § 232(a), Nov. 9, 1978, 92 Stat. 3226; Pub. L. 96–153, title V, § 510, Dec. 21, 1979, 93 Stat. 1137; Pub. L. 98–181, title V, § 504, Nov. 30, 1983, 97 Stat. 1242; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(32), (f)(24)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–425, 2681–433; Pub. L. 106–569, title VII, § 702, Dec. 27, 2000, 114 Stat. 3013.)

REFERENCES IN TEXT

Section 2809 of this title, referred to in subsec. (c)(1), was repealed by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519.

The Energy Conservation in Existing Buildings Act of 1976, referred to in subsec. (c)(1), is title IV of Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1150, as amended. Part A of the Energy Conservation in Existing Buildings Act of 1976 is classified generally to Part A (§ 6861 et seq.)

[1] See References in Text note below.

of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (c)(3), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Older American Community Service Employment Act, referred to in subsec. (c)(3), was title V of Pub. L. 89–73, as added Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 720, and amended. Title V of Pub. L. 89–73 was amended generally and renamed the Community Service Senior Opportunities Act by Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2563, and is classified generally to subchapter IX (§ 3056 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–569 substituted ''$7,500'' for ''$2,500'' in fourth sentence.

1998—Subsec. (c)(3). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(24)], struck out ''the Job Training Partnership Act or'' after ''pursuant to''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(32)], substituted ''pursuant to the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 or the'' for ''pursuant to the Comprehensive Employment and Training Act of 1973 or the''.

1983—Subsec. (a). Pub. L. 98–181 substituted ''The Secretary may make a loan, grant, or combined loan and grant to an eligible very low-income applicant in order to improve or modernize a rural dwelling, to make the dwelling safer or more sanitary, or to remove hazards. The Secretary may make a loan or grant under this subsection to the applicant to cover the cost of any or all repairs, improvements, or additions such as repairing roofs, providing sanitary waste facilities, providing a convenient and sanitary water supply, repairing or providing structural supports, or making similar repairs, additions, improvements, including all preliminary and installation costs in obtaining central water and sewer service. The maximum amount of a grant, a loan, or a loan and grant shall not exceed such limitations as the Secretary determines to be appropriate.'' for ''In the event the Secretary determines that an eligible applicant cannot qualify for a loan under the provisions of sections 1472 and 1473 of this title and that repairs or improvements should be made to a rural dwelling occupied by him in order to make such dwelling safe and sanitary and remove hazards to the health of the occupant, his family, or the community, and that repairs should be made to farm buildings in order to remove hazards and make such buildings safe, the Secretary may make a grant or a combined loan and grant to the applicant to cover the cost of improvements or additions, such as repairing roofs, providing toilet facilities, providing a convenient and sanitary water supply, supplying screens, repairing or providing structural supports, or making similar repairs, additions, or improvements, including all preliminary and installation costs in obtaining central water and sewer service. No assistance shall be extended to any individual or family under this subsection in the form of a grant in excess of $5,000, and no assistance shall be extended to any individual or family under this subsection in the form of a loan or a combined loan and grant in excess of $7,500.''

1979—Subsec. (a). Pub. L. 96–153 substituted provisions limiting the assistance in the form of grants to any individual or family to $5,000 and in the form of loans or combined loans and grants to $7,500 for provisions limiting loans, grants, or combined loans and grants to $5,000 in the case of assistance to individuals.

1978—Subsec. (c). Pub. L. 95–619 added subsec. (c).

1974—Subsec. (a). Pub. L. 93–383 substituted provisions relating to repairs or improvements of a rural dwelling, scope of such repairs or improvements, limitation of $5,000 as maximum amount of grant or loan, and requirement of a promissory note for loan less than $2,500, for provisions relating to repairs or improvements of a farm dwelling, scope of such repairs or improvements, and limitations of $2,500, or $3,500 in cases involving water or plumbing facilities, as maximum amount of grant or loan.

1970—Subsec. (a). Pub. L. 91–609 increased limitation on amount of assistance from ''$1,500'' to ''$2,500'' and provided for an alternative larger amount not exceeding $3,500 as Secretary determines to be necessary in case of repairs or improvements involving water supply, septic tank, or bathroom or kitchen plumbing facilities.

1966—Subsec. (a). Pub. L. 89–754 increased limitation on assistance from $1,000 to $1,500.

1962—Subsec. (a). Pub. L. 87–723 substituted ''in the form of a loan, grant, or combined loan and grant in excess of $1,000'' for ''(1) in the form of a loan, or combined loan and grant, in excess of $1,000, or (2) in the form of a grant (whether or not combined with a loan) in excess of $500.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(32)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(24)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration, established by section 601 of Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), terminated when Economic Opportunity Act of 1964, Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 519 (42 U.S.C. 9912(a)). An Office of Community Services, headed by a Director, was established in Department of Health and Human Services by section 676 of Pub. L. 97–35 (42 U.S.C. 9905).

§ 1474a. Security for direct or insured rural housing loans to farmer applicants

On and after August 8, 1968, farmer applicants for direct or insured rural housing loans shall be required to provide only such collateral security as is required of owners of nonfarm tracts.

(Pub. L. 90–463, title II, § 201, Aug. 8, 1968, 82 Stat. 651.)

CODIFICATION

Section was enacted as part of the Department of Agriculture and Related Agencies Appropriation Act, 1969, and not as part of the Housing Act of 1949 which comprises this chapter.

§ 1475. Loan payment moratorium and foreclosure procedures

(a) Moratorium

During any time that any such loan is outstanding, the Secretary is authorized under regulations to be prescribed by him to grant a moratorium upon the payment of interest and principal on such loan for so long a period as he deems necessary, upon a showing by the borrower that due to circumstances beyond his control, he is unable to continue making payments of such principal and interest when due without

unduly impairing his standard of living. In cases of extreme hardship under the foregoing circumstances, the Secretary is further authorized to cancel interest due and payable on such loans during the moratorium. Should any foreclosure of such a mortgage securing such a loan upon which a moratorium has been granted occur, no deficiency judgment shall be taken against the mortgagor if he shall have faithfully tried to meet his obligation.

(b) Foreclosure procedures

In foreclosing on any mortgage held by the Secretary under this subchapter, the Secretary shall follow the foreclosure procedures of the State in which the property involved is located to the extent such procedures are more favorable to the borrower than the foreclosure procedures that would otherwise be followed by the Secretary. This subsection shall be subject to the availability of amounts approved in appropriations Acts, to the extent additional budget authority is necessary to carry out this subsection.

(July 15, 1949, ch. 338, title V, § 505, 63 Stat. 434; Pub. L. 101–625, title VII, § 707, Nov. 28, 1990, 104 Stat. 4287.)

AMENDMENTS

1990—Pub. L. 101–625 amended section catchline generally, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

§ 1476. Buildings and repairs

(a) Construction in accordance with plans and specifications; supervision and inspection; technical services and research

In connection with financial assistance authorized in this subchapter, the Secretary shall require that all new buildings and repairs financed under this subchapter shall be substantially constructed and in accordance with such building plans and specifications as may be required by the Secretary. Buildings and repairs constructed with funds advanced pursuant to this subchapter shall be supervised and inspected as required by the Secretary. In addition to the financial assistance authorized in this subchapter, the Secretary is authorized to furnish, through such agencies as he may determine, to any person, including a person eligible for financial assistance under this subchapter, without charge or at such charges as the Secretary may determine, technical services such as building plans, specifications, construction supervision and inspection, and advice and information regarding farm dwellings and other buildings.

(b) Research and technical studies for reduction of costs and adaptation and development of fixtures and appurtenances

The Secretary is further authorized and directed to conduct research, technical studies, and demonstrations relating to the mission and programs of the Farmers Home Administration and the national housing goals defined in section 1441 of this title. In connection with such activities, the Secretary shall seek to promote the construction of adequate farm and other rural housing, with particular attention to the housing needs of the elderly, handicapped, migrant and seasonal farmworkers, Indians and other identifiable groups with special needs. The Secretary shall conduct such activities for the purposes of stimulating construction and improving the architectural design and utility of dwellings and buildings. In carrying out this subsection, the Secretary may permit demonstrations involving innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies if the Secretary finds that in so doing, the health and safety of the population of the area in which the demonstration is carried out will not be adversely affected, except that the aggregate expenditures for such demonstrations may not exceed $10,000,000 in any fiscal year.

(c) Research, study, and analysis of farm housing

The Secretary is further authorized to carry out a program of research, study, and analysis of farm housing in the United States to develop data and information on—

(1) the adequacy of existing farm housing;

(2) the nature and extent of current and prospective needs for farm housing, including needs for financing and for improved design, utility, and comfort, and the best methods of satisfying such needs;

(3) problems faced by farmers and other persons eligible under section 1471 of this title in purchasing, constructing, improving, altering, repairing, and replacing farm housing;

(4) the interrelation of farm housing problems and the problems of housing in urban and suburban areas; and

(5) any other matters bearing upon the provision of adequate farm housing.

(d) Research capacity within Farmers Home Administration; establishment; authority

In order to carry out this section, the Secretary shall establish a research capacity within the Farmers Home Administration which shall have authority to undertake, or to contract with any public or private body to undertake, research authorized by this section.

(e) Preparation and submission of estimates of housing needs

The Secretary of Agriculture shall prepare and submit to the President and to the Congress estimates of national rural housing needs and reports with respect to the progress being made toward meeting such needs and correlate and recommend proposals for such executive action or legislation necessary or desirable for the furtherance of the national housing objective and policy established by this Act with respect to rural housing, together with such other reports or information as may be required of the Secretary by the President or the Congress.

(f) Study of housing available for migrant and settled farmworkers

(1) The Secretary shall conduct a study of housing which is available for migrant and settled farmworkers. In conducting such study, the Secretary shall—

(A) determine the location, number, quality, and condition of housing units which are available to such farmworkers and the cost as-

sessed such farmworkers for occupying such units;

(B) recommend legislative, administrative, and other action (including the need for new authority for such action) which may be taken for the purpose of improving both the availability and the condition of such housing units; and

(C) determine the possible roles which individual farmworkers, farmworker associations, individual farmers, farmer associations, and public and private nonprofit agencies can perform in improving the housing conditions of farmworkers.

(2) The Secretary shall transmit the results of the study described in paragraph (1) to each House of the Congress within one year after October 31, 1978.

(July 15, 1949, ch. 338, title V, § 506, 63 Stat. 435; Pub. L. 87–70, title VIII, §§ 804(b)(1), 805(a), June 30, 1961, 75 Stat. 188; Pub. L. 87–723, § 4(c)(2), Sept. 28, 1962, 76 Stat. 672; Pub. L. 88–560, title V, § 503(c), Sept. 2, 1964, 78 Stat. 798; Pub. L. 89–117, title X, § 1005(d), Aug. 10, 1965, 79 Stat. 501; Pub. L. 89–348, § 1(5), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 93–383, title V, §§ 506, 519(a), Aug. 22, 1974, 88 Stat. 694, 699; Pub. L. 95–128, title V, § 510, Oct. 12, 1977, 91 Stat. 1142; Pub. L. 95–557, title V, § 502, Oct. 31, 1978, 92 Stat. 2111; Pub. L. 98–181, title V, § 505, Nov. 30, 1983, 97 Stat. 1242; Pub. L. 104–66, title I, § 1011(m), Dec. 21, 1995, 109 Stat. 710.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, known as the Housing Act of 1949, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of that Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

1995—Subsec. (b). Pub. L. 104–66 struck out at end ''The Secretary shall report to the Congress at the close of each fiscal year on the results of such demonstrations.''

1983—Subsec. (b). Pub. L. 98–181 inserted provision relating to demonstrations involving innovative housing units and systems not meeting existing standards with expenditures not to exceed $10,000,000 in any fiscal year and a report to be made to Congress at the close of each fiscal year.

1978—Subsec. (b). Pub. L. 95–557, § 502(a), revised the provisions of this subsection to bring particular attention to the housing needs of the elderly, handicapped, migrant and seasonal farmworkers, Indians and other identifiable groups.

Subsec. (f). Pub. L. 95–557, § 502(b), added subsec. (f).

1977—Subsec. (d). Pub. L. 95–128 substituted provision respecting establishment and authority of a research capacity within the Farmers Home Administration for provision to carry out subsec. (b) and (c) research and study programs through grants by the Secretary to land-grant colleges on such terms, conditions, and standards as he may prescribe or through such other agencies as he may elect.

1974—Subsec. (a). Pub. L. 93–383, § 519(a), substituted ''as required by the Secretary'' for ''as may be required by the Secretary, by competent employees of the Secretary''.

Subsec. (d). Pub. L. 93–383, § 506(a), substituted provisions authorizing grants to such other private or public organizations as selected by the Secretary upon finding that required research and study could not be performed by personnel and facilities of Department of Agriculture or land-grant colleges, for provisions authorizing grants to such other agencies as selected by the Secretary.

Subsec. (e). Pub. L. 93–383, § 506(b), substituted ''rural housing'' for ''farm housing'' wherever appearing.

1965—Subsec. (a). Pub. L. 89–117 substituted ''this subchapter'' for ''sections 1471 to 1474 and sections 1484 to 1486 of this title'' wherever appearing.

Subsec. (e). Pub. L. 89–348, which directed the repeal in subsec. (b) of the requirement of the report of estimates of national farm housing needs and of progress made toward meeting such needs, probably was intended to repeal such reporting requirement in subsec. (e) in view of the redesignation of subsec. (b) as (e) by Pub. L. 87–70.

1964—Subsec. (a). Pub. L. 88–560 inserted reference to section 1486 of this title wherever appearing.

1962—Subsec. (a). Pub. L. 87–723 substituted ''sections 1484 and 1485'' for ''section 1484'' wherever appearing.

1961—Subsec. (a). Pub. L. 87–70, §§ 804(b)(1), 805(a)(1), inserted a reference to section 1484 of this title in two places, and struck out provisions which authorized the conduct of research and technical studies including the development, demonstration, and promotion of construction of adequate farm dwellings and other buildings for the purposes of stimulating construction, improving architectural design and utility, utilizing new and native materials, economies in materials and construction methods, and new methods of production, distribution, assembly, and construction, which provisions are now contained in subsec. (b) of this section.

Subsecs. (b) to (e). Pub. L. 87–70, § 805(a)(2), (3), added subsecs. (b) to (d) and redesignated former subsec. (b) as (e). Provisions of subsec. (b) were formerly contained in subsec. (a).

STUDY OF EMERGENCY POTABLE WATER AND SEWAGE PROGRAM

Section 508 of Pub. L. 95–557 required Secretary of Agriculture to determine the approximate number of rural housing units without access to sanitary toilet facilities or potable water, prepare a projection of the cost providing such facilities and supplies, and report to Congress not later than six months after Oct. 31, 1978.

REPORT OF ESTIMATES OF NATIONAL FARM HOUSING NEEDS

Pub. L. 89–348, § 1(5), Nov. 8, 1965, 79 Stat. 1310, repealed provisions of subsec. (e) of this section which related to reports of the estimates of national farm housing needs and of progress toward meeting such needs.

§ 1477. Preferences for veterans and families of deceased servicemen

As between eligible applicants seeking assistance under sections 1471 to 1474, inclusive, of this title, the Secretary shall give preference to veterans and the families of deceased servicemen. As used herein, a ''veteran'' shall mean a person who served in the military forces of the United States during any war between the United States and any other nation or during the period beginning June 27, 1950, and ending on such date as shall be determined by Presidential proclamation or concurrent resolution of Congress, or during the period beginning after January 31, 1955, and ending on August 4, 1964, or during the Vietnam era (as defined in section 101(29) of title 38), and who was discharged or released therefrom on conditions other than dishonorable. ''Deceased servicemen'' shall mean persons who served in the military forces of the United States during any war between the United States and any other nation or during the period beginning June 27, 1950, and ending on such date

as shall be determined by Presidential proclamation or concurrent resolution of Congress, or during the period beginning after January 31, 1955, and ending on August 4, 1964, or during the Vietnam era (as defined in section 101(29) of title 38), and who died in service before the termination of such war or such period or era.

(July 15, 1949, ch. 338, title V, § 507, 63 Stat. 435; June 30, 1953, ch. 174, § 3, 67 Stat. 132; Pub. L. 87–70, title VIII, § 804(b)(2), June 30, 1961, 75 Stat. 188; Pub. L. 93–383, title V, § 507, Aug. 22, 1974, 88 Stat. 694.)

AMENDMENTS

1974—Pub. L. 93–383 inserted references to the period beginning after Jan. 31, 1955 and ending on Aug. 4, 1964, or during the Vietnam era wherever appearing therein.

1961—Pub. L. 87–70 substituted ''under sections 1471 to 1474, inclusive, of this title'' for ''under this subchapter.''

1953—Act June 30, 1953, enlarged the definition of ''veteran'' and ''deceased servicemen'' to include members of the armed forces who have served during the Korean conflict.

PERIOD OF SERVICE IN MILITARY FORCES

Proc. No. 3080, Jan. 5, 1955, 20 F.R. 173, fixed Jan. 31, 1955, as the date ending the period during which persons must have served in the military forces in order that such persons come within the meaning of the terms ''veteran'' and ''deceased servicemen'', contained in this section, by reason of service during the period beginning June 27, 1950.

CONTINUATION OF PROVISIONS

Joint Res. July 3, 1952, ch. 570, § 1(a)(20), 66 Stat. 332, as amended by Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, provided that qualification period should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc. No. 2914, 15 F.R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond July 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

REPEAL OF PRIOR ACTS CONTINUING SECTION

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal took effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

§ 1478. Local committees to assist Secretary

(a) Composition, appointment, and compensation; chairman; promulgation of procedural rules; forms and equipment

For the purposes of this subsection and subsection (b) of this section, the Secretary may use the services of any existing committee of farmers operating (pursuant to laws or regulations carried out by the Department of Agriculture) in any county or parish in which activities are carried on under this subchapter. In any county or parish in which activities are carried on under this subchapter and in which no existing satisfactory committee is available, the Secretary is authorized to appoint a committee composed of three persons residing in the county or parish. Each member of such existing or newly appointed committee shall be allowed compensation at the rate determined by the Secretary while engaged in the performance of duties under this subchapter and, in addition, shall be allowed such amounts as the Secretary may prescribe for necessary traveling and subsistence expenses. One member of the committee shall be designated by the Secretary as chairman. The Secretary shall prescribe rules governing the procedures of the committees, furnish forms and equipment necessary for the performance of their duties, and authorize and provide for the compensation of such clerical assistance as he deems may be required by any committee.

(b) Duties

The committees utilized or appointed pursuant to this section may examine applications of persons desiring to obtain the benefits of section 1471(a)(1) and (2) of this title as they relate to the successful operation of a farm, and may submit recommendations to the Secretary with respect to each applicant as to whether the applicant is eligible to receive such benefits, whether by reason of his character, ability, and experience he is likely successfully to carry out undertakings required of him under a loan under such section, and whether the farm with respect to which the application is made is of such character that there is a reasonable likelihood that the making of the loan requested will carry out the purposes of this subchapter. The committees may also certify to the Secretary with respect to the amount of any loan.

(July 15, 1949, ch. 338, title V, § 508, 63 Stat. 436; Pub. L. 87–70, title VIII, § 806, June 30, 1961, 75 Stat. 188; Pub. L. 91–609, title VIII, § 803(b), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93–383, title V, § 508, Aug. 22, 1974, 88 Stat. 694.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–383 substituted provisions relating to examination of applications under section 1471(a)(1) and (2) of this title, and certification to the Secretary with respect to amount of any loan, for provisions relating to examination of applications under provisions of this subchapter, certification to the Secretary with respect to the amount of the loan or grant, and requiring performance of such other duties as the Secretary requests.

1970—Subsec. (b). Pub. L. 91–609 substituted ''may'' for ''shall'' in first and second sentences where reading ''shall examine'', ''shall submit'', and ''shall also certify''.

1961—Subsec. (a). Pub. L. 87–70, § 806(a), substituted ''at the rate determined by the Secretary'' for ''at the rate of $5 per day''.

Subsec. (b). Pub. L. 87–70, § 806(b), substituted ''certify to the Secretary as to the amount of the loan or grant'' for ''certify to the Secretary their opinions of the reasonable values of the farms''.

§ 1479. General powers of Secretary

(a) Standards of adequate farm housing and other buildings; criteria

The Secretary, for the purposes of this subchapter, shall have the power to determine and prescribe the standards of adequate farm housing and other buildings, by farms or localities, taking into consideration, among other factors, the type of housing which will provide decent, safe, and sanitary dwelling for the needs of the

family using the housing, the type and character of the farming operations to be conducted, and the size and earning capacity of the land. The Secretary shall approve a residential building as meeting such standards if the building is constructed in accordance with (1) the minimum standards prescribed by the Secretary, (2) the minimum property standards prescribed by the Secretary of Housing and Urban Development for mortgages insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.], (3) the standards contained in any of the voluntary national model building codes, or (4) in the case of manufactured housing, the standards referred to in section 1472(e) of this title. To the maximum extent feasible, the Secretary shall promote the use of energy saving techniques through standards established by such Secretary for newly constructed residential housing assisted under this subchapter. Such standards shall, insofar as is practicable, be consistent with the standards established pursuant to section 526 of the National Housing Act [12 U.S.C. 1735f–4] and shall incorporate the energy performance requirements developed pursuant to such section.

(b) Terms or conditions of leases or occupancy agreements subject to change with approval of Secretary

The Secretary may require any recipient of a loan or grant to agree that the availability of improvements constructed or repaired with the proceeds of the loan or grant under this subchapter shall not be a justification for directly or indirectly changing the terms or conditions of the lease or occupancy agreement with the occupants of such farms to the latter's disadvantage without the approval of the Secretary.

(c) Rural Housing Insurance Fund for payment of expenditures respecting construction defects; judicial review prohibition

The Secretary is authorized, after October 1, 1977, with respect to any unit or dwelling newly constructed during the period beginning eighteen months prior to October 12, 1977, and purchased with financial assistance authorized by this subchapter which he finds to have structural defects to make expenditures for (1) correcting such defects, (2) paying the claims of the owner of the property arising from such defects, or (3) acquiring title to the property, if such assistance is requested by the owner of the property within thirty-six months after financial assistance under this subchapter is rendered to the owner of the property or, in the case of property with respect to which assistance was made available within eighteen months prior to October 12, 1977, within thirty-six months after October 12, 1977. Expenditures pursuant to this subsection may be paid from the Rural Housing Insurance Fund. Decisions by the Secretary regarding such expenditures or payments under this subsection, and the terms and conditions under which the same are approved or disapproved, shall not be subject to judicial review.

(d) Defaults involving security interest in tribal lands

In the event of default involving a security interest in tribal allotted or trust land, the Secretary shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe or tribes. If the Secretary subsequently proceeds to liquidate the account, the Secretary shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

(e) Terms and conditions; regulations

The Secretary shall, by regulation, prescribe the terms and conditions under which expenditures and payments may be made under the provisions of this section.

(f) Housing in underserved areas

(1) Designation of underserved area

The Secretary shall designate as targeted underserved areas 100 counties and communities in each fiscal year that have severe, unmet housing needs as determined by the Secretary. A county or community shall be eligible for designation if, during the 5-year period preceding the year in which the designation is made, it has received an average annual amount of assistance under this subchapter that is substantially lower than the average annual amount of such assistance received during that 5-year period by other counties and communities in the State that are eligible for such assistance calculated on a per capita basis, and has—

(A) 20 percent or more of its population at or below the poverty level; and

(B) 10 percent or more of its population residing in substandard housing.

As used in this paragraph, the term ''poverty level'' has the meaning given the term in section 5302(a)(9) of this title.

(2) Preferences

In selecting projects to receive assistance with amounts set aside under paragraph (4), the Secretary shall give preference to any project located in a county or community that has, at the time of designation and as determined by the Secretary—

(A) 28 percent or more of its population at or below poverty level; and

(B) 13 percent or more of its population residing in substandard housing.

In designating underserved areas under paragraph (1), in each fiscal year the Secretary shall designate not less than 5 counties or communities that contain tribal allotted or Indian trust land.

(3) Outreach program and review

(A) Outreach

The Secretary shall publicize the availability to targeted underserved areas of grants and loans under this subchapter and promote, to the maximum extent feasible, efforts to apply for those grants and loans for housing in targeted underserved areas.

(B) Review

Upon the receipt of data from the 1990 decennial census, the Secretary shall conduct a review of any designations made under paragraph (1) and preferences given under

paragraph (2) and the eligibility of communities and counties for such designation and preference, examining the effects of such data on such eligibility. The Secretary shall submit to the Congress, not later than 9 months after the availability of the data, a report regarding the review, which shall include any recommendations of the Secretary for modifications in the standards for designation and preference.

(4) Set-aside for targeted underserved areas and colonias

(A) In general

The Secretary shall set aside and reserve for assistance in targeted underserved areas an amount equal to 5.0 percent in each fiscal year of the aggregate amount of lending authority under sections 1472, 1474, 1484, 1485, and 1490d of this title. During each fiscal year, the Secretary shall set aside from amounts available for assistance under paragraphs (2) and (5) of section 1490a(a) of this title, an amount that is appropriate to provide assistance with respect to the lending authority under sections 1484 and 1485 of this title that is set aside for such fiscal year. The Secretary shall establish a procedure to reallocate any assistance set aside in any fiscal year for targeted underserved areas that has not been expended during a reasonable period in such year for use in (i) colonias that have applied for and are eligible for assistance under subparagraph (B) or paragraph (7) and did not receive assistance, and (ii) counties and communities eligible for designation as targeted underserved areas but which were not so designated. The procedure shall also provide that any assistance reallocated under the preceding sentence that has not been expended by a reasonable date established by the Secretary (which shall be after the expiration of the period referred to in the preceding sentence) shall be made available and allocated under the laws and regulations relating to such assistance, notwithstanding this subsection.

(B) Priority for colonias

(i) Notwithstanding the designation of counties and communities as targeted underserved areas under paragraph (1) and the provisions of section 1490 of this title, colonias shall be eligible for assistance with amounts reserved under subparagraph (A), as provided in this subparagraph.

(ii) In providing assistance from amounts reserved under this paragraph in each fiscal year, the Secretary shall give priority to any application for assistance to be used in, or in close proximity to, and serving the residents of, a colonia located in a State described under clause (iii). After the Secretary has provided assistance under the priority for colonias located in a State in an amount equal to 5 percent of the total amount of assistance allocated under this subchapter to such State in the fiscal year, the priority shall not apply to any applications for colonias in such State.

(iii) This paragraph shall apply to any State for any fiscal year following 2 fiscal years in which the State obligated the total amount of assistance allocated to it under this subchapter during each of such 2 fiscal years.

(5) List of underserved areas

The Secretary shall publish annually the current list of targeted underserved areas in the Federal Register.

(6) Project preparation assistance

(A) In general

The Secretary may make grants to eligible applicants under subparagraph (D) to promote the development of affordable housing in targeted underserved areas and colonias.

(B) Use

A grant under this paragraph shall not exceed an amount that the Secretary determines to equal the customary and reasonable costs incurred in preparing an application for a loan under section 1472, 1474, 1484, 1485, or 1490d of this title, or a grant under section 1490m of this title (including preapplication planning, site analysis, market analysis, and other necessary technical assistance). The Secretary shall adjust the loan or grant amount under such sections to take account of project preparation costs that have been paid from grant proceeds under this paragraph and that normally would be reimbursed with proceeds of the loan or grant.

(C) Approval

The Secretary shall approve a properly submitted application or issue a written statement indicating the reasons for disapproval not later than 60 days after the receipt of the application.

(D) Eligibility

For purposes of this paragraph, an eligible applicant may be a nonprofit organization or corporation, a community housing development organization, State, unit of general local government, or agency of a State or unit of general local government.

(E) Availability of funding

Any amounts appropriated to carry out this paragraph shall remain available until expended.

(7) Priority for colonias

(A) In general

In providing assistance under this subchapter in any fiscal year described under subparagraph (B), each State in which colonias are located shall give priority to any application for assistance to be used in a colonia. The priority under this subparagraph shall not apply in such State after 5 percent of the assistance available in such fiscal year has been allocated for colonias qualifying for the priority.

(B) Covered years

This paragraph shall apply to any fiscal year following 2 fiscal years in which the State did not obligate the total amount of assistance allocated it under this subchapter during each of such 2 fiscal years.

(8) "Colonia" defined

For purposes of this subsection, the term ''colonia'' means any identifiable community that—

(A) is in the State of Arizona, California, New Mexico, or Texas;

(B) is in the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1,000,000;

(C) is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and

(D) was in existence as a colonia before November 28, 1990.

(July 15, 1949, ch. 338, title V, § 509, 63 Stat. 436; Pub. L. 95–128, title V, § 504, Oct. 12, 1977, 91 Stat. 1139; Pub. L. 96–153, title V, § 508, Dec. 21, 1979, 93 Stat. 1136; Pub. L. 98–181, title V, § 506(a), Nov. 30, 1983, 97 Stat. 1242; Pub. L. 101–625, title VII, §§ 708, 709(b), Nov. 28, 1990, 104 Stat. 4287, 4288; Pub. L. 102–550, title VII, § 705, Oct. 28, 1992, 106 Stat. 3835; Pub. L. 104–120, § 4(a), Mar. 28, 1996, 110 Stat. 835; Pub. L. 104–180, title VII, § 734(b), Aug. 6, 1996, 110 Stat. 1602; Pub. L. 105–86, title VII, § 735(a), Nov. 18, 1997, 111 Stat. 2110; Pub. L. 105–276, title V, § 599C(a), (e)(2)(B), Oct. 21, 1998, 112 Stat. 2661, 2662.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the National Housing Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1998—Subsec. (f)(4)(A). Pub. L. 105–276, in first sentence, substituted ''each fiscal year'' for ''fiscal year 1998'' and, in second sentence, substituted ''During each fiscal year'' for ''During such fiscal year'' and substituted ''from amounts available for assistance under paragraphs (2) and (5) of section 1490a(a) of this title, an amount'' for ''an amount of section 521 rental assistance''.

1997—Subsec. (f)(4)(A). Pub. L. 105–86 substituted ''fiscal year 1998'' for ''fiscal year 1997''.

1996—Subsec. (f)(4)(A). Pub. L. 104–180 substituted ''fiscal year 1997'' for ''fiscal year 1996''.

Pub. L. 104–120 substituted ''fiscal year 1996'' for ''fiscal years 1993 and 1994'' and ''During such fiscal year'' for ''During each such fiscal year''.

1992—Subsec. (f)(1). Pub. L. 102–550, § 705(a)(1), substituted ''in each fiscal year'' for ''in each of fiscal years 1991 and 1992'' in introductory provisions.

Subsec. (f)(2). Pub. L. 102–550, § 705(a)(2), inserted concluding provisions.

Subsec. (f)(4)(A). Pub. L. 102–550, § 705(a)(3), substituted ''an amount equal to 5.0 percent in fiscal years 1993 and 1994'' for ''an amount equal to 3.5 percent in fiscal year 1991 and 5.0 percent in fiscal year 1992''.

Subsec. (f)(4)(B)(ii). Pub. L. 102–550, § 705(c), inserted '', or in close proximity to, and serving the residents of,'' before ''a colonia''.

Subsec. (f)(8)(C) to (E). Pub. L. 102–550, § 705(b), redesignated subpar. (D) as (C), struck out former subpar. (C) which read as follows: ''is designated by the State or county in which it is located as a colonia;'', added subpar. (D), and struck out subpar. (E) which read as follows: ''was in existence and generally recognized as a colonia before November 28, 1990.''

1990—Subsecs. (d), (e). Pub. L. 101–625, § 708, added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (f). Pub. L. 101–625, § 709(b), added subsec. (f).

1983—Subsec. (a). Pub. L. 98–181 inserted provisions relating to standards, designated cls. (1) to (4), the compliance with which will result in approval by the Secretary, and inserted provision relating to the promotion of the use of energy saving techniques.

1979—Subsec. (c). Pub. L. 96–153 substituted ''within thirty-six months after October 12, 1977'' for ''within eighteen months after October 12, 1977''.

1977—Subsecs. (c), (d). Pub. L. 95–128 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as an Effective and Termination Dates of 1996 Amendments note under section 1437d of this title.

REGULATIONS

Section 709(c) of Pub. L. 101–625 provided that: ''Not later than the expiration of the 120-day period beginning on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990], the Secretary of Agriculture shall issue any regulations necessary to carry out the amendment made by this section [amending this section].''

HOUSING IN UNDERSERVED AREAS

Section 709(a) of Pub. L. 101–625 provided that: ''The purpose of this section [amending this section and enacting provisions set out above] is to improve the quality of affordable housing in communities that have extremely high concentrations of poverty and substandard housing and that have been underserved by rural housing programs, including extremely distressed areas in the Lower Mississippi Delta and other regions of the Nation, by directing Farmers Home Administration assistance toward designated underserved areas.''

EXEMPTIONS OF EXISTING DWELLINGS FROM LIVING AREA LIMITATIONS; AUTHORITY OF DISTRICT OFFICES OF FARMERS' HOME ADMINISTRATION

Pub. L. 100–202, § 101(k) [title VI, § 632], Dec. 22, 1987, 101 Stat. 1329–322, 1329–356, provided that: ''During fiscal year 1988 and each succeeding fiscal year, the Secretary of Agriculture shall permit each district office of the Farmers Home Administration to exempt any existing dwelling from any limitation established by the Secretary on the number of square feet of living area that may be contained in a dwelling to be eligible for a loan under section 502 of the Housing Act of 1949 [section 1472 of this title], if the dwelling is modest in design, size, and cost for the area in which it is located.''

§ 1480. Administrative powers of Secretary

In carrying out the provisions of this subchapter, the Secretary shall have the power to—

(a) Service and supply contracts

make contracts for services and supplies without regard to the provisions of section 5 of title 41, when the aggregate amount involved is less than $300;

(b) Subordination, subrogation, and other agreements

enter into subordination, subrogation, or other agreements satisfactory to the Secretary;

(c) Compromise of claims and obligations

compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or re-

lease the terms of security instruments, leases, contracts, and agreements entered into or administered by the Secretary under this subchapter, as circumstances may require, including the release of borrowers or others obligated on a debt from personal liability with or without payment of any consideration at the time of the compromise, adjustment, reduction, or charge-off of any claim;

(d) Collection of claims and obligations

collect all claims and obligations arising out of or under any mortgage, lease, contract, or agreement entered into pursuant to this subchapter and, if in his judgment necessary and advisable, to pursue the same to final collection in any court having jurisdiction: *Provided*, That the prosecution and defense of all litigation under this subchapter shall be conducted under the supervision of the Attorney General and the legal representation shall be by the United States attorneys for the districts, respectively, in which such litigation may arise and by such other attorney or attorneys as may, under law, be designated by the Attorney General; except that—

(1) prosecution and defense of any litigation under section 1472 of this title shall be conducted, at the discretion of the Secretary, by—

(A) the United States attorneys for the districts in which the litigation arises and any other attorney that the Attorney General may designate under law, under the supervision of the Attorney General;

(B) the General Counsel of the Department of Agriculture; or

(C) any other attorney with whom the Secretary enters into a contract after a determination by the Secretary that—

(i) the attorney will provide competent and cost-effective representation for the Farmers Home Administration; and

(ii) representation by the attorney will either (I) accelerate the process by which a family or person eligible for assistance under section 1472 of this title will be able to purchase and occupy the housing involved; or (II) preserve the quality of the housing involved; and

(2) the Secretary shall annually submit to the Congress a report describing activities carried out under paragraph (1)(C), including the cost of entering into contracts with such attorneys and the savings resulting from expedited foreclosure proceedings;

(e) Purchase of pledged or mortgaged property at foreclosure or other sales; operation, sale or disposition of said property

bid for and purchase at any foreclosure or other sale or otherwise to acquire the property pledged or mortgaged to secure a loan or other indebtedness owing under this subchapter, to accept title to any property so purchased or acquired, to operate or lease such property for such period as may be necessary or advisable, to protect the interest of the United States therein, to repair and rehabilitate such property, and to sell or otherwise dispose of the property so purchased or acquired by such terms and for such considerations as the Secretary shall determine to be reasonable and to make loans as provided herein to provide adequate farm dwellings and buildings for the purchasers of such property; except that the Secretary may not sell or otherwise dispose of such property unless (1) the Secretary assures that such property will meet decent, safe, and sanitary standards, including cost-effective energy conservation standards prescribed under section 1479(a) of this title, (2) the recipient of the property is obligated, as a condition of the sale or other disposition of the property, to meet such standards with respect to the property before such property is occupied, or (3) such recipient is precluded, as a condition of the sale or other disposition of the property, from using the property for residential purposes and the authority of the Secretary under this paragraph includes the authority to transfer section 1472 inventory properties for use as rental or cooperative units under section 1485 of this title with mortgages containing repayment terms with up to fifty years, or for use as rental units under section 1484 of this title with mortgages containing repayment terms with up to 33 years, to private nonprofit organizations, public bodies, or for-profit entities, which have good records of providing low income housing under section 1485 of this title; such a transfer may be made even where rental assistance may be required so long as the authority to provide such assistance is available after taking into account the requirements of section 1490a(d)(1) of this title; where the Secretary determines the transfer will contribute to the provision of housing for very low-income persons and families, the transfer may be made at the lesser of the appraised value or the Farmers Home Administration's investment;

(f) Processing of applications received prior to determination of nonrural status; assistance

continue processing as expeditiously as possible applications on hand received prior to the time an area has been determined by the Secretary not to be ''rural'' or a ''rural area'', as those terms are defined in section 1490 of this title, and make loans or grants to such applicants who are found to be eligible on the same basis as though the area were still rural;

(g) Rules and regulations for written notice of denial or reduction of assistance

issue rules and regulations which assure that applicants denied assistance under this subchapter or persons or organizations whose assistance under this subchapter is being substantially reduced or terminated are given written notice of the reasons for denial, reduction or termination and are provided at least an opportunity to appeal an adverse decision and to present additional information relevant to that decision to a person, other than the person making the original determination, who has authority to reverse the decision, except that rules issued under this subsection may not exclude from their coverage decisions made by the Secretary that are not based on objective standards contained in published regulations;

(h) Assistance in connection with transfers and assumptions of property for nonrural areas

notwithstanding that an area ceases, or has ceased, to be ''rural'', in a ''rural area'', or an eligible area, make assistance under this subchapter available for subsequent loans to permit necessary dwelling repairs and rehabilitation and in connection with transfers and assumptions of property securing any loan made, insured, or held by the Secretary or in connection with any property held by the Secretary under this subchapter on the same basis as though the area were still rural;

(i) Utilization of indebtedness

utilize with respect to the indebtedness arising from loans and payments made under this subchapter, all the powers and authorities given to him under sections 1150 to 1150b of title 12;

(j) Fee inspectors and appraisers

utilize the services of fee inspectors and fee appraisers to expedite the processing of applications for loans and grants under this subchapter, which services shall be utilized in any case in which a county or district office is unable to expeditiously process such loan and grant applications, and to include the cost of such services in the amount of such loans and grants; and

(k) Rules and regulations

make such rules and regulations as he deems necessary to carry out the purposes of this subchapter.

(July 15, 1949, ch. 338, title V, § 510, 63 Stat. 437; Pub. L. 94–375, § 25(c), Aug. 3, 1976, 90 Stat. 1078; Pub. L. 95–557, title V, § 503, Oct. 31, 1978, 92 Stat. 2112; Pub. L. 96–153, title V, § 507, Dec. 21, 1979, 93 Stat. 1136; Pub. L. 96–399, title V, §§ 508, 510, Oct. 8, 1980, 94 Stat. 1670, 1671; Pub. L. 98–181, title V, § 507, Nov. 30, 1983, 97 Stat. 1243; Pub. L. 98–479, title I, § 105(c), Oct. 17, 1984, 98 Stat. 2227; Pub. L. 100–242, title III, § 313, Feb. 5, 1988, 101 Stat. 1897; Pub. L. 100–628, title X, § 1045, Nov. 7, 1988, 102 Stat. 3273; Pub. L. 101–625, title VII, §§ 710, 711, Nov. 28, 1990, 104 Stat. 4291.)

AMENDMENTS

1990—Subsec. (e)(3). Pub. L. 101–625, § 710, inserted '', or for use as rental units under section 1484 of this title with mortgages containing repayment terms with up to 33 years,'' after ''fifty years'' and substituted '', public bodies, or for-profit entities, which have good records of providing low income housing under section 1485 of this title'' for ''or public bodies''.

Subsec. (g). Pub. L. 101–625, § 711, inserted before semicolon at end '', except that rules issued under this subsection may not exclude from their coverage decisions made by the Secretary that are not based on objective standards contained in published regulations''.

1988—Subsec. (c). Pub. L. 100–242 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''compromise claims and obligations arising out of sections 1472 to 1475 of this title and adjust and modify the terms of mortgages, leases, contracts, and agreements entered into as circumstances may require, including the release from personal liability, without payments of further consideration, of—

''(1) borrowers who have transferred their farms to other approved applicants for loans who have agreed to assume the outstanding indebtedness to the Secretary under this subchapter; and

''(2) borrowers who have transferred their farms to other approved applicants for loans who have agreed to assume that portion of the outstanding indebtedness to the Secretary under this subchapter which is equal to the earning capacity value of the farm at the time of the transfer, and borrowers whose farms have been acquired by the Secretary, in cases where the Secretary determines that the original borrowers have cooperated in good faith with the Secretary, have farmed in a workmanlike manner, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to their loans, to the best of their abilities;''.

Subsec. (d). Pub. L. 100–628 inserted before semicolon at end ''; except that—'' and added pars. (1) and (2).

1984—Subsec. (e). Pub. L. 98–479 substituted ''; such'' and ''; where'' for ''. Such'' and ''. Where'', respectively.

1983—Subsec. (e). Pub. L. 98–181, § 507(a), inserted provisions relating to the authority of the Secretary to transfer section 1472 inventory property to private nonprofit organizations or public bodies.

Subsecs. (j), (k). Pub. L. 98–181, § 507(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1980—Subsec. (e)(1). Pub. L. 96–399, § 508, inserted provisions respecting cost-effective energy conservation standards prescribed under section 1479(a) of this title.

Subsec. (h). Pub. L. 96–399, § 510, inserted provisions respecting subsequent loans to permit necessary dwelling repairs and rehabilitation.

1979—Subsec. (e). Pub. L. 96–153 substituted ''United States therein, to repair and rehabilitate such property, and to sell'' for ''United States therein and to sell'', and inserted provision that the Secretary may not sell or otherwise dispose of such property unless the conditions in cls. (1) to (3) are satisfied.

1978—Subsecs. (g) to (j). Pub. L. 95–557 added subsec. (g) and redesignated former subsecs. (g), (h), and (i) as (h), (i), and (j), respectively.

1976—Subsecs. (f) to (i). Pub. L. 94–375 added subsecs. (f) and (g) and redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (d)(2) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 47 of House Document No. 103–7.

STUDY OF PROBLEMS CAUSED BY REMOTE CLAIMS

Section 509 of Pub. L. 95–557 directed Secretary of Agriculture to make a detailed study of problems associated with obtaining title insurance by persons in rural areas with respect to real property encumbered by remote claims and make a final report to Congress with respect to such study not later than one year after Oct. 31, 1978.

§ 1481. Issuance of notes and obligations for loan funds; amount; limitation; security; form and denomination; interest; purchase and sale by Treasury; public debt transaction

The Secretary may issue notes and other obligations for purchase by the Secretary of the Treasury for the purpose of making direct loans under this subchapter. The notes and obligations issued by the Secretary shall be secured by the obligations of borrowers and the Secretary's commitments to make contributions under this subchapter and shall be repaid from the payment of principal and interest on the obligations of the borrowers and from funds appropriated hereunder. The notes and other obligations issued by the Secretary shall be in such forms and denominations, shall have such maturities, and shall be subject to such terms and conditions as

may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Each such note or other obligation shall bear interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note or other obligation is issued, which are neither due nor callable for redemption for 15 years from their date of issue. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Secretary issued hereunder and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such obligations. The Secretary of the Treasury may at any time sell any of the notes or obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or obligations shall be treated as public debt transactions of the United States.

(July 15, 1949, ch. 338, title V, § 511, 63 Stat. 438; July 14, 1952, ch. 723, § 11(a), 66 Stat. 604; June 29, 1954, ch. 410, § 5(a), 68 Stat. 320; Aug. 2, 1954, ch. 649, title VIII, § 812(a), 68 Stat. 647; Aug. 11, 1955, ch. 783, title V, § 501(1), 69 Stat. 654; Aug. 7, 1956, ch. 1029, title VI, § 606(a), 70 Stat. 1114; Pub. L. 87–70, title VIII, §§ 801(c), 802, June 30, 1961, 75 Stat. 186; Pub. L. 87–723, § 4(c)(1), Sept. 28, 1962, 76 Stat. 672; Pub. L. 88–560, title V, § 501(a), Sept. 2, 1964, 78 Stat. 796; Pub. L. 89–117, title X, § 1003(b), Aug. 10, 1965, 79 Stat. 500; Pub. L. 98–181, title V, § 508, Nov. 30, 1983, 97 Stat. 1243; Pub. L. 98–479, title II, § 203(d)(4), Oct. 17, 1984, 98 Stat. 2229.)

AMENDMENTS

1984—Pub. L. 98–479 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'' and ''such chapter'' for ''such Act''.

1983—Pub. L. 98–181 struck out second sentence providing that total principal amount of such notes and obligations issued pursuant to this section during the period beginning July 1, 1956, and ending October 1, 1969, shall not exceed $850,000,000.

1965—Pub. L. 89–117 changed the purpose for which the Secretary may issue notes and other obligations for purchase by the Secretary of the Treasury from that of making loans under this subchapter (other than loans under section 1474(b) or 1485 of this title) to that of making direct loans under the entire subchapter, substituted ''October 1969'' for ''September 30, 1965'', eliminated reservation that, of the allowable $850,000,000 principal amount of notes and obligations, $50,000,000 be available exclusively for assistance to elderly persons under clause (3) of section 1471(a) of this title, and changed the method for setting the interest on notes and obligations from that of having the Secretary set a rate taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the notes or obligations to that of the Secretary setting a rate equal to the average rate payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note or other obligation is issued, which are neither due nor callable for redemption for 15 years from their date of issuance.

1964—Pub. L. 88–560 substituted ''September 30, 1965'' for ''June 30, 1965'', and ''$850,000,000'' for ''$700,000,000''.

1962—Pub. L. 87–723 substituted ''1474(b) or 1485'' for ''1474(b)'' and ''$700,000,000, of which $50,000,000 shall be available exclusively for assistance to elderly persons as provided in clause (3) of section 1471(a) of this title'' for ''$650,000,000''.

1961—Pub. L. 87–70 substituted ''June 30, 1965'' for ''June 30, 1961'', and ''$650,000,000'' for ''$450,000,000''.

1956—Act Aug. 7, 1956, authorized $450,000,000 for loans for the period beginning July 1, 1956, and ending June 30, 1961.

1955—Act Aug. 11, 1955, authorized an additional $100,000,000 on and after July 1, 1955.

1954—Act Aug. 2, 1954, substituted ''$100,000,000'' for the authorization of $8,500,000 (on and after July 1, 1954) which had been inserted by Act June 29, 1954.

Act June 29, 1954, authorized an additional $8,500,000 on and after July 1, 1954.

1952—Act July 14, 1952, authorized an additional $100,000,000 for fiscal year 1954.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 606(d) of act Aug. 7, 1956, provided that: ''This section [amending this section and sections 1482 and 1483 of this title] shall take effect as of July 1, 1956.''

§ 1482. Repealed. Pub. L. 98–181, title V, § 509, Nov. 30, 1983, 97 Stat. 1243

Section, acts July 15, 1949, ch. 338, title V, § 512, 63 Stat. 438; July 14, 1952, ch. 723, § 11(b), 66 Stat. 604; June 29, 1954, ch. 410, § 5(b), 68 Stat. 320; Aug. 2, 1954, ch. 649, title VIII, § 812(b), 68 Stat. 647; Aug. 11, 1955, ch. 783, title V, § 501(2), 69 Stat. 654; Aug. 7, 1956, ch. 1029, title VI, § 606(b), 70 Stat. 1114; June 30, 1961, Pub. L. 87–70, title VIII, § 801(c), 75 Stat. 186; Sept. 4, 1964, Pub. L. 88–560, title V, § 501(b), 78 Stat. 796; Aug. 10, 1965, Pub. L. 89–117, title X, § 1005(a), 79 Stat. 501, related to authorization to make commitments for contributions aggregating not to exceed $10,000,000 during period beginning July 1, 1956, and ending Oct. 1, 1969, in connection with loans made pursuant to section 1473 of this title.

§ 1483. Program levels and authorizations

(a) In general

(1) The Secretary may, to the extent approved in appropriation Acts, insure and guarantee loans under this subchapter during fiscal years 1993 and 1994, in aggregate amounts not to exceed $2,446,855,600 and $2,549,623,535, respectively, as follows:

(A) For insured or guaranteed loans under section 1472 of this title on behalf of low-income borrowers receiving assistance under section 1490a(a)(1) of this title, $1,676,484,000 for fiscal year 1993 and $1,746,896,328 for fiscal year 1994.

(B) For guaranteed loans under section 1472(h) of this title on behalf of low- and moderate-income borrowers, such sums as may be appropriated for fiscal years 1993 and 1994.

(C) For loans under section 1474 of this title, $12,400,000 for fiscal year 1993 and $12,920,800 for fiscal year 1994.

(D) For insured loans under section 1484 of this title, $16,821,600 for fiscal year 1993 and $17,528,107 for fiscal year 1994.

(E) For insured loans under section 1485 of this title, $739,500,000 for fiscal year 1993 and $770,559,000 for fiscal year 1994.

(F) For loans under section 1490c(b)(1)(B) of this title, $800,000 for fiscal year 1993 and $833,600 for fiscal year 1994.

(G) For site loans under section 1490d of this title, $850,000 for fiscal year 1993 and $885,700 for fiscal year 1994.

(2) Notwithstanding any other provision of law, insured and guaranteed loan authority au-

thorized in this subchapter for any fiscal year beginning after September 30, 1984, shall not be transferred or used for any purpose not specified in this subchapter.

(b) Authorization of appropriations

There are authorized to be appropriated for fiscal years 1993 and 1994, and to remain available until expended, the following amounts:

(1) For grants under section 1472(f)(1) of this title, $1,100,000 for fiscal year 1993 and $1,146,200 for fiscal year 1994.

(2) For grants under section 1474 of this title, $21,100,000 for fiscal year 1993 and $21,986,200 for fiscal year 1994.

(3) For purposes of section 1479(c) of this title, $600,000 for fiscal year 1993 and $625,200 for fiscal year 1994.

(4) For project preparation grants under section 1479(f)(6) of this title, $5,300,000 in fiscal year 1993 and $5,522,600 in fiscal year 1994.

(5) In fiscal years 1993 and 1994, such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to—

(A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title; and

(B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary.

(6) For grants for service coordinators under section 1485(y) of this title, $1,000,000 in fiscal year 1993 and $1,042,000 in fiscal year 1994.

(7) For financial assistance under section 1486 of this title—

(A) for low-rent housing and related facilities for domestic farm labor under subsections (a) through (j) of such section, $21,700,000 for fiscal year 1993 and $22,611,400 for fiscal year 1994; and

(B) for housing for rural homeless and migrant farmworkers under subsection (k) of such section, $10,500,000 for fiscal year 1993 and $10,941,000 for fiscal year 1994.

(8) For grants under section 1490c(f)[1] of this title, $13,900,000 for fiscal year 1993 and $14,483,800 for fiscal year 1994.

(9) For grants under section 1490m of this title, $30,800,000 for fiscal year 1993 and $32,093,600 for fiscal year 1994.

(c) Rental assistance

(1) The Secretary, to the extent approved in appropriations Acts for fiscal years 1993 and 1994, may enter into rental assistance payment contracts under section 1490a(a)(2)(A) of this title aggregating $414,100,000 for fiscal year 1993 and $431,492,200 for fiscal year 1994.

(2) Any authority approved in appropriation Acts for fiscal year 1988 or any succeeding fiscal year for rental assistance payment contracts under section 1490a(a)(2)(A) of this title or contracts for operating assistance under section 1490a(a)(5) of this title shall be used by the Secretary—

(A) to renew rental assistance payment contracts or operating assistance contracts that expire during such fiscal year;

(B) to provide amounts required to continue assistance payments for the remaining period of an existing contract, in any case in which the original amount of assistance is used prior to the end of the term of the contract; and

(C) to make additional rental assistance payment contracts or operating assistance contracts for existing or newly constructed dwelling units.

(d) Supplemental rental assistance contracts

The Secretary, to the extent approved in appropriations Acts for fiscal years 1993 and 1994, may enter into 5-year supplemental rental assistance contracts under section 1472(c)(5)(D) of this title aggregating $12,178,000 for fiscal year 1993 and $12,689,476 for fiscal year 1994.

(e) Authorization of appropriations

There are authorized to be appropriated for rural housing vouchers under section 1490r of this title, $130,000,000 for fiscal year 1993 and $140,000,000 for fiscal year 1994.

(July 15, 1949, ch. 338, title V, § 513, 63 Stat. 438; July 14, 1952, ch. 723, § 11(c), 66 Stat. 604; June 29, 1954, ch. 410, § 5(c), 68 Stat. 320; Aug. 2, 1954, ch. 649, title VIII, § 812(c), 68 Stat. 647; Aug. 11, 1955, ch. 783, title V, § 501(3), 69 Stat. 654; Aug. 7, 1956, ch. 1029, title VI, § 606(c), 70 Stat. 1115; Pub. L. 87–70, title VIII, §§ 801(c), 805(b), June 30, 1961, 75 Stat. 186, 188; Pub. L. 88–560, title V, §§ 501(c), 503(b), Sept. 2, 1964, 78 Stat. 796, 798; Pub. L. 89–117, title X, § 1005(b), Aug. 10, 1965, 79 Stat. 501; Pub. L. 90–448, title X, § 1003, Aug. 1, 1968, 82 Stat. 553; Pub. L. 91–78, § 1, Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title IV, § 413(a), Dec. 24, 1969, 83 Stat. 398; Pub. L. 93–117, § 13(a), Oct. 2, 1973, 87 Stat. 423; Pub. L. 93–383, title V, § 509(a), Aug. 22, 1974, 88 Stat. 694; Pub. L. 95–60, § 4(a), June 30, 1977, 91 Stat. 258; Pub. L. 95–80, § 4(a), July 31, 1977, 91 Stat. 340; Pub. L. 95–128, title V, § 501(a), Oct. 12, 1977, 91 Stat. 1138; Pub. L. 95–406, § 7(a), Sept. 30, 1978, 92 Stat. 880; Pub. L. 95–557, title V, § 501(a)–(c), Oct. 31, 1978, 92 Stat. 2110, 2111; Pub. L. 95–619, title II, § 232(b), Nov. 9, 1978, 92 Stat. 3227; Pub. L. 96–71, § 5(a), Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, § 5(a), Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title V, § 501(a), Dec. 21, 1979, 93 Stat. 1132; Pub. L. 96–372, § 6(a), Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title V, § 501(a), Oct. 8, 1980, 94 Stat. 1667; Pub. L. 97–35, title III, § 351(a), Aug. 13, 1981, 95 Stat. 420; Pub. L. 98–181, title V, § 511(a), Nov. 30, 1983, 97 Stat. 1243; Pub. L. 98–479, title I, § 105(d), Oct. 17, 1984, 98 Stat. 2227; Pub. L. 99–272, title III, § 3005, Apr. 7, 1986, 100 Stat. 103; Pub. L. 100–242, title III, § 301(a)–(d), (g), Feb. 5, 1988, 101 Stat. 1891–1893; Pub. L. 101–625, title VII, § 701(a)–(d), Nov. 28, 1990, 104 Stat. 4281, 4282; Pub. L. 102–550, title VII, § 701(a)–(d), (f), Oct. 28, 1992, 106 Stat. 3832–3834; Pub. L. 105–276, title V, § 599C(e)(2)(C), Oct. 21, 1998, 112 Stat. 2662.)

REFERENCES IN TEXT

Section 1490c(f) of this title, referred to in subsec. (b)(8), was repealed by Pub. L. 102–550, title VII, § 710(2), Oct. 28, 1992, 106 Stat. 3840.

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105–276, § 599C(e)(2)(C)(i), inserted "or contracts for operating assistance under section 1490a(a)(5) of this title" after "section 1490a(a)(2)(A) of this title" in introductory provisions.

[1] See References in Text note below.

Subsec. (c)(2)(A). Pub. L. 105–276, § 599C(e)(2)(C)(ii), inserted ''or operating assistance contracts'' after ''contracts''.

Subsec. (c)(2)(B). Pub. L. 105–276, § 599C(e)(2)(C)(iii), struck out ''rental'' before ''assistance'' in two places.

Subsec. (c)(2)(C). Pub. L. 105–276, § 599C(e)(2)(C)(iv), inserted ''or operating assistance contracts'' after ''contracts''.

1992—Subsec. (a). Pub. L. 102–550, § 701(a), inserted heading and amended par. (1) generally, substituting provisions relating to aggregate amounts for which Secretary may insure and guarantee loans for fiscal years 1993 and 1994 for provisions authorizing aggregate amounts for fiscal years 1991 and 1992.

Subsec. (b). Pub. L. 102–550, § 701(b), amended subsec. (b) generally, inserting heading and substituting provisions authorizing appropriations for fiscal years 1993 and 1994 for provisions authorizing appropriations for fiscal years 1991 and 1992.

Subsec. (c). Pub. L. 102–550, § 701(c), inserted heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary, to the extent approved in appropriation Acts for fiscal years 1991 and 1992, may enter into rental assistance payment contracts under section 1490a(a)(2)(A) of this title aggregating $397,000,000 for fiscal year 1991 and $414,100,000 for fiscal year 1992.''

Subsec. (d). Pub. L. 102–550, § 701(d), inserted heading and amended text generally. Prior to amendment, text read as follows: ''The Secretary, to the extent approved in appropriation Acts for fiscal years 1991 and 1992, may enter into 5-year supplemental rental assistance contracts under section 1472(c)(5)(D) of this title aggregating $5,200,000 for fiscal year 1991 and $5,500,000 for fiscal year 1992.''

Subsec. (e). Pub. L. 102–550, § 701(f), amended subsec. (e) generally, substituting present provisions for provisions authorizing a demonstration rural housing voucher program during fiscal years 1988 and 1989. See section 1490r of this title.

1990—Subsec. (a)(1). Pub. L. 101–625, § 701(a), amended par. (1) generally, substituting provisions relating to aggregate amounts for which Secretary may insure and guarantee loans for fiscal years 1991 and 1992 for provisions authorizing aggregate amounts for fiscal years 1988 and 1989.

Subsec. (b). Pub. L. 101–625, § 701(b), amended subsec. (b) generally, substituting provisions authorizing appropriations for fiscal years 1991 and 1992 for provisions authorizing appropriations for fiscal years 1988 and 1989.

Subsec. (c)(1). Pub. L. 101–625, § 701(c), amended par. (1) generally, substituting provisions authorizing appropriations for rental assistance payment contracts for fiscal years 1991 and 1992 for provisions authorizing appropriations for such contracts for fiscal years 1988 and 1989.

Subsec. (d). Pub. L. 101–625, § 701(d), amended subsec. (d) generally, substituting provisions authorizing supplemental rental assistance contracts aggregating $5,200,000 for fiscal year 1991 and $5,500,000 for fiscal year 1992 for provisions authorizing contracts aggregating $26,000,000 for fiscal year 1988 and $27,534,000 for fiscal year 1989.

1988—Subsec. (a)(1). Pub. L. 100–242, § 301(a), amended par. (1) generally, substituting provisions relating to the aggregate amounts for which the Secretary may insure and guarantee loans for fiscal years 1988 and 1989, for provisions authorizing aggregate amounts the Secretary may insure and guarantee for fiscal year 1986.

Subsec. (b). Pub. L. 100–242, § 301(b), amended subsec. (b) generally, substituting provisions authorizing appropriated funds for fiscal years 1988 and 1989, for provisions authorizing appropriated funds for fiscal years 1984 and 1985.

Subsec. (c). Pub. L. 100–242, § 301(c), amended subsec. (c) generally, substituting provisions authorizing appropriations to enter into rental assistance payment contracts for fiscal years 1988 and 1989, for provisions authorizing appropriations for such contracts for fiscal years 1984 and 1985.

Subsecs. (d), (e). Pub. L. 100–242, § 301(d), (g), added subsecs. (d) and (e).

1986—Subsec. (a)(1). Pub. L. 99–272 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary may insure and guarantee loans under this subchapter during fiscal years 1984 and 1985 in an aggregate amount not to exceed such sums as may be approved in an appropriation Act.''

1984—Subsec. (a). Pub. L. 98–479, § 105(d)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(7). Pub. L. 98–479, § 105(d)(2), substituted ''1490m of this title'' for ''1490k of this title''.

1983—Subsec. (a). Pub. L. 98–181 amended subsec. (a) generally, substituting ''The Secretary may insure and guarantee loans under this subchapter during fiscal years 1984 and 1985 in an aggregate amount not to exceed such sums as may be approved in an appropriation Act'' for ''The Secretary may, as approved in appropriation Acts, insure and guarantee loans under the authorities provided in this subchapter in an aggregate principal amount not to exceed $3,700,600,000 with respect to the fiscal year ending September 30, 1982; except that—

''(1) not less than $3,170,000,000 of any amount so approved in appropriation Acts for such year shall be made available for loans insured or guaranteed on behalf of borrowers receiving assistance pursuant to subparagraph (B) or (C) of section 1490a(a)(1) of this title;

''(2) not more than $25,600,000 of such amount so approved for such fiscal year may be made available for loans insured under section 1484 of this title;

''(3) not more than $5,000,000 of such amount so approved shall be available for making advances under section 1471(e) of this title for such fiscal year; and

''(4) none of such amount shall be available for loans guaranteed pursuant to this title on behalf of borrowers who do not receive assistance pursuant to subparagraph (B) or (C) of section 1490a(a)(1) of this title.

Subsec. (b). Pub. L. 98–181 amended subsec. (b) generally, substituting ''There are authorized to be appropriated for fiscal years 1984 and 1985—

''(1) such sums as may be necessary for grants pursuant to section 1474 of this title;

''(2) such sums as may be necessary for the purposes of section 1479(c) of this title;

''(3) such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to (A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title, and (B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary;

''(4) such sums as may be necessary for financial assistance pursuant to section 1486 of this title;

''(5) such sums as may be necessary for the purposes of section 1490c of this title;

''(6) such sums as may be necessary for purposes of section 1490e(a) of this title;

''(7) not to exceed $100,000,000 for each such year for grants under section 1490k of this title; of which 5 per centum shall be available for technical assistance; and

''(8) such sums as may be required by the Secretary to administer the provisions of sections 1715z and 1715z–1 of title 12 and section 1437f of this title''

for ''There are authorized to be appropriated—

''(1) such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to (A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title, and (B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary;

''(2) not to exceed $50,000,000 for loans and grants pursuant to section 1474 of this title for the fiscal year ending September 30, 1982, of which not more than $25,000,000 shall be available for grants;

''(3) not to exceed $25,000,000 for financial assistance pursuant to section 1486 of this title for the fiscal year ending September 30, 1982;

''(4) not to exceed $2,000,000 for the purposes of section 1490e(a) of this title, of which not less than $1,000,000 shall be used for counseling purchasers and delinquent borrowers, for the fiscal year ending September 30, 1982;

''(5) such sums as may be required by the Secretary to administer the provisions of sections 1752 and 1752–1 of title 12 and section 1437f of this title; and

''(6) not to exceed $2,000,000 for the purposes of section 1479(c) of this title for the fiscal year ending September 30, 1982.''

Subsec. (c). Pub. L. 98–181 added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35, § 351(a)(1)–(3), in introductory text substituted provisions authorizing appropriations for the fiscal year ending Sept. 30, 1982, for provisions authorizing appropriations for the fiscal year ending Sept. 30, 1981, in par. (1) substituted ''$3,170,000,000'' for ''$3,120,000,000'', and in par. (3) substituted ''none'' for ''not more than $100,000,000''.

Subsec. (b). Pub. L. 97–35, § 351(a)(4)–(7), in par. (2) substituted ''$50,000,000'' for ''$49,000,000'' and ''1982'' for ''1981'', in par. (3) substituted ''1982'' for ''1981'', in par. (4) substituted ''1982'' for ''1981'', and added par. (6).

1980—Subsec. (a). Pub. L. 96–399, § 501(a)(1)–(4), substituted in introductory clause, provision for $3,797,600,000 for fiscal year ending Sept. 30, 1981, for provision for $4,484,000,000 for fiscal year ending Oct. 15, 1980, in par. (1) substituted ''$3,120,000,000'' for ''$3,070,000,000'', in par. (2) substituted ''$25,600,000'' for ''$38,000,000'', and added par. (4).

Pub. L. 96–372, § 6(a)(1), substituted ''October 15, 1980'' for ''September 30, 1980''.

Subsec. (b). Pub. L. 96–399, § 501(a)(5)–(7), in par. (2) substituted provision for $49,000,000 for fiscal year ending Sept. 30, 1981, for provision for $48,000,000 for fiscal year ending Sept. 30, 1980, and inserted limitation of $25,000,000 available for grants, in par. (3) substituted provision for $25,000,000 for fiscal year ending Sept. 30, 1981, for provision for $30,000,000 for fiscal year ending Oct. 15, 1980, and in par. (4) substituted ''$2,000,000'' for ''$1,500,000'', ''$1,000,000'' for ''$750,000'', ''1981'' for ''1980'', and struck out ''and not to exceed $1,000,000 for the purposes of section 1490e(b) of this title'' after ''borrowers''.

Pub. L. 96–372, § 6(a)(2), substituted ''October 15, 1980'' for ''September 30, 1980'' in pars. (2) to (4).

1979—Pub. L. 96–153 amended section generally, inserted authorization of appropriations for fiscal year ending Sept. 30, 1980 for guaranteeing loans under this subchapter and laid down maximum limits for certain programs, authorized appropriation of $48,000,000 for fiscal year ending Sept. 30, 1980 for purposes of section 1481 of this title, of $30,000,000 for fiscal year ending Sept. 30, 1980 for purposes of section 1486 of this title, of $1,500,000 for fiscal year ending Sept. 30, 1980 for purposes of section 1490e(a) of this title, of $1,000,000 for purposes of section 1490e(b) of this title, inserted reference to section 1437f of this title, and struck out authorization of appropriations for research and study programs.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979'' wherever appearing in cls. (b) to (d).

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979'' wherever appearing in cls. (b) to (d).

1978—Pub. L. 95–619 in cl. (b) inserted requirement that not less than $25,000,000 of any amount authorized to be appropriated for the fiscal year ending Sept. 30, 1979, was to be appropriated for the purpose of making grants pursuant to section 1474(c) of this title.

Pub. L. 95–557, inserted in cl. (b) ''and not to exceed $48,000,000 for the fiscal year ending September 30, 1979'', and in cl. (c) ''and not to exceed $38,000,000 for the fiscal year ending September 30, 1979'', and substituted in cl. (d) ''not to exceed $10,000,000 for research and study programs pursuant to subsections (b), (c), and (d) of section 1476 of this title for the fiscal year ending September 30, 1979'' for ''not to exceed $250,000 per year for research and study programs pursuant to subsection (b), (c), and (d) of section 1476 of this title during the period beginning July 1, 1961, and ending June 30, 1974, and not to exceed $1,000,000 per year for such programs during the period beginning October 1, 1974, and ending October 31, 1978''.

Pub. L. 95–406 substituted in cls. (b) to (d) ''October 31, 1978'' for ''September 30, 1978''.

1977—Pub. L. 95–128 substituted in cls. (b) to (d) ''September 30, 1978'' for ''September 30, 1977'' and in cls. (b) and (c) ''$105,000,000'' for ''$80,000,000''.

Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977'' wherever appearing.

Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977'' wherever appearing.

1974—Pub. L. 93–383 in cls. (b) and (c) increased amount from $50,000,000 to $80,000,000 and substituted ''June 30, 1977'' for ''October 1, 1974'', and in cl. (d) substituted ''June 30, 1974'' for ''October 1, 1974'' and inserted provisions authorizing not to exceed $1,000,000 per year during the period beginning October 1, 1974, and ending June 30, 1977.

1973—Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973'' wherever appearing.

1969—Pub. L. 91–152 substituted ''October 1, 1973'' for ''January 1, 1970'' wherever appearing.

Pub. L. 91–78 substituted ''January 1, 1970'' for ''October 1, 1969'' wherever appearing.

1968—Pub. L. 90–448 authorized appropriations of such sums as may be required to administer the provisions of sections 1715z and 1715z–1 of title 12.

1965—Pub. L. 89–117 substituted ''October 1, 1969'' for ''September 30, 1965'' wherever appearing and ''$50,000,000'' for ''$10,000,000'' in cl. (c) as the maximum allowable appropriation for financial assistance pursuant to section 1486 of this title.

1964—Pub. L. 88–560 substituted ''September 30, 1965'' for ''June 30, 1965'' wherever appearing, redesignated cls. (c) and (d) as (d) and (e), and added cl. (c).

1961—Pub. L. 87–70 extended the period for grants and loans pursuant to section 1474 (a), (b) of this title from June 30, 1961, to June 30, 1965, and authorized appropriations of not more than $250,000 per year for research and study programs pursuant to subsections (b), (c), and (d) of section 1476 of this title for the period beginning July 1, 1961, and ending June 30, 1965.

1956—Act Aug. 7, 1956, authorized $50,000,000 for grants and loans from July 1, 1956, to June 30, 1961.

1955—Act Aug. 11, 1955, authorized an additional $10,000,000 on July 1, 1955.

1954—Act Aug. 2, 1954, substituted $10,000,000 for the authorization of $850,000 (available July 1, 1954) which had been authorized by act June 29, 1954.

Act June 29, 1954, authorized an appropriation of $850,000 to be available on July 1, 1954.

1952—Act July 14, 1952, authorized an appropriation of $10,000,000 to be available on July 1, 1953.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 7, 1956, effective July 1, 1956, see section 606(d) of act Aug. 7, 1956, set out as a note under section 1481 of this title.

§ 1484. Insurance of loans for housing and related facilities for domestic farm labor

(a) Authorization; terms and conditions

The Secretary is authorized to insure and make commitments to insure loans made by lenders other than the United States to the owner of any farm or any association of farmers for the purpose of providing housing and related facilities for domestic farm labor, or to any In-

dian tribe for such purpose, or to any State (or political subdivision thereof), or any broad-based public or private nonprofit organization, or any limited partnership in which the general partner is a nonprofit entity, or any nonprofit organization of farmworkers incorporated within the State for the purpose of providing housing and related facilities for domestic farm labor any place within the State where a need exists. All such loans shall be made in accordance with terms and conditions substantially identical with those specified in section 1472 of this title, except that—

(1) no such loan shall be insured in an amount in excess of the value of the farm involved less any prior liens in the case of a loan to an individual owner of a farm, or the total estimated value of the structures and facilities with respect to which the loan is made in the case of any other loan;

(2) no such loan shall be insured if it bears interest at a rate in excess of 1 per centum per annum;

(3) out of interest payments by the borrower the Secretary shall retain a charge in an amount not less than one-half of 1 per centum per annum of the unpaid principal balance of the loan;

(4) the insurance contracts and agreements with respect to any loan may contain provisions for servicing the loan by the Secretary or by the lender, and for the purchase by the Secretary of the loan if it is not in default, on such terms and conditions as the Secretary may prescribe; and

(5) the Secretary may take mortgages creating a lien running to the United States for the benefit of the insurance fund referred to in subsection (b) of this section notwithstanding the fact that the note may be held by the lender or his assignee.

(b) Utilization of farm tenant mortgage insurance fund; additions to and deposits in fund; deposits in Treasury

The Secretary shall utilize the insurance fund created by section 1005a of title 7[1] and the provisions of section 1005c(a), (b), and (c) of title 7[1] to discharge obligations under insurance contracts made pursuant to this section, and

(1) the Secretary may utilize the insurance fund to pay taxes, insurance, prior liens, and other expenses to protect the security for loans which have been insured hereunder and to acquire such security property at foreclosure sale or otherwise;

(2) the notes and security therefor acquired by the Secretary under insurance contracts made pursuant to this section shall become a part of the insurance fund. Loans insured under this section may be held in the fund and collected in accordance with their terms or may be sold and reinsured. All proceeds from such collections, including the liquidation of security and the proceeds of sales, shall become a part of the insurance fund; and

(3) of the charges retained by the Secretary out of interest payments by the borrower, amounts not less than one-half of 1 per centum per annum of the unpaid principal balance of the loan shall be deposited in and become a part of the insurance fund. The remainder of such charges shall be deposited in the Treasury of the United States and shall be available for administrative expenses of the Farmers Home Administration, to be transferred annually to and become merged with any appropriation for such expenses.

(c) Insurance contract; obligation of United States; incontestability

Any contract of insurance executed by the Secretary under this section shall be an obligation of the United States and incontestable except for fraud or misrepresentation of which the holder of the contract has actual knowledge.

(d) Repealed. Pub. L. 96–153, title V, § 501(b), Dec. 21, 1979, 93 Stat. 1133

(e) Administrative expenses

Amounts made available pursuant to section 1483 of this title shall be available for administrative expenses incurred under this section.

(f) Definitions

As used in this section—

(1) the term ''housing'' means (A) new structures (including household furnishings) suitable for dwelling use by domestic farm labor, and (B) existing structures (including household furnishings) which can be made suitable for dwelling use by domestic farm labor by rehabilitation, alteration, conversion, or improvement;

(2) the term ''related facilities'' means (A) new structures (including household furnishings) suitable for use as dining halls, community rooms or buildings, or infirmaries, or for other essential services facilities, and (B) existing structures (including household furnishings) which can be made suitable for the above uses by rehabilitation, alteration, conversion, or improvement and (C) land necessary for an adequate site; and

(3) the term ''domestic farm labor'' means any person (and the family of such person) who receives a substantial portion of his or her income from primary production of agricultural or aquacultural commodities or the handling of such commodities in the unprocessed stage, without respect to the source of employment, except that—

(A) such person shall be a citizen of the United States or a person legally admitted for permanent residence;

(B) such term includes any person (and the family of such person) who is retired or disabled, but who was domestic farm labor at the time of retirement or becoming disabled; and

(C) in applying this paragraph with respect to vacant units in farm labor housing, the Secretary shall make units available for occupancy in the following order of priority:

(i) to active farm laborers (and their families);

(ii) to retired or disabled farm laborers (and their families) who were active in the local farm labor market at the time of retiring or becoming disabled; and

[1] See References in Text note below.

(iii) to other retired or disabled farm laborers (and their families).

(g) Waiver of interest rate limitations

The Secretary may waive the interest rate limitation contained in subsection (a)(2) of this section and the requirement of section 1471(c)(3) of this title in any case in which the Secretary determines that qualified public or private nonprofit sponsors are not currently available and are not likely to become available within a reasonable period of time and such waiver is necessary to permit farmers to provide housing and related facilities for migrant domestic farm laborers, except that the benefits resulting from such waiver shall accrue to the tenants, and the interest rate on a loan insured under this section and for which the Secretary permits such waiver shall be no less than one-eighth of 1 per centum above the average interest rate on notes or other obligations which are issued under section 1481 of this title and have maturities comparable to such a loan.

(h) Determination of need for assistance

In making available assistance in any area under this section or section 1486 of this title, the Secretary shall—

(1) in determining the need for the assistance, take into consideration the housing needs only of domestic farm labor, including migrant farmworkers, in the area; and

(2) in determining whether to provide such assistance, make such determination without regard to the extent or nature of other housing needs in the area.

(i) Domestic farm labor housing available for other families

Housing and related facilities constructed with loans under this section may be used for tenants eligible for occupancy under section 1485 of this title if the Secretary determines that—

(1) there is no longer a need in the area for farm labor housing; or

(2) the need for such housing in the area has diminished to the extent that the purpose of the loan, providing housing for domestic farm labor, can no longer be met.

(July 15, 1949, ch. 338, title V, § 514, as added Pub. L. 87–70, title VIII, § 804(a), June 30, 1961, 75 Stat. 186; amended Pub. L. 88–560, title V, § 502, Sept. 2, 1964, 78 Stat. 796; Pub. L. 90–448, title X, § 1004, Aug. 1, 1968, 82 Stat. 553; Pub. L. 91–609, title VIII, § 801(a)–(c), Dec. 31, 1970, 84 Stat. 1805, 1806; Pub. L. 95–128, title V, § 505, Oct. 12, 1977, 91 Stat. 1140; Pub. L. 95–557, title V, §§ 501(d), 504, Oct. 31, 1978, 92 Stat. 2111, 2112; Pub. L. 96–153, title V, § 501(b), Dec. 21, 1979, 93 Stat. 1133; Pub. L. 96–399, title V, § 507(b), Oct. 8, 1980, 94 Stat. 1670; Pub. L. 98–181, title V, § 510, Nov. 30, 1983, 97 Stat. 1243; Pub. L. 100–242, title III, §§ 305(a), 316(b), Feb. 5, 1988, 101 Stat. 1895, 1897; Pub. L. 100–628, title X, § 1043(a), Nov. 7, 1988, 102 Stat. 3273; Pub. L. 104–180, title VII, § 734(e)(1), Aug. 6, 1996, 110 Stat. 1603; Pub. L. 105–276, title V, § 599C(d), Oct. 21, 1998, 112 Stat. 2661; Pub. L. 106–569, title VII, §§ 703, 708(b), Dec. 27, 2000, 114 Stat. 3013, 3018.)

REFERENCES IN TEXT

Sections 1005a and 1005c(a), (b), and (c) of title 7, referred to in subsec. (b), were repealed by section 341(a) of Pub. L. 87–128, title III, Aug. 8, 1961, 75 Stat. 318 (set out as a note under section 1921 of Title 7, Agriculture), which also provided that references in other laws to the Bankhead-Jones Farm Tenant Act shall be construed as referring to appropriate provisions of section 1921 et seq. of Title 7. The fund established pursuant to section 1005a of Title 7 was renamed the Agricultural Credit Insurance Fund. See section 1929 of Title 7.

CODIFICATION

Another section 801(b) of Pub. L. 91–609 amended section 1460(c)(1) of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–569, § 703, substituted ''limited partnership'' for ''nonprofit limited partnership'' in first sentence of introductory provisions.

Subsec. (j). Pub. L. 106–569, § 708(b), struck out heading and text of subsec. (j). Text read as follows: ''Whoever, as an owner, agent, or manger, or who is otherwise in custody, control, or possession of property that is security for a loan made or insured under this section willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property, for any purpose other than to meet actual or necessary expenses of the property, or for any other purpose not authorized by this subchapter or the regulations adopted pursuant to this subchapter, shall be fined not more than $250,000 or imprisoned not more than 5 years, or both.''

1998—Subsec. (a). Pub. L. 105–276 inserted '', or any nonprofit limited partnership in which the general partner is a nonprofit entity,'' after ''private nonprofit organization'' in first sentence.

1996—Subsec. (j). Pub. L. 104–180 added subsec. (j).

1988—Subsec. (f)(1). Pub. L. 100–242, § 316(b), struck out ''and'' at end.

Subsec. (f)(3). Pub. L. 100–242, § 305(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''the term 'domestic farm labor' means persons who receive a substantial portion (as determined by the Secretary) of their income as laborers on farms situated in the United States, Puerto Rico, or the Virgin Islands and either (A) are citizens of the United States, or (B) reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence therein.''

Subsec. (i). Pub. L. 100–628 added subsec. (i).

1983—Subsec. (h). Pub. L. 98–181 added subsec. (h).

1980—Subsec. (a). Pub. L. 96–399 inserted reference to Indian tribe.

1979—Subsec. (d). Pub. L. 96–153 repealed subsec. (d) which provided for a maximum of $38,000,000 for the aggregate amount of principal obligations of loans insured under this section.

1978—Subsec. (d). Pub. L. 95–557, § 501(d), substituted ''$38,000,000 (subject to approval in an appropriation Act)'' for ''$25,000,000''.

Subsec. (g). Pub. L. 95–557, § 504, added subsec. (g).

1977—Subsec. (f)(3). Pub. L. 95–128 extended definition of ''domestic farm labor'' to include laborers on farms situated in Puerto Rico and the Virgin Islands and the residents of the islands after being legally admitted for permanent residence.

1970—Subsec. (a). Pub. L. 91–609, § 801(a), authorized insurance of loans to broad-based nonprofit organizations and nonprofit organizations of farmworkers incorporated within the State and provided for housing and related facilities for domestic farm labor any place within the State where need exists.

Subsec. (a)(2). Pub. L. 91–609, § 801(b), substituted ''1'' for ''5'' per centum.

Subsec. (f)(1), (2). Pub. L. 91–609, § 801(c), substituted ''structures (including household furnishings)'' for ''structures'' in cls. (A) and (B).

1968—Subsec. (f)(2). Pub. L. 90–448 included land necessary for an adequate site within the definition of ''related facilities''.

1964—Subsec. (f)(3). Pub. L. 88–560 included residents of the United States after being legally admitted for permanent residence.

§ 1485. Housing and related facilities for elderly persons and families or other persons and families of low income

(a) Direct loans; authorization; terms and conditions; revolving fund; appropriation

The Secretary is authorized to make loans to private nonprofit corporations and consumer cooperatives and Indian tribes to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families of low or moderate income or other persons and families of low income in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

(1) no such loan shall exceed the development cost or the value of the security, whichever is less;

(2) such a loan may be made for a period of up to 30 years from the making of the loan; and

(3) such a loan, when made to a consumer cooperative for cooperative housing purposes, may, notwithstanding any other provision of law, be made upon the condition that any person who is admitted as an eligible member and tenant of the cooperative may not subsequently be deprived of his membership or tenancy by reason of his no longer meeting the income eligibility requirements established by the Secretary.

There is authorized to be appropriated not to exceed $50,000,000, which shall constitute a revolving fund to be used by the Secretary in carrying out this subsection.

(b) Insurance of loans; authorization; terms and conditions; utilization of Agricultural Credit Insurance Fund

The Secretary is authorized to insure and make commitments to insure loans made to any individual, corporation, association, trust, Indian tribe, or partnership to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families or other persons and families of moderate income in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

(1) no such loan shall exceed the development cost or the value of the security, whichever is less;

(2) such a loan may be made for a period of up to 30 years from the making of the loan, but the Secretary may provide for periodic payments based on an amortization schedule of 50 years with a final payment of the balance due at the end of the term of the loan;

(3) for insuring such loans, the Secretary shall utilize the Agricultural Credit Insurance Fund subject to all the provisions of section 1929 of title 7 and the second and third sentences of section 1928[1] of title 7, including the authority in section 1929(f)(1)[1] of title 7 to utilize the insurance fund to make, sell, and insure loans which could be insured under this subsection; but the aggregate of the principal amounts of such loans made by the Secretary and not disposed of shall not exceed $10,000,000 outstanding at any one time; and the Secretary may take liens running to the United States though the notes may be held by other lenders;

(4) such a loan, when made to a consumer cooperative for cooperative housing purposes, may, notwithstanding any other provision of law, be made upon the condition that any person who is admitted as an eligible member and tenant of the cooperative may not subsequently be deprived of his membership or tenancy by reason of his no longer meeting the income eligibility requirements established by the Secretary;

(5) loans may be made to owners who are otherwise eligible under this section to purchase and convert single-family residences to rental units of two or more dwellings; and

(6) the Secretary may make a new loan to the current borrower to finance the final payment of the original loan for an additional period not to exceed twenty years, if—

(A) the Secretary determines—

(i) it is more cost-efficient and serves the tenant base more effectively to maintain the current property than to build a new property in the same location; or

(ii) the property has been maintained to such an extent that it warrants retention in the current portfolio because it can be expected to continue providing decent, safe, and affordable rental units for the balance of the loan; and

(B) the Secretary determines—

(i) current market studies show that a need for low-income rural rental housing still exists for that area; and

(ii) any other criteria established by the Secretary has been met.

(c) Equity recapture loans and loans to nonprofit organizations and public agencies

With respect to a loan made or insured under subsection (a) or (b) of this section, the Secretary is authorized to—

(1) make or insure an equity loan in the form of a supplemental loan for the purpose of equity takeout to the owner of housing financed with a loan made or insured under this section pursuant to a contract entered into before December 15, 1989, for the purpose of extending the affordability of the housing for low income families or persons and very low-income families or persons for not less than 20 years, except that such loan may not exceed 90 percent of the value of the equity in the project as determined by the Secretary;

(2) transfer and reamortize an existing loan in connection with assistance provided under paragraph (1); and

(3) make or insure a loan to enable a nonprofit organization or public agency to make a purchase described in section 1472(c)(5) of this title.

(d) Construction requirements; detached units for cooperative housing

No loan shall be made or insured under subsection (a) or (b) of this section unless the Sec-

[1] See References in Text note below.

retary finds that the construction involved will be undertaken in an economical manner and will not be of elaborate or extravagant design or materials. However, specifically designed equipment required by elderly or handicapped persons or families shall not be considered elaborate or extravagant. A loan may be made or insured under subsection (a) or (b) of this section with respect to detached units, including those on scattered sites, for cooperative housing.

(e) Definitions

As used in this section—

(1) the term ''housing'' means new or existing housing suitable for dwelling use by occupants eligible under this section, and such term also means manufactured home rental parks where either the lots or both the lots and the homes are available for use by occupants eligible under this section; and such term also means congregate housing facilities for elderly or handicapped persons or families who require some supervision and central services but are otherwise able to care for themselves; such housing for the handicapped may be utilized in conjunction with educational and training facilities;

(2) the term ''related facilities'' includes cafeterias or dining halls, community rooms or buildings, appropriate recreation facilities, and other essential service facilities;

(3) the term ''congregate housing'' means housing in which (A) some of the units may not have kitchen facilities, and (B) there is a central dining facility to provide wholesome and economic meals for elderly or handicapped persons or families.

(4) the term ''development cost'' means the costs of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities and purchasing and improving the necessary land, including necessary and appropriate fees and charges, initial operating expenses up to 2 per centum of the aforementioned costs, approved by the Secretary, impact fees, local charges for installation, provision, or use of infrastructure, and local assessments for public improvements and services imposed by State and local governments. Such fees and charges may include payments of qualified consulting organizations or foundations which operate on a nonprofit basis and which render services or assistance to nonprofit corporations or consumer cooperatives who provide housing and related facilities for low or moderate income families. Notwithstanding the first sentence of this paragraph, the term ''development cost'' shall not include any initial operating expenses in the case of any nonprofit corporation or consumer cooperative that is financing housing under this section and has been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.

(f) Administrative expenses

Amounts made available pursuant to section 1483 of this title shall be available for administrative expenses incurred under this section.

(g) Loans for financing transfers of memberships in cooperatives

Notwithstanding the provisions of subsections (a) and (b) of this section, the Secretary may make and insure loans to consumer cooperatives to enable such cooperatives to finance the transfers of memberships in the cooperatives upon such terms and conditions as low- and moderate-income persons can reasonably afford, except that such loans shall not be made upon terms more favorable than are authorized under section 1490a(a) of this title, and that the total loan to a cooperative under this section shall not exceed the value of the property.

(h) Project transfers

After August 6, 1996, the ownership or control of a project for which a loan is made or insured under this section may be transferred only if the Secretary determines that such transfer would further the provision of housing and related facilities for low-income families or persons and would be in the best interests of residents and the Federal Government.

(i) Limitations on cost increases after approval for project involving newly constructed or substantially rehabilitated units; applicable factors

After approving a project involving newly constructed or substantially rehabilitated units under this section, the Secretary shall limit cost increases to those approved by the Secretary. The Secretary may approve those increases only for unforeseen factors beyond the owner's control, design changes required by the Secretary or the local government, or changes in financing approved by the Secretary.

(j) Contract preferences for providing units in newly constructed projects

For the purpose of achieving the lowest cost in providing units in newly constructed projects assisted under this section, the Secretary shall give a preference in entering into contracts under this section for projects which are to be located on specific tracts of land provided by States, units of local government, or others if the Secretary determines that the tract of land is suitable for such housing, and that affording such preference will be cost effective.

(k) Management fees

The Secretary shall assure that management fees are not excessive when a project developed under this section is managed by the developer or an affiliate of the developer.

(*l*) Determination of market feasibility of project

For purposes of determining the market feasibility of any project to be assisted under this section—

(1) in the case of any applicant who applies for rental assistance payments under section 1490a of this title in connection with such project, the Secretary shall consider the availability of such rental assistance payments with respect to the project and shall require such applicant to demonstrate that a market exists for persons and families eligible for such rental assistance payments; and

(2) in the case of any applicant whose project is expected to utilize any assistance under a

program of a State, or political subdivision thereof, that is similar to such assistance payments under section 1490a of this title, the Secretary shall only require such applicant to demonstrate that—

(A) a market exists for persons and families eligible for such program of assistance;

(B) such program of assistance will provide rental assistance for a period of not less than five years, and, at the option of the applicant, either that there is a reasonable assurance that the contract for assistance will be extended or renewed, or for the term of the loan remaining after the period of such assistance, that an adequate rental market exists for the project without such assistance; and

(C) during the term of such rental assistance contracts, such State or political subdivision shall make available the amounts required for such rental assistance not less than annually.

(m) Standards for housing and related facilities rehabilitated or repaired; establishment, criteria, etc.

The Secretary shall establish standards for housing and related facilities rehabilitated or repaired with amounts received under a loan made or insured under this section. Standards established by the Secretary under this subsection shall provide that except for substantial rehabilitation the particular items or systems repaired or rehabilitated must meet appropriate levels of quality or performance comparable to those levels prescribed by the Secretary of Housing and Urban Development for rehabilitation, but shall not require that such items or systems or the remainder of the property meet the standards which are applicable to new construction. The Secretary shall ensure that standards prescribed under this subsection provide decent, safe, and sanitary housing and related facilities.

(n) Assistance to projects located on more than one site

The Secretary may not deny assistance under this section or section 1490a of this title on the basis that the project involved is to be located on more than one site.

(*o*) Rental assistance payments as affecting assistance to projects or occupancy by eligible persons

The Secretary may not (1) deny assistance under this section on the basis that rental assistance payments under section 1490a of this title may be required unless the authority to provide such assistance is not available; or (2) promulgate any regulation that would have the effect of denying occupancy to eligible persons on the basis that such persons require rental assistance payments under section 1490a of this title.

(p) Occupancy by low income persons and families other than very low-income persons and families

(1) To the extent assistance is available under section 1490a(a)(2) of this title, not more than 25 per centum of the dwelling units which were available for occupancy under this section prior to November 30, 1983, and which will be leased on or after November 30, 1983, shall be available for leasing by low income persons and families other than very low-income persons and families.

(2) To the extent assistance is available under section 1490a(a)(2) of this title, not more than 5 per centum of the dwelling units which become available for occupancy under this section on or after November 30, 1983, shall be available for leasing by low income persons and families other than very low-income persons and families.

(3) Units in projects financed under this section which become available for occupancy after November 30, 1983, shall not be available for occupancy by persons and families other than very low-income persons and families if the authority to provide assistance for such persons is available.

(4) In projects financed under this section, units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26 shall not be available for occupancy by persons or families other than persons or families with incomes not in excess of the qualifying income applicable to such units pursuant to subparagraph (A) or (B) of section 42(g)(1) of title 26.

(5) The Secretary shall coordinate the processing of any application for a loan under this section for a project and the processing of any application for assistance under section 1490a(a)(2) of this title with respect to housing units in the same project in an economical and efficient manner. At the time the Secretary enters into a commitment to make or insure a loan under this section the Secretary shall obligate amounts for assistance payments under section 1490a(a)(2) of this title for the project, to the extent that such amounts are available and the Secretary determines such assistance is necessary for the market feasibility of the project.

(q) Determination of income of person or family occupying financed housing

In determining the income of a person or family occupying housing financed under this section, the Secretary shall consider the value of that person's or family's assets in the same manner as the Secretary of Housing and Urban Development considers such value for the purpose of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(r) Operating reserve and equity contribution requirements; regulations to implement adjustment by negotiated rulemaking procedure

(1) the[2] Secretary—

(A) may require that the initial operating reserve under this section may be in the form of an irrevocable letter of credit; and

(B) except as provided in paragraph (2), may require not more than a 3 percent contribution to equity, except that the Secretary shall require a 5 percent contribution in the case of a project that is allocated a low-income housing tax credit pursuant to section 42 of title 26.

(2) The Secretary may adjust the amount of equity contribution to ensure that assistance

[2] So in original. Probably should be capitalized.

provided is not more than is necessary to provide affordable housing after taking account of assistance from all Federal, State, and local sources.

(3) Not later than 60 days after August 6, 1996, the Secretary shall issue regulations to implement subsection (r)(2) of this section in accordance with the negotiated rulemaking procedures set forth in subchapter III of chapter 5 of title 5: *Provided*, That if the negotiated rulemaking is not completed within the designated time, the Secretary shall proceed to promulgate regulations under the rulemaking authority contained in section 557 of title 5.

(s) Limitation of fees on loans

No fee other than a late fee may be imposed by or for the Secretary or any other Federal agency on or with respect to a loan made or insured under this section.

(t) Equity takeout loans

(1) Authority

The Secretary is authorized to guarantee an equity loan (in the form of a supplemental loan) to an owner of housing financed with a loan made or insured under subsection (b) of this section, only if the Secretary determines, after taking into account local market conditions, that there is reasonable likelihood that the housing will continue as decent, safe, and sanitary housing for the remaining life of the original loan on the project made or insured under subsection (b) of this section and that such an equity loan is—

(A) necessary to provide a fair return on the owner's investment in the housing;

(B) the least costly alternative for the Federal Government that is consistent with carrying out the purposes of this subsection; and

(C) would not impose an undue hardship on tenants or an unreasonable cost to the Federal Government.

The amount of loans guaranteed under this subsection shall be subject to limits provided in appropriations Acts.

(2) Timing

The Secretary is authorized to guarantee an equity loan under this subsection after the expiration of the 20-year period beginning on the date that an existing loan under subsection (b) of this section was made or insured. Not more than one equity loan under this subsection may be provided for any project.

(3) Amount of the takeout

The amount of an equity loan under this subsection shall not exceed the difference between the outstanding principal on debt secured by the project and 90 percent of the appraised value of the project. The appraised value of the project shall be determined by 2 independent appraisers, 1 of whom shall be selected by the Secretary and 1 of whom shall be selected by the owner. If the 2 appraisers fail to agree on the value of the project, the Secretary and the owner shall jointly select a third appraiser whose appraisal shall be binding on the Secretary and the owner. The amount of the equity loan shall not exceed 30 percent of the amount of the original appraised value of the project made or insured under subsection (b) of this section.

(4) Submission of plan

An owner requesting an equity loan under this subsection shall submit a plan acceptable to the Secretary to ensure that the cost of amortizing an equity loan under paragraph (1) does not result in the displacement of very-low-income tenants or substantially alter the income mix of the tenants in the project.

(5) Regulations

The Secretary shall issue final regulations within 180 days from December 15, 1989.

(6) Effective date

The requirements of this subsection shall apply to any loan obligated under this section on or after December 15, 1989. This subsection shall not require retroactive reserve account payments with respect to any loan that was obligated on or after December 15, 1989, and on or before June 16, 1990, but reserve account payments shall be required for such loans beginning on November 28, 1990.

(u) Reuse of loan authority

Loan authority that is obligated under this section but that is not expended due to any action that removes the original borrower, may be reallocated to a different borrower during the same fiscal year in which the loan authority was obligated. Any loan authority under this section appropriated or made available within limits established in appropriations Acts shall remain available until expended.

(v) Assumption of loans

The Secretary may provide for the assumption or transfer of a loan or loan obligation under this section to any person or entity qualified to receive a loan or loan obligation under this section in any case of default or foreclosure with respect to the original borrower. The Secretary shall provide in each assumption or transfer under this subsection for the assumption of the obligations, rights, and interests under the terms of the loan or loan obligation or such other terms as the Secretary determines appropriate.

(w) Set-aside of rural rental housing funds

(1) Authority

Except as provided in paragraph (2), the Secretary shall set aside from amounts made available for each State for loans under this section, not less than 9 percent of the amounts available in each fiscal year. Amounts set aside shall be available only for nonprofit entities in the State, which may not be wholly or partially owned or controlled by a for-profit entity. A partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary, is eligible to receive funds set aside under this subsection to sponsor a project which is receiving low-income housing tax credits authorized under section 42 of title 26. For the purposes of this subsection, a nonprofit entity is an organization that—

(A) will own an interest in a project to be financed under this section and will materi-

ally participate in the development and the operation of the project;

(B) is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of title 26;

(C) has among its purposes the planning, development, or management of low-income housing or community development projects; and

(D) is not affiliated with or controlled by a for-profit organization.

(2) Minimum State set-aside

If the amount set aside under paragraph (1) for any State is less than $750,000 in any fiscal year, the Secretary shall pool such amount together with set-aside amounts from other States whose set-aside is less than $750,000, and shall make such amounts available for such eligible entities under paragraph (1) in any such State. The Secretary shall establish a procedure to provide that any amounts pooled under this paragraph from the allocation for any State in any fiscal year that are not obligated during a reasonable period in such year shall be made available for any such eligible entities under paragraph (1) in such State. The Secretary may provide amounts available for reallocation under this subsection in excess of $750,000 in a given State, if such amounts are necessary to finance a project under this section.

(3) Unused amounts

(A) Equitable distribution

Any amounts set aside under this subsection from the allocation for any State that are not obligated by 9 months after the allocation, shall first be pooled and made available to any other eligible nonprofit entity in any State as defined in this subsection. The Secretary shall make reasonable efforts to ensure that pooled funds are distributed under this subparagraph in an equitable manner.

(B) Return to the States

After funds have been pooled and obligated for 30 days, the Secretary shall return any remaining funds to the States on a proportional basis for use by any other eligible entity as defined in this section.

(x) Uniform project costs; coordination of housing resources and tax benefits

The Secretary shall—

(1) establish standard guidelines for State offices that describe allowable development costs which are required for development of all projects under this section, without regard to whether the project was allocated a low-income housing tax credit;

(2) require each State to establish a process for coordinating the selection of projects under this section with the housing needs and priorities as established in a State comprehensive housing affordability strategy under section 12705 of this title and a low-income housing tax credit allocation plan under section 42 of title 26; and

(3) develop, in consultation with housing credit agencies (as that term is defined under section 42 of title 26), uniform procedures for identifying and sharing information on project costs, builder profit, identity of interests relationships, and other factors, as appropriate, with the relevant housing credit agency for projects that are allocated a low-income housing tax credit pursuant to section 42(h) of title 26 for the purpose of achieving compliance with section 3545(d) of this title.

(y) Service coordinators

(1) Grants

The Secretary may make grants under this subsection, with respect to any project that the Secretary determines has a sufficient number of frail elderly residents, for the cost of employing or otherwise retaining the services of one or more individuals to coordinate services provided to frail elderly residents of the project (in this subsection referred to as a ''service coordinator''), who shall be responsible for—

(A) assessing the supportive service needs of frail elderly residents of the project, based on objective criteria and interviews with such residents;

(B) working with service providers to design the provision of services to meet the needs of frail elderly residents of the project, taking into consideration the needs and desires of such residents and their ability and willingness to pay for such services, as expressed by the residents;

(C) mobilizing public and private resources to obtain funding for such services for such residents;

(D) monitoring and evaluating the impact and effectiveness of any supportive services provided for such residents;

(E) consulting and coordinating with any appropriate public and private agencies regarding the provision of supportive services; and

(F) performing such other duties that the Secretary deems appropriate to enable frail elderly persons residing in federally assisted housing to live with dignity and independence.

(2) Qualifications

Individuals employed as service coordinators pursuant to this subsection shall meet the minimum qualifications and standards established under section 8011(d)(4) of this title for service coordinators under a congregate housing services program.

(3) Application and selection

The Secretary shall provide for the form and manner of applications for grants under this subsection and for the selection of applicants to receive the grants.

(4) "Frail elderly" defined

For purposes of this subsection, the term ''frail elderly'' has the meaning given the term in section 8011(k) of this title.

(z) Accounting and recordkeeping requirements

(1) Accounting standards

The Secretary shall require that borrowers in programs authorized by this section main-

tain accounting records in accordance with generally accepted accounting principles for all projects that receive funds from loans made or guaranteed by the Secretary under this section.

(2) Record retention requirements

The Secretary shall require that borrowers in programs authorized by this section retain for a period of not less than 6 years and make available to the Secretary in a manner determined by the Secretary, all records required to be maintained under this subsection and other records identified by the Secretary in applicable regulations.

(aa) Double damages for unauthorized use of housing projects assets and income

(1) Action to recover assets or income

(A) In general

The Secretary may request the Attorney General to bring an action in a United States district court to recover any assets or income used by any person in violation of the provisions of a loan made or guaranteed by the Secretary under this section or in violation of any applicable statute or regulation.

(B) Improper documentation

For purposes of this subsection, a use of assets or income in violation of the applicable loan, loan guarantee, statute, or regulation shall include any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the project or for which the documentation has not been maintained in accordance with the requirements of the Secretary and in reasonable condition for proper audit.

(C) Definition

For the purposes of this subsection, the term ''person'' means—

(i) any individual or entity that borrows funds in accordance with programs authorized by this section;

(ii) any individual or entity holding 25 percent or more interest of any entity that borrows funds in accordance with programs authorized by this section; and

(iii) any officer, director, or partner of an entity that borrows funds in accordance with programs authorized by this section.

(2) Amount recoverable

(A) In general

In any judgment favorable to the United States entered under this subsection, the Attorney General may recover double the value of the assets and income of the project that the court determines to have been used in violation of the provisions of a loan made or guaranteed by the Secretary under this section or any applicable statute or regulation, plus all costs related to the action, including reasonable attorney and auditing fees.

(B) Application of recovered funds

Notwithstanding any other provision of law, the Secretary may use amounts recovered under this subsection for activities authorized under this section and such funds shall remain available for such use until expended.

(3) Time limitation

Notwithstanding any other provision of law, an action under this subsection may be commenced at any time during the 6-year period beginning on the date that the Secretary discovered or should have discovered the violation of the provisions of this section or any related statutes or regulations.

(4) Continued availability of other remedies

The remedy provided in this subsection is in addition to and not in substitution of any other remedies available to the Secretary or the United States.

(July 15, 1949, ch. 338, title V, §515, as added Pub. L. 87–723, §4(b), Sept. 28, 1962, 76 Stat. 671; amended Pub. L. 88–340, June 30, 1964, 78 Stat. 233; Pub. L. 88–560, title V, §501(d) Sept. 2, 1964, 78 Stat. 796; Pub. L. 89–117, title X, §1005(c), Aug. 10, 1965, 79 Stat. 501; Pub. L. 89–754, title VIII, §§804, 805, Nov. 3, 1966, 80 Stat. 1282; Pub. L. 91–78, §1, Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title IV, §413(a), Dec. 24, 1969, 83 Stat. 398; Pub. L. 91–609, title VIII, §803(c), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93–117, §13(b), Oct. 2, 1973, 87 Stat. 423; Pub. L. 93–383, title V, §§509(b), 510, Aug. 22, 1974, 88 Stat. 695; Pub. L. 95–60, §4(b), June 30, 1977, 91 Stat. 258; Pub. L. 95–80, §4(b), July 31, 1977, 91 Stat. 340; Pub. L. 95–128, title V, §§501(b), 507(a)(3), 508, Oct. 12, 1977, 91 Stat. 1138, 1140, 1141; Pub. L. 95–406, §7(b), Sept. 30, 1978, 92 Stat. 881; Pub. L. 95–557, title V, §501(e), Oct. 31, 1978, 92 Stat. 2111; Pub. L. 96–71, §5(b), Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, §5(b), Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title V, §501(f), Dec. 21, 1979, 93 Stat. 1134; Pub. L. 96–372, §6(b), Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title V, §§501(b), 502, 503, 507(c), Oct. 8, 1980, 94 Stat. 1668, 1670; Pub. L. 97–35, title III, §351(b), Aug. 13, 1981, 95 Stat. 420; Pub. L. 97–289, §3(a), Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98–35, §3(a), May 26, 1983, 97 Stat. 198; Pub. L. 98–109, §4(a), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–181, title V, §§511(b), 512, Nov. 30, 1983, 97 Stat. 1244; Pub. L. 98–479, title I, §105(e), Oct. 17, 1984, 98 Stat. 2227; Pub. L. 99–120, §3(a), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, §3(a), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, §3(a), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, §3(a), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, §3009(a), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title II, §§242, 263, title III, §§301(e), 306, 307, 316(c), Feb. 5, 1988, 101 Stat. 1890, 1891, 1893, 1895, 1896, 1898; Pub. L. 100–628, title X, §1042, Nov. 7, 1988, 102 Stat. 3273; Pub. L. 101–137, §7(a), Nov. 3, 1989, 103 Stat. 825; Pub. L. 101–235, title II, §207, title IV, §402, Dec. 15, 1989, 103 Stat. 2042, 2048; Pub. L. 101–625, title VII, §§701(e), 712, 713, Nov. 28, 1990, 104 Stat. 4282, 4291, 4292; Pub. L. 102–142, title VII, §743(a), Oct.

28, 1991, 105 Stat. 915; Pub. L. 102–230, § 4, Dec. 12, 1991, 105 Stat. 1721; Pub. L. 102–550, title VII, §§ 701(e), 707(a)–(f)(1), 708(a), Oct. 28, 1992, 106 Stat. 3834, 3836–3839; Pub. L. 104–120, § 4(b), (c), Mar. 28, 1996, 110 Stat. 835; Pub. L. 104–180, title VII, § 734(a), (c)(1), (2), (3)(C), (d), (e)(2), Aug. 6, 1996, 110 Stat. 1601–1603; Pub. L. 105–86, title VII, § 735(b), Nov. 18, 1997, 111 Stat. 2110; Pub. L. 105–276, title V, § 599C(b), Oct. 21, 1998, 112 Stat. 2661; Pub. L. 106–569, title VII, § 704, Dec. 27, 2000, 114 Stat. 3014.)

REFERENCES IN TEXT

Section 1928 of title 7, referred to in subsec. (b)(3), was amended generally by Pub. L. 104–127, title VI, § 605, Apr. 4, 1996, 110 Stat. 1086, and, as so amended, consists of subsecs. (a) and (b) which are substantially similar to provisions formerly contained in the third sentence of such section.

Section 1929(f)(1) of title 7, referred to in subsec. (b)(3), was repealed and section 1929(f)(2) was redesignated section 1929(f)(1) by Pub. L. 104–127, title VII, § 744, Apr. 4, 1996, 110 Stat. 1125.

The United States Housing Act of 1937, referred to in subsec. (q), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

CODIFICATION

Section 203(a) of Pub. L. 100–242, as amended, which was formerly set out in a note under section 1715*l* of Title 12, Banks and Banking, and which provided that on Nov. 28, 1990, the amendment made by section 263 of Pub. L. 100–242 is repealed and section is to read as it would without such amendment, was omitted in the general amendment of subtitle A of title II of Pub. L. 100–242 by Pub. L. 101–625.

AMENDMENTS

2000—Subsec. (z). Pub. L. 106–569 added subsec. (z) and struck out heading and text of former subsec. (z). Text read as follows: ''Whoever, as an owner, agent, or manager, or who is otherwise in custody, control, or possession of property that is security for a loan made or insured under this section willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other fund derived from such property, for any purpose other than to meet actual or necessary expenses of the property, or for any other purpose not authorized by this subchapter or the regulations adopted pursuant to this subchapter, shall be fined not more than $250,000 or imprisoned not more than 5 years, or both.''

Subsec. (aa). Pub. L. 106–569 added subsec. (aa).

1998—Subsec. (b)(4) to (7). Pub. L. 105–276, § 599C(b)(1), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4) which read as follows: ''no loan shall be insured under this subsection after September 30, 1998;''.

Subsec. (w)(1). Pub. L. 105–276, § 599C(b)(2), substituted ''each fiscal year'' for ''fiscal year 1998'' in first sentence.

1997—Subsec. (a)(2). Pub. L. 105–86, § 735(b)(3)(A), substituted ''up to 30 years'' for ''up to fifty years''.

Subsec. (b)(2). Pub. L. 105–86, § 735(b)(3)(B)(i), added par. (2) and struck out former par. (2) which read as follows: ''provide for complete amortization by periodic payments within such term as the Secretary may prescribe;''.

Subsec. (b)(4). Pub. L. 105–86, § 735(b)(1), substituted ''September 30, 1998'' for ''September 30, 1997''.

Subsec. (b)(7). Pub. L. 105–86, § 735(b)(3)(B)(ii)–(iv), added par. (7).

Subsec. (w)(1). Pub. L. 105–86, § 735(b)(2), substituted ''fiscal year 1998'' for ''fiscal year 1997''.

1996—Subsec. (b)(4). Pub. L. 104–180, § 734(a)(1), substituted ''September 30, 1997'' for ''September 30, 1996''.

Pub. L. 104–120, § 4(b), substituted ''September 30, 1996'' for ''September 30, 1994''.

Subsec. (c)(1). Pub. L. 104–180, § 734(c)(3)(C), substituted ''December 15, 1989'' for ''December 21, 1979''.

Subsec. (h). Pub. L. 104–180, § 734(c)(1), added subsec. (h).

Subsec. (r). Pub. L. 104–180, § 734(d)(1), added subsec. (r) and struck out former subsec. (r) which read as follows: ''The Secretary—

''(1) may require that the initial operating reserve under this section may be in the form of an irrevocable letter of credit; and

''(2) may not require more than a 3 percent contribution to equity, except that the Secretary shall require a 5 percent contribution in the case of a project that is allocated a low-income housing tax credit pursuant to section 42 of title 26.''

Subsec. (t)(4). Pub. L. 104–180, § 734(c)(2), redesignated par. (6) as (4) and struck out heading and text of former par. (4). Text read as follows: ''For each initial loan made or insured under subsection (b) of this section pursuant to a contract entered into after the date this subsection takes effect, the owner shall make monthly payments from project income to the Secretary for deposit in a reserve account for the project. Such monthly payments shall, in the first year after the loan is made or insured, equal $2 for each unit in the project, and shall increase by $2 annually until the expiration of the 20-year period beginning on the date that the loan was made or insured, except that such initial payments, any accrued payments, and annual increases shall not be required for a unit occupied by a low-income family or individual who is paying more than 30 percent of the family's or individual's adjusted income in rent. The rent on a unit for which payment is made under this paragraph shall be increased by the amount of such payment.''

Subsec. (t)(5). Pub. L. 104–180, § 734(c)(2), redesignated par. (7) as (5) and struck out former par. (5) which read as follows:

''(5) RESERVE ACCOUNT.—

''(A) Payments under paragraph (4) shall be deposited in an interest bearing account that the Secretary shall establish for the project.

''(B) The Secretary shall make available amounts in the reserve account only for payments of principal and interest on an equity loan under this subsection. Such payments shall be in amounts necessary to ensure that rent payments made by low-income families residing in the housing do not exceed the maximum rent under section 1490a(a)(2)(A) of this title;

''(C) Any payments to the account, and interest on such payments, not expended in the project from which such payments were made, shall be used in other projects to make payments of principal and interest on an equity loan under this subsection. Such payments shall be in amounts necessary to ensure that rent payments made by low-income families residing in the housing do not exceed the maximum rent under section 1490a(a)(2)(A) of this title.

''(D) The Secretary shall make payments from accounts under this paragraph only to the extent provided in appropriations Acts.''

Subsec. (t)(6) to (8). Pub. L. 104–180, § 734(c)(2)(B), redesignated pars. (6) to (8) as (4) to (6), respectively.

Subsec. (w)(1). Pub. L. 104–180, § 734(a)(2), substituted ''fiscal year 1997'' for ''fiscal year 1996''.

Pub. L. 104–120, § 4(c), substituted ''fiscal year 1996'' for ''fiscal years 1993 and 1994''.

Subsec. (z). Pub. L. 104–180, § 734(d)(2), (e)(2), added subsec. (z) and struck out heading and text of former subsec. (z). Text consisted of 3 pars. which denied Secretary authority to refuse to make complying loan solely because facilities were in rural or remote area or to provide preference for project based on availability of particular essential service and required Secretary to give preference to proposed projects serving rural communities 20 or more miles from an urban area.

1992—Subsec. (b)(4). Pub. L. 102–550, §701(e), substituted ''1994'' for ''1992''.

Subsec. (e)(4). Pub. L. 102–550, §707(a), struck out ''and'' before ''initial operating expenses up to'', inserted '', impact fees, local charges for installation, provision, or use of infrastructure, and local assessments for public improvements and services imposed by State and local governments'' after ''approved by the Secretary'', and inserted at end ''Notwithstanding the first sentence of this paragraph, the term 'development cost' shall not include any initial operating expenses in the case of any nonprofit corporation or consumer cooperative that is financing housing under this section and has been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.''

Subsec. (*l*)(1). Pub. L. 102–550, §707(b)(1), added par. (1) and struck out former par. (1) which read as follows: ''in the case of any applicant whose project is expected to utilize rental assistance payments under section 1490a of this title, the Secretary shall only require such applicant to demonstrate that a market exists for persons and families eligible for such rental assistance payments; and''.

Subsec. (p)(4). Pub. L. 102–550, §707(b)(2)(1), substituted period at end for '', except when the Secretary determines that the continued vacancy of units that have been unoccupied for at least 6 months threatens the financial viability of the project. The preceding sentence shall not be interpreted as authorizing the Secretary to—

''(A) limit the ability of a housing credit agency to require an owner of housing, in order to receive a low-income housing tax credit, to enter into a restrictive covenant, in such form and for such period as the housing credit agency deems appropriate, to maintain the occupancy characteristics of the project as prescribed in section 42(h)(6) of title 26; or

''(B) deny or delay closing of financing under this section by reason of the existence, or occupancy terms, of any such restrictive covenant.''

Subsec. (p)(5). Pub. L. 102–550, §707(b)(2)(2), added par. (5).

Subsec. (r)(2). Pub. L. 102–550, §707(c), inserted before period at end '', except that the Secretary shall require a 5 percent contribution in the case of a project that is allocated a low-income housing tax credit pursuant to section 42 of title 26''.

Subsec. (w)(1). Pub. L. 102–550, §708(a)(1)–(3), substituted ''not less than 9 percent of the amounts available in fiscal years 1993 and 1994'' for ''not less than 7 percent of the amounts available in fiscal year 1991 and not less than 9 percent of the amounts available in fiscal year 1992'' in first sentence, struck out ''or under whole or partial control with a for-profit entity'' after ''by a for-profit entity'' in second sentence, and inserted at end ''A partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary, is eligible to receive funds set aside under this subsection to sponsor a project which is receiving low-income housing tax credits authorized under section 42 of title 26. For the purposes of this subsection, a nonprofit entity is an organization that—'' and subpars. (A) to (D).

Subsec. (w)(2). Pub. L. 102–550, §708(a)(4), inserted at end ''The Secretary may provide amounts available for reallocation under this subsection in excess of $750,000 in a given State, if such amounts are necessary to finance a project under this section.''

Subsec. (w)(3). Pub. L. 102–550, §708(a)(5), added par. (3) and struck out heading and text of former par. (3). Text read as follows: ''Any amounts set aside or pooled under this subsection from the allocation for any State in any fiscal year that are not obligated by a reasonable date established by the Secretary (which shall be after the expiration of the period under paragraph (2)) shall be made available to any entity eligible under this section in such State.''

Subsec. (x). Pub. L. 102–550, §707(d), added subsec. (x).

Subsec. (y). Pub. L. 102–550, §707(e), added subsec. (y).

Subsec. (z). Pub. L. 102–550, §707(f)(1), added subsec. (z).

1991—Subsec. (b)(4). Pub. L. 102–142 substituted ''1992'' for ''1991''.

Subsec. (p)(4). Pub. L. 102–230 inserted at end ''The preceding sentence shall not be interpreted as authorizing the Secretary to—'' and subpars. (A) and (B).

1990—Subsec. (b)(4). Pub. L. 101–625, §701(e), substituted ''1991'' for ''1990''.

Subsec. (t)(3). Pub. L. 101–625, §712(a)(1), substituted ''original appraised value of the project'' for ''original loan on the project''.

Subsec. (t)(4). Pub. L. 101–625, §712(a)(2), inserted ''initial'' before ''loan'' in first sentence and inserted ''initial payments, any accrued payments, and'' after ''except that such'' in second sentence.

Subsec. (t)(8). Pub. L. 101–625, §712(a)(3), added par. (8) and struck out former par. (8) which read as follows: ''The requirements of this subsection shall apply to any applications for assistance under this section on or after the expiration of 180 days from December 15, 1989.''

Subsec. (u). Pub. L. 101–625, §712(b), inserted at end ''Any loan authority under this section appropriated or made available within limits established in appropriations Acts shall remain available until expended.''

Subsec. (v). Pub. L. 101–625, §712(c), added subsec. (v).

Subsec. (w). Pub. L. 101–625, §713, added subsec. (w).

1989—Subsec. (b)(4). Pub. L. 101–137 substituted ''September 30, 1990'' for ''September 30, 1989''.

Subsec. (t). Pub. L. 101–235, §207, added subsec. (t).

Subsec. (u). Pub. L. 101–235, §402, added subsec. (u).

1988—Subsec. (b)(4). Pub. L. 100–242, §301(e), substituted ''September 30, 1989'' for ''March 15, 1988''.

Subsec. (c). Pub. L. 100–242, §242, added subsec. (c). Former subsec. (c) redesignated (d).

Subsecs. (d) to (g). Pub. L. 100–242, §242(1), redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

Subsec. (h). Pub. L. 100–628 struck out subsec. (h) which read as follows: ''The Secretary shall limit increases in rents on or after November 30, 1983, for newly constructed or substantially rehabilitated projects assisted under this section to the lesser of the actual operating cost increases incurred or the amount of operating cost increases incurred with respect to comparable rental dwelling units of various sizes and types in the same market area which are suitable for occupancy by families and persons assisted under this section. Where no comparable dwelling units exist in the same market area, the Secretary shall have authority to approve such increases in accordance with the best available data regarding operating cost increases in rental dwelling units.''

Pub. L. 100–242, §242(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsecs. (i) to (p). Pub. L. 100–242, §242(1), redesignated subsecs. (h) to (*o*) as (i) to (p), respectively.

Subsec. (p)(1). Pub. L. 100–242, §316(c), substituted ''on or after such date'' for ''on or after such effective date'', which for purposes of codification was translated as ''on or after November 30, 1983'', thus requiring no change in text.

Subsec. (p)(4). Pub. L. 100–242, §306, added par. (4).

Subsec. (q). Pub. L. 100–242, §242(1), redesignated former subsec. (p) as (q).

Subsec. (r). Pub. L. 100–242, §263, added subsec. (r).

Subsec. (s). Pub. L. 100–242, §307, added subsec. (s).

1987—Subsec. (b)(4). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Subsec. (b)(4). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 directed amendment identical to Pub. L. 99–219, substituting ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsec. (b)(4). Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''September 30, 1985''.

1984—Subsec. (k)(2)(B). Pub. L. 98–479 inserted '', at the option of the applicant, either that there is a reasonable assurance that the contract for assistance will be extended or renewed, or''.

1983—Subsec. (a)(2) to (4). Pub. L. 98–181, § 512(c)(1), (2), struck out par. (2) which related to rates of interest on loans, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (b)(2) to (4). Pub. L. 98–181, § 512(c)(3), (4), struck out par. (2) which related to rates of interest on loans and redesignated pars. (3) to (5) as (2) to (4), respectively.

Subsec. (b)(5). Pub. L. 98–181, § 512(c)(4), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 98–181, § 511(b), substituted ''September 30, 1985'' for ''November 30, 1983''.

Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983''.

Subsec. (b)(6), (7). Pub. L. 98–181, § 512(c)(4), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Pub. L. 98–181, § 512(b), added par. (7).

Subsec. (c). Pub. L. 98–181, § 512(d), inserted provisions relating to detached units, on scattered sites, for cooperative housing.

Subsec. (d)(1). Pub. L. 98–181, § 512(e), inserted provisions relating to applicability to manufactured home rental parks.

Subsecs. (g) to (p). Pub. L. 98–181, § 512(a), added subsecs. (g) to (p).

1982—Subsec. (b)(5). Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982''.

1981—Subsec. (b)(5). Pub. L. 97–35 substituted ''1982'' for ''1981''.

1980—Subsec. (a). Pub. L. 96–399, §§ 503(a), 507(c)(1), inserted reference to Indian tribes in provisions preceding par. (1), and added par. (4).

Subsec. (b). Pub. L. 96–399, §§ 501(b), 503(b), 507(c)(2), inserted reference to Indian tribe in provisions preceding par. (1), in par. (5) substituted ''September 30, 1981'' for ''October 15, 1980'', and added par. (6).

Pub. L. 96–372 substituted ''October 15, 1980'' for ''September 30, 1980'' in par. (5).

Subsec. (f). Pub. L. 96–399, § 502, added subsec. (f).

1979—Subsec. (b)(5). Pub. L. 96–153 substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979''.

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979''.

1978—Subsec. (b)(5). Pub. L. 95–557 substituted ''September 30, 1979'' for ''October 31, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.

1977—Subsec. (a). Pub. L. 95–128, § 507(a)(3), authorized loans for housing of handicapped persons or families.

Subsec. (b). Pub. L. 95–128, §§ 501(b), 507(a)(3), substituted ''elderly or handicapped persons or families'' for ''elderly persons and elderly families'' in provision preceding par. (1) and ''September 30, 1978'' for ''September 30, 1977'' in par. (5).

Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977'' in par. (5).

Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977'' in par. (5).

Subsec. (c). Pub. L. 95–128, § 508(a), provided that specifically designed equipment required by elderly or handicapped persons or families shall not be considered elaborate or extravagant.

Subsec. (d)(1). Pub. L. 95–128, § 508(b), defined ''housing'' to also mean congregate housing facilities for elderly or handicapped persons or families who require some supervision and central services but are otherwise able to care for themselves and authorized such housing for the handicapped to be utilized in conjunction with educational and training facilities.

Subsec. (d)(3). Pub. L. 95–128, § 508(c), substituted definition of ''congregate housing'' for prior definition of ''elderly persons'' as persons 62 years of age or over and ''elderly families'' as families the head of which (or his spouse) is 62 years of age or over.

1974—Subsec. (b)(1). Pub. L. 93–383, § 510(a), struck out ''$750,000 or'' after ''exceed'' and substituted ''less'' for ''least''.

Subsec. (b)(5). Pub. L. 93–383, § 509(b), substituted ''June 30, 1977'' for ''October 1, 1974''.

Subsec. (d)(4). Pub. L. 93–383, § 510(b), inserted provisions including initial operating expenses up to 2 per centum of enumerated costs and requiring payments to be made to consultants rendering services to nonprofit corporations or consumer cooperatives providing housing and related facilities to low or moderate income families.

1973—Subsec. (b)(5). Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973''.

1970—Subsec. (b)(1). Pub. L. 91–609 substituted ''$750,000'' for ''$300,000''.

1969—Subsec. (b)(5). Pub. L. 91–152 substituted ''October 1, 1973'' for ''January 1, 1970''.

Pub. L. 91–78 substituted ''January 1, 1970'' for ''October 1, 1969''.

1966—Subsec. (a). Pub. L. 89–754, §§ 804(a), 805(a), inserted ''or other persons and families of low income'' after ''income'' and substituted ''rental or cooperative housing'' for ''rental housing'', respectively.

Subsec. (b). Pub. L. 89–754, § 805(a), (b), substituted ''rental or cooperative housing'' for ''rental housing'' and inserted ''or other persons and families of moderate income'' after ''families'', respectively.

Subsec. (d)(1). Pub. L. 89–754, § 804(b), substituted in the definition of ''housing'' the words ''occupants eligible under this section,'' for ''elderly persons or elderly families''.

Subsec. (d)(4). Pub. L. 89–754, § 805(c), defined fees and charges as used for purposes of ''development cost'' to include payments to qualified consulting organizations or foundations which operate on a nonprofit basis and which render services or assistance to nonprofit corporations or consumer cooperatives who provide housing and related facilities.

1965—Subsec. (b)(5). Pub. L. 89–117 substituted ''October 1, 1969'' for ''September 30, 1965''.

1964—Subsec. (b). Pub. L. 88–560 substituted ''$300,000'' for ''$100,000'' in cl. (1), and ''1965'' for ''1964'' in cl. (5).

Pub. L. 88–340 substituted ''September 30, 1964'' for ''June 30, 1964'' in cl. (5).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as an Effective and Termination Dates of 1996 Amendments note under section 1437d of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 708(b) of Pub. L. 102–550 provided that: ''The amendment made by subsection (a)(5) [amending this section] shall take effect on October 1, 1993, and shall apply to fiscal year 1994 and each fiscal year thereafter.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

REGULATIONS

Section 707(f)(2) of Pub. L. 102–550 provided that: ''The Secretary of Agriculture shall issue any regulations necessary to carry out the amendment made by paragraph (1) [amending this section] not later than the expiration of the 45-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act, the Secretary shall submit a copy of any regulations to be issued under this subsection to the Congress. The requirements of section 534(d) of the Housing Act of 1949 [42 U.S.C. 1490n(d)] and subsections (b) and (c) of section 553 of title 5, United States Code, shall apply to any such regulations.''

§ 1486. Financial assistance to provide low-rent housing for domestic farm labor

(a) Application; considerations

Upon the application of any State or political subdivision thereof, or any Indian tribe, or any broad-based public or private nonprofit organization incorporated within the State, or any nonprofit organization of farmworkers incorporated within the State, the Secretary is authorized to provide financial assistance for the provision of low-rent housing and related facilities (which may be located any place within the State) for domestic farm labor, if he finds that—

(1) the housing and related facilities for which financial assistance is requested will fulfill a pressing need in the area in which such housing and facilities will be located, and there is reasonable doubt that the same can be provided without financial assistance under this section;

(2) the applicant will contribute, from its own resources or from funds borrowed under section 1484 of this title or elsewhere, at least 10 per centum of the total development cost;

(3) the types of housing and related facilities to be provided are most practicable, giving due consideration to the purposes to be served thereby and the needs of the occupants thereof, and such housing and facilities shall be durable and suitable for year-around occupancy or use, unless the Secretary finds that there is no need for such year-around occupancy or use in that area; and

(4) the construction will be undertaken in an economical manner, and the housing and related facilities will not be of elaborate or extravagant design or material.

(b) Maximum amount of assistance

The amount of any financial assistance provided under this section for low-rent housing and related facilities shall not exceed 90 per centum of the total development cost thereof, as determined by the Secretary, less such amount as the Secretary determines can be practicably obtained from other sources (including a loan under section 1484 of this title).

(c) Prerequisite agreements; rentals; safety and sanitation standards; priority of domestic farm labor

No financial assistance for low-rent housing and related facilities shall be made available under this section unless, to any extent and for any periods required by the Secretary, the applicant agrees—

(1) that the rentals charged domestic farm labor shall not exceed such amounts as may be approved by the Secretary, giving due consideration to the income and earning capacity of the tenants, and the necessary costs of operating and maintaining such housing;

(2) that such housing shall be maintained at all times in a safe and sanitary condition in accordance with such standards as may be prescribed by State or local law, or, in the absence of such standards, in accordance with such minimum requirements as the Secretary shall prescribe; and

(3) an absolute priority will be given at all times in granting occupancy of such housing and facilities to domestic farm labor.

(d) Payments; contracts to specify uses of housing

The Secretary may make payments pursuant to any contract for financial assistance under this section at such times and in such manner, as may be specified in the contract. In each contract, the Secretary shall include such covenants, conditions, or provisions as he deems necessary to insure that the housing and related facilities, for which financial assistance is made available, be used only in conformity with the provisions of this section.

(e) Regulations for prevention of waste

The Secretary shall prescribe regulations to insure that Federal funds expended under this section are not wasted or dissipated. The Secretary shall not give priority for funding under this section to any one of the groups listed in subsection (a) of this section over any of the others so listed.

(f) Wages; labor standards; waiver; authority and functions of Secretary

All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary which are undertaken by approved applicants under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary shall not extend any financial assistance under this section for any project without first obtaining adequate assurance that these labor standards will be maintained on the construction work; except that compliance with such standards may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the person, corporation, association, organization, or other entity, undertaking the project. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.

(g) Definitions

As used in this section—

(1) the term ''low-rent housing'' means rental housing within the financial reach of families of low income consisting of (A) new structures (including household furnishings) suitable for dwelling use by domestic farm labor, and (B) existing structures (including household furnishings) which can be made suitable for dwelling use by domestic farm labor by rehabilitation, alteration, conversion, or improvement;

(2) the terms ''related facilities'' and ''domestic farm labor'' shall have the meaning assigned to them in section 1484(f) of this title;

(3) the term ''development cost'' shall have the meaning assigned to it in section 1485(d)(4)[1] of this title; and

(4) the term ''domestic farm labor'' has the meaning given such term in section 1484(f)(3) of this title.

(h) Migrant farmworker housing

Notwithstanding the provisions of subsection (a)(3) of this section, the Secretary may, upon a finding of persistent need for migrant farmworker housing in any area, provide assistance to eligible applicants for 90 per centum of the development costs of such housing in such area to be used solely by migrant farmworkers while they are away from their residence. Such housing shall be constructed in such a manner as to be safe and weatherproof for the time it is to be occupied, be equipped with potable water and modern sanitation facilities (including a kitchen sink, toilet, and bathing facilities), and meet such other requirements as the Secretary may prescribe.

(i) Farm labor housing

The Secretary shall utilize not more than 10 per centum of the amounts available for any fiscal year for purposes of this section for financial assistance to eligible private and public nonprofit agencies to encourage the development of domestic and migrant farm labor housing projects under this subchapter.

(j) Domestic farm labor housing available for other families

Housing and related facilities constructed with grants under this section may be used for tenants eligible for occupancy under section 1485 of this title if the Secretary determines that—

(1) there is no longer a need in the area for farm labor housing; or

(2) the need for such housing in the area has diminished to the extent that the purpose of the grant, providing housing for domestic farm labor, can no longer be met.

(k) Housing for rural homeless and migrant farmworkers

(1) In general

The Secretary may provide financial assistance for providing affordable rental housing and related facilities for migrant farmworkers and homeless individuals (and the families of such individuals) to applicants as provided in this subsection.

(2) Types of assistance

(A) In general

The Secretary may provide the following assistance for housing under this subsection:

(i) An advance, in an amount not to exceed $400,000, of the cost of acquisition, substantial rehabilitation, or acquisition and rehabilitation of an existing structure or construction of a new structure for use in the provision of housing under this subsection. The repayment of any outstanding debt owed on a loan made to purchase an existing structure shall be considered to be a cost of acquisition eligible for an advance under this subparagraph if the structure was not used for the purposes under this subsection prior to the receipt of assistance.

(ii) A grant, in an amount not to exceed $400,000, for moderate rehabilitation of an existing structure for use in the provision of housing under this subsection.

(iii) Annual payments for operating costs of such housing (without regard to whether the housing is an existing structure), not to exceed 75 percent of the annual operating costs of such housing.

(B) Available assistance

A recipient may receive assistance under both clauses (i) and (ii) of subparagraph (A). The Secretary may increase the limit contained in such clauses to $800,000 in areas which the Secretary finds have high acquisition and rehabilitation costs.

(C) Repayment of advance

Any advance provided under subparagraph (A)(i) shall be repaid on such terms as may be prescribed by the Secretary when the project ceases to be used as housing in accordance with the provisions of this subsection. Recipients shall be required to repay 100 percent of the advance if the housing is used for purposes under this subsection for fewer than 10 years following initial occupancy. If the housing is used for such purposes for more than 10 years, the percentage of the amount that shall be required to be repaid shall be reduced by 10 percentage points for each year in excess of 10 that the property is so used.

(D) Prevention of undue benefits

Upon any sale or other disposition of housing acquired or rehabilitated with assistance under this subsection prior to the close of 20 years after the housing is placed in service, other than a sale or other disposition resulting in the use of the project for the direct benefit of low income persons or where all of the proceeds are used to provide housing for migrant farmworkers and homeless individuals (and the families of such individuals), the recipient shall comply with such terms and conditions as the Secretary may prescribe to prevent the recipient from unduly benefiting from the sale or other disposition of the project.

[1] See References in Text note below.

(3) Program requirements

(A) Applications

(i) Applications for assistance under this subsection shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(ii) The Secretary shall require that applications contain at a minimum (I) a description of the proposed housing, (II) a description of the size and characteristics of the population that would occupy the housing, (III) a description of any public and private resources that are expected to be made available in connection with the housing, (IV) a description of the housing needs for migrant farmworkers and homeless individuals (and the families of such individuals) in the area to be served by the housing, and (V) assurances satisfactory to the Secretary that the housing assisted will be operated for not less than 10 years for the purpose specified in the application.

(iii) The Secretary shall require that an application furnish reasonable assurances that the housing will be available for occupancy by homeless individuals (and the families of such individuals) only on an emergency and temporary basis during the off-season and shall be otherwise available for occupancy by migrant farmworkers (and their families).

(iv) The Secretary shall require that an application furnish reasonable assurances that the applicant will own or have control of a site for the proposed housing not later than 6 months after notification of an award for grant assistance. An applicant may obtain ownership or control of a suitable site different from the site specified in the application. If an applicant fails to obtain ownership or control of the site within 1 year after notification of an award for grant assistance, the grant shall be recaptured and reallocated.

(B) Selection criteria

The Secretary shall establish selection criteria for a national competition for assistance under this subsection, which shall include—

(i) the ability of the applicant to develop and operate the housing;

(ii) the feasibility of the proposal in providing the housing;

(iii) the need for such housing in the area to be served;

(iv) the cost effectiveness of the proposed housing;

(v) the extent to which the project would meet the needs of migrant farmworkers and homeless individuals (and the families of such individuals) in the State;

(vi) the extent to which the applicant has control of the site of the proposed housing; and

(vii) such other factors as the Secretary determines to be appropriate for purposes of this subsection.

(C) Required agreements

The Secretary may not approve assistance for any housing under this subsection unless the applicant agrees—

(i) to operate the proposed project as housing for migrant farmworkers and homeless individuals (and the families of such individuals) in compliance with the provisions of this subsection and the application approved by the Secretary;

(ii) to monitor and report to the Secretary on the progress of the housing; and

(iii) to comply with such other terms and conditions as the Secretary may establish for purposes of this subsection.

(D) Occupant rent

Each migrant farmworker and homeless individual residing in a facility assisted under this subsection shall pay as rent an amount determined in accordance with the provisions of section 1437a(a) of this title.

(4) Guidelines

(A) Regulations

Not later than 120 days after November 28, 1990, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this subsection.

(B) Limitation on use of funds

No assistance received under this subsection (or any State or local government funds used to supplement such assistance) may be used to replace other public funds previously used, or designated for use, to assist homeless individuals (and the families of such individuals) or migrant farmworkers.

(5) Limitation on administrative expenses

No recipient may use more than 5 percent of an advance or grant received under this subsection for administrative purposes.

(6) Omitted

(7) Definitions

For purposes of this subsection:

(A) The term ''applicant'' means a State, political subdivision thereof, Indian tribe, any private nonprofit organization incorporated within the State that has applied for a grant under this subsection.

(B) The term ''homeless individual'' has the same meaning given the term under section 11302 of this title.

(C) The term ''migrant farmworker''—

(i) means any person (and the family of such person) who (I) receives a substantial portion of his or her income from primary production of agricultural or aquacultural commodities, the handling of such commodities in the unprocessed stage, or the processing of such commodities, without respect to the source of employment, and (II) establishes residence in a location on a seasonal or temporary basis, in an attempt to receive an income as described in subclause (I); and

(ii) includes any person (and the family of such person) who is retired or disabled, but who met the requirements of clause (i)

at the time of retirement or becoming disabled.

(D) The term ''operating costs'' means expenses incurred by a recipient providing housing under this subsection with respect to the administration, maintenance, repair, and security of such housing and utilities, fuel, furnishings, and equipment for such housing.

(July 15, 1949, ch. 338, title V, § 516, as added Pub. L. 88–560, title V, § 503(a), Sept. 2, 1964, 78 Stat. 796; amended Pub. L. 91–609, title VIII, § 801(c), (d), Dec. 31, 1970, 84 Stat. 1806; Pub. L. 95–557, title V, § 505, Oct. 31, 1978, 92 Stat. 2112; Pub. L. 96–153, title V, § 509, Dec. 21, 1979, 93 Stat. 1136; Pub. L. 96–399, title V, § 507(d), Oct. 8, 1980, 94 Stat. 1670; Pub. L. 98–181, title V, § 513, Nov. 30, 1983, 97 Stat. 1247; Pub. L. 100–242, title III, § 305(b), Feb. 5, 1988, 101 Stat. 1895; Pub. L. 100–628, title X, § 1043(b), Nov. 7, 1988, 102 Stat. 3273; Pub. L. 101–625, title VII, § 714(a), Nov. 28, 1990, 104 Stat. 4292; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (f), is set out in the Appendix to Title 5, Government Organization and Employees.

Section 1485(d)(4) of this title, referred to in subsec. (g)(3), was redesignated section 1485(e)(4) of this title by Pub. L. 100–242, title II, § 242(1), Feb. 5, 1988, 101 Stat. 1890.

CODIFICATION

In subsec. (f), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Subsec. (k)(6) of this section, which required the Secretary to submit an annual report to Congress summarizing the activities carried out under subsec. (k) and setting forth the findings, conclusions, and recommendations of the Secretary as a result of the activities, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 18 on page 103 of House Document No. 103–7.

AMENDMENTS

2000—Subsec. (k)(7)(B). Pub. L. 106–400 made technical amendment to reference in original act which appears in text as reference to section 11302 of this title.

1990—Subsec. (k). Pub. L. 101–625 added subsec. (k).

1988—Subsec. (g)(4). Pub. L. 100–242 added par. (4).

Subsec. (j). Pub. L. 100–628 added subsec. (j).

1983—Subsec. (i). Pub. L. 98–181 added subsec. (i).

1980—Subsec. (a). Pub. L. 96–399 inserted reference to Indian tribe in provisions preceding par. (1).

1979—Subsec. (h). Pub. L. 96–153 added subsec. (h).

1978—Subsec. (e). Pub. L. 95–557 inserted ''The Secretary shall not give priority for funding under this section to any one of the groups listed in subsection (a) of this section over any of the others so listed''.

1970—Subsec. (a). Pub. L. 91–609, § 801(d)(1), authorized financial assistance for broad-based nonprofit organizations incorporated within the State and nonprofit organizations of farmworkers incorporated within the State and provided for low-rent housing and related facilities ''(which may be located within the State)''.

Subsec. (a)(2). Pub. L. 91–609, § 801(d)(2), substituted ''10 per centum'' for ''one-third''.

Subsec. (a)(3). Pub. L. 91–609, § 801(d)(3), inserted '', and such housing and facilities shall be durable and suitable for year-around occupancy or use, unless the Secretary finds that there is no need for such year-around occupancy or use in that area;''.

Subsec. (b). Pub. L. 91–609, § 801(d)(4), substituted ''90 per centum'' for ''two-thirds''.

Subsec. (g)(1). Pub. L. 91–609, § 801(c), substituted ''structures (including household furnishings)'' for ''structures'' in cls. (A) and (B).

§ 1487. Rural Housing Insurance Fund

(a) Authority to make and insure loans for housing and buildings on adequate farms; amounts

The Secretary may insure loans meeting the requirements of section 1472 of this title, and may make loans in accordance with the requirements of such section to be sold and insured. The amount of such a loan to a low income person or family shall not exceed the amount necessary to provide adequate housing which is modest in size, design, and cost (as determined by the Secretary).

(b) Authority to make and insure loans for housing and related facilities for domestic farm labor and elderly persons; transfer of notes, contracts, and mortgages from Agricultural Credit Insurance Fund; compensation

The Secretary may insure loans in accordance with the requirements of section 1484 of this title (exclusive of subsections (a)(3), (a)(5), and (b) thereof), 1485 of this title (exclusive of subsections (a) and (b)(3) thereof), 1490d, and 1490f of this title, and may make loans meeting such requirements to be sold and insured. Upon the expiration of ninety days after the original capitalization of the Rural Housing Insurance Fund, created by subsection (e) of this section, no new loans shall be made or insured under section 1484 or 1485(b) of this title, except in conformity with this section. The notes held in the Agricultural Credit Insurance Fund (section 1929 of title 7) which evidence loans made or insured by the Secretary under section 1484 or 1485(b) of this title, the rights and liabilities of that Fund under insurance contracts relating to such loans held by insured investors, the mortgages securing the obligations of the borrowers under such loans held in the Fund or by insured investors, and all rights to subsequent collections on and proceeds of such notes, contracts, and mortgages, are hereby transferred to the Rural Housing Insurance Fund and for the purposes of this subchapter and any other Act shall be subject to the provisions of this section as if created pursuant thereto. The Rural Housing Insurance Fund shall compensate the Agricultural Credit Insurance Fund for the aggregate unpaid principal balance plus accrued interest of the notes so transferred.

(c) Use of funds from Rural Housing Insurance Fund for loans; sale of insured and guaranteed loans to public

The Secretary may use the Rural Housing Insurance Fund for the purpose of making loans to be sold and insured under this section. Any loan made and sold by the Secretary under this section after April 7, 1986 (and any loan made by other lenders under this subchapter that is in-

sured or guaranteed in accordance with this section, is purchased by the Secretary, and is sold by the Secretary under this section after such date) shall be sold to the public and may not be sold to the Federal Financing Bank, unless such sale to the Federal Financing Bank is required to service transactions under this subchapter between the Secretary and the Federal Financing Bank occurring on or before such date.

(d) Authority to insure payment of interest and principal; liens; assignability of notes evidencing loans; interest subsidy on insured and guaranteed loans offered for sale to public; protection of borrowers under loans sold to public

(1) The Secretary may, in conformity with subsections (a), (b), and (m) of this section, insure the payment of principal and interest on loans made by lenders other than the United States, and on loans made from or otherwise acquired by the Rural Housing Insurance Fund which are sold by the Secretary. Any contract of insurance executed by the Secretary hereunder shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or material misrepresentation of which the holder has actual knowledge. In connection with loans insured under this section, the Secretary may take liens running to the United States notwithstanding the fact that the notes evidencing such loans may be held by lenders other than the United States. Notes evidencing such loans shall be freely assignable, but the Secretary shall not be bound by any such assignment until notice thereof is given to and acknowledged by him.

(2) Each loan made by the Secretary or other lenders under this subchapter that is insured or guaranteed in accordance with this subsection shall, when offered for sale to the public, be accompanied by an agreement by the Secretary to pay to the holder of such loan (through an agreement to purchase such loan or through such other means as the Secretary determines to be appropriate) the difference between the rate of interest paid by the borrower of such loan and the market rate of interest (as determined by the Secretary) on obligations having comparable periods to maturity on the date of such sale.

(3) Each loan made by the Secretary or other lenders under this subchapter that is insured or guaranteed in accordance with this subsection shall, when offered for sale to the public, be accompanied by agreements for the benefit of the borrower under the loan that provide that—

(A) the purchaser or any assignee of the loan shall not diminish any substantive or procedural right of the borrower arising under this subchapter;

(B) upon any substantial default of the borrower, but prior to foreclosure, the loan shall be assigned to the Secretary for the purpose of avoiding foreclosure; and

(C) following any assignment under subparagraph (B) and before commencing any action to foreclose or otherwise dispossess the borrower, the Secretary shall afford the borrower all substantive and procedural rights arising under this subchapter, including consideration for interest subsidy, moratorium, reamortization, refinancing, and appeal of any adverse decision to an impartial officer.

(4) From the proceeds of loan sales under paragraph (2), the Secretary shall set aside as a reserve against future losses not less than 5 percent of the outstanding face amount of the loans held by the public at any time.

(e) Rural Housing Insurance Fund; creation; authorization of appropriations; separate operation of guaranteed and insured loan programs: transfer of funds

There is hereby created the Rural Housing Insurance Fund (hereinafter referred to as the ''Fund'') which shall be used by the Secretary as a revolving fund for carrying out the provisions of this section. There are authorized to be appropriated to the Secretary such sums as may be necessary for the purposes of the Fund. The guaranteed loan program under this subchapter shall be operated separately from the insured loan program operated under this subchapter and no funds designated for one program may be transferred to another program.

(f) Investment of excess Fund moneys

Money in the Fund not needed for current operations shall be invested in direct obligations of the United States or obligations guaranteed by the United States.

(g) Fund assets and liabilities; sale of loans; agreements for servicing and purchasing loans

All funds, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and all collections and proceeds therefrom, shall constitute assets of the Fund; and all liabilities and obligations of such assets shall be liabilities and obligations of the Fund. Loans may be held in the Fund and collected in accordance with their terms or may be sold by the Secretary with or without agreements for insurance thereof. The Secretary is authorized to make agreements with respect to servicing loans held or insured by him under this section and purchasing such insured loans on such terms and conditions as he may prescribe.

(h) Issuance of notes; form and denominations; interest rate; purchase by Secretary of the Treasury; debt transactions

The Secretary is authorized to issue notes to the Secretary of the Treasury to obtain funds necessary for discharging obligations under this section and for authorized expenditures out of the Fund, but, except as may be authorized in appropriation Acts, not for the original or any additional capital of the Fund. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Each note shall bear interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note is issued, which are neither due nor callable for redemption for fifteen years from their date of issue. The Secretary of the Treasury is

authorized and directed to purchase any notes of the Secretary issued hereunder, and for that purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which such securities may be issued under such chapter are extended to include purchases of notes issued by the Secretary. All redemption, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States. The notes issued by the Secretary to the Secretary of the Treasury shall constitute obligations of the Fund.

(i) Retention of annual charge; administrative expenses; merger of funds

The Secretary may retain out of interest payments by the borrower an annual charge in an amount specified in the insurance or sale agreement applicable to the loan. Of the charges retained by the Secretary, if any, not to exceed 1 per centum per annum of the unpaid balance of the loan shall be deposited in the Fund. Any retained charges not deposited in the Fund shall be available for administrative expenses in carrying out the provisions of this subchapter, to be transferred annually, and become merged with any appropriation for administrative expenses of the Farmers Home Administration, when and in such amounts as may be authorized in appropriation Acts.

(j) Additional uses of Fund moneys

The Secretary may also utilize the Fund—

(1) to pay amounts to which the holder of the note is entitled in accordance with an insurance or sale agreement under this section accruing between the date of any payment by the borrower to the Secretary and the date of transmittal of any such payments to the holder of the note; and in the discretion of the Secretary, payments other than final payments need not be remitted to the holder until due or until the next agreed annual or semiannual remittance date;

(2) to pay the holder of any note insured under this section any defaulted installment or, upon assignment of the note to the Secretary at the Secretary's request, or pursuant to a purchase agreement, the entire balance outstanding on the note;

(3) to pay taxes, insurance, prior liens, expenses necessary to make fiscal adjustments in connection with the application and transmittal of collections or necessary to obtain credit reports on applicants or borrowers, and other services customary in the industry, independent audits of project expenses, construction inspections, commercial appraisals, servicing of loans, and other related program services and expenses, and other expenses and advances to protect the security for loans which are insured under this section or held in the Fund, and to acquire such security property at foreclosure sale or otherwise;

(4) to make assistance payments authorized by section 1490a(a) of this title;

(5) after October 1, 1977, and as approved in appropriations Acts, to make advances authorized by section 1471(e) of this title;

(6) to make payments and take other actions in accordance with agreements entered into under paragraphs (2) and (3) of subsection (d) of this section; and

(7) to provide advances and assistance required to carry out paragraphs (4) and (5) of section 1472(c) of this title.

(k) Sale of loans as sale of assets

Any sale by the Secretary of loans individually or in blocks, pursuant to subsections (c) and (g) of this section, shall be treated as a sale of assets for the purposes of chapter 11 of title 31, notwithstanding the fact that the Secretary, under an agreement with the purchaser, holds the debt instruments evidencing the loans and holds or reinvests payments thereon as trustee and custodian for the purchaser.

(*l*) Commitments to make or insure loans to lenders, builders, or sellers; terms and conditions

The Secretary may also, upon the application of lenders, builders, or sellers and upon compliance with requirements specified by him, make commitments upon such terms and conditions as he shall prescribe to make or insure loans under this section to eligible applicants.

(m) Transfer of assets, liabilities, and authorizations of Rural Housing Direct Loan Account to Fund; abolition of Account; applicability of provisions

The assets and liabilities of, and authorizations applicable to, the Rural Housing Direct Loan Account are hereby transferred to the Fund, and such Account is hereby abolished. Such assets and their proceeds, including loans made out of the Fund pursuant to this section, shall be subject to all of the provisions of this section.

(n) Purchase of eligible residential properties

The Secretary may guarantee and service loans made for the purchase of eligible residential properties under section 1441a(c) of title 12 in accordance with subsection (d) of this section and the last sentence of section 1490a(a)(1)(A) of this title.

(*o*) Rules to encourage rehabilitation or purchase of existing buildings; regulations to facilitate marketability of insured or guaranteed loans in secondary mortgage market

(1) The Secretary shall promulgate rules which encourage the rehabilitation or purchase of existing buildings for the purpose of providing housing which is economical in cost and operation.

(2) Not later than the expiration of the 90-day period following April 7, 1986, the Secretary shall issue regulations to facilitate the marketability in the secondary mortgage market of loans insured or guaranteed under this section. Such regulations shall ensure that such loans are competitive with other loans and mortgages insured or guaranteed by the Federal Government.

(July 15, 1949, ch. 338, title V, § 517, as added Pub. L. 89–117, title X, § 1003(a), Aug. 10, 1965, 79 Stat. 498; amended Pub. L. 89–754, title VIII, § 806, Nov. 3, 1966, 80 Stat. 1282; Pub. L. 91–78, § 1, Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title IV,

§ 413(a)–(e)(2), (f)(2), Dec. 24, 1969, 83 Stat. 398–400; Pub. L. 91–609, title VIII, § 803(d), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93–117, § 13(c), Oct. 2, 1973, 87 Stat. 423; Pub. L. 93–383, title V, §§ 505(c), 509(b), 514(c), 516(b), 517, 519(b), Aug. 22, 1974, 88 Stat. 694–696, 698, 699; Pub. L. 95–60, § 4(c), June 30, 1977, 91 Stat. 258; Pub. L. 95–80, § 4(c), July 31, 1977, 91 Stat. 340; Pub. L. 95–128, title V, §§ 501(c), 502(b), (c), 506, 509, Oct. 12, 1977, 91 Stat. 1139–1141; Pub. L. 95–406, § 7(c), Sept. 30, 1978, 92 Stat. 881; Pub. L. 95–557, title V, §§ 501(f), 506(b), Oct. 31, 1978, 92 Stat. 2111, 2113; Pub. L. 96–71, § 5(c), Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, § 5(c), Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title V, §§ 501(g), 511, Dec. 21, 1979, 93 Stat. 1134, 1137; Pub. L. 96–372, § 6(c), Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title V, §§ 501(c), 511, Oct. 8, 1980, 94 Stat. 1668, 1671; Pub. L. 97–35, title III, § 351(c), Aug. 13, 1981, 95 Stat. 421; Pub. L. 97–289, § 3(b), Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98–35, § 3(b), May 26, 1983, 97 Stat. 198; Pub. L. 98–109, § 4(b), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–181, title V, §§ 511(c), 514, Nov. 30, 1983, 97 Stat. 1244, 1247; Pub. L. 98–479, title I, § 105(f), title II, § 203(d)(5), (6), Oct. 17, 1984, 98 Stat. 2227, 2230; Pub. L. 99–272, title III, § 3006, Apr. 7, 1986, 100 Stat. 103; Pub. L. 100–242, title II, § 243, Feb. 5, 1988, 101 Stat. 1890; Pub. L. 101–73, title V, § 501(e)(2), Aug. 9, 1989, 103 Stat. 394; Pub. L. 102–550, title VII, § 707(g), Oct. 28, 1992, 106 Stat. 3839.)

AMENDMENTS

1992—Subsec. (j)(3). Pub. L. 102–550 inserted ''independent audits of project expenses,'' after ''customary in the industry,''.

1989—Subsec. (n). Pub. L. 101–73 added subsec. (n).

1988—Subsec. (j)(7). Pub. L. 100–242 added par. (7).

1986—Subsec. (c). Pub. L. 99–272, § 3006(a), inserted provision requiring any loan made and sold after Apr. 7, 1986, to be sold to the public and not to Federal Financing Bank unless required to service transactions between Secretary and Bank occurring on or before such date.

Subsec. (d). Pub. L. 99–272, § 3006(b), (c), designated existing provisions as par. (1), and added pars. (2) to (4).

Subsec. (j)(6). Pub. L. 99–272, § 3006(d), added par. (6).

Subsec. (n). Pub. L. 99–272, § 3006(e), struck out subsec. (n) which restricted loans guaranteed under this section to borrowers with moderate or above-moderate incomes.

Subsec. (*o*). Pub. L. 99–272, § 3006(f), designated existing provisions as par. (1), and added par. (2).

1984—Subsec. (h). Pub. L. 98–479, § 203(d)(5), substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'' and ''such chapter'' for ''such Act''.

Subsec. (j)(4). Pub. L. 98–479, § 105(f), inserted ''and'' after the semicolon at the end.

Subsec. (k). Pub. L. 98–479, § 203(d)(6), substituted ''chapter 11 of title 31'' for ''the Budget and Accounting Act, 1921''.

1983—Subsec. (a). Pub. L. 98–181, § 514(a)(1), substituted provisions relating to amount of loan to low income person or family, for provisions designated as pars. (1) and (2) relating to restrictions on loans with respect to amounts, interest, etc., where the borrowers are persons of low or moderate income, and similar restrictions where the borrowers are other persons.

Subsec. (a)(1). Pub. L. 98–181, § 511(c), substituted ''September 30, 1985'' for ''November 30, 1983''.

Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983''.

Subsec. (b). Pub. L. 98–181, § 514(a)(2), substituted ''(b)(3)'' for ''(b)(4)''.

Subsec. (j)(6). Pub. L. 98–181, § 514(b), struck out par. (6) which related to making expenditures under section 1479(c) of this title after Oct. 1, 1977.

Subsec. (*o*). Pub. L. 98–181, § 514(c), (d), added subsec. (*o*), and struck out former subsec. (*o*) which related to loans to persons of low income and to the minimum amounts available to such persons.

1982—Subsec. (a)(1). Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982''.

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''1982'' for ''1981''.

1980—Subsec. (a)(1). Pub. L. 96–399, § 501(c), substituted ''September 30, 1981'' for ''October 15, 1980''.

Pub. L. 96–372 substituted ''October 15, 1980'' for ''September 30, 1980''.

Subsec. (n). Pub. L. 96–399, § 511, inserted reference to moderate income borrowers.

1979—Subsec. (a)(1). Pub. L. 96–153, § 501(g), substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979''.

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979''.

Subsec. (*o*). Pub. L. 96–153, § 511, redesignated existing provisions as par. (1) and added par. (2).

1978—Subsec. (a)(1). Pub. L. 95–557, § 501(f), substituted ''September 30, 1979'' for ''October 31, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.

Subsec. (j)(4). Pub. L. 95–557, § 506(b), substituted ''1490a(a)'' for ''1490a(a)(2)''.

1977—Subsec. (a)(1). Pub. L. 95–128, § 501(c), substituted ''September 30, 1978'' for ''September 30, 1977''.

Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977''.

Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977''.

Subsec. (e). Pub. L. 95–128, § 502(b), required separate operation of guaranteed loan program and insured loan program and prohibited transfer of funds from one program to the other.

Subsec. (j)(5), (6). Pub. L. 95–128, § 506, added pars. (5) and (6).

Subsec. (n). Pub. L. 95–128, § 502(c), added subsec. (n).

Subsec. (*o*). Pub. L. 95–128, § 509, added subsec. (*o*).

1974—Subsec. (a)(1). Pub. L. 93–383, § 509(b), substituted ''June 30, 1977'' for ''October 1, 1974''.

Subsec. (b). Pub. L. 93–383, §§ 516(b), 517, inserted reference to section 1490f of this title and provisions relating to transfer of notes from and compensation for the Agricultural Credit Insurance Fund.

Subsec. (d). Pub. L. 93–383, § 505(c)(1), struck out ''as it becomes due'' after ''principal and interest''.

Subsec. (j). Pub. L. 93–383, §§ 505(c)(2), (3), 514(c), 519(b), in cl. (1) substituted ''any payment'' for ''any prepayment'' and ''such payments'' for ''such prepayments'' and inserted provision relating to next agreed annual or semiannual remittance date, in cl. (3) inserted provisions authorizing other services customary in the industry, etc., and added cl. (4).

1973—Subsec. (a)(1). Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973''.

1970—Subsec. (j)(3). Pub. L. 91–609 authorized use of Fund moneys for expenses necessary to obtain credit reports on applicants or borrowers.

1969—Subsec. (a)(1). Pub. L. 91–152, § 413(a), substituted ''October 1, 1973'' for ''January 1, 1970''.

Pub. L. 91–78 substituted ''January 1, 1970'' for ''October 1, 1969''.

Subsec. (b). Pub. L. 91–152, § 413(f)(2), inserted reference to section 1490d of this title.

Subsec. (c). Pub. L. 91–152, § 413(b), struck out provision which imposed a limit of not to exceed $100,000,000 on the aggregate amount of loans held by the Secretary at any one time.

Subsec. (d). Pub. L. 91–152, § 413(e)(2), inserted reference to subsec. (m) of this section and inserted ''or otherwise acquired by'' after ''loans made from''.

Subsecs. (k) to (m). Pub. L. 91–152, § 413(c)–(e)(1), added subsecs. (k) to (m).

1966—Subsec. (a)(1). Pub. L. 89–754 substituted restriction against insurance or making of a loan under this par. after Oct. 1, 1969, except pursuant to a commitment entered into before that date for former clause (C) which provided that such loans shall not exceed in the aggregate of $300,000,000 of new loans made or insured in any one fiscal year.

SALE OF RURAL HOUSING LOANS

Pub. L. 99–509, title II, § 2001, Oct. 21, 1986, 100 Stat. 1879, directed Secretary of Agriculture to take such actions as necessary to ensure that loans made under this subchapter are sold to public in amounts sufficient to provide a net reduction in outlays of not less than $1,715,000,000 in fiscal year 1987 from proceeds of such sales, specified procedures and terms of sales, required Secretary to report to specified Congressional committees not later than 20 days before initial sale estimating amount of discount at which loans will be sold at such initial sale and estimating such amount at each subsequent sale during fiscal year 1987 and periodic reports to such committees, the first not later than 60 days after Oct. 21, 1986, and subsequent reports each 60 days thereafter, on Secretary's activities regarding such sales, authorized audits and evaluations of Secretary's activities by Comptroller General and reports on such audits and evaluations to Congressional committees, and excluded applicability of subsec. (d)(2) and (3) of this section to sale of loans.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1488. Repealed. Pub. L. 91–152, title IV, § 413(e)(3), Dec. 24, 1969, 83 Stat. 399

Section, act July 15, 1949, ch. 338, title V, § 518, as added Aug. 10, 1965, Pub. L. 89–117, title X, § 1003(a), 79 Stat. 500, created the Rural Housing Direct Loan Account, set forth the composition of such Account, and authorized the issuance of notes to the Secretary of the Treasury.

§ 1489. Transfer of excess funds out of Rural Housing Insurance Fund

Any sums in the Rural Housing Insurance Fund which the Secretary determines are in excess of amounts needed to meet the obligations and carry out the purposes of such Fund shall be returned to miscellaneous receipts of the Treasury.

(July 15, 1949, ch. 338, title V, § 519, as added Pub. L. 89–117, title X, § 1006, Aug. 10, 1965, 79 Stat. 501; amended Pub. L. 91–152, title IV, § 413(e)(4), Dec. 24, 1969, 83 Stat. 399.)

AMENDMENTS

1969—Pub. L. 91–152 struck out applicability of provisions to Rural Housing Direct Loan Account.

§ 1490. "Rural" and "rural area" defined

As used in this subchapter, the terms ''rural'' and ''rural area'' mean any open country, or any place, town, village, or city which is not (except in the cases of Pajaro, in the State of California, and Guadalupe, in the State of Arizona) part of or associated with an urban area and which (1) has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or (3) has a population in excess of 10,000 but not in excess of 20,000, and (A) is not contained within a standard metropolitan statistical area, and (B) has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary and the Secretary of Housing and Urban Development. For purposes of this subchapter, any area classified as ''rural'' or a ''rural area'' prior to October 1, 1990, and determined not to be ''rural'' or a ''rural area'' as a result of data received from or after the 1990 or 2000 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2010, if such area has a population in excess of 10,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families. Notwithstanding any other provision of this section, the city of Plainview, Texas, shall be considered a rural area for purposes of this subchapter, and the city of Altus, Oklahoma, shall be considered a rural area for purposes of this subchapter until the receipt of data from the decennial census in the year 2000.

(July 15, 1949, ch. 338, title V, § 520, as added Pub. L. 89–117, title X, § 1007, Aug. 10, 1965, 79 Stat. 502; amended Pub. L. 91–609, title VIII, § 803(e), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93–383, title V, § 511, Aug. 22, 1974, 88 Stat. 695; Pub. L. 94–375, § 25(b), Aug. 3, 1976, 90 Stat. 1078; Pub. L. 98–181, title V, § 515, Nov. 30, 1983, 97 Stat. 1247; Pub. L. 98–479, title I, § 105(g), Oct. 17, 1984, 98 Stat. 2227; Pub. L. 99–120, § 3(b), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, § 3(b), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 3(b), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 3(b), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3009(b), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title III, § 308, Feb. 5, 1988, 101 Stat. 1896; Pub. L. 101–137, § 7(b), Nov. 3, 1989, 103 Stat. 826; Pub. L. 101–625, title VII, § 715(a), Nov. 28, 1990, 104 Stat. 4296; Pub. L. 102–550, title VII, § 709, Oct. 28, 1992, 106 Stat. 3840; Pub. L. 105–276, title V, § 599H(g), Oct. 21, 1998, 112 Stat. 2669; Pub. L. 106–554, § 1(a)(4) [div. A, § 102], Dec. 21, 2000, 114 Stat. 2763, 2763A–172; Pub. L. 106–569, title VII, § 705, Dec. 27, 2000, 114 Stat. 3015.)

AMENDMENTS

2000—Pub. L. 106–554 and Pub. L. 106–569 amended second sentence identically, substituting ''1990 or 2000 decennial census'' for ''1990 decennial census'' and ''year 2010'' for ''year 2000''.

1998—Pub. L. 105–276 inserted before period at end '', and the city of Altus, Oklahoma, shall be considered a rural area for purposes of this subchapter until the receipt of data from the decennial census in the year 2000''.

1992—Pub. L. 102–550 inserted at end ''Notwithstanding any other provision of this section, the city of Plainview, Texas, shall be considered a rural area for purposes of this subchapter.''

1990—Pub. L. 101–625 substituted ''cases'' for ''case'' in first sentence, inserted '', and Guadalupe, in the State of Arizona'' after ''California'', and substituted last sentence for ''For purposes of this subchapter, any area classified as 'rural' or a 'rural area' prior to the receipt of data from or after the 1980 decennial census and de-

termined not to be 'rural' or a 'rural area' as a result of such data shall continue to be so classified through September 30, 1990, if such area has a population in excess of 10,000 but not in excess of 20,000.''

1989—Pub. L. 101–137 substituted ''September 30, 1990'' for ''September 30, 1989''.

1988—Pub. L. 100–242 added parenthetical exception for Pajaro, in the State of California, and substituted ''September 30, 1989'' for ''March 15, 1988''.

1987—Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 directed amendment identical to Pub. L. 99–219, substituting ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''the end of fiscal year 1985''.

1984—Pub. L. 98–479 substituted ''1985'' for ''1984''.

1983—Pub. L. 98–181 inserted provisions relating to applicability of this subchapter through fiscal year 1984 to areas classified pursuant to 1980 decennial census.

1976—Cl. (3)(B). Pub. L. 94–375 inserted ''for lower and moderate-income families'' after ''has a serious lack of mortgage credit''.

1974—Cl. (3). Pub. L. 93–383 added cl. (3).

1970—Pub. L. 91–609 substituted as upper population limit ''10,000'' for ''5,500''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 715(b) of Pub. L. 101–625 provided that: ''The amendment made by this section [amending this section] shall apply with respect to classification of rural areas for fiscal year 1991 and any fiscal year thereafter.''

§ 1490a. Loans to provide occupant owned, rental, and cooperative housing for low and moderate income, elderly or handicapped persons or families

(a) Interest rates; additional assistance; payments to owners; rent limitations

(1)(A) Notwithstanding the provisions of sections 1472, 1487(a) and 1485 of this title, loans to persons of low or moderate income under section 1472 or 1487(a)(1)[1] of this title, loans under section 1485 of this title to provide rental or cooperative housing and related facilities for persons and families of low or moderate income or elderly or handicapped persons or families and loans under section 1490f of this title to provide condominium housing for persons and families of low or moderate income, shall bear interest at a rate prescribed by the Secretary at not less than a rate determined by the Secretary of the Treasury upon the request of the Secretary taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum. Any loan guaranteed under this subchapter shall bear interest at such rate as may be agreed upon by the borrower and the lender.

(B) From the interest rate so determined, the Secretary may provide the borrower with assistance in the form of credits so as to reduce the effective interest rate to a rate not less than 1 per centum per annum for such periods of time as the Secretary may determine for applicants described in subparagraph (A) if without such assistance such applicants could not afford the dwelling or make payments on the indebtedness of the rental or cooperative housing. In the case of assistance provided under this subparagraph with respect to a loan under section 1472 of this title, the Secretary may not reduce, cancel, or refuse to renew the assistance due to an increase in the adjusted income of the borrower if the reduction, cancellation, or nonrenewal will cause the borrower to be unable to reasonably afford the resulting payments required under the loan.

(C) For persons of low income under section 1472 or 1487(a) of this title who the Secretary determines are unable to afford a dwelling with the assistance provided under subparagraph (B) and when the Secretary determines that assisted rental housing programs (as authorized under this subchapter, the National Housing Act [12 U.S.C. 1701 et seq.], and the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]) would be unsuitable in the area in which such persons reside, the Secretary may provide additional assistance, pursuant to amounts approved in appropriation Acts and for such periods of time as the Secretary may determine, which may be in an amount not to exceed the difference between (i) the amount determined by the Secretary to be necessary to pay the principal indebtedness, interest, taxes, insurance, utilities, and maintenance, and (ii) 25 per centum of the income of such applicant. The amount of such additional assistance which may be approved in appropriation Acts may not exceed an aggregate amount of $100,000,000. Such additional assistance may not be so approved with respect to any fiscal year beginning on or after October 1, 1981.

(D)(i) With respect to borrowers under section 1472 or 1487(a) of this title who have received assistance under subparagraph (B) or (C), the Secretary shall provide for the recapture of all or a portion of such assistance rendered upon the disposition or nonoccupancy of the property by the borrower. In providing for such recapture, the Secretary shall make provisions to provide incentives for the borrower to maintain the property in a marketable condition. Notwithstanding any other provision of law, any such assistance whenever rendered shall constitute a debt secured by the security instruments given by the borrower to the Secretary to the extent that the Secretary may provide for recapture of such assistance.

(ii) In determining the amount recaptured under this subparagraph with respect to any loan made pursuant to section 1472(a)(3) of this

[1] See References in Text note below.

title for the purchase of a dwelling located on land owned by a community land trust, the Secretary shall determine any appreciation of the dwelling based on any agreement between the borrower and the community land trust that limits the sale price or appreciation of the dwelling.

(E) Except for Federal or State laws relating to taxation, the assistance rendered to any borrower under subparagraphs (B) and (C) shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to welfare and public assistance programs.

(F) Loans subject to the interest rates and assistance provided under this paragraph (1) may be made only when the Secretary determines the needs of the applicant for necessary housing cannot be met with financial assistance from other sources including assistance under the National Housing Act [12 U.S.C. 1701 et seq.] and the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(G) Interest on loans under section 1472 or 1487(a) of this title to victims of a natural disaster shall not exceed the rate which would be applicable to such loans under section 1472 of this title without regard to this section.

(2)(A) The Secretary shall make and insure loans under this section and sections 1484, 1485, and 1487 of this title to provide rental or cooperative housing and related facilities for persons and families of low income in multifamily housing projects, and shall make, and contract to make, assistance payments to the owners of such rental, congregate, or cooperative housing in order to make available to low-income occupants of such housing rentals at rates commensurate to income and not exceeding the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of monthly income, or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs. Any rent or contribution of any recipient shall not increase as a result of this section or any other provision of Federal law or regulation by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law or regulation.

(B) The owner of any project assisted under this paragraph or paragraph (5) shall be required to provide at least annually a budget of operating expenses and record of tenants' income. The budget (and the income, in the case of a project assisted under this paragraph) shall be used to determine the amount of the assistance for each project.

(C) The project owner shall accumulate, safeguard, and periodically pay to the Secretary any rental charges collected in excess of basic rental charges as established by the Secretary in conformity with subparagraph (A). These funds may be credited to the appropriation and used by the Secretary for making such assistance payments through the end of the next fiscal year. Notwithstanding the preceding sentence, excess funds received from tenants in projects financed under section 1485 of this title during a fiscal year shall be available during the next succeeding fiscal year, together with funds provided under subparagraph (D), to the extent approved in appropriations Acts, to make assistance payments to reduce rent overburden on behalf of tenants of any such project whose rents exceed the levels referred to in subparagraph (A). In providing assistance to relieve rent overburden, the Secretary shall provide assistance with respect to very low-income and low-income families to reduce housing rentals to the levels specified in subparagraph (A).

(D) The Secretary, to the extent approved in appropriation Acts, may enter into rental assistance contracts aggregating not more than $398,000,000 in carrying out subparagraph (A) with respect to the fiscal year ending on September 30, 1982.

(E) In order to assist elderly or handicapped persons or families who elect to live in a shared housing arrangement in which they benefit as a result of sharing the facilities of a dwelling with others in a manner that effectively and efficiently meets their housing needs and thereby reduces their cost of housing, the Secretary shall permit rental assistance to be used by such persons or families if the shared housing arrangement is in a single-family dwelling. For the purpose of this subparagraph, the Secretary shall prescribe minimum habitability standards to assure decent, safe, and sanitary housing for such families while taking into account the special circumstances of shared housing.

(3)(A) In the case of loans under sections 1484 and 1485 of this title approved prior to the effective date of this paragraph with respect to which rental assistance is provided, the rent for tenants receiving such assistance shall not exceed the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of monthly income, or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs.

(B) In the case of a section 1485 loan approved prior to the effective date of this paragraph with respect to which interest credits are provided, the tenant's rent shall not exceed the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of monthly income, or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs, or, where no rental assistance authority is available, the rent level established on a basis of a 1 per centum interest rate on debt service.

(C) No rent for a unit financed under section 1484 or 1485 of this title shall be increased as a result of this subsection or other provision of Federal law or Federal regulation by more than 10 per centum in any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law, or regulation.

(4) In the case of a loan with respect to the purchase of a manufactured home with respect

to which rental assistance is provided, the monthly payment for principal and interest on the manufactured home and for lot rental and utilities shall not exceed the highest of (A) 30 per centum of monthly adjusted income, (B) 10 per centum of monthly income, or (C) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs.

(5) OPERATING ASSISTANCE FOR MIGRANT FARMWORKER PROJECTS.—

(A) AUTHORITY.—In the case of housing (and related facilities) for migrant farmworkers provided or assisted with a loan under section 1484 of this title or a grant under section 1486 of this title, the Secretary may, at the request of the owner of the project, use amounts provided for rental assistance payments under paragraph (2) to provide assistance for the costs of operating the project. Any tenant or unit assisted under this paragraph may not receive rental assistance under paragraph (2).

(B) AMOUNT.—In any fiscal year, the assistance provided under this paragraph for any project shall not exceed an amount equal to 90 percent of the operating costs for the project for the year, as determined by the Secretary. The amount of assistance to be provided for a project under this paragraph shall be an amount that makes units in the project available to migrant farmworkers in the area of the project at rates not exceeding 30 percent of the monthly adjusted incomes of such farmworkers, based on the prevailing incomes of such farmworkers in the area.

(C) SUBMISSION OF INFORMATION.—The owner of a project assisted under this paragraph shall be required to provide to the Secretary, at least annually, a budget of operating expenses and estimated rental income, which the Secretary may use to determine the amount of assistance for the project.

(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) The term ''migrant farmworker'' has the same meaning given such term in section 1486(k)(7) of this title.

(ii) The term ''operating cost'' means expenses incurred in operating a project, including expenses for—

(I) administration, maintenance, repair, and security of the project;

(II) utilities, fuel, furnishings, and equipment for the project; and

(III) maintaining adequate reserve funds for the project.

(b) Location in rural areas; inclusion of qualified nonrural residents who will become rural residents

Housing and related facilities provided with loans described in subsection (a) of this section shall be located in rural areas; and applicants eligible for such loans under section 1472, 1487(a)(1),[2] or 1490f(a) of this title, or for occupancy of housing provided with such loans under section 1485 or 1490f(c) of this title, shall include otherwise qualified nonrural residents who will become rural residents.

(c) Reimbursement of Rural Housing Insurance Fund

There shall be reimbursed to the Rural Housing Insurance Fund by annual appropriations (1) the amounts by which nonprincipal payments made from the fund during each fiscal year to the holders of insured loans described in subsection (a)(1) of this section exceed interest due from the borrowers during each year, and (2) the amount of assistance payments described in subsections (a)(2) and (a)(5) of this section. There are authorized to be appropriated to the Rural Housing Insurance Fund such sums as may be necessary to reimburse such fund for the amount of assistance payments described in subsection (a)(1)(C) of this section. The Secretary may from time to time issue notes to the Secretary of the Treasury under section 1487(h) and of this title and section 1490f of this title to obtain amounts equal to such unreimbursed payments, pending the annual reimbursement by appropriation.

(d) Rental assistance contract authority; preconditions, limitations, etc.

(1) In utilizing the rental assistance payments authority pursuant to subsection (a)(2) of this section—

(A) the Secretary shall make such assistance available in existing projects for units occupied by low income families or persons to extend expiring contracts or to provide additional assistance when necessary to provide the full amount authorized pursuant to existing contracts;

(B) any such authority remaining after carrying out subparagraph (A) shall be used in projects receiving commitments under section 1484, 1485, or 1486 of this title after fiscal year 1983 for contracts to assist very low-income families or persons to occupy the units in such projects, except that not more than 5 percent of the units assisted may be occupied by low income families or persons who are not very low-income families or persons; and

(C) any such authority remaining after carrying out subparagraphs (A) and (B) may be used to provide further assistance to existing projects under section 1484, 1485, or 1486 of this title.

(2) The Secretary shall transfer rental assistance contract authority under this section from projects where such authority is unused after initial rentup and not needed because of a lack of eligible tenants in the area to projects where such authority is needed.

(e) Increases in rent or contribution of any recipient

Any rent or contribution of any recipient or any tenant in a project assisted under subsection (a)(5) of this section shall not increase as a result of this section, any amendment thereto, or any other provision of Federal law or regulation by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law or regulation.

[2] See References in Text note below.

(July 15, 1949, ch. 338, title V, § 521, as added Pub. L. 90–448, title X, § 1001, Aug. 1, 1968, 82 Stat. 551; amended Pub. L. 93–383, title V, §§ 514(a), (b), 516(c), Aug. 22, 1974, 88 Stat. 696, 698; Pub. L. 94–375, § 25(a), Aug. 3, 1976, 90 Stat. 1078; Pub. L. 95–128, title V, §§ 502(d), 507(a)(4), (5), 511, Oct. 12, 1977, 91 Stat. 1139, 1140, 1142; Pub. L. 95–557, title V, §§ 506(a), 507, Oct. 31, 1978, 92 Stat. 2112, 2113; Pub. L. 96–153, title V, §§ 501(c), 502(a), 504, Dec. 21, 1979, 93 Stat. 1133–1135; Pub. L. 96–372, § 6(d), Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title V, §§ 501(e), (f), 505, Oct. 8, 1980, 94 Stat. 1668, 1669; Pub. L. 97–35, title III, §§ 351(d), 352, Aug. 13, 1981, 95 Stat. 421; Pub. L. 98–181, title V, §§ 516, 517(a)–(c), (e), Nov. 30, 1983, 97 Stat. 1247–1249; Pub. L. 98–479, title I, § 105(h), Oct. 17, 1984, 98 Stat. 2227; Pub. L. 100–242, title III, §§ 309, 316(d), Feb. 5, 1988, 101 Stat. 1896, 1898; Pub. L. 101–625, title VII, § 716, Nov. 28, 1990, 104 Stat. 4296; Pub. L. 102–550, title VII, § 702(b), Oct. 28, 1992, 106 Stat. 3834; Pub. L. 105–276, title V, § 599C(e)(1), (e)(2)(D)–(F), Oct. 21, 1998, 112 Stat. 2661, 2663; Pub. L. 106–569, title VII, § 706, Dec. 27, 2000, 114 Stat. 3015.)

REFERENCES IN TEXT

Section 1487(a) of this title, referred to in subsecs. (a)(1)(A) and (b), was amended by Pub. L. 98–181, title V, § 514(a)(1), Nov. 30, 1983, 98 Stat. 1247, and, as so amended, does not contain a par. (1).

The National Housing Act, referred to in subsec. (a)(1)(C) and (F), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The United States Housing Act of 1937, referred to in subsec. (a)(1)(C) and (F), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The effective date of this paragraph, referred to in subsec. (a)(3)(A) and (B), is six months after Nov. 30, 1983, or upon the earlier promulgation of implementing regulations by the Secretary. See section 517(f) of Pub. L. 98–181, set out as an Effective Date of 1983 Amendment note below.

AMENDMENTS

2000—Subsec. (a)(5)(A). Pub. L. 106–569 substituted ''Any tenant or unit assisted'' for ''Any project assisted'' in last sentence.

1998—Subsec. (a)(2)(B). Pub. L. 105–276, § 599C(e)(2)(D), inserted ''or paragraph (5)'' after ''this paragraph'' and substituted ''. The budget (and the income, in the case of a project assisted under this paragraph) shall be used to determine the amount of the assistance for each project.'' for ''which shall be used to determine the amount of assistance for each project.''

Subsec. (a)(5). Pub. L. 105–276, § 599C(e)(1), added par. (5).

Subsec. (c)(2). Pub. L. 105–276, § 599C(e)(2)(E), substituted ''subsections (a)(2) and (a)(5)'' for ''subsection (a)(2)''.

Subsec. (e). Pub. L. 105–276, § 599C(e)(2)(F), inserted ''or any tenant in a project assisted under subsection (a)(5) of this section'' after ''recipient''.

1992—Subsec. (a)(1)(D). Pub. L. 102–550 designated existing provisions as cl. (i) and added cl. (ii).

1990—Subsec. (a)(2)(C). Pub. L. 101–625 inserted at end ''Notwithstanding the preceding sentence, excess funds received from tenants in projects financed under section 1485 of this title during a fiscal year shall be available during the next succeeding fiscal year, together with funds provided under subparagraph (D), to the extent approved in appropriations Acts, to make assistance payments to reduce rent overburden on behalf of tenants of any such project whose rents exceed the levels referred to in subparagraph (A). In providing assistance to relieve rent overburden, the Secretary shall provide assistance with respect to very low-income and low-income families to reduce housing rentals to the levels specified in subparagraph (A).''

1988—Subsec. (a)(1)(A). Pub. L. 100–242, § 316(d)(1), struck out before period at end '', except that such loans to provide housing and related facilities for persons or families of moderate income shall bear interest at the rate established by the Secretary of Housing and Urban Development under section 1709–1 of title 12 with respect to maximum interest rates established for mortgages insured under section 1709(b) of title 12 if the Secretary determines that the borrower can afford such higher interest charges.''

Subsec. (a)(1)(B). Pub. L. 100–242, § 309, inserted at end ''In the case of assistance provided under this subparagraph with respect to a loan under section 1472 of this title, the Secretary may not reduce, cancel, or refuse to renew the assistance due to an increase in the adjusted income of the borrower if the reduction, cancellation, or nonrenewal will cause the borrower to be unable to reasonably afford the resulting payments required under the loan.''

Subsec. (a)(2)(A). Pub. L. 100–242, § 316(d)(2), substituted comma for semicolon at end of cl. (ii).

1984—Subsec. (d)(1). Pub. L. 98–479 in amending par. (1) generally, inserted provisions preceding subpar. (A), in subpar. (A) substituted provisions authorizing Secretary to make assistance available in existing projects for former provisions which required Secretary to first assure that expiring contracts are extended for those units occupied by persons or families of low income and that additional assistance is used when necessary to provide the full amount authorized pursuant to existing contracts, in subpar. (B) substituted ''any such authority remaining after carrying out subparagraph (A)'' for ''Remaining funds'' and inserted provisions relating to persons who are not very low-income families or persons, and in subpar. (C) substituted provisions that remaining authority may be used to provide assistance under sections 1484 to 1486 of this title for former provisions which authorized the Secretary to use remaining funds for existing projects for very low-income families except that 5 per centum of the units assisted may be occupied by families and persons of low income.

1983—Subsec. (a)(2)(A). Pub. L. 98–181, § 517(c), substituted provisions setting forth factors applicable to determination of maximum amount, for provisions setting forth maximum amount as 25 per centum of income, and inserted provisions relating to limitations on increases of any rent or contribution of recipient.

Pub. L. 98–181, § 517(a), struck out provisions requiring assistance payments to be made on a unit basis and maximum amount of such payments, and provisions respecting priority for approval of projects under this paragraph.

Subsec. (a)(2)(E). Pub. L. 98–181, § 516, added subpar. (E).

Subsec. (a)(3), (4). Pub. L. 98–181, § 517(b), added pars. (3) and (4).

Subsecs. (d), (e). Pub. L. 98–181, § 517(e), added subsecs. (d) and (e).

1981—Subsec. (a)(1)(B). Pub. L. 97–35, § 352, substituted ''may provide'' for ''shall provide''.

Subsec. (a)(2)(D). Pub. L. 97–35, § 351(d), substituted ''$398,000,000'' for ''$493,000,000'', and substituted provisions relating to fiscal year ending Sept. 30, 1982, for provisions relating to fiscal year ending Sept. 30, 1981.

1980—Subsec. (a)(1)(B). Pub. L. 96–399, § 505, substituted ''the Secretary shall provide'' for ''the Secretary may provide''.

Subsec. (a)(1)(C). Pub. L. 96–399, § 501(f), substituted provisions limiting the amount of additional assistance which may be approved to $100,000,000, for provisions

limiting such amounts to $985,000,000 for contracts entered into with respect to fiscal year 1979 and $500,000,000 for contracts entered into through Oct. 15, 1980, and substituted ''with respect to any fiscal year beginning on or after October 1, 1981'' for ''after October 15, 1980''.

Pub. L. 96–372 substituted ''through October 15, 1980'' for ''with respect to fiscal year 1980'' and in last sentence ''after October 15, 1980'' for ''with respect to any fiscal year after fiscal year 1980''.

Subsec. (a)(2)(D). Pub. L. 96–399, § 501(e), added subpar. (D).

1979—Subsec. (a)(1)(A). Pub. L. 96–153, § 502(a), inserted exception that loans to provide housing and related facilities for persons or families of moderate income shall bear interest at the rate established by the Secretary under certain provisions of title 12.

Subsec. (a)(1)(C). Pub. L. 96–153, § 501(c)(1), inserted provisions that the amount of such additional assistance which may be approved in appropriation acts may not exceed an aggregate amount of $985,000,000 for contracts entered into with respect to fiscal year 1979 and an aggregate amount of $500,000,000 for contracts entered into with respect to fiscal year 1980 and that such additional assistance may not be so approved with respect to any fiscal year after fiscal year 1980.

Subsec. (a)(1)(H). Pub. L. 96–153, § 501(c)(3), repealed subpar. (H) which provided that the aggregate principal amount of loans made to borrowers receiving assistance pursuant to subpar. (C) shall not exceed $440,000,000.

Subsec. (a)(2)(A). Pub. L. 96–153, § 504, substituted ''assistance payments to the owners of'' for ''assistance payments to public and private nonprofit owners of'', ''70 per centum'' for ''20 per centum'' in two places, ''by a loan under section 1484 of this title to a public or private nonprofit owner'' for ''by a loan under section 1484 of this title'', the first time section 1484 of this title appeared in cl. (i), and inserted provisions that in approving projects for assistance under this paragraph, the Secretary shall give priority to projects in which assistance is provided to 40 per centum or fewer of the units contained in the project.

Subsec. (c). Pub. L. 96–153, § 501(c)(2), inserted authorization of appropriation to Rural Housing Insurance Fund of such sums as may be necessary to reimburse fund for amount of assistance payments under subsec. (a)(1)(C) of this section.

1978—Subsec. (a)(1)(A) to (H). Pub. L. 95–557, § 506(a), designated existing provisions as par. (1)(A), and in par. (1)(A) as so designated, struck out ''less not to exceed the difference between the adjusted rate determined by the Secretary of the Treasury and 1 per cent per annum: *Provided*, That such a loan may be made only when the Secretary determines that the needs of the applicant for necessary housing cannot be met with financial assistance from other sources including assistance under section 1715z or 1715z–1 of title 12: *Provided further*, That interest on loans under section 1472 or 1487(a) of this title to victims of natural disaster shall not exceed the rate which would be applicable to such loans under section 1472 of this title without regard to this section'', after ''one-eighth of 1 per centum,'' and added pars. (B) to (H).

Subsec. (a)(2)(A). Pub. L. 95–557, § 507, substituted ''public and private nonprofit owners'' for ''the owners'', inserted ''congregate, or cooperative'' after ''rental'' and inserted ''by a loan under section 1484 of this title'' after ''section 1485 of this title for elderly or handicapped housing''.

1977—Subsec. (a)(1). Pub. L. 95–128, §§ 502(d), 507(a)(4), provided that any loan guaranteed under this subchapter shall bear interest at the rate as may be agreed upon by the borrower and the lender and provided loans for housing of handicapped persons or families.

Subsec. (a)(2)(A). Pub. L. 95–128, §§ 507(a)(5), 511, included handicapped housing in cl. (i) and substituted ''shall'' for ''may'' wherever appearing, except in cl. (i).

1976—Subsec. (a)(1). Pub. L. 94–375 substituted ''rate determined by the Secretary of the Treasury upon the request of the Secretary'' for ''rate determined annually by the Secretary of the Treasury''.

1974—Subsec. (a)(1). Pub. L. 93–383, §§ 514(a), 516(c)(1), redesignated existing subsec. (a) as (a)(1) and, as so redesignated, substituted ''loans under section 1485 of this title'' for ''and loans under section 1485 of this title'' and inserted provisions relating to loans under section 1490f of this title to provide condominium housing for persons and families of low or moderate income.

Subsec. (a)(2). Pub. L. 93–383, § 514(a), added par. (2).

Subsec. (b). Pub. L. 93–383, § 516(c)(2), inserted references to sections 1490f(a) and 1490f(c) of this title.

Subsec. (c). Pub. L. 93–383, §§ 514(b), 516(c)(3), reorganized structure of subsec. (c) by designating existing provisions as cl. (1) and, as so designated, substituted reference to subsec. (a)(1) of this section for reference to subsec. (a) of this section, added cl. (2), and made former second clause into second sentence, and, as so amended, inserted reference to section 1490f of this title and struck out ''excess'' after ''unreimbursed''.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 517(f) of Pub. L. 98–181 provided that: ''The amendments made by this section [amending this section and section 1490j of this title] shall take effect six months after the date of enactment of this Act [Nov. 30, 1983], or upon the earlier promulgation of regulations implementing this section by the Secretary.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1490b. Housing for rural trainees

(a) Authorization; financial and technical assistance; selection of training sites and location of housing

Upon the application of any State or political subdivision thereof, or any public or private nonprofit organization, the Secretary is authorized, after consultation with the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, and the Director of the Office of Economic Opportunity, and after the Secretary determines that the housing and related facilities cannot reasonably be provided in any other way, to provide financial and technical assistance for the establishment, in rural areas, of housing and related facilities for trainees and their families who are residents of a rural area and have a rural background, while such trainees are enrolled and participating in training courses designed to improve their employment capability. The selection of training sites and location of housing shall be made with due regard to the economic viability of the area, and only after consideration of a labor area survey and full coordination among all Government agencies having primary responsibility for administering related programs.

(b) Quality of housing and related facilities; design and location

Housing and related facilities assisted under this section shall be safe and sanitary, constructed in the most economical manner, and of modest design, giving due consideration to the purposes to be served and the needs of the occupants, and may, in the discretion of the Secretary, include mobile family quarters. Design and location shall be such as to facilitate, as feasible, the use of such housing and related fa-

cilities for other purposes when no longer needed for the primary purpose.

(c) Contribution of land by applicant

The applicant shall contribute the necessary land, or funds to acquire such land, from its own resources, including land acquired by donation or from funds repayable under subsection (e) of this section or borrowed from other sources.

(d) Conditions precedent to grant of financial assistance

No financial assistance shall be made available under this section unless, to the extent and for the periods required by the Secretary, the applicant agrees that—

(1) such housing will be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by State or local law, or, in the absence of such standards, with requirements prescribed by the Secretary;

(2) priority shall be given at all times, in granting occupancy of such housing and facilities, to the trainees and their families described in subsection (a) of this section; and

(3) rentals charged them shall not exceed amounts approved by the Secretary after considering the portion of the actual total family income which the family can afford to pay for rent while meeting its other immediate needs during occupancy.

(e) Advances; repayment; limitation on amount

The Secretary may make advances pursuant to any contract for financial assistance under this section at such times and in such manner as may be specified in the contract. Such advances for the purchase of land shall be repayable with interest and within a period not to exceed thirty-three years and may be made upon such security, if any, as the Secretary requires. Advances for other purposes may be made repayable with or without interest or nonrepayable, as determined by the Secretary on the basis of the anticipated income, and cost of operation of the housing and related facilities and the ability of each applicant to finance such facilities. Any advances shall be limited to cover the capital costs of constructing such facilities, plus interest on borrowings to cover such costs.

(f) Sale of housing and related facilities to ineligible transferee or diversion to use other than primary purpose; repayment of advances; return of property to original condition

Should housing and related facilities assisted pursuant to a contract under this section be sold to an ineligible transferee or diverted to a use other than its primary purpose within a period specified in the contract, all advances made under such contract shall be repaid to the Secretary, up to the amount of the sales price or the fair value of the property as determined by the Secretary, whichever is higher, with interest from the date of the sale or diversion. If no suitable alternate use of the property is available, as determined by the Secretary, after the purpose of this section can no longer be served, the property shall be returned to its original condition by the recipient of the assistance.

(g) Interest on advances

Interest charged on advances made under this section shall be at a rate, prescribed by the Secretary, which shall be not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, less not to exceed the difference between the adjusted rate determined by the Secretary of the Treasury and 1 per centum per annum, as determined by the Secretary.

(h) Regulations

The Secretary shall prescribe regulations to insure that Federal funds expended under this section are not wasted or dissipated.

(i) "Related facilities" and "trainee" defined

As used in this section (1) the term ''related facilities'' shall include any necessary community rooms or buildings, infirmaries, utilities, access roads, water and sewer services, and the minimum fixed or movable equipment determined by the Secretary to be necessary to make the housing reasonably habitable by trainees and their families; and (2) the term ''trainee'' means any person receiving training under any federally assisted training program.

(j) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(July 15, 1949, ch. 338, title V, § 522, as added Pub. L. 90–448, title X, § 1002, Aug. 1, 1968, 82 Stat. 551; amended Pub. L. 98–479, title II, § 201(c), Oct. 17, 1984, 98 Stat. 2228; Pub. L. 100–242, title III, § 316(e), Feb. 5, 1988, 101 Stat. 1898.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–242 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, and Human Services''.

1984—Subsec. (a). Pub. L. 98–479 substituted ''Health, and Human Services'' for ''Health, Education, and Welfare''.

OFFICE OF ECONOMIC OPPORTUNITY

Pub. L. 93–644, § 9(a), Jan. 4, 1975, 88 Stat. 2310 [42 U.S.C. 2941], amended the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] to create the Community Services Administration, an independent agency in the executive branch, as the successor authority to the Office of Economic Opportunity, and provided that references to the Office of Economic Opportunity or to its Director were deemed to refer to the Community Services Administration or to its Director. The Community Services Administration was terminated when the Economic Opportunity Act of 1964, except for titles VIII and X, was repealed, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 519 (42 U.S.C. 9912(a)). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub. L. 97–35 (42 U.S.C. 9905).

§ 1490c. Mutual and self-help housing

(a) Purpose

The purposes of this section are (1) to make financial assistance available on reasonable terms

and conditions in rural areas and small towns to needy low-income individuals and their families who, with the benefit of technical assistance and overall guidance and supervision, participate in approved programs of mutual or self-help housing by acquiring and developing necessary land, acquiring building materials, providing their own labor, and working cooperatively with others for the provision of decent, safe, and sanitary dwellings for themselves, their families, and others in the area or town involved, and (2) to facilitate the efforts of both public and private nonprofit organizations providing assistance to such individuals to contribute their technical and supervisory skills toward more effective and comprehensive programs of mutual or self-help housing in rural areas and small towns wherever necessary.

(b) Contract authority; establishment of Self-Help Housing Land Development Fund; authorization to make loans; conditions of loan

In order to carry out the purposes of this section, the Secretary of Agriculture (in this section referred to as the ''Secretary'') is authorized—

(1)(A) to make grants to, or contract with, public or private nonprofit corporations, agencies, institutions, organizations, Indian tribes, and other associations approved by him, to pay part or all of the costs of developing, conducting, administering, or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and their families in carrying out mutual or self-help housing efforts, including the repair of units financed under section 1472 of this title that are being held in inventory; and

(B) to establish the Self-Help Housing Land Development Fund, referred to herein as the Self-Help Fund, to be used by the Secretary as a revolving fund for making loans, on such terms and conditions and in such amounts as he deems necessary, to public or private nonprofit organizations and to Indian tribes for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations, and cooperatives eligible for assistance under section 1715z or 1715z–1 of title 12 or section 1490a of this title. Such a loan, with interest at a rate not to exceed 3 percent per annum, shall be repaid within a period not to exceed two years from the making of the loan, or within such additional period as may be authorized by the Secretary in any case as being necessary to carry out the purposes hereof: *Provided*, That the Secretary may advance funds under this paragraph to organizations receiving assistance under clause (A) to enable them to establish revolving accounts for the purchase of land options and any such advances may bear interest at a rate determined by the Secretary and shall be repaid to the Secretary at the expiration of the period for which the grant to the organization involved was made;

(2) to make grants to, or contract with, national or regional private nonprofit corporations to provide training and technical assistance to public or private nonprofit corporations, agencies, institutions, organizations, and other associations, including Indian tribes, eligible to receive assistance under this section in order to expand the use of authorities contained in this section and to improve performance; and

(3) to make loans, on such terms and conditions and in such amounts as he deems necessary, to needy low-income individuals participating in programs of mutual or self-help housing approved by him, for the acquisition and development of land and for the purchase of such other building materials as may be necessary in order to enable them, by providing substantially all of their own labor, and by cooperating with others participating in such programs, to carry out to completion the construction of decent, safe, and sanitary dwellings for such individuals and their families, subject to the following limitations:

(A) there is reasonable assurance of repayment of the loan;

(B) the amount of the loan, together with other funds which may be available, is adequate to achieve the purpose for which the loan is made;

(C) the credit assistance is not otherwise available on like terms or conditions from private sources or through other Federal, State, or local programs;

(D) the loan bears interest at a rate not to exceed 3 per centum per annum on the unpaid balance of principal, plus such additional charge, if any, toward covering other costs of the loan program as the Secretary may determine to be consistent with its purposes; and

(E) the loan is repayable within not more than thirty-three years.

(c) Considerations for financial assistance

In determining whether to extend financial assistance under paragraph (1) or (2) of subsection (b) of this section, the Secretary shall take into consideration, among other factors, the suitability of the area within which construction will be carried out to the type of dwelling which can be provided under mutual or self-help housing programs, the extent to which the assistance will facilitate the provision of more decent, safe, and sanitary housing conditions than presently exist in the area, the extent to which the assistance will be utilized efficiently and expeditiously, the extent to which the assistance will effect an increase in the standard of living of low-income individuals participating in the mutual or self-help housing program, and whether the assistance will fulfill a need in the area which is not otherwise being met through other programs, including those carried out by other Federal, State, or local agencies.

(d) "Construction" defined

As used in this section, the term ''construction'' includes the erection of new dwellings, and the rehabilitation, alteration, conversion, or improvement of existing structures.

(e) Establishment of appropriate criteria and procedures for determining eligibility of applicants

The Secretary is authorized to establish appropriate criteria and procedures in order to de-

termine the eligibility of applicants for the financial assistance provided under this section, including criteria and procedures with respect to the periodic review of any construction carried out with such financial assistance.

(f) Repealed. Pub. L. 102–550, title VII, § 710(2), Oct. 28, 1992, 106 Stat. 3840

(g) Deposit in Self-Help Fund; availability of amounts; assets

Amounts appropriated under this subsection, together with principal collections from loans made under appropriations in any previous fiscal years, shall be deposited in the Self-Help Housing Land Development Fund, which shall be available, to the extent approved in appropriation Acts, as a revolving fund for making loans under subsection (b)(1)(B) of this section; except that not more than $5,000,000 may be made available during fiscal year 1985. Instruments and property acquired by the Secretary in or as a result of making such loans shall be assets of the Self-Help Housing Land Development Fund.

(h) Rules and regulations

The Secretary shall issue rules and regulations for the orderly processing and review of applications under this section and rules and regulations protecting the rights of grantees under this section in the event he determines to end grant assistance prior to the termination date of any grant agreement.

(July 15, 1949, ch. 338, title V, § 523, as added Pub. L. 90–448, title X, § 1005, Aug. 1, 1968, 82 Stat. 553; amended Pub. L. 93–117, § 13(d), Oct. 2, 1973, 87 Stat. 423; Pub. L. 93–383, title V, § 512, Aug. 22, 1974, 88 Stat. 695; Pub. L. 95–60, § 4(d), June 30, 1977, 91 Stat. 258; Pub. L. 95–80, § 4(d), July 31, 1977, 91 Stat. 340; Pub. L. 95–128, title V, § 501(d), Oct. 12, 1977, 91 Stat. 1139; Pub. L. 95–406, § 7(d), Sept. 30, 1978, 92 Stat. 881; Pub. L. 95–557, title V, § 501(g), (h), Oct. 31, 1978, 92 Stat. 2111; Pub. L. 96–71, § 5(d), Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, § 5(d), Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title V, §§ 501(d), (e), 505, Dec. 21, 1979, 93 Stat. 1133, 1135; Pub. L. 96–372, § 6(e), Oct. 3, 1980, 94 Stat. 1365; Pub. L. 96–399, title V, §§ 501(d), 507(e), Oct. 8, 1980, 94 Stat. 1668, 1670; Pub. L. 97–35, title III, § 351(e), Aug. 13, 1981, 95 Stat. 421; Pub. L. 97–289, § 3(c), Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98–35, § 3(c), May 26, 1983, 97 Stat. 198; Pub. L. 98–109, § 4(c), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–181, title V, § 511(d), (e), Nov. 30, 1983, 97 Stat. 1244; Pub. L. 98–479, title II, § 204(c)(2), Oct. 17, 1984, 98 Stat. 2233; Pub. L. 99–120, § 3(c), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, § 3(c), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 3(c), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 3(c), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3009(c), Apr. 7, 1986, 100 Stat. 106; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title III, § 301(f), Feb. 5, 1988, 101 Stat. 1893; Pub. L. 101–137, § 7(c), Nov. 3, 1989, 103 Stat. 826; Pub. L. 101–625, title VII, § 701(f), Nov. 28, 1990, 104 Stat. 4282; Pub. L. 102–142, title VII, § 743(b), Oct. 28, 1991, 105 Stat. 915; Pub. L. 102–550, title VII, § 710, Oct. 28, 1992, 106 Stat. 3840.)

AMENDMENTS

1992—Subsec. (b)(1)(A). Pub. L. 102–550, § 710(1), inserted ", including the repair of units financed under section 1472 of this title that are being held in inventory" after "efforts".

Subsec. (f). Pub. L. 102–550, § 710(2), struck out subsec. (f) which read as follows: "No grant or loan may be made or contract entered into under the authority of this section after September 30, 1992, except pursuant to a commitment or other obligation entered into pursuant to this section before that date."

1991—Subsec. (f). Pub. L. 102–142 substituted "1992" for "1991".

1990—Subsec. (f). Pub. L. 101–625 substituted "1991" for "1990".

1989—Subsec. (f). Pub. L. 101–137 substituted "1990" for "1989".

1988—Subsec. (f). Pub. L. 100–242 substituted "September 30, 1989" for "March 15, 1988".

1987—Subsec. (f). Pub. L. 100–200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100–179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100–170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100–154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100–122 substituted "October 31, 1987" for "September 30, 1987".

1986—Subsec. (f). Pub. L. 99–430 substituted "1987" for "1986".

Pub. L. 99–345 substituted "September 30, 1986" for "June 6, 1986".

Pub. L. 99–289 substituted "June 6, 1986" for "April 30, 1986".

Pub. L. 99–272 directed amendment identical to Pub. L. 99–219, substituting "March 17, 1986" for "December 15, 1985".

Pub. L. 99–267 substituted "April 30, 1986" for "March 17, 1986".

1985—Subsec. (f). Pub. L. 99–219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99–156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99–120 substituted "November 14, 1985" for "September 30, 1985".

1984—Subsec. (g). Pub. L. 98–479 inserted "Housing" before "Land" after "Self-Help" in last sentence.

1983—Subsec. (f). Pub. L. 98–181, § 511(d), substituted "September 30, 1985" for "November 30, 1983", and struck out first sentence which authorized not to exceed $5,000,000 to carry out this section for fiscal year 1983.

Pub. L. 98–109 substituted "November 30, 1983" for "September 30, 1983" the second time it appeared.

Pub. L. 98–35 substituted "September 30, 1983" for "May 20, 1983" in two places.

Subsec. (g). Pub. L. 98–181, § 511(e), substituted "1985" for "1982" and struck out first sentence which authorized not to exceed $3,000,000 to carry out subsec. (b)(1)(B) for fiscal year 1982.

1982—Subsec. (f). Pub. L. 97–289 substituted "May 20, 1983" for "September 30, 1982" wherever appearing.

1981—Subsec. (f). Pub. L. 97–35, § 351(e)(1), substituted "1982" for "1981" in two places.

Subsec. (g). Pub. L. 97–35, § 351(e)(2)–(4), inserted provisions relating to availability in appropriation Acts, and substituted provisions relating to authorization of appropriations for fiscal year ending Sept. 30, 1982, for provisions authorizing appropriations for fiscal year ending Sept. 30, 1981.

1980—Subsec. (b). Pub. L. 96–399, § 507(e), inserted reference to Indian tribes in subpars. (1)(A) and (B), and in par. (2).

Subsec. (f). Pub. L. 96–399, § 501(d)(1), substituted ''September 30, 1981'' for ''October 15, 1980'' wherever appearing.

Pub. L. 96–372 substituted ''October 15, 1980'' for ''September 30, 1980'' wherever appearing.

Subsec. (g). Pub. L. 96–399, § 501(d)(2), substituted provisions authorizing appropriations not to exceed $2,500,000 for fiscal 1981, such amount together with principal collections from loans under appropriations in prior years to be deposited in the Self-Help Housing Land Development Fund, to be available as a revolving fund for loans under subsec. (b)(1)(B) of this section for provisions authorizing appropriations not to exceed $1,000,000, $2,000,000, $3,000,000 and $1,000,000 for fiscal years ending June 30, 1969, June 30, 1970, Sept. 30, 1979, and Sept. 30, 1980, respectively, provisions allowing appropriation of authorized funds in succeeding years, to be deposited in the Self-Help Fund to be available without fiscal year limitation, and provision for deposit in such Fund of sums received from repayment of such loans.

1979—Subsec. (b). Pub. L. 96–153, § 505, redesignated existing par. (2) as (3) and added par. (2).

Subsec. (f). Pub. L. 96–153, § 501(d), substituted authorization of appropriation of $5,000,000 for fiscal year ending Sept. 30, 1980, for provisions containing authorization of appropriation for fiscal years commencing June 30, 1968 to Oct. 1, 1978, and substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''December 1, 1979'' and ''November 30, 1979'' for ''November 1, 1979'' and ''October 31, 1979'', respectively.

Pub. L. 96–71 substituted ''November 1, 1979'' and ''October 31, 1979'' for ''October 1, 1979'' and ''September 30, 1979'', respectively.

Subsec. (g). Pub. L. 96–153, § 501(e), inserted authorization of appropriation of $1,000,000 for fiscal year ending September 30, 1980.

1978—Subsec. (f). Pub. L. 95–557, § 501(g), substituted ''October 1, 1979'' for ''November 1, 1978'', ''September 30, 1979'' for ''October 31, 1978'', and ''$16,500,000'' for ''$10,000,000''.

Pub. L. 95–406 substituted ''November 1, 1978'' for ''October 1, 1978'' and ''October 31, 1978'' for ''September 30, 1978''.

Subsec. (g). Pub. L. 95–557, § 501(h), inserted ''and not to exceed $3,000,000 for the fiscal year ending September 30, 1979'', after ''June 30, 1970''.

1977—Subsec. (f). Pub. L. 95–128 substituted ''1978'' for ''1977'' wherever appearing.

Pub. L. 95–80 substituted ''October 1, 1977'' for ''August 1, 1977'' and ''September 30, 1977'' for ''July 31, 1977''.

Pub. L. 95–60 substituted ''August 1, 1977'' for ''July 1, 1977'' and ''July 31, 1977'' for ''June 30, 1977''.

1974—Subsec. (b)(1). Pub. L. 93–383, § 512(a), inserted proviso relating to advance of funds by Secretary at end of cl. (B).

Subsec. (f). Pub. L. 93–383, § 512(b), substituted ''1977'' for ''1974'' wherever appearing and ''$10,000,000'' for ''$5,000,000''.

Subsec. (h). Pub. L. 93–383, § 512(c), added subsec. (h).

1973—Subsec. (f). Pub. L. 93–117 substituted ''1974'' for ''1973'' wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1490d. Loans to nonprofit organizations to provide building sites for eligible families, nonprofit organizations, public agencies, and cooperatives; interest rates; factors determinative in making loan

(a)(1) IN GENERAL.—The Secretary may make loans, on such terms and conditions and in such amounts he deems necessary, to public or private nonprofit organizations and to Indian tribes for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations, public agencies, and cooperatives eligible for assistance under any section of this subchapter or under any other law which provides financial assistance for housing low- and moderate-income families. Such a loan shall bear interest at a rate prescribed by the Secretary taking into consideration a rate determined annually by the Secretary of the Treasury as the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, and shall be repaid within a period not to exceed two years from the making of the loan or within such additional period as may be authorized by the Secretary in any case as being necessary to carry out the purposes of this section.

(2) REVOLVING FUNDS.—The Secretary may make grants to nonprofit housing agencies to establish revolving loan funds for the acquisition and preparation of building sites for low-income housing. Any proceeds and repayments from such loans shall be returned to the revolving loan fund to be used for purposes related to this section. Loan funds and interest payments shall be used solely for the acquisition of land; the preparation of land for building sites; the payment of reimbursable legal and technical costs; and technical assistance and administrative costs, not to exceed 10 percent of the fund.

(b) In determining whether to extend financial assistance under this section, the Secretary shall take into consideration, among other factors, (1) the suitability of the area to the types of dwellings which can feasibly be provided, and (2) the extent to which the assistance will (i) facilitate providing needed decent, safe, and sanitary housing, (ii) be utilized efficiently and expeditiously, and (iii) fulfill a need in the area which is not otherwise being met through other programs, including those being carried out by other Federal, State, or local agencies.

(July 15, 1949, ch. 338, title V, § 524, as added Pub. L. 91–152, title IV, § 413(f)(1), Dec. 24, 1969, 83 Stat. 399; amended Pub. L. 93–383, title V, § 513, Aug. 22, 1974, 88 Stat. 696; Pub. L. 96–399, title V, § 507(f), Oct. 8, 1980, 94 Stat. 1670; Pub. L. 102–550, title VII, § 715, Oct. 28, 1992, 106 Stat. 3842.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1980—Subsec. (a). Pub. L. 96–399 inserted reference to Indian tribes.

1974—Subsec. (a). Pub. L. 93–383 provided for applicability to public agencies and substituted ''any section of this subchapter or under any other law which provides financial assistance for housing low- and moderate-income families'' for ''section 1715z or 1715z–1 of title 12 or section 1490a of this title''.

§ 1490e. Programs of technical and supervisory assistance for low-income individuals and families in rural areas

(a) Grants or contracts with public or private nonprofit corporations, etc., for assistance; preferential treatment of applications sponsored by governmental entity or public body

The Secretary may make grants to or enter into contracts with public or private nonprofit corporations, agencies, institutions, organizations, Indian tribes, and other associations approved by him, to pay part or all of the cost of developing, conducting, administering or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from Federal, State, and local housing programs in rural areas. In processing applications for such grants or contracts made by private nonprofit corporations, agencies, institutions, organizations, and other associations, the Secretary shall give preference to those which are sponsored (including assistance to the applicant in processing the application, implementing the technical assistance program, and carrying out the obligations of the grant or contract) by a State, county, municipality, or other governmental entity or public body.

(b) Loans to public or private nonprofit corporations, etc., for necessary planning and financing expenses; interest rates; factors determinative of amount; terms and conditions of repayment

The Secretary is authorized to make loans to public or private nonprofit corporations, agencies, institutions, organizations, Indian tribes, and other associations approved by him for the necessary expenses, prior to construction, of planning, and obtaining financing for, the rehabilitation or construction of housing for low-income individuals or families under any Federal, State, or local housing program which is or could be used in rural areas. Such loans shall be made without interest and shall be for the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing prior to the availability of financing, including but not limited to preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, and construction loan fees and discounts. The Secretary shall require repayment of loans made under this subsection, under such terms and conditions as he may require, upon completion of the housing or sooner.

(c) Repealed. Pub. L. 98–181, title V, § 518(b), Nov. 30, 1983, 97 Stat. 1249

(d) Deposit of appropriated funds into low-income sponsor fund; availability; administration of fund as revolving fund; deposit of repayments

All funds appropriated for the purpose of subsection (b) of this section shall be deposited in a fund which shall be known as the low-income sponsor fund, and which shall be available without fiscal year limitation and be administered by the Secretary as a revolving fund for carrying out the purposes of that subsection. Sums received in repayment of loans made under subsection (b) of this section shall be deposited in such fund.

(July 15, 1949, ch. 338, title V, § 525, as added Pub. L. 93–383, title V, § 515, Aug. 22, 1974, 88 Stat. 697; amended Pub. L. 95–557, title V, § 501(i), Oct. 31, 1978, 92 Stat. 2111; Pub. L. 96–399, title V, § 507(g), Oct. 8, 1980, 94 Stat. 1670; Pub. L. 98–181, title V, § 518, Nov. 30, 1983, 97 Stat. 1249.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98–181, § 518(a), struck out provisions setting forth conditions under which any part or all of the loan is subject to cancellation.

Subsec. (c). Pub. L. 98–181, § 518(b), struck out subsec. (c), which related to authorization of appropriations for fiscal years ending June 30, 1975, June 30, 1976, and Sept. 30, 1979, and availability of amounts.

1980—Subsecs. (a), (b). Pub. L. 96–399 inserted references to Indian tribes.

1978—Subsec. (c). Pub. L. 95–557 inserted ''There are also authorized to be appropriated for the fiscal year ending September 30, 1979, not to exceed $5,000,000 for the purposes of subsection (a) of this section and not to exceed $5,000,000 for the purposes of subsection (b) of this section.''

§ 1490f. Loans and insurance of loans for condominium housing in rural areas

(a) Individual loans and insurance of loans to low or moderate income persons or families for purchase of units; terms and conditions

The Secretary is authorized, upon such terms and conditions (substantially identical insofar as may be feasible with those specified in section 1472 of this title) as he may prescribe, to make loans to persons and families of low or moderate income, and to insure and make commitments to insure loans made to persons and families of low or moderate income, to assist them in purchasing dwelling units in condominiums located in rural areas.

(b) Scope of individual loans and insurance of loans; condominium requirements

Any loan made or insured under subsection (a) of this section shall cover a one-family dwelling unit in a condominium, and shall be subject to such provisions as the Secretary determines to be necessary for the maintenance of the common areas and facilities of the condominium project and to such additional requirements as the Secretary deems appropriate for the protection of the consumer.

(c) Blanket loans and insurance of loans; terms and conditions; certification by borrower of future ownership of multifamily project; maximum amount of principal obligation

In addition to individual loans made or insured under subsection (a) of this section the Secretary is authorized, upon such terms and conditions (substantially identical insofar as may be feasible with those specified in section 1485 of this title) as he may prescribe, to make or insure blanket loans to a borrower who shall certify to the Secretary, as a condition of obtaining such loan or insurance, that upon completion of the multifamily project the ownership of the project will be committed to a plan of family unit ownership under which (1) each family unit will be eligible for a loan or insurance

under subsection (a) of this section, and (2) the individual dwelling units in the project will be sold only on a condominium basis and only to purchasers eligible for a loan or insurance under subsection (a) of this section. The principal obligation of any blanket loan made or insured under this subsection shall in no case exceed the sum of the individual amounts of the loans which could be made or insured with respect to the individual dwelling units in the project under subsection (a) of this section.

(d) "Condominium" defined

As used in this section, the term ''condominium'' means a multi-unit housing project which is subject to a plan of family unit ownership acceptable to the Secretary under which each dwelling unit is individually owned and each such owner holds an undivided interest in the common areas and facilities which serve the project.

(July 15, 1949, ch. 338, title V, § 526, as added Pub. L. 93–383, title V, § 516(a), Aug. 22, 1974, 88 Stat. 698; amended Pub. L. 98–181, title V, § 519(a), Nov. 30, 1983, 97 Stat. 1249; Pub. L. 100–242, title III, § 316(f), Feb. 5, 1988, 101 Stat. 1898.)

AMENDMENTS

1988—Subsecs. (a), (c). Pub. L. 100–242 struck out ''and'' after ''is authorized,''.

1983—Subsecs. (a), (c). Pub. L. 98–181 struck out ''in his discretion'' after ''Secretary is authorized,''.

§ 1490g. Repealed. Pub. L. 98–181, title V, § 503(c), Nov. 30, 1983, 97 Stat. 1241

Section, act July 15, 1949, ch. 338, title V, § 527, as added Aug. 22, 1974, Pub. L. 93–383, title V, § 518, 88 Stat. 699, defined ''housing'' as including mobile homes and mobile home sites, and authorized the Secretary to prescribe property standards for mobile homes financed under this subchapter.

§ 1490h. Taxation of property held by Secretary

All property subject to a lien held by the United States or the title to which is acquired or held by the Secretary under this subchapter other than property used for administrative purposes shall be subject to taxation by a State, Commonwealth, territory, possession, district, and local political subdivisions in the same manner and to the same extent as other property is taxed: *Provided*, That no tax shall be imposed or collected on or with respect to any instrument if the tax is based on—

(1) the value of any notes or mortgages or other lien instruments held by or transferred to the Secretary;

(2) any notes or lien instruments administered under this subchapter which are made, assigned, or held by a person otherwise liable for such tax; or

(3) the value of any property conveyed or transferred to the Secretary, whether as a tax on the instrument, the privilege of conveying or transferring, or the recordation thereof; nor shall the failure to pay or collect any such tax be a ground for refusal to record or file such instruments, or for failure to impart notice, or prevent the enforcement of its provisions in any State or Federal court.

(July 15, 1949, ch. 338, title V, § 528, as added Pub. L. 95–128, title V, § 512(a), Oct. 12, 1977, 91 Stat. 1142; amended Pub. L. 98–479, title II, § 204(c)(3), Oct. 17, 1984, 98 Stat. 2233.)

AMENDMENTS

1984—Pub. L. 98–479 substituted ''property held by Secretary'' for ''Farmers Home Administration-held property'' in section catchline.

EFFECTIVE DATE

Section 512(c) of Pub. L. 95–128 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective as of January 1, 1977.''

REFUND OF TAX PAYMENTS PRIOR TO OCTOBER 12, 1977, BARRED; FEDERAL OFFICERS OR EMPLOYEES NOT LIABLE FOR SUCH PAYMENTS

Section 512(b) of Pub. L. 95–128 provided that: ''Notwithstanding any other provision of law, no State, Commonwealth, territory, possession, district, or local political subdivision which has received, prior to the date of enactment of this Act [Oct. 12, 1977], tax payments from the Department of Agriculture based on property held by the Farmers Home Administration shall be liable for, or be obligated to refund, the amount of any such payment, which, if it had been made after the date of enactment of this Act, would have been authorized by the provisions of section 528 of the Housing Act of 1949 [this section], and no officer or employee of the United States shall incur or be under any liability by reason of having made or authorized any such payments.''

§ 1490i. Repealed. Pub. L. 98–181, title V, § 506(b), Nov. 30, 1983, 97 Stat. 1242

Section, act July 15, 1949, ch. 338, title V, § 529, as added Nov. 9, 1978, Pub. L. 95–619, title II, § 252(b), 92 Stat. 3236, required the Secretary of Agriculture to promote the use of energy saving techniques through the establishment of minimum property standards for newly constructed residential housing.

§ 1490j. Conditions on rent increases in projects receiving assistance under other provisions of law

The Secretary may not approve any increase in rental payments, with respect to units in which the tenants are paying rentals in excess of 30 per centum of their incomes, in any project which is assisted under section 1484, 1485, or 1487 of this title and under section 1490a(a)(1)(B) of this title unless the project owner is receiving, or has applied for (within the most recent period of 180 days prior to the effective date of such increase), assistance payments with respect to such project under section 1490a(a)(2)(A) or 1490a(a)(5) of this title or section 1437f of this title.

(July 15, 1949, ch. 338, title V, § 530, as added Pub. L. 96–399, title V, § 509, Oct. 8, 1980, 94 Stat. 1670; amended Pub. L. 98–181, title V, § 517(d), Nov. 30, 1983, 97 Stat. 1248; Pub. L. 105–276, title V, § 599C(e)(2)(G), Oct. 21, 1998, 112 Stat. 2663.)

AMENDMENTS

1998—Pub. L. 105–276 substituted ''assistance payments with respect to such project under section 1490a(a)(2)(A) or 1490a(a)(5) of this title'' for ''rental assistance payments with respect to such project under section 1490a(a)(2)(A) of this title''.

1983—Pub. L. 98–181 substituted ''30 per centum'' for ''25 per centum''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 effective six months after Nov. 30, 1983, or upon the earlier promulgation of

implementing regulations, see section 517(f) of Pub. L. 98–181, set out as a note under section 1490a of this title.

§ 1490k. FHA insurance

The Secretary is authorized to act as an agent of the Secretary of Housing and Urban Development to recommend insurance of any mortgage meeting the requirements of section 1709 of title 12.

(July 15, 1949, ch. 338, title V, § 531, as added Pub. L. 98–181, title V, § 520, Nov. 30, 1983, 97 Stat. 1249.)

§ 1490*l*. Processing of applications

(a) Priority

Except as otherwise provided in subsection (c) of this section, the Secretary shall, in making assistance available under this subchapter, give a priority to applications submitted by—

(1) persons and families that have the greatest housing assistance needs because of their low income and their residing in inadequate dwellings;

(2) applicants applying for assistance for projects that will serve such persons and families; and

(3) applicants residing in areas which are the most rural in character.

(b) Preliminary reservation of assistance at time of initial approval of project

In making available the assistance authorized by section 1483 of this title and section 1490a(a) of this title with respect to projects involving insured and guaranteed loans and interest credits and rental assistance payments, the Secretary shall process and approve requests for such assistance in a manner that provides for a preliminary reservation of assistance at the time of initial approval of the project.

(c) Prioritization of section 1485 housing assistance

(1) In general

The Secretary shall make assistance under section 1485 of this title available pursuant to an objective procedure established by the Secretary, under which the Secretary shall identify counties and communities having the greatest need for such assistance and designate such counties and communities to receive such assistance.

(2) Objective measures

The Secretary shall use the following objective measures to determine the need for rental housing assistance under paragraph (1):

(A) The incidence of poverty.

(B) The lack of affordable housing and the existence of substandard housing.

(C) The lack of mortgage credit.

(D) The rural characteristics of the location.

(E) Other factors as determined by the Secretary, demonstrating the need for affordable housing.

(3) Information

In administering this subsection, the Secretary shall use information from the most recent decennial census of the United States, relevant comprehensive affordable housing strategies under section 12705 of this title, and other reliable sources obtained by the Secretary which demonstrate the need for affordable housing in rural areas.

(4) Designation

A designation under this subsection shall not be effective for a period of more than 3 years, but may be renewed by the Secretary in accordance with the procedure set forth in this subsection. The Secretary shall take such other reasonable actions as the Secretary considers to be appropriate to notify the public of such designations.

(July 15, 1949, ch. 338, title V, § 532, as added Pub. L. 98–181, title V, § 521, Nov. 30, 1983, 97 Stat. 1250; amended Pub. L. 104–180, title VII, § 734(f), Aug. 6, 1996, 110 Stat. 1604.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–180, § 734(f)(1), substituted ''Except as otherwise provided in subsection (c) of this section, the Secretary'' for ''The Secretary'' in introductory provisions.

Subsec. (c). Pub. L. 104–180, § 734(f)(2), added subsec. (c).

§ 1490m. Housing preservation grants

(a) Statement of purposes

The purpose of this section is to authorize the Secretary to make grants to eligible grantees including private nonprofit organizations, Indian tribes, general units of local government, counties, States, and consortia of other eligible grantees, in order to—

(1) rehabilitate or replace single family housing in rural areas which is owned by low- and very low-income persons and families, and

(2) rehabilitate or replace rental properties or cooperative housing which has a membership resale structure that enables the cooperative to maintain affordability for persons of low income in rural areas serving low- and very low-income occupants.

The Secretary may also provide tenant-based assistance as provided under section 1437f of this title or section 1490r of this title upon the request of grantees in order to minimize the displacement of very low-income tenants residing in units rehabilitated or replaced with assistance under this section.

(b) Mandatory program requirements

Preservation programs assisted under this section shall—

(1) be used to provide loans or grants to owners of single family housing in order to cover the cost of repairs and improvements;

(2) be used to provide loans or grants, not to exceed $15,000 per unit, to owners of single family housing to replace existing housing if repair or rehabilitation of the housing is determined by the Secretary not to be practicable and the owner of the housing is unable to afford a loan under section 1472 of this title for replacement housing;

(3) be used to provide interest reduction payment;

(4) be used to provide loans or grants to owners of rental housing, except that rental reha-

bilitation or replacement assistance provided under this subsection for any structure shall not exceed 75 per centum of the total costs associated with the rehabilitation or replacement of that structure;

(5) be used to provide other comparable assistance that the Secretary deems appropriate to carry out the purpose of this section, designed to reduce the costs of such repair, rehabilitation, and replacement in order to make such housing affordable by persons of low income and, to the extent feasible, by persons and families whose incomes do not exceed 50 per centum of the area median income;

(6) benefit low- and very low-income persons and families in rural areas, without causing the displacement of current residents; and

(7) raise health and safety conditions to meet those specified in section 1479(a) of this title.

(c) Allocation formula; transfer of funds; maximum amounts

(1) The Secretary shall allocate grant funds under this section for use in each State on the basis of a formula contained in a regulation prescribed by the Secretary using the average of the ratios between—

(A) the population of the rural areas in that State and the population of the rural areas of all States;

(B) the extent of poverty in the rural areas in that State and the extent of poverty in the rural areas of all States; and

(C) the extent of substandard housing in the rural areas of that State and the extent of substandard housing in the rural areas of all States.

Any funds which are allocated to a State but uncommitted to grantees will be transferred to the State office of the Farmers Home Administration in a timely manner and be used for authorized rehabilitation activities under section 1474 of this title. Funds obligated, but subsequently unspent and deobligated, may remain available, to the extent provided in appropriations Acts, for use as housing preservation grants in ensuing fiscal years.

(2) Unless there is only one eligible grantee in a State, a single grantee may not receive more than 50 per centum of a State's allocation.

(d) Statement of activity by grantee; submission; contents; availability; consultations; evaluation by Secretary; criteria applicable; maximum amounts

(1) Eligible grantees may submit a statement of activity to the Secretary at the time specified by the program administrator, containing a description of its proposed preservation program. The statement shall consist of the activities each entity proposes to undertake for the fiscal year, and the projected progress in carrying out those activities. The statement of activities shall be made available to the public for comment.

(2) In preparing such statement, the grantee shall consult with and consider the views of appropriate local officials.

(3) The Secretary shall evaluate the merits of each statement on the basis of such criteria as the Secretary shall prescribe, including the extent—

(A) to which the repair, rehabilitation, and replacement activities will assist persons of low income who lack adequate shelter, with priority given to applications assisting the maximum number of persons and families whose incomes do not exceed 50 per centum of the area median income;

(B) to which the repair, rehabilitation, and replacement activities include the participation of other public or private organizations in providing assistance, in addition to the assistance provided under this section, in order to lower the costs of such activities or provide for the leveraging of available funds to supplement the rural housing preservation grant program;

(C) to which such activities will be undertaken in rural areas having populations below 10,000 or in remote parts of other rural areas;

(D) to which the repair, rehabilitation, and replacement activities may be expected to result in achieving the greatest degree of repair or improvement for the least cost per unit or dwelling;

(E) to which the program would minimize displacement;

(F) to which the program would alleviate overcrowding in rural residences inhabited by low- and very low-income persons and families;

(G) to which the program would minimize the use of grant funds for administrative purposes; and

(H) to which the owner agrees to meet the requirement of subsection (e)(1)(B)(iv) of this section for a period longer than 5 years;

and shall assess the demonstrated capacity of the grantee to carry out the program as well as the financial feasibility of the program.

(4) The amount of assistance provided under this section with respect to any housing shall be the least amount that the Secretary determines is necessary to provide, through the repair and rehabilitation, or replacement, of such housing, decent housing of modest design that is affordable for persons of low income.

(5) A grantee may use housing preservation grant funds under this section for replacement housing only after providing documentation to the Secretary that—

(A) the existing housing is in such poor condition that rehabilitation is not economically feasible;

(B) the owner of the housing lacks the income or repayment ability necessary to qualify for a loan under section 1472 of this title; and

(C) the grantee will extend assistance to the owner of the housing under terms that the owner can afford.

(e) Limitations on assistance; failure to implement required agreement

(1) Assistance under this section may be provided with respect to rental or cooperative housing only if—

(A) the owner has entered into such agreements with the Secretary as may be necessary to assure compliance with the requirements of

this section, to assure the financial feasibility of such housing, and to carry out the other provisions of this section;

(B) the owner agrees—

(i) to pass on to the tenants any reduction in the debt service payments resulting from the assistance provided under this section;

(ii) not to convert the units to condominium ownership (or in the case of a cooperative, to condominium ownership or any form of cooperative ownership not eligible for assistance under this section);

(iii) not to refuse to rent a dwelling unit in the structure to a family solely because the family is receiving or is eligible to receive assistance under any Federal, State, or local housing assistance program; and

(iv) that the units repaired and rehabilitated with such assistance will be occupied, or available for occupancy, by persons of low income;

during the 5-year period beginning on the date on which the units in the housing are available for occupancy;

(C) the unit of general local government or nonprofit organization that receives the assistance certifies to the satisfaction of the Secretary that the assistance will be made available in conformity with Public Law 88–352 [42 U.S.C. 2000a et seq.] and Public Law 90–284;

(D) the owner agrees to enter into and abide by written leases with the tenants, which leases shall provide that tenants may be evicted only for good cause; and

(E) the unit of general local government or nonprofit organization will agree to supervise repairs and rehabilitation and will agree to have a disinterested party inspect such repairs and rehabilitation.

(2) Assistance under this section provided with respect to any housing other than rental or cooperative housing may be provided only if the owner complies with the requirements set forth in subparagraph (E) of paragraph (1) and any other requirements established by the Secretary to carry out the purpose of this section.

(3)(A) The Secretary shall provide that if the owner or his or her successors in interest fail to carry out the agreements described in subparagraphs (A) and (B) of paragraph (1) during the applicable period, the owner or his or her successors in interest shall make a payment to the Secretary of an amount that equals the total amount of assistance provided under this section with respect to such housing, plus interest thereon (without compounding), for each year and any fraction thereof that the assistance was outstanding, at a rate determined by the Secretary taking into account the average yield on outstanding marketable long-term obligations of the United States during the month preceding the date on which the assistance was made available.

(B) Notwithstanding any other provision of law, any assistance provided under this section shall constitute a debt, which is payable in the case of any failure to carry out the agreements described in subparagraphs (A), (B), and (C) of paragraph (1), and shall be secured by the security instruments provided by the owner to the Secretary.

(f) Advance payments of assistance

The Secretary shall provide for such advance payments of assistance under this section as the Secretary determines is necessary to effectively carry out the provisions of this section.

(g) Annual review and audit by Secretary of activities; adjustment, etc., of resources; reallocation of amounts

The Secretary shall, at least on an annual basis, make such review and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner and in accordance with the requirements of this section, the degree to which the activities assisted benefitted low income families or persons and very low-income families or persons who lacked adequate housing, and whether the grantee has a continuing capacity to carry out the activities in a timely manner. The Secretary may adjust, reduce, or withdraw resources made available to grantees receiving assistance under this section, or take other action as appropriate in accordance with the findings of these reviews and audits. Any amounts which become available as a result of actions under this subsection shall be reallocated as housing preservation grants to such grantee or grantees as the Secretary may determine.

(h) Rules and regulations; delegation of authority

(1) The Secretary is authorized to prescribe such rules and regulations and make such delegations of authority as he deems necessary to carry out this section within 90 days after November 30, 1983.

(2) The Secretary shall, not later than the expiration of the 30-day period following February 5, 1988, issue regulations to carry out the program of grants under subsection (a)(2) of this section.

(i) National historic preservation objectives affected by rehabilitation activities; establishment of procedures for determining consonant purposes and measures

The Secretary shall establish procedures which support national historic preservation objectives and which assure that, if any rehabilitation proposed to be assisted under this section would affect property that is included or is eligible for inclusion on the National Register of Historic Places, such activity shall not be undertaken unless (1) it will reasonably meet the standards for rehabilitation issued by the Secretary of the Interior and the appropriate State historic preservation officer is afforded the opportunity to comment on the specific rehabilitation plan, or (2) the Advisory Council on Historic Preservation is afforded an opportunity to comment on cases for which the recipient of assistance, in consultation with the State historic preservation officer, determines that the proposed rehabilitation activity cannot reasonably meet such standards or would adversely affect historic property as defined therein.

(July 15, 1949, ch. 338, title V, § 533, as added Pub. L. 98–181, title V, § 522, Nov. 30, 1983, 97 Stat. 1250; amended Pub. L. 100–242, title III, §§ 310, 316(g),

Feb. 5, 1988, 101 Stat. 1896, 1898; Pub. L. 101–625, title VII, § 717, Nov. 28, 1990, 104 Stat. 4296; Pub. L. 102–550, title VII, §§ 706(1), 711, Oct. 28, 1992, 106 Stat. 3835, 3840; Pub. L. 105–276, title V, § 550(e), Oct. 21, 1998, 112 Stat. 2610; Pub. L. 105–362, title I, § 101(h), Nov. 10, 1998, 112 Stat. 3281.)

REFERENCES IN TEXT

Public Law 88–352, referred to in subsec. (e)(1)(C), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Public Law 90–284, referred to in subsec. (e)(1)(C), is Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, as amended, known as the Civil Rights Act of 1968. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–276 substituted ''tenant-based assistance as provided under section 1437f of this title'' for ''assistance payments as provided by section 1437f(*o*) of this title'' in concluding provisions.

Subsec. (j). Pub. L. 105–362 struck out subsec. (j) which read as follows: ''Not later than 180 days after the close of each fiscal year in which assistance under this section is furnished, the Secretary shall submit to the Congress a report which shall contain—

''(1) a description of the progress made in accomplishing the objectives of this section; and

''(2) a summary of the use of such funds during the preceding year.

The Secretary shall require grantees under this section to submit to him such reports, and other information as may be necessary in order for the Secretary to make the report required by this subsection.''

1992—Subsec. (a). Pub. L. 102–550, §§ 706(1), 711(1)(B), in concluding provisions, inserted reference to section 1490r of this title and ''or replaced'' after ''rehabilitated''.

Subsec. (a)(1), (2). Pub. L. 102–550, § 711(1)(A), inserted ''or replace'' after ''rehabilitate''.

Subsec. (b). Pub. L. 102–550, § 711(2)(A), substituted ''Preservation programs'' for ''Rehabilitation programs'' in introductory provisions.

Subsec. (b)(2). Pub. L. 102–550, § 711(2)(E), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 102–550, § 711(2)(D), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Pub. L. 102–550, § 711(2)(B), inserted ''or replacement'' after ''rehabilitation'' in two places.

Subsec. (b)(4). Pub. L. 102–550, § 711(2)(D), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Pub. L. 102–550, § 711(2)(C), substituted ''repair, rehabilitation, and replacement'' for ''repair and rehabilitation''.

Subsec. (b)(5) to (7). Pub. L. 102–550, § 711(2)(D), redesignated pars. (4) to (6) as (5) to (7), respectively.

Subsec. (c)(1). Pub. L. 102–550, § 711(3), substituted ''grant funds under this section'' for ''rehabilitation grant funds'' in introductory provisions.

Subsec. (d)(1). Pub. L. 102–550, § 711(4)(A), substituted ''preservation program'' for ''rehabilitation program''.

Subsec. (d)(3)(A), (B), (D). Pub. L. 102–550, § 711(4)(B), substituted ''repair, rehabilitation, and replacement'' for ''repair and rehabilitation''.

Subsec. (d)(4). Pub. L. 102–550, § 711(4)(C), inserted '', or replacement,'' after ''rehabilitation''.

Subsec. (d)(5). Pub. L. 102–550, § 711(4)(D), added par. (5).

1990—Subsec. (c)(1). Pub. L. 101–625, § 717(a), inserted at end ''Funds obligated, but subsequently unspent and deobligated, may remain available, to the extent provided in appropriations Acts, for use as housing preservation grants in ensuing fiscal years.''

Subsec. (g). Pub. L. 101–625, § 717(b), substituted last sentence for ''Any amounts which became available as a result of actions under this subsection shall be reallocated in the year in which they become available to such grantee or grantees as the Secretary may determine.''

1988—Subsec. (e)(1)(B)(iii). Pub. L. 100–242, § 316(g)(1), inserted ''to'' before ''refuse''.

Subsec. (g). Pub. L. 100–242, § 316(g)(2), substituted ''low income families or persons and very low-income families or persons'' for ''persons of low income and very low-income''.

Subsec. (h). Pub. L. 100–242, § 310, designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

RURAL RENTAL REHABILITATION DEMONSTRATION

Pub. L. 100–242, title III, § 311, Feb. 5, 1988, 101 Stat. 1896, as amended by Pub. L. 100–628, title X, § 1044, Nov. 7, 1988, 102 Stat. 3273; Pub. L. 101–137, § 7(d), Nov. 3, 1989, 103 Stat. 826; Pub. L. 101–144, title II, Nov. 9, 1989, 103 Stat. 846; Pub. L. 105–362, title VII, § 701(f), Nov. 10, 1998, 112 Stat. 3287, directed Secretary of Housing and Urban Development to carry out a rural rental rehabilitation demonstration program, provided funding for program, and terminated authority for such program after Sept. 30, 1991.

§ 1490n. Review of rules and regulations

(a) Publication for public comment in Federal Register

Notwithstanding any other provision of law, no rule or regulation pursuant to this subchapter may become effective unless it has first been published for public comment in the Federal Register for at least 60 days, and published in final form for at least 30 days.

(b) Transmittal to Congressional committee members prior to publication in Federal Register

The Secretary shall transmit to the chairman and ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House, all rules and regulations at least 15 days before they are sent to the Federal Register for purposes of subsection (a) of this section.

(c) Rules and regulations issued on emergency basis

The provisions of this section shall not apply to a rule or regulation which the Secretary certifies is issued on an emergency basis.

(d) Regulatory authority

The Secretary shall include with each rule or regulation required to be transmitted to the Committees under this section a detailed summary of all changes required by the Office of Management and Budget that prohibit, modify, postpone, or disapprove such rule or regulation in whole or part.

(July 15, 1949, ch. 338, title V, § 534, as added Pub. L. 98–181, title V, § 523, Nov. 30, 1983, 97 Stat. 1254; amended Pub. L. 100–242, title V, § 563(b), Feb. 5, 1988, 101 Stat. 1944.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–242 added subsec. (d).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 1490*o*. Reciprocity in approval of housing subdivisions among Federal agencies

(a) Administrative approval of housing subdivisions

The Secretary of Agriculture, the Secretary of Housing and Urban Development, and the Secretary of Veterans Affairs shall each accept an administrative approval of any housing subdivision made by any of the others so that not later than January 1, 1984, there is total reciprocity for housing subdivision approvals among the agencies which they head.

(b) Certificates of reasonable value for one or more properties as constituting administrative approval of subdivision

For purposes of complying with subsection (a) of this section, the Secretary of Housing and Urban Development shall consider the issuance by the Secretary of Veterans Affairs of a certificate of reasonable value for 1 or more properties in a subdivision to be an administrative approval for the entire subdivision. This subsection shall not apply after September 30, 1994.

(c) Report to Congress

Before the expiration of the period referred to in subsection (b) of this section, the Secretary of Housing and Urban Development shall report to the Congress on housing subdivision approval policies and practices, if any, of the Departments of Housing and Urban Development and Agriculture and the Department of Veterans Affairs. The report shall focus on the administration of environmental laws in connection with any such policies and practices, and shall recommend any statutory, regulatory, and administrative changes needed to achieve total reciprocity for such housing subdivision approvals. The Secretary of Housing and Urban Development shall consult with the foregoing agencies, and such other agencies as the Secretary selects, in preparing the report.

(d) Approval by local, county, or State agencies

For loans made under this subchapter, the Secretary may accept subdivisions that have been approved by local, county, or State agencies.

(July 15, 1949, ch. 338, title V, § 535, as added Pub. L. 98–181, title V, § 523, Nov. 30, 1983, 97 Stat. 1254; amended Pub. L. 100–628, title X, § 1067, Nov. 7, 1988, 102 Stat. 3276; Pub. L. 101–235, title III, § 303, Dec. 15, 1989, 103 Stat. 2044; Pub. L. 101–625, title VII, § 718(a), Nov. 28, 1990, 104 Stat. 4297; Pub. L. 102–54, § 13(q)(5), June 13, 1991, 105 Stat. 280; Pub. L. 102–550, title VII, § 716(a), (c), Oct. 28, 1992, 106 Stat. 3842; Pub. L. 103–120, § 8(a), Oct. 27, 1993, 107 Stat. 1151.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–120 substituted ''September 30, 1994'' for ''June 15, 1993''.

1992—Subsec. (b). Pub. L. 102–550, § 716(a), inserted last sentence and struck out former last sentence which read as follows: ''This subsection shall not apply after the expiration of the 18-month period beginning on December 15, 1989.''

Subsec. (d). Pub. L. 102–550, § 716(c), added subsec. (d).

1991—Subsecs. (a), (b). Pub. L. 102–54, § 13(q)(5)(A), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (c). Pub. L. 102–54, § 13(q)(5)(B), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (b). Pub. L. 101–625 substituted ''18-month period'' for ''6-month period''.

1989—Subsec. (b). Pub. L. 101–235 substituted ''6-month period beginning on December 15, 1989'' for ''1-year period beginning on November 7, 1988''.

1988—Pub. L. 100–628 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

RETROACTIVITY OF APPROVAL OF HOUSING SUBDIVISIONS AMONG FEDERAL AGENCIES

Section 8(b) of Pub. L. 103–120 provided that: ''An administrative approval of a housing subdivision made after June 15, 1993, and before the date of the enactment of this Act [Oct. 27, 1993] is approved and shall be considered to have been lawfully made, but only if otherwise made in accordance with the provisions of section 535(b) of the Housing Act of 1949 [42 U.S.C. 1490*o*(b)].''

Section 716(b) of Pub. L. 102–550 provided that: ''Any administrative approval of any housing subdivision made after the expiration of the 18-month period beginning on the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989 [Dec. 15, 1989] and before the date of the enactment of this Act [Oct. 28, 1992] is approved and shall be considered to have been lawfully made, but only if otherwise made in accordance with the provisions of section 535(b) of the Housing Act of 1949 [42 U.S.C. 1490*o*(b)].''

Section 718(b) of Pub. L. 101–625 provided that: ''Any administrative approval of any housing subdivision made after the expiration of the 6-month period beginning on the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989 [Dec. 15, 1989] and before the date of the enactment of this Act [Nov. 28, 1990] is hereby approved and shall be considered to have been lawfully made, but only if otherwise made in accordance with the provisions of section 535(b) of the Housing Act of 1949 [42 U.S.C. 1490*o*(b)].''

§ 1490p. Accountability

(a) Notice regarding assistance

(1) Publication of notice of availability

The Secretary shall publish in the Federal Register notice of the availability of any assistance under any program or discretionary fund administered by the Secretary under this subchapter.

(2) Publication of application procedures

The Secretary shall publish in the Federal Register a description of the form and procedures by which application for the assistance may be made, and any deadlines relating to the award or allocation of the assistance. Such

description shall be sufficient to enable any eligible applicant to apply for such assistance.

(3) Publication of selection criteria

Not less than 30 days before any deadline by which applications or requests for assistance under any program or discretionary fund administered by the Secretary must be submitted, the Secretary shall publish in the Federal Register the criteria by which selection for the assistance will be made. Such criteria shall include any objective measures of housing need, project merit, or efficient use of resources that the Secretary determines are appropriate and consistent with the statute under which the assistance is made available.

(4) Documentation of decisions

(A) The Secretary shall award or allocate assistance only in response to a written application in a form approved in advance by the Secretary, except where other award or allocation procedures are specified in statute.

(B) The Secretary shall ensure that documentation and other information regarding each application for assistance is sufficient to indicate the basis on which any award or allocation was made or denied. The preceding sentence shall apply to—

(i) any application for an award or allocation of assistance made by the Secretary to a State, unit of general local government, or other recipient of assistance, and

(ii) any application for a subsequent award or allocation of such assistance by such State, unit of general local government or other recipient.

(C) The Secretary shall ensure that each application and all related documentation and other information referred to in subparagraph (B) is readily available for public inspection for a period of not less than 10 years, beginning not less than 30 days following the date on which the award or allocation is made.

(5) Emergency exception

The Secretary may waive the requirements of paragraphs (1), (2), and (3) if the Secretary determines that the waiver is required for adequate response to an emergency. Not less than 30 days after providing a waiver under the preceding sentence, the Secretary shall publish in the Federal Register the Secretary's reasons for so doing.

(b) Disclosures by applicants

The Secretary shall require the disclosure of information with respect to any application for assistance under this subchapter submitted by any applicant who has received or, in the determination of the Secretary, can reasonably be expected to receive assistance under this subchapter in excess of $200,000 in the aggregate during any fiscal year. Such information shall include the following:

(1) Other government assistance

Information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to the project or activities for which the applicant is seeking assistance under this subchapter. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

(2) Interested parties

The name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the application for assistance under this subchapter or the planning, development, or implementation of the project or activity. For purposes of this paragraph, residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

(3) Expected sources and uses

A report satisfactory to the Secretary of the expected sources and uses of funds that are to be made available for the project or activity.

(c) Updating of disclosure

During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required under the previous subsection within 30 days of any substantial change.

(d) Repealed. Pub. L. 104–65, § 11(b)(2), Dec. 19, 1995, 109 Stat. 701

(e) Remedies and penalties

(1) Administrative remedies

If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (b), (c), or (d) this[1] section has occurred, the Secretary shall—

(A) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate actions; and

(B) in the case of a selection that has been made, determine whether to—

(i) void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

(ii) impose sanctions upon the violator, including debarment, subject to review and determination on the record after opportunity for a hearing;

(iii) recapture any funds that have been disbursed;

(iv) permit the violating applicant selected to continue to participate in the program; or

(v) take any other actions that the Secretary considers appropriate.

The Secretary shall publish in the Federal Register a descriptive statement of each determination made and action taken under this paragraph.

[1] So in original. Probably should be "of this".

(2) Civil penalties

Whoever violates any section[2] of this section shall be subject to the imposition of a civil penalty in a civil action brought by the United States in an appropriate district court of the United States. A civil penalty under this paragraph may not exceed—

(A) $100,000 in the case of an individual; or

(B) $1,000,000 in the case of an applicant other than an individual.

(3) Deposit of penalties in insurance funds

Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the Rural Housing Insurance Fund.

(4) Nonexclusiveness of remedies

This subsection may not be construed to limit the applicability of any requirements, sanctions, penalties, or remedies established under any other law. The Secretary shall not be relieved of any obligation to carry out the requirements of this section because such other requirements, sanctions, penalties, or remedies apply.

(f) Limitation of assistance

The Secretary shall certify that assistance provided by the Secretary to any housing project shall not be more than is necessary to provide affordable housing after taking account of assistance from all Federal, State, and local sources. The Secretary shall adjust the amount of assistance provided to an applicant to compensate for any changes reported under subsection (c) of this section.

(g) Regulations

Not less than 180 days following December 15, 1989, the Secretary shall promulgate regulations to implement this section.

(h) "Assistance" defined

For purposes of this section, the term ''assistance'' means any housing grant, loan, guarantee, insurance, rebate, subsidy, tax credit benefit, or other form of direct or indirect assistance, for the original construction or development of the project.

(i) Report by Secretary

The Secretary shall submit to the Congress, not later than 180 days following December 15, 1989, a report describing actions taken to carry out this section, including actions to inform and educate officers and employees of the Department of Agriculture regarding the provisions of this section.

(July 15, 1949, ch. 338, title V, § 536, as added Pub. L. 101–235, title IV, § 401(a), Dec. 15, 1989, 103 Stat. 2045; amended Pub. L. 101–625, title VII, § 719(a), Nov. 28, 1990, 104 Stat. 4297; Pub. L. 104–65, § 11(b)(2), Dec. 19, 1995, 109 Stat. 701.)

CODIFICATION

December 15, 1989, referred to in subsec. (g), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 101–235, which enacted this section, to reflect the probable intent of Congress.

[2] So in original. Probably should be ''subsection''.

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–65 struck out subsec. (d) which related to regulation of lobbyists and consultants.

1990—Subsec. (h). Pub. L. 101–625 inserted before period at end '', for the original construction or development of the project''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 104–65 effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104–65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

EFFECTIVE DATE

Section 401(b) of Pub. L. 101–235 provided that: ''Section 536 of the Housing Act of 1949 [this section], as added by subsection (a), shall take effect on the effective date of regulations implementing such section.''

§ 1490p–1. Office of Rural Housing Preservation

(a) Establishment

There is established within the Farmers Home Administration an Office of Rental Housing Preservation (hereafter in this section referred to as the ''Office''). The Office shall be headed by a Director designated by the Secretary of Agriculture.

(b) Purposes

The purposes of the Office are:

(1) to review and process applications under section 1472(c) of this title and section 1485(t) of this title related to the preservation of rural rental housing;

(2) to provide technical or financial assistance to any other projects needing such assistance;

(3) to coordinate and direct all other activities related to the preservation of rural housing; and

(4) to monitor compliance of projects prepaid or receiving incentives under the Housing Act of 1949.

(July 15, 1949, ch. 338, title V, § 537, as added Pub. L. 102–550, title VII, § 712(c), Oct. 28, 1992, 106 Stat. 3841.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsec. (b)(4), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

§ 1490p–2. Loan guarantees for multifamily rental housing in rural areas

(a) Authority

The Secretary may make commitments to guarantee eligible loans for the development costs of eligible housing and related facilities, and may guarantee such eligible loans, in accordance with this section.

(b) Extent of guarantee

A guarantee made under this section shall guarantee repayment of an amount not exceeding the total of the amount of the unpaid principal and interest of the loan for which the guarantee is made. The liability of the United States under any guarantee under this section shall de-

crease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation.

(c) Eligible borrowers

A loan guaranteed under this section may be made to a nonprofit organization, an agency or body of any State government or political subdivision thereof, an Indian tribe, or a private entity.

(d) Eligible housing

A loan may be guaranteed under this section only if the loan is used for the development costs of housing and related facilities (as such terms are defined in section 1485(e) of this title) that—

(1) consists of 5 or more adequate dwellings;

(2) is available for occupancy only by low or moderate income[1] families or persons, whose incomes at the time of initial occupancy do not exceed 115 percent of the median income of the area, as determined by the Secretary;

(3) will remain available as provided in paragraph (2), according to such binding commitments as the Secretary may require, for the period of the original term of the loan guaranteed, unless the housing is acquired by foreclosure (or instrument in lieu of foreclosure) or the Secretary waives the applicability of such requirement for the loan only after determining, based on objective information, that—

(A) there is no longer a need for low- and moderate-income housing in the market area in which the housing is located;

(B) housing opportunities for low-income households and minorities will not be reduced as a result of the waiver; and

(C) additional Federal assistance will not be necessary as a result of the waiver; and

(4) is located in a rural area.

(e) Eligible lenders

(1) Requirement

A loan may be guaranteed under this section only if the loan is made by a lender that the Secretary determines—

(A) meets the qualifications, and has been approved by the Secretary of Housing and Urban Development, to make loans for multifamily housing that are to be insured under the National Housing Act [12 U.S.C. 1701 et seq.];

(B) meets the qualifications, and has been approved by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, to make loans for multifamily housing that are to be sold to such corporations; or

(C) meets any qualifications that the Secretary may, by regulation, establish for participation of lenders in the loan guarantee program under this section.

(2) Eligibility list and annual audit

The Secretary shall establish a list of eligible lenders and shall annually conduct an audit of each lender included in the list for purposes of determining whether such lender continues to be an eligible lender.

[1] So in original. Probably should be ''low- or moderate-income''.

(f) Loan terms

Each loan guaranteed pursuant to this section shall—

(1) be made for a period of not less than 25 nor greater than 40 years from the date the loan was made and may provide for amortization of the loan over a period of not to exceed 40 years with a final payment of the balance due at the end of the loan term;

(2) involve a rate of interest agreed upon by the borrower and the lender that does not exceed the maximum allowable rate established by the Secretary for purposes of this section and is fixed over the term of the loan;

(3) involve a principal obligation (including initial service charges, appraisal, inspection, and other fees as the Secretary may approve) not to exceed—

(A) in the case of a borrower that is a nonprofit organization or an agency or body of any State or local government, 97 percent of the development costs of the housing and related facilities or the value of the housing and facilities, whichever is less;

(B) in the case of a borrower that is a for-profit entity not referred to in subparagraph (A), 90 percent of the development costs of the housing and related facilities or the value of the housing and facilities, whichever is less; and

(C) in the case of any borrower, for such part of the property as may be attributable to dwelling use, the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act [12 U.S.C. 1713(c)];

(4) be secured by a first mortgage on the housing and related facilities for which the loan is made, or otherwise, as the Secretary may determine necessary to ensure repayment of the obligation; and

(5) for at least 20 percent of the loans made under this section, the Secretary shall provide the borrower with assistance in the form of credits pursuant to section 1490a(a)(1)(B) of this title to the extent necessary to reduce the rate of interest under paragraph (2) to the applicable Federal rate, as such term is used in section 42(i)(2)(D) of title 26.

(g) Guarantee fee

At the time of issuance of a loan guaranteed under this section, the Secretary may collect from the lender a fee equal to not more than 1 percent of the principal obligation of the loan.

(h) Authority for lenders to issue certificates of guarantee

The Secretary may authorize certain eligible lenders to determine whether a loan meets the requirements for guarantee under this section and, subject to the availability of authority to enter into guarantees under this section, execute a firm commitment for a guarantee binding upon the Secretary and issue a certificate of guarantee evidencing a guarantee, without review and approval by the Secretary of the specific loan. The Secretary may establish standards for approving eligible lenders for a delegation of authority under this subsection.

(i) Payment under guarantee

(1) Notice of default

In the event of default by the borrower on a loan guaranteed under this section, the holder of the guarantee certificate for the loan shall provide written notice of the default to the Secretary.

(2) Foreclosure

After receiving notice under paragraph (1) and providing written notice of action under this paragraph to the Secretary, the holder of the guarantee certificate for the loan may initiate foreclosure proceedings for the loan in a court of competent jurisdiction, in accordance with regulations issued by the Secretary, to obtain possession of the security property. After the court issues a final order authorizing foreclosure on the property, the holder of the certificate shall be entitled to payment by the Secretary under the guarantee (in the amount provided under subsection (b) of this section) upon (A) submission to the Secretary of a claim for payment under the guarantee, and (B) assignment to the Secretary of all the claims of the holder of the guarantee against the borrower or others arising out of the loan transaction or foreclosure proceedings, except claims released with the consent of the Secretary.

(3) Assignment by Secretary

After receiving notice under paragraph (1), the Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interests of the United States. Assignment of a loan under this paragraph shall include conveyance to the Secretary of title to the security property, assignment to the Secretary of all rights and interests arising under the loan, and assignment to the Secretary of all claims against the borrower or others arising out of the loan transaction. Upon assignment of a loan under this paragraph, the holder of a guarantee certificate for the loan shall be entitled to payment by the Secretary under the guarantee (in the amount provided under subsection (b) of this section).

(4) Requirements

Before any payment under a guarantee is made under paragraph (2) or (3), the holder of the guarantee certificate shall exhaust all reasonable possibilities of collection on the loan guaranteed. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. The Secretary shall then take such action to collect as the Secretary determines appropriate.

(j) Violation of guarantee requirements by lenders issuing guarantees

(1) Indemnification

If the Secretary determines that a loan guaranteed by an eligible lender pursuant to delegation of authority under subsection (h) of this section was not originated in accordance with the requirements under this section and the Secretary pays a claim under the guarantee for the loan, the Secretary may require the eligible lender authorized under subsection (h) of this section to issue the guarantee certificate for the loan—

(A) to indemnify the Secretary for the loss, if the payment under the guarantee was made within a reasonable period specified by the Secretary; or

(B) to indemnify the Secretary for the loss regardless of when payment under the guarantee was made, if the Secretary determines that fraud or misrepresentation was involved in connection with the origination of the loan.

(2) Termination of authority to issue guarantees

The Secretary may cancel a delegation of authority under subsection (h) of this section to an eligible lender if the Secretary determines that the lender has violated the requirements and procedures for guaranteed loans under this section or for other good cause. Any such cancellation shall be made by giving notice to the eligible lender and shall take effect upon receipt of the notice by the mortgagee or at a later date, as the Secretary may provide. A decision by the Secretary to cancel a delegation shall be final and conclusive and shall not be subject to judicial review.

(k) Refinancing

Any loan guaranteed under this section may be refinanced and extended in accordance with terms and conditions that the Secretary shall prescribe, but in no event for an additional amount or term that exceeds the limitations under subsection (f) of this section.

(*l*) Geographical targeting

(1) Study

The Secretary shall provide for an independent entity to conduct a study to determine the extent to which borrowers in the United States will utilize loan guarantees under this section, the rural areas in the United States in which borrowers can best utilize and most need loans guaranteed under this section, and the rural areas in the United States in which housing of the type eligible for a loan guarantee under this section is most needed by low- and moderate-income families. The Secretary shall require the independent entity conducting the study to submit a report to the Secretary and to the Congress describing the results of the study not later than the expiration of the 90-day period beginning on March 28, 1996.

(2) Targeting

In providing loan guarantees under this section, the Secretary shall establish standards to target and give priority to rural areas in which borrowers can best utilize and most need loans guaranteed under this section, as determined by the Secretary based on the results of the study under paragraph (1) and any other information the Secretary considers appropriate.

(m) Inapplicability of credit-elsewhere test

Section 1471(c) of this title shall not apply to guarantees, or loans guaranteed, under this section.

(n) Tenant protections

The Secretary shall establish standards for the treatment of tenants of housing developed using amounts from a loan guaranteed under this section, which shall incorporate, to the extent applicable, existing standards applicable to tenants of housing developed with loans made under section 1485 of this title. Such standards shall include standards for fair housing and equal opportunity, lease and grievance procedures, and tenant appeals of adverse actions.

(*o*) Housing standards

The standards established under section 1485(m) of this title for housing and related facilities assisted under section 1485 of this title shall apply to housing and related facilities the development costs of which are financed in whole or in part with a loan guaranteed under this section.

(p) Limitation on commitments to guarantee loans

(1) Requirement of appropriations for cost subsidy

The authority of the Secretary to enter into commitments to guarantee loans under this section, and to guarantee loans, shall be effective for each fiscal year only to the extent that appropriations of budget authority to cover the costs (as such term is defined in section 661a of title 2) of the guarantees are made in advance for such fiscal year.

(2) Annual limitation on amount of loan guarantee

In each fiscal year, the Secretary may enter into commitments to guarantee loans under this section only to the extent that the costs of the guarantees entered into in such fiscal year do not exceed such amount as may be provided in appropriation Acts for such fiscal year.

(q) Report

(1) In general

The Secretary shall submit a report to the Congress, not later than the expiration of the 2-year period beginning on March 28, 1996, describing the program under this section for guaranteeing loans.

(2) Contents

The report shall—

(A) describe the types of borrowers providing housing with loans guaranteed under this section, the areas served by the housing provided and the geographical distribution of the housing, the levels of income of the residents of the housing, the number of dwelling units provided, the extent to which borrowers under such loans have obtained other financial assistance for development costs of housing provided with the loans, and the extent to which borrowers under such loans have used low-income housing tax credits provided under section 42 of title 26 in connection with the housing provided with the loans;

(B) analyze the financial viability of the housing provided with loans guaranteed under this section and the need for project-based rental assistance for such housing;

(C) include any recommendations of the Secretary for expanding or improving the program under this section for guaranteeing loans; and

(D) include any other information regarding the program for guaranteeing loans under this section that the Secretary considers appropriate.

(r) Definitions

For purposes of this section, the following definitions shall apply:

(1) The term ''development cost'' has the meaning given the term in section 1485(e) of this title.

(2) The term ''eligible lender'' means a lender determined by the Secretary to meet the requirements of subparagraph (A), (B), (C), or (D) of subsection (e)(1) of this section.

(3) The terms ''housing'' and ''related facilities'' have the meanings given such terms in section 1485(e) of this title.

(4) INDIAN TRIBE.—The term ''Indian tribe'' means—

(A) any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation, as defined by or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450 et seq.); or

(B) any entity established by the governing body of an Indian tribe described in subparagraph (A) for the purpose of financing economic development.

(s) Authorization of appropriations

There are authorized to be appropriated for each fiscal year for costs (as such term is defined in section 661a of title 2) of loan guarantees made under this section such sums as may be necessary for such fiscal year to provide guarantees under this section for eligible loans having an aggregate principal amount of $500,000,000.

(t) Tax-exempt financing

The Secretary may not deny a guarantee under this section on the basis that the interest on the loan or on an obligation supporting the loan for which a guarantee is sought is exempt from inclusion in gross income for purposes of chapter I[2] of title 26.

(u) Fee authority

Any amounts collected by the Secretary pursuant to the fees charged to lenders for loan guarantees issued under this section shall be used to offset costs (as defined by section 661a of

[2] So in original. Probably should be chapter ''1''.

title 2) of loan guarantees made under this section.

(v) Defaults of loans secured by reservation lands

In the event of a default involving a loan to an Indian tribe or tribal corporation made under this section which is secured by an interest in land within such tribe's reservation (as determined by the Secretary of the Interior), including a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act (25 U.S.C. 461 et seq.), the lender shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe. If the lender subsequently proceeds to liquidate the account, the lender shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

(July 15, 1949, ch. 338, title V, § 538, as added and amended Pub. L. 104–120, § 5, Mar. 28, 1996, 110 Stat. 835; Pub. L. 105–86, title VII, § 735(c), Nov. 18, 1997, 111 Stat. 2111; Pub. L. 105–276, title V, § 599C(c), Oct. 21, 1998, 112 Stat. 2661; Pub. L. 106–569, title VII, § 707, Dec. 27, 2000, 114 Stat. 3015.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (e)(1)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (r)(4)(A), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Indian Self-Determination and Education Assistance Act of 1975, referred to in subsec. (r)(4)(A), probably means the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Reorganization Act, referred to in subsec. (v), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, which is classified generally to subchapter V (§ 461 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 461 of Title 25 and Tables.

CODIFICATION

Section is based on section 5(a) of H.R. 1691, One Hundred Fourth Congress, as passed by the House of Representatives on Oct. 30, 1995, which was enacted into law by Pub. L. 104–120.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–569, § 707(1), inserted "an Indian tribe," after "political subdivision thereof,".

Subsec. (f)(1). Pub. L. 106–569, § 707(2), added par. (1) and struck out former par. (1) which read as follows: "provide for complete amortization by periodic payments to be made for a term not to exceed 40 years;".

Subsec. (i)(2). Pub. L. 106–569, § 707(3), substituted "(A) submission to the Secretary of a claim for payment under the guarantee, and (B) assignment" for "(A) conveyance to the Secretary of title to the security property, (B) submission to the Secretary of a claim for payment under the guarantee, and (C) assignment".

Subsec. (*l*). Pub. L. 106–569, § 707(6), (7), redesignated subsec. (m) as (*l*) and struck out heading and text of former subsec. (*l*). Text read as follows: "The borrower under a loan that is guaranteed under this section and under which any portion of the principal obligation or interest remains outstanding may not be relieved of liability with respect to the loan, notwithstanding the transfer of property for which the loan was made."

Subsecs. (m) to (r). Pub. L. 106–569, § 707(7), redesignated subsecs. (n) to (s) as (m) to (r), respectively. Former subsec. (m) redesignated (*l*).

Subsec. (s). Pub. L. 106–569, § 707(7), redesignated subsec. (t) as (s). Former subsec. (s) redesignated (r).

Subsec. (s)(4). Pub. L. 106–569, § 707(4), added par. (4).

Subsec. (t). Pub. L. 106–569, § 707(7), redesignated subsec. (u) as (t). Former subsec. (t) redesignated (s).

Pub. L. 106–569, § 707(5), inserted before period at end "to provide guarantees under this section for eligible loans having an aggregate principal amount of $500,000,000".

Subsec. (u). Pub. L. 106–569, § 707(8), added subsec. (u). Former subsec. (u) redesignated (t).

Subsec. (v). Pub. L. 106–569, § 707(8), added subsec. (v).

1998—Subsec. (t). Pub. L. 105–276, § 599C(c)(1), substituted "each fiscal year" for "fiscal year 1998".

Subsec. (u). Pub. L. 105–276, § 599C(c)(2), added subsec. (u) and struck out heading and text of former subsec. (u). Text read as follows: "A loan may not be guaranteed under this section after September 30, 1998."

1997—Subsec. (q)(2). Pub. L. 105–86, § 735(c)(1), added par. (2) and struck out heading and text of former par. (2). Text read as follows: "In fiscal year 1996, the Secretary may enter into commitments to guarantee loans under this section only to the extent that the costs of the guarantees entered into in such fiscal year do not exceed $1,000,000."

Subsec. (t). Pub. L. 105–86, § 735(c)(2), added subsec. (t) and struck out text of former subsec. (t). Text read as follows: "There is authorized to be appropriated for fiscal year 1996 $1,000,000 for costs (as such term is defined in section 661a of title 2) of loan guarantees made under this section."

Subsec. (u). Pub. L. 105–86, § 735(c)(3), substituted "1998" for "1996".

1996—Subsecs. (m)(1), (r)(1). Pub. L. 104–120, § 5(b), made technical amendment to reference in original act which appears in text as reference to March 28, 1996.

EFFECTIVE DATE

Section to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as an Effective and Termination Dates of 1996 Amendments note under section 1437d of this title.

§ 1490q. Disaster assistance

(a) Authority

(1) In general

Notwithstanding any other provision of this subchapter, in the event of a natural disaster, so declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], the Secretary shall allocate, for assistance under this section to the States affected for use in the counties designated as disaster areas and the counties contiguous to such counties, amounts made available to the Secretary by an appropriations Act for such purpose. Allocations under this section may be made for each of the fiscal years ending during the 3-year period beginning on the declaration of the disaster by the President.

(2) Amount

Subject to the availability of amounts pursuant to appropriations Acts, assistance under

paragraph (1) shall be made in an amount equal to the product of—

(A) the sum of the official State estimate of the number of dwelling units in the counties described in paragraph (1) within the eligible service area of the Farmers Home Administration (or otherwise if the Secretary provides for a waiver under subsection (d) of this section) that are destroyed or seriously damaged; and

(B) 20 percent of the average cost of all dwelling units assisted by the Secretary in the State during the previous 3 years.

(b) Use

The assistance made available under this section may be used for the housing purposes authorized under this subchapter, and the Secretary shall issue such regulations as may be necessary to carry out this section to assure the prompt and expeditious use of such funds for the restoration of decent, safe, and sanitary housing within the areas described in subsection (a)(1) of this section. In implementing this section, the Secretary shall evaluate the natural hazards to which any permanent replacement housing is exposed and shall take appropriate action to mitigate such hazards.

(c) Eligibility

Notwithstanding any other provision of this subchapter, assistance allocated under this section shall be available to units of general local government and their agencies and to local nonprofit organizations, agencies, and corporations for the construction or rehabilitation of housing for agricultural employees and their families.

(d) Waiver of rural area requirements

The Secretary may waive the application of the provisions of section 1490 of this title with respect to assistance under this section, as the Secretary considers appropriate.

(e) Rural Housing Insurance Fund

The Secretary is authorized to advance from the Rural Housing Insurance Fund such sums as may be necessary to meet the requirements of subsection (a)(1) of this section, subject to limits previously approved in appropriations Acts.

(July 15, 1949, ch. 338, title V, § 541, as added Pub. L. 101–625, title IX, § 934, Nov. 28, 1990, 104 Stat. 4404; amended Pub. L. 102–550, title VII, § 713, Oct. 28, 1992, 106 Stat. 3842.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(1), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–550 substituted ''amounts made available to the Secretary by an appropriations Act for such purpose'' for ''amounts available under this subchapter''.

§ 1490r. Rural housing voucher program

(a) In general

To such extent or in such amounts as are approved in appropriation Acts, the Secretary shall carry out a rural housing voucher program to assist very low-income families and persons to reside in rental housing in rural areas. For such purposes, the Secretary may provide assistance using a payment standard based on the fair market rental rate established by the Secretary for the area. The monthly assistance payment for any family shall be the amount by which the payment standard for the area exceeds 30 per centum of the family's monthly adjusted income, except that such monthly assistance payment shall not exceed the amount which the rent for the dwelling unit (including the amount allowed for utilities in the case of a unit with separate utility metering) exceeds 10 per centum of the family's monthly gross income.

(b) Coordination and limitation

In carrying out the rural housing voucher program under this section, the Secretary shall—

(1) coordinate activities under this section with activities assisted under sections 1485 and 1490m of this title; and

(2) enter into contracts for assistance for not more than 5000 units in any fiscal year.

(July 15, 1949, ch. 338, title V, § 542, as added Pub. L. 102–550, title VII, § 706(2), Oct. 28, 1992, 106 Stat. 3835.)

§ 1490s. Enforcement provisions

(a) Equity skimming

(1) Criminal penalty

Whoever, as an owner, agent, employee, or manager, or is otherwise in custody, control, or possession of property that is security for a loan made or guaranteed under this subchapter, willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property, for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this subchapter or the regulations adopted pursuant to this subchapter, shall be fined under title 18 or imprisoned not more than 5 years, or both.

(2) Civil sanctions

An entity or individual who as an owner, operator, employee, or manager, or who acts as an agent for a property that is security for a loan made or guaranteed under this subchapter where any part of the rents, assets, proceeds, income, or other funds derived from such property are used for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this subchapter or the regulations adopted pursuant to this subchapter, shall be subject to a fine of not more than $25,000 per violation. The sanctions provided in this paragraph may be imposed in addition to any other civil sanctions or civil monetary penalties authorized by law.

(b) Civil monetary penalties

(1) In general

The Secretary may, after notice and opportunity for a hearing, impose a civil monetary penalty in accordance with this subsection

against any individual or entity, including its owners, officers, directors, general partners, limited partners, or employees, who knowingly and materially violate, or participate in the violation of, the provisions of this subchapter, the regulations issued by the Secretary pursuant to this subchapter, or agreements made in accordance with this subchapter, by—

(A) submitting information to the Secretary that is false;

(B) providing the Secretary with false certifications;

(C) failing to submit information requested by the Secretary in a timely manner;

(D) failing to maintain the property subject to loans made or guaranteed under this subchapter in good repair and condition, as determined by the Secretary;

(E) failing to provide management for a project which received a loan made or guaranteed under this subchapter that is acceptable to the Secretary; or

(F) failing to comply with the provisions of applicable civil rights statutes and regulations.

(2) Conditions for renewal or extension

The Secretary may require that expiring loan or assistance agreements entered into under this subchapter shall not be renewed or extended unless the owner executes an agreement to comply with additional conditions prescribed by the Secretary, or executes a new loan or assistance agreement in the form prescribed by the Secretary.

(3) Amount

(A) In general

The amount of a civil monetary penalty imposed under this subsection shall not exceed the greater of—

(i) twice the damages the Department of Agriculture, the guaranteed lender, or the project that is secured for a loan under this section suffered or would have suffered as a result of the violation; or

(ii) $50,000 per violation.

(B) Determination

In determining the amount of a civil monetary penalty under this subsection, the Secretary shall take into consideration—

(i) the gravity of the offense;

(ii) any history of prior offenses by the violator (including offenses occurring prior to the enactment of this section);

(iii) the ability of the violator to pay the penalty;

(iv) any injury to tenants;

(v) any injury to the public;

(vi) any benefits received by the violator as a result of the violation;

(vii) deterrence of future violations; and

(viii) such other factors as the Secretary may establish by regulation.

(4) Payment of penalties

No payment of a penalty assessed under this section may be made from funds provided under this subchapter or from funds of a project which serve as security for a loan made or guaranteed under this subchapter.

(5) Remedies for noncompliance

(A) Judicial intervention

If a person or entity fails to comply with a final determination by the Secretary imposing a civil monetary penalty under this subsection, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against such individual or entity and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorney's fees and other expenses incurred by the United States in connection with the action.

(B) Reviewability of determination

In an action under this paragraph, the validity and appropriateness of a determination by the Secretary imposing the penalty shall not be subject to review.

(July 15, 1949, ch. 338, title V, § 543, as added Pub. L. 106–569, title VII, § 708(a), Dec. 27, 2000, 114 Stat. 3016.)

REFERENCES IN TEXT

Enactment of this section, referred to in subsec. (b)(3)(B)(ii), means enactment of Pub. L. 106–569, which enacted this section and was approved Dec. 27, 2000.

§ 1490t. Indian tribes

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) shall not apply to actions by federally recognized Indian tribes (including instrumentalities of such Indian tribes) under this Act.

(July 15, 1949, ch. 338, title V, § 544, as added Pub. L. 109–136, § 4, Dec. 22, 2005, 119 Stat. 2644.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Civil Rights Act of 1968, referred to in text, is Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, as amended. Title VIII of the Act, known as the Fair Housing Act, is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

This Act, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, known as the Housing Act of 1949, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

CHAPTER 8B—PUBLIC WORKS OR FACILITIES

§§ 1491 to 1497. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this chapter after Jan. 1, 1975.

Section 1491, acts Aug. 11, 1955, ch. 783, title II, § 201, 69 Stat. 642; June 30, 1961, Pub. L. 87–70, title V, § 501(a), 75 Stat. 173; Oct. 15, 1962, Pub. L. 87–808, § 1, 76 Stat. 920, set forth Congressional declaration of policy for public works or facilities provisions.

Section 1492, acts Aug. 11, 1955, ch. 783, title II, § 202, 69 Stat. 643; June 30, 1961, Pub. L. 87–70, title V, § 501(b)–(d)(1), (e)–(g), 75 Stat. 173, 174; Sept. 5, 1962, Pub. L. 87–634, 76 Stat. 435; Sept. 14, 1962, Pub. L. 87–658, § 5, 76 Stat. 543; Oct. 15, 1962, Pub. L. 87–808, § 2, 76 Stat. 920; Oct. 15, 1962, Pub. L. 87–809, 76 Stat. 920; Sept. 2, 1964, Pub. L. 88–560, title VI, § 601, 78 Stat. 798; Aug. 10, 1965, Pub. L. 89–117, title XI, § 1107, 79 Stat. 503; Nov. 3, 1966, Pub. L. 89–754, title IV, § 407, title X, § 1009, 80 Stat. 1273, 1286; May 25, 1967, Pub. L. 90–19, § 12(b), (c), 81 Stat. 23; Aug. 1, 1968, Pub. L. 90–448, title IV, § 416(a), 82 Stat. 518; Dec. 31, 1970, Pub. L. 91–609, title VII, § 727(b), 84 Stat. 1802, related to purchase of securities or obligations and loans, restrictions and limitations upon such powers, priority for applications, etc.

Section 1493, acts Aug. 11, 1955, ch. 783, title II, § 203, 69 Stat. 643; Sept. 14, 1960, Pub. L. 86–788, § 2(c), 74 Stat. 1028; June 30, 1961, Pub. L. 87–70, title V, § 501(d)(2), (h), (j), 75 Stat. 174, 175; May 25, 1967, Pub. L. 90–19, § 12(b), 81 Stat. 23; Oct. 17, 1984, Pub. L. 98–479, title II, § 203(f), 98 Stat. 2230, related to forms and denominations, maturities, terms and conditions, etc., respecting notes and obligations.

Section 1494, acts Aug. 11, 1955, ch. 783, title II, § 204, 69 Stat. 644; May 25, 1967, Pub. L. 90–19, § 12(b), 81 Stat. 23, related to functions, powers, and duties of the Secretary, and administrative expenses.

Section 1495, act Aug. 11, 1955, ch. 783, title II, § 205, 69 Stat. 644, prohibited making of loans under section 459 of former Title 40, Public Buildings, Property, and Works, after Aug. 11, 1955, except pursuant to an application for such loan filed prior to such date.

Section 1496, act Aug. 11, 1955, ch. 783, title II, § 206, as added Aug. 7, 1956, ch. 1029, title VI, § 603, 70 Stat. 1114; amended Dec. 24, 1969, Pub. L. 91–152, title IV, § 403(b), 83 Stat. 395, defined ''States'' for purposes of this chapter.

Section 1497, act Aug. 11, 1955, ch. 783, title II, § 207, as added June 30, 1961, Pub. L. 87–70, title V, § 501(i), 75 Stat. 175; amended Oct. 15, 1962, Pub. L. 87–808, § 3, 76 Stat. 920; May 25, 1967, Pub. L. 90–19, § 12(b), 81 Stat. 23, related to technical advisory services in budgeting, financing, planning, and construction of community facilities, and appropriations.

CHAPTER 8C—OPEN-SPACE LAND

§§ 1500 to 1500b. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this chapter after Jan. 1, 1975.

Section 1500, Pub. L. 87–70, title VII, § 701, June 30, 1961, 75 Stat. 183; Pub. L. 89–177, title IX, § 901(b), (c), Aug. 10, 1965, 79 Stat. 494; Pub. L. 89–754, title VI, § 605(b), (c), Nov. 3, 1966, 80 Stat. 1279; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1781, set forth Congressional declaration of findings and purpose for open-space land provisions.

Section 1500a, Pub. L. 87–70, title VII, § 702, June 30, 1961, 75 Stat. 184; Pub. L. 88–560, title X, § 1001, Sept. 2, 1964, 78 Stat. 806; Pub. L. 89–117, title IX, §§ 902(a), (b), 903, 904, 909(b), (c), Aug. 10, 1965, 79 Stat. 495, 497; Pub. L. 89–754, title VI, § 605(d), Nov. 3, 1966, 80 Stat. 1279; Pub. L. 90–19, § 18(c), (d), May 25, 1967, 81 Stat. 25; Pub. L. 90–448, title VI, § 606(a), Aug. 1, 1968, 82 Stat. 534; Pub. L. 91–152, title III, § 303, Dec. 24, 1969, 83 Stat. 391; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1781, related to authorizations, limitations and restrictions, etc., respecting grants to States and local public bodies for acquisition and development of open-space land.

Section 1500b, Pub. L. 87–70, title VII, § 703, June 30, 1961, 75 Stat. 184; Pub. L. 89–117, title IX, § 905, Aug. 10, 1965, 79 Stat. 495; Pub. L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1782, related to planning requirements.

§ 1500c. Repealed. Pub. L. 98–181, title I, § 126(b)(3), Nov. 30, 1983, 97 Stat. 1175

Section, Pub. L. 87–70, title VII, § 704, June 30, 1961, 75 Stat. 185; Pub. L. 89–117, title IX, § 909(d), Aug. 10, 1965, 79 Stat. 497; Pub. L. 90–19, § 18(c), May 25, 1967, 81 Stat 25; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1782, related to conversion to other uses.

§§ 1500c–1 to 1500e. Omitted

CODIFICATION

Sections 1500c–1 to 1500d–1 were omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this chapter after Jan. 1, 1975.

Section 1500c–1, Pub. L. 87–70, title VII, § 705, as added Pub. L. 89–117, title IX, § 906, Aug. 10, 1965, 79 Stat. 496; amended Pub. L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1782, related to conversions of land involving historic or architectural purposes.

Section 1500c–2, Pub. L. 87–70, title VII, § 706, as added Pub. L. 89–117, title IX, § 906, Aug. 10, 1965, 79 Stat. 496; amended Pub. L. 89–754, title VI, § 605(e), Nov. 3, 1966, 80 Stat. 1280; Pub. L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1783; Pub. L. 98–181, title I, § 126(b)(3), Nov. 30, 1983, 97 Stat. 1175, related to acquisition of interests to guide urban development.

Section 1500c–3, Pub. L. 87–70, title VII, § 707, as added Pub. L. 89–117, title IX, § 907, Aug. 10, 1965, 79 Stat. 496; amended Pub. L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1783, related to labor standards.

Section 1500d, Pub. L. 87–70, title VII, § 708, formerly § 705, June 30, 1961, 75 Stat. 185, renumbered § 708 and amended Pub. L. 89–117, title IX, §§ 906, 908, Aug. 10, 1965, 79 Stat. 495, 497; Pub. L. 89–754, title VI, § 605(f), Nov. 3, 1966, 80 Stat. 1280; Pub. L. 90–19, § 18(c), May 25, 1967, 81 Stat, 25; Pub. L. 90–448, title VI, § 606(b), Aug. 1, 1968, 82 Stat. 534; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1783; Pub. L. 92–213, § 8(b), Dec. 22, 1971, 85 Stat. 776; Pub. L. 92–335, § 5, July 1, 1972, 86 Stat. 405; Pub. L. 93–117, § 7, Oct. 2, 1973, 87 Stat. 422, authorized appropriations for purpose of making grants under this chapter.

Section 1500d–1, Pub. L. 87–70, title VII, § 709, as added Pub. L. 89–754, title VI, § 605(g), Nov. 3, 1966, 80 Stat. 1280; amended Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1783, defined the terms ''open-space land'', ''urban area'', ''State'', ''local public body'', and ''open-space uses'' for purposes of this chapter.

Section 1500e, Pub. L. 87–70, title VII, § 710, formerly § 706, June 30, 1961, 75 Stat. 185; renumbered § 709 and amended Pub. L. 89–117, title IX, §§ 902(c), 906, Aug. 10, 1965, 79 Stat. 495; renumbered § 710, Pub. L. 89–754, title VI, § 605(g), Nov. 3, 1966, 80 Stat. 1280; amended Pub. L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25, which defined ''open-space land'', ''urban area'', ''State'', and ''open space uses'', was omitted in the general amendment of this chapter by Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1781.

CRITERIA FOR GRANTS FOR HISTORIC PRESERVATION

Pub. L. 89–754, title VI, § 605(h), Nov. 3, 1966, 80 Stat. 1280, provided that beginning three years after Nov. 3, 1966, no grant shall be made (except pursuant to a contract or commitment entered into less than three years after such date) under provisions of sections 1453 or 1500d–1 of this title or section 461(h) of former Title 40, Public Buildings, Property, and Works, to the extent that it was to be used for historic or architectural preservation, except with respect to districts, sites, buildings, structures, and objects which the Secretary of Housing and Urban Development found met criteria

comparable to those used in establishing the National Register maintained by the Secretary of the Interior pursuant to other provisions of law.

CHAPTER 9—HOUSING OF PERSONS ENGAGED IN NATIONAL DEFENSE

SUBCHAPTER I—PROJECTS GENERALLY

Sec.
1501. Cooperation between departments; definitions; limitation of projects.
1502. Initiation and development of projects; jurisdiction; acquisition of property; fees of architects, engineers, etc.
1502a. Repealed.
1503. Development of projects by Secretary; financial assistance to public housing agencies.
1504. Rental rates; exemption from limitations of United States Housing Act of 1937.
1505. Funds of Secretary of Housing and Urban Development.
1506. Administration of utilities and utility services; granting of easements.
1507. Omitted.

SUBCHAPTER II—DEFENSE HOUSING

1521. Omitted.
1522. Definitions; actions to recover developed property.
1523. Omitted.
1524. Declaration of policy; disposal of housing.

SUBCHAPTER III—DEFENSE PUBLIC WORKS

1531 to 1536. Omitted.

SUBCHAPTER IV—GENERAL PROVISIONS AFFECTING SUBCHAPTERS II TO VII

1541. Omitted.
1542. Transfer of funds from other Federal agencies to Secretary of Housing and Urban Development.
1543. Omitted.
1544. Power of Secretary of Housing and Urban Development to manage, convey, etc., housing properties.
1545. Omitted.
1546. Payment of annual sums to local authorities in lieu of taxes.
1547. Preservation of local civil and criminal jurisdiction and civil rights.
1548. Rules and regulations; standards of safety, convenience, and health.
1549. Laborers and mechanics; wages; preference in employment.
1550. Separability.
1551. Repealed.
1552. Powers of certain agencies designated to provide temporary shelter.
1553. Removal by Secretary of certain housing of temporary character; exceptions for local communities; report to Congress.

SUBCHAPTER V—DEFENSE HOUSING AND PUBLIC WORKS FOR DISTRICT OF COLUMBIA

1561 to 1563. Omitted.
1564. Definitions.

SUBCHAPTER VI—HOUSING FOR DISTRESSED FAMILIES OF SERVICEMEN AND VETERANS

1571 to 1576. Omitted or Repealed.

SUBCHAPTER VII—DISPOSAL OF WAR AND VETERANS' HOUSING

1581. Housing disposition.
1582. Temporary housing exempted from provisions of section 1553 of this title.
1583. Redetermination of demountable housing as temporary or permanent.
1584. Removal of all dwelling structures on land under Secretary's control; temporary housing exempted; preference in fulfilling vacancies.
Sec.
1585. Acquisition of housing sites.
1586. Sale of specific housing projects.
1587. Disposition of other permanent war housing.
1588. Sale of vacant land to local housing authorities; sale of personal property.
1589. Conveyance of land and nondwelling structures thereon to States for National Guard purposes.
1589a. Extension by President of dates for disposal and other actions relating to housing under this subchapter.
1589b. Establishment of income limitations for occupancy of housing; effect on prior tenants.
1589c. Transfer of certain housing to Indians.
1589d. Undisposed housing.
1590. Definitions.

SUBCHAPTER VIII—CRITICAL DEFENSE HOUSING AREAS

1591. Determination of critical areas by President; requisite conditions.
1591a. Construction by private enterprise.
1591b. Community facilities or services by local agencies.
1591c. Expiration date; exception.
1591d. Powers as cumulative and additional.

SUBCHAPTER IX—DEFENSE HOUSING AND COMMUNITY FACILITIES AND SERVICES

1592. Authority of Secretary.
1592a. Construction of housing.
1592b. Maximum construction costs; determinations by Secretary in certain condemnation proceedings.
1592c. Loans or grants for community facilities or services; conditions; maximum amounts; annual adjustments.
1592d. Secretary's powers with respect to housing, facilities, and services.
1592e. Interagency transfers of property; application of rules and regulations.
1592f. Preservation of local civil and criminal jurisdiction, and civil rights; jurisdiction of State courts.
1592g. Payment of annual sums to local authorities in lieu of taxes.
1592h. Conditions and requirements as to contracts; utilization of existing facilities; disposition of facilities constructed by United States.
1592i. Laborers and mechanics.
1592j. Disposition of moneys derived from rentals, operation, and disposition of property.
1592k. Determination of fair rentals and classes of occupants by Secretary.
1592*l*. Authorization of appropriations.
1592m. Transfer of functions and funds in certain cases.
1592n. Definitions.
1592*o*. Powers of Surgeon General of Public Health Service.

SUBCHAPTER X—DEVELOPMENT SITES FOR ISOLATED DEFENSE INSTALLATIONS

1593 to 1593d. Repealed.
1593e. Housing of persons displaced by acquisition of property for defense installations or industries.

SUBCHAPTER XI—HOUSING FOR MILITARY PERSONNEL

1594. Contracts for construction.
1594a. Acquisition of military housing financed under Armed Services Housing Mortgage Insurance Fund and rental housing at military bases.
1594a–1, 1594a–2. Repealed.
1594b. Maintenance and operation of housing; use of quarters; payment of principal, interest, and other obligations.

Sec.
1594c. Services of architects and engineers; use of appropriations; acquisition of sites.
1594d. Appropriations; use of quarters allowances.
1594e. Definitions.
1594f. Net floor area limitations.
1594g to 1594k. Repealed.

SUBCHAPTER I—PROJECTS GENERALLY

§ 1501. Cooperation between departments; definitions; limitation of projects

In connection with the national defense program, the Departments of the Navy, Army, and Air Force and the Secretary of Housing and Urban Development are authorized to cooperate in making necessary housing available for persons engaged in national defense activities, as provided in this subchapter. ''Persons engaged in national defense activities'' (as that term is used in this subchapter) shall include (i) enlisted men with families, who are in the naval and military service and officers of the Army, Air Force, and Marine Corps not above the grade of captain, and officers of the Navy and Coast Guard, not above the grade of lieutenant and employees of the Departments of the Navy, Army, and Air Force who are assigned to duty at naval or military reservations, posts, or bases, and (ii) workers with families, who are engaged or to be engaged in industries connected with and essential to the national defense program. No project shall be developed or assisted for the purposes of this subchapter except with the approval of the President and upon a determination by him that there is an acute shortage of housing in the locality involved which impedes the national defense program.

(June 28, 1940, ch. 440, title II, § 201, 54 Stat. 681; Oct. 26, 1942, ch. 626, § 1(a), 56 Stat. 988; July 26, 1947, ch. 343, title II, §§ 205(a), 207(a), (f), 61 Stat. 501–503; 1947 Reorg. Plan No. 3, § 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 955; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

AMENDMENTS

1942—Act Oct. 26, 1942, substituted ''and officers of the Army and Marine Corps not above the grade of captain, and officers of the Navy and Coast Guard, not above the grade of lieutenant'' for ''(excluding officers)''.

CHANGE OF NAME

Department of the Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, 502, and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App. B (123)], July 22, 1949. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

SHORT TITLE OF 1951 AMENDMENT

Act Sept. 1, 1951, ch. 378, § 1, 65 Stat. 293, provided: ''That this Act [enacting sections 1507, 1589a, 1589b, and 1591 to 1593e of this title, sections 1701g–1 to 1701g–3, 1701i–1, 1715g, 1715h, 1716a, 1748g–1, 1750, 1750a, and 1750b to 1750g of Title 12, Banks and Banking, section 2136 of the Appendix to Title 50, War and National Defense, amended sections 1584 and 1585 of this title, sections 371, 1430, 1701g, 1701j, 1702, 1706, 1710, 1713, 1715c, 1715d, 1715f, 1716, 1743, 1747a, 1747f, and 1747*l*, 1748b of Title 12, section 2135 of Title 50, App., and enacted provisions set out as notes under section 1591 of this title and section 1748b of Title 12] may be cited as the 'Defense Housing and Community Facilities and Services Act'.''

SHORT TITLE

Act Oct. 14, 1940, ch. 862, 54 Stat. 1125, which is classified to subchapters II to VII of this chapter, is popularly known as the ''Lanham Public War Housing Act''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Housing Administration and Housing and Home Finance Agency (of which Public Housing Administration was a constituent agency) and of heads thereof transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provided that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency and Public Housing Administration have lapsed.

United States Housing Authority consolidated into Housing and Home Finance Agency by Reorg. Plan No. 3 of 1947, § 1, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, set out in the Appendix to Title 5, Government Organization and Employees, and name of Authority changed to Public Housing Administration by section 4(a) of such Plan. Section 9 of Reorg. Plan No. 3 of 1947 abolished office of Administrator of United States Housing Authority, whose functions were transferred by section 4 of such Plan to Public Housing Commissioner.

§ 1502. Initiation and development of projects; jurisdiction; acquisition of property; fees of architects, engineers, etc.

(a) Projects may be initiated under this subchapter by the Department of the Navy or Army or the Air Force to provide dwellings on or near naval or military reservations, posts or bases for rental to the officers, enlisted men and employees of the Departments of the Navy, Army, and Air Force described in section 1501 of this title. Such projects shall be developed by the Department of the Navy or Army or the Air Force or by the Secretary of Housing and Urban Development, whichever the President determines is better suited to the fulfillment of the purposes of this subchapter with respect to any particular project. If the development of such project is to be undertaken by the Department of the Navy or Army or Air Force, the Secretary of Housing and Urban Development is authorized to aid the development of the project by furnishing technical assistance and by transferring to such Department the funds necessary for the development of the project. Any project developed for the purpose of this section shall be leased to the Department of the Navy or Army or Air Force by the Secretary of Housing and Urban Develop-

ment (who shall have title to such project until repayment of the cost thereof to the Secretary of Housing and Urban Development as prescribed in such lease) upon such terms as shall be prescribed in the lease, which may be the same terms as are authorized by the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], with respect to leases to public housing agencies. All the provisions of said Act which apply to the development of projects by the Secretary of Housing and Urban Development shall (insofar as applicable and not inconsistent herewith) apply to the development of projects by the Department of the Navy or Army or Air Force. Notwithstanding other provisions of this or any other law, the Department leasing a project shall have the same jurisdiction over such project as it has over the reservation, post or base in connection with which the project is developed.

(b) The Department of the Navy or Army or Air Force, in connection with any project developed or leased by it, and the Secretary of Housing and Urban Development, in connection with any project developed or assisted by him, for the purposes of this subchapter, may acquire real or personal property or any interest therein by purchase, eminent domain, gift, lease or otherwise. The provisions of sections 3111 and 3112 of title 40 shall not apply to the acquisition of any real property by the Department of the Navy or Army or Air Force or by the Secretary of Housing and Urban Development for the purposes of this subchapter or to the project developed thereon, and the provisions of section 1302 of title 40, shall not apply to any lease of any project developed for the purposes of this subchapter or of any dwelling therein. Condemnation proceedings instituted by the Secretary of Housing and Urban Development shall be in the Secretary's own name and the practice and procedure governing such proceedings by the United States shall be followed, and the Secretary of Housing and Urban Development shall likewise be entitled to proceed in accordance with the provisions of sections 3114 to 3116 and 3118 of title 40 and an Act of Congress approved March 1, 1929 (45 Stat. 1415).[1] If the Secretary of Housing and Urban Development acquires land in connection with a project to be assisted for the purposes of this subchapter, the Secretary may convey such land to the public housing agency involved for a consideration equal to the cost of the land to the Secretary of Housing and Urban Development. The Departments of the Navy, Army, and Air Force and the Secretary of Housing and Urban Development may negotiate, contract and fix such fees as they determine are reasonable for the services of architects, engineers, surveyors, appraisers, title examiners and real estate negotiators in connection with specific projects developed by them under this subchapter. The Secretaries of Navy, Army, and Air Force are authorized to make available to the Secretary of Housing and Urban Development any land that is needed for a project to be developed by the Secretary of Housing and Urban Development and leased to the Department of the Navy or Army or Air Force and to execute such leases, agreements and other instruments with the Secretary of Housing and Urban Development as may be necessary to carry out the purposes of this subchapter.

(June 28, 1940, ch. 440, title II, § 202, 54 Stat. 682; Oct. 26, 1942, ch. 626, § 1(b), 56 Stat. 988; July 26, 1947, ch. 343, title II, §§ 205(a), 207(a), (f), 61 Stat. 501–503; 1947 Reorg. Plan No. 3, § 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 955; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The United States Housing Act of 1937 and said Act, referred to in subsec. (a), are act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Act of Congress approved March 1, 1929, referred to in subsec. (b), is act Mar. 1, 1929, ch. 416, 45 Stat. 1415, which was classified to chapter 7 (§ 361 et seq.) of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 88–241, § 21(b), Dec. 23, 1963, 77 Stat. 627.

CODIFICATION

In subsec. (b), ''sections 3111 and 3112 of title 40'' substituted for ''section 355 of the Revised Statutes'', ''section 1302 of title 40'' substituted for ''section 321 of the Act of June 30, 1932 (U.S.C. 1934 edition, title 40, sec. 303b)'', and ''sections 3114 to 3116 and 3118 of title 40'' substituted for ''the Act of Congress approved February 26, 1931 (46 Stat. 1421)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

CHANGE OF NAME

Department of the Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, 502, and Secretary of Defense Transfer Order No. 40 [App. A(75)], July 22, 1949. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

AMENDMENTS

1942—Subsec. (a). Act Oct. 26, 1942, inserted ''officers,'' after ''rental to the'' in first sentence.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1501 of this title.

§ 1502a. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section, act July 15, 1955, ch. 368, title V, § 509, 69 Stat. 351, related to acquisition of housing units for military personnel and dependents. See section 2678 of Title 10, Armed Forces.

§ 1503. Development of projects by Secretary; financial assistance to public housing agencies

In any localities where the President determines that there is an acute shortage of housing which impedes the national defense program and

[1] See References in Text note below.

that the necessary housing would not otherwise be provided when needed for persons engaged in national defense activities, the Secretary of Housing and Urban Development may undertake the development and administration of projects to assure the availability of dwellings in such localities for such persons and their families, or the Secretary of Housing and Urban Development may extend financial assistance of public housing agencies for the development and administration of such projects. Such financial assistance to public housing agencies shall be extended (except as otherwise provided herein and not inconsistent herewith) under the provisions of, and in the same manner and forms as provided in, title I[1] of the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.], with respect to other housing projects.

(June 28, 1940, ch. 440, title II, § 203, 54 Stat. 683; 1947 Reorg. Plan No. 3, § 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 955; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1501 of this title.

§ 1504. Rental rates; exemption from limitations of United States Housing Act of 1937

Any contract made for financial assistance under the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.], may be revised so as to provide that the project involved will be assisted for any of the purposes of this subchapter. The Department of the Navy or Army or the Air Force or the Secretary of Housing and Urban Development, in the administration of any project developed for the purposes of this subchapter, shall fix rentals for persons engaged in national defense activities and their families which will be within their financial reach, and the Secretary of Housing and Urban Development, in any contract for financial assistance or any lease of such a project, shall require the fixing of such rentals. Projects developed by the Department of the Navy or Army or Air Force, or developed or assisted by the Secretary of Housing and Urban Development, for the purposes of this subchapter shall not be subject to the elimination requirements of sections 10(a) and 11(a) of said Act [42 U.S.C. 1410(a), 1411(a)], or to any provisions of section 9 of said Act [42 U.S.C. 1409] which would require any part of the development cost thereof to be met in any manner other than from funds loaned or furnished by the Secretary of Housing and Urban Development. Funds expended for the purposes of this subchapter shall be excluded in determining, for the purposes of section 21(d)[1] of said Act [42 U.S.C. 1421(d)], the amounts expended within each State. Except as otherwise provided in this subchapter or as may be inconsistent with this subchapter, all the provisions of title I[2] of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall apply to this subchapter. During the period when the President determines that in any locality there is an acute need for housing to assure the availability of dwellings for persons engaged in national defense activities, dwellings in a project developed or assisted in said locality which are devoted to the purposes of providing housing for persons engaged in national defense activities shall not be subject to sections 2(1) and 2(2) of the United States Housing Act of 1937, as amended [42 U.S.C. 1402(1), (2)], and during such period such projects shall be deemed projects of a low-rent character for the purposes of any of the applicable provisions in title I[2] of the United States Housing Act of 1937.

(June 28, 1940, ch. 440, title II, § 204, 54 Stat. 683; July 26, 1947, ch. 343, title II, §§ 205(a), 207(a), (f), 61 Stat. 501–503; 1947 Reorg. Plan No. 3, § 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 955; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Sections 2, 9, 10(a), and 11(a) of the United States Housing Act of 1937, referred to in text, is a reference to sections of the Act prior to the general revision of the Act by Pub. L. 93–383. The Act as so revised is classified to section 1437 et seq. of this title. Provisions of former sections 2, 9, and 10(a) are covered by sections 3, 4, and 5(a) of the Act which are classified to sections 1437a, 1437b, and 1437c(a) of this title.

Section 21(d) of said Act, referred to in text, was repealed by Pub. L. 87–70, title II, § 204(c), June 30, 1961, 75 Stat. 164.

CHANGE OF NAME

Department of the Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, 502, and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App. B(124)], July 22, 1949. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1501 of this title.

[1] So in original. Reference should probably be to entire ''United States Housing Act of 1937'' because such Act is not divided into titles. See section 1437 et seq. of this title.

[1] See References in Text note below.

[2] So in original. Reference should probably be to entire ''United States Housing Act of 1937'' because such Act is not divided into titles. See section 1437 et seq. of this title.

§ 1505. Funds of Secretary of Housing and Urban Development

The Secretary of Housing and Urban Development may use for the purposes of this subchapter any of the funds or authorizations heretofore or hereafter made available to it.

(June 28, 1940, ch. 440, title II, § 205, 54 Stat. 683; 1947 Reorg. Plan No. 3, § 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 955; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1501 of this title.

PROVISIONS INAPPLICABLE TO THIS SUBCHAPTER

Section 205 of act June 28, 1940, contained the following sentence: ''The provisions of title I of this Act shall not apply to this title [this subchapter].'' The provisions of title I of act June 28, 1940 were classified to the Code as section 40 of Title 41, Public Contracts, and sections 1151 to 1162 of Appendix to Title 50, War and National Defense.

§ 1506. Administration of utilities and utility services; granting of easements

(a) Any Federal agency (including any wholly owned Government corporation) administering utility installations connected to a utility system for housing under the jurisdiction of the Secretary of Housing and Urban Development is authorized—

(1) to continue to provide utilities and utility services to such housing as long as it is under the jurisdiction of the Secretary;

(2) to contract with the purchasers or transferees of such housing to continue the utility connection with such installations and furnish such utilities and services as may be available and needed in connection with such housing, for such period of time (not exceeding the period of Federal administration of such installations) and subject to such terms (including the payment of the pro rata cost to the Government or the market value of the utilities and services furnished, whichever is greater) as may be determined by the head of the agency;

(3) to dispose of such installations, when excess to the needs of the agency, and where not excess to grant an option to purchase, to the purchasers or transferees of such housing, for an amount not less than the appraised value of the installations and upon such terms and conditions as the head of the agency shall establish.

(b) Any Federal agency (including any wholly owned Government corporation) having under its jurisdiction lands across which run any part of a utility system for housing under the jurisdiction of the Secretary is authorized to grant to the Secretary, or to the purchasers or transferees of such housing, easements (which may be perpetual) on such land for utility purposes.

(June 28, 1948, ch. 688, § 2, 62 Stat. 1063; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

CODIFICATION

Section was not enacted as part of title II of act June 28, 1948, ch. 440, 54 Stat. 681, known as title II of the National Defense Expediting Act which comprises this subchapter.

TRANSFER OF FUNCTIONS

Functions of Public Housing Administration and Housing and Home Finance Agency (of which Public Housing Administration was a constituent agency) and of heads thereof transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provided that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency and Public Housing Administration have lapsed.

§ 1507. Omitted

CODIFICATION

Section, act Sept. 1, 1951, ch. 378, title VI, § 616, 65 Stat. 317, prohibited from Sept. 1, 1951 to June 30, 1953, initiation of projects, and waiver or suspension of income limitations contained in United States Housing Act of 1937, pursuant to authorization contained in sections 1501 and 1505 of this title.

SUBCHAPTER II—DEFENSE HOUSING

REVOLVING FUND

Establishment of revolving fund under which to account for assets and liabilities in connection with public war housing under sections 1521 to 1524 of this title, see section 1701g–5 of Title 12, Banks and Banking.

§ 1521. Omitted

CODIFICATION

Section, acts Oct. 14, 1940, ch. 862, title I, § 1, 54 Stat. 1125; Apr. 29, 1941, ch. 80, § 1, 55 Stat. 147; June 28, 1941, ch. 260, § 2, 55 Stat. 361; Jan. 21, 1942, ch. 14, §§ 1, 11, 56 Stat. 11, 13; Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73, which related to the powers of the Housing and Home Administrator respecting defense housing, was omitted pursuant to section 1(a)(12) of act July 3, 1952, ch. 570, 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, which provided that this section continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by Proc. No. 2914, 15 F.R. 9029, 64 Stat. A. 454, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, or on such earlier date or dates as provided by Congress, but in no event beyond July 1, 1953.

§ 1522. Definitions; actions to recover developed property

As used in subchapters II to VII of this chapter, (a) the term ''persons engaged in national-defense activities'' shall include (1) enlisted men in the naval or military services of the United States; (2) employees of the United States in the Departments of the Navy, Army, and Air Force assigned to duty at naval or military reservations, posts, or bases; (3) workers engaged or to be engaged in industries connected with and essential to the national defense; (4) officers of the Army, Air Force, and Marine Corps not above the grade of captain, and officers of the Navy and Coast Guard, not above the grade of lieutenant, senior grade, assigned to duty at naval or military reservations, posts, or bases, or to duty at defense industries: *Provided*, That any proceedings for the recovery of possession of any

property or project developed or constructed under this subchapter shall be brought by the Secretary of Housing and Urban Development in the courts of the States having jurisdiction of such causes and the laws of the States shall be applicable thereto; (b) the term ''Federal agency'' means any executive department or office (including the President), independent establishment, commission, board, bureau, division, or office in the executive branch of the United States Government, or other agency of the United States, including corporations in which the United States owns all or a majority of the stock, directly or indirectly.

(Oct. 14, 1940, ch. 862, title I, § 2, 54 Stat. 1126; Jan. 21, 1942, ch. 14, § 2, 56 Stat. 11; Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; July 26, 1947, ch. 343, title II, §§ 205(a), 207(a), (f), 61 Stat. 501–503; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in text, was comprised of sections 1531 to 1536 of this title. Section 1532 was omitted from the Code pursuant to the time limitation set out in act July 3, 1952, ch. 570, § 1(a)(12), 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18. Sections 1531, 1533, and 1534 were omitted from the Code upon the termination of section 1532. Section 1535 was omitted from the Code as executed. Section 1536 was omitted from the Code as not having been repeated in subsequent appropriation acts.

Subchapter VI of this chapter, referred to in text, was comprised of sections 1571 to 1576 of this title. Sections 1571 and 1573 have been omitted from the Code pursuant to the time limitation set out in act July 3, 1952, ch. 570, § 1(a)(12), (21), 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18. Sections 1572 and 1575 were omitted upon the termination of sections 1571 and 1573. Section 1574 was repealed by act Oct. 31, 1951, ch. 654, § 1(113), 65 Stat. 706. Section 1576 was omitted from the Code as not having been repeated in subsequent appropriation acts.

CHANGE OF NAME

Department of the Air Force inserted on authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, 502. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator''.

1942—Act Jan. 21, 1942, inserted cl. (a)(4) and proviso.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Housing and Home Finance Agency transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provided that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency has lapsed.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1523. Omitted

CODIFICATION

Section, acts Oct. 14, 1940, ch. 862, title I, § 3, 54 Stat. 1126; Apr. 29, 1941, ch. 80, § 2, 55 Stat. 147; June 28, 1941, ch. 260, § 2, 55 Stat. 361; Jan. 21, 1942, ch. 14, § 3, 56 Stat. 12; Ex. Ord. No. 9070, § 1, eff. Feb 24, 1942, 7 F.R. 1529; Oct. 1, 1942, ch. 572, 56 Stat. 763; July 7, 1943, ch. 196, §§ 1, 2, 57 Stat. 387; July 1, 1944, ch. 374, 58 Stat. 720; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73, which related to authorization of appropriations for the purpose of this subchapter, was omitted in view of the omission of section 1521 of this title.

PRIOR ADDITIONAL APPROPRIATIONS

Joint Res. Oct. 14, 1940, ch. 857, 54 Stat. 1115, $75,000,000.

Acts Mar. 1, 1941, ch. 9, 55 Stat. 14, $5,000,000.

May 24, 1941, ch. 132, 55 Stat. 199, $150,000,000.

Dec. 17, 1941, ch. 591, title III, 55 Stat. 818, $300,000,000.

Dec. 23, 1941, ch. 621, 55 Stat. 855, $300,000,000.

July 12, 1943, ch. 229, title I, 57 Stat. 540, $50,000,000.

Dec. 23, 1943, ch. 380, title I, 57 Stat. 618, $50,000,000.

Apr. 1, 1944, ch. 152, title I, 58 Stat. 153, $115,000,000.

June 28, 1944, ch. 304, title I, 58 Stat. 604.

Apr. 25, 1945, ch. 95 title I, 59 Stat. 82; July 5, 1945, ch. 271, title I, 59 Stat. 420, $84,373,000.

§ 1524. Declaration of policy; disposal of housing

It is declared to be the policy of this subchapter to further the national defense by providing housing in those areas where it cannot otherwise be provided by private enterprise when needed, and that such housing may be sold and disposed of as expeditiously as possible: *Provided*, That in disposing of said housing consideration shall be given to its full market value and said housing or any part thereof shall not, unless specifically authorized by Congress, be conveyed to any public or private agency organized for slum clearance or to provide subsidized housing for persons of low income: *Provided further*, That the Secretary of Housing and Urban Development may, in his discretion, upon the request of the Secretaries of the Army, Air Force or Navy transfer to the jurisdiction of the Army, Air Force or Navy Departments such housing constructed under the provisions of subchapters II to VII of this chapter as may be considered to be permanently useful to the Army, Air Force or Navy: *Provided further*, That whenever the Secretary of Housing and Urban Development disposes of any permanent house or structure containing not more than four family dwelling units under authority of this subchapter by offering such house or structure for sale on an individual basis, he shall, when the purchaser is a veteran buying for his own occupancy, sell any such house or structure (1) at a purchase price not in excess of the apportioned

cost of such house or structure and of the land and appurtenances allocated thereto, together with the apportioned share of the cost of all utilities and other facilities provided for and common to the project of which such house or structure is a part, or (2) at a purchase price not in excess of such considered full market value of such house or structure and the land, appurtenances, utilities and facilities allocated thereto, whichever purchase price is the less: *Provided further*, That, for the purposes of this section, housing constructed or acquired under the provisions of Public Law 781, Seventy-sixth Congress, approved September 9, 1940, or Public Law 9, 73, or 353, Seventy-seventh Congress, approved, respectively, March 1, 1941, May 24, 1941, and December 17, 1941, shall be deemed to be housing constructed or acquired under subchapters II to VII of this chapter.

(Oct. 14, 1940, ch. 862, title I, § 4, as added Jan. 21, 1942, ch. 14, § 4, 56 Stat. 12; amended Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1259; July 26, 1947, ch. 343, title II, §§ 205(a), 207(a), (f), 61 Stat. 501–503; June 19, 1948, ch. 520, 62 Stat. 492; June 28, 1948, ch. 688, § 3, 62 Stat. 1064; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 of this title, and sections 1571 to 1576 of this title, respectively, and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

Public Law 781, Seventy-sixth Congress, approved September 9, 1940, referred to in text, is the Second Supplemental National Defense Appropriation Act, 1941, act Sept. 9, 1940, ch. 717, 54 Stat. 872. Section 201 thereof appropriated $100,000,000 to the President for allocation to the former ''War'' Department, and to the Navy Department, for the construction of housing necessary to the national defense program. This provision is not classified to the Code.

Public Laws 9, 73, or 353, Seventy-seventh Congress, referred to in text, refer to the following acts, respectively: Public Law 9, Urgent Deficiency Appropriation Act, 1941, act Mar. 1, 1941, ch. 9, 55 Stat. 14; Public Law 73, Additional Urgent Deficiency Appropriation Act, 1941, act May 24, 1941, ch. 132, 55 Stat. 197; and Public Law 353, Third Supplemental National Defense Appropriation Act, 1942, act Dec. 17, 1941, ch. 591, 55 Stat. 810. These three acts appropriated a total of $320,000,000 to the President for the purpose of providing housing necessary because of national defense activities and conditions arising out of World War II. These provisions are not classified to the Code, although all three acts are cited in a ''Prior Additional Appropriations'' note under section 1523 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator'' wherever appearing.

1948—Act June 19, 1948, inserted proviso to permit sale of certain permanent war housing to veterans at a purchase price not in excess of cost of construction.

Act June 28, 1948, inserted last proviso.

CHANGE OF NAME

Department of the Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, 502, and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App. B(126)], July 29, 1949. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

SUBCHAPTER III—DEFENSE PUBLIC WORKS

§§ 1531 to 1536. Omitted

CODIFICATION

Section 1531, act Oct. 14, 1940, ch. 862, title II, § 201, as added June 28, 1941, ch. 260, § 3, 55 Stat. 361, which declared the policy of this subchapter was to provide means by which public works were to be acquired, operated, and maintained in the areas described in section 1532 of this title, and defined public works, was omitted in view of the omission of section 1532 of this title.

Section 1532, act Oct. 14, 1940, ch. 862, title II, § 202, as added June 28, 1941, ch. 260, § 3, 55 Stat. 362; amended Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; 1950 Reorg. Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269, which related to the powers of the Housing and Home Administrator respecting defense public works and defined private agency, was omitted pursuant to section 1(a)(12) of act July 3, 1952, ch. 570, 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, which provided that this section continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by Proc. No. 2914, 15 F.R. 9029 64 Stat. A 454, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, or on such earlier date or dates as provided by Congress, but in no event beyond July 1, 1953.

Section 1533, act Oct. 14, 1940, ch. 862, title II, § 203, as added June 28, 1941, ch. 260, § 3, 55 Stat. 362; amended Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1259; June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; 1950 Reorg. Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269, which related to the terms to be observed in the application of this subchapter and restricted governmental supervision over schools and hospitals, was omitted in view of the omission of section 1532 of this title.

Section 1534, act Oct. 14, 1940, ch. 862, title II, § 204, as added June 28, 1941, ch. 260, § 3, 55 Stat. 363; amended Jan. 21, 1942, ch. 14, § 5, 56 Stat. 12; July 15, 1943, ch. 240, 57 Stat. 565; July 3, 1945, ch. 264, § 1, 59 Stat. 383, which authorized appropriations to carry out the purposes of this subchapter, was omitted in view of the omission of section 1532 of this title.

Section 1535, act Oct. 14, 1940, ch. 862, title II, § 205, as added June 26, 1946, ch. 498, 60 Stat. 314, which authorized, for the fiscal year ending June 30, 1947, contributions for the operation and maintenance of school facilities in order to enable school authorities that were still over-burdened with war-incurred school enrollments to meet their needs during transition from war to peacetime conditions.

Section 1536, act July 31, 1953, ch. 302, title I, § 101, 67 Stat. 305, which authorized the Administrator to transfer projects or facilities to other departments or agencies which request a transfer, was enacted as a part of the First Independent Offices Appropriation Act, 1954,

and not as a part of title II of the Lanham Public War Housing Act which comprised this subchapter, and was not repeated in subsequent appropriation acts.

LIMITATION ON USE OF FUNDS

Act July 15, 1943, as amended by act July 3, 1945, provided in part that no funds be used for loans, grants, or contributions for the operation day care or extended school services for children of mothers employed in war areas if and when the War-Area-Child-Care Act of 1943 (S. 1130, Seventy-eighth Congress, first session), becomes law, no grant, loan, or contribution for the maintenance or operation of public schools in any State be made without prior consultation with the State department of education and the United States Office of Education, and that none of the funds authorized herein be used to acquire public works already operated by public or private agencies, except where funds were allotted for substantial additions or improvements to such works with the consent of the owner, and that the total amount for contributions to public and private agencies for the maintenance and operation of public works after July 1, 1943, not exceed $120,000,000.

ADDITIONAL APPROPRIATIONS

Acts Apr. 25, 1945, ch. 95, title I, 59 Stat. 80; July 3, 1945, ch. 264, §§2, 3, 59 Stat. 383, provided in part for an additional $20,000,000 to enable the Federal Works Administrator to carry out the functions vested in him by sections 1531 to 1534 and 1541 of this title, which amount was to remain available during the continuance of the unlimited national emergency declared by the President on May 27, 1941 but which was not to be available for new projects after June 30, 1946 and of which amount $800,000 was to be available for administrative expenses, and the limitation of $80,000,000 in the First Supplemental Appropriation Act, 1945, act Mar. 31, 1945, ch. 47, 95 Stat. 46, on the total amount to be allocated for contributions to public and private agencies for the maintenance and operation of public works after July 1, 1943 be increased to $85,000,000, and that in making allocations from the funds herein appropriated for construction projects, priority be given to emergency projects involving an estimated cost to the Federal Government of less than $250,000.

SUBCHAPTER IV—GENERAL PROVISIONS AFFECTING SUBCHAPTERS II TO VII

§ 1541. Omitted

Section, acts Oct. 14, 1940, ch. 862, title III, §301, formerly §4, 54 Stat. 1127; renumbered title III, §301, and amended June 28, 1941, ch. 260, §4(a), 55 Stat. 363; Apr. 10, 1942, ch. 239, §1, 56 Stat. 212, which provided that when President declared that emergency declared by him on Sept. 8, 1939, ceased to exist, the authority contained in sections 1521, 1532, 1561, and 1562 of this title terminate and that property acquired or constructed under subchapters II to VII of this subchapter be disposed of as promptly as advantageous under circumstances and in public interest, was omitted pursuant to section 1(a)(12) of act July 3, 1952, ch. 570, 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, §1, 67 Stat. 18, which provided that this section continue in force until six months after the national emergency proclaimed by the President on Dec. 16, 1950 by Proc. No. 2914, 15 F.R. 9029, 64 Stat. A. 454, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, or on such earlier date or dates as approved by Congress, but in no event beyond July 1, 1953.

§ 1542. Transfer of funds from other Federal agencies to Secretary of Housing and Urban Development

Where any Federal agency has funds for the provision of housing in connection with national-defense activities it may, in its discretion, make transfers of those funds, in whole or in part, to the Secretary of Housing and Urban Development, and the funds so transferred shall be available for, but only for, any or all of the objects and purposes of and in accordance with all the authority and limitations contained in subchapters II to VII of this chapter, and for administrative expenses in connection therewith.

(Oct. 14, 1940, ch. 862, title III, §302, formerly §5, 54 Stat. 1127; renumbered title III, §302, June 28, 1941, ch. 260, §4(b), 55 Stat. 363; amended Ex. Ord. No. 9070, §1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73; Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted "Housing and Home Finance Administrator" for "National Housing Administrator".

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1543. Omitted

CODIFICATION

Section, acts Oct. 14, 1940, ch. 862, title III, §303, formerly §6, 54 Stat. 1127; renumbered title III, §303, June 28, 1941, ch. 260, §4(b), 55 Stat. 363; amended Ex. Ord. No. 9070, §1, eff. Feb. 24, 1942, 7 F.R. 1529; July 7, 1943, ch. 196, §3, 57 Stat. 388; Feb. 18, 1946, ch. 30, title I, §101, 60 Stat. 9; June 11, 1948, ch. 448, 62 Stat. 356; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73, which related to disposition of moneys derived from rentals or operations of acquired or constructed property and to establishment, limitations on, and termination of reserves, was omitted in view of the omission of section 1541 of this title.

§ 1544. Power of Secretary of Housing and Urban Development to manage, convey, etc., housing properties

Notwithstanding any other provisions of law, whether relating to the acquisition, handling, or disposal of real or other property by the United States or to other matters, the Secretary of Housing and Urban Development, with respect to any property acquired or constructed under the provisions of subchapters II to VII of this chapter, is authorized by means of Government personnel, selected qualified private agencies, or public agencies (a) to deal with, maintain, operate, administer, and insure; (b) to pursue to final collection by way of compromise or otherwise, all claims arising therefrom; (c) to rent, lease, exchange, sell for cash or credit, and convey the whole or any part of such property and to convey without cost portions thereof to local municipalities for street or other public use: *Provided*, That any such transaction shall be

upon such terms, including the period of any lease, as may be deemed by the Secretary of Housing and Urban Development to be in the public interest: *Provided further*, That the Secretary of Housing and Urban Development shall fix fair rentals, on projects developed pursuant to subchapters II to VII of this chapter, which shall be based on the value thereof as determined by him, with power during the emergency, in exceptional cases, to adjust the rent to the income of the persons to be housed, and that rentals to be charged for Army, Air Force, and Navy personnel shall be fixed by the Departments of the Army, Air Force, and Navy: *Provided further*, That any lease authorized hereunder shall not be subject to the provisions of section 1302 of title 40. As used in this section the term ''local municipalities'' shall include the District of Columbia.

(Oct. 14, 1940, ch. 862, title III, § 304, formerly § 7, 54 Stat. 1127; renumbered title III, § 304, June 28, 1941, ch. 260, § 4(b), 55 Stat. 363; amended Jan. 21, 1942, ch. 14, § 6, 56 Stat. 12; Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 10, 1942, ch. 239, § 2, 56 Stat. 212; July 26, 1947, ch. 343, title II, §§ 205(a), 207(a), (f), 61 Stat. 501–503; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

CODIFICATION

In text, ''section 1302 of title 40'' substituted for ''section 321 of the Act of June 30, 1932 (47 Stat. 412)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator'' wherever appearing.

1942—Act Apr. 10, 1942, inserted last sentence.

Act Jan. 21, 1942, amended second proviso.

CHANGE OF NAME

Department of the Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App. B(129)], July 29, 1949. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by sections 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1545. Omitted

CODIFICATION

Section, acts Oct. 14, 1940, ch. 862, title III, § 305, formerly § 8, 54 Stat. 1127; renumbered title III, § 305, June 28, 1941, ch. 260, § 4(b), 55 Stat. 363; amended Jan. 21, 1942, ch. 14, § 7, 56 Stat. 12; Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73, which related to utilization of Federal and local agencies and private services, was omitted in view of the omission of section 1541 of this title.

§ 1546. Payment of annual sums to local authorities in lieu of taxes

The Secretary of Housing and Urban Development shall pay from rentals annual sums in lieu of taxes to any State and/or political subdivision thereof, with respect to any real property acquired and held by him under subchapters II to VII of this chapter, including improvements thereon. The amount so paid for any year upon such property shall approximate the taxes which would be paid to the State and/or subdivision, as the case may be, upon such property if it were not exempt from taxation, with such allowance as may be considered by him to be appropriate for expenditure by the Government for streets, utilities, or other public services to serve such property. As used in this section the term ''State'' shall include the District of Columbia.

(Oct. 14, 1940, ch. 862, title III, § 306, formerly § 9, 54 Stat. 1127; renumbered title III, § 306, and amended June 28, 1941, ch. 260, § 4(b), 55 Stat. 363; Jan. 21, 1942, ch. 14, § 8, 56 Stat. 12; Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 10, 1942, ch. 239, § 3(a), 56 Stat. 212; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

CODIFICATION

Words ''including any Territory or possession of the United States'' appearing in text prior to amendment by act Jan. 21, 1942, inserted on authority of section 4(b) of act June 28, 1941, which provided that when used in this section the term '''State' includes any Territory or possession of the United States''.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator''.

1942—Act Apr. 10, 1942, inserted last sentence.

Act Jan. 21, 1942, amended section generally.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1547. Preservation of local civil and criminal jurisdiction and civil rights

Notwithstanding any other provision of law, the acquisition by the Secretary of Housing and

Urban Development of any real property pursuant to subchapters II to VII of this chapter shall not deprive any State or political subdivision thereof, including any Territory or possession of the United States, of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property. As used in this section the term ''State'' shall include the District of Columbia.

(Oct. 14, 1940, ch. 862, title III, § 307, formerly § 10, 54 Stat. 1128; renumbered title III, § 307, and amended June 28, 1941, ch. 260, § 4(b), 55 Stat. 363; Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 10, 1942, ch. 239, § 3(b), 56 Stat. 212; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

CODIFICATION

Words ''including any Territory or possession of the United States'' were inserted upon authority of section 4(b) of act June 28, 1941, which provided that when used in this section the term ''State' includes any Territory or possession of the United States''.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator''.

1942—Act Apr. 10, 1942, inserted last sentence.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1548. Rules and regulations; standards of safety, convenience, and health

The Secretary of Housing and Urban Development is authorized to make such rules and regulations as may be necessary to carry out the provisions of subchapters II to VII of this chapter, and shall establish reasonable standards of safety, convenience, and health.

(Oct. 14, 1940, ch. 862, title III, § 308, formerly § 11, 54 Stat. 1128; renumbered title III, § 308, June 28, 1941, ch. 260, § 4(b), 55 Stat. 363; amended Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' and ''Housing and Home Finance Agency'' for ''National Housing Administrator'' and ''National Housing Agency'', respectively, wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1549. Laborers and mechanics; wages; preference in employment

Notwithstanding any other provision of law, the wages of every laborer and mechanic employed on any construction, repair or demolition work authorized by subchapters II to VII of this chapter shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. Not less than the prevailing wages shall be paid in the construction of defense housing authorized herein. Preference in such employment shall be given to qualified local residents.

(Oct. 14, 1940, ch. 862, title III, § 309, formerly § 12, 54 Stat. 1128; renumbered title III, § 309, June 28, 1941, ch. 260, § 4(b), 55 Stat. 363; amended Jan. 21, 1942, ch. 14, § 9, 56 Stat. 12.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1942—Act Jan. 21, 1942, inserted last sentence.

§ 1550. Separability

If any provision of subchapters II to VII of this chapter, or the application thereof to any persons or circumstances, is held invalid, the remainder of said subchapters, or application of such provision to other persons or circumstances shall not be affected thereby.

(Oct. 14, 1940, ch. 862, title III, § 310, formerly § 13, 54 Stat. 1128; renumbered title III, § 310, June 28, 1941, ch. 260, § 4(b), 55 Stat. 363.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

§ 1551. Repealed. Aug. 2, 1954, ch. 649, title VIII, § 802(b), 68 Stat. 642

Section, act Oct. 14, 1940, ch. 862, title III, § 311, formerly § 14, 54 Stat. 1128; renumbered title III, § 311, June 28, 1941, ch. 260, § 4(b), 55 Stat. 363, related to reports to Congress. See section 1701*o* of Title 12, Banks and Banking.

§ 1552. Powers of certain agencies designated to provide temporary shelter

Any agency designated by the President to provide temporary shelter under the provisions

of Public Law Numbered 9, Seventy-seventh Congress, Public Law Numbered 73, Seventy-seventh Congress, or the Third Supplemental National Defense Appropriations Act, 1942, shall have the same powers with respect to the management, maintenance, operation, and administration of such temporary shelter as are granted to the Secretary of Housing and Urban Development under section 1544 and section 1546 of this title with respect to projects constructed hereunder, and the provisions of section 1547 of this title shall apply to such temporary shelter projects and the occupants thereof.

(Oct. 14, 1940, ch. 862, title III, § 312, as added Jan. 21, 1942, ch. 14, § 10, 56 Stat. 13; amended Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The provisions of Public Laws 9 and 73, referred to in text, are not classified to the Code. The Third Supplemental National Defense Appropriation Act, 1942, referred to in text, is Public Law 353, the relevant provisions of which are not classified to the Code. For further details, see note set out under section 1524 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1553. Removal by Secretary of certain housing of temporary character; exceptions for local communities; report to Congress

Except as otherwise provided in subchapters II to VII of this chapter, the Secretary of Housing and Urban Development shall, as promptly as may be practicable and in the public interest, remove (by demolition or otherwise) all housing under his jurisdiction which is of a temporary character, as determined by him, and constructed under the provisions of this subchapter, Public Law 781, Seventy-sixth Congress, and Public Laws 9, 73, 353, Seventy-seventh Congress. Such removal shall, in any event, be accomplished not later than July 1, 1954 or by such later date as may be required because of extensions of time in accordance with section 1584 of this title, with the exception only of such housing as the Secretary of Housing and Urban Development, after consultation with local communities, finds is still urgently needed because of a particularly acute housing shortage in the area: *Provided*, That all such exceptions shall be reexamined annually by the Secretary of Housing and Urban Development and that all such exceptions and reexaminations shall be reported to the Congress. Notwithstanding any other provisions of law except provisions of law hereafter enacted expressly in limitation hereof, no Federal statute, or regulation thereunder, shall prohibit or restrict any action or proceeding to recover possession of any housing accommodations for the purpose of carrying out the provisions of this section or section 1584 of this title.

(Oct. 14, 1940, ch. 862, title III, § 313, as added July 7, 1943, ch. 196, § 4, 57 Stat. 388; amended June 28, 1948, ch. 688, § 4, 62 Stat. 1064; Oct. 25, 1949, ch. 729, § 5, 63 Stat. 906; Apr. 20, 1950, ch. 94, title II, §§ 202, 204, 64 Stat. 72, 73; Ex. Ord. No. 10385, Aug. 18, 1952, 17 F.R. 7525; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

The provisions of Public Law 781, and Public Laws 9, 73, 353, referred to in text, are not classified to the Code. For further details, see note set out under section 1524 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''December 31, 1952 or by such later date as may be required because of extensions of time in accordance with section 1584 of this title, with the exception only of such housing as the Administrator, after consultation with local communities, finds is still urgently needed because of a particularly acute housing shortage in the area'' for ''January 1, 1951, with the exception only of such housing as the Administrator, after consultation with local communities finds is still needed in the interest of orderly demobilization of the war effort,'' and inserted last sentence.

1949—Act Oct. 25, 1949, inserted ''January 1, 1951'' for ''January 1, 1950''.

1948—Act June 28, 1948, substituted ''January 1, 1950'' for ''two years after the President declares that the emergency declared by him on September 8, 1939, has ceased to exist''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in interpretation of this section, the date July 25, 1947, shall be deemed to be date of termination of any state of war theretofore declared by Congress and of national emergencies proclaimed by President on Sept. 8, 1939, and May 27, 1941.

EX. ORD. NO. 10385. EXTENSION OF TIME

Ex. Ord. No. 10385, Aug. 18, 1952, affected section by extending time for the removal of temporary housing from Dec. 31, 1952, to July 1, 1954.

SUBCHAPTER V—DEFENSE HOUSING AND PUBLIC WORKS FOR DISTRICT OF COLUMBIA

§§ 1561 to 1563. Omitted

CODIFICATION

Section 1561, act Oct. 14, 1940, ch. 862, title IV, § 401, as added Apr. 10, 1942, ch. 239, § 4, 56 Stat. 212; amended Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73, which authorized appropriations for housing of United States employees, was omitted pursuant to section 1(a)(12) of act July 3, 1952, ch. 570, 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, which provided that this section and section 1562 of this title continue in

force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by Proc. No. 2914, 15 F.R. 9029, 64 Stat. A 454, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, or on such earlier date or dates as provided by Congress, but in no event beyond July 1, 1953.

Section 1562, act Oct. 14, 1940, ch. 862, title IV, § 402, as added Apr. 10, 1942, ch. 239, § 4, 56 Stat. 213; amended June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380, authorized appropriations for public works projects. See par. set out above.

Section 1563, act Oct. 14, 1940, ch. 862, title IV, § 403, as added Apr. 10, 1942, ch. 239, § 4, 56 Stat. 213; amended June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380, which related to advancements to District of Columbia Commissioner for public works and reports to Congress, was omitted in view of the omission of sections 1561 and 1562 of this title.

§ 1564. Definitions

As used in subchapters II to VII of this chapter the term ''Federal Works Administrator'' or ''Administrator'', or ''Federal Works Agency'' shall, with respect to housing, be deemed to refer to the Housing and Home Finance Administrator or the Housing and Home Finance Agency, as the case may be. Such terms shall, with respect to public works and equipment therefor, be deemed to refer to the Federal Works Administrator or the Federal Works Agency, as the case may be.

(Oct. 14, 1940, ch. 862, title IV, § 404, as added Apr. 10, 1942, ch. 239, § 4, 56 Stat. 213; amended Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' and ''Housing and Home Finance Agency'' for ''National Housing Administrator'' and ''National Housing Agency'', respectively.

TRANSFER OF FUNCTIONS

Functions of Housing and Home Finance Agency transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provided that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency has lapsed.

Functions under sections 1531 to 1534 of this title transferred from Federal Works Administrator to Administrator of General Services by act June 30, 1949, ch. 288, title I, § 103(a), 63 Stat. 380, which was classified to section 753(a) of former Title 40, Public Buildings, Property, and Works, and subsequently transferred to Housing and Home Finance Administrator by Reorg. Plan No. 17 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

SUBCHAPTER VI—HOUSING FOR DISTRESSED FAMILIES OF SERVICEMEN AND VETERANS

§§ 1571 to 1573. Omitted

CODIFICATION

Section 1571, acts Oct. 14, 1940, ch. 862, title V, § 501, as added June 23, 1945, ch. 192, 59 Stat. 260; amended Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73, related to the construction of temporary housing facilities, and was omitted pursuant to section 1(a)(12) of act July 3, 1952, ch. 570, 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, which provided that this section and sections 1572, 1573, 1575, and 1576 of this title continue in force until six months after the termination of the National emergency proclaimed by the President on Dec. 16, 1950 by Proc. No. 2914, 15 F.R. 9029, 64 Stat. A 454, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, or on such earlier date or dates as provided by Congress, but in no event beyond July 1, 1953.

Section 1572, acts Oct. 14, 1940, ch. 862, title V, § 502, as added June 23, 1945, ch. 192, 59 Stat. 260; amended Dec. 31, 1945, ch. 657, 59 Stat. 674; Mar. 28, 1946, ch. 118, §§ 1, 2, 60 Stat. 85; Aug. 8, 1946, ch. 917, § 1, 60 Stat. 958; May 31, 1947, ch. 91, § 1, 61 Stat. 128; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73, related to the availability of funds for purposes of this subchapter, and was omitted in view of the termination of sections 1571 and 1573 of this title.

Section 1573, acts Oct. 14, 1940, ch. 862, title V, § 503, as added June 23, 1945, ch. 192, 59 Stat. 260; amended June 30, 1953, ch. 174, § 1, 67 Stat. 132, related to definitions for purposes of this subchapter, and was omitted pursuant to the time limitation set out in act July 3, 1952, ch. 570, § 1(a)(21), 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18. See section 1571 of this title.

AVAILABILITY OF FUNDS

Act May 31, 1947, ch. 91, § 2, 61 Stat. 128, provided that there were to be additional funds available under sections 1571, 1572, and 1573 of this title for necessary expenses incurred in completing the provision of temporary housing pursuant to a contract in writing executed prior to May 31, 1947, for reimbursement of certain eligible organizations for particular expenditures, and for payments to meet certain actual expenses prior to Apr. 1, 1947.

§ 1574. Repealed. Oct. 31, 1951, ch. 654, § 1(113), 65 Stat. 706

Section, act Oct. 14, 1940, ch. 862, title V, § 504, as added Aug. 8, 1946, ch. 912, § 2, 60 Stat. 958, related to the use or reuse of structures or facilities of Federal agencies as educational facilities for persons receiving training courses or education under title II of the Servicemen's Readjustment Act of 1944, as amended (act June 22, 1944, ch. 268, title II, 58 Stat. 284).

§§ 1575, 1576. Omitted

CODIFICATION

Section 1575, acts Oct. 14, 1940, ch. 862, title V, § 505, as added June 28, 1948, ch. 688, § 1, 62 Stat. 1062; amended Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; Oct. 26, 1951, ch. 577, § 2, 65 Stat. 648, related to relinquishment of Government's rights in temporary housing on campuses or other educational lands.

Section 1576, acts Aug. 24, 1949, ch. 506, title II, § 201, 63 Stat. 659; Sept. 6, 1950, ch. 896, ch. VIII, title II, § 201, 64 Stat. 723, which was not repeated in the Independent Offices Appropriation Act, 1952, act Aug. 31, 1951, ch. 376, 65 Stat. 268, provided that application for relinquishment had to be filed by Dec. 30, 1950. Section was enacted as a part of act Aug. 24, 1949, popularly known as the Independent Offices Appropriation Act, 1951, and

not as a part of title V of the Lanham Public War Housing Act, act Oct. 14, 1940, ch. 862, as added June 23, 1945, ch. 192, 59 Stat. 260, which comprises this subchapter.

SUBCHAPTER VII—DISPOSAL OF WAR AND VETERANS' HOUSING

§ 1581. Housing disposition

(a) Mandatory transfers

Upon the filing of a request therefor as herein prescribed, the Secretary of Housing and Urban Development shall (subject to the provisions of this section) relinquish and transfer, without monetary consideration, to any State or political subdivision thereof, local housing authority, local public agency, nonprofit organization, or educational institution, all contractual rights (including the right to revenues and other proceeds) and all property right, title, and interest of the United States in and with respect to (1) any temporary housing located on land owned or controlled by such transferee and in which the United States has no leasehold or other property interest, and (2) housing materials which have been made available to the transferee by the Secretary of Housing and Urban Development pursuant to section 1572 of this title.

(b) Transfer to provide housing for parents of deceased World War II servicemen

Upon the filing of a request therefor as herein prescribed, the Secretary of Housing and Urban Development may (subject to the provisions of this section) relinquish and transfer, without monetary consideration other than that specifically required by this subsection, to any State, county, municipality, or local housing authority, or to any educational institution where the housing involved is being operated for its student veterans or where the land underlying the housing is in the ownership of two or more educational institutions, or to any other local public agency or nonprofit organization where the housing involved has been made available by the United States to such agency or organization pursuant to section 1572 of this title or where the Secretary of Housing and Urban Development determines that the housing involved is urgently needed by parents of persons who served in the Armed forces at any time on or after September 16, 1940, and prior to July 26, 1947, or on or after June 27, 1950, and prior to such date thereafter as shall be determined by the President and died of service-connected illness or injury (in which case the preferences in subsection (d)(1) of this section shall not apply), all right, title, and interest of the United States in and with respect to any temporary housing (excluding commercial facilities which the Secretary of Housing and Urban Development determines are suitable for separate disposal and community facilities which the Secretary of Housing and Urban Development determines should be disposed of separately) located on land in which the United States has a property interest through ownership, lease, or otherwise, under the following conditions:

(1) If the land is owned by the United States and under the jurisdiction of the Secretary of Housing and Urban Development, the transferee shall have purchased such land from the Secretary of Housing and Urban Development at a price substantially equal to the cost to the United States of the land (including survey, title examination, and other similar expenses incident to acquisition but excluding the cost or value of all improvements thereto by the United States other than extraordinary fill), or, if the Secretary of Housing and Urban Development determines the amount of such cost to be nominal or not readily ascertainable, at a price which the Secretary of Housing and Urban Development determines to be fair and reasonable. Payment for such land shall be made in full at the time of sale or in not more than ten equal annual installments (the first of which shall be paid within one year from the date of conveyance) all of which shall be secured as determined by the Secretary of Housing and Urban Development with interest from the date of conveyance at the going Federal rate of interest at the time of conveyance.

(2) If the land is owned by the United States and not under the jurisdiction of the Secretary of Housing and Urban Development, the transferee shall have purchased such land from the Federal agency having jurisdiction thereof. The Federal agency having jurisdiction of any such land is authorized to sell and convey the same to any such transferee on the terms authorized herein except that the determinations required to be made by the Secretary of Housing and Urban Development shall be made by the agency having jurisdiction of such land.

(3) If the United States does not own the land but has an interest therein through lease or otherwise, the transferee shall (i) where it is not the landowner, obtain the right to possession of such land for a term satisfactory to the Secretary of Housing and Urban Development, (ii) obtain from the landowner a release (or, if the transferee is the landowner, furnish a release) of the United States from all liability in connection therewith, including any liability for removal of structures or restoration of the land, except for any rental or use payment due at the time of transfer, and (iii) reimburse the United States for the proportionate amount of any payments made by the United States for the right to use the land and for taxes or payments in lieu of taxes for any period extending beyond the time of the transfer, and (iv) if the interest of the United States is not under the jurisdiction of the Secretary of Housing and Urban Development, the transferee shall obtain a transfer or release of the interest of the United States from the Federal agency having jurisdiction, which transfers and releases by such Federal agencies are authorized on such terms as the head of the respective agency determines to be in the public interest.

(c) Requests for relinquishment and transfer

The filing of a request under subsections (a), (b), (g), or (h) of this section must be made on or before June 30, 1953, unless the Secretary of Housing and Urban Development shall, in any specific case, authorize the filing of a request subsequent to such date but on or before June

30, 1951, and, in any such case, the Secretary of Housing and Urban Development may extend, for a specified period not beyond December 31, 1951, the time hereinafter prescribed for complying with all conditions to the relinquishment or transfer. Such request shall be in the form of a resolution adopted by the governing body of the applicant, except that, in the case of a State, such request may be in the form of a written request from the governor, and, in the case of a local housing authority (other than the Alaska Housing Authority), or a local public agency organized specifically and solely for the purpose of slum clearance and community redevelopment, shall be accompanied by a resolution of the governing body of the municipality or county approving the request for transfer. Such request shall be accompanied by either (1) a final opinion of the chief law officer or legal counsel of the applicant to the effect that it has legal authority to make the request, to accept the transfer of and operate any property involved, and to perform its obligations under this subchapter, or (2) a preliminary opinion of such officer or counsel concerning the legal authority of the applicant with respect to the proposed relinquishment or transfer including a statement of the reasons for not furnishing the final opinion with the request and the time required to furnish such opinion. If a request has been submitted as herein provided, the applicant shall comply with all conditions to the relinquishment or transfer (including the furnishing of the final legal opinion) on or before June 30, 1953: *Provided*, That, in any case where the applicant is unable to comply with all conditions to the relinquishment or transfer because of the need for the enactment of State legislation or charter amendment, such date shall be June 30, 1952, and may be extended by the Secretary of Housing and Urban Development, upon request in a particular case, to December 31, 1952. The Secretary of Housing and Urban Development shall act as promptly as practicable on any request which complies with the provisions of this section and is supported as herein required, and shall as promptly as practicable arrange for the making of any survey or the performance of other work necessary to the transfer: *Provided*, That, notwithstanding the provisions of this section, the Secretary of Housing and Urban Development may at any time, except with respect to housing for which a request has been or may be submitted under subsection (a) of this section, remove, dispose of, or retain any temporary housing, or part thereof, in accordance with any provision of subchapters II to VII of this chapter.

(d) Representations by transferee as to use of property; preferences

No relinquishment or transfer with respect to temporary housing shall be made under this section unless the transferee represents in its request therefor that it proposes, to the extent permitted by law:

(1) As among eligible applicants for occupancy in dwellings of given sizes and at specified rents, to extend the following preferences in the selection of tenants:

First, to families which are to be displaced by any low-rent housing project or by any public slum-clearance or redevelopment project initiated after January 1, 1947, or which were so displaced within three years prior to making application for admission to such housing; and as among such families first preference shall be given to families of disabled veterans whose disability has been determined by the Secretary of Veterans Affairs to be service-connected, and second preference shall be given to families of deceased veterans and servicemen whose death has been determined by the Secretary of Veterans Affairs to be service-connected, and third preference shall be given to families of other veterans and servicemen;

Second, to families of other veterans and servicemen; and as among such families first preference shall be given to families of disabled veterans whose disability has been determined by the Secretary of Veterans Affairs to be service-connected, and second preference shall be given to families of deceased veterans and servicemen whose death has been determined by the Secretary of Veterans Affairs to be service-connected: *Provided*, That if the transferee is an educational institution it may limit such preferences to student veterans and servicemen, and their families, and may, in lieu of such preferences, make available to veterans or servicemen and their families accommodations in any housing of the institution equal in number to the accommodations relinquished or transferred to it: *And provided further*, That, notwithstanding such preferences, if the transferee is a State, political subdivision, local housing authority, or local public agency, it will, in filling vacancies in housing transferred under subsection (b) of this section, give such preferences to military personnel and persons engaged in national defense or mobilization activities as the Secretary of Defense or his designee prescribes to such transferee.

(2) Not to dispose of any right, title, or interest in the property (by sale, transfer, grant, exchange, mortgage, lease, release, termination of the leasehold, or any other relinquishment of interest) either (i) for housing use on the present site or on any other site except to a State or political subdivision thereof, local housing authority, a local public agency, or an educational or eleemosynary institution, or (ii) for any other use unless the governing body of the municipality or county shall have adopted a resolution determining that, on the basis of local need and acceptability, the structures involved are satisfactory for such use and need not be removed: *Provided*, That this representation will not apply to any disposal through demolition for salvage, lease to tenants for residential occupancy, or lease of nondwelling facilities for the continuance of a use existing on the date of transfer, or where such disposal is the result of a bona fide foreclosure or other proceeding to enforce rights given as security for a loan to pay for land under this section: *And provided further*, That nothing contained in this paragraph shall be construed as applicable to

the disposition of any land or interest therein after the removal of the structures therefrom.

(3) To manage and operate the property involved in accordance with sound business practices, including the establishment of adequate reserves.

(4) Whenever the structures involved, or a substantial portion thereof, are terminated for housing use and are not to be used for a specific nonhousing use, to promptly demolish such structures terminated for housing use and clear the site thereof.

(e) Waiver of removal requirements

Any relinquishment or transfer by the Secretary of Housing and Urban Development under this section shall constitute a waiver of the requirements of section 1553 of this title (and any contractual obligations pursuant thereto) for removing the housing involved if the request for such relinquishment or transfer was made, as authorized herein, by the governing body of the municipality or county, or by the local housing authority, or, in other cases, if, prior to or within six months after the date of the relinquishment or transfer, there is filed with the Secretary of Housing and Urban Development a resolution of such governing body specifically approving (1) the unconditional waiver of such requirements or (2) the waiver of such requirements subject to conditions specified in the resolution. Any such conditions shall not affect the waiver of removal requirements hereunder, and the United States shall assume no responsibility for compliance therewith.

(f) Disposition of net revenue and proceeds; transfer charges

In any relinquishment or transfer under this section, the net revenues and other proceeds from such housing to which the United States is entitled on the basis of periodic settlements shall continue to accrue to the United States until the end of the month in which the relinquishment or transfer is made, and the obligation of the transferee to pay such accrued amounts shall not be affected by this section. The Secretary of Housing and Urban Development may charge to the transferee the cost to the United States of any survey, title information, or other item incidental to the transfer.

(g) Transfers for slum clearance and community redevelopment projects

Upon the filing of a request therefor as herein prescribed, the Secretary of Housing and Urban Development may (subject to the provisions of this section) relinquish and transfer, without monetary consideration other than payment for land involved as specifically required by subsection (b) of this section, to any local public agency organized specifically and solely for the purpose of slum clearance and community redevelopment in a municipality in which the total number of persons, who on December 31, 1948, were living in temporary family accommodations provided by the United States or any agency thereof since September 8, 1939, exceeded the total population of such municipality as shown by the 1940 census, all right, title, and interest of the United States in and with respect to any temporary housing located in such municipality under the conditions set forth in subsection (b) of this section. Notwithstanding the provisions of subsection (b) of this section, the Secretary of Housing and Urban Development shall not relinquish or transfer any right, title, or interest of the United States in and with respect to any temporary housing situated in such a municipality except as set forth in this subsection if at the time of the relinquishment or transfer there is in existence in such a municipality a local public agency organized specifically and solely for the purpose of slum clearance and community redevelopment.

(h) Transfers of temporary housing of masonry construction

Upon the filing of a request therefor as herein prescribed, the Secretary of Housing and Urban Development may (subject to the provisions of this section except the provisions of subsection (d) of this section) relinquish and transfer to any municipality, without monetary consideration other than payment for the land involved as specifically required by subsection (b) of this section, all right, title, and interest of the United States in and with respect to unoccupied temporary housing of masonry construction located in such municipality: *Provided*, That such housing has been wholly or partially stripped of trim and fixtures prior to April 20, 1950 and the municipality adopts a resolution determining that the structures, with proposed improvements, will be suitable for long-term housing use.

(Oct. 14, 1940, ch. 862, title VI, § 601, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Ex. Ord. No. 10284, §§ 1, 2, eff. Sept. 4, 1951, 16 F.R. 8971; Oct. 26, 1951, ch. 577, § 2, 65 Stat. 648; Ex. Ord. No. 10339, eff. Apr. 7, 1952, 17 F.R. 3012; Ex. Ord. No. 10395, eff. Sept. 19, 1952, 17 F.R. 8449; Ex. Ord. No. 10425, eff. Jan. 16, 1953, 18 F.R. 405; Feb. 15, 1956, ch. 35, 70 Stat. 15; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 102–54, § 13(q)(6)(A), June 13, 1991, 105 Stat. 280.)

REFERENCES IN TEXT

Section 1572 of this title, referred to in subsecs. (a) and (b), has been omitted from the Code.

Subchapters III and VI of this chapter, referred to in subsec. (c), were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

CODIFICATION

In subsec. (c), ''June 30, 1953'' substituted for ''December 31, 1950'' the first time it appears and ''June 30, 1951'' the second time it appears pursuant to the executive orders cited as credits to this section. See notes set out below.

AMENDMENTS

1991—Subsec. (d)(1). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration'' wherever appearing.

1956—Subsec. (g). Act Feb. 15, 1956, limited restriction on transfer or relinquishment of temporary housing to a local public slum clearance agency to municipalities having such an agency at time of transfer or relinquishment.

1951—Subsec. (b). Act Oct. 26, 1951, substituted ''at any time on or after September 16, 1940, and prior to

July 26, 1947, or on or after June 27, 1950, and prior to such date thereafter as shall be determined by the President'' for ''during World War II''.

TRANSFER OF FUNCTIONS

Functions of Housing and Home Finance Agency and head thereof transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provided that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency and Public Housing Administration have lapsed.

EXECUTIVE ORDER NO. 10284

Ex. Ord. 10284, Sept. 4, 1951, which extended time for filing requests from Dec. 31, 1950, to Dec. 31, 1951, also extended time for compliance with all conditions to relinquishments or transfers from June 30, 1951, to June 30, 1952. See note set out under section 1589a of this title.

EXECUTIVE ORDER NO. 10339

Ex. Ord. No. 10339, Apr. 7, 1952, set out as a note under section 1589a of this title, extended time for filing requests under subsecs. (a), (b), and (g) from Dec. 31, 1951, to Dec. 31, 1952, and extended time for compliance with all conditions to relinquishments or transfers under subsecs. (a), (b), and (g) from June 30, 1952, to June 30, 1953.

EXECUTIVE ORDER NO. 10395

Ex. Ord. No. 10395, Sept. 19, 1952, set out as a note under section 1589a of this title, extended time for filing requests under subsec. (h) from Dec. 31, 1951, to Dec. 31, 1952, and extended time for compliance with all conditions to relinquishments or transfers under subsec. (h) from June 30, 1952, to June 30, 1953.

EXECUTIVE ORDER NO. 10425

Ex. Ord. No. 10425, Jan. 16, 1953, set out as a note under section 1589a of this title, extended time for filing requests under subsecs. (a), (b), (g), and (h) from Dec. 31, 1952, to June 30, 1953.

§ 1582. Temporary housing exempted from provisions of section 1553 of this title

The requirements of section 1553 of this title shall not apply to any temporary housing—

(a) for which such requirements have been waived pursuant to section 1575[1] or section 1581 of this title;

(b) transferred by the Secretary of Housing and Urban Development to the jurisdiction of the Department of the Army, the Navy, or the Air Force pursuant to section 1524 of this title;

(c) disposed of by the Secretary of Housing and Urban Development under subchapter II or IV of this chapter for long-term housing or nonhousing use without any requirement for removal where the governing body of the municipality or county has adopted a resolution determining that, on the basis of local need and acceptability, the structures involved are (1) satisfactory for such long-term use or (2) satisfactory for such long-term use if conditions prescribed in such resolution, affecting the physical characteristics of the project, are met: *Provided*, That any such conditions shall not affect the disposal of any temporary housing hereunder, and the United States shall assume no responsibility for compliance with such conditions: *And provided further*, That any housing disposed of for housing use in accordance with this subsection shall thereafter be deemed to be housing accommodations, the construction of which was completed after June 30, 1947, within the meaning of section 1884 of Appendix to title 50, relating to preference or priority to veterans or their families; or

(d) disposed of or relinquished by the Secretary of Housing and Urban Development prior to April 20, 1950, subject to such requirements or contractual obligations pursuant thereto, where the governing body of the municipality or county on or before December 31, 1950, adopts a resolution as provided in subsection (c) of this section; and any contract obligations to the Federal Government for the removal of such housing shall be relinquished upon the filing of such a resolution with the Secretary of Housing and Urban Development.

(Oct. 14, 1940, ch. 862, title VI, § 602, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Oct. 26, 1951, ch. 577, § 2, 65 Stat. 648; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Section 1575 of this title, referred to in subsec. (a), has been omitted from the Code.

AMENDMENTS

1951—Subsec. (c). Act Oct. 26, 1951, struck ''of World War II'' thus making section applicable to veterans of Korean war.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1583. Redetermination of demountable housing as temporary or permanent

With respect to any housing classified, prior to April 20, 1950, by the Secretary of Housing and Urban Development as demountable, the Secretary of Housing and Urban Development shall, as soon as practicable but not later in any event than December 31, 1950, and after consultation with the communities affected, redetermine (taking into consideration local standards and conditions) whether such housing is of a temporary or permanent character, and after such redetermination shall dispose of such housing in accordance with the provisions of this subchapter.

(Oct. 14, 1940, ch. 862, title VI, § 603, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

[1] See References in Text note below.

§ 1584. Removal of all dwelling structures on land under Secretary's control; temporary housing exempted; preference in fulfilling vacancies

With respect to temporary housing remaining under the jurisdiction of the Secretary of Housing and Urban Development on land under his control, the Secretary of Housing and Urban Development shall (1) permit vacancies, occurring or continuing after July 1, 1953, to be filled only by transfer of tenants of other accommodations in the same locality being removed as required by subchapters II to VII of this chapter; (2) notify, on or before March 31, 1954, all tenants to vacate the premises prior to July 1, 1954; (3) promptly after July 1, 1954, cause actions to be instituted to evict any tenants still remaining; and (4) remove (by demolition or otherwise) all dwelling structures as soon as practicable after they become vacant: *Provided*, That in any case where a request for relinquishment or transfer has been filed pursuant to section 1581 of this title and where under the provisions of section 1581(c) of this title the date for compliance with all conditions to the relinquishment or transfer shall have been extended, each of the foregoing dates shall be extended for a period of time equal to the period of the extension under section 1581(c) of this title: *And provided further*, That nothing heretofore in this section shall apply (1) to any temporary housing in any municipality in which the total number of persons, who on December 31, 1948, were living in temporary family accommodations provided by the United States or any agency thereof since September 8, 1939, exceeds 30 per centum of the total population of such municipality as shown by the 1940 census, nor (2) to any temporary housing as to which the local governing body has adopted a resolution as provided in section 1582(c) of this title, nor (3) to any temporary housing for which a request has been submitted in accordance with section 1581(b) of this title, but which has not been relinquished or transferred solely because the applicant has been unable to obtain from the landowner the right to possession of the land on reasonable terms as determined by the Secretary of Housing and Urban Development: *Provided*, That, in filling vacancies in such housing, the preferences set forth in section 1581(d)(1) of this title shall be applicable and that families within such preference classes shall be eligible for admission to such housing, nor (4) to any temporary housing in which accommodations have been reserved, prior to the enactment of this section, for veterans attending an educational institution if (i) such institution certifies that the accommodations are urgently needed for such veterans and submits facts showing, to the satisfaction of the Secretary of Housing and Urban Development, that all reasonable efforts have been made by the institution to find other accommodations for them and (ii) such institution agrees to reimburse the Secretary of Housing and Urban Development for any financial loss to the Secretary of Housing and Urban Development in the operation of the accommodations after June 30, 1951.

(Oct. 14, 1940, ch. 862, title VI, § 604, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended June 30, 1951, ch. 197, 65 Stat. 110; Sept. 1, 1951, ch. 378, title VI, § 603(a), 65 Stat. 314; Ex. Ord. No. 10284, §§ 3–5, eff. Sept. 4, 1951, 16 F.R. 8971; Ex. Ord. No. 10339, eff. Apr. 7, 1952, 17 F.R. 3012; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1951—Act Sept. 1, 1951, repealed former fourth and fifth provisos which related to adjustments in rentals that might be set for Government-owned temporary housing.

Act June 30, 1951, substituted ''August 15, 1951'' for ''July 1, 1951''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

EXECUTIVE ORDER NO. 10284

Ex. Ord. No. 10284, Sept. 4, 1951, extended time for filling vacancies from Aug. 15, 1951, to July 1, 1952, for notices to vacate premises from Mar. 31, 1952, to Mar. 31, 1953, for time of vacating from July 1, 1952, to July 1, 1953, and for eviction from July 1, 1952, to July 1, 1953. See note set out under section 1589a of this title.

EXECUTIVE ORDER NO. 10339

Ex. Ord. No. 10339, Apr. 7, 1952, set out as a note under section 1589a of this title, extended time for filling vacancies from July 1, 1952, to July 1, 1953, for notices to vacate premises from Mar. 31, 1953, to Mar. 31, 1954, for time of vacating from July 1, 1953, to July 1, 1954, and for eviction from July 1, 1953, to July 1, 1954.

§ 1585. Acquisition of housing sites

(a) Lease, condemnation or purchase; temporary housing

The Secretary of Housing and Urban Development may continue by lease or condemnation any interest less than a fee simple in lands heretofore acquired by the Secretary of Housing and Urban Development for national defense or war housing or for veterans' housing (whether of permanent or temporary character), or held by any Federal agency in connection therewith, and may acquire, by purchase or condemnation, a fee simple title to or lesser interest in any such lands if the Secretary of Housing and Urban Development determines that the acquisition of such fee simple or lesser interest is necessary to protect the Government's investment or to maintain the improvements constructed thereon, or that the cost of fulfilling the Government's obligation to restore the property to its original condition would equal or exceed the cost of acquiring the title thereto.

In any city in which, on March 1, 1953, there were more than ten thousand temporary housing units held by the United States of America, or any two contiguous cities in one of which there were on such date more than ten thousand temporary housing units so held, the Secretary of Housing and Urban Development may acquire, by purchase or condemnation, a fee simple title

to any or all lands in which the Secretary holds a leasehold interest, or other interest less than a fee simple, acquired by the Federal Government for national defense or war housing or for veteran's housing where (1) the Secretary of Housing and Urban Development finds that the acquisition by the Secretary of a fee simple title in the land will tend to expedite the orderly disposal or removal of temporary housing under the Secretary's jurisdiction by facilitating the availability of improved sites for privately owned housing needed to replace such temporary housing, and will tend to expedite the transition of the city from a war-affected community containing, as of said date, a large number of temporary houses to a community having additional permanent, well-planned, residential neighborhoods, (2) the local governing body of the city makes a like finding and requests the Secretary of Housing and Urban Development to acquire such title to the land, and (3) the city has furnished assurances satisfactory to the Secretary of Housing and Urban Development that no individual who is employed by, or is an official of, the government of the city in which the land is located, or any agency thereof, shall be permitted, directly or indirectly, to have any financial interest in the purchase or redevelopment of such land: *Provided*, That such acquisitions by the Secretary of Housing and Urban Development pursuant to this sentence shall be limited to not exceeding four hundred and twenty-five acres of land in the general area in which approximately one thousand five hundred units of temporary housing held by the United States of America were unoccupied on said date: *And provided further*, That funds for such acquisition by the Secretary of Housing and Urban Development, which are authorized, pursuant to subsection (c) of this section and title II of the Independent Offices Appropriation Act, 1955, to be expended from the revolving fund established by section 1701g–5 of title 12, shall be taken into consideration, to the extent that they are needed, in making any determination pursuant to the second proviso under that section. All or any part of any land so acquired by the Secretary of Housing and Urban Development may, during the five year period following the date of its acquisition, be sold by the Secretary, through negotiated sale, to such city or any local public agency where (1) the city or local public agency has represented to the Secretary of Housing and Urban Development that it is duly authorized under State law to purchase and resell such land, that such land will be made available to private enterprise for development in accordance with local zoning and other laws, and that the aggregate of such land and any other land in the same city previously sold under the authority of this paragraph to the city or a local public agency will be developed for predominantly residential use, and (2) the city or local public agency has agreed to pay the fair market value of the land as determined by the Secretary of Housing and Urban Development, after giving consideration, among other relevant information, to the cost to the Federal Government of acquiring the fee simple title and of holding the land pending sale (including estimated amounts to cover legal and overhead expenses of such acquisition and to cover interest costs to the Federal Government of monies invested in the land pending sale). Any such negotiated sale of land to the city or a local public agency shall be made upon terms which require (1) that the city or public agency shall pay in cash at least one third of the price of the land upon its conveyance and the entire price within one year after its conveyance and (2) that any portion of the entire price not paid upon such conveyance shall be represented by an indebtedness which shall bear interest on outstanding balances at a rate of 4 per centum per annum and which shall be secured by a first mortgage lien upon the land or such portion of the land as the Secretary of Housing and Urban Development deems adequate to protect the financial interest of the Federal Government. The Secretary of Housing and Urban Development may, at any time that the Secretary deems it to be in the public interest to do so, dispose, under authority of other provisions of subchapters II to VII of this chapter, of any land acquired by the Secretary pursuant to this paragraph. Any land acquired by the Secretary of Housing and Urban Development pursuant to this paragraph which has not been disposed of within five years after its acquisition shall be disposed of by the Secretary as expeditiously as possible in the public interest in accordance with other authority contained in subchapters II to VII of this chapter. Notwithstanding the provisions of section 1546 of this title or any other provisions of law, no payments in lieu of taxes shall be made for any tax year beginning subsequent to the date of the acquisition of title to the property by the Secretary of Housing and Urban Development.

(b) Land rentals

In any case in which the Secretary of Housing and Urban Development holds, on or after April 1, 1950, an interest in land acquired by the Federal Government for national defense, war housing, or veterans' housing and where (1) the term of such interest (as prescribed in the taking or in the lease or other instruments) is for the ''duration of the emergency'' or ''duration of the war'', or ''duration of the emergency'' or ''duration of the war'' plus a specific period thereafter, or for some similarly prescribed term, and (2) the rental, award, or other consideration which the Federal Government is obligated to pay or furnish for such interest gives the owner of the land less than an annual return, after payment of real estate taxes, of 6 per centum of the lowest value placed on such land by an independent appraiser, hired by the Government to make such appraisal based on the value of the land before the acquisition of the Government's interest therein, plus 100 per centum of such value, the Secretary of Housing and Urban Development shall, upon request of the owner of the land and, notwithstanding any existing contractual or other rights or obligations, increase the amount of future payments for such interest in order to give the owner of the land a return for the Government's use thereof not exceeding the 6 per centum annual return described in (2) of this subsection: *Provided*, That this subsection shall not affect any payment heretofore made or any future payment accepted by an ob-

ligee, nor shall this subsection limit the consideration which may be paid for the use of any land beyond the existing term of the Government's interest therein.

(c) Reserve account; availability of moneys

Notwithstanding any other provisions of law unless hereafter enacted expressly in limitation hereof, moneys shall be deposited in the reserve account established pursuant to subsections (a) and (b) of section 1543 of this title (which account is continued subject to the limitation as to amount specified in subsection (c) of section 1543 of this title) and all moneys deposited in such reserve account shall be and remain available for any or all of the purposes specified in said subsections (a) or (b) of section 1543 of this title or in this section without regard to the time prescribed in subsection (c) of section 1543 of this title with respect to covering moneys in such account into miscellaneous receipts. Moneys in such reserve accounts shall also be available for the payment of necessary expenses (which shall be considered nonadministrative expenses) in connection with administering (1) transfers pursuant to section 1581 of this title, (2) redeterminations of the temporary or permanent character of demountable housing pursuant to section 1583 of this title, (3) changes in land tenure and revisions in the consideration payable to landowners pursuant to subsections (a) and (b) of this section, and (4) transfers of permanent war housing for low-rent use pursuant to section 1586 of this title. Moneys in such reserve account shall also be available for the purpose of making improvements to, or alterations of, any permanent housing or part thereof if (1) the dwelling structures therein are designed for occupancy by not more than four families and are to be sold separately and (2) such improvement or alteration is requested by the local governing body as a condition to the acceptance of the dedication of streets or utilities or is necessary for compliance with local law or regulation relating to the continued operation or occupancy of the housing by a purchaser.

(Oct. 14, 1940, ch. 862, title VI, § 605, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Sept. 1, 1951, ch. 378, title VI, § 603(b), (c), 65 Stat. 314; Aug. 2, 1954, ch. 649, title VIII, § 805(1), 68 Stat. 644; Aug. 11, 1955, ch. 783, title I, § 108(d), 69 Stat. 638; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Title II of the Independent Offices Appropriation Act, 1955, referred to in subsec. (a), is title II of act June 24, 1954, ch. 359, 68 Stat. 294. Provisions of title II that authorized funds for acquisition of housing sites are not classified to the Code.

Subchapters III and VI of this chapter, referred to in subsec. (a), were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

Section 1543 of this title, referred to in subsec. (c), was omitted from the Code.

AMENDMENTS

1955—Subsec. (a). Act Aug. 11, 1955, authorized Administrator to acquire a fee simple title to lands where he finds that such acquisition will tend to expedite the transition of the city from a war-affected community containing a large number of temporary houses to a community having additional permanent, well-planned, residential neighborhoods.

1954—Subsec. (a). Act Aug. 2, 1954, added second par.

1951—Subsec. (b). Act Sept. 1, 1951, in cl. (2), inserted "plus 100 per centum of such value", substituted "shall" for "is authorized" and "increase" for "to increase".

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1586. Sale of specific housing projects

(a) Conditions precedent

The Secretary of Housing and Urban Development is specifically authorized to convey the following housing projects to the following local public housing agencies respectively, if—

(1) on or before January 30, 1953, (i) the conveyance is requested by the governing body of the municipality or county and (ii) the public housing agency has demonstrated to the satisfaction of the Secretary of Housing and Urban Development that there is a need for low-rent housing (as such term is defined in the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]) within the area of operation of such public housing agency which is not being met by private enterprise;

(2) the Secretary of Housing and Urban Development determines that the project requested will meet such need in whole or in part, and is suitable for low-rent housing use; and

(3) on or before June 30, 1953, the governing body of the municipality or county enters into an agreement with the public housing agency (satisfactory to the Secretary of Housing and Urban Development) providing for local cooperation and payments in lieu of taxes not in excess of the amount permitted by subsection (c)(5) of this section, and the public housing agency enters into an agreement with the Secretary of Housing and Urban Development (in accordance with subsection (c) of this section) or for the administration of the project:

State	*Project number*	*Local public housing agency*
Alabama	1041	Housing Authority of District of Birmingham.
	1061	Housing Authority of Greater Gadsden.
	1062	Housing Authority of Greater Gadsden.
	1031	Housing Board of Mobile.
	1033	Housing Board of Mobile.
	1034	Housing Board of Mobile.
	1035	Housing Board of Mobile.
	1036	Housing Board of Mobile.
	1101	Housing Board of Mobile.
	1102	Housing Board of Mobile.
	1072	Housing Authority of Sylacauga.
	1076	Housing Authority of Sylacauga.
	1073	Housing Authority of City of Talladega.
Arkansas	3023	Housing Authority of City of Conway.
California	4031	Housing Authority of City of Fresno.
	4161	Housing Authority of County of Kern.
	4141	Housing Authority of County of Kern.
	4103	Housing Authority of City of Los Angeles.
	4104	Housing Authority of City of Los Angeles.

State	Project number	Local public housing agency
	4108	Housing Authority of City of Los Angeles.
	4121	Housing Authority of City of Paso Robles.
	4171	Housing Authority of City of Richmond.
	4174	Housing Authority of City of Richmond.
Connecticut	6091	Housing Authority of City of Bristol.
	6024	Housing Authority of Town of East Hartford.
	6031	Housing Authority of City of New Britain.
	6032	Housing Authority of City of New Britain.
	6101	Housing Authority of City of New Haven.
	6041	Housing Authority of City of Waterbury.
	6213	Housing Authority of City of Waterbury.
District of Columbia.	49012	National Capital Housing Authority.
	49017	National Capital Housing Authority.
	49044	National Capital Housing Authority.
Florida	8052	Housing Authority of City of Jacksonville.
	8121	Housing Authority of City of Lakeland.
	8062	Housing Authority of City of Miami.
	8011	Housing Authority of City of Orlando.
	8082	Housing Authority of City of Pensacola.
	8084	Housing Authority of City of Pensacola.
	8085	Housing Authority of City of Pensacola.
	8131	Housing Authority of City of Sebring.
	8041	Housing Authority of City of West Palm Beach.
Georgia	9071	Housing Authority of City of Albany.
	9061	Housing Authority of Macon.
	9063	Housing Authority of Macon.
	9041	Housing Authority of Savannah.
	9042	Housing Authority of Savannah.
	9043	Housing Authority of Savannah.
Illinois	11081	Madison County Housing Authority.
	11082	Madison County Housing Authority.
	11111	Winnebago County Housing Authority.
	11112	Winnebago County Housing Authority.
Indiana	12071	Housing Authority of City of Fort Wayne.
	12021	Housing Authority of City of South Bend.
Louisiana	16051	Housing Authority of Parish of East Baton Rouge.
Maryland	18095	Housing Authority of Baltimore City.
	18096	Housing Authority of Baltimore City.
	18097	Housing Authority of Baltimore City.
	18098	Housing Authority of Baltimore City.
Massachusetts	19051	Boston Housing Authority.
	19021	Chicopee Housing Authority.
	19022	Chicopee Housing Authority.
	19061	Pittsfield Housing Authority.
	19023	Springfield Housing Authority.
Michigan	20042	Housing Commission of Detroit.
Nevada	26021	Housing Authority of City of Las Vegas.
New Hampshire	27021	Housing Authority of City of Manchester.
New Jersey	28044	Housing Authority of City of Camden.
	28021	Housing Authority of City of Long Branch.
	28072	Housing Authority of City of Newark.
	28111	Housing Authority of Town of Phillipsburg.
New York	30031	Buffalo Municipal Housing Authority.
	30032	Buffalo Municipal Housing Authority.
	30042	Elmira Housing Authority.
	30033	Lackawanna Municipal Housing Authority.
	30039	Lackawanna Municipal Housing Authority.
	30034	Niagara Falls Housing Authority.
	30071	Niagara Falls Housing Authority.
	30082	Massena Housing Authority.
North Carolina	31023	Housing Authority of City of Wilmington.
	31024	Housing Authority of City of Wilmington.
Ohio	33031	Canton Metropolitan Housing Authority.
	33033	Canton Metropolitan Housing Authority.
	33021	Cincinnati Metropolitan Housing Authority.
	33071	Cleveland Metropolitan Housing Authority.
	33074	Cleveland Metropolitan Housing Authority.
	33075	Cleveland Metropolitan Housing Authority.
	33112	Lorain Metropolitan Housing Authority.
	33261	Lorain Metropolitan Housing Authority.
	33262	Lorain Metropolitan Housing Authority.
	33041	Warren Metropolitan Housing Authority.
	33043	Warren Metropolitan Housing Authority.
Oregon	35021	Housing Authority of Portland.
Pennsylvania	36051	Housing Authority of County of Beaver.
	36058	Housing Authority of County of Beaver.
	36041	Housing Authority of Bethlehem.
	36042	Housing Authority of Bethlehem.
	36044	Housing Authority of Bethlehem.
	36151	Allegheny County Housing Authority.
	36152	Allegheny County Housing Authority.
	36061	Housing Authority of County of Lawrence.
	36021	Housing Authority of City of Erie.
	36031	Housing Authority of County of Lycoming.
	36011	Housing Authority of Philadelphia.
	36012	Housing Authority of Philadelphia.
	36014	Housing Authority of Philadelphia.
	36015	Housing Authority of Philadelphia.
	36016	Housing Authority of Philadelphia.
	36101	Housing Authority of City of Pittsburgh.
	36212	Allegheny County Housing Authority.
	36295	Housing Authority of City of York.
Rhode Island	37013	Housing Authority of City of Newport.
South Carolina	38023	Housing Authority of City of Charleston.
	38061	Housing Authority of City of Charleston.
	38041	Housing Authority of City of Spartanburg.
	38042	Housing Authority of City of Spartanburg.
Tennessee	40022	Jackson Housing Authority.
	40023	Milan Housing Authority.
	40011	Nashville Housing Authority.
	40025	Trenton Housing Authority.
Texas	41064	Housing Authority of City of Corpus Christi.
	41065	Housing Authority of City of Corpus Christi.
	41133	Housing Authority of City of Freeport.
	41031	Housing Authority of City of Houston.
	41131	Housing Authority of City of Lake Jackson.
	41101	Housing Authority of City of Mineral Wells.
	41103	Housing Authority of City of Mineral Wells.
	41072	Housing Authority of City of Orange.
	41032	Housing Authority of City of Pasadena.
	41141	Housing Authority of City of Texarkana.
	41121	Housing Authority of City of Wichita Falls.
Virginia	44131	Alexandria Redevelopment and Housing Authority.
	44132	Alexandria Redevelopment and Housing Authority.
	44133	Alexandria Redevelopment and Housing Authority.
	44135	Alexandria Redevelopment and Housing Authority.
	44136	Alexandria Redevelopment and Housing Authority.

State	*Project number*	*Local public housing agency*
	44065	Newport News Redevelopment and Housing Authority.
	44074	Norfolk Redevelopment and Housing Authority.
	44086	Portsmouth Redevelopment and Housing Authority.
Washington	45043	Housing Authority of City of Bremerton.
	45277N	Housing Authority of County of Clallam.
	45315N	Housing Authority of County of Clallam.
	45133	Housing Authority of County of King.
	45052	Housing Authority of City of Seattle.
	45053	Housing Authority of City of Seattle.
	45054	Housing Authority of City of Seattle.
	45055	Housing Authority of City of Seattle.
	45056	Housing Authority of City of Seattle.
	45122	Housing Authority of City of Vancouver.

In addition to the authority of the Secretary of Housing and Urban Development under the first sentence of this subsection, the Secretary is specifically authorized to convey any permanent war housing project to a local public housing agency if requested in writing, within sixty days after April 20, 1950, by such agency or the executive head of the municipality (or of the county or parish if such project is not in a municipality) within which the project is located, or by the Governor of the State where an agency of the State has authority to operate the project: *Provided*, That any conveyance by the Secretary of Housing and Urban Development pursuant to this sentence shall be subject to the same conditions and requirements as provided in this section with respect to a project specifically designated herein.

(b) Projects as "low-rent housing"

Upon the conveyance by the Secretary of Housing and Urban Development of any such project pursuant to the provisions of this section, such project shall constitute and be deemed to be ''low-rent housing'' as that term is used and defined in the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] (and to be a low-rent housing project assisted pursuant to that Act, within the meaning of section 1404a(b) of this title). Any instrument of conveyance by the Administrator stating that it is executed under subchapters II to VII of this chapter shall be conclusive evidence of compliance therewith insofar as any title or other interest in the property is concerned.

(c) Conditions and requirements of agreements

The agreement between the public housing agency and the Secretary of Housing and Urban Development required by subsection (a) of this section shall contain the following conditions and requirements, and may contain such further conditions, requirements, and provisions as the Secretary determines—

(1) during a period of forty years following the conveyance the project shall be administered as low-rent housing in accordance with subsections 2(1) and 2(2) of the United States Housing Act of 1937 [42 U.S.C. 1402(1) and (2)]: *Provided*, That if at any time during such period the public housing agency and the Secretary of Housing and Urban Development agree that the project, or any part thereof, is no longer suitable for use as low-rent housing, the project, or part thereof, shall with the approval of the Secretary of Housing and Urban Development be sold by the public housing agency after which the agreement shall be deemed to have terminated with respect to such project or part thereof except that the proceeds from such sale, after payment of the reasonable expense thereof, shall be paid to the Secretary of Housing and Urban Development, or, with the Secretary's approval, used to finance the repair or rehabilitation of a project or part thereof conveyed to the public housing agency under this section;

(2) the public housing agency shall, within six months following the conveyance, initiate a program for the removal of all families residing in the project on the date of conveyance who are ineligible under the provisions of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] for continued occupancy therein, and shall have required such ineligible tenants to vacate their dwellings within eighteen months after the initiation of such program: *Provided*, That military personnel as designated by the Secretary of Defense or his designee shall not be subject to such removal until eighteen months after the date of conveyance;

(3) annually during the term of such agreement, the public housing agency shall pay to the Secretary of Housing and Urban Development all income from the project remaining after deducting the amounts necessary (as determined pursuant to regulations of the Secretary of Housing and Urban Development) for (i) the payment of reasonable and proper costs of operating, maintaining, and approving such project, (ii) the payments in lieu of taxes authorized hereunder, (iii) the establishment and maintenance of reasonable and proper reserves as approved by the Secretary of Housing and Urban Development, and (iv) the payment of currently maturing installments of principal of and interest on any indebtedness incurred by such public housing agency with the approval of the Secretary of Housing and Urban Development: *Provided*, That the provisions of this paragraph shall not be applicable to any project which is consolidated under a single contract with one or more low-rent projects being assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], and all income from any such project conveyed under this section may be commingled with funds of the project or projects with which it is consolidated and applied in accordance with the requirements of the consolidated contract and the provisions of section 10(c) of the said Act [42 U.S.C. 1410(c)];

(4) during the term of such agreement, the project shall be exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivisions;

(5) for the tax year in which the conveyance is made and the next succeeding tax year annual payments in lieu of taxes may be made to the State, city, county, or other political sub-

divisions in amounts not in excess of the real property taxes which would be paid to such State, city, county, or other political subdivisions if the project were not exempt from taxation; and thereafter, during the term of such agreement, payments in lieu of taxes with respect to the project may be made in annual amounts which do not exceed 10 per centum of the annual shelter rents charged in such project;

(6) in selecting tenants for such project, the public housing agency shall give such preferences as are prescribed by subsection 10(g) of the United States Housing Act of 1937 [42 U.S.C. 1410g], except that for one year after the date of conveyance of a project, the public housing agency shall, to the extent permitted by law, give such preferences, by allocation or otherwise, to military personnel as the Secretary of Defense or his designee prescribes to the public housing agency; and

(7) upon the occurrence of a substantial default in respect to the requirements and conditions to which the public housing agency is subject (as such substantial default shall be defined in such agreement), the public housing agency shall be obligated at the option of the Secretary of Housing and Urban Development, either to convey title in any case where, in the determination of the Secretary of Housing and Urban Development, (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of this subchapter and the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], or to deliver possession to the Secretary of Housing and Urban Development of the project, as then constituted, to which such agreement relates: *Provided*, That in the event of such conveyance of title or delivery of possession, the Secretary of Housing and Urban Development may improve and administer such project as low-rent housing, and otherwise deal with such housing or parts thereof, subject, however, to the limitations contained in the applicable provisions of the United States Housing Act of 1937. The Secretary of Housing and Urban Development shall be obligated to reconvey or to redeliver possession of the project, as constituted at the time of reconveyance or redelivery, to such public housing agency or to its successor (if such public housing agency or a successor exists) upon such terms as shall be prescribed in such agreement and as soon as practicable after the Secretary of Housing and Urban Development shall be satisfied that all defaults with respect to the project have been cured, and that the project will, in order to fulfill the purposes of this subchapter and the United States Housing Act of 1937, thereafter be operated in accordance with the terms of such agreement. Any prior conveyances and reconveyances, deliveries and redeliveries of possession shall not exhaust the right to require a conveyance or delivery of possession of the project to the Secretary of Housing and Urban Development pursuant to this paragraph upon the subsequent occurrence of a substantial default.

(d) Disposition of payments

At the end of each fiscal year, the total amount of payments during such year to the Secretary of Housing and Urban Development in accordance with subsection (c) of this section shall be covered into the Treasury as miscellaneous receipts.

(Oct. 14, 1940, ch. 862, title VI, §606, as added June 28, 1948, ch. 688, §7, as added Apr. 20, 1950, ch. 94, title II, §201, 64 Stat. 59; amended by Ex. Ord. No. 10284, §§6, 7, eff. Sept. 4, 1951, 16 F.R. 8971; Ex. Ord. No. 10339, eff. Apr. 7, 1952, 17 F.R. 3012; Ex. Ord. No. 10425, eff. Jan. 16, 1953, 18 F.R. 405; Pub. L. 86–372, title VIII, §807, Sept. 23, 1959, 73 Stat. 687; Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 93–383, title II, §207, Aug. 22, 1974, 88 Stat. 669.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsecs. (a)(1), (b), and (c)(2), (3), (7), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note under section 1437 of this title and Tables.

Subchapters III and VI of this chapter, referred to in subsec. (b), were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

Subsections 2(1) and 2(2) and section 10 of the United States Housing Act of 1937, referred to in subsec. (c)(1), (3), and (6), are references to sections 2 and 10 of the Act prior to the general revision of the Act by Pub. L. 93–383. The Act as so revised is classified to section 1437 et seq. of this title. Provisions of former sections 2 and 10 are covered by sections 3 and 5 of the Act which are classified to sections 1437a and 1437d of this title.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–383, §207(a), struck out provisions relating to payment of capital grants or annual contributions to low-rent housing projects.

Subsec. (c)(1). Pub. L. 93–383, §207(b), inserted provision relating to financing repair or rehabilitation of a project or part of project conveyed to public housing agency under this section.

1959—Subsec. (b). Pub. L. 86–372, §807(1), provided that if any such project is consolidated under a single annual contributions contract with any low-rent project being assisted with annual contributions under United States Housing Act of 1937, payment of any annual contribution on account of any project so assisted shall not be deemed to be a capital grant or annual contribution with respect to any project conveyed hereunder.

Subsec. (c)(3). Pub. L. 86–372, §807(2), inserted proviso making provisions of subsec. (c)(3) inapplicable to any project which is consolidated under a single contract with one or more low-rent projects being assisted under United States Housing Act of 1937, and permitting commingling of income from such project with funds of project or projects with which it is consolidated.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

EXECUTIVE ORDER NO. 10284

Ex. Ord. No. 10284, Sept. 4, 1951, extended time for request for conveyance of housing projects from Dec. 31, 1950, to Dec. 31, 1951, and extended time for entering agreements with Public Housing Administration from June 30, 1951, to June 30, 1952. See note set out under section 1589a of this title.

EXECUTIVE ORDER NO. 10339

Ex. Ord. No. 10339, Apr. 7, 1952, set out as a note under section 1589a of this title, extended time for request for conveyance of housing projects from Dec. 31, 1951, to Dec. 31, 1952, and extended time for entering agreements with Public Housing Administration from June 30, 1952, to June 30, 1953.

EXECUTIVE ORDER NO. 10425

Ex. Ord. No. 10425, Jan. 16, 1953, set out as a note under section 1589a of this title, extended time for request for conveyance of housing projects from Dec. 31, 1952, to June 30, 1953.

§ 1587. Disposition of other permanent war housing

(a) Public interest

The Secretary of Housing and Urban Development shall, subject to the provisions of this section, dispose of permanent war housing, other than housing conveyed pursuant to section 1586 of this title, as promptly as practicable and in the public interest.

(b) Preference in sales to individuals

Preference in the purchase of any dwelling structure designed for occupancy by not more than four families and offered for separate sale shall be granted to occupants and to veterans over other prospective purchasers for such period as the Secretary of Housing and Urban Development may determine and in the following order:

(1) a veteran who occupies a unit in the dwelling structure to be sold and who intends to continue to occupy such unit;

(2) a nonveteran who occupies a unit in the dwelling structure to be sold and who intends to continue to occupy such unit;

(3) a veteran who intends to occupy a unit in the dwelling structure to be sold.

Subject to the above order of preference, the Secretary of Housing and Urban Development may establish subordinate preferences for any such dwelling structure. In the disposition of any dwellings under this section which were acquired by the United States from persons occupying the dwellings at the time of such acquisition, the Secretary of Housing and Urban Development may, notwithstanding the order of preference provided in this section, grant a first preference to such persons in the purchase of any of these dwellings for such period and under such conditions as the Secretary may determine to be appropriate and in the public interest. As used in this subsection, the term ''veteran'' shall include a veteran, a serviceman, or the family of a veteran or a serviceman, or the family of a deceased veteran or serviceman whose death has been determined by the Secretary of Veterans Affairs to be service-connected.

(c) Preference in sales of projects

In the case of any housing project required by this section to be disposed of, which is not offered for separate sale of separate dwelling structures designed for occupancy by not more than four families, such project may be sold as a whole or in such portions as the Secretary of Housing and Urban Development may determine. On such sales of an entire project or portions thereof consisting of more than one dwelling structure or of an individual dwelling structure designed for occupancy by more than four families, first preference shall be given for such period not less than ninety days nor more than six months from the date of the initial offering of such project or portions thereof as the Secretary of Housing and Urban Development may determine, to groups of veterans organized on a mutual ownership or cooperative basis (provided that any such group shall accept as a member of its organization, on the same terms, subject to the same conditions, and with the same privileges and responsibilities, required of, and extended to other members of the group any tenant occupying a dwelling unit in such project, portion thereof or building, at any time during such period as the Secretary of Housing and Urban Development shall deem appropriate, starting on the date of the announcement by the Secretary of Housing and Urban Development of the availability of such project, portion thereof or building for sale), except that a first preference for said period of not less than ninety days nor more than six months shall be given to any group organized on a mutual or cooperative basis, which, with respect to its proposed purchase of a specific housing project or portions thereof, has, prior to August 1, 1949, been granted an exception by the Secretary of Housing and Urban Development from the sales preference provisions of Public Regulation 1 of the Housing and Home Finance Agency and has been designated as a preferred purchaser.

(d) Equitable selection method for each preference class

The Secretary of Housing and Urban Development shall provide an equitable method of selecting the purchasers to apply when preferred purchasers (or groups of preferred purchasers) in the same preference class or containing members in the same preference class compete with each other.

(e) Veterans' preference

Any housing disposed of in accordance with this section shall after such disposal be deemed to be housing accommodations the construction of which was completed after June 30, 1947, within the meaning of section 1884 of Appendix to title 50, relating to preference or priority to veterans of World War II or their families.

(f) Terms of sales

Sales pursuant to this section shall be upon such terms as the Secretary of Housing and Urban Development shall determine: *Provided*, That full payment to the Government for the property sold shall be required within a period not exceeding twenty-five years with interest on unpaid balances at not less than 4 per centum per annum, except that in the case of projects initially programmed as mutual housing communities under the defense housing program, the terms of sale shall not require a down payment and shall provide for full payment to the United States over a period of forty-five years with interest on unpaid balances at not more than 3 per centum per annum.

(g) Disregard of preferences in certain cases

The Secretary of Housing and Urban Development may dispose of any permanent war housing

without regard to the preferences in subsections (b) and (c) of this section when the Secretary determines that (1) such housing, because of design or lack of amenities, is unsuitable for family dwelling use, or (2) it is being used at the time of disposition for other than dwelling purposes, or (3) it was offered, with preferences substantially similar to those provided in the Housing Act of 1950, to veterans and occupants prior to April 20, 1950.

(Oct. 14, 1940, ch. 862, title VI, § 607, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Mar. 10, 1954, ch. 61, 68 Stat. 26; Aug. 2, 1954, ch. 649, title VIII, § 805(2), 68 Stat. 644; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 102–54, § 13(q)(6)(B), June 13, 1991, 105 Stat. 281.)

REFERENCES IN TEXT

The Housing Act of 1950, referred to in subsec. (g), is act Apr. 20, 1950, ch. 94, 64 Stat. 48, as amended. For complete classification of this Act to the Code, see Short Title of 1950 Amendment note set out under section 1701 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration'' in last sentence.

1954—Subsec. (b). Act Mar. 10, 1954, in last paragraph, inserted sentence permitting Administrator to give, in the disposition of dwellings under this section which were acquired by the United States from persons occupying the dwellings at the time of such acquisition, a first preference to such persons in the purchase thereof.

Subsec. (g). Act Aug. 2, 1954, added subsec. (g).

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1588. Sale of vacant land to local housing authorities; sale of personal property

(a) Notwithstanding any other provision of law, any land acquired under subchapters II to VII of this chapter or any other Act in connection with war or veterans' housing, but upon which no dwellings are located at the time of sale, may be sold at fair value, as determined by the Secretary of Housing and Urban Development to any agency organized for slum clearance or to provide subsidized housing for persons of low income.

(b) Notwithstanding any other provision of law, any personal property held under subchapters II to VII of this chapter, and not sold with a project or building, may be sold at fair value, as determined by the Secretary of Housing and Urban Development to any agency organized for slum clearance or to provide subsidized housing for persons of low income. Any sale of personal property under this subsection shall be made on a cash basis, payable at the time of settlement.

(Oct. 14, 1940, ch. 862, title VI, § 608, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Aug. 11, 1955, ch. 787, 69 Stat. 668; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1955—Act Aug. 11, 1955, designated existing provisions as subsec. (a) and added subsec. (b).

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1589. Conveyance of land and nondwelling structures thereon to States for National Guard purposes

Notwithstanding any other provision of law, the Secretary of Housing and Urban Development is authorized to convey by quit claim deed, without consideration, to any State for National Guard purposes any land, together with any nondwelling structures thereon, held under subchapters II to VII of this chapter or any other Act in connection with war or veterans' housing: *Provided*, That the United States shall be saved harmless from or reimbursed for such costs incidental to the conveyance as the Secretary of Housing and Urban Development may deem proper: *Provided further*, That the conveyance of such land shall contain the express condition that if the grantee shall fail or cease to use such land for such purposes, or shall alienate (or attempt to alienate) such land, title thereto shall, at the option of the United States, revert to the United States.

(Oct. 14, 1940, ch. 862, title VI, § 609, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1589a. Extension by President of dates for disposal and other actions relating to housing under this subchapter

Notwithstanding any other provision of law, the President is authorized to extend, for such period or periods as he shall specify, the time within which any action is required or permitted to be taken by the Secretary of Housing and Urban Development or others under the provisions of this subchapter or section 1553 of this title (or any contract entered into pursuant thereto), upon a determination by him, after considering the needs of national defense and the effect of such extension upon the general housing situation and the national economy, that such extension is in the public interest.

(Oct. 14, 1940, ch. 862, title VI, § 611, as added Sept. 1, 1951, ch. 378, title VI, § 603(d), 65 Stat. 314; amended July 14, 1952, ch. 723, § 6, 66 Stat.

603; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

AMENDMENTS

1952—Act July 14, 1952, inserted ''or section 1553 of this title'' immediately before parenthetical clause, and substituted ''thereto'' for ''of this subchapter'' in parenthetical clause.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

EXECUTIVE ORDER NO. 10284

Ex. Ord. No. 10284, Sept. 1, 1951, 16 F.R. 8971, was superseded by Ex. Ord. No. 10339, Apr. 5, 1952, 17 F.R. 3012.

EX. ORD. NO. 10339. EXTENSIONS OF TIME

Ex. Ord. No. 10339, Apr. 7, 1952, 17 F.R. 3012, as amended by Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405, provided:

1. [Superseded. Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405.]

2. The time stipulated in subsection (c) of section 601 of the Act [section 1581(c) of this title] on or before which all conditions to relinquishments or transfers pursuant to requests made under subsections (a), (b) and (g) of that section must be complied with is extended to June 30, 1953.

3. The time stipulated in section 604 of the Act [section 1584 of this title] after which vacancies occurring or continuing in temporary housing remaining under the jurisdiction of the Housing and Home Finance Administrator on land under his control may be filled only by transfer of tenants of other accommodations in the same locality being removed as required by the Act is extended to July 1, 1953.

4. The time stipulated in section 604 of the Act [section 1584 of this title] on or before which all tenants must be notified to vacate the premises is extended to March 31, 1954; and the time required to be stipulated in such notices prior to which the premises must be vacated is extended to July 1, 1954.

5. The time stipulated in section 604 of the Act [section 1584 of this title] promptly after which actions must be instituted to evict any tenants still remaining is extended to July 1, 1954.

6. [Superseded. Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405.]

7. The time stipulated in section 606(a)(3) of the Act [section 1586(a)(3) of this title] on or before which the governing body of the municipality or county must enter into an agreement with the public housing agency satisfactory to the Public Housing Administration providing for local cooperation and payments in lieu of taxes and on or before which the public housing agency must enter into an agreement with the Public Housing Administration for the administration of any project requested under section 606(a) of the Act [section 1586(a) of this title] is extended to June 30, 1953.

This order supersedes Executive Order 10284, dated September 1, 1951.

EX. ORD. NO. 10385. EXTENSION OF TIME RELATING TO THE REMOVAL OF CERTAIN TEMPORARY HOUSING

Ex. Ord. No. 10385, Aug. 16, 1952, 17 F.R. 7525, provided:

The time stipulated in section 313 of the said act approved October 14, 1940, as amended [section 1553 of this title], within which, subject to the qualifications stated in the said section 313 [section 1553 of this title], housing of a temporary character under the jurisdiction of the Housing and Home Finance Administrator and constructed under certain laws must be removed is hereby extended from December 31, 1952, to July 1, 1954.

EX. ORD. NO. 10395. EXTENSION OF TIME

Ex. Ord. No. 10395, Sept. 18, 1952, 17 F.R. 8449, as amended by Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405, provided:

1. [Superseded. Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405.]

2. The time stipulated in subsection (c) of section 601 of the Act [section 1581(c) of this title] on or before which all conditions to relinquishments or transfers pursuant to requests made under subsection (h) of that section must be complied with is extended to June 30, 1953.

EX. ORD. NO. 10425. EXTENSIONS OF TIME

Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405, provided:

1. The time stipulated in subsection (c) of section 601 of the act [section 1581(c) of this title] on or before which requests must be filed under subsections (a), (b), (g), and (h) of that section is extended to June 30, 1953.

2. The time stipulated in section 606(a)(1) of the action or before which conveyance of the housing projects listed in section 606(a)(3) of the act [section 1586(2)(1) of this title] must be requested by the governing body of the municipality or county and on or before which the need for low-rent housing must be demonstrated to the satisfaction of the Administrator is extended to June 30, 1953.

This order supersedes paragraphs 1 and 6 of Executive Order No. 10339 of April 5, 1952 [set out above], and paragraph 1 of Executive Order No. 10395 of September 18, 1952 [set out above].

EX. ORD. NO. 10462. DELEGATION OF FUNCTIONS TO THE HOUSING AND HOME FINANCE ADMINISTRATOR

Ex. Ord. No. 10462, June 19, 1953, 18 F.R. 3613, provided:

1. The Housing and Home Finance Administrator is hereby designated and empowered to perform, without the approval, ratification, or other action by the President, the functions vested in the President by section 611 of the act entitled ''An Act to expedite the provision of housing in connection with national defense, and for other purposes,'' approved October 14, 1940, as amended (42 U.S.C. 1589a).

2. The meaning of the terms ''perform'' and ''functions'' as used in this order shall be the same as the meaning of those terms as used in chapter 4 of title 3 of the United States Code.

§ 1589b. Establishment of income limitations for occupancy of housing; effect on prior tenants

The Secretary of Housing and Urban Development notwithstanding any other provisions of subchapters II to VII of this chapter or any other law except provisions hereafter enacted expressly in amendment hereof, is authorized to establish income limitations for occupancy of any housing held by him under subchapters II to VII of this chapter and, giving consideration to the ability of such tenants to obtain other housing accommodations, to require tenants, admitted to occupancy prior to the establishment of such income limitations and who have incomes in excess of limitations established by him, to vacate such housing.

(Oct. 14, 1940, ch. 862, title VI, § 612, as added Sept. 1, 1951, ch. 378, title VI, § 603(d), 65 Stat. 314; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1589c. Transfer of certain housing to Indians

Upon a certification by the Secretary of the Interior that any surplus housing, classified by the Secretary of Housing and Urban Development as demountable, in the area of San Diego, California, is needed to provide dwelling accommodations for members of a tribe of Indians in Riverside County or San Diego County or Imperial County, California, the Secretary of Housing and Urban Development is authorized, notwithstanding any other provision of law, to transfer and convey such housing without consideration to such tribe, the members thereof, or the Secretary of the Interior in trust therefor, as the Secretary may prescribe: *Provided*, That the term housing as used in this section shall not include land.

(Oct. 14, 1940, ch. 862, title VI, § 613, as added Aug. 2, 1954, ch. 649, title VIII, § 805(3), 68 Stat. 645; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1589d. Undisposed housing

(a) Disposal to highest bidder; rejection of bids; disposal by negotiation

Notwithstanding the provisions of this or any other law, (1) any housing to be sold on-site determined by the Secretary of Housing and Urban Development to be permanent, located on lands owned by the United States and under the jurisdiction of the Secretary, which is not relinquished, transferred, under contract of sale, sold, or otherwise disposed of by the Secretary under other provisions of this subchapter or under the provisions of other law by January 1, 1957, except housing which is determined by the Secretary by that date to be suitable for sale in accordance with section 1587(b) of this title; and (2) any permanent housing to be sold off-site which is not relinquished, transferred, under contract of sale, sold, or otherwise disposed of prior to August 7, 1956, shall be disposed of, as expeditiously as possible, on a competitive basis to the highest responsible bidder upon such terms and after such public advertisement as the Secretary of Housing and Urban Development may deem in the public interest; except that the Secretary of Housing and Urban Development may reject any bid which the Secretary deems less than the fair market value of the property and may thereafter dispose of the property by negotiation.

(b) Contracts; time for passage of title; termination of purchaser's rights

Notwithstanding the provisions of this or any other law, all contracts entered into after August 7, 1956, for the sale, transfer, or other disposal of housing (other than housing subject to the provisions of section 1587(b) of this title) determined by the Secretary of Housing and Urban Development to be permanent, except contracts entered into pursuant to subsection (a) of this section, shall require that if title does not pass to the purchaser by April 1, 1957 (or within sixty days thereafter if such time is necessary to cure defects in title in accordance with the provisions of the contract), the rights of the purchaser shall terminate and thereafter the housing shall be sold under the provisions of subsection (a) of this section. For the purposes of this subsection, title shall be considered to have passed upon the execution of a conditional sales contract.

(c) Dates

The dates set forth in subsections (a) and (b) of this section shall not be subject to change by virtue of the provisions of section 1589a of this title.

(Oct. 14, 1940, ch. 862, title VI, § 614, as added Aug. 7, 1956, ch. 1029, title IV, § 407(a), 70 Stat. 1106; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1590. Definitions

As used in this subchapter, the following terms shall have the meanings ascribed to them below, unless the context clearly indicates otherwise:

(a) The term ''governing body of the municipality or county'' means the governing body of the city, village, or other municipality having general governmental authority over the area in which the housing involved is located or, if the housing is not located in such a municipality, the term means the governing body of the county or parish in which the housing is located, or if the housing is located in the District of Columbia the term means the Council of the District of Columbia.

(b) The term ''housing'' means any housing under the jurisdiction of the Secretary of Housing and Urban Development (including trailers and other mobile or portable housing) constructed, acquired, or made available under subchapters II to VII of this chapter or Public Law 781, Seventy-sixth Congress, approved September 9, 1940, or Public Laws 9, 73, or 353, Seventy-seventh Congress, approved, respectively, March 1, 1941, May 24, 1941, and December 17, 1941, or any other law, and includes in addition to dwellings any structures, appurtenances, and other property, real or personal, acquired for or held in connection therewith.

(c) The term ''temporary housing'' means any housing (as defined in (b)) which the Secretary of Housing and Urban Development has determined to be ''of a temporary character'' pursuant to subchapters II to VII of this chapter and shall also include any such housing after rights thereto have been relinquished or transferred under this subchapter or section 1575 of this title.

(d) The terms ''veteran'' and ''serviceman'' mean ''veteran'' and ''serviceman'' as those terms are defined in the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(e) The term ''State'' means any State, Territory, dependency, or possession of the United States, or the District of Columbia.

(f) The term ''going Federal rate of interest'' means ''going Federal rate'' as that term is defined in the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(g) The term ''United States Housing Act of 1937'' [42 U.S.C. 1437 et seq.] means the provisions of that Act, including all amendments thereto, now or hereafter adopted, except provisions relating to the initial construction of a project or dwelling units.

(Oct. 14, 1940, ch. 862, title VI, § 610, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; 1967 Reorg. Plan No. 3, § 402(432), eff. Nov. 3, 1967, 32 F.R. 11669, 81 Stat. 948; Pub. L. 93–198, title IV, § 401, Dec. 24, 1973, 87 Stat. 785.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in subsecs. (b) and (c), were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

The provisions of Public Law 781, and Public Laws 9, 73, or 353, referred to in subsec. (b), are not classified to the Code. For further details, see note set out under section 1524 of this title.

The United States Housing Act of 1937, referred to in subsecs. (d), (f), and (g), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

TRANSFER OF FUNCTIONS

In subsec. (a), ''Council of the District of Columbia'' substituted for ''District of Columbia Council'' pursuant to section 401 of Pub. L. 93–198. District of Columbia Council, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by Council of District of Columbia, as provided by section 401 of Pub. L. 93–198.

Previously, reference to Board of Commissioners of District of Columbia had been changed to District of Columbia Council pursuant to section 402(432) of Reorganization Plan No. 3 of 1967, 32 F.R. 11669, eff. Nov. 3, 1967, set out in the Appendix to Title 5, Government Organization and Employees, which transferred the regulatory and other functions of Board of Commissioners relating to functions under this subchapter previously vested in Board of Commissioners pursuant to this section to District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing District of Columbia Council, see section 201 of the Reorg. Plan No. 3 of 1967.

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

SUBCHAPTER VIII—CRITICAL DEFENSE HOUSING AREAS

§ 1591. Determination of critical areas by President; requisite conditions

(a) Notwithstanding any other provisions of this Act, the authority contained in titles II or III of this Act shall not be exercised in any area unless the President shall have determined that such area is a critical defense housing area.

(b) No area shall be determined to be a critical defense housing area pursuant to this section unless the President finds that in such area all the following conditions exist:

(1) a new defense plant or installation has been or is to be provided, or an existing defense plant or installation has been or is to be reactivated or its operation substantially expanded;

(2) substantial in-migration of defense workers or military personnel is required to carry out activities at such plant or installation; and

(3) a substantial shortage of housing required for such defense workers or military personnel exists or impends which impedes or threatens to impede activities at such defense plant or installation, or that community facilities or services required for such defense workers or military personnel are not available or are insufficient, or both, as the case may be.

(Sept. 1, 1951, ch. 378, title I, § 101, 65 Stat. 293; June 30, 1953, ch. 170, § 15, 67 Stat. 125.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (c), and (d), means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. Title II of this Act enacted subchapter X (§ 1750 et seq.) of chapter 13 of Title 12, Banks and Banking, and amended sections 371, 1430, 1702, 1706, 1715c, 1715f, 1716, and 1743 of Title 12. Title III of this Act is classified generally to subchapter IX (§ 1592 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

AMENDMENTS

1953—Subsec. (a). Act June 30, 1953, substituted ''titles II or III'' for ''titles II, III, or IV''.

INCONSISTENT LAWS

Section 617 of act Sept. 1, 1951, provided that: ''Insofar as the provisions of any other law are inconsistent with the provisions of this Act [see Short Title of 1951 Amendment note set out under section 1501 of this title], the provisions of this Act shall be controlling.''

SEPARABILITY

Second sentence of section 618 of act Sept. 1, 1951, provided that: ''Notwithstanding any other evidence of the intention of Congress, it is hereby declared to be the controlling intent of Congress that if any provisions of this Act [see Short Title of 1951 Amendment note set out under section 1501 of this title], or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances, but shall be confined in its operation to the provisions of this Act or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered.''

§ 1591a. Construction by private enterprise

In order to assure that private enterprise shall be afforded full opportunity to provide the defense housing needed wherever possible, in any area which the President, pursuant to the authority contained in section 1591 of this title, has declared to be a critical defense housing area—

(a) Publication of number of units needed

first, the number of permanent dwelling units (including information as to types, rent-

als, and general locations) needed for defense workers and military personnel in such critical defense housing area shall be publicly announced and printed in the Federal Register by the Secretary of Housing and Urban Development;

(b) Suspension of credit restrictions

second, residential credit restrictions under the Defense Production Act of 1950, as amended [50 U.S.C. 2061 App. et seq.], (1) as to housing to be sold at $12,000 or less per unit or to be rented at $85 or less per unit per month, shall be suspended with respect to the number and types of housing units at the sales prices or rentals which the President determines to be needed in such area for defense workers or military personnel, and (2) as to all other housing, shall be relaxed in such manner and to such extent as the President determines to be necessary and appropriate to obtain the production of such housing needed in such area for defense workers or military personnel;

(c) Mortgage insurance

third, the mortgage insurance aids provided under title II of this Act shall be made available to obtain the production of housing needed in such area for defense workers or military personnel; and

(d) Construction by Government as conditional

fourth, no permanent housing shall be constructed by the Federal Government under the provisions of subchapter IX of this chapter except to the extent that private builders or eligible mortgagees have not, within a period of not less than ninety days (as the Secretary of Housing and Urban Development shall specify) following public announcement of the availability of such mortgage insurance aids under title II of this Act, indicated through bona fide applications (which meet the requirements as to types, rentals, or sales prices, and general locations) for exceptions from such residential credit restrictions or for mortgage insurance or guaranty that they will provide the housing determined to be needed in such area for defense workers and military personnel and publicly announced as provided by subsection (a) of this section.

(Sept. 1, 1951, ch. 378, title I, § 102, 65 Stat. 294; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The Defense Production Act of 1950, referred to in subsec. (b), is act Sept. 8, 1950, ch. 932, 64 Stat. 798, as amended, which is classified to section 2061 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 2061 of Title 50, Appendix, and Tables.

This Act, referred to in subsecs. (c) and (d), means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. Title II of this Act enacted subchapter X (§ 1750 et seq.) of chapter 13 of Title 12, Banks and Banking, and amended sections 371, 1430, 1702, 1706, 1715c, 1715f, 1716, and 1743 of Title 12. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1591b. Community facilities or services by local agencies

In order to assure that community facilities or services required in connection with national defense activities shall, wherever possible, be provided by the appropriate local agencies with local funds, in any area which the President, pursuant to the authority contained in section 1591 of this title, has declared to be a critical defense housing area—

(a) Certification of necessity for loan

no loan shall be made pursuant to subchapter IX of this chapter for the provision of community facilities or equipment therefor required in connection with national defense activities in such area unless the chief executive officer of the appropriate political subdivision certifies, and the Secretary of Housing and Urban Development finds, that such facilities or equipment could not otherwise be provided when needed;

(b) Certification of necessity for grants or other payments

no grant or other payment shall be made pursuant to subchapter IX of this chapter for the provision, or for the operation and maintenance, of community facilities or equipment therefor, or for the provision of community services, required in connection with national defense activities in such area unless the chief executive officer of the appropriate political subdivision certifies, and the Secretary of Housing and Urban Development finds, that such community facilities or services cannot otherwise be provided when needed, or operated and maintained, as the case may be, without the imposition of an increased excessive tax burden or an unusual or excessive increase in the debt limit of the appropriate local agency; and

(c) Maintenance and operation of facilities

no community facilities or services shall be provided, and no community facilities shall be maintained and operated, by the United States directly except where the appropriate local agency is demonstrably unable to provide such facilities and services, or to maintain or operate such community facilities and services adequately with its own personnel, with loans, grants, or payments authorized to be made pursuant to subchapter IX of this chapter.

For the purposes of this section, the term ''chief executive officer of the appropriate political subdivision'' shall mean appropriate principal executive officer or governing body having primary responsibility with respect to the community facility or service involved, but shall not, in any case, mean any public housing authority, or its governing body, or any of its officers, acting in such capacity.

(Sept. 1, 1951, ch. 378, title I, § 103, 65 Stat. 294; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1591c. Expiration date; exception

After June 30, 1953, no construction of permanent housing may be begun under subchapter IX of this chapter. After July 31, 1954, (a) no mortgage may be insured under title IX of the National Housing Act, as amended [12 U.S.C. 1750 et seq.] (except (i) pursuant to a commitment to insure issued on or before such date or (ii) after July 31, 1954, and until August 1, 1955, during such period, or for such project or projects, as the President may designate hereunder or (iii) pursuant to a commitment to insure issued pursuant to the preceding clause (ii)), (b) no agreement may be made to extend assistance for the provision of community facilities or services under subchapter IX of this chapter, and no construction of temporary housing or community facilities by the United States may be begun under such subchapter, except after July 31, 1954, and until August 1, 1955, during such period, or for such project or projects, as the President may designate hereunder: *Provided*, That to the extent necessary to assure the adequate completion of any facilities for which prior agreements have been made under subchapter IX of this chapter, the Secretary of Housing and Urban Development may, at any time after July 31, 1954, enter into amendatory agreements under such subchapter involving the expenditure of additional Federal funds within the balance available therefor on or before such date, (c) no loan may be made or obligations purchased by the Secretary of Housing and Urban Development under section 1701g–1 of title 12 (except pursuant to a commitment issued on or before June 30, 1953, or to refinance an existing loan or existing obligations held under such section by said Secretary on June 30, 1953).

(Sept. 1, 1951, ch. 378, title I, § 104, 65 Stat. 295; June 30, 1953, ch. 170, § 16, 67 Stat. 125; June 29, 1954, ch. 410, § 3, 68 Stat. 320; Aug. 2, 1954, ch. 649, title I, § 129, 68 Stat. 609; June 30, 1955, ch. 251, § 2, 69 Stat. 225; Aug. 11, 1955, ch. 783, title I, § 105, 69 Stat. 637; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title IX of the National Housing Act is title IX of act June 27, 1934, ch. 847, as added by act Sept. 1, 1951, ch. 378, title II, § 201, 65 Stat. 295, which is classified generally to subchapter X (§ 1750 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 1701g–1 of title 12, referred to in text, has been omitted from the Code.

AMENDMENTS

1955—Act Aug. 11, 1955, inserted item (iii) in cl. (a).

Act June 30, 1955, substituted ''August 1, 1955'' for ''July 1, 1955'' in two places in second sentence.

1954—Act Aug. 2, 1954, gave President standby authority to use mortgage insurance authority under title IX of the National Housing Act and the provisions in subchapter IX of this chapter for Federal aid in providing defense housing and community facilities and services in critical defense areas, in substitution for provisions under which authority for new projects under these two programs would have expired on June 30, 1954, and authorized the Housing and Home Finance Administrator to enter into amendatory agreements after June 30, 1954, to provide additional Federal assistance with respect to defense community facilities undertaken on or before such date where he finds it necessary to do so to assure the adequate completion of such facilities.

Act June 29, 1954, substituted ''July 31, 1954'' for ''June 30, 1954'' at beginning of second sentence.

1953—Act June 30, 1953, inserted sentence prohibiting the beginning of permanent housing construction under subchapter IX of this chapter, after June 30, 1953; substituted ''June 30, 1954'' for ''June 30, 1953'' at beginning of present second sentence and ''temporary housing'' for ''housing'' in cl. (b) of present second sentence; struck a former cl. (c) out of existing second sentence which provided that (after June 30, 1953) no land might be acquired by the Housing and Home Finance Administrator under subchapter X of this chapter; and redesignated cl. (d) as (c).

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1591d. Powers as cumulative and additional

Except as may be otherwise expressly provided in this Act, all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing.

(Sept. 1, 1951, ch. 378, title VI, § 618, 65 Stat. 317.)

REFERENCES IN TEXT

This Act, referred to in text, means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

CODIFICATION

Section constitutes the first sentence of section 618 of act Sept. 1, 1951. Remainder of section 618 is set out in Separability note under section 1591 of this title.

SUBCHAPTER IX—DEFENSE HOUSING AND COMMUNITY FACILITIES AND SERVICES

REVOLVING FUND

Establishment of revolving fund under which to account for assets and liabilities in connection with community facilities or defense housing under sections 1592 to 1592*o* of this title, see section 1701g–5 of Title 12, Banks and Banking.

EXPIRATION DATE

For prohibition of construction of housing or community facilities by United States under this subchapter, see section 1591c of this title.

§ 1592. Authority of Secretary

Subject to the provisions and limitations of this subchapter and subchapter VIII of this chapter, the Secretary of Housing and Urban Development (hereinafter referred to as the ''Secretary'') is authorized to provide housing in any areas (subject to the provisions of section 1591 of this title) needed for defense workers or military personnel or to extend assistance for the provision of, or to provide, community facilities

or services required in connection with national defense activities in any area which the President, pursuant to the authority contained in said section, has determined to be a critical defense housing area.

(Sept. 1, 1951, ch. 378, title III, § 301, 65 Stat. 303; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592a. Construction of housing

(a) Types, sales, preferences in purchases, and payment

Consistent with other requirements of national defense, any permanent housing constructed pursuant to the authority of this subchapter shall consist of one- to four-family dwelling structures (including row houses) so arranged that they may be offered for separate sale. All housing of permanent construction which is constructed or acquired under the authority of this subchapter shall be sold as expeditiously as possible and in the public interest taking into consideration the continuation of the need for such housing by persons engaged in national defense activities. All dwelling structures of permanent construction designed for occupancy by not more than four families (including row houses) shall be offered for sale, and preference in the purchase of any such dwelling structure shall be granted to occupants and to veterans over other prospective purchasers. As among veterans, preference in the purchase of any such dwelling structure shall be given to disabled veterans whose disability has been determined by the Secretary of Veterans Affairs to be service-connected. All dwelling structures of permanent construction in any housing project which are designed for occupancy by more than four families (and other structures in such project which are not sold separately) shall be sold as an entity. On such sales first preference shall be given for such period not less than ninety days nor more than six months from the date of the initial offering of such project as the Secretary of Housing and Urban Development may determine, to groups of veterans organized on a mutual ownership or cooperative basis (provided that any such group shall accept as a member of its organization, on the same terms, subject to the same conditions, and with the same privileges and responsibilities, required of, and extended to, other members of the group any tenant occupying a dwelling unit in such project, at any time during such period as the Secretary of Housing and Urban Development shall deem appropriate, starting on the date of the announcement by the Secretary of Housing and Urban Development of the availability of such project). The Secretary of Housing and Urban Development shall provide an equitable method of selecting the purchasers when preferred purchasers (or groups of preferred purchasers) in the same preference class or containing members in the same preference class compete with each other. Sales pursuant to this section shall be for cash or credit, upon such terms as the Secretary of Housing and Urban Development shall determine, and at the fair value of the property as determined by the Secretary: *Provided*, That full payment to the Government for the property sold shall be required within a period of not exceeding twenty-five years with interest on unpaid balances at not less than 4 per centum per annum.

(b) Temporary housing

Where it is necessary to provide housing under this subchapter in locations where, in the determination of the Secretary of Housing and Urban Development, there appears to be no need for such housing beyond the period during which it is needed for housing persons engaged in national defense activities, the provisions of section 1591a of this title shall not be applicable and temporary housing which is of a mobile or portable character or which is otherwise constructed so as to be available for reuse at other locations or existing housing built or acquired by the United States under authority of any other law shall be provided. Any temporary housing constructed or acquired under this subchapter which the Secretary of Housing and Urban Development determines to be no longer needed for use under this subchapter shall, unless transferred to the Department of Defense pursuant to section 1592e of this title, or reported as excess to the Administrator of the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, as amended,[1] be sold as soon as practicable to the highest responsible bidder after public advertising, except that if one or more of such bidders is a veteran purchasing a dwelling unit for his own occupancy the sale of such unit shall be made to the highest responsible bidder who is a veteran so purchasing: *Provided*, That the Secretary of Housing and Urban Development may reject any bid for less than two-thirds of the appraised value as determined by him: *Provided further*, That the housing may be sold at fair value (as determined by the Secretary of Housing and Urban Development) to a public body for public use: *And provided further*, That the housing structures shall be sold for removal from the site, except that they may be sold for use on the site if the governing body of the locality has adopted a resolution approving use of such structures on the site.

(c) Preference in admission to occupancy pending ultimate disposition

When the Secretary of Housing and Urban Development determines that any housing provided under this subchapter is no longer required for persons engaged in national defense activities, preference in admission to occupancy thereof shall be given to veterans pending its ultimate sale or disposition in accordance with the provisions of this subchapter. As among veterans, preference in admission to occupancy shall be given to disabled veterans whose disability has been determined by the Secretary of Veterans Affairs to be service-connected.

(Sept. 1, 1951, ch. 378, title III, § 302, 65 Stat. 303; July 14, 1952, ch. 723, § 5, 66 Stat. 602; Aug. 2, 1954,

[1] See References in Text note below.

ch. 649, title VIII, § 806, 68 Stat. 645; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 102–54, § 13(q)(7)(A), June 13, 1991, 105 Stat. 281.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (b), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1991—Subsecs. (a), (c). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

1954—Subsec. (b). Act Aug. 2, 1954, in second sentence, substituted provisions prescribing the disposition procedure, for former provisions that the housing should ''be disposed of by the Administrator not later than the date, and subject to the conditions and requirements, hereafter prescribed by the Congress: *Provided*, That nothing in this sentence shall be construed as prohibiting the Administrator from removing any such housing by demolition or otherwise prior to the enactment of such legislation''.

1952—Subsec. (b). Act July 14, 1952, inserted ''or existing housing built or acquired by the United States under authority of any other law'' after ''for reuse at other locations''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592b. Maximum construction costs; determinations by Secretary in certain condemnation proceedings

The cost per family dwelling unit for any housing project constructed under the authority of this subchapter shall not exceed an average of $9,000 for two-bedroom units in such project, $10,000 for three-bedroom units in such project, and $11,000 for four-bedroom units in such project: *Provided*, That the Secretary of Housing and Urban Development may increase any such dollar limitation by not exceeding $1,000 in any geographical area where he finds that cost levels so require: *Provided further*, That in the Territories and possessions of the United States the Secretary of Housing and Urban Development may increase any such dollar limitation by 50 per centum: *And provided further*, That for the purposes of this section the cost of any land acquired by the Secretary of Housing and Urban Development upon the filing of a declaration of taking in proceedings for the condemnation of fee title shall be considered to be the amount determined by the Secretary of Housing and Urban Development upon the basis of competent appraisal, to be the value thereof.

(Sept. 1, 1951, ch. 378, title III, § 303, 65 Stat. 305; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592c. Loans or grants for community facilities or services; conditions; maximum amounts; annual adjustments

In furtherance of the purposes of this subchapter and subject to the provisions hereof, the Secretary of Housing and Urban Development may make loans or grants, or other payments, to public and nonprofit agencies for the provision, or for the operation and maintenance, of community facilities and equipment therefor, or for the provision of community services, upon such terms and in such amounts as the Secretary of Housing and Urban Development may consider to be in the public interest: *Provided*, That grants under this subchapter to any local agency for hospital construction may be made only after such action by the local agency to secure assistance under Public Law 725, Seventy-ninth Congress, approved August 13, 1946, as amended, or Public Law 380, Eighty-first Congress, approved October 25, 1949, as is determined to be reasonable under the circumstances, and only to the extent that the required assistance is not available to such local agency under said Public Law 725, or said Public Law 380, as the case may be: *Provided further*, That grants or payments for the provision, or for the maintenance and operation, of community facilities or services under this section shall not exceed the portion of the cost of the provision, or the maintenance and operation, of such facilities or services which the Secretary of Housing and Urban Development estimates to be attributable to the national defense activities in the area and not to be recovered by the public or nonprofit agency from other sources, including payments by the United States under any other provisions of this Act or any other law: *And provided further*, That any such continuing grant or payment shall be reexamined and adjusted annually upon the basis of the ability of the agency to bear a greater portion of the cost of such maintenance, operation, or services as a result of increased revenues made possible by such facility or by such defense activities.

(Sept. 1, 1951, ch. 378, title III, § 304, 65 Stat. 305; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Public Law 725, Seventy-ninth Congress, approved Aug. 13, 1946, as amended, referred to in text, means act Aug. 13, 1946, ch. 958, 60 Stat. 1041, as amended, known as the Hospital Survey and Construction Act. For complete classification of this Act to the Code, see Tables.

Public Law 380, Eighty-first Congress, approved Oct. 25, 1949, referred to in text, means act Oct. 25, 1949, ch. 722, 63 Stat. 898, known as the Hospital Survey and Construction Amendments of 1949, which amended sections 291, 291d, 291f, 291g, 291h, 291i, 291j, 291n, and enacted provisions set out as notes under section 291 of this title. For complete classification of this Act to the Code, see Tables.

This Act, referred to in text, means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

HOSPITAL CONSTRUCTION; REVIVAL AND EXTENSION OF LOAN AND GRANT AUTHORITY; EXPIRATION DATE; APPROPRIATION

Act Aug. 7, 1956, ch. 1029, § 605, 70 Stat. 1114, as amended by Pub. L. 86–372, title VIII, § 804, Sept. 23, 1959, 73 Stat. 687; Pub. L. 87–70, title IX, § 906, June 30, 1961, 75 Stat. 191, provided that notwithstanding section 1591c of this title, the authority under this section to make loans or grants, or other payments to public and nonprofit agencies for the construction of hospitals was revived and extended with respect to public and nonprofit agencies which had, prior to June 30, 1953, applied under this section, for such loans or grants, or other payments for the construction of hospitals, and had been denied such loans or grants, or other payments solely because of the unavailability of funds for such purpose, provided that the authority granted by this section was to expire June 30, 1962, and authorized appropriations for fiscal years ending June 30, 1962.

§ 1592d. Secretary's powers with respect to housing, facilities, and services

(a) Planning, acquisition, construction, etc.

With respect to any housing or community facilities or services which the Secretary of Housing and Urban Development is authorized to provide, or any property which he is authorized to acquire, under this Act, the Secretary of Housing and Urban Development is authorized by contract or otherwise (without regard to section 5 of title 41, section 322 of the Act of June 30, 1932 (47 Stat. 412), as amended,[1] the Federal Property and Administrative Services Act of 1949, as amended,[1] and prior to the approval of the Attorney General) to make plans, surveys, and investigations; to acquire (by purchase, donation, condemnation or otherwise), construct, erect, extend, remodel, operate, rent, lease, exchange, repair, deal with, insure, maintain, convey, sell for cash or credit, demolish, or otherwise dispose of any property, land, improvement, or interest therein; to provide approaches, utilities, and transportation facilities; to procure necessary materials, supplies, articles, equipment, and machinery; to make advance payments for leased property; to pursue to final disposition by way of compromise or otherwise, claims both for and against the United States (exclusive of claims in excess of $5,000 arising out of contracts for construction, repairs, and the purchase of supplies and materials, and claims involving administrative expenses) which are not in litigation and which have not been referred to the Department of Justice; and to convey without cost to States and political subdivisions and instrumentalities thereof property for streets and other public thoroughfares and easements for public purposes: *Provided*, That any instrument executed by the Secretary of Housing and Urban Development and purporting to convey any right, title or interest in any property acquired pursuant to this subchapter or subchapter X of this chapter shall be conclusive evidence of compliance with the provisions thereof insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. Notwithstanding any provisions of this Act, housing or community facilities constructed by the United States pursuant to the authority contained herein shall conform to the requirements of State and local laws, ordinances, rules, or regulations relating to health and sanitation, and, to the maximum extent practicable, taking into consideration the availability of materials and the requirements of national defense, any housing or community facilities, except housing or community facilities of a temporary character, constructed by the United States pursuant to the authority contained herein shall conform to the requirements of State or local laws, ordinances, rules, or regulations relating to building codes.

(b) Condemnation

Before condemnation proceedings are instituted pursuant to this subchapter or subchapter X of this chapter an effort shall be made to acquire the property involved by negotiation unless, because of reasonable doubt as to the identity of the owner or owners, because of the large number of persons with whom it would be necessary to negotiate, or for other reasons, the effort to acquire by negotiation would involve, in the judgment of the Secretary of Housing and Urban Development, such delay in acquiring the property as to be contrary to the interest of national defense. In any condemnation proceeding instituted pursuant to this subchapter or subchapter X of this chapter, the court shall not order the party in possession to surrender possession in advance of final judgment unless a declaration of taking has been filed, and a deposit of the amount estimated to be just compensation has been made, under section 3114(a) to (d) of title 40, providing for such declarations. Unless title is in dispute, the court, upon application, shall promptly pay to the owner at least 75 per centum of the amount so deposited, but such payment shall be made without prejudice to any party to the proceeding.

(c) Return to original owner in certain cases

If any real property acquired under this subchapter or subchapter X of this chapter is retained after June 30, 1954, without having been used for the purposes of this Act, the Secretary of Housing and Urban Development shall, if the original owner desires the property and pays the fair value thereof, return such property to the owner. In the event the Secretary of Housing and Urban Development and the original owner do not agree as to the fair value of the property, the fair value shall be determined by three appraisers, one of whom shall be chosen by the Secretary of Housing and Urban Development, one by the original owner, and the third by the first two appraisers; the expenses of such determination shall be paid in equal shares by the Government and the original owner.

(Sept. 1, 1951, ch. 378, title III, § 305, 65 Stat. 305; June 30, 1953, ch. 170, § 17, 67 Stat. 125; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 97–214, § 10(b)(1), July 12, 1982, 96 Stat. 175.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (c), means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as

[1] See References in Text note below.

the Defense Housing and Community Facilities and Services Act of 1951. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

Section 322 of the Act of June 30, 1932, referred to in subsec. (a), is section 322 of act June 30, 1932, ch. 314, 47 Stat. 412, which was classified to section 278a of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 100–678, § 7, Nov. 17, 1988, 102 Stat. 4052.

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

Subchapter X of this chapter, referred to in subsecs. (a), (b), and (c), was in the original, title IV of this Act, meaning title IV of act Sept. 1, 1951, ch. 378, 65 Stat. 310, as amended, which enacted sections 1593 to 1593d of this title and was repealed by act June 30, 1953, ch. 170, § 19, 67 Stat. 126.

CODIFICATION

In subsec. (b), ''section 3114(a) to (d) of title 40'' substituted for ''the first section of the Act of February 26, 1931 (46 Stat. 1421)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–214 struck out reference to section 1136 of the Revised Statutes, which had been enacted as sections 4774 and 9774 of title 10 by act Aug. 10, 1956, ch. 1041, as amended by Pub. L. 93–166, § 509(c), (e), Nov. 29, 1973, 87 Stat. 677, 678.

1953—Subsec. (c). Act June 30, 1953, substituted ''June 30, 1954'' for ''June 30, 1953''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of Title 10, Armed Forces.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592e. Interagency transfers of property; application of rules and regulations

Any Federal agency may, upon request of the Secretary of Housing and Urban Development, transfer to his jurisdiction without reimbursement any lands, improved or unimproved, or other property real or personal, considered by the Secretary of Housing and Urban Development to be needed or useful for housing or community facilities, or both, to be provided under this subchapter, and the Secretary of Housing and Urban Development is authorized to accept any such transfers. The Secretary of Housing and Urban Development may also utilize any other real or personal property under his jurisdiction for the purpose of this subchapter without adjustment of the appropriations or funds involved. Any property so transferred or utilized, and any funds in connection therewith, shall be subject only to the authorizations and limitations of this subchapter. The Secretary of Housing and Urban Development may, in his discretion, upon request of the Secretary of Defense or his designee, transfer to the jurisdiction of the Department of Defense without reimbursement any land, improvements, housing, or community facilities constructed or acquired under the provisions of this subchapter and considered by the Department of Defense to be required for the purposes of the said Department. Upon the transfer of any such property to the jurisdiction of the Department of Defense, the laws, rules, and regulations relating to property of the Department of Defense shall be applicable to the property so transferred, and the provisions of this subchapter and the rules and regulations issued thereunder shall no longer apply.

(Sept. 1, 1951, ch. 378, title III, § 306, 65 Stat. 306; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592f. Preservation of local civil and criminal jurisdiction, and civil rights; jurisdiction of State courts

Notwithstanding any other provisions of law, the acquisition by the United States of any real property pursuant to this subchapter or subchapter X of this chapter shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property, or impair the civil or other rights under the State or local law of the inhabitants of such property. Any proceedings by the United States for the recovery of possession of any property or project acquired, developed, or constructed under this subchapter or subchapter X of this chapter may be brought in the courts of the States having jurisdiction of such causes.

(Sept. 1, 1951, ch. 378, title III, § 307, 65 Stat. 307.)

REFERENCES IN TEXT

Subchapter X of this chapter, referred to in text, was in the original ''title IV of this Act'', meaning title IV of act Sept. 1, 1951, ch. 378, 65 Stat. 310, as amended, which enacted sections 1593 to 1593d of this title and was repealed by act June 30, 1953, ch. 170, § 19, 67 Stat. 126.

§ 1592g. Payment of annual sums to local authorities in lieu of taxes

The Secretary of Housing and Urban Development shall pay from rentals annual sums in lieu of taxes and special assessments to any State and/or political subdivision thereof, with respect to any real property, including improvements thereon, acquired and held by the Secretary under this subchapter for residential purposes (or for commercial purposes incidental thereto), whether or not such property is or has been held in the exclusive jurisdiction of the United States. The amount so paid for any year upon such property shall approximate the taxes and special assessments which would be paid to the State and/or subdivision, as the case may be, upon such property if it were not exempt from taxation and special assessments, with such al-

lowance as may be considered by the Secretary to be appropriate for expenditures by the Federal Government for the provision or maintenance of streets, utilities, or other public services to serve such property.

(Sept. 1, 1951, ch. 378, title III, § 308, 65 Stat. 307; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592h. Conditions and requirements as to contracts; utilization of existing facilities; disposition of facilities constructed by United States

In carrying out this subchapter—

(a) notwithstanding any other provisions of this subchapter, so far as is consistent with emergency needs, contracts shall be subject to section 5 of title 41;

(b) the cost-plus-a-percentage-of-cost system of contracting shall not be used, but contracts may be made on a cost-plus-a-fixed-fee basis: *Provided*, That the fixed fee shall not exceed 6 per centum of the estimated cost;

(c) wherever practicable, existing private and public community facilities shall be utilized or such facilities shall be extended, enlarged, or equipped in lieu of constructing new facilities; and

(d) all right, title, and interest of the United States in and to any community facilities constructed by the United States pursuant to the authority contained in this subchapter shall (if such agency is willing to accept such facility and operate the same for the purpose for which it was constructed) be disposed of to the appropriate State, city, or other local agency having responsibility for such type of facility in the area not later than one year after June 30, 1953, and subject to the conditions and requirements hereafter prescribed by the Congress.

(Sept. 1, 1951, ch. 378, title III, § 309, 65 Stat. 307.)

§ 1592i. Laborers and mechanics

(a) Wages; overtime

Notwithstanding any other provision of law, the wages of every laborer and mechanic employed on any construction, maintenance, repair, or demolition work authorized by this subchapter shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

(b) Applicability of other laws

The provisions of sections 3141–3144, 3146, and 3147 of title 40; of section 874 of title 18; and of section 3145 of title 40, shall apply in accordance with their terms to work pursuant to this subchapter.

(c) Stipulations in loan contracts as to wages; certification

Any contract for loan or grant, or both, pursuant to this subchapter shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141–3144, 3146, and 3147 of title 40, shall be paid to all laborers and mechanics employed in the construction of the project at the site thereof; and the Secretary of Housing and Urban Development shall require certification as to compliance with the provisions of this subsection prior to making any payment under such contract.

(d) Reports by contractors and subcontractors to Secretary of Labor

Any contractor engaged in the development of any project financed in whole or in part with funds made available pursuant to this subchapter shall report monthly to the Secretary of Labor, and shall cause all subcontractors to report in like manner, within five days after the close of each month and on forms to be furnished by the United States Department of Labor, as to the number of persons on their respective payrolls on the particular project, the aggregate amount of such payrolls, the total man-hours worked, and itemized expenditures for materials. Any such contractor shall furnish to the Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable.

(e) Prescription of standards, regulations, and procedures by Secretary of Labor

The Secretary of Labor shall prescribe appropriate standards, regulations, and procedures, which shall be observed by the Secretary of Housing and Urban Development in carrying out the provisions of this subchapter (and cause to be made by the Department of Labor such investigations) with respect to compliance with and enforcement of the labor standards provisions of this section, as the Secretary deems desirable.

(Sept. 1, 1951, ch. 378, title III, § 310, 65 Stat. 307; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

CODIFICATION

In subsec. (b), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act (49 Stat. 1011), as amended'' and ''section 3145 of title 40'' substituted for ''title 40, United States Code, section 276c'', and, in subsec. (c), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592j. Disposition of moneys derived from rentals, operation, and disposition of property

Moneys derived from rentals, operation, or disposition of property acquired or constructed under the provisions of this subchapter shall be available for expenses of operation, maintenance, improvement, and disposition of any such property, including the establishment of necessary reserves therefor and administrative expenses in connection therewith: *Provided*, That such moneys derived from rentals, operation, or disposition may be deposited in a common fund

account or accounts in the Treasury: *And provided further*, That the moneys in such common fund account or accounts shall not exceed $5,000,000 at any time, and all moneys in excess of such amount shall be covered into miscellaneous receipts.

(Sept. 1, 1951, ch. 378, title III, § 311, 65 Stat. 308.)

§ 1592k. Determination of fair rentals and classes of occupants by Secretary

The Secretary of Housing and Urban Development shall fix fair rentals based on the value thereof as determined by the Secretary which shall be charged for housing accommodations operated under this subchapter and may prescribe the class or classes of persons who may occupy such accommodations, preferences, or priorities in the rental thereof, and the terms, conditions, and period of such occupancy.

(Sept. 1, 1951, ch. 378, title III, § 312, 65 Stat. 308; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592*l*. Authorization of appropriations

There are authorized to be appropriated—

(a) such sums, not exceeding $100,000,000, as may be necessary for carrying out the provisions and purposes of this subchapter relating to community facilities and services in critical defense housing areas; and

(b) such sums, not exceeding $100,000,000, as may be necessary for carrying out the provisions and purposes of this subchapter relating to housing in critical defense housing areas.

(Sept. 1, 1951, ch. 378, title III, § 313, 65 Stat. 308; July 14, 1952, ch. 723, § 4, 66 Stat. 602.)

AMENDMENTS

1952—Act July 14, 1952, increased appropriation authorization in subsec. (a) from $60,000,000 to $100,000,000 and in subsec. (b) from $50,000,000 to $100,000,000.

§ 1592m. Transfer of functions and funds in certain cases

Subject to all of the limitations and restrictions of this Act, including, specifically, the requirements of subsection (c) of section 1591b of this title and of subsections (c) and (d) of section 1592h of this title, where any other officer, department, or agency is performing, or, in the determination of the President, has facilities adapted to the performance of, functions, powers and duties similar, or directly related, to any of the functions, powers and duties which the Secretary of Housing and Urban Development is authorized by this subchapter to perform with respect to the construction, maintenance or operation of community facilities for recreation, and daycare centers, or the provision of community services, the President may transfer to such other officer, department, or agency any of the functions, powers, and duties authorized by this subchapter to be performed with respect thereto if he finds that such transfer will assist the furtherance of national defense activities, and upon any such transfer, funds in such amount as the Director of the Office of Management and Budget shall determine, but in no event in excess of the balance of any moneys appropriated to the Secretary of Housing and Urban Development pursuant to the authorization therefor contained in this subchapter for the performance of the transferred functions, powers, and duties, may also be transferred by the President to such other officer, department, or agency: *Provided*, That the President, by Executive Order or otherwise, may prescribe or direct the manner in which any functions, powers, and duties, which the Secretary of Housing and Urban Development is authorized by this subchapter to perform with respect to assistance for the construction, or the construction of, any community facilities, shall be administered in coordination with other officers, departments, or agencies having functions or activities related thereto.

(Sept. 1, 1951, ch. 378, title III, § 314, 65 Stat. 308; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

REFERENCES IN TEXT

This Act, referred to in text, means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. For complete classification of this Act to the Code, see Short Title of 1951 Amendment set out as a note under section 1501 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President of United States by section 101 of Reorg. Plan. No. 2, of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2, of 1970, redesignated Bureau of the Budget as Office of Management and Budget.

EX. ORD. NO. 10296. PERFORMANCE OF DEFENSE HOUSING FUNCTIONS

Ex. Ord. No. 10296, Oct. 2, 1951, 16 F.R. 10103, as amended by Ex. Ord. No. 10461, June 17, 1953, 18 F.R. 3513; Ex. Ord. No. 10593, Jan. 27, 1955, 20 F.R. 599; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

1. [Revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239.]

2. [Revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239.]

3. The Housing and Home Finance Administrator is hereby designated and empowered to perform, without the approval, ratification, or other action of the President, the function vested in the President by section 102(b) of the Act [section 1591a(b) of this title], relative to the suspension and relaxation of residential credit restrictions under the Defense Production Act of 1950, as amended [50 App. §§ 2061 to 2166].

4. Except, as provided in paragraph 5 hereof, the functions authorized by Title III of the Act [sections 1592 to 1592*o* of this title] to be performed with respect to or in furtherance of the provision, maintenance, or operation of community facilities for, and with respect to or in furtherance of the provision of community services for,

recreation and child day-care centers are hereby transferred to the Federal Security Administrator and shall be performed by him or by such officers and units of the Federal Security Agency as he may determine.

5. There are hereby excluded from the transfers effected by paragraph 4 hereof (a) functions with respect to site selection and land acquisition for, and the construction (including the letting of construction contracts, the preparation and approval of plans and specifications, and the supervision of construction work and of expenditures therefor) of, projects approved by the Federal Security Administrator, whether such construction is performed on behalf of, or is aided by, the Federal Government, (b) the servicing of loans for the construction of projects so approved, and (c) the functions under the second and third provisos of section 304 of the Act [section 1592c of this title] and those under sections 103(a) and 103(b) of the Act [sections 1591b(a) and (b) of this title]: *Provided*, that (1), the Federal Security Administrator or his delegate shall determine the general layout, size, and special design features appropriate to the particular type of facility, and (2) that final plans and specifications shall conform to such determinations.

6. In the performance of functions with respect to roads and highways under the Act, the Housing and Home Finance Administrator shall from time to time consult with the Secretary of Commerce or his representative as to the relationship of road and highway projects under the said Act to road and highway programs under the jurisdiction of the said Secretary.

7. In the performance of functions under Title III of the Act [sections 1592 to 1592*o* of this title] in Territories there shall be consultation with the Secretary of the Interior or his representative as to the relationship of proposed facilities and services in Territories to Territorial programs of the Department of the Interior.

8. The Housing and Home Finance Administrator, in connection with the performance of the pertinent functions vested in him by Title III of the Act [sections 1592 to 1592*o* of this title], shall obtain the approval of the Surgeon General of the Public Health Service or his representative with respect to the public health aspects of sources of water supply developed, utilized, or aided by the said Administrator, and shall consult with the Surgeon General or his representative with respect to the public health aspects of water distribution systems and sewerage systems constructed or aided by the Administrator.

9. Subject to the consent of the Housing and Home Finance Administrator, the Surgeon General of the Public Health Service shall utilize the facilities and services of the Housing and Home Finance Agency for the performance of the following aspects of the functions conferred upon him by section 316 of the Act [section 1592*o* of this title]: (a) the construction by the Federal Government of projects approved by the Surgeon General (including the letting of construction contracts, the preparation or review of plans and specifications, and the supervision of construction work and expenditures therefor), (b) land acquisition for projects to be so constructed, and (c) the obtaining of information required for the purpose of, and the furnishing of recommendations with respect to, (i) the findings provided for in sections 103(a) and 103(b) of the Act [sections 1591b(a) and (b) of this title], and (ii) the actions provided for in the second and third provisos of section 304 of the Act [section 1592c of this title]. The Surgeon General shall pay the Housing and Home Finance Agency for such utilization, either in advance or otherwise, out of funds available to him for the performance of such functions.

10. Subject to the consent of the Federal Security Administrator, the Housing and Home Finance Administrator shall utilize the facilities and services of the Federal Security Agency in connection with the providing of library facilities under Title III of the Act [sections 1592 to 1592*o* of this title] in such manner that the division of work with respect to library facilities as between the Housing and Home Finance Administrator and the Federal Security Administrator will be the same as that with respect to recreation and child day-care center facilities as indicated in paragraphs 4 and 5 of this order. The Housing and Home Finance Administrator shall pay the Federal Security Administrator for such utilization, either in advance or otherwise, out of funds available to the Housing and Home Finance Administrator for the performance of the functions involved.

11. Paragraphs 9 and 10 shall not be construed as a limitation upon the Surgeon General or the Housing and Home Finance Administrator, as the case may be, with respect to utilization or delegation other than that referred to in such paragraphs and not inconsistent with the provisions of such paragraphs, respectively, or as divesting either the Surgeon General or the Administrator of any function conferred upon him by the Act.

12. As used in this order the term ''functions'' embraces duties, powers, responsibilities, authority, or discretion, and the term ''perform'' may be construed to mean ''exercise''.

§ 1592n. Definitions

As used in this subchapter, the following terms shall have the meanings respectively ascribed to them below, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular number:

(a) ''State'' shall mean the several States, the District of Columbia, and Territories, and possessions of the United States.

(b) ''Federal agency'' shall mean any executive department or officer (including the President), independent establishment, commission, board, bureau, division, or office in the executive branch of the United States Government, or other agency of the United States, including corporations in which the United States owns all or a majority of the stock, directly or indirectly.

(c) ''Community facility'' shall mean waterworks, sewers, sewage, garbage and refuse disposal facilities, police and fire protection facilities, public sanitary facilities, works for treatment and purification of water, libraries, hospitals and other places for the care of the sick, recreational facilities, streets and roads, and day-care centers.

(d) ''Community service'' shall mean the maintenance and operation of facilities for health, refuse disposal, sewage treatment, recreation, water purification, and day-care centers, and the provision of fire-protection.

(e) ''National defense'' shall mean (1) the operations and activities of the armed forces, the Atomic Energy Commission, or any other Government department or agency directly or indirectly and substantially concerned with the national defense, (2) other operations and activities directly or indirectly and substantially concerned with the operations and activities of the armed forces and the Atomic Energy Commission, (3) activities in connection with the Mutual Defense Assistance Act of 1949, as amended, or (4) the provision of community facilities or services necessary to the health, safety, or public welfare of the inhabitants of a town or community which has been relocated as a result of the acquisition (through eminent domain or purchase in lieu thereof) of its former site by or on behalf of the Atomic Energy Commission for national-defense activities.

(f) ''Nonprofit agency'' shall mean any agency no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(g) ''Project'' shall mean housing or community facilities acquired, developed, or constructed with financial assistance pursuant to this subchapter.

(h) ''Veteran'' shall mean a person, or the family of a person, who has served in the active military or naval service of the United States at any time (i) on or after September 16, 1940, and prior to July 26, 1947, (ii) on or after April 6, 1917, and prior to November 11, 1918, or (iii) on or after June 27, 1950, and prior to such date thereafter as shall be determined by the President, and who shall have been discharged or released therefrom under conditions other than dishonorable or who shall be still serving therein. The term shall also include the family of a person who served in the active military or naval service of the United States within any such period and who shall have died of causes determined by the Secretary of Veterans Affairs to have been service-connected.

(Sept. 1, 1951, ch. 378, title III, § 315, 65 Stat. 309; June 30, 1953, ch. 170, § 18, 67 Stat. 126; Pub. L. 102–54, § 13(q)(7)(B), June 13, 1991, 105 Stat. 281.)

REFERENCES IN TEXT

The Mutual Defense Assistance Act of 1949, referred to in subsec. (e), is act Oct. 6, 1949, ch. 626, 63 Stat. 714, as amended, which was classified generally to chapter 20 (§ 1571 et seq.) of Title 22, Foreign Relations and Intercourse, prior to its repeal by act Aug. 26, 1954, ch. 937, title V, § 542(a)(5), (9) to (11), 68 Stat. 861. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1991—Subsec. (h). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

1953—Subsec. (e)(4). Act June 30, 1953, added cl. (4).

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See, also, Transfer of Functions notes set out under those sections.

§ 1592*o*. Powers of Surgeon General of Public Health Service

Notwithstanding any other provision of this subchapter, all functions, powers, and duties under this subchapter and section 1591b of this title with respect to health, refuse disposal, sewage treatment, and water purification shall be exercised by and vested in the Surgeon General of the Public Health Service: *Provided*, That the Surgeon General shall have power to delegate to any other Federal agency functions, powers, and duties with respect to construction.

(Sept. 1, 1951, ch. 378, title III, § 316, 65 Stat. 310.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of 1966 Reorg. Plan No. 3 eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of 1966 Reorg. Plan. No. 3, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SUBCHAPTER X—DEVELOPMENT SITES FOR ISOLATED DEFENSE INSTALLATIONS

EXPIRATION DATE

For expiration of authority of Housing and Home Administrator to act under this subchapter, see section 1591c of this title.

§§ 1593 to 1593d. Repealed. June 30, 1953, ch. 170, § 19, 67 Stat. 126

Section 1593, acts Sept. 1, 1951, ch. 378, title IV, § 401, 65 Stat. 310; July 14, 1952, ch. 723, § 10(d), 66 Stat. 604, related to acquisition of land for housing and community facilities.

Section 1593a, act Sept. 1, 1951, ch. 378, title IV, § 402, 65 Stat. 310, related to acquisition of land for defense installations.

Section 1593b, act Sept. 1, 1951, ch. 378, title IV, § 403, 65 Stat. 311, related to payment of annual sums to local authorities in lieu of taxes.

Section 1593c, act Sept. 1, 1951, ch. 378, title IV, § 404, 65 Stat. 311, related to use of Treasury moneys.

Section 1593d, act Sept. 1, 1951, ch. 378, title IV, § 405, 65 Stat. 311, related to acquisition of land for privately financed defense housing.

§ 1593e. Housing of persons displaced by acquisition of property for defense installations or industries

Upon a finding by the Secretary of Housing and Urban Development that the acquisition of any real property for a defense installation or industry has resulted, or will result, in the displacement of persons from their homes on such property, he may (notwithstanding any other provision of this or any other law) issue regulations pursuant to which such persons may be permitted to occupy or purchase housing for which credit restrictions established pursuant to the Defense Production Act of 1950 [50 U.S.C. 2061 App. et seq.] have been relaxed or housing which has been provided or assisted under the provisions of this Act (including amendments to other Acts provided herein), subject to any conditions or requirements that he determines necessary for purposes of national defense.

(Sept. 1, 1951, ch. 378, title VI, § 611, 65 Stat. 316; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The Defense Production Act of 1950, referred to in text, is act Sept. 8, 1950, ch. 932, 64 Stat. 798, as amended, which is classified to section 2061 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 2061 of Title 50, Appendix, and Tables.

This Act and herein, referred to in text, mean act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

SUBCHAPTER XI—HOUSING FOR MILITARY PERSONNEL

§ 1594. Contracts for construction

(a) Contract provisions; competitive bids

The Secretary of Defense or his designee is authorized to enter into contracts with any eligible bidder to provide for the construction of urgently needed housing on lands owned or leased by the United States and situated on or near a military reservation or installation for the purpose of providing suitable living accommodations for military personnel of the armed services assigned to duty at the military installation at or in the area where the housing is situated. Any such contract shall provide that each housing unit in the project shall be placed under the control of the Secretary of Defense, or his designee, as soon as the unit is available for occupancy as determined by the Secretary of Housing and Urban Development. Any such contract shall also provide that, except for stock held by the Secretary of Housing and Urban Development, the capital stock of the mortgagor (where the mortgagor is a corporation) be transferred to the Secretary of Defense, or his designee, when the housing has been completed as determined by the Secretary of Housing and Urban Development. Any such contract shall contain such terms and conditions as the Secretary of Defense may determine to be necessary to protect the interests of the United States. Any such contract shall provide for the furnishing by the contractor of a performance bond and a payment bond with a surety or sureties satisfactory to the Secretary of Defense, or his designee, and the furnishing of such bonds shall be deemed a sufficient compliance with the provisions of section 3131 of title 40, and no additional bonds shall be required under such section. Before the Secretary of Defense shall enter into any contract as authorized by this section for the construction of housing, he shall invite the submission of competitive bids after advertising in the manner prescribed in section 2305 of title 10.

(b) "Eligible bidder" defined

For the purposes of this subchapter, the term ''eligible bidder'' means a person, partnership, firm, or corporation determined by the Secretary of Defense after consultation with the Secretary of Housing and Urban Development (1) to be qualified by experience and financial responsibility to construct housing of the type described in subsection (a) of this section, and (2) to have submitted the lowest acceptable bid.

(c) Acquisition of capital stock of property covered by mortgage

Notwithstanding any other provision of law, the Secretary of Defense or his designee is authorized to acquire the capital stock of mortgagors holding property covered by a mortgage insured under title VIII of the National Housing Act as amended by the Housing Amendments of 1955 [12 U.S.C. 1748 et seq.], and to exercise the rights as holder of such capital stock during the life of such mortgage and, upon the termination of the mortgage, to dissolve the corporation; to guarantee the payment of notes or other legal instruments required by the Secretary of Housing and Urban Development of such mortgagors; to make payments thereon; and to guarantee and indemnify the Armed Services Housing Mortgage Insurance Fund against loss in cases where so required. All housing facilities placed under the control of the Secretary of Defense pursuant to the provisions of this subchapter shall be deemed to be housing facilities under the jurisdiction of the military department to which they are assigned.

(d) Opinion as to title to property; guarantee; title search and title insurance

On request by the Secretary of Defense, the Attorney General shall furnish to the Secretary of Defense, or his designee, an opinion as to the sufficiency of title to any property on which it is proposed to construct housing, or on which housing has been constructed, under this section. If the opinion of the Attorney General is that the title to any such property is good and sufficient, the Secretary of Defense is authorized to guarantee, or enter into a commitment to guarantee, the mortgagee, under a mortgage on such property which is insured under title VIII of the National Housing Act [12 U.S.C. 1748 et seq.], against any losses that may thereafter arise from adverse claims to title. None of the proceeds of any mortgage loan hereafter insured under such title VIII shall be used for title search and title insurance costs: *Provided*, That if the Secretary of Defense, or his designee, determines in the case of any housing project, that the financing of the construction of such project is impossible unless title insurance is provided, the Secretary of Defense may provide for the payment of the reasonable costs necessary for obtaining title search and title insurance. Any payments by the Secretary of Defense hereunder shall be made from the revolving fund established under section 1594a(g)[1] of this title. Any determination by the Secretary of Defense under the foregoing proviso shall be set forth in writing, together with the reasons therefor. The Committees on Armed Services of the Senate and House of Representatives shall be promptly notified of each such determination, and of the amount of any payment made by the Secretary of Defense for title search and title insurance costs.

(Aug. 11, 1955, ch. 783, title IV, § 403, 69 Stat. 651; Aug. 7, 1956, ch. 1029, title V, §§ 506(b)–(d), 507, 70 Stat. 1110; Pub. L. 86–149, title IV, § 415, Aug. 10, 1959, 73 Stat. 323; Pub. L. 90–19, § 12(d), (h)(1)–(3), May 25, 1967, 81 Stat. 23, 24.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (c) and (d), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title VIII of the National Housing Act is classified generally to subchapter VIII (§ 1748 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 1594a(g) of this title, referred to in subsec. (d), was repealed by Pub. L. 87–554, title V, § 501(d), July 27, 1962, 76 Stat. 237.

CODIFICATION

In subsec. (a), ''section 3131 of title 40'' substituted for ''section 1 of the Act of August 24, 1935 (49 Stat.

[1] See References in Text note below.

793)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (a), ''section 2305 of title 10'' substituted for ''section 3 of the Armed Forces Procurement Act of 1947'' on authority of act Aug. 10, 1956, ch. 1041, § 49(b), 70A Stat. 640, the first section of which enacted Title 10, Armed Forces. Prior to enactment of Title 10, section 3 of the Armed Forces Procurement Act of 1947 was classified to section 152 of Title 41, Public Contracts.

AMENDMENTS

1967—Subsecs. (a) to (c). Pub. L. 90–19, § 12(d), substituted ''Secretary of Housing and Urban Development'' for ''Commissioner'' wherever appearing.

Subsec. (a). Pub. L. 90–19, § 12(h)(1), substituted ''Secretary of Defense'' for ''Secretary'' in fourth and sixth sentences.

Subsec. (b). Pub. L. 90–19, § 12(h)(2), substituted ''Secretary of Defense'' for ''Secretary''.

Subsec. (d). Pub. L. 90–19, § 12(h)(3), substituted ''Secretary of Defense'' for ''Secretary'' in last three sentences.

1959—Subsec. (d). Pub. L. 86–149 added subsec. (d).

1956—Subsec. (a). Act Aug. 7, 1956, §§ 506(b), (c), (d), 507, substituted ''eligible bidder'' for ''eligible builder'' in first sentence; substituted ''the mortgagor'' for ''the builder'' in two places in third sentence; inserted provision before last sentence, relating to furnishing by contractor of a performance bond and a payment bond with surety satisfactory to Secretary; and struck out from last sentence ''with any builder'' after ''Before the Secretary shall enter into any contract''.

Subsec. (b). Act Aug. 7, 1956, § 506(b), substituted ''eligible bidder'' for ''eligible builder''.

§ 1594a. Acquisition of military housing financed under Armed Services Housing Mortgage Insurance Fund and rental housing at military bases

(a) Purchase price

Whenever the Secretary of Defense or his designee deems it necessary for the purpose of this subchapter, he may acquire, by purchase, donation, condemnation, or other means of transfer, any land or (with the approval of the Secretary of Housing and Urban Development) (1) any housing financed with mortgages insured under title VIII of the National Housing Act [12 U.S.C. 1748 et seq.] as in effect prior to August 11, 1955, or (2) any housing situated adjacent to a military installation which was (A) completed prior to July 1, 1952, (B) certified by the Department of Defense, prior to construction, as being necessary to meet an existing military family housing need and considered as military housing by the Secretary of Housing and Urban Development, and (C) financed with mortgages insured under section 207 of the National Housing Act [12 U.S.C. 1713], or (3) any housing situated on or adjacent to a military installation which was (A) completed prior to July 1, 1952, (B) considered by the Department of Defense, prior to construction, as being necessary to meet an existing military family housing need and considered as military housing by the Secretary of Housing and Urban Development, and (C) financed with mortgages insured under section 608 of the National Housing Act [12 U.S.C. 1743], including adjacent property constructed primarily to provide commercial facilities for the occupants of such housing. The purchase price of any such housing shall not exceed the Secretary of Housing and Urban Development's estimate of the replacement cost of such housing and related property (not including the value of any improvements installed or constructed with appropriated funds) as of the date of final endorsement for mortgage insurance reduced by an appropriate allowance representing the estimated cost of repairs and replacements necessary to restore the property to sound physical condition, as determined by the Secretary of Defense or his designee upon the advice of the Secretary of Housing and Urban Development: *Provided*, That in any case where the Secretary of Defense or his designee acquires a project held by the Secretary of Housing and Urban Development, the price paid shall not exceed the face value of the debentures (plus accrued interest thereon) which the Secretary of Housing and Urban Development issued in acquiring such project.

(b) Housing at or near a military installation

Notwithstanding any provision of subsection (a) of this section to the contrary, the Secretary of Defense or his designee shall, in the manner provided in subsection (a) of this section, acquire by purchase, donation, or other means of transfer or, if the parties cannot agree upon terms for acquisition by such means, by condemnation, any housing described in clause (1) or (2) of subsection (a) of this section which is located at or near a military installation where the construction of housing under the Armed Services Housing Mortgage Insurance Program has been approved by the Secretary.

(c) Condemnation; procedures; deposit; payment; interest

(1) Condemnation proceedings instituted pursuant to this section shall be conducted in accordance with the provisions of section 3113 of title 40, or any other applicable Federal statute. Before any such condemnation proceedings are instituted, an effort shall be made to acquire the property involved by negotiation. In any such condemnation proceedings, and in the interests of expedition, the issue of just compensation may be determined by a commission of three qualified, disinterested persons to be appointed by the court. Any commission appointed hereunder shall give full consideration to all elements of value in accordance with existing law, and shall have the powers of a master provided in subdivision (c) of rule 53 of the Federal Rules of Civil Procedure and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of such rule. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice prescribed in paragraph (2) of subdivision (e) of such rule. Trial of all issues, other than just compensation, shall be by the court.

(2) In any condemnation proceedings instituted to acquire any such housing, or interest therein, the court shall not order the party in possession to surrender possession in advance of final judgment unless a declaration of taking has been filed, and a deposit of the amount estimated to be just compensation has been made, under section 3114(a) to (d) of title 40. The amount of such deposit for the purpose of this section shall not in any case be less than an

amount equal to the actual cost of the housing (not including the value of any improvements installed or constructed with appropriated funds) as certified by the sponsor or owner of the project to the Secretary of Housing and Urban Development pursuant to any statute or any regulations issued by the Secretary of Housing and Urban Development, reduced by the amount of the principal obligation of the mortgage outstanding at the time possession is surrendered, but any such deposit shall not include any excess mortgage proceeds or ''windfalls,'' kickbacks and rebates received in connection with the construction of said housing as determined by the Department of Defense, or any other Federal agency. The amount of such deposit in any case where the sponsor or owner has not certified the cost of the project to the Secretary of Housing and Urban Development at August 10, 1959, shall be determined by the Secretary of Defense, or his designee, in accordance with sections 3114 to 3116 and 3118 of title 40, with a view toward accurately estimating the equity of the sponsor or owner: *Provided*, That in the event there is withdrawn from the registry of the court by the owner or sponsor a sum of money in excess of the final award of just compensation, this excess shall be repaid to the United States plus a sum equal to 4 per centum per annum on such excess from the time such sum is deposited in the registry of the court: *Provided further*, That any court in which money is deposited as provided in this section shall require the furnishing of security by the owner to protect the United States from any loss by reason of a final award of just compensation of less than the amount deposited: *And provided further*, That the deposit required to be made by this section shall be without prejudice to any party in the determination of just compensation. Unless title is in dispute, the court, upon application and subject to the foregoing provisions of this subsection, shall promptly pay to the owner at least 75 per centum of the amount so deposited, but such payment shall be made without prejudice to any party to the proceeding. In the event that condemnation proceedings are instituted in accordance with procedures under sections 3114 to 3116 and 3118 of title 40, the court shall order that the amount deposited shall be paid in a lump sum or over a period not exceeding five years in accordance with stipulations executed by the parties in the proceedings. In connection with condemnation proceedings which do not utilize the procedures under such sections, the Secretary of Defense or his designee, after final judgment of the court, may pay or agree to pay in a lump sum or, in accordance with stipulations executed by the parties to the proceedings, over a period not exceeding five years the difference between the outstanding principal obligation, plus accrued interest, and the price for the property fixed by the court. Unless such payment is made in a lump sum, the unpaid balance thereof shall bear interest at the rate of 4 per centum per annum.

(d) Occupancy; use, or improvement of property before approval of title

Property acquired under this section may be occupied, used, and improved for the purposes of this section prior to the approval of title by the Attorney General as required by sections 3111 and 3112 of title 40.

(e) Release of accrual requirements for replacement, taxes, and hazard insurance reserves

The Secretary of Defense or his designee may, in the case of any housing acquired or to be acquired under this section, make arrangements with the mortgage whereby such mortgage will agree to release and waive all requirements of accruals for reserves for replacement, taxes, and hazard insurance provided for under the corporate charter and indenture agreement with respect to such housing, upon the execution of a written agreement by the Secretary or his designee that the purposes for which such reserves and other funds were accrued will be carried out.

(f) Use as public quarters or lease of housing

Any housing acquired under this section may be (1) assigned as public quarters to military personnel and their dependents; or (2) leased to military and civilian personnel for occupancy by them and their dependents, upon such terms and conditions as will in the judgment of the Secretary of Defense or his designee be in the best interest of the United States, without loss to military personnel of their basic allowance for quarters or appropriate allotments.

(Aug. 11, 1955, ch. 783, title IV, §404, 69 Stat. 652; Aug. 3, 1956, ch. 939, title IV, §420, 70 Stat. 1019; Aug. 7, 1956, ch. 1029, title V, §512, 70 Stat. 1111; Pub. L. 85–104, title V, §504, July 12, 1957, 71 Stat. 303; Pub. L. 85–685, title V, §513(d), Aug. 20, 1958, 72 Stat. 663; Pub. L. 86–149, title IV, §418, Aug. 10, 1959, 73 Stat. 323; Pub. L. 86–372, title VII, §§702(a), (b), 703, Sept. 23, 1959, 73 Stat. 683; Pub. L. 87–554, title V, §501(d), July 27, 1962, 76 Stat. 237; Pub. L. 88–560, title X, §1003, Sept. 2, 1964, 78 Stat. 806; Pub. L. 90–19, §12(e), (h)(4)–(6), May 25, 1967, 81 Stat. 23, 24.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title VIII of the National Housing Act is classified generally to subchapter VIII (§1748 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

CODIFICATION

In subsec. (c)(1), ''section 3113 of title 40'' substituted for ''the Act of August 1, 1888 (25 Stat. 357; 40 U.S.C. 257), as amended'', in subsec. (c)(2), ''section 3114(a) to (d) of title 40'' substituted for ''the first section of the Act of February 26, 1931 (46 Stat. 1421)'', ''sections 3114 to 3116 and 3118 of title 40'' substituted for ''the Act of February 26, 1931 (46 Stat. 1421)'' and for ''such Act of February 26, 1931'', and, in subsec. (d), ''sections 3111 and 3112 of title 40'' substituted for ''section 355 of the Revised Statutes, as amended'', on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–19, §12(e)(1)–(3), (h)(4), substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner'' wherever appearing in first sentence, ''Secretary of Housing and Urban Development's'' for ''Federal Housing Commissioner's'', ''Secretary of Housing and Urban Develop-

ment'' for ''Commissioner'' wherever appearing in second sentence, and ''Secretary of Defense'' for ''Secretary'' in proviso, respectively.

Subsec. (c)(2). Pub. L. 90–19, § 12(e)(1), (h)(5), substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner'' wherever appearing and ''Secretary of Defense'' for ''Secretary'' in penultimate sentence, respectively.

Subsec. (e). Pub. L. 90–19, § 12(h)(6), substituted ''Secretary of Defense'' for ''Secretary''.

1964—Subsec. (a). Pub. L. 88–560 authorized acquisition of housing on or adjacent to a military installation completed prior to July 1, 1952, considered necessary to meet existing military family need, considered military housing by the Federal Housing Commissioner, and financed with mortgages insured under section 608 of the National Housing Act, including adjacent property constructed primarily to provide commercial facilities for the occupants of such housing.

1962—Subsec. (f). Pub. L. 87–554 struck out provision for deposit in the revolving fund of amounts equal to the quarters allowances or appropriate allotments of military personnel to whom housing is assigned as public quarters and rental charges for leasing of housing to military and civilian personnel.

Subsec. (g). Pub. L. 87–554 repealed subsec. (g) creating the revolving fund, enumerating uses of the fund and requiring the deposit in the fund of specified quarters allowances or allotments, rental charges and savings realized in operation of housing.

Subsec. (h). Pub. L. 87–554 repealed subsec. (h) requiring the establishment of the revolving fund on the books of the Treasury Department, limiting appropriation authorization for revolving fund capital to $50,000,000 and permitting the transfer of certain funds to provide adequate capital for the fund.

1959—Subsec. (a). Pub. L. 86–372, § 702(a), authorized acquisition of any housing situated adjacent to a military installation which was completed prior to July 1, 1952, certified by the Department of Defense, prior to construction, as being necessary to meet an existing military family housing need and considered as military housing by the Federal Housing Commissioner, and financed with mortgages insured under section 207 of the National Housing Act.

Subsec. (b). Pub. L. 86–372, § 702(b), substituted ''any housing described in clause (1) or (2) of subsection (a) of this section'' for ''any housing constructed under the mortgage insurance provisions of sections 1748 to 1748h of title 12 (as in effect prior to Aug. 11, 1955)''.

Subsec. (c)(2). Pub. L. 86–372, § 703, required the amount of the deposit in any case where the sponsor or owner has not certified the cost of the project to be determined with a view toward accurately estimating the equity of the sponsor or owner.

Pub. L. 86–149 required the amount of the deposit to be not less than an amount equal to the actual cost of the housing as certified reduced by the amount of the principal obligation of the mortgage outstanding at the time possession is surrendered, provided for determination of amount of deposit in cases where cost has not been certified, and required payment of 4 percent interest where money has been withdrawn in excess of final award of just compensation.

1958—Subsec. (c). Pub. L. 85–685 inserted provisions authorizing issue of just compensation to be determined by a commission of three qualified, disinterested persons to be appointed by the court, prescribing its powers, relating to its action and report, and requiring trial of all issues, other than just compensation, to be by the court.

1957—Subsec. (a). Pub. L. 85–104 substituted ''representing the estimated cost of repairs and replacements necessary to restore the property to sound physical condition'' for ''for physical depreciation''.

1956—Act Aug. 7, 1956, designated existing provisions as subsecs. (a), (c), and (d), and added subsecs. (b) and (e) to (h).

Act Aug. 3, 1956, limited purchase price of housing to Commissioner's estimate of replacement cost of such housing and related property as of date of final endorsement for mortgage insurance reduced by an appropriate allowance for depreciation, and limited price of any project held by Commissioner to face value of debentures, plus accrued interest, which the Commissioner issued in acquiring the project.

REPEALS

Pub. L. 87–554, title V, § 501(d), July 27, 1962, 76 Stat. 237, cited as a credit to this section, was repealed by Pub. L. 97–214, § 7(5), July 12, 1982, 96 Stat. 173.

§§ 1594a–1, 1594a–2. Repealed. Pub. L. 97–214, § 7(5), July 12, 1982, 96 Stat. 173

Section 1594a–1, Pub. L. 87–554, title V, § 501(a)–(c), July 27, 1962, 76 Stat. 236; Pub. L. 90–110, title VI, § 606, Oct. 21, 1967, 81 Stat. 304; Pub. L. 91–142, title V, § 511, Dec. 5, 1969, 83 Stat. 312; Pub. L. 96–418, title V, § 511, Oct. 10, 1980, 94 Stat. 1767, related to Department of Defense family housing management account. See section 2831 of Title 10, Armed Forces.

Section 1594a–2, Pub. L. 87–554, title V, § 507, July 27, 1962, 76 Stat. 240, related to prior legislative approval for appropriations for family housing. See section 2821(a) of Title 10.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of Title 10, Armed Forces.

§ 1594b. Maintenance and operation of housing; use of quarters; payment of principal, interest, and other obligations

The Secretary of Defense or his designee is authorized to maintain and operate any housing acquired under this title and assign quarters therein to military and civilian personnel and their dependents. Appropriations for quarters allowances or appropriate allotments, and rental charges to civilian personnel, may be utilized by the military department concerned for the payment of principal, interest, and other obligations, except those of maintenance and operation, of the mortgagor corporation with respect to such housing projects. Such payments shall not exceed an average of $90 a month per housing unit and total payments for all housing so acquired shall not exceed $21,000,000 per month: *Provided*, That, in case of the United States Coast Guard, total payments for all housing so acquired shall not exceed $90,000 per month.

(Aug. 11, 1955, ch. 783, title IV, § 405, 69 Stat. 652; Aug. 7, 1956, ch. 1029, title V, § 508, 70 Stat. 1110.)

REFERENCES IN TEXT

This title, referred to in text, means title IV of act Aug. 11, 1955, ch. 783, 69 Stat. 646, as amended, which enacted sections 1594 and 1594a, 1594b to 1594f of this title, amended sections 1720, 1748, and 1748a to 1748g of Title 12, Banks and Banking, and enacted provisions set out as a note under section 1748 of Title 12. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1956—Act Aug. 7, 1956, substituted ''$21,000,000'' for ''$9,000,000''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities

and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1594c. Services of architects and engineers; use of appropriations; acquisition of sites

Whenever the Secretary of Defense or his designee determines that it is desirable in order to effectuate the purposes of this title, the Secretary is authorized, without regard to the civil service and classification laws, to procure, by negotiation or otherwise, the services of architects and engineers, or organizations thereof, under such arrangements as he deems desirable, but at an expense not in excess of that permissible under the schedule of fees allowed from time to time by the Secretary of Housing and Urban Development in connection with projects assisted under the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.]. Such services may include the development of plans, drawings and specifications for family housing under this title and other services in connection therewith: *Provided*, That such plans, drawings, and specifications may include the use of any project to be constructed under this subchapter of alternate materials or alternate types of construction, including prefabrication, that provide substantially equal value and conform to standards established by the Secretary of Housing and Urban Development: *Provided further*, That such plans, drawings, and specifications, when developed pursuant to arrangements made under this section after August 7, 1956, shall follow the principle of modular measure, in order that the housing may be built by conventional construction, on-site fabrication, factory precutting, factory fabrication, or any combination of these construction methods: *Provided further*, That the Secretary of Defense may designate certain sites or parts thereof for family housing to be furnished from prefabricated houses or housing components. Such arrangements may include provision for advance or progress payments, for payment by third parties, for payment by the Government of any such compensation as it not paid for by third parties, and shall include provision for reimbursement by third parties to the Government of any compensation or other expenses paid by the Government pursuant to this section, and may include other provisions for compensation. Any public works appropriations now or hereafter available to the Departments of the Army, Navy, or Air Force or the Coast Guard may be obligated by the respective departments or the Coast Guard for these purposes. Reimbursements to the Government on account of payments made pursuant to this section shall be made to appropriations against which such payments were charged. The Secretary of Defense is further authorized to advance or pay to the Department of Housing and Urban Development its ''Appraisal and Eligibility Statement'' fees in connection with such family housing. The Secretary of Defense is further authorized to enter into arrangements by contract or otherwise for eventual acquisition by the Government, without cost to the Government of all right, title, and interest in sites on which housing is constructed pursuant to this title and improvements thereon.

(Aug. 11, 1955, ch. 783, title IV, § 406, 69 Stat. 653; Aug. 7, 1956, ch. 1029, title V, § 509, 70 Stat. 1110; Pub. L. 90–19, § 12(f), (h)(7), (8), May 25, 1967, 81 Stat. 24.)

REFERENCES IN TEXT

This title, referred to in text, means title IV of act Aug. 11, 1955, ch. 783, 69 Stat. 646, as amended, which enacted sections 1594 and 1594a, 1594b to 1594f of this title, amended sections 1720, 1748, and 1748a to 1748g of Title 12, Banks and Banking, and enacted provisions set out as a note under section 1748 of Title 12. For complete classification of this Act to the Code, see Tables.

The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in text, are classified generally to chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' and ''Department of Housing and Urban Development'' for ''Public Housing Administration'' and ''Federal Housing Administration'' in first sentence and first proviso and for ''Federal Housing Administration'' in penultimate sentence and ''Secretary of Defense'' for ''Secretary'' in third proviso and last two sentences, respectively.

1956—Act Aug. 7, 1956, inserted second proviso requiring plans, drawings, and specifications to follow the principle of modular measure, so the housing may be built by conventional construction, on-site fabrication, factory precutting, factory fabrication, or any combination of these construction methods.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1594d. Appropriations; use of quarters allowances

(a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 1594, 1594a, 1594b, and 1594c of this title.

(b) Any funds heretofore or hereafter authorized to be expended by any of the military departments or the Coast Guard for the payment of allowances for quarters for military personnel may be used for the purposes specified in subsection (a) of this section.

(Aug. 11, 1955, ch. 783, title IV, § 407, 69 Stat. 653.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities

and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1594e. Definitions

(a) Wherever the terms ''Secretary of Defense'' or ''Secretary of the Army, Navy, or Air Force'' appear in this title or in title VIII of the National Housing Act, as amended by the Housing Amendments of 1955 [12 U.S.C. 1748 et seq.], they shall be deemed to mean the Secretary of Transportation in the case of the application of the provisions of this subchapter or of title VIII of the National Housing Act, as amended by the Housing Amendments of 1955, for the benefit of the United States Coast Guard.

(b) Wherever the term ''armed services'' appears in this subchapter it shall be deemed to include the United States Coast Guard.

(Aug. 11, 1955, ch. 783, title IV, § 409, 69 Stat. 654; Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938; Pub. L. 90–19, § 12(g), May 25, 1967, 81 Stat. 24.)

REFERENCES IN TEXT

This title, referred to in subsec. (a), means title IV of act Aug. 11, 1955, ch. 783, 69 Stat. 646, as amended, which enacted sections 1594 and 1594a, 1594b to 1594f of this title, amended sections 1720, 1748, and 1748a to 1748g of Title 12, Banks and Banking, and enacted provisions set out as a note under section 1748 of Title 12. For complete classification of this Act to the Code, see Tables.

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title VIII of the National Housing Act is classified generally to subchapter VIII (§ 1748 et seq.) of chapter 13, Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–19 struck out ''or Secretary'' after ''Secretary of Defense''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and all functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

§ 1594f. Net floor area limitations

In the construction of housing under the authority of this title and title VIII of the National Housing Act, as amended [12 U.S.C. 1748 et seq.], the maximum limitations on net floor area for each unit shall be the same as the net floor area limitations prescribed by law (at the time plans and specifications for such construction are begun) for public quarters built with appropriated funds under military construction authority.

(Aug. 11, 1955, ch. 783, title IV, § 410, as added Aug. 7, 1956, ch. 1029, title V, § 510, 70 Stat. 1110; amended Pub. L. 85–104, title V, § 503, July 12, 1957, 71 Stat. 303.)

REFERENCES IN TEXT

This title, referred to in text, means title IV of act Aug. 11, 1955, ch. 783, 69 Stat. 646, as amended, which enacted sections 1594 and 1594a, 1594b to 1594f of this title, amended sections 1720, 1748, and 1748a to 1748g of Title 12, Banks and Banking, and enacted provisions set out as a note under section 1748 of Title 12.

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title VIII of the National Housing Act is classified generally to subchapter VIII (§ 1748 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1957—Pub. L. 85–104 substituted ''limitations prescribed by law (at the time plans and specifications for such construction are begun) for public quarters built with appropriated funds under military construction authority'' for ''permanent limitations prescribed in the second, third, and fourth provisos of section 3 of the act of June 12, 1948 (62 Stat. 375), or section 3 of the act of June 16, 1948 (62 Stat. 459), other than the first, second, and third provisos thereof''.

§ 1594g. Repealed. Pub. L. 85–241, title IV, § 406(b), Aug. 30, 1957, 71 Stat. 556

Section, act Aug. 3, 1956, ch. 939, title IV, § 419, 70 Stat. 1018, related to conditions precedent to entering into contracts for construction or acquisition of family housing units by or for the use of military or civilian personnel of any of the military services.

EFFECTIVE DATE OF REPEAL

Section 406(b) of Pub. L. 85–241 provided that the repeal of this section is effective July 1, 1958.

§§ 1594h to 1594i. Repealed. Pub. L. 97–214, § 7(3), (5), (9), (17), July 12, 1982, 96 Stat. 173, 174

Section 1594h, Pub. L. 85–241, title I, § 103, Aug. 30, 1957, 71 Stat. 534, related to purchase of family housing for assignment as public quarters, and space and cost limitations.

Section 1594h–1, Pub. L. 87–554, title V, § 503, July 27, 1962, 76 Stat. 239, related to improvement of family housing units, public quarters designation, and cost limitations.

Section 1594h–2, Pub. L. 90–110, title VI, § 610(a), Oct. 21, 1967, 81 Stat. 305; Pub. L. 93–166, title V, § 506(a), Nov. 29, 1973, 87 Stat. 675; Pub. L. 95–356, title V, § 502(b), Sept. 8, 1978, 92 Stat. 578; Pub. L. 96–418, title V, § 502(b), Oct. 10, 1980, 94 Stat. 1764, related to improvement of single family housing units and cost limitations of such improvements. See section 2825(b) of Title 10, Armed Forces.

Section 1594h–3, Pub. L. 96–418, title V, § 505, Oct. 10, 1980, 94 Stat. 1765, related to settlement of contractor claims on military family housing.

Section 1594i, Pub. L. 85–241, title IV, § 406(a) Aug. 30, 1957, 71 Stat. 556; Pub. L. 85–685, title V, § 512, Aug. 20, 1958, 72 Stat. 662; Pub. L. 86–149, title IV, § 408, Aug. 10, 1959, 73 Stat. 321; Pub. L. 86–500, title V, § 507(b), June 8, 1960, 74 Stat. 185; Pub. L. 87–70, title VI, § 611(b), June 30, 1961, 75 Stat. 180; Pub. L. 88–174, title V, § 510, Nov. 7, 1963, 77 Stat. 327, related to authorization of number of family housing units. See section 2822 of Title 10.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of Title 10, Armed Forces.

§ 1594j. Repealed. Pub. L. 92–545, title V, § 508(c), Oct. 25, 1972, 86 Stat. 1150

Section, Pub. L. 85–241, title IV, § 407, Aug. 30, 1957, 71 Stat. 556; Pub. L. 85–685, title V, § 516, Aug. 20, 1958, 72 Stat. 664; Pub. L. 86–372, title VII, § 702(c), Sept. 23, 1959, 73 Stat. 683; Pub. L. 86–500, title V, § 508, June 8, 1960, 74 Stat. 186; Pub. L. 87–57, title VI, § 610, June 27, 1961, 75 Stat. 111; Pub. L. 88–174, title V, § 506, Nov. 7, 1963, 77 Stat. 326; Pub. L. 89–568, title V, § 502, Sept. 12, 1966; 80 Stat. 753; Pub. L. 90–110, title VI, § 608, Oct. 21, 1967, 81 Stat. 305, provided for occupancy on a rental basis of inadequate quarters without loss of basic allowance for quarters. See section 2830 of Title 10, Armed Forces.

§§ 1594j–1, 1594k. Repealed. Pub. L. 97–214, § 7(6), (13), July 12, 1982, 96 Stat. 173, 174

Section 1594j–1, Pub. L. 92–545, title V, § 508(a), (b), Oct. 25, 1972, 86 Stat. 1149, related to inadequate quarters. See section 2830 of Title 10, Armed Forces.

Section 1594k, Pub. L. 88–174, title V, § 507, Nov. 7, 1963, 77 Stat. 326; Pub. L. 89–188, title V, § 505, Sept. 16, 1965, 79 Stat. 814; Pub. L. 90–110, title VI, § 605, Oct. 21, 1967, 81 Stat. 304; Pub. L. 90–408, title VI, § 607, July 21, 1968, 82 Stat. 388; Pub. L. 91–142, title V, § 508, Dec. 5, 1969, 83 Stat. 312; Pub. L. 91–511, title V, § 507, Oct. 26, 1970, 84 Stat. 1220; Pub. L. 92–145, title V, § 507, Oct. 27, 1971, 85 Stat. 407; Pub. L. 92–545, title V, § 507, Oct. 25, 1972, 86 Stat. 1149; Pub. L. 93–166, title V, § 508, Nov. 29, 1973, 87 Stat. 676, related to guarantee of rental return to builders or other sponsors in foreign countries, and limitation on amount, period, and unit limitation of such guarantee.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of Title 10, Armed Forces.

SAVINGS PROVISION

Section 9(b) of Pub. L. 97–214 provided that: ''The Secretary of Defense may continue in effect any agreement guaranteeing rental returns to builders or other sponsors of family housing in foreign countries that was made under section 507 of the Military Construction Authorization Act, 1964 (42 U.S.C. 1594k), before the effective date of this Act [Oct. 1, 1982] and may exercise any option of the United States in any such agreement that has not been exercised before such date.''

CHAPTER 10—FEDERAL SECURITY AGENCY

§§ 1601, 1602. Transferred

CODIFICATION

Section 1601, act May 9, 1941, ch. 97, 55 Stat. 184; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, related to adoption of a seal by Secretary of Department of Health, Education, and Welfare, and was transferred to section 3505 of this title.

Section 1602, act July 12, 1943, ch. 221, title II, § 201, 57 Stat. 513; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, related to delegation of authority of Secretary of Health, Education, and Welfare with respect to his authority to transfer personnel and household goods from one station to another, and was transferred to section 3507 of this title.

§ 1603. Omitted

CODIFICATION

Section, acts July 13, 1943, ch. 221, title II, § 1, 57 Stat. 513; June 28, 1944, ch. 302, title II, § 1, 58 Stat. 566; July 3, 1945, ch. 263, title II, 59 Stat. 376; July 26, 1946, ch. 672, title II, § 201, 60 Stat. 697; July 8, 1947, ch. 210, title II, § 201, 61 Stat. 276, which authorized the Secretary of the Treasury to transfer to constituent organizations of the Federal Security Agency requested amounts from appropriations for traveling expenses and printing and binding, Federal Security Agency, and to retransfer to such appropriations, was not repeated in subsequent appropriation acts.

CHAPTER 11—COMPENSATION FOR DISABILITY OR DEATH TO PERSONS EMPLOYED AT MILITARY, AIR, AND NAVAL BASES OUTSIDE UNITED STATES

Sec.
1651. Compensation authorized.
1652. Computation of benefits; application to aliens and nonnationals.
1653. Compensation districts; judicial proceedings.
1654. Persons excluded from benefits.

§ 1651. Compensation authorized

(a) Places of employment

Except as herein modified, the provisions of the Longshore and Harbor Workers' Compensation Act, approved March 4, 1927 (44 Stat. 1424), as amended [33 U.S.C. 901 et seq.], shall apply in respect to the injury or death of any employee engaged in any employment—

(1) at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government; or

(2) upon any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone); or

(3) upon any public work in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone), if such employee is engaged in employment at such place under the contract of a contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) with the United States; but nothing in this paragraph shall be construed to apply to any employee of such a contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(4) under a contract entered into with the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1)–(3) of this subdivision, for the purpose of engaging in public work, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (1) shall, before commencing per-

formance of such contract, provide for securing to or on behalf of employees engaged in such public work under such contract the payment of compensation and other benefits under the provisions of this chapter, and (2) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(5) under a contract approved and financed by the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States, under the Mutual Security Act of 1954, as amended (other than title II of chapter II thereof unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States, determines a contract financed under a successor provision of any successor Act should be covered by this section), and not otherwise within the coverage of this section, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (A) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in work under such contract the payment of compensation and other benefits under the provisions of this chapter, and (B) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(6) outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense,

irrespective of the place where the injury or death occurs, and shall include any injury or death occurring to any such employee during transportation to or from his place of employment, where the employer or the United States provides the transportation or the cost thereof.

(b) Definitions

As used in this section—

(1) the term ''public work'' means any fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including but not limited to projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project;

(2) the term ''allies'' means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance;

(3) the term ''war activities'' includes activities directly relating to military operations;

(4) the term ''continental United States'' means the States and the District of Columbia.

(c) Liability as exclusive

The liability of an employer, contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) under this chapter shall be exclusive and in place of all other liability of such employer, contractor, subcontractor, or subordinate contractor to his employees (and their dependents) coming within the purview of this chapter, under the workmen's compensation law of any State, Territory, or other jurisdiction, irrespective of the place where the contract of hire of any such employee may have been made or entered into.

(d) "Contractor" defined

As used in this section, the term ''contractor'' means any individual, partnership, corporation, or association, and includes any trustee, receiver, assignee, successor, or personal representative thereof, and the rights, obligations, liability, and duties of the employer under such Longshore and Harbor Workers' Compensation Act [33 U.S.C. 901 et seq.] shall be applicable to such contractor.

(e) Contracts within section; waiver of application of section

The liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in public work under subparagraphs (3) and (4), subdivision (a) of this section, and the conditions set forth therein, shall become applicable to contracts and subcontracts heretofore entered into but not completed at August 16, 1941, and the liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in performance of contracts, subcontracts, or subordinate contracts specified in subparagraph (5), subdivision (a) of this section, and the conditions set forth therein, shall hereafter be applicable to the remaining terms of such contracts, subcontracts, and subordinate contracts entered into prior to but not completed on the date of enactment of any successor Act to the Mutual Security Act of 1954, as amended, and contracting officers of the United States are authorized to make such modifications and amendments of existing contracts as may be necessary to bring such contracts into conformity with the provisions of this chapter. No right shall arise in any employee or his dependent under subparagraphs (3) and (4) of subdivision (a) of this section, prior to two months after the approval of this chapter. Upon the rec-

ommendation of the head of any department or other agency of the United States, the Secretary of Labor, in the exercise of his discretion, may waive the application of this section with respect to any contract, subcontract, contract, or subordinate contract, work location under such contracts, or classification of employees. Upon recommendation of any employer referred to in paragraph (6) of subsection (a) of this section, the Secretary of Labor may waive the application of this section to any employee or class of employees of such employer, or to any place of employment of such an employee or class of employees.

(f) Liability to prisoners of war and protected persons

The liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in public work under paragraphs (1), (2), (3), and (4) of subsection (a) of this section or in any work under paragraph (5) of subsection (a) of this section does not apply with respect to any person who is a prisoner of war or a protected person under the Geneva Conventions of 1949 and who is detained or utilized by the United States.

(Aug. 16, 1941, ch. 357, §1, 55 Stat. 622; Dec. 2, 1942, ch. 668, title III, §301, 56 Stat. 1035; 1946 Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7871, 60 Stat. 1352; June 30, 1953, ch. 176, §4, 67 Stat. 135; Pub. L. 85–477, ch. V, §502(a), June 30, 1958, 72 Stat. 272; Pub. L. 85–608, title II, §201, Aug. 8, 1958, 72 Stat. 537; Pub. L. 86–70, §40, June 25, 1959, 73 Stat. 150; Pub. L. 86–108, ch. VII, §701(a), July 24, 1959, 73 Stat. 257; Pub. L. 87–195, pt. IV, §701, Sept. 4, 1961, 75 Stat. 463; Pub. L. 98–426, §27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, referred to in subsecs. (a) and (d), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

For definition of Canal Zone, referred to in subsec. (a)(2), (3), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Mutual Security Act of 1954, referred to in subsecs. (a)(5) and (e), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, §§2–11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85–141, 71 Stat. 355; June 30, 1958, Pub. L. 85–477, ch. 1, §§101–103, ch. II, §§201–205, ch. III, §301, ch. IV, §401, ch. V, §501, 72 Stat. 261; July 24, 1959, Pub. L. 86–108, §2, ch. 1, §101, ch. II, §§201 to 205(a)–(i), (k)–(n), ch. III, §301, ch. IV, §401(a)–(k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86–472, chs. I to V, 74 Stat. 134, which was principally classified to chapter 24 (§1750 et seq.) of Title 22, and which was repealed by acts July 18, 1956, ch. 627, §8(m), 70 Stat. 559; Aug. 14, 1957, Pub. L. 85–141, §§2(e), 3, 4(b), 11(d), 71 Stat. 356; July 24, 1959, Pub. L. 86–108, ch. II, §205(j), ch. IV, §401(1), 73 Stat. 250; May 14, 1960, Pub. L. 86–472, ch. II, §§203(d), 204(k), 74 Stat. 138; Sept. 4, 1961, Pub. L. 87–195, pt. III, §642(a)(2), 75 Stat. 460; June 30, 1976, Pub. L. 94–329, title II, §212(b)(1), 90 Stat. 745; Apr. 4, 1996, Pub. L. 104–127, title II, §228, 110 Stat. 963, except for sections 1754, 1783, 1796, 1853, 1928, and 1937 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of Title 22 and Tables.

Title II of Chapter II of the Mutual Security Act of 1954, referred to in subsec. (a)(5), which was classified generally to sections 1870 to 1876 of Title 22, was repealed by Pub. L. 87–195, Pt. III, §642(a)(2), Sept. 4, 1961, 75 Stat. 460.

CODIFICATION

Reference to Philippine Islands in paragraphs (2) and (3) of subsec. (a) of this section was omitted as obsolete in view of Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7871, 60 Stat. 1352, recognizing the independence of the Philippines and withdrawing and surrendering all rights of possession, supervision, jurisdiction, control, or sovereignty now existing and exercised by the United States in and over the territory and people of the Philippines. See note set out under section 1394 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1984—Subsecs. (a), (d). Pub. L. 98–426 substituted ''Longshore and Harbor Workers' Compensation Act'' for ''Longshoremen's and Harbor Workers' Compensation Act''.

1961—Subsec. (a)(5). Pub. L. 87–195, §701(1), extended coverage in those cases where the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States, determines a contract financed under a successor provision of any successor act to the Mutual Security Act of 1954 should be covered by this section.

Subsec. (e). Pub. L. 87–195, §701(2), substituted ''but not completed on the date of enactment of any successor act to the Mutual Security Act of 1954, as amended'' for ''June 30, 1958, but not completed on July 24, 1959''.

1959—Subsec. (a)(2), (3). Pub. L. 86–70, §40(a), struck out ''Alaska;'' before ''the United States Naval Operating Base''.

Subsec. (a)(6). Pub. L. 86–70, §40(b), struck out ''or in Alaska or the Canal Zone'' after ''continental United States''.

Subsec. (b)(4). Pub. L. 86–70, §40(c), added par. (4).

Subsec. (e). Pub. L. 86–108 provided that the liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in performance of contracts, subcontracts, or subordinate contracts specified in subsec. (a)(5) of this section, and the conditions set forth therein, shall be applicable to the remaining terms of such contracts, subcontracts, and subordinate contracts entered into prior to June 30, 1958, but not completed on July 24, 1959.

1958—Subsec. (a)(5). Pub. L. 85–477, §502(a)(1), added par. (5).

Subsec. (a)(6). Pub. L. 85–608, §201(a), added par. (6).

Subsec. (b). Pub. L. 85–608, §201(b), inserted ''whether or not fixed,'' after ''any project'' and substituted ''projects or operations under service contracts and projects in connection with the national defense or with war activities'' for ''projects in connection with the war effort'' in definition of ''public work'', and inserted definitions of ''allies'' and ''war activities''.

Subsec. (e). Pub. L. 85–608, §201(c), substituted ''may waive the application of this section with respect to any contract'' for ''may waive the application of the provisions of subparagraphs (3), (4), or (5) of subdivision (a) of this section, with respect to any contract'', and inserted provisions authorizing the Secretary to waive the application of this section to any employee or class of employees of an employer referred to in paragraph (6) of subsection (a) of this section upon recommendation of the employer.

Pub. L. 85–477, §502(a)(2), substituted ''provisions of subparagraphs (3), (4), or (5)'' for ''provisions of subparagraphs (3) or (4)''.

Subsec. (f). Pub. L. 85–602, §201(d), substituted provisions making liability of a contractor, subcontractor, or subordinate contractor inapplicable with respect to persons who are prisoners of war or protected persons and who are detained or utilized by the United States for provisions which made liability inapplicable with respect to employees not citizens of the United States who incurred an injury or death resulting in death subsequent to June 30, 1953.

Pub. L. 85–477, § 502(a)(3), inserted ''or any work under subparagraph (5) of subsection (a) of this section'' before ''shall not apply''.

1953—Subsec. (f). Act June 30, 1953, added subsec. (f).

1942—Act Dec. 2, 1942, amended section generally. Prior to amendment section read as follows: ''Except as herein modified, the provisions of sections 901–921, 922–950 of title 33, as amended, and as the same may be amended hereafter, shall apply in respect to the injury or death of any employee engaged in any employment at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government or any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States, including Alaska, Guantanamo, and the Philippine Islands, but excluding the Canal Zone, irrespective of the place where the injury or death occurs.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 47(g) of Pub. L. 86–70 provided that: ''The amendments in sections 40 and 42 [amending this section and sections 1701, 1704, and 1711 of this title] shall take effect when enacted [June 25, 1959]: *Provided, however*, That with respect to injuries or deaths occurring on or after January 3, 1959, and prior to the effective date of these amendments, claims filed by employees engaged in the State of Alaska in any of the employments covered by the Defense Base Act [this chapter] (and their dependents) may be adjudicated under the Workmen's Compensation Act of Alaska instead of the Defense Base Act.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 402 of Pub. L. 85–608 provided that: ''The effective date of this Act [amending this section, sections 1701, 1702, 1704, 1711, and 1716 of this title, and sections 751 and 790 of former Title 5, Executive Departments and Government Officers and Employees, repealing section 801 of former Title 5, and enacting provisions set out as notes under this section and section 1701 of this title] is June 30, 1958. Persons are entitled to the benefits of this Act notwithstanding the fact that an injury, disability, or death occurred after June 30, 1958, and before the date of enactment of this Act [Aug. 8, 1958].''

SHORT TITLE

Section 5 of act Aug. 16, 1941, as added by Pub. L. 85–608, title II, § 202, Aug. 8, 1958, 72 Stat. 538, provided that: ''This Act [enacting this chapter] may be cited as the 'Defense Base Act'.''

REPEALS

Section 701 of Pub. L. 87–195, cited as a credit to this section, was repealed by section 401 of Pub. L. 87–565, pt. IV, Aug. 1, 1962, 76 Stat. 263, except insofar as section 701 affected this section.

TRANSFER OF FUNCTIONS

For transfer of certain functions insofar as they pertain to Air Force, and to extent that they were not previously transferred to Secretary of the Air Force and Department of the Air Force from Secretary of the Army and Department of the Army, see Secretary of Defense Transfer Order No. 40 [App. A(74)], July 22, 1949.

§ 1652. Computation of benefits; application to aliens and nonnationals

(a) The minimum limit on weekly compensation for disability, established by section 906(b) of title 33, and the minimum limit on the average weekly wages on which death benefits are to be computed, established by section 909(e) of title 33, shall not apply in computing compensation and death benefits under this chapter.

(b) Compensation for permanent total or permanent partial disability under section 908(c)(21) of title 33, or for death under this chapter to aliens and nonnationals of the United States not residents of the United States or Canada shall be in the same amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year immediately prior to the date of the injury, and except that the Secretary of Labor may, at his option or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to such aliens or nonnationals of the United States by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary.

(Aug. 16, 1941, ch. 357, § 2, 55 Stat. 623; 1946 Reorg. Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg. Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; Pub. L. 98–426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98–426 substituted references to sections of the Longshore and Harbor Workers' Compensation Act for sections of the Longshoremen's and Harbor Workers' Compensation Act, which references have been translated to sections of title 33, thus requiring no change in text.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

''Secretary of Labor'' and ''Secretary'' substituted for ''Federal Security Administrator'' and ''Administrator'', respectively, in subsec. (b), pursuant to Reorg. Plan No. 19 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271, which transferred functions of Federal Security Administrator to Secretary of Labor.

Previously, ''Federal Security Administrator'' and ''Administrator'' substituted for ''United States Employees' Compensation Commission'' and ''Commission'' pursuant to Reorg. Plan No. 2 of 1946, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which abolished United States Employees' Compensation Commission and transferred its functions to Federal Security Administrator.

§ 1653. Compensation districts; judicial proceedings

(a) The Secretary of Labor is authorized to extend compensation districts established under the Longshore and Harbor Workers' Compensation Act, approved March 4, 1927 (44 Stat. 1424) [33 U.S.C. 901 et seq.], or to establish new compensation districts, to include any area to which this chapter applies; and to assign to each such district one or more deputy commissioners, as the Secretary may deem necessary.

(b) Judicial proceedings provided under sections 18 and 21 of the Longshore and Harbor

Workers' Compensation Act [33 U.S.C. 918, 921] in respect to a compensation order made pursuant to this chapter shall be instituted in the United States district court of the judicial district wherein is located the office of the deputy commissioner whose compensation order is involved if his office is located in a judicial district, and if not so located, such judicial proceedings shall be instituted in the judicial district nearest the base at which the injury or death occurs.

(Aug. 16, 1941, ch. 357, § 3, 55 Stat. 623; 1946 Reorg. Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg. Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; Pub. L. 98–426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, referred to in text, is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98–426 substituted ''Longshore and Harbor Workers' Compensation Act'' for ''Longshoremen's and Harbor Workers' Compensation Act''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

''Secretary of Labor'' and ''Secretary'' substituted for ''Federal Security Administrator'' and ''Administrator'', respectively, in subsec. (a), pursuant to Reorg. Plan No. 19 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271, which transferred functions of Federal Security Administrator to Secretary of Labor.

Previously, ''Federal Security Administrator'' and ''Administrator'' substituted for ''United States Employees' Compensation Commission'' and ''Commission'' pursuant to Reorg. Plan No. 2 of 1946, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which abolished United States Employees' Compensation Commission and transferred its functions to Federal Security Administrator.

§ 1654. Persons excluded from benefits

This chapter shall not apply in respect to the injury or death of (1) an employee subject to the provisions of subchapter I of chapter 81 of title 5; (2) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, or profession of the employer; and (3) a master or member of a crew of any vessel.

(Aug. 16, 1941, ch. 357, § 4, 55 Stat. 623.)

CODIFICATION

''Subchapter I of chapter 81 of title 5'' substituted for reference to act Sept. 7, 1916 (39 Stat. 742), known as the Federal Employees' Compensation Act, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

CHAPTER 12—COMPENSATION FOR INJURY, DEATH, OR DETENTION OF EMPLOYEES OF CONTRACTORS WITH UNITED STATES OUTSIDE UNITED STATES

SUBCHAPTER I—COMPENSATION, REIMBURSEMENT, ETC., BY SECRETARY OF LABOR

Sec.
1701. Compensation for injury or death resulting from war-risk hazard.
1702. Application of Longshore and Harbor Workers' Compensation Act.
1703. ''Contractor with the United States'' defined.
1704. Reimbursement.
1705. Receipt of workmen's compensation benefits.
1706. Administration.

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

1711. Definitions.
1712. Disqualification from benefits.
1713. Fraud; penalties.
1714. Legal services.
1715. Finality of Secretary's decisions.
1716. Presumption of death or detention.
1717. Assignment of benefits; execution, levy, etc., against benefits.

REPEALS

Section 6 of act June 30, 1953, ch. 176, 67 Stat. 135, repealed section 1(a)(13) of Joint Res. July 3, 1952, ch. 570, 66 Stat. 332, which, as amended by Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, provided for the continuation of this chapter until July 1, 1953.

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

SUBCHAPTER I—COMPENSATION, REIMBURSEMENT, ETC., BY SECRETARY OF LABOR

§ 1701. Compensation for injury or death resulting from war-risk hazard

(a) Persons covered

In case of injury or death resulting from injury—

(1) to any person employed by a contractor with the United States, if such person in an employee specified in chapter 11 of this title, and no compensation is payable with respect to such injury or death under such chapter; or

(2) to any person engaged by the United States under a contract for his personal services outside the continental United States; or

(3) to any person employed outside the continental United States as a civilian employee paid from nonappropriated funds administered by the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Store Ashore, Navy exchanges, Marine Corps exchanges, officers' and noncommissioned officers' open messes, enlisted men's clubs, service clubs, special service activities, or any other instrumentality of the United States under the jurisdiction of the Department of Defense and conducted for the mental, physical, and morale improvement of personnel of the Department of Defense and their dependents; or

(4) to any person who is an employee specified in section 1651(a)(5) of this title, if no

compensation is payable with respect to such injury or death under chapter 11 of this title or to any person engaged under a contract for his personal services outside the United States approved and financed by the United States under the Mutual Security Act of 1954, as amended (other than title II of chapter II thereof unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States Government, determines a contract financed under a successor provision of any successor Act should be covered by this section): *Provided*, That in cases where the United States is not a formal party to contracts approved and financed under the Mutual Security Act of 1954, as amended, the Secretary, upon the recommendation of the head of any department or agency of the United States, may, in the exercise of his discretion, waive the application of the provisions of this subparagraph with respect to any such contracts, subcontracts, or subordinate contracts, work location under such contracts, subcontracts, or subordinate contracts, or classification of employees; or

(5) to any person employed or otherwise engaged for personal services outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense,

and such injury proximately results from a war-risk hazard, whether or not such person then actually was engaged in the course of his employment, the provisions of subchapter I of chapter 81 of title 5, as amended, and as modified by this chapter, shall apply with respect thereto in the same manner and to the same extent as if the person so employed were a civil employee of the United States and were injured while in the performance of his duty, and any compensation found to be due shall be paid from the compensation fund established pursuant to section 8147 of title 5. This subsection shall not be construed to include any person who would otherwise come within the purview of subchapter I of chapter 81 of title 5.

(b) Missing persons considered as totally disabled

(1) Any person specified in subsection (a) of this section who—

(A) is found to be missing from his place of employment, whether or not such person then actually was engaged in the course of his employment, under circumstances supporting an inference that his absence is due to the belligerent action of a hostile force or person, or

(B) is known to have been taken by a hostile force or person as a prisoner, hostage, or otherwise, or

(C) is not returned to his home or to the place where he was employed by reason of the failure of the United States or its contractor to furnish transportation,

until such time as he is returned to his home, to the place of his employment, or is able to be returned to the jurisdiction of the United States, shall, under such regulations as the Secretary may prescribe, be regarded solely for the purposes of this subsection as totally disabled, and the same benefits as are provided for such disability under this subchapter shall be credited to his account and be payable to him for the period of such absence or until his death is in fact established or can be legally presumed to have occurred: *Provided*, That if such person has dependents residing in the United States or its Territories or possessions (including the United States Naval Operating Base, Guantanamo Bay, Cuba, and the Canal Zone), the Secretary during the period of such absence may disburse a part of such compensation, accruing for such total disability, to such dependents, which shall be equal to the monthly benefits otherwise payable for death under this subchapter, and the balance of such compensation for total disability shall accrue and be payable to such person upon his return from such absence. Any payment made pursuant to this subsection shall not in any case be included in computing the maximum aggregate or total compensation payable for disability or death, as provided in section 1702(a) of this title: *Provided further*, That no such payment to such person or his dependent, on account of such absence, shall be made during any period such person or dependent, respectively, has received, or may be entitled to receive, any other payment from the United States, either directly or indirectly, because of such absence, unless such person or dependent refunds or renounces such other benefit or payment for the period claimed.

Benefits found to be due under this subsection shall be paid from the compensation fund established pursuant to section 8147 of title 5: *Provided*, That the determination of dependents, dependency, and amounts of payments to dependents shall be made in the manner specified in subchapter I of chapter 81 of title 5: *Provided further*, That claim for such detention benefits shall be filed in accordance with and subject to the limitation provisions of subchapter I of chapter 81 of title 5, as modified by section 1706(c) of this title: *And provided further*, That except in cases of fraud or willful misrepresentation, the Secretary may waive recovery of money erroneously paid under this subdivision whenever he finds that such recovery would be impracticable or would cause hardship to the beneficiary affected: *And provided further*, That where such a person is found to be missing from his place of employment whether or not such person then actually was engaged in the course of his employment, under circumstances supporting an inference that his absence is due to the belligerent action of a hostile force or person or is known to have been taken by a hostile force or person as a prisoner, hostage, or otherwise, the amount of benefits to be credited to the account of such person under this subsection, and for the purposes of this subsection only, shall be 100 per centum of the average weekly wages of such person, except that in computing such benefits such average weekly wages (a) shall not exceed the average weekly wages paid to civilian employees of the United States in the same or most similar occupation in the area nearest to the place of employment where such person was last employed, and (b)

shall not exceed the average weekly wages of such absent person at the time such absence began; and 70 per centum of such average weekly wage so determined shall be disbursed to the dependent or dependents of such person, irrespective of the limitations of section 909 of title 33, but should there be more than one such dependent, the distribution of such 70 per centum shall be proportionate to the percentages allowed for dependents by section 909 of title 33, and if such manner of disbursement in any case would result in injustice or excessive allowance for a dependent, the Secretary may, in his discretion, modify such percentage or apportionment to meet the requirements of the case; and in such cases benefits for detention shall accrue from January 1, 1942, unless the beginning of absence occurred upon a later date in which event benefits shall accrue from such later date, and for the period of such absence shall be 100 per centum of the average weekly wages, determined as herein provided: *And provided further*, That compensation for disability under this subchapter (except under allowance for scheduled losses of members or functions of the body, within the purview of section 1702(a) of this title) shall not be paid in any case in respect to any period of time during which benefits for detention may accrue under this subchapter in the same case, and should a person entitled to benefits for detention also be entitled to workmen's compensation or similar benefits under any other law, agreement, or plan (except allowances for scheduled losses of members or functions of the body), where such other benefits are paid or to be paid directly or indirectly by the United States, the amount thereof accruing as to the period of absence shall be taken into account and the benefits credited to the account of the detained person reduced accordingly: *And provided further*, That where through mistake of fact, absence of proof of death, or error through lack of adequate information or otherwise, payments as for detention have in any case been erroneously made or credited, any resulting overpayment of detention benefits (the recovery of which is not waived as otherwise provided for in this section) shall be recouped by the Secretary in such manner as he shall determine from any unpaid accruals to the account of the detained person, and if such accruals are insufficient for such purpose, then from any allowance of compensation for injury or death in the same case (whether under this subchapter or under any other law, agreement, or plan, if the United States pays, or is obligated to pay, such benefits, directly or indirectly), but only to the extent of the amount of such compensation benefits payable for the particular period of such overpayment, and in cases of erroneous payments of compensation for injury or death, made through mistake of fact, whether under this subchapter or under any other law, agreement, or plan (if the United States is obligated to pay such compensation, directly or indirectly), the Secretary is authorized to recoup from any unpaid benefits for detention, the amount of any overpayment thus arising; and any amounts recovered under this section shall be covered into such compensation fund, and for the foregoing purposes the Secretary shall have a right of lien, intervention, and recovery in any claim or proceeding for compensation.

(2) Upon application by such person, or someone on his behalf, the Secretary may, under such regulations as he may prescribe, furnish transportation or the cost thereof (including reimbursement) to any such person from the point where his release from custody by a hostile force or person is effected, to his some, the place of his employment, or other place within the jurisdiction of the United States; but no transportation, or the cost thereof, shall be furnished under this paragraph where such person is furnished such transportation, or the cost thereof, under any agreement with his employer or under any other provision of law.

(3) In the case of death of any such person, if his death occurred away from his home, the body of such person shall, in the discretion of the Secretary, and if so desired by his next of kin, near relative, or legal representative, be embalmed and transported in a hermetically sealed casket or other appropriate container to the home of such person or to such other place as may be designated by such next of kin, near relative, or legal representative. No expense shall be incurred under this paragraph by the Secretary in any case where death takes place after repatriation, unless such death proximately results from a war-risk hazard.

(4) Such benefits for detention, transportation expenses of repatriated persons, and expenses of embalming, providing sealed or other appropriate container, and transportation of the body, and attendants (if required), as approved by the Secretary, shall be paid out of the compensation fund established under section 8147 of title 5.

(c) Persons not citizens or residents of United States

Compensation for permanent total or permanent partial disability or for death payable under this section to persons who are not citizens of the United States and who are not residents of the United States or Canada, shall be in the same amount as provided for residents; except that dependents in any foreign country shall be limited to surviving wife or husband and child or children, or if there be no surviving wife or husband or child or children, to surviving father or mother whom such person has supported, either wholly or in part, for the period of one year immediately prior to the date of the injury; and except that the Secretary, at his option, may commute all future installments of compensation to be paid to such persons by paying to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary.

(d) Persons excepted from coverage

The provisions of this section shall not apply in the case of any person (1) whose residence is at or in the vicinity of the place of his employment, and (2) who is not living there solely by virtue of the exigencies of his employment, unless his injury or death resulting from injury occurs or his detention begins while in the course of his employment, or (3) who is a prisoner of war or a protected person under the Geneva Conventions of 1949 and who is detained or utilized by the United States.

(Dec. 2, 1942, ch. 668, title I, § 101, 56 Stat. 1028; Dec. 23, 1943, ch. 380, title I, 57 Stat. 626; Aug. 7, 1946, ch. 805, § 1, 60 Stat. 899; June 30, 1953, ch. 176, §§ 2, 3, 67 Stat. 135; Pub. L. 85–477, ch. V, § 502(g), June 30, 1958, 72 Stat. 273; Pub. L. 85–608, title I, §§ 101, 104, title IV, § 401, Aug. 8, 1958, 72 Stat. 536, 537, 539; Pub. L. 86–70, § 42(a), June 25, 1959, 73 Stat. 151; Pub. L. 87–195, pt. IV, § 702, Sept. 4, 1961, 75 Stat. 463; Pub. L. 98–426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Mutual Security Act of 1954, referred to in subsec. (a)(4), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, §§ 2–11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85–141, 71 Stat. 355; June 30, 1958, Pub. L. 85–477, ch. 1, §§ 101–103, ch. II, §§ 201–205, ch. III, § 301, ch. IV, § 401, ch. V, § 501, 72 Stat. 261; July 24, 1959, Pub. L. 86–108, § 2, ch. 1, § 101, ch. II, §§ 201–205(a)–(i), (k)–(n), ch. III, § 301, ch. IV, § 401(a)–(k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86–472, chs. I–V, 74 Stat. 134, which was principally classified to chapter 24 (§ 1750 et seq.) of Title 22, Foreign Relations and Intercourse, and which was repealed by acts July 18, 1956, ch. 627, § 8(m), 70 Stat. 559; Aug. 14, 1957, Pub. L. 85–141, §§ 2(e), 3, 4(b), 11(d), 71 Stat. 356; July 24, 1959, Pub. L. 86–108, ch. II, § 205(j), ch. IV, § 401(1), 73 Stat. 250; May 14, 1960, Pub. L. 86–472, ch. II, §§ 203(d), 204(k), 74 Stat. 138; Sept. 4, 1961, Pub. L. 87–195, pt. III, § 642(a)(2), 75 Stat. 460; June 30, 1976, Pub. L. 94–329, title II, § 212(b)(1), 90 Stat. 745; Apr. 4, 1996, Pub. L. 104–127, title II, § 228, 110 Stat. 963, except for sections 1754, 1783, 1796, 1853, 1928, and 1937 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of Title 22 and Tables.

Title II of chapter II of the Mutual Security Act of 1954, referred to in subsec. (a)(4), which was classified generally to sections 1870 to 1876 of Title 22, was repealed by Pub. L. 87–195, Pt. III, § 642(a)(2), Sept. 4, 1961, 75 Stat. 460.

For definition of Canal Zone, referred to in subsec. (b), see section 3602(b) of Title 22.

CODIFICATION

In subsecs. (a) and (b), ''subchapter I of chapter 81 of title 5'' and ''section 8147 of title 5'' substituted for references to act September 7, 1916, as amended, and section 35 of that Act, respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, the act of September 7, 1916, known as the Federal Employees' Compensation Act, was classified to chapter 15 of Title 5.

Reference to Philippine Islands in subsec. (b)(1) omitted as obsolete in view of Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7871, 60 Stat. 1352, recognizing independence of Philippines and withdrawing and surrendering all rights of possession, supervision, jurisdiction, control, or sovereignty now existing and exercised by United States in and over territory and people of Philippines. See note set out under section 1394 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–426 substituted references to sections of the Longshore and Harbor Workers' Compensation Act for sections of the Longshoremen's and Harbor Workers' Compensation Act, which references have been translated to sections of title 33, thus requiring no change in text.

1961—Subsec. (a)(4). Pub. L. 87–195 extended coverage in those cases where the Secretary of Labor, upon the recommendation of the head of any department or other agency of the U.S. Government, determines a contract financed under a successor provision of any successor act to the Mutual Security Act of 1954 should be covered by this section.

1959—Subsec. (a). Pub. L. 86–70 struck out ''or in Alaska or the Canal Zone'' after ''continental United States'' in pars. (2), (3) and (5).

1958—Subsec. (a)(2). Pub. L. 85–608, § 101(a), substituted ''outside the continental United States or in Alaska or the Canal Zone'' for ''outside the United States or in Hawaii, Alaska, Puerto Rico, or the Virgin Islands''.

Subsec. (a)(3). Pub. L. 85–608, § 101(b), substituted provisions relating to injuries to civilian employees outside the continental United States or in Alaska or the Canal Zone paid from nonappropriated funds and who are employed in connection with activities conducted for the mental, physical, and morale improvement of personnel of the Department of Defense and their dependents for provisions which related to injuries to persons employed as civilian employees of post exchanges or ship-service stores outside the United States or in Hawaii, Alaska, Puerto Rico, or the Virgin Islands.

Subsec. (a)(4). Pub. L. 85–477 added par. (4).

Subsec. (a)(5). Pub. L. 85–608, § 101(c), added par. (5).

Subsec. (b). Pub. L. 85–608, § 104, substituted ''a hostile force or person'' for ''an enemy'' in four places and for ''the enemy''.

Subsec. (c). Pub. L. 85–608, § 401, reenacted subsec. (c) and also repealed section 2 of act June 30, 1953, which had previously repealed subsec. (c).

Subsec. (d). Pub. L. 85–608, § 101(d), substituted provisions making section inapplicable to persons who are prisoners of war or protected persons and who are detained or utilized by the United States for provisions which made section inapplicable to persons who are not citizens of the United States and who suffered an injury, disability, death, or detention by the enemy subsequent to June 30, 1953.

1953—Subsec. (c). Act June 30, 1953, § 2, repealed subsec. (c) which provided for amount of compensation payable to noncitizens and nonresidents for permanent total or permanent partial disability or death, limited eligible dependents and permitted Secretary to commute future installments of compensation.

Subsec. (d). Act June 30, 1953, § 3, added cl. (3).

1946—Act Aug. 7, 1946, made benefits payable for detention uniform from date of capture rather than at a reduced rate for 2 years as was the case formerly, prevented dual payments without impairing compensation rights for disability which continues after repatriation, and provided for adjustments of overpayments made under a mistake of facts.

1943—Subsec. (b)(1). Act Dec. 23, 1943, inserted fourth proviso in second paragraph.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective June 25, 1959, see section 47(g) of Pub. L. 86–70, set out as a note under section 1651 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–608 effective June 30, 1958, see section 402 of Pub. L. 85–608, set out as a note under section 1651 of this title.

EFFECTIVE DATE OF 1943 AMENDMENT

Act Dec. 23, 1943, provided that: ''The amendment in paragraph (a) [amending this section] shall become effective the first day of the month next following the approval of this Act [Dec. 23, 1943].''

EFFECTIVE DATE

Section 107 of title I of act Dec. 2, 1942, provided: ''This title [enacting this subchapter] shall take effect as of December 7, 1941.''

RETROACTIVE EFFECT OF 1946 AMENDMENT; REVIEW OF CASES

Section 2 of act Aug. 7, 1946, provided for application of section 1 of act Aug. 7, 1946, amending this section, in all cases coming within the purview of subsec. (b) of this section, retrospectively to Jan. 1, 1942; and for review by the United States Employes' Compensation Commission of any case affected by such provisions, to make the adjustment of benefits which they require, and to make payments where the detained person has died since adjudication, to his legal representative.

SHORT TITLE

Section 208 of act Dec. 2, 1942, as added by Pub. L. 85–608, § 105, provided that: ''Titles I and II of this Act [enacting subchapters I and II of this chapter] may be cited as the 'War Hazards Compensation Act'.''

REPEALS

Section 702 of Pub. L. 87–195, cited as a credit to this section, was repealed by section 401 of Pub. L. 87–565, pt. IV, Aug. 1, 1962, 76 Stat. 263, except in so far as section 702 affected this section.

Section 6 of act June 30, 1953, repealed section 1(a)(13) of act July 3, 1952, ch. 570, 66 Stat. 331, which defined terms ''enemy'', ''allies'', ''national war effort'', and ''war effort''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

INCREASE IN COMPENSATION FOR INJURIES AND DEATH FROM INJURIES SUSTAINED BEFORE JULY 1, 1946

Pub. L. 87–380, Oct. 4, 1961, 75 Stat. 809, increased the monthly disability and death compensation payable pursuant to subsec. (a) of this section with respect to injuries or deaths resulting from injury sustained prior to July 1, 1946, by 15 per centum, effective only with respect to disability and death compensation payable for periods commencing on and after Oct. 4, 1961.

§ 1702. Application of Longshore and Harbor Workers' Compensation Act

(a) In the administration of the provisions of subchapter I of chapter 81 of title 5 with respect to cases coming within the purview of section 1701 of this title, the scale of compensation benefits and the provisions for determining the amount of compensation and the payment thereof as provided in sections 908 and 909 of title 33, so far as the provisions of said sections can be applied under the terms and conditions set forth therein shall be payable in lieu of the benefits, except medical benefits, provided under subchapter I of chapter 81 of title 5: *Provided*, That the total compensation payable under this subchapter for injury or death shall in no event exceed the limitations upon compensation as fixed in section 914(m)[1] of title 33 as such section may from time to time be amended except that the total compensation shall not be less than that provided for in the original enactment of this chapter.

(b) For the purpose of computing compensation with respect to cases coming within the purview of section 1701 of this title, the provisions of sections 906 and 910 of title 33 shall be applicable: *Provided*, That the minimum limit on weekly compensation for disability, established by section 906(b) of title 33, and the minimum limit on the average weekly wages on which death benefits are to be computed, established by section 909(e) of title 33, shall not apply in computing compensation under this subchapter.

(Dec. 2, 1942, ch. 668, title I, § 102, 56 Stat. 1031; July 3, 1948, ch. 826, § 4(c), 62 Stat. 1242; Pub. L. 85–608, title I, § 102, Aug. 8, 1958, 72 Stat. 536; Pub. L. 98–426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, referred to in section catchline, is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

Subsection (m) of section 914 of title 33, referred to in subsec. (a), was repealed by Pub. L. 92–576, § 5(e), Oct. 27, 1972, 86 Stat. 1254.

CODIFICATION

''Subchapter I of chapter 81 of title 5'' substituted for references to Act of September 7, 1916, as amended, known as the Federal Employees' Compensation Act, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Pub. L. 98–426 substituted ''Longshore and Harbor Workers' Compensation Act'' for ''Longshoremen's and Harbor Workers' Compensation Act'' wherever appearing.

1958—Subsec. (a). Pub. L. 85–608 struck out proviso that required any amendment to the Longshoremen's and Harbor Workers' Compensation Act which increased the amount of benefits payable for injury or death to be applied in the administration of this section as if the amendment had been in effect at the time of the particular injury or death.

1948—Subsec. (a). Act July 3, 1948, inserted all text in proviso beginning ''as fixed in section 914(m) of title 33''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–608 effective June 30, 1958, see section 402 of Pub. L. 85–608, set out as a note under section 1651 of this title.

BENEFITS ADJUDICATED PRIOR TO AUGUST 8, 1958

Section 102 of Pub. L. 85–608 provided that the amendment made by that section shall not affect benefits adjudicated thereunder prior to Aug. 8, 1958.

§ 1703. "Contractor with the United States" defined

As used in this subchapter, the term ''contractor with the United States'' includes any subcontractor or subordinate subcontractor with respect to the contract of such contractor.

(Dec. 2, 1942, ch. 668, title I, § 103, 56 Stat. 1031.)

§ 1704. Reimbursement

(a) Payments reimbursable; filing claim for reimbursement; regulations for payment of direct benefits

Where any employer or his insurance carrier or compensation fund pays or is required to pay benefits—

[1] See References in Text note below.

(1) to any person or fund on account of injury or death of any person coming within the purview of this subchapter or chapter 11 of this title, if such injury or death arose from a war-risk hazard, which are payable under any workmen's compensation law of the United States or of any State, Territory, or possession of the United States, or other jurisdiction; or

(2) to any person by reason of any agreement outstanding on December 2, 1942 made in accordance with a contract between the United States and any contractor therewith to pay benefits with respect to the death of any employee of such contractor occurring under circumstances not entitling such person to benefits under any workmen's compensation law or to pay benefits with respect to the failure of the United States or its contractor to furnish transportation upon the completion of the employment of any employee of such contractor to his home or to the place where he was employed; or

(3) to any person by reason of an agreement approved or authorized by the United States under which a contractor with the United States has agreed to pay workmen's compensation benefits or benefits in the nature of workmen's compensation benefits to an injured employee or his dependents on account of detention by a hostile force or person or on account of injury or death arising from a war-risk hazard;

such employer, carrier, or fund shall be entitled to be reimbursed for all benefits so paid or payable, including funeral and burial expenses, medical, hospital, or other similar costs for treatment and care; and reasonable and necessary claims expense in connection therewith. Claim for such reimbursement shall be filed with the Secretary under regulations promulgated by him, and such claims, or such part thereof as may be allowed by the Secretary, shall be paid from the compensation fund established under section 8147 of title 5. The Secretary may, under such regulations as he shall prescribe, pay such benefits, as they accrue and in lieu of reimbursement, directly to any person entitled thereto, and the insolvency of such employer, insurance carrier, or compensation fund shall not affect the right of the beneficiaries of such benefits to receive the compensation directly from the said compensation fund established under section 8147 of title 5. The Secretary may also, under such regulations as he shall prescribe, use any private facilities, or such Government facilities as may be available, for the treatment or care of any person entitled thereto.

(b) Charging of premiums as prohibiting reimbursement

No reimbursement shall be made under this subchapter in any case in which the Secretary finds that the benefits paid or payable were on account of injury, detention, or death which arose from a war-risk hazard for which a premium (which included an additional charge or loading for such hazard) was charged.

(c) Injury or death occurring within any State

The provisions of this section shall not apply with respect to benefits on account of any injury or death occurring within any State.

(Dec. 2, 1942, ch. 668, title I, § 104, 56 Stat. 1031; Pub. L. 85–608, title I, § 104, Aug. 8, 1958, 72 Stat. 537; Pub. L. 86–70, § 42(b), June 25, 1959, 73 Stat. 151.)

CODIFICATION

In subsec. (a), ''section 8147 of title 5'' substituted for ''section 35 of such Act of September 7, 1916, as amended'', on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1959—Subsec. (c). Pub. L. 86–70 added subsec. (c).

1958–Subsec. (a)(3). Pub. L. 85–608 substituted ''a hostile force or person'' for ''the enemy''.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective June 25, 1959, see section 47(g) of Pub. L. 86–70, set out as a note under section 1651 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–608 effective June 30, 1958, see section 402 of Pub. L. 85–608, set out as a note under section 1651 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

§ 1705. Receipt of workmen's compensation benefits

(a) Receipt of benefits under other provisions

No benefits shall be paid or furnished under the provisions of this subchapter for injury or death to any person who recovers or receives workmen's compensation benefits for the same injury or death under any other law of the United States, or under the law of any State, Territory, possession, foreign country, or other jurisdiction, or benefits in the nature of workmen's compensation benefits payable under an agreement approved or authorized by the United States pursuant to which a contractor with the United States has undertaken to provide such benefits.

(b) Lien and right of recovery against compensation payable under other provisions

The Secretary shall have a lien and a right of recovery, to the extent of any payments made under this subchapter on account of injury or death, against any compensation payable under any other workmen's compensation law on account of the same injury or death; and any amounts recovered under this subsection shall be covered into the fund established under section 8147 of title 5.

(c) Receipt of wages as credit against payment under this subchapter; intervention by Secretary in proceeding to recover wages, etc.

Where any person specified in section 1701(a) of this title, or the dependent, beneficiary, or allottee of such person, receives or claims wages, payments in lieu of wages, insurance benefits for disability or loss of life (other than workmen's

compensation benefits), and the cost of such wages, payments, or benefits is provided in whole or in part by the United States, the amount of such wages, payments, or benefits shall be credited, in such manner as the Secretary shall determine, against any payments to which any such person is entitled under this subchapter.

Where any person specified in section 1701(a) of this title, or any dependent, beneficiary, or allottee of such person, or the legal representative or estate of any such entities, after having obtained benefits under this subchapter, seeks through any proceeding, claim, or otherwise, brought or maintained against the employer, the United States, or other person, to recover wages, payments in lieu of wages, or any sum claimed as for services rendered, or for failure to furnish transportation, or for liquidated or unliquidated damages under the employment contract, or any other benefit, and the right in respect thereto is alleged to have accrued during or as to any period of time in respect of which payments under this subchapter in such case have been made, and in like cases where a recovery is made or allowed, the Secretary shall have the right of intervention and a lien and right of recovery to the extent of any payments paid and payable under this subchapter in such case, provided the cost of such wages, payments in lieu of wages, or other such right, may be directly or indirectly paid by the United States; and any amounts recovered under this subsection shall be covered into the fund established under section 8147 of title 5.

(d) Entitlement to benefits by national of a foreign government under foreign laws

Where a national of a foreign government is entitled to benefits on account of injury or death resulting from a war-risk hazard, under the laws of his native country or any other foreign country, the benefits of this subchapter shall not apply.

(e) Receipt of benefits for prior accident or disease

If at the time a person sustains an injury coming within the purview of this subchapter said person is receiving workmen's compensation benefits on account of a prior accident or disease, said person shall not be entitled to any benefits under this subchapter during the period covered by such workmen's compensation benefits unless the injury from a war-risk hazard increases his disability, and then only to the extent such disability has been so increased.

(Dec. 2, 1942, ch. 668, title I, § 105, 56 Stat. 1032; Dec. 23, 1943, ch. 380, title I, 57 Stat. 627.)

CODIFICATION

In subsecs. (b) and (c), ''section 8147 of title 5'' was substituted for ''section 35 of such Act of September 7, 1916, as amended,'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1943—Subsec. (c). Act Dec. 23, 1943, added second par.

EFFECTIVE DATE OF 1943 AMENDMENT

Act Dec. 23, 1943, provided that: ''The amendment in paragraph (a) [amending this section] shall become effective as of the effective date of title I of such Act of December 2, 1942 [sections 1701 to 1706 of this title].''

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

§ 1706. Administration

(a) Rules and regulations

The provisions of this subchapter shall be administered by the Secretary of Labor, and the Secretary is authorized to make rules and regulations for the administration thereof and to contract with insurance carriers for the use of the service facilities of such carriers for the purpose of facilitating administration.

(b) Agreements and working arrangements with other agencies, etc.

In administering the provisions of this subchapter the Secretary may enter into agreements or cooperative working arrangements with other agencies of the United States or of any State (including the District of Columbia, Hawaii, Alaska, Puerto Rico, and the Virgin Islands) or political subdivision thereof, and with other public agencies and private persons, agencies, or institutions, within and outside the United States, to utilize their services and facilities and to compensate them for such use. The Secretary may delegate to any officer or employee, or to any agency, of the United States or of any State, or of any political subdivision thereof, or Territory or possession of the United States, such of his powers and duties as he finds necessary for carrying out the purposes of this subchapter.

(c) Waiver of notice of injury and filing of claims

The Secretary, in his discretion, may waive the limitation provisions of subchapter I of chapter 81 of title 5 with respect to notice of injury and filing of claims under this subchapter, whenever the Secretary shall find that, because of circumstances beyond the control of an injured person or his beneficiary, compliance with such provisions could not have been accomplished within the time therein specified.

(Dec. 2, 1942, ch. 668, title I, § 106, 56 Stat. 1033.)

CODIFICATION

In subsec. (c), ''subchapter I of chapter I of title 5'' substituted for reference to Act of September 7, 1916, as amended, known as the Federal Employees' Compensation Act, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

''Secretary of Labor'' and ''Secretary'' substituted for ''Federal Security Administrator'' and ''Administrator'', respectively, in text, pursuant to Reorg. Plan No. 19 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271, which transferred functions of Federal Security Administrator to Secretary of Labor.

Previously, ''Federal Security Administrator'' and ''Administrator'' substituted for ''United States Employees' Compensation Commission'' and ''Commission'' pursuant to Reorg. Plan No. 2 of 1946, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which abolished United States Employees' Compensation Commission and transferred its functions to Federal Security Administrator.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

§ 1711. Definitions

When used in this chapter—

(a) The term ''Secretary'' means the Secretary of Labor.

(b) The term ''war-risk hazard'' means any hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring within any country in which a person covered by this chapter is serving; from—

(1) the discharge of any missile (including liquids and gas) or the use of any weapon, explosive, or other noxious thing by a hostile force or person or in combating an attack or an imagined attack by a hostile force or person; or

(2) action of a hostile force or person, including rebellion or insurrection against the United States or any of its Allies; or

(3) the discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or person as defined herein (except with respect to employees of a manufacturer, processor, or transporter of munitions during the manufacture, processing, or transporting thereof, or while stored on the premises of the manufacturer, processor, or transporter); or

(4) the collision of vessels in convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(5) the operation of vessels or aircraft in a zone of hostilities or engaged in war activities.

(c) The term ''hostile force or person'' means any nation, any subject of a foreign nation, or any other person serving a foreign nation (1) engaged in a war against the United States or any of its allies, (2) engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies, or (3) engaged in a war or armed conflict between military forces of any origin in any country in which a person covered by this chapter is serving.

(d) The term ''allies'' means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance.

(e) The term ''war activities'' includes activities directly relating to military operations.

(f) the[1] term ''continental United States'' means the States and the District of Columbia.

[1] So in original. Probably should be capitalized.

(Dec. 2, 1942, ch. 668, title II, § 201, 56 Stat. 1033; 1946 Reorg. Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg. Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; June 30, 1953, ch. 176 § 1, 67 Stat. 134; June 30, 1954, ch. 431, § 1, 68 Stat. 336; June 30, 1955, ch. 257, § 1, 69 Stat. 241; July 9, 1956, ch. 537, § 1, 70 Stat. 519; Pub. L. 85–70, June 29, 1957, 71 Stat. 242; Pub. L. 85–608, title I, §§ 103, 104, Aug. 8, 1958, 72 Stat. 537; Pub. L. 86–70, § 42(c), June 25, 1959, 73 Stat. 151.)

CODIFICATION

In the original of act Dec. 2, 1942, § 201, the opening clause read ''When used in this Act (except when used in title III)—''. Title III of such Act amended section 1651 of this title which is not in this chapter. Therefore, because of the use of the restrictive term ''this chapter'', in this section, the words in parenthesis ''except when used in title III'' were omitted as unnecessary. This chapter comprises the remainder of such Act.

AMENDMENTS

1959—Subsec. (f). Pub. L. 86–70 added subsec. (f).

1958—Subsec. (b). Pub. L. 85–608, § 103(a), struck out provisions which defined ''war-risk hazard'' to mean hazards arising after Dec. 6, 1941, and prior to July 1, 1958, and inserted provisions redefining term to include hazards arising during a war or an armed conflict in which the United States is engaged, and hazards arising during a war or armed conflict between military forces of any origin, occurring within any country in which a person covered by this chapter is serving.

Subsec. (b)(1). Pub. L. 85–608, § 104, substituted ''a hostile force or person'' for ''an enemy'' in two places.

Subsec. (b)(2). Pub. L. 85–608, § 104, substituted ''a hostile force or person'' for ''the enemy''.

Subsec. (b)(3). Pub. L. 85–608, § 103(b), substituted ''a war or armed conflict with a hostile force or person as defined herein'' for ''the national war effort'', and excepted employees of transporters of munitions during the transportation thereof or while the munitions are stored on the premises of the transporter.

Subsec. (c). Pub. L. 85–608, § 103(c), substituted provisions defining ''hostile force or person'' for provisions which defined ''enemy'' to mean any nation, government, or force engaged in armed conflict with the Armed Forces of the United States or of any of its allies.

Subsec. (d). Pub. L. 85–608, § 103(d), substituted provisions redefining ''allies'' to mean any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance for provisions which defined the term as meaning any nation, government, or force participating with the United States in any armed conflict.

Subsec. (e). Pub. L. 85–608, § 103(e), substituted definition of ''war activities'' for provisions defining ''national war effort'' and ''war effort''.

Subsec. (f). Pub. L. 85–608, § 103(f), repealed subsec. (f) which defined ''war activities'', now covered by subsec. (e) of this section.

1957—Subsec. (b). Pub. L. 85–70 substituted ''July 1, 1958'' for ''July 1, 1957''.

1956—Subsec. (b). Act July 9, 1956, substituted ''July 1, 1957'' for ''July 1, 1956''.

1955—Subsec. (b). Act June 30, 1955, substituted ''July 1, 1956'' for ''July 1, 1955''.

1954—Subsec. (b). Act June 30, 1954, substituted ''July 1, 1955'' for ''July 1, 1954''.

1953—Subsec. (b). Act June 30, 1953, § 1(a), substituted ''July 1, 1954'' for ''the end of the present war''.

Subsecs. (c) to (f). Act June 30, 1953, § 1(b), added subsecs. (c) to (f).

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective June 25, 1959, see section 47(g) of Pub. L. 86–70, set out as a note under section 1651 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–608 effective June 30, 1958, see section 402 of Pub. L. 85–608, set out as a note under section 1651 of this title.

TRANSFER OF FUNCTIONS

"'Secretary' means the Secretary of Labor" substituted for "'Administrator' means the Federal Security Administrator" in subsec. (a), pursuant to Reorg. Plan No. 19 of 1950, § 1, eff. May 24, 1950, 15 F.R. 2178, 64 Stat. 1271, which transferred functions of Federal Security Administrator to Secretary of Labor.

Previously, "'Administrator' means the Federal Security Administrator" substituted for "'Commission' means the United States Employees' Compensation Commission" pursuant to Reorg. Plan No. 2 of 1946, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which abolished United States Employees' Compensation Commission and transferred its functions to Federal Security Administrator.

§ 1712. Disqualification from benefits

No person convicted in a court of competent jurisdiction of any subversive act against the United States or any of its Allies, committed after the declaration by the President on May 27, 1941, of the national emergency, shall be entitled to compensation or other benefits under subchapter I of this chapter, nor shall any compensation be payable with respect to his death or detention under said subchapter, and upon indictment or the filing of an information charging the commission of any such subversive act, all such compensation or other benefits shall be suspended and remain suspended until acquittal or withdrawal of such charge, but upon conviction thereof or upon death occurring prior to a final disposition thereof, all such payments and all benefits under said subchapter shall be forfeited and terminated. If the charge is withdrawn, or there is an acquittal, all such compensation withheld shall be paid to the person or persons entitled thereto.

(Dec. 2, 1942, ch. 668, title II, § 202, 56 Stat. 1034.)

NATIONAL EMERGENCY DECLARED ON MAY 27, 1941

The national emergency declared by the President on May 27, 1941, by Proc. No. 2487, 6 F.R. 2617, 55 Stat. 1647, was terminated April 28, 1952 by Proc. No. 2974, Apr. 30, 1952, 17 F.R. 3813, 66 Stat. c31, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

§ 1713. Fraud; penalties

Whoever, for the purpose of causing an increase in any payment authorized to be made under this chapter, or for the purpose of causing any payment to be made where no payment is authorized hereunder, shall knowingly make or cause to be made, or aid or abet in the making of any false statement or representation of a material fact in any application for any payment under subchapter I of this chapter, or knowingly make or cause to be made, or aid or abet in the making of any false statement, representation, affidavit, or document in connection with such an application, or claim, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(Dec. 2, 1942, ch. 668, title II, § 203, 56 Stat. 1034.)

§ 1714. Legal services

No claim for legal services or for any other services rendered in respect of a claim or award for compensation under subchapter I of this chapter to or on account of any person shall be valid unless approved by the Secretary; and any claim so approved shall, in the manner and to the extent fixed by the said Secretary, be paid out of the compensation payable to the claimant; and any person who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is so approved, or who solicits employment for another person or for himself in respect of any claim or award for compensation under said subchapter shall be guilty of a misdemeanor and upon conviction thereof shall, for each offense, be fined not more than $1,000 or imprisoned not more than one year, or both.

(Dec. 2, 1942, ch. 668, title II, § 204, 56 Stat. 1034.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

§ 1715. Finality of Secretary's decisions

The action of the Secretary in allowing or denying any payment under subchapter I of this chapter shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General is authorized and directed to allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

(Dec. 2, 1942, ch. 668, title II, § 205, 56 Stat. 1034.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

§ 1716. Presumption of death or detention

A determination that an individual is dead or a determination that he has been detained by a hostile force or person may be made on the basis of evidence that he has disappeared under circumstances such as to make such death or detention appear probable.

(Dec. 2, 1942, ch. 668, title II, § 206, 56 Stat. 1034; Pub. L. 85–608, title I, § 104, Aug. 8, 1958, 72 Stat. 537.)

AMENDMENTS

1958—Pub. L. 85–608 substituted "a hostile force or person" for "the enemy".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–608 effective June 30, 1958, see section 402 of Pub. L. 85–608, set out as a note under section 1651 of this title.

§ 1717. Assignment of benefits; execution, levy, etc., against benefits

The right of any person to any benefit under subchapter I of this chapter shall not be transferable or assignable at law or in equity except to the United States, and none of the moneys paid or payable (except money paid hereunder as

reimbursement for funeral expenses or as reimbursement with respect to payments of workmen's compensation or in the nature of workmen's compensation benefits), or rights existing under said subchapter, shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(Dec. 2, 1942, ch. 668, title II, § 207, 56 Stat. 1035.)

CHAPTER 13—SCHOOL LUNCH PROGRAMS

Sec.
1751. Congressional declaration of policy.
1752. Authorization of appropriations; ''Secretary'' defined.
1753. Apportionments to States.
1754. Nutrition promotion.
1755. Direct expenditures for agricultural commodities and other foods.
1756. Payments to States.
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1759a. Special assistance funds.
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1763, 1764. Repealed.
1765. Election to receive cash payments.
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1769c. Compliance and accountability.
1769d, 1769e. Repealed.
1769f. Duties of Secretary relating to nonprocurement debarment.
1769g. Information clearinghouse.
1769h. Accommodation of the special dietary needs of individuals with disabilities.
1769i. Program evaluation.

§ 1751. Congressional declaration of policy

It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs.

(June 4, 1946, ch. 281, § 2, 60 Stat. 230; Pub. L. 101–147, title III, § 312(1), Nov. 10, 1989, 103 Stat. 916.)

AMENDMENTS

1989—Pub. L. 101–147 substituted ''school lunch'' for ''school-lunch''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 2 of Pub. L. 101–147 provided that: ''Except as otherwise provided in this Act, the amendments made by this Act [see Short Title of 1989 Amendment note below] shall take effect on the date of the enactment of this Act [Nov. 10, 1989].''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–265, § 1(a), June 30, 2004, 118 Stat. 729, provided that: ''This Act [enacting sections 1754 and 1769i of this title, amending sections 1396a, 1758, 1759a, 1760, 1761, 1762a, 1766, 1769, 1769b–1, 1769c, 1769g, 1773, 1776, 1786, and 1788 of this title and section 2020 of Title 7, Agriculture, enacting provisions set out as notes under this section and sections 1754, 1758, 1766, 1769c, 1773, and 1786 of this title, and amending provisions set out as a note under section 612c of Title 7] may be cited as the 'Child Nutrition and WIC Reauthorization Act of 2004'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–336, § 1(a), Oct. 31, 1998, 112 Stat. 3143, provided that: ''This Act [amending sections 1755, 1758, 1759a to 1761, 1762a, 1765 to 1766a, 1769, 1769b–1, 1769c, 1769f to 1769h, 1773, 1776, 1784, 1786, and 1788 of this title, repealing section 1766b of this title, enacting provisions set out as notes under sections 1755, 1761, and 1786 of this title, and amending provisions set out as notes under section 1769 of this title and section 612c of Title 7, Agriculture] may be cited as the 'William F. Goodling Child Nutrition Reauthorization Act of 1998'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–149, § 1, May 29, 1996, 110 Stat. 1379, provided that: ''This Act [amending section 1758 of this title] may be cited as the 'Healthy Meals for Children Act'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–448, § 1(a), Nov. 2, 1994, 108 Stat. 4699, provided that: ''This Act [enacting sections 1766b and 1769f to 1769h of this title, amending sections 280c–6, 1396a, 1755, 1756, 1758, 1759a, 1760, 1761, 1762a, 1766, 1769, 1769a, 1769b–1, 1769c, 1773, 1776, 1779, 1786, and 1788 of this title, section 2018 of Title 7, Agriculture, section 1484a of Title 20, Education, and section 3803 of Title 31, Money and Finance, enacting provisions set out as notes under this section and sections 1755, 1758, 1760, 1761, 1762a, 1769f, and 1786 of this title, amending provisions set out as notes under section 1786 of this title and section 612c of Title 7, and repealing provisions set out as a note under section 1786 of this title] may be cited as the 'Healthy Meals for Healthy Americans Act of 1994'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–342, § 1, Aug. 14, 1992, 106 Stat. 911, provided that: ''This Act [enacting section 1790 of this title, amending sections 1766, 1769, and 1786 of this title, enacting provisions set out as a note under section 1769 of this title, and amending provisions set out as a note under section 612c of Title 7, Agriculture] may be cited as the 'Child Nutrition Amendments of 1992'.''

SHORT TITLE OF 1989 AMENDMENT

Section 1(a) of Pub. L. 101–147 provided that: ''This Act [enacting sections 1766a, 1769b–1, 1769c, 1769d, and 1769e of this title, amending this section and sections 1753, 1755–1758, 1759a, 1760, 1761, 1762a, 1765, 1766, 1769–1769b, 1772, 1773, 1776, 1779, 1783, 1784, 1786, and 1788 of this title, repealing sections 1762 and 1763 of this title, enacting provisions set out as notes under this section and sections 1755, 1758, 1761, 1762a, 1766, 1766a, 1769, 1769c, 1773, 1776, and 1786 of this title, and amending provisions set out as a note under section 1766 of this title] may be cited as the 'Child Nutrition and WIC Reauthorization Act of 1989'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–661, § 4001(a), Nov. 14, 1986, 100 Stat. 4070, provided that: ''This division [div. D (§§ 4001–4503) of Pub. L. 99–661, amending sections 1752, 1755, 1758, 1760, 1761, 1762a, 1766, 1769 to 1769b, 1772, 1773, 1776, 1784, 1786, 1788, and 1789 of this title, repealing sections 1767, 1768, and 1769c of this title, and enacting provisions set out as notes under sections 1758, 1760, 1766, 1772, 1773, and 1786 of this title and section 1431e of Title 7, Agri-

culture] may be cited as the 'Child Nutrition Amendments of 1986'.''

Pub. L. 99–500, title III, § 301(a), Oct. 18, 1986, 100 Stat. 1783–359, and Pub. L. 99–591, title III, § 301(a), Oct. 30, 1986, 100 Stat. 3341–362, provided that: ''This title [amending sections 1752, 1755, 1758, 1760, 1761, 1762a, 1766, 1769 to 1769b, 1772, 1773, 1776, 1784, 1786, 1788, and 1789 of this title and section 1929a of Title 7, Agriculture, repealing sections 1767, 1768, and 1769c of this title, and enacting provisions set out as notes under sections 1758, 1760, 1766, 1772, 1773, and 1786 of this title and sections 1431e and 1929a of Title 7] may be cited as the 'School Lunch and Child Nutrition Amendments of 1986'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–627, § 1, Nov. 10, 1978, 92 Stat. 3603, provided: ''That this Act [enacting section 1769c of this title, amending sections 1755, 1757, 1758, 1759a to 1761, 1762a, 1766, 1769, 1772 to 1774, 1776, 1784, and 1786 of this title, and enacting provisions set out as notes under sections 1755, 1773 and 1786 of this title] may be cited as the 'Child Nutrition Amendments of 1978'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–166, § 1, Nov. 10, 1977, 91 Stat. 1325, provided: ''That this Act [enacting sections 1769, 1769a, and 1788 of this title, amending sections 1754 to 1758, 1759a, 1760, 1761, 1762a, 1763, 1766, 1772 to 1774, 1776, 1779, 1784, and 1786 of this title, and enacting provisions set out as notes under sections 1755 and 1772 of this title] may be cited as the 'National School Lunch Act and Child Nutrition Amendments of 1977'.''

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94–105, § 1, Oct. 7, 1975, 89 Stat. 511, provided: ''That this Act [enacting sections 1765, 1766, 1767, 1768, and 1787 of this title, amending sections 1752, 1755, 1756, 1758, 1759, 1759a, 1760, 1761, 1762a, 1772, 1773, 1774, 1784, and 1786 of this title, repealing section 1764 of this title, and enacting provisions set out as notes under sections 1758, 1760, 1761, and 1786 of this title] may be cited as the 'National School Lunch Act and Child Nutrition Act of 1966 Amendments of 1975'.''

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–326, § 1, June 30, 1974, 88 Stat. 286, provided: ''That this Act [enacting section 1762a of this title and amending sections 1752, 1755, 1758, 1763, 1774, and 1786 of this title] may be cited as the 'National School Lunch and Child Nutrition Act Amendments of 1974'.''

SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93–150, § 1, Nov. 7, 1973, 87 Stat. 560, provided: ''That this Act [amending sections 1753, 1755, 1757, 1758, 1759, 1759a, 1763, 1772, 1773, and 1786 of this title, and enacting provisions set out as notes under this section and section 240 of Title 20, Education] may be cited as the 'National School Lunch and Child Nutrition Act Amendments of 1973'.''

SHORT TITLE

Section 1 of act June 4, 1946, as amended by Pub. L. 106–78, title VII, § 752(a), Oct. 22, 1999, 113 Stat. 1169, provided: ''That this Act [enacting this chapter] may be cited as the 'Richard B. Russell National School Lunch Act'.''

LOCAL WELLNESS POLICY

Pub. L. 108–265, title II, § 204, June 30, 2004, 118 Stat. 780, as amended by Pub. L. 109–97, title VII, § 776, Nov. 10, 2005, 119 Stat. 2161, provided that:

''(a) IN GENERAL.—Not later than the first day of the school year beginning after June 30, 2006, each local educational agency participating in a program authorized by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall establish a local school wellness policy for schools under the local educational agency that, at a minimum—

''(1) includes goals for nutrition education, physical activity, and other school-based activities that are designed to promote student wellness in a manner that the local educational agency determines is appropriate;

''(2) includes nutrition guidelines selected by the local educational agency for all foods available on each school campus under the local educational agency during the school day with the objectives of promoting student health and reducing childhood obesity;

''(3) provides an assurance that guidelines for reimbursable school meals shall not be less restrictive than regulations and guidance issued by the Secretary of Agriculture pursuant to subsections (a) and (b) of section 10 of the Child Nutrition Act (42 U.S.C. 1779) and sections 9(f)(1) and 17(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1), 1766(a)), as those regulations and guidance apply to schools;

''(4) establishes a plan for measuring implementation of the local wellness policy, including designation of 1 or more persons within the local educational agency or at each school, as appropriate, charged with operational responsibility for ensuring that the school meets the local wellness policy; and

''(5) involves parents, students, representatives of the school food authority, the school board, school administrators, and the public in the development of the school wellness policy.

''(b) TECHNICAL ASSISTANCE AND BEST PRACTICES.—

''(1) IN GENERAL.—The Secretary, in coordination with the Secretary of Education and in consultation with the Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention, shall make available to local educational agencies, school food authorities, and State educational agencies, on request, information and technical assistance for use in—

''(A) establishing healthy school nutrition environments;

''(B) reducing childhood obesity; and

''(C) preventing diet-related chronic diseases.

''(2) CONTENT.—Technical assistance provided by the Secretary under this subsection shall—

''(A) include relevant and applicable examples of schools and local educational agencies that have taken steps to offer healthy options for foods sold or served in schools;

''(B) include such other technical assistance as is required to carry out the goals of promoting sound nutrition and establishing healthy school nutrition environments that are consistent with this section;

''(C) be provided in such a manner as to be consistent with the specific needs and requirements of local educational agencies; and

''(D) be for guidance purposes only and not be construed as binding or as a mandate to schools, local educational agencies, school food authorities, or State educational agencies.

''(3) FUNDING.—

''(A) IN GENERAL.—On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection $4,000,000, to remain available until September 30, 2009.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.''

COORDINATION OF SCHOOL LUNCH, SCHOOL BREAKFAST, AND SUMMER FOOD SERVICE PROGRAMS

Pub. L. 104–193, title VII, § 741, Aug. 22, 1996, 110 Stat. 2307, as amended by Pub. L. 106–78, title VII, § 752(b)(6), Oct. 22, 1999, 113 Stat. 1169, provided that:

''(a) COORDINATION.—

''(1) IN GENERAL.—The Secretary of Agriculture shall develop proposed changes to the regulations under the school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), the summer food service program under section 13 of that Act (42 U.S.C. 1761), and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), for the purpose of simplifying and coordinating those programs into a comprehensive meal program.

''(2) CONSULTATION.—In developing proposed changes to the regulations under paragraph (1), the Secretary of Agriculture shall consult with local, State, and regional administrators of the programs described in such paragraph.

''(b) REPORT.—Not later than November 1, 1997, the Secretary of Agriculture shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Economic and Educational Opportunities of the House of Representatives a report containing the proposed changes developed under subsection (a).''

SUPPLEMENTAL NUTRITION PROGRAMS; CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 103–448, § 2, Nov. 2, 1994, 108 Stat. 4700, as amended by Pub. L. 106–78, title VII, § 752(b)(15), Oct. 22, 1999, 113 Stat. 1170, provided that: ''Congress finds that—

''(1) undernutrition can permanently retard physical growth, brain development, and cognitive functioning of children;

''(2) the longer a child's nutritional, emotional, and educational needs go unmet, the greater the likelihood of cognitive impairment;

''(3) low-income children who attend school hungry score significantly lower on standardized tests than non-hungry low-income children; and

''(4) supplemental nutrition programs under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) can help to offset threats posed to a child's capacity to learn and perform in school that result from inadequate nutrient intake.''

STUDY OF ADULTERATION OF JUICE PRODUCTS SOLD TO SCHOOL MEAL PROGRAMS

Pub. L. 103–448, title I, § 125, Nov. 2, 1994, 108 Stat. 4734, directed Comptroller General of the United States, not later than 1 year after Nov. 2, 1994, to conduct study and to submit a report to Congress on costs and problems associated with sale of adulterated fruit juice and juice products to the school lunch program under this chapter and school breakfast program under section 1773 of this title.

CONSOLIDATION OF SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM INTO COMPREHENSIVE MEAL PROGRAM

Pub. L. 103–448, title III, § 301, Nov. 2, 1994, 108 Stat. 4749, as amended by Pub. L. 106–78, title VII, § 752(b)(15), Oct. 22, 1999, 113 Stat. 1170, provided that:

''(a) IN GENERAL.—Notwithstanding any provision of [the] Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except as otherwise provided in this section, the Secretary of Agriculture shall, not later than 18 months after the date of enactment of this Act [Nov. 2, 1994], develop and implement regulations to consolidate the school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) into a comprehensive meal program.

''(b) REQUIREMENTS.—In establishing the comprehensive meal program under subsection (a), the Secretary shall meet the following requirements:

''(1) The Secretary shall ensure that the program continues to serve children who are eligible for free and reduced price meals. The meals shall meet the nutritional requirements of section 9(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)(1)) and section 4(e)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)).

''(2) The Secretary shall continue to make breakfast assistance payments in accordance with section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and food assistance payments in accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

''(3) The Secretary may not consolidate any aspect of the school lunch program or the school breakfast program with respect to any matter described in any of subparagraphs (A) through (N) of section 12(*l*)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(*l*)(4)).

''(c) PLAN AND RECOMMENDATIONS.—

''(1) PLAN FOR CONSOLIDATION AND SIMPLIFICATION.—Not later than 180 days prior to implementing the regulations described in subsection (a), the Secretary shall prepare and submit to the Committee on Education and Labor [now Committee on Education and the Workforce] of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a plan for the consolidation and simplification of the school lunch program and the school breakfast program.

''(2) RECOMMENDATIONS WITH RESPECT TO CHANGE IN PAYMENT AMOUNTS.—If the Secretary proposes to change the amount of the breakfast assistance payment or the food assistance payment under the comprehensive meal program, the Secretary shall not include the change in the consolidation and shall prepare and submit to the Committee on Education and Labor [now Committee on Education and the Workforce], and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate recommendations for legislation to effect the change.''

STUDY AND REPORT RELATING TO USE OF PRIVATE FOOD ESTABLISHMENTS AND CATERERS UNDER SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM

Pub. L. 103–448, title III, § 302, Nov. 2, 1994, 108 Stat. 4750, directed Comptroller General of the United States, in conjunction with the Director of the Office of Technology Assessment, to conduct a study and submit a report to Congress, not later than Sept. 1, 1996, on the use of private food establishments and caterers by schools that participate in the school lunch program under this chapter or the school breakfast program under section 1773 of this title.

SCHOOL LUNCH STUDIES

Pub. L. 101–624, title XVII, § 1779, Nov. 28, 1990, 104 Stat. 3816, directed Secretary of Agriculture to determine the quantity of bonus commodities lost, by State, since the 1987–88 school year, the amount that school food service authorities charged students for non-free or reduced price meals, and the trends in school participation and student participation, by State and for the United States, and directed Secretary also to determine the cost to produce school lunches and breakfasts, including indirect and local administrative costs, the reasons why schools choose not to participate in the National school lunch program, the State costs incurred to administer the school programs, and the reasons why children eligible for free or reduced price meals do not apply for benefits or participate, with Secretary to submit to Congress a final report on results of the studies not later than Oct. 1, 1993.

COMPREHENSIVE STUDY OF BENEFITS OF PROGRAMS; REPORT TO CONGRESS

Pub. L. 93–150, § 10, Nov. 7, 1973, 87 Stat. 564, directed Secretary of Agriculture to carry out a comprehensive study to determine if the benefits of the National School Lunch Act and the Child Nutrition Act are ac-

cruing to the maximum extent possible to all of the nation's school children, and to determine if regional cost differentials exist in Alaska and other States so as to require additional reimbursement, such report with recommendations to be submitted to Congress no later than June 30, 1974.

§ 1752. Authorization of appropriations; "Secretary" defined

For each fiscal year, there is authorized to be appropriated, out of money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Secretary of Agriculture (hereinafter referred to as ''the Secretary'') to carry out the provisions of this chapter, other than sections 1761 and 1766 of this title. Appropriations to carry out the provisions of this chapter and of the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] for any fiscal year are authorized to be made a year in advance of the beginning of the fiscal year in which the funds will become available for disbursement to the States. Notwithstanding any other provision of law, any funds appropriated to carry out the provisions of this chapter and the Child Nutrition Act of 1966 shall remain available for the purposes of the Act for which appropriated until expended.

(June 4, 1946, ch. 281, § 3, 60 Stat. 230; Pub. L. 87–823, § 1, Oct. 15, 1962, 76 Stat. 944; Pub. L. 90–302, § 1, May 8, 1968, 82 Stat. 117; Pub. L. 91–248, § 1(a), May 14, 1970, 84 Stat. 208; Pub. L. 93–326, § 7, June 30, 1974, 88 Stat. 287; Pub. L. 94–105, § 24, Oct. 7, 1975, 89 Stat. 529; Pub. L. 99–500, title III, § 371(a)(2), Oct. 18, 1986, 100 Stat. 1783–368, and Pub. L. 99–591, title III, § 371(a)(2), Oct. 30, 1986, 100 Stat. 3341–371; Pub. L. 99–661, div. D, title V, § 4501(a)(2), Nov. 14, 1986, 100 Stat. 4080.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in text, is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, which identically directed amendment of section by substituting ''sections 1761 and 1766'' for ''sections 1761, 1766, and 1768'' were executed making the substitution for ''sections 1761, 1766 and 1768'' as the probable intent of Congress.

1975—Pub. L. 94–105 substituted ''sections 1761, 1766 and 1768'' for ''section 1761''.

1974—Pub. L. 93–326 substituted ''other than section 1761 of this title'' for ''other than sections 1759a and 1761 of this title''.

1970—Pub. L. 91–248 provided that appropriations for child food service programs may be made a year in advance of the beginning of the fiscal year in which the funds become available and that funds appropriated for such programs remain available until expended.

1968—Pub. L. 90–302 inserted section 1761 to enumeration of sections excepted from application of this section.

1962—Pub. L. 87–823 struck out '', beginning with the fiscal year ending June 30, 1947,'' after ''fiscal year'' and inserted '', other than section 1759a of this title.''

APPROPRIATIONS AS FUNCTIONS OF HEALTH AND HUMAN SERVICES

Section 1 of Pub. L. 90–302, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided in part that: ''Appropriations shall be considered Health and Human Services functions for budget purposes rather than functions of Agriculture.''

§ 1753. Apportionments to States

(a) The sums appropriated for any fiscal year pursuant to the authorizations contained in section 1752 of this title shall be available to the Secretary for supplying agricultural commodities and other food for the program in accordance with the provisions of this chapter.

(b)(1) The Secretary shall make food assistance payments to each State educational agency each fiscal year, at such times as the Secretary may determine, from the sums appropriated for such purpose, in a total amount equal to the product obtained by multiplying—

(A) the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under section 1758(a) of this title) served during such fiscal year in schools in such State which participate in the school lunch program under this chapter under agreements with such State educational agency; by

(B) the national average lunch payment prescribed in paragraph (2) of this subsection.

(2) The national average lunch payment for each lunch served shall be 10.5 cents (as adjusted pursuant to section 1759a(a) of this title) except that for each lunch served in school food authorities in which 60 percent or more of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price, the national average lunch payment shall be 2 cents more.

(June 4, 1946, ch. 281, § 4, 60 Stat. 230; July 12, 1952, ch. 699, § 1(a), 66 Stat. 591; Pub. L. 87–688, § 3(a), Sept. 25, 1962, 76 Stat. 587; Pub. L. 87–823, § 2, Oct. 15, 1962, 76 Stat. 944; Pub. L. 92–433, § 4(c), Sept. 26, 1972, 86 Stat. 726; Pub. L. 93–150, § 2(a), Nov. 7, 1973, 87 Stat. 560; Pub. L. 97–35, title VIII, §§ 801(a), 819(g), Aug. 13, 1981, 95 Stat. 521, 533; Pub. L. 101–147, title III, §§ 301, 312(2), Nov. 10, 1989, 103 Stat. 913, 916.)

AMENDMENTS

1989—Pub. L. 101–147, § 301, inserted ''Apportionments to States'' as section catchline.

Subsec. (b)(2). Pub. L. 101–147, § 312(2), substituted ''reduced price'' for ''reduced-price''.

1981—Subsec. (a). Pub. L. 97–35, §§ 801(a)(1), (2), 819(g), designated existing provisions as subsec. (a), struck out exclusion of sum specified in section 1754 of this title, and struck out provisions relating to food assistance payments.

Subsec. (b). Pub. L. 97–35, § 801(a)(3), added subsec. (b).

1973—Pub. L. 93–150 increased national average food assistance payments from 8 to 10 cents per lunch.

1972—Pub. L. 92–433 substituted new formula for food assistance payments to State educational agencies by taking into account the number of lunches served during the year, the children in the schools in such State participating in the school lunch program, and the national average payment per lunch set up by the Secretary, with certain limitations, for apportionment formula limiting the apportionable funds to 75 per cent of the available funds for such year, and taking into ac-

count the participation rate for the State, the need rate for the State, and providing for a method of apportionment, special provisions for disposal of excess or unused funds and for fiscal years beginning July 1, 1962, July 1, 1963, July 1, 1964 and fixing the funds for American Samoa at $25,000 for each year for the five fiscal years beginning July 1, 1962.

1962—Pub. L. 87–823 amended section generally, and, among other changes, substituted as factors for apportionment of funds among the States ''(1) the participation rate for the State, and (2) the assistance need rate for the State'' for ''(1) the number of school children in the State and (2) the need for assistance in the State as indicated by the relation of the per capita income of the United States to the per capita income in the State''; inserted, in provision for determination of amount of apportionment in clause designated ''second'', ''(exclusive of American Samoa for periods ending before July 1, 1967)''; inserted provisions for use of transitional formulas in apportionment of funds for fiscal years beginning in 1962, 1963, and 1964 and apportioning to American Samoa $25,000 annually for five fiscal years in period beginning July 1, 1962 and ending June 30, 1967; and struck out apportionment formula for Puerto Rico, Guam, American Samoa, and the Virgin Islands, which limited apportionments to 3 per centum of the total fund to be apportioned but required the apportionment to each to be not less than an amount which would result in an allotment per child of school age equal to that for the State with the lowest per capita income, definition of school (incorporated in section 1760(d)(7) of this title), provision for use of latest per capita income figures certified by the Department of Commerce (incorporated in section 1760(d)(6)(ii) of this title), and definition of school children which provided that the number of school children should be the number between ages of five and seventeen.

Pub. L. 87–688 inserted ''American Samoa,'' after ''Guam,'' in two places and ''the apportionment for American Samoa,'' after ''the apportionment for Guam,''.

1952—Act July 12, 1952, removed Alaska and Hawaii from 3 percent limitation imposed on Puerto Rico and Virgin Islands, made limitation applicable to Guam, and modified effects of 3 percent limitation.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 820(a) of title VIII of Pub. L. 97–35 provided that: ''The provisions of this title shall take effect as follows:

''(1) The amendments made by the following sections shall take effect on the first day of the month following the date of the enactment of this Act [Aug. 13, 1981] or on September 1, 1981, whichever is earlier:

''(A) section 801 [amending this section and sections 1759a and 1773 of this title];

''(B) that portion of the amendment made by section 810(c) [amending section 1766 of this title] pertaining to the reimbursement rate for supplements;

''(C) that portion of the amendment made by section 810(d)(1) [amending section 1766 of this title] pertaining to the limitation on the number of meals for which reimbursement may be made under the child care food program;

''(D) that portion of the amendment made by section 810(d)(3) [amending section 1766 of this title] which reduces the meal reimbursement factor by 10 percent; and

''(E) section 811 [amending section 1758 of this title].

''(2) The amendments made by sections 802 and 804 [amending sections 1755 and 1756 of this title] shall take effect on July 1, 1981.

''(3) The amendments made by sections 807 [amending section 1772 of this title], 808 [amending sections 1760 and 1784 of this title], and 810(a)(2) [amending section 1766 of this title] shall take effect on the first day of the second month following the date of the enactment of this Act [Aug. 13, 1981].

''(4) The amendments made by the following sections shall take effect October 1, 1981: sections 805 [repealing sections 1754 and 1774 of this title], 806 [amending section 1788 of this title], 809 [amending section 1761 of this title], 810(a)(1) [amending section 1766 of this title], 810(f) [amending section 1766 of this title], 810(g) [amending section 1766 of this title], 812 [amending section 1759a of this title], 814 [amending section 1776 of this title], 817 [enacting section 1774 of this title and amending sections 1759, 1761, 1766, 1773, and 1788 of this title], and 819 [amending this section and sections 1755, 1757, 1759a, 1760, 1762a, 1763, 1766, 1773, 1776, and 1780 of this title].

''(5) The amendments made by section 813 [amending sections 1759a, 1760, 1762a, and 1772 of this title] shall take effect 90 days after the date of the enactment of this Act [Aug. 13, 1981].

''(6) The amendments made by the following provisions shall take effect January 1, 1982: subsections (b), (c), (d), and (e) of section 810 [amending section 1766 of this title], except that—

''(A) the amendment made by section 810(c) pertaining to the reimbursement rate for supplements shall take effect as provided under paragraph (1) of this subsection;

''(B) the amendment made by section 810(d)(1) pertaining to the limitation on the number of meals for which reimbursement may be made shall take effect as provided under paragraph (1) of this subsection; and

''(C) the amendment made by section 810(d)(3) which reduces the meal reimbursement factor by 10 percent shall take effect as provided under paragraph (1) of this subsection.

''(7) The following provisions shall take effect on the date of the enactment of this Act [Aug. 13, 1981]:

''(A) the amendments made by subsections (a) and (b) [amending section 1758 of this title] of section 803 and the provisions of subsections (c) and (d) [amending provisions set out as notes under section 1758 of this title] of section 803;

''(B) the amendment made by section 815 [amending section 1786 of this title];

''(C) the amendment made by section 816 [amending section 1785 of this title]; and

''(D) the provisions of section 818.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 4(c) of Pub. L. 92–433 provided that the amendment made by that section is effective after the fiscal year ending June 30, 1973.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3(b) of Pub. L. 87–688 provided that: ''The amendments made by this section [amending this section and sections 1754 and 1760 of this title] shall be applicable only with respect to funds appropriated after the date of enactment of this Act [Sept. 25, 1962].''

EFFECTIVE DATE OF 1952 AMENDMENT

Section 1(d) of act July 12, 1952, provided that: ''The amendments made by this Act [amending this section and sections 1754 and 1760 of this title] shall be effective only with respect to funds appropriated after the date on which this Act is enacted [July 12, 1952].''

PROMULGATION OF REGULATIONS

Section 820(c) of title VIII of Pub. L. 97–35 provided that: ''Not later than 60 days after the date of the enactment of this Act [Aug. 13, 1981], the Secretary of Agriculture shall promulgate regulations to implement the amendments made by this title [see Tables for classification].''

REDUCTION IN GENERAL REIMBURSEMENT FOR FISCAL YEAR ENDING SEPTEMBER 30, 1981

Pub. L. 96–499, title II, § 201(a), Dec. 5, 1980, 94 Stat. 2599, provided that the national average payment per lunch under this chapter shall be reduced by 2½ cents for certain school food authorities for fiscal year ending Sept. 30, 1981, and that the amount of reimburse-

ments under section 1776 of this title for fiscal year ending Sept. 30, 1983, and the amount of State revenues appropriated or used for meeting the requirements under section 1756 of this title for the school year ending June 30, 1982, shall not be reduced because of a reduction in the amount of Federal funds expended, prior to repeal by Pub. L. 97–35, title VIII, § 820(b)(1), Aug. 13, 1981, 95 Stat. 535, effective Sept. 1, 1981, or the first day of the first month following Aug. 1981, whichever is earlier.

USE OF FUNDS APPROPRIATED UNDER SECTION 612c OF TITLE 7 FOR IMPLEMENTING THIS SECTION AND REIMBURSEMENT OF SUCH FUNDS

Section 4(a) of Pub. L. 92–433 authorized Secretary of Agriculture to use so much of the funds appropriated by section 612(c) of title 7, as may be necessary, to carry out the purposes of this section and provide an average rate of reimbursement of not less than 8 cents per meal within each State during the fiscal year 1973 and provided for reimbursement of funds so used.

ADDITIONAL FUNDS FOR APPORTIONMENT TO STATES AND FOR SPECIAL ASSISTANCE; CONSULTATION WITH CHILD NUTRITION COUNCIL; REIMBURSEMENT OF SEPARATE FUND FROM SUPPLEMENTAL APPROPRIATION

Pub. L. 92–153, § 1, Nov. 5, 1971, 85 Stat. 419, provided: ''That, notwithstanding any other provision of law, the Secretary of Agriculture shall until such time as a supplemental appropriation may provide additional funds for such purpose use so much of the funds appropriated by section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as may be necessary, in addition to the funds now available therefor, to carry out the purposes of section 11 of the [Richard B. Russell] National School Lunch Act [section 1759a of this title] and provide a rate of reimbursement which will assure every needy child of free or reduced price lunches during the fiscal year ending June 30, 1972, and to carry out the purposes of section 4 of the [Richard B. Russell] National School Lunch Act [this section] and provide an average rate of reimbursement of 6 cents per meal within each State. In determining the amount of funds needed and the requirements of the various States therefor, the Secretary shall consult with the National Advisory Council on Child Nutrition and interested parties. Funds expended under the foregoing provisions of this resolution shall be reimbursed out of any supplemental appropriation hereafter enacted [on and after Nov. 5, 1971] for the purpose of carrying out section 4 [this section] and section 11 of the [Richard B. Russell] National School Lunch Act [section 1759a of this title], and such reimbursements shall be deposited into the fund established pursuant to section 32 of the Act of August 24, 1935 [section 612c of Title 7, Agriculture], to be available for the purposes of said section 32 [section 612c of Title 7].''

APPORTIONMENT OF ADDITIONAL FUNDS TO STATES

Section 4(b) of Pub. L. 92–433 provided that: ''Funds made available pursuant to this section shall be apportioned to the States in such manner as will best enable schools to meet their obligations with respect to the service of free and reduced-price lunches and to meet the objective of this section with respect to providing a minimum rate of reimbursement under section 4 of the [Richard B. Russell] National School Lunch Act [this section], and such funds shall be apportioned and paid as expeditiously as may be practicable.''

Pub. L. 92–153, § 2, Nov. 5, 1971, 85 Stat. 420, provided that: ''Funds made available by this joint resolution [amending sections 1758 and 1759a of this title and enacting provisions set out as notes under this section and sections 1758 and 1773 of this title] shall be apportioned to the States in such manner as will best enable schools to meet their obligations with respect to the service of free and reduced price lunches and to meet the objective of this joint resolution [amending sections 1758 and 1759a of this title and enacting provisions set out as notes under this section and sections 1758 and 1773 of this title] with respect to providing a minimum rate of reimbursement under section 4 of the [Richard B. Russell] National School Lunch Act [this section], and such funds shall be apportioned and paid as expeditiously as may be practicable.''

§ 1754. Nutrition promotion

(a) In general

Subject to the availability of funds made available under subsection (g) of this section, the Secretary shall make payments to State agencies for each fiscal year, in accordance with this section, to promote nutrition in food service programs under this chapter and the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(b) Total amount for each fiscal year

The total amount of funds available for a fiscal year for payments under this section shall equal not more than the product obtained by multiplying—

(1) ½ cent; by

(2) the number of lunches reimbursed through food service programs under this chapter during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs.

(c) Payments to States

(1) Allocation

Subject to paragraph (2), from the amount of funds available under subsection (g) of this section for a fiscal year, the Secretary shall allocate to each State agency an amount equal to the greater of—

(A) a uniform base amount established by the Secretary; or

(B) an amount determined by the Secretary, based on the ratio that—

(i) the number of lunches reimbursed through food service programs under this chapter in schools, institutions, and service institutions in the State that participate in the food service programs; bears to

(ii) the number of lunches reimbursed through the food service programs in schools, institutions, and service institutions in all States that participate in the food service programs.

(2) Reductions

The Secretary shall reduce allocations to State agencies qualifying for an allocation under paragraph (1)(B), in a manner determined by the Secretary, to the extent necessary to ensure that the total amount of funds allocated under paragraph (1) is not greater than the amount appropriated under subsection (g) of this section.

(d) Use of payments

(1) Use by State agencies

A State agency may reserve, to support dissemination and use of nutrition messages and material developed by the Secretary, up to—

(A) 5 percent of the payment received by the State for a fiscal year under subsection (c) of this section; or

(B) in the case of a small State (as determined by the Secretary), a higher percent-

age (as determined by the Secretary) of the payment.

(2) Disbursement to schools and institutions

Subject to paragraph (3), the State agency shall disburse any remaining amount of the payment to school food authorities and institutions participating in food service programs described in subsection (a) of this section to disseminate and use nutrition messages and material developed by the Secretary.

(3) Summer food service program for children

In addition to any amounts reserved under paragraph (1), in the case of the summer food service program for children established under section 1761 of this title, the State agency may—

(A) retain a portion of the funds made available under subsection (c) of this section (as determined by the Secretary); and

(B) use the funds, in connection with the program, to disseminate and use nutrition messages and material developed by the Secretary.

(e) Documentation

A State agency, school food authority, and institution receiving funds under this section shall maintain documentation of nutrition promotion activities conducted under this section.

(f) Reallocation

The Secretary may reallocate, to carry out this section, any amounts made available to carry out this section that are not obligated or expended, as determined by the Secretary.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.

(June 4, 1946, ch. 281, § 5, as added Pub. L. 108–265, title I, § 101, June 30, 2004, 118 Stat. 730.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

PRIOR PROVISIONS

A prior section 1754, acts June 4, 1946, ch. 281, § 5, 60 Stat. 231; July 12, 1952, ch. 699, § 1(b), 66 Stat. 591; Sept. 25, 1962, Pub. L. 87–688, § 3(a), 76 Stat. 587; Oct. 15, 1962, Pub. L. 87–823, § 3(a), 76 Stat. 945; Nov. 10, 1977, Pub. L. 95–166, § 3, 91 Stat. 1332, related to amount, apportionment, etc., for food service equipment assistance, prior to repeal by Pub. L. 97–35, title VIII, §§ 805(a), 820(a)(4), Aug. 13, 1981, 95 Stat. 527, 534, effective Oct. 1, 1981.

EFFECTIVE DATE

Pub. L. 108–265, title V, § 502, June 30, 2004, 118 Stat. 789, as amended by Pub. L. 108–447, div. A, title VII, § 788(f), Dec. 8, 2004, 118 Stat. 2851, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this Act [see Short Title of 2004 Amendment note set out under section 1751 of this title], this Act and the amendments made by this Act take effect on the date of enactment of this Act [June 30, 2004].

''(b) SPECIAL EFFECTIVE DATES.—

''(1) JULY 1, 2004.—The amendments made by sections 106, 107, 126(c), and 201 [amending sections 1758, 1773, and 1776 of this title] take effect on July 1, 2004.

''(2) OCTOBER 1, 2004.—The amendments made by sections 119(c), 119(g), 202(a), 203(a), 203(b), 203(c)(1), 203(c)(5), 203(e)(8), 203(e)(10), 203(e)(13), 203(f), 203(h)(1), and 203(h)(2) [amending sections 1766, 1776, and 1786 of this title] take effect on October 1, 2004.

''(3) JANUARY 1, 2005.—The amendments made by sections 116(f)(1) and 116(f)(3) [amending section 1769 of this title] take effect on January 1, 2005.

''(4) JULY 1, 2005.—The amendments made by sections 102, 104 (other than section 104(a)(1)), 105, 111, and 126(b) [amending sections 1396a, 1758, 1759a, and 1769c of this title and section 2020 of Title 7, Agriculture] take effect on July 1, 2005.

''(5) OCTOBER 1, 2005.—The amendments made by sections 116(d) and 203(e)(9) [amending sections 1761 and 1786 of this title] take effect on October 1, 2005.''

§ 1755. Direct expenditures for agricultural commodities and other foods

(a) Administrative expenses; nutritional education; pilot projects; cash-in-lieu of commodities study; refusal of commodities and receipt of other commodities available to the State in lieu of the refused commodities

The funds provided by appropriation or transfer from other accounts for any fiscal year for carrying out the provisions of this chapter, and for carrying out the provisions of the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], other than section 3 thereof [42 U.S.C. 1772] less

(1) not to exceed 3½ per centum thereof which per centum is hereby made available to the Secretary for the Secretary's administrative expenses under this chapter and under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.];

(2) the amount apportioned by the Secretary pursuant to section 1753 of this title and the amount appropriated pursuant to sections 1759a and 1761 of this title and sections 4 and 7 of the Child Nutrition Act of 1966 [42 U.S.C. 1773 and 1776]; and

(3) not to exceed 1 per centum of the funds provided for carrying out the programs under this chapter and the programs under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], other than section 3 [42 U.S.C. 1772], which per centum is hereby made available to the Secretary to supplement the nutritional benefits of these programs through grants to States and other means for nutritional training and education for workers, cooperators, and participants in these programs, for pilot projects and the cash-in-lieu of commodities study required to be carried out under section 1769 of this title, and for necessary surveys and studies of requirements for food service programs in furtherance of the purposes expressed in section 1751 of this title, and section 2 of the Child Nutrition Act of 1966 [42 U.S.C. 1771],

shall be available to the Secretary during such year for direct expenditure by the Secretary for agricultural commodities and other foods to be distributed among the States and schools and service institutions participating in the food service programs under this chapter and under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] in accordance with the needs as determined by the local school and service institution authorities. Except as provided in the next 2 sentences, any school participating in food service programs under this chapter may refuse to ac-

cept delivery of not more than 20 percent of the total value of agricultural commodities and other foods tendered to it in any school year; and if a school so refuses, that school may receive, in lieu of the refused commodities, other commodities to the extent that other commodities are available to the State during that year. Any school food authority may refuse some or all of the fresh fruits and vegetables offered to the school food authority in any school year and shall receive, in lieu of the offered fruits and vegetables, other more desirable fresh fruits and vegetables that are at least equal in value to the fresh fruits and vegetables refused by the school food authority. The value of any fresh fruits and vegetables refused by a school under the preceding sentence for a school year shall not be used to determine the 20 percent of the total value of agricultural commodities and other foods tendered to the school food authority in the school year under the second sentence. The provisions of law contained in the proviso of section 713c of title 15, facilitating operations with respect to the purchase and disposition of surplus agricultural commodities under section 612c of title 7, shall, to the extent not inconsistent with the provision of this chapter, also be applicable to expenditures of funds by the Secretary under this chapter. In making purchases of such agricultural commodities and other foods, the Secretary shall not issue specifications which restrict participation of local producers unless such specifications will result in significant advantages to the food service programs authorized by this chapter and the Child Nutrition Act of 1966.

(b) Delivery of commodities

The Secretary shall deliver, to each State participating in the school lunch program under this chapter, commodities valued at the total level of assistance authorized under subsection (c)[1] of this section for each school year for the school lunch program in the State, not later than September 30 of the following school year.

(c) Level of commodity assistance; computation of index; calculation of total assistance to each State; emphasis on high protein foods; per meal value of donated foods

(1)(A) The national average value of donated foods, or cash payments in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. The Index shall be computed using 5 major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighed using the same relative weight as determined by the Bureau of Labor Statistics.

(B) The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a 3-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest ¼ cent.

(C) For each school year, the total commodity assistance or cash in lieu thereof available to a State for the school lunch program shall be calculated by multiplying the number of lunches served in the preceding school year by the rate established by subparagraph (B). After the end of each school year, the Secretary shall reconcile the number of lunches served by schools in each State with the number of lunches served by schools in each State during the preceding school year and increase or reduce subsequent commodity assistance or cash in lieu thereof provided to each State based on such reconciliation.

(D) Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products).

(E) Notwithstanding any other provision of this section, not less than 75 percent of the assistance provided under this subsection shall be in the form of donated foods for the school lunch program.

(2) To the maximum extent feasible, each State agency shall offer to each school food authority under its jurisdiction that participates in the school lunch program and receives commodities, agricultural commodities and their products, the per meal value of which is not less than the national average value of donated foods established under paragraph (1). Each such offer shall include the full range of such commodities and products that are available from the Secretary to the extent that quantities requested are sufficient to allow efficient delivery to and within the State.

(d) Termination of commodity assistance based upon school breakfast program

Beginning with the school year ending June 30, 1981, the Secretary shall not offer commodity assistance based upon the number of breakfasts served to children under section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773].

(e) Minimum percentage of commodity assistance

(1) Subject to paragraph (2), in each school year the Secretary shall ensure that not less than 12 percent of the assistance provided under section 1753 of this title, this section, and section 1759a of this title shall be in the form of—

(A) commodity assistance provided under this section, including cash in lieu of commodities and administrative costs for procurement of commodities under this section; or

(B) during the period beginning October 1, 2003, and ending September 30, 2009, commodities provided by the Secretary under any provision of law.

(2) If amounts available to carry out the requirements of the sections described in paragraph (1) are insufficient to meet the requirement contained in paragraph (1) for a school year, the Secretary shall, to the extent necessary, use the authority provided under section 1762a(a) of this title to meet the requirement for the school year.

(June 4, 1946, ch. 281, §6, 60 Stat. 231; Pub. L. 87–823, §3(b), Oct. 15, 1962, 76 Stat. 945; Pub. L.

[1] See References in Text note below.

90–302, § 2(a), May 8, 1968, 82 Stat. 117; Pub. L. 91–248, § 3, May 14, 1970, 84 Stat. 209; Pub. L. 93–13, § 2, Mar. 30, 1973, 87 Stat. 10; Pub. L. 93–150, § 5, Nov. 7, 1973, 87 Stat. 562; Pub. L. 93–326, § 3, June 30, 1974, 88 Stat. 286; Pub. L. 94–105, §§ 4, 11, Oct. 7, 1975, 89 Stat. 511, 515; Pub. L. 95–166, §§ 5, 7, 10(1), 19(a), Nov. 10, 1977, 91 Stat. 1334–1336, 1345; Pub. L. 95–627, §§ 5(b), 12(a), Nov. 10, 1978, 92 Stat. 3619, 3625; Pub. L. 96–499, title II, § 202(b), Dec. 5, 1980, 94 Stat. 2600; Pub. L. 97–35, title VIII, §§ 802, 819(h), Aug. 13, 1981, 95 Stat. 524, 533; Pub. L. 99–500, title III, §§ 321, 371(c)(2), Oct. 18, 1986, 100 Stat. 1783–360, 1783–369, and Pub. L. 99–591, title III, §§ 321, 371(c)(2), Oct. 30, 1986, 100 Stat. 3341–364, 3341–372; Pub. L. 99–661, div. D, title II, § 4201, title V, § 4501(c)(2), Nov. 14, 1986, 100 Stat. 4071, 4080; Pub. L. 100–237, § 3(j), Jan. 8, 1988, 101 Stat. 1738; Pub. L. 101–147, title I, § 131(a), title III, § 302, Nov. 10, 1989, 103 Stat. 906, 913; Pub. L. 103–448, title I, §§ 101–103, Nov. 2, 1994, 108 Stat. 4700, 4701; Pub. L. 105–336, title I, § 101(a), Oct. 31, 1998, 112 Stat. 3144; Pub. L. 106–170, title IV, § 411, Dec. 17, 1999, 113 Stat. 1917; Pub. L. 106–224, title II, § 241(b), June 20, 2000, 114 Stat. 410; Pub. L. 107–171, title IV, § 4301(a), May 13, 2002, 116 Stat. 330.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

Subsection (c) of this section, referred to in subsec. (b), was repealed and subsec. (e) was redesignated (c) by Pub. L. 105–336, title I, § 101(a), Oct. 31, 1998, 112 Stat. 3144.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2002—Subsec. (e)(1)(B). Pub. L. 107–171 substituted ''2003'' for ''2001''.

2000—Subsec. (e)(1)(B). Pub. L. 106–224 substituted ''2001'' for ''2000''.

1999—Subsec. (e)(1). Pub. L. 106–170 designated existing provisions as introductory provisions and subpar. (A) and added subpar. (B).

1998—Subsecs. (c) to (g). Pub. L. 105–336 redesignated subsecs. (e) to (g) as (c) to (e), respectively, and struck out former subsecs. (c) and (d) which read as follows:

''(c) Notwithstanding any other provision of law, the Secretary, until such time as a supplemental appropriation may provide additional funds for the purpose of subsection (b) of this section, shall use funds appropriated by section 612c of title 7 to make any payments to States authorized under such subsection. Any section 612c of title 7 funds utilized to make such payments shall be reimbursed out of any supplemental appropriation hereafter enacted for the purpose of carrying out subsection (b) of this section and such reimbursement shall be deposited into the fund established pursuant to section 612c of title 7 to be available for the purpose of said section 612c of title 7.

''(d) Any funds made available under subsection (b) or (c) of this section shall not be subject to the State matching provisions of section 1756 of this title.''

1994—Subsec. (a). Pub. L. 103–448, § 101, substituted in second sentence ''Except as provided in the next 2 sentences, any school'' for ''Any school'' and inserted after second sentence ''Any school food authority may refuse some or all of the fresh fruits and vegetables offered to the school food authority in any school year and shall receive, in lieu of the offered fruits and vegetables, other more desirable fresh fruits and vegetables that are at least equal in value to the fresh fruits and vegetables refused by the school food authority. The value of any fresh fruits and vegetables refused by a school under the preceding sentence for a school year shall not be used to determine the 20 percent of the total value of agricultural commodities and other foods tendered to the school food authority in the school year under the second sentence.''

Subsec. (b). Pub. L. 103–448, § 102, amended subsec. (b) generally. Prior to amendment, subsec. (b) related to cash donations in lieu of commodity donations during school year for school food service programs and withholding of funds for States administered by Secretary for disbursement to participating schools to be used to purchase commodities and other food for their food service programs.

Subsec. (g). Pub. L. 103–448, § 103, added subsec. (g).

1989—Subsec. (a). Pub. L. 101–147, § 302, substituted ''the Secretary's'' for ''his'' in par. (1), substituted ''the Secretary'' for ''him'' in par. (2), and, in concluding provisions, substituted ''expenditure by the Secretary'' for ''expenditure by him'' and made technical amendments to the references to section 713c of title 15 and section 612c of title 7 involving underlying provisions of original act and requiring no change in text.

Subsec. (e)(1). Pub. L. 101–147, § 131(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The national average value of donated foods, or cash payments in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. The Index shall be computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a three-month simple average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest one-fourth cent. Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products). Notwithstanding any other provision of this section, not less than 75 per centum of the assistance provided under this subsection (e) shall be in the form of donated foods for the school lunch program.''

Subsec. (e)(2). Pub. L. 101–147, § 131(a)(2), substituted ''To the maximum extent feasible, each State agency'' for ''Each State agency''.

1988—Subsec. (e). Pub. L. 100–237 designated existing provisions as par. (1) and added par. (2).

1986—Subsecs. (a)(3), (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended section identically, in subsec. (a)(3), making technical amendment to reference to section 1769 of this title to reflect renumbering of corresponding section of original act and, in subsec. (b), substituting ''June 1'' for ''May 15'' and ''July 1'' for ''June 15''.

1981—Subsec. (a)(2). Pub. L. 97–35, § 819(h), struck out references to section 1754 of this title, and section 5 of the Child Nutrition Act of 1966.

Subsec. (e). Pub. L. 97–35, § 802, substituted provisions requiring value to be set at 11 cents, as adjusted on July 1, 1982, and each July 1, thereafter, for provisions requiring value to be set at not less than 10 cents, as adjusted on an annual basis each school year after June 30, 1975.

1980—Subsec. (f). Pub. L. 96–499 added subsec. (f).

1978—Subsec. (e). Pub. L. 95–627, § 5(b), substituted provision relating to Price Index for Food Used in Schools and Institutions for provision relating to Consumer Price Index.

Pub. L. 95–627, § 12(a), which provided for inserting ''(which may include domestic seafood commodities

and their products)'' after ''alternatives'' was executed by inserting that parenthetical after ''alternates'' as the probable intent of Congress.

1977—Subsec. (a). Pub. L. 95–166, §§7, 10(1), inserted provision which authorized refusal of commodities and receipt of other commodities available to State, in lieu of refused commodities, and in cl. (3) authorized grants for pilot projects and cash-in-lieu of commodities study required to be carried out under section 1769 of this title.

Subsec. (b). Pub. L. 95–166, §5, in revising subsec. (b), changed commodity distribution program to a school year from a fiscal year basis, and among other changes, extended deadline for estimated valuation and payment to May 15 and June 15 from February 15 and March 15, and struck out provision respecting apportionment among State educational agencies on basis of meals served in all the States during the fiscal year and specific reference to regulations of the Department of Agriculture under title 7, subtitle (b), chapter II, subchapter (a), parts 210 and 220.

Subsec. (e). Pub. L. 95–166, §19(a), substituted ''school years'' and ''school year after June 30, 1975'' for ''fiscal years'' and ''fiscal year after June 30, 1975'', respectively.

1975—Subsec. (a). Pub. L. 94–105, §11(a), inserted provision prohibiting issuance of specifications in purchase of agricultural commodities and other foods unless such specifications result in significant advantages to the authorized food service programs.

Subsec. (b). Pub. L. 94–105, §4, substituted references to all schools of States for references to only nonprofit private schools of States in provisions covering Secretary's direct administration of school food service programs.

Subsec. (e). Pub. L. 94–105, §11(b), inserted provision mandating that not less than 75 per centum of assistance under this subsection shall be in form of donated foods for the school lunch program.

1974—Subsec. (e). Pub. L. 93–326 added subsec. (e).

1973—Subsec. (a). Pub. L. 93–13 designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 93–150, in revising text to make provisions applicable each fiscal year rather than only for fiscal year ending June 30, 1973, substituted in: first sentence, ''As of February 15 of each fiscal year'' and ''during that fiscal year'' for ''As of March 15, 1973'' and ''during the fiscal year ending June 30, 1973''; second sentence, ''for that fiscal year'', ''March 15 of that fiscal year'', and ''as of February 15 of such fiscal year'' for ''for the fiscal year ending June 30, 1973'', ''April 15, 1973'', and ''as of March 15, 1973''; third sentence, ''during the preceding fiscal year'' for ''during the fiscal year ending June 30, 1972''; and proviso of third sentence, ''during that fiscal year'' for ''during the fiscal year ending June 30, 1972,''.

Pub. L. 93–13 added subsec. (b).

Subsec. (c). Pub. L. 93–150 reenacted provisions without change.

Pub. L. 93–13 added subsec. (c).

Subsec. (d). Pub. L. 93–150 reenacted provisions without change.

Pub. L. 93–13 added subsec. (d).

1970—Pub. L. 91–248 increased amount authorized for administrative expenses by 3½ percent of the amount appropriated to carry out this chapter and the Child Nutrition Act of 1966, other than section 1772 of this title, made such amount available for the Secretary's administrative expenses, authorized use of up to 1 percent of the funds appropriated for this chapter and the Child Nutrition Act of 1966, other than section 1772 of this title, for nutritional training and education and studies of food service requirements in connection with those programs, reduced, to the extent funds were used for administrative expenses other than for this chapter or nutritional training or education or studies, the share of this chapter's appropriations which may be used for direct expenditure by the Secretary for agricultural commodities and other foods, and authorized distribution of such foods to schools and service institutions participating in food service programs under this chapter and the Child Nutrition Act of 1966.

1968—Pub. L. 90–302 inserted ''except section 1761 of this title'' after ''The funds appropriated for any fiscal year for carrying out the provisions of this chapter,''.

1962—Pub. L. 87–823 substituted '', less the amount apportioned by him pursuant to sections 1753, 1754, and 1759 of this title, and less the amount appropriated pursuant to section 1759a of this title'' for ''and less the amount apportioned to him pursuant to sections 1753, 1754, and 1759 of this title''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–171, title IV, §4301(b), May 13, 2002, 116 Stat. 330, provided that: ''The amendment made by this section [amending this section] takes effect on the date of enactment of this Act [May 13, 2002].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–336, title IV, §401, Oct. 31, 1998, 112 Stat. 3170, provided that: ''Except as otherwise provided in this Act [see Short Title of 1998 Amendment note set out under section 1751 of this title], this Act and the amendments made by this Act shall take effect on October 1, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 401 of Pub. L. 103–448 provided that: ''Except as otherwise provided in this Act [see Short Title of 1994 Amendment note set out under section 1751 of this title], this Act and the amendments made by this Act shall become effective on October 1, 1994.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 131(c) of Pub. L. 101–147 provided that: ''The amendments made by this section [amending this section and section 1766 of this title] shall become effective on July 1, 1989.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 802 and 819(h) of Pub. L. 97–35 effective July 1, 1981, and Oct. 1, 1981, respectively, see section 820(a)(2), (4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 14 of Pub. L. 95–627 provided that: ''The provisions of this Act [enacting section 1769c of this title, amending this section and sections 1757, 1760, 1761, 1762a, 1766, 1769, 1773, 1774, 1776, 1784, and 1786 of this title and enacting provisions set out as notes under this section, sections 1751, 1773, and 1786 of this title], except sections 4, 5, and 8, shall become effective October 1, 1978. The provisions of section 4 of this Act [amending section 1759a of this title] shall become effective Jan[u]ary 1, 1979. The provisions of sections 5 [amending this section and sections 1759a, 1761, and 1772 of this title] and 8 [amending section 1758 of this title] of this Act shall become effective July 1, 1979, except that the Secretary may make the necessary changes in the income poverty guidelines for the special supplemental food program under section 17 of the Child Nutrition Act of 1966 [section 1786 of this title] not earlier than October 1, 1978, and not later than July 1, 1979.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 19 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

REDUCTION IN COMMODITY ASSISTANCE FOR FISCAL YEAR ENDING SEPTEMBER 30, 1981

Section 202(a) of Pub. L. 96–499 provided that for the fiscal year ending Sept. 30, 1981, the national average value of donated foods or cash payments in lieu thereof, as determined under subsec. (e) of this section, shall be reduced by 2 cents, prior to repeal by Pub. L. 97–35, title VIII, §820(b)(2), Aug. 13, 1981, 95 Stat. 535, effective July 1, 1981.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 1 of Pub. L. 93–13 provided that: ''The Congress finds that the volume and variety of Federal food donations to the school lunch and child nutrition programs are significantly below the amounts programed and budgeted for the fiscal year ending June 30, 1973, and that schools participating in these programs are confronted with serious financial problems in obtaining sufficient supplies of the foods required to meet the nutritional standards established by law for these programs. It is, therefore, the purpose of this Act [amending this section] to provide an effective and immediate solution to this nutritional crisis.''

§ 1756. Payments to States

(a) State revenue matching requirements; special provisions for lower than average income per capita States

(1) Funds appropriated to carry out section 1753 of this title during any fiscal year shall be available for payment to the States for disbursement by State educational agencies in accordance with such agreements, not inconsistent with the provisions of this chapter, as may be entered into by the Secretary and such State educational agencies for the purpose of assisting schools within the States in obtaining agricultural commodities and other foods for consumption by children in furtherance of the school lunch program authorized under this chapter. For any school year, such payments shall be made to a State only if, during such school year, the amount of the State revenues (excluding State revenues derived from the operation of the program) appropriated or used specifically for program purposes (other than any State revenues expended for salaries and administrative expenses of the program at the State level) is not less than 30 percent of the funds made available to such State under section 1753 of this title for the school year beginning July 1, 1980.

(2) If, for any school year, the per capita income of a State is less than the average per capita income of all the States, the amount required to be expended by a State under paragraph (1) for such year shall be an amount bearing the same ratio to the amount equal to 30 percent of the funds made available to such State under section 1753 of this title for the school year beginning July 1, 1980, as the per capita income of such State bears to the average per capita income of all the States.

(b) Disbursements; private schools

The State revenues provided by any State to meet the requirement of subsection (a) of this section shall, to the extent the State deems practicable, be disbursed to schools participating in the school lunch program under this chapter. No State in which the State educational agency is prohibited by law from disbursing State appropriated funds to private schools shall be required to match Federal funds made available for meals served in such schools, or to disburse, to such schools, any of the State revenues required to meet the requirements of subsection (a) of this section.

(c) Certification of payments by Secretary

The Secretary shall certify to the Secretary of the Treasury, from time to time, the amounts to be paid to any State under this section and shall specify when such payments are to be made. The Secretary of the Treasury shall pay to the State, at the time or times fixed by the Secretary, the amounts so certified.

(d) Combined Federal and State commodity purchases

Notwithstanding any other provision of law, the Secretary may enter into an agreement with a State agency, acting on the request of a school food service authority, under which funds payable to the State under section 1753 or 1759a of this title may be used by the Secretary for the purpose of purchasing commodities for use by the school food service authority in meals served under the school lunch program under this chapter.

(June 4, 1946, ch. 281, § 7, 60 Stat. 232; Pub. L. 91–248, § 4, May 14, 1970, 84 Stat. 209; Pub. L. 92–433, § 10, Sept. 26, 1972, 86 Stat. 731; Pub. L. 94–105, § 5, Oct. 7, 1975, 89 Stat. 511; Pub. L. 95–166, § 19(b), Nov. 10, 1977, 91 Stat. 1345; Pub. L. 97–35, title VIII, § 804, Aug. 13, 1981, 95 Stat. 526; Pub. L. 101–147, title III, § 303, Nov. 10, 1989, 103 Stat. 913; Pub. L. 103–448, title I, § 104, Nov. 2, 1994, 108 Stat. 4701.)

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–448 added subsec. (d).

1989—Pub. L. 101–147, § 303(a), inserted ''Payments to States'' as section catchline.

Subsec. (a)(2). Pub. L. 101–147, § 303(b), substituted ''the'' for ''the the'' before ''school year beginning''.

1981—Subsec. (a). Pub. L. 97–35 designated existing provisions as subsec. (a) and substituted provisions relating to funds appropriated to carry out section 1753 of this title during any fiscal year, for provisions relating to funds appropriated to carry out sections 1753 and 1754 of this title during any fiscal year.

Subsecs. (b), (c). Pub. L. 97–35 added subsecs. (b) and (c).

1977—Pub. L. 95–166, among other changes, substituted in first sentence ''Funds appropriated to carry out'' and ''food service equipment assistance'' for ''Funds apportioned to any State pursuant to'' and ''nonfood assistance''; substituted in third sentence ''fiscal or school year thereafter'' for ''fiscal year thereafter''; substituted in fourth sentence ''fiscal or school year'' for ''fiscal year''; and substituted sixth sentence ''For the school year beginning in 1976, State revenue (other than revenues derived from the program) appropriated or used specifically for program purposes (other than salaries and administrative expenses at the State, as distinguished from local, level) shall constitute at least 8 percent of the matching requirement for the preceding school year, or, at the discretion of the Secretary, fiscal year, and for each school year thereafter, at least 10 percent of the matching requirement for the preceding school year'' for ''For the fiscal year beginning July 1, 1971, and the fiscal year beginning July 1, 1972, State revenue (other than revenues derived from the program) appropriated or utilized specifically for program purposes (other than salaries and administrative expenses at the State, as distinguished from local, level) shall constitute at least 4 per centum of the matching requirement for the preceding fiscal year; for each of the two succeeding fiscal years, at least 6 per centum of the matching requirement for the preceding fiscal year; for each of the subsequent two fiscal years, at least 8 per centum of the matching requirement for the preceding fiscal year; and for each fiscal year thereafter at least 10 per centum of the matching requirement for the preceding fiscal year''.

1975—Pub. L. 94–105 made requirements of section that each dollar of Federal assistance be matched by $3

from sources within the State inapplicable with respect to the payments made to participating schools under section 1753 of this title, with the proviso that such inapplicability not affect the level of State matching required by the sixth sentence of the section.

1972—Pub. L. 92–433 substituted ''per centum of the matching requirement for the preceding fiscal year'' for ''per centum of the matching requirement'' in four places.

1970—Pub. L. 91–248 inserted provision requiring that State revenues represent a prescribed minimum of the local funds required to match Federal funds apportioned under this chapter, required that amounts derived by the State from the program, or expended by it for salaries or administrative expenses at the State level, would not count toward meeting the State revenue share of the matching requirement, and required State funds disbursed to each school, to the extent practicable, on the basis of its share of the funds apportioned for the regular school lunch program, the special assistance program to schools to assure lunches for low-income children, the school breakfast program for needy children, and the nonfood assistance program for schools drawing from poor economic areas.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective July 1, 1981, see section 820(a)(2) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 19 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

§ 1757. State disbursement to schools

(a) Disbursement by State educational agency

Funds paid to any State during any fiscal year pursuant to section 1753 of this title shall be disbursed by the State educational agency, in accordance with such agreements approved by the Secretary, as may be entered into by such State agency and the schools in the State, to those schools in the State which the State educational agency, taking into account need and attendance, determines are eligible to participate in the school lunch program.

(b) Permanent, amendable agreements

The agreements described in subsection (a) of this section shall be permanent agreements that may be amended as necessary.

(c) Suspension or termination of agreements

The State educational agency may suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(d) Use of funds

Use of funds paid to States may include, in addition to the purchase price of agricultural commodities and other foods, the cost of processing, distributing, transporting, storing or handling thereof.

(e) Limitation

In no event shall such disbursement for food to any school for any fiscal year exceed an amount determined by multiplying the number of lunches served in the school in the school lunch program under this chapter during such year by the maximum per meal reimbursement rate for the State, for the type of lunch served, as prescribed by the Secretary.

(f) Increase in meal reimbursement

In any fiscal year in which the national average payment per lunch determined under section 1753 of this title is increased above the amount prescribed in the previous fiscal year, the maximum per meal reimbursement rate, for the type of lunch served, shall be increased by a like amount.

(g) In advance or as reimbursement

Lunch assistance disbursements to schools under this section and under section 1759a of this title may be made in advance or by way of reimbursement in accordance with procedures prescribed by the Secretary.

(June 4, 1946, ch. 281, § 8, 60 Stat. 232; Pub. L. 92–433, § 8, Sept. 26, 1972, 86 Stat. 729; Pub. L. 93–150, § 2(b), Nov. 7, 1973, 87 Stat. 560; Pub. L. 95–166, § 3, Nov. 10, 1977, 91 Stat. 1332; Pub. L. 95–627, § 10(d)(1), Nov. 10, 1978, 92 Stat. 3624; Pub. L. 97–35, title VIII, § 819(d), Aug. 13, 1981, 95 Stat. 533; Pub. L. 101–147, title II, § 201, title III, §§ 304, 312(1), Nov. 10, 1989, 103 Stat. 908, 914, 916; Pub. L. 104–193, title VII, § 701(a), Aug. 22, 1996, 110 Stat. 2287.)

AMENDMENTS

1996—Pub. L. 104–193 designated first and second sentences as subsecs. (a) and (b), respectively, substituted ''in subsection (a) of this section'' for ''in the preceding sentence'' in subsec. (b), designated third sentence as subsec. (c) and substituted ''The State educational agency may'' for ''Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to'', struck out fourth and fifth sentences, designated sixth sentence as subsec. (d) and substituted ''Use of funds paid to States'' for ''Such food costs'', and designated seventh to ninth sentences as subsecs. (e) to (g), respectively. Prior to amendment, fourth and fifth sentences read as follows: ''Such disbursement to any school shall be made only for the purpose of assisting it to obtain agricultural commodities and other foods for consumption by children in the school lunch program. The terms 'child' and 'children' as used in this chapter shall be deemed to include individuals regardless of age who are determined by the State educational agency, in accordance with regulations prescribed by the Secretary, to have 1 or more mental or physical handicaps and who are attending any child care institution as defined in section 1766 of this title or any nonresidential public or nonprofit private school of high school grade or under for the purpose of participating in a school program established for individuals with mental or physical handicaps: *Provided*, That no institution that is not otherwise eligible to participate in the program under section 1766 of this title shall be deemed so eligible because of this sentence.''

1989—Pub. L. 101–147, § 312(1), substituted ''school lunch'' for ''school-lunch'' in three places.

Pub. L. 101–147, § 304, which directed the amendment of subsec. (d) by substituting ''individuals'' for ''persons'', ''to have 1 or more mental or physical handicaps'' for ''to be mentally or physically handicapped'', and ''for individuals with mental or physical handicaps'' for ''for mentally or physically handicapped'', was executed by making the substitutions in the undesignated text before the proviso as the probable intent of Congress because the section contains no subsection designations.

Pub. L. 101–147, § 201, inserted after first sentence ''The agreements described in the preceding sentence

shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.''

1981—Pub. L. 97–35 substituted references to per meal reimbursement rate, for references to Federal food-cost contribution rate wherever appearing, and struck out reference to section 1754 of this title, and food service equipment assistance.

1978—Pub. L. 95–627 inserted provision relating to definition of ''child'' and ''children''.

1977—Pub. L. 95–166 substituted ''food service equipment assistance'' for ''nonfood assistance''.

1973—Pub. L. 93–150 provided that in any fiscal year in which the national average payment per lunch determined under section 1753 of this title is increased above the amount prescribed in the previous fiscal year, the maximum Federal food-cost contribution rate, for the type of lunch served, shall be increased by a like amount.

1972—Pub. L. 92–433 substituted provision that disbursement to schools be made for the purpose of assisting them to finance the costs of agricultural commodities, for provision that such disbursement be made for the purpose of reimbursing them for such costs and inserted provision that lunch assistance disbursements to schools under this section and section 1759a of this title may be made in advance or by way of reimbursement according to procedure prescribed by the Secretary.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

§ 1758. Program requirements

(a) Nutritional requirements

(1)(A) Lunches served by schools participating in the school lunch program under this chapter shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research, except that the minimum nutritional requirements—

(i) shall not be construed to prohibit the substitution of foods to accommodate the medical or other special dietary needs of individual students; and

(ii) shall, at a minimum, be based on the weekly average of the nutrient content of school lunches.

(B) The Secretary shall provide technical assistance and training, including technical assistance and training in the preparation of lower-fat versions of foods commonly used in the school lunch program under this chapter, to schools participating in the school lunch program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs. The Secretary shall provide additional technical assistance to schools that are having difficulty maintaining compliance with the requirements.

(2) FLUID MILK.—

(A) IN GENERAL.—Lunches served by schools participating in the school lunch program under this chapter—

(i) shall offer students fluid milk in a variety of fat contents;

(ii) may offer students flavored and unflavored fluid milk and lactose-free fluid milk; and

(iii) shall provide a substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk.

(B) SUBSTITUTES.—

(i) STANDARDS FOR SUBSTITUTION.—A school may substitute for the fluid milk provided under subparagraph (A), a nondairy beverage that is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary (which shall, among other requirements to be determined by the Secretary, include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk) for students who cannot consume fluid milk because of a medical or other special dietary need other than a disability described in subparagraph (A)(iii).

(ii) NOTICE.—The substitutions may be made if the school notifies the State agency that the school is implementing a variation allowed under this subparagraph, and if the substitution is requested by written statement of a medical authority or by a student's parent or legal guardian that identifies the medical or other special dietary need that restricts the student's diet, except that the school shall not be required to provide beverages other than beverages the school has identified as acceptable substitutes.

(iii) EXCESS EXPENSES BORNE BY SCHOOL FOOD AUTHORITY.—Expenses incurred in providing substitutions under this subparagraph that are in excess of expenses covered by reimbursements under this chapter shall be paid by the school food authority.

(C) RESTRICTIONS ON SALE OF MILK PROHIBITED.—A school that participates in the school lunch program under this chapter shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place—

(i) on the school premises; or

(ii) at any school-sponsored event.

(3) Students in senior high schools that participate in the school lunch program under this chapter (and, when approved by the local school district or nonprofit private schools, students in any other grade level) shall not be required to accept offered foods they do not intend to consume, and any such failure to accept offered foods shall not affect the full charge to the student for a lunch meeting the requirements of this subsection or the amount of payments made under this chapter to any such school for such lunch.

(4) PROVISION OF INFORMATION.—

(A) GUIDANCE.—Prior to the beginning of the school year beginning July 2004, the Secretary

shall issue guidance to States and school food authorities to increase the consumption of foods and food ingredients that are recommended for increased serving consumption in the most recent Dietary Guidelines for Americans published under section 5341 of title 7.

(B) RULES.—Not later than 2 years after June 30, 2004, the Secretary shall promulgate rules, based on the most recent Dietary Guidelines for Americans, that reflect specific recommendations, expressed in serving recommendations, for increased consumption of foods and food ingredients offered in school nutrition programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(b) Eligibility

(1)(A) Not later than June 1 of each fiscal year, the Secretary shall prescribe income guidelines for determining eligibility for free and reduced price lunches during the 12-month period beginning July 1 of such fiscal year and ending June 30 of the following fiscal year. The income guidelines for determining eligibility for free lunches shall be 130 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with subparagraph (B). The income guidelines for determining eligibility for reduced price lunches for any school year shall be 185 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with subparagraph (B). The Office of Management and Budget guidelines shall be revised at annual intervals, or at any shorter interval deemed feasible and desirable.

(B) The revision required by subparagraph (A) of this paragraph shall be made by multiplying—

(i) the official poverty line (as defined by the Office of Management and Budget); by

(ii) the percentage change in the Consumer Price Index during the annual or other interval immediately preceding the time at which the adjustment is made.

Revisions under this subparagraph shall be made not more than 30 days after the date on which the consumer price index data required to compute the adjustment becomes available.

(2)(A) Following the determination by the Secretary under paragraph (1) of this subsection of the income eligibility guidelines for each school year, each State educational agency shall announce the income eligibility guidelines, by family size, to be used by schools in the State in making determinations of eligibility for free and reduced price lunches. Local school authorities shall, each year, publicly announce the income eligibility guidelines for free and reduced price lunches on or before the opening of school.

(B) APPLICATIONS AND DESCRIPTIVE MATERIAL.—

(i) IN GENERAL.—Applications for free and reduced price lunches, in such form as the Secretary may prescribe or approve, and any descriptive material, shall be distributed to the parents or guardians of children in attendance at the school, and shall contain only the family size income levels for reduced price meal eligibility with the explanation that households with incomes less than or equal to these values would be eligible for free or reduced price lunches.

(ii) INCOME ELIGIBILITY GUIDELINES.—Forms and descriptive material distributed in accordance with clause (i) may not contain the income eligibility guidelines for free lunches.

(iii) CONTENTS OF DESCRIPTIVE MATERIAL.—

(I) IN GENERAL.—Descriptive material distributed in accordance with clause (i) shall contain a notification that—

(aa) participants in the programs listed in subclause (II) may be eligible for free or reduced price meals; and

(bb) documentation may be requested for verification of eligibility for free or reduced price meals.

(II) PROGRAMS.—The programs referred to in subclause (I)(aa) are—

(aa) the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

(bb) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(cc) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

(dd) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(3) HOUSEHOLD APPLICATIONS.—

(A) DEFINITION OF HOUSEHOLD APPLICATION.—In this paragraph, the term ''household application'' means an application for a child of a household to receive free or reduced price school lunches under this chapter, or free or reduced price school breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), for which an eligibility determination is made other than under paragraph (4) or (5).

(B) ELIGIBILITY DETERMINATION.—

(i) IN GENERAL.—An eligibility determination shall be made on the basis of a complete household application executed by an adult member of the household or in accordance with guidance issued by the Secretary.

(ii) ELECTRONIC SIGNATURES AND APPLICATIONS.—A household application may be executed using an electronic signature if—

(I) the application is submitted electronically; and

(II) the electronic application filing system meets confidentiality standards established by the Secretary.

(C) CHILDREN IN HOUSEHOLD.—

(i) IN GENERAL.—The household application shall identify the names of each child in the household for whom meal benefits are requested.

(ii) SEPARATE APPLICATIONS.—A State educational agency or local educational agency

may not request a separate application for each child in the household that attends schools under the same local educational agency.

(D) VERIFICATION OF SAMPLE.—

(i) DEFINITIONS.—In this subparagraph:

(I) ERROR PRONE APPLICATION.—The term ''error prone application'' means an approved household application that—

(aa) indicates monthly income that is within $100, or an annual income that is within $1,200, of the income eligibility limitation for free or reduced price meals; or

(bb) in lieu of the criteria established under item (aa), meets criteria established by the Secretary.

(II) NON-RESPONSE RATE.—The term ''non-response rate'' means (in accordance with guidelines established by the Secretary) the percentage of approved household applications for which verification information has not been obtained by a local educational agency after attempted verification under subparagraphs (F) and (G).

(ii) VERIFICATION OF SAMPLE.—Each school year, a local educational agency shall verify eligibility of the children in a sample of household applications approved for the school year by the local educational agency, as determined by the Secretary in accordance with this subsection.

(iii) SAMPLE SIZE.—Except as otherwise provided in this paragraph, the sample for a local educational agency for a school year shall equal the lesser of—

(I) 3 percent of all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; or

(II) 3,000 error prone applications approved by the local educational agency for the school year, as of October 1 of the school year.

(iv) ALTERNATIVE SAMPLE SIZE.—

(I) IN GENERAL.—If the conditions described in subclause (IV) are met, the verification sample size for a local educational agency shall be the sample size described in subclause (II) or (III), as determined by the local educational agency.

(II) 3,000/3 PERCENT OPTION.—The sample size described in this subclause shall be the lesser of 3,000, or 3 percent of, applications selected at random from applications approved by the local educational agency for the school year, as of October 1 of the school year.

(III) 1,000/1 PERCENT PLUS OPTION.—

(aa) IN GENERAL.—The sample size described in this subclause shall be the sum of—

(AA) the lesser of 1,000, or 1 percent of, all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; and

(BB) the lesser of 500, or ½ of 1 percent of, applications approved by the local educational agency for the school year, as of October 1 of the school year, that provide a case number (in lieu of income information) showing participation in a program described in item (bb) selected from those approved applications that provide a case number (in lieu of income information) verifying the participation.

(bb) PROGRAMS.—The programs described in this item are—

(AA) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(BB) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

(CC) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995.

(IV) CONDITIONS.—The conditions referred to in subclause (I) shall be met for a local educational agency for a school year if—

(aa) the nonresponse rate for the local educational agency for the preceding school year is less than 20 percent; or

(bb) the local educational agency has more than 20,000 children approved by application by the local educational agency as eligible for free or reduced price meals for the school year, as of October 1 of the school year, and—

(AA) the nonresponse rate for the preceding school year is at least 10 percent below the nonresponse rate for the second preceding school year; or

(BB) in the case of the school year beginning July 2005, the local educational agency attempts to verify all approved household applications selected for verification through use of public agency records from at least 2 of the programs or sources of information described in subparagraph (F)(i).

(v) ADDITIONAL SELECTED APPLICATIONS.—A sample for a local educational agency for a school year under clauses (iii) and (iv)(III)(AA) shall include the number of additional randomly selected approved household applications that are required to comply with the sample size requirements in those clauses.

(E) PRELIMINARY REVIEW.—

(i) REVIEW FOR ACCURACY.—

(I) IN GENERAL.—Prior to conducting any other verification activity for approved

household applications selected for verification, the local educational agency shall ensure that the initial eligibility determination for each approved household application is reviewed for accuracy by an individual other than the individual making the initial eligibility determination, unless otherwise determined by the Secretary.

(II) WAIVER.—The requirements of subclause (I) shall be waived for a local educational agency if the local educational agency is using a technology-based solution that demonstrates a high level of accuracy, to the satisfaction of the Secretary, in processing an initial eligibility determination in accordance with the income eligibility guidelines of the school lunch program.

(ii) CORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is correct, the local educational agency shall verify the approved household application.

(iii) INCORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is incorrect, the local educational agency shall (as determined by the Secretary)—

(I) correct the eligibility status of the household;

(II) notify the household of the change;

(III) in any case in which the review indicates that the household is not eligible for free or reduced-price meals, notify the household of the reason for the ineligibility and that the household may reapply with income documentation for free or reduced-price meals; and

(IV) in any case in which the review indicates that the household is eligible for free or reduced-price meals, verify the approved household application.

(F) DIRECT VERIFICATION.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), to verify eligibility for free or reduced price meals for approved household applications selected for verification, the local educational agency may (in accordance with criteria established by the Secretary) first obtain and use income and program participation information from a public agency administering—

(I) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(II) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b));

(III) the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(IV) the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); or

(V) a similar income-tested program or other source of information, as determined by the Secretary.

(ii) FREE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for free meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for free meals) that is relied on to administer—

(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

(aa) a State in which the income eligibility limit applied under section 1902(*l*)(2)(C) of that Act (42 U.S.C. 1396a(*l*)(2)(C)) is not more than 133 percent of the official poverty line described in section 1902(*l*)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)); or

(bb) a State that otherwise identifies households that have income that is not more than 133 percent of the official poverty line described in section 1902(*l*)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)).

(iii) REDUCED PRICE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for reduced price meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for reduced price meals) that is relied on to administer—

(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

(aa) a State in which the income eligibility limit applied under section 1902(*l*)(2)(C) of that Act (42 U.S.C. 1396a(*l*)(2)(C)) is not more than 185 percent of the official poverty line described in section 1902(*l*)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)); or

(bb) a State that otherwise identifies households that have income that is not more than 185 percent of the official poverty line described in section 1902(*l*)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)).

(iv) EVALUATION.—Not later than 3 years after June 30, 2004, the Secretary shall complete an evaluation of—

(I) the effectiveness of direct verification carried out under this subparagraph in decreasing the portion of the verification sample that must be verified under subparagraph (G) while ensuring that adequate verification information is obtained; and

(II) the feasibility of direct verification by State agencies and local educational agencies.

(v) EXPANDED USE OF DIRECT VERIFICATION.—If the Secretary determines that di-

rect verification significantly decreases the portion of the verification sample that must be verified under subparagraph (G), while ensuring that adequate verification information is obtained, and can be conducted by most State agencies and local educational agencies, the Secretary may require a State agency or local educational agency to implement direct verification through 1 or more of the programs described in clause (i), as determined by the Secretary, unless the State agency or local educational agency demonstrates (under criteria established by the Secretary) that the State agency or local educational agency lacks the capacity to conduct, or is unable to implement, direct verification.

(G) HOUSEHOLD VERIFICATION.—

(i) IN GENERAL.—If an approved household application is not verified through the use of public agency records, a local educational agency shall provide to the household written notice that—

(I) the approved household application has been selected for verification; and

(II) the household is required to submit verification information to confirm eligibility for free or reduced price meals.

(ii) PHONE NUMBER.—The written notice in clause (i) shall include a toll-free phone number that parents and legal guardians in households selected for verification can call for assistance with the verification process.

(iii) FOLLOWUP ACTIVITIES.—If a household does not respond to a verification request, a local educational agency shall make at least 1 attempt to obtain the necessary verification from the household in accordance with guidelines and regulations promulgated by the Secretary.

(iv) CONTRACT AUTHORITY FOR SCHOOL FOOD AUTHORITIES.—A local educational agency may contract (under standards established by the Secretary) with a third party to assist the local educational agency in carrying out clause (iii).

(H) VERIFICATION DEADLINE.—

(i) GENERAL DEADLINE.—

(I) IN GENERAL.—Subject to subclause (II), not later than November 15 of each school year, a local educational agency shall complete the verification activities required for the school year (including followup activities).

(II) EXTENSION.—Under criteria established by the Secretary, a State may extend the deadline established under subclause (I) for a school year for a local educational agency to December 15 of the school year.

(ii) ELIGIBILITY CHANGES.—Based on the verification activities, the local educational agency shall make appropriate modifications to the eligibility determinations made for household applications in accordance with criteria established by the Secretary.

(I) LOCAL CONDITIONS.—In the case of a natural disaster, civil disorder, strike, or other local condition (as determined by the Secretary), the Secretary may substitute alternatives for—

(i) the sample size and sample selection criteria established under subparagraph (D); and

(ii) the verification deadline established under subparagraph (H).

(J) INDIVIDUAL REVIEW.—In accordance with criteria established by the Secretary, the local educational agency may, on individual review—

(i) decline to verify no more than 5 percent of approved household applications selected under subparagraph (D); and

(ii) replace the approved household applications with other approved household applications to be verified.

(K) FEASIBILITY STUDY.—

(i) IN GENERAL.—The Secretary shall conduct a study of the feasibility of using computer technology (including data mining) to reduce—

(I) overcertification errors in the school lunch program under this chapter;

(II) waste, fraud, and abuse in connection with this paragraph; and

(III) errors, waste, fraud, and abuse in other nutrition programs, as determined to be appropriate by the Secretary.

(ii) REPORT.—Not later than 180 days after June 30, 2004, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(I) the results of the feasibility study conducted under this subsection;

(II) how a computer system using technology described in clause (i) could be implemented;

(III) a plan for implementation; and

(IV) proposed legislation, if necessary, to implement the system.

(4) DIRECT CERTIFICATION FOR CHILDREN IN FOOD STAMP HOUSEHOLDS.—

(A) IN GENERAL.—Subject to subparagraph (D), each State agency shall enter into an agreement with the State agency conducting eligibility determinations for the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(B) PROCEDURES.—Subject to paragraph (6), the agreement shall establish procedures under which a child who is a member of a household receiving assistance under the food stamp program shall be certified as eligible for free lunches under this chapter and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

(C) CERTIFICATION.—Subject to paragraph (6), under the agreement, the local educational agency conducting eligibility determinations for a school lunch program under this chapter and a school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall certify a child who is a member of a household receiving assistance under the

food stamp program as eligible for free lunches under this chapter and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

(D) APPLICABILITY.—This paragraph applies to—

(i) in the case of the school year beginning July 2006, a school district that had an enrollment of 25,000 students or more in the preceding school year;

(ii) in the case of the school year beginning July 2007, a school district that had an enrollment of 10,000 students or more in the preceding school year; and

(iii) in the case of the school year beginning July 2008 and each subsequent school year, each local educational agency.

(5) DISCRETIONARY CERTIFICATION.—

(A) IN GENERAL.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as—

(i) a member of a family that is receiving assistance under the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(ii) a homeless child or youth (defined as 1 of the individuals described in section 11434a(2) of this title;[1]

(iii) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); or

(iv) a migratory child (as defined in section 6399 of title 20).

(B) CHILDREN OF HOUSEHOLDS RECEIVING FOOD STAMPS.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as a member of a household that is receiving food stamps under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(6) USE OR DISCLOSURE OF INFORMATION.—

(A) IN GENERAL.—The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in paragraph (3)(F), (4), or (5), shall be limited to—

(i) a person directly connected with the administration or enforcement of this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (including a regulation promulgated under either this chapter or that Act);

(ii) a person directly connected with the administration or enforcement of—

(I) a Federal education program;

(II) a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq.; 42 U.S.C. 1397aa et seq.)); or

(III) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the school lunch program under this chapter;

(iii)(I) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

(II) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by this paragraph or paragraph (3)(F), (4), or (5);

(iv) a person directly connected with the administration of the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.) solely for the purposes of—

(I) identifying children eligible for benefits under, and enrolling children in, those programs, except that this subclause shall apply only to the extent that the State and the local educational agency or school food authority so elect; and

(II) verifying the eligibility of children for programs under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(v) a third party contractor described in paragraph (3)(G)(iv).

(B) LIMITATION ON INFORMATION PROVIDED.—Information provided under clause (ii) or (v) of subparagraph (A) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits is made or for whom eligibility information is provided under paragraph (3)(F), (4), or (5), unless the consent of the parent or guardian of the child for whom application for benefits was made is obtained.

(C) CRIMINAL PENALTY.—A person described in subparagraph (A) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

(D) REQUIREMENTS FOR WAIVER OF CONFIDENTIALITY.—A State that elects to exercise the option described in subparagraph (A)(iv)(I) shall ensure that any local educational agency or school food authority acting in accordance with that option—

(i) has a written agreement with 1 or more State or local agencies administering health programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq. and 1397aa et seq.) that requires the health agencies to use the information obtained under subparagraph (A) to seek to

[1] So in original. Probably should be preceded by a closing parenthesis.

enroll children in those health programs; and

(ii)(I) notifies each household, the information of which shall be disclosed under subparagraph (A), that the information disclosed will be used only to enroll children in health programs referred to in subparagraph (A)(iv); and

(II) provides each parent or guardian of a child in the household with an opportunity to elect not to have the information disclosed.

(E) USE OF DISCLOSED INFORMATION.—A person to which information is disclosed under subparagraph (A)(iv)(I) shall use or disclose the information only as necessary for the purpose of enrolling children in health programs referred to in subparagraph (A)(iv).

(7) FREE AND REDUCED PRICE POLICY STATEMENT.—

(A) IN GENERAL.—After the initial submission, a local educational agency shall not be required to submit a free and reduced price policy statement to a State educational agency under this chapter unless there is a substantive change in the free and reduced price policy of the local educational agency.

(B) ROUTINE CHANGE.—A routine change in the policy of a local educational agency (such as an annual adjustment of the income eligibility guidelines for free and reduced price meals) shall not be sufficient cause for requiring the local educational agency to submit a policy statement.

(8) COMMUNICATIONS.—

(A) IN GENERAL.—Any communication with a household under this subsection or subsection (d) of this section shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

(B) ELECTRONIC AVAILABILITY.—In addition to the distribution of applications and descriptive material in paper form as provided for in this paragraph, the applications and material may be made available electronically via the Internet.

(9) ELIGIBILITY FOR FREE AND REDUCED PRICE LUNCHES.—

(A) FREE LUNCHES.—Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate which does not exceed the applicable family size income level of the income eligibility guidelines for free lunches, as determined under paragraph (1), shall be served a free lunch.

(B) REDUCED PRICE LUNCHES.—

(i) IN GENERAL.—Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate greater than the applicable family size income level of the income eligibility guidelines for free lunches, as determined under paragraph (1), but less than or equal to the applicable family size income level of the income eligibility guidelines for reduced price lunches, as determined under paragraph (1), shall be served a reduced price lunch.

(ii) MAXIMUM PRICE.—The price charged for a reduced price lunch shall not exceed 40 cents.

(C) DURATION.—Except as otherwise specified in paragraph (3)(E), (3)(H)(ii), and section 1759a(a) of this title, eligibility for free or reduced price meals for any school year shall remain in effect—

(i) beginning on the date of eligibility approval for the current school year; and

(ii) ending on a date during the subsequent school year determined by the Secretary.

(10) No physical segregation of or other discrimination against any child eligible for a free lunch or a reduced price lunch under this subsection shall be made by the school nor shall there by[2] any overt identification of any child by special tokens or tickets, announced or published lists of names, or by other means.

(11) Any child who has a parent or guardian who (A) is responsible for the principal support of such child and (B) is unemployed shall be served a free or reduced price lunch, respectively, during any period (i) in which such child's parent or guardian continues to be unemployed and (ii) the income of the child's parents or guardians during such period of unemployment falls within the income eligibility criteria for free lunches or reduced price lunches, respectively, based on the current rate of income of such parents or guardians. Local educational agencies shall publicly announce that such children are eligible for a free or reduced price lunch, and shall make determinations with respect to the status of any parent or guardian of any child under clauses (A) and (B) of the preceding sentence on the basis of a statement executed in such form as the Secretary may prescribe by such parent or guardian. No physical segregation of, or other discrimination against, any child eligible for a free or reduced price lunch under this paragraph shall be made by the school nor shall there be any overt identification of any such child by special tokens or tickets, announced or published lists of names, or by any other means.

(12)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is—

(i) a member of a household receiving assistance under the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(ii) a member of a family (under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(iii) enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child is a member of a fam-

[2] So in original. Probably should be "be".

ily that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A));

(iv) a homeless child or youth (defined as 1 of the individuals described in section 11434a(2) of this title;[3]

(v) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); or

(vi) a migratory child (as defined in section 6399 of title 20).

(B) Proof of receipt of food stamps or assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995, or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(iii), shall be sufficient to satisfy any verification requirement imposed under this subsection.

(13) EXCLUSION OF CERTAIN MILITARY HOUSING ALLOWANCES.—The amount of a basic allowance provided under section 403 of title 37 on behalf of a member of a uniformed service for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10, or any related provision of law, shall not be considered to be income for the purpose of determining the eligibility of a child who is a member of the household of the member of a uniformed service for free or reduced price lunches under this chapter.

(c) Operation on nonprofit basis; donation of agricultural commodities

School lunch programs under this chapter shall be operated on a nonprofit basis. Commodities purchased under the authority of section 612c of title 7, may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in the school lunch program under this chapter as well as to other schools carrying out nonprofit school lunch programs and institutions authorized to receive such commodities. The requirements of this section relating to the service of meals without cost or at a reduced cost shall apply to the lunch program of any school utilizing commodities donated under any provision of law.

(d) Social Security numbers and other documentation required as condition of eligibility

(1) The Secretary shall require as a condition of eligibility for receipt of free or reduced price lunches that the member of the household who executes the application furnish the social security account number of the parent or guardian who is the primary wage earner responsible for the care of the child for whom the application is made, or that of another appropriate adult member of the child's household, as determined by the Secretary. The Secretary shall require that social security account numbers of all adult members of the household be provided if verification of the data contained in the application is sought under subsection (b)(3)(G) of this section.

(2) No member of a household may be provided a free or reduced price lunch under this chapter unless—

(A) appropriate documentation relating to the income of such household (as prescribed by the Secretary) has been provided to the appropriate local educational agency so that the local educational agency may calculate the total income of such household;

(B) documentation showing that the household is participating in the food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.] has been provided to the appropriate local educational agency;

(C) documentation has been provided to the appropriate local educational agency showing that the family is receiving assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(D) documentation has been provided to the appropriate local educational agency showing that the child meets the criteria specified in clauses (iv) or (v) of subsection (b)(12)(A) of this section; or

(E) documentation has been provided to the appropriate local educational agency showing the status of the child as a migratory child (as defined in section 6399 of title 20).

(e) Limitation on meal contracting

A school or school food authority participating in a program under this chapter may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced price, and full-price reimbursable meals to all eligible children.

(f) Adherence to Dietary Guidelines

(1) NUTRITIONAL REQUIREMENTS.—Except as provided in paragraph (2), not later than the first day of the 1996–1997 school year, schools that are participating in the school lunch or school breakfast program shall serve lunches and breakfasts under the program that—

(A) are consistent with the goals of the most recent Dietary Guidelines for Americans published under section 5341 of title 7; and

(B) provide, on the average over each week, at least—

(i) with respect to school lunches, ⅓ of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; and

(ii) with respect to school breakfasts, ¼ of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences.

(2) State educational agencies may grant waivers from the requirements of paragraph (1) subject to criteria established by the appro-

[3] So in original. Probably should be preceded by a closing parenthesis.

priate State educational agency. The waivers shall not permit schools to implement the requirements later than July 1, 1998, or a later date determined by the Secretary.

(3) To assist schools in meeting the requirements of this subsection, the Secretary—

(A) shall—

(i) develop, and provide to schools, standardized recipes, menu cycles, and food product specification and preparation techniques; and

(ii) provide to schools information regarding nutrient standard menu planning, assisted nutrient standard menu planning, and food-based menu systems; and

(B) may provide to schools information regarding other approaches, as determined by the Secretary.

(4) USE OF ANY REASONABLE APPROACH.—

(A) IN GENERAL.—A school food service authority may use any reasonable approach, within guidelines established by the Secretary in a timely manner, to meet the requirements of this subsection, including—

(i) using the school nutrition meal pattern in effect for the 1994–1995 school year; and

(ii) using any of the approaches described in paragraph (3).

(B) NUTRIENT ANALYSIS.—The Secretary may not require a school to conduct or use a nutrient analysis to meet the requirements of this subsection.

(5) WAIVER OF REQUIREMENT FOR WEIGHTED AVERAGES FOR NUTRIENT ANALYSIS.—During the period ending on September 30, 2009, the Secretary shall not require the use of weighted averages for nutrient analysis of menu items and foods offered or served as part of a meal offered or served under the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(g) Justification of production records; paperwork reduction

Not later than 1 year after November 2, 1994, the Secretary shall provide a notification to Congress that justifies the need for production records required under section 210.10(b) of title 7, Code of Federal Regulations, and describes how the Secretary has reduced paperwork relating to the school lunch and school breakfast programs.

(h) Food safety

(1) In general

A school participating in the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall—

(A) at least twice during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections;

(B) post in a publicly visible location a report on the most recent inspection conducted under subparagraph (A); and

(C) on request, provide a copy of the report to a member of the public.

(2) State and local government inspections

Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.

(3) Audits and reports by States

For each of fiscal years 2006 through 2009, each State shall annually—

(A) audit food safety inspections of schools conducted under paragraphs (1) and (2); and

(B) submit to the Secretary a report of the results of the audit.

(4) Audit by the Secretary

For each of fiscal years 2006 through 2009, the Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).

(5) School food safety program

Each school food authority shall implement a school food safety program, in the preparation and service of each meal served to children, that complies with any hazard analysis and critical control point system established by the Secretary.

(i) Single permanent agreement between State agency and school food authority; common claims form

(1) In general

If a single State agency administers any combination of the school lunch program under this chapter, the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the summer food service program for children under section 1761 of this title, or the child and adult care food program under section 1766 of this title, the agency shall—

(A) require each school food authority to submit to the State agency a single agreement with respect to the operation by the authority of the programs administered by the State agency; and

(B) use a common claims form with respect to meals and supplements served under the programs administered by the State agency.

(2) Additional requirement

The agreement described in paragraph (1)(A) shall be a permanent agreement that may be amended as necessary.

(j) Purchases of locally produced foods

(1) In general

The Secretary shall—

(A) encourage institutions participating in the school lunch program under this chapter and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to purchase, in addition to other food purchases, locally produced foods for school meal programs, to the maximum extent practicable and appropriate;

(B) advise institutions participating in a program described in subparagraph (A) of the policy described in that subparagraph and post information concerning the policy on the website maintained by the Secretary; and

(C) in accordance with requirements established by the Secretary, provide startup

grants to not more than 200 institutions to defray the initial costs of equipment, materials, and storage facilities, and similar costs, incurred in carrying out the policy described in subparagraph (A).

(2) Authorization of appropriations

(A) In general

There is authorized to be appropriated to carry out this subsection $400,000 for each of fiscal years 2003 through 2009, to remain available until expended.

(B) Limitation

No amounts may be made available to carry out this subsection unless specifically provided by an appropriation Act.

(June 4, 1946, ch. 281, §9, 60 Stat. 233; Pub. L. 90–302, §2(b), May 8, 1968, 82 Stat. 117; Pub. L. 91–248, §6(a), (b), (d), (e), May 14, 1970, 84 Stat. 210; Pub. L. 92–153, §5, Nov. 5, 1971, 85 Stat. 420; Pub. L. 92–433, §5, Sept. 26, 1972, 86 Stat. 726; Pub. L. 93–150, §9, Nov. 7, 1973, 87 Stat. 564; Pub. L. 93–326, §4, June 30, 1974, 88 Stat. 286; Pub. L. 94–105, §6, Oct. 7, 1975, 89 Stat. 512; Pub. L. 95–166, §8, Nov. 10, 1977, 91 Stat. 1335; Pub. L. 95–627, §8, Nov. 10, 1978, 92 Stat. 3622; Pub. L. 97–35, title VIII, §§803(a), (b), 811, Aug. 13, 1981, 95 Stat. 524, 525, 529; Pub. L. 99–500, title III, §§322–324, Oct. 18, 1986, 100 Stat. 1783–361, and Pub. L. 99–591, title III, §§322–324, Oct. 30, 1986, 100 Stat. 3341–364; Pub. L. 99–661, div. D, title II, §§4202–4204, Nov. 14, 1986, 100 Stat. 4072; Pub. L. 100–356, §1, June 28, 1988, 102 Stat. 669; Pub. L. 101–147, title I, §101, title II, §202(a)(1), (2)(A), (b), title III, §§305, 312(1), (2), Nov. 10, 1989, 103 Stat. 878, 908, 914, 916; Pub. L. 103–448, title I, §§105(a), 106–109(a), 110, Nov. 2, 1994, 108 Stat. 4701–4705; Pub. L. 104–149, §2, May 29, 1996, 110 Stat. 1379; Pub. L. 104–193, title I, §109(g), title VII, §§702, 703, Aug. 22, 1996, 110 Stat. 2170, 2288, 2289; Pub. L. 105–336, title I, §102, Oct. 31, 1998, 112 Stat. 3144; Pub. L. 106–224, title II, §242(a), June 20, 2000, 114 Stat. 411; Pub. L. 107–171, title IV, §§4302(a), 4303, May 13, 2002, 116 Stat. 330, 331; Pub. L. 108–134, §1, Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108–211, §1, Mar. 31, 2004, 118 Stat. 566; Pub. L. 108–265, title I, §§102–104(b)(1), (d)(1), (2), 105(a), 106–108(a), 109–112, June 30, 2004, 118 Stat. 731–734, 737, 738, 745–747; Pub. L. 108–447, div. A, title VII, §788(a), Dec. 8, 2004, 118 Stat. 2851.)

AMENDMENT OF SUBSECTION (b)(5)

Pub. L. 108–265, title I, §104(d)(1), June 30, 2004, 118 Stat. 737, provided that, effective July 1, 2008, subsection (b)(5) of this section is amended as follows:

(1) by striking subparagraph (B);

(2) by striking ''CERTIFICATION.—'' *and all that follows through* ''IN GENERAL.—'' *and inserting* ''CERTIFICATION.—''*; and*

(3) by redesignating clauses (i) through (iv) as subparagraphs (A) through (D), respectively, and indenting appropriately.

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in text, is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Food Stamp Act of 1977, referred to in text, is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV, title XIX, and title XXI of the Act are classified generally to part A (§601 et seq.) of subchapter IV, subchapter XIX (§1396 et seq.), and subchapter XXI (§1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Runaway and Homeless Youth Act, referred to in subsec. (b)(5)(A)(iii), (12)(A)(v), is title III of Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1129, as amended, which is classified generally to subchapter III (§5701 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

The Head Start Act, referred to in subsec. (b)(12)(A)(iii), is subchapter B (§§635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–265, §102, added par. (2) and struck out former par. (2) which read as follows: ''Lunches served by schools participating in the school lunch program under this chapter—

''(A) shall offer students fluid milk; and

''(B) shall offer students a variety of fluid milk consistent with prior year preferences unless the prior year preference for any such variety of fluid milk is less than 1 percent of the total milk consumed at the school.''

Subsec. (a)(4). Pub. L. 108–265, §103, added par. (4).

Subsec. (b)(2)(B). Pub. L. 108–265, §104(a)(2)(A), inserted subpar. heading, designated first and second sentences as cls. (i) and (ii), respectively, and inserted headings, in cl. (ii) substituted ''Forms and descriptive material distributed in accordance with clause (i)'' for ''Such forms and descriptive material'', and added cl. (iii).

Subsec. (b)(2)(C)(i). Pub. L. 108–265, §104(a)(2)(B), redesignated par. (2)(C)(i) as par. (3).

Subsec. (b)(2)(C)(ii) to (vii), (D). Pub. L. 108–265, §104(a)(2)(C), struck out subpars. (C)(ii) to (vii) and (D), which related to direct certification of children in households receiving other assistance, disclosure of eligibility information, limitations, sanction for wrongful disclosure, waiver of confidentiality, use of disclosed information, and submission of price policy statement by school food authority.

Subsec. (b)(3). Pub. L. 108–265, §105(a), added par. (3) and struck out former par. (3) which read as follows: ''Except as provided in clause (ii), each eligibility determination shall be made on the basis of a complete application executed by an adult member of the household. The Secretary, State, or local food authority may verify any data contained in such application. A local school food authority shall undertake such verification of information contained in any such application as the Secretary may by regulation prescribe and, in accordance with such regulations, shall make appropriate changes in the eligibility determination with respect to such application on the basis of such verification.''

Pub. L. 108–265, §104(a)(2)(B), redesignated par. (2)(C)(i) as par. (3).

Pub. L. 108–265, §104(a)(1), redesignated par. (3) as (9).

Subsec. (b)(4). Pub. L. 108–265, §104(a)(2)(C), added par. (4).

Pub. L. 108–265, § 104(a)(1), redesignated par. (4) as (10).

Subsec. (b)(5). Pub. L. 108–265, § 104(b)(1), as amended by Pub. L. 108–447, added par. (5).

Pub. L. 108–265, § 104(a)(1), redesignated par. (5) as (11).

Subsec. (b)(6). Pub. L. 108–265, § 104(b)(1), added par. (6).

Pub. L. 108–265, § 104(a)(1), redesignated par. (6) as (12).

Subsec. (b)(7). Pub. L. 108–265, § 104(b)(1), added par. (7).

Pub. L. 108–265, § 104(a)(1), redesignated par. (7) as (13).

Pub. L. 108–211 substituted ''June 30, 2004'' for ''March 31, 2004''.

Subsec. (b)(8). Pub. L. 108–265, § 104(b)(1), added par. (8).

Subsec. (b)(9). Pub. L. 108–265, § 106, inserted par. heading, designated existing provisions as subpars. (A) and (B), inserted subpar. headings, in subpar. (B) designated existing provisions as cls. (i) and (ii) and inserted cl. headings, and added subpar. (C).

Pub. L. 108–265, § 104(a)(1), redesignated par. (3) as (9).

Subsec. (b)(10). Pub. L. 108–265, § 104(a)(1), redesignated par. (4) as (10).

Subsec. (b)(11). Pub. L. 108–265, § 108(a)(1), substituted ''Local educational agencies'' for ''Local school authorities'' in second sentence.

Pub. L. 108–265, § 104(a)(1), redesignated par. (5) as (11).

Subsec. (b)(12). Pub. L. 108–265, § 104(a)(1), redesignated par. (6) as (12).

Subsec. (b)(12)(A)(iv) to (vi). Pub. L. 108–265, § 107(a), added cls. (iv) to (vi).

Subsec. (b)(12)(B). Pub. L. 108–265, § 104(d)(2)(A), substituted ''this subsection'' for ''paragraph (2)(C)''.

Subsec. (b)(13). Pub. L. 108–265, § 109, substituted ''The'' for ''For each of fiscal years 2002 and 2003 and through June 30, 2004, the''.

Pub. L. 108–265, § 104(a)(1), redesignated par. (7) as (13).

Subsec. (d)(1). Pub. L. 108–265, § 104(d)(2)(B), substituted ''subsection (b)(3)(G)'' for ''subsection (b)(2)(C)'' in second sentence.

Subsec. (d)(2)(A). Pub. L. 108–265, § 108(a)(2), substituted ''appropriate local educational agency'' for ''appropriate local school food authority'' and ''the local educational agency'' for ''such authority''.

Subsec. (d)(2)(B), (C). Pub. L. 108–265, § 108(a)(2)(A), substituted ''local educational agency'' for ''local school food authority''.

Subsec. (d)(2)(D), (E). Pub. L. 108–265, § 107(b), added subpars. (D) and (E).

Subsec. (f)(5). Pub. L. 108–265, § 110, substituted ''September 30, 2009'' for ''September 30, 2003''.

Subsec. (h). Pub. L. 108–265, § 111(1), struck out ''inspections'' after ''safety'' in heading.

Subsec. (h)(1). Pub. L. 108–265, § 111(2), substituted ''A school'' for ''Except as provided in paragraph (2), a school'', inserted subpar. (A) designation, substituted ''at least twice'' for ''at least once'', and added subpars. (B) and (C).

Subsec. (h)(2) to (5). Pub. L. 108–265, § 111(3), added pars. (2) to (5) and struck out heading and text of former par. (2). Text read as follows: ''Paragraph (1) shall not apply to a school if a food safety inspection of the school is required by a State or local governmental agency responsible for food safety inspections.''

Subsec. (j)(2)(A). Pub. L. 108–265, § 112, substituted ''2009'' for ''2007''.

2003—Subsec. (b)(7). Pub. L. 108–134 inserted ''and through March 31, 2004'' after ''and 2003''.

2002—Subsec. (b)(7). Pub. L. 107–171, § 4302(a), added par. (7).

Subsec. (j). Pub. L. 107–171, § 4303, added subsec. (j).

2000—Subsec. (b)(2)(C)(iii)(IV). Pub. L. 106–224, § 242(a)(1), added subcl. (IV).

Subsec. (b)(2)(C)(vi), (vii). Pub. L. 106–224, § 242(a)(2), added cls. (vi) and (vii).

1998—Subsec. (f)(2). Pub. L. 105–336, § 102(a)(1), substituted ''paragraph (1)'' for ''subparagraph (A)''.

Subsec. (f)(3), (4). Pub. L. 105–336, § 102(a)(2), substituted ''this subsection'' for ''this paragraph'' wherever appearing.

Subsec. (f)(5). Pub. L. 105–336, § 102(b), added par. (5).

Subsec. (h). Pub. L. 105–336, § 102(c), added subsec. (h).

Subsec. (i). Pub. L. 105–336, § 102(d), added subsec. (i).

1996—Subsec. (a)(2). Pub. L. 104–193, § 702(a)(1), redesignated par. (2)(A) as (2) and cls. (i) and (ii) of former subpar. (A) as subpars. (A) and (B), respectively, and struck out former subpar. (B) which read as follows:

''(B)(i) The Secretary shall purchase in each calendar year to carry out the school lunch program under this chapter, and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), lowfat cheese on a bid basis in a quantity that is the milkfat equivalent of the quantity of milkfat the Secretary estimates the Commodity Credit Corporation will purchase each calendar year as a result of the elimination of the requirement that schools offer students fluid whole milk and fluid unflavored lowfat milk, based on data provided by the Director of Office of Management and Budget.

''(ii) Not later than 30 days after the Secretary provides an estimate required under clause (i), the Director of the Congressional Budget Office shall provide to the appropriate committees of Congress a report on whether the Director concurs with the estimate of the Secretary.

''(iii) The quantity of lowfat cheese that is purchased under this subparagraph shall be in addition to the quantity of cheese that is historically purchased by the Secretary to carry out school feeding programs. The Secretary shall take such actions as are necessary to ensure that purchases under this subparagraph shall not displace commercial purchases of cheese by schools.''

Subsec. (a)(3), (4). Pub. L. 104–193, § 702(a)(2), (3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The Secretary shall establish, in cooperation with State educational agencies, administrative procedures, which shall include local educational agency and student participation, designed to diminish waste of foods which are served by schools participating in the school lunch program under this chapter without endangering the nutritional integrity of the lunches served by such schools.''

Subsec. (b)(2)(C)(ii)(II). Pub. L. 104–193, § 109(g)(1)(A), substituted ''State program funded'' for ''program for aid to families with dependent children'' and inserted before period at end ''that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995''.

Subsec. (b)(2)(D). Pub. L. 104–193, § 703, added subpar. (D).

Subsec. (b)(6)(A)(ii). Pub. L. 104–193, § 109(g)(1)(B)(i), substituted ''a family (under the State program funded'' for ''an AFDC assistance unit (under the aid to families with dependent children program authorized'' and ''that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995'' for '', in a State where the standard of eligibility for the assistance does not exceed 130 percent of the poverty line (as defined in section 9902(2) of this title)''.

Subsec. (b)(6)(B). Pub. L. 104–193, § 109(g)(1)(B)(ii), substituted ''assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995'' for ''aid to families with dependent children''.

Subsec. (c). Pub. L. 104–193, § 702(b)(2), struck out ''Each school shall, insofar as practicable, utilize in its lunch program commodities designated from time to time by the Secretary as being in abundance, either nationally or in the school area or commodities donated by the Secretary.'' after ''operated on a nonprofit basis.'', ''The Secretary is authorized to prescribe

terms and conditions respecting the use of commodities donated under such section 612c of title 7, under section 1431 of title 7 and under section 1446a–1 of title 7, as will maximize the nutritional and financial contributions of such donated commodities in such schools and institutions.'' after ''authorized to receive such commodities.'', and ''None of the requirements of this section in respect to the amount for 'reduced cost' meals and to eligibility for meals without cost shall apply to schools (as defined in section 1760(d)(6) of this title which are private and nonprofit as defined in the last sentence of section 1760(d)(6) of this title) which participate in the school lunch program under this chapter until such time as the State educational agency, or in the case of such schools which participate under the provisions of section 1759 of this title the Secretary certifies that sufficient funds from sources other than children's payments are available to enable such schools to meet these requirements.'' at end.

Pub. L. 104–193, §702(b)(1), substituted ''provision of law'' for ''of the provisions of law referred to in the preceding sentence'' in fifth sentence.

Subsec. (d)(2)(C). Pub. L. 104–193, §109(g)(2), substituted ''State program funded'' for ''program for aid to families with dependent children'' and inserted before period at end ''that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995''.

Subsec. (f). Pub. L. 104–193, §702(c)(1)–(3), struck out ''(2)'' designation before ''(A) Except as provided'', redesignated subpars. (A) to (D) as pars. (1) to (4), respectively, and struck out former par. (1) which read as follows: ''Not later than the first day of the 1996–97 school year, the Secretary, State educational agencies, schools, and school food service authorities shall, to the maximum extent practicable, inform students who participate in the school lunch and school breakfast programs, and parents and guardians of the students, of—

''(A) the nutritional content of the lunches and breakfasts that are served under the programs; and

''(B) the consistency of the lunches and breakfasts with the guidelines contained in the most recent 'Dietary Guidelines for Americans' that is published under section 5341 of title 7 (referred to in this subsection as the 'Guidelines'), including the consistency of the lunches and breakfasts with the guideline for fat content.''

Subsec. (f)(1). Pub. L. 104–193, §702(c)(4), added par. (1) and struck out former par. (1), as redesignated by Pub. L. 104–193, §702(c)(3), which read as follows: ''Except as provided in subparagraph (B), not later than the first day of the 1996–97 school year, schools that are participating in the school lunch or school breakfast program shall serve lunches and breakfasts under the programs that are consistent with the Guidelines (as measured in accordance with subsection (a)(1)(A)(ii) of this section and section 4(e)(1)).''

Subsec. (f)(2)(D). Pub. L. 104–149 added subpar. (D) and struck out former subpar. (D) which read as follows: ''Schools may use any of the approaches described in subparagraph (C) to meet the requirements of this paragraph. In the case of schools that elect to use food-based menu systems to meet the requirements of this paragraph, the Secretary may not require the schools to conduct or use nutrient analysis.''

Subsec. (f)(3). Pub. L. 104–193, §702(c)(5), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and subcls. (I) and (II) of subpar. (A) as cls. (i) and (ii), respectively.

Subsec. (f)(4). Pub. L. 104–193, §702(c)(6), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, in subpar. (A), redesignated subcls. (I) and (II) as cls. (i) and (ii), respectively, and in subpar. (A)(ii), substituted ''paragraph (3)'' for ''subparagraph (C)''.

Subsec. (h). Pub. L. 104–193, §702(d), struck out subsec. (h) which read as follows: ''In carrying out this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), a State educational agency may use resources provided through the nutrition education and training program authorized under section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) for training aimed at improving the quality and acceptance of school meals.''

1994—Subsec. (a)(1). Pub. L. 103–448, §§105(a), 106(a), designated existing provisions as subpar. (A) and cl. (i) of subpar. (A) and added cl. (ii) of subpar. (A) and subpar. (B).

Subsec. (a)(2). Pub. L. 103–448, §107, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Lunches served by schools participating in the school lunch program under this chapter shall offer students fluid whole milk and fluid unflavored lowfat milk.''

Subsec. (b)(2)(C)(iii) to (v). Pub. L. 103–448, §108, added cls. (iii) to (v) and struck out former cl. (iii), which read as follows: ''School food service authorities shall only use information obtained under clause (ii) for the purpose of determining eligibility for participation in programs under this chapter and the Child Nutrition Act of 1966.''

Subsec. (b)(6)(A). Pub. L. 103–448, §109(a)(1), struck out ''a member of'' after ''if the child is'' in introductory provisions, inserted ''a member of'' after ''(i)'' and ''(ii)'', and added cl. (iii).

Subsec. (b)(6)(B). Pub. L. 103–448, §109(a)(2), inserted '', or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(iii),'' after ''aid to families with dependent children''.

Subsecs. (f) to (h). Pub. L. 103–448, §§106(b), (c), 110, added subsecs. (f) to (h).

1989—Subsec. (a). Pub. L. 101–147, §101(a), amended subsec. (a), as amended identically by Pub. L. 99–500 and 99–591, §322, and Pub. L. 99–661, §4202, to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (a)(1). Pub. L. 101–147, §312(1), substituted ''school lunch'' for ''school-lunch''.

Subsec. (a)(2). Pub. L. 101–147, §101(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In addition to such other forms of milk as the Secretary may determine, the lunches shall offer whole milk as a beverage.''

Subsec. (b). Pub. L. 101–147, §§305(b)(1), 312(2), substituted ''reduced price'' for ''reduced-price'' and ''family size'' for ''family-size'' wherever appearing.

Pub. L. 101–147, §202(a)(1), (2)(A), amended subsec. (b), as amended identically by Pub. L. 99–500 and Pub. L. 99–591, §323, and Pub. L. 99–661, §4203, and as amended by Pub. L. 100–356, §1, to read as if only the amendment by Pub. L. 99–661 was enacted, and further amended subsec. (b) identically to the amendments that were made by Pub. L. 100–356, §1, resulting in no change in text, see 1986 and 1988 Amendment notes below.

Subsec. (b)(2)(C). Pub. L. 101–147, §202(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Eligibility determinations shall be made on the basis of a complete application executed by an adult member of the household. The Secretary, States, and local school food authorities may seek verification of the data contained in the application. Local school food authorities shall undertake such verification of the information contained in these applications as the Secretary may by regulation prescribe and, in accordance with such regulations, make appropriate changes in the eligibility determinations on the basis of such verification.''

Subsec. (c). Pub. L. 101–147, §§305(b)(2), 312(1), substituted ''School lunch'' for ''School-lunch'', substituted ''school lunch'' for ''school-lunch'' wherever appearing, and made technical amendments to the references to sections 612c, 1431, and 1446a–1 of title 7 involving underlying provisions of original act and requiring no change in text.

Subsec. (d)(1). Pub. L. 101–147, §§202(b)(2)(A), 312(2), substituted ''reduced price'' for ''reduced-price'' and ''number of the parent or guardian who is the primary wage earner responsible for the care of the child for

whom the application is made, or that of another appropriate adult member of the child's household, as determined by the Secretary. The Secretary shall require that social security account numbers of all adult members of the household be provided if verification of the data contained in the application is sought under subsection (b)(2)(C) of this section.'' for ''numbers of all adult members of the household of which such person is a member.''

Subsec. (d)(2). Pub. L. 101–147, § 312(2), substituted ''reduced price'' for ''reduced-price''.

Subsec. (d)(2)(A). Pub. L. 101–147, § 202(b)(2)(B)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''appropriate documentation, as prescribed by the Secretary, of the income of such household has been provided to the appropriate local school food authority; or''.

Subsec. (d)(2)(C). Pub. L. 101–147, § 202(b)(2)(B)(ii), (iii), added subpar. (C).

Subsec. (e). Pub. L. 101–147, § 312(2), substituted ''reduced price'' for ''reduced-price''.

Pub. L. 101–147, § 305(a), amended subsec. (e), as amended identically by Pub. L. 99–500 and Pub. L. 99–591, § 324, and Pub. L. 99–661, § 4204, to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

1988—Subsec. (b)(1)(A). Pub. L. 100–356 substituted ''The'' for ''For the school years ending June 30, 1982, and June 30, 1983, the'' in second sentence and struck out provisions which equated income guidelines for determining eligibility for free lunches with gross income eligibility standards for participation in food stamp program.

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, § 322, and Pub. L. 99–661, § 4202, amended subsec. (a) identically, designating existing provisions as pars. (1), (3), and (4) and adding par. (2).

Subsec. (b)(6). Pub. L. 99–500 and Pub. L. 99–591, § 323, and Pub. L. 99–661, § 4203, amended subsec. (b) identically, adding par. (6).

Subsec. (e). Pub. L. 99–500 and Pub. L. 99–591, § 324, and Pub. L. 99–661, § 4204, amended section identically, adding subsec. (e).

1981—Subsec. (a). Pub. L. 97–35, § 811, struck out ''in any junior high school or middle school'' after ''grade level''.

Subsec. (b). Pub. L. 97–35, § 803(a), in par. (1) substituted provisions relating to income eligibility guidelines, for provisions relating to income poverty guidelines, redesignated former par. (2) as (5) and, as so redesignated, struck out ''solely'' after ''sentence'', and added pars. (2) to (4).

Subsec. (d). Pub. L. 97–35, § 803(b), added subsec. (d).

1978—Subsec. (b)(1). Pub. L. 95–627 substituted guidelines prescribed by the Office of Management and Budget for the Consumer Price Index for purposes of determining the income poverty guidelines.

1977—Subsec. (a). Pub. L. 95–166 inserted parenthetical text authorizing students in any grade level in any junior high school or middle school, when approved by local school district or nonprofit private school, to refuse to accept offered foods they do not intend to consume.

1975—Subsec. (a). Pub. L. 94–105, § 6(a), directed Secretary to establish administrative procedures designed to diminish food waste in school lunch programs and made provision for senior high school students to refuse food which they do not intend to consume without affecting lunch charges or payments to schools for lunches served.

Subsec. (b)(1). Pub. L. 94–105, § 6(b), designated existing provisions as subsec. (b)(1), struck out ''if a school elects to serve reduced-price lunches'' after ''reduced price not to exceed 20 cents'', inserted provision for a reduced price lunch for any child eligible under reduced price lunch income guidelines, established income guidelines for reduced price lunches, beginning with fiscal year ending June 30, 1976, at 95 per centum above applicable family size income levels in income poverty guidelines, and provided for a reduced price lunch not to exceed 20 cents to any child belonging to a household whose income falls between guidelines for a free lunch and 95 per centum above income levels in the income poverty guidelines.

Pub. L. 94–105, § 6(c), substituted provision adjusting income poverty guidelines that take effect July 1 of each year according to percentage change in Consumer Price Index for 12-month period ending in April of that year, except that the first adjustment, effective July 1, 1976, shall be made according to percentage change between average Consumer Price Index for 1974, on which the 1975–1976 guidelines are based, and Consumer Price Index for April 1976 for provision basing the guidelines on average Consumer Price Index for previous calendar year.

Subsec. (b)(2). Pub. L. 94–105, § 6(d), added par. (2).

Subsec. (c). Pub. L. 94–105, § 6(e), substituted ''schools (as defined in section 1760(d)(6) of this title which are private and nonprofit as defined in the last sentence of section 1760(d)(6) of this title)'' for ''nonprofit private schools''.

1974—Subsec. (b). Pub. L. 93–326 substituted ''beginning with the fiscal year ending June 30, 1974'' for ''for the fiscal year ending June 30, 1974'' in provision authorizing State educational agencies to establish income guidelines for reduced price lunches at not more than 75 per centum above applicable family size income levels in income poverty guidelines as prescribed by Secretary.

1973—Subsec. (b). Pub. L. 93–150 inserted proviso relating to income guidelines for reduced price lunches.

1972—Subsec. (a). Pub. L. 92–433, § 5(a), designated first sentence as subsec. (a).

Subsec. (b). Pub. L. 92–433, § 5(b), designated second through seventh sentences of existing provisions as subsec. (b), separated provisions relating to free and reduced price lunches, substituted May 15 of each year for July 1 of each year as the date by which the Secretary is required to prescribe an income poverty guideline, prescribed free lunch for children of households below the guideline instead of prior provision requiring free lunch or lunch at reduced price, authorized State educational agencies to set up family-size income levels for free and reduced price lunches to be within certain percentage limitations of the guideline prescribed by the Secretary, and provided for continuation until July 1, 1973 of higher guidelines established prior to July 1, 1972.

Subsec. (c). Pub. L. 92–433, § 5(c), designated eighth through thirteenth sentences as subsec. (c) and in last sentence inserted provision that requirements of this section are not applicable to nonprofit private schools which participate in the school lunch program under this chapter until the State educational agency certifies about the funds.

1971—Pub. L. 92–153 inserted provisions for consideration of income poverty guidelines during fiscal year 1972 as a national minimum standard of eligibility and for reimbursement of State agencies during such fiscal year pursuant to eligibility standards established by State agencies prior to Oct. 1, 1971.

1970—Pub. L. 91–248 placed a ceiling of 20 cents on any reduced price meal offered under the school lunch program, provided for determination of ability to pay the full cost of lunch based on a publicly announced policy the minimum criteria of which includes family income and the number of school children in the family unit as well as the size of the family unit in general, but, under which, by Jan. 1, 1971, such determination shall be based on the income poverty guidelines with first priority given to providing free meals to the neediest children, provided that there be no overt identification of those children who receive free and reduced price meals, authorized the Secretary to prescribe such terms and conditions for food service in the non-national School Lunch Act schools as well as schools under this Act which are receiving Federal assistance in the form of commodities, and excepted from requirements of this section with respect to amount for reduced cost meals and eligibility for meals without cost

nonprofit private schools which participate in the school lunch program under the provisions of section 1759 of this title until the Secretary certifies that sufficient funds are available to enable such schools to meet the requirements of this section.

1968—Pub. L. 90–302 provided that minimum nutritional requirements prescribed by the Secretary on basis of tested nutritional research which lunches served by participating schools must meet could not be construed to prohibit substitution of foods to accommodate medical or other special dietary needs of individual students.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by sections 102, 104(a)(2), (b)(1), (d)(1), (2), 105(a), and 111 of Pub. L. 108–265 effective July 1, 2005, see section 502(b)(4) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

Amendment by sections 103, 104(a)(1), 108(a), 109, 110, and 112 of Pub. L. 108–265 effective June 30, 2004, except as otherwise provided, see section 502(a) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

Pub. L. 108–265, title I, § 104(d)(1), June 30, 2004, 118 Stat. 737, provided that the amendment made by section 104(d)(1) is effective July 1, 2008.

Amendment by sections 106 and 107 of Pub. L. 108–265 effective July 1, 2004, see section 502(b)(1) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–171, title IV, § 4302(b), May 13, 2002, 116 Stat. 331, provided that: ''The amendment made by this section [amending this section] takes effect on the date of enactment of this Act [May 13, 2002].''

Amendment by section 4303 of Pub. L. 107–171 effective Oct. 1, 2002, except as otherwise provided, see section 4405 of Pub. L. 107–171, set out as an Effective Date note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–224, title II, § 242(c), June 20, 2000, 114 Stat. 413, provided that: ''The amendments made by this section [amending this section and sections 1760 and 1786 of this title] take effect on October 1, 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 109(g) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 105(a) and 106 to 108 of Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

Section 109(c) of Pub. L. 103–448 provided that: ''The amendments made by this section [amending this section and section 1766 of this title] shall become effective on September 25, 1995.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 202(a)(2)(B) of Pub. L. 101–147 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if such amendments had been effective on June 28, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Sections 322 to 324 of Pub. L. 99–500 and Pub. L. 99–591 and sections 4202 to 4204 of Pub. L. 99–661 provided that the amendments made by those sections are effective July 1, 1986.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 803(a), (b) and 811 of Pub. L. 97–35 effective Aug. 13, 1981, and Sept. 1, 1981, respectively, see section 820(a)(1)(E), (7)(A) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective July 1, 1979, except as specifically provided, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 6(c) of Pub. L. 94–105 provided that the amendment made by that section is effective Jan. 1, 1976.

REGULATIONS

Pub. L. 108–265, title V, § 501, June 30, 2004, 118 Stat. 789, provided that:

''(a) GUIDANCE.—As soon as practicable after the date of enactment of this Act [June 30, 2004], the Secretary of Agriculture shall issue guidance to implement the amendments made by sections 102, 103, 104, 105, 106, 107, 111, 116, 119(c), 119(g), 120, 126(b), 126(c), 201, 203(a)(3), 203(b), 203(c)(5), 203(e)(3), 203(e)(4), 203(e)(5), 203(e)(6), 203(e)(7), 203(e)(10), and 203(h)(1) [amending this section, sections 1396a, 1759a, 1761, 1766, 1769, 1769c, 1773, 1776, and 1786 of this title, and section 2020 of Title 7, Agriculture].

''(b) INTERIM FINAL REGULATIONS.—The Secretary may promulgate interim final regulations to implement the amendments described in subsection (a).

''(c) REGULATIONS.—Not later than 2 years after the date of enactment of this Act [June 30, 2004], the Secretary shall promulgate final regulations to implement the amendments described in subsection (a).''

Section 202(c) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement the amendments made by subsection (b) [amending this section].''

INCOME ELIGIBILITY GUIDELINES

Pub. L. 96–499, title II, § 203(a)–(c), Dec. 5, 1980, 94 Stat. 2600, as amended by Pub. L. 97–35, title VIII, § 820(b)(3), Aug. 13, 1981, 95 Stat. 535, provided that:

''(a), (b) [Repealed].

''(c) For the school year ending June 30, 1981, the Secretary may prescribe procedures for implementing the revisions in the income poverty guidelines for free and reduced price lunches contained in this section that may allow school food authorities to (1) use applications distributed at the beginning of the school year when making eligibility determinations based on the revised income poverty guidelines or (2) distribute new applications containing the revised income poverty guidelines and make eligibility determinations using the new applications.''

VERIFICATION OF ELIGIBILITY DATA SUBMITTED ON A SAMPLE OF APPLICATIONS FOR FREE AND REDUCED-PRICE MEALS

Section 803(c) of Pub. L. 97–35 provided that: ''Notwithstanding any other provision of law, the Secretary of Agriculture shall conduct a pilot study to verify the data submitted on a sample of applications for free and reduced-price meals. In conducting the pilot study, the Secretary may require households included in the study to furnish social security numbers of all household members and such other information as the Sec-

retary may require, including, but not limited to, pay stubs, documentation of the current status of household members who are recipients of public assistance, unemployment insurance documents, and written statements from employers, as a condition for receipt of free or reduced-price meals.''

PROCEDURES FOR IMPLEMENTING NEW INCOME ELIGIBILITY GUIDELINES FOR FREE AND REDUCED-PRICE LUNCHES

Section 803(d) of Pub. L. 97–35 provided that for school year ending June 30, 1982, Secretary could prescribe procedures for implementing the revisions made by section 803 of Pub. L. 97–35, amending this section, to the income eligibility guidelines for free and reduced-price lunches under this section, and that such procedures could allow school food authorities to use applications distributed at beginning of school year when making eligibility determinations or to distribute new applications.

LOWERING MINIMUM STANDARD OF ELIGIBILITY AND REDUCTION IN NUMBER OF CHILDREN SERVED, FISCAL YEAR 1972

Section 6 of Pub. L. 92–153 provided that: ''The Secretary shall not lower minimum standards of eligibility for free and reduced price meals nor require a reduction in the number of children served in any school district during a fiscal year to be effective for that fiscal year. This section shall apply to fiscal year 1972.''

§ 1759. Direct disbursement to schools by Secretary

(a) The Secretary shall withhold funds payable to a State under this chapter and disburse the funds directly to schools, institutions, or service institutions within the State for the purposes authorized by this chapter to the extent that the Secretary has so withheld and disbursed such funds continuously since October 1, 1980, but only to such extent (except as otherwise required by subsection (b) of this section). Any funds so withheld and disbursed by the Secretary shall be used for the same purposes, and shall be subject to the same conditions, as applicable to a State disbursing funds made available under this chapter. If the Secretary is administering (in whole or in part) any program authorized under this chapter, the State in which the Secretary is administering the program may, upon request to the Secretary, assume administration of that program.

(b) If a State educational agency is not permitted by law to disburse the funds paid to it under this chapter to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to public schools within the State by the State educational agency.

(June 4, 1946, ch. 281, § 10, 60 Stat. 233; Pub. L. 87–823, § 4, Oct. 15, 1962, 76 Stat. 945; Pub. L. 91–248, § 1(b), May 14, 1970, 84 Stat. 208; Pub. L. 93–433, § 4(d), Sept. 26, 1972, 86 Stat. 726; Pub. L. 93–150, § 3(b), Nov. 7, 1973, 87 Stat. 562; Pub. L. 94–105, § 7, Oct. 7, 1975, 89 Stat. 514; Pub. L. 97–35, title VIII, § 817(a), Aug. 13, 1981, 95 Stat. 531.)

AMENDMENTS

1981—Pub. L. 97–35 designated existing provisions as subsec. (a), substituted provisions relating to disbursement of funds directly to schools, institutions, or service institutions for the purposes authorized by this chapter, for provisions relating to disbursement of funds directly to schools for the purposes and subject to conditions authorized or required for disbursements to schools within the State by the State educational agency, and added subsec. (b).

1975—Pub. L. 94–105 altered provisions of section to accommodate authorization of direct payments to private nonprofit schools and institutions in conformity with revised allocation method for school lunch funds and expanded definition of ''school'' to include any public or licensed nonprofit residential child care institution, including but not limited to, orphanages and homes for the mentally retarded.

1973—Pub. L. 93–150 inserted in proviso reference to section 1759a of this title.

1972—Pub. L. 92–433 inserted proviso that beginning with the fiscal year ending June 30, 1974, the Secretary shall make payments directly to the nonprofit private schools for the purpose of section 1753 of this title under the same conditions as are prescribed for State educational agencies.

1970—Pub. L. 91–248 provided that data upon which State apportionments are calculated is the program year completed two years immediately prior to the fiscal year for which the appropriation is requested.

1962—Pub. L. 87–823 substituted ''an amount which bears the same ratio to such funds as the number of lunches, consisting of a combination of foods and meeting the minimum requirements prescribed by the Secretary pursuant to section 1758 of this title, served in the preceding fiscal year by all nonprofit private schools participating in the program under this chapter within the State, as determined by the Secretary, bears to the participation rate for the State'' for ''the same proportion of the funds as the number of children between the ages of 5 and 17, inclusive, attending nonprofit private schools within the State, is of the total number of persons of those ages within the State attending school''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

§ 1759a. Special assistance funds

(a) Formula for computation of payments; computation for lunches to eligible children in schools funding service to ineligible children from non-Federal sources; special assistance factors; annual adjustments

(1)(A) Except as provided in section 1759 of this title, in each fiscal year each State educational agency shall receive special assistance payments in an amount equal to the sum of the product obtained by multiplying the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to section 1758(a) of this title) served free to children eligible for such lunches in schools within that State during such fiscal year by the special assistance factor for free lunches prescribed by the Secretary for such fiscal year and the product obtained by multiplying the number of lunches served at a reduced price to children eligible for such reduced price lunches in schools within that State during such fiscal year by the special assistance factor for reduced price lunches prescribed by the Secretary for such fiscal year.

(B) Except as provided in subparagraph (C), (D), or (E), in the case of any school which determines that at least 80 percent of the children

in attendance during a school year (hereinafter in this sentence referred to as the ''first school year'') are eligible for free lunches or reduced price lunches, special assistance payments shall be paid to the State educational agency with respect to that school, if that school so requests for the school year following the first school year, on the basis of the number of free lunches or reduced price lunches, as the case may be, that are served by that school during the school year for which the request is made, to those children who were determined to be so eligible in the first school year and the number of free lunches and reduced price lunches served during that year to other children determined for that year to be eligible for such lunches.

(C)(i) Except as provided in subparagraph (D), in the case of any school or school district that—

(I) elects to serve all children in the school or school district free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school or school district that serves both lunches and breakfasts, elects to serve all children in the school or school district free lunches and free breakfasts under the school lunch program and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) during any period of 4 successive school years; and

(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period;

special assistance payments shall be paid to the State educational agency with respect to the school or school district during the period on the basis of the number of lunches or breakfasts determined under clause (ii) or (iii).

(ii) For purposes of making special assistance payments under clause (i), except as provided in clause (iii), the number of lunches or breakfasts served by a school or school district to children who are eligible for free lunches or breakfasts or reduced price lunches or breakfasts during each school year of the 4-school-year period shall be considered to be equal to the number of lunches or breakfasts served by the school or school district to children eligible for free lunches or breakfasts or reduced price lunches or breakfasts during the first school year of the period.

(iii) For purposes of computing the amount of the payments, a school or school district may elect to determine on a more frequent basis the number of children who are eligible for free or reduced price lunches or breakfasts who are served lunches or breakfasts during the 4-school-year period.

(D)(i) In the case of any school or school district that is receiving special assistance payments under this paragraph for a 4-school-year period described in subparagraph (C), the State may grant, at the end of the 4-school-year period, an extension of the period for an additional 4 school years, if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school or school district has remained stable.

(ii) A school or school district described in clause (i) may reapply to the State at the end of the 4-school-year period, and at the end of each 4-school-year period thereafter for which the school or school district receives special assistance payments under this paragraph, for the purpose of continuing to receive the payments for a subsequent 4-school-year period.

(iii) If the Secretary determines after considering the best available socioeconomic data that the income level of families of children enrolled in a school or school district has not remained stable, the Secretary may require the submission of applications for free and reduced price lunches, or for free and reduced price lunches and breakfasts, in the first school year of any 4-school-year period for which the school or school district receives special assistance payments under this paragraph, for the purpose of calculating the special assistance payments.

(iv) For the purpose of updating information and reimbursement levels, a school or school district described in clause (i) that carries out a school lunch or school breakfast program may at any time require submission of applications for free and reduced price lunches or for free and reduced price lunches and breakfasts.

(E)(i) In the case of any school or school district that—

(I) elects to serve all children in the school or school district free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school or school district that serves both lunches and breakfasts, elects to serve all children in the school or school district free lunches and free breakfasts under the school lunch program and the school breakfast program during any period of 4 successive school years; and

(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period;

total Federal cash reimbursements and total commodity assistance shall be provided to the State educational agency with respect to the school or school district at a level that is equal to the total Federal cash reimbursements and total commodity assistance received by the school or school district in the last school year for which the school or school district accepted applications under the school lunch or school breakfast program, adjusted annually for inflation in accordance with paragraph (3)(B) and for changes in enrollment, to carry out the school lunch or school breakfast program.

(ii) A school or school district described in clause (i) may reapply to the State at the end of the 4-school-year period described in clause (i), and at the end of each 4-school-year period thereafter for which the school or school district receives reimbursements and assistance under this subparagraph, for the purpose of continuing to receive the reimbursements and assistance for a subsequent 4-school-year period. The State

may approve an application under this clause if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school or school district has remained consistent with the income level of the population of the school or school district in the last school year for which the school or school district accepted the applications described in clause (i).

(2) The special assistance factor prescribed by the Secretary for free lunches shall be 98.75 cents and the special assistance factor for reduced price lunches shall be 40 cents less than the special assistance factor for free lunches.

(3)(A) The Secretary shall prescribe on July 1, 1982, and on each subsequent July 1, an annual adjustment in the following:

(i) The national average payment rates for lunches (as established under section 1753 of this title).

(ii) The special assistance factor for lunches (as established under paragraph (2) of this subsection).

(iii) The national average payment rates for breakfasts (as established under section 4(b) of the Child Nutrition Act of 1966 [42 U.S.C. 1773 (b)]).

(iv) The national average payment rates for supplements (as established under section 1766(c) of this title).

(B) COMPUTATION OF ADJUSTMENT.—

(i) IN GENERAL.—The annual adjustment under this paragraph shall reflect changes in the cost of operating meal programs under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], as indicated by the change in the series for food away from home of the Consumer Price Index for all Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(ii) BASIS.—Each annual adjustment shall reflect the changes in the series for food away from home for the most recent 12-month period for which such data are available.

(iii) ROUNDING.—

(I) THROUGH JUNE 30, 1999.—For the period ending June 30, 1999, the adjustments made under this paragraph shall be computed to the nearest one-fourth cent, except that adjustments to payment rates for meals and supplements served to individuals not determined to be eligible for free or reduced price meals and supplements shall be computed to the nearest lower cent increment and based on the unrounded amount for the preceding 12-month period.

(II) JULY 1, 1999, AND THEREAFTER.—On July 1, 1999, and on each subsequent July 1, the national average payment rates for meals and supplements shall be adjusted to the nearest lower cent increment and shall be based on the unrounded amounts for the preceding 12-month period.

(b) Financing cost of free and reduced price lunches on basis of need of school for special assistance; maximum per lunch amount

Except as provided in section 10 of the Child Nutrition Act of 1966 [42 U.S.C. 1779], the special assistance payments made to each State agency during each fiscal year under the provisions of this section shall be used by such State agency to assist schools of that State in providing free and reduced price lunches served to children pursuant to section 1758(b) of this title. The amount of such special assistance funds that a school shall from time to time receive, within a maximum per lunch amount established by the Secretary for all States, shall be based on the need of the school for such special assistance. Such maximum per lunch amount established by the Secretary shall not be less than 60 cents.

(c) Payments to States

Special assistance payments to any State under this section shall be made as provided in the last sentence of section 1756 of this title.

(d) Report of school to State educational agency, contents; report of State educational agency to Secretary, contents

(1) The Secretary, when appropriate, may request each school participating in the school lunch program under this chapter to report monthly to the State educational agency the average number of children in the school who received free lunches and the average number of children who received reduced price lunches during the immediately preceding month.

(2) On request of the Secretary, the State educational agency of each State shall report to the Secretary the average number of children in the State who received free lunches and the average number of children in the State who received reduced price lunches during the immediately preceding month.

(e) Eligibility of commodity only schools for special assistance payments; free and reduced price meals; discrimination and identification prohibited

Commodity only schools shall also be eligible for special assistance payments under this section. Such schools shall serve meals free to children who meet the eligibility requirements for free meals under section 1758(b) of this title, and shall serve meals at a reduced price, not exceeding the price specified in section 1758(b)(9) of this title, to children meeting the eligibility requirements for reduced price meals under such section. No physical segregation of, or other discrimination against, any child eligible for a free or reduced-priced[1] lunch shall be made by the school, nor shall there be any overt identification of any such child by any means.

(f) Information and assistance concerning reimbursement options

(1) In general

From funds made available under paragraph (3), the Secretary shall provide grants to not more than 10 State agencies in each of fiscal years 2000 and 2001 to enable the agencies, in accordance with criteria established by the Secretary, to—

(A) identify separately in a list—

(i) schools that are most likely to benefit from electing to receive special assistance under subparagraph (C) or (E) of subsection (a)(1) of this section; and

(ii) schools that may benefit from electing to receive special assistance under sub-

[1] So in original. Probably should be ''reduced price''.

paragraph (C) or (E) of subsection (a)(1) of this section;

(B) make the list of schools identified under this subsection available to each school district within the State and to the public;

(C) provide technical assistance to schools, or school districts containing the schools, to enable the schools to evaluate and receive special assistance under subparagraph (C) or (E) of subsection (a)(1) of this section;

(D) take any other actions the Secretary determines are consistent with receiving special assistance under subparagraph (C) or (E) of subsection (a)(1) of this section and receiving a grant under this subsection; and

(E) as soon as practicable after receipt of the grant, but not later than September 30, 2003, take the actions described in subparagraphs (A) through (D).

(2) Report

(A) In general

The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

(i) not later than January 1, 2003, an interim report on the activities of the State agencies receiving grants under this subsection; and

(ii) not later than January 1, 2004, a final report on the activities of the State agencies receiving grants under this subsection.

(B) Contents

In the reports, the Secretary shall specify—

(i) the number of schools identified as likely to benefit from electing to receive special assistance under subparagraph (C) or (E) of subsection (a)(1) of this section;

(ii) the number of schools identified under this subsection that have elected to receive special assistance under subparagraph (C) or (E) of subsection (a)(1) of this section; and

(iii) a description of how the funds and technical assistance made available under this subsection have been used.

(3) Funding

Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary $2,250,000 for each of fiscal years 2000 and 2001 to carry out this subsection. The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.

(June 4, 1946, ch. 281, §11, as added Pub. L. 87–823, §6, Oct. 15, 1962, 76 Stat. 946; amended Pub. L. 91–248, §7, May 14, 1970, 84 Stat. 211; Pub. L. 92–153, §4, Nov. 5, 1971, 85 Stat. 420; Pub. L. 93–150, §3(a), Nov. 7, 1973, 87 Stat. 561; Pub. L. 94–105, §8, Oct. 7, 1975, 89 Stat. 514; Pub. L. 95–166, §9, Nov. 10, 1977, 91 Stat. 1336; Pub. L. 95–627, §§4, 5(c), Nov. 10, 1978, 92 Stat. 3619, 3620; Pub. L. 96–499, title II, §204(a), Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97–35, title VIII, §§801(b), 812, 813(b), 819(a), Aug. 13, 1981, 95 Stat. 522, 530, 533; Pub. L. 101–147, title II, §203, title III, §312(2), (3), Nov. 10, 1989, 103 Stat. 909, 916; Pub. L. 103–448, title I, §111, Nov. 2, 1994, 108 Stat. 4706; Pub. L. 104–193, title VII, §704(a), (b)(1), (c), Aug. 22, 1996, 110 Stat. 2289, 2290; Pub. L. 105–336, title I, §103(a), (b)(1), (c)(1), Oct. 31, 1998, 112 Stat. 3145, 3146; Pub. L. 107–76, title VII, §766, Nov. 28, 2001, 115 Stat. 744; Pub. L. 108–265, title I, §§104(d)(3), 113, June 30, 2004, 118 Stat. 738, 747.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a)(1)(C)(i)(II), (E)(i)(II), (3)(B)(i), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of that Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

2004—Subsec. (a)(1)(C) to (E). Pub. L. 108–265, §113, inserted ''or school district'' after ''school'' wherever appearing other than as part of ''school year'', ''school years'', ''school lunch'', ''school breakfast'', and ''4-school-year period''.

Subsec. (e). Pub. L. 108–265, §104(d)(3), substituted ''section 1758(b)(9)'' for ''section 1758(b)(3)''.

2001—Subsec. (f)(1)(E). Pub. L. 107–76, §766(1), substituted ''2003'' for ''2001''.

Subsec. (f)(2)(A). Pub. L. 107–76, §766(2)(A), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: ''Not later than January 1, 2002, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate a report on the activities of the State agencies receiving grants under this subsection.''

Subsec. (f)(2)(B). Pub. L. 107–76, §766(2)(B), substituted ''reports'' for ''report'' in introductory provisions.

1998—Subsec. (a)(1)(C)(i)(I). Pub. L. 105–336, §103(a)(1)(A), substituted ''4'' for ''3'' before ''successive school years'' in two places.

Subsec. (a)(1)(C)(ii), (iii). Pub. L. 105–336, §103(a)(1)(B), substituted ''4-'' for ''3-'' before ''school-year period''.

Subsec. (a)(1)(D)(i). Pub. L. 105–336, §103(a)(2)(A), substituted ''4-'' for ''3-'' before ''school-year period'' in two places and ''4'' for ''2'' before ''school years''.

Subsec. (a)(1)(D)(ii). Pub. L. 105–336, §103(a)(2)(B), struck out first sentence which read ''A school described in clause (i) may reapply to the State at the end of the 2-school-year period described in clause (i) for the purpose of continuing to receive special assistance payments, as determined in accordance with this paragraph, for a subsequent 5-school-year period.'', substituted ''A school described in clause (i)'' for ''The school'', and substituted ''4-'' for ''5-'' before ''school-year period'' wherever appearing.

Subsec. (a)(1)(D)(iii). Pub. L. 105–336, §103(a)(2)(C), substituted ''4-'' for ''5-'' before ''school-year period''.

Subsec. (a)(1)(E)(iii). Pub. L. 105–336, §103(a)(3), struck out cl. (iii) which read as follows: ''Not later than 1 year after November 2, 1994, the Secretary shall evaluate the effects of this subparagraph and notify the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the results of the evaluation.''

Subsec. (a)(3)(B). Pub. L. 105–336, §103(b)(1), inserted subpar. heading, designated first two sentences as cls. (i) and (ii), respectively, and inserted headings, and designated last sentence as subcl. (I) of cl. (iii), inserted headings, substituted ''For the period ending June 30, 1999, the adjustments'' for ''The adjustments'', and added subcl. (II).

Subsec. (f). Pub. L. 105–336, §103(c)(1), added subsec. (f).

1996—Subsec. (a)(1)(D)(i). Pub. L. 104–193, § 704(a), struck out ‘‘, on November 2, 1994,’’ after ‘‘any school that’’.

Subsec. (a)(3)(B). Pub. L. 104–193, § 704(b)(1), inserted before period at end ‘‘, except that adjustments to payment rates for meals and supplements served to individuals not determined to be eligible for free or reduced price meals and supplements shall be computed to the nearest lower cent increment and based on the unrounded amount for the preceding 12-month period’’.

Subsec. (d). Pub. L. 104–193, § 704(c)(1), (3) redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ‘‘In carrying out this section, the terms and conditions governing the operation of the school lunch program set forth in other sections of this chapter, including those applicable to funds apportioned or paid pursuant to section 1753 of this title but excluding the provisions of section 1756 of this title relating to matching, shall be applicable to the extent they are not inconsistent with the express requirements of this section.’’

Subsec. (e). Pub. L. 104–193, § 704(c)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(2). Pub. L. 104–193, § 704(c)(2), substituted ‘‘On request of the Secretary, the State educational agency’’ for ‘‘The State educational agency’’ and struck out ‘‘each month’’ after ‘‘report to the Secretary’’.

Subsec. (f). Pub. L. 104–193, § 704(c)(3), redesignated subsec. (f) as (e).

1994—Subsec. (a)(1). Pub. L. 103–448 designated first sentence as subpar. (A) and second sentence as subpar. (B), substituted ‘‘Except as provided in subparagraph (C), (D), or (E), in the case of’’ for ‘‘In the case of’’ in subpar. (B), added subpars. (C) to (E), and struck out at end ‘‘In the case of any school that (A) elects to serve all children in that school free lunches under the school lunch program during any period of three successive school years and (B) pays, from sources other than Federal funds, for the costs of serving such lunches which are in excess of the value of assistance received under this chapter with respect to the number of lunches served during that period, special assistance payments shall be paid to the State educational agency with respect to that school during that period on the basis of the number of lunches determined under the succeeding sentence. For purposes of making special assistance payments in accordance with the preceding sentence, the number of lunches served by a school to children eligible for free lunches and reduced price lunches during each school year of the three-school-year period shall be deemed to be the number of lunches served by that school to children eligible for free lunches and reduced price lunches during the first school year of such period, unless that school elects, for purposes of computing the amount of such payments, to determine on a more frequent basis the number of children eligible for free and reduced price lunches who are served lunches during such period.’’

1989—Subsecs. (a), (b). Pub. L. 101–147, § 312(2), (3), substituted ‘‘reduced price’’ for ‘‘reduced-price’’ and ‘‘special assistance’’ for ‘‘special-assistance’’ wherever appearing in pars. (1) and (2) of subsec. (a) and first sentence of subsec. (b).

Subsec. (e)(1). Pub. L. 101–147, § 203, substituted ‘‘The Secretary, when appropriate, may request each school participating in the school lunch program under this chapter to report monthly to the State educational agency’’ for ‘‘Each school participating in the school lunch program under this chapter shall report each month to its State educational agency’’.

Subsec. (f). Pub. L. 101–147, § 312(2), (3), substituted ‘‘reduced price’’ for ‘‘reduced-price’’ and ‘‘special assistance’’ for ‘‘special-assistance’’.

1981—Subsec. (a). Pub. L. 97–35, § 801(b), redesignated existing provisions as par. (1), substituted ‘‘(A)’’ for ‘‘(1)’’ and ‘‘(B)’’ for ‘‘(2)’’, and struck out provisions relating to special assistance factors, adjustments, etc., for funds for the fiscal year beginning July 1, 1973, and after, and added pars. (2) and (3).

Subsec. (b). Pub. L. 97–35, § 819(a)(1), struck out ‘‘financing the cost of’’ before ‘‘providing free’’.

Subsec. (d). Pub. L. 97–35, § 819(a)(2), struck out reference to section 1754 of this title.

Subsec. (e). Pub. L. 97–35, § 812, struck out par. (1) which related to submission of State plan for child nutrition operations. Former pars. (2) and (3) were redesignated as (1) and (2), respectively, and in such pars. as so redesignated, struck out requirement respecting estimation of eligible children by participating State.

Subsec. (f). Pub. L. 97–35, § 813(b), added subsec. (f).

1980—Subsec. (a). Pub. L. 96–499 struck out provision that if in any State all schools charged students a uniform price for reduced-price lunches, and such price was less than twenty cents, the special assistance factor prescribed for reduced-price lunches in such State was to be equal to the special assistance factor for free lunches reduced by either ten cents or the price charged for reduced-price lunches in such State, whichever was greater.

1978—Subsec. (a). Pub. L. 95–627 substituted ‘‘20 cents’’ for ‘‘10 cents’’ after ‘‘which shall be’’, inserted ‘‘for All Urban Consumers’’ after ‘‘Consumer Price Index’’, and inserted provision relating to the special assistance factor prescribed for reduced-price lunches in any State in which all schools charge students a uniform price for lunches.

1977—Subsec. (a). Pub. L. 95–166 provided for special-assistance payments to the State educational agency where 80 percent of children in attendance during the school year are eligible for free lunches or reduced-price lunches and for determination of number of lunches served to children eligible for free lunches and reduced-price lunches where the school serves all students, eligible and noneligible, and funds for noneligible students are from other than Federal funds.

1975—Subsec. (e)(1). Pub. L. 94–105 substituted ‘‘Each year by not later than a date specified by the Secretary’’ for ‘‘Not later than January 1 of each year’’, and ‘‘following school year’’ for ‘‘following fiscal year’’.

1973—Subsec. (a). Pub. L. 93–150 added subsec. (a) and struck out former subsec. (a) provisions relating to appropriations authorization for fiscal year ending June 30, 1971, and succeeding fiscal years of such sums as may be necessary to provide special assistance to assure access to the school lunch program under this chapter by children of low-income families.

Subsec. (b). Pub. L. 93–150 added subsec. (b) and struck out former subsec. (b) provisions relating to formula for apportionment of funds and need for additional funds.

Subsec. (c). Pub. L. 93–150 redesignated subsec. (d) as (c), substituted ‘‘Special assistance payments to any State’’ for ‘‘Payment of the funds apportioned to any State’’, and struck out former subsec. (c) provisions relating to basis for apportionment among States and need for additional funds.

Subsec. (d). Pub. L. 93–150 redesignated subsec. (g) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 93–150 redesignated subsec. (h) as (e) struck out former subsec. (e) provisions relating to State disbursement to schools for financing operating costs of the school lunch program and basis for determination of amount of funds. Subject matter was covered by subsecs. (a) and (b) of this section.

Subsec. (f). Pub. L. 93–150 struck out subsec. (f) provisions relating to withholding of funds from State educational agencies not permitted to disburse funds to nonprofit private schools and direct disbursement to nonprofit private schools, and conditions thereof.

Subsecs. (g), (h). Pub. L. 93–150 redesignated subsecs. (g) and (h) as (d) and (e), respectively.

1971—Subsec. (e). Pub. L. 92–153 established a reimbursement rate as amount of funds to be disbursed to schools in a State, provided for receipt of a greater amount or reimbursement per meal if the school established financial inability to support service of meals, and prescribed maximum per meal amount and higher maximum per meal amount for especially needy schools.

1970—Subsec. (a). Pub. L. 91–248 authorized for fiscal year ending June 30, 1971, and for each succeeding fiscal year such sums as may be necessary to provide assistance to assure access to school lunch program by children of low-income families.

Subsec. (b). Pub. L. 91–248 substituted formula for apportionment of funds among Puerto Rico, the Virgin Islands, Guam, and American Samoa based on the ratio of the number of children aged three to seventeen, inclusive, in such State as compared to the total number of such children in all such States, for a ratio based on the number of free or reduced price lunches served in the preceding fiscal year in such State as compared to the number of such lunches served in all such States in the preceding fiscal year.

Subsec. (c). Pub. L. 91–248 struck out provision requiring that not less than 50 percent of the remaining sums appropriated be apportioned among the States other than Puerto Rico, the Virgin Islands, Guam, and American Samoa, substituted formula for apportionment of special assistance funds among the States based on the total number of children aged three to seventeen, inclusive, in households with incomes of less than $4,000 per annum, for a formula based on the number of free or reduced price lunches served in the preceding fiscal year and the assistance need rate, and provided that further apportionment be made on the same basis as the initial apportionment to any State which justifies the need for additional funds.

Subsec. (e). Pub. L. 91–248 substituted provision requiring that funds disbursed by the State be used to assist schools in financing all or part of the operating costs of the school lunch program, for requirement that disbursed funds be used to assist schools in the purchase of agricultural commodities and other foods, struck out provision relating to the selection of schools to receive funds, and substituted as a basis for determination of the amount of funds to go to each school the need of that school for assistance in meeting the requirements of section 1758 of this title, for such factors as economic condition of area from which school draws attendance, the percentages of free and reduced price lunches being served in such schools, the price of lunches in such schools compared with the average prevailing price of lunches served in the State under this chapter and the need of such schools for assistance as reflected by the financial position of the school's lunch programs.

Subsec. (f). Pub. L. 91–248 substituted ''in the fiscal year beginning two years immediately prior to the fiscal year for which the funds are appropriated'' for ''in the preceding fiscal year''.

Subsec. (h). Pub. L. 91–248 added subsec. (h).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 104(d)(3) of Pub. L. 108–265 effective July 1, 2005, and amendment by section 113 of Pub. L. 108–265 effective June 30, 2004, see section 502(a), (b)(4) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 704(b)(2) of Pub. L. 104–193 provided that: ''The amendment made by paragraph (1) [amending this section] shall become effective on July 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 801 of Pub. L. 97–35 effective Sept. 1, 1981, amendment by sections 812 and 819 of Pub. L. 97–35 effective Oct. 1, 1981, and amendment by section 813 of Pub. L. 97–35 effective 90 days after Aug. 13, 1981, see section 820(a)(1)(A), (4), (5) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by sections 4 and 5(c) of Pub. L. 95–627 effective Jan. 1, 1979, and July 1, 1979, respectively, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

SEMIANNUAL ADJUSTMENTS REFLECTING THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS DURING FISCAL YEAR ENDING SEPTEMBER 30, 1981

Section 204(b) of Pub. L. 96–499 related to annual and semiannual adjustments required under the former sixth sentence of subsec. (a) of this section during the fiscal year ending Sept. 30, 1981.

ADDITIONAL FUNDS FOR FOOD SERVICE PROGRAMS FOR CHILDREN; APPORTIONMENT TO STATES SPECIAL ASSISTANCE; CONSULTATION WITH CHILD NUTRITION COUNCIL; REIMBURSEMENT FROM SUPPLEMENTAL APPROPRIATION

Additional funds for food service programs for children from appropriations under section 612(c) of Title 7, Agriculture, apportionment to States, special assistance programs, consultation with National Advisory Council on Child Nutrition, and reimbursement from supplemental appropriation, see section 1 of Pub. L. 92–153, set out as a note under section 1753 of this title.

§ 1760. Miscellaneous provisions

(a) Accounts and records

States, State educational agencies, and schools participating in the school lunch program under this chapter shall keep such accounts and records as may be necessary to enable the Secretary to determine whether the provisions of this chapter are being complied with. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines is necessary.

(b) Agreements with State educational agencies

The Secretary shall incorporate, in the Secretary's agreements with the State educational agencies, the express requirements under this chapter with respect to the operation of the school lunch program under this chapter insofar as they may be applicable and such other provisions as in the Secretary's opinion are reasonably necessary or appropriate to effectuate the purposes of this chapter.

(c) Requirements with respect to teaching personnel, curriculum, instruction, etc.

In carrying out the provisions of this chapter, the Secretary shall not impose any requirement with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction in any school.

(d) Definitions

For the purposes of this chapter—

(1) CHILD.—

(A) IN GENERAL.—The term ''child'' includes an individual, regardless of age, who—

(i) is determined by a State educational agency, in accordance with regulations

prescribed by the Secretary, to have one or more disabilities; and

(ii) is attending any institution, as defined in section 1766(a) of this title, or any nonresidential public or nonprofit private school of high school grade or under, for the purpose of participating in a school program established for individuals with disabilities.

(B) RELATIONSHIP TO CHILD AND ADULT CARE FOOD PROGRAM.—No institution that is not otherwise eligible to participate in the program under section 1766 of this title shall be considered eligible because of this paragraph.

(2) ''Commodity only schools'' means schools that do not participate in the school lunch program under this chapter, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.

(3) DISABILITY.—The term ''disability'' has the meaning given the term in the Rehabilitation Act of 1973 for purposes of title II of that Act (29 U.S.C 760 et seq.).

(4) LOCAL EDUCATIONAL AGENCY.—

(A) IN GENERAL.—The term ''local educational agency'' has the meaning given the term in section 7801 of title 20.

(B) INCLUSION.—The term ''local educational agency'' includes, in the case of a private nonprofit school, an appropriate entity determined by the Secretary.

(5) ''School'' means (A) any public or nonprofit private school of high school grade or under, and (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor). For purposes of this paragraph, the term ''nonprofit'', when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of title 26.

(6) ''School year'' means the annual period from July 1 through June 30.

(7) ''Secretary'' means the Secretary of Agriculture.

(8) ''State'' means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(9) ''State educational agency'' means, as the State legislature may determine, (A) the chief State school officer (such as the State superintendent of public instruction, commissioner of education, or similar officer), or (B) a board of education controlling the State department of education.

(e) Value of assistance as income or resources under Federal or State laws

The value of assistance to children under this chapter shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

(f) Adjustment of national average payment rate for Alaska, Hawaii, territories and possessions, etc.

In providing assistance for breakfasts, lunches, suppers, and supplements served in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates prescribed under sections 1753, 1759a, 1761, and 1766 of this title and section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773], to reflect the differences between the costs of providing meals and supplements in those States and the costs of providing meals and supplements in all other States.

(g) Criminal penalties

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(h) Combined allocation for breakfast and lunch

No provision of this chapter or of the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] shall require any school receiving funds under this chapter and the Child Nutrition Act of 1966 to account separately for the cost incurred in the school lunch and school breakfast programs.

(i) Use of school lunch facilities for elderly programs

Facilities, equipment, and personnel provided to a school food authority for a program authorized under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.].

(j) Reimbursement for final claims

(1) Except as provided in paragraph (2), the Secretary may provide reimbursements for final claims for service of meals, supplements, and milk submitted to State agencies by eligible schools, summer camps, family day care homes, institutions, and service institutions only if—

(A) the claims have been submitted to the State agencies not later than 60 days after the last day of the month for which the reimbursement is claimed; and

(B) the final program operations report for the month is submitted to the Secretary not

later than 90 days after the last day of the month.

(2) The Secretary may waive the requirements of paragraph (1) at the discretion of the Secretary.

(k) Expedited rulemaking

(1) Not later than June 1, 1995, the Secretary shall issue final regulations to conform the nutritional requirements of the school lunch and breakfast programs with the guidelines contained in the most recent ''Dietary Guidelines for Americans'' that is published under section 5341 of title 7. The final regulations shall include—

(A) rules permitting the use of food-based menu systems; and

(B) adjustments to the rule on nutrition objectives for school meals published in the Federal Register on June 10, 1994 (59 Fed. Reg. 30218).

(2) No school food service authority shall be required to implement final regulations issued pursuant to this subsection until the regulations have been final for at least 1 year.

***(l)* Waiver of statutory and regulatory requirements**

(1)(A) Except as provided in paragraph (4), the Secretary may waive any requirement under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or any regulation issued under either this chapter or such Act, for a State or eligible service provider that requests a waiver if—

(i) the Secretary determines that the waiver of the requirement would facilitate the ability of the State or eligible service provider to carry out the purpose of the program;

(ii) the State or eligible service provider has provided notice and information to the public regarding the proposed waiver; and

(iii) the State or eligible service provider demonstrates to the satisfaction of the Secretary that the waiver will not increase the overall cost of the program to the Federal Government, and, if the waiver does increase the overall cost to the Federal Government, the cost will be paid from non-Federal funds.

(B) The notice and information referred to in subparagraph (A)(ii) shall be provided in the same manner in which the State or eligible service provider customarily provides similar notices and information to the public.

(2)(A) To request a waiver under paragraph (1), a State or eligible service provider (through the appropriate administering State agency) shall submit an application to the Secretary that—

(i) identifies the statutory or regulatory requirements that are requested to be waived;

(ii) in the case of a State requesting a waiver, describes actions, if any, that the State has undertaken to remove State statutory or regulatory barriers;

(iii) describes the goal of the waiver to improve services under the program and the expected outcomes if the waiver is granted; and

(iv) includes a description of the impediments to the efficient operation and administration of the program.

(B) An application described in subparagraph (A) shall be developed by the State or eligible service provider and shall be submitted to the Secretary by the State.

(3) The Secretary shall act promptly on a waiver request contained in an application submitted under paragraph (2) and shall either grant or deny the request. The Secretary shall state in writing the reasons for granting or denying the request.

(4) The Secretary may not grant a waiver under this subsection that increases Federal costs or that relates to—

(A) the nutritional content of meals served;

(B) Federal reimbursement rates;

(C) the provision of free and reduced price meals;

(D) limits on the price charged for a reduced price meal;

(E) maintenance of effort;

(F) equitable participation of children in private schools;

(G) distribution of funds to State and local school food service authorities and service institutions participating in a program under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(H) the disclosure of information relating to students receiving free or reduced price meals and other recipients of benefits;

(I) prohibiting the operation of a profit producing program;

(J) the sale of competitive foods;

(K) the commodity distribution program under section 1762a of this title;

(L) the special supplemental nutrition program authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786); or

(M) enforcement of any constitutional or statutory right of an individual, including any right under—

(i) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(ii) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(iii) title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);

(iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

(v) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

(vi) the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(5) The Secretary shall periodically review the performance of any State or eligible service provider for which the Secretary has granted a waiver under this subsection and shall terminate the waiver if the performance of the State or service provider has been inadequate to justify a continuation of the waiver. The Secretary shall terminate the waiver if, after periodic review, the Secretary determines that the waiver has resulted in an increase in the overall cost of the program to the Federal Government and the increase has not been paid for in accordance with paragraph (1)(A)(iii).

(6) The Secretary shall annually submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report—

(A) summarizing the use of waivers by the State and eligible service providers;

(B) describing whether the waivers resulted in improved services to children;

(C) describing the impact of the waivers on providing nutritional meals to participants; and

(D) describing how the waivers reduced the quantity of paperwork necessary to administer the program.

(7) As used in this subsection, the term ''eligible service provider'' means—

(A) a local school food service authority;

(B) a service institution or private nonprofit organization described in section 1761 of this title; or

(C) a family or group day care home sponsoring organization described in section 1766 of this title.

(m) Procurement training

(1) In general

Subject to the availability of funds made available under paragraph (4), the Secretary shall provide technical assistance and training to States, State agencies, schools, and school food authorities in the procurement of goods and services for programs under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)).

(2) Buy American training

Activities carried out under paragraph (1) shall include technical assistance and training to ensure compliance with subsection (n) of this section.

(3) Procuring safe foods

Activities carried out under paragraph (1) shall include technical assistance and training on procuring safe foods, including the use of model specifications for procuring safe foods.

(4) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $1,000,000 for each of fiscal years 2005 through 2009, to remain available until expended.

(n) Buy American

(1) Definition of domestic commodity or product

In this subsection, the term ''domestic commodity or product'' means—

(A) an agricultural commodity that is produced in the United States; and

(B) a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) Requirement

(A) In general

Subject to subparagraph (B), the Secretary shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(B) Limitations

Subparagraph (A) shall apply only to—

(i) a school food authority located in the contiguous United States; and

(ii) a purchase of a domestic commodity or product for the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(3) Applicability to Hawaii

Paragraph (2)(A) shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(4) Applicability to Puerto Rico

Paragraph (2)(A) shall apply to a school food authority in the Commonwealth of Puerto Rico with respect to domestic commodities or products that are produced in the Commonwealth of Puerto Rico in sufficient quantities to meet the needs of meals provided under the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(*o*) Procurement contracts

In acquiring a good or service for programs under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)), a State, State agency, school, or school food authority may enter into a contract with a person that has provided specification information to the State, State agency, school, or school food authority for use in developing contract specifications for acquiring such good or service.

(June 4, 1946, ch. 281, § 12, formerly § 11, 60 Stat. 233; July 12, 1952, ch. 699, § 1(c), 66 Stat. 591; Pub. L. 87–688, § 3(a), Sept. 25, 1962, 76 Stat. 587; renumbered § 12 and amended Pub. L. 87–823, § 5, Oct. 15, 1962, 76 Stat. 945; Pub. L. 91–248, § 1(b), May 14, 1970, 84 Stat. 208; Pub. L. 94–105, § 9, Oct. 7, 1975, 89 Stat. 514; Pub. L. 95–166, §§ 3, 19(c), Nov. 10, 1977, 91 Stat. 1332, 1345; Pub. L. 95–627, §§ 6(a), 10(a), (b), Nov. 10, 1978, 92 Stat. 3620, 3623; Pub. L. 96–499, title II, § 205, Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97–35, title VIII, §§ 808(a), 813(d), 819(c), Aug. 13, 1981, 95 Stat. 527, 530, 533; Pub. L. 99–500, title III, §§ 325(a), 326, 373(a), Oct. 18, 1986, 100 Stat. 1783–361, 1783–369, and Pub. L. 99–591, title III, §§ 325(a), 326, 373(a), Oct. 30, 1986, 100 Stat. 3341–364, 3341–365, 3341–372; Pub. L. 99–661, div. D, title II, §§ 4205(a), 4206, title V, § 4503(a), Nov. 14, 1986, 100 Stat. 4072, 4073, 4081; Pub. L. 100–71, title I, § 101(a), July 11, 1987, 101 Stat. 429; Pub. L. 101–147, title III, §§ 306, 312(1), Nov. 10, 1989, 103 Stat. 914, 916; Pub. L. 103–448, title I, §§ 112(a)(1), (b)–(d), 113, Nov. 2, 1994, 108 Stat. 4708–4712; Pub. L. 104–193, title VII, §§ 701(b), 705, Aug. 22, 1996, 110 Stat. 2288, 2290; Pub. L. 105–336, title I, §§ 104, 107(j)(3)(A), Oct. 31, 1998, 112 Stat. 3147, 3153; Pub. L. 106–224, title II, § 242(b)(3), June 20, 2000, 114 Stat. 412; Pub. L. 107–171, title IV, § 4304, May 13, 2002, 116 Stat. 331; Pub. L. 108–265, title I, §§ 108(b), 114, 115, title II, § 203(i)(2), June 30, 2004, 118 Stat. 746, 748, 780.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (d)(3), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as

amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. Title II of the Act is classified generally to subchapter II (§760 et seq.) of chapter 16 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Child Nutrition Act of 1966, referred to in subsecs. (g) to (i), (*l*)(1)(A), (4)(G), (m)(1), and (*o*), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Older Americans Act of 1965, referred to in subsec. (i), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (*l*)(4)(M)(i), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (*l*)(4)(M)(iii), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (*l*)(4)(M)(iv), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (*l*)(4)(M)(v), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (§12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (*l*)(4)(M)(vi), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (d)(3) to (9). Pub. L. 108–265, §108(b), redesignated par. (8) as (3), added par. (4), and redesignated former pars. (3) to (7) as (5) to (9), respectively.

Subsec. (m). Pub. L. 108–265, §115, added subsec. (m).

Pub. L. 108–265, §114, struck out subsec. (m), which related to grants for food and nutrition projects for each of fiscal years 1995 through 2003.

Subsec. (p). Pub. L. 108–265, §203(i)(2), struck out subsec. (p), which authorized grants for carrying out the demonstration project under section 1786(r) of this title and directed the Secretary to conduct an evaluation of such project and grant program.

2002—Subsec. (n)(4). Pub. L. 107–171 added par. (4).

2000—Subsec. (p). Pub. L. 106–224 added subsec. (p).

1998—Subsec. (d)(1)(A)(i), (ii). Pub. L. 105–336, §107(j)(3)(A)(i), struck out ''mental or physical'' before ''disabilities''.

Subsec. (d)(8). Pub. L. 105–336, §107(j)(3)(A)(ii), added par. (8).

Subsec. (f). Pub. L. 105–336, §104(a), substituted ''breakfasts, lunches, suppers, and supplements'' for ''school breakfasts and lunches'', substituted ''sections 1753, 1759a, 1761, and 1766'' for ''sections 1753 and 1759a'', and substituted ''meals and supplements'' for ''lunches and breakfasts'' in two places.

Subsec. (g). Pub. L. 105–336, §104(b), substituted ''$25,000'' for ''$10,000''.

Subsec. (m)(3), (5). Pub. L. 105–336, §104(c), substituted ''2003'' for ''1998''.

Subsec. (n). Pub. L. 105–336, §104(d), added subsec. (n).

Subsec. (*o*). Pub. L. 105–336, §104(e), added subsec. (*o*).

1996—Subsec. (a). Pub. L. 104–193, §705(a), substituted ''be available at any reasonable time'' for ''at all times be available''.

Subsec. (c). Pub. L. 104–193, §705(b), substituted ''the Secretary shall not'' for ''neither the Secretary nor the State shall''.

Subsec. (d)(1). Pub. L. 104–193, §705(c)(3), redesignated par. (9) as (1). Former par. (1) redesignated (6).

Pub. L. 104–193, §705(c)(1), substituted ''the Commonwealth of the Northern Mariana Islands'' for ''the Trust Territory of the Pacific Islands''.

Subsec. (d)(2). Pub. L. 104–193, §705(c)(3), redesignated par. (7) as (2). Former par. (2) redesignated (7).

Subsec. (d)(3). Pub. L. 104–193, §705(c)(2), (3), redesignated par. (5) as (3) and struck out former par. (3) which read as follows: '' 'Participation rate' for a State means a number equal to the number of lunches, consisting of a combination of foods and meeting the minimum requirements prescribed by the Secretary pursuant to section 1758 of this title, served in the fiscal year beginning two years immediately prior to the fiscal year for which the Federal funds are appropriated by schools participating in the program under this chapter in the State, as determined by the Secretary.''

Subsec. (d)(4). Pub. L. 104–193, §705(c)(2), (3), redesignated par. (6) as (4) and struck out former par. (4) which read as follows: '' 'Assistance need rate' (A) in the case of any State having an average annual per capita income equal to or greater than the average annual per capita income for all the States, shall be 5; and (B) in the case of any State having an average annual per capita income less than the average annual per capita income for all the States, shall be the product of 5 and the quotient obtained by dividing the average annual per capita income for all the States by the average annual per capita income for such State, except that such product may not exceed 9 for any such State. For the purposes of this paragraph (i) the average annual per capita income for any State and for all the States shall be determined by the Secretary on the basis of the average annual per capita income for each State and for all the States for the three most recent years for which such data are available and certified to the Secretary by the Department of Commerce; and (ii) the average annual per capita income for American Samoa shall be disregarded in determining the average annual per capita income for all the States for periods ending before July 1, 1967.''

Subsec. (d)(5). Pub. L. 104–193, §705(c)(3), redesignated par. (8) as (5). Former par. (5) redesignated (3).

Subsec. (d)(6), (7). Pub. L. 104–193, §705(c)(3), redesignated pars. (1) and (2) as (6) and (7), respectively. Former pars. (6) and (7) redesignated (4) and (2), respectively.

Subsec. (d)(8). Pub. L. 104–193, §705(c)(3), redesignated par. (8) as (5).

Subsec. (d)(9). Pub. L. 104–193, §705(c)(3), redesignated par. (9) as (1).

Pub. L. 104–193, §701(b), added par. (9).

Subsec. (f). Pub. L. 104–193, §705(d), struck out ''the Trust Territory of the Pacific Islands,'' after ''the Virgin Islands of the United States,''.

Subsec. (k)(1). Pub. L. 104–193, §705(e)(3), substituted ''with the guidelines contained in the most recent 'Dietary Guidelines for Americans' that is published under section 5341 of title 7'' for ''with the Guidelines'' in introductory provisions.

Pub. L. 104–193, §705(e)(1), (2), redesignated par. (3) as (1) and struck out former par. (1) which read as follows: ''Prior to the publication of final regulations that im-

plement changes that are intended to bring the meal pattern requirements of the school lunch and breakfast programs into conformance with the guidelines contained in the most recent 'Dietary Guidelines for Americans' that is published under section 5341 of title 7 (referred to in this subsection as the 'Guidelines'), the Secretary shall issue proposed regulations permitting the use of food-based menu systems.''

Subsec. (k)(2). Pub. L. 104–193, § 705(e)(1), (2), redesignated par. (4) as (2) and struck out former par. (2) which read as follows: ''Notwithstanding chapter 5 of title 5, not later than 45 days after the publication of the proposed regulations permitting the use of food-based menu systems, the Secretary shall publish notice in the Federal Register of, and hold, a public meeting with—

''(A) representatives of affected parties, such as Federal, State, and local administrators, school food service administrators, other school food service personnel, parents, and teachers; and

''(B) organizations representing affected parties, such as public interest antihunger organizations, doctors specializing in pediatric nutrition, health and consumer groups, commodity groups, food manufacturers and vendors, and nutritionists involved with the implementation and operation of programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

to discuss and obtain public comments on the proposed rule.''

Subsec. (k)(3), (4). Pub. L. 104–193, § 705(e)(2), redesignated pars. (3) and (4) as (1) and (2), respectively.

Subsec. (k)(5). Pub. L. 104–193, § 705(e)(1), struck out par. (5) which read as follows: ''The final regulations shall reflect comments made at each phase of the proposed rulemaking process, including the public meeting required under paragraph (2).''

Subsec. (*l*)(2)(A)(iii) to (vii). Pub. L. 104–193, § 705(f)(1), struck out ''and'' at end of cl. (iii), substituted period for semicolon at end of cl. (iv), and struck out cls. (v) to (vii) which read as follows:

''(v) describes the management goals to be achieved, such as fewer hours devoted to, or fewer number of personnel involved in, the administration of the program;

''(vi) provides a timetable for implementing the waiver; and

''(vii) describes the process the State or eligible service provider will use to monitor the progress in implementing the waiver, including the process for monitoring the cost implications of the waiver to the Federal Government.''

Subsec. (*l*)(3). Pub. L. 104–193, § 705(f)(2), designated subpar. (A) as par. (3) and struck out subpars. (B) to (D) which read as follows:

''(B) If the Secretary grants a waiver request, the Secretary shall state in writing the expected outcome of granting the waiver.

''(C) The result of the decision of the Secretary shall be disseminated by the State or eligible service provider through normal means of communication.

''(D)(i) Except as provided in clause (ii), a waiver granted by the Secretary under this subsection shall be for a period not to exceed 3 years.

''(ii) The Secretary may extend the period if the Secretary determines that the waiver has been effective in enabling the State or eligible service provider to carry out the purposes of the program.''

Subsec. (*l*)(4). Pub. L. 104–193, § 705(f)(3)(A), substituted ''that increases Federal costs or that relates to'' for ''of any requirement relating to'' in introductory provisions.

Subsec. (*l*)(4)(D) to (K). Pub. L. 104–193, § 705(f)(3)(B), (C), redesignated subpars. (E) to (L) as (D) to (K), respectively, and struck out former subpar. (D) which read as follows: ''offer versus serve provisions;''.

Subsec. (*l*)(4)(L). Pub. L. 104–193, § 705(f)(3)(D), substituted ''or'' for ''and'' at end.

Pub. L. 104–193, § 705(f)(3)(C), redesignated subpar. (M) as (L). Former subpar. (L) redesignated (K).

Subsec. (*l*)(4)(M), (N). Pub. L. 104–193, § 705(f)(3)(C), redesignated subpar. (N) as (M). Former subpar. (M) redesignated (L).

Subsec. (*l*)(6). Pub. L. 104–193, § 705(f)(4), struck out subpar. (A) and designation of subpar. (B) and redesignated cls. (i) to (iv) of former subpar. (B) as subpars. (A) to (D). Prior to amendment, subpar. (A) read as follows:

''(A)(i) An eligible service provider that receives a waiver under this subsection shall annually submit to the State a report that—

''(I) describes the use of the waiver by the eligible service provider; and

''(II) evaluates how the waiver contributed to improved services to children served by the program for which the waiver was requested.

''(ii) The State shall annually submit to the Secretary a report that summarizes all reports received by the State from eligible service providers.''

1994—Subsec. (d)(5). Pub. L. 103–448, § 112(a)(1), in first sentence struck out cl. (C) which read as follows: ''with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico'' and in second sentence struck out ''of clauses (A) and (B)'' after ''For purposes''.

Subsecs. (j) to (m). Pub. L. 103–448, §§ 112(b)–(d), 113, added subsecs. (j) to (m).

1989—Subsec. (a). Pub. L. 101–147, § 312(1), substituted ''school lunch'' for ''school-lunch''.

Subsec. (b). Pub. L. 101–147, §§ 306(b)(1), 312(1), substituted ''the Secretary's'' for ''his'' in two places and ''school lunch'' for ''school-lunch''.

Subsec. (d)(5). Pub. L. 101–147, § 306(b)(2), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (d)(8). Pub. L. 101–147, § 306(a)(1), amended par. (8), as amended identically by Pub. L. 99–500 and 99–591, § 373(a), and Pub. L. 99–661, § 4503(a), to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (g). Pub. L. 101–147, § 306(b)(3), substituted ''personal'' for ''his'' before ''use''.

Subsec. (i). Pub. L. 101–147, § 306(b)(4), struck out ''(42 U.S.C. 1771 et seq.)'' after ''Child Nutrition Act of 1966'' and ''(42 U.S.C. 3001 et seq.)'' after ''Older Americans Act of 1965''.

Pub. L. 101–147, § 306(a)(2), amended subsec. (i), as amended identically by Pub. L. 99–500 and 99–591, § 326, and Pub. L. 99–661, § 4206, to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

1987—Subsec. (d)(5). Pub. L. 100–71 amended par. (5) generally. Prior to amendment, par. (5) read as follows: '''School' means (A) any public or nonprofit private school of high school grade or under, (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor), and (C) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico. For purposes of clauses (A) and (B) of this paragraph, the term 'nonprofit', when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of title 26. On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.''

1986—Subsec. (d)(5). Pub. L. 99–661, § 4205(a)(2), inserted ''On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.''

Subsec. (d)(5)(A). Pub. L. 99–500 and Pub. L. 99–591, § 325(a), which directed the amendment of subpar. (A) by striking out ''except private schools whose average

yearly tuition exceeds $1,500 per child,'' after ''grade or under,'' was executed by striking out ''except private schools whose average yearly tuition exceeds $2,000 per child,'' after ''grade or under,'' to reflect the probable intent of Congress and the intervening amendment of subpar. (A) by Pub. L. 99–661, § 4205(a)(1). See below.

Pub. L. 99–661, § 4205(a)(1), substituted ''$2,000'' for ''$1,500''.

Subsec. (d)(8). Pub. L. 99–500 and Pub. L. 99–591, § 373(a), and Pub. L. 99–661, § 4503(a), amended subsec. (d) identically, adding par. (8).

Subsec. (i). Pub. L. 99–500 and Pub. L. 99–591, § 326, and Pub. L. 99–661, § 4206, amended section identically, adding subsec. (i).

1981—Subsec. (d). Pub. L. 97–35, § 819(c)(1), struck out par. (3) which defined ''food service equipment assistance'', and redesignated pars. (4) to (8) as (3) to (7), respectively.

Pub. L. 97–35, § 808(a), inserted reference to private schools in par. (6).

Pub. L. 97–35, § 813(d), added par. (8).

Subsec. (h). Pub. L. 97–35, § 819(c)(2), struck out provisions relating to net cost of operating limitation.

1980—Subsec. (d)(6). Pub. L. 96–499 inserted '', but excluding Job Corps Centers funded by the Department of Labor''.

1978—Subsec. (d)(7). Pub. L. 95–627, § 10(b), substituted ''from July 1 through June 30'' for ''determined in accordance with regulations issued by the Secretary''.

Subsecs. (f), (g). Pub. L. 95–627, § 10(a), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 95–627, § 6(a), added subsec. (h).

1977—Subsec. (d)(3). Pub. L. 95–166, § 3, substituted ''food service equipment assistance'' for ''nonfood assistance''.

Subsec. (d)(7). Pub. L. 95–166, § 19(c), added par. (7).

1975—Subsec. (d)(1). Pub. L. 94–105, § 9(b), inserted reference to Trust Territory of the Pacific Islands.

Subsec. (d)(3) to (7). Pub. L. 94–105, § 9(a), (c), struck out par. (3) defining ''Nonprofit private schools'', redesignated pars. (4) to (7) as (3) to (6), respectively, and in par. (6), as so redesignated, expanded definition of ''school'' to include any public or licensed nonprofit private residential child care institution, including, but not limited to, orphanages and homes for the mentally retarded, and inserted provision defining ''nonprofit'' as any school or institution exempt under section 501(c)(3) of title 26.

Subsec. (e). Pub. L. 94–105, § 9(d), added subsec. (e).

1970—Subsec. (d)(5). Pub. L. 91–248 provided that data upon which State apportionments are calculated is program year completed two years immediately prior to fiscal year for which appropriation is requested.

1962—Subsec. (c). Pub. L. 87–823 struck out requirement of just and equitable distribution of funds in States maintaining separate schools for minority and majority races.

Subsec. (d). Pub. L. 87–823 redefined ''State'' in par. (1) to recognize Hawaiian and Alaskan statehood and to include American Samoa; ''State educational agency'' in par. (2) to exclude an exception applicable to the District of Columbia and language which was effective by its terms only through June 30, 1948; ''nonprofit private school'' in par. (3), substituting ''section 501(c)(3) of title 26'' for ''section 101(6) of title 26''; and ''nonfood assistance'' in par. (4), substituting ''used by schools'' for ''used on school premises''; and added pars. (5) to (7).

Pub. L. 87–688 inserted ''American Samoa,'' after ''Guam''.

1952—Subsec. (d)(1). Act July 12, 1952, included Guam within definition of State.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–171 effective Oct. 1, 2002, except as otherwise provided, see section 4405 of Pub. L. 107–171, set out as an Effective Date note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–224 effective Oct. 1, 2000, see section 242(c) of Pub. L. 106–224, set out as a note under section 1758 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 112(a)(2) of Pub. L. 103–448 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on October 1, 1995.''

Amendment by sections 112(b)–(d) and 113 of Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 101(c) of Pub. L. 100–71 provided that: ''The amendments made by subsections (a) and (b) [amending sections 1760 and 1784 of this title] shall take effect on July 1, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 4205(c) of Pub. L. 99–661 provided that:

''(1) The amendments made by subsections (a)(1) and (b)(1) [amending sections 1760 and 1784 of this title] shall apply for the fiscal year beginning on October 1, 1986, and each school year thereafter.

''(2) The amendments made by subsections (a)(2) and (b)(2) [amending sections 1760 and 1784 of this title] shall apply for the school year beginning on July 1, 1988, and each school year thereafter.''

Section 325(c) of Pub. L. 99–500 and Pub. L. 99–591 provided that: ''The amendments made by this section [amending sections 1760 and 1784 of this title] shall take effect July 1, 1987.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 808 and 819 of Pub. L. 97–35 effective Oct. 1, 1981, and amendment by section 813 of Pub. L. 97–35 effective 90 days after Aug. 13, 1981, see section 820(a)(3)–(5) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 19 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–688 applicable only with respect to funds appropriated after Sept. 25, 1962, see section 3(b) of Pub. L. 87–688, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 12, 1952, effective only with respect to funds appropriated after July 12, 1952, see section 1(d) of act July 12, 1952, set out as a note under section 1753 of this title.

STUDY OF COST ACCOUNTING REQUIREMENTS

Section 21 of Pub. L. 94–105 prohibited Secretary from delaying or withholding or causing any State to delay or withhold payments for reimbursement of per-meal costs on basis of noncompliance with cost accounting procedures until requirements of subsec. (b) of this section have been met, and called for a study by Secretary of additional personnel and training needs of States, school districts, and schools resulting from requirement of full cost accounting procedures, such report with recommendations to be submitted to appropriate committees of Congress within one year after Oct. 7, 1975.

§ 1761. Summer food service programs for children in service institutions

(a) Assistance to States; definitions; eligible service institutions; priorities in participation; limitations on reimbursement; nonprofit organizations; rural areas

(1) The Secretary is authorized to carry out a program to assist States, through grants-in-aid and other means, to initiate and maintain nonprofit food service programs for children in service institutions. For purposes of this section, (A) ''program'' means the summer food service program for children authorized by this section; (B) ''service institutions'' means public or private nonprofit school food authorities, local, municipal, or county governments, public or private nonprofit higher education institutions participating in the National Youth Sports Program,,[1] and residential public or private nonprofit summer camps, that develop special summer or school vacation programs providing food service similar to that made available to children during the school year under the school lunch program under this chapter or the school breakfast program under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.]; (C) ''areas in which poor economic conditions exist'' means areas in which at least 50 percent of the children are eligible for free or reduced price school meals under this chapter and the Child Nutrition Act of 1966, as determined by information provided from departments of welfare, zoning commissions, census tracts, by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the area of program food service sites, or from other appropriate sources, including statements of eligibility based upon income for children enrolled in the program; (D) ''children'' means individuals who are eighteen years of age and under, and individuals who are older than eighteen who are (i) determined by a State educational agency or a local public educational agency of a State, in accordance with regulations prescribed by the Secretary, to have a disability, and (ii) participating in a public or nonprofit private school program established for individuals who have a disability; and (E) ''State'' means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Northern Mariana Islands.

(2) To the maximum extent feasible, consistent with the purposes of this section, any food service under the program shall use meals prepared at the facilities of the service institution or at the food service facilities of public and nonprofit private schools. The Secretary shall assist States in the development of information and technical assistance to encourage increased service of meals prepared at the facilities of service institutions and at public and nonprofit private schools.

(3) Eligible service institutions entitled to participate in the program shall be limited to those that—

(A) demonstrate adequate administrative and financial responsibility to manage an effective food service;

(B) have not been seriously deficient in operating under the program;

(C)(i) conduct a regularly scheduled food service for children from areas in which poor economic conditions exist; or

(ii) qualify as camps; and

(D) provide an ongoing year-round service to the community to be served under the program (except that an otherwise eligible service institution shall not be disqualified for failure to meet this requirement for ongoing year-round service if the State determines that its disqualification would result in an area in which poor economic conditions exist not being served or in a significant number of needy children not having reasonable access to a summer food service program).

(4) The following order of priority shall be used by the State in determining participation where more than one eligible service institution proposes to serve the same area:

(A) Local schools.

(B) All other service institutions and private nonprofit organizations eligible under paragraph (7) that have demonstrated successful program performance in a prior year.

(C) New public institutions.

(D) New private nonprofit organizations eligible under paragraph (7).

The Secretary and the States, in carrying out their respective functions under this section, shall actively seek eligible service institutions located in rural areas, for the purpose of assisting such service institutions in applying to participate in the program.

(5) Camps that satisfy all other eligibility requirements of this section shall receive reimbursement only for meals served to children who meet the eligibility requirements for free or reduced price meals, as determined under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(6) Service institutions that are local, municipal, or county governments shall be eligible for reimbursement for meals served in programs under this section only if such programs are operated directly by such governments.

(7)(A) Private nonprofit organizations, as defined in subparagraph (B) (other than organizations eligible under paragraph (1)), shall be eligible for the program under the same terms and conditions as other service institutions.

(B) As used in this paragraph, the term ''private nonprofit organizations'' means those organizations that—

[1] So in original.

(i) operate—

(I) not more than 25 sites, with not more than 300 children being served at any one site; or

(II) with a waiver granted by the State agency under standards developed by the Secretary, with not more than 500 children being served at any one site;

(ii) exercise full control and authority over the operation of the program at all sites under their sponsorship;

(iii) provide ongoing year-around activities for children or families;

(iv) demonstrate that such organizations have adequate management and the fiscal capacity to operate a program under this section; and

(v) meet applicable State and local health, safety, and sanitation standards.

(8) SEAMLESS SUMMER OPTION.—Except as otherwise determined by the Secretary, a service institution that is a public or private nonprofit school food authority may provide summer or school vacation food service in accordance with applicable provisions of law governing the school lunch program established under this chapter or the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(9) EXEMPTION.—

(A) IN GENERAL.—For each of calendar years 2005 and 2006 in rural areas of the State of Pennsylvania (as determined by the Secretary), the threshold for determining ''areas in which poor economic conditions exist'' under paragraph (1)(C) shall be 40 percent.

(B) EVALUATION.—

(i) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in subparagraph (A) as compared to the eligibility criteria described in paragraph (1)(C).

(ii) IMPACT.—The evaluation shall assess the impact of the threshold in subparagraph (A) on—

(I) the number of sponsors offering meals through the summer food service program;

(II) the number of sites offering meals through the summer food service program;

(III) the geographic location of the sites;

(IV) services provided to eligible children; and

(V) other factors determined by the Secretary.

(iii) REPORT.—Not later than January 1, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subparagraph.

(iv) FUNDING.—

(I) IN GENERAL.—On January 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subparagraph $400,000, to remain available until expended.

(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subparagraph the funds transferred under subclause (I), without further appropriation.

(10) SUMMER FOOD SERVICE RURAL TRANSPORTATION.—

(A) IN GENERAL.—The Secretary shall provide grants, through not more than 5 eligible State agencies selected by the Secretary, to not more than 60 eligible service institutions selected by the Secretary to increase participation at congregate feeding sites in the summer food service program for children authorized by this section through innovative approaches to limited transportation in rural areas.

(B) ELIGIBILITY.—To be eligible to receive a grant under this paragraph—

(i) a State agency shall submit an application to the Secretary, in such manner as the Secretary shall establish, and meet criteria established by the Secretary; and

(ii) a service institution shall agree to the terms and conditions of the grant, as established by the Secretary.

(C) DURATION.—A service institution that receives a grant under this paragraph may use the grant funds during the 3-fiscal year period beginning in fiscal year 2006.

(D) REPORTS.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

(i) not later than January 1, 2008, an interim report that describes—

(I) the use of funds made available under this paragraph; and

(II) any progress made by using funds from each grant provided under this paragraph; and

(ii) not later than January 1, 2009, a final report that describes—

(I) the use of funds made available under this paragraph;

(II) any progress made by using funds from each grant provided under this paragraph;

(III) the impact of this paragraph on participation in the summer food service program for children authorized by this section; and

(IV) any recommendations by the Secretary concerning the activities of the service institutions receiving grants under this paragraph.

(E) FUNDING.—

(i) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph—

(I) on October 1, 2005, $2,000,000; and

(II) on October 1, 2006, and October 1, 2007, $1,000,000.

(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this para-

graph the funds transferred under clause (i), without further appropriation.

(iii) AVAILABILITY OF FUNDS.—Funds transferred under clause (i) shall remain available until expended.

(iv) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.

(b) Service institutions

(1) PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, payments to service institutions shall equal the full cost of food service operations (which cost shall include the costs of obtaining, preparing, and serving food, but shall not include administrative costs).

(B) MAXIMUM AMOUNTS.—Subject to subparagraph (C), payments to any institution under subparagraph (A) shall not exceed—

(i) $1.97 for each lunch and supper served;

(ii) $1.13 for each breakfast served; and

(iii) 46 cents for each meal supplement served.

(C) ADJUSTMENTS.—Amounts specified in subparagraph (B) shall be adjusted on January 1, 1997, and each January 1 thereafter, to the nearest lower cent increment to reflect changes for the 12-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. Each adjustment shall be based on the unrounded adjustment for the prior 12-month period.

(D) SEAMLESS SUMMER REIMBURSEMENTS.—A service institution described in subsection (a)(8) of this section shall be reimbursed for meals and meal supplements in accordance with the applicable provisions under this chapter (other than subparagraphs (A), (B), and (C) of this paragraph and paragraph (4)) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), as determined by the Secretary.

(2) Any service institution may only serve lunch and either breakfast or a meal supplement during each day of operation, except that any service institution that is a camp or that serves meals primarily to migrant children may serve up to 3 meals, or 2 meals and 1 supplement, during each day of operation, if (A) the service institution has the administrative capability and the food preparation and food holding capabilities (where applicable) to serve more than one meal per day, and (B) the service period of different meals does not coincide or overlap.

(3) Every service institution, when applying for participation in the program, shall submit a complete budget for administrative costs related to the program, which shall be subject to approval by the State. Payment to service institutions for administrative costs shall equal the full amount of State approved administrative costs incurred, except that such payment to service institutions may not exceed the maximum allowable levels determined by the Secretary pursuant to the study prescribed in paragraph (4) of this subsection.

(4)(A) The Secretary shall conduct a study of the food service operations carried out under the program. Such study shall include, but shall not be limited to—

(i) an evaluation of meal quality as related to costs; and

(ii) a determination whether adjustments in the maximum reimbursement levels for food service operation costs prescribed in paragraph (1) of this subsection should be made, including whether different reimbursement levels should be established for self-prepared meals and vendored meals and which site-related costs, if any, should be considered as part of administrative costs.

(B) The Secretary shall also study the administrative costs of service institutions participating in the program and shall thereafter prescribe maximum allowable levels for administrative payments that reflect the costs of such service institutions, taking into account the number of sites and children served, and such other factors as the Secretary determines appropriate to further the goals of efficient and effective administration of the program.

(C) The Secretary shall report the results of such studies to Congress not later than December 1, 1977.

(c) Payments for meals served during May through September; exceptions for continuous school calendars or non-school sites; National Youth Sports Program

(1) Payments shall be made to service institutions only for meals served during the months of May through September, except in the case of service institutions that operate food service programs for children on school vacation at any time under a continuous school calendar or that provide meal service at non-school sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order, or similar cause.

(2) Children participating in National Youth Sports Programs operated by higher education institutions shall be eligible to participate in the program under this paragraph on showing residence in areas in which poor economic conditions exist or on the basis of income eligibility statements for children enrolled in the program.

(d) Advance program payments to States for monthly meal service; letters of credit, forwarding to States; determination of amount; valid claims, receipt

Not later than April 15, May 15, and July 1 of each year, the Secretary shall forward to each State a letter of credit (advance program payment) that shall be available to each State for the payment of meals to be served in the month for which the letter of credit is issued. The amount of the advance program payment shall be an amount which the State demonstrates, to the satisfaction of the Secretary, to be necessary for advance program payments to service institutions in accordance with subsection (e) of this section. The Secretary shall also forward such advance program payments, by the first

day of the month prior to the month in which the program will be conducted, to States that operate the program in months other than May through September. The Secretary shall forward any remaining payments due pursuant to subsection (b) of this section not later than sixty days following receipt of valid claims therefor.

(e) Advance program payments to service institutions for monthly meal service; certification of personnel training sessions; minimum days per month operations requirement; payments: computation, limitation; valid claims, receipt; withholding; demand for repayment; subtraction of disputed payments

(1) Not later than June 1, July 15, and August 15 of each year, or, in the case of service institutions that operate under a continuous school calendar, the first day of each month of operation, the State shall forward advance program payments to each service institution. The State shall not release the second month's advance program payment to any service institution (excluding a school) that has not certified that it has held training sessions for its own personnel and the site personnel with regard to program duties and responsibilities. No advance program payment may be made for any month in which the service institution will operate under the program for less than ten days.

(2) The amount of the advance program payment for any month in the case of any service institution shall be an amount equal to (A) the total program payment for meals served by such service institution in the same calendar month of the preceding calendar year, (B) 50 percent of the amount established by the State to be needed by such service institution for meals if such service institution contracts with a food service management company, or (C) 65 percent of the amount established by the State to be needed by such service institution for meals if such service institution prepares its own meals, whichever amount is greatest: *Provided*, That the advance program payment may not exceed the total amount estimated by the State to be needed by such service institution for meals to be served in the month for which such advance program payment is made or $40,000, whichever is less, except that a State may make a larger advance program payment to such service institution where the State determines that such larger payment is necessary for the operation of the program by such service institution and sufficient administrative and management capability to justify a larger payment is demonstrated. The State shall forward any remaining payment due a service institution not later than seventy-five days following receipt of valid claims. If the State has reason to believe that a service institution will not be able to submit a valid claim for reimbursement covering the period for which an advance program payment has been made, the subsequent month's advance program payment shall be withheld until such time as the State has received a valid claim. Program payments advanced to service institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance program payment.

(f) Nutritional standards

(1) Service institutions receiving funds under this section shall serve meals consisting of a combination of foods and meeting minimum nutritional standards prescribed by the Secretary on the basis of tested nutritional research.

(2) The Secretary shall provide technical assistance to service institutions and private nonprofit organizations participating in the program to assist the institutions and organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to this subsection.

(3) Meals described in paragraph (1) shall be served without cost to children attending service institutions approved for operation under this section, except that, in the case of camps, charges may be made for meals served to children other than those who meet the eligibility requirements for free or reduced price meals in accordance with subsection (a)(5) of this section.

(4) To assure meal quality, States shall, with the assistance of the Secretary, prescribe model meal specifications and model food quality standards, and ensure that all service institutions contracting for the preparation of meals with food service management companies include in their contracts menu cycles, local food safety standards, and food quality standards approved by the State.

(5) Such contracts shall require (A) periodic inspections, by an independent agency or the local health department for the locality in which the meals are served, of meals prepared in accordance with the contract in order to determine bacteria levels present in such meals, and (B) conformance with standards set by local health authorities.

(6) Such inspections and any testing resulting therefrom shall be in accordance with the practices employed by such local health authority.

(7) OFFER VERSUS SERVE.—A school food authority participating as a service institution may permit a child to refuse one or more items of a meal that the child does not intend to consume, under rules that the school uses for school meals programs. A refusal of an offered food item shall not affect the amount of payments made under this section to a school for the meal.

(g) Regulations, guidelines, applications, and handbooks; publication; startup costs

The Secretary shall publish proposed regulations relating to the implementation of the program by November 1 of each fiscal year, final regulations by January 1 of each fiscal year, and guidelines, applications, and handbooks by February 1 of each fiscal year. In order to improve program planning, the Secretary may provide that service institutions be paid as startup costs not to exceed 20 percent of the administrative funds provided for in the administrative budget approved by the State under subsection (b)(3) of this section. Any payments made for startup costs shall be subtracted from amounts otherwise payable for administrative costs subsequently made to service institutions under subsection (b)(3) of this section.

(h) Direct disbursement to service institutions by Secretary

Each service institution shall, insofar as practicable, use in its food service under the program foods designated from time to time by the Secretary as being in abundance. The Secretary is authorized to donate to States, for distribution to service institutions, food available under section 1431 of title 7, or purchased under section 612c of title 7 or section 1446a–1 of title 7. Donated foods may be distributed only to service institutions that can use commodities efficiently and effectively, as determined by the Secretary.

(i) Repealed. Pub. L. 97–35, title VIII, § 817(b), Aug. 13, 1981, 95 Stat. 532

(j) Administrative expenses of Secretary; authorization of appropriations

Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(k) Administrative costs of State; payment; adjustment; standards and effective dates, establishment; funds: withholding, inspection

(1) The Secretary shall pay to each State for its administrative costs incurred under this section in any fiscal year an amount equal to (A) 20 percent of the first $50,000 in funds distributed to that State for the program in the preceding fiscal year; (B) 10 percent of the next $100,000 distributed to that State for the program in the preceding fiscal year; (C) 5 percent of the next $250,000 in funds distributed to that State for the program in the preceding fiscal year; and (D) 2½ percent of any remaining funds distributed to that State for the program in the preceding fiscal year: *Provided*, That such amounts may be adjusted by the Secretary to reflect changes in the size of that State's program since the preceding fiscal year.

(2) The Secretary shall establish standards and effective dates for the proper, efficient, and effective administration of the program by the State. If the Secretary finds that the State has failed without good cause to meet any of the Secretary's standards or has failed without good cause to carry out the approved State management and administration plan under subsection (n) of this section, the Secretary may withhold from the State such funds authorized under this subsection as the Secretary determines to be appropriate.

(3) To provide for adequate nutritional and food quality monitoring, and to further the implementation of the program, an additional amount, not to exceed the lesser of actual costs or 1 percent of program funds, shall be made available by the Secretary to States to pay for State or local health department inspections, and to reinspect facilities and deliveries to test meal quality.

(*l*) Food service management companies; subcontracts; assignments, conditions and limitations; meal capacity information in bids subject to review; registration; record, availability to States; small and minority-owned businesses for supplies and services; contracts: standard form, bid and contract procedures, bonding requirements and exemption, review by States, collusive bidding safeguards

(1) Service institutions may contract on a competitive basis with food service management companies for the furnishing of meals or management of the entire food service under the program, except that a food service management company entering into a contract with a service institution under this section may not subcontract with a single company for the total meal, with or without milk, or for the assembly of the meal. The Secretary shall prescribe additional conditions and limitations governing assignment of all or any part of a contract entered into by a food service management company under this section. Any food service management company shall, in its bid, provide the service institution information as to its meal capacity.

(2) Each State may provide for the registration of food service management companies.

(3) In accordance with regulations issued by the Secretary, positive efforts shall be made by service institutions to use small businesses and minority-owned businesses as sources of supplies and services. Such efforts shall afford those sources the maximum feasible opportunity to compete for contracts using program funds.

(4) Each State, with the assistance of the Secretary, shall establish a standard form of contract for use by service institutions and food service management companies. The Secretary shall prescribe requirements governing bid and contract procedures for acquisition of the services of food service management companies, including, but not limited to, bonding requirements (which may provide exemptions applicable to contracts of $100,000 or less), procedures for review of contracts by States, and safeguards to prevent collusive bidding activities between service institutions and food service management companies.

(m) Accounts and records

States and service institutions participating in programs under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations issued hereunder. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(n) Management and administration plan; notification and submittal to Secretary; specific provisions

Each State desiring to participate in the program shall notify the Secretary by January 1 of each year of its intent to administer the program and shall submit for approval by February

15 a management and administration plan for the program for the fiscal year, which shall include, but not be limited to, (1) the State's administrative budget for the fiscal year, and the State's plans to comply with any standards prescribed by the Secretary under subsection (k) of this section; (2) the State's plans for use of program funds and funds from within the State to the maximum extent practicable to reach needy children; (3) the State's plans for providing technical assistance and training eligible service institutions; (4) the State's plans for monitoring and inspecting service institutions, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently; (5) the State's plan for timely and effective action against program violators; and (6) the State's plan for ensuring fiscal integrity by auditing service institutions not subject to auditing requirements prescribed by the Secretary.

(*o*) Violations and penalties

(1) Whoever, in connection with any application, procurement, recordkeeping entry, claim for reimbursement, or other document or statement made in connection with the program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or whoever, in connection with the program, knowingly makes an opportunity for any person to defraud the United States, or does or omits to do any act with intent to enable any person to defraud the United States, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) Whoever being a partner, officer, director, or managing agent connected in any capacity with any partnership, association, corporation, business, or organization, either public or private, that receives benefits under the program, knowingly or willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any benefits provided by this section or any money, funds, assets, or property derived from benefits provided by this section, shall be fined not more than $10,000 or imprisoned for not more than five years, or both (but, if the benefits, money, funds, assets, or property involved is not over $200, then the penalty shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both).

(3) If two or more persons conspire or collude to accomplish any act made unlawful under this subsection, and one or more of such persons do any act to effect the object of the conspiracy or collusion, each shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(p) Monitoring of participating private nonprofit organizations

(1) In addition to the normal monitoring of organizations receiving assistance under this section, the Secretary shall establish a system under which the Secretary and the States shall monitor the compliance of private nonprofit organizations with the requirements of this section and with regulations issued to implement this section.

(2) In the fiscal year 1990 and each succeeding fiscal year, the Secretary may reserve for purposes of carrying out paragraph (1) not more than ½ of 1 percent of amounts appropriated for purposes of carrying out this section.

(q) Authorization of appropriations

For the period beginning October 1, 1977, and ending September 30, 2009, there are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(June 4, 1946, ch. 281, §13, as added Pub. L. 90–302, §3, May 8, 1968, 82 Stat. 117; amended Pub. L. 91–248, §6(c), (d), May 14, 1970, 84 Stat. 210; Pub. L. 92–32, §7, June 30, 1971, 85 Stat. 86; Pub. L. 92–433, §§1, 2, Sept. 26, 1972, 86 Stat. 724; Pub. L. 94–20, May 2, 1975, 89 Stat. 82; Pub. L. 94–105, §13, Oct. 7, 1975, 89 Stat. 515; Pub. L. 95–166, §2, Nov. 10, 1977, 91 Stat. 1325; Pub. L. 95–627, §§5(d), 7(b), 10(d)(2), Nov. 10, 1978, 92 Stat. 3620, 3622, 3624; Pub. L. 96–499, title II, §206, Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97–35, title VIII, §§809, 817(b), Aug. 13, 1981, 95 Stat. 527, 532; Pub. L. 99–500, title III, §311, Oct. 18, 1986, 100 Stat. 1783–360, and Pub. L. 99–591, title III, §311, Oct. 30, 1986, 100 Stat. 3341–363; Pub. L. 99–661, div. D, title I, §4101, Nov. 14, 1986, 100 Stat. 4071; Pub. L. 100–435, title II, §213, Sept. 19, 1988, 102 Stat. 1658; Pub. L. 101–147, title I, §102(a), title III, §307, Nov. 10, 1989, 103 Stat. 879, 915; Pub. L. 103–448, title I, §§105(b), 114(a)–(g), Nov. 2, 1994, 108 Stat. 4702, 4712, 4713; Pub. L. 104–193, title VII, §706(a)–(*l*), Aug. 22, 1996, 110 Stat. 2291–2293; Pub. L. 105–336, title I, §§105(a)–(e)(1), 107(j)(2)(A), (3)(B), Oct. 31, 1998, 112 Stat. 3148, 3149, 3152, 3153; Pub. L. 108–134, §5(1), Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108–211, §5(a), Mar. 31, 2004, 118 Stat. 566; Pub. L. 108–265, title I, §116(a)–(e), June 30, 2004, 118 Stat. 748–750; Pub. L. 108–447, div. A, title VII, §788(b), Dec. 8, 2004, 118 Stat. 2851.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1), (5), (8) and (b)(1)(D), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (a)(8), (9). Pub. L. 108–265, §116(a), (c), added pars. (8) and (9).

Subsec. (a)(10). Pub. L. 108–265, §116(d), added par. (10).

Subsec. (a)(10)(C). Pub. L. 108–447, §788(b)(1), substituted "2006" for "2005".

Subsec. (a)(10)(D)(i). Pub. L. 108–447, §788(b)(2)(A), substituted "2008" for "2007".

Subsec. (a)(10)(D)(ii). Pub. L. 108–447, §788(b)(2)(B), substituted "2009" for "2008".

Subsec. (b)(1)(D). Pub. L. 108–265, §116(b), added subpar. (D).

Subsec. (q). Pub. L. 108–265, §116(e), substituted "September 30, 2009" for "June 30, 2004".

Pub. L. 108–211 substituted "June 30, 2004" for "March 31, 2004".

2003—Subsec. (q). Pub. L. 108–134 substituted ''the period beginning October 1, 1977, and ending March 31, 2004'' for ''the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 2003''.

1998—Subsec. (a)(1)(D)(i). Pub. L. 105–336, § 107(j)(3)(B)(i), substituted ''to have a disability'' for ''to be mentally or physically handicapped''.

Subsec. (a)(1)(D)(ii). Pub. L. 105–336, § 107(j)(3)(B)(ii), substituted ''individuals who have a disability'' for ''the mentally or physically handicapped''.

Subsec. (a)(3)(C). Pub. L. 105–336, § 107(j)(2)(A), inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''conduct a regularly scheduled food service primarily for homeless children; or''.

Subsec. (a)(7)(B)(i). Pub. L. 105–336, § 105(a), added cl. (i) and struck out former cl. (i) which read as follows:

''(i)(I) serve a total of not more than 2,500 children per day at not more than 5 sites in any urban area, with not more than 300 children being served at any 1 site (or, with a waiver granted by the State under standards developed by the Secretary, not more than 500 children being served at any 1 site); or

''(II) serve a total of not more than 2,500 children per day at not more than 20 sites in any rural area, with not more than 300 children being served at any 1 site (or, with a waiver granted by the State under standards developed by the Secretary, not more than 500 children being served at any 1 site);''.

Subsec. (a)(7)(B)(ii) to (vii). Pub. L. 105–336, § 105(b)(1), redesignated cls. (iv) to (vii) as (ii) to (v), respectively, and struck out former cls. (ii) and (iii) which read as follows:

''(ii) use self-preparation facilities to prepare meals, or obtain meals from a public facility (such as a school district, public hospital, or State university) or a school participating in the school lunch program under this chapter;

''(iii) operate in areas where a school food authority or the local, municipal, or county government has not indicated by March 1 of any year that such authority or unit of local government will operate a program under this section in such year;''.

Subsec. (f)(7). Pub. L. 105–336, § 105(c), in first sentence, struck out ''attending a site on school premises operated directly by the authority'' after ''permit a child''.

Subsec. (*l*)(1). Pub. L. 105–336, § 105(b)(2)(A), in first sentence, struck out ''(other than private nonprofit organizations eligible under subsection (a)(7) of this section)'' after ''Service institutions'' and substituted ''with food service management companies'' for ''only with food service management companies registered with the State in which they operate'' and struck out at end ''The State shall, upon award of any bid, review the company's registration to calculate how many remaining meals the food service management company is equipped to prepare.''

Subsec. (*l*)(2). Pub. L. 105–336, § 105(b)(2)(B), substituted ''may'' for ''shall'' after ''Each State'' and struck out at end ''For the purposes of this section, registration shall include, at a minimum—

''(A) certification that the company meets applicable State and local health, safety, and sanitation standards;

''(B) disclosure of past and present company owners, officers, and directors, and their relationship, if any, to any service institution or food service management company that received program funds in any prior fiscal year;

''(C) records of contract terminations or disallowances, and health, safety, and sanitary code violations, in regard to program operations in prior fiscal years; and

''(D) the addresses of the company's food preparation and distribution sites.

No food service management company may be registered if the State determines that such company (i) lacks the administrative and financial capability to perform under the program, or (ii) has been seriously deficient in its participation in the program in prior fiscal years.''

Subsec. (*l*)(3) to (5). Pub. L. 105–336, § 105(b)(2)(C), (D), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ''In order to ensure that only qualified food service management companies contract for services in all States, the Secretary shall maintain a record of all registered food service management companies that have been seriously deficient in their participation in the program and may maintain a record of other registered food service management companies, for the purpose of making such information available to the States.''

Subsec. (n)(2). Pub. L. 105–336, § 105(e)(1), amended Pub. L. 104–193, § 706(j)(1). See 1996 Amendment note below.

Subsec. (q). Pub. L. 105–336, § 105(d), substituted ''2003'' for ''1998''.

1996—Subsec. (a)(1). Pub. L. 104–193, § 706(a)(1)(A), substituted ''initiate and maintain nonprofit food service programs'' for ''initiate, maintain, and expand nonprofit food service programs'' in first sentence.

Subsec. (a)(1)(E). Pub. L. 104–193, § 706(a)(1)(B), struck out ''the Trust Territory of the Pacific Islands,'' before ''and the Northern Mariana Islands''.

Subsec. (a)(7)(A). Pub. L. 104–193, § 706(a)(2), substituted ''Private nonprofit organizations'' for ''Except as provided in subparagraph (C), private nonprofit organizations''.

Subsec. (b). Pub. L. 104–193, § 706(b), inserted heading.

Subsec. (b)(1). Pub. L. 104–193, § 706(b), added par. (1) and struck out former par. (1) which read as follows: ''Payments to service institutions shall equal the full cost of food service operations (which cost shall include the cost of obtaining, preparing, and serving food, but shall not include administrative costs), except that such payments to any institution shall not exceed (1) 85.75 cents for each lunch and supper served; (2) 47.75 cents for each breakfast served; or (3) 22.50 cents for each meal supplement served: *Provided*, That such amounts shall be adjusted each January 1 to the nearest one-fourth cent in accordance with the changes for the twelve-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor: *Provided further*, That the Secretary may make such adjustments in the maximum reimbursement levels as the Secretary determines appropriate after making the study prescribed in paragraph (4) of this subsection.''

Subsec. (b)(2). Pub. L. 104–193, § 706(c), substituted ''3 meals, or 2 meals and 1 supplement,'' for ''four meals'' in first sentence and struck out at end ''The meals that camps and migrant programs may serve shall include a breakfast, a lunch, a supper, and meal supplements.''

Subsec. (c)(2). Pub. L. 104–193, § 706(d)(3), (4), struck out '', and such higher education institutions,'' before ''shall be eligible to participate'' and substituted ''on showing residence in areas in which poor economic conditions exist or on the basis of income eligibility statements for children enrolled in the program'' for ''without application''.

Pub. L. 104–193, § 706(d)(1), (2), designated subpar. (B) as par. (2) and struck out subpars. (A), relating to eligibility of institutions operating National Youth Sports Program for meal and supplement reimbursements, and (C) to (E), relating to reimbursement rates, nutritional requirements and meal patterns, and issuance of regulations, respectively.

Subsec. (e)(1). Pub. L. 104–193, § 706(e), substituted ''each service institution. The State'' for ''each service institution: *Provided*, That (A) the State'', inserted ''(excluding a school)'' after ''program payment to any service institution'', and substituted ''responsibilities. No advance program payment'' for ''responsibilities, and (B) no advance program payment''.

Subsec. (f). Pub. L. 104–193, § 706(f)(5), redesignated pars. (4) to (7) as (3) to (6), respectively.

Pub. L. 104–193, § 706(f)(1)–(4), redesignated first to seventh sentences as pars. (1) to (7), respectively, struck out par. (3), substituted ''paragraph (1)'' for ''the first sentence'' in par. (4), and substituted ''conformance with standards set by local health authorities'' for ''that bacteria levels conform to the standards which are applied by the local health authority for that locality with respect to the levels of bacteria that may be present in meals served by other establishments in that locality'' in par. (6)(B). Prior to repeal, par. (3) read as follows: ''The Secretary shall provide additional technical assistance to those service institutions and private nonprofit organizations that are having difficulty maintaining compliance with the requirements.''

Subsec. (f)(7). Pub. L. 104–193, § 706(g), added par. (7).

Subsec. (m). Pub. L. 104–193, § 706(h), substituted ''be available at any reasonable time for inspection and audit'' for ''at all times be available for inspection and audit'' in second sentence.

Subsec. (n)(2). Pub. L. 104–193, § 706(j)(1), as amended by Pub. L. 105–336, § 105(e)(1), struck out '', including the State's methods for assessing need'' after ''needy children''.

Pub. L. 104–193, § 706(i), struck out '', and its plans and schedule for informing service institutions of the availability of the program'' before semicolon.

Subsec. (n)(3). Pub. L. 104–193, § 706(j)(2), (4), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''the State's best estimate of the number and character of service institutions and sites to be approved, and of meals to be served and children to participate for the fiscal year, and a description of the estimating methods used;''.

Subsec. (n)(4). Pub. L. 104–193, § 706(j)(4), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Pub. L. 104–193, § 706(j)(3), struck out ''and schedule'' after ''State's plans''.

Subsec. (n)(5) to (7). Pub. L. 104–193, § 706(j)(4), redesignated pars. (6) and (7) as (5) and (6), respectively. Former par. (5) redesignated (4).

Subsec. (p). Pub. L. 104–193, § 706(*l*), redesignated subsec. (q) as (p) and struck out former subsec. (p) which read as follows: ''During the fiscal years 1990 and 1991, the Secretary and the States shall carry out a program to disseminate to potentially eligible private nonprofit organizations information concerning the amendments made by the Child Nutrition and WIC Reauthorization Act of 1989 regarding the eligibility under subsection (a)(7) of this section of private nonprofit organizations for the program established under this section.''

Subsec. (q). Pub. L. 104–193, § 706(*l*)(2), redesignated subsec. (r) as (q). Former subsec. (q) redesignated (p).

Subsec. (q)(2). Pub. L. 104–193, § 706(k)(1), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The Secretary shall require each State to establish and implement an ongoing training and technical assistance program for private nonprofit organizations that provides information on program requirements, procedures, and accountability. The Secretary shall provide assistance to State agencies regarding the development of such training and technical assistance programs.''

Subsec. (q)(3). Pub. L. 104–193, § 706(k)(3), redesignated par. (3) as (2).

Pub. L. 104–193, § 706(k)(2), substituted ''paragraph (1)'' for ''paragraphs (1) and (2) of this subsection''.

Subsec. (q)(4). Pub. L. 104–193, § 706(k)(1), struck out par. (4) which read as follows: ''For the purposes of this subsection, the term 'private nonprofit organization' has the meaning given such term in subsection (a)(7)(B) of this section.''

Subsec. (r). Pub. L. 104–193, § 706(*l*)(2), redesignated subsec. (r) as (q).

1994—Subsec. (a)(4)(A) to (F). Pub. L. 103–448, § 114(a), added subpars. (A) to (D) and struck out former subpars. (A) to (F) which read as follows:

''(A) local schools or service institutions that have demonstrated successful program performance in a prior year;

''(B) service institutions that prepare meals at their own facilities or operate only one site;

''(C) service institutions that use local school food facilities for the preparation of meals;

''(D) other service institutions that have demonstrated ability for successful program operation;

''(E) service institutions that plan to integrate the program with Federal, State, or local employment programs; and

''(F) private nonprofit organizations eligible under paragraph (7).''

Subsec. (a)(7)(C). Pub. L. 103–448, § 114(b), struck out subpar. (C) which read as follows:

''(C)(i) Except as provided in clause (ii), no private nonprofit organization (other than organizations eligible under paragraph (1)) may participate in the program in an area where a school food authority or a local, municipal, or county government participated in the program before such organization applied to participate until the expiration of the 1-year period beginning on the date that such school food authority or local, municipal, or county government terminated its participation in the program.

''(ii) Clause (i) shall not apply if the appropriate State agency or regional office of the Department of Agriculture (whichever administers the program in the area concerned), after consultation with the school food authority or local, municipal, or county government concerned, determines that such school food authority or local, municipal, or county government would have discontinued its participation in the program regardless of whether a private nonprofit organization was available to participate in the program in such area.''

Subsec. (c)(1). Pub. L. 103–448, § 114(c), inserted before period at end ''or that provide meal service at nonschool sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order, or similar cause''.

Subsec. (f). Pub. L. 103–448, § 105(b), inserted after first sentence ''The Secretary shall provide technical assistance to service institutions and private nonprofit organizations participating in the program to assist the institutions and organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to this subsection. The Secretary shall provide additional technical assistance to those service institutions and private nonprofit organizations that are having difficulty maintaining compliance with the requirements.'' and substituted ''Meals described in the first sentence shall be served'' for ''Such meals shall be served''.

Subsec. (*l*)(3). Pub. L. 103–448, § 114(d), substituted ''that have been seriously deficient in their participation in the program and may maintain a record of other registered food service management companies,'' for ''and their program record''.

Subsec. (n)(5). Pub. L. 103–448, § 114(e)(1), (2), redesignated cl. (7) as (5) and struck out former cl. (5) which read as follows: ''the State's schedule for application by service institutions;''.

Subsec. (n)(6). Pub. L. 103–448, § 114(e)(1)–(3), redesignated cl. (9) as (6), inserted ''and'' at end, and struck out former cl. (6) which read as follows: ''the actions to be taken to maximize the use of meals prepared by service institutions and the use of school food service facilities;''.

Subsec. (n)(7). Pub. L. 103–448, § 114(e)(2), redesignated cl. (11) as (7). Former cl. (7) redesignated (5).

Subsec. (n)(8). Pub. L. 103–448, § 114(e)(1), struck out cl. (8) which read as follows: ''the State's plan and schedule for registering food service management companies;''.

Subsec. (n)(9). Pub. L. 103–448, § 114(e)(2), redesignated cl. (9) as (6).

Subsec. (n)(10). Pub. L. 103–448, § 114(e)(1), struck out cl. (10) which read as follows: ''the State's plan for determining the amounts of program payments to service institutions and for disbursing such payments;''.

Subsec. (n)(11). Pub. L. 103–448, § 114(e)(2), redesignated cl. (11) as (7).

Subsec. (n)(12). Pub. L. 103–448, § 114(e)(4), struck out cl. (12) which read as follows: ''the State's procedure for granting a hearing and prompt determination to any service institution wishing to appeal a State ruling denying the service institution's application for program participation or for program reimbursement.''

Subsec. (q)(2). Pub. L. 103–448, § 114(f)(1), (2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Application forms or other printed materials provided by the Secretary or the States to persons who intend to apply to participate as private nonprofit organizations shall contain a warning in bold lettering explaining, at a minimum—

''(A) the criminal provisions and penalties established by subsection (*o*) of this section; and

''(B) the procedures for termination of participation in the program as established by regulations.''

Subsec. (q)(3). Pub. L. 103–448, § 114(f)(2), (3), redesignated par. (4) as (3) and substituted ''paragraphs (1) and (2)'' for ''paragraphs (1) and (3)''. Former par. (3) redesignated (2).

Subsec. (q)(4), (5). Pub. L. 103–448, § 114(f)(2), redesignated pars. (4) and (5) as (3) and (4), respectively.

Subsec. (r). Pub. L. 103–448, § 114(g), substituted ''1998'' for ''1994''.

1989—Subsec. (a)(3)(C). Pub. L. 101–147, § 102(a)(1)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''either conduct a regularly scheduled food service for children from areas in which poor economic conditions exist or qualify as camps; and''.

Subsec. (a)(4)(F). Pub. L. 101–147, § 102(a)(1)(B), added subpar. (F).

Subsec. (a)(7)(A). Pub. L. 101–147, § 102(a)(1)(C)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Not later than May 1, 1989, the Secretary shall institute Statewide demonstration projects in five States in which private nonprofit organizations, as defined in subparagraph (B) (other than organizations already eligible under subsection (a)(1) of this section), shall be eligible for the program under the same terms and conditions as other service institutions.''

Subsec. (a)(7)(B)(i). Pub. L. 101–147, § 102(a)(1)(C)(ii)(I), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''serve no more than 2,500 children per day and operate at not more than 5 sites;''.

Subsec. (a)(7)(B)(ii). Pub. L. 101–147, § 102(a)(1)(C)(ii)(II), inserted ''or a school participating in the school lunch program under this chapter'' after ''university)''.

Subsec. (a)(7)(B)(v). Pub. L. 101–147, § 102(a)(1)(C)(ii)(III), inserted ''or families'' after ''children''.

Subsec. (a)(7)(C). Pub. L. 101–147, § 102(a)(1)(C)(iii), added subpar. (C).

Subsec. (c). Pub. L. 101–147, § 102(a)(2), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 101–147, § 307(1), substituted ''July 1 of each year'' for ''July 1, of each year''.

Subsec. (f). Pub. L. 101–147, § 307(2), substituted ''prescribe'' for ''prescribed'' before ''model meal specifications''.

Subsec. (g). Pub. L. 101–147, § 307(3), struck out '': *Provided*, That for fiscal year 1978, those portions of the regulations relating to payment rates for both food service operations and administrative costs need not be published until December 1 and February 1, respectively'' after ''February 1 of each fiscal year''.

Subsec. (h). Pub. L. 101–147, § 307(4), made technical amendments to references to sections 612c, 1431, and 1446a–1 of title 7 involving underlying provisions of original act and requiring no change in text.

Subsec. (*l*)(1). Pub. L. 101–147, § 102(a)(3), inserted ''(other than private nonprofit organizations eligible under subsection (a)(7) of this section)'' after ''Service institutions''.

Subsec. (p). Pub. L. 101–147, § 102(a)(4), (5), added subsec. (p) and redesignated former subsec. (p) as (r).

Subsec. (q). Pub. L. 101–147, § 102(a)(5), added subsec. (q).

Subsec. (r). Pub. L. 101–147, § 102(a)(6), substituted ''For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 1994,'' for ''For the fiscal years beginning October 1, 1979, and ending September 30, 1989,''.

Pub. L. 101–147, § 102(a)(4), redesignated former subsec. (p) as (r).

1988—Subsec. (a)(1)(B). Pub. L. 100–435, § 213(a), inserted reference to public or private nonprofit higher education institutions participating in National Youth Sports Program.

Subsec. (a)(7). Pub. L. 100–435, § 213(b), added par. (7).

1986—Subsec. (p). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended subsec. (p) identically, substituting ''1989'' for ''1984''.

1981—Subsec. (a). Pub. L. 97–35, § 809, in par. (1)(B) substituted ''public or private nonprofit school food authorities, local, municipal, or county governments,'' for ''nonresidential public or private nonprofit institutions'' and in par. (1)(C) substituted ''50'' for ''33⅓'', and added par. (6).

Subsec. (i). Pub. L. 97–35, § 817(b), struck out subsec. (i) which related to administration of program by Secretary in event of nonadministration by State.

1980—Subsec. (b)(2). Pub. L. 96–499, § 206(1), restricted service institutions to serving only two meals per day unless such institutions were a camp or an institution serving meals primarily to migrant children.

Subsec. (p). Pub. L. 96–499, § 206(2), substituted ''September 30, 1984'' for ''September 30, 1980''.

1978—Subsec. (a)(1)(D)(ii). Pub. L. 95–627, § 10(d)(2), inserted ''or nonprofit private'' after ''in a public''.

Subsec. (b)(1). Pub. L. 95–627, § 5(d), inserted ''for All Urban Consumers'' after ''Consumer Price Index''.

Subsec. (k)(1). Pub. L. 95–627, § 7(b), substituted ''$100,000'' for ''$50,000'' in cl. (B), ''$250,000'' for ''$100,000'' in cl. (C), and ''2½ percent'' for ''2 percent'' in cl. (D).

1977—Subsec. (a). Pub. L. 95–166, in revising subsec. (a), among other changes: reenacted par. (1); inserted cl. (A) definition of ''program''; reenacted as cl. (B) definition of ''service institutions'', inserting development of ''school vacation'' programs; reenacted as cl. (C) definition of ''areas in which poor economic conditions exist'' definition of ''poor economic conditions'' of former par. (3), substituting ''as determined by information'' for ''as shown by information'' and ''served to children attending public and nonprofit private schools located in the area of program food service sites, or from other appropriate sources, including statements of eligibility based upon income for children enrolled in the program'' for ''served to children attending schools located in the area of summer food sites, or from other applicable sources'' and striking out reference to information provided from model city target areas; inserted cl. (D) definition of ''children''; reenacted as cl. (E) definition of ''State'' last sentence of former par. (3), extending term to include the Northern Mariana Islands; enacted par. (2), which incorporated part of former par. (1) which had read ''To the maximum extent feasible, consistent with the purposes of this section, special summer programs shall utilize the existing food service facilities of public and nonprofit private schools.''; enacted par. (3), which incorporated part of former par. (2) which had read ''Service institutions eligible to participate under the program authorized under this section shall be limited to those which conduct a regularly scheduled program for children from areas in which poor economic conditions exist, for any period during the months of May through September, at site locations where organized recreation activities or food services are provided for children in attendance.''; and added pars. (4) and (5).

Subsec. (b)(1). Pub. L. 95–166 incorporated existing provisions in part in text designated par. (1); substituted ''Payments'' for ''Disbursements'' increased payments for cost of lunch and supper, breakfast, and each meal supplement to 85.75 from 75.5, to 47.75 from 42, and to 22.50 from 19.75 cents respectively; substituted provision for adjustment of rates each January

1 based on the Consumer Price Index for twelve-month period ending November 30 for prior such provision for adjustment each March 1 based on the Index for year ending January 31; exclude from cost of food service operations administrative costs; and authorized adjustments, as appropriate, in the maximum reimbursement levels.

Subsec. (b)(2). Pub. L. 95–166 added par. (2) which incorporated in part existing provision which formerly stated that no institution shall be prohibited from serving breakfasts, suppers, and meal supplements as well as lunches unless the service period of different meals coincides or overlaps.

Subsec. (b)(3). Pub. L. 95–166 added par. (3) which supersedes part of existing provisions prescribing administrative costs of lunch and supper, breakfast, and meal supplement not to exceed 6, 3, and 1.5 cents respectively.

Subsec. (b)(4). Pub. L. 95–166 added par. (4).

Subsec. (c). Pub. L. 95–166 substituted ''Payments'' for ''Disbursements'' and ''except in the case of service institutions that operate food service programs for children on school vacation at any time under a continuous school calendar'' for ''except that the foregoing provision shall not apply to institutions which develop food service programs for children on school vacation at any time under a continuous school calendar or prevent such institutions, if otherwise eligible, from participating in the program authorized by this section''.

Subsec. (d). Pub. L. 95–166, in revising text, substituted provision for advance program payment to States through letters of credit forwarded no later than April 15, May 15, and July 1, of each year for prior provision for forwarding advance payments no later than June 1, July 1, and August 1 of each year; inserted computation of payment amount provision; struck out prior provision for an amount no less than (1) the total payment made to the State for meals served for the calendar month of the preceding calendar year or (2) 65 per centum of the amount estimated by the State, on the basis of approved applications, to be needed to reimburse service institutions for meals to be served in the month, whichever is the greater, now covered in subsec. (e)(2) of this section; substituted provision for forwarding payments to States operating a program in months other than May through September by the first day of the month prior to the month in which the program is conducted for prior provision for receipt of advance payments not later than the first day of each month involved where institutions operate programs during nonsummer vacations during a continuous school year calendar; reenacted provision for payments within sixty days of receipt of valid claims; and struck out provision declaring that any funds advanced to a State for which valid claims have not been established within 180 days shall be deducted from the next appropriate monthly advance payment unless the claimant requests a hearing with the Secretary prior to the 180th day, covered in subsec. (e)(2) of this section.

Subsec. (e). Pub. L. 95–166 added subsec. (e) which in incorporating in part provisions of former subsec. (d), substituted in par. (1) July 15 and August 15 for July 1 and August 1 and reenacted provision for payment not later than the first day of each month of operation where service institutions operate under a continuous school calendar, and in par. (2) substituted provision for computation of amount which is the greatest of the amount described in cls. (A), (B), and (C) for prior provision for such computation which is the greater of (1) the total payment made to the State for meals served for the calendar month of the preceding calendar year (covered in cl. (A)) or (2) 65 per centum of the amount estimated by the State, on the basis of approved applications, to be needed to reimburse service institutions for meals to be served in the month (covered in cl. (C)). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 95–166 redesignated former subsec. (e) as (f), substituted in first sentence ''receiving funds'' for ''to which funds are disbursed'', and inserted provisions respecting: charging ineligible children for meals served in camps, model specifications and standards for quality assurance, meal preparation contract requirements, and inspection and testing. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 95–166 redesignated former subsec. (f) as (g), required publication of proposed regulations by November 1, instead of January 1, final regulations by January 1, instead of March 1, and guidelines, applications, and handbooks by February 1, instead of March 1, of each fiscal year, inserted proviso, substituted provision for payment of startup costs limited to 20 percent of administrative funds provided for in the administrative budget for prior limitation to 10 per centum of Federal funds provided the service institutions for meals served under this section during the preceding summer, and substituted provision for subtraction of startup costs from amounts otherwise payable for administrative costs made to the service institutions for prior provision for such reduction from payments made for meals served under subsec. (b) of this section. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 95–166 redesignated former subsec. (g) as (h), struck out ''participating'' before ''service institution'' and '', either nationally or in the institution area, or foods donated by the Secretary'' after ''abundance'', and substituted provision for donation of available or purchased food to States, for distribution to service institutions that can use commodities efficiently and effectively, as determined by the Secretary for prior provision for donation by the Secretary of available or purchased foods, irrespective of amount of appropriated funds, to service institutions in accordance with the needs as determined by authorities of these institutions for utilization in their feeding program. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95–166 redesignated former subsec. (h) as (i), authorized Secretary's administration of the program when the State is unable for any reason to disburse the funds otherwise payable or does not operate the program as required by this section, prior provision only requiring direct disbursements when the State educational agency was not permitted by law or was otherwise unable to disburse the funds, and required State notification of the Secretary of its intention not to administer the program. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 95–166 redesignated former subsec. (i) as (j). Former subsec. (j) redesignated (p).

Subsec. (k). Pub. L. 95–166 added subsec. (k) and struck out former subsec. (k) which required Secretary to pay administrative costs of each State in an amount equal to 2 per centum of funds distributed to the State and prescribing minimum sum of $10,000 each fiscal year, except where distribution of funds to the State totals less than $50,000 for the fiscal year.

Subsec. (*l*). Pub. L. 95–166 added subsec. (*l*) and struck out former subsec. (*l*) which provided that nothing in this section should be construed to preclude a service institution from contracting on a competitive basis for the furnishing of meals or administration of the program, or both.

Subsec. (m). Pub. L. 95–166 struck out '', State educational agencies,'' after ''States''.

Subsecs. (n), (*o*). Pub. L. 95–166 added subsecs. (n) and (*o*).

Subsec. (p). Pub. L. 95–166 redesignated former subsec. (j) as (p) and made authorization applicable to fiscal years beginning Oct. 1, 1977, and ending Sept. 30, 1980.

1975—Subsec. (a). Pub. L. 94–105 substituted provisions authorizing to be appropriated sums for a summer food services program through Sept. 30, 1977, for provisions authorizing to be appropriated sums for a summer food services program through Sept. 30, 1975.

Subsec. (a)(1). Pub. L. 94–20, §1(a), inserted ''and for the period July 1, 1975, through September 30, 1975,'' before ''to enable''.

Subsec. (b). Pub. L. 94–105 substituted provisions for payment to service institutions of the full cost of obtaining, preparing and serving food and administrative costs, with maximum rates for each kind of meal and

its related administrative cost and adjustment of the rates each March 1 on the basis of changes in the series for food away from home of the Consumer Price Index for provisions apportioning among the states the appropriated sums, with a maximum basic grant of $50,000, and reserving 2 per centum of the appropriated sums for apportionment to Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

Subsec. (c). Pub. L. 94–105 substituted provisions for disbursement to service institutions only for meals served during May through Sept. except for institutions with programs for children on school vacation at any time under a continuous school calendar for provisions for the disbursement of funds by the State educational agency to service institutions on a nondiscriminatory basis for the cost of obtaining agricultural commodities and other foods, purchase and rental of equipment and authorizing financial assistance not to exceed 3 per centum of the operating costs in cases of severe need.

Subsec. (d). Pub. L. 94–105 substituted provisions relating to the advance payment to States for meals served in that month and deductions in the next month for advances for which valid claims have not been established within 180 days for provisions for the disbursement of funds directly to service institutions in states where the State educational agency is forbidden by law to disburse funds to such institutions.

Subsec. (e). Pub. L. 94–105 substituted provisions for free meals consisting of a combination of foods and meeting minimum nutritional standards for provisions making available for the first three months of the next fiscal year any funds unobligated at the end of the prior fiscal year.

Subsec. (f). Pub. L. 94–105 substituted provisions directing the Secretary to publish proposed and final regulations, guidelines, and handbooks and authorizing startup costs for meals served during the preceding summer for provisions for free or reduced cost meals with minimum nutritional standards and prohibiting segregation, discrimination or overt identification practices with regard to any child because of his inability to pay.

Subsec. (g). Pub. L. 94–105 substituted provisions directing the utilization of foods donated or designated as in abundance by the Secretary and directing the donation of food available under section 1431, 612c and 1446a–1 of title 7 irrespective of the amount of funds appropriated under this section for provisions directing further apportionment among the States if any State cannot utilize all funds apportioned to it or additional funds are made available.

Subsec. (h). Pub. L. 94–105 substituted provisions authorizing the Secretary to disburse funds directly to service institutions in States where the educational agency is not permitted by law or is otherwise unable to disburse the funds for provisions requiring certification by the Secretary to the Secretary of the Treasury of amounts to be paid, directing the utilization of donated foods or foods designated as abundant, permitting donation of food available under sections 1431, 612c or 1446a–1 of title 7 irrespective of funds appropriated, mandating that value of assistance to children under this section not be considered income, that expenditures of State and local funds not be diminished as a result of federal funding, authorizing appropriations for administrative expenses and requiring States and State educational agencies and service institutions to keep and make available for inspection such accounts and records as may be necessary.

Subsec. (i). Pub. L. 94–105 substituted provision that the amount of State and local funds spent for food programs not be diminished as a result of funds received under this program for provisions authorizing the Secretary of Agriculture to utilize during May 15 to Sept. 15, 1972 not to exceed $25,000 of funds available under section 612c of Title 7 to carry out the purposes of this chapter, such funds to be reimbursed out of any supplemental appropriation.

Subsec. (j). Pub. L. 94–105 substituted provision authorizing to be appropriated such sums as may be necessary for the Secretary's administrative expenses, for provisions adjusting the reimbursement rate for meals served during May through Sept. 1975 to the nearest quarter cent to reflect changes since the period of May through Sept. 1974 in the cost of operating special summer food programs.

Pub. L. 94–20, §1(b), added subsec. (j).

Subsec. (k). Pub. L. 94–105 substituted provisions directing the Secretary to pay each State for administrative costs an amount equal to 2 per centum of funds distributed under subsec. (b), with no State to receive less than $10,000 unless funds distributed to such State total less than $50,000 for provisions directing the Secretary to issue regulations no later than ten days following May 2, 1975 pertaining to operations of the program during the months of May through Sept. 1975, with proviso that such regulations shall in no way differ from current regulations except for changes necessary to implement this chapter.

Pub. L. 94–20, §1(b), added subsec. (k).

Subsecs. (*l*), (m). Pub. L. 94–105 added subsecs. (*l*) and (m).

1972—Subsec. (a)(1). Pub. L. 92–433, §2(a), substituted authorization of appropriation of such sums as are necessary for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for provisions authorizing appropriation of $32,000,000 for each of the fiscal years ending June 30, 1972 and June 30, 1973.

Subsec. (a)(2). Pub. L. 92–433, §2(b), inserted provisions authorizing special summer programs to utilize existing food service facilities of public and nonprofit private schools to the maximum extent feasible.

Subsec. (i). Pub. L. 92–433, §1, added subsec. (i).

1971—Subsec. (a)(1). Pub. L. 92–32, §7(a), authorized appropriations of $32,000,000 for fiscal years ending June 30, 1972, and 1973, as were authorized for fiscal years ending June 30, 1969, 1970, and 1971, and substituted in first sentence ''program'' for ''pilot program''.

Subsec. (c)(2). Pub. L. 92–32, §7(b), provided that non-Federal contributions may be in cash or kind, fairly evaluated, including but not limited to equipment and services.

1970—Subsec. (f). Pub. L. 91–248 provided for determination of ability to pay the full cost of lunch based on a publicly announced policy the minimum criteria of which includes family income and the number of school children in the family unit as well as the size of the family unit in general and provided that there be no overt identification of those children who receive free and reduced price meals.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 116(a)–(c), (e) of Pub. L. 108–265 effective June 30, 2004, and amendment by section 116(d) of Pub. L. 108–265 effective Oct. 1, 2005, see section 502(a), (b)(5) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–336, title I, §105(e)(2), Oct. 31, 1998, 112 Stat. 3149, provided that: ''The amendment made by paragraph (1) [amending this section] takes effect on January 1, 1997.''

Pub. L. 105–336, title I, §107(j)(4), Oct. 31, 1998, 112 Stat. 3153, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and sections 1766 and 1769f of this title and repealing section 1766b of this title] take effect on July 1, 1999.''

Amendment by sections 105(a)–(d) and 107(j)(3)(B) of Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 706(m) of Pub. L. 104–193 provided that: ''The amendments made by subsection (b) [amending this section] shall become effective on January 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 102(b)(2)(A) of Pub. L. 101–147 provided that: ''Subparagraphs (A), (B), (C), and (D)(i) of section 13(c)(2) of the [Richard B. Russell] National School Lunch Act [subpars. (A), (B), (C), (D)(i) of subsec. (c)(2) of this section] (as added by subsection (a)(2)(B) of this section) shall be effective as of October 1, 1989.''

Section 102(b)(3) of Pub. L. 101–147 provided that: ''The amendments made by subsection (a)(6) [amending this section] shall be effective as of October 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–435 to be effective and implemented on Oct. 1, 1988, see section 701(a) of Pub. L. 100–435, set out as a note under section 2012 of Title 7, Agriculture.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 5(d) of Pub. L. 95–627 effective July 1, 1979, and amendment by sections 7(b) and 10(d)(2) of Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 13 of Pub. L. 94–105 provided that the amendment made by that section is effective Oct. 1, 1975.

REGULATIONS

Section 102(b)(1) of Pub. L. 101–147 provided that: ''Not later than February 1, 1990, the Secretary of Agriculture shall issue regulations to implement the amendments made by paragraphs (1), (3), (4), and (5) of subsection (a) [amending this section]. Notwithstanding the provisions of section 553 of title 5, United States Code, the Secretary of Agriculture may issue such regulations without providing notice or an opportunity for public comment.''

Section 102(b)(2)(B) of Pub. L. 101–147 provided that: ''Not later than February 1, 1990, the Secretary of Agriculture shall—

''(i) issue final regulations to implement subparagraph (D)(ii) of section 13(c)(2) of the [Richard B. Russell] National School Lunch Act [subpar. (D)(ii) of subsec. (c)(2) of this section] (as added by subsection (a)(2)(B) of this section); and

''(ii) issue final regulations under subparagraph (E) of such section.''

ALL-DAY EDUCATIONAL AND RECREATIONAL ACTIVITIES; SOURCES OF FUNDS

Section 114(h) of Pub. L. 103–448 directed Secretary of Agriculture, not later than 180 days after Nov. 2, 1994, in consultation with heads of other Federal agencies, to identify sources of Federal funds that might be available from other Federal agencies for service institutions under the summer food service program for children established under this section to carry out all-day educational and recreational activities for children at feeding sites under the program, and notify the service institutions of the sources.

§ 1762. Repealed. Pub. L. 101–147, title III, § 308, Nov. 10, 1989, 103 Stat. 915

Section, act June 4, 1946, ch. 281, § 13A, as added Mar. 12, 1970, Pub. L. 91–207, 84 Stat. 51, related to emergency assistance to provide nutritious meals to needy children in schools.

§ 1762a. Commodity distribution program

(a) Use of funds for purchase of agricultural commodities and products for donation

Notwithstanding any other provision of law, the Secretary shall—

(1) use funds available to carry out the provisions of section 612c of title 7 which are not expended or needed to carry out such provisions, to purchase (without regard to the provisions of existing law governing the expenditure of public funds) agricultural commodities and their products of the types customarily purchased under such section (which may include domestic seafood commodities and their products), for donation to maintain the annually programmed level of assistance for programs carried on under this chapter, the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], and title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.]; and

(2) if stocks of the Commodity Credit Corporation are not available, use the funds of such Corporation to purchase agricultural commodities and their products of the types customarily available under section 1431 of title 7, for such donation.

(b) Nutrition quality and content information

(1) The Secretary shall maintain and continue to improve the overall nutritional quality of entitlement commodities provided to schools to assist the schools in improving the nutritional content of meals.

(2) The Secretary shall—

(A) require that nutritional content information labels be placed on packages or shipments of entitlement commodities provided to the schools; or

(B) otherwise provide nutritional content information regarding the commodities provided to the schools.

(c) Authorization of appropriations for purchase of products or for cash payments in lieu of donations

The Secretary may use funds appropriated from the general fund of the Treasury to purchase agricultural commodities and their products of the types customarily purchased for donation under section 311(a)(4)[1] of the Older Americans Act of 1965 or for cash payments in lieu of such donations under section 311(b)(1)[1] of such Act. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subsection.

(d) Assistance procedures; cost and benefits, review; technical assistance; report to Congress; food quality standards contracting procedures

In providing assistance under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] for school lunch and breakfast programs, the Secretary shall establish procedures which will—

(1) ensure that the views of local school districts and private nonprofit schools with respect to the type of commodity assistance needed in schools are fully and accurately re-

[1] See References in Text note below.

flected in reports to the Secretary by the State with respect to State commodity preferences and that such views are considered by the Secretary in the purchase and distribution of commodities and by the States in the allocation of such commodities among schools within the States;

(2) solicit the views of States with respect to the acceptability of commodities;

(3) ensure that the timing of commodity deliveries to States is consistent with State school year calendars and that such deliveries occur with sufficient advance notice;

(4) provide for systematic review of the costs and benefits of providing commodities of the kind and quantity that are suitable to the needs of local school districts and private nonprofit schools; and

(5) make available technical assistance on the use of commodities available under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

Within eighteen months after November 10, 1977, the Secretary shall report to Congress on the impact of procedures established under this subsection, including the nutritional, economic, and administrative benefits of such procedures. In purchasing commodities for programs carried out under this chapter and the Child Nutrition Act of 1966, the Secretary shall establish procedures to ensure that contracts for the purchase of such commodities shall not be entered into unless the previous history and current patterns of the contracting party with respect to compliance with applicable meat inspection laws and with other appropriate standards relating to the wholesomeness of food for human consumption are taken into account.

(e) Consultation with school representatives

Each State agency that receives food assistance payments under this section for any school year shall consult with representatives of schools in the State that participate in the school lunch program with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance for such program.

(f) Commodity only schools

Commodity only schools shall be eligible to receive donated commodities equal in value to the sum of the national average value of donated foods established under section 1755(c) of this title and the national average payment established under section 1753 of this title. Such schools shall be eligible to receive up to 5 cents per meal of such value in cash for processing and handling expenses related to the use of such commodities. Lunches served in such schools shall consist of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under section 1758(a) of this title, and shall represent the four basic food groups, including a serving of fluid milk.

(g) Extension of alternative means of assistance

(1) As used in this subsection, the term ''eligible school district'' has the same meaning given such term in section 1581(a) of the Food Security Act of 1985.

(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

(h) Notice of irradiated food products

(1) In general

The Secretary shall develop a policy and establish procedures for the purchase and distribution of irradiated food products in school meals programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) Minimum requirements

The policy and procedures shall ensure, at a minimum, that—

(A) irradiated food products are made available only at the request of States and school food authorities;

(B) reimbursements to schools for irradiated food products are equal to reimbursements to schools for food products that are not irradiated;

(C) States and school food authorities are provided factual information on the science and evidence regarding irradiation technology, including—

(i) notice that irradiation is not a substitute for safe food handling techniques; and

(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals programs;

(D) States and school food authorities are provided model procedures for providing to school food authorities, parents, and students—

(i) factual information on the science and evidence regarding irradiation technology; and

(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals;

(E) irradiated food products distributed to the Federal school meals program under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) are labeled with a symbol or other printed notice that—

(i) indicates that the product was irradiated; and

(ii) is prominently displayed in a clear and understandable format on the container;

(F) irradiated food products are not commingled in containers with food products that are not irradiated; and

(G) schools that offer irradiated food products are encouraged to offer alternatives to irradiated food products as part of the meal plan used by the schools.

(June 4, 1946, ch. 281, § 14, as added Pub. L. 93–326, § 2, June 30, 1974, 88 Stat. 286; amended Pub. L. 94–105, § 10, Oct. 7, 1975, 89 Stat. 515; Pub. L. 95–166, § 6, Nov. 10, 1977, 91 Stat. 1334; Pub. L. 95–627, § 12(b), Nov. 10, 1978, 92 Stat. 3625; Pub. L. 96–499, title II, § 202(c), Dec. 5, 1980, 94 Stat. 2600; Pub. L. 97–35, title VIII, §§ 813(a), 819(j), Aug. 13,

1981, 95 Stat. 530, 533; Pub. L. 98–459, title VIII, §801(a), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99–500, title III, §§312, 363, Oct. 18, 1986, 100 Stat. 1783–360, 1783–368, and Pub. L. 99–591, title III, §§312, 363, Oct. 30, 1986, 100 Stat. 3341–363, 3341–371; Pub. L. 99–661, div. D, title I, §4102, title IV, §4403, Nov. 14, 1986, 100 Stat. 4071, 4079; Pub. L. 100–356, §2, June 28, 1988, 102 Stat. 669; Pub. L. 101–147, title I, §103(a)–(b)(2)(A), (c), Nov. 10, 1989, 103 Stat. 882; Pub. L. 103–448, title I, §115, Nov. 2, 1994, 108 Stat. 4713; Pub. L. 104–193, title VII, §707, Aug. 22, 1996, 110 Stat. 2293; Pub. L. 105–336, title I, §§101(b), 106, Oct. 31, 1998, 112 Stat. 3144, 3149; Pub. L. 108–134, §4, Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108–211, §4, Mar. 31, 2004, 118 Stat. 566; Pub. L. 108–265, title I, §§117, 118, June 30, 2004, 118 Stat. 752.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1), (d), and (h)(1), (2)(E), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Older Americans Act of 1965, referred to in subsecs. (a)(1) and (c), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Title III of the Older Americans Act of 1965 is classified generally to subchapter III (§3021 et seq.) of chapter 35 of this title. Section 311 of the Act, which is classified to section 3030a of this title, was amended by Pub. L. 106–501, title III, §309, Nov. 13, 2000, 114 Stat. 2246, and, as so amended, new subsecs. (a) and (b) were added, former subsec. (a)(4) was redesignated (c)(4) and repealed, and former subsec. (b)(1) was redesignated (d)(1). For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Section 1581 of the Food Security Act, referred to in subsec. (g), is section 1581 of Pub. L. 99–198, title XV, Dec. 23, 1985, 99 Stat. 1594, which is not classified to the Code.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–265, §117, struck out ‘‘, during the period beginning July 1, 1974, and ending June 30, 2004,’’ before ‘‘shall—’’ in introductory provisions.

Pub. L. 108–211 substituted ‘‘June 30, 2004’’ for ‘‘March 31, 2004’’ in introductory provisions.

Subsec. (h). Pub. L. 108–265, §118, added subsec. (h).

2003—Subsec. (a). Pub. L. 108–134 substituted ‘‘March 31, 2004’’ for ‘‘September 30, 2003’’ in introductory provisions.

1998—Subsec. (a). Pub. L. 105–336, §106, substituted ‘‘2003’’ for ‘‘1998’’ in introductory provisions.

Subsec. (f). Pub. L. 105–336, §101(b), substituted ‘‘1755(c)’’ for ‘‘1755(e)’’.

1996—Subsec. (b). Pub. L. 104–193, §707(a), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: ‘‘Among the products to be included in the food donations to the school lunch program shall be cereal and shortening and oil products.’’

Subsec. (e). Pub. L. 104–193, §707(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ‘‘Each State educational agency that receives food assistance payments under this section for any school year shall establish for such year an advisory council, which shall be composed of representatives of schools in the State that participate in the school lunch program. The council shall advise such State agency with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance for such program.’’

Subsec. (g)(3). Pub. L. 104–193, §707(c), struck out par. (3) relating to cash compensation for losses due to changed methodology of study during 1982–1983 school year.

1994—Subsec. (a). Pub. L. 103–448, §115(1), substituted ‘‘1998’’ for ‘‘1994’’ in introductory provisions.

Subsec. (b). Pub. L. 103–448, §115(2), designated existing provisions as par. (1) and added pars. (2) and (3).

1989—Subsec. (a). Pub. L. 101–147, §103(a), substituted ‘‘1994’’ for ‘‘1989’’.

Subsec. (g). Pub. L. 101–147, §103(b)(1), (2)(A), amended subsec. (g), as amended identically by Pub. L. 99–500 and 99–591, §363, and Pub. L. 99–661, §4403, and as further amended by Pub. L. 100–356, §2, to read as if only the amendment by Pub. L. 99–661 was enacted, and further amended subsec. (g) identically to the amendments that were made by section 2(a) and (b) of Pub. L. 100–356, resulting in changing text by striking out only the language that was inserted by section 2(c) of Pub. L. 100–356 at the end of par. (3)(A), ‘‘The Secretary shall complete action on any claim submitted under this subparagraph not later than 45 days after June 28, 1988.’’, see 1986 and 1988 Amendment notes below.

Subsec. (g)(3)(A). Pub. L. 101–147, §103(c), substituted last four sentences for former last two sentences which read as follows: ‘‘The Secretary, in computing losses sustained by any school district under the preceding sentence, shall base such computation on the actual amount of assistance received by such school district under this chapter for the school year ending June 30, 1982, including—

‘‘(i) the value of assistance in the form of commodities provided in addition to those provided pursuant to section 1755(e) of this title; and

‘‘(ii) the value of assistance provided in the form of either cash or commodity letters of credit.

The Secretary may provide cash compensation under this subparagraph only to eligible school districts that submit applications for such compensation not later than May 1, 1988.’’

1988—Subsec. (g)(3)(A). Pub. L. 100–356, §2(c), inserted at end ‘‘The Secretary shall complete action on any claim submitted under this subparagraph not later than 45 days after June 28, 1988.’’

Pub. L. 100–356, §2(a), inserted at end ‘‘The Secretary, in computing losses sustained by any school district under the preceding sentence, shall base such computation on the actual amount of assistance received by such school district under this chapter for the school year ending June 30, 1982, including—

‘‘(i) the value of assistance in the form of commodities provided in addition to those provided pursuant to section 1755(e) of this title; and

‘‘(ii) the value of assistance provided in the form of either cash or commodity letters of credit.

The Secretary may provide cash compensation under this subparagraph only to eligible school districts that submit applications for such compensation not later than May 1, 1988.’’

Subsec. (g)(3)(B). Pub. L. 100–356, §2(b), substituted ‘‘such sums as may be necessary’’ for ‘‘$50,000’’.

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, §312, and Pub. L. 99–661, §4102, amended subsec. (a) identically, substituting ‘‘1989’’ for ‘‘1984’’.

Subsec. (g). Pub. L. 99–500 and Pub. L. 99–591, §363, and Pub. L. 99–661, §4403, amended section identically, adding subsec. (g).

1984—Subsec. (c). Pub. L. 98–459 substituted ‘‘(b)(1)’’ for ‘‘(c)(1)’’.

1981—Subsec. (a)(1). Pub. L. 97–35, §819(j)(1), substituted ‘‘III’’ for ‘‘VII’’.

Subsec. (c). Pub. L. 97–35, §819(j)(2), substituted references to section 311(a)(4) and (c)(1) of the Older Americans Act of 1965, for references to section 3045f(a)(4) and (d)(4) of this title.

Subsec. (f). Pub. L. 97–35, §813(a), added subsec. (f).

1980—Subsec. (a). Pub. L. 96–499 substituted ‘‘September 30, 1984’’ for ‘‘September 30, 1982’’.

1978—Subsec. (a)(1). Pub. L. 95–627 inserted ''(which may include domestic seafood commodities and their products)'' after ''under such section''.

1977—Subsec. (a). Pub. L. 95–166, § 6(1), extended termination date for termination of commodity distribution program to Sept. 30, 1982, from Sept. 30, 1977.

Subsecs. (c) to (e). Pub. L. 95–166, § 6(2), added subsecs. (c) to (e).

1975—Pub. L. 94–105 designated existing provisions as subsec. (a), substituted ''September 30, 1977'' for ''June 30, 1975'', and added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 103(b)(2)(B) of Pub. L. 101–147 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if such amendments had been effective on June 28, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 813(a) of Pub. L. 97–35 effective 90 days after Aug. 13, 1981, and amendment by section 819(j) of Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4), (5) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

STUDY OF EFFECT OF COMBINING FEDERALLY DONATED AND FEDERALLY INSPECTED MEAT OR POULTRY

Section 304 of Pub. L. 103–448 directed Comptroller General of the United States to conduct study on incidence and effect of States restricting or prohibiting legally contracted commercial entity from physically combining federally donated and inspected meat or poultry from another State and to submit report to Congress not later than Sept. 1, 1996.

§ 1763. Repealed. Pub. L. 101–147, title I, § 104, Nov. 10, 1989, 103 Stat. 883

Section, act June 4, 1946, ch. 281, § 15, formerly § 14, as added May 14, 1970, Pub. L. 91–248, § 9, 84 Stat. 213; amended Nov. 7, 1973, Pub. L. 93–150, § 8, 87 Stat. 564; renumbered § 15, June 30, 1974, Pub. L. 93–326, § 2, 88 Stat. 286; Nov. 10, 1977, Pub. L. 95–166, § 16, 91 Stat. 1344; Aug. 13, 1981, Pub. L. 97–35, title VIII, § 819(i), 95 Stat. 533, established National Advisory Council on Child Nutrition.

§ 1764. Repealed. Pub. L. 94–105, § 22, Oct. 7, 1975, 89 Stat. 528

Section, act June 4, 1946, ch. 281, § 15, as added June 30, 1971, Pub. L. 92–32, § 1, 85 Stat. 85, authorized use, during fiscal 1971, of not to exceed $35,000,000 from section 612c of Title 7, and not to exceed $100,000,000 during fiscal 1972 to carry out provisions of this chapter, with unexpended funds to remain available in accordance with last sentence of section 1752 of this title.

§ 1765. Election to receive cash payments

(a) Notwithstanding any other provision of law, where a State phased out its commodity distribution facilities prior to June 30, 1974, such State may, for purposes of the programs authorized by this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], elect to receive cash payments in lieu of donated foods. Where such an election is made, the Secretary shall make cash payments to such State in an amount equivalent in value to the donated foods that the State would otherwise have received if it had retained its commodity distribution facilities. The amount of cash payments in the case of lunches shall be governed by section 1755(c) of this title.

(b) When such payments are made, the State educational agency shall promptly and equitably disburse any cash it receives in lieu of commodities to eligible schools and institutions, and such disbursements shall be used by such schools and institutions to purchase United States agricultural commodities and other foods for their food service programs.

(June 4, 1946, ch. 281, § 16, as added Pub. L. 94–105, § 12, Oct. 7, 1975, 89 Stat. 515; amended Pub. L. 101–147, title III, § 309, Nov. 10, 1989, 103 Stat. 915; Pub. L. 105–336, title I, § 101(b), Oct. 31, 1998, 112 Stat. 3144.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–336 substituted ''1755(c)'' for ''1755(e)''.

1989—Pub. L. 101–147 inserted ''Election to receive cash payments'' as section catchline.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

§ 1766. Child and adult care food program

(a) Grant authority and institution eligibility

(1) Grant authority

The Secretary may carry out a program to assist States through grants-in-aid and other means to initiate and maintain nonprofit food service programs for children in institutions providing child care.

(2) Definition of institution

In this section, the term ''institution'' means—

(A) any public or private nonprofit organization providing nonresidential child care or day care outside school hours for school children, including any child care center, settlement house, recreational center, Head Start center, and institution providing child care facilities for children with disabilities;

(B) any other private organization providing nonresidential child care or day care outside school hours for school children, if—

(i) at least 25 percent of the children served by the organization meet the income eligibility criteria established under

section 1758(b) of this title for free or reduced price meals; or

(ii) the organization receives compensation from amounts granted to the States under title XX of the Social Security Act (42 U.S.C. 1397 et seq.) (but only if the organization receives compensation under that title for at least 25 percent of its enrolled children or 25 percent of its licensed capacity, whichever is less);

(C) any public or private nonprofit organization acting as a sponsoring organization for one or more of the organizations described in subparagraph (A) or (B) or for an adult day care center (as defined in subsection (*o*)(2) of this section);

(D) any other private organization acting as a sponsoring organization for, and that is part of the same legal entity as, one or more organizations that are—

(i) described in subparagraph (B); or

(ii) proprietary title XIX or title XX centers (as defined in subsection (*o*)(2) of this section);

(E) any public or private nonprofit organization acting as a sponsoring organization for one or more family or group day care homes; and

(F) any emergency shelter (as defined in subsection (t) of this section).

(3) Age limit

Except as provided in subsection (r) of this section, reimbursement may be provided under this section only for meals or supplements served to children not over 12 years of age (except that such age limitation shall not be applicable for children of migrant workers if 15 years of age or less or for children with disabilities).

(4) Additional guidelines

The Secretary may establish separate guidelines for institutions that provide care to school children outside of school hours.

(5) Licensing

In order to be eligible, an institution (except a school or family or group day care home sponsoring organization) or family or group day care home shall—

(A)(i) be licensed, or otherwise have approval, by the appropriate Federal, State, or local licensing authority; or

(ii) be in compliance with appropriate procedures for renewing participation in the program, as prescribed by the Secretary, and not be the subject of information possessed by the State indicating that the license of the institution or home will not be renewed;

(B) if Federal, State, or local licensing or approval is not available—

(i) meet any alternate approval standards established by the appropriate State or local governmental agency; or

(ii) meet any alternate approval standards established by the Secretary after consultation with the Secretary of Health and Human Services; or

(C) if the institution provides care to school children outside of school hours and Federal, State, or local licensing or approval is not required for the institution, meet State or local health and safety standards.

(6) Eligibility criteria

No institution shall be eligible to participate in the program unless it satisfies the following criteria:

(A) accepts final administrative and financial responsibility for management of an effective food service;

(B) has not been seriously deficient in its operation of the child and adult care food program, or any other program under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], or has not been determined to be ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program, for a period of time specified by the Secretary;

(C)(i) will provide adequate supervisory and operational personnel for overall monitoring and management of the child care food program; and

(ii) in the case of a sponsoring organization, the organization shall employ an appropriate number of monitoring personnel based on the number and characteristics of child care centers and family or group day care homes sponsored by the organization, as approved by the State (in accordance with regulations promulgated by the Secretary), to ensure effective oversight of the operations of the child care centers and family or group day care homes;

(D) in the case of a family or group day care home sponsoring organization that employs more than one employee, the organization does not base payments to an employee of the organization on the number of family or group day care homes recruited;

(E) in the case of a sponsoring organization, the organization has in effect a policy that restricts other employment by employees that interferes with the responsibilities and duties of the employees of the organization with respect to the program; and

(F) in the case of a sponsoring organization that applies for initial participation in the program on or after June 20, 2000, and that operates in a State that requires such institutions to be bonded under State law, regulation, or policy, the institution is bonded in accordance with such law, regulation, or policy.

(b) Limitations on cash assistance

For the fiscal year ending September 30, 1979, and for each subsequent fiscal year, the Secretary shall provide cash assistance to States for meals as provided in subsection (f) of this section, except that, in any fiscal year, the aggregate amount of assistance provided to a State by the Secretary under this section shall not exceed the sum of (1) the Federal funds provided by the State to participating institutions within the State for that fiscal year and (2) any funds used by the State under section 10 of the Child Nutrition Act of 1966 [42 U.S.C. 1779].

(c) Formula for computation of payments; national average payment rate

(1) For purposes of this section, except as provided in subsection (f)(3) of this section, the national average payment rate for free lunches and suppers, the national average payment rate for reduced price lunches and suppers, and the national average payment rate for paid lunches and suppers shall be the same as the national average payment rates for free lunches, reduced price lunches, and paid lunches, respectively, under sections 1753 and 1759a of this title as appropriate (as adjusted pursuant to section 1759a(a) of this title).

(2) For purposes of this section, except as provided in subsection (f)(3) of this section, the national average payment rate for free breakfasts, the national average payment rate for reduced price breakfasts, and the national average payment rate for paid breakfasts shall be the same as the national average payment rates for free breakfasts, reduced price breakfasts, and paid breakfasts, respectively, under section 4(b) of the Child Nutrition Act of 1966 [42 U.S.C. 1773(b)] (as adjusted pursuant to section 1759a(a) of this title).

(3) For purposes of this section, except as provided in subsection (f)(3) of this section, the national average payment rate for free supplements shall be 30 cents, the national average payment rate for reduced price supplements shall be one-half the rate for free supplements, and the national average payment rate for paid supplements shall be 2.75 cents (as adjusted pursuant to section 1759a(a) of this title).

(4) Determinations with regard to eligibility for free and reduced price meals and supplements shall be made in accordance with the income eligibility guidelines for free lunches and reduced price lunches, respectively, under section 1758 of this title.

(5) A child shall be considered automatically eligible for benefits under this section without further application or eligibility determination, if the child is enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A)).

(6) A child who has not yet entered kindergarten shall be considered automatically eligible for benefits under this section without further application or eligibility determination if the child is enrolled as a participant in the Even Start program under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.).[1]

(d) Institution approval and applications

(1) INSTITUTION APPROVAL.—

(A) ADMINISTRATIVE CAPABILITY.—Subject to subparagraph (B) and except as provided in subparagraph (C), the State agency shall approve an institution that meets the requirements of this section for participation in the child and adult care food program if the State agency determines that the institution—

(i) is financially viable;

(ii) is administratively capable of operating the program (including whether the sponsoring organization has business experience and management plans appropriate to operate the program) described in the application of the institution; and

(iii) has internal controls in effect to ensure program accountability.

(B) APPROVAL OF PRIVATE INSTITUTIONS.—

(i) IN GENERAL.—In addition to the requirements established by subparagraph (A) and subject to clause (ii), the State agency shall approve a private institution that meets the requirements of this section for participation in the child and adult care food program only if—

(I) the State agency conducts a satisfactory visit to the institution before approving the participation of the institution in the program; and

(II) the institution—

(aa) has tax exempt status under title 26;

(bb) is operating a Federal program requiring nonprofit status to participate in the program; or

(cc) is described in subsection (a)(2)(B) of this section.

(ii) EXCEPTION FOR FAMILY OR GROUP DAY CARE HOMES.—Clause (i) shall not apply to a family or group day care home.

(C) EXCEPTION FOR CERTAIN SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—The State agency may approve an eligible institution acting as a sponsoring organization for one or more family or group day care homes or centers that, at the time of application, is not participating in the child and adult care food program only if the State agency determines that—

(I) the institution meets the requirements established by subparagraphs (A) and (B); and

(II) the participation of the institution will help to ensure the delivery of benefits to otherwise unserved family or group day care homes or centers or to unserved children in an area.

(ii) CRITERIA FOR SELECTION.—The State agency shall establish criteria for approving an eligible institution acting as a sponsoring organization for one or more family or group day care homes or centers that, at the time of application, is not participating in the child and adult care food program for the purpose of determining if the participation of the institution will help ensure the delivery of benefits to otherwise unserved family or group day care homes or centers or to unserved children in an area.

(D) NOTIFICATION TO APPLICANTS.—Not later than 30 days after the date on which an applicant institution files a completed application with the State agency, the State agency shall notify the applicant institution whether the institution has been approved or disapproved to participate in the child and adult care food program.

[1] See References in Text note below.

(2)(A) The Secretary shall develop a policy that—

(i) allows institutions providing child care that participate in the program under this section, at the option of the State agency, to reapply for assistance under this section at 3-year intervals;

(ii)(I) requires periodic unannounced site visits at not less than 3-year intervals to sponsored child care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program;

(II) requires at least one scheduled site visit each year to sponsored child care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations; and

(III) requires at least one scheduled site visit at not less than 3-year intervals to sponsoring organizations and nonsponsored child care centers to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations; and

(iii) requires periodic site visits to private institutions that the State agency determines have a high probability of program abuse.

(B) Each State agency that exercises the option authorized by subparagraph (A) shall confirm on an annual basis that each such institution is in compliance with the licensing or approval provisions of subsection (a)(5) of this section.

(3) PROGRAM INFORMATION.—

(A) IN GENERAL.—On enrollment of a child in a sponsored child care center or family or group day care home participating in the program, the center or home (or its sponsoring organization) shall provide to the child's parents or guardians—

(i) information that describes the program and its benefits; and

(ii) the name and telephone number of the sponsoring organization of the center or home and the State agency involved in the operation of the program.

(B) FORM.—The information described in subparagraph (A) shall be in a form and, to the maximum extent practicable, language easily understandable by the child's parents or guardians.

(4) ALLOWABLE ADMINISTRATIVE EXPENSES FOR SPONSORING ORGANIZATIONS.—In consultation with State agencies and sponsoring organizations, the Secretary shall develop, and provide for the dissemination to State agencies and sponsoring organizations of, a list of allowable reimbursable administrative expenses for sponsoring organizations under the program.

(5) TERMINATION OR SUSPENSION OF PARTICIPATING ORGANIZATIONS.—

(A) IN GENERAL.—The Secretary shall establish procedures for the termination of participation by institutions and family or group day care homes under the program.

(B) STANDARDS.—Procedures established pursuant to subparagraph (A) shall include standards for terminating the participation of an institution or family or group day care home that—

(i) engages in unlawful practices, falsifies information provided to the State agency, or conceals a criminal background; or

(ii) substantially fails to fulfill the terms of its agreement with the State agency.

(C) CORRECTIVE ACTION.—Procedures established pursuant to subparagraph (A)—

(i) shall require an entity described in subparagraph (B) to undertake corrective action; and

(ii) may require the immediate suspension of operation of the program by an entity described in subparagraph (B), without the opportunity for corrective action, if the State agency determines that there is imminent threat to the health or safety of a participant at the entity or the entity engages in any activity that poses a threat to public health or safety.

(D) HEARING.—

(i) IN GENERAL.—Except as provided in clause (ii), an institution or family or group day care home shall be provided a fair hearing in accordance with subsection (e)(1) of this section prior to any determination to terminate participation by the institution or family or group day care home under the program.

(ii) EXCEPTION FOR FALSE OR FRAUDULENT CLAIMS.—

(I) IN GENERAL.—If a State agency determines that an institution has knowingly submitted a false or fraudulent claim for reimbursement, the State agency may suspend the participation of the institution in the program in accordance with this clause.

(II) REQUIREMENT FOR REVIEW.—Prior to any determination to suspend participation of an institution under subclause (I), the State agency shall provide for an independent review of the proposed suspension in accordance with subclause (III).

(III) REVIEW PROCEDURE.—The review shall—

(aa) be conducted by an independent and impartial official other than, and not accountable to, any person involved in the determination to suspend the institution;

(bb) provide the State agency and the institution the right to submit written documentation relating to the suspension, including State agency documentation of the alleged false or fraudulent claim for reimbursement and the response of the institution to the documentation;

(cc) require the reviewing official to determine, based on the review, whether the State agency has established, based on a preponderance of the evidence, that the institution has knowingly submitted a false or fraudulent claim for reimbursement;

(dd) require the suspension to be in effect for not more than 120 calendar days after the institution has received notifi-

cation of a determination of suspension in accordance with this clause; and

(ee) require the State agency during the suspension to ensure that payments continue to be made to sponsored centers and family and group day care homes meeting the requirements of the program.

(IV) HEARING.—A State agency shall provide an institution that has been suspended from participation in the program under this clause an opportunity for a fair hearing on the suspension conducted in accordance with subsection (e)(1) of this section.

(E) LIST OF DISQUALIFIED INSTITUTIONS AND INDIVIDUALS.—

(i) IN GENERAL.—The Secretary shall maintain a list of institutions, sponsored family or group day care homes, and individuals that have been terminated or otherwise disqualified from participation in the program.

(ii) AVAILABILITY.—The Secretary shall make the list available to State agencies for use in approving or renewing applications by institutions, sponsored family or group day care homes, and individuals for participation in the program.

(e) Hearing

(1) Except as provided in paragraph (2), the State shall provide, in accordance with regulations issued by the Secretary, a fair hearing and a prompt determination to any institution aggrieved by the action of the State as it affects the participation of such institution in the program authorized by this section, or its claim for reimbursement under this section.

(2) A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

(3) If a State does not provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination, the Secretary, on request, shall afford a hearing to the institution concerning the action.

(f) State disbursements to institutions

(1) IN GENERAL.—

(A) REQUIREMENT.—Funds paid to any State under this section shall be disbursed to eligible institutions by the State under agreements approved by the Secretary. Disbursements to any institution shall be made only for the purpose of assisting in providing meals to children attending institutions, or in family or group day care homes. Disbursement to any institution shall not be dependent upon the collection of moneys from participating children. All valid claims from such institutions shall be paid within forty-five days of receipt by the State. The State shall notify the institution within fifteen days of receipt of a claim if the claim as submitted is not valid because it is incomplete or incorrect.

(B) FRAUD OR ABUSE.—

(i) IN GENERAL.—The State may recover funds disbursed under subparagraph (A) to an institution if the State determines that the institution has engaged in fraud or abuse with respect to the program or has submitted an invalid claim for reimbursement.

(ii) PAYMENT.—Amounts recovered under clause (i)—

(I) may be paid by the institution to the State over a period of one or more years; and

(II) shall not be paid from funds used to provide meals and supplements.

(iii) HEARING.—An institution shall be provided a fair hearing in accordance with subsection (e)(1) of this section prior to any determination to recover funds under this subparagraph.

(2)(A) Subject to subparagraph (B) of this paragraph, the disbursement for any fiscal year to any State for disbursement to institutions, other than family or group day care home sponsoring organizations, for meals provided under this section shall be equal to the sum of the products obtained by multiplying the total number of each type of meal (breakfast, lunch or supper, or supplement) served in such institution in that fiscal year by the applicable national average payment rate for each such type of meal, as determined under subsection (c) of this section.

(B) No reimbursement may be made to any institution under this paragraph, or to family or group day care home sponsoring organizations under paragraph (3) of this subsection, for more than two meals and one supplement per day per child, or in the case of an institution (but not in the case of a family or group day care home sponsoring organization), 2 meals and 1 supplement per day per child, for children that are maintained in a child care setting for eight or more hours per day.

(C) LIMITATION ON ADMINISTRATIVE EXPENSES FOR CERTAIN SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—Except as provided in clause (ii), a sponsoring organization of a day care center may reserve not more than 15 percent of the funds provided under paragraph (1) for the administrative expenses of the organization.

(ii) WAIVER.—A State may waive the requirement in clause (i) with respect to a sponsoring organization if the organization provides justification to the State that the organization requires funds in excess of 15 percent of the funds provided under paragraph (1) to pay the administrative expenses of the organization.

(3) REIMBURSEMENT OF FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

(A) REIMBURSEMENT FACTOR.—

(i) IN GENERAL.—An institution that participates in the program under this section as a family or group day care home sponsoring organization shall be provided, for payment to a home sponsored by the organization, reimbursement factors in accordance with this subparagraph for the cost of obtaining and preparing food and prescribed labor costs involved in providing meals under this section.

(ii) TIER I FAMILY OR GROUP DAY CARE HOMES.—

(I) DEFINITION OF TIER I FAMILY OR GROUP DAY CARE HOME.—In this paragraph, the

term ''tier I family or group day care home'' means—

(aa) a family or group day care home that is located in a geographic area, as defined by the Secretary based on census data, in which at least 50 percent of the children residing in the area are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title;

(bb) a family or group day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price school meals under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or

(cc) a family or group day care home that is operated by a provider whose household meets the income eligibility guidelines for free or reduced price meals under section 1758 of this title and whose income is verified by the sponsoring organization of the home under regulations established by the Secretary.

(II) REIMBURSEMENT.—Except as provided in subclause (III), a tier I family or group day care home shall be provided reimbursement factors under this clause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the children of a person acting as a family or group day care home provider unless the children meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title.

(III) FACTORS.—Except as provided in subclause (IV), the reimbursement factors applied to a home referred to in subclause (II) shall be the factors in effect on July 1, 1996.

(IV) ADJUSTMENTS.—The reimbursement factors under this subparagraph shall be adjusted on July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this subparagraph shall be rounded to the nearest lower cent increment and based on the unrounded adjustment in effect on June 30 of the preceding school year.

(iii) TIER II FAMILY OR GROUP DAY CARE HOMES.—

(I) IN GENERAL.—

(aa) FACTORS.—Except as provided in subclause (II), with respect to meals or supplements served under this clause by a family or group day care home that does not meet the criteria set forth in clause (ii)(I), the reimbursement factors shall be 95 cents for lunches and suppers, 27 cents for breakfasts, and 13 cents for supplements.

(bb) ADJUSTMENTS.—The factors shall be adjusted on July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this item shall be rounded down to the nearest lower cent increment and based on the unrounded adjustment for the preceding 12-month period.

(cc) REIMBURSEMENT.—A family or group day care home shall be provided reimbursement factors under this subclause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the children of a person acting as a family or group day care home provider unless the children meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title.

(II) OTHER FACTORS.—A family or group day care home that does not meet the criteria set forth in clause (ii)(I) may elect to be provided reimbursement factors determined in accordance with the following requirements:

(aa) CHILDREN ELIGIBLE FOR FREE OR REDUCED PRICE MEALS.—In the case of meals or supplements served under this subsection to children who are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title, the family or group day care home shall be provided reimbursement factors set by the Secretary in accordance with clause (ii)(III).

(bb) INELIGIBLE CHILDREN.—In the case of meals or supplements served under this subsection to children who are members of households whose incomes do not meet the income eligibility guidelines, the family or group day care home shall be provided reimbursement factors in accordance with subclause (I).

(III) INFORMATION AND DETERMINATIONS.—

(aa) IN GENERAL.—If a family or group day care home elects to claim the factors described in subclause (II), the family or group day care home sponsoring organization serving the home shall collect the necessary income information, as determined by the Secretary, from any parent or other caretaker to make the determinations specified in subclause (II) and shall make the determinations in accordance with rules prescribed by the Secretary.

(bb) CATEGORICAL ELIGIBILITY.—In making a determination under item (aa), a family or group day care home sponsoring organization may consider a child participating in or subsidized under, or a child with a parent participating in or subsidized under, a federally or State

supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free or reduced price meals under section 1758 of this title to be a child who is a member of a household whose income meets the income eligibility guidelines under section 1758 of this title.

(cc) FACTORS FOR CHILDREN ONLY.—A family or group day care home may elect to receive the reimbursement factors prescribed under clause (ii)(III) solely for the children participating in a program referred to in item (bb) if the home elects not to have income statements collected from parents or other caretakers.

(IV) SIMPLIFIED MEAL COUNTING AND REPORTING PROCEDURES.—The Secretary shall prescribe simplified meal counting and reporting procedures for use by a family or group day care home that elects to claim the factors under subclause (II) and by a family or group day care home sponsoring organization that sponsors the home. The procedures the Secretary prescribes may include 1 or more of the following:

(aa) Setting an annual percentage for each home of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under clause (ii)(III) and an annual percentage of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under subclause (I), based on the family income of children enrolled in the home in a specified month or other period.

(bb) Placing a home into 1 of 2 or more reimbursement categories annually based on the percentage of children in the home whose households have incomes that meet the income eligibility guidelines under section 1758 of this title, with each such reimbursement category carrying a set of reimbursement factors such as the factors prescribed under clause (ii)(III) or subclause (I) or factors established within the range of factors prescribed under clause (ii)(III) and subclause (I).

(cc) Such other simplified procedures as the Secretary may prescribe.

(V) MINIMUM VERIFICATION REQUIREMENTS.—The Secretary may establish any minimum verification requirements that are necessary to carry out this clause.

(B) Family or group day care home sponsoring organizations shall also receive reimbursement for their administrative expenses in amounts not exceeding the maximum allowable levels prescribed by the Secretary. Such levels shall be adjusted July 1 of each year to reflect changes in the Consumer Price Index for all items for the most recent 12-month period for which such data are available.

(C)(i) Reimbursement for administrative expenses shall also include start-up funds to finance the administrative expenses for such institutions to initiate successful operation under the program and expansion funds to finance the administrative expenses for such institutions to expand into low-income or rural areas. Institutions that have received start-up funds may also apply at a later date for expansion funds. Such start-up funds and expansion funds shall be in addition to other reimbursement to such institutions for administrative expenses. Start-up funds and expansion funds shall be payable to enable institutions satisfying the criteria of subsection (d) of this section, and any other standards prescribed by the Secretary, to develop an application for participation in the program as a family or group day care home sponsoring organization or to implement the program upon approval of the application. Such start-up funds and expansion funds shall be payable in accordance with the procedures prescribed by the Secretary. The amount of start-up funds and expansion funds payable to an institution shall be not less than the institution's anticipated reimbursement for administrative expenses under the program for one month and not more than the institution's anticipated reimbursement for administrative expenses under the program for two months.

(ii) Funds for administrative expenses may be used by family or group day care home sponsoring organizations to assist unlicensed family or group day care homes in becoming licensed.

(D) LIMITATIONS ON ABILITY OF FAMILY OR GROUP DAY CARE HOMES TO TRANSFER SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—Subject to clause (ii), a State agency shall limit the ability of a family or group day care home to transfer from a sponsoring organization to another sponsoring organization more frequently than once a year.

(ii) GOOD CAUSE.—The State agency may permit or require a family or group day care home to transfer from a sponsoring organization to another sponsoring organization more frequently than once a year for good cause (as determined by the State agency), including circumstances in which the sponsoring organization of the family or group day care home ceases to participate in the child and adult care food program.

(E) PROVISION OF DATA TO FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

(i) CENSUS DATA.—The Secretary shall provide to each State agency administering a child and adult care food program under this section data from the most recent decennial census survey or other appropriate census survey for which the data are available showing which areas in the State meet the requirements of subparagraph (A)(ii)(I)(aa). The State agency shall provide the data to family or group day care home sponsoring organizations located in the State.

(ii) SCHOOL DATA.—

(I) IN GENERAL.—A State agency administering the school lunch program under this chapter or the school breakfast program under the Child Nutrition Act of 1966

(42 U.S.C. 1771 et seq.) shall provide to approved family or group day care home sponsoring organizations a list of schools serving elementary school children in the State in which not less than ½ of the children enrolled are certified to receive free or reduced price meals. The State agency shall collect the data necessary to create the list annually and provide the list on a timely basis to any approved family or group day care home sponsoring organization that requests the list.

(II) USE OF DATA FROM PRECEDING SCHOOL YEAR.—In determining for a fiscal year or other annual period whether a home qualifies as a tier I family or group day care home under subparagraph (A)(ii)(I), the State agency administering the program under this section, and a family or group day care home sponsoring organization, shall use the most current available data at the time of the determination.

(iii) DURATION OF DETERMINATION.—For purposes of this section, a determination that a family or group day care home is located in an area that qualifies the home as a tier I family or group day care home (as the term is defined in subparagraph (A)(ii)(I)), shall be in effect for 5 years (unless the determination is made on the basis of census data, in which case the determination shall remain in effect until more recent census data are available) unless the State agency determines that the area in which the home is located no longer qualifies the home as a tier I family or group day care home.

(4) By the first day of each month of operation, the State may provide advance payments for the month to each approved institution in an amount that reflects the full level of valid claims customarily received from such institution for one month's operation. In the case of a newly participating institution, the amount of the advance shall reflect the State's best estimate of the level of valid claims such institutions will submit. If the State has reason to believe that an institution will not be able to submit a valid claim covering the period for which such an advance has been made, the subsequent month's advance payment shall be withheld until the State receives a valid claim. Payments advanced to institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance payment.

(g) Meals served by participating institutions; compliance assistance

(1)(A) Meals served by institutions participating in the program under this section shall consist of a combination of foods that meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.

(B) The Secretary shall provide technical assistance to those institutions participating in the program under this section to assist the institutions and family or group day care home sponsoring organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A).

(2) No physical segregation or other discrimination against any child shall be made because of his or her inability to pay, nor shall there be any overt identification of any such child by special tokens or tickets, different meals or meal service, announced or published lists of names, or other means.

(3) Each institution shall, insofar as practicable, use in its food service foods designated from time to time by the Secretary as being in abundance, either nationally or in the food service area, or foods donated by the Secretary.

(h) Donation of agricultural commodities by Secretary; measurement of value; annual readjustment of assistance; cash in lieu of commodities; Department of Defense child care feeding program

(1)(A) The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child care food program under this section.

(B) The value of the commodities donated under subparagraph (A) (or cash in lieu of commodities) to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during the preceding school year by the rate for commodities or cash in lieu of commodities established under section 1755(c) of this title for the school year concerned.

(C) After the end of each school year, the Secretary shall—

(i) reconcile the number of lunches and suppers served in participating institutions in each State during such school year with the number of lunches and suppers served by participating institutions in each State during the preceding school year; and

(ii) based on such reconciliation, increase or reduce subsequent commodity assistance or cash in lieu of commodities provided to each State.

(D) Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities.

(2) The Secretary is authorized to provide agricultural commodities obtained by the Secretary under the provisions of the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) and donated under the provisions of section 416 of such Act [7 U.S.C. 1431], to the Department of Defense for use by its institutions providing child care services, when such commodities are in excess of the quantities needed to meet the needs of all other child nutrition programs, domestic and foreign food assistance and export enhancement programs. The Secretary shall require reimburse-

ment from the Department of Defense for the costs, or some portion thereof, of delivering such commodities to overseas locations, unless the Secretary determines that it is in the best interest of the program that the Department of Agriculture shall assume such costs.

(i) Audits

(1) Disregards

(A) In general

Subject to subparagraph (B), in conducting management evaluations, reviews, or audits under this section, the Secretary or a State agency may disregard any overpayment to an institution for a fiscal year if the total overpayment to the institution for the fiscal year does not exceed an amount that is consistent with the disregards allowed in other programs under this chapter and recognizes the cost of collecting small claims, as determined by the Secretary.

(B) Criminal or fraud violations

In carrying out this paragraph, the Secretary and a State agency shall not disregard any overpayment for which there is evidence of a violation of a criminal law or civil fraud law.

(2) Funding

The Secretary shall make available for each fiscal year to States administering the child care food program, for the purpose of conducting audits of participating institutions, an amount up to 1.5 percent (except, in the case of each of fiscal years 2005 through 2007, 1 percent) of the funds used by each State in the program under this section, during the second preceding fiscal year.

(j) Agreements

(1) In general

The Secretary may issue regulations directing States to develop and provide for the use of a standard form of agreement between each family or group day care sponsoring organization and the family or group day care homes participating in the program under such organization, for the purpose of specifying the rights and responsibilities of each party.

(2) Duration

An agreement under paragraph (1) shall remain in effect until terminated by either party to the agreement.

(k) Training and technical assistance

A State participating in the program established under this section shall provide sufficient training, technical assistance, and monitoring to facilitate effective operation of the program. The Secretary shall assist the State in developing plans to fulfill the requirements of this subsection.

(*l*) Non-diminishment of State and local funds

Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(m) Accounts and records

States and institutions participating in the program under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with the requirements of this section. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and appropriate State representatives and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(n) Authorization of appropriations

There are hereby authorized to be appropriated for each fiscal year such funds as are necessary to carry out the purposes of this section.

(*o*) Participation of older persons and chronically impaired disabled persons

(1) For purposes of this section, adult day care centers shall be considered eligible institutions for reimbursement for meals or supplements served to persons 60 years of age or older or to chronically impaired disabled persons, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction. Reimbursement provided to such institutions for such purposes shall improve the quality of meals or level of services provided or increase participation in the program. Lunches served by each such institution for which reimbursement is claimed under this section shall provide, on the average, approximately ⅓ of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Such institutions shall make reasonable efforts to serve meals that meet the special dietary requirements of participants, including efforts to serve foods in forms palatable to participants.

(2) For purposes of this subsection—

(A) the term ''adult day care center'' means any public agency or private nonprofit organization, or any proprietary title XIX or title XX center, which—

(i) is licensed or approved by Federal, State, or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes, or a group living arrangement, on a less than 24-hour basis; and

(ii) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services; and

(B) the term ''proprietary title XIX or title XX center'' means any private, for-profit center providing adult day care services for which it receives compensation from amounts granted to the States under title XIX or XX of the Social Security Act [42 U.S.C. 1396 et seq., 1397 et seq.] and which title XIX or title XX beneficiaries were not less than 25 percent of enrolled eligible participants in a calendar month preceding initial application or annual reapplication for program participation.

(3)(A) The Secretary, in consulation[2] with the Assistant Secretary for Aging, shall establish, within 6 months of October 1, 1988, separate guidelines for reimbursement of institutions described in this subsection. Such reimbursement shall take into account the nutritional requirements of eligible persons, as determined by the Secretary on the basis of tested nutritional research, except that such reimbursement shall not be less than would otherwise be required under this section.

(B) The guidelines shall contain provisions designed to assure that reimbursement under this subsection shall not duplicate reimbursement under part C of title III of the Older Americans Act of 1965 [42 U.S.C. 3030e et seq.], for the same meal served.

(4) For the purpose of establishing eligibility for free or reduced price meals or supplements under this subsection, income shall include only the income of an eligible person and, if any, the spouse and dependents with whom the eligible person resides.

(5) A person described in paragraph (1) shall be considered automatically eligible for free meals or supplements under this subsection, without further application or eligibility determination, if the person is—

(A) a member of a household receiving assistance under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

(B) a recipient of assistance under title XVI or XIX of the Social Security Act [42 U.S.C. 1381 et seq., 1396 et seq.].

(6) The Governor of any State may designate to administer the program under this subsection a State agency other than the agency that administers the child care food program under this section.

(p) Rural area eligibility determination for day care homes

(1) Definition of selected tier I family or group day care home

In this subsection, the term ''selected tier I family or group day care home'' means a family or group day home that meets the definition of tier I family or group day care home under subclause (I) of subsection (f)(3)(A)(ii) of this section except that items (aa) and (bb) of that subclause shall be applied by substituting ''40 percent'' for ''50 percent''.

(2) Eligibility

For each of fiscal years 2006 and 2007, in rural areas of the State of Nebraska (as determined by the Secretary), the Secretary shall provide reimbursement to selected tier I family or group day care homes (as defined in paragraph (1)) under subsection (f)(3) of this section in the same manner as tier I family or group day care homes (as defined in subsection (f)(3)(A)(ii)(I) of this section).

(3) Evaluation

(A) In general

The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in paragraph (2) as compared to the eligibility criteria described in subsection (f)(3)(A)(ii)(I) of this section.

(B) Impact

The evaluation shall assess the impact of the change in eligibility requirements on—

(i) the number of family or group day care homes offering meals under this section;

(ii) the number of family or group day care homes offering meals under this section that are defined as tier I family or group day care homes as a result of paragraph (1) that otherwise would be defined as tier II family or group day care homes under subsection (f)(3)(A)(iii) of this section;

(iii) the geographic location of the family or group day care homes;

(iv) services provided to eligible children; and

(v) other factors determined by the Secretary.

(C) Report

Not later than March 31, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subsection.

(D) Funding

(i) In general

On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph $400,000, to remain available until expended.

(ii) Receipt and acceptance

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.

(q) Management support

(1) Technical and training assistance

In addition to the training and technical assistance that is provided to State agencies under other provisions of this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), the Secretary shall provide training and technical assistance in order to assist the State agencies in improving their program management and oversight under this section.

(2) Technical and training assistance for identification and prevention of fraud and abuse

As part of training and technical assistance provided under paragraph (1), the Secretary shall provide training on a continuous basis to State agencies, and shall ensure that such training is provided to sponsoring organizations, for the identification and prevention of fraud and abuse under the program and to improve management of the program.

[2] So in original. Probably should be ''consultation''.

(3) Funding

For each of fiscal years 2005 and 2006, the Secretary shall reserve to carry out paragraph (1) $1,000,000 of the amounts made available to carry out this section.

(r) Program for at-risk school children

(1) Definition of at-risk school child

In this subsection, the term ''at-risk school child'' means a school child who—

(A) is not more than 18 years of age, except that the age limitation provided by this subparagraph shall not apply to a child described in section 1760(d)(1)(A) of this title; and

(B) participates in a program authorized under this section operated at a site located in a geographical area served by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) Participation in child and adult care food program

An institution may participate in the program authorized under this section only if the institution provides meals or supplements under a program—

(A) organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year; and

(B) with an educational or enrichment purpose.

(3) Administration

Except as otherwise provided in this subsection, the other provisions of this section apply to an institution described in paragraph (2).

(4) Meal and supplement reimbursement

(A) Limitations

An institution may claim reimbursement under this subsection only for one meal per child per day and one supplement per child per day served under a program organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year.

(B) Rates

(i) Meals

A meal shall be reimbursed under this subsection at the rate established for free meals under subsection (c) of this section.

(ii) Supplements

A supplement shall be reimbursed under this subsection at the rate established for a free supplement under subsection (c)(3) of this section.

(C) No charge

A meal or supplement claimed for reimbursement under this subsection shall be served without charge.

(5) Limitation

The Secretary shall limit reimbursement under this subsection for meals served under a program to institutions located in seven States, of which five States shall be Illinois, Pennsylvania, Missouri, Delaware, and Michigan and two States shall be approved by the Secretary through a competitive application process.

(s) Information concerning the special supplemental nutrition program for women, infants, and children

(1) In general

The Secretary shall provide each State agency administering a child and adult care food program under this section with information concerning the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

(2) Requirements for State agencies

Each State agency shall ensure that each participating family and group day care home and child care center (other than an institution providing care to school children outside school hours)—

(A) receives materials that include—

(i) a basic explanation of the importance and benefits of the special supplemental nutrition program for women, infants, and children;

(ii) the maximum State income eligibility standards, according to family size, for the program; and

(iii) information concerning how benefits under the program may be obtained;

(B) receives periodic updates of the information described in subparagraph (A); and

(C) provides the information described in subparagraph (A) to parents of enrolled children at enrollment.

(t) Participation by emergency shelters

(1) Definition of emergency shelter

In this subsection, the term ''emergency shelter'' means—

(A) an emergency shelter (as defined in section 11351 of this title); or

(B) a site operated by the shelter.

(2) Administration

Except as otherwise provided in this subsection, an emergency shelter shall be eligible to participate in the program authorized under this section in accordance with the terms and conditions applicable to eligible institutions described in subsection (a) of this section.

(3) Licensing requirements

The licensing requirements contained in subsection (a)(5) of this section shall not apply to an emergency shelter.

(4) Health and safety standards

To be eligible to participate in the program authorized under this section, an emergency shelter shall comply with applicable State or local health and safety standards.

(5) Meal or supplement reimbursement

(A) Limitations

An emergency shelter may claim reimbursement under this subsection—

(i) only for a meal or supplement served to children residing at an emergency shelter, if the children are—

(I) not more than 18 years of age; or

(II) children with disabilities; and

(ii) for not more than 3 meals, or 2 meals and a supplement, per child per day.

(B) Rate

A meal or supplement eligible for reimbursement shall be reimbursed at the rate at which free meals and supplements are reimbursed under subsection (c) of this section.

(C) No charge

A meal or supplement claimed for reimbursement shall be served without charge.

(June 4, 1946, ch. 281, §17, as added Pub. L. 94–105, §16, Oct. 7, 1975, 89 Stat. 522; amended Pub. L. 95–166, §§3, 19(d), Nov. 10, 1977, 91 Stat. 1332, 1345; Pub. L. 95–627, §2, Nov. 10, 1978, 92 Stat. 3603; Pub. L. 96–499, title II, §§207(a), 208(b), (c), Dec. 5, 1980, 94 Stat. 2602; Pub. L. 97–35, title VIII, §§810, 817(c), 819(k), Aug. 13, 1981, 95 Stat. 528, 532, 534; Pub. L. 99–500, title III, §§361, 372(a), Oct. 18, 1986, 100 Stat. 1783–367, 1783–369, and Pub. L. 99–591, title III, §§361, 372(a), Oct. 30, 1986, 100 Stat. 3341–370, 3341–372; Pub. L. 99–661, div. D, title IV, §4401, title V, §4502(a), Nov. 14, 1986, 100 Stat. 4079, 4080; Pub. L. 100–175, title IV, §401, Nov. 29, 1987, 101 Stat. 972; Pub. L. 100–435, title II, §§211, 214, Sept. 19, 1988, 102 Stat. 1657, 1659; Pub. L. 100–460, title VI, §641, Oct. 1, 1988, 102 Stat. 2265; Pub. L. 101–147, title I, §§105(a), (b), 131(b), title II, §204(a), title III, §§310, 312(2), Nov. 10, 1989, 103 Stat. 883, 907, 909, 915, 916; Pub. L. 102–342, title II, §§202, 203, Aug. 14, 1992, 106 Stat. 913; Pub. L. 102–375, title VIII, §811(a), Sept. 30, 1992, 106 Stat. 1295; Pub. L. 103–171, §3(b)(4), Dec. 2, 1993, 107 Stat. 1991; Pub. L. 103–448, title I, §§105(c), 109(b), 116, Nov. 2, 1994, 108 Stat. 4702, 4705, 4714; Pub. L. 104–193, title VII, §708(a)–(j), Aug. 22, 1996, 110 Stat. 2293–2299; Pub. L. 105–336, title I, §§101(b), 107(a)–(j)(1), (2)(B), (3)(C), Oct. 31, 1998, 112 Stat. 3144, 3149–3153; Pub. L. 106–224, title II, §243(a), (b)(1)–(4)(A), (5), (c)–(g)(1), (h), (i), June 20, 2000, 114 Stat. 413–420; Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106–472, title III, §307(c), Nov. 9, 2000, 114 Stat. 2073; Pub. L. 106–554, §1(a)(4) [div. B, title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–214; Pub. L. 107–76, title VII, §§743, 771, Nov. 28, 2001, 115 Stat. 738, 745; Pub. L. 108–7, div. A, title VII, §735, Feb. 20, 2003, 117 Stat. 43; Pub. L. 108–134, §2, Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108–211, §2, Mar. 31, 2004, 118 Stat. 566; Pub. L. 108–265, title I, §119(a)–(h), June 30, 2004, 118 Stat. 753–755.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(2)(B)(ii) and (*o*)(2)(B), (5)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI, XIX, and XX of the Act are classified generally to subchapters XVI (§1381 et seq.), XIX (§1396 et seq.), and XX (§1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Child Nutrition Act of 1966, referred to in subsecs. (a)(6)(B), (f)(3)(A)(ii)(I)(bb), (E)(ii)(I), (q)(1), and (r)(1)(B), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Head Start Act, referred to in subsec. (c)(5), is subchapter B (§§635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

Part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(6), means part B of chapter 1 of title I of Pub. L. 89–10 which was classified generally to part B (§2741 et seq.) of division 1 of subchapter I of chapter 47 of Title 20, Education, prior to being omitted in the general amendment of Pub. L. 89–10 by Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3519.

The Agricultural Act of 1949, referred to in subsec. (h)(2), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

The Older Americans Act of 1965, referred to in subsec. (*o*)(3)(B), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Part C of title III of the Older Americans Act of 1965 is classified generally to part C (§3030e et seq.) of subchapter III of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (*o*)(5)(A), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

October 1, 1988, referred to in subsec. (*o*)(3)(A) [formerly (p)(3)(A)], was in the original ''enactment'', which was translated as meaning the date of enactment of Pub. L. 100–460, which amended subsec. (p)(3)(A) generally, to reflect the probable intent of Congress.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (a)(2)(B)(i). Pub. L. 108–265, §119(a)(1), struck out ''during the period beginning on December 21, 2000, and ending on June 30, 2004,'' before ''at least''.

Pub. L. 108–211 substituted ''June 30, 2004'' for ''March 31, 2004''.

Subsec. (a)(6)(B). Pub. L. 108–265, §119(h)(1), inserted ''and adult'' after ''child''.

Subsec. (f)(3)(E)(iii). Pub. L. 108–265, §119(b), substituted ''5 years'' for ''3 years''.

Subsec. (i). Pub. L. 108–265, §119(c), inserted subsec. heading, designated existing provisions as par. (2), inserted par. heading, and added par. (1).

Subsec. (j). Pub. L. 108–265, §119(d), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

Subsec. (p). Pub. L. 108–265, §119(e), added subsec. (p).

Pub. L. 108–265, §119(a)(2), struck out subsec. (p), which related to demonstration projects for qualification under this section of private for-profit organizations providing nonresidential day care services.

Subsec. (q)(3). Pub. L. 108–265, §119(f), substituted ''2005 and 2006'' for ''1999 through 2003''.

Subsec. (t)(3). Pub. L. 108–265, §119(h)(2), substituted ''subsection (a)(5)'' for ''subsection (a)(1)''.

Subsec. (t)(5)(A)(i). Pub. L. 108–265, §119(g), in subcl. (I), substituted ''18'' for ''12'' and inserted ''or'' at end, redesignated subcl. (III) as (II), and struck out former subcl. (II) which read as follows: ''children of migrant workers, if the children are not more than 15 years of age; or''.

2003—Subsec. (a)(2)(B)(i). Pub. L. 108–134 substituted ''March 31, 2004'' for ''September 30, 2003''.

Pub. L. 108–7 substituted ''2003'' for ''2002''.

2001—Subsec. (a)(2)(B)(i). Pub. L. 107–76, § 743, substituted ''2002'' for ''2001''.

Subsec. (r)(5). Pub. L. 107–76, § 771, substituted ''located in seven'' for ''located in six'' and ''of which five'' for ''of which four'' and inserted ''Illinois,'' before ''Pennsylvania''.

2000—Pub. L. 106–472, § 307(c)(1)(A), made technical amendment to section catchline.

Subsec. (a). Pub. L. 106–224, § 243(a)(1)–(7), inserted subsec. (a) heading, inserted par. (1) designation and heading before ''The Secretary may carry'', substituted par. (2) for ''For purposes of this section, the term 'institution' means any public or private nonprofit organization providing nonresidential child care, including, but not limited to, child care centers, settlement houses, recreational centers, Head Start centers, and institutions providing child care facilities for children with disabilities; and such term shall also mean any other private organization providing nonresidential day care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act (but only if such organization receives compensation under such title for at least 25 percent of its enrolled children or 25 percent of its licensed capacity, whichever is less). In addition, the term 'institution' shall include programs developed to provide day care outside school hours for schoolchildren, public or nonprofit private organizations that sponsor family or group day care homes, and emergency shelters (as provided in subsection (t) of this section).'', inserted par. (3) designation and heading before ''Except as provided in subsection (r)'', inserted par. (4) designation and heading before ''The Secretary may establish separate guidelines'', inserted par. (5) designation and heading after ''school children outside of school hours.'', substituted ''In order to be eligible,'' for ''For purposes of determining eligibility—'', struck out former par. (1) designation before ''an institution (except a school or family'', substituted ''standards.'' for ''standards; and'', and substituted par. (6) designation and heading for former par. (2) designation and ''No institution'' for ''no institution''.

Subsec. (a)(2)(B). Pub. L. 106–554 substituted ''children, if—'' for ''children for which'', added cl. (i), and designated remaining provisions as cl. (ii).

Subsec. (a)(6)(B). Pub. L. 106–224, § 243(a)(8)(A), inserted '', or has not been determined to be ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program'' before '', for a period''.

Subsec. (a)(6)(C). Pub. L. 106–224, § 243(a)(8)(B), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(6)(C)(ii). Pub. L. 106–472, § 307(c)(1)(B), struck out ''and'' at end.

Subsec. (a)(6)(D). Pub. L. 106–224, § 243(a)(8)(C), substituted a semicolon for the period at end.

Subsec. (a)(6)(E), (F). Pub. L. 106–224, § 243(a)(8)(D), added subpars. (E) and (F).

Subsec. (d). Pub. L. 106–224, § 243(b)(1), inserted subsec. heading.

Subsec. (d)(1). Pub. L. 106–224, § 243(b)(1), added par. (1) and struck out former par. (1), which had provided that any eligible public institution would be approved upon its request, that any eligible private institution would be approved if it had been visited by a State agency and had either tax exempt status or had been operating a Federal program requiring nonprofit status, and set forth provisions relating to tax exempt certification of family or group day care homes, authorizing temporary participation for an institution moving toward compliance, and requiring notice of approval or disapproval of application within 30 days after filing.

Subsec. (d)(2)(A)(ii), (iii). Pub. L. 106–224, § 243(b)(2), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (d)(2)(B). Pub. L. 106–224, § 243(b)(3), substituted ''subsection (a)(5)'' for ''subsection (a)(1)''.

Subsec. (d)(3). Pub. L. 106–224, § 243(b)(4)(A), added par. (3).

Subsec. (d)(4). Pub. L. 106–224, § 243(b)(5), added par. (4).

Subsec. (d)(5). Pub. L. 106–224, § 243(c), added par. (5).

Subsec. (d)(5)(D). Pub. L. 106–472, § 307(c)(2), designated existing provisions as cl. (i), inserted cl. (i) heading, substituted ''Except as provided in cl. (ii), an institution'' for ''An institution'', and added cl. (ii).

Subsec. (f). Pub. L. 106–224, § 243(d)(1), inserted heading.

Subsec. (f)(1). Pub. L. 106–224, § 243(d), inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (f)(2)(C). Pub. L. 106–224, § 243(e), added subpar. (C).

Subsec. (f)(3)(D). Pub. L. 106–224, § 243(f), added subpar. (D) and struck out former subpar. (D), which required the Secretary to reserve $5,000,000 of the amount made available for fiscal year 1997 for grants to States to provide assistance to family or group day care homes and set forth provisions relating to allocation and retention of funds and additional payments.

Subsec. (p)(1). Pub. L. 106–224, § 243(g)(1)(A), substituted ''State-wide demonstration projects in three States'' for ''2 statewide demonstration projects'' in first sentence of introductory provisions.

Subsec. (p)(3). Pub. L. 106–224, § 243(g)(1)(B)(i), inserted ''in'' after ''subsection'' in introductory provisions.

Subsec. (p)(3)(C). Pub. L. 106–224, § 243(g)(1)(B)(ii)–(iv), added subpar. (C).

Subsec. (p)(3)(C)(iii). Pub. L. 106–472, § 307(c)(3)(A), substituted ''all low-income families'' for ''all families''.

Subsec. (p)(3)(C)(iv). Pub. L. 106–472, § 307(c)(3)(B), substituted ''reported for fiscal year 1998'' for ''made''.

Subsec. (q)(2), (3). Pub. L. 106–224, § 243(h), added par. (2) and redesignated former par. (2) as (3).

Subsec. (r)(2). Pub. L. 106–224, § 243(i)(1), inserted ''meals or'' before ''supplements'' in introductory provisions.

Subsec. (r)(4). Pub. L. 106–224, § 243(i)(2)(A), substituted ''Meal and supplement'' for ''Supplement'' in par. heading.

Subsec. (r)(4)(A). Pub. L. 106–224, § 243(i)(2)(B), substituted ''only for one meal per child per day and one supplement per child per day'' for ''only for—'', struck out ''(i) a supplement'' before ''served under'', substituted a period for ''; and'', and struck out cl. (ii) which read as follows: ''one supplement per child per day.''

Subsec. (r)(4)(B). Pub. L. 106–224, § 243(i)(2)(C), in par. heading, substituted ''Rates'' for ''Rate'', added cl. (i), designated existing provisions as cl. (ii), and inserted cl. (ii) heading.

Subsec. (r)(4)(C). Pub. L. 106–224, § 243(i)(2)(D), inserted ''meal or'' before ''supplement''.

Subsec. (r)(5). Pub. L. 106–224, § 243(i)(3), added par. (5).

Subsec. (t)(1)(A). Pub. L. 106–400 made technical amendment to reference in original act which appears in text as reference to section 11351 of this title.

1998—Subsec. (a). Pub. L. 105–336, § 107(j)(3)(C), substituted ''children with disabilities'' for ''children with handicaps'' in two places in introductory provisions.

Pub. L. 105–336, § 107(j)(2)(B), in third sentence of introductory provisions, substituted ''public'' for ''and public'' and inserted, '', and emergency shelters (as provided in subsection (t) of this section)'' before period at end.

Pub. L. 105–336, § 107(a)(1), in fourth sentence of introductory provisions, substituted ''Except as provided in subsection (r) of this section, reimbursement'' for ''Reimbursement''.

Subsec. (a)(1). Pub. L. 105–336, § 107(a)(2), added par. (1) and struck out former par. (1) which read as follows: ''no institution, other than a family or group day care home sponsoring organization, or family or group day care home shall be eligible to participate in the program unless it has Federal, State, or local licensing or approval, or is complying with appropriate renewal procedures as prescribed by the Secretary and the State has no information indicating that the institution's license will not be renewed; or where Federal, State, or local licensing or approval is not available, it receives

funds under title XX of the Social Security Act or otherwise demonstrates that it meets either any applicable State or local government licensing or approval standards or approval standards established by the Secretary after consultation with the Secretary of Health and Human Services; and''.

Subsec. (c)(6). Pub. L. 105–336, §107(b), struck out ''(A)'' before ''A child'' and struck out subpar. (B) which read as follows: ''Subparagraph (A) shall apply only with respect to the provision of benefits under this section for the period beginning September 1, 1995, and ending September 30, 1997.''

Subsec. (d)(1). Pub. L. 105–336, §107(c)(1), (d), inserted ''has been visited by a State agency prior to approval and it'' after ''if it'' in second sentence, inserted ''An institution moving toward compliance with the requirement for tax exempt status shall be allowed to participate in the child and adult care food program for a period of not more than 180 days, except that a State agency may grant a single extension of not to exceed an additional 90 days if the institution demonstrates, to the satisfaction of the State agency, that the inability of the institution to obtain tax exempt status within the 180-day period is due to circumstances beyond the control of the institution.'' after third sentence, and struck out at end ''If an institution submits an incomplete application to the State, the State shall so notify the institution within fifteen days of receipt of the application.''

Subsec. (d)(2)(A). Pub. L. 105–336, §107(c)(2), substituted ''policy that—'' for ''policy that'', inserted ''(i)'' before ''allows institutions'', substituted ''; and'' for period at end, and added cl. (ii).

Subsec. (h)(1)(B). Pub. L. 105–336, §101(b), substituted ''1755(c)'' for ''1755(e)''.

Subsec. (i). Pub. L. 105–336, §107(e), substituted ''1.5 percent (except, in the case of each of fiscal years 2005 through 2007, 1 percent)'' for ''2 percent''.

Subsec. (p)(4), (5). Pub. L. 105–336, §107(f), struck out pars. (4) and (5) which read as follows:

''(4) Such project shall—

''(A) commence not earlier than May 1, 1990, and not later than June 30, 1990; and

''(B) terminate on September 30, 1998.

''(5) Notwithstanding paragraph (4)(B), the Secretary shall continue until September 30, 1998, the two pilot projects established under this subsection to the extent, and in such amounts, as are provided for in advance in appropriations Acts.''

Subsec. (q). Pub. L. 105–336, §107(g), added subsec. (q).

Subsec. (r). Pub. L. 105–336, §107(h), added subsec. (r).

Subsec. (s). Pub. L. 105–336, §107(i), added subsec. (s).

Subsec. (t). Pub. L. 105–336, §107(j)(1), added subsec. (t).

1996—Subsec. (a). Pub. L. 104–193, §708(a), substituted ''initiate and maintain nonprofit food service programs'' for ''initiate, maintain, and expand nonprofit food service programs'' in first sentence.

Subsec. (a)(2)(D). Pub. L. 104–193, §708(b), added subpar. (D).

Subsec. (c)(1) to (3). Pub. L. 104–193, §708(e)(4), inserted ''except as provided in subsection (f)(3) of this section,'' after ''For purposes of this section,''.

Subsec. (d)(1). Pub. L. 104–193, §708(c), struck out '', and shall provide technical assistance, if necessary, to the institution for the purpose of completing its application'' before period at end.

Subsec. (f)(2)(B). Pub. L. 104–193, §708(d), substituted ''2 meals and 1 supplement'' for ''two meals and two supplements or three meals and one supplement''.

Subsec. (f)(3). Pub. L. 104–193, §708(e)(1), inserted heading.

Subsec. (f)(3)(A). Pub. L. 104–193, §708(e)(1), added heading and text of subpar. (A) and struck out former subpar. (A) which read as follows: ''Institutions that participate in the program under this section as family or group day care home sponsoring organizations shall be provided, for payment to such homes, a reimbursement factor set by the Secretary for the cost of obtaining and preparing food and prescribed labor costs, involved in providing meals under this section, without a requirement for documentation of such costs, except that reimbursement shall not be provided under this subparagraph for meals or supplements served to the children of a person acting as a family or group day care home provider unless such children meet the eligibility standards for free or reduced price meals under section 1758 of this title. The reimbursement factor in effect as of August 13, 1981, shall be reduced by 10 percent. The reimbursement factor under this subparagraph shall be adjusted on July 1 of each year to reflect changes in the Consumer Price Index for food away from home for the most recent 12-month period for which such data are available. The reimbursement factor under this subparagraph shall be rounded to the nearest one-fourth cent.''

Subsec. (f)(3)(B). Pub. L. 104–193, §708(f)(1)(A), struck out at end ''The maximum allowable levels for administrative expense payments, as in effect as of August 13, 1981, shall be adjusted by the Secretary so as to achieve a 10 percent reduction in the total amount of reimbursement provided to institutions for such administrative expenses. In making the reduction required by the preceding sentence, the Secretary shall increase the economy of scale factors used to distinguish institutions that sponsor a greater number of family or group day care homes from those that sponsor a lesser number of such homes.''

Subsec. (f)(3)(C)(ii). Pub. L. 104–193, §708(f)(1)(B), substituted ''assist unlicensed family or group day care homes in becoming'' for ''conduct outreach and recruitment to unlicensed family or group day care homes so that the day care homes may become''.

Subsec. (f)(3)(D). Pub. L. 104–193, §708(e)(2), added subpar. (D).

Subsec. (f)(3)(E). Pub. L. 104–193, §708(e)(3), added subpar. (E).

Subsec. (f)(4). Pub. L. 104–193, §708(f)(2), substituted ''State may provide'' for ''State shall provide'' in first sentence.

Subsec. (g)(1)(A). Pub. L. 104–193, §708(g)(1), struck out at end ''Such meals shall be served free to needy children.''

Subsec. (g)(1)(B). Pub. L. 104–193, §708(g)(2), struck out at end ''The Secretary shall provide additional technical assistance to those institutions and family or group day care home sponsoring organizations that are having difficulty maintaining compliance with the requirements.''

Subsec. (k). Pub. L. 104–193, §708(h), added heading and text of subsec. (k) and struck out former subsec. (k) consisting of pars. (1) to (3) which related to training and technical assistance, monitoring, research, and demonstration projects.

Subsec. (m). Pub. L. 104–193, §708(i), substituted ''available at any reasonable time'' for ''available at all times''.

Subsec. (q). Pub. L. 104–193, §708(j), struck out subsec. (q) which related to provision of information concerning special supplemental nutrition program for women, infants, and children.

1994—Subsec. (c)(5). Pub. L. 103–448, §109(b), added par. (5).

Subsec. (c)(6). Pub. L. 103–448, §116(a), added par. (6).

Subsec. (d)(2)(A). Pub. L. 103–448, §116(b), substituted ''3-year intervals'' for ''2-year intervals''.

Subsec. (f)(3)(C). Pub. L. 103–448, §116(c), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (g)(1). Pub. L. 103–448, §105(c), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (k)(4). Pub. L. 103–448, §116(d), added par. (4).

Subsec. (p). Pub. L. 103–448, §116(e), substituted ''25 percent of the children enrolled in the organization or 25 percent of the licensed capacity of the organization for children, whichever is less,'' for ''25 percent of the children served by such organization'' in par. (1)(A), ''1998'' for ''1992'' in par. (4)(B), and ''1998'' for ''1994'' in par. (5).

Subsec. (q). Pub. L. 103–448, §116(f), added subsec. (q).

1993—Subsec. (*o*)(3)(A). Pub. L. 103–171 substituted ''Assistant Secretary for Aging'' for ''Commissioner of Aging''.

1992—Subsec. (a). Pub. L. 102–342, § 202, substituted ''of its enrolled children or 25 percent of its licensed capacity, whichever is less'' for ''of the children for which the organization provides such nonresidential day care services''.

Subsec. (*o*)(2)(A)(i). Pub. L. 102–375 inserted '', or a group living arrangement,'' after ''homes''.

Subsec. (p)(5). Pub. L. 102–342, § 203, added par. (5).

1989—Pub. L. 101–147, § 105(a), substituted ''Child and adult care food program'' for ''Child care food program'' in section catchline.

Subsec. (a). Pub. L. 101–147, § 310(a)(1), substituted ''children with handicaps'' for ''handicapped children'' wherever appearing.

Subsec. (c). Pub. L. 101–147, § 312(2), substituted ''reduced price'' for ''reduced-price'' wherever appearing.

Subsec. (d). Pub. L. 101–147, § 204(a), designated existing provisions as par. (1), redesignated cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

Subsec. (d)(1). Pub. L. 101–147, § 310(a)(2), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (e). Pub. L. 101–147, § 310(b), amended subsec. (e), as identically amended by Pub. L. 99–500 and 99–591, § 361, and Pub. L. 99–661, § 4401, to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (f)(1). Pub. L. 101–147, § 310(a)(3)(A), substituted ''day care'' for ''day-care''.

Subsec. (f)(2)(B). Pub. L. 101–147, § 310(a)(3)(B), struck out second period at end.

Subsec. (f)(3)(A). Pub. L. 101–147, § 312(2), substituted ''reduced price'' for ''reduced-price''.

Subsec. (f)(3)(C). Pub. L. 101–147, § 105(b)(1), inserted before period at end of first sentence ''and expansion funds to finance the administrative expenses for such institutions to expand into low-income or rural areas'', inserted ''and expansion funds'' after ''start-up funds'' in second, fourth, and fifth sentences and after ''Start-up funds'' in third sentence, and inserted after first sentence ''Institutions that have received start-up funds may also apply at a later date for expansion funds.''

Subsec. (h)(1). Pub. L. 101–147, § 131(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child care food program under this section. The value of such commodities (or cash in lieu of commodities) donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during that school year by the rate for commodities or cash in lieu thereof established for that school year under section 1755(e) of this title. Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities.''

Subsec. (k). Pub. L. 101–147, § 310(a)(4), redesignated subsec. (*l*) as (k) and struck out former subsec. (k) which related to study and report on maximum administrative payments reflecting costs of institutions.

Subsec. (*l*). Pub. L. 101–147, § 310(a)(4), redesignated subsec. (m) as (*l*). Former subsec. (*l*) redesignated (k).

Pub. L. 101–147, § 105(b)(2), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsecs. (m), (n). Pub. L. 101–147, § 310(a)(4), redesignated subsecs. (n) and (*o*) as (m) and (n), respectively. Former subsec. (m) redesignated (*l*).

Subsec. (*o*). Pub. L. 101–147, § 312(2), substituted ''reduced price'' for ''reduced-price'' in par. (4).

Pub. L. 101–147, § 310(a)(4), redesignated subsec. (p) as (*o*). Former subsec. (*o*) redesignated (n).

Subsec. (p). Pub. L. 101–147, § 310(a)(4), redesignated subsec. (q) as (p). Former subsec. (p) redesignated (*o*).

Pub. L. 101–147, § 105(b)(3)(A), inserted at end of par. (1) ''Lunches served by each such institution for which reimbursement is claimed under this section shall provide, on the average, approximately ⅓ of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Such institutions shall make reasonable efforts to serve meals that meet the special dietary requirements of participants, including efforts to serve foods in forms palatable to participants.''

Pub. L. 101–147, § 105(b)(3)(B), added par. (6).

Subsec. (q). Pub. L. 101–147, § 310(a)(4), redesignated subsec. (q) as (p).

Pub. L. 101–147, § 105(b)(4), added subsec. (q).

1988—Subsec. (f)(2)(B). Pub. L. 100–435, § 211, inserted provisions relating to reimbursement to institutions maintaining a child care setting for eight or more hours per day.

Subsec. (h). Pub. L. 100–435, § 214, designated existing provisions as par. (1) and added par. (2).

Subsec. (p)(3)(A). Pub. L. 100–460, § 641(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The Secretary of Agriculture, in consultation with the Commissioner on Aging, may establish separate guidelines for reimbursement of institutions described in this subsection.''

Subsec. (p)(4). Pub. L. 100–460, § 641(a), added par. (4).

Subsec. (p)(5). Pub. L. 100–460, § 641(b), added par. (5).

1987—Subsec. (p). Pub. L. 100–175 added subsec. (p).

1986—Subsec. (a)(1). Pub. L. 99–500 and Pub. L. 99–591, § 372(a), and Pub. L. 99–661, § 4502(a), amended par. (1) identically, substituting ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (e). Pub. L. 99–500 and Pub. L. 99–591, § 361, and Pub. L. 99–661, § 4401, amended subsec. (e) identically, designating existing provisions as par. (1), substituting ''Except as provided in paragraph (2), the'' for ''The'', and adding pars. (2) and (3).

1981—Subsec. (a). Pub. L. 97–35, § 810(a), inserted provisions respecting 25 percent requirement for children receiving nonresidential day care services, and reimbursement for meals and supplements.

Subsec. (b). Pub. L. 97–35, § 810(b), substituted provisions respecting applicability of subsec. (f), for provisions respecting applicability of subsec. (c).

Subsec. (c). Pub. L. 97–35, § 810(c), substituted provisions respecting applicability, determinations, etc., for national average payment rates for free lunches and suppers, etc., for provisions respecting formula for computation of payments, and applicability of national average payment rates.

Subsec. (f)(1). Pub. L. 97–35, § 819(k), struck out authorization respecting financing the cost of meals.

Subsec. (f)(2) to (5). Pub. L. 97–35, § 810(d), in par. (2) substituted provisions setting forth formula for disbursements for meals for provisions setting forth maximum per meal rates of reimbursements, struck out par. (3) which related to election rights of institutions other than family or group day care home sponsoring organizations, redesignated par. (4) as (3) and, as so redesignated, substantially revised and restructured provisions, and redesignated par. (5) as (4).

Subsec. (g). Pub. L. 97–35, § 810(e), struck out par. (2) which related to prohibitions respecting meals served by institutions, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (i). Pub. L. 97–35, §§ 810(f), 817(c)(2), struck out subsec. (i) which related to information required from State plans. Former subsec. (j) redesignated (i).

Subsecs. (j) to (*l*). Pub. L. 97–35, §§ 810(g), 817(c)(2), redesignated subsecs. (k), (*l*), and (*o*) as (j), (k), and (*l*), respectively, and in subsec. (*l*), as so redesignated, struck out provision respecting availability of funds from food service equipment program. Former subsecs. (j) to (*l*) redesignated (i) to (k), respectively.

Subsec. (m). Pub. L. 97–35, §817(c), struck out subsec. (m) which related to withholding of funds. Subsec. (p) redesignated (m).

Subsec. (n). Pub. L. 97–35, §§810(f), 817(c)(2), struck out subsec. (n) which related to appropriations, etc., for equipment assistance. Subsec. (q) redesignated (n).

Subsecs. (*o*) to (r). Pub. L. 97–35, §817(c)(2), redesignated subsecs. (*o*) to (r) as (*l*) to (*o*), respectively.

1980—Subsec. (a). Pub. L. 96–499, §207(a), included in definition of ''institution'' any private organization providing nonresidential day care services for which compensation was received from amounts granted to the States under title XX of the Social Security Act.

Subsec. (c). Pub. L. 96–499, §208(b), inserted provision in pars. (1), (2), and (3) that the average payment rates for supplements served in such institutions was to be three cents lower than the adjusted rates prescribed by the Secretary in accordance with the adjustment formulas contained in such pars. (1), (2), and (3).

Subsec. (n)(1). Pub. L. 96–499, §208(c), substituted ''$4,000,000'' for ''$6,000,000''.

1978—Subsec. (a). Pub. L. 95–627 excepted family or group day care homes from licensing requirements, set out guidelines for institutions providing care for children outside of school hours, and set out criteria for determining eligibility under this section.

Subsec. (b). Pub. L. 95–627 substituted provisions limiting the aggregate amount of cash assistance to a State under this section for provisions setting out a formula for computation of payments under this section and adjustments to such payments. See subsec. (c) of this section.

Subsec. (c). Pub. L. 95–627 substituted provisions relating to the formula for the computation of payments under this section and the prescription of a national average payment rate for provisions relating to the maintenance of national nutritional standards and the prohibition of discrimination and identification of children unable to pay under the program.

Subsec. (d). Pub. L. 95–627 substituted provisions stating requirements for approval for participation in the program and requiring written notification of such approval or disapproval for provisions relating to State disbursements to participating institutions.

Subsec. (e). Pub. L. 95–627 substituted provisions relating to fair hearings for provisions relating to donations of agricultural commodities and cash in lieu of commodities. See subsec. (h) of this section.

Subsec. (f). Pub. L. 95–627 substituted provisions relating to disbursements to participating institutions by the State for provisions calling for direct disbursements to participating institutions by the Secretary and prescribing conditions therefor.

Subsec. (g). Pub. L. 95–627 substituted provisions relating to meals served at participating institutions and the necessary nutritional content thereof for provisions prohibiting the diminution of expenditures by State and local sources by reason of the availability of Federal funds.

Subsec. (h). Pub. L. 95–627 substituted provisions relating to donations of agricultural land commodities and cash in lieu of commodities for provisions authorizing appropriations to meet the administrative expenditures of the Secretary.

Subsec. (i). Pub. L. 95–627 substituted provisions relating to information required from State plans for provisions requiring adequate accounts and general record-keeping by States, State educational agencies, and participating institutions.

Subsec. (j). Pub. L. 95–627 substituted provisions relating to the availability of Federal funds to the States for audits of participating institutions for provisions relating to food service equipment assistance and the apportionment of unused funds.

Subsec. (k). Pub. L. 95–627 substituted provisions relating to the use of a standard form of agreement and the issuance of regulations pertaining to such use for provisions relating to the issuance of rules and regulations to carry out this section by the Secretary.

Subsecs. (*l*) to (r). Pub. L. 95–627 added subsecs. (*l*) to (r).

1977—Subsec. (e). Pub. L. 95–166, §19(d), substituted in last sentence ''school year'' for ''fiscal year'' in three instances.

Subsec. (j)(1). Pub. L. 95–166, §3, substituted ''food service equipment assistance'' for ''nonfood assistance''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 119(a), (b), (d)–(f), (h) of Pub. L. 108–265 effective June 30, 2004, and amendment by section 119(c), (g) of Pub. L. 108–265 effective Oct. 1, 2004, see section 502(a), (b)(2) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–224, title II, §243(b)(4)(B), June 20, 2000, 114 Stat. 417, provided that: ''In the case of a child that is enrolled in a sponsored child care center or family or group day care home participating in the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) before the date of the enactment of this Act [June 20, 2000], the center or home shall provide information to the child's parents or guardians pursuant to section 17(d)(3) of that Act [42 U.S.C. 1766(d)(3)], as added by subparagraph (A), not later than 90 days after the date of the enactment of this Act.''

Pub. L. 106–224, title II, §243(g)(2), June 20, 2000, 114 Stat. 419, provided that: ''The Secretary may carry out demonstration projects in the State described in section 17(p)(3)(C) of the Richard B. Russell National School Lunch Act [42 U.S.C. 1766(p)(3)(C)], as added by paragraph (1)(B)(iv), beginning not earlier than October 1, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 107(j)(1), (2)(B) of Pub. L. 105–336 effective July 1, 1999, see section 107(j)(4) of Pub. L. 105–336, set out as a note under section 1761 of this title.

Amendment by sections 101(b) and 107(a)–(i), (j)(3)(C) of Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 708(k)(1), (2) of Pub. L. 104–193 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall become effective on the date of enactment of this Act [Aug. 22, 1996].

''(2) IMPROVED TARGETING OF DAY CARE HOME REIMBURSEMENTS.—The amendments made by paragraphs (1) and (4) of subsection (e) [amending this section] shall become effective on July 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 105(c) and 116 of Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

Amendment by section 109(b) of Pub. L. 103–448 effective Sept. 25, 1995, see section 109(c) of Pub. L. 103–448, set out as a note under section 1758 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 811(b) of Pub. L. 102–375 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if the amendment had been included in the Older Americans Act Amendments of 1987 [Pub. L. 100–375].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 131(b) of Pub. L. 101–147 effective July 1, 1989, see section 131(c) of Pub. L. 101–147, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 211 of Pub. L. 100–435 to be effective and implemented on July 1, 1989, and amend-

ment by section 214 of Pub. L. 100–435 to be effective and implemented on Oct. 1, 1988, see section 701(a), (b)(4) of Pub. L. 100–435, set out as a note under section 2012 of Title 7, Agriculture.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, see section 701(a) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 810(a), (f), (g), 817(c), and 819(k) of Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(3), (4) of Pub. L. 97–35, set out as a note under section 1753 of this title. For effective dates of amendments by section 810(b)–(e) of Pub. L. 97–35, see section 820(a)(1)(B)–(D), (3), (4), (6) of Pub. L. 97–35.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 207(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply with respect to all fiscal years beginning on or after October 1, 1980.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 19 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

IMPLEMENTATION OF 1989 AMENDMENTS

Section 105(d) of Pub. L. 101–147 provided that:

''(1) EXPANSION; DEMONSTRATION PROJECT.—The Secretary of Agriculture shall implement the amendments made by subsections (b)(1) and (b)(2) [amending this section] not later than July 1, 1990.

''(2) DIETARY REQUIREMENTS FOR ADULT DAY CARE FOOD PROGRAM.—Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement the amendments made by subsection (b)(3) [amending this section].''

REGULATIONS

Section 708(k)(3) of Pub. L. 104–193 provided that:

''(A) INTERIM REGULATIONS.—Not later than January 1, 1997, the Secretary of Agriculture shall issue interim regulations to implement—

''(i) the amendments made by paragraphs (1), (3), and (4) of subsection (e) [amending this section]; and

''(ii) section 17(f)(3)(C) of the [Richard B. Russell] National School Lunch Act (42 U.S.C. 1766(f)(3)(C)).

''(B) FINAL REGULATIONS.—Not later than July 1, 1997, the Secretary of Agriculture shall issue final regulations to implement the provisions of law referred to in subparagraph (A).''

Section 204(b) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary shall issue final regulations to implement the amendments made by subsection (a) [amending this section].''

RECOVERY AND REALLOCATION OF AUDIT FUNDS

Pub. L. 109–97, title VII, § 769, Nov. 10, 2005, 119 Stat. 2159, provided that: ''Hereafter, notwithstanding any other provision of law, funds made available to States administering the Child and Adult Care Food Program, for the purpose of conducting audits of participating institutions, funds identified by the Secretary as having been unused during the initial fiscal year of availability may be recovered and reallocated by the Secretary: *Provided*, That States may use the reallocated funds until expended for the purpose of conducting audits of participating institutions.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 108–447, div. A, title VII, § 796, Dec. 8, 2004, 118 Stat. 2852.

PAPERWORK REDUCTION

Pub. L. 108–265, title I, § 119(i), June 30, 2004, 118 Stat. 755, provided that: ''The Secretary of Agriculture, in conjunction with States and participating institutions, shall examine the feasibility of reducing paperwork resulting from regulations and recordkeeping requirements for State agencies, family child care homes, child care centers, and sponsoring organizations participating in the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).''

EARLY CHILD NUTRITION EDUCATION

Pub. L. 108–265, title I, § 119(j), June 30, 2004, 118 Stat. 755, provided that:

''(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (6), for a period of 4 successive years, the Secretary of Agriculture shall award to 1 or more entities with expertise in designing and implementing health education programs for limited-English-proficient individuals 1 or more grants to enhance obesity prevention activities for child care centers and sponsoring organizations providing services to limited-English-proficient individuals through the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) in each of 4 States selected by the Secretary in accordance with paragraph (2).

''(2) STATES.—The Secretary shall provide grants under this subsection in States that have experienced a growth in the limited-English-proficient population of the States of at least 100 percent between the years 1990 and 2000, as measured by the census.

''(3) REQUIRED ACTIVITIES.—Activities carried out under paragraph (1) shall include—

''(A) developing an interactive and comprehensive tool kit for use by lay health educators and training activities;

''(B) conducting training and providing ongoing technical assistance for lay health educators; and

''(C) establishing collaborations with child care centers and sponsoring organizations participating in the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) to—

''(i) identify limited-English-proficient children and families; and

''(ii) enhance the capacity of the child care centers and sponsoring organizations to use appropriate obesity prevention strategies.

''(4) EVALUATION.—Each grant recipient shall identify an institution of higher education to conduct an independent evaluation of the effectiveness of the grant.

''(5) REPORT.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Health, Education, Labor, and Pensions, of the Senate a report that includes—

''(A) the evaluation completed by the institution of higher education under paragraph (4);

''(B) the effectiveness of lay health educators in reducing childhood obesity; and

''(C) any recommendations of the Secretary concerning the grants.

''(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $250,000 for each of fiscal years 2005 through 2009.''

STUDY OF IMPACT OF AMENDMENTS BY PUB. L. 104–193 ON PROGRAM PARTICIPATION AND FAMILY DAY CARE LICENSING

Section 708(*l*) of Pub. L. 104–193 directed Secretary of Agriculture, in conjunction with Secretary of Health and Human Services, to conduct study and report to Congress not later than 2 years after Aug. 22, 1996, on impact of the amendments made by section 708 of Pub. L. 104–193, amending this section, on the number of

family day care homes and day care home sponsoring organizations participating in the child and adult care food program established under this section, the number of day care homes that are licensed, certified, registered, or approved by each State in accordance with regulations issued by the Secretary, the rate of growth of such numbers, the nutritional adequacy and quality of meals served in family day care homes, and the proportion of low-income children participating in the program prior to such amendments to this section and the proportion of low-income children participating in the program after such amendments to this section, and further required each State agency participating in the child and adult care food program under this section to submit to the Secretary of Agriculture data necessary to carry out this study.

FAMILY OR GROUP DAY CARE HOME DEMONSTRATION PROJECT

Section 503 of Pub. L. 100–435, as amended by Pub. L. 101–147, title I, §105(c)(1), Nov. 10, 1989, 103 Stat. 885, directed Secretary of Agriculture to conduct a demonstration project to begin 30 days after Sept. 19, 1988, but in no event earlier than Oct. 1, 1988, in one State (selected by the Secretary) regarding the Child Care Food Program authorized under 42 U.S.C. 1766 in which day care institutions and family or group day care sponsoring organizations shall receive a reimbursement (in addition to that received under 42 U.S.C. 1766(d) and (f)) for providing one additional meal or supplement for children that are maintained in a day care institution or in a family or group day care home setting for eight or more hours per day, directed Secretary to submit a preliminary report to Congress not later than Aug. 1, 1989, and a final report after the conclusion of such project, with project to terminate Sept. 30, 1990.

REVIEW AND REVISION OF NUTRITION REQUIREMENTS FOR MEALS SERVED UNDER BREAKFAST PROGRAM; PROMULGATION OF REGULATIONS

Section 330(b) of title III of Pub. L. 99–500 and Pub. L. 99–591 and section 4210(b) of Pub. L. 99–661 directed Secretary of Agriculture to review and revise nutrition requirements for meals served under the breakfast program authorized under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and this section to improve nutritional quality of meals, taking into consideration both findings of National Evaluation of School Nutrition Programs and need to provide increased flexibility in meal planning to local food authorities, and to promulgate regulations to implement revisions not later than 180 days after Oct. 18, 1986.

ADJUSTMENTS IN NATIONAL AVERAGE PAYMENT RATE FOR SUPPLEMENTS DURING FISCAL YEAR ENDING SEPTEMBER 30, 1981

Section 208(a) of Pub. L. 96–499 related to adjustments required under the former pars. (1) through (3) of subsec. (c) of this section applicable in determining the national average payment rate for supplements during the fiscal year ending Sept. 30, 1981.

§1766a. Meal supplements for children in afterschool care

(a) General authority

(1) Grants to States

The Secretary shall carry out a program to assist States through grants-in-aid and other means to provide meal supplements under a program organized primarily to provide care for children in afterschool care in eligible elementary and secondary schools.

(2) Eligible schools

For the purposes of this section, the term ''eligible elementary and secondary schools'' means schools that—

(A) operate school lunch programs under this chapter;

(B) sponsor afterschool care programs; and

(C) operate afterschool programs with an educational or enrichment purpose.

(b) Eligible children

Reimbursement may be provided under this section only for supplements served to school children who are not more than 18 years of age, except that the age limitation provided by this subsection shall not apply to a child described in section 1760(d)(1)(A) of this title.

(c) Reimbursement

(1) At-risk school children

In the case of an eligible child who is participating in a program authorized under this section operated at a site located in a geographical area served by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), a supplement provided under this section to the child shall be—

(A) reimbursed at the rate at which free supplements are reimbursed under section 1766(c)(3) of this title; and

(B) served without charge.

(2) Other school children

In the case of an eligible child who is participating in a program authorized under this section at a site that is not described in paragraph (1), for the purposes of this section, the national average payment rate for supplements shall be equal to those established under section 1766(c)(3) of this title (as adjusted pursuant to section 1759a(a)(3) of this title).

(d) Contents of supplements

The requirements that apply to the content of meal supplements served under child care food programs operated with assistance under this chapter shall apply to the content of meal supplements served under programs operated with assistance under this section.

(June 4, 1946, ch. 281, §17A, as added Pub. L. 101–147, title I, §106(a), Nov. 10, 1989, 103 Stat. 885; amended Pub. L. 105–336, title I, §108, Oct. 31, 1998, 112 Stat. 3153.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (c)(1), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–336, §108(a)(1), substituted ''supplements under a program organized primarily to provide care for'' for ''supplements to''.

Subsec. (a)(2)(C). Pub. L. 105–336, §108(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''are participating in the child care food program under section 1766 of this title on May 15, 1989.''

Subsec. (b). Pub. L. 105–336, §108(b), substituted ''served to school children who are not more than 18 years of age, except that the age limitation provided by

this subsection shall not apply to a child described in section 1760(d)(1)(A) of this title.'' for ''served to children—

''(1) who are not more than 12 years of age; or

''(2) in the case of children of migrant workers or children with handicaps, who are not more than 15 years of age.''

Subsec. (c). Pub. L. 105–336, § 108(c), added par. (1), designated existing provisions as par. (2), inserted heading, and substituted ''In the case of an eligible child who is participating in a program authorized under this section at a site that is not described in paragraph (1), for the purposes'' for ''For the purposes''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

REGULATIONS

Section 106(b) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement section 17A of the [Richard B. Russell] National School Lunch Act [this section] (as added by subsection (a) of this section).''

§ 1766b. Repealed. Pub. L. 105–336, title I, § 107(j)(2)(C)(i), Oct. 31, 1998, 112 Stat. 3153

Section, act June 4, 1946, ch. 281, § 17B, as added Pub. L. 103–448, title I, § 117(a)(1), Nov. 2, 1994, 108 Stat. 4715, related to homeless children nutrition program.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1999, see section 107(j)(4) of Pub. L. 105–336, set out as an Effective Date of 1998 Amendment note under section 1761 of this title.

§§ 1767, 1768. Repealed. Pub. L. 99–500, title III, § 371(a)(1), Oct. 18, 1986, 100 Stat. 1783–368, and Pub. L. 99–591, title III, § 371(a)(1), Oct. 30, 1986, 100 Stat. 3341–371; Pub. L. 99–661, div. D, title V, § 4501(a)(1), Nov. 14, 1986, 100 Stat. 4080

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Section 1767, act June 4, 1946, ch. 281, § 18, as added Oct. 7, 1975, Pub. L. 94–105, § 19, 89 Stat. 526, authorized nutrition program staff study.

Section 1768, act June 4, 1946, ch. 281, § 19, as added Oct. 7, 1975, Pub. L. 94–105, § 20, 89 Stat. 527, authorized appropriations to assist Trust Territory of Pacific Islands.

§ 1769. Pilot projects

(a) Pilot projects for administration of child nutrition programs by contract or direct disbursement

The Secretary may conduct pilot projects in not more than three States in which the Secretary is currently administering programs to evaluate the effects of the Secretary contracting with private profit and nonprofit organizations to act as a State agency under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] for schools, institutions, or service institutions referred to in section 1759 of this title and section 5 of the Child Nutrition Act of 1966 [42 U.S.C. 1774].

(b) Extension of eligibility of certain school districts to receive cash or commodity letters of credit assistance for school lunch programs

(1) Upon request to the Secretary, any school district that on January 1, 1987, was receiving all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program shall receive all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program beginning July 1, 1987. The Secretary, directly or through contract, shall administer the project under this subsection.

(2) Any school district that elects under paragraph (1) to receive all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program shall receive bonus commodities in the same manner as if such school district was receiving all entitlement commodities for its school lunch program.

(c) Alternative counting and claiming procedures

(1)(A) The Secretary shall carry out a pilot program for purposes of identifying alternatives to—

(i) daily counting by category of meals provided by school lunch programs under this chapter; and

(ii) annual applications for eligibility to receive free meals or reduced price meals.

(B) For the purposes of carrying out the pilot program under this paragraph, the Secretary may waive requirements of this chapter relating to counting of meals provided by school lunch programs and applications for eligibility.

(C) For the purposes of carrying out the pilot program under this paragraph, the Secretary shall solicit proposals from State educational agencies and local educational agencies for the alternatives described in subparagraph (A).

(2)(A) The Secretary shall carry out a pilot program under which a limited number of schools participating in the special assistance program under section 1759a(a)(1) of this title that have in attendance children at least 80 percent of whom are eligible for free lunches or reduced price lunches shall submit applications for a 3-year period.

(B) Each school participating in the pilot program under this paragraph shall have the option of determining the number of free meals, reduced price meals, and paid meals provided daily under the school lunch program operated by such school by applying percentages determined under subparagraph (C) to the daily total student meal count.

(C) The percentages determined under this subparagraph shall be established on the basis of the master roster of students enrolled in the school concerned, which—

(i) shall include a notation as to the eligibility status of each student with respect to the school lunch program; and

(ii) shall be updated not later than September 30 of each year.

(3) In addition to the pilot projects described in this subsection, the Secretary may conduct other pilot projects to test alternative counting and claiming procedures.

(4) Each pilot program carried out under this subsection shall be evaluated by the Secretary after it has been in operation for 3 years.

(d) Fortified fluid milk

(1) Subject to the availability of appropriations to carry out this subsection, the Secretary

shall establish pilot projects in at least 25 school districts under which the milk offered by schools meets the fortification requirements of paragraph (3) for lowfat, skim, and other forms of fluid milk.

(2) The Secretary shall make available to school districts information that compares the nutritional benefits of fluid milk that meets the fortification requirements of paragraph (3) and the nutritional benefits of other milk that is made available through the school lunch program established under this chapter.

(3) The fortification requirements for fluid milk for the pilot project referred to in paragraph (1) shall provide that—

(A) all whole milk in final package form for beverage use shall contain not less than—

(i) 3.25 percent milk fat; and

(ii) 8.7 percent milk solids not fat;

(B) all lowfat milk in final package form for beverage use shall contain not less than 10 percent milk solids not fat; and

(C) all skim milk in final package form for beverage use shall contain not less than 9 percent milk solids not fat.

(4)(A) In selecting where to establish pilot projects under this subsection, the Secretary shall take into account, among other factors, the availability of fortified milk and the interest of the school district in being included in the pilot project.

(B) The Secretary shall establish the pilot projects in as many geographic areas as practicable, except that none of the projects shall be established in school districts that use milk described in paragraph (3) or similar milk.

(5) Not later than 2 years after the establishment of the first pilot project under this subsection, the Secretary shall report to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on—

(A) the acceptability of fortified whole, lowfat, and skim milk products to participating children;

(B) the impact of offering the milk on milk consumption;

(C) the views of the school food service authorities on the pilot projects; and

(D) any increases or reductions in costs attributed to the pilot projects.

(6) The Secretary shall—

(A) obtain copies of any research studies or papers that discuss the impact of the fortification of milk pursuant to standards established by the States; and

(B) on request, make available to State agencies and the public—

(i) the information obtained under subparagraph (A); and

(ii) information about where to obtain milk described in paragraph (3).

(7)(A) Each pilot project established under this subsection shall terminate on the last day of the third year after the establishment of the pilot project.

(B) The Secretary shall advise representatives of each district participating in a pilot project that the district may continue to offer the fortified forms of milk described in paragraph (3) after the project terminates.

(e) Breakfast pilot projects

(1) In general

Subject to the availability of funds made available under paragraph (10), for a period of 3 successive school years, the Secretary shall make grants to State agencies to conduct pilot projects in elementary schools under the jurisdiction of not more than 6 school food authorities approved by the Secretary to—

(A) reduce paperwork, simplify meal counting requirements, and make changes that will increase participation in the school breakfast program; and

(B) evaluate the effect of providing free breakfasts to elementary school children, without regard to family income, on participation, academic achievement, attendance and tardiness, and dietary intake over the course of a day.

(2) Nominations

A State agency that seeks a grant under this subsection shall submit to the Secretary nominations of school food authorities to participate in a pilot project under this subsection[1]

(3) Approval

The Secretary shall approve for participation in pilot projects under this subsection elementary schools under the jurisdiction of not more than 6 nominated school food authorities selected so as to—

(A) provide for an equitable distribution of pilot projects among urban and rural elementary schools;

(B) provide for an equitable distribution of pilot projects among elementary schools of varying family income levels; and

(C) permit the evaluation of pilot projects to distinguish the effects of the pilot projects from other factors, such as changes or differences in educational policies or programs.

(4) Grants to school food authorities

A State agency receiving a grant under paragraph (1) shall make grants to school food authorities to conduct the pilot projects described in paragraph (1).

(5) Duration of pilot projects

Subject to the availability of funds made available to carry out this subsection, a school food authority receiving amounts under a grant to conduct a pilot project described in paragraph (1) shall conduct the project during a period of 3 successive school years.

(6) Waiver authority

(A) In general

Except as provided in subparagraph (B), the Secretary may waive the requirements of this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) relating to counting of meals, applications for eligi-

[1] So in original. Probably should be followed by a period.

bility, and related requirements that would preclude the Secretary from making a grant to conduct a pilot project under paragraph (1).

(B) Nonwaivable requirements

The Secretary may not waive a requirement under subparagraph (A) if the waiver would prevent a program participant, a potential program participant, or a school from receiving all of the benefits and protections of this chapter, the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or a Federal law (including a regulation) that protects an individual constitutional right or a statutory civil right.

(7) Requirements for participation in pilot project

To be eligible to participate in a pilot project under this subsection—

(A) a State agency—

(i) shall submit an application to the Secretary at such time and in such manner as the Secretary shall establish to meet criteria the Secretary has established to enable a valid evaluation to be conducted; and

(ii) shall provide such information relating to the operation and results of the pilot project as the Secretary may reasonably require; and

(B) a school food authority—

(i) shall agree to serve all breakfasts at no charge to all children enrolled in participating elementary schools;

(ii) shall not have a history of violations of this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(iii) shall have, under the jurisdiction of the school food authority, a sufficient number of elementary schools that are not participating in the pilot projects to permit a valid evaluation of the effects of the pilot projects; and

(iv) shall meet all other requirements that the Secretary may reasonably require.

(8) Evaluation of pilot projects

(A) In general

The Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct an evaluation of the pilot projects conducted by the school food authorities selected for participation.

(B) Content

The evaluation shall include—

(i) a determination of the effect of participation in the pilot project on the academic achievement, attendance and tardiness, and dietary intake over the course of a day of participating children that is not attributable to changes in educational policies and practices; and

(ii) a determination of the effect that participation by elementary schools in the pilot project has on the proportion of students who eat breakfast and on the paperwork required to be completed by the schools.

(C) Report

On completion of the pilot projects and the evaluation, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation of the pilot projects required under subparagraph (A).

(9) Reimbursement

(A) In general

Except as provided in subparagraph (B), a school conducting a pilot project under this subsection shall receive a total Federal reimbursement under the school breakfast program in an amount that is equal to the total Federal reimbursement for the school for the prior year under the program (adjusted to reflect changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor and adjusted for fluctuations in enrollment).

(B) Excess needs

Funds required for the pilot project in excess of the level of reimbursement received by the school for the prior year (adjusted to reflect changes described in subparagraph (A) and adjusted for fluctuations in enrollment) may be taken from any non-Federal source or from amounts provided under this subsection.

(10) Authorization of appropriations

(A) In general

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(B) Requirement

No amounts may be provided under this subsection unless specifically provided in appropriations Acts.

(f) Simplified summer food programs

(1) Definition of eligible State

In this subsection, the term ''eligible State'' means—

(A) a State participating in the program under this subsection as of May 1, 2004; and

(B) a State in which (based on data available in June 2005)—

(i) the percentage obtained by dividing—

(I) the sum of—

(aa) the average daily number of children attending the summer food service program in the State in July 2003; and

(bb) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in July 2003; by

(II) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in March 2003; is less than

(ii) 75 percent of the percentage obtained by dividing—

(I) the sum of—

(aa) the average daily number of children attending the summer food service program in all States in July 2003; and

(bb) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in July 2003; by

(II) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in March 2003.

(2) Programs

The Secretary shall carry out a summer food program in each eligible State to increase the number of children participating in the summer food service program in the State.

(3) Support levels for service institutions

(A) Food service

Under the program, a service institution in an eligible State shall receive the maximum amounts for food service under section 1761(b)(1) of this title without regard to the requirement under section 1761(b)(1)(A) of this title that payments shall equal the full cost of food service operations.

(B) Administrative costs

Under the program, a service institution in an eligible State shall receive the maximum amounts for administrative costs determined by the Secretary under section 1761(b)(4) of this title without regard to the requirement under section 1761(b)(3) of this title that payments to service institutions shall equal the full amount of State-approved administrative costs incurred.

(C) Compliance

A service institution that receives assistance under this subsection shall comply with all provisions of section 1761 of this title other than subsections (b)(1)(A) and (b)(3) of section 1761 of this title.

(4) Maintenance of effort

Expenditures of funds from State and local sources for maintenance of a summer food service program shall not be diminished as a result of assistance from the Secretary received under this subsection.

(5) Evaluation of programs

(A) In general

The Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct an evaluation of the program.

(B) Content

An evaluation under this paragraph shall describe—

(i) any effect on participation by children and service institutions in the summer food service program in the eligible State in which the program is carried out;

(ii) any effect of the program on the quality of the meals and supplements served in the eligible State in which the program is carried out; and

(iii) any effect of the program on program integrity.

(6) Report

Not later than April 30, 2007, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes—

(A) the evaluations completed by the Secretary under paragraph (5); and

(B) any recommendations of the Secretary concerning the programs.

(g) Fresh fruit and vegetable program

(1) In general

For the school year beginning July 2004 and each subsequent school year, the Secretary shall carry out a program to make free fresh fruits and vegetables available, to the maximum extent practicable, to—

(A) 25 elementary or secondary schools in each of the 4 States authorized to participate in the program under this subsection on May 1, 2004;

(B) 25 elementary or secondary schools (as selected by the Secretary in accordance with paragraph (3)) in each of 4 States (including a State for which funds were allocated under the program described in paragraph (3)(B)(ii)) that are not participating in the program under this subsection on May 1, 2004; and

(C) 25 elementary or secondary schools operated on 3 Indian reservations (including the reservation authorized to participate in the program under this subsection on May 1, 2004), as selected by the Secretary.

(2) Program

A school participating in the program shall make free fresh fruits and vegetables available to students throughout the school day in 1 or more areas designated by the school.

(3) Selection of schools

(A) In general

Except as provided in subparagraph (B), in selecting additional schools to participate in the program under paragraph (1)(B), the Secretary shall—

(i) to the maximum extent practicable, ensure that the majority of schools selected are those in which not less than 50 percent of students are eligible for free or reduced price meals under this chapter;

(ii) solicit applications from interested schools that include—

(I) information pertaining to the percentage of students enrolled in the school submitting the application who are eligible for free or reduced price school lunches under this chapter;

(II) a certification of support for participation in the program signed by the school food manager, the school principal, and the district superintendent (or equivalent positions, as determined by the school); and

(III) such other information as may be requested by the Secretary;

(iii) for each application received, determine whether the application is from a school in which not less than 50 percent of students are eligible for free or reduced price meals under this chapter; and

(iv) give priority to schools that submit a plan for implementation of the program that includes a partnership with 1 or more entities that provide non-Federal resources (including entities representing the fruit and vegetable industry) for—

(I) the acquisition, handling, promotion, or distribution of fresh and dried fruits and fresh vegetables; or

(II) other support that contributes to the purposes of the program.

(B) Nonapplicability to existing participants

Subparagraph (A) shall not apply to a school, State, or Indian reservation authorized—

(i) to participate in the program on May 1, 2004; or

(ii) to receive funding for free fruits and vegetables under funds provided for public health improvement under the heading ''DISEASE CONTROL, RESEARCH, AND TRAINING'' under the heading ''CENTERS FOR DISEASE CONTROL AND PREVENTION'' in title II of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004 (Division E of Public Law 108–199; 118 Stat. 238).

(4) Notice of availability

To be eligible to participate in the program under this subsection, a school shall widely publicize within the school the availability of free fresh fruits and vegetables under the program.

(5) Reports

(A) Interim reports

Not later than September 30 of each of fiscal years 2005 through 2008, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report that describes the activities carried out under this subsection during the fiscal year covered by the report.

(B) Final report

Not later than December 31, 2008, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a final report that describes the results of the program under this subsection.

(6) Funding

(A) Existing funds

The Secretary shall use to carry out this subsection any funds that remain under this subsection on the day before June 30, 2004.

(B) Mandatory funds

(i) In general

On October 1, 2004, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection $9,000,000, to remain available until expended.

(ii) Receipt and acceptance

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds made available under this subparagraph, without further appropriation.

(C) Authorization of appropriations

In addition to any amounts made available under subparagraphs (A) and (B), there are authorized to be appropriated such sums as are necessary to expand the program carried out under this subsection.

(D) Reallocation

The Secretary may reallocate any amounts made available to carry out this subsection that are not obligated or expended, as determined by the Secretary.

(h) Summer food service residential camp eligibility

(1) In general

During the month after June 30, 2004, through September, 2004, and the months of May through September, 2005, the Secretary shall modify eligibility criteria, at not more than 1 private nonprofit residential camp in each of not more than 2 States, as determined by the Secretary, for the purpose of identifying and evaluating alternative methods of determining the eligibility of residential private nonprofit camps to participate in the summer food service program for children established under section 1761 of this title.

(2) Eligibility

To be eligible for the criteria modified under paragraph (1), a residential camp—

(A) shall be a service institution (as defined in section 1761(a)(1) of this title);

(B) may not charge a fee to any child in residence at the camp; and

(C) shall serve children who reside in an area in which poor economic conditions exist (as defined in section 1761(a)(1) of this title).

(3) Payments

(A) In general

Under this subsection, the Secretary shall provide reimbursement for meals served to all children at a residential camp at the payment rates specified in section 1761(b)(1) of this title.

(B) Reimbursable meals

A residential camp selected by the Secretary may receive reimbursement for not more than 3 meals, or 2 meals and 1 supplement, during each day of operation.

(4) Evaluation

(A) Information from residential camps

Not later than December 31, 2005, a residential camp selected under paragraph (1) shall report to the Secretary such information as is required by the Secretary concerning the requirements of this subsection.

(B) Report to Congress

Not later than March 31, 2006, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that evaluates the effect of this subsection on program participation and other factors, as determined by the Secretary.

(i) Access to local foods and school gardens

(1) In general

The Secretary may provide assistance, through competitive matching grants and technical assistance, to schools and nonprofit entities for projects that—

(A) improve access to local foods in schools and institutions participating in programs under this chapter and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) through farm-to-cafeteria activities, including school gardens, that may include the acquisition of food and appropriate equipment and the provision of training and education;

(B) are, at a minimum, designed to—

(i) procure local foods from small- and medium-sized farms for school meals; and

(ii) support school garden programs;

(C) support nutrition education activities or curriculum planning that incorporates the participation of school children in farm-based agricultural education activities, that may include school gardens;

(D) develop a sustained commitment to farm-to-cafeteria projects in the community by linking schools, State departments of agriculture, agricultural producers, parents, and other community stakeholders;

(E) require $100,000 or less in Federal contributions;

(F) require a Federal share of costs not to exceed 75 percent;

(G) provide matching support in the form of cash or in-kind contributions (including facilities, equipment, or services provided by State and local governments and private sources); and

(H) cooperate in an evaluation carried out by the Secretary.

(2) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2004 through 2009.

(j) Year-round services for eligible entities

(1) In general

A service institution that is described in section 1761(a)(6) of this title (excluding a public school), or a private nonprofit organization described in section 1761(a)(7) of this title, and that is located in the State of California may be reimbursed—

(A) for up to 2 meals during each day of operation served—

(i) during the months of May through September;

(ii) in the case of a service institution that operates a food service program for children on school vacation, at anytime under a continuous school calendar; and

(iii) in the case of a service institution that provides meal service at a nonschool site to children who are not in school for a period during the school year due to a natural disaster, building repair, court order, or similar case, at anytime during such a period; and

(B) for a snack served during each day of operation after school hours, weekends, and school holidays during the regular school calendar.

(2) Payments

The service institution shall be reimbursed consistent with section 1761(b)(1) of this title.

(3) Administration

To receive reimbursement under this subsection, a service institution shall comply with section 1761 of this title, other than subsections (b)(2) and (c)(1) of that section.

(4) Evaluation

Not later than September 30, 2007, the State agency shall submit to the Secretary a report on the effect of this subsection on participation in the summer food service program for children established under section 1761 of this title.

(5) Funding

The Secretary shall provide to the State of California such sums as are necessary to carry out this subsection for each of fiscal years 2005 through 2009.

(k) Free lunch and breakfast eligibility

(1) In general

Subject to the availability of funds under paragraph (4), the Secretary shall expand the service of free lunches and breakfasts provided at schools participating in the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) in all or part of 5 States selected by the Secretary (of which at least 1 shall be a largely rural State with a significant Native American population).

(2) Income eligibility

The income guidelines for determining eligibility for free lunches or breakfasts under this subsection shall be 185 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 1758(b)(1)(B) of this title.

(3) Evaluation

(A) In general

Not later than 3 years after the implementation of this subsection, the Secretary shall

conduct an evaluation to assess the impact of the changed income eligibility guidelines by comparing the school food authorities operating under this subsection to school food authorities not operating under this subsection.

(B) Impact assessment

(i) Children

The evaluation shall assess the impact of this subsection separately on—

(I) children in households with incomes less than 130 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 1758(b)(1)(B) of this title; and

(II) children in households with incomes greater than 130 percent and not greater than 185 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 1758(b)(1)(B) of this title.

(ii) Factors

The evaluation shall assess the impact of this subsection on—

(I) certification and participation rates in the school lunch and breakfast programs;

(II) rates of lunch- and breakfast-skipping;

(III) academic achievement;

(IV) the allocation of funds authorized in title I of the Elementary and Secondary Education Act [20 U.S.C. 6301 et seq.] to local educational agencies and public schools; and

(V) other factors determined by the Secretary.

(C) Cost assessment

The evaluation shall assess the increased costs associated with providing additional free, reduced price, or paid meals in the school food authorities operating under this subsection.

(D) Report

On completion of the evaluation, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this paragraph.

(4) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

(June 4, 1946, ch. 281, § 18, formerly § 20, as added Pub. L. 95–166, § 10(2), Nov. 10, 1977, 91 Stat. 1336; amended Pub. L. 95–627, § 11, Nov. 10, 1978, 92 Stat. 3624; renumbered § 18 and amended Pub. L. 99–500, title III, §§ 327, 371(c)(1), Oct. 18, 1986, 100 Stat. 1783–362, 1783–368, and Pub. L. 99–591, title III, §§ 327, 371(c)(1), Oct. 30, 1986, 100 Stat. 3341–365, 3341–372; renumbered § 18 and amended Pub. L. 99–661, div. D, title II, § 4207, title V, § 4501(c)(1), Nov. 14, 1986, 100 Stat. 4073, 4080; Pub. L. 100–237, § 5, Jan. 8, 1988, 101 Stat. 1739; Pub. L. 101–147, title I, § 107, title II, § 205(a), title III, § 311, Nov. 10, 1989, 103 Stat. 886, 910, 916; Pub. L. 102–342, title I, § 101(a), title III, § 301, Aug. 14, 1992, 106 Stat. 911, 913; Pub. L. 102–512, title I, § 102, Oct. 24, 1992, 106 Stat. 3363; Pub. L. 103–448, title I, §§ 117(a)(2)(A), (b), 118, Nov. 2, 1994, 108 Stat. 4717, 4719; Pub. L. 104–193, title VII, § 709, Aug. 22, 1996, 110 Stat. 2301; Pub. L. 105–336, title I, § 109(a)–(c)(1), Oct. 31, 1998, 112 Stat. 3154–3156; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 102(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–215; Pub. L. 107–171, title IV, § 4305(a), May 13, 2002, 116 Stat. 332; Pub. L. 108–30, § 1, May 29, 2003, 117 Stat. 774; Pub. L. 108–134, § 5(2), Nov. 22, 2003, 117 Stat. 1390; Pub. L. 108–211, § 5(b), Mar. 31, 2004, 118 Stat. 567; Pub. L. 108–265, title I, §§ 116(f), 120–124, June 30, 2004, 118 Stat. 750, 756–760; Pub. L. 109–97, title VII, § 777(a), Nov. 10, 2005, 119 Stat. 2161.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a) and (e)(6), (7)(B)(ii), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004, referred to in subsec. (g)(3)(B)(ii), is Pub. L. 108–199, div. E, Jan. 23, 2004, 118 Stat. 226. Provisions under the headings ''CENTERS FOR DISEASE CONTROL AND PREVENTION'' and ''DISEASE CONTROL, RESEARCH, AND TRAINING'' in title II of the Act appear at 118 Stat. 238 and are not classified to the Code.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (k)(3)(B)(ii)(IV), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 18 of act June 4, 1946, which was classified to section 1767 of this title, was repealed.

AMENDMENTS

2005—Subsec. (f)(1)(B). Pub. L. 109–97, § 777(a)(1), substituted ''June 2005'' for ''April 2004'' in introductory provisions.

Subsec. (f)(1)(B)(ii). Pub. L. 109–97, § 777(a)(2), substituted ''75'' for ''66.67'' in introductory provisions.

2004—Subsec. (f). Pub. L. 108–265, § 116(f)(5)(A), substituted ''Simplified summer food programs'' for ''Summer food pilot projects'' in heading.

Subsec. (f)(1). Pub. L. 108–265, § 116(f)(1), added par. (1) and struck out heading and text of former par. (1), which defined ''eligible State'' using formula based on data available in July 2000.

Subsec. (f)(2). Pub. L. 108–265, § 116(f)(5)(B), substituted ''Programs'' for ''Pilot projects'' in heading and ''food program'' for ''food pilot project'' in text.

Pub. L. 108–265, § 116(f)(2), substituted ''The'' for ''During the period beginning October 1, 2000, and ending June 30, 2004, the''.

Pub. L. 108–211 substituted ''June 30, 2004'' for ''March 31, 2004''.

Subsec. (f)(3)(A), (B). Pub. L. 108–265, §116(f)(5)(C), substituted ''program'' for ''pilot project''.

Pub. L. 108–265, §116(f)(3), struck out ''(other than a service institution described in section 1761(a)(7) of this title)'' after ''service institution''.

Subsec. (f)(5). Pub. L. 108–265, §116(f)(5)(D), substituted ''programs'' for ''pilot projects'' in heading and ''the program'' for ''the pilot project'' in text wherever appearing.

Subsec. (f)(6). Pub. L. 108–265, §116(f)(4), added par. (6) and struck out heading and text of former par. (6), which related to interim and final reports on pilot projects carried out under this subsec.

Subsec. (g). Pub. L. 108–265, §120, added subsec. (g) and struck out heading and text of former subsec. (g), which related to fruit and vegetable pilot program.

Subsecs. (h) to (k). Pub. L. 108–265, §§121–124, added subsecs. (h) to (k).

2003—Subsec. (f)(2). Pub. L. 108–134 substituted ''beginning October 1, 2000, and ending March 31, 2004'' for ''of fiscal years 2001 through 2003''.

Subsec. (g)(4). Pub. L. 108–30 inserted before period at end '', to remain available until the close of the school year beginning July 2003''.

2002—Subsec. (g). Pub. L. 107–171 added subsec (g).

2000—Subsec. (f). Pub. L. 106–554 added subsec. (f).

1998—Subsec. (c). Pub. L. 105–336, §109(a), (c)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to demonstration program for prevention of boarder babies.

Subsec. (d). Pub. L. 105–336, §109(c)(1), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 105–336, §109(a), (c)(1), redesignated subsec. (i) as (e) and struck out former subsec. (e) which related to demonstration program to provide meals and supplements outside of school hours.

Subsec. (f). Pub. L. 105–336, §109(c)(1), redesignated subsec. (f) as (d).

Subsec. (g). Pub. L. 105–336, §109(a), struck out subsec. (g) which related to increased choices of fruits, vegetables, legumes, cereals, and grain-based products.

Subsec. (h). Pub. L. 105–336, §109(a), struck out subsec. (h) which related to increased choices of lowfat dairy products and lean meat and poultry products.

Subsec. (i). Pub. L. 105–336, §109(b), (c)(1), amended subsec. (i) generally and redesignated it as subsec. (e). Prior to amendment, subsec. (i) related to reduced paperwork and application requirements and increased participation pilots.

1996—Subsec. (d)(3) to (5). Pub. L. 104–193, §709(a), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which related to pilot program for schools with universal free lunch programs to use certain methods to determine number of free, reduced price, and paid meals to be provided.

Subsec. (e)(1). Pub. L. 104–193, §709(b)(1), designated subpar. (A) as par. (1), substituted ''Secretary may establish'' for ''Secretary shall establish'', and struck out subpar. (B) which read as follows: ''The amount of a grant under subparagraph (A) shall be equal to the amount necessary to provide meals or supplements described in such subparagraph and shall be determined in accordance with reimbursement payment rates for meals and supplements under the child and adult care food program under section 1766 of this title.''

Subsec. (e)(5). Pub. L. 104–193, §709(b)(2), added heading and text of par. (5) and struck out former par. (5) which read as follows:

''(5)(A) Except as provided in subparagraph (B), the Secretary shall expend to carry out this subsection, from amounts appropriated for purposes of carrying out section 1766 of this title, $325,000 for fiscal year 1995, $475,000 for each of fiscal years 1996 and 1997, and $525,000 for fiscal year 1998. In addition to amounts described in the preceding sentence, the Secretary shall expend any additional amounts in any fiscal year as may be provided in advance in appropriations Acts.

''(B) The Secretary may expend less than the amount required under subparagraph (A) if there is an insufficient number of suitable applicants.''

1994—Subsec. (b)(1). Pub. L. 103–448, §118(a), struck out '', and ending September 30, 1994'' after ''beginning July 1, 1987''.

Subsec. (c). Pub. L. 103–448, §117(a)(2)(A), (b), added subsec. (c) and struck out former subsec. (c), which related to provision of food service to homeless children under age 6 in emergency shelters.

Subsecs. (e) to (i). Pub. L. 103–448, §118(b)–(f), added subsecs. (e) to (i).

1992—Subsec. (b)(1). Pub. L. 102–342, §301, substituted ''September 30, 1994'' for ''September 30, 1992''.

Subsec. (c)(2). Pub. L. 102–342, §101(a)(1), inserted ''State, city, local, or county governments, other public entities, or'' before ''private nonprofit''.

Subsec. (c)(2)(B)(i). Pub. L. 102–512 substituted ''Each private nonprofit organization'' for ''Each such organization''.

Subsec. (c)(3)(A). Pub. L. 102–342, §101(a)(2), inserted at end ''The projects shall receive reimbursement payments for meals and supplements served on Saturdays, Sundays, and holidays, at the request of the sponsor of any such project. The meal pattern requirements of this subparagraph may be modified as necessary by the Secretary to take into account the needs of infants.''

Subsec. (c)(5)(A). Pub. L. 102–342, §101(a)(1), (3), substituted ''not less than $350,000 in each of fiscal years 1991 and 1992, not less than $650,000 in fiscal year 1993, and not less than $800,000 in fiscal year 1994,'' for ''and not less than $350,000 in each of the fiscal years 1991, 1992, 1993, and 1994,'' and inserted ''State, city, local, or county governments, other public entities, or'' before ''private nonprofit''.

Subsec. (c)(7). Pub. L. 102–342, §101(a)(4), added par. (7).

1989—Subsec. (a). Pub. L. 101–147, §311(2), struck out ''(42 U.S.C. 1771 et seq.)'' after ''Child Nutrition Act of 1966'' and ''(42 U.S.C. 1774)'' after ''section 5 of the Child Nutrition Act of 1966''.

Pub. L. 101–147, §311(1), redesignated subsec. (d) as (a) and struck out former subsec. (a) which set forth statement of purpose of section and requirements for types of projects.

Subsec. (b). Pub. L. 101–147, §311(1), redesignated subsec. (e) as (b) and struck out former subsec. (b) which provided for a study on effect of cash payments in lieu of commodities.

Subsec. (c). Pub. L. 101–147, §311(1), redesignated subsec. (f) as (c) and struck out former subsec. (c) which related to report due not later than 18 months after Nov. 10, 1977.

Subsec. (d). Pub. L. 101–147, §311(1), redesignated subsec. (g) as (d). Former subsec. (d) redesignated (a).

Subsec. (e). Pub. L. 101–147, §311(1), redesignated subsec. (e) as (b).

Subsec. (e)(1). Pub. L. 101–147, §107(1)(A), substituted ''beginning July 1, 1987, and ending September 30, 1992'' for ''for the duration beginning July 1, 1987, and ending December 31, 1990'' and inserted at end ''The Secretary, directly or through contract, shall administer the project under this subsection.''

Subsec. (f). Pub. L. 101–147, §311(1), redesignated subsec. (f) as (c).

Pub. L. 101–147, §107(2), added subsec. (f).

Subsec. (g). Pub. L. 101–147, §311(1), redesignated subsec. (g) as (d).

Pub. L. 101–147, §205(a), added subsec. (g).

1988—Subsec. (e). Pub. L. 100–237 added subsec. (e).

1986—Subsec. (c). Pub. L. 99–500 and Pub. L. 99–591, §327(b), and Pub. L. 99–661, §4207(b), which directed the identical amendment of subsec. (c) by striking out ''except for the pilot projects conducted under subsection (d) of this section,'' were executed by striking out '', except for the pilot projects conducted under subsection (d) of this section'' after ''under this section'' in introductory provisions, as the probable intent of Congress.

Subsec. (d). Pub. L. 99–500 and Pub. L. 99–591, §327(a), and Pub. L. 99–661, §4207(a), amended section identically, adding subsec. (d) and striking out former subsec. (d) which related to free lunches without regard to fam-

ily income and to reimbursement of school food authorities.

1978—Subsec. (c). Pub. L. 95–627, § 11(1), inserted provision excluding pilot projects conducted under subsec. (d) of this section.

Subsec. (d). Pub. L. 95–627, § 11(2), added subsec. (d).

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–97, title VII, § 777(b), Nov. 10, 2005, 119 Stat. 2161, provided that: ''The amendments made by subsection (a) [amending this section] take effect on January 1, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 116(f)(1), (3) of Pub. L. 108–265 effective Jan. 1, 2005, and amendment by sections 116(f)(2), (4), (5) and 120 to 124 of Pub. L. 108–265 effective June 30, 2004, see section 502(a), (b)(3) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–171, title IV, § 4305(b), May 13, 2002, 116 Stat. 332, provided that: ''The amendment made by this section [amending this section] takes effect on the date of enactment of this Act [May 13, 2002].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 104 of title I of Pub. L. 102–512 provided that: ''This title [amending this section and section 1776 of this title and enacting provisions set out as a note under section 1771 of this title] and the amendments made by this title shall become effective on September 30, 1992.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

OTHER DEMONSTRATION PROJECTS FOR FEEDING HOMELESS CHILDREN

Pub. L. 102–342, title I, § 101(b), Aug. 14, 1992, 106 Stat. 911, as amended by Pub. L. 105–336, title I, § 109(c)(2), Oct. 31, 1998, 112 Stat. 3157, provided that: ''The Secretary of Agriculture may conduct demonstration projects to identify effective means of providing food assistance to homeless children residing in temporary shelters.''

ALTERNATIVE COUNTING AND CLAIMING PROCEDURES; PROMULGATION OF REGULATIONS

Section 205(b) of Pub. L. 101–147 provided that not later than July 1, 1990, Secretary of Agriculture was to issue final regulations to implement subsec. (g) of this section.

§ 1769a. Repealed. Pub. L. 104–193, title VII, § 710, Aug. 22, 1996, 110 Stat. 2301

Section, act June 4, 1946, ch. 281, § 19, formerly § 21, as added Nov. 10, 1977, Pub. L. 95–166, § 13, 91 Stat. 1338; renumbered § 19, Oct. 18, 1986, Pub. L. 99–500, title III, § 371(c)(1), 100 Stat. 1783–368, and Oct. 30, 1986, Pub. L. 99–591, title III, § 371(c)(1), 100 Stat. 3341–372; renumbered § 19, Nov. 14, 1986, Pub. L. 99–661, div. D, title V, § 4501(c)(1), 100 Stat. 4080; Nov. 10, 1989, Pub. L. 101–147, title I, § 108, 103 Stat. 887; Nov. 2, 1994, Pub. L. 103–448, title I, § 119, 108 Stat. 4726, directed Secretary to reduce paperwork required in carrying out functions under this chapter and under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

§ 1769b. Department of Defense overseas dependents' schools

(a) Purpose of program; availability of payments and commodities

For the purpose of obtaining Federal payments and commodities in conjunction with the provision of lunches to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the National School Lunch Program in the United States.

(b) Administration of program; eligibility determinations and regulations

The Secretary of Defense shall administer lunch programs authorized by this section and shall determine eligibility for free and reduced price lunches under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the National School Lunch Program under this section.

(c) Nutritional standards for meals; noncompliance with standards

The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is impracticable.

(d) Authorization of appropriations

Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section.

(e) Technical assistance for administration of program

The Secretary of Agriculture shall provide the Secretary of Defense with the technical assistance in the administration of the school lunch programs authorized by this section.

(June 4, 1946, ch. 281, § 20, formerly § 22, as added Pub. L. 95–561, title XIV, § 1408(a), Nov. 1, 1978, 92

Stat. 2368; renumbered § 20 and amended Pub. L. 99–500, title III, §§ 328(a), 371(c)(1), Oct. 18, 1986, 100 Stat. 1783–362, 1783–368, and Pub. L. 99–591, title III, §§ 328(a), 371(c)(1), Oct. 30, 1986, 100 Stat. 3341–365, 3341–372; renumbered § 20 and amended Pub. L. 99–661, div. D, title II, § 4208(a), title V, § 4501(c)(1), Nov. 14, 1986, 100 Stat. 4073, 4080; Pub. L. 101–147, title III, § 312(2), Nov. 10, 1989, 103 Stat. 916.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 20 of act June 4, 1946, was renumbered section 18 of act June 4, 1946, and is classified to section 1769 of this title.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–147 substituted ''reduced price'' for ''reduced-price''.

1986—Subsec. (d). Pub. L. 99–500 and Pub. L. 99–591, § 328(a), and Pub. L. 99–661, § 4208(a), amended subsec. (d) identically, striking out ''and for payment of the difference between the value of commodities and payments received from the Secretary of Agriculture and (1) the full cost of each lunch for each student eligible for a free lunch, and (2) the full cost of each lunch, less any amounts required by law or regulation to be paid by each student eligible for a reduced-price lunch'' after ''this section''.

EFFECTIVE DATE

Section effective Oct. 1, 1978 and no provision herein to be construed as impairing or preventing the taking effect of any other Act providing for the transfer of functions described herein to an executive department having responsibility for education, see section 1415 of Pub. L. 95–561, set out as a note under section 921 of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer to Secretary of Education of functions of Secretary of Defense and Department of Defense relating to operation of overseas schools for dependents of Department of Defense and under Defense Dependents' Education Act of 1978, 20 U.S.C. 921 et seq., see section 3442(a) of Title 20, Education.

§ 1769b–1. Training, technical assistance, and food service management institute

(a) General authority

The Secretary—

(1) subject to the availability of, and from, amounts appropriated pursuant to subsection (e)(1) of this section, shall conduct training activities and provide—

(A) training and technical assistance to improve the skills of individuals employed in—

(i) food service programs carried out with assistance under this chapter and, to the maximum extent practicable, using individuals who administer exemplary local food service programs in the State;

(ii) school breakfast programs carried out with assistance under section 1773 of this title; and

(iii) as appropriate, other federally assisted feeding programs; and

(B) assistance, on a competitive basis, to State agencies for the purpose of aiding schools and school food authorities with at least 50 percent of enrolled children certified to receive free or reduced price meals (and, if there are any remaining funds, other schools and school food authorities) in meeting the cost of acquiring or upgrading technology and information management systems for use in food service programs carried out under this chapter and section 1773 of this title, if the school or school food authority submits to the State agency an infrastructure development plan that—

(i) addresses the cost savings and improvements in program integrity and operations that would result from the use of new or upgraded technology;

(ii) ensures that there is not any overt identification of any child by special tokens or tickets, announced or published list of names, or by any other means;

(iii) provides for processing and verifying applications for free and reduced price school meals;

(iv) integrates menu planning, production, and serving data to monitor compliance with section 1758(f)(1) of this title; and

(v) establishes compatibility with statewide reporting systems;

(C) assistance, on a competitive basis, to State agencies with low proportions of schools or students that—

(i) participate in the school breakfast program under section 1773 of this title; and

(ii) demonstrate the greatest need, for the purpose of aiding schools in meeting costs associated with initiating or expanding a school breakfast program under section 1773 of this title, including outreach and informational activities; and

(2) from amounts appropriated pursuant to subsection (e)(2) of this section, is authorized to provide financial and other assistance to the University of Mississippi, in cooperation with the University of Southern Mississippi, to establish and maintain a food service management institute.

(b) Minimum requirements

The activities conducted and assistance provided as required by subsection (a)(1) of this section shall at least include activities and assistance with respect to—

(1) menu planning;

(2) implementation of regulations and appropriate guidelines; and

(3) compliance with program requirements and accountability for program operations.

(c) Duties of food service management institute

(1) In general

Any food service management institute established as authorized by subsection (a)(2) of this section shall carry out activities to improve the general operation and quality of—

(A) food service programs assisted under this chapter;

(B) school breakfast programs assisted under section 1773 of this title; and

(C) as appropriate, other federally assisted feeding programs.

(2) Required activities

Activities carried out under paragraph (1) shall include—

(A) conducting research necessary to assist schools and other organizations that participate in such programs in providing high quality, nutritious, cost-effective meal service to the children served;

(B) providing training and technical assistance with respect to—

(i) efficient use of physical resources;

(ii) financial management;

(iii) efficient use of computers;

(iv) procurement;

(v) sanitation;

(vi) safety, including food handling, hazard analysis and critical control point plan implementation, emergency readiness, responding to a food recall, and food biosecurity training;

(vii) meal planning and related nutrition activities;

(viii) culinary skills; and

(ix) other appropriate activities;

(C) establishing a national network of trained professionals to present training programs and workshops for food service personnel;

(D) developing training materials for use in the programs and workshops described in subparagraph (C);

(E) acting as a clearinghouse for research, studies, and findings concerning all aspects of the operation of food service programs;

(F) training food service personnel to comply with the nutrition guidance and objectives established by the Secretary through a national network of instructors or other means;

(G) preparing informational materials, such as video instruction tapes and menu planners, to promote healthier food preparation; and

(H) assisting State educational agencies in providing additional nutrition and health instructions and instructors, including training personnel to comply with the nutrition guidance and objectives established by the Secretary.

(d) Coordination

(1) In general

The Secretary shall coordinate activities carried out and assistance provided as required by subsection (b) of this section with activities carried out by any food service management institute established as authorized by subsection (a)(2) of this section.

(2) Use of institute for dietary and nutrition activities

The Secretary shall use any food service management institute established under subsection (a)(2) of this section to assist in carrying out dietary and nutrition activities of the Secretary.

(e) Authorization of appropriations

(1) Training activities and technical assistance

There are authorized to be appropriated to carry out subsection (a)(1) of this section $3,000,000 for fiscal year 1990, $2,000,000 for fiscal year 1991, and $1,000,000 for each of fiscal years 1992 through 2009.

(2) Food service management institute

(A) Funding

In addition to any amounts otherwise made available for fiscal year 1995, out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary $3,000,000 for fiscal year 2004 and $4,000,000 for fiscal year 2005 and each subsequent fiscal year, to carry out subsection (a)(2) of this section. The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.

(B) Additional funding

In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out subsection (a)(2) of this section such sums as are necessary for fiscal year 1995 and each subsequent fiscal year. The Secretary shall carry out activities under subsection (a)(2) of this section, in addition to the activities funded under subparagraph (A), to the extent provided for, and in such amounts as are provided for, in advance in appropriations Acts.

(C) Funding for education, training, or applied research or studies

In addition to amounts made available under subparagraphs (A) and (B), from amounts otherwise appropriated to the Secretary in discretionary appropriations, the Secretary may provide funds to any food service management institute established under subsection (a)(2) of this section for projects specified by the Secretary that will contribute to implementing dietary or nutrition initiatives. Any additional funding under this subparagraph shall be provided noncompetitively in a separate cooperative agreement.

(f) Administrative training and technical assistance material

In collaboration with State educational agencies, local educational agencies, and school food authorities of varying sizes, the Secretary shall develop and distribute training and technical assistance material relating to the administration of school meals programs that are representative of the best management and administrative practices.

(g) Federal administrative support

(1) Funding

(A) In general

Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection—

(i) on October 1, 2004, and October 1, 2005, $3,000,000; and

(ii) on October 1, 2006, October 1, 2007, and October 1, 2008, $2,000,000.

(B) Receipt and acceptance

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this

subsection the funds transferred under subparagraph (A), without further appropriation.

(C) Availability of funds

Funds transferred under subparagraph (A) shall remain available until expended.

(2) Use of funds

The Secretary may use funds provided under this subsection—

(A) to provide training and technical assistance and material related to improving program integrity and administrative accuracy in school meals programs; and

(B) to assist State educational agencies in reviewing the administrative practices of local educational agencies, to the extent determined by the Secretary.

(June 4, 1946, ch. 281, § 21, as added Pub. L. 101–147, title I, § 109, Nov. 10, 1989, 103 Stat. 887; amended Pub. L. 102–337, § 1, Aug. 7, 1992, 106 Stat. 865; Pub. L. 103–448, title I, § 120, Nov. 2, 1994, 108 Stat. 4726; Pub. L. 105–336, title I, §§ 103(c)(2), 110, Oct. 31, 1998, 112 Stat. 3147, 3157; Pub. L. 108–265, title I, §§ 125, 126(a), title II, § 205(b), June 30, 2004, 118 Stat. 761, 763, 787; Pub. L. 108–447, div. A, title VII, § 788(c), Dec. 8, 2004, 118 Stat. 2851.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–265, § 125(a), substituted provisions relating to training and technical assistance under this chapter, section 1773 of this title, and other federally assisted programs, including assistance on a competitive basis to State agencies for the purpose of aiding schools with at least 50 percent of enrolled children certified to receive free or reduced price meals, and to State agencies with low proportions of students that participate in the school breakfast program and demonstrate the greatest need, for provisions relating to training activities and technical assistance under this chapter, section 1773 of this title, and other federally assisted programs.

Subsec. (c)(2)(B)(vi) to (x). Pub. L. 108–265, § 125(b), added cl. (vi), struck out former cls. (vi) and (vii), which related to safety and food handling, respectively, and redesignated former cls. (viii) to (x) as (vii) to (ix), respectively.

Subsec. (c)(2)(E). Pub. L. 108–265, § 205(b), struck out ", including activities carried out with assistance provided under section 1788 of this title" before semicolon at end.

Subsec. (e)(1). Pub. L. 108–265, § 125(c)(1), substituted "2009" for "2003".

Subsec. (e)(2)(A). Pub. L. 108–447 inserted "and" after "2005".

Pub. L. 108–265, § 125(c)(2), substituted "provide to the Secretary" for "provide to the Secretary $147,000 for fiscal year 1995, $2,000,000 for each of fiscal years 1996 through 1998, and" and "2004 and $4,000,000 for fiscal year 2005" for "1999 and".

Subsecs. (f), (g). Pub. L. 108–265, § 126(a), added subsecs. (f) and (g).

1998—Subsec. (c)(2)(F), (H). Pub. L. 105–336, § 110(a), substituted "established by the Secretary" for "of section 1769e of this title".

Subsec. (e)(1). Pub. L. 105–336, § 110(b), substituted "2003" for "1998".

Subsec. (e)(2)(A). Pub. L. 105–336, § 110(c), substituted "$2,000,000 for each of fiscal years 1996 through 1998, and $3,000,000 for fiscal year 1999 and each subsequent fiscal year," for "and $2,000,000 for fiscal year 1996 and each subsequent fiscal year," in first sentence.

Pub. L. 105–336, § 103(c)(2), inserted ", without further appropriation" before period at end of second sentence.

1994—Subsec. (a)(1). Pub. L. 103–448, § 120(c)(1), substituted "subject to the availability of, and from, amounts" for "from amounts" in introductory provisions.

Subsec. (c)(2)(B)(ix), (x). Pub. L. 103–448, § 120(a)(1), added cl. (ix) and redesignated former cl. (ix) as (x).

Subsec. (c)(2)(F) to (H). Pub. L. 103–448, § 120(a)(2)–(4), added subpars. (F) to (H).

Subsec. (d). Pub. L. 103–448, § 120(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (e). Pub. L. 103–448, § 120(c)(2), added subsec. (e) and struck out former subsec. (e) which read as follows: "There are authorized to be appropriated—

"(1) $3,000,000 for the fiscal year 1990, $2,000,000 for the fiscal year 1991, and $1,000,000 for each of the fiscal years 1992, 1993, and 1994 for purposes of carrying out subsection (a)(1) of this section; and

"(2) $1,000,000 for the fiscal year 1990 and $4,000,000 for each of the fiscal years 1991, 1992, 1993, and 1994 for purposes of carrying out subsection (a)(2) of this section."

1992—Subsec. (a)(2). Pub. L. 102–337 inserted "to provide financial and other assistance to the University of Mississippi, in cooperation with the University of Southern Mississippi," after "is authorized".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

§ 1769c. Compliance and accountability

(a) Unified accountability system

There shall be a unified system prescribed and administered by the Secretary for ensuring that local food service authorities that participate in the school lunch program under this chapter comply with the provisions of this chapter. Such system shall be established through the publication of regulations and the provision of an opportunity for public comment, consistent with the provisions of section 553 of title 5.

(b) Functions of system

(1) In general

Under the system described in subsection (a) of this section, each State educational agency shall—

(A) require that local food service authorities comply with the provisions of this chapter; and

(B) ensure such compliance through reasonable audits and supervisory assistance reviews.

(2) Minimization of additional duties

Each State educational agency shall coordinate the compliance and accountability activities described in paragraph (1) in a manner that minimizes the imposition of additional duties on local food service authorities.

(3) Additional review requirement for selected local educational agencies

(A) Definition of selected local educational agencies

In this paragraph, the term "selected local educational agency" means a local edu-

cational agency that has a demonstrated high level of, or a high risk for, administrative error, as determined by the Secretary.

(B) Additional administrative review

In addition to any review required by subsection (a) of this section or paragraph (1), each State educational agency shall conduct an administrative review of each selected local educational agency during the review cycle established under subsection (a) of this section.

(C) Scope of review

In carrying out a review under subparagraph (B), a State educational agency shall only review the administrative processes of a selected local educational agency, including application, certification, verification, meal counting, and meal claiming procedures.

(D) Results of review

If the State educational agency determines (on the basis of a review conducted under subparagraph (B)) that a selected local educational agency fails to meet performance criteria established by the Secretary, the State educational agency shall—

(i) require the selected local educational agency to develop and carry out an approved plan of corrective action;

(ii) except to the extent technical assistance is provided directly by the Secretary, provide technical assistance to assist the selected local educational agency in carrying out the corrective action plan; and

(iii) conduct a followup review of the selected local educational agency under standards established by the Secretary.

(4) Retaining funds after administrative reviews

(A) In general

Subject to subparagraphs (B) and (C), if the local educational agency fails to meet administrative performance criteria established by the Secretary in both an initial review and a followup review under paragraph (1) or (3) or subsection (a) of this section, the Secretary may require the State educational agency to retain funds that would otherwise be paid to the local educational agency for school meals programs under procedures prescribed by the Secretary.

(B) Amount

The amount of funds retained under subparagraph (A) shall equal the value of any overpayment made to the local educational agency or school food authority as a result of an erroneous claim during the time period described in subparagraph (C).

(C) Time period

The period for determining the value of any overpayment under subparagraph (B) shall be the period—

(i) beginning on the date the erroneous claim was made; and

(ii) ending on the earlier of the date the erroneous claim is corrected or—

(I) in the case of the first followup review conducted by the State educational agency of the local educational agency under this section after July 1, 2005, the date that is 60 days after the beginning of the period under clause (i); or

(II) in the case of any subsequent followup review conducted by the State educational agency of the local educational agency under this section, the date that is 90 days after the beginning of the period under clause (i).

(5) Use of retained funds

(A) In general

Subject to subparagraph (B), funds retained under paragraph (4) shall—

(i) be returned to the Secretary, and may be used—

(I) to provide training and technical assistance related to administrative practices designed to improve program integrity and administrative accuracy in school meals programs to State educational agencies and, to the extent determined by the Secretary, to local educational agencies and school food authorities;

(II) to assist State educational agencies in reviewing the administrative practices of local educational agencies in carrying out school meals programs; and

(III) to carry out section 1769b–1(f) of this title; or

(ii) be credited to the child nutrition programs appropriation account.

(B) State share

A State educational agency may retain not more than 25 percent of an amount recovered under paragraph (4), to carry out school meals program integrity initiatives to assist local educational agencies and school food authorities that have repeatedly failed, as determined by the Secretary, to meet administrative performance criteria.

(C) Requirement

To be eligible to retain funds under subparagraph (B), a State educational agency shall—

(i) submit to the Secretary a plan describing how the State educational agency will use the funds to improve school meals program integrity, including measures to give priority to local educational agencies from which funds were retained under paragraph (4);

(ii) consider using individuals who administer exemplary local food service programs in the provision of training and technical assistance; and

(iii) obtain the approval of the Secretary for the plan.

(c) Role of Secretary

In carrying out this section, the Secretary shall—

(1) assist the State educational agency in the monitoring of programs conducted by local food service authorities; and

(2) through management evaluations, review the compliance of the State educational agency and the local school food service authori-

ties with regulations issued under this chapter.

(d) Authorization of appropriations

There is authorized to be appropriated for purposes of carrying out the compliance and accountability activities referred to in subsection (c) of this section $6,000,000 for each of fiscal years 2004 through 2009.

(June 4, 1946, ch. 281, § 22, as added Pub. L. 101–147, title I, § 110(a), Nov. 10, 1989, 103 Stat. 889; amended Pub. L. 103–448, title I, § 121, Nov. 2, 1994, 108 Stat. 4727; Pub. L. 105–336, title I, § 111, Oct. 31, 1998, 112 Stat. 3157; Pub. L. 108–265, title I, §§ 126(b)(1), 127, June 30, 2004, 118 Stat. 763, 767.)

PRIOR PROVISIONS

A prior section 1769c, act June 4, 1946, ch. 281, § 22, as added Nov. 10, 1978, Pub. L. 95–627, § 9, 92 Stat. 3623, directed a study of menu choice, prior to repeal by Pub. L. 99–500, title III, § 371(b), Oct. 18, 1986, 100 Stat. 1783–368, and Pub. L. 99–591, title III, § 371(b), Oct. 30, 1986, 100 Stat. 3341–372; Pub. L. 99–661, div. D, title V, § 4501(b), Nov. 14, 1986, 100 Stat. 4080.

AMENDMENTS

2004—Subsec. (b)(3) to (5). Pub. L. 108–265, § 126(b)(1), added pars. (3) to (5).

Subsec. (d). Pub. L. 108–265, § 127, substituted ''$6,000,000 for each of fiscal years 2004 through 2009'' for ''$3,000,000 for each of the fiscal years 1994 through 2003''.

1998—Subsec. (d). Pub. L. 105–336 substituted ''2003'' for ''1996''.

1994—Subsec. (d). Pub. L. 103–448 substituted ''fiscal years 1994 through 1996'' for ''fiscal years 1990, 1991, 1992, 1993, and 1994''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 126(b)(1) of Pub. L. 108–265 effective July 1, 2005, and amendment by section 127 of Pub. L. 108–265 effective June 30, 2004, see section 502(a), (b)(4) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

REGULATIONS

Section 110(b) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement section 22 of the [Richard B. Russell] National School Lunch Act [this section] (as added by subsection (a) of this section).''

INTERPRETATION

Pub. L. 108–265, title I, § 126(b)(2), June 30, 2004, 118 Stat. 765, provided that: ''Nothing in the amendment made by paragraph (1) [amending this section] affects the requirements for fiscal actions as described in the regulations issued pursuant to section 22(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(a)).''

§§ 1769d, 1769e. Repealed. Pub. L. 104–193, title VII, §§ 711, 712, Aug. 22, 1996, 110 Stat. 2301

Section 1769d, act June 4, 1946, ch. 281, § 23, as added Nov. 10, 1989, Pub. L. 101–147, title I, § 111, 103 Stat. 890, directed Secretary to provide each appropriate State agency with information on income eligibility for free or reduced price meals under each program established under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

Section 1769e, act June 4, 1946, ch. 281, § 24, as added Nov. 10, 1989, Pub. L. 101–147, title I, § 112, 103 Stat. 890, related to nutrition guidance for child nutrition programs.

§ 1769f. Duties of Secretary relating to nonprocurement debarment

(a) Purposes

The purposes of this section are to promote the prevention and deterrence of instances of fraud, bid rigging, and other anticompetitive activities encountered in the procurement of products for child nutrition programs by—

(1) establishing guidelines and a timetable for the Secretary to initiate debarment proceedings, as well as establishing mandatory debarment periods; and

(2) providing training, technical advice, and guidance in identifying and preventing the activities.

(b) Definitions

As used in this section:

(1) Child nutrition program

The term ''child nutrition program'' means—

(A) the school lunch program established under this chapter;

(B) the summer food service program for children established under section 1761 of this title;

(C) the child and adult care food program established under section 1766 of this title;

(D) the special milk program established under section 1772 of this title;

(E) the school breakfast program established under section 1773 of this title; and

(F) the special supplemental nutrition program for women, infants, and children authorized under section 1786 of this title.

(2) Contractor

The term ''contractor'' means a person that contracts with a State, an agency of a State, or a local agency to provide goods or services in relation to the participation of a local agency in a child nutrition program.

(3) Local agency

The term ''local agency'' means a school, school food authority, child care center, sponsoring organization, or other entity authorized to operate a child nutrition program at the local level.

(4) Nonprocurement debarment

The term ''nonprocurement debarment'' means an action to bar a person from programs and activities involving Federal financial and nonfinancial assistance, but not including Federal procurement programs and activities.

(5) Person

The term ''person'' means any individual, corporation, partnership, association, cooperative, or other legal entity, however organized.

(c) Assistance to identify and prevent fraud and anticompetitive activities

The Secretary shall—

(1) in cooperation with any other appropriate individual, organization, or agency, provide advice, training, technical assistance, and guidance (which may include awareness training, training films, and troubleshooting advice) to representatives of States and local agencies regarding means of identifying and preventing fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program; and

(2) provide information to, and fully cooperate with, the Attorney General and State attorneys general regarding investigations of fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program.

(d) Nonprocurement debarment

(1) In general

Except as provided in paragraph (3) and subsection (e) of this section, not later than 180 days after notification of the occurrence of a cause for debarment described in paragraph (2), the Secretary shall initiate nonprocurement debarment proceedings against the contractor who has committed the cause for debarment.

(2) Causes for debarment

Actions requiring initiation of nonprocurement debarment pursuant to paragraph (1) shall include a situation in which a contractor is found guilty in any criminal proceeding, or found liable in any civil or administrative proceeding, in connection with the supplying, providing, or selling of goods or services to any local agency in connection with a child nutrition program, of—

(A) an anticompetitive activity, including bid-rigging, price-fixing, the allocation of customers between competitors, or other violation of Federal or State antitrust laws;

(B) fraud, bribery, theft, forgery, or embezzlement;

(C) knowingly receiving stolen property;

(D) making a false claim or statement; or

(E) any other obstruction of justice.

(3) Exception

If the Secretary determines that a decision on initiating nonprocurement debarment proceedings cannot be made within 180 days after notification of the occurrence of a cause for debarment described in paragraph (2) because of the need to further investigate matters relating to the possible debarment, the Secretary may have such additional time as the Secretary considers necessary to make a decision, but not to exceed an additional 180 days.

(4) Mandatory child nutrition program debarment periods

(A) In general

Subject to the other provisions of this paragraph and notwithstanding any other provision of law except subsection (e) of this section, if, after deciding to initiate nonprocurement debarment proceedings pursuant to paragraph (1), the Secretary decides to debar a contractor, the debarment shall be for a period of not less than 3 years.

(B) Previous debarment

If the contractor has been previously debarred pursuant to nonprocurement debarment proceedings initiated pursuant to paragraph (1), and the cause for debarment is described in paragraph (2) based on activities that occurred subsequent to the initial debarment, the debarment shall be for a period of not less than 5 years.

(C) Scope

At a minimum, a debarment under this subsection shall serve to bar the contractor for the specified period from contracting to provide goods or services in conjunction with the participation of a local agency in a child nutrition program.

(D) Reversal, reduction, or exception

Nothing in this section shall restrict the ability of the Secretary to—

(i) reverse a debarment decision;

(ii) reduce the period or scope of a debarment;

(iii) grant an exception permitting a debarred contractor to participate in a particular contract to provide goods or services; or

(iv) otherwise settle a debarment action at any time;

in conjunction with the participation of a local agency in a child nutrition program, if the Secretary determines there is good cause for the action, after taking into account factors set forth in paragraphs (1) through (6) of subsection (e) of this section.

(5) Information

On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the decisions required by this subsection.

(6) Relationship to other authorities

A debarment imposed under this section shall not reduce or diminish the authority of a Federal, State, or local government agency or court to penalize, imprison, fine, suspend, debar, or take other adverse action against a person in a civil, criminal, or administrative proceeding.

(7) Regulations

The Secretary shall issue such regulations as are necessary to carry out this subsection.

(e) Mandatory debarment

Notwithstanding any other provision of this section, the Secretary shall initiate nonprocurement debarment proceedings against the contractor (including any cooperative) who has committed the cause for debarment (as determined under subsection (d)(2) of this section), unless the action—

(1) is likely to have a significant adverse effect on competition or prices in the relevant market or nationally;

(2) will interfere with the ability of a local agency to procure a needed product for a child nutrition program;

(3) is unfair to a person, subsidiary corporation, affiliate, parent company, or local division of a corporation that is not involved in the improper activity that would otherwise result in the debarment;

(4) is likely to have significant adverse economic impacts on the local economy in a manner that is unfair to innocent parties;

(5) is not justified in light of the penalties already imposed on the contractor for violations relevant to the proposed debarment, including any suspension or debarment arising out of the same matter that is imposed by any Federal or State agency; or

(6) is not in the public interest, or otherwise is not in the interests of justice, as determined by the Secretary.

(f) Exhaustion of administrative remedies

Prior to seeking judicial review in a court of competent jurisdiction, a contractor against whom a nonprocurement debarment proceeding has been initiated shall—

(1) exhaust all administrative procedures prescribed by the Secretary; and

(2) receive notice of the final determination of the Secretary.

(g) Information relating to prevention and control of anticompetitive activities

On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the activities of the Secretary relating to anticompetitive activities, fraud, nonprocurement debarment, and any waiver granted by the Secretary under this section.

(June 4, 1946, ch. 281, § 25, as added Pub. L. 103–448, title I, § 122(a), Nov. 2, 1994, 108 Stat. 4727; amended Pub. L. 105–336, title I, § 107(j)(2)(C)(ii), Oct. 31, 1998, 112 Stat. 3153.)

AMENDMENTS

1998—Subsec. (b)(1)(D) to (G). Pub. L. 105–336 redesignated subpars. (E) to (G) as (D) to (F), respectively, and struck out former subpar. (D) which read as follows: ''the homeless children nutrition program established under section 1766b of this title;''.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective July 1, 1999, see section 107(j)(4) of Pub. L. 105–336, set out as a note under section 1761 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as an Effective Date of 1994 Amendment note under section 1755 of this title.

Section 122(b) of Pub. L. 103–448 provided that: ''Section 25 of the [Richard B. Russell] National School Lunch Act [42 U.S.C. 1769f] (as added by subsection (a)) shall not apply to a cause for debarment as described in section 25(d)(2) of such Act that is based on an activity that took place prior to the effective date of section 25 of such Act [Oct. 1, 1994].''

NO REDUCTION IN AUTHORITY OF SECRETARY OF AGRICULTURE TO DEBAR OR SUSPEND A PERSON FROM FEDERAL FINANCIAL AND NONFINANCIAL ASSISTANCE AND BENEFITS

Section 122(c) of Pub. L. 103–448 provided that: ''The authority of the Secretary of Agriculture that exists on the day before the date of enactment of this Act [Nov. 2, 1994] to debar or suspend a person from Federal financial and nonfinancial assistance and benefits under Federal programs and activities shall not be diminished or reduced by subsection (a) [enacting this section] or the amendment made by subsection (a).''

§ 1769g. Information clearinghouse

(a) In general

The Secretary shall enter into a contract with a nongovernmental organization described in subsection (b) of this section to establish and maintain a clearinghouse to provide information to nongovernmental groups located throughout the United States that assist low-income individuals or communities regarding food assistance, self-help activities to aid individuals in becoming self-reliant, and other activities that empower low-income individuals or communities to improve the lives of low-income individuals and reduce reliance on Federal, State, or local governmental agencies for food or other assistance.

(b) Nongovernmental organization

The nongovernmental organization referred to in subsection (a) of this section shall be selected on a competitive basis and shall—

(1) be experienced in the gathering of firsthand information in all the States through onsite visits to grassroots organizations in each State that fight hunger and poverty or that assist individuals in becoming self-reliant;

(2) be experienced in the establishment of a clearinghouse similar to the clearinghouse described in subsection (a) of this section;

(3) agree to contribute in-kind resources towards the establishment and maintenance of the clearinghouse and agree to provide clearinghouse information, free of charge, to the Secretary, States, counties, cities, antihunger groups, and grassroots organizations that assist individuals in becoming self-sufficient and self-reliant;

(4) be sponsored by an organization, or be an organization, that—

(A) has helped combat hunger for at least 10 years;

(B) is committed to reinvesting in the United States; and

(C) is knowledgeable regarding Federal nutrition programs;

(5) be experienced in communicating the purpose of the clearinghouse through the

media, including the radio and print media, and be able to provide access to the clearinghouse information through computer or telecommunications technology, as well as through the mails; and

(6) be able to provide examples, advice, and guidance to States, counties, cities, communities, antihunger groups, and local organizations regarding means of assisting individuals and communities to reduce reliance on government programs, reduce hunger, improve nutrition, and otherwise assist low-income individuals and communities become more self-sufficient.

(c) Audits

The Secretary shall establish fair and reasonable auditing procedures regarding the expenditures of funds to carry out this section.

(d) Funding

Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall pay to the Secretary to provide to the organization selected under this section, to establish and maintain the information clearinghouse, $200,000 for each of fiscal years 1995 and 1996, $150,000 for fiscal year 1997, $100,000 for fiscal year 1998, $166,000 for each of fiscal years 1999 through 2004, and $250,000 for each of fiscal years 2005 through 2009. The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.

(June 4, 1946, ch. 281, § 26, as added Pub. L. 103–448, title I, § 123, Nov. 2, 1994, 108 Stat. 4731; amended Pub. L. 105–336, title I, §§ 103(c)(2), 112, Oct. 31, 1998, 112 Stat. 3147, 3157; Pub. L. 108–265, title I, § 128, June 30, 2004, 118 Stat. 767.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–265, in first sentence, substituted ''1998,'' for ''1998, and'' and ''through 2004, and $250,000 for each of fiscal years 2005 through 2009'' for ''through 2003''.

1998—Subsec. (d). Pub. L. 105–336 substituted ''$100,000 for fiscal year 1998, and $166,000 for each of fiscal years 1999 through 2003'' for ''and $100,000 for fiscal year 1998'' in first sentence and inserted '', without further appropriation'' before period at end of second sentence.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as an Effective Date of 1994 Amendment note under section 1755 of this title.

§ 1769h. Accommodation of the special dietary needs of individuals with disabilities

(a) Definitions

In this section:

(1) Covered program

The term ''covered program'' means—

(A) the school lunch program authorized under this chapter;

(B) the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

(C) any other program authorized under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] (except for section 17 [42 U.S.C. 1786]) that the Secretary determines is appropriate.

(2) Eligible entity

The term ''eligible entity'' means a school food authority, institution, or service institution that participates in a covered program.

(b) Activities

The Secretary may carry out activities to help accommodate the special dietary needs of individuals with disabilities who are participating in a covered program. The activities may include—

(1) developing and disseminating to State agencies guidance and technical assistance materials;

(2) conducting training of State agencies and eligible entities; and

(3) providing grants to State agencies and eligible entities.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 1999 through 2003.

(June 4, 1946, ch. 281, § 27, as added Pub. L. 103–448, title I, § 124, Nov. 2, 1994, 108 Stat. 4732; amended Pub. L. 105–220, title IV, § 414(d), Aug. 7, 1998, 112 Stat. 1242; Pub. L. 105–336, title I, § 113, Oct. 31, 1998, 112 Stat. 3157.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a)(1)(C), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

1998—Pub. L. 105–336 amended section generally, substituting present provisions for former provisions relating to guidance and grants for accommodating special dietary needs of children with disabilities.

Subsec. (a)(1)(B). Pub. L. 105–220 substituted ''section 705 of title 29'' for ''section 706(8) of title 29''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as an Effective Date of 1994 Amendment note under section 1755 of this title.

§ 1769i. Program evaluation

(a) Performance assessments

(1) In general

Subject to the availability of funds made available under paragraph (3), the Secretary, acting through the Administrator of the Food and Nutrition Service, may conduct annual national performance assessments of the meal programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) Components

In conducting an assessment, the Secretary may assess—

(A) the cost of producing meals and meal supplements under the programs described in paragraph (1); and

(B) the nutrient profile of meals, and status of menu planning practices, under the programs.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $5,000,000 for fiscal year 2004 and each subsequent fiscal year.

(b) Certification improvements

(1) In general

Subject to the availability of funds made available under paragraph (5), the Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct a study of the feasibility of improving the certification process used for the school lunch program established under this chapter.

(2) Pilot projects

In carrying out this subsection, the Secretary may conduct pilot projects to improve the certification process used for the school lunch program.

(3) Components

In carrying out this subsection, the Secretary shall examine the use of—

(A) other income reporting systems;

(B) an integrated benefit eligibility determination process managed by a single agency;

(C) income or program participation data gathered by State or local agencies; and

(D) other options determined by the Secretary.

(4) Waivers

(A) In general

Subject to subparagraph (B), the Secretary may waive such provisions of this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) as are necessary to carry out this subsection.

(B) Provisions

The protections of section 1758(b)(6) of this title shall apply to any study or pilot project carried out under this subsection.

(5) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection such sums as are necessary.

(June 4, 1946, ch. 281, § 28, as added Pub. L. 108–265, title I, § 129, June 30, 2004, 118 Stat. 767.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1) and (b)(4)(A), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

CHAPTER 13A—CHILD NUTRITION

Sec.
1771. Congressional declaration of purpose.
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1789. Department of Defense overseas dependents' schools.
1790. Breastfeeding promotion program.
1791. Bill Emerson Good Samaritan Food Donation Act.

§ 1771. Congressional declaration of purpose

In recognition of the demonstrated relationship between food and good nutrition and the capacity of children to develop and learn, based on the years of cumulative successful experience under the national school lunch program with its significant contributions in the field of applied nutrition research, it is hereby declared to be the policy of Congress that these efforts shall be extended, expanded, and strengthened under the authority of the Secretary of Agriculture as a measure to safeguard the health and well-being of the Nation's children, and to encourage the domestic consumption of agricultural and other foods, by assisting States, through grants-in-aid and other means, to meet more effectively the nutritional needs of our children.

(Pub. L. 89–642, § 2, Oct. 11, 1966, 80 Stat. 885.)

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–512, § 1, Oct. 24, 1992, 106 Stat. 3363, provided that: "This Act [amending sections 1769, 1776, and 1786 of this title and enacting provisions set out as notes under this section and sections 1769 and 1786 of this title] may be cited as the 'Children's Nutrition Assistance Act of 1992'."

Pub. L. 102–512, title I, § 101, Oct. 24, 1992, 106 Stat. 3363, provided that: "This title [amending sections 1769 and 1776 of this title and enacting provisions set out as a note under section 1769 of this title] may be cited as the 'Homeless Children's Assistance Act of 1992'."

Pub. L. 102–512, title II, § 201, Oct. 24, 1992, 106 Stat. 3364, provided that: "This title [amending section 1786 of this title and enacting provisions set out as notes under section 1786 of this title] may be cited as the 'WIC Infant Formula Procurement Act of 1992'."

Pub. L. 102–314, § 1, July 2, 1992, 106 Stat. 280, provided that: "This Act [amending section 1786 of this title and

enacting provisions set out as notes under section 1786 of this title] may be cited as the 'WIC Farmers' Market Nutrition Act of 1992'.''

SHORT TITLE

Section 1 of Pub. L. 89–642 provided: ''That this Act [enacting this chapter] may be cited as the 'Child Nutrition Act of 1966'.''

§ 1772. Special program to encourage the consumption of fluid milk by children; authorization of appropriations; eligibility for special milk program; minimum rate of reimbursement; ineligibility of commodity only schools

(a)(1) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year, such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as the Secretary may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (A) nonprofit schools of high school grade and under, except as provided in paragraph (2), which do not participate in a meal service program authorized under this chapter or the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], and (B) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a meal service program authorized under this chapter or the Richard B. Russell National School Lunch Act.

(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this chapter or the Richard B. Russell National School Lunch Act.

(3) For the purposes of this section ''United States'' means the fifty States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the District of Columbia.

(4) The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as the Secretary administered the special milk program provided for by this chapter during the fiscal year ending June 30, 1969.

(5) Any school or nonprofit child care institution which does not participate in a meal service program authorized under this chapter or the Richard B. Russell National School Lunch Act shall receive the special milk program upon its request.

(6) Children who qualify for free lunches under guidelines set forth by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) be eligible for free milk upon their request.

(7) For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor.

(8) Such adjustment shall be computed to the nearest one-fourth cent.

(9) Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

(10) The State educational agency shall disburse funds paid to the State during any fiscal year for purposes of carrying out the program under this section in accordance with such agreements approved by the Secretary as may be entered into by such State agency and the schools in the State. The agreements described in the preceding sentence shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(b) Commodity only schools shall not be eligible to participate in the special milk program under this section. For the purposes of the preceding sentence, the term ''commodity only schools'' means schools that do not participate in the school lunch program under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.

(Pub. L. 89–642, § 3, Oct. 11, 1966, 80 Stat. 885; Pub. L. 91–295, June 30, 1970, 84 Stat. 336; Pub. L. 93–150, § 7, Nov. 7, 1973, 87 Stat. 563; Pub. L. 93–347, § 3, July 12, 1974, 88 Stat. 341; Pub. L. 94–105, § 15(a), Oct. 7, 1975, 89 Stat. 522; Pub. L. 95–166, §§ 11, 20(1), (2), Nov. 10, 1977, 91 Stat. 1337, 1346; Pub. L. 95–627, § 5(a), Nov. 10, 1978, 92 Stat. 3619; Pub. L. 96–499, title II, § 209, Dec. 5, 1980, 94 Stat. 2602; Pub. L. 97–35, title VIII, §§ 807, 813(c), Aug. 13, 1981, 95 Stat. 527, 530; Pub. L. 99–500, title III, § 329, Oct. 18, 1986, 100 Stat. 1783–362, and Pub. L. 99–591, title III, § 329, Oct. 30, 1986, 100 Stat. 3341–365; Pub. L. 99–661, div. D, title II, § 4209, Nov. 14, 1986, 100 Stat. 4073; Pub. L. 101–147, title II, § 211, title III, § 321, Nov. 10, 1989, 103 Stat. 911, 916; Pub. L. 104–193, title VII, § 721, Aug. 22, 1996, 110 Stat. 2301; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsecs. (a)(1), (2), (5), (b), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1999—Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act'' wherever appearing.

1996—Subsec. (a)(3). Pub. L. 104–193 substituted ''the Commonwealth of the Northern Mariana Islands'' for ''the Trust Territory of the Pacific Islands''.

1989—Subsec. (a). Pub. L. 101–147, § 211(a), amended subsec. (a) as identically amended by Pub. L. 99–591, § 329, and Pub. L. 99–661, § 4209, to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (a)(1). Pub. L. 101–147, § 321(1), substituted ''the Secretary'' for ''he'' before ''may deem''.

Subsec. (a)(2). Pub. L. 101–147, § 321(2), struck out ''(42 U.S.C. 1751 et seq.)'' after ''National School Lunch Act''.

Subsec. (a)(4). Pub. L. 101–147, § 321(3), substituted ''the Secretary'' for ''he''.

Subsec. (a)(5). Pub. L. 101–147, § 321(4), substituted ''its'' for ''their'' before ''request''.

Subsec. (a)(10). Pub. L. 101–147, § 211(b), added par. (10).

1986—Subsec. (a). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (a) identically, designating existing provisions as pars. (1) and (3) to (9), in par. (1), redesignating former cls. (1) and (2) as subpars. (A) and (B) and inserting ''except as provided in paragraph (2),'' in subpar. (A), and adding par. (2).

1981—Subsec. (a). Pub. L. 97–35, § 813(c)(1), designated existing provisions as subsec. (a).

Pub. L. 97–35, § 807, inserted provisions respecting nonparticipation in a meal service program, and struck out provisions relating to rate of reimbursement per half-pint of milk served to children not eligible for free milk in schools, child care institutions, and summer camps participating in meal service programs under the National School Lunch Act.

Subsec. (b). Pub. L. 97–35, § 813(c)(2), added subsec. (b).

1980—Pub. L. 96–499 provided that rate of reimbursement per half-pint of milk, served to children not eligible for free milk in schools, child care institutions, and summer camps participating in meal service programs under the National School Lunch Act and this chapter was to be five cents.

1978—Pub. L. 95–627 substituted ''Producer Price Index for Fresh Processed Milk'' for ''series of food away from home of the Consumer Price Index'', and inserted provision relating to eligibility for free milk.

1977—Pub. L. 95–166 provided free milk for children when milk is made available at times other than the periods of meal service in outlets that operate a food service program under sections 1753, 1766, and 1773 of this title, and substituted ''school years'' and ''annual basis each school year'' for ''fiscal years'' and ''annual basis each fiscal year'' and deleted ''thereafter, beginning with the fiscal year ending June 30, 1976,'' before ''to reflect changes''.

1975—Pub. L. 94–105 added the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands to definition of ''United States'', and inserted provision relating to minimum rate of reimbursement to schools and institutions of the cost of milk served to children.

1974—Pub. L. 93–347 substituted ''such sums as may be necessary'' for '', not to exceed $120,000,000,'' in provision limiting the size of appropriations authorized and inserted provisions setting a minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions and allowing for an annual adjustment of the minimum rate.

1973—Pub. L. 93–150 inserted provisions making any school or nonprofit child care institution eligible to receive the special milk program upon their request and any children that qualify for free lunches under guidelines set forth by the Secretary also eligible for free milk.

1970—Pub. L. 91–295 substituted provisions authorizing appropriations of not to exceed $120,000,000 for fiscal year ending June 30, 1970, and for each succeeding fiscal year, for provisions authorizing appropriations of not to exceed $110,000,000 for fiscal year ending June 30, 1967, not to exceed $115,000,000 for fiscal year ending June 30, 1968, and not to exceed $120,000,000 for each of two succeeding fiscal years, and provisions requiring Secretary to administer the special milk program provided for by this section in same manner as he administered the special milk program provided for by this chapter during fiscal year ending June 30, 1969, for provisions requiring the Secretary to administer such program in the same manner as he administered the special milk program provided for by Pub. L. 85–478, as amended, during fiscal year ending June 30, 1966, and provided that Guam be subject to provisions of this section.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 4209 of Pub. L. 99–661 provided that the amendment made by that section is effective Oct. 1, 1986.

Section 329 of Pub. L. 99–500 and Pub. L. 99–591 provided that the amendment made by that section is effective July 1, 1987.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 807 of Pub. L. 97–35 effective Oct. 1, 1981, and amendment by section 813 of Pub. L. 97–35 effective 90 days after Aug. 13, 1981, see section 820(a)(3), (5) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective July 1, 1979, except as specifically provided, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 20 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

§ 1773. School breakfast program

(a) Establishment; authorization of appropriations

There is hereby authorized to be appropriated such sums as are necessary to enable the Secretary to carry out a program to assist the States and the Department of Defense through grants-in-aid and other means to initiate, maintain, or expand nonprofit breakfast programs in all schools which make application for assistance and agree to carry out a nonprofit breakfast program in accordance with this chapter. Appropriations and expenditures for this chapter shall be considered Health and Human Services functions for budget purposes rather than functions of Agriculture.

(b) Breakfast assistance payments to State educational agencies; calculation; national average payments for breakfasts, free breakfasts and reduced price breakfasts; maximum price for reduced cost breakfasts; minimum daily nutrition requirements criteria; additional payments for severe need schools; maximum severe need payments

(1)(A)(i) The Secretary shall make breakfast assistance payments to each State educational agency each fiscal year, at such times as the Secretary may determine, from the sums appropriated for such purpose, in an amount equal to the product obtained by multiplying—

(I) the number of breakfasts served during such fiscal year to children in schools in such States which participate in the school breakfast program under agreements with such State educational agency; by

(II) the national average breakfast payment for free breakfasts, for reduced price breakfasts, or for breakfasts served to children not

eligible for free or reduced price meals, as appropriate, as prescribed in clause (B) of this paragraph.

(ii) The agreements described in clause (i)(I) shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(B) The national average payment for each free breakfast shall be 57 cents (as adjusted pursuant to section 1759a(a) of this title). The national average payment for each reduced price breakfast shall be one-half of the national average payment for each free breakfast, except that in no case shall the difference between the amount of the national average payment for a free breakfast and the national average payment for a reduced price breakfast exceed 30 cents. The national average payment for each breakfast served to a child not eligible for free or reduced price meals shall be 8.25 cents (as adjusted pursuant to section 1759a(a) of this title).

(C) No school which receives breakfast assistance payments under this section may charge a price of more than 30 cents for a reduced price breakfast.

(D) No breakfast assistance payment may be made under this subsection for any breakfast served by a school unless such breakfast consists of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under subsection (e) of this section.

(E) FREE AND REDUCED PRICE POLICY STATEMENT.—After the initial submission, a local educational agency shall not be required to submit a free and reduced price policy statement to a State educational agency under this chapter unless there is a substantive change in the free and reduced price policy of the local educational agency. A routine change in the policy of a local educational agency, such as an annual adjustment of the income eligibility guidelines for free and reduced price meals, shall not be sufficient cause for requiring the local educational agency to submit a policy statement.

(2)(A) The Secretary shall make additional payments for breakfasts served to children qualifying for a free or reduced price meal at schools that are in severe need.

(B) The maximum payment for each such free breakfast shall be the higher of—

(i) the national average payment established by the Secretary for free breakfasts plus 10 cents, or

(ii) 45 cents (as adjusted pursuant to section 1759a(a)(3)(B) of this title).

(C) The maximum payment for each such reduced price breakfast shall be thirty cents less than the maximum payment for each free breakfast as determined under clause (B) of this paragraph.

(3) The Secretary shall increase by 6 cents the annually adjusted payment for each breakfast served under this chapter and section 1766 of this title. These funds shall be used to assist States, to the extent feasible, in improving the nutritional quality of the breakfasts.

(4) Notwithstanding any other provision of law, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, the Secretary shall make such commodities available to school food authorities and eligible institutions serving breakfasts under this chapter in a quantity equal in value to not less than 3 cents for each breakfast served under this chapter and section 1766 of this title.

(5) Expenditures of funds from State and local sources for the maintenance of the breakfast program shall not be diminished as a result of funds or commodities received under paragraph (3) or (4).

(c) Disbursement of apportioned funds by State; preference for schools in poor economic areas, for students traveling long distances daily, and for schools for improvement of nutrition and dietary practices of children of working mothers and from low-income families

Funds apportioned and paid to any State for the purpose of this section shall be disbursed by the State educational agency to schools selected by the State educational agency to assist such schools in operating a breakfast program and for the purpose of subsection (d) of this section. Disbursement to schools shall be made at such rates per meal or on such other basis as the Secretary shall prescribe. In selecting schools for participation, the State educational agency shall, to the extent practicable, give first consideration to those schools drawing attendance from areas in which poor economic conditions exist, to those schools in which a substantial proportion of the children enrolled must travel long distances daily, and to those schools in which there is a special need for improving the nutrition and dietary practices of children of working mothers and children from low-income families. Breakfast assistance disbursements to schools under this section may be made in advance or by way of reimbursement in accordance with procedures prescribed by the Secretary.

(d) Severe need assistance

(1) In general

Each State educational agency shall provide additional assistance to schools in severe need, which shall include only those schools (having a breakfast program or desiring to initiate a breakfast program) in which—

(A) during the most recent second preceding school year for which lunches were served, 40 percent or more of the lunches served to students at the school were served free or at a reduced price; or

(B) in the case of a school in which lunches were not served during the most recent second preceding school year, the Secretary otherwise determines that the requirements of subparagraph (A) would have been met.

(2) Additional assistance

A school, on the submission of appropriate documentation about the need circumstances in that school and the eligibility of the school for additional assistance, shall be entitled to receive the meal reimbursement rate specified in subsection (b)(2) of this section.

(e) Nutritional requirements; service free or at reduced price; compliance assistance

(1)(A) Breakfasts served by schools participating in the school breakfast program under this section shall consist of a combination of foods and shall meet the minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research, except that the minimum nutritional requirements shall be measured by not less than the weekly average of the nutrient content of school breakfasts. Such breakfasts shall be served free or at a reduced price to children in school under the same terms and conditions as are set forth with respect to the service of lunches free or at a reduced price in section 1758 of this title.

(B) The Secretary shall provide through State educational agencies technical assistance and training, including technical assistance and training in the preparation of foods high in complex carbohydrates and lower-fat versions of foods commonly used in the school breakfast program established under this section, to schools participating in the school breakfast program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs.

(2) At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this chapter may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this chapter to a school for the breakfast.

(Pub. L. 89–642, § 4, Oct. 11, 1966, 80 Stat. 886; Pub. L. 90–302, § 5, May 8, 1968, 82 Stat. 119; Pub. L. 91–248, §§ 6(d), 10, May 14, 1970, 84 Stat. 210, 214; Pub. L. 92–32, §§ 2–5, June 30, 1971, 85 Stat. 85; Pub. L. 92–433, § 3, Sept. 26, 1972, 86 Stat. 724; Pub. L. 93–150, § 4, Nov. 7, 1973, 87 Stat. 562; Pub. L. 94–105, §§ 2, 3, 15(b), 17(a), Oct. 7, 1975, 89 Stat. 511, 522, 525; Pub. L. 95–166, § 12, Nov. 10, 1977, 91 Stat. 1337; Pub. L. 95–561, title XIV, § 1408(b)(1), Nov. 1, 1978, 92 Stat. 2368; Pub. L. 95–627, § 6(c), Nov. 10, 1978, 92 Stat. 3620; Pub. L. 97–35, title VIII, §§ 801(c), 817(d), 819(b), Aug. 13, 1981, 95 Stat. 522, 532, 533; Pub. L. 99–500, title III, §§ 330(a), 331, 372(b)(1), Oct. 18, 1986, 100 Stat. 1783–363, 1783–369, and Pub. L. 99–591, title III, §§ 330(a), 331, 372(b)(1), Oct. 30, 1986, 100 Stat. 3341–366, 3341–372; Pub. L. 99–661, div. D, title II, §§ 4210(a), 4211, title V, § 4502(b)(1), Nov. 14, 1986, 100 Stat. 4074, 4080; Pub. L. 100–435, title II, § 210, Sept. 19, 1988, 102 Stat. 1657; Pub. L. 101–147, title I, § 121, title II, § 212(a)(1), (2)(A), (b), title III, § 322, Nov. 10, 1989, 103 Stat. 891, 912, 916; Pub. L. 103–448, title II, § 201, Nov. 2, 1994, 108 Stat. 4734; Pub. L. 104–193, title VII, §§ 722–723(b)(1), Aug. 22, 1996, 110 Stat. 2301, 2302; Pub. L. 105–336, title I, § 103(b)(2), title II, § 201, Oct. 31, 1998, 112 Stat. 3146, 3158; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170; Pub. L. 108–265, title I, § 108(c), title II, § 201, June 30, 2004, 118 Stat. 746, 768.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (b)(1)(E). Pub. L. 108–265, § 108(c), substituted ''local educational agency'' for ''school food authority'' wherever appearing.

Subsec. (d). Pub. L. 108–265, § 201, added subsec. (d) and struck out former subsec. (d), which authorized severe need assistance to schools in which the service of breakfasts is required by State law and to schools in which 40 percent or more of lunches were served free or at a reduced price during the most recent second preceding school year, and entitled such schools to receive the lesser of 100 percent of the operating costs of the breakfast program or the meal reimbursement rate specified in subsec. (b)(2).

1999—Subsecs. (b), (e)(1)(A). Pub. L. 106–78 made technical amendment to references in original act which appear in text as references to sections 1758, 1759a, and 1766 of this title.

1998—Subsec. (a). Pub. L. 105–336, § 201, struck out ''and to carry out the provisions of subsection (g) of this section'' before period at end of first sentence.

Subsec. (b)(1)(B). Pub. L. 105–336, § 103(b)(2)(A), struck out ''adjusted to the nearest one-fourth cent,'' after ''payment for each free breakfast,'' in second sentence.

Subsec. (b)(2)(B)(ii). Pub. L. 105–336, § 103(b)(2)(B), substituted ''(as adjusted pursuant to section 1759a(a)(3)(B) of this title).'' for '', which shall be adjusted on an annual basis each July 1 to the nearest one-fourth cent in accordance with changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor for the most recent twelve-month period for which such data are available, except that the initial such adjustment shall be made on January 1, 1978, and shall reflect the change in the series of food away from home during the period November 1, 1976, to October 31, 1977.''

1996—Subsec. (b)(1)(E). Pub. L. 104–193, § 722, added subpar. (E).

Subsec. (e)(1)(B). Pub. L. 104–193, § 723(a), struck out at end ''The Secretary shall provide through State educational agencies additional technical assistance to schools that are having difficulty maintaining compliance with the requirements.''

Subsecs. (f), (g). Pub. L. 104–193, § 723(b)(1), struck out subsec. (f) relating to expansion of program and subsec. (g) relating to startup and expansion costs.

1994—Subsec. (e)(1). Pub. L. 103–448, § 201(a), (b), designated existing provisions as subpar. (A), inserted '', except that the minimum nutritional requirements shall be measured by not less than the weekly average of the nutrient content of school breakfasts'' before period at end, and added subpar. (B).

Subsec. (f)(1). Pub. L. 103–448, § 201(c), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (g). Pub. L. 103–448, § 201(d), amended heading and text of subsec. (g) generally. Prior to amendment, text required the Secretary to pay State educational agencies to assist eligible schools in initiating a school breakfast program, set forth a plan by which certain State educational agencies competing for startup cost payments were to be given preference, provided that breakfast program maintenance funds were not to be diminished by these payments, defined ''eligible school'', and directed Secretary to report to Congress.

1989—Subsec. (a). Pub. L. 101–147, § 121(1), inserted before period at end of first sentence ''and to carry out the provisions of subsection (g) of this section''.

Subsec. (b). Pub. L. 101–147, § 322(1), substituted ''reduced price'' for ''reduced-price'' wherever appearing.

Subsec. (b)(1)(A). Pub. L. 101–147, § 212(b), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), and added cl. (ii).

Subsec. (b)(3). Pub. L. 101–147, § 322(2), made technical amendment to reference to section 1766 of this title in-

volving underlying provisions of original act and requiring no change in text.

Subsec. (b)(3) to (5). Pub. L. 101–147, § 212(a)(1), (2)(A), amended subsec. (b)(3) to (5), as amended identically by Pub. L. 99–591, § 330(a), and Pub. L. 99–661, § 4210(a), and as further amended by Pub. L. 100–435, § 210, to read as if only the amendment by Pub. L. 99–661 was enacted, and further amended subsec. (b)(3) identically to the amendment that was made by Pub. L. 100–435, resulting in no change in text, see 1986 and 1988 Amendment notes below.

Subsec. (d)(1)(B). Pub. L. 101–147, § 322(1), substituted ''reduced price'' for ''reduced-price''.

Subsec. (f). Pub. L. 101–147, § 121(2), inserted ''Expansion of program'' as heading, designated existing provisions as par. (1), struck out at end ''Within 4 months after October 7, 1975, the Secretary shall report to the committees of jurisdiction in the Congress his plans and those of the cooperating State agencies to bring about the needed expansion in the school breakfast program.'', and added par. (2).

Subsec. (g). Pub. L. 101–147, § 121(3), added subsec. (g).

1988—Subsec. (b)(3). Pub. L. 100–435 substituted ''6'' for ''3''.

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, § 372(b)(1), and Pub. L. 99–661, § 4502(b)(1), amended subsec. (a) identically, substituting ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (b)(3) to (5). Pub. L. 99–500 and Pub. L. 99–591, § 330(a), and Pub. L. 99–661, § 4210(a), amended subsec. (b) identically, adding pars. (3) to (5).

Subsec. (e). Pub. L. 99–500 and Pub. L. 99–591, § 331, and Pub. L. 99–661, § 4211, amended subsec. (e) identically, designating existing provisions as par. (1) and adding par. (2).

1981—Subsec. (b). Pub. L. 97–35, § 801(c)(1), (2), in par. (1) substituted provisions respecting calculation, amount, limitations, etc., for breakfast assistance payments to State educational agencies for provisions respecting apportionment, calculation, etc., for payments beginning with fiscal year ending June 30, 1973, and in par. (2) substituted provisions respecting annual adjustments, for provisions respecting semiannual adjustments and substituted ''thirty'' for ''five''.

Subsec. (c). Pub. L. 97–35, § 819(b), struck out ''financing the costs of'' after ''such schools in''.

Subsec. (d). Pub. L. 97–35, § 801(c)(3)(A), substituted provisions limiting additional assistance requirements to schools in severe need for provisions setting forth requirements for eligibility standards for providing additional assistance to schools in severe need.

Subsec. (f). Pub. L. 97–35, § 817(d), redesignated former subsec. (g) as (f). Former subsec. (f), which related to nonprofit private schools, was struck out.

Subsec. (g). Pub. L. 97–35, § 817(d), redesignated former subsec. (g) as (f).

1978—Subsec. (a). Pub. L. 95–561 inserted provision relating to applicability to programs of the Department of Defense.

Subsec. (d). Pub. L. 95–627 specified which schools could be considered to be in severe need.

1977—Subsec. (b)(1). Pub. L. 95–166, § 12(1), (2), designated existing provisions as par. (1) and struck out provision for payment of up to 45 cents for breakfasts served to children qualifying for a free breakfast in cases of severe need, which is now covered in par. (2).

Subsec. (b)(2). Pub. L. 95–166, § 12(3), added par. (2).

Subsec. (d). Pub. L. 95–166, § 12(4), substituted requirement that the Secretary establish eligibility standards for providing additional assistance to schools in severe need for prior requirement that the State educational agency require applicant schools to provide justification of the need for such assistance; required the eligibility standards to be submitted to the Secretary for approval and to be included in the State plan of child nutrition operations and submission of appropriate documentation about the need circumstances in the school and the school's eligibility for additional assistance; and authorized payment of the lesser of 100 percent of the operating costs or the meal reimbursement rate, previously limited to the 100 percent payment.

1975—Subsec. (a). Pub. L. 94–105, § 2, struck out ''for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975,'' after ''such sums as are necessary''.

Subsec. (b). Pub. L. 94–105, § 15(b), substituted ''American Samoa, and the Trust Territory of the Pacific Islands'' for ''and American Samoa'' wherever appearing in cl. (1) of first sentence.

Subsec. (f). Pub. L. 94–105, § 17(a), substituted ''directly to the schools (as defined in section 1784(c) of this title which are private and nonprofit as defined in the last sentence of section 1784(c) of this title)'' for ''directly to the nonprofit private schools''.

Subsec. (g). Pub. L. 94–105, § 3, added subsec. (g).

1973—Subsec. (b). Pub. L. 93–150, § 4(c), prescribed a minimum payment of 8 cents as the national average payment for all breakfasts served to eligible children, inserted provision for minimum payment of 15 cents for each reduced-price breakfast and for minimum payment of 20 cents for each free breakfast, and authorized, in cases of severe need, a payment of up to 45 cents for each breakfast served to children qualifying for a free breakfast.

Subsec. (c). Pub. L. 93–150, § 4(a), (b), substituted in first sentence ''State educational agency to assist such schools in financing the costs of operating a breakfast program'' for ''State educational agency, to assist such schools in financing the cost of obtaining agricultural and other foods for consumption by needy children in a breakfast program'' and struck out second sentence which provided that ''Such food costs may include, in addition to the purchase price, the cost of processing, distributing, transporting, storing, and handling.'', respectively.

1972—Subsec. (a). Pub. L. 92–433, § 3(a), substituted authorization of appropriation of such sums as are necessary for fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for provisions authorizing appropriation of amounts not exceeding $25,000,000 for fiscal years 1972 and 1973 and made amounts available to schools making applications for assistance and agreeing to carry out a nonprofit breakfast program in accordance with this chapter.

Subsec. (b). Pub. L. 92–433, § 3(b), made existing apportionment formula applicable to fiscal year ending June 30, 1973 and added new formula for fiscal years beginning with fiscal year ending June 30, 1974.

Subsec. (c). Pub. L. 92–433, § 3(c), inserted provision that breakfast assistance disbursements to schools may be made in advance or by way of reimbursement in accordance with procedure prescribed by the Secretary.

Subsec. (e). Pub. L. 92–433, § 3(d), substituted provisions that breakfasts be served free or at reduced cost under same terms and conditions as set forth in section 1758 of this title for provisions relating to determination by local school authorities of the inability of children to pay full cost, criteria for such determination, income poverty guidelines, affidavit of household's annual income, eligibility of nonprofit private schools for funds, and prohibition of discrimination on account of inability to pay.

Subsec. (f). Pub. L. 92–433, § 3(e), substituted provisions that for fiscal year ending June 30, 1973, withholding and disbursement to nonprofit private schools will be effected as before and that commencing with the next fiscal year, the Secretary would directly make payments to the nonprofit private schools participating in the breakfast program under agreement with the Secretary for provisions that such withholding and disbursement be effected in accordance with section 1759 of this title with some exceptions.

1971—Subsec. (a). Pub. L. 92–32, § 2, authorized appropriations of 25 million dollars for fiscal years 1972, and 1973, and struck out provision for appropriation of 6.5, 10, and 25 million dollars for fiscal years, 1969, 1970, and 1971, respectively.

Subsec. (c). Pub. L. 92–32, § 3, substituted ''assist such schools in financing the cost'' for ''reimburse such schools for the cost'' and provided for preference of schools for improvement of nutrition and dietary practices of children of working mothers and from low-income families.

Subsec. (d). Pub. L. 92–32, §4, increased financial assistance from ''80'' to ''100'' per centum.

Subsec. (e). Pub. L. 92–32, §5, substituted provisions relating to criteria for determination of eligible children, income poverty guidelines, priority of neediest children, affidavit of household's annual income, and certification of availability of funds for nonprofit private schools, for former provision for determination of eligible children on basis of consultations of local school authorities with public welfare and health agencies.

1970—Subsec. (a). Pub. L. 91–248, §10, substituted ''$25,000,000'' for ''$12,000,000''.

Subsec. (e). Pub. L. 91–248, §6(d), provided that there be no overt identification of those children who receive free and reduced price meals.

1968—Subsec. (a). Pub. L. 90–302 provided authorization to appropriate $6,500,000 for fiscal year 1969, not to exceed $10,000,000 for fiscal year 1970, and not to exceed $12,000,000 for fiscal year 1971, struck out references to authorization for fiscal years 1967 and 1968 and to pilot programs conducted on a nonpartisan basis, and added provision that appropriations and expenditures for this chapter be considered Health, Education, and Welfare functions for budget purposes rather than functions of Agriculture.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 108(c) of Pub. L. 108–265 effective June 30, 2004, and amendment by section 201 of Pub. L. 108–265 effective July 1, 2004, see section 502(a), (b)(1) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 723(b)(2) of Pub. L. 104–193 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on October 1, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 212(a)(2)(B) of Pub. L. 101–147 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if such amendments had been effective on July 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–435 to be effective and implemented on July 1, 1989, see section 701(b)(4) of Pub. L. 100–435, set out as a note under section 2012 of Title 7, Agriculture.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 4210(a) of Pub. L. 99–661 provided that the amendment made by that section is effective Oct. 1, 1986.

Section 330(a) of Pub. L. 99–500 and Pub. L. 99–591 provided that the amendment made by that section is effective July 1, 1987.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 801(c) of Pub. L. 97–35 effective Sept. 1, 1981, and amendment by sections 817 and 819 of Pub. L. 97–35 effective Oct. 1, 1981, see section 820(1)(A), (4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

Amendment by Pub. L. 95–561 effective Oct. 1, 1978, and no provision therein to be construed as impairing or preventing the taking effect of any other Act providing for the transfer of functions described therein to an executive department having responsibility for education, see section 1415 of Pub. L. 95–561, set out as an Effective Date note under section 921 of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer to Secretary of Education of functions of Secretary of Defense and Department of Defense relating to operation of overseas schools for dependents of Department of Defense and under Defense Dependents' Education Act of 1978, 20 U.S.C. 921 et seq., see section 3442(a) of Title 20, Education.

REVIEW OF BEST PRACTICES IN THE BREAKFAST PROGRAM

Pub. L. 108–265, title II, §206, June 30, 2004, 118 Stat. 787, directed the Secretary of Agriculture to enter into an agreement with a research organization to collect and disseminate a review of best practices to assist school food authorities in addressing existing impediments at the State and local level that hinder the growth of the school breakfast program and, not later than 1 year after June 30, 2004, to make the review available to school food authorities via the Internet and to transmit it to congressional committees.

CONSOLIDATION OF SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM INTO COMPREHENSIVE MEAL PROGRAM

For provisions directing Secretary of Agriculture to consolidate school breakfast program under this section and school lunch program under chapter 13 (§1751 et seq.) of this title into comprehensive meal program, see section 301 of Pub. L. 103–448, set out as a note under section 1751 of this title.

ADJUSTMENTS IN MAXIMUM BREAKFAST PAYMENTS FOR FISCAL YEAR ENDING SEPTEMBER 30, 1981

Pub. L. 96–499, title II, §210, Dec. 5, 1980, 94 Stat. 2602, provided that: ''Notwithstanding section 4(b)(2)(B)(ii) of the Child Nutrition Act of 1966 [subsec. (b)(2)(B)(ii) of this section], in determining the maximum payment for free breakfasts under such section for the fiscal year ending September 30, 1981—

''(1) no adjustment under such section shall be made on January 1 of such fiscal year; and

''(2) the adjustment under such section required to be made on July 1 of such fiscal year shall be computed to the nearest one-fourth cent based on changes, measured over the preceding twelve-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, Department of Labor.''

ALTERNATE FOODS

Pub. L. 95–627, §6(d), Nov. 10, 1998, 93 Stat. 3621, provided that: ''The Secretary shall not limit or prohibit, during the school year 1978–79, the use of formulated grain-fruit products currently approved for use in the school breakfast program. The Secretary shall consult experts in child nutrition, industry representatives, and school food service personnel and school administrators (including personnel and administrators in school systems using such products) with respect to the continued use of formulated grain-fruit products in the school breakfast program, and shall also take into account the findings and recommendations in the report on this subject of the General Accounting Office [now Government Accountability Office]. The Secretary shall not promulgate a final rule disapproving the use of such products in the school breakfast program beyond the 1978–79 school year until the Secretary has notified the appropriate committees of Congress, and

such rule shall not take effect until sixty days after such notification.''

REPORT TO CONGRESS OF NEEDS FOR ADDITIONAL FUNDS FOR SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS, FISCAL YEAR ENDING JUNE 30, 1972

Pub. L. 92–153, § 3, Nov. 5, 1971, 85 Stat. 420, provided that the Secretary of Agriculture determine immediately upon enactment of this resolution (Nov. 5, 1971) and report to Congress the needs for additional funds to carry out the school breakfast and nonfood assistance programs during the fiscal year ending June 30, 1972, at levels permitting expansion of the school breakfast and school lunch programs to all schools desiring such programs as rapidly as practicable.

TRANSFER OF FUNDS TO SCHOOLS IN NEED OF ADDITIONAL ASSISTANCE IN SCHOOL BREAKFAST PROGRAM

Pub. L. 92–153, § 7, Nov. 5, 1971, 85 Stat. 420, provided that: ''In addition to any other authority given to the Secretary he is hereby authorized to transfer funds from section 32 of the Act of August 24, 1935 [section 612c of Title 7, Agriculture], for the purpose of assisting schools which demonstrate a need for additional funds in the school breakfast program.''

DIRECT DISTRIBUTION PROGRAMS FOR DIET OF NEEDY CHILDREN SUFFERING FROM GENERAL AND CONTINUED HUNGER; ADDITIONAL FUNDS

Additional funds for direct distribution programs for diet of needy children suffering from general and continued hunger and payment of administrative costs of State or local welfare agency carrying out such programs, see section 6 of Pub. L. 92–32, set out as a note under section 612c of Title 7, Agriculture.

§ 1774. Disbursement directly to schools or institutions

(a) The Secretary shall withhold funds payable to a State under this chapter and disburse the funds directly to schools or institutions within the State for the purposes authorized by this chapter to the extent that the Secretary has so withheld and disbursed such funds continuously since October 1, 1980, but only to such extent (except as otherwise required by subsection (b) of this section). Any funds so withheld and disbursed by the Secretary shall be used for the same purposes, and shall be subject to the same conditions, as applicable to a State disbursing funds made available under this chapter. If the Secretary is administering (in whole or in part) any program authorized under this chapter, the State in which the Secretary is administering the program may, upon request to the Secretary, assume administration of that program.

(b) If a State educational agency is not permitted by law to disburse the funds paid to it under this chapter to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to public schools within the State by the State educational agency.

(Pub. L. 89–642, § 5, as added Pub. L. 97–35, title VIII, § 817(e), Aug. 13, 1981, 95 Stat. 532.)

PRIOR PROVISIONS

A prior section 1774, Pub. L. 89–642, § 5, Oct. 11, 1966, 80 Stat. 887; Pub. L. 91–248, § 2, May 14, 1970, 84 Stat. 208; Pub. L. 92–433, § 6(a)–(d), Sept. 26, 1972, 86 Stat. 727; Pub. L. 93–326, § 5, June 30, 1974, 88 Stat. 287; Pub. L. 94–105, § 18, Oct. 7, 1975, 89 Stat. 525; Pub. L. 95–166, §§ 4, 20(3), (4), Nov. 10, 1977, 91 Stat. 1332, 1346; Pub. L. 95–627, § 6(b), Nov. 10, 1978, 92 Stat. 3620; Pub. L. 96–499, title II, § 211, Dec. 5, 1980, 94 Stat. 2603, made provision for food service equipment assistance program, prior to repeal by Pub. L. 97–35, § 805(b).

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 1753 of this title.

REPORT TO CONGRESS OF NEEDS FOR EQUIPMENT TO BE SUBMITTED BY JUNE 30, 1973

Pub. L. 92–433, § 6(e), Sept. 26, 1972, 86 Stat. 729, directed Secretary, to assist Congress in determining amounts needed annually, to conduct a survey among States and school districts on unmet needs for equipment in schools eligible for assistance under former section 1774 of this title, results of such survey to be reported to Congress by June 30, 1973.

§ 1775. Certification to Secretary of the Treasury of amounts to be paid to States

The Secretary shall certify to the Secretary of the Treasury from time to time the amounts to be paid to any State under sections 1772 through 1776 of this title and the time or times such amounts are to be paid; and the Secretary of the Treasury shall pay to the State at the time or times fixed by the Secretary the amounts so certified.

(Pub. L. 89–642, § 6, Oct. 11, 1966, 80 Stat. 888.)

§ 1776. State administrative expenses

(a) Amount and allocation of funds

(1) Amount available

(A) In general

Except as provided in subparagraph (B), each fiscal year, the Secretary shall make available to the States for their administrative costs an amount equal to not less than 1½ percent of the Federal funds expended under sections 4, 11, and 17 of the Richard B. Russell National School Lunch Act [42 U.S.C. 1753, 1759a, 1766] and 1772 and 1773 of this title during the second preceding fiscal year.

(B) Minimum amount

In the case of each of fiscal years 2005 through 2007, the Secretary shall make available to each State for administrative costs not less than the initial allocation made to the State under this subsection for fiscal year 2004.

(C) Allocation

The Secretary shall allocate the funds so provided in accordance with paragraphs (2), (3), and (4) of this subsection.

(2) Expense grants

(A) In general

Subject to subparagraph (B), the Secretary shall allocate to each State for administrative costs incurred in any fiscal year in connection with the programs authorized under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] or under this chapter, except for the programs au-

thorized under section 13 or 17 of the Richard B. Russell National School Lunch Act [42 U.S.C. 1761, 1766] or under section 1786 of this title, an amount equal to not less than 1 percent and not more than 1½ percent of the funds expended by each State under sections 4 and 11 of the Richard B. Russell National School Lunch Act [42 U.S.C. 1753, 1759a] and sections 1772 and 1773 of this title during the second preceding fiscal year.

(B) Minimum amount

(i) In general

In no case shall the grant available to any State under this paragraph be less than the amount such State was allocated in the fiscal year ending September 30, 1981, or $200,000 (as adjusted under clause (ii),[1] whichever is larger.

(ii) Adjustment

On October 1, 2008, and each October 1 thereafter, the minimum dollar amount for a fiscal year specified in clause (i) shall be adjusted to reflect the percentage change between—

(I) the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(II) the value of that index for the 12-month period ending June 30 of the preceding fiscal year.

(3) The Secretary shall allocate to each State for its administrative costs incurred under the program authorized by section 17 of the Richard B. Russell National School Lunch Act [42 U.S.C. 1766] in any fiscal year an amount, based upon funds expended under that program in the second preceding fiscal year, equal to (A) 20 percent of the first $50,000, (B) 10 percent of the next $100,000, (C) 5 percent of the next $250,000, and (D) 2½ percent of any remaining funds. If an agency in the State other than the State educational agency administers such program, the State shall ensure that an amount equal to no less than the funds due the State under this paragraph is provided to such agency for costs incurred by such agency in administering the program, except as provided in paragraph (5). The Secretary may adjust any State's allocation to reflect changes in the size of its program.

(4) The remaining funds appropriated under this section shall be allocated among the States by the Secretary in amounts the Secretary determines necessary for the improvement in the States of the administration of the programs authorized under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] and this chapter, except for section 1786 of this title, including, but not limited to, improved program integrity and the quality of meals served to children.

(5)(A) Not more than 25 percent of the amounts made available to each State under this section for the fiscal year 1991 and 20 percent of the amounts made available to each State under this section for the fiscal year 1992 and for each succeeding fiscal year may remain available for obligation or expenditure in the fiscal year succeeding the fiscal year for which such amounts were appropriated.

(B) REALLOCATION OF FUNDS.—

(i) RETURN TO SECRETARY.—For each fiscal year, any amounts appropriated that are not obligated or expended during the fiscal year and are not carried over for the succeeding fiscal year under subparagraph (A) shall be returned to the Secretary.

(ii) REALLOCATION BY SECRETARY.—The Secretary shall allocate, for purposes of administrative costs, any remaining amounts among States that demonstrate a need for the amounts.

(6) USE OF ADMINISTRATIVE FUNDS.—Funds available to a State under this subsection and under section 13(k)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(k)(1)) may be used by the State for the costs of administration of the programs authorized under this chapter (except for the programs authorized under sections 1786 and 1790 of this title) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) without regard to the basis on which the funds were earned and allocated.

(7) Where the Secretary is responsible for the administration of programs under this chapter or the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], the amount of funds that would be allocated to the State agency under this section and under section 13(k)(1) of the Richard B. Russell National School Lunch Act [42 U.S.C. 1761(k)(1)] shall be retained by the Secretary for the Secretary's use in the administration of such programs.

(8) In the fiscal year 1991 and each succeeding fiscal year, in accordance with regulations issued by the Secretary, each State shall ensure that the State agency administering the distribution of commodities under programs authorized under this chapter and under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] is provided, from funds made available to the State under this subsection, an appropriate amount of funds for administrative costs incurred in distributing such commodities. In developing such regulations, the Secretary may consider the value of commodities provided to the State under this chapter and under the Richard B. Russell National School Lunch Act.

(9)(A) If the Secretary determines that the administration of any program by a State under this chapter (other than section 1786 of this title) or under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) (including any requirement to provide sufficient training, technical assistance, and monitoring of the child and adult care food program under section 17 of that Act (42 U.S.C. 1766)), or compliance with a regulation issued pursuant to either this chapter or such Act, is seriously deficient, and the State fails to correct the deficiency within a specified period of time, the Secretary may withhold from the State some or all of the funds allocated to the State under this section or under section 13(k)(1) or 17 of the Richard B.

[1] So in original. Probably should be preceded by an additional closing parenthesis.

Russell National School Lunch Act (42 U.S.C. 1761(k)(1) or 1766).

(B) On a subsequent determination by the Secretary that the administration of any program referred to in subparagraph (A), or compliance with the regulations issued to carry out the program, is no longer seriously deficient and is operated in an acceptable manner, the Secretary may allocate some or all of the funds withheld under such subparagraph.

(b) Funds, usage: compensation, benefits, and travel expenses of personnel; support services; office equipment; staff development

Funds paid to a State under subsection (a) of this section may be used to pay salaries, including employee benefits and travel expenses, for administrative and supervisory personnel; for support services; for office equipment; and for staff development.

(c) Fund adjustment; State administered programs

If any State agency agrees to assume responsibility for the administration of food service programs in nonprofit private schools or child care institutions that were previously administered by the Secretary, an appropriate adjustment shall be made in the administrative funds paid under this section to the State not later than the succeeding fiscal year.

(d) Unused funds; availability for obligation and expenditure, and reallocation to other States

Notwithstanding any other provision of law, funds made available to each State under this section shall remain available for obligation and expenditure by that State during the fiscal year immediately following the fiscal year for which such funds were made available. For each fiscal year the Secretary shall establish a date by which each State shall submit to the Secretary a plan for the disbursement of funds provided under this section for each such year, and the Secretary shall reallocate any unused funds, as evidenced by such plans, to other States as the Secretary considers appropriate.

(e) Plans for use of administrative expense funds

(1) In general

Each State shall submit to the Secretary for approval by October 1 of the initial fiscal year a plan for the use of State administrative expense funds, including a staff formula for State personnel, system level supervisory and operating personnel, and school level personnel.

(2) Updates and information management systems

(A) In general

After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.

(B) Plan contents

Each State plan shall, at a minimum, include a description of how technology and information management systems will be used to improve program integrity by—

(i) monitoring the nutrient content of meals served;

(ii) training local educational agencies, school food authorities, and schools in how to use technology and information management systems (including verifying eligibility for free or reduced price meals using program participation or income data gathered by State or local agencies); and

(iii) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data.

(3) Training and technical assistance

Each State shall submit to the Secretary for approval a plan describing the manner in which the State intends to implement subsection (g) of this section and section 22(b)(3) of the Richard B. Russell National School Lunch Act [42 U.S.C. 1769c(b)(3)].

(f) State funding requirement

Payments of funds under this section shall be made only to States that agree to maintain a level of funding out of State revenues, for administrative costs in connection with programs under this chapter (except section 1786 of this title) and the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] (except section 13 of that Act [42 U.S.C. 1761]), not less than the amount expended or obligated in fiscal year 1977, and that agree to participate fully in any studies authorized by the Secretary.

(g) State training

(1) In general

At least annually, each State shall provide training in administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures) to local educational agency and school food authority administrative personnel and other appropriate personnel, with emphasis on the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

(2) Federal role

The Secretary shall—

(A) provide training and technical assistance to a State; or

(B) at the option of the Secretary, directly provide training and technical assistance described in paragraph (1).

(3) Required participation

In accordance with procedures established by the Secretary, each local educational agency or school food authority shall ensure that an individual conducting or overseeing administrative procedures described in paragraph (1) receives training at least annually, unless determined otherwise by the Secretary.

(h) Funding for training and administrative reviews

(1) Funding

(A) In general

On October 1, 2004, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary

of Agriculture to carry out this subsection $4,000,000, to remain available until expended.

(B) Receipt and acceptance

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

(2) Use of funds

(A) In general

Except as provided in subparagraph (B), the Secretary shall use funds provided under this subsection to assist States in carrying out subsection (g) of this section and administrative reviews of selected local educational agencies carried out under section 22 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c).

(B) Exception

The Secretary may retain a portion of the amount provided to cover costs of activities carried out by the Secretary in lieu of the State.

(3) Allocation

The Secretary shall allocate funds provided under this subsection to States based on the number of local educational agencies that have demonstrated a high level of, or a high risk for, administrative error, as determined by the Secretary, taking into account the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

(4) Reallocation

The Secretary may reallocate, to carry out this section, any amounts made available to carry out this subsection that are not obligated or expended, as determined by the Secretary.

(i) Technology infrastructure improvement

(1) In general

Each State shall submit to the Secretary, for approval by the Secretary, an amendment to the plan required by subsection (e) of this section that describes the manner in which funds provided under this section will be used for technology and information management systems.

(2) Requirements

The amendment shall, at a minimum, describe the manner in which the State will improve program integrity by—

(A) monitoring the nutrient content of meals served;

(B) providing training to local educational agencies, school food authorities, and schools on the use of technology and information management systems for activities including—

(i) menu planning;

(ii) collection of point-of-sale data; and

(iii) the processing of applications for free and reduced price meals; and

(C) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data across schools and school food authorities.

(3) Technology infrastructure grants

(A) In general

Subject to the availability of funds made available under paragraph (4) to carry out this paragraph, the Secretary shall, on a competitive basis, provide funds to States to be used to provide grants to local educational agencies, school food authorities, and schools to defray the cost of purchasing or upgrading technology and information management systems for use in programs authorized by this chapter (other than section 1786 of this title) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) Infrastructure development plan

To be eligible to receive a grant under this paragraph, a school or school food authority shall submit to the State a plan to purchase or upgrade technology and information management systems that addresses potential cost savings and methods to improve program integrity, including—

(i) processing and verification of applications for free and reduced price meals;

(ii) integration of menu planning, production, and serving data to monitor compliance with section 9(f)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1)); and

(iii) compatibility with statewide reporting systems.

(4) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2005 through 2009, to remain available until expended.

(j) Authorization of appropriations

For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 2009, there are hereby authorized to be appropriated such sums as may be necessary for the purposes of this section.

(Pub. L. 89–642, § 7, Oct. 11, 1966, 80 Stat. 888; Pub. L. 90–302, § 4, May 8, 1968, 82 Stat. 119; Pub. L. 91–248, § 5, May 14, 1970, 84 Stat. 210; Pub. L. 95–166, § 14, Nov. 10, 1977, 91 Stat. 1338; Pub. L. 95–627, § 7(a), Nov. 10, 1978, 92 Stat. 3621; Pub. L. 96–499, title II, § 201(b), Dec. 5, 1980, 94 Stat. 2600; Pub. L. 97–35, title VIII, §§ 814, 819(e), Aug. 13, 1981, 95 Stat. 531, 533; Pub. L. 99–500, title III, §§ 313, 332, Oct. 18, 1986, 100 Stat. 1783–360, 1783–363, and Pub. L. 99–591, title III, §§ 313, 332, Oct. 30, 1986, 100 Stat. 3341–363, 3341–367; Pub. L. 99–661, div. D, title I, § 4103, title II, § 4212, Nov. 14, 1986, 100 Stat. 4071, 4075; Pub. L. 101–147, title I, § 122(a), Nov. 10, 1989, 103 Stat. 893; Pub. L. 102–512, title I, § 103, Oct. 24, 1992, 106 Stat. 3363; Pub. L. 103–448, title I, § 117(a)(2)(B), title II, § 202, Nov. 2, 1994, 108 Stat. 4717, 4737; Pub. L. 104–193, title VII, § 724, Aug. 22, 1996, 110 Stat. 2302; Pub. L. 105–336, title II, § 202, Oct. 31, 1998, 112 Stat. 3158; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170; Pub. L. 106–224, title II, § 243(j), June 20, 2000, 114 Stat. 420; Pub. L.

108–265, title I, § 126(c), title II, § 202, June 30, 2004, 118 Stat. 765, 769.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsecs. (a), (f) and (i)(3)(A), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

The Child Nutrition and WIC Reauthorization Act of 2004, referred to in subsecs. (g)(1) and (h)(3), is Pub. L. 108–265, June 30, 2004, 118 Stat. 729, as amended. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 1751 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–265, § 202(a)(1), inserted heading.

Subsec. (a)(1). Pub. L. 108–265, § 202(a)(1), (2)(A), inserted par. heading, designated first and second sentences as subpars. (A) and (C), respectively, inserted subpar. (A) and (C) headings, in subpar. (A) substituted ''Except as provided in subparagraph (B), each'' for ''Each'', added subpar. (B), and struck out at end ''There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.''

Subsec. (a)(2). Pub. L. 108–265, § 202(a)(2)(B), inserted par. heading, designated existing provisions as subpars. (A) and (B)(i), inserted headings, in subpar. (A) substituted ''Subject to subparagraph (B), the'' for ''The'', in subpar. (B)(i) substituted ''this paragraph'' for ''this subsection'' and ''$200,000 (as adjusted under clause (ii)'' for ''$100,000'', and added subpar. (B)(ii).

Subsec. (e). Pub. L. 108–265, § 126(c)(1), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, struck out last sentence requiring a State, after submitting the initial plan, to submit to the Secretary for approval only a substantive change in the plan, and added pars. (2) and (3).

Subsecs. (g), (h). Pub. L. 108–265, § 126(c)(3), added subsecs. (g) and (h). Former subsec. (g) redesignated (j).

Subsec. (i). Pub. L. 108–265, § 202(b), added subsec. (i).

Subsec. (j). Pub. L. 108–265, § 202(c), substituted ''2009'' for ''2003''.

Pub. L. 108–265, § 126(c)(2), redesignated subsec. (g) as (j).

2000—Subsec. (a)(9)(A). Pub. L. 106–224 inserted ''(including any requirement to provide sufficient training, technical assistance, and monitoring of the child and adult care food program under section 17 of that Act (42 U.S.C. 1766))'' after ''(42 U.S.C. 1751 et seq.)''.

1999—Subsecs. (a), (f). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act'' wherever appearing.

1998—Subsec. (a)(5)(B). Pub. L. 105–336, § 202(a), amended subpar. (B) generally, substituting present provisions for provisions which related to return of unexpended funds to Secretary and reallocation of such funds to provide annual grants to public entities and private nonprofit organizations participating in projects under former section 1766b of this title.

Subsec. (a)(6). Pub. L. 105–336, § 202(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Funds available to States under this subsection and under section 13(k)(1) of the National School Lunch Act shall be used for the costs of administration of the programs for which the allocations are made, except that States may transfer up to 10 percent of any of the amounts allocated among such programs.''

Subsec. (g). Pub. L. 105–336, § 202(c), substituted ''2003'' for ''1998''.

1996—Subsec. (e). Pub. L. 104–193, § 724(b), substituted ''the initial fiscal year a plan'' for ''each year an annual plan'' and inserted at end ''After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.''

Pub. L. 104–193, § 724(a), redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: ''The State may use a portion of the funds available under this section to assist in the administration of the commodity distribution program.''

Subsecs. (f), (g). Pub. L. 104–193, § 724(a)(2), redesignated subsecs. (g) and (i) as (f) and (g), respectively. Former subsec. (f) redesignated (e).

Subsec. (h). Pub. L. 104–193, § 724(a)(1), struck out subsec. (h) which read as follows: ''The Secretary may not provide amounts under this section to a State for administrative costs incurred in any fiscal year unless the State agrees to participate in any study or survey of programs authorized under this chapter or the National School Lunch Act (42 U.S.C. 1751 et seq.) and conducted by the Secretary.''

Subsec. (i). Pub. L. 104–193, § 724(a)(2), redesignated subsec. (i) as (g).

1994—Subsec. (a)(5)(B)(i)(I). Pub. L. 103–448, § 117(a)(2)(B), substituted ''projects under section 17B of the National School Lunch Act'' for ''projects under section 18(c) of the National School Lunch Act (42 U.S.C. 1769(c))'' and substituted ''fiscal year 1995 and each subsequent fiscal year'' for ''each of fiscal years 1993 and 1994'' in two places.

Subsec. (a)(9). Pub. L. 103–448, § 202(a), added par. (9).

Subsec. (h). Pub. L. 103–448, § 202(c)(2), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 103–448, § 202(b), substituted ''1998'' for ''1994''.

Subsec. (i). Pub. L. 103–448, § 202(c)(1), redesignated subsec. (h) as (i).

1992—Subsec. (a)(5)(B)(i). Pub. L. 102–512, § 103(1), substituted a colon for '', the Secretary shall—'' in introductory provisions.

Subsec. (a)(5)(B)(i)(I). Pub. L. 102–512, § 103(2), added subcl. (I) and struck out former subcl. (I) which read as follows: ''first allocate, for the purpose of providing grants on an annual basis to private nonprofit organizations participating in projects under section 18(f) of the National School Lunch Act, not less than $3,000,000 in the fiscal year 1992 and not less than $4,000,000 in each of the fiscal years 1993 and 1994; and''.

Subsec. (a)(5)(B)(i)(II). Pub. L. 102–512, § 103(3), substituted ''After making the allocations under subclause (I), the Secretary shall allocate,'' for ''then allocate,''.

1989—Subsec. (a)(3). Pub. L. 101–147, § 122(a)(1)(A), inserted after first sentence ''If an agency in the State other than the State educational agency administers such program, the State shall ensure that an amount equal to no less than the funds due the State under this paragraph is provided to such agency for costs incurred by such agency in administering the program, except as provided in paragraph (5).''

Subsec. (a)(5) to (8). Pub. L. 101–147, § 122(a)(1)(B)–(D), added pars. (5) and (8) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (g). Pub. L. 101–147, § 122(a)(2), inserted before period at end '', and that agree to participate fully in any studies authorized by the Secretary''.

Subsec. (h). Pub. L. 101–147, § 122(a)(3), substituted ''For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 1994,'' for ''For the fiscal years beginning October 1, 1977, and ending September 30, 1989,''.

1986—Subsecs. (b) to (g). Pub. L. 99–500 and Pub. L. 99–591, § 332, and Pub. L. 99–661, § 4212, amended section identically, redesignating subsecs. (c) to (h) as (b) to (g), respectively, and striking out former subsec. (b) which read as follows: ''The Secretary, in cooperation with the several States, shall develop State staffing standards for the administration by each State of sections 4, 11, and 17 of the National School Lunch Act [42 U.S.C. 1753, 1759a, 1766], and sections 1772 and 1773 of this title, that will ensure sufficient staff for the planning and administration of programs covered by State administrative expenses.''

Subsecs. (h), (i). Pub. L. 99–500 and Pub. L. 99–591, §§ 313, 332(2), and Pub. L. 99–661, §§ 4103, 4212(2), amended section identically, redesignating subsec. (i) as (h) and substituting ''1989'' for ''1984''. Former subsec. (h) redesignated (g).

1981—Subsec. (a). Pub. L. 97–35, §§ 814(a), 819(e), in par. (1) struck out reference to section 1774 of this title, and in par. (2) substituted ''1981'' for ''1978'' and struck out reference to section 1774 of this title.

Subsec. (b). Pub. L. 97–35, § 819(e), struck out reference to section 1774 of this title.

Subsec. (e). Pub. L. 97–35, § 814(b), substituted provisions relating to general availability of unobligated funds during fiscal years following the fiscal years for which such funds were made available for provisions relating to availability of unobligated funds for fiscal year 1979 and for the five succeeding fiscal years.

1980—Subsec. (e). Pub. L. 96–499, § 201(b)(1), substituted ''and for the five succeeding fiscal years'' for ''and the succeeding fiscal year''.

Subsec. (i). Pub. L. 96–499, § 201(b)(2), substituted ''September 30, 1984'' for ''September 30, 1980''.

1978—Subsec. (a). Pub. L. 95–627 generally revised and restructured subsection and, among other changes, inserted formula for determining State allocations for administrative costs incurred under the program authorized by section 17 of the National School Lunch Act, authorized the State to transfer up to ten percent of any amounts allocated for administrative costs of the programs for which such funds were allocated, and authorized retention by the Secretary for the Secretary's use in administering certain programs, allocations for such programs, under this section and section 13(k)(1) of the National School Lunch Act.

1977—Subsecs. (a) to (i). Pub. L. 95–166 added subsecs. (a) to (i) and struck out prior provisions authorizing the Secretary to utilize appropriated funds for advances to State educational agencies for use for administrative expenses, advancing the fund only in necessary amounts and for administration of certain activities, and authorizing appropriation of necessary sums, now incorporated in subsec. (i) of this section.

1970—Pub. L. 91–248 inserted provisions authorizing Secretary to utilize funds appropriated under this section for advances for administrative expenses of any other designated State agency as well as for those of the State educational agency and in the case of either State agency, for its administrative expenses in supervising and giving technical assistance to service institutions as well as to local school districts.

1968—Pub. L. 90–302 inserted the programs under sections 1759a and 1761 of this title to the enumeration of programs in which appropriated funds could be used for administrative expenses of local school districts in supervising and giving technical assistance and added section 1761 to the enumeration of sections covering programs of additional activities under which funds could be advanced only in amounts and to the extent determined necessary by the Secretary.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 126(c) of Pub. L. 108–265 effective July 1, 2004, amendment by section 202(a) of Pub. L. 108–265 effective Oct. 1, 2004, and amendment by section 202(b), (c) of Pub. L. 108–265 effective June 30, 2004, see section 502(a), (b)(1), (2) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–512 effective Sept. 30, 1992, see section 104 of Pub. L. 102–512, set out as a note under section 1769 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 122(b) of Pub. L. 101–147 provided that: ''The amendment made by subsection (a)(1)(A) [amending this section] shall be effective as of October 1, 1989.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

§§ 1776a, 1776b. Omitted

CODIFICATION

Section 1776a, Pub. L. 103–111, title IV, Oct. 21, 1993, 107 Stat. 1071, conditioned the distribution of funds under section 1776 of this title upon agreement by a State to participate in studies and surveys of programs authorized under this chapter or the preceding chapter, when such studies or surveys were directed by Congress and requested by the Secretary of Agriculture, and was not repeated in the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1995. See section 1776(h) of this title.

Section 1776b, Pub. L. 103–111, title IV, Oct. 21, 1993, 107 Stat. 1071, authorized the withholding, by the Secretary of Agriculture, of funds allocated to a State under sections 1761(k)(1) and 1776 of this title if the Secretary determined that the State was seriously deficient in administering any program under this chapter or the preceding chapter, and the State failed to correct such deficiencies within a specified period of time, and was not repeated in the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1995. See section 1776(a)(9)(A) of this title.

Provisions similar to sections 1776a and 1776b were contained in the following prior appropriation acts:

Pub. L. 102–341, title IV, Aug. 14, 1992, 106 Stat. 900.
Pub. L. 102–142, title IV, Oct. 28, 1991, 105 Stat. 904.
Pub. L. 101–506, title III, Nov. 5, 1990, 104 Stat. 1340.
Pub. L. 101–161, title III, Nov. 21, 1989, 103 Stat. 976.
Pub. L. 100–460, title III, Oct. 1, 1988, 102 Stat. 2254.
Pub. L. 100–202, § 101(k) [title III], Dec. 22, 1987, 101 Stat. 1329–322, 1329–348.
Pub. L. 99–500, § 101(a) [title III], Oct. 18, 1986, 100 Stat. 1783, 1783–22, and Pub. L. 99–591, § 101(a) [title III], Oct. 30, 1986, 100 Stat. 3341, 3341–22.
Pub. L. 99–190, § 101(a) [H.R. 3037, title III], Dec. 19, 1985, 99 Stat. 1185; Pub. L. 100–202, § 106, Dec. 22, 1987, 101 Stat. 1329–433.
Pub. L. 98–473, title I, § 101(a) [H.R. 5743, title III], Oct. 12, 1984, 98 Stat. 1837.
Pub. L. 98–151, § 101(d) [H.R. 3223, title III], Nov. 14, 1983, 97 Stat. 972.
Pub. L. 97–370, title III, Dec. 18, 1982, 96 Stat. 1805.
Pub. L. 97–103, title III, Dec. 23, 1981, 95 Stat. 1484.
Pub. L. 96–528, title III, Dec. 15, 1980, 94 Stat. 3112.
Pub. L. 96–108, title III, Nov. 9, 1979, 93 Stat. 837.
Pub. L. 96–38, title I, July 25, 1979, 93 Stat. 98.

§ 1777. Use in school breakfast program of food designated as being in abundance or food donated by the Secretary of Agriculture

Each school participating under section 1773 of this title shall, insofar as practicable, utilize in its program foods designated from time to time

by the Secretary as being in abundance, either nationally or in the school area, or foods donated by the Secretary. Foods available under section 1431 of title 7 or purchased under section 612c or 1446a–1 of title 7, may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in their feeding programs under this chapter.

(Pub. L. 89–642, § 8, Oct. 11, 1966, 80 Stat. 888.)

§ 1778. Nonprofit programs

The food and milk service programs in schools and nonprofit institutions receiving assistance under this chapter shall be conducted on a nonprofit basis.

(Pub. L. 89–642, § 9, Oct. 11, 1966, 80 Stat. 888.)

§ 1779. Rules and regulations

(a) Authority of Secretary

The Secretary shall prescribe such regulations as the Secretary may deem necessary to carry out this chapter and the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], including regulations relating to the service of food in participating schools and service institutions in competition with the programs authorized under this chapter and the Richard B. Russell National School Lunch Act.

(b) Sale of competitive foods

The regulations shall not prohibit the sale of competitive foods approved by the Secretary in food service facilities or areas during the time of service of food under this chapter or the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] if the proceeds from the sales of such foods will inure to the benefit of the schools or of organizations of students approved by the schools.

(c) Transfer of funds; reserve for special projects

In such regulations the Secretary may provide for the transfer of funds by any State between the programs authorized under this chapter and the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] on the basis of an approved State plan of operation for the use of the funds and may provide for the reserve of up to 1 per centum of the funds available for apportionment to any State to carry out special developmental projects.

(Pub. L. 89–642, § 10, Oct. 11, 1966, 80 Stat. 889; Pub. L. 91–248, § 8, May 14, 1970, 84 Stat. 212; Pub. L. 92–433, § 7, Sept. 26, 1972, 86 Stat. 729; Pub. L. 95–166, § 17, Nov. 10, 1977, 91 Stat. 1345; Pub. L. 101–147, title III, § 323, Nov. 10, 1989, 103 Stat. 916; Pub. L. 103–448, title II, § 203, Nov. 2, 1994, 108 Stat. 4738; Pub. L. 104–193, title VII, § 725, Aug. 22, 1996, 110 Stat. 2302; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in text, is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act'' wherever appearing.

1996—Subsec. (b). Pub. L. 104–193 redesignated par. (1) as subsec. (b) and struck out pars. (2) to (4) which read as follows:

''(2) The Secretary shall develop and provide to State agencies, for distribution to private elementary schools and to public elementary schools through local educational agencies, model language that bans the sale of competitive foods of minimal nutritional value anywhere on elementary school grounds before the end of the last lunch period.

''(3) The Secretary shall provide to State agencies, for distribution to private secondary schools and to public secondary schools through local educational agencies, a copy of regulations (in existence on the effective date of this paragraph) concerning the sale of competitive foods of minimal nutritional value.

''(4) Paragraphs (2) and (3) shall not apply to a State that has in effect a ban on the sale of competitive foods of minimal nutritional value in schools in the State.''

1994—Pub. L. 103–448 designated existing provisions as subsecs. (a) to (c), realigned margins, and in subsec. (b) designated existing provisions as par. (1), substituted ''The regulations'' for ''Such regulations'', and added pars. (2) to (4).

1989—Pub. L. 101–147 substituted ''the Secretary'' for ''he'' before ''may deem'' in first sentence.

1977—Pub. L. 95–166 inserted ''approved by the Secretary'' after ''competitive foods''.

1972—Pub. L. 92–433 inserted provision that regulations issued under the section shall not prohibit the sale of competitive foods in food service facilities or areas during the time of service of food if the proceeds from the sales of such foods inures to the benefit of the schools or organizations of students approved by the school.

1970—Pub. L. 91–248 provided that regulations under this chapter and under the National School Lunch Act may include provisions relating to the service of food in participating schools and service institutions in competition with programs under this chapter and the National School Lunch Act, provided for transfer of funds by any State between programs authorized under this chapter and under the National School Lunch Act, and provided for a reserve of up to one percent of the funds available for apportionment to any State to carry out special development projects.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

§ 1780. Prohibition against interference with school personnel, curriculum, or instruction; prohibition against inclusion of assistance in determining income or resources for purposes of taxation, welfare, or public assistance programs

(a) In carrying out the provisions of sections 1772 and 1773 of this title, the Secretary shall not impose any requirements with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction.

(b) The value of assistance to children under this chapter shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be dimin-

ished as a result of funds received under this chapter.

(Pub. L. 89–642, § 11, Oct. 11, 1966, 80 Stat. 889; Pub. L. 97–35, title VIII, § 819(f), Aug. 13, 1981, 95 Stat. 533; Pub. L. 104–193, title VII, § 726, Aug. 22, 1996, 110 Stat. 2302.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–193 substituted ''the Secretary shall not'' for ''neither the Secretary nor the State shall''.

1981—Subsec. (a). Pub. L. 97–35 struck out reference to section 1774 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

§ 1781. Preschool programs

The Secretary may extend the benefits of all school feeding programs conducted and supervised by the Department of Agriculture to include preschool programs operated as part of the school system.

(Pub. L. 89–642, § 12, Oct 11, 1966, 80 Stat. 889.)

§ 1782. Centralization in Department of Agriculture of administration of food service programs for children

Authority for the conduct and supervision of Federal programs to assist schools in providing food service programs for children is assigned to the Department of Agriculture. To the extent practicable, other Federal agencies administering programs under which funds are to be provided to schools for such assistance shall transfer such funds to the Department of Agriculture for distribution through the administrative channels and in accordance with the standards established under this chapter and the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.].

(Pub. L. 89–642, § 13, Oct. 11, 1966, 80 Stat. 889; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in text, is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

§ 1783. Appropriations for administrative expense

There are hereby authorized to be appropriated for any fiscal year such sums as may be necessary to the Secretary for the Secretary's administrative expense under this chapter.

(Pub. L. 89–642, § 14, Oct. 11, 1966, 80 Stat. 889; Pub. L. 101–147, title III, § 324, Nov. 10, 1989, 103 Stat. 917.)

AMENDMENTS

1989—Pub. L. 101–147 inserted ''Appropriations for administrative expense'' as section catchline and substituted ''are hereby'' for ''is hereby'' and ''the Secretary's'' for ''his''.

§ 1784. Definitions

For the purposes of this chapter—

(1) ''State'' means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(2) ''State educational agency'' means, as the State legislature may determine, (A) the chief State school officer (such as the State superintendent of public instruction, commissioner of education, or similar officer), or (B) a board of education controlling the State department of education.

(3) ''School'' means (A) any public or nonprofit private school of high school grade or under, including kindergarten and preschool programs operated by such school, and (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor). For purposes of clauses (A) and (B) of this paragraph, the term ''nonprofit'', when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of title 26.

(4) ''Secretary'' means the Secretary of Agriculture.

(5) ''School year'' means the annual period from July 1 through June 30.

(6) Except as used in section 1786 of this title, the terms ''child'' and ''children'' as used in this chapter, shall be deemed to include persons regardless of age who are determined by the State educational agency, in accordance with regulations prescribed by the Secretary, to have 1 or more disabilities and who are attending any nonresidential public or nonprofit private school of high school grade or under for the purpose of participating in a school program established for individuals with disabilities.

(7) DISABILITY.—The term ''disability'' has the meaning given the term in the Rehabilitation Act of 1973 for purposes of title II of that Act (29 U.S.C 760 et seq.).

(Pub. L. 89–642, § 15, Oct. 11, 1966, 80 Stat. 889; Pub. L. 94–105, §§ 15(c), 17(b), Oct. 7, 1975, 89 Stat. 522, 525; Pub. L. 95–166, § 20(5), Nov. 10, 1977, 91 Stat. 1346; Pub. L. 95–627, § 10(c), (d)(3), Nov. 10, 1978, 92 Stat. 3624; Pub. L. 96–499, title II, § 212, Dec. 5, 1980, 94 Stat. 2603; Pub. L. 97–35, title VIII, § 808(b), Aug. 13, 1981, 95 Stat. 527; Pub. L. 99–500, title III, § 325(b), Oct. 18, 1986, 100 Stat. 1783–361, and Pub. L. 99–591, title III, § 325(b), Oct. 30, 1986, 100 Stat. 3341–365; Pub. L. 99–661, div. D, title II, § 4205(b), Nov. 14, 1986, 100 Stat. 4072; Pub. L. 100–71, title I, § 101(b), July 11, 1987, 101 Stat. 430; Pub. L. 101–147, title III, § 325, Nov. 10, 1989, 103 Stat. 917; Pub. L. 104–193, title VII, § 727, Aug. 22, 1996, 110 Stat. 2302; Pub. L. 105–336, title I, § 107(j)(3)(D), Oct. 31, 1998, 112 Stat. 3153.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in par. (7), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended,

which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. Title II of the Act is classified generally to subchapter II (§ 760 et seq.) of chapter 16 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1998—Par. (6). Pub. L. 105–336, § 107(j)(3)(D)(i), substituted ''disabilities'' for ''mental or physical handicaps'' in two places.

Par. (7). Pub. L. 105–336, § 107(j)(3)(D)(ii), added par. (7).

1996—Par. (1). Pub. L. 104–193, § 727(1), substituted ''the Commonwealth of the Northern Mariana Islands'' for ''Trust Territory of the Pacific Islands''.

Par. (3). Pub. L. 104–193, § 727(2), inserted ''and'' before ''(B)'' and struck out '', and (C) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico'' before ''. For purposes of clauses (A) and (B)''.

1989—Pub. L. 101–147 redesignated subsecs. (a) through (f) as pars. (1) through (6), respectively, in par. (2) redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, in par. (3) substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text, and in par. (6) substituted ''to have 1 or more mental or physical handicaps'' for ''to be mentally or physically handicapped'' and ''for individuals with mental or physical handicaps'' for ''for mentally or physically handicapped''.

1987—Subsec. (c). Pub. L. 100–71 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: '''School' means (A) any public or nonprofit private school of high school grade or under, including kindergarten and preschool programs operated by such school, (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor), and (C) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico. For purposes of clauses (A) and (B) of this subsection, the term 'nonprofit', when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of title 26. On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.''

1986—Subsec. (c). Pub. L. 99–661, § 4205(b)(2), inserted ''On July 1, 1988, and on each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect the changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.''

Subsec. (c)(A). Pub. L. 99–500 and Pub. L. 99–591, which directed the amendment of subpar. (A) by striking out ''except private schools whose average yearly tuition exceeds $1,500 per child,'' after ''such school'' was executed by striking out ''except private schools whose average yearly tuition exceeds $2,000 per child,'' after ''such school'' to reflect the probable intent of Congress and the intervening amendment of subpar. (A) by Pub. L. 99–661, § 4205(b)(2). See below.

Pub. L. 99–661, § 4205(b)(1), substituted ''$2,000'' for ''$1,500''.

1981—Subsec. (c). Pub. L. 97–35 inserted exception for private schools whose average yearly tuition exceeds $1,500.

1980—Subsec. (c). Pub. L. 96–499 inserted '', but excluding Job Corps Centers funded by the Department of Labor'' after ''mentally retarded''.

1978—Subsec. (e). Pub. L. 95–627, § 10(c), substituted ''from July 1 through June 30'' for ''determined in accordance with regulations issued by the Secretary''.

Subsec. (f). Pub. L. 95–627, § 10(d)(3), added subsec. (f).

1977—Subsec. (e). Pub. L. 95–166 added subsec. (e).

1975—Subsec. (a). Pub. L. 94–105, § 15(c), included Trust Territory of Pacific Islands in definition of ''State''.

Subsecs. (c) to (e). Pub. L. 94–105, § 17(b), struck out subsec. (c) which defined ''Nonprofit private school'' as any private school exempt from income tax under section 501(c)(3) of title 26, redesignated subsecs. (d) and (e) as (c) and (d) respectively, and in subsec. (c) as so redesignated, inserted definition of ''School'' any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded), and provision defining ''nonprofit'' as an exemption under section 501(c)(3) of title 26.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–71 effective July 1, 1987, see section 101(c) of Pub. L. 100–71, set out as a note under section 1760 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 4205(b)(1) of Pub. L. 99–661 applicable for fiscal year beginning Oct. 1, 1986, and each school year thereafter, and amendment by section 4205(b)(2) of Pub. L. 99–661 applicable for school year beginning July 1, 1988, and each school year thereafter, see section 4205(c) of Pub. L. 99–661, set out as a note under section 1760 of this title.

Amendment by Pub. L. 99–500 and Pub. L. 99–591 effective July 1, 1987, see section 325(c) of Pub. L. 99–500 and Pub. L. 99–591, set out as a note under section 1760 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(3) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 20 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

§ 1785. Accounts and records; availability for inspection; authority to settle, adjust, or waive claims

(a) States, State educational agencies, schools, and nonprofit institutions participating in programs under this chapter shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this chapter and the regulations hereunder. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of three years, as the Secretary determines is necessary.

(b) With regard to any claim arising under this chapter or under the Richard B. Russell Na-

tional School Lunch Act [42 U.S.C. 1751 et seq.], the Secretary shall have the authority to determine the amount of, to settle and to adjust any such claim, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of either this chapter or the Richard B. Russell National School Lunch Act. Nothing contained in this subsection shall be construed to diminish the authority of the Attorney General of the United States under section 516 of title 28 to conduct litigation on behalf of the United States.

(Pub. L. 89–642, § 16, Oct. 11, 1966, 80 Stat. 890; Pub. L. 97–35, title VIII, § 816, Aug. 13, 1981, 95 Stat. 531; Pub. L. 104–193, title VII, § 728, Aug. 22, 1996, 110 Stat. 2302; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act'' in two places.

1996—Subsec. (a). Pub. L. 104–193 substituted ''be available at any reasonable time'' for ''at all times be available''.

1981—Pub. L. 97–35 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 820(a)(7)(C), of Pub. L. 97–35, set out as a note under section 1753 of this title.

STUDY OF COST ACCOUNTING REQUIREMENTS

Secretary prohibited from delaying or withholding or causing any State to delay or withhold payments for reimbursement of per meal costs on the basis of noncompliance with full cost accounting procedure unless and until the Secretary has studied additional personnel and training needs of States, local school districts and schools resulting from imposition of requirement to implement full cost accounting procedures, see section 21 of Pub. L. 94–105, set out as a note under section 1760 of this title.

§ 1786. Special supplemental nutrition program for women, infants, and children

(a) Congressional findings and declaration of purpose

Congress finds that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. It is, therefore, the purpose of the program authorized by this section to provide, up to the authorization levels set forth in subsection (g) of this section, supplemental foods and nutrition education through any eligible local agency that applies for participation in the program. The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems, including drug abuse, and improve the health status of these persons.

(b) Definitions

As used in this section—

(1) ''Breastfeeding women'' means women up to one year postpartum who are breastfeeding their infants.

(2) ''Children'' means persons who have had their first birthday but have not yet attained their fifth birthday.

(3) ''Competent professional authority'' means physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated by physicians or State or local medically trained health officials, in accordance with standards prescribed by the Secretary, as being competent professionally to evaluate nutritional risk.

(4) ''Costs of nutrition services and administration'' or ''nutrition services and administration'' means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.

(5) ''Infants'' means persons under one year of age.

(6) ''Local agency'' means a public health or welfare agency or a private nonprofit health or welfare agency, which, directly or through an agency or physician with which it has contracted, provides health services. The term shall include an Indian tribe, band, or group recognized by the Department of the Interior, the Indian Health Service of the Department of Health and Human Services, or an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior.

(7) NUTRITION EDUCATION.—The term ''nutrition education'' means individual and group sessions and the provision of material that are designed to improve health status and achieve positive change in dietary and physical activity habits, and that emphasize the relationship between nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.

(8) ''Nutritional risk'' means (A) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, (B) other documented nutritionally related medical conditions, (C) dietary deficiencies that impair or endanger health, (D) conditions that directly affect the nutritional health of a person, such as alcoholism or drug abuse, or (E) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, includ-

ing, but not limited to, homelessness and migrancy.

(9) ''Plan of operation and administration'' means a document that describes the manner in which the State agency intends to implement and operate the program.

(10) ''Postpartum women'' means women up to six months after termination of pregnancy.

(11) ''Pregnant women'' means women determined to have one or more fetuses in utero.

(12) ''Secretary'' means the Secretary of Agriculture.

(13) ''State agency'' means the health department or comparable agency of each State; an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is the authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior; or the Indian Health Service of the Department of Health and Human Services.

(14) ''Supplemental foods'' means those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children and foods that promote the health of the population served by the program authorized by this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as prescribed by the Secretary. State agencies may, with the approval of the Secretary, substitute different foods providing the nutritional equivalent of foods prescribed by the Secretary, to allow for different cultural eating patterns.

(15) ''Homeless individual'' means—

(A) an individual who lacks a fixed and regular nighttime residence; or

(B) an individual whose primary nighttime residence is—

(i) a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations;

(ii) an institution that provides a temporary residence for individuals intended to be institutionalized;

(iii) a temporary accommodation of not more than 365 days in the residence of another individual; or

(iv) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(16) ''Drug abuse education'' means—

(A) the provision of information concerning the dangers of drug abuse; and

(B) the referral of participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals.

(17) ''Competitive bidding'' means a procurement process under which the Secretary or a State agency selects a single source (a single infant formula manufacturer) offering the lowest price, as determined by the submission of sealed bids, for a product for which bids are sought for use in the program authorized by this section.

(18) ''Rebate'' means the amount of money refunded under cost containment procedures to any State agency from the manufacturer or other supplier of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant in each such agency's program established under this section.

(19) ''Discount'' means, with respect to a State agency that provides program foods to participants without the use of retail grocery stores (such as a State that provides for the home delivery or direct distribution of supplemental food), the amount of the price reduction or other price concession provided to any State agency by the manufacturer or other supplier of the particular food product as the result of the purchase of program food by each such State agency, or its representative, from the supplier.

(20) ''Net price'' means the difference between the manufacturer's wholesale price for infant formula and the rebate level or the discount offered or provided by the manufacturer under a cost containment contract entered into with the pertinent State agency.

(21) REMOTE INDIAN OR NATIVE VILLAGE.—The term ''remote Indian or Native village'' means an Indian or Native village that—

(A) is located in a rural area;

(B) has a population of less than 5,000 inhabitants; and

(C) is not accessible year-around by means of a public road (as defined in section 101 of title 23).

(22) PRIMARY CONTRACT INFANT FORMULA.—The term ''primary contract infant formula'' means the specific infant formula for which manufacturers submit a bid to a State agency in response to a rebate solicitation under this section and for which a contract is awarded by the State agency as a result of that bid.

(23) STATE ALLIANCE.—The term ''State alliance'' means 2 or more State agencies that join together for the purpose of procuring infant formula under the program by soliciting competitive bids for infant formula.

(c) Grants-in-aid; cash grants; ratable reduction of amount an agency may distribute; affirmative action; regulations relating to dual receipt of benefits under commodity supplemental food program

(1) The Secretary may carry out a special supplemental nutrition program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods and nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, and children who satisfy the eligibility requirements specified in subsection (d) of this section. The program shall be supplementary to—

(A) the food stamp program;

(B) any program under which foods are distributed to needy families in lieu of food stamps; and

(C) receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.

(2) Subject to amounts appropriated to carry out this section under subsection (g) of this section—

(A) the Secretary shall make cash grants to State agencies for the purpose of administering the program, and

(B) any State agency approved eligible local agency that applies to participate in or expand the program under this section shall immediately be provided with the necessary funds to carry out the program.

(3) Nothing in this subsection shall be construed to permit the Secretary to reduce ratably the amount of foods that an eligible local agency shall distribute under the program to participants. The Secretary shall take affirmative action to ensure that the program is instituted in areas most in need of supplemental foods. The existence of a commodity supplemental food program under section 4 of the Agriculture and Consumer Protection Act of 1973 shall not preclude the approval of an application from an eligible local agency to participate in the program under this section nor the operation of such program within the same geographic area as that of the commodity supplemental food program, but the Secretary shall issue such regulations as are necessary to prevent dual receipt of benefits under the commodity supplemental food program and the program under this section.

(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.

(d) Eligible participants

(1) Participation in the program under this section shall be limited to pregnant, postpartum, and breastfeeding women, infants, and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

(2)(A) The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of individuals for participation in the program. Any individual at nutritional risk shall be eligible for the program under this section only if such individual—

(i) is a member of a family with an income that is less than the maximum income limit prescribed under section 1758(b) of this title for free and reduced price meals;

(ii)(I) receives food stamps under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; or

(II) is a member of a family that receives assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995; or

(iii)(I) receives medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or

(II) is a member of a family in which a pregnant woman or an infant receives such assistance.

(B) For the purpose of determining income eligibility under this section, any State agency may choose to exclude from income—

(i) any basic allowance—

(I) for housing received by military service personnel residing off military installations; or

(II) provided under section 403 of title 37 for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10 or any related provision of law; and

(ii) any cost-of-living allowance provided under section 405 of title 37 to a member of a uniformed service who is on duty outside the contiguous States of the United States.

(C) In the case of a pregnant woman who is otherwise ineligible for participation in the program because the family of the woman is of insufficient size to meet the income eligibility standards of the program, the pregnant woman shall be considered to have satisfied the income eligibility standards if, by increasing the number of individuals in the family of the woman by 1 individual, the income eligibility standards would be met.

(3) CERTIFICATION.—

(A) PROCEDURES.—

(i) IN GENERAL.—Subject to clause (ii), a person shall be certified for participation in accordance with general procedures prescribed by the Secretary.

(ii) BREASTFEEDING WOMEN.—A State may elect to certify a breastfeeding woman for a period of 1 year postpartum or until a woman discontinues breastfeeding, whichever is earlier.

(B) A State may consider pregnant women who meet the income eligibility standards to be presumptively eligible to participate in the program and may certify the women for participation immediately, without delaying certification until an evaluation is made concerning nutritional risk. A nutritional risk evaluation of such a woman shall be completed not later than 60 days after the woman is certified for participation. If it is subsequently determined that the woman does not meet nutritional risk criteria, the certification of the woman shall terminate on the date of the determination.

(C) PHYSICAL PRESENCE.—

(i) IN GENERAL.—Except as provided in clause (ii) and subject to the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 794 of title 29, each individual seeking certification or recertification for participation in the program shall be physically present at each certification or recertification determination in order to determine eligibility under the program.

(ii) WAIVERS.—If the agency determines that the requirement of clause (i) would present an unreasonable barrier to participation, a local agency may waive the requirement of clause (i) with respect to—

(I) an infant or child who—

(aa) was present at the initial certification visit; and

(bb) is receiving ongoing health care;

(II) an infant or child who—

(aa) was present at the initial certification visit;

(bb) was present at a certification or recertification determination within the 1-year period ending on the date of the certification or recertification determination described in clause (i); and

(cc) has one or more parents who work; and

(III) an infant under 8 weeks of age—

(aa) who cannot be present at certification for a reason determined appropriate by the local agency; and

(bb) for whom all necessary certification information is provided.

(D) INCOME DOCUMENTATION.—

(i) IN GENERAL.—Except as provided in clause (ii), in order to participate in the program pursuant to clause (i) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of family income.

(ii) WAIVERS.—A State agency may waive the documentation requirement of clause (i), in accordance with criteria established by the Secretary, with respect to—

(I) an individual for whom the necessary documentation is not available; or

(II) an individual, such as a homeless woman or child, for whom the agency determines the requirement of clause (i) would present an unreasonable barrier to participation.

(E) ADJUNCT DOCUMENTATION.—In order to participate in the program pursuant to clause (ii) or (iii) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of receipt of assistance described in that clause.

(F) PROOF OF RESIDENCY.—An individual residing in a remote Indian or Native village or an individual served by an Indian tribal organization and residing on a reservation or pueblo may, under standards established by the Secretary, establish proof of residency under this section by providing to the State agency the mailing address of the individual and the name of the remote Indian or Native village.

(e) Nutrition education and drug abuse education

(1) The State agency shall ensure that nutrition education and drug abuse education is provided to all pregnant, postpartum, and breastfeeding participants in the program and to parents or caretakers of infant and child participants in the program. The State agency may also provide nutrition education and drug abuse education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children enrolled at local agencies operating the program under this section who do not participate in the program. A local agency participating in the program shall provide education or educational materials relating to the effects of drug and alcohol use by a pregnant, postpartum, or breastfeeding woman on the developing child of the woman.

(2) The Secretary shall prescribe standards to ensure that adequate nutrition education services and breastfeeding promotion and support are provided. The State agency shall provide training to persons providing nutrition education under this section.

(3) NUTRITION EDUCATION MATERIALS.—

(A) IN GENERAL.—The Secretary shall, after submitting proposed nutrition education materials to the Secretary of Health and Human Services for comment, issue such materials for use in the program under this section.

(B) SHARING OF MATERIALS.—The Secretary may provide, in bulk quantity, nutrition education materials (including materials promoting breastfeeding) developed with funds made available for the program authorized under this section to State agencies administering the commodity supplemental food program authorized under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note; Public Law 93–86) at no cost to that program.

(4) The State agency—

(A) shall provide each local agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 5 under the medical assistance program established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (in this section referred to as the ''medicaid program'');

(B) shall provide to individuals applying for the program under this section, or reapplying at the end of their certification period, written information about the medicaid program and referral to such program or to agencies authorized to determine presumptive eligibility for such program, if such individuals are not participating in such program and appear to have family income below the applicable maximum income limits for such program; and

(C) may provide a local agency with materials describing other programs for which a participant in the program may be eligible.

(5) Each local agency shall maintain and make available for distribution a list of local resources for substance abuse counseling and treatment.

(f) Plan of operation and administration by State agency

(1)(A) Each State agency shall submit to the Secretary, by a date specified by the Secretary, an initial plan of operation and administration for a fiscal year. After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.

(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

(C) The plan shall include—

(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program at any of the authorized retail stores under the program, to be administered in accordance with standards developed by the Secretary, including a description of the State agency's vendor peer group system, competitive price criteria, and allowable reim-

bursement levels that demonstrate that the State is in compliance with the cost-containment provisions in subsection (h)(11) of this section;

(ii) procedures for accepting and processing vendor applications outside of the established timeframes if the State agency determines there will be inadequate access to the program, including in a case in which a previously authorized vendor sells a store under circumstances that do not permit timely notification to the State agency of the change in ownership;

(iii) a description of the financial management system of the State agency;

(iv) a plan to coordinate operations under the program with other services or programs that may benefit participants in, and applicants for, the program;

(v) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants, homeless individuals, and Indians;

(vi) a plan to expend funds to carry out the program during the relevant fiscal year;

(vii) a plan to provide program benefits under this section to unserved and underserved areas in the State (including a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas), if sufficient funds are available to carry out this clause;

(viii) a plan for reaching and enrolling eligible women in the early months of pregnancy, including provisions to reach and enroll eligible migrants;

(ix) a plan to provide program benefits under this section to unserved infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally;

(x) a plan to provide nutrition education and promote breastfeeding; and

(xi) such other information as the Secretary may reasonably require.

(D) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).

(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.

(3) The Secretary shall establish procedures under which eligible migrants may, to the maximum extent feasible, continue to participate in the program under this section when they are present in States other than the State in which they were originally certified for participation in the program and shall ensure that local programs provide priority consideration to serving migrant participants who are residing in the State for a limited period of time. Each State agency shall be responsible for administering the program for migrant populations within its jurisdiction.

(4) State agencies shall submit monthly financial reports and participation data to the Secretary.

(5) State and local agencies operating under the program shall keep such accounts and records, including medical records, as may be necessary to enable the Secretary to determine whether there has been compliance with this section and to determine and evaluate the benefits of the nutritional assistance provided under this section. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(6)(A) Local agencies participating in the program under this section shall notify persons of their eligibility or ineligibility for the program within twenty days of the date that the household, during office hours of a local agency, personally makes an oral or written request to participate in the program. The Secretary shall establish a shorter notification period for categories of persons who, due to special nutritional risk conditions, must receive benefits more expeditiously.

(B) State agencies may provide for the delivery of vouchers to any participant who is not scheduled for nutrition education counseling or a recertification interview through means, such as mailing, that do not require the participant to travel to the local agency to obtain vouchers. The State agency shall describe any plans for issuance of vouchers by mail in its plan submitted under paragraph (1). The Secretary may disapprove a State plan with respect to the issuance of vouchers by mail in any specified jurisdiction or part of a jurisdiction within a State only if the Secretary finds that such issuance would pose a significant threat to the integrity of the program under this section in such jurisdiction or part of a jurisdiction.

(7)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible individuals (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, organizations and agencies serving homeless individuals and shelters for victims of domestic violence, and religious and community organizations in low income areas).

(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible individuals who are most in need of the benefits, including pregnant women in the early months of pregnancy.

(D) Each local agency operating the program within a hospital and each local agency operating the program that has a cooperative arrangement with a hospital shall—

(i) advise potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or accompany a child under the age of 5 who receives well-child services, of the availability of program benefits; and

(ii) to the extent feasible, provide an opportunity for individuals who may be eligible to be certified within the hospital for participation in such program.

(8)(A) The State agency shall grant a fair hearing, and a prompt determination thereafter, in accordance with regulations issued by the Secretary, to any applicant, participant, or local agency aggrieved by the action of a State or local agency as it affects participation.

(B) Any State agency that must suspend or terminate benefits to any participant during the participant's certification period due to a shortage of funds for the program shall first issue a notice to such participant.

(9) If an individual certified as eligible for participation in the program under this section in one area moves to another area in which the program is operating, that individual's certification of eligibility shall remain valid for the period for which the individual was originally certified.

(10) The Secretary shall establish standards for the proper, efficient, and effective administration of the program. If the Secretary determines that a State agency has failed without good cause to administer the program in a manner consistent with this section or to implement the approved plan of operation and administration under this subsection, the Secretary may withhold such amounts of the State agency's funds for nutrition services and administration as the Secretary deems appropriate. Upon correction of such failure during a fiscal year by a State agency, any funds so withheld for such fiscal year shall be provided the State agency.

(11) SUPPLEMENTAL FOODS.—

(A) IN GENERAL.—The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section.

(B) APPROPRIATE CONTENT.—To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is appropriate.

(C) ALLOWABLE USE OF FUNDS.—Subject to the availability of funds, the Secretary shall award grants to not more than 10 local sites determined by the Secretary to be geographically and culturally representative of State, local, and Indian agencies, to evaluate the feasibility of including fresh, frozen, or canned fruits and vegetables (to be made available through private funds) as an addition to the supplemental foods prescribed under this section.

(D) REVIEW OF AVAILABLE SUPPLEMENTAL FOODS.—As frequently as determined by the Secretary to be necessary to reflect the most recent scientific knowledge, the Secretary shall—

(i) conduct a scientific review of the supplemental foods available under the program; and

(ii) amend the supplemental foods available, as necessary, to reflect nutrition science, public health concerns, and cultural eating patterns.

(12) A competent professional authority shall be responsible for prescribing the appropriate supplemental foods, taking into account medical and nutritional conditions and cultural eating patterns, and, in the case of homeless individuals, the special needs and problems of such individuals.

(13) The State agency may (A) provide nutrition education, breastfeeding promotion, and drug abuse education materials and instruction in languages other than English and (B) use appropriate foreign language materials in the administration of the program, in areas in which a substantial number of low-income households speak a language other than English.

(14) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.

(15) To be eligible to participate in the program authorized by this section, a manufacturer of infant formula that supplies formula for the program shall—

(A) register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]; and

(B) before bidding for a State contract to supply infant formula for the program, certify with the State health department that the formula complies with such Act and regulations issued pursuant to such Act.

(16) The State agency may adopt methods of delivering benefits to accommodate the special needs and problems of homeless individuals.

(17) Notwithstanding subsection (d)(2)(A)(i) of this section, not later than July 1 of each year, a State agency may implement income eligibility guidelines under this section concurrently with the implementation of income eligibility guidelines under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(18) Each local agency participating in the program under this section may provide information about other potential sources of food assistance in the local area to individuals who apply in person to participate in the program under this section, but who cannot be served because the program is operating at capacity in the local area.

(19) The State agency shall adopt policies that—

(A) require each local agency to attempt to contact each pregnant woman who misses an appointment to apply for participation in the program under this section, in order to reschedule the appointment, unless the phone number and the address of the woman are unavailable to such local agency; and

(B) in the case of local agencies that do not routinely schedule appointments for individ-

uals seeking to apply or be recertified for participation in the program under this section, require each such local agency to schedule appointments for each employed individual seeking to apply or be recertified for participation in such program so as to minimize the time each such individual is absent from the workplace due to such application or request for recertification.

(20) Each State agency shall conduct monitoring reviews of each local agency at least biennially.

(21) USE OF CLAIMS FROM LOCAL AGENCIES, VENDORS, AND PARTICIPANTS.—A State agency may use funds recovered from local agencies, vendors, and participants, as a result of a claim arising under the program, to carry out the program during—

(A) the fiscal year in which the claim arises;

(B) the fiscal year in which the funds are collected; and

(C) the fiscal year following the fiscal year in which the funds are collected.

(22) The Secretary and the Secretary of Health and Human Services shall carry out an initiative to assure that, in a case in which a State medicaid program uses coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)), coordination between the program authorized by this section and the medicaid program is continued, including—

(A) the referral of potentially eligible women, infants, and children between the 2 programs; and

(B) the timely provision of medical information related to the program authorized by this section to agencies carrying out the program.

(23) INDIVIDUALS PARTICIPATING AT MORE THAN ONE SITE.—Each State agency shall implement a system designed by the State agency to identify individuals who are participating at more than one site under the program.

(24) HIGH RISK VENDORS.—Each State agency shall—

(A) identify vendors that have a high probability of program abuse; and

(B) conduct compliance investigations of the vendors.

(25) INFANT FORMULA BENEFITS.—A State agency may round up to the next whole can of infant formula to allow all participants under the program to receive the full-authorized nutritional benefit specified by regulation.

(26) NOTIFICATION OF VIOLATIONS.—If a State agency finds that a vendor has committed a violation that requires a pattern of occurrences in order to impose a penalty or sanction, the State agency shall notify the vendor of the initial violation in writing prior to documentation of another violation, unless the State agency determines that notifying the vendor would compromise an investigation.

(g) Authorization of appropriations

(1) IN GENERAL.—

(A) AUTHORIZATION.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2004 through 2009.

(B) ADVANCE APPROPRIATIONS; AVAILABILITY.—As authorized by section 1752 of this title, appropriations to carry out the provisions of this section may be made not more than 1 year in advance of the beginning of the fiscal year in which the funds will become available for disbursement to the States, and shall remain available for the purposes for which appropriated until expended.

(2)(A) Notwithstanding any other provision of law, unless enacted in express limitation of this subparagraph, the Secretary—

(i) in the case of legislation providing funds through the end of a fiscal year, shall issue—

(I) an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 15-day period beginning on the date of the enactment of such legislation; and

(II) subsequent allocations of funds provided by the enactment of such legislation not later than the beginning of each of the second, third, and fourth quarters of the fiscal year; and

(ii) in the case of legislation providing funds for a period that ends prior to the end of a fiscal year, shall issue an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 10-day period beginning on the date of the enactment of such legislation.

(B) In any fiscal year—

(i) unused amounts from a prior fiscal year that are identified by the end of the first quarter of the fiscal year shall be recovered and reallocated not later than the beginning of the second quarter of the fiscal year; and

(ii) unused amounts from a prior fiscal year that are identified after the end of the first quarter of the fiscal year shall be recovered and reallocated on a timely basis.

(3) Notwithstanding any other provision of law, unless enacted in express limitation of this paragraph—

(A) the allocation of funds required by paragraph (2)(A)(i)(I) shall include not less than ⅓ of the amounts appropriated by the legislation described in such paragraph;

(B) the allocations of funds required by paragraph (2)(A)(i)(II) to be made not later than the beginning of the second and third quarters of the fiscal year shall each include not less than ¼ of the amounts appropriated by the legislation described in such paragraph; and

(C) in the case of the enactment of legislation providing appropriations for a period of not more than 4 months, the allocation of funds required by paragraph (2)(A)(ii) shall include all amounts appropriated by such legislation except amounts reserved by the Secretary for purposes of carrying out paragraph (5).

(4) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.

(5) Of the sums appropriated for any fiscal year for the program under this section, one-half of 1 percent, not to exceed $5,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, preparing reports on program participant characteristics, providing technical assistance to improve State agency administrative systems, administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations, and carrying out technical assistance and research evaluation projects of the programs under this section.

(h) Funds for nutrition services and administration

(1)(A) Each fiscal year, the Secretary shall make available, from amounts appropriated for such fiscal year under subsection (g)(1) of this section and amounts remaining from amounts appropriated under such subsection for the preceding fiscal year, an amount sufficient to guarantee a national average per participant grant to be allocated among State agencies for costs of nutrition services and administration incurred by State and local agencies for such year.

(B)(i) The amount of the national average per participant grant for nutrition services and administration for any fiscal year shall be an amount equal to the amount of the national average per participant grant for nutrition services and administration issued for the preceding fiscal year, as adjusted.

(ii) Such adjustment, for any fiscal year, shall be made by revising the national average per participant grant for nutrition services and administration for the preceding fiscal year to reflect the percentage change between—

(I) the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(II) the best estimate that is available as of the start of the fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year.

(C) REMAINING AMOUNTS.—

(i) IN GENERAL.—Except as provided in clause (ii), in any fiscal year, amounts remaining from amounts appropriated for such fiscal year under subsection (g)(1) of this section and from amounts appropriated under such section for the preceding fiscal year, after carrying out subparagraph (A), shall be made available for food benefits under this section, except to the extent that such amounts are needed to carry out the purposes of subsections (g)(4) and (g)(5) of this section.

(ii) BREAST PUMPS.—A State agency may use amounts made available under clause (i) for the purchase of breast pumps.

(2)(A) The Secretary shall allocate to each State agency from the amount described in paragraph (1)(A) an amount for costs of nutrition services and administration on the basis of a formula prescribed by the Secretary. Such formula—

(i) shall be designed to take into account—

(I) the varying needs of each State;

(II) the number of individuals participating in each State; and

(III) other factors which serve to promote the proper, efficient, and effective administration of the program under this section;

(ii) shall provide for each State agency—

(I) an estimate of the number of participants for the fiscal year involved; and

(II) a per participant grant for nutrition services and administration for such year;

(iii) shall provide for a minimum grant amount for State agencies; and

(iv) may provide funds to help defray reasonable anticipated expenses associated with innovations in cost containment or associated with procedures that tend to enhance competition.

(B)(i) Except as provided in clause (ii) and subparagraph (C), in any fiscal year, the total amount allocated to a State agency for costs of nutrition services and administration under the formula prescribed by the Secretary under subparagraph (A) shall constitute the State agency's operational level for such costs for such year even if the number of participants in the program at such agency is lower than the estimate provided under subparagraph (A)(ii)(I).

(ii) If a State agency's per participant expenditure for nutrition services and administration is more than 10 percent (except that the Secretary may establish a higher percentage for State agencies that are small) higher than its per participant grant for nutrition services and administration without good cause, the Secretary may reduce such State agency's operational level for costs of nutrition services and administration.

(C) In any fiscal year, the Secretary may reallocate amounts provided to State agencies under subparagraph (A) for such fiscal year. When reallocating amounts under the preceding sentence, the Secretary may provide additional amounts to, or recover amounts from, any State agency.

(3)(A) Except as provided in subparagraphs (B) and (C), in each fiscal year, each State agency shall expend—

(i) for nutrition education activities and breastfeeding promotion and support activities, an aggregate amount that is not less than the sum of—

(I) ⅙ of the amounts expended by the State for costs of nutrition services and administration; and

(II) except as otherwise provided in subparagraphs (F) and (G), an amount equal to a proportionate share of the national minimum breastfeeding promotion expenditure, as described in subparagraph (E), with each State's share determined on the basis of the number of pregnant women and breastfeeding women in the program in the State as a percentage of the number of pregnant women and breastfeeding women in the program in all States; and

(ii) for breastfeeding promotion and support activities an amount that is not less than the amount determined for such State under clause (i)(II).

(B) The Secretary may authorize a State agency to expend an amount less than the amount described in subparagraph (A)(ii) for purposes of breastfeeding promotion and support activities if—

(i) the State agency so requests; and

(ii) the request is accompanied by documentation that other funds will be used to conduct nutrition education activities at a level commensurate with the level at which such activities would be conducted if the amount described in subparagraph (A)(ii) were expended for such activities.

(C) The Secretary may authorize a State agency to expend for purposes of nutrition education an amount that is less than the difference between the aggregate amount described in subparagraph (A) and the amount expended by the State for breastfeeding promotion and support programs if—

(i) the State agency so requests; and

(ii) the request is accompanied by documentation that other funds will be used to conduct such activities.

(D) The Secretary shall limit to a minimal level any documentation required under this paragraph.

(E) For each fiscal year, the national minimum breastfeeding promotion expenditure means an amount that is—

(i) equal to $21 multiplied by the number of pregnant women and breastfeeding women participating in the program nationwide, based on the average number of pregnant women and breastfeeding women so participating during the last 3 months for which the Secretary has final data; and

(ii) adjusted for inflation on October 1, 1996, and each October 1 thereafter, in accordance with paragraph (1)(B)(ii).

(4) The Secretary shall—

(A) in consultation with the Secretary of Health and Human Services, develop a definition of breastfeeding for the purposes of the program under this section;

(B) authorize the purchase of breastfeeding aids by State and local agencies as an allowable expense under nutrition services and administration;

(C) require each State agency to designate an agency staff member to coordinate breastfeeding promotion efforts identified in the State plan of operation and administration;

(D) require the State agency to provide training on the promotion and management of breastfeeding to staff members of local agencies who are responsible for counseling participants in the program under this section concerning breastfeeding;

(E) not later than 1 year after November 2, 1994, develop uniform requirements for the collection of data regarding the incidence and duration of breastfeeding among participants in the program; and

(F) partner with communities, State and local agencies, employers, health care professionals, and other entities in the private sector to build a supportive breastfeeding environment for women participating in the program under this section to support the breastfeeding goals of the Healthy People 2010 initiative.

(5)(A) Subject to subparagraph (B), in any fiscal year that a State agency submits a plan to reduce average food costs per participant and to increase participation above the level estimated for the State agency, the State agency may, with the approval of the Secretary, convert amounts allocated for food benefits for such fiscal year for costs of nutrition services and administration to the extent that such conversion is necessary—

(i) to cover allowable expenditures in such fiscal year; and

(ii) to ensure that the State agency maintains the level established for the per participant grant for nutrition services and administration for such fiscal year.

(B) If a State agency increases its participation level through measures that are not in the nutritional interests of participants or not otherwise allowable (such as reducing the quantities of foods provided for reasons not related to nutritional need), the Secretary may refuse to allow the State agency to convert amounts allocated for food benefits to defray costs of nutrition services and administration.

(C) For the purposes of this paragraph, the term ''acceptable measures'' includes use of cost containment measures, curtailment of vendor abuse, and breastfeeding promotion activities.

(D) REMOTE INDIAN OR NATIVE VILLAGES.—For noncontiguous States containing a significant number of remote Indian or Native villages, a State agency may convert amounts allocated for food benefits for a fiscal year to the costs of nutrition services and administration to the extent that the conversion is necessary to cover expenditures incurred in providing services (including the full cost of air transportation and other transportation) to remote Indian or Native villages and to provide breastfeeding support in remote Indian or Native villages.

(6) In each fiscal year, each State agency shall provide, from the amounts allocated to such agency for such year for costs of nutrition services and administration, an amount to each local agency for its costs of nutrition services and administration. The amount to be provided to each local agency under the preceding sentence shall be determined under allocation standards developed by the State agency in cooperation with the several local agencies, taking into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as—

(A) local agency staffing needs;

(B) density of population;

(C) number of individuals served; and

(D) availability of administrative support from other sources.

(7) The State agency may provide in advance to any local agency any amounts for nutrition services and administration deemed necessary for successful commencement or significant expansion of program operations during a reasonable period following approval of—

(A) a new local agency;

(B) a new cost containment measure; or

(C) a significant change in an existing cost containment measure.

(8)(A)(i) Except as provided in subparagraphs (B) and (C)(iii), any State that provides for the purchase of foods under the program at retail grocery stores shall, with respect to the procurement of infant formula, use—

(I) a competitive bidding system; or

(II) any other cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system when such savings are determined by comparing the amounts of savings that would be provided over the full term of contracts offered in response to a single invitation to submit both competitive bids and bids for other cost containment systems for the sale of infant formula.

(ii) In determining whether a cost containment measure other than competitive bidding yields equal or greater savings, the State, in accordance with regulations issued by the Secretary, may take into account other cost factors (in addition to rebate levels and procedures for adjusting rebate levels when wholesale price levels change), such as—

(I) the number of infants who would not be expected to receive the primary contract infant formula under a competitive bidding system;

(II) the number of cans of infant formula for which no rebate would be provided under another rebate system; and

(III) differences in administrative costs relating to the implementation of the various cost containment systems (such as costs of converting a computer system for the purpose of operating a cost containment system and costs of preparing participants for conversion to a new or alternate cost containment system).

(iii) COMPETITIVE BIDDING SYSTEM.—A State agency using a competitive bidding system for infant formula shall award contracts to bidders offering the lowest net price for a specific infant formula for which manufacturers submit a bid unless the State agency demonstrates to the satisfaction of the Secretary that the weighted average retail price for different brands of infant formula in the State does not vary by more than 5 percent.

(iv) SIZE OF STATE ALLIANCES.—

(I) IN GENERAL.—Except as provided in subclauses (II) through (IV), no State alliance may exist among States if the total number of infants served by States participating in the alliance as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, would exceed 100,000.

(II) ADDITION OF INFANT PARTICIPANTS.—In the case of a State alliance that exists on June 30, 2004, the alliance may continue and may expand to serve more than 100,000 infants but, except as provided in subclause (III), may not expand to include any additional State agency.

(III) ADDITION OF SMALL STATE AGENCIES AND INDIAN STATE AGENCIES.—Any State alliance may expand to include any State agency that served less than 5,000 infant participants as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, or any Indian State agency, if the State agency or Indian State agency requests to join the State alliance.

(IV) SECRETARIAL WAIVER.—The Secretary may waive the requirements of this clause not earlier than 30 days after submitting to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a written report that describes the cost-containment and competitive benefits of the proposed waiver.

(v) FIRST CHOICE OF ISSUANCE.—The State agency shall use the primary contract infant formula as the first choice of issuance (by formula type), with all other infant formulas issued as an alternative to the primary contract infant formula.

(vi) REBATE INVOICES.—Effective beginning October 1, 2004, each State agency shall have a system to ensure that infant formula rebate invoices, under competitive bidding, provide a reasonable estimate or an actual count of the number of units sold to participants in the program under this section.

(vii) SEPARATE SOLICITATIONS.—In soliciting bids for infant formula under a competitive bidding system, any State agency, or State alliance, that served under the program a monthly average of more than 100,000 infants during the preceding 12-month period shall solicit bids from infant formula manufacturers under procedures that require that bids for rebates or discounts are solicited for milk-based and soy-based infant formula separately.

(viii) CENT-FOR-CENT ADJUSTMENTS.—A bid solicitation for infant formula under the program shall require the manufacturer to adjust for price changes subsequent to the opening of the bidding process in a manner that requires—

(I) a cent-for-cent increase in the rebate amounts if there is an increase in the lowest national wholesale price for a full truckload of the particular infant formula; and

(II) a cent-for-cent decrease in the rebate amounts if there is a decrease in the lowest national wholesale price for a full truckload of the particular infant formula.

(ix) LIST OF INFANT FORMULA WHOLESALERS, DISTRIBUTORS, RETAILERS, AND MANUFACTURERS.—The State agency shall maintain a list of—

(I) infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations); and

(II) infant formula manufacturers registered with the Food and Drug Administration that provide infant formula.

(x) PURCHASE REQUIREMENT.—A vendor authorized to participate in the program under this section shall only purchase infant formula from the list described in clause (ix).

(B)(i) The Secretary shall waive the requirement of subparagraph (A) in the case of any State that demonstrates to the Secretary that—

(I) compliance with subparagraph (A) would be inconsistent with efficient or effective operation of the program operated by such State under this section; or

(II) the amount by which the savings yielded by an alternative cost containment system would be less than the savings yielded by a competitive bidding system is sufficiently minimal that the difference is not significant.

(ii) The Secretary shall prescribe criteria under which a waiver may be granted pursuant to clause (i).

(iii) The Secretary shall provide information on a timely basis to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on waivers that have been granted under clause (i).

(C)(i) The Secretary shall provide technical assistance to small Indian State agencies carrying out this paragraph in order to assist such agencies to achieve the maximum cost containment savings feasible.

(ii) The Secretary shall also provide technical assistance, on request, to State agencies that desire to consider a cost containment system that covers more than 1 State agency.

(iii) The Secretary may waive the requirement of subparagraph (A) in the case of any Indian State agency that has not more than 1,000 participants.

(D) No State may enter into a cost containment contract (in this subparagraph referred to as the ''original contract'') that prescribes conditions that would void, reduce the savings under, or otherwise limit the original contract if the State solicited or secured bids for, or entered into, a subsequent cost containment contract to take effect after the expiration of the original contract.

(E) The Secretary shall offer to solicit bids on behalf of State agencies regarding cost-containment contracts to be entered into by infant formula manufacturers and State agencies. The Secretary shall make the offer to State agencies once every 12 months. Each such bid solicitation shall only take place if two or more State agencies request the Secretary to perform the solicitation. For such State agencies, the Secretary shall solicit bids and select the winning bidder for a cost containment contract to be entered into by State agencies and infant formula manufacturers or suppliers.

(F) In soliciting bids for contracts for infant formula for the program authorized by this section, the Secretary shall solicit bids from infant formula manufacturers under procedures in which bids for rebates or discounts are solicited for milk-based and soy-based infant formula, separately, except where the Secretary determines that such solicitation procedures are not in the best interest of the program.

(G) To reduce the costs of any supplemental foods, the Secretary may make available additional funds to State agencies out of the funds otherwise available under paragraph (1)(A) for nutrition services and administration in an amount not exceeding one half of 1 percent of the amounts to help defray reasonable anticipated expenses associated with innovations in cost containment or associated with procedures that tend to enhance competition.

(H)(i) Any person, company, corporation, or other legal entity that submits a bid to supply infant formula to carry out the program authorized by this section and announces or otherwise discloses the amount of the bid, or the rebate or discount practices of such entities, in advance of the time the bids are opened by the Secretary or the State agency, or any person, company, corporation, or other legal entity that makes a statement (prior to the opening of bids) relating to levels of rebates or discounts, for the purpose of influencing a bid submitted by any other person, shall be ineligible to submit bids to supply infant formula to the program for the bidding in progress for up to 2 years from the date the bids are opened and shall be subject to a civil penalty of up to $100,000,000, as determined by the Secretary to provide restitution to the program for harm done to the program. The Secretary shall issue regulations providing such person, company, corporation, or other legal entity appropriate notice, and an opportunity to be heard and to respond to charges.

(ii) The Secretary shall determine the length of the disqualification, and the amount of the civil penalty referred to in clause (i) based on such factors as the Secretary by regulation determines appropriate.

(iii) Any person, company, corporation, or other legal entity disqualified under clause (i) shall remain obligated to perform any requirements under any contract to supply infant formula existing at the time of the disqualification and until each such contract expires by its terms.

(I) Not later than the expiration of the 180-day period beginning on October 24, 1992, the Secretary shall prescribe regulations to carry out this paragraph.

(J) A State shall not incur any interest liability to the Federal Government on rebate funds for infant formula and other foods if all interest earned by the State on the funds is used for program purposes.

(9) For purposes of this subsection, the term ''cost containment measure'' means a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in its approved plan of operation and administration.

(10) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—

(A) IN GENERAL.—For each of fiscal years 2006 through 2009, the Secretary shall use for the purposes specified in subparagraph (B), $64,000,000 or the amount of nutrition services and administration funds and supplemental food funds for the prior fiscal year that have not been obligated, whichever is less.

(B) PURPOSES.—Of the amount made available under subparagraph (A) for a fiscal year, not more than—

(i) $14,000,000 shall be used for—

(I) infrastructure for the program under this section;

(II) special projects to promote breastfeeding, including projects to assess the effectiveness of particular breastfeeding promotion strategies; and

(III) special State projects of regional or national significance to improve the services of the program;

(ii) $30,000,000 shall be used to establish, improve, or administer management infor-

mation systems for the program, including changes necessary to meet new legislative or regulatory requirements of the program; and

(iii) $20,000,000 shall be used for special nutrition education such as breast feeding peer counselors and other related activities.

(C) PROPORTIONAL DISTRIBUTION.—In a case in which less than $64,000,000 is available to carry out this paragraph, the Secretary shall make a proportional distribution of funds allocated under subparagraph (B).

(11) VENDOR COST CONTAINMENT.—

(A) PEER GROUPS.—

(i) IN GENERAL.—The State agency shall—

(I) establish a vendor peer group system;

(II) in accordance with subparagraphs (B) and (C), establish competitive price criteria and allowable reimbursement levels for each vendor peer group; and

(III) if the State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I)—

(aa) distinguish between vendors described in subparagraph (D)(ii)(I) and other vendors by establishing—

(AA) separate peer groups for vendors described in subparagraph (D)(ii)(I); or

(BB) distinct competitive price criteria and allowable reimbursement levels for vendors described in subparagraph (D)(ii)(I) within a peer group that contains both vendors described in subparagraph (D)(ii)(I) and other vendors; and

(bb) establish competitive price criteria and allowable reimbursement levels that comply with subparagraphs (B) and (C), respectively, and that do not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

Nothing in this paragraph shall be construed to compel a State agency to achieve lower food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

(ii) EXEMPTIONS.—The Secretary may exempt from the requirements of clause (i)—

(I) a State agency that elects not to authorize any types of vendors described in subparagraph (D)(ii)(I) and that demonstrates to the Secretary that—

(aa) compliance with clause (i) would be inconsistent with efficient and effective operation of the program administered by the State under this section; or

(bb) an alternative cost-containment system would be as effective as a vendor peer group system; or

(II) a State agency—

(aa) in which the sale of supplemental foods that are obtained with food instruments from vendors described in subparagraph (D)(ii)(I) constituted less than 5 percent of total sales of supplemental foods that were obtained with food instruments in the State in the year preceding a year in which the exemption is effective; and

(bb) that demonstrates to the Secretary that an alternative cost-containment system would be as effective as the vendor peer group system and would not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

(B) COMPETITIVE PRICING.—

(i) IN GENERAL.—The State agency shall establish competitive price criteria for each peer group for the selection of vendors for participation in the program that—

(I) ensure that the retail prices charged by vendor applicants for the program are competitive with the prices charged by other vendors; and

(II) consider—

(aa) the shelf prices of the vendor for all buyers; or

(bb) the prices that the vendor bid for supplemental foods, which shall not exceed the shelf prices of the vendor for all buyers.

(ii) PARTICIPANT ACCESS.—In establishing competitive price criteria, the State agency shall consider participant access by geographic area.

(iii) SUBSEQUENT PRICE INCREASES.—The State agency shall establish procedures to ensure that a retail store selected for participation in the program does not, subsequent to selection, increase prices to levels that would make the store ineligible for selection to participate in the program.

(C) ALLOWABLE REIMBURSEMENT LEVELS.—

(i) IN GENERAL.—The State agency shall establish allowable reimbursement levels for supplemental foods for each vendor peer group that ensure—

(I) that payments to vendors in the vendor peer group reflect competitive retail prices; and

(II) that the State agency does not reimburse a vendor for supplemental foods at a level that would make the vendor ineligible for authorization under the criteria established under subparagraph (B).

(ii) PRICE FLUCTUATIONS.—The allowable reimbursement levels may include a factor to reflect fluctuations in wholesale prices.

(iii) PARTICIPANT ACCESS.—In establishing allowable reimbursement levels, the State agency shall consider participant access in a geographic area.

(D) EXEMPTIONS.—The State agency may exempt from competitive price criteria and allowable reimbursement levels established under this paragraph—

(i) pharmacy vendors that supply only exempt infant formula or medical foods that are eligible under the program; and

(ii) vendors—

(I)(aa) for which more than 50 percent of the annual revenue of the vendor from the sale of food items consists of revenue from the sale of supplemental foods that are obtained with food instruments; or

(bb) who are new applicants likely to meet the criteria of item (aa) under criteria approved by the Secretary; and

(II) that are nonprofit.

(E) COST CONTAINMENT.—If a State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I), the State agency shall demonstrate to the Secretary, and the Secretary shall certify, that the competitive price criteria and allowable reimbursement levels established under this paragraph for vendors described in subparagraph (D)(ii)(I) do not result in average payments per voucher to vendors described in subparagraph (D)(ii)(I) that are higher than average payments per voucher to comparable vendors other than vendors described in subparagraph (D)(ii)(I).

(F) LIMITATION ON PRIVATE RIGHTS OF ACTION.—Nothing in this paragraph may be construed as creating a private right of action.

(G) IMPLEMENTATION.—A State agency shall comply with this paragraph not later than 18 months after June 30, 2004.

(12) IMPOSITION OF COSTS ON RETAIL STORES.—The Secretary may not impose, or allow a State agency to impose, the costs of any equipment, system, or processing required for electronic benefit transfers on any retail store authorized to transact food instruments, as a condition for authorization or participation in the program.

(13) UNIVERSAL PRODUCT CODES DATABASE.—The Secretary shall—

(A) establish a national universal product code database for use by all State agencies in carrying out the program; and

(B) make available from appropriated funds such sums as are required for hosting, hardware and software configuration, and support of the database.

(14) INCENTIVE ITEMS.—A State agency shall not authorize or make payments to a vendor described in paragraph (11)(D)(ii)(I) that provides incentive items or other free merchandise, except food or merchandise of nominal value (as determined by the Secretary), to program participants unless the vendor provides to the State agency proof that the vendor obtained the incentive items or merchandise at no cost.

(i) Division of funds formula; reallocation of unspent funds; use of State allocation to buy supplemental foods; use of amounts available for succeeding fiscal year

(1) By the beginning of each fiscal year, the Secretary shall divide, among the State agencies, the amounts made available for food benefits under subsection (h)(1)(C) of this section on the basis of a formula determined by the Secretary.

(2) Each State agency's allocation, as so determined, shall constitute the State agency's authorized operational level for that year, except that the Secretary shall reallocate funds periodically if the Secretary determines that a State agency is unable to spend its allocation.

(3)(A) Notwithstanding paragraph (2) and subject to subparagraph (B)—

(i)(I) not more than 1 percent (except as provided in subparagraph (C)) of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods during the preceding fiscal year; and

(II) not more than 1 percent of the amount of funds allocated to a State agency under this section for nutrition services and administration for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods and nutrition services and administration during the preceding fiscal year; and

(ii)(I) for each fiscal year, of the amounts allocated to a State agency for nutrition services and administration, an amount equal to not more than 3 percent of the amount allocated to the State agency under this section for the fiscal year may be expended by the State agency for allowable expenses incurred under this section for nutrition services and administration during the subsequent fiscal year; and

(II) for each fiscal year, of the amounts allocated to a State agency for nutrition services and administration, an amount equal to not more than ½ of 1 percent of the amount allocated to the State agency under this section for the fiscal year may be expended by the State agency, with the prior approval of the Secretary, for the development of a management information system, including an electronic benefit transfer system, during the subsequent fiscal year.

(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.

(C) The Secretary may authorize a State agency to expend not more than 3 percent of the amount of funds allocated to a State under this section for supplemental foods for a fiscal year for expenses incurred under this section for supplemental foods during the preceding fiscal year, if the Secretary determines that there has been a significant reduction in infant formula cost containment savings provided to the State agency that would affect the ability of the State agency to at least maintain the level of participation by eligible participants served by the State agency.

(4) For purposes of the formula, if Indians are served by the health department of a State, the formula shall be based on the State population inclusive of the Indians within the State boundaries.

(5) If Indians residing in the State are served by a State agency other than the health department of the State, the population of the tribes within the jurisdiction of the State being so served shall not be included in the formula for such State, and shall instead be included in the formula for the State agency serving the Indians.

(6) Notwithstanding any other provision of this section, the Secretary may use a portion of a State agency's allocation to purchase supplemental foods for donation to the State agency under this section.

(7) In addition to any amounts expended under paragraph (3)(A)(i), any State agency using cost containment measures as defined in subsection (h)(9) of this section may temporarily use amounts made available to such agency for the first quarter of a fiscal year to defray expenses for costs incurred during the final quarter of the preceding fiscal year. In any fiscal year, any State agency that uses amounts made available for a succeeding fiscal year under the authority of the preceding sentence shall restore or reimburse such amounts when such agency receives payment as a result of its cost containment measures for such expenses.

(j) Initiative to provide program services at community and migrant health centers

(1) The Secretary and the Secretary of Health and Human Services (referred to in this subsection as the ''Secretaries'') shall jointly establish and carry out an initiative for the purpose of providing both supplemental foods and nutrition education under the special supplemental nutrition program and health care services to low-income pregnant, postpartum, and breastfeeding women, infants, and children at substantially more community health centers and migrant health centers.

(2) The initiative shall also include—

(A) activities to improve the coordination of the provision of supplemental foods and nutrition education under the special supplemental nutrition program and health care services at facilities funded by the Indian Health Service; and

(B) the development and implementation of strategies to ensure that, to the maximum extent feasible, new community health centers, migrant health centers, and other federally supported health care facilities established in medically underserved areas provide supplemental foods and nutrition education under the special supplemental nutrition program.

(3) The initiative may include—

(A) outreach and technical assistance for State and local agencies and the facilities described in paragraph (2)(A) and the health centers and facilities described in paragraph (2)(B);

(B) demonstration projects in selected State or local areas; and

(C) such other activities as the Secretaries find are appropriate.

(4) As used in this subsection:

(A) The term ''community health center'' has the meaning given the term in section 254c(a)[1] of this title.

(B) The term ''migrant health center'' has the meaning given the term in section 254b(a)(1)[1] of this title.

[1] See References in Text note below.

(k) National Advisory Council on Maternal, Infant, and Fetal Nutrition; establishment; membership; term; officers; meetings; quorum; technical assistance by Secretary

(1) There is hereby established a National Advisory Council on Maternal, Infant, and Fetal Nutrition (referred to in this subsection as the ''Council'') composed of 24 members appointed by the Secretary. One member shall be a State director of a program under this section; one member shall be a State official responsible for a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977; one member shall be a State fiscal officer of a program under this section (or the equivalent thereof); one member shall be a State health officer (or the equivalent thereof); one member shall be a local agency director of a program under this section in an urban area; one member shall be a local agency director of a program under this section in a rural area; one member shall be a project director of a commodity supplemental food program; one member shall be a State public health nutrition director (or the equivalent thereof); one member shall be a representative of an organization serving migrants; one member shall be an official from a State agency predominantly serving Indians; three members shall be parent participants of a program under this section or of a commodity supplemental food program; one member shall be a pediatrician; one member shall be an obstetrician; one member shall be a representative of a nonprofit public interest organization that has experience with and knowledge of the special supplemental nutrition program; one member shall be a person involved at the retail sales level of food in the special supplemental nutrition program; two members shall be officials of the Department of Health and Human Services appointed by the Secretary of Health and Human Services; two members shall be officials of the Department of Agriculture appointed by the Secretary; 1 member shall be an expert in the promotion of breast feeding; one member shall be an expert in drug abuse education and prevention; and one member shall be an expert in alcohol abuse education and prevention.

(2) Members of the Council appointed from outside the Department of Agriculture and the Department of Health and Human Services shall be appointed for terms not exceeding three years. State and local officials shall serve only during their official tenure, and the tenure of parent participants shall not exceed two years. Persons appointed to complete an unexpired term shall serve only for the remainder of such term.

(3) The Council shall elect a Chairman and a Vice Chairman. The Council shall meet at the call of the Chairman, but shall meet at least once a year. Eleven members shall constitute a quorum.

(4) The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions.

(5) Members of the Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses incurred by them in the performance of the duties of the

Council. Parent participant members of the Council, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated in advance for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.

(*l*) Donation of foods by Secretary

Foods available under section 1431 of title 7, including, but not limited to, dry milk, or purchased under section 612c of title 7, may be donated by the Secretary, at the request of a State agency, for distribution to programs conducted under this section. The Secretary may purchase and distribute, at the request of a State agency, supplemental foods for donation to programs conducted under this section, with appropriated funds, including funds appropriated under this section.

(m) Women, infants, and children farmers' market nutrition program; establishment, grants, etc.

(1) Subject to the availability of funds appropriated for the purposes of this subsection, and as specified in this subsection, the Secretary shall award grants to States that submit State plans that are approved for the establishment or maintenance of programs designed to provide recipients of assistance under subsection (c) of this section, or those who are on the waiting list to receive the assistance, with coupons that may be exchanged for fresh, nutritious, unprepared foods at farmers' markets and (at the option of a State) roadside stands, as defined in the State plans submitted under this subsection.

(2) A grant provided to any State under this subsection shall be provided to the chief executive officer of the State, who shall—

(A) designate the appropriate State agency or agencies to administer the program in conjunction with the appropriate nonprofit organizations; and

(B) ensure coordination of the program among the appropriate agencies and organizations.

(3) The Secretary shall not make a grant to any State under this subsection unless the State agrees to provide State, local, or private funds for the program in an amount that is equal to not less than 30 percent of the administrative cost of the program, which may be satisfied from program income or State contributions that are made for similar programs. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds than is required under the preceding sentence, but not lower than 10 percent of the administrative cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council.

(4) Subject to paragraph (6), the Secretary shall establish a formula for determining the amount of the grant to be awarded under this subsection to each State for which a State plan is approved under paragraph (6), according to the number of recipients proposed to participate as specified in the State plan. In determining the amount to be awarded to new States, the Secretary shall rank order the State plans according to the criteria of operation set forth in this subsection, and award grants accordingly. The Secretary shall take into consideration the minimum amount needed to fund each approved State plan, and need not award grants to each State that submits a State plan.

(5) Each State that receives a grant under this subsection shall ensure that the program for which the grant is received complies with the following requirements:

(A) Individuals who are eligible to receive Federal benefits under the program shall only be individuals who are receiving assistance under subsection (c) of this section, or who are on the waiting list to receive the assistance.

(B) Construction or operation of a farmers' market may not be carried out using funds—

(i) provided under the grant; or

(ii) required to be provided by the State under paragraph (3).

(C) The value of the Federal share of the benefits received by any recipient under the program may not be—

(i) less than $10 per year; or

(ii) more than $30 per year.

(D) The coupon issuance process under the program shall be designed to ensure that coupons are targeted to areas with—

(i) the highest concentration of eligible individuals;

(ii) the greatest access to farmers' markets; and

(iii) certain characteristics, in addition to those described in clauses (i) and (ii), that are determined to be relevant by the Secretary and that maximize the availability of benefits to eligible individuals.

(E) The coupon redemption process under the program shall be designed to ensure that the coupons may be—

(i) redeemed only by producers authorized by the State to participate in the program; and

(ii) redeemed only to purchase fresh nutritious unprepared food for human consumption.

(F)(i) Except as provided in clauses (ii) and (iii), the State may use for administration of the program in any fiscal year not more than 17 percent of the total amount of program funds.

(ii) During any fiscal year for which a State receives assistance under this subsection, the Secretary shall permit the State to use not more than 2 percent of total program funds for market development or technical assistance to farmers' markets if the Secretary determines that the State intends to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables.

(iii) The provisions of clauses (i) and (ii) with respect to the use of program funds shall not apply to any funds that a State may contribute in excess of the funds used by the

State to meet the requirements of paragraph (3).

(G) The State shall ensure that no State or local taxes are collected within the State on purchases of food with coupons distributed under the program.

(6)(A) The Secretary shall give the same preference for funding under this subsection to eligible States that participated in the program under this subsection in a prior fiscal year as to States that participated in the program in the most recent fiscal year. The Secretary shall inform each State of the award of funds as prescribed by subparagraph (G) by February 15 of each year.

(B)(i) Subject to the availability of appropriations, if a State provides the amount of matching funds required under paragraph (3), the State shall receive assistance under this subsection in an amount that is not less than the amount of such assistance that the State received in the most recent fiscal year in which it received such assistance.

(ii) If amounts appropriated for any fiscal year pursuant to the authorization contained in paragraph (10) for grants under this subsection are not sufficient to pay to each State for which a State plan is approved under paragraph (6) the amount that the Secretary determines each such State is entitled to under this subsection, each State's grant shall be ratably reduced, except that (if sufficient funds are available) each State shall receive at least $75,000 or the amount that the State received for the prior fiscal year if that amount is less than $75,000.

(C) In providing funds to a State that received assistance under this subsection in the previous fiscal year, the Secretary shall consider—

(i) the availability of any such assistance not spent by the State during the program year for which the assistance was received;

(ii) documentation that demonstrates that—

(I) there is a need for an increase in funds; and

(II) the use of the increased funding will be consistent with serving nutritionally at-risk persons and expanding the awareness and use of farmers' markets;

(iii) demonstrated ability to satisfactorily operate the existing program; and

(iv) whether, in the case of a State that intends to use any funding provided under subparagraph (G)(i)[2] to increase the value of the Federal share of the benefits received by a recipient, the funding provided under subparagraph (G)(i)[2] will increase the rate of coupon redemption.

(D)(i) A State that desires to receive a grant under this subsection shall submit, for each fiscal year, a State plan to the Secretary by November 15 of each year.

(ii) Each State plan submitted under this paragraph shall contain—

(I) the estimated cost of the program and the estimated number of individuals to be served by the program;

(II) a description of the State plan for complying with the requirements established in paragraph (5); and

(III) criteria developed by the State with respect to authorization of producers to participate in the program.

(iii) The criteria developed by the State as required by clause (ii)(III) shall require any authorized producer to sell fresh nutritious unprepared foods (such as fruits and vegetables) to recipients, in exchange for coupons distributed under the program.

(E) The Secretary shall establish objective criteria for the approval and ranking of State plans submitted under this paragraph.

(F)(i) An amount equal to 75 percent of the funds available after satisfying the requirements of subparagraph (B) shall be made available to States participating in the program whose State plan is approved by the Secretary. If this amount is greater than that necessary to satisfy the approved State plans, the unallocated amount shall be applied toward satisfying any unmet need of States that have not participated in the program in the prior fiscal year, and whose State plans have been approved.

(ii) An amount equal to 25 percent of the funds available after satisfying the requirements of subparagraph (B) shall be made available to States that have not participated in the program in the prior fiscal year, and whose State plans have been approved by the Secretary. If this amount is greater than that necessary to satisfy the approved State plans for new States, the unallocated amount shall be applied toward satisfying any unmet need of States whose State plans have been approved.

(iii) In any fiscal year, any funds that remain unallocated after satisfying the requirements of clauses (i) and (ii) shall be reallocated in the following fiscal year according to procedures established pursuant to paragraph (10)(B)(ii).

(7)(A) The value of the benefit received by any recipient under any program for which a grant is received under this subsection may not affect the eligibility or benefit levels for assistance under other Federal or State programs.

(B) Any programs for which a grant is received under this subsection shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

(8) For each fiscal year, the Secretary shall collect from each State that receives a grant under this subsection information relating to—

(A) the number and type of recipients served by both Federal and non-Federal benefits under the program for which the grant is received;

(B) the rate of redemption of coupons distributed under the program;

(C) the average amount distributed in coupons to each recipient;

(D) the change in consumption of fresh fruits and vegetables by recipients, if the information is available;

(E) the effects of the program on farmers' markets, if the information is available; and

(F) any other information determined to be necessary by the Secretary.

(9) FUNDING.—

[2] See References in Text note below.

(A) IN GENERAL.—

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2009.

(ii) MANDATORY FUNDING.—Not later than 30 days after May 13, 2002, of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this subsection $15,000,000, to remain available until expended.

(B)(i)(I) Each State shall return to the Secretary any funds made available to the State that are unobligated at the end of the fiscal year for which the funds were originally allocated. The unexpended funds shall be returned to the Secretary by February 1st of the following fiscal year.

(II) Notwithstanding any other provision of this subsection, a total of not more than 5 percent of funds made available to a State for any fiscal year may be expended by the State to reimburse expenses incurred for a program assisted under this subsection during the preceding fiscal year.

(ii) The Secretary shall establish procedures to reallocate funds that are returned under clause (i).

(10) For purposes of this subsection:

(A) The term ''coupon'' means a coupon, voucher, or other negotiable financial instrument by which benefits under this section are transferred.

(B) The term ''program'' means—

(i) the State farmers' market coupon nutrition program authorized by this subsection (as it existed on September 30, 1991); or

(ii) the farmers' market nutrition program authorized by this subsection.

(C) The term ''recipient'' means a person or household, as determined by the State, who is chosen by a State to receive benefits under this subsection, or who is on a waiting list to receive such benefits.

(D) The term ''State agency'' has the meaning provided in subsection (b)(13) of this section, except that the term also includes the agriculture department of each State and any other agency approved by the chief executive officer of the State.

(n) Disqualification of vendors who are disqualified under food stamp program

(1) In general

The Secretary shall issue regulations providing criteria for the disqualification under this section of an approved vendor that is disqualified from accepting benefits under the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(2) Terms

A disqualification under paragraph (1)—

(A) shall be for the same period as the disqualification from the program referred to in paragraph (1);

(B) may begin at a later date than the disqualification from the program referred to in paragraph (1); and

(C) shall not be subject to judicial or administrative review.

***(o)* Disqualification of vendors convicted of trafficking or illegal sales**

(1) In general

Except as provided in paragraph (4), a State agency shall permanently disqualify from participation in the program authorized under this section a vendor convicted of—

(A) trafficking in food instruments (including any voucher, draft, check, or access device (including an electronic benefit transfer card or personal identification number) issued in lieu of a food instrument under this section); or

(B) selling firearms, ammunition, explosives, or controlled substances (as defined in section 802 of title 21) in exchange for food instruments (including any item described in subparagraph (A) issued in lieu of a food instrument under this section).

(2) Notice of disqualification

The State agency shall—

(A) provide the vendor with notification of the disqualification; and

(B) make the disqualification effective on the date of receipt of the notice of disqualification.

(3) Prohibition of receipt of lost revenues

A vendor shall not be entitled to receive any compensation for revenues lost as a result of disqualification under this subsection.

(4) Exceptions in lieu of disqualification

(A) In general

A State agency may permit a vendor that, but for this paragraph, would be disqualified under paragraph (1), to continue to participate in the program if the State agency determines, in its sole discretion according to criteria established by the Secretary, that—

(i) disqualification of the vendor would cause hardship to participants in the program authorized under this section; or

(ii)(I) the vendor had, at the time of the violation under paragraph (1), an effective policy and program in effect to prevent violations described in paragraph (1); and

(II) the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(B) Civil penalty

If a State agency under subparagraph (A) permits a vendor to continue to participate in the program in lieu of disqualification, the State agency shall assess the vendor a civil penalty in an amount determined by the State agency, in accordance with criteria established by the Secretary, except that—

(i) the amount of the civil penalty shall not exceed $10,000 for each violation; and

(ii) the amount of civil penalties imposed for violations investigated as part of a single investigation may not exceed $40,000.

(p) Criminal forfeiture

(1) In general

Notwithstanding any provision of State law and in addition to any other penalty author-

ized by law, a court may order a person that is convicted of a violation of a provision of law described in paragraph (2), with respect to food instruments (including any item described in subsection (*o*)(1)(A) of this section issued in lieu of a food instrument under this section), funds, assets, or property that have a value of $100 or more and that are the subject of a grant or other form of assistance under this section, to forfeit to the United States all property described in paragraph (3).

(2) Applicable laws

A provision of law described in this paragraph is—

(A) section 1760(g) of this title; and

(B) any other Federal law imposing a penalty for embezzlement, willful misapplication, stealing, obtaining by fraud, or trafficking in food instruments (including any item described in subsection (*o*)(1)(A) of this section issued in lieu of a food instrument under this section), funds, assets, or property.

(3) Property subject to forfeiture

The following property shall be subject to forfeiture under paragraph (1):

(A) All property, real and personal, used in a transaction or attempted transaction, to commit, or to facilitate the commission of, a violation described in paragraph (1).

(B) All property, real and personal, constituting, derived from, or traceable to any proceeds a person obtained directly or indirectly as a result of a violation described in paragraph (1).

(4) Procedures; interest of owner

Except as provided in paragraph (5), all property subject to forfeiture under this subsection, any seizure or disposition of the property, and any proceeding relating to the forfeiture, seizure, or disposition shall be subject to section 853 of title 21, other than subsection (d) of that section.

(5) Proceeds

The proceeds from any sale of forfeited property and any amounts forfeited under this subsection shall be used—

(A) first, to reimburse the Department of Justice, the Department of the Treasury, and the United States Postal Service for the costs incurred by the Departments or Service to initiate and complete the forfeiture proceeding;

(B) second, to reimburse the Office of Inspector General of the Department of Agriculture for any costs incurred by the Office in the law enforcement effort resulting in the forfeiture;

(C) third, to reimburse any Federal, State, or local law enforcement agency for any costs incurred in the law enforcement effort resulting in the forfeiture; and

(D) fourth, by the State agency to carry out approval, reauthorization, and compliance investigations of vendors.

(q) Provision of technical assistance to Secretary of Defense

The Secretary of Agriculture shall provide technical assistance to the Secretary of Defense, if so requested by the Secretary of Defense, for the purpose of carrying out the overseas special supplemental food program established under section 1060a(a) of title 10.

(Pub. L. 89–642, § 17, as added Pub. L. 92–433, § 9, Sept. 26, 1972, 86 Stat. 729; amended Pub. L. 93–150, § 6, Nov. 7, 1973, 87 Stat. 563; Pub. L. 93–326, § 6, June 30, 1974, 88 Stat. 287; Pub. L. 94–28, May 28, 1975, 89 Stat. 96; Pub. L. 94–105, § 14, Oct. 7, 1975, 89 Stat. 518; Pub. L. 95–166, §§ 18, 20(6), Nov. 10, 1977, 91 Stat. 1345, 1346; Pub. L. 95–627, § 3, Nov. 10, 1978, 92 Stat. 3611; Pub. L. 96–108, title III, § 301, Nov. 9, 1979, 93 Stat. 838; Pub. L. 96–499, title II, § 203(d), Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97–35, title VIII, § 815, Aug. 13, 1981, 95 Stat. 531; Pub. L. 99–500, title III, §§ 314, 341, 342(a), 343, 344(a), 345–348(a), 349–353(a), 372(b)(1), Oct. 18, 1986, 100 Stat. 1783–360, 1783–364 to 1783–367, 1783–369, and Pub. L. 99–591, title III, §§ 314, 341, 342(a), 343, 344(a), 345–348(a), 349–353(a), 372(b)(1), Oct. 30, 1986, 100 Stat. 3341–363, 3341–367 to 3341–370, 3341–372; Pub. L. 99–661, div. D, title I, § 4104, title III, §§ 4301, 4302(a), 4303, 4304(a), 4305–4308(a), 4309–4313(a), title V, § 4502(b)(1), Nov. 14, 1986, 100 Stat. 4071, 4075–4078, 4080; Pub. L. 100–71, title I, July 11, 1987, 101 Stat. 425; Pub. L. 100–237, §§ 8(a), (b), 9, 11, 12, Jan. 8, 1988, 101 Stat. 1740, 1741; Pub. L. 100–356, § 3, June 28, 1988, 102 Stat. 669; Pub. L. 100–435, title II, § 212, title V, § 501(b), Sept. 19, 1988, 102 Stat. 1657, 1668; Pub. L. 100–690, title III, § 3201, Nov. 18, 1988, 102 Stat. 4246; Pub. L. 101–147, title I, § 123(a), title II, § 213(a), title III, § 326, Nov. 10, 1989, 103 Stat. 894, 912, 917; Pub. L. 101–330, July 12, 1990, 104 Stat. 311; Pub. L. 102–314, § 3, July 2, 1992, 106 Stat. 280; Pub. L. 102–342, title II, § 204, Aug. 14, 1992, 106 Stat. 913; Pub. L. 102–512, title II, §§ 203–207, Oct. 24, 1992, 106 Stat. 3364–3368; Pub. L. 103–448, title II, § 204(a)–(*o*)(1), (p)–(v)(11), (w)(1), Nov. 2, 1994, 108 Stat. 4738–4745; Pub. L. 104–66, title I, § 1011(*l*), Dec. 21, 1995, 109 Stat. 710; Pub. L. 104–193, title I, § 109(h), title VII, § 729(a)–(g)(1), (h)–(j), Aug. 22, 1996, 110 Stat. 2171, 2303–2305; Pub. L. 105–336, title II, § 203(a)–(f)(1), (g)–(*l*), (m)–(p)(1), (q), Oct. 31, 1998, 112 Stat. 3158–3165; Pub. L. 105–362, title I, § 101(i), Nov. 10, 1998, 112 Stat. 3281; Pub. L. 106–65, div. A, title VI, § 674(e), Oct. 5, 1999, 113 Stat. 675; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170; Pub. L. 106–224, title II, §§ 242(b)(1), (2), 244(a)–(e), June 20, 2000, 114 Stat. 411, 412, 421; Pub. L. 106–472, title III, § 307(b), Nov. 9, 2000, 114 Stat. 2073; Pub. L. 107–171, title IV, §§ 4306(a), 4307(a), May 13, 2002, 116 Stat. 332; Pub. L. 108–265, title II, § 203(a)–(c)(2)(A), (3), (4)(A), (5), (d), (e)(1)–(4)(A), (5), (6)(A), (7)(A), (B), (8)–(13), (f)–(i)(1), June 30, 2004, 118 Stat. 771–780; Pub. L. 108–447, div. A, title VII, § 788(d), (e), Dec. 8, 2004, 118 Stat. 2851.)

REFERENCES IN TEXT

Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, referred to in subsecs. (c)(3), (e)(3)(B), and (f)(1)(D), are sections 4 and 5 of Pub. L. 93–86, which are set out as notes under section 612c of Title 7, Agriculture.

The Food Stamp Act of 1977, referred to in subsecs. (d)(2)(A)(ii)(I), (m)(7)(B), and (n)(1), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended by Pub. L. 95–113, title XIII, Sept. 29, 1977, 91 Stat. 958, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7. For complete classification of the Food Stamp Act of 1977 to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Social Security Act, referred to in subsecs. (d)(2)(A)(ii)(II), (iii)(I), (e)(4)(A), and (f)(17), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV, title XIX, and title XXI of the Act are classified generally to part A (§601 et seq.) of subchapter IV, subchapter XIX (§1396 et seq.), and subchapter XXI (§1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (d)(3)(C)(i), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (f)(15), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Sections 254b and 254c of this title, referred to in subsec. (j)(4), were in the original references to sections 329 and 330 of the Public Health Service Act, act July 1, 1944, which were omitted in the general amendment of subpart I (§254b et seq.) of part D of subchapter II of chapter 6A of this title by Pub. L. 104–299, §2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

Section 1304 of the Food and Agriculture Act of 1977, referred to in subsec. (k)(1), is section 1304 of Pub. L. 95–113, title XIII, Sept. 29, 1977, 91 Stat. 980, which amended provisions set out as notes under sections 612c and 1281 of Title 7, Agriculture.

Subparagraph (G)(i), referred to in subsec. (m)(6)(C)(iv), meaning subpar. (G)(i) of subsec. (m)(6), was redesignated subpar. (F)(i) of subsec. (m)(6) by Pub. L. 105–336, title II, §203(*o*)(3)(B), Oct. 31, 1998, 112 Stat. 3164.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (b)(7). Pub. L. 108–265, §203(a)(1), added par. (7) and struck out former par. (7) which read as follows: " 'Nutrition education' means individual or group sessions and the provision of materials designed to improve health status that achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences."

Subsec. (b)(14). Pub. L. 108–265, §203(a)(2), inserted "and foods that promote the health of the population served by the program authorized by this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns" after "children".

Subsec. (b)(22), (23). Pub. L. 108–265, §203(a)(3), added pars. (22) and (23).

Subsec. (d)(3)(A). Pub. L. 108–265, §203(b)(1), inserted par. and subpar. headings, designated existing provisions as cl. (i), inserted heading, substituted "Subject to clause (ii), a person" for "Persons", and added cl. (ii).

Subsec. (d)(3)(C)(ii)(I)(bb). Pub. L. 108–265, §203(b)(2)(A), substituted semicolon for "from a provider other than the local agency; or".

Subsec. (d)(3)(C)(ii)(II)(cc). Pub. L. 108–265, §203(b)(2)(B), substituted "; and" for period at end.

Subsec. (d)(3)(C)(ii)(III). Pub. L. 108–265, §203(b)(2)(C), added subcl. (III).

Subsec. (f)(1)(C)(i). Pub. L. 108–447, §788(d), struck out period after "subsection (h)(11) of this section".

Pub. L. 108–265, §203(e)(10)(B), inserted before semicolon at end ", including a description of the State agency's vendor peer group system, competitive price criteria, and allowable reimbursement levels that demonstrate that the State is in compliance with the cost-containment provisions in subsection (h)(11) of this section."

Pub. L. 108–265, §203(c)(1)(A), inserted "at any of the authorized retail stores under the program" after "foods under the program".

Subsec. (f)(1)(C)(ii) to (xi). Pub. L. 108–265, §203(c)(1)(B), (C), added cl. (ii) and redesignated former cls. (ii) to (x) as (iii) to (xi), respectively.

Subsec. (f)(11). Pub. L. 108–265, §203(c)(2)(A), inserted par. heading, designated existing provisions as subpars. (A) and (B), inserted headings, and added subpars. (C) and (D).

Subsec. (f)(21). Pub. L. 108–265, §203(c)(3), substituted "local agencies, vendors," for "vendors" in heading and introductory provisions.

Subsec. (f)(25). Pub. L. 108–265, §203(c)(4)(A), added par. (25).

Subsec. (f)(26). Pub. L. 108–265, §203(c)(5), added par. (26).

Subsec. (g). Pub. L. 108–265, §203(d), inserted heading.

Subsec. (g)(1). Pub. L. 108–265, §203(d), inserted par. heading, added subpar. (A), designated second sentence as subpar. (B), inserted heading, and struck out first sentence relating to appropriations for fiscal year 1990 and fiscal years 1995 through 2003.

Subsec. (h)(2)(A). Pub. L. 108–265, §203(e)(1), substituted "The" for "For each of the fiscal years 1995 through 2003, the" in introductory provisions.

Subsec. (h)(4)(F). Pub. L. 108–265, §203(e)(2), added subpar. (F).

Subsec. (h)(8)(A)(ii). Pub. L. 108–265, §203(e)(7)(B), substituted "change" for "rise" in introductory provisions.

Subsec. (h)(8)(A)(ii)(I). Pub. L. 108–265, §203(e)(4)(A)(i), substituted "primary contract" for "contract brand of".

Subsec. (h)(8)(A)(iii). Pub. L. 108–265, §203(e)(4)(A)(ii), inserted "for a specific infant formula for which manufacturers submit a bid" after "lowest net price".

Subsec. (h)(8)(A)(iv). Pub. L. 108–265, §203(e)(3), added cl. (iv).

Subsec. (h)(8)(A)(v). Pub. L. 108–265, §203(e)(4)(A)(iii), added cl. (v).

Subsec. (h)(8)(A)(vi). Pub. L. 108–447, §788(e), substituted "Effective beginning October 1, 2004, each State" for "Each State".

Pub. L. 108–265, §203(e)(5), added cl. (vi).

Subsec. (h)(8)(A)(vii). Pub. L. 108–265, §203(e)(6)(A), added cl. (vii).

Subsec. (h)(8)(A)(viii). Pub. L. 108–265, §203(e)(7)(A), added cl. (viii).

Subsec. (h)(8)(A)(ix), (x). Pub. L. 108–265, §203(e)(8), added cls. (ix) and (x).

Subsec. (h)(10). Pub. L. 108–265, §203(e)(9), added par. (10) and struck out former par. (10), which related to use of certain funds for each of fiscal years 1995 through 2003 for development of infrastructure for the program, special State projects to improve services, and special breastfeeding support and promotion projects.

Subsec. (h)(11). Pub. L. 108–265, §203(e)(10)(A), added par. (11) and struck out former par. (11), which required a State agency to consider price levels of retail stores for participation in the program and to establish procedures to ensure that selected stores would not subsequently raise prices to levels that would have made them ineligible for participation.

Subsec. (h)(12). Pub. L. 108–265, §203(e)(11), added par. (12) and struck out former par. (12), which directed the Secretary to establish a long-range plan for the development and implementation of management information systems to be used in carrying out the program, and to submit a report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than 2 years after Oct. 31, 1998.

Subsec. (h)(13), (14). Pub. L. 108–265, §203(e)(12), (13), added pars. (13) and (14).

Subsec. (i)(3)(A)(ii)(I). Pub. L. 108–265, §203(f), substituted "3 percent" for "1 percent".

Subsec. (j)(4), (5). Pub. L. 108–265, § 203(g), redesignated par. (5) as (4) and struck out former par. (4), which directed the Secretaries to provide notifications to Congress concerning actions to carry out the initiative and, upon completion of such initiative, an evaluation and a plan to further its goals.

Subsec. (m)(1). Pub. L. 108–265, § 203(h)(1), inserted ''and (at the option of a State) roadside stands'' after ''farmers' markets''.

Subsec. (m)(3). Pub. L. 108–265, § 203(h)(2), substituted ''administrative'' for ''total'' in two places.

Subsec. (m)(5)(C)(ii). Pub. L. 108–265, § 203(h)(3), substituted ''$30'' for ''$20''.

Subsec. (m)(9)(A)(i). Pub. L. 108–265, § 203(h)(4), added cl. (i) and struck out former cl. (i), which authorized to be appropriated to carry out this subsection $8,000,000 for fiscal year 1994, $10,500,000 for fiscal year 1995, and such sums as might be necessary for each of fiscal years 1996 through 2003.

Subsec. (r). Pub. L. 108–265, § 203(i)(1), struck out subsec. (r), which provided for demonstration projects relating to use of the WIC program for identification and enrollment of children in certain health programs.

2002—Subsec. (d)(2)(B)(i). Pub. L. 107–171, § 4306(a), inserted hyphen after ''basic allowance'' and designated remainder of cl. (i) as subcl. (I), substituted ''or'' for ''and'' after semicolon, and added subcl. (II).

Subsec. (m)(9). Pub. L. 107–171, § 4307(a), inserted par. heading, subpar. (A) heading, and cl. (i) designation and heading and added cl. (ii).

2000—Subsec. (b)(4). Pub. L. 106–224, § 242(b)(2)(A), substituted ''(4) 'Costs of nutrition services and administration' or 'nutrition services and administration' means'' for ''(4) 'Costs for nutrition services and administration' means''.

Subsec. (b)(21). Pub. L. 106–224, § 244(a), added par. (21).

Subsec. (d)(2)(B). Pub. L. 106–224, § 244(b), designated part of existing provisions as cl. (i), substituted ''housing'' for ''quarters'', and added cl. (ii).

Subsec. (d)(2)(B)(ii). Pub. L. 106–472, § 307(b)(1), substituted ''contiguous States of the'' for ''continental''.

Subsec. (d)(3)(F). Pub. L. 106–224, § 244(c), added subpar. (F).

Subsec. (h)(1)(A). Pub. L. 106–224, § 242(b)(2)(B), substituted ''costs of nutrition services and administration incurred by State and local agencies'' for ''costs incurred by State and local agencies for nutrition services and administration''.

Subsec. (h)(1)(B)(i). Pub. L. 106–224, § 244(d)(1), substituted ''the preceding fiscal year'' for ''the fiscal year 1987''.

Subsec. (h)(1)(B)(ii). Pub. L. 106–224, § 244(d)(2)(A), substituted ''the preceding fiscal year'' for ''the fiscal year 1987'' in introductory provisions.

Subsec. (h)(1)(B)(ii)(I). Pub. L. 106–224, § 244(d)(2)(B), added subcl. (I) and struck out former subcl. (I) which read as follows: ''the value of the index for State and local government purchases, using the implicit price deflator, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 1986; and''.

Subsec. (h)(5)(D). Pub. L. 106–224, § 244(e), added subpar. (D).

Subsec. (r). Pub. L. 106–224, § 242(b)(1), added subsec. (r).

Subsec. (r)(1). Pub. L. 106–472, § 307(b)(2), substituted ''not more than 20 local agencies'' for ''at least 20 local agencies'' in introductory provisions.

1999—Subsecs. (d)(2)(A)(i), (g)(1), (p)(2)(A). Pub. L. 106–78 made technical amendment to references in original act which appear in text as references to sections 1752, 1758, and 1760 of this title.

Subsec. (q). Pub. L. 106–65 added subsec. (q).

1998—Subsec. (d)(3)(C) to (E). Pub. L. 105–336, § 203(a), added subpars. (C) to (E).

Subsec. (e)(1). Pub. L. 105–336, § 203(b), inserted at end ''A local agency participating in the program shall provide education or educational materials relating to the effects of drug and alcohol use by a pregnant, postpartum, or breastfeeding woman on the developing child of the woman.''

Subsec. (e)(3). Pub. L. 105–336, § 203(c), inserted par. heading, designated existing provisions as subpar. (A) and inserted heading, and added subpar. (B).

Subsec. (f)(21). Pub. L. 105–336, § 203(d), amended par. (21) generally. Prior to amendment, par. (21) read as follows: ''A State agency may use funds recovered as a result of violations in the food delivery system of the program in the year in which the funds are collected for the purpose of carrying out the program.''

Subsec. (f)(23). Pub. L. 105–336, § 203(e), added par. (23).

Subsec. (f)(24). Pub. L. 105–336, § 203(f)(1), added par. (24).

Subsec. (g)(1). Pub. L. 105–336, § 203(g), substituted ''2003'' for ''1998''.

Subsec. (h)(1)(C). Pub. L. 105–336, § 203(h), inserted subpar. heading, designated existing provisions as cl. (i), inserted heading, substituted ''Except as provided in clause (ii), in'' for ''In'', and added cl. (ii).

Subsec. (h)(2)(A). Pub. L. 105–336, § 203(i)(1), substituted ''2003'' for ''1998'' in introductory provisions.

Subsec. (h)(2)(A)(iv). Pub. L. 105–336, § 203(i)(2), struck out '', to the extent funds are not already provided under subparagraph (I)(v) for the same purpose,'' after ''may provide funds''.

Subsec. (h)(2)(B)(ii). Pub. L. 105–336, § 203(i)(3), substituted ''10 percent (except that the Secretary may establish a higher percentage for State agencies that are small)'' for ''15 percent''.

Subsec. (h)(3)(E). Pub. L. 105–336, § 203(i)(4)(A), in introductory provisions, substituted ''For each fiscal year,'' for ''In the case of fiscal year 1996 (except as provided in subparagraph (G)) and each subsequent fiscal year,''.

Subsec. (h)(3)(F), (G). Pub. L. 105–336, § 203(i)(4)(B), struck out subpar. (F) which provided for adjusted payments in lieu of required payments for fiscal year 1995 and subpar. (G) which provided for delay of required payments for fiscal year 1996 and for adjusted payments in lieu of required payments for fiscal year 1996.

Subsec. (h)(5)(A). Pub. L. 105–336, § 203(i)(5), in introductory provisions, substituted ''submits a plan to reduce average food costs per participant and to increase participation above the level estimated for the State agency, the State agency may, with the approval of the Secretary,'' for ''achieves, through use of acceptable measures, participation that exceeds the participation level estimated for such State agency under paragraph (2)(A)(ii)(I), such State agency may''.

Subsec. (h)(8)(A)(iii). Pub. L. 105–336, § 203(j), added cl. (iii).

Subsec. (h)(10)(A). Pub. L. 105–336, § 203(k), (n)(2)(A), substituted ''2003'' for ''1998'' and inserted ''and supplemental foods funds'' after ''nutrition services and administration funds''.

Subsec. (h)(11). Pub. L. 105–336, § 203(*l*), added par. (11).

Subsec. (h)(12). Pub. L. 105–336, § 203(m), added par. (12).

Subsec. (i)(3)(A). Pub. L. 105–336, § 203(n)(1)(A), substituted ''subparagraph (B)'' for ''subparagraphs (B) and (C)'' in introductory provisions.

Subsec. (i)(3)(A)(i), (ii). Pub. L. 105–336, § 203(n)(1)(B), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) not more than 1 percent (except as provided in subparagraph (H)) of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; and

''(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.''

Subsec. (i)(3)(C) to (H). Pub. L. 105–336, § 203(n)(2)(B), redesignated subpar. (H) as (C) and struck out former subpars. (C) to (G) which read as follows:

''(C) The total amount of funds transferred from any fiscal year under clauses (i) and (ii) of subparagraph (A) shall not exceed 1 percent of the amount of the funds allocated to a State agency for such fiscal year.

''(D) For State agencies implementing cost containment measures as defined in subsection (h)(9) of this section, not more than 5 percent of the amount of funds allocated under this section to such a State agency for supplemental foods for the fiscal year in which the system is implemented, and not more than 3 percent of the amount of funds allocated to such a State agency for the fiscal year following the fiscal year in which the system is implemented, may be expended by the State agency for expenses incurred under this section for supplemental foods during the succeeding fiscal year.

''(E) Notwithstanding any other provision in this paragraph and paragraph (2) a State agency may, subject to the approval of the Secretary under subparagraph (F), expend not more than 3 percent of the amount of funds allocated to such agency for supplemental foods for the fiscal year 1991 for expenses incurred under this section for supplemental foods during the fiscal year 1990.

''(F) Each State agency which intends to use the authority provided in subparagraph (E) shall request approval from the Secretary in advance and shall submit a plan showing how the State's caseload will be managed to meet funding limitations. The Secretary shall review and make determinations on such plans on an expedited basis.

''(G) No State can use the authority provided under subparagraph (E) to increase the caseload level above the highest level to date in fiscal year 1990.''

Subsec. (k)(4) to (6). Pub. L. 105–362 redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which read as follows: ''The Council shall make a continuing study of the operation of the program under this section and related programs to determine how the program may be improved. The Council shall submit once every two years to the President and Congress, beginning with the fiscal year ending September 30, 1980, a written report, together with its recommendations on such program operations.''

Subsec. (m)(3). Pub. L. 105–336, §203(*o*)(1), inserted ''program income or'' after ''satisfied from'' in first sentence.

Subsec. (m)(6)(C). Pub. L. 105–336, §203(*o*)(2)(A), struck out ''serve additional recipients in'' after ''In providing funds to'' in introductory provisions.

Subsec. (m)(6)(C)(ii). Pub. L. 105–336, §203(*o*)(2)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ''documentation that justifies the need for an increase in participation; and''.

Subsec. (m)(6)(C)(iii), (iv). Pub. L. 105–336, §203(*o*)(2)(C), (D), substituted ''; and'' for period at end of cl. (iii) and added cl. (iv).

Subsec. (m)(6)(F). Pub. L. 105–336, §203(*o*)(3), redesignated subpar. (G) as (F) and struck out former subpar. (F) which listed criteria for Secretary to apply in approving and ranking State plans.

Subsec. (m)(6)(F)(i). Pub. L. 105–336, §203(*o*)(4)(A), in first sentence, substituted ''whose State plan'' for ''that wish to serve additional recipients, and whose State plan to do so'' and, in second sentence, struck out ''for additional recipients'' after ''approved State plans''.

Subsec. (m)(6)(F)(ii). Pub. L. 105–336, §203(*o*)(4)(B), struck out ''that desire to serve additional recipients, and'' after ''need of States'' in second sentence.

Subsec. (m)(6)(G). Pub. L. 105–336, §203(*o*)(3)(B), redesignated subpar. (G) as (F).

Subsec. (m)(9)(A). Pub. L. 105–336, §203(*o*)(5), substituted ''2003'' for ''1998''.

Subsec. (*o*). Pub. L. 105–336, §203(p)(1), added subsec. (*o*).

Subsec. (p). Pub. L. 105–336, §203(q), added subsec. (p).

1996—Subsec. (b)(15)(B)(iii). Pub. L. 104–193, §729(a)(1), inserted ''of not more than 365 days'' after ''temporary accommodation''.

Subsec. (b)(16). Pub. L. 104–193, §729(a)(2), inserted ''and'' at end of subpar. (A), substituted a period for ''; and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''the provision of materials developed by the Secretary under subsection (n) of this section.''

Subsec. (c)(5). Pub. L. 104–193, §729(b), struck out par. (5) which read as follows: ''The Secretary shall promote the special supplemental nutrition program by producing and distributing materials, including television and radio public service announcements in English and other appropriate languages, that inform potentially eligible individuals of the benefits and services under the program.''

Subsec. (d)(2)(A)(ii)(II). Pub. L. 104–193, §109(h), substituted ''State program funded'' for ''program for aid to families with dependent children established'' and inserted before semicolon ''that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995''.

Subsec. (d)(4). Pub. L. 104–193, §729(c), struck out par. (4) which read as follows: ''The Secretary shall report biennially to Congress and the National Advisory Council on Maternal, Infant, and Fetal Nutrition established under subsection (k) of this section on—

''(A) the income and nutritional risk characteristics of participants in the program;

''(B) participation in the program by members of families of migrant farmworkers; and

''(C) such other matters relating to participation in the program as the Secretary considers appropriate.''

Subsec. (e)(2). Pub. L. 104–193, §729(d)(1), struck out at end ''Nutrition education and breastfeeding promotion and support shall be evaluated annually by each State agency, and such evaluation shall include the views of participants concerning the effectiveness of the nutrition education and breastfeeding promotion and support they have received.''

Subsec. (e)(4). Pub. L. 104–193, §729(d)(2), struck out ''shall'' after ''State agency'' in introductory provisions, struck out subpar. (A), redesignated subpars. (B) and (C) as (A) and (B), respectively, inserted ''shall'' before ''provide'' in subpars. (A) and (B), and added subpar. (C). Prior to amendment, subpar. (A) read as follows: ''ensure that written information concerning food stamps, the program for aid to families with dependent children under part A of title IV of the Social Security Act, and the child support enforcement program under part D of title IV of the Social Security Act is provided on at least 1 occasion to each adult participant in and each applicant for the program;''.

Subsec. (e)(5). Pub. L. 104–193, §729(d)(3), substituted ''Each local agency'' for ''The State agency shall ensure that each local agency''.

Subsec. (e)(6). Pub. L. 104–193, §729(d)(4), struck out par. (6) which read as follows: ''Each local agency may use a master file to document and monitor the provision of nutrition education services (other than the initial provision of such services) to individuals that are required, under standards prescribed by the Secretary, to be included by the agency in group nutrition education classes.''

Subsec. (f)(1)(A). Pub. L. 104–193, §729(e)(1)(A), substituted ''to the Secretary, by a date specified by the Secretary, an initial'' for ''annually to the Secretary, by a date specified by the Secretary, a'' and inserted at end ''After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.''

Subsec. (f)(1)(C)(iii). Pub. L. 104–193, §729(e)(1)(B)(i), added cl. (iii) and struck out former cl. (iii) which read as follows: ''a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, local programs for breastfeeding promotion, prenatal care, well-child care, family planning, drug abuse education, alcohol and drug abuse counseling and treatment, child abuse counseling, and with the aid to families with dependent children, food stamp, maternal and child health care, and medicaid programs, including medicaid programs that use coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C.

1396b(m) or 1396n(b)) (including coordination through the referral of potentially eligible women, infants, and children between the program authorized under this section and the medicaid program);''.

Subsec. (f)(1)(C)(vi). Pub. L. 104–193, § 729(e)(1)(B)(ii), inserted ''(including a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas)'' after ''in the State''.

Subsec. (f)(1)(C)(vii). Pub. L. 104–193, § 729(e)(1)(B)(iii), substituted ''for reaching and enrolling'' for ''to provide program benefits under this section to eligible individuals most in need of the benefits and to provide eligible individuals not participating in the program with information on the program, the eligibility criteria for the program, and how to apply for the program, with emphasis on reaching and enrolling''.

Subsec. (f)(1)(C)(ix). Pub. L. 104–193, § 729(e)(1)(B)(vii), inserted ''and'' at end.

Pub. L. 104–193, § 729(e)(1)(B)(iv), (vi), redesignated cl. (xi) as (ix) and struck out former cl. (ix) which read as follows: ''if the State agency chooses to provide program benefits under this section to some or all eligible individuals who are incarcerated in prisons or juvenile detention facilities that do not receive Federal assistance under any program specifically established to assist pregnant women regarding their nutrition and health needs, a plan for the provision of such benefits to, and to meet the special nutrition education needs of, such individuals, which may include—

''(I) providing supplemental foods to such individuals that are different from those provided to other participants in the program under this section;

''(II) providing such foods to such individuals in a different manner than to other participants in the program under this section in order to meet the special needs of such individuals; and

''(III) the development of nutrition education materials appropriate for the special needs of such individuals;''.

Subsec. (f)(1)(C)(x). Pub. L. 104–193, § 729(e)(1)(B)(iv), (vi), redesignated cl. (xiii) as (x) and struck out former cl. (x) which read as follows: ''a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances that participants and applicants must travel, including appointment scheduling, adjustment of clinic hours, clinic locations, or mailing of multiple vouchers;''.

Subsec. (f)(1)(C)(xi). Pub. L. 104–193, § 729(e)(1)(B)(vi), redesignated cl. (xi) as (ix).

Subsec. (f)(1)(C)(xii). Pub. L. 104–193, § 729(e)(1)(B)(iv), struck out cl. (xii) which read as follows: ''if the State agency chooses to request the funds conversion authority established in clause (h)(5) of this section, an estimate of the increased participation which will result from its cost-saving initiative, including an explanation of how the estimate was developed; and''.

Subsec. (f)(1)(C)(xiii). Pub. L. 104–193, § 729(e)(1)(B)(vi), redesignated cl. (xiii) as (x).

Pub. L. 104–193, § 729(e)(1)(B)(v), substituted ''may reasonably require'' for ''may require''.

Subsec. (f)(1)(D), (E). Pub. L. 104–193, § 729(e)(1)(C), (D), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: ''The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.''

Subsec. (f)(5). Pub. L. 104–193, § 729(e)(3), substituted ''be available at any reasonable time'' for ''at all times be available'' in second sentence.

Subsec. (f)(6). Pub. L. 104–193, § 729(e)(2), (10), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''The State agency, upon receipt of a completed application from a local agency for participation in the program (and the Secretary, upon receipt of a completed application from a State agency), shall notify the applicant agency in writing within thirty days of the approval or disapproval of the application, and any disapproval shall be accompanied with a statement of the reasons for such disapproval. Within fifteen days after receipt of an incomplete application, the State agency (or the Secretary) shall notify the applicant agency of the additional information needed to complete the application.''

Subsec. (f)(7), (8). Pub. L. 104–193, § 729(e)(10), redesignated pars. (8) and (9) as (7) and (8), respectively. Former par. (7) redesignated (6).

Subsec. (f)(9). Pub. L. 104–193, § 729(e)(10), redesignated par. (10) as (9). Former par. (9) redesignated (8).

Subsec. (f)(9)(B). Pub. L. 104–193, § 729(e)(4), struck out at end ''Such notice shall include, in addition to other information required by the Secretary, the categories of participants whose benefits are being suspended or terminated due to such shortage.''

Subsec. (f)(10). Pub. L. 104–193, § 729(e)(10), redesignated par. (11) as (10). Former par. (10) redesignated (9).

Subsec. (f)(11). Pub. L. 104–193, § 729(e)(10), redesignated par. (12) as (11). Former par. (11) redesignated (10).

Pub. L. 104–193, § 729(e)(5), struck out '', including standards that will ensure sufficient State agency staff'' after ''program'' in first sentence.

Subsec. (f)(12). Pub. L. 104–193, § 729(e)(10), redesignated par. (13) as (12). Former par. (12) redesignated (11).

Pub. L. 104–193, § 729(e)(6), struck out at end ''Products specifically designed for pregnant, postpartum, and breastfeeding women, or infants shall be available at the discretion of the Secretary if the products are commercially available or are justified to and approved by the Secretary based on clinical tests performed in accordance with standards prescribed by the Secretary.''

Subsec. (f)(13). Pub. L. 104–193, § 729(e)(10), redesignated par. (14) as (13). Former par. (13) redesignated (12).

Subsec. (f)(14). Pub. L. 104–193, § 729(e)(10), redesignated par. (15) as (14). Former par. (14) redesignated (13).

Pub. L. 104–193, § 729(e)(7), substituted ''State agency may'' for ''State agency shall''.

Subsec. (f)(15), (16). Pub. L. 104–193, § 729(e)(10), redesignated pars. (16) and (17) as (15) and (16), respectively. Former par. (15) redesignated (14).

Subsec. (f)(17). Pub. L. 104–193, § 729(e)(10), redesignated par. (18) as (17). Former par. (17) redesignated (16).

Pub. L. 104–193, § 729(e)(8), struck out ''and to accommodate the special needs and problems of individuals who are incarcerated in prisons or juvenile detention facilities'' before period at end.

Subsec. (f)(18). Pub. L. 104–193, § 729(e)(10), redesignated par. (19) as (18). Former par. (18) redesignated (17).

Subsec. (f)(19). Pub. L. 104–193, § 729(e)(10), redesignated par. (20) as (19). Former par. (19) redesignated (18).

Pub. L. 104–193, § 729(e)(9), substituted ''may provide information'' for ''shall provide information''.

Subsec. (f)(20), (21). Pub. L. 104–193, § 729(e)(10), redesignated pars. (23) and (21) as (21) and (20), respectively. Former par. (20) redesignated (19).

Subsec. (f)(22). Pub. L. 104–193, § 729(e)(10), redesignated par. (24) as (22).

Pub. L. 104–193, § 729(e)(2), struck out par. (22) which read as follows: ''In the State plan submitted to the Secretary for fiscal year 1994, each State agency shall advise the Secretary regarding the procedures to be used by the State agency to reduce the purchase of low-iron infant formula for infants on the program for whom such formula has not been prescribed by a physician or other appropriate health professional, as determined by regulations issued by the Secretary.''

Subsec. (f)(23), (24). Pub. L. 104–193, § 729(e)(10), redesignated pars. (23) and (24) as (21) and (22), respectively.

Subsec. (g)(5). Pub. L. 104–193, § 729(f)(1), substituted ''reports on program participant characteristics'' for

''the report required under subsection (d)(4) of this section''.

Subsec. (g)(6). Pub. L. 104–193, §729(f)(2), struck out par. (6) which read as follows: ''Upon the completion of the 1990 decennial census, the Secretary, in coordination with the Secretary of Commerce, shall make available an estimate, by State and county (or equivalent political subdivision) of the number of women, infants, and children who are members of families that have incomes below the maximum income limit for participation in the program under this section.''

Subsec. (h)(4)(E). Pub. L. 104–193, §729(g)(1)(A), struck out ''and, on development of the uniform requirements, require each State agency to report the data for inclusion in the report to Congress described in subsection (d)(4) of this section'' before period at end.

Subsec. (h)(8)(A). Pub. L. 104–193, §729(g)(1)(B)(i), (iv), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''No State may receive its allocation under this subsection unless on or before August 30, 1989 (or a subsequent date established by the Secretary for any State) such State has—

''(i) examined the feasibility of implementing cost containment measures with respect to procurement of infant formula, and, where practicable, other foods necessary to carry out the program under this section; and

''(ii) initiated action to implement such measures unless the State demonstrates, to the satisfaction of the Secretary, that such measures would not lower costs or would interfere with the delivery of formula or foods to participants in the program.''

Subsec. (h)(8)(A)(i). Pub. L. 104–193, §729(g)(1)(B)(v), in introductory provisions substituted ''subparagraphs (B) and (C)(iii),'' for ''subparagraphs (C), (D), and (E)(iii), in carrying out subparagraph (A),''.

Subsec. (h)(8)(B). Pub. L. 104–193, §729(g)(1)(B)(iv), redesignated subpar. (D) as (B). Former subpar. (B) redesignated (A).

Subsec. (h)(8)(B)(i). Pub. L. 104–193, §729(g)(1)(B)(vi), substituted ''subparagraph (A)'' for ''subparagraph (B)'' in two places.

Subsec. (h)(8)(C). Pub. L. 104–193, §729(g)(1)(B)(i), (iv), redesignated subpar. (E) as (C) and struck out former subpar. (C) which read as follows: ''In the case of any State that has a contract in effect on November 10, 1989, subparagraph (B) shall not apply to the program operated by such State under this section until the term of such contract, as such term is specified by the contract as in effect on November 10, 1989, expires. In the case of any State that has more than 1 such contract in effect on November 10, 1989, subparagraph (B) shall not apply until the term of the contract with the latest expiration date, as such term is specified by such contract as in effect on November 10, 1989, expires.''

Subsec. (h)(8)(C)(iii). Pub. L. 104–193, §729(g)(1)(B)(vii), substituted ''subparagraph (A)'' for ''subparagraph (B)''.

Subsec. (h)(8)(D) to (F). Pub. L. 104–193, §729(g)(1)(B)(iv), redesignated subpars. (F) to (H) as (D) to (F). Former subpars. (D) and (E) redesignated (B) and (C), respectively.

Subsec. (h)(8)(G). Pub. L. 104–193, §729(g)(1)(B)(iv), redesignated subpar. (I) as (G). Former subpar. (G) redesignated (E).

Pub. L. 104–193, §729(g)(1)(B)(ii), designated cl. (i) as subpar. (G) and struck out cls. (ii) to (ix) which related to procedures for soliciting bids on behalf of State agencies regarding cost-containment contracts to be entered into by infant formula and cereal manufacturers and State agencies.

Subsec. (h)(8)(H). Pub. L. 104–193, §729(g)(1)(B)(iv), redesignated subpar. (J) as (H). Former subpar. (H) redesignated (F).

Subsec. (h)(8)(I). Pub. L. 104–193, §729(g)(1)(B)(iv), redesignated subpar. (K) as (I). Former subpar. (I) redesignated (G).

Pub. L. 104–193, §729(g)(1)(B)(iii), substituted ''Secretary may'' for ''Secretary—

''(i) shall promote, but not require, the joint purchase of infant formula among State agencies electing not to participate under the procedures set forth in subparagraph (G);

''(ii) shall encourage and promote (but not require) the purchase of supplemental foods other than infant formula under cost containment procedures;

''(iii) shall inform State agencies of the benefits of cost containment and provide assistance and technical advice at State agency request regarding the State agency's use of cost containment procedures;

''(iv) shall encourage (but not require) the joint purchase of supplemental foods other than infant formula under procedures specified in subparagraph (B), if the Secretary determines that—

''(I) the anticipated savings are expected to be significant;

''(II) the administrative expenses involved in purchasing the food item through competitive bidding procedures, whether under a rebate or discount system, will not exceed the savings anticipated to be generated by the procedures; and

''(III) the procedures would be consistent with the purposes of the program; and

''(v) may''.

Subsec. (h)(8)(J) to (L). Pub. L. 104–193, §729(g)(1)(B)(iv), redesignated subpars. (J) to (L) as (H) to (J), respectively.

Subsec. (h)(8)(M). Pub. L. 104–193, §729(g)(1)(B)(i), struck out subpar. (M) which read as follows:

''(M)(i) The Secretary shall establish pilot projects in at least 1 State, with the consent of the State, to determine the feasibility and cost of requiring States to carry out a system for using universal product codes to assist retail food stores that are vendors under the program in providing the type of infant formula that the participants in the program are authorized to obtain. In carrying out the projects, the Secretary shall determine whether the system reduces the incidence of incorrect redemptions of low-iron formula or brands of infant formula not authorized to be redeemed through the program, or both.

''(ii) The Secretary shall provide a notification to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate regarding whether the system is feasible, is cost-effective, reduces the incidence of incorrect redemptions described in clause (i), and results in any additional costs to States.

''(iii) The system shall not require a vendor under the program to obtain special equipment and shall not be applicable to a vendor that does not have equipment that can use universal product codes.''

Subsec. (k)(3). Pub. L. 104–193, §729(h), substituted ''Council shall elect'' for ''Secretary shall designate''.

Subsec. (n). Pub. L. 104–193, §729(i), (j), added heading and text of subsec. (n) and struck out former subsec. (n) which related to study of methods of drug abuse education instruction.

Subsecs. (*o*), (p). Pub. L. 104–193, §729(i), struck out subsecs. (*o*) and (p) which related, respectively, to demonstration program for establishment of clinics at community colleges offering nursing education programs and grants for improvement and updating of information and data systems.

1995—Subsec. (m)(9) to (11). Pub. L. 104–66 redesignated pars. (10) and (11) as (9) and (10), respectively, and struck out former par. (9) which read as follows:

''(9)(A) The Secretary shall submit to the Committee on Education and Labor and the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a compilation of the information collected under paragraph (8).

''(B) The compilation required by subparagraph (A) shall be submitted on or before April 1, 1994.''

1994—Pub. L. 103–448, §204(w)(1)(A), substituted ''Special supplemental nutrition program for women, infants, and children'' for ''Special supplemental food program'' in section catchline.

Subsec. (b)(8)(D). Pub. L. 103–448, §204(a)(2), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (b)(8)(E). Pub. L. 103–448, § 204(a)(1), (3), redesignated subpar. (D) as (E) and substituted ''homelessness and migrancy'' for ''alcoholism and drug addiction, homelessness, and migrancy''.

Subsec. (c)(1). Pub. L. 103–448, § 204(w)(1)(B), substituted ''special supplemental nutrition program'' for ''special supplemental food program'' in first sentence.

Subsec. (c)(5). Pub. L. 103–448, § 204(b), added par. (5).

Subsec. (d)(2)(C). Pub. L. 103–448, § 204(c)(1), added subpar. (C).

Subsec. (d)(3). Pub. L. 103–448, § 204(c)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(4). Pub. L. 103–448, § 204(t)(1), inserted ''and the National Advisory Council on Maternal, Infant, and Fetal Nutrition established under subsection (k) of this section'' after ''Congress'' in introductory provisions.

Subsec. (e)(3) to (6). Pub. L. 103–448, § 204(d), redesignated par. (3) relating to State agency providing information and materials as par. (4) and former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f)(1)(C)(iii). Pub. L. 103–448, § 204(e), inserted before semicolon at end '', including medicaid programs that use coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)) (including coordination through the referral of potentially eligible women, infants, and children between the program authorized under this section and the medicaid program)''.

Subsec. (f)(3). Pub. L. 103–448, § 204(f), inserted before period at end ''and shall ensure that local programs provide priority consideration to serving migrant participants who are residing in the State for a limited period of time''.

Subsec. (f)(18). Pub. L. 103–448, § 204(g), amended par. (18) generally. Prior to amendment, par. (18) read as follows:

''(18)(A) Except as provided in subparagraph (B), a State agency may implement income eligibility guidelines under this section at the time the State implements income eligibility guidelines under the medicaid program.

''(B) Income eligibility guidelines under this section shall be implemented not later than July 1 of each year.''

Subsec. (f)(23), (24). Pub. L. 103–448, § 204(h), (i), added pars. (23) and (24).

Subsec. (g). Pub. L. 103–448, § 204(j)(1), (k), in par. (1) substituted ''fiscal years 1995 through 1998'' for ''fiscal years 1991, 1992, 1993, and 1994'' and in par. (5) struck out ''and'' before ''administration'' and inserted before period at end '', and carrying out technical assistance and research evaluation projects of the programs under this section''.

Subsec. (h)(2)(A). Pub. L. 103–448, § 204(j)(2), substituted ''fiscal years 1995 through 1998'' for ''fiscal years 1990, 1991, 1992, 1993 and 1994''.

Subsec. (h)(3). Pub. L. 103–448, § 204(*l*), substituted ''except as otherwise provided in subparagraphs (F) and (G), an amount'' for ''an amount'' and ''the national minimum breastfeeding promotion expenditure, as described in subparagraph (E)'' for ''$8,000,000'' in subpar. (A)(i)(II) and added subpars. (E) to (G).

Subsec. (h)(4)(E). Pub. L. 103–448, § 204(m), added subpar. (E).

Subsec. (h)(8). Pub. L. 103–448, § 204(n), (*o*)(1), (p), (q), substituted ''on a timely basis'' for ''at 6-month intervals'' in subpar. (D)(iii) and added subpars. (G)(ix), (L), and (M).

Subsec. (h)(10). Pub. L. 103–448, § 204(r), added par. (10).

Subsec. (i)(3). Pub. L. 103–448, § 204(s), inserted ''(except as provided in subparagraph (H))'' after ''1 percent'' in subpar. (A)(i) and added subpar. (H).

Subsec. (j). Pub. L. 103–448, § 204(t)(2), (u), added subsec. (j) and struck out former subsec. (j) which read as follows: ''By October 1 of every other year, the Secretary shall prepare a report describing plans to ensure that, to the maximum extent feasible, eligible members of migrant populations continue to participate in the program as such persons move among States. The report shall be made available to the National Advisory Council on Maternal, Infant, and Fetal Nutrition.''

Subsec. (k)(1). Pub. L. 103–448, § 204(w)(1)(C), substituted ''special supplemental nutrition program'' for ''special supplemental food program'' in two places.

Subsec. (m)(3). Pub. L. 103–448, § 204(v)(1), inserted at end ''The Secretary may negotiate with an Indian State agency a lower percentage of matching funds than is required under the preceding sentence, but not lower than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council.''

Subsec. (m)(5)(F)(i). Pub. L. 103–448, § 204(v)(2)(A), substituted ''17 percent'' for ''15 percent''.

Subsec. (m)(5)(F)(ii). Pub. L. 103–448, § 204(v)(2)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ''During the first fiscal year for which a State receives assistance under this subsection, the Secretary shall permit the State to use 2 percent of the total program funds for administration of the program in addition to the amount the State is permitted to use under clause (i). During any fiscal year other than the first fiscal year for which a State receives assistance under this subsection, upon the showing by the State of financial need, the Secretary may permit the State to use not more than 2 percent of the total program funds for administration of the program in addition to the amount the State is permitted to use under clause (i).''

Subsec. (m)(5)(F)(iii). Pub. L. 103–448, § 204(v)(2)(C), struck out ''for the administration of the program'' after ''use of program funds''.

Subsec. (m)(6)(A). Pub. L. 103–448, § 204(v)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Each State that received assistance under the demonstration program authorized by this subsection in a fiscal year ending before October 1, 1991, shall receive assistance under this subsection if the State complies with the requirements established by this subsection, as determined by the Secretary.''

Subsec. (m)(6)(B)(ii). Pub. L. 103–448, § 204(v)(4), substituted ''$75,000'' for ''$50,000'' in two places.

Subsec. (m)(6)(D)(i). Pub. L. 103–448, § 204(v)(5), substituted ''by November 15 of each year'' for ''at such time and in such manner as the Secretary may reasonably require''.

Subsec. (m)(6)(G). Pub. L. 103–448, § 204(v)(6), substituted ''75 percent'' for ''45 to 55 percent'' in cl. (i) and ''25 percent'' for ''45 to 55 percent'' in cl. (ii).

Subsec. (m)(8)(D), (E). Pub. L. 103–448, § 204(v)(7), added subpars. (D) and (E) and struck out former subpars. (D) and (E) which read as follows:

''(D) when practicable, the impact on the nutritional status of recipients by determining the change in consumption of fresh fruits and vegetables by recipients;

''(E) the effects of the program on the use of farmers' markets and the marketing of agricultural products at such markets and when practicable, the effects of the program on recipients' awareness regarding farmers' markets; and''.

Subsec. (m)(10)(A). Pub. L. 103–448, § 204(v)(8), struck out ''$3,000,000 for fiscal year 1992, $6,500,000 for fiscal year 1993, and'' after ''to carry out this subsection'' and inserted before period at end '', $10,500,000 for fiscal year 1995, and such sums as may be necessary for each of fiscal years 1996 through 1998''.

Subsec. (m)(10)(B). Pub. L. 103–448, § 204(v)(9), (10), substituted ''Each'' for ''Except as provided in subclause (II), each'' in cl. (i)(I), struck out ''or may be retained by the State to reimburse expenses expected to be incurred for such a program during the succeeding fiscal year'' before period at end of cl. (i)(II), and struck out ''Funds that remain unexpended at the end of any demonstration project authorized by this subsection (as it existed on September 30, 1991) shall be reallocated in a similar manner.'' at end of cl. (ii).

Subsec. (m)(11)(D). Pub. L. 103–448, § 204(v)(11), inserted before period at end ''and any other agency approved by the chief executive officer of the State''.

Subsec. (*o*)(1)(B). Pub. L. 103–448, § 204(w)(1)(D), substituted ''special supplemental nutrition program'' for ''special supplemental food program''.

1992—Subsec. (b)(8)(D). Pub. L. 102–342 inserted before period at end ‘‘, homelessness, and migrancy’’.

Subsec. (b)(17) to (20). Pub. L. 102–512, §203, added pars. (17) to (20) and struck out former par. (17) which read as follows: ‘‘‘Competitive bidding’ means a procurement process under which the State agency selects the single source offering the lowest price, as determined by the submission of sealed bids, for the product for which bids are sought.’’

Subsec. (f)(22). Pub. L. 102–512, §205, added par. (22).

Subsec. (h)(2)(A). Pub. L. 102–512, §206, struck out ‘‘shall’’ after ‘‘Such formula’’, inserted ‘‘shall’’ after cl. designation in cls. (i) to (iii), and added cl. (iv).

Subsec. (h)(8)(E)(ii). Pub. L. 102–512, §207, struck out ‘‘that do not have large caseloads and’’ after ‘‘State agencies’’.

Subsec. (h)(8)(G) to (K). Pub. L. 102–512, §204, added subpars. (G) to (K) and struck out former subpar. (G) which read as follows: ‘‘Not later than the expiration of the 120-day period beginning on November 10, 1989, the Secretary shall prescribe regulations to carry out this paragraph. Such regulations shall address issues involved in comparing savings from different cost containment measures, as provided under subparagraph (B).’’

Subsec. (m). Pub. L. 102–314 amended subsec. (m) generally, substituting provisions relating to farmers' market nutrition program to benefit women, infants, and children nutritionally at risk for provisions relating to farmers' market food coupons demonstration project.

1990—Subsec. (i)(3)(E) to (G). Pub. L. 101–330 added subpars. (E) to (G).

1989—Subsec. (b)(17). Pub. L. 101–147, §123(a)(1), added par. (17).

Subsec. (c)(3). Pub. L. 101–147, §326(b)(1), substituted ‘‘section 4 of the Agriculture and Consumer Protection Act of 1973’’ for ‘‘section 1304 of the Food and Agriculture Act of 1977’’.

Subsec. (c)(4). Pub. L. 101–147, §326(a)(1), amended par. (4), as added by Pub. L. 99–591, §342(a), and Pub. L. 99–661, §4302(a), to read as if the addition by Pub. L. 99–661 had not been enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (d)(2). Pub. L. 101–147, §123(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ‘‘The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of persons for participation in the program. Persons at nutritional risk shall be eligible for the program only if they are members of families that satisfy the income standards prescribed for free and reduced-price school meals under section 1758 of this title.’’

Subsec. (d)(4). Pub. L. 101–147, §326(b)(2), realigned margins of par. (4) and subpars. (A) to (C).

Pub. L. 101–147, §326(a)(2), amended par. (4), as added by Pub. L. 99–591, §343(a), and Pub. L. 99–661, §4303(a), to read as if the addition by Pub. L. 99–661 had not been enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (e)(1). Pub. L. 101–147, §123(a)(3)(A), struck out at end ‘‘The Secretary shall prescribe standards to ensure that adequate nutrition education services are provided. The State agency shall provide training to persons providing nutrition education under this section. Nutrition education shall be evaluated annually by each State agency, and such evaluation shall include the views of participants concerning the effectiveness of the nutrition education they have received.’’

Subsec. (e)(2). Pub. L. 101–147, §123(a)(3)(B), (C), added par. (2). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 101–147, §123(a)(3)(D), added par. (3) relating to State agency providing information and materials.

Pub. L. 101–147, §123(a)(3)(B), redesignated former par. (2), relating to Secretary issuing materials, as (3).

Subsec. (e)(4). Pub. L. 101–147, §123(a)(3)(D), added par. (4).

Subsec. (e)(5). Pub. L. 101–147, §213(a)(1), added par. (5).

Subsec. (f)(1)(C)(iii). Pub. L. 101–147, §123(a)(4)(A)(i), inserted ‘‘local programs for breastfeeding promotion,’’ after ‘‘immunization programs,’’ and ‘‘and treatment’’ after ‘‘alcohol and drug abuse counseling’’.

Subsec. (f)(1)(C)(vii). Pub. L. 101–147, §123(a)(4)(A)(ii), amended cl. (vii) generally. Prior to amendment, cl. (vii) read as follows: ‘‘a plan to provide program benefits under this section to eligible persons most in need of the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable;’’.

Subsec. (f)(1)(C)(viii) to (xiii). Pub. L. 101–147, §123(a)(4)(A)(iii), (iv), added cls. (viii) to (xi) and redesignated former cls. (viii) and (ix) as (xii) and (xiii), respectively.

Subsec. (f)(7). Pub. L. 101–147, §213(a)(2)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(8)(A), (C). Pub. L. 101–147, §326(b)(3)(A), substituted ‘‘individuals’’ for ‘‘persons’’.

Subsec. (f)(8)(D). Pub. L. 101–147, §123(a)(4)(B), added subpar. (D).

Subsec. (f)(9). Pub. L. 101–147, §123(a)(4)(C), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(10). Pub. L. 101–147, §326(b)(3)(B), substituted ‘‘an individual’’ for ‘‘a person’’, ‘‘individual's’’ for ‘‘person's’’, and ‘‘the individual’’ for ‘‘the person’’.

Subsec. (f)(14)(A). Pub. L. 101–147, §123(a)(4)(D), inserted ‘‘, breastfeeding promotion,’’ after ‘‘nutrition education’’.

Subsec. (f)(17). Pub. L. 101–147, §§123(a)(4)(E), 326(b)(3)(C), realigned margin of par. (17) and inserted before period at end ‘‘and to accommodate the special needs and problems of individuals who are incarcerated in prisons or juvenile detention facilities’’.

Subsec. (f)(18) to (20). Pub. L. 101–147, §123(a)(4)(F), added pars. (18) to (20).

Subsec. (f)(21). Pub. L. 101–147, §213(a)(2)(B), added par. (21).

Subsec. (g)(1). Pub. L. 101–147, §123(a)(5)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ‘‘There are authorized to be appropriated to carry out this section $1,570,000,000 for the fiscal year ending September 30, 1986, and such sums as may be necessary for each of the fiscal years ending September 30, 1987, September 30, 1988, and September 30, 1989.’’

Subsec. (g)(2), (3). Pub. L. 101–147, §123(a)(5)(B), (C), added pars. (2) and (3). Former pars. (2) and (3) redesignated (4) and (5), respectively.

Subsec. (g)(4). Pub. L. 101–147, §123(a)(5)(B), redesignated former par. (2) as (4).

Subsec. (g)(5). Pub. L. 101–147, §123(a)(5)(D), substituted ‘‘$5,000,000’’ for ‘‘$3,000,000’’.

Pub. L. 101–147, §123(a)(5)(B), redesignated former par. (3) as (5).

Subsec. (g)(6). Pub. L. 101–147, §123(a)(5)(E), added par. (6).

Subsec. (h). Pub. L. 101–147, §123(a)(6), amended subsec. (h) generally, substituting provisions regarding the establishment and administration of national average participant grants for purposes of funding nutrition services and administration and provisions on breastfeeding promotion and procurement of infant formula, for provisions limiting funding for nutrition services and administration to 20% of the total funding for the section, providing a formula for distributing funds to States and setting forth various administrative duties.

Subsec. (i)(1). Pub. L. 101–147, §123(a)(7)(A), substituted ‘‘amounts made available for food benefits under subsection (h)(1)(C) of this section’’ for ‘‘funds provided in accordance with this section’’.

Subsec. (i)(3)(D). Pub. L. 101–147, §123(a)(7)(B), substituted ‘‘cost containment measures as defined in subsection (h)(9)’’ for ‘‘approved cost-savings strategies as identified in subsection (h)(5)(A)’’ and ‘‘not more than 3 percent’’ for ‘‘at the discretion of the Secretary, up to 5 percent’’.

Subsec. (i)(7). Pub. L. 101–147, §123(a)(7)(C), added par. (7).

Subsec. (j). Pub. L. 101–147, § 123(a)(8), substituted ''every other year'' for ''each year''.

Subsec. (k)(1). Pub. L. 101–147, § 123(a)(9), substituted ''24'' for ''twenty-three'' and inserted ''1 member shall be an expert in the promotion of breast feeding;'' after ''the Secretary;''.

Subsec. (m)(7)(B). Pub. L. 101–147, § 326(b)(4)(A), struck out ''(7 U.S.C. 2011 et seq.)'' after ''Food Stamp Act of 1977''.

Subsec. (m)(11)(A). Pub. L. 101–147, § 326(b)(4)(B), substituted ''individual'' for ''person''.

Subsec. (n)(1). Pub. L. 101–147, § 326(b)(5), substituted ''the date of enactment of the Anti-Drug Abuse Act of 1988'' for ''the date of enactment of this Act'' in the original, which for purposes of codification was translated as ''November 18, 1988'', resulting in no change in text.

Subsecs. (*o*), (p). Pub. L. 101–147, § 123(a)(10), added subsecs. (*o*) and (p).

1988—Subsec. (a). Pub. L. 100–690, § 3201(1), substituted ''health problems, including drug abuse,'' for ''health problems''.

Subsec. (b)(15). Pub. L. 100–435, § 212(a), added par. (15).

Subsec. (b)(16). Pub. L. 100–690, § 3201(2), added par. (16).

Subsec. (c)(1). Pub. L. 100–435, § 212(b), amended last sentence generally, designating existing provisions as cls. (A) and (B) and adding cl. (C).

Subsec. (e)(1). Pub. L. 100–690, § 3201(3), substituted ''nutrition education and drug abuse education'' for ''nutrition education'' in first and second sentences.

Subsec. (f)(1)(C)(iii). Pub. L. 100–690, § 3201(4)(A), inserted ''drug abuse education,'' after ''family planning,''.

Pub. L. 100–237, § 9, substituted ''maternal and child health care, and medicaid programs'' for ''and maternal and child health care programs''.

Subsec. (f)(1)(C)(iv). Pub. L. 100–435, § 212(c)(1), substituted ''migrants, homeless individuals,'' for ''migrants''.

Subsec. (f)(1)(C)(vii) to (ix). Pub. L. 100–237, § 8(b), struck out ''and'' at end of cl. (vii), added cl. (viii), and redesignated former cl. (viii) as (ix).

Subsec. (f)(8)(A). Pub. L. 100–435, § 212(c)(2), inserted ''organizations and agencies serving homeless individuals and shelters for victims of domestic violence,'' after ''Indian tribal organizations,''.

Subsec. (f)(13). Pub. L. 100–435, § 212(c)(3), inserted '', and, in the case of homeless individuals, the special needs and problems of such individuals'' before period at end.

Subsec. (f)(14)(A). Pub. L. 100–690, § 3201(4)(B), inserted ''and drug abuse education'' after ''education''.

Subsec. (f)(16). Pub. L. 100–237, § 11, added par. (16).

Subsec. (f)(17). Pub. L. 100–435, § 212(c)(4), added par. (17).

Subsec. (h)(5). Pub. L. 100–237, § 8(a), added par. (5).

Subsec. (h)(5)(D), (E). Pub. L. 100–356, § 3(a), added subpars. (D) and (E).

Subsec. (i)(3)(A). Pub. L. 100–237, § 12(1), inserted ''and subject to subparagraphs (B) and (C)'' after ''paragraph (2)'', and substituted ''and'' for ''or'' at end of cl. (i).

Subsec. (i)(3)(C). Pub. L. 100–237, § 12(2), added subpar. (C).

Subsec. (i)(3)(D). Pub. L. 100–356, § 3(b), added subpar. (D).

Subsec. (k)(1). Pub. L. 100–690, § 3201(5)(A), (B), increased membership of Council to twenty-three from twenty-one members and included experts in drug abuse education and prevention and alcohol abuse education and prevention.

Subsec. (m). Pub. L. 100–435, § 501(b), added subsec. (m).

Subsec. (n). Pub. L. 100–690, § 3201(6), added subsec. (n).

1987—Subsec. (g)(1). Pub. L. 100–71 inserted ''and'' after ''September 30, 1986,'' and substituted ''September 30, 1988, and September 30, 1989'' for ''and September 30, 1988, and $1,782,000,000 for the fiscal year ending September 30, 1989''.

1986—Subsec. (b)(1) to (4). Pub. L. 99–500 and Pub. L. 99–591, § 341(a), and Pub. L. 99–661, § 4301(a), amended subsec. (b) identically, redesignating pars. (2) to (4) as (1) to (3), respectively, adding par. (4), and striking out former par. (1) which defined ''Administrative costs''.

Subsec. (b)(6), (13). Pub. L. 99–500 and Pub. L. 99–591, § 372(b)(1), and Pub. L. 99–661, § 4502(b)(1), amended pars. (6) and (13) identically, substituting ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (c)(2). Pub. L. 99–500 and Pub. L. 99–591, § 314(1), and Pub. L. 99–661, § 4104(1), amended par. (2) identically, substituting ''Subject to amounts appropriated to carry out this section under subsection (g) of this section'' for ''Subject to the authorization levels specified in subsection (g) of this section for the fiscal years ending September 30, 1979, and September 30, 1980, and subject to amounts appropriated for this program for the fiscal year ending September 30, 1981, and for each succeeding fiscal year ending on or before September 30, 1984''.

Subsec. (c)(4). Pub. L. 99–500 and Pub. L. 99–591, § 342(a), and Pub. L. 99–661, § 4302(a), amended subsec. (c) identically, adding par. (4).

Subsec. (d)(4). Pub. L. 99–500 and Pub. L. 99–591, § 343(a), and Pub. L. 99–661, § 4303(a), amended subsec. (d) identically, adding par. (4).

Subsec. (e)(2). Pub. L. 99–500 and Pub. L. 99–591, § 372(b)(1), and Pub. L. 99–661, § 4502(b)(1), amended par. (2) identically, substituting ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (f)(1). Pub. L. 99–500 and Pub. L. 99–591, § 344(a), and Pub. L. 99–661, § 4304(a), generally amended par. (1) identically, substituting subpars. (A) to (E) for former subpars. (A) to (L) and concluding provisions.

Subsec. (f)(2). Pub. L. 99–500 and Pub. L. 99–591, § 345, and Pub. L. 99–661, § 4305, generally amended par. (2) identically. Prior to amendment, par. (2) read as follows: ''Not less than one month prior to the submission to the Governor of the plan of operation and administration required by this subsection, the State agency shall conduct hearings to enable the general public to participate in the development of the State agency plan.''

Subsec. (f)(8). Pub. L. 99–500 and Pub. L. 99–591, § 346, and Pub. L. 99–661, § 4306, generally amended par. (8) identically. Prior to amendment, par. (8) read as follows: ''The State agency shall, in cooperation with participating local agencies, publicize the availability of program benefits, including the eligibility criteria for participation and the location of local agencies operating the program. Such information shall be publicly announced by the State agency and by local agencies at least annually. Such information shall also be distributed to offices and organizations that deal with significant numbers of potentially eligible persons, including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas.''

Subsec. (f)(11). Pub. L. 99–500 and Pub. L. 99–591, § 341(b)(1), and Pub. L. 99–661, § 4301(b)(1), amended par. (11) identically, substituting ''funds for nutrition services and administration'' for ''administrative funds''.

Subsec. (f)(15). Pub. L. 99–500 and Pub. L. 99–591, § 347, and Pub. L. 99–661, § 4307, amended subsec. (f) identically, adding par. (15).

Subsec. (g)(1). Pub. L. 99–661, § 4104(2), designated existing provision authorizing appropriations of $550,000,000 for fiscal year ending Sept. 30, 1979, $750,000,000 for fiscal year ending Sept. 30, 1980, $900,000,000 for fiscal year ending Sept. 30, 1981, $1,017,000,000 for fiscal year ending Sept. 30, 1982, $1,060,000,000 for fiscal year ending Sept. 30, 1983, and $1,126,000,000 for fiscal year ending Sept. 30, 1984 as par. (1), and substituted provision authorizing appropriations of $1,570,000,000 for fiscal year ending Sept. 30, 1986, such sums as may be necessary for each of fiscal years ending Sept. 30, 1987, and Sept. 30, 1988, and $1,782,000,000 for fiscal year ending Sept. 30, 1989.

Pub. L. 99–500 and Pub. L. 99–591, § 314(2), designated existing provision authorizing appropriations of

$550,000,000 for fiscal year ending Sept. 30, 1979, $750,000,000 for fiscal year ending Sept. 30, 1980, $900,000,000 for fiscal year ending Sept. 30, 1981, $1,017,000,000 for fiscal year ending Sept. 30, 1982, $1,060,000,000 for fiscal year ending Sept. 30, 1983, and $1,126,000,000 for fiscal year ending Sept. 30, 1984, as par. (1), and in par. (1) as so designated, substituted provision authorizing appropriations of $1,580,494,000 for fiscal year ending Sept. 30, 1986, such sums as may be necessary for each of fiscal years ending Sept. 30, 1987, and Sept. 30, 1988, and $1,782,000,000 for fiscal year ending Sept. 30, 1989.

Subsec. (g)(2). Pub. L. 99–500 and Pub. L. 99–591, §348(a), and Pub. L. 99–661, §4308(a), amended subsec. (g) identically, adding par. (2).

Subsec. (g)(3). Pub. L. 99–500 and Pub. L. 99–591, §§314(2)(A), 343(b), 349, and Pub. L. 99–661, §§4104(2)(A), 4303(b), 4309, amended subsec. (g) identically, designating provisions as par. (3) and inserting ''preparing the report required under subsection (d)(4) of this section, providing technical assistance to improve State agency administrative systems,''.

Subsec. (h)(1). Pub. L. 99–500 and Pub. L. 99–591, §§341(b)(2), 350, and Pub. L. 99–661, §§4301(b)(2), 4310, amended par. (1) identically, substituting ''costs for nutrition services and administration'' for ''administrative costs'' in three places and inserting at end ''The Secretary shall limit to a minimal level any documentation required under the preceding sentence.''

Subsec. (h)(2). Pub. L. 99–500 and Pub. L. 99–591, §§314(3), 341(b)(1), and Pub. L. 99–661, §§4104(3), 4301(b)(1), amended par. (2) identically, substituting ''1989'' for ''1984'' and ''funds for nutrition services and administration'' for ''administrative funds''.

Subsec. (h)(3). Pub. L. 99–500 and Pub. L. 99–591, §§341(b), 351, and Pub. L. 99–661, §§4301(b), 4311, amended par. (3) identically, substituting ''funds for nutrition services and administration'' for ''administrative funds'' in two places and ''costs for nutrition services and administration'' for ''administrative costs'' and striking out '', which satisfy allocation guidelines established by the Secretary'' after ''several local agencies'' and last sentence which read as follows: ''These allocation standards shall be included in the plan of operation and administration required by subsection (f) of this section.''

Subsec. (h)(4). Pub. L. 99–500 and Pub. L. 99–591, §352, and Pub. L. 99–661, §4312, amended par. (4) identically, substituting ''may'' for ''shall''.

Pub. L. 99–500 and Pub. L. 99–591, §341(b)(1), and Pub. L. 99–661, §4301(b)(1), amended par. (4) identically, substituting ''funds for nutrition services and administration'' for ''administrative funds''.

Subsec. (i). Pub. L. 99–500 and Pub. L. 99–591, §353(a), and Pub. L. 99–661, §4313, amended subsec. (i) identically, designating existing provisions as pars. (1), (2), and (4) to (6) and adding par. (3).

Subsec. (k)(1), (2). Pub. L. 99–500 and Pub. L. 99–591, §372(b)(1), and Pub. L. 99–661, §4502(b)(1), amended pars. (1) and (2) identically, substituting ''Health and Human Services'' for ''Health, Education, and Welfare'' in two places in par. (1) and in one place in par. (2).

1981—Subsec. (g). Pub. L. 97–35 inserted provisions setting forth specific appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1980—Subsec. (c)(2). Pub. L. 96–499, §203(d)(1), substituted ''for the fiscal year ending September 30, 1981, and for each succeeding fiscal year ending on or before September 30, 1984'' for ''for the fiscal years ending September 30, 1981, and September 30, 1982''.

Subsec. (g). Pub. L. 96–499, §203(d)(2), substituted ''such sums as may be necessary for the three subsequent fiscal years'' for ''$950,000,000 for the fiscal year ending September 30, 1982''.

Subsec. (h)(2). Pub. L. 96–499, §203(d)(3), substituted ''1984'' for ''1982''.

1979—Subsec. (g). Pub. L. 96–108 substituted ''$750,000,000'' for ''$800,000,000''.

1978—Subsec. (a). Pub. L. 95–627 expanded provisions of this section to include postpartum and breastfeeding women.

Subsec. (b). Pub. L. 95–627 substituted provisions defining terms for purposes of this section for provisions relating to cash grants to State health departments, Indians, and other agencies for supplemental food to pregnant and lactating women and infants.

Subsec. (c). Pub. L. 95–627 substituted provisions authorizing grants-in-aid by the Secretary, prohibiting ratable reductions of amounts of food an agency may distribute, authorizing affirmative actions to institute the program where needed, and authorizing the issuance of regulations relating to dual receipt of benefits under a commodity supplemental food program for provisions authorizing appropriations to carry out the food program for each fiscal year during the period ending Sept. 30, 1978.

Subsec. (d). Pub. L. 95–627 substituted provisions specifying persons eligible to participate in the food program for provisions prescribing administrative cost limitations and calling for approval by the Secretary of the manner of expenditure by the recipient agencies.

Subsec. (e). Pub. L. 95–627 substituted provisions relating to nutrition education for program participants for provisions relating to persons eligible to participate in the program. See subsec. (d) of this section.

Subsec. (f). Pub. L. 95–627 substituted provisions relating to submittal of State operational and administrative plans, participation in the program by eligible migrants, recordkeeping, certain types of notification, hearings, certification of eligibility, withholding of funds, issuance of regulations, and use of foreign languages for provisions relating to the maintenance of adequate medical records, the establishment of an advisory committee to study methods of evaluating the health benefits of the program, and the submittal of a report to Congress based upon such study no later than June 1, 1976.

Subsec. (g). Pub. L. 95–627 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, 1981, and 1982 for provisions defining terms for purposes of this section. See subsec. (b) of this section.

Subsec. (h). Pub. L. 95–627 substituted provisions relating to allocation of funds for administrative costs for provisions relating to establishment of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

Subsecs. (i) to (*l*). Pub. L. 95–627 added subsecs. (i) to (*l*).

1977—Subsec. (d). Pub. L. 95–166, §20(6), substituted ''each year by not later than a date specified by the Secretary'' for ''by January 1 of each year (by December 1 in the case of fiscal year 1976)''.

Subsec. (h)(8). Pub. L. 95–166, §18, inserted proviso respecting compensation of parent recipient members of the Council.

1975—Subsec. (a). Pub. L. 94–105 added subsec. (a). Former subsec. (a) redesignated (b).

Pub. L. 94–28, §1(a), inserted ''and for the period July 1, 1975, through September 30, 1975,'' after ''1975,''.

Subsec. (b)(1), (2). Pub. L. 94–105 redesignated former subsec. (a) as (b)(1), added (b)(2), and in (b)(1) as so redesignated, extended the program from Sept. 30, 1975 through the fiscal year ending Sept. 30, 1978 and made minor changes in phraseology. Former subsec. (b) redesignated (c).

Pub. L. 94–28, §1(b), inserted ''and for the period July 1, 1975, through September 30, 1975,'' after ''1975,''.

Subsec. (c). Pub. L. 94–105 redesignated former subsec. (b) as (c), and in subsec. (c) as so redesignated, authorized the appropriation of $250,000,000 during each fiscal year during the period ending Sept. 30, 1977, authorized the amount of $250,000,000 which the Secretary can use out of the funds appropriated by section 612c of Title 7 in the event that less than $250,000,000 has been appropriated by the beginning of each fiscal year and authorized the appropriation of not to exceed $250,000,000 during the fiscal year ending Sept. 30, 1978. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 94–105 redesignated former subsec. (c) as (d), and in subsec. (d) as so redesignated, in-

creased from 10 to 20 per centum the amount of administrative costs the Secretary is authorized to pay except that in the first 3 months or until the projected caseload level has been reached the Secretary shall pay those administrative costs necessary to commence the program successfully, inserted provision relating to submission for approval of a description of the manner in which administrative funds shall be spent, and directed the Secretary to take affirmative action to insure that programs begin in the most needy areas. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 94–105 redesignated former subsec. (d) as (e) and in subsec. (e) as so redesignated, substituted ''under this section'' for ''under subsection (a) of this section'' and inserted ''or members of populations'' after ''residents of areas''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 94–105 redesignated former subsec. (e) as (f), and in subsec. (f) as so redesignated, substituted provisions relating to the convention of an advisory committee to study methods available to evaluate the health benefits of the program with a report to the Secretary who shall report to Congress no later than June 1, 1976, for provision that the Secretary and Comptroller General of the United States submit preliminary reports to Congress no later than Oct. 1, 1974 and submit no later than March 30, 1975 evaluations of the program and recommendations with regard to its continuation. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 94–105 redesignated former subsec. (f) as (g), and in subsec. (g) as so redesignated, substituted ''includes women from'' for ''includes mothers from'', and expanded definition of lactating women who are breast feeding an infant up to one year of age and all women for a period of six months post partum, in par. (1); substituted ''5 years'' for ''four years'' wherever appearing and inserted ''(at the discretion of the Secretary)'' after ''may also include'', in par. (2); struck out ''food product'' before ''commercially formulated'', inserted ''women or'' before ''infants'' and inserted provision relating to the availability of the contents of the food package, in par. (3).

Subsec. (h). Pub. L. 94–105 added subsec. (h).

1974—Subsec. (b). Pub. L. 93–326 increased from $40,000,000 to $100,000,000 appropriation authorization for fiscal year ending June 30, 1975, and increased from $40,000,000 to $100,000,000 amount which Secretary can use out of funds appropriated by section 612c of Title 7 in event that less than $100,000,000 has been appropriated by Aug. 1, 1974, for carrying out special supplemental food program for fiscal year ending June 30, 1975.

1973—Subsec. (a). Pub. L. 93–150, § 6(a), provided for cash grants during fiscal year ending June 30, 1975, substituted in first sentence in two places ''State; Indian tribe, band, or group recognized by the Department of the Interior; or the Indian Health Service of the Department of Health, Education, and Welfare'' for ''State'', and substituted in second sentence provision for operation of the program for a ''three-year'' rather than a ''two-year'' period.

Subsec. (b). Pub. L. 93–150, § 6(b), authorized appropriation of $40,000,000 for fiscal year ending June 30, 1975, and provided that in the event such sum was not appropriated by August 1, 1974, the Secretary was to use $40,000,000, or, if any amount had been appropriated, the difference, if any, between the amount directly appropriated and $40,000,000, out of funds appropriated by section 612c of title 7.

Subsec. (e). Pub. L. 93–150, § 6(c), extended dates for submission of preliminary and final evaluation reports from Oct. 1, 1973, to Oct. 1, 1974, and from Mar. 30, 1974, to Mar. 30, 1975, respectively.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 203 of Pub. L. 108–265 effective June 30, 2004, except as otherwise provided, see section 502(a) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

Amendment by sections 203(a)–(c)(1), (5), (e)(8), (10), (13), (f) of Pub. L. 108–265 effective Oct. 1, 2004, see section 502(b)(2) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

Pub. L. 108–265, title II, § 203(c)(4)(B), June 30, 2004, 118 Stat. 773, provided that: ''The amendment made by subparagraph (A) [amending this section] applies to infant formula provided under a contract resulting from a bid solicitation issued on or after October 1, 2004.''

Pub. L. 108–265, title II, § 203(e)(4)(B), June 30, 2004, 118 Stat. 774, provided that: ''The amendments made by subparagraph (A) [amending this section] apply to a contract resulting from a bid solicitation issued on or after October 1, 2004.''

Pub. L. 108–265, title II, § 203(e)(6)(B), June 30, 2004, 118 Stat. 775, provided that: ''The amendment made by this paragraph [amending this section] applies to a bid solicitation issued on or after October 1, 2004.''

Pub. L. 108–265, title II, § 203(e)(7)(C), June 30, 2004, 118 Stat. 775, provided that: ''The amendments made by this paragraph [amending this section] apply to a bid solicitation issued on or after October 1, 2004.''

Amendment by section 203(e)(9) of Pub. L. 108–265 effective Oct. 1, 2005, see section 502(b)(5) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–171, title IV, § 4306(b), May 13, 2002, 116 Stat. 332, provided that: ''The amendments made by this section [amending this section] take effect on the date of enactment of this Act [May 13, 2002].''

Pub. L. 107–171, title IV, § 4307(b), May 13, 2002, 116 Stat. 333, provided that: ''The amendments made by this section [amending this section] take effect on the date of enactment of this Act [May 13, 2002].''

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–472, title III, § 307(b)(2), Nov. 9, 2000, 114 Stat. 2073, provided that the amendment made by section 307(b)(2) is effective Oct. 1, 2000.

Amendment by section 242(b)(1), (2) of Pub. L. 106–224 effective Oct. 1, 2000, see section 242(c) of Pub. L. 106–224, set out as a note under section 1758 of this title.

Pub. L. 106–224, title II, § 244(f), June 20, 2000, 114 Stat. 422, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] take effect on the date of the enactment of this Act [June 20, 2000].

''(2) ALLOCATION OF FUNDS.—The amendments made by subsections (d) and (e) [amending this section] take effect on October 1, 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 109(h) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of enti-

tlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Section 729(g)(2) of Pub. L. 104–193 provided that: ''The amendments made by paragraph (1) [amending this section] shall not apply to a contract for the procurement of infant formula under section 17(h)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)) that is in effect on the date of enactment of this subsection [Aug. 22, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE AND TERMINATION DATES OF 1992 AMENDMENTS

Section 209 of title II of Pub. L. 102–512, which provided that the authority provided and the amendments made by title II of Pub. L. 102–512, amending this section and enacting provisions set out as notes under this section and section 1771 of this title, would terminate on Sept. 30, 1994, except with regard to subsec. (h)(8)(J) of this section, as amended by section 204 of Pub. L. 102–512, was repealed, eff. Oct. 1, 1994, by Pub. L. 103–448, title II, §204(*o*)(2), title IV, §401, Nov. 2, 1994, 108 Stat. 4742, 4751.

Section 4 of Pub. L. 102–314 provided that: ''The amendment made by section 3 [amending this section] shall be effective as of October 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 123(f)(2) of Pub. L. 101–147 provided that: ''The amendments made by subsections (a)(5), (a)(6), and (a)(7) [amending this section] shall be effective as of October 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–435 to be effective and implemented on Oct. 1, 1988, see section 701(a) of Pub. L. 100–435, set out as a note under section 2012 of Title 7, Agriculture.

Section 8(d) of Pub. L. 100–237 provided that: ''The amendment made by subsections (a), (b), and (c) [amending this section and enacting provisions set out below] shall take effect October 1, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 342(b) of Pub. L. 99–500 and Pub. L. 99–591 and section 4302(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to a State beginning with the fiscal year that commences after the end of the first regular session of the State legislature following the date of the enactment of this title [Oct. 18, 1986].''

Section 344(b) of Pub. L. 99–500 and Pub. L. 99–591 and section 4304(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to a plan submitted by a State agency under section 17(f)(1) of the Child Nutrition Act of 1966 [subsec. (f)(1) of this section] for the fiscal year ending September 30, 1987, and each fiscal year thereafter.''

Section 347 of Pub. L. 99–500 and Pub. L. 99–591 and section 4307 of Pub. L. 99–661 provided that the amendment made by section 347 of Pub. L. 99–500 and Pub. L. 99–591 and by section 4307 of Pub. L. 99–661 is effective Oct. 1, 1986.

Section 348(a) of Pub. L. 99–500 and Pub. L. 99–591 and section 4308(a) of Pub. L. 99–661 provided that the amendment made by section 348(a) of Pub. L. 99–500 and Pub. L. 99–591 and by section 4308(a) of Pub. L. 99–661 is effective Oct. 1, 1986.

Section 352 of Pub. L. 99–500 and Pub. L. 99–591 and section 4312 of Pub. L. 99–661 provided that the amendment made by section 352 of Pub. L. 99–500 and Pub. L. 99–591 and by section 4312 of Pub. L. 99–661 is effective Oct. 1, 1986.

Section 353(b) of Pub. L. 99–500 and Pub. L. 99–591 and section 4313(b) of Pub. L. 99–661 were substantially identical in providing that: ''Section 17(i)(3)(A)(i) of the Child Nutrition Act of 1966 [subsec. (i)(3)(A)(i) of this section] (as amended by subsection (a)) shall not apply to appropriations made before the date of enactment of this title [Oct. 18, 1986].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 820(a)(7)(B) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 20 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 14 of Pub. L. 94–105 provided that the amendment made by that section is effective beginning with the fiscal year ending June 30, 1976.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REGULATIONS

Pub. L. 108–265, title II, §203(c)(2)(B), June 30, 2004, 118 Stat. 772, provided that: ''Not later than 18 months after the date of receiving the review initiated by the National Academy of Sciences, Institute of Medicine in September 2003 of the supplemental foods available for the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), the Secretary shall promulgate a final rule updating the prescribed supplemental foods available through the program.''

Pub. L. 105–336, title II, §203(f)(2), Oct. 31, 1998, 112 Stat. 3160, provided that: ''The Secretary of Agriculture shall promulgate—

''(A) not later than March 1, 1999, proposed regulations to carry out section 17(f)(24) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(24)), as added by paragraph (1); and

''(B) not later than March 1, 2000, final regulations to carry out section 17(f)(24) of that Act.''

Pub. L. 105–336, title II, §203(*l*)(2), Oct. 31, 1998, 112 Stat. 3162, provided that: ''The Secretary of Agriculture shall promulgate—

''(A) not later than March 1, 1999, proposed regulations to carry out section 17(h)(11) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(11)), as added by paragraph (1); and

''(B) not later than March 1, 2000, final regulations to carry out section 17(h)(11) of that Act.''

Pub. L. 105–336, title II, §203(p)(2), Oct. 31, 1998, 112 Stat. 3165, provided that: ''The Secretary of Agriculture shall promulgate—

''(A) not later than March 1, 1999, proposed regulations to carry out section 17(*o*) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(*o*)), as added by paragraph (1); and

''(B) not later than March 1, 2000, final regulations to carry out section 17(*o*) of that Act.''

Section 123(f)(1) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement the amendments made by subsections (a)(2), (a)(3), and (a)(4) [amending this section].''

Section 213(b) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement the amendments made by subsection (a) [amending this section].''

Section 13 of Pub. L. 95–627 provided that:

''(a) The Secretary shall promulgate regulations to implement the provisions of section 3 of this Act [amending this section] within one hundred and twenty days of the date of enactment of this Act [Nov. 10, 1978].

''(b) The provisions of section 17 of the [Richard B. Russell] National School Lunch Act [section 1766 of this title] and section 17 of the Child Nutrition Act of 1966 [this section], in effect prior to the effective date of sections 2 and 3 of this Act [Oct. 1, 1978], which are relevant to current regulations of the Secretary governing the child care food program and the special supplemental food program, respectively, shall remain in effect until such regulations are revoked, superseded, amended, or modified by regulations issued under those sections as amended by sections 2 and 3 of this Act.

''(c) Pending proceedings under section 17 of the National School Lunch Act [section 1766 of this title] and section 17 of the Child Nutrition Act of 1966 [this section] shall not be abated by reason of any provision of sections 2 and 3 of this Act [amending this section and section 1766 of this title], but shall be disposed of under the applicable provisions of section 17 of the National School Lunch Act and section 17 of the Child Nutrition Act of 1966 in effect prior to the effective date of sections 2 and 3 of this Act [Oct. 1, 1978].

''(d) Appropriations made available to carry out section 17 of the National School Lunch Act [section 1766 of this title] and section 17 of the Child Nutrition Act of 1966 [this section] shall be available to carry out the provisions of sections 2 and 3 of this Act [amending this section and section 1766 of this title].''

STUDY OF COST CONTAINMENT PRACTICES

Pub. L. 105–336, title II, § 203(r), Oct. 31, 1998, 112 Stat. 3166, provided that:

''(1) IN GENERAL.—The Secretary of Agriculture shall conduct a study on the effect of cost containment practices established by States under the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) for the selection of vendors and approved food items (other than infant formula) on—

''(A) program participation;

''(B) access and availability of prescribed foods;

''(C) voucher redemption rates and actual food selections by participants;

''(D) participants on special diets or with specific food allergies;

''(E) participant use and satisfaction of prescribed foods;

''(F) achievement of positive health outcomes; and

''(G) program costs.

''(2) REPORT.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

''(A) not later than 2 years after the date of enactment of this Act [Oct. 31, 1998], an interim report describing the results of the study conducted under paragraph (1); and

''(B) not later than 3 years after the date of enactment of this Act, a final report describing the results of the study conducted under paragraph (1).''

STUDY OF WIC SERVICES

Pub. L. 105–336, title II, § 203(s), Oct. 31, 1998, 112 Stat. 3167, provided that:

''(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study that assesses—

''(A) the cost of delivering services under the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), including the costs of implementing and administering cost containment efforts;

''(B) the fixed and variable costs incurred by State and local governments for delivering the services and the extent to which those costs are charged to State agencies;

''(C) the quality of the services delivered, taking into account the effect of the services on the health of participants; and

''(D) the costs incurred for personnel, automation, central support, and other activities to deliver the services and whether the costs meet Federal audit standards for allowable costs under the program.

''(2) REPORT.—Not later than 3 years after the date of enactment of this Act [Oct. 31, 1998], the Comptroller General shall submit to the Secretary of Agriculture, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the results of the study conducted under paragraph (1).''

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

PROMOTION BY SECRETARY OF USE OF FARMERS' MARKETS

Section 204(v)(12) of Pub. L. 103–448 provided that: ''The Secretary of Agriculture shall promote the use of farmers' markets by recipients of Federal nutrition programs administered by the Secretary.''

REFERENCES TO SPECIAL SUPPLEMENTAL FOOD PROGRAM

Section 204(w)(3) of Pub. L. 103–448 provided that: ''Any reference to the special supplemental food program established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) in any provision of law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the special supplemental nutrition program established under such section.''

WIC INFANT FORMULA PROTECTION; FINDINGS AND PURPOSES

Section 202 of title II of Pub. L. 102–512, as amended by Pub. L. 103–448, title II, § 204(w)(2)(F), Nov. 2, 1994, 108 Stat. 4746, provided that:

''(a) FINDINGS.—

''(1) the domestic infant formula industry is one of the most concentrated manufacturing industries in the United States;

''(2) only three pharmaceutical firms are responsible for almost all domestic infant formula production;

''(3) coordination of pricing and marketing strategies is a potential danger where only a very few companies compete regarding a given product;

''(4) improved competition among suppliers of infant formula to the special supplemental food program [special supplemental nutrition program] for women, infants, and children (WIC) can save substantial additional sums to be used to put thousands of additional eligible women, infants, and children on the WIC program; and

''(5) barriers exist in the infant formula industry that inhibit the entry of new firms and thus limit competition.

''(b) PURPOSES.—It is the purpose of this title [amending this section and enacting provisions set out as

notes under this section and section 1771 of this title] to enhance competition among infant formula manufacturers and to reduce the per unit costs of infant formula for the special supplemental nutrition program for women, infants, and children (WIC).''

STUDY OF INFANT FORMULA BID SOLICITATIONS

Section 208 of title II of Pub. L. 102–512 directed Secretary of Agriculture, not later than Apr. 1, 1994, to report to Congress on State agencies that request the Secretary of Agriculture to conduct bid solicitations for infant formula under 42 U.S.C. 1786(h)(8)(G)(i), cost reductions achieved by the solicitations, and other matters the Secretary determined to be appropriate regarding title II of Pub. L. 102–512.

WOMEN, INFANTS, AND CHILDREN FARMERS' MARKET NUTRITION PROGRAM; CONGRESSIONAL STATEMENT OF PURPOSE

Section 2 of Pub. L. 102–314 provided that: ''The purpose of this Act [amending this section and enacting provisions set out as notes under this section and section 1771 of this title] is to authorize grants to be made to State programs designed to—

''(1) provide resources to women, infants, and children who are nutritionally at risk in the form of fresh nutritious unprepared foods (such as fruits and vegetables), from farmers' markets; and

''(2) expand the awareness and use of farmers' markets and increase sales at such markets.''

REVIEW OF PRIORITY SYSTEM; REPORTS TO CONGRESS

Section 123(b) of Pub. L. 101–147 directed Secretary of Agriculture to review relationship between nutritional risk criteria established under this section and priority system used under special supplemental food program under this section, especially as it affected pregnant women, and to submit preliminary and final reports to Congress on results of review by Oct. 1, 1990, and by July 1, 1991, respectively.

REPORT ON WIC FOOD PACKAGE

Section 123(c) of Pub. L. 101–147 directed Secretary of Agriculture to review appropriateness of foods eligible for purchase under special supplemental food program under this section and to submit preliminary and final reports to Congress on findings of review by June 30, 1991, and by June 30, 1992, respectively.

REPORT ON COSTS FOR NUTRITION SERVICES AND ADMINISTRATION

Section 123(d) of Pub. L. 101–147 directed Secretary of Agriculture to review effect on costs for nutrition services and administration incurred by State and local agencies of sections 123 and 213 of Pub. L. 101–647, and the amendments made by such sections, amending this section and enacting provisions set out as notes under this section (including effect of both increases and decreases in requirements imposed on such agencies), and to report results of such review to Congress not later than one year after Nov. 10, 1989.

PAPERWORK REDUCTION

Section 123(e) of Pub. L. 101–147 provided that: ''In implementing and monitoring compliance with the provisions of the amendments made by this section [amending this section] (other than the amendment made by subsection (a)(2) to section 17(d)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)), the Secretary of Agriculture shall not impose any new requirement on a State or local agency that would require the State or local agency to place additional paperwork or documentation in a case file maintained by a local agency.''

FARMERS' MARKET COUPONS DEMONSTRATION PROJECT

Section 501(a) of Pub. L. 100–435 provided that: ''The purpose of this section is to authorize the establishment of a grant program to encourage State demonstration projects designed to—

''(1) provide resources to persons who are nutritionally at risk in the form of fresh nutritious unprepared foods (such as fruits and vegetables), from farmers' markets; and

''(2) expand the awareness and use of farmers' markets and increase sales at such markets.''

STUDY OF NUTRITION SERVICES AND ADMINISTRATION FUNDING

Section 8(c) of Pub. L. 100–237 directed Secretary to conduct a study of appropriateness of percentage of annual appropriation for the program required by 42 U.S.C. 1786(h)(1) to be made available for State and local agency costs for nutrition services and administration, and to report results of this study to Congress not later than Mar. 1, 1989, such study to include an analysis of the impact in future years on per participant administrative costs if a substantial number of States implement competitive bidding, rebate, direct distribution, or home delivery systems and to examine the impact of percentage provided for nutrition services and administration on quality of such services.

STUDY OF MEDICAID SAVINGS FOR NEWBORNS FROM WIC PROGRAM

Section 10 of Pub. L. 100–237 directed Secretary of Agriculture to study medicaid savings for newborns as result of prenatal participation by mothers in special supplemental food program under this section and to report study results to Congress by Feb. 1, 1990. Similar provisions were contained in Pub. L. 100–202, § 101(k) [title III], Dec. 22, 1987, 101 Stat. 1329–349.

ACCOUNTABILITY FOR MIGRANT SERVICES

Section 348(b) of Pub. L. 99–500 and Pub. L. 99–591 and section 4308(b) of Pub. L. 99–661 provided that: ''To the extent possible, accountability for migrant services under section 17(g)(2) of the Child Nutrition Act of 1966 [subsec. (g)(2) of this section] (as added by subsection (a)) shall be conducted under regulations in effect on the date of the enactment of this Act [Oct. 18, 1986].''

§ 1787. Repealed. Pub. L. 104–193, title VII, § 730, Aug. 22, 1996, 110 Stat. 2305

Section, Pub. L. 89–642, § 18, as added Pub. L. 94–105, § 23, Oct. 7, 1975, 89 Stat. 528, authorized appropriations and directed Secretary to make cash grants for nutrition education.

§ 1788. Team nutrition network

(a) Purposes

The purposes of the team nutrition network are—

(1) to establish State systems to promote the nutritional health of school children of the United States through nutrition education and the use of team nutrition messages and material developed by the Secretary, and to encourage regular physical activity and other activities that support healthy lifestyles for children, including those based on the most recent Dietary Guidelines for Americans published under section 5341 of title 7;

(2) to provide assistance to States for the development of comprehensive and integrated nutrition education and active living programs in schools and facilities that participate in child nutrition programs;

(3) to provide training and technical assistance and disseminate team nutrition messages to States, school and community nutrition programs, and child nutrition food service professionals;

(4) to coordinate and collaborate with other nutrition education and active living programs that share similar goals and purposes; and

(5) to identify and share innovative programs with demonstrated effectiveness in helping children to maintain a healthy weight by enhancing student understanding of healthful eating patterns and the importance of regular physical activity.

(b) Definition of team nutrition network

In this section, the term ''team nutrition network'' means a statewide multidisciplinary program for children to promote healthy eating and physical activity based on scientifically valid information and sound educational, social, and marketing principles.

(c) Grants

(1) In general

Subject to the availability of funds for use in carrying out this section, in addition to any other funds made available to the Secretary for team nutrition purposes, the Secretary, in consultation with the Secretary of Education, may make grants to State agencies for each fiscal year, in accordance with this section, to establish team nutrition networks to promote nutrition education through—

(A) the use of team nutrition network messages and other scientifically based information; and

(B) the promotion of active lifestyles.

(2) Form

A portion of the grants provided under this subsection may be in the form of competitive grants.

(3) Funds from nongovernmental sources

In carrying out this subsection, the Secretary may accept cash contributions from nongovernmental organizations made expressly to further the purposes of this section, to be managed by the Food and Nutrition Service, for use by the Secretary and the States in carrying out this section.

(d) Allocation

Subject to the availability of funds for use in carrying out this section, the total amount of funds made available for a fiscal year for grants under this section shall equal not more than the sum of—

(1) the product obtained by multiplying ½ cent by the number of lunches reimbursed through food service programs under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs; and

(2) the total value of funds received by the Secretary in support of this section from nongovernmental sources.

(e) Requirements for State participation

To be eligible to receive a grant under this section, a State agency shall submit to the Secretary a plan that—

(1) is subject to approval by the Secretary; and

(2) is submitted at such time and in such manner, and that contains such information, as the Secretary may require, including—

(A) a description of the goals and proposed State plan for addressing the health and other consequences of children who are at risk of becoming overweight or obese;

(B) an analysis of the means by which the State agency will use and disseminate the team nutrition messages and material developed by the Secretary;

(C) an explanation of the ways in which the State agency will use the funds from the grant to work toward the goals required under subparagraph (A), and to promote healthy eating and physical activity and fitness in schools throughout the State;

(D) a description of the ways in which the State team nutrition network messages and activities will be coordinated at the State level with other health promotion and education activities;

(E) a description of the consultative process that the State agency employed in the development of the model nutrition and physical activity programs, including consultations with individuals and organizations with expertise in promoting public health, nutrition, or physical activity;

(F) a description of how the State agency will evaluate the effectiveness of each program developed by the State agency;

(G) an annual summary of the team nutrition network activities;

(H) a description of the ways in which the total school environment will support healthy eating and physical activity; and

(I) a description of how all communications to parents and legal guardians of students who are members of a household receiving or applying for assistance under the program shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

(f) State coordinator

Each State that receives a grant under this section shall appoint a team nutrition network coordinator who shall—

(1) administer and coordinate the team nutrition network within and across schools, school food authorities, and other child nutrition program providers in the State; and

(2) coordinate activities of the Secretary, acting through the Food and Nutrition Service, and State agencies responsible for other children's health, education, and wellness programs to implement a comprehensive, coordinated team nutrition network program.

(g) Authorized activities

A State agency that receives a grant under this section may use funds from the grant—

(1)(A) to collect, analyze, and disseminate data regarding the extent to which children and youths in the State are overweight, physically inactive, or otherwise suffering from nutrition-related deficiencies or disease conditions; and

(B) to identify the programs and services available to meet those needs;

(2) to implement model elementary and secondary education curricula using team nutrition network messages and material developed by the Secretary to create a comprehensive, coordinated nutrition and physical fitness awareness and obesity prevention program;

(3) to implement pilot projects in schools to promote physical activity and to enhance the nutritional status of students;

(4) to improve access to local foods through farm-to-cafeteria activities that may include the acquisition of food and the provision of training and education;

(5) to implement State guidelines in health (including nutrition education and physical education guidelines) and to emphasize regular physical activity during school hours;

(6) to establish healthy eating and lifestyle policies in schools;

(7) to provide training and technical assistance to teachers and school food service professionals consistent with the purposes of this section;

(8) to collaborate with public and private organizations, including community-based organizations, State medical associations, and public health groups, to develop and implement nutrition and physical education programs targeting lower income children, ethnic minorities, and youth at a greater risk for obesity.

(h) Local nutrition and physical activity grants

(1) In general

Subject to the availability of funds to carry out this subsection, the Secretary, in consultation with the Secretary of Education, shall provide assistance to selected local educational agencies to create healthy school nutrition environments, promote healthy eating habits, and increase physical activity, consistent with the Dietary Guidelines for Americans published under section 5341 of title 7, among elementary and secondary education students.

(2) Selection of schools

In selecting local educational agencies for grants under this subsection, the Secretary shall—

(A) provide for the equitable distribution of grants among—

(i) urban, suburban, and rural schools; and

(ii) schools with varying family income levels;

(B) consider factors that affect need, including local educational agencies with significant minority or low-income student populations; and

(C) establish a process that allows the Secretary to conduct an evaluation of how funds were used.

(3) Requirement for participation

To be eligible to receive assistance under this subsection, a local educational agency shall, in consultation with individuals who possess education or experience appropriate for representing the general field of public health, including nutrition and fitness professionals, submit to the Secretary an application that shall include—

(A) a description of the need of the local educational agency for a nutrition and physical activity program, including an assessment of the nutritional environment of the school;

(B) a description of how the proposed project will improve health and nutrition through education and increased access to physical activity;

(C) a description of how the proposed project will be aligned with the local wellness policy required under section 204 of the Child Nutrition and WIC Reauthorization Act of 2004;

(D) a description of how funds under this subsection will be coordinated with other programs under this chapter, the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), or other Acts, as appropriate, to improve student health and nutrition;

(E) a statement of the measurable goals of the local educational agency for nutrition and physical education programs and promotion;

(F) a description of the procedures the agency will use to assess and publicly report progress toward meeting those goals; and

(G) a description of how communications to parents and guardians of participating students regarding the activities under this subsection shall be in an understandable and uniform format, and, to the extent maximum practicable, in a language that parents can understand.

(4) Duration

Subject to the availability of funds made available to carry out this subsection, a local educational agency receiving assistance under this subsection shall conduct the project during a period of 3 successive school years beginning with the initial fiscal year for which the local educational agency receives funds.

(5) Authorized activities

An eligible applicant that receives assistance under this subsection—

(A) shall use funds provided to—

(i) promote healthy eating through the development and implementation of nutrition education programs and curricula based on the Dietary Guidelines for Americans published under section 5341 of title 7; and

(ii) increase opportunities for physical activity through after school programs, athletics, intramural activities, and recess; and

(B) may use funds provided to—

(i) educate parents and students about the relationship of a poor diet and inactivity to obesity and other health problems;

(ii) develop and implement physical education programs that promote fitness and lifelong activity;

(iii) provide training and technical assistance to food service professionals to develop more appealing, nutritious menus and recipes;

(iv) incorporate nutrition education into physical education, health education, and after school programs, including athletics;

(v) involve parents, nutrition professionals, food service staff, educators, community leaders, and other interested parties in assessing the food options in the school environment and developing and implementing an action plan to promote a balanced and healthy diet;

(vi) provide nutrient content or nutrition information on meals served through the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 1773 of this title and items sold a la carte during meal times;

(vii) encourage the increased consumption of a variety of healthy foods, including fruits, vegetables, whole grains, and low-fat dairy products, through new initiatives to creatively market healthful foods, such as salad bars and fruit bars;

(viii) offer healthy food choices outside program meals, including by making low-fat and nutrient dense options available in vending machines, school stores, and other venues; and

(ix) provide nutrition education, including sports nutrition education, for teachers, coaches, food service staff, athletic trainers, and school nurses.

(6) Report

Not later than 18 months after completion of the projects and evaluations under this subsection, the Secretary shall—

(A) submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition and Forestry of the Senate a report describing the results of the evaluation under this subsection; and

(B) make the report available to the public, including through the Internet.

(i) Nutrition education support

In carrying out the purpose of this section to support nutrition education, the Secretary may provide for technical assistance and grants to improve the quality of school meals and access to local foods in schools and institutions.

(j) Limitation

Material prepared under this section regarding agricultural commodities, food, or beverages, must be factual and without bias.

(k) Team nutrition network independent evaluation

(1) In general

Subject to the availability of funds to carry out this subsection, the Secretary shall offer to enter into an agreement with an independent, nonpartisan, science-based research organization—

(A) to conduct a comprehensive independent evaluation of the effectiveness of the team nutrition initiative and the team nutrition network under this section; and

(B) to identify best practices by schools in—

(i) improving student understanding of healthful eating patterns;

(ii) engaging students in regular physical activity and improving physical fitness;

(iii) reducing diabetes and obesity rates in school children;

(iv) improving student nutrition behaviors on the school campus, including by increasing healthier meal choices by students, as evidenced by greater inclusion of fruits, vegetables, whole grains, and lean dairy and protein in meal and snack selections;

(v) providing training and technical assistance for food service professionals resulting in the availability of healthy meals that appeal to ethnic and cultural taste preferences;

(vi) linking meals programs to nutrition education activities;

(vii) successfully involving parents, school administrators, the private sector, public health agencies, nonprofit organizations, and other community partners;

(viii) ensuring the adequacy of time to eat during school meal periods; and

(ix) successfully generating revenue through the sale of food items, while providing healthy options to students through vending, student stores, and other venues.

(2) Report

Not later than 3 years after funds are made available to carry out this subsection, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the findings of the independent evaluation.

(*l*) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section.

(Pub. L. 89–642, § 19, as added Pub. L. 95–166, § 15, Nov. 10, 1977, 91 Stat. 1340; amended Pub. L. 96–499, title II, § 213, Dec. 5, 1980, 94 Stat. 2603; Pub. L. 97–35, title VIII, §§ 806, 817(f), Aug. 13, 1981, 95 Stat. 527, 532; Pub. L. 99–500, title III, §§ 315, 362, 372(b), 373(b), Oct. 18, 1986, 100 Stat. 1783–360, 1783–368, 1783–369, and Pub. L. 99–591, title III, §§ 315, 362, 372(b), 373(b), Oct. 30, 1986, 100 Stat. 3341–363, 3341–371, 3341–372; Pub. L. 99–661, div. D, title I, § 4105, title IV, § 4402, title V, §§ 4502(b), 4503(b), Nov. 14, 1986, 100 Stat. 4071, 4079–4081; Pub. L. 101–147, title I, § 124, title II, § 214, title III, § 327, Nov. 10, 1989, 103 Stat. 905, 913, 918; Pub. L. 103–448, title II, § 205, Nov. 2, 1994, 108 Stat. 4746; Pub. L. 104–193, title VII, § 731(a)–(f), Aug. 22, 1996, 110 Stat. 2305–2307; Pub. L. 105–336, title II, § 204, Oct. 31, 1998, 112 Stat. 3167; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170; Pub. L. 108–265, title II, § 205(a), June 30, 2004, 118 Stat. 782.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsecs. (d)(1) and (h)(3)(D), (5)(B)(vi), is

act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

Section 204 of the Child Nutrition and WIC Reauthorization Act of 2004, referred to in subsec. (h)(3)(C), is section 204 of Pub. L. 108–265, which is set out as a note under section 1751 of this title.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Pub. L. 108–265 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (i) relating to the establishment of a system of grants to State educational agencies for the development of comprehensive nutrition education and training programs, which would include, but not be limited to, instructing students with regard to the nutritional value of foods and the relationship between food and health, training child nutrition program personnel in the principles and practices of food service management, instructing teachers in principles of nutrition education, developing and using classroom materials and curricula, and providing information to parents and caregivers regarding the nutritional value of food and the relationship between food and health.

1999—Subsec. (d). Pub. L. 106–78 made technical amendment to references in original act which appear in text as references to sections 1761 and 1769b–1 of this title.

1998—Subsec. (i). Pub. L. 105–336 inserted subsec. heading and par. (1)(A) and struck out former subsec. heading and pars. (1) to (3)(A) which provided for grants to States for nutrition education and information programs based on rate of 50 cents for each child enrolled in schools, minimum amounts to be received by States, and authorizations of appropriations; redesignated par. (3)(B) as (1)(B); and redesignated pars. (4) and (5) as (2) and (3), respectively.

1996—Subsec. (a). Pub. L. 104–193, §731(a)(1), substituted ''that effective dissemination of scientifically valid information to children participating or eligible to participate in the school lunch and related child nutrition programs should be encouraged.'' for ''that—'' and pars. (1) to (5) which related to priority of proper nutrition, lack of understanding of principles of good nutrition, training school employees, role of parents, and opportunities for children to learn about importance of good nutrition.

Subsec. (b). Pub. L. 104–193, §731(a)(2), substituted ''establish'' for ''encourage effective dissemination of scientifically valid information to children participating or eligible to participate in the school lunch and related child nutrition programs by establishing''.

Subsec. (f)(1). Pub. L. 104–193, §731(b)(1)(B), struck out ''(A)'' before ''The funds made available'' in introductory provisions, redesignated cls. (i) to (viii) and (xx) as subpars. (A) to (H) and (I), respectively, added subpar. (J), and struck out cls. (ix) to (xix) which related to use of funds for a nutrition component usable in consumer, homemaking and health education programs, instructing staff on working with children from different backgrounds, developing means of providing nutrition education in materials to children through after-school programs, training about healthy and nutritious meals, creating instructional programming for school staff and parents, aspects of the Strategic Plan for Nutrition and Education, encouraging public service advertisements, coordinating and promoting nutrition activities in local school districts, contracting with public and private nonprofit educational institutions for nutrition education, increasing awareness of importance of breakfasts, and coordinating and promoting nutrition education under child nutrition programs.

Pub. L. 104–193, §731(b)(1)(A), struck out subpar. (B) which read as follows: ''As used in this paragraph, the term 'language appropriate' used with respect to materials, programming, or advertisements means materials, programming, or advertisements, respectively, using a language other than the English language in a case in which the language is dominant for a large percentage of individuals participating in the program.''

Subsec. (f)(2), (3). Pub. L. 104–193, §731(b)(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Any State desiring to receive grants authorized by this section may, from the funds appropriated to carry out this section, receive a planning and assessment grant for the purposes of carrying out the responsibilities described in clauses (A), (B), (C), and (D) of paragraph (1) of this subsection. Any State receiving a planning and assessment grant, may, during the first year of participation, be advanced a portion of the funds necessary to carry out such responsibilities: *Provided*, That in order to receive additional funding, the State must carry out such responsibilities.''

Subsec. (f)(4). Pub. L. 104–193, §731(b)(2), struck out par. (4) which read as follows: ''Nothing in this section shall prohibit State or local educational agencies from making available or distributing to adults nutrition education materials, resources, activities, or programs authorized under this section.''

Subsec. (g)(1). Pub. L. 104–193, §731(c), substituted ''be available at any reasonable time'' for ''at all times be available'' in second sentence.

Subsec. (h)(1). Pub. L. 104–193, §731(d)(1), in second sentence, struck out ''as provided in paragraph (2) of this subsection'' after ''needs in the State'' and ''as provided in paragraph (3) of this subsection'' after ''prepare a State plan''.

Subsec. (h)(2). Pub. L. 104–193, §731(d)(2), struck out at end ''Such assessment shall include, but not be limited to, the identification and location of all students in need of nutrition education. The assessment shall also identify State and local individual, group, and institutional resources within the State for materials, facilities, staffs, and methods related to nutrition education.''

Subsec. (h)(3). Pub. L. 104–193, §731(d)(3), struck out par. (3) which related to comprehensive nutrition education plan to be submitted by State coordinator within 9 months of award of planning and assessment grant and reviews in light of plan.

Subsec. (i)(2)(A). Pub. L. 104–193, §731(e)(1), struck out ''and each succeeding fiscal year'' after ''fiscal year 1996''.

Subsec. (i)(3) to (5). Pub. L. 104–193, §731(e)(2), (3), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (j). Pub. L. 104–193, §731(f), struck out subsec. (j) which read as follows:

''(1) The Secretary shall assess the nutrition education and training program carried out under this section to determine what nutrition education needs are for children participating under the National School Lunch Act in the school lunch program, the summer food service program, and the child care food program.

''(2) The assessment required by paragraph (1) shall be completed not later than October 1, 1990.''

1994—Subsec. (b). Pub. L. 103–448, §205(a), substituted ''education and training programs'' for ''information and education programs''.

Subsec. (c). Pub. L. 103–448, §205(a), (b), substituted ''education and training program'' for ''information and education program'' in first sentence, substituted ''child nutrition program personnel'' for ''school food service personnel'' in subpar. (B), and added subpar. (E).

Subsec. (d)(1). Pub. L. 103–448, §205(a), (c)(1), substituted ''education and training program'' for ''information and education program'' in introductory provisions and inserted '', and the provision of nutrition education to parents and caregivers'' before period at end of subpar. (C).

Subsec. (d)(4). Pub. L. 103–448, §205(c)(2), substituted ''educational, school food service, child care, and summer food service personnel'' for ''educational and school food service personnel''.

Subsec. (d)(5). Pub. L. 103–448, § 205(c)(3), in first sentence inserted ", and in child care institutions and summer food service institutions," after "schools".

Subsec. (f)(1)(A). Pub. L. 103–448, § 205(d)(1), designated existing provisions of par. (1) as subpar. (A). Former subpar. (A) redesignated cl. (i).

Subsec. (f)(1)(A)(i) to (viii). Pub. L. 103–448, § 205(d)(2)–(4), redesignated subpars. (A) to (H) as cls. (i) to (viii), respectively, of subpar. (A) and realigned margins.

Subsec. (f)(1)(A)(ix). Pub. L. 103–448, § 205(d)(5), (7), added cl. (ix). Former cl. (ix) redesignated (xx).

Pub. L. 103–448, § 205(d)(3), (4), redesignated subpar. (I) as cl. (ix) of subpar. (A) and realigned margins.

Subsec. (f)(1)(A)(x) to (xix). Pub. L. 103–448, § 205(d)(7), added cls. (x) to (xix).

Subsec. (f)(1)(A)(xx). Pub. L. 103–448, § 205(d)(6), redesignated cl. (ix) as (xx).

Subsec. (f)(1)(B). Pub. L. 103–448, § 205(d)(8), added subpar. (B). Former subpar. (B) redesignated cl. (ii) of subpar. (A).

Subsec. (f)(1)(C) to (F). Pub. L. 103–448, § 205(d)(3), redesignated subpars. (C) to (F) as cls. (iii) to (vi) of subpar. (A).

Subsec. (f)(1)(G). Pub. L. 103–448, § 205(d)(3), redesignated subpar. (G) as cl. (vii) of subpar. (A).

Pub. L. 103–448, § 205(a), substituted "education and training" for "information and education".

Subsec. (f)(1)(H), (I). Pub. L. 103–448, § 205(d)(3), redesignated subpars. (H) and (I) as cls. (viii) and (ix), respectively, of subpar. (A).

Subsec. (f)(3). Pub. L. 103–448, § 205(e), added par. (3) and struck out former par. (3) which read as follows: "An amount not to exceed 15 percent of each State's grant may be used for up to 50 percent of the expenditures for overall administrative and supervisory purposes in connection with the program authorized under this section."

Subsec. (h). Pub. L. 103–448, § 205(f), substituted "nutrition education and training needs" for "nutrition education needs" in par. (2) and added subpar. (F) in par. (3).

Subsec. (i)(2)(A). Pub. L. 103–448, § 205(g), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "There is authorized to be appropriated for grants to each State for the conduct of nutrition education and information programs—

"(i) $10,000,000 for the fiscal year 1990;

"(ii) $15,000,000 for the fiscal year 1991;

"(iii) $20,000,000 for the fiscal year 1992; and

"(iv) $25,000,000 for each of the fiscal years 1993 and 1994."

Subsec. (i)(3), (4). Pub. L. 103–448, § 205(h), added par. (3) and redesignated former par. (3) as (4).

Subsec. (j)(1). Pub. L. 103–448, § 205(a), substituted "education and training program" for "information and education program".

1989—Subsec. (d)(1)(B). Pub. L. 101–147, § 124(1)(A)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the food service management training of school food service personnel, and".

Subsec. (d)(1)(C). Pub. L. 101–147, § 124(1)(A)(ii), substituted "schools, child care institutions, and institutions offering summer food service programs under section 13 of the National School Lunch Act" for "schools and child care institutions".

Subsec. (d)(2). Pub. L. 101–147, §§ 124(1)(B), 327(1)(A), substituted "recommendations of State educational agencies, the Department of Health and Human Services, and other" for "recommendation of the National Advisory Council on Child Nutrition; State educational agencies; the Department of Health and Human Services; and other".

Subsec. (d)(4). Pub. L. 101–147, §§ 124(1)(C), 327(1)(B), struck out "(12 Stat. 503, as amended; 7 U.S.C. 301–305, 307 and 308)" after "Act of July 2, 1862" and "(26 Stat. 417, as amended; 7 U.S.C. 321–326 and 328)" after "Act of August 30, 1890" and inserted ", in coordination with the activities authorized under section 21 of the National School Lunch Act".

Subsec. (d)(5). Pub. L. 101–147, § 327(1)(C), struck out "(12 Stat. 503, as amended; 7 U.S.C. 301–305, 307, and 308)" after "Act of July 2, 1862" and "(26 Stat. 417, as amended; 7 U.S.C. 321–326 and 328)" after "act of August 30, 1890".

Subsec. (h)(3). Pub. L. 101–147, § 327(2), in subpar. (E), struck out "(12 Stat. 503; 7 U.S.C. 301–305, 307, and 308)" after "Act of July 2, 1862" and "(26 Stat. 417, as amended; 7 U.S.C. 321–326 and 328)" after "act of August 30, 1890".

Pub. L. 101–147, § 214, inserted at end "Each plan developed as required by this section shall be updated on an annual basis."

Pub. L. 101–147, § 124(2), in subpar. (C), struck out "the National Advisory Council on Child Nutrition," after "recommendations of".

Subsec. (i)(2). Pub. L. 101–147, § 124(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For the fiscal year ending September 30, 1980, and for each succeeding fiscal year ending on or before September 30, 1989, there is hereby authorized to be appropriated for grants to each State for the conduct of nutrition education and information programs, an amount equal to the higher of (A) 50 cents for each child enrolled in schools or in institutions within each State, or (B) $50,000 for each State. There is authorized to be appropriated for the grants referred to in the preceding sentence not more than $15,000,000 for fiscal year 1981, and not more than $5,000,000 for each subsequent fiscal year. Grants to each State from such appropriations shall be based on a rate of 50 cents for each child enrolled in schools or in institutions within such State, except that no State shall receive an amount less than $50,000 for that year. If funds appropriated for such year are insufficient to pay the amount to which each State is entitled under the second preceding sentence, the amount of such grant shall be ratably reduced to the extent necessary so that the total of such amounts paid does not exceed the amount of appropriated funds. If additional funds become available for making such payments, such amounts shall be increased on the same basis as they were reduced."

Subsec. (j). Pub. L. 101–147, § 124(4), added subsec. (j).

1986—Subsec. (d)(2), (3). Pub. L. 99–500 and Pub. L. 99–591, § 372(b)(1), and Pub. L. 99–661, § 4502(b)(1), amended pars. (2) and (3) identically, substituting "Health and Human Services" for "Health, Education, and Welfare" in one place in par. (2) and in two places in par. (3).

Subsecs. (i), (j). Pub. L. 99–500 and Pub. L. 99–591, §§ 315, 362, 372(b)(2), 373(b), and Pub. L. 99–661, §§ 4105, 4402, 4502(b)(2), 4503(b), amended section identically, redesignating subsec. (j) as (i), substituting "1989" for "1984" in one place and "$50,000" for "$75,000" in two places in par. (2), and substituting "Department of Education" for "Office of Education of the Department of Health, Education, and Welfare" in par. (3).

1981—Subsec. (d)(6). Pub. L. 97–35, § 817(f), struck out par. (6) relating to State prohibition on administration of program in nonprofit private schools and institutions.

Subsec. (j)(2). Pub. L. 97–35, § 806, substituted provisions authorizing $15,000,000 for fiscal year 1981 and not more than $5,000,000 for each subsequent fiscal year for provisions authorizing $15,000,000 for the fiscal year beginning Oct. 1, 1980, and each subsequent fiscal year.

1980—Subsec. (j)(2). Pub. L. 96–499 substituted "For the fiscal year ending September 30, 1980, and for each succeeding fiscal year ending on or before September 30, 1984" for "For the fiscal year beginning October 1, 1979" and "second preceding sentence" for "preceding sentence" and inserted provision authorizing appropriations for the fiscal year beginning October 1, 1980, and subsequent fiscal years, for the grants referred to in the preceding sentence, not more than $15,000,000.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 731(g) of Pub. L. 104–193 provided that: ''The amendments made by subsection (e) [amending this section] shall become effective on October 1, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

§ 1789. Department of Defense overseas dependents' schools

(a) Purpose of program; availability of payments and commodities

For the purpose of obtaining Federal payments and commodities in conjunction with the provision of breakfasts to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the school breakfast program in the United States.

(b) Administration of program; eligibility determinations and regulations

The Secretary of Defense shall administer breakfast programs authorized by this section and shall determine eligibility for free and reduced-price breakfasts under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the school breakfast program under this section.

(c) Nutritional standards for meals; noncompliance with standards

The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is highly impracticable.

(d) Authorization of appropriations

Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section.

(e) Technical assistance for administration of program

The Secretary of Agriculture shall provide the Secretary of Defense with technical assistance in the administration of the school breakfast programs authorized by this section.

(Pub. L. 89–642, § 20, as added Pub. L. 95–561, title XIV, § 1408(b)(2), Nov. 1, 1978, 92 Stat. 2368; amended Pub. L. 99–500, title III, § 328(b), Oct. 18, 1986, 100 Stat. 1783–362, and Pub. L. 99–591, title III, § 328(b), Oct. 30, 1986, 100 Stat. 3341–365; Pub. L. 99–661, div. D, title II, § 4208(b), Nov. 14, 1986, 100 Stat. 4073.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1986—Subsec. (d). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (d) identically, striking out ''and for payment of the difference between the value of commodities and payments received from the Secretary of Agriculture and (1) the full cost of each breakfast for each student eligible for a free breakfast, and (2) the full cost of each breakfast, less any amounts required by law or regulation to be paid by each student eligible for a reduced-price breakfast'' after ''this section''.

EFFECTIVE DATE

Section effective Oct. 1, 1978, and no provisions to be construed to impair or to prevent the taking of effect of any other Act providing for the transfer of the described functions to an executive department having responsibility for education, see section 1415 of Pub. L. 95–561, set out as a note under section 921 of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer to Secretary of Education of functions of Secretary of Defense and Department of Defense relating to operation of overseas schools for dependents of Department of Defense and under Defense Dependents' Education Act of 1978, 42 U.S.C. 921 et seq., see section 3442(a) of Title 20, Education.

§ 1790. Breastfeeding promotion program

(a) In general

The Secretary, from amounts received under subsection (d) of this section, shall establish a breastfeeding promotion program to promote breastfeeding as the best method of infant nutrition, foster wider public acceptance of breastfeeding in the United States, and assist in the distribution of breastfeeding equipment to breastfeeding women.

(b) Conduct of program

In carrying out the program described in subsection (a) of this section, the Secretary may—

(1) develop or assist others to develop appropriate educational materials, including public service announcements, promotional publications, and press kits for the purpose of promoting breastfeeding;

(2) distribute or assist others to distribute such materials to appropriate public and private individuals and entities; and

(3) provide funds to public and private individuals and entities, including physicians, health professional organizations, hospitals, community based health organizations, and employers, for the purpose of assisting such entities in the distribution of breastpumps and similar equipment to breastfeeding women.

(c) Cooperative agreements

The Secretary is authorized to enter into cooperative agreements with Federal agencies, State and local governments, and other entities to carry out the program described in subsection (a) of this section.

(d) Gifts, bequests, and devises

(1) In general

The Secretary is authorized to solicit, accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of establishing and carrying out the program described in subsection (a) of this section. Gifts, bequests, or devises of money and proceeds from the sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Secretary.

(2) Criteria for acceptance

The Secretary shall establish criteria for determining whether to solicit and accept gifts, bequests, or devises under paragraph (1), including criteria that ensure that the acceptance of any gifts, bequests, or devises would not—

(A) reflect unfavorably on the ability of the Secretary to carry out the Secretary's responsibilities in a fair and objective manner; or

(B) compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in the program.

(Pub. L. 89–642, § 21, as added Pub. L. 102–342, title II, § 201, Aug. 14, 1992, 106 Stat. 912.)

§ 1791. Bill Emerson Good Samaritan Food Donation Act

(a) Short title

This section may be cited as the ''Bill Emerson Good Samaritan Food Donation Act''.

(b) Definitions

As used in this section:

(1) Apparently fit grocery product

The term ''apparently fit grocery product'' means a grocery product that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(2) Apparently wholesome food

The term ''apparently wholesome food'' means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(3) Donate

The term ''donate'' means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(4) Food

The term ''food'' means any raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(5) Gleaner

The term ''gleaner'' means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

(6) Grocery product

The term ''grocery product'' means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

(7) Gross negligence

The term ''gross negligence'' means voluntary and conscious conduct (including a failure to act) by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person.

(8) Intentional misconduct

The term ''intentional misconduct'' means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(9) Nonprofit organization

The term ''nonprofit organization'' means an incorporated or unincorporated entity that—

(A) is operating for religious, charitable, or educational purposes; and

(B) does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

(10) Person

The term ''person'' means an individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, council member, or other elected or appointed individual responsible for the governance of the entity.

(c) Liability for damages from donated food and grocery products

(1) Liability of person or gleaner

A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals.

(2) Liability of nonprofit organization

A nonprofit organization shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit gro-

cery product that the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution to needy individuals.

(3) Exception

Paragraphs (1) and (2) shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the person, gleaner, or nonprofit organization, as applicable, constituting gross negligence or intentional misconduct.

(d) Collection or gleaning of donations

A person who allows the collection or gleaning of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals shall not be subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this paragraph shall not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

(e) Partial compliance

If some or all of the donated food and grocery products do not meet all quality and labeling standards imposed by Federal, State, and local laws and regulations, the person or gleaner who donates the food and grocery products shall not be subject to civil or criminal liability in accordance with this section if the nonprofit organization that receives the donated food or grocery products—

(1) is informed by the donor of the distressed or defective condition of the donated food or grocery products;

(2) agrees to recondition the donated food or grocery products to comply with all the quality and labeling standards prior to distribution; and

(3) is knowledgeable of the standards to properly recondition the donated food or grocery product.

(f) Construction

This section shall not be construed to create any liability. Nothing in this section shall be construed to supercede State or local health regulations.

(Pub. L. 89–642, § 22, formerly Pub. L. 101–610, title IV, § 402, Nov. 16, 1990, 104 Stat. 3183; renumbered § 22 and amended Pub. L. 104–210, § 1(a)(2), (b), Oct. 1, 1996, 110 Stat. 3011, 3012.)

CODIFICATION

Section was formerly classified to section 12672 of this title prior to renumbering by Pub. L. 104–210.

AMENDMENTS

1996—Pub. L. 104–210, § 1(a)(2)(A), substituted ''Bill Emerson'' for ''Model'' in section catchline.

Subsec. (a). Pub. L. 104–210, § 1(a)(2)(B), inserted ''Bill Emerson'' before ''Good''.

Subsec. (b)(7). Pub. L. 104–210, § 1(a)(2)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'gross negligence' means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.''

Subsec. (c). Pub. L. 104–210, § 1(a)(2)(D), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ''A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals, except that this paragraph shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the donor constituting gross negligence or intentional misconduct.''

Subsec. (f). Pub. L. 104–210, § 1(a)(2)(E), inserted at end ''Nothing in this section shall be construed to supercede State or local health regulations.''

CHAPTER 14—DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

§§ 1801 to 1819. Transferred

CODIFICATION

The Atomic Energy Act of 1946, as amended, act Aug. 1, 1946, ch. 724, 60 Stat. 755, formerly classified to sections 1801 to 1819 of this title, was completely amended by act Aug. 30, 1954, ch. 1073, 68 Stat. 919, to read as follows: ''Atomic Energy Act of 1954'', which is classified to section 2011 et seq. of this title.

Section 1801, act Aug. 1, 1946, ch. 724, § 1, 60 Stat. 755, related to declaration of policy and purpose of chapter. See sections 2011 to 2013 of this title.

Section 1802, acts Aug. 1, 1946, ch. 724, § 2, 60 Stat. 756; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501; July 3, 1948, ch. 828, 62 Stat. 1259; Oct. 11, 1949, ch. 673, §§ 1–3, 63 Stat. 762; Sept. 23, 1950, ch. 1000, §§ 1, 2, 64 Stat. 979; July 31, 1953, ch. 283, § 1, 67 Stat. 240, related to establishment of Atomic Energy Commission, its membership, tenure, compensation, and appointment of certain officers and committees. See sections 2031 to 2038 of this title.

Section 1803, act Aug. 1, 1946, ch. 724, § 3, 60 Stat. 758, related to research and development activities by Commission. See sections 2051 to 2053 of this title.

Section 1804, act Aug. 1, 1946, ch. 724, § 4, 60 Stat. 759, related to production of fissionable material, prohibited acts, ownership and operation of production facilities, irradiation of materials, and manufacture of production facilities. See sections 2061 to 2112 of this title.

Section 1805, acts Aug. 1, 1946, ch. 724, § 5, 60 Stat. 760; Oct. 30, 1951, ch. 633, 65 Stat. 692; Aug. 13, 1954, ch. 730, § 10(a)–(c), 68 Stat. 715, 716, related to control of fissionable materials. See sections 2061 to 2112 of this title.

Section 1806, act Aug. 1, 1946, ch. 724, § 6, 60 Stat. 763, related to military application of atomic energy. See sections 2121 and 2122 of this title.

Section 1807, act Aug. 1, 1946, ch. 724, § 7, 60 Stat. 764, related to license requirements for utilization of atomic energy, reports to Congress, and issuance of licenses. See sections 2131 to 2140 of this title.

Section 1808, act Aug. 1, 1946, ch. 724, § 8, 60 Stat. 765, related to force and effect of international agreements. See sections 2151 to 2154 of this title.

Section 1809, act Aug. 1, 1946, ch. 724, § 9, 60 Stat. 765, related to property of Commission and its exempt status from taxation. See sections 2015 and 2208 of this title.

Section 1810, acts Aug. 1, 1946, ch. 724, § 10, 60 Stat. 766; Oct. 30, 1951, ch. 633, 65 Stat. 692; Apr. 5, 1952, ch. 159, § 1, 66 Stat. 43, related to control of information. See sections 2161 to 2166 of this title.

Section 1811, act Aug. 1, 1946, ch. 724, § 11, 60 Stat. 768, related to patents and inventions. See sections 2181 to 2190 of this title.

Section 1812, acts Aug. 1, 1946, ch. 724, § 12, 60 Stat. 770; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972, related to authority, powers and duties of Commission. See sections 2201 to 2209 of this title.

Section 1813, act Aug. 1, 1946, ch. 724, §13, 60 Stat. 772, related to compensation for acquisition of private property. See sections 2221 to 2224 of this title.

Section 1814, act Aug. 1, 1946, ch. 724, §14, 60 Stat. 772, related to judicial review. See sections 2231 to 2239 of this title.

Section 1815, acts Aug. 1, 1946, ch. 724, §15, 60 Stat. 772; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972, related to Joint Committee of Congress on Atomic Energy. See sections 2251 to 2257 of this title.

Section 1816, act Aug. 1, 1946, ch. 724, §16, 60 Stat. 773, related to penalties for violation of certain provisions of this chapter, injunctions, subpoena of witnesses, and production of documents. See sections 2271 to 2281 of this title.

Section 1817, act Aug. 1, 1946, ch. 724, §17, 60 Stat. 774, related to reports and recommendations to Congress.

Section 1818, act Aug. 1, 1946, ch. 724, §18, 60 Stat. 774, related to definitions. See section 2014 of this title.

Section 1819, act Aug. 1, 1946, ch. 724, §19, 60 Stat. 775, related to authorization of appropriations. See section 2017 of this title.

CHAPTER 15—DISASTER RELIEF

SUBCHAPTER I—FEDERAL ASSISTANCE PROGRAMS

§§ 1851 to 1854. Repealed. Sept. 30, 1950, ch. 1125 § 9, 64 Stat. 1111

Section 1851, act July 25, 1947, ch. 320, §1, 61 Stat. 422, related to transfer of surplus personal property between War Assets Administration and Federal Works Agency to be utilized in alleviation of suffering caused by flood or other catastrophe.

Section 1852, acts July 25, 1947, ch. 320, §2, 61 Stat. 422; June 30, 1949, ch. 288, title I, §103, 63 Stat. 380, related to loan or transfer of property to States and local governments.

Section 1853, acts July 25, 1947, ch. 320, §3, 61 Stat. 423; June 30, 1949, ch. 288, title I, §§103, 105, 63 Stat. 380, related to utilization of government and State officers and employees and cooperation of Federal agencies with Administrator.

Section 1854, acts July 25, 1947, ch. 320, §4, 61 Stat. 423; June 30, 1949, ch. 288, title I, §103, 63 Stat. 380, related to authorization of appropriations.

For provisions relating to disaster relief, see section 5121 et seq.) of this title.

§§ 1855 to 1855g. Repealed. Pub. L. 91–606, title III, § 302(1), Dec. 31, 1970, 84 Stat. 1759

Section 1855, act Sept. 30, 1950, ch. 1125 §1, 64 Stat. 1109, set out Congressional declaration of intent in enacting act of Sept. 30, 1950, covering major disasters.

Section 1855a, acts Sept. 30, 1950, ch. 1125, §2, 64 Stat. 1109; June 27, 1962, Pub. L. 87–502, §1, 76 Stat. 111; Nov. 6, 1966, Pub. L. 89–769, §6(a), 80 Stat. 1317, defined ''major disasters'', ''United States'', ''State'', ''governor'', ''local government'', and ''Federal agency''.

Section 1855b, acts Sept. 30, 1950, ch. 1125, §3, 64 Stat. 1110; Aug. 3, 1951, ch. 293, §2, 65 Stat. 173; July 17, 1953, ch. 255, 67 Stat. 180; June 27, 1962, Pub. L. 87–502, §2, 76 Stat. 111, authorized and directed Federal agencies to render assistance in event of major disasters.

Section 1855c, act Sept. 30, 1950, ch. 1125, §4, 64 Stat. 1110, directed Federal agencies to cooperate with each other and with other agencies in providing assistance.

Section 1855d, act Sept. 30, 1950, ch. 1125, §5, 64 Stat. 1110, directed the President to coordinate disaster assistance and to issue rules and regulations covering disaster relief.

Section 1855e, act Sept. 30, 1950, ch. 1125, §6, 64 Stat. 1111, dealt with repair and reconstruction of damaged United States facilities.

Section 1855f, act Sept. 30, 1950, ch. 1125, §7, 64 Stat. 1111, provided for utilization of services and facilities of other agencies, employment of temporary personnel, incurring of obligations, and reimbursements.

Section 1855g, act Sept. 30, 1950, ch. 1125, §8, 64 Stat. 1111, authorized an appropriation of $5,000,000 and required by the President to submit a report to Congress at beginning of each session covering expenditure of amounts appropriated.

For provisions relating to disaster relief, see section 5121 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

SUBCHAPTER II—ADJUSTMENT AND COORDINATION OF FEDERAL PROGRAMS

§§ 1855aa to 1855ii. Repealed. Pub. L. 91–606, title III, § 302(2), Dec. 31, 1970, 84 Stat. 1759

Section 1855aa, Pub. L. 89–769, §2, Nov. 6, 1966, 80 Stat. 1316, defined ''major disaster.''

Pub. L. 89–769, §§1, 14, Nov. 6, 1966, 80 Stat. 1316, 1321, set out as notes under section 1855aa of this title, gave the name ''Disaster Relief Act of 1966'' to Pub. L. 89–769, and provided for effective date of such act.

Section 1855bb, Pub. L. 89–769, §3(a), Nov. 6, 1966, 80 Stat. 1316, called for rescheduling and refinancing of Federal loans in event of a major disaster. See section 3538 of this title and section 912a of Title 7, Agriculture.

Section 1855cc, Pub. L. 89–769, §5, Nov. 6, 1966, 80 Stat. 1317, authorized Secretary of Defense to make available facilities of civil defense communications system in case of imminent natural disasters.

Section 1855dd, Pub. L. 89–769, §8, Nov. 6, 1966, 80 Stat. 1320, set out order of priorities to be followed in processing applications for public facility and public housing assistance in major disaster areas.

Section 1855ee, Pub. L. 89–769, §9, Nov. 6, 1966, 80 Stat. 1320, provided for reimbursement of costs of reconstruction of public facilities, eligible costs, and agencies and parties entitled to reimbursement.

Section 1855ff, Pub. L. 89–769, §10, Nov. 6, 1966, 80 Stat. 1320, directed department heads to administer programs covering major disasters so that there is no duplication of efforts between various programs.

Section 1855gg, Pub. L. 89–769, §11, Nov. 6, 1966, 80 Stat. 1321, provided for extension of time to leaseholders, etc., of public lands in disaster areas.

Section 1855hh, Pub. L. 89–769, §12, Nov. 6, 1966, 80 Stat. 1321, directed the President to coordinate and review all assistance programs.

Section 1855ii, Pub. L. 89–769, §13, Nov. 6, 1966, 80 Stat. 1321, called for a study of air operation facilities for disaster assistance and for a report of findings of such study to Congress with recommendations by May 6, 1967.

For provisions relating to disaster relief, see section 5121 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

SUBCHAPTER III—ADDITIONAL FEDERAL ASSISTANCE PROGRAMS

§§ 1855aaa to 1855nnn. Repealed. Pub. L. 91–606, title III, § 302(3), Dec. 31, 1970, 84 Stat. 1759

Section 1855aaa, Pub. L. 91–79, §1, Oct. 1, 1969, 83 Stat. 125, set out Congressional statement of policy in enacting Pub. L. 91–79.

Pub. L. 91–79, §16, Oct. 1, 1969, 83 Stat. 125, set out as a note under section 1855aaa of the title, gave the name ''Disaster Relief Act of 1969'' to Pub. L. 91–79.

Section 1855bbb, Pub. L. 91–79, §2, Oct. 1, 1969, 83 Stat. 126, authorized the President to allocate funds for per-

manent repair and reconstruction of non-Federal streets, roads, and highway facilities destroyed or damaged as a result of a major disaster.

Section 1855ccc, Pub. L. 91–79, § 3, Oct. 1, 1969, 83 Stat. 126, covered allowable alterations in timber sales contracts between Secretary of Agriculture or Secretary of the Interior and a timber purchaser in event of a major disaster causing major physical changes.

Section 1855ddd, Pub. L. 91–79, § 4, Oct. 1, 1969, 83 Stat. 126, authorized Secretary of the Interior to give public land entrymen additional time to comply with requirements of law.

Section 1855eee, Pub. L. 91–79, § 6, Oct. 1, 1969, 83 Stat. 127, made provision for Small Business Administration disaster loans.

Section 1855fff, Pub. L. 91–79, § 7, Oct. 1, 1969, 83 Stat. 127, provided for emergency farm loans by Secretary of Agriculture.

Section 1855ggg, Pub. L. 91–79, § 8, Oct. 1, 1969, 83 Stat. 128, provided for development of State disaster relief programs, development of State agencies to administer disaster relief programs, and reports to Congress.

Section 1855hhh, Pub. L. 91–79, § 9, Oct. 1, 1969, 83 Stat. 128, made provision for appointment and duties of a Federal coordinating officer to operate under Office of Emergency Preparedness in any area designated a major disaster area.

Section 1855iii, Pub. L. 91–79, § 10, Oct. 1, 1969, 83 Stat. 128, authorized the President to provide on a temporary basis dwelling accommodations for individuals and families displaced by a major disaster.

Section 1855jjj, Pub. L. 91–79, § 11, Oct. 1, 1969, 83 Stat. 129, authorized the President to set up a food stamp and surplus commodities program to distribute food to persons in low-income households unable to purchase food as result of a major disaster.

Section 1855kkk, Pub. L. 91–79, § 12, Oct. 1, 1969, 83 Stat. 129, provided for unemployment assistance to persons unemployed as result of a major disaster.

Section 1855*lll*, Pub. L. 91–79, § 13, Oct. 1, 1969, 83 Stat. 129, covered grants and loans for funds used in the suppression of fire on forest or grass lands which threatens destruction as to constitute a major disaster.

Section 1855mmm, Pub. L. 91–79, § 14, Oct. 1, 1969, 83 Stat. 130, authorized grants for removal of debris.

Section 1855nnn, Pub. L. 91–79, § 15, Oct. 1, 1969, 83 Stat. 130, defined ''major disaster'' and provided termination date of sections 1855aaa et seq. of this title on Dec. 31, 1970.

For provisions relating to disaster relief, see section 5121 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

CHAPTER 15A—RECIPROCAL FIRE PROTECTION AGREEMENTS

SUBCHAPTER I—PROTECTION OF UNITED STATES PROPERTY

Sec.
1856. Definitions.
1856a. Authority to enter into reciprocal agreement; waiver of claims; reimbursement; ratification of prior agreements.
1856a–1. Authority to enter into contracts with State and local governmental entities.
1856b. Emergency assistance.
1856c. Service in line of duty.
1856d. Funds.

SUBCHAPTER II—WILDFIRE SUPPRESSION WITH FOREIGN FIRE ORGANIZATION

1856m. Definitions.
1856n. Implementation.
1856*o*. Funds.
1856p. Repealed.

SUBCHAPTER I—PROTECTION OF UNITED STATES PROPERTY

§ 1856. Definitions

As used in this subchapter—

(a) The term ''agency head'' means the head of any executive department, military department, agency, or independent establishment in the executive branch of the Government;

(b) The term ''fire protection'' includes personal services and equipment required for fire prevention, the protection of life and property from fire,,[1] fire fighting, and emergency services, including basic medical support, basic and advanced life support, hazardous material containment and confinement, and special rescue events involving vehicular and water mishaps, and trench, building, and confined space extractions; and

(c) The term ''fire organization'' means any governmental entity or public or private corporation or association maintaining fire protection facilities within the United States, its Territories and possessions, and any governmental entity or public or private corporation or association which maintains fire protection facilities in any foreign country in the vicinity of any installation of the United States.

(May 27, 1955, ch. 105, § 1, 69 Stat. 66; Pub. L. 109–163, div. A, title X, § 1060, Jan. 6, 2006, 119 Stat. 3444.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–163 substituted '', fire fighting, and emergency services, including basic medical support, basic and advanced life support, hazardous material containment and confinement, and special rescue events involving vehicular and water mishaps, and trench, building, and confined space extractions'' for ''and fire fighting''.

§ 1856a. Authority to enter into reciprocal agreement; waiver of claims; reimbursement; ratification of prior agreements

(a) Each agency head charged with the duty of providing fire protection for any property of the United States is authorized to enter into a reciprocal agreement, with any fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid in furnishing fire protection for such property and for other property for which such organization normally provides fire protection. Each such agreement shall include a waiver by each party of all claims against every other party for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement. Any such agreement may provide for the reimbursement of any party for all or any part of the cost incurred by such party in furnishing fire protection for or on behalf of any other party.

(b) Any agreement heretofore executed which would have been authorized by this subchapter, if this subchapter had been in effect on the date of execution thereof, is ratified and confirmed.

(May 27, 1955, ch. 105, § 2, 69 Stat. 66.)

[1] So in original.

§ 1856a–1. Authority to enter into contracts with State and local governmental entities

Notwithstanding any other provision of law, in fiscal year 1992 and thereafter, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Energy, and the Secretary of the Smithsonian Institution are authorized to enter into contracts with State and local governmental entities, including local fire districts, for procurement of services in the presuppression, detection, and suppression of fires on any units within their jurisdiction.

(Pub. L. 102–154, title III, § 309, Nov. 13, 1991, 105 Stat. 1034.)

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1992, and not as part of act May 27, 1955, which comprises this subchapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation act: Pub. L. 101–512, title III, § 310, Nov. 5, 1990, 104 Stat. 1959.

§ 1856b. Emergency assistance

In the absence of any agreement authorized or ratified by section 1856a of this title, each agency head is authorized to render emergency assistance in extinguishing fires and in preserving life and property from fire, within the vicinity of any place at which such agency maintains fire-protection facilities, when the rendition of such assistance is determined, under regulations prescribed by the agency head, to be in the best interest of the United States.

(May 27, 1955, ch. 105, § 3, 69 Stat. 67.)

§ 1856c. Service in line of duty

Any service performed under section 1856a or section 1856b of this title, by any officer or employee of the United States or any member of any armed force of the United States shall constitute service rendered in line of duty in such office, employment, or force. The performance of such service by any other individual shall not constitute such individual an officer or employee of the United States for the purposes of subchapter I of chapter 81 of title 5.

(May 27, 1955, ch. 105, § 4, 69 Stat. 67.)

CODIFICATION

''Subchapter I of chapter 81 of title 5'' substituted for ''the Federal Employees' Compensation Act, as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

§ 1856d. Funds

Funds available to any agency head for fire protection on installations or in connection with activities under the jurisdiction of such agency may be used to carry out the purposes of this subchapter. All sums received by any agency head for fire protection rendered pursuant to this subchapter shall be covered into the Treasury as miscellaneous receipts.

(May 27, 1955, ch. 105, § 5, 69 Stat. 67.)

SUBCHAPTER II—WILDFIRE SUPPRESSION WITH FOREIGN FIRE ORGANIZATION

§ 1856m. Definitions

As used in this subchapter—

(1) the term ''fire organization'' means any governmental, public, or private entity having wildfire protection resources;

(2) the term ''wildfire protection resources'' means personnel, supplies, equipment, and other resources required for wildfire presuppression and suppression activities; and

(3) the term ''wildfire'' means any forest or range fire.

(Pub. L. 100–428, § 2, Sept. 9, 1988, 102 Stat. 1615.)

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–11, § 1, Apr. 7, 1989, 103 Stat. 15, provided that: ''This Act [repealing section 1856p of this title] may be cited as the 'Wildfire Suppression Assistance Act'.''

SHORT TITLE

Section 1 of Pub. L. 100–428 provided: ''That this Act [enacting this subchapter] may be cited as the 'Temporary Emergency Wildfire Suppression Act'.''

§ 1856n. Implementation

(a) Reciprocal agreement; waiver of claims; termination of agreement; reimbursement

(1) The Secretary of Agriculture or the Secretary of the Interior, in consultation with the Secretary of State, may enter into a reciprocal agreement with any foreign fire organization for mutual aid in furnishing wildfire protection resources for lands and other properties for which such Secretary or organization normally provides wildfire protection.

(2) Any agreement entered into under this subsection—

(A) shall include a waiver by each party to the agreement of all claims against every other party to the agreement for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement;

(B) shall include a provision to allow the termination of such agreement by any party thereto after reasonable notice; and

(C) may provide for the reimbursement of any party thereto for all or any part of the costs incurred by such party in furnishing wildfire protection resources for, or on behalf of, any other party thereto.

(b) Emergency wildfire protection resources; furnishing or accepting in absence of agreement

In the absence of any agreement authorized under subsection (a) of this section, the Secretary of Agriculture or the Secretary of the Interior may—

(1) furnish emergency wildfire protection resources to any foreign nation when the furnishing of such resources is determined by such Secretary to be in the best interest of the United States, and

(2) accept emergency wildfire protection resources from any foreign fire organization when the acceptance of such resources is determined by such Secretary to be in the best interest of the United States.

(c) Reimbursement of Canada

Notwithstanding the preceding provisions of this section, reimbursement may be provided for the costs incurred by the Government of Canada or a Canadian organization in furnishing wildfire protection resources to the Government of the United States under—

(1) the memorandum entitled ''Memorandum of Understanding Between the United States Department of Agriculture and Environment Canada on Cooperation in the Field of Forestry-Related Programs'' dated June 25, 1982; and

(2) the arrangement entitled ''Arrangement in the Form of an Exchange of Notes Between the Government of Canada and the Government of the United States of America'' dated May 4, 1982.

(d) Service in line of duty

Any service performed by any employee of the United States under an agreement or otherwise under this subchapter shall constitute service rendered in the line of duty in such employment. The performance of such service by any other individual shall not make such individual an employee of the United States.

(Pub. L. 100–428, § 3, Sept. 9, 1988, 102 Stat. 1615.)

§ 1856*o*. Funds

Funds available to the Secretary of Agriculture or the Secretary of the Interior for wildfire protection resources in connection with activities under the jurisdiction of such Secretary may be used to carry out activities authorized under agreements or otherwise under this subchapter, or for reimbursements authorized under section 1856n(c) of this title: *Provided*, That no such funds may be expended for wildfire protection resources or personnel provided by a foreign fire organization unless the Secretary determines that no wildfire protection resources or personnel within the United States are reasonably available to provide wildfire protection.

(Pub. L. 100–428, § 4, Sept. 9, 1988, 102 Stat. 1616.)

§ 1856p. Repealed. Pub. L. 101–11, § 2, Apr. 7, 1989, 103 Stat. 15

Section, Pub. L. 100–428, § 5, Sept. 9, 1988, 102 Stat. 1616, provided that authority to enter into agreements, to furnish or accept emergency wildfire protection resources, or to incur obligations for reimbursement under section 1856n of this title was to terminate Dec. 31, 1988.

CHAPTER 15B—AIR POLLUTION CONTROL

SUBCHAPTER I—AIR POLLUTION PREVENTION AND CONTROL

§§ 1857 to 1857c–9. Transferred

CODIFICATION

Section 1857, act July 14, 1955, ch. 360, title I, § 101, formerly § 1, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 392; renumbered title I, § 101, and amended Oct. 20, 1965, Pub. L. 89–272, title I, § 101(2), (3), 79 Stat. 992; Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 485, which related to Congressional findings and declaration of purpose, was transferred to section 7401 of this title.

Section 1857a, act July 14, 1955, ch. 360, title I, § 102, formerly § 2, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 393; renumbered title I, § 102, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(3), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 485; Dec. 31, 1970, Pub. L. 91–604, § 15(c)(2), 84 Stat. 1713, which related to cooperative activities, was transferred to section 7402 of this title.

Section 1857b, act July 14, 1955, ch. 360, title I, § 103, formerly § 3, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 394; renumbered title I, § 103, and amended Oct. 20, 1965, Pub. L. 89–272, title I, §§ 101(3), 103, 79 Stat. 992, 996; Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 486; Dec. 31, 1970, Pub. L. 91–604, §§ 2(a), 4(2), 15(a)(2), (c)(2), 84 Stat. 1676, 1689, 1710, 1713, which related to research, investigations, training, and other activities, was transferred to section 7403 of this title.

Section 1857b–1, act July 14, 1955, ch. 360, title I, § 104, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 487; amended Dec. 5, 1969, Pub. L. 91–137, 83 Stat. 283; Dec. 31, 1970, Pub. L. 91–604, §§ 2(b), (c), 13(a), 15(c)(2), 84 Stat. 1676, 1677, 1709, 1713; Apr. 9, 1973, Pub. L. 93–15, § 1(a), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, § 13(a), 88 Stat. 265, which provided for research relating to fuels and vehicles, was transferred to section 7404 of this title.

Section 1857c, act July 14, 1955, ch. 360, title I, § 105, formerly § 4, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 395; renumbered and amended § 104, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(2)–(4), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89–675, § 3, 80 Stat. 954; renumbered title I, § 105, and amended § 105, Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 489; Dec. 31, 1970, Pub. L. 91–604, §§ 3(a), (b)(1), 15(c)(2), 84 Stat. 1677, 1713, which related to grants for support of air pollution planning and control programs, was transferred to section 7405 of this title.

Section 1857c–1, act July 14, 1955, ch. 360, title I, § 106, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 490; amended Dec. 31, 1970, Pub. L. 91–604, § 3(c), 84 Stat. 1677, which related to interstate air quality agencies and program cost limitations, was transferred to section 7406 of this title.

Section 1857c–2, act July 14, 1955, ch. 360, title I, § 107, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1678, which related to air quality control regions, was transferred to section 7407 of this title.

Section 1857c–3, act July 14, 1955, ch. 360, title I, § 108, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1678, which related to air quality criteria and control techniques, was transferred to section 7408 of this title.

Section 1857c–4, act July 14, 1955, ch. 360, title I, § 109, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1679, which related to procedure for and promulgation of national primary and secondary ambient air quality standards, was transferred to section 7409 of this title.

Section 1857c–5, act July 14, 1955, ch. 360, title I, § 110, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1680; amended June 22, 1974, Pub. L. 93–319, § 4, 88 Stat. 256; S. Res. 4, Feb. 4, 1977, which related to State implementation plans for national primary and secondary ambient air quality standards, was transferred to section 7410 of this title.

Section 1857c–6, act July 14, 1955, ch. 360, title I, § 111, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1683; amended Nov. 18, 1971, Pub. L. 92–157, title III, § 302(f), 85 Stat. 464, which related to standards of performance for new stationary sources, was transferred to section 7411 of this title.

Section 1857c–7, act July 14, 1955, ch. 360, title I, § 112, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1685, which related to national emission standards for hazardous air pollutants, was transferred to section 7412 of this title.

Section 1857c–8, act July 14, 1955, ch. 360, title I, § 113, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1686; amended Nov. 18, 1971, Pub. L. 92–157, title III, § 302(b), (c), 85 Stat. 464; June 22, 1974, Pub. L. 93–319, § 6(a)(1)–(3), 88 Stat. 259, which related to Federal enforcement procedures, was transferred to section 7413 of this title.

Section 1857c–9, act July 14, 1955, ch. 360, title I, § 114, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1687; amended June 22, 1974, Pub. L. 93–319, § 6(a)(4), 88 Stat. 259, which related to recordkeeping, inspections, mon-

itoring, and entry, was transferred to section 7414 of this title.

§ 1857c–10. Repealed. Pub. L. 95–95, title I, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709

Section, act July 14, 1955, ch. 360, title I, § 119, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, related to the authority of the Administrator of the Environmental Protection Agency to deal with energy shortages. See section 7413 of this title.

References to section 1857c–10 appearing in section 792 of Title 15, Commerce and Trade, shall be construed to refer to section 7413(d) of Title 42, The Public Health and Welfare, see Compliance Orders note set out under section 792 of Title 15.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 7, 1977, see section 406 of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§§ 1857d to 1857f–6c. Transferred

CODIFICATION

Section 1857d, act July 14, 1955, ch. 360, title I, § 115, formerly § 5, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 396; renumbered § 105 and amended Oct. 20, 1965, Pub. L. 89–272, title I, §§ 101(2), (3), 102, 79 Stat. 992, 995; renumbered § 108 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 491; renumbered § 115 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 4(a), (b)(2)–(10), 15(c)(2), 84 Stat. 1678, 1688, 1689, 1713, which related to abatement of air pollution by means of conference procedure, was transferred to section 7415 of this title.

Section 1857d–1, act July 14, 1955, ch. 360, title I, § 116, formerly § 109 as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 497; renumbered and amended Dec. 31, 1970, Pub. L. 91–604, § 4(a), (c), 84 Stat. 1678, 1689; June 22, 1974, Pub. L. 93–319, § 6(b), 88 Stat. 259, which related to retention of State authority concerning air pollution, was transferred to section 7416 of this title.

Section 1857e, act July 14, 1955, ch. 360, title I, § 117, formerly § 6, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 399; renumbered § 106, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(3), 79 Stat. 992; renumbered § 110 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 498; renumbered § 117 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 4(a), (d), 15(c)(2), 84 Stat. 1678, 1689, 1713, which related to an Air Quality Advisory Board and to advisory committees, was transferred to section 7417 of this title.

Section 1857f, act July 14, 1955, ch. 360, title I, § 118, formerly § 7, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 399; renumbered § 107, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(3), 79 Stat. 992; renumbered § 111 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 499; renumbered § 118 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 4(a), 5, 84 Stat. 1678, 1689, which related to control and abatement of air pollution from Federal facilities, Presidential exemption, and report to Congress on Presidential exemptions, was transferred to section 7418 of this title.

SUBCHAPTER II—EMISSION STANDARDS FOR MOVING SOURCES

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

Section 1857f–1, act July 14, 1955, ch. 360, title II, § 202, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91–604, § 6(a), 84 Stat. 1690; June 22, 1974, Pub. L. 93–319, § 5, 88 Stat. 258, which related to establishment of motor vehicle emission and fuel standards, was transferred to section 7521 of this title.

Section 1857f–2, act July 14, 1955, ch. 360, title II, § 203, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 993; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91–604, §§ 7(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1693, 1705, 1713, which related to prohibited acts with regard to motor vehicle emissions, was transferred to section 7522 of this title.

Section 1857f–3, act July 14, 1955, ch. 360, title II, § 204, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 500; Dec. 31, 1970, Pub. L. 91–604, § 7(b), 84 Stat. 1694, which related to subpenas and to jurisdiction of district courts to restrain violations, was transferred to section 7523 of this title.

Section 1857f–4, act July 14, 1955, ch. 360, title II, § 205, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 500; Dec. 31, 1970, Pub. L. 91–604, § 7(c), 84 Stat. 1694, which related to penalties for violations, was transferred to section 7524 of this title.

Section 1857f–5, act July 14, 1955, ch. 360, title II, § 206, as added Dec. 31, 1970, Pub. L. 91–604, § 8(a), 84 Stat. 1694, which related to motor vehicle and motor vehicle engine compliance testing and certification, was transferred to section 7525 of this title.

Section 1857f–5a, act July 14, 1955, ch. 360, title II, § 207, as added Dec. 31, 1970, Pub. L. 91–604, § 8(a), 84 Stat. 1696, which related to compliance by vehicles and engines in actual use, was transferred to section 7541 of this title.

Section 1857f–6, act July 14, 1955, ch. 360, title II, § 208, formerly § 207, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 501; renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 10(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1694, 1700, 1705, 1713, which related to reports, records, and information required, access to and copying records, availability of records to the public, and disclosure of trade secrets, was transferred to section 7542 of this title.

Section 1857f–6a, act July 14, 1955, ch. 360, title II, § 209, formerly § 208, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 501; renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1694, 1705, 1713, which related to State standards regarding control of emissions from new motor vehicles or new motor vehicle engines, was transferred to section 7543 of this title.

Section 1857f–6b, act July 14, 1955, ch. 360, title II, § 210, formerly § 209, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 502; renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 10(b), 84 Stat. 1694, 1700, which related to Federal assistance in developing and maintaining vehicle emission devices and systems inspection and emission testing and control programs, was transferred to section 7544 of this title.

Section 1857f–6c, act July 14, 1955, ch. 360, title II, § 211, formerly § 210, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 502; renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 9(a), 84 Stat. 1694, 1698; Nov. 18, 1971, Pub. L. 92–157, title III, § 302(d), (e), 85 Stat. 464, which related to regulation of fuels, was transferred to section 7545 of this title.

§ 1857f–6d. Repealed. Pub. L. 91–604, § 8(a), Dec. 31, 1970, 84 Stat. 1694

Section, act July 14, 1955, ch. 360, title II, § 211, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 503, provided for a national emissions standards study for stationary sources to be conducted by the Secretary, with a report and recommendations to be submitted to the Congress by Nov. 21, 1969, and for a study of the feasibility of controls for jet and piston aircraft engines, with a report thereon to Congress by Nov. 21, 1968.

§§ 1857f–6e to 1857f–7. Transferred

CODIFICATION

Section 1857f–6e, act July 14, 1955, ch. 360, title II, § 212, as added Dec. 31, 1970, Pub. L. 91–604, § 10(c), 84 Stat. 1700; amended Apr. 9, 1973, Pub. L. 93–15, § 1(b), 87

Stat. 11; June 22, 1974, Pub. L. 93–319, § 13(b), 88 Stat. 265, which related to low emission vehicles, was transferred to section 7546 of this title.

Section 1857f–6f, act July 14, 1955, ch. 360, title II, § 213, as added June 22, 1974, Pub. L. 93–319, § 10, 88 Stat. 261; amended S. Res. 4, Feb. 4, 1977, which related to fuel economy for new vehicles, was transferred to section 7547 of this title.

Section 1857f–7, act July 14, 1955, ch. 360, title II, § 214, formerly § 208, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994; renumbered § 212 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 503; renumbered § 213 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 10(d), 11(a)(2)(A), 84 Stat. 1694, 1703, 1705; renumbered § 214, June 22, 1974, Pub. L. 93–319, § 10, 88 Stat. 261, which related to definitions concerning motor vehicle emission and fuel standards, was transferred to section 7550 of this title.

§ 1857f–8. Repealed. Pub. L. 89–675, § 2(b), Oct. 15, 1966, 80 Stat. 954

Section, act July 14, 1955, ch. 360, title II, § 209, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 995, authorized appropriations for the fiscal years ending June 30, 1966, 1967, 1968, and 1969, to carry out sections 1857f–1 to 1857f–7. See section 1857*l* of this title.

PART B—AIRCRAFT EMISSION STANDARDS

§§ 1857f–9 to 1857k. Transferred

CODIFICATION

Section 1857f–9, act July 14, 1955, ch. 360, title II, § 231, as added Dec. 31, 1970, Pub. L. 91–604, § 11(a)(1), 84 Stat. 1703, which related to the establishment of aircraft emission standards, was transferred to section 7571 of this title.

Section 1857f–10, act July 14, 1955, ch. 360, title II, § 232, as added Dec. 31, 1970, Pub. L. 91–604, § 11(a)(1), 84 Stat. 1704, which related to enforcement of aircraft emission standards, was transferred to section 7572 of this title.

Section 1857f–11, act July 14, 1955, ch. 360, title II, § 233, as added Dec. 31, 1970, Pub. L. 91–604, § 11(a)(1), 84 Stat. 1704, which related to State standards and controls regarding aircraft emissions, was transferred to section 7573 of this title.

Section 1857f–12, act July 14, 1955, ch. 360, title II, § 234, as added Dec. 31, 1970, Pub. L. 91–604, § 11(a)(1), 84 Stat. 1705, related to definitions concerning aircraft emissions standards, was transferred to section 7574 of this title.

SUBCHAPTER III—GENERAL PROVISIONS

Section 1857g, act July 14, 1955, ch. 360, title III, § 301, formerly § 8, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 400; renumbered title III, § 301, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 504; Dec. 31, 1970, Pub. L. 91–604, §§ 3(b)(2), 15(c)(2), 84 Stat. 1677, 1713, which related to administration of air pollution control, was transferred to section 7601 of this title.

Section 1857h, act July 14, 1955, ch. 360, title III, § 302, formerly § 9, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 400; renumbered title III, § 302, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 504; Dec. 31, 1970, Pub. L. 91–604, § 15(a)(1), (c)(1), 84 Stat. 1710, 1713, which related to definitions concerning air pollution control, was transferred to section 7602 of this title.

Section 1857h–1, act July 14, 1955, ch. 360, title III, § 303, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1705, which related to emergency powers of the Administrator, was transferred to section 7603 of this title.

Section 1857h–2, act July 14, 1955, ch. 360, title III, § 304, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1706, which related to citizen suits, was transferred to section 7604 of this title.

Section 1857h–3, act July 14, 1955, ch. 360, title III, § 305, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1707, which related to legal representation of the Administrator and appearance by the Attorney General, was transferred to section 7605 of this title.

Section 1857h–4, act July 14, 1955, ch. 360, title III, § 306, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1707, which related to Federal procurement, was transferred to section 7606 of this title.

Section 1857h–5, act July 14, 1955, ch. 360, title III, § 307, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1707; amended Nov. 18, 1971, Pub. L. 92–157, title III, § 302(a), 85 Stat. 464; June 22, 1974, Pub. L. 93–319, § 6(c), 88 Stat. 259, which related to administrative proceedings and judicial review, was transferred to section 7607 of this title.

Section 1857h–6, act July 4, 1955, ch. 360, title III, § 308, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1708, which related to mandatory licensing, was transferred to section 7608 of this title.

Section 1857h–7, act July 14, 1955, ch. 360, title III, § 309, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1709, which related to policy review, was transferred to section 7609 of this title.

Section 1857i, act July 14, 1955, ch. 360, title III, § 310, formerly § 10, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401; renumbered title III, § 303, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 505; renumbered § 310 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to application to other laws and nonduplication of appropriations, was transferred to section 7610 of this title.

Section 1857j, act July 14, 1955, ch. 360, title III, § 311, formerly § 11, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401; renumbered title III, § 304, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 505; renumbered § 311 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to records and audits, was transferred to section 7611 of this title.

Section 1857j–1, act July 14, 1955, ch. 360, title III, § 312, formerly § 305, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 505; renumbered § 312 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to cost studies, was transferred to section 7612 of this title.

Section 1857j–2, act July 14, 1955, ch. 360, title III, § 313, formerly § 306, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 313 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to additional reports to Congress, was transferred to section 7613 of this title.

Section 1857j–3, act July 14, 1955, ch. 360, title III, § 314, formerly § 307, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 314 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to labor standards, was transferred to section 7614 of this title.

Section 1857k, act July 14, 1955, ch. 360, title III, § 315, formerly § 12, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401; renumbered title III, § 305, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992; renumbered § 308 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 315, Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1705, which related to separability of provisions, was transferred to section 7615 of this title.

§ 1857*l*. Repealed. Pub. L. 95–95, title III, § 306, Aug. 7, 1977, 91 Stat. 777

Section, act July 14, 1955, ch. 360, title III, § 316, formerly § 13, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401; renumbered title III, § 306, and amended Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89–675, § 2(a), 80 Stat. 954; renumbered § 309 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 316 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93–15, § 1(c), 87 Stat. 11; June

22, 1974, Pub. L. 93–319, § 13(c), 88 Stat. 265, authorized appropriations for air pollution control. See section 7626 of this title.

SUBCHAPTER IV—NOISE POLLUTION

§§ 1858, 1858a. Transferred

CODIFICATION

Section 1858, act July 14, 1955, ch. 360, title IV, § 402, as added Dec. 31, 1970, Pub. L. 91–604, § 14, 84 Stat. 1709, which established Office of Noise Abatement and Control and authorized investigation of noise and its effects on public health and welfare and a report to Congress on results of this investigation, was transferred to section 7641 of this title.

Section 1858a, act July 14, 1955, ch. 360, title IV, § 403, as added Dec. 31, 1970, Pub. L. 91–604, § 14, 84 Stat. 1710, which authorized appropriations concerning noise pollution, was transferred to section 7642 of this title.

CHAPTER 16—NATIONAL SCIENCE FOUNDATION

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§ 1861. Establishment; composition

There is established in the executive branch of the Government an independent agency to be known as the National Science Foundation (hereinafter referred to as the ''Foundation''). The Foundation shall consist of a National Science Board (hereinafter referred to as the ''Board'') and a Director.

(May 10, 1950, ch. 171, § 2, 64 Stat. 149.)

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–368, § 1, Dec. 19, 2002, 116 Stat. 3034, provided that: ''This Act [enacting sections 1862n to 1862n–10 of this title, amending sections 1862i, 1862*l*, 1863, 1873, and 1885 of this title, enacting provisions set out as notes under sections 1862b, 1862g, 1862n, 1864, and 1885c of this title, and amending provisions set out as a note under section 1862k of this title] may be cited as the 'National Science Foundation Authorization Act of 2002'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–207, § 1, July 29, 1998, 112 Stat. 869, provided that: ''This Act [enacting sections 1862k to 1862m of this title, amending sections 1862, 1863, 1864, 1873, 1874, 1881a, 1881b, 1885b, 1885c, and 6686 of this title, and enacting provisions set out as notes under sections 1862k and 6686 of this title] may be cited as the 'National Science Foundation Authorization Act of 1998'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–476, § 1, Oct. 23, 1992, 106 Stat. 2297, provided that: ''This Act [enacting sections 1862h to 1862j of this title and amending section 1862 of this title] may be cited as the 'Scientific and Advanced-Technology Act of 1992'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–570, § 1, Oct. 31, 1988, 102 Stat. 2865, provided that: ''This Act [enacting sections 1862a to 1862g, 1870a, and 1881b of this title, amending sections 1863, 1873, 1874, and 1885c of this title and sections 3011 to 3013

of Title 20, Education, repealing former sections 1862a and 1862b of this title, enacting provisions set out as notes under sections 1861, 1875, and 7704 of this title and section 3911 of Title 20, and repealing provisions set out as a note under section 1861 of this title] may be cited as the 'National Science Foundation Authorization Act of 1988'.''

Pub. L. 100–570, title II, §201, Oct. 31, 1988, 102 Stat. 2873, provided that: ''This title [enacting sections 1862a to 1862d of this title, repealing former sections 1862a and 1862b of this title, and repealing provisions set out as a note under section 1861 of this title] may be cited as the 'Academic Research Facilities Modernization Act of 1988'.''

Pub. L. 100–418, title VI, §6401, Aug. 23, 1988, 102 Stat. 1542, which provided that subtitle E (§§6401–6403) of title VI of Pub. L. 100–418, enacting sections 1862a and 1862b of this title, was to be cited as the ''National Science Foundation University Infrastructure Act of 1988'', was repealed by Pub. L. 100–570, title II, §206, Oct. 31, 1988, 102 Stat. 2878.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–383, §1, Aug. 21, 1986, 100 Stat. 813, provided: ''That this Act [amending sections 1862, 1864a, 1869, and 1870 of this title and section 5316 of Title 5, Government Organization and Employees, repealing sections 1876 to 1879 of this title, and enacting provisions set out as notes under sections 1885a and 6614 of this title] may be cited as the 'National Science Foundation Authorization Act for Fiscal Year 1987'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–159, title I, §101, Nov. 22, 1985, 99 Stat. 887, provided that: ''This title [enacting section 1886 of this title, amending sections 1862, 1863, 1864, 1868 to 1872, 1873, 1874, 1881a, 1882, and 1885 to 1885d of this title, repealing sections 1873a and 1884 of this title, and amending provisions set out as notes under sections 1861 and 1882 of this title] may be cited as the 'National Science Foundation Authorization Act for Fiscal Year 1986'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–516, §1, Dec. 12, 1980, 94 Stat. 3007, as amended by Pub. L. 99–159, title I, §111(a), Nov. 22, 1985, 99 Stat. 892, provided: ''That this Act [enacting sections 1885 to 1885d of this title, amending sections 1863, 1874, 1875, 1881, and 1881a of this title, and enacting provisions set out as notes under sections 1861, 1864, 1866, and 1885 of this title] may be cited as the 'National Science Foundation Authorization and Science and Engineering Equal Opportunities Act'.''

Pub. L. 96–516, §31, Dec. 12, 1980, 94 Stat. 3010, as amended by Pub. L. 99–159, title I, §111(b)(1), Nov. 22, 1985, 99 Stat. 892, provided that: ''This part [part B (§§31–39), enacting sections 1885 to 1885d of this title, and provisions set out as notes under section 1885 of this title] may be cited as the 'Science and Engineering Equal Opportunities Act'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–99, §1, Aug. 15, 1977, 91 Stat. 831, provided: ''That this Act [enacting sections 1869b, 1873a, and 1884 of this title, amending sections 1862, 1863, 1873, and 1882 of this title, and enacting provisions set out as a note under section 1862 of this title] may be cited as the 'National Science Foundation Authorization Act, Fiscal Year 1978'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–471, §1, Oct. 11, 1976, 90 Stat. 2053, provided: ''That this Act [enacting sections 1882 and 1883 of this title, amending section 1863 of this title, and enacting provisions set out as notes under sections 1862, 1864, 1873, and 5820 of this title] may be cited as the 'National Science Foundation Authorization Act, 1977'.''

SHORT TITLE

Section 1 of act May 10, 1950, provided: ''That this Act [enacting this chapter] may be cited as the 'National Science Foundation Act of 1950'.''

TRANSFER OF FUNCTIONS

Office of Science and Technology, including offices of Director and Deputy Director, provided for by sections 1 and 2 of Reorg. Plan No. 2 of 1962, abolished and all functions vested by law in Office of Science and Technology or Director or Deputy Director of Office of Science and Technology transferred to Director of National Science Foundation by sections 2 and 3(a)(5) of Reorg. Plan No. 1 of 1973, eff. July 1, 1973, set out in the Appendix to Title 5, Government Organization and Employees.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION

Amendments by Pub. L. 90–407, July 18, 1868, 82 Stat. 360, intended to continue in effect the existing offices, procedures, and organization of the Foundation as provided by this chapter, part II of Reorg. Plan No. 2 of 1962 [set out below], and Reorg. Plan, No. 5 of 1965 [set out in Appendix to Title 5, Government Organization and Employees], but on and after July 18, 1968, part II of Reorg. Plan No. 2 of 1962, and Reorg. Plan No. 5 of 1965, as being of no force or affect, and nothing in Pub. L. 90–407 as altering or affecting any transfers of functions made by part I of Reorg. Plan No. 2 of 1962, see section 16 of Pub. L. 90–407, set out as Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation note under section 1862 of this title.

REORGANIZATION PLAN NO. 2 OF 1962

Eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, as amended Pub. L. 88–426, title III, §305(41), Aug. 14, 1964, 78 Stat. 427; Pub. L. 94–282, title V, §502, May 11, 1976, 90 Stat. 472

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 29, 1962, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

CERTAIN SCIENCE AGENCIES AND FUNCTIONS

PART I—OFFICE OF SCIENCE AND TECHNOLOGY

Sec. 1. [Repealed. Pub. L. 94–282, title V, §502, May 11, 1976, 90 Stat. 472. Section established, in Executive Office of the President, the Office of Science and Technology.]

Sec. 2. [Repealed. Pub. L. 94–282, title V, §502, May 11, 1976, 90 Stat. 472. Section as amended by Pub. L. 88–426, title III, §305(41)(A), (B), Aug. 14, 1964, 78 Stat. 427, 428, authorized appointment of Director and Deputy Director of Office of Science and Technology by the President by and with the advice and consent of the Senate.]

Sec. 3. [Repealed. Pub. L. 94–282, title V, §502, May 11, 1976, 90 Stat. 472. Section transferred to Director of the Office of Science and Technology, from National Science Foundation, certain functions formerly conferred upon the Foundation.]

Sec. 4. [Repealed. Pub. L. 94–282, title V, §502, May 11, 1976, 90 Stat. 472. Section authorized Director of the Office of Science and Technology to appoint employees necessary for work of the Office under classified civil service and to fix their compensation in accordance with the classification laws.]

PART II—NATIONAL SCIENCE FOUNDATION

SECTION 21. EXECUTIVE COMMITTEE

(a) There is hereby established the Executive Committee of the National Science Board, hereafter in this Part referred to as the Executive Committee, which shall be composed of five voting members. Four of the members shall be elected as hereinafter provided. The Director provided for in section 22 of this reorganization plan, ex officio, shall be the fifth member and the chairman of the Executive Committee.

(b) At its annual meeting held in 1964 and at each of its succeeding annual meetings the National Science

Board, hereafter in this Part referred to as the Board, shall elect two of its members as members of the Executive Committee, and the Executive Committee members so elected shall hold office for two years from the date of their election. Any person who has been a member of the Executive Committee (established by this reorganization plan) for six consecutive years shall thereafter be ineligible for service as a member thereof during the two-year period following the expiration of such sixth year. For the purposes of this subsection, the period between any two consecutive annual meetings of the Board shall be deemed to be one year.

(c) At its first meeting held after the effective date of this section the Board shall elect four of its members as members of the Executive Committee. As designated by the Board, two of the Executive Committee members so elected shall hold office as such members until the date of the annual meeting of the Board held in 1964 and the other two members so elected shall hold such office until the annual meeting of the Board held in 1965.

(d) Any person elected as a member of the Executive Committee to fill a vacancy occurring prior to the expiration of the term for which his predecessor was elected shall be elected for the remainder of such term.

(e) The functions conferred upon the Executive Committee now existing under the provisions of the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.], by the provisions of section 6 of the National Science Foundation Act of 1950 (42 U.S.C. 1865) or otherwise, are hereby transferred to the Executive Committee established by the provisions of this Part; and the authority of the National Science Board to assign its powers and functions to the now-existing Executive Committee, and statutory limitations upon such assignment, shall hereafter be applicable to the Executive Committee established by the provisions of this Part.

SEC. 22. DIRECTOR

(a) There is hereby established in the National Science Foundation a new office with the title of Director of the National Science Foundation. The Director of the National Science Foundation, hereafter in this Part referred to as the Director, shall be appointed by the President by and with the advice and consent of the Senate. Before any person is appointed as Director the President shall afford the Board an opportunity to make recommendations to him with respect to such appointment. The Director shall serve for a term of six years unless sooner removed by the President. The Director shall not engage in any business, vocation or employment other than that of serving as such Director, nor shall he, except with the approval of the Board, hold any office in, or act in any capacity for, any organization, agency, or institution with which the Foundation makes any contract or other arrangement under the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.].

(b) Except to the extent inconsistent with the provisions of section 23(b)(2) of this reorganization plan, all functions of the office of Director of the National Science Foundation abolished by the provisions of 23(a)(2) hereof are hereby transferred to the office of Director established by the provisions of subsection (a) of this section.

(c) The Director, ex officio, shall be an additional member of the Board and, except in respect of compensation and tenure, shall be coordinate with other members of the Board. He shall be a voting member of the Board and shall be eligible for election by the Board as chairman or vice chairman of the Board. [As amended Pub. L. 88–426, title III, §305(41)(C), Aug. 14, 1964, 78 Stat. 428.]

SEC. 23. ABOLITIONS

(a) The following agencies, now existing under the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.], are hereby abolished:

(1) The Executive Committee of the National Science Board (section 6 of Act; 42 U.S.C. 1865).

(2) The office of Director of the National Science Foundation (sections 2 and 5 of Act; 42 U.S.C. 1861, 1864).

(b) There are also hereby abolished:

(1) The functions conferred upon the National Science Board by that part of section 6(a) of the National Science Foundation Act of 1950 (42 U.S.C. 1865(a)) which reads ''The Board is authorized to appoint from among its members an Executive Committee''.

(2) The functions of the Director of the National Science Foundation provided for in sections 4(a) and 5(a) of the National Science Foundation Act of 1950 (42 U.S.C. 1863(a), 1864(a)) with respect to serving as a nonvoting member of the Board and his functions with respect to serving as a nonvoting member of the Executive Committee provided for in section 6(b) of that Act (42 U.S.C. 1865(b)).

(3) So much of the functions conferred upon divisional committees by the provisions of section 8(d) of the National Science Foundation Act of 1950 (42 U.S.C. 1867(d)) as consists of making recommendations to, and advising and consulting with, the Board.

(c) The provisions of sections 23(a)(1) and 23(b)(1) hereof shall become effective on the date of the first meeting of the Board held after the effective date of the other provisions of this reorganization plan.

PART III. TRANSITIONAL PROVISIONS

SECTION 31. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available, in connection with the functions transferred by the provisions of section 3 of this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred to the Office of Science and Technology at such time or times as the said Director shall direct.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 32. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of Part I of the reorganization plan holds a position in the Executive Office of the President to act as Director of the Office of Science and Technology until the office of Director is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may authorize any person who immediately prior to the effective date of section 22 of this reorganization plan holds any office existing under the provisions of the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.] to act as Director of the National Science Foundation until the Office of Director is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

[Amendments by Pub. L. 90–407, July 18, 1968, 82 Stat. 360, intended to continue in effect the existing offices, procedures, and organization of the National Science Foundation as provided by this chapter, part II of Reorg. Plan No. 2 of 1962, and Reorg. Plan No. 5 of 1965, but on and after July 18, 1968, part II of Reorg. Plan No. 2 of 1962, and Reorg. Plan No. 5 of 1965, as being of no

force or effect, and nothing in Pub. L. 90–407 as altering or affecting any transfers of functions made by part I of Reorg. Plan No. 2 of 1962, see section 16 of Pub. L. 90–407, set out as Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation note under section 1862 of this title.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 2 of 1962, prepared in accordance with the provisions of the Reorganization Act of 1949, as amended, and providing for certain reorganizations in the field of science and technology.

Part I of the reorganization plan establishes the Office of Science and Technology as a new unit within the Executive Office of the President; places at the head thereof a Director appointed by the President by and with the advice and consent of the Senate and makes provision for a Deputy Director similarly appointed; and transfers to the Director certain functions of the National Science Foundation under sections 3(a)(1) and 3(a)(6) of the National Science Foundation Act of 1950.

The new arrangements incorporated in part I of the reorganization plan will constitute an important development in executive branch organization for science and technology. Under those arrangements the President will have permanent staff resources capable of advising and assisting him on matters of national policy affected by or pertaining to science and technology. Considering the rapid growth and far-reaching scope of Federal activities in science and technology, it is imperative that the President have adequate staff support in developing policies and evaluating programs in order to assure that science and technology are used most effectively in the interests of national security and general welfare.

To this end it is contemplated that the Director will assist the President in discharging the responsibility of the President for the proper coordination of Federal science and technology functions. More particularly, it is expected that he will advise and assist the President as the President may request with respect to—

(1) Major policies, plans, and programs of science and technology of the various agencies of the Federal Government, giving appropriate emphasis to the relationship of science and technology to national security and foreign policy, and measures for furthering science and technology in the Nation.

(2) Assessment of selected scientific and technical developments and programs in relation to their impact on national policies.

(3) Review, integration, and coordination of major Federal activities in science and technology, giving due consideration to the effects of such activities on non-Federal resources and institutions.

(4) Assuring that good close relations exist with the Nation's scientific and engineering communities so as to further in every appropriate way their participation in strengthening science and technology in the United States and the free world.

(5) Such other matters consonant with law as may be assigned by the President to the Office.

The ever-growing significance and complexity of Federal programs in science and technology have in recent years necessitated the taking of several steps for improving the organizational arrangements of the executive branch in relation to science and technology:

(1) The National Science Foundation was established in 1950. The Foundation was created to meet a widely recognized need for an organization to develop and encourage a national policy for the promotion of basic research and education in the sciences, to support basic research, to evaluate research programs undertaken by Federal agencies, and to perform related functions.

(2) The Office of the Special Assistant to the President for Science and Technology was established in 1957. The Special Assistant serves as Chairman of both the President's Science Advisory Committee and the Federal Council for Science and Technology, mentioned below.

(3) At the same time, the Science Advisory Committee, composed of eminent non-Government scientists and engineers, and located within the Office of Defense Mobilization, was reconstituted in the White House Office as the President's Science Advisory Committee.

(4) The Federal Council for Science and Technology, composed of policy officials of the principal agencies engaged in scientific and technical activities, was established in 1959.

The National Science Foundation has proved to be an effective instrument for administering sizable programs in support of basic research and education in the sciences and has set an example for other agencies through the administration of its own programs. However, the Foundation, being at the same organizational level as other agencies, cannot satisfactorily coordinate Federal science policies or evaluate programs of other agencies. Science policies, transcending agency lines, need to be coordinated and shaped at the level of the Executive Office of the President drawing upon many resources both within and outside of Government. Similarly, staff efforts at that higher level are required for the evaluation of Government programs in science and technology.

Thus, the further steps contained in part I of the reorganization plan are now needed in order to meet most effectively new and expanding requirements brought about by the rapid and far-reaching growth of the Government's research and development programs. These requirements call for the further strengthening of science organization at the Presidential level and for the adjustment of the Foundation's role to reflect changed conditions. The Foundation will continue to originate policy proposals and recommendations concerning the support of basic research and education in the sciences, and the new Office will look to the Foundation to provide studies and information on which sound national policies in science and technology can be based.

Part I of the reorganization plan will permit some strengthening of the staff and consultant resources now available to the President in respect of scientific and technical factors affecting executive branch policies and will also facilitate communication with the Congress.

Part II of the reorganization plan provides for certain reorganizations within the National Science Foundation which will strengthen the capability of the Director of the Foundation to exert leadership and otherwise further the effectiveness of administration of the Foundation. Specifically:

(1) There is established a new office of Director of the National Science Foundation and that Director, ex officio, is made a member of the National Science Board on a basis coordinate with that of other Board members.

(2) There is substituted for the now-existing Executive Committee of the National Science Board a new Executive Committee composed of the Director of the National Science Foundation, ex officio, as a voting member and Chairman of the Committee, and of four other members elected by the National Science Board from among its appointive members.

(3) Committees advisory to each of the divisions of the Foundation will make their recommendations to the Director only rather than to both the Director and the National Science Board.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 2 of 1962 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I have found and hereby declare that it is necessary to include in the reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of the Director and Deputy Director of the Office of Science and Technology and of

the Director of the National Science Foundation. The rate of compensation fixed for each of these officers is that which I have found to prevail in respect of comparable officers in the executive branch of the Government.

The functions abolished by the provisions of section 23(b) of the reorganization plan are provided for in sections 4(a), 5(a), 6(a), 6(b), and 8(d) of the National Science Foundation Act of 1950.

The taking effect of the reorganizations included in the reorganization plan will provide sound organizational arrangements and will make possible more effective and efficient administration of Government programs in science and technology. It is, however, impracticable to itemize at this time the reductions in expenditures which it is probable will be brought about by such taking effect.

I recommend that the Congress allow the reorganization plan to become effective.

JOHN F. KENNEDY.

THE WHITE HOUSE, March 29, 1962.

§ 1862. Functions

(a) Initiation and support of studies and programs; scholarships; current register of scientific and engineering personnel

The Foundation is authorized and directed—

(1) to initiate and support basic scientific research and programs to strengthen scientific research potential and science education programs at all levels in the mathematical, physical, medical, biological, social, and other sciences, and to initiate and support research fundamental to the engineering process and programs to strengthen engineering research potential and engineering education programs at all levels in the various fields of engineering, by making contracts or other arrangements (including grants, loans, and other forms of assistance) to support such scientific, engineering, and educational activities and to appraise the impact of research upon industrial development and upon the general welfare;

(2) to award, as provided in section 1869 of this title, scholarships and graduate fellowships for study and research in the sciences or in engineering;

(3) to foster the interchange of scientific and engineering information among scientists and engineers in the United States and foreign countries;

(4) to foster and support the development and use of computer and other scientific and engineering methods and technologies, primarily for research and education in the sciences and engineering;

(5) to evaluate the status and needs of the various sciences and fields of engineering as evidenced by programs, projects, and studies undertaken by agencies of the Federal Government, by individuals, and by public and private research groups, employing by grant or contract such consulting services as it may deem necessary for the purpose of such evaluations; and to take into consideration the results of such evaluations in correlating the research and educational programs undertaken or supported by the Foundation with programs, projects, and studies undertaken by agencies of the Federal Government, by individuals, and by public and private research groups;

(6) to provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies of the Federal Government;

(7) to initiate and maintain a program for the determination of the total amount of money for scientific and engineering research, including money allocated for the construction of the facilities wherein such research is conducted, received by each educational institution and appropriate nonprofit organization in the United States, by grant, contract, or other arrangement from agencies of the Federal Government, and to report annually thereon to the President and the Congress; and

(8) to take a leading role in fostering and supporting research and education activities to improve the security of networked information systems.

(b) Contracts, grants, loans, etc., for scientific and engineering activities; financing of programs

The Foundation is authorized to initiate and support specific scientific and engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and engineering applications upon society by making contracts or other arrangements (including grants, loans, and other forms of assistance) for the conduct of such activities. When initiated or supported pursuant to requests made by any other Federal department or agency, including the Office of Technology Assessment, such activities shall be financed whenever feasible from funds transferred to the Foundation by the requesting official as provided in section 1873(f) of this title, and any such activities shall be unclassified and shall be identified by the Foundation as being undertaken at the request of the appropriate official.

(c) Scientific and engineering research programs at academic and other nonprofit institutions; applied scientific and engineering research programs by Presidential directive; employment of consulting services; coordination of activities

In addition to the authority contained in subsections (a) and (b) of this section, the Foundation is authorized to initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions. When so directed by the President, the Foundation is further authorized to support, through other appropriate organizations, applied scientific research and engineering research relevant to national problems involving the public interest. In exercising the authority contained in this subsection, the Foundation may employ by grant or contract such consulting services as it deems necessary, and shall coordinate and correlate its activities with respect to any such problem with other agencies of the Federal Government undertaking similar programs in that field.

(d) Promotion of research and education in science and engineering

The Board and the Director shall recommend and encourage the pursuit of national policies for the promotion of research and education in science and engineering.

(e) Balancing of research and educational activities in the sciences and engineering

In exercising the authority and discharging the functions referred to in the foregoing subsections, it shall be an objective of the Foundation to strengthen research and education in the sciences and engineering, including independent research by individuals, throughout the United States, and to avoid undue concentration of such research and education.

(f) Annual report to the President and Congress

The Foundation shall render an annual report to the President for submission on or before the 15th day of April of each year to the Congress summarizing the activities of the Foundation and making such recommendations as it may deem appropriate. Such report shall include information as to the acquisition and disposition by the Foundation of any patents and patent rights.

(g) Support of access to computer networks

In carrying out subsection (a)(4) of this section, the Foundation is authorized to foster and support access by the research and education communities to computer networks which may be used substantially for purposes in addition to research and education in the sciences and engineering, if the additional uses will tend to increase the overall capabilities of the networks to support such research and education activities.

(May 10, 1950, ch. 171, §3, 64 Stat. 149; Pub. L. 85–510, §1, July 11, 1958, 72 Stat. 353; Pub. L. 86–232, §1, Sept. 8, 1959, 73 Stat. 467; Pub. L. 90–407, §1, July 18, 1968, 82 Stat. 360; Pub. L. 92–372, §8, Aug. 10, 1972, 86 Stat. 528; Pub. L. 92–484, §10(b), Oct. 13, 1972, 86 Stat. 802; Pub. L. 94–273, §11(3), Apr. 21, 1976, 90 Stat. 378; Pub. L. 95–99, §12(a), formerly §14(a), Aug. 15, 1977, 91 Stat. 835, renumbered §12(a), Pub. L. 99–159, title I, §109(h), Nov. 22, 1985, 99 Stat. 890; Pub. L. 99–159, title I, §§109(e)(2), 110(a)(1)–(11), Nov. 22, 1985, 99 Stat. 890, 891; Pub. L. 99–383, §7(a), Aug. 21, 1986, 100 Stat. 814; Pub. L. 102–476, §4, Oct. 23, 1992, 106 Stat. 2300; Pub. L. 102–588, title II, §217, Nov. 4, 1992, 106 Stat. 5117; Pub. L. 105–207, title II, §202(e), July 29, 1998, 112 Stat. 875; Pub. L. 107–305, §7, Nov. 27, 2002, 116 Stat. 2375.)

AMENDMENTS

2002—Subsec. (a)(8). Pub. L. 107–305 added par. (8).

1998—Subsec. (g). Pub. L. 105–207 struck out the subsec. (g) enacted by Pub. L. 102–588. See 1992 Amendment note below.

1992—Subsec. (g). Pub. L. 102–476 and Pub. L. 102–588 amended section identically, adding subsec. (g).

1986—Subsec. (a)(6). Pub. L. 99–383 amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''to maintain a current register of scientific and engineering personnel, and in other ways to provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and engineering resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal Government; and''.

1985—Subsec. (a)(1). Pub. L. 99–159, §110(a)(1), struck out ''engineering,'' after ''biological,'' and inserted provisions relating to research fundamental to the engineering process, engineering programs, and engineering activities.

Subsec. (a)(2). Pub. L. 99–159, §110(a)(2), substituted ''for study and research in the sciences or in engineering'' for ''in the mathematical, physical, medical, biological, engineering, social, and other sciences''.

Subsec. (a)(3). Pub. L. 99–159, §110(a)(3), inserted applicability to engineering and engineers.

Subsec. (a)(4). Pub. L. 99–159, §110(a)(4), inserted applicability to engineering.

Subsec. (a)(5). Pub. L. 99–159, §110(a)(5), inserted applicability to fields of engineering.

Subsec. (a)(6). Pub. L. 99–159, §110(a)(6), substituted ''engineering'' for ''technical'' in two places.

Subsec. (a)(7). Pub. L. 99–159, §110(a)(7), inserted applicability to engineering.

Subsec. (b). Pub. L. 99–159, §§109(e)(2), 110(a)(8), inserted reference to engineering in two places and substituted ''1873(f)'' for ''1873(g)''.

Subsec. (c). Pub. L. 99–159, §110(a)(9), inserted applicability to engineering research.

Subsec. (d). Pub. L. 99–159, §110(a)(10), substituted ''research and education in science and engineering'' for ''basic research and education in the sciences''.

Subsec. (e). Pub. L. 99–159, §110(11), inserted applicability to engineering.

1977—Subsec. (e). Pub. L. 95–99 substituted ''an objective'' for ''one of the objectives''.

1976—Subsec. (f). Pub. L. 94–273 substituted ''April'' for ''January''.

1972—Subsec. (a)(1). Pub. L. 92–372 inserted support of science education programs at all levels to the functions of the Foundation and substituted ''scientific and educational activities'' for ''scientific activities''.

Subsec. (b). Pub. L. 92–484 inserted provisions authorizing the Foundation to initiate and support specific scientific activities in connection with matters relating to the effects of scientific applications upon society, and substituted provisions relating to the initiation or support pursuant to requests of activities by any other Federal department or agency, including the Office of Technology Assessment, for provisions relating to the initiation or support pursuant to requests of activities by the Secretary of State or Secretary of Defense.

1968—Subsec. (a)(1). Pub. L. 90–407 redesignated par. (2) as (1) and added social sciences to the enumerated list of sciences. Former par. (1) redesignated subsec. (d).

Subsec. (a)(2). Pub. L. 90–407 redesignated par. (4) as (2) and added social sciences to the enumerated list of sciences. Former par. (2) redesignated (1).

Subsec. (a)(3). Pub. L. 90–407 redesignated par. (5) as (3). Former par. (3) redesignated subsec. (b).

Subsec. (a)(4). Pub. L. 90–407 added par. (4). Former par. (4) redesignated subsec. (a)(2).

Subsec. (a)(5). Pub. L. 90–407 redesignated par. (6) as (5) and provided for the employment of consulting services, by grant or contract, to assist in the evaluation of the status and needs of the various sciences as evidenced by the programs and studies undertaken by agencies of the government, by individuals, and by public and private research groups, and provided for the consideration of the results of such evaluations in the correlation of the Foundation's programs with those undertaken by agencies of the government, as well as those undertaken by individuals and by public and private research groups. Former par. (5) redesignated (3).

Subsec. (a)(6). Pub. L. 90–407 redesignated par. (8) as (6) and provided that the register of scientific and technical personnel shall be current, and authorized the Foundation to analyze and interpret the collected data on the availability of, and the current and projected need for, scientific and technical resources in the United States and to make such information available

to other agencies of the government for policy formulation. Former par. (6) redesignated (5).

Subsec. (a)(7). Pub. L. 90–407 added par. (7). Former par. (7), which provided for the establishment of such special commissions as the Board may from to time deem necessary for the purposes of this chapter, was struck out.

Subsec. (a)(8). Pub. L. 90–407 redesignated par. (8) as (6).

Subsec. (a)(9). Pub. L. 90–407 struck out par. (9) which authorized the Foundation to initiate and support a program of study, research, and evaluation in the field of weather modification, with particular attention to areas experiencing floods, drought, etc., and to report annually to the President and the Congress thereon.

Subsec. (b). Pub. L. 90–407 redesignated former subsec. (a)(3) as (b) and substituted provisions authorizing the Foundation to initiate and support specific scientific activities in matters related to international cooperation or national security for provisions authorizing the Foundation to initiate and support only scientific research activities, only in matters related to national defense and only when requested to do so by the Secretary of Defense, and inserted provisions specifying the manner of financing such scientific activities. Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 90–407 added subsec. (c). Former subsec. (c) redesignated (f).

Subsec. (d). Pub. L. 90–407 redesignated former subsec. (a)(1) as (d) and substituted provisions authorizing the Board and the Director to recommend and encourage national policies promoting basic research and education in the sciences for provisions authorizing and directing the Foundation to develop and encourage such policies.

Subsec. (e). Pub. L. 90–407 redesignated former subsec. (b) as (e), substituted ''the foregoing subsections'' for ''subsection (a) of this section'', ''strengthen research'' for ''strengthen basic research'', and struck out reference to the territories and possessions of the United States.

Subsec. (f). Pub. L. 90–407 redesignated former subsec. (c) as (f) and struck out provision requiring the report to include the minority views and recommendations if any, of members of the Board.

1959—Subsec. (a)(2). Pub. L. 86–232 clarified the Foundation's authority to support programs to strengthen scientific research potential.

1958—Subsec. (a)(9). Pub. L. 85–510 added par. (9).

TRANSFER OF NATIONAL SCIENCE FOUNDATION PROGRAMS

For transfer of all programs relating to science education of the National Science Foundation or the Director thereof under this chapter, with certain exceptions, to the Secretary of Education, see section 3444 of Title 20, Education.

NSF STUDY AND REPORT ON THE ''DIGITAL DIVIDE''

Pub. L. 106–313, title I, § 109, Oct. 17, 2000, 114 Stat. 1255, provided that:

''(a) STUDY.—The National Science Foundation shall conduct a study of the divergence in access to high technology (commonly referred to as the 'digital divide') in the United States.

''(b) REPORT.—Not later than 18 months after the date of enactment of this Act [Oct. 17, 2000], the Director of the National Science Foundation shall submit a report to Congress setting forth the findings of the study conducted under subsection (a).''

IMPROVING UNITED STATES UNDERSTANDING OF SCIENCE, ENGINEERING, AND TECHNOLOGY IN EAST ASIA

Pub. L. 105–244, title VIII, § 831, Oct. 7, 1998, 112 Stat. 1820, provided that:

''(a) ESTABLISHMENT.—The Director of the National Science Foundation is authorized, beginning in fiscal year 2000, to carry out an interdisciplinary program of education and research on East Asian science, engineering, and technology. The Director shall carry out the interdisciplinary program in consultation with the Secretary of Education.

''(b) PURPOSES.—The purposes of the program established under this section shall be to—

''(1) increase understanding of East Asian research, and innovation for the creative application of science and technology to the problems of society;

''(2) provide scientists, engineers, technology managers, and students with training in East Asian languages, and with an understanding of research, technology, and management of innovation, in East Asian countries;

''(3) provide program participants with opportunities to be directly involved in scientific and engineering research, and activities related to the management of scientific and technological innovation, in East Asia; and

''(4) create mechanisms for cooperation and partnerships among United States industry, universities, colleges, not-for-profit institutions, Federal laboratories (within the meaning of section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6))), and government, to disseminate the results of the program assisted under this section for the benefit of United States research and innovation.

''(c) PARTICIPATION BY FEDERAL SCIENTISTS, ENGINEERS, AND MANAGERS.—Scientists, engineers, and managers of science and engineering programs in Federal agencies and the Federal laboratories shall be eligible to participate in the program assisted under this section on a reimbursable basis.

''(d) REQUIREMENT FOR MERIT REVIEW.—Awards made under the program established under this section shall only be made using a competitive, merit-based review process.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2000.''

STATUS OF SCIENTIFIC INSTRUMENTATION; CURRENT AND PROJECTED NEEDS FOR SCIENTIFIC AND TECHNOLOGICAL INSTRUMENTATION; DEVELOPMENT OF INDICES, CORRELATES, OR OTHER SUITABLE MEASURES OR INDICATORS

Pub. L. 96–44, § 7, Aug. 2, 1979, 93 Stat. 334, provided that: ''In partial fulfillment of the established statutory requirement that the National Science Foundation evaluate the status of and current and projected need for scientific resources (section 3(a)(5) and (6) of Public Law 81–507, as amended [subsec. (a)(5) and (6) of this section]), the National Science Foundation shall develop indices, correlates, or other suitable measures or indicators of the status of scientific instrumentation in the United States and of the current and projected need for scientific and technological instrumentation.''

FLOOD HAZARD MITIGATION STUDY

Pub. L. 96–44, § 8, Aug. 2, 1979, 93 Stat. 334, directed National Science Foundation to conduct a Flood Hazard Mitigation Study and report to Congress with specific program recommendations by end of fiscal year 1980.

AUTHORIZED USE OF FUNDS UNDER SCIENCE AND SOCIETY PROGRAM

Section 5 of Pub. L. 95–99 provided that:

''(a) From the funds authorized under the program 'Science and Society', the National Science Foundation is authorized to provide support which is designed to—

''(1) improve public understanding of public policy issues involving science and technology;

''(2) facilitate the participation of qualified scientists and engineers and of undergraduate and graduate students in public activities aimed at the resolution of public policy issues having significant scientific and technical aspects; and

''(3) assist nonprofit, citizens, and bona fide public interest groups to acquire necessary scientific and

technical expertise in order to improve their comprehension of scientific and technical aspects of public policy issues.

''(b) Awards made pursuant to this section shall, to the extent feasible, include support for—

''(1) qualified scientists and engineers to work on public policy issues with significant scientific and technical components in conjunction with units of State and local government, nonprofit organizations, or bona fide public interest groups;

''(2) internship programs for science and engineering undergraduate or graduate students to work on public policy issues with significant scientific and technical components in conjunction with units of State and local government, nonprofit organizations, or bona fide public interest groups as part of their academic training;

''(3) forums, conferences, and workshops on public policy issues with significant scientific and technical components;

''(4) training in the presentation of scientific and technical studies in a manner which (A) improves public understanding of the ways in which science and technology influence contemporary life, (B) improves public access to the results of scientific and technical research, (C) encourages and facilitates interaction between laypersons and scientists on public issues with important scientific and technological components, and (D) increases public knowledge and understanding of the ethical and value implications of scientific and technological developments;

''(5) new and existing programs using radio or television to increase public understanding of public policy issues with significant scientific and technical components; and

''(6) bona fide public interest groups to acquire necessary scientific and technical expertise relating to the scientific and technical aspects of public policy issues and to enable such groups to bring together in appropriate forums experts whose research has been directed to the resolution of such issues.''

ESTABLISHMENT OF ''SCIENCE FOR CITIZENS PROGRAM'' CONDUCTED IN CONJUNCTION WITH ''PUBLIC UNDERSTANDING OF SCIENCE PROGRAM''

Pub. L. 94–471, §5, Oct. 11, 1976, 90 Stat. 2054, provided that:

''(a) The National Science Foundation is authorized and directed to conduct an experimental 'Science for Citizens Program' and an augmented Public Understanding of Science Program under which funds will be available for pilot projects to:

''(1) improve public understanding of science, engineering and technology and their impact on public policy issues;

''(2) facilitate the participation of experienced scientists and engineers as well as graduate and undergraduate students in helping the public understand science, engineering and technology and their impact on public policies; and

''(3) assist nationally recognized professional societies and groups serving important public purposes in conducting a limited number of forums, conferences, and workshops to increase public understanding of science and technology, and of their impact on public policy issues, after consideration of the following eligibility factors:

''(A) the extent to which the proposal of the society or group will contribute to the development of facts, issues, and arguments relevant to public policy issues having significant scientific and technical aspects, and

''(B) the ability of the society or group, using its own resources, to conduct such forums, conferences, and workshops.

''(b) One or more review panels shall be established for the purpose of evaluating applications for awards under this section. The membership of each review panel shall have balanced representation from the scientific and nonscientific communities and the public and private sectors.

''(c) No contract, grant or other arrangement shall be made under this Section without the prior approval of the National Science Board.

''(d) To assist the Congress in evaluating activities initiated pursuant to this Section, the Director of the National Science Foundation, in consultation with a review panel having a balanced representation from the scientific and nonscientific community and the public and private sectors, is directed to prepare a comprehensive analysis and assessment of such activities to be submitted to the House Committee on Science and Technology and the Senate Committee on Labor and Public Welfare [now Committee on Health, Education, Labor, and Pensions], not later than October 31, 1977. An interim report is required no later than March 1, 1977.''

DEVELOPMENT OF PROGRAM PLAN FOR CONTINUING EDUCATION IN SCIENCE AND ENGINEERING

Section 6 of Pub. L. 94–471 required the National Science Foundation to develop a program plan for continuing education in science and engineering and, not later than Oct. 31, 1977, provide specific committees of the House of Representatives and Senate a report on the plan developed with recommendations for implementation in fiscal year 1978.

DENIAL OF FINANCIAL ASSISTANCE TO CAMPUS DISRUPTERS

Section 7 of Pub. L. 93–96, Aug. 16, 1973, 87 Stat. 316, provided that:

''(a) If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has been convicted by any court of record of any crime which was committed after the date of enactment of this Act [Aug. 16, 1973] and which involved the use of (or assistance to others in the use of) force, disruption, or the seizure of property under control of any institution of higher education to prevent officials or students in such institution from engaging in their duties or pursuing their studies, and that such crime was of a serious nature and contributed to a substantial disruption of the administration of the institution with respect to which such crime was committed, then the institution which such individual attends, or is employed by, shall deny for a period of two years any further payment to, or for the direct benefit of, such individual under any of the programs specified in subsection (c). If an institution denies an individual assistance under the authority of the preceding sentence of this subsection, then any institution which such individual subsequently attends shall deny for the remainder of the two-year period any further payment to, or for the direct benefit of, such individual under any of the programs specified in subsection (c).

''(b) If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has willfully refused to obey a lawful regulation or order of such institution after the date of enactment of this Act [Aug. 16, 1973], and that such refusal was of a serious nature and contributed to a substantial disruption of the administration of such institution, then such institution shall deny, for a period of two years, any further payment to, or for the direct benefit of, such individual under any of the programs specified in subsection (c).

''(c) The programs referred to in subsections (a) and (b) are as follows:

''(1) The programs authorized by the National Science Foundation Act of 1950 [this chapter]; and

''(2) The programs authorized under title IX of the National Defense Education Act of 1958 [sections 1876 to 1879 of this title] relating to establishing the Science Information Service.

''(d)(1) Nothing in this Act [Pub. L. 93–96], or any Act amended by this Act, shall be construed to prohibit any institution of higher education from refusing to award,

continue, or extend any financial assistance under any such Act to any individual because of any misconduct which in its judgment bears adversely on his fitness for such assistance.

''(2) Nothing in this section shall be construed as limiting or prejudicing the rights and prerogatives of any institution of higher education to institute and carry out an independent, disciplinary proceeding pursuant to existing authority, practice, and law.

''(3) Nothing in this section shall be construed to limit the freedom of any student to verbal expression of individual views or opinions.''

Similar provisions were contained in the following National Science Foundation Authorization Acts:

Pub. L. 92–372, § 7, Aug. 10, 1972, 86 Stat. 527.

Pub. L. 92–86, § 7, Aug. 11, 1971, 85 Stat. 309.

Pub. L. 91–356, § 5, July 24, 1970, 84 Stat. 471.

CONTINUATION OF AUTHORIZATION FOR WEATHER MODIFICATION PROGRAMS; REPEAL

Section 11(1) of Pub. L. 90–407 provided in part that the authorization for the programs initiated under former subsec. (a)(9) of this section shall continue in effect until Sept. 1, 1968 for the purposes of section 1872a of this title.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Section 16 of Pub. L. 90–407 provided that: ''Except as otherwise specifically provided therein, the amendments made by this Act [enacting section 1864a of this title, amending sections 1862 to 1866, 1868 to 1870, 1872 to 1875, and 1877 of this title, sections 5313, 5314, and 5316 of Title 5, Government Organization and Employees, repealing sections 1867 and 1872a of this title, and enacting provisions set out as a note under section 5313 of Title 5] are intended to continue in effect under the National Science Foundation Act of 1950 [this chapter] the existing offices, procedures, and organization of the National Science Foundation as provided by such Act, [this chapter] part II of Reorganization Plan Numbered 2 of 1962, and Reorganization Plan Numbered 5 of 1965 [set out as a note under section 1861 of this title]. From and after the date of the enactment of this Act [July 18, 1968], part II of Reorganization Plan Numbered 2 of 1962, and Reorganization Plan Numbered 5 of 1965, shall be of no force or effect; but nothing in this Act shall alter or affect any transfers of functions made by part I of such Reorganization Plan Numbered 2 of 1962.''

INVESTIGATION OF NEED FOR GEOPHYSICAL INSTITUTE IN TERRITORY OF HAWAII

Act Aug. 1, 1956, ch. 865, 70 Stat. 922, directed the National Science Foundation to conduct an investigation into the need for and the feasibility and usefulness of a geophysical institute located in the Territory [now State] of Hawaii. The Foundation was required to report the results of its investigations, together with its recommendations based thereon, to the Congress not later than 9 months after Aug. 1, 1956.

EX. ORD. NO. 10521. ADMINISTRATION OF SCIENTIFIC RESEARCH

Ex. Ord. No. 10521, Mar. 17, 1954, 19 F.R. 1499, as amended by Ex. Ord. No. 10807, § 6(b), Mar. 13, 1959, 24 F.R. 1899, provided:

SECTION 1. The National Science Foundation (hereinafter referred to as the Foundation) shall from time to time recommend to the President policies for the promotion and support of basic research and education in the sciences, including policies with respect to furnishing guidance toward defining the responsibilities of the Federal Government in the conduct and support of basic scientific research.

SEC. 2. The Foundation shall continue to make comprehensive studies and recommendations regarding the Nation's scientific research effort and its resources for scientific activities, including facilities and scientific personnel, and its foreseeable scientific needs, with particular attention to the extent of the Federal Government's activities and the resulting effects upon trained scientific personnel. In making such studies, the Foundation shall make full use of existing sources of information and research facilities within the Federal Government.

SEC. 3. The Foundation, in concert with each Federal agency concerned, shall review the basic scientific research programs and activities of the Federal Government in order, among other purposes, to formulate methods for strengthening the administration of such programs and activities by the responsible agencies, and to study areas of basic research where gaps or undesirable overlapping of support may exist, and shall recommend to the heads of agencies concerning the support given to basic research.

SEC. 4. As now or hereafter authorized or permitted by law, the Foundation shall be increasingly responsible for providing support by the Federal Government for general-purpose basic research through contracts and grants. The conduct and support by other Federal agencies of basic research in areas which are closely related to their missions is recognized as important and desirable, especially in response to current national needs, and shall continue.

SEC. 5. The Foundation, in consultation with educational institutions, the heads of Federal agencies, and the Commissioner of Education of the Department of Health, Education, and Welfare [now Secretary of Education], shall study the effects upon educational institutions of Federal policies and administration of contracts and grants for scientific research and development, and shall recommend policies and procedures which will promote the attainment of general national research objectives and realization of the research needs of Federal agencies while safeguarding the strength and independence of the Nation's institutions of learning.

SEC. 6. The head of each Federal agency engaged in scientific research shall make certain that effective executive, organizational, and fiscal practices exist to ensure (a) that the Foundation is consulted on policies concerning the support of basic research, (b) that approved scientific research programs conducted by the agency are reviewed continuously in order to preserve priorities in research efforts and to adjust programs to meet changing conditions without imposing unnecessary added burdens on budgetary and other resources, (c) that applied research and development shall be undertaken with sufficient consideration of the underlying basic research and such other factors as relative urgency, project costs, and availability of manpower and facilities, and (d) that, subject to considerations of security and applicable law, adequate dissemination shall be made within the Federal Government of reports on the nature and progress of research projects as an aid to the efficiency and economy of the overall Federal scientific research program.

SEC. 7. Federal agencies supporting or engaging in scientific research shall, with the assistance of the Foundation, cooperate in an effort to improve the methods of classification and reporting of scientific research projects and activities, subject to the requirements of security of information.

SEC. 8. To facilitate the efficient use of scientific research equipment and facilities held by Federal agencies:

(a) the head of each such agency engaged in scientific research shall, to the extent practicable, encourage and facilitate the sharing with other Federal agencies of major equipment and facilities; and

(b) a Federal agency shall procure new major equipment or facilities for scientific research purposes only after taking suitable steps to ascertain that the need cannot be met adequately from existing inventories or facilities of its own or of other agencies; and

(c) the Interdepartmental Committee on Scientific Research and Development shall take necessary steps to ensure that each Federal agency engaged directly in scientific research is kept informed of selected major

equipment and facilities which could serve the needs of more than one agency. Each Federal agency possessing such equipment and facilities shall maintain appropriate records to assist other agencies in arranging for their joint use or exchange.

SEC. 9. The heads of the respective Federal agencies shall make such reports concerning activities within the purview of this order as may be required by the President.

SEC. 10. The National Science Foundation shall provide leadership in the effective coordination of the scientific information activities of the Federal Government with a view to improving the availability and dissemination of scientific information. Federal agencies shall cooperate with and assist the National Science Foundation in the performance of this function, to the extent permitted by law.

EXECUTIVE ORDER NO. 10807

Ex. Ord. No. 10807, Mar. 13, 1959, 24 F.R. 1897, as amended Ex. Ord. No. 11381, Nov. 8, 1967, 32 F.R. 15629, which established the Federal Council for Science and Technology, provided for a chairman and membership, specified the functions of the Council, provided for assistance from other Federal agencies and the establishment of standing committees and panels, revoked Ex. Ord. No. 9912 of Dec. 24, 1947, entitled ''Establishing the Interdepartmental Committee on Scientific Research and Development'', and amended Ex. Ord. No. 10521, set out above, was omitted from the Code in view of Pub. L. 94–282, title IV, § 402, May 11, 1976, 90 Stat. 472, set out below, which abolished the Federal Council for Science and Technology.

ABOLITION OF FEDERAL COUNCIL FOR SCIENCE AND TECHNOLOGY

Pub. L. 94–282, title IV, § 402, May 11, 1976, 90 Stat. 472, provided that: ''The Federal Council for Science and Technology, established pursuant to Executive Order No. 10807, Mar. 13, 1959, 24 F.R. 1897, as amended by Executive Order No. 11381, Nov. 8, 1967, 32 F.R. 15629, is hereby abolished.''

§ 1862a. Findings and purpose

(a) The Congress finds that—

(1) the fundamental research and related education program supported by the Federal Government and conducted by the Nation's universities and colleges are essential to our national security, and to our health, economic welfare, and general well-being;

(2) many national research and related education programs conducted by universities and colleges are now hindered by obsolete research buildings and equipment, and many institutions lack sufficient resources to repair, renovate, or replace their laboratories;

(3) the Nation's capacity to conduct high quality research and education programs and to maintain its competitive position at the forefront of modern science, engineering, and technology is threatened by this research capital deficit, which poses serious and adverse consequences to our future national security, health, welfare, and ability to compete in the international marketplace;

(4) a national effort to spur reinvestment in research facilities is needed, and national, State, and local policies and cooperative programs are required that will yield maximum return on the investment of scarce national resources and sustain a commitment to excellence in research and education; and

(5) the Foundation, as part of its responsibility for maintaining the vitality of the Nation's academic research, and in partnership with the States, industry, and universities and colleges, must assist in enhancing the historic linkages between Federal investment in academic research and training and investment in the research capital base by reinvesting in the capital facilities which modern research and education programs require.

(b) It is the purpose of sections 1862a to 1862d of this title to assist in modernizing and revitalizing the Nation's research facilities at institutions of higher education, independent non-profit research institutions and research museums, and consortia thereof, through capital investment.

(Pub. L. 100–570, title II, § 202, Oct. 31, 1988, 102 Stat. 2873.)

REFERENCES IN TEXT

Sections 1862a to 1862d of this title, referred to in subsec. (b), was in the original ''this title'', meaning title II of Pub. L. 100–570, Oct. 31, 1988, 102 Stat. 2873, known as the Academic Research Facilities Modernization Act of 1988, which enacted sections 1862a to 1862d of this title, repealed former sections 1862a and 1862b of this title, and repealed provisions set out as a note under section 1861 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Academic Research Facilities Modernization Act of 1988, and also as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1862a, Pub. L. 100–418, title VI, § 6402, Aug. 23, 1988, 102 Stat. 1542, related to establishment of National Science Foundation Academic Research Facilities Modernization Program, prior to repeal by Pub. L. 100–570, § 206.

§ 1862b. Establishment of Program

(a) Establishment; purpose

(1) To carry out sections 1862a to 1862d of this title, the Director shall establish and carry out a new Academic Research Facilities Modernization Program (hereafter in sections 1862a to 1862d of this title referred to as the ''Program''), under which awards are made to institutions of higher education, independent nonprofit research institutions, and research museums, and consortia thereof, for the repair, renovation, or, in exceptional cases, replacement of obsolete science and engineering facilities primarily devoted to research.

(2) Such awards shall, consistent with the functions of the Foundation set forth in section 1862 of this title and through established Foundation selection procedures, serve to—

(A) promote the modernization of graduate academic science and engineering research laboratories and related facilities so as to facilitate and support research in the scientific and engineering disciplines;

(B) assist those academic institutions that historically have received relatively little Federal research and development funds to improve their academic science and engineering

infrastructures and broaden and strengthen the Nation's science and engineering base; and

(C) promote the modernization of undergraduate academic science and engineering research laboratories and related facilities so as to facilitate and support research in the scientific and engineering disciplines.

(b) Improvement projects; maximum amounts

(1) The Program shall be carried out through projects which involve the repair, renovation, or, in exceptional cases, replacement of specific science and engineering facilities devoted primarily to research at eligible institutions, or consortia thereof, and for which funds are awarded in response to specific proposals submitted by such eligible institutions or consortia in accordance with procedures prescribed by the Director pursuant to section 1862c of this title.

(2) Awards made under the Program shall not exceed $7,000,000 to any institution or consortium over any period of 5 years for the repair, renovation, or, in exceptional cases, replacement of academic research facilities.

(3) The Director shall, in making awards under the Program, consider the extent to which that institution or consortium has received funds for the repair, renovation, construction, or replacement of academic facilities from any other Federal funding source within the 5-year period immediately preceding the application. The Director shall give priority to institutions or consortia that have not received such funds in the preceding 5 years.

(4) The Director shall, in awarding funds under sections 1862a to 1862d of this title, consider the distribution of funds among institutions of different sizes and geographical locations.

(c) Criteria for award of funds

Criteria for the award of funds to any institution for a project under the Program shall include—

(1) the quality of the research and training to be carried out in the facility or facilities involved;

(2) the need for the proposed repair, renovation, or, in exceptional cases, replacement based on an analysis of the age and condition of existing research facilities and equipment;

(3) the congruence of the institution's research and training activities with the future research needs of the Nation and the research mission of the Foundation;

(4) the contribution that the project will make toward meeting national, regional, and institutional research and related training needs;

(5) in the case of an institution that historically has received relatively little Federal research and development funding, the contribution the proposed project will make to improving the institution's academic scientific and engineering infrastructure and broadening the Nation's science and engineering base; and

(6) the impact of the award on the overall geographic distribution of awards made under the Program, with the objective of avoiding undue concentration of awards.

(Pub. L. 100–570, title II, § 203, Oct. 31, 1988, 102 Stat. 2874.)

CODIFICATION

Section was enacted as part of the Academic Research Facilities Modernization Act of 1988, and also as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1862b, Pub. L. 100–418, title VI, § 6403, Aug. 23, 1988, 102 Stat. 1544, related to establishment of National Science Foundation College Science Instrumentation Program, prior to repeal by Pub. L. 100–570, § 206.

MAJOR RESEARCH INSTRUMENTATION

Pub. L. 107–368, § 13, Dec. 19, 2002, 116 Stat. 3055, required Director of the National Science Foundation to conduct a review and assessment of the major research instrumentation program and, not later than 1 year after Dec. 19, 2002, submit a report, including specified estimates, descriptions and analyses, of findings and recommendations to certain Congressional committees, and also required the Director to enter into an arrangement with the National Academy of Sciences to assess the need for an interagency program to establish and support fully equipped, state-of-the-art university-based centers for interdisciplinary research and advanced instrumentation development, and not later than 15 months after Dec. 19, 2002, to transmit to the committees the assessment conducted by the National Academy of Sciences together with the Foundation's reaction to the assessment.

§ 1862c. Procedures, guidelines, and planning activities

(a) Procedures

(1) The Director shall, consistent with the objectives of the Program and the criteria set forth in section 1862b(c) of this title, set forth procedures for the Program.

(2) The procedures so prescribed shall contain such terms, conditions, and guidelines as may be necessary in the light of Program objectives, but shall in any event provide that—

(A) funds to carry out the Program will be awarded only on the basis of merit after a comprehensive review using established Foundation procedures;

(B) the membership of merit review panels that assess proposals will be broadly representative of eligible institutions, including research universities and predominantly undergraduate and minority institutions;

(C) the institution receiving an award shall provide at least 50 percent of the cost, in cash or in kind, fairly evaluated, of the repair, renovation, or replacement involved and shall provide this contribution from private or non-Federal public sources, except that the Director may accept a match of less than 50 percent, but at least 30 percent, for institutions which are not ranked among the top 100 of the institutions receiving Federal research and development funding, as documented in the latest annual report of the Foundation entitled ''Federal Support to Universities, Colleges, and Selected Nonprofit Institutions''; and

(D) to the extent practicable, eligible institutions of a given type will compete against similar institutions for Program awards.

(b) Comprehensive planning activities

The Director shall conduct comprehensive planning activities, including surveys of re-

search facility needs and other information-gathering activities, necessary to implement the Program and to develop the procedures called for under subsection (a) of this section.

(c) Guidelines

Prior to the issuance of the comprehensive plan required by subsection (d) of this section, and consistent with the Program criteria set forth in section 1862b(c) of this title, the Director shall publish in the Federal Register proposed Program guidelines for public review for a comment period of 30 days. Such guidelines shall provide detailed information on eligibility, criteria, terms, and conditions and shall include, but not be limited to—

(1) definitions for the terms ''institutions of higher education'', ''private non-profit research organizations'', ''research museums'', ''consortia'', ''facilities'', ''facilities primarily devoted to research'', ''instrumentation'', ''equipment'', ''repair'', ''renovation'', and ''replacement'';

(2) selection criteria to be used by the Foundation in evaluating proposals from institutions and consortia thereof, including criteria for evaluating scientific merit and for evaluating the age and condition of existing research facilities; and

(3) requirements for matching a Program award with contributions from non-Federal sources.

(d) Comprehensive plan

The Director, after gathering appropriate information and after considering comments on the proposed Program guidelines published in the Federal Register pursuant to subsection (c) of this section, shall develop a comprehensive plan for the Program that—

(1) defines the appropriate roles and responsibilities of the Federal Government, institutions of higher education, State governments, private foundations, and other appropriate organizations;

(2) states what procedures will be used to ensure that predominantly undergraduate institutions and colleges and universities that historically have received little Federal research and development funding will receive substantial percentages of the funds awarded under sections 1862a to 1862d of this title;

(3) states the estimated percentage of Program funds available for each category of eligible institutions, including predominantly undergraduate institutions and colleges and universities that historically have received little Federal research and development funding as well as research universities; and

(4) evaluates and addresses, to the maximum extent possible, a variety of factors which include—

(A) the unique circumstances and research facilities needs of research universities, undergraduate institutions, and other institutions whose enrollment includes substantial percentages of minorities underrepresented in science and engineering research;

(B) innovative approaches in the management of the Program that address both short-term and long-term aspects of the renovation, repair, and replacement of academic research facilities;

(C) programmatic approaches that recognize and support excellence, strengthen scientific and engineering research potential and, to the maximum extent possible and consistent with the purposes of this Act, assure an equitable distribution of resources with respect to institutions and geographical areas; and

(D) any recommendations necessary to improve the Program and further meet the purposes of sections 1862a to 1862d of this title.

(e) Report

The Director shall prepare and submit, not later than June 15, 1989, a report containing the comprehensive plan required by subsection (d) of this section to the Committee on Labor and Human Resources and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

(f) Final guidelines

Final guidelines shall be published in the Federal Register not later than 45 days after the submission of the report required under subsection (e) of this section.

(g) Amount available for this section

The Director shall, from amounts available to the Foundation under section 101(b) of this Act for fiscal year 1989, make available an amount, not to exceed $1,000,000, to carry out the provisions of this section. None of the funds authorized to be appropriated in section 101 of this Act may be used for grant or contract awards under the Program prior to completion and submission to Congress of the comprehensive plan required by subsection (d) of this section.

(h) Consultation with Secretary of Education and heads of other agencies

In conducting the activities under the Program, the Director shall consult with the Secretary of Education and the heads of other related agencies.

(Pub. L. 100–570, title II, § 204, Oct. 31, 1988, 102 Stat. 2875.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (d)(4)(C) and (g), is Pub. L. 100–570, Oct. 31, 1988, 102 Stat. 2865, known as the National Science Foundation Authorization Act of 1988. Section 101 of this Act is not classified to the Code. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Academic Research Facilities Modernization Act of 1988, and also as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1862d. Set-aside for certain institutions

Of the amounts appropriated to the Foundation for the Program, as authorized under section 101 of this Act, in each fiscal year, at least 12 percent shall be reserved for historically Black colleges or universities defined as ''part B institutions'' by section 1061(2) of title 20 and other institutions of higher education whose enrollment includes a substantial percentage of students who are Black Americans, Hispanic Americans, or Native Americans.

(Pub. L. 100–570, title II, § 205, Oct. 31, 1988, 102 Stat. 2877.)

REFERENCES IN TEXT

Section 101 of this Act, referred to in text, is section 101 of Pub. L. 100–570, title I, Oct. 31, 1988, 102 Stat. 2865, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Academic Research Facilities Modernization Act of 1988, and also as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862e. Evaluations of research centers

In carrying out performance reviews of research centers by the Foundation, the Director shall take such action as may be necessary, consistent with the merit review process of the Foundation, to ensure that—

(1) members of review panels are free from any conflict of interest; and

(2) the conditions of each award to such centers have been fulfilled.

(Pub. L. 100–570, title I, § 109, Oct. 31, 1988, 102 Stat. 2869.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862f. Research center consortia

In Foundation programs making grants to research centers, the Director shall encourage the formation of consortia that include research universities, two-year and four-year colleges, and the private sector.

(Pub. L. 100–570, title I, § 110, Oct. 31, 1988, 102 Stat. 2869.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862g. Experimental Program to Stimulate Competitive Research

(a) The Director shall operate an Experimental Program to Stimulate Competitive Research, the purpose of which is to assist those States that—

(1) historically have received relatively little Federal research and development funding; and

(2) have demonstrated a commitment to develop their research bases and improve science and engineering research and education programs at their universities and colleges.

(b) A State which has received an initial award under such Program, whether or not the award was received before or after October 31, 1988, shall be eligible for up to 5 years of additional support under the program[1] if that State provides assurances of new matching funds and submits an acceptable new plan for using Program funds and matching funds to build the research capabilities of the State.

(Pub. L. 100–570, title I, § 113, Oct. 31, 1988, 102 Stat. 2870.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

PLANNING GRANTS

Pub. L. 107–368, § 26, Dec. 19, 2002, 116 Stat. 3067, provided that: ''The Director is authorized to accept planning proposals from applicants who are within .075 percentage points of the current eligibility level for the Experimental Program to Stimulate Competitive Research. Such proposals shall be reviewed by the Foundation to determine their merit for support under the Experimental Program to Stimulate Competitive Research or any other appropriate program.''

[For definitions of terms used in section 26 of Pub. L. 107–368, set out above, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.]

§ 1862h. Congressional statement of findings and declaration of purposes respecting scientific and technical education and training

(a) Findings

The Congress finds that—

(1) the position of the United States in the world economy faces great challenges from highly trained foreign competition;

(2) the workforce of the United States must be better prepared for the technologically advanced, competitive, global economy;

(3) the improvement of our work force's productivity and our international economic position depend upon the strengthening of our educational efforts in science, mathematics, and technology, especially at the associate-degree level;

(4) shortages of scientifically and technically trained workers in a wide variety of fields will best be addressed by collaboration among the Nation's associate-degree-granting colleges and private industry to produce skilled, advanced technicians; and

(5) the National Science Foundation's traditional role in developing model curricula, disseminating instructional materials, enhancing faculty development, and stimulating partnerships between educational institutions and industry, makes an enlarged role for the Foundation in scientific and technical education and training particularly appropriate.

(b) Purposes

It is the purpose of sections 1862h to 1862j of this title to—

[1] So in original. Probably should be capitalized.

(1) improve science and technical education at associate-degree-granting colleges;

(2) improve secondary school and postsecondary curricula in mathematics and science;

(3) improve the educational opportunities of postsecondary students by creating comprehensive articulation agreements and planning between 2-year and 4-year institutions; and

(4) promote outreach to secondary schools to improve mathematics and science instruction.

(Pub. L. 102–476, § 2, Oct. 23, 1992, 106 Stat. 2297.)

REFERENCES IN TEXT

Sections 1862h to 1862j of this title, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 102–476, Oct. 23, 1992, 106 Stat. 2297, known as the Scientific and Advanced-Technology Act of 1992, which enacted this section and sections 1862i and 1862j of this title and amended section 1862 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Scientific and Advanced-Technology Act of 1992, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862i. Scientific and technical education

(a) National advanced scientific and technical education program

The Director of the National Science Foundation (hereafter in sections 1862h to 1862j of this title referred to as the ''Director'') shall award grants to associate-degree-granting colleges, and consortia thereof, to assist them in providing education in advanced-technology fields, and to improve the quality of their core education courses in science and mathematics. The grant program shall place emphasis on the needs of students who have been in the workforce (including work in the home), and shall be designed to strengthen and expand the scientific and technical education and training capabilities of associate-degree-granting colleges through such methods as—

(1) the development of model instructional programs in advanced-technology fields and in core science and mathematics courses;

(2) the professional development of faculty and instructors, both full- and part-time, who provide instruction in science, mathematics, and advanced-technology fields;

(3) the establishment of innovative partnership arrangements that—

(A) involve associate-degree-granting colleges and other appropriate public and private sector entities, and

(B) provide for private sector donations, faculty opportunities to have short-term assignments with industry, sharing of program costs, equipment loans, and the cooperative use of laboratories, plants, and other facilities, and provision for state-of-the-art work experience opportunities for students enrolled in such programs;

(4) the acquisition of state-of-the-art instrumentation essential to programs designed to prepare and upgrade students in scientific and advanced-technology fields; and

(5) the development and dissemination of instructional materials in support of improving the advanced scientific and technical education and training capabilities of associate-degree-granting colleges, including programs for students who are not pursuing a science degree.

(b) National centers of scientific and technical education

The Director shall award grants for the establishment of centers of excellence, not to exceed 10 in number, among associate-degree-granting colleges. Centers shall meet one or both of the following criteria:

(1) Exceptional instructional programs in advanced-technology fields.

(2) Excellence in undergraduate education in mathematics and science.

The centers shall serve as national and regional clearinghouses and models for the benefit of both colleges and secondary schools, and shall provide seminars and programs to disseminate model curricula and model teaching methods and instructional materials to other associate-degree-granting colleges in the geographic region served by the center.

(c) Articulation partnerships

(1) Partnership grants

(A) The Director shall make grants to eligible partnerships to encourage students to pursue bachelor degrees in mathematics, science, engineering, or technology, and to assist students pursuing bachelor degrees in mathematics, science, engineering, or technology to make the transition from associate-degree-granting colleges to bachelor-degree-granting institutions, through such means as—

(i) examining curricula to ensure that academic credit earned at the associate-degree-granting college is transferable to bachelor-degree-granting institutions;

(ii) informing teachers from the associate-degree-granting college on the specific requirements of courses at the bachelor-degree-granting institution; and

(iii) providing summer educational programs for students from the associate-degree-granting college to encourage such students' subsequent matriculation at bachelor-degree-granting institutions.

(B) Each eligible partnership receiving a grant under this paragraph shall, at a minimum—

(i) counsel students, including students who have been in the workforce (including work in the home), about the requirements and course offerings of the bachelor-degree-granting institution;

(ii) conduct workshops and orientation sessions to ensure that students are familiar with programs, including laboratories and financial aid programs, at the bachelor-degree-granting institution;

(iii) provide students with research experiences at bachelor's-degree-granting institutions participating in the partnership, including stipend support for students participating in summer programs; and

(iv) provide faculty mentors for students participating in activities under clause (iii), including summer salary support for faculty mentors.

Funds used by eligible partnerships to carry out clauses (i) and (ii) shall be from non-Federal sources. In-cash and in-kind resources used by eligible partnerships to carry out clauses (i) and (ii) shall not be considered to be contributions for purposes of applying subsection (f)(3) of this section.

(C) Any institution participating in a partnership that receives a grant under this paragraph shall be ineligible to receive assistance under part B of title I of the Higher Education Act of 1965 [20 U.S.C. 1011 et seq.] for the duration of the grant received under this paragraph.

(2) Outreach grants

The Director shall make grants to associate-degree-granting colleges with outstanding mathematics and science programs to strengthen relationships with secondary schools in the community served by the college by improving mathematics and science education and encouraging the interest and aptitude of secondary school students for careers in science and advanced-technology fields through such means as developing agreements with local educational agencies to enable students to satisfy entrance and course requirements at the associate-degree-granting college.

(d) Coordination with other Federal departments

In carrying out this section, the Director shall consult, cooperate, and coordinate, to enhance program effectiveness and to avoid duplication, with the programs and policies of other relevant Federal agencies. In carrying out subsection (c) of this section, the Director shall coordinate activities with programs receiving assistance under part B of title I of the Higher Education Act of 1965 [20 U.S.C. 1011 et seq.].

(e) Limitation on funding

To qualify for a grant under this section, an associate-degree-granting college, or consortium thereof, shall provide assurances adequate to the Director that it will not decrease its level of spending of funds from non-Federal sources on advanced scientific and technical education and training programs.

(f) Functions of Director

In carrying out sections 1862h to 1862j of this title, the Director shall—

(1) award grants on a competitive, merit basis;

(2) ensure an equitable geographic distribution of grant awards;

(3) ensure that an applicant for a grant awarded under subsection (a), (b), or (c)(1) of this section will make an in-cash or in-kind contribution in an amount equal to at least 25 percent of the cost of the program, and for a grant awarded under subsection (c)(2) of this section will make an in-cash or in-kind contribution in an amount at least equal to the amount of the grant award;

(4) establish and maintain a readily accessible inventory of the programs assisted under sections 1862h to 1862j of this title; and

(5) designate an officer of the National Science Foundation to serve as a liaison with associate-degree-granting institutions for the purpose of enhancing the role of such institutions in the activities of the Foundation.

(g) Definitions

As used in this section—

(1) the term ''advanced-technology'' includes advanced technical activities such as the modernization, miniaturization, integration, and computerization of electronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, fiber optic, robotic, and other technological applications to enhance productivity improvements in manufacturing, communication, transportation, commercial, and similar economic and national security activities;

(2) the term ''associate-degree-granting college'' means an institution of higher education (as determined under section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001]) that—

(A) is a nonprofit institution that offers a 2-year associate-degree program or a 2-year certificate program; or

(B) is a proprietary institution that offers a 2-year associate-degree program;

(3) the term ''bachelor-degree-granting institution'' means an institution of higher education (as determined under section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001]) that offers a baccalaureate degree program;

(4) the term ''eligible partnership'' means one or more associate-degree-granting colleges in partnership with one or more separate bachelor-degree-granting institutions; and

(5) the term ''local educational agency'' has the meaning given such term in section 2891(12)[1] of title 20.

(Pub. L. 102–476, § 3, Oct. 23, 1992, 106 Stat. 2297; Pub. L. 105–244, title I, § 102(a)(13)(B), Oct. 7, 1998, 112 Stat. 1620; Pub. L. 107–368, § 21(a), (b), Dec. 19, 2002, 116 Stat. 3064.)

REFERENCES IN TEXT

Sections 1862h to 1862j of this title, referred to in subsecs. (a) and (f), was in the original ''this Act'', meaning Pub. L. 102–476, Oct. 23, 1992, 106 Stat. 2297, known as the Scientific and Advanced-Technology Act of 1992, which enacted this section and sections 1862h and 1862j of this title and amended section 1862 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1861 of this title and Tables.

The Higher Education Act of 1965, referred to in subsecs. (c)(1)(C) and (d), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part B of title I of the Act is classified generally to part B (§ 1011 et seq.) of subchapter I of chapter 28 of Title 20, Education. Pub. L. 105–244, title I, § 101(a), Oct. 7, 1998, 112 Stat. 1585, amended title I of the Act generally and part B, which formerly related to articulation agreements, now relates to additional general provisions. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Section 2891(12) of title 20, referred to in subsec. (g)(5), was in the original ''section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))'', Pub. L. 89–10, and was omitted in the general amendment of that Act by Pub. L. 103–382, title

[1] See References in Text note below.

I, § 101, Oct. 20, 1994, 108 Stat. 3519. For provisions relating to definitions, see section 7801 of Title 20, Education.

CODIFICATION

Section was enacted as part of the Scientific and Advanced-Technology Act of 1992, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–368, § 21(a)(1), inserted ", and to improve the quality of their core education courses in science and mathematics" after "education in advanced-technology fields" in introductory provisions.

Subsec. (a)(1). Pub. L. 107–368, § 21(a)(2), inserted "and in core science and mathematics courses" after "advanced-technology fields".

Subsec. (a)(2). Pub. L. 107–368, § 21(a)(3), substituted "who provide instruction in science, mathematics, and advanced-technology fields" for "in advanced-technology fields".

Subsec. (c)(1)(B)(iii), (iv). Pub. L. 107–368, § 21(b), added cls. (iii) and (iv).

1998—Subsec. (g)(2), (3). Pub. L. 105–244 substituted "section 101 of the Higher Education Act of 1965" for "section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

§ 1862j. Authorization of appropriations

There are authorized to be appropriated, from sums otherwise authorized to be appropriated, to the Director for carrying out sections 1862h to 1862j of this title—

(1) $35,000,000 for fiscal year 1992; and

(2) $35,000,000 for fiscal year 1993.

(Pub. L. 102–476, § 5, Oct. 23, 1992, 106 Stat. 2301.)

REFERENCES IN TEXT

Sections 1862h to 1862j of this title, referred to in text, was in the original "this Act", meaning Pub. L. 102–476, Oct. 23, 1992, 106 Stat. 2297, known as the Scientific and Advanced-Technology Act of 1992, which enacted this section and sections 1862h and 1862i of this title and amended section 1862 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Scientific and Advanced-Technology Act of 1992, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862k. Findings; core strategies

(a) Findings

Congress finds the following:

(1) The United States depends upon its scientific and technological capabilities to preserve the military and economic security of the United States.

(2) America's leadership in the global marketplace is dependent upon a strong commitment to education, basic research, and development.

(3) A nation that is not technologically literate cannot compete in the emerging global economy.

(4) A coordinated commitment to mathematics and science instruction at all levels of education is a necessary component of successful efforts to produce technologically literate citizens.

(5) Professional development is a necessary component of efforts to produce system-wide improvements in mathematics, engineering, and science education in secondary, elementary, and postsecondary settings.

(6)(A) The mission of the National Science Foundation is to provide Federal support for basic scientific and engineering research, and to be a primary contributor to mathematics, science, and engineering education at academic institutions in the United States.

(B) In accordance with such mission, the long-term goals of the National Science Foundation include providing leadership to—

(i) enable the United States to maintain a position of world leadership in all aspects of science, mathematics, engineering, and technology;

(ii) promote the discovery, integration, dissemination, and application of new knowledge in service to society; and

(iii) achieve excellence in United States science, mathematics, engineering, and technology education at all levels.

(b) Core strategies

In carrying out activities designed to achieve the goals described in subsection (a) of this section, the Foundation shall use the following core strategies:

(1) Develop intellectual capital, both people and ideas, with particular emphasis on groups and regions that traditionally have not participated fully in science, mathematics, and engineering.

(2) Strengthen the scientific infrastructure by investing in facilities planning and modernization, instrument acquisition, instrument design and development, and shared-use research platforms.

(3) Integrate research and education through activities that emphasize and strengthen the natural connections between learning and inquiry.

(4) Promote partnerships with industry, elementary and secondary schools, community colleges, colleges and universities, other agencies, State and local governments, and other institutions involved in science, mathematics, and engineering to enhance the delivery of math and science education and improve the technological literacy of the citizens of the United States.

(Pub. L. 105–207, title I, § 101, July 29, 1998, 112 Stat. 869.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1998, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

INDIRECT COSTS

Pub. L. 105–207, title II, § 203, July 29, 1998, 112 Stat. 875, provided that:

"(a) MATCHING FUNDS.—Matching funds required pursuant to section 204(a)(2)(C) of the Academic Research

Facilities Modernization Act of 1988 (42 U.S.C. 1862c(a)(2)(C)) shall not be considered facilities costs for purposes of determining indirect cost rates under Office of Management and Budget Circular A–21.

''(b) REPORT.—

''(1) IN GENERAL.—The Director of the Office of Science and Technology Policy, in consultation with other Federal agencies the Director deems appropriate, shall prepare a report—

''(A) analyzing the Federal indirect cost reimbursement rates (as the term is defined in Office of Management and Budget Circular A–21) paid to universities in comparison with Federal indirect cost reimbursement rates paid to other entities, such as industry, government laboratories, research hospitals, and nonprofit institutions;

''(B)(i) analyzing the distribution of the Federal indirect cost reimbursement rates by category (such as administration, facilities, utilities, and libraries), and by the type of entity; and

''(ii) determining what factors, including the type of research, influence the distribution;

''(C) analyzing the impact, if any, that changes in Office of Management and Budget Circular A–21 have had on—

''(i) the Federal indirect cost reimbursement rates, the rate of change of the Federal indirect cost reimbursement rates, the distribution by category of the Federal indirect cost reimbursement rates, and the distribution by type of entity of the Federal indirect cost reimbursement rates; and

''(ii) the Federal indirect cost reimbursement (as calculated in accordance with Office of Management and Budget Circular A–21), the rate of change of the Federal indirect cost reimbursement, the distribution by category of the Federal indirect cost reimbursement, and the distribution by type of entity of the Federal indirect cost reimbursement;

''(D) analyzing the impact, if any, of Federal and State law on the Federal indirect cost reimbursement rates;

''(E)(i) analyzing options to reduce or control the rate of growth of the Federal indirect cost reimbursement rates, including options such as benchmarking of facilities and equipment cost, elimination of cost studies, mandated percentage reductions in the Federal indirect cost reimbursement; and

''(ii) assessing the benefits and burdens of the options to the Federal Government, research institutions, and researchers; and

''(F) analyzing options for creating a database—

''(i) for tracking the Federal indirect cost reimbursement rates and the Federal indirect cost reimbursement; and

''(ii) for analyzing the impact that changes in policies with respect to Federal indirect cost reimbursement will have on the Federal Government, researchers, and research institutions.

''(2) REPORT TO CONGRESS.—The report prepared under paragraph (1) shall be submitted to Congress not later than 1 year after the date of enactment of this Act [July 29, 1998].''

NOTICE; ENHANCEMENT OF SCIENCE AND MATHEMATICS PROGRAMS

Pub. L. 105–207, title II, §§ 205, 206, July 29, 1998, 112 Stat. 876, provided that:

''SEC. 205. NOTICE.

''(a) NOTICE OF REPROGRAMMING.—If any funds appropriated pursuant to the amendments made by this Act [See Short Title of 1998 Amendment note set out under section 1861 of this title] are subject to a reprogramming action that requires notice to be provided to the Committees on Appropriations of the Senate and the House of Representatives, notice of that action shall concurrently be provided to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate, and the Committee on Science of the House of Representatives.

''(b) NOTICE OF REORGANIZATION.—Not later than 15 days before any major reorganization of any program, project, or activity of the National Science Foundation, the Director of the National Science Foundation shall provide notice to the Committees on Science and Appropriations of the House of Representatives and the Committees on Commerce, Science and Transportation, Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate, and Appropriations of the Senate.

''SEC. 206. ENHANCEMENT OF SCIENCE AND MATHEMATICS PROGRAMS.

''(a) DEFINITIONS.—In this section:

''(1) EDUCATIONALLY USEFUL FEDERAL EQUIPMENT.—The term 'educationally useful Federal equipment' means computers and related peripheral tools and research equipment that is appropriate for use in schools.

''(2) SCHOOL.—The term 'school' means a public or private educational institution that serves any of the grades of kindergarten through grade 12.

''(b) SENSE OF THE CONGRESS.—

''(1) IN GENERAL.—It is the sense of the Congress that the Director should, to the greatest extent practicable and in a manner consistent with applicable Federal law (including Executive Order No. 12999 [40 U.S.C. 549 note]), donate educationally useful Federal equipment to schools in order to enhance the science and mathematics programs of those schools.

''(2) REPORTS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [July 29, 1998], and annually thereafter, the Director shall prepare and submit to the President a report that meets the requirements of this paragraph. The President shall submit that report to Congress at the same time as the President submits a budget request to Congress under section 1105(a) of title 31, United States Code.

''(B) CONTENTS OF REPORT.—The report prepared by the Director under this paragraph shall describe any donations of educationally useful Federal equipment to schools made during the period covered by the report.''

DEFINITIONS

Pub. L. 105–207, § 2, July 29, 1998, 112 Stat. 869, as amended by Pub. L. 107–368, § 14(b)(3), Dec. 19, 2002, 116 Stat. 3057, provided that: ''In this Act [see Short Title of 1998 Amendment note set out under section 1861 of this title]:

''(1) DIRECTOR.—The term 'Director' means the Director of the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

''(2) FOUNDATION.—The term 'Foundation' means the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

''(3) FULL LIFE-CYCLE COST.—The term 'full life-cycle cost' means all costs of planning, development, procurement, construction, operations and support, and shut-down costs, without regard to funding source and without regard to what entity manages the project or facility involved.

''(4) BOARD.—The term 'Board' means the National Science Board established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

''(5) UNITED STATES.—The term 'United States' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

''(6) NATIONAL RESEARCH FACILITY.—The term 'national research facility' means a research facility

funded by the Foundation which is available, subject to appropriate policies allocating access, for use by all scientists and engineers affiliated with research institutions located in the United States.''

§ 1862*l*. National research facilities

(a) Facilities plan

(1) In general

The Director shall prepare, and include as part of the Foundation's annual budget request to Congress, a plan for the proposed construction of, and repair and upgrades to, national research facilities, including full life-cycle cost information.

(2) Contents of the plan

The plan shall include—

(A) estimates of the costs for the construction, repairs, and upgrades described in paragraph (1), including costs for instrumentation development;

(B) estimates of the costs for the operation and maintenance of existing and proposed new facilities;

(C) in the case of proposed new construction and for major upgrades to existing facilities, funding profiles, by fiscal year, and milestones for major phases of the construction;

(D) for each project funded under the major research equipment and facilities construction account—

(i) estimates of the total project cost (from planning to commissioning); and

(ii) the source of funds, including Federal funding identified by appropriations category and non-Federal funding;

(E) estimates of the full life-cycle cost of each national research facility;

(F) information on any plans to retire national research facilities; and

(G) estimates of funding levels for grants supporting research that will be conducted using each national research facility.

(3) Special rule

The plan shall include cost estimates in the categories of construction, repair, and upgrades—

(A) for the year in which the plan is submitted to Congress; and

(B) for not fewer than the succeeding 4 years.

(b) Status of facilities under construction

The plan required under subsection (a) of this section shall include a status report for each uncompleted construction project included in current and previous plans. The status report shall include data on cumulative construction costs by project compared with estimated costs, and shall compare the current and original schedules for achievement of milestones for the major phases of the construction.

(Pub. L. 105–207, title II, § 201, July 29, 1998, 112 Stat. 872; Pub. L. 107–368, § 14(b)(1), (2), Dec. 19, 2002, 116 Stat. 3056, 3057.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1998, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–368, § 14(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Not later than December 1, of each year, the Director shall, as part of the annual budget request, prepare and submit to Congress a plan for the proposed construction of, and repair and upgrades to, national research facilities.''

Subsec. (a)(2)(A). Pub. L. 107–368, § 14(b)(2)(A), substituted ''(1), including costs for instrumentation development;'' for ''(1);''.

Subsec. (a)(2)(D) to (G). Pub. L. 107–368, § 14(b)(2)(B)–(D), added subpars. (D) to (G).

§ 1862m. Financial disclosure

Persons temporarily employed by or at the Foundation shall be subject to the same financial disclosure requirements and related sanctions under the Ethics in Government Act of 1978 (5 U.S.C. App.) as are permanent employees of the Foundation in equivalent positions.

(Pub. L. 105–207, title II, § 204, July 29, 1998, 112 Stat. 876.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in text, is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1998, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862n. Mathematics and science education partnerships

(a) Program authorized

(1) In general

(A) The Director shall carry out a program to award grants to institutions of higher education or eligible nonprofit organizations (or consortia of such institutions or organizations) to establish mathematics and science education partnership programs to improve elementary and secondary mathematics and science instruction.

(B) Grants shall be awarded under this subsection on a competitive, merit-reviewed basis.

(2) Partnerships

(A) In order to be eligible to receive a grant under this subsection, an institution of higher education or eligible nonprofit organization (or consortium of such institutions or organizations) shall enter into a partnership with one or more local educational agencies that may also include a State educational agency or one or more businesses.

(B) A participating institution of higher education shall include mathematics, science, or engineering departments in the programs carried out through a partnership under this paragraph.

(3) Uses of funds

Grants awarded under this subsection shall be used for activities that draw upon the expertise of the partners to improve elementary or secondary education in mathematics or science and that are consistent with State mathematics and science student academic achievement standards, including—

(A) recruiting and preparing students for careers in elementary or secondary mathematics or science education;

(B) offering professional development programs, including summer or academic year institutes or workshops, designed to strengthen the capabilities of mathematics and science teachers;

(C) offering innovative preservice and in-service programs that instruct teachers on using technology more effectively in teaching mathematics and science, including programs that recruit and train undergraduate and graduate students to provide technical support to teachers;

(D) developing distance learning programs for teachers or students, including developing courses, curricular materials, and other resources for the in-service professional development of teachers that are made available to teachers through the Internet;

(E) developing a cadre of master teachers who will promote reform and improvement in schools;

(F) offering teacher preparation and certification programs for professional mathematicians, scientists, and engineers who wish to begin a career in teaching;

(G) developing tools to evaluate activities conducted under this subsection;

(H) developing or adapting elementary school and secondary school mathematics and science curricular materials that incorporate contemporary research on the science of learning;

(I) developing initiatives to increase and sustain the number, quality, and diversity of prekindergarten through grade 12 teachers of mathematics and science, especially in underserved areas;

(J) using mathematicians, scientists, and engineers employed by private businesses to help recruit and train mathematics and science teachers;

(K) developing and offering mathematics or science enrichment programs for students, including after-school and summer programs;

(L) providing research opportunities in business or academia for students and teachers;

(M) bringing mathematicians, scientists, and engineers from business and academia into elementary school and secondary school classrooms; and

(N) any other activities the Director determines will accomplish the goals of this subsection.

(4) Master teachers

Activities carried out in accordance with paragraph (3)(E) shall—

(A) emphasize the training of master teachers who will improve the instruction of mathematics or science in kindergarten through grade 12;

(B) include training in both content and pedagogy; and

(C) provide training only to teachers who will be granted sufficient nonclassroom time to serve as master teachers, as demonstrated by assurances their employing school has provided to the Director, in such time and such manner as the Director may require.

(5) Science enrichment programs for girls

Activities carried out in accordance with paragraph (3)(K) and (L) shall include elementary school and secondary school programs to encourage the ongoing interest of girls in science, mathematics, engineering, and technology and to prepare girls to pursue undergraduate and graduate degrees and careers in science, mathematics, engineering, or technology. Funds made available through awards to partnerships for the purposes of this paragraph may support programs for—

(A) encouraging girls to pursue studies in science, mathematics, engineering, and technology and to major in such fields in post-secondary education;

(B) tutoring girls in science, mathematics, engineering, and technology;

(C) providing mentors for girls in person and through the Internet to support such girls in pursuing studies in science, mathematics, engineering, and technology;

(D) educating the parents of girls about the difficulties faced by girls to maintain an interest and desire to achieve in science, mathematics, engineering, and technology, and enlisting the help of parents in overcoming these difficulties; and

(E) acquainting girls with careers in science, mathematics, engineering, and technology and encouraging girls to plan for careers in such fields.

(6) Research in secondary schools

Activities carried out in accordance with paragraph (3)(K) may include support for research projects performed by students at secondary schools. Uses of funds made available through awards to partnerships for purposes of this paragraph may include—

(A) training secondary school mathematics and science teachers in the design of research projects for students;

(B) establishing a system for students and teachers involved in research projects funded under this subsection to exchange information about their projects and research results; and

(C) assessing the educational value of the student research projects by such means as tracking the academic performance and choice of academic majors of students conducting research.

(7) Stipends

Grants awarded under this subsection may be used to provide stipends for teachers or students participating in training or research activities that would not be part of their typical classroom activities.

(b) Selection process

(1) Application

An institution of higher education or an eligible nonprofit organization (or a consortium of such institutions or organizations) seeking funding under subsection (a) of this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the partnership and the role that each member will play in implementing the proposal;

(B) a description of each of the activities to be carried out, including—

(i) how such activities will be aligned with State mathematics and science student academic achievement standards and with other activities that promote student achievement in mathematics and science;

(ii) how such activities will be based on a review of relevant research;

(iii) why such activities are expected to improve student performance and strengthen the quality of mathematics and science instruction; and

(iv) any activities that will encourage the interest of individuals identified in section 1885a or 1885b of this title in mathematics, science, engineering, and technology and will help prepare such individuals to pursue postsecondary studies in these fields;

(C) a description of the number, size, and nature of any stipends that will be provided to students or teachers and the reasons such stipends are needed;

(D) a description of how the partnership will serve as a catalyst for reform of mathematics and science education programs;

(E) a description of how the partnership will assess its success;

(F) a description of how the partnership will collaborate with the State educational agency to ensure that successful partnership activities may be replicated throughout the State; and

(G) a description of the manner in which the partnership will be continued after assistance under this section ends.

(2) Review of applications

In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the partnership to carry out effectively the proposed programs;

(B) the extent to which the members of the partnership are committed to making the partnership a central organizational focus;

(C) the degree to which activities carried out by the partnership are based on relevant research and are likely to result in increased student achievement;

(D) the degree to which such activities are aligned with State mathematics and science student academic achievement standards;

(E) the likelihood that the partnership will demonstrate activities that can be widely implemented as part of larger scale reform efforts; and

(F) the extent to which the activities will encourage the interest of individuals identified in section 1885a or 1885b of this title in mathematics, science, engineering, and technology and will help prepare such individuals to pursue postsecondary studies in these fields.

(3) Awards

In awarding grants under this section, the Director shall—

(A) give priority to applications in which the partnership includes a high-need local educational agency or a high-need local educational agency in which at least one school does not make adequate yearly progress, as determined pursuant to part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.); and

(B) ensure that, to the extent practicable, a substantial number of the partnerships funded under this section include businesses.

(c) Accountability and dissemination

(1) Assessment required

The Director shall evaluate the program established under subsection (a) of this section. At a minimum, such evaluation shall—

(A) use a common set of benchmarks and assessment tools to identify best practices and materials developed and demonstrated by the partnerships; and

(B) to the extent practicable, compare the effectiveness of practices and materials developed and demonstrated by the partnerships authorized under this section with those of partnerships funded by other State or Federal agencies.

(2) Dissemination of results

(A) The results of the evaluation required under paragraph (1) shall be made available to the public and shall be provided to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(B) Materials developed under the program established under subsection (a) of this section that are demonstrated to be effective shall be made widely available to the public.

(3) Annual meeting

The Director, in consultation with the Secretary of Education, shall convene an annual meeting of the partnerships participating under this section to foster greater national collaboration.

(4) Report on coordination

The Director, in consultation with the Secretary of Education, shall provide an annual report to the Committee on Science of the House of Representatives, the Committee on Education and the Workforce of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate describing how the program authorized under this section has been and will be coordinated

with the program authorized under part B of title II of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6661 et seq.]. The report under this paragraph shall be submitted along with the President's annual budget request.

(5) Technical assistance

At the request of an eligible partnership or a State educational agency, the Director shall provide the partnership or agency with technical assistance in meeting any requirements of this section, including providing advice from experts on how to develop—

(A) a quality application for a grant; and

(B) quality activities from funds received from a grant under this section.

(Pub. L. 107–368, § 9, Dec. 19, 2002, 116 Stat. 3044.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (b)(3)(A) and (c)(4), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Part A of title I of the Act is classified generally to part A (§ 6311 et seq.) of subchapter I of chapter 70 of Title 20, Education. Part B of title II of the Act is classified generally to part B (§ 6661 et seq.) of subchapter II of chapter 70 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

FINDINGS

Pub. L. 107–368, § 2, Dec. 19, 2002, 116 Stat. 3034, provided that: "Congress finds the following:

"(1) The National Science Foundation has made major contributions for more than 50 years to strengthen and sustain the Nation's academic research enterprise that is the envy of the world.

"(2) The economic strength and national security of the United States and the quality of life of all Americans are grounded in the Nation's scientific and technological capabilities.

"(3) The National Science Foundation carries out important functions in supporting basic research in all science and engineering disciplines and in supporting science, mathematics, engineering, and technology education at all levels.

"(4) The research and education activities of the National Science Foundation promote the discovery, integration, dissemination, and application of new knowledge in service to society and prepare future generations of scientists, mathematicians, and engineers who will be necessary to ensure America's leadership in the global marketplace.

"(5) The National Science Foundation must be provided with sufficient resources to enable it to carry out its responsibilities to develop intellectual capital, strengthen the scientific infrastructure, integrate research and education, enhance the delivery of mathematics and science education in the United States, and improve the technological literacy of all people in the United States.

"(6) The emerging global economic, scientific, and technical environment challenges long-standing assumptions about domestic and international policy, requiring the National Science Foundation to play a more proactive role in sustaining the competitive advantage of the United States through superior research capabilities.

"(7) Commercial application of the results of Federal investment in basic and computing science is consistent with longstanding United States technology transfer policy and is a critical national priority, particularly with regard to cybersecurity and other homeland security applications, because of the urgent needs of commercial, academic, and individual users as well as the Federal and State Governments."

REPORT ON FOUNDATION BUDGETARY AND PROGRAMMATIC EXPANSION

Pub. L. 107–368, § 22, Dec. 19, 2002, 116 Stat. 3065, provided for a National Science Board report to address and examine specified issues concerning the National Science Foundation's budgetary and programmatic growth provided for by Pub. L. 107–368 and to be submitted to certain Congressional committees within one year after Dec. 19, 2002.

DEFINITIONS

Pub. L. 107–368, § 4, Dec. 19, 2002, 116 Stat. 3035, provided that: "In this Act [see Short Title of 2002 Amendment note set out under section 1861 of this title]:

"(1) ACADEMIC UNIT.—The term 'academic unit' means a department, division, institute, school, college, or other subcomponent of an institution of higher education.

"(2) BOARD.—The term 'Board' means the National Science Board established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

"(3) COMMUNITY COLLEGE.—The term 'community college' has the meaning given such term in section 3301(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7011(3)).

"(4) DIRECTOR.—The term 'Director' means the Director of the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

"(5) ELEMENTARY SCHOOL.—The term 'elementary school' has the meaning given that term by section 9101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

"(6) ELIGIBLE NONPROFIT ORGANIZATION.—The term 'eligible nonprofit organization' means a nonprofit research institute, or a nonprofit professional association, with demonstrated experience and effectiveness in mathematics or science education as determined by the Director.

"(7) FOUNDATION.—The term 'Foundation' means the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

"(8) HIGH-NEED LOCAL EDUCATIONAL AGENCY.—The term 'high-need local educational agency' means a local educational agency that meets one or more of the following criteria:

"(A) It has at least one school in which 50 percent or more of the enrolled students are eligible for participation in the free and reduced price lunch program established by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

"(B) It has at least one school in which—

"(i) more than 34 percent of the academic classroom teachers at the secondary level (across all academic subjects) do not have an undergraduate degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes; or

"(ii) more than 34 percent of the teachers in two of the academic departments do not have an undergraduate degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes.

"(C) It has at least one school whose teacher attrition rate has been 15 percent or more over the last three school years.

"(9) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

"(10) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given such term

by section 9101(26) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(26)).

''(11) MASTER TEACHER.—The term 'master teacher' means a mathematics or science teacher who works to improve the instruction of mathematics or science in kindergarten through grade 12 through—

''(A) participating in the development or revision of science, mathematics, engineering, or technology curricula;

''(B) serving as a mentor to mathematics or science teachers;

''(C) coordinating and assisting teachers in the use of hands-on inquiry materials, equipment, and supplies, and when appropriate, supervising acquisition and repair of such materials;

''(D) providing in-classroom teaching assistance to mathematics or science teachers; and

''(E) providing professional development, including for the purposes of training other master teachers, to mathematics and science teachers.

''(12) NATIONAL RESEARCH FACILITY.—The term 'national research facility' means a research facility funded by the Foundation which is available, subject to appropriate policies allocating access, for use by all scientists and engineers affiliated with research institutions located in the United States.

''(13) SECONDARY SCHOOL.—The term 'secondary school' has the meaning given that term by section 9101(38) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(38)).

''(14) STATE.—Except with respect to the Experimental Program to Stimulate Competitive Research, the term 'State' means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

''(15) STATE EDUCATIONAL AGENCY.—The term 'State educational agency' has the meaning given such term by section 9101(41) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(41)).

''(16) UNITED STATES.—The term 'United States' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.''

§ 1862n–1. Robert Noyce Scholarship Program

(a) Scholarship program

(1) In general

The Director shall carry out a program to award grants to institutions of higher education (or consortia of such institutions) to provide scholarships, stipends, and programming designed to recruit and train mathematics and science teachers. Such program shall be known as the ''Robert Noyce Scholarship Program''.

(2) Merit review

Grants shall be provided under this subsection on a competitive, merit-reviewed basis.

(3) Use of grants

Grants provided under this section shall be used by institutions of higher education or consortia—

(A) to develop and implement a program to encourage top college juniors and seniors majoring in mathematics, science, and engineering at the grantee's institution to become mathematics and science teachers, through—

(i) administering scholarships in accordance with subsection (c) of this section;

(ii) offering programs to help scholarship recipients to teach in elementary schools and secondary schools, including programs that will result in teacher certification or licensing; and

(iii) offering programs to scholarship recipients, both before and after they receive their baccalaureate degree, to enable the recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to exchange ideas with others in their fields; or

(B) to develop and implement a program to encourage science, mathematics, or engineering professionals to become mathematics and science teachers, through—

(i) administering stipends in accordance with subsection (d) of this section;

(ii) offering programs to help stipend recipients obtain teacher certification or licensing; and

(iii) offering programs to stipend recipients, both during and after matriculation in the program for which the stipend is received, to enable recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to exchange ideas with others in their fields.

(b) Selection process

(1) Application

An institution of higher education or consortium seeking funding under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the scholarship or stipend program that the applicant intends to operate, including the number of scholarships or the size and number of stipends the applicant intends to award, and the selection process that will be used in awarding the scholarships or stipends;

(B) evidence that the applicant has the capability to administer the scholarship or stipend program in accordance with the provisions of this section; and

(C) a description of the programming that will be offered to scholarship or stipend recipients during and after their matriculation in the program for which the scholarship or stipend is received.

(2) Review of applications

In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the applicant to effectively carry out the program;

(B) the extent to which the applicant is committed to making the program a central organizational focus;

(C) the degree to which the proposed programming will enable scholarship or stipend recipients to become successful mathematics and science teachers;

(D) the number and quality of the students that will be served by the program; and

(E) the ability of the applicant to recruit students who would otherwise not pursue a career in teaching.

(c) Scholarship requirements

(1) In general

Scholarships under this section shall be available only to students who are—

(A) majoring in science, mathematics, or engineering; and

(B) in the last 2 years of a baccalaureate degree program.

(2) Selection

Individuals shall be selected to receive scholarships primarily on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 1885a or 1885b of this title.

(3) Amount

The Director shall establish for each year the amount to be awarded for scholarships under this section for that year, which shall be not less than $7,500 per year, except that no individual shall receive for any year more than the cost of attendance at that individual's institution. Individuals may receive a maximum of 2 years of scholarship support.

(4) Service obligation

If an individual receives a scholarship, that individual shall be required to complete, within 6 years after graduation from the baccalaureate degree program for which the scholarship was awarded, 2 years of service as a mathematics or science teacher for each year a scholarship was received. Service required under this paragraph shall be performed in a high-need local educational agency.

(d) Stipends

(1) In general

Stipends under this section shall be available only to mathematics, science, and engineering professionals who, while receiving the stipend, are enrolled in a program to receive certification or licensing to teach.

(2) Selection

Individuals shall be selected to receive stipends under this section primarily on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 1885a or 1885b of this title.

(3) Duration

Individuals may receive a maximum of 1 year of stipend support.

(4) Service obligation

If an individual receives a stipend under this section, that individual shall be required to complete, within 6 years after graduation from the program for which the stipend was awarded, 2 years of service as a mathematics or science teacher for each year a stipend was received. Service required under this paragraph shall be performed in a high-need local educational agency.

(e) Conditions of support

As a condition of acceptance of a scholarship or stipend under this section, a recipient shall enter into an agreement with the institution of higher education—

(1) accepting the terms of the scholarship or stipend pursuant to subsections (c) and (g) of this section, or subsection (d) of this section;

(2) agreeing to provide the awarding institution of higher education with annual certification of employment and up-to-date contact information and to participate in surveys provided by the institution of higher education as part of an ongoing assessment program; and

(3) establishing that any scholarship recipient shall be liable to the United States for any amount that is required to be repaid in accordance with the provisions of subsection (g) of this section.

(f) Collection for noncompliance

(1) Monitoring compliance

An institution of higher education (or consortium thereof) receiving a grant under this section shall, as a condition of participating in the program, enter into an agreement with the Director to monitor the compliance of scholarship and stipend recipients with their respective service requirements.

(2) Collection of repayment

(A) In the event that a scholarship recipient is required to repay the scholarship under subsection (g) of this section, the institution shall be responsible for collecting the repayment amounts.

(B) Except as provided in subparagraph (C), any such repayment shall be returned to the Treasury of the United States.

(C) A grantee may retain a percentage of any repayment it collects to defray administrative costs associated with the collection. The Director shall establish a single, fixed percentage that will apply to all grantees.

(g) Failure to complete service obligation

(1) General rule

If an individual who has received a scholarship under this section—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which the individual is enrolled, as determined by the Director;

(B) is dismissed from such educational institution for disciplinary reasons;

(C) withdraws from the baccalaureate degree program for which the award was made before the completion of such program;

(D) declares that the individual does not intend to fulfill the service obligation under this section; or

(E) fails to fulfill the service obligation of the individual under this section,

such individual shall be liable to the United States as provided in paragraph (2).

(2) Amount of repayment

(A) If a circumstance described in paragraph (1) occurs before the completion of one year of a service obligation under this section, the United States shall be entitled to recover from the individual, within one year after the date of the occurrence of such circumstance, an amount equal to—

(i) the total amount of awards received by such individual under this section; plus

(ii) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 2.

(B) If a circumstance described in paragraph (1)(D) or (E) occurs after the completion of one year of a service obligation under this section, the United States shall be entitled to recover from the individual, within one year after the date of the occurrence of such circumstance, an amount equal to the total amount of awards received by such individual under this section minus ½ of the amount of the award received per year for each full year of service completed, plus the interest on such amounts which would be payable if at the time the amounts were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(3) Exceptions

The Director may provide for the partial or total waiver or suspension of any service or payment obligation by an individual under this section whenever compliance by the individual with the obligation is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be unconscionable.

(h) Data collection

Institutions or consortia receiving grants under this section shall supply to the Director any relevant statistical and demographic data on scholarship recipients and stipend recipients the Director may request, including information on employment required by subsection (e) of this section.

(i) Definitions

In this section—

(1) the term ''cost of attendance'' has the meaning given such term in section 1087*ll* of title 20;

(2) the term ''mathematics and science teacher'' means a mathematics, science, or technology teacher at the elementary school or secondary school level;

(3) the term ''mathematics, science, or engineering professional'' means a person who holds a baccalaureate, masters, or doctoral degree in science, mathematics, or engineering and is working in that field or a related area;

(4) the term ''scholarship'' means an award under subsection (c) of this section; and

(5) the term ''stipend'' means an award under subsection (d) of this section.

(Pub. L. 107–368, § 10, Dec. 19, 2002, 116 Stat. 3049.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–2. Establishment of centers for research on mathematics and science learning and education improvement

(a) Establishment

(1) In general

(A) The Director shall award grants to institutions of higher education (or consortia thereof) to establish multidisciplinary Centers for Research on Learning and Education Improvement.

(B) Grants shall be awarded under this paragraph on a competitive, merit-reviewed basis.

(2) Purpose

The purpose of the Centers shall be to conduct and evaluate research in cognitive science, education, and related fields and to develop ways in which the results of such research can be applied in elementary school and secondary school classrooms to improve the teaching of mathematics and science.

(3) Focus

(A) Each Center shall be focused on a different challenge faced by elementary school or secondary school teachers of mathematics and science. In determining the research focus of the Centers, the Director shall consult with the National Academy of Sciences and the Secretary of Education and take into account the extent to which other Federal programs support research on similar questions.

(B) The proposal solicitation issued by the Director shall state the focus of each Center and applicants shall apply for designation as a specific Center.

(C) At least one Center shall focus on developing ways in which the results of research described in paragraph (2) can be applied, duplicated, and scaled up for use in low-performing elementary schools and secondary schools to improve the teaching and student achievement levels in mathematics and science.

(D) To the extent practicable and relevant to its focus, every Center shall include, as part of its research, work designed to quantitatively assess and improve the ways that information technology is used in the teaching of mathematics and science.

(b) Selection process

(1) Application

An institution of higher education (or a consortium of such institutions) seeking funding under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the initial research projects that will be undertaken by the Center and the process by which new projects will be identified;

(B) how the Center will work with other research institutions and schools to broaden the national research agenda on learning and teaching;

(C) how the Center will promote active collaboration among physical, biological, and social science researchers;

(D) how the Center will promote active participation by elementary and secondary mathematics and science teachers and administrators; and

(E) how the results of the Center's research can be incorporated into educational practices, and how the Center will assess the success of those practices.

(2) Review of applications

In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the applicant to effectively carry out the research program, including the activities described in paragraph (1)(E);

(B) the experience of the applicant in conducting research on the science of teaching and learning and the capacity of the applicant to foster new multidisciplinary collaborations;

(C) the capacity of the applicant to attract elementary school and secondary school teachers from a diverse array of schools, and with diverse professional experiences, for participation in Center activities; and

(D) the capacity of the applicant to attract and provide adequate support for graduate students to pursue research at the intersection of educational practice and basic research on human cognition and learning.

(3) Awards

The Director shall ensure, to the extent practicable, that the Centers funded under this section conduct research and develop educational practices designed to improve the educational performance of a broad range of students, including individuals identified in section 1885a or 1885b of this title.

(c) Annual conference

The Director shall convene an annual meeting of the Centers to foster collaboration among the Centers and to further disseminate the results of the Centers' activities.

(d) Coordination

The Director shall coordinate with the Secretary of Education in—

(1) disseminating the results of the research conducted pursuant to grants awarded under this section to elementary school teachers and secondary school teachers; and

(2) providing programming, guidance, and support to ensure that such teachers—

(A) understand the implications of the research disseminated under paragraph (1) for classroom practice; and

(B) can use the research to improve such teachers' performance in the classroom.

(Pub. L. 107–368, § 11, Dec. 19, 2002, 116 Stat. 3053.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–3. Duplication of programs

(a) In general

The Director shall review the education programs of the Foundation that are in operation as of December 19, 2002, to determine whether any of such programs duplicate the programs authorized under this Act.

(b) Implementation

As programs authorized under this Act are implemented, the Director shall—

(1) terminate any duplicative program being carried out by the Foundation or merge the duplicative program into a program authorized under this Act; and

(2) not establish any new program that duplicates a program that has been implemented pursuant to this Act.

(c) Report

(1) Review

The Director of the Office of Science and Technology Policy shall review the education programs of the Foundation to ensure compliance with the provisions of this section.

(2) Submission

Not later than 1 year after December 19, 2002, and annually thereafter as part of the annual Office of Science and Technology Policy's budget submission to Congress, the Director of the Office of Science and Technology Policy shall complete a report on the review carried out under this subsection and shall submit the report to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate.

(Pub. L. 107–368, § 12, Dec. 19, 2002, 116 Stat. 3054.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), is Pub. L. 107–368, Dec. 19, 2002, 116 Stat. 3034, known as the National Science Foundation Authorization Act of 2002. For complete classification of this Act to the Code, see Short Title of 2002 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–4. Major research equipment and facilities construction plan

(a) Prioritization of proposed major research equipment and facilities construction

(1) Development of priorities

(A) The Director shall—

(i) develop a list indicating by number the relative priority for funding under the major research equipment and facilities construction account that the Director assigns to each project the Board has approved for inclusion in a future budget request; and

(ii) submit the list described in clause (i) to the Board for approval.

(B) The Director shall update the list prepared under subparagraph (A) each time the Board approves a new project that would receive funding under the major research equipment and facilities construction account, as necessary to prepare reports under paragraph (2), and, from time to time, submit any updated list to the Board for approval.

(2) Annual report

Not later than 90 days after December 19, 2002, and not later than each June 15 thereafter, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing—

(A) the most recent Board-approved priority list developed under paragraph (1)(A);

(B) a description of the criteria used to develop such list; and

(C) a description of the major factors for each project that determined the ranking of such project on the list, based on the application of the criteria described pursuant to subparagraph (B).

(3) Criteria

The criteria described pursuant to paragraph (2)(B) shall include, at a minimum—

(A) scientific merit;

(B) broad societal need and probable impact;

(C) consideration of the results of formal prioritization efforts by the scientific community;

(D) readiness of plans for construction and operation;

(E) the applicant's management and administrative capacity of large research facilities;

(F) international and interagency commitments; and

(G) the order in which projects were approved by the Board for inclusion in a future budget request.

(b) Omitted

(c) Project management

No national research facility project funded under the major research equipment and facilities construction account shall be managed by an individual whose appointment to the Foundation is temporary.

(d) Board approval of major research equipment and facilities projects

(1) In general

The Board shall explicitly approve any project to be funded out of the major research equipment and facilities construction account before any funds may be obligated from such account for such project.

(2) Report

Not later than September 15 of each fiscal year, the Board shall report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Science of the House of Representatives on the conditions of any delegation of authority under section 1863 of this title that relates to funds appropriated for any project in the major research equipment and facilities construction account.

(e) National Academy of Sciences study on major research equipment and facilities construction

(1) Study

Not later than 3 months after December 19, 2002, the Director shall enter into an arrangement with the National Academy of Sciences to perform a study on setting priorities for a diverse array of disciplinary and interdisciplinary Foundation-sponsored large research facility projects.

(2) Transmittal to Congress

Not later than 15 months after December 19, 2002, the Director shall transmit to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate, the study conducted by the National Academy of Sciences together with the Foundation's reaction to the study authorized under paragraph (1).

(Pub. L. 107–368, § 14, Dec. 19, 2002, 116 Stat. 3056.)

CODIFICATION

Section is comprised of section 14 of Pub. L. 107–368. Subsec. (b)(1), (2) of section 14 of Pub. L. 107–368 amended section 1862*l* of this title, and subsec. (b)(3) of section 14 of Pub. L. 107–368 amended provisions set out as a note under section 1862k of this title.

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–5. Board meetings; audits; reports; scholarship eligibility

(a) Board meetings

(1) Omitted

(2) Open meetings

The Board and all of its committees, subcommittees, and task forces (and any other entity consisting of members of the Board and reporting to the Board) shall be subject to section 552b of title 5.

(3) Compliance audit

The Inspector General of the Foundation shall conduct an annual audit of the compli-

ance by the Board with the requirements described in paragraph (2). The audit shall examine the proposed and actual content of closed meetings and determine whether the closure of the meetings was consistent with section 552b of title 5.

(4) Report

Not later than February 15 of each year, the Inspector General of the Foundation shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate the audit required under paragraph (3) along with recommendations for corrective actions that need to be taken to achieve fuller compliance with the requirements described in paragraph (2), and recommendations on how to ensure public access to the Board's deliberations.

(b), (c) Omitted

(d) Scholarship eligibility

The Director shall not exclude part-time students from eligibility for scholarships under the Computer Science, Engineering, and Mathematics Scholarship program.

(Pub. L. 107–368, § 15, Dec. 19, 2002, 116 Stat. 3058.)

CODIFICATION

Section is comprised of section 15 of Pub. L. 107–368. Subsecs. (a)(1) and (c) of section 15 of Pub. L. 107–368 amended section 1863 of this title, and subsec. (b) of section 15 of Pub. L. 107–368 amended section 1873 of this title.

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–6. Undergraduate education reform

(a) In general

The Director shall award grants, on a competitive, merit-reviewed basis, to institutions of higher education to expand previously implemented reforms of undergraduate science, mathematics, engineering, or technology education that have been demonstrated to have been successful in increasing the number and quality of students studying toward and completing associate's or baccalaureate degrees in science, mathematics, engineering, or technology.

(b) Uses of funds

Activities supported by grants under this section may include—

(1) expansion of successful reform efforts beyond a single course or group of courses to achieve reform within an entire academic unit;

(2) expansion of successful reform efforts beyond a single academic unit to other science, mathematics, engineering, or technology academic units within an institution;

(3) creation of multidisciplinary courses or programs that formalize collaborations for the purpose of improved student instruction and research in science, mathematics, engineering, and technology;

(4) expansion of undergraduate research opportunities beyond a particular laboratory, course, or academic unit to engage multiple academic units in providing multidisciplinary research opportunities for undergraduate students;

(5) expansion of innovative tutoring or mentoring programs proven to enhance student recruitment or persistence to degree completion in science, mathematics, engineering, or technology;

(6) improvement of undergraduate science, mathematics, engineering, and technology education for nonmajors, including education majors; and

(7) implementation of technology-driven reform efforts, including the installation of technology to facilitate such reform, that directly impact undergraduate science, mathematics, engineering, or technology instruction or research experiences.

(c) Selection process

(1) Applications

An institution of higher education seeking a grant under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the proposed reform effort;

(B) a description of the previously implemented reform effort that will serve as the basis for the proposed reform effort and evidence of success of that previous effort, including data on student recruitment, persistence to degree completion, and academic achievement;

(C) evidence of active participation in the proposed project by individuals who were central to the success of the previously implemented reform effort; and

(D) evidence of institutional support for, and commitment to, the proposed reform effort, including a description of existing or planned institutional policies and practices regarding faculty hiring, promotion, tenure, and teaching assignment that reward faculty contributions to undergraduate education equal to, or greater than, scholarly scientific research.

(2) Review of applications

In evaluating applications submitted under paragraph (1), the Director shall consider at a minimum—

(A) the evidence of past success in implementing undergraduate education reform and the likelihood of success in undertaking the proposed expanded effort;

(B) the extent to which the faculty, staff, and administrators of the institution are committed to making the proposed institutional reform a priority of the participating academic unit;

(C) the degree to which the proposed reform will contribute to change in institu-

tional culture and policy such that a greater value is placed on faculty engagement in undergraduate education, as evidenced through promotion and tenure policies; and

(D) the likelihood that the institution will sustain or expand the reform beyond the period of the grant.

(3) Grant distribution

The Director shall ensure, to the extent practicable, that grants awarded under this section are made to a variety of types of institutions of higher education.

(Pub. L. 107–368, § 17, Dec. 19, 2002, 116 Stat. 3060.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–7. Reports

(a) Grant size and duration

Not later than 6 months after December 19, 2002, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report describing the impact that increasing the average grant size and duration would have on minority-serving institutions and on institutions located in States where the Foundation's Experimental Program to Stimulate Competitive Research (established under section 1862g of this title) is carrying out activities.

(b) Faculty

Not later than 3 months after December 19, 2002, the Director shall enter into an arrangement with the National Academy of Sciences to assess gender differences in the careers of science and engineering faculty. This study shall build on the Academy's work on gender differences in the carriers of doctoral scientists and engineers and examine issues such as faculty hiring, promotion, tenure, and allocation of resources including laboratory space. Upon completion, the results of this study shall be transmitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(c) Grant funding

Not later than 3 months after December 19, 2002, the Director shall enter into an agreement with an appropriate party to assess gender differences in the distribution of external Federal research and development funding. This study shall examine differences in amounts requested and awarded, by gender, in major Federal external grant programs. Upon completion, the results of this study shall be transmitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(d) Study of broadband network access for schools and libraries

(1) Report to Congress

The Director shall conduct a study of the issues described in paragraph (3), and not later than 1 year after December 19, 2002, transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report including recommendations to address those issues. Such report shall be updated annually for 4 additional years.

(2) Consultation

In preparing the reports under paragraph (1), the Director shall consult with Federal agencies and educational entities as the Director considers appropriate.

(3) Issues to be addressed

The reports shall—

(A) identify the availability of high-speed, large bandwidth capacity access to different demographic groups served by elementary schools, secondary schools, and libraries in the United States;

(B) identify how the provision of high-speed, large bandwidth capacity access to the Internet to such schools and libraries can be effectively utilized within each school and library;

(C) consider the effect that specific or regional circumstances may have on the ability of such institutions to acquire high-speed, large bandwidth capacity access to achieve universal connectivity as an effective tool in the education process; and

(D) include options and recommendations to address the challenges and issues identified in the reports.

(e) Minority-serving institution funding

(1) Annual reporting required

The Director shall submit an annual report, along with the President's annual budget request, to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on the amount of funding awarded by the Foundation to minority-serving institutions, including funding received as members of consortia. The report shall include information on such funding to minority-serving institutions—

(A) expressed as a percentage of funding to all institutions of higher education for each appropriations account within the Foundation's budget; and

(B) for the preceding 10 years.

(2) Report on ways to improve funding

Within one year after December 19, 2002, the Director shall submit to the Committee on Science of the House of Representatives, the

Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report on recommendations on how the Foundation can improve funding to minority-serving institutions.

(Pub. L. 107–368, § 18, Dec. 19, 2002, 116 Stat. 3061.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–8. Evaluations

(a) Education

(1) In general

The Director, through the Research, Evaluation and Communication Division of the Education and Human Resources Directorate of the Foundation, shall evaluate the effectiveness of all undergraduate science, mathematics, engineering, or technology education activities supported by the Foundation in increasing the number and quality of students, including individuals identified in section 1885a or 1885b of this title studying toward and completing associate's or baccalaureate degrees in science, mathematics, engineering, and technology. In conducting the evaluation, the Director shall consider information on—

(A) the number of students enrolled in undergraduate science, mathematics, engineering, and technology programs;

(B) student academic achievement, including quantifiable measurements of students' mastery of content and skills;

(C) persistence to degree completion, including students who transfer from science, mathematics, engineering, and technology programs to programs in other academic disciplines; and

(D) placement during the first year after degree completion in post-graduate education or career pathways.

(2) Assessment benchmarks and tools

The Director, through the Research, Evaluation and Communication Division of the Education and Human Resources Directorate of the Foundation, shall establish a common set of assessment benchmarks and tools, and shall enable every Foundation-sponsored project to incorporate the use of these benchmarks and tools in their project-based assessment activities.

(3) Reports to Congress

Not later than 3 years after December 19, 2002, and once every 3 years thereafter, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing the results of evaluations under paragraph (1).

(b) Awards

Notwithstanding any other provision of this Act, the Director shall annually evaluate a random sample of grants, contracts, or other awards made pursuant to this Act.

(c) Dissemination

The Director shall—

(1) provide for the dissemination of the results of the evaluations conducted pursuant to this section to the public; and

(2) provide notice to the public that such evaluations are available.

(Pub. L. 107–368, § 19, Dec. 19, 2002, 116 Stat. 3063.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 107–368, Dec. 19, 2002, 116 Stat. 3034, known as the National Science Foundation Authorization Act of 2002. For complete classification of this Act to the Code, see Short Title of 2002 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–9. Astronomy and Astrophysics Advisory Committee

(a) Establishment

The Foundation, the National Aeronautics and Space Administration, and the Department of Energy shall jointly establish an Astronomy and Astrophysics Advisory Committee (in this section referred to as the ''Advisory Committee'').

(b) Duties

The Advisory Committee shall—

(1) assess, and make recommendations regarding, the coordination of astronomy and astrophysics programs of the Foundation, the National Aeronautics and Space Administration, and the Department of Energy;

(2) assess, and make recommendations regarding, the status of the activities of the Foundation, the National Aeronautics and Space Administration, and the Department of Energy as they relate to the recommendations contained in the National Research Council's 2001 report entitled ''Astronomy and Astrophysics in the New Millennium'', and the recommendations contained in subsequent National Research Council reports of a similar nature; and

(3) not later than March 15 of each year, transmit a report to the Director, the Administrator of the National Aeronautics and Space Administration, the Secretary of Energy, the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on the Advisory Committee's findings and recommendations under paragraphs (1) and (2).

(c) Membership

The Advisory Committee shall consist of 13 members, none of whom shall be a Federal employee, including—

(1) 4 members selected by the Director;

(2) 4 members selected by the Administrator of the National Aeronautics and Space Administration;

(3) 3 members selected by the Secretary of Energy; and

(4) 2 members selected by the Director of the Office of Science and Technology Policy.

(d) Selection process

Initial selections under subsection (c) of this section shall be made within 3 months after December 19, 2002. Vacancies shall be filled in the same manner as provided in subsection (c) of this section.

(e) Chairperson

The Advisory Committee shall select a chairperson from among its members.

(f) Coordination

The Advisory Committee shall coordinate with other Federal advisory committees that advise Federal agencies that engage in related research activities.

(g) Compensation

The members of the Advisory Committee shall serve without compensation, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(h) Meetings

The Advisory Committee shall convene, in person or by electronic means, at least 4 times a year.

(i) Quorum

A majority of the members serving on the Advisory Committee shall constitute a quorum for purposes of conducting the business of the Advisory Committee.

(j) Duration

Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

(Pub. L. 107–368, § 23, Dec. 19, 2002, 116 Stat. 3065; Pub. L. 108–423, § 5(a), Nov. 30, 2004, 118 Stat. 2402.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (j), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2004—Subsecs. (a), (b)(1), (2). Pub. L. 108–423, § 5(a)(1), substituted ‘‘, the National Aeronautics and Space Administration, and the Department of Energy’’ for ‘‘and the National Aeronautics and Space Administration’’.

Subsec. (b)(3). Pub. L. 108–423, § 5(a)(2), substituted ‘‘Administration, the Secretary of Energy,’’ for ‘‘Administration, and’’.

Subsec. (c)(1), (2). Pub. L. 108–423, § 5(a)(3)(A), substituted ‘‘4’’ for ‘‘5’’.

Subsec. (c)(3), (4). Pub. L. 108–423, § 5(a)(3)(B)–(D), added par. (3) and redesignated former par. (3) as (4) and substituted ‘‘2’’ for ‘‘3’’.

Subsec. (f). Pub. L. 108–423, § 5(a)(4), substituted ‘‘other Federal advisory committees that advise Federal agencies that engage in related research activities’’ for ‘‘the advisory bodies of other Federal agencies, such as the Department of Energy, which may engage in related research activities’’.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–423, § 5(b), Nov. 30, 2004, 118 Stat. 2402, provided that: ‘‘The amendments made by subsection (a) [amending this section] take effect on March 15, 2005.’’

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–10. Minority-serving institutions undergraduate program

(a) In general

The Director is authorized to establish a new program to award grants on a competitive, merit-reviewed basis to Hispanic-serving institutions, Alaska Native-serving institutions, Native Hawaiian-serving institutions, and other institutions of higher education serving a substantial number of minority students to enhance the quality of undergraduate science, mathematics, and engineering education at such institutions and to increase the retention and graduation rates of students pursuing associate's or baccalaureate degrees in science, mathematics, engineering, or technology.

(b) Program components

Grants awarded under this section shall support—

(1) activities to improve courses and curriculum in science, mathematics, and engineering;

(2) faculty development;

(3) stipends for undergraduate students participating in research; and

(4) other activities consistent with subsection (a) of this section, as determined by the Director.

(c) Program coordination

This program shall be coordinated with and in addition to the ongoing Historically Black Colleges and Universities Undergraduate Program and the Tribal Colleges and Universities Program.

(d) Instrumentation

Funding for instrumentation is an allowed use of grants awarded under this section and under the ongoing Historically Black Colleges and Universities Undergraduate Program and the Tribal Colleges and Universities Program.

(Pub. L. 107–368, § 24, Dec. 19, 2002, 116 Stat. 3066.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1863. National Science Board

(a) Composition; appointment; establishment of policies of the Foundation

The Board shall consist of twenty-four members to be appointed by the President, by and with the advice and consent of the Senate, and of the Director ex officio. In addition to any powers and functions otherwise granted to it by this chapter, the Board shall establish the policies of the Foundation, within the framework of applicable national policies as set forth by the President and the Congress.

(b) Executive Committee; delegation of powers and functions

The Board shall have an Executive Committee as provided in section 1865 of this title, and may delegate to it or to the Director or both such of the powers and functions granted to the Board by this chapter as it deems appropriate.

(c) Meetings; nominations; quorum; notice

The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation. In making nominations under this section, the President shall give due regard to equitable representation of scientists and engineers who are women or who represent minority groups. The President is requested, in the making of nominations of persons for appointment as members, to give due consideration to any recommendations for nomination which may be submitted to him by the National Academy of Sciences, the National Academy of Engineering, the National Association of State Universities and Land Grant Colleges, the Association of American Universities, the Association of American Colleges, the Association of State Colleges and Universities, or by other scientific, engineering, or educational organizations.

(d) Term of office; reappointment

The term of office of each member of the Board shall be six years; except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Any person, other than the Director, who has been a member of the Board for twelve consecutive years shall thereafter be ineligible for appointment during the two-year period following the expiration of such twelfth year.

(e) Meetings; quorum; notice

The Board shall meet annually on the third Monday in May unless, prior to May 10 in any year, the Chairman has set the annual meeting for a day in May other than the third Monday, and at such other times as the Chairman may determine, but he shall also call a meeting whenever one-third of the members so request in writing. The Board shall adopt procedures governing the conduct of its meetings, including delivery of notice and a definition of a quorum, which in no case shall be less than one-half plus one of the confirmed members of the Board.

(f) Election of Chairman and Vice Chairman; vacancy

The election of the Chairman and Vice Chairman of the Board shall take place at each annual meeting occurring in an even-numbered year. The Vice Chairman shall perform the duties of the Chairman in his absence. In case a vacancy occurs in the chairmanship or vice chairmanship, the Board shall elect a member to fill such vacancy.

(g) Appointment and assignment of staff; compensation; security requirements

The Board may, with the concurrence of a majority of its members, permit the appointment of a staff consisting of not more than five professional staff members and such clerical staff members as may be necessary. Such staff shall be appointed by the Chairman and assigned at the direction of the Board. The professional members of such staff may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 of title 5 relating to classification, and compensated at a rate not exceeding the maximum rate payable under section 5376 of title 5, as may be necessary to provide for the performance of such duties as may be prescribed by the Board in connection with the exercise of its powers and functions under this chapter. Each appointment under this subsection shall be subject to the same security requirements as those required for personnel of the Foundation appointed under section 1873(a) of this title.

(h) Special commissions

The Board is authorized to establish such special commissions as it may from time to time deem necessary for the purposes of this chapter.

(i) Committees; survey and advisory functions

The Board is also authorized to appoint from among its members such committees as it deems necessary, and to assign to committees so appointed such survey and advisory functions as the Board deems appropriate to assist it in exercising its powers and functions under this chapter.

(j) Report to President; submittal to Congress

(1) The Board shall render to the President, for submission to the Congress no later than January 15 of each even numbered year, a report on indicators of the state of science and engineering in the United States.

(2) The Board shall render to the President for submission to the Congress reports on specific, individual policy matters related to science and engineering and education in science and engineering, as the Board, the President, or the Congress determines the need for such reports.

(k) Closed meetings

Portions of Board meetings in which the Board considers proposed Foundation budgets for a particular fiscal year may be closed to the public until the President's budget for that fiscal year has been submitted to the Congress.

(*l*) Financial disclosure report for Board members

Members of the Board shall be required to file a financial disclosure report under title II of the Ethics in Government Act of 1978 (5 U.S.C. App.; 92 Stat. 1836), except that such reports shall be held confidential and exempt from any law otherwise requiring their public disclosure.

(May 10, 1950, ch. 171, §4, 64 Stat. 150; Pub. L. 86–232, §2, Sept. 8, 1959, 73 Stat. 467; Pub. L. 86–507, §1(36), June 11, 1960, 74 Stat. 202; Pub. L. 90–407, §2, July 18, 1968, 82 Stat. 361; Pub. L. 94–273, §11(3), Apr. 21, 1976, 90 Stat. 378; Pub. L. 94–282, title V, §503, May 11, 1976, 90 Stat. 473; Pub. L. 94–471, §9, Oct. 11, 1976, 90 Stat. 2057; Pub. L. 95–99, §12(b), formerly §14(b), Aug. 15, 1977, 91 Stat. 835, renumbered §12(b), Pub. L. 99–159, title I, §109(h), Nov. 22, 1985, 99 Stat. 890; Pub. L. 96–516, §21(a), Dec. 12, 1980, 94 Stat. 3010; Pub. L. 97–375, title II, §214, Dec. 21, 1982, 96 Stat. 1826; Pub. L. 99–159, title I, §§109(a), 110(a)(12), Nov. 22, 1985, 99 Stat. 889, 891; Pub. L. 100–570, title I, §§105(a), 108, Oct. 31, 1988, 102 Stat. 2868, 2869; Pub. L. 105–207, title II, §202(a)(1), July 29, 1998, 112 Stat. 873; Pub. L. 107–368, §15(a)(1), (c), Dec. 19, 2002, 116 Stat. 3058, 3059.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (g), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The Ethics in Government Act of 1978, referred to in subsec. (*l*), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title II of the Ethics in Government Act of 1978 was set out in the Appendix to Title 5, Government Organization and Employees, prior to repeal by Pub. L. 101–194, title II, §201, Nov. 30, 1989, 103 Stat. 1724. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–368, §15(a)(1), substituted ''The Board shall adopt procedures governing the conduct of its meetings, including delivery of notice and a definition of a quorum, which in no case shall be less than one-half plus one of the confirmed members of the Board.'' for ''A majority of the members of the Board shall constitute a quorum. Each member shall be given notice, not less than fifteen days prior to any meeting, of the call of such meeting.''

Subsec. (g). Pub. L. 107–368, §15(c), substituted ''Such staff shall be appointed by the Chairman and assigned at the direction of the Board.'' for ''Such staff shall be appointed by the Director, after consultation with the chairman of the Board and assigned at the direction of the Board.''

1998—Subsec. (g). Pub. L. 105–207, §202(a)(1)(A), substituted ''the maximum rate payable under section 5376'' for ''the appropriate rate provided for individuals in grade GS–18 of the General Schedule under section 5332''.

Subsecs. (k), (*l*). Pub. L. 105–207, §202(a)(1)(B), redesignated subsec. (k), relating to requirement of Board members to file financial disclosure report, as (*l*).

1988—Subsec. (k). Pub. L. 100–570, §108, added subsec. (k) relating to requirement of Board members to file financial disclosure report.

Pub. L. 100–570, §105(a), added subsec. (k) relating to closed meetings.

1985—Subsec. (c). Pub. L. 99–159, §110(a)(12), inserted ''and engineering'', ''and engineers'', and ''the National Academy of Engineering,'' and inserted '', engineering,'' after ''other scientific''.

Subsec. (e). Pub. L. 99–159, §109(a), struck out requirement that notice be made to members by registered or certified mail mailed to the last known address of record.

1982—Subsec. (j). Pub. L. 97–375 substituted provisions requiring a report in each even numbered year on the state of science and engineering, and reports on specific policy matters, as needed, for provisions requiring the Board to render an annual report to the President, for submission to the Congress on or before March 31 in each year, to deal essentially, though not necessarily exclusively, with policy issues or matters affecting the Foundation or with which the Board in its official role as the policymaking body of the Foundation was concerned.

1980—Subsec. (c). Pub. L. 96–516 inserted provisions respecting nominations of women and minority groups.

1977—Subsec. (j). Pub. L. 95–99 added subsec. (j).

1976—Subsec. (a). Pub. L. 94–471, §9(a), inserted reference to the framework of applicable national policies as set forth by the President and the Congress.

Subsec. (g). Pub. L. 94–471, §9(b), inserted reference to consultation of the Director with the Chairman of the Board and substituted ''GS–18'' for ''GS–15''.

Pub. L. 94–282 redesignated subsec. (h), and all references thereto, as subsec. (g). Former subsec. (g), concerning the annual report by the National Science Board to the President and Congress, was deleted.

Pub. L. 94–273 substituted ''April'' for ''January''.

Subsecs. (h) to (j). Pub. L. 94–282 redesignated subsecs. (h) to (j) as (g) to (i), respectively.

1968—Subsec. (a). Pub. L. 90–407 substituted provisions which authorized the Board to establish the policies of the Foundation in addition to any powers and functions otherwise granted to it by this chapter, for provisions which authorized the Board, except as otherwise provided by this chapter, to exercise the authority granted to the Foundation by this chapter. Provisions of this subsection, which enumerated the qualifications of persons nominated for appointment to the Board and provided for the specified organizations to make recommendations to the President of individuals qualified for nomination, were designated as subsec. (c).

Subsec. (b). Pub. L. 90–407 added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 90–407 redesignated provisions of former subsec. (a) as (c) and added social science and research management to the enumerated fields of eminence, and substituted ''the National Association of State Universities and Land Grant Colleges, the Association of American Universities, the Association of American Colleges, the Association of State Colleges and Universities'' for ''the Association of Land Grant Colleges and Universities, the National Association of State Universities, the Association of American Colleges''. Former subsec. (c), which provided that ''The President shall call the first meeting of the Board, at which the first order of business shall be the election of a chairman and a vice chairman'', was struck out as executed.

Subsec. (d). Pub. L. 90–407 redesignated former subsec. (b) as (d), substituted ''term of office of each member'' for ''term of office of each voting member'', struck out ''the terms of office of the members first taking office after May 10, 1950, shall expire, as designated by the President at the time of appointment, eight at the end of two years, eight at the end of four years, and eight at the end of six years, after May 10, 1950'', and provided for exemption of Director from prohibition against reappointment within two years following twelve consecutive years of Board membership. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 90–407 redesignated former subsec. (d) as (e) and substituted ''A majority of the members of the Board shall constitute a quorum'' for ''A majority of the voting members of the Board shall constitute a quorum''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 90–407 redesignated former subsec. (e) as (f) and substituted provisions that the election of the Chairman and Vice Chairman take place at each

annual meeting occurring in an even-numbered year for provisions that their election take place at the first meeting of the National Science Board following the enactment of Pub. L. 86–232, and that thereafter such election take place at the second annual meeting occurring after each such election.

Subsecs. (g) to (j). Pub. L. 90–407 added subsecs. (g) to (j).

1960—Subsec. (d). Pub. L. 86–507 inserted ''or by certified mail'' after ''registered mail''.

1959—Subsec. (d). Pub. L. 86–232 changed annual meeting of Board from first Monday in December to third Monday or other designated day in May.

Subsec. (e). Pub. L. 86–232 substituted provision for an election of a Chairman and Vice Chairman of the Board at first meeting of Board following enactment of Pub. L. 86–232 and at each second annual meeting thereafter in place of provision for election of the first Chairman and Vice Chairman to serve until first Monday in December next succeeding date of election and for election of subsequent officers for terms of two years thereafter.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1864. Director of Foundation

(a) Appointment; compensation; term of office

The Director of the Foundation (referred to in this chapter as the ''Director'') shall be appointed by the President, by and with the advice and consent of the Senate. Before any person is appointed as Director, the President shall afford the Board an opportunity to make recommendations to him with respect to such appointment. The Director shall receive basic pay at the rate provided for level II of the Executive Schedule under section 5313 of title 5, and shall serve for a term of six years unless sooner removed by the President.

(b) Exercise of authority of Foundation; actions as final and binding upon the Foundation

Except as otherwise specifically provided in this chapter (1) the Director shall exercise all of the authority granted to the Foundation by this chapter (including any powers and functions which may be delegated to him by the Board), and (2) all actions taken by the Director pursuant to the provisions of this chapter (or pursuant to the terms of a delegation from the Board) shall be final and binding upon the Foundation.

(c) Delegation and redelegation of functions

The Director may from time to time make such provisions as he deems appropriate authorizing the performance by any other officer, agency, or employee of the Foundation of any of his functions under this chapter, including functions delegated to him by the Board; except that the Director may not redelegate policymaking functions delegated to him by the Board.

(d) Formulation of programs

The formulation of programs in conformance with the policies of the Foundation shall be carried out by the Director in consultation with the Board.

(e) Authority to grant, contract, etc.; delegation of authority or imposition of conditions; reporting requirement

(1) The Director may make grants, contracts, and other arrangements pursuant to section 1870(c) of this title only with the prior approval of the Board or under authority delegated by the Board, and subject to such conditions as the Board may specify.

(2) Any delegation of authority or imposition of conditions under paragraph (1) shall be promptly published in the Federal Register and reported to the Committee on Labor and Human Resources, and the Committee on Commerce, Science, and Transportation, of the Senate and the Committee on Science of the House of Representatives.

(f) Status; power to vote and hold office

The Director, in his capacity as ex officio member of the Board, shall, except with respect to compensation and tenure, be coordinate with the other members of the Board. He shall be a voting member of the Board and shall be eligible for election by the Board as Chairman or Vice Chairman of the Board.

(May 10, 1950, ch. 171, § 5, 64 Stat. 151; Pub. L. 86–232, § 3, Sept. 8, 1959, 73 Stat. 467; Pub. L. 90–407, § 3, July 18, 1968, 82 Stat. 362; Pub. L. 99–159, title I, § 109(b), Nov. 22, 1985, 99 Stat. 889; Pub. L. 103–437, § 15(c)(1), Nov. 2, 1994, 108 Stat. 4591; Pub. L. 105–207, title II, § 202(a)(2), July 29, 1998, 112 Stat. 873.)

AMENDMENTS

1998—Subsec. (e)(2). Pub. L. 105–207 added par. (2) and struck out former par. (2), which read as follows: ''Any delegation of authority or imposition of conditions under the preceding sentence shall be effective only for such period of time, not exceeding two years, as the Board may specify, and shall be promptly published in the Federal Register and reported to the Committees on Labor and Human Resources and Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. On October 1 of each odd-numbered year the Board shall submit to the Congress a concise report which explains and justifies any actions taken by the Board under this subsection to delegate its authority or impose conditions within the preceding two years. The provisions of this subsection shall cease to be effective at the end of fiscal year 1989.''

1994—Subsec. (e)(2). Pub. L. 103–437 substituted ''Science, Space, and Technology'' for ''Science and Technology''.

1985—Subsec. (e). Pub. L. 99–159 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as fol-

lows: ''The Director shall not make any contract, grant, or other arrangement pursuant to section 1870(c) of this title without the prior approval of the Board, except that a grant, contract, or other arrangement involving a total commitment of less than $2,000,000, or less than $500,000 in any one year, or a commitment of such lesser amount or amounts and subject to such other conditions as the Board in its discretion may from time to time determine to be appropriate and publish in the Federal Register, may be made if such action is taken pursuant to the terms and conditions set forth by the Board, and if each such action is reported to the Board at the Board meeting next following such action.''

1968—Subsec. (a). Pub. L. 90–407 inserted provision prescribing the annual rate of compensation of the Director, and struck out provision authorizing the Director to serve as a nonvoting ex officio member of the Board and as the chief executive officer of the Foundation.

Subsec. (b). Pub. L. 90–407 substituted provisions authorizing the Director, except as otherwise provided, to exercise all of the authority granted to the Foundation by this chapter and to take action final and binding upon the Foundation for provisions authorizing the Director, in addition to the powers and duties specifically vested in him by this chapter, to exercise the powers granted by sections 1869 or 1870(c) of this title and such other powers and duties delegated by the Board to him, and the proviso that no action taken by the Director pursuant to section 1869 or 1870(c) shall be final unless in each instance the Board has reviewed and approved the action proposed to be taken, or such action is taken pursuant to the terms of a delegation of authority from the Board or the Executive Committee to the Director.

Subsecs. (c) to (f). Pub. L. 90–407 added subsecs. (c) to (f).

1959—Subsec. (b). Pub. L. 86–232 provided for delegation of authority from the Board or the Executive Committee to the Director.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–407, insofar as related to rates of basic pay, effective on first day of first calendar month which begins on or after July 18, 1968, see section 15(a)(4), set out as a note under section 5313 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

Authority of Director of National Science Foundation, from time to time, to make appropriate provisions authorizing performance by any other officer, or by any agency or employee, of National Science Foundation of any of his functions (including functions delegated to him by National Science Board), see Reorg. Plan No. 5 of 1965, eff. July 27, 1965, 30 F.R. 9355, 79 Stat. 1323, set out in the Appendix to Title 5, Government Organization and Employees.

Office of Director of National Science Foundation established under provisions of this section abolished and functions transferred to Director of National Science Foundation appointed pursuant to Reorg. Plan No. 2 of 1962, see section 22 (a), (b) of Reorg. Plan No. 2 of 1962, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, set out as a note under section 1861 of this title.

STUDY ON RESEARCH AND DEVELOPMENT FUNDING DATA DISCREPANCIES

Pub. L. 107–368, § 25, Dec. 19, 2002, 116 Stat. 3067, required the Director of the National Science Foundation to enter into an agreement with the National Academy of Sciences to conduct a comprehensive study to determine the source of discrepancies in Federal reports on obligations and actual expenditures of Federal research and development funding and to submit a report on the results of the study to committees of Congress within one year after Dec. 19, 2002, and required the Director of the Office of Science and Technology Policy to submit to those committees a plan for implementation of the recommendations of the study, within 6 months after the completion of the study.

RESEARCH PURPOSES OF GRANTS; BRIEF STATEMENT IN TITLES

Pub. L. 96–516, § 20, Dec. 12, 1980, 94 Stat. 3010, provided that: ''The Director of the National Science Foundation shall require the titles of all its grants to contain a brief statement of the purpose of the research being undertaken. Insofar as possible such statements shall be in layman's language.''

FEASIBILITY STUDY OF SOLAR ENERGY TRANSMISSION TO EARTH

Pub. L. 95–434, § 8, Oct. 10, 1978, 92 Stat. 1050, provided that:

''(a) The Director of the National Science Foundation, in consultation with the Director of the Office of Science and Technology Policy, the Secretary of Energy, the Administrator of the National Aeronautics and Space Administration, and technical experts in public agencies, private organizations, and academic institutions, is authorized to determine the need to provide support under this Act for a study of the feasibility of transmitting solar energy to Earth by using orbital structures manufactured from lunar or asteroidal materials, and the impact of such a feasibility study, if any, on existing National Science Foundation programs.

''(b)(1) If the Foundation determines that such a feasibility study is necessary, the Foundation is authorized to conduct such a study directly or by grants or contracts with public agencies, private organizations, or academic institutions.

''(2) At the conclusion of any such study the Foundation shall prepare and submit to the President and to the Congress a report of the study, together with such recommendations as the Foundation deems appropriate.

''(3) Of the funds authorized in section 2, $500,000 shall be available to carry out the provisions of this subsection.''

FEASIBILITY STUDY OF THE OPERATION OF THE PEER REVIEW SYSTEM IN THE EVALUATION OF GRANT PROPOSALS

Pub. L. 94–471, § 2(f), Oct. 11, 1976, 90 Stat. 2053, provided that: ''The Director of the National Science Foundation is authorized and directed to conduct a feasibility study of operating the peer review system used in the evaluation of grant proposals within the Foundation so as to assure that the identity of the proposer is not known to the reviewers of the proposal. Any such system shall be considered to supplement and not to supplant the peer review system in operation in the Foundation on the date of enactment of this Act [Oct. 11, 1976].''

SCIENCE FOR CITIZENS PROGRAM; PREPARATION AND SUBMISSION OF PLAN TO COMMITTEES OF CONGRESS

Pub. L. 94–86, § 3, Aug. 9, 1975, 89 Stat. 429, directed the Director of the National Science Foundation to prepare a comprehensive plan for the establishment and conduct of a ''Science for Citizens Program'' and, within six months from Aug. 9, 1975, submit the plan to specific committees of the House of Representatives and Senate. See section 5 of Pub. L. 94–471, set out as a note under section 1862 of this title.

PARTICIPATION OF PUBLIC IN CONDUCT OF FOUNDATION PROGRAMS; PREPARATION AND SUBMISSION OF PLAN TO COMMITTEES OF CONGRESS

Pub. L. 94–86, § 4, Aug. 9, 1975, 89 Stat. 430, authorized the Director of the National Science Foundation to pre-

pare a comprehensive plan to facilitate the participation of members of the public in the formulation, development, and conduct of National Science Foundation programs, policies, and priorities and to submit the resulting recommendations, plans, or other findings to specific committees of the House of Representatives and the Senate within 120 days from Aug. 9, 1975.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1864a. Deputy Director of the Foundation

There shall be a Deputy Director of the Foundation (referred to in this chapter as the ''Deputy Director''), who shall be appointed by the President, by and with the advice and consent of the Senate. Before any person is appointed as Deputy Director, the President shall afford the Board and the Director an opportunity to make recommendations to him with respect to such appointment. The Deputy Director shall receive basic pay at the rate provided for level III of the Executive Schedule under section 5314 of title 5, and shall perform such duties and exercise such powers as the Director may prescribe. The Deputy Director shall act for, and exercise the powers of, the Director during the absence or disability of the Director or in the event of a vacancy in the office of Director.

(May 10, 1950, ch. 171, § 6, as added Pub. L. 90–407, § 4, July 18, 1968, 82 Stat. 363; amended Pub. L. 99–383, § 7(b)(1), Aug. 21, 1986, 100 Stat. 814.)

AMENDMENTS

1986—Pub. L. 99–383 struck out subsec. (a) designation and struck out subsec. (b) which provided for appointment of four Assistant Directors of the Foundation.

EFFECTIVE DATE

Section, insofar as related to rates of basic pay, effective on first day of first calendar month which begins on or after July 18, 1968, see section 15(a)(4) of Pub. L. 90–407, set out as an Effective Date of 1968 Amendment note under section 5313 of Title 5, Government Organization and Employees.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1865. Executive Committee

(a) Composition; powers and functions; membership; chairman

There shall be an Executive Committee of the Board (referred to in this chapter as the ''Executive Committee''), which shall be composed of five members and shall exercise such powers and functions as may be delegated to it by the Board. Four of the members shall be elected as provided in subsection (b) of this section, and the Director ex officio shall be the fifth member and the chairman of the Executive Committee.

(b) Election to membership; term of office; eligibility for reelection

At each of its annual meetings the Board shall elect two of its members as members of the Executive Committee, and the Executive Committee members so elected shall hold office for two years from the date of their election. Any person, other than the Director, who has been a member of the Executive Committee for six consecutive years shall thereafter be ineligible for service as a member thereof during the two-year period following the expiration of such sixth year. For the purposes of this subsection, the period between any two consecutive annual meetings of the Board shall be deemed to be one year.

(c) Term of vacancy appointment

Any person elected as a member of the Executive Committee to fill a vacancy occurring prior to the expiration of the term for which his predecessor was elected shall be elected for the remainder of such term.

(d) Reports; minority views

The Executive Committee shall render an annual report to the Board, and such other reports as it may deem necessary, summarizing its activities and making such recommendations as it may deem appropriate. Minority views and recommendations, if any, of members of the Executive Committee shall be included in such reports.

(May 10, 1950, ch. 171, § 7, formerly § 6, 64 Stat. 151; Pub. L. 86–232, § 4, Sept. 8, 1959, 73 Stat. 467; renumbered and amended Pub. L. 90–407, §§ 4, 5, July 18, 1968, 82 Stat. 363, 364.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–407, § 5, made mandatory the organization of the Executive Committee, struck out prohibition that the Board may not assign to the Executive Committee the function of establishing policies, and inserted provisions setting forth the number of members, their manner of election, and the status of the Director.

Subsec. (b). Pub. L. 90–407, § 5, substituted provisions that Board elect two members as members of Executive Committee at its annual meeting, with period between any two consecutive annual meetings to be deemed one year, for provisions covering composition of Executive Committee, setting forth a special one year term of office for four members first elected after May 10, 1950, and directing that membership of Committee represent diverse interests and areas. Provisions of former subsecs. (b)(2)(A) and (b)(5) were redesignated as subsecs. (c) and (d), respectively.

Subsec. (c). Pub. L. 90–407, § 5, redesignated former subsec. (b)(2)(A) as (c) and substituted ''Any person elected as a member of the Executive Committee'' for ''any member elected''. Former subsec. (c), authorizing the Board to appoint such additional committees as it deems necessary, and to delegate to such committees survey and advisory functions as it deems appropriate, was struck out.

Subsec. (d). Pub. L. 90–407, § 5, redesignated former subsec. (b)(5) as (d) and substituted ''The Executive Committee'' for ''Such Committee''.

1959—Subsec. (a). Pub. L. 86–232 struck out prohibition against assignment to Executive Committee of function of review and approval.

Subsec. (b)(1). Pub. L. 86–232 authorized Board to have an Executive Committee consisting of from five to nine members rather than fixed number of nine.

TRANSFER OF FUNCTIONS

Executive Committee of National Science Board appointed under provisions of this section abolished and functions conferred by this section transferred to Executive Committee of National Science Board established by Reorg. Plan No. 2 of 1962, see sections 21(e) and

23(a)(1) of Reorg. Plan No. 2 of 1962, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, set out as a note under section 1861 of this title.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1866. Divisions within Foundation

There shall be within the Foundation such Divisions as the Director, in consultation with the Board, may from time to time determine.

(May 10, 1950, ch. 171, § 8, formerly § 7, 64 Stat. 152; renumbered § 8 and amended Pub. L. 90–407, §§ 4, 6, July 18, 1968, 82 Stat. 363, 364.)

PRIOR PROVISIONS

A prior section 8 of act May 10, 1950, which was classified to section 1867 of this title, was repealed by Pub. L. 90–407, § 4, July 18, 1968, 82 Stat. 363.

AMENDMENTS

1968—Pub. L. 90–407, § 6, substituted provisions that there be within the Foundation such divisions as the Director, in consultation with the Board, may from time to time determine for provisions that, unless otherwise provided by the Board, there be within the Foundation a Division of Medical Research, a Division of Mathematical, Physical, and Engineering Sciences, a Division of Biological Sciences, a Division of Scientific Personnel and Education, and such other divisions as the Board deems necessary.

CONSOLIDATION OF DIRECTORATES

Pub. L. 96–516, § 18, Dec. 12, 1980, 94 Stat. 3009, directed National Science Foundation to consolidate all Directorates, including Science Education Directorate, under one roof, in present location of central administrative offices, on or before Aug. 1, 1982.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1867. Repealed. Pub. L. 90–407, § 4, July 18, 1968, 82 Stat. 363

Section, act May 10, 1950, ch. 171, § 8, 64 Stat. 152, authorized a committee for each division of the Foundation, and provided for the composition, terms of office, chairmenship, rules of procedure, and powers and duties of each divisional committee.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1868. Special commissions

(a) Each special commission established under section 1863(h) of this title shall be appointed by the Board and shall consist of such members as the Board considers appropriate.

(b) Special commissions may be established to study and make recommendations to the Foundation on issues relating to research and education in science and engineering.

(May 10, 1950, ch. 171, § 9, 64 Stat. 152; Pub. L. 90–407, § 7, July 18, 1968, 82 Stat. 364; Pub. L. 99–159, title I, § 109(d), Nov. 22, 1985, 99 Stat. 889.)

AMENDMENTS

1985—Pub. L. 99–159 amended section generally. Prior to amendment, section read as follows:

''(a) Each special commission established pursuant to section 1863(i) of this title shall consist of eleven members appointed by the Board, six of whom shall be eminent scientists and five of whom shall be persons other than scientists. Each special commission shall choose its own chairman and vice chairman.

''(b) It shall be the duty of each such special commission to make a comprehensive survey of research, both public and private, being carried on in its field, and to formulate and recommend to the Foundation at the earliest practicable date an over-all research program in its field.''

1968—Subsec. (a). Pub. L. 90–407 substituted ''section 1863(i) of this title'' for ''section 1862(a)(7) of this title''.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1869. Scholarships and graduate fellowships

The Foundation is authorized to award scholarships and graduate fellowships for study and research in the sciences or in engineering at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time. Persons shall be selected for such scholarships and fellowships from among citizens, nationals or lawfully admitted permanent resident aliens of the United States, and such selections shall be made solely on the basis of ability; but in any case in which two or more applicants for scholarships or fellowships, as the case may be, are deemed by the Foundation to be possessed of substantially equal ability, and there are not sufficient scholarships or fellowships, as the case may be, available to grant one to each of such applicants, the available scholarship or scholarships or fellowship or fellowships shall be awarded to the applicants in such manner as will tend to result in a wide distribution of scholarships and fellowships throughout the United States. Nothing contained in this chapter shall prohibit the Foundation from refusing or revoking a scholarship or fellowship award, in whole or in part, in the case of any applicant or recipient, if the Board is of the opinion that such award is not in the best interests of the United States.

(May 10, 1950, ch. 171, § 10, 64 Stat. 152; Pub. L. 86–232, § 5, Sept. 8, 1959, 73 Stat. 468; Pub. L. 86–550, June 29, 1960, 74 Stat. 256; Pub. L. 87–835, § 2, Oct. 16, 1962, 76 Stat. 1070; Pub. L. 90–407, § 8, July 18, 1968, 82 Stat. 364; Pub. L. 99–159, title I, § 110(a)(13), Nov. 22, 1985, 99 Stat. 891; Pub. L. 99–383, § 7(c), Aug. 21, 1986, 100 Stat. 814; Pub. L. 101–589, title III, § 302(c), Nov. 16, 1990, 104 Stat. 2895.)

AMENDMENTS

1990—Pub. L. 101–589 substituted '', nationals or lawfully admitted permanent resident aliens'' for ''or nationals'' in second sentence.

1986—Pub. L. 99–383 struck out '', within the limits of funds made available specifically for such purpose pur-

suant to section 1875 of this title,'' after ''The Foundation is authorized to award''.

1985—Pub. L. 99–159 substituted ''study and research in the sciences or in engineering'' for ''scientific study or scientific work in the mathematical, physical, medical, biological, engineering, social, and other sciences''.

1968—Pub. L. 90–407 inserted social sciences to the enumerated list of sciences, and substituted ''throughout the United States'' for ''among the States, Territories, possessions, and the District of Columbia''.

1962—Pub. L. 87–835 authorized the Foundation to refuse or revoke a scholarship or fellowship award if they believe such award is not in the best interests of the United States.

1960—Pub. L. 86–550 authorized the selection of nationals for scholarships and fellowships.

1959—Pub. L. 86–232 substituted ''appropriate'' for ''accredited'' and struck out ''of higher education'' after ''foreign institutions''.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1869a. Contracts for precollege science or engineering curriculum development activities; inspection of materials by parent or guardian

After August 9, 1975, the Director of the National Science Foundation, shall require, as a condition of any award made by the National Science Foundation for the purpose of precollege science or engineering curriculum development activities, that the awardee, and any subcontractors involved in the distribution, marketing, or selling of such science or engineering curricula, shall include in any testing agreement, sales contract, or other comparable legal instrument a provision requiring that all instructional materials, including teacher's manuals, films, tapes, or other supplementary instructional materials developed or provided under such award, subcontract, or other legal instrument, will be made available within the school district using such materials for inspection by parents or guardians of children engaged in educational programs or projects of that school district. In addition, the Director of the National Science Foundation shall take such action as may be necessary and feasible to modify awards made for the purpose of precollege science or engineering curriculum development and implementation activities on or before August 9, 1975, to include such a provision in all possible cases.

(Pub. L. 94–86, § 2(b), Aug. 9, 1975, 89 Stat. 428; Pub. L. 99–159, title I, § 110(b), Nov. 22, 1985, 99 Stat. 892.)

CODIFICATION

Section was not enacted as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1985—Pub. L. 99–159 inserted ''or engineering'' after ''science'' in three places.

§ 1869b. Issuance of instructions to grantees of pre-college curriculum projects

The National Science Foundation is directed to issue instructions to grantees for pre-college curriculum projects covering the protection of pre-college students and procedures for involving such students in pre-college education research and development, pilot-testing, evaluation, and revision of experimental and innovative pre-college curriculum projects funded by the Foundation. These instructions shall require such grantees to obtain written approval of the school board or comparable authority responsible for the schools prior to the involvement of such students.

(Pub. L. 95–99, § 8, formerly § 9, Aug. 15, 1977, 91 Stat. 833; renumbered § 8, Pub. L. 99–159, title I, § 109(h), Nov. 22, 1985, 99 Stat. 890.)

CODIFICATION

Section was not enacted as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1869c. Low-income scholarship program

(1) Establishment

The Director of the National Science Foundation (referred to in this section as the ''Director'') shall award scholarships to low-income individuals to enable such individuals to pursue associate, undergraduate, or graduate level degrees in mathematics, engineering, or computer science.

(2) Eligibility

(A) In general

To be eligible to receive a scholarship under this section, an individual—

(i) must be a citizen of the United States, a national of the United States (as defined in section 1101(a) of title 8), an alien admitted as a refugee under section 1157 of title 8, or an alien lawfully admitted to the United States for permanent residence;

(ii) shall prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

(iii) shall certify to the Director that the individual intends to use amounts received under the scholarship to enroll or continue enrollment at an institution of higher education (as defined in section 1001(a) of title 20) in order to pursue an associate, undergraduate, or graduate level degree in mathematics, engineering, computer science, or other technology and science programs designated by the Director.

(B) Ability

Awards of scholarships under this section shall be made by the Director solely on the basis of the ability of the applicant, except that in any case in which 2 or more applicants for scholarships are deemed by the Director to be possessed of substantially equal ability, and there are not sufficient scholarships available to grant one to each of such applicants, the available scholarship or scholarships shall be awarded to the applicants in a manner that will tend to result in a geographically wide distribution throughout the United States of recipients' places of permanent residence.

(3) Limitation

The amount of a scholarship awarded under this section shall be determined by the Director,

except that the Director shall not award a scholarship in an amount exceeding $10,000 per year. The Director may renew scholarships for up to 4 years.

(4) Funding

The Director shall carry out this section only with funds made available under section 1356(s)(3) of title 8. The Director may use no more than 50 percent of such funds for undergraduate programs for curriculum development, professional and workforce development, and to advance technological education. Funds for these other programs may be used for purposes other than scholarships.

(5) Federal Register

Not later than 60 days after December 8, 2004, the Director shall publish in the Federal Register a list of eligible programs of study.

(Pub. L. 105–277, div. C, title IV, § 414(d), Oct. 21, 1998, 112 Stat. 2681–653; Pub. L. 106–313, title I, § 110(b), Oct. 17, 2000, 114 Stat. 1256; Pub. L. 108–447, div. J, title IV, § 429, Dec. 8, 2004, 118 Stat. 3360.)

REFERENCES IN TEXT

Section 1157 of title 8, referred to in par. (2)(A)(i), was in the original ''section 207 of the Immigration and Nationality'', and was translated as reading section 207 of the Immigration and Nationality Act to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the American Competitiveness and Workforce Improvement Act of 1998, and also as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2004—Par. (2)(A)(iii). Pub. L. 108–447, § 429(a), substituted ''computer science, or other technology and science programs designated by the Director'' for ''or computer science''.

Par. (3). Pub. L. 108–447, § 429(b), substituted ''$10,000 per year'' for ''$3,125 per year''.

Par. (4). Pub. L. 108–447, § 429(c), inserted at end ''The Director may use no more than 50 percent of such funds for undergraduate programs for curriculum development, professional and workforce development, and to advance technological education. Funds for these other programs may be used for purposes other than scholarships.''

Par. (5). Pub. L. 108–447, § 429(d), added par. (5).

2000—Par. (3). Pub. L. 106–313 substituted ''$3,125 per year. The Director may renew scholarships for up to 4 years'' for ''$2,500 per year.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–447 effective 90 days after Dec. 8, 2004, see section 430(a) of Pub. L. 108–447, set out as a note under section 1182 of Title 8, Aliens and Nationality.

§ 1870. General authority of Foundation

The Foundation shall have the authority, within the limits of available appropriations, to do all things necessary to carry out the provisions of this chapter, including, but without being limited thereto, the authority—

(a) to prescribe such rules and regulations as it deems necessary governing the manner of its operations and its organization and personnel;

(b) to make such expenditures as may be necessary for administering the provisions of this chapter;

(c) to enter into contracts or other arrangements, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such scientific or engineering activities as the Foundation deems necessary to carry out the purposes of this chapter, and, at the request of the Secretary of State or Secretary of Defense, specific scientific or engineering activities in connection with matters relating to international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrangements, or modifications thereof may be entered into without legal consideration, without performance or other bonds, and without regard to section 5 of title 41;

(d) to make advance, progress, and other payments which relate to scientific or engineering activities without regard to the provisions of section 3324(a) and (b) of title 31;

(e) to acquire by purchase, lease, loan, gift, or condemnation, and to hold and dispose of by grant, sale, lease, or loan, real and personal property of all kinds necessary for, or resulting from, the exercise of authority granted by this chapter;

(f) to receive and use funds donated by others, if such funds are donated without restriction other than that they be used in furtherance of one or more of the general purposes of the Foundation;

(g) to publish or arrange for the publication of scientific and engineering information so as to further the full dissemination of information of scientific or engineering value consistent with the national interest, without regard to the provisions of section 501 of title 44;

(h) to accept and utilize the services of voluntary and uncompensated personnel and to provide transportation and subsistence as authorized by section 5703 of title 5 for persons serving without compensation;

(i) to prescribe, with the approval of the Comptroller General of the United States, the extent to which vouchers for funds expended under contracts for scientific or engineering research shall be subject to itemization or substantiation prior to payment, without regard to the limitations of other laws relating to the expenditure of public funds and accounting therefor;

(j) to arrange with and reimburse the heads of other Federal agencies for the performance of any activity which the Foundation is authorized to conduct; and

(k) during the 5-year period beginning on August 21, 1986, to indemnify grantees, contractors, and subcontractors associated with the Ocean Drilling Program under the provisions of section 2354 of title 10 with all approvals and certifications required by such indemnification made by the Director.

(May 10, 1950, ch. 171, § 11, 64 Stat. 153; Pub. L. 86–232, § 6, Sept. 8, 1959, 73 Stat. 468; Pub. L.

90–407, § 9, July 18, 1968, 82 Stat. 365; Pub. L. 99–159, title I, § 110(a)(14), Nov. 22, 1985, 99 Stat. 891; Pub. L. 99–383, § 7(d), Aug. 21, 1986, 100 Stat. 814.)

CODIFICATION

In subsec. (d), ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes (31 U.S.C., sec. 529)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

In subsec. (g), ''section 501 of title 44'' substituted for ''section 87 of the Act of January 12, 1895 (28 Stat. 622), and section 11 of the Act of March 1, 1919 (40 Stat. 1270; 44 U.S.C., sec. 111)'' on authority of Pub. L. 90–620, § 2(b), Oct. 22, 1968, 82 Stat. 1305, the first section of which enacted Title 44, Public Printing and Documents.

AMENDMENTS

1986—Subsec. (k). Pub. L. 99–383 added subsec. (k).

1985—Subsecs. (c), (d). Pub. L. 99–159, § 110(a)(14)(A), inserted references to engineering.

Subsec. (g). Pub. L. 99–159, § 110(a)(14)(B), (C), substituted ''engineering'' for ''technical'' and inserted reference to engineering value.

Subsec. (i). Pub. L. 99–159, § 110(a)(14)(A), inserted applicability to engineering.

1968—Subsec. (c). Pub. L. 90–407, § 9(a), substituted ''scientific activities'' for ''basic scientific research activities'' and ''scientific research activities'', ''international cooperation or national security'' for ''national defense'', and inserted ''Secretary of State'' after ''at the request of the''.

Subsec. (d). Pub. L. 90–407, § 9(b), substituted ''activities'' for ''research''.

Subsec. (h). Pub. L. 90–407, § 9(c), substituted ''section 5703 of title 5'' for ''section 5 of the Act of August 2, 1946 (5 U.S.C. 73b–2)''.

Subsec. (j). Pub. L. 90–407, § 9(d), added subsec. (j).

1959—Subsec. (e). Pub. L. 86–232 included acquisition of property by condemnation.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1870a. Buy-American requirements

(a) Award of contracts

The Director shall, to the maximum extent practicable and consistent with current law, award to domestic firms any contracts for the purchase of goods and services intended for direct use by the Foundation.

(b) Report

The Director shall, as soon as possible after October 31, 1988, prepare a report on—

(1) the number of Foundation contracts entered into with foreign firms in fiscal year 1988;

(2) the number of such contracts entered into with domestic firms in that fiscal year;

(3) the number of contracts entered into with foreign firms where the Foundation also received a technically acceptable bid from a domestic firm; and

(4) any steps the Foundation will take to increase the number of contracts awarded to domestic firms.

Such report shall be submitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committees on Labor and Human Resources and Commerce, Science, and Transportation of the Senate.

(c) Definitions

For the purposes of this section—

(1) the term ''domestic firm'' means a business entity which is organized under the laws of the United States or the laws of a State, district, commonwealth, territory, or possession of the United States, and which conducts business operations in the United States; and

(2) the term ''foreign firm'' means a business entity not described in paragraph (1).

(Pub. L. 100–570, title I, § 111, Oct. 31, 1988, 102 Stat. 2869.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1871. Disposition of inventions produced under contracts or other arrangements

Each contract or other arrangement executed pursuant to this chapter which relates to scientific or engineering research shall contain provisions governing the disposition of inventions produced thereunder in a manner calculated to protect the public interest and the equities of the individual or organization with which the contract or other arrangement is executed: *Provided, however*, That nothing in this chapter shall be construed to authorize the Foundation to enter into any contractual or other arrangement inconsistent with any provision of law affecting the issuance or use of patents.

(May 10, 1950, ch. 171, § 12, 64 Stat. 154; Pub. L. 99–159, title I, §§ 109(c), 110(a)(15), Nov. 22, 1985, 99 Stat. 889, 891.)

AMENDMENTS

1985—Pub. L. 99–159 struck out subsec. (a) designation, inserted ''or engineering'' after ''scientific'', and struck out subsec. (b) which prohibited Foundation officers and employees from acquiring, etc., patent rights in inventions.

§ 1872. International cooperation and coordination with foreign policy

(a) The Foundation is authorized to cooperate in any international scientific or engineering activities consistent with the purposes of this chapter and to expend for such international scientific or engineering activities such sums within the limit of appropriated funds as the Foundation may deem desirable. The Director may defray the expenses of representatives of Government agencies and other organizations and of

individual scientists or engineers to accredited international scientific or engineering congresses and meetings whenever he deem[1] it necessary in the promotion of the objectives of this chapter. In this connection, with the approval of the Secretary of State, the Foundation may undertake programs granting fellowships to, or making other similar arrangements with, foreign nationals for study and research in the sciences or in engineering in the United States without regard to section 1869 of this title or the affidavit of allegiance to the United States required by section 1874(d)(2)[2] of this title.

(b)(1) The authority to enter into contracts or other arrangements with organizations or individuals in foreign countries and with agencies of foreign countries, as provided in section 1870(c) of this title, and the authority to cooperate in international scientific or engineering activities as provided in subsection (a) of this section, shall be exercised only with the approval of the Secretary of State, to the end that such authority shall be exercised in such manner as is consistent with the foreign policy objectives of the United States.

(2) If, in the exercise of the authority referred to in paragraph (1) of this subsection, negotiation with foreign countries or agencies thereof becomes necessary, such negotiation shall be carried on by the Secretary of State in consultation with the Director.

(May 10, 1950, ch. 171, § 13, 64 Stat. 154; Pub. L. 86–232, § 7, Sept. 8, 1959, 73 Stat. 468; Pub. L. 90–407, § 10, July 18, 1968, 82 Stat. 365; Pub. L. 99–159, title I, § 110(a)(16), (17), Nov. 22, 1985, 99 Stat. 891.)

REFERENCES IN TEXT

Section 1874(d)(2) of this title, referred to in subsec. (a), was redesignated section 1874(c)(2) by Pub. L. 96–516, § 21(b)(2), Dec. 12, 1980, 94 Stat. 3010.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–159, § 110(a)(16), inserted ''or engineering'' after ''scientific'' the first three places appearing and ''or engineers'' after ''scientists'' and substituted ''study and research in the sciences or in engineering'' for ''scientific study or scientific work''.

Subsec. (b)(1). Pub. L. 99–159, § 110(a)(17), inserted reference to engineering.

1968—Subsec. (a). Pub. L. 90–407 struck out '', with the approval of the Board,'' after ''The Director'', and substituted ''section 15(d)(2) of this Act'' for ''section 16(d)(2) of this Act'', which resulted in no change in text because, for purposes of classification, provision was translated as ''section 1874(d)(2) of this title''.

1959—Subsec. (a). Pub. L. 86–232 authorized the Foundation, with approval of the Secretary of State, to cooperate in scientific activities rather than scientific research activities, and to grant fellowships or make other arrangements with foreign nationals for scientific study or scientific work in the United States.

Subsec. (b)(1). Pub. L. 86–232 struck out ''research'' from phrase ''scientific research activities''.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

[1] So in original. Probably should be ''deems''.

[2] See References in Text note below.

§ 1872a. Repealed. Pub. L. 90–407, § 11(1), July 18, 1968, 82 Stat. 365

Section, act May 10, 1950, ch. 171, § 14, as added July 11, 1958, Pub. L. 85–510, § 2, 72 Stat. 353, authorized the Foundation, in carrying out a program of study, research, and evaluation in the field of weather modification, to consult with meteorologists and scientists, make contracts and grants, accept gifts, loan property, conduct hearings, and subpoena books and records.

EFFECTIVE DATE OF REPEAL

Section 11(1) of Pub. L. 90–407 provided that the repeal of this section is effective Sept. 1, 1968, and that provisions authorizing Foundation to initiate and support programs in field of weather modification should remain in effect until Sept. 1, 1968, for purpose of this section.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Repeal by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1873. Employment of personnel

(a) Appointment; compensation; application of civil service provisions; technical and professional personnel; members of special commissions; temporary appointments; travel expenses

(1) The Director shall, in accordance with such policies as the Board shall from time to time prescribe, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter. Except as provided in section 1863(h)[1] of this title, such appointments shall be made and such compensation shall be fixed in accordance with the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates: *Provided*, That the Director may, in accordance with such policies as the Board shall from time to time prescribe, employ such technical and professional personnel and fix their compensation, without regard to such provisions, as he may deem necessary for the discharge of the responsibilities of the Foundation under this chapter. The members of the special commissions shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service.

(2) The Director may, under the authority provided by paragraph (1) of this subsection and in accordance with such policies as the Board chooses to prescribe, appoint for a limited term, or on a temporary basis, scientists, engineers, and other technical and professional personnel on leave of absence from academic, industrial, or research institutions to work for the Foundation.

(3) The Foundation may pay, to the extent authorized for certain other Federal employees by section 5723 of title 5, travel expenses for any individual appointed for a limited term or on a temporary basis and transportation expenses of his or her immediate family and his or her household goods and personal effects from that

[1] See References in Text note below.

individual's residence at the time of selection or assignment to his or her duty station. The Foundation may pay such travel expenses and transportation expenses to the same extent for such an individual's return to the former place of residence from his or her duty station, upon separation from the Federal service following an agreed period of service. The Foundation may also pay a per diem allowance at a rate not to exceed the daily amounts prescribed under section 5702 of title 5 to such an individual, in lieu of transportation expenses of the immediate family and household goods and personal effects, for the period of his or her employment with the Foundation. Notwithstanding any other provision of law, the employer's contribution to any retirement, life insurance, or health benefit plan for an individual appointed for a term of one year or less, which could be extended for no more than one additional year, may be made or reimbursed from appropriations available to the Foundation.

(b) Operation of laboratories and pilot plants

The Foundation shall not, itself, operate any laboratories or pilot plants.

(c) Compensation of members of Board and special commissions

The members of the Board and the members of each special commission shall be entitled to receive compensation for each day engaged in the business of the Foundation at a rate fixed by the Chairman but not exceeding the maximum rate payable under section 5376 of title 5 and shall be allowed travel expenses as authorized by section 5703 of title 5. For the purposes of determining the payment of compensation under this subsection, the time spent in travel by any member of the Board or any member of a special commission shall be deemed as time engaged in the business of the Foundation. Members of the Board and members of special commissions may waive compensation and reimbursement for traveling expenses.

(d) Federal officers as members of special commissions; compensation

Persons holding other offices in the executive branch of the Federal Government may serve as members of special commissions, but they shall not receive remuneration for their services as such members during any period for which they receive compensation for their services in such other offices.

(e) Utilization of appropriations in making contracts

In making contracts or other arrangements for scientific or engineering research, the Foundation shall utilize appropriations available therefor in such manner as will in its discretion best realize the objectives of (1) having the work performed by organizations, agencies, and institutions, or individuals in the United States or foreign countries, including Government agencies of the United States and of foreign countries, qualified by training and experience to achieve the results desired, (2) strengthening the research staff of organizations, particularly nonprofit organizations, in the United States, (3) adding institutions, agencies, or organizations which, if aided, will advance scientific or engineering research, and (4) encouraging independent scientific or engineering research by individuals.

(f) Transfer of research and education funds of other Government departments or agencies

Funds available to any department or agency of the Government for scientific or engineering research or education, or the provision of facilities therefor, shall be available for transfer, with the approval of the head of the department or agency involved, in whole or in part, to the Foundation for such use as is consistent with the purposes for which such funds were provided, and funds so transferred shall be expendable by the Foundation for the purposes for which the transfer was made.

(g) "United States" defined

For purposes of this chapter, the term ''United States'' when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(h) Expiration of authorization

Notwithstanding any other provision of law, the authorization of any appropriation to the Foundation shall expire (unless an earlier expiration is specifically provided) at the close of the second fiscal year following the fiscal year for which the authorization was enacted, to the extent that such appropriation has not theretofore actually been made.

(i) Public disclosure of information

(1)(A) Information supplied to the Foundation or a contractor of the Foundation in survey forms, questionnaires, or similar instruments for purposes of section 1862(a)(5) or (6) of this title by an individual, an industrial or commercial organization, or an educational, academic, or other nonprofit institution when the institution has received a pledge of confidentiality from the Foundation, shall not be disclosed to the public unless the information has been transformed into statistical or abstract formats that do not allow for the identification of the supplier.

(B) Information that has not been transformed into formats described in subparagraph (A) may be used only for statistical or research purposes.

(C) The identities of individuals, organizations, and institutions supplying information described in subparagraph (A) may not be disclosed to the public.

(2) In support of functions authorized by section 1862(a)(5) or (6) of this title, the Foundation may designate, at its discretion, authorized persons, including employees of Federal, State, or local agencies or instrumentalities (including local educational agencies) and employees of private organizations, to have access, for statistical or research purposes only, to information collected pursuant to section 1862(a)(5) or (6) of this title that allows for the identification of the supplier. No such person may—

(A) publish information collected pursuant to section 1862(a)(5) or (6) of this title in such a manner that either an individual, an industrial or commercial organization, or an edu-

cational, academic, or other nonprofit institution that has received a pledge of confidentiality from the Foundation can be specifically identified;

(B) permit anyone other than individuals authorized by the Foundation to examine data that allows for such identification relating to an individual, an industrial or commercial organization, or an academic, educational, or other nonprofit institution that has received a pledge of confidentiality from the Foundation; or

(C) knowingly and willfully request or obtain any nondisclosable information described in paragraph (1) from the Foundation under false pretenses.

(3) Violation of this subsection is punishable by a fine of not more than $10,000, imprisonment for not more than 5 years, or both.

(May 10, 1950, ch. 171, § 14, 64 Stat. 154; renumbered § 15, Pub. L. 85–510, § 2, July 11, 1958, 72 Stat. 353; amended Pub. L. 86–232, § 8, Sept. 8, 1959, 73 Stat. 469; renumbered § 14 and amended Pub. L. 90–407, §§ 11(2), 12, July 18, 1968, 82 Stat. 365, 366; Pub. L. 91–120, § 3, Nov. 18, 1969, 83 Stat. 203; Pub. L. 95–99, § 12(c), formerly § 14(c), Aug. 15, 1977, 91 Stat. 835, renumbered § 12(c), Pub. L. 99–159, title I, § 109(h), Nov. 22, 1985, 99 Stat. 890; Pub. L. 99–159, title I, §§ 109(e)(1), 110(a)(18), Nov. 22, 1985, 99 Stat. 889, 891; Pub. L. 100–570, title I, §§ 106, 107, Oct. 31, 1988, 102 Stat. 2868, 2869; Pub. L. 101–589, title II, § 251, Nov. 16, 1990, 104 Stat. 2894; Pub. L. 102–139, title III, Oct. 28, 1991, 105 Stat. 774; Pub. L. 104–66, title II, § 2141(b), Dec. 21, 1995, 109 Stat. 731; Pub. L. 105–207, title II, § 202(a)(3), July 29, 1998, 112 Stat. 873; Pub. L. 107–368, § 15(b), Dec. 19, 2002, 116 Stat. 3058.)

REFERENCES OF TEXT

Section 1863(h) of this title, referred to in subsec. (a), was redesignated section 1863(g) of this title by Pub. L. 94–282, title V, § 503, May 11, 1976, 90 Stat. 473.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (a)(1), is set out under section 5332 of Title 5.

AMENDMENTS

2002—Subsec. (i). Pub. L. 107–368 amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''Information supplied to the Foundation or a contractor of the Foundation by an industrial or commercial organization in survey forms, questionnaires, or similar instruments for the purposes of subsection (a)(5) or (a)(6) of section 1862 of this title may not be disclosed to the public unless such information has been transformed into statistical or aggregate formats that do not allow the identification of the supplier. The names of organizations supplying such information may not be disclosed to the public.''

1998—Subsec. (c). Pub. L. 105–207 substituted ''shall be entitled to receive'' for ''shall receive'' and ''the maximum rate payable under section 5376'' for ''the rate specified for the daily rate for GS–18 of the General Schedule under section 5332'' and inserted at end ''For the purposes of determining the payment of compensation under this subsection, the time spent in travel by any member of the Board or any member of a special commission shall be deemed as time engaged in the business of the Foundation. Members of the Board and members of special commissions may waive compensation and reimbursement for traveling expenses.''

1995—Subsec. (j). Pub. L. 104–66 struck out subsec. (j) which read as follows: ''Starting with fiscal year 1990, the Foundation shall submit to the Congress in each fiscal year, at the time of the release of the President's budget, a three-year budget estimate for the Foundation. The three-year budget shall include funding estimates for each major activity, including each scientific directorate, the United States Antarctic Program, the Science and Engineering Education Directorate, and the Program Development and Management activity.''

1991—Subsec. (a)(3). Pub. L. 102–139 struck out ''and when less than'' after ''in lieu of''.

1990—Subsec. (f). Pub. L. 101–589 inserted ''or education'' after ''research''.

1988—Subsec. (a). Pub. L. 100–570, § 106, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (j). Pub. L. 100–570, § 107, added subsec. (j).

1985—Subsec. (b). Pub. L. 99–159, § 109(e)(1)(A), (B), struck out subsec. (b) relating to outside employment and activities, and redesignated subsec. (c) as (b).

Subsecs. (c), (d). Pub. L. 99–159, § 109(e)(1)(B), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsec. (e). Pub. L. 99–159, §§ 109(e)(1)(B), 110(a)(18)(A), redesignated subsec. (f) as (e) and inserted ''or engineering'' after ''scientific'' wherever appearing. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 99–159, §§ 109(e)(1)(B), 110(a)(18)(B), redesignated subsec. (g) as (f) and substituted ''engineering'' for ''technical''. Former subsec. (f) redesignated (e).

Subsecs. (g), (h). Pub. L. 99–159, § 109(e)(1)(B), redesignated subsecs. (h) and (i) as (g) and (h), respectively. Former subsec. (g) redesignated (f).

Subsec. (i). Pub. L. 99–159, § 109(e)(1)(B), (C), added subsec. (i). Former subsec. (i) redesignated (h).

1977—Subsec. (d). Pub. L. 95–99 substituted provisions authorizing compensation at a daily rate fixed by the chairman but not exceeding the rate specified for the daily rate for GS–18 of the General Schedule under section 5332 of title 5 for provisions authorizing a daily rate of $100.

1969—Subsec. (i). Pub. L. 91–120 added subsec. (i).

1968—Subsec. (a). Pub. L. 90–407, § 12, substituted provisions making applicable chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, for provisions making applicable the civil-service laws and regulations and the Classification Act of 1949, and provisions that the members of special commissions be appointed without regard to the provisions of title 5, governing appointments in the competitive service, for provisions that the Deputy Director, and members of divisional committees and special commissions be appointed without regard to the civil-service laws or regulations. Provisions this subsection, relating to outside employment and activities of certain specified officers of the Foundation, were designated as subsec. (b).

Subsec. (b). Pub. L. 90–407, § 12, redesignated provisions of former subsec. (a) as (b) and added Assistant Directors to specified officers of Foundation prohibited from engaging in outside employment and activities. Former subsec. (b), providing for the appointment of a Deputy Director, was struck out.

Subsec. (d). Pub. L. 90–407, § 12, struck out applicability to members of each divisional committee, and substituted ''$100'' for ''$50'' and ''section 5703'' for ''section 73b–2''.

Subsec. (e). Pub. L. 90–407, § 12, struck out ''the divisional committees and'' after ''may serve as members of''.

Subsec. (f). Pub. L. 90–407, § 12, redesignated subsec. (g) as (f), in cl. (2) substituted ''United States'' for ''States, Territories, possessions, and the District of Columbia'', in cl. (3) substituted ''advance scientific research'' for ''advance basic research'', and in cl. (4) substituted ''independent scientific research'' for ''independent basic research''. Former subsec. (f), exempting members of Board, divisional committees, or special commissions form provisions of former sections 281, 283,

or 284 of title 18 or former section 99 of title 5, unless the act made unlawful by the aforementioned former sections directly involved or directly interested the Foundation, was struck out.

Subsec. (g). Pub. L. 90–407, § 12, redesignated subsec. (h) as (g) and struck out ''and, until such time as an appropriation is made available directly to the Foundation, for general administrative expenses of the Foundation without regard to limitations otherwise applicable to such funds'' after ''the purposes for which the transfer was made''. Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 90–407, § 12, added subsec. (h). Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 90–407, § 12, struck out subsec. (i) which provided for transfer of National Roster of Scientific and Specialized Personnel from United States Employment Service to Foundation.

1959—Subsec. (d). Pub. L. 86–232 increased compensation for $25 to $50 per diem.

TRANSFER OF FUNCTIONS

Authority of Director of National Science Foundation, from time to time, to make appropriate provisions authorizing performance by any other officer, or by any agency or employee, of National Science Foundation of any of his functions (including functions delegated to him by National Science Board), see Reorg. Plan No. 5 of 1965, eff. July 27, 1965, 30 F.R. 9355, 79 Stat. 1323, set out in the Appendix to Title 5, Government Organization and Employees.

EMPLOYMENT OF MINORITIES, WOMEN, AND HANDICAPPED INDIVIDUALS IN EXECUTIVE LEVEL POSITIONS

Pub. L. 94–471, § 7, Oct. 11, 1976, 90 Stat. 2056, provided that:

''(a) The Director of the National Science Foundation shall initiate an intensive search for qualified women, members of minority groups, and handicapped individuals to fill executive level positions in the National Science Foundation. In carrying out the requirement of this subsection, the Director shall work closely with organizations which have been active in seeking greater recognition and utilization of the scientific and technical capabilities of minorities, women, and handicapped individuals. The Director shall improve the representation of minorities, women, and handicapped individuals on advisory committees, review panels, and all other mechanisms by which the scientific community provides assistance to the Foundation. The Director of the National Science Foundation shall report quarterly to the Congress on the status of minorities, women, and handicapped individuals and activities undertaken pursuant to this section.

''(b) Notwithstanding any other provision of this or any other Act, the National Science Foundation shall, with funds available from the program ''Minorities, Women, and Handicapped Individuals in Science'' conduct experimental forums, conferences, workshops or other activities designed to improve scientific literacy and to encourage and assist minorities, women, and handicapped individuals to undertake and to advance in careers in scientific research and science education.

''(c)(1) In order to promote increased participation by minorities in careers in science and engineering, the National Science Foundation is authorized and directed to make available planning and study grants for programs including, but not limited to, Minority Centers for Graduate Education in Science and Engineering in accordance with this subsection.

''(2) The grants for Minority Centers for Graduate Education shall be used to determine the need for and feasibility of developing Centers to be established at geographically dispersed educational institutions which—

''(A) have substantial minority student enrollment;

''(B) are geographically located near minority population centers;

''(C) demonstrate a commitment to encouraging and assisting minority students, researchers, and faculty;

''(D) have an existing or developing capacity to offer doctoral programs in science and engineering;

''(E) will support basic research and the acquisition of necessary research facilities and equipment;

''(F) will serve as a regional resource in science and engineering for the minority community which the Center is designed to serve; and

''(G) will develop joint educational programs with nearby undergraduate institutions of higher education which have a substantial minority student enrollment.

''(3) The Director, in consultation with groups which have been active in seeking greater recognition of the scientific and technical capabilities of minorities, shall establish criteria for the award of the grants, and shall report to the Committee on Science and Technology of the House of Representatives and the Committee on Labor and Public Welfare [now Committee on Health, Education, Labor, and Pensions] of the Senate on the results of activities including an evaluation and assessment of the entire program carried out under this subsection, not later than March 1, 1977.''

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1873a. Repealed. Pub. L. 99–159, title I, § 109(f), Nov. 22, 1985, 99 Stat. 890

Section, Pub. L. 95–99, § 10, Aug. 15, 1977, 91 Stat. 834; amended Pub. L. 96–470, title I, § 119, Oct. 19, 1980, 94 Stat. 2241, related to prohibition respecting financial or other interest of employees processing applications or proposals for Foundation grants or contracts.

§ 1874. Security provisions

(a) Nuclear energy research and development

The Foundation shall not support any research or development activity in the field of nuclear energy, nor shall it exercise any authority pursuant to section 1870(e) of this title in respect to that field, without first having obtained the concurrence of the Secretary of Energy that such activity will not adversely affect the common defense and security. To the extent that such activity involves restricted data as defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] the provisions of that Act regarding the control of the dissemination of restricted data and the security clearance of those individuals to be given access to restricted data shall be applicable. Nothing in this chapter shall supersede or modify any provision of the Atomic Energy Act of 1954.

(b) Research relating to national defense

(1) In the case of scientific or engineering research activities under this chapter in connection with matters relating to the national defense, with respect to which funds have been transferred to the Foundation from the Department of Defense in accordance with the provisions of section 1873(f) of this title, the Secretary of Defense shall establish such security requirements and safeguards, including restrictions with respect to access to information and property, as he deems necessary.

(2) In the case of scientific or engineering research activities under this chapter in connection with matters relating to the national defense other than research activities referred to

in paragraph (1) of this subsection, the Foundation shall establish such security requirements and safeguards, including restrictions with respect to access to information and property, as it deems necessary.

(3) Any agency of the Government exercising investigatory functions is authorized to make such investigations and reports as may be requested by the Foundation in connection with the enforcement of security requirements and safeguards, including restrictions with respect to access to information and property, established under paragraph (1) or (2) of this subsection.

(May 10, 1950, ch. 171, § 15, 64 Stat. 156; Apr. 5, 1952, ch. 159, § 1, 66 Stat. 43; renumbered § 16, Pub. L. 85–510, § 2, July 11, 1958, 72 Stat. 353; amended Pub. L. 87–835, § 1, Oct. 16, 1962, 76 Stat. 1069; renumbered § 15 and amended Pub. L. 90–407, §§ 11(2), 13, July 18, 1968, 82 Stat. 365, 366; Pub. L. 96–516, § 21(b), Dec. 12, 1980, 94 Stat. 3010; Pub. L. 99–159, title I, §§ 109(e)(2), 110(a)(19), Nov. 22, 1985, 99 Stat. 890, 891; Pub. L. 100–570, title I, § 105(b), Oct. 31, 1988, 102 Stat. 2868; Pub. L. 105–207, title II, § 202(a)(4), July 29, 1998, 112 Stat. 874.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified principally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–207 substituted ''Secretary of Energy'' for ''Atomic Energy Commission''.

1988—Subsec. (c). Pub. L. 100–570 struck out subsec. (c) which related to oath and statement prerequisite to acceptance of scholarship or fellowship, ineligibility of Communist organization members, and penalties for violation.

1985—Subsec. (b)(1). Pub. L. 99–159, §§ 109(e)(2), 110(a)(19)(A), substituted ''engineering'' for ''technical'' and ''1873(f)'' for ''1873(g)''.

Subsec. (b)(2). Pub. L. 99–159, § 110(a)(19)(B), inserted applicability to engineering.

1980—Subsecs. (c), (d). Pub. L. 96–516 redesignated subsec. (d) as (c), and struck out former subsec. (c) relating to clearance of personnel by the Civil Service Commission.

1968—Subsec. (a). Pub. L. 90–407, § 13, substituted ''1954'' for ''1946''.

Subsec. (b)(1). Pub. L. 90–407, § 13, substituted ''section 1873(g) of this title'' for section 1873(h) of this title''.

1962—Subsec. (d). Pub. L. 87–835 designated existing provisions as par. (1), inserted reference to section 1869 of this title, and substituted the requirement, for applications made on or after Oct. 1, 1962, of a full statement regarding convictions for crimes, other than any committed before age 16 or for minor traffic violations, and any criminal charges punishable by thirty days confinement, or more, pending at time of application for scholarship or fellowship, for the requirement of an affidavit stating the affiant did not believe in, and was not a member or supporter of any organization believing in, or teaching, the violent overthrow of the United States Government, or by any illegal means, in such par. (1), and added par. (2).

1952—Subsec. (c). Act Apr. 5, 1952, substituted ''Civil Service Commission'' for ''Federal Bureau of Investigation''.

SUBVERSIVE ACTIVITIES CONTROL BOARD

The Subversive Activities Control Board, established by act Sept. 23, 1950, ch. 1024, title I, § 12, 64 Stat. 997, ceased to operate as of June 30, 1973, due to lack of funding.

BASIC SCIENTIFIC RESEARCH; INCREASE IN GOVERNMENT SUPPORT; NATIONAL SCIENCE FOUNDATION

Pub. L. 91–441, title II, § 205, Oct. 7, 1970, 84 Stat. 908, provided that: ''It is the sense of the Congress that—

''(1) an increase in Government support of basic scientific research is necessary to preserve and strengthen the sound technological base essential both to protection of the national security and the solution of unmet domestic needs; and

''(2) a larger share of such support should be provided hereafter through the National Science Foundation.''

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1875. Appropriations

To enable the Foundation to carry out its powers and duties, only such sums may be appropriated as the Congress may authorize by law.

(May 10, 1950, ch. 171, § 16, 64 Stat. 157; Aug. 8, 1953, ch. 377, 67 Stat. 488; renumbered § 17, Pub. L. 85–510, § 2, July 11, 1958, 72 Stat. 353; renumbered § 16 and amended Pub. L. 90–407, §§ 11(2), (14), July 18, 1968, 82 Stat. 365, 366; Pub. L. 96–516, § 21(c), Dec. 12, 1980, 94 Stat. 3010.)

AMENDMENTS

1980—Pub. L. 96–516 amended subsec. (a) generally, striking out specific dollar amounts for fiscal years ending June 30, 1969, and June 30, 1970, reference to subsequent fiscal years, and provisions relating to sums as additional to sums under section 1122(b)(1) of title 33, and struck out subsec. (b) which related to availability of sums for obligation and expenditure.

1968—Subsec. (a). Pub. L. 90–407, § 14, substituted provisions authorizing the appropriation of funds for the fiscal year ending June 30, 1969, June 30, 1970, and each subsequent fiscal year, such sums to be in addition to sums authorized by section 1122(b)(1) of title 33, for provisions authorizing the appropriation of such sums as may be necessary to carry out the provisions of this chapter out of any money in the Treasury not otherwise appropriated.

1953—Subsec. (a). Act Aug. 8, 1953, removed the $15 million limitation on the amount of the annual appropriations.

DRUG-FREE WORKPLACE

Pub. L. 100–570, title I, § 118, Oct. 31, 1988, 102 Stat. 2873, provided that:

''(a) No funds authorized to be appropriated under this Act, or under any other Act authorizing appropriations for fiscal year 1989 through 1993 for the Foundation, shall be obligated or expended unless the Foundation has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act [21 U.S.C. 801 et seq.]) by the officers and employees of the Foundation.

''(b) No funds authorized to be appropriated to the Foundation for fiscal years 1989 through 1993 shall be available for payment in connection with any grant, contract, or other agreement, unless the recipient of such grant, contractor, or party to such agreement, as the case may be, has in place and will continue to administer in good faith a written policy, adopted by the

board of directors or other governing authority of such recipient, contractor, or party, satisfactory to the Director of the Foundation, designed to ensure that all of the workplaces of such recipient, contractor, or party are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such recipient, contractor, or party.''

[Section 118 of Pub. L. 100–570, set out above, effective Jan. 16, 1989, see section 215(c) of Pub. L. 100–685, set out as a note under section 2459 of this title.]

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§§ 1876 to 1879. Repealed. Pub. L. 99–383, § 11, Aug. 21, 1986, 100 Stat. 817

Section 1876, Pub. L. 85–864, title IX, § 901, Sept. 2, 1958, 72 Stat. 1601, authorized establishment of a Science Information Service by National Science Foundation.

Section 1877, Pub. L. 85–864, title IX, § 902, Sept. 2, 1958, 72 Stat. 1601; Pub. L. 90–407, § 15(b), July 18, 1968, 82 Stat. 367, authorized establishment of a Science Information Council within National Science Foundation.

Section 1878, Pub. L. 85–864, title IX, § 903, Sept. 2, 1958, 72 Stat. 1601, provided National Science Foundation with same power and authority in carrying out its functions under sections 1876 to 1879 of this title as it had in carrying out its functions under this chapter.

Section 1879, Pub. L. 85–864, title IX, § 904, Sept. 2, 1958, 72 Stat. 1602, authorized appropriations to carry out programs of the Science Information Service and the Science Information Council.

§ 1880. National Medal of Science

There is established a National Medal of Science (hereinafter referred to as the ''medal''), which shall be of such design and materials and bear such inscriptions as the President, on the basis of recommendations submitted by the National Science Foundation, may prescribe, and shall be awarded as provided in section 1881 of this title.

(Pub. L. 86–209, § 1, Aug. 25, 1959, 73 Stat. 431.)

CODIFICATION

Section was not enacted as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1881. Award of National Medal of Science

(a) Recommendations

The President shall from time to time award the medal, on the basis of recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as he deems appropriate, to individuals who in his judgment are deserving of special recognition by reason of their outstanding contributions to knowledge in the physical, biological, mathematical, engineering, behavioral or social sciences.

(b) Number

Not more than twenty individuals may be awarded the medal in any one calendar year.

(c) Citizenship

An individual may not be awarded the medal unless at the time such award is made he—

(1) is a citizen or other national of the United States; or

(2) is an alien lawfully admitted to the United States for permanent residence who (A) has filed an application for petition for naturalization in the manner prescribed by section 1445(b) of title 8 and (B) is not permanently ineligible to become a citizen of the United States.

(d) Ceremonies

The presentation of the award shall be made by the President with such ceremonies as he may deem proper, including attendance by appropriate Members of Congress.

(Pub. L. 86–209, § 2, Aug. 25, 1959, 73 Stat. 431; Pub. L. 96–516, § 22(a)(1), Dec. 12, 1980, 94 Stat. 3010.)

CODIFICATION

Section was not enacted as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–516 inserted applicability to behavioral and social sciences.

EX. ORD. NO. 11287. AWARD AND PRESENTATION OF NATIONAL MEDAL OF SCIENCE

Ex. Ord. No. 11287, eff. June 28, 1966, 31 F.R. 8995, as amended by Ex. Ord. No. 11502, eff. Dec. 22, 1969, 34 F.R. 20171; Ex. Ord. No. 11734, July 30, 1973, 38 F.R. 20433, provided:

By virtue of the authority vested in me by the Act of August 25, 1959, entitled ''An Act To Establish a National Medal of Science To Provide Recognition for Individuals Who Make Outstanding Contributions in the Physical, Biological, Mathematical, and Engineering Sciences,'' 73 Stat. 431 (hereinafter referred to as the Act) [42 U.S.C. 1880, 1881], and as President of the United States, it is ordered as follows:

SECTION 1. *Award of Medal.* (a) The President shall award the National Medal of Science (hereinafter referred to as the Medal) established by the Act, the specifications of which are prescribed by Executive Order No. 10910 of January 17, 1961, as amended, on the basis of recommendations received by him in accordance with the provisions of this Order to individuals who in his judgment are deserving of special recognition by reason of their outstanding contributions to knowledge in the physical, biological, mathematical, or engineering sciences.

(b) The following-described criteria shall govern the award of the Medal—

(1) Not more than twenty individuals shall be awarded the Medal in any one calendar year.

(2) No individual shall be awarded the Medal unless, at the time such award is made, he:

(A) is a citizen or other national of the United States; or

(B) is an alien lawfully admitted to the United States for permanent residence who (i) has filed a petition for naturalization in the manner prescribed by Section 334(b) of the Immigration and Nationality Act [8 U.S.C. 1445(b)], and (ii) is not permanently ineligible to become a citizen of the United States.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, the Medal may be awarded posthumously, but only to individuals who, at the time of their death, met the conditions set forth in paragraph (2). The Medal shall not be awarded to any individual after the fifth anniversary of the day of his death.

(c) Each Medal awarded shall be suitably inscribed. Each individual awarded the Medal shall also receive a citation descriptive of the award.

(d) The presentation of the Medal shall be made in accordance with Section 2(d) of the Act.

SEC. 2. *The President's Committee*. (a) There is hereby established the President's Committee on the National Medal of Science (hereinafter referred to as the Committee), which shall be composed of twelve appointive members and two ex officio members and shall assist the President, as provided in this order, in connection with the carrying out of the Act.

(b) Each appointive member of the Committee shall be appointed by the President from among appropriately qualified citizens of the United States. Except as otherwise provided in subsection (e) of this Section, each such member shall be so appointed for a term of three years or for the balance of the unexpired term of his predecessor, whichever is appropriate. Members may be reappointed to serve one additional term of three years. As nearly as practicable, the appointive members of the Committee shall comprise a cross section of the major fields of science and engineering.

(c) The following shall be ex officio members of the Committee:

(1) The Science Adviser.

(2) The President of the National Academy of Sciences.

(d) The President shall from time to time designate one of the members of the Committee as Chairman thereof.

(e) Of the persons first designated as members of the Committee under the provisions of subsection (b) of this Section, four shall be designated to serve until December 31, 1966, four shall be designated to serve until December 31, 1967, and four shall be designated to serve until December 31, 1968.

SEC. 3. *Preliminary Procedure*. (a) The Committee shall receive, on behalf of the President, (1) the recommendations made by the National Academy of Sciences respecting the award of the Medal pursuant to the provisions of Section 2(a) of the Act [subsec. (a) of this section], and (2) such similar recommendations as may be made by any other nationally representative scientific or engineering organization or other qualified source. Each such recommendation shall include or be accompanied by such appropriate supporting material as the Committee may from time to time specify.

(b) On the basis of such criteria, information, and evidence as it may deem appropriate, and subject to the provisions of Section 1 of this Order, the Committee shall designate, from among the individuals who are recommended in accordance with Section 3(a) of this Order, those individuals whom the Committee recommends for the award of the Medal and shall transmit the names of those individuals to the President, together with its recommendations. In so transmitting its recommendations, the Committee (1) shall include expressions of its views concerning, and such other information as may be pertinent to, its recommendations, and (2) may arrange the names of all or some of the recommended individuals in a sequence deemed by it to indicate the order of precedence in which the individuals involved deserve to receive the Medal.

(c) Each recommendation respecting the award of the Medal to an individual which is transmitted to the President by the Committee shall be accompanied by a draft of a citation describing the contributions which are being recognized by the award.

SEC. 4. *Time of Awards and Recommendations*. (a) Unless otherwise directed by the President, announcement of the award of the Medal shall be made during the last sixty days of each calendar year and ceremonies for presentation of the Medal shall be held during the first ninety days of the calendar year following the announcement of the award.

(b) Recommendations for awards of the Medals shall be submitted to the Committee, pursuant to Section 3(a) of this Order, by the first day of July of the year in which it is proposed that they be announced by the President. Recommendations of the Committee shall be delivered to the President by the fifteenth day of October of the year in which it is proposed that they be announced. Awards of the Medal may be based upon recommendations of the Committee or upon such other information and evidence as the President deems appropriate.

SEC. 5. *Services and Expenses*. (a) The National Science Foundation is authorized to provide such assistance as may be necessary and appropriate to carry out the purposes of this Order.

(b) The members of the Committee shall serve without compensation, but the National Science Foundation is authorized to reimburse them for travel expenses and to pay them per diem in lieu of subsistence as authorized for persons serving without compensation (5 U.S.C. 73b–2) [see 5 U.S.C. 703].

SEC. 6. *Prior Orders*. (a) Subject to the provisions of this Order, the President's Committee on the National Medal of Science established by Section 2 of this Order shall be deemed to constitute a continuation of the Committee of the same name established by Executive Order No. 10961 of August 21, 1961. The latter Order is hereby revoked.

(b) Executive Order No. 10910 of January 17, 1961, is hereby amended by deleting from its title the words ''AND AWARD'', and by deleting the last two sentences of Section 1, and all of Section 2, thereof.

EXTENSION OF TERM OF PRESIDENT'S COMMITTEE ON THE NATIONAL MEDAL OF SCIENCE

Term of the President's Committee on the National Medal of Science extended until Dec. 31, 1978, by Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Committee on the National Medal of Science extended until Dec. 31, 1982, by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1993, by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1999, by Ex. Ord. No. 13062, §1(j), Sept. 29, 1997, 62 F.R. 51755, for-

merly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 2007, by Ex. Ord. No. 13385, § 1(j), Sept. 29, 2005, 70 F.R. 57989, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

§ 1881a. Alan T. Waterman Award

(a) Establishment; amounts; terms

The National Science Foundation is authorized to establish the Alan T. Waterman Award for research or advanced study in the mathematical, physical, medical, biological, engineering, behavioral, social, or other sciences. The award authorized by this section shall consist of a suitable medal and a grant to support further research or study by the recipient. The National Science Board will periodically establish the amounts and terms of such grants under this section.

(b) Purpose

Awards under this section shall be made to recognize and encourage the work of younger scientists whose capabilities and accomplishments show exceptional promise of significant future achievement.

(c) Number

No more than one award shall be made under this section in any one fiscal year.

(Pub. L. 94–86, § 6, Aug. 9, 1975, 89 Stat. 430; Pub. L. 96–516, § 22(b), Dec. 12, 1980, 94 Stat. 3010; Pub. L. 99–159, title I, § 109(g), Nov. 22, 1985, 99 Stat. 890; Pub. L. 105–207, title II, § 202(b), July 29, 1998, 112 Stat. 874.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act, 1976, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–207 substituted "social," for "social, social,".

1985—Subsec. (a). Pub. L. 99–159 substituted provisions requiring the National Science Board to periodically establish amounts and terms of grants, for provisions limiting the grant awarded to $50,000 per year for a period not exceeding three years.

1980—Subsec. (a). Pub. L. 96–516 inserted ", behavioral, social" after "engineering".

§ 1881b. Presidential awards for teaching excellence

(1)(A) The President is authorized to make Presidential Awards for Excellence in Mathematics and Science Teaching to kindergarten through grade 12 school teachers of mathematics and science who have demonstrated outstanding teaching ability in the field of teaching mathematics or science.

(B) Each year the President is authorized to make no fewer than 108 awards under subparagraph (A). In selecting teachers for an award authorized by this subsection, the President shall select at least two teachers—

(i) from each of the several States;

(ii) from the District of Columbia;

(iii) from the Commonwealth of Puerto Rico;

(iv) from among the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and other commonwealths, territories, and possessions of the United States; and

(v) from schools established outside the several States and the District of Columbia by any agency of the Federal Government for dependents of the employees of such agency.

(2) The President shall carry out this subsection, including the establishment of the selection procedures, after consultation with the Director and other appropriate officials of Federal agencies.

(3)(A) Funds to carry out this subsection for any fiscal year shall be made available from amounts appropriated pursuant to annual authorization of appropriations for the Foundation for Education and Human Resources.

(B) Amounts made available pursuant to subparagraph (A) shall be available for making awards under this subsection, for administrative expenses, for necessary travel by teachers selected under this subsection, and for special activities related to carrying out this subsection.

(Pub. L. 100–570, title I, § 117(a), Oct. 31, 1988, 102 Stat. 2872; Pub. L. 105–207, title II, § 202(c), July 29, 1998, 112 Stat. 874.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1998—Par. (1)(B)(v). Pub. L. 105–207, § 202(c)(1), added cl. (v) and struck out former cl. (v) which read as follows: "from the United States Department of Defense Dependents' School."

Par. (3)(A). Pub. L. 105–207, § 202(c)(2), substituted "Education and Human Resources" for "Science and Engineering Education".

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1882. Information furnished to Congressional committees

Notwithstanding any other provision of this or any other Act, the Director of the National Science Foundation and the National Science Board shall keep the Committee on Labor and Human Resources of the Senate and the Committee on Science, Space, and Technology of the

House of Representatives fully and currently informed with respect to all of the activities of the National Science Foundation.

(Pub. L. 96–44, § 9, Aug. 2, 1979, 93 Stat. 335; Pub. L. 99–159, title I, § 109(i), Nov. 22, 1985, 99 Stat. 890; Pub. L. 103–437, § 15(c)(2), Nov. 2, 1994, 108 Stat. 4591.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96–44, known as the National Science Foundation Authorization Act for Fiscal Year 1980. For classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the authorization act cited as the credit to this section, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to this section were contained in the following prior authorization acts:

Pub. L. 95–434, § 7, Oct. 10, 1978, 92 Stat. 1050.

Pub. L. 95–99, § 11, formerly § 13, Aug. 15, 1977, 91 Stat. 835, renumbered § 11, Pub. L. 99–159, title I, § 109(h), Nov. 22, 1985, 99 Stat. 890.

Pub. L. 94–471, § 11, Oct. 11, 1976, 90 Stat. 2058.

Pub. L. 94–86, § 11, Aug. 9, 1975, 89 Stat. 431.

Pub. L. 93–413, § 7, Sept. 4, 1974, 88 Stat. 1095.

Pub. L. 93–96, § 9, Aug. 16, 1973, 87 Stat. 317.

Pub. L. 91–120, § 6, Nov. 18, 1969, 83 Stat. 203.

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Science, Space, and Technology'' for ''Science and Technology''.

1985—Pub. L. 99–159 inserted ''and the National Science Board''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1883. Office of Small Business Research and Development

The National Science Foundation is authorized and directed to establish an Office of Small Business Research and Development. The Foundation through the Office of Small Business Research and Development and in cooperation and consultation with the Small Business Administration shall—

(1) foster communication between the National Science Foundation and the small business community, and insure that the set-aside for small business concerns provided under this Act or any other Act authorizing appropriations for the National Science Foundation is fully and effectively utilized;

(2) collect, analyze, compile, and publish information concerning grants and contracts awarded to small business concerns by the Foundation, and the procedures for handling proposals submitted by small business concerns;

(3) assist individual small business concerns in obtaining information regarding programs, policies, and procedures of the Foundation, and assure the expeditious processing of proposals by small business concerns based on scientific and technical merit; and

(4) recommend to the Director and to the National Science Board such changes in the procedures and practices of the Foundation as may be required to enable the Foundation to draw fully on the resources of the small business research and development community.

(Pub. L. 94–471, § 8, Oct. 11, 1976, 90 Stat. 2057; Pub. L. 99–386, title I, § 108, Aug. 22, 1986, 100 Stat. 822.)

REFERENCES IN TEXT

This Act, referred to in par. (1), is Pub. L. 94–471, Oct. 11, 1976, 90 Stat. 2053, known as the National Science Foundation Authorization Act, 1977, which, insofar as classified to the Code, enacted sections 1882 and 1883 of this title, amended section 1863 of this title, and enacted provisions set out as notes under sections 1862, 1864, 1873, and 5820 of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act, 1977, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1986—Par. (5). Pub. L. 99–386 struck out par. (5) which related to quarterly reports to Congress concerning activities of Office of Small Business Research and Development.

§ 1884. Repealed. Pub. L. 99–159, title I, § 109(h), Nov. 22, 1985, 99 Stat. 890

Section, Pub. L. 95–99, § 6, Aug. 15, 1977, 91 Stat. 833, related to the establishment, etc., of the Resource Center for Science and Engineering.

§ 1885. Congressional statement of findings and declaration of policy respecting equal opportunities in science and engineering

(a) The Congress finds that it is in the national interest to promote the full use of human resources in science and engineering and to insure the full development and use of the scientific and engineering talents and skills of men and women, equally, of all ethnic, racial, and economic backgrounds, including persons with disabilities.

(b) The Congress declares it is the policy of the United States to encourage men and women, equally, of all ethnic, racial, and economic backgrounds, including persons with disabilities, to acquire skills in science, engineering, and mathematics, to have equal opportunity in education, training, and employment in scientific and engineering fields, and thereby to promote scientific and engineering literacy and the full use of the human resources of the Nation in science and engineering. To this end, the Congress declares that the highest quality science and engineering over the long-term requires substantial support, from currently available research and educational funds, for increased participation in science and engineering by women, minorities, and persons with disabil-

ities. The Congress further declares that the impact on women, minorities, and persons with disabilities which is produced by advances in science and engineering must be included as essential factors in national and international science, engineering, and economic policies.

(Pub. L. 96–516, § 32, Dec. 12, 1980, 94 Stat. 3010; Pub. L. 99–159, title I, § 111(b)(2)–(5), Nov. 22, 1985, 99 Stat. 892; Pub. L. 107–368, § 16, Dec. 19, 2002, 116 Stat. 3059.)

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–368, § 16(1), substituted ''backgrounds, including persons with disabilities'' for ''backgrounds''.

Subsec. (b). Pub. L. 107–368, § 16(2), inserted '', including persons with disabilities,'' after ''backgrounds'' and substituted '', minorities, and persons with disabilities'' for ''and minorities'' in two places.

1985—Subsec. (a). Pub. L. 99–159, § 111(b)(2), substituted ''engineering'' for ''technology'' and ''scientific and engineering talents and skills'' for ''scientific talent and technical skills''.

Subsec. (b). Pub. L. 99–159, § 111(b)(3)–(5), inserted '', engineering,'' after ''skills in science'', substituted ''engineering'' for ''technical'', ''scientific and engineering literacy'' for ''scientific literacy'', and ''engineering'' for ''technology'' wherever appearing, and inserted ''and engineering'' after ''highest quality science''.

SHORT TITLE

For short title of sections 31 et seq. of Pub. L. 96–516 as the ''Science and Engineering Equal Opportunities Act'', see section 31 of Pub. L. 96–516, as amended, set out as a Short Title of 1980 Amendment note under section 1861 of this title.

SEVERABILITY OF SCIENCE AND ENGINEERING EQUAL OPPORTUNITIES ACT

Section 38 of Pub. L. 96–516 provided that: ''If a provision of this Act [enacting sections 1885 to 1885d of this title and provisions set out as notes under sections 1861 and 1885 of this title] is held invalid, the validity of the other provisions of the Act shall not be affected. If an application of a provision of this Act to a person or circumstance is held invalid, the validity of the application of the provisions to another person or circumstance shall not be affected.''

REPORTS TO CONGRESS CONCERNING NATIONAL POLICY DEVELOPMENT OF PROMOTION, ETC., OF EQUAL OPPORTUNITY FOR WOMEN AND MINORITIES IN SCIENCE AND TECHNOLOGY, AND IMPACTS OF SCIENCE AND TECHNOLOGY ON WOMEN AND MINORITIES

Section 35 of Pub. L. 96–516 directed President, with assistance of Director of Office of Science and Technology Policy and Director of Foundation, to prepare and transmit before Jan. 20, 1982, a report to Congress proposing a comprehensive national policy and program, including budgetary and legislative recommendations, for promotion of equal opportunity for women and minorities in science and technology, and directed President, with assistance of Director of Office of Science and Technology Policy, heads of appropriate executive departments, and Director of the Foundation to prepare and transmit before Jan. 1, 1983, a report to Congress proposing a comprehensive policy, including budgetary and legislative recommendations, concerning direct and indirect impacts of science and technology on women and minorities.

§ 1885a. Women in science and engineering; support of activities by Foundation for promotion, etc.

The Foundation is authorized to—

(1) support activities designed to—

(A) increase the participation of women in courses of study at the undergraduate, graduate, and postgraduate levels leading to degrees in scientific and engineering fields;

(B) encourage women to consider and prepare for careers in science and engineering; or

(C) provide traineeship and fellowship opportunities for women in science and engineering;

(2) support programs in science, engineering, and mathematics in elementary and secondary schools so as to stimulate the acquisition of knowledge, skills, and information by female students and to increase female student awareness of career opportunities requiring scientific and engineering skills;

(3) support activities in continuing education in science and engineering which provide opportunities for women who—

(A) are in the work force, or

(B) who are not in the work force because their careers have been interrupted,

to acquire new knowledge, techniques, and skills in scientific and engineering fields;

(4) undertake a comprehensive research program designed to increase public understanding of (A) the potential contribution of women in science and engineering and (B) the means to facilitate the participation and advancement of women in scientific and engineering careers;

(5) establish a visiting women scientists and engineers program;

(6) support activities designed to improve the availability and quality of public information concerning the importance of the participation of women in careers in science and engineering;

(7) support activities of museums and science centers which demonstrate potential to interest and involve women in science and engineering;

(8) make grants, to be known as the National Research Opportunity Grants, to women scientists and engineers who (A) have received their doctorates within five years prior to the date of the award or (B) have received their doctorates, have had their careers interrupted, and are re-entering the work force within five years after such interruption;

(9) make grants to women eligible under paragraph (8) to assist such women in planning and developing a research project eligible for support under such paragraph;

(10) provide support to individuals or academic institutions for full-time or part-time visiting professorships for women in science and engineering; and

(11) support demonstration project activities of individuals, public agencies, and private entities designed to encourage the employment and advancement of women in science and engineering.

(Pub. L. 96–516, §33, Dec. 12, 1980, 94 Stat. 3011; Pub. L. 99–159, title I, §111(b)(6), Nov. 22, 1985, 99 Stat. 892.)

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1985—Par. (1). Pub. L. 99–159, §111(b)(6)(A), substituted ''engineering'' for ''technology'' and ''technical'' wherever appearing.

Par. (2). Pub. L. 99–159, §111(b)(6)(A), (B), inserted '', engineering,'' after ''science'', and substituted ''engineering'' for ''technical''.

Par. (3). Pub. L. 99–159, §111(b)(6)(A), substituted ''engineering fields'' for ''technical fields''.

Par. (4). Pub. L. 99–159, §111(b)(6)(A), substituted ''engineering'' for ''technology'' and ''technical''.

Par. (5). Pub. L. 99–159, §111(b)(6)(C), inserted applicability to engineers.

Pars. (6), (7). Pub. L. 99–159, §111(b)(6)(A), substituted ''engineering'' for ''technology''.

Par. (8). Pub. L. 99–159, §111(b)(6)(C), inserted applicability to engineers.

Par. (10). Pub. L. 99–159, §111(b)(6)(D), inserted applicability to engineering.

Par. (11). Pub. L. 99–159, §111(b)(6)(E), substituted ''science and engineering'' for ''science, engineering, and technology''.

COMMISSION ON THE ADVANCEMENT OF WOMEN AND MINORITIES IN SCIENCE, ENGINEERING, AND TECHNOLOGY DEVELOPMENT

Pub. L. 105–255, Oct. 14, 1998, 112 Stat. 1889, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development Act'.

''SEC. 2. FINDINGS.

''The Congress finds the following:

''(1) According to the National Science Foundation's 1996 report, Women, Minorities, and Persons with Disabilities in Science and Engineering—

''(A) women have historically been underrepresented in scientific and engineering occupations, and although progress has been made over the last several decades, there is still room for improvement;

''(B) female and minority students take fewer high-level mathematics and science courses in high school;

''(C) female students earn fewer bachelors, masters, and doctoral degrees in science and engineering;

''(D) among recent bachelors of science and bachelors of engineering graduates, women are less likely to be in the labor force, to be employed full-time, and to be employed in their field than are men;

''(E) among doctoral scientists and engineers, women are far more likely to be employed at 2-year institutions, are far less likely to be employed in research universities, and are much more likely to teach part-time;

''(F) among university full-time faculty, women are less likely to chair departments or hold high-ranked positions;

''(G) a substantial salary gap exists between men and women with doctorates in science and engineering;

''(H) Blacks, Hispanics, and Native Americans continue to be seriously underrepresented in graduate science and engineering programs; and

''(I) Blacks, Hispanics, and Native Americans as a group are 23 percent of the population of the United States, but only 6 percent are scientists or engineers.

''(2) According to the National Research Council's 1995 report, Women Scientists and Engineers Employed in Industry: Why So Few?—

''(A) limited access is the first hurdle faced by women seeking industrial jobs in science and engineering, and while progress has been made in recent years, common recruitment and hiring practices that make extensive use of traditional networks often overlook the available pool of women;

''(B) once on the job, many women find paternalism, sexual harassment, allegations of reverse discrimination, different standards for judging the work of men and women, lower salary relative to their male peers, inequitable job assignments, and other aspects of a male-oriented culture that are hostile to women; and

''(C) women to a greater extent than men find limited opportunities for advancement, particularly for moving into management positions, and the number of women who have achieved the top levels in corporations is much lower than would be expected, based on the pipeline model.

''(3) The establishment of a commission to examine issues raised by the findings of these two reports would help—

''(A) to focus attention on the importance of eliminating artificial barriers to the recruitment, retention, and advancement of women and minorities in the fields of science, engineering, and technology, and in all employment sectors of the United States;

''(B) to promote work force diversity;

''(C) to sensitize employers to the need to recruit and retain women and minority scientists, engineers, and computer specialists; and

''(D) to encourage the replication of successful recruitment and retention programs by universities, corporations, and Federal agencies having difficulties in employing women or minorities in the fields of science, engineering, and technology.

''SEC. 3. ESTABLISHMENT.

''There is established a commission to be known as the 'Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development' (in this Act referred to as the 'Commission').

''SEC. 4. DUTY OF THE COMMISSION.

''The Commission shall review available research, and, if determined necessary by the Commission, conduct additional research to—

''(1) identify the number of women, minorities, and individuals with disabilities in the United States in specific types of occupations in science, engineering, and technology development;

''(2) examine the preparedness of women, minorities, and individuals with disabilities to—

''(A) pursue careers in science, engineering, and technology development; and

''(B) advance to positions of greater responsibility within academia, industry, and government;

''(3) describe the practices and policies of employers and labor unions relating to the recruitment, retention, and advancement of women, minorities, and individuals with disabilities in the fields of science, engineering, and technology development;

''(4) identify the opportunities for, and artificial barriers to, the recruitment, retention, and advancement of women, minorities, and individuals with disabilities in the fields of science, engineering, and technology development in academia, industry, and government;

''(5) compile a synthesis of available research on lawful practices, policies, and programs that have successfully led to the recruitment, retention, and advancement of women, minorities, and individuals with disabilities in science, engineering, and technology development;

''(6) issue recommendations with respect to lawful policies that government (including Congress and appropriate Federal agencies), academia, and private industry can follow regarding the recruitment, retention, and advancement of women, minorities, and individuals with disabilities in science, engineering, and technology development;

''(7) identify the disincentives for women, minorities, and individuals with disabilities to continue graduate education in the fields of engineering, physics, and computer science;

''(8) identify university undergraduate programs that are successful in retaining women, minorities, and individuals with disabilities in the fields of science, engineering, and technology development;

''(9) identify the disincentives that lead to a disproportionate number of women, minorities, and individuals with disabilities leaving the fields of science, engineering, and technology development before completing their undergraduate education;

''(10) assess the extent to which the recommendations of the Task Force on Women, Minorities, and the Handicapped in Science and Technology established under section 8 of the National Science Foundation Authorization Act for Fiscal Year 1987 (Public Law 99–383; 42 U.S.C. 1885a note) have been implemented;

''(11) compile a list of all federally funded reports on the subjects of encouraging women, minorities, and individuals with disabilities to enter the fields of science and engineering and retaining women, minorities, and individuals with disabilities in the science and engineering workforce that have been issued since the date that the Task Force described in paragraph (10) submitted its report to Congress;

''(12) assess the extent to which the recommendations contained in the reports described in paragraph (11) have been implemented; and

''(13) evaluate the benefits of family-friendly policies in order to assist recruiting, retaining, and advancing women in the fields of science, engineering, and technology such as the benefits or disadvantages of the Family and Medical Leave Act of 1993 (29 U.S.C. 2001 et seq. [see Short Title note set out under section 2601 of Title 29, Labor, and Tables]).

''SEC. 5. MEMBERSHIP.

''(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 11 members as follows:

''(1) One member appointed by the President from among for-profit entities that hire individuals in the fields of engineering, science, or technology development.

''(2) Two members appointed by the Speaker of the House of Representatives from among such entities.

''(3) One member appointed by the minority leader of the House of Representatives from among such entities.

''(4) Two members appointed by the majority leader of the Senate from among such entities.

''(5) One member appointed by the minority leader of the Senate from among such entities.

''(6) Two members appointed by the Chairman of the National Governors Association from among individuals in education or academia in the fields of life science, physical science, or engineering.

''(7) Two members appointed by the Vice Chairman of the National Governors Association from among such individuals.

''(b) INITIAL APPOINTMENTS.—Initial appointments shall be made under subsection (a) not later than 90 days after the date of the enactment of this Act [Oct. 14, 1998].

''(c) TERMS.—

''(1) IN GENERAL.—Each member shall be appointed for the life of the Commission.

''(2) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

''(d) PAY OF MEMBERS.—Members shall not be paid by reason of their service on the Commission.

''(e) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

''(g) CHAIRPERSON.—The Chairperson of the Commission shall be elected by the members.

''(h) MEETINGS.—The Commission shall meet not fewer than 5 times in connection with and pending the completion of the report described in section 8. The Commission shall hold additional meetings for such purpose if the Chairperson or a majority of the members of the Commission requests the additional meetings in writing.

''(i) EMPLOYMENT STATUS.—Members of the Commission shall not be deemed to be employees of the Federal Government by reason of their work on the Commission except for the purposes of—

''(1) the tort claims provisions of chapter 171 of title 28, United States Code; and

''(2) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

''SEC. 6. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

''(a) DIRECTOR.—The Commission shall appoint a Director who shall be paid at a rate not to exceed the maximum annual rate of basic pay payable under section 5376 of title 5, United States Code.

''(b) STAFF.—The Commission may appoint and fix the pay of additional personnel as the Commission considers appropriate.

''(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the maximum annual rate of basic pay payable under section 5376 of title 5, United States Code.

''(d) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the maximum annual rate of basic pay payable under section 5376 of title 5, United States Code.

''(e) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the Director of the National Science Foundation or the head of any other Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

''SEC. 7. POWERS OF COMMISSION.

''(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

''(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

''(c) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish that information to the Commission.

''(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(e) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act.

''(f) CONTRACT AUTHORITY.—To the extent provided in advance in appropriations Acts, the Commission may contract with and compensate Government and private agencies or persons for the purpose of conducting research or surveys necessary to enable the Commission to carry out its duties under this Act.

''SEC. 8. REPORT.

''Not later than 1 year after the date on which the initial appointments under section 5(a) are completed, the Commission shall submit to the President, the Congress, and the highest executive official of each State, a written report containing the findings, conclusions, and recommendations of the Commission resulting from the study conducted under section 4.

''SEC. 9. CONSTRUCTION; USE OF INFORMATION OBTAINED.

''(a) IN GENERAL.—Nothing in this Act shall be construed to require any non-Federal entity (such as a business, college or university, foundation, or research organization) to provide information to the Commission concerning such entity's personnel policies, including salaries and benefits, promotion criteria, and affirmative action plans.

''(b) USE OF INFORMATION OBTAINED.—No information obtained from any entity by the Commission may be used in connection with any employment related litigation.

''SEC. 10. TERMINATION; ACCESS TO INFORMATION.

''(a) TERMINATION.—The Commission shall terminate 30 days after submitting the report required by section 8.

''(b) ACCESS TO INFORMATION.—On or before the date of the termination of the Commission under subsection (a), the Commission shall provide to the National Science Foundation the information gathered by the Commission in the process of carrying out its duties under this Act. The National Science Foundation shall act as a central repository for such information and shall make such information available to the public, including making such information available through the Internet.

''SEC. 11. REVIEW OF INFORMATION PROVIDED BY THE NATIONAL SCIENCE FOUNDATION AND OTHER AGENCIES.

''(a) PROVISION OF INFORMATION.—At the request of the Commission, the National Science Foundation and any other Federal department or agency shall provide to the Commission any information determined necessary by the Commission to carry out its duties under this Act, including—

''(1) data on academic degrees awarded to women, minorities, and individuals with disabilities in science, engineering, and technology development, and workforce representation and the retention of women, minorities, and individuals with disabilities in the fields of science, engineering, and technology development; and

''(2) information gathered by the National Science Foundation in the process of compiling its biennial report on Women, Minorities, and Persons with Disabilities in Science and Engineering.

''(b) REVIEW OF INFORMATION.—The Commission shall review any information provided under subsection (a) and shall include in the report required under section 8—

''(1) recommendations on how to correct any deficiencies in the collection of the types of information described in that subsection, and in the analysis of such data, which might impede the characterization of the factors which affect the attraction and retention of women, minorities, and individuals with disabilities in the fields of science, engineering, and technology development; and

''(2) an assessment of the biennial report of the National Science Foundation on Women, Minorities, and Persons with Disabilities in Science and Engineering, and recommendations on how that report could be improved.

''SEC. 12. DEFINITION OF STATE.

''In this Act, the term 'State' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and any other territory or possession of the United States.

''SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this Act—

''(1) $400,000 for fiscal year 1999; and

''(2) $400,000 for fiscal year 2000.''

TASK FORCE ON WOMEN, MINORITIES, AND THE HANDICAPPED IN SCIENCE AND TECHNOLOGY

Pub. L. 99–383, §8, Aug. 21, 1986, 100 Stat. 815, provided that:

''(a) It is the purpose of this section to establish a task force on women, minorities, and the handicapped in science and technology to—

''(1) examine the current status of women, minorities, and the handicapped in science and engineering positions in the Federal Government and in federally assisted research programs;

''(2) coordinate existing Federal programs designed to promote the employment of women, minorities, and the handicapped in such positions;

''(3) suggest cooperative interagency programs for promoting such employment;

''(4) identify exemplary State, local, or private sector programs designed to promote such employment; and

''(5) develop a long-range plan to advance opportunities for women, minorities, and the handicapped in Federal scientific and technical positions in federally assisted research, and to coordinate the activities of participating agencies with the Committee on Equal Opportunities in Science and Engineering established by section 36 of the National Science Foundation Authorization and Science and Technology Equal Opportunities Act [now the National Science Foundation Authorization and Science and Engineering Equal Opportunities Act] (42 U.S.C. 1885c), after the termination of the task force established by this section.

''(b) For purposes of this section, the term 'participating agency' means—

''(1) the National Science Foundation;

''(2) the Department of Health and Human Services;

''(3) the National Aeronautics and Space Administration;

''(4) the Environmental Protection Agency;

''(5) the Department of Agriculture;

''(6) the Department of Defense;

''(7) the Department of Education;

''(8) the Department of Energy;

''(9) the Department of Commerce; and

''(10) the Department of the Interior.

''(c)(1) The task force on women, minorities, and the handicapped in science and technology shall be composed of individuals appointed by participating agencies pursuant to this subsection.

''(2) The head of each participating agency shall appoint two individuals to serve as members of the task force. If an appointed member is unable to serve for the duration of the task force, the head of the participating agency who appointed that member shall appoint another individual to fill the vacancy.

''(3) Task force members may be appointed from private business, academia, professional associations, or nonprofit foundations.

''(d) The task force shall prepare and submit a report on its findings and recommendations to the President, the Congress, and the head of each participating agency not later than December 31, 1989.

''(e) The Office of Science and Technology Policy shall call the first meeting of the task force not later than 90 days after the date of enactment of this Act [Aug. 21, 1986], shall ensure that each participating agency has appointed two members, and shall assist the task force to meet its objectives.

''(f)(1) Members of the task force not otherwise employed by the Federal Government shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the task force.

''(2) The Director of the National Science Foundation shall make provision for administrative support of the task force, and may enter into agreements with the heads of other participating agencies to facilitate the work of the task force.

''(g) The task force shall terminate on January 31, 1990.''

§ 1885b. Participation in science and engineering of minorities and persons with disabilities

(a) The Foundation is authorized (1) to undertake or support a comprehensive science and engineering education program to increase the participation of minorities in science and engineering, and (2) to support activities to initiate research at minority institutions.

(b) The Foundation is authorized to undertake or support programs and activities to encourage the participation of persons with disabilities in the science and engineering professions.

(Pub. L. 96–516, § 34, Dec. 12, 1980, 94 Stat. 3012; Pub. L. 99–159, title I, § 111(b)(7), Nov. 22, 1985, 99 Stat. 892; Pub. L. 105–207, title II, § 202(d)(1), July 29, 1998, 112 Stat. 874.)

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1998—Pub. L. 105–207, § 202(d)(1)(A), substituted section catchline for former section catchline.

Subsec. (b). Pub. L. 105–207, § 202(d)(1)(B), added subsec. (b) and struck out former subsec. (b), which read as follows: ''By September 30, 1981, the Director, with the advice and assistance of the Committee on Equal Opportunities in Science and Technology established in section 1885c of this title, shall prepare and transmit to the Committee on Labor and Human Resources of the Senate and the Committee on Science and Technology of the House of Representatives a report proposing a comprehensive and continuing program at the Foundation to promote the full participation of minorities in science and engineering. Such report shall contain budgetary and legislative recommendations for the carrying out of such program by the Foundation.''

1985—Subsec. (a). Pub. L. 99–159, § 111(b)(7), substituted ''science and engineering education'' for ''science education'' and ''engineering'' for ''technology''.

Subsec. (b). Pub. L. 99–159, § 111(b)(7)(B), substituted ''engineering'' for ''technology''.

§ 1885c. Committee on Equal Opportunities in Science and Engineering

(a) Establishment; purposes

There is established within the Foundation a Committee on Equal Opportunities in Science and Engineering (hereinafter referred to as the ''Committee''). The Committee shall provide advice to the Foundation concerning (1) the implementation of the provisions of sections 1885 to 1885d of this title and (2) other policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities in scientific, engineering, and professional fields.

(b) Membership; Chairperson; term of members

Each member of the Committee shall be appointed by the Director. In addition, the Chairman of the National Science Board may designate a member of the Board as a member of the Committee. Members of the Committee shall be appointed to serve for a three-year term, and may be reappointed to serve one additional term of three years.

(c) Responsibilities of Committee

The Committee shall be responsible for reviewing and evaluating all Foundation matters relating to opportunities for the participation in, and the advancement of, women, minorities, and persons with disabilities in education, training, and science and engineering research programs.

(d) Standing or ad hoc subcommittees

The Committee may organize such standing or ad hoc subcommittees as the Committee finds appropriate.

(e) Biennial report

Every two years, the Committee shall prepare and transmit to the Director a report on its activities during the previous two years and proposed activities for the next two years. The Director shall transmit to Congress the report, unaltered, together with such comments as the Director deems appropriate.

(Pub. L. 96–516, § 36, Dec. 12, 1980, 94 Stat. 3012; Pub. L. 99–159, title I, § 111(b)(8), Nov. 22, 1985, 99 Stat. 893; Pub. L. 100–570, title I, § 105(c), Oct. 31, 1988, 102 Stat. 2868; Pub. L. 105–207, title II, § 202(d)(2), July 29, 1998, 112 Stat. 874.)

REFERENCES IN TEXT

Sections 1885 to 1885d of this title, referred to in subsec. (a), was in the original ''this Act'', meaning sections 31 et seq. of Pub. L. 96–516, as amended, known as the Science and Engineering Equal Opportunities Act, which enacted sections 1885 to 1885d of this title and provisions set out as notes under sections 1861 and 1885 of this title. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–207, § 202(d)(2)(A), substituted ''minorities, and persons with disabilities in scientific'' for ''minorities, and other groups currently underrepresented in scientific''.

Subsec. (b). Pub. L. 105–207, § 202(d)(2)(B), struck out ''with the concurrence of the National Science Board'' after ''the Director'' and substituted ''In addition, the Chairman of the National Science Board may designate

a member of the Board as a member of the Committee.'' for ''The Chairperson of the National Science Board Committee on Minorities and Women shall be an ex officio member of the Committee.''

Subsec. (c). Pub. L. 105–207, § 202(d)(2)(C), (D), added subsec. (c) and struck out former subsec. (c) which read as follows: ''There shall be a subcommittee of the Committee which shall be known as the Subcommittee on Women in Science and Engineering. The Subcommittee on Women in Science and Engineering shall have responsibility for all Committee matters relating to (1) the participation in and opportunities for the education, training, and research of women in science and engineering and (2) the impact of science and engineering on women. The Subcommittee shall be composed of all the women members of the Committee and such other members of the Committee as the Committee may designate.''

Subsec. (d). Pub. L. 105–207, § 202(d)(2)(F), struck out ''additional'' after ''organize such''.

Pub. L. 105–207, § 202(d)(2)(C), (E), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''There shall be a subcommittee of the Committee which shall be known as the Subcommittee on Minorities in Science and Engineering. The Subcommittee on Minorities in Science and Engineering shall have responsibility for all Committee matters relating to (1) the participation in and opportunities for education, training, and research for minorities in science and engineering and (2) the impact of science and engineering on minorities. The Subcommittee shall be composed of all minority members of the Committee and such other members of the Committee as the Committee may designate.''

Subsecs. (e), (f). Pub. L. 105–207, § 202(d)(2)(E), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1988—Subsec. (f). Pub. L. 100–570 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Each year the Committee shall prepare and transmit to the Director a report concerning its activities during the previous year and its proposed activities for the next year. The Director shall transmit to Congress the report, unaltered, along with comments.''

1985—Pub. L. 99–159, § 111(b)(8)(A), substituted ''Engineering'' for ''Technology'' in section catchline.

Subsec. (a). Pub. L. 99–159 substituted ''Engineering'' for ''Technology'' and ''scientific, engineering, and professional'' for ''scientific engineering, professional, and technical''.

Subsecs. (c), (d). Pub. L. 99–159, § 111(b)(8)(A), substituted ''Engineering'' for ''Technology'' and ''engineering'' for ''technology'' wherever appearing.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973 to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REPORT BY COMMITTEE ON EQUAL OPPORTUNITIES IN SCIENCE AND ENGINEERING

Pub. L. 107–368, § 20, Dec. 19, 2002, 116 Stat. 3063, provided that: ''As part of the first report required by section 36(e) of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885c(e)) transmitted to Congress after the date of enactment of this Act [Dec. 19, 2002], the Committee on Equal Opportunities in Science and Engineering shall include—

''(1) a summary of its findings over the previous 10 years;

''(2) a description of past and present policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities in science, mathematics, and engineering fields, including activities in support of minority-serving institutions; and

''(3) an assessment of the trends in participation in Foundation activities, and an assessment of the success of Foundation policies and activities, along with proposals for new strategies or the broadening of existing successful strategies toward facilitating the goals of that Act [42 U.S.C. 1885 et seq.].''

[For definitions of terms used in section 20 of Pub. L. 107–368, set out above, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.]

§ 1885d. Biennial reports

(a) By January 30 of each odd-numbered year, the Director shall simultaneously transmit a report to the Congress, the Attorney General, the Director of the Office of Science and Technology Policy, the Chairman of the Equal Employment Opportunity Commission, the Director of the Office of Personnel Management, the Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services.

(b) The report required by subsection (a) of this section shall contain—

(1) an accounting and comparison, by sex, race, and ethnic group and by discipline, of the participation of women and men in scientific and engineering positions, including—

(A) the number of individuals in permanent and temporary and in full-time and part-time scientific and engineering positions by appropriate level or similar category;

(B) the average salary of individuals in such scientific and engineering positions;

(C) the number and type of promotional opportunities realized by individuals in such scientific and engineering positions;

(D) the number of individuals serving as principal investigators in federally conducted or federally supported research and development; and

(E) the unemployment rate of individuals seeking scientific and engineering positions;

(2) an assessment, including quantitative and other data, of the proportion of women and minorities studying scientific and engineering fields, including mathematics and computer skills, at all educational levels; and

(3) such other data, analyses, and evaluations as the Director, acting on the advice of the Committee on Equal Opportunities in Science and Engineering, determines appropriate to carry out the Foundation's functions as well as the policies and programs of sections 1885 to 1885d of this title.

(Pub. L. 96–516, § 37, Dec. 12, 1980, 94 Stat. 3013; Pub. L. 99–159, title I, § 111(b)(9), Nov. 22, 1985, 99 Stat. 893; Pub. L. 108–360, title II, § 208, Oct. 25, 2004, 118 Stat. 1679.)

REFERENCES IN TEXT

Sections 1885 to 1885d of this title, referred to in subsec. (b)(3), was in the original ''this Act'', meaning sections 31 et seq. of Pub. L. 96–516, as amended, known as the Science and Engineering Equal Opportunities Act, which enacted sections 1885 to 1885d of this title and provisions set out as notes under sections 1861 and 1885 of this title. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–360 substituted ''By January 30 of each odd-numbered year'' for ''By January 30, 1982, and biennially thereafter''.

1985—Subsec. (b)(1), (2). Pub. L. 99–159, § 111(b)(9)(A), substituted ''engineering'' for ''technical'' wherever appearing.

Subsec. (b)(3). Pub. L. 99–159, § 111(b)(9)(B), substituted ''Engineering'' for ''Technology''.

§ 1886. Data collection and analysis

The National Science Foundation is authorized to design, establish, and maintain a data collection and analysis capability in the Foundation for the purpose of identifying and assessing the research facilities needs of universities. The needs of universities, by major field of science and engineering, for construction and modernization of research laboratories, including fixed equipment and major research equipment, shall be documented. University expenditures for the construction and modernization of research facilities, the sources of funds, and other appropriate data shall be collected and analyzed. The Foundation, in conjunction with other appropriate Federal agencies, shall conduct the necessary surveys every 2 years and report the results to the Congress. The first report shall be submitted to the Congress by September 1, 1986.

(Pub. L. 99–159, title I, § 108, Nov. 22, 1985, 99 Stat. 888.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act for Fiscal Year 1986, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1887. Indemnification of grantees, contractors, and subcontractors under ocean drilling program; approvals and certifications by Director

The Foundation is on and after November 25, 1985, authorized to indemnify grantees, contractors, and subcontractors associated with the ocean drilling program under the provisions of section 2354 of title 10, with all approvals and certifications required thereby made by the Director of the National Science Foundation.

(Pub. L. 99–160, title II, § 201, Nov. 25, 1985, 99 Stat. 922.)

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to this section were contained in the following prior appropriation act: Pub. L. 98–371, title II, § 201, July 18, 1984, 98 Stat. 1228.

CHAPTER 16A—GRANTS FOR SUPPORT OF SCIENTIFIC RESEARCH

§§ 1891, 1892. Repealed. Pub. L. 95–224, § 10(a), Feb. 3, 1978, 92 Stat. 6

Section 1891, Pub. L. 85–934, § 1, Sept. 6, 1958, 72 Stat. 1793, authorized the head of each executive agency to make grants for support of scientific research with institutions of higher education, etc. See section 6301 et seq. of Title 31, Money and Finance.

Section 1892, Pub. L. 85–934, § 2, Sept. 6, 1958, 72 Stat. 1793, authorized the head of each executive agency to vest title to equipment, where feasible, in institutions of higher education, etc., involved in basic or applied scientific research pursuant to grants.

EFFECTIVE DATE OF REPEAL

Section 10(a) of Pub. L. 95–224 provided that sections 1891 and 1892 are repealed effective one year after the date of enactment of Pub. L. 95–224, which was approved Feb. 3, 1978.

REPEALS

Pub. L. 95–224, § 10(a), Feb. 3, 1978, 92 Stat. 6, which repealed these sections and provided for the effective date of that repeal was itself repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1083.

§ 1893. Repealed. Pub. L. 93–608, § 1(1), Jan. 2, 1975, 88 Stat. 1967

Section, Pub. L. 85–934, § 3, Sept. 6, 1958, 72 Stat. 1793; Pub. L. 94–273, § 2(24), Apr. 21, 1976, 90 Stat. 376, required a report to the appropriate committees of Congress by agencies or departments making grants for basic scientific research under this chapter.

CHAPTER 16B—CONTRACTS FOR SCIENTIFIC AND TECHNOLOGICAL RESEARCH

Sec.
1900. Interior Department programs.
1900a. Rules and regulations.
1900b. Amendment, modification, or repeal of authorizations for execution of contracts for research.

§ 1900. Interior Department programs

(a) Authorization for research contracts

The Secretary of the Interior is authorized to enter into contracts with educational institutions, public or private agencies or organizations, or persons for the conduct of scientific or technological research into any aspect of the problems related to the programs of the Department of the Interior which are authorized by statute.

(b) Capabilities of prospective contractors; advice and assistance, coordination of research, lines of inquiry, and cooperation

The Secretary shall require a showing that the institutions, agencies, organizations, or persons with which he expects to enter into contracts pursuant to this section have the capability of doing effective work. He shall furnish such advice and assistance as he believes will best carry out the mission of the Department of the Interior, participate in coordinating all research initiated under this section, indicate the lines of inquiry which seem to him most important, and encourage and assist in the establishment and maintenance of cooperation by and between the institutions, agencies, organizations, or persons and between them and other research organiza-

tions, the United States Department of the Interior, and other Federal agencies.

(c) Research reports or publications

The Secretary may from time to time disseminate in the form of reports or publications to public or private agencies or organizations, or individuals such information as he deems desirable on the research carried out pursuant to this section.

(Pub. L. 89–672, § 1, Oct. 15, 1966, 80 Stat. 951; Pub. L. 96–470, title I, § 108(a), Oct. 19, 1980, 94 Stat. 2239.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–470 struck out subsec. (d) which provided that no contract involving more than $25,000 be executed under subsec. (a) of this section prior to 30 calendar days from the date submitted to the President of the Senate and Speaker of the House of Representatives and the 30 calendar days not include days on which either the Senate or House of Representatives is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die.

§ 1900a. Rules and regulations

The Secretary shall prescribe such rules and regulations as he deems necessary to carry out the provisions of this chapter.

(Pub. L. 89–672, § 2, Oct. 15, 1966, 80 Stat. 951.)

§ 1900b. Amendment, modification, or repeal of authorizations for execution of contracts for research

Nothing contained in this chapter is intended to amend, modify, or repeal any provisions of law administered by the Secretary of the Interior which authorize the making of contracts for research.

(Pub. L. 89–672, § 3, Oct. 15, 1966, 80 Stat. 951.)

CHAPTER 17—FEDERAL EMPLOYMENT SERVICE

§§ 1901 to 1918. Transferred

CODIFICATION

Section 1901, act June 6, 1933, ch. 49, § 1, 48 Stat. 113, which related to establishment of United States Employment Service, was transferred to section 49 of Title 29, Labor.

Section 1902, act June 6, 1933, ch. 49, § 2, 48 Stat. 114; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, which related to establishment of officers and employees of the Service, was transferred to section 49a of Title 29.

Section 1903, act June 6, 1933, ch. 49, § 3, 48 Stat. 114, which related to promotion and development of national system of employment offices, was transferred to section 49b of Title 29.

Section 1904, act June 6, 1933, ch. 49, § 4, 48 Stat. 114, which related to establishment of state agencies, was transferred to section 49c of Title 29.

Section 1905, acts June 6, 1933, ch. 49, § 5, 48 Stat. 114; May 10, 1935, ch. 102, 49 Stat. 216; June 29, 1938, ch. 816, 52 Stat. 1244; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to authorization of appropriations, was transferred to section 49d of Title 29.

Section 1906, act June 6, 1933, ch. 49, § 6, 48 Stat. 115; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to apportionment among States, was transferred to section 49e of Title 29.

Section 1907, act June 6, 1933, ch. 49, § 7, 48 Stat. 115; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to ascertainment of amount due to States and certification thereof to Secretary of the Treasury, was transferred to section 49f of Title 29.

Section 1908, act June 6, 1933, ch. 49, § 8, 48 Stat. 115; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to submission of State plans, was transferred to section 49g of Title 29.

Section 1909, act June 6, 1933, ch. 49, § 9, 48 Stat. 116; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to reports by State agencies, was transferred to section 49h of Title 29.

Section 1910, act June 6, 1933, ch. 49, § 11, 48 Stat. 116; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to establishment of a Federal Advisory Council, was transferred to section 49j of Title 29.

Section 1911, act June 6, 1933, ch. 49, § 12, 48 Stat. 117; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to issuance of rules and regulations, was transferred to section 49k of Title 29.

Section 1912, act Aug. 11, 1939, ch. 693, 53 Stat. 1409, which related to transfer to States of property used by United States Employment Service, was transferred to section 49c–1 of Title 29.

Section 1913, acts July 26, 1946, ch. 672, title I, § 101, 60 Stat. 684; June 16, 1948, ch. 472, title I, § 101, 62 Stat. 446, which related to Federal employees employed in State and local employment service and their conditions of service, was transferred to section 49c–2 of Title 29 and subsequently omitted from the Code.

Section 1914, act July 26, 1946, ch. 672, title I, § 101, 60 Stat. 685, which related to refund of contributions to Federal Retirement System, was transferred to section 49c–3 of Title 29 and was repealed.

Section 1915, acts July 26, 1946, ch. 672, title I, § 101, 60 Stat. 685; July 8, 1947, ch. 210, title I, § 101, 61 Stat. 263; June 16, 1948, ch. 472, title I, § 101, 62 Stat. 446, which related to establishment and maintenance of personnel standards on merit basis, was transferred to section 49c–4 of Title 29 and subsequently omitted from the Code.

Section 1916, acts July 26, 1946, ch. 672, title I, § 101, 60 Stat. 686; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; July 8, 1947, ch. 210, title I, § 101, 61 Stat. 263; June 16, 1948, ch. 472, title I, § 101, 62 Stat. 446, which related to joint budget for grants under this chapter and for certain grants under the Social Security Act, was transferred to section 49c–5 of Title 29 and subsequently omitted from the Code.

Section 1917, act June 16, 1948, ch. 472, title I, § 101, 62 Stat. 445, which related to payment to States for administrative expenses, was transferred to section 49m of Title 29 and subsequently omitted from the Code.

Section 1918, act June 16, 1948, ch. 472, title I, § 101, 62 Stat. 445, which related to personnel standards, was transferred to section 49n of Title 29 and subsequently omitted from the Code.

CHAPTER 18—YOUTH MEDALS

Sec.
1921. Establishment of medals for bravery; rules and regulations; conditions governing awards.
1922. Establishment of medals for character and service; condition governing awards.

Sec.
1923. Names of medals; presentation.
1924. Certificate of commendation accompanying awards; limitation on number of yearly awards.
1925. Omitted.
1926. Authorization of appropriations.

§ 1921. Establishment of medals for bravery; rules and regulations; conditions governing awards

The Department of Justice be, and it is, authorized and directed to promulgate rules and regulations establishing a medal; the method of selecting such recipient thereof so that an award shall be made to any child residing in the United States, who is eighteen years old or under, who has exhibited exceptional courage, extraordinary decision, presence of mind, and unusual swiftness of action, regardless of his or her own personal safety, in an effort to save or successfully saving the life or lives of any person or persons whose life or lives were in actual imminent danger.

(Aug. 3, 1950, ch. 520, § 1, 64 Stat. 397.)

§ 1922. Establishment of medals for character and service; condition governing awards

The Department of Justice shall also honor by an appropriate medal such American boy or girl citizens, eighteen years old or under, who, in the opinion of the said Department of Justice, shall have achieved outstanding or unusual recognition for character and service during any given year.

(Aug. 3, 1950, ch. 520, § 2, 64 Stat. 397.)

§ 1923. Names of medals; presentation

The medal to be awarded for bravery or valor as defined in section 1921 of this title shall be known as the Young American Medal for Bravery, while the medal for outstanding character and service as defined in section 1922 of this title shall be known as the Young American Medal for Service, and such medals shall be presented personally by the President of the United States for and on behalf, and in the name of the President and the Congress of the United States of America.

(Aug. 3, 1950, ch. 520, § 3, 64 Stat. 398.)

§ 1924. Certificate of commendation accompanying awards; limitation on number of yearly awards

Accompanying such medals designated in this chapter there shall be an appropriate certificate of commendation presented to the recipient or recipients stating (a) the circumstances under which the act of bravery was performed, and (b) citing the outstanding recognition for character and service: *Provided*, That there shall not be awarded in any one calendar year in excess of four such medals, to wit, two for bravery and two for character and service, as herein authorized.

(Aug. 3, 1950, ch. 520, § 4, 64 Stat. 398.)

§ 1925. Omitted

CODIFICATION

Section, Aug. 3, 1950, ch. 520, § 5, 64 Stat. 398, which required the Department of Justice to submit an annual report furnishing a list of the names of all those upon whom the President has conferred either the Young American Medal for Bravery or the Young American Medal for Service, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 6 on page 117 of House Document No. 103–7.

§ 1926. Authorization of appropriations

It shall also be the duty of the Department of Justice to list in its annual budget request the sum of money necessary to carry out the provisions of this chapter, which sum is authorized in a sum not to exceed $5,000 per annum.

(Aug. 3, 1950, ch. 520, § 6, 64 Stat. 398.)

CHAPTER 19—SALINE AND SALT WATERS

SUBCHAPTER I—SALINE WATER DEVELOPMENT PROGRAM

§§ 1951 to 1958. Repealed. Pub. L. 92–60, § 11, July 29, 1971, 85 Stat. 163

Section 1951, acts July 3, 1952, ch. 568, § 1, 66 Stat. 328; Sept. 22, 1961, Pub. L. 87–295, § 1, 75 Stat. 628, stated Congressional policy on conversion of sea and saline waters and defined ''saline water'' and ''United States''. See sections 1959 and 1959g(b) and (d) of this title.

Section 1952, acts July 3, 1952, ch. 568, § 2, 66 Stat. 328; June 29, 1955, ch. 227, § 1(1), 69 Stat. 198; Sept. 22, 1961, Pub. L. 87–295, § 1, 75 Stat. 628; Aug. 11, 1965, Pub. L. 89–118, § 1(1), 79 Stat. 509; June 24, 1967, Pub. L. 90–30, § 1(b)–(d), 81 Stat. 78, prescribed duties of Secretary of the Interior relating to (a) research and studies for development of processes and methods for converting saline water; (b) research and technical development work for developing processes and plant designs; reports to Congress; and treatment of demonstration projects as test beds; (c) recommendations to Congress for prototype plant; (d) methods for recovery and marketing of byproducts; and (e) economic studies and surveys on water production costs. See sections 1959a and 1959b(b) of this title.

Section 1953, acts July 3, 1952, ch. 568, § 3, 66 Stat. 329; June 29, 1955, ch. 227, § 1(2), 69 Stat. 198; Sept. 22, 1961, Pub. L. 87–295, § 1, 75 Stat. 628, provided for powers of Secretary of the Interior. See section 1959c of this title.

Section 1954, acts July 3, 1952, ch. 568, § 4, 66 Stat. 329; Sept. 22, 1961, Pub. L. 87–295, § 1, 75 Stat. 629, provided for coordination or joint conduct of activities with Department of Defense; cooperation with other Federal agencies; and availability to public of resulting information and developments. See section 1959d of this title.

Section 1955, acts July 3, 1952, ch. 568, § 5, 66 Stat. 329; Sept. 22, 1961, Pub. L. 87–295, § 1, 75 Stat. 629, related to disposal of water and byproducts, disposition of moneys and alteration of existing law. See section 1959d(e) and (f) of this title.

Section 1956, acts July 3, 1952, ch. 568, § 6, 66 Stat. 329; Sept. 22, 1961, Pub. L. 87–295, § 1, 75 Stat. 629, provided for reports to President and Congress. See section 1959f of this title.

Section 1957, acts July 3, 1952, ch. 568, § 7, 66 Stat. 329; Sept. 22, 1961, Pub. L. 87–295, § 1, 75 Stat. 629, authorized issuance of rules and regulations. See section 1959e of this title.

Section 1958, acts July 3, 1952, ch. 568, § 8, 66 Stat. 329; June 29, 1955, ch. 227, § 1(3), 69 Stat. 198; Sept. 22, 1961, Pub. L. 87–295, § 1, 75 Stat. 629; Aug. 11, 1965, Pub. L. 89–118, § 1(2), 79 Stat. 509; June 24, 1967, Pub. L. 90–30,

§ 1(a), 81 Stat. 78; Apr. 29, 1968, Pub. L. 90–297, § 1, 82 Stat. 110, authorized appropriations. See section 1959h of this title.

SUBCHAPTER II—SALINE WATER DEMONSTRATION PROGRAM

§§ 1958a to 1958g. Omitted

CODIFICATION

Section 1958a, Pub. L. 85–883, § 1, Sept. 2, 1958, 72 Stat. 1706, which related to demonstration plants for production of consumptive water from saline water, was omitted pursuant to section 1958d of this title.

Section 1958b, Pub. L. 85–883, § 2, Sept. 2, 1958, 72 Stat. 1707, which related to contracts for construction, operation, and maintenance of demonstration plants, was omitted pursuant to section 1958d of this title.

Section 1958c, Pub. L. 85–883, § 3, Sept. 2, 1958, 72 Stat. 1707, which related to acceptance of assistance from State and public agencies, and contracts for such assistance and its use, was omitted pursuant to section 1958d of this title.

Section 1958d, Pub. L. 85–883, § 4, Sept. 2, 1958, 72 Stat. 1707; Pub. L. 87–295, § 2, Sept. 22, 1961, 75 Stat. 630, provided for termination of authority of the Secretary to construct, operate, and maintain demonstration plants upon the expiration of twelve years after Sept. 2, 1958.

Section 1958e, Pub. L. 85–883, § 5, Sept. 2, 1958, 72 Stat. 1708, which related to additional powers of the Secretary, was omitted pursuant to section 1958d of this title.

Section 1958f, Pub. L. 85–883, § 6, Sept. 2, 1958, 72 Stat. 1708, which related to contracts for construction, materials, and supplies, was omitted pursuant to section 1958d of this title.

Section 1958g, Pub. L. 85–883, § 7, Sept. 2, 1958, 72 Stat. 1708, which related to authorization of appropriations, was omitted pursuant to section 1958d of this title.

SUBCHAPTER III—SALINE WATER CONVERSION PROGRAM

§§ 1959 to 1959h. Repealed. Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section 1959, Pub. L. 92–60, § 2, July 29, 1971, 85 Stat. 159, set out Congressional findings and policy in enacting conversion of saline water legislation. See section 7831 of this title.

Section 1959a, Pub. L. 92–60, § 3, July 29, 1971, 85 Stat. 159, set out general duties of Secretary of the Interior in the area of conversion of saline water. See section 7832 of this title.

Section 1959b, Pub. L. 92–60, § 4, July 29, 1971, 85 Stat. 160, set out additional duties of Secretary of the Interior in area of conversion of saline water, such as conducting preliminary investigations, exploring potential cooperative agreements, reporting to the President and Congress, utilizing Federal agencies' expertise and accepting financial assistance from State and other public agencies. See section 7833 of this title.

Section 1959c, Pub. L. 92–60, § 5, July 29, 1971, 85 Stat. 160, set out powers of Secretary of the Interior. See section 7871 of this title.

Section 1959d, Pub. L. 92–60, § 6, July 29, 1971, 85 Stat. 161, provided for coordination of saline water conversion activities with Department of Defense, cooperation of Secretary of the Interior's activities with the Environmental Protection Agency and other Federal agencies, availability of research information and developments, continued validity of patent rights, publication of rules in the Federal Register, disposal of water and byproducts, dispositions of moneys and nonalteration of existing water ownership and control laws. See sections 7877(a) and 7879 of this title.

Section 1959e, Pub. L. 92–60, § 7, July 29, 1971, 85 Stat. 162, authorized Secretary of the Interior to issue rules and regulations. See section 7834 of this title.

Section 1959f, Pub. L. 92–60, § 8, July 29, 1971, 85 Stat. 162, required Secretary of the Interior to submit a report to the President and Congress. See section 7880 of this title.

Section 1959g, Pub. L. 92–60, § 9, July 29, 1971, 85 Stat. 162, defined terms used in this chapter. See section 7835 of this title.

Section 1959h, Pub. L. 92–60, § 10, July 29, 1971, 85 Stat. 162; Pub. L. 95–84, § 1(a)(2), Aug. 2, 1977, 91 Stat. 400, authorized appropriations for saline water conversion programs. See sections 7873 and 7874 of this title.

SHORT TITLE

Pub. L. 92–60, § 1, July 29, 1971, 85 Stat. 159, which provided that Pub. L. 92–60, which enacted sections 1959 to 1959h of this title and repealed sections 1951 to 1958 of this title may be cited as "The Saline Water Conversion Act of 1971" was repealed by Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316.

ANNUAL AUTHORIZATION OF APPROPRIATIONS

Annual authorization for appropriations for the saline water conversion programs for fiscal years authorized by former section 1959h(b) of this title were contained in the following appropriations acts:

Pub. L. 95–84, § 1(b), Aug. 2, 1977, 91 Stat. 400.
Pub. L. 94–316, § 1, June 22, 1976, 90 Stat. 694.
Pub. L. 94–38, June 19, 1975, 89 Stat. 217.
Pub. L. 93–342, July 10, 1974, 88 Stat. 295.
Pub. L. 92–51, July 1, 1973, 87 Stat. 129.
Pub. L. 92–273, Apr. 17, 1972, 86 Stat. 122.

INVENTIONS—DEFINITION, TITLE, AND LICENSING

Pub. L. 94–316, § 3, June 22, 1976, 90 Stat. 694, which provided that relative to the definition of, title to, and licensing of inventions made or conceived in the course of or under any contract or grant pursuant to the Water Resources Research Act of 1964 (42 U.S.C. 1961 et seq.) or the Saline Water Conversion Act of 1971 (42 U.S.C. 1959 et seq.), and that notwithstanding any other provision of law, the Secretary was to be governed by the provisions of sections 9 and 10 of the Federal Nonnuclear Energy, Research, and Development Act of 1974 (42 U.S.C. 5908, 5909), provided, however, that subsecs. (*l*) and (n) of section 5908 of this title were not to apply to this act, was omitted in view of the repeal of the Water Resources Research Act of 1964 and the Saline Water Conversion Act of 1971 by Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316.

§ 1959i. Transferred

CODIFICATION

Section, Pub. L. 95–84, § 2, Aug. 2, 1977, 91 Stat. 400, which related to desalting plants, was transferred to section 7836 of this title.

CHAPTER 19A—WATER RESOURCES RESEARCH PROGRAM

GENERAL PROVISIONS

§ 1961. Repealed. Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section, Pub. L. 88–379, § 1(b), July 17, 1964, 78 Stat. 329, set out Congressional purpose in enacting water resources research program legislation. See section 7802 of this title.

SHORT TITLE

Pub. L. 88–379, § 1(a), July 17, 1964, 78 Stat. 329, provided that Pub. L. 88–379, which enacted sections 1961 to 1961c–8, may be cited as the "Water Resources Research Act of 1964", prior to repeal by Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316.

SUBCHAPTER I—STATE WATER RESOURCES RESEARCH INSTITUTE

§§ 1961a to 1961a–5. Repealed. Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section 1961a, Pub. L. 88–379, title I, § 100, July 17, 1964, 78 Stat. 329; Pub. L. 92–175, §§ 1–3, Dec. 2, 1971, 85 Stat. 493, related to water resources research institutes. See section 7811 of this title.

Section 1961a–1, Pub. L. 88–379, title I, § 101, July 17, 1964, 78 Stat. 330, authorized appropriations for specific water resources research projects, including regional projects. See sections 7815(a) and 7872 of this title.

Section 1961a–2, Pub. L. 88–379, title I, § 102, July 17, 1964, 78 Stat. 330; Pub. L. 92–175, § 4, Dec. 2, 1971, 85 Stat. 493, set time and amount of payments to institutes, directed that an accounting officer be appointed to each State institute and submit an annual report to Secretary of the Interior, and required that State replace diminished, lost or misapplied funds. See section 7876 of this title.

Section 1961a–3, Pub. L. 88–379, title I, § 103, July 17, 1964, 78 Stat. 330, made appropriated funds available for printing and publishing results of research and for the planning, coordinating and conducting of cooperative research. See section 7812 of this title.

Section 1961a–4, Pub. L. 88–379, title I, § 104, July 17, 1964, 78 Stat. 331; Pub. L. 89–404, § 2, Apr. 19, 1966, 80 Stat. 130, related to powers and duties of Secretary of the Interior. See section 7813 of this title.

Section 1961a–5, Pub. L. 88–379, title I, § 105, July 17, 1964, 78 Stat. 331, related to legal relationship of educational institutions and State governments and Federal control or direction of education. See section 7814 of this title.

SUBCHAPTER II—ADDITIONAL WATER RESOURCES RESEARCH PROGRAMS

§ 1961b. Repealed. Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section, Pub. L. 88–379, title II, § 200, July 17, 1964, 78 Stat. 331; Pub. L. 89–404, § 1, Apr. 19, 1966, 80 Stat. 129; Pub. L. 92–175, § 5, Dec. 2, 1971, 85 Stat. 493; Pub. L. 93–608, § 1(17), Jan. 2, 1975, 88 Stat. 1970; Pub. L. 95–84, § 1(a)(1), Aug. 2, 1977, 91 Stat. 400, authorized appropriations for research into water problems related to the mission of the Department of the Interior and required that the Secretary's annual report to the President and Congress identify each approved contract and grant award. See section 7815 of this title.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§§ 1961c to 1961c–8. Repealed. Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section 1961c, Pub. L. 88–379, title III, § 300, July 17, 1964, 78 Stat. 332, related to cooperation of Federal, State and private agencies with Secretary of the Interior who was directed to make information on relevant projects available. See section 7877(a) of this title.

Section 1961c–1, Pub. L. 88–379, title III, § 301, July 17, 1964, 78 Stat. 332, related to lack of authority of Secretary of the Interior over water resources research of other Federal agencies and lack of effect that this chapter had on existing authorities and responsibilities of Federal agencies. See section 7881 of this title.

Section 1961c–2, Pub. L. 88–379, title III, § 302, July 17, 1964, 78 Stat. 332, related to advance payments of initial expenses. See section 7818 of this title.

Section 1961c–3, Pub. L. 88–379, title III, § 303, July 17, 1964, 78 Stat. 332, made expenditures of funds for scientific or technological research or development activity conditioned upon availability to public of resulting information and developments, and provided that background patent rights would be unaffected. See section 7879 of this title.

Section 1961c–4, Pub. L. 88–379, title III, § 304, July 17, 1964, 78 Stat. 332, established a cataloging center. See section 7853 of this title.

Section 1961c–5, Pub. L. 88–379, title III, § 305, July 17, 1964, 78 Stat. 332, related to interagency coordination of water resources research. See section 7877(b) of this title.

Section 1961c–6, Pub. L. 88–379, title III, § 306, July 17, 1964, 78 Stat. 333; Pub. L. 92–175, § 6, Dec. 2, 1971, 85 Stat. 494, defined ''State''. See section 7817 of this title.

Section 1961c–7, Pub. L. 88–379, title III, § 307, as added Pub. L. 89–404, § 2, Apr. 19, 1966, 80 Stat. 130, and amended Pub. L. 92–175, § 7, Dec. 2, 1971, 85 Stat. 494, required Secretary of the Interior to make an annual report to the President and Congress. See section 7880 of this title.

Section 1961c–8, Pub. L. 88–379, title III, § 308, as added Pub. L. 92–175, § 8, Dec. 2, 1971, 85 Stat. 494, empowered Secretary of the Interior to convey excess personal property to cooperating institutes, educational institutions and nonprofit organizations. See section 7878 of this title.

CHAPTER 19B—WATER RESOURCES PLANNING

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1962d–18. Study of depletion of natural resources of regions of Colorado, Kansas, New Mexico, Oklahoma, Texas, and Nebraska utilizing Ogallala aquifer; plans; reports to Congress; authorization of appropriation.
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§ 1962. Congressional statement of policy

In order to meet the rapidly expanding demands for water throughout the Nation, it is hereby declared to be the policy of the Congress to encourage the conservation, development, and utilization of water and related land resources of the United States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned.

(Pub. L. 89–80, § 2, July 22, 1965, 79 Stat. 244.)

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–251, title I, § 109, Mar. 16, 1974, 88 Stat. 49, provided that: ''This title [enacting sections 1962d–5c and 1962d–15 to 1962d–17 of this title, section 460ee of Title 16, Conservation, and sections 50c–2, 50k, 579, 701b–11, and 1252a of Title 33, Navigation and Navigable Waters, amending section 4482 of this title, sections 460*l*–13(a), (a)(3) and 460*l*–14(b)(1) of Title 16, section 275a of Title 22, Foreign Relations and Intercourse, and sections 701g, 701n, 701r, 701r–1(c), 701s, 709a(b), and 1165a(d) of Title 33, and enacting provisions set out as notes under sections 1962d–5 and 1962d–7 of this title and section 460*l*–13 of Title 16] may be cited as the 'Water Resources Development Act of 1974'.''

SHORT TITLE

Section 1 of Pub. L. 89–80 provided that: ''This Act [enacting this chapter] may be cited as the 'Water Resources Planning Act'.''

UNITED STATES-MEXICO TRANSBOUNDARY AQUIFER ASSESSMENT

Pub. L. 109–448, Dec. 22, 2006, 120 Stat. 3328, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'United States-Mexico Transboundary Aquifer Assessment Act'.

''SEC. 2. PURPOSE.

''The purpose of this Act is to direct the Secretary of the Interior to establish a United States-Mexico transboundary aquifer assessment program to systematically assess priority transboundary aquifers.

''SEC. 3. DEFINITIONS.

''In this Act:

''(1) AQUIFER.—The term 'aquifer' means a subsurface water-bearing geologic formation from which significant quantities of water may be extracted.

''(2) IBWC.—The term 'IBWC' means the International Boundary and Water Commission, an agency of the Department of State.

''(3) INDIAN TRIBE.—The term 'Indian tribe' means an Indian tribe, band, nation, or other organized group or community—

''(A) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

''(B) the reservation of which includes a transboundary aquifer within the exterior boundaries of the reservation.

''(4) PARTICIPATING STATE.—The term 'Participating State' means each of the States of Arizona, New Mexico, and Texas.

''(5) PRIORITY TRANSBOUNDARY AQUIFER.—The term 'priority transboundary aquifer' means a transboundary aquifer that has been designated for study and analysis under the program.

''(6) PROGRAM.—The term 'program' means the United States-Mexico transboundary aquifer assessment program established under section 4(a).

''(7) RESERVATION.—The term 'reservation' means land that has been set aside or that has been acknowledged as having been set aside by the United States for the use of an Indian tribe, the exterior boundaries of which are more particularly defined in a final tribal treaty, agreement, executive order, Federal statute, secretarial order, or judicial determination.

''(8) SECRETARY.—The term 'Secretary' means the Secretary of the Interior, acting through the Director of the United States Geological Survey.

''(9) TRANSBOUNDARY AQUIFER.—The term 'transboundary aquifer' means an aquifer that underlies the boundary between a Participating State and Mexico.

''(10) TRI-REGIONAL PLANNING GROUP.—The term 'Tri-Regional Planning Group' means the binational planning group comprised of—

''(A) the Junta Municipal de Agua y Saneamiento de Ciudad Juarez;

''(B) the El Paso Water Utilities Public Service Board; and

''(C) the Lower Rio Grande Water Users Organization.

''(11) WATER RESOURCES RESEARCH INSTITUTES.—The term 'water resources research institutes' means the institutes within the Participating States established under section 104 of the Water Resources Research Act of 1984 (42 U.S.C. 10303).

''SEC. 4. ESTABLISHMENT OF PROGRAM.

''(a) IN GENERAL.—The Secretary, in consultation and cooperation with the Participating States, the water resources research institutes, Sandia National Laboratories, and other appropriate entities in the United States and Mexico, and the IBWC, as appropriate, shall carry out the United States-Mexico transboundary aquifer assessment program to characterize, map, and model priority transboundary aquifers along the United States-Mexico border at a level of detail determined to be appropriate for the particular aquifer.

''(b) OBJECTIVES.—The objectives of the program are to—

''(1) develop and implement an integrated scientific approach to identify and assess priority transboundary aquifers, including—

''(A) for purposes of subsection (c)(2), specifying priority transboundary aquifers for further analysis by assessing—

''(i) the proximity of a proposed priority transboundary aquifer to areas of high population density;

''(ii) the extent to which a proposed priority transboundary aquifer would be used;

''(iii) the susceptibility of a proposed priority transboundary aquifer to contamination; and

''(iv) any other relevant criteria;

''(B) evaluating all available data and publications as part of the development of study plans for each priority transboundary aquifer;

''(C) creating a new, or enhancing an existing, geographic information system database to characterize the spatial and temporal aspects of each priority transboundary aquifer; and

''(D) using field studies, including support for and expansion of ongoing monitoring and metering efforts, to develop—

''(i) the additional data necessary to adequately define aquifer characteristics; and

''(ii) scientifically sound groundwater flow models to assist with State and local water management and administration, including modeling of relevant groundwater and surface water interactions;

''(2) consider the expansion or modification of existing agreements, as appropriate, between the United States Geological Survey, the Participating States, the water resources research institutes, and appropriate authorities in the United States and Mexico, to—

''(A) conduct joint scientific investigations;

''(B) archive and share relevant data; and

''(C) carry out any other activities consistent with the program; and

''(3) produce scientific products for each priority transboundary aquifer that—

''(A) are capable of being broadly distributed; and

''(B) provide the scientific information needed by water managers and natural resource agencies on both sides of the United States-Mexico border to effectively accomplish the missions of the managers and agencies.

''(c) DESIGNATION OF PRIORITY TRANSBOUNDARY AQUIFERS.—

''(1) IN GENERAL.—For purposes of the program, the Secretary shall designate as priority transboundary aquifers—

''(A) the Hueco Bolson and Mesilla aquifers underlying parts of Texas, New Mexico, and Mexico;

''(B) the Santa Cruz River Valley aquifers underlying Arizona and Sonora, Mexico; and

''(C) the San Pedro aquifers underlying Arizona and Sonora, Mexico.

''(2) ADDITIONAL AQUIFERS.—The Secretary may, using the criteria under subsection (b)(1)(A), evaluate and designate additional priority transboundary aquifers which underlie New Mexico or Texas.

''(d) COOPERATION WITH MEXICO.—To ensure a comprehensive assessment of priority transboundary aquifers, the Secretary shall, to the maximum extent practicable, work with appropriate Federal agencies and other organizations to develop partnerships with, and receive input from, relevant organizations in Mexico to carry out the program.

''(e) GRANTS AND COOPERATIVE AGREEMENTS.—The Secretary may provide grants or enter into cooperative agreements and other agreements with the water resources research institutes and other Participating State entities to carry out the program.

''SEC. 5. IMPLEMENTATION OF PROGRAM.

''(a) COORDINATION WITH STATES, TRIBES, AND OTHER ENTITIES.—The Secretary shall coordinate the activities carried out under the program with—

''(1) the appropriate water resource agencies in the Participating States;

''(2) any affected Indian tribes;

''(3) any other appropriate entities that are conducting monitoring and metering activity with respect to a priority transboundary aquifer; and

''(4) the IBWC, as appropriate.

''(b) NEW ACTIVITY.—After the date of enactment of this Act [Dec. 22, 2006], the Secretary shall not initiate any new field studies or analyses under the program before consulting with, and coordinating the activity with, any Participating State water resource agencies that have jurisdiction over the aquifer.

''(c) STUDY PLANS; COST ESTIMATES.—

''(1) IN GENERAL.—The Secretary shall work closely with appropriate Participating State water resource agencies, water resources research institutes, and other relevant entities to develop a study plan, timeline, and cost estimate for each priority transboundary aquifer to be studied under the program.

''(2) REQUIREMENTS.—A study plan developed under paragraph (1) shall, to the maximum extent practicable—

''(A) integrate existing data collection and analyses conducted with respect to the priority transboundary aquifer;

''(B) if applicable, improve and strengthen existing groundwater flow models developed for the priority transboundary aquifer; and

''(C) be consistent with appropriate State guidelines and goals.

''SEC. 6. EFFECT.

''(a) IN GENERAL.—Nothing in this Act affects—

''(1) the jurisdiction or responsibility of a Participating State with respect to managing surface or groundwater resources in the Participating State;

''(2) the water rights of any person or entity using water from a transboundary aquifer; or

''(3) State water law, or an interstate compact or international treaty governing water.

''(b) TREATY.—Nothing in this Act shall delay or alter the implementation or operation of any works constructed, modified, acquired, or used within the territorial limits of the United States relating to the waters governed by the Treaty Between the United States and

Mexico Regarding Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Treaty Series 994 (59 Stat. 1219).

''SEC. 7. REPORTS.

''Not later than 5 years after the date of enactment of this Act [Dec. 22, 2006], and on completion of the program in fiscal year 2016, the Secretary shall submit to the appropriate water resource agency in the Participating States, an interim and final report, respectively, that describes—

''(1) any activities carried out under the program;

''(2) any conclusions of the Secretary relating to the status of priority transboundary aquifers; and

''(3) the level of participation in the program of entities in Mexico.

''SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act $50,000,000 for the period of fiscal years 2007 through 2016.

''(b) DISTRIBUTION OF FUNDS.—Of the amounts made available under subsection (a), 50 percent shall be made available to the water resources research institutes to provide funding to appropriate entities in the Participating States (including Sandia National Laboratories, State agencies, universities, the Tri-Regional Planning Group, and other relevant organizations) and to implement cooperative agreements entered into with appropriate entities in Mexico to conduct specific authorized activities in furtherance of the program, including the binational collection and exchange of scientific data.

''(c) CRITERIA.—Funding provided to an appropriate entity in Mexico pursuant to subsection (b) shall be contingent on that entity providing 50 percent of the necessary resources (including in-kind services) to further assist in carrying out the authorized activity.

''SEC. 9. SUNSET OF AUTHORITY.

''The authority of the Secretary to carry out any provisions of this Act shall terminate 10 years after the date of enactment of this Act [Dec. 22, 2006].''

WATERSHED PROTECTION AND FLOOD PREVENTION PROJECTS EXEMPT FROM REQUIREMENTS FOR INDEPENDENT WATER PROJECT REVIEW

Provisions exempting watershed projects under the Watershed Protection and Flood Prevention Act, Aug. 4, 1954, ch. 656, 68 Stat. 666, which is classified generally to chapter 18 (§1001 et seq.) of Title 16, Conservation, from the requirements of Executive Orders 12113 and 12141, formerly set out below, were contained in the following appropriation acts:

Pub. L. 97–370, title VI, §619, Dec. 18, 1982, 96 Stat. 1811.

Pub. L. 97–103, title VI, §619, Dec. 23, 1981, 95 Stat. 1490.

Pub. L. 96–528, title VI, §622, Dec. 15, 1980, 94 Stat. 3118.

EXECUTIVE ORDER NO. 12113

Ex. Ord. No. 12113, Jan. 4, 1979, 44 F.R. 1955, as amended by Ex. Ord. No. 12141, June 5, 1979, 44 F.R. 32635, which provided for independent review of Federal water resources programs and projects by the Water Resources Council, was revoked by section 4 of Ex. Ord. No. 12322, Sept. 17, 1981, 46 F.R. 46561, set out below.

EX. ORD. NO. 12322. WATER RESOURCES PROGRAMS AND PROJECTS REVIEW

Ex. Ord. No. 12322, Sept. 17, 1981, 46 F.R. 46561, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure efficient and coordinated planning and review of water resources programs and projects, it is hereby ordered as follows:

SECTION 1. Before any agency or officer thereof submits to the Congress, or to any committee or member thereof, for approval, appropriations, or legislative action any report, proposal, or plan relating to a Federal or Federally assisted water and related land resources project or program, such report, proposal, or plan shall be submitted to the Director of the Office of Management and Budget.

SEC. 2. The Director of the Office of Management and Budget shall examine each report, proposal, or plan for consistency with, and shall advise the agency of the relationship of the project to, the following:

(a) the policy and programs of the President;

(b) the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies or other such planning guidelines for water and related land resources planning, as shall hereafter be issued; and

(c) other applicable laws, regulations, and requirements relevant to the planning process.

SEC. 3. When such report, proposal, or plan is thereafter submitted to the Congress, or to any committee or member thereof, it shall include a statement of the advice received from the Office of Management and Budget.

SEC. 4. Executive Order No. 12113, as amended, is revoked.

RONALD REAGAN.

§ 1962–1. Effect on existing laws

Nothing in this chapter shall be construed—

(a) to expand or diminish either Federal or State jurisdiction, responsibility, or rights in the field of water resources planning, development, or control; nor to displace, supersede, limit or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, or of two or more States and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office except as required to carry out the provisions of this chapter with respect to the preparation and review of comprehensive regional or river basin plans and the formulation and evaluation of Federal water and related land resources projects;

(c) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water and related land resources or to exercise licensing or regulatory functions in relation thereto, except as required to carry out the provisions of this chapter; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board and the United States Operating Entity or Entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico;

(d) as authorizing any entity established or acting under the provisions hereof to study, plan, or recommend the transfer of waters between areas under the jurisdiction of more than one river basin commission or entity performing the function of a river basin commission.

(Pub. L. 89–80, §3, July 22, 1965, 79 Stat. 244.)

REFERENCES IN TEXT

The International Joint Commission, United States and Canada, referred to in subsec. (c), was organized in 1911 pursuant to article VII of the treaty of January 11, 1909, with Great Britain, 36 Stat. 2448. Provisions relating to such Commission are contained in sections 267b and 268 of Title 22, Foreign Relations and Intercourse.

§ 1962–2. Congressional statement of objectives

It is the intent of Congress that the objectives of enhancing regional economic development, the quality of the total environment, including its protection and improvement, the well-being of the people of the United States, and the national economic development are the objectives to be included in federally financed water resource projects (including shore protection projects such as projects for beach nourishment, including the replacement of sand), and in the evaluation of benefits and cost attributable thereto, giving due consideration to the most feasible alternative means of accomplishing these objectives.

(Pub. L. 91–611, title II, § 209, Dec. 31, 1970, 84 Stat. 1829; Pub. L. 104–303, title II, § 227(f), Oct. 12, 1996, 110 Stat. 3703.)

CODIFICATION

Section was enacted as a part of the Flood Control Act of 1970 and not as a part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1996—Pub. L. 104–303 inserted ''(including shore protection projects such as projects for beach nourishment, including the replacement of sand)'' after ''water resource projects''.

SUBCHAPTER I—WATER RESOURCES COUNCIL

§ 1962a. Establishment; composition; other Federal agency participation; designation of Chairman

There is hereby established a Water Resources Council (hereinafter referred to as the ''Council'') which shall be composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and the Secretary of Energy. The Chairman of the Council shall request the heads of other Federal agencies to participate with the Council when matters affecting their responsibilities are considered by the Council. The Chairman of the Council shall be designated by the President.

(Pub. L. 89–80, title I, § 101, July 22, 1965, 79 Stat. 245; Pub. L. 94–112, § 1(a), Oct. 16, 1975, 89 Stat. 575; Pub. L. 95–91, title III, § 301(b), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 578, 606, 607.)

AMENDMENTS

1975—Pub. L. 94–112 included in the membership of the Water Resources Council, the Secretaries of Commerce, Housing and Urban Development, and Transportation and the Administrator of the Environmental Protection Agency, and terminated the membership for the Secretary of Health, Education, and Welfare.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted for ''Chairman of the Federal Power Commission'' in text pursuant to sections 301(b), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(b), 7293, and 7297 of this title, and which terminated Federal Power Commission and transferred its functions and functions of Chairman thereof (with certain exceptions) to Secretary of Energy.

NATIONAL WATER COMMISSION

Pub. L. 90–515, Sept. 26, 1968, 82 Stat. 868, provided for establishment of National Water Commission, its membership, chairman, compensation, powers, duties, and functions, required Commission to review national water resource problems and submit interim and final reports, and provided that Commission terminate no later than five years from Sept. 26, 1968.

§ 1962a–1. Powers and duties

The Council shall—

(a) maintain a continuing study and prepare an assessment biennially, or at such less frequent intervals as the Council may determine, of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein; and

(b) maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies; it shall appraise the adequacy of existing and proposed policies and programs to meet such requirements; and it shall make recommendations to the President with respect to Federal policies and programs.

(Pub. L. 89–80, title I, § 102, July 22, 1965, 79 Stat. 245.)

§ 1962a–2. Principles, standards, and procedures for Federal projects

(a) Establishment, consultation, revision

The Council shall establish, after such consultation with other interested entities, both Federal and non-Federal, as the Council may find appropriate, and with the approval of the President, principles, standards, and procedures for Federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects. Such procedures may include provision for Council revision of plans for Federal projects intended to be proposed in any plan or revision thereof being prepared by a river basin planning commission.

(b) Economic evaluation; primary criterion

The Council shall develop standards and criteria for economic evaluation of water resource projects. For the purpose of those standards and criteria, the primary direct navigation benefits of a water resource project are defined as the product of the savings to shippers using the waterway and the estimated traffic that would use the waterway. ''Savings to shippers'' means the difference between (1) the freight rates or charges prevailing at the time of the study for

the movement by the alternative means, and (2) those which would be charged on the proposed waterway. Estimated traffic that would use the waterway will be based on those freight rates, taking into account projections of the economic growth of the area.

(Pub. L. 89–80, title I, § 103, July 22, 1965, 79 Stat. 245; Pub. L. 97–449, § 4(a), Jan. 12, 1983, 96 Stat. 2441.)

AMENDMENTS

1983—Pub. L. 97–449 designated existing provisions as subsec. (a) and added subsec. (b).

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Chairman of Water Resources Council, see Ex. Ord. No. 11747, eff. Nov. 7, 1973, 38 F.R. 30993, as amended, set out as a note under section 1962a–3 of this title.

COMPUTATION OF PRICES FOR AGRICULTURAL COMMODITIES FOR USE IN EVALUATION OF WATER RESOURCES DEVELOPMENT PROJECTS

Pub. L. 100–460, title VI, § 632, Oct. 1, 1988, 102 Stat. 2262, provided that: ''Hereafter, none of the funds appropriated in this or any other Act shall be used to alter the method of computing normalized prices for agricultural commodities for use by any Federal agency in evaluating water resources development projects to be undertaken in whole or in part with Federal funds that was in effect as of January 1, 1986.''

Similar provisions were contained in Pub. L. 100–202, § 101(k) [title VI, § 634], Dec. 22, 1987, 101 Stat. 1329–322, 1329–357.

§ 1962a–3. Review of river basin commission plans; report to President and Congress

Upon receipt of a plan or revision thereof from any river basin commission under the provisions of section 1962b–3(3) of this title, the Council shall review the plan or revision with special regard to—

(1) the efficacy of such plan or revision in achieving optimum use of the water and related land resources in the area involved;

(2) the effect of the plan on the achievement of other programs for the development of agricultural, urban, energy, industrial, recreational, fish and wildlife, and other resources of the entire Nation; and

(3) the contributions which such plan or revision will make in obtaining the Nation's economic and social goals.

Based on such review the Council shall—

(a) formulate such recommendations as it deems desirable in the national interest; and

(b) transmit its recommendations, together with the plan or revision of the river basin commission and the views, comments, and recommendations with respect to such plan or revision submitted by any Federal agency, Governor, interstate commission, or United States section of an international commission, to the President for his review and transmittal to the Congress with his recommendations in regard to authorization of Federal projects.

(Pub. L. 89–80, title I, § 104, July 22, 1965, 79 Stat. 245.)

EX. ORD. NO. 11747. DELEGATION OF PRESIDENTIAL FUNCTIONS

Ex. Ord. No. 11747, eff. Nov. 7, 1973, 38 F.R. 30993, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

The Chairman of the Water Resources Council is designated and empowered to exercise, without the approval, ratification, or other action of the President, the approval function for standards and procedures vested in the President by section 103 of the Water Resources Planning Act, as amended (42 U.S.C. 1962a–2).

§ 1962a–4. Administrative provisions

(a) Hearings, proceedings, evidence, reports; office space; use of mails; personnel; consultants; motor vehicles; necessary expenses; other powers

For the purpose of carrying out the provisions of this chapter, the Council may: (1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable; (2) acquire, furnish, and equip such office space as is necessary; (3) use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States; (4) employ and fix the compensation of such personnel as it deems advisable, in accordance with the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5; (5) procure services as authorized by section 3109 of title 5, at rates not in excess of the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5 in the case of individual experts or consultants; (6) purchase, hire, operate, and maintain passenger motor vehicles; and (7) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this chapter.

(b) Oaths

Any member of the Council is authorized to administer oaths when it is determined by a majority of the Council that testimony shall be taken or evidence received under oath.

(c) Records; public inspection

To the extent permitted by law, all appropriate records and papers of the Council may be made available for public inspection during ordinary office hours.

(d) Information and personnel from other Federal agencies

Upon request of the Council, the head of any Federal department or agency is authorized (1) to furnish to the Council such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (2) to detail to temporary duty with such Council on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

(e) Responsibility for personnel and funds

The Council shall be responsible for (1) the appointment and supervision of personnel, (2) the assignment of duties and responsibilities among such personnel, and (3) the use and expenditures of funds.

(Pub. L. 89–80, title I, § 105, July 22, 1965, 79 Stat. 246; Pub. L. 94–112, § 1(b), Oct. 16, 1975, 89 Stat. 575.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (a), ''chapter 51 and subchapter III of chapter 53 of title 5'' substituted for ''Classification Act of 1949, as amended'' and ''section 3109 of title 5'' substituted for ''section 15 of the Act of August 2, 1946 (5 U.S.C. 55a)'', on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1975—Subsec. (a)(5). Pub. L. 94–112 substituted ''not in excess of the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5 in the case of individual experts or consultants'' for ''not to exceed $100 per diem for individuals''.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SUBCHAPTER II—RIVER BASIN COMMISSIONS

§ 1962b. Creation of commissions; powers and duties

(a) The President is authorized to declare the establishment of a river basin water and related land resources commission upon request therefor by the Council, or request addressed to the Council by a State within which all or part of the basin or basins concerned are located if the request by the Council or by a State (1) defines the area, river basin, or group of related river basins for which a commission is requested, (2) is made in writing by the Governor or in such manner as State law may provide, or by the Council, and (3) is concurred in by the Council and by not less than one-half of the States within which portions of the basin or basins concerned are located and, in the event the Upper Colorado River Basin is involved, by at least three of the four States of Colorado, New Mexico, Utah, and Wyoming or, in the event the Columbia River Basin is involved, by at least three of the four States of Idaho, Montana, Oregon, and Washington. Such concurrences shall be in writing.

(b) Each such commission for an area, river basin, or group of river basins shall, to the extent consistent with section 1962–1 of this title—

(1) serve as the principal agency for the coordination of Federal, State, interstate, local and nongovernmental plans for the development of water and related land resources in its area, river basin, or group of river basins;

(2) prepare and keep up to date, to the extent practicable, a comprehensive, coordinated, joint plan for Federal, State, interstate, local and nongovernmental development of water and related resources: *Provided*, That the plan shall include an evaluation of all reasonable alternative means of achieving optimum development of water and related land resources of the basin or basins, and it may be prepared in stages, including recommendations with respect to individual projects;

(3) recommend long-range schedules of priorities for the collection and analysis of basic data and for investigation, planning, and construction of projects; and

(4) foster and undertake such studies of water and related land resources problems in its area, river basin, or group of river basins as are necessary in the preparation of the plan described in clause (2) of this subsection.

(Pub. L. 89–80, title II, § 201, July 22, 1965, 79 Stat. 246.)

EXECUTIVE ORDER NO. 11331

Ex. Ord. No. 11331, Mar. 6, 1967, 32 F.R. 3875, as amended by Ex. Ord. No. 11613, Aug. 2, 1971, 36 F.R. 14299; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the Pacific Northwest River Basins Commission, was revoked, effective Oct. 1, 1981, by section 5(a)(1) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45591, set out below.

EXECUTIVE ORDER NO. 11345

Ex. Ord. No. 11345, Apr. 20, 1967, 32 F.R. 6329, as amended by Ex. Ord. No. 11613, Aug. 2, 1971, 36 F.R. 14299; Ex. Ord. No. 11646, Feb. 8, 1972, 37 F.R. 2925; Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the Great Lakes Basin Commission, was revoked, effective Oct. 1, 1981, by section 5(a)(2) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45591, set out below.

EXECUTIVE ORDER NO. 11359

Ex. Ord. No. 11359, eff. June 20, 1967, 32 F.R. 8851, as amended by Ex. Ord. No. 11613, eff. Aug. 2, 1971, 36 F.R. 14299; Ex. Ord. No. 11635, eff. Dec. 9, 1971, 36 F.R. 23615, which established the Souris-Red-Rainy Basins Commission, was superseded by Ex. Ord. No. 11737, Sept. 7, 1973, 38 F.R. 24883, formerly set out below.

EXECUTIVE ORDER NO. 11371

Ex. Ord. No. 11371, Sept. 6, 1967, 32 F.R. 12903, as amended by Ex. Ord. No. 11528, Apr. 24, 1970, 35 F.R. 6695; Ex. Ord. No. 11613, Aug. 2, 1971, 36 F.R. 14299; Ex. Ord. No. 11707, Mar. 12, 1973, 38 F.R. 6877; Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the New England River Basins Commission, was revoked, effective Oct. 1, 1981, by section 5(a)(3) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45592, set out below.

EXECUTIVE ORDER NO. 11578

Ex. Ord. No. 11578, Jan. 13, 1971, 36 F.R. 683, as amended by Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the Ohio River Basin Commission, was revoked, effective Oct. 1, 1981, by section 5(a)(4) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45592, set out below.

EXECUTIVE ORDER NO. 11613

Ex. Ord. No. 11613, Aug. 2, 1971, 36 F.R. 14299, which provided for membership of the Environmental Protec-

tion Agency on the Pacific Northwest River Basins Commission, the Great Lakes Basin Commission, the Souris-Red-Rainy River Basins Commission, and the New England River Basins Commission, was omitted in view of the revocation of Ex. Ord. Nos. 11331, 11345, 11359, and 11371, which provided for the establishment, jurisdiction, functions, etc., of the Pacific Northwest River Basins Commission, the Great Lakes Basin Commission, the Souris-Red-Rainy River Basins Commission, and the New England River Basins Commission, respectively. See notes set out above.

EXECUTIVE ORDER NO. 11658

Ex. Ord. No. 11658, Mar. 22, 1972, 37 F.R. 6045, as amended by Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the Missouri River Basin Commission, was revoked, effective Oct. 1, 1981, by section 5(a)(5) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45592, set out below.

EXECUTIVE ORDER NO. 11659

Ex. Ord. No. 11659, Mar. 22, 1972, 37 F.R. 6047, as amended by Ex. Ord. No. 11737, Sept. 7, 1973, 38 F.R. 24883; Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the Upper Mississippi River Basin Commission, was revoked, effective Jan. 1, 1982, by section 5(b) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45592, set out below.

EXECUTIVE ORDER NO. 11737

Ex. Ord. No. 11737, Sept. 7, 1973, 38 F.R. 24883, which provided for the enlargement of the Upper Mississippi River Basin Commission, transferred all funds, property, etc., of the Souris-Red-Rainy River Basins Commission to the Upper Mississippi River Basin Commission, and superseded Ex. Ord. Nos. 11359 and 11635, was omitted in view of the revocation of Ex. Ord. No. 11659, which established the Upper Mississippi River Basin Commission and provided for its jurisdiction, functions, etc. See note set out above.

EXECUTIVE ORDER NO. 11882

Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293, relating to membership of the Energy Research and Development Administration on established river basin commissions, was omitted pursuant to Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

EX. ORD. NO. 12319. TERMINATION OF CERTAIN RIVER BASIN COMMISSIONS

Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45591, provided:

By the authority vested in me as President by the Constitution and laws of the United States, in order to ensure the orderly termination of the six river basin commissions established pursuant to the Water Resources Planning Act (42 U.S.C. 1962 et seq.), it is hereby ordered as follows:

SECTION 1. In accord with the decision of the Water Resources Council pursuant to Section 203(a) of the Water Resources Planning Act (42 U.S.C. 1962b–2(a)), the following river basin commissions shall terminate on the date indicated:

(a) Pacific Northwest River Basins Commission, terminated on September 30, 1981.

(b) Great Lakes Basin Commission, terminated on September 30, 1981.

(c) Ohio River Basin Commission, terminated on September 30, 1981.

(d) New England River Basins Commission, terminated on September 30, 1981.

(e) Missouri River Basin Commission, terminated on September 30, 1981.

(f) Upper Mississippi River Basin Commission, terminated on December 31, 1981.

SEC. 2. All Federal agencies shall cooperate with the commissions and the member States to achieve an orderly close out of commission activities and, if the member States so elect, to carry out an orderly transition of appropriate commission activities to the member States.

SEC. 3. To the extent permitted by law, the assets of the commissions which the Federal Government might otherwise be entitled to claim are to be transferred to the member States of the commissions, or such entities as the States acting through their representatives on the commissions may designate, to be used for such water and related land resources planning purposes as the States may decide among themselves. The terms and conditions for transfer of assets under this Section shall be subject to the approval of the Director of the Office of Management and Budget, or such Federal agency as he designates, before the transfer is effective.

SEC. 4. Federal agency members of river basin commissions are directed to continue coordination and cooperation in future State and inter-State basin planning arrangements.

SEC. 5. (a) Effective October 1, 1981, the following Executive Orders are revoked:

(1) Executive Order No. 11331, as amended, which established the Pacific Northwest River Basins Commission.

(2) Executive Order No. 11345, as amended, which established the Great Lakes Basin Commission.

(3) Executive Order No. 11371, as amended, which established the New England River Basins Commission.

(4) Executive Order No. 11578, as amended, which established the Ohio River Basin Commission.

(5) Executive Order No. 11658, as amended, which established the Missouri River Basin Commission.

(b) Effective January 1, 1982, Executive Order No. 11659, as amended, which established the Upper Mississippi River Basin Commission, is revoked.

RONALD REAGAN.

§ 1962b–1. Membership of commissions; appointment of chairman

Each river basin commission shall be composed of members appointed as follows:

(a) A chairman appointed by the President who shall also serve as chairman and coordinating officer of the Federal members of the commission and who shall represent the Federal Government in Federal-State relations on the commission and who shall not, during the period of his service on the commission, hold any other position as an officer or employee of the United States, except as a retired officer or retired civilian employee of the Federal Government;

(b) One member from each Federal department or independent agency determined by the President to have a substantial interest in the work to be undertaken by the commission, such member to be appointed by the head of such department or independent agency and to serve as the representative of such department or independent agency;

(c) One member from each State which lies wholly or partially within the area, river basin, or group of river basins for which the commission is established, and the appointment of each such member shall be made in accordance with the laws of the State which he represents. In the absence of governing provisions of State law, such State members shall be appointed and serve at the pleasure of the Governor;

(d) One member appointed by any interstate agency created by an interstate compact to which the consent of Congress has been given, and whose jurisdiction extends to the waters of

the area, river basin, or group of river basins for which the river basin commission is created;

(e) When deemed appropriate by the President, one member, who shall be appointed by the President, from the United States section of any international commission created by a treaty to which the consent of the Senate has been given, and whose jurisdiction extends to the waters of the area, river basin, or group of river basins for which the river basin commission is established.

(Pub. L. 89–80, title II, § 202, July 22, 1965, 79 Stat. 247.)

§ 1962b–2. Organization of commissions

(a) Commencement of functions; transfer of property, assets, and records upon termination of commission; availability of studies, data, and other materials to participants

Each river basin commission shall organize for the performance of its functions within ninety days after the President shall have declared the establishment of such commission, subject to the availability of funds for carrying on its work. A commission shall terminate upon decision of the Council or agreement of a majority of the States composing the commission. Upon such termination, all property, assets, and records of the commission shall thereafter be turned over to such agencies of the United States and the participating States as shall be appropriate in the circumstances: *Provided*, That studies, data, and other materials useful in water and related land resources planning to any of the participants shall be kept freely available to all such participants.

(b) Vice chairman; State election; State representation

State members of each commission shall elect a vice chairman, who shall serve also as chairman and coordinating officer of the State members of the commission and who shall represent the State governments in Federal-State relations on the commission.

(c) Vacancies; alternates for chairman and vice chairman

Vacancies in a commission shall not affect its powers but shall be filled in the same manner in which the original appointments were made: *Provided*, That the chairman and vice chairman may designate alternates to act for them during temporary absences.

(d) Consensus of members on issues; opportunities for individual views; record of position of chairman and vice chairman; final authority on procedural questions

In the work of the commission every reasonable endeavor shall be made to arrive at a consensus of all members on all issues; but failing this, full opportunity shall be afforded each member for the presentation and report of individual views: *Provided*, That at any time the commission fails to act by reason of absence of consensus, the position of the chairman, acting in behalf of the Federal members, and the vice chairman, acting upon instructions of the State members, shall be set forth in the record: *Provided further*, That the chairman, in consultation with the vice chairman, shall have the final authority, in the absence of an applicable by-law adopted by the commission or in the absence of a consensus, to fix the times and places for meetings, to set deadlines for the submission of annual and other reports, to establish subcommittees, and to decide such other procedural questions as may be necessary for the commission to perform its functions.

(Pub. L. 89–80, title II, § 203, July 22, 1965, 79 Stat. 248.)

§ 1962b–3. Duties of commissions

Each river basin commission shall—

(1) engage in such activities and make such studies and investigations as are necessary and desirable in carrying out the policy set forth in section 1962 of this title and in accomplishing the purposes set forth in section 1962b(b) of this title;

(2) submit to the Council and the Governor of each participating State a report on its work at least once each year. Such report shall be transmitted through the President to the Congress. After such transmission, copies of any such report shall be sent to the heads of such Federal, State, interstate, and international agencies as the President or the Governors of the participating States may direct;

(3) submit to the Council for transmission to the President and by him to the Congress, and the Governors and the legislatures of the participating States a comprehensive, coordinated, joint plan, or any major portion thereof or necessary revisions thereof, for water and related land resources development in the area, river basin, or group of river basins for which such commission was established. Before the commission submits such a plan or major portion thereof or revision thereof to the Council, it shall transmit the proposed plan or revision to the head of each Federal department or agency, the Governor of each State, and each interstate agency, from which a member of the commission has been appointed, and to the head of the United States section of any international commission if the plan, portion or revision deals with a boundary water or a river crossing a boundary, or any tributary flowing into such boundary water or river, over which the international commission has jurisdiction or for which it has responsibility. Each such department and agency head, Governor, interstate agency, and United States section of an international commission shall have ninety days from the date of the receipt of the proposed plan, portion, or revision to report its views, comments, and recommendations to the commission. The commission may modify the plan, portion, or revision after considering the reports so submitted. The views, comments, and recommendations submitted by each Federal department or agency head, Governor, interstate agency, and United States section of an international commission shall be transmitted to the Council with the plan, portion, or revision; and

(4) submit to the Council at the time of submitting such plan, any recommendations it may have for continuing the functions of the

commission and for implementing the plan, including means of keeping the plan up to date.

(Pub. L. 89–80, title II, § 204, July 22, 1965, 79 Stat. 248.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in par. (2) of this section relating to transmittal of reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 5 on page 40 of House Document No. 103–7.

UPPER MISSISSIPPI RIVER SYSTEM COMPREHENSIVE MASTER MANAGEMENT PLAN

Pub. L. 95–502, title I, § 101, Oct. 21, 1978, 92 Stat. 1693, as amended by Pub. L. 99–662, title XI, § 1103(c)(2), Nov. 17, 1986, 100 Stat. 4226, which provided for the development, revision, and implementation of the Upper Mississippi River System comprehensive master management plan by the Upper Mississippi River Basin Commission, was omitted in view of the termination of the Upper Mississippi River Basin Commission on Dec. 31, 1981, pursuant to section 1(f) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45591, set out as a note under section 1962b of this title.

§ 1962b–4. Administrative provisions

(a) Hearings, proceedings, evidence, reports; office space; use of mails; personnel, consultants, and professional service contracts; personnel from other agencies; retirement and employee benefit system for personnel without coverage; motor vehicles; necessary expenses; other powers

For the purpose of carrying out the provisions of this subchapter, each river basin commission may—

(1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable;

(2) acquire, furnish, and equip such office space as is necessary;

(3) use the United States mails in the same manner and upon the same conditions as departments and agencies of the United States;

(4) employ and compensate such personnel as it deems advisable, including consultants, at rates not in excess of the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5, and retain and compensate such professional or technical service firms as it deems advisable on a contract basis;

(5) arrange for the services of personnel from any State or the United States, or any subdivision or agency thereof, or any intergovernmental agency;

(6) make arrangements, including contracts, with any participating government, except the United States or the District of Columbia, for inclusion in a suitable retirement and employee benefit system of such of its personnel as may not be eligible for or continuing in another governmental retirement or employee benefit system, or otherwise provide for such coverage of its personnel;

(7) purchase, hire, operate, and maintain passenger motor vehicles; and

(8) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this chapter.

(b) Oaths

The chairman of a river basin commission, or any member of such commission designated by the chairman thereof for the purpose, is authorized to administer oaths when it is determined by a majority of the commission that testimony shall be taken or evidence received under oath.

(c) Records; public inspection

To the extent permitted by law, all appropriate records and papers of each river basin commission shall be made available for public inspection during ordinary office hours.

(d) Information and personnel from other Federal agencies

Upon request of the chairman of any river basin commission, or any member or employee of such commission designated by the chairman thereof for the purpose, the head of any Federal department or agency is authorized (1) to furnish to such commission such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (2) to detail to temporary duty with such commission on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

(e) Responsibility for personnel and funds

The chairman of each river basin commission shall, with the concurrence of the vice chairman, appoint the personnel employed by such commission, and the chairman shall, in accordance with the general policies of such commission with respect to the work to be accomplished by it and the timing thereof, be responsible for (1) the supervision of personnel employed by such commission, (2) the assignment of duties and responsibilities among such personnel, and (3) the use and expenditure of funds available to such commission.

(Pub. L. 89–80, title II, § 205, July 22, 1965, 79 Stat. 249; Pub. L. 94–112, § 1(c), Oct. 16, 1975, 89 Stat. 575.)

AMENDMENTS

1975—Subsec. (a)(4). Pub. L. 94–112 substituted ''not in excess of the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5'' for ''not to exceed $100 per diem''.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1962b–5. Compensation of members and chairmen

(a) Additional compensation prohibited to members appointed from Federal departments, agencies, and international commissions

Any member of a river basin commission appointed pursuant to section 1962b–1(b) and (e) of

this title shall receive no additional compensation by virtue of his membership on the commission, but shall continue to receive, from appropriations made for the agency from which he is appointed, the salary of his regular position when engaged in the performance of the duties vested in the commission.

(b) Compensation of members from States and interstate agencies

Members of a commission, appointed pursuant to section 1962b–1(c) and (d) of this title, shall each receive such compensation as may be provided by the States or the interstate agency respectively, which they represent.

(c) Compensation of chairman

The per annum compensation of the chairman of each river basin commission shall be determined by the President, but when employed on a full-time annual basis shall not exceed the maximum scheduled rate for grade GS–18 or when engaged in the performance of the commission's duties on an intermittent basis such compensation shall be not more than $100 per day and shall not exceed $12,000 in any year.

(Pub. L. 89–80, title II, § 206, July 22, 1965, 79 Stat. 250.)

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1962b–6. Expenses of commissions

(a) Federal share; apportionment of remainder; annual budget; estimates of proposed Federal appropriations; advances against delayed State appropriations; credit to account in the Treasury

Each commission shall recommend what share of its expenses shall be borne by the Federal Government, but such share shall be subject to approval by the Council. The remainder of the commission's expenses shall be otherwise apportioned as the commission may determine. Each commission shall prepare a budget annually and transmit it to the Council and the States. Estimates of proposed appropriations from the Federal Government shall be included in the budget estimates submitted by the Council under chapter 11 of title 31, and may include an amount for advance to a commission against State appropriations for which delay is anticipated by reason of later legislative sessions. All sums appropriated to or otherwise received by a commission shall be credited to the commission's account in the Treasury of the United States.

(b) Acceptance, reception, utilization, and disposal of appropriations, donations, and grants

A commission may accept for any of its purposes and functions appropriations, donations, and grants of money, equipment, supplies, materials, and services from any State or the United States or any subdivision or agency thereof, or intergovernmental agency, and may receive, utilize, and dispose of the same.

(c) Accounts of receipts and disbursements; annual audit; inclusion in annual report

The commission shall keep accurate accounts of all receipts and disbursements. The accounts shall be audited at least annually in accordance with generally accepted auditing standards by independent certified or licensed public accountants, certified or licensed by a regulatory authority of a State, and the report of the audit shall be included in and become a part of the annual report of the commission.

(d) Inspection of accounts

The accounts of the commission shall be open at all reasonable times for inspection by representatives of the jurisdictions and agencies which make appropriations, donations, or grants to the commission.

(Pub. L. 89–80, title II, § 207, July 22, 1965, 79 Stat. 250.)

CODIFICATION

In subsec. (a), "chapter 11 of title 31" substituted for "the Budget and Accounting Act of 1921, as amended [31 U.S.C. 1 et seq.]" on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

SUBCHAPTER III—FINANCIAL ASSISTANCE TO STATES FOR COMPREHENSIVE PLANNING GRANT AUTHORIZATIONS

§ 1962c. Authorization of appropriations; coordination of related Federal planning assistance programs; utilization of Federal agencies administering programs contributing to water resources planning

(a) In recognition of the need for increased participation by the States in water and related land resources planning to be effective, there are hereby authorized to be appropriated to the Council, $3,000,000 for fiscal year 1979 for grants to States to assist them in developing and participating in the development of comprehensive water and related land resources plans.

(b) The Council, with the approval of the President, shall prescribe such rules, establish such procedures, and make such arrangements and provisions relating to the performance of its functions under this subchapter, and the use of funds available therefor, as may be necessary in order to assure (1) coordination of the program authorized by this subchapter with related Federal planning assistance programs, including the program authorized under section 701 of the Housing Act of 1954[1] and (2) appropriate utilization of other Federal agencies administering programs which may contribute to achieving the purpose of this chapter.

(Pub. L. 89–80, title III, § 301, July 22, 1965, 79 Stat. 251; Pub. L. 94–112, § 1(d), Oct. 16, 1975, 89 Stat. 575; Pub. L. 95–404, § 1(d), Sept. 30, 1978, 92 Stat. 864.)

REFERENCES IN TEXT

Section 701 of the Housing Act of 1954, referred to in subsec. (b), is section 701 of act Aug. 2, 1954, ch. 649, 68

[1] See References in Text note below.

Stat. 640, which was classified to section 461 of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97–35, title III, § 313(b), Aug. 13, 1981, 95 Stat. 398.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–404 substituted "$3,000,000 for fiscal year 1979" for "for fiscal years 1977 and 1978, $5,000,000 in each such year".

1975—Subsec. (a). Pub. L. 94–112 substituted "for fiscal years 1977 and 1978," for "for the next fiscal year beginning after July 22, 1965, and for the nine succeeding fiscal years thereafter,".

INCREASES IN SALARY, PAY, RETIREMENT, OR OTHER BENEFITS FOR FEDERAL EMPLOYEES

For authority for payment of increases in salary and other Federal employee benefits, see section 1(e) of Pub. L. 95–404, set out as a note under section 1962d of this title.

§ 1962c–1. Allotments to States: basis, population and land area determinations; payments to States: amount

(a) From the sums appropriated pursuant to section 1962c of this title for any fiscal year the Council shall from time to time make allotments to the States, in accordance with its regulations, on the basis of (1) the population, (2) the land area, (3) the need for comprehensive water and related land resources planning programs, and (4) the financial need of the respective States. For the purposes of this section the population of the States shall be determined on the basis of the latest estimates available from the Department of Commerce and the land area of the States shall be determined on the basis of the official records of the United States Geological Survey.

(b) From each State's allotment under this section for any fiscal year the Council shall pay to such State an amount which is not more than 50 per centum of the cost of carrying out its State program approved under section 1962c–2 of this title, including the cost of training personnel for carrying out such program and the cost of administering such program.

(Pub. L. 89–80, title III, § 302, July 22, 1965, 79 Stat. 251.)

§ 1962c–2. State programs; approval by Council; submission; requirements; notice and hearing prior to disapproval

The Council shall approve any program for comprehensive water and related land resources planning which is submitted by a State, if such program—

(1) provides for comprehensive planning with respect to intrastate or interstate water resources, or both, in such State to meet the needs for water and water-related activities taking into account prospective demands for all purposes served through or affected by water and related land resources development, with adequate provision for coordination with all Federal, State, and local agencies, and nongovernmental entities having responsibilities in affected fields;

(2) provides, where comprehensive statewide development planning is being carried on with or without assistance under section 701 of the Housing Act of 1954[1] or under the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 460*l*–4 et seq.], for full coordination between comprehensive water resources planning and other statewide planning programs and for assurances that such water resources planning will be in conformity with the general development policy in such State;

(3) designates a State agency (hereinafter referred to as the "State agency") to administer the program;

(4) provides that the State agency will make such reports in such form and containing such information as the Council from time to time reasonably requires to carry out its functions under this subchapter;

(5) sets forth the procedure to be followed in carrying out the State program and in administering such program; and

(6) provides such accounting, budgeting, and other fiscal methods and procedures as are necessary for keeping appropriate accountability of the funds and for the proper and efficient administration of the program.

The Council shall not disapprove any program without first giving reasonable notice and opportunity for hearing to the State agency administering such program.

(Pub. L. 89–80, title III, § 303, July 22, 1965, 79 Stat. 252.)

REFERENCES IN TEXT

Section 701 of the Housing Act of 1954, referred to in par. (2), is section 701 of act Aug. 2, 1954, ch. 649, 68 Stat. 640, which was classified to section 461 of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97–35, title III, § 313(b), Aug. 13, 1981, 95 Stat. 398.

The Land and Water Conservation Fund Act of 1965, referred to in par. (2), is Pub. L. 88–578, Sept. 3, 1964, 78 Stat. 897, as amended, which is classified generally to part B (§ 460*l*–4 et seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 460*l*–4 of Title 16 and Tables.

§ 1962c–3. Noncompliance; curtailing of payments

Whenever the Council after reasonable notice and opportunity for hearing to a State agency finds that—

(a) the program submitted by such State and approved under section 1962c–2 of this title has been so changed that it no longer complies with a requirement of such section; or

(b) in the administration of the program there is a failure to comply substantially with such a requirement,

the Council shall notify such agency that no further payments will be made to the State under this subchapter until it is satisfied that there will no longer be any such failure. Until the Council is so satisfied, it shall make no further payments to such State under this subchapter.

(Pub. L. 89–80, title III, § 304, July 22, 1965, 79 Stat. 252.)

§ 1962c–4. Payments to States; computation of amount

The method of computing and paying amounts pursuant to this subchapter shall be as follows:

[1] See References in Text note below.

(1) The Council shall, prior to the beginning of each calendar quarter or other period prescribed by it, estimate the amount to be paid to each State under the provisions of this subchapter for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation, as the Council may find necessary.

(2) The Council shall pay to the State, from the allotment available therefor, the amount so estimated by it for any period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which it finds that its estimate of the amount to be paid such State for any prior period under this subchapter was greater or less than the amount which should have been paid to such State for such prior period under this subchapter. Such payments shall be made through the disbursing facilities of the Treasury Department, at such times and in such installments as the Council may determine.

(Pub. L. 89–80, title III, § 305, July 22, 1965, 79 Stat. 253.)

§ 1962c–5. "State" defined

For the purpose of this subchapter the term ''State'' means a State, the District of Columbia, Puerto Rico, the Virgin Islands or Guam.

(Pub. L. 89–80, title III, § 306, July 22, 1965, 79 Stat. 253; Pub. L. 94–285, § 2, May 12, 1976, 90 Stat. 516.)

AMENDMENTS

1976—Pub. L. 94–285 inserted reference to Guam.

§ 1962c–6. Records; audit and examination

(a) Each recipient of a grant under this chapter shall keep such records as the Chairman of the Council shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, and the total cost of the project or undertaking in connection with which the grant was made and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Chairman of the Council and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of the grant that are pertinent to the determination that funds granted are used in accordance with this chapter.

(Pub. L. 89–80, title III, § 307, July 22, 1965, 79 Stat. 253.)

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 1962d. Authorization of appropriations to the Water Resources Council

There are authorized to be appropriated to the Water Resources Council:

(a) Limitation for single river basin commission

The sum of $2,886,000 for fiscal year 1979 for the Federal share of the expenses of administration and operation of river basin commissions, including salaries and expenses of the chairmen, but not including funds authorized by subsection (c) below: *Provided*, That not more than $750,000 annually shall be available under this subsection for any single river basin commission;

(b) Limitation on the expenses of the Water Resources Council

the[1] sum of $2,668,000 for fiscal year 1979 for the expenses of the Water Resources Council in administering this chapter, not including funds authorized by subsection (c) below;

(c) Limitation on availability of funds for preparation of certain studies and for assessments and plans

The sum of $3,179,900 for fiscal year 1979 for preparation of assessments, and for directing and coordinating the preparation of such river basin plans as the Council determines are necessary and desirable in carrying out the policy of this chapter: *Provided*, That $828,900 shall be available under this subsection for preparation of the Columbia River Estuary Special Study: *Provided further*, That $308,000 shall be available under this subsection for preparation of the New England Port and Harbor Study and $135,000 shall be available for completion of the Hudson River Basin Level B Study: *Provided further*, That $150,000 shall be available under this subsection for completion of Case Studies of the Application of Cost Sharing Policy Options for Flood Plain Management in the Connecticut River Basin: *Provided further*, That not more than $2,500,000 shall be available under this subsection for the preparation of assessments: *Provided further*, That the Council may transfer funds authorized by this subsection to river basin commissions and to Federal and State agencies upon such terms and conditions as it determines are necessary and desirable to carry out the above functions in an economical, efficient, and timely manner, and that such commissions and agencies are hereby authorized to receive and expend such funds pursuant to this subsection.

(Pub. L. 89–80, title IV, § 401, July 22, 1965, 79 Stat. 253; Pub. L. 90–547, Oct. 2, 1968, 82 Stat. 935; Pub. L. 92–27, June 17, 1971, 85 Stat. 77; Pub. L. 92–396, Aug. 20, 1972, 86 Stat. 578; Pub. L. 93–55, July 1, 1973, 87 Stat. 140; Pub. L. 94–112, § 1(e), Oct. 16, 1975, 89 Stat. 575; Pub. L. 94–285, § 1, May 12, 1976, 90 Stat. 516; Pub. L. 95–41, § 1, June 6, 1977, 91 Stat. 209; Pub. L. 95–404, § 1(a)–(c), Sept. 30, 1978, 92 Stat. 864.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–404, § 1(a), substituted ''The sum of $2,886,000 for fiscal year 1979'' for ''not to exceed $6,000,000 for fiscal year 1978''.

Subsec. (b). Pub. L. 95–404, § 1(b), substituted ''the sum of $2,668,000 for fiscal year 1979'' for ''not to exceed $2,000,000 for fiscal year 1978''.

Subsec. (c). Pub. L. 95–404, § 1(c), substituted ''The sum of $3,179,900 for fiscal year 1979'' for ''not to exceed the sum of $3,905,000 for fiscal year 1978'' and inserted provisions making available the sums of $828,900 for the Columbia River Estuary Special Study, $308,000 for the

[1] So in original. Probably should be capitalized.

New England Port and Harbor Study, $135,000 for the Hudson River Basin Level B Study, and $150,000 for the Case Studies of the Application of Cost Sharing Policy Options for Flood Plan Management in the Connecticut River Basin.

1977—Subsecs. (a), (b). Pub. L. 95–41, § 1(b), (c), substituted ''for fiscal year 1978'' for ''annually''.

Subsec. (c). Pub. L. 95–41, § 1(a), substituted ''not to exceed the sum of $3,905,000 for fiscal year 1978'' for ''not to exceed a total of $10,000,000 for fiscal years 1976 and 1977''.

1976—Subsec. (b). Pub. L. 94–285 substituted ''$2,000,000'' for ''$1,500,000''.

1975—Subsec. (c). Pub. L. 94–112 substituted ''not to exceed a total of $10,000,000 for fiscal years 1976 and 1977'' for ''not to exceed $3,500,000 annually for fiscal years 1974 and 1975''.

1973—Subsec. (c). Pub. L. 93–55 substituted ''annually for fiscal years 1974 and 1975'' for ''in fiscal year 1973 and such annual amounts as may be authorized by subsequent Acts''.

1972—Pub. L. 92–396 authorized appropriations to the Water Resources Council, and in subsec. (a), substituted ''chairmen'' for ''chairman'', in subsec. (b) inserted ''not including funds authorized by subsection (c) below'', and added subsec. (c).

1971—Pub. L. 92–27 substituted appropriation authorization of $6,000,000 annually for Federal share of expenses of administration and operation of river basin commissions, including salaries and expenses of chairman, for former provisions for annual appropriation authorization of $500,000; $6,000,000; and $400,000 for subchapters I, II, and III of this chapter and authorize appropriation of $1.5 million annually for administration expenses of Water Resources Council.

1968—Pub. L. 90–547 increased authorization for appropriations to carry out provisions of subchapter I of this chapter from not to exceed $300,000 annually to not to exceed $500,000 annually.

INCREASES IN SALARY, PAY, RETIREMENT, OR OTHER BENEFITS FOR FEDERAL EMPLOYEES

Section 1(e) of Pub. L. 95–404 provided that: ''Appropriations authorized by this Act [amending sections 1962c and 1962d of this title] for salary, pay, retirement, or other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases authorized by law.''

§ 1962d–1. Rules and regulations

The Council is authorized to make such rules and regulations as it may deem necessary or appropriate for carrying out those provisions of this chapter which are administered by it.

(Pub. L. 89–80, title IV, § 402, July 22, 1965, 79 Stat. 254.)

§ 1962d–2. Delegation of functions

The Council is authorized to delegate to any member or employee of the Council its administrative functions under section 1962a–4 of this title and the detailed administration of the grant program under subchapter III of this chapter.

(Pub. L. 89–80, title IV, § 403, July 22, 1965, 79 Stat. 254.)

§ 1962d–3. Utilization of personnel

The Council may, with the consent of the head of any other department or agency of the United States, utilize such officers and employees of such agency on a reimbursable basis as are necessary to carry out the provisions of this chapter.

(Pub. L. 89–80, title IV, § 404, July 22, 1965, 79 Stat. 254.)

§ 1962d–4. Northeastern United States water supply

(a) Plans for Federal construction, operation, and maintenance of reservoir system within certain river basins and conveyance and purification facilities through cooperation of Secretary of the Army and government agencies; financial participation of States

Congress hereby recognizes that assuring adequate supplies of water for the great metropolitan centers of the United States has become a problem of such magnitude that the welfare and prosperity of this country require the Federal Government to assist in the solution of water supply problems. Therefore, the Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate with Federal, State, and local agencies in preparing plans in accordance with the Water Resources Planning Act [42 U.S.C. 1962 et seq.] to meet the long-range water needs of the northeastern United States. This plan may provide for the construction, operation, and maintenance by the United States of (1) a system of major reservoirs to be located within those river basins of the northeastern United States which drain into the Chesapeake Bay, those that drain into the Atlantic Ocean north of the Chesapeake Bay, those that drain into Lake Ontario, and those that drain into the Saint Lawrence River, (2) major conveyance facilities by which water may be exchanged between these river basins to the extent found desirable in the national interest, and (3) major purification facilities. Such plans shall provide for appropriate financial participation by the States, political subdivisions thereof, and other local interests.

(b) Construction, operation, and maintenance of reservoirs and conveyance and purification facilities

The Secretary of the Army, acting through the Chief of Engineers, shall construct, operate, and maintain those reservoirs, conveyance facilities, and purification facilities, which are recommended in the plan prepared in accordance with subsection (a) of this section, and which are specifically authorized by law enacted after October 27, 1965.

(c) Reservoirs as components of river basin and water supply plans

Each reservoir included in the plan authorized by this section shall be considered as a component of a comprehensive plan for the optimum development of the river basin in which it is situated, as well as a component of the plan established in accordance with this section.

(Pub. L. 89–298, title I, § 101, Oct. 27, 1965, 79 Stat. 1073.)

REFERENCES IN TEXT

The Water Resources Planning Act, referred to in subsec. (a), is Pub. L. 89–80, July 22, 1965, 79 Stat. 244, as amended, which is classified generally to this chapter (§ 1962 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1962 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–5. Water resources development projects involving navigation, flood control, and shore protection

(a) Construction, operation, and maintenance; limitation on estimated Federal first cost of construction; Congressional committee approval of projects; reports to Congress

The Secretary of the Army, acting through the Chief of Engineers, is authorized to construct, operate, and maintain any water resource development project, including single and multiple purpose projects involving, but not limited to, navigation, flood control, and shore protection, if the estimated Federal first cost of constructing such project is less than $15,000,000. No appropriation shall be made to construct, operate, or maintain any such project if such project has not been approved by resolutions adopted by the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives, respectively. For the purpose of securing consideration of such approval the Secretary shall transmit to Congress a report of such proposed project, including all relevant data and all costs.

(b) Local cooperation requirements based on certain estimated Federal first cost of construction

Any water resource development project authorized to be constructed by this section shall be subject to the same requirements of local cooperation as it would be if the estimated Federal first cost of such project were $15,000,000 or more.

(Pub. L. 89–298, title II, § 201, Oct. 27, 1965, 79 Stat. 1073; Pub. L. 94–587, § 131, Oct. 22, 1976, 90 Stat. 2928; Pub. L. 103–437, § 15(d), Nov. 2, 1994, 108 Stat. 4592.)

CODIFICATION

Section was enacted as part of the Flood Control Act of 1965, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–437 substituted ''Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House'' for ''Committees on Public Works of the Senate and House''.

1976—Subsec. (a). Pub. L. 94–587, § 131(a), substituted ''$15,000,000'' for ''$10,000,000''.

Subsec. (b). Pub. L. 94–587, § 131(b), substituted ''$15,000,000'' for ''$10,000,000''.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

LOCAL COOPERATION, STUDY; REPORT TO CONGRESS

Pub. L. 93–251, title I, § 24, Mar. 7, 1974, 88 Stat. 20, provided that the Secretary of the Army make a study of the items of local cooperation involving hold and save harmless provisions which have been required for water resource development projects under his jurisdiction and report on such study to Congress not later than June 30, 1975.

LAND AND WATER USE, STUDY; REPORT TO CONGRESS

Pub. L. 93–251, title I, § 25, Mar. 7, 1974, 88 Stat. 20, provided that the Secretary of the Army conduct a study on land use practices and recreational uses at water resource development projects under his jurisdiction and report on such study to Congress not later than June 30, 1975.

NATIONAL STREAMBANK EROSION PREVENTION AND CONTROL DEMONSTRATION PROGRAM

Pub. L. 93–251, title I, § 32, Mar. 7, 1974, 88 Stat. 21, as amended by Pub. L. 94–587, §§ 155, 161, Oct. 22, 1976, 90 Stat. 2932, 2933, known as the ''Streambank Erosion Control Evaluation and Demonstration Act of 1974'', directed the Secretary of the Army, acting through the Chief of Engineers, to establish and conduct for a period of five fiscal years a national streambank erosion prevention and control demonstration program, to consist of an evaluation of the extent of streambank erosion on navigable rivers and their tributaries; development of new methods and techniques for bank protection, research on soil stability, and identification of the causes of erosion; a report to the Congress on the results of such studies and the recommendations of the Secretary of the Army on means for the prevention and correction of streambank erosion; and demonstration projects, including bank protection works. The final report to the Congress was to be made by Secretary of the Army no later than Dec. 31, 1981.

NATIONAL SHORELINE EROSION CONTROL DEVELOPMENT AND DEMONSTRATION PROGRAM

Pub. L. 93–251, title I, § 54, Mar. 7, 1974, 88 Stat. 26, known as the ''Shoreline Erosion Control Demonstration Act of 1974'', directed the Secretary of the Army, acting through the Chief of Engineers, to establish and conduct for a period of five fiscal years a national shoreline erosion control development and demonstration program, to consist of planning, constructing, operating, evaluating, and demonstrating prototype shoreline erosion control devices, both engineered and vegetative, and to be carried out in cooperation with the Secretary of Agriculture, particularly with respect to vegetative means of preventing and controlling shoreline erosion, and in cooperation with Federal, State, and local agencies, private organizations, and the Shoreline Erosion Advisory Panel established pursuant to section 54(d) of Pub. L. 93–251. The Panel was to expire ninety days after termination of the five-year program. The Secretary of the Army was to submit to Congress a final report, sixty days after the fifth fiscal year of funding, such report to include a comprehensive evaluation of the national shoreline erosion control development and demonstration program.

TECHNICAL AND ENGINEERING ASSISTANCE FOR NON-DEVELOPMENT OF EROSION PREVENTION METHODS

Pub. L. 93–251, title I, § 55, Mar. 7, 1974, 88 Stat. 28, provided that: ''The Secretary of the Army, acting through the Chief of Engineers, is authorized to provide technical and engineering assistance to non-Federal public interests in developing structural and non-structural methods of preventing damages attributable to shore and streambank erosion.''

VISITOR PROTECTION SERVICES, STUDY; REPORT TO CONGRESS

Pub. L. 93–251, title I, § 75, Mar. 7, 1974, 88 Stat. 32, directed Secretary of the Army to conduct a study on need for and means of providing visitor protection services at water resource development projects under jurisdiction of Department of the Army and report on such study to Congress not later than Dec. 31, 1974.

§ 1962d–5a. Reimbursement to States

(a) Combination of reimbursement of installation costs and reduction in contributions; single project limitation

The Secretary of the Army, acting through the Chief of Engineers, may, when he determines it to be in the public interest, enter into agreements providing for reimbursement to States or political subdivisions thereof for work to be performed by such non-Federal public bodies at water resources development projects authorized for construction under the Secretary of the Army and the supervision of the Chief of Engineers. Such agreements may provide for reimbursement of installation costs incurred by such entities or an equivalent reduction in the contributions they would otherwise be required to make, or in appropriate cases, for a combination thereof. The amount of Federal reimbursement, including reductions in contributions, for a single project shall not exceed $5,000,000 or 1 percent of the total project cost, whichever is greater; except that the amount of actual Federal reimbursement, including reductions in contributions, for such project may not exceed $5,000,000 in any fiscal year.

(b) Agreement provisions; termination of agreement for failure to commence work

Agreements entered into pursuant to this section shall (1) fully describe the work to be accomplished by the non-Federal public body, and be accompanied by an engineering plan if necessary therefor; (2) specify the manner in which such work shall be carried out; (3) provide for necessary review of design and plans, and inspection of the work by the Chief of Engineers or his designee; (4) state the basis on which the amount of reimbursement shall be determined; (5) state that such reimbursement shall be dependent upon the appropriation of funds applicable thereto or funds available therefor, and shall not take precedence over other pending projects of higher priority for improvements; and (6) specify that reimbursement or credit for non-Federal installation expenditures shall apply only to work undertaken on Federal projects after project authorization and execution of the agreement, and does not apply retroactively to past non-Federal work. Each such agreement shall expire three years after the date on which it is executed if the work to be undertaken by the non-Federal public body has not commenced before the expiration of that period. The time allowed for completion of the work will be determined by the Secretary of the Army, acting through the Chief of Engineers, and stated in the agreement.

(c) Certification of performance

No reimbursement shall be made, and no expenditure shall be credited, pursuant to this section, unless and until the Chief of Engineers or his designee, has certified that the work for which reimbursement or credit is requested has been performed in accordance with the agreement.

(d) Beach erosion control projects

Reimbursement for work commenced by non-Federal public bodies no later than one year after August 13, 1968, to carry out or assist in carrying out projects for beach erosion control, may be made in accordance with the provisions of section 426f of title 33. Reimbursement for such work may, as an alternative, be made in accordance with the provisions of this section, provided that agreement required herein shall have been executed prior to commencement of the work. Expenditures for projects for beach erosion control commenced by non-Federal public bodies subsequent to one year after August 13, 1968, may be reimbursed by the Secretary of the Army, acting through the Chief of Engineers, only in accordance with the provisions of this section.

(e) Prohibition of construction for Federal assumption of responsibilities of non-Federal bodies or for Federal liability for unnecessary or inapplicable project work of such bodies

This section shall not be construed (1) as authorizing the United States to assume any responsibilities placed upon a non-Federal body by the conditions of project authorization, or (2) as committing the United States to reimburse non-Federal interests if the Federal project is not undertaken or is modified so as to make the work performed by the non-Federal Public body no longer applicable.

(f) Allotment limitation for any fiscal year; specific project reimbursement authorizations

The Secretary of the Army is authorized to allot from any appropriations hereafter made for civil works, not to exceed $10,000,000 for any one fiscal year to carry out the provisions of this section. This limitation does not include specific project authorizations providing for reimbursement.

(Pub. L. 90–483, title II, § 215, Aug. 13, 1968, 82 Stat. 747; Pub. L. 99–662, title IX, § 913, Nov. 17, 1986, 100 Stat. 4190; Pub. L. 100–676, § 12, Nov. 17, 1988, 102 Stat. 4025; Pub. L. 104–303, title II, § 224(a), Oct. 12, 1996, 110 Stat. 3697.)

CODIFICATION

Section was enacted as part of the Flood Control Act of 1968, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–303, in last sentence, substituted ''$5,000,000'' for ''$3,000,000'' before ''or 1 percent'' and ''any fiscal year.'' for ''any fiscal year..''

1988—Subsec. (a). Pub. L. 100–676 inserted before period at end ''or 1 percent of the total project cost, whichever is greater; except that the amount of actual Federal reimbursement, including reductions in contributions, for such project may not exceed $5,000,000 in any fiscal year.''

1986—Subsec. (a). Pub. L. 99–662 substituted ''$3,000,000'' for ''$1,000,000''.

§ 1962d–5b. Water resources projects; written agreement requirement

(a) Cooperation of non-Federal interest

After December 31, 1970, the construction of any water resources project, or an acceptable separable element thereof, by the Secretary of the Army, acting through the Chief of Engineers, or by a non-Federal interest where such

interest will be reimbursed for such construction under the provisions of section 1962d–5a of this title or under any other provision of law, shall not be commenced until each non-Federal interest has entered into a written agreement with the Secretary of the Army to furnish its required cooperation for the project or the appropriate element of the project, as the case may be; except that no such agreement shall be required if the Secretary determines that the administrative costs associated with negotiating, executing, or administering the agreement would exceed the amount of the contribution required from the non-Federal interest and are less than $25,000. In any such agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future appropriations for such performance and payment when obligating future appropriations would be inconsistent with constitutional or statutory limitations of the State or a political subdivision of the State.

(b) Definition of non-Federal interest

A non-Federal interest shall be a legally constituted public body with full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform.

(c) Enforcement; jurisdiction

Every agreement entered into pursuant to this section shall be enforcible in the appropriate district court of the United States.

(d) Nonperformance of terms of agreement by non-Federal interest; notice; reasonable opportunity for performance; performance by Chief of Engineers

After commencement of construction of a project, the Chief of Engineers may undertake performance of those items of cooperation necessary to the functioning of the project for its purposes, if he has first notified the non-Federal interest of its failure to perform the terms of its agreement and has given such interest a reasonable time after such notification to so perform.

(e) Effective date

This section shall not apply to any project the construction of which was commenced before January 1, 1972, or to the assurances for future demands required by the Water Supply Act of 1958, as amended [43 U.S.C. 390b].

(Pub. L. 91–611, title II, § 221, Dec. 31, 1970, 84 Stat. 1831; Pub. L. 92–222, § 4, Dec. 23, 1971, 85 Stat. 799; Pub. L. 99–662, title IX, § 912(a), Nov. 17, 1986, 100 Stat. 4189; Pub. L. 104–106, div. A, title X, § 1064(d), Feb. 10, 1996, 110 Stat. 445; Pub. L. 104–303, title II, § 220, Oct. 12, 1996, 110 Stat. 3696; Pub. L. 106–541, title II, § 201, Dec. 11, 2000, 114 Stat. 2587.)

REFERENCES IN TEXT

The Water Supply Act of 1958, as amended, referred to in subsec. (e), is Pub. L. 85–500, title III, § 301, July 3, 1958, 72 Stat. 319, as amended, which is classified to section 390b of Title 43, Public Lands.

CODIFICATION

Section was enacted as part of the Flood Control Act of 1970, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–541 in last sentence, struck out ''State legislative'' after ''obligate future'', substituted ''constitutional'' for ''State constitutional'', and inserted ''of the State or a political subdivision of the State'' before period at end.

1996—Subsec. (a). Pub. L. 104–303, in first sentence, inserted before period at end ''; except that no such agreement shall be required if the Secretary determines that the administrative costs associated with negotiating, executing, or administering the agreement would exceed the amount of the contribution required from the non-Federal interest and are less than $25,000''.

Subsecs. (e), (f). Pub. L. 104–106 redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: ''The Secretary of the Army, acting through the Chief of Engineers, shall maintain a continuing inventory of agreements and the status of their performance, and shall report thereon annually to the Congress.''

1986—Subsec. (a). Pub. L. 99–662 inserted '', or an acceptable separable element thereof,'', ''or the appropriate element of the project, as the case may be'', and ''In any such agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future State legislative appropriations for such performance and payment when obligating future appropriations would be inconsistent with State constitutional or statutory limitations.''

1971—Subsec. (f). Pub. L. 92–222 made provisions of section inapplicable to the assurances for future demands required by the Water Supply Act of 1958, as amended.

COMPLIANCE WITH COOPERATION REQUIREMENTS FOR NON-FEDERAL INTERESTS IN WATER RESOURCES PROJECTS

Section 912(b) of Pub. L. 99–662 provided that:

''(1) The Secretary may require compliance with any requirements pertaining to cooperation by non-Federal interests in carrying out any water resources project authorized before, on, or after the date of enactment of this Act [Nov. 17, 1986].

''(2) Whenever on the basis of any information available to the Secretary, the Secretary finds that any non-Federal interest is not providing cooperation required under subsection (a) [amending this section], the Secretary shall issue an order requiring such non-Federal interest to provide such cooperation. After notice and opportunity for a hearing, if the Secretary finds that any person is violating an order issued under this section [amending this section], such person shall be subject to a civil penalty not to exceed $10,000 per day of such violation, except that the total amount of civil penalties for any violation shall not exceed $50,000.

''(3) Non-Federal interests shall be liable for interest on any payments required pursuant to section 221 of the Flood Control Act of 1970 [this section] that may fall delinquent. The interest rate to be charged on any such delinquent payment shall be at a rate, to be determined by the Secretary of the Treasury, equal to 150 percent of the average bond equivalent rate of the thirteen-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional three-month period if the period of delinquency exceeds three months.

''(4) The Secretary may request the Attorney General to bring a civil action for appropriate relief, including permanent or temporary injunction, for any violation of an order issued under this section, to collect a civil

penalty imposed under this section, to recover any cost incurred by the Secretary in undertaking performance of any item of cooperation under section 221(d) of the Flood Control Act of 1970 [subsec. (d) of this section], or to collect interest for which a non-Federal interest is liable under paragraph (3). Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides, or is doing business, and such court shall have jurisdiction to restrain such violation, to require compliance, to require payment of any civil penalty imposed under this section, and to require payment of any costs incurred by the Secretary in undertaking performance of any such item.

''(5) The Secretary is authorized to determine that no funds appropriated for operation and maintenance, including operation and maintenance of the project for flood control, Mississippi River and Tributaries, are to be used for the particular benefit of projects within the jurisdiction of any non-Federal interest when such non-Federal interest is in arrears for more than twenty-four months in the payment of charges due under an agreement entered into with the United States pursuant to section 221 of the Flood Control Act of 1970 (Public Law 91–611) [this section].''

§ 1962d–5c. Non-Federal public bodies, installment construction payments

(a) Annual installments during period of construction in absence of other provision for extended repayment

In connection with any water resource development project, heretofore, herein, or hereafter authorized to be undertaken by the Secretary of the Army, the construction of which has not been initiated as of March 7, 1974, where authorization requires that non-Federal public bodies make an agreed-upon cash contribution as part of their reimbursement to the Federal Government for construction costs, or a specific portion of the construction costs, and where there exists no other provision of law which would permit extended repayment for the construction costs or such specific portion of the construction costs involved, such non-Federal public bodies may make such repayment in annual installments during the period of construction.

(b) Cost sharing; modification

Upon the request of affected non-Federal public bodies, the Secretary of the Army is authorized to modify existing cost sharing agreements in order to effectuate the provisions of subsection (a) of this section.

(Pub. L. 93–251, title I, § 40, Mar. 7, 1974, 88 Stat. 23.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1974, and not as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–5d. Authorization of Secretary of the Army to contract with States and political subdivisions for increased law enforcement services during peak visitation periods; authorization of appropriations

(a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to contract with States and their political subdivisions for the purpose of obtaining increased law enforcement services at water resources development projects under the jurisdiction of the Secretary of the Army to meet needs during peak visitation periods.

(b) There is authorized to be appropriated $10,000,000 per fiscal year for each fiscal year beginning after September 30, 1986, to carry out this section.

(Pub. L. 94–587, § 120, Oct. 22, 1976, 90 Stat. 2924; Pub. L. 99–662, title IX, § 920, Nov. 17, 1986, 100 Stat. 4193.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–662 amended subsec. (b) generally, substituting ''$10,000,000 per fiscal year for each fiscal year beginning after September 30, 1986'' for ''$6,000,000 per fiscal year for the fiscal years ending September 30, 1978, and September 30, 1979''.

§ 1962d–5e. Wetland areas

(a) Authorization of Secretary of the Army to plan and establish wetland areas; criteria for establishment

The Secretary of the Army, acting through the Chief of Engineers, is authorized to plan and establish wetland areas as part of an authorized water resources development project under his jurisdiction. Establishment of any wetland area in connection with the dredging required for such a water resources development project may be undertaken in any case where the Chief of Engineers in his judgment finds that—

(1) environmental, economic, and social benefits of the wetland area justifies the increased cost thereof above the cost required for alternative methods of disposing of dredged material for such project; and

(2) the increased cost of such wetland area will not exceed $400,000; and

(3) there is reasonable evidence that the wetland area to be established will not be substantially altered or destroyed by natural or man-made causes.

(b) Reports to Congress

Whenever the Secretary of the Army, acting through the Chief of Engineers, submits to Congress a report on a water resources development project after October 22, 1976, such report shall include, where appropriate, consideration of the establishment of wetland areas.

(c) Cost

In the computation of benefits and cost of any water resources development project the benefits of establishing of any wetland area shall be deemed to be at least equal to the cost of establishing such area. All costs of establishing a wetland area shall be borne by the United States.

(Pub. L. 94–587, § 150, Oct. 22, 1976, 90 Stat. 2931.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–5f. Beach nourishment

The Secretary of the Army, acting through the Chief of Engineers, is authorized to provide

periodic beach nourishment in the case of each water resources development project where such nourishment has been authorized for a limited period for such additional period as he determines necessary but in no event shall such additional period extend beyond the fiftieth year which begins after the date of initiation of construction of such project.

(Pub. L. 94–587, § 156, Oct. 22, 1976, 90 Stat. 2933; Pub. L. 99–662, title IX, § 934, Nov. 17, 1986, 100 Stat. 4197.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1986—Pub. L. 99–662 substituted ''fiftieth'' for ''fifteenth''.

§ 1962d–5g. Hydroelectric power resources

(a) Study; plan

The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to conduct a study of the most efficient methods of utilizing the hydroelectric power resources at water resource development projects under the jurisdiction of the Secretary of the Army and to prepare a plan based upon the findings of such study. Such study shall include, but not be limited to, an analysis of—

(1) the physical potential for hydroelectric development, giving consideration to the economic, social, environmental and institutional factors which will affect the realization of physical potential;

(2) the magnitude and regional distribution of needs for hydroelectric power;

(3) the integration of hydroelectric power generation with generation from other types of generating facilities;

(4) measures necessary to assure that generation from hydroelectric projects will efficiently contribute to meeting the national electric energy demands;

(5) the timing of hydroelectric development to properly coincide with changes in the demand for electric energy;

(6) conventional hydroelectric potential, both high head and low head projects utilizing run-of-rivers and possible advances in mechanical technology, and pumped storage hydroelectric potential at sites which evidence such potential;

(7) the feasibility of adding or reallocating storage and modifying operation rules to increase power production at corps projects with existing hydroelectric installations;

(8) measures deemed necessary or desirable to insure that the potential contribution of hydroelectric resources to the overall electric energy supply are realized to the maximum extent possible; and

(9) any other pertinent factors necessary to evaluate the development and operation of hydroelectric projects of the Corps of Engineers.

(b) Transmittal of plan to Congressional committees

Within three years after the date of the first appropriation of funds for the purpose of carrying out this section, the Secretary of the Army, acting through the Chief of Engineers, shall transmit the plan prepared pursuant to subsection (a) of this section with supporting studies and documentation, together with the recommendations of the Secretary and the Chief of Engineers on such plan, to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(c) Authorization of appropriation

There is authorized to be appropriated to carry out subsections (a) and (b) of this section not to exceed $7,000,000.

(d) Feasibility studies of specific hydroelectric power installations; authorization of appropriations

The Secretary of the Army, acting through the Chief of Engineers, is authorized with respect to previously authorized projects to undertake feasibility studies of specific hydroelectric power installations that are identified in the course of the study authorized by this section, as having high potential for contribution toward meeting regional power needs. There is authorized to be appropriated to carry out this subsection not to exceed $5,000,000 per fiscal year for each of the fiscal years 1978 and 1979.

(Pub. L. 94–587, § 167, Oct. 22, 1976, 90 Stat. 2935; Pub. L. 103–437, § 15(e)(1), Nov. 2, 1994, 108 Stat. 4592.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–437 substituted ''Committee on Environment and Public Works of the Senate'' for ''Committee on Public Works of the Senate''.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

FEDERAL HYDROELECTRIC POWER MODERNIZATION STUDY

Pub. L. 100–676, § 42, Nov. 17, 1988, 102 Stat. 4040, directed Secretary to conduct a study of need to modernize and upgrade federally owned and operated hydroelectric power system, and to submit a report, along with recommendations, to Congress not later than 2 years after Nov. 17, 1988.

WATER QUALITY EFFECTS OF HYDROELECTRIC FACILITIES

Pub. L. 100–676, § 43, Nov. 17, 1988, 102 Stat. 4040, directed Secretary, in cooperation with Administrator of Environmental Protection Agency, to undertake a study of water quality effects of hydroelectric facilities owned and operated by Corps of Engineers, which was to be transmitted to Congress within 2 years of Nov. 17, 1988, and was to consider and include information for each such Corps of Engineers hydroelectric facility pertaining to: relevant water quality standards including dissolved oxygen; water quality monitoring data; possible options and projected costs of measures required to improve the quality of water released from each

such facility where justified; and recommendations with respect to such study results.

§ 1962d–6. Feasibility studies; acceleration; advancement of costs by non-Federal sources

The Secretary may accelerate feasibility studies authorized by law when and to the extent that the costs of such studies shall have been advanced by non-Federal sources.

(Pub. L. 89–561, § 5, Sept. 7, 1966, 80 Stat. 714.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–7. Delmarva Peninsula hydrologic study; duties of Secretary of the Interior

The Secretary of the Interior (hereinafter referred to as the ''Secretary'') is authorized and directed to make a comprehensive study and investigation of the water resources of the Delmarva Peninsula with a view to determining the availability of fresh water supplies needed to meet the anticipated future water requirements of the Delmarva Peninsula area, and with a view to determining the most effective means from the standpoint of hydrologic feasibility of protecting and developing fresh water sources so as to insure, insofar as practicable, the availability of adequate water supplies in the future. In carrying out such study and investigation with respect to the Delmarva Peninsula, the Secretary shall—

(1) appraise the water use, requirements, and trends, and determine the availability of water in the streams and underground sources for the entire peninsula;

(2) determine the depths, thicknesses, and permeabilities, the perennial yield, and the recharge characteristics of major aquifers, and the quality characteristics to be expected from each such major aquifer;

(3) determine with respect to ground water resources the continuity and extent of important water-bearing formations;

(4) determine the yield from stream systems under natural flow conditions and under varying degrees of storage and the amounts and quality of waters available from such systems during drought, flood, and intermediate conditions;

(5) determine whether sea water has moved inland into heavily pumped coastal aquifers;

(6) give special consideration to conditions which may invite the invasion of sea water into fresh-water supplies;

(7) compile and make available to appropriate State and local officials any results of this study and investigation that would be appropriate for their use in long-range planning, development, and management of water supplies;

(8) cooperate with State and local agencies for the purpose of using any information and data available to carry out the purposes of this study; and

(9) consider such other matters as the Secretary may deem appropriate to the study and investigation herein authorized.

(Pub. L. 89–618, § 1, Oct. 4, 1966, 80 Stat. 870.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

WASHINGTON METROPOLITAN AREA WATER NEEDS AND ESTUARIAL WATER SUPPLIES; STUDIES

Pub. L. 93–251, title I, § 85, Mar. 7, 1974, 88 Stat. 36, provided in part for a study of Washington Metropolitan Area Future Water Needs, coordinated with Northeastern United States Water Supply study, and for a study of Estuarial Water Supplies, including a Potomac Estuary Water Treatment Pilot Project, for review of scientific basis for study conclusions by National Academy of Sciences-National Academy of Engineering, and made further authorizations for Sixes Bridge Dam and Lake Project, Maryland dependent on such studies and review.

§ 1962d–8. Reports on Delmarva Peninsula hydrologic study

During the course of the study and investigation authorized by sections 1962d–7 to 1962d–11 of this title, the Secretary may submit to the President for transmission to the Congress such interim reports as the Secretary may consider desirable. The Secretary shall submit a final report to the President for transmission to the Congress not more than six years after October 4, 1966.

(Pub. L. 89–618, § 2, Oct. 4, 1966, 80 Stat. 870.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–9. Information from Federal agencies for Delmarva Peninsula study

The Secretary is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Federal Government, information, suggestions, estimates, and statistics for the purpose of sections 1962d–7 to 1962d–11 of this title, and each department, bureau, agency, board, commission, office, independent establishment, or instrumentality is authorized and directed to furnish such information, suggestions, estimates, and statistics, to the Secretary upon his or his designee's request.

(Pub. L. 89–618, § 3, Oct. 4, 1966, 80 Stat. 870.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–10. Cooperation with agencies on Delmarva Peninsula study

In carrying out the study and investigation authorized by sections 1962d–7 to 1962d–11 of this title, the Secretary is authorized to cooperate with other Federal, State, and local agencies now engaged in comprehensive planning for water resource use and development in the Delmarva Peninsula area by making available to those agencies his findings and to cooperate with those agencies in the Northeastern United States Water Supply Study as authorized by section 1962d–4 of this title.

(Pub. L. 89–618, § 4, Oct. 4, 1966, 80 Stat. 871.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–11. Authorization of appropriation for Delmarva Peninsula study

There is hereby authorized to be appropriated the sum of $500,000 to carry out the provisions of sections 1962d–7 to 1962d–11 of this title: *Provided*, That nothing in such sections shall prevent the expenditure of other funds appropriated to the United States Geological Survey for studies and activities performed under its general authority.

(Pub. L. 89–618, § 5, Oct. 4, 1966, 80 Stat. 871; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

CHANGE OF NAME

''United States Geological Survey'' substituted in text for ''Geological Survey'' pursuant to provision of title I of Pub. L. 102–154, set out as a note under section 31 of Title 43, Public Lands.

§ 1962d–11a. Potomac River water diversion structure

(a) Consent of Congress for construction; written agreement providing schedule for allocation among parties for withdrawal of waters

(1) Subject to paragraph (2) of this subsection, the consent of Congress is granted under section 401 of title 33 to the Washington Suburban Sanitary Commission to construct a water diversion structure, with an elevation not to exceed one hundred and fifty-nine feet above sea level, from the north shore of the Potomac River at the Washington Suburban Sanitary Commission water filtration plant to the north shore of Watkins Island.

(2) The structure authorized by paragraph (1) of this subsection, may not be constructed until the Secretary of the Army, acting through the Chief of Engineers, and the State of Maryland, the Commonwealth of Virginia, the Washington Suburban Sanitary Commission, and such other governmental authorities as the Secretary of the Army, the State of Maryland, and the Commonwealth of Virginia deem desirable signatories enter into a written agreement providing an enforceable schedule for allocation among the parties to such agreement for the withdrawal of the waters of that portion of the Potomac River located between Little Falls Dam and the farthest upstream limit of the pool of water behind the Chesapeake and Ohio Canal Company rubble dam at Seneca, Maryland, during periods of low flow of such portion of such river.

(b) Authorization of Secretary of the Army to enter written agreement; amendments or revisions

The Secretary of the Army, acting through the Chief of Engineers, is authorized to enter into the agreement referred to in subsection (a)(2) of this section and any amendment to or revision of such agreement.

(c) Riparian rights or other authority of Maryland, Virginia, political subdivisions; authority of District of Columbia

Except as may be provided in the agreement referred to in subsection (a)(2) of this section, nothing in this section shall alter any riparian rights or other authority of the State of Maryland, or any political subdivision thereof, the Commonwealth of Virginia, or any political subdivision thereof, or the District of Columbia, or authority of the Corps of Engineers existing on October 22, 1976, relative to the appropriation of water from, or the use of, the Potomac River.

(Pub. L. 94–587, § 181, Oct. 22, 1976, 90 Stat. 2939; Pub. L. 96–292, § 2, June 28, 1980, 94 Stat. 609.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1980—Subsec. (a)(2). Pub. L. 96–292 struck out cl. ''(A)'' designation and cl. (B) which prohibited construction of the Potomac River water diversion structure should such structure be in conflict with the report of the Secretary of the Army, acting through the Chief of Engineers, issued in connection with a study of water resources development.

§ 1962d–11b. Dalecarlia Reservoir; delivery of water to metropolitan Maryland; expenses; payments; purchase of water from State or local authorities in Maryland or Virginia

(a) The Secretary, on the recommendation of the Chief of Engineers, is authorized to permit the delivery of water from the District of Columbia water system at the Dalecarlia filtration plant, or at other points on the system, to any competent State or local authority in the Washington, District of Columbia, metropolitan area in Maryland. All of the expense of installing the connection or connections and appurtenances between the water supply systems and any subsequent changes therein shall be paid by the requesting entity, which shall also pay such charges for the use of the water as the Secretary may, from time to time in advance of delivery, determine to be reasonable. Payments shall be made at such time, and pursuant to such regulations, as the Secretary prescribes. The Secretary may revoke any permit for the use of water at any time.

(b) The Secretary is authorized to purchase water from any State or local authority in Maryland or Virginia that has, at the time of purchase, completed a connection with the District of Columbia water system. The Secretary is authorized to pay such charges for the use of the water as the Secretary has agreed upon in advance of delivery.

(Pub. L. 99–662, title XI, § 1111, Nov. 17, 1986, 100 Stat. 4231.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1986, and not as part of the Water Resources Planning Act which comprises this chapter.

DEFINITIONS

Secretary means the Secretary of the Army, see section 2201 of Title 33, Navigation and Navigable Waters.

§§ 1962d–12 to 1962d–14. Repealed. Pub. L. 104–58, title I, § 104(g)(3), Nov. 28, 1995, 109 Stat. 560

Section 1962d–12, act Aug. 9, 1955, ch. 682, § 1, 69 Stat. 618, authorized Secretary of the Interior to make investigations of projects for conservation, development, and utilization of Alaskan water resources and to report findings, with recommendations, to President and Congress.

Section 1962d–13, act Aug. 9, 1955, ch. 682, § 2, 69 Stat. 618, directed Secretary of the Interior, prior to transmission of report on Alaskan water resource projects to Congress, to transmit copies thereof for information and comment to Governor of Alaska and to heads of interested Federal departments and agencies, and to include copies of views of such officials along with transmission of Secretary's report to Congress.

Section 1962d–14, act Aug. 9, 1955, ch. 682, § 3, 69 Stat. 618, authorized to be appropriated not more than $250,000 in any one fiscal year for Alaskan water resources investigation.

§ 1962d–14a. Alaska hydroelectric power development

(a) Congressional findings and declaration

(1) The Congress finds that the expeditious development of hydroelectric power generating facilities in Alaska that are environmentally sound to assist the Nation in meeting existing and future energy demands is in the national interest.

(2) The Congress therefore declares that the expertise of the Chief of Engineers can and should be utilized for the benefit of local public bodies in the development of projects which yield 90 per centum or more of the benefits of the project are attributable to hydroelectric power generation when the project is fully operational.

(b) Establishment of fund; composition

To meet the goals of this section, there is hereby established in the Treasury of the United States an Alaska Hydroelectric Power Development Fund (hereafter referred to as the ''fund'') to be and remain available for use by the Secretary of the Army (hereinafter referred to as the ''Secretary'') to make expenditures authorized by this section. The fund shall consist of (1) all receipts and collections by the Secretary of repayments in accordance with subsection (e) of this section and payments by non-Federal public authorities to the Secretary to finance the cost of construction of projects in accordance with subsection (f) of this section, and which the Secretary is hereby directed to deposit in the fund as they are received, and (2) any appropriations made by the Congress to the fund.

(c) Authorization of appropriation

There is authorized to be appropriated to the Secretary for deposit in the fund established by subsection (b) of this section the sum of $25,000,000.

(d) Investments; deposits

(1) If the Secretary determines that moneys in the fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in direct, general obligations of, or obligations guaranteed as to both principal and interest by, the United States.

(2) With the approval of the Secretary of the Treasury, the Secretary may deposit moneys of the fund in any Federal Reserve bank or other depository for funds of the United States, or in such other banks and financial institutions and under such terms and conditions as the Secretary and the Secretary of the Treasury may mutually agree.

(e) Expenditures for phase I design memorandum stage of advanced engineering and design; withholding of favorable report to Congress prior to repayment; expenditures from non-Federal funds

The Secretary is authorized to make expenditures from the fund for the phase I design memorandum stage of advanced engineering and design for any project in Alaska that meets the requirements of subsection (a)(2) of this section, if appropriate non-Federal public authorities, approved by the Secretary, agree with the Secretary, in writing, to repay the Secretary for all the separable and joint costs of preparing such design memorandum, if such report is favorable. Following the completion of the phase I design memorandum stage of advanced engineering and design under this subsection, the Secretary shall not transmit any favorable report to Congress prior to being repaid in full by the appropriate non-Federal public authorities for the costs incurred during such phase I. The Secretary is also authorized to make expenditures from non-Federal funds deposited in the fund as an advance against construction costs.

(f) Authorization to construct projects; expenditures

In connection with water resources development projects which meet the criteria established by subsection (a)(2) of this section and which are to be constructed by the Secretary, acting through the Chief of Engineers, in accordance with an authorization by Congress and a contract between the non-Federal public authorities and the Secretary, pursuant to subsection (g)(1) of this section occurring on or subsequent to October 22, 1976, the Secretary, acting through the Chief of Engineers, is authorized to construct such projects including activities for engineering and design land acquisition, site development, and off-site improvements necessary for the authorized construction by making expenditures from (1) the Fund established in subsection (b) of this section of funds deposited by non-Federal public authorities as payments for construction and (2) payments of non-Federal public authorities held by the Secretary as payment of construction costs for a project authorized by this section.

(g) Agreement with non-Federal public authorities and submittal to Congressional committees, payment of total non-Federal obligations; conditions of United States assumption of excess over costs fixed in agreement, payment subject to appropriations acts

(1) Prior to initiating any construction work under the authorities of this section, the Secretary and the appropriate non-Federal public authorities shall agree in writing, and submit such agreement to the Committees on Environment and Public Works and on Appropriations of the Senate and the Committees on Public Works and Transportation and on Appropria-

tions of the House of Representatives for review and reporting to the Congress for its consideration and approval that the appropriate non-Federal public authorities will pay the full anticipated costs of constructing the project at the time such costs are incurred, together with normal contingencies and related administrative expenses of the Secretary, and such payments shall be deposited in the fund or held by the Secretary for payment of obligations incurred by the Secretary on an authorized project under this section. The agreement shall provide for an initial determination of feasibility and compliance by the project with law. The total non-Federal obligation shall be paid on or prior to the date the Chief of Engineers has estimated by agreement, that the project concerned will be available for actual generation of all or a substantial portion of the authorized hydroelectric power of the project.

(2) In consideration of the obligations to be assumed by non-Federal public authorities under the provisions of this section and in recognition of the substantial investments which will be made by these authorities in reliance on the program established by this section, the United States shall assume the responsibility for paying for all costs over those fixed in the agreement with the non-Federal public authorities, if such costs are occasioned by acts of God, failure on the part of the Secretary, acting through the Chief of Engineers, to adhere to the agreed schedule of work or a failure of design: *Provided*, That payments by the Secretary of such costs shall be subject to appropriations acts.

(h) Conveyance of title, rights, and interests of United States; Federal requirements, reservations, and provisions

The Secretary is authorized and directed, pursuant to the agreement, to convey all title, rights, and interests of the United States to any project, its lands and water areas, and appurtenant facilities to the non-Federal public authorities which have agreed to assume ownership of the project and responsibility for its performance, operation, and maintenance, as well as necessary replacements in accordance with this section upon full payment by such non-Federal public authorities as required under subsection (g)(1) of this section. Such conveyance shall, pursuant to the agreement required by subsection (g) of this section, to the maximum extent possible, occur immediately upon the project's availability for generation of all or a substantial portion of the authorized hydroelectric power of the project, and shall include such Federal requirements, reservations, and provisions for access rights to the project and its records as the Secretary finds advisable to complete any portion of project construction remaining at the time of conveyance and to assure that the project will be operated and maintained in a responsible and safe manner to accomplish, as nearly as may be possible, all of the authorized purposes of the project including, but not restricted to, hydroelectric power generation.

(i) Short title

This section shall be cited as the ''Alaska Hydroelectric Power Development Act''.

(Pub. L. 94–587, § 203, Oct. 22, 1976, 90 Stat. 2946; Pub. L. 103–437, § 15(e)(2), Nov. 2, 1994, 108 Stat. 4592.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (g)(1). Pub. L. 103–437 substituted ''Committees on Environment and Public Works and on Appropriations of the Senate and the Committees on Public Works and Transportation and on Appropriations of the House'' for ''Committees on Public Works and Appropriations of the Senate and House''.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1962d–15. Protection of United States from liability for damages; exception of damages due to fault or negligence of United States

The requirement in any water resources development project under the jurisdiction of the Secretary of the Army, that non-Federal interests hold and save the United States free from damages due to the construction, operation, and maintenance of the project, does not include damages due to the fault or negligence of the United States or its contractors.

(Pub. L. 93–251, title I, § 9, Mar. 7, 1974, 88 Stat. 16.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1974, and not as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–16. Comprehensive plans for development, utilization, and conservation of water and related resources

(a) Federal and State cooperation

The Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate with any State in the preparation of comprehensive plans for the development, utilization, and conservation of the water and related resources of drainage basins, watersheds, or ecosystems located within the boundaries of such State and to submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out such plans.

(b) Fees

(1) Establishment and collection

For the purpose of recovering 50 percent of the total cost of providing assistance pursuant to this section, the Secretary of the Army is authorized to establish appropriate fees, as determined by the Secretary, and to collect such fees from States and other non-Federal public bodies to whom assistance is provided under this section.

(2) In-kind services

Up to ½ of the non-Federal contribution for preparation of a plan subject to the cost shar-

ing program under this subsection may be made by the provision of services, materials, supplies, or other in-kind services necessary to prepare the plan.

(3) Deposit and use

Fees collected under this subsection shall be deposited into the account in the Treasury of the United States entitled, ''Contributions and Advances, Rivers and Harbors, Corps of Engineers (8862)'' and shall be available until expended to carry out this section.

(c) Authorization of appropriations; general and State limitation

There is authorized to be appropriated not to exceed $10,000,000 annually to carry out the provisions of this section except that not more than $500,000 shall be expended in any one year in any one State.

(d) "State" defined

For the purposes of this section, the term ''State'' means the several States of the United States, Indian tribes, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(Pub. L. 93–251, title I, § 22, Mar. 7, 1974, 88 Stat. 20; Pub. L. 94–587, § 168, Oct. 22, 1976, 90 Stat. 2936; Pub. L. 96–597, title VI, § 605, Dec. 24, 1980, 94 Stat. 3482; Pub. L. 99–662, title IX, § 921, Nov. 17, 1986, 100 Stat. 4194; Pub. L. 101–640, title III, § 319, Nov. 28, 1990, 104 Stat. 4642; Pub. L. 102–580, title II, § 208, Oct. 31, 1992, 106 Stat. 4829; Pub. L. 104–303, title II, § 221, Oct. 12, 1996, 110 Stat. 3697.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1974, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–303, § 221(1), inserted '', watersheds, or ecosystems'' after ''basins''.

Subsec. (b)(2) to (4). Pub. L. 104–303, § 221(2), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out heading and text of former par. (2). Text read as follows: ''The Secretary shall phase in the cost sharing program under this subsection by recovering—

''(A) approximately 10 percent of the total cost of providing assistance in fiscal year 1991;

''(B) approximately 30 percent of the total cost in fiscal year 1992; and

''(C) approximately 50 percent of the total cost in fiscal year 1993 and each succeeding fiscal year.''

Subsec. (c). Pub. L. 104–303, § 221(3), substituted ''$10,000,000'' for ''$6,000,000'' and ''$500,000'' for ''$300,000''.

1992—Subsec. (b)(3), (4). Pub. L. 102–580, § 208(1), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d). Pub. L. 102–580, § 208(2), inserted ''Indian tribes,'' after ''States of the United States,''.

1990—Subsecs. (b) to (d). Pub. L. 101–640 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1986—Subsec. (b). Pub. L. 99–662 substituted ''$6,000,000'' for ''$4,000,000'' and ''$300,000'' for ''$200,000''.

1980—Subsec. (c). Pub. L. 96–597 added subsec. (c).

1976—Subsec. (b). Pub. L. 94–587 increased limitation on annual appropriation authorization to $4,000,000 from $2,000,000.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 605 of Pub. L. 96–597 provided that the amendment made by that section is effective Oct. 1, 1981.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1962d–17. Regional or river basin plans and Federal water and related land resources projects; preparation, formulation, and evaluation

(a) Interest rate formula for discounting future benefits and cost computations; repeal of conflicting provisions and administrative actions

The interest rate formula to be used in plan formulation and evaluation for discounting future benefits and computing costs by Federal officers, employees, departments, agencies, and instrumentalities in the preparation of comprehensive regional or river basin plans and the formulation and evaluation of Federal water and related land resources projects shall be the formula set forth in the ''Policies, Standards, and Procedures in the Formulation, Evaluation, and Review of Plans for Use and Development of Water and Related Land Resources'' approved by the President on May 15, 1962, and published as Senate Document 97 of the Eighty-seventh Congress on May 29, 1962, as amended by the regulation issued by the Water Resources Council and published in the Federal Register on December 24, 1968 (33 F.R. 19170; 18 C.F.R. 704.39), until otherwise provided by a statute enacted after March 7, 1974. Every provision of law and every administrative action in conflict with this section is hereby repealed to the extent of such conflict.

(b) Interest rate for prior authorized projects assured of non-Federal share of project costs; continuation of rate

In the case of any project authorized before January 3, 1969, if the appropriate non-Federal interests have, prior to December 31, 1969, given satisfactory assurances to pay the required non-Federal share of project costs, the discount rate to be used in the computation of benefits and costs for such project shall be the rate in effect immediately prior to December 24, 1968, and that rate shall continue to be used for such project until construction has been completed, unless otherwise provided by a statute enacted after March 7, 1974.

(c) Water and related resources projects; Presidential study; scope of study; report to Congress

The President shall make a full and complete investigation and study of principles and standards for planning and evaluating water and related resources projects. Such investigation and study shall include, but not be limited to, consideration of enhancing regional economic development, the quality of the total environment including its protection and improvement, the well-being of the people of the United States, and the national economic development, as objectives to be included in federally-financed water and related resources projects and in the evaluation of costs and benefits attributable to such projects, as intended in section 1962–2 of

this title, the interest rate formula to be used in evaluating and discounting future benefits for such projects, and appropriate Federal and non-Federal cost sharing for such projects. He shall report the results of such investigation and study, together with his recommendations, to Congress not later than one year after funds are first appropriated to carry out this subsection.

(Pub. L. 93–251, title I, § 80, Mar. 7, 1974, 88 Stat. 34.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1974, and not as part of the Water Resources Planning Act which comprises this chapter.

RATES USED TO ASSESS RETURN ON FEDERAL GOVERNMENT'S INVESTMENT IN PROJECTS OF ARMY CORPS OF ENGINEERS AND BUREAU OF RECLAMATION

Pub. L. 95–28, title II, § 204, May 13, 1977, 91 Stat. 121, provided that: ''It is hereby reiterated that the interest rates or rates of discount to be used to assess the return on the Federal Government's investment in projects of the United States Army Corps of Engineers or the Department of the Interior Bureau of Reclamation, shall be those interest rates or rates of discount established by Public Law 93–251, the Water Resources Development Act of 1974 [see Short Title of 1974 Amendment note set out under section 1962 of this title] or by any prior law authorizing projects of the United States Army Corps of Engineers or the Department of the Interior Bureau of Reclamation.''

§ 1962d–18. Study of depletion of natural resources of regions of Colorado, Kansas, New Mexico, Oklahoma, Texas, and Nebraska utilizing Ogallala aquifer; plans; reports to Congress; authorization of appropriation

In order to assure an adequate supply of food to the Nation and to promote the economic vitality of the High Plains Region, the Secretary of Commerce (hereinafter referred to in this section as the ''Secretary''), acting through the Economic Development Administration, in cooperation with the Secretary of the Army, acting through the Chief of Engineers, and appropriate Federal, State, and local agencies, and the private sector, is authorized and directed to study the depletion of the natural resources of those regions of the States of Colorado, Kansas, New Mexico, Oklahoma, Texas, and Nebraska presently utilizing the declining water resources of the Ogallala acquifer,[1] and to develop plans to increase water supplies in the area and report thereon to Congress, together with any recommendations for further congressional action. In formulating these plans, the Secretary is directed to consider all past and ongoing studies, plans, and work on depleted water resources in the region, and to examine the feasibility of various alternatives to provide adequate water supplies in the area including, but not limited to, the transfer of water from adjacent areas, such portion to be conducted by the Chief of Engineers to assure the continued economic growth and vitality of the region. The Secretary shall report on the costs of reasonably available options, the benefits of various options, and the costs of inaction. If water transfer is found to be a part of a reasonable solution, the Secretary, as part of his study, shall include a recommended plan for allocating and distributing water in an equitable fashion, taking into account existing water rights and the needs for future growth of all affected areas. An interim report, with recommendations, shall be transmitted to the Congress no later than October 1, 1978, and a final report, with recommendations, shall be transmitted to Congress not later than July 1, 1980. A sum of $6,000,000 is authorized to be appropriated for the purposes of carrying out this section.

(Pub. L. 94–587, § 193, Oct. 22, 1976, 90 Stat. 2943.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–19. Cooperation of Secretary of the Interior with State and local regulatory and law enforcement officials in enforcement of laws or ordinances in connection with Federal resource protection, etc., within Federal water resource development project; funding

The Secretary of the Interior, in connection with Federal resource protection and the Federal administration of the use and occupancy of lands and waters within a water resource development project under his jurisdiction, is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or political subdivision. Such cooperation may include the reimbursement of a State or its political subdivision for expenditures incurred in connection with such resource protection and administration. For purposes of complying with section 651 of title 2, the authorization provided under this section is subject to the availability of appropriations.

(Pub. L. 98–552, § 3, Oct. 30, 1984, 98 Stat. 2823.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–20. Prohibition on Great Lakes diversions

(a) Congressional findings and declarations

The Congress finds and declares that—

(1) the Great Lakes are a most important natural resource to the eight Great Lakes States and two Canadian provinces, providing water supply for domestic and industrial use, clean energy through hydropower production, an efficient transportation mode for moving products into and out of the Great Lakes region, and recreational uses for millions of United States and Canadian citizens;

(2) the Great Lakes need to be carefully managed and protected to meet current and future needs within the Great Lakes basin and Canadian provinces;

(3) any new diversions of Great Lakes water for use outside of the Great Lakes basin will have significant economic and environmental impacts, adversely affecting the use of this resource by the Great Lakes States and Canadian provinces; and

[1] So in original. Probably should be ''aquifer,''.

(4) four of the Great Lakes are international waters and are defined as boundary waters in the Boundary Waters Treaty of 1909 between the United States and Canada, and as such any new diversion of Great Lakes water in the United States would affect the relations of the Government of the United States with the Government of Canada.

(b) Congressional declaration of purpose and policy

It is therefore declared to be the purpose and policy of the Congress in this section—

(1) to take immediate action to protect the limited quantity of water available from the Great Lakes system for use by the Great Lakes States and in accordance with the Boundary Waters Treaty of 1909;

(2) to encourage the Great Lakes States, in consultation with the Provinces of Ontario and Quebec, to develop and implement a mechanism that provides a common conservation standard embodying the principles of water conservation and resource improvement for making decisions concerning the withdrawal and use of water from the Great Lakes Basin;

(3) to prohibit any diversion of Great Lakes water by any State, Federal agency, or private entity for use outside the Great Lakes basin unless such diversion is approved by the Governor of each of the Great Lakes States; and

(4) to prohibit any Federal agency from undertaking any studies that would involve the transfer of Great Lakes water for any purpose for use outside the Great Lakes basin.

(c) "Great Lakes State" defined

As used in this section, the term ''Great Lakes State'' means each of the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin.

(d) Approval by Governors for diversion of water

No water shall be diverted or exported from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin unless such diversion or export is approved by the Governor of each of the Great Lake[1] States.

(e) Approval of Governors for diversion studies

No Federal agency may undertake any study, or expend any Federal funds to contract for any study, of the feasibility of diverting water from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin, unless such study or expenditure is approved by the Governor of each of the Great Lakes States. The prohibition of the preceding sentence shall not apply to any study or data collection effort performed by the Corps of Engineers or other Federal agency under the direction of the International Joint Commission in accordance with the Boundary Waters Treaty of 1909.

(f) Previously authorized diversions

This section shall not apply to any diversion of water from any of the Great Lakes which is authorized on November 17, 1986.

[1] So in original. Probably should be ''Lakes''.

(Pub. L. 99–662, title XI, § 1109, Nov. 17, 1986, 100 Stat. 4230; Pub. L. 106–541, title V, § 504(a), (b), Dec. 11, 2000, 114 Stat. 2644.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1986, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

2000—Subsec. (b)(2) to (4). Pub. L. 106–541, § 504(a), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d). Pub. L. 106–541, § 504(b), inserted ''or exported'' after ''diverted'' and ''or export'' after ''diversion''.

GREAT LAKES CONSUMPTIVE USE STUDY

Pub. L. 100–4, title V, § 521, Feb. 4, 1987, 101 Stat. 88, provided that in recognition of the serious impacts on the Great Lakes environment that could occur as a result of increased consumption of Great Lakes water, including loss of wetlands and reduction of fish spawning and habitat areas, as well as serious economic losses to vital Great Lakes industries, the Secretary of the Army in cooperation with the Administrator, other interested departments, agencies, and instrumentalities of the United States, and the eight Great Lakes States, was authorized to conduct a study of the effects of Great Lakes water consumption on economic growth and environmental quality in the Great Lakes region and of control measures that could be implemented to reduce the quantity of water consumed, and further provided an appropriation of $750,000 for fiscal years beginning after Sept. 30, 1986, to carry out such study.

Similar provisions were contained in Pub. L. 99–662, title XI, § 1147, Nov. 17, 1986, 100 Stat. 4253.

MEASUREMENTS OF LAKE MICHIGAN DIVERSIONS

Section 1142 of Pub. L. 99–662, as amended by Pub. L. 106–53, title V, § 508, Aug. 17, 1999, 113 Stat. 339; Pub. L. 106–541, title V, § 518, Dec. 11, 2000, 114 Stat. 2653, provided that:

''(a) Beginning October 1, 1987, the Secretary, in cooperation with the State of Illinois, shall carry out measurements and make necessary computations required by the decree of the United States Supreme Court (388 U.S. 426) relating to the diversion of water from Lake Michigan and shall coordinate the results with downstate interests. The measurements and computations shall consist of all flow measurements, gauge records, hydraulic and hydrologic computations, including periodic field investigations and measuring device calibrations, necessary to compute the amount of water diverted from Lake Michigan by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities, not including water diverted or used by Federal installations.

''(b) There are authorized to be appropriated $1,250,000 for each of fiscal years 1999 through 2003 and $800,000 for each fiscal year beginning after September 30, 2003, to carry out this section, including those funds necessary to maintain the measurements and computations, as well as necessary capital construction costs associated with the installation of new flow measurement devices or structures declared necessary and appropriate by the Secretary.''

§ 1962d–21. John Glenn Great Lakes basin program

(a) Strategic plans

(1) Study

The Secretary shall conduct a comprehensive study of the Great Lakes region to ensure the future use, management, and protection of water resources and related resources of the Great Lakes basin.

(2) Report

(A) In general

As expeditiously as possible, but not later than 3 years after August 17, 1999, and every 2 years thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report outlining a strategic plan for Corps of Engineers programs and proposed Corps of Engineers projects in the Great Lakes basin.

(B) Contents

The plan shall include—

(i) details of projects in the Great Lakes region relating to—

(I) navigation improvements, maintenance, and operations for commercial and recreational vessels;

(II) environmental restoration activities;

(III) water level maintenance activities;

(IV) technical and planning assistance to States and remedial action planning committees;

(V) sediment transport analysis, sediment management planning, and activities to support prevention of excess sediment loadings;

(VI) flood damage reduction and shoreline erosion prevention; and

(VII) all other relevant activities of the Corps of Engineers; and

(ii) an analysis of factors limiting use of programs and authorities of the Corps of Engineers in existence on August 17, 1999, in the Great Lakes basin, including the need for new or modified authorities.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this section $1,000,000 for the period of fiscal years 2000 through 2003.

(b) Great Lakes biohydrological information

(1) Inventory

(A) In general

Not later than 90 days after August 17, 1999, the Secretary shall request each Federal agency that may possess information relevant to the Great Lakes biohydrological system to provide an inventory of all such information in the possession of the agency.

(B) Relevant information

For the purpose of subparagraph (A), relevant information includes information on—

(i) ground and surface water hydrology;

(ii) natural and altered tributary dynamics;

(iii) biological aspects of the system influenced by and influencing water quantity and water movement;

(iv) meteorological projections and the impacts of weather conditions on Great Lakes water levels; and

(v) other Great Lakes biohydrological system data relevant to sustainable water use management.

(2) Report

(A) In general

Not later than 18 months after August 17, 1999, the Secretary, in consultation with the States, Indian tribes, and Federal agencies, and after requesting information from the provinces and the federal government of Canada, shall—

(i) compile the inventories of information;

(ii) analyze the information for consistency and gaps; and

(iii) submit to Congress, the International Joint Commission, and the Great Lakes States a report that includes recommendations on ways to improve the information base on the biohydrological dynamics of the Great Lakes ecosystem as a whole, so as to support environmentally sound decisions regarding diversions and consumptive uses of Great Lakes water.

(B) Recommendations

The recommendations in the report under subparagraph (A) shall include recommendations relating to the resources and funds necessary for implementing improvement of the information base.

(C) Considerations

In developing the report under subparagraph (A), the Secretary, in cooperation with the Secretary of State, the Secretary of Transportation, and the heads of other agencies as appropriate, shall consider and report on the status of the issues described and recommendations made in—

(i) the Report of the International Joint Commission to the Governments of the United States and Canada under the 1977 reference issued in 1985; and

(ii) the 1993 Report of the International Joint Commission to the Governments of Canada and the United States on Methods of Alleviating Adverse Consequences of Fluctuating Water Levels in the Great Lakes St. Lawrence Basin.

(c) Great Lakes recreational boating

Not later than 18 months after August 17, 1999, the Secretary, using information and studies in existence on August 17, 1999, to the extent practicable, and in cooperation with the Great Lakes States, shall submit to Congress a report detailing the economic benefits of recreational boating in the Great Lakes basin, particularly at harbors benefiting from operation and maintenance projects of the Corps of Engineers.

(d) Cooperation

In undertaking activities under this section, the Secretary shall—

(1) encourage public participation; and

(2) cooperate, and, as appropriate, collaborate, with Great Lakes States, tribal governments, and Canadian federal, provincial, and tribal governments.

(e) Water use activities and policies

The Secretary may provide technical assistance to the Great Lakes States to develop interstate guidelines to improve the consistency and

efficiency of State-level water use activities and policies in the Great Lakes basin.

(f) Cost sharing

The Secretary may seek and accept funds from non-Federal entities to be used to pay up to 25 percent of the cost of carrying out subsections (b), (c), (d), and (e) of this section.

(Pub. L. 106–53, title IV, § 455, Aug. 17, 1999, 113 Stat. 330.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water Resources Planning Act which comprises this chapter.

DEFINITIONS

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–53, set out as a note under section 2201 of Title 33, Navigation and Navigable Waters.

§ 1962d–22. Great Lakes fishery and ecosystem restoration

(a) Findings

Congress finds that—

(1) the Great Lakes comprise a nationally and internationally significant fishery and ecosystem;

(2) the Great Lakes fishery and ecosystem should be developed and enhanced in a coordinated manner; and

(3) the Great Lakes fishery and ecosystem provides a diversity of opportunities, experiences, and beneficial uses.

(b) Definitions

In this section, the following definitions apply:

(1) Great Lake

(A) In general

The term ''Great Lake'' means Lake Superior, Lake Michigan, Lake Huron (including Lake St. Clair), Lake Erie, and Lake Ontario (including the St. Lawrence River to the 45th parallel of latitude).

(B) Inclusions

The term ''Great Lake'' includes any connecting channel, historically connected tributary, and basin of a lake specified in subparagraph (A).

(2) Great Lakes Commission

The term ''Great Lakes Commission'' means the Great Lakes Commission established by the Great Lakes Basin Compact (82 Stat. 414).

(3) Great Lakes Fishery Commission

The term ''Great Lakes Fishery Commission'' has the meaning given the term ''Commission'' in section 931 of title 16.

(4) Great Lakes State

The term ''Great Lakes State'' means each of the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin.

(c) Great Lakes fishery and ecosystem restoration

(1) Support plan

(A) In general

Not later than 1 year after December 11, 2000, the Secretary shall develop a plan for activities of the Corps of Engineers that support the management of Great Lakes fisheries.

(B) Use of existing documents

To the maximum extent practicable, the plan shall make use of and incorporate documents that relate to the Great Lakes and are in existence on December 11, 2000, such as lakewide management plans and remedial action plans.

(C) Cooperation

The Secretary shall develop the plan in cooperation with—

(i) the signatories to the Joint Strategic Plan for Management of the Great Lakes Fisheries; and

(ii) other affected interests.

(2) Projects

The Secretary shall plan, design, and construct projects to support the restoration of the fishery, ecosystem, and beneficial uses of the Great Lakes.

(3) Evaluation program

(A) In general

The Secretary shall develop a program to evaluate the success of the projects carried out under paragraph (2) in meeting fishery and ecosystem restoration goals.

(B) Studies

Evaluations under subparagraph (A) shall be conducted in consultation with the Great Lakes Fishery Commission and appropriate Federal, State, and local agencies.

(d) Cooperative agreements

In carrying out this section, the Secretary may enter into a cooperative agreement with the Great Lakes Commission or any other agency established to facilitate active State participation in management of the Great Lakes.

(e) Relationship to other Great Lakes activities

No activity under this section shall affect the date of completion of any other activity relating to the Great Lakes that is authorized under other law.

(f) Cost sharing

(1) Development of plan

The Federal share of the cost of development of the plan under subsection (c)(1) of this section shall be 65 percent.

(2) Project planning, design, construction, and evaluation

The Federal share of the cost of planning, design, construction, and evaluation of a project under paragraph (2) or (3) of subsection (c) of this section shall be 65 percent.

(3) Non-Federal share

(A) Credit for land, easements, and rights-of-way

The Secretary shall credit the non-Federal interest for the value of any land, easement, right-of-way, dredged material disposal area, or relocation provided for carrying out a project under subsection (c)(2) of this section.

(B) Form

The non-Federal interest may provide up to 50 percent of the non-Federal share required under paragraphs (1) and (2) in the form of services, materials, supplies, or other in-kind contributions.

(4) Operation and maintenance

The operation, maintenance, repair, rehabilitation, and replacement of projects carried out under this section shall be a non-Federal responsibility.

(5) Non-Federal interests

Notwithstanding section 1962d–5b of this title, for any project carried out under this section, a non-Federal interest may include a private interest and a nonprofit entity.

(g) Authorization of appropriations

(1) Development of plan

There is authorized to be appropriated for development of the plan under subsection (c)(1) of this section $300,000.

(2) Other activities

There is authorized to be appropriated to carry out paragraphs (2) and (3) of subsection (c) of this section $100,000,000.

(Pub. L. 106–541, title V, § 506, Dec. 11, 2000, 114 Stat. 2645.)

REFERENCES IN TEXT

The Great Lakes Basin Compact, referred to in subsec. (b)(2), is not classified to the Code.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2000, and not as part of the Water Resources Planning Act which comprises this chapter.

DEFINITIONS

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–541, set out as a note under section 2201 of Title 33, Navigation and Navigable Waters.

CHAPTER 20—ELECTIVE FRANCHISE

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SUBCHAPTER I—GENERALLY

§ 1971. Voting rights

(a) Race, color, or previous condition not to affect right to vote; uniform standards for voting qualifications; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions

(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall—

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 [42 U.S.C. 1974 et seq.]: *Provided, however*, That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

(3) For purposes of this subsection—

(A) the term ''vote'' shall have the same meaning as in subsection (e) of this section;

(B) the phrase ''literacy test'' includes any test of the ability to read, write, understand, or interpret any matter.

(b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

(c) Preventive relief; injunction; rebuttable literacy presumption; liability of United States for costs; State as party defendant

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice

shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

(d) Jurisdiction; exhaustion of other remedies

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

(e) Order qualifying person to vote; application; hearing; voting referees; transmittal of report and order; certificate of qualification; definitions

In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote in any such election. The Attorney General shall cause to be transmitted certified copies of such order to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so declared qualified to vote to vote at an appropriate election shall constitute contempt of court.

An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, who shall subscribe to the oath of office required by section 3331 of title 5, to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period, such order shall be entered unless prior to that time there has been filed with the court and served upon all parties a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by statements or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time

of such election, the court shall issue an order authorizing the applicant to vote provisionally: *Provided, however*, That such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The court may take any other action, and may authorize such referee or such other person as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

When used in the subsection, the word ''vote'' includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words ''affected area'' shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a) of this section; and the words ''qualified under State law'' shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

(f) Contempt; assignment of counsel; witnesses

Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel.

(g) Three-judge district court: hearing, determination, expedition of action, review by Supreme Court; single-judge district court: hearing, determination, expedition of action

In any proceeding instituted by the United States in any district court of the United States under this section in which the Attorney General requests a finding of a pattern or practice of discrimination pursuant to subsection (e) of this section the Attorney General, at the time he files the complaint, or any defendant in the proceeding, within twenty days after service upon him of the complaint, may file with the clerk of such court a request that a court of three judges be convened to hear and determine the entire case. A copy of the request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In any proceeding brought under subsection (c) of this section to enforce subsection (b) of this section, or in the event neither the Attorney General nor any defendant files a request for a three-judge court in any proceeding authorized by this subsection, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or, in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(R.S. § 2004; Pub. L. 85–315, pt. IV, § 131, Sept. 9, 1957, 71 Stat. 637; Pub. L. 86–449, title VI, § 601, May 6, 1960, 74 Stat. 90; Pub. L. 88–352, title I, § 101, July 2, 1964, 78 Stat. 241; Pub. L. 89–110, § 15, Aug. 6, 1965, 79 Stat. 445.)

REFERENCES IN TEXT

The Civil Rights Act of 1960, referred to in subsec. (a)(2)(C), is Pub. L. 86–449, May 6, 1960, 74 Stat. 86, as amended. Title III of the Civil Rights Act of 1960 is classified generally to subchapter II (§ 1974 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

Rule 53(c) of the Federal Rules of Civil Procedure, referred to in subsec. (e), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

This Act, referred to in subsec. (f), is Pub. L. 85–315, Sept. 9, 1957, 71 Stat. 634, as amended, which enacted sections 1975 to 1975e and 1995 of this title and section 295–1 of former Title 5, Executive Departments and Government Officers and Employees, amended this section and sections 1343 and 1861 of Title 28, repealed section 1993 of this title, and enacted provisions set out as a note under section 1975 of this title.

CODIFICATION

R.S. § 2004 derived from act May 31, 1870, ch. 114, § 1, 16 Stat. 140.

In subsec. (e), ''section 3331 of title 5'' was substituted for ''Revised Statutes, section 1757 (5 U.S.C. 16)'' on au-

thority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 31 of Title 8, Aliens and Nationality.

AMENDMENTS

1965—Subsecs. (a), (c). Pub. L. 89–110, §15(a), struck out ''Federal'' before ''election'' wherever appearing.

Subsecs. (f) to (h). Pub. L. 89–110, §15(b), redesignated subsecs. (g) and (h) as (f) and (g), respectively, and repealed former subsec. (f) which defined ''Federal elections''.

1964—Subsec. (a). Pub. L. 88–352, §101(a), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (c). Pub. L. 88–352, §101(b), provided for a rebuttable literacy presumption when a person has not been adjudged an incompetent and has completed the sixth grade of his schooling.

Subsecs. (f), (g). Pub. L. 88–352, §101(c), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (h). Pub. L. 88–352, §101(d), added subsec. (h).

1960—Subsec. (c). Pub. L. 86–449, §601(b), permitted the State to be joined as a party defendant in cases where officials of a State or subdivision thereof are alleged to have committed acts or practices constituting a deprivation of any rights or privileges secured by subsection (a) of this section, and authorized commencement of the proceeding against the State where an official has resigned or has been relieved of his office and no successor has assumed such office.

Subsecs. (e), (f). Pub. L. 86–449, §601(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1957—Pub. L. 85–315, §131, substituted ''Voting rights'' for ''Race, color, or previous condition not to affect right to vote'' in section catchline, designated existing provisions as subsec. (a), and added subsecs. (b) to (e).

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–246, §1, July 27, 2006, 120 Stat. 577, provided that: ''This Act [amending sections 1973a to 1973c, 1973f, 1973j to 1973*l*, and 1973aa–1a of this title, repealing sections 1973d, 1973e, and 1973g of this title, and enacting provisions set out as a note under section 1973 of this title] may be cited as the 'Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–344, §1, Aug. 26, 1992, 106 Stat. 921, provided that: ''This Act [amending section 1973aa–1a of this title] may be cited as the 'Voting Rights Language Assistance Act of 1992'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–410, §1, Aug. 28, 1986, 100 Stat. 924, provided that: ''This Act [enacting subchapter I–G of this chapter, sections 608 and 609 of Title 18, Crimes and Criminal Procedure, and section 3406 of Title 39, Postal Service, amending sections 2401, 3627, and 3684 of Title 39, repealing subchapters I–D and I–E of this chapter, and enacting provisions set out as a note under section 1973ff of this title] may be cited as the 'Uniformed and Overseas Citizens Absentee Voting Act'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–205, §1, June 29, 1982, 96 Stat. 131, provided: ''That this Act [enacting section 1973aa–6 of this title, amending sections 1973, 1973b, and 1973aa–1a of this title, and enacting provisions set out as notes under sections 1973, 1973b, 1973aa–1a and 1973aa–6 of this title] may be cited as the 'Voting Rights Act Amendments of 1982'.''

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–285, §1, June 22, 1970, 84 Stat. 314, provided: ''That this Act [designating existing provisions of Pub. L. 89–110 as subchapter I–A, enacting subchapters I–B and I–C of this chapter, and amending sections 1973b and 1973c of this title] may be cited as the 'Voting Rights Act Amendments of 1970'.''

SHORT TITLE OF 1960 AMENDMENT

Pub. L. 86–449, §1, May 6, 1960, 74 Stat. 84, provided that: ''This Act [enacting subchapter II of this chapter and sections 837, 1074, and 1509 of Title 18, Crimes and Criminal Procedure, and amending this section and sections 241 and 640 of Title 20, Education] may be cited as the 'Civil Rights Act of 1960'.''

SHORT TITLE OF 1957 AMENDMENT

Pub. L. 85–315, pt. V, §161, Sept. 9, 1957, 71 Stat. 638, provided that: ''This Act [enacting former chapter 20A of this title and section 1995 of this title and section 295–1 of former Title 5, Executive Departments and Government Officers and Employees, amending this section and sections 1343 and 1861 of Title 28, Judiciary and Judicial Procedure, and repealing section 1993 of this title] may be cited as the 'Civil Rights Act of 1957'.''

SHORT TITLE

Pub. L. 89–110, §1, Aug. 6, 1965, 79 Stat. 437, provided that: ''This Act [enacting subchapters I–A, I–B, and I–C of this chapter and amending this section] shall be known as the 'Voting Rights Act of 1965'.''

Act Aug. 9, 1955, ch. 656, §1, 69 Stat. 584, which provided that such Act, which enacted subchapter I–D of this chapter and repealed sections 301 to 303, 321 to 331, 341, and 351 to 355 of Title 50, War and National Defense, was to be cited as ''The Federal Voting Assistance Act of 1955'', was repealed by Pub. L. 99–410, title II, §203, Aug. 28, 1986, 100 Stat. 930.

Pub. L. 94–203, §1, Jan. 2, 1976, 89 Stat. 1142, which provided that Pub. L. 94–203, which enacted subchapter I–E of this chapter, was to be cited as ''Overseas Citizens Voting Rights Act of 1975'', was repealed by Pub. L. 99–410, title II, §203, Aug. 28, 1986, 100 Stat. 930.

Pub. L. 98–435, §1, Sept. 28, 1984, 98 Stat. 1678, provided that: ''This Act [enacting subchapter I–F of this chapter] may be cited as the 'Voting Accessibility for the Elderly and Handicapped Act'.''

Pub. L. 103–31, §1, May 20, 1993, 107 Stat. 77, provided that: ''This Act [enacting subchapter I–H of this chapter and section 3629 of Title 39, Postal Service, and amending sections 2401 and 3627 of Title 39] may be cited as the 'National Voter Registration Act of 1993'.''

SEPARABILITY

Section 701 of Pub. L. 86–449 provided that: ''If any provisions of this Act [see Short Title note above] is held invalid, the remainder of this Act shall not be affected thereby.''

VOTER REGISTRATION DRIVES

Pub. L. 98–473, title I, §101(j), Oct. 12, 1984, 98 Stat. 1963, provided that: ''It is the sense of the Congress that—

''(1) voter registration drives should be encouraged by governmental entities at all levels; and

''(2) voter registration drives conducted by State governments on a nonpartisan basis do not violate the provisions of the Intergovernmental Personnel Act (42 U.S.C. 4728, 4763).''

§ 1972. Interference with freedom of elections

No officer of the Army, Navy, or Air Force of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State.

(R.S. § 2003.)

CODIFICATION

R.S. § 2003 derived from act Feb. 25, 1865, ch. 52, § 1, 13 Stat. 437.

Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 502, which established a separate Department of the Air Force, and Secretary of Defense Transfer Order No. 40 [App. A(10)], July 22, 1949, which transferred certain functions to the Air Force. Section 207(a), (f) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 8010 to 8013 continued Department of the Air Force under administrative supervision of Secretary of the Air Force.

Section was formerly classified to section 32 of Title 8, Aliens and Nationality.

SUBCHAPTER I–A—ENFORCEMENT OF VOTING RIGHTS

§ 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

(Pub. L. 89–110, title I, § 2, Aug. 6, 1965, 79 Stat. 437; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, § 206, Aug. 6, 1975, 89 Stat. 402; Pub. L. 97–205, § 3, June 29, 1982, 96 Stat. 134.)

AMENDMENTS

1982—Pub. L. 97–205 redesignated existing provisions as subsec. (a), struck out the comma after ''voting'', substituted ''in a manner which results in a denial or abridgement of'' for ''to deny or abridge'', inserted '', as provided in subsection (b) of this section'' after ''in contravention of the guarantees set forth in section 1973b(f)(2) of this title'', and added subsec. (b).

1975—Pub. L. 94–73 substituted ''race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title'' for ''race or color''.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 6 of Pub. L. 97–205 provided that: ''Except as otherwise provided in this Act, the amendments made by this Act [see Short Title of 1982 Amendment note below] shall take effect on the date of the enactment of this Act [June 29, 1982].''

SHORT TITLE

This subchapter and subchapters I–B and I–C of this chapter known as the ''Voting Rights Act of 1965'', see Short Title note set out under section 1971 of this title.

CONGRESSIONAL PURPOSE AND FINDINGS

Pub. L. 109–246, § 2, July 27, 2006, 120 Stat. 577, provided that:

''(a) PURPOSE.—The purpose of this Act [see Short Title of 2006 Amendment note set out under section 1971 of this title] is to ensure that the right of all citizens to vote, including the right to register to vote and cast meaningful votes, is preserved and protected as guaranteed by the Constitution.

''(b) FINDINGS.—The Congress finds the following:

''(1) Significant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices. This progress is the direct result of the Voting Rights Act of 1965 [this subchapter and subchapters I–B and I–C of this chapter].

''(2) However, vestiges of discrimination in voting continue to exist as demonstrated by second generation barriers constructed to prevent minority voters from fully participating in the electoral process.

''(3) The continued evidence of racially polarized voting in each of the jurisdictions covered by the expiring provisions of the Voting Rights Act of 1965 demonstrates that racial and language minorities remain politically vulnerable, warranting the continued protection of the Voting Rights Act of 1965.

''(4) Evidence of continued discrimination includes—

''(A) the hundreds of objections interposed, requests for more information submitted followed by voting changes withdrawn from consideration by jurisdictions covered by the Voting Rights Act of 1965, and section 5 [42 U.S.C. 1973c] enforcement actions undertaken by the Department of Justice in covered jurisdictions since 1982 that prevented election practices, such as annexation, at-large voting, and the use of multi-member districts, from being enacted to dilute minority voting strength;

''(B) the number of requests for declaratory judgments denied by the United States District Court for the District of Columbia;

''(C) the continued filing of section 2 [42 U.S.C. 1973] cases that originated in covered jurisdictions; and

''(D) the litigation pursued by the Department of Justice since 1982 to enforce sections 4(e), 4(f)(4), and 203 of such Act [42 U.S.C. 1973b(e), (f)(4), 1973aa–1a] to ensure that all language minority citizens have full access to the political process.

''(5) The evidence clearly shows the continued need for Federal oversight in jurisdictions covered by the Voting Rights Act of 1965 since 1982, as demonstrated in the counties certified by the Attorney General for Federal examiner and observer coverage and the tens of thousands of Federal observers that have been dispatched to observe elections in covered jurisdictions.

''(6) The effectiveness of the Voting Rights Act of 1965 has been significantly weakened by the United States Supreme Court decisions in Reno v. Bossier Parish II and Georgia v. Ashcroft, which have misconstrued Congress' original intent in enacting the Voting Rights Act of 1965 and narrowed the protections afforded by section 5 of such Act [42 U.S.C. 1973c].

''(7) Despite the progress made by minorities under the Voting Rights Act of 1965, the evidence before Congress reveals that 40 years has not been a suffi-

cient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution.

''(8) Present day discrimination experienced by racial and language minority voters is contained in evidence, including the objections interposed by the Department of Justice in covered jurisdictions; the section 2 litigation filed to prevent dilutive techniques from adversely affecting minority voters; the enforcement actions filed to protect language minorities; and the tens of thousands of Federal observers dispatched to monitor polls in jurisdictions covered by the Voting Rights Act of 1965.

''(9) The record compiled by Congress demonstrates that, without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years.''

SEPARABILITY

Section 208 of Pub. L. 94–73 provided that: ''If any amendments made by this Act [enacting sections 1973aa–1a and 1973aa–5 of this title, amending this section and sections 1973a to 1973d, 1973h, 1973i, 1973k, 1973*l*, 1973aa, 1973aa–2, 1973aa–3, 1973bb, 1973bb–1 of this title, and repealing sections 1973bb–2 to 1973bb–4 of this title] or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of the Voting Rights Act of 1965 [this subchapter and subchapters I–B and I–C of this chapter], or the application of such provision to other persons or circumstances shall not be affected by such determination.''

§ 1973a. Proceeding to enforce the right to vote

(a) Authorization by court for appointment of Federal observers

Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal observers by the Director of the Office of Personnel Management in accordance with section 1973d[1] of this title to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such observers is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of observers if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

[1] See References in Text note below.

(b) Suspension of use of tests and devices which deny or abridge the right to vote

If in a proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) Retention of jurisdiction to prevent commencement of new devices to deny or abridge the right to vote

If in any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

(Pub. L. 89–110, title I, § 3, Aug. 6, 1965, 79 Stat. 437; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, §§ 205, 206, title IV, §§ 401, 410, Aug. 6, 1975, 89 Stat. 402, 404, 406; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 109–246, § 3(d)(1), July 27, 2006, 120 Stat. 580.)

REFERENCES IN TEXT

Section 1973d of this title, referred to in subsec. (a), was repealed by Pub. L. 109–246, § 3(c), July 27, 2006, 120 Stat. 580.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–246 substituted ''observers'' for ''examiners'' wherever appearing.

1975—Subsec. (a). Pub. L. 94–73 inserted reference to fourteenth amendment in three places, and substituted ''voting guarantees'' for ''guarantees'' in three places, ''Attorney General or an aggrieved person'' for ''Attorney General'', and ''on account of race or color or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color''.

Subsec. (b). Pub. L. 94–73 substituted ''Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment'' for ''Attorney General under any statute to enforce the guarantees of the fifteenth amendment'', and ''on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color''.

Subsec. (c). Pub. L. 94–73 substituted ''Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment'' for ''Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment'' and ''on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color''.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''United States Civil Service Commission'' in subsec. (a) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1973b. Suspension of the use of tests or devices in determining eligibility to vote

(a) Action by State or political subdivision for declaratory judgment of no denial or abridgement; three-judge district court; appeal to Supreme Court; retention of jurisdiction by three-judge court

(1) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court determines that during the ten years preceding the filing of the action, and during the pendency of such action—

(A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section;

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

(C) no Federal examiners or observers under subchapters I–A to I–C of this chapter have been assigned to such State or political subdivision;

(D) such State or political subdivision and all governmental units within its territory have complied with section 1973c of this title, including compliance with the requirement that no change covered by section 1973c of this title has been enforced without preclearance under section 1973c of this title, and have repealed all changes covered by section 1973c of this title to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 1973c of this title, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 1973c of this title, and no such submissions or declaratory judgment actions are pending; and

(F) such State or political subdivision and all governmental units within its territory—

(i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;

(ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under subchapters I–A to I–C of this chapter; and

(iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. Any aggrieved party may as of right intervene at any stage in such action.

(5) An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for ten years after judgment and shall reopen the action upon motion of the Attorney General or any aggrieved person alleging that conduct has occurred which, had that conduct occurred during the ten-year periods referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection. The court, upon such reopening, shall vacate the declaratory judgment issued under this section if, after the issuance of such declaratory judgment, a final judgment against the State or subdivision with respect to which such declaratory judgment was issued, or against any governmental unit within that State or subdivision, determines that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision which sought a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision, or if, after the issuance of such declaratory judgment, a consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds.

(6) If, after two years from the date of the filing of a declaratory judgment under this subsection, no date has been set for a hearing in such action, and that delay has not been the result of an avoidable delay on the part of counsel for any party, the chief judge of the United States District Court for the District of Columbia may request the Judicial Council for the Circuit of the District of Columbia to provide the necessary judicial resources to expedite any action filed under this section. If such resources are unavailable within the circuit, the chief judge shall file a certificate of necessity in accordance with section 292(d) of title 28.

(7) The Congress shall reconsider the provisions of this section at the end of the fifteen-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

(8) The provisions of this section shall expire at the end of the twenty-five-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

(9) Nothing in this section shall prohibit the Attorney General from consenting to an entry of judgment if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of subsection (a)(1) of this section. Any aggrieved party may as of right intervene at any stage in such action.

(b) Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register

The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to

which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973f or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) "Test or device" defined

The phrase ''test or device'' shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) Required frequency, continuation and probable recurrence of incidents of denial or abridgement to constitute forbidden use of tests or devices

For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e) Completion of requisite grade level of education in American-flag schools in which the predominant classroom language was other than English

(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

(f) Congressional findings of voting discrimination against language minorities; prohibition of English-only elections; other remedial measures

(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

(3) In addition to the meaning given the term under subsection (c) of this section, the term ''test or device'' shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to subsection (b) of this section, the term ''test or device'', as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of subsection (a) of this section provides

any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan Natives and American Indians, if the predominate language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(Pub. L. 89–110, title I, § 4, Aug. 6, 1965, 79 Stat. 438; renumbered title I and amended Pub. L. 91–285, §§ 2–4, June 22, 1970, 84 Stat. 314, 315; Pub. L. 94–73, title I, § 101, title II, §§ 201–203, 206, Aug. 6, 1975, 89 Stat. 400–402; Pub. L. 97–205, § 2(a)–(c), June 29, 1982, 96 Stat. 131–133; Pub. L. 109–246, §§ 3(d)(2), (e)(1), 4, July 27, 2006, 120 Stat. 580.)

REFERENCES IN TEXT

The effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, referred to in subsec. (a)(7), (8), is July 27, 2006.

AMENDMENTS

2006—Subsec. (a)(1)(C). Pub. L. 109–246, § 3(d)(2), inserted ''or observers'' after ''examiners''.

Subsec. (a)(7), (8). Pub. L. 109–246, § 4, substituted ''Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006'' for ''Voting Rights Act Amendments of 1982''.

Subsec. (b). Pub. L. 109–246, § 3(e)(1), substituted ''section 1973f'' for ''section 1973d''.

1982—Subsec. (a). Pub. L. 97–205, § 2(a), (b), substituted ''nineteen years'' for ''seventeen years'' in three places, effective June 29, 1982, and, effective on and after Aug. 5, 1985, completely revised subsec. (a). Prior to such revision, subsec. (a) consisted of 4 undesignated paragraphs reading as follows:

''To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of seventeen years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after August 6, 1965, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred any where in the territory of such plaintiff. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of tests or devices have occurred anywhere in the territory of such plaintiff.

''An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section.

''If the Attorney General determines that he has no reason to believe that any such test or device has been used during the seventeen years preceding the filing of an action under the first sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

''If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, he shall consent to the entry of such judgment.''

Subsec. (f)(4). Pub. L. 97–205, § 2(c), inserted ''or in the case of Alaskan Natives and American Indians, if the predominate language is historically unwritten''.

1975—Subsec. (a). Pub. L. 94–73, §§ 101, 201, 206, in first par., substituted ''seventeen years'' for ''ten years'' in two places, and ''determinations have been made under the first two sentences of subsection (b)'' for ''determinations have been made under subsection (b)'', inserted provisions that no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any state with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such state or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section with the proviso that no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, de-

termining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of tests or devices have occurred anywhere in the territory of such plaintiff, in second par., substituted ''on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section'' for ''on account of race or color'', in third par., substituted ''seventeen years preceding the filing of an action under the first sentence of this subsection'' for ''ten years preceding the filing of the action'', and added fourth par.

Subsec. (b). Pub. L. 94–73, § 202, inserted provisions that on and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November, 1972.

Subsec. (d). Pub. L. 94–73, § 206, substituted ''on account of race or color or in contravention of the guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color''.

Subsec. (f). Pub. L. 94–73, § 203, added subsec. (f).

1970—Subsec. (a). Pub. L. 91–285, § 3, substituted ''ten'' for ''five'' years in first and third pars.

Subsec. (b). Pub. L. 91–285, § 4, inserted provision respecting the making of factual determinations concerning maintenance of any test or device on Nov. 1, 1968, registration of less than 50 per centum of persons of voting age on Nov. 1, 1968, and voting by less than 50 per centum of such persons in the presidential election of November 1968.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 2(a), (c) of Pub. L. 97–205 effective June 29, 1982, see section 6 of Pub. L. 97–205, set out as a note under section 1973 of this title.

Section 2(b) of Pub. L. 97–205 provided that the amendment made by that section is effective on and after Aug. 5, 1984.

§ 1973c. Alteration of voting qualifications; procedure and appeal; purpose or effect of diminishing the ability of citizens to elect their preferred candidates

(a) Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court.

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

(c) The term ''purpose'' in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice.

(Pub. L. 89–110, title I, § 5, Aug. 6, 1965, 79 Stat. 439; renumbered title I and amended Pub. L. 91–285, §§ 2, 5, June 22, 1970, 84 Stat. 314, 315; Pub. L. 94–73, title II, §§ 204, 206, title IV, § 405, Aug. 6, 1975, 89 Stat. 402, 404; Pub. L. 109–246, § 5, July 27, 2006, 120 Stat. 580.)

AMENDMENTS

2006—Pub. L. 109–246 designated existing provisions as subsec. (a), substituted ''neither has the purpose nor will have the effect'' for ''does not have the purpose and will not have the effect'', and added subsecs. (b) to (d).

1975—Pub. L. 94–73 inserted ''or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972,'' after 1968, substituted ''or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object,'' for ''except that neither the Attorney General's failure to object'', and ''on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color'', and inserted provisions that in the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to examine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.

1970—Pub. L. 91–285 inserted ''based upon determinations made under the first sentence of section 1973b(b) of this title'' after ''section 1973b(a) of this title'' and ''or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968,'' after ''1964,''.

§§ 1973d, 1973e. Repealed. Pub. L. 109–246, § 3(c), July 27, 2006, 120 Stat. 580

Section 1973d, Pub. L. 89–110, title I, § 6, Aug. 6, 1965, 79 Stat. 439; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, §§ 205, 206, Aug. 6, 1975, 89 Stat. 402; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 103–94, § 5, Oct. 6, 1993, 107 Stat. 1005, related to appointment of Federal voting examiners.

Section 1973e, Pub. L. 89–110, title I, § 7, Aug. 6, 1965, 79 Stat. 440; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783, related to examination of applicants for registration..

§ 1973f. Use of observers

(a) Assignment

Whenever—

(1) a court has authorized the appointment of observers under section 1973a(a) of this title for a political subdivision; or

(2) the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 1973b(b) of this title, unless a declaratory judgment has been rendered under section 1973b(a) of this title, that—

(A) the Attorney General has received written meritorious complaints from residents, elected officials, or civic participation organizations that efforts to deny or abridge the right to vote under the color of law on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title are likely to occur; or

(B) in the Attorney General's judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to the Attorney General to be reasonably attributable to violations of the 14th or 15th amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 14th or 15th amendment), the assignment of observers is otherwise necessary to enforce the guarantees of the 14th or 15th amendment;

the Director of the Office of Personnel Management shall assign as many observers for such subdivision as the Director may deem appropriate.

(b) Status

Except as provided in subsection (c), such observers shall be assigned, compensated, and separated without regard to the provisions of any statute administered by the Director of the Office of Personnel Management, and their service under subchapters I–A to I–C shall not be considered employment for the purposes of any statute administered by the Director of the Office of Personnel Management, except the provisions of section 7324 of title 5 prohibiting partisan political activity.

(c) Designation

The Director of the Office of Personnel Management is authorized to, after consulting the head of the appropriate department or agency, designate suitable persons in the official service of the United States, with their consent, to serve in these positions.

(d) Authority

Observers shall be authorized to—

(1) enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote; and

(2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

(e) Investigation and report

Observers shall investigate and report to the Attorney General, and if the appointment of observers has been authorized pursuant to section 1973a(a) of this title, to the court.

(Pub. L. 89–110, title I, § 8, Aug. 6, 1965, 79 Stat. 441; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 109–246, § 3(a), July 27, 2006, 120 Stat. 578.)

AMENDMENTS

2006—Pub. L. 109–246 amended section generally. Prior to amendment, text of section read as follows: ''Whenever an examiner is serving under subchapters I–A to I–C of this chapter in any political subdivision, the Director of the Office of Personnel Management may assign, at the request of the Attorney General, one or

more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 1973a(a) of this title, to the court.''

§ 1973g. Repealed. Pub. L. 109–246, § 3(c), July 27, 2006, 120 Stat. 580

Section, Pub. L. 89–110, title I, § 9, Aug. 6, 1965, 79 Stat. 441; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783, related to challenges to eligibilty listings.

§ 1973h. Poll taxes

(a) Congressional finding and declaration of policy against enforced payment of poll taxes as a device to impair voting rights

The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) Authority of Attorney General to institute actions for relief against enforcement of poll tax requirement

In the exercise of the powers of Congress under section 5 of the fourteenth amendment, section 2 of the fifteenth amendment and section 2 of the twenty-fourth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) of this section and the purposes of this section.

(c) Jurisdiction of three-judge district courts; appeal to Supreme Court

The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(Pub. L. 89–110, title I, § 10, Aug. 6, 1965, 79 Stat. 442; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title IV, § 408, Aug. 6, 1975, 89 Stat. 405.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–73, § 408(2), (3), inserted reference to section 2 of twenty-fourth amendment.

Subsec. (d). Pub. L. 94–73, § 408(1), struck out subsec. (d) which related to post-payment of poll taxes in event of a judicial declaration of constitutionality.

§ 1973i. Prohibited acts

(a) Failure or refusal to permit casting or tabulation of vote

No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of subchapters I–A to I–C of this chapter or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 1973a(a), 1973d,[1] 1973f, 1973g,[1] 1973h, or 1973j(e) of this title.

(c) False information in registering or voting; penalties

Whoever knowingly or willfully gives false information as to his name, address or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however*, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Falsification or concealment of material facts or giving of false statements in matters within jurisdiction of examiners or hearing officers; penalties

Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudu-

[1] See References in Text note below.

lent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(e) Voting more than once

(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term ''votes more than once'' does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 1973aa–1 of this title, to the extent two ballots are not cast for an election to the same candidacy or office.

(Pub. L. 89–110, title I, § 11, Aug. 6, 1965, 79 Stat. 443; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 91–405, title II, § 204(e), Sept. 22, 1970, 84 Stat. 853; Pub. L. 94–73, title IV, §§ 404, 409, Aug. 6, 1975, 89 Stat. 404, 405.)

REFERENCES IN TEXT

Sections 1973d and 1973g of this title, referred to in subsec. (b), were repealed by Pub. L. 109–246, § 3(c), July 27, 2006, 120 Stat. 580.

AMENDMENTS

1975—Subsec. (c). Pub. L. 94–73, § 404, inserted reference to Guam and Virgin Islands.

Subsec. (e). Pub. L. 94–73, § 409, added subsec. (e).

1970—Subsec. (c). Pub. L. 91–405 substituted reference to Delegate from District of Columbia for Delegates or Commissioners from territories or possessions.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

§ 1973j. Civil and criminal sanctions

(a) Depriving or attempting to deprive persons of secured rights

Whoever shall deprive or attempt to deprive any person of any right secured by section 1973, 1973a, 1973b, 1973c, or 1973h of this title or shall violate section 1973i(a) of this title, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Destroying, defacing, mutilating, or altering ballots or official voting records

Whoever, within a year following an election in a political subdivision in which an observer has been assigned (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Conspiring to violate or interfere with secured rights

Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 1973, 1973a, 1973b, 1973c, 1973h, or 1973i(a) of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Civil action by Attorney General for preventive relief; injunctive and other relief

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 1973, 1973a, 1973b, 1973c, 1973e,[1] 1973h, 1973i, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under subchapters I–A to I–C of this chapter to vote and (2) to count such votes.

(e) Proceeding by Attorney General to enforce the counting of ballots of registered and eligible persons who are prevented from voting

Whenever in any political subdivision in which there are observers appointed pursuant to subchapters I–A to I–C of this chapter any persons allege to such an observer within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under subchapters I–A to I–C of this chapter or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the observer shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) Jurisdiction of district courts; exhaustion of administrative or other remedies unnecessary

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of subchapters I–A to I–C of this chapter shall have exhausted any administrative or other remedies that may be provided by law.

(Pub. L. 89–110, title I, § 12, Aug. 6, 1965, 79 Stat. 443; Pub. L. 90–284, title I, § 103(c), Apr. 11, 1968,

[1] See References in Text note below.

82 Stat. 75; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; Pub. L. 109–246, § 3(d)(3), (4), (e)(2), July 27, 2006, 120 Stat. 580.)

REFERENCES IN TEXT

Section 1973e of this title, referred to in subsec. (d), was repealed by Pub. L. 109–246, § 3(c), July 27, 2006, 120 Stat. 580.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–246, § 3(e)(2), struck out ''1973e,'' after ''1973c,''.

Subsec. (b). Pub. L. 109–246, § 3(d)(3), substituted ''an observer has been assigned'' for ''an examiner has been appointed''.

Subsec. (c). Pub. L. 109–246, § 3(e)(2), struck out ''1973e,'' after ''1973c,''.

Subsec. (e). Pub. L. 109–246, § 3(d)(4), substituted ''observers'' for ''examiners'' and substituted ''observer'' for ''examiner'' in two places.

1968—Subsecs. (a), (c). Pub. L. 90–284 struck out reference to violation of section 1973i(b) of this title.

§ 1973k. Termination of assignment of observers

(a) The assignment of observers shall terminate in any political subdivision of any State—

(1) with respect to observers appointed pursuant to section 1973f of this title or with respect to examiners certified under subchapters I–A to I–C before July 27, 2006, whenever the Attorney General notifies the Director of the Office of Personnel Management, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision described in subsection (b), that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title in such subdivision; and

(2) with respect to observers appointed pursuant to section 1973a(a) of this title, upon order of the authorizing court.

(b) A political subdivision referred to in subsection (a)(1) is one with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote.

(c) A political subdivision may petition the Attorney General for a termination under subsection (a)(1).

(Pub. L. 89–110, title I, § 13, Aug. 6, 1965, 79 Stat. 444; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, § 206, Aug. 6, 1975, 89 Stat. 402; Pub. L. 109–246, § 3(b), July 27, 2006, 120 Stat. 579.)

AMENDMENTS

2006—Pub. L. 109–246 amended section generally. Prior to amendment, section related to termination of listing procedures, basis for termination, and survey or census by the Director of the Census.

1975—Pub. L. 94–73 substituted ''on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color''.

§ 1973*l*. Enforcement proceedings

(a) Criminal contempt

All cases of criminal contempt arising under the provisions of subchapters I–A to I–C of this chapter shall be governed by section 1995 of this title.

(b) Jurisdiction of courts for declaratory judgment, restraining orders, or temporary or permanent injunction

No court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment pursuant to section 1973b or 1973c of this title or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of subchapters I–A to I–C of this chapter or any action of any Federal officer or employee pursuant hereto.

(c) Definitions

(1) The terms ''vote'' or ''voting'' shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this subchapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term ''political subdivision'' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(3) The term ''language minorities'' or ''language minority group'' means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.

(d) Subpenas

In any action for a declaratory judgment brought pursuant to section 1973b or 1973c of this title, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: *Provided*, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

(e) Attorney's fees

In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, reasonable expert fees, and other reasonable litigation expenses as part of the costs.

(Pub. L. 89–110, title I, § 14, Aug. 6, 1965, 79 Stat. 445; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, § 207, title IV, § 402, Aug. 6, 1975, 89 Stat. 402, 404; Pub. L. 109–246, §§ 3(e)(3), 6, July 27, 2006, 120 Stat. 580, 581.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–246, § 3(e)(3), struck out ''or a court of appeals in any proceeding under section 1973g of this title'' after ''District of Columbia''.

Subsec. (e). Pub. L. 109–246, § 6, inserted ‘‘, reasonable expert fees, and other reasonable litigation expenses’’ after ‘‘reasonable attorney's fee’’.

1975—Subsec. (c)(3). Pub. L. 94–73, § 207, added par. (3).

Subsec. (e). Pub. L. 94–73, § 402, added subsec. (e).

§ 1973m. Omitted

CODIFICATION

Section, Pub. L. 89–110, title I, § 16, Aug. 6, 1965, 79 Stat. 445; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314, authorized Attorney General and Secretary of Defense, jointly, to make a study to determine whether laws or practices of any State or States impose preconditions to voting resulting in discrimination against Armed Forces personnel seeking to vote and to make a report to Congress not later than June 30, 1966, with the results of such study and recommendations for legislation.

§ 1973n. Impairment of voting rights of persons holding current registration

Nothing in subchapters I–A to I–C of this chapter shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

(Pub. L. 89–110, title I, § 17, Aug. 6, 1965, 79 Stat. 446; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314.)

§ 1973*o*. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of subchapters I–A to I–C of this chapter.

(Pub. L. 89–110, title I, § 18, Aug. 6, 1965, 79 Stat. 446; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314.)

§ 1973p. Separability

If any provision of subchapters I–A to I–C of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of subchapters I–A to I–C of this chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Pub. L. 89–110, title I, § 19, Aug. 6, 1965, 79 Stat. 446; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314.)

SUBCHAPTER I–B—SUPPLEMENTAL PROVISIONS

§ 1973aa. Application of prohibition to other States; “test or device” defined

(a) No citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.

(b) As used in this section, the term ‘‘test or device’’ means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(Pub. L. 89–110, title II, § 201, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 315; amended Pub. L. 94–73, title I, § 102, Aug. 6, 1975, 89 Stat. 400.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–73 struck out ‘‘Prior to August 6, 1975,’’ and ‘‘as to which the provisions of section 1973b(a) of this title are not in effect by reason of determinations made under section 1973b(b) of this title’’.

§ 1973aa–1. Residence requirements for voting

(a) Congressional findings

The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections—

(1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;

(2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;

(3) denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;

(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;

(5) has the effect of denying to citizens the equality of civil rights, and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment; and

(6) does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.

(b) Congressional declaration: durational residency requirement, abolishment; absentee registration and balloting standards, establishment

Upon the basis of these findings, Congress declares that in order to secure and protect the above-stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.

(c) Prohibition of denial of right to vote because of durational residency requirement or absentee balloting

No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President,

in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

(d) Registration: time for application; absentee balloting: time of application and return of ballots

For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

(e) Change of residence; voting in person or by absentee ballot in State of prior residence

If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

(f) Absentee registration requirement

No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration.

(g) State or local adoption of less restrictive voting practices

Nothing in this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein.

(h) "State" defined

The term ''State'' as used in this section includes each of the several States and the District of Columbia.

(i) False registration, and other fraudulent acts and conspiracies: application of penalty for false information in registering or voting

The provisions of section 1973i(c) of this title shall apply to false registration, and other fraudulent acts and conspiracies, committed under this section.

(Pub. L. 89–110, title II, § 202, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 316.)

§ 1973aa–1a. Bilingual election requirements

(a) Congressional findings and declaration of policy

The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

(b) Bilingual voting materials requirement

(1) Generally

Before August 6, 2032, no covered State or political subdivision shall provide voting materials only in the English language.

(2) Covered States and political subdivisions

(A) Generally

A State or political subdivision is a covered State or political subdivision for the purposes of this subsection if the Director of the Census determines, based on the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data, that—

(i)(I) more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient;

(II) more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; or

(III) in the case of a political subdivision that contains all or any part of an Indian

reservation, more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and

(ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.

(B) Exception

The prohibitions of this subsection do not apply in any political subdivision that has less than 5 percent voting age limited-English proficient citizens of each language minority which comprises over 5 percent of the statewide limited-English proficient population of voting age citizens, unless the political subdivision is a covered political subdivision independently from its State.

(3) Definitions

As used in this section—

(A) the term ''voting materials'' means registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots;

(B) the term ''limited-English proficient'' means unable to speak or understand English adequately enough to participate in the electoral process;

(C) the term ''Indian reservation'' means any area that is an American Indian or Alaska Native area, as defined by the Census Bureau for the purposes of the 1990 decennial census;

(D) the term ''citizens'' means citizens of the United States; and

(E) the term ''illiteracy'' means the failure to complete the 5th primary grade.

(4) Special rule

The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

(c) Requirement of voting notices, forms, instructions, assistance, or other materials and ballots in minority language

Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(d) Action for declaratory judgment permitting English-only materials

Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

(e) Definitions

For purposes of this section, the term ''language minorities'' or ''language minority group'' means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

(Pub. L. 89–110, title II, § 203, as added Pub. L. 94–73, title III, § 301, Aug. 6, 1975, 89 Stat. 402; amended Pub. L. 97–205, §§ 2(d), 4, June 29, 1982, 96 Stat. 134; Pub. L. 102–344, § 2, Aug. 26, 1992, 106 Stat. 921; Pub. L. 109–246, §§ 7, 8, July 27, 2006, 120 Stat. 581.)

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–246, § 7, substituted ''2032'' for ''2007''.

Subsec. (b)(2)(A). Pub. L. 109–246, § 8, substituted ''the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data'' for ''census data'' in introductory provisions.

1992—Subsec. (b). Pub. L. 102–344 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Prior to August 6, 1992, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: *Provided*, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.''

1982—Subsec. (b). Pub. L. 97–205, § 4, substituted ''Prior to August 6, 1992'' for ''Prior to August 6, 1985''.

Subsec. (c). Pub. L. 97–205, § 2(d), inserted ''and American Indians'' after ''Alaskan natives''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–205 effective June 29, 1982, see section 6 of Pub. L. 97–205, set out as a note under section 1973 of this title.

EXTENSION TO AUGUST 6, 1992, OF PROHIBITION ON USE OF VOTING INSTRUCTIONS, ASSISTANCE, OR OTHER MATERIALS OR INFORMATION IN ENGLISH ONLY; LIMITATIONS BASED ON 1980 CENSUS AND SUBSEQUENT CENSUS DATA

Section 4 of Pub. L. 97–205 provided in part that: ''[T]he extension made by this section [amending subsec. (b) of this section] shall apply only to determinations made by the Director of the Census under clause (i) of section 203(b) [subsec. (b)(i) of this section] for members of a single language minority who do not speak or understand English adequately enough to participate in the electoral process when such a determination can be made by the Director of the Census based on the 1980 and subsequent census data.''

§ 1973aa–2. Judicial relief; civil actions by the Attorney General; three-judge district court; appeal to Supreme Court

Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 1973aa of this title, or (b) undertakes to deny the right to vote in any election in violation of section 1973aa–1 or 1973aa–1a of this title, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393[1] of title 28, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall be to the Supreme Court.

(Pub. L. 89–110, title II, § 204, formerly § 203, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 317; renumbered § 204 and amended Pub. L. 94–73, title III, §§ 302, 303, title IV, § 406, Aug. 6, 1975, 89 Stat. 403, 405.)

REFERENCES IN TEXT

Section 1393 of title 28, referred to in text, was repealed by Pub. L. 100–702, title X, § 1001(a), Nov. 19, 1988, 102 Stat. 4664.

AMENDMENTS

1975—Pub. L. 94–73 inserted reference to section 1973aa–1a of this title and substituted reference to section 2284 of title 28 for reference to section 2282 of title 28.

§ 1973aa–3. Penalty

Whoever shall deprive or attempt to deprive any person of any right secured by section 1973aa, 1973aa–1, or 1973aa–1a of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(Pub. L. 89–110, title II, § 205, formerly § 204, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 317; renumbered § 205 and amended Pub. L. 94–73, title III, §§ 302, 304, Aug. 6, 1975, 89 Stat. 403.)

AMENDMENTS

1975—Pub. L. 94–73 inserted reference to section 1973aa–1a of this title.

§ 1973aa–4. Separability

If any provision of subchapters I–A to I–C of this chapter or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of subchapters I–A to I–C of this chapter or the application of such provision to other persons or circumstances shall not be affected by such determination.

(Pub. L. 89–110, title II, § 206, formerly § 205, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 318; renumbered § 206, Pub. L. 94–73, title III, § 302, Aug. 6, 1975, 89 Stat. 403.)

[1] See References in Text note below.

§ 1973aa–5. Survey to compile registration and voting statistics

(a) Elections to House of Representatives and elections designated by United States Commission on Civil Rights

Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 1973b(a) of this title are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1974; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall only include a count of citizens of voting age, race or color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in the elections surveyed.

(b) Prohibition against compulsion to disclose personal data; advice of rights

In any survey under subsection (a) of this section no person shall be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information.

(c) Report to Congress

The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

(d) Confidentiality of information; penalties

The provisions of section 9 and chapter 7 of title 13 shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section.

(Pub. L. 89–110, title II, § 207, as added Pub. L. 94–73, title IV, § 403, Aug. 6, 1975, 89 Stat. 404.)

§ 1973aa–6. Voting assistance for blind, disabled or illiterate persons

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

(Pub. L. 89–110, title II, § 208, as added Pub. L. 97–205, § 5, June 29, 1982, 96 Stat. 135.)

EFFECTIVE DATE

Section 5 of Pub. L. 97–205 provided that this section is effective Jan. 1, 1984.

SUBCHAPTER I–C—EIGHTEEN-YEAR-OLD VOTING AGE

§ 1973bb. Enforcement of twenty-sixth amendment

(a)(1) The Attorney General is directed to institute, in the name of the United States, such

actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this subchapter, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(Pub. L. 89–110, title III, § 301, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 318; amended Pub. L. 94–73, title IV, § 407, Aug. 6, 1975, 89 Stat. 405.)

AMENDMENTS

1975—Pub. L. 94–73 substituted provisions authorizing the Attorney General to institute proceedings to enforce twenty-sixth amendment, the jurisdiction of the district courts, and penalties for denial of rights secured by twenty-sixth amendment, for provisions relating to Congressional findings and prohibition of denial of right to vote on account of age.

§ 1973bb–1. "State" defined

As used in this subchapter, the term ''State'' includes the District of Columbia.

(Pub. L. 89–110, title III, § 302, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 318; amended Pub. L. 94–73, title IV, § 407, Aug. 6, 1975, 89 Stat. 405.)

AMENDMENTS

1975—Pub. L. 94–73 substituted definition of State for provisions prohibiting denial of right to vote because of age.

§§ 1973bb–2 to 1973bb–4. Repealed. Pub. L. 94–73, title IV, § 407, Aug. 6, 1975, 89 Stat. 405

Section 1973bb–2, Pub. L. 89–110, title III, § 303, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 318, authorized the Attorney General to institute actions to enforce this subchapter, and provided for jurisdiction of district courts, appeals, and penalties for denial of rights secured by this subchapter. See section 1973bb of this title.

Section 1973bb–3, Pub. L. 89–110, title III, § 304, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 319, defined ''State''. See section 1973bb–1 of this title.

Section 1973bb–4, Pub. L. 89–10, title III, § 305, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 319, provided for effective date of this subchapter.

SUBCHAPTER I–D—FEDERAL ABSENTEE VOTING ASSISTANCE

PART I—RECOMMENDATION TO STATES

§§ 1973cc to 1973cc–3. Repealed. Pub. L. 99–410, title II, § 203, Aug. 28, 1986, 100 Stat. 930

Section 1973cc, acts Aug. 9, 1955, ch. 656, title I, § 101, 69 Stat. 584; June 18, 1968, Pub. L. 90–343, § 1, 82 Stat. 180; Nov. 4, 1978, Pub. L. 95–593, § 7, 92 Stat. 2537, related to State enactment of absentee voting legislation and to covered persons. See sections 1973ff–1 and 1973ff–3 of this title.

Section 1973cc–1, acts Aug. 9, 1955, ch. 656, title I, § 102, 69 Stat. 584; June 18, 1968, Pub. L. 90–344, § 1(1), 82 Stat. 181; Aug. 6, 1981, Pub. L. 97–31, § 12(19), 95 Stat. 154, related to balloting procedures. See section 1973ff–3 of this title.

Section 1973cc–2, act Aug. 9, 1955, ch. 656, title I, § 103, 69 Stat. 585, related to availability of statistical data to assist Presidential designee in compiling comprehensive information of operations under this subchapter.

Section 1973cc–3, act Aug. 9, 1955, ch. 656, title I, § 104, as added June 18, 1968, Pub. L. 90–344, § 1(2), 82 Stat. 181, related to legal residence for voting purposes of personnel residing on military installations.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L. 99–410, set out as an Effective Date note under section 1973ff of this title.

PART II—RESPONSIBILITIES OF FEDERAL GOVERNMENT

§§ 1973cc–11 to 1973cc–15. Repealed. Pub. L. 99–410, title II, § 203, Aug. 28, 1986, 100 Stat. 930

Section 1973cc–11, acts Aug. 9, 1955, ch. 656, title II, § 201, 69 Stat. 585; Dec. 21, 1982, Pub. L. 97–375, title II, § 203(b), 96 Stat. 1823, provided for designation of Presidential designee to coordinate and facilitate Federal responsibilities and to report to the President and Congress. See section 1973ff(a) and (b) of this title.

Section 1973cc–12, acts Aug. 9, 1955, ch. 656, title II, § 202, 69 Stat. 586; Nov. 4, 1978, Pub. L. 95–593, § 8, 92 Stat. 2537, related to acquisition and distribution by Presidential designee of current absentee voting information from each State.

Section 1973c–13, acts Aug. 9, 1955, ch. 656, title II, § 203, 69 Stat. 586; June 18, 1968, Pub. L. 90–344, § 1(3), 82 Stat. 181; Nov. 4, 1978, Pub. L. 95–593, § 9, 92 Stat. 2538, related to cooperation of Government officials, drafts of State legislation, and printing and transmitting of post cards. See section 1973ff(c) of this title.

Section 1973cc–14, acts Aug. 9, 1955, ch. 656, title II, § 204, 69 Stat. 586; June 18, 1968, Pub. L. 90–343, § 2, 82 Stat. 181; June 18, 1968, Pub. L. 90–344, § 1(4)–(6), 82 Stat. 182; Nov. 4, 1978, Pub. L. 95–593, § 10, 92 Stat. 2538, related to form and content of post card application. See section 1973ff(b)(2) of this title.

Section 1973cc–15, act Aug. 9, 1955, ch. 656, title II, § 205, 69 Stat. 588, related to use of prior post card form for election of Members of Congress.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L. 99–410, set out as an Effective Date note under section 1973ff of this title.

PART III—GENERAL PROVISIONS

§§ 1973cc–21 to 1973cc–26. Repealed. Pub. L. 99–410, title II, § 203, Aug. 28, 1986, 100 Stat. 930

Section 1973cc–21, act Aug. 9, 1955, ch. 656, title III, § 301, 69 Stat. 588, provided definitions of terms used in this subchapter. See section 1973ff–6 of this title.

Section 1973cc–22, act Aug. 9, 1955, ch. 656, title III, § 302, 69 Stat. 588, provided free postage for official post cards, ballots, voting instructions, and envelopes. See section 3406 of Title 39, Postal Service.

Section 1973cc–23, act Aug. 9, 1955, ch. 656, title III, § 303, 69 Stat. 588, related to prevention of fraud and coercion.

Section 1973cc–24, act Aug. 9, 1955, ch. 656, title III, § 304, 69 Stat. 589, provided that acts done in good faith do not constitute a violation of any provision of law relating to elective franchise.

Section 1973cc–25, act Aug. 9, 1955, ch. 656, title III, § 305, 69 Stat. 589, provided that no undue influence be used by any officer but that nothing in this subchapter be deemed to prohibit free discussion regarding political issues or candidates for public office. See section 609 of Title 18, Crimes and Criminal Procedure.

Section 1973cc–26, act Aug. 9, 1955, ch. 656, title III, § 308, 69 Stat. 589, authorized appropriations as necessary to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L. 99–410, set out as an Effective Date note under section 1973ff of this title.

SUBCHAPTER I–E—VOTING RIGHTS OF OVERSEAS CITIZENS

§§ 1973dd to 1973dd–6. Repealed. Pub. L. 99–410, title II, § 203, Aug. 28, 1986, 100 Stat. 930

Section 1973dd, Pub. L. 94–203, § 2, Jan. 2, 1976, 89 Stat. 1142; Pub. L. 95–593, § 1, Nov. 4, 1978, 92 Stat. 2535, provided definitions of terms used in this subchapter. See section 1973ff–6 of this title.

Section 13973dd–1, Pub. L. 94–203, § 3, Jan. 2, 1976, 89 Stat. 1142; Pub. L. 95–593, § 2, Nov. 4, 1978, 92 Stat. 2535, related to qualifications for registration and vote by absentee ballot.

Section 1973dd–2, Pub. L. 94–203, § 4, Jan. 2, 1976, 89 Stat. 1143; Pub. L. 95–593, § 3, Nov. 4, 1978, 92 Stat. 2535, related to State provisions concerning absentee registration or qualification and absentee ballots and to recommendations to States in carrying out the provisions of this section. See sections 1973ff–1 and 1973ff–3 of this title.

Section 1973dd–2a, Pub. L. 94–203, § 5, as added Pub. L. 95–593, § 4(2), Nov. 4, 1978, 92 Stat. 2535, related to acquisition and dissemination by Presidential designee of current absentee voting information from each State.

Section 1973dd–2b, Pub. L. 94–203, § 6, as added Pub. L. 95–593, § 4(2), Nov. 4, 1978, 92 Stat. 2536, related to printing and transmitting of voting material. See section 1973ff(c)(2) of this title and section 3406 of Title 39, Postal Service.

Section 1973dd–3, Pub. L. 94–203, § 7, formerly § 5, Jan. 2, 1976, 89 Stat. 1143; renumbered § 7, Pub. L. 95–593, § 4(1), Nov. 4, 1978, 92 Stat. 2535, provided for enforcement by the Attorney General, jurisdiction of courts, and penalties for depriving or attempting to deprive persons of secured rights and giving or conspiring to give false information or paying or accepting money either for registration to vote or voting. See section 1973ff–4 of this title and section 608 of Title 18, Crimes and Criminal Procedure.

Section 1973dd–4, Pub. L. 94–203, § 8, formerly § 6, Jan. 2, 1976, 89 Stat. 1143; renumbered § 8, Pub. L. 95–593, § 4(1), Nov. 4, 1978, 92 Stat. 2535, provided that if any provision of this subchapter is held invalid, the validity of the remainder of this subchapter not be affected.

Section 1973dd–5, Pub. L. 94–203, § 9, formerly § 7, Jan. 2, 1976, 89 Stat. 1144; renumbered § 9 and amended Pub. L. 95–593, §§ 4(1), 5, Nov. 4, 1978, 92 Stat. 2535, 2537, related to applicability of this subchapter to State registration requirements and voting practices and provided that exercise of any right to register or vote in Federal elections by any citizen outside the United States not affect the determination of residence or domicile for tax purposes. See section 1973ff–5 of this title.

Section 1973dd–6, Pub. L. 94–203, § 11, as added Pub. L. 95–593, § 6, Nov. 4, 1978, 92 Stat. 2537, authorized appropriations as necessary to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L. 99–410, set out as an Effective Date note under section 1973ff of this title.

SUBCHAPTER I–F—VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED

§ 1973ee. Congressional declaration of purpose

It is the intention of Congress in enacting this subchapter to promote the fundamental right to vote by improving access for handicapped and elderly individuals to registration facilities and polling places for Federal elections.

(Pub. L. 98–435, § 2, Sept. 28, 1984, 98 Stat. 1678.)

EFFECTIVE DATE

Section 9 of Pub. L. 98–435 provided that: ''This Act [enacting this subchapter] shall apply with respect to elections taking place after December 31, 1985.''

SHORT TITLE

This subchapter is known as the ''Voting Accessibility for the Elderly and Handicapped Act'', see Short Title note set out under section 1971 of this title.

§ 1973ee–1. Selection of polling facilities

(a) Accessibility to all polling places as responsibility of each political subdivision

Within each State, except as provided in subsection (b) of this section, each political subdivision responsible for conducting elections shall assure that all polling places for Federal elections are accessible to handicapped and elderly voters.

(b) Exception

Subsection (a) of this section shall not apply to a polling place—

(1) in the case of an emergency, as determined by the chief election officer of the State; or

(2) if the chief election officer of the State—

(A) determines that all potential polling places have been surveyed and no such accessible place is available, nor is the political subdivision able to make one temporarily accessible, in the area involved; and

(B) assures that any handicapped or elderly voter assigned to an inaccessible polling place, upon advance request of such voter (pursuant to procedures established by the chief election officer of the State)—

(i) will be assigned to an accessible polling place, or

(ii) will be provided with an alternative means for casting a ballot on the day of the election.

(c) Report to Federal Election Commission

(1) Not later than December 31 of each even-numbered year, the chief election officer of each State shall report to the Federal Election Commission, in a manner to be determined by the Commission, the number of accessible and inaccessible polling places in such State on the date of the preceding general Federal election, and the reasons for any instance of inaccessibility.

(2) Not later than April 30 of each odd-numbered year, the Federal Election Commission shall compile the information reported under paragraph (1) and shall transmit that information to the Congress.

(3) The provisions of this subsection shall only be effective for a period of 10 years beginning on September 28, 1984.

(Pub. L. 98–435, § 3, Sept. 28, 1984, 98 Stat. 1678.)

§ 1973ee–2. Selection of registration facilities

(a) Each State or political subdivision responsible for registration for Federal elections shall provide a reasonable number of accessible permanent registration facilities.

(b) Subsection (a) of this section does not apply to any State that has in effect a system that provides an opportunity for each potential voter to register by mail or at the residence of such voter.

(Pub. L. 98–435, § 4, Sept. 28, 1984, 98 Stat. 1679.)

§ 1973ee–3. Registration and voting aids

(a) Printed instructions; telecommunications devices for the deaf

Each State shall make available registration and voting aids for Federal elections for handicapped and elderly individuals, including—

(1) instructions, printed in large type, conspicuously displayed at each permanent registration facility and each polling place; and

(2) information by telecommunications devices for the deaf.

(b) Medical certification

No notarization or medical certification shall be required of a handicapped voter with respect to an absentee ballot or an application for such ballot, except that medical certification may be required when the certification establishes eligibility, under State law—

(1) to automatically receive an application or a ballot on a continuing basis; or

(2) to apply for an absentee ballot after the deadline has passed.

(c) Notice of availability of aids

The chief election officer of each State shall provide public notice, calculated to reach elderly and handicapped voters, of the availability of aids under this section, assistance under section 1973aa–6 of this title, and the procedures for voting by absentee ballot, not later than general public notice of registration and voting is provided.

(Pub. L. 98–435, § 5, Sept. 28, 1984, 98 Stat. 1679.)

§ 1973ee–4. Enforcement

(a) Action for declaratory or injunctive relief

If a State or political subdivision does not comply with this subchapter, the United States Attorney General or a person who is personally aggrieved by the noncompliance may bring an action for declaratory or injunctive relief in the appropriate district court.

(b) Prerequisite notice of noncompliance

An action may be brought under this section only if the plaintiff notifies the chief election officer of the State of the noncompliance and a period of 45 days has elapsed since the date of notification.

(c) Attorney fees

Notwithstanding any other provision of law, no award of attorney fees may be made with respect to an action under this section, except in any action brought to enforce the original judgment of the court.

(Pub. L. 98–435, § 6, Sept. 28, 1984, 98 Stat. 1679.)

§ 1973ee–5. Relationship to Voting Rights Act of 1965

This subchapter shall not be construed to impair any right guaranteed by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(Pub. L. 98–435, § 7, Sept. 28, 1984, 98 Stat. 1679.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in text, is Pub. L. 89–110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I–A (§ 1973 et seq.), I–B (§ 1973aa et seq.), and I–C (§ 1973bb et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

§ 1973ee–6. Definitions

As used in this subchapter, the term—

(1) ''accessible'' means accessible to handicapped and elderly individuals for the purpose of voting or registration, as determined under guidelines established by the chief election officer of the State involved;

(2) ''elderly'' means 65 years of age or older;

(3) ''Federal election'' means a general, special, primary, or runoff election for the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) ''handicapped'' means having a temporary or permanent physical disability; and

(5) ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possesssion[1] of the United States.

(Pub. L. 98–435, § 8, Sept. 28, 1984, 98 Stat. 1679.)

SUBCHAPTER I–G—REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS IN ELECTIONS FOR FEDERAL OFFICE

PRIOR PROVISIONS

Provisions similar to this subchapter were contained in subchapters I–D and I–E (1973cc et seq. and 1973dd et seq.) of this chapter prior to repeal by Pub. L. 99–410.

§ 1973ff. Federal responsibilities

(a) Presidential designee

The President shall designate the head of an executive department to have primary responsibility for Federal functions under this subchapter.

(b) Duties of Presidential designee

The Presidential designee shall—

(1) consult State and local election officials in carrying out this subchapter, and ensure that such officials are aware of the requirements of this Act;

(2) prescribe an official post card form, containing both an absentee voter registration application and an absentee ballot application,

[1] So in original. Probably should be ''possession''.

for use by the States as required under section 1973ff–1(4) of this title;

(3) carry out section 1973ff–2 of this title with respect to the Federal write-in absentee ballot for absent uniformed services voters and overseas voters in general elections for Federal office;

(4) prescribe a suggested design for absentee ballot mailing envelopes for use by the States as recommended in section 1973ff–3[1] of this title;

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions;

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this subchapter, including a statistical analysis of uniformed services voter participation, a separate statistical analysis of overseas nonmilitary participation, and a description of State-Federal cooperation; and

(7) prescribe a standard oath for use with any document under this subchapter affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury.

(c) Duties of other Federal officials

(1) In general

The head of each Government department, agency, or other entity shall, upon request of the Presidential designee, distribute balloting materials and otherwise cooperate in carrying out this subchapter.

(2) Administrator of General Services

As directed by the Presidential designee, the Administrator of General Services shall furnish official post card forms (prescribed under subsection (b) of this section) and Federal write-in absentee ballots (prescribed under section 1973ff–2 of this title).

(Pub. L. 99–410, title I, § 101, Aug. 28, 1986, 100 Stat. 924; Pub. L. 105–277, div. G, title XXII, § 2219(c), Oct. 21, 1998, 112 Stat. 2681–817; Pub. L. 107–107, div. A, title XVI, § 1606(a)(2), Dec. 28, 2001, 115 Stat. 1279; Pub. L. 107–252, title VII, § 705(a), (b)(1), (c), Oct. 29, 2002, 116 Stat. 1724, 1725; Pub. L. 108–375, div. A, title V, § 566(a), Oct. 28, 2004, 118 Stat. 1919.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, as amended, known as the Uniformed and Overseas Citizens Absentee Voting Act, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

Section 1973ff–3 of this title, referred to in subsec. (b)(4), was amended generally by Pub. L. 107–107, div. A, title XVI, § 1606(b), Dec. 28, 2001, 115 Stat. 1279, and, as so amended, no longer contains provisions relating to designs for absentee ballot mailing envelopes.

[1] See References in Text note below.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–375 substituted ''absent uniformed services voters and overseas voters'' for ''overseas voters''.

2002—Subsec. (b)(1). Pub. L. 107–252, § 705(a), inserted '', and ensure that such officials are aware of the requirements of this Act'' before semicolon at end.

Subsec. (b)(6). Pub. L. 107–252, § 705(c), substituted ''a separate statistical analysis'' for ''a general assessment''.

Subsec. (b)(7). Pub. L. 107–252, § 705(b)(1), added par. (7).

2001—Subsec. (b)(2). Pub. L. 107–107 substituted ''as required under section 1973ff–1(4) of this title'' for ''as recommended in section 1973ff–3 of this title''.

1998—Subsec. (b)(6). Pub. L. 105–277 substituted ''of uniformed services voter participation, a general assessment of overseas nonmilitary participation,'' for ''of voter participation''.

EFFECTIVE DATE

Section 204 of Pub. L. 99–410 provided that: ''The amendments and repeals made by this Act [see Short Title of 1986 Amendment note set out under section 1971 of this title] shall apply with respect to elections taking place after December 31, 1987.''

SENSE OF CONGRESS REGARDING THE IMPORTANCE OF VOTING

Pub. L. 107–107, div. A, title XVI, § 1601, Dec. 28, 2001, 115 Stat. 1274, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that each person who is an administrator of a Federal, State, or local election—

''(1) should be aware of the importance of the ability of each uniformed services voter to exercise the right to vote; and

''(2) should perform that person's duties as an election administrator with the intent to ensure that—

''(A) each uniformed services voter receives the utmost consideration and cooperation when voting;

''(B) each valid ballot cast by such a voter is duly counted; and

''(C) all eligible American voters, regardless of race, ethnicity, disability, the language they speak, or the resources of the community in which they live, should have an equal opportunity to cast a vote and to have that vote counted.

''(b) UNIFORMED SERVICES VOTER DEFINED.—In this section, the term 'uniformed services voter' means—

''(1) a member of a uniformed service (as defined in section 101(a)(5) of title 10, United States Code) in active service;

''(2) a member of the merchant marine (as defined in section 107 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–6)); and

''(3) a spouse or dependent of a member referred to in paragraph (1) or (2) who is qualified to vote.''

ELECTRONIC VOTING DEMONSTRATION PROJECT

Pub. L. 107–107, div. A, title XVI, § 1604, Dec. 28, 2001, 115 Stat. 1277, as amended by Pub. L. 108–375, div. A, title V, § 567, Oct. 28, 2004, 118 Stat. 1919, provided that:

''(a) ESTABLISHMENT OF DEMONSTRATION PROJECT.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary of Defense shall carry out a demonstration project under which absent uniformed services voters are permitted to cast ballots in the regularly scheduled general election for Federal office for November 2002 through an electronic voting system. The project shall be carried out with participation of sufficient numbers of absent uniformed services voters so that the results are statistically relevant.

''(2) AUTHORITY TO DELAY IMPLEMENTATION.—If the Secretary of Defense determines that the implementation of the demonstration project under paragraph (1) with respect to the regularly scheduled general election for Federal office for November 2002 may adversely affect the national security of the United

States, the Secretary may delay the implementation of such demonstration project until the first regularly scheduled general election for Federal office which occurs after the Election Assistance Commission notifies the Secretary that the Commission has established electronic absentee voting guidelines and certifies that it will assist the Secretary in carrying out the project. The Secretary shall notify the Committee on Armed Services and the Committee on Rules and Administration of the Senate and the Committee on Armed Services and the Committee on House Administration of the House of Representatives of any decision to delay implementation of the demonstration project.

''(b) COORDINATION WITH STATE ELECTION OFFICIALS.—The Secretary shall carry out the demonstration project under this section through cooperative agreements with State election officials of States that agree to participate in the project.

''(c) REPORT TO CONGRESS.—Not later than June 1 of the year following the year in which the demonstration project is conducted under this section, the Secretary of Defense shall submit to Congress a report analyzing the demonstration project. The Secretary shall include in the report any recommendations the Secretary considers appropriate for continuing the project on an expanded basis for absent uniformed services voters during the next regularly scheduled general election for Federal office.

''(d) DEFINITIONS.—In this section:

''(1) ABSENT UNIFORMED SERVICES VOTER.—The term 'absent uniformed services voter' has the meaning given that term in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–6(1)).

''(2) STATE.—The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.''

GOVERNORS' REPORTS ON IMPLEMENTATION OF RECOMMENDATIONS FOR CHANGES IN STATE LAW MADE UNDER FEDERAL VOTING ASSISTANCE PROGRAM

Pub. L. 107–107, div. A, title XVI, §1605, Dec. 28, 2001, 115 Stat. 1277, provided that:

''(a) REPORTS.—(1) Whenever a State receives a uniformed services voting assistance legislative recommendation from the Secretary of Defense, acting as the Presidential designee, the chief executive authority of that State shall, not later than 90 days after receipt of that recommendation, provide a report on the status of implementation of that recommendation by that State.

''(2) If a legislative recommendation referred to in paragraph (1) has been implemented, in whole or in part, by a State, the report of the chief executive authority of that State under that paragraph with respect to that recommendation shall include a description of the changes made to State law to implement the recommendation. If the recommendation has not been implemented, the report shall include a statement of the status of the recommendation before the State legislature and a statement of any recommendation the chief executive officer has made or intends to make to the legislature with respect to that recommendation.

''(3) Any report under paragraph (1) shall be transmitted to the Secretary of Defense, acting as the Presidential designee. The Secretary shall transmit a copy of the response to each Member of Congress who represents that State.

''(b) PERIOD OF APPLICABILITY.—This section applies with respect to any uniformed services voting assistance legislative recommendation transmitted to a State by the Secretary of Defense, acting as the Presidential designee, during the three-year period beginning on the date of the enactment of this Act [Dec. 28, 2001].

''(c) DEFINITIONS.—In this section:

''(1) The term 'uniformed services voting assistance legislative recommendation' means a recommendation of the Presidential designee for a modification in the laws of a State for the purpose of improving the access to the polls of absent uniformed services voters and overseas voters.

''(2) The term 'Presidential designee' means the head of the executive department designated by the President under section 101(a) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(a)).

''(3) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

''(4) The term 'Member of Congress' includes a Delegate or Resident Commissioner to the Congress.''

EX. ORD. NO. 12642. DESIGNATION OF SECRETARY OF DEFENSE AS PRESIDENTIAL DESIGNEE

Ex. Ord. No. 12642, June 8, 1988, 53 F.R. 21975, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including section 101(a) of the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99–410) (''the Act'') [42 U.S.C. 1973ff(a)], it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is hereby designated as the ''Presidential designee'' under Title I of the Act [42 U.S.C. 1973ff et seq.].

SEC. 2. In order to effectuate the purposes of the Act [see Short Title note above], the Secretary of Defense is hereby authorized to delegate any or all of the functions, responsibilities, powers, authority, or discretion devolving upon him in consequence of this Order to any person or persons within the Department of Defense.

RONALD REAGAN.

§ 1973ff–1. State responsibilities

(a) In general

Each State shall—

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit absent uniformed services voters and overseas voters to use Federal write-in absentee ballots (in accordance with section 1973ff–2 of this title) in general elections for Federal office;

(4) use the official post card form (prescribed under section 1973ff of this title) for simultaneous voter registration application and absentee ballot application; and

(5) if the State requires an oath or affirmation to accompany any document under this subchapter, use the standard oath prescribed by the Presidential designee under section 1973ff(b)(7) of this title.

(b) Designation of single State office to provide information on registration and absentee ballot procedures for all voters in State

(1) In general

Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and

overseas voters with respect to elections for Federal office (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) Recommendation regarding use of office to accept and process materials

Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) Report on number of absentee ballots transmitted and received

Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002 [42 U.S.C. 15301 et seq.]) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

(d) Registration notification

With respect to each absent uniformed services voter and each overseas voter who submits a voter registration application or an absentee ballot request, if the State rejects the application or request, the State shall provide the voter with the reasons for the rejection.

(Pub. L. 99–410, title I, § 102, Aug. 28, 1986, 100 Stat. 925; Pub. L. 107–107, div. A, title XVI, § 1606(a)(1), Dec. 28, 2001, 115 Stat. 1278; Pub. L. 107–252, title VII, §§ 702, 703(a), 705(b)(2), 707, Oct. 29, 2002, 116 Stat. 1723–1725; Pub. L. 108–375, div. A, title V, § 566(b), Oct. 28, 2004, 118 Stat. 1919.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(2), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, as amended, known as the Uniformed and Overseas Citizens Absentee Voting Act, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

The Help America Vote Act of 2002, referred to in subsec. (c), is Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to chapter 146 (§ 15301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

AMENDMENTS

2004—Subsec. (a)(3). Pub. L. 108–375 substituted ''absent uniformed services voters and overseas voters'' for ''overseas voters''.

2002—Pub. L. 107–252, § 702, designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a)(5). Pub. L. 107–252, § 705(b)(2), added par. (5).

Subsec. (c). Pub. L. 107–252, § 703(a), added subsec. (c).

Subsec. (d). Pub. L. 107–252, § 707, added subsec. (d).

2001—Par. (2). Pub. L. 107–107, § 1606(a)(1)(A), struck out ''general, special, primary, or runoff'' before ''election for Federal office'' and ''and'' after semicolon at end and inserted ''and absentee ballot application'' after ''voter registration application''.

Par. (4). Pub. L. 107–107, § 1606(a)(1)(B), (C), added par. (4).

DEVELOPMENT OF STANDARDIZED FORMAT FOR REPORTS

Pub. L. 107–252, title VII, § 703(b), Oct. 29, 2002, 116 Stat. 1724, provided that: ''The Election Assistance Commission, working with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board, shall develop a standardized format for the reports submitted by States and units of local government under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff–1(c)] (as added by subsection (a)), and shall make the format available to the States and units of local government submitting such reports.''

§ 1973ff–2. Federal write-in absentee ballot in general elections for Federal office for absent uniformed services voters and overseas voters

(a) In general

The Presidential designee shall prescribe a Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for such ballot) for use in general elections for Federal office by absent uniformed services voters and overseas voters who make timely application for, and do not receive, States, absentee ballots.

(b) Submission and processing

Except as otherwise provided in this subchapter, a Federal write-in absentee ballot shall be submitted and processed in the manner provided by law for absentee ballots in the State involved. A Federal write-in absentee ballot of an absent uniformed services voter or overseas voter shall not be counted—

(1) in the case of a ballot submitted by an overseas voter who is not an absent uniformed services voter, if the ballot is submitted from any location in the United States;

(2) if the application of the absent uniformed services voter or overseas voter for a State absentee ballot is received by the appropriate State election official after the later of—

(A) the deadline of the State for receipt of such application; or

(B) the date that is 30 days before the general election; or

(3) if a State absentee ballot of the absent uniformed services voter or overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.

(c) Special rules

The following rules shall apply with respect to Federal write-in absentee ballots:

(1) In completing the ballot, the absent uniformed services voter or overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party).

(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved.

(3) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot, if the intention of the voter can be ascertained.

(d) Second ballot submission; instruction to absent uniformed services voter or overseas voter

An absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives a State absentee ballot, may submit the State absentee ballot. The Presidential designee shall assure that the instructions for each Federal write-in absentee ballot clearly state that an absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives and submits a State absentee ballot should make every reasonable effort to inform the appropriate State election official that the voter has submitted more than one ballot.

(e) Use of approved State absentee ballot in place of Federal write-in absentee ballot

The Federal write-in absentee ballot shall not be valid for use in a general election if the State involved provides a State absentee ballot that—

(1) at the request of the State, is approved by the Presidential designee for use in place of the Federal write-in absentee ballot; and

(2) is made available to absent uniformed services voters and overseas voters at least 60 days before the deadline for receipt of the State ballot under State law.

(f) Certain States exempted

A State is not required to permit use of the Federal write-in absentee ballot, if, on and after August 28, 1986, the State has in effect a law providing that—

(1) a State absentee ballot is required to be available to any voter described in section 1973ff–6(5)(A) of this title at least 90 days before the general election involved; and

(2) a State absentee ballot is required to be available to any voter described in section 1973ff–6(5)(B) or (C) of this title, as soon as the official list of candidates in the general election is complete.

(Pub. L. 99–410, title I, § 103, Aug. 28, 1986, 100 Stat. 925; Pub. L. 108–375, div. A, title V, § 566(c), (d), Oct. 28, 2004, 118 Stat. 1919.)

AMENDMENTS

2004—Pub. L. 108–375, § 566(d)(1), substituted ''Federal write-in absentee ballot in general elections for Federal office for absent uniformed services voters and overseas voters'' for ''Federal write-in absentee ballot for overseas voters in general elections for Federal office'' in section catchline.

Subsec. (a). Pub. L. 108–375, § 566(c)(1), substituted ''absent uniformed services voters and overseas voters'' for ''overseas voters''.

Subsec. (b). Pub. L. 108–375, § 566(c)(2), inserted second sentence and struck out former second sentence which read as follows: ''A Federal write-in absentee ballot of an overseas voter shall not be counted—

''(1) if the ballot is submitted from any location in the United States;

''(2) if the application of the overseas voter for a State absentee ballot is received by the appropriate State election official less than 30 days before the general election; or

''(3) if a State absentee ballot of the overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.''

Subsec. (c)(1). Pub. L. 108–375, § 566(c)(3), substituted ''absent uniformed services voter or overseas voter'' for ''overseas voter''.

Subsec. (d). Pub. L. 108–375, § 566(c)(4), (d)(2), substituted ''absent uniformed services voter or overseas voter'' for ''overseas voter'' in heading and two places in text.

Subsec. (e)(2). Pub. L. 108–375, § 566(c)(5), substituted ''absent uniformed services voters and overseas voters'' for ''overseas voters''.

§ 1973ff–3. Use of single application for all subsequent elections

(a) In general

If a State accepts and processes an official post card form (prescribed under section 1973ff of this title) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 1973ff–1(a)(4) of this title) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State through the next 2 regularly scheduled general elections for Federal office (including any runoff elections which may occur as a result of the outcome of such general elections), the State shall provide an absentee ballot to the voter for each such subsequent election.

(b) Exception for voters changing registration

Subsection (a) of this section shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

(c) Revision of official post card form

The Presidential designee shall revise the official post card form (prescribed under section 1973ff of this title) to enable a voter using the form to—

(1) request an absentee ballot for each election for Federal office held in a State during a year; or

(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

(d) No Effect on voter removal programs

Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 1973gg–6 of this title.

(e) Prohibition of refusal of applications on grounds of early submission

A State may not refuse to accept or process, with respect to any election for Federal office, any otherwise valid voter registration applica-

tion or absentee ballot application (including the postcard form prescribed under section 1973ff of this title) submitted by an absent uniformed services voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or processes such applications for that year submitted by absentee voters who are not members of the uniformed services.

(Pub. L. 99–410, title I, § 104, Aug. 28, 1986, 100 Stat. 926; Pub. L. 107–107, div. A, title XVI, § 1606(b), Dec. 28, 2001, 115 Stat. 1279; Pub. L. 107–252, title VII, §§ 704, 706(a), Oct. 29, 2002, 116 Stat. 1724, 1725.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–252, § 704, substituted ''through the next 2 regularly scheduled general elections for Federal office (including any runoff elections which may occur as a result of the outcome of such general elections), the State shall provide an absentee ballot to the voter for each such subsequent election'' for ''during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year''.

Subsec. (e). Pub. L. 107–252, § 706(a), added subsec. (e).

2001—Pub. L. 107–107 amended section catchline and text generally, substituting provisions relating to use of single application for all subsequent elections for provisions relating to recommendations to States to maximize access to polls by absent uniformed services voters and overseas voters.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–252, title VII, § 706(b), Oct. 29, 2002, 116 Stat. 1725, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to elections for Federal office that occur after January 1, 2004.''

§ 1973ff–4. Enforcement

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this subchapter.

(Pub. L. 99–410, title I, § 105, Aug. 28, 1986, 100 Stat. 927.)

§ 1973ff–5. Effect on certain other laws

The exercise of any right under this subchapter shall not affect, for purposes of any Federal, State, or local tax, the residence or domicile of a person exercising such right.

(Pub. L. 99–410, title I, § 106, Aug. 28, 1986, 100 Stat. 927.)

§ 1973ff–6. Definitions

As used in this subchapter, the term—

(1) ''absent uniformed services voter'' means—

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

(2) ''balloting materials'' means official post card forms (prescribed under section 1973ff of this title), Federal write-in absentee ballots (prescribed under section 1973ff–2 of this title), and any State balloting materials that, as determined by the Presidential designee, are essential to the carrying out of this subchapter;

(3) ''Federal office'' means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) ''member of the merchant marine'' means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways)—

(A) employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or

(B) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel;

(5) ''overseas voter'' means—

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa;

(7) ''uniformed services'' means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration; and

(8) ''United States'', where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(Pub. L. 99–410, title I, § 107, Aug. 28, 1986, 100 Stat. 927.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Secu-

rity, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER I–H—NATIONAL VOTER REGISTRATION

§ 1973gg. Findings and purposes

(a) Findings

The Congress finds that—

(1) the right of citizens of the United States to vote is a fundamental right;

(2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and

(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) Purposes

The purposes of this subchapter are—

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) to make it possible for Federal, State, and local governments to implement this subchapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter registration rolls are maintained.

(Pub. L. 103–31, § 2, May 20, 1993, 107 Stat. 77.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 103–31, May 20, 1993, 107 Stat. 77, as amended, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

EFFECTIVE DATE

Section 13 of Pub. L. 103–31 provided that: ''This Act [see Short Title note set out under section 1971 of this title] shall take effect—

''(1) with respect to a State that on the date of enactment of this Act [May 20, 1993] has a provision in the constitution of the State that would preclude compliance with this Act unless the State maintained separate Federal and State official lists of eligible voters, on the later of—

''(A) January 1, 1996; or

''(B) the date that is 120 days after the date by which, under the constitution of the State as in effect on the date of enactment of this Act, it would be legally possible to adopt and place into effect any amendments to the constitution of the State that are necessary to permit such compliance with this Act without requiring a special election; and

''(2) with respect to any State not described in paragraph (1), on January 1, 1995.''

SHORT TITLE

This subchapter is known as the ''National Voter Registration Act of 1993'', see Short Title note set out under section 1971 of this title.

PROOF OF CITIZENSHIP

Pub. L. 104–132, title IX, § 902, Apr. 24, 1996, 110 Stat. 1317, provided that: ''Notwithstanding any other provision of law, a Federal, State, or local government agency may not use a voter registration card (or other related document) that evidences registration for an election for Federal office, as evidence to prove United States citizenship.''

Similar provisions were contained in section 117 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37.

§ 1973gg–1. Definitions

As used in this subchapter—

(1) the term ''election'' has the meaning stated in section 431(1) of title 2;

(2) the term ''Federal office'' has the meaning stated in section 431(3) of title 2;

(3) the term ''motor vehicle driver's license'' includes any personal identification document issued by a State motor vehicle authority;

(4) the term ''State'' means a State of the United States and the District of Columbia; and

(5) the term ''voter registration agency'' means an office designated under section 1973gg–5(a)(1) of this title to perform voter registration activities.

(Pub. L. 103–31, § 3, May 20, 1993, 107 Stat. 77.)

§ 1973gg–2. National procedures for voter registration for elections for Federal office

(a) In general

Except as provided in subsection (b) of this section, notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office—

(1) by application made simultaneously with an application for a motor vehicle driver's license pursuant to section 1973gg–3 of this title;

(2) by mail application pursuant to section 1973gg–4 of this title; and

(3) by application in person—

(A) at the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section 1973gg–5 of this title.

(b) Nonapplicability to certain States

This subchapter does not apply to a State described in either or both of the following paragraphs:

(1) A State in which, under law that is in effect continuously on and after August 1, 1994, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) A State in which, under law that is in effect continuously on and after August 1, 1994, or that was enacted on or prior to August 1, 1994, and by its terms is to come into effect upon the enactment of this subchapter, so long as that law remains in effect, all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office.

(Pub. L. 103–31, § 4, May 20, 1993, 107 Stat. 78; Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, amended Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37.)

REFERENCES IN TEXT

Upon the enactment of this subchapter, referred to in subsec. (b)(2), means the date of enactment of Pub. L. 103–31, which was approved May 20, 1993.

CODIFICATION

Amendment by Pub. L. 104–91 is based on section 116(a) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104–91.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–91, as amended by Pub. L. 104–99, substituted ''August 1, 1994'' for ''March 11, 1993'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 116(b) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the provisions of the National Voter Registration Act of 1993 [Pub. L. 103–31].''

§ 1973gg–3. Simultaneous application for voter registration and application for motor vehicle driver's license

(a) In general

(1) Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.

(2) An application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant.

(b) Limitation on use of information

No information relating to the failure of an applicant for a State motor vehicle driver's license to sign a voter registration application may be used for any purpose other than voter registration.

(c) Forms and procedures

(1) Each State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license.

(2) The voter registration application portion of an application for a State motor vehicle driver's license—

(A) may not require any information that duplicates information required in the driver's license portion of the form (other than a second signature or other information necessary under subparagraph (C));

(B) may require only the minimum amount of information necessary to—

(i) prevent duplicate voter registrations; and

(ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(C) shall include a statement that—

(i) states each eligibility requirement (including citizenship);

(ii) contains an attestation that the applicant meets each such requirement; and

(iii) requires the signature of the applicant, under penalty of perjury;

(D) shall include, in print that is identical to that used in the attestation portion of the application—

(i) the information required in section 1973gg–6(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes; and

(E) shall be made available (as submitted by the applicant, or in machine readable or other format) to the appropriate State election official as provided by State law.

(d) Change of address

Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.

(e) Transmittal deadline

(1) Subject to paragraph (2), a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(Pub. L. 103–31, § 5, May 20, 1993, 107 Stat. 78.)

§ 1973gg–4. Mail registration

(a) Form

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 1973gg–7(a)(2) of this title for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that

meets all of the criteria stated in section 1973gg–7(b) of this title for the registration of voters in elections for Federal office.

(3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

(b) Availability of forms

The chief State election official of a State shall make the forms described in subsection (a) of this section available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

(c) First-time voters

(1) Subject to paragraph (2), a State may by law require a person to vote in person if—

(A) the person was registered to vote in a jurisdiction by mail; and

(B) the person has not previously voted in that jurisdiction.

(2) Paragraph (1) does not apply in the case of a person—

(A) who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.];

(B) who is provided the right to vote otherwise than in person under section 1973ee–1(b)(2)(B)(ii) of this title; or

(C) who is entitled to vote otherwise than in person under any other Federal law.

(d) Undelivered notices

If a notice of the disposition of a mail voter registration application under section 1973gg–6(a)(2) of this title is sent by nonforwardable mail and is returned undelivered, the registrar may proceed in accordance with section 1973gg–6(d) of this title.

(Pub. L. 103–31, § 6, May 20, 1993, 107 Stat. 79.)

REFERENCES IN TEXT

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (c)(2)(A), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, as amended, which is classified principally to subchapter I–G (§ 1973ff et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

§ 1973gg–5. Voter registration agencies

(a) Designation

(1) Each State shall designate agencies for the registration of voters in elections for Federal office.

(2) Each State shall designate as voter registration agencies—

(A) all offices in the State that provide public assistance; and

(B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.

(3)(A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

(B) Voter registration agencies designated under subparagraph (A) may include—

(i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and

(ii) Federal and nongovernmental offices, with the agreement of such offices.

(4)(A) At each voter registration agency, the following services shall be made available:

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

(B) If a voter registration agency designated under paragraph (2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.

(5) A person who provides service described in paragraph (4) shall not—

(A) seek to influence an applicant's political preference or party registration;

(B) display any such political preference or party allegiance;

(C) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(D) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(6) A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration shall—

(A) distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance—

(i) the mail voter registration application form described in section 1973gg–7(a)(2) of this title, including a statement that—

(I) specifies each eligibility requirement (including citizenship);

(II) contains an attestation that the applicant meets each such requirement; and

(III) requires the signature of the applicant, under penalty of perjury; or

(ii) the office's own form if it is equivalent to the form described in section 1973gg–7(a)(2) of this title,

unless the applicant, in writing, declines to register to vote;

(B) provide a form that includes—

(i) the question, ''If you are not registered to vote where you live now, would you like to apply to register to vote here today?'';

(ii) if the agency provides public assistance, the statement, ''Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.'';

(iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), ''IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.'';

(iv) the statement, ''If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.''; and

(v) the statement, ''If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with _____.'', the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed; and

(C) provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

(7) No information relating to a declination to register to vote in connection with an application made at an office described in paragraph (6) may be used for any purpose other than voter registration.

(b) Federal Government and private sector cooperation

All departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a) of this section, and all nongovernmental entities are encouraged to do so.

(c) Armed Forces recruitment offices

(1) Each State and the Secretary of Defense shall jointly develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces of the United States.

(2) A recruitment office of the Armed Forces of the United States shall be considered to be a voter registration agency designated under subsection (a)(2) of this section for all purposes of this subchapter.

(d) Transmittal deadline

(1) Subject to paragraph (2), a completed registration application accepted at a voter registration agency shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(Pub. L. 103–31, § 7, May 20, 1993, 107 Stat. 80.)

EX. ORD. NO. 12926. IMPLEMENTATION OF NATIONAL VOTER REGISTRATION ACT OF 1993

Ex. Ord. No. 12926, Sept. 12, 1994, 59 F.R. 47227, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to ensure, as required by section 7(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) [42 U.S.C. 1973gg–5(b)] (''the Act''), that departments, agencies, and other entities of the executive branch of the Federal Government cooperate with the States in carrying out the Act's requirements, it is hereby ordered as follows:

SECTION 1. *Assistance to States*. To the greatest extent practicable, departments, agencies, and other entities of the executive branch of the Federal Government that provide, in whole or in part, funding, grants, or assistance for, or with respect to the administration of, any program of public assistance or services to persons with disabilities within the meaning of section 7(a) of the Act shall: (a) provide, to State agencies administering any such program, guidance for the implementation of the requirements of section 7 of the Act, including guidance for use and distribution of voter registration forms in connection with applications for service;

(b) assist each such State agency administering any such program with the costs of implementation of the Act [42 U.S.C. 1973gg et seq.], consistent with legal authority and the availability of funds, and promptly indicate to each State agency the extent to which such assistance will be made available; and

(c) designate an office or staff to be available to provide technical assistance to such State agencies.

SEC. 2. *Armed Forces Recruitment Offices*. The Secretary of Defense is directed to work with the appropriate State elections authorities in each State to develop procedures for persons to apply to register to vote at Armed Forces recruitment offices as required by section 7(c) of the Act.

SEC. 3. *Acceptance of Designation*. To the greatest extent practicable, departments, agencies, or other entities of the executive branch of the Federal Government, if requested to be designated as a voter registration agency pursuant to section 7(a)(3)(B)(ii) of the Act, shall: (a) agree to such a designation if agreement is consistent with the department's, agency's, or entity's legal authority and availability of funds; and

(b) ensure that all of its offices that are located in a particular State will have available to the public at least one of the national voter registration forms that are required under the Act to be available in that State.

WILLIAM J. CLINTON.

§ 1973gg–6. Requirements with respect to administration of voter registration

(a) In general

In the administration of voter registration for elections for Federal office, each State shall—

(1) ensure that any eligible applicant is registered to vote in an election—

(A) in the case of registration with a motor vehicle application under section 1973gg–3 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 1973gg–4 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except—

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—

(A) the death of the registrant; or

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d) of this section;

(5) inform applicants under sections 1973gg–3, 1973gg–4, and 1973gg–5 of this title of—

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(b) Confirmation of voter registration

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.); and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) of this section to remove an individual from the official list of eligible voters if the individual—

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) Voter removal programs

(1) A State may meet the requirement of subsection (a)(4) of this section by establishing a program under which—

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that—

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) of this section to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude—

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a) of this section; or

(ii) correction of registration records pursuant to this subchapter.

(d) Removal of names from voting rolls

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant—

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B) of this section. If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) Procedure for voting following failure to return card

(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant—

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) Change of voting address within a jurisdiction

In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d) of this section.

(g) Conviction in Federal court

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 1973gg–8 of this title of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include—

(A) the name of the offender;

(B) the offender's age and residence address;

(C) the date of entry of the judgment;

(D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(h) Omitted

(i) Public disclosure of voter registration activities

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to

a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) of this section are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(j) "Registrar's jurisdiction" defined

For the purposes of this section, the term ''registrar's jurisdiction'' means—

(1) an incorporated city, town, borough, or other form of municipality;

(2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or

(3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

(Pub. L. 103–31, § 8, May 20, 1993, 107 Stat. 82; Pub. L. 107–252, title IX, § 903, Oct. 29, 2002, 116 Stat. 1728.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89–110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I–A (§ 1973 et seq.), I–B (§ 1973aa et seq.), and I–C (§ 1973bb et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

CODIFICATION

Section is comprised of section 8 of Pub. L. 103–31. Subsec. (h) of section 8 of Pub. L. 103–31 enacted section 3629 of Title 39, Postal Service, and amended sections 2401 and 3627 of Title 39.

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–252 inserted before period at end '', except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) of this section to remove an individual from the official list of eligible voters if the individual—

''(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

''(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office''.

§ 1973gg–7. Federal coordination and regulations

(a) In general

The Election Assistance Commission—

(1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);

(2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office;

(3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this subchapter on the administration of elections for Federal office during the preceding 2-year period and including recommendations for improvements in Federal and State procedures, forms, and other matters affected by this subchapter; and

(4) shall provide information to the States with respect to the responsibilities of the States under this subchapter.

(b) Contents of mail voter registration form

The mail voter registration form developed under subsection (a)(2) of this section—

(1) may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(2) shall include a statement that—

(A) specifies each eligibility requirement (including citizenship);

(B) contains an attestation that the applicant meets each such requirement; and

(C) requires the signature of the applicant, under penalty of perjury;

(3) may not include any requirement for notarization or other formal authentication; and

(4) shall include, in print that is identical to that used in the attestation portion of the application—

(i) the information required in section 1973gg–6(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(Pub. L. 103–31, § 9, May 20, 1993, 107 Stat. 87; Pub. L. 107–252, title VIII, § 802(b), Oct. 29, 2002, 116 Stat. 1726.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–252 substituted ''Election Assistance Commission'' for ''Federal Election Commission'' in introductory provisions.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–252 effective upon appointment of all members of the Election Assistance Commission under section 15323 of this title, see section 15534(a) of this title.

§ 1973gg–8. Designation of chief State election official

Each State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this subchapter.

(Pub. L. 103–31, § 10, May 20, 1993, 107 Stat. 87.)

§ 1973gg–9. Civil enforcement and private right of action

(a) Attorney General

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this subchapter.

(b) Private right of action

(1) A person who is aggrieved by a violation of this subchapter may provide written notice of the violation to the chief election official of the State involved.

(2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

(3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

(c) Attorney's fees

In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney fees, including litigation expenses, and costs.

(d) Relation to other laws

(1) The rights and remedies established by this section are in addition to all other rights and remedies provided by law, and neither the rights and remedies established by this section nor any other provision of this subchapter shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(2) Nothing in this subchapter authorizes or requires conduct that is prohibited by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(Pub. L. 103–31, § 11, May 20, 1993, 107 Stat. 88.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (d), is Pub. L. 89–110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I–A (§ 1973 et seq.), I–B (§ 1973aa et seq.), and I–C (§ 1973bb et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

§ 1973gg–10. Criminal penalties

A person, including an election official, who in any election for Federal office—

(1) knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for—

(A) registering to vote, or voting, or attempting to register or vote;

(B) urging or aiding any person to register to vote, to vote, or to attempt to register or vote; or

(C) exercising any right under this subchapter; or

(2) knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by—

(A) the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held; or

(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held,

shall be fined in accordance with title 18 (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31), notwithstanding any other law), or imprisoned not more than 5 years, or both.

(Pub. L. 103–31, § 12, May 20, 1993, 107 Stat. 88.)

SUBCHAPTER II—FEDERAL ELECTION RECORDS

§ 1974. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Pub. L. 86–449, title III, § 301, May 6, 1960, 74 Stat. 88.)

§ 1974a. Theft, destruction, concealment, mutilation, or alteration of records or papers; penalties

Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 1974 of this title to be retained and preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Pub. L. 86–449, title III, § 302, May 6, 1960, 74 Stat. 88.)

§ 1974b. Demand for records or papers by Attorney General or representative; statement of basis and purpose

Any record or paper required by section 1974 of this title to be retained and preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or his representative. This demand shall contain a statement of the basis and the purpose therefor.

(Pub. L. 86–449, title III, § 303, May 6, 1960, 74 Stat. 88.)

§ 1974c. Disclosure of records or papers

Unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose any record or paper produced pursuant to this subchapter, or any reproduction or copy, except to Congress and any committee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury.

(Pub. L. 86–449, title III, § 304, May 6, 1960, 74 Stat. 88.)

§ 1974d. Jurisdiction to compel production of records or papers

The United States district court for the district in which a demand is made pursuant to section 1974b of this title, or in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper.

(Pub. L. 86–449, title III, § 305, May 6, 1960, 74 Stat. 88.)

§ 1974e. "Officer of election" defined

As used in this subchapter, the term ''officer of election'' means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

(Pub. L. 86–449, title III, § 306, May 6, 1960, 74 Stat. 88.)

CHAPTER 20A—CIVIL RIGHTS COMMISSION

Sec.
1975. Establishment of Commission.
1975a. Duties of Commission.
1975b. Administrative provisions.
1975c. Authorization of appropriations.
1975d. Termination.
1975e, 1975f. Omitted.

CODIFICATION

A prior chapter 20A, which provided for the establishment of a Commission on Civil Rights in the executive branch, was comprised of part I (§§ 101–106) of Pub. L. 85–315, Sept. 9, 1957, 71 Stat. 634, and was omitted from the Code in view of the termination of the Commission 60 days after the submission of the Commission's final report which was due not later than Sept. 30, 1983.

§ 1975. Establishment of Commission

(a) Generally

There is established the United States Commission on Civil Rights (hereinafter in this chapter referred to as the ''Commission'').

(b) Membership

The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States Commission on Civil Rights on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

(1) 4 members of the Commission shall be appointed by the President.

(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

(c) Terms

The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.

(d) Chairperson

(1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States Commission on Civil Rights on September 30, 1994 shall initially fill those roles on the Commission.

(2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

(3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson.

(e) Removal of members

The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

(f) Quorum

5 members of the Commission constitute a quorum of the Commission.

(Pub. L. 98–183, § 2, Nov. 30, 1983, 97 Stat. 1301; Pub. L. 102–167, § 5, Nov. 26, 1991, 105 Stat. 1101; Pub. L. 103–419, § 2, Oct. 25, 1994, 108 Stat. 4338.)

PRIOR PROVISIONS

A prior section 1975, Pub. L. 85–315, pt. I, § 101, Sept. 9, 1957, 71 Stat. 634, related to establishment, membership, etc., of Commission on Civil Rights. See Codification note set out preceding this section.

AMENDMENTS

1994—Pub. L. 103–419 amended section generally, substituting provisions relating to establishment of United States Commission on Civil Rights for provisions relating to Commission on Civil Rights.

1991—Subsec. (c). Pub. L. 102–167 substituted ''Chairperson'' for ''Chairman'' wherever appearing.

SHORT TITLE OF 1994 AMENDMENT

Section 1 of Pub. L. 103–419 provided that: ''This Act [amending this section and sections 1975a to 1975d of this title, omitting former sections 1975e and 1975f of this title, and amending provisions set out as a note below] may be cited as the 'Civil Rights Commission Amendments Act of 1994'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–400, § 1, Oct. 7, 1992, 106 Stat. 1955, provided that: ''This Act [amending section 1975e of this title] may be cited as the 'United States Commission on Civil Rights Authorization Act of 1992'.''

SHORT TITLE OF 1991 AMENDMENT

Section 1 of Pub. L. 102–167 provided that: ''This Act [amending this section and sections 1975a and 1975c to 1975f of this title] may be cited as the 'United States Commission on Civil Rights Reauthorization Act of 1991'.''

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–180, § 1, Nov. 28, 1989, 103 Stat. 1325, provided that: ''This Act [amending sections 1975e and 1975f of this title] may be cited as the 'Civil Rights Commission Reauthorization Act of 1989'.''

SHORT TITLE

Section 1 of Pub. L. 98–183, as amended by Pub. L. 103–419, § 2, Oct. 25, 1994, 108 Stat. 4338, provided that: ''This Act [enacting this chapter] may be cited as the 'Civil Rights Commission Act of 1983'.''

§ 1975a. Duties of Commission

(a) Generally

The Commission—

(1) shall investigate allegations in writing under oath or affirmation relating to deprivations—

(A) because of color, race, religion, sex, age, disability, or national origin; or

(B) as a result of any pattern or practice of fraud;

of the right of citizens of the United States to vote and have votes counted; and

(2) shall—

(A) study and collect information relating to;

(B) make appraisals of the laws and policies of the Federal Government with respect to;

(C) serve as a national clearinghouse for information relating to; and

(D) prepare public service announcements and advertising campaigns to discourage;

discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.

(b) Limitations on investigatory duties

Nothing in this chapter or any other Act shall be construed as authorizing the Commission, its advisory committees, or any person under its supervision or control, to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club, or any religious organization.

(c) Reports

(1) Annual report

The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

(2) Other reports generally

The Commission shall submit such other reports to the President and the Congress as the Commission, the Congress, or the President shall deem appropriate.

(d) Advisory committees

The Commission may constitute such advisory committees as it deems advisable. The Commission shall establish at least one such committee in each State and the District of Columbia composed of citizens of that State or District.

(e) Hearings and ancillary matters

(1) Power to hold hearings

The Commission, or on the authorization of the Commission, any subcommittee of two or more members of the Commission, at least one of whom shall be of each major political party, may, for the purpose of carrying out this chapter, hold such hearings and act at such times and places as the Commission or such authorized subcommittee deems advisable. Each member of the Commission shall have the power to administer oaths and affirmations in connection with the proceedings of the Commission. The holding of a hearing by the Commission or the appointment of a subcommittee to hold a hearing pursuant to this paragraph must be approved by a majority of the Commission, or by a majority of the members present at a meeting when a quorum is present.

(2) Power to issue subpoenas

The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(3) Witness fees

A witness attending any proceeding of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(4) Depositions and interrogatories

The Commission may use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

(f) Limitation relating to abortion

Nothing in this chapter or any other Act shall be construed as authorizing the Commission, its advisory committees, or any other person under its supervision or control to study and collect, make appraisals of, or serve as a clearinghouse for any information about laws and policies of the Federal Government or any other governmental authority in the United States, with respect to abortion.

(Pub. L. 98–183, § 3, Nov. 30, 1983, 97 Stat. 1302; Pub. L. 102–167, § 5, Nov. 26, 1991, 105 Stat. 1101; Pub. L. 103–419, § 2, Oct. 25, 1994, 108 Stat. 4339.)

PRIOR PROVISIONS

A prior section 1975a, Pub. L. 85–315, pt. I, § 102, Sept. 9, 1957, 71 Stat. 634; Pub. L. 88–352, title V, § 501, July 2, 1964, 78 Stat. 249; Pub. L. 91–521, § 4, Nov. 25, 1970, 84 Stat. 1357; Pub. L. 92–496, § 1, Oct. 14, 1972, 86 Stat. 813, established rules of procedure for Commission. See Codification note set out preceding section 1975 of this title.

AMENDMENTS

1994—Pub. L. 103–419 amended section generally, substituting provisions relating to duties of Commission for provisions relating to rules of procedure of Commission hearings.

1991—Subsecs. (a), (d), (f). Pub. L. 102–167 substituted ''Chairperson'' for ''Chairman'' wherever appearing.

§ 1975b. Administrative provisions

(a) Staff

(1) Director

There shall be a full-time staff director for the Commission who shall—

(A) serve as the administrative head of the Commission; and

(B) be appointed by the President with the concurrence of a majority of the Commission.

(2) Other personnel

Within the limitation of its appropriations, the Commission may—

(A) appoint such other personnel as it deems advisable, under the civil service and classification laws; and

(B) procure services, as authorized in section 3109 of title 5, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS–15 of the General Schedule under section 5332 of title 5.

(b) Compensation of members

(1) Generally

Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Executive Schedule under section 5315 of title 5, prorated on a daily basis for time spent in the work of the Commission.

(2) Persons otherwise in Government service

Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from such member's usual place of residence, under subchapter I of chapter 57 of title 5.

(c) Voluntary or uncompensated personnel

The Commission shall not accept or use the services of voluntary or uncompensated persons. This limitation shall apply with respect to services of members of the Commission as it does with respect to services by other persons.

(d) Rules

(1) Generally

The Commission may make such rules as are necessary to carry out the purposes of this chapter.

(2) Continuation of old rules

Except as inconsistent with this chapter, and until modified by the Commission, the rules of the Commission on Civil Rights in effect on September 30, 1994 shall be the initial rules of the Commission.

(e) Cooperation

All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(Pub. L. 98–183, § 4, Nov. 30, 1983, 97 Stat. 1304; Pub. L. 103–419, § 2, Oct. 25, 1994, 108 Stat. 4340.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(2)(A), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsec. (a)(2)(A), are classified generally to chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

PRIOR PROVISIONS

A prior section 1975b, Pub. L. 85–315, pt. I, § 103, Sept. 9, 1957, 71 Stat. 635; Pub. L. 88–352, title V, §§ 502, 503, July 2, 1964, 78 Stat. 250, 251; Pub. L. 91–521, § 1, Nov. 25, 1970, 84 Stat. 1356; Pub. L. 92–496, § 2, Oct. 14, 1972, 86 Stat. 813; Pub. L. 95–444, § 2, Oct. 10, 1978, 92 Stat. 1067, related to compensation of members of Commission. See Codification note set out preceding section 1975 of this title.

AMENDMENTS

1994—Pub. L. 103–419 amended section generally, substituting administrative provisions for provisions relating to compensation of members of Commission.

§ 1975c. Authorization of appropriations

There are authorized to be appropriated,[1] to carry out this chapter $9,500,000 for fiscal year

[1] So in original. The comma probably should not appear.

1995. None of the sums authorized to be appropriated for fiscal year 1995 may be used to create additional regional offices.

(Pub. L. 98–183, §5, Nov. 30, 1983, 97 Stat. 1304; Pub. L. 102–167, §2, Nov. 26, 1991, 105 Stat. 1101; Pub. L. 103–419, §2, Oct. 25, 1994, 108 Stat. 4341.)

PRIOR PROVISIONS

A prior section 1975c, Pub. L. 85–315, pt. I, §104, Sept. 9, 1957, 71 Stat. 635; Pub. L. 86–383, title IV, §401, Sept. 28, 1959, 73 Stat. 724; Pub. L. 87–264, title IV, §401, Sept. 21, 1961, 75 Stat. 559; Pub. L. 88–152, §2, Oct. 17, 1963, 77 Stat. 271; Pub. L. 88–352, title V, §504, July 2, 1964, 78 Stat. 251; Pub. L. 90–198, §1, Dec. 14, 1967, 81 Stat. 582; Pub. L. 92–496, §§3, 4, Oct. 14, 1972, 86 Stat. 813, 814; Pub. L. 95–444, §3, Oct. 10, 1978, 92 Stat. 1067; Pub. L. 96–81, §2, Oct. 6, 1979, 93 Stat. 642, related to duties of Commission. See Codification note set out preceding section 1975 of this title.

AMENDMENTS

1994—Pub. L. 103–419 amended section generally, substituting provisions authorizing appropriations for fiscal year 1995 for provisions relating to duties of Commission.

1991—Subsec. (f). Pub. L. 102–167, which directed the insertion of ''The Commission shall, in addition to any other reports under this section, submit at least one annual report that monitors Federal civil rights enforcement efforts in the United States to Congress and to the President.'' at the end of this section, was executed by making the insertion at the end of subsec. (f).

§ 1975d. Termination

This chapter shall terminate on September 30, 1996.

(Pub. L. 98–183, §6, Nov. 30, 1983, 97 Stat. 1305; Pub. L. 102–167, §5, Nov. 26, 1991, 105 Stat. 1101; Pub. L. 103–419, §2, Oct. 25, 1994, 108 Stat. 4342.)

PRIOR PROVISIONS

A prior section 1975d, Pub. L. 85–315, pt. I, §105, Sept. 9, 1957, 71 Stat. 636; Pub. L. 86–449, title IV, §401, May 6, 1960, 74 Stat. 89; Pub. L. 88–352, title V, §§505–507, July 2, 1964, 78 Stat. 251, 252; Pub. L. 91–521, §2, Nov. 25, 1970, 84 Stat. 1356; Pub. L. 92–496, §5, Oct. 14, 1972, 86 Stat. 814; Pub. L. 95–444, §§4–6, Oct. 10, 1978, 92 Stat. 1067, 1068, related to powers of Commission. See Codification note set out preceding section 1975 of this title.

AMENDMENTS

1994—Pub. L. 103–419 amended section generally, substituting provisions terminating this chapter Sept. 30, 1996, for provisions relating to powers of Commission.

1991—Subsec. (f). Pub. L. 102–167 substituted ''Chairperson'' for ''Chairman'' in two places.

§§ 1975e, 1975f. Omitted

CODIFICATION

Sections 1975e and 1975f were omitted in the general amendment of this chapter by Pub. L. 103–419.

Section 1975e, Pub. L. 98–183, §7, Nov. 30, 1983, 97 Stat. 1307; Pub. L. 101–180, §2(1), Nov. 28, 1989, 103 Stat. 1325; Pub. L. 102–167, §3, Nov. 26, 1991, 105 Stat. 1101; Pub. L. 102–400, §2, Oct. 7, 1992, 106 Stat. 1955, authorized appropriations to carry out this chapter. See section 1975c of this title.

A prior section 1975e, Pub. L. 85–315, pt. I, §106, Sept. 9, 1957, 71 Stat. 636; Pub. L. 90–198, §2, Dec. 14, 1967, 81 Stat. 582; Pub. L. 91–521, §3, Nov. 25, 1970, 84 Stat. 1356; Pub. L. 92–64, Aug. 4, 1971, 85 Stat. 166; Pub. L. 92–496, §6, Oct. 14, 1972, 86 Stat. 814; Pub. L. 94–292, §2, May 27, 1976, 90 Stat. 524; Pub. L. 95–132, §2, Oct. 13, 1977, 91 Stat. 1157; Pub. L. 95–444, §7, Oct. 10, 1978, 92 Stat. 1068; Pub. L. 96–81, §3, Oct. 6, 1979, 93 Stat. 642; Pub. L. 96–447, §2, Oct. 13, 1980, 94 Stat. 1894, related to authorization of appropriations for this chapter. See Codification note set out preceding section 1975 of this title.

Section 1975f, Pub. L. 98–183, §8, Nov. 30, 1983, 97 Stat. 1307; Pub. L. 101–180, §2(2), Nov. 28, 1989, 103 Stat. 1325; Pub. L. 102–167, §4, Nov. 26, 1991, 105 Stat. 1101, provided termination date for this chapter. See section 1975d of this title.

CHAPTER 21—CIVIL RIGHTS

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2000e–12. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission.
2000e–13. Application to personnel of Commission of sections 111 and 1114 of title 18; punishment for violation of section 1114 of title 18.
2000e–14. Equal Employment Opportunity Coordinating Council; establishment; composition; duties; report to President and Congress.
2000e–15. Presidential conferences; acquaintance of leadership with provisions for employment rights and obligations; plans for fair administration; membership.
2000e–16. Employment by Federal Government.
2000e–16a. Short title; purpose; definition.
2000e–16b. Discriminatory practices prohibited.
2000e–16c. Coverage of previously exempt State employees.
2000e–17. Procedure for denial, withholding, termination, or suspension of Government contract subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan.

SUBCHAPTER VII—REGISTRATION AND VOTING STATISTICS

2000f. Survey for compilation of registration and voting statistics; geographical areas; scope; application of census provisions; voluntary disclosure; advising of right not to furnish information.

SUBCHAPTER VIII—COMMUNITY RELATIONS SERVICE

2000g. Establishment of Service; Director of Service: appointment, term; personnel.
2000g–1. Functions of Service.
2000g–2. Cooperation with other agencies; conciliation assistance in confidence and without publicity; information as confidential; restriction on performance of investigative or prosecuting functions; violations and penalties.
2000g–3. Reports to Congress.

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS

2000h. Criminal contempt proceedings: trial by jury, criminal practice, penalties, exceptions, intent; civil contempt proceedings.
2000h–1. Double jeopardy; specific crimes and criminal contempts.
2000h–2. Intervention by Attorney General; denial of equal protection on account of race, color, religion, sex or national origin.
2000h–3. Construction of provisions not to affect authority of Attorney General, etc., to institute or intervene in actions or proceedings.
2000h–4. Construction of provisions not to exclude operation of State laws and not to invalidate consistent State laws.
2000h–5. Authorization of appropriations.
2000h–6. Separability.

SUBCHAPTER I—GENERALLY

§ 1981. Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every

State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term ''make and enforce contracts'' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

(R.S. §1977; Pub. L. 102–166, title I, §101, Nov. 21, 1991, 105 Stat. 1071.)

CODIFICATION

R.S. §1977 derived from act May 31, 1870, ch. 114, §16, 16 Stat. 144.

Section was formerly classified to section 41 of Title 8, Aliens and Nationality.

AMENDMENTS

1991—Pub. L. 102–166 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 402 of Pub. L. 102–166 provided that:

''(a) IN GENERAL.—Except as otherwise specifically provided, this Act [see Short Title of 1991 Amendment note below] and the amendments made by this Act shall take effect upon enactment [Nov. 21, 1991].

''(b) CERTAIN DISPARATE IMPACT CASES.—Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.''

SHORT TITLE OF 1991 AMENDMENT

Section 1 of Pub. L. 102–166 provided that: ''This Act [enacting section 1981a of this title and sections 60*l* and 1201 to 1224 of Title 2, The Congress, amending this section and sections 1988, 2000e, 2000e–1, 2000e–2, 2000e–4, 2000e–5, 2000e–16, 12111, 12112, and 12209 of this title, and section 626 of Title 29, Labor, and enacting provisions set out as notes under this section and sections 2000e and 2000e–4 of this title, and section 1a–5 of Title 16, Conservation] may be cited as the 'Civil Rights Act of 1991'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–559, which amended section 1988 of this title, is known as ''The Civil Rights Attorney's Fees Awards Act of 1976'', see note set out under section 1988 of this title.

SEVERABILITY

Section 401 of Pub. L. 102–166 provided that: ''If any provision of this Act [see Short Title of 1991 Amendment note above], or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.''

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 102–166 provided that: ''The Congress finds that—

''(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;

''(2) the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and

''(3) legislation is necessary to provide additional protections against unlawful discrimination in employment.''

PURPOSES OF 1991 AMENDMENT

Section 3 of Pub. L. 102–166 provided that: ''The purposes of this Act [see Short Title of 1991 Amendment note above] are—

''(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

''(2) to codify the concepts of 'business necessity' and 'job related' enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989);

''(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

''(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.''

LEGISLATIVE HISTORY FOR 1991 AMENDMENT

Section 105(b) of Pub. L. 102–166 provided that: ''No statements other than the interpretive memorandum appearing at Vol. 137 Congressional Record S 15276 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this Act [see Short Title of 1991 Amendment note above] that relates to Wards Cove—Business necessity/cumulation/alternative business practice.''

CONSTRUCTION OF 1991 AMENDMENT

Section 116 of title I of Pub. L. 102–166 provided that: ''Nothing in the amendments made by this title [enacting section 1981a of this title and amending this section, sections 1988, 2000e, 2000e–1, 2000e–2, 2000e–4, 2000e–5, 2000e–16, 12111, and 12112 of this title, and section 626 of Title 29, Labor] shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.''

ALTERNATIVE MEANS OF DISPUTE RESOLUTION

Section 118 of title I of Pub. L. 102–166 provided that: ''Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title [enacting section 1981a of this title and amending this section, sections 1988, 2000e, 2000e–1, 2000e–2, 2000e–4, 2000e–5, 2000e–16, 12111, and 12112 of this title, and section 626 of Title 29, Labor].''

EXECUTIVE ORDER NO. 13050

Ex. Ord. No. 13050, June 13, 1997, 62 F.R. 32987, which established the President's Advisory Board on Race, was revoked by Ex. Ord. No. 13138, §3(e), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

§1981a. Damages in cases of intentional discrimination in employment

(a) Right of recovery

(1) Civil rights

In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act

of 1964 [42 U.S.C. 2000e–5, 2000e–16] against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act [42 U.S.C. 2000e–2, 2000e–3, 2000e–16], and provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

(2) Disability

In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–5, 2000e–16] (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 794a(a)(1) of title 29, respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 791 of title 29 and the regulations implementing section 791 of title 29, or who violated the requirements of section 791 of title 29 or the regulations implementing section 791 of title 29 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

(3) Reasonable accommodation and good faith effort

In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990 [42 U.S.C. 12112(b)(5)] or regulations implementing section 791 of title 29, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

(b) Compensatory and punitive damages

(1) Determination of punitive damages

A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

(2) Exclusions from compensatory damages

Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964 [42 U.S.C. 2000e–5(g)].

(3) Limitations

The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party—

(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000;

(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000; and

(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000; and

(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.

(4) Construction

Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1981 of this title.

(c) Jury trial

If a complaining party seeks compensatory or punitive damages under this section—

(1) any party may demand a trial by jury; and

(2) the court shall not inform the jury of the limitations described in subsection (b)(3) of this section.

(d) Definitions

As used in this section:

(1) Complaining party

The term ''complaining party'' means—

(A) in the case of a person seeking to bring an action under subsection (a)(1) of this section, the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) in the case of a person seeking to bring an action under subsection (a)(2) of this section, the Equal Employment Opportunity Commission, the Attorney General, a person who may bring an action or proceeding under section 794a(a)(1) of title 29, or a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 [42 U.S.C. 12111 et seq.].

(2) Discriminatory practice

The term ''discriminatory practice'' means the discrimination described in paragraph (1), or the discrimination or the violation described in paragraph (2), of subsection (a) of this section.

(R.S. § 1977A, as added Pub. L. 102–166, title I, § 102, Nov. 21, 1991, 105 Stat. 1072.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (d)(1)(A), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VII of the Act is classified generally to subchapter VI (§ 2000e et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (d)(1)(B) is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended. Title I of the Act is classified generally to subchapter I (§ 12111 et seq.) of chapter 126 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

EFFECTIVE DATE

Section effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as an Effective Date of 1991 Amendment note under section 1981 of this title.

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

(R.S. § 1978.)

CODIFICATION

R.S. § 1978 derived from act Apr. 9, 1866, ch. 31, § 1, 14 Stat. 27.

Section was formerly classified to section 42 of Title 8, Aliens and Nationality.

EX. ORD. NO. 11063. EQUAL OPPORTUNITY IN HOUSING

Ex. Ord. No. 11063, Nov. 20, 1962, 27 F.R. 11527, as amended by Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253; Ex. Ord. No. 12892, § 6–604, Jan. 17, 1994, 59 F.R. 2939, provided:

WHEREAS the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and

WHEREAS the Congress in the Housing Act of 1949 [see Short Title note set out under section 1441 of this title] has declared that the general welfare and security of the Nation and the health and living standards of its people require the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family; and

WHEREAS discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

WHEREAS such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

WHEREAS the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

PART I—PREVENTION OF DISCRIMINATION

SECTION 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, disability, familial status or national origin—

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are—

(i) owned or operated by the Federal Government, or

(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or

(iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government, or

(iv) provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under a loan of grant contract hereafter entered into; and

(b) in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans hereafter insured or guaranteed by the Federal Government.

SEC. 102. I hereby direct the Department of Housing and Urban Development and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities heretofore provided with Federal financial assistance of the types referred to in Section 101(a)(ii), (iii), and (iv).

PART II—IMPLEMENTATION BY DEPARTMENTS AND AGENCIES

SEC. 201. Each executive department and agency subject to this order is directed to submit to the President's Committee on Equal Opportunity in Housing established pursuant to Part IV of this order (hereinafter sometimes referred to as the Committee), within thirty days from the date of this order, a report outlining all current programs administered by it which are affected by this order.

SEC. 202. Each such department and agency shall be primarily responsible for obtaining compliance with the purposes of this order as the order applies to programs administered by it; and is directed to cooperate with the Committee, to furnish it, in accordance with law, such information and assistance as it may request in the performance of its functions, and to report to it at such intervals as the Committee may require.

SEC. 203. Each such department and agency shall, within thirty days from the date of this order, issue such rules and regulations, adopt such procedures and policies, and make such exemptions and exceptions as may be consistent with law and necessary or appropriate to effectuate the purposes of this order. Each such department and agency shall consult with the Committee in order to achieve such consistency and uniformity as may be feasible.

PART III—ENFORCEMENT

SEC. 301. The Committee, any subcommittee thereof, and any officer or employee designated by any execu-

tive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

SEC. 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such action as may be appropriate under its governing laws, including, but not limited to, the following:

It may—

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

(b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;

(c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

SEC. 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

SEC. 304. Any executive department or agency affected by this order may also invoke the sanctions provided in Section 302 where any person or firm, including a lender, has violated the rules, regulations, or procedures issued or adopted pursuant to this order, or the nondiscrimination provisions included in any agreement or contract, with respect to any program affected by this order administered by any other executive department or agency.

PART IV—ESTABLISHMENT OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

[Revoked. Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253; Ex. Ord. No. 12892, § 6–604, Jan. 17, 1994, 59 F.R. 2939.]

PART V—POWERS AND DUTIES OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

SEC. 501. [Revoked. Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253; Ex. Ord. No. 12892, § 6–604, Jan. 17, 1994, 59 F.R. 2939.]

SEC. 502. (a) The Committee shall take such steps as it deems necessary and appropriate to promote the coordination of the activities of departments and agencies under this order. In so doing, the Committee shall consider the overall objectives of Federal legislation relating to housing and the right of every individual to participate without discrimination because of race, color, religion (creed), sex, disability, familial status or national origin in the ultimate benefits of the Federal programs subject to this order.

(b) The Committee may confer with representatives of any department or agency, State or local public agency, civic, industry, or labor group, or any other group directly or indirectly affected by this order; examine the relevant rules, regulations, procedures, policies, and practices of any department or agency subject to this order and make such recommendations as may be necessary or desirable to achieve the purposes of this order.

(c) The Committee shall encourage educational programs by civic, educational, religious, industry, labor, and other nongovernmental groups to eliminate the basic causes of discrimination in housing and related facilities provided with Federal assistance.

SEC. 503. [Revoked. Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253; Ex. Ord. No. 12892, § 6–604, Jan. 17, 1994, 59 F.R. 2939.]

PART VI—MISCELLANEOUS

SEC. 601. As used in this order, the term "departments and agencies" includes any wholly-owned or mixed-ownership Government corporation, and the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

SEC. 602. This order shall become effective immediately.

[Functions of President's Committee on Equal Opportunity in Housing under Ex. Ord. No. 11063 delegated to Secretary of Housing and Urban Development by Ex. Ord. No. 12892, § 6–604(a), Jan. 17, 1994, 59 F.R. 2939, set out as a note under section 3608 of this title.]

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub. L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104–317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

CODIFICATION

R.S. § 1979 derived from act Apr. 20, 1871, ch. 22, § 1, 17 Stat. 13.

Section was formerly classified to section 43 of Title 8, Aliens and Nationality.

AMENDMENTS

1996—Pub. L. 104–317 inserted before period at end of first sentence ", except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable".

1979—Pub. L. 96–170 inserted "or the District of Columbia" after "Territory", and provisions relating to Acts of Congress applicable solely to the District of Columbia.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–170 applicable with respect to any deprivation of rights, privileges, or immunities

secured by the Constitution and laws occurring after Dec. 29, 1979, see section 3 of Pub. L. 96–170, set out as a note under section 1343 of Title 28, Judiciary and Judicial Procedure.

§ 1984. Omitted

CODIFICATION

Section, act Mar. 1, 1875, ch. 114, § 5, 18 Stat. 337, which was formerly classified to section 46 of Title 8, Aliens and Nationality, related to Supreme Court review of cases arising under act Mar. 1, 1875. Sections 1 and 2 of act Mar. 1, 1875 were declared unconstitutional in *U.S. v. Singleton*, 109 U.S. 3, and sections 3 and 4 of such act were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862.

§ 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

(R.S. § 1980.)

CODIFICATION

R.S. § 1980 derived from acts July 31, 1861, ch. 33, 12 Stat. 284; Apr. 20, 1871, ch. 22, § 2, 17 Stat. 13.

Section was formerly classified to section 47 of Title 8, Aliens and Nationality.

§ 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

(R.S. § 1981.)

CODIFICATION

R.S. § 1981 derived from act Apr. 20, 1871, ch. 22, § 6, 17 Stat. 15.

Section was formerly classified to section 48 of Title 8, Aliens and Nationality.

§ 1987. Prosecution of violation of certain laws

The United States attorneys, marshals, and deputy marshals, the United States magistrate judges appointed by the district and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all per-

sons violating any of the provisions of section 1990 of this title or of sections 5506 to 5516 and 5518 to 5532 of the Revised Statutes, and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the territorial court having cognizance of the offense.

(R.S. § 1982; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Pub. L. 90–578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

REFERENCES IN TEXT

Sections 5506 to 5510, 5516 to 5519 and 5524 to 5535 of the Revised Statutes, referred to in text, were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153; section 5506, 5511 to 5515, and 5520 to 5523, also referred to in text, were repealed by act Feb. 8, 1894, ch. 25, § 1, 28 Stat. 37. The provisions of sections 5508, 5510, 5516, 5518 and 5524 to 5532 of the Revised Statutes were reenacted by act Mar. 4, 1909, and classified to sections 51, 52, 54 to 59, 246, 428 and 443 to 445 of former Title 18, Criminal Code and Criminal Procedure. Those sections were repealed and reenacted as sections 241, 242, 372, 592, 593, 752, 1071, 1581, 1583 and 1588 of Title 18, Crimes and Criminal Procedure, in the general revision of Title 18 by act June 25, 1948, ch. 645, 62 Stat. 683.

CODIFICATION

R.S. § 1982 derived from acts Apr. 9, 1866, ch. 31, § 4, 14 Stat. 28; May 31, 1870, Ch. 114, § 9, 16 Stat. 142.

Section was formerly classified to section 49 of Title 8, Aliens and Nationality.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorneys'' for ''district attorneys''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

''United States magistrate judges'' substituted in text for ''magistrates'' pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28. Previously, ''magistrates'' substituted for ''commissioners'' pursuant to Pub. L. 90–578. See chapter 43 (§ 631 et seq.) of Title 28.

Reference to the district courts substituted for reference to the circuit courts on authority of section 291 of act Mar. 3, 1911.

§ 1988. Proceedings in vindication of civil rights

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92–318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

(R.S. § 722; Pub. L. 94–559, § 2, Oct. 19, 1976, 90 Stat. 2641; Pub. L. 96–481, title II, § 205(c), Oct. 21, 1980, 94 Stat. 2330; Pub. L. 102–166, title I, §§ 103, 113(a), Nov. 21, 1991, 105 Stat. 1074, 1079; Pub. L. 103–141, § 4(a), Nov. 16, 1993, 107 Stat. 1489; Pub. L. 103–322, title IV, § 40303, Sept. 13, 1994, 108 Stat. 1942; Pub. L. 104–317, title III, § 309(b), Oct. 19, 1996, 110 Stat. 3853; Pub. L. 106–274, § 4(d), Sept. 22, 2000, 114 Stat. 804.)

REFERENCES IN TEXT

Title 13 of the Revised Statutes, referred to in subsec. (a), was in the original ''this Title'' meaning title 13 of the Revised Statutes, consisting of R.S. §§ 530 to 1093. For complete classification of R.S. §§ 530 to 1093 to the Code, see Tables.

Title 24 of the Revised Statutes, referred to in subsec. (a), was in the original ''Title 'CIVIL RIGHTS,' '' meaning title 24 of the Revised Statutes, consisting of R.S. §§ 1977 to 1991, which are classified to sections 1981 to 1983, 1985 to 1987, and 1989 to 1994 of this title. For complete classification of R.S. §§ 1977 to 1991 to the Code, see Tables.

Title 70 of the Revised Statutes, referred to in subsec. (a), was in the original ''Title 'CRIMES,' '' meaning title 70 of the Revised Statutes, consisting of R.S. §§ 5323 to 5550. For complete classification of R.S. §§ 5323 to 5550, see Tables.

Title IX of Public Law 92–318, referred to in subsec. (b), is title IX of Pub. L. 92–318, June 23, 1972, 86 Stat. 373, as amended, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, which is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Religious Freedom Restoration Act of 1993, referred to in subsec. (b), is Pub. L. 103–141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to chapter 21B (§ 2000bb et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000bb of this title and Tables.

The Religious Land Use and Institutionalized Persons Act of 2000, referred to in subsec. (b), is Pub. L. 106–274, Sept. 22, 2000, 114 Stat. 803, which is classified principally to chapter 21C (§ 2000cc et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000cc of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

R.S. § 722 derived from acts Apr. 9, 1866, ch. 31, § 3, 14 Stat. 27; May 31, 1870, ch. 114, § 18, 16 Stat. 144.

Section was formerly classified to section 729 of Title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, § 1, 62 Stat. 869.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–274 inserted ''the Religious Land Use and Institutionalized Persons Act of 2000,'' after ''Religious Freedom Restoration Act of 1993,'' and deleted comma after ''section 13981 of this title,''.

1996—Subsec. (b). Pub. L. 104–317 inserted before period at end '', except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction''.

1994—Subsec. (b). Pub. L. 103–322, which directed the amendment of the last sentence of this section by striking ''or'' after ''92–318,'' and by inserting '', or section 13981 of this title,'' after ''1964'', was executed to subsec. (b) of this section by striking ''or'' after ''Act of 1993,'' and by inserting '', or section 13981 of this title,'' after ''1964'', to reflect the probable intent of Congress and amendments by Pub. L. 102–166 and Pub. L. 103–141. See 1993 and 1991 Amendment notes below.

1993—Subsec. (b). Pub. L. 103–141 inserted ''the Religious Freedom Restoration Act of 1993,'' before ''or title VI''.

1991—Subsec. (a). Pub. L. 102–166, § 113(a)(1), designated first sentence of existing provisions as subsec. (a).

Subsec. (b). Pub. L. 102–166, §§ 103, 113(a)(1), designated second sentence of existing provisions as subsec. (b) and inserted ''1981a,'' after ''1981,''.

Subsec. (c). Pub. L. 102–166, § 113(a)(2), added subsec. (c).

1980—Pub. L. 96–481 struck out ''or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code,''.

1976—Pub. L. 94–559 authorized the court, in its discretion, to allow a reasonable attorney's fee as part of the prevailing party's costs.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–481 effective Oct. 1, 1981, and applicable to adversary adjudication as defined in section 504(b)(1)(C) of Title 5, Government Organization and Employees, and to civil actions and adversary adjudications described in section 2412 of Title 28, Judiciary and Judicial Procedure, which are pending on, or commenced on or after Oct. 1, 1981, see section 208 of Pub. L. 96–481, set out as an Effective Date note under section 2412 of Title 28.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–559, § 1, Oct. 19, 1976, 90 Stat. 2641, provided: ''That this Act [amending this section] may be cited as 'The Civil Rights Attorney's Fees Awards Act of 1976'.''

§ 1989. United States magistrate judges; appointment of persons to execute warrants

The district courts of the United States and the district courts of the Territories, from time to time, shall increase the number of United States magistrate judges, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in section 1987 of this title; and such magistrate judges are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. Said magistrate judges are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the magistrate judges may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued.

(R.S. §§ 1983, 1984; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Pub. L. 90–578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

CODIFICATION

R.S. §§ 1983 and 1984 derived from acts Apr. 9, 1866, ch. 31, §§ 4, 5, 14 Stat. 28; May 31, 1870, ch. 114, §§ 9, 10, 16 Stat. 142.

Section was formerly classified to section 50 of Title 8, Aliens and Nationality.

CHANGE OF NAME

''United States magistrate judges'' and ''magistrate judges'' substituted in text for ''magistrates'' wherever appearing pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, ''magistrates'' substituted for ''commissioners'' pursuant to Pub. L. 90–578. See chapter 43 (§ 631 et seq.) of Title 28.

''District courts'' substituted for ''circuit courts'' on authority of section 291 of act Mar. 3, 1911.

§ 1990. Marshal to obey precepts; refusing to receive or execute process

Every marshal and deputy marshal shall obey and execute all warrants or other process, when directed to him, issued under the provisions of section 1989 of this title. Every marshal and deputy marshal who refuses to receive any warrant or other process when tendered to him, issued in pursuance of the provisions of this section, or refuses or neglects to use all proper means diligently to execute the same, shall be liable to a fine in the sum of $1,000, for the benefit of the party aggrieved thereby.

(R.S. §§ 1985, 5517.)

CODIFICATION

R.S. § 1985 derived from acts Apr. 9, 1866, ch. 31, § 5, 14 Stat. 28; May 31, 1870, ch. 114, § 10, 16 Stat. 142.

R.S. § 5517 derived from act May 31, 1870, ch. 114, § 10, 16 Stat. 142.

Section was formerly classified to section 51 of Title 8, Aliens and Nationality.

§ 1991. Fees; persons appointed to execute process

Every person appointed to execute process under section 1989 of this title shall be entitled to a fee of $5 for each party he may arrest and take before any United States magistrate judge, with such other fees as may be deemed reasonable by the magistrate judge for any additional services necessarily performed by him, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of the magistrate judge; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in case of conviction.

(R.S. § 1987; Pub. L. 90–578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

CODIFICATION

R.S. § 1987 derived from acts Apr. 9, 1866, ch. 31, § 7, 14 Stat. 29; May 31, 1870, ch. 114, § 12, 16 Stat. 143.

Section was formerly classified to section 53 of Title 8, Aliens and Nationality.

CHANGE OF NAME

''United States magistrate judge'' and ''magistrate judge'' substituted in text for ''magistrate'' wherever appearing pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, ''magistrate'' substituted for ''commissioner'' pursuant to Pub. L. 90–578. See chapter 43 (§ 631 et seq.) of Title 28.

§ 1992. Speedy trial

Whenever the President has reason to believe that offenses have been, or are likely to be committed against the provisions of section 1990 of this title or of section 5506 to 5516 and 5518 to 5532 of the Revised Statutes, within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and United States attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons so charged, and it shall be the duty of every judge or other officer, when any such requisition is received by him to attend at the place and for the time therein designated.

(R.S. § 1988; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

REFERENCES IN TEXT

Sections 5506 to 5510, 5516 to 5519 and 5524 to 5535 of the Revised Statutes, referred to in text, were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153; section 5506, 5511 to 5515, and 5520 to 5523, also referred to in text, were repealed by act Feb. 8, 1894, ch. 25, § 1, 28 Stat. 37. The provisions of sections 5508, 5510, 5516, 5518 and 5524 to 5532 of the Revised Statutes were reenacted by act Mar. 4, 1909, and classified to sections 51, 52, 54 to 59, 246, 428 and 443 to 445 of former Title 18, Criminal Code and Criminal Procedure. Those sections were repealed and reenacted as sections 241, 242, 372, 592, 593, 752, 1071, 1581, 1583 and 1588 of Title 18, Crimes and Criminal Procedure, in the general revision of Title 18 by act June 25, 1948, ch. 645, 62 Stat. 683.

CODIFICATION

R.S. § 1988 derived from act Apr. 9, 1866, ch. 31, § 8, 14 Stat. 29.

Section was formerly classified to section 54 of Title 8, Aliens and Nationality.

CHANGE OF NAME

Act June 25, 1948, effective Sept. 1, 1948, substituted ''United States attorney'' for ''district attorney''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

§ 1993. Repealed. Pub. L. 85–315, pt. III, § 122, Sept. 9, 1957, 71 Stat. 637

Section, R.S. § 1989, authorized President to employ land or naval forces to aid in execution of judicial process issued under sections 1981 to 1983 or 1985 to 1992 of this title, or to prevent violation and enforce due execution of sections 1981 to 1983 and 1985 to 1994 of this title. See section 332 of Title 10, Armed Forces.

§ 1994. Peonage abolished

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

(R.S. § 1990.)

CODIFICATION

R.S. § 1990 derived from act Mar. 2, 1867, ch. 187, § 1, 14 Stat. 546.

Section was formerly classified to section 56 of Title 8, Aliens and Nationality.

§ 1995. Criminal contempt proceedings; penalties; trial by jury

In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: *Provided however*, That in case the accused is a natural person the fine to be paid shall not exceed the sum of $1,000, nor shall imprisonment exceed the term of six months: *Provided further*, That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: *Provided further, however*, That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of the sum of $300 or imprisonment in excess of forty-five days, the accused in said proceeding, upon demand therefore, shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in other criminal cases.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court.

Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

(Pub. L. 85–315, pt. V, § 151, Sept. 9, 1957, 71 Stat. 638.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 85–315, Sept. 9, 1957, 71 Stat. 634, as amended, known as the Civil Rights Act of 1957, which enacted this section, sections 1975 to 1975e of this title and section 295–1 of former Title 5, Executive Departments and Government Officers and Employees, repealed section 1993 of this title, amended section 1971 of this title and sections 1343 and 1861 of Title 28, Judiciary and Judicial Procedure, and enacted provisions set out as a note under section 1971 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

§ 1996. Protection and preservation of traditional religions of Native Americans

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

(Pub. L. 95–341, § 1, Aug. 11, 1978, 92 Stat. 469.)

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–344, § 1, Oct. 6, 1994, 108 Stat. 3125, provided that: ''This Act [enacting section 1996a of this title] may be cited as the 'American Indian Religious Freedom Act Amendments of 1994'.''

SHORT TITLE

Pub. L. 95–341, as amended, which enacted this section, section 1996a of this title, and a provision set out as a note under this section, is popularly known as the American Indian Religious Freedom Act.

FEDERAL IMPLEMENTATION OF PROTECTIVE AND PRESERVATION FUNCTIONS RELATING TO NATIVE AMERICAN RELIGIOUS CULTURAL RIGHTS AND PRACTICES; PRESIDENTIAL REPORT TO CONGRESS

Section 2 of Pub. L. 95–341 provided that the President direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders to determine changes necessary to preserve Native American religious cultural rights and practices and report to the Congress 12 months after Aug. 11, 1978.

EX. ORD. NO. 13007. INDIAN SACRED SITES

Ex. Ord. No. 13007, May 24, 1996, 61 F.R. 26771, provided:

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

SECTION 1. *Accommodation of Sacred Sites*. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) ''Federal lands'' means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) ''Indian tribe'' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103–454, 108 Stat. 4791 [see 25 U.S.C. 479a, 479a–1], and ''Indian'' refers to a member of such an Indian tribe; and

(iii) ''Sacred site'' means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

SEC. 2. *Procedures*. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' [25 U.S.C. 450 note].

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

SEC. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, ''agency action'' has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

SEC. 4. This order is intended only to improve the internal management of the executive branch and is not

intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

WILLIAM J. CLINTON.

§ 1996a. Traditional Indian religious use of peyote

(a) Congressional findings and declarations

The Congress finds and declares that—

(1) for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures;

(2) since 1965, this ceremonial use of peyote by Indians has been protected by Federal regulation;

(3) while at least 28 States have enacted laws which are similar to, or are in conformance with, the Federal regulation which protects the ceremonial use of peyote by Indian religious practitioners, 22 States have not done so, and this lack of uniformity has created hardship for Indian people who participate in such religious ceremonies;

(4) the Supreme Court of the United States, in the case of Employment Division v. Smith, 494 U.S. 872 (1990), held that the First Amendment does not protect Indian practitioners who use peyote in Indian religious ceremonies, and also raised uncertainty whether this religious practice would be protected under the compelling State interest standard; and

(5) the lack of adequate and clear legal protection for the religious use of peyote by Indians may serve to stigmatize and marginalize Indian tribes and cultures, and increase the risk that they will be exposed to discriminatory treatment.

(b) Use, possession, or transportation of peyote

(1) Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.

(2) This section does not prohibit such reasonable regulation and registration by the Drug Enforcement Administration of those persons who cultivate, harvest, or distribute peyote as may be consistent with the purposes of this section and section 1996 of this title.

(3) This section does not prohibit application of the provisions of section 481.111(a) of Vernon's Texas Health and Safety Code Annotated, in effect on October 6, 1994, insofar as those provisions pertain to the cultivation, harvest, and distribution of peyote.

(4) Nothing in this section shall prohibit any Federal department or agency, in carrying out its statutory responsibilities and functions, from promulgating regulations establishing reasonable limitations on the use or ingestion of peyote prior to or during the performance of duties by sworn law enforcement officers or personnel directly involved in public transportation or any other safety-sensitive positions where the performance of such duties may be adversely affected by such use or ingestion. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice. Any regulation promulgated pursuant to this section shall be subject to the balancing test set forth in section 3 of the Religious Freedom Restoration Act (Public Law 103–141; 42 U.S.C. 2000bb–1).

(5) This section shall not be construed as requiring prison authorities to permit, nor shall it be construed to prohibit prison authorities from permitting, access to peyote by Indians while incarcerated within Federal or State prison facilities.

(6) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103–141; 42 U.S.C. 2000bb–1) [42 U.S.C. 2000bb et seq.], this section shall not be construed to prohibit States from enacting or enforcing reasonable traffic safety laws or regulations.

(7) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103–141; 42 U.S.C. 2000bb–1), this section does not prohibit the Secretary of Defense from promulgating regulations establishing reasonable limitations on the use, possession, transportation, or distribution of peyote to promote military readiness, safety, or compliance with international law or laws of other countries. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice.

(c) Definitions

For purposes of this section—

(1) the term ''Indian'' means a member of an Indian tribe;

(2) the term ''Indian tribe'' means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) the term ''Indian religion'' means any religion—

(A) which is practiced by Indians, and

(B) the origin and interpretation of which is from within a traditional Indian culture or community; and

(4) the term ''State'' means any State of the United States, and any political subdivision thereof.

(d) Protection of rights of Indians and Indian tribes

Nothing in this section shall be construed as abrogating, diminishing, or otherwise affecting—

(1) the inherent rights of any Indian tribe;

(2) the rights, express or implicit, of any Indian tribe which exist under treaties, Executive orders, and laws of the United States;

(3) the inherent right of Indians to practice their religions; and

(4) the right of Indians to practice their religions under any Federal or State law.

(Pub. L. 95–341, § 3, as added Pub. L. 103–344, § 2, Oct. 6, 1994, 108 Stat. 3125.)

REFERENCES IN TEXT

The Religious Freedom Restoration Act, referred to in subsec. (b)(6), (7), probably means the Religious Freedom Restoration Act of 1993, Pub. L. 103–141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to chapter 21B (§ 2000bb et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000bb of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(2), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 1996b. Interethnic adoption

(1) Prohibited conduct

A person or government that is involved in adoption or foster care placements may not—

(A) deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) Enforcement

Noncompliance with paragraph (1) is deemed a violation of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(3) No effect on the Indian Child Welfare Act of 1978

This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.].

(Pub. L. 104–188, title I, § 1808(c), Aug. 20, 1996, 110 Stat. 1904.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in par. (2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Indian Child Welfare Act of 1978, referred to in par. (3), is Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§ 1901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 25 and Tables.

SUBCHAPTER I–A—INSTITUTIONALIZED PERSONS

§ 1997. Definitions

As used in this subchapter—

(1) The term ''institution'' means any facility or institution—

(A) which is owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State; and

(B) which is—

(i) for persons who are mentally ill, disabled, or retarded, or chronically ill or handicapped;

(ii) a jail, prison, or other correctional facility;

(iii) a pretrial detention facility;

(iv) for juveniles—

(I) held awaiting trial;

(II) residing in such facility or institution for purposes of receiving care or treatment; or

(III) residing for any State purpose in such facility or institution (other than a residential facility providing only elementary or secondary education that is not an institution in which reside juveniles who are adjudicated delinquent, in need of supervision, neglected, placed in State custody, mentally ill or disabled, mentally retarded, or chronically ill or handicapped); or

(v) providing skilled nursing, intermediate or long-term care, or custodial or residential care.

(2) Privately owned and operated facilities shall not be deemed ''institutions'' under this subchapter if—

(A) the licensing of such facility by the State constitutes the sole nexus between such facility and such State;

(B) the receipt by such facility, on behalf of persons residing in such facility, of payments under title XVI, XVIII [42 U.S.C. 1381 et seq., 1395 et seq.], or under a State plan approved under title XIX [42 U.S.C. 1396 et seq.], of the Social Security Act, constitutes the sole nexus between such facility and such State; or

(C) the licensing of such facility by the State, and the receipt by such facility, on behalf of persons residing in such facility, of payments under title XVI, XVIII [42 U.S.C. 1381 et seq., 1395 et seq.], or under a State plan approved under title XIX [42 U.S.C. 1396 et seq.], of the Social Security Act, constitutes the sole nexus between such facility and such State;

(3) The term ''person'' means an individual, a trust or estate, a partnership, an association, or a corporation;

(4) The term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States;

(5) The term ''legislative days'' means any calendar day on which either House of Congress is in session.

(Pub. L. 96–247, § 2, May 23, 1980, 94 Stat. 349.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2)(B), (C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI, XVIII, and XIX of the Social Security Act are classified generally to subchapters XVI (§ 1381 et seq.), XVIII (§ 1395 et seq.), and XIX (§ 1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

SHORT TITLE

Section 1 of Pub. L. 96–247 provided: ''That this Act [enacting this subchapter] may be cited as the 'Civil Rights of Institutionalized Persons Act'.''

§ 1997a. Initiation of civil actions

(a) Discretionary authority of Attorney General; preconditions

Whenever the Attorney General has reasonable cause to believe that any State or political subdivision of a State, official, employee, or agent thereof, or other person acting on behalf of a State or political subdivision of a State is subjecting persons residing in or confined to an institution, as defined in section 1997 of this title, to egregious or flagrant conditions which deprive such persons of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing such persons to suffer grievous harm, and that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may institute a civil action in any appropriate United States district court against such party for such equitable relief as may be appropriate to insure the minimum corrective measures necessary to insure the full enjoyment of such rights, privileges, or immunities, except that such equitable relief shall be available under this subchapter to persons residing in or confined to an institution as defined in section 1997(1)(B)(ii) of this title only insofar as such persons are subjected to conditions which deprive them of rights, privileges, or immunities secured or protected by the Constitution of the United States.

(b) Discretionary award of attorney fees

In any action commenced under this section, the court may allow the prevailing party, other than the United States, a reasonable attorney's fee against the United States as part of the costs.

(c) Attorney General to personally sign complaint

The Attorney General shall personally sign any complaint filed pursuant to this section.

(Pub. L. 96–247, § 3, May 23, 1980, 94 Stat. 350; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 803(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–70; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–134 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Any complaint filed by the Attorney General pursuant to this section shall be personally signed by him.''

§ 1997b. Certification requirements; Attorney General to personally sign certification

(a) At the time of the commencement of an action under section 1997a of this title the Attorney General shall certify to the court—

(1) that at least 49 calendar days previously the Attorney General has notified in writing the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution of—

(A) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities;

(B) the supporting facts giving rise to the alleged conditions and the alleged pattern or practice, including the dates or time period during which the alleged conditions and pattern or practice of resistance occurred; and when feasible, the identity of all persons reasonably suspected of being involved in causing the alleged conditions and pattern or practice at the time of the certification, and the date on which the alleged conditions and pattern or practice were first brought to the attention of the Attorney General; and

(C) the minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance;

(2) that the Attorney General has notified in writing the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution of the Attorney General's intention to commence an investigation of such institution, that such notice was delivered at least seven days prior to the commencement of such investigation and that between the time of such notice and the commencement of an action under section 1997a of this title—

(A) the Attorney General has made a reasonable good faith effort to consult with the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution, or their designees, regarding financial, technical, or other assistance which may be available from the United States and which the Attorney General believes may assist in the correction of such conditions and pattern or practice of resistance;

(B) the Attorney General has encouraged the appropriate officials to correct the alleged conditions and pattern or practice of resistance through informal methods of conference, conciliation and persuasion, including, to the extent feasible, discussion of the possible costs and fiscal impacts of alternative minimum corrective measures, and it is the Attorney General's opinion that reasonable efforts at voluntary correction have not succeeded; and

(C) the Attorney General is satisfied that the appropriate officials have had a reasonable time to take appropriate action to correct such conditions and pattern or practice, taking into consideration the time required to remodel or make necessary changes in physical facilities or relocate residents, reasonable legal or procedural requirements, the urgency of the need to correct such conditions, and other circumstances involved in correcting such conditions; and

(3) that the Attorney General believes that such an action by the United States is of general public importance and will materially further the vindication of rights, privileges, or

immunities secured or protected by the Constitution or laws of the United States.

(b) The Attorney General shall personally sign any certification made pursuant to this section.

(Pub. L. 96–247, § 4, May 23, 1980, 94 Stat. 350; Pub. L. 97–256, title II, § 201(a), Sept. 8, 1982, 96 Stat. 816; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 803(b)], Apr. 26, 1996, 110 Stat. 1321, 1321–71; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(b)(1)(A)], substituted ''the Attorney General'' for ''he'' in introductory provisions and in subpar. (C).

Subsec. (a)(2). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(b)(1)(A)], substituted ''the Attorney General'' for ''he'' wherever appearing in introductory provisions and in subpars. (A) to (C).

Pub. L. 104–134, § 101[(a)] [title VIII, § 803(b)(1)(B)], substituted ''the Attorney General's'' for ''his'' in introductory provisions and in subpar. (B).

Subsec. (a)(3). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(b)(1)(A)], substituted ''the Attorney General'' for ''he''.

Subsec. (b). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(b)(2)], amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Any certification made by the Attorney General pursuant to this section shall be personally signed by him.''

1982—Subsec. (a). Pub. L. 97–256 substituted ''section 1997a of this title'' for ''section 1997 of this title'' in provisions preceding par. (1).

§ 1997c. Intervention in actions

(a) Discretionary authority of Attorney General; preconditions; time period

(1) Whenever an action has been commenced in any court of the United States seeking relief from egregious or flagrant conditions which deprive persons residing in institutions of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing them to suffer grievous harm and the Attorney General has reasonable cause to believe that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may intervene in such action upon motion by the Attorney General.

(2) The Attorney General shall not file a motion to intervene under paragraph (1) before 90 days after the commencement of the action, except that if the court determines it would be in the interests of justice, the court may shorten or waive the time period.

(b) Certification requirements by Attorney General

(1) The Attorney General shall certify to the court in the motion to intervene filed under subsection (a) of this section—

(A) that the Attorney General has notified in writing, at least fifteen days previously, the Governor or chief executive officer, attorney general or chief legal officer of the appropriate State or political subdivision, and the director of the institution of—

(i) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities;

(ii) the supporting facts giving rise to the alleged conditions, including the dates and time period during which the alleged conditions and pattern or practice of resistance occurred; and

(iii) to the extent feasible and consistent with the interests of other plaintiffs, the minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance; and

(B) that the Attorney General believes that such intervention by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(2) The Attorney General shall personally sign any certification made pursuant to this section.

(c) Attorney General to personally sign motion to intervene

The Attorney General shall personally sign any motion to intervene made pursuant to this section.

(d) Discretionary award of attorney fees; other award provisions unaffected

In any action in which the United States joins as an intervenor under this section, the court may allow the prevailing party, other than the United States, a reasonable attorney's fee against the United States as part of the costs. Nothing in this subsection precludes the award of attorney's fees available under any other provisions of the United States Code.

(Pub. L. 96–247, § 5, May 23, 1980, 94 Stat. 351; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 803(c)], Apr. 26, 1996, 110 Stat. 1321, 1321–71; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

AMENDMENTS

1996—Subsec. (b)(1)(A). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(c)(1)(A)], substituted ''the Attorney General'' for ''he'' in introductory provisions and in cl. (iii).

Subsec. (b)(1)(B). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(c)(1)(A)], substituted ''the Attorney General'' for ''he''.

Subsec. (b)(2). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(c)(1)(B)], amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Any certification made by the Attorney General pursuant to this subsection shall be personally signed by him.''

Subsec. (c). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(c)(2)], amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Any motion to intervene made by the Attorney General pursuant to this section shall be personally signed by him.''

§ 1997d. Prohibition of retaliation

No person reporting conditions which may constitute a violation under this subchapter shall be subjected to retaliation in any manner for so reporting.

(Pub. L. 96–247, § 6, May 23, 1980, 94 Stat. 352.)

§ 1997e. Suits by prisoners

(a) Applicability of administrative remedies

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

(b) Failure of State to adopt or adhere to administrative grievance procedure

The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 1997a or 1997c of this title.

(c) Dismissal

(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

(d) Attorney's fees

(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988[1] of this title, such fees shall not be awarded, except to the extent that—

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988[1] of this title; and

(B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of title 18 for payment of court-appointed counsel.

(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 1988[1] of this title.

(e) Limitation on recovery

No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

(f) Hearings

(1) To the extent practicable, in any action brought with respect to prison conditions in Federal court pursuant to section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.

(2) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.

(g) Waiver of reply

(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

(2) The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.

(h) "Prisoner" defined

As used in this section, the term ''prisoner'' means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(Pub. L. 96–247, § 7, May 23, 1980, 94 Stat. 352; Pub. L. 103–322, title II, § 20416(a), Sept. 13, 1994, 108 Stat. 1833; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 803(d)], Apr. 26, 1996, 110 Stat. 1321, 1321–71; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

REFERENCES IN TEXT

Section 1988 of this title, referred to in subsec. (d)(1), (4), was in the original a reference to section 2 of the Revised Statutes of the United States (42 U.S.C. 1988), and has been translated as reading section 722 of the Revised Statutes of the United States to reflect the probable intent of Congress. Section 2 of the Revised Statutes, which defined the term ''county'', was repealed and reenacted as section 2 of Title 1, General Provisions, by act July 30, 1947, ch. 388, 61 Stat. 633, 640.

[1] See References in Text note below.

AMENDMENTS

1996—Pub. L. 104–134 amended section generally, substituting provisions relating to suits by prisoners, consisting of subsecs. (a) to (h), for former provisions relating to exhaustion of remedies, consisting of subsecs. (a) to (d).

1994—Subsec. (a). Pub. L. 103–322, § 20416(a)(1), substituted ''exceed 180 days'' for ''exceed ninety days'' in par. (1) and inserted before period at end of par. (2) ''or are otherwise fair and effective''.

Subsec. (c). Pub. L. 103–322, § 20416(a)(2), inserted ''or are otherwise fair and effective'' before period at end of par. (1) and ''or is no longer fair and effective'' before period at end of par. (2).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 20416(b) of Pub. L. 103–322 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Sept. 13, 1994].''

NONDISCLOSURE OF INFORMATION IN ACTIONS BROUGHT BY PRISONERS

Pub. L. 105–277, div. A, § 101(b) [title I, § 127], Oct. 21, 1998, 112 Stat. 2681–50, 2681–74, provided that: ''Notwithstanding any other provision of law, in any action brought by a prisoner under section 1979 of the Revised Statutes (42 U.S.C. 1983) against a Federal, State, or local jail, prison, or correctional facility, or any employee or former employee thereof, arising out of the incarceration of that prisoner—

''(1) the financial records of a person employed or formerly employed by the Federal, State, or local jail, prison, or correctional facility, shall not be subject to disclosure without the written consent of that person or pursuant to a court order, unless a verdict of liability has been entered against that person; and

''(2) the home address, home phone number, social security number, identity of family members, personal tax returns, and personal banking information of a person described in paragraph (1), and any other records or information of a similar nature relating to that person, shall not be subject to disclosure without the written consent of that person, or pursuant to a court order.''

[Pub. L. 105–277, div. A, § 101(b) [title I, § 127], set out above, applicable to fiscal year 2000 and thereafter, see Pub. L. 106–113, div. B, § 1000(a)(1) [title I, § 109], set out as an Applicability of Provisions Relating to Use of Counterterrorism Appropriations and Nondisclosure of Information in Actions Brought by Prisoners note under section 524 of Title 28, Judiciary and Judicial Procedure.]

§ 1997f. Report to Congress

The Attorney General shall include in the report to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28—

(1) a statement of the number, variety, and outcome of all actions instituted pursuant to this subchapter including the history of, precise reasons for, and procedures followed in initiation or intervention in each case in which action was commenced;

(2) a detailed explanation of the procedures by which the Department has received, reviewed and evaluated petitions or complaints regarding conditions in institutions;

(3) an analysis of the impact of actions instituted pursuant to this subchapter, including, when feasible, an estimate of the costs incurred by States and other political subdivisions;

(4) a statement of the financial, technical, or other assistance which has been made available from the United States to the State in order to assist in the correction of the conditions which are alleged to have deprived a person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States; and

(5) the progress made in each Federal institution toward meeting existing promulgated standards for such institutions or constitutionally guaranteed minima.

(Pub. L. 96–247, § 8, May 23, 1980, 94 Stat. 353; Pub. L. 97–256, title II, § 201(b), Sept. 8, 1982, 96 Stat. 817; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 803(e)], Apr. 26, 1996, 110 Stat. 1321, 1321–73; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

AMENDMENTS

1996—Pub. L. 104–134 substituted ''the report'' for ''his report'' in introductory provisions .

1982—Pub. L. 97–256 substituted ''Attorney General'' for ''Attorney''.

§ 1997g. Priorities for use of funds

It is the intent of Congress that deplorable conditions in institutions covered by this subchapter amounting to deprivations of rights protected by the Constitution or laws of the United States be corrected, not only by litigation as contemplated in this subchapter, but also by the voluntary good faith efforts of agencies of Federal, State, and local governments. It is the further intention of Congress that where Federal funds are available for use in improving such institutions, priority should be given to the correction or elimination of such unconstitutional or illegal conditions which may exist. It is not the intent of this provision to require the redirection of funds from one program to another or from one State to another.

(Pub. L. 96–247, § 9, May 23, 1980, 94 Stat. 354.)

§ 1997h. Notice to Federal departments

At the time of notification of the commencement of an investigation of an institution under section 1997a of this title or of the notification of an intention to file a motion to intervene under section 1997c of this title, and if the relevant institution receives Federal financial assistance from the Department of Health and Human Services or the Department of Education, the Attorney General shall notify the appropriate Secretary of the action and the reasons for such action and shall consult with such officials. Following such consultation, the Attorney General may proceed with an action under this subchapter if the Attorney General is satisfied that such action is consistent with the policies and goals of the executive branch.

(Pub. L. 96–247, § 10, May 23, 1980, 94 Stat. 354; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 803(f)], Apr. 26, 1996, 110 Stat. 1321, 1321–73; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

AMENDMENTS

1996—Pub. L. 104–134 substituted ''the action'' for ''his action'' and ''the Attorney General is satisfied'' for ''he is satisfied''.

§ 1997i. Disclaimer respecting standards of care

Provisions of this subchapter shall not authorize promulgation of regulations defining standards of care.

(Pub. L. 96–247, § 11, May 23, 1980, 94 Stat. 354.)

§ 1997j. Disclaimer respecting private litigation

The provisions of this subchapter shall in no way expand or restrict the authority of parties other than the United States to enforce the legal rights which they may have pursuant to existing law with regard to institutionalized persons. In this regard, the fact that the Attorney General may be conducting an investigation or contemplating litigation pursuant to this subchapter shall not be grounds for delay of or prejudice to any litigation on behalf of parties other than the United States.

(Pub. L. 96–247, § 12, May 23, 1980, 94 Stat. 354.)

SUBCHAPTER II—PUBLIC ACCOMMODATIONS

§ 2000a. Prohibition against discrimination or segregation in places of public accommodation

(a) Equal access

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Establishments affecting interstate commerce or supported in their activities by State action as places of public accommodation; lodgings; facilities principally engaged in selling food for consumption on the premises; gasoline stations; places of exhibition or entertainment; other covered establishments

Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) Operations affecting commerce; criteria; "commerce" defined

The operations of an establishment affect commerce within the meaning of this subchapter if (1) it is one of the establishments described in paragraph (1) of subsection (b) of this section; (2) in the case of an establishment described in paragraph (2) of subsection (b) of this section, it serves or offers to serve interstate travelers of a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b) of this section, it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b) of this section, it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, ''commerce'' means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Support by State action

Discrimination or segregation by an establishment is supported by State action within the meaning of this subchapter if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) Private establishments

The provisions of this subchapter shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b) of this section.

(Pub. L. 88–352, title II, § 201, July 2, 1964, 78 Stat. 243.)

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–411, § 1, Oct. 14, 1992, 106 Stat. 2102, provided that: ''This Act [amending section 2000e–4 of this title] may be cited as the 'EEOC Education, Technical Assistance, and Training Revolving Fund Act of 1992'.''

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–261, § 1, Mar. 24, 1972, 86 Stat. 103, provided: ''That this Act [enacting sections 2000e–16 and 2000e–17 of this title, amending sections 5108 and 5314 to 5316 of Title 5, Government Organization and Employees, and sections 2000e to 2000e–6, 2000e–8, 2000e–9, 2000e–13, and 2000e–14 of this title, and enacting provisions set out as

a note under section 2000e–5 of this title] may be cited as the 'Equal Employment Opportunity Act of 1972'.''

SHORT TITLE

Section 1 of Pub. L. 88–352 provided: ''That this Act [enacting subchapters II to IX of this chapter, amending sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, section 1447(d) of Title 28, Judiciary and Judicial Procedure, and sections 1971 and 1975a to 1975d of this title, and enacting provisions set out as a note under section 2000e of this title] may be cited as the 'Civil Rights Act of 1964'.''

§ 2000a–1. Prohibition against discrimination or segregation required by any law, statute, ordinance, regulation, rule or order of a State or State agency

All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

(Pub. L. 88–352, title II, § 202, July 2, 1964, 78 Stat. 244.)

§ 2000a–2. Prohibition against deprivation of, interference with, and punishment for exercising rights and privileges secured by section 2000a or 2000a–1 of this title

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive any person of any right or privilege secured by section 2000a or 2000a–1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a–1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a–1 of this title.

(Pub. L. 88–352, title II, § 203, July 2, 1964, 78 Stat. 244.)

§ 2000a–3. Civil actions for injunctive relief

(a) Persons aggrieved; intervention by Attorney General; legal representation; commencement of action without payment of fees, costs, or security

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2000a–2 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

(b) Attorney's fees; liability of United States for costs

In any action commenced pursuant to this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) State or local enforcement proceedings; notification of State or local authority; stay of Federal proceedings

In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) of this section before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

(d) References to Community Relations Service to obtain voluntary compliance; duration of reference; extension of period

In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a) of this section: *Provided*, That the court may refer the matter to the Community Relations Service established by subchapter VIII of this chapter for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: *Provided further*, That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

(Pub. L. 88–352, title II, § 204, July 2, 1964, 78 Stat. 244.)

§ 2000a–4. Community Relations Service; investigations and hearings; executive session; release of testimony; duty to bring about voluntary settlements

The Service is authorized to make a full investigation of any complaint referred to it by the court under section 2000a–3(d) of this title and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

(Pub. L. 88–352, title II, § 205, July 2, 1964, 78 Stat. 244.)

§ 2000a–5. Civil actions by the Attorney General

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(Pub. L. 88–352, title II, § 206, July 2, 1964, 78 Stat. 245.)

§ 2000a–6. Jurisdiction; exhaustion of other remedies; exclusiveness of remedies; assertion of rights based on other Federal or State laws and pursuit of remedies for enforcement of such rights

(a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subchapter and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

(Pub. L. 88–352, title II, § 207, July 2, 1964, 78 Stat. 245.)

SUBCHAPTER III—PUBLIC FACILITIES

§ 2000b. Civil actions by the Attorney General

(a) Complaint; certification; institution of civil action; relief requested; jurisdiction; impleading additional parties as defendants

Whenever the Attorney General receives a complaint in writing signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 2000c of this title, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings

The Attorney General may deem a person or persons unable to initiate and maintain appro-

priate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(Pub. L. 88–352, title III, § 301, July 2, 1964, 78 Stat. 246.)

§ 2000b–1. Liability of United States for costs and attorney's fee

In any action or proceeding under this subchapter the United States shall be liable for costs, including a reasonable attorney's fee, the same as a private person.

(Pub. L. 88–352, title III, § 302, July 2, 1964, 78 Stat. 246.)

§ 2000b–2. Personal suits for relief against discrimination in public facilities

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this subchapter.

(Pub. L. 88–352, title III, § 303, July 2, 1964, 78 Stat. 246.)

§ 2000b–3. "Complaint" defined

A complaint as used in this subchapter is a writing or document within the meaning of section 1001, title 18.

(Pub. L. 88–352, title III, § 304, July 2, 1964, 78 Stat. 246.)

SUBCHAPTER IV—PUBLIC EDUCATION

§ 2000c. Definitions

As used in this subchapter—

(a) ''Secretary'' means the Secretary of Education.

(b) ''Desegregation'' means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but ''desegregation'' shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) ''Public school'' means any elementary or secondary educational institution, and ''public college'' means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) ''School board'' means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

(Pub. L. 88–352, title IV, § 401, July 2, 1964, 78 Stat. 246; Pub. L. 92–318, title IX, § 906(a), June 23, 1972, 86 Stat. 375; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–318 inserted ''sex'' after ''religion,''.

TRANSFER OF FUNCTIONS

''Secretary means the Secretary of Education'' substituted for ''Commissioner means the Commissioner of Education'' in subsec. (a) pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education of Department of Health, Education, and Welfare to Secretary of Education.

§ 2000c–1. Omitted

CODIFICATION

Section, Pub. L. 88–352, title IV, § 402, July 2, 1964, 78 Stat. 247, authorized the Commissioner to conduct a survey and make a report to the President and the Congress within two years of July, 1964 concerning the availability of educational opportunities for minority group members.

§ 2000c–2. Technical assistance in preparation, adoption, and implementation of plans for desegregation of public schools

The Secretary is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Department of Education or other persons specially equipped to advise and assist them in coping with such problems.

(Pub. L. 88–352, title IV, § 403, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, § 301(a)(1), (b)(2), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 678, 692.)

TRANSFER OF FUNCTIONS

''Secretary'', meaning the Secretary of Education, and ''Department of Education'' substituted in text for ''Commissioner'' and ''Office of Education'', respectively, pursuant to sections 301(a)(1), (b)(2) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1), (b)(2) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education and transferred Office of Education to the Department of Education.

§ 2000c–3. Training institutes; stipends; travel allowances

The Secretary is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively

with special educational problems occasioned by desegregation. Individuals who attend such an institute on a full-time basis may be paid stipends for the period of their attendance at such institute in amounts specified by the Secretary in regulations, including allowances for travel to attend such institute.

(Pub. L. 88–352, title IV, § 404, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

TRANSFER OF FUNCTIONS

''Secretary'', meaning the Secretary of Education, substituted in text for ''Commissioner'' pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

§ 2000c–4. Grants for inservice training in dealing with and for employment of specialists to advise in problems incident to desegregation; factors for consideration in making grants and fixing amounts, terms, and conditions

(a) The Secretary is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

(1) giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and

(2) employing specialists to advise in problems incident to desegregation.

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Secretary shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

(Pub. L. 88–352, title IV, § 405, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

TRANSFER OF FUNCTIONS

''Secretary'', meaning the Secretary of Education, substituted in text for ''Commissioner'' pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

§ 2000c–5. Payments; adjustments; advances or reimbursement; installments

Payments pursuant to a grant or contract under this subchapter may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(Pub. L. 88–352, title IV, § 406, July 2, 1964, 78 Stat. 248; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

TRANSFER OF FUNCTIONS

''Secretary'', meaning the Secretary of Education, substituted in text for ''Commissioner'' pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

§ 2000c–6. Civil actions by the Attorney General

(a) Complaint; certification; notice to school board or college authority; institution of civil action; relief requested; jurisdiction; transportation of pupils to achieve racial balance; judicial power to insure compliance with constitutional standards; impleading additional parties as defendants

Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings

The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) "Parent" and "complaint" defined

The term ''parent'' as used in this section includes any person standing in loco parentis. A ''complaint'' as used in this section is a writing or document within the meaning of section 1001, title 18.

(Pub. L. 88–352, title IV, § 407, July 2, 1964, 78 Stat. 248; Pub. L. 92–318, title IX, § 906(a), June 23, 1972, 86 Stat. 375.)

AMENDMENTS

1972—Subsec. (a)(2). Pub. L. 92–318 inserted ''sex'' after ''religion,''.

§ 2000c–7. Liability of United States for costs

In any action or proceeding under this subchapter the United States shall be liable for costs the same as a private person.

(Pub. L. 88–352, title IV, § 408, July 2, 1964, 78 Stat. 249.)

§ 2000c–8. Personal suits for relief against discrimination in public education

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

(Pub. L. 88–352, title IV, § 409, July 2, 1964, 78 Stat. 249.)

§ 2000c–9. Classification and assignment

Nothing in this subchapter shall prohibit classification and assignment for reasons other than race, color, religion, sex or national origin.

(Pub. L. 88–352, title IV, § 410, July 2, 1964, 78 Stat. 249; Pub. L. 92–318, title IX, § 906(a), June 23, 1972, 86 Stat. 375.)

AMENDMENTS

1972—Pub. L. 92–318 inserted ''sex'' after ''religion,''.

SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(Pub. L. 88–352, title VI, § 601, July 2, 1964, 78 Stat. 252.)

COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF PROVISIONS

For provisions relating to the coordination of implementation and enforcement of the provisions of this subchapter by the Attorney General, see section 1–201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of this title.

EX. ORD. NO. 13160. NONDISCRIMINATION ON THE BASIS OF RACE, SEX, COLOR, NATIONAL ORIGIN, DISABILITY, RELIGION, AGE, SEXUAL ORIENTATION, AND STATUS AS A PARENT IN FEDERALLY CONDUCTED EDUCATION AND TRAINING PROGRAMS

Ex. Ord. No. 13160, June 23, 2000, 65 F.R. 39775, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921–932 of title 20, United States Code; section 2164 of title 10, United States Code; section 2001 *et seq.*, of title 25, United States Code; section 7301 of title 5, United States Code; and section 301 of title 3, United States Code, and to achieve equal opportunity in Federally conducted education and training programs and activities, it is hereby ordered as follows:

SECTION 1. *Statement of policy on education programs and activities conducted by executive departments and agencies.*

1–101. The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities—including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–17 [42 U.S.C. 2000e et seq.], as amended, discrimination on the basis of race, color, national origin, or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d [et seq.], and sex-based discrimination in education programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* Through this Executive Order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent will be prohibited in Federally conducted education and training programs and activities.

1–102. No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.

SEC. 2. *Definitions.*

2–201. ''Federally conducted education and training programs and activities'' includes programs and activities conducted, operated, or undertaken by an executive department or agency.

2–202. ''Education and training programs and activities'' include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and teacher training programs.

2–203. The Attorney General is authorized to make a final determination as to whether a program falls within the scope of education and training programs and activities covered by this order, under subsection 2–202, or is excluded from coverage, under section 3.

2–204. ''Military education or training programs'' are those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2–205. ''Armed Forces'' means the Armed Forces of the United States.

2–206. ''Status as a parent'' refers to the status of an individual who, with respect to an individual who is

under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(a) a biological parent;
(b) an adoptive parent;
(c) a foster parent;
(d) a stepparent;
(e) a custodian of a legal ward;
(f) in loco parentis over such an individual; or
(g) actively seeking legal custody or adoption of such an individual.

SEC. 3. *Exemption from coverage.*

3–301. This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination that are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

3–302. This order does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program.

3–303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program established consistent with federal law or limited by Federal law to individuals of a particular race, sex, color, disability, national origin, age, religion, sexual orientation, or status as a parent different from his or her own.

3–304. This order does not apply to ceremonial or similar education or training programs or activities of schools conducted by the Department of the Interior, Bureau of Indian Affairs, that are culturally relevant to the children represented in the school. ''Culturally relevant'' refers to any class, program, or activity that is fundamental to a tribe's culture, customs, traditions, heritage, or religion.

3–305. This order does not apply to (a) selections based on national origin of foreign nationals to participate in covered education or training programs, if such programs primarily concern national security or foreign policy matters; or (b) selections or other decisions regarding participation in covered education or training programs made by entities outside the executive branch. It shall be the policy of the executive branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law.

3–306. The prohibition on discrimination on the basis of age provided in this order does not apply to age-based admissions of participants to education or training programs, if such programs have traditionally been age-specific or must be age-limited for reasons related to health or national security.

SEC. 4. *Administrative enforcement.*

4–401. Any person who believes himself or herself to be aggrieved by a violation of this order or its implementing regulations, rules, policies, or guidance may, personally or through a representative, file a written complaint with the agency that such person believes is in violation of this order or its implementing regulations, rules, policies, or guidance. Pursuant to procedures to be established by the Attorney General, each executive department or agency shall conduct an investigation of any complaint by one of its employees alleging a violation of this Executive Order.

4–402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any of its implementing rules, regulations, policies, or guidance, such office shall complete a report and refer a copy of the report and any relevant findings or supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials with a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4–403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance, including removal from employment, where appropriate, shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Public Law No. 95–454, 92 Stat. 1111 [see Tables for classification].

SEC. 5. *Implementation and Agency Responsibilities.*

5–501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

a. which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2–202, or excluded from coverage, under section 3 of this order;
b. examples of discriminatory conduct;
c. applicable legal principles;
d. enforcement procedures with respect to complaints against employees;
e. remedies;
f. requirements for agency annual and tri-annual reports as set forth in section 6 of this order; and
g. such other matters as deemed appropriate.

5–502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90 days of issuance.

5–503. The head of each executive department and agency shall be responsible for ensuring compliance within this order.

5–504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5–505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

SEC. 6. *Reporting Requirements.*

6–601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. For the first 3 years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every 3 years and within 90 days of the end of each 3-year period.

SEC. 7. *General Provisions.*

7–701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12250 [42 U.S.C. 2000d–1 note].

SEC. 8. *Judicial Review*.

8–801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, *et seq*.

WILLIAM J. CLINTON.

§ 2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub. L. 88–352, title VI, § 602, July 2, 1964, 78 Stat. 252.)

DELEGATION OF FUNCTIONS

Function of the President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to the Attorney General, see section 1–101 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out below.

EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex. Ord. No. 11246, eff. Sept. 24, 1965, 30 F.R. 12319, and Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

EXECUTIVE ORDER NO. 11247

Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, which related to enforcement of coordination of nondiscrimination in federally assisted programs, was superseded by Ex. Ord. No. 11764, eff. Jan. 21, 1974, 39 F.R. 2575, formerly set out below.

EXECUTIVE ORDER NO. 11764

Ex. Ord. No. 11764, Jan. 21, 1974, 39 F.R. 2575, which related to coordination of enforcement of provisions of this subchapter, was revoked by section 1–501 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72996, set out below.

EX. ORD. NO. 12250. LEADERSHIP AND COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF NONDISCRIMINATION LAWS

Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1–1. DELEGATION OF FUNCTION

1–101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–2. COORDINATION OF NONDISCRIMINATION PROVISIONS

1–201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1–202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1–203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1–204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1–205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1–206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1–207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1–3. IMPLEMENTATION BY THE ATTORNEY GENERAL

1–301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1–302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1–303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1–304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1–305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1–4. AGENCY IMPLEMENTATION

1–401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1–402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1–403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1–5. GENERAL PROVISIONS

1–501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 [this subchapter] shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1–502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794], shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1–503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1–504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

JIMMY CARTER.

EX. ORD. NO. 13166. IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

Ex. Ord. No. 13166, Aug. 11, 2000, 65 F.R. 50121, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

SECTION 1. *Goals.*

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

SEC. 2. *Federally Conducted Programs and Activities.*

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

SEC. 3. *Federally Assisted Programs and Activities.*

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-spe-

cific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

SEC. 4. *Consultations.*

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

SEC. 5. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON.

§ 2000d–2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

(Pub. L. 88–352, title VI, § 603, July 2, 1964, 78 Stat. 253.)

CODIFICATION

''Chapter 7 of title 5'' and ''that chapter'' substituted in text for ''section 10 of the Administrative Procedure Act'' and ''that section'', respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 10 of the Administrative Procedure Act was classified to section 1009 of Title 5.

§ 2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(Pub. L. 88–352, title VI, § 604, July 2, 1964, 78 Stat. 253.)

§ 2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(Pub. L. 88–352, title VI, § 605, July 2, 1964, 78 Stat. 253.)

§ 2000d–4a. "Program or activity" and "program" defined

For the purposes of this subchapter, the term ''program or activity'' and the term ''program'' mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(Pub. L. 88–352, title VI, § 606, as added Pub. L. 100–259, § 6, Mar. 22, 1988, 102 Stat. 31; amended

Pub. L. 103–382, title III, § 391(q), Oct. 20, 1994, 108 Stat. 4024; Pub. L. 107–110, title X, § 1076(y), Jan. 8, 2002, 115 Stat. 2093.)

AMENDMENTS

2002—Par. (2)(B). Pub. L. 107–110 substituted ''7801'' for ''8801''.

1994—Par. (2)(B). Pub. L. 103–382 substituted ''section 8801 of title 20'' for ''section 198(a)(10) of the Elementary and Secondary Education Act of 1965''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EXCLUSION FROM COVERAGE

This section not to be construed to extend application of Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100–259, set out as a Construction note under section 1687 of Title 20, Education.

ABORTION NEUTRALITY

This section not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100–259, set out as a note under section 1688 of Title 20, Education.

§ 2000d–5. Prohibited deferral of action on applications by local educational agencies seeking Federal funds for alleged noncompliance with Civil Rights Act

The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], by the Act of September 30, 1950[1] (Public Law 874, Eighty-first Congress), or by the Cooperative Research Act [20 U.S.C. 331 et seq.], on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d–1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

(Pub. L. 89–750, title I, § 182, Nov. 3, 1966, 80 Stat. 1209; Pub. L. 90–247, title I, § 112, Jan. 2, 1968, 81 Stat. 787; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 103–382, title III, § 392(b)(1), Oct. 20, 1994, 108 Stat. 4026.)

[1] See References in Text note below.

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 89–750, Nov. 3, 1966, 80 Stat. 1191, as amended, known as the Elementary and Secondary Education Amendments of 1966. For complete classification of that Act to the Code, see Short Title of 1966 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§ 6301 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Act of September 30, 1950, referred to in text, is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, popularly known as the Educational Agencies Financial Aid Act, which was classified generally to chapter 13 (§ 236 et seq.) of Title 20 prior to repeal by Pub. L. 103–382, title III, § 331(b), Oct. 20, 1994, 108 Stat. 3965. For complete classification of this Act to the Code, see Tables.

The Cooperative Research Act, referred to in text, is act July 26, 1954, ch. 576, 68 Stat. 533, which was classified generally to chapter 15 (§ 331 et seq.) of Title 20, and terminated on July 1, 1975, under provisions of section 402(c)(1) of Pub. L. 93–380, title IV, Aug. 21, 1974, 88 Stat. 544. See section 1851 et seq. of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Elementary and Secondary Education Amendments of 1966, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

AMENDMENTS

1994—Pub. L. 103–382, which directed amendment of this section by striking out ''by the Act of September 23, 1950 (Public Law 815, 81st Congress),'', was executed by striking out ''by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress)'' before ''or by the Cooperative'' to reflect the probable intent of Congress.

1968—Pub. L. 90–247 inserted proviso.

EFFECTIVE DATE

Section 191 of Pub. L. 89–750 provided that: ''The provisions of this title [enacting this section and sections 241m, 871 to 880, and 886 of Title 20, Education, amending sections 241b, 241c, 241e, 241f, 241g, 241h, 241j, 241k, 241*l*, 244, 331a, 332a, 332b, 821, 822, 823, 841, 842, 843, 844, 861, 862, 863, 864, 883, and 884 of Title 20, repealing section 241d of Title 20, and enacting provisions set out as notes under sections 241a, 241b, and 241c of Title 20] shall be effective with respect to fiscal years beginning after June 30, 1966, except as specifically provided otherwise.''

TRANSFER OF FUNCTIONS

''Secretary of Education'' and ''Secretary'' substituted in text for ''Commissioner of Education'' and ''Commissioner'', respectively, pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education of Department of Health, Education, and Welfare to Secretary of Education.

§ 2000d–6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies

(a) Declaration of uniform policy

It is the policy of the United States that guidelines and criteria established pursuant to

title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C. 2000d–5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Nature of uniformity

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(d) Additional funds

It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

(Pub. L. 91–230, § 2, Apr. 13, 1970, 84 Stat. 121; Pub. L. 96–88, title III, § 301, title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsecs. (a) and (c), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (§ 2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as part of the Elementary and Secondary Education Amendments of 1969, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

TRANSFER OF FUNCTIONS

''Secretary of Education'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (d) pursuant to sections 301 and 507 of Pub. L. 96–88, which are classified to sections 3441 and 3507 of Title 20, Education, and which transferred functions and offices (relating to education) of Department and Secretary of Health, Education, and Welfare to Secretary of Education.

§ 2000d–7. Civil rights remedies equalization

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

(Pub. L. 99–506, title X, § 1003, Oct. 21, 1986, 100 Stat. 1845.)

REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (§ 2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as part of the Rehabilitation Act Amendments of 1986, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

SUBCHAPTER VI—EQUAL EMPLOYMENT OPPORTUNITIES

§ 2000e. Definitions

For the purposes of this subchapter—

(a) The term ''person'' includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

(b) The term ''employer'' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization)

which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term ''employment agency'' means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term ''labor organization'' means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term ''employee'' means an individual employed by an employer, except that the term ''employee'' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term ''commerce'' means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term ''industry affecting commerce'' means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry ''affecting commerce'' within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term ''State'' includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term ''religion'' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms ''because of sex'' or ''on the basis of sex'' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e–2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(*l*) The term ''complaining party'' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term ''demonstrates'' means meets the burdens of production and persuasion.

(n) The term ''respondent'' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e–16 of this title.

(Pub. L. 88–352, title VII, § 701, July 2, 1964, 78 Stat. 253; Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 662; Pub. L. 92–261, § 2, Mar. 24, 1972, 86 Stat. 103; Pub. L. 95–555, § 1, Oct. 31, 1978, 92 Stat. 2076; Pub. L. 95–598, title III, § 330, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–166, title I, §§ 104, 109(a), Nov. 21, 1991, 105 Stat. 1074, 1077.)

REFERENCES IN TEXT

The National Labor Relations Act, as amended, referred to in subsec. (e)(1), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Railway Labor Act, referred to in subsec. (e)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (h), is Pub. L. 86–257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§ 401 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 29 and Tables.

For definition of Canal Zone, referred to in subsec. (i), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Outer Continental Shelf Lands Act, referred to in subsec. (i), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102–166, § 109(a), inserted at end ''With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.''

Subsecs. (*l*) to (n). Pub. L. 102–166, § 104, added subsecs. (*l*) to (n).

1986—Subsec. (b). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1978—Subsec. (a). Pub. L. 95–598 substituted ''trustees in cases under title 11'' for ''trustees in bankruptcy''.

Subsec. (k). Pub. L. 95–555 added subsec. (k).

1972—Subsec. (a). Pub. L. 92–261, § 2(1), included within ''person'' governments, governmental agencies, and political subdivisions.

Subsec. (b). Pub. L. 92–261, § 2(2), substituted ''fifteen or more employees'' for ''twenty-five or more employees'', extended coverage to include State and local governments, excepted from coverage any department or agency of the District of Columbia subject by statute to procedures of the competitive service, as defined in section 2102 of title 5, and substituted provisions under which persons having fewer than twenty-five employees during the first year after March 24, 1972, were not to be considered employers, for provisions under which persons having fewer than a specified number of employees during the first year after the effective date of this section, and the second and third years after such date were not to be considered employers.

Subsec. (c). Pub. L. 92–261, § 2(3), struck out from term ''employment agency'' exemption from coverage for agencies of the United States, States or political subdivisions of States, other than the United States Employment Service and the system of State and local employment services receiving Federal assistance.

Subsec. (e). Pub. L. 92–261, § 2(4), substituted provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as twenty-five or more during the first year after March 24, 1972, and fifteen or more thereafter, for provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as one hundred or more during the first year after the effective date of this section, seventy-five or more during the second year after such date, fifty or more during the third year after such date, and twenty-five or more thereafter.

Subsec. (f). Pub. L. 92–261, § 2(5), inserted provisions enumerating persons excepted from term ''employee''.

Subsec. (h). Pub. L. 92–261, § 2(6), inserted '', and further includes any governmental industry, business, or activity'' after ''Labor-Management Reporting and Disclosure Act of 1959''.

Subsec. (j). Pub. L. 92–261, § 2(7), added subsec. (j).

1966—Subsec. (b). Pub. L. 89–554 struck out proviso which stated that it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin and directed the President to utilize his existing authority to effectuate this policy.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 104 of Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

Section 109(c) of Pub. L. 102–166 provided that: ''The amendments made by this section [amending this section and sections 2000e–1, 12111, and 12112 of this title] shall not apply with respect to conduct occurring before the date of the enactment of this Act [Nov. 21, 1991].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1978 AMENDMENT; EXCEPTIONS TO APPLICATION

Section 2 of Pub. L. 95–555 provided that:

''(a) Except as provided in subsection (b), the amendment made by this Act [amending this section] shall be effective on the date of enactment [Oct. 31, 1978].

''(b) The provisions of the amendment made by the first section of this Act [amending this section] shall not apply to any fringe benefit program or fund, or insurance program which is in effect on the date of enactment of this Act [Oct. 31, 1978] until 180 days after enactment of this Act.''

EFFECTIVE DATE

Subsecs. (a), (b) of section 716 of Pub. L. 88–352 provided that:

''(a) This title [enacting this section and sections 2000e–1, 2000e–4, 2000e–7 to 2000e–15 of this title, and amending sections 2204 and 2205(a)(45) of former Title 5, Executive Departments and Government Officers and Employees] shall become effective one year after the date of its enactment [July 2, 1964].

''(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 [sections 2000e–2, 2000e–3, 2000e–5, and 2000e–6 of this title] shall become effective immediately [July 2, 1964].''

GLASS CEILING

Title II of Pub. L. 102–166, entitled the ''Glass Ceiling Act of 1991'', established a Glass Ceiling Commission which was to submit to Congress, no later than 15 months after Nov. 21, 1991, study and recommendations concerning eliminating artificial barriers to advancement of women and minorities in the workplace and increasing opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions in businesses, authorized creation of a National Award for Diversity and Excellence in American Executive Management which was to be awarded annually by the Commission to a qualified business concern which promoted more diverse skilled work force at management and decisionmaking levels in business, and further provided for composition of Commission, powers, staff and consultants, confidentiality of information, appropriations, and termination of Commission and authority to make awards 4 years after Nov. 21, 1991.

READJUSTMENT OF BENEFITS

Section 3 of Pub. L. 95–555 provided that: ''Until the expiration of a period of one year from the date of enactment of this Act [Oct. 31, 1978] or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act [amending this section and enacting provisions set out above] shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: *Provided*, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: *And provided further*, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act.''

EXECUTIVE ORDER NO. 11126

Ex. Ord. No. 11126, Nov. 1, 1963, 28 F.R. 11717, as amended by Ex. Ord. No. 11221, May 6, 1965, 30 F.R. 6427; Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, which related to the Interdepartmental Committee on the Status of Women and the Citizens' Advisory Council on the Status of Women, was revoked by Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, formerly set out below.

EX. ORD. NO. 11246. EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, as amended by Ex. Ord. No. 11375, Oct. 13, 1967, 32 F.R. 14303; Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985; Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501; Ex. Ord. No. 13279, § 4, Dec. 12, 2002, 67 F.R. 77143, provided:

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

[Superseded. Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985.]

PART II—NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

SUBPART A—DUTIES OF THE SECRETARY OF LABOR

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

SUBPART B—CONTRACTORS' AGREEMENTS

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

''During the performance of this contract, the contractor agrees as follows:

''(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

''(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

''(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

''(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

''(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

''(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

''(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 [section 204 of this Order] so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contrac-

tor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.''

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or any agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

SEC. 204. (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order.

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *provided*, that such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *and provided further*, that in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

SUBPART C—POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 [sections 2000d to 2000d–4 of this title and this subchapter] or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

SUBPART D—SANCTIONS AND PENALTIES

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of

this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964 [this subchapter].

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

SEC. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

SUBPART E—CERTIFICATES OF MERIT

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices, and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III—NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor; together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. (a) ''Construction contract,'' as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term ''applicant'' as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 [sections 2000d to 2000d–4 of this title] shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof [section 2000d–1 of this title] and the regulations of the administering department or agency issued thereunder.

PART IV—MISCELLANEOUS

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the ''Plans for Progress.''

SEC. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

EX. ORD. NO. 11478. EQUAL EMPLOYMENT OPPORTUNITY IN FEDERAL GOVERNMENT

Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831; Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053; Ex. Ord. No. 13087, May 28, 1998, 63 F.R. 30097; Ex. Ord. No. 13152, May 2, 2000, 65 F.R. 26115, provided:

NOW THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, sexual orientation, or status as a parent., [sic] and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government, to the extent permitted by law.

SEC. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

SEC. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

SEC. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and and [sic] appropriate to carry out its responsibilities under this Order.

SEC. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

SEC. 6. ''Status as a parent'' refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(a) a biological parent;
(b) an adoptive parent;
(c) a foster parent;
(d) a stepparent;
(e) a custodian of a legal ward;
(f) in loco parentis over such an individual; or
(g) actively seeking legal custody or adoption of such an individual.

SEC. 7. The Office of Personnel Management shall be authorized to develop guidance on the provisions of this order prohibiting discrimination on the basis of an individual's sexual orientation or status as a parent.

SEC. 8. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office [now Government Accountability Office]) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SEC. 9. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

SEC. 10. This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970 [Title 39, Postal Service].

SEC. 11. This Executive Order does not confer any right or benefit enforceable in law or equity against the United States or its representatives.

EXECUTIVE ORDER NO. 12050

Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, as amended by Ex. Ord. No. 12057, May 8, 1978, 43 F.R. 19811; Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639; Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, which established a National Advisory Committee for Women, was omitted in view of the revocation of sections 1 to 5 and 7 and 8 by Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639 and the revocation of section 6 by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239.

EX. ORD. NO. 12067. COORDINATION OF FEDERAL EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under section 2000e–4 of this title and in the Appendix to Title 5, Government Organizations and Employees], it is ordered as follows:

1–1. IMPLEMENTATION OF REORGANIZATION PLAN

1–101. The transfer to the Equal Employment Opportunity Commission of all the functions of the Equal Employment Opportunity Coordinating Council, and the termination of that Council, as provided by Section 6 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under section 2000e–4 of this title and in the Appendix to Title 5, Government Organization and Employees] shall be effective on July 1, 1978.

1–2. RESPONSIBILITIES OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

1–201. The Equal Employment Opportunity Commission shall provide leadership and coordination to the efforts of Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age or handicap. It shall strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the Federal departments and agencies having responsibility for enforcing such statutes, Executive orders, regulations and policies.

1–202. In carrying out its functions under this order the Equal Employment Opportunity Commission shall consult with and utilize the special expertise of Federal departments and agencies with equal employment opportunity responsibilities. The Equal Employment Opportunity Commission shall cooperate with such departments and agencies in the discharge of their equal employment responsibilities.

1–203. All Federal departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this order and shall furnish the Commission such reports and information as it may request.

1–3. SPECIFIC RESPONSIBILITIES

1–301. To implement its responsibilities under Section 1–2, the Equal Employment Opportunity Commission shall, where feasible:

(a) develop uniform standards, guidelines, and policies defining the nature of employment discrimination on the ground of race, color, religion, sex, national origin, age or handicap under all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity;

(b) develop uniform standards and procedures for investigations and compliance reviews to be conducted by Federal departments and agencies under any Federal statute, Executive order, regulation or policy requiring equal employment opportunity;

(c) develop procedures with the affected agencies, including the use of memoranda of understanding, to minimize duplicative investigations or compliance reviews of particular employers or classes of employers or others covered by Federal statutes, Executive orders, regulations or policies requiring equal employment opportunity;

(d) ensure that Federal departments and agencies develop their own standards and procedures for undertaking enforcement actions when compliance with equal employment opportunity requirements of any Federal statute, Executive order, regulation or policy cannot be secured by voluntary means;

(e) develop uniform record-keeping and reporting requirements concerning employment practices to be utilized by all Federal departments and agencies having equal employment enforcement responsibilities;

(f) provide for the sharing of compliance records, findings, and supporting documentation among Federal departments and agencies responsible for ensuring equal employment opportunity;

(g) develop uniform training programs for the staff of Federal departments and agencies with equal employment opportunity responsibilities;

(h) assist all Federal departments and agencies with equal employment opportunity responsibilities in developing programs to provide appropriate publications and other information for those covered and those protected by Federal equal employment opportunity statutes, Executive orders, regulations, and policies; and

(i) initiate cooperative programs, including the development of memoranda of understanding between agencies, designed to improve the coordination of equal employment opportunity compliance and enforcement.

1–302. The Equal Employment Opportunity Commission shall assist the Office of Personnel Management, or its successor, in establishing uniform job-related qualifications and requirements for job classifications and descriptions for Federal employees involved in enforcing all Federal equal employment opportunity provisions.

1–303. The Equal Employment Opportunity Commission shall issue such rules, regulations, policies, procedures or orders as it deems necessary to carry out its

responsibilities under this order. It shall advise and offer to consult with the affected Federal departments and agencies during the development of any proposed rules, regulations, policies, procedures or orders and shall formally submit such proposed issuances to affected departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall use its best efforts to reach agreement with the agencies on matters in dispute. Departments and agencies shall comply with all final rules, regulations, policies, procedures or orders of the Equal Employment Opportunity Commission.

1–304. All Federal departments and agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity. Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall review such proposed rules, regulations, policies, procedures or orders to ensure consistency among the operations of the various Federal departments and agencies. Issuances related to internal management and administration are exempt from this clearance process. Case handling procedures unique to a single program also are exempt, although the Equal Employment Opportunity Commission may review such procedures in order to assure maximum consistency within the Federal equal employment opportunity program.

1–305. Before promulgating significant rules, regulations, policies, procedures or orders involving equal employment opportunity, the Commission and affected departments and agencies shall afford the public an opportunity to comment.

1–306. The Equal Employment Opportunity Commission may make recommendations concerning staff size and resource needs of the Federal departments and agencies having equal employment opportunity responsibilities to the Office of Management and Budget.

1–307. (a) It is the intent of this order that disputes between or among agencies concerning matters covered by this order shall be resolved through good faith efforts of the affected agencies to reach mutual agreement. Use of the dispute resolution mechanism contained in Subsections (b) and (c) of this Section should be resorted to only in extraordinary circumstances.

(b) Whenever a dispute which cannot be resolved through good faith efforts arises between the Equal Employment Opportunity Commission and another Federal department or agency concerning the issuance of an equal employment opportunity rule, regulation, policy, procedure, order or any matter covered by this Order, the Chairman of the Equal Employment Opportunity Commission or the head of the affected department or agency may refer the matter to the Executive Office of the President. Such reference must be in writing and may not be made later than 15 working days following receipt of the initiating agency's notice of intent publicly to announce an equal employment opportunity rule, regulation, policy, procedure or order. If no reference is made within the 15 day period, the decision of the agency which initiated the proposed issuance will become effective.

(c) Following reference of a disputed matter to the Executive Office of the President, the Assistant to the President for Domestic Affairs and Policy (or such other official as the President may designate) shall designate an official within the Executive Office of the President to meet with the affected agencies to resolve the dispute within a reasonable time.

1–4. Annual Report

1–401. The Equal Employment Opportunity Commission shall include in the annual report transmitted to the President and the Congress pursuant to Section 715 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–14), a statement of the progress that has been made in achieving the purpose of this order. The Equal Employment Opportunity Commission shall provide Federal departments and agencies an opportunity to comment on the report prior to formal submission.

1–5. General Provisions

1–501. Nothing in this order shall relieve or lessen the responsibilities or obligations imposed upon any person or entity by Federal equal employment law, Executive order, regulation or policy.

1–502. Nothing in this order shall limit the Attorney General's role as legal adviser to the Executive Branch.

JIMMY CARTER.

Ex. Ord. No. 12086. Consolidation of Contract Compliance Functions for Equal Employment Opportunity

Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], in order to provide for the transfer to the Department of Labor of certain contract compliance functions relating to equal employment opportunity, it is hereby ordered as follows:

1–1. Transfer of Functions

1–101. The functions concerned with being primarily responsible for the enforcement of the equal employment opportunity provisions under Parts II and III of Executive Order. No. 11246, as amended [set out as a note above], are transferred or reassigned to the Secretary of Labor from the following agencies:

(a) Department of the Treasury.
(b) Department of Defense.
(c) Department of the Interior.
(d) Department of Commerce.
(e) Department of Health and Human Services.
(f) Department of Housing and Urban Development.
(g) Department of Transportation.
(h) Department of Energy.
(i) Environmental Protection Agency.
(j) General Services Administration.
(k) Small Business Administration.

1–102. The records, property, personnel and positions, and unexpended balances of appropriations or funds related to the functions transferred or reassigned by this Order, that are available and necessary to finance or discharge those functions, are transferred to the Secretary of Labor.

1–103. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

1–2. Conforming Amendments to Executive Order No. 11246

1–201(a). In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, Section 201 of Executive Order No. 11246, as amended, is amended to read:

''Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.''.

(b) Paragraph (7) of the contract clauses specified in Section 202 of Executive Order No. 11246, as amended, is amended to read:

''(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or pur-

chase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.''.

1–202. In subsection (c) of Section 203 of Executive Order No. 11246, as amended, delete ''contracting agency'' in the proviso and substitute ''Secretary of Labor'' therefor.

1–203. In both the beginning and end of subsection (d) of Section 203 of Executive Order No. 11246, as amended, delete ''contracting agency or the'' in the phrase ''contracting agency or the Secretary''.

1–204. Section 205 of Executive Order No. 11246, as amended, is amended by deleting the last two sentences, which dealt with agency designation of compliance officers, and revising the rest of that Section to read:

''SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.''.

1–205. In order to delete references to the contracting agencies conducting investigations, Section 206 of Executive Order No. 11246, as amended, is amended to read:

''SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.''.

''(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.''.

1–206. In Section 207 of Executive Order No. 11246, as amended, delete ''contracting agencies, other'' in the first sentence.

1–207. The introductory clause in Section 209(a) of Executive Order No. 11246, as amended, is amended by deleting ''or the appropriate contracting agency'' from ''In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:''.

1–208. In paragraph (5) of Section 209(a) of Executive Order No. 11246, as amended, insert at the beginning the phrase ''After consulting with the contracting agency, direct the contracting agency to'', and at the end of paragraph (5) delete ''contracting agency'' and substitute therefor ''Secretary of Labor'' so that paragraph (5) is amended to read:

''(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.''.

1–209. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions, substitute ''Secretary of Labor'' for ''each contracting agency'' in Section 209(b) of Executive Order No. 11246, as amended, so that Section 209(b) is amended to read:

''(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.''.

1–210. In order to reflect the responsibility of the contracting agencies for prompt compliance with the directions of the Secretary of Labor, Sections 210 and 211 of Executive Order No. 11246, as amended, are amended to read:

''SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.''.

''SEC. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.''.

1–211. Section 212 of Executive Order No. 11246, as amended, is amended to read:

''SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.''.

1–212. In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, references to the administering department or agency are deleted in clauses (1), (2), and (3) of Section 301 of Executive Order No. 11246, as amended, and those clauses are amended to read:

''(1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order,''.

1–213. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions ''Secretary of Labor'' shall be substituted for ''administering department or agency'' in Section 303 of Executive Order No. 11246, as amended, and Section 303 is amended to read:

''SEC. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.''.

''(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any ad-

ministering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.''.

''(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.''.

1–214. Section 401 of Executive Order No. 11246, as amended, is amended to read:

''SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.''.

1–3. GENERAL PROVISIONS

1–301. The transfers or reassignments provided by Section 1–1 of this Order shall take effect at such time or times as the Director of the Office of Management and Budget shall determine. The Director shall ensure that all such transfers or reassignments take effect within 60 days.

1–302. The conforming amendments provided by Section 1–2 of this Order shall take effect on October 8, 1978; except that, with respect to those agencies identified in Section 1–101 of this Order, the conforming amendments shall be effective on the effective date of the transfer or reassignment of functions as specified pursuant to Section 1–301 of this Order.

EXECUTIVE ORDER NO. 12135

Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639, which established the President's Advisory Committee for Women, was revoked by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, set out below.

EX. ORD. NO. 12336. TASK FORCE ON LEGAL EQUITY FOR WOMEN

Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, as amended by Ex. Ord. No. 12355, Apr. 1, 1982, 47 F.R. 14479, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities, it is hereby ordered as follows:

SECTION 1. *Establishment*. (a) There is established the Task Force on Legal Equity for Women.

(b) The Task Force members shall be appointed by the President from among nominees by the heads of the following Executive agencies, each of which shall have one representative on the Task Force.

(1) Department of State.
(2) Department of The Treasury.
(3) Department of Defense.
(4) Department of Justice.
(5) Department of The Interior.
(6) Department of Agriculture.
(7) Department of Commerce.
(8) Department of Labor.
(9) Department of Health and Human Services.
(10) Department of Housing and Urban Development.
(11) Department of Transportation.
(12) Department of Energy.
(13) Department of Education.
(14) Agency for International Development.
(15) Veterans Administration [now Department of Veterans Affairs].
(16) Office of Management and Budget.
(17) International Communication Agency.
(18) Office of Personnel Management.
(19) Environmental Protection Agency.
(20) ACTION [now Corporation for National and Community Service].
(21) Small Business Administration.

(c) The President shall designate one of the members to chair the Task Force. Other agencies may be invited to participate in the functions of the Task Force.

SEC. 2. *Functions*. (a) The members of the Task Force shall be responsible for coordinating and facilitating in their respective agencies, under the direction of the head of their agency, the implementation of changes ordered by the President in sex-discriminatory Federal regulations, policies, and practices.

(b) The Task Force shall periodically report to the President on the progress made throughout the Government in implementing the President's directives.

(c) The Attorney General shall complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates, or which effectively discriminates, on the basis of sex. The Attorney General or his designee shall, on a quarterly basis, report his findings to the President through the Cabinet Council on Legal Policy.

SEC. 3. *Administration*. (a) The head of each Executive agency shall, to the extent permitted by law, provide the Task Force with such information and advice as the Task Force may identify as being useful to fulfill its functions.

(b) The agency with its representative chairing the Task Force shall, to the extent permitted by law, provide the Task Force with such administrative support as may be necessary for the effective performance of its functions.

(c) The head of each agency represented on the Task Force shall, to the extent permitted by law, furnish its representative such administrative support as is necessary and appropriate.

SEC. 4. *General Provisions*. (a) Section 1–101(h) of Executive Order No. 12258, as amended, is revoked.

(b) Executive Order No. 12135 is revoked.

(c) Section 6 of Executive Order No. 12050, as amended, is revoked.

RONALD REAGAN.

[The International Communication Agency was redesignated the United States Information Agency, see section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22.]

EX. ORD. NO. 13171. HISPANIC EMPLOYMENT IN THE FEDERAL GOVERNMENT

Ex. Ord. No. 13171, Oct. 12, 2000, 65 F.R. 61251, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the representation of Hispanics in Federal employment, within merit system principles and consistent with the application of appropriate veterans' preference criteria, to achieve a Federal workforce drawn from all segments of society, it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the executive branch to recruit qualified individuals from appropriate sources in an effort to achieve a workforce drawn from all segments of society. Pursuant to this policy, this Administration notes that Hispanics remain underrepresented in the Federal workforce: they make up only 6.4 percent of the Federal civilian workforce, roughly half of their total representation in the civilian labor force. This Executive Order, therefore, affirms ongoing policies and recommends additional policies to eliminate the underpresentation [sic] of Hispanics in the Federal workforce.

SEC. 2. *Responsibilities of Executive Departments and Agencies*. The head of each executive department and agency (agency) shall establish and maintain a program for the recruitment and career development of Hispanics in Federal employment. In its program, each agency shall:

(a) provide a plan for recruiting Hispanics that creates a fully diverse workforce for the agency in the 21st century;

(b) assess and eliminate any systemic barriers to the effective recruitment and consideration of Hispanics, including but not limited to:

(1) broadening the area of consideration to include applicants from all appropriate sources;

(2) ensuring that selection factors are appropriate and achieve the broadest consideration of applicants and do not impose barriers to selection based on nonmerit factors; and

(3) considering the appointment of Hispanic Federal executives to rating, selection, performance review, and executive resources panels and boards;

(c) improve outreach efforts to include organizations outside the Federal Government in order to increase the number of Hispanic candidates in the selection pool for the Senior Executive Service;

(d) promote participation of Hispanic employees in management, leadership, and career development programs;

(e) ensure that performance plans for senior executives, managers, and supervisors include specific language related to significant accomplishments on diversity recruitment and career development and that accountability is predicated on those plans;

(f) establish appropriate agency advisory councils that include Hispanic Employment Program Managers;

(g) implement the goals of the Government-wide Hispanic Employment Initiatives issued by the Office of Personnel Management (OPM) in September 1997 (Nine-Point Plan), and the Report to the President's Management Council on Hispanic Employment in the Federal Government of March 1999;

(h) ensure that managers and supervisors receive periodic training in diversity management in order to carry out their responsibilities to maintain a diverse workforce; and

(i) reflect a continuing priority for eliminating Hispanic underrepresentation in the Federal workforce and incorporate actions under this order as strategies for achieving workforce diversity goals in the agency's Government Performance and Results Act (GPRA) Annual Performance Plan.

SEC. 3. *Cooperation*. All efforts taken by heads of agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation among Federal, public, and private sector employers, and appropriate Hispanic organizations whenever such partnerships and cooperation are possible and would promote the Federal employment of qualified individuals. In developing the long-term comprehensive strategies required by section 2 of this order, agencies shall, as appropriate, consult with and seek information and advice from experts in the areas of special targeted recruitment and diversity in employment.

SEC. 4. *Responsibilities of the Office of Personnel Management*. The Office of Personnel Management is required by law and regulations to undertake a Government-wide minority recruitment effort. Pursuant to that on-going effort and in implementation of this order, the Director of OPM shall:

(a) provide Federal human resources management policy guidance to address Hispanic underrepresentation where it occurs;

(b) take the lead in promoting diversity to executive agencies for such actions as deemed appropriate to promote equal employment opportunity;

(c) within 180 days from the date of this order, prescribe such regulations as may be necessary to carry out the purposes of this order;

(d) within 60 days from the date of this order, establish an Interagency Task Force, chaired by the Director and composed of agency officials at the Deputy Secretary level, or the equivalent. This Task Force shall meet semi-annually to:

(1) review best practices in strategic human resources management planning, including alignment with agency GPRA plans;

(2) assess overall executive branch progress in complying with the requirements of this order;

(3) provide advice on ways to increase Hispanic community involvement; and

(4) recommend any further actions, as appropriate, in eliminating the underrepresentation of Hispanics in the Federal workforce where it occurs; and

(e) issue an annual report with findings and recommendations to the President on the progress made by agencies on matters related to this order. The first annual report shall be issued no later than 1 year from the date of this order.

SEC. 5. *Judicial Review*. This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity except as may be identified in existing laws and regulations, by a party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 2000e–1. Exemption

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Compliance with statute as violative of foreign law

It shall not be unlawful under section 2000e–2 or 2000e–3 of this title for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country

(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e–2 or 2000e–3 of this title engaged in by such corporation shall be presumed to be engaged in by such employer.

(2) Sections 2000e–2 and 2000e–3 of this title shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

(A) the interrelation of operations;

(B) the common management;

(C) the centralized control of labor relations; and

(D) the common ownership or financial control,

of the employer and the corporation.

(Pub. L. 88–352, title VII, § 702, July 2, 1964, 78 Stat. 255; Pub. L. 92–261, § 3, Mar. 24, 1972, 86 Stat. 103; Pub. L. 102–166, title I, § 109(b)(1), Nov. 21, 1991, 105 Stat. 1077.)

AMENDMENTS

1991—Pub. L. 102–166 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1972—Pub. L. 92–261 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102–166, set out as a note under section 2000e of this title.

§ 2000e–2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase ''unlawful employment practice'' shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive

Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29.

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if—

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of ''alternative employment practice''.

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21

U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(*l*) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to—

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28.

(Pub. L. 88–352, title VII, § 703, July 2, 1964, 78 Stat. 255; Pub. L. 92–261, § 8(a), (b), Mar. 24, 1972, 86 Stat. 109; Pub. L. 102–166, title I, §§ 105(a), 106, 107(a), 108, Nov. 21, 1991, 105 Stat. 1074–1076.)

REFERENCES IN TEXT

The Subversive Activities Control Act of 1950, referred to in subsec. (f), is title I (§§ 1–32) of act Sept. 23, 1950, ch. 1024, 64 Stat. 987, as amended, which is classified principally to subchapter I (§ 781 et seq.) of chapter 23 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

The Controlled Substances Act, referred to in subsec. (k)(3), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Federal civil rights laws, referred to in subsec. (n)(1), are classified generally to chapter 21 (§ 1981 et seq.) of this title.

The Federal Rules of Civil Procedure, referred to in subsec. (n)(2)(A), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1991—Subsec. (k). Pub. L. 102–166, § 105(a), added subsec. (k).

Subsec. (*l*). Pub. L. 102–166, § 106, added subsec. (*l*).

Subsec. (m). Pub. L. 102–166, § 107(a), added subsec. (m).

Subsec. (n). Pub. L. 102–166, § 108, added subsec. (n).

1972—Subsec. (a)(2). Pub. L. 92–261, § 8(a), inserted ''or applicants for employment'' after ''his employees''.

Subsec. (c)(2). Pub. L. 92–261, § 8(b), inserted ''or applicants for membership'' after ''membership''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

SUBVERSIVE ACTIVITIES CONTROL BOARD

Subversive Activities Control Board established by act Sept. 23, 1950, ch. 1024, § 12, 64 Stat. 977, and ceased to operate on June 30, 1973.

§ 2000e–3. Other unlawful employment practices

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of

his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

(Pub. L. 88–352, title VII, § 704, July 2, 1964, 78 Stat. 257; Pub. L. 92–261, § 8(c), Mar. 24, 1972, 86 Stat. 109.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–261, § 8(c)(1), inserted provision making it an unlawful employment practice for a joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against the specified individuals.

Subsec. (b). Pub. L. 92–261, § 8(c)(2), inserted provisions making prohibitions applicable to joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, and notices or advertisements of such joint labor-management committees relating to admission to, or employment in, any program established to provide apprenticeship or other training.

§ 2000e–4. Equal Employment Opportunity Commission

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5.

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e–5 and 2000e–6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) Exercise of powers during vacancy; quorum

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) Seal; judicial notice

The Commission shall have an official seal which shall be judicially noticed.

(e) Reports to Congress and the President

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) Principal and other offices

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) Powers of Commission

The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e–5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities

(1) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(2) In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to—

(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this subchapter or such law, as the case may be.

(i) Personnel subject to political activity restrictions

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324[1] of title 5, notwithstanding any exemption contained in such section.

(j) Technical Assistance Training Institute

(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

(2) An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

(k) EEOC Education, Technical Assistance, and Training Revolving Fund

(1) There is hereby established in the Treasury of the United States a revolving fund to be known as the ''EEOC Education, Technical Assistance, and Training Revolving Fund'' (hereinafter in this subsection referred to as the ''Fund'') and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

(2)(A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such fees for any education, technical assistance, or training—

(i) shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,

(ii) shall not exceed the cost of providing such education, assistance, and training, and

(iii) with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

(C) The Commission shall include in each report made under subsection (e) of this section information with respect to the operation of the Fund, including information, presented in the aggregate, relating to—

(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,

(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and

[1] See References in Text note below.

(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund $1,000,000 from the Salaries and Expenses appropriation of the Commission.

(Pub. L. 88–352, title VII, § 705, July 2, 1964, 78 Stat. 258; Pub. L. 92–261, § 8(d)–(f), Mar. 24, 1972, 86 Stat. 109, 110; Pub. L. 93–608, § 3(1), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 95–251, § 2(a)(11), Mar. 27, 1978, 92 Stat. 183; Pub. L. 102–166, title I, §§ 110(a), 111, Nov. 21, 1991, 105 Stat. 1078; Pub. L. 102–411, § 2, Oct. 14, 1992, 106 Stat. 2102; Pub. L. 104–66, title II, § 2031, Dec. 21, 1995, 109 Stat. 728.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5.

The effective date of this Act, referred to in subsec. (b)(1), probably means the date of enactment of Pub. L. 92–261, which was approved Mar. 24, 1972.

Section 7324 of title 5, referred to in subsec. (i), which related to Executive agency employees or District of Columbia government employees influencing elections or taking part in political campaigns, was omitted in the general revision of subchapter III of chapter 73 of Title 5 by Pub. L. 103–94, § 2(a), Oct. 6, 1993, 107 Stat. 1003, which enacted a new section 7324, relating to prohibition of political activities while on duty. See section 7323 of Title 5.

CODIFICATION

In subsec. (a), reference to section ''5372'' of title 5 substituted for reference to section ''5362'' on authority of Pub. L. 95–454, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221, which redesignated sections 5361 through 5365 of title 5 as sections 5371 through 5375.

In subsec. (i), ''section 7324 of title 5'' substituted for ''section 9 of the Act of August 2, 1939, as amended (the Hatch Act)'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 9 of the Act of August 2, 1939, as amended, was classified to section 118i of Title 5.

AMENDMENTS

1995—Subsec. (k)(2)(C). Pub. L. 104–66 substituted ''including information, presented in the aggregate, relating to'' for ''including'' in introductory provisions, ''the number of persons and entities'' for ''the identity of each person or entity'' in cl. (i), ''such persons and entities'' for ''such person or entity'' in cl. (ii), and ''fees'' for ''fee'' and ''such persons and entities'' for ''such person or entity'' in cl. (iii).

1992—Subsec. (k). Pub. L. 102–411 added subsec. (k).

1991—Subsec. (h). Pub. L. 102–166, § 111, designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 102–166, § 110(a), added subsec. (j).

1978—Subsec. (a). Pub. L. 95–251 substituted ''administrative law judges'' for ''hearing examiners'' wherever appearing.

1975—Subsec. (e). Pub. L. 93–608 struck out reporting requirement of names, salaries, and duties of all individuals in employ of Commission.

1972—Subsec. (a). Pub. L. 92–261, § 8(d), struck out provisions setting forth length of terms of original members of Commission and provisions authorizing Vice Chairman to act as Chairman in certain circumstances, inserted provisions relating to continuation in office of all members of Commission, and substituted provisions requiring appointment of officers, etc., in accordance with provisions of title 5, fixing compensation of such officers, etc., in accordance with provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, and requiring assignment, removal, and compensation of hearing examiners in accordance with specified sections, for provisions requiring appointment of officers, etc., in accordance with civil service laws, and fixing compensation of such officers, etc., in accordance with the Classification Act of 1949, as amended.

Subsecs. (b) to (e). Pub. L. 92–261, § 8(e), added subsec. (b), struck out subsec. (e) which amended sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, and redesignated existing subsecs. (b), (c), and (d) as (c), (d), and (e), respectively.

Subsec. (g)(6). Pub. L. 92–261, § 8(f), substituted provisions which authorized Commission to intervene in a civil action brought under section 2000e–5 of this title where respondent is other than a government, governmental agency, or political subdivision for provisions which authorized Commission to refer matters to Attorney General with recommendations to intervene or institute civil actions.

Subsecs. (h) to (j). Pub. L. 92–261, § 8(e)(2), (3), struck out subsec. (h) which provided for legal representation for Commission, and redesignated subsecs. (i) and (j) as (h) and (i), respectively.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 110(b) of Pub. L. 102–166 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 21, 1991].''

Amendment by section 111 of Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (e) of this section is listed in item 20 on page 165), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, § 1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

REORGANIZATION PLAN NO. 1 OF 1978 SUPERSEDED BY CIVIL SERVICE REFORM ACT OF 1978

Section 905 of Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1224, provided in part that any provision in Reorganization Plan No. 1 of 1978 [set out below] inconsistent with any provision of that Act [see Tables for classification] was superseded thereby.

REORGANIZATION PLAN NO. 1 OF 1978

43 F.R. 19807, 92 Stat. 3781

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

EQUAL EMPLOYMENT OPPORTUNITY

SECTION 1. TRANSFER OF EQUAL PAY ENFORCEMENT FUNCTIONS

All functions related to enforcing or administering Section 6(d) of the Fair Labor Standards Act, as

amended, (29 U.S.C. 206(d)) are hereby transferred to the Equal Employment Opportunity Commission. Such functions include, but shall not be limited to, the functions relating to equal pay administration and enforcement now vested in the Secretary of Labor, the Administrator of the Wage and Hour Division of the Department of Labor, and the Civil Service Commission pursuant to Sections 4(d)(1); 4(f); 9; 11(a), (b), and (c); 16(b) and (c) and 17 of the Fair Labor Standards Act, as amended, (29 U.S.C. 204(d)(1); 204(f); 209; 211(a), (b), and (c); 216(b) and (c) and 217) and Section 10(b)(1) of the Portal-to-Portal Act of 1947, as amended, (29 U.S.C. 259).

SEC. 2. TRANSFER OF AGE DISCRIMINATION ENFORCEMENT FUNCTIONS

All functions vested in the Secretary of Labor or in the Civil Service Commission pursuant to Sections 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 621, 623, 626, 627, 628, 629, 630, 631, 632, 633, and 633a) are hereby transferred to the Equal Employment Opportunity Commission. All functions related to age discrimination administration and enforcement pursuant to Sections 6 and 16 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 625 and 634) are hereby transferred to the Equal Employment Opportunity Commission.

SEC. 3. TRANSFER OF EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT ENFORCEMENT FUNCTIONS

(a) All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717(b) and (c) of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–16(b) and (c)), are hereby transferred to the Equal Employment Opportunity Commission.

(b) The Equal Employment Opportunity Commission may delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a Federal employee alleges a violation of Section 717 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–16) provided that the Equal Employment Opportunity Commission retains the function of making the final determination concerning such issue of discrimination.

SEC. 4. TRANSFER OF FEDERAL EMPLOYMENT OF HANDICAPPED INDIVIDUALS ENFORCEMENT FUNCTIONS

All Federal employment of handicapped individuals enforcement functions and related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) are hereby transferred to the Equal Employment Opportunity Commission. The function of being co-chairman of the Interagency Committee on Handicapped Employees now vested in the Chairman of the Civil Service Commission pursuant to Section 501 is hereby transferred to the Chairman of the Equal Employment Opportunity Commission.

SEC. 5. TRANSFER OF PUBLIC SECTOR 707 FUNCTIONS

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under Section 707 of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–6) and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, are hereby transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with said Title VII. The Attorney General is authorized to delegate any function under Section 707 of said Title VII to any officer or employee of the Department of Justice.

SEC. 6. TRANSFER OF FUNCTIONS AND ABOLITION OF THE EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

All functions of the Equal Employment Opportunity Coordinating Council, which was established pursuant to Section 715 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–14), are hereby transferred to the Equal Employment Opportunity Commission. The Equal Employment Opportunity Coordinating Council is hereby abolished.

SEC. 7. SAVINGS PROVISION

Administrative proceedings including administrative appeals from the acts of an executive agency (as defined by Section 105 of Title 5 of the United States Code) commenced or being conducted by or against such executive agency will not abate by reason of the taking effect of this Plan. Consistent with the provisions of this Plan, all such proceedings shall continue before the Equal Employment Opportunity Commission otherwise unaffected by the transfers provided by this Plan. Consistent with the provisions of this Plan, the Equal Employment Opportunity Commission shall accept appeals from those executive agency actions which occurred prior to the effective date of this Plan in accordance with law and regulations in effect on such effective date. Nothing herein shall affect any right of any person to judicial review under applicable law.

SEC. 8. INCIDENTAL TRANSFERS

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate department, agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of the Council abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SEC. 9. EFFECTIVE DATE

This Reorganization Plan shall become effective at such time or times, on or before October 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

[Pursuant to Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, the transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission relating to enforcement of equal employment opportunity programs as provided by sections 1 to 4 of this Reorg. Plan is effective Jan. 1, 1979.]

[Pursuant to Ex. Ord. No. 12144, June 22, 1979, 44 F.R. 37193, sections 1 and 2 of this Reorg. Plan are effective July 1, 1979, except for transfer of functions already effective Jan. 1, 1979, under Ex. Ord. No. 12106 above.]

[Pursuant to Ex. Ord. No. 12068, June 30, 1978, 43 F.R. 28971, section 5 of this Reorg. Plan is effective July 1, 1978.]

[Pursuant to Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, section 6 of this Reorg. Plan is effective July 1, 1978.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I am submitting to you today Reorganization Plan No. 1 of 1978. This Plan makes the Equal Employment Opportunity Commission the principal Federal agency

in fair employment enforcement. Together with actions I shall take by Executive Order, it consolidates Federal equal employment opportunity activities and lays, for the first time, the foundation of a unified, coherent Federal structure to combat job discrimination in all its forms.

In 1940 President Roosevelt issued the first Executive Order forbidding discrimination in employment by the Federal government. Since that time the Congress, the courts and the Executive Branch—spurred by the courage and sacrifice of many people and organizations—have taken historic steps to extend equal employment opportunity protection throughout the private as well as public sector. But each new prohibition against discrimination unfortunately has brought with it a further dispersal of Federal equal employment opportunity responsibility. This fragmentation of authority among a number of Federal agencies has meant confusion and ineffective enforcement for employees, regulatory duplication and needless expense for employers.

Fair employment is too vital for haphazard enforcement. My Administration will aggressively enforce our civil rights laws. Although discrimination in any area has severe consequences, limiting economic opportunity affects access to education, housing and health care. I, therefore, ask you to join with me to reorganize administration of the civil rights laws and to begin that effort by reorganizing the enforcement of those laws which ensure an equal opportunity to a job.

Eighteen government units now exercise important responsibilities under statutes, Executive Orders and regulations relating to equal employment opportunity:

The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, [section 2000e et seq. of this title] which bans employment discrimination based on race, national origin, sex or religion. The EEOC acts on individual complaints and also initiates private sector cases involving a ''pattern or practice'' of discrimination.

The Department of Labor and 11 other agencies enforce Executive Order 11246 [set out as a note under section 2000e of this title]. This prohibits discrimination in employment on the basis of race, national origin, sex, or religion and requires affirmative action by government contractors. While the Department now coordinates enforcement of this ''contract compliance'' program, it is actually administered by eleven other departments and agencies. The Department also administers those statutes requiring contractors to take affirmative action to employ handicapped people, disabled veterans and Vietnam veterans.

In addition, the Labor Department enforces the Equal Pay Act of 1963 [section 206(d) of Title 29, Labor], which prohibits employers from paying unequal wages based on sex, and the Age Discrimination in Employment Act of 1967 [section 621 et seq. of Title 29], which forbids age discrimination against persons between the ages of 40 and 65.

The Department of Justice litigates Title VII cases involving public sector employers—State and local governments. The Department also represents the Federal government in lawsuits against Federal contractors and grant recipients who are in violation of Federal nondiscrimination prohibitions.

The Civil Service Commission (CSC) enforces Title VII and all other nondiscrimination and affirmative action requirements for Federal employment. The CSC rules on complaints filed by individuals and monitors affirmative action plans submitted annually by other Federal agencies.

The Equal Employment Opportunity Coordinating Council includes representatives from EEOC, Labor, Justice, CSC and the Civil Rights Commission. It is charged with coordinating the Federal equal employment opportunity enforcement effort and with eliminating overlap and inconsistent standards.

In addition to these major government units, other agencies enforce various equal employment opportunity requirements which apply to specific grant programs. The Department of the Treasury, for example, administers the anti-discrimination prohibitions applicable to recipients of revenue sharing funds.

These programs have had only limited success. Some of the past deficiencies include:

—inconsistent standards of compliance;
—duplicative, inconsistent paperwork requirements and investigative efforts;
—conflicts within agencies between their program responsibilities and their responsibility to enforce the civil rights laws;
—confusion on the part of workers about how and where to seek redress;
—lack of accountability.

I am proposing today a series of steps to bring coherence to the equal employment enforcement effort. These steps, to be accomplished by the Reorganization Plan and Executive Orders, constitute an important step toward consolidation of equal employment opportunity enforcement. They will be implemented over the next two years, so that the agencies involved may continue their internal reform.

Its experience and broad scope make the EEOC suitable for the role of principal Federal agency in fair employment enforcement. Located in the Executive Branch and responsible to the President, the EEOC has developed considerable expertise in the field of employment discrimination since Congress created it by the Civil Rights Act of 1964 [section 2000e–4 of this title]. The Commission has played a pioneer role in defining both employment discrimination and its appropriate remedies.

While it has had management problems in past administrations, the EEOC's new leadership is making substantial progress in correcting them. In the last seven months the Commission has redesigned its internal structures and adopted proven management techniques. Early experience with these procedures indicates a high degree of success in reducing and expediting new cases. At my direction, the Office of Management and Budget is actively assisting the EEOC to ensure that these reforms continue.

The Reorganization Plan I am submitting will accomplish the following:

On July 1, 1978, abolish the Equal Employment Opportunity Coordinating Council (42 U.S.C. 2000e–14) and transfer its duties to the EEOC (no positions or funds shifted).

On October 1, 1978, shift enforcement of equal employment opportunity for Federal employees from the CSC to the EEOC (100 positions and $6.5 million shifted).

On July 1, 1979, shift responsibility for enforcing both the Equal Pay Act and the Age Discrimination in Employment Act from the Labor Department to the EEOC (198 positions and $5.3 million shifted for Equal Pay; 119 positions and $3.5 million for Age Discrimination).

Clarify the Attorney General's authority to initiate ''pattern or practice'' suits under Title VII in the public sector.

In addition, I will issue an Executive Order on October 1, 1978, to consolidate the contract compliance program—now the responsibility of Labor and eleven ''compliance agencies''—into the Labor Department (1,517 positions and $33.1 million shifted).

These proposed transfers and consolidations reduce from fifteen to three the number of Federal agencies having important equal employment opportunity responsibilities under Title VII of the Civil Rights Act of 1964 and Federal contract compliance provisions.

Each element of my Plan is important to the success of the entire proposal.

By abolishing the Equal Employment Opportunity Coordinating Council and transferring its responsibilities to the EEOC, this plan places the Commission at the center of equal employment opportunity enforcement. With these new responsibilities, the EEOC can give coherence and direction to the government's efforts by developing strong uniform enforcement standards to apply throughout the government: standardized data collection procedures, joint training programs, programs to ensure the sharing of enforcement related

data among agencies, and methods and priorities for complaint and compliance reviews. Such direction has been absent in the Equal Employment Opportunity Coordinating Council.

It should be stressed, however, that affected agencies will be consulted before EEOC takes any action. When the Plan has been approved, I intend to issue an Executive Order which will provide for consultation, as well as a procedure for reviewing major disputed issues within the Executive Office of the President. The Attorney General's responsibility to advise the Executive Branch on legal issues will also be preserved.

Transfer of the Civil Service Commission's equal employment opportunity responsibilities to EEOC is needed to ensure that: (1) Federal employees have the same rights and remedies as those in the private sector and in State and local government; (2) Federal agencies meet the same standards as are required of other employers; and (3) potential conflicts between an agency's equal employment opportunity and personnel management functions are minimized. The Federal government must not fall below the standard of performance it expects of private employers.

The Civil Service Commission has in the past been lethargic in enforcing fair employment requirements within the Federal government. While the Chairman and other Commissioners I have appointed have already demonstrated their personal commitment to expanding equal employment opportunity, responsibility for ensuring fair employment for Federal employees should rest ultimately with the EEOC.

We must ensure that the transfer in no way undermines the important objectives of the comprehensive civil service reorganization which will be submitted to Congress in the near future. When the two plans take effect; I will direct the EEOC and the CSC to coordinate their procedures to prevent any duplication and overlap.

The Equal Pay Act now administered by the Labor Department, prohibits employers from paying unequal wages based on sex. Title VII of the Civil Rights Act, which is enforced by EEOC, contains a broader ban on sex discrimination. The transfer of Equal Pay responsibility from the Labor Department to the EEOC will minimize overlap and centralize enforcement of statutory prohibitions against sex discrimination in employment.

The transfer will strengthen efforts to combat sex discrimination. Such efforts would be enhanced still further by passage of the legislation pending before you, which I support, that would prohibit employers from excluding women disabled by pregnancy from participating in disability programs.

There is now virtually complete overlap in the employers, labor organizations, and employment agencies covered by Title VII and by the Age Discrimination in Employment Act. This overlap is burdensome to employers and confusing to victims of discrimination. The proposed transfer of the age discrimination program from the Labor Department to the EEOC will eliminate the duplication.

The Plan I am proposing will not affect the Attorney General's responsibility to enforce Title VII against State or local governments or to represent the Federal government in suits against Federal contractors and grant recipients. In 1972, the Congress determined that the Attorney General should be involved in suits against State and local governments. This proposal reinforces that judgment and clarifies the Attorney General's authority to initiate litigation against State or local governments engaged in a ''pattern or practice'' of discrimination. This in no way diminishes the EEOC's existing authority to investigate complaints filed against State or local governments and, where appropriate, to refer them to the Attorney General. The Justice Department and the EEOC will cooperate so that the Department sues on valid referrals, as well as on its own ''pattern or practice'' cases.

A critical element of my proposals will be accomplished by Executive Order rather than by the Reorganization Plan. This involves consolidation in the Labor Department of the responsibility to ensure that Federal contractors comply with Executive Order 11246. Consolidation will achieve the following: promote consistent standards, procedures, and reporting requirements; remove contractors from the jurisdiction of multiple agencies; prevent an agency's equal employment objectives from being outweighed by its procurement and construction objectives; and produce more effective law enforcement through unification of planning, training and sanctions. By 1981, after I have had an opportunity to review the manner in which both the EEOC and the Labor Department are exercising their new responsibilities, I will determine whether further action is appropriate.

Finally, the responsibility for enforcing grant-related equal employment provisions will remain with the agencies administering the grant programs. With the EEOC acting as coordinator of Federal equal employment programs, we will be able to bring overlap and duplication to a minimum. We will be able, for example, to see that a university's employment practices are not subject to duplicative investigations under both Title IX of the Education Amendments of 1972 [section 1681 et seq. of Title 20, Education] and the contract compliance program. Because of the similarities between the Executive Order program and those statutes requiring Federal contractors to take affirmative action to employ handicapped individuals and disabled and Vietnam veterans, I have determined that enforcement of these statues should remain in the Labor Department.

Each of the changes set forth in the Reorganization Plan accompanying this message is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. I have taken care to determine that all functions abolished by the Plan are done only under the statutory authority provided by Section 903(b) of Title 5 of the United States Code.

I do not anticipate that the reorganizations contained in this Plan will result in any significant change in expenditures. They will result in a more efficient and manageable enforcement program.

The Plan I am submitting is moderate and measured. It gives the Equal Employment Opportunity Commission—an agency dedicated solely to this purpose—the primary Federal responsibility in the area of job discrimination, but it is designed to give this agency sufficient time to absorb its new responsibilities. This reorganization will produce consistent agency standards, as well as increased accountability. Combined with the intense commitment of those charged with these responsibilities, it will become possible for us to accelerate this nation's progress in ensuring equal job opportunities for all our people.

JIMMY CARTER.

THE WHITE HOUSE, February 23, 1978.

EX. ORD. NO. 12106. TRANSFER OF CERTAIN EQUAL EMPLOYMENT ENFORCEMENT FUNCTIONS

Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, provided:

By the authority vested in me as President of the United States of America by Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal employment programs, and in order to make certain technical amendments in other Orders to reflect this transfer of functions, it is hereby ordered as follows:

1–101. The transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission, relating to enforcement of equal employment opportunity programs as provided by Sections 1, 2, 3 and 4 of Reorganization Plan No. 1 of 1978 (43 FR 19807) shall be effective on January 1, 1979.

1–102. Executive Order No. 11478, as amended [set out as a note under section 2000e of this title], is further amended by deleting the preamble, by substituting ''national origin, handicap, or age'' for ''or national or-

igin'' in the first sentence of Section 1, and revising Sections 3, 4, and 5 to read as follows:

''SEC. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

''SEC. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

''SEC. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.''

1–103. Executive Order No. 11022, as amended [set out as a note under section 3001 of this title], is further amended by revising Section 1(b) to read as follows:

''(b) The Council shall be composed of the Secretary of Health, Education, and Welfare [now Health and Human Services], who shall be Chairman, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of Veterans Affairs, the Director of the Office of Personnel Management, the Director of the Community Services Administration, and the Chairman of the Equal Employment Opportunity Commission.''

1–104. Executive Order No. 11480 of September 9, 1969 [set out as a note under section 791 of Title 29, Labor], is amended by deleting ''and the Chairman of the United States Civil Service Commission'' in Section 4 and substituting therefor ''Director of the Office of Personnel Management, and the Chairman of the Equal Employment Opportunity Commission''.

1–105. Executive Order No. 11830 of January 9, 1975 [set out as a note under section 791 of Title 29, Labor], is amended by deleting Section 2 and revising Section 1 to read as follows:

''In accord with Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and Section 4 of Reorganization Plan No. 1 of 1978 (43 FR 19808) the Interagency Committee on Handicapped Employees is enlarged and composed of the following, or their designees whose positions are Executive level IV or higher:

''(1) Secretary of Defense.

''(2) Secretary of Labor.

''(3) Secretary of Health, Education, and Welfare [now Health and Human Services], Co-Chairman.

''(4) Director of the Office of Personnel Management.

''(5) Administrator of Veterans Affairs.

''(6) Administrator of General Services.

''(7) Chairman of the Federal Communications Commission.

''(8) Chairman of the Equal Employment Opportunity Commission, Co-Chairman.

''(9) Such other members as the President may designate.''

1–106. This Order shall be effective on January 1, 1979.

JIMMY CARTER.

EX. ORD. NO. 12144. TRANSFER OF CERTAIN EQUAL PAY AND AGE DISCRIMINATION IN EMPLOYMENT ENFORCEMENT FUNCTIONS

Ex. Ord. No. 12144, June 22, 1979, 44 F.R. 37193, provided:

By the authority vested in me as President of the United States of America by the Constitution and laws of the United States, including Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal pay and age discrimination in employment programs from the Department of Labor to the Equal Employment Opportunity Commission, it is hereby ordered as follows:

1–101. Sections 1 and 2 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out as a note above] shall become effective on July 1, 1979, with the exception of the transfer of functions from the Civil Service Commission, already effective January 1, 1979 (Executive Order No. 12106 [set out above]).

1–102. The records, property, personnel and positions, and unexpended balances of appropriations or funds, available or to be made available, which relate to the functions transferred as provided in this Order are hereby transferred from the Department of Labor to the Equal Employment Opportunity Commission.

1–103. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all actions necessary or appropriate to effectuate the transfers provided in this Order, including the transfer of funds, records, property, and personnel.

1–104. This Order shall be effective July 1, 1979.

JIMMY CARTER.

§ 2000e–5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e–2 or 2000e–3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the ''respondent'') within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly

notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a)[1] of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil ac-

[1] So in original. Probably should be subsection ''(b)''.

tion against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section, is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2)(A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e–3(a) of this title.

(B) On a claim in which an individual proves a violation under section 2000e–2(m) of this title and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e–2(m) of this title; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of title 29 shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders

In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, title 28.

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

(Pub. L. 88–352, title VII, § 706, July 2, 1964, 78 Stat. 259; Pub. L. 92–261, § 4, Mar. 24, 1972, 86 Stat. 104; Pub. L. 102–166, title I, §§ 107(b), 112, 113(b), Nov. 21, 1991, 105 Stat. 1075, 1078, 1079.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f)(2), means Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Rules 65 and 53 of the Federal Rules of Civil Procedure, referred to in subsec. (f)(2), (5), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Chapter 6 (§ 101 et seq.) of title 29, referred to in subsec. (h), is a reference to act Mar. 23, 1932, ch. 90, 47 Stat. 70, as amended, popularly known as the Norris-LaGuardia Act. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1991—Subsec. (e). Pub. L. 102–166, § 112, designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 102–166, § 107(b), designated existing provisions as pars. (1) and (2)(A) and added par. (2)(B).

Subsec. (k). Pub. L. 102–166, § 113(b), inserted "(including expert fees)" after "attorney's fee".

1972—Subsec. (a). Pub. L. 92–261, § 4(a), added subsec. (a). Former subsec. (a) redesignated (b) and amended generally.

Subsec. (b). Pub. L. 92–261, § 4(a), redesignated former subsec. (a) as (b), modified the procedure for the filing and consideration of charges by the Commission, subjected to coverage unlawful employment practices of joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, required the Commission to accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law in its determination of reasonable cause, and inserted provision setting forth the time period, after charges have been filed, allowed to the Commission to determine reasonable cause. Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub. L. 92–261, § 4(a), redesignated former subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 92–261, § 4(a), redesignated former subsec. (d) as (e), extended from ninety to one hundred and eighty days after the occurrence of the alleged unlawful employment practice the time for filing charges under this section and from two hundred and ten to three hundred days the time for filing such charges where the person aggrieved initially instituted proceedings with a State or local agency, and inserted requirement that notice of the charge be served on the respondent within ten days after filing. Former subsec. (e) redesignated (f)(1).

Subsec. (f). Pub. L. 92–261, § 4(a), redesignated former subsec. (e) as par. (1), substituted provisions setting forth the procedure for civil actions where the Commission was unable to secure from the respondents a conciliation agreement to prevent further unlawful employment practices for provisions setting forth the procedure for civil actions where the Commission was unable to obtain voluntary compliance with this subchapter and inserted provisions setting forth the procedure for civil action where the respondent is a government, governmental agency, or political subdivision and the Commission could not secure a conciliation agreement, added par. (2), redesignated former subsec. (f) as par. (3), substituted "aggrieved person" for "plaintiff", and added pars. (4) and (5).

Subsec. (g). Pub. L. 92–261, § 4(a), inserted provisions which authorized the court to order affirmative action not limited solely to the enumerated affirmative acts and such other equitable relief as deemed appropriate, and provisions which set forth the accrual date for back pay.

Subsecs. (i), (j). Pub. L. 92–261, § 4(b)(1), (2), substituted "this section" for "subsection (e) of this section".

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 14 of Pub. L. 92–261 provided that: "The amendments made by this Act to section 706 of the Civil Rights Act of 1964 [this section] shall be applica-

ble with respect to charges pending with the Commission on the date of enactment of this Act [Mar. 24, 1972] and all charges filed thereafter.''

§ 2000e–6. Civil actions by the Attorney General

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e–5 of this title.

(Pub. L. 88–352, title VII, § 707, July 2, 1964, 78 Stat. 261; Pub. L. 92–261, § 5, Mar. 24, 1972, 86 Stat. 107.)

AMENDMENTS

1972—Subsecs. (c) to (e). Pub. L. 92–261 added subsecs. (c) to (e).

TRANSFER OF FUNCTIONS

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under this section, and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, were transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with this subchapter, and with the Attorney General authorized to delegate any function under this section to any officer or employee of the Department of Justice, by Reorg. Plan No. 1 of 1978, § 5, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title.

EX. ORD. NO. 12068. TRANSFER OF CERTAIN FUNCTIONS TO ATTORNEY GENERAL

Ex. Ord. No. 12068, June 30, 1978, 43 F.R. 28971, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out as a note under section 2000e–4 of this title], in order to clarify the Attorney General's authority to initiate public sector litigation under Section 707 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–6), it is ordered as follows:

1–1. SECTION 707 FUNCTIONS OF THE ATTORNEY GENERAL

1–101. Section 5 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out as a note under section 2000e–4 of this title] shall become effective on July 1, 1978.

1–102. The functions transferred to the Attorney General by Section 5 of Reorganization Plan Number 1 of 1978 [set out as a note under section 2000e–4 of this title] shall, consistent with Section 707 of Title VII of the Civil Rights Act of 1964, as amended [this section], be performed in accordance with Department of Justice procedures heretofore followed under Section 707.

JIMMY CARTER.

§ 2000e–7. Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

(Pub. L. 88–352, title VII, § 708, July 2, 1964, 78 Stat. 262.)

§ 2000e–8. Investigations

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a charge filed under section 2000e–5 of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of

the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty, of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

(Pub. L. 88–352, title VII, § 709, July 2, 1964, 78 Stat. 262; Pub. L. 92–261, § 6, Mar. 24, 1972, 86 Stat. 107.)

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–261 inserted provisions authorizing the Commission to engage in and contribute to the cost of research and other projects undertaken by State and local agencies and provisions authorizing the Commission to make advance payments to State and local agencies and their employees for services rendered to the Commission, and struck out provisions relating to agreements between the Commission and State and local agencies prohibiting private civil actions under section 2000e–5 of this title in specified cases.

Subsec. (c). Pub. L. 92–261 struck out ''Except as provided in subsection (d) of this section,'' before ''every employer, employment agency, and labor organization subject to this subchapter shall (1)'', required the party seeking an exemption to bring an action in the district court only after the Commission denied the application for the exemption, and inserted provision which authorized the Commission, or the Attorney General in a case involving a government, etc., to apply for a court order compelling compliance with the recordkeeping and reporting obligations set out in this subsection.

Subsec. (d). Pub. L. 92–261 substituted provisions requiring consultation and coordination between Federal and State agencies in prescribing recordkeeping and reporting requirements pursuant to subsec. (c) of this section, and authorizing the Commission to furnish information obtained pursuant to subsec. (c) of this section to interested State and local agencies, for provisions exempting from recordkeeping and reporting requirements employers, etc., required to keep records and make reports under State or local fair employment practice laws, except for the maintenance of notations by such employers, etc., which reflect the differences in coverage or enforcement between State or local laws and the provisions of this subchapter, and dispensing with recordkeeping and reporting requirements where the employer reports under some Executive Order prescribing fair employment practices for Government contractors or subcontractors.

§ 2000e–9. Conduct of hearings and investigations pursuant to section 161 of title 29

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of title 29 shall apply.

(Pub. L. 88–352, title VII, § 710, July 2, 1964, 78 Stat. 264; Pub. L. 92–261, § 7, Mar. 24, 1972, 86 Stat. 109.)

AMENDMENTS

1972—Pub. L. 92–261 substituted provisions making applicable section 161 of title 29 to all hearings and investigations conducted by the Commission or its authorized agents or agencies, for provisions enumerating the investigatory powers of the Commission and the procedure for their enforcement.

§ 2000e–10. Posting of notices; penalties

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts, from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

(Pub. L. 88–352, title VII, § 711, July 2, 1964, 78 Stat. 265.)

§ 2000e–11. Veterans' special rights or preference

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

(Pub. L. 88–352, title VII, § 712, July 2, 1964, 78 Stat. 265.)

§ 2000e–12. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provi-

sions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of title 5.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

(Pub. L. 88–352, title VII, § 713, July 2, 1964, 78 Stat. 265.)

CODIFICATION

In subsec. (a), ''subchapter II of chapter 5 of title 5'' substituted for ''the Administrative Procedure Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

RELIGIOUS LIBERTY

Pub. L. 103–317, title VI, § 610, Aug. 26, 1994, 108 Stat. 1774, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the liberties protected by our Constitution include religious liberty protected by the first amendment;

''(2) citizens of the United States profess the beliefs of almost every conceivable religion;

''(3) Congress has historically protected religious expression even from governmental action not intended to be hostile to religion;

''(4) the Supreme Court has written that 'the free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires';

''(5) the Supreme Court has firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the content of the ideas is offensive to some;

''(6) Congress enacted the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.] to restate and make clear again our intent and position that religious liberty is and should forever be granted protection from unwarranted and unjustified government intrusions and burdens;

''(7) the Equal Employment Opportunity Commission has written proposed guidelines to title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.], published in the Federal Register on October 1, 1993, that expand the definition of religious harassment beyond established legal standards set forth by the Supreme Court, and that may result in the infringement of religious liberty;

''(8) such guidelines do not appropriately resolve issues related to religious liberty and religious expression in the workplace;

''(9) properly drawn guidelines for the determination of religious harassment should provide appropriate guidance to employers and employees and assist in the continued preservation of religious liberty as guaranteed by the first amendment;

''(10) the Commission states in its proposed guidelines that it retains wholly separate guidelines for the determination of sexual harassment because the Commission believes that sexual harassment raises issues about human interaction that are to some extent unique; and

''(11) the subject of religious harassment also raises issues about human interaction that are to some extent unique in comparison to other harassment.

''(b) CATEGORY OF RELIGIOUS HARASSMENT IN PROPOSED GUIDELINES.—For purposes of issuing final regulations under title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.] in connection with the proposed guidelines published by the Equal Employment Opportunity Commission on October 1, 1993 (58 Fed. Reg. 51266), the Chairperson of the Equal Employment Opportunity Commission shall ensure that—

''(1) the category of religion shall be withdrawn from the proposed guidelines at this time;

''(2) any new guidelines for the determination of religious harassment shall be drafted so as to make explicitly clear that symbols or expressions of religious belief consistent with the first amendment and the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.] are not to be restricted and do not constitute proof of harassment;

''(3) the Commission shall hold public hearings on such new proposed guidelines; and

''(4) the Commission shall receive additional public comment before issuing similar new regulations.''

§ 2000e–13. Application to personnel of Commission of sections 111 and 1114 of title 18; punishment for violation of section 1114 of title 18

The provisions of sections 111 and 1114, title 18, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

(Pub. L. 88–352, title VII, § 714, July 2, 1964, 78 Stat. 265; Pub. L. 92–261, § 8(g), Mar. 24, 1972, 86 Stat. 110.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1972—Pub. L. 92–261 inserted provisions which made section 1114 of title 18 applicable to officers, etc., of the Commission and set forth punishment for violation of such section 1114.

§ 2000e–14. Equal Employment Opportunity Coordinating Council; establishment; composition; duties; report to President and Congress

The Equal Employment Opportunity Commission shall have the responsibility for developing

and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 of each year, the Equal Employment Opportunity Commission shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

(Pub. L. 88–352, title VII, § 715, July 2, 1964, 78 Stat. 265; Pub. L. 92–261, § 10, Mar. 24, 1972, 86 Stat. 111; Pub. L. 94–273, § 3(24), Apr. 21, 1976, 90 Stat. 377; 1978 Reorg. Plan No. 1, § 6, eff. July 1, 1978, 43 F.R. 19807, 92 Stat. 3781.)

CODIFICATION

The first sentence of this section, which read ''There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates'' was omitted pursuant to Reorg. Plan No. 1 of 1978, § 6, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title, which abolished the Equal Employment Opportunity Coordinating Council, effective July 1, 1978, as provided by section 1–101 of Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, set out as a note under section 2000e of this title. See Transfer of Functions note below.

AMENDMENTS

1976—Pub. L. 94–273 substituted ''October'' for ''July''.

1972—Pub. L. 92–261 substituted provisions which established the Equal Employment Opportunity Coordinating Council and set forth the composition, powers, and duties of the Council for provisions which directed the Secretary of Labor to make a report to the Congress not later than June 30, 1965 concerning discrimination in employment because of age.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to transmittal of a report and recommendations to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 19 on page 165 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

''Equal Employment Opportunity Commission'' substituted in text for ''Council'', meaning Equal Employment Opportunity Coordinating Council, pursuant to Reorg. Plan. No. 1 of 1978, § 6, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title, which abolished Equal Employment Opportunity Coordinating Council and transferred its functions to Equal Employment Opportunity Commission, effective July 1, 1978, as provided by section 1–101 of Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, set out as a note under section 2000e of this title.

SUBMISSION OF SPECIFIC LEGISLATIVE RECOMMENDATIONS TO CONGRESS BY JANUARY 1, 1967, TO IMPLEMENT REPORT ON AGE DISCRIMINATION

Pub. L. 89–601, title VI, § 606, Sept. 23, 1966, 80 Stat. 845, directed the Secretary of Labor to submit to the Congress not later than Jan. 1, 1967 his specific legislative recommendations for implementing the conclusions and recommendations contained in his report on age discrimination in employment made pursuant to provisions of this section prior to its amendment in 1972.

§ 2000e–15. Presidential conferences; acquaintance of leadership with provisions for employment rights and obligations; plans for fair administration; membership

The President shall, as soon as feasible after July 2, 1964, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

(Pub. L. 88–352, title VII, § 716(c), July 2, 1964, 78 Stat. 266.)

EXECUTIVE ORDER NO. 11197

Ex. Ord. No. 11197, eff. Feb. 5, 1965, 30 F.R. 1721, which established the President's Council on Equal Opportunity, was revoked by Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, formerly set out as a note under section 2000d–1 of this title.

§ 2000e–16. Employment by Federal Government

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, in executive agencies as defined in section 105 of title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e–5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e–5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e–5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties..[1]

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(Pub. L. 88–352, title VII, §717, as added Pub. L. 92–261, §11, Mar. 24, 1972, 86 Stat. 111; amended 1978 Reorg. Plan No. 1, §3, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub. L. 96–191, §8(g), Feb. 15, 1980, 94 Stat. 34; Pub. L. 102–166, title I, §114, Nov. 21, 1991, 105 Stat. 1079; Pub. L. 104–1, title II, §201(c)(1), Jan. 23, 1995, 109 Stat. 8; Pub. L. 105–220, title III, §341(a), Aug. 7, 1998, 112 Stat. 1092; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), means Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et

[1] So in original.

seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Executive Order 11478, as amended, referred to in subsecs. (c) and (e), is set out as a note under section 2000e of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

2004—Subsec. (a). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1998—Subsec. (a). Pub. L. 105–220 inserted ''in the Smithsonian Institution,'' before ''and in the Government Printing Office,''.

1995—Subsec. (a). Pub. L. 104–1 substituted ''units of the judicial branch'' for ''units of the legislative and judicial branches'' and inserted ''Government Printing Office, the General Accounting Office, and the'' before ''Library of Congress''.

1991—Subsec. (c). Pub. L. 102–166, § 114(1), substituted ''90 days'' for ''thirty days''.

Subsec. (d). Pub. L. 102–166, § 114(2), inserted before the period '', and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.''

1980—Subsec. (a). Pub. L. 96–191 struck out ''(other than the General Accounting Office)'' after ''in executive agencies''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–220 effective Aug. 7, 1998, and applicable to and may be raised in any administrative or judicial claim or action brought before Aug. 7, 1998, but pending on such date, and any administrative or judicial claim or action brought after such date regardless of whether the claim or action arose prior to such date, if the claim or action was brought within the applicable statute of limitations, see section 341(d) of Pub. L. 105–220, set out as a note under section 633a of Title 29, Labor.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–1 effective 1 year after Jan. 23, 1995, see section 1311(d) of Title 2, The Congress.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–191 effective Oct. 1, 1980, see section 10(a) of Pub. L. 96–191.

TRANSFER OF FUNCTIONS

''Equal Employment Opportunity Commission'' substituted for ''Civil Service Commission'' in subsecs. (b) and (c) pursuant to Reorg. Plan No. 1 of 1978, § 3, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title, which transferred all equal opportunity in Federal employment enforcement and related functions vested in Civil Service Commission by subsecs. (b) and (c) of this section to Equal Employment Opportunity Commission, with certain authority delegable to Director of Office of Personnel Management, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053, set out as a note under section 2000e–4 of this title.

EX. ORD. NO. 13145. TO PROHIBIT DISCRIMINATION IN FEDERAL EMPLOYMENT BASED ON GENETIC INFORMATION

Ex. Ord. No. 13145, Feb. 8, 2000, 65 F.R. 6877, provided:

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, it is ordered as follows:

SECTION 1. *Nondiscrimination in Federal Employment on the Basis of Protected Genetic Information.*

1–101. It is the policy of the Government of the United States to provide equal employment opportunity in Federal employment for all qualified persons and to prohibit discrimination against employees based on protected genetic information, or information about a request for or the receipt of genetic services. This policy of equal opportunity applies to every aspect of Federal employment.

1–102. The head of each Executive department and agency shall extend the policy set forth in section 1101 to all its employees covered by section 717 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16).

1–103. Executive departments and agencies shall carry out the provisions of this order to the extent permitted by law and consistent with their statutory and regulatory authorities, and their enforcement mechanisms. The Equal Employment Opportunity Commission shall be responsible for coordinating the policy of the Government of the United States to prohibit discrimination against employees in Federal employment based on protected genetic information, or information about a request for or the receipt of genetic services.

SEC. 2. *Requirements Applicable to Employing Departments and Agencies.*

1–201. Definitions.

(a) The term ''employee'' shall include an employee, applicant for employment, or former employee covered by section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16).

(b) Genetic monitoring means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, respond to the effects of, or control adverse environmental exposures in the workplace.

(c) Genetic services means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic or therapeutic purposes, or for genetic education or counseling.

(d) Genetic test means the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations. Tests for metabolites fall within the definition of ''genetic tests'' when an excess or deficiency of the metabolites indicates the presence of a mutation or mutations. The conducting of metabolic tests by a department or agency that are not intended to reveal the presence of a mutation shall not be considered a violation of this order, regardless of the results of the tests. Test results revealing a mutation shall, however, be subject to the provisions of this order.

(e) Protected genetic information.

(1) In general, protected genetic information means:

(A) information about an individual's genetic tests;

(B) information about the genetic tests of an individual's family members; or

(C) information about the occurrence of a disease, or medical condition or disorder in family members of the individual.

(2) Information about an individual's current health status (including information about sex, age, physical exams, and chemical, blood, or urine analyses) is not protected genetic information unless it is described in subparagraph (1).

1–202. In discharging their responsibilities under this order, departments and agencies shall implement the following nondiscrimination requirements.

(a) The employing department or agency shall not discharge, fail or refuse to hire, or otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of em-

ployment of that employee, because of protected genetic information with respect to the employee, or because of information about a request for or the receipt of genetic services by such employee.

(b) The employing department or agency shall not limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect that employee's status, because of protected genetic information with respect to the employee or because of information about a request for or the receipt of genetic services by such employee.

(c) The employing department or agency shall not request, require, collect, or purchase protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by such employee.

(d) The employing department or agency shall not disclose protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by an employee except:

(1) to the employee who is the subject of the information, at his or her request;

(2) to an occupational or other health researcher, if the research conducted complies with the regulations and protections provided for under part 46 of title 45, of the Code of Federal Regulations;

(3) if required by a Federal statute, congressional subpoena, or an order issued by a court of competent jurisdiction, except that if the subpoena or court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the subpoena or court order, unless the subpoena or court order also imposes confidentiality requirements; or

(4) to executive branch officials investigating compliance with this order, if the information is relevant to the investigation.

(e) The employing department or agency shall not maintain protected genetic information or information about a request for or the receipt of genetic services in general personnel files; such information shall be treated as confidential medical records and kept separate from personnel files.

SEC. 3. *Exceptions.*

1–301. The following exceptions shall apply to the nondiscrimination requirements set forth in section 1202.

(a) The employing department or agency may request or require information defined in section 1–201(e)(1)(C) with respect to an applicant who has been given a conditional offer of employment or to an employee if:

(1) the request or requirement is consistent with the Rehabilitation Act [of 1973, 29 U.S.C. 701 et seq.] and other applicable law;

(2) the information obtained is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order;

(3) such current disease, or medical condition or disorder could prevent the applicant or employee from performing the essential functions of the position held or desired; and

(4) the information defined in section 1–201(e)(1)(C) of this order will not be disclosed to persons other than medical personnel involved in or responsible for assessing whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order.

(b) The employing department or agency may request, collect, or purchase protected genetic information with respect to an employee, or any information about a request for or receipt of genetic services by such employee if:

(1) the employee uses genetic or health care services provided by the employer (other than use pursuant to section 1–301(a) of this order);

(2) the employee who uses the genetic or health care services has provided prior knowing, voluntary, and written authorization to the employer to collect protected genetic information;

(3) the person who performs the genetic or health care services does not disclose protected genetic information to anyone except to the employee who uses the services for treatment of the individual; pursuant to section 1–202(d) of this order; for program evaluation or assessment; for compiling and analyzing information in anticipation of or for use in a civil or criminal legal proceeding; or, for payment or accounting purposes, to verify that the service was performed (but in such cases the genetic information itself cannot be disclosed);

(4) such information is not used in violation of sections 1–202(a) or 1–202(b) of this order.

(c) The employing department or agency may collect protected genetic information with respect to an employee if the requirements of part 46 of title 45 of the Code of Federal Regulations are met.

(d) Genetic monitoring of biological effects of toxic substances in the workplace shall be permitted if all of the following conditions are met:

(1) the employee has provided prior, knowing, voluntary, and written authorization;

(2) the employee is notified when the results of the monitoring are available and, at that time, the employer makes any protected genetic information that may have been acquired during the monitoring available to the employee and informs the employee how to obtain such information;

(3) the monitoring conforms to any genetic monitoring regulations that may be promulgated by the Secretary of Labor; and

(4) the employer, excluding any licensed health care professionals that are involved in the genetic monitoring program, receives results of the monitoring only in aggregate terms that do not disclose the identity of specific employees.

(e) This order does not limit the statutory authority of a Federal department or agency to:

(1) promulgate or enforce workplace safety and health laws and regulations;

(2) conduct or sponsor occupational or other health research that is conducted in compliance with regulations at part 46 of title 45, of the Code of Federal Regulations; or

(3) collect protected genetic information as a part of a lawful program, the primary purpose of which is to carry out identification purposes.

SEC. 4. *Miscellaneous.*

1–401. The head of each department and agency shall take appropriate action to disseminate this policy and, to this end, shall designate a high level official responsible for carrying out its responsibilities under this order.

1–402. Nothing in this order shall be construed to:

(a) limit the rights or protections of an individual under the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), the Privacy Act of 1974 (5 U.S.C. 552a), or other applicable law; or

(b) require specific benefits for an employee or dependent under the Federal Employees Health Benefits Program or similar program.

1–403. This order clarifies and makes uniform Administration policy and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 2000e–16a. Short title; purpose; definition

(a) Short title

Sections 2000e–16a to 2000e–16c of this title may be cited as the ''Government Employee Rights Act of 1991''.

(b) Purpose

The purpose of sections 2000e–16a to 2000e–16c of this title is to provide procedures to protect

the rights of certain government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(c) "Violation" defined

For purposes of sections 2000e–16a to 2000e–16c of this title, the term ''violation'' means a practice that violates section 2000e–16b(a) of this title.

(Pub. L. 102–166, title III, § 301, Nov. 21, 1991, 105 Stat. 1088; Pub. L. 103–283, title III, § 312(f)(1), July 22, 1994, 108 Stat. 1446; Pub. L. 104–1, title V, § 504(a)(1), Jan. 23, 1995, 109 Stat. 40.)

REFERENCES IN TEXT

Sections 2000e–16a to 2000e–16c of this title, referred to in text, was in the original ''this title'', meaning title III of Pub. L. 102–166, which is classified generally to sections 2000e–16a to 2000e–16c of this title. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 1201 of Title 2, The Congress.

AMENDMENTS

1995—Pub. L. 104–1 amended section generally, substituting ''rights of certain government employees'' for ''right of Senate and other government employees'' in subsec. (b) and striking out definitions of ''Senate employee'' and ''head of employing office'' in subsec. (c).

1994—Subsec. (c)(1)(B) to (D). Pub. L. 103–283, which directed the amendment of subsec. (c) by striking out subpar. (B), redesignating subpars. (C) and (D) as (B) and (C), respectively, and striking out ''or (B)'' after ''described in subparagraph (A)'' in subpars. (B) and (C), was executed by making the amendment to subsec. (c)(1) to reflect the probable intent of Congress. Prior to amendment, subpar. (B) read as follows: ''any employee of the Architect of the Capitol who is assigned to the Senate Restaurants or to the Superintendent of the Senate Office Buildings;''.

EFFECTIVE DATE

Section effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as an Effective Date of 1991 Amendment note under section 1981 of this title.

§ 2000e–16b. Discriminatory practices prohibited

(a) Practices

All personnel actions affecting the Presidential appointees described in section 1219[1] of title 2 or the State employees described in section 2000e–16c of this title shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 2000e–16 of this title;

(2) age, within the meaning of section 633a of title 29; or

(3) disability, within the meaning of section 791 of title 29 and sections 12112 to 12114 of this title.

(b) Remedies

The remedies referred to in sections 1219(a)(1)[1] of title 2 and 2000e–16c(a) of this title—

(1) may include, in the case of a determination that a violation of subsection (a)(1) or (a)(3) of this section has occurred, such remedies as would be appropriate if awarded under sections 2000e–5(g), 2000e–5(k), and 2000e–16(d) of this title, and such compensatory damages as would be appropriate if awarded under section 1981 or sections 1981a(a) and 1981a(b)(2) of this title;

(2) may include, in the case of a determination that a violation of subsection (a)(2) of this section has occurred, such remedies as would be appropriate if awarded under section 633a(c) of title 29; and

(3) may not include punitive damages.

(Pub. L. 102–166, title III, § 302, Nov. 21, 1991, 105 Stat. 1088; Pub. L. 104–1, title V, § 504(a)(1), Jan. 23, 1995, 109 Stat. 40.)

REFERENCES IN TEXT

Section 1219 of title 2, referred to in text, was repealed by Pub. L. 104–331, § 5(a), Oct. 26, 1996, 110 Stat. 4072.

CODIFICATION

Section was formerly classified to section 1202 of Title 2, The Congress.

AMENDMENTS

1994—Pub. L. 104–1 amended section generally. Prior to amendment, text read as follows: ''All personnel actions affecting employees of the Senate shall be made free from any discrimination based on—

''(1) race, color, religion, sex, or national origin, within the meaning of section 2000e–16 of this title;

''(2) age, within the meaning of section 633a of title 29; or

''(3) handicap or disability, within the meaning of section 791 of title 29 and sections 12112 to 12114 of this title.''

EFFECTIVE DATE

Section effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as an Effective Date of 1991 Amendment note under section 1981 of this title.

§ 2000e–16c. Coverage of previously exempt State employees

(a) Application

The rights, protections, and remedies provided pursuant to section 2000e–16b of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

(1) to be a member of the elected official's personal staff;

(2) to serve the elected official on the policymaking level; or

(3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) Enforcement by administrative action

(1) In general

Any individual referred to in subsection (a) of this section may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, which, in accordance with the principles and

[1] See References in Text note below.

procedures set forth in sections 554 through 557 of title 5, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(2) Referral to State and local authorities

(A) Application

Section 2000e–5(d) of this title shall apply with respect to any proceeding under this section.

(B) Definition

For purposes of the application described in subparagraph (A), the term ''any charge filed by a member of the Commission alleging an unlawful employment practice'' means a complaint filed under this section.

(c) Judicial review

Any party aggrieved by a final order under subsection (b) of this section may obtain a review of such order under chapter 158 of title 28. For the purpose of this review, the Equal Employment Opportunity Commission shall be an ''agency'' as that term is used in chapter 158 of title 28.

(d) Standard of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) of this section if it is determined that the order was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) Attorney's fees

If the individual referred to in subsection (a) of this section is the prevailing party in a proceeding under this subsection,[1] attorney's fees may be allowed by the court in accordance with the standards prescribed under section 2000e–5(k) of this title.

(Pub. L. 102–166, title III, § 304, formerly § 321, Nov. 21, 1991, 105 Stat. 1097; renumbered § 304 and amended Pub. L. 104–1, title V, § 504(a)(3), (4), Jan. 23, 1995, 109 Stat. 41.)

CODIFICATION

Section was formerly classified to section 1220 of Title 2, The Congress.

PRIOR PROVISIONS

A prior section 304 of Pub. L. 102–166 was classified to section 1204 of Title 2, The Congress, prior to repeal by Pub. L. 104–1.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–1, § 504(a)(4), struck out ''and 1207(h) of title 2'' before ''shall apply'' in introductory provisions.

[1] So in original.

EFFECTIVE DATE

Section effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as an Effective Date of 1991 Amendment note under section 1981 of this title.

§ 2000e–17. Procedure for denial, withholding, termination, or suspension of Government contract subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of title 5, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

(Pub. L. 88–352, title VII, § 718, as added Pub. L. 92–261, § 13, Mar. 24, 1972, 86 Stat. 113.)

SUBCHAPTER VII—REGISTRATION AND VOTING STATISTICS

§ 2000f. Survey for compilation of registration and voting statistics; geographical areas; scope; application of census provisions; voluntary disclosure; advising of right not to furnish information

The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, only include a count of persons of voting age by race, color, and national origin, and determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the Nineteenth Decennial Census, and at such other times as the Congress may prescribe. The provisions of section 9 and chapter 7 of title 13 shall apply to any survey, collection, or compilation of registration and voting statistics carried out under this subchapter: *Provided, however*, That no person shall be compelled to disclose his race, color, national origin, or questioned about his political party affiliation, how he voted, or the reasons therefore, nor shall any penalty be imposed for his failure

or refusal to make such disclosure. Every person interrogated orally, by written survey or questionnaire or by any other means with respect to such information shall be fully advised with respect to his right to fail or refuse to furnish such information.

(Pub. L. 88–352, title VIII, § 801, July 2, 1964, 78 Stat. 266.)

SUBCHAPTER VIII—COMMUNITY RELATIONS SERVICE

§ 2000g. Establishment of Service; Director of Service: appointment, term; personnel

There is hereby established in and as a part of the Department of Commerce a Community Relations Service (hereinafter referred to as the ''Service''), which shall be headed by a Director who shall be appointed by the President with the advice and consent of the Senate for a term of four years. The Director is authorized to appoint, subject to the civil service laws and regulations, such other personnel as may be necessary to enable the Service to carry out its functions and duties, and to fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(Pub. L. 88–352, title X, § 1001(a), July 2, 1964, 78 Stat. 267; Pub. L. 95–624, § 5, Nov. 9, 1978, 92 Stat. 3462.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

References to ''chapter 51 and subchapter III of chapter 53 of title 5'' and ''section 3109 of title 5'' substituted in text for ''the Classification Act of 1949, as amended'' and ''section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55a)'', respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1978—Pub. L. 95–624 struck out provision authorizing the Director to procure the services of experts and consultants at rates for individuals not in excess of $75 per diem.

REORGANIZATION PLAN NO. 1 OF 1966

Eff. Apr. 22, 1966, 31 F.R. 6187, 80 Stat. 1607

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 10, 1966, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

COMMUNITY RELATIONS SERVICE

SECTION 1. TRANSFER OF SERVICE

Subject to the provisions of this reorganization plan, the Community Relations Service now existing in the Department of Commerce under the Civil Rights Act of 1964 (Pub. L. No. 88–352, July 2, 1964) [see Short Title note under 42 U.S.C. 2000a], including the office of Director there of, is hereby transferred to the Department of Justice.

SEC. 2. TRANSFER OF FUNCTIONS

All functions of the Community Relations Service, and all functions of the Director of the Community Relations Service, together with all functions of the Secretary of Commerce and the Department of Commerce with respect thereto, are hereby transferred to the Attorney General.

SEC. 3. INCIDENTAL TRANSFERS

(a) Section 1 hereof shall be deemed to transfer to the Department of Justice the personnel, property, and records of the Community Relations Service and the unexpended balances of appropriations, allocations, and other funds available or to be made available to the Service.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1966, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization of community relations functions in the area of civil rights.

After a careful review of the activities of the Federal agencies involved in the field of civil rights, it became clear that the elimination of duplication and undesirable overlap required the consolidation of certain functions.

As a first step, I issued Executive Orders 11246 and 11247 on September 24, 1965.

Executive Order 11246 simplified and clarified executive branch assignments of responsibility for enforcing civil rights policies and placed responsibility for the Government-wide coordination of the enforcement activities of executive agencies in the Secretary of Labor with respect to employment by Federal contractors and in the Civil Service Commission with respect to employment by Federal agencies.

Executive Order 11247 directed the Attorney General to assist Federal agencies in coordinating their enforcement activities with respect to title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally assisted programs.

As a further step for strengthening the operation and coordination of our civil rights programs, I now recommend transfer of the functions of the Community Relations Service, established in the Department of Commerce under title X of the Civil Rights Act of 1964, to the Attorney General and transfer of the Service, including the Office of Director, to the Department of Justice.

The Community Relations Service was located in the Department of Commerce by the Congress on the assumption that a primary need would be the conciliation of disputes arising out of the public accommodations title of the act. That decision was appropriate on the basis of information available at that time. The need for conciliation in this area has not been as great as anticipated because of the voluntary progress that has been made by businessmen and business organizations.

To be effective, assistance to communities in the identification and conciliation of disputes should be closely and tightly coordinated. Thus, in any particular situation that arises within a community, representatives of Federal agencies whose programs are involved should coordinate their efforts through a single agency. In recent years, the Civil Rights Division of the Justice Department has played such a coordinating role in many situations, and has done so with great effectiveness.

Placing the Community Relations Service within the Justice Department will enhance the ability of the Justice Department to mediate and conciliate and will insure that the Federal Government speaks with a unified voice in those tense situations where the good of-

fices of the Federal Government are called upon to assist.

In this, as in other areas of Federal operations, we will move more surely and rapidly toward our objectives if we improve Federal organization and the arrangements for interagency coordination. The accompanying reorganization plan has that purpose.

The present distribution of Federal civil rights responsibilities clearly indicates that the activities of the Community Relations Service will fit most appropriately in the Department of Justice.

The Department of Justice has primary program responsibilities in civil rights matters and deep and broad experience in the conciliation of civil rights disputes. Congress has assigned it a major role in the implementation of the Civil Rights Act of 1957, 1960, and 1964, and the Voting Rights Act of 1965. The Department of Justice performs related functions under other acts of Congress. Most of these responsibilities require not only litigation, but also efforts at persuasion, negotiation, and explanation, especially with local governments and law enforcement authorities. In addition, under the Law Enforcement Assistance Act the Department will be supporting local programs in the area of police-community relations.

The test of the effectiveness of an enforcement agency is not how many legal actions are initiated and won, but whether there is compliance with the law. Thus, every such agency necessarily engages in extensive efforts to obtain compliance with the law and the avoidance of disputes. In fact, title VI of the Civil Rights Act of 1964 requires each agency concerned to attempt to obtain compliance by voluntary means before taking further action.

Among the heads of Cabinet departments the President looks principally to the Attorney General for advice and judgment on civil rights issues. The latter is expected to be familiar with civil rights problems in all parts of the Nation and to make recommendations for executive and legislative action.

The Attorney General already has responsibility with respect to a major portion of Federal conciliation efforts in the civil rights field. Under Executive Order 11247, he coordinates the Government-wide enforcement of title VI of the Civil Rights Act of 1964, which relies heavily on the achievement of compliance through persuasion and negotiation.

In the light of these facts, the accompanying reorganization plan would transfer the functions of the Community Relations Service and of its Director to the Attorney General. In so providing, the plan, of course, follows the established pattern of Federal organization by vesting all the transferred powers in the head of the department. The Attorney General will provide for the organization of the Community Relations Service as a separate unit within the Department of Justice.

The functions transferred by the reorganization plan would be carried out with full regard for the provisions of section 1003 of title X of the Civil Rights Act of 1964 relating to (1) cooperation with appropriate State or local, public, or private agencies; (2) the confidentiality of information acquired with the understanding that it would be so held; and (3) the limitation on the performance of investigative or prosecutive functions by personnel of the Service.

This transfer will benefit both the Department of Justice and the Community Relations Service in the fulfillment of their existing functions.

The Attorney General will benefit in his role as the President's adviser by obtaining an opportunity to anticipate and meet problems before the need for legal action arises.

The Community Relations Service, brought into closer relationship with the Attorney General and the Civil Rights Division of the Department of Justice, will gain by becoming a primary resource in a coordinated effort in civil rights under the leadership of the Attorney General. The Community Relations Service will have direct access to the extensive information, experience, staff, and facilities within the Department and in other Federal agencies.

Finally, the responsibility for coordinating major Government activities under the Civil Rights Act aimed at voluntary and peaceful resolution of discriminatory practices will be centered in one department. Thus, the reorganization will permit the most efficient and effective utilization of resources in this field. Together the Service and the Department will have a larger capacity for accomplishment than they do apart.

Although the reorganizations provided for in the reorganization plan will not of themselves result in immediate savings, the improvement achieved in administration will permit a fuller and more effective utilization of manpower and will in the future allow the performance of the affected functions at lower costs than would otherwise be possible.

After investigation I have found and hereby declare that each organization included in Reorganization Plan No. 1 of 1966 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I recommend that the Congress allow the reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, February 10, 1966.

§ 2000g–1. Functions of Service

It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce. The Service may offer its services in cases of such disputes, disagreements, or difficulties whenever, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby, and it may offer its services either upon its own motion or upon the request of an appropriate State or local official or other interested person.

(Pub. L. 88–352, title X, § 1002, July 2, 1964, 78 Stat. 267.)

§ 2000g–2. Cooperation with other agencies; conciliation assistance in confidence and without publicity; information as confidential; restriction on performance of investigative or prosecuting functions; violations and penalties

(a) The Service shall, whenever possible, in performing its functions, seek and utilize the cooperation of appropriate State or local, public, or private agencies.

(b) The activities of all officers and employees of the Service in providing conciliation assistance shall be conducted in confidence and without publicity, and the Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held. No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he acted on behalf of the Service. Any officer or other employee of the Service, who shall make public in any manner whatever any information in violation of this subsection, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than one year.

(Pub. L. 88–352, title X, § 1003, July 2, 1964, 78 Stat. 267.)

§ 2000g–3. Reports to Congress

Subject to the provisions of sections 2000a–4 and 2000g–2(b) of this title, the Director shall, on or before January 31 of each year, submit to the Congress a report of the activities of the Service during the preceding fiscal year.

(Pub. L. 88–352, title X, § 1004, July 2, 1964, 78 Stat. 267.)

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS

§ 2000h. Criminal contempt proceedings: trial by jury, criminal practice, penalties, exceptions, intent; civil contempt proceedings

In any proceeding for criminal contempt arising under title II, III, IV, V, VI, or VII of this Act, the accused, upon demand therefor, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than $1,000 or imprisoned for more than six months.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court. No person shall be convicted of criminal contempt hereunder unless the act or omission constituting such contempt shall have been intentional, as required in other cases of criminal contempt.

Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

(Pub. L. 88–352, title XI, § 1101, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

Title II, III, IV, V, VI, or VII of this Act, referred to in text, mean title II, III, IV, V, VI, or VII of Pub. L. 88–352, July 2, 1964, 78 Stat. 243, as amended. Titles II, III, and IV are classified generally to subchapters II (§ 2000a et seq.), III (§ 2000b et seq.), and IV (§ 2000c et seq.) of this chapter. Title V amended sections 1975a to 1975d of this title. Title VI enacted sections 2000d to 2000d–4 of this title. Title VII enacted sections 2000e to 2000e–15 of this title, amended sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, and enacted provisions set out as a note under section 2000e of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 2000h–1. Double jeopardy; specific crimes and criminal contempts

No person should be put twice in jeopardy under the laws of the United States for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime under the laws of the United States shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime under the laws of the United States based upon the same act or omission.

(Pub. L. 88–352, title XI, § 1102, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 2000h–2. Intervention by Attorney General; denial of equal protection on account of race, color, religion, sex or national origin

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

(Pub. L. 88–352, title IX, § 902, July 2, 1964, 78 Stat. 266; Pub. L. 92–318, title IX, § 906(a), June 23, 1972, 86 Stat. 375.)

AMENDMENTS

1972—Pub. L. 92–318 inserted ''sex'' after ''religion,''.

§ 2000h–3. Construction of provisions not to affect authority of Attorney General, etc., to institute or intervene in actions or proceedings

Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

(Pub. L. 88–352, title XI, § 1103, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 2000h–4. Construction of provisions not to exclude operation of State laws and not to invalidate consistent State laws

Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which

any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

(Pub. L. 88–352, title XI, § 1104, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 2000h–5. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

(Pub. L. 88–352, title XI, § 1105, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 2000h–6. Separability

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Pub. L. 88–352, title XI, § 1106, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

This Act and the Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CHAPTER 21A—PRIVACY PROTECTION

SUBCHAPTER I—FIRST AMENDMENT PRIVACY PROTECTION

PART A—UNLAWFUL ACTS

Sec.
2000aa. Searches and seizures by government officers and employees in connection with investigation or prosecution of criminal offenses.

PART B—REMEDIES, EXCEPTIONS, AND DEFINITIONS

2000aa–5. Border and customs searches.
2000aa–6. Civil actions by aggrieved persons.
2000aa–7. Definitions.

SUBCHAPTER II—ATTORNEY GENERAL GUIDELINES

2000aa–11. Guidelines for Federal officers and employees.
2000aa–12. Binding nature of guidelines; disciplinary actions for violations; legal proceedings for non-compliance prohibited.

SUBCHAPTER I—FIRST AMENDMENT PRIVACY PROTECTION

PART A—UNLAWFUL ACTS

§ 2000aa. Searches and seizures by government officers and employees in connection with investigation or prosecution of criminal offenses

(a) Work product materials

Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate: *Provided, however*, That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, or section 2274, 2275, or 2277 of this title, or section 783 of title 50, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18); or

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.

(b) Other documents

Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize documentary materials, other than work product materials, possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to

otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate: *Provided, however*, That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, or section 2274, 2275, or 2277 of this title, or section 783 of title 50, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18);

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being;

(3) there is reason to believe that the giving of notice pursuant to a subpena duces tecum would result in the destruction, alteration, or concealment of such materials; or

(4) such materials have not been produced in response to a court order directing compliance with a subpena duces tecum, and—

(A) all appellate remedies have been exhausted; or

(B) there is reason to believe that the delay in an investigation or trial occasioned by further proceedings relating to the subpena would threaten the interests of justice.

(c) Objections to court ordered subpoenas; affidavits

In the event a search warrant is sought pursuant to paragraph (4)(B) of subsection (b) of this section, the person possessing the materials shall be afforded adequate opportunity to submit an affidavit setting forth the basis for any contention that the materials sought are not subject to seizure.

(Pub. L. 96–440, title I, § 101, Oct. 13, 1980, 94 Stat. 1879; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 121[6]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–30.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–208, § 101(a) [title I, § 121[6(1)]], inserted '', or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18'' before parenthesis at end.

Subsec. (b)(1). Pub. L. 104–208, § 101(a) [title I, § 121[6(2)]], inserted '', or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18'' before parenthesis at end.

EFFECTIVE DATE

Section 108 of title I of Pub. L. 96–440 provided that: ''The provisions of this title [enacting this subchapter] shall become effective on January 1, 1981, except that insofar as such provisions are applicable to a State or any governmental unit other than the United States, the provisions of this title shall become effective one year from the date of enactment of this Act [Oct. 13, 1980].''

SHORT TITLE

Section 1 of Pub. L. 96–440 provided: ''That this Act [enacting this chapter and provisions set out as notes under this section] may be cited as the 'Privacy Protection Act of 1980'.''

PART B—REMEDIES, EXCEPTIONS, AND DEFINITIONS

§ 2000aa–5. Border and customs searches

This chapter shall not impair or affect the ability of a government officer or employee, pursuant to otherwise applicable law, to conduct searches and seizures at the borders of, or at international points of, entry into the United States in order to enforce the customs laws of the United States.

(Pub. L. 96–440, title I, § 105, Oct. 13, 1980, 94 Stat. 1880.)

§ 2000aa–6. Civil actions by aggrieved persons

(a) Right of action

A person aggrieved by a search for or seizure of materials in violation of this chapter shall have a civil cause of action for damages for such search or seizure—

(1) against the United States, against a State which has waived its sovereign immunity under the Constitution to a claim for damages resulting from a violation of this chapter, or against any other governmental unit, all of which shall be liable for violations of this chapter by their officers or employees while acting within the scope or under color of their office or employment; and

(2) against an officer or employee of a State who has violated this chapter while acting within the scope or under color of his office or employment, if such State has not waived its sovereign immunity as provided in paragraph (1).

(b) Good faith defense

It shall be a complete defense to a civil action brought under paragraph (2) of subsection (a) of this section that the officer or employee had a reasonable good faith belief in the lawfulness of his conduct.

(c) Official immunity

The United States, a State, or any other governmental unit liable for violations of this chapter under subsection (a)(1) of this section, may not assert as a defense to a claim arising under this chapter the immunity of the officer or employee whose violation is complained of or his reasonable good faith belief in the lawfulness of his conduct, except that such a defense may be asserted if the violation complained of is that of a judicial officer.

(d) Exclusive nature of remedy

The remedy provided by subsection (a)(1) of this section against the United States, a State, or any other governmental unit is exclusive of any other civil action or proceeding for conduct constituting a violation of this chapter, against the officer or employee whose violation gave rise to the claim, or against the estate of such officer or employee.

(e) Admissibility of evidence

Evidence otherwise admissible in a proceeding shall not be excluded on the basis of a violation of this chapter.

(f) Damages; costs and attorneys' fees

A person having a cause of action under this section shall be entitled to recover actual damages but not less than liquidated damages of $1,000, and such reasonable attorneys' fees and other litigation costs reasonably incurred as the court, in its discretion, may award: *Provided, however*, That the United States, a State, or any other governmental unit shall not be liable for interest prior to judgment.

(g) Attorney General; claims settlement; regulations

The Attorney General may settle a claim for damages brought against the United States under this section, and shall promulgate regulations to provide for the commencement of an administrative inquiry following a determination of a violation of this chapter by an officer or employee of the United States and for the imposition of administrative sanctions against such officer or employee, if warranted.

(h) Jurisdiction

The district courts shall have original jurisdiction of all civil actions arising under this section.

(Pub. L. 96–440, title I, § 106, Oct. 13, 1980, 94 Stat. 1880.)

§ 2000aa–7. Definitions

(a) ''Documentary materials'', as used in this chapter, means materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, motion picture films, negatives, video tapes, audio tapes, and other mechanically, magentically[1] or electronically recorded cards, tapes, or discs, but does not include contraband or the fruits of a crime or things otherwise criminally possessed, or property designed or intended for use, or which is or has been used as, the means of committing a criminal offense.

(b) ''Work product materials'', as used in this chapter, means materials, other than contraband or the fruits of a crime or things otherwise criminally possessed, or property designed or intended for use, or which is or has been used, as the means of committing a criminal offense, and—

(1) in anticipation of communicating such materials to the public, are prepared, produced, authored, or created, whether by the person in possession of the materials or by any other person;

(2) are possessed for the purposes of communicating such materials to the public; and

(3) include mental impressions, conclusions, opinions, or theories of the person who prepared, produced, authored, or created such material.

(c) ''Any other governmental unit'', as used in this chapter, includes the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any local government, unit of local government, or any unit of State government.

(Pub. L. 96–440, title I, § 107, Oct. 13, 1980, 94 Stat. 1881.)

SUBCHAPTER II—ATTORNEY GENERAL GUIDELINES

§ 2000aa–11. Guidelines for Federal officers and employees

(a) Procedures to obtain documentary evidence; protection of certain privacy interests

The Attorney General shall, within six months of October 13, 1980, issue guidelines for the procedures to be employed by any Federal officer or employee, in connection with the investigation or prosecution of an offense, to obtain documentary materials in the private possession of a person when the person is not reasonably believed to be a suspect in such offense or related by blood or marriage to such a suspect, and when the materials sought are not contraband or the fruits or instrumentalities of an offense. The Attorney General shall incorporate in such guidelines—

(1) a recognition of the personal privacy interests of the person in possession of such documentary materials;

(2) a requirement that the least intrusive method or means of obtaining such materials be used which do not substantially jeopardize the availability or usefulness of the materials sought to be obtained;

(3) a recognition of special concern for privacy interests in cases in which a search or seizure for such documents would intrude upon a known confidential relationship such as that which may exist between clergyman and parishioner; lawyer and client; or doctor and patient; and

(4) a requirement that an application for a warrant to conduct a search governed by this subchapter be approved by an attorney for the government, except that in an emergency situation the application may be approved by another appropriate supervisory official if within 24 hours of such emergency the appropriate United States Attorney is notified.

(b) Use of search warrants; reports to Congress

The Attorney General shall collect and compile information on, and report annually to the Committees on the Judiciary of the Senate and the House of Representatives on the use of search warrants by Federal officers and employees for documentary materials described in subsection (a)(3) of this section.

(Pub. L. 96–440, title II, § 201, Oct. 13, 1980, 94 Stat. 1882.)

[1] So in original. Probably should be ''magnetically''.

§ 2000aa–12. Binding nature of guidelines; disciplinary actions for violations; legal proceedings for non-compliance prohibited

Guidelines issued by the Attorney General under this subchapter shall have the full force and effect of Department of Justice regulations and any violation of these guidelines shall make the employee or officer involved subject to appropriate administrative disciplinary action. However, an issue relating to the compliance, or the failure to comply, with guidelines issued pursuant to this subchapter may not be litigated, and a court may not entertain such an issue as the basis for the suppression or exclusion of evidence.

(Pub. L. 96–440, title II, § 202, Oct. 13, 1980, 94 Stat. 1883.)

CHAPTER 21B—RELIGIOUS FREEDOM RESTORATION

Sec.
2000bb. Congressional findings and declaration of purposes.
2000bb–1. Free exercise of religion protected.
2000bb–2. Definitions.
2000bb–3. Applicability.
2000bb–4. Establishment clause unaffected.

§ 2000bb. Congressional findings and declaration of purposes

(a) Findings

The Congress finds that—

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws ''neutral'' toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) Purposes

The purposes of this chapter are—

(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

(Pub. L. 103–141, § 2, Nov. 16, 1993, 107 Stat. 1488.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 103–141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 1 of Pub. L. 103–141 provided that: ''This Act [enacting this chapter and amending section 1988 of this title and section 504 of Title 5, Government Organization and Employees] may be cited as the 'Religious Freedom Restoration Act of 1993'.''

§ 2000bb–1. Free exercise of religion protected

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(Pub. L. 103–141, § 3, Nov. 16, 1993, 107 Stat. 1488.)

§ 2000bb–2. Definitions

As used in this chapter—

(1) the term ''government'' includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity;

(2) the term ''covered entity'' means the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term ''demonstrates'' means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term ''exercise of religion'' means religious exercise, as defined in section 2000cc–5 of this title.

(Pub. L. 103–141, § 5, Nov. 16, 1993, 107 Stat. 1489; Pub. L. 106–274, § 7(a), Sept. 22, 2000, 114 Stat. 806.)

AMENDMENTS

2000—Par. (1). Pub. L. 106–274, § 7(a)(1), substituted ''or of a covered entity'' for ''a State, or a subdivision of a State''.

Par. (2). Pub. L. 106–274, § 7(a)(2), substituted ''term 'covered entity' means'' for ''term 'State' includes''.

Par. (4). Pub. L. 106–274, § 7(a)(3), substituted ''religious exercise, as defined in section 2000cc–5 of this title'' for ''the exercise of religion under the First Amendment to the Constitution''.

§ 2000bb–3. Applicability

(a) In general

This chapter applies to all Federal law, and the implementation of that law, whether statu-

tory or otherwise, and whether adopted before or after November 16, 1993.

(b) Rule of construction

Federal statutory law adopted after November 16, 1993, is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.

(c) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(Pub. L. 103–141, § 6, Nov. 16, 1993, 107 Stat. 1489; Pub. L. 106–274, § 7(b), Sept. 22, 2000, 114 Stat. 806.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–274 struck out ''and State'' after ''Federal''.

§ 2000bb–4. Establishment clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the ''Establishment Clause''). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. As used in this section, the term ''granting'', used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(Pub. L. 103–141, § 7, Nov. 16, 1993, 107 Stat. 1489.)

CHAPTER 21C—PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

Sec.	
2000cc.	Protection of land use as religious exercise.
2000cc–1.	Protection of religious exercise of institutionalized persons.
2000cc–2.	Judicial relief.
2000cc–3.	Rules of construction.
2000cc–4.	Establishment Clause unaffected.
2000cc–5.	Definitions.

§ 2000cc. Protection of land use as religious exercise

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application

This subsection applies in any case in which—

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits

No government shall impose or implement a land use regulation that—

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

(Pub. L. 106–274, § 2, Sept. 22, 2000, 114 Stat. 803.)

SHORT TITLE

Pub. L. 106–274, § 1, Sept. 22, 2000, 114 Stat. 803, provided that: ''This Act [enacting this chapter and amending sections 1988, 2000bb–2 and 2000bb–3 of this title] may be cited as the 'Religious Land Use and Institutionalized Persons Act of 2000' ''.

§ 2000cc–1. Protection of religious exercise of institutionalized persons

(a) General rule

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) Scope of application

This section applies in any case in which—

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

(Pub. L. 106–274, § 3, Sept. 22, 2000, 114 Stat. 804.)

§ 2000cc–2. Judicial relief

(a) Cause of action

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) Burden of persuasion

If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) Full faith and credit

Adjudication of a claim of a violation of section 2000cc of this title in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) Omitted

(e) Prisoners

Nothing in this chapter shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) Authority of United States to enforce this chapter

The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) Limitation

If the only jurisdictional basis for applying a provision of this chapter is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

(Pub. L. 106–274, § 4, Sept. 22, 2000, 114 Stat. 804.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 106–274, Sept. 22, 2000, 114 Stat. 803, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000cc of this title and Tables.

The Prison Litigation Reform Act of 1995, referred to in subsec. (e), is Pub. L. 104–134, title I, § 101(a) [title VIII], Apr. 26, 1996, 110 Stat. 1321, 1321–66, as amended. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 3601 of Title 18, Crimes and Criminal Procedure, and Tables.

CODIFICATION

Section is comprised of section 4 of Pub. L. 106–274. Subsec. (d) of section 4 of Pub. L. 106–274 amended section 1988(b) of this title.

§ 2000cc–3. Rules of construction

(a) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(b) Religious exercise not regulated

Nothing in this chapter shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) Claims to funding unaffected

Nothing in this chapter shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) Other authority to impose conditions on funding unaffected

Nothing in this chapter shall—

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this chapter.

(e) Governmental discretion in alleviating burdens on religious exercise

A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) Effect on other law

With respect to a claim brought under this chapter, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this chapter.

(g) Broad construction

This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.

(h) No preemption or repeal

Nothing in this chapter shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this chapter.

(i) Severability

If any provision of this chapter or of an amendment made by this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, the amendments made by this chapter, and the application of the provision to any other person or circumstance shall not be affected.

(Pub. L. 106–274, § 5, Sept. 22, 2000, 114 Stat. 805.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 106–274, Sept. 22, 2000, 114 Stat. 803, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000cc of this title and Tables.

§ 2000cc–4. Establishment Clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the ''Establishment Clause''). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. In this section, the term ''granting'', used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(Pub. L. 106–274, § 6, Sept. 22, 2000, 114 Stat. 806.)

§ 2000cc–5. Definitions

In this chapter:

(1) Claimant

The term ''claimant'' means a person raising a claim or defense under this chapter.

(2) Demonstrates

The term ''demonstrates'' means meets the burdens of going forward with the evidence and of persuasion.

(3) Free Exercise Clause

The term ''Free Exercise Clause'' means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government

The term ''government''—

(A) means—

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc–2(b) and 2000cc–3 of this title, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation

The term ''land use regulation'' means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term ''program or activity'' means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d–4a of this title.

(7) Religious exercise

(A) In general

The term ''religious exercise'' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) Rule

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

(Pub. L. 106–274, § 8, Sept. 22, 2000, 114 Stat. 806.)

CHAPTER 21D—DETAINEE TREATMENT

Sec.
2000dd. Prohibition on cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the United States Government.
2000dd–0. Additional prohibition on cruel, inhuman, or degrading treatment or punishment.
2000dd–1. Protection of United States Government personnel engaged in authorized interrogations.

§ 2000dd. Prohibition on cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the United States Government

(a) In general

No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(b) Construction

Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, in-

human, or degrading treatment or punishment under this section.

(c) Limitation on supersedure

The provisions of this section shall not be superseded, except by a provision of law enacted after December 30, 2005, which specifically repeals, modifies, or supersedes the provisions of this section.

(d) Cruel, inhuman, or degrading treatment or punishment defined

In this section, the term ''cruel, inhuman, or degrading treatment or punishment'' means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(Pub. L. 109–148, div. A, title X, § 1003, Dec. 30, 2005, 119 Stat. 2739; Pub. L. 109–163, div. A, title XIV, § 1403, Jan. 6, 2006, 119 Stat. 3475.)

REFERENCES IN TEXT

The date ''December 30, 2005'', referred to in subsec. (c), was in the original ''the date of the enactment of this Act'' and was translated as the date of enactment of Pub. L. 109–148.

CODIFICATION

Pub. L. 109–148 and Pub. L. 109–163 enacted identical sections.

SHORT TITLE

Pub. L. 109–148, div. A, title X, § 1001, Dec. 30, 2005, 119 Stat. 2739, and Pub. L. 109–163, div. A, title XIV, § 1401, Jan. 6, 2006, 119 Stat. 3474, provided that: ''This title [enacting this chapter, amending section 2241 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under section 801 of Title 10, Armed Forces] may be cited as the 'Detainee Treatment Act of 2005'.''

§ 2000dd–0. Additional prohibition on cruel, inhuman, or degrading treatment or punishment

(1) In general

No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) Cruel, inhuman, or degrading treatment or punishment defined

In this section, the term ''cruel, inhuman, or degrading treatment or punishment'' means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(3) Compliance

The President shall take action to ensure compliance with this section, including through the establishment of administrative rules and procedures.

(Pub. L. 109–366, § 6(c), Oct. 17, 2006, 120 Stat. 2635.)

CODIFICATION

Section was enacted as part of the Military Commissions Act of 2006, and not as part of the Detainee Treatment Act of 2005 which comprises this chapter.

§ 2000dd–1. Protection of United States Government personnel engaged in authorized interrogations

(a) Protection of United States Government personnel

In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person, arising out of the officer, employee, member of the Armed Forces, or other agent's engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

(b) Counsel

The United States Government shall provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution or investigation arising out of practices described in that subsection, whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10.

(Pub. L. 109–148, div. A, title X, § 1004, Dec. 30, 2005, 119 Stat. 2740; Pub. L. 109–163, div. A, title XIV, § 1404, Jan. 6, 2006, 119 Stat. 3475; Pub. L. 109–366, § 8(a), Oct. 17, 2006, 120 Stat. 2636.)

CODIFICATION

Pub. L. 109–148 and Pub. L. 109–163 enacted identical sections. The section enacted by Pub. L. 109–148, but

not the section enacted by Pub. L. 109–163, was amended by Pub. L. 109–366, see 2006 Amendment notes below. The text of this section is based on the text of section 1004 of Pub. L. 109–148 as amended by Pub. L. 109–366.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–366, § 8(a)(3), which directed the insertion of ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection'', was executed by making insertion after ''described in that subsection,'', to reflect the probable intent of Congress.

Pub. L. 109–366, § 8(a)(1), (2), substituted ''shall provide'' for ''may provide'' and inserted ''or investigation'' after ''criminal prosecution''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–366, § 8(b), Oct. 17, 2006, 120 Stat. 2636, provided that: ''Section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution that—

''(1) relates to the detention and interrogation of aliens described in such section;

''(2) is grounded in section 2441(c)(3) of title 18, United States Code; and

''(3) relates to actions occurring between September 11, 2001, and December 30, 2005.''

CHAPTER 22—INDIAN HOSPITALS AND HEALTH FACILITIES

SUBCHAPTER I—MAINTENANCE AND OPERATION

Sec.
2001. Hospitals and health facilities transferred to Public Health Service; restriction on closing hospitals.
2002. Transfer of hospitals and facilities to State or private institutions; conditions and restrictions; failure to meet requirements.
2003. Regulations.
2004. Transfer of personnel, property, records, monies.
2004a. Sanitation facilities.
2004b. Implementation of education, hospital and health facility, etc., contracts and grants by Public Health Service personnel; request for detail of personnel.

SUBCHAPTER II—CONSTRUCTION OF HEALTH FACILITIES AND COMMUNITY HOSPITALS

2005. Financial assistance by Surgeon General.
2005a. Amount of assistance; determination of costs.
2005b. Conditions of assistance.
2005c. Payments.
2005d. Eligibility of assisted project for aid under other acts; excluded costs.
2005e. Definitions.
2005f. Supervision or control of assisted hospitals.

SUBCHAPTER I—MAINTENANCE AND OPERATION

§ 2001. Hospitals and health facilities transferred to Public Health Service; restriction on closing hospitals

(a) All functions, responsibilities, authorities, and duties of the Department of the Interior, the Bureau of Indian Affairs, Secretary of the Interior, and the Commissioner of Indian Affairs relating to the maintenance and operation of hospital and health facilities for Indians, and the conservation of the health of Indians, are transferred to, and shall be administered by, the Surgeon General of the United States Public Health Service, under the supervision and direction of the Secretary of Health and Human Services: *Provided*, That hospitals now in operation for a specific tribe or tribes of Indians shall not be closed prior to July 1, 1956, without the consent of the governing body of the tribe or its organized council.

(b) In carrying out his functions, responsibilities, authorities, and duties under this subchapter, the Secretary is authorized, with the consent of the Indian people served, to contract with private or other non-Federal health agencies or organizations for the provision of health services to such people on a fee-for-service basis or on a prepayment or other similar basis.

(Aug. 5, 1954, ch. 658, § 1, 68 Stat. 674; Pub. L. 93–222, § 6(a), Dec. 29, 1973, 87 Stat. 935; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1973—Pub. L. 93–222 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section 6 of act Aug. 5, 1954, as amended by Pub. L. 86–121, § 2, July 31, 1959, 73 Stat. 268, provided that: ''Sections 1 to 5, inclusive, of this Act [enacting this subchapter and repealing sections 444 to 449 of Title 25, Indians] shall take effect July 1, 1959.''

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2002. Transfer of hospitals and facilities to State or private institutions; conditions and restrictions; failure to meet requirements

Whenever the health needs of the Indians can be better met thereby, the Secretary of Health and Human Services is authorized in his discretion to enter into contracts with any State, Territory, or political subdivision thereof, or any private nonprofit corporation, agency or institution providing for the transfer by the United States Public Health Service of Indian hospitals or health facilities, including initial operating equipment and supplies.

It shall be a condition of such transfer that all facilities transferred shall be available to meet the health needs of the Indians and that such health needs shall be given priority over those of the non-Indian population. No hospital or health facility that has been constructed or maintained for a specific tribe of Indians, or for a specific group of tribes, shall be transferred by the Secretary of Health and Human Services to a non-Indian entity or organization under this subchapter unless such action has been approved by the governing body of the tribe, or by the governing bodies of a majority of the tribes, for which such hospital or health facility has been constructed or maintained: *Provided*, That if, following such transfer by the United States Public Health Service, the Secretary of Health and Human Services finds the hospital or health facility transferred under this section is not thereafter serving the need of the Indians, the

Secretary of Health and Human Services shall notify those charged with management thereof, setting forth needed improvements, and in the event such improvements are not made within a time to be specified, shall immediately assume management and operation of such hospital or health facility.

(Aug. 5, 1954, ch. 658, § 2, 68 Stat. 674; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2003. Regulations

The Secretary of Health and Human Services is also authorized to make such other regulations as he deems desirable to carry out the provisions of this subchapter.

(Aug. 5, 1954, ch. 658, § 3, 68 Stat. 674; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2004. Transfer of personnel, property, records, monies

The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available), which the Director of the Office of Management and Budget shall determine to relate primarily to the functions transferred to the Public Health Service of the Department of Health and Human Services hereunder, are transferred for use in the administration of the functions so transferred. Any of the personnel transferred pursuant to this subchapter which the transferee agency shall find to be in excess of the personnel necessary for the administration of the functions transferred to such agency shall be retransferred under existing law to other positions in the Government or separated from the service.

(Aug. 5, 1954, ch. 658, § 4, 68 Stat. 674; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970, redesignated Bureau of the Budget as Office of Management and Budget.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2004a. Sanitation facilities

(a) Powers of Surgeon General

In carrying out his functions under this subchapter with respect to the provision of sanitation facilities and services, the Surgeon General is authorized—

(1) to construct, improve, extend, or otherwise provide and maintain, by contract or otherwise, essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures, for Indian homes, communities, and lands;

(2) to acquire lands, or rights or interests therein, including sites, rights-of-way, and easements, and to acquire rights to the use of water, by purchase, lease, gift, exchange, or otherwise, when necessary for the purposes of this section, except that no lands or rights or interests therein may be acquired from an Indian tribe, band, group, community, or individual other than by gift or for nominal consideration, if the facility for which such lands or rights or interests therein are acquired is for the exclusive benefit of such tribe, band, group, community, or individual, respectively;

(3) to make such arrangements and agreements with appropriate public authorities and nonprofit organizations or agencies and with the Indians to be served by such sanitation facilities (and any other person so served) regarding contributions toward the construction, improvement, extension and provision thereof, and responsibilities for maintenance thereof, as in his judgment are equitable and will best assure the future maintenance of facilities in an effective and operating condition; and

(4) to transfer any facilities provided under this section, together with appurtenant interests in land, with or without a money consideration, and under such terms and conditions as in his judgment are appropriate, having regard to the contributions made and the maintenance responsibilities undertaken, and the special health needs of the Indians concerned, to any State or Territory or subdivision or public authority thereof, or to any Indian tribe, group, band, or community or, in the case of domestic appurtenances and fixtures, to any one or more of the occupants of the Indian home served thereby.

(b) Transfer and reversion of lands

The Secretary of the Interior is authorized to transfer to the Surgeon General for use in carrying out the purposes of this section such interest and rights in federally owned lands under the ju-

risdiction of the Department of the Interior, and in Indian-owned lands that either are held by the United States in trust for Indians or are subject to a restriction against alienation imposed by the United States, including appurtenances and improvements thereto, as may be requested by the Surgeon General. Any land or interest therein, including appurtenances and improvements to such land, so transferred shall be subject to disposition by the Surgeon General in accordance with paragraph (4) of subsection (a) of this section: *Provided*, That, in any case where a beneficial interest in such land is in any Indian, or Indian tribe, band, or group, the consent of such beneficial owner to any such transfer or disposition shall first be obtained: *Provided further*, That where deemed appropriate by the Secretary of the Interior provisions shall be made for a reversion of title to such land if it ceases to be used for the purpose for which it is transferred or disposed.

(c) Project consultation and participation

The Surgeon General shall consult with, and encourage the participation of, the Indians concerned, States and political subdivisions thereof, in carrying out the provisions of this section.

(Aug. 5, 1954, ch. 658, § 7, as added Pub. L. 86–121, § 1, July 31, 1959, 73 Stat. 267.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2004b. Implementation of education, hospital and health facility, etc., contracts and grants by Public Health Service personnel; request for detail of personnel

In accordance with subsection (d) of section 215 of this title, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to sections 450f and 450h of title 25.

(Aug. 5, 1954, ch. 658, § 8, as added Pub. L. 93–638, title I, § 104(b), formerly § 105(b), Jan. 4, 1975, 88 Stat. 2208; renumbered § 104(b) and amended Pub. L. 100–472, title II, § 203(a), (c), Oct. 5, 1988, 102 Stat. 2290.)

AMENDMENTS

1988—Pub. L. 100–472, which directed amendment of this section by substituting ''sections 450f and 450h'' for ''sections 450f, 450g, and 450h'' was executed by making the substitution for ''section 450f, 450g, or 450h'', to reflect the probable intent of Congress.

SUBCHAPTER II—CONSTRUCTION OF HEALTH FACILITIES AND COMMUNITY HOSPITALS

§ 2005. Financial assistance by Surgeon General

Whenever the Surgeon General of the Public Health Service, in carrying out his functions under subchapter I of this chapter with respect to the provision of health services to Indians in any particular area, determines, after consultation with such Indians, that the provision of financial assistance to one or more public or other nonprofit agencies or organizations for the construction of a community hospital constitutes a method of making needed hospital facilities available for such Indians which is more desirable and effective than direct Federal construction, he may provide such financial assistance from funds available for the construction of Indian health facilities for such Indians.

(Pub. L. 85–151, § 1, Aug. 16, 1957, 71 Stat. 370.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2005a. Amount of assistance; determination of costs

The amount of such financial assistance shall not exceed that portion of the reasonable cost of the construction project which is attributable to the Indian health needs, as determined by the Surgeon General: *Provided*, That in determining, for the purposes of this subchapter, the portion of the cost of the construction project attributable to Indian health needs, the Surgeon General shall take into account only those categories of Indians for which hospital and medical care, including outpatient care and field health services, is being provided by or at the expense of the Public Health Service on August 16, 1957.

(Pub. L. 85–151, § 2, Aug. 16, 1957, 71 Stat. 371.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2005b. Conditions of assistance

As a condition to providing assistance under section 2005 of this title, the Surgeon General shall—

(a) require plans and specifications meeting such standards of construction and equipment as he may prescribe, and

(b) obtain such assurances and agreements as in his judgment are equitable in the light of the financial assistance provided under this subchapter and are necessary to assure the availability of the facility for the provision of hospital and medical care to Indians and to assure that the hospital is operated in compliance with State standards for operation and maintenance of hospitals which receive Fed-

eral aid under title VI of the Public Health Service Act [42 U.S.C. 291 et seq.].

(Pub. L. 85–151, § 3, Aug. 16, 1957, 71 Stat. 371.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in par. (b), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title VI of the Act is classified generally to subchapter IV (§ 291 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2005c. Payments

The Surgeon General shall make payments under section 2005 of this title in advance or by way of reimbursement and in such installments consistent with construction progress, as he may determine.

(Pub. L. 85–151, § 4, Aug. 16, 1957, 71 Stat. 371.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2005d. Eligibility of assisted project for aid under other acts; excluded costs

Neither assistance provided under this subchapter for meeting part of the cost of construction of a hospital project, nor the giving of any assurance required as a condition of such assistance, shall be construed as affecting in any way the eligibility of such project for aid under title VI of the Public Health Service Act [42 U.S.C. 291 et seq.] or any other Federal Act authorizing financial aid in the construction of such project, but construction costs met with Federal funds made available under this subchapter shall not be included in the cost of construction in which the Federal Government shares under such title VI or other Federal Act.

(Pub. L. 85–151, § 5, Aug. 16, 1957, 71 Stat. 371.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title VI of the Act is classified generally to subchapter IV (§ 291 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

§ 2005e. Definitions

As used in this subchapter:

(a) ''Hospital'' includes diagnostic or treatment centers and general hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care;

(b) ''Diagnostic or treatment center'' means a facility for the diagnosis or diagnosis and treatment of ambulatory patients—

(1) which is operated in connection with a hospital, or

(2) in which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State, or, in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State.

(c) ''Nonprofit'' means owned or operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(d) ''Construction'' means construction of new buildings, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings (including medical transportation facilities), including architects and engineering fees, but excluding legal fees, the cost of off-site improvements and the cost of the acquisition of land.

(Pub. L. 85–151, § 6, Aug. 16, 1957, 71 Stat. 371.)

§ 2005f. Supervision or control of assisted hospitals

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any hospital, with respect to which any funds have been or may be expended under this subchapter.

(Pub. L. 85–151, § 7, Aug. 16, 1957, 71 Stat. 372.)

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Division A—Atomic Energy

SUBCHAPTER I—GENERAL PROVISIONS

§ 2011. Congressional declaration of policy

Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

(a) the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security; and

(b) the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

(Aug. 1, 1946, ch. 724, title I, § 1, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 1 of act Aug. 1, 1946, ch. 724, 60 Stat. 755, which was classified to section 1801 of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–58, title VI, § 601, Aug. 8, 2005, 119 Stat. 779, provided that: ''This subtitle [subtitle A (§§ 601–610) of title VI of Pub. L. 109–58, amending sections 2210 and 2282a of this title and enacting provisions set out as notes under sections 2210 and 2282a of this title] may be cited as the 'Price-Anderson Amendments Act of 2005'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–245, § 1, July 10, 2000, 114 Stat. 501, provided that: ''This Act [enacting section 285a–9 of this title and enacting and amending provisions set out as notes under section 2210 of this title] may be cited as the 'Radiation Exposure Compensation Act Amendments of 2000'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–134, title III, § 3101, Apr. 26, 1996, 110 Stat. 1321–335, provided that: ''This subchapter [subch. A (§§ 3101–3117) of ch. 1 of title III of Pub. L. 104–134, enacting sections 2297h to 2297h–13 of this title, amending sections 2014, 2239, 2243, 2282, 2296b–7, 2297f, and 2297f–1 of this title and section 9101 of Title 31, Money and Finance, repealing sections 2297 to 2297e–7 of this title, and enacting provisions set out as notes under section 2297 of this title and section 9101 of Title 31] may be cited as the 'USEC Privatization Act'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–408, § 1, Aug. 20, 1988, 102 Stat. 1066, provided that: ''This Act [enacting section 2282a of this title, amending sections 2014, 2210, and 2273 of this title,

and enacting provisions set out as notes under sections 2014 and 2210 of this title] may be cited as the 'Price-Anderson Amendments Act of 1988'.''

SHORT TITLE OF 1964 AMENDMENT

Pub. L. 88–489, § 21, Aug. 26, 1964, 78 Stat. 607, provided that: ''This Act [amending sections 2012, 2013, 2073 to 2078, 2135, 2153, 2201, 2221, 2233, and 2234 of this title, repealing section 2072 of this title, and enacting provisions set out as notes under sections 2012 and 2072 of this title] may be cited as the 'Private Ownership of Special Nuclear Materials Act'.''

SHORT TITLE OF 1958 AMENDMENT

Pub. L. 85–846, § 1, Aug. 28, 1958, 72 Stat. 1084, provided: ''That this Act [enacting sections 2291 to 2296 of this title] may be cited as the 'EURATOM Cooperation Act of 1958'.''

SHORT TITLE

Section 291 of title I of act Aug. 1, 1946, as added by act Aug. 30, 1954, § 1; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, § 902(a)(8), 106 Stat. 2944, provided that: ''This Act [enacting this chapter and amending sections 1031(d) and 1032 of former Title 5, Executive Departments and Government Officers and Employees, and enacting provision set out as a note under section 2221 of this title] may be cited as the 'Atomic Energy Act of 1954'.''

SEPARABILITY

Section 281 of title I of act Aug. 1, 1946, as added by act Aug. 30, 1954, § 1; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, § 902(a)(8), 106 Stat. 2944, provided that: ''If any provision of this Act [enacting this chapter] or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.''

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2012. Congressional findings

The Congress of the United States makes the following findings concerning the development, use, and control of atomic energy:

(a) The development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security.

(b) Repealed. Pub. L. 88–489, § 1, Aug. 26, 1964, 78 Stat. 602.

(c) The processing and utilization of source, byproduct, and special nuclear material affect interstate and foreign commerce and must be regulated in the national interest.

(d) The processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.

(e) Source and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public.

(f) The necessity for protection against possible interstate damage occurring from the operation of facilities for the production or utilization of source or special nuclear material places the operation of those facilities in interstate commerce for the purposes of this chapter.

(g) Funds of the United States may be provided for the development and use of atomic energy under conditions which will provide for the common defense and security and promote the general welfare.

(h) Repealed. Pub. L. 88–489, § 2, Aug. 26, 1964, 78 Stat. 602.

(i) In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses.

(Aug. 1, 1946, ch. 724, title I, § 2, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921; amended Pub. L. 85–256, § 1, Sept. 2, 1957, 71 Stat. 576; Pub. L. 88–489, §§ 1, 2, Aug. 26, 1964, 78 Stat. 602; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 1 of act Aug. 1, 1946, ch. 724, 60 Stat. 755, which was classified to section 1801 of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1964—Subsec. (b). Pub. L. 88–489, § 1, struck out subsec. (b) which found that use of United States property by others must be regulated in national interest and in order to provide for common defense and security and to protect health and safety of public.

Subsec. (h). Pub. L. 88–489, § 2, struck out subsec. (h) which found it essential to common defense and security that title to all special nuclear material be in United States while such special nuclear material is within United States.

1957—Subsec. (i). Pub. L. 85–256 added subsec. (i).

CONTROL AND REGULATION POWERS OF UNITED STATES AND OF ATOMIC ENERGY COMMISSION UNAFFECTED BY PRIVATE OWNERSHIP OF SPECIAL NUCLEAR MATERIALS

Section 20 of Pub. L. 88–489 provided that: ''Nothing in this Act [amending this section and sections 2013, 2073 to 2078, 2135, 2153, 2201, 2233 and 2234 of this title, repealing section 2072 of this title, and enacting provisions set out as notes under this section and section 2072 of this title] shall be deemed to diminish existing authority of the United States, or of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended [this chapter], to regulate source, byproduct, and special nuclear material and production and utilization facilities, or to control such materials and facilities exported from the United States by imposition of governmental guarantees and security safeguards with respect thereto, in order to assure the common defense and security and to protect the health and safety of the public, or to reduce the responsibility of the Atomic Energy Commission to achieve such objectives.''

§ 2013. Purpose of chapter

It is the purpose of this chapter to effectuate the policies set forth above by providing for—

(a) a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress;

(b) a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress;

(c) a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons;

(d) a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public;

(e) a program of international cooperation to promote the common defense and security and to make available to cooperating nations the benefits of peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit; and

(f) a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be currently informed so as to take further legislative action as may be appropriate.

(Aug. 1, 1946, ch. 724, title I, § 3, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 922; amended Pub. L. 88–489, § 3, Aug. 26, 1964, 78 Stat. 602; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 1 of act Aug. 1, 1946, ch. 724, 60 Stat. 755, which was classified to section 1801 of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1964—Subsec. (c). Pub. L. 88–489 inserted ''whether owned by the Government or others'' and ''and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons''.

§ 2014. Definitions

The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this chapter:

(a) The term ''agency of the United States'' means the executive branch of the United States, or any Government agency, or the legislative branch of the United States, or any agency, committee, commission, office, or other establishment in the legislative branch, or the judicial branch of the United States, or any office, agency, committee, commission, or other establishment in the judicial branch.

(b) The term ''agreement for cooperation'' means any agreement with another nation or regional defense organization authorized or permitted by sections 2074, 2077, 2094, 2112, 2121(c), 2133, 2134, or 2164 of this title, and made pursuant to section 2153 of this title.

(c) The term ''atomic energy'' means all forms of energy released in the course of nuclear fission or nuclear transformation.

(d) The term ''atomic weapon'' means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

(e) The term ''byproduct material'' means—

(1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;

(3)(A) any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(B) any material that—

(i) has been made radioactive by use of a particle accelerator; and

(ii) is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(4) any discrete source of naturally occurring radioactive material, other than source material, that—

(A) the Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(B) before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

(f) The term ''Commission'' means the Atomic Energy Commission.

(g) The term ''common defense and security'' means the common defense and security of the United States.

(h) The term ''defense information'' means any information in any category determined by any Government agency authorized to classify information, as being information respecting, relating to, or affecting the national defense.

(i) The term ''design'' means (1) specifications, plans, drawings, blueprints, and other items of like nature; (2) the information contained therein; or (3) the research and development data pertinent to the information contained therein.

(j) The term ''extraordinary nuclear occurrence'' means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, and which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, ''offsite'' means away from ''the location'' or ''the contract location'' as defined in the applicable Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, indemnity agreement, entered into pursuant to section 2210 of this title.

(k) The term ''financial protection'' means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages.

(*l*) The term ''Government agency'' means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

(m) The term ''indemnitor'' means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, with respect to any obligation undertaken by it in indemnity agreement entered into pursuant to section 2210 of this title.

(n) The term ''international arrangement'' means any international agreement hereafter approved by the Congress or any treaty during the time such agreement or treaty is in full force and effect, but does not include any agreement for cooperation.

(*o*) The term ''Energy Committees'' means the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(p) The term ''licensed activity'' means an activity licensed pursuant to this chapter and covered by the provisions of section 2210(a) of this title.

(q) The term ''nuclear incident'' means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however*, That as the term is used in section 2210(*l*) of this title, it shall include any such occurrence outside the United States: *And provided further*, That as the term is used in section 2210(d) of this title, it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further*, That as the term is used in section 2210(c) of this title, it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to subchapters V, VI, VII, and IX of this division, which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission to another person licensed by the Nuclear Regulatory Commission.

(r) The term ''operator'' means any individual who manipulates the controls of a utilization or production facility.

(s) The term ''person'' means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(t) The term ''person indemnified'' means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in section 2210(c) of this title, and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 2210(d) of this title has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

(u) The term ''produce'', when used in relation to special nuclear material, means (1) to manu-

facture, make, produce, or refine special nuclear material; (2) to separate special nuclear material from other substances in which such material may be contained; or (3) to make or to produce new special nuclear material.

(v) The term ''production facility'' means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission. Except with respect to the export of a uranium enrichment production facility, such term as used in subchapters IX and XV of this division shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

(w) The term ''public liability'' means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation), except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections (a), (c), and (k) of section 2210 of this title, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. ''Public liability'' also includes damage to property of persons indemnified: *Provided*, That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

(x) The term ''research and development'' means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(y) The term ''Restricted Data'' means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 2162 of this title.

(z) The term ''source material'' means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 2091 of this title to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

(aa) The term ''special nuclear material'' means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 2071 of this title, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(bb) The term ''United States'' when used in a geographical sense includes all territories and possessions of the United States, the Canal Zone and Puerto Rico.

(cc) The term ''utilization facility'' means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

(dd) The terms ''high-level radioactive waste'' and ''spent nuclear fuel'' have the meanings given such terms in section 10101 of this title.

(ee) The term ''transuranic waste'' means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

(ff) The term ''nuclear waste activities'', as used in section 2210 of this title, means activities subject to an agreement of indemnification under subsection (d) of such section, that the Secretary of Energy is authorized to undertake, under this chapter or any other law, involving the storage, handling, transportation, treatment, or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96–164 (93 Stat. 1265).

(gg) The term ''precautionary evacuation'' means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is—

(1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and

(2) initiated by an official of a State or a political subdivision of a State, who is author-

ized by State law to initiate such an evacuation and who reasonably determined that such an evacuation was necessary to protect the public health and safety.

(hh) The term ''public liability action'', as used in section 2210 of this title, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 2210 of this title, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

(jj)[1] LEGAL COSTS.—As used in section 2210 of this title, the term ''legal costs'' means the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling, or defending claims or suits for damage arising under such section.

(Aug. 1, 1946, ch. 724, title I, § 11, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 922; amended Aug. 6, 1956, ch. 1015, § 1, 70 Stat. 1069; Pub. L. 85–256, § 3, Sept. 2, 1957, 71 Stat. 576; Pub. L. 85–602, § 1, Aug. 8, 1958, 72 Stat. 525; Pub. L. 87–206, §§ 2, 3, Sept. 6, 1961, 75 Stat. 476; Pub. L. 87–615, §§ 4, 5, Aug. 29, 1962, 76 Stat. 410; Pub. L. 89–645, § 1(a), Oct. 13, 1966, 80 Stat. 891; Pub. L. 94–197, § 1, Dec. 31, 1975, 89 Stat. 1111; Pub. L. 95–604, title II, § 201, Nov. 8, 1978, 92 Stat. 3033; Pub. L. 100–408, §§ 4(b)–5(b), 11(b), (d)(2), 16(a)(1), (b)(1), (2), (d)(1)–(3), Aug. 20, 1988, 102 Stat. 1069, 1070, 1076, 1078–1080; Pub. L. 101–575, § 5(a), Nov. 15, 1990, 104 Stat. 2835; renumbered title I and amended Pub. L. 102–486, title IX, § 902(a)(8), title XI, § 1102, Oct. 24, 1992, 106 Stat. 2944, 2955; Pub. L. 103–437, § 15(f)(1), Nov. 2, 1994, 108 Stat. 4592; Pub. L. 104–134, title III, § 3116(b)(1), Apr. 26, 1996, 110 Stat. 1321–349; Pub. L. 109–58, title VI, § 651(e)(1), Aug. 8, 2005, 119 Stat. 806.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (bb), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Section 213 of Public Law 96–164, referred to in subsec. (ff), is Pub. L. 96–164, title II, § 213, Dec. 29, 1979, 93 Stat. 1265, which is not classified to the Code.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 18 of act Aug. 1, 1946, ch. 724, 60 Stat. 774, which was classified to section 1818 of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–58 substituted ''means—'' for ''means'', realigned margins of pars. (1) and (2), and added pars. (3) and (4).

1996—Subsec. (v). Pub. L. 104–134, which directed the amendment of subsec. (v) by striking out ''or the construction and operation of a uranium enrichment facility using Atomic Vapor Laser Isotope Separation technology'', was executed by striking out ''or the construction and operation of a uranium enrichment production facility using Atomic Vapor Laser Isotope Separation technology'' before '', such term as used'', to reflect the probable intent of Congress.

1994—Subsec. (*o*). Pub. L. 103–437 substituted ''''Energy Committees' means the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives'' for ''''Joint Committee' means the Joint Committee on Atomic Energy''.

1992—Subsec. (v). Pub. L. 102–486 amended last sentence generally. Prior to amendment, last sentence read as follows: ''Except with respect to the export of a uranium enrichment production facility, such term as used in subchapters IX and XV of this division shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.''

1990—Subsec. (v). Pub. L. 101–575 inserted at end ''Except with respect to the export of a uranium enrichment production facility, such term as used in subchapters IX and XV of this chapter shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.''

1988—Subsecs. (j), (m). Pub. L. 100–408, § 16(b)(1), substituted ''Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,'' for ''Commission'' wherever appearing.

Subsec. (q). Pub. L. 100–408, § 16(d)(1), substituted ''section'' for ''subsection'' in three places, which for purposes of codification was translated as ''section'', thus requiring no change in text.

Pub. L. 100–408, § 16(a)(1), substituted ''Nuclear Regulatory Commission'' for ''Commission'' wherever appearing.

Subsec. (t). Pub. L. 100–408, § 16(d)(2), substituted ''section'' for ''subsection'' in two places, which for purposes of codification was translated as ''section'', thus requiring no change in text.

Pub. L. 100–408, § 16(b)(2), substituted ''Secretary of Energy'' for ''Commission'' in cl. (2).

Subsec. (w). Pub. L. 100–408, § 16(d)(3), substituted ''subsections (a), (c), and (k) of section 2210 of this title'' for ''section 2210(a), (c), and (k) of this title''.

Pub. L. 100–408, § 5(a), inserted ''or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation)'' after first reference to ''nuclear incident''.

Subsecs. (dd) to (ff). Pub. L. 100–408, § 4(b), added subsecs. (dd) to (ff).

Subsec. (gg). Pub. L. 100–408, § 5(b), added subsec. (gg).

Subsec. (hh). Pub. L. 100–408, § 11(b), added subsec. (hh).

Subsec. (jj). Pub. L. 100–408, § 11(d)(2), added subsec. (jj).

1978—Subsec. (e). Pub. L. 95–604 designated existing provisions as cl. (1) and added cl. (2).

1975—Subsec. (q). Pub. L. 94–197 substituted ''source, special nuclear, or byproduct material'' for ''facility or device'' and inserted proviso to include within term as used in section 2210(c) of this title any occurrence outside both the United States and any other nation.

Subsec. (t). Pub. L. 94–197 expanded definition to include nuclear incidents occurring outside the United States as the term is used in section 2210(c) of this title and inserted reference to person required to maintain financial protection.

1966—Subsec. (j). Pub. L. 89–645, § 1(a)(2), added subsec. (j). Former subsec. (j) redesignated (k).

Subsecs. (k), (*l*). Pub. L. 89–645, § 1(a)(1), redesignated former subsecs. (j) and (k) as (k) and (*l*), respectively. Former subsec. (*l*) redesignated (n).

Subsec. (m). Pub. L. 89–645, § 1(a)(3), added subsec. (m). Former subsec. (m) redesignated (*o*).

Subsecs. (n) to (p). Pub. L. 89–645, § 1(a)(1), redesignated former subsecs. (*l*) to (n) as (n) to (p), respectively. Former subsecs. (n) to (p) redesignated (p) to (r), respectively.

Subsec. (q). Pub. L. 89–645, § 1(a)(1), (4), redesignated former subsec. (*o*) as (q) and inserted '', including an extraordinary nuclear occurrence,'' between ''occur-

[1] So in original. No subsec. (ii) has been enacted.

rence'' and ''within'', respectively. Former subsec. (q) redesignated (s).

Subsecs. (r) to (cc). Pub. L. 89–645, § 1(a)(1), redesignated former subsecs. (p) to (aa) as (r) to (cc), respectively.

1962—Subsec. (*o*). Pub. L. 87–615, § 4, enlarged definition of ''nuclear incident'' to include any occurrence within the United States causing any of the listed injuries and damages within or outside the United States, provided that as used in section 2210(*l*) of this title, term shall ''include'' instead of ''mean'' any such occurrence outside the United States, and that as used in section 2210(d) of this title, the term shall include any such occurrence outside the United States if such occurrence involves a facility or devise owned by, and used by or under contract with, the United States.

Subsec. (r). Pub. L. 87–615, § 5, limited definition of ''person indemnified'' to nuclear incidents occurring within the United States, or in connection with the nuclear ship Savannah, and inserted provisions with respect to nuclear incidents occurring outside the United States.

1961—Subsec. (b). Pub. L. 87–206, § 2, included section 2121(c) of this title in enumeration.

Subsec. (u). Pub. L. 87–206, § 3, designated existing provisions as cls. (i) and (ii) and added cl. (iii).

1958—Subsec. (*o*). Pub. L. 85–602 inserted proviso defining ''nuclear incident'' as it is used in section 2210(*l*) of this title.

1957—Subsec. (j). Pub. L. 85–256 added subsec. (j). Former subsec. (j) redesignated (k).

Subsecs. (k) to (m). Pub. L. 85–256, redesignated former subsecs. (j) to (*l*) as (k) to (m), respectively. Former subsec. (m) redesignated (p).

Subsec. (n). Pub. L. 85–256 added subsec. (n). Former subsec. (n) redesignated (q).

Subsec. (*o*). Pub. L. 85–256 added subsec. (*o*). Former subsec. (*o*) redesignated (s).

Subsecs. (p), (q). Pub. L. 85–256 redesignated former subsecs. (m) and (n) as (p) and (q), respectively. Former subsecs. (p) and (q) redesignated (t) and (u), respectively.

Subsec. (r). Pub. L. 85–256 added subsec. (r). Former subsec. (r) redesignated (w).

Subsecs. (s), (t). Pub. L. 85–256 redesignated former subsecs. (*o*) and (p) as (s) and (t), respectively. Former subsecs. (s) and (t) redesignated (x) and (y), respectively.

Subsec. (u). Pub. L. 85–256 added subsec. (u). Former subsec. (u) redesignated (z).

Subsecs. (v) to (aa). Pub. L. 85–256 redesignated former subsecs. (q) to (v) as (v) to (aa), respectively.

1956—Subsec. (u). Act Aug. 6, 1956, substituted ''the Canal Zone and Puerto Rico'' for ''and the Canal Zone''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 20 of Pub. L. 100–408 provided that:

''(a) Except as provided in subsection (b), the amendments made by this Act [enacting section 2282a of this title and amending this section and sections 2210 and 2273 of this title] shall become effective on the date of the enactment of this Act [Aug. 20, 1988] and shall be applicable with respect to nuclear incidents occurring on or after such date.

''(b)(1) The amendments made by section 11 [amending this section and section 2210 of this title] shall apply to nuclear incidents occurring before, on, or after the date of the enactment of this Act.

''(2)(A) Section 234A of the Atomic Energy Act of 1954 [section 2282a of this title] shall not apply to any violation occurring before the date of the enactment of this Act.

''(B) Section 223 c. of the Atomic Energy Act of 1954 [section 2273(c) of this title] shall not apply to any violation occurring before the date of enactment of this Act.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 208 of Pub. L. 95–604 provided that: ''Except as otherwise provided in this title [see section 202(b) of Pub. L. 95–604, set out as an Effective Date note under section 2113 of this title] the amendments made by this title [enacting sections 2022 and 2114 of this title, amending this section and sections 2021, 2111, and 2201 of this title, and enacting provisions set out as notes under sections 2021 and 2113 of this title] shall take effect on the date of the enactment of this Act [Nov. 8, 1978].''

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2015. Transfer of property

Nothing in this chapter shall be deemed to repeal, modify, amend, or alter the provisions of section 9(a) of the Atomic Energy Act of 1946, as heretofore amended.

(Aug. 1, 1946, ch. 724, title I, § 241, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 960; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

Section 9(a) of the Atomic Energy Act of 1946, as heretofore amended, referred to in text, which was formerly classified to section 1809(a) of this title, provided that: ''The President shall direct the transfer to the Commission of all interests owned by the United States or any Government agency in the following property:

''(1) All fissionable material; all atomic weapons and parts thereof; all facilities, equipment, and materials for the processing, production, or utilization of fissionable material or atomic energy; all processes and technical information of any kind, and the source thereof (including data, drawings, specifications, patents, patent applications, and other sources (relating to the processing, production, or utilization of fissionable material or atomic energy; and all contracts, agreements, leases, patents, applications for patents, inventions and discoveries (whether patented or unpatented), and other rights of any kind concerning any such items;

''(2) All facilities, equipment, and materials, devoted primarily to atomic energy research and development; and

''(3) Such other property owned by or in the custody or control of the Manhattan Engineer District or other Government agencies as the President may determine.''

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 9 of act Aug. 1, 1946, ch. 724, 60 Stat. 765, which was classified to section 1809 of this title, prior to the complete amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2015a. Cold standby

The Secretary is authorized to expend such funds as may be necessary for the purposes of

maintaining enrichment capability at the Portsmouth, Ohio, facility.

(Aug. 1, 1946, ch. 724, title I, § 242, as added Pub. L. 107–222, § 1(d)(1), Aug. 21, 2002, 116 Stat. 1336.)

§ 2015b. Scholarship and fellowship program

(a) Scholarship program

To enable students to study, for at least 1 academic semester or equivalent term, science, engineering, or another field of study that the Commission determines is in a critical skill area related to the regulatory mission of the Commission, the Commission may carry out a program to—

(1)[1] award scholarships to undergraduate students who—

(A) are United States citizens; and

(B) enter into an agreement under subsection (c) of this section to be employed by the Commission in the area of study for which the scholarship is awarded.

(b) Fellowship program

To enable students to pursue education in science, engineering, or another field of study that the Commission determines is in a critical skill area related to its regulatory mission, in a graduate or professional degree program offered by an institution of higher education in the United States, the Commission may carry out a program to—

(1)[1] award fellowships to graduate students who—

(A) are United States citizens; and

(B) enter into an agreement under subsection (c) of this section to be employed by the Commission in the area of study for which the fellowship is awarded.

(c) Requirements

(1) In general

As a condition of receiving a scholarship or fellowship under subsection (a) or (b) of this section, a recipient of the scholarship or fellowship shall enter into an agreement with the Commission under which, in return for the assistance, the recipient shall—

(A) maintain satisfactory academic progress in the studies of the recipient, as determined by criteria established by the Commission;

(B) agree that failure to maintain satisfactory academic progress shall constitute grounds on which the Commission may terminate the assistance;

(C) on completion of the academic course of study in connection with which the assistance was provided, and in accordance with criteria established by the Commission, engage in employment by the Commission for a period specified by the Commission, that shall be not less than 1 time and not more than 3 times the period for which the assistance was provided; and

(D) if the recipient fails to meet the requirements of subparagraph (A), (B), or (C), reimburse the United States Government for—

(i) the entire amount of the assistance provided the recipient under the scholarship or fellowship; and

(ii) interest at a rate determined by the Commission.

(2) Waiver or suspension

The Commission may establish criteria for the partial or total waiver or suspension of any obligation of service or payment incurred by a recipient of a scholarship or fellowship under this section.

(d) Competitive process

Recipients of scholarships or fellowships under this section shall be selected through a competitive process primarily on the basis of academic merit and such other criteria as the Commission may establish, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 1885a or 1885b of this title.

(e) Direct appointment

The Commission may appoint directly, with no further competition, public notice, or consideration of any other potential candidate, an individual who has—

(1) received a scholarship or fellowship awarded by the Commission under this section; and

(2) completed the academic program for which the scholarship or fellowship was awarded.

(Aug. 1, 1946, ch. 724, title I, § 243, as added Pub. L. 109–58, title VI, § 622(a), Aug. 8, 2005, 119 Stat. 782.)

§ 2015c. Partnership program with institutions of higher education

(a) Definitions

In this section:

(1) Hispanic-serving institution

The term ''Hispanic-serving institution'' has the meaning given the term in section 1101a(a) of title 20.

(2) Historically Black college and university

The term ''historically Black college or university'' has the meaning given the term ''part B institution'' in section 1061 of title 20.

(3) Tribal college

The term ''Tribal college'' has the meaning given the term ''tribally controlled college or university'' in section 1801(a) of title 25.

(b) Partnership program

The Commission may establish and participate in activities relating to research, mentoring, instruction, and training with institutions of higher education, including Hispanic-serving institutions, historically Black colleges or universities, and Tribal colleges, to strengthen the capacity of the institutions—

(1) to educate and train students (including present or potential employees of the Commission); and

(2) to conduct research in the field of science, engineering, or law, or any other field that the Commission determines is important to the work of the Commission.

[1] So in original. No par. (2) has been enacted.

(Aug. 1, 1946, ch. 724, title I, § 244, as added Pub. L. 109–58, title VI, § 651(c)(4)(A), Aug. 8, 2005, 119 Stat. 802.)

§ 2016. Repealed. Pub. L. 105–85, div. C, title XXXI, § 3152(a)(1), Nov. 18, 1997, 111 Stat. 2042

Section, act Aug. 1, 1946, ch. 724, title I, § 251, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 960; amended June 11, 1959, Pub. L. 86–43, 73 Stat. 73; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, § 902(a)(8), 106 Stat. 2944, required Commission to submit to Congress annual report on its activities.

§ 2017. Authorization of appropriations

(a) Congressional authorization

No appropriation shall be made to the Commission, nor shall the Commission waive charges for the use of materials under the Cooperative Power Reactor Demonstration Program, unless previously authorized by legislation enacted by the Congress.

(b) Accounting

Any Act appropriating funds to the Commission may appropriate specified portions thereof to be accounted for upon the certification of the Commission only.

(c) Restoration or replacement of facilities

Notwithstanding the provisions of subsection (a) of this section, funds are hereby authorized to be appropriated for the restoration or replacement of any plant or facility destroyed or otherwise seriously damaged, and the Commission is authorized to use available funds for such purposes.

(d) Substituted construction projects

Funds authorized to be appropriated for any construction project to be used in connection with the development or production of special nuclear material or atomic weapons may be used to start another construction project not otherwise authorized if the substituted construction project is within the limit of cost of the construction project for which substitution is to be made, and the Commission certifies that—

(1) the substituted project is essential to the common defense and security;

(2) the substituted project is required by changes in weapon characteristics or weapon logistic operations; and

(3) the Commission is unable to enter into a contract with any person on terms satisfactory to it to furnish from a privately owned plant or facility the product or services to be provided by the new project.

(Aug. 1, 1946, ch. 724, title I, § 261, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 960; amended Pub. L. 85–79, § 1, July 3, 1957, 71 Stat. 274; Pub. L. 87–615, § 8, Aug. 29, 1962, 76 Stat. 411; Pub. L. 88–72, § 107, July 22, 1963, 77 Stat. 88; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 19 of act Aug. 1, 1946, ch. 724, 60 Stat. 775, which was classified to section 1819 of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1963—Subsec. (a). Pub. L. 88–72 required legislative authorization of appropriations to the Commission and waiver of charges for use of materials under the Cooperative Power Reactor Demonstration Program. Former provisions of subsec. (a) authorized appropriations necessary and appropriate to carry out the provisions and purposes of this chapter, excepting in par. (1) sums necessary for acquisition of real property or facility acquisition, construction or expansion (and deeming under certain conditions a nonmilitary experimental reactor to be a facility) and in par. (2) sums necessary to carry out cooperative programs for development and construction of reactors for demonstration of their use in production of electrical power or process heat, or for propulsion, or for commercial provision of byproduct material, irradiation or other special service, for civilian use, by arrangements providing for payment of funds, rendering of services and undertaking of research and development without full reimbursement, the waiver of charges accompanying such arrangement or the provision of other financial assistance pursuant to such arrangement or the acquisition of real property or facility acquisition, construction or expansion undertaken by the Commission as part of such arrangement.

Subsec. (b). Pub. L. 88–72 substituted ''Any act appropriating funds to the Commission'' for ''The acts appropriating such sums.''

Subsec. (c). Pub. L. 88–72 struck out authorization of funds provision for advance planning, construction design and architectural services in connection with any plant or facility and inserted ''Notwithstanding'' phrase.

Subsec. (d). Pub. L. 88–72 struck out ''hereafter'' after ''Funds'' and inserted ''construction'' before ''project'' wherever appearing.

1962—Subsecs. (c), (d). Pub. L. 87–615 added subsecs. (c) and (d).

1957—Pub. L. 85–79 designated first sentence as introductory clause of subsec. (a) and as (a)(1), inserted proviso to (a)(1), added (a)(2), by designating second sentence as subsec. (b), and struck out former sentence which provided that ''Funds appropriated to the Commission shall, if obligated by contract during the fiscal year for which appropriated, remain available for expenditure for four years following the expiration of the fiscal year for which appropriated.''.

EFFECTIVE DATE OF 1963 AMENDMENT

Section 107 of Pub. L. 88–72 provided that the amendment made by that section is effective Jan. 1, 1964.

§ 2017a. Omitted

CODIFICATION

Section, act Sept. 26, 1962, Pub. L. 87–701, § 103, 76 Stat. 601, which authorized appropriations for the Atomic Energy Commission for advance planning, construction design, and architectural services in connection with certain projects, was from an Act authorizing appropriations for the Atomic Energy Commission, and was not enacted as part of the Atomic Energy Act of 1954 which comprises this chapter. See section 2017a–1 of this title.

Similar provisions were contained in the following prior appropriation authorization acts:

Sept. 26, 1961, Pub. L. 87–315, § 103, 75 Stat. 678.
May 13, 1960, Pub. L. 86–457, § 103, 74 Stat. 121.
June 23, 1959, Pub. L. 86–50, § 103, 73 Stat. 83.
Aug. 4, 1958, Pub. L. 85–590, § 103, 72 Stat. 493.
Aug. 21, 1957, Pub. L. 85–162, title I, § 103, 71 Stat. 406.
May 3, 1956, ch. 233, § 103, 70 Stat. 129.
July 11, 1955, ch. 304, § 103, 69 Stat. 293.

§ 2017a–1. Omitted

CODIFICATION

Section, Pub. L. 95–39, title III, § 304, June 3, 1977, 91 Stat. 189, which authorized the Administrator of the Energy Research and Development Administration to perform construction design services for any Administration construction project whenever the Administrator made certain determinations, was from an Act authorizing appropriations for fiscal year 1977 to the Energy Research and Development Administration, and was not enacted as part of the Atomic Energy Act of 1954 which comprises this chapter. See section 5821(g) of this title.

Similar provisions were contained in the following prior appropriation authorization acts:

Pub. L. 94–187, title III, § 301, Dec. 31, 1975, 89 Stat. 1073.
Pub. L. 93–276, title I, § 103, May 10, 1974, 88 Stat. 118.
Pub. L. 93–60, § 103, July 6, 1973, 87 Stat. 144.
Pub. L. 92–314, title I, § 103, June 16, 1972, 86 Stat. 225.
Pub. L. 92–84, title I, § 103, Aug. 11, 1971, 85 Stat. 306.
Pub. L. 91–273, § 103, June 2, 1970, 84 Stat. 300.
Pub. L. 91–44, § 103, July 11, 1969, 83 Stat. 47.
Pub. L. 90–289, § 103, Apr. 19, 1968, 82 Stat. 97.
Pub. L. 90–56, § 103, July 26, 1967, 81 Stat. 125.
Pub. L. 89–428, § 103, May 21, 1966, 80 Stat. 163.
Pub. L. 89–32, § 103, June 2, 1965, 79 Stat. 122.
Pub. L. 88–332, § 104, June 30, 1964, 78 Stat. 229.

§ 2017b. Omitted

CODIFICATION

Section, act Sept. 26, 1962, Pub. L. 87–701, § 104, 76 Stat. 601, which authorized appropriations for the Atomic Energy Commission for restoration or replacement of facilities, was from an Act authorizing appropriations for the Atomic Energy Commission, and was not enacted as part of the Atomic Energy Act of 1954 which comprises this chapter. See section 2017(c) of this title.

Similar provisions were contained in the following prior appropriation authorization acts:

Sept. 26, 1961, Pub. L. 87–315, § 104, 75 Stat. 678.
May 13, 1960, Pub. L. 86–457, § 104, 74 Stat. 122.
June 23, 1959, Pub. L. 86–50, § 104, 73 Stat. 83.
Aug. 4, 1958, Pub. L. 85–590, 72 Stat. 493.
Aug. 21, 1957, Pub. L. 85–162, title I, § 104, 71 Stat. 406.
May 3, 1956, ch. 233, § 104, 70 Stat. 129.
July 11, 1955, ch. 304, § 104, 69 Stat. 293.

§ 2018. Agency jurisdiction

Nothing in this chapter shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission: *Provided*, That this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.

(Aug. 1, 1946, ch. 724, title I, § 271, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 960; amended Pub. L. 89–135, Aug. 24, 1965, 79 Stat. 551; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1965—Pub. L. 89–135 inserted ''produced through the use of nuclear facilities licensed by the Commission: *Provided*, That this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.''

§ 2019. Applicability of Federal Power Act

Every licensee under this chapter who holds a license from the Commission for a utilization or production facility for the generation of commercial electric energy under section 2133 of this title and who transmits such electric energy in interstate commerce or sells it at wholesale in interstate commerce shall be subject to the regulatory provisions of the Federal Power Act [16 U.S.C. 791a et seq.].

(Aug. 1, 1946, ch. 724, title I, § 272, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 960; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

The Federal Power Act, referred to in text, is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

§ 2020. Licensing of Government agencies

Nothing in this chapter shall preclude any Government agency now or hereafter authorized by law to engage in the production, marketing, or distribution of electric energy from obtaining a license under section 2133 of this title, if qualified under the provisions of said section, for the construction and operation of production or utilization facilities for the primary purpose of producing electric energy for disposition for ultimate public consumption.

(Aug. 1, 1946, ch. 724, title I, § 273, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 960; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2021. Cooperation with States

(a) Purpose

It is the purpose of this section—

(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this chapter of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

(b) Agreements with States

Except as provided in subsection (c) of this section, the Commission is authorized to enter

into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under subchapters V, VI, and VII of this division, and section 2201 of this title, with respect to any one or more of the following materials within the State:

(1) Byproduct materials (as defined in section 2014(e) of this title).

(2) Source materials.

(3) Special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

(c) Commission regulation of certain activities

No agreement entered into pursuant to subsection (b) of this section shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

(1) the construction and operation of any production or utilization facility or any uranium enrichment facility;

(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 2014(e)(2) of this title. Notwithstanding any agreement between the Commission and any State pursuant to subsection (b) of this section, the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

(d) Conditions

The Commission shall enter into an agreement under subsection (b) of this section with any State if—

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection (*o*) of this section and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

(e) Publication in Federal Register; comment of interested persons

(1) Before any agreement under subsection (b) of this section is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection (f) of this section shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

(2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

(f) Exemptions

The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in subchapters V, VI, and VII of this division, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection (b) of this section.

(g) Compatible radiation standards

The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

(h) Consultative, advisory, and miscellaneous functions of Administrator of Environmental Protection Agency

The Administrator of the Environmental Protection Agency shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings with, participate in the deliberations of, and to advise the Administrator. The Administrator shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Administrator shall also perform such other functions as the President may assign to him by Executive order.

(i) Inspections and other functions; training and other assistance

The Commission in carrying out its licensing and regulatory responsibilities under this chapter is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection (b) of this section.

(j) Reserve power to terminate or suspend agreements; emergency situations; State nonaction on causes of danger; authority exercisable only during emergency and commensurate with danger

(1) The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection (b) of this section has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of its agreement with the State and reassert the licensing and regulatory authority vested in it under this chapter, if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

(2) The Commission, upon its own motion or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the Commission:

(A) an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside the State, and

(B) the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

A temporary suspension under this paragraph shall remain in effect only for such time as the emergency situation exists and shall authorize the Commission to exercise its authority only to the extent necessary to contain or eliminate the danger.

(k) State regulation of activities for certain purposes

Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

(*l*) Commission regulated activities; notice of filing; hearing

With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection (c) of this section, the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.

(m) Limitation of agreements and exemptions

No agreement entered into under subsection (b) of this section, and no exemption granted pursuant to subsection (f) of this section, shall affect the authority of the Commission under section 2201(b) or (i) of this title to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of section 2201(i) of this title, activities covered by exemptions granted pursuant to subsection (f) of this section shall be deemed to constitute activities authorized pursuant to this chapter; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 2073 of this title.

(n) "State" and "agreement" defined

As used in this section, the term ''State'' means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia. As used in this section, the term ''agreement'' includes any amendment to any agreement.

(*o*) State compliance requirements: compliance with section 2113(b) of this title and health and environmental protection standards; procedures for licenses, rulemaking, and license impact analysis; amendment of agreements for transfer of State collected funds; proceedings duplication restriction; alternative requirements

In the licensing and regulation of byproduct material, as defined in section 2014(e)(2) of this title, or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection (b) of this section, a State shall require—

(1) compliance with the requirements of subsection (b) of section 2113 of this title (respecting ownership of byproduct material and land), and

(2) compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Commission and the Administrator of the Environmental Pro-

tection Agency pursuant to sections 2113, 2114, and 2022 of this title, and

(3) procedures which—

(A) in the case of licenses, provide procedures under State law which include—

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,

(ii) an opportunity for cross examination, and

(iii) a written determination which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review;

(B) in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule;

(C) require for each license which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment, which analysis shall include—

(i) an assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such license;

(ii) an assessment of any impact on any waterway and groundwater resulting from such activities;

(iii) consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and

(iv) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by section 2014(e)(2) of this title; and

(D) prohibit any major construction activity with respect to such material prior to complying with the provisions of subparagraph (C).

If any State under such agreement imposes upon any licensee any requirement for the payment of funds to such State for the reclamation or long-term maintenance and monitoring of such material, and if transfer to the United States of such material is required in accordance with section 2113(b) of this title, such agreement shall be amended by the Commission to provide that such State shall transfer to the United States upon termination of the license issued to such licensee the total amount collected by such State from such licensee for such purpose. If such payments are required, they must be sufficient to ensure compliance with the standards established by the Commission pursuant to section 2201(x) of this title. No State shall be required under paragraph (3) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission. In adopting requirements pursuant to paragraph (2) of this subsection with respect to sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 2014(e)(2) of this title, the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 2022 of this title. Such alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology.

(Aug. 1, 1946, ch. 724, title I, § 274, as added Pub. L. 86–373, § 1, Sept. 23, 1959, 73 Stat. 688; amended 1970 Reorg. Plan No. 3, §§ 2(a)(7), 6(2), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086; Pub. L. 95–604, title II, § 204(a)–(e)(1), (f), Nov. 8, 1978, 92 Stat. 3036–3038; Pub. L. 96–295, title II, § 205, June 30, 1980, 94 Stat. 787; Pub. L. 97–415, § 19(a), Jan. 4, 1983, 96 Stat. 2078; renumbered title I and amended Pub. L. 102–486, title IX, § 902(a)(6), (8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109–58, title VI, § 651(e)(2), Aug. 8, 2005, 119 Stat. 807.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (n), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

In subsec. (h) of this section, provisions for the establishment of a Federal Radiation Council and for the designation of its Chairman and members have been omitted and the Administrator of the Environmental Protection Agency has been substituted for the Council as the person charged with the responsibility of carrying out the functions of the Council pursuant to Reorg. Plan No. 3 of 1970, §§ 2(a)(7), 6(2), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out in the Appendix to Title 5, Government Organization and Employees, which abolished the Federal Radiation Council and transferred its functions to the Administrator of the Environmental Protection Administration.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 substituted ''State:'' for ''State—'' in introductory provisions, added pars. (1) to (3), and struck out former pars. (1) to (4) which read as follows:

''(1) byproduct materials as defined in section 2014(e)(1) of this title;

''(2) byproduct materials as defined in section 2014(e)(2) of this title;

''(3) source materials;

''(4) special nuclear materials in quantities not sufficient to form a critical mass.''

1992—Subsec. (c)(1). Pub. L. 102–486, § 902(a)(6), inserted before semicolon at end ''or any uranium enrichment facility''.

1983—Subsec. (*o*). Pub. L. 97–415 inserted provisions relating to the adoption of equivalent alternative requirements by the States.

1980—Subsec. (j). Pub. L. 96–295 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (b). Pub. L. 95–604, § 204(a), inserted in par. (1) ''as defined in section 2014(e)(1) of this title'' after ''byproduct materials'', added par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (c). Pub. L. 95–604, § 204(f), required the Commission to retain authority under the agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material as defined in section 2014(e)(2) of this title.

Subsec. (d)(2). Pub. L. 95–604, § 204(b), inserted ''in accordance with the requirements of subsection (o) of this section and in all other respects'' before ''compatible''.

Subsec. (j). Pub. L. 95–604, § 204(d), inserted ''all or part of'' after ''suspend'', designated provision requiring termination or suspension be necessary to protect the public health and safety as cl. (1), added cl. (2), and inserted provision requiring the Commission to periodically review the agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

Subsec. (n). Pub. L. 95–604, § 204(c), inserted definition of ''agreement''.

Subsec. (*o*). Pub. L. 95–604, § 204(e)(1), added subsec. (*o*).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 204(e)(2) of Pub. L. 95–604, as added by Pub. L. 96–106, § 22(d), Nov. 9, 1979, 93 Stat. 800, provided that: ''The provisions of the amendment made by paragraph (1) of this subsection (which adds a new subsection *o*. to section 274 of the Atomic Energy Act of 1954 [this section]) shall apply only to the maximum extent practicable during the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1978].''

Amendment by Pub. L. 95–604 effective Nov. 8, 1978, see section 208 of Pub. L. 95–604, set out as a note under section 2014 of this title.

STATE AUTHORITIES AND AGREEMENTS RESPECTING BYPRODUCT MATERIAL; ENTRY AND EFFECTIVE DATES OF AGREEMENTS

Section 204(g), (h) of Pub. L. 95–604, as amended by Pub. L. 96–106, § 22(a), (b), Nov. 9, 1979, 93 Stat. 799; Pub. L. 97–415, § 19(b), Jan. 4, 1983, 96 Stat. 2079, provided that:

''(g) Nothing in any amendment made by this section [amending this section] shall preclude any State from exercising any other authority as permitted under the Atomic Energy Act of 1954 [this chapter] respecting any byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954 [section 2014(e)(2) of this title].

''(h)(1) During the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1978], notwithstanding any other provision of this title [See Effective Date of 1978 Amendment note set out under section 2014 of this title], any State may exercise any authority under State law (including authority exercised pursuant to an agreement entered into pursuant to section 274 of the Atomic Energy Act of 1954 [this section]) respecting (A) byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954 [section 2014(e)(2) of this title], or (B) any activity which results in the production of byproduct material as so defined, in the same manner and to the same extent as permitted before the date of the enactment of this Act, except that such State authority shall be exercised in a manner which, to the extent practicable, is consistent with the requirements of section 274 *o*. of the Atomic Energy Act of 1954 (as added by section 204(e) of this Act) [subsec. (*o*) of this section]. The Commission shall have the authority to ensure that such section 274 *o*. is implemented by any such State to the extent practicable during the three-year period beginning on the date of the enactment of this Act. Nothing in this section shall be construed to preclude the Commission or the Administrator of the Environmental Protection Agency from taking such action under section 275 of the Atomic Energy Act of 1954 [section 2022 of this title] as may be necessary to implement title I of this Act [section 7911 et seq. of this title].

''(2) An agreement entered into with any State as permitted under section 274 of the Atomic Energy Act of 1954 [this section] with respect to byproduct material as defined in section 11 e. (2) of such Act. [section 2014(e)(2) of this title], may be entered into at any time after the date of the enactment of this Act [Nov. 8, 1978] but no such agreement may take effect before the date three years after the date of the enactment of this Act.

''(3) Notwithstanding any other provision of this title [See Effective Date of 1978 Amendment note set out under section 2014 of this title], where a State assumes or has assumed, pursuant to an agreement entered into under section 274 b. of the Atomic Energy Act of 1954 [subsec. (b) of this section], authority over any activity which results in the production of byproduct material, as defined in section 11 e. (2) of such Act [section 2014(e)(2) of this title], the Commission shall not, until the end of the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1978], have licensing authority over such byproduct material produced in any activity covered by such agreement, unless the agreement is terminated, suspended, or amended to provide for such Federal licensing. If, at the end of such three-year period, a State has not entered into such an agreement with respect to byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954, the Commission shall have authority over such byproduct material: *Provided, however*, That, in the case of a State which has exercised any authority under State law pursuant to an agreement entered into under section 274 of the Atomic Energy Act of 1954 [this section], the State authority over such byproduct material may be terminated, and the Commission authority over such material may be exercised, only after compliance by the Commission with the same procedures as are applicable in the case of termination of agreements under section 274j. of the Atomic Energy Act of 1954 [subsec. (j) of this section].''

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

EXECUTIVE ORDER NO. 12192

Ex. Ord. No. 12192, Feb. 12, 1980, 45 F.R. 9727, which established the State Planning Council on Radioactive Waste Management and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, § 13, Aug. 17, 1982, 47 F.R. 36099, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 2021a. Storage or disposal facility planning

(a) Any person, agency, or other entity proposing to develop a storage or disposal facility, including a test disposal facility, for high-level radioactive wastes, non-high-level radioactive wastes including transuranium contaminated wastes, or irradiated nuclear reactor fuel, shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed situs whenever the Commission has knowledge of such proposal.

(b) The Commission is authorized and directed to prepare a report on means for improving the

opportunities for State participation in the process for siting, licensing, and developing nuclear waste storage or disposal facilities. Such report shall include detailed consideration of a program to provide grants through the Commission to any State, and the advisability of such a program, for the purpose of conducting an independent State review of any proposal to develop a nuclear waste storage or disposal facility identified in subsection (a) of this section within such State. On or before March 1, 1979, the Commission shall submit the report to the Congress including recommendations for improving the opportunities for State participation together with any necessary legislative proposals.

(Pub. L. 95–601, §14, Nov. 6, 1978, 92 Stat. 2953.)

REFERENCES IN TEXT

Commission, referred to in text, probably means the Nuclear Regulatory Commission in view of the fact that this section was enacted as part of the act authorizing appropriations for the Nuclear Regulatory Commission for fiscal year 1979.

CODIFICATION

Section was enacted as part of an act authorizing appropriations to the Nuclear Regulatory Commission for fiscal year 1979, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

PLAN FOR PERMANENT DISPOSAL OF WASTE FROM ATOMIC ENERGY DEFENSE ACTIVITIES; SUBMISSION OF PLAN TO CONGRESS NOT LATER THAN JUNE 30, 1983

Pub. L. 97–90, title II, §213, Dec. 4, 1981, 95 Stat. 1171, directed President to submit to Committees on Armed Services of Senate and of House of Representatives not later than June 30, 1983, a report setting forth his plans for permanent disposal of high-level and transuranic wastes resulting from atomic energy defense activities, such report to include, but not be limited to, for each State in which such wastes are stored in interim storage facilities on Dec. 4, 1981, specific estimates of amounts planned for expenditure in each of the next five fiscal years to achieve the permanent disposal of such wastes and general estimates of amounts planned for expenditure in fiscal years thereafter to achieve such purpose, and a thorough and detailed program management plan for the disposal of such wastes.

WEST VALLEY DEMONSTRATION PROJECT; RADIOACTIVE WASTE MANAGEMENT; PROJECT ACTIVITIES; PUBLIC HEARINGS; REVIEW OF PROJECT AND CONSULTATIONS; AUTHORIZATION OF APPROPRIATIONS; REPORT TO CONGRESS

Pub. L. 107–66, title III, Nov. 12, 2001, 115 Stat. 503, provided in part: ''That funding for the West Valley Demonstration Project shall be reduced in subsequent fiscal years to the minimum necessary to maintain the project in a safe and stable condition, unless, not later than September 30, 2002, the Secretary: (1) provides written notification to the Committees on Appropriations of the House of Representatives and the Senate that agreement has been reached with the State of New York on the final scope of Federal activities at the West Valley site and on the respective Federal and State cost shares for those activities; (2) submits a written copy of that agreement to the Committees on Appropriations of the House of Representatives and the Senate; and (3) provides a written certification that the Federal actions proposed in the agreement will be in full compliance with all relevant Federal statutes and are in the best interest of the Federal Government.''

Pub. L. 96–368, Oct. 1, 1980, 94 Stat. 1347, as amended by Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000, provided that:

''SECTION 1. This Act may be cited as the 'West Valley Demonstration Project Act'.

''SEC. 2. (a) The Secretary shall carry out, in accordance with this Act, a high level radioactive waste management demonstration project at the Western New York Service Center in West Valley, New York, for the purpose of demonstrating solidification techniques which can be used for preparing high level radioactive waste for disposal. Under the project the Secretary shall carry out the following activities:

''(1) The Secretary shall solidify, in a form suitable for transportation and disposal, the high level radioactive waste at the Center by vitrification or by such other technology which the Secretary determines to be the most effective for solidification.

''(2) The Secretary shall develop containers suitable for the permanent disposal of the high level radioactive waste solidified at the Center.

''(3) The Secretary shall, as soon as feasible, transport, in accordance with applicable provisions of law, the waste solidified at the Center to an appropriate Federal repository for permanent disposal.

''(4) The Secretary shall, in accordance with applicable licensing requirements, dispose of low level radioactive waste and transuranic waste produced by the solidification of the high level radioactive waste under the project.

''(5) The Secretary shall decontaminate and decommission—

''(A) the tanks and other facilities of the Center in which the high level radioactive waste solidified under the project was stored,

''(B) the facilities used in the solidification of the waste, and

''(C) any material and hardware used in connection with the project,

in accordance with such requirements as the Commission may prescribe.

''(b) Before undertaking the project and during the fiscal year ending September 30, 1981, the Secretary shall carry out the following:

''(1) The Secretary shall hold in the vicinity of the Center public hearings to inform the residents of the area in which the Center is located of the activities proposed to be undertaken under the project and to receive their comments on the project.

''(2) The Secretary shall consider the various technologies available for the solidification and handling of high level radioactive waste taking into account the unique characteristics of such waste at the Center.

''(3) The Secretary shall—

''(A) undertake detailed engineering and cost estimates for the project,

''(B) prepare a plan for the safe removal of the high level radioactive waste at the Center for the purposes of solidification and include in the plan provisions respecting the safe breaching of the tanks in which the waste is stored, operating equipment to accomplish the removal, and sluicing techniques,

''(C) conduct appropriate safety analyses of the project, and

''(D) prepare required environmental impact analyses of the project.

''(4) The Secretary shall enter into a cooperative agreement with the State in accordance with the Federal Grant and Cooperative Agreement Act of 1977 [see section 6301 et seq. of Title 31, Money and Finance] under which the State will carry out the following:

''(A) The State will make available to the Secretary the facilities of the Center and the high level radioactive waste at the Center which are necessary for the completion of the project. The facilities and the waste shall be made available without the transfer of title and for such period as may be required for completion of the project.

''(B) The Secretary shall provide technical assistance in securing required license amendments.

''(C) The State shall pay 10 per centum of the costs of the project, as determined by the Sec-

retary. In determining the costs of the project, the Secretary shall consider the value of the use of the Center for the project. The State may not use Federal funds to pay its share of the cost of the project, but may use the perpetual care fund to pay such share.

''(D) Submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration.

''(c) Within one year from the date of the enactment of this Act [Oct. 1, 1980], the Secretary shall enter into an agreement with the Commission to establish arrangements for review and consultation by the Commission with respect to the project: *Provided*, That review and consultation by the Commission pursuant to this subsection shall be conducted informally by the Commission and shall not include nor require formal procedures or actions by the Commission pursuant to the Atomic Energy Act of 1954, as amended [this chapter], the Energy Reorganization Act of 1974, as amended [section 5801 et seq. of this title], or any other law. The agreement shall provide for the following:

''(1) The Secretary shall submit to the Commission, for its review and comment, a plan for the solidification of the high level radioactive waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities to be used in solidifying the waste. In preparing its comments on the plan, the Commission shall specify with precision its objections to any provision of the plan. Upon submission of a plan to the Commission, the Secretary shall publish a notice in the Federal Register of the submission of the plan and of its availability for public inspection, and, upon receipt of the comments of the Commission respecting a plan, the Secretary shall publish a notice in the Federal Register of the receipt of the comments and of the availability of the comments for public inspection. If the Secretary does not revise the plan to meet objections specified in the comments of the Commission, the Secretary shall publish in the Federal Register a detailed statement for not so revising the plan.

''(2) The Secretary shall consult with the Commission with respect to the form in which the high level radioactive waste at the Center shall be solidified and the containers to be used in the permanent disposal of such waste.

''(3) The Secretary shall submit to the Commission safety analysis reports and such other information as the Commission may require to identify any danger to the public health and safety which may be presented by the project.

''(4) The Secretary shall afford the Commission access to the Center to enable the Commission to monitor the activities under the project for the purpose of assuring the public health and safety.

''(d) In carrying out the project, the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Director of the United States Geological Survey, and the commercial operator of the Center.

''SEC. 3. (a) There are authorized to be appropriated to the Secretary for the project not more than $5,000,000 for the fiscal year ending September 30, 1981.

''(b) The total amount obligated for the project by the Secretary shall be 90 per centum of the costs of the project.

''(c) The authority of the Secretary to enter into contracts under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

''SEC. 4. Not later than February 1, 1981, and on February 1 of each calendar year thereafter during the term of the project, the Secretary shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate an up-to-date report containing a detailed description of the activities of the Secretary in carrying out the project, including agreements entered into and the costs incurred during the period reported on and the activities to be undertaken in the next fiscal year and the estimated costs thereof.

''SEC. 5. (a) Other than the costs and responsibilities established by this Act for the project, nothing in this Act shall be construed as affecting any rights, obligations, or liabilities of the commercial operator of the Center, the State, or any person, as is appropriate, arising under the Atomic Energy Act of 1954 [this chapter] or under any other law, contract, or agreement for the operation, maintenance, or decontamination of any facility or property at the Center or for any wastes at the Center. Nothing in this Act shall be construed as affecting any applicable licensing requirement of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974 [section 5801 et seq. of this title]. This Act shall not apply or be extended to any facility or property at the Center which is not used in conducting the project. This Act may not be construed to expand or diminish the rights of the Federal Government.

''(b) This Act does not authorize the Federal Government to acquire title to any high level radioactive waste at the Center or to the Center or any portion thereof.

''SEC. 6. For purposes of this Act:

''(1) The term 'Secretary' means the Secretary of Energy.

''(2) The term 'Commission' means the Nuclear Regulatory Commission.

''(3) The term 'State' means the State of New York.

''(4) The term 'high level radioactive waste' means the high level radioactive waste which was produced by the reprocessing at the Center of spent nuclear fuel. Such term includes both liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste, and such other material as the Commission designates as high level radioactive waste for purposes of protecting the public health and safety.

''(5) The term 'transuranic waste' means material contaminated with elements which have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and which are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Commission may prescribe to protect the public health and safety.

''(6) The term 'low level radioactive waste' means radioactive waste not classified as high level radioactive waste, transuranic waste, or byproduct material as defined in section 11e. (2) of the Atomic Energy Act of 1954 [section 2014(e)(2) of this title].

''(7) The term 'project' means the project prescribed by section 2(a).

''(8) The term 'Center' means the Western New York Service Center in West Valley, New York.''

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under section 4 of Pub. L. 96–368, set out above, is listed in item 1 on page 84), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, § 1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.]

§ 2021b. Definitions

For purposes of sections 2021b to 2021j of this title:

(1) Agreement State

The term ''agreement State'' means a State that—

(A) has entered into an agreement with the Nuclear Regulatory Commission under section 2021 of this title; and

(B) has authority to regulate the disposal of low-level radioactive waste under such agreement.

(2) Allocation

The term ''allocation'' means the assignment of a specific amount of low-level radioactive waste disposal capacity to a commercial nuclear power reactor for which access is required to be provided by sited States subject to the conditions specified under sections 2021b to 2021j of this title.

(3) Commercial nuclear power reactor

The term ''commercial nuclear power reactor'' means any unit of a civilian light-water moderated utilization facility required to be licensed under section 2133 or 2134(b) of this title.

(4) Compact

The term ''compact'' means a compact entered into by two or more States pursuant to sections 2021b to 2021j of this title.

(5) Compact commission

The term ''compact commission'' means the regional commission, committee, or board established in a compact to administer such compact.

(6) Compact region

The term ''compact region'' means the area consisting of all States that are members of a compact.

(7) Disposal

The term ''disposal'' means the permanent isolation of low-level radioactive waste pursuant to the requirements established by the Nuclear Regulatory Commission under applicable laws, or by an agreement State if such isolation occurs in such agreement State.

(8) Generate

The term ''generate'', when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(9) Low-level radioactive waste

(A) In general

The term ''low-level radioactive waste'' means radioactive material that—

(i) is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in section 2014(e)(2) of this title); and

(ii) the Nuclear Regulatory Commission, consistent with existing law and in accordance with paragraph (A), classifies as low-level radioactive waste.

(B) Exclusion

The term ''low-level radioactive waste'' does not include byproduct material (as defined in paragraphs (3) and (4) of section 2014(e) of this title).

(10) Non-sited compact region

The term ''non-sited compact region'' means any compact region that is not a sited compact region.

(11) Regional disposal facility

The term ''regional disposal facility'' means a non-Federal low-level radioactive waste disposal facility in operation on January 1, 1985, or subsequently established and operated under a compact.

(12) Secretary

The term ''Secretary'' means the Secretary of Energy.

(13) Sited compact region

The term ''sited compact region'' means a compact region in which there is located one of the regional disposal facilities at Barnwell, in the State of South Carolina; Richland, in the State of Washington; or Beatty, in the State of Nevada.

(14) State

The term ''State'' means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 96–573, § 2, as added Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1842; amended Pub. L. 109–58, title VI, § 651(e)(3)(B), Aug. 8, 2005, 119 Stat. 808.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

PRIOR PROVISIONS

A prior section 2021b, Pub. L. 96–573, § 2, Dec. 22, 1980, 94 Stat. 3347, related to definitions respecting low-level radioactive waste policy as used in former sections 2021b to 2021d of this title, prior to repeal by Pub. L. 99–240, § 102.

AMENDMENTS

2005—Par. (9). Pub. L. 109–58 designated existing provisions as subpar. (A), inserted heading, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

SHORT TITLE OF 1986 AMENDMENT

Section 101 of title I of Pub. L. 99–240 provided that: ''This Title [enacting this section and sections 2021c to 2021j of this title, repealing former sections 2021b to 2021d of this title, and enacting and repealing a provision set out as a note under this section] may be cited as the 'Low-Level Radioactive Waste Policy Amendments Act of 1985'.''

SHORT TITLE

Section 1 of Pub. L. 96–573, as added by Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1842, provided that: ''This Act [enacting sections 2021b to 2021j of this title] may be cited as the 'Low-Level Radioactive Waste Policy Act'.''

A prior section 1 of Pub. L. 96–573 which provided that Pub. L. 96–573 [enacting former sections 2021b to 2021d of this title] could be cited as the ''Low-Level Radioactive Waste Policy Act'' was repealed by Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1842.

§ 2021c. Responsibilities for disposal of low-level radioactive waste

(a)(1) Each State shall be responsible for providing, either by itself or in cooperation with other States, for the disposal of—

(A) low-level radioactive waste generated within the State (other than by the Federal Government) that consists of or contains class A, B, or C radioactive waste as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983;

(B) low-level radioactive waste described in subparagraph (A) that is generated by the Federal Government except such waste that is—

(i) owned or generated by the Department of Energy;

(ii) owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy; or

(iii) owned or generated as a result of any research, development, testing, or production of any atomic weapon; and

(C) low-level radioactive waste described in subparagraphs (A) and (B) that is generated outside of the State and accepted for disposal in accordance with sections[1] 2021e or 2021f of this title.

(2) No regional disposal facility may be required to accept for disposal any material—

(A) that is not low-level radioactive waste as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983, or

(B) identified under the Formerly Utilized Sites Remedial Action Program.

Nothing in this paragraph shall be deemed to prohibit a State, subject to the provisions of its compact, or a compact region from accepting for disposal any material identified in subparagraph (A) or (B).

(b)(1) The Federal Government shall be responsible for the disposal of—

(A) low-level radioactive waste owned or generated by the Department of Energy;

(B) low-level radioactive waste owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy;

(C) low-level radioactive waste owned or generated by the Federal Government as a result of any research, development, testing, or production of any atomic weapon; and

(D) any other low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983.

(2) All radioactive waste designated a Federal responsibility pursuant to subparagraph (b)(1)(D) that results from activities licensed by the Nuclear Regulatory Commission under this chapter, shall be disposed of in a facility licensed by the Nuclear Regulatory Commission that the Commission determines is adequate to protect the public health and safety.

(3) Not later than 12 months after January 15, 1986, the Secretary shall submit to the Congress a comprehensive report setting forth the recommendations of the Secretary for ensuring the safe disposal of all radioactive waste designated a Federal responsibility pursuant to subparagraph (b)(1)(D). Such report shall include—

(A) an identification of the radioactive waste involved, including the source of such waste, and the volume, concentration, and other relevant characteristics of such waste;

(B) an identification of the Federal and non-Federal options for disposal of such radioactive waste;

(C) a description of the actions proposed to ensure the safe disposal of such radioactive waste;

(D) a description of the projected costs of undertaking such actions;

(E) an identification of the options for ensuring that the beneficiaries of the activities resulting in the generation of such radioactive wastes bear all reasonable costs of disposing of such wastes; and

(F) an identification of any statutory authority required for disposal of such waste.

(4) The Secretary may not dispose of any radioactive waste designated a Federal responsibility pursuant to paragraph (b)(1)(D) that becomes a Federal responsibility for the first time pursuant to such paragraph until ninety days after the report prepared pursuant to paragraph (3) has been submitted to the Congress.

(Pub. L. 96–573, § 3, as added Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1843.)

REFERENCES IN TEXT

January 15, 1986, referred to in subsec. (b)(3), was in the original ''the date of enactment of this Act'' and was translated as meaning the date of enactment of Pub. L. 99–240 to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

PRIOR PROVISIONS

A prior section 2021c, Pub. L. 96–573, § 3, Dec. 22, 1980, 94 Stat. 3347, related to the applicability of low-level radioactive waste compacts, prior to repeal by Pub. L. 99–240, § 102. See section 2021d of this title.

§ 2021d. Regional compacts for disposal of low-level radioactive waste

(a) In general

(1) Federal policy

It is the policy of the Federal Government that the responsibilities of the States under section 2021c of this title for the disposal of low-level radioactive waste can be most safely and effectively managed on a regional basis.

(2) Interstate compacts

To carry out the policy set forth in paragraph (1), the States may enter into such compacts as may be necessary to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste.

(b) Applicability to Federal activities

(1) In general

(A) Activities of the Secretary

Except as provided in subparagraph (B), no compact or action taken under a compact shall be applicable to the transportation, management, or disposal of any low-level radioactive waste designated in section 2021c(a)(1)(B)(i)–(iii) of this title.

(B) Federal low-level radioactive waste disposed of at non-Federal facilities

Low-level radioactive waste owned or generated by the Federal Government that is

[1] So in original. Probably should be ''section''.

disposed of at a regional disposal facility or non-Federal disposal facility within a State that is not a member of a compact shall be subject to the same conditions, regulations, requirements, fees, taxes, and surcharges imposed by the compact commission, and by the State in which such facility is located, in the same manner and to the same extent as any low-level radioactive waste not generated by the Federal Government.

(2) Federal low-level radioactive waste disposal facilities

Any low-level radioactive waste disposal facility established or operated exclusively for the disposal of low-level radioactive waste owned or generated by the Federal Government shall not be subject to any compact or any action taken under a compact.

(3) Effect of compacts on Federal law

Nothing contained in sections 2021b to 2021j of this title or any compact may be construed to confer any new authority on any compact commission or State—

(A) to regulate the packaging, generation, treatment, storage, disposal, or transportation of low-level radioactive waste in a manner incompatible with the regulations of the Nuclear Regulatory Commission or inconsistent with the regulations of the Department of Transportation;

(B) to regulate health, safety, or environmental hazards from source material, byproduct material, or special nuclear material;

(C) to inspect the facilities of licensees of the Nuclear Regulatory Commission;

(D) to inspect security areas or operations at the site of the generation of any low-level radioactive waste by the Federal Government, or to inspect classified information related to such areas or operations; or

(E) to require indemnification pursuant to the provisions of chapter 171 of title 28 (commonly referred to as the Federal Tort Claims Act), or section 2210 of this title, whichever is applicable.

(4) Federal authority

Except as expressly provided in sections 2021b to 2021j of this title, nothing contained in sections 2021b to 2021j of this title or any compact may be construed to limit the applicability of any Federal law or to diminish or otherwise impair the jurisdiction of any Federal agency, or to alter, amend, or otherwise affect any Federal law governing the judicial review of any action taken pursuant to any compact.

(5) State authority preserved

Except as expressly provided in sections 2021b to 2021j of this title, nothing contained in sections 2021b to 2021j of this title expands, diminishes, or otherwise affects State law.

(c) Restricted use of regional disposal facilities

Any authority in a compact to restrict the use of the regional disposal facilities under the compact to the disposal of low-level radioactive waste generated within the compact region shall not take effect before each of the following occurs:

(1) January 1, 1986; and

(2) the Congress by law consents to the compact.

(d) Congressional review

Each compact shall provide that every 5 years after the compact has taken effect the Congress may by law withdraw its consent.

(Pub. L. 96–573, § 4, as added Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1845.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

PRIOR PROVISIONS

A prior section 2021d, Pub. L. 96–573, § 4, Dec. 22, 1980, 94 Stat. 3348, related to policy of Federal Government concerning low-level radioactive waste disposal, implementation of that policy, and a report to Congress and the States to assist in carrying out the policy, prior to repeal by Pub. L. 99–240, § 102.

TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT CONSENT ACT

Pub. L. 105–236, Sept. 20, 1998, 112 Stat. 1542, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Texas Low-Level Radioactive Waste Disposal Compact Consent Act'.

''SEC. 2. CONGRESSIONAL FINDING.

''The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b et seq.).

''SEC. 3. CONDITIONS OF CONSENT TO COMPACT.

''The consent of the Congress to the compact set forth in section 5—

''(1) shall become effective on the date of the enactment of this Act [Sept. 20, 1998];

''(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b et seq.); and

''(3) is granted only for so long as the regional commission established in the compact complies with all of the provisions of such Act.

''SEC. 4. CONGRESSIONAL REVIEW.

''The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of the enactment of this Act [Sept. 20, 1998], and at such intervals thereafter as may be provided in such compact.

''SEC. 5. TEXAS LOW-LEVEL RADIOACTIVE WASTE COMPACT.

''(a) CONSENT OF CONGRESS.—In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of Congress is given to the States of Texas, Maine, and Vermont to enter into the compact set forth in subsection (b).

''(b) TEXT OF COMPACT.—The compact reads substantially as follows: [Text of compact appears at 112 Stat. 1543]''.

SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT CONSENT ACT

Pub. L. 100–712, Nov. 23, 1988, 102 Stat. 4773, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Southwestern Low-Level Radioactive Waste Disposal Compact Consent Act'[.]

''SEC. 2. CONGRESSIONAL FINDING.

''The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021b–2021j].

''SEC. 3. CONDITIONS OF CONSENT TO COMPACT.

''The consent of the Congress to the compact set forth in section 5—

''(1) shall become effective on the date of the enactment of this Act [Nov. 23, 1988];

''(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021b–2021j]; and

''(3) is granted only for so long as the regional commission established in the compact complies with all of the provisions of such Act.

''SEC. 4. CONGRESSIONAL REVIEW.

''The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of enactment of this Act [Nov. 23, 1988], and at such intervals thereafter as may be provided in such compact.

''SEC. 5. SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE COMPACT.

''In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of Congress is given to the states of Arizona, California, and any eligible states, as defined in article VII of the Southwestern Low-Level Radioactive Waste Disposal Compact, to enter into such compact. Such compact is substantially as follows: [Text of compact appears at 102 Stat. 4773]''.

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT CONSENT ACT

Pub. L. 100–319, May 19, 1988, 102 Stat. 471, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Appalachian States Low-Level Radioactive Waste Compact Consent Act'.

''SEC. 2. CONGRESSIONAL FINDING.

''The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021b–2021j].

''SEC. 3. CONDITIONS OF CONSENT TO COMPACT.

''The consent of the Congress to the compact set forth in section 5—

''(1) shall become effective on the date of the enactment of this Act [May 19, 1988],

''(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021b–2021j], and

''(3) is granted only for so long as the Appalachian States Low-Level Radioactive Waste Commission, advisory committees, and regional boards established in the compact comply with all the provisions of such Act.

''SEC. 4. CONGRESSIONAL REVIEW.

''The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of the enactment of this Act [May 19, 1988], and at such intervals thereafter as may be provided for in such compact.

''SEC. 5. APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT.

''In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(A)(2) [42 U.S.C. 2021d(a)(2)]), the consent of Congress is given to the States of Pennsylvania, West Virginia, and any eligible States as defined in Article 5(A) of the Appalachian States Low-Level Radioactive Waste Compact to enter into such compact. Such compact is substantially as follows: [Text of compact appears at 102 Stat. 471]''.

OMNIBUS LOW-LEVEL RADIOACTIVE WASTE INTERSTATE COMPACT CONSENT ACT

Pub. L. 99–240, title II, Jan. 15, 1986, 99 Stat. 1859, provided that:

''SEC. 201. SHORT TITLE.

''This Title may be cited as the 'Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act'.

''Subtitle A—General Provisions

''SEC. 211. CONGRESSIONAL FINDING.

''The Congress hereby finds that each of the compacts set forth in subtitle B is in furtherance of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021b–2021j].

''SEC. 212. CONDITIONS OF CONSENT TO COMPACTS.

''The consent of the Congress to each of the compacts set forth in subtitle B—

''(1) shall become effective on the date of the enactment of this Act [Jan. 15, 1986];

''(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act, as amended [42 U.S.C. 2021b–2021j]; and

''(3) is granted only for so long as the regional commission, committee, or board established in the compact complies with all of the provisions of such Act.

''SEC. 213. CONGRESSIONAL REVIEW.

''The Congress may alter, amend, or repeal this Act with respect to any compact set forth in subtitle B after the expiration of the 10-year period following the date of the enactment of this Act [Jan. 15, 1986], and at such intervals thereafter as may be provided in such compact.

''Subtitle B—Congressional Consent to Compacts

''SEC. 221. NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT.

''The consent of Congress is hereby given to the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming to enter into the Northwest Interstate Compact on Low-level Radioactive Waste Management, and to each and every part and article thereof. Such compact reads substantially as follows: [Text of compact appears at 99 Stat. 1860.]

''SEC. 222. CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT.

''The consent of Congress is hereby given to the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, and Oklahoma to enter into the Central Interstate Low-Level Radioactive Waste Compact, and to each and every part and article thereof. Such compact reads substantially as follows: [Text of compact appears at 99 Stat. 1863.]

''SEC. 223. SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT.

''In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress is hereby given to the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia to enter into the Southeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows: [Text of compact appears at 99 Stat. 1871; 103 Stat. 1289.]

''SEC. 224. CENTRAL MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT.

''In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress hereby is given to the States of Illinois and Kentucky to enter into the Central Midwest Interstate Low-Level Radioactive Waste Compact. Such compact is substantially as follows: [Text of compact appears at 99 Stat. 1880; 108 Stat. 4607.]

''SEC. 225. MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT.

''The consent of Congress is hereby given to the States of Iowa, Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin to enter into the Midwest Interstate Compact on Low-level Radioactive Waste Management. Such compact is as follows: [Text of compact appears at 99 Stat. 1892.]

''SEC. 226. ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT.

''In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress hereby is given to the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming to enter into the Rocky Mountain Interstate Low-Level Radioactive Waste Compact. Such compact is substantially as follows: [Text of compact appears at 99 Stat. 1902.]

''SEC. 227. NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT.

''In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021d(a)(2)], the consent of the Congress is hereby given to the States of Connecticut, New Jersey, Delaware, and Maryland to enter into the Northeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows: [Text of compact appears at 99 Stat. 1910.].''

§ 2021e. Limited availability of certain regional disposal facilities during transition and licensing periods

(a) Availability of disposal capacity

(1) Pressurized water and boiling water reactors

During the seven-year period beginning January 1, 1986 and ending December 31, 1992, subject to the provisions of subsections (b) through (g) of this section, each State in which there is located a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section shall make disposal capacity available for low-level radioactive waste generated by pressurized water and boiling water commercial nuclear power reactors in accordance with the allocations established in subsection (c) of this section.

(2) Other sources of low-level radioactive waste

During the seven-year period beginning January 1, 1986 and ending December 31, 1992, subject to the provisions of subsections (b) through (g) of this section, each State in which there is located a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section shall make disposal capacity available for low-level radioactive waste generated by any source not referred to in paragraph (1).

(3) Allocation of disposal capacity

(A) During the seven-year period beginning January 1, 1986 and ending December 31, 1992, low-level radioactive waste generated within a sited compact region shall be accorded priority under this section in the allocation of available disposal capacity at a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section and located in the sited compact region in which such waste is generated.

(B) Any State in which a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section is located may, subject to the provisions of its compact, prohibit the disposal at such facility of low-level radioactive waste generated outside of the compact region if the disposal of such waste in any given calendar year, together with all other low-level radioactive waste disposed of at such facility within that same calendar year, would result in that facility disposing of a total annual volume of low-level radioactive waste in excess of 100 per centum of the average annual volume for such facility designated in subsection (b) of this section: *Provided, however*, That in the event that all three States in which regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) of this section act to prohibit the disposal of low-level radioactive waste pursuant to this subparagraph, each such State shall, in accordance with any applicable procedures of its compact, permit, as necessary, the disposal of additional quantities of such waste in increments of 10 per centum of the average annual volume for each such facility designated in subsection (b) of this section.

(C) Nothing in this paragraph shall require any disposal facility or State referred to in paragraphs (1) through (3) of subsection (b) of this section to accept for disposal low-level radioactive waste in excess of the total amounts designated in subsection (b) of this section.

(4) Cessation of operation of low-level radioactive waste disposal facility

No provision of this section shall be construed to obligate any State referred to in paragraphs (1) through (3) of subsection (b) of this section to accept low-level radioactive waste from any source in the event that the regional disposal facility located in such State ceases operations.

(b) Limitations

The availability of disposal capacity for low-level radioactive waste from any source shall be subject to the following limitations:

(1) Barnwell, South Carolina

The State of South Carolina, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Barnwell, South Carolina to a total of 8,400,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 1,200,000 cubic feet of low-level radioactive waste).

(2) Richland, Washington

The State of Washington, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Richland, Washington to a total of 9,800,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 1,400,000 cubic feet of low-level radioactive waste).

(3) Beatty, Nevada

The State of Nevada, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility lo-

cated at Beatty, Nevada to a total of 1,400,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 200,000 cubic feet of low-level radioactive waste).

(c) Commercial nuclear power reactor allocations

(1) Amount

Subject to the provisions of subsections (a) through (g) of this section each commercial nuclear power reactor shall upon request receive an allocation of low-level radioactive waste disposal capacity (in cubic feet) at the facilities referred to in subsection (b) of this section during the 4-year transition period beginning January 1, 1986, and ending December 31, 1989, and during the 3-year licensing period beginning January 1, 1990, and ending December 31, 1992, in an amount calculated by multiplying the appropriate number from the following table by the number of months remaining in the applicable period as determined under paragraph (2).

Reactor Type	4-year Transition Period		3-year Licensing Period	
	In Sited Region	All Other Locations	In Sited Region	All Other Locations
PWR ...	1027	871	934	685
BWR ...	2300	1951	2091	1533

(2) Method of calculation

For purposes of calculating the aggregate amount of disposal capacity available to a commercial nuclear power reactor under this subsection, the number of months shall be computed beginning with the first month of the applicable period, or the sixteenth month after receipt of a full power operating license, whichever occurs later.

(3) Unused allocations

Any unused allocation under paragraph (1) received by a reactor during the transition period or the licensing period may be used at any time after such reactor receives its full power license or after the beginning of the pertinent period, whichever is later, but not in any event after December 31, 1992, or after commencement of operation of a regional disposal facility in the compact region or State in which such reactor is located, whichever occurs first.

(4) Transferability

Any commercial nuclear power reactor in a State or compact region that is in compliance with the requirements of subsection (e) of this section may assign any disposal capacity allocated to it under this subsection to any other person in each State or compact region. Such assignment may be for valuable consideration and shall be in writing, copies of which shall be filed at the affected compact commissions and States, along with the assignor's unconditional written waiver of the disposal capacity being assigned.

(5) Unusual volumes

(A) The Secretary may, upon petition by the owner or operator of any commercial nuclear power reactor, allocate to such reactor disposal capacity in excess of the amount calculated under paragraph (1) if the Secretary finds and states in writing his reasons for so finding that making additional capacity available for such reactor through this paragraph is required to permit unusual or unexpected operating, maintenance, repair or safety activities.

(B) The Secretary may not make allocations pursuant to subparagraph (A) that would result in the acceptance for disposal of more than 800,000 cubic feet of low-level radioactive waste or would result in the total of the allocations made pursuant to this subsection exceeding 11,900,000 cubic feet over the entire seven-year interim access period.

(6) Limitation

During the seven-year interim access period referred to in subsection (a) of this section, the disposal facilities referred to in subsection (b) of this section shall not be required to accept more than 11,900,000 cubic feet of low-level radioactive waste generated by commercial nuclear power reactors.

(d) Use of surcharge funds for milestone incentives; consequences of failure to meet disposal deadline

(1) Surcharges

The disposal of any low-level radioactive waste under this section (other than low-level radioactive waste generated in a sited compact region) may be charged a surcharge by the State in which the applicable regional disposal facility is located, in addition to the fees and surcharges generally applicable for disposal of low-level radioactive waste in the regional disposal facility involved. Except as provided in subsection (e)(2) of this section, such surcharges shall not exceed—

(A) in 1986 and 1987, $10 per cubic foot of low-level radioactive waste;

(B) in 1988 and 1989, $20 per cubic foot of low-level radioactive waste; and

(C) in 1990, 1991, and 1992, $40 per cubic foot of low-level radioactive waste.

(2) Milestone incentives

(A) Escrow account

Twenty-five per centum of all surcharge fees received by a State pursuant to paragraph (1) during the seven-year period referred to in subsection (a) of this section shall be transferred on a monthly basis to an escrow account held by the Secretary. The Secretary shall deposit all funds received in a special escrow account. The funds so deposited shall not be the property of the United States. The Secretary shall act as trustee for such funds and shall invest them in interest-bearing United States Government Securities with the highest available yield. Such funds shall be held by the Secretary until—

(i) paid or repaid in accordance with subparagraph (B) or (C); or

(ii) paid to the State collecting such fees in accordance with subparagraph (F).

(B) Payments

(i) JULY 1, 1986.—The twenty-five per centum of any amount collected by a

State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning on January 15, 1986, and ending June 30, 1986, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(A) of this section is met by the State in which such waste originated.

(ii) JANUARY 1, 1988.—The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning July 1, 1986 and ending December 31, 1987, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(B) of this section is met by the State in which such waste originated (or its compact region, where applicable).

(iii) JANUARY 1, 1990.—The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1988 and ending December 31, 1989, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(C) of this section is met by the State in which such waste originated (or its compact region, where applicable).

(iv) The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1990 and ending December 31, 1992, and transferred to the Secretary under subparagrah[1] (A), shall be paid by the Secretary in accordance with subparagraph (D) if, by January 1, 1993, the State in which such waste originated (or its compact region, where applicable) is able to provide for the disposal of all low-level radioactive waste generated within such State or compact region.

(C) Failure to meet January 1, 1993 deadline

If, by January 1, 1993, a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State or compact region—

(i) each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, shall be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1993 as the generator or owner notifies the State that the waste is available for shipment; or

(ii) if such State elects not to take title to, take possession of, and assume liability for such waste, pursuant to clause (i), twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1990 and ending December 31, 1992 shall be repaid, with interest, to each generator from whom such surcharge was collected. Repayments made pursuant to this clause shall be made on a monthly basis, with the first such repayment beginning on February 1, 1993, in an amount equal to one thirty-sixth of the total amount required to be repaid pursuant to this clause, and shall continue until the State (or, where applicable, compact region) in which such low-level radioactive waste is generated is able to provide for the disposal of all such waste generated within such State or compact region or until January 1, 1996, whichever is earlier.

If a State in which low-level radioactive waste is generated elects to take title to, take possession of, and assume liability for such waste pursuant to clause (i), such State shall be paid such amounts as are designated in subparagraph (B)(iv). If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated provides for the disposal of such waste at any time after January 1, 1993 and prior to January 1, 1996, such State (or, where applicable, compact region) shall be paid in accordance with subparagraph (D) a lump sum amount equal to twenty-five per centum of any amount collected by a State under paragraph (1): *Provided, however*, That such payment shall be adjusted to reflect the remaining number of months between January 1, 1993 and January 1, 1996 for which such State (or, where applicable, compact region) provides for the disposal of such waste. If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State or compact region by January 1, 1996, each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1996, as the generator or owner notifies the State that the waste is available for shipment.

(D) Recipients of payments

The payments described in subparagraphs (B) and (C) shall be paid within thirty days after the applicable date—

(i) if the State in which such waste originated is not a member of a compact region, to such State;

(ii) if the State in which such waste originated is a member of the compact re-

[1] So in original. Probably should be ''subparagraph''.

gion, to the compact commission serving such State.

(E) Uses of payments

(i) Limitations

Any amount paid under subparagraphs (B) or (C) may only be used to—

(I) establish low-level radioactive waste disposal facilities;

(II) mitigate the impact of low-level radioactive waste disposal facilities on the host State;

(III) regulate low-level radioactive waste disposal facilities; or

(IV) ensure the decommissioning, closure, and care during the period of institutional control of low-level radioactive waste disposal facilities.

(ii) Reports

(I) Recipient

Any State or compact commission receiving a payment under subparagraphs (B) or (C) shall, on December 31 of each year in which any such funds are expended, submit a report to the Department of Energy itemizing any such expenditures.

(II) Department of Energy

Not later than six months after receiving the reports under subclause (I), the Secretary shall submit to the Congress a summary of all such reports that shall include an assessment of the compliance of each such State or compact commission with the requirements of clause (i).

(F) Payment to States

Any amount collected by a State under paragraph (1) that is placed in escrow under subparagraph (A) and not paid to a State or compact commission under subparagraphs (B) and (C) or not repaid to a generator under subparagraph (C) shall be paid from such escrow account to such State collecting such payment under paragraph (1). Such payment shall be made not later than 30 days after a determination of ineligibility for a refund is made.

(G) Penalty surcharges

No rebate shall be made under this subsection of any surcharge or penalty surcharge paid during a period of noncompliance with subsection (e)(1) of this section.

(e) Requirements for access to regional disposal facilities

(1) Requirements for non-sited compact regions and non-member States

Each non-sited compact region, or State that is not a member of a compact region that does not have an operating disposal facility, shall comply with the following requirements:

(A) By July 1, 1986, each such non-member State shall ratify compact legislation or, by the enactment of legislation or the certification of the Governor, indicate its intent to develop a site for the location of a low-level radioactive waste disposal facility within such State.

(B) By January 1, 1988

(i) each non-sited compact region shall identify the State in which its low-level radioactive waste disposal facility is to be located, or shall have selected the developer for such facility and the site to be developed, and each compact region or the State in which its low-level radioactive waste disposal facility is to be located shall develop a siting plan for such facility providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application and shall delegate authority to implement such plan;

(ii) each non-member State shall develop a siting plan providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application for a low-level radioactive waste disposal facility and shall delegate authority to implement such plan; and

(iii) The siting plan required pursuant to this paragraph shall include a description of the optimum way to attain operation of the low-level radioactive waste disposal facility involved, within the time period specified in sections 2021b to 2021j of this title. Such plan shall include a description of the objectives and a sequence of deadlines for all entities required to take action to implement such plan, including, to the extent practicable, an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning facility operation. Such plan shall also identify, to the extent practicable, the process for (1) screening for broad siting areas; (2) identifying and evaluating specific candidate sites; and (3) characterizing the preferred site(s), completing all necessary environmental assessments, and preparing a license application for submission to the Nuclear Regulatory Commission or an Agreement State.

(C) By January 1, 1990

(i) a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member State; or

(ii) the Governor (or, for any State without a Governor, the chief executive officer) of any State that is not a member of a compact region in compliance with clause (i), or has not complied with such clause by its own actions, shall provide a written certification to the Nuclear Regulatory Commission, that such State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within such State and requiring disposal after December 31, 1992, and include a description of the actions that will be taken to ensure that such capacity exists.

(D) By January 1, 1992, a complete application (as determined by the Nuclear Regu-

latory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member State.

(E) The Nuclear Regulatory Commission shall transmit any certification received under subparagraph (C) to the Congress and publish any such certification in the Federal Register.

(F) Any State may, subject to all applicable provisions, if any, of any applicable compact, enter into an agreement with the compact commission of a region in which a regional disposal facility is located to provide for the disposal of all low-level radioactive waste generated within such State, and, by virtue of such agreement, may, with the approval of the State in which the regional disposal facility is located, be deemed to be in compliance with subparagraphs (A), (B), (C), and (D).

(2) Penalties for failure to comply

(A) By July 1, 1986

If any State fails to comply with subparagraph (1)(A)—

(i) any generator of low-level radioactive waste within such region or non-member State shall, for the period beginning July 1, 1986, and ending December 31, 1986, be charged 2 times the surcharge otherwise applicable under subsection (d) of this section; and

(ii) on or after January 1, 1987, any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) of this section.

(B) By January 1, 1988

If any non-sited compact region or non-member State fails to comply with paragraph (1)(B)—

(i) any generator of low-level radioactive waste within such region or non-member State shall—

(I) for the period beginning January 1, 1988, and ending June 30, 1988, be charged 2 times the surcharge otherwise applicable under subsection (d) of this section; and

(II) for the period beginning July 1, 1988, and ending December 31, 1988, be charged 4 times the surcharge otherwise applicable under subsection (d) of this section; and

(ii) on or after January 1, 1989, any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) of this section.

(C) By January 1, 1990

If any non-sited compact region or non-member State fails to comply with paragraph (1)(C), any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) of this section.

(D) By January 1, 1992

If any non-sited compact region or non-member State fails to comply with paragraph (1)(D), any generator of low-level radioactive waste within such region or non-member State shall, for the period beginning January 1, 1992 and ending upon the filing of the application described in paragraph (1)(D), be charged 3 times the surcharge otherwise applicable under subsection (d) of this section.

(3) Denial of access

No denial or suspension of access to a regional disposal facility under paragraph (2) may be based on the source, class, or type of low-level radioactive waste.

(4) Restoration of suspended access; penalties for failure to comply

Any access to a regional disposal facility that is suspended under paragraph (2) shall be restored after the non-sited compact region or non-member State involved complies with such requirement. Any payment of surcharge penalties pursuant to paragraph (2) for failure to comply with the requirements of this subsection shall be terminated after the non-sited compact region or non-member State involved complies with such requirements.

(f) Monitoring of compliance and denial of access to non-Federal facilities for noncompliance; information requirements of certain States; proprietary information

(1) Administration

Each State and compact commission in which a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section is located shall have authority—

(A) to monitor compliance with the limitations, allocations, and requirements established in this section; and

(B) to deny access to any non-Federal low-level radioactive waste disposal facilities within its borders to any low-level radioactive waste that—

(i) is in excess of the limitations or allocations established in this section; or

(ii) is not required to be accepted due to the failure of a compact region or State to comply with the requirements of subsection (e)(1) of this section.

(2) Availability of information during interim access period

(A) The States of South Carolina, Washington, and Nevada may require information from disposal facility operators, generators, intermediate handlers, and the Department of Energy that is reasonably necessary to monitor the availability of disposal capacity, the use and assignment of allocations and the applicability of surcharges.

(B) The States of South Carolina, Washington, and Nevada may, after written notice followed by a period of at least 30 days, deny access to disposal capacity to any generator or intermediate handler who fails to provide information under subparagraph (A).

(C) PROPRIETARY INFORMATION.—

(i) Trade secrets, proprietary and other confidential information shall be made available to a State under this subsection upon request only if such State—

(I) consents in writing to restrict the dissemination of the information to those who are directly involved in monitoring under subparagraph (A) and who have a need to know;

(II) accepts liability for wrongful disclosure; and

(III) demonstrates that such information is essential to such monitoring.

(ii) The United States shall not be liable for the wrongful disclosure by any individual or State of any information provided to such individual or State under this subsection.

(iii) Whenever any individual or State has obtained possession of information under this subsection, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any department or agency thereof and the State shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information, or other confidential information under sections 2021b to 2021j of this title may be required to disclose such information under State law.

(g) Nondiscrimination

Except as provided in subsections (b) through (e) of this section, low-level radioactive waste disposed of under this section shall be subject without discrimination to all applicable legal requirements of the compact region and State in which the disposal facility is located as if such low-level radioactive waste were generated within such compact region.

(Pub. L. 96–573, § 5, as added Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1846.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2021f. Emergency access

(a) In general

The Nuclear Regulatory Commission may grant emergency access to any regional disposal facility or non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste, if necessary to eliminate an immediate and serious threat to the public health and safety or the common defense and security. The procedure for granting emergency access shall be as provided in this section.

(b) Request for emergency access

Any generator of low-level radioactive waste, or any Governor (or, for any State without a Governor, the chief executive officer of the State) on behalf of any generator or generators located in his or her State, may request that the Nuclear Regulatory Commission grant emergency access to a regional disposal facility or a non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste. Any such request shall contain any information and certifications the Nuclear Regulatory Commission may require.

(c) Determination of Nuclear Regulatory Commission

(1) Required determination

Not later than 45 days after receiving a request under subsection (b) of this section, the Nuclear Regulatory Commission shall determine whether—

(A) emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security; and

(B) the threat cannot be mitigated by any alternative consistent with the public health and safety, including storage of low-level radioactive waste at the site of generation or in a storage facility obtaining access to a disposal facility by voluntary agreement, purchasing disposal capacity available for assignment pursuant to section 2021e(c) of this title or ceasing activities that generate low-level radioactive waste.

(2) Required notification

If the Nuclear Regulatory Commission makes the determinations required in paragraph (1) in the affirmative, it shall designate an appropriate non-Federal disposal facility or facilities, and notify the Governor (or chief executive officer) of the State in which such facility is located and the appropriate compact commission that emergency access is required. Such notification shall specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration, not exceeding 180 days, necessary to alleviate the immediate threat to public health and safety or the common defense and security. The Nuclear Regulatory Commission shall also notify the Governor (or chief executive officer) of the State in which the low-level radioactive waste requiring emergency access was generated that emergency access has been granted and that, pursuant to subsection (e) of this section, no extension of emergency access may be granted absent diligent State action during the period of the initial grant.

(d) Temporary emergency access

Upon determining that emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security, the Nuclear Regulatory Commission may at its discretion grant temporary emergency access, pending its determination whether the threat could be mitigated by any alternative consistent with the public

health and safety. In granting access under this subsection, the Nuclear Regulatory Commission shall provide the same notification and information required under subsection (c) of this section. Absent a determination that no alternative consistent with the public health and safety would mitigate the threat, access granted under this subsection shall expire 45 days after the granting of temporary emergency access under this subsection.

(e) Extension of emergency access

The Nuclear Regulatory Commission may grant one extension of emergency access beyond the period provided in subsection (c) of this section, if it determines that emergency access continues to be necessary because of an immediate and serious threat to the public health and safety or the common defense and security that cannot be mitigated by any alternative consistent with the public health and safety, and that the generator of low-level radioactive waste granted emergency access and the State in which such low-level radioactive waste was generated have diligently though unsuccessfully acted during the period of the initial grant to eliminate the need for emergency access. Any extension granted under this subsection shall be for the minimum volume and duration the Nuclear Regulatory Commission finds necessary to eliminate the immediate threat to public health and safety or the common defense and security, and shall not in any event exceed 180 days.

(f) Reciprocal access

Any compact region or State not a member of a compact that provides emergency access to non-Federal disposal facilities within its borders shall be entitled to reciprocal access to any subsequently operating non-Federal disposal facility that serves the State or compact region in which low-level radioactive waste granted emergency access was generated. The compact commission or State having authority to approve importation of low-level radioactive waste to the disposal facility to which emergency access was granted shall designate for reciprocal access an equal volume of low-level radioactive waste having similar characteristics to that provided emergency access.

(g) Approval by compact commission

Any grant of access under this section shall be submitted to the compact commission for the region in which the designated disposal facility is located for such approval as may be required under the terms of its compact. Any such compact commission shall act to approve emergency access not later than 15 days after receiving notification from the Nuclear Regulatory Commission, or reciprocal access not later than 15 days after receiving notification from the appropriate authority under subsection (f) of this section.

(h) Limitations

No State shall be required to provide emergency or reciprocal access to any regional disposal facility within its borders for low-level radioactive waste not meeting criteria established by the license or license agreement of such facility, or in excess of the approved capacity of such facility, or to delay the closing of any such facility pursuant to plans established before receiving a request for emergency or reciprocal access. No State shall, during any 12-month period, be required to provide emergency or reciprocal access to any regional disposal facility within its borders for more than 20 percent of the total volume of low-level radioactive waste accepted for disposal at such facility during the previous calendar year.

(i) Volume reduction and surcharges

Any low-level radioactive waste delivered for disposal under this section shall be reduced in volume to the maximum extent practicable and shall be subject to surcharges established in sections 2021b to 2021j of this title.

(j) Deduction from allocation

Any volume of low-level radioactive waste granted emergency or reciprocal access under this section, if generated by any commercial nuclear power reactor, shall be deducted from the low-level radioactive waste volume allocable under section 2021e(c) of this title.

(k) Agreement States

Any agreement under section 2021 of this title shall not be applicable to the determinations of the Nuclear Regulatory Commission under this section.

(Pub. L. 96–573, § 6, as added Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1855.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2021g. Responsibilities of Department of Energy

(a) Financial and technical assistance

The Secretary shall, to the extent provided in appropriations Act, provide to those compact regions, host States, and nonmember States detemined[1] by the Secretary to require assistance for purposes of carrying out sections 2021b to 2021j of this title—

(1) continuing technical assistance to assist them in fulfilling their responsibilities under sections 2021b to 2021j of this title. Such technical assistance shall include, but not be limited to, technical guidelines for site selection, alternative technologies for low-level radioactive waste disposal, volume reduction options, management techniques to reduce low-level waste generation, transportation practices for shipment of low-level wastes, health and safety considerations in the storage, shipment and disposal of low-level radioactive wastes, and establishment of a computerized data-base to monitor the management of low-level radioactive wastes; and

(2) through the end of fiscal year 1993, financial assistance to assist them in fulfilling their responsibilities under sections 2021b to 2021j of this title.

(b) Omitted

(Pub. L. 96–573, § 7, as added Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1858.)

[1] So in original. Probably should be ''determined''.

CODIFICATION

Subsec. (b) of this section, which required the Secretary to prepare and submit to Congress on an annual basis a report on low-level waste disposal, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 2 on page 84 of House Document No. 103–7.

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2021h. Alternative disposal methods

(a) Not later than 12 months after January 15, 1986, the Nuclear Regulatory Commission shall, in consultation with the States and other interested persons, identify methods for the disposal of low-level radioactive waste other than shallow land burial, and establish and publish technical guidance regarding licensing of facilities that use such methods.

(b) Not later than 24 months after January 15, 1986, the Commission shall, in consultation with the States and other interested persons, identify and publish all relevant technical information regarding the methods identified pursuant to subsection (a) of this section that a State or compact must provide to the Commission in order to pursue such methods, together with the technical requirements that such facilities must meet, in the judgment of the Commission, if pursued as an alternative to shallow land burial. Such technical information and requirements shall include, but need not be limited to, site suitability, site design, facility operation, disposal site closure, and environmental monitoring, as necessary to meet the performance objectives established by the Commission for a licensed low-level radioactive waste disposal facility. The Commission shall specify and publish such requirements in a manner and form deemed appropriate by the Commission.

(Pub. L. 96–573, § 8, as added Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1858.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2021i. Licensing review and approval

In order to ensure the timely development of new low-level radioactive waste disposal facilities, the Nuclear Regulatory Commission or, as appropriate, agreement States, shall consider an application for a disposal facility license in accordance with the laws applicable to such application, except that the Commission and the agreement state[1] shall—

(1) not later than 12 months after January 15, 1986, establish procedures and develop the technical capability for processing applications for such licenses;

(2) to the extent practicable, complete all activities associated with the review and processing of any application for such a license (except for public hearings) no later than 15 months after the date of receipt of such application; and

(3) to the extent practicable, consolidate all required technical and environmental reviews and public hearings.

(Pub. L. 96–573, § 9, as added Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1859.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2021j. Radioactive waste below regulatory concern

(a) Not later than 6 months after January 15, 1986, the Commission shall establish standards and procedures, pursuant to existing authority, and develop the technical capability for considering and acting upon petitions to exempt specific radioactive waste streams from regulation by the Commission due to the presence of radionuclides in such waste streams in sufficiently low concentrations or quantities as to be below regulatory concern.

(b) The standards and procedures established by the Commission pursuant to subsection (a) of this section shall set forth all information required to be submitted to the Commission by licensees in support of such petitions, including, but not limited to—

(1) a detailed description of the waste materials, including their origin, chemical composition, physical state, volume, and mass; and

(2) the concentration or contamination levels, half-lives, and identities of the radionuclides present.

Such standards and procedures shall provide that, upon receipt of a petition to exempt a specific radioactive waste stream from regulation by the Commission, the Commission shall determine in an expeditious manner whether the concentration or quantity of radionuclides present in such waste stream requires regulation by the Commission in order to protect the public health and safety. Where the Commission determines that regulation of a radioactive waste stream is not necessary to protect the public health and safety, the Commission shall take such steps as may be necessary, in an expeditious manner, to exempt the disposal of such radioactive waste from regulation by the Commission.

(Pub. L. 96–573, § 10, as added Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1859.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2022. Health and environmental standards for uranium mill tailings

(a) Promulgation and revision of rules for protection from hazards at inactive or depository sites

As soon as practicable, but not later than October 1, 1982, the Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the ''Administrator'') shall,

[1] So in original. Probably should be ''States''.

by rule, promulgate standards of general application (including standards applicable to licenses under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7914(h)]) for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials (as defined in section 101 of the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7911]) located at inactive uranium mill tailings sites and depository sites for such materials selected by the Secretary of Energy, pursuant to title I of the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7911 et seq.]. Standards promulgated pursuant to this subsection shall, to the maximum extent practicable, be consistent with the requirements of the Solid Waste Disposal Act, as amended [42 U.S.C. 6901 et seq.]. In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate. The Administrator may periodically revise any standard promulgated pursuant to this subsection. After October 1, 1982, if the Administrator has not promulgated standards in final form under this subsection, any action of the Secretary of Energy under title I of the Uranium Mill Tailings Radiation Control Act of 1978 which is required to comply with, or be taken in accordance with, standards of the Administrator shall comply with, or be taken in accordance with, the standards proposed by the Administrator under this subsection until such time as the Administrator promulgates such standards in final form.

(b) Promulgation and revision of rules for protection from hazards at processing or disposal sites

(1) As soon as practicable, but not later than October 31, 1982, the Administrator shall, by rule, propose, and within 11 months thereafter promulgate in final form, standards of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material, as defined in section 2014(e)(2) of this title, at sites at which ores are processed primarily for their source material content or which are used for the disposal of such byproduct material. If the Administrator fails to promulgate standards in final form under this subsection by October 1, 1983, the authority of the Administrator to promulgate such standards shall terminate, and the Commission may take actions under this chapter without regard to any provision of this chapter requiring such actions to comply with, or be taken in accordance with, standards promulgated by the Administrator. In any such case, the Commission shall promulgate, and from time to time revise, any such standards of general application which the Commission deems necessary to carry out its responsibilities in the conduct of its licensing activities under this chapter. Requirements established by the Commission under this chapter with respect to byproduct material as defined in section 2014(e)(2) of this title shall conform to such standards. Any requirements adopted by the Commission respecting such byproduct material before promulgation by the Commission of such standards shall be amended as the Commission deems necessary to conform to such standards in the same manner as provided in subsection (f)(3) of this section. Nothing in this subsection shall be construed to prohibit or suspend the implementation or enforcement by the Commission of any requirement of the Commission respecting byproduct material as defined in section 2014(e)(2) of this title pending promulgation by the Commission of any such standard of general application. In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate.

(2) Such generally applicable standards promulgated pursuant to this subsection for nonradiological hazards shall provide for the protection of human health and the environment consistent with the standards required under subtitle C of the Solid Waste Disposal Act, as amended [42 U.S.C. 6921 et seq.], which are applicable to such hazards: *Provided, however*, That no permit issued by the Administrator is required under this chapter or the Solid Waste Disposal Act, as amended [42 U.S.C. 6901 et seq.], for the processing, possession, transfer, or disposal of byproduct material, as defined in section 2014(e)(2) of this title. The Administrator may periodically revise any standard promulgated pursuant to this subsection. Within three years after such revision of any such standard, the Commission and any State permitted to exercise authority under section 2021(b)(2) of this title shall apply such revised standard in the case of any license for byproduct material as defined in section 2014(e)(2) of this title or any revision thereof.

(c) Publication in Federal Register; notice and hearing; consultations; judicial review; time for petition; venue; copy to Administrator; record; administrative jurisdiction; review by Supreme Court; effective date of rule

(1) Before the promulgation of any rule pursuant to this section, the Administrator shall publish the proposed rule in the Federal Register, together with a statement of the research, analysis, and other available information in support of such proposed rule, and provide a period of public comment of at least thirty days for written comments thereon and an opportunity, after such comment period and after public notice, for any interested person to present oral data, views, and arguments at a public hearing. There shall be a transcript of any such hearing. The Administrator shall consult with the Commission and the Secretary of Energy before promulgation of any such rule.

(2) Judicial review of any rule promulgated under this section may be obtained by any interested person only upon such person filing a petition for review within sixty days after such promulgation in the United States court of appeals for the Federal judicial circuit in which such

person resides or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of court to the Administrator. The Administrator thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which such rule was based as provided in section 2112 of title 28. The court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. The judgement of the court affirming, modifying, or setting aside, in whole or in part, any such rule shall be final, subject to judicial review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(3) Any rule promulgated under this section shall not take effect earlier than sixty calendar days after such promulgation.

(d) Federal and State implementation and enforcement

Implementation and enforcement of the standards promulgated pursuant to subsection (b) of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this chapter. States exercising authority pursuant to section 2021(b)(2) of this title shall implement and enforce such standards in accordance with subsection (*o*) of such section.

(e) Other authorities of Administrator unaffected

Nothing in this chapter applicable to byproduct material, as defined in section 2014(e)(2) of this title, shall affect the authority of the Administrator under the Clean Air Act of 1970, as amended [42 U.S.C. 7401 et seq.], or the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.].

(f) Implementation or enforcement of Uranium Mill Licensing Requirements

(1) Prior to January 1, 1983, the Commission shall not implement or enforce the provisions of the Uranium Mill Licensing Requirements published as final rules at 45 Federal Register 65521 to 65538 on October 3, 1980 (hereinafter in this subsection referred to as the ''October 3 regulations''). After December 31, 1982, the Commission is authorized to implement and enforce the provisions of such October 3 regulations (and any subsequent modifications or additions to such regulations which may be adopted by the Commission), except as otherwise provided in paragraphs (2) and (3) of this subsection.

(2) Following the proposal by the Administrator of standards under subsection (b) of this section, the Commission shall review the October 3 regulations, and, not later than 90 days after the date of such proposal, suspend implementation and enforcement of any provision of such regulations which the Commission determines after notice and opportunity for public comment to require a major action or major commitment by licensees which would be unnecessary if—

(A) the standards proposed by the Administrator are promulgated in final form without modification, and

(B) the Commission's requirements are modified to conform to such standards.

Such suspension shall terminate on the earlier of April 1, 1984 or the date on which the Commission amends the October 3 regulations to conform to final standards promulgated by the Administrator under subsection (b) of this section. During the period of such suspension, the Commission shall continue to regulate byproduct material (as defined in section 2014(e)(2) of this title) under this chapter on a licensee-by-licensee basis as the Commission deems necessary to protect public health, safety, and the environment.

(3) Not later than 6 months after the date on which the Administrator promulgates final standards pursuant to subsection (b) of this section, the Commission shall, after notice and opportunity for public comment, amend the October 3 regulations, and adopt such modifications, as the Commission deems necessary to conform to such final standards of the Administrator.

(4) Nothing in this subsection may be construed as affecting the authority or responsibility of the Commission under section 2114 of this title to promulgate regulations to protect the public health and safety and the environment.

(Aug. 1, 1946, ch. 724, title I, § 275, as added Pub. L. 95–604, title II, § 206(a), Nov. 8, 1978, 92 Stat. 3039; amended Pub. L. 97–415, §§ 18(a), 22(b), Jan. 4, 1983, 96 Stat. 2077, 2080; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

The Uranium Mill Tailings Radiation Control Act of 1978, referred to in subsec. (a), is Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, as amended. Title I of such act is classified generally to subchapter I (§ 7911 et seq.) of chapter 88 of this title. For complete classification of this act to the Code, see Short Title note set out under section 7901 of this title and Tables.

The Solid Waste Disposal Act, as amended, referred to in subsecs. (a) and (b)(2), is title II of Pub. L. 89–272, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Clean Air Act of 1970, as amended, referred to in subsec. (e), probably means the Clean Air Act, which is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, as amended, referred to in subsec. (e), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–415, §§ 18(a)(1), 22(b)(1), substituted ''October 1, 1982'' for ''one year after November 8, 1978'' inserted provisions relating to the application of the Administrator's proposed standards to actions by the Secretary of Energy in the event the Administrator fails to promulgate standards in final form after Oct. 1, 1982, and inserted provisions that in establishing standards, the Administrator shall consider risk

to public health, safety, and the environment, environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate.

Subsec. (b)(1). Pub. L. 97–415, §§18(a)(2), (3), 22(b)(2), substituted ''October 31, 1982, the Administrator shall, by rule, propose, and within 11 months thereafter promulgate in final form,'' for ''eighteen months after November 8, 1978, the Administrator shall, by rule, promulgate'' inserted provisions relating to the consequences of failure by the Administrator to promulgate standards in final form by Oct. 1, 1983, and inserted provisions that in establishing standards, the Administrator shall consider risk to public health, safety, and the environment, environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate.

Subsec. (f). Pub. L. 97–415, §18(a)(4), added subsec. (f).

EFFECTIVE DATE

Section effective Nov. 8, 1978, see section 208 of Pub. L. 95–604, set out as an Effective Date of 1978 Amendment note under section 2014 of this title.

§ 2023. State authority to regulate radiation below level of regulatory concern of Nuclear Regulatory Commission

(a) In general

No provision of this chapter, or of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021b et seq.], may be construed to prohibit or otherwise restrict the authority of any State to regulate, on the basis of radiological hazard, the disposal or off-site incineration of low-level radioactive waste, if the Nuclear Regulatory Commission, after October 24, 1992, exempts such waste from regulation.

(b) Relation to other State authority

This section may not be construed to imply preemption of existing State authority. Except as expressly provided in subsection (a) of this section, this section may not be construed to confer on any State any additional authority to regulate activities licensed by the Nuclear Regulatory Commission.

(c) Definitions

For purposes of this section:

(1) The term ''low-level radioactive waste'' means radioactive material classified by the Nuclear Regulatory Commission as low-level radioactive waste on October 24, 1992.

(2) The term ''off-site incineration'' means any incineration of radioactive materials at a facility that is located off the site where such materials were generated.

(3) The term ''State'' means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Aug. 1, 1946, ch. 724, title I, §276, as added Pub. L. 102–486, title XXIX, §2901(a), Oct. 24, 1992, 106 Stat. 3122.)

REFERENCES IN TEXT

The Low-Level Radioactive Waste Policy Act, referred to in subsec. (a), is Pub. L. 96–573, as amended generally by Pub. L. 99–240, title I, §102, Jan. 15, 1986, 99 Stat. 1842, which is classified generally to section 2021b et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2021b of this title and Tables.

SUBCHAPTER II—ORGANIZATION

§§ 2031, 2032. Repealed. Pub. L. 93–438, title I, § 104(a), Oct. 11, 1974, 88 Stat. 1237

Section 2031, act Aug. 1, 1946, ch. 724, §21, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 924; amended Aug. 9, 1955, ch. 697, §3, 69 Stat. 630, provided for establishment of Atomic Energy Commission, its composition, Chairman, acting Chairman, quorum, official spokesman, and seal.

Provisions similar to section 2031 were contained in section 1802(a)(1) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

Section 2032, act Aug. 1, 1946, ch. 724, §22, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 924; amended Sept. 4, 1957, Pub. L. 85–287, §1, 71 Stat. 612; Aug. 14, 1964, Pub. L. 88–426, title III, §305(10)(A), 78 Stat. 423, provided for appointment of members of Commission, terms of office, and prohibition from engaging in any other vocation, business, or employment, by the members.

Provisions similar to section 2032 were contained in section 1802(a)(2) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

EFFECTIVE DATE OF REPEAL

Repeal effective 120 days after Oct. 11, 1974, or on such earlier date as the President may prescribe and publish in the Federal Register, see section 312(a) of Pub. L. 93–438, set out as a note under section 5801 of this title.

EX. ORD. NO. 9816. TRANSFER OF PROPERTY AND PERSONNEL TO THE ATOMIC ENERGY COMMISSION

Ex. Ord. No. 9816, eff. Dec. 31, 1946, 12 F.R. 37, provided:

By virtue of the authority vested in me by the Constitution and the statutes, including the Atomic Energy Act of 1946 [this chapter], and as President of the United States and Commander in Chief of the Army and the Navy, it is hereby ordered and directed as follows:

1. There are transferred to the Atomic Energy Commission all interests owned by the United States or any Government agency in the following property:

(a) All fissionable material; all atomic weapons and parts thereof; all facilities, equipment, and materials for the processing, production, or utilization of fissionable material or atomic energy; all processes and technical information of any kind, and the source thereof (including data, drawings, specifications, patents, patent applications, and other sources) relating to the processing, production, or utilization of fissionable material or atomic energy; and all contracts, agreements, leases, patents, applications for patents, inventions and discoveries (whether patented or unpatented), and other rights of any kind concerning any such items.

(b) All facilities, equipment, and materials, devoted primarily to atomic energy research and development.

2. There also are transferred to the Atomic Energy Commission all property, real or personal, tangible or intangible, including records, owned by or in the possession, custody or control of the Manhattan Engineer District, War Department, in addition to the property described in paragraph 1 above. Specific items of such property, including records, may be excepted from transfer to the Commission in the following manner:

(a) The Secretary of War shall notify the Commission in writing as to the specific items of property or records he wishes to except; and

(b) If after full examination of the facts by the Commission, it concurs in the exception, those specific items of property or records shall be excepted from transfer to the Commission; or

(c) If after full examination of the facts by the Commission, it does not concur in the exception, the matter shall be referred to the President for decision.

3. The Atomic Energy Commission shall exercise full jurisdiction over all interests and property transferred

to the Commission in paragraphs 1 and 2 above, in accordance with the provisions of the Atomic Energy Act of 1946 [this chapter].

4. Any Government agency is authorized to transfer to the Atomic Energy Commission, at the request of the Commission, any property, real or personal, tangible or intangible, acquired or used by such Government agency in connection with any of the property or interests transferred to the Commission by paragraphs 1 and 2 above.

5. Each Government agency shall supply the Atomic Energy Commission with a report on, and an accounting and inventory of, all interests and property, described in paragraphs 1, 2 and 4 above, owned by or in the possession, custody, or control of such Government agency, the form and detail of such report, accounting and inventory, to be determined by mutual agreement, or, in case of nonagreement, by the Director of the Bureau of the Budget.

6. (a) There also are transferred to the Atomic Energy Commission, all civilian officers and employees of the Manhattan Engineer District, War Department, except that the Commission and the Secretary of War may by mutual agreement exclude any of such personnel from transfer to the Commission.

(b) The military and naval personnel heretofore assigned or detailed to the Manhattan Engineer District. War Department, shall continue to be made available to the Commission, for military and naval duty, in similar manner, without prejudice, to the military or naval status of such personnel, for such periods of time as may be agreed mutually by the Commission and the Secretary of War or the Secretary of the Navy.

7. The assistance and the services, personal or other, including the use of property, heretofore made available by any Government agency to the Manhattan Engineer District, War Department, shall be made available to the Atomic Energy Commission for the same purposes as heretofore and under the arrangements now existing until terminated after 30 days notice given by the Commission or by the Government agency concerned in each case.

8. The Commission is authorized to exercise all of the powers and functions vested in the Secretary of War by Executive Order No. 9001, of December 27, 1941, as amended, in so far as they relate to contracts heretofore made by or hereby transferred to the Commission.

9. Such further measures and dispositions as may be determined by the Atomic Energy Commission and any Government agency concerned to be necessary to effectuate the transfers authorized or directed by this order shall be carried out in such manner as the Director of the Bureau of the Budget may direct and by such agencies as he may designate.

10. This order shall be effective as of midnight, December 31, 1946.

Ex. Ord. No. 9816, was amended by Ex. Ord. No. 10657, Feb. 15, 1956, 21 F.R. 1063, and Ex. Ord. No. 11105, Apr. 19, 1963, 28 F.R. 3909, formerly set out as notes under section 2313 of this title, to the extent that it may be inconsistent with such Executive orders.

EX. ORD. NO. 9829. EXTENSION OF EXECUTIVE ORDER NO. 9177 TO ATOMIC ENERGY COMMITTEE

Ex. Ord. No. 9829, eff. Feb. 21, 1947, 12 F.R. 1259, provided:

By virtue of the authority vested in me by the Constitution and laws of the United States, and particularly by Title I of the First War Powers Act, 1941, approved December 18, 1941 (55 Stat. 838), and in the interest of the internal management of the Government, I hereby extend the provisions of Executive Order No. 9177 of May 30, 1942 (7 F.R. 4195), to the United States Atomic Energy Commission; and, subject to the limitations contained in that order, I hereby authorize the United States Atomic Energy Commission to perform and exercise all of the functions and powers vested in and granted to the Secretary of War, the Secretary of the Treasury, the Secretary of Agriculture, and the Reconstruction Finance Corporation by that order.

This order shall be applicable to articles entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 1947.

§ 2033. Principal office

The principal office of the Commission shall be in or near the District of Columbia, but the Commission or any duly authorized representative may exercise any or all of its powers in any place; however, the Commission shall maintain an office for the service of process and papers within the District of Columbia.

(Aug. 1, 1946, ch. 724, title I, § 23, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 925; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1802(a)(3) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

EXPENSES FOR MOVE TO NEW PRINCIPAL OFFICE

Pub. L. 85–162, title I, § 109, Aug. 21, 1957, 71 Stat. 407, as amended by Pub. L. 85–590, § 108, Aug. 4, 1958, 72 Stat. 493, authorized the Commission to use its funds for the payment for travel and transportation expenses in connection with the relocation of residence of employees in order to facilitate retention and relocation of Commission headquarter employees.

§ 2034. General Manager, Deputy and Assistant General Managers

There is established within the Commission—

(a) General Manager; chief executive officer; duties; appointment; removal

a General Manager, who shall be the chief executive officer of the Commission, and who shall discharge such of the administrative and executive functions of the Commission as the Commission may direct. The General Manager shall be appointed by the Commission, shall serve at the pleasure of the Commission and shall be removable by the Commission.

(b) Deputy General Manager; duties; appointment; removal

a Deputy General Manager, who shall act in the stead of the General Manager during his absence when so directed by the General Manager, and who shall perform such other administrative and executive functions as the General Manager shall direct. The Deputy General Manager shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.

(c) Assistant General Managers; duties; appointment; removal

Assistant General Managers, or their equivalents (not to exceed a total of three positions), who shall perform such administrative and executive functions as the General Manager shall direct. They shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.

(Aug. 1, 1946, ch. 724, title I, § 24, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 925; amended Pub. L. 85–287, § 2, Sept. 4, 1957, 71 Stat. 612; Pub. L. 88–426, title III, § 306(f)(1)–(3), Aug. 14, 1964, 78 Stat. 429; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1802(a)(4)(A) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1964—Subsec. (a). Pub. L. 88–426, § 306(f)(1), struck out provisions which prescribed the compensation of the General Manager. Such compensation is now prescribed by section 5315 of Title 5, Government Organization and Employees.

Subsec. (b). Pub. L. 88–426, § 306(f)(2), struck out provisions which prescribed the compensation of the Deputy General Manager. Such compensation is now prescribed by section 5316 of Title 5, Government Organization and Employees.

Subsec. (c). Pub. L. 88–426, § 306(f)(3), struck out provisions which prescribed the compensation of the Assistant General Managers. Such compensation is now prescribed by section 5316 of Title 5, Government Organization and Employees.

1957—Subsec. (a). Pub. L. 85–287 designated existing provisions as subsec. (a), designated the General Manager as the chief executive officer of the Commission, and increased his compensation from $20,000 to $22,000 per annum.

Subsecs. (b), (c). Pub. L. 85–287 added subsecs. (b) and (c).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426.

§ 2035. Divisions, offices, and positions

There is established within the Commission—

(a) Program divisions; appointment and powers of Assistant General Manager and Division Directors

a Division of Military Application and such other program divisions (not to exceed ten in number) as the Commission may determine to the necessary to the discharge of its responsibilities, including a division or divisions the primary responsibilities of which include the development and application of civilian uses of atomic energy. The Division of Military Application shall be under the direction of an Assistant General Manager for Military Application, who shall be appointed by the Commission and shall be an active commissioned officer of the Armed Forces serving in general or flag officer rank or grade, as appropriate. Each other program division shall be under the direction of a Director who shall be appointed by the Commission. The Commission shall require each such division to exercise such of the Commission's administrative and executive powers as the Commission may determine;

(b) General Counsel

an Office of the General Counsel under the direction of the General Counsel who shall be appointed by the Commission; and

(c) Inspection Division; duties

an Inspection Division under the direction of a Director who shall be appointed by the Commission. The Inspection Division shall be responsible for gathering information to show whether or not the contractors, licensees, and officers and employees of the Commission are complying with the provisions of this chapter (except those provisions for which the Federal Bureau of Investigation is responsible) and the appropriate rules and regulations of the Commission.

(d) Executive management positions; appointment; removal

such other executive management positions (not to exceed six in number) as the Commission may determine to be necessary to the discharge of its responsibilities. Such positions shall be established by the General Manager with the approval of the Commission. They shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.

(Aug. 1, 1946, ch. 724, title I, § 25, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 925; amended Pub. L. 85–287, § 3, Sept. 4, 1957, 71 Stat. 612; Pub. L. 88–426, title III, § 306(f)(4)–(7), Aug. 14, 1964, 78 Stat. 429, 430; Pub. L. 90–190, § 5, Dec. 14, 1967, 81 Stat. 577; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1802(a)(4)(B) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–190 substituted an Assistant General Manager for Military Application, who would be appointed by the Commission, for the Director of the Division of Military Application as the head of the Division of Military Application, inserted requirement that the Assistant General Manager be a commissioned officer of the Armed Forces serving in general or flag officer rank or grade, as appropriate, and substituted ''other program division'' for ''such division''.

1964—Subsec. (a). Pub. L. 88–426, § 306(f)(4), struck out provisions which prescribed the compensation of directors of program divisions.

Subsec. (b). Pub. L. 88–426, § 306(f)(5), struck out provisions which prescribed compensation of General Counsel. Such compensation is now prescribed by section 5316 of Title 5, Government Organization and Employees.

Subsec. (c). Pub. L. 88–426, § 306(f)(6), struck out provisions which prescribed compensation of Director of Inspection Division.

Subsec. (d). Pub. L. 88–426, § 306(f)(7), struck out provisions which prescribed compensation of executive management positions.

1957—Pub. L. 85–287 substituted ''Divisions, offices, and positions'' for ''Divisions and offices'' in section catchline.

Subsec. (a). Pub. L. 85–287 increased compensation of Director from $16,000 to $19,000 per annum.

Subsec. (b). Pub. L. 85–287 increased compensation of General Counsel from $16,000 to $19,500 per annum.

Subsec. (c). Pub. L. 85–287 increased compensation of Director from $16,000 to $19,000 per annum.

Subsec. (d). Pub. L. 85–287 added subsec. (d).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426.

TRANSFER OF FUNCTIONS

Divisions of Military Application and Naval Reactors, both established under this section, transferred to Department of Energy by section 7158 of this title, with such organizational units to be deemed organizational units established by chapter 84 (§ 7101 et seq.) of this title. Energy Research and Development Administration terminated pursuant to sections 7151(a) and 7293 of this title.

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. Divisions of Military Application and Naval Reactors established under this section transferred to Energy Research and Development Administration and functions of Atomic Energy Commission with respect thereto transferred to Administrator by section 5814(d) of this title. See also Transfer of Functions notes set out under sections 5814 and 5841 of this title.

§ 2036. Repealed. Pub. L. 95–91, title VII, § 709(c)(1), Aug. 4, 1977, 91 Stat. 608

Section, act Aug. 1, 1946, ch. 724, § 26, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 926, established a General Advisory Committee to advise the Atomic Energy Commission on scientific and technical matters relating to materials, production, and research and development.

Provisions similar to this section were contained in section 1802(b) of this title prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2037. Repealed. Pub. L. 99–661, div. C, title I, § 3137(c), Nov. 14, 1986, 100 Stat. 4066

Section, act Aug. 1, 1946, ch. 724, § 27, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 926; amended Aug. 14, 1964, Pub. L. 88–426, title III, § 305(10)(B), 78 Stat. 423, related to Military Liaison Committee, its composition and duties, and authority of Defense Department to make recommendations to Committee.

§ 2038. Appointment of Army, Navy, or Air Force officer as Assistant General Manager for Military Application; Chairman of Military Liaison Committee; compensation

Notwithstanding the provisions of any other law, the officer of the Army, Navy, or Air Force serving as Assistant General Manager for Military Application shall serve without prejudice to his commissioned status as such officer. Any such officer serving as Assistant General Manager for Military Application shall receive in addition to his pay and allowances, including special and incentive pays, for which pay and allowances the Commission shall reimburse his service, an amount equal to the difference between such pay and allowances, including special and incentive pays, and the compensation established for this position. Notwithstanding the provisions of any other law, any active or retired officer of the Army, Navy, or Air Force may serve as Chairman of the Military Liaison Committee without prejudice to his active or retired status as such officer. Any such active officer serving as Chairman of the Military Liaison Committee shall receive, in addition to his pay and allowances, including special and incentive pays, an amount equal to the difference between such pay and allowances, including special and incentive pays, and the compensation fixed for such Chairman. Any such retired officer serving as Chairman of the Military Liaison Committee shall receive the compensation fixed for such Chairman and his retired pay.

(Aug. 1, 1946, ch. 724, title I, § 28, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 926; amended Pub. L. 88–426, title III, § 306(f)(8), Aug. 14, 1964, 78 Stat. 430; Pub. L. 88–448, title IV, § 401(f), Aug. 19, 1964, 78 Stat. 490; Pub. L. 90–190, § 6, Dec. 14, 1967, 81 Stat. 577; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 107–107, div. A, title X, § 1048(i)(11), Dec. 28, 2001, 115 Stat. 1230.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1802(d) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2001—Pub. L. 107–107 struck out ", subject to section 201 of the Dual Compensation Act" before period at end.

1967—Pub. L. 90–190 substituted "the officer of the Army, Navy, or Air Force serving" for "any active officer of the Army, Navy, or Air Force may serve" and "Assistant General Manager for Military Application" for "Director of the Division of Military Application" wherever appearing, provided for reimbursement by the Commission to the service of the Assistant General Manager for the pay and allowances received by him from his service while he is serving as Assistant General Manager, and struck out references to sections 2211 and 2213 of former title 5.

1964—Pub. L. 88–448 substituted provisions permitting a retired officer serving as Chairman of the Military Liaison Committee to receive the compensation fixed for such Chairman and his retired pay, subject to section 3102 of former title 5, for provisions which permitted a retired officer serving as Chairman to receive in addition to his retired pay, an amount equal to the difference between his retired pay and the compensation prescribed for the Chairman.

Pub. L. 88–426 substituted "and the compensation established for this position pursuant to section 2211 or 2213 of title 5" for "and the compensation prescribed in section 2035 of this title".

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–448 effective on first day of first month which begins later than the ninetieth day following Aug. 19, 1964, see section 403 of Pub. L. 88–448.

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426.

§ 2039. Advisory Committee on Reactor Safeguards; composition; tenure; duties; compensation

There is established an Advisory Committee on Reactor Safeguards consisting of a maximum of fifteen members appointed by the Commission for terms of four years each. The Committee shall review safety studies and facility license applications referred to it and shall make reports thereon, shall advise the Commission with regard to the hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards, and shall perform such other duties as the Commission may

request. One member shall be designated by the Committee as its Chairman. The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, or other work of the Committee, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Committee. The provisions of section 2203 of this title shall be applicable to the Committee.

(Aug. 1, 1946, ch. 724, title I, § 29, as added Pub. L. 85–256, § 5, Sept. 2, 1957, 71 Stat. 579; amended Pub. L. 95–209, § 5, Dec. 13, 1977, 91 Stat. 1483; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 105–362, title XII, § 1201(a), Nov. 10, 1998, 112 Stat. 3292.)

AMENDMENTS

1998—Pub. L. 105–362 struck out at end ''In addition to its other duties under this section, the committee, making use of all available sources, shall undertake a study of reactor safety research and prepare and submit annually to the Congress a report containing the results of such study. The first such report shall be submitted to the Congress not later than December 31, 1977.''

1977—Pub. L. 95–209 inserted provisions which called for a study of reactor safety research and an annual report on results of study.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2040. Fellowship program of Advisory Committee on Reactor Safeguards; selection of fellowships

To assist the Advisory Committee on Reactor Safeguards in carrying out its function, the committee shall establish a fellowship program under which persons having appropriate engineering or scientific expertise are assigned particular tasks relating to the functions of the committee. Such fellowship shall be for 2-year periods and the recipients of such fellowships shall be selected pursuant to such criteria as may be established by the committee.

(Pub. L. 95–209, § 6, Dec. 13, 1977, 91 Stat. 1483.)

CODIFICATION

Section was not enacted as part of the Atomic Energy Act of 1954.

SUBCHAPTER III—RESEARCH

§ 2051. Research and development assistance

(a) Contracts and loans for research activities

The Commission is directed to exercise its powers in such manner as to insure the continued conduct of research and development and training activities in the fields specified below, by private or public institutions or persons, and to assist in the acquisition of an ever-expanding fund of theoretical and practical knowledge in such fields. To this end the Commission is authorized and directed to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities relating to—

(1) nuclear processes;

(2) the theory and production of atomic energy, including processes, materials, and devices related to such production;

(3) utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;

(4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial or commercial uses, the generation of usable energy, and the demonstration of advances in the commercial or industrial application of atomic energy;

(5) the protection of health and the promotion of safety during research and production activities; and

(6) the preservation and enhancement of a viable environment by developing more efficient methods to meet the Nation's energy needs.

(b) Grants and contributions

The Commission is authorized—

(1) to make grants and contributions to the cost of construction and operation of reactors and other facilities and other equipment to colleges, universities, hospitals, and eleemosynary or charitable institutions for the conduct of educational and training activities relating to the fields in subsection (a) of this section; and

(2) to provide grants, loans, cooperative agreements, contracts, and equipment to institutions of higher education (as defined in section 1002 of title 20) to support courses, studies, training, curricula, and disciplines pertaining to nuclear safety, security, or environmental protection, or any other field that the Commission determines to be critical to the regulatory mission of the Commission.

(c) Purchase of supplies without advertising

The Commission may (1) make arrangements pursuant to this section, without regard to the provisions of section 5 of title 41, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable; (2) make partial and advance payments under such arrangements; and (3) make available for use in connection therewith such of its equipment and facilities as it may deem desirable.

(d) Prevention of dissemination of information prohibited; other conditions of agreements

The arrangements made pursuant to this section shall contain such provisions (1) to protect health, (2) to minimize danger to life or property, and (3) to require the reporting and to permit the inspection of work performed there-

under, as the Commission may determine. No such arrangement shall contain any provisions or conditions which prevent the dissemination of scientific or technical information, except to the extent such dissemination is prohibited by law.

(Aug. 1, 1946, ch. 724, title I, § 31, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 927; amended Aug. 6, 1956, ch. 1015, §§ 2, 3, 70 Stat. 1069; Pub. L. 91–560, § 1, Dec. 19, 1970, 84 Stat. 1472; Pub. L. 92–84, title II, § 201(a), Aug. 11, 1971, 85 Stat. 307; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109–58, title VI, § 651(c)(1), Aug. 8, 2005, 119 Stat. 801.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1803(a) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 inserted heading, inserted par. (1) designation before ''to make grants'', in introductory provisions substituted ''authorized—'' for ''further authorized'', and added par. (2).

1971—Subsec. (a)(6). Pub. L. 92–84 added par. (6).

1970—Subsec. (a)(4). Pub. L. 91–560 inserted commercial uses as an additional purpose and substituted ''demonstration of advances in the commercial or industrial application of atomic energy'' for ''demonstration of the practical value of utilization or production facilities for industrial or commercial purposes''.

1956—Subsec. (a). Act Aug. 6, 1956, § 2, inserted ''and training'' after ''development'' in first sentence.

Subsecs. (b) to (d). Act Aug. 6, 1956, § 3, added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

THREE MILE ISLAND NUCLEAR STATION, PA.; FEASIBILITY OF EPIDEMIOLOGICAL RESEARCH ON HEALTH EFFECTS OF LOW-LEVEL RADIATION; REPORT TO CONGRESS

Pub. L. 96–295, title III, § 308(a), June 30, 1980, 94 Stat. 792, provided that in the conduct of the study required by Pub. L. 95–601, § 5(d), Nov. 6, 1978, 92 Stat. 2949, on options for Federal epidemiological research on the health effects of low-level ionizing radiation, set out below, the Nuclear Regulatory Commission and the Environmental Protection Agency, in consultation with the Secretary of Health and Human Services, evaluate the feasibility of epidemiological research on the health effects of low-level ionizing radiation exposure to licensee, contractor, and subcontractor employees as a result of the accident of March 28, 1979, at unit two of the Three Mile Island Nuclear Station in Pennsylvania, the efforts to stabilize such facility or reduce or prevent radioactive unplanned offsite releases in excess of allowable limits for normal operation established by the Commission, or efforts to decontaminate, decommission, or repair such facility, with the report required by such section 5(d) of Pub. L. 95–601 to include the results of this evaluation.

STUDY ON HEALTH EFFECTS OF LOW-LEVEL RADIATION; REPORT TO CONGRESS

Pub. L. 95–601, § 5, Nov. 6, 1978, 92 Stat. 2949, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96–295, title III, § 308(b), June 30, 1980, 94 Stat. 792, provided that the Nuclear Regulatory Commission and the Environmental Protection Agency, in consultation with the Secretary of Health and Human Services, conduct preliminary planning and design studies for epidemiological research on the health effects of low-level ionizing radiation, within thirty days after Nov. 6, 1978, the Commission and the Environmental Protection Agency submit to the Congress a memorandum of understanding to delineate their responsibilities in the conduct of the planning studies, on or before Apr. 1, 1979, the Commission and the Environmental Protection Agency submit a report to the Congress containing an assessment of the capabilities and research needs of such agencies in the area of health effects of low-level ionizing radiation, and on or before Sept. 30, 1980, the Commission and the Environmental Protection Agency, in consultation with the Secretary of Health and Human Services, submit a report to the Congress which includes a study of options for Federal epidemiological research on the health effects of low-level ionizing radiation with evaluations of the feasibility of such options.

§ 2052. Research by Commission

The Commission is authorized and directed to conduct, through its own facilities, activities and studies of the types specified in section 2051 of this title.

(Aug. 1, 1946, ch. 724, title I, § 32, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 928; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1803(b) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2053. Research for others; charges

Where the Commission finds private facilities or laboratories are inadequate for the purpose, it is authorized to conduct for other persons, through its own facilities, such of those activities and studies of the types specified in section 2051 of this title as it deems appropriate to the development of energy. To the extent the Commission determines that private facilities or laboratories are inadequate for the purpose, and that the Commission's facilities, or scientific or technical resources have the potential of lending significant assistance to other persons in the fields of protection of public health and safety, the Commission may also assist other persons in these fields by conducting for such persons, through the Commission's own facilities, research and development or training activities and studies. The Commission is authorized to determine and make such charges as in its discretion may be desirable for the conduct of the activities and studies referred to in this section.

(Aug. 1, 1946, ch. 724, title I, § 33, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 928; amended Pub. L. 90–190, § 7, Dec. 14, 1967, 81 Stat. 577; Pub. L. 92–84, title II, § 201(b), Aug. 11, 1971, 85 Stat. 307; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1971—Pub. L. 92–84 substituted provisions authorizing the Commission to conduct research for other persons for the development of energy, for provisions authorizing the Commission to conduct research for other persons for the development of atomic energy.

1967—Pub. L. 90–190 inserted provision which authorized the Commission, to the extent the Commission made certain determinations, to assist other persons on the fields of protection of public health and safety by conducting for such persons, through the facilities of

the Commission, research and development or training activities and studies, and substituted ''the activities and studies referred to in this section'' for ''such activities and studies''.

SUBCHAPTER IV—PRODUCTION OF SPECIAL NUCLEAR MATERIAL

§ 2061. Production facilities

(a) Ownership

The Commission, as agent of and on behalf of the United States, shall be the exclusive owner of all production facilities other than facilities which (1) are useful in the conduct of research and development activities in the fields specified in section 2051 of this title, and do not, in the opinion of the Commission, have a potential production rate adequate to enable the user of such facilities to produce within a reasonable period of time a sufficient quantity of special nuclear material to produce an atomic weapon; (2) are licensed by the Commission under this division; or (3) are owned by the United States Enrichment Corporation.

(b) Operation of Commission's facilities

The Commission is authorized and directed to produce or to provide for the production of special nuclear material in its own production facilities. To the extent deemed necessary, the Commission is authorized to make, or to continue in effect, contracts with persons obligating them to produce special nuclear material in facilities owned by the Commission. The Commission is also authorized to enter into research and development contracts authorizing the contractor to produce special nuclear material in facilities owned by the Commission to the extent that the production of such special nuclear material may be incident to the conduct of research and development activities under such contracts. Any contract entered into under this section shall contain provisions (1) prohibiting the contractor from subcontracting any part of the work he is obligated to perform under the contract, except as authorized by the Commission; and (2) obligating the contractor (A) to make such reports pertaining to activities under the contract to the Commission as the Commission may require, (B) to submit to inspection by employees of the Commission of all such activities, and (C) to comply with all safety and security regulations which may be prescribed by the Commission. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 5 of title 41, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under such contracts.

(c) Operation of other facilities

Special nuclear material may be produced in the facilities which under this section are not required to be owned by the Commission.

(Aug. 1, 1946, ch. 724, title I, § 41, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 928; amended Pub. L. 90–190, § 8, Dec. 14, 1967, 81 Stat. 577; Pub. L. 101–575, § 5(c), Nov. 15, 1990, 104 Stat. 2835; renumbered title I and amended Pub. L. 102–486, title IX, § 902(a)(2), (8), Oct. 24, 1992, 106 Stat. 2943, 2944.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 4 of act Aug. 1, 1946, ch. 724, 60 Stat. 759, which was classified to section 1804 of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486, § 902(a)(2), substituted ''under this division'' for ''pursuant to under this chapter'' in cl. (2) and added cl. (3).

1990—Subsec. (a)(2). Pub. L. 101–575 substituted ''under this chapter'' for ''section 2133 or 2134 of this title''.

1967—Subsec. (b). Pub. L. 90–190 struck out provision requiring the President to determine in writing at least once each year the quantities of special nuclear material to be produced under this section, and to specify in such determination the quantities of special nuclear material to be available for distribution by the Commission pursuant to sections 2073 and 2074 of this title.

REFERENCES TO UNITED STATES ENRICHMENT CORPORATION

References to the United States Enrichment Corporation deemed, as of the privatization date (July 28, 1998), to be references to the private corporation, see section 3116(e) of Pub. L. 104–134, set out as a note under former section 2297 of this title.

ISOTOPE PRODUCTION AND DISTRIBUTION PROGRAM FUND

Pub. L. 103–316, title III, Aug. 26, 1994, 108 Stat. 1715, provided in part: ''That the Secretary of Energy may transfer available amounts appropriated for use by the Department of Energy under title III of previously enacted Energy and Water Development Appropriations Acts [see below] into the Isotope Production and Distribution Program Fund, in order to continue isotope production and distribution activities: *Provided further*, That the authority to use these amounts appropriated is effective from the date of enactment of this Act [Aug. 26, 1994]: *Provided further*, That fees set by the Secretary for the sale of isotopes and related services shall hereafter be determined without regard to the provisions of Energy and Water Development Appropriations Act (Public Law 101–101) [see below]: *Provided further*, That amounts provided for isotope production and distribution in previous Energy and Water Development Appropriations Acts shall be treated as direct appropriations and shall be merged with funds appropriated under this head [ENERGY SUPPLY, RESEARCH AND DEVELOPMENT ACTIVITIES].''

Pub. L. 102–377, title III, Oct. 2, 1992, 106 Stat. 1334, provided in part that: ''Revenues received hereafter from the disposition of isotopes and related services shall be credited to this account, to be available for carrying out the purposes of the isotope production and distribution program without further appropriation: *Provided*, That such revenues and all funds provided under this head in Public Law 101–101 [set out below] shall remain available until expended: *Provided further*, That if at any time the amounts available to the fund are insufficient to enable the Department of Energy to discharge its responsibilities with respect to isotope production and distribution, the Secretary may borrow from amounts available in the Treasury, such sums as are necessary up to a maximum of $5,000,000 to remain available until expended.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–104, title III, Aug. 17, 1991, 105 Stat. 528.

Pub. L. 101–514, title III, Nov. 5, 1990, 104 Stat. 2090.

Pub. L. 101–101, title III, Sept. 29, 1989, 103 Stat. 659, provided in part that: ''For necessary expenses of ac-

tivities related to the production, distribution, and sale of isotopes and related services, $16,243,000, to remain available until expended: *Provided*, That this amount and, notwithstanding 31 U.S.C. 3302, revenues received from the disposition of isotopes and related services shall be credited to this account to be available for carrying out these purposes without further appropriation: *Provided further*, That all unexpended balances of previous appropriations made for the purpose of carrying out activities related to the production, distribution, and sale of isotopes and related services may be transferred to this fund and merged with other balances in the fund and be available under the same conditions and for the same period of time: *Provided further*, That fees shall be set by the Secretary of Energy in such a manner as to provide full cost recovery, including administrative expenses, depreciation of equipment, accrued leave, and probable losses: *Provided further*, That all expenses of this activity shall be paid only from funds available in this fund: *Provided further*, That at any time the Secretary of Energy determines that moneys in the fund exceed the anticipated requirements of the fund, such excess shall be transferred to the general fund of the Treasury.''

§ 2062. Irradiation of materials

The Commission and persons lawfully producing or utilizing special nuclear material are authorized to expose materials of any kind to the radiation incident to the processes of producing or utilizing special nuclear material.

(Aug. 1, 1946, ch. 724, title I, § 42, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 929; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 4 of act Aug. 1, 1946, ch. 724, 60 Stat. 759, which was classified to section 1804 of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2063. Acquisition of production facilities

The Commission is authorized to purchase any interest in facilities for the production of special nuclear materials, or in real property on which such facilities are located, without regard to the provisions of section 5 of title 41 upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. The Commission is further authorized to requisition, condemn, or otherwise acquire any interest in such production facilities, or to condemn or otherwise acquire such real property, and just compensation shall be made therefor.

(Aug. 1, 1946, ch. 724, title I, § 43, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 929; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 5 of act Aug. 1, 1946, ch. 724, 60 Stat. 760, which was classified to section 1805 of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2064. Disposition of energy; regulation on sale

If energy is produced at production facilities of the Commission or is produced in experimental utilization facilities of the Commission, such energy may be used by the Commission, or transferred to other Government agencies, or sold to publicly, cooperatively, or privately owned utilities or users at reasonable and nondiscriminatory prices. If the energy produced is electric energy, the price shall be subject to regulation by the appropriate agency having jurisdiction. In contracting for the disposal of such energy, the Commission shall give preference and priority to public bodies and cooperatives or to privately owned utilities providing electric utility services to high cost areas not being served by public bodies or cooperatives. Nothing in this chapter shall be construed to authorize the Commission to engage in the sale or distribution of energy for commercial use except such energy as may be produced by the Commission incident to the operation of research and development facilities of the Commission, or of production facilities of the Commission.

(Aug. 1, 1946, ch. 724, title I, § 44, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 929; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 7(d) of act Aug. 1, 1946, ch. 724, 60 Stat. 764, which was classified to section 1807(d) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

SUBCHAPTER V—SPECIAL NUCLEAR MATERIAL

§ 2071. Determination of other material as special nuclear material; Presidential assent; effective date

The Commission may determine from time to time that other material is special nuclear material in addition to that specified in the definition as special nuclear material. Before making any such determination, the Commission must find that such material is capable of releasing substantial quantities of atomic energy and must find that the determination that such material is special nuclear material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment for more than three days) before the determination of the Commission may become effective: *Provided, however*, That the Energy Committees, after having received such determination, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.

(Aug. 1, 1946, ch. 724, title I, § 51, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 929; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103–437, § 15(f)(2), Nov. 2, 1994, 108 Stat. 4592.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(a)(1) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Energy Committees'' for ''Joint Committee'' in two places.

§ 2072. Repealed. Pub. L. 88–489, § 4, Aug. 26, 1964, 78 Stat. 603

Section, act Aug. 1, 1946, ch. 724, § 52, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 929, related to Government ownership of all special nuclear material and provided for compensation of private owners of such material.

EXTINGUISHMENT OF RIGHTS, TITLE AND INTEREST IN SPECIAL NUCLEAR MATERIAL

Section 4 of Pub. L. 88–489 provided in part that: ''All rights, title, and interest in and to any special nuclear material vested in the United States solely by virtue of the provisions of the first sentence of such section 52 [this section], and not by any other transaction authorized by the Atomic Energy Act of 1954, as amended [this chapter], or other applicable law, are hereby extinguished.''

§ 2073. Domestic distribution of special nuclear material

(a) Licenses

The Commission is authorized (i) to issue licenses to transfer or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to section 2153 of this title, special nuclear material, (ii) to make special nuclear material available for the period of the license, and, (iii) to distribute special nuclear material within the United States to qualified applicants requesting such material—

(1) for the conduct of research and development activities of the types specified in section 2051 of this title;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 2134 of this title;

(3) for use under a license issued pursuant to section 2133 of this title;

(4) for such other uses as the Commission determines to be appropriate to carry out the purposes of this chapter.

(b) Minimum criteria for licenses

The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of special nuclear material depending upon the degree of importance to the common defense and security or to the health and safety of the public of—

(1) the physical characteristics of the special nuclear material to be distributed;

(2) the quantities of special nuclear material to be distributed; and

(3) the intended use of the special nuclear material to be distributed.

(c) Manner of distribution; charges for material sold; agreements; charges for material leased

(1) The Commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy, or grant: *Provided, however*, That unless otherwise authorized by law, the Commission shall not after December 31, 1970, distribute special nuclear material except by sale to any person who possesses or operates a utilization facility under a license issued pursuant to section 2133 or 2134(b) of this title for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission.

(2) The Commission shall establish reasonable sales prices for the special nuclear material licensed and distributed by sale under this section. Such sales prices shall be established on a nondiscriminatory basis which, in the opinion of the Commission, will provide reasonable compensation to the Government for such special nuclear material.

(3) The Commission is authorized to enter into agreements with licensees for such period of time as the Commission may deem necessary or desirable to distribute to such licensees such quantities of special nuclear material as may be necessary for the conduct of the licensed activity. In such agreements, the Commission may agree to repurchase any special nuclear material licensed and distributed by sale which is not consumed in the course of the licensed activity, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission.

(4) The Commission may make a reasonable charge, determined pursuant to this section, for the use of special nuclear material licensed and distributed by lease under subsection (a)(1), (2) or (4) of this section and shall make a reasonable charge determined pursuant to this section for the use of special nuclear material licensed and distributed by lease under subsection (a)(3) of this section. The Commission shall establish criteria in writing for the determination of whether special nuclear material will be distributed by grant and for the determination of whether a charge will be made for the use of special nuclear material licensed and distributed by lease under subsection (a)(1), (2) or (4) of this section, considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the special nuclear material will be used.

(d) Determination of charges

In determining the reasonable charge to be made by the Commission for the use of special nuclear material distributed by lease to licensees of utilization or production facilities licensed pursuant to section 2133 or 2134 of this title, in addition to consideration of the cost thereof, the Commission shall take into consideration—

(1) the use to be made of the special nuclear material;

(2) the extent to which the use of the special nuclear material will advance the development of the peaceful uses of atomic energy;

(3) the energy value of the special nuclear material in the particular use for which the license is issued;

(4) whether the special nuclear material is to be used in facilities licensed pursuant to section 2133 or 2134 of this title. In this respect, the Commission shall, insofar as practicable, make uniform, nondiscriminatory charges for the use of special nuclear material distributed to facilities licensed pursuant to section 2133 of this title; and

(5) with respect to special nuclear material consumed in a facility licensed pursuant to section 2133 of this title, the Commission shall make a further charge equivalent to the sale price for similar special nuclear material established by the Commission in accordance with subsection (c)(2) of this section, and the Commission may make such a charge with respect to such material consumed in a facility licensed pursuant to section 2134 of this title.

(e) License conditions

Each license issued pursuant to this section shall contain and be subject to the following conditions—

(1) Repealed. Pub. L. 88–489, § 8, Aug. 26, 1964, 78 Stat. 604.

(2) no right to the special nuclear material shall be conferred by the license except as defined by the license;

(3) neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this chapter;

(4) all special nuclear material shall be subject to the right of recapture or control reserved by section 2138 of this title and to all other provisions of this chapter;

(5) no special nuclear material may be used in any utilization or production facility except in accordance with the provisions of this chapter;

(6) special nuclear material shall be distributed only on terms, as may be established by rule of the Commission, such that no user will be permitted to construct an atomic weapon;

(7) special nuclear material shall be distributed only pursuant to such safety standards as may be established by rule of the Commission to protect health and to minimize danger to life or property; and

(8) except to the extent that the indemnification and limitation of liability provisions of section 2210 of this title apply, the licensee will hold the United States and the Commission harmless from any damages resulting from the use or possession of special nuclear material by the licensee.

(f) Distribution for independent research and development activities

The Commission is directed to distribute within the United States sufficient special nuclear material to permit the conduct of widespread independent research and development activities to the maximum extent practicable. In the event that applications for special nuclear material exceed the amount available for distribution, preference shall be given to those activities which are most likely, in the opinion of the Commission, to contribute to basic research, to the development of peacetime uses of atomic energy, or to the economic and military strength of the Nation.

(Aug. 1, 1946, ch. 724, title I, § 53, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 930; amended Pub. L. 85–256, § 2, Sept. 2, 1957, 71 Stat. 576; Pub. L. 85–681, §§ 1, 2, Aug. 19, 1958, 72 Stat. 632; Pub. L. 88–489, §§ 5–8, Aug. 26, 1964, 78 Stat. 603, 604; Pub. L. 90–190, §§ 9, 10, Dec. 14, 1967, 81 Stat. 577; renumbered title I and amended Pub. L. 102–486, title IX, § 902(a)(3), (8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(a)(4) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1992—Subsec. (c)(1). Pub. L. 102–486, § 902(a)(3), substituted ''or grant'' for ''grant,'' and struck out ''or through the provision of production or enrichment services'' before '': *Provided, however*'' and before ''to any person''.

1967—Subsec. (c)(1). Pub. L. 90–190, § 10, inserted ''or through the provision of production or enrichment services'' wherever appearing.

Subsec. (f). Pub. L. 90–190, § 9, struck out reference to the limitations on the distribution of special nuclear materials set by the President in determinations made pursuant to section 2061 of this title.

1964—Subsec. (a). Pub. L. 88–489, § 5, substituted ''(i) to issue licenses to transfer or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to section 2153 of this title, special nuclear material, (ii) to make special nuclear material available for the period of the license, and, (iii)'' for ''to issue licenses for the possession of, to make available for the period of the license, and''.

Subsec. (c). Pub. L. 88–489, § 6, designated existing provisions as par. (4), inserted ''by lease'' wherever appearing and ''special nuclear material will be distributed by grant and for the determination of whether'', and added pars. (1) to (3).

Subsec. (d). Pub. L. 88–489, § 7, inserted ''by lease'' in introductory provisions, and in ch. (5) substituted ''equivalent to the sale price for similar special nuclear material established by the Commission in accordance with subsection (c)(2) of this section, and the Commission may make such a charge with respect to such material consumed in a facility licensed pursuant to section 2134 of this title'' for ''based on the cost to the Commission, as estimated by the Commission, or the average fair price paid for the production of such special nuclear material as determined by section 2076 of this title, whichever is lower''.

Subsec. (e)(1). Pub. L. 88–489, § 8, struck out par. (1) which provided that title to all special nuclear material shall at all times be in the United States.

1958—Subsec. (a)(4). Pub. L. 85–681, § 1, added par. (4).

Subsec. (c). Pub. L. 85–681, § 2, substituted ''subsections (a)(1), (2) or (4)'' for ''subsection (a)(1) or (a)(2)''.

1957—Subsec. (e)(8). Pub. L. 85–256 inserted ''except to the extent that the indemnification and limitation of liability provisions of section 2210 of this title apply,''.

§ 2074. Foreign distribution of special nuclear material

(a) Compensation; distribution to International Atomic Energy Agency; procedure for distribution; repurchase of unconsumed materials; price; purchase of materials produced outside United States; price

The Commission is authorized to cooperate with any nation or group of nations by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms of an agreement for cooperation to which such nation or group of nations is a party and which is made in accordance with section 2153 of this title. Unless hereafter otherwise authorized by law the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material, except that the Commission to assist and encourage research on peaceful uses or for medical therapy may so distribute without charge during any calendar year only a quantity of such material which at the time of transfer does not exceed in value $10,000 in the case of one nation or $50,000 in the case of any group of nations. The Commission may distribute to the International Atomic Energy Agency, or to any group of nations, only such amounts of special nuclear materials and for such period of time as are authorized by Congress: *Provided, however*, That, (i) notwithstanding this provision, the Commission is hereby authorized, subject to the provisions of section 2153 of this title, to distribute to the Agency five thousand kilograms of contained uranium-235, five hundred grams of uranium-233, and three kilograms of plutonium, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to June 1, 1960; and (ii) notwithstanding the foregoing provisions of this subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group of nations, such other amounts of special nuclear materials and for such other periods of time as are established in writing by the Commission: *Provided, however*, That before they are established by the Commission pursuant to this subdivision (ii), such proposed amounts and periods shall be submitted to the Congress and referred to the Energy Committees and a period of sixty days shall elapse while Congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days): *And provided further*, That any such proposed amounts and periods shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed action: *And provided further*, That prior to the elapse of the first thirty days of any such sixty-day period the Energy Committees shall submit to their respective houses reports of their views and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed amounts or periods. The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this subsection which is not consumed in the course of the activities conducted in accordance with the agreement for cooperation, or any uranium remaining after irradiation of such special nuclear material, at repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission. The Commission may also agree to purchase, consistent with and within the period of the agreement for cooperation, special nuclear material produced in a nuclear reactor located outside the United States through the use of special nuclear material which was leased or sold pursuant to this subsection. Under any such agreement the Commission shall purchase only such material as is delivered to the Commission during any period when there is in effect a guaranteed purchase price for the same material produced in a nuclear reactor by a person licensed under section 2134 of this title, established by the Commission pursuant to section 2076 of this title, and the price to be paid shall be the price so established by the Commission and in effect for the same material delivered to the Commission.

(b) Distribution to persons outside United States of plutonium and other special nuclear material exempted under section 2077(d) of this title; compensation; reports

Notwithstanding the provisions of sections 2153 and 2154 of this title and section 125 of the Atomic Energy Act of 1954, the Commission is authorized to distribute to any person outside the United States (1) plutonium containing 80 per centum or more by weight of plutonium-238, and (2) other special nuclear material when it has, in accordance with subsection 2077(d) of this title, exempted certain classes or quantities of such other special nuclear material or kinds of uses or users thereof from the requirements for a license set forth in this chapter. Unless hereafter otherwise authorized by law, the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material. The Commission shall not distribute any plutonium containing 80 per centum or more by weight of plutonium-238 to any person under this subsection if, in its opinion, such distribution would be inimical to the common defense and security. The Commission may require such reports regarding the use of material distributed pursuant to the provisions of this subsection as it deems necessary.

(c) Licensing or granting permission to others to distribute special nuclear material; conditions

The Commission is authorized to license or otherwise permit others to distribute special nuclear material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

(d) Laboratory samples; medical devices; monitoring or other instruments; emergencies

The authority to distribute special nuclear material under this section other than under an export license granted by the Nuclear Regulatory Commission shall extend only to the following small quantities of special nuclear material (in no event more than five hundred grams per year of the uranium isotope 233, the uranium isotope 235, or plutonium contained in special nuclear material to any recipient):

(1) which are contained in laboratory samples, medical devices, or monitoring or other instruments; or

(2) the distribution of which is needed to deal with an emergency situation in which time is of the essence.

(e) Arrangements for storage or disposition of irradiated fuel elements

The authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 2160(a)(2)(E) of this title shall be subject to the requirements of section 2160 of this title.

(Aug. 1, 1946, ch. 724, title I, § 54, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 931; amended Pub. L. 85–177, § 7, Aug. 28, 1957, 71 Stat. 455; Pub. L. 87–206, § 4, Sept. 6, 1961, 75 Stat. 476; Pub. L. 88–489, § 9, Aug. 26, 1964, 78 Stat. 604; Pub. L. 93–377, § 2, Aug. 17, 1974, 88 Stat. 473; Pub. L. 95–242, title III, §§ 301(a), 303(b)(1), Mar. 10, 1978, 92 Stat. 125, 131; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103–437, § 15(f)(3), Nov. 2, 1994, 108 Stat. 4592.)

REFERENCES IN TEXT

Section 125 of the Atomic Energy Act of 1954, referred to in subsec. (b), is section 125 of act Aug. 1, 1946, ch. 724, as added by Pub. L. 85–14, Apr. 12, 1957, 71 Stat. 11, as amended, and is set out as a note under section 2153 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–437 substituted ''Energy Committees and a period'' for ''Joint Committee and a period'' and ''Energy Committees shall submit to their respective houses reports of their views'' for ''Joint Committee shall submit a report to the Congress of its views''.

1978—Subsec. (d). Pub. L. 95–242, § 301(a), added subsec. (d).

Subsec. (e). Pub. L. 95–242, § 303(b)(1), added subsec. (e).

1974—Pub. L. 93–377 designated existing provisions as subsec. (a), designated initial proviso as cl. (i), added cl. (ii) and references to groups of nations, and substituted references to this subsection for references to this section, and added subsecs. (b) and (c).

1964—Pub. L. 88–489 authorized repurchase of unconsumed special nuclear materials, or any uranium remaining after irradiation of such materials, at a price not exceeding Commission's sale price for comparable material in effect at time of delivery to Commission, and purchase of special nuclear material produced outside United States through use of material leased or sold under this section, during any period when there is a guaranteed purchase price for same material as produced under section 2134 of this title, for such price as established by the Commission.

1961—Pub. L. 87–206 inserted ''five hundred grams of uranium 233 and three kilograms of plutonium'' after ''five thousand kilograms of contained uranium 235''.

1957—Pub. L. 85–177 inserted provisions requiring compensation at domestic charges for materials distributed abroad except for peaceful or medical therapy uses, and required Commission to obtain authorization of Congress for materials to be contributed to Agency beyond amount made available by all other members of Agency to July 1, 1960.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2075. Acquisition of special nuclear material; payments; just compensation

The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this chapter, to purchase without regard to the limitations in section 2074 of this title or any guaranteed purchase prices established pursuant to section 2076 of this title, and to take, requisition, condemn, or otherwise acquire any special nuclear material or any interest therein. Any contract of purchase made under this section may be made without regard to the provisions of section 5 of title 41, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, or condemned under this section: *Providing*, That the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 2160(a)(2)(E) of this title shall be subject to the requirements of section 2160 of this title.

(Aug. 1, 1946, ch. 724, title I, § 55, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 931; amended Pub. L. 88–489, § 10, Aug. 26, 1964, 78 Stat. 604; Pub. L. 95–242, title III, § 303(b)(2), Mar. 10, 1978, 92 Stat. 131; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(a)(5) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1978—Pub. L. 95–424 provided that the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 2160(a)(2)(E) of this title shall be subject to the requirement of section 2160 of this title.

1964—Pub. L. 88–489 limited the authorization to the extent necessary to effectuate the chapter, inserted ''without regard to the limitations in section 2074 of this title or any guaranteed purchase prices established pursuant to section 2076 of this title, and to take, requisition, condemn,'' and ''Any contract of purchase made under this section may be made'', provided for just compensation for any right, property, or interest taken, requisitioned, or condemned under this section, and struck out ''outside the United States'' after ''any interest therein''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2076. Guaranteed purchase prices

The Commission shall establish guaranteed purchase prices for plutonium produced in a nuclear reactor by a person licensed under section 2134 of this title and delivered to the Commission before January 1, 1971. The Commission shall also establish for such periods of time as it may deem necessary, but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed under section 2133 or section 2134 and delivered to the Commission within the period of the guarantee. Guaranteed purchase prices established under the authority of this section shall not exceed the Commission's determination of the estimated value of plutonium or uranium enriched in the isotope 233 as fuel in nuclear reactors, and such prices shall be established on a nondiscriminatory basis: *Provided*, That the Commission is authorized to establish such guaranteed purchase prices only for such plutonium or uranium enriched in the isotope 233 as the Commission shall determine is produced through the use of special nuclear material which was leased or sold by the Commission pursuant to section 2073 of this title.

(Aug. 1, 1946, ch. 724, title I, § 56, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 931; amended Pub. L. 88–489, § 11, Aug. 26, 1964, 78 Stat. 605; Pub. L. 91–560, § 2, Dec. 19, 1970, 84 Stat. 1472; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1970—Pub. L. 91–560 extended the power of the Commission to establish guaranteed purchase prices for uranium produced by persons licensed under section 2133 of this title.

1964—Pub. L. 88–489 substituted provisions which directed the Commission to establish guaranteed purchase prices for plutonium produced by a person licensed under section 2134 of this title and delivered to the Commission prior to Jan. 1, 1971, and for uranium enriched in the isotope 233, for such periods of time as it deems necessary, but not exceeding ten years as to any such period, if produced by a person licensed under said section 2134, and delivered within the period of the guarantee, provided that guaranteed prices established under this section shall not exceed the Commission's estimated value of enriched plutonium or uranium as fuel in reactors, and shall be on a nondiscriminatory basis, and authorized such guaranteed prices only for such enriched plutonium or uranium as is produced through use of material leased or sold pursuant to section 2073 of this title, for provisions requiring the Commission to determine the fair price of special nuclear material by considering the value of the material for its intended use by the United States, and by giving such weight to the cost of production as it found to be equitable, providing that such price was to apply to all licensed producers of the same material, and permitting the Commission to establish guaranteed fair prices for all such material delivered to the Commission for such time as it deemed necessary, but not exceeding seven years.

§ 2077. Unauthorized dealings in special nuclear material

(a) Handling by persons

Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to section 2073 of this title, no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear material.

(b) Engagement or participation in development or production

It shall be unlawful for any person to directly or indirectly engage or participate in the development or production of any special nuclear material outside of the United States except (1) as specifically authorized under an agreement for cooperation made pursuant to section 2153 of this title, including a specific authorization in a subsequent arrangement under section 2160 of this title, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States: *Provided*, That any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense. The Secretary of Energy shall, within ninety days after March 10, 1978, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, and the Nuclear Regulatory Commission for the consideration of requests for authorization under this subsection. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an interagency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and interagency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decision required under this subsection. The processing of any request proposed and filed as of March 10, 1978, shall not be delayed pending the development and establishment of procedures to implement the requirements of this

subsection. Any trade secrets or proprietary information submitted by any person seeking an authorization under this subsection shall be afforded the maximum degree of protection allowable by law: *Provided further*, That the export of component parts as defined in section 2014(v)(2) or (cc)(2) of this title shall be governed by sections 2139 and 2155 of this title: *Provided further*, That notwithstanding section 7172(d) of this title, the Secretary of Energy and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section, section 2074(d), section 2094, or section 2141(b) of this title.

(c) Distribution by Commission

The Commission shall not—

(1) distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 2074 of this title; or

(2) distribute any special nuclear material or issue a license pursuant to section 2073 of this title to any person within the United States if the Commission finds that the distribution of such special nuclear material or the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

(d) Establishment of classes of special nuclear material; exemption of materials, kinds of uses and users from requirement of license

The Commission is authorized to establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.

(e) Transfer, etc., of special nuclear material

Special nuclear material, as defined in section 2014 of this title, produced in facilities licensed under section 2133 or 2134 of this title may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes.

(Aug. 1, 1946, ch. 724, title I, § 57, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 932; amended Pub. L. 88–489, § 12, Aug. 26, 1964, 78 Stat. 605; Pub. L. 93–377, § 3, Aug. 17, 1974, 88 Stat. 475; Pub. L. 95–242, title III, § 302, Mar. 10, 1978, 92 Stat. 126; Pub. L. 97–415, § 14, Jan. 4, 1983, 96 Stat. 2075; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 105–277, div. G, title XII, § 1225(d)(1), Oct. 21, 1998, 112 Stat. 2681–774; Pub. L. 108–458, title VI, § 6803(a), Dec. 17, 2004, 118 Stat. 3768.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(a)(3) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–458 substituted ''or participate in the development or production of any special nuclear material'' for ''in the production of any special nuclear material''.

1998—Subsec. (b). Pub. L. 105–277 struck out ''the Arms Control and Disarmament Agency,'' after ''after consultation with'' in first sentence and ''the Director of the Arms Control and Disarmament Agency,'' after ''Defense, and Commerce,'' in second sentence.

1983—Subsec. (e). Pub. L. 97–415 added subsec. (e).

1978—Subsec. (b). Pub. L. 95–242 substituted ''except (1) as specifically authorized under an agreement for cooperation made pursuant to section 2153 of this title, including a specific authorization in a subsequent arrangement under section 2160 of this title, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States'' for ''except (1) under an agreement for cooperation made pursuant to section 2153 of this title, or (2) upon authorization by the Commission after a determination that such activity will not be inimical to the interest of the United States'' in existing provisions and inserted provisos relating to determinations by the Secretary of Energy, the procedures to be followed in processing authorization requests, the export of component parts, and the jurisdiction of the Secretary of Energy.

1974—Subsec. (d). Pub. L. 93–377 added subsec. (d).

1964—Pub. L. 88–489 amended section generally, and among other changes, included all special nuclear materials within the section, struck out condition that such material be ''the property of the United States'', included delivery, acquisition, ownership and receiving possession of or title to any special nuclear material within the acts prohibited to persons, prohibited the Commission from issuing a license pursuant to section 2073 of this title if the Commission finds that the issuance would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public, and extended the power of the Commission to refuse to distribute any special nuclear material if it finds that the distribution would constitute an unreasonable risk to the health and safety of the public.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2078. Congressional review of guaranteed purchase price, guaranteed purchase price period, and criteria for waiver of charges

Before the Commission establishes any guaranteed purchase price or guaranteed purchase price period in accordance with the provisions of section 2076 of this title, or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed and distributed under section 2073 of this title, the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge shall be submitted to the Energy Committees and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days): *Provided, however*, That the Energy Committees, after having received the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge, may by resolution in writing waive the conditions of, or all or any portion of, such forty-five-day period.

(Aug. 1, 1946, ch. 724, title I, § 58, as added Pub. L. 85–79, § 2, July 3, 1957, 71 Stat. 275; amended Pub. L. 88–489, § 13, Aug. 26, 1964, 78 Stat. 605; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103–437, § 15(f)(4), Nov. 2, 1994, 108 Stat. 4592.)

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Energy Committees'' for ''Joint Committee'' in two places.

1964—Pub. L. 88–489 substituted ''guaranteed purchase'' and ''purchase'' for ''fair'' wherever appearing, ''licensed and distributed'' for ''licensed or distributed'', and provided that the Joint Committee resolution waiving the conditions of the forty-five-day period must be in writing.

SUBCHAPTER VI—SOURCE MATERIAL

§ 2091. Determination of source material

The Commission may determine from time to time that other material is source material in addition to those specified in the definition of source material. Before making such determination, the Commission must find that such material is essential to the production of special nuclear material and must find that the determination that such material is source material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days) before the determination of the Commission may become effective: *Provided, however*, That the Energy Committees, after having received such determination, may by resolution in writing waive the conditions of or all or any portion of such thirty-day period.

(Aug. 1, 1946, ch. 724, title I, § 61, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 932; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103–437, § 15(f)(4), Nov. 2, 1994, 108 Stat. 4592.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(b)(1) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Energy Committees'' for ''Joint Committee'' in two places.

§ 2092. License requirements for transfers

Unless authorized by a general or specific license issued by the Commission which the Commission is authorized to issue, no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature, except that licenses shall not be required for quantities of source material which, in the opinion of the Commission, are unimportant.

(Aug. 1, 1946, ch. 724, title I, § 62, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 932; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(b)(2) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2093. Domestic distribution of source material

(a) License

The Commission is authorized to issue licenses for and to distribute source material within the United States to qualified applicants requesting such material—

(1) for the conduct of research and development activities of the types specified in section 2051 of this title;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 2134 of this title;

(3) for use under a license issued pursuant to section 2133 of this title; or

(4) for any other use approved by the Commission as an aid to science or industry.

(b) Minimum criteria for licenses

The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of source material depending upon the degree of importance to the common defense and security or to the health and safety of the public of—

(1) the physical characteristics of the source material to be distributed;

(2) the quantities of source material to be distributed; and

(3) the intended use of the source material to be distributed.

(c) Determination of charges

The Commission may make a reasonable charge determined pursuant to section 2201(m)

of this title for the source material licensed and distributed under subsection (a)(1), (a)(2), or (a)(4) of this section and shall make a reasonable charge determined pursuant to section 2201(m) of this title, for the source material licensed and distributed under subsection (a)(3) of this section. The Commission shall establish criteria in writing for the determination of whether a charge will be made for the source material licensed and distributed under subsection (a)(1), (a)(2), or (a)(4) of this section, considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the source material will be used.

(Aug. 1, 1946, ch. 724, title I, § 63, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 933; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(b)(3) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2094. Foreign distribution of source material

The Commission is authorized to cooperate with any nation by distributing source material and to distribute source material pursuant to the terms of an agreement for cooperation to which such nation is a party and which is made in accordance with section 2153 of this title. The Commission is also authorized to distribute source material outside of the United States upon a determination by the Commission that such activity will not be inimical to the interests of the United States. The authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of source material in excess of three metric tons per year per recipient.

(Aug. 1, 1946, ch. 724, title I, § 64, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 933; amended Pub. L. 95–242, title III, § 301(b), Mar. 10, 1978, 92 Stat. 125; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1978—Pub. L. 95–242 provided that the authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of source material in excess of three metric tons per year per recipient.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2095. Reports

The Commission is authorized to issue such rules, regulations, or orders requiring reports of ownership, possession, extraction, refining, shipment, or other handling of source material as it may deem necessary, except that such reports shall not be required with respect to (a) any source material prior to removal from its place of deposit in nature, or (b) quantities of source material which in the opinion of the Commission are unimportant or the reporting of which will discourage independent prospecting for new deposits.

(Aug. 1, 1946, ch. 724, title I, § 65, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 933; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(b)(4) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2096. Acquisition of source material; payments

The Commission is authorized and directed, to the extent it deems necessary to effectuate the provisions of this chapter—

(a) to purchase, take, requisition, condemn, or otherwise acquire supplies of source material;

(b) to purchase, condemn, or otherwise acquire any interest in real property containing deposits of source material; and

(c) to purchase, condemn, or otherwise acquire rights to enter upon any real property deemed by the Commission to have possibilities of containing deposits of source material in order to conduct prospecting and exploratory operations for such deposits.

Any purchase made under this section may be made without regard to the provisions of section 5 of title 41, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advanced payments may be made under contracts for such purposes. The Commission may establish guaranteed prices for all source material delivered to it within a specified time. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, condemned, or otherwise acquired under this section.

(Aug. 1, 1946, ch. 724, title I, § 66, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 933; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(b)(5) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2097. Operations on lands belonging to United States

The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this chapter, to issue leases or permits for prospecting for, exploration for, mining of, or removal of deposits of source material in lands belonging to the United States: *Provided, however*, That notwithstanding any other provisions of law, such leases or permits may be issued for lands administered for national park, monument, and wildlife purposes only when the President by Executive Order declares that the requirements of the common defense and security make such action necessary.

(Aug. 1, 1946, ch. 724, title I, § 67, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 934; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2098. Public and acquired lands

(a) Conditions on location, entry, and settlement

No individual, corporation, partnership, or association, which had any part, directly or indirectly, in the development of the atomic energy program, may benefit by any location, entry, or settlement upon the public domain made after such individual, corporation, partnership, or association took part in such project, if such individual, corporation, partnership, or association, by reason of having had such part in the development of the atomic energy program, acquired confidential official information as to the existence of deposits of such uranium, thorium, or other materials in the specific lands upon which such location, entry, or settlement is made, and subsequent to August 30, 1954, made such location, entry, or settlement or caused the same to be made for his, or its, or their benefit.

(b) Reservation of mineral rights; release

Any reservation of radioactive mineral substances, fissionable materials, or source material, together with the right to enter upon the land and prospect for, mine, and remove the same, inserted pursuant to Executive Order 9613 of September 13, 1945, Executive Order 9701 of March 4, 1946, the Atomic Energy Act of 1946 [42 U.S.C. 1801 et seq.], or Executive Order 9908 of December 5, 1947, in any patent, conveyance, lease, permit, or other authorization or instrument disposing of any interest in public or acquired lands of the United States, is released, remised, and quitclaimed to the person or persons entitled upon August 19, 1958 under the grant from the United States or successive grants to the ownership, occupancy, or use of the land under the applicable Federal or State laws: *Provided, however*, That in cases where any such reservation on acquired lands of the United States has been heretofore released, remised, or quitclaimed subsequent to August 12, 1954, in reliance upon authority deemed to have been contained in the Atomic Energy Act of 1946, as amended, or the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], as heretofore amended, the same shall be valid and effective in all respects to the same extent as if public lands and not acquired lands had been involved. The foregoing release shall be subject to any rights which may have been granted by the United States pursuant to any such reservation, but the releases shall be subrogated to the rights of the United States.

(c) Prior locations

Notwithstanding the provisions of the Atomic Energy Act of 1946, as amended [42 U.S.C. 1801 et seq.], and particularly section 5(b)(7) thereof [42 U.S.C. 1805(b)(7)], or the provisions of sections 501 to 505 of title 30, and particularly section 503 of title 30, any mining claim, heretofore located under the mining laws of the United States, for or based upon a discovery of a mineral deposit which is a source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a source material.

(Aug. 1, 1946, ch. 724, title I, § 68, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 934; amended Pub. L. 85–681, § 3, Aug. 19, 1958, 72 Stat. 632; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

The Atomic Energy Act of 1946, referred to in subsecs. (b) and (c), is act Aug. 1, 1946, ch. 724, 60 Stat. 755, which was classified generally to chapter 14 (§ 1801 et seq.) of this title prior to the general amendment by act Aug. 30, 1954, ch. 1073, 68 Stat. 921. The act of Aug. 1, 1946, ch. 724, is now known as the Atomic Energy Act of 1954, and is classified principally to this chapter (§ 2011 et seq.). For complete classification of the Atomic Energy Act of 1954 to the Code, see Short Title note set out under section 2011 of this title and Tables.

Section 5(b)(7) thereof, referred to in subsec. (c), was classified to section 1805(b)(7) of this title and was omitted in the general amendment of the Atomic Energy Act of 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The mining laws of the United States, referred to in subsec. (c), are classified generally to Title 30, Mineral Lands and Mining.

Ex. Ord. No. 9908, eff. Dec. 5, 1947, 12 F.R. 8223; Ex. Ord. No. 9701 eff. Mar. 7, 1946, 11 F.R. 2369, and Ex. Ord. No. 9613, eff. Sept. 13, 1945, 10 F.R. 11789, referred to in subsec. (b), related to reservation of source material in certain lands owned by the United States; reservation of rights to fissionable materials in lands owned by the United States; and withdrawal and reservation for the use of the United States lands containing radio-active mineral substances. Ex. Ord. No. 10596, eff. Feb. 15, 1955, 20 F.R. 1007, revoked Ex. Ord. No. 9908, which had revoked Ex. Ord. No. 9701, which had earlier revoked Ex. Ord. No. 9613.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(b)(7) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–681 provided a general release of reservations of fissionable materials or source

materials under acquired lands of the United States as well as public lands.

§ 2099. Prohibitions against issuance of license

The Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material if, in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense and security or the health and safety of the public.

(Aug. 1, 1946, ch. 724, title I, § 69, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 934; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(d)(2) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

SUBCHAPTER VII—BYPRODUCT MATERIALS

§ 2111. Domestic distribution

(a) In general

No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 2112 or section 2114 of this title. The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to qualified applicants with or without charge: *Provided, however*, That, for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to applicants proposing to use such material either in the conduct of research and development or in medical therapy. The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

(b) Requirements

(1) In general

Except as provided in paragraph (2), byproduct material, as defined in paragraphs (3) and (4) of section 2014(e) of this title, may only be transferred to and disposed of in a disposal facility that—

(A) is adequate to protect public health and safety; and

(B)(i) is licensed by the Commission; or

(ii) is licensed by a State that has entered into an agreement with the Commission under section 2021(b) of this title, if the licensing requirements of the State are compatible with the licensing requirements of the Commission.

(2) Effect of subsection

Nothing in this subsection affects the authority of any entity to dispose of byproduct material, as defined in paragraphs (3) and (4) of section 2014(e) of this title, at a disposal facility in accordance with any Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(c) Treatment as low-level radioactive waste

Byproduct material, as defined in paragraphs (3) and (4) of section 2014(e) of this title, disposed of under this section shall not be considered to be low-level radioactive waste for the purposes of—

(1) section 2 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b); or

(2) carrying out a compact that is—

(A) entered into in accordance with that Act (42 U.S.C. 2021b et seq.); and

(B) approved by Congress.

(Aug. 1, 1946, ch. 724, title I, § 81, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 935; amended Pub. L. 93–377, § 4, Aug. 17, 1974, 88 Stat. 475; Pub. L. 95–604, title II, § 205(b), Nov. 8, 1978, 92 Stat. 3039; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109–58, title VI, § 651(e)(3)(A), Aug. 8, 2005, 119 Stat. 807.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Low-Level Radioactive Waste Policy Act, referred to in subsec. (c)(2)(A), is Pub. L. 96–573, as amended generally by Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1842, which is classified generally to section 2021b et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2021b of this title and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(c)(2) of this title, prior to the general

amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2005—Pub. L. 109–58 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

1978—Pub. L. 95–604 inserted reference to section 2114 of this title.

1974—Pub. L. 93–377 substituted ''qualified applicants with or without charge'' for ''licensees with or without charge'', and struck out ''Licensees of the Commission may distribute byproduct material only to applicants therefor who are licensed by the Commission to receive such byproduct material'' before ''The Commission shall not''.

§ 2112. Foreign distribution of byproduct material

(a) Cooperation with other Nations

The Commission is authorized to cooperate with any nation by distributing byproduct material, and to distribute byproduct material, pursuant to the terms of an agreement for cooperation to which such nation is party and which is made in accordance with section 2153 of this title.

(b) Distribution to individuals

The Commission is also authorized to distribute byproduct material to any person outside the United States upon application therefor by such person and demand such charge for such material as would be charged for the material if it were distributed within the United States: *Provided, however*, That the Commission shall not distribute any such material to any person under this section if, in its opinion, such distribution would be inimical to the common defense and security: *And provided further*, That the Commission may require such reports regarding the use of material distributed pursuant to the provisions of this section as it deems necessary.

(c) Distributor's license

The Commission is authorized to license others to distribute byproduct material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

(Aug. 1, 1946, ch. 724, title I, § 82, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 935; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2113. Ownership and custody of certain byproduct material and disposal sites

(a) Specific assurances in license for pre-termination actions

Any license issued or renewed after the effective date of this section under section 2092 or section 2111 of this title for any activity which results in the production of any byproduct material, as defined in section 2014(e)(2) of this title, shall contain such terms and conditions as the Commission determines to be necessary to assure that, prior to termination of such license—

(1) the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission for sites (A) at which ores were processed primarily for their source material content and (B) at which such byproduct material is deposited, and

(2) ownership of any byproduct material, as defined in section 2014(e)(2) of this title, which resulted from such licensed activity shall be transferred to (A) the United States or (B) in the State in which such activity occurred if such State exercises the option under subsection (b)(1) of this section to acquire land used for the disposal of byproduct material.

Any license which is in effect on the effective date of this section and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination.

(b) Transfer of title; health and environmental protection through maintenance of property and materials; use of surface or subsurface estates: first refusal rights of transferor; maintenance, monitoring, and emergency measures and other authorized action; licensee-transferor liability for fraud or negligence; administrative and legal costs limitation; government retransfers under section 7914(h) of this title

(1)(A) The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section, title to the land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 2014(e)(2) of this title, pursuant to such license shall be transferred to—

(i) the United States, or

(ii) the State in which such land is located, at the option of such State,

unless the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such determination shall be made in accordance with section 2231 of this title. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 2111 of this title in such manner as will protect the public health, safety, and the environment.

(B) If the Commission determines by order that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State under subparagraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, shall permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred such land with the right of first refusal with respect to such use of such land.

(2) If transfer to the United States of title to such byproduct material and such land is re-

quired under this section, the Secretary of Energy or any Federal agency designated by the President shall, following the Commission's determination of compliance under subsection (c) of this section, assume title and custody of such byproduct material and land transferred as provided in this subsection. Such Secretary or Federal agency shall maintain such material and land in such manner as will protect the public health and safety and the environment. Such custody may be transferred to another officer or instrumentality of the United States only upon approval of the President.

(3) If transfer to a State of title to such byproduct material is required in accordance with this subsection, such State shall, following the Commission's determination of compliance under subsection (d) of this section, assume title and custody of such byproduct material and land transferred as provided in this subsection. Such State shall maintain such material and land in such manner as will protect the public health, safety, and the environment.

(4) In the case of any such license under section 2092 of this title, which was in effect on the effective date of this section, the Commission may require, before the termination of such license, such transfer of land and interests therein (as described in paragraph (1) of this subsection) to the United States or a State in which such land is located, at the option of such State, as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

(5) The Commission may, pursuant to a license, or by rule or order, require the Secretary or other Federal agency or State having custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standards promulgated pursuant to section 2114 of this title. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after November 8, 1978.

(6) The transfer of title to land or byproduct materials, as defined in section 2014(e)(2) of this title, to a State or the United States pursuant to this subsection shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(7) Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer). Subject to the provisions of paragraph (1)(B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 7914(h) of this title.

(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in section 2014(e)(2) of this title, the licensee shall be required to enter into such arrangements with the Commission as may be appropriate to assure the long-term maintenance and monitoring of such lands by the United States.

(c) Compliance with applicable standards and license requirements; determination upon termination of license

Upon termination on[1] any license to which this section applies, the Commission shall determine whether or not the licensee has complied with all applicable standards and requirements under such license.

(Aug. 1, 1946, ch. 724, title I, § 83, as added Pub. L. 95–604, title II, § 202(a), Nov. 8, 1978, 92 Stat. 3033; amended Pub. L. 96–106, § 22(c), (e), Nov. 9, 1979, 93 Stat. 800; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

Effective date of this section, referred to in subsecs. (a) and (b)(1)(A), (4), is three years after Nov. 8, 1978, see section 202(b) of Pub. L. 95–604, set out as an Effective Date note below.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–106, § 22(c), substituted "Any license which is in effect on the effective date of this section and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination" for "Any license in effect on November 8, 1978, shall either contain such terms and conditions on renewal thereof after the effective date of this section, or comply with paragraphs (1) and (2) upon the termination of such license, whichever first occurs".

Subsec. (b)(1)(A). Pub. L. 96–106, § 22(e), among other changes, substituted reference to section 2111 of this title for reference to section 2114(b) of this title.

EFFECTIVE DATE

Section 202(b) of Pub. L. 95–604 provided that: "This section [enacting this section] shall be effective three years after the enactment of this Act [Nov. 8, 1978]."

CONSOLIDATION OF LICENSES AND PROCEDURES

Section 209 of Pub. L. 95–604 provided that: "The Nuclear Regulatory Commission shall consolidate, to the maximum extent practicable, licenses and licensing procedures under amendments made by this title [see Effective Date of 1978 Amendment note set out under section 2014 of this title] with licenses and licensing procedures under other authorities contained in the Atomic Energy Act of 1954 [this chapter]."

[Provision effective Nov. 8, 1978, see section 208 of Pub. L. 95–604, set out as an Effective Date of 1978 Amendment note under section 2014 of this title].

[1] So in original. Probably should be "of".

§ 2114. Authorities of Commission respecting certain byproduct material

(a) Management function

The Commission shall insure that the management of any byproduct material, as defined in section 2014(e)(2) of this title, is carried out in such manner as—

(1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and non-radiological hazards associated with the processing and with the possession and transfer of such material, taking into account the risk to the public health, safety, and the environment, with due consideration of the economic costs and such other factors as the Commission determines to be appropriate,,[1]

(2) conforms with applicable general standards promulgated by the Administrator of the Environmental Protection Agency under section 2022 of this title, and

(3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended [42 U.S.C. 6901 et seq.].

(b) Rules, regulations, or orders for certain activities; civil penalty

In carrying out its authority under this section, the Commission is authorized to—

(1) by rule, regulation, or order require persons, officers, or instrumentalities exempted from licensing under section 2111 of this title to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or property, and in connection with the disposal or storage of such byproduct material; and

(2) make such studies and inspections and to conduct such monitoring as may be necessary.

Any violation by any person other than the United States or any officer or employee of the United States or a State of any rule, regulation, or order or licensing provision, of the Commission established under this section or section 2113 of this title shall be subject to a civil penalty in the same manner and in the same amount as violations subject to a civil penalty under section 2282 of this title. Nothing in this section affects any authority of the Commission under any other provision of this chapter.

(c) Alternative requirements or proposals

In the case of sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 2014(e)(2) of this title, a licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this chapter. Such alternative proposals may take into account local or regional conditions, including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 2022 of this title.

(Aug. 1, 1946, ch. 724, title I, § 84, as added Pub. L. 95–604, title II, § 205(a), Nov. 8, 1978, 92 Stat. 3039; amended Pub. L. 97–415, §§ 20, 22(a), Jan. 4, 1983, 96 Stat. 2079, 2080; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, as amended, referred to in subsec. (a)(3), is title II of Pub. L. 89–272, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 97–415, § 22(a), inserted provision that the Commission is to take into account the risk to the public health, safety, and the environment, with due consideration of the economic costs and such other factors as the Commission determines to be appropriate.

Subsec. (c). Pub. L. 97–415, § 20, added subsec. (c).

EFFECTIVE DATE

Section effective Nov. 8, 1978, see section 208 of Pub. L. 95–604, set out as an Effective Date of 1978 Amendment note under section 2014 of this title.

SUBCHAPTER VIII—MILITARY APPLICATION OF ATOMIC ENERGY

§ 2121. Authority of Commission

(a) Research and development; weapons production; hazardous wastes; transfers of technologies

The Commission is authorized to—

(1) conduct experiments and do research and development work in the military application of atomic energy;

(2) engage in the production of atomic weapons, or atomic weapon parts, except that such activities shall be carried on only to the extent that the express consent and direction of the President of the United States has been obtained, which consent and direction shall be obtained at least once each year;

(3) provide for safe storage, processing, transportation, and disposal of hazardous waste (including radioactive waste) resulting from nuclear materials production, weapons production and surveillance programs, and naval nuclear propulsion programs;

(4) carry out research on and development of technologies needed for the effective negotia-

[1] So in original.

tion and verification of international agreements on control of special nuclear materials and nuclear weapons; and

(5) under applicable law (other than this paragraph) and consistent with other missions of the Department of Energy, make transfers of federally owned or originated technology to State and local governments, private industry, and universities or other nonprofit organizations so that the prospects for commercialization of such technology are enhanced.

(b) Material for Department of Defense use

The President from time to time may direct the Commission (1) to deliver such quantities of special nuclear material or atomic weapons to the Department of Defense for such use as he deems necessary in the interest of national defense, or (2) to authorize the Department of Defense to manufacture, produce, or acquire any atomic weapon or utilization facility for military purposes: *Provided*, *however*, That such authorization shall not extend to the production of special nuclear material other than that incidental to the operation of such utilization facilities.

(c) Sale, lease, or loan to other Nations of materials for military applications

The President may authorize the Commission or the Department of Defense, with the assistance of the other, to cooperate with another nation and, notwithstanding the provisions of section 2077, 2092, or 2111 of this title, to transfer by sale, lease, or loan to that nation, in accordance with terms and conditions of a program approved by the President—

(1) nonnuclear parts of atomic weapons provided that such nation has made substantial progress in the development of atomic weapons, and other nonnuclear parts of atomic weapons systems involving Restricted Data provided that such transfer will not contribute significantly to that nation's atomic weapon design, development, or fabrication capability; for the purpose of improving that nation's state of training and operational readiness;

(2) utilization facilities for military applications; and

(3) source, byproduct, or special nuclear material for research on, development of, production of, or use in utilization facilities for military applications; and

(4) source, byproduct, or special nuclear material for research on, development of, or use in atomic weapons: *Provided*, *however*, That the transfer of such material to that nation is necessary to improve its atomic weapon design, development, or fabrication capability: *And provided further*, That such nation has made substantial progress in the development of atomic weapons,

whenever the President determines that the proposed cooperation and each proposed transfer arrangement for the nonnuclear parts of atomic weapons and atomic weapons systems, utilization facilities or source, byproduct, or special nuclear material will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided*, *however*, That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 2153 of this title: *And provided further*, That if an agreement for cooperation arranged pursuant to this subsection provides for transfer of utilization facilities for military applications the Commission, or the Department of Defense with respect to cooperation it has been authorized to undertake, may authorize any person to transfer such utilization facilities for military applications in accordance with the terms and conditions of this subsection and of the agreement for cooperation.

(Aug. 1, 1946, ch. 724, title I, § 91, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 936; amended Pub. L. 85–479, § 1, July 2, 1958, 72 Stat. 276; Pub. L. 101–189, div. C, title XXXI, § 3157, Nov. 29, 1989, 103 Stat. 1684; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1806(a) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1989—Subsec. (a)(3) to (5). Pub. L. 101–189 added pars. (3) to (5).

1958—Subsec. (c). Pub. L. 85–479 added subsec. (c).

DELEGATION OF FUNCTIONS

Authority vested in President by subsec. (c) of this section delegated to Secretary of Defense and Secretary of Energy, see section 2(a)(1) of Ex. Ord. No. 10841, as amended, set out as a note under section 2153 of this title.

FORM OF CERTIFICATIONS REGARDING SAFETY OR RELIABILITY OF NUCLEAR WEAPONS STOCKPILE

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3194], Oct. 30, 2000, 114 Stat. 1654, 1654A–481, which was formerly set out as a note under this section, was renumbered section 4206 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(7), Nov. 24, 2003, 117 Stat. 1759, and is classified to section 2526 of Title 50, War and National Defense.

AUTHORITY TO PROVIDE CERTIFICATE OF COMMENDATION TO DEPARTMENT OF ENERGY AND CONTRACTOR EMPLOYEES FOR EXEMPLARY SERVICE IN STOCKPILE STEWARDSHIP AND SECURITY

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3195], Oct. 30, 2000, 114 Stat. 1654, 1654A–481, which was formerly set out as a note under this section, was renumbered section 4605 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(6), Nov. 24, 2003, 117 Stat. 1778, and is classified to section 2705 of Title 50, War and National Defense.

NUCLEAR WEAPONS STOCKPILE LIFE EXTENSION PROGRAM

Pub. L. 106–65, div. C, title XXXI, § 3133, Oct. 5, 1999, 113 Stat. 926, which was formerly set out as a note under this section, was renumbered section 4204 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(5)(A)–(C), Nov. 24, 2003, 117 Stat. 1758, and is classified to section 2524 of Title 50, War and National Defense.

REPORT ON STOCKPILE STEWARDSHIP CRITERIA

Pub. L. 105–261, div. C, title XXXI, §3158, Oct. 17, 1998, 112 Stat. 2257, as amended by Pub. L. 106–65, div. A, title X, §1067(3), Oct. 5, 1999, 113 Stat. 774, which was formerly set out as a note under this section, was renumbered section 4202 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, §3141(e)(3), Nov. 24, 2003, 117 Stat. 1758, and is classified to section 2522 of Title 50, War and National Defense.

PANEL TO ASSESS THE RELIABILITY, SAFETY, AND SECURITY OF THE UNITED STATES NUCLEAR STOCKPILE

Pub. L. 105–261, div. C, title XXXI, §3159, Oct. 17, 1998, 112 Stat. 2258, as amended by Pub. L. 106–65, div. A, title X, §1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. C, title XXXI, §3156, Dec. 28, 2001, 115 Stat. 1379; Pub. L. 107–314, div. C, title XXXI, §3175, Dec. 2, 2002, 116 Stat. 2745, provided that:

''(a) REQUIREMENT FOR PANEL.—The Secretary of Defense, in consultation with the Secretary of Energy, shall enter into a contract with a federally funded research and development center to establish a panel for the assessment of the certification process for the reliability, safety, and security of the United States nuclear stockpile.

''(b) COMPOSITION AND ADMINISTRATION OF PANEL.—(1) The panel shall consist of private citizens of the United States with knowledge and expertise in the technical aspects of design, manufacture, and maintenance of nuclear weapons.

''(2) The federally funded research and development center shall be responsible for establishing appropriate procedures for the panel, including selection of a panel chairman.

''(c) DUTIES OF PANEL.—Each year the panel shall review and assess the following:

''(1) The annual certification process, including the conclusions and recommendations resulting from the process, for the safety, security, and reliability of the nuclear weapons stockpile of the United States, as carried out by the directors of the national weapons laboratories.

''(2) The long-term adequacy of the process of certifying the safety, security, and reliability of the nuclear weapons stockpile of the United States.

''(3) The adequacy of the criteria established by the Secretary of Energy pursuant to section 3158 [formerly set out as a note above] for achieving the purposes for which those criteria are established.

''(d) REPORT.—Not later than October 1 of 1999 and 2000, and not later than February 1, 2002, the panel shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report setting forth its findings and conclusions resulting from the review and assessment carried out for the year covered by the report. The report shall be submitted in classified and unclassified form.

''(e) COOPERATION OF OTHER AGENCIES.—(1) The panel may secure directly from the Department of Energy, the Department of Defense, or any of the national weapons laboratories or plants or any other Federal department or agency information that the panel considers necessary to carry out its duties.

''(2) For carrying out its duties, the panel shall be provided full and timely cooperation by the Secretary of Energy, the Secretary of Defense, the Commander of United States Strategic Command, the Directors of the Los Alamos National Laboratory, the Lawrence Livermore National Laboratory, the Sandia National Laboratories, the Savannah River Site, the Y–12 Plant, the Pantex Facility, and the Kansas City Plant, and any other official of the United States that the chairman of the panel determines as having information described in paragraph (1).

''(3) The Secretary of Energy and the Secretary of Defense shall each designate at least one officer or employee of the Department of Energy and the Department of Defense, respectively, to serve as a liaison officer between the department and the panel.

''(f) FUNDING.—The Secretary of Defense and the Secretary of Energy shall each contribute 50 percent of the amount of funds that are necessary for the panel to carry out its duties. Funds available for the Department of Energy for the National Nuclear Security Administration shall be available for the Department of Energy contribution.

''(g) TERMINATION OF PANEL.—The panel shall terminate April 1, 2003.

''(h) INITIAL IMPLEMENTATION.—The Secretary of Defense shall enter into the contract required under subsection (a) not later than 60 days after the date of the enactment of this Act [Oct. 17, 1998]. The panel shall convene its first meeting not later than 30 days after the date as of which all members of the panel have been appointed.

''(i) FOLLOW-UP REPORT.—Not later than February 1, 2003, the panel shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a follow-up report assessing progress toward meeting the expectations set forth by the panel for the United States stockpile stewardship program, and making recommendations for corrective legislative action where progress has been unsatisfactory.''

COMMISSION ON MAINTAINING UNITED STATES NUCLEAR WEAPONS EXPERTISE

Pub. L. 104–201, div. C, title XXXI, §3162, Sept. 23, 1996, 110 Stat. 2843, as amended by Pub. L. 105–85, div. C, title XXXI, §3163, Nov. 18, 1997, 111 Stat. 2049, provided that:

''(a) ESTABLISHMENT.—There is hereby established a commission to be known as the 'Commission on Maintaining United States Nuclear Weapons Expertise' (in this section referred to as the 'Commission').

''(b) ORGANIZATIONAL MATTERS.—(1)(A) The Commission shall be composed of eight members appointed from among individuals in the public and private sectors who have significant experience in matters relating to nuclear weapons, as follows:

''(i) Two shall be appointed by the majority leader of the Senate (in consultation with the minority leader of the Senate).

''(ii) One shall be appointed by the minority leader of the Senate (in consultation with the majority leader of the Senate).

''(iii) Two shall be appointed by the Speaker of the House of Representatives (in consultation with the minority leader of the House of Representatives).

''(iv) One shall be appointed by the minority leader of the House of Representatives (in consultation with the Speaker of the House of Representatives).

''(v) Two shall be appointed by the Secretary of Energy.

''(B) Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

''(C) The chairman of the Commission shall be designated from among the members of the Commission appointed under subparagraph (A) by the majority leader of the Senate, in consultation with the Speaker of the House of Representatives, the minority leader of the Senate, and the minority leader of the House of Representatives. The chairman may be designated once five members of the Commission have been appointed under subparagraph (A).

''(D) Members shall be appointed not later than 60 days after the date of the enactment of this Act [Sept. 23, 1996].

''(E) The Commission may commence its activities under this section upon the designation of the chairman of the Commission under subparagraph (C).

''(2) The members of the Commission shall establish procedures for the activities of the Commission, including procedures for calling meetings, requirements for quorums, and the manner of taking votes.

''(c) DUTIES.—(1) The Commission shall develop a plan for recruiting and retaining within the Department of Energy nuclear weapons complex such scientific, engineering, and technical personnel as the Commission determines appropriate in order to permit the Department to maintain over the long term a safe and reliable nuclear weapons stockpile without engaging in underground testing.

''(2) In developing the plan, the Commission shall—

''(A) identify actions that the Secretary may undertake to attract qualified scientific, engineering, and technical personnel to the nuclear weapons complex of the Department; and

''(B) review and recommend improvements to the on-going efforts of the Department to attract such personnel to the nuclear weapons complex.

''(d) REPORT.—Not later than March 15, 1999, the Commission shall submit to the Secretary and to Congress a report containing the plan developed under subsection (c). The report may include recommendations for legislation and administrative action.

''(e) COMMISSION PERSONNEL MATTERS.—(1) Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

''(2) The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

''(3) The Commission may, without regard to the civil service laws and regulations, appoint and terminate such personnel as may be necessary to enable the Commission to perform its duties. The Commission may fix the compensation of the personnel of the Commission without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

''(4) Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

''(f) TERMINATION.—The Commission shall terminate 30 days after the date on which the Commission submits its report under subsection (d).

''(g) APPLICABILITY OF FACA.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission.

''(h) FUNDING.—Of the amounts authorized to be appropriated pursuant to section 3101 [110 Stat. 2820], not more than $1,000,000 shall be available for the activities of the Commission under this section. Funds made available to the Commission under this section shall remain available until expended.''

[Section 3163(a) of Pub. L. 105–85 provided that the amendment made by that section to section 3162(b)(1) of Pub. L. 104–201, set out above, is effective Jan. 1, 1998.]

TRITIUM PRODUCTION PROGRAM

Pub. L. 104–106, div. C, title XXXI, § 3133, Feb. 10, 1996, 110 Stat. 618, which was formerly set out as a note under this section, was renumbered section 4231 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(16)(A)–(C), Nov. 24, 2003, 117 Stat. 1761, and is classified to section 2541 of Title 50, War and National Defense.

MANUFACTURING INFRASTRUCTURE FOR REFABRICATION AND CERTIFICATION OF NUCLEAR WEAPONS STOCKPILE

Pub. L. 104–106, div. C, title XXXI, § 3137, Feb. 10, 1996, 110 Stat. 620, as amended by Pub. L. 104–201, div. C, title XXXI, § 3132(a), (b), Sept. 23, 1996, 110 Stat. 2829, which was formerly set out as a note under this section, was renumbered section 4212 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(13)(A)–(C), Nov. 24, 2003, 117 Stat. 1760, and is classified to section 2532 of Title 50, War and National Defense.

FELLOWSHIP PROGRAM FOR DEVELOPMENT OF SKILLS CRITICAL TO DEPARTMENT OF ENERGY NUCLEAR WEAPONS COMPLEX

Pub. L. 104–106, div. C, title XXXI, § 3140, Feb. 10, 1996, 110 Stat. 621, as amended by Pub. L. 106–65, div. C, title XXXI, § 3162(a)–(d), Oct. 5, 1999, 113 Stat. 943, which was formerly set out as a note under this section, was renumbered section 4623 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(10), Nov. 24, 2003, 117 Stat. 1779, and is classified to section 2723 of Title 50, War and National Defense.

STUDY ON NUCLEAR TEST READINESS POSTURES

Pub. L. 104–106, div. C, title XXXI, § 3152, Feb. 10, 1996, 110 Stat. 623, as amended by Pub. L. 106–398, § 1 [div. C, title XXXI, § 3192], Oct. 30, 2000, 114 Stat. 1654, 1654A–480, which was formerly set out as a note under this section, was renumbered section 4208 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(9), Nov. 24, 2003, 117 Stat. 1759, and is classified to section 2528 of Title 50, War and National Defense.

PLAN FOR STEWARDSHIP, MANAGEMENT, AND CERTIFICATION OF WARHEADS IN THE NUCLEAR WEAPONS STOCKPILE

Pub. L. 105–85, div. C, title XXXI, § 3151, Nov. 18, 1997, 111 Stat. 2041, which was formerly set out as a note under this section, was renumbered section 4203 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(4), Nov. 24, 2003, 117 Stat. 1758, and is classified to section 2523 of Title 50, War and National Defense.

REPORT ON WASTE STREAMS GENERATED BY NUCLEAR WEAPONS PRODUCTION CYCLE

Pub. L. 103–337, div. C, title XXXI, § 3154, Oct. 5, 1994, 108 Stat. 3091, directed Secretary of Energy, not later than Mar. 31, 1996, to submit to Congress report containing description of all waste streams generated before 1992 during each step of complete cycle of production and disposition of nuclear weapon components by Department of Energy, with description for each such step to be based on unit of analysis appropriate for that step, and to include estimate of volume of waste generated per unit of analysis and analysis of characteristics of each waste stream.

PROHIBITION ON RESEARCH AND DEVELOPMENT OF LOW-YIELD NUCLEAR WEAPONS

Pub. L. 103–160, div. C, title XXXI, § 3136, Nov. 30, 1993, 107 Stat. 1946, expressed policy of United States with respect to research and development of low-yield nuclear weapons, prior to repeal by Pub. L. 108–136, div. C, title XXXI, § 3116(a), Nov. 24, 2003, 117 Stat. 1746.

[Pub. L. 108–136, div. C, title XXXI, § 3116(b), Nov. 24, 2003, 117 Stat. 1746, provided that: ''Nothing in the repeal made by subsection (a) [repealing section 3136 of Pub. L. 103–160, formerly set out as a note above] shall be construed as authorizing the testing, acquisition, or deployment of a low-yield nuclear weapon.'']

STOCKPILE STEWARDSHIP PROGRAM

Pub. L. 105–85, div. C, title XXXI, § 3156, Nov. 18, 1997, 111 Stat. 2045, expressed findings of Congress and policy

of United States about the direction and conduct of the stockpile stewardship program, prior to repeal by Pub. L. 105–261, div. C, title XXXI, §3157, Oct. 17, 1998, 112 Stat. 2257.

Pub. L. 103–160, div. C, title XXXI, §3138, Nov. 30, 1993, 107 Stat. 1946, as amended by Pub. L. 105–85, div. C, title XXXI, §3152(e), Nov. 18, 1997, 111 Stat. 2042, which was formerly set out as a note under this section, was renumbered section 4201 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, §3141(e)(2), Nov. 24, 2003, 117 Stat. 1758, and is classified to section 2521 of Title 50, War and National Defense.

LIMITATIONS ON UNITED STATES NUCLEAR WEAPONS TESTING

Pub. L. 103–160, div. A, title II, §261, Nov. 30, 1993, 107 Stat. 1608, provided that:

''(a) LIMITATION ON OBLIGATION OF FUNDS.—The Secretary of Defense may not obligate funds in preparation for any activity of the Department of Defense, including the so-called 'Mighty Uncle' test, to study the effects of a nuclear weapon explosion through underground nuclear weapons testing unless that test is permitted in accordance with the provisions of section 507 of Public Law 102–377 [set out below] (106 Stat. 1343).

''(b) CERTAIN ACTIONS NOT PROHIBITED.—Subsection (a) does not preclude the Secretary of Defense, acting through the Director of the Defense Nuclear Agency, from—

''(1) proceeding with underground nuclear test tunnel deactivation and environmental cleanup; or

''(2) expending funds for infrastructure activities not covered by the limitation in subsection (a).

''(c) FUNDING.—Of the funds authorized to be appropriated pursuant to section 201 [107 Stat. 1583] for Defense-wide activities, not more than $38,000,000 may be used for activities described in subsection (b).''

Pub. L. 103–160, div. C, title XXXI, §3137, Nov. 30, 1993, 107 Stat. 1946, which was formerly set out as a note under this section, was renumbered section 4211 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, §3141(e)(12)(A)–(C), Nov. 24, 2003, 117 Stat. 1760, and is classified to section 2531 of Title 50, War and National Defense.

Pub. L. 102–377, title V, §507, Oct. 2, 1992, 106 Stat. 1343, as amended by Pub. L. 108–136, div. C, title XXXI, §3141(e)(11), Nov. 24, 2003, 117 Stat. 1760, provided that:

''(a) Hereafter, funds made available by this Act or any other Act for fiscal year 1993 or for any other fiscal year may be available for conducting a test of a nuclear explosive device only if the conduct of that test is permitted in accordance with the provisions of this section.

''(b) No underground test of a nuclear weapon may be conducted by the United States after September 30, 1992, and before July 1, 1993.

''(c) On and after July 1, 1993, and before January 1, 1997, an underground test of a nuclear weapon may be conducted by the United States—

''(1) only if—

''(A) the President has submitted the annual report required under subsection (d);

''(B) 90 days have elapsed after the submittal of that report in accordance with that subsection; and

''(C) Congress has not agreed to a joint resolution described in subsection (d)(3) within that 90-day period; and

''(2) only if the test is conducted during the period covered by the report.

''(d)(1) Not later than March 1, of each year beginning after 1992, the President shall submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, in classified and unclassified forms, a report containing the following matters:

''(A) A schedule for resumption of the Nuclear Testing Talks with Russia.

''(B) A plan for achieving a multilateral comprehensive ban on the testing of nuclear weapons on or before September 30, 1996.

''(C) An assessment of the number and type of nuclear warheads that will remain in the United States stockpile of active nuclear weapons on September 30, 1996.

''(D) For each fiscal year after fiscal year 1992, an assessment of the number and type of nuclear warheads that will remain in the United States stockpile of nuclear weapons and that—

''(i) will not be in the United States stockpile of active nuclear weapons;

''(ii) will remain under the control of the Department of Defense; and

''(iii) will not be transferred to the Department of Energy for dismantlement.

''(E) A description of the safety features of each warhead that is covered by an assessment referred to in subparagraph (C) or (D).

''(F) A plan for installing one or more modern safety features in each warhead identified in the assessment referred to in subparagraph (C), as determined after an analysis of the costs and benefits of installing such feature or features in the warhead, should have one or more of such features.

''(G) An assessment of the number and type of nuclear weapons tests, not to exceed 5 tests in any period covered by an annual report under this paragraph and a total of 15 tests in the 4-fiscal year period beginning with fiscal year 1993, that are necessary in order to ensure the safety of each nuclear warhead in which one or more modern safety features are installed pursuant to the plan referred to in subparagraph (F).

''(H) A schedule, in accordance with subparagraph (G), for conducting at the Nevada test site, each of the tests enumerated in the assessment pursuant to subparagraph (G).

''(2) The first annual report shall cover the period beginning on the date on which a resumption of testing of nuclear weapons is permitted under subsection (c) and ending on September 30, 1994. Each annual report thereafter shall cover the fiscal year following the fiscal year in which the report is submitted.

''(3) For the purposes of paragraph (1), 'joint resolution' means only a joint resolution introduced after the date on which the Committees referred to in that paragraph receive the report required by that paragraph the matter after the resolving clause of which is as follows: 'The Congress disapproves the report of the President on nuclear weapons testing, dated .' (the blank space being appropriately filled in).

''(4) No report is required under this subsection after 1996.

''(e)(1) Except as provided in paragraphs (2) and (3), during a period covered by an annual report submitted pursuant to subsection (d), nuclear weapons may be tested only as follows:

''(A) Only those nuclear explosive devices in which modern safety features have been installed pursuant to the plan referred to in subsection (d)(1)(F) may be tested.

''(B) Only the number and types of tests specified in the report pursuant to subsection (d)(1)(G) may be conducted.

''(2)(A) One test of the reliability of a nuclear weapon other than one referred to in paragraph (1)(A) may be conducted during any period covered by an annual report, but only if—

''(i) within the first 60 days after the beginning of that period, the President certifies to Congress that it is vital to the national security interests of the United States to test the reliability of such a nuclear weapon; and

''(ii) within the 60-day period beginning on the date that Congress receives the certification, Congress does not agree to a joint resolution described in subparagraph (B).

''(B) For the purposes of subparagraph (A), 'joint resolution' means only a joint resolution introduced after the date on which the Congress receives the certification referred to in that subparagraph the matter

after the resolving clause of which is as follows: 'The Congress disapproves the testing of a nuclear weapon covered by the certification of the President dated .' (the blank space being appropriately filled in).

''(3) The President may authorize the United Kingdom to conduct in the United States, within a period covered by an annual report, one test of a nuclear weapon if the President determines that it is in the national interests of the United States to do so. Such a test shall be considered as one of the tests within the maximum number of tests that the United States is permitted to conduct during that period under paragraph (1)(B).

''(f) [Transferred to section 2530 of Title 50, War and National Defense.]

''(g) In the computation of the 90-day period referred to in subsection (c)(1) and the 60-day period referred to in subsection (e)(2)(A)(ii), the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded.

''(h) In this section, the term 'modern safety feature' means any of the following features:

''(1) An insensitive high explosive (IHE).

''(2) Fire resistant pits (FRP).

''(3) An enhanced detonation safety (ENDS) system.''

NUCLEAR TEST BAN READINESS PROGRAM

Pub. L. 100–456, div. A, title XIV, § 1436, Sept. 29, 1988, 102 Stat. 2075, as amended by Pub. L. 105–85, div. C, title XXXI, § 3152(i), Nov. 18, 1997, 111 Stat. 2042, which was formerly set out as a note under this section, was renumbered section 4207 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(8)(A)–(C), Nov. 24, 2003, 117 Stat. 1759, and is classified to section 2527 of Title 50, War and National Defense.

§ 2122. Prohibitions governing atomic weapons

(a) It shall be unlawful, except as provided in section 2121 of this title, for any person, inside or outside of the United States, to knowingly participate in the development of, manufacture, produce, transfer, acquire, receive, possess, import, export, or use, or possess and threaten to use, any atomic weapon. Nothing in this section shall be deemed to modify the provisions of section 2051(a) or 2131 of this title.

(b) Conduct prohibited by subsection (a) of this section is within the jurisdiction of the United States if—

(1) the offense occurs in or affects interstate or foreign commerce; the offense occurs outside of the United States and is committed by a national of the United States;

(2) the offense is committed against a national of the United States while the national is outside the United States;

(3) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

(4) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

(Aug. 1, 1946, ch. 724, title I, § 92, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 936; amended Pub. L. 85–479, § 2, July 2, 1958, 72 Stat. 277; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 108–458, title VI, §§ 6803(b), 6904(a), Dec. 17, 2004, 118 Stat. 3768, 3771.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1806(b) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2004—Pub. L. 108–458, § 6904(a)(1), designated existing provisions as subsec. (a).

Pub. L. 108–458, § 6803(b)(2), inserted ''participate in the development of,'' after ''interstate or foreign commerce,''.

Pub. L. 108–458, § 6803(b)(1), inserted '', inside or outside of the United States,'' after ''for any person''.

Subsec. (a). Pub. L. 108–458, § 6904(a)(4), which directed amendment by striking out ''transfer or receive in interstate or foreign commerce,'' before ''manufacture'', was executed by striking out such phrase before ''participate in the development of, manufacture'' to reflect the probable intent of Congress and the intervening amendment by Pub. L. 108–458, § 6803(b)(2). See above.

Pub. L. 108–458, § 6904(a)(3), (5), (6), inserted ''receive,'' after ''acquire,'', struck out ''or'' before ''export'', and inserted '', or use, or possess and threaten to use,'' before ''any atomic weapon''.

Pub. L. 108–458, § 6904(a)(2), which directed amendment by inserting ''knowingly'' after ''for any person to'', was executed by making the insertion after ''for any person, inside or outside of the United States, to'' to reflect the probable intent of Congress and the amendment by Pub. L. 108–458, § 6803(b)(1). See above.

Subsec. (b). Pub. L. 108–458, § 6904(a)(7), added subsec. (b).

1958—Pub. L. 85–479 included transfers or receipts in foreign commerce.

§ 2122a. Repealed. Pub. L. 106–65, div. C, title XXXII, § 3294(e)(1)(A), Oct. 5, 1999, 113 Stat. 970

Section, act Aug. 1, 1946, ch. 724, title I, § 93, as added Pub. L. 103–160, div. C, title XXXI, § 3156(a), Nov. 30, 1993, 107 Stat. 1953, related to congressional oversight of special access programs. See section 2426 of Title 50, War and National Defense.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

§ 2123. Transferred

CODIFICATION

Section, Pub. L. 102–190, div. C, title XXXI, § 3136, Dec. 5, 1991, 105 Stat. 1577; Pub. L. 103–35, title II, § 203(b)(3), May 31, 1993, 107 Stat. 102, which related to critical technology partnerships between laboratories of the Department of Energy and other entities, was renumbered section 4813 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(8), Nov. 24, 2003, 117 Stat. 1785, and transferred to section 2794 of Title 50, War and National Defense.

SUBCHAPTER IX—ATOMIC ENERGY LICENSES

§ 2131. License required

It shall be unlawful, except as provided in section 2121 of this title, for any person within the

United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 2133 or 2134 of this title.

(Aug. 1, 1946, ch. 724, title I, § 101, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 936; amended Aug. 6, 1956, ch. 1015, § 11, 70 Stat. 1071; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1807(a) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1956—Act Aug. 6, 1956, inserted ''use,'' after ''possess,''.

§ 2132. Utilization and production facilities for industrial or commercial purposes

(a) Issuance of licenses

Except as provided in subsections (b) and (c) of this section, or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 2133 of this title.

(b) Facilities constructed or operated under section 2134(b)

Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to section 2134(b) of this title prior to enactment into law of this subsection, shall be issued under section 2134(b) of this title.

(c) Cooperative Power Reactor Demonstration facilities

Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under section 2134(b) of this title.

(Aug. 1, 1946, ch. 724, title I, § 102, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 936; amended Pub. L. 91–560, § 3, Dec. 19, 1970, 84 Stat. 1472; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1970—Pub. L. 91–560 substituted provisions authorizing Commission to issue licenses for a utilization or production facility for industrial or commercial purposes under section 2133, except that license may be issued under section 2134(b), for such utilization or production facility, construction or operation of which was licensed under section 2134(b) before December 19, 1970 or constructed or operated under an arrangement with Commission entered into under Cooperative Power Reactor Demonstration Program, for provisions authorizing Commission to issue licenses pursuant to section 2133 of this title on a determination that such utilization or production facility has been sufficiently developed to be of practical value for industrial or commercial purposes.

§ 2133. Commercial licenses

(a) Conditions

The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 2153 of this title, utilization or production facilities for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of subchapter XV of this division and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this chapter.

(b) Nonexclusive basis

The Commission shall issue such licenses on a nonexclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

(c) License period

Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years from the authorization to commence operations, and may be renewed upon the expiration of such period.

(d) Limitations

No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 2153 of this title, or except under the provisions of section 2139 of this title. No license may be issued to an alien or any any[1] corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

[1] So in original.

(f)[2] Accident notification condition; license revocation; license amendment to include condition

Each license issued for a utilization facility under this section or section 2134(b) of this title shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with section 2237 of this title, the Commission shall promptly amend each license for a utilization facility issued under this section or section 2134(b) of this title which is in effect on June 30, 1980, to include the provisions required under this subsection.

(Aug. 1, 1946, ch. 724, title I, § 103, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 936; amended Aug. 6, 1956, ch. 1015, §§ 12, 13, 70 Stat. 1071; Pub. L. 91–560, § 4, Dec. 19, 1970, 84 Stat. 1472; Pub. L. 96–295, title II, § 201, June 30, 1980, 94 Stat. 786; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109–58, title VI, § 621, Aug. 8, 2005, 119 Stat. 782.)

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–58 inserted "from the authorization to commence operations" after "forty years".

1980—Subsec. (f). Pub. L. 96–295 added subsec. (f).

1970—Subsec. (a). Pub. L. 91–560 struck out requirement of a finding of practical value under section 2132 and substituted "utilization and production facilities for industrial or commercial purposes" for "such type of utilization or production facility".

1956—Subsec. (a). Act Aug. 6, 1956, § 12, inserted "use," after "possess,".

Subsec. (d). Act Aug. 6, 1956, § 13, inserted "an alien or any" after "issued to".

§ 2134. Medical, industrial, and commercial licenses

(a) Medical therapy

The Commission is authorized to issue licenses to persons applying therefor for utilization facilities for use in medical therapy. In issuing such licenses the Commission is directed to permit the widest amount of effective medical therapy possible with the amount of special nuclear material available for such purposes and to impose the minimum amount of regulation consistent with its obligations under this chapter to promote the common defense and security and to protect the health and safety of the public.

(b) Industrial and commercial purposes

As provided for in subsection (b) or (c) of section 2132 of this title, or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this chapter.

(c) Research and development activities

The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities useful in the conduct of research and development activities of the types specified in section 2051 of this title and which are not facilities of the type specified in subsection (b) of this section. The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this chapter to promote the common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development.

(d) Limitations

No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 2153 of this title or except under the provisions of section 2139 of this title. No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

(Aug. 1, 1946, ch. 724, title I, § 104, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 937; amended Pub. L. 91–560, § 5, Dec. 19, 1970, 84 Stat. 1472; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–560 substituted provisions authorizing the issue of licenses for utilization or production facilities for industrial or commercial purposes (i) where specifically authorized by law or (ii) where the facility was constructed or operated under an arrangement with the Commission entered into under the cooperative power reactor demonstration program, and the applicable statutory authorization does not require licensing under section 2133, or (iii) where the facility was theretofore licensed under section 2134(b), for provisions authorizing the issue of licenses for utilization and production facilities involved in the conduct of research and development activities leading to the demonstration of the practical value of such facilities for industrial and commercial purposes.

§ 2135. Antitrust provisions governing licenses

(a) Violations of antitrust laws

Nothing contained in this chapter shall relieve any person from the operation of the following Acts, as amended, "An Act to protect trade and commerce against unlawful restraints and monopolies" approved July second, eighteen hundred and ninety; sections seventy-three to seventy-six, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the

[2] So in original. Probably should be "(e)".

Government, and for other purposes'' approved August twenty-seven, eighteen hundred and ninety-four; ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'' approved October fifteen, nineteen hundred and fourteen; and ''An Act to create a Federal Trade Commission, to defined its powers and duties, and for other purposes'' approved September twenty-six, nineteen hundred and fourteen. In the event a licensee is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the laws cited above, to have violated any of the provisions of such laws in the conduct of the licensed activity, the Commission may suspend, revoke, or take such other action as it may deem necessary with respect to any license issued by the Commission under the provisions of this chapter.

(b) Reports to Attorney General

The Commission shall report promptly to the Attorney General any information it may have with respect to any utilization of special nuclear material or atomic energy which appears to violate or to tend toward the violation of any of the foregoing Acts, or to restrict free competition in private enterprise.

(c) Transmissions to Attorney General of copies of license applications; publication of advice; factors considered; exceptions

(1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection, and a copy of any written request provided for in paragraph (3) of this subsection; and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to paragraph (5) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.

(2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 2133 of this title: *Provided, however*, That paragraph (1) shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 2133 of this title unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

(3) With respect to any Commission permit for the construction of a utilization or production facility issued pursuant to subsection (b) of section 2134 of this title prior to December 19, 1970, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination shall have the right, upon a written request to the Commission, to obtain an antitrust review under this section of the application for an operating license. Such written request shall be made within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license for the facility or December 19, 1970, whichever is later.

(4) Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate for the advice called for in paragraph (1) of this subsection.

(5) Promptly upon receipt of the Attorney General's advice, the Commission shall publish the advice in the Federal Register. Where the Attorney General advises that there may be adverse antitrust aspects and recommends that there be a hearing, the Attorney General or his designee may participate as a party in the proceedings thereafter held by the Commission on such licensing matter in connection with the subject matter of his advice. The Commission shall give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter, and shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection (a) of this section.

(6) In the event the Commission's finding under paragraph (5) is in the affirmative, the Commission shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest. On the basis of its findings, the Commission shall have the authority to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.

(7) The Commission, with the approval of the Attorney General, may except from any of the requirements of this subsection such classes or types of licenses as the Commission may determine would not significantly affect the applicant's activities under the antitrust laws as specified in subsection (a) of this section.

(8) With respect to any application for a construction permit on file at the time of enactment into law of this subsection, which permit would be for issuance under section 2133 of this title, and with respect to any application for an operating license in connection with which a written request for an antitrust review is made as provided for in paragraph (3), the Commission, after consultation with the Attorney General, may, upon determination that such action is necessary in the public interest to avoid unnecessary delay, establish by rule or order periods for Commission notification and receipt of advice differing from those set forth above and may issue a construction permit or operating license in advance of consideration of and findings with respect to the matters covered in this sub-

section: *Provided*, That any construction permit or operating license so issued shall contain such conditions as the Commission deems appropriate to assure that any subsequent findings and orders of the Commission with respect to such matters will be given full force and effect.

(9) APPLICABILITY.—This subsection does not apply to an application for a license to construct or operate a utilization facility or production facility under section 2133 or 2134(b) of this title that is filed on or after August 8, 2005.

(Aug. 1, 1946, ch. 724, title I, § 105, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 938; amended Pub. L. 88–489, § 14, Aug. 26, 1964, 78 Stat. 606; Pub. L. 91–560, § 6, Dec. 19, 1970, 84 Stat. 1473; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 107–273, div. C, title IV, § 14102(c)(2)(D), Nov. 2, 2002, 116 Stat. 1921; Pub. L. 109–58, title VI, § 625, Aug. 8, 2005, 119 Stat. 784.)

REFERENCES IN TEXT

The act to protect trade and commerce against unlawful restraints and monopolies, referred to in subsec. (a), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Sections seventy-three to seventy-six, inclusive, of an act entitled ''An Act to reduce taxation, to provide revenue for the Government, and for other purposes'', referred to in subsec. (a), are sections 73 to 76 of act Aug. 27, 1894, ch. 349, 28 Stat. 570, as amended, known as the Wilson Tariff Act, which are classified to sections 8 to 11, respectively, of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 8 of Title 15 and Tables.

''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'' approved October fifteen, nineteen hundred and fourteen, referred to in subsec. (a), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The act to create a Federal Trade Commission, to define its powers and duties, and for other purposes, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, known as the Federal Trade Commission Act, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1807(c) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2005—Subsec. (c)(9). Pub. L. 109–58 added par. (9).

2002—Subsec. (a). Pub. L. 107–273 substituted ''seventy-six'' for ''seventy-seven''.

1970—Subsec. (c). Pub. L. 91–560 designated existing provisions as pars. (1), (2), (4), and (5) and amended such provisions by extending the time for the Attorney General to give advice from 90 to 180 days and provided for review of licenses once granted under section 2133 of this title, and when the Attorney General recommends that there be a hearing, authorized the Commission to hold hearings and permit the Attorney General to appear as a party and to make a finding as to whether the activities under the license would be inconsistent with the antitrust laws, and in par. (3), provided for a review of the permit issued under section 2134(b) of this title, and added pars. (6) to (8).

1964—Subsec. (a). Pub. L. 88–489 struck out '', including the provisions which vest title to all special nuclear material in the United States,'' before ''shall relieve any person''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002, see section 14103 of Pub. L. 107–273, set out as a note under section 3 of Title 15, Commerce and Trade.

§ 2136. Classes of facilities

The Commission may—

(a) group the facilities licensed either under section 2133 or 2134 of this title into classes which may include either production or utilization facilities or both, upon the basis of the similarity of operating and technical characteristics of the facilities;

(b) define the various activities to be carried on at each such class of facility; and

(c) designate the amounts of special nuclear material available for use by each such facility.

(Aug. 1, 1946, ch. 724, title I, § 106, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 938; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2137. Operators' licenses

The Commission shall—

(a) prescribe uniform conditions for licensing individuals as operators of any of the various classes of production and utilization facilities licensed in this chapter;

(b) determine the qualifications of such individuals;

(c) issue licenses to such individuals in such form as the Commission may prescribe; and

(d) suspend such licenses for violations of any provision of this chapter or any rule or regulation issued thereunder whenever the Commission deems such action desirable.

(Aug. 1, 1946, ch. 724, title I, § 107, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 939; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

TECHNICAL CAPABILITY OF LICENSEE PERSONNEL IMPROVEMENT PLAN; STUDY OF LICENSE REQUIREMENT FOR PLANT MANAGERS AND SENIOR LICENSEE OFFICERS; REPORT TO CONGRESS

Pub. L. 96–395, title III, § 307, June 30, 1980, 94 Stat. 791, provided that:

''(a) The Commission is authorized and directed to prepare a plan for improving the technical capability of licensee personnel to safely operate utilization facilities licensed under section 103 or 104b. of the Atomic Energy Act of 1954 [sections 2133 and 2134(b) of this title]. In proposing such plan, the Commission shall consider the feasibility of requiring standard mandatory training programs for nuclear facility operators, including classroom study, apprenticeships at the facility, and emergency simulator training. Such plan shall include specific criteria for more intensive training and retraining of operator personnel licensed under section 107 of the Atomic Energy Act of 1954 [this section], and for the licensing of such personnel, to assure—

''(1) conformity with all conditions and requirements of the operating license;

''(2) early identification of accidents, events, or event sequences which may significantly increase the likelihood of an accident; and

''(3) effective response to any such event or sequence.

Such plan shall include provision for Commission review and approval of the qualifications of personnel conducting any required training and retraining program. The plan shall also include requirements for the renewal of operator licenses including, to the extent practicable, requirements that the operator—

''(A) has been actively and extensively engaged in the duties listed in such license,

''(B) has discharged such duties safely to the satisfaction of the Commission,

''(C) is capable of continuing such duties, and

''(D) has participated in a requalification training program.

Such plan shall include criteria for suspending or revoking operator licenses. In addition, the Commission shall also consider the feasibility of requiring such licensed operator to pass a requalification test every six months including—

''(i) written questions, and

''(ii) emergency simulator exams.

The Commission shall transmit to the Congress the plan required by this subsection within six months after the date of the enactment of this Act [June 30, 1980], and shall implement as expeditiously as practicable each element thereof not requiring legislative enactment.

''(b) The Nuclear Regulatory Commission is authorized and directed to undertake a study of the feasibility and value of licensing, under section 107 of the Atomic Energy Act of 1954 [this section], plant managers of utilization facilities and senior licensee officers responsible for operation of such facilities. The Commission shall report to the Congress within six months of the date of enactment of this Act [June 30, 1980] on the findings and recommendations of the study required by this subsection, and shall expeditiously implement each such recommendation not requiring legislative enactment.''

§ 2138. Suspension of licenses during war or national emergency

Whenever the Congress declares that a state of war or national emergency exists, the Commission is authorized to suspend any licenses granted under this chapter if in its judgment such action is necessary to the common defense and security. The Commission is authorized during such period, if the Commission finds it necessary to the common defense and security, to order the recapture of any special nuclear material or to order the operation of any facility licensed under section 2133 or 2134 of this title, and is authorized to order the entry into any plant or facility in order to recapture such material, or to operate such facility. Just compensation shall be paid for any damages caused by the recapture of any special nuclear material or by the operation of any such facility.

(Aug. 1, 1946, ch. 724, title I, § 108, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 939; amended Pub. L. 86–373, § 2, Sept. 23, 1959, 73 Stat. 691; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1959—Pub. L. 86–373 struck out ''distributed under the provisions of section 2073(a) of this title,'' before ''or to order''.

§ 2139. Component and other parts of facilities

(a) Licenses for domestic activities

With respect to those utilization and production facilities which are so determined by the Commission pursuant to section 2014(v)(2) or 2014(cc)(2) of this title the Commission may issue general licenses for domestic activities required to be licensed under section 2131 of this title, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security.

(b) Export licenses

After consulting with the Secretaries of State, Energy, and Commerce, the Commission is authorized and directed to determine which component parts as defined in section 2014(v)(2) or 2014(cc)(2) of this title and which other items or substances are especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes. Except as provided in section 2155(b)(2) of this title, no such component, substance, or item which is so determined by the Commission shall be exported unless the Commission issues a general or specific license for its export after finding, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the following criteria or their equivalent are met: (1) IAEA safeguards as required by Article III (2) of the Treaty will be applied with respect to such component, substance, or item; (2) no such component, substance, or item will be used for any nuclear explosive device or for research on or development of any nuclear explosive device; and (3) no such component, substance, or item will be retransferred to the jurisdiction of any other nation or group of nations unless the prior consent of the United States is obtained for such retransfer; and after determining in writing that the issuance of each such general or specific license or category of licenses will not be inimical to the common defense and security: *Provided*, That a specific license shall not be required for an export pursuant to this section if the component, item or substance is covered by a facility license issued pursuant to section 2155 of this title.

(c) Exports inimical to common defense and security of United States

The Commission shall not issue an export license under the authority of subsection (b) of this section if it is advised by the executive branch, in accordance with the procedures established under section 2155(a) of this title, that the export would be inimical to the common defense and security of the United States.

(Aug. 1, 1946, ch. 724, title I, § 109, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 939; amended Pub. L. 87–615, § 9, Aug. 29, 1962, 76 Stat. 411; Pub. L. 89–645, § 1(b), Oct. 13, 1966, 80 Stat. 891; Pub. L. 95–242, title III, § 309(a), Mar. 10, 1978, 92 Stat. 141; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 105–277, div. G, title XII, § 1225(d)(2), Oct. 21, 1998, 112 Stat. 2681–774.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–277 struck out ''and the Director'' after ''Energy, and Commerce''.

1978—Subsec. (a). Pub. L. 95–242 designated existing provisions as subsec. (a) and substituted ''the Commission may issue general licenses for domestic activities required to be licensed under section 2131 of this title, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security'' for ''the Commission may (a) issue general licenses for activities required to be licensed under section 2131 of this title, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security, and (b) issue licenses for the export of such facilities, if the Commission determines in writing that each export will not constitute an unreasonable risk to the common defense and security''.

Subsecs. (b), (c). Pub. L. 95–242 added subsecs. (b) and (c).

1966—Pub. L. 89–645 substituted ''section 2014(v)(2) or 2014 (cc)(2)'' for ''section 2014(t)(2) or 2014(aa)(2)''.

1962—Pub. L. 87–615 substituted ''section 2014(t)(2) or 2014(aa)(2)'' for ''section 2014(p)(2) or 2014(v)(2)''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

EXPORTS CONTRACTED FOR PRIOR TO NOV. 1, 1977, MADE WITHIN ONE YEAR OF MAR. 10, 1978; SAVINGS PROVISION

Section 309(d) of Pub. L. 95–242 provided that: ''The amendments to section 109 of the 1954 Act [this section] made by this section shall not affect the approval of exports contracted for prior to November 1, 1977, which are made within one year of the date of enactment of such amendments [Mar. 10, 1978].''

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2139a. Regulations implementing requirements relating to licensing for components and other parts of facilities

(a) Omitted

(b) The Commission, not later than one hundred and twenty days after March 10, 1978, shall publish regulations to implement the provisions of subsections (b) and (c) of section 2139 of this title. Among other things, these regulations shall provide for the prior consultation by the Commission with the Department of State, the Department of Energy, the Department of Defense, and the Department of Commerce.

(c) The President, within not more than one hundred and twenty days after March 10, 1978, shall publish procedures regarding the control by the Department of Commerce over all export items, other than those licensed by the Commission, which could be, if used for purposes other than those for which the export is intended, of significance for nuclear explosive purposes. Among other things, these procedures shall provide for prior consultations by the Department of Commerce with the Department of State, the Commission, the Department of Energy, and the Department of Defense.

(Pub. L. 95–242, title III, § 309(b), (c), Mar. 10, 1978, 92 Stat. 141; Pub. L. 103–236, title VII, § 714(b), Apr. 30, 1994, 108 Stat. 498; Pub. L. 105–277, div. G, title XII, § 1225(e)(4), Oct. 21, 1998, 112 Stat. 2681–775.)

REFERENCES IN TEXT

Commission, referred to in text, is defined as meaning the Nuclear Regulatory Commission by section 4(a)(1) of the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, which is classified to section 3203(a)(1) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

Section is based on subsecs. (b) and (c) of Pub. L. 95–242. Subsec. (a) of Pub. L. 95–242 amended section 2139 of this title, and subsec. (d) is set out as a note under section 2139 of this title.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–277, § 1225(e)(4)(A), substituted ''and the Department of Commerce'' for ''the Department of Commerce, and the Arms Control and Disarmament Agency''.

Subsec. (c). Pub. L. 105–277, § 1225(e)(4)(B), struck out ''the Arms Control and Disarmament Agency,'' after ''Department of State,''.

1994—Subsec. (c). Pub. L. 103–236 struck out '', as required,'' after ''prior consultations'' in last sentence.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Secretary of Commerce to be responsible for performing function vested in President by subsec. (c) of this section, see section 3 of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978,

92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2140. Exclusions from license requirement

Nothing in this subchapter shall be deemed—

(a) to require a license for (1) the processing, fabricating, or refining of special nuclear material, or the separation of special nuclear material, or the separation of special nuclear material from other substances, under contract with and for the account of the Commission; or (2) the construction or operation of facilities under contract with and for the account of the Commission; or

(b) to require a license for the manufacture, production, or acquisition by the Department of Defense of any utilization facility authorized pursuant to section 2121 of this title, or for the use of such facility by the Department of Defense or a contractor thereof.

(Aug. 1, 1946, ch. 724, title I, § 110, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 939; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2141. Licensing by Nuclear Regulatory Commission of distribution of special nuclear material, source material, and byproduct material by Department of Energy

(a) The Nuclear Regulatory Commission is authorized to license the distribution of special nuclear material, source material, and byproduct material by the Department of Energy pursuant to section 2074, 2094, and 2112 of this title, respectively, in accordance with the same procedures established by law for the export licensing of such material by any person: *Provided*, That nothing in this section shall require the licensing of the distribution of byproduct material by the Department of Energy under section 2112 of this title.

(b) The Department of Energy shall not distribute any special nuclear material or source material under section 2074 or 2094 of this title other than under an export license issued by the Nuclear Regulatory Commission until (1) the Department has obtained the concurrence of the Department of State and has consulted with the Nuclear Regulatory Commission and the Department of Defense under mutually agreed procedures which shall be established within not more than ninety days after March 10, 1978, and (2) the Department finds based on a reasonable judgment of the assurances provided and the information available to the United States Government, that the criteria in section 2156 of this title or their equivalent and any applicable criteria in section 2157 of this title are met, and that the proposed distribution would not be inimical to the common defense and security.

(Aug. 1, 1946, ch. 724, title I, § 111, as added Pub. L. 95–242, title III, § 301(c), Mar. 10, 1978, 92 Stat. 125; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 105–277, div. G, title XII, § 1225(d)(3), Oct. 21, 1998, 112 Stat. 2681–774.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–277 substituted ''the Nuclear Regulatory Commission'' for ''the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission,''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SUBCHAPTER X—INTERNATIONAL ACTIVITIES

§ 2151. Effect of international arrangements

Any provision of this chapter or any action of the Commission to the extent and during the time that it conflicts with the provisions of any international arrangements made after August 30, 1954 shall be deemed to be of no force or effect.

(Aug. 1, 1946, ch. 724, title I, § 121, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 939; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1808(a) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2152. Policies contained in international arrangements

In the performance of its functions under this chapter, the Commission shall give maximum effect to the policies contained in any international arrangement made after August 30, 1954.

(Aug. 1, 1946, ch. 724, title I, § 122, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 939; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1808(c) of this title, prior to the general amend-

ment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2153. Cooperation with other nations

No cooperation with any nation, group of nations or regional defense organization pursuant to sections 2073, 2074(a), 2077, 2094, 2112, 2121, 2133, 2134, or 2164 of this title shall be undertaken until—

(a) Terms, conditions, duration, nature, scope, and other requirements of proposed agreements for cooperation; Presidential exemptions; negotiations; Nuclear Proliferation Assessment Statement

the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

(1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;

(2) in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere;

(3) except in the case of those agreements for cooperation arranged pursuant to section 2121(c) of this title, a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement, and no special nuclear material produced through the use of any nuclear materials and equipment or sensitive nuclear technology transferred pursuant to such agreement, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose;

(4) except in the case of those agreements for cooperation arranged pursuant to section 2121(c) of this title and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards;

(5) a guaranty by the cooperating party that any material or any Restricted Data transferred pursuant to the agreement for cooperation and, except in the case of agreements arranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title, any production or utilization facility transferred pursuant to the agreement for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without the consent of the United States;

(6) a guaranty by the cooperating party that adequate physical security will be maintained with respect to any nuclear material transferred pursuant to such agreement and with respect to any special nuclear material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to such agreement;

(7) except in the case of agreements for cooperation arranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title, a guaranty by the cooperating party that no material transferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear materials which have been irradiated) otherwise altered in form or content without the prior approval of the United States;

(8) except in the case of agreements for cooperation arranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title, a guaranty by the cooperating party that no plutonium, no uranium 233, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation, or recovered from any source or special nuclear material so transferred or from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States; and

(9) except in the case of agreements for cooperation arranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title, a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

The President may exempt a proposed agreement for cooperation (except an agreement ar-

ranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title) from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security. Except in the case of those agreements for cooperation arranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title, any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy; and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy, and the Nuclear Regulatory Commission. The Secretary of State shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement (A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this chapter, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B) regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. Each Nuclear Proliferation Assessment Statement prepared pursuant to this chapter shall be accompanied by a classified annex, prepared in consultation with the Director of Central Intelligence, summarizing relevant classified information. In the case of those agreements for cooperation arranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title, any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(d) of this title which are to be implemented by the Department of Defense, by the Secretary of Defense;

(b) Presidential approval and authorization for execution of proposed agreements for cooperation

the President has submitted text of the proposed agreement for cooperation (except an agreement arranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title), together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 2159(g) of this title) concerning the consistency of the terms of the proposed agreement with all the requirements of this chapter, and the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

(c) Submittal of proposed agreements for cooperation to Congressional committees

the proposed agreement for cooperation (if not an agreement subject to subsection (d) of this section), together with the approval and determination of the President, has been submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in section 2159(g) of this title): *Provided, however*, That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

(d) Congressional action

the proposed agreement for cooperation (if arranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title, or if entailing implementation of section 2073, 2074(a), 2133, or 2134 of this title in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title, the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided*, That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Secretary of State, and any annexes thereto, when required by subsection (a) of this section, have been submitted to the Congress: *Provided further*, That an agreement for cooperation exempted by the President pursuant to subsection (a) of this section from any requirement contained in that subsection, or an agreement exempted pursuant to section 8003(a)(1) of title 22, shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement. During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or dis-

approved. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 2159(i) of this title.

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title) to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after March 10, 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection (a)(2) of this section, such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to section 2157(b)(3) of this title for purposes of the Commission's consideration of applications and requests under section 2155(a)(2) of this title and there shall be no congressional review pursuant to section 2157 of this title of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

(Aug. 1, 1946, ch. 724, title I, § 123, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 940; amended Pub. L. 85–479, §§ 3, 4, July 2, 1958, 72 Stat. 277; Pub. L. 85–681, § 4, Aug. 19, 1958, 72 Stat. 632; Pub. L. 88–489, § 15, Aug. 26, 1964, 78 Stat. 606; Pub. L. 93–377, § 5, Aug. 17, 1974, 88 Stat. 475; Pub. L. 93–485, § 1, Oct. 26, 1974, 88 Stat. 1460; Pub. L. 95–242, title IV, § 401, Mar. 10, 1978, 92 Stat. 142; Pub. L. 99–64, title III, § 301(a), (b), July 12, 1985, 99 Stat. 159, 160; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103–337, div. C, title XXXI, § 3155(c)(1), Oct. 5, 1994, 108 Stat. 3092; Pub. L. 103–437, § 15(f)(5), Nov. 2, 1994, 108 Stat. 4592; Pub. L. 104–106, div. A, title XV, § 1505(g), Feb. 10, 1996, 110 Stat. 515; Pub. L. 105–277, div. G, title XII, § 1225(d)(4), Oct. 21, 1998, 112 Stat. 2681–774; Pub. L. 109–401, title I, § 104(e), Dec. 18, 2006, 120 Stat. 2734.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–401, in second proviso, inserted ", or an agreement exempted pursuant to section 8003(a)(1) of title 22," after "that subsection".

1998—Pub. L. 105–277, § 1225(d)(4)(C), in first undesignated paragraph of concluding provisions, struck out "the Arms Control and Disarmament Agency," after "Department of Energy,".

Subsec. (a). Pub. L. 105–277, § 1225(d)(4)(A), in concluding provisions, struck out "and in consultation with the Director of the Arms Control and Disarmament Agency ('the Director')" before "; and after consultation", inserted "and" after "Secretary of Energy,", substituted "Commission. The Secretary of State" for "Commission, and the Director, who", and inserted "Each Nuclear Proliferation Assessment Statement prepared pursuant to this chapter shall be accompanied by a classified annex, prepared in consultation with the Director of Central Intelligence, summarizing relevant classified information." after "nuclear explosive purpose."

Subsec. (d). Pub. L. 105–277, § 1225(d)(4)(B), in first proviso, substituted "Nuclear Proliferation Assessment Statement prepared by the Secretary of State, and any annexes thereto," for "Nuclear Proliferation Assessment Statement prepared by the Director of the Arms Control and Disarmament Agency," and substituted "have been" for "has been".

1996—Subsec. (a). Pub. L. 104–106 substituted ", 2164(b), or 2164(d)" for "2164(b), or 2164(d)" in concluding provisions.

1994—Pub. L. 103–437 substituted "Foreign Affairs" for "International Relations" in penultimate paragraph.

Pub. L. 103–337, § 3155(c)(1)(A), substituted "2164(c), or 2164(d)" for "or 2164(c)" in penultimate paragraph.

Subsec. (a). Pub. L. 103–337, § 3155(c)(1)(B), substituted "2164(b), or 2164(d)" for "or 2164(b)" in provisions following par. (9).

Pub. L. 103–337, § 3155(c)(1)(A), substituted "2164(c), or 2164(d)" for "or 2164(c)" wherever appearing.

Subsec. (b). Pub. L. 103–437 substituted "Foreign Affairs" for "International Relations".

Pub. L. 103–337, § 3155(c)(1)(C), inserted "(except an agreement arranged pursuant to section 2121(c), 2164(b), 2164(c), or 2164(d) of this title)" after "the President has submitted text of the proposed agreement for cooperation".

Subsec. (c). Pub. L. 103–437 substituted "Foreign Affairs" for "International Relations".

Subsec. (d). Pub. L. 103–437 substituted "Foreign Affairs" for "International Relations" in two places.

Pub. L. 103–337, § 3155(c)(1)(A), substituted "2164(c), or 2164(d)" for "or 2164(c)" in two places.

1985—Subsec. (a). Pub. L. 99–64, § 301(a)(1), in provisions following par. (9) inserted "(A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this chapter, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B)" after "Assessment Statement".

Subsec. (b). Pub. L. 99–64, § 301(a)(2), inserted "the President has submitted text of the proposed agreement for cooperation, together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 2159(g) of this title) concerning the consistency of the terms of the proposed agreement with all the requirements of this chapter, and".

Subsec. (d). Pub. L. 99–64, § 301(a)(3), (b), substituted "adopts, and there is enacted, a joint resolution" for "adopts a concurrent resolution", inserted a further proviso directing that an agreement for cooperation exempted by the President pursuant to subsection (a) of this section from any requirement contained in that subsection shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement, inserted sentence directing that during the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved, and substituted "section 2159(i) of this title" for "section 2159 of this title for the consideration of Presidential submissions".

1978—Subsec. (a). Pub. L. 95–242 amended and carried forward into pars. (3), (5), and (6) the existing provisions relating to the terms and conditions required for inclusion in all new agreements for cooperation, inserted new terms and conditions set out in pars. (1), (2), (4), (7), (8), and (9), inserted provisions empowering the President to exempt proposed agreements from any of the requirements if he determines that inclusion of the requirement would be seriously prejudicial to the achievement of United States nonproliferation objectives or jeopardize the common defense and security for any other reason, provided for Congressional rejection of any such Presidential exemption, and provided that agreements be negotiated by the Department of State, with an exception for defense related agreements.

Subsec. (b). Pub. L. 95–242 reenacted existing provisions with only minor changes in punctuation.

Subsec. (c). Pub. L. 95–242 inserted ''(if not an agreement subject to subsection (d) of this section)'' after ''the proposed agreement for cooperation'', substituted ''submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations for a period of thirty days of continuous session (as defined in section 2159(g) of this title)'' for ''submitted to the Joint Committee and a period of thirty days has elapsed while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of the adjournment of more than three days)'', and substituted reference to ''these committees'' for reference to ''the Joint Committee'' in proviso.

Subsec. (d). Pub. L. 95–242 provided that proposed agreements be laid before the Committees on International Relations and Foreign Relations rather than the Joint Committee on Atomic Energy and that for major agreements the Nuclear Proliferation Assessment Statement, if any, prepared in conjunction with the President's review of the proposed agreement, also be submitted to the committees, and added unlettered paragraphs following subsec. (d) relating to the submission of agency views to Congressional committees and the failure of the Congress to act on agreements which exempt the recipient nation from the requirements of subsec. (a)(2).

1974—Pub. L. 93–377 substituted reference to section 2074(a) of this title for reference to section 2074 of this title in opening par.

Subsec. (d). Pub. L. 93–485 inserted reference to proposed agreements entailing implementation of sections 2073, 2074, 2133, or 2134 of this title, or in relation to reactors capable of producing more than five thermal megawatts or special nuclear material in connection therewith, inserted provision requiring the Joint Committee to submit a report to Congress of its views and recommendations respecting the proposed agreement and an accompanying proposed concurrent resolution favoring or otherwise of such agreement within the first thirty days of the sixty day period and providing that such concurrent resolution so reported shall become the pending business of the House in question within twenty-five days and shall be voted on within five days thereafter unless such House determined otherwise, and struck out the proviso that during the 85th Congress the waiting period shall be thirty days.

1964—Pub. L. 88–489 inserted reference to section 2073 in opening par.

1958—Pub. L. 85–479, §3, inserted reference to section 2121 in opening par.

Subsec. (a). Pub. L. 85–479, §3, included agreements for cooperation arranged pursuant to section 2121(c) of this title, and inserted in cl. (3) the exception in the case of agreements arranged pursuant to section 2121(c) of this title.

Subsec. (c). Pub. L. 85–681 inserted proviso clause relating to waiver waiting period.

Subsec. (d). Pub. L. 85–479, §4, added subsec. (d).

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 301(d) of Pub. L. 99–64 provided that: ''The amendments made by this section [amending this section and section 2159 of this title] shall apply to any agreement for cooperation which is entered into after the date of the enactment of this Act [July 12, 1985].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2 of Pub. L. 93–485 provided that: ''This Act [amending this section] shall apply to proposed agreements for cooperation and to proposed amendments to agreements for cooperation hereafter [Oct. 26, 1974] submitted to the Congress.''

APPLICABILITY OF NOTICE AND WAIT PROVISIONS

Section 3155(b) of Pub. L. 103–337, as amended by Pub. L. 104–201, div. C, title XXXI, §3160, Sept. 23, 1996, 110 Stat. 2843; Pub. L. 107–314, div. D, title XLV, §4501(b), formerly Pub. L. 104–106, div. C, title XXXI, §3154(b), Feb. 10, 1996, 110 Stat. 624, renumbered §4501(b) of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(h)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1771, provided that: ''Section 123 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2153(d)), as amended by subsection (c), shall not apply to a proposed agreement for cooperation under section 144 d. of such Act [42 U.S.C. 2164(d)], as inserted by subsection (a), until October 1, 1997.''

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

FUEL CYCLE EVALUATIONS; REPORT TO CONGRESS

Pub. L. 95–601, §9, Nov. 6, 1978, 92 Stat. 2951, directed Commission to monitor and assist, as requested, International Fuel Cycle Evaluation and studies and evaluations of various nuclear fuel cycle systems by Depart-

ment of Energy in progress as of Nov. 6, 1978, and report to Congress semiannually through calendar year 1980 and annually through calendar year 1982 on status of domestic and international evaluations of nuclear fuel cycle systems, with report to include a summary of information developed by and available to Commission on health, safety, and safeguards implications of leading fuel cycle technologies.

ADEQUACY OF LAWS AND REGULATIONS GOVERNING EXPORT AND RE-EXPORT OF NUCLEAR MATERIALS, ETC., AND SAFEGUARDS PREVENTING PROLIFERATION OF NUCLEAR MATERIALS

Pub. L. 93–500, § 14, Oct. 29, 1974, 88 Stat. 1557, directed President to review and report to Congress within six months after Oct. 29, 1974, on all laws and pertinent regulations issued thereunder, governing the export and re-export of nuclear materials and information relating to the design and development thereof, in order to curb further domestic and international nuclear proliferation, diversion, or theft of nuclear materials.

COOPERATION WITH BERLIN

Act Aug. 1, 1946, ch. 724, title I, § 125, as added by Apr. 12, 1957, Pub. L. 85–14, 71 Stat. 11; amended by Aug. 17, 1974, Pub. L. 93–377, § 5, 88 Stat. 475; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, § 902(a)(8), 106 Stat. 2944, provided that the President could authorize the Commission to enter into agreements for cooperation with the Federal Republic of Germany in accordance with this section, on behalf of Berlin, which for the purposes of this chapter comprised those areas over which the Berlin Senate exercised jurisdiction (the United States, British, and French sectors) and the Commission could thereafter cooperate with Berlin pursuant to section 2074(a), 2077, 2094, 2112, 2133, or 2134 of this title, with provision that the guaranties required by this section were to be made by Berlin with the approval of the allied commandants.

EX. ORD. NO. 10841. INTERNATIONAL COOPERATION

Ex. Ord. No. 10841, eff. Sept. 30, 1959, 24 F.R. 7941, as amended by Ex. Ord. No. 10956, eff. Aug. 10, 1961, 26 F.R. 7315; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

SECTION 1. Whenever the President, pursuant to section 123 of the Act [this section], has approved and authorized the execution of a proposed agreement providing for cooperation pursuant to section 91c, 144a, 144b, or 144c of the Act [sections 2121(c), 2164(a), 2164(b), 2164 (c) of this title], such approval and authorization by the President shall constitute his authorization to cooperate to the extent provided for in the agreement and in the manner provided for in section 91c, 144a, 144b, or 144c [sections 2121(c), 2164(a), 2164(b), or 2164(c) of this title], as pertinent. In respect of sections 91c, 144b, and 144c [sections 2121(c), 2164(b), and 2164(c) of this title], authorizations by the President to cooperate shall be subject to the requirements of sections 123d of the Act [subsec. (d) of this section] and shall also be subject to appropriate determinations made pursuant to section 2 of this order.

SEC. 2. (a) The Secretary of Defense and the Secretary of Energy are hereby designated and empowered to exercise jointly, after consultation with executive agencies as may be appropriate, the following-described authority without the approval, ratification, or other action of the President:

(1) The authority vested in the President by section 91c of the Act [section 2121(c) of this title] to determine that the proposed cooperation and each proposed transfer arrangement referred to in that section will promote and will not constitute an unreasonable risk to the common defense and security.

(2) The authority vested in the President by section 144b of the Act [section 2164(b) of this title] to determine that the proposed cooperation and the proposed communication of Restricted Data referred to in that section will promote and will not constitute an unreasonable risk to the common defense and security: *Provided*, That each determination made under this paragraph shall be referred to the President and, unless disapproved by him, shall become effective fifteen days after such referral or at such later time as may be specified in the determination.

(3) The authority vested in the President by section 144c of the Act [section 2164(c) of this title] to determine that the proposed cooperation and the communication of the proposed Restricted Data referred to in that section will promote and will not constitute an unreasonable risk to the common defense and security.

(b) Whenever the Secretary of Defense and the Secretary of Energy are unable to agree upon a joint determination under the provisions of subsection (a) of this section, the recommendations of each of them, together with the recommendations of other agencies concerned, shall be referred to the President, and the determination shall be made by the President.

SEC. 3. This order shall not be construed as delegating the function vested in the President by section 91c of the Act [section 2121(c) of this title] of approving programs proposed under that section.

SEC. 4. (a) The functions of negotiating and entering into international agreements under the Act [this chapter] shall be performed by or under the authority of the Secretary of State.

(b) International cooperation under the Act [this chapter] shall be subject to the responsibilities of the Secretary of State with respect to the foreign policy of the United States pertinent thereto.

§ 2153a. Approval for enrichment after export of source or special nuclear material; export of major critical components of enrichment facilities

(a) Except as specifically provided in any agreement for cooperation, no source or special nuclear material hereafter exported from the United States may be enriched after export without the prior approval of the United States for such enrichment: *Provided*, That the procedures governing such approvals shall be identical to those set forth for the approval of proposed subsequent arrangements under section 2160 of this title, and any commitments from the recipient which the Secretary of Energy and the Secretary of State deem necessary to ensure that such approval will be obtained prior to such enrichment shall be obtained prior to the submission of the executive branch judgment regarding the export in question and shall be set forth in such submission: *And provided further*, That no source or special nuclear material shall be exported for the purpose of enrichment or reactor fueling to any nation or group of nations which has, after March 10, 1978, entered into a new or amended agreement for cooperation with the United States, except pursuant to such agreement.

(b) In addition to other requirements of law, no major critical component of any uranium enrichment, nuclear fuel reprocessing, or heavy water production facility shall be exported under any agreement for cooperation (except an agreement for cooperation pursuant to section 2121(c), 2164(b), or 2164(c) of this title) unless such agreement for cooperation specifically designates such components as items to be exported pursuant to the agreement for cooperation. For purposes of this subsection, the term ''major critical component'' means any component part or group of component parts which the President determines to be essential to the operation

of a complete uranium enrichment, nuclear fuel reprocessing, or heavy water production facility.

(Pub. L. 95–242, title IV, § 402, Mar. 10, 1978, 92 Stat. 145.)

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Delegation or assignment to Secretary of Energy of function vested in President under subsec. (b) of this section, see section 1(a) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2153b. Export policies relating to peaceful nuclear activities and international nuclear trade

The President shall take immediate and vigorous steps to seek agreement from all nations and groups of nations to commit themselves to adhere to the following export policies with respect to their peaceful nuclear activities and their participation in international nuclear trade:

(a) Undertakings by transferee nations receiving nuclear material and equipment or sensitive nuclear technology

No nuclear materials and equipment and no sensitive nuclear technology within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be transferred to the jurisdiction of any other nation or group of nations unless the nation or group of nations receiving such transfer commits itself to strict undertakings including, but not limited to, provisions sufficient to ensure that—

(1) no nuclear materials and equipment and no nuclear technology in, under the jurisdiction of, or under the control of any non-nuclear-weapon state, shall be used for nuclear explosive devices for any purpose or for research on or development of nuclear explosive devices for any purpose, except as permitted by Article V, the Treaty;

(2) IAEA safeguards will be applied to all peaceful nuclear activities in, under the jurisdiction of, or under the control of any non-nuclear-weapon state;

(3) adequate physical security measures will be established and maintained by any nation or group of nations on all of its nuclear activities;

(4) no nuclear materials and equipment and no nuclear technology intended for peaceful purposes in, under the jurisdiction of, or under the control of any nation or group of nations shall be transferred to the jurisdiction of any other nation or group of nations which does not agree to stringent undertakings meeting the objectives of this section; and

(5) no nation or group of nations will assist, encourage, or induce any non-nuclear-weapon state to manufacture or otherwise acquire any nuclear explosive device.

(b) Enrichment of source or special nuclear material only under effective international auspices and inspection

(1) No source or special nuclear material within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be enriched (as described in section 2014(aa)(2) of this title) or reprocessed, no irradiated fuel elements containing such material which are to be removed from a reactor will be altered in form or content, and no fabrication or stockpiling involving plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 shall be performed except in a facility under effective international auspices and inspection, and any such irradiated fuel elements shall be transferred to such a facility as soon as practicable after removal from a reactor consistent with safety requirements. Such facilities shall be limited in number to the greatest extent feasible and shall be carefully sited and managed so as to minimize the proliferation and environmental risks associated with such facilities. In addition, there shall be conditions to limit the access of non-nuclear-weapon states other than the host country to sensitive nuclear technology associated with such facilities.

(2) Any facilities within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere for the necessary short-term storage of fuel elements containing plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 prior to placement in a reactor or of irradiated fuel elements prior to transfer as required in subparagraph (1) shall be placed under effective international auspices and inspection.

(c) Establishment of physical security measures

Adequate physical security measures will be established and maintained with respect to all nuclear activities within the territory of each nation and group of nations, under its jurisdiction, or under its control anywhere, and with respect to any international shipment of significant quantities of source or special nuclear material or irradiated source or special nuclear material, which shall also be conducted under international safeguards.

(d) United States military activities

Nothing in this section shall be interpreted to require international control or supervision of any United States military activities.

(Pub. L. 95–242, title IV, § 403, Mar. 10, 1978, 92 Stat. 146.)

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Secretary of State responsible for performing functions vested in President under this section, see section 2(a) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2153c. Renegotiation of agreements for cooperation

(a) Application to existing agreements of undertakings required of new agreements after March 10, 1978

The President shall initiate a program immediately to renegotiate agreements for cooperation in effect on March 10, 1978, or otherwise to obtain the agreement of parties to such agreements for cooperation to the undertakings that would be required for new agreements under this chapter. To the extent that an agreement for cooperation in effect on March 10, 1978, with a cooperating party contains provisions equivalent to any or all of the criteria set forth in section 2156 of this title with respect to materials and equipment transferred pursuant thereto or with respect to any special nuclear material used in or produced through the use of any such material or equipment, any renegotiated agreement with that cooperating party shall continue to contain an equivalent provision with respect to such transferred materials and equipment and such special nuclear material. To the extent that an agreement for cooperation in effect on March 10, 1978, with a cooperating party does not contain provisions with respect to any nuclear materials and equipment which have previously been transferred under an agreement for cooperation with the United States and which are under the jurisdiction or control of the cooperating party and with respect to any special nuclear material which is used in or produced through the use thereof and which is under the jurisdiction or control of the cooperating party, which are equivalent to any or all of those required for new and amended agreements for cooperation under section 2153(a) of this title, the President shall vigorously seek to obtain the application of such provisions with respect to such nuclear materials and equipment and such special nuclear material. Nothing in this Act or in this chapter shall be deemed to relinquish any rights which the United States may have under any agreement for cooperation in force on March 10, 1978.

(b) Presidential review of export agreement conditions and policy goals

The President shall annually review each of requirements (1) through (9) set forth for inclusion in agreements for cooperation under section 2153(a) of this title and the export policy goals set forth in section 2153b of this title to determine whether it is in the interest of United States non-proliferation objectives for any such requirements or export policies which are not already being applied as export criteria to be enacted as additional export criteria.

(c) Presidential proposals for additional export criteria

If the President proposes enactment of any such requirements or export policies as additional export criteria or to take any other action with respect to such requirements or export policy goals for the purpose of encouraging adherence by nations and groups of nations to such requirements and policies, he shall submit such a proposal together with an explanation thereof to the Congress.

(d) Congressional action

If the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, after reviewing the President's annual report or any proposed legislation, determines that it is in the interest of United States non-proliferation objectives to take any action with respect to such requirements or export policy goals, it shall report a joint resolution to implement such determination. Any joint resolution so reported shall be considered in the Senate and the House of Representatives, respectively, under applicable procedures provided for the consideration of resolutions pursuant to section 2159(b) through (g) of this title.

(Pub. L. 95–242, title IV, § 404, Mar. 10, 1978, 92 Stat. 147; Pub. L. 103–437, § 15(g), Nov. 2, 1994, 108 Stat. 4593.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

Section 2153b of this title, referred to in subsec. (b), was in the original "section 401", meaning section 401 of Pub. L. 95–242, which amended section 2153 of this title. Section 401 has been translated as section 2153b of this title, which was enacted by section 403 of Pub. L. 95–242, to reflect the probable intent of Congress in view of the reference to the export policy goals which are set forth in section 2153b of this title.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–437 substituted "Foreign Affairs" for "International Relations".

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Secretary of State responsible for performing functions vested in President under this section, see section 2(a) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SUPPLY OF ADDITIONAL LOW-ENRICHED URANIUM UNDER INTERNATIONAL AGREEMENTS FOR COOPERATION IN CIVIL USES OF NUCLEAR ENERGY

Pub. L. 96–280, June 18, 1980, 94 Stat. 550, provided that:

''SECTION 1. Limits contained in agreements for cooperation on the amount of low-enriched uranium which may be transferred by or exported from the United States pursuant thereto shall not be construed to preclude transfer or export of amounts of low-enriched uranium in excess of such limits to nations which are parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

''SEC. 2. (a) The terms used in this joint resolution shall have the meanings ascribed to them by the Atomic Energy Act of 1954 [this chapter] and by the Nuclear Non-Proliferation Act of 1978 [22 U.S.C. 3201 et seq.].

''(b) The term 'low-enriched uranium' means uranium enriched to less than 20 per centum in the isotope 235.''

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2153d. Authority to continue agreements for cooperation entered into prior to March 10, 1978

(a) The amendments to section 2153 of this title made by this Act shall not affect the authority to continue cooperation pursuant to agreements for cooperation entered into prior to March 10, 1978.

(b) Nothing in this Act shall affect the authority to include dispute settlement provisions, including arbitration, in any agreement made pursuant to an Agreement for Cooperation.

(Pub. L. 95–242, title IV, § 405, Mar. 10, 1978, 92 Stat. 148.)

REFERENCES IN TEXT

This Act, referred to in text, means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2153e. Protection of environment

The President shall endeavor to provide in any agreement entered into pursuant to section 2153 of this title for cooperation between the parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

(Pub. L. 95–242, title IV, § 407, Mar. 10, 1978, 92 Stat. 148.)

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Secretary of State responsible for performing functions vested in President under this section, see section 2(a) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2153e–1. Effectiveness of rule, regulation, or procedure with regard to exports subject to Nuclear Non-Proliferation Act of 1978

No environmental rule, regulation, or procedure shall become effective with regard to exports subject to the provisions of 22 U.S.C. 3201 et seq., the Nuclear Non-Proliferation Act of 1978, until such time as the President has reported to Congress on the progress achieved pursuant to section 407 of the Act (42 U.S.C. 2153e) entitled ''Protection of the Environment'' which requires the President to seek to provide, in agreements required under the Act, for cooperation between the parties in protecting the environment from radioactive, chemical or thermal contaminations arising from peaceful nuclear activities.

(Pub. L. 95–630, title XIX, § 1913, Nov. 10, 1978, 92 Stat. 3727.)

REFERENCES IN TEXT

The Nuclear Non-Proliferation Act of 1978, referred to in text, is Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120,

which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

CODIFICATION

Section was enacted as part of the Export-Import Bank Act Amendments of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

EFFECTIVE DATE

Section effective Nov. 10, 1978, see section 1917 of Pub. L. 95–630, set out as an Effective Date of 1978 Amendment note under section 635 of Title 12, Banks and Banking.

§ 2153f. Savings clause; Nuclear Non-Proliferation Act of 1978

(a) All orders, determinations, rules, regulations, permits, contracts, agreements, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are the subject of this Act, by (i) any agency or officer, or part thereof, in exercising the functions which are affected by this Act, or (ii) any court of competent jurisdiction, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed as the case may be, by the parties thereto or by any court of competent jurisdiction.

(b) Nothing in this Act shall affect the procedures or requirements applicable to agreements for cooperation entered into pursuant to sections 2121(c), 2164(b), or 2164(c) of this title or arrangements pursuant thereto as it was in effect immediately prior to March 10, 1978.

(Pub. L. 95–242, title VI, § 603(a), (b), Mar. 10, 1978, 92 Stat. 152.)

REFERENCES IN TEXT

This Act, referred to in text, means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2154. International atomic pool

The President is authorized to enter into an international arrangement with a group of nations providing for international cooperation in the nonmilitary applications of atomic energy and he may thereafter cooperate with that group of nations pursuant to sections 2074(a), 2077, 2094, 2112, 2133, 2134, or 2164(a) of this title: *Provided, however*, That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 2153 of this title.

(Aug. 1, 1946, ch. 724, title I, § 124, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 940; amended Pub. L. 93–377, § 5, Aug. 17, 1974, 88 Stat. 475; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1974—Pub. L. 93–377 substituted reference to section 2074(a) of this title for reference to section 2074 of this title.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2155. Export licensing procedures

(a) Executive branch judgment on export applications; criteria governing United States nuclear exports

No license may be issued by the Nuclear Regulatory Commission (the ''Commission'') for the export of any production or utilization facility, or any source material or special nuclear material, including distributions of any material by the Department of Energy under section 2074, 2094, or 2112 of this title, for which a license is required or requested, and no exemption from any requirement for such an export license may be granted by the Commission, as the case may be, until—

(1) the Commission has been notified by the Secretary of State that it is the judgment of the executive branch that the proposed export or exemption will not be inimical to the common defense and security, or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes. The Secretary of State shall, within ninety days after March 10, 1978, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of Energy, Defense, and Commerce, and the Nuclear Regulatory Commission, for the preparation of the executive branch judgment on export applications under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such applications, express deadlines for the solicitation and collection of

the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such applications, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending applications, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial applications should be identified as quickly as possible so that any required policy decisions or diplomatic consultations con[1] be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decisions required under this section. The processing of any export application proposed and filed as of March 10, 1978, shall not be delayed pending the development and establishment of procedures to implement the requirements of this section. The executive branch judgment shall be completed in not more than sixty days from receipt of the application or request, unless the Secretary of State in his discretion specifically authorizes additional time for consideration of the application or request because it is in the national interest to allow such additional time. The Secretary shall notify the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of any such authorization. In submitting any such judgment, the Secretary of State shall specifically address the extent to which the export criteria then in effect are met and the extent to which the cooperating party has adhered to the provisions of the applicable agreement for cooperation. In the event he considers it warranted, the Secretary may also address the following additional factors, among others:

(A) whether issuing the license or granting the exemption will materially advance the non-proliferation policy of the United States by encouraging the recipient nation to adhere to the Treaty, or to participate in the undertakings contemplated by section 2153b or 2153c(a) of this title;

(B) whether failure to issue the license or grant the exemption would otherwise be seriously prejudicial to the non-proliferation objectives of the United States; and

(C) whether the recipient nation or group of nations has agreed that conditions substantially identical to the export criteria set forth in section 2156 of this title will be applied by another nuclear supplier nation or group of nations to the proposed United States export, and whether in the Secretary's judgment those conditions will be implemented in a manner acceptable to the United States.

[1] So in original. Probably should be ''can''.

The Secretary of State shall provide appropriate data and recommendations, subject to requests for additional data and recommendations, as required by the Commission or the Secretary of Energy, as the case may be; and

(2) the Commission finds, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the criteria in section 2156 of this title or their equivalent, and any other applicable statutory requirements, are met: *Provided*, That continued cooperation under an agreement for cooperation as authorized in accordance with section 2154 of this title shall not be prevented by failure to meet the provisions of paragraph (4) or (5) of section 2156 of this title for a period of thirty days after March 10, 1978, and for a period of twenty-three months thereafter if the Secretary of State notifies the Commission that the nation or group of nations bound by the relevant agreement has agreed to negotiations as called for in section 2153c(a) of this title; however, nothing in this subsection shall be deemed to relinquish any rights which the United States may have under agreements for cooperation in force on March 10, 1978: *Provided further*, That if, upon the expiration of such twenty-four month period, the President determines that failure to continue cooperation with any group of nations which has been exempted pursuant to the above proviso from the provisions of paragraph (4) or (5) of section 2156 of this title, but which has not yet agreed to comply with those provisions would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, he may, after notifying the Congress of his determination, extend by Executive order the duration of the above proviso for a period of twelve months, and may further extend the duration of such proviso by one year increments annually thereafter if he again makes such determination and so notifies the Congress. In the event that the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate reports a joint resolution to take any action with respect to any such extension, such joint resolution will be considered in the House or Senate, as the case may be, under procedures identical to those provided for the consideration of resolutions pursuant to section 2159 of this title: *And additionally provided*, That the Commission is authorized to (A) make a single finding under this subsection for more than a single application or request, where the applications or requests involve exports to the same country, in the same general time frame, of similar significance for nuclear explosive purposes and under reasonably similar circumstances and (B) make a finding under this subsection that there is no material changed circumstance associated with a new application or request from those existing at the time of the last application or request for an export to the same country, where the prior application or request was approved by the Commission using all applicable procedures of this section, and such finding of

no material changed circumstance shall be deemed to satisfy the requirement of this paragraph for findings of the Commission. The decision not to make any such finding in lieu of the findings which would otherwise be required to be made under this paragraph shall not be subject to judicial review: *And provided further*, That nothing contained in this section is intended to require the Commission independently to conduct or prohibit the Commission from independently conducting country or site specific visitations in the Commission's consideration of the application of IAEA safeguards.

(b) Requests to be given timely consideration; Presidential review if Commission is unable to make required statutory determinations; Commission review

(1) Timely consideration shall be given by the Commission to requests for export licenses and exemptions and such requests shall be granted upon a determination that all applicable statutory requirements have been met.

(2) If, after receiving the executive branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under this chapter, the Commission shall publicly issue its decision to that effect, and shall submit the license application to the President. The Commission's decision shall include an explanation of the basis for the decision and any dissenting or separate views. If, after receiving the proposed license application and reviewing the Commission's decision, the President determines that withholding the proposed export would be seriously prejudicial to the achievement of United States non-proliferation objectives, or would otherwise jeopardize the common defense and security, the proposed export may be authorized by Executive order: *Provided*, That prior to any such export, the President shall submit the Executive order, together with his explanation of why, in light of the Commission's decision, the export should nonetheless be made, to the Congress for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and shall be referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such proposed export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions: *And provided further*, That the procedures established pursuant to subsection (b) of section 2155a of this title shall provide that the Commission shall immediately initiate review of any application for a license under this section and to the maximum extent feasible shall expeditiously process the application concurrently with the executive branch review, while awaiting the final executive branch judgment. In initiating its review, the Commission may identify a set of concerns and requests for information associated with the projected issuance of such license and shall transmit such concerns and requests to the executive branch which shall address such concerns and requests in its written communications with the Commission. Such procedures shall also provide that if the Commission has not completed action on the application within sixty days after the receipt of an executive branch judgment that the proposed export or exemption is not inimical to the common defense and security or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes, the Commission shall inform the applicant in writing of the reason for delay and provide follow-up reports as appropriate. If the Commission has not completed action by the end of an additional sixty days (a total of one hundred and twenty days from receipt of the executive branch judgment), the President may authorize the proposed export by Executive order, upon a finding that further delay would be excessive and upon making the findings required for such Presidential authorizations under this subsection, and subject to the Congressional review procedures set forth herein. However, if the Commission has commenced procedures for public participation regarding the proposed export under regulations promulgated pursuant to subsection (b) of section 2155a of this title, or—within sixty days after receipt of the executive branch judgment on the proposed export—the Commission has identified and transmitted to the executive branch a set of additional concerns or requests for information, the President may not authorize the proposed export until sixty days after public proceedings are completed or sixty days after a full executive branch response to the Commission's additional concerns or requests has been made consistent with subsection (a)(1) of this section: *Provided further*, That nothing in this section shall affect the right of the Commission to obtain data and recommendations from the Secretary of State at any time as provided in subsection (a)(1) of this section.

(c) Additional export criteria

In the event that the House of Representatives or the Senate passes a joint resolution which would adopt one or more additional export criteria, or would modify any existing export criteria under this chapter, any such joint resolution shall be referred in the other House to the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, as the case may be, and shall be considered by the other House under applicable procedures provided for the consideration of resolutions pursuant to section 2159 of this title.

(Aug. 1, 1946, ch. 724, title I, § 126, as added Pub. L. 95–242, title III, § 304(a), Mar. 10, 1978, 92 Stat. 131; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103–437, § 15(f)(5), Nov. 2, 1994, 108 Stat. 4592; Pub. L. 105–277, div. G, title XII, § 1225(d)(5), Oct. 21, 1998, 112 Stat. 2681–774.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–277 substituted ''and the Nuclear Regulatory Commission,'' for ''the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission''.

1994—Pub. L. 103–437 substituted ''Foreign Affairs'' for ''International Relations'' wherever appearing.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

DELEGATION OF FUNCTIONS

Secretary of State responsible for preparation of timely information and recommendations related to the functions vested in President by this section, see section 2(d) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

NUCLEAR EXPORT REPORTING REQUIREMENT

Pub. L. 105–261, div. A, title XV, §1523, Oct. 17, 1998, 112 Stat. 2180, as amended by Pub. L. 106–113, div. B, §1000(a)(7) [div. B, title XI, §1135], Nov. 29, 1999, 113 Stat. 1536, 1501A–494, provided that:

''(a) NOTIFICATION OF CONGRESS.—The President shall notify the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives upon the granting of a license by the Nuclear Regulatory Commission for the export or reexport of any nuclear-related technology or equipment, including source material, special nuclear material, or equipment or material especially designed or prepared for the processing, use, or production of special nuclear material.

''(b) APPLICABILITY.—The requirements of this section shall apply only to an export or reexport to a country that—

''(1) the President has determined is a country that has detonated a nuclear explosive device; and

''(2) is not a member of the North Atlantic Treaty Organization.

''(c) CONTENT OF NOTIFICATION.—The notification required pursuant to this section shall include—

''(1) a detailed description of the articles or services to be exported or reexported, including a brief description of the capabilities of any article to be exported or reexported;

''(2) an estimate of the number of officers and employees of the United States Government and of United States Government civilian contract personnel expected to be required in such country to carry out the proposed export or reexport;

''(3) the name of each licensee expected to provide the article or service proposed to be sold and a description from the licensee of any offset agreements proposed to be entered into in connection with such sale (if known on the date of transmittal of such statement);

''(4) the projected delivery dates of the articles or services to be exported or reexported; and

''(5) the extent to which the recipient country in the previous two years has engaged in any of the actions specified in subparagraph (A), (B), or (C) of section 129(2) of the Atomic Energy Act of 1954 [42 U.S.C. 2158(2)(A), (B), (C)].''

[Memorandum of President of the United States, July 8, 2004, 69 F.R. 43725, delegated to Secretary of State the functions conferred upon the President by section 1523 of Pub. L. 105–261, set out above.]

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

EX. ORD. NO. 12055. EXPORT OF SPECIAL NUCLEAR MATERIAL TO INDIA

Ex. Ord. No. 12055, Apr. 27, 1978, 43 F.R. 18157, provided:

By virtue of the authority vested in me as President by the Constitution of the United States of America and by Section 126b(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2155), as amended by Section 304(a) of the Nuclear Non-Proliferation Act of 1978 (Public Law 95–242, 92 Stat. 131) [subsec. (b)(2) of this section], and having determined that withholding the export proposed pursuant to Nuclear Regulatory Commission export license application XSNM–1060 would be seriously prejudicial to the achievement of the United States non-proliferation objectives, that export to India is authorized; however, such export shall not occur for a period of 60 days as defined by Section 130g of the Atomic Energy Act of 1954, as amended [section 2159(g) of this title].

JIMMY CARTER.

EXECUTIVE ORDER NO. 12193

Ex. Ord. No. 12193, Feb. 12, 1980, 45 F.R. 9885, which extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1981, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237. See notes below.

EX. ORD. NO. 12218. EXPORT OF SPECIAL NUCLEAR MATERIAL TO INDIA

Ex. Ord. No. 12218, June 19, 1980, 45 F.R. 41625, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 126b. (2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(b)(2)), and having determined that withholding the exports proposed pursuant to Nuclear Regulatory Commission export license applications XSNM–1379, XSNM–1569, XCOM–0240, XCOM–0250, XCOM–0376, XCOM–0381 and XCOM–0395, would be seriously prejudicial to the achievement of United States non-proliferation objectives and would otherwise jeopardize the common defense and security, those exports to India are authorized; however, such exports shall not occur for a period of 60 days as defined by Section 130 g. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2159(g)).

JIMMY CARTER.

EXECUTIVE ORDER NO. 12295

Ex. Ord. No. 12295, Feb. 24, 1981, 46 F.R. 14113, which extended the period of nuclear cooperation with the Eu-

ropean Atomic Energy Community to Mar. 10, 1982, was revoked by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617. See notes below.

EXECUTIVE ORDER NO. 12351

Ex. Ord. No. 12351, Mar. 9, 1982, 47 F.R. 10505, which extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1983, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237. See notes below.

EXECUTIVE ORDER NO. 12409

Ex. Ord. No. 12409, Mar. 7, 1983, 48 F.R. 9829, which extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1984, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237. See notes below.

EXECUTIVE ORDER NO. 12463

Ex. Ord. No. 12463, Feb. 23, 1984, 49 F.R. 7097, which extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1985, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237. See notes below.

EXECUTIVE ORDER NO. 12506

Ex. Ord. No. 12506, Mar. 4, 1985, 50 F.R. 8991, extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1986. See notes below.

EXECUTIVE ORDER NO. 12554

Ex. Ord. No. 12554, Feb. 28, 1986, 51 F.R. 7423, extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1987. See notes below.

EXECUTIVE ORDER NO. 12587

Ex. Ord. No. 12587, Mar. 9, 1987, 52 F.R. 7397, which extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1988, was superseded by Ex. Ord. No. 12629, Mar. 9, 1988, 53 F.R. 7875. See notes below.

EXECUTIVE ORDER NO. 12629

Ex. Ord. No. 12629, Mar. 9, 1988, 53 F.R. 7875, extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1989. See notes below.

EXECUTIVE ORDER NO. 12670

Ex. Ord. No. 12670, Mar. 9, 1989, 54 F.R. 10267, which extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1990, was superseded by Ex. Ord. No. 12706, Mar. 9, 1990, 55 F.R. 9313. See notes below.

EXECUTIVE ORDER NO. 12706

Ex. Ord. No. 12706, Mar. 9, 1990, 55 F.R. 9313, which extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1991, was superseded by Ex. Ord. No. 12753, Mar. 8, 1991, 56 F.R. 10501. See notes below.

EXECUTIVE ORDER NO. 12753

Ex. Ord. No. 12753, Mar. 8, 1991, 56 F.R. 10501, which extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1992, was superseded by Ex. Ord. No. 12791, Mar. 9, 1992, 57 F.R. 8717. See notes below.

EXECUTIVE ORDER NO. 12791

Ex. Ord. No. 12791, Mar. 9, 1992, 57 F.R. 8717, which extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1993, was superseded by Ex. Ord. No. 12840, Mar. 9, 1993, 58 F.R. 13401. See notes below.

EXECUTIVE ORDER NO. 12840

Ex. Ord. No. 12840, Mar. 9, 1993, 58 F.R. 13401, which extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1994, was superseded by Ex. Ord. No. 12903, Mar. 9, 1994, 59 F.R. 11473. See notes below.

EXECUTIVE ORDER NO. 12903

Ex. Ord. No. 12903, Mar. 9, 1994, 59 F.R. 11473, which extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1995, was superseded by Ex. Ord. No. 12955, Mar. 9, 1995, 60 F.R. 13365. See note below.

EX. ORD. NO. 12955. NUCLEAR COOPERATION WITH EUROPEAN ATOMIC ENERGY COMMUNITY

Ex. Ord. No. 12955, Mar. 9, 1995, 60 F.R. 13365, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to section 126a(2) of such Act and extended for 12-month periods by Executive Order Nos. 12193, 12295, 12351, 12409, 12463, 12506, 12554, 12587, 12629, 12670, 12706, 12753, 12791, 12840, and 12903 [see notes above], failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of United States nonproliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to December 31, 1995. Executive Order No. 12903 shall be superseded on the effective date of this Executive order.

WILLIAM J. CLINTON.

DELEGATION OF FUNCTIONS REGARDING DETERMINATION OF TIME, TERMS AND CONDITIONS OF NUCLEAR EXPORTS

Memorandum of the President of the United States, dated Oct. 3, 1980, provided:

By the authority vested in me by Title 3, United States Code, Section 301, you are hereby authorized to perform the following functions on my behalf:

1. Determination of the time, terms and conditions of exports made pursuant to any Executive Order heretofore or hereafter issued under Section 126(b)(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2155(b)(2)).

2. Issuance of such rules, regulations and procedures as you may from time to time deem necessary or desirable for the exercise of functions delegated by paragraph 1.

This memorandum shall be published in the Federal Register.

JIMMY CARTER.

§ 2155a. Regulations establishing Commission procedures covering grant, suspension, revocation, or amendment of nuclear export licenses or exemptions

(a) Omitted

(b) Within one hundred and twenty days of March 10, 1978, the Commission shall, after consultations with the Secretary of State, promulgate regulations establishing procedures (1) for the granting, suspending, revoking, or amending of any nuclear export license or exemption pursuant to its statutory authority; (2) for public participation in nuclear export licensing proceedings when the Commission finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by this chapter,

including such public hearings and access to information as the Commission deems appropriate: *Provided*, That judicial review as to any such finding shall be limited to the determination of whether such finding was arbitrary and capricious; (3) for a public written Commission opinion accompanied by the dissenting or separate views of any Commissioner, in those proceedings where one or more Commissioners have dissenting or separate views on the issuance of an export license; and (4) for public notice of Commission proceedings and decisions, and for recording of minutes and votes of the Commission: *Provided further*, That until the regulations required by this subsection have been promulgated, the Commission shall implement the provisions of this Act under temporary procedures established by the Commission.

(c) The procedures to be established pursuant to subsection (b) of this section shall constitute the exclusive basis for hearings in nuclear export licensing proceedings before the Commission and, notwithstanding section 2239(a) of this title, shall not require the Commission to grant any person an on-the-record hearing in such a proceeding.

(Pub. L. 95–242, title III, § 304(b), (c), Mar. 10, 1978, 92 Stat. 135.)

REFERENCES IN TEXT

Commission, referred to in text, is defined as meaning the Nuclear Regulatory Commission by section 4(a)(1) of the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, which is classified to section 3203(a)(1) of Title 22, Foreign Relations and Intercourse.

This Act, referred to in subsec. (b), means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

Section is based on subsecs. (b) and (c) of Pub. L. 95–242. Subsecs. (a) and (d) of Pub. L. 95–242 enacted sections 2155 and 2156a, respectively, of this title.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2156. Criteria governing United States nuclear exports

The United States adopts the following criteria which, in addition to other requirements of law, will govern exports for peaceful nuclear uses from the United States of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology:

(1) IAEA safeguards as required by Article III(2) of the Treaty will be applied with respect to any such material or facilities proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

(2) No such material, facilities, or sensitive nuclear technology proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nuclear material produced through the use of such materials, facilities, or sensitive nuclear technology, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Following the effective date of any regulations promulgated by the Commission pursuant to section 2156a of this title, physical security measures shall be deemed adequate if such measures provide a level of protection equivalent to that required by the applicable regulations.

(4) No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

(6) No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology.

(Aug. 1, 1946, ch. 724, title I, § 127, as added Pub. L. 95–242, title III, § 305, Mar. 10, 1978, 92 Stat. 136; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2156a. Regulations establishing levels of physical security to protect facilities and material

Within sixty days of March 10, 1978, the Commission shall, in consultation with the Secretary of State, the Secretary of Energy, and the Secretary of Defense, promulgate (and may from time to time amend) regulations establishing the levels of physical security which in its judgement are no less strict than those established by any international guidelines to which the United States subscribes and which in its judgment will provide adequate protection for facilities and material referred to in paragraph (3) of section 2156 of this title taking into consideration variations in risks to security as appropriate.

(Pub. L. 95–242, title III, § 304(d), Mar. 10, 1978, 92 Stat. 135; Pub. L. 105–277, div. G, title XII, § 1225(e)(3), Oct. 21, 1998, 112 Stat. 2681–775.)

REFERENCES IN TEXT

Commission, referred to in text, is defined as meaning the Nuclear Regulatory Commission by section 4(a)(1) of the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, which is classified to section 3203(a)(1) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

1998—Pub. L. 105–277 substituted ''and the Secretary of Defense,'' for ''the Secretary of Defense, and the Director,''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2157. Additional export criterion and procedures

(a)(1) As a condition of continued United States export of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology to non-nuclear-weapon states, no such export shall be made unless IAEA safeguards are maintained with respect to all peaceful nuclear activities in, under the jurisdiction of, or carried out under the control of such state at the time of the export.

(2) The President shall seek to achieve adherence to the foregoing criterion by recipient non-nuclear-weapon states.

(b) The criterion set forth in subsection (a) of this section shall be applied as an export criterion with respect to any application for the export of materials, facilities, or technology specified in subsection (a) of this section which is filed after eighteen months from March 10, 1978, or for any such application under which the first export would occur at least twenty-four months after March 10, 1978, except as provided in the following paragraphs:

(1) If the Commission or the Department of Energy, as the case may be, is notified that the President has determined that failure to approve an export to which this subsection applies because such criterion has not yet been met would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, the license or authorization may be issued subject to other applicable requirements of the law: *Provided*, That no such export of any production or utilization facility or of any source or special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-nuclear-weapon state which has failed to meet such criterion until the first such license or authorization with respect to such state is submitted to the Congress (together with a detailed assessment of the reasons underlying the President's determination, the judgment of the executive branch required under section 2155 of this title, and any Commission opinion and views) for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but such export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that the Congress does not favor the proposed export. Any such license or authorization shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions.

(2) If the Congress adopts a resolution of disapproval pursuant to paragraph (1), no further export of materials, facilities, or technology specified in subsection (a) of this section shall be permitted for the remainder of that Congress, unless such state meets the criterion or

the President notifies the Congress that he has determined that significant progress has been made in achieving adherence to such criterion by such state or that United States foreign policy interests dictate reconsideration and the Congress, pursuant to the procedure of paragraph (1), does not adopt a concurrent resolution stating in substance that it disagrees with the President's determination.

(3) If the Congress does not adopt a resolution of disapproval with respect to a license or authorization submitted pursuant to paragraph (1), the criterion set forth in subsection (a) of this section shall not be applied as an export criterion with respect to exports of materials, facilities and technology specified in subsection (a) of this section to that state: *Provided*, That the first license or authorization with respect to that state which is issued pursuant to this paragraph after twelve months from the elapse of the sixty-day period specified in paragraph (1), and the first such license or authorization which is issued after each twelve-month period thereafter, shall be submitted to the Congress for review pursuant to the procedures specified in paragraph (1): *Provided further*, That if the Congress adopts a resolution of disapproval during any review period provided for by this paragraph, the provisions of paragraph (2) shall apply with respect to further exports to such state.

(Aug. 1, 1946, ch. 724, title I, § 128, as added Pub. L. 95–242, title III, § 306, Mar. 10, 1978, 92 Stat. 137; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103–437, § 15(f)(5), Nov. 2, 1994, 108 Stat. 4592.)

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–437 substituted ''Foreign Affairs'' for ''International Relations''.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Secretary of State responsible for performing function vested in President under subsec. (a)(2) of this section and responsible for preparation of timely information and recommendations related to functions vested in President under subsec. (b) of this section, see section 2(b), (d) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2158. Conduct resulting in termination of nuclear exports

(a) No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

(1) any non-nuclear-weapon state that is found by the President to have, at any time after March 10, 1978,

(A) detonated a nuclear explosive device; or

(B) terminated or abrogated IAEA safeguards; or

(C) materially violated an IAEA safeguards agreement; or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities; or

(2) any nation or group of nations that is found by the President to have, at any time after March 10, 1978,

(A) materially violated an agreement for cooperation with the United States, or, with respect to material or equipment not supplied under an agreement for cooperation, materially violated the terms under which such material or equipment was supplied or the terms of any commitments obtained with respect thereto pursuant to section 2153a(a) of this title; or

(B) assisted, encouraged, or induced any non-nuclear-weapon state to engage in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such assistance, encouragement, or inducement; or

(C) entered into an agreement after March 10, 1978, for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes;

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: *Provided*, That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on Foreign Affairs of the House of Representatives and the Commit-

tee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in section 2159(g) of this title), but any such determination shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions.

(b)(1) Notwithstanding any other provision of law, including specifically section 2151 of this title, and except as provided in paragraphs (2) and (3), no nuclear materials and equipment or sensitive nuclear technology, including items and assistance authorized by section 2077(b) of this title and regulated under part 810 of title 10, Code of Federal Regulations, and nuclear-related items on the Commerce Control List maintained under part 774 of title 15 of the Code of Federal Regulations, shall be exported or reexported, or transferred or retransferred whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or reexport, or transfer, or retransfer, whether directly or indirectly, of these items or assistance (as defined in this paragraph) to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which has been determined by the Secretary of State under section 2371(a) of title 22, section 2405(j)(1) of title 50, Appendix, or section 2780(d) of title 22 to have repeatedly provided support for acts of international terrorism).

(2) This subsection shall not apply to exports, reexports, transfers, or retransfers of radiation monitoring technologies, surveillance equipment, seals, cameras, tamper-indication devices, nuclear detectors, monitoring systems, or equipment necessary to safely store, transport, or remove hazardous materials, whether such items, services, or information are regulated by the Department of Energy, the Department of Commerce, or the Commission, except to the extent that such technologies, equipment, seals, cameras, devices, detectors, or systems are available for use in the design or construction of nuclear reactors or nuclear weapons.

(3) The President may waive the application of paragraph (1) to a country if the President determines and certifies to Congress that the waiver will not result in any increased risk that the country receiving the waiver will acquire nuclear weapons, nuclear reactors, or any materials or components of nuclear weapons and—

(A) the government of such country has not within the preceding 12-month period willfully aided or abetted the international proliferation of nuclear explosive devices to individuals or groups or willfully aided and abetted an individual or groups in acquiring unsafeguarded nuclear materials;

(B) in the judgment of the President, the government of such country has provided adequate, verifiable assurances that it will cease its support for acts of international terrorism;

(C) the waiver of that paragraph is in the vital national security interest of the United States; or

(D) such a waiver is essential to prevent or respond to a serious radiological hazard in the country receiving the waiver that may or does threaten public health and safety.

(Aug. 1, 1946, ch. 724, title I, § 129, as added Pub. L. 95–242, title III, § 307, Mar. 10, 1978, 92 Stat. 138; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103–437, § 15(f)(5), Nov. 2, 1994, 108 Stat. 4592; Pub. L. 109–58, title VI, § 632(a), Aug. 8, 2005, 119 Stat. 788.)

AMENDMENTS

2005—Pub. L. 109–58 designated existing provisions as subsec. (a) and added subsec. (b).

1994—Pub. L. 103–437 substituted ''Foreign Affairs'' for ''International Relations'' in closing provisions.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title VI, § 632(b), Aug. 8, 2005, 119 Stat. 789, provided that: ''Subsection b. of section 129 of Atomic Energy Act of 1954 [42 U.S.C. 2158(b)], as added by subsection (a) of this section, shall apply with respect to exports that have been approved for transfer as of the date of the enactment of this Act [Aug. 8, 2005] but have not yet been transferred as of that date.''

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Secretary of State responsible for preparation of timely information and recommendations related to functions vested in President by this section, see section 2(d) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2159. Congressional review procedures

(a) Committee consideration of Presidential submissions; reports

Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President required by section 2155(a)(2), 2155(b)(2), 2157(b), 2158, 2160(a)(3), or 2160(f)(1)(A) of this title, the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of

the House of Representatives shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection (f) of this section, stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided*, That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission. If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection (f) of this section, which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

(b) Consideration of resolution by respective Houses of Congress

When the relevant committee or committees have reported such a resolution (or have been discharged from further consideration of such a resolution pursuant to subsection (a) of this section) or when a resolution has been introduced and placed on the appropriate calendar pursuant to subsection (a) of this section, as the case may be, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(c) Debate

Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to a motion to postpone, or a motion to recommit the resolution, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order. No amendment to any concurrent resolution pursuant to the procedures of this section is in order except as provided in subsection (d) of this section.

(d) Vote on final approval

Immediately following (1) the conclusion of the debate on such concurrent resolution, (2) a single quorum call at the conclusion of debate if requested in accordance with the rules of the appropriate House, and (3) the consideration of an amendment introduced by the Majority Leader or his designee to insert the phrase, ''does not'' in lieu of the word ''does'' if the resolution under consideration is a concurrent resolution of approval, the vote on final approval of the resolution shall occur.

(e) Appeals from decisions of Chair

Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to such a resolution shall be decided without debate.

(f) Resolution

For the purposes of subsections (a) through (e) of this section, the term ''resolution'' means a concurrent resolution of the Congress, the matter after the resolving clause of which is as follows: ''That the Congress (does or does not) favor the transmitted to the Congress by the President on , .'', the blank spaces therein to be appropriately filled, and the affirmative or negative phrase within the parenthetical to be appropriately selected.

(g) Continuity of Congressional sessions; computation of time

(1) Except as provided in paragraph (2), for the purposes of this section—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(2) For purposes of this section insofar as it applies to section 2153 of this title—

(A) continuity of session is broken only by an adjournment of Congress sine die at the end of a Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days are excluded in the computation of any period of time in which Congress is in continuous session.

(h) Supersedure or change in rules

This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by subsection (f) of this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(i) Joint resolutions

(1) For the purposes of this subsection, the term ''joint resolution'' means a joint resolution, the matter after the resolving clause of which is as follows: ''That the Congress (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on .'', with the date of the trans-

mission of the proposed agreement for cooperation inserted in the blank, and the affirmative or negative phrase within the parenthetical appropriately selected.

(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under section 2153(d) of this title, a joint resolution with respect to such agreement for cooperation shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement for cooperation is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(3) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee or committees, and all joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the Committee on Armed Services.

(4) If the committee of either House to which a joint resolution has been referred has not reported it at the end of 45 days after its introduction, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter; except that, in the case of a joint resolution which has been referred to more than one committee, if before the end of that 45-day period one such committee has reported the joint resolution, any other committee to which the joint resolution was referred shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(5) A joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this subsection, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this subsection which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(6) In the case of a joint resolution described in paragraph (1), if prior to the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same matter from the other House, then—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

(Aug. 1, 1946, ch. 724, title I, § 130, as added Pub. L. 95–242, title III, § 308, Mar. 10, 1978, 92 Stat. 139; amended Pub. L. 99–64, title III, § 301(c), July 12, 1985, 99 Stat. 160; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103–437, § 15(f)(5), Nov. 2, 1994, 108 Stat. 4592.)

REFERENCES IN TEXT

Section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (i)(5), is section 601(b)(4) of Pub. L. 94–329, June 30, 1976, 90 Stat. 729, which made provision for expedited procedures in the Senate, and is not classified to the Code.

AMENDMENTS

1994—Subsecs. (a), (i)(2). Pub. L. 103–437 substituted ''Foreign Affairs'' for ''International Relations''.

1985—Subsec. (a). Pub. L. 99–64, § 301(c)(1), struck out ''2153(d),'' after ''submission of the President required by section'', struck out '', and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate,'' after ''Committee on Foreign Affairs of the House of Representatives'', and struck out in proviso ''and if, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the other relevant committee of that House has reported such a resolution, such committee shall be deemed discharged from further consideration of that resolution'' after ''consideration of such submission''.

Subsec. (g). Pub. L. 99–64, § 301(c)(2), designated existing provisions of subsec. (g) as par. (1), substituted ''Except as provided in paragraph (2), for'' for ''For'', redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (i). Pub. L. 99–64, § 301(c)(2)(B), added subsec. (i).

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–64 applicable to any agreement for cooperation entered into after July 12, 1985, see section 301(d) of Pub. L. 99–64, set out as a note under section 2153 of this title.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2160. Subsequent arrangements

(a) Consultation and concurrence; negotiations of a policy nature; notice of proposed subsequent arrangements; Nuclear Proliferation Assessment Statement; reprocessing of material

(1) Prior to entering into any proposed subsequent arrangement under an agreement for co-

operation (other than an agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title), the Secretary of Energy shall obtain the concurrence of the Secretary of State and shall consult with the Commission, and the Secretary of Defense: *Provided*, That the Secretary of State shall have the leading role in any negotiations of a policy nature pertaining to any proposed subsequent arrangement regarding arrangements for the storage or disposition of irradiated fuel elements or approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of source or special nuclear material, production or utilization facilities, or nuclear technology. Notice of any proposed subsequent arrangement shall be published in the Federal Register, together with the written determination of the Secretary of Energy that such arrangement will not be inimical to the common defense and security, and such proposed subsequent arrangement shall not take effect before fifteen days after publication. Whenever the Secretary of State is required to prepare a Nuclear Proliferation Assessment Statement pursuant to paragraph (2) of this subsection, notice of the proposed subsequent arrangement which is the subject of the requirement to prepare a Nuclear Proliferation Assessment Statement shall not be published until after the receipt by the Secretary of Energy of such Statement or the expiration of the time authorized by subsection (c) of this section for the preparation of such Statement, whichever occurs first.

(2) If in the view of the Secretary of State, Secretary of Energy, Secretary of Defense, or the Commission a proposed subsequent arrangement might significantly contribute to proliferation, the Secretary of State, in consultation with such Secretary or the Commission, shall prepare an unclassified Nuclear Proliferation Assessment Statement with regard to such proposed subsequent arrangement regarding the adequacy of the safeguards and other control mechanisms and the application of the peaceful use assurances of the relevant agreement to ensure that assistance to be furnished pursuant to the subsequent arrangement will not be used to further any military or nuclear explosive purpose. For the purposes of this section, the term ''subsequent arrangements'' means arrangements entered into by any agency or department of the United States Government with respect to cooperation with any nation or group of nations (but not purely private or domestic arrangements) involving—

(A) contracts for the furnishing of nuclear materials and equipment;

(B) approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of any source or special nuclear material, production or utilization facility, or nuclear technology;

(C) authorization for the distribution of nuclear materials and equipment pursuant to this chapter which is not subject to the procedures set forth in section 2141(b), section 2155, or section 2139(b) of this title;

(D) arrangements for physical security;

(E) arrangements for the storage or disposition of irradiated fuel elements;

(F) arrangements for the application of safeguards with respect to nuclear materials and equipment; or

(G) any other arrangement which the President finds to be important from the standpoint of preventing proliferation.

(3) The United States will give timely consideration to all requests for prior approval, when required by this chapter, for the reprocessing of material proposed to be exported, previously exported and subject to the applicable agreement for cooperation, or special nuclear material produced through the use of such material or a production or utilization facility transferred pursuant to such agreement for cooperation, or to the altering of irradiated fuel elements containing such material, and additionally, to the maximum extent feasible, will attempt to expedite such consideration when the terms and conditions for such actions are set forth in such agreement for cooperation or in some other international agreement executed by the United States and subject to congressional review procedures comparable to those set forth in section 2153 of this title.

(4) All other statutory requirements under other sections of this chapter for the approval or conduct of any arrangement subject to this subsection shall continue to apply and any other such requirements for prior approval or conditions for entering such arrangements shall also be satisfied before the arrangement takes effect pursuant to paragraph (1).

(b) Reports to Congressional committees; increase in risk of proliferation

With regard to any special nuclear material exported by the United States or produced through the use of any nuclear materials and equipment or sensitive nuclear technology exported by the United States—

(1) the Secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material, until he has provided the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in section 2159(g) of this title) has elapsed: *Provided, however*, That if in the view of the President an emergency exists due to unforeseen circumstances requiring immediate entry into a subsequent arrangement, such period shall consist of fifteen calendar days;

(2) the Secretary of Energy may not enter into any subsequent arrangement for the reprocessing of any such material in a facility which has not processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to March 10, 1978, or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, unless in his judgment, and that of

the Secretary of State, such reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device; and

(3) the Secretary of Energy shall attempt to ensure, in entering into any subsequent arrangement for the reprocessing of any such material in any facility that has processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to March 10, 1978, or for the subsequent retransfer to any non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, that such reprocessing or retransfer shall take place under conditions comparable to those which in his view, and that of the Secretary of State, satisfy the standards set forth in paragraph (2).

(c) Procedures for consideration of requests for subsequent arrangements

The Secretary of Energy shall, within ninety days after March 10, 1978, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce and the Nuclear Regulatory Commission for the consideration of requests for subsequent arrangements under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurance or evidentiary showings, for the decisions required under this section. Further, such procedures shall specify that if he intends to prepare a Nuclear Proliferation Assessment Statement, the Secretary of State shall so declare in his response to the Department of Energy. If the Secretary of State declares that he intends to prepare such a Statement, he shall do so within sixty days of his receipt of a copy of the proposed subsequent arrangement (during which time the Secretary of Energy may not enter into the subsequent arrangement), unless pursuant to the Secretary of State's request, the President waives the sixty-day requirement and notifies the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of such waiver and the justification therefor. The processing of any subsequent arrangement proposed and filed as of March 10, 1978, shall not be delayed pending the development and establishment of procedures to implement the requirements of this section.

(d) Activities not prohibited, precluded, or limited

Nothing in this section is intended to prohibit, permanently or unconditionally, the reprocessing of spent fuel owned by a foreign nation which fuel has been supplied by the United States, to preclude the United States from full participation in the International Nuclear Fuel Cycle Evaluation provided for in section 3224 of title 22; to in any way limit the presentation or consideration in that evaluation of any nuclear fuel cycle by the United States or any other participation; nor to prejudice open and objective consideration of the results of the evaluation.

(e) Jurisdiction of Secretary of Energy

Notwithstanding section 7172(d) of this title, the Secretary of Energy, and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section.

(f) Subsequent arrangements involving direct or indirect commitment of United States for storage or other disposition of foreign spent nuclear fuel in United States

(1) With regard to any subsequent arrangement under subsection (a)(2)(E) of this section (for the storage or disposition of irradiated fuel elements), where such arrangement involves a direct or indirect commitment of the United States for the storage or other disposition, interim or permanent, of any foreign spent nuclear fuel in the United States, the Secretary of Energy may not enter into any such subsequent arrangement, unless:

(A)(i) Such commitment of the United States has been submitted to the Congress for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and has been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such commitment shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the commitment, any such commitment to be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions; or (ii) if the President has submitted a detailed generic plan for such disposition or storage in the United States to the Congress for a period of sixty

days of continuous session (as defined in section 2159(g) of this title), which plan has been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate and has not been disapproved during such sixty-day period by the adoption of a concurrent resolution stating in substance that Congress does not favor the plan; and the commitment is subject to the terms of an effective plan. Any such plan shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions;

(B) The Secretary of Energy has complied with subsection (a) of this section; and

(C) The Secretary of Energy has complied, or in the arrangement will comply with all other statutory requirements of this chapter, under sections 2074 and 2075 of this title and any other applicable sections, and any other requirements of law.

(2) Paragraph (1) shall not apply to the storage or other disposition in the United States of limited quantities of foreign spent nuclear fuel if the President determines that (A) a commitment under section 2074 or 2075 of this title of the United States for storage or other disposition of such limited quantities in the United States is required by an emergency situation, (B) it is in the national interest to take such immediate action, and (C) he notifies the Committees on Foreign Affairs and Science, Space, and Technology of the House of Representatives and the Committees on Foreign Relations and Energy and Natural Resources of the Senate of the determination and action, with a detailed explanation and justification thereof, as soon as possible.

(3) Any plan submitted by the President under paragraph (1) shall include a detailed discussion, with detailed information, and any supporting documentation thereof, relating to policy objectives, technical description, geographic information, cost data and justifications, legal and regulatory considerations, environmental impact information and any related international agreements, arrangements or understandings.

(4) For the purposes of this subsection, the term ''foreign spent nuclear fuel'' shall include any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and operated by any foreign legal entity, government or nongovernment, regardless of the legal ownership or other control of the fuel or reactor and regardless of the origin or licensing of the fuel or reactor, but not including fuel irradiated in a research reactor.

(Aug. 1, 1946, ch. 724, title I, §131, as added Pub. L. 95–242, title III, §303(a), Mar. 10, 1978, 92 Stat. 127; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103–437, §15(f)(6), Nov. 2, 1994, 108 Stat. 4592; Pub. L. 105–277, div. G, title XII, §1225(d)(6), (7), Oct. 21, 1998, 112 Stat. 2681–774.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–277, §1225(d)(6)(A), in first sentence, struck out ''the Director,'' after ''shall consult with'' and, in third sentence, substituted ''the Secretary of State is required'' for ''the Director declares that he intends'' and ''the requirement to prepare a Nuclear Proliferation Assessment Statement'' for ''the Director's declaration''.

Subsec. (a)(2). Pub. L. 105–277, §1225(d)(6)(B), substituted ''view of the Secretary of State, Secretary of Energy, Secretary of Defense, or the Commission'' for ''Director's view'' and ''the Secretary of State, in consultation with such Secretary or the Commission, shall prepare'' for ''he may prepare''.

Subsec. (c). Pub. L. 105–277, §1225(d)(7), struck out '', the Director of the Arms Control and Disarmament Agency,'' before ''and the Nuclear'' in first sentence and substituted ''Secretary of State'' for ''Director'' in sixth and seventh sentences and ''Secretary of State's'' for ''Director's'' in seventh sentence.

1994—Subsecs. (b)(1), (c), (f)(1)(A). Pub. L. 103–437, §15(f)(6)(A), substituted ''Foreign Affairs'' for ''International Relations'' wherever appearing.

Subsec. (f)(2). Pub. L. 103–437 substituted ''Foreign Affairs and Science, Space, and Technology'' for ''International Relations and Science and Technology''.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives and Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Delegation or assignment to Secretary of Energy of functions vested in President under subsecs. (a)(2)(G), (b)(1), and (f)(2) of this section, and of function vested in President under subsec. (f)(1)(A)(ii) of this section to extent that such function relates to preparation of a detailed generic plan, see section 1(b) and (c) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

Secretary of State responsible for performing function vested in President under subsec. (c) of this section, except that Secretary of State may not waive 60-day requirement for preparation of a Nuclear Non-Proliferation Assessment Statement for more than 60 days without approval of President, see section 2(e) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22.

LIMITATIONS ON RECEIPT AND STORAGE OF SPENT NUCLEAR FUEL FROM FOREIGN RESEARCH REACTORS

Pub. L. 103–160, div. C, title XXXI, §3151, Nov. 30, 1993, 107 Stat. 1949, provided that:

''(a) PURPOSE.—It is the purpose of this section to regulate the receipt and storage of spent nuclear fuel at the Department of Energy defense nuclear facility located at the Savannah River Site, South Carolina (in this section referred to as the 'Savannah River Site').

''(b) RECEIPT IN EMERGENCY CIRCUMSTANCES.—When the Secretary of Energy determines that emergency

circumstances make it necessary to receive spent nuclear fuel, the Secretary shall submit a notification of that determination to the Congress. The Secretary may not receive spent nuclear fuel at the Savannah River Site until the expiration of the 30-day period beginning on the date on which the Congress receives the notification.

''(c) LIMITATION ON STORAGE IN NON-EMERGENCY CIRCUMSTANCES.—The Secretary of Energy may not, under other than emergency circumstances, receive and store at the Savannah River Site any spent nuclear fuel in excess of the amount that (as of the date of the enactment of this Act [Nov. 30, 1993]) the Savannah River Site is capable of receiving and storing, until, with respect to the receipt and storage of any such spent nuclear fuel—

''(1) the completion of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

''(2) the expiration of the 90-day period (as prescribed by regulation pursuant to such Act [42 U.S.C. 4321 et seq.]) beginning on the date of such completion; and

''(3) the signing by the Secretary of a record of decision following such completion.

''(d) LIMITATIONS ON RECEIPT.—The Secretary of Energy may not, under emergency or non-emergency circumstances, receive spent nuclear fuel if the spent nuclear fuel—

''(1) cannot be transferred in an expeditious manner from its port of entry in the United States to a storage facility that is located at a Department of Energy facility and is capable of receiving and storing the spent nuclear fuel; or

''(2) will remain on a vessel in the port of entry for a period that exceeds the period necessary to unload the fuel from the vessel pursuant to routine unloading procedures.

''(e) CRITERIA FOR PORT OF ENTRY.—The Secretary of Energy shall, if economically feasible and to the maximum extent practicable, provide for the receipt of spent nuclear fuel under this section at a port of entry in the United States which, as determined by the Secretary and compared to each other port of entry in the United States that is capable of receiving the spent nuclear fuel—

''(1) has the lowest human population in the area surrounding the port of entry;

''(2) is closest in proximity to the facility which will store the spent nuclear fuel; and

''(3) has the most appropriate facilities for, and experience in, receiving spent nuclear fuel.

''(f) DEFINITION.—In this section, the term 'spent nuclear fuel' means nuclear fuel that—

''(1) was originally exported to a foreign country from the United States in the form of highly enriched uranium; and

''(2) was used in a research reactor by the Government of a foreign country or by a foreign-owned or foreign-controlled entity.''

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2160a. Review of Nuclear Proliferation Assessment Statements

No court or regulatory body shall have any jurisdiction under any law to compel the performance of or to review the adequacy of the performance of any Nuclear Proliferation Assessment Statement, or any annexes thereto, called for in this Act or in this chapter.

(Pub. L. 95–242, title IV, § 406, Mar. 10, 1978, 92 Stat. 148; Pub. L. 105–277, div. G, title XII, § 1225(e)(5), Oct. 21, 1998, 112 Stat. 2681–775.)

REFERENCES IN TEXT

This Act, referred to in text, means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

1998—Pub. L. 105–277 inserted '', or any annexes thereto,'' before ''called for in''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95–242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2160b. Authority to suspend nuclear cooperation with nations which have not ratified the Convention on the Physical Security of Nuclear Material

The President may suspend nuclear cooperation under this chapter with any nation or group of nations which has not ratified the Convention on the Physical Security of Nuclear Material.

(Aug. 1, 1946, ch. 724, title I, § 132, as added Pub. L. 99–399, title VI, § 602, Aug. 27, 1986, 100 Stat. 875; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2160c. Consultation with Department of Defense concerning certain exports and subsequent arrangements

(a) In addition to other applicable requirements—

(1) a license may be issued by the Nuclear Regulatory Commission under this chapter for the export of special nuclear material described in subsection (b) of this section; and

(2) approval may be granted by the Secretary of Energy under section 2160 of this title for the transfer of special nuclear material described in subsection (b) of this section;

only after the Secretary of Defense has been consulted on whether the physical protection of that material during the export or transfer will be adequate to deter theft, sabotage, and other acts of international terrorism which would re-

sult in the diversion of that material. If, in the view of the Secretary of Defense based on all available intelligence information, the export or transfer might be subject to a genuine terrorist threat, the Secretary shall provide to the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, his written assessment of the risk and a description of the actions the Secretary of Defense considers necessary to upgrade physical protection measures.

(b) Subsection (a) of this section applies to the export or transfer of more than 2 kilograms of plutonium or more than 5 kilograms of uranium enriched to more than 20 percent in the isotope 233 or the isotope 235.

(Aug. 1, 1946, ch. 724, title I, § 133, as added Pub. L. 99–399, title VI, § 603, Aug. 27, 1986, 100 Stat. 875; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103–236, title VIII, § 829, Apr. 30, 1994, 108 Stat. 521.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–236 substituted ''5 kilograms'' for ''20 kilograms''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–236 effective 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103–236, set out as an Effective Date note under section 6301 of Title 22, Foreign Relations and Intercourse.

§ 2160d. Further restrictions on exports

(a) In general

Except as provided in subsection (b) of this section, the Commission may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this chapter, the Commission determines that—

(1) there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be used in that reactor;

(2) the proposed recipient of that uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

(3) the United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.

(b) Medical isotope production

(1) Definitions

In this subsection:

(A) Highly enriched uranium

The term ''highly enriched uranium'' means uranium enriched to include concentration of U–235 above 20 percent.

(B) Medical isotope

The term ''medical isotope'' includes Molybdenum 99, Iodine 131, Xenon 133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

(C) Radiopharmaceutical

The term ''radiopharmaceutical'' means a radioactive isotope that—

(i) contains byproduct material combined with chemical or biological material; and

(ii) is designed to accumulate temporarily in a part of the body for therapeutic purposes or for enabling the production of a useful image for use in a diagnosis of a medical condition.

(D) Recipient country

The term ''recipient country'' means Canada, Belgium, France, Germany, and the Netherlands.

(2) Licenses

The Commission may issue a license authorizing the export (including shipment to and use at intermediate and ultimate consignees specified in the license) to a recipient country of highly enriched uranium for medical isotope production if, in addition to any other requirements of this chapter (except subsection (a) of this section), the Commission determines that—

(A) a recipient country that supplies an assurance letter to the United States Government in connection with the consideration by the Commission of the export license application has informed the United States Government that any intermediate consignees and the ultimate consignee specified in the application are required to use the highly enriched uranium solely to produce medical isotopes; and

(B) the highly enriched uranium for medical isotope production will be irradiated only in a reactor in a recipient country that—

(i) uses an alternative nuclear reactor fuel; or

(ii) is the subject of an agreement with the United States Government to convert to an alternative nuclear reactor fuel when alternative nuclear reactor fuel can be used in the reactor.

(3) Review of physical protection requirements

(A) In general

The Commission shall review the adequacy of physical protection requirements that, as of the date of an application under paragraph (2), are applicable to the transportation and storage of highly enriched uranium for medical isotope production or control of residual material after irradiation and extraction of medical isotopes.

(B) Imposition of additional requirements

If the Commission determines that additional physical protection requirements are necessary (including a limit on the quantity of highly enriched uranium that may be contained in a single shipment), the Commission shall impose such requirements as license conditions or through other appropriate means.

(4) First report to Congress

(A) NAS study

The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study to determine—

(i) the feasibility of procuring supplies of medical isotopes from commercial sources that do not use highly enriched uranium;

(ii) the current and projected demand and availability of medical isotopes in regular current domestic use;

(iii) the progress that is being made by the Department of Energy and others to eliminate all use of highly enriched uranium in reactor fuel, reactor targets, and medical isotope production facilities; and

(iv) the potential cost differential in medical isotope production in the reactors and target processing facilities if the products were derived from production systems that do not involve fuels and targets with highly enriched uranium.

(B) Feasibility

For the purpose of this subsection, the use of low enriched uranium to produce medical isotopes shall be determined to be feasible if—

(i) low enriched uranium targets have been developed and demonstrated for use in the reactors and target processing facilities that produce significant quantities of medical isotopes to serve United States needs for such isotopes;

(ii) sufficient quantities of medical isotopes are available from low enriched uranium targets and fuel to meet United States domestic needs; and

(iii) the average anticipated total cost increase from production of medical isotopes in such facilities without use of highly enriched uranium is less than 10 percent.

(C) Report by the Secretary

Not later than 5 years after August 8, 2005, the Secretary shall submit to Congress a report that—

(i) contains the findings of the National Academy of Sciences made in the study under subparagraph (A); and

(ii) discloses the existence of any commitments from commercial producers to provide domestic requirements for medical isotopes without use of highly enriched uranium consistent with the feasibility criteria described in subparagraph (B) not later than the date that is 4 years after the date of submission of the report.

(5) Second report to Congress

If the study of the National Academy of Sciences determines under paragraph (4)(A)(i) that the procurement of supplies of medical isotopes from commercial sources that do not use highly enriched uranium is feasible, but the Secretary is unable to report the existence of commitments under paragraph (4)(C)(ii), not later than the date that is 6 years after August 8, 2005, the Secretary shall submit to Congress a report that describes options for developing domestic supplies of medical isotopes in quantities that are adequate to meet domestic demand without the use of highly enriched uranium consistent with the cost increase described in paragraph (4)(B)(iii).

(6) Certification

At such time as commercial facilities that do not use highly enriched uranium are capable of meeting domestic requirements for medical isotopes, within the cost increase described in paragraph (4)(B)(iii) and without impairing the reliable supply of medical isotopes for domestic utilization, the Secretary shall submit to Congress a certification to that effect.

(7) Sunset provision

After the Secretary submits a certification under paragraph (6), the Commission shall, by rule, terminate its review of export license applications under this subsection.

(c) Definitions

As used in this section—

(1) the term ''alternative nuclear reactor fuel or target'' means a nuclear reactor fuel or target which is enriched to less than 20 percent in the isotope U–235;

(2) the term ''highly enriched uranium'' means uranium enriched to 20 percent or more in the isotope U–235; and

(3) a fuel or target ''can be used'' in a nuclear research or test reactor if—

(A) the fuel or target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy, and

(B) use of the fuel or target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor.

(Aug. 1, 1946, ch. 724, title I, § 134, as added Pub. L. 102–486, title IX, § 903(a)(1), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109–58, title VI, § 630, Aug. 8, 2005, 119 Stat. 785.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, § 630(1), inserted heading and substituted ''Except as provided in subsection (b) of this section, the Commission'' for ''The Commission'' in introductory provisions.

Subsecs. (b), (c). Pub. L. 109–58, § 630(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

SUBCHAPTER XI—CONTROL OF INFORMATION

§ 2161. Policy of Commission

It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles:

(a) Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by section 2164 of this title; and

(b) The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to

provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information.

(Aug. 1, 1946, ch. 724, title I, § 141, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 940; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1810(a) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2162. Classification and declassification of Restricted Data

(a) Periodic determination

The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

(b) Continuous review

The Commission shall maintain a continuous review of Restricted Data and of any Classification Guides issued for the guidance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security.

(c) Joint determination on atomic weapons; Presidential determination on disagreement

In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

(d) Removal from Restricted Data category

The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided*, *however*, That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for cooperation entered into in accordance with subsection (b) or (d) of section 2164 of this title.

(e) Joint determination on atomic energy programs

The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of Central Intelligence jointly determine to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended,[1] and can be adequately safeguarded as defense information.

(Aug. 1, 1946, ch. 724, title I, § 142, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 941; amended Pub. L. 102–484, div. C, title XXXI, § 3152, Oct. 23, 1992, 106 Stat. 2644; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103–337, div. A, title XXXI, § 3155(c)(2), (3), Oct. 5, 1994, 108 Stat. 3092.)

REFERENCES IN TEXT

Section 102(d) of the National Security Act of 1947, as amended, referred to in subsec. (e), was a reference to section 102(d) of act July 26, 1947, ch. 343, title I, 61 Stat. 497, as amended, which was classified to section 403(d) of Title 50, War and National Defense, prior to repeal by Pub. L. 104–293, title VIII, § 805(a), Oct. 11, 1996, 110 Stat. 3477.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–337, § 3155(c)(2), substituted ''subsection (b) or (d) of section 2164 of this title'' for ''section 2164(b) of this title''.

Subsec. (f). Pub. L. 103–337, § 3155(c)(3), struck out subsec. (f) which read as follows: ''Notwithstanding any other law, the President may publicly release Restricted Data regarding the nuclear weapons stockpile of the United States if the United States and member states of the Commonwealth of Independent States reach reciprocal agreement on the release of such data.''

1992—Subsec. (f). Pub. L. 102–484 added subsec. (f).

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

REVIEW OF CERTAIN DOCUMENTS BEFORE DECLASSIFICATION AND RELEASE

Pub. L. 104–106, div. C, title XXXI, § 3155, Feb. 10, 1996, 110 Stat. 625, which was formerly set out as a note under this section, was renumbered section 4521 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(11), Nov. 24, 2003, 117 Stat. 1774, and is classified to section 2671 of Title 50, War and National Defense.

EX. ORD. NO. 10899. COMMUNICATION OF RESTRICTED DATA BY CENTRAL INTELLIGENCE AGENCY

Ex. Ord. No. 10899, eff. Dec. 9, 1960, 25 F.R. 12729, provided:

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011 *et seq.*), and as President of the United States, it is ordered as follows:

The Central Intelligence Agency is hereby authorized to communicate for intelligence purposes, in accordance with the terms and conditions of any agreement

[1] See References in Text note below.

for cooperation arranged pursuant to subsections 144a, b, or c of the act (42 U.S.C. 2162 (a), (b), or (c)), such restricted data and data removed from the restricted data category under subsection 142d of the Act (42 U.S.C. 2162(d)) as is determined

(i) by the President, pursuant to the provisions of the Act, or

(ii) by the Atomic Energy Commission and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841 [set out as a note under section 2153 of this title], to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Central Intelligence Agency in accordance with the terms and conditions of the agreement for cooperation involved: *Provided*, that no such communication shall be made by the Central Intelligence Agency until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures approved by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by the Central Intelligence Agency.

DWIGHT D. EISENHOWER.

MODIFICATION OF EXECUTIVE ORDER NO. 10899

Ex. Ord. No. 10899, Dec. 9, 1960, 25 F.R. 12729, set out above, when referring to functions of the Atomic Energy Commission is modified to provide that all such functions shall be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, see section 4(a)(1) of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

EX. ORD. NO. 11057. COMMUNICATION OF RESTRICTED DATA BY DEPARTMENT OF STATE

Ex. Ord. No. 11057, eff. Oct. 18, 1962, 27 F.R. 10289, provided:

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011 et seq.), and as President of the United States, it is ordered as follows:

The Department of State is hereby authorized to communicate, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsection 144b of the act (42 U.S.C. 2164(b)), such restricted data and data removed from the restricted data category under subsection 142d of the act (42 U.S.C. 2162(d)) as is determined

(i) by the President, pursuant to the provisions of the Act, or

(ii) by the Atomic Energy Commission and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841, as amended [set out as a note under section 2153 of this title], to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Department of State in accordance with the terms and conditions of the agreement for cooperation involved: *Provided*, that no such communication shall be made by the Department of State until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures approved by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by the Department of State.

JOHN F. KENNEDY.

MODIFICATION OF EXECUTIVE ORDER NO. 11057

Ex. Ord. No. 11057, Oct. 18, 1962, 27 F.R. 10289, set out above, when referring to functions of the Atomic Energy Commission is modified to provide that all such functions shall be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, see section 4(a)(1) of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

§ 2163. Access to Restricted Data

The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under section 2165(b) and (c) of this title to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: *Provided*, *however*, That the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member or employee to have access to such Restricted Data will not endanger the common defense and security: *And provided further*, That the Secretary of Defense finds that the established personnel and other security procedures and standards of such agency are adequate and in reasonable conformity to the standards established by the Commission under section 2165 of this title.

(Aug. 1, 1946, ch. 724, title I, § 143, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 941; amended Aug. 6, 1956, ch. 1015, § 14, 70 Stat. 1071; Pub. L. 87–206, § 5, Sept. 6, 1961, 75 Stat. 476; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1961—Pub. L. 87–206 inserted reference to subsection (c) of section 2165 of this title.

1956—Act Aug. 6, 1956, inserted ''or any other person authorized access to Restricted Data by the Commission under section 2165(b) of this title''.

§ 2164. International cooperation

(a) By Commission

The President may authorize the Commission to cooperate with another nation and to communicate to that nation Restricted Data on—

(1) refining, purification, and subsequent treatment of source material;

(2) civilian reactor development;

(3) production of special nuclear material;

(4) health and safety;

(5) industrial and other applications of atomic energy for peaceful purposes; and

(6) research and development relating to the foregoing:

Provided, *however*, That no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons: *And provided further*, That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 2153 of this title, or is undertaken pursuant to an agreement existing on August 30, 1954.

(b) By Department of Defense

The President may authorize the Department of Defense, with the assistance of the Commis-

sion, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data (including design information) as is necessary to—

(1) the development of defense plans;

(2) the training of personnel in the employment of and defense against atomic weapons and other military applications of atomic energy;

(3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons and other military applications of atomic energy; and

(4) the development of compatible delivery systems for atomic weapons;

whenever the President determines that the proposed cooperation and the proposed communication of the Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however*, That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 2153 of this title.

(c) Exchange of information concerning atomic weapons; research, development, or design, of military reactors

In addition to the cooperation authorized in subsections (a) and (b) of this section, the President may authorize the Commission, with the assistance of the Department of Defense, to cooperate with another nation and—

(1) to exchange with that nation Restricted Data concerning atomic weapons: *Provided*, That communication of such Restricted Data to that nation is necessary to improve its atomic weapon design, development, or fabrication capability and provided that nation has made substantial progress in the development of atomic weapons; and

(2) to communicate or exchange with that nation Restricted Data concerning research, development, or design, of military reactors,

whenever the President determines that the proposed cooperation and the communication of the proposed Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however*, That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 2153 of this title.

(d) By Department of Energy

(1) In addition to the cooperation authorized in subsections (a), (b), and (c) of this section, the President may, upon making a determination described in paragraph (2), authorize the Department of Energy, with the assistance of the Department of Defense, to cooperate with another nation to communicate to that nation such Restricted Data, and the President may, upon making such determination, authorize the Department of Defense, with the assistance of the Department of Energy, to cooperate with another nation to communicate to that nation such data removed from the Restricted Data category under section 2162 of this title, as is necessary for—

(A) the support of a program for the control of and accounting for fissile material and other weapons material;

(B) the support of the control of and accounting for atomic weapons;

(C) the verification of a treaty; and

(D) the establishment of international standards for the classification of data on atomic weapons, data on fissile material, and related data.

(2) A determination referred to in paragraph (1) is a determination that the proposed cooperation and proposed communication referred to in that paragraph—

(A) will promote the common defense and security interests of the United States and the nation concerned; and

(B) will not constitute an unreasonable risk to such common defense and security interests.

(3) Cooperation under this subsection shall be undertaken pursuant to an agreement for cooperation entered into in accordance with section 2153 of this title.

(e) Communication of data by other Government agencies

The President may authorize any agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection (a), (b), (c), or (d) of this section, such Restricted Data as is determined to be transmissible under the agreement for cooperation involved.

(Aug. 1, 1946, ch. 724, title I, §144, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 942; amended Pub. L. 85–479, §§5–7, July 2, 1958, 72 Stat. 278; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103–337, div. C, title XXXI, §3155(a), (c)(4), Oct. 5, 1994, 108 Stat. 3091, 3092.)

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–337, §3155(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 103–337, §3155(c)(4), substituted ''(c), or (d)'' for ''or (c)''.

Pub. L. 103–337, §3155(a)(1), redesignated subsec. (d) as (e).

1958—Subsec. (a). Pub. L. 85–479, §5, substituted ''civilian reactor development'' for ''reactor development'' in cl. (2).

Subsec. (b). Pub. L. 85–479, §6, authorized communication of design information, of data concerning other military applications of atomic energy necessary for the training of personnel or for the evaluation of the capabilities of potential enemies, and of data necessary to the development of compatible delivery systems for atomic weapons, and struck out provisions which prohibited communication of data which would reveal important information concerning the design or fabrication of the nuclear components of atomic weapons.

Subsecs. (c), (d). Pub. L. 85–479, §7, added subsecs. (c) and (d).

DELEGATION OF FUNCTIONS

Authority vested in President by subsecs. (b) and (c) of this section delegated to Secretary of Defense and Secretary of Energy, see section 2(a)(2) and (3) of Ex. Ord. No. 10841, as amended, set out as a note under section 2153 of this title.

PROHIBITION ON INSPECTIONS

Pub. L. 104–106, div. C, title XXXI, § 3154(a), Feb. 10, 1996, 110 Stat. 624, which was formerly set out as a note under this section, was renumbered section 4501(a) of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1771, and is classified to section 2651(a) of Title 50, War and National Defense.

§ 2165. Security restrictions

(a) On contractors and licensees

No arrangement shall be made under section 2051 of this title, no contract shall be made or continued in effect under section 2061 of this title, and no license shall be issued under section 2133 or 2134 of this title, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Director of the Office of Personnel Management shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(b) Employment of personnel; access to Restricted Data

Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Director of the Office of Personnel Management shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(c) Acceptance of investigation and clearance granted by other Government agencies

In lieu of the investigation and report to be made by the Director of the Office of Personnel Management pursuant to subsection (b) of this section, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

(d) Investigations by FBI

In the event an investigation made pursuant to subsections (a) and (b) of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Director of the Office of Personnel Management shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Director of the Office of Personnel Management for his information and appropriate action.

(e) Presidential investigation

(1) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections (a), (b), and (c) of this section be made by the Federal Bureau of Investigation.

(2) In the case of an individual employed in a program known as a Special Access Program, any investigation required by subsections (a), (b), and (c) of this section shall be made by the Federal Bureau of Investigation.

(f) Performance of personnel security investigations by FBI

(1) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, but subject to subsection (e) of this section, a majority of the members of the Commission may direct that an investigation required by such provisions on an individual described in paragraph (2) be carried out by the Federal Bureau of Investigation rather than by the Civil Service Commission.

(2) An individual described in this paragraph is an individual who is employed—

(A) in a program certified by a majority of the members of the Commission to be of a high degree of importance or sensitivity; or

(B) in any other specific position certified by a majority of the members of the Commission to be of a high degree of importance or sensitivity.

(g) Investigation standards

The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this section, that permitting a person access to restricted data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the restricted data to which access will be permitted.

(h) War time clearance

Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by subsection (b) of this section, to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

(Aug. 1, 1946, ch. 724, title I, § 145, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 942; amended Pub. L. 85–681, § 5, Aug. 19, 1958, 72 Stat. 633; Pub. L. 87–206, § 6, Sept. 6, 1961, 75 Stat. 476; Pub. L. 87–615, § 10, Aug. 29, 1962, 76 Stat. 411; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 106–65, div. C, title XXXI, § 3144(a), Oct. 5, 1999, 113 Stat. 934; Pub. L. 108–136, div. C, title XXXI, § 3131, Nov. 24, 2003, 117 Stat. 1749.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1810(b)(5) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2003—Subsec. (e)(2). Pub. L. 108–136, § 3131(b), struck out ''or a Personnel Security and Assurance Program'' after ''Special Access Program''.

Subsec. (f). Pub. L. 108–136, § 3131(a), amended text of subsec. (f) generally. Prior to amendment, text read as follows: ''Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity, and upon such certification, the investigation and reports required by such provisions shall be made by the Federal Bureau of Investigation.''

1999—Subsec. (e). Pub. L. 106–65 designated existing provisions as par. (1) and added par. (2).

1962—Subsec. (f). Pub. L. 87–615 struck out the comma after ''investigation''.

1961—Subsecs. (c), (d). Pub. L. 87–206 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (e). Pub. L. 87–206 redesignated former subsec. (d) as (e) and amended provisions by substituting ''determine that'' for ''cause investigations'', inserting reference to subsection (c) of this section and striking out ''instead of by the Civil Service Commission'' after ''Federal Bureau of Investigation''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 87–206 redesignated former subsec. (e) as (f) and amended provisions by inserting reference to subsection (c) of this section and striking out ''instead of by the Civil Service Commission'' after ''Federal Bureau of Investigation''. Former subsec. (f) redesignated (g).

Subsecs. (g), (h). Pub. L. 87–206 redesignated former subsec. (f) as (g) and amended provisions by substituting '', the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this section, that permitting a person access to restricted data will not endanger the common defense and security'' for ''to be made by the Civil Service Commission pursuant to subsections (a) and (b) of this section.'' Former subsec. (g) redesignated (h).

1958—Subsec. (g). Pub. L. 85–681 added subsec. (g).

IMPLEMENTATION OF SUBSECTION (e)(2)

Pub. L. 106–65, div. C, title XXXI, § 3144(b), (c), Oct. 5, 1999, 113 Stat. 934, provided that:

''(b) COMPLIANCE.—The Director of the Federal Bureau of Investigation shall have 18 months from the date of the enactment of this Act [Oct. 5, 1999] to meet the responsibilities of the Bureau under subsection e.(2) of section 145 of the Atomic Energy Act of 1954 [42 U.S.C. 2165(e)(2)], as added by subsection (a).

''(c) REPORT.—(1) Not later than six months after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the committees specified in paragraph (2) a report on the implementation of the responsibilities of the Bureau under subsection e.(2) of that section. That report shall include the following:

''(A) An assessment of the capability of the Bureau to execute the additional clearance requirements, to include additional post-initial investigations.

''(B) An estimate of the additional resources required, to include funding, to support the expanded use of the Bureau to conduct the additional investigations.

''(C) The extent to which contractor personnel are and would be used in the clearance process.

''(2) The committees referred to in paragraph (1) are the following:

''(A) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

''(B) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.''

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' and ''his'' substituted for ''Civil Service Commission'' and ''its'', respectively, in subsecs. (a) to (d), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 2166. Applicability of other laws

(a) Sections 2161 to 2165 of this title shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of those sections.

(b) The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

(Aug. 1, 1946, ch. 724, title I, § 146, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 943; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1810(b)(6) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2167. Safeguards information

(a) Confidentiality of certain types of information; issuance of regulations and orders; considerations for exercise of Commission's authority; disclosure of routes and quantities of shipment; civil penalties; withholding of information from Congressional committees

In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of title 5, the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed—

(1) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whom-

ever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or by-product material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2)[1]

if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

(B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Nothing in this chapter shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 2282 of this title. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

(b) Regulations or orders issued under this section and section 2201(b) of this title for purposes of section 2273 of this title

For the purposes of section 2273 of this title, any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 2201(b) of this title.

(c) Judicial review

Any determination by the Commission concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a)(4)(B) of section 552 of title 5.

[1] So in original. Probably should be followed by a semicolon.

(d) Reports to Congress; contents

Upon prescribing or issuing any regulation or order under subsection (a) of this section, the Commission shall submit to Congress a report that:

(1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;

(2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and

(3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

(Aug. 1, 1946, ch. 724, title I, § 147, as added Pub. L. 96–295, title II, § 207(a)(1), June 30, 1980, 94 Stat. 788; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

CODIFICATION

Subsection (e) of this section, which required the Commission to submit to Congress on a quarterly basis a report detailing the Commission's application during that period of every regulation or order prescribed or issued under this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 7 on page 186 of House Document No. 103–7.

§ 2168. Dissemination of unclassified information

(a) Dissemination prohibited; rules and regulations; determinations of Secretary prerequisite to issuance of prohibiting regulations or orders; criteria

(1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, the Secretary of Energy (hereinafter in this section referred to as the ''Secretary''), with respect to atomic energy defense programs, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to—

(A) the design of production facilities or utilization facilities;

(B) security measures (including security plans, procedures, and equipment) for the physical protection of (i) production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

(C) the design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or

the head of the predecessor agency of the Department of Energy) pursuant to section 2162 of this title.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (A) illegal production of nuclear weapons, or (B) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in paragraph (1) of this subsection—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (i) illegal production of nuclear weapons, or (ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(5) Nothing in this section shall be construed to authorize the Secretary to authorize the withholding of information from the appropriate committees of the Congress.

(b) Civil penalties

(1) Any person who violates any regulation or order of the Secretary issued under this section with respect to the unauthorized dissemination of information shall be subject to a civil penalty, to be imposed by the Secretary, of not to exceed $100,000 for each such violation. The Secretary may compromise, mitigate, or remit any penalty imposed under this subsection.

(2) The provisions of subsections (b) and (c) of section 2282 of this title, shall be applicable with respect to the imposition of civil penalties by the Secretary under this section in the same manner that such provisions are applicable to the imposition of civil penalties by the Commission under subsection (a) of such section.

(c) Criminal penalties

For the purposes of section 2273 of this title, any regulation prescribed or order issued by the Secretary under this section shall also be deemed to be prescribed or issued under section 2201(b) of this title.

(d) Judicial review

Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5.

(e) Quarterly reports for interested persons; contents

The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall—

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons, or theft, diversion, or sabotage of nuclear materials, equipment, or facilities, as specified under subsection (a) of this section; and

(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

(Aug. 1, 1946, ch. 724, title I, § 148, as added Pub. L. 97–90, title II, § 210(a)(1), Dec. 4, 1981, 95 Stat. 1169; amended Pub. L. 97–415, § 17, Jan. 4, 1983, 96 Stat. 2076; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 97–415, § 17(a), inserted ", with respect to atomic energy defense programs," after "(hereinafter in this section referred to as the 'Secretary')".

Subsecs. (d), (e). Pub. L. 97–415, § 17(b), added subsecs. (d) and (e).

§ 2169. Fingerprinting for criminal history record checks

(a) In general

(1)(A)(i) The Commission shall require each individual or entity described in clause (ii) to fingerprint each individual described in subparagraph (B) before the individual described in subparagraph (B) is permitted access under subparagraph (B).

(ii) The individuals and entities referred to in clause (i) are individuals and entities that, on or before the date on which an individual is permitted access under subparagraph (B)—

(I) are licensed or certified to engage in an activity subject to regulation by the Commission;

(II) have filed an application for a license or certificate to engage in an activity subject to regulation by the Commission; or

(III) have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission.

(B) The Commission shall require to be fingerprinted any individual who—

(i) is permitted unescorted access to—

(I) a utilization facility; or

(II) radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks; or

(ii) is permitted access to safeguards information under section 2167 of this title.

(2) All fingerprints obtained by an individual or entity as required in paragraph (1) shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check.

(3) The costs of an identification or records check under paragraph (2) shall be paid by the individual or entity required to conduct the fingerprinting under paragraph (1)(A).

(4) Notwithstanding any other provision of law—

(A) the Attorney General may provide any result of an identification or records check under paragraph (2) to the Commission; and

(B) the Commission, in accordance with regulations prescribed under this section, may provide the results to the individual or entity required to conduct the fingerprinting under paragraph (1)(A).

(b) Waiver

The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.

(c) Regulations

For purposes of administering this section, the Commission shall prescribe requirements—

(1) to implement procedures for the taking of fingerprints;

(2) to establish the conditions for use of information received from the Attorney General, in order—

(A) to limit the redissemination of such information;

(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted unescorted access to a utilization facility, radioactive material, or other property described in subsection (a)(1)(B) of this section or shall be permitted access to safeguards information under section 2167 of this title;

(C) to ensure that no final determination may be made solely on the basis of information provided under this section involving—

(i) an arrest more than 1 year old for which there is no information of the disposition of the case; or

(ii) an arrest that resulted in dismissal of the charge or an acquittal; and

(D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and

(3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.

(d) Use of biometric methods

The Commission may require a person or individual to conduct fingerprinting under subsection (a)(1) of this section by authorizing or requiring the use of any alternative biometric method for identification that has been approved by—

(1) the Attorney General; and

(2) the Commission, by regulation.

(e) Processing fees; use of amounts collected

(1) The Commission may establish and collect fees to process fingerprints and criminal history records under this section.

(2) Notwithstanding section 3302(b) of title 31, and to the extent approved in appropriation Acts—

(A) a portion of the amounts collected under this subsection in any fiscal year may be retained and used by the Commission to carry out this section; and

(B) the remaining portion of the amounts collected under this subsection in such fiscal year may be transferred periodically to the Attorney General and used by the Attorney General to carry out this section.

(3) Any amount made available for use under paragraph (2) shall remain available until expended.

(Aug. 1, 1946, ch. 724, title I, § 149, as added Pub. L. 99–399, title VI, § 606(a), Aug. 27, 1986, 100 Stat. 876; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109–58, title VI, § 652, Aug. 8, 2005, 119 Stat. 810.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, § 652(1), revised and restructured provisions of subsec. (a). Prior to amendment, subsec. (a) read as follows: ''The Nuclear Regulatory Commission (in this section referred to as the 'Commission') shall require each licensee or applicant for a license to operate a utilization facility under section 2133 or 2134(b) of this title to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to safeguards information under section 2167 of this title. All fingerprints obtained by a licensee or applicant as required in the preceding sentence shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant. Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints.'' Amendment by Pub. L. 109–58, § 652(1)(D), which misquoted the sentence to be stricken by leaving out the word ''the'' before ''licensee'', was nevertheless executed to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 109–58, § 652(2)(A), substituted ''requirements—'' for '', subject to public notice and comment, regulations—'' in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 109–58, § 652(2)(B), substituted ''unescorted access to a utilization facility,

radioactive material, or other property described in subsection (a)(1)(B) of this section'' for ''unescorted access to the facility of a licensee or applicant''.

Subsecs. (d), (e). Pub. L. 109–58, § 652(3), (4), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE

Section 606(b) of Pub. L. 99–399 provided that: ''The provisions of subsection a. of section 149 of the Atomic Energy Act of 1954 [subsec. (a) of this section], as added by this Act, shall take effect upon the promulgation of regulations by the Nuclear Regulatory Commission as set forth in subsection c. of such section [subsec. (c) of this section]. Such regulations shall be promulgated not later than 6 months after the date of the enactment of this Act [Aug. 27, 1986].''

SUBCHAPTER XII—PATENTS AND INVENTIONS

§ 2181. Inventions relating to atomic weapons, and filing of reports

(a) Denial of patent; revocation of prior patents

No patent shall hereafter be granted for any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon. Any patent granted for any such invention or discovery is revoked, and just compensation shall be made therefor.

(b) Denial of rights; revocation of prior rights

No patent hereafter granted shall confer any rights with respect to any invention or discovery to the extent that such invention or discovery is used in the utilization of special nuclear material or atomic energy in atomic weapons. Any rights conferred by any patent heretofore granted for any invention or discovery are revoked to the extent that such invention or discovery is so used, and just compensation shall be made therefor.

(c) Report of invention to Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

Any person who has made or hereafter makes any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, shall file with the Commission a report containing a complete description thereof unless such invention or discovery is described in an application for a patent filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office by such person within the time required for the filing of such report. The report covering any such invention or discovery shall be filed on or before the one hundred and eightieth day after such person first discovers or first has reason to believe that such invention or discovery is useful in such production or utilization.

(d) Report to Commission by Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall notify the Commission of all applications for patents heretofore or hereafter filed which, in his opinion, disclose inventions or discoveries required to be reported under subsection (c) of this section, and shall provide the Commission access to all such applications.

(e) Confidential information; circumstances permitting disclosure

Reports filed pursuant to subsection (c) of this section, and applications to which access is provided under subsection (d) of this section, shall be kept in confidence by the Commission, and no information concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commission.

(Aug. 1, 1946, ch. 724, title I, § 151, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 943; amended Pub. L. 87–206, §§ 7–9, Sept. 6, 1961, 75 Stat. 477; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(b)(18)], Nov. 29, 1999, 113 Stat. 1536, 1501A–585.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1811(a) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1999—Subsecs. (c), (d). Pub. L. 106–113 substituted ''Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office'' for ''Commissioner of Patents''.

1961—Pub. L. 87–206, § 7, substituted provision concerning inventions relating to atomic weapons and filing of reports for provision relating to military utilization in section catchline.

Subsec. (c). Pub. L. 87–206, § 8, struck out designation as cl. (1) of provision relating to production or utilization of special nuclear material or atomic energy and cls. (2) and (3) relating to utilization of special nuclear material in an atomic weapon and utilization of atomic energy in an atomic weapon, respectively, and substituted ''the one hundred and eightieth day'' for ''whichever of the following is the later: either the ninetieth day after completion of such invention or discovery; or the ninetieth day''.

Subsec. (e). Pub. L. 87–206, § 9, added subsec. (e).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING ATOMIC ENERGY CASES

Excusal of delayed fees or actions affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, see note set out under section 111 of Title 35, Patents.

§ 2182. Inventions conceived during Commission contracts; ownership; waiver; hearings

Any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved

the expenditure of funds by the Commission, shall be vested in, and be the property of, the Commission, except that the Commission may waive its claim to any such invention or discovery under such circumstances as the Commission may deem appropriate, consistent with the policy of this section. No patent for any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, shall be issued unless the applicant files with the application, or within thirty days after request therefor by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (unless the Commission advises the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office that its rights have been determined and that accordingly no statement is necessary) a statement under oath setting forth the full facts surrounding the making or conception of the invention or discovery described in the application and whether the invention or discovery was made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall as soon as the application is otherwise in condition for allowance forward copies of the application and the statement to the Commission.

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may proceed with the application and issue the patent to the applicant (if the invention or discovery is otherwise patentable) unless the Commission, within 90 days after receipt of copies of the application and statement, directs the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office to issue the patent to the Commission (if the invention or discovery is otherwise patentable) to be held by the Commission as the agent of and on behalf of the United States.

If the Commission files such a direction with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and if the applicant's statement claims, and the applicant still believes, that the invention or discovery was not made or conceived in the course of or under any contract, subcontract or arrangement entered into with or for the benefit of the Commission entitling the Commission to the title to the application or the patent the applicant may, within 30 days after notification of the filing of such a direction, request a hearing before the Board of Patent Appeals and Interferences. The Board shall have the power to hear and determine whether the Commission was entitled to the direction filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. The Board shall follow the rules and procedures established for interference cases and an appeal may be taken by either the applicant or the Commission from the final order of the Board to the United States Court of Appeals for the Federal Circuit in accordance with the procedures governing the appeals from the Board of Patent Appeals and Interferences.

If the statement filed by the applicant should thereafter be found to contain false material statements any notification by the Commission that it has no objections to the issuance of a patent to the applicant shall not be deemed in any respect to constitute a waiver of the provisions of this section or of any applicable civil or criminal statute, and the Commission may have the title to the patent transferred to the Commission on the records of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office in accordance with the provisions of this section. A determination of rights by the Commission pursuant to a contractual provision or other arrangement prior to the request of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office for the statement, shall be final in the absence of false material statements or nondisclosure of material facts by the applicant.

(Aug. 1, 1946, ch. 724, title I, § 152, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 944; amended Pub. L. 87–206, § 10, Sept. 6, 1961, 75 Stat. 477; Pub. L. 87–615, § 11, Aug. 29, 1962, 76 Stat. 411; Pub. L. 97–164, title I, § 162(2), Apr. 2, 1982, 96 Stat. 49; Pub. L. 98–622, title II, § 205(b), Nov. 8, 1984, 98 Stat. 3388; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(b)(19)], Nov. 29, 1999, 113 Stat. 1536, 1501A–585.)

AMENDMENTS

1999—Pub. L. 106–113 substituted ''Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office'' for ''Commissioner of Patents'' wherever appearing.

1984—Pub. L. 98–622, in third par., substituted ''the Board of Patent Appeals and Interferences'' for ''a Board of Patent Interferences'' and ''the Board of Patent Interferences''.

1982—Pub. L. 97–164 substituted ''United States Court of Appeals for the Federal Circuit'' for ''Court of Customs and Patent Appeals'' in third par.

1962—Pub. L. 87–615 substituted ''allowance'' for ''allowances'' before ''forward copies of the application'' in first par.

1961—Pub. L. 87–206 clarified language concerning Commission's patent rights on inventions made or conceived under contract, subcontract, or arrangement with Commission, striking out language extending Commission's patent rights to other relationships and activities in connection with Commission contracts, provided for waiver of patent rights consistent with the policy of this section and for finality of determinations of Commission, and dispensed with need for statement to Commissioner of Patents under certain circumstances.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–622, effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98–622, set out as a note under section 41 of Title 35, Patents.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 2183. Nonmilitary utilization

(a) Declaration of public interest

The Commission may, after giving the patent owner an opportunity for a hearing, declare any patent to be affected with the public interest if (1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy; and (2) the licensing of such invention or discovery under this section is of primary importance to effectuate the policies and purposes of this chapter.

(b) Action by Commission

Whenever any patent has been declared affected with the public interest, pursuant to subsection (a) of this section—

(1) the Commission is licensed to use the invention or discovery covered by such patent in performing any of its powers under this chapter; and

(2) any person may apply to the Commission for a nonexclusive patent license to use the invention or discovery covered by such patent, and the Commission shall grant such patent license to the extent that it finds that the use of the invention or discovery is of primary importance to the conduct of an activity by such person authorized under this chapter.

(c) Application for patent

Any person—

(1) who has made application to the Commission for a license under sections 2073, 2092, 2093, 2111, 2133 or 2134 of this title, or a permit or lease under section 2097 of this title;

(2) to whom such license, permit, or lease has been issued by the Commission;

(3) who is authorized to conduct such activities as such applicant is conducting or proposes to conduct under a general license issued by the Commission under sections 2092 or 2111 of this title; or

(4) whose activities or proposed activities are authorized under section 2051 of this title,

may at any time make application to the Commission for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent. Each such application shall set forth the nature and purpose of the use which the applicant intends to make of the patent license, the steps taken by the applicant to obtain a patent license from the owner of the patent, and a statement of the effects, as estimated by the applicant, on the authorized activities which will result from failure to obtain such patent license and which will result from the granting of such patent license.

(d) Hearings

Whenever any person has made an application to the Commission for a patent license pursuant to subsection (c) of this section—

(1) the Commission, within 30 days after the filing of such application, shall make available to the owner of the patent all of the information contained in such application, and shall notify the owner of the patent of the time and place at which a hearing will be held by the Commission;

(2) the Commission shall hold a hearing within 60 days after the filing of such application at a time and place designated by the Commission; and

(3) in the event an applicant applies for two or more patent licenses, the Commission may, in its discretion, order the consolidation of such applications, and if the patents are owned by more than one owner, such owners may be made parties to one hearing.

(e) Commission's findings

If, after any hearing conducted pursuant to subsection (d) of this section, the Commission finds that—

(1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy;

(2) the licensing of such invention or discovery is of primary importance to the conduct of the activities of the applicant;

(3) the activities to which the patent license are proposed to be applied by such applicant are of primary importance to the furtherance of policies and purposes of this chapter; and

(4) such applicant cannot otherwise obtain a patent license from the owner of the patent on terms which the Commission deems to be reasonable for the intended use of the patent to be made by such applicant,

the Commission shall license the applicant to use the invention or discovery covered by the patent for the purposes stated in such application on terms deemed equitable by the Commission and generally not less fair than those granted by the patentee or by the Commission to similar licensees for comparable use.

(f) Limitations on issuance of patent

The Commission shall not grant any patent license pursuant to subsection (e) of this section for any other purpose than that stated in the application. Nor shall the Commission grant any patent license to any other applicant for a patent license on the same patent without an application being made by such applicant pursuant to subsection (c) of this section, and without separate notification and hearing as provided in subsection (d) of this section, and without a separate finding as provided in subsection (e) of this section.

(g) Royalty fees

The owner of the patent affected by a declaration or a finding made by the Commission pursuant to subsection (b) or (e) of this section shall be entitled to a reasonable royalty fee from the licensee for any use of an invention or discovery licensed by this section. Such royalty

fee may be agreed upon by such owner and the patent licensee, or in the absence of such agreement shall be determined for each patent license by the Commission pursuant to section 2187(c) of this title.

(h) Effective period

The provisions of this section shall apply to any patent the application for which shall have been filed before September 1, 1979.

(Aug. 1, 1946, ch. 724, title I, § 153, as added Aug. 20, 1954, ch. 1073, § 1, 68 Stat. 945; amended Pub. L. 86–50, § 114, June 23, 1959, 73 Stat. 87; Pub. L. 88–394, § 1, Aug. 1, 1964, 78 Stat. 376; Pub. L. 91–161, § 1, Dec. 24, 1969, 83 Stat. 444; Pub. L. 93–377, § 6, Aug. 17, 1974, 88 Stat. 475; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1811(c)(1), (2) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1974—Subsec. (h). Pub. L. 93–377 substituted ''September 1, 1979'' for ''September 1, 1974''.

1969—Subsec. (h). Pub. L. 91–161 substituted ''September 1, 1974'' for ''September 1, 1969''.

1964—Subsec. (h). Pub. L. 88–394 substituted ''September 1, 1969'' for ''September 1, 1964''.

1959—Subsec. (h). Pub. L. 86–50 substituted ''September 1, 1964'' for ''September 1, 1959''.

§ 2184. Injunctions; measure of damages

No court shall have jurisdiction or power to stay, restrain, or otherwise enjoin the use of any invention or discovery by a patent licensee, to the extent that such use is licensed by section 2183(b) or 2183(e) of this title. If, in any action against such patent licensee, the court shall determine that the defendant is exercising such license, the measure of damages shall be the royalty fee determined pursuant to section 2187(c) of this title, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court. If no royalty fee has been determined, the court shall stay the proceeding until the royalty fee is determined pursuant to section 2187(c) of this title. If any such patent licensee shall fail to pay such royalty fee, the patentee may bring an action in any court of competent jurisdiction for such royalty fee, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court.

(Aug. 1, 1946, ch. 724, title I, § 154, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 946; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1811(c)(3) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2185. Prior art

In connection with applications for patents covered by this subchapter, the fact that the invention or discovery was known or used before shall be a bar to the patenting of such invention or discovery even though such prior knowledge or use was under secrecy within the atomic energy program of the United States.

(Aug. 1, 1946, ch. 724, title I, § 155, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 947; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See, also, notes set out under those sections.

§ 2186. Commission patent licenses

The Commission shall establish standard specifications upon which it may grant a patent license to use any patent declared to be affected with the public interest pursuant to section 2183(a) of this title. Such a patent license shall not waive any of the other provisions of this chapter.

(Aug. 1, 1946, ch. 724, title I, § 156, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 947; amended Pub. L. 96–517, § 7(a), Dec. 12, 1980, 94 Stat. 3027; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1980—Pub. L. 96–517 substituted ''patent declared to be affected'' for ''patent held by the Commission or declared to be affected''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–517 effective July 1, 1981, but implementing regulations authorized to be issued earlier, see section 8(f) of Pub. L. 96–517, set out as a note under section 41 of Title 35, Patents.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See, also, notes set out under those sections.

§ 2187. Compensation, awards, and royalties

(a) Patent Compensation Board

The Commission shall designate a Patent Compensation Board to consider applications under this section. The members of the Board shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Board. The members of the Board may serve as such without regard to the provisions of sections 281, 283, or 284[1] of title 18, except in so far as such sections may prohibit any such member from receiving compensation in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested.

(b) Eligibility

(1) Any owner of a patent licensed under section 2188 or 2183(b) or 2183(e) of this title, or any patent licensee thereunder may make application to the Commission for the determination of a reasonable royalty fee in accordance with such procedures as the Commission by regulation may establish.

[1] See References in Text note below.

(2) Any person seeking to obtain the just compensation provided in section 2181 of this title shall make application therefor to the Commission in accordance with such procedures as the Commission may by regulation establish.

(3) Any person making any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, who is not entitled to compensation or a royalty therefor under this chapter and who has complied with the provisions of section 2181(c) of this title may make application to the Commission for, and the Commission may grant, an award. The Commission may also, after consultation with the General Advisory Committee, and with the approval of the President, grant an award for any especially meritorious contribution to the development, use, or control of atomic energy.

(c) Standards

(1) In determining a reasonable royalty fee as provided for in section 2183(b) or 2183(e) of this title, the Commission shall take into consideration (A) the advice of the Patent Compensation Board; (B) any defense, general or special, that might be pleaded by a defendant in an action for infringement; (C) the extent to which, if any, such patent was developed through federally financed research; and (D) the degree of utility, novelty, and importance of the invention or discovery, and may consider the cost to the owner of the patent of developing such invention or discovery or acquiring such patent.

(2) In determining what constitutes just compensation as provided for in section 2181 of this title, or in determining the amount of any award under subsection (b)(3) of this section, the Commission shall take into account the considerations set forth in paragraph (1) of this subsection and the actual use of such invention or discovery. Such compensation may be paid by the Commission in periodic payments or in a lump sum.

(d) Limitations

Every application under this section shall be barred unless filed within six years after the date on which first accrues the right to such reasonable royalty fee, just compensation, or award for which such application is filed.

(Aug. 1, 1946, ch. 724, title I, § 157, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 947; amended Pub. L. 87–206, § 11, Sept. 6, 1961, 75 Stat. 478; Pub. L. 93–276, title II, § 201, May 10, 1974, 88 Stat. 119; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

Sections 281, 283, and 284 of title 18, referred to in subsec. (a), were repealed by Pub. L. 87–849, § 2, Oct. 23, 1962, 76 Stat. 1126, except as sections 281 and 283 apply to retired officers of the Armed Forces of the United States, and were supplanted by sections 203, 205, and 207, respectively, of Title 18, Crimes and Criminal Procedures. For further details, see ''Exemptions'' note set out under section 203 of Title 18.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1811(e)(1) to (3) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1974—Subsec. (b)(3). Pub. L. 93–276 substituted ''after consultation with the General Advisory Committee'' for ''upon the recommendation of the General Advisory Committee''.

1961—Subsec. (d). Pub. L. 87–206 added subsec. (d).

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. Patent Compensation Board established by this section transferred to Energy Research and Development Administration and functions of Atomic Energy Commission with respect thereto transferred to Administrator by section 5814(d) of this title. See, also, notes set out under sections 5814 and 5841 of this title. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 11477. AWARDS BY COMMISSION WITHOUT APPROVAL OF PRESIDENT

Ex. Ord. No. 11477, eff. Aug. 7, 1969, 34 F.R. 12937, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

The Atomic Energy Commission is hereby designated and empowered, without approval, ratification, or other action by the President, to grant by the unanimous affirmative vote of all of its members not more than five awards in any calendar year, not exceeding the sum of $5,000 each, pursuant to the last sentence of section 157b(3) of the Atomic Energy Act of 1954 (42 U.S.C. 2187(b)(3)) which authorizes the Commission to grant awards for especially meritorious contributions to the development, use, or control of atomic energy.

RICHARD NIXON.

MODIFICATION OF EXECUTIVE ORDER NO. 11477

Ex. Ord. No. 11477, Aug. 7, 1969, 34 F.R. 12937, set out as a note above, when referring to functions of the Atomic Energy Commission is modified to provide that all such functions shall be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, see section 4(a)(1) of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

§ 2188. Monopolistic use of patents

Whenever the owner of any patent hereafter granted for any invention or discovery of primary use in the utilization or production of special nuclear material or atomic energy is found by a court of competent jurisdiction to have intentionally used such patent in a manner so as to violate any of the antitrust laws specified in section 2135(a) of this title, there may be included in the judgment of the court, in its discretion and in addition to any other lawful sanctions, a requirement that such owner license such patent to any other licensee of the Com-

mission who demonstrates a need therefor. If the court, at its discretion, deems that such licensee shall pay a reasonable royalty to the owner of the patent, the reasonable royalty shall be determined in accordance with section 2187 of this title.

(Aug. 1, 1946, ch. 724, title I, § 158, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 947; amended Pub. L. 87–206, § 12, Sept. 6, 1961, 75 Stat. 478; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1961—Pub. L. 87–206 made it discretionary, rather than mandatory, for the court to require payment of royalties by a licensee to the owner of a patent.

§ 2189. Federally financed research

Nothing in this chapter shall affect the right of the Commission to require that patents granted on inventions, made or conceived during the course of federally financed research or operations, be assigned to the United States.

(Aug. 1, 1946, ch. 724, title I, § 159, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 948; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2190. Saving clause for prior patent applications

Any patent application on which a patent was denied by the United States Patent and Trademark Office under sections 1811(a)(1), 1811(a)(2), or 1811(b)[1] of this title, and which is not prohibited by section 2181 or 2185 of this title may be reinstated upon application to the Commissioner of Patents and Trademarks within one year after August 30, 1954 and shall then be deemed to have been continuously pending since its original filing date: *Provided, however*, That no patent issued upon any patent application so reinstated shall in any way furnish a basis of claim against the Government of the United States.

(Aug. 1, 1946, ch. 724, title I, § 160, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 948; amended Pub. L. 93–596, § 3, Jan. 2, 1975, 88 Stat. 1949; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

Sections 1811(a)(1), 1811(a)(2), and 1811(b) of this title, referred to in text, were omitted from the Code in the general amendment and renumbering of act Aug. 1, 1946 (which was classified to section 1801 et seq. of this title) by act Aug. 30, 1954, ch. 1073, 68 Stat. 919.

CHANGE OF NAME

Patent Office and Commissioner of Patents changed to Patent and Trademark Office and Commissioner of Patents and Trademarks, respectively, pursuant to Pub. L. 93–596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

SUBCHAPTER XIII—GENERAL AUTHORITY OF COMMISSION

§ 2201. General duties of Commission

In the performance of its functions the Commission is authorized to—

(a) Establishment of advisory boards

establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

(b) Standards governing use and possession of material

establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;

(c) Studies and investigations

make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this chapter, or in the administration or enforcement of this chapter, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States;

(d) Employment of personnel

appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: *Provided, however*, That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule) whose position would be subject to chapter 51 and subchapter III of chapter 53 of title 5, if such provisions were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such provisions for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the

[1] See References in Text note below.

Commission as may be authorized by chapter 51 and subchapter III of chapter 53 of title 5, as of the same date such rates are authorized for positions subject to such provisions. The Commission shall make adequate provision for administrative review of any determination to dismiss any employee;

(e) Acquisition of material, property, etc.; negotiation of commercial leases

acquire such material, property, equipment, and facilities, establish or construct such buildings and facilities, and modify such buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of section 2224 of this title: *Provided, however*, That in the communities owned by the Commission, the Commission is authorized to grant privileges, leases and permits upon adjusted terms which (at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant) are fair and reasonable to responsible persons to operate commercial businesses without advertising and without advertising[1] and without securing competitive bids, but taking into consideration, in addition to the price, and among other things (1) the quality and type of services required by the residents of the community, (2) the experience of each concession applicant in the community and its surrounding area, (3) the ability of the concession applicant to meet the needs of the community, and (4) the contribution the concession applicant has made or will make to the other activities and general welfare of the community;

(f) Utilization of other Federal agencies

with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable;

(g) Acquisition of real and personal property

acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 2224 of this title, and to sell, lease, grant, and dispose of such real and personal property as provided in this chapter;

(h) Consideration of license applications

consider in a single application one or more of the activities for which a license is required by this chapter, combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission;

(i) Regulations governing Restricted Data

prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this chapter, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 2073 of this title or produced by any person in connection with any activity authorized pursuant to this chapter, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, (3) to govern any activity authorized pursuant to this chapter, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property, and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 2133 or 2134(b) of this title, including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this chapter that has control over any fund for the decommissioning of the facility;

(j) Disposition of surplus materials

without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended,[2] except section 207 of that Act,[2] or any other law, make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission, in the interest of the national security: *Provided, however*, That the property furnished to licensees in accordance with the provisions of subsection (m) of this section shall not be deemed to be property disposed of by the Commission pursuant to this subsection;

(k) Carrying of firearms; authority to make arrests without warrant

authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United

[1] So in original.

[2] See References in Text note below.

States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable ground to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this chapter that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;

(*l*) Repealed. Pub. L. 87–456, title III, § 303(c), May 24, 1962, 76 Stat. 78

(m) Agreements regarding production

enter into agreements with persons licensed under section 2133, 2134, 2073(a)(4), or 2093(a)(4) of this title for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this chapter, as may be necessary for the conduct of the licensed activity: *Provided, however*, That any such agreement may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: *And provided further*, That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission;

(n) Delegation of functions

delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this chapter except those specified in sections 2071, 2077(b), 2091, 2138, 2153, 2165(b) of this title (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 2165(f) of this title and subsection (a) of this section;

(*o*) Reports

require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in section 2051 of this title and of activities under licenses issued pursuant to sections 2073, 2093, 2111, 2133, and 2134 of this title, as may be necessary to effectuate the purposes of this chapter, including section 2135 of this title; and

(p) Rules and regulations

make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this chapter.

(q) Easements for rights-of-way

The Commission is authorized and empowered, under such terms and conditions as are deemed advisable by it, to grant easements for rights-of-way over, across, in, and upon acquired lands under its jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Commission, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for (a) railroad tracks; (b) oil pipe lines; (c) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines; (d) canals; (e) ditches; (f) flumes; (g) tunnels; (h) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements; (i) roads and streets; and (j) for any other purpose or purposes deemed advisable by the Commission: *Provided*, That such rights-of-way shall be granted only upon a finding by the Commission that the same will not be incompatible with the public interest: *Provided further*, That such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted: *And provided further*, That all or any part of such rights-of-way may be annulled and forfeited by the Commission for failure to comply with the terms and conditions of any grant hereunder or for nonuse for a period of two consecutive years or abandonment of rights granted under authority hereof. Copies of all instruments granting easements over public lands pursuant to this section shall be furnished to the Secretary of the Interior.

(r) Sale of utilities and related services

Under such regulations and for such periods and at such prices the Commission may prescribe, the Commission may sell or contract to

sell to purchasers within Commission-owned communities or in the immediate vicinity of the Commission community, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of the national defense or in the public interest:

(1) Electric power.
(2) Steam.
(3) Compressed air.
(4) Water.
(5) Sewage and garbage disposal.
(6) Natural, manufactured, or mixed gas.
(7) Ice.
(8) Mechanical refrigeration.
(9) Telephone service.

Proceeds of sales under this subsection shall be credited to the appropriation currently available for the supply of that utility or service. To meet local needs the Commission may make minor expansions and extensions of any distributing system or facility within or in the immediate vicinity of a Commission-owned community through which a utility or service is furnished under this subsection.

(s) Succession of authority

establish a plan for a succession of authority which will assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. Notwithstanding any other provision of this chapter, the person or persons succeeding to command in the event of disaster in accordance with the plan established pursuant to this subsection shall be vested with all of the authority of the Commission: *Provided*, That any such succession to authority, and vesting of authority shall be effective only in the event and as long as a quorum of three or more members of the Commission is unable to convene and exercise direction during the disaster period: *Provided further*, That the disaster period includes the period when attack on the United States is imminent and the post-attack period necessary to reestablish normal lines of command;

(t) Contracts

enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 2133 or 2134 of this title: *Provided*, That the prices for services under such contracts shall be no less than the prices currently charged by the Commission pursuant to subsection (m) of this section;

(u) Additional contracts; guiding principles; appropriations

(1) enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;

(2)(A) enter into contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial sources; (ii) the furnishing of such supplies, equipment, materials, or services will require the construction or acquisition of special facilities by the vendors or suppliers thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment, materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.

(B) In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and

(3) include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract. Any appropriation available at the time of termination or thereafter made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term ''special facilities'' as used in this subsection means any land and any depreciable buildings, structures, utilities, machinery, equipment, and fixtures necessary for the production or furnishing of such supplies, equipment, materials, or services and not available to the vendors or suppliers for the performance of the contract.

(v) Support of United States Enrichment Corporation

provide services in support of the United States Enrichment Corporation, except that the Secretary of Energy shall annually collect payments and other charges from the Corporation sufficient to ensure recovery of the costs (excluding depreciation and imputed interest on original plant investments in the Department's gaseous diffusion plants and costs

under section 2297c–2(d)[3] of this title) incurred by the Department of Energy after October 24, 1992, in performing such services;

(w) License fees for nuclear power reactors

prescribe and collect from any other Government agency, which applies to the Commission for, or is issued by the Commission, a license or certificate, any fee, charge, or price which it may require, in accordance with the provisions of section 9701 of title 31 or any other law.

(x) Standards and instructions for bonding, surety, or other financial arrangements, including performance bonds

Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 2231 of this title, such standards and instructions as the Commission may deem necessary or desirable to ensure—

(1) that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 2014(e)(2) of this title, by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that—

(A) in the case of any such license issued or renewed after November 8, 1978, the need for long-term maintenance and monitoring of such sites, structures and equipment after termination of such license will be minimized and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on November 8, 1978, or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material as defined in section 2014(e)(2) of this title, will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.

[3] See References in Text note below.

(Aug. 1, 1946, ch. 724, title I, § 161, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 948; amended July 14, 1956, ch. 608, 70 Stat. 553; Aug. 6, 1956, ch. 1015, § 4, 70 Stat. 1069; Pub. L. 85–162, title II, §§ 201, 204, Aug. 21, 1957, 71 Stat. 410; Pub. L. 85–287, § 4, Sept. 4, 1957, 71 Stat. 613; Pub. L. 85–507, § 21(b)(1), July 7, 1958, 72 Stat. 337; Pub. L. 85–681, §§ 6, 7, Aug. 19, 1958, 72 Stat. 633; Pub. L. 86–300, § 1, Sept. 21, 1959, 73 Stat. 574; Pub. L. 87–206, § 13, Sept. 6, 1961, 75 Stat. 478; Pub. L. 87–456, title III, § 303(c), May 24, 1962, 76 Stat. 78; Pub. L. 87–615, § 12, Aug. 29, 1962, 76 Stat. 411; Pub. L. 87–793, § 1001(g), Oct. 11, 1962, 76 Stat. 864; Pub. L. 88–489, § 16, Aug. 26, 1964, 78 Stat. 606; Pub. L. 90–190, § 11, Dec. 14, 1967, 81 Stat. 578; Pub. L. 91–452, title II, § 237, Oct. 15, 1970, 84 Stat. 930; Pub. L. 91–560, §§ 7, 8, Dec. 19, 1970, 84 Stat. 1474; Pub. L. 92–314, title III, § 301, June 16, 1972, 86 Stat. 227; Pub. L. 93–377, § 7, Aug. 17, 1974, 88 Stat. 475; Pub. L. 95–604, title II, § 203, Nov. 8, 1978, 92 Stat. 3036; Pub. L. 97–90, title II, § 211, Dec. 4, 1981, 95 Stat. 1170; Pub. L. 99–661, div. C, title I, § 3134, Nov. 14, 1986, 100 Stat. 4064; Pub. L. 100–449, title III, § 305(b), Sept. 28, 1988, 102 Stat. 1876; Pub. L. 101–575, § 5(b), Nov. 15, 1990, 104 Stat. 2835; renumbered title I and amended Pub. L. 102–486, title IX, § 902(a)(4), (5), (8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109–58, title VI, §§ 623, 626, Aug. 8, 2005, 119 Stat. 783, 784.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (d), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (j), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works. Section 207 of the Act was repealed and reenacted by Pub. L. 107–217 as section 559 of Title 40.

Section 2297c–2 of this title, referred to in subsec. (v), was repealed by Pub. L. 104–134, title III, § 3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349.

CODIFICATION

In subsec. (d), ''chapter 51 and subchapter III of chapter 53 of title 5'' and ''such provisions'' substituted for ''the Classification Act of 1949, as amended'' and ''such Act'', respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (x)(2)(B), ''November 8, 1978'' was in the original ''the date of the enactment of this section'', which has been translated as the date of the enactment of this subsection to reflect the probable intent of Congress.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1812(a) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2005—Subsec. (i)(4). Pub. L. 109–58, § 626, added cl. (4).

Subsec. (w). Pub. L. 109–58, § 623, substituted ''to the Commission for, or is issued by the Commission, a license or certificate'' for ''for or is issued a license for

a utilization facility designed to produce electrical or heat energy pursuant to section 2133 or 2134(b) of this title, or which operates any facility regulated or certified under section 2297f or 2297f–1 of this title'' and ''section 9701'' for ''section 483a'' and struck out '', of applicants for, or holders of, such licenses or certificates'' before period at end.

1992—Subsec. (v). Pub. L. 102–486, § 902(a)(4), amended subsec. (v) generally, substituting provisions relating to duty to provide services in support of United States Energy Enrichment Corporation for provisions relating to duty to enter into contracts for production or enrichment of special nuclear material.

Subsec. (w). Pub. L. 102–486, § 902(a)(5), inserted ''or which operates any facility regulated or certified under section 2297f or 2297f–1 of this title,'' after ''2134(b) of this title,'' and ''or certificates'' after ''holders of, such licenses''.

1990—Subsec. (b). Pub. L. 101–575, which directed amendment of subsec. (b) by striking the period at the end and inserting ''; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;'', was executed by striking the semicolon at end of subsec. (b) and making insertion to reflect probable intent of Congress.

1988—Subsec. (v). Pub. L. 100–449 inserted in closing provisions ''For purposes of this subsection and of section 305 of Public Law 99–591 (100 Stat. 3341–209, 210), 'foreign origin' excludes source or special nuclear material originating in Canada.''

1986—Subsec. (k). Pub. L. 99–661 inserted ''and subcontractors (at any tier)'' after ''employees of its contractors'', substituted ''under the jurisdiction of the United States'' for ''owned by the United States and'', inserted ''or being transported to or from such facilities'' after ''contracted to the United States'', inserted after third sentence ''An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense.'', and inserted before the semicolon at end ''. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection''.

1981—Subsec. (k). Pub. L. 97–90 inserted provision that a person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony, that a person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this chapter that may subject an offender to a fine, imprisonment, or both, and that the arrest authority conferred by this subsection is in addition to any arrest authority under other laws.

1978—Subsec. (x). Pub. L. 95–604 added subsec. (x).

1974—Subsec. (i). Pub. L. 93–377 inserted provision in cl. (2) relating to regulations or orders designating activities, involving quantities of special nuclear material important to the common defense and security, that may be conducted by persons whose character, etc., have been established so that if they are permitted to conduct such activities it would not be inimical to the common defense and security.

1972—Subsec. (w). Pub. L. 92–314 added subsec. (w).

1970—Subsec. (c). Pub. L. 91–452 struck out provisions that no person be excused from complying with any requirements under this paragraph because of his privilege against self-incrimination, but that the immunity provisions of the Compulsory Testimony Act of Feb. 11, 1893, apply with respect to any individual who specifically claims such privilege.

Subsec. (n). Pub. L. 91–560, § 7, struck out references to section 2132 of this title and the finding of practical value.

Subsec. (v). Pub. L. 91–560, § 8, substituted provisions for the establishment of prices on a basis of recovery of the Government's costs over a reasonable period of time for provisions for the establishment of prices on a basis which will provide reasonable compensation to the Government.

1967—Subsec. (n). Pub. L. 90–190 substituted ''2077(b)'' for ''2077(a)(3)''.

1964—Subsec. (v). Pub. L. 88–489 added subsec. (v).

1962—Subsec. (d). Pub. L. 87–793 substituted ''up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended'' for ''up to a limit of $19,000''.

Subsec. (*l*). Pub. L. 87–456 repealed subsec. (*l*) which authorized the admittance free of duty into the United States of purchases made abroad of source materials.

Subsec. (n). Pub. L. 87–615 substituted ''2165(f) of this title'' for ''2165(e) of this title''.

1961—Subsecs. (s) to (v). Pub. L. 87–206 redesignated subsecs. (t) to (v) as (s) to (u), respectively.

1959—Subsec. (m). Pub. L. 86–300 inserted references to sections 2073(a)(4) and 2093(a)(4) of this title.

1958—Subsec. (d). Pub. L. 85–681, § 6, authorized the Commission to adopt compensation rates on a retroactive basis as may be authorized by the Classification Act for other Government employees.

Subsecs. (n) to (s). Pub. L. 85–507 redesignated subsecs. (*o*) to (s) as (n) to (r), respectively. Former subsec. (n), which authorized the Commission to assign employees for instruction, education, or training by public or private agencies, institutions of learning, laboratories, or industrial or commercial organizations, was repealed by Pub. L. 85–507, see section 4101 et seq. of Title 5, Government Organizations and Employees.

Subsecs. (t) to (v). Pub. L. 85–681, § 7, added subsecs. (t) to (v).

1957—Subsec. (d). Pub. L. 85–287 inserted ''up to a limit of $19,000'' after ''scientific and technical personnel''.

Subsec. (e). Pub. L. 85–162, § 201, inserted ''(at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant)'' after ''adjusted terms which''.

Subsec. (s). Pub. L. 85–162, § 204, added subsec. (s).

1956—Subsec. (e). Act July 14, 1956, inserted proviso relating to negotiation of commercial leases without advertising by the Commission.

Subsec. (r). Act Aug. 6, 1956, added subsec. (r).

Effective and Termination Dates of 1988 Amendment

Amendment by Pub. L. 100–449 effective on the date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on the date the Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–793 effective on first day of first pay period which begins on or after Oct. 11, 1962, see section 1008 of Pub. L. 87–793.

Repeal of subsec. (*l*) effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–507, see section 21(a) of Pub. L. 85–507.

REFERENCES TO UNITED STATES ENRICHMENT CORPORATION

References to the United States Enrichment Corporation deemed, as of the privatization date (July 28, 1998), to be references to the private corporation, see section 3116(e) of Pub. L. 104–134, set out as a note under former section 2297 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

ORGANIZATIONAL CONFLICTS OF INTEREST

Pub. L. 95–209, § 7, Dec. 13, 1977, 91 Stat. 1483, provided that: ''The Commission shall by December 31, 1977, promulgate guidelines to be applied by the Commission in determining whether an organization proposing to enter into a contractual arrangement with the Commission has a conflict of interest which might impair the contractor's judgment or otherwise give the contractor an unfair competitive advantage.''

APPLICABILITY TO FUNCTIONS TRANSFERRED BY DEPARTMENT OF ENERGY ORGANIZATION ACT

Pub. L. 95–91, title VII, § 709(c)(2), Aug. 4, 1977, 91 Stat. 608, provided that: ''Section 161(d) of the Atomic Energy Act of 1954 [subsec. (d) of this section] shall not apply to functions transferred by this Act [see Short Title note set out under section 7101 of this title].''

TERMINATION OF ADVISORY BOARDS

Advisory boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Members of the Nuclear Regulatory Commission, see Parts 1, 2, and 21 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

PRINCIPAL OFFICE BUILDING FOR ATOMIC ENERGY COMMISSION

Act May 6, 1955, ch. 34, 69 Stat. 47, as amended by Pub. L. 85–107, July 17, 1957, 71 Stat. 307, authorized Atomic Energy Commission to acquire a suitable site in or near District of Columbia and, notwithstanding any other provision of law, to provide for construction on such site, in accordance with plans and specifications prepared by or under direction of Commission, of a modern office building to serve as principal office of Commission at a total cost of not to exceed $13,300,000 and authorized to be appropriated such sums as were necessary.

REPORT WITH RESPECT TO RENEGOTIATIONS, REAPPRAISALS, AND SALES PROCEEDINGS

Section 203 of Pub. L. 85–162 directed Atomic Energy Commission, Federal Housing Administration, and Housing and Home Finance Agency to report to Joint Committee by Jan. 31, 1958, with respect to renegotiations, reappraisals, and sales proceedings authorized under sections 201 and 202 of Pub. L. 85–162 [amending subsec. (e) of this section and enacting section 2325(c) of this title].

§ 2201a. Use of firearms by security personnel

(a) Definitions

In this section, the terms ''handgun'', ''rifle'', ''shotgun'', ''firearm'', ''ammunition'', ''machinegun'', ''short-barreled shotgun'', and ''short-barreled rifle'' have the meanings given the terms in section 921(a) of title 18.

(b) Authorization

Notwithstanding subsections (a)(4), (a)(5), (b)(2), (b)(4), and (*o*) of section 922 of title 18, section 925(d)(3) of title 18, section 5844 of title 26, and any law (including regulations) of a State or a political subdivision of a State that prohibits the transfer, receipt, possession, transportation, importation, or use of a handgun, a rifle, a shotgun, a short-barreled shotgun, a short-barreled rifle, a machinegun, a semiautomatic assault weapon, ammunition for any such gun or weapon, or a large capacity ammunition feeding device, in carrying out the duties of the Commission, the Commission may authorize the security personnel of any licensee or certificate holder of the Commission (including an employee of a contractor of such a licensee or certificate holder) to transfer, receive, possess, transport, import, and use 1 or more such guns, weapons, ammunition, or devices, if the Commission determines that—

(1) the authorization is necessary to the discharge of the official duties of the security personnel; and

(2) the security personnel—

(A) are not otherwise prohibited from possessing or receiving a firearm under Federal or State laws relating to possession of firearms by a certain category of persons;

(B) have successfully completed any requirement under this section for training in the use of firearms and tactical maneuvers;

(C) are engaged in the protection of—

(i) a facility owned or operated by a licensee or certificate holder of the Commission that is designated by the Commission; or

(ii) radioactive material or other property owned or possessed by a licensee or certificate holder of the Commission, or

that is being transported to or from a facility owned or operated by such a licensee or certificate holder, and that has been determined by the Commission to be of significance to the common defense and security or public health and safety; and

(D) are discharging the official duties of the security personnel in transferring, receiving, possessing, transporting, or importing the weapons, ammunition, or devices.

(c) Background checks

A person that receives, possesses, transports, imports, or uses a weapon, ammunition, or a device under subsection (b) of this section shall be subject to a background check by the Attorney General, based on fingerprints and including a background check under section 103(b) of the Brady Handgun Violence Prevention Act (Public Law 103–159; 18 U.S.C. 922 note) to determine whether the person is prohibited from possessing or receiving a firearm under Federal or State law.

(d) Effective date

This section takes effect on the date on which guidelines are issued by the Commission, with the approval of the Attorney General, to carry out this section.

(Aug. 1, 1946, ch. 724, title I, § 161A, as added Pub. L. 109–58, title VI, § 653, Aug. 8, 2005, 119 Stat. 811.)

§ 2202. Contracts

The President may, in advance, exempt any specific action of the Commission in a particular matter from the provisions of law relating to contracts whenever he determines that such action is essential in the interest of the common defense and security.

(Aug. 1, 1946, ch. 724, title I, § 162, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 951; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1812(b) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2203. Advisory committees

The members of the General Advisory Committee established pursuant to section 2036[1] of this title and the members of advisory boards established pursuant to section 2201(a) of this title may serve as such without regard to the provisions of sections 281, 283, or 284[1] of title 18, except insofar as such sections may prohibit any such member from receiving compensation from a source other than a nonprofit educational institution in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested.

(Aug. 1, 1946, ch. 724, title I, § 163, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 951; amended Pub. L. 86–300, § 2, Sept. 21, 1959, 73 Stat. 574; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 2036 of this title, referred to in text, was repealed by Pub. L. 95–91, title VII, § 709(c)(1), Aug. 4, 1977, 91 Stat. 608.

Sections 281, 283, and 284 of title 18, referred to in text, were repealed by Pub. L. 87–849, § 2, Oct. 23, 1962, 76 Stat. 1126, except as sections 281 and 283 apply to retired officers of the Armed Forces of the United States, and were supplanted by sections 203, 205, and 207, respectively, of Title 18, Crimes and Criminal Procedures. For further details, see ''Exemptions'' note set out under section 203 of Title 18.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1812(c) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1959—Pub. L. 86–300 inserted ''from a source other than a nonprofit educational institution'' after ''compensation''.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. General Advisory Committee transferred to Energy Research and Development Administration and functions of Commission with respect thereto transferred to Administrator by section 5814(d) of this title. See, also, notes set out under sections 5814 and 5841 of this title. General Advisory Committee abolished by Pub. L. 95–91, title VII, § 709(c)(1), Aug. 4, 1977, 91 Stat. 608. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

TERMINATION OF ADVISORY BOARDS AND COMMITTEES

Advisory boards and committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a board or committee established by the President or an officer of the federal government, such board or committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board or committee established by the Congress, its duration is otherwise provided by law. Advisory boards and committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board or committee established by the President or an officer of the federal government, such board or committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board or committee established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2204. Electric utility contracts; authority to enter into; cancellation; submission to Energy Committees

The Commission is authorized in connection with the construction or operation of the Oak Ridge, Paducah, and Portsmouth installations of the Commission, without regard to sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of title 31, to enter into new contracts or modify or confirm existing contracts to provide for electric utility services for periods not exceeding twenty-five years, and such contracts shall be subject to termination by the Commis-

sion upon payment of cancellation costs as provided in such contracts, and any appropriation presently or hereafter made available to the Commission shall be available for the payment of such cancellation costs. Any such cancellation payments shall be taken into consideration in determination of the rate to be charged in the event the Commission or any other agency of the Federal Government shall purchase electric utility services from the contractor subsequent to the cancellation and during the life of the original contract. The authority of the Commission under this section to enter into new contracts or modify or confirm existing contracts to provide for electric utility services includes, in case such electric utility services are to be furnished to the Commission by the Tennessee Valley Authority, authority to contract with any person to furnish electric utility services to the Tennessee Valley Authority in replacement thereof. Any contract hereafter entered into by the Commission pursuant to this section shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of adjournment for more than three days) before the contract of the Commission shall become effective: *Provided*, *however*, That the Energy Committees, after having received the proposed contract, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.

(Aug. 1, 1946, ch. 724, title I, § 164, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 951; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103–437, § 15(f)(7), Nov. 2, 1994, 108 Stat. 4593.)

CODIFICATION

''Sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of title 31'' substituted in text for ''section 3679 of the Revised Statutes, as amended [31 U.S.C. 665]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Energy Committees'' for ''Joint Committee'' in two places.

§ 2204a. Fission product contracts

(a) Authority to enter into contracts

Without regard to sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of title 31, the Commission is authorized to enter into contracts for such periods of time as the Commission may deem necessary or desirable, for the purpose of making available fission products from Commission reactors, with or without charge for commercial application.

(b) Cancellation

Any contract entered into by the Commission pursuant to this section shall be subject to termination by the Commission upon payment of cancellation costs as provided in such contract, and any appropriation presently or hereafter made available to the Commission shall be available for payment of such costs which may arise from termination as the contract may provide.

(c) Submission to Energy Committees

Before the Commission enters into any arrangement or amendment thereto under the authority of this section, the basis for the proposed arrangement or amendment thereto which the Commission proposes to execute (with necessary background and explanatory data) shall be submitted to the Energy Committees (as defined by section 2014 of this title), and a period of forty-five days shall elapse while Congress is in session in computing such forty-five days, there shall be excluded the days on which either House is not in session because of adjournment of more than three days: *Provided*, *however*, That the Energy Committees, after having received the basis for the proposed arrangement or amendment thereto, may by resolution in writing waive the conditions of, or all or any portion of, such forty-five-day period.

(Pub. L. 88–332, § 107, June 30, 1964, 78 Stat. 230; Pub. L. 103–437, § 15(h), Nov. 2, 1994, 108 Stat. 4593.)

REFERENCES IN TEXT

Commission, referred to in text, probably means the Atomic Energy Commission in view of the fact that this section was enacted as part of the act authorizing appropriations for the Atomic Energy Commission.

CODIFICATION

In subsec. (a), ''sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of title 31'' substituted for ''section 3679 of the Revised Statutes, as amended [31 U.S.C. 665]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was not enacted as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–437 substituted ''Energy Committees (as defined by section 2014 of this title)'' for ''Joint Committee'' after ''submitted to the'' and ''Energy Committees'' for ''Joint Committee'' after ''That the''.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See, also, notes set out under those sections.

§ 2205. Contract practices

(a) In carrying out the purposes of this chapter the Commission shall not use the cost-plus-percentage-of-cost system of contracting.

(b) No contract entered into under the authority of this chapter shall provide, and no contract entered into under the authority of the Atomic Energy Act of 1946, as amended, shall be modified or amended after August 30, 1954, to provide, for direct payment or direct reimbursement by the Commission of any Federal income taxes on behalf of any contractor performing such contract for profit.

(Aug. 1, 1946, ch. 724, title I, § 165, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 951; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

Atomic Energy Act of 1946, as amended, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, 60 Stat. 755,

which was classified generally to chapter 14 (§ 1801 et seq.) of this title prior to the general amendment by act Aug. 30, 1954, ch. 1073, 68 Stat. 921. The act of Aug. 1, 1946, ch. 724, is now known as the Atomic Energy Act of 1954, and is classified principally to this chapter (§ 2011 et seq.). For complete classification of the Atomic Energy Act of 1954 to the Code, see Short Title note set out under section 2011 of this title and Tables.

§ 2205a. Repealed. Pub. L. 97–375, title I, § 115, Dec. 21, 1982, 96 Stat. 1821

Section, Pub. L. 95–601, § 11, Nov. 6, 1978, 92 Stat. 2953, directed Commission to report to Congress on Jan. 1, 1979, and annually thereafter on use of contractors, consultants, and National Laboratories by Commission, and that such report include, for each contract issued, in progress or completed during fiscal year 1978, information on bidding procedure, nature of work, amount and duration of contract, progress of work, relation to previous contracts, and relation between amount of contract and amount actually spent.

§ 2206. Comptroller General audit

No moneys appropriated for the purposes of this chapter shall be available for payments under any contract with the Commission, negotiated without advertising, except contracts with any foreign government or any agency thereof and contracts with foreign producers, unless such contract includes a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to such contracts or subcontracts: *Provided, however*, That no moneys so appropriated shall be available for payment under such contract which includes any provision precluding an audit by the Government Accountability Office of any transaction under such contract: *And provided further*, That nothing in this section shall preclude the earlier disposal of contractor and subcontractor records in accordance with records disposal schedules agreed upon between the Commission and the Government Accountability Office.

(Aug. 1, 1946, ch. 724, title I, § 166, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 951; amended Pub. L. 85–681, § 8, Aug. 19, 1958, 72 Stat. 634; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office" in two places.

1958—Pub. L. 85–681 inserted proviso relating to records disposal.

§ 2207. Claim settlements; reports to Congress

The Commission, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, settle, and pay, any claim for money damage of $5,000 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from any detonation, explosion, or radiation produced in the conduct of any program undertaken by the Commission involving the detonation of an explosive device, where such claim is presented to the Commission in writing within one year after the accident or incident out of which the claim arises: *Provided, however*, That the damage to or loss of property, or bodily injury or death, shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agents, or employees. Any such settlement under the authority of this section shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary. If the Commission considers that a claim in excess of $5,000 is meritorious and would otherwise be covered by this section, the Commission may report the facts and circumstances thereof to the Congress for its consideration.

(Aug. 1, 1946, ch. 724, title I, § 167, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 952; amended Pub. L. 87–206, § 14, Sept. 6, 1961, 75 Stat. 478; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1961—Pub. L. 87–206 substituted "any program undertaken by the Commission involving the detonation of an explosive device" for "the Commission's program for testing atomic weapons" and authorized the Commission to report meritorious claims in excess of $5,000 to the Congress.

§ 2208. Payments in lieu of taxes

In order to render financial assistance to those States and localities in which the activities of the Commission are carried on, and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment.

(Aug. 1, 1946, ch. 724, title I, § 168, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 952; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1809(b) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2209. Subsidies

No funds of the Commission shall be employed in the construction or operation of facilities licensed under section 2133 or 2134 of this title except under contract or other arrangement entered into pursuant to section 2051 of this title.

(Aug. 1, 1946, ch. 724, title I, § 169, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 952; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2210. Indemnification and limitation of liability

(a) Requirement of financial protection for licensees

Each license issued under section 2133 or 2134 of this title and each construction permit issued under section 2235 of this title shall, and each license issued under section 2073, 2093, or 2111 of this title may, for the public purposes cited in section 2012(i) of this title, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Nuclear Regulatory Commission (in this section referred to as the ''Commission'') in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection (b) of this section to cover public liability claims. Whenever such financial protection is required, it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection (c) of this section. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

(b) Amount and type of financial protection for licensees

(1) The amount of primary financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (A) the cost and terms of private insurance, (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (C) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection). Such primary financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided*, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such primary financial protection: *And provided further*, That the maximum amount of the standard deferred premium that may be charged a licensee following any nuclear incident under such a plan shall not be more than $95,800,000 (subject to adjustment for inflation under subsection (t) of this section), but not more than $15,000,000 in any 1 year (subject to adjustment for inflation under subsection (t) of this section), for each facility for which such licensee is required to maintain the maximum amount of primary financial protection: *And provided further*, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection (*o*)(1)(D) of this section, payment of which has not been authorized under such subsection) arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this chapter shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission.

(2)(A) The Commission may, on a case by case basis, assess annual deferred premium amounts less than the standard annual deferred premium amount assessed under paragraph (1)—

(i) for any facility, if more than one nuclear incident occurs in any one calendar year; or

(ii) for any licensee licensed to operate more than one facility, if the Commission determines that the financial impact of assessing the standard annual deferred premium amount under paragraph (1) would result in undue financial hardship to such licensee or the ratepayers of such licensee.

(B) In the event that the Commission assesses a lesser annual deferred premium amount under subparagraph (A), the Commission shall require payment of the difference between the standard annual deferred premium assessment under paragraph (1) and any such lesser annual deferred premium assessment within a reasonable period of time, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the standard annual deferred premium assessment under paragraph (1) would become due.

(3) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the

payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

(4)(A) In the event that the funds available to pay valid claims in any year are insufficient as a result of the limitation on the amount of deferred premiums that may be required of a licensee in any year under paragraph (1) or (2), or the Commission is required to make reinsurance or guaranteed payments under paragraph (3), the Commission shall, in order to advance the necessary funds—

(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

(B) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), any funds appropriated under subparagraph (A)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by standard deferred premium assessments, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated under such subparagraph are made available.

(C) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by standard deferred premium assessments. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

(B) A combination of facilities referred to in subparagraph (A) is two or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.

(c) Indemnification of licensees by Nuclear Regulatory Commission

The Commission shall, with respect to licenses issued between August 30, 1954, and December 31, 2025, for which it requires financial protection of less than $560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 excluding costs of investigating and settling claims and defending suits for damage: *Provided, however*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and December 31, 2025, the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, 2025.

(d) Indemnification of contractors by Department of Energy

(1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the ''Secretary'') may have, the Secretary shall, until December 31, 2025, enter into agreements of indemnification under this subsection with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability and that are not subject to financial protection requirements under subsection (b) of this section or agreements of indemnification under subsection (c) or (k) of this section.

(B)(i)(I) Beginning 60 days after August 20, 1988, agreements of indemnification under subparagraph (A) shall be the exclusive means of indemnification for public liability arising from activities described in such subparagraph, including activities conducted under a contract that contains an indemnification clause under Public Law 85–804 [50 U.S.C. 1431 et seq.] entered into between August 1, 1987, and August 20, 1988.

(II) The Secretary may incorporate in agreements of indemnification under subparagraph (A) the provisions relating to the waiver of any issue or defense as to charitable or governmental immunity authorized in subsection (n)(1)

of this section to be incorporated in agreements of indemnification. Any such provisions incorporated under this subclause shall apply to any nuclear incident arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A).

(ii) Public liability arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A) that are funded by the Nuclear Waste Fund established in section 10222 of this title shall be compensated from the Nuclear Waste Fund in an amount not to exceed the maximum amount of financial protection required of licensees under subsection (b) of this section.

(2) In an agreement of indemnification entered into under paragraph (1), the Secretary—

(A) may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection (t) of this section), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on August 8, 2005, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.

(4) Financial protection under paragraph (2) and indemnification under paragraph (1) shall be the exclusive means of financial protection and indemnification under this section for any Department of Energy demonstration reactor licensed by the Commission under section 5842 of this title.

(5) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed $500,000,000.

(6) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

(7) A contractor with whom an agreement of indemnification has been executed under paragraph (1)(A) and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this subsection, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

(e) Limitation on aggregate public liability

(1) The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection (*o*)(1)(D) of this section, shall not exceed—

(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the maximum amount of financial protection required of such facilities under subsection (b) of this section (plus any surcharge assessed under subsection (*o*)(1)(E) of this section);

(B) in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection (d) of this section, the amount of indemnity and financial protection that may be required under paragraph (2) of subsection (d) of this section; and

(C) in the case of all other licensees of the Commission required to maintain financial protection under this section—

(i) $500,000,000, together with the amount of financial protection required of the licensee; or

(ii) if the amount of financial protection required of the licensee exceeds $60,000,000, $560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

(2) In the event of a nuclear incident involving damages in excess of the amount of aggregate public liability under paragraph (1), the Congress will thoroughly review the particular incident in accordance with the procedures set forth in subsection (i) of this section and will in accordance with such procedures, take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to subsection (b) of this section, to fund any action undertaken pursuant to paragraph (2).

(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection (d) of this section is applicable, such aggregate public liability shall not exceed the amount of $500,000,000, together with the amount of financial protection required of the contractor.

(f) Collection of fees by Nuclear Regulatory Commission

The Commission or the Secretary, as appropriate, is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 2133 of this title: *Provided*, That the Commission or the Secretary, as appropriate, is authorized to reduce the fee for such facilities in

reasonable relation to increases in financial protection required above a level of $60,000,000. For facilities licensed under section 2134 of this title, and for construction permits under section 2235 of this title, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 2134 of this title, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.

(g) Use of services of private insurers

In administering the provisions of this section, the Commission or the Secretary, as appropriate, shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission or the Secretary, as appropriate, may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 5 of title 41 upon a showing by the Commission or the Secretary, as appropriate, that advertising is not reasonably practicable and advance payments may be made.

(h) Conditions of agreements of indemnification

The agreement of indemnification may contain such terms as the Commission or the Secretary, as appropriate, deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission or the Secretary, as appropriate, makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission or the Secretary, as appropriate, shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission or the Secretary, as appropriate, shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this chapter. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.

(i) Compensation plans

(1) After any nuclear incident involving damages that are likely to exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section, the Secretary or the Commisison,[1] as appropriate, shall—

(A) make a survey of the causes and extent of damage; and

(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

(2) Not later than 90 days after any determination by a court, pursuant to subsection (*o*) of this section, that the public liability from a single nuclear incident may exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section the President shall submit to the Congress—

(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of aggregate public liability under subsection (e)(1) of this section;

(B) recommendations for additional sources of funds to pay claims exceeding the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section, which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied);

(C) 1 or more compensation plans, that either individually or collectively shall provide for full and prompt compensation for all valid claims and contain a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the payment of claims that may arise as a result of latent injuries that may not be discovered until a later date; and

(D) any additional legislative authorities necessary to implement such compensation plan or plans.

(3)(A) Any compensation plan transmitted to the Congress pursuant to paragraph (2) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(B) The provisions of paragraphs (4) through (6) shall apply with respect to consideration in the Senate of any compensation plan transmitted to the Senate pursuant to paragraph (2).

(4) No such compensation plan may be considered approved for purposes of subsection (e)(2) of this section unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to the Senate, the Senate passes a resolution described in paragraph 6[2] of this subsection.

(5) For the purpose of paragraph (4) of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day calendar period.

(6)(A) This paragraph is enacted—

[1] So in original. Probably should be ''Commission,''.

[2] So in original. Probably should be paragraph ''(6)''.

(i) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by subparagraph (B) and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of the Senate to change the rules at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(B) For purposes of this paragraph, the term ''resolution'' means only a joint resolution of the Congress the matter after the resolving clause of which is as follows: ''That the approves the compensation plan numbered submitted to the Congress on , 19 .'', the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one compensation plan.

(C) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate.

(D)(i) If the committee of the Senate to which a resolution with respect to a compensation plan has been referred has not reported it at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

(ii) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(iii) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

(E)(i) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(ii) Debate on the resolution referred to in clause (i) of this subparagraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(F)(i) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

(ii) Appeals from the decision of the Chair relating to the application of the rules of the Senate to the procedures relating to a resolution shall be decided without debate.

(j) Contracts in advance of appropriations

In administering the provisions of this section, the Commission or the Secretary, as appropriate, may make contracts in advance of appropriations and incur obligations without regard to sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31.

(k) Exemption from financial protection requirement for nonprofit educational institutions

With respect to any license issued pursuant to section 2073, 2093, 2111, 2134(a), or 2134(c) of this title, for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection (a) of this section. With respect to licenses issued between August 30, 1954, and December 31, 2025, for which the Commission grants such exemption:

(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including such legal costs of the licensee as are approved by the Commission;

(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and December 31, 2025, the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, 2025.

(*l*) Presidential commission on catastrophic nuclear accidents

(1) Not later than 90 days after August 20, 1988, the President shall establish a commission (in this subsection referred to as the ''study commission'') in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection (e)(1) of this section.

(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who—

(i) shall be appointed by the President; and

(ii) shall be representative of a broad range of views and interests.

(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

(E) The President shall designate one of the members of the study commission as chairperson, to serve at the pleasure of the President.

(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection (e)(1) of this section, and shall submit to the Congress a final report setting forth—

(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5.

(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

(C) The Attorney General, the Secretary of Health and Human Services, and the Administrator of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

(E) Each member of the study commission may receive compensation at the maximum rate prescribed by the Federal Advisory Committee Act (5 U.S.C. App.) for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5.

(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on August 20, 1988.

(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.

(m) Coordinated procedures for prompt settlement of claims and emergency assistance

The Commission or the Secretary, as appropriate, is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission or the Secretary, as appropriate, and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission or the Secretary, as appropriate, shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

(n) Waiver of defenses and judicial procedures

(1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

(A) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility,

(B) arises out of or results from or occurs in the course of transportation of source mate-

rial, byproduct material, or special nuclear material to or from a production or utilization facility,

(C) during the course of the contract activity arises out of or results from the possession, operation, or use by a Department of Energy contractor or subcontractor of a device utilizing special nuclear material or byproduct material,

(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 2073, 2093, or 2111 of this title, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection (a) of this section,

(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 2073, 2093, or 2111 of this title, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection (a) of this section, or

(F) arises out of, results from, or occurs in the course of nuclear waste activities.[3]

the Commission or the Secretary, as appropriate, may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforcible in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection (e) of this section.

(2) With respect to any public liability action arising out of or resulting from a nuclear incident, the United States district court in the district where the nuclear incident takes place, or in the case of a nuclear incident taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission or the Secretary, as appropriate, any such action pending in any State court (including any such action pending on August 20, 1988) or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28 or within the 30-day period beginning on August 20, 1988, whichever occurs later.

(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the ''management panel'') to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

(i) a court, acting pursuant to subsection (*o*) of this section, determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection (b) of this section (or an equivalent amount in the case of a contractor indemnified under subsection (d) of this section); or

(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

(C) It shall be the function of each management panel—

(i) to consolidate related or similar claims for hearing or trial;

(ii) to establish priorities for the handling of different classes of cases;

(iii) to assign cases to a particular judge or special master;

(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil

[3] So in original. The period probably should be a comma.

Procedure, to expedite cases or allow more equitable consideration of claims;

(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.

(*o*) Plan for distribution of funds

(1) Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under the applicable limit of liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section:

(A) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(B) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (C); and

(C) The Commission or the Secretary, as appropriate, shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission or the Secretary as appropriate, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States.

(D) A court may authorize payment of only such legal costs as are permitted under paragraph (2) from the amount of financial protection required by subsection (b) of this section.

(E) If the sum of public liability claims and legal costs authorized under paragraph (2) arising from any nuclear incident exceeds the maximum amount of financial protection required under subsection (b) of this section, any licensee required to pay a standard deferred premium under subsection (b)(1) of this section shall, in addition to such deferred premium, be charged such an amount as is necessary to pay a pro rata share of such claims and costs, but in no case more than 5 percent of the maximum amount of such standard deferred premium described in such subsection.

(2) A court may authorize the payment of legal costs under paragraph (1)(D) only if the person requesting such payment has—

(A) submitted to the court the amount of such payment requested; and

(B) demonstrated to the court—

(i) that such costs are reasonable and equitable; and

(ii) that such person has—

(I) litigated in good faith;

(II) avoided unnecessary duplication of effort with that of other parties similarly situated;

(III) not made frivolous claims or defenses; and

(IV) not attempted to unreasonably delay the prompt settlement or adjudication of such claims.

(p) Reports to Congress

The Commission and the Secretary shall submit to the Congress by December 31, 2021, detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

(q) Limitation on awarding of precautionary evacuation costs

No court may award costs of a precautionary evacuation unless such costs constitute a public liability.

(r) Limitation on liability of lessors

No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.

(s) Limitation on punitive damages

No court may award punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.

(t) Inflation adjustment

(1) The Commission shall adjust the amount of the maximum total and annual standard deferred premium under subsection (b)(1) of this section not less than once during each 5-year period following August 20, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) August 20, 2003, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection (d) of this section not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) that date, in the case of the first adjustment under this paragraph; or

(B) the previous adjustment under this paragraph.

(3) For purposes of this subsection, the term ''Consumer Price Index'' means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

(Aug. 1, 1946, ch. 724, title I, § 170, as added Pub. L. 85–256, § 4, Sept. 2, 1957, 71 Stat. 576; amended Pub. L. 85–602, §§ 2, 2[3], Aug. 8, 1958, 72 Stat. 525; Pub. L. 85–744, Aug. 23, 1958, 72 Stat. 837; Pub. L. 87–206, § 15, Sept. 6, 1961, 75 Stat. 479; Pub. L. 87–615, §§ 6, 7, Aug. 29, 1962, 76 Stat. 410; Pub. L. 88–394, §§ 2, 3, Aug. 1, 1964, 78 Stat. 376; Pub. L. 89–210, §§ 1–5, Sept. 29, 1965, 79 Stat. 855–857; Pub. L. 89–645, §§ 2, 3, Oct. 13, 1966, 80 Stat. 891; Pub. L. 94–197, §§ 2–14, Dec. 31, 1975, 89 Stat. 1111–1115; Pub. L. 100–408, §§ 2–4(a), 5(c)–11(a), (c), (d)(1), 12–15, 16(a)(2), (b)(3)–(c), (d)(4)–(e), Aug. 20, 1988, 102 Stat. 1066–1068, 1070–1080; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 105–362, title XII, § 1201(b), Nov. 10, 1998, 112 Stat. 3292; Pub. L. 107–314, div. C, title XXXI, § 3171, Dec. 2, 2002, 116 Stat. 2743; Pub. L. 108–7, div. O, § 101, Feb. 20, 2003, 117 Stat. 551; Pub. L. 108–375, div. C, title XXXI, § 3141, Oct. 28, 2004, 118 Stat. 2171; Pub. L. 109–58, title VI, §§ 602–608, Aug. 8, 2005, 119 Stat. 779–781; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

Public Law 85–804, referred to in subsec. (d)(1)(B)(i)(I), is Pub. L. 85–804, Aug. 28, 1958, 72 Stat. 972, as amended, which is classified generally to chapter 29 (§ 1431 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

The Federal Advisory Committee Act, referred to in subsec. (*l*)(1), (4)(A), (E), (F), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Federal Rules of Civil Procedure, referred to in subsec. (n)(3)(C)(v), (vi), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–58, § 603(1), substituted ''$95,800,000'' for ''$63,000,000'' and ''$15,000,000 in any 1 year (subject to adjustment for inflation under subsection (t) of this section)'' for ''$10,000,000 in any 1 year'' in second proviso of third sentence.

Subsec. (b)(5). Pub. L. 109–58, § 608, added par. (5).

Subsec. (c). Pub. L. 109–58, § 602(a), substituted ''licensees'' for ''licenses'' in heading and substituted ''December 31, 2025'' for ''December 31, 2003'' in text wherever appearing.

Subsec. (d)(1)(A). Pub. L. 109–58, § 602(b), substituted ''December 31, 2025'' for ''December 31, 2006''.

Subsec. (d)(2). Pub. L. 109–58, § 604(a), added par. (2) and struck out former par. (2) which read as follows: ''In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the aggregate public liability of the persons indemnified for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.''

Subsec. (d)(3). Pub. L. 109–58, § 604(b), added par. (3) and struck out former par. (3) which read as follows:

''(3)(A) Notwithstanding paragraph (2), if the maximum amount of financial protection required of licensees under subsection (b) of this section is increased by the Commission, the amount of indemnity, together with any financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection (b) of this section.

''(B) The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

''(C) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person, shall be deemed to be amended, on August 20, 1988, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on August 20, 1988.''

Subsec. (d)(5). Pub. L. 109–58, § 605(a), substituted ''$500,000,000'' for ''$100,000,000''.

Subsec. (e)(1)(B). Pub. L. 109–58, § 604(c), struck out ''the maximum amount of financial protection required under subsection (b) of this section or'' before ''the amount of indemnity'' and substituted ''paragraph (2) of subsection (d) of this section'' for ''paragraph (3) of subsection (d) of this section, whichever amount is more''.

Subsec. (e)(4). Pub. L. 109–58, § 605(b), substituted ''$500,000,000'' for ''$100,000,000''.

Subsec. (k). Pub. L. 109–58, § 602(c), substituted ''December 31, 2025'' for ''August 1, 2002'' wherever appearing.

Subsec. (p). Pub. L. 109–58, § 606, substituted ''December 31, 2021'' for ''August 1, 1998''.

Subsec. (t)(1). Pub. L. 109–58, § 603(2), inserted ''total and annual'' before ''standard deferred premium'' in introductory provisions and substituted ''August 20, 2003'' for ''August 20, 1988'' in introductory provisions and subpar. (A).

Subsec. (t)(2), (3). Pub. L. 109–58, § 607, added par. (2) and redesignated former par. (2) as (3).

2004—Subsec. (d)(1)(A). Pub. L. 108–375 substituted ''until December 31, 2006'' for ''until December 31, 2004''.

2003—Subsec. (c). Pub. L. 108–7 substituted ''December 31, 2003'' for ''August 1, 2002'' wherever appearing.

2002—Subsec. (d)(1)(A). Pub. L. 107–314 substituted ''until December 31, 2004,'' for ''until August 1, 2002,''.

1998—Subsec. (p). Pub. L. 105–362 struck out par. (1) designation and struck out par. (2) which read as follows: ''Not later than April 1 of each year, the Commission and the Secretary shall each submit an annual report to the Congress setting forth the activities under this section during the preceding calendar year.''

1988—Subsec. (a). Pub. L. 100–408, § 16(e)(1), inserted ''Requirement of financial protection for licensees'' as heading.

Pub. L. 100–408, § 16(d)(4), substituted ''section 2i.'' for ''subsection 2i. of the Atomic Energy Act of 1954, as amended'', ''subsection b.'' for ''subsection 170b.'', and ''subsection c.'' for ''subsection 170c.'', which for purposes of codification were translated as ''section 2012(i) of this title'', ''subsection (b) of this section'', and ''subsection (c) of this section'', respectively, thus requiring no change in text.

Pub. L. 100–408, § 16(a)(2), substituted ''the Nuclear Regulatory Commission (in this section referred to as the 'Commission') in the exercise'' for ''the Commission in the exercise''.

Subsec. (b). Pub. L. 100–408, § 16(e)(2), inserted ''Amount and type of financial protection for licensees'' as heading.

Subsec. (b)(1). Pub. L. 100–408, § 2(a)–(c)(3), inserted par. (1) designation, inserted ''primary'' after ''The amount of'', ''the amount of'', ''Such'', and ''of such'', redesignated cls. (1) to (3) as (A) to (C), inserted ''(excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection)'', substituted ''The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection,'' for ''In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from December 31, 1975, include, in determining such maximum amount'', substituted ''That the maximum amount of the standard deferred premium that may be charged a licensee following any nuclear incident under such a plan shall not be more than $63,000,000 (subject to adjustment for inflation under subsection (t) of this section), but not more than $10,000,000 in any 1 year, for each facility for which such licensee is required to maintain the maximum amount of primary financial protection'' for ''That the standard deferred premium which may be charged following any nuclear incident under such a plan shall be not less than $2,000,000 nor more than $5,000,000 for each facility required to maintain the maximum amount of financial protection'', inserted ''(excluding legal costs subject to subsection (*o*)(1)(D) of this section, payment of which has not been authorized under such subsection)'', and struck out ''The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard.''

Subsec. (b)(2). Pub. L. 100–408, § 2(c)(4), added par. (2).

Subsec. (b)(3). Pub. L. 100–408, § 2(d)(1), inserted par. (3) designation.

Subsec. (b)(4). Pub. L. 100–408, § 2(d)(2), added par. (4).

Subsec. (c). Pub. L. 100–408, § 16(e)(3), inserted ''Indemnification of licenses by Nuclear Regulatory Commission'' as heading.

Pub. L. 100–408, § 3, substituted ''August 1, 2002'' for ''August 1, 1987'' wherever appearing.

Subsec. (d). Pub. L. 100–408, § 4(a), inserted ''Indemnification of contractors by Department of Energy'' as heading and completely revised and expanded subsec. (d), changing its structure from a single unnumbered subsection to one consisting of seven numbered paragraphs.

Subsec. (e). Pub. L. 100–408, § 6, inserted ''Limitation on aggregate public liability'' as heading and completely revised and expanded subsec. (e), changing its structure from a single unnumbered subsection to one consisting of four numbered paragraphs.

Subsec. (f). Pub. L. 100–408, § 16(e)(4), inserted ''Collection of fees by Nuclear Regulatory Commission'' as heading.

Pub. L. 100–408, § 16(b)(3), inserted ''or the Secretary, as appropriate,'' in two places.

Subsec. (g). Pub. L. 100–408, § 16(e)(5), inserted ''Use of services of private insurers'' as heading.

Pub. L. 100–408, § 16(c)(1), substituted ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' for ''section 3709 of the Revised Statutes'', which for purposes of codification was translated as ''section 5 of title 41'', thus requiring no change in text.

Pub. L. 100–408, § 16(b)(4), inserted ''or the Secretary, as appropriate,'' after ''Commission'', wherever appearing.

Subsec. (h). Pub. L. 100–408, § 16(e)(6), inserted ''Conditions of agreements of indemnification'' as heading.

Pub. L. 100–408, § 16(b)(4), inserted ''or the Secretary, as appropriate,'' after ''Commission'', wherever appearing.

Subsec. (i). Pub. L. 100–408, § 7(a), inserted ''Compensation plans'' as heading and completely revised and expanded subsec. (i), changing its structure from a single unnumbered subsection to one consisting of six numbered paragraphs.

Subsec. (j). Pub. L. 100–408, § 16(e)(7), inserted ''Contracts in advance of appropriations'' as heading.

Pub. L. 100–408, § 16(c)(2), substituted ''sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31'' for ''section 3679 of the Revised Statutes, as amended''.

Pub. L. 100–408, § 16(b)(4), inserted ''or the Secretary, as appropriate,''.

Subsec. (k). Pub. L. 100–408, § 16(e)(8), inserted ''Exemption from financial protection requirement for nonprofit educational institutions'' as heading.

Pub. L. 100–408, § 16(d)(5), in introductory provisions substituted ''subsection a'' for ''subsection 170a'', which for purposes of codification was translated as ''subsection (a) of this section'', thus requiring no change in text.

Pub. L. 100–408, § 8(1), substituted ''August 1, 2002'' for ''August 1, 1987'', wherever appearing in introductory and closing provisions.

Subsec. (k)(1). Pub. L. 100–408, § 8(2), substituted ''including such legal costs of the licensee as are approved by the Commission'' for ''excluding cost of investigating and settling claims and defending suits for damage''.

Subsec. (*l*). Pub. L. 100–408, § 9, inserted ''Presidential commission on catastrophic nuclear accidents'' as heading and completely revised and expanded subsec. (*l*), changing its structure from a single unnumbered subsection to one consisting of six numbered paragraphs.

Subsec. (m). Pub. L. 100–408, § 16(e)(9), inserted ''Coordinated procedures for prompt settlement of claims and emergency assistance'' as heading.

Pub. L. 100–408, § 16(b)(4), inserted ''or the Secretary, as appropriate,'' after ''Commission'' wherever appearing.

Subsec. (n). Pub. L. 100–408, § 16(e)(10), inserted ''Waiver of defenses and judicial procedures'' as heading.

Subsec. (n)(1). Pub. L. 100–408, §§ 10, 16(b)(5)(A), (d)(6), redesignated existing subpars. (a), (b), and (c) as (A), (B), and (C), respectively, added subpars. (D), (E), and (F), substituted ''a Department of Energy contractor'' for ''a Commission contractor'' in subpar. (C), and, in closing provisions inserted '', or the Secretary, as appropriate,'' after ''the Commission'', struck out '', but in no event more than twenty years after the date of the nuclear incident'' after ''and the cause thereof'', and substituted ''subsection e'' for ''subsection 170e'', which for purposes of codification was translated as ''subsection (e) of this section'', requiring no change in text.

Subsec. (n)(2). Pub. L. 100–408, § 16(b)(5)(B), inserted ''or the Secretary, as appropriate'' after ''Commission''.

Pub. L. 100–408, § 11(a), substituted ''a nuclear incident'' for ''an extraordinary nuclear occurrence'' in two places and ''the nuclear incident'' for ''the extraordinary nuclear occurrence'', and inserted ''(including any such action pending on August 20, 1988)'', and ''In any action that is or becomes removable pursuant to

this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28 or within the 30-day period beginning on August 20, 1988, whichever occurs later.''

Subsec. (n)(3). Pub. L. 100–408, § 11(c), added par. (3).

Subsec. (*o*). Pub. L. 100–408, § 11(d)(1), inserted ''Plan for distribution of funds'' as heading, designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added subpars. (D) and (E) and par. (2).

Subsec. (*o*)(1). Pub. L. 100–408, § 7(b)(1), substituted ''the applicable limit of liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section'' for ''subsection (e) of this section'' in introductory provisions.

Subsec. (*o*)(1)(B). Pub. L. 100–408, § 16(d)(7), substituted ''subparagraph (C)'' for ''subparagraph (3) of this subsection (*o*)''.

Subsec. (*o*)(1)(C). Pub. L. 100–408, § 16(b)(6), inserted ''or the Secretary, as appropriate,'' after first reference to ''Commission'' and ''or the Secretary as appropriate'' after second reference to ''Commission''.

Subsec. (*o*)(4). Pub. L. 100–408, § 7(b)(2), struck out par. (4) which read as follows: ''The Commission shall, within ninety days after a court shall have made such determination, deliver to the Joint Committee a supplement to the report prepared in accordance with subsection (i) of this section setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.''

Subsec. (p). Pub. L. 100–408, § 16(e)(11), inserted ''Reports to Congress'' as heading.

Pub. L. 100–408, § 12, designated existing provisions as par. (1), substituted ''and the Secretary shall submit to the Congress by August 1, 1998, detailed reports'' for ''shall submit to the Congress by August 1, 1983, a detailed report'', and added par. (2).

Subsec. (q). Pub. L. 100–408, § 5(c), added subsec. (q).

Subsec. (r). Pub. L. 100–408, § 13, added subsec. (r).

Subsec. (s). Pub. L. 100–408, § 14, added subsec. (s).

Subsec. (t). Pub. L. 100–408, § 15, added subsec. (t).

1975—Subsec. (a). Pub. L. 94–197, § 2, inserted provision relating to the public purposes cited in section 2012(i) of this title and ''in the exercise of its licensing and regulatory authority and responsibility'' after ''as the Commission'', and substituted ''required, it may'' for ''required, it shall''.

Subsec. (b). Pub. L. 94–197, § 3, inserted requirement that for facilities having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be at a reasonable cost and on reasonable terms, and requirement that financial protection be subject to such terms and conditions as the Commission, by rule, regulation or order prescribes, and established premium and funding standards and procedures for prescribing terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources. Notwithstanding the directory language that amendment be made to section 107 b. of the Atomic Energy Act of 1954, as amended, the amendment was executed to section 170 b. of the Atomic Energy Act of 1954, as amended, (subsec. (b) of this section) as the probable intent of Congress.

Subsec. (c). Pub. L. 94–197, § 4, substituted ''and August 1, 1987, for which it requires financial protection of less than $560,000,000,'' for ''and August 1, 1977, for which it requires financial protection,'', ''excluding'' for ''including the reasonable'', and ''August 1, 1987'' for ''August 1, 1977'' in text relating to any production or utilization facility.

Subsec. (d). Pub. L. 94–197, § 5, substituted ''until August 1, 1987,'' for ''until August 1, 1977,'' and ''excluding'' for ''including the reasonable''.

Subsec. (e). Pub. L. 94–197, § 6, designated existing provisions as cl. (1), added cl. (2), substituted proviso relating to Congressional review and action for proviso relating to aggregate liability exceeding the sum of $560,000,000, and substituted ''*And provided further*'' for ''*Provided further*''.

Subsec. (f). Pub. L. 94–197, § 7, inserted proviso which authorized Commission to reduce the indemnity fee for persons with whom indemnification agreements have been executed in reasonable relation to increases in financial protection above a level of $60,000,000.

Subsec. (h). Pub. L. 94–197, § 8, substituted ''shall not include'' for ''may include reasonable''.

Subsec. (i). Pub. L. 94–197, § 9, inserted ''or which will probably result in public liability claims in excess of $560,000,000,'' after ''this section'', and requirement that Commission report extent of damage caused from a nuclear incident to the Congressmen of the affected districts and the Senators of the affected state and substituted provision relating to information concerning the national defense, for provisions relating to applicability of prohibition of sections 2161 to 2166 of this title, other laws or Executive order.

Subsec. (k). Pub. L. 94–197, § 10, substituted ''August 1, 1987'' for ''August 1, 1977'' wherever appearing and substituted ''excluding'' for ''including the reasonable'' in par. (1).

Subsec. (*l*). Pub. L. 94–197, § 11, substituted ''excluding'' for ''including the reasonable''.

Subsec. (n)(1)(iii). Pub. L. 94–197, § 12, substituted ''twenty years'' for ''ten years''.

Subsec. (*o*)(3), (4). Pub. L. 94–197, § 13, in par. (3) inserted provisions authorizing the establishment, in any plan for disposition of claims, of priorities between classes of claims and claimants to extent necessary to ensure the most equitable allocation of available funds, and added par. (4).

Subsec. (p). Pub. L. 94–197, § 14, added subsec. (p).

1966—Subsec. (e). Pub. L. 89–645, § 2, struck out last sentence which authorized application by the Commission or any indemnified person to district court of the United States having venue in bankruptcy over location of nuclear incident and to United States District Court for the District of Columbia in cases of nuclear incidents occurring outside the United States, and upon a showing that public liability from a single nuclear incident will probably exceed the limit of imposable liability, entitled the applicant to orders for enforcement of this section, including limitation of liability of indemnified persons, staying payment of claims and execution of court judgments, apportioning payments to claimants, permitting partial payments before final determination of total claims, and setting aside part of funds for possible injuries not discovered until later time, now incorporated in subsec. (*o*) of this section.

Subsecs. (m) to (*o*). Pub. L. 89–645, § 3, added subsecs. (m) to (*o*).

1965—Subsec. (c). Pub. L. 89–210, § 1, substituted ''August 1, 1977'' for ''August 1, 1967'' wherever appearing, and inserted proviso requiring the amount of indemnity to be reduced by the amount that the financial protection required shall exceed $60,000,000.

Subsec. (d). Pub. L. 89–210, § 2, substituted ''August 1, 1977'' for ''August 1, 1967,'' and inserted proviso requiring the amount of indemnity to be reduced by the amount that the financial protection required shall exceed $60,000,000.

Subsec. (e). Pub. L. 89–210, § 3, inserted proviso prohibiting the aggregate liability to exceed the sum of $560,000,000.

Subsec. (k). Pub. L. 89–210, § 4, substituted ''August 1, 1977'' for ''August 1, 1967'' wherever appearing.

Subsec. (*l*). Pub. L. 89–210, § 5, substituted ''August 1, 1977'' for ''August 1, 1967'' and ''in the amount of $500,000,000'' for ''in the maximum amount provided by subsection (e) of this section'', inserted ''in the aggregate for all persons indemnified in connection with each nuclear incident'', and inserted proviso requiring the amount of indemnity to be reduced by the amount that the financial protection required shall exceed $60,000,000.

1964—Subsec. (c). Pub. L. 88–394, § 2, provided that with respect to any facility for which a permit is issued between Aug. 30, 1954, and Aug. 1, 1967, the requirements of the subsection shall apply to any license issued subsequent to Aug. 1, 1967.

Subsec. (k). Pub. L. 88–394, § 3, provided that with respect to any facility for which a permit is issued between Aug. 30, 1954, and Aug. 1, 1967, the requirements of the subsection shall apply to any license issued subsequent to Aug. 1, 1967.

1962—Subsec. (d). Pub. L. 87–615, § 6, limited the amount of indemnity provided by the Commission for nuclear incidents occurring outside the United States to $100,000,000.

Subsec. (e). Pub. L. 87–615, § 7, inserted proviso limiting the aggregate liability in cases of nuclear incidents occurring outside the United States to which an indemnification agreement entered into under subsec. (d) of this section is applicable, to $100,000,000, and substituted ''occurring outside the United States, the Commission or any person indemnified may apply to the United States District Court for the District of Columbia'' for ''caused by ships of the United States outside of the United States, the Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the principal place of business of the shipping company owning or operating the ship''.

1961—Subsec. (d). Pub. L. 87–206 inserted provision for liability of contractor to extent of indemnification under this section free of defense of sovereign immunity.

1958—Subsec. (e). Pub. L. 85–602, § 2[3], gave the district court that has venue in bankruptcy matters over the location of the principal place of business of the shipping company owning or operating the ship, jurisdiction in cases of nuclear incidents caused by ships of the United States outside of the United States.

Subsec. (k). Pub. L. 85–744 added subsec. (k).

Subsec. (*l*). Pub. L. 85–602, § 2, added subsec. (*l*).

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (*l*)(4)(C) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title VI, § 609, Aug. 8, 2005, 119 Stat. 781, provided that: ''The amendments made by sections 603, 604, and 605 [amending this section] do not apply to a nuclear incident that occurs before the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–408 effective Aug. 20, 1988, and applicable with respect to nuclear incidents occurring on or after Aug. 20, 1988, except that amendment by section 11 of Pub. L. 100–408 applicable to nuclear incidents occurring before, on, or after Aug. 20, 1988, see section 20 of Pub. L. 100–408, set out as a note under section 2014 of this title.

SHORT TITLE

This section is popularly known as the ''Price-Anderson Act'' and also as the ''Atomic Energy Damages Act''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF ADVISORY COMMISSIONS

Advisory commissions established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

FINDINGS

Pub. L. 106–245, § 2, July 10, 2000, 114 Stat. 501, provided that: ''Congress finds that—

''(1) the Radiation Exposure Compensation Act [Pub. L. 101–426] (42 U.S.C. 2210 note) recognized the responsibility of the Federal Government to compensate individuals who were harmed by the mining of radioactive materials or fallout from nuclear arms testing;

''(2) a congressional oversight hearing conducted by the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate demonstrated that since enactment of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note), regulatory burdens have made it too difficult for some deserving individuals to be fairly and efficiently compensated;

''(3) reports of the Atomic Energy Commission and the National Institute for Occupational Safety and Health testify to the need to extend eligibility to States in which the Federal Government sponsored uranium mining and milling from 1941 through 1971;

''(4) scientific data resulting from the enactment of the Radiation[–]Exposed Veterans Compensation Act of 1988 (38 U.S.C. 101 note) [Pub. L. 100–321, see Tables for classification], and obtained from the Committee on the Biological Effects of Ionizing Radiations, and the President's Advisory Committee on Human Radiation Experiments provide medical validation for the extension of compensable radiogenic pathologies;

''(5) above-ground uranium miners, millers and individuals who transported ore should be fairly compensated, in a manner similar to that provided for underground uranium miners, in cases in which those individuals suffered disease or resultant death, associated with radiation exposure, due to the failure of the Federal Government to warn and otherwise help protect citizens from the health hazards addressed by the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note); and

''(6) it should be the responsibility of the Federal Government in partnership with State and local governments and appropriate healthcare organizations, to initiate and support programs designed for the early detection, prevention and education on radiogenic diseases in approved States to aid the thousands of individuals adversely affected by the mining of uranium and the testing of nuclear weapons for the Nation's weapons arsenal.''

AFFIDAVITS

Pub. L. 106–245, § 3(e)(2), July 10, 2000, 114 Stat. 507, provided that:

''(A) IN GENERAL.—The Attorney General shall take such action as may be necessary to ensure that the pro-

cedures established by the Attorney General under section 6 of the Radiation Exposure Compensation Act [Pub. L. 101–426] (42 U.S.C. 2210 note) provide that, in addition to any other material that may be used to substantiate employment history for purposes of determining working level months, an individual filing a claim under those procedures may make such a substantiation by means of an affidavit described in subparagraph (B).

''(B) AFFIDAVITS.—An affidavit referred to under subparagraph (A) is an affidavit—

''(i) that meets such requirements as the Attorney General may establish; and

''(ii) is made by a person other than the individual filing the claim that attests to the employment history of the claimant.''

GAO REPORTS

Pub. L. 106–245, § 3(i), July 10, 2000, 114 Stat. 508, which required General Accounting Office, not later than 18 months after July 10, 2000, and every 18 months thereafter, to submit a report to Congress containing a detailed accounting of the administration of the Radiation Exposure Compensation Act (Pub. L. 101–426, 42 U.S.C. 2210 note) by the Department of Justice, was repealed by Pub. L. 107–273, div. C, title I, § 11007(b), Nov. 2, 2002, 116 Stat. 1818. See section 14 of Pub. L. 101–426, set out below.

RADIATION EXPOSURE COMPENSATION

Pub. L. 101–426, Oct. 15, 1990, 104 Stat. 920, as amended by Pub. L. 101–510, div. C, title XXXI, §§ 3139, 3140, Nov. 5, 1990, 104 Stat. 1835, 1837; Pub. L. 102–486, title XXX, § 3018, Oct. 24, 1992, 106 Stat. 3131; Pub. L. 106–245, § 3(a)–(e)(1), (f)–(h), July 10, 2000, 114 Stat. 502–508; Pub. L. 107–107, div. A, title X, § 1063, Dec. 28, 2001, 115 Stat. 1232; Pub. L. 107–273, div. C, title I, § 11007(a), Nov. 2, 2002, 116 Stat. 1817; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108–375, div. C, title XXXI, § 3165(b), Oct. 28, 2004, 118 Stat. 2187; Pub. L. 108–447, div. B, title I, § 122, Dec. 8, 2004, 118 Stat. 2870, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Radiation Exposure Compensation Act'.

''SEC. 2. FINDINGS, PURPOSE, AND APOLOGY.

''(a) FINDINGS.—The Congress finds that—

''(1) fallout emitted during the Government's atmospheric nuclear tests exposed individuals to radiation that is presumed to have generated an excess of cancers among these individuals;

''(2) the health of the individuals who were exposed to radiation in these tests was put at risk to serve the national security interests of the United States;

''(3) radiation released in underground uranium mines that were providing uranium for the primary use and benefit of the nuclear weapons program of the United States Government exposed miners to large doses of radiation and other airborne hazards in the mine environment that together are presumed to have produced an increased incidence of lung cancer and respiratory diseases among these miners;

''(4) the United States should recognize and assume responsibility for the harm done to these individuals; and

''(5) the Congress recognizes that the lives and health of uranium miners and of individuals who were exposed to radiation were subjected to increased risk of injury and disease to serve the national security interests of the United States.

''(b) PURPOSE.—It is the purpose of this Act to establish a procedure to make partial restitution to the individuals described in subsection (a) for the burdens they have borne for the Nation as a whole.

''(c) APOLOGY.—The Congress apologizes on behalf of the Nation to the individuals described in subsection (a) and their families for the hardships they have endured.

''SEC. 3. TRUST FUND.

''(a) ESTABLISHMENT.—There is established in the Treasury of the United States, a trust fund to be known as the 'Radiation Exposure Compensation Trust Fund' (hereinafter in this Act referred to as the 'Fund'), which shall be administered by the Secretary of the Treasury.

''(b) INVESTMENT OF AMOUNTS IN THE FUND.—Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on, and proceeds from any such investment shall be credited to and become a part of the Fund.

''(c) AVAILABILITY OF THE FUND.—Amounts in the Fund shall be available only for disbursement by the Attorney General under section 6.

''(d) TERMINATION.—The Fund shall terminate 22 years after the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000 [July 10, 2000]. If all of the amounts in the Fund have not been expended by the end of that 22-year period, investments of amounts in the Fund shall be liquidated and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

''(e) APPROPRIATION.—

''(1) IN GENERAL.—There are appropriated to the Fund, out of any money in the Treasury not otherwise appropriated, for fiscal year 2002 and each fiscal year thereafter, such sums as may be necessary, not to exceed the applicable maximum amount specified in paragraph (2), to carry out the purposes of the Fund.

''(2) LIMITATION.—Appropriation of amounts to the Fund pursuant to paragraph (1) is subject to the following maximum amounts:

''(A) For fiscal year 2002, $172,000,000.

''(B) For fiscal year 2003, $143,000,000.

''(C) For fiscal year 2004, $107,000,000.

''(D) For fiscal year 2005, $65,000,000.

''SEC. 4. CLAIMS RELATING TO ATMOSPHERIC NUCLEAR TESTING.

''(a) CLAIMS.—

''(1) CLAIMS RELATING TO LEUKEMIA.—

''(A) IN GENERAL.—An individual described in this subparagraph shall receive an amount specified in subparagraph (B) if the conditions described in subparagraph (C) are met. An individual referred to in the preceding sentence is an individual who—

''(i)(I) was physically present in an affected area for a period of at least 1 year during the period beginning on January 21, 1951, and ending on October 31, 1958;

''(II) was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962; or

''(III) participated onsite in a test involving the atmospheric detonation of a nuclear device; and

''(ii) submits written documentation that such individual developed leukemia—

''(I) after the applicable period of physical presence described in subclause (I) or (II) of clause (i) or onsite participation described in clause (i)(III) (as the case may be); and

''(II) more that [sic] 2 years after first exposure to fallout.

''(B) AMOUNTS.—If the conditions described in subparagraph (C) are met, an individual—

''(i) who is described in subclause (I) or (II) of subparagraph (A)(i) shall receive $50,000; or

''(ii) who is described in subclause (III) of subparagraph (A)(i) shall receive $75,000.

''(C) CONDITIONS.—The conditions described in this subparagraph are as follows:

''(i) Initial exposure occurred prior to age 21.

''(ii) The claim for a payment under subparagraph (B) is filed with the Attorney General by or on behalf of the individual.

''(iii) The Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

''(2) CLAIMS RELATING TO SPECIFIED DISEASES.—Any individual who—

''(A) was physically present in the affected area for a period of at least 2 years during the period beginning on January 21, 1951, and ending on October 31, 1958,

''(B) was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962, or

''(C) participated onsite in a test involving the atmospheric detonation of a nuclear device,

and who submits written medical documentation that he or she, after such period of physical presence or such participation (as the case may be), contracted a specified disease, shall receive $50,000 (in the case of an individual described in subparagraph (A) or (B)) or $75,000 (in the case of an individual described in subparagraph (C)), if—

''(i) the claim for such payment is filed with the Attorney General by or on behalf of such individual, and

''(ii) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

''(3) CONFORMITY WITH SECTION 6.—Payments under this section may be made only in accordance with section 6.

''(4) EXCLUSION.—No payment may be made under this section on any claim of the Government of the Marshall Islands, or of any citizen or national of the Marshall Islands, that is referred to in Article X, Section 1 of the Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of section 177 of the Compact of Free Association (as approved by the Compact of Free Association Act of 1985 (Public Law 99–239) [48 U.S.C. 1901 et seq., 2001 et seq.]).

''(b) DEFINITIONS.—For purposes of this section, the term—

''(1) 'affected area' means—

''(A) in the State of Utah, the counties of Washington, Iron, Kane, Garfield, Sevier, Beaver, Millard, Wayne, San Juan, and Piute;

''(B) in the State of Nevada, the counties of White Pine, Nye, Lander, Lincoln, Eureka, and that portion of Clark County that consists of townships 13 through 16 at ranges 63 through 71; and

''(C) in the State of Arizona, the counties of Coconino, Yavapai, Navajo, Apache, and Gila, and that part of Arizona that is north of the Grand Canyon; and

''(2) 'specified disease' means leukemia (other than chronic lymphocytic leukemia), provided that initial exposure occurred after the age of 20 and the onset of the disease was at least 2 years after first exposure, and the following diseases, provided onset was at least 5 years after first exposure: multiple myeloma, lymphomas (other than Hodgkin's disease), and primary cancer of the: thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, liver (except if cirrhosis or hepatitis B is indicated), or lung.

''SEC. 5. CLAIMS RELATING TO URANIUM MINING.

''(a) ELIGIBILITY OF INDIVIDUALS.—

''(1) IN GENERAL.—An individual shall receive $100,000 for a claim made under this Act if—

''(A) that individual—

''(i) was employed in a uranium mine or uranium mill (including any individual who was employed in the transport of uranium ore or vanadium-uranium ore from such mine or mill) located in Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and Texas at any time during the period beginning on January 1, 1942, and ending on December 31, 1971; and

''(ii)(I) was a miner exposed to 40 or more working level months of radiation or worked for at least 1 year during the period described under clause (i) and submits written medical documentation that the individual, after that exposure, developed lung cancer or a nonmalignant respiratory disease; or

''(II) was a miller or ore transporter who worked for at least 1 year during the period described under clause (i) and submits written medical documentation that the individual, after that exposure, developed lung cancer or a nonmalignant respiratory disease or renal cancers and other chronic renal disease including nephritis and kidney tubal tissue injury;

''(B) the claim for that payment is filed with the Attorney General by or on behalf of that individual; and

''(C) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

''(2) INCLUSION OF ADDITIONAL STATES.—Paragraph (1)(A)(i) shall apply to a State, in addition to the States named under such clause, if—

''(A) a uranium mine was operated in such State at any time during the period beginning on January 1, 1942, and ending on December 31, 1971;

''(B) the State submits an application to the Department of Justice to include such State; and

''(C) the Attorney General makes a determination to include such State.

''(3) PAYMENT REQUIREMENT.—Each payment under this section may be made only in accordance with section 6.

''(b) DEFINITIONS.—For purposes of this section—

''(1) the term 'working level month of radiation' means radiation exposure at the level of one working level every work day for a month, or an equivalent exposure over a greater or lesser amount of time;

''(2) the term 'working level' means the concentration of the short half-life daughters of radon that will release (1.3×10^5) million electron volts of alpha energy per liter of air;

''(3) the term 'nonmalignant respiratory disease' means fibrosis of the lung, pulmonary fibrosis, corpulmonale related to fibrosis of the lung, silicosis, and pneumoconiosis;

''(4) the term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, that is recognized as eligible for special programs and services provided by the United States to Indian tribes because of their status as Indians;

''(5) the term 'written medical documentation' for purposes of proving a nonmalignant respiratory disease means, in any case in which the claimant is living—

''(A)(i) an arterial blood gas study; or

''(ii) a written diagnosis by a physician meeting the requirements of subsection (c)(1); and

''(B)(i) a chest x-ray administered in accordance with standard techniques and the interpretive reports of a maximum of two National Institute of Occupational Health and Safety certified 'B' readers classifying the existence of the nonmalignant respiratory disease of category 1/0 or higher according to a 1989 report of the International Labor Office (known as the 'ILO'), or subsequent revisions;

''(ii) high resolution computed tomography scans (commonly known as 'HRCT scans') (including computer assisted tomography scans (commonly known as 'CAT scans'), magnetic resonance imaging scans (commonly known as 'MRI scans'), and positron emission tomography scans (commonly known as 'PET scans')) and interpretive reports of such scans;

''(iii) pathology reports of tissue biopsies; or

''(iv) pulmonary function tests indicating restrictive lung function, as defined by the American Thoracic Society;

''(6) the term 'lung cancer'—

''(A) means any physiological condition of the lung, trachea, or bronchus that is recognized as lung cancer by the National Cancer Institute; and

''(B) includes in situ lung cancers;

''(7) the term 'uranium mine' means any underground excavation, including 'dog holes', as well as open pit, strip, rim, surface, or other aboveground mines, where uranium ore or vanadium-uranium ore was mined or otherwise extracted; and

''(8) the term 'uranium mill' includes milling operations involving the processing of uranium ore or vanadium-uranium ore, including both carbonate and acid leach plants.

''(c) WRITTEN DOCUMENTATION.—

''(1) DIAGNOSIS ALTERNATIVE TO ARTERIAL BLOOD GAS STUDY.—

''(A) IN GENERAL.—For purposes of this Act, the written diagnosis and the accompanying interpretive reports described in subsection (b)(5)(A) shall—

''(i) be considered to be conclusive; and

''(ii) be subject to a fair and random audit procedure established by the Attorney General.

''(B) CERTAIN WRITTEN DIAGNOSES.—

''(i) IN GENERAL.—For purposes of this Act, a written diagnosis made by a physician described under clause (ii) of a nonmalignant pulmonary disease of a claimant that is accompanied by written documentation shall be considered to be conclusive evidence of that disease.

''(ii) DESCRIPTION OF PHYSICIANS.—A physician referred to under clause (i) is a physician who—

''(I) is employed by the Indian Health Service or the Department of Veterans Affairs; or

''(II) is a board certified physician; and

''(III) has a documented ongoing physician patient relationship with the claimant.

''(2) CHEST X-RAYS.—

''(A) IN GENERAL.—For purposes of this Act, a chest x-ray and the accompanying interpretive reports described in subsection (b)(5)(B) shall—

''(i) be considered to be conclusive; and

''(ii) be subject to a fair and random audit procedure established by the Attorney General.

''(B) CERTAIN WRITTEN DIAGNOSES.—

''(i) IN GENERAL.—For purposes of this Act, a written diagnosis made by a physician described in clause (ii) of a nonmalignant pulmonary disease of a claimant that is accompanied by written documentation that meets the definition of that term under subsection (b)(5) shall be considered to be conclusive evidence of that disease.

''(ii) DESCRIPTION OF PHYSICIANS.—A physician referred to under clause (i) is a physician who—

''(I) is employed by—

''(aa) the Indian Health Service; or

''(bb) the Department of Veterans Affairs; and

''(II) has a documented ongoing physician patient relationship with the claimant.

''SEC. 6. DETERMINATION AND PAYMENT OF CLAIMS.

''(a) ESTABLISHMENT OF FILING PROCEDURES.—The Attorney General shall establish procedures whereby individuals may submit claims for payments under this Act. In establishing procedures under this subsection, the Attorney General shall take into account and make allowances for the law, tradition, and customs of Indian tribes (as that term is defined in section 5(b)) and members of Indian tribes, to the maximum extent practicable.

''(b) DETERMINATION OF CLAIMS.—

''(1) IN GENERAL.—The Attorney General shall, in accordance with this subsection, determine whether each claim filed under this Act meets the requirements of this Act. All reasonable doubt with regard to whether a claim meets the requirements of this Act shall be resolved in favor of the claimant.

''(2) CONSULTATION.—The Attorney General shall—

''(A) in consultation with the Surgeon General, establish guidelines for determining what constitutes written medical documentation that an individual contracted leukemia under section 4(a)(1), a specified disease under section 4(a)(2), or other disease specified in section 5;

''(B) in consultation with the Director of the National Institute for Occupational Safety and Health, establish guidelines for determining what constitutes documentation that an individual was exposed to the working level months of radiation under section 5; and

''(C) in consultation with the Secretary of Defense and the Secretary of Energy, establish guidelines for determining what constitutes documentation that an individual participated onsite in a test involving the atmospheric detonation of a nuclear device under section 4(a)(2)(C).

The Attorney General may consult with the Surgeon General with respect to making determinations pursuant to the guidelines issued under subparagraph (A), with the Director of the National Institute for Occupational Safety and Health with respect to making determinations pursuant to the guidelines issued under subparagraph (B), and with the Secretary of Defense and the Secretary of Energy with respect to making determinations pursuant to the guidelines issued under subparagraph (C)..[sic]

''(c) PAYMENT OF CLAIMS.—

''(1) IN GENERAL.—The Attorney General shall pay, from amounts available in the Fund (or, in the case of a payment under section 5, from the Energy Employees Occupational Illness Compensation Fund, pursuant to section 3630(d) of the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384u(d)]), claims filed under this Act which the Attorney General determines meet the requirements of this Act.

''(2) OFFSET FOR CERTAIN PAYMENTS.—(A) A payment to an individual, or to a survivor of that individual, under this section on a claim under subsection (a)(1), (a)(2)(A), or (a)(2)(B) of section 4 or a claim under section 5 shall be offset by the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation), against any person, that is based on injuries incurred by that individual on account of—

''(i) exposure to radiation, from atmospheric nuclear testing, in the affected area (as defined in section 4(b)(1)) at any time during the period described in subsection (a)(1), (a)(2)(A), or (a)(2)(B) of section 4, or

''(ii) exposure to radiation in a uranium mine at any time during the period described in section 5(a).

''(B) A payment to an individual, or to a survivor of that individual, under this section on a claim under section 4(a)(2)(C) shall be offset by the amount of—

''(i) any payment made pursuant to a final award or settlement on a claim (other than a claim for workers' compensation), against any person, or

''(ii) any payment made by the Department of Veterans Affairs,

that is based on injuries incurred by that individual on account of exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device. The amount of the offset under this subparagraph with respect to payments described in clauses (i) and (ii) shall be the actuarial present value of such payments.

''(3) RIGHT OF SUBROGATION.—Upon payment of a claim under this section, the United States Government is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in paragraph (2).

''(4) PAYMENTS IN THE CASE OF DECEASED PERSONS.—

''(A) IN GENERAL.—In the case of an individual who is deceased at the time of payment under this section, such payment may be made only as follows:

''(i) If the individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

''(ii) If there is no surviving spouse described in clause (i), such payment shall be made in equal shares to all children of the individual who are living at the time of payment.

''(iii) If there is no surviving spouse described in clause (i) and if there are no children described in clause (ii), such payment shall be made in equal shares to the parents of the individual who are living at the time of payment.

''(iv) If there is no surviving spouse described in clause (i), and if there are no children described in clause (ii) or parents described in clause (iii), such payment shall be made in equal shares to all grandchildren of the individual who are living at the time of payment.

''(v) If there is no surviving spouse described in clause (i), and if there are no children described in clause (ii), parents described in clause (iii), or grandchildren described in clause (iv), then such payment shall be made in equal shares to the grandparents of the individual who are living at the time of payment.

''(B) INDIVIDUALS WHO ARE SURVIVORS.—If an individual eligible for payment under section 4 or 5 dies before filing a claim under this Act, a survivor of that individual who may receive payment under subparagraph (A) may file a claim for such payment under this Act.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) the 'spouse' of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

''(ii) a 'child' includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

''(iii) a 'parent' includes fathers and mothers through adoption;

''(iv) a 'grandchild' of an individual is a child of a child of that individual; and

''(v) a 'grandparent' of an individual is a parent of a parent of that individual.

''(D) APPLICATION OF NATIVE AMERICAN LAW.—In determining those individuals eligible to receive compensation by virtue of marriage, relationship, or survivorship, such determination shall take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

''(d) ACTION ON CLAIMS.—

''(1) IN GENERAL.—The Attorney General shall complete the determination on each claim filed in accordance with the procedures established under subsection (a) not later than twelve months after the claim is so filed. For purposes of determining when the 12-month period ends, a claim under this Act shall be deemed filed as of the date of its receipt by the Attorney General. In the event of the denial of a claim, the claimant shall be permitted a reasonable period in which to seek administrative review of the denial by the Attorney General. The Attorney General shall make a final determination with respect to any administrative review within 90 days after the receipt of the claimant's request for such review. In the event the Attorney General fails to render a determination within 12 months after the date of the receipt of such request, the claim shall be deemed awarded as a matter of law and paid.

''(2) ADDITIONAL INFORMATION.—The Attorney General may request from any claimant under this Act, or from any individual or entity on behalf of any such claimant, any reasonable additional information or documentation necessary to complete the determination on the claim in accordance with the procedures established under subsection (a).

''(3) TREATMENT OF PERIOD ASSOCIATED WITH REQUEST.—

''(A) IN GENERAL.—The period described in subparagraph (B) shall not apply to the 12-month limitation under paragraph (1).

''(B) PERIOD.—The period described in this subparagraph is the period—

''(i) beginning on the date on which the Attorney General makes a request for additional information or documentation under paragraph (2); and

''(ii) ending on the date on which the claimant or individual or entity acting on behalf of that claimant submits that information or documentation or informs the Attorney General that it is not possible to provide that information or that the claimant or individual or entity will not provide that information.

''(4) PAYMENT WITHIN 6 WEEKS.—The Attorney General shall ensure that an approved claim is paid not later than 6 weeks after the date on which such claim is approved.

''(5) NATIVE AMERICAN CONSIDERATIONS.—Any procedures under this subsection shall take into consideration and incorporate, to the fullest extent feasible, Native American law, tradition, and custom with respect to the submission and processing of claims by Native Americans.

''(e) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—Except as otherwise authorized by law, the acceptance of payment by an individual under this section shall be in full satisfaction of all claims of or on behalf of that individual against the United States, or against any person with respect to that person's performance of a contract with the United States, that arise out of exposure to radiation, from atmospheric nuclear testing, in the affected area (as defined in section 4(b)(1)) at any time during the period described in subsection (a)(1), (a)(2)(A), or (a)(2)(B) of section 4, exposure to radiation in a uranium mine, mill, or while employed in the transport of uranium ore or vanadium-uranium ore from such mine or mill at any time during the period described in section 5(a), or exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device.

''(f) ADMINISTRATIVE COSTS NOT PAID FROM THE FUND.—No costs incurred by the Attorney General in carrying out this section shall be paid from the Fund or set off against, or otherwise deducted from, any payment under this section to any individual.

''(g) TERMINATION OF DUTIES OF ATTORNEY GENERAL.—The duties of the Attorney General under this section shall cease when the Fund terminates.

''(h) CERTIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an individual under this section—

''(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

''(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

''(i) USE OF EXISTING RESOURCES.—The Attorney General should use funds and resources available to the Attorney General to carry out his or her functions under this Act.

''(j) REGULATORY AUTHORITY.—The Attorney General may issue such regulations as are necessary to carry out this Act.

''(k) ISSUANCE OF REGULATIONS, GUIDELINES, AND PROCEDURES.—Regulations, guidelines, and procedures to carry out this Act shall be issued not later than 180 days after the date of the enactment of this Act [Oct. 15, 1990]. Not later than 180 days after the date of enactment of the Radiation Exposure Compensation Act Amendments of 2000 [July 10, 2000], the Attorney General shall issue revised regulations to carry out this Act.

''(*l*) JUDICIAL REVIEW.—An individual whose claim for compensation under this Act is denied may seek judicial review solely in a district court of the United States. The court shall review the denial on the administrative record and shall hold unlawful and set aside the denial if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

''SEC. 7. CLAIMS NOT ASSIGNABLE OR TRANSFERABLE; CHOICE OF REMEDIES.

''(a) CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.—No claim cognizable under this Act shall be assignable or transferable.

''(b) CHOICE OF REMEDIES.—No individual may receive more than 1 payment under this Act.

''SEC. 8. LIMITATIONS ON CLAIMS.

''(a) IN GENERAL.—A claim to which this Act applies shall be barred unless the claim is filed within 22 years after the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000 [July 10, 2000].

''(b) RESUBMITTAL OF CLAIMS.—After the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000 [July 10, 2000], any claimant who has been denied compensation under this Act may resubmit a claim for consideration by the Attorney General in accordance with this Act not more than three times. Any resubmittal made before the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000 shall not be applied to the limitation under the preceding sentence.

''SEC. 9. ATTORNEY FEES.

''(a) GENERAL RULE.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under this Act, more than that percentage specified in subsection (b) of a payment made under this Act on such claim.

''(b) APPLICABLE PERCENTAGE LIMITATIONS.—The percentage referred to in subsection (a) is—

''(1) 2 percent for the filing of an initial claim; and

''(2) 10 percent with respect to—

''(A) any claim with respect to which a representative has made a contract for services before the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000 [July 10, 2000]; or

''(B) a resubmission of a denied claim.

''(c) PENALTY.—Any such representative who violates this section shall be fined not more than $5,000.

''SEC. 10. CERTAIN CLAIMS NOT AFFECTED BY AWARDS OF DAMAGES.

''A payment made under this Act shall not be considered as any form of compensation or reimbursement for a loss for purposes of imposing liability on any individual receiving such payment, on the basis of such receipt, to repay any insurance carrier for insurance payments, or to repay any person on account of worker's compensation payments; and a payment under this Act shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

''SEC. 11. BUDGET ACT.

''No authority under this Act to enter into contracts or to make payments shall be effective in any fiscal year except to such extent or in such amounts as are provided in advance in appropriations Acts.

''SEC. 12. REPORT.

''(a) REPORT.—The Secretary of Health and Human Services shall submit a report on the incidence of radiation related moderate or severe silicosis and pneumoconiosis in uranium miners employed in the uranium mines that are defined in section 5 and are located off of Indian reservations.

''(b) COMPLETION.—Such report shall be completed not later than September 30, 1992.

''SEC. 13. REPEAL.

''Section 1631 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1985 (42 U.S.C. 2212) is repealed.

''SEC. 14. GAO REPORTS.

''(a) IN GENERAL.—Not later than 18 months after the date of enactment of the Radiation Exposure Compensation Act Amendments of 2000 [July 10, 2000], and every 18 months thereafter, the Government Accountability Office shall submit a report to Congress containing a detailed accounting of the administration of this Act by the Department of Justice.

''(b) CONTENTS.—Each report submitted under this section shall include an analysis of—

''(1) claims, awards, and administrative costs under this Act; and

''(2) the budget of the Department of Justice relating to this Act.''

NEGOTIATED RULEMAKING ON FINANCIAL PROTECTION FOR RADIOPHARMACEUTICAL LICENSEES

Section 19 of Pub. L. 100–408 provided that:

''(a) RULEMAKING PROCEEDING.—

''(1) PURPOSE.—The Nuclear Regulatory Commission (hereafter in this section referred to as the 'Commission') shall initiate a proceeding, in accordance with the requirements of this section, to determine whether to enter into indemnity agreements under section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) with persons licensed by the Commission under section 81, 104(a), or 104(c) of the Atomic Energy Act of 1954 (42 U.S.C. 2111, 2134(a), and 2134(c)) or by a State under section 274(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)) for the manufacture, production, possession, or use of radioisotopes or radiopharmaceuticals for medical purposes (hereafter in this section referred to as 'radiopharmaceutical licensees').

''(2) FINAL DETERMINATION.—A final determination with respect to whether radiopharmaceutical licensees, or any class of such licensees, shall be indemnified pursuant to section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) and if so, the terms and conditions of such indemnification, shall be rendered by the Commission within 18 months of the date of the enactment of this Act [Aug. 20, 1988].

''(b) NEGOTIATED RULEMAKING.—

''(1) ADMINISTRATIVE CONFERENCE GUIDELINES.—For the purpose of making the determination required under subsection (a), the Commission shall, to the extent consistent with the provisions of this Act [see Short Title of 1988 Amendment note set out under section 2011 of this title], conduct a negotiated rulemaking in accordance with the guidance provided by the Administrative Conference of the United States in Recommendation 82–4, 'Procedures for Negotiating Proposed Regulations' (42 Fed. Reg. 30708, July 15, 1982).

''(2) DESIGNATION OF CONVENER.—Within 30 days of the date of the enactment of this Act [Aug. 20, 1988], the Commission shall designate an individual or individuals recommended by the Administrative Conference of the United States to serve as a convener for such negotiations.

''(3) SUBMISSION OF RECOMMENDATIONS OF THE CONVENER.—The convener shall, not later than 7 months after the date of the enactment of this Act, submit to the Commission recommendations for a proposed rule regarding whether the Commission should enter into indemnity agreements under section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) with radiopharmaceutical licensees and, if so, the terms and conditions of such indemnification. If the convener recommends that such indemnity be provided for radiopharmaceutical licensees, the proposed rule submitted by the convener shall set forth the procedures for the execution of indemnification agreements with radiopharmaceutical licensees.

''(4) PUBLICATION OF RECOMMENDATIONS AND PROPOSED RULE.—If the convener recommends that such indemnity be provided for radiopharmaceutical licensees, the Commission shall publish the recommendations of the convener submitted under paragraph (3) as a notice of proposed rulemaking within 30 days of the submission of such recommendations under such paragraph.

''(5) ADMINISTRATIVE PROCEDURES.—To the extent consistent with the provisions of this Act, the Com-

mission shall conduct the proceeding required under subsection (a) in accordance with section 553 of title 5, United States Code.''

EXECUTIVE ORDER NO. 12658

Ex. Ord. No. 12658, Nov. 18, 1988, 53 F.R. 47517, as amended by Ex. Ord. No. 12665, Jan. 12, 1989, 54 F.R. 1919, which established President's Commission on Catastrophic Nuclear Accidents, was revoked by Ex. Ord. No. 12774, § 3(c), Sept. 27, 1991, 56 F.R. 49836, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12891

Ex. Ord. No. 12891, Jan. 15, 1994, 59 F.R. 2935, which established the Advisory Committee on Human Radiation Experiments, was revoked by Ex. Ord. No. 13062, § 3(a), Sept. 29, 1997, 62 F.R. 51756, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 2210a. Conflicts of interest relating to contracts and other arrangements

(a) Disclosure requirements

The Commission shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement, whether by competitive bid or negotiation, under this chapter or any other law administered by it for the conduct of research, development, evaluation activities, or for technical and management support services, to provide the Commission, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Commission, bearing on whether that person has a possible conflict of interest with respect to—

(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons, or

(2) being given an unfair competitive advantage. Such person shall insure, in accordance with regulations prescribed by the Commission, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract for more than $10,000.

(b) Evaluation

(1) In general

Except as provided in paragraph (2), the Nuclear Regulatory Commission shall not enter into any such contract agreement or arrangement unless it finds, after evaluating all information provided under subsection (a) of this section and any other information otherwise available to the Commission that—

(A) it is unlikely that a conflict of interest would exist, or

(B) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement; except that if the Commission determines that such conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Commission may enter into such contract, agreement, or arrangement, if the Commission determines that it is in the best interests of the United States to do so and includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

(2) Nuclear Regulatory Commission

Notwithstanding any conflict of interest, the Nuclear Regulatory Commission may enter into a contract, agreement, or arrangement with the Department of Energy or the operator of a Department of Energy facility, if the Nuclear Regulatory Commission determines that—

(A) the conflict of interest cannot be mitigated; and

(B) adequate justification exists to proceed without mitigation of the conflict of interest.

(c) Promulgation and publication of rules

The Commission shall publish rules for the implementation of this section, in accordance with section 553 of title 5 (without regard to subsection (a)(2) thereof) as soon as practicable after November 6, 1978, but in no event later than 120 days after such date.

(Aug. 1, 1946, ch. 724, title I, § 170A, as added Pub. L. 95–601, § 8(a), Nov. 6, 1978, 92 Stat. 2950; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 109–58, title VI, § 639, Aug. 8, 2005, 119 Stat. 794.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, in introductory provisions substituted ''Except as provided in paragraph (2), the Nuclear Regulatory Commission'' for ''The Commission'', redesignated former pars. (1) and (2) as subpars. (A) and (B) of par. (1), respectively, and added par. (2).

§ 2210b. Uranium supply

(a) Assessment of domestic uranium industry viability; monitoring and reporting requirements; criteria; implementation by rules and regulations

The Secretary of Energy shall monitor and for the years 1983 to 1992 report annually to the Congress and to the President a determination of the viability of the domestic uranium mining and milling industry and shall establish by rule, after public notice and in accordance with the requirements of section 2231 of this title, within 9 months of January 4, 1983, specific criteria which shall be assessed in the annual reports on the domestic uranium industry's viability. The Secretary of Energy is authorized to issue regulations providing for the collection of such information as the Secretary of Energy deems necessary to carry out the monitoring and reporting requirements of this section.

(b) Disclosure of information

Upon a satisfactory showing to the Secretary of Energy by any person that any information, or portion thereof obtained under this section, would, if made public, divulge proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18.

(c) Criteria for monitoring and reporting requirements

The criteria referred to in subsection (a) of this section shall also include, but not be limited to—

(1) an assessment of whether executed contracts or options for source material or special nuclear material will result in greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period being supplied by source material or special nuclear material from foreign sources;

(2) projections of uranium requirements and inventories of domestic utilities for a 10 year period;

(3) present and probable future use of the domestic market by foreign imports;

(4) whether domestic economic reserves can supply all future needs for a future 10 year period;

(5) present and projected domestic uranium exploration expenditures and plans;

(6) present and projected employment and capital investment in the uranium industry;

(7) the level of domestic uranium production capacity sufficient to meet projected domestic nuclear power needs for a 10 year period; and

(8) a projection of domestic uranium production and uranium price levels which will be in effect under various assumptions with respect to imports.

(d) Excessive imports; investigation by United States International Trade Commission

The Secretary or[1] Energy, at any time, may determine on the basis of the monitoring and annual reports required under this section that source material or special nuclear material from foreign sources is being imported in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the United States uranium mining and milling industry. Based on that determination, the United States Trade Representative shall request that the United States International Trade Commission initiate an investigation under section 2251[2] of title 19.

(e) Excessive imports for contracts or options as threatening national security; investigation by Secretary of Commerce; recommendation for further investigation

(1) If, during the period 1982 to 1992, the Secretary of Energy determines that executed contracts or options for source material or special nuclear material from foreign sources for use in utilization facilities within or under the jurisdiction of the United States represent greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period, or if the Secretary of Energy determines the level of contracts or options involving source material and special nuclear material from foreign sources may threaten to impair the national security, the Secretary of Energy shall request the Secretary of Commerce to initiate under section 1862 of title 19 an investigation to determine the effects on the national security of imports of source material and special nuclear material. The Secretary of Energy shall cooperate fully with the Secretary of Commerce in carrying out such an investigation and shall make available to the Secretary of Commerce the findings that lead to this request and such other information that will assist the Secretary of Commerce in the conduct of the investigation.

(2) The Secretary of Commerce shall, in the conduct of any investigation requested by the Secretary of Energy pursuant to this section, take into account any information made available by the Secretary of Energy, including information regarding the impact on national security of projected or executed contracts or options for source material or special nuclear material from foreign sources or whether domestic production capacity is sufficient to supply projected national security requirements.

(3) No sooner than 3 years following completion of any investigation by the Secretary of Commerce under paragraph (1), if no recommendation has been made pursuant to such study for trade adjustments to assist or protect domestic uranium production, the Secretary of Energy may initiate a request for another such investigation by the Secretary of Commerce.

(Aug. 1, 1946, ch. 724, title I, § 170B, as added Pub. L. 97–415, § 23(b)(1), Jan. 4, 1983, 96 Stat. 2081; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

Section 2251 of title 19, referred to in subsec. (d), was amended generally by Pub. L. 100–418, title I, § 1401(a), Aug. 23, 1988, 102 Stat. 1225, and as so amended does not relate to investigations. See section 2252 of Title 19, Customs Duties.

REVIEW OF STATUS OF DOMESTIC URANIUM MINING AND MILLING INDUSTRY; AVAILABILITY TO CONGRESSIONAL COMMITTEES; SCOPE OF REVIEW

Section 23(a) of Pub. L. 97–415 provided that:

''(a)(1) Not later than 12 months after the date of enactment of this section [Jan. 4, 1983], the President shall prepare and submit to the Congress a comprehensive review of the status of the domestic uranium mining and milling industry. This review shall be made available to the appropriate committees of the United States Senate and the House of Representatives.

''(2) The Comprehensive review prepared for submission under paragraph (1) shall include—

''(A) projections of uranium requirements and inventories of domestic utilities;

''(B) present and future projected uranium production by the domestic mining and milling industry;

''(C) the present and future probable penetration of the domestic market by foreign imports;

''(D) the size of domestic and foreign ore reserves;

''(E) present and projected domestic uranium exploration expenditures and plans;

''(F) present and projected employment and capital investment in the uranium industry;

''(G) an estimate of the level of domestic uranium production necessary to ensure the viable existence of a domestic uranium industry and protection of national security interests;

''(H) an estimate of the percentage of domestic uranium demand which must be met by domestic uranium production through the year 2000 in order to ensure the level of domestic production estimated to be necessary under subparagraph (G);

''(I) a projection of domestic uranium production and uranium price levels which will be in effect both

[1] So in original. Probably should be ''of''.

[2] See References in Text note below.

under current policy and in the event that foreign import restrictions were enacted by Congress in order to guarantee domestic production at the level estimated to be necessary under subparagraph (G);

''(J) the anticipated effect of spent nuclear fuel reprocessing on the demand for uranium; and

''(K) other information relevant to the consideration of restrictions on the importation of source material and special nuclear material from foreign sources.''

§ 2210c. Elimination of pension offset for certain rehired Federal retirees

(a) In general

The Commission may waive the application of section 8344 or 8468 of title 5 on a case-by-case basis for employment of an annuitant—

(1) in a position of the Commission for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(2) when a temporary emergency hiring need exists.

(b) Procedures

The Commission shall prescribe procedures for the exercise of authority under this section, including—

(1) criteria for any exercise of authority; and

(2) procedures for a delegation of authority.

(c) Effect of waiver

An employee as to whom a waiver under this section is in effect shall not be considered an employee for purposes of subchapter II of chapter 83, or chapter 84, of title 5.

(Aug. 1, 1946, ch. 724, title I, § 170C, as added Pub. L. 109–58, title VI, § 624(a), Aug. 8, 2005, 119 Stat. 783.)

§ 2210d. Security evaluations

(a) Security response evaluations

Not less often than once every 3 years, the Commission shall conduct security evaluations at each licensed facility that is part of a class of licensed facilities, as the Commission considers to be appropriate, to assess the ability of a private security force of a licensed facility to defend against any applicable design basis threat.

(b) Force-on-force exercises

(1) The security evaluations shall include force-on-force exercises.

(2) The force-on-force exercises shall, to the maximum extent practicable, simulate security threats in accordance with any design basis threat applicable to a facility.

(3) In conducting a security evaluation, the Commission shall mitigate any potential conflict of interest that could influence the results of a force-on-force exercise, as the Commission determines to be necessary and appropriate.

(c) Action by licensees

The Commission shall ensure that an affected licensee corrects those material defects in performance that adversely affect the ability of a private security force at that facility to defend against any applicable design basis threat.

(d) Facilities under heightened threat levels

The Commission may suspend a security evaluation under this section if the Commission determines that the evaluation would compromise security at a nuclear facility under a heightened threat level.

(e) Report

Not less often than once each year, the Commission shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report, in classified form and unclassified form, that describes the results of each security response evaluation conducted and any relevant corrective action taken by a licensee during the previous year.

(Aug. 1, 1946, ch. 724, title I, § 170D, as added Pub. L. 109–58, title VI, § 651(a)(1), Aug. 8, 2005, 119 Stat. 799.)

§ 2210e. Design basis threat rulemaking

(a) Rulemaking

The Commission shall—

(1) not later than 90 days after the date of enactment of this section, initiate a rulemaking proceeding, including notice and opportunity for public comment, to be completed not later than 18 months after that date, to revise the design basis threats of the Commission; or

(2) not later than 18 months after the date of enactment of this section, complete any ongoing rulemaking to revise the design basis threats.

(b) Factors

When conducting its rulemaking, the Commission shall consider the following, but not be limited to—

(1) the events of September 11, 2001;

(2) an assessment of physical, cyber, biochemical, and other terrorist threats;

(3) the potential for attack on facilities by multiple coordinated teams of a large number of individuals;

(4) the potential for assistance in an attack from several persons employed at the facility;

(5) the potential for suicide attacks;

(6) the potential for water-based and air-based threats;

(7) the potential use of explosive devices of considerable size and other modern weaponry;

(8) the potential for attacks by persons with a sophisticated knowledge of facility operations;

(9) the potential for fires, especially fires of long duration;

(10) the potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals;

(11) the adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility; and

(12) the potential for theft and diversion of nuclear materials from such facilities.

(Aug. 1, 1946, ch. 724, title I, § 170E, as added Pub. L. 109–58, title VI, § 651(a)(1), Aug. 8, 2005, 119 Stat. 799.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 109–58, which was approved August 8, 2005.

§ 2210f. Recruitment tools

The Commission may purchase promotional items of nominal value for use in the recruitment of individuals for employment.

(Aug. 1, 1946, ch. 724, title I, § 170F, as added Pub. L. 109–58, title VI, § 651(c)(2), Aug. 8, 2005, 119 Stat. 801.)

§ 2210g. Expenses authorized to be paid by the Commission

The Commission may—

(1) pay transportation, lodging, and subsistence expenses of employees who—

(A) assist scientific, professional, administrative, or technical employees of the Commission; and

(B) are students in good standing at an institution of higher education (as defined in section 1002 of title 20) pursuing courses related to the field in which the students are employed by the Commission; and

(2) pay the costs of health and medical services furnished, pursuant to an agreement between the Commission and the Department of State, to employees of the Commission and dependents of the employees serving in foreign countries.

(Aug. 1, 1946, ch. 724, title I, § 170G, as added Pub. L. 109–58, title VI, § 651(c)(3), Aug. 8, 2005, 119 Stat. 801.)

§ 2210h. Radiation source protection

(a) Definitions

In this section:

(1) Code of conduct

The term ''Code of Conduct'' means the code entitled the ''Code of Conduct on the Safety and Security of Radioactive Sources'', approved by the Board of Governors of the International Atomic Energy Agency and dated September 8, 2003.

(2) Radiation source

The term ''radiation source'' means—

(A) a Category 1 Source or a Category 2 Source, as defined in the Code of Conduct; and

(B) any other material that poses a threat such that the material is subject to this section, as determined by the Commission, by regulation, other than spent nuclear fuel and special nuclear materials.

(b) Commission approval

Not later than 180 days after August 8, 2005, the Commission shall issue regulations prohibiting a person from—

(1) exporting a radiation source, unless the Commission has specifically determined under section 2077 or 2112 of this title, consistent with the Code of Conduct, with respect to the exportation, that—

(A) the recipient of the radiation source may receive and possess the radiation source under the laws and regulations of the country of the recipient;

(B) the recipient country has the appropriate technical and administrative capability, resources, and regulatory structure to ensure that the radiation source will be managed in a safe and secure manner; and

(C) before the date on which the radiation source is shipped—

(i) a notification has been provided to the recipient country; and

(ii) a notification has been received from the recipient country;

as the Commission determines to be appropriate;

(2) importing a radiation source, unless the Commission has determined, with respect to the importation, that—

(A) the proposed recipient is authorized by law to receive the radiation source; and

(B) the shipment will be made in accordance with any applicable Federal or State law or regulation; and

(3) selling or otherwise transferring ownership of a radiation source, unless the Commission—

(A) has determined that the licensee has verified that the proposed recipient is authorized under law to receive the radiation source; and

(B) has required that the transfer shall be made in accordance with any applicable Federal or State law or regulation.

(c) Tracking system

(1)(A) Not later than 1 year after August 8, 2005, the Commission shall issue regulations establishing a mandatory tracking system for radiation sources in the United States.

(B) In establishing the tracking system under subparagraph (A), the Commission shall coordinate with the Secretary of Transportation to ensure compatibility, to the maximum extent practicable, between the tracking system and any system established by the Secretary of Transportation to track the shipment of radiation sources.

(2) The tracking system under paragraph (1) shall—

(A) enable the identification of each radiation source by serial number or other unique identifier;

(B) require reporting within 7 days of any change of possession of a radiation source;

(C) require reporting within 24 hours of any loss of control of, or accountability for, a radiation source; and

(D) provide for reporting under subparagraphs (B) and (C) through a secure Internet connection.

(d) Penalty

A violation of a regulation issued under subsection (a) or (b) of this section shall be punishable by a civil penalty not to exceed $1,000,000.

(e) National Academy of Sciences study

(1) Not later than 60 days after August 8, 2005, the Commission shall enter into an arrangement with the National Academy of Sciences under which the National Academy of Sciences shall conduct a study of industrial, research, and commercial uses for radiation sources.

(2) The study under paragraph (1) shall include a review of uses of radiation sources in existence

on the date on which the study is conducted, including an identification of any industrial or other process that—

(A) uses a radiation source that could be replaced with an economically and technically equivalent (or improved) process that does not require the use of a radiation source; or

(B) may be used with a radiation source that would pose a lower risk to public health and safety in the event of an accident or attack involving the radiation source.

(3) Not later than 2 years after August 8, 2005, the Commission shall submit to Congress the results of the study under paragraph (1).

(f) Task force on radiation source protection and security

(1) There is established a task force on radiation source protection and security (referred to in this section as the ''task force'').

(2)(A) The chairperson of the task force shall be the Chairperson of the Commission (or a designee).

(B) The membership of the task force shall consist of the following:

(i) The Secretary of Homeland Security (or a designee).

(ii) The Secretary of Defense (or a designee).

(iii) The Secretary of Energy (or a designee).

(iv) The Secretary of Transportation (or a designee).

(v) The Attorney General (or a designee).

(vi) The Secretary of State (or a designee).

(vii) The Director of National Intelligence (or a designee).

(viii) The Director of the Central Intelligence Agency (or a designee).

(ix) The Administrator of the Federal Emergency Management Agency (or a designee).

(x) The Director of the Federal Bureau of Investigation (or a designee).

(xi) The Administrator of the Environmental Protection Agency (or a designee).

(3)(A) The task force, in consultation with Federal, State, and local agencies, the Conference of Radiation Control Program Directors, and the Organization of Agreement States, and after public notice and an opportunity for comment, shall evaluate, and provide recommendations relating to, the security of radiation sources in the United States from potential terrorist threats, including acts of sabotage, theft, or use of a radiation source in a radiological dispersal device.

(B) Not later than 1 year after August 8, 2005, and not less than once every 4 years thereafter, the task force shall submit to Congress and the President a report, in unclassified form with a classified annex if necessary, providing recommendations, including recommendations for appropriate regulatory and legislative changes, for—

(i) a list of additional radiation sources that should be required to be secured under this chapter, based on the potential attractiveness of the sources to terrorists and the extent of the threat to public health and safety of the sources, taking into consideration—

(I) radiation source radioactivity levels;

(II) radioactive half-life of a radiation source;

(III) dispersability;

(IV) chemical and material form;

(V) for radioactive materials with a medical use, the availability of the sources to physicians and patients for medical treatment; and

(VI) any other factor that the Chairperson of the Commission determines to be appropriate;

(ii) the establishment of, or modifications to, a national system for recovery of lost or stolen radiation sources;

(iii) the storage of radiation sources that are not used in a safe and secure manner as of the date on which the report is submitted;

(iv) modifications to the national tracking system for radiation sources;

(v) the establishment of, or modifications to, a national system (including user fees and other methods) to provide for the proper disposal of radiation sources secured under this chapter;

(vi) modifications to export controls on radiation sources to ensure that foreign recipients of radiation sources are able and willing to adequately control radiation sources from the United States;

(vii)(I) any alternative technologies available as of the date on which the report is submitted that may perform some or all of the functions performed by devices or processes that employ radiation sources; and

(II) the establishment of appropriate regulations and incentives for the replacement of the devices and processes described in subclause (I)—

(aa) with alternative technologies in order to reduce the number of radiation sources in the United States; or

(bb) with radiation sources that would pose a lower risk to public health and safety in the event of an accident or attack involving the radiation source; and

(viii) the creation of, or modifications to, procedures for improving the security of use, transportation, and storage of radiation sources, including—

(I) periodic audits or inspections by the Commission to ensure that radiation sources are properly secured and can be fully accounted for;

(II) evaluation of the security measures by the Commission;

(III) increased fines for violations of Commission regulations relating to security and safety measures applicable to licensees that possess radiation sources;

(IV) criminal and security background checks for certain individuals with access to radiation sources (including individuals involved with transporting radiation sources);

(V) requirements for effective and timely exchanges of information relating to the results of criminal and security background checks between the Commission and any State with which the Commission has entered into an agreement under section 2021(b) of this title;

(VI) assurances of the physical security of facilities that contain radiation sources (in-

cluding facilities used to temporarily store radiation sources being transported); and

(VII) the screening of shipments to facilities that the Commission determines to be particularly at risk for sabotage of radiation sources to ensure that the shipments do not contain explosives.

(g) Action by Commission

Not later than 60 days after the date of receipt by Congress and the President of a report under subsection (f)(3)(B) of this section, the Commission, in accordance with the recommendations of the task force, shall—

(1) take any action the Commission determines to be appropriate, including revising the system of the Commission for licensing radiation sources; and

(2) ensure that States that have entered into agreements with the Commission under section 2021(b) of this title take similar action in a timely manner.

(Aug. 1, 1946, ch. 724, title I, § 170H, as added Pub. L. 109–58, title VI, § 651(d)(1), Aug. 8, 2005, 119 Stat. 802; amended Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (f)(2)(B)(ix) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

§ 2210i. Secure transfer of nuclear materials

(a) The Commission shall establish a system to ensure that materials described in subsection (b) of this section, when transferred or received in the United States by any party pursuant to an import or export license issued pursuant to this chapter, are accompanied by a manifest describing the type and amount of materials being transferred or received. Each individual receiving or accompanying the transfer of such materials shall be subject to a security background check conducted by appropriate Federal entities.

(b) Except as otherwise provided by the Commission by regulation, the materials referred to in subsection (a) of this section are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 10101(16) of this title).

(Aug. 1, 1946, ch. 724, title I, § 170I, as added Pub. L. 109–58, title VI, § 656(a), Aug. 8, 2005, 119 Stat. 813.)

EFFECTIVE DATE

Pub. L. 109–58, title VI, § 656(c), Aug. 8, 2005, 119 Stat. 814, provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect upon the issuance of regulations under subsection (b) [set out below], except that the background check requirement shall become effective on a date established by the Commission.'' [For issuance of regulations effective Feb. 23, 2007, see 72 F.R. 3025.]

REGULATIONS

Pub. L. 109–58, title VI, § 656(b), Aug. 8, 2005, 119 Stat. 814, provided that: ''Not later than 1 year after the date of the enactment of this Act [Aug. 8, 2005], and from time to time thereafter as it considers necessary, the Nuclear Regulatory Commission shall issue regulations identifying radioactive materials or classes of individuals that, consistent with the protection of public health and safety and the common defense and security, are appropriate exceptions to the requirements of section 170D [probably means 170I] of the Atomic Energy Act of 1954 [42 U.S.C. 2210i], as added by subsection (a) of this section.''

EFFECT ON OTHER LAW

Pub. L. 109–58, title VI, § 656(d), Aug. 8, 2005, 119 Stat. 814, provided that: ''Nothing in this section [enacting this section and provisions set out as notes under this section] or the amendment made by this section shall waive, modify, or affect the application of chapter 51 of title 49, United States Code, part A of subtitle V of title 49, United States Code, part B of subtitle VI of title 49, United States Code, and title 23, United States Code.''

§ 2211. Payment of claims or judgments for damage resulting from nuclear incident involving nuclear reactor of United States warship; exception; terms and conditions

It is the policy of the United States that it will pay claims or judgments for bodily injury, death, or damage to or loss of real or personal property proven to have resulted from a nuclear incident involving the nuclear reactor of a United States warship: *Provided*, That the injury, death, damage, or loss was not caused by the act of an armed force engaged in combat or as a result of civil insurrection. The President may authorize, under such terms and conditions as he may direct, the payment of such claims or judgments from any contingency funds available to the Government or may certify such claims or judgments to the Congress for appropriation of the necessary funds.

(Pub. L. 93–513, Dec. 6, 1974, 88 Stat. 1611.)

CODIFICATION

Section was not enacted as part of the Atomic Energy Act of 1954 which comprises this chapter.

EX. ORD. NO. 11918. COMPENSATION FOR DAMAGES INVOLVING NUCLEAR REACTORS OF UNITED STATES WARSHIPS

Ex. Ord. No. 11918, eff. June 1, 1976, 41 F.R. 22329, provided:

By virtue of the authority vested in me by the joint resolution approved December 6, 1974 (Public Law 93–513, 88 Stat. 1610, 42 U.S.C. 2211), and by section 301 of title 3 of the United States Code, and as President of the United States of America, in order that prompt, adequate and effective compensation will be provided in the unlikely event of injury or damage resulting from a nuclear incident involving the nuclear reactor of a United States warship, it is hereby ordered as follows:

SECTION 1. (a) With respect to the administrative settlement of claims or judgments for bodily injury, death, or damage to or loss of real or personal property proven to have resulted from a nuclear incident involving the nuclear reactor of a United States warship, the Secretary of Defense is designated and empowered to authorize, in accord with Public Law 93–513 [this sec-

tion], the payment, under such terms and conditions as he may direct, of such claims and judgments from contingency funds available to the Department of Defense.

(b) The Secretary of Defense shall, when he considers such action appropriate, certify claims or judgments described in subsection (a) and transmit to the Director of the Office of Management and Budget his recommendation with respect to appropriation by the Congress of such additional sums as may be necessary.

SEC. 2. The provisions of section 1 shall not be deemed to replace, alter, or diminish, the statutory and other functions vested in the Attorney General, or the head of any other agency, with respect to litigation against the United States and judgments and compromise settlements arising therefrom.

SEC. 3. The functions herein delegated shall be exercised in consultation with the Secretary of State in the case of any incident giving rise to a claim of a foreign country or national thereof, and international negotiations relating to Public Law 93–513 [this section], shall be performed by or under the authority of the Secretary of State.

GERALD R. FORD.

§ 2212. Transferred

CODIFICATION

Section, Pub. L. 101–510, div. C, title XXXI, § 3141, Nov. 5, 1990, 104 Stat. 1837, which related to contractor liability for injury or loss of property arising out of atomic weapons testing programs, was renumbered section 4803 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(4)(A)–(C), Nov. 24, 2003, 117 Stat. 1783, and transferred to section 2783 of Title 50, War and National Defense.

PRIOR PROVISIONS

A prior section 2212, Pub. L. 98–525, title XVI, § 1631, Oct. 19, 1984, 98 Stat. 2646, related to contractor liability for injury or loss of property arising out of atomic weapons testing programs, prior to repeal by Pub. L. 101–426, § 13, as added Pub. L. 101–510, div. C, title XXXI, § 3140, Nov. 5, 1990, 104 Stat. 1837.

§ 2213. Repealed. Pub. L. 109–58, title VI, § 637(b), Aug. 8, 2005, 119 Stat. 791

Section, Pub. L. 99–272, title VII, § 7601, Apr. 7, 1986, 100 Stat. 146; Pub. L. 100–203, title V, § 5601, Dec. 22, 1987, 101 Stat. 1330–275; Pub. L. 101–239, title III, § 3201, Dec. 19, 1989, 103 Stat. 2132; Pub. L. 101–508, title VI, § 6101(e), Nov. 5, 1990, 104 Stat. 1388–299, related to assessment and collection of annual charges from Nuclear Regulatory Commission licensees.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2006, see section 637(c) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendment note under section 2214 of this title.

§ 2214. NRC user fees and annual charges

(a) Annual assessment

(1) In general

The Nuclear Regulatory Commission (in this section referred to as the ''Commission'') shall annually assess and collect such fees and charges as are described in subsections (b) and (c) of this section.

(2) First assessment

The first assessment of fees under subsection (b) of this section and annual charges under subsection (c) of this section shall be made not later than September 30, 1991.

(b) Fees for service or thing of value

Pursuant to section 9701 of title 31, any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value.

(c) Annual charges

(1) Persons subject to charge

Except as provided in paragraph (4), any licensee or certificate holder of the Commission may be required to pay, in addition to the fees set forth in subsection (b) of this section, an annual charge.

(2) Aggregate amount of charges

(A) In general

The aggregate amount of the annual charges collected from all licensees and certificate holders in a fiscal year shall equal an amount that approximates the percentages of the budget authority of the Commission for the fiscal year stated in subparagraph (B), less—

(i) amounts collected under subsection (b) of this section during the fiscal year;

(ii) amounts appropriated to the Commission from the Nuclear Waste Fund for the fiscal year;

(iii) amounts appropriated to the Commission for the fiscal year for implementation of section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005; and

(iv) amounts appropriated to the Commission for homeland security activities of the Commission for the fiscal year, except for the costs of fingerprinting and background checks required by section 2169 of this title and the costs of conducting security inspections.

(B) Percentages

The percentages referred to in subparagraph (A) are—

(i) 98 percent for fiscal year 2001;

(ii) 96 percent for fiscal year 2002;

(iii) 94 percent for fiscal year 2003;

(iv) 92 percent for fiscal year 2004; and

(v) 90 percent for fiscal year 2005 and each fiscal year thereafter.

(3) Amount per licensee

The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among licensees. To the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees.

(4) Exemption

(A) In general

Paragraph (1) shall not apply to the holder of any license for a federally owned research reactor used primarily for educational training and academic research purposes.

(B) Research reactor

For purposes of subparagraph (A), the term ''research reactor'' means a nuclear reactor that—

(i) is licensed by the Nuclear Regulatory Commission under section 2134(c) of this title for operation at a thermal power level of 10 megawatts or less; and

(ii) if so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(I) a circulating loop through the core in which the licensee conducts fuel experiments;

(II) a liquid fuel loading; or

(III) an experimental facility in the core in excess of 16 square inches in cross-section.

(d) "Nuclear Waste Fund" defined

As used in this section, the term ''Nuclear Waste Fund'' means the fund established pursuant to section 10222(c) of this title.

(Pub. L. 101–508, title VI, § 6101, Nov. 5, 1990, 104 Stat. 1388–298; Pub. L. 102–486, title XXIX, § 2903(a), Oct. 24, 1992, 106 Stat. 3125; Pub. L. 103–66, title VII, § 7001, Aug. 10, 1993, 107 Stat. 401; Pub. L. 105–245, title V, § 505, Oct. 7, 1998, 112 Stat. 1856; Pub. L. 106–60, title VI, § 604, Sept. 29, 1999, 113 Stat. 501; Pub. L. 106–377, § 1(a)(2) [title VIII], Oct. 27, 2000, 114 Stat. 1441, 1441A–86; Pub. L. 109–58, title VI, § 637(a), Aug. 8, 2005, 119 Stat. 791; Pub. L. 109–103, title IV, Nov. 19, 2005, 119 Stat. 2283.)

REFERENCES IN TEXT

Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, referred to in subsec. (c)(2)(A)(iii), is section 3116 of Pub. L. 108–375, which is set out as a note under section 2601 of Title 50, War and National Defense.

CODIFICATION

Section is comprised of section 6101 of Pub. L. 101–508. Subsec. (e) of section 6101 of Pub. L. 101–508 amended former section 2213 of this title.

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109–58, § 637(a)(1)(A), substituted ''The'' for ''Except as provided in paragraph (3), the''.

Subsec. (a)(3). Pub. L. 109–58, § 637(a)(1)(B), struck out heading and text of par. (3). Text read as follows: ''The last assessment of annual charges under subsection (c) of this section shall be made not later than September 20, 2005.''

Subsec. (c)(2)(A)(iii), (iv). Pub. L. 109–58, § 637(a)(2)(A)–(C), added cls. (iii) and (iv).

Subsec. (c)(2)(B)(v). Pub. L. 109–58, § 637(a)(2)(D), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''90 percent for fiscal year 2005 and fiscal year 2006.''

Pub. L. 109–103 inserted ''and fiscal year 2006'' before period at end.

2000—Subsec. (a)(3). Pub. L. 106–377, § 1(a)(2) [title VIII], which directed substitution of ''September 20, 2005'' for ''September 30, 1999'', was executed by making the substitution for ''September 30, 2000'' to reflect the probable intent of Congress and the amendment by Pub. L. 106–60, § 604. See 1999 Amendment note below.

Subsec. (c)(1). Pub. L. 106–377, § 1(a)(2) [title VIII], inserted ''or certificate holder'' after ''licensee''.

Subsec. (c)(2). Pub. L. 106–377, § 1(a)(2) [title VIII], added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''The aggregate amount of the annual charge collected from all licensees shall equal an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such charge is collected, less any amount appropriated to the Commission from the Nuclear Waste Fund and the amount of fees collected under subsection (b) of this section in such fiscal year.''

1999—Subsec. (a)(3). Pub. L. 106–60 substituted ''September 30, 2000'' for ''September 30, 1999''.

1998—Subsec. (a)(3). Pub. L. 105–245 substituted ''September 30, 1999'' for ''September 30, 1998''.

1993—Subsec. (a)(3). Pub. L. 103–66 substituted ''September 30, 1998'' for ''September 30, 1995''.

1992—Subsec. (c)(1). Pub. L. 102–486, § 2903(a)(1), substituted ''Except as provided in paragraph (4), any licensee'' for ''Any licensee''.

Subsec. (c)(4). Pub. L. 102–486, § 2903(a)(2), added par. (4).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title VI, § 637(c), Aug. 8, 2005, 119 Stat. 791, provided that: ''The amendments made by this section [amending this section and repealing section 2213 of this title] take effect on October 1, 2006.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2903(b) of Pub. L. 102–486 provided that: ''The amendments made [by] subsection (a) [amending this section] shall apply to annual charges assessed under section 6101(c) of the Omnibus Budget Reconciliation Act of 1990 [42 U.S.C. 2214(c)] for fiscal year 1992 or any succeeding fiscal year.''

POLICY REVIEW

Section 2903(c) of Pub. L. 102–486 provided that: ''The Nuclear Regulatory Commission shall review its policy for assessment of annual charges under section 6101(c) of the Omnibus Budget Reconciliation Act of 1990 [42 U.S.C. 2214(c)], solicit public comment on the need for changes to such policy, and recommend to the Congress such changes in existing law as the Commission finds are needed to prevent the placement of an unfair burden on certain licensees of the Commission, in particular those that hold licenses to operate federally owned research reactors used primarily for educational training and academic research purposes.''

SUBCHAPTER XIV—COMPENSATION FOR PRIVATE PROPERTY ACQUIRED

§ 2221. Just compensation for requisitioned property

The United States shall make just compensation for any property or interests therein taken or requisitioned pursuant to sections 2063, 2075, 2096, and 2138 of this title. Except in case of real property or any interest therein, the Commission shall determine and pay such just compensation. If the compensation so determined is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined, and shall be entitled to sue the United States in the United States Court of Federal Claims or in any district court of the United States for the district in which such claimant is a resident in the manner provided by section 1346 of title 28 to recover such further sum as added to said 75 per centum will constitute just compensation.

(Aug. 1, 1946, ch. 724, title I, § 171, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 952; amended Pub. L. 88–489, § 17, Aug. 26, 1964, 78 Stat. 606; Pub. L. 97–164, title I, § 160(a)(16), Apr. 2, 1982, 96 Stat. 48; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1813(a) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

1964—Pub. L. 88–489 substituted ''2075'' for ''2072 (with respect to the material for which the United States is required to pay just compensation),''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

RETROCESSION OF LAND TO NEW MEXICO

Section 3 of act Aug. 30, 1954, provided that:

''There is hereby retroceded to the State of New Mexico the exclusive jurisdiction heretofore acquired from the State of New Mexico by the United States of America over the following land of the United States Atomic Energy Commission in Bernalillo County and within the boundaries of the Sandia base, Albuquerque, New Mexico.

''Beginning at the center quarter corner of section 30, township 10 north, range 4 east, New Mexico principal meridian, Bernalillo County, New Mexico, thence south no degrees twenty-three minutes thirty seconds west one thousand nine hundred forty-seven and twenty one-hundredths feet, thence north eighty-nine degrees thirty-six minutes forty-five seconds east two thousand sixty-eight and forty one-hundredths feet, thence north eighty-nine degrees three minutes fifteen seconds east five hundred forty-six feet, thence north no degrees thirty-nine minutes no seconds east two hundred thirty-two and seventy one-hundredths feet, thence north eighty-nine degrees twenty-one minutes no seconds west eight hundred fifty-two and twenty one-hundredths feet, thence north no degrees thirty-nine minutes no seconds east five hundred and sixty one-hundredths feet, thence along the back of the south curb of West Sandia Drive, Sandia Base, Bernalillo County, New Mexico, eight hundred sixty-five and sixty one-hundredths feet, thence north no degrees thirty-nine minutes no seconds east one thousand three hundred thirty-five and three-tenths feet to a point south eighty-nine degrees twenty-seven minutes forty-five seconds west a distance of thirty feet from the quarter corner common to sections 30 and 29, township 10 north, range 4 east, thence south eighty-nine degrees, twenty-seven minutes forty-five seconds west two thousand six hundred twenty-three and forty one-hundredths feet to the point of beginning.

''This retrocession of jurisdiction shall take effect upon acceptance by the State of New Mexico.''

§ 2222. Condemnation of real property

Proceedings for condemnation shall be instituted pursuant to the provisions of section 3113 of title 40, and section 1403 of title 28. Sections 3114 to 3116 and 3118 of title 40 shall be applicable to any such proceedings.

(Aug. 1, 1946, ch. 724, title I, § 172, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 953; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

CODIFICATION

In text, ''section 3113 of title 40'' substituted for ''the Act approved August 1, 1888, as amended,'' and ''Sections 3114 to 3116 and 3118 of title 40'' substituted for ''The Act approved February 26, 1931, as amended,'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1813(b) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2223. Patent application disclosures

In the event that the Commission communicates to any nation any Restricted Data based on any patent application not belonging to the United States, just compensation shall be paid by the United States to the owner of the patent application. The Commission shall determine such compensation. If the compensation so determined is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined, and shall be entitled to sue the United States in the United States Court of Federal Claims or in any district court of the United States for the district in which such claimant is a resident in a manner provided by section 1346 of title 28 to recover such further sum as added to such 75 per centum will constitute just compensation.

(Aug. 1, 1946, ch. 724, title I, § 173, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 953; amended Pub. L. 97–164, title I, § 160(a)(16), Apr. 2, 1982, 96 Stat. 48; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 2224. Attorney General approval of title

All real property acquired under this chapter shall be subject to the provisions of sections 3111 and 3112 of title 40: *Provided, however*, That real property acquired by purchase or donation, or other means of transfer may also be occupied, used, and improved for the purposes of this chapter prior to approval of title by the Attorney General in those cases where the President determines that such action is required in the interest of the common defense and security.

(Aug. 1, 1946, ch. 724, title I, § 174, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 953; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

CODIFICATION

In text, ''sections 3111 and 3112 of title 40'' substituted for ''section 355 of the Revised Statutes, as amended'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1813(b) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

SUBCHAPTER XV—JUDICIAL REVIEW AND ADMINISTRATIVE PROCEDURE

§ 2231. Applicability of administrative procedure provisions; definitions

The provisions of subchapter II of chapter 5, and chapter 7, of title 5 shall apply to all agency action taken under this chapter, and the terms ''agency'' and ''agency action'' shall have the meaning specified in section 551 of title 5: *Provided, however*, That in the case of agency proceedings or actions which involve Restricted Data, defense information, safeguards information protected from disclosure under the authority of section 2167 of this title or information protected from dissemination under the authority of section 2168 of this title, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 2168 of this title to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 2168 of this title were not involved.

(Aug. 1, 1946, ch. 724, title I, § 181, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 953; amended Pub. L. 96–295, title II, § 207(b), June 30, 1980, 94 Stat. 789; Pub. L. 97–90, title II, § 210(b), Dec. 4, 1981, 95 Stat. 1170; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

CODIFICATION

''Subchapter II of chapter 5, and chapter 7, of title 5'' substituted in text for the first reference to the Administrative Procedure Act on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. ''Section 551 of title 5'' substituted for the second reference to the Administrative Procedure Act to reflect the codification of the definitions of ''agency'' and ''agency action'' in that section. Prior to the enactment of Title 5, the Administrative Procedure Act was classified to sections 1001 to 1011 of Title 5.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1814(a), (c) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1981—Pub. L. 97–90, in proviso, substituted ''involve Restricted Data, defense information, safeguards information protected from disclosure under the authority of section 2167 of this title or information protected from dissemination under the authority of section 2168 of this title, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 2168 of this title to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 2168 of this title were not involved'' for ''involve Restricted Data, defense information, or safeguards information protected from disclosure under the authority of section 2167 of this title, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, or such safeguards information, to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, or such safeguards information, were not involved''.

1980—Pub. L. 96–295 inserted references and made provisions applicable to safeguards information.

§ 2232. License applications

(a) Contents and form

Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license. In connection with applications for licenses to operate production or utilization facilities, the applicant shall state such technical specifications, including information of the amount, kind, and source of special nuclear material required, the place of the use, the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization or production of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public. Such technical specifications shall be a part of any license issued. The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee. Applications for, and statements made in connection with, licenses under sections 2133 and 2134 of this title shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

(b) Review of applications by Advisory Committee on Reactor Safeguards; report

The Advisory Committee on Reactor Safeguards shall review each application under section 2133 or section 2134(b) of this title for a construction permit or an operating license for a facility, any application under section 2134(c) of this title for a construction permit or an operating license for a testing facility, any application under subsection (a) or (c) of section 2134 of this title specifically referred to it by the Commission, and any application for an amendment to a construction permit or an amendment to an operating license under section 2133 or 2134(a), (b), or (c) of this title specifically referred to it by the Commission, and shall submit a report thereon which shall be made part of the record of the application and available to the public except to the extent that security classification prevents disclosure.

(c) Commercial power; publication

The Commission shall not issue any license under section 2133 of this title for a utilization or production facility for the generation of commercial power until it has given notice in writing to such regulatory agency as may have jurisdiction over the rates and services incident to the proposed activity; until it has published notice of the application in such trade or news publications as the Commission deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility; and until it has published notice of such application once each week for four consecutive weeks in the Federal Register, and until four weeks after the last notice.

(d) Preferred consideration

The Commission, in issuing any license for a utilization or production facility for the generation of commercial power under section 2133 of this title, shall give preferred consideration to applications for such facilities which will be located in high cost power areas in the United States if there are conflicting applications for a limited opportunity for such license. Where such conflicting applications resulting from limited opportunity for such license include those submitted by public or cooperative bodies such applications shall be given preferred consideration.

(Aug. 1, 1946, ch. 724, title I, § 182, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 953; amended Aug. 6, 1956, ch. 1015, § 5, 70 Stat. 1069; Pub. L. 85–256, § 6, Sept. 2, 1957, 71 Stat. 579; Pub. L. 87–615, § 3, Aug. 29, 1962, 76 Stat. 409; Pub. L. 91–560, § 9, Dec. 19, 1970, 84 Stat. 1474; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1970—Subsec. (c). Pub. L. 91–560 substituted provisions requiring notification by publication giving reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility, for provisions requiring notice in writing to municipalities, private utilities, public bodies and cooperatives within transmission distance authorized to engage in the distribution of electric energy.

1962—Subsec. (b). Pub. L. 87–615 substituted provisions requiring review of applications under section 2133 or 2134(b) of this title for a construction permit or an operating license for a facility, or under section 2134(c) of this title for a testing facility, for provisions which required review of license applications for such facilities, and inserted provisions requiring review of any application for an amendment to a construction permit or operating license under section 2133 or 2134(a), (b), or (c) of this title specifically referred to it by the Commission.

1957—Subsecs. (b) to (d). Pub. L. 85–256 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1956—Subsec. (a). Act Aug. 6, 1956, struck out ''under oath or affirmation'' from last sentence, and inserted two sentences at end requiring applications and statements in connection with sections 2133 and 2134 to be made under oath or affirmation and authorizing Commission to require any other applications or statements to be made under oath or affirmation.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2233. Terms of licenses

Each license shall be in such form and contain such terms and conditions as the Commission may, by rule or regulation, prescribe to effectuate the provisions of this chapter, including the following provisions:

(a) Repealed. Pub. L. 88–489, § 18, Aug. 26, 1964, 78 Stat. 607.

(b) No right to the special nuclear material shall be conferred by the license except as defined by the license.

(c) Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this chapter.

(d) Every license issued under this chapter shall be subject to the right of recapture or control reserved by section 2138 of this title, and to all of the other provisions of this chapter, now or hereafter in effect and to all valid rules and regulations of the Commission.

(Aug. 1, 1946, ch. 724, title I, § 183, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 954; amended Pub. L. 88–489, § 18, Aug. 26, 1964, 78 Stat. 607; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1964—Par. (a). Pub. L. 88–489 struck out par. (a) which placed title to all special nuclear material utilized or produced by facilities pursuant to license in the United States at all times.

§ 2234. Inalienability of licenses

No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through

transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this chapter, and shall give its consent in writing. The Commission may give such consent to the creation of a mortgage, pledge, or other lien upon any facility or special nuclear material, owned or thereafter acquired by a licensee, or upon any leasehold or other interest to such facility, and the rights of the creditors so secured may thereafter be enforced by any court subject to rules and regulations established by the Commission to protect public health and safety and promote the common defense and security.

(Aug. 1, 1946, ch. 724, title I, § 184, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 954; amended Pub. L. 88–489, § 19, Aug. 26, 1964, 78 Stat. 607; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1964—Pub. L. 88–489 inserted ''or special nuclear material,'' after ''lien upon any facility'' and substituted ''interest in such facility'' for ''interest in such property''.

§ 2235. Construction permits and operating licenses

(a) All applicants for licenses to construct or modify production or utilization facilities shall, if the application is otherwise acceptable to the Commission, be initially granted a construction permit. The construction permit shall state the earliest and latest dates for the completion of the construction or modification. Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this chapter and of the rules and regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this chapter, the Commission shall thereupon issue a license to the applicant. For all other purposes of this chapter, a construction permit is deemed to be a ''license''.

(b) After holding a public hearing under section 2239(a)(1)(A) of this title, the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this chapter, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this chapter, and the Commission's rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Any finding made under this subsection shall not require a hearing except as provided in section 2239(a)(1)(B) of this title.

(Aug. 1, 1946, ch. 724, title I, § 185, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 955; renumbered title I and amended Pub. L. 102–486, title IX, § 902(a)(8), title XXVIII, § 2801, Oct. 24, 1992, 106 Stat. 2944, 3120.)

AMENDMENTS

1992—Pub. L. 102–486 inserted ''and operating licenses'' after ''permits'' in section catchline, designated existing text as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2806 of Pub. L. 102–486 provided that: ''Sections 185 b. and 189 a. (1)(B) of the Atomic Energy Act of 1954 [subsec. (b) of this section and section 2239(a)(1)(B) of this title], as added by sections 2801 and 2802 of this Act, shall apply to all proceedings involving a combined license for which an application was filed after May 8, 1991, under such sections.''

EXECUTIVE ORDER NO. 12129

Ex. Ord. No. 12129, Apr. 5, 1979, 44 F.R. 21001, which established a Critical Energy Facility Program, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 2236. Revocation of licenses

(a) False applications; failure of performance

Any license may be revoked for any material false statement in the application or any statement of fact required under section 2232 of this title, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this chapter or of any regulation of the Commission.

(b) Procedure

The Commission shall follow the provisions of section 558(c) of title 5 in revoking any license.

(c) Repossession of material

Upon revocation of the license, the Commission may immediately retake possession of all special nuclear material held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission may recapture any special nuclear material held by the licensee or may enter upon and operate the facility prior to any of the procedures provided under subchapter II of chapter

5 and chapter 7 of title 5. Just compensation shall be paid for the use of the facility.

(Aug. 1, 1946, ch. 724, title I, § 186, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 955; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

CODIFICATION

In subsecs. (b) and (c), ''section 558(c) of title 5'' and ''subchapter II of chapter 5 and chapter 7 of title 5'' substituted for ''section 9(b) of the Administrative Procedure Act [5 U.S.C. 1008(b)]'' and ''the Administration Procedure Act [5 U.S.C. 1001–1011]'', respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

§ 2237. Modification of license

The terms and conditions of all licenses shall be subject to amendment, revision, or modification, by reason of amendments of this chapter or by reason of rules and regulations issued in accordance with the terms of this chapter.

(Aug. 1, 1946, ch. 724, title I, § 187, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 955; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2238. Continued operation of facilities

Whenever the Commission finds that the public convenience and necessity or the production program of the Commission requires continued operation of a production facility or utilization facility the license for which has been revoked pursuant to section 2236 of this title, the Commission may, after consultation with the appropriate regulatory agency, State or Federal, having jurisdiction, order that possession be taken of and such facility be operated for such period of time as the public convenience and necessity or the production program of the Commission may, in the judgment of the Commission, require, or until a license for the operation of the facility shall become effective. Just compensation shall be paid for the use of the facility.

(Aug. 1, 1946, ch. 724, title I, § 188, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 955; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2239. Hearings and judicial review

(a)(1)(A) In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under sections[1] 2183, 2187, 2236(c) or 2238 of this title, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 2133 or 2134(b) of this title for a construction permit for a facility, and on any application under section 2134(c) of this title for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

(B)(i) Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 2235(b) of this title, the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

(ii) A request for hearing under clause (i) shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(iii) After receiving a request for a hearing under clause (i), the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(iv) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under clause (i), and shall state its reasons therefor.

(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license or any amendment to a combined construction and operating license, upon a determination by the Commission that such

[1] So in original. Probably should be ''section''.

amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this chapter.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license or any amendment to a combined construction and operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

(b) The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of title 28 and chapter 7 of title 5:

(1) Any final order entered in any proceeding of the kind specified in subsection (a) of this section.

(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act [42 U.S.C. 2297h et seq.].

(4) Any final determination under section 2297f(c) of this title relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Privatization Act [42 U.S.C. 2297h et seq.], are in compliance with the Commission's standards governing the gaseous diffusion plants and all applicable laws.

(Aug. 1, 1946, ch. 724, title I, § 189, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 955; amended Pub. L. 85–256, § 7, Sept. 2, 1957, 71 Stat. 579; Pub. L. 87–615, § 2, Aug. 29, 1962, 76 Stat. 409; Pub. L. 97–415, § 12(a), Jan. 4, 1983, 96 Stat. 2073; renumbered title I and amended Pub. L. 102–486, title IX, § 902(a)(8), title XXVIII, §§ 2802, 2804, 2805, Oct. 24, 1992, 106 Stat. 2944, 3120, 3121; Pub. L. 104–134, title III, § 3116(c), Apr. 26, 1996, 110 Stat. 1321–349.)

REFERENCES IN TEXT

The effective date of this paragraph, referred to in subsec. (a)(2)(C), probably means the date of enactment of Pub. L. 97–415, which was approved Jan. 4, 1983.

The USEC Privatization Act, referred to in subsec. (b)(3), (4), is subchapter A (§§ 3101–3117) of chapter 1 of title III of Pub. L. 104–134, Apr. 26, 1996, 110 Stat. 1321–335, which is classified principally to subchapter VIII (§ 2297h et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 2011 of this title and Tables.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–134 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Any final order entered in any proceeding of the kind specified in subsection (a) of this section or any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license shall be subject to judicial review in the manner prescribed in the Act of December 29, 1950, as amended (ch. 1189, 64 Stat. 1129), and to the provisions of section 10 of the Administrative Procedure Act, as amended."

1992—Subsec. (a)(1). Pub. L. 102–486, § 2802, designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(2)(A), (C). Pub. L. 102–486, § 2804, inserted "or any amendment to a combined construction and operating license" after "any amendment to an operating license".

Subsec. (b). Pub. L. 102–486, § 2805, inserted "or any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license" before "shall be subject to judicial review".

1983—Subsec. (a). Pub. L. 97–415 designated existing provisions as par. (1) and added par. (2).

1962—Subsec. (a). Pub. L. 87–615 substituted "construction permit for a facility" and "construction permit for a testing facility" for "license for a facility" and "license for a testing facility" respectively, and authorized the commission in cases where a permit has been issued following a hearing, and in the absence of a request therefor by anyone whose interest may be affected, to issue an operating license or an amendment to a construction permit or an operating license without a hearing upon thirty days' notice and publication once in the Federal Register of its intent to do so, and to dispense with such notice and publication with respect to any application for an amendment to a construction permit or to an operating license upon its determination that the amendment involves no significant hazards consideration.

1957—Subsec. (a). Pub. L. 85–256 required the Commission to hold a hearing after 30 days notice and publication once in the Federal Register on an application for a license for a facility or a testing facility.

EFFECTIVE DATE OF 1992 AMENDMENT

Subsec. (a)(1)(B) of this section, as added by section 2802 of Pub. L. 102–486, applicable to all proceedings involving combined license for which application was filed after May 8, 1991, see section 2806 of Pub. L. 102–486, set out as a note under section 2235 of this title.

AUTHORITY TO EFFECTUATE AMENDMENTS TO OPERATING LICENSES

Section 12(b) of Pub. L. 97–415 provided that: "The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a) [amending this section], to issue and to make immediately effective any amendment to an operating license shall take effect upon the promulgation by the

Commission of the regulations required in such provisions.''

REVIEW OF NUCLEAR PROLIFERATION ASSESSMENT STATEMENTS

No court or regulatory body to have jurisdiction to compel performance of or to review adequacy of performance of any Nuclear Proliferation Assessment Statement called for by the Atomic Energy Act of 1954 [this chapter] or by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, see section 2160a of this title.

ADMINISTRATIVE ORDERS REVIEW ACT

Court of appeals exclusive jurisdiction respecting final orders of Atomic Energy Commission, now the Nuclear Regulatory Commission and the Secretary of Energy, made reviewable by this section, see section 2342 of Title 28, Judiciary and Judicial Procedure.

§ 2240. Licensee incident reports as evidence

No report by any licensee of any incident arising out of or in connection with a licensed activity made pursuant to any requirement of the Commission shall be admitted as evidence in any suit or action for damages growing out of any matter mentioned in such report.

(Aug. 1, 1946, ch. 724, title I, § 190, as added Pub. L. 87–206, § 16, Sept. 6, 1961, 75 Stat. 479; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2241. Atomic safety and licensing boards; establishment; membership; functions; compensation

(a) Notwithstanding the provisions of sections 556(b) and 557(b) of title 5, the Commission is authorized to establish one or more atomic safety and licensing boards, each comprised of three members, one of whom shall be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this chapter, any other provision of law, or any regulation of the Commission issued thereunder. The Commission may delegate to a board such other regulatory functions as the Commission deems appropriate. The Commission may appoint a panel of qualified persons from which board members may be selected.

(b) Board members may be appointed by the Commission from private life, or designated from the staff of the Commission or other Federal agency. Board members appointed from private life shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of a board. The provisions of section 2203 of this title shall be applicable to board members appointed from private life.

(Aug. 1, 1946, ch. 724, title I, § 191, as added Pub. L. 87–615, § 1, Aug. 29, 1962, 76 Stat. 409; amended Pub. L. 91–560, § 10, Dec. 19, 1970, 84 Stat. 1474; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

CODIFICATION

In subsec. (a), ''sections 556(b) and 557(b) of title 5'' substituted for ''sections 7(a) and 8(a) of the Administrative Procedure Act [5 U.S.C. 1006(a), 1007(a)]'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–560 required that two members of the board should have such technical or other qualifications the Commission deems appropriate to the issues to be decided.

§ 2242. Temporary operating license

(a) Fuel loading, testing, and operation at specific power level; petition, affidavit, etc.

In any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 2133 or 2134(b) of this title, in which a hearing is otherwise required pursuant to section 2239(a) of this title, the applicant may petition the Commission for a temporary operating license for such facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application. The initial petition for a temporary operating license for each such facility, and any temporary operating license issued for such facility based upon the initial petition, shall be limited to power levels not to exceed 5 percent of rated full thermal power. Following issuance by the Commission of the temporary operating license for each such facility, the licensee may file petitions with the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 percent of rated full thermal power. The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by section 2232(b) of this title; (2) the filing of the initial Safety Evaluation Report by the Nuclear Regulatory Commission staff and the Nuclear Regulatory Commission staff's first supplement to the report prepared in response to the report of the Advisory Committee on Reactor Safeguards for the facility; (3) the Nuclear Regulatory Commission staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 4332(2)(C) of this title; and (4) a State, local, or utility emergency preparedness plan for the facility. Petitions for the issuance of a temporary operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment thereto. The Commission shall publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such temporary operating

license or amendment thereto. Any person may file affidavits or statements in support of, or in opposition to, the petition within thirty days after the publication of such notice in the Federal Register.

(b) Operation at greater power level; criteria, effect, terms and conditions, etc.; procedures applicable

With respect to any petition filed pursuant to subsection (a) of this section, the Commission may issue a temporary operating license, or amend the license to authorize temporary operation at each specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that—

(1) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

(2) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and the environment during the period of temporary operation; and

(3) denial of such temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the date when such facility would otherwise receive a final operating license pursuant to this chapter.

The temporary operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. Any final order authorizing the issuance or amendment of any temporary operating license pursuant to this section shall recite with specificity the facts and reasons justifying the findings under this subsection, and shall be transmitted upon such issuance to the Committees on Natural Resources and on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission with respect to the issuance or amendment of a temporary operating license shall be subject to judicial review pursuant to chapter 158 of title 28. The requirements of section 2239(a) of this title with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of a temporary operating license under this section.

(c) Hearing for final operating license; suspension, issuance, compliance, etc., with temporary operating license

Any hearing on the application for the final operating license for a facility required pursuant to section 2239(a) of this title shall be concluded as promptly as practicable. The Commission shall suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of a temporary operating license under subsection (b) of this section shall be without prejudice to the right of any party to raise any issue in a hearing required pursuant to section 2239(a) of this title; and failure to assert any ground for denial or limitation of a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. Any party to a hearing required pursuant to section 2239(a) of this title on the final operating license for a facility for which a temporary operating license has been issued under subsection (b) of this section, and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information indicating that the terms and conditions of the temporary operating license are not being met, or that such terms and conditions are not sufficient to comply with the provisions of paragraph (2) of subsection (b) of this section.

(d) Administrative remedies for minimization of need for license

The Commission is authorized and directed to adopt such administrative remedies as the Commission deems appropriate to minimize the need for issuance of temporary operating licenses pursuant to this section.

(e) Expiration of issuing authority

The authority to issue new temporary operating licenses under this section shall expire on December 31, 1983.

(Aug. 1, 1946, ch. 724, title I, § 192, as added Pub. L. 92–307, June 2, 1972, 86 Stat. 191; amended Pub. L. 97–415, § 11, Jan. 4, 1983, 96 Stat. 2071; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103–437, § 15(f)(8), Nov. 2, 1994, 108 Stat. 4593.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–437 substituted ''Natural Resources and on'' for ''Interior and Insular Affairs and''.

1983—Subsec. (a). Pub. L. 97–415 substituted provisions setting forth procedures for petitioning for a temporary operating license in any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 2133 or 2134(b) of this title in which a hearing is otherwise required pursuant to section 2239(a) of this title, for provisions setting forth procedures for petitioning for a temporary operating license in any proceeding upon an application for an operating license for a nuclear power reactor in which a hearing is otherwise required pursuant to section 2239(a) of this title.

Subsec. (b). Pub. L. 97–415 substituted provisions relating to requisite findings, effectiveness, terms and conditions, etc., with respect to petition for a temporary operating license for a utilization facility or amendment of the license to authorize temporary operation at greater power levels than authorized in the initial temporary operating license, for provisions relating to requisite findings, terms and conditions, etc., with respect to petition for a temporary operating license for a nuclear power reactor.

Subsec. (c). Pub. L. 97–415 inserted provisions relating to notification requirements on any party to the hearing and any Board member, and substituted provisions relating to suspension of the temporary operating license, for provisions relating to vacation of the temporary operating license.

Subsec. (d). Pub. L. 97–415 substituted provisions relating to administrative remedies for minimization of

need for temporary operating licenses for provisions setting forth expiration of authority under this section on Oct. 30, 1973.

Subsec. (e). Pub. L. 97–415 added subsec. (e).

CHANGE OF NAME

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives and Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 2243. Licensing of uranium enrichment facilities

(a) Environmental impact statement

(1) Major Federal action

The issuance of a license under sections 2073 and 2093 of this title for the construction and operation of any uranium enrichment facility shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Timing

An environmental impact statement prepared under paragraph (1) shall be prepared before the hearing on the issuance of a license for the construction and operation of a uranium enrichment facility is completed.

(b) Adjudicatory hearing

(1) In general

The Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility under sections 2073 and 2093 of this title.

(2) Timing

Such hearing shall be completed and a decision issued before the issuance of a license for such construction and operation.

(3) Single proceeding

No further Commission licensing action shall be required to authorize operation.

(c) Inspection and operation

Prior to commencement of operation of a uranium enrichment facility licensed hereunder, the Commission shall verify through inspection that the facility has been constructed in accordance with the requirements of the license for construction and operation. The Commission shall publish notice of the inspection results in the Federal Register.

(d) Insurance and decommissioning

(1) The Commission shall require, as a condition of the issuance of a license under sections 2073 and 2093 of this title for a uranium enrichment facility, that the licensee have and maintain liability insurance of such type and in such amounts as the Commission judges appropriate to cover liability claims arising out of any occurrence within the United States, causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source or special nuclear material.

(2) The Commission shall require, as a condition for the issuance of a license under sections 2073 and 2093 of this title for a uranium enrichment facility, that the licensee provide adequate assurance of the availability of funds for the decommissioning (including decontamination) of such facility using funding mechanisms that may include, but are not necessarily limited to, the following:

(A) Prepayment (in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities).

(B) Surety (in the form of a surety or performance bond, letter of credit, or line of credit), insurance, or other guarantee (including parent company guarantee) method.

(C) External sinking fund in which deposits are made at least annually.

(e) No Price-Anderson coverage

Section 2210 of this title shall not apply to any license under section 2073 or 2093 of this title for a uranium enrichment facility constructed after November 15, 1990.

(f) Limitation

No license or certificate of compliance may be issued to the United States Enrichment Corporation or its successor under this section or sections[1] 2073, 2093, or 2297f of this title, if the Commission determines that—

(1) the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(2) the issuance of such a license or certificate of compliance would be inimical to—

(A) the common defense and security of the United States; or

(B) the maintenance of a reliable and economical domestic source of enrichment services.

(Aug. 1, 1946, ch. 724, title I, § 193, as added Pub. L. 101–575, § 5(e), Nov. 15, 1990, 104 Stat. 2835; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 104–134, title III, § 3116(b)(2), Apr. 26, 1996, 110 Stat. 1321–349.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–134 added subsec. (f).

[1] So in original. Probably should be "section".

REFERENCES TO UNITED STATES ENRICHMENT CORPORATION

References to the United States Enrichment Corporation deemed, as of the privatization date (July 28, 1998), to be references to the private corporation, see section 3116(e) of Pub. L. 104–134, set out as a note under former section 2297 of this title.

SUBCHAPTER XVI—JOINT COMMITTEE ON ATOMIC ENERGY

§§ 2251 to 2257. Repealed. Aug. 1, 1946, ch. 724, title I, § 302(a), as added Aug. 30, 1954, ch. 1073, § 1, as added Sept. 20, 1977, Pub. L. 95–110, § 1, 91 Stat. 884; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, § 902(a)(8), 106 Stat. 2944

Section 2251, act Aug. 1, 1946, ch. 724, § 201, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 956, provided for establishment of Joint Committee on Atomic Energy.

Provisions similar to section 2251 were contained in section 1815(a) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

Section 2252, act Aug. 1, 1946, ch. 724, § 202, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 956; amended Sept. 6, 1961, Pub. L. 87–206, § 17, 75 Stat. 479; Mar. 26, 1964, Pub. L. 88–294, 78 Stat. 172; Dec. 6, 1974, Pub. L. 93–514, 88 Stat. 1611, set out authority and duties of Joint Committee.

Provisions similar to section 2252 were contained in section 1815(b) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

Section 2253, act Aug. 1, 1946, ch. 724, § 203, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 956, provided for a Chairman and a Vice Chairman of Committee.

Provisions similar to section 2253 were contained in section 1815(c) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

Section 2254, act Aug. 1, 1946, ch. 724, § 204, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 957; amended Dec. 27, 1974, Pub. L. 93–554, title I, § 101(2), 88 Stat. 1776, related to the powers of Committee.

Provisions similar to section 2254 were contained in section 1815(d) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

Section 2255, act Aug. 1, 1946, ch. 724, § 205, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 957, related to staff and assistance for Committee.

Provisions similar to section 2255 were contained in section 1815(e) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

Section 2256, act Aug. 1, 1946, ch. 724, § 206, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 957, related to classification of information originating in Committee.

Section 2257, act Aug. 1, 1946, ch. 724, § 207, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 957, required that Committee keep records of all Committee actions.

EFFECTIVE DATE OF REPEAL

Section 302(a) of act Aug. 1, 1946, ch. 724, title I, as added Aug. 30, 1954, ch. 1073, § 1, as added Sept. 20, 1977, Pub. L. 95–110, § 1, 91 Stat. 884; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, § 902(a)(8), 106 Stat. 2944, provided that the repeal of sections 2251 to 2257 is effective Sept. 20, 1977.

§ 2258. Joint Committee on Atomic Energy abolished

(a) Abolition

The Joint Committee on Atomic Energy is abolished.

(b) References in rules, etc., on and after September 20, 1977

Any reference in any rule, resolution, or order of the Senate or the House of Representatives or in any law, regulation, or Executive order to the Joint Committee on Atomic Energy shall, on and after September 20, 1977, be considered as referring to the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matter of such reference.

(c) Transfer of records, data, etc.; copies

All records, data, charts, and files of the Joint Committee on Atomic Energy are transferred to the committees of the Senate and House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matters to which such records, data, charts, and files relate. In the event that any record, data, chart, or file shall be within the jurisdiction of more than one committee, duplicate copies shall be provided upon request.

(Aug. 1, 1946, ch. 724, title I, § 301, as added Aug. 30, 1954, ch. 1073, § 1, as added Pub. L. 95–110, § 1, Sept. 20, 1977, 91 Stat. 884; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2259. Information and assistance to Congressional committees

(a) Secretary of Energy and Nuclear Regulatory Commission

The Secretary of Energy and the Nuclear Regulatory Commission shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the functions of the Secretary or the Commission, fully and currently informed with respect to the activities of the Secretary and the Commission.

(b) Department of Defense and Department of State

The Department of Defense and Department of State shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over national security considerations of nuclear energy, fully and currently informed with respect to such matters within the Department of Defense and Department of State relating to national security considerations of nuclear technology which are within the jurisdiction of such committees.

(c) Government agencies

Any Government agency shall furnish any information requested by the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, with respect to the activities or responsibilities of such agency in the field of nuclear energy which are within the jurisdiction of such committees.

(d) Utilization of services, facilities, and personnel of Government agencies; reimbursement; prior written consent

The committees of the Senate and the House of Representatives which, under the rules of the

Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, are authorized to utilize the services, information, facilities, and personnel of any Government agency which has activities or responsibilities in the field of nuclear energy which are within the jurisdiction of such committees: *Provided, however*, That any utilization of personnel by such committees shall be on a reimbursable basis and shall require, with respect to committees of the Senate, the prior written consent of the Committee on Rules and Administration, and with respect to committees of the House of Representatives, the prior written consent of the Committee on House Oversight.

(Aug. 1, 1946, ch. 724, title I, § 303, as added Aug. 30, 1954, ch. 1073, § 1, as added Pub. L. 95–110, § 1, Sept. 20, 1977, 91 Stat. 884; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 104–186, title II, § 222(1), Aug. 20, 1996, 110 Stat. 1751.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–186 substituted ''House Oversight'' for ''House Administration''.

CHANGE OF NAME

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

SUBCHAPTER XVII—ENFORCEMENT OF CHAPTER

§ 2271. General provisions

(a) Authority of President to utilize Government agencies

To protect against the unlawful dissemination of Restricted Data and to safeguard facilities, equipment, materials, and other property of the Commission, the President shall have authority to utilize the services of any Government agency to the extent he may deem necessary or desirable.

(b) Criminal violations

The Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations of this chapter.

(c) Violations of this chapter

No action shall be brought against any individual or person for any violation under this chapter unless and until the Attorney General of the United States has advised the Commission with respect to such action and no such action shall be commenced except by the Attorney General of the United States: *Provided, however*, That nothing in this subsection shall be construed as applying to administrative action taken by the Commission.

(Aug. 1, 1946, ch. 724, title I, § 221, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 958; amended Pub. L. 91–161, § 5, Dec. 24, 1969, 83 Stat. 445; Pub. L. 101–647, title XII, § 1211, Nov. 29, 1990, 104 Stat. 4833; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–647 struck out ''That no action shall be brought under section 2272, 2273, 2274, 2275, or 2276 of this title except by the express direction of the Attorney General: *And provided further*,'' after ''*Provided however*,''.

1969—Subsec. (c). Pub. L. 91–161 provided that nothing in this subsection should be construed to apply to administrative action taken by the Commission.

§ 2272. Violation of specific sections

(a) Whoever willfully violates, attempts to violate, or conspires to violate, any provision of sections[1] 2077 or 2131 of this title, or whoever unlawfully interferes, attempts to interfere, or conspires to interfere with any recapture or entry under section 2138 of this title, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than $20,000 or both.

(b) Any person who violates, or attempts or conspires to violate, section 2122 of this title shall be fined not more than $2,000,000 and sentenced to a term of imprisonment not less than 25 years or to imprisonment for life. Any person who, in the course of a violation of section 2122 of this title, uses, attempts or conspires to use, or possesses and threatens to use, any atomic weapon shall be fined not more than $2,000,000 and imprisoned for not less than 30 years or imprisoned for life. If the death of another results from a person's violation of section 2122 of this title, the person shall be fined not more than $2,000,000 and punished by imprisonment for life.

(Aug. 1, 1946, ch. 724, title I, § 222, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 958; amended Pub. L. 91–161, §§ 2, 3(a), Dec. 24, 1969, 83 Stat. 444; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 108–458, title VI, § 6904(b), Dec. 17, 2004, 118 Stat. 3771.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1816(a), (b) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2004—Pub. L. 108–458 designated existing provisions as subsec. (a), struck out '', 2122,'' after ''2077'', and added subsec. (b).

1969—Pub. L. 91–161 increased maximum term of imprisonment from five years to ten years for willful violation, or attempted violation of enumerated sections, and struck out applicability of death penalty for violation of same offenses committed with intent to injure the United States, or secure an advantage to any foreign nation.

[1] So in original. Probably should be ''section''.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 7 of Pub. L. 91–161 provided that: ''The amendments contained in sections 2 and 3 of this Act [amending this section and sections 2274 and 2276 of this title] shall apply only to offenses under sections 222, 224, 225, and 226 [this section and sections 2274, 2275, and 2276 of this title] which are committed on or after the date of enactment of this Act [Dec. 24, 1969]. Nothing in section 2 or 3 of this Act shall affect penalties authorized under existing law for offenses under section 222, 224, 225, or 226 of the Atomic Energy Act of 1954, as amended, committed prior to the date of enactment of this Act.''

§ 2273. Violation of sections

(a) Generally

Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this chapter for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under section 2095 or 2201(b), (i), or (*o*) of this title shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than $20,000 or by imprisonment for not more than twenty years, or both.

(b) Construction or supply of components for utilization facilities; impairment of basic components; "basic component" defined; posting at construction sites of utilization facilities and on premises of component fabrication plants

Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 2133 or 2134(b) of this title who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this chapter, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility shall, upon conviction, be subject to a fine of not more than $25,000 for each day of violation, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than $50,000 per day of violation, or imprisonment for not more than two years, or both. For the purposes of this subsection, the term ''basic component'' means a facility structure, system, component or part thereof necessary to assure—

(1) the integrity of the reactor coolant pressure boundary,

(2) the capability to shut-down the facility and maintain it in a safe shut-down condition, or

(3) the capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 2133 or 2134(b) of this title is under construction and on the premises of each plant where components for such a facility are fabricated.

(c) Criminal penalties

Any individual director, officer or employee of a person indemnified under an agreement of indemnification under section 2210(d) of this title (or of a subcontractor or supplier thereto) who, by act or omission, knowingly and willfully violates or causes to be violated any section of this chapter or any applicable nuclear safety-related rule, regulation or order issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation), which violation results in or, if undetected, would have resulted in a nuclear incident as defined in section 2014(q) of this title shall, upon conviction, notwithstanding section 3571 of title 18, be subject to a fine of not more than $25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, notwithstanding section 3571 of title 18, punishment shall be a fine of not more than $50,000, or imprisonment for not more than five years, or both.

(Aug. 1, 1946, ch. 724, title I, § 223, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 958; amended Pub. L. 90–190, § 12, Dec. 14, 1967, 81 Stat. 578; Pub. L. 91–161, § 6, Dec. 24, 1969, 83 Stat. 445; Pub. L. 96–295, title II, § 203, June 30, 1980, 94 Stat. 786; Pub. L. 100–408, § 18, Aug. 20, 1988, 102 Stat. 1083; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–408 added subsec. (c).

1980—Pub. L. 96–295 designated existing provisions as subsec. (a) and added subsec. (b).

1969—Pub. L. 91–161 limited application of section to instances where no criminal penalties have been provided.

1967—Pub. L. 90–190 substituted ''(*o*)'' for ''(p)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–408 effective Aug. 20, 1988, but inapplicable to any violation occurring before Aug. 20, 1988, see section 20 of Pub. L. 100–408, set out as a note under section 2014 of this title.

§ 2274. Communication of Restricted Data

Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data—

(a) communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than $100,000 or both;

(b) communicates, transmits, or discloses the same to any individual or person, or at-

tempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than $50,000 or imprisonment for not more than ten years, or both.

(Aug. 1, 1946, ch. 724, title I, § 224, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 958; amended Pub. L. 91–161, § 3(b), Dec. 24, 1969, 83 Stat. 444; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 106–65, div. C, title XXXI, § 3148(a), Oct. 5, 1999, 113 Stat. 938; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(g)(9)], Oct. 30, 2000, 114 Stat. 1654, 1654A–294.)

AMENDMENTS

2000—Cl. (b). Pub. L. 106–398 substituted ''$50,000'' for ''$500,000''.

1999—Cl. (a). Pub. L. 106–65, § 3148(a)(1), substituted ''$100,000'' for ''$20,000''.

Cl. (b). Pub. L. 106–65, § 3148(a)(2), substituted ''$500,000'' for ''$10,000''.

1969—Pub. L. 91–161 made death penalty inapplicable for willful violation, or attempted violation of this section with intent to injure the United States, or secure an advantage for any foreign nation.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title X, § 1087(g)(9)], Oct. 30, 2000, 114 Stat. 1654, 1654A–294, provided that the amendment made by that section is effective as of Oct. 5, 1999.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–161 applicable to offenses committed on or after Dec. 24, 1969, see section 7 of Pub. L. 91–161, set out as a note under section 2272 of this title.

§ 2275. Receipt of Restricted Data

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, acquires, or attempts or conspires to acquire any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data, shall upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than $100,000 or both.

(Aug. 1, 1946, ch. 724, title I, § 225, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 959; amended Pub. L. 91–161, § 3(b), Dec. 24, 1969, 83 Stat. 444; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 106–65, div. C, title XXXI, § 3148(b), Oct. 5, 1999, 113 Stat. 938.)

AMENDMENTS

1999—Pub. L. 106–65 substituted ''$100,000'' for ''$20,000''.

1969—Pub. L. 91–161 made death penalty inapplicable for willful violation, or attempted violation of this section with intent to injure the United States, or secure an advantage for any foreign nation.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–161 applicable to offenses committed on or after Dec. 24, 1969, see section 7 of Pub. L. 91–161, set out as a note under section 2272 of this title.

§ 2276. Tampering with Restricted Data

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, removes, conceals, tampers with, alters, mutilates, or destroys any document, writing, sketch, photograph, plan, model, instrument, appliance, or note involving or incorporating Restricted Data and used by any individual or person in connection with the production of special nuclear material, or research or development relating to atomic energy, conducted by the United States, or financed in whole or in part by Federal funds, or conducted with the aid of special nuclear material, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than $20,000 or both.

(Aug. 1, 1946, ch. 724, title I, § 226, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 959; amended Pub. L. 91–161, § 3(b), Dec. 24, 1969, 83 Stat. 444; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1969—Pub. L. 91–161 made death penalty inapplicable for willful violation, or attempted violation of this section with intent to injure the United States, or secure an advantage for any foreign nation.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–161 applicable to offenses committed on or after Dec. 24, 1969, see section 7 of Pub. L. 91–161, set out as a note under section 2272 of this title.

§ 2277. Disclosure of Restricted Data

Whoever, being or having been an employee or member of the Commission, a member of the Armed Forces, an employee of any agency of the United States, or being or having been a contractor of the Commission or of an agency of the United States, or being or having been an employee of a contractor of the Commission or of an agency of the United States, or being or having been a licensee of the Commission, or being or having been an employee of a licensee of the Commission, knowingly communicates, or whoever conspires to communicate or to receive, any Restricted Data, knowing or having reason to believe that such data is Restricted Data, to any person not authorized to receive Restricted Data pursuant to the provisions of this chapter or under rule or regulation of the Commission issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive Restricted Data shall, upon conviction thereof, be punishable by a fine of not more than $12,500.

(Aug. 1, 1946, ch. 724, title I, § 227, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 959; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 106–65, div. C, title XXXI, § 3148(c), Oct. 5, 1999, 113 Stat. 938.)

AMENDMENTS

1999—Pub. L. 106–65 substituted ''$12,500'' for ''$2,500''.

§ 2278. Statute of limitations

Except for a capital offense, no individual or person shall be prosecuted, tried, or punished for any offense prescribed or defined in sections 2274 to 2276 of this title unless the indictment is

found or the information is instituted within ten years next after such offense shall have been committed.

(Aug. 1, 1946, ch. 724, title I, § 228, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 959; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2278a. Trespass on Commission installations

(a) Issuance and posting of regulations

(1) The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, in the custody of the Commission, or subject to the licensing authority of the Commission or certification by the Commission under this chapter or any other Act.

(2) Every such regulation of the Commission shall be posted conspicuously at the location involved.

(b) Penalty for violation of regulations

Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection (a) of this section shall, upon conviction thereof, be punishable by a fine of not more than $1,000.

(c) Penalty for violation of regulations regarding enclosed property

Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection (a) of this section with respect to any installation or other property which is enclosed by a fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed $5,000 or to imprisonment for not more than one year, or both.

(Aug. 1, 1946, ch. 724, title I, § 229, as added Aug. 6, 1956, ch. 1015, § 6, 70 Stat. 1070; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 109–58, title VI, § 654, Aug. 8, 2005, 119 Stat. 812.)

AMENDMENTS

2005—Pub. L. 109–58, § 654(1), (2), substituted ''on'' for ''upon'' in section catchline and realigned margins.

Subsec. (a). Pub. L. 109–58, § 654(3), designated first sentence as par. (1), substituted ''in the custody of the Commission, or subject to the licensing authority of the Commission or certification by the Commission under this chapter or any other Act'' for ''or in the custody of the Commission'', and designated second sentence as par. (2).

§ 2278b. Photographing, etc., of Commission installations; penalty

It shall be an offense, punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both—

(1) to make any photograph, sketch, picture, drawing, map or graphical representation, while present on property subject to the jurisdiction, administration or in the custody of the Commission, of any installations or equipment designated by the President as requiring protection against the general dissemination of information relative thereto, in the interest of the common defense and security, without first obtaining the permission of the Commission, and promptly submitting the product obtained to the Commission for inspection or such other action as may be deemed necessary; or

(2) to use or permit the use of an aircraft or any contrivance used, or designed for navigation or flight in air, for the purpose of making a photograph, sketch, picture, drawing, map or graphical representation of any installation or equipment designated by the President as provided in the preceding paragraph, unless authorized by the Commission.

(Aug. 1, 1946, ch. 724, title I, § 230, as added Aug. 6, 1956, ch. 1015, § 6, 70 Stat. 1070; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2279. Applicability of other laws

Sections 2274 to 2278b of this title shall not exclude the applicable provisions of any other laws.

(Aug. 1, 1946, ch. 724, title I, § 231, formerly § 229, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 959; renumbered § 231 and amended Aug. 6, 1956, ch. 1015, §§ 6, 7, 70 Stat. 1070; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1956—Act Aug. 6, 1956, § 7, substituted ''2274 to 2278b'' for ''2274 to 2278''.

§ 2280. Injunction proceedings

Whenever in the judgment of the Commission any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any regulation or order issued thereunder, the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Commission that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

(Aug. 1, 1946, ch. 724, title I, § 232, formerly § 230, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 959; renumbered § 232, Aug. 6, 1956, ch. 1015, § 6, 70 Stat. 1070; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1816(c) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2281. Contempt proceedings

In case of failure or refusal to obey a subpena served upon any person pursuant to section 2201(c) of this title, the district court for any district in which such person is found or resides

or transacts business, upon application by the Attorney General on behalf of the United States, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both, in accordance with the subpena; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Aug. 1, 1946, ch. 724, title I, § 233, formerly § 231, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 960; renumbered § 233, Aug. 6, 1956, ch. 1015, § 6, 70 Stat. 1070; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1816(d) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2282. Civil penalties

(a) Violations of licensing requirements

Any person who (1) violates any licensing or certification provision of section 2073, 2077, 2092, 2093, 2111, 2112, 2131, 2133, 2134, 2137, 2139, or 2297f of this title or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or certification issued thereunder, or (2) commits any violation for which a license may be revoked under section 2236 of this title, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed $100,000 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The Commission shall have the power to compromise, mitigate, or remit such penalties.

(b) Notice

Whenever the Commission has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing (1) setting forth the date, facts, and nature of each act or omission with which the person is charged, (2) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (3) advising of each penalty which the Commission proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the Commission to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the Commission, if any, the penalty may be collected by civil action.

(c) Collection of penalties

On the request of the Commission, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

(Aug. 1, 1946, ch. 724, title I, § 234, as added Pub. L. 91–161, § 4, Dec. 24, 1969, 83 Stat. 444; amended Pub. L. 96–295, title II, § 206, June 30, 1980, 94 Stat. 787; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 104–134, title III, § 3116(d), Apr. 26, 1996, 110 Stat. 1321–350.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–134, in first sentence, substituted "any licensing or certification provision of section 2073, 2077, 2092, 2093, 2111, 2112, 2131, 2133, 2134, 2137, 2139, or 2297f of this title" for "any licensing provision of section 2073, 2077, 2092, 2093, 2111, 2112, 2131, 2133, 2134, 2137, or 2139 of this title" and "any license or certification issued thereunder" for "any license issued thereunder".

1980—Subsec. (a). Pub. L. 96–295 substituted $100,000 penalty limitation per violation for $5,000 limit per violation and $25,000 limit for all violations taking place within any thirty consecutive day period.

§ 2282a. Civil monetary penalties for violation of Department of Energy safety regulations

(a) Persons subject to penalty

Any person who has entered into an agreement of indemnification under section 2210(d) of this title (or any subcontractor or supplier thereto) who violates (or whose employee violates) any applicable rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this chapter (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation) shall be subject to a civil penalty of not to exceed $100,000 for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(b) Determination of amount

(1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(c) Assessment and payment

(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within thirty days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within thirty calendar days after receipt of notice under para-

graph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the election under paragraph (1).

(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(d) Limitation for not-for-profit institutions

(1) Notwithstanding subsection (a) of this section, in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under subsection (a) of this section may not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under the contract under which the violation occurs.

(2) For purposes of this section, the term ''not-for-profit'' means that no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.

(Aug. 1, 1946, ch. 724, title I, § 234A, as added Pub. L. 100–408, § 17, Aug. 20, 1988, 102 Stat. 1081; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 106–65, div. C, title XXXI, § 3147(c), Oct. 5, 1999, 113 Stat. 938; Pub. L. 109–58, title VI, § 610(a), (b), Aug. 8, 2005, 119 Stat. 781.)

AMENDMENTS

2005—Subsec. (b)(2). Pub. L. 109–58, § 610(a), struck out at end ''In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.''

Subsec. (d). Pub. L. 109–58, § 610(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) provided that the provisions of this section would not apply to the University of Chicago for activities associated with Argonne National Laboratory; the University of California for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory; American Telephone and Telegraph Company and its subsidiaries for activities associated with Sandia National Laboratories; Universities Research Association, Inc. for activities associated with FERMI National Laboratory; Princeton University for activities associated with Princeton Plasma Physics Laboratory; the Associated Universities, Inc. for activities associated with the Brookhaven National Laboratory; and Battelle Memorial Institute for activities associated with Pacific Northwest Laboratory.

1999—Pub. L. 106–65 inserted ''safety'' before ''regulations'' in section catchline.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title VI, § 610(c), Aug. 8, 2005, 119 Stat. 782, provided that: ''The amendments made by this section [amending this section] shall not apply to any violation of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) occurring under a contract entered into before the date of enactment of this section [Aug. 8, 2005].''

EFFECTIVE DATE

Section effective Aug. 20, 1988, but inapplicable to any violation occurring before Aug. 20, 1988, see section 20 of Pub. L. 100–408, set out as an Effective Date of 1988 Amendment note under section 2014 of this title.

§ 2282b. Civil monetary penalties for violations of Department of Energy regulations regarding security of classified or sensitive information or data

(a) Persons subject to penalty

Any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary pursuant to this chapter relating to the safeguarding or security of Restricted Data or other classified or sensitive information shall be subject to a civil penalty of not to exceed $100,000 for each such violation.

(b) Fee or payment reductions for violations

The Secretary shall include in each contract with a contractor of the Department provisions which provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information. The provisions shall specify various degrees of violations and the

amount of the reduction attributable to each degree of violation.

(c) Powers and limitations

The powers and limitations applicable to the assessment of civil penalties under section 2282a of this title, except for subsection (d) of that section, shall apply to the assessment of civil penalties under this section.

(d) Application to certain entities

In the case of an entity specified in subsection (d) of section 2282a of this title—

(1) the assessment of any civil penalty under subsection (a) of this section against that entity may not be made until the entity enters into a new contract with the Department of Energy or an extension of a current contract with the Department; and

(2) the total amount of civil penalties under subsection (a) of this section in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.

(Aug. 1, 1946, ch. 724, title I, § 234B, as added Pub. L. 106–65, div. C, title XXXI, § 3147(a), Oct. 5, 1999, 113 Stat. 937.)

EFFECTIVE DATE

Pub. L. 106–65, div. C, title XXXI, § 3147(b), Oct. 5, 1999, 113 Stat. 938, provided that: ''Subsection a. of section 234B of the Atomic Energy Act of 1954 [42 U.S.C. 2282b(a)], as added by subsection (a), applies to any violation after the date of the enactment of this Act [Oct. 5, 1999].''

§ 2282c. Worker health and safety rules for Department of Energy nuclear facilities

(a) Regulations required

(1) In general

The Secretary shall promulgate regulations for industrial and construction health and safety at Department of Energy facilities that are operated by contractors covered by agreements of indemnification under section 2210(d) of this title, after public notice and opportunity for comment under section 553 of title 5 (commonly known as the ''Administrative Procedure Act''). Such regulations shall, subject to paragraph (3), provide a level of protection for workers at such facilities that is substantially equivalent to the level of protection currently provided to such workers at such facilities.

(2) Applicability

The regulations promulgated under paragraph (1) shall not apply to any facility that is a component of, or any activity conducted under, the Naval Nuclear Propulsion Program provided for under Executive Order No. 12344, dated February 1, 1982 (as in force pursuant to section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98–525)).

(3) Flexibility

In promulgating the regulations under paragraph (1), the Secretary shall include flexibility—

(A) to tailor implementation of such regulations to reflect activities and hazards associated with a particular work environment;

(B) to take into account special circumstances at a facility that is, or is expected to be, permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse; and

(C) to achieve national security missions of the Department of Energy in an efficient and timely manner.

(4) No effect on health and safety enforcement

This subsection does not diminish or otherwise affect the enforcement or the application of any other law, regulation, order, or contractual obligation relating to worker health and safety.

(b) Civil penalties

(1) In general

A person (or any subcontractor or supplier of the person) who has entered into an agreement of indemnification under section 2210(d) of this title (or any subcontractor or supplier of the person) that violates (or is the employer of a person that violates) any regulation promulgated under subsection (a) of this section shall be subject to a civil penalty of not more than $70,000 for each such violation.

(2) Continuing violations

If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty under paragraph (1).

(c) Contract penalties

(1) In general

The Secretary shall include in each contract with a contractor of the Department who has entered into an agreement of indemnification under section 2210(d) of this title provisions that provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any regulation promulgated under subsection (a) of this section.

(2) Contents

The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

(d) Coordination of penalties

(1) Choice of penalties

For any violation by a person of a regulation promulgated under subsection (a) of this section, the Secretary shall pursue either civil penalties under subsection (b) of this section or contract penalties under subsection (c) of this section, but not both.

(2) Maximum amount

In the case of an entity described in subsection (d) of section 2282a of this title, the total amount of civil penalties under subsection (b) of this section and contract penalties under subsection (c) of this section in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.

(3) Coordination with section 2282a of this title

The Secretary shall ensure that a contractor of the Department is not penalized both under this section and under section 2282a of this title for the same violation.

(Aug. 1, 1946, ch. 724, title I, § 234C, as added Pub. L. 107–314, div. C, title XXXI, § 3173(a), Dec. 2, 2002, 116 Stat. 2743.)

REFERENCES IN TEXT

Executive Order No. 12344, referred to in subsec. (a)(2), is set out as a note under section 2511 of Title 50, War and National Defense.

Section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98–525), referred to in subsec. (a)(2), is set out as a note under section 2511 of Title 50, War and National Defense.

PROMULGATION OF INITIAL REGULATIONS

Pub. L. 107–314, div. C, title XXXI, § 3173(b), Dec. 2, 2002, 116 Stat. 2745, provided that:

''(1) DEADLINE FOR PROMULGATING REGULATIONS.—The Secretary of Energy shall promulgate the regulations required by subsection a. of section 234C of the Atomic Energy Act of 1954 [42 U.S.C. 2282c(a)] (as added by subsection (a)) not later than one year after the date of the enactment of this Act [Dec. 2, 2002].

''(2) EFFECTIVE DATE.—The regulations promulgated under paragraph (1) shall take effect on the date that is one year after the promulgation date of the regulations.''

PROHIBITION

Pub. L. 107–314, div. C, title XXXI, § 3173(c), Dec. 2, 2002, 116 Stat. 2745, provided that: ''The Secretary of Energy shall not participate in or otherwise support any study or other project relating to a modification in the scope of the regulations enforceable by civil penalties under section 234A or 234C of the Atomic Energy Act of 1954 [42 U.S.C. 2282a, 2282c], or the responsibility of the Secretary to implement and enforce such regulations, until after the date on which the regulations for such purposes under such section 234C take effect in accordance with subsection (b) [set out as a note above].''

§ 2283. Protection of nuclear inspectors

(a) Homicide

Whoever kills any person who performs any inspections which—

(1) are related to any activity or facility licensed by the Commission, and

(2) are carried out to satisfy requirements under this chapter or under any other Federal law governing the safety of utilization facilities required to be licensed under section 2133 or 2134(b) of this title, or the safety of radioactive materials,

shall be punished as provided under sections 1111 and 1112 of title 18. The preceding sentence shall be applicable only if such person is killed while engaged in the performance of such inspection duties or on account of the performance of such duties.

(b) Assault

Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person who performs inspections as described under subsection (a) of this section, while such person is engaged in such inspection duties or on account of the performance of such duties, shall be punished as provided under section 111 of title 18.

(Aug. 1, 1946, ch. 724, title I, § 235, as added Pub. L. 96–295, title II, § 202(a), June 30, 1980, 94 Stat. 786; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2284. Sabotage of nuclear facilities or fuel

(a) Physical damage to facilities, etc.

Any person who knowingly destroys or causes physical damage to—

(1) any production facility or utilization facility licensed under this chapter;

(2) any nuclear waste treatment, storage, or disposal facility licensed under this chapter;

(3) any nuclear fuel for a utilization facility licensed under this chapter, or any spent nuclear fuel from such a facility;

(4) any uranium enrichment, uranium conversion, or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission;

(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility subject to licensing or certification under this chapter during construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;

(6) any primary facility or backup facility from which a radiological emergency preparedness alert and warning system is activated; or

(7) any radioactive material or other property subject to regulation by the Commission that, before the date of the offense, the Commission determines, by order or regulation published in the Federal Register, is of significance to the public health and safety or to common defense and security;[1]

or attempts or conspires to do such an act, shall be fined not more than $10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

(b) Unauthorized use or tampering with facilities, etc.

Any person who knowingly causes an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, or attempts or conspires to do such an act, shall be fined not more than $10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

(Aug. 1, 1946, ch. 724, title I, § 236, as added Pub. L. 96–295, title II, § 204(a), June 30, 1980, 94 Stat. 787; amended Pub. L. 97–415, § 16, Jan. 4, 1983, 96 Stat. 2076; Pub. L. 101–575, § 5(d), Nov. 15, 1990, 104 Stat. 2835; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 107–56, title VIII, §§ 810(f), 811(h), Oct. 26, 2001, 115 Stat. 380, 381; Pub. L. 109–58, title VI, § 655, Aug. 8, 2005, 119 Stat. 813.)

[1] So in original. The semicolon probably should be a comma.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, § 655(b), substituted ''knowingly'' for ''intentionally and willfully'' in introductory provisions.

Pub. L. 109–58, § 655(a), substituted ''treatment, storage, or disposal facility'' for ''storage facility'' in par. (2), ''a utilization facility licensed under this chapter'' for ''such a utilization facility'' in par. (3), and '', uranium conversion, or nuclear fuel fabrication facility licensed or certified'' for ''facility licensed'' in par. (4) and added pars. (5) to (7).

Subsec. (b). Pub. L. 109–58, § 655(b), substituted ''knowingly'' for ''intentionally and willfully''.

2001—Subsec. (a). Pub. L. 107–56, §§ 810(f)(1), (2), 811(h)(1)(A), (C), in introductory provisions, struck out '', or who intentionally and willfully attempts to destroy or cause physical damage to'' before ''—'', and in concluding provisions, inserted ''or attempts or conspires to do such an act,'' before ''shall be fined'' and substituted ''20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.'' for ''ten years, or both.''

Subsec. (a)(4). Pub. L. 107–56, § 811(h)(1)(B), substituted comma for period at end.

Subsec. (b). Pub. L. 107–56, §§ 810(f)(1), (3), 811(h)(2), struck out ''or attempts to cause'' before ''an interruption of normal operation'', inserted ''or attempts or conspires to do such an act,'' before ''shall be fined'', and substituted ''20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.'' for ''ten years, or both.''

1990—Subsec. (a)(4). Pub. L. 101–575, which directed amendment of this section by adding par. (4) after par. (3), was executed by adding par. (4) after par. (3) of subsec. (a) of this section to reflect the probable intent of Congress.

1983—Pub. L. 97–415 designated existing provisions as subsec. (a) and added subsec. (b).

SUBCHAPTER XVII–A—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

§ 2286. Establishment

(a) Establishment

There is hereby established an independent establishment in the executive branch, to be known as the ''Defense Nuclear Facilities Safety Board'' (hereafter in this subchapter referred to as the ''Board'').

(b) Membership

(1) The Board shall be composed of five members appointed from civilian life by the President, by and with the advice and consent of the Senate, from among United States citizens who are respected experts in the field of nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board. Not more than three members of the Board shall be of the same political party.

(2) Any vacancy in the membership of the Board shall be filled in the same manner in which the original appointment was made.

(3) No member of the Board may be an employee of, or have any significant financial relationship with, the Department of Energy or any contractor of the Department of Energy.

(4) Not later than 180 days after September 29, 1988, the President shall submit to the Senate nominations for appointment to the Board. In the event that the President is unable to submit the nominations within such 180-day period, the President shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives a report describing the reasons for such inability and a plan for submitting the nominations within the next 90 days. If the President is unable to submit the nominations within that 90-day period, the President shall again submit to such committees and the Speaker such a report and plan. The President shall continue to submit to such committees and the Speaker such a report and plan every 90 days until the nominations are submitted.

(c) Chairman and Vice Chairman

(1) The President shall designate a Chairman and Vice Chairman of the Board from among members of the Board.

(2) The Chairman shall be the chief executive officer of the Board and, subject to such policies as the Board may establish, shall exercise the functions of the Board with respect to—

(A) the appointment and supervision of employees of the Board;

(B) the organization of any administrative units established by the Board; and

(C) the use and expenditure of funds.

(3) The Chairman may delegate any of the functions under this paragraph to any other member or to any appropriate officer of the Board.

(4) The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman.

(d) Terms

(1) Except as provided under paragraph (2), the members of the Board shall serve for terms of five years. Members of the Board may be reappointed.

(2) Of the members first appointed—

(A) one shall be appointed for a term of one year;

(B) one shall be appointed for a term of two years;

(C) one shall be appointed for a term of three years;

(D) one shall be appointed for a term of four years; and

(E) one shall be appointed for a term of five years,

as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term of office for which such member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of that member's term until a successor has taken office.

(e) Quorum

Three members of the Board shall constitute a quorum, but a lesser number may hold hearings.

(Aug. 1, 1946, ch. 724, title I, § 311, as added Pub. L. 100–456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2076; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REPORT ON EXTERNAL REGULATION OF DEFENSE NUCLEAR FACILITIES

Pub. L. 105–85, div. C, title XXXII, § 3202, Nov. 18, 1997, 111 Stat. 2054, provided that:

''(a) REPORTING REQUIREMENT.—The Defense Nuclear Facilities Safety Board (in this section referred to as the 'Board') shall prepare a report and make recommendations on its role in the Department of Energy's decision to establish external regulation of defense nuclear facilities. The report shall include the following:

''(1) An assessment of the value of and the need for the Board to continue to perform the functions specified under chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

''(2) An assessment of the relationship between the functions of the Board and a proposal by the Department of Energy to place Department of Energy defense nuclear facilities under the jurisdiction of external regulatory agencies.

''(3) An assessment of the functions of the Board and whether there is a need to modify or amend such functions.

''(4) An assessment of the relative advantages and disadvantages to the Department and the public of continuing the functions of the Board with respect to Department of Energy defense nuclear facilities and replacing the activities of the Board with external regulation of such facilities.

''(5) A list of all existing or planned Department of Energy defense nuclear facilities that are similar to facilities under the regulatory jurisdiction of the Nuclear Regulatory Commission.

''(6) A list of all Department of Energy defense nuclear facilities that are in compliance with all applicable Department of Energy orders, regulations, and requirements relating to the design, construction, operation, and decommissioning of defense nuclear facilities.

''(7) A list of all Department of Energy defense nuclear facilities that have implemented, pursuant to an implementation plan, recommendations made by the Board and accepted by the Secretary of Energy.

''(8) A list of Department of Energy defense nuclear facilities that have a function related to Department weapons activities.

''(9)(A) A list of each existing defense nuclear facility that the Board determines—

''(i) should continue to stay within the jurisdiction of the Board for a period of time or indefinitely; and

''(ii) should come under the jurisdiction of an outside regulatory authority.

''(B) An explanation of the determinations made under subparagraph (A).

''(10) For any existing facilities that should, in the opinion of the Board, come under the jurisdiction of an outside regulatory authority, the date when this move would occur and the period of time necessary for the transition.

''(11) A list of any proposed Department of Energy defense nuclear facilities that should come under the Board's jurisdiction.

''(12) An assessment of regulatory and other issues associated with the design, construction, operation, and decommissioning of facilities that are not owned by the Department of Energy but which would provide services to the Department of Energy.

''(13) An assessment of the role of the Board, if any, in privatization projects undertaken by the Department.

''(14) An assessment of the role of the Board, if any, in any tritium production facilities.

''(15) An assessment of the comparative advantages and disadvantages to the Department of Energy in the event some or all Department of Energy defense nuclear facilities were no longer included in the functions of the Board and were regulated by the Nuclear Regulatory Commission.

''(16) A comparison of the cost, as identified by the Nuclear Regulatory Commission, that would be incurred at a gaseous diffusion plant to comply with regulations issued by the Nuclear Regulatory Commission, with the cost that would be incurred by a gaseous diffusion plant if such a plant was considered to be a Department of Energy defense nuclear facility as defined by chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

''(b) COMMENTS ON REPORT.—Before submission of the report to Congress under subsection (c), the Board shall transmit the report to the Secretary of Energy and the Nuclear Regulatory Commission. The Secretary and the Commission shall provide their comments on the report to both the Board and to Congress.

''(c) SUBMISSION TO CONGRESS.—Not later than six months after the date of the enactment of this Act [Nov. 18, 1997], the Board shall provide to Congress an interim report on the status of the implementation of this section. Not later than one year after the date of the enactment of this Act, and not earlier than 30 days after receipt of comments from the Secretary of Energy and the Nuclear Regulatory Commission under subsection (b), the Board shall submit to Congress the report required under subsection (a).

''(d) DEFINITION.—In this section, the term 'Department of Energy defense nuclear facility' has the meaning provided by section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).''

§ 2286a. Functions of Board

(a) In general

The Board shall perform the following functions:

(1) Review and evaluation of standards

The Board shall review and evaluate the content and implementation of the standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at each Department of Energy defense nuclear facility. The Board shall recommend to the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected. The Board shall include in its recommendations necessary changes in the content and implementation of such standards, as well as matters on which additional data or additional research is needed.

(2) Investigations

(A) The Board shall investigate any event or practice at a Department of Energy defense nuclear facility which the Board determines has adversely affected, or may adversely affect, public health and safety.

(B) The purpose of any Board investigation under subparagraph (A) shall be—

(i) to determine whether the Secretary of Energy is adequately implementing the standards described in paragraph (1) of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at the facility;

(ii) to ascertain information concerning the circumstances of such event or practice and its implications for such standards;

(iii) to determine whether such event or practice is related to other events or practices at other Department of Energy defense nuclear facilities; and

(iv) to provide to the Secretary of Energy such recommendations for changes in such standards or the implementation of such standards (including Department of Energy orders, regulations, and requirements) and

such recommendations relating to data or research needs as may be prudent or necessary.

(3) Analysis of design and operational data

The Board shall have access to and may systematically analyze design and operational data, including safety analysis reports, from any Department of Energy defense nuclear facility.

(4) Review of facility design and construction

The Board shall review the design of a new Department of Energy defense nuclear facility before construction of such facility begins and shall recommend to the Secretary, within a reasonable time, such modifications of the design as the Board considers necessary to ensure adequate protection of public health and safety. During the construction of any such facility, the Board shall periodically review and monitor the construction and shall submit to the Secretary, within a reasonable time, such recommendations relating to the construction of that facility as the Board considers necessary to ensure adequate protection of public health and safety. An action of the Board, or a failure to act, under this paragraph may not delay or prevent the Secretary of Energy from carrying out the construction of such a facility.

(5) Recommendations

The Board shall make such recommendations to the Secretary of Energy with respect to Department of Energy defense nuclear facilities, including operations of such facilities, standards, and research needs, as the Board determines are necessary to ensure adequate protection of public health and safety. In making its recommendations the Board shall consider the technical and economic feasibility of implementing the recommended measures.

(b) Excluded functions

The functions of the Board under this subchapter do not include functions relating to the safety of atomic weapons. However, the Board shall have access to any information on atomic weapons that is within the Department of Energy and is necessary to carry out the functions of the Board.

(Aug. 1, 1946, ch. 724, title I, § 312, as added Pub. L. 100–456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2077; amended Pub. L. 102–190, div. C, title XXXII, § 3202(b)(2), Dec. 5, 1991, 105 Stat. 1582; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1991—Pub. L. 102–190 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 2286b. Powers of Board

(a) Hearings

(1) The Board or a member authorized by the Board may, for the purpose of carrying out this subchapter, hold such hearings and sit and act at such times and places, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such evidence as the Board or an authorized member may find advisable.

(2)(A) Subpoenas may be issued only under the signature of the Chairman or any member of the Board designated by him and shall be served by any person designated by the Chairman, any member, or any person as otherwise provided by law. The attendance of witnesses and the production of evidence may be required from any place in the United States at any designated place of hearing in the United States.

(B) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(C) If a person issued a subpoena under paragraph (1) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Board) order such person to appear before the Board to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt of the court.

(D) The subpoenas of the Board shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(E) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

(b) Staff

(1) The Board may, for the purpose of performing its responsibilities under this subchapter—

(A) hire such staff as it considers necessary to perform the functions of the Board, including such scientific and technical personnel as the Board may determine necessary, but not more than the equivalent of 150 full-time employees; and

(B) procure the temporary and intermittent services of experts and consultants to the extent authorized by section 3109(b) of title 5 at rates the Board determines to be reasonable.

(2) The authority and requirements provided in section 2201(d) of this title with respect to officers and employees of the Commission shall apply with respect to scientific and technical personnel hired under paragraph (1)(A).

(c) Regulations

The Board may prescribe regulations to carry out the responsibilities of the Board under this subchapter.

(d) Reporting requirements

The Board may establish reporting requirements for the Secretary of Energy which shall be binding upon the Secretary. The information which the Board may require the Secretary of Energy to report under this subsection may include any information designated as classified information, or any information designated as safeguards information and protected from disclosure under section 2167 or 2168 of this title.

(e) Use of Government facilities, etc.

The Board may, for the purpose of carrying out its responsibilities under this subchapter, use any facility, contractor, or employee of any other department or agency of the Federal Government with the consent of and under appropriate support arrangements with the head of such department or agency and, in the case of a contractor, with the consent of the contractor.

(f) Assistance from certain agencies of Federal Government

With the consent of and under appropriate support arrangements with the Nuclear Regulatory Commission, the Board may obtain the advice and recommendations of the staff of the Commission on matters relating to the Board's responsibilities and may obtain the advice and recommendations of the Advisory Committee on Reactor Safeguards on such matters.

(g) Assistance from organizations outside Federal Government

Notwithstanding any other provision of law relating to the use of competitive procedures, the Board may enter into an agreement with the National Research Council of the National Academy of Sciences or any other appropriate group or organization of experts outside the Federal Government chosen by the Board to assist the Board in carrying out its responsibilities under this subchapter.

(h) Resident inspectors

The Board may assign staff to be stationed at any Department of Energy defense nuclear facility to carry out the functions of the Board.

(i) Special studies

The Board may conduct special studies pertaining to adequate protection of public health and safety at any Department of Energy defense nuclear facility.

(j) Evaluation of information

The Board may evaluate information received from the scientific and industrial communities, and from the interested public, with respect to—

(1) events or practices at any Department of Energy defense nuclear facility; or

(2) suggestions for specific measures to improve the content of standards described in section 2286a(1) of this title, the implementation of such standards, or research relating to such standards at Department of Energy defense nuclear facilities.

(Aug. 1, 1946, ch. 724, title I, § 313, as added Pub. L. 100–456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2079; amended Pub. L. 101–510, div. C, title XXXII, § 3202, Nov. 5, 1990, 104 Stat. 1844; Pub. L. 102–190, div. C, title XXXII, § 3202(a), Dec. 5, 1991, 105 Stat. 1582; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a)(2)(D), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1991—Subsec. (b)(1)(A). Pub. L. 102–190, § 3202(a)(1), substituted ''150'' for ''100''.

Subsec. (g). Pub. L. 102–190, § 3202(a)(2), substituted ''Notwithstanding any other provision of law relating to the use of competitive procedures, the Board may'' for ''The Board may''.

1990—Subsec. (b). Pub. L. 101–510 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted ''including such scientific and technical personnel as the Board may determine necessary,'' after ''Board,'' in subpar. (A), and added par. (2).

§ 2286c. Responsibilities of Secretary of Energy

(a) Cooperation

The Secretary of Energy shall fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information as the Board considers necessary to carry out its responsibilities under this subchapter. Each contractor operating a Department of Energy defense nuclear facility under a contract awarded by the Secretary shall, to the extent provided in such contract or otherwise with the contractor's consent, fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information of the contractor as the Board considers necessary to carry out its responsibilities under this subchapter.

(b) Access to information

The Secretary of Energy may deny access to information provided to the Board to any person who—

(1) has not been granted an appropriate security clearance or access authorization by the Secretary of Energy; or

(2) does not need such access in connection with the duties of such person.

(Aug. 1, 1946, ch. 724, title I, § 314, as added Pub. L. 100–456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2080; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2286d. Board recommendations

(a) Public availability and comment

Subject to subsections (g) and (h) of this section and after receipt by the Secretary of Energy of any recommendations from the Board under section 2286a of this title, the Board promptly shall make such recommendations available to the public in the Department of Energy's regional public reading rooms and shall publish in the Federal Register such recommendations and a request for the submission to the Board of public comments on such recommendations. Interested persons shall have 30 days after the date of the publication of such notice in which to submit comments, data, views, or arguments to the Board concerning the recommendations.

(b) Response by Secretary

(1) The Secretary of Energy shall transmit to the Board, in writing, a statement on whether the Secretary accepts or rejects, in whole or in part, the recommendations submitted to him by the Board under section 2286a of this title, a description of the actions to be taken in response to the recommendations, and his views on such recommendations. The Secretary of Energy

shall transmit his response to the Board within 45 days after the date of the publication, under subsection (a) of this section, of the notice with respect to such recommendations or within such additional period, not to exceed 45 days, as the Board may grant.

(2) At the same time as the Secretary of Energy transmits his response to the Board under paragraph (1), the Secretary, subject to subsection (h) of this section, shall publish such response, together with a request for public comment on his response, in the Federal Register.

(3) Interested persons shall have 30 days after the date of the publication of the Secretary of Energy's response in which to submit comments, data, views, or arguments to the Board concerning the Secretary's response.

(4) The Board may hold hearings for the purpose of obtaining public comments on its recommendations and the Secretary of Energy's response.

(c) Provision of information to Secretary

The Board shall furnish the Secretary of Energy with copies of all comments, data, views, and arguments submitted to it under subsection (a) or (b) of this section.

(d) Final decision

If the Secretary of Energy, in a response under subsection (b)(1) of this section, rejects (in whole or part) any recommendation made by the Board under section 2286a of this title, the Board shall either reaffirm its original recommendation or make a revised recommendation and shall notify the Secretary of its action. Within 30 days after receiving the notice of the Board's action under this subsection, the Secretary shall consider the Board's action and make a final decision on whether to implement all or part of the Board's recommendations. Subject to subsection (h) of this section, the Secretary shall publish the final decision and the reasoning for such decision in the Federal Register and shall transmit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives a written report containing that decision and reasoning.

(e) Implementation plan

The Secretary of Energy shall prepare a plan for the implementation of each Board recommendation, or part of a recommendation, that is accepted by the Secretary in his final decision. The Secretary shall transmit the implementation plan to the Board within 90 days after the date of the publication of the Secretary's final decision on such recommendation in the Federal Register. The Secretary may have an additional 45 days to transmit the plan if the Secretary submits to the Board and to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives a notification setting forth the reasons for the delay and describing the actions the Secretary is taking to prepare an implementation plan under this subsection. The Secretary may implement any such recommendation (or part of any such recommendation) before, on, or after the date on which the Secretary transmits the implementation plan to the Board under this subsection.

(f) Implementation

(1) Subject to paragraph (2), not later than one year after the date on which the Secretary of Energy transmits an implementation plan with respect to a recommendation (or part thereof) under subsection (e) of this section, the Secretary shall carry out and complete the implementation plan. If complete implementation of the plan takes more than 1 year, the Secretary of Energy shall submit a report to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives setting forth the reasons for the delay and when implementation will be completed.

(2) If the Secretary of Energy determines that the implementation of a Board recommendation (or part thereof) is impracticable because of budgetary considerations, or that the implementation would affect the Secretary's ability to meet the annual nuclear weapons stockpile requirements established pursuant to section 2121 of this title, the Secretary shall submit to the President, to the Committees on Armed Services and on Appropriations of the Senate, and to the Speaker of the House of Representatives a report containing the recommendation and the Secretary's determination.

(g) Imminent or severe threat

(1) In any case in which the Board determines that a recommendation submitted to the Secretary of Energy under section 2286a of this title relates to an imminent or severe threat to public health and safety, the Board and the Secretary of Energy shall proceed under this subsection in lieu of subsections (a) through (d) of this section.

(2) At the same time that the Board transmits a recommendation relating to an imminent or severe threat to the Secretary of Energy, the Board shall also transmit the recommendation to the President and for information purposes to the Secretary of Defense. The Secretary of Energy shall submit his recommendation to the President. The President shall review the Secretary of Energy's recommendation and shall make the decision concerning acceptance or rejection of the Board's recommendation.

(3) After receipt by the President of the recommendation from the Board under this subsection, the Board promptly shall make such recommendation available to the public and shall transmit such recommendation to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives. The President shall promptly notify such committees and the Speaker of his decision and the reasons for that decision.

(h) Limitation

Notwithstanding any other provision of this section, the requirements to make information available to the public under this section—

(1) shall not apply in the case of information that is classified; and

(2) shall be subject to the orders and regulations issued by the Secretary of Energy under sections 2167 and 2168 of this title to prohibit dissemination of certain information.

(Aug. 1, 1946, ch. 724, title I, § 315, as added Pub. L. 100–456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2080; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2286e. Reports

(a) Board report

(1) The Board shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, a written report concerning its activities under this subchapter, including all recommendations made by the Board, during the year preceding the year in which the report is submitted. The Board may also issue periodic unclassified reports on matters within the Board's responsibilities.

(2) The annual report under paragraph (1) shall include an assessment of—

(A) the improvements in the safety of Department of Energy defense nuclear facilities during the period covered by the report;

(B) the improvements in the safety of Department of Energy defense nuclear facilities resulting from actions taken by the Board or taken on the basis of the activities of the Board; and

(C) the outstanding safety problems, if any, of Department of Energy defense nuclear facilities.

(b) DOE report

The Secretary of Energy shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, a written report concerning the activities of the Department of Energy under this subchapter during the year preceding the year in which the report is submitted.

(Aug. 1, 1946, ch. 724, title I, § 316, as added Pub. L. 100–456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2082; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REPORTING REQUIREMENTS

Section 1441(c), (d) of Pub. L. 100–456 provided that:

''(c) REQUIREMENTS FOR FIRST ANNUAL REPORT.—(1) Before submission of the first annual report by the Defense Nuclear Facilities Safety Board under section 316(a) of the Atomic Energy Act of 1954 [subsec. (a) of this section] (as added by subsection (a)), the Board shall conduct a study on whether nuclear facilities of the Department of Energy that are excluded from the definition of 'Department of Energy defense nuclear facility' in section 318(1)(C) of such Act [section 2286g(1)(C) of this title] (hereafter in this subsection referred to as 'non-defense nuclear facilities') should be subject to independent external oversight. The Board shall include in such first annual report the results of such study and the recommendation of the Board on whether non-defense nuclear facilities should be subject to independent external oversight.

''(2) If the Board recommends in the report that non-defense nuclear facilities should be subject to such oversight, the report shall include a discussion of alternative mechanisms for implementing such oversight, including mechanisms such as a separate executive agency and oversight as a part of the Board's responsibilities. The discussion of alternative mechanisms of oversight also shall include considerations of budgetary costs, protection of the security of sensitive nuclear weapons information, and the similarities and differences in the design, construction, operation, and decommissioning of defense and non-defense nuclear facilities of the Department of Energy.

''(d) REQUIREMENTS FOR FIFTH ANNUAL REPORT.—The fifth annual report submitted by the Defense Nuclear Facilities Safety Board under section 316(a) of the Atomic Energy Act of 1954 [subsec. (a) of this section] (as added by subsection (a)) shall include—

''(1) an assessment of the degree to which the overall administration of the Board's activities are believed to meet the objectives of Congress in establishing the Board;

''(2) recommendations for continuation, termination, or modification of the Board's functions and programs, including recommendations for transition to some other independent oversight arrangement if it is advisable; and

''(3) recommendations for appropriate transition requirements in the event that modifications are recommended.''

§ 2286f. Judicial review

Chapter 7 of title 5 shall apply to the activities of the Board under this subchapter.

(Aug. 1, 1946, ch. 724, title I, § 317, as added Pub. L. 100–456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2083; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2286g. "Department of Energy defense nuclear facility" defined

As used in this subchapter, the term ''Department of Energy defense nuclear facility'' means any of the following:

(1) A production facility or utilization facility (as defined in section 2014 of this title) that is under the control or jurisdiction of the Secretary of Energy and that is operated for national security purposes, but the term does not include—

(A) any facility or activity covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program;

(B) any facility or activity involved with the transportation of nuclear explosives or nuclear material;

(C) any facility that does not conduct atomic energy defense activities; or

(D) any facility owned by the United States Enrichment Corporation.

(2) A nuclear waste storage facility under the control or jurisdiction of the Secretary of Energy, but the term does not include a facility developed pursuant to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) and licensed by the Nuclear Regulatory Commission.

(Aug. 1, 1946, ch. 724, title I, § 318, as added Pub. L. 100–456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2083; amended Pub. L. 102–190, div. C, title XXXII, § 3202(b)(1), Dec. 5, 1991, 105 Stat. 1582; renumbered title I and amended Pub. L. 102–486, title IX, § 902(a)(7), (8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

Executive Order No. 12344, referred to in par. (1)(A), is set out as a note under section 2511 of Title 50, War and National Defense.

The Nuclear Waste Policy Act of 1982, referred to in par. (2), is Pub. L. 97–425, Jan. 7, 1983, 96 Stat. 2201, as amended, which is classified generally to chapter 108 (§ 10101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10101 of this title and Tables.

AMENDMENTS

1992—Par. (1)(D). Pub. L. 102–486, § 902(a)(7), added subpar. (D).

1991—Par. (1)(B). Pub. L. 102–190 struck out ''with the assembly or testing of nuclear explosives or'' after ''involved''.

REFERENCES TO UNITED STATES ENRICHMENT CORPORATION

References to the United States Enrichment Corporation deemed, as of the privatization date (July 28, 1998), to be references to the private corporation, see section 3116(e) of Pub. L. 104–134, set out as a note under former section 2297 of this title.

§ 2286h. Contract authority subject to appropriations

The authority of the Board to enter into contracts under this subchapter is effective only to the extent that appropriations (including transfers of appropriations) are provided in advance for such purpose.

(Aug. 1, 1946, ch. 724, title I, § 319, as added Pub. L. 100–456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2083; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2286h–1. Transmittal of certain information to Congress

Whenever the Board submits or transmits to the President or the Director of the Office of Management and Budget any legislative recommendation, or any statement or information in preparation of a report to be submitted to the Congress pursuant to section 2286e(a) of this title, the Board shall submit at the same time a copy thereof to the Congress.

(Aug. 1, 1946, ch. 724, title I, § 320, as added Pub. L. 103–160, div. C, title XXXII, § 3202(a)(2), Nov. 30, 1993, 107 Stat. 1959.)

PRIOR PROVISIONS

A prior section 320 of act Aug. 1, 1946, was renumbered section 321 and is classified to section 2286i of this title.

§ 2286i. Annual authorization of appropriations

Authorizations of appropriations for the Board for fiscal years beginning after fiscal year 1989 shall be provided annually in authorization Acts.

(Aug. 1, 1946, ch. 724, title I, § 321, formerly § 320, as added Pub. L. 100–456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2084; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; renumbered § 321, Pub. L. 103–160, div. C, title XXXII, § 3202(a)(1), Nov. 30, 1993, 107 Stat. 1959.)

SUBCHAPTER XVIII—EURATOM COOPERATION

§ 2291. Definitions

As used in this subchapter—

(a) ''The Community'' means the European Atomic Energy Community (EURATOM).

(b) The ''Commission'' means the Atomic Energy Commission, as established by the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].

(c) ''Joint program'' means the cooperative program established by the Community and the United States and carried out in accordance with the provisions of an agreement for cooperation entered into pursuant to the provisions of section 2153 of this title, to bring into operation in the territory of the members of the Community powerplants using nuclear reactors of types selected by the Commission and the Community, having as a goal a total installed capacity of approximately one million kilowatts of electricity by December 31, 1963, except that two reactors may be selected to be in operation by December 31, 1965.

(d) All other terms used in this subchapter shall have the same meaning as terms described in section 2014 of this title.

(Pub. L. 85–846, § 2, Aug. 28, 1958, 72 Stat. 1084.)

REFERENCES IN TEXT

Atomic Energy Act of 1954, as amended, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to this chapter (§ 2011 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

CODIFICATION

Section was enacted as part of the EURATOM Cooperation Act of 1958 which comprises this subchapter, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2292. Authorization of appropriations for research and development program; authority to enter into contracts; period of contracts; equivalent amounts for research and development program

There is authorized to be appropriated to the Commission, in accordance with the provisions of section 2017(a)(2) of this title, the sum of $3,000,000 as an initial authorization for fiscal year 1959 for use in a cooperative program of research and development in connection with the types of reactors selected by the Commission and the Community under the joint program. The Commission may enter into contracts for such periods as it deems necessary, but in no event to exceed five years, for the purpose of conducting the research and development program authorized by this section: *Provided*, That the Community authorizes an equivalent amount for use in the cooperative program of research and development.

(Pub. L. 85–846, § 3, Aug. 28, 1958, 72 Stat. 1084.)

CODIFICATION

Section was enacted as part of the EURATOM Cooperation Act of 1958 which comprises this subchapter, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2293. Omitted

CODIFICATION

Section, Pub. L. 85–846, § 4, Aug. 28, 1958, 72 Stat. 1084; Pub. L. 87–206, § 18, Sept. 6, 1961, 75 Stat. 479, related to guarantee contracts between the Atomic Energy Commission and operators of reactors under the cooperation program which were to extend no later than Dec. 31, 1975.

§ 2294. Authorization for sale or lease of uranium and plutonium; amounts; lien for nonpayment; uranium enrichment services

Pursuant to the provisions of section 2074 of this title, there is hereby authorized for sale or lease to the Community—

an amount of contained uranium 235 which does not exceed that necessary to support the fuel cycle of power reactors located within the Community having a total installed capacity of thirty-five thousand megawatts of electric energy, together with twenty-five thousand kilograms of contained uranium 235 for other purposes;

one thousand five hundred kilograms of plutonium; and

thirty kilograms of uranium 233;

in accordance with the provisions of an agreement or agreements for cooperation between the Government of the United States and the Community entered into pursuant to the provisions of section 2153 of this title: *Provided*, That the Government of the United States obtains the equivalent of a first lien on any such material sold to the Community for which payment is not made in full at the time of transfer. The Commission may enter into contracts to provide, after December 31, 1968, for the producing or enriching of all, or part of, the above-mentioned contained uranium 235 pursuant to the provisions of section 2201(v)(B) of this title in lieu of sale or lease thereof.

(Pub. L. 85–846, § 5, Aug. 28, 1958, 72 Stat. 1085; Pub. L. 87–206, § 19, Sept. 6, 1961, 75 Stat. 479; Pub. L. 88–394, § 5, Aug. 1, 1964, 78 Stat. 376; Pub. L. 90–190, § 13, Dec. 14, 1967, 81 Stat. 578; Pub. L. 93–88, Aug. 14, 1973, 87 Stat. 296.)

CODIFICATION

Section was enacted as part of the EURATOM Cooperation Act of 1958 which comprises this subchapter, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

1973—Pub. L. 93–88 substituted ''an amount of contained uranium 235 which does not exceed that necessary to support the fuel cycle of power reactors located within the Community having a total installed capacity of thirty-five thousand megawatts of electric energy, together with twenty-five thousand kilograms of contained uranium for other purposes'' for ''two hundred fifteen thousand kilograms of contained uranium 235''.

1967—Pub. L. 90–190 increased from seventy thousand to two hundred fifteen thousand kilograms of contained uranium 235 and from five hundred to one thousand five hundred kilograms of plutonium respectively the amount of material authorized to be sold or leased to the Community, and inserted provision authorizing the Commission, after Dec. 31, 1968, to perform uranium enrichment services for the Community, pursuant to the provisions of section 2201(v)(B) of this title, in lieu of the sale or lease of such material.

1964—Pub. L. 88–394 increased the amount of contained uranium 235 from thirty thousand kilograms to seventy thousand kilograms, and plutonium, from nine kilograms to five hundred kilograms.

1961—Pub. L. 87–206 substituted ''Nine kilograms'' for ''One kilogram'' of plutonium and inserted item reading ''Thirty kilograms of uranium 233'' and ''or agreements''.

§ 2295. Acquisition of nuclear materials

(a) Authorization; restriction of amounts of plutonium or uranium; amount and use of plutonium authorized to be acquired

The Atomic Energy Commission is authorized to purchase or otherwise acquire from the Community special nuclear material or any interest therein from reactors constructed under the joint program in accordance with the terms of an agreement for cooperation entered into pursuant to the provisions of section 2153 of this title: *Provided*, That neither plutonium nor uranium 233 nor any interest therein shall be acquired under this section in excess of the total quantities authorized by law. The Commission is authorized to acquire from the Community pursuant to this section up to four thousand one hundred kilograms of plutonium for use only for peaceful purposes.

(b) Terms and periods of contracts to acquire plutonium

Any contract made under the provisions of this section to acquire plutonium or any interest therein may be at such prices and for such period of time as the Commission may deem necessary: *Provided*, That with respect to plutonium produced in any reactor constructed under the joint program, no such contract shall be for a period greater than ten years of operation of such reactors or December 31, 1973 (or December 31, 1975, for not more than two reactors selected under section 2291(c) of this title, whichever is earlier: *And provided further*, That no such contract shall provide for compensation or the payment of a purchase price in excess of the Commission's established price in effect at the time of delivery to the Commission for such material as fuel in a nuclear reactor.

(c) Terms and periods of contracts to acquire uranium

Any contract made under the provisions of this section to acquire uranium enriched in the isotope uranium 235 may be at such price and for such period of time as the Commission may deem necessary: *Provided*, That no such contract shall be for a period of time extending beyond the terminal date of the agreement for cooperation with the Community or provide for the acquisition of uranium enriched in the isotope U–235 in excess of the quantities of such material that have been distributed to the Community by the Commission less the quantity consumed in the nuclear reactors involved in the joint program: *And provided further*, That no

such contract shall provide for compensation or the payment of a purchase price in excess of the Atomic Energy Commission's established charges for such material in effect at the time delivery is made to the Commission.

(d) Contracts for purchase of special nuclear materials

Any contract made under this section for the purchase of special nuclear material or any interest therein may be made without regard to the provisions of sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of title 31.

(e) Certification by Commission

Any contract made under this section may be made without regard to section 5 of title 41, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable.

(Pub. L. 85–846, § 6, Aug. 28, 1958, 72 Stat. 1085.)

CODIFICATION

In subsec. (d), ''sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of title 31'' substituted for ''section 3679 of the Revised Statutes, as amended [31 U.S.C. 665]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was enacted as part of the EURATOM Cooperation Act of 1958 which comprises this subchapter, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2296. Nonliability of United States; indemnification

The Government of the United States of America shall not be liable for any damages or third party liability arising out of or resulting from the joint program: *Provided, however*, That nothing in this section shall deprive any person of any rights under section 2210 of this title: *And provided further*, That nothing in this section shall apply to arrangements made by the Commission under a research and development program authorized in section 2292 of this title. The Government of the United States shall take such steps as may be necessary, including appropriate disclaimer or indemnity arrangements, in order to carry out the provisions of this section.

(Pub. L. 85–846, § 7, Aug. 28, 1958, 72 Stat. 1086; Pub. L. 87–206, § 20, Sept. 6, 1961, 75 Stat. 479.)

CODIFICATION

Section was enacted as part of the EURATOM Cooperation Act of 1958 which comprises this subchapter, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

1961—Pub. L. 87–206 inserted proviso making provisions of section inapplicable to arrangements made by the Commission under a research and development program authorized by section 2292 of this title.

SUBCHAPTER XIX—REMEDIAL ACTION AND URANIUM REVITALIZATION

PART A—REMEDIAL ACTION AT ACTIVE PROCESSING SITES

§ 2296a. Remedial action program

(a) In general

Except as provided in subsection (b) of this section, the costs of decontamination, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site shall be borne by persons licensed under section 2092 or 2111 of this title for any activity at such site which results or has resulted in the production of byproduct material.

(b) Reimbursement

(1) In general

The Secretary of Energy shall, subject to paragraph (2), reimburse at least annually a licensee described in subsection (a) of this section for such portion of the costs described in such subsection as are—

(A) determined by the Secretary to be attributable to byproduct material generated as an incident of sales to the United States; and

(B) either—

(i) incurred by such licensee not later than December 31, 2007; or

(ii) incurred by a licensee after December 31, 2007, in accordance with a plan for subsequent decontamination, decommissioning, reclamation, and other remedial action approved by the Secretary.

(2) Amount

(A) To individual active site uranium licensees

The amount of reimbursement paid to any licensee under paragraph (1) shall be determined by the Secretary in accordance with regulations issued pursuant to section 2296a–1 of this title and, for uranium mill tailings only, shall not exceed an amount equal to $6.25 multiplied by the dry short tons of byproduct material located on October 24, 1992, at the site of the activities of such licensee described in subsection (a) of this section, and generated as an incident of sales to the United States.

(B) To all active site uranium licensees

Payments made under paragraph (1) to active site uranium licensees shall not in the aggregate exceed $350,000,000.

(C) To thorium licensees

Payments made under paragraph (1) to the licensee of the active thorium site shall not exceed $365,000,000, and may only be made for off-site disposal. Such payments shall not exceed the following amounts:

(i) $90,000,000 in fiscal year 2002.
(ii) $55,000,000 in fiscal year 2003.
(iii) $20,000,000 in fiscal year 2004.
(iv) $20,000,000 in fiscal year 2005.
(v) $20,000,000 in fiscal year 2006.
(vi) $20,000,000 in fiscal year 2007.

Any amounts authorized to be paid in a fiscal year under this subparagraph that are not paid

in that fiscal year may be paid in subsequent fiscal years.

(D) Inflation escalation index

The amounts in subparagraphs (A), (B), and (C) of this paragraph shall be increased annually based upon an inflation index. The Secretary shall determine the appropriate index to apply.

(E) Additional reimbursement

(i) Determination of excess

The Secretary shall determine as of December 31, 2008, whether the amount authorized to be appropriated pursuant to section 2296a–2 of this title, when considered with the $6.25 per dry short ton limit on reimbursement, exceeds the amount reimbursable to the licensees under subsection (b)(2) of this section.

(ii) In the event of excess

If the Secretary determines under clause (i) that there is an excess, the Secretary may allow reimbursement in excess of $6.25 per dry short ton on a prorated basis at such sites where the costs reimbursable under subsection (b)(1) of this section exceed the $6.25 per dry short ton limitation described in paragraph (2) of such subsection.

(3) Byproduct location

Notwithstanding the requirement of paragraph (2)(A) that byproduct material be located at the site on October 24, 1992, byproduct material moved from the site of the Edgemont Mill to a disposal site as the result of the decontamination, decommissioning, reclamation, and other remedial action of such mill shall be eligible for reimbursement to the extent eligible under paragraph (1).

(Pub. L. 102–486, title X, § 1001, Oct. 24, 1992, 106 Stat. 2946; Pub. L. 104–259, § 3(a), Oct. 9, 1996, 110 Stat. 3173; Pub. L. 105–388, § 11(a), Nov. 13, 1998, 112 Stat. 3484; Pub. L. 106–317, § 1, Oct. 19, 2000, 114 Stat. 1277; Pub. L. 107–222, § 1(a), Aug. 21, 2002, 116 Stat. 1336.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

2002—Subsec. (b)(2)(C). Pub. L. 107–222 substituted ''$365,000,000'' for ''$140,000,000'' and inserted at end ''Such payments shall not exceed the following amounts:

''(i) $90,000,000 in fiscal year 2002.

''(ii) $55,000,000 in fiscal year 2003.

''(iii) $20,000,000 in fiscal year 2004.

''(iv) $20,000,000 in fiscal year 2005.

''(v) $20,000,000 in fiscal year 2006.

''(vi) $20,000,000 in fiscal year 2007.

Any amounts authorized to be paid in a fiscal year under this subparagraph that are not paid in that fiscal year may be paid in subsequent fiscal years.''

2000—Subsec. (b)(1)(B)(i). Pub. L. 106–317, § 1(1), substituted ''2007'' for ''2002''.

Subsec. (b)(1)(B)(ii). Pub. L. 106–317, § 1(2), substituted ''incurred by a licensee after December 31, 2007,'' for ''placed in escrow not later than December 31, 2002,''.

Subsec. (b)(2)(E)(i). Pub. L. 106–317, § 1(3), substituted ''December 31, 2008'' for ''July 31, 2005''.

1998—Subsec. (b)(2)(C). Pub. L. 105–388 substituted ''$140,000,000'' for ''$65,000,000''.

1996—Subsec. (b)(2)(A). Pub. L. 104–259, § 3(a)(1), substituted ''$6.25'' for ''$5.50''.

Subsec. (b)(2)(B). Pub. L. 104–259, § 3(a)(2), substituted ''$350,000,000'' for ''$270,000,000''.

Subsec. (b)(2)(C). Pub. L. 104–259, § 3(a)(3), substituted ''$65,000,000'' for ''$40,000,000''.

Subsec. (b)(2)(E). Pub. L. 104–259, § 3(a)(4), (5), substituted ''$6.25'' for ''$5.50'' wherever appearing.

§ 2296a–1. Regulations

Within 180 days of October 24, 1992, the Secretary shall issue regulations governing reimbursement under section 2296a of this title. An active uranium or thorium processing site owner shall apply for reimbursement hereunder by submitting a request for the amount of reimbursement, together with reasonable documentation in support thereof, to the Secretary. Any such request for reimbursement, supported by reasonable documentation, shall be approved by the Secretary and reimbursement therefor shall be made in a timely manner subject only to the limitations of section 2296a of this title.

(Pub. L. 102–486, title X, § 1002, Oct. 24, 1992, 106 Stat. 2947.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2296a–2. Authorization of appropriations

(a) In general

There is authorized to be appropriated $715,000,000 to carry out this part. The aggregate amount authorized in the preceding sentence shall be increased annually as provided in section 2296a of this title, based upon an inflation index to be determined by the Secretary.

(b) Source

Funds described in subsection (a) of this section shall be provided from the Fund established under section 2297g of this title.

(Pub. L. 102–486, title X, § 1003, Oct. 24, 1992, 106 Stat. 2947; Pub. L. 104–259, § 3(b), Oct. 9, 1996, 110 Stat. 3174; Pub. L. 105–388, § 11(b), Nov. 13, 1998, 112 Stat. 3485; Pub. L. 107–222, § 1(b), Aug. 21, 2002, 116 Stat. 1336.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–222 substituted ''$715,000,000'' for ''$490,000,000''.

1998—Subsec. (a). Pub. L. 105–388 substituted ''$490,000,000'' for ''$415,000,000''.

1996—Subsec. (a). Pub. L. 104–259 substituted ''$415,000,000'' for ''$310,000,000''.

§ 2296a–3. Definitions

For purposes of this part:

(1) The term ''active uranium or thorium processing site'' means—

(A) any uranium or thorium processing site, including the mill, containing byproduct material for which a license (issued by

the Nuclear Regulatory Commission or its predecessor agency under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], or by a State as permitted under section 274 of such Act (42 U.S.C. 2021)) for the production at such site of any uranium or thorium derived from ore—

(i) was in effect on January 1, 1978;

(ii) was issued or renewed after January 1, 1978; or

(iii) for which an application for renewal or issuance was pending on, or after January 1, 1978; and

(B) any other real property or improvement on such real property that is determined by the Secretary or by a State as permitted under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) to be—

(i) in the vicinity of such site; and

(ii) contaminated with residual byproduct material;

(2) The term ''byproduct material'' has the meaning given such term in section 11 e. (2) of the Atomic Energy Act of 1954,[1] (42 U.S.C. 2014(e)(2)); and

(3) The term ''decontamination, decommissioning, reclamation, and other remedial action'' means work performed prior to or subsequent to October 24, 1992, which is necessary to comply with all applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.), or where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021).

(Pub. L. 102–486, title X, § 1004, Oct. 24, 1992, 106 Stat. 2947.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in par. (1)(A), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to this chapter (§ 2011 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Uranium Mill Tailings Radiation Control Act of 1978, referred to in par. (3), is Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, as amended, which is classified principally to chapter 88 (§ 7901 et seq.) of this title. For complete classification of this act to the Code, see Short Title note set out under section 7901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

PART B—URANIUM REVITALIZATION

§ 2296b. Overfeed program

(a) Uranium purchases

To the maximum extent permitted by sound business practice, the Corporation shall purchase uranium in accordance with subsection (b) of this section and overfeed it into the enrichment process to reduce the amount of power required to produce the enriched uranium ordered by enrichment services customers, taking into account costs associated with depleted tailings.

(b) Use of domestic uranium

Uranium purchased by the Corporation for purposes of this section shall be of domestic origin and purchased from domestic uranium producers to the extent permitted under the multilateral trade agreements (as defined in section 3501(4) of title 19) and the North American Free Trade Agreement.

(Pub. L. 102–486, title X, § 1011, Oct. 24, 1992, 106 Stat. 2948; Pub. L. 106–36, title I, § 1002(g)(1), June 25, 1999, 113 Stat. 133.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–36 substituted ''multilateral trade agreements (as defined in section 3501(4) of title 19) and the ''North American Free Trade Agreement'' for ''General Agreement on Tariffs and Trade and the United States-Canada Free Trade Agreement''.

§ 2296b–1. National Strategic Uranium Reserve

There is hereby established the National Strategic Uranium Reserve under the direction and control of the Secretary. The Reserve shall consist of natural uranium and uranium equivalents contained in stockpiles or inventories currently held by the United States for defense purposes. Effective on October 24, 1992, and for 6 years thereafter, use of the Reserve shall be restricted to military purposes and government research. Use of the Department of Energy's stockpile of enrichment tails existing on October 24, 1992, shall be restricted to military purposes for 6 years thereafter.

(Pub. L. 102–486, title X, § 1012, Oct. 24, 1992, 106 Stat. 2948.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2296b–2. Sale of remaining DOE inventories

The Secretary, after making the transfer required under section 2297c–6[1] of this title, may sell, from time to time, portions of the remaining inventories of raw or low-enriched uranium of the Department that are not necessary to national security needs, to the Corporation, at a fair market price. Sales under this section may be made only if such sales will not have a substantial adverse impact on the domestic uranium mining industry. Proceeds from sales under this subsection shall be deposited into the general fund of the United States Treasury.

(Pub. L. 102–486, title X, § 1013, Oct. 24, 1992, 106 Stat. 2949.)

REFERENCES IN TEXT

Section 2297c–6 of this title, referred to in text, was repealed by Pub. L. 104–134, title III, § 3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349.

[1] So in original. The comma probably should not appear.

[1] See References in Text note below.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2296b–3. Responsibility for the industry

(a) Continuing Secretarial responsibility

The Secretary shall have a continuing responsibility for the domestic uranium industry to encourage the use of domestic uranium. The Secretary, in fulfilling this responsibility, shall not use any supervisory authority over the Corporation. The Secretary shall report annually to the appropriate committees of Congress on action taken with respect to the domestic uranium industry, including action to promote the export of domestic uranium pursuant to subsection (b) of this section.

(b) Encourage export

The Department, with the cooperation of the Department of Commerce, the United States Trade Representative and other governmental organizations, shall encourage the export of domestic uranium. Within 180 days after October 24, 1992, the Secretary shall develop recommendations and implement government programs to promote the export of domestic uranium.

(Pub. L. 102–486, title X, § 1014, Oct. 24, 1992, 106 Stat. 2949.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2296b–4. Annual uranium purchase reports

(a) In general

By January 1 of each year, the owner or operator of any civilian nuclear power reactor shall report to the Secretary, acting through the Administrator of the Energy Information Administration, for activities of the previous fiscal year—

(1) the country of origin and the seller of any uranium or enriched uranium purchased or imported into the United States either directly or indirectly by such owner or operator; and

(2) the country of origin and the seller of any enrichment services purchased by such owner or operator.

(b) Congressional access

The information provided to the Secretary pursuant to this section shall be made available to the Congress by March 1 of each year.

(Pub. L. 102–486, title X, § 1015, Oct. 24, 1992, 106 Stat. 2949.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2296b–5. Uranium inventory study

Within 1 year after October 24, 1992, the Secretary shall submit to the Congress a study and report that includes—

(1) a comprehensive inventory of all Government owned uranium or uranium equivalents, including natural uranium, depleted tailings, low-enriched uranium, and highly enriched uranium available for conversion to commercial use;

(2) a plan for the conversion of inventories of foreign and domestic highly enriched uranium to low-enriched uranium for commercial use;

(3) an estimation of the potential need of the United States for inventories of highly enriched uranium;

(4) an analysis and summary of technological requirements and costs associated with converting highly enriched uranium to low-enriched uranium, including the construction of facilities if necessary;

(5) an estimation of potential net proceeds from the conversion and sale of highly enriched uranium;

(6) recommendations for implementing a plan to convert highly enriched uranium to low-enriched uranium; and

(7) recommendations for the future use and disposition of such inventories.

(Pub. L. 102–486, title X, § 1016, Oct. 24, 1992, 106 Stat. 2949.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2296b–6. Regulatory treatment of uranium purchases

(a) Encouragement

The Secretary shall encourage States and utility regulatory authorities to take into consideration the achievement of the objectives and purposes of this part, including the national need to avoid dependence on imports, when considering whether to allow the owner or operator of any electric power plant to recover in its rates and charges to customers any cost of purchase of domestic uranium, enriched uranium, or enrichment services from a non-affiliated seller greater than the cost of non-domestic uranium, enriched uranium or enrichment services.

(b) Report

Within 1 year after October 24, 1992, and annually thereafter, the Secretary shall report to the Congress on the progress of the Secretary in encouraging actions by State regulatory authorities pursuant to subsection (a) of this section. Such report shall include detailed information on programs initiated by the Secretary to encourage appropriate State regulatory action and recommendations, if any, on further action that could be taken by the Secretary, other Federal agencies, or the Congress in order to further the purposes of this part.

(c) Savings provision

This section may not be construed to authorize the Secretary to take any action in violation of the multilateral trade agreements (as defined in section 3501(4) of title 19) or the North American Free Trade Agreement.

(Pub. L. 102–486, title X, § 1017, Oct. 24, 1992, 106 Stat. 2950; Pub. L. 106–36, title I, § 1002(g)(2), June 25, 1999, 113 Stat. 133.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–36 substituted ''multilateral trade agreements (as defined in section 3501(4) of title 19) or the North American Free Trade Agreement'' for ''General Agreement on Tariffs and Trade or the United States-Canada Free Trade Agreement''.

§ 2296b–7. Definitions

For purposes of this part:

(1) The term ''Corporation'' means the United States Enrichment Corporation established under section 2297b[1] of this title or its successor.

(2) The term ''country of origin'' means—

(A) with respect to uranium, that country where the uranium was mined;

(B) with respect to enriched uranium, that country where the uranium was mined and enriched; or

(C) with respect to enrichment services, that country where the enrichment services were performed.

(3) The term ''domestic origin'' refers to any uranium that has been mined in the United States including uranium recovered from uranium deposits in the United States by underground mining, open-pit mining, strip mining, in situ recovery, leaching, and ion recovery, or recovered from phosphoric acid manufactured in the United States.

(4) The term ''domestic uranium producer'' means a person or entity who produces domestic uranium and who has, to the extent required by State and Federal agencies having jurisdiction, licenses and permits for the operation, decontamination, decommissioning, and reclamation of sites, structures and equipment.

(5) The term ''non-affiliated'' refers to a seller who does not control, and is not controlled by or under common control with, the buyer.

(6) The term ''overfeed'' means to use uranium in the enrichment process in excess of the amount required at the transactional tails assay.

(7) The term ''utility regulatory authority'' means any State agency or Federal agency that has ratemaking authority with respect to the sale of electric energy by any electric utility or independent power producer. For purposes of this paragraph, the terms ''electric utility'', ''State agency'', ''Federal agency'', and ''ratemaking authority'' have the respective meanings given such terms in section 2602 of title 16.

(Pub. L. 102–486, title X, § 1018, Oct. 24, 1992, 106 Stat. 2950; Pub. L. 104–134, title III, § 3117(b), Apr. 26, 1996, 110 Stat. 1321–350.)

REFERENCES IN TEXT

Section 2297b of this title, referred to in par. (1), was repealed by Pub. L. 104–134, title III, § 3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349.

[1] See References in Text note below.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

1996—Par. (1). Pub. L. 104–134 inserted ''or its successor'' before period at end.

Division B—United States Enrichment Corporation

SUBCHAPTER I—GENERAL PROVISIONS

§§ 2297, 2297a. Repealed. Pub. L. 104–134, title III, § 3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349

Section 2297, act Aug. 1, 1946, ch. 724, title II, § 1201, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2923, defined terms for purposes of this division.

Section 2297a, act Aug. 1, 1946, ch. 724, title II, § 1202, as added Oct. 24, 1992, Pub. L. 102–486, title IX, § 901, 106 Stat. 2924, related to purposes of United States Enrichment Corporation.

EFFECTIVE DATE OF REPEAL

Pub. L. 104–134, title III, § 3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349, provided that: ''Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 U.S.C. 2297–2297e–7) are repealed as of the privatization date [July 28, 1998, see 42 U.S.C. 2297h(9) for definition of privatization date as date on which 100 percent of ownership of United States Enrichment Corporation has been transferred to private investors].''

SEVERABILITY

Section 904 of title IX of Pub. L. 102–486 provided that: ''If any provision of this title [see Tables for classification], or the amendments made by this title, or the application of any provision to any entity, person, or circumstance, is for any reason adjudged by a court of competent jurisdiction to be invalid, the remainder of this title, and the amendments made by this title, or its application shall not be affected.''

REFERENCES TO UNITED STATES ENRICHMENT CORPORATION

Pub. L. 104–134, title III, § 3116(e), Apr. 26, 1996, 110 Stat. 1321–350, provided that: ''Following the privatization date [July 28, 1998, see Effective Date of Repeal note above], all references in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] to the United States Enrichment Corporation shall be deemed to be references to the private corporation.''

SUBCHAPTER II—ESTABLISHMENT, POWERS, AND ORGANIZATION OF CORPORATION

§§ 2297b to 2297b–15. Repealed. Pub. L. 104–134, title III, § 3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349

Section 2297b, act Aug. 1, 1946, ch. 724, title II, § 1301, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2925, related to establishment of United States Enrichment Corporation.

Section 2297b–1, act Aug. 1, 1946, ch. 724, title II, § 1302, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2925, related to offices of Corporation and service of process.

Section 2297b–2, act Aug. 1, 1946, ch. 724, title II, § 1303, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2925, related to powers of Corporation.

Section 2297b–3, act Aug. 1, 1946, ch. 724, title II, § 1304, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2926, related to Board of Directors of Corporation.

Section 2297b–4, act Aug. 1, 1946, ch. 724, title II, § 1305, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2927, related to employees of Corporation.

Section 2297b–5, act Aug. 1, 1946, ch. 724, title II, § 1306, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2928, related to independent and Comptroller General audits of Corporation's financial statements.

Section 2297b–6, act Aug. 1, 1946, ch. 724, title II, § 1307, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2929, related to annual reports by Corporation to President and Congress.

Section 2297b–7, act Aug. 1, 1946, ch. 724, title II, § 1308, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2929, related to accounts and transfer of unexpended balances.

Section 2297b–8, act Aug. 1, 1946, ch. 724, title II, § 1309, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2930, related to bonds, notes, and other evidences of indebtedness.

Section 2297b–9, act Aug. 1, 1946, ch. 724, title II, § 1310, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2931, related to exemption from State and local taxes and payments in lieu of such taxes.

Section 2297b–10, act Aug. 1, 1946, ch. 724, title II, § 1311, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2931, related to cooperation with other agencies.

Section 2297b–11, act Aug. 1, 1946, ch. 724, title II, § 1312, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2932, related to applicability of certain Federal laws.

Section 2297b–12, act Aug. 1, 1946, ch. 724, title II, § 1313, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2933, related to security of Corporation facilities, equipment, etc.

Section 2297b–13, act Aug. 1, 1946, ch. 724, title II, § 1314, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2933, related to control of information.

Section 2297b–14, act Aug. 1, 1946, ch. 724, title II, § 1315, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2933, related to governance of Corporation during transition period prior to appointment of Board.

Section 2297b–15, act Aug. 1, 1946, ch. 724, title II, § 1316, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2934, related to establishment of Working Capital Account.

EFFECTIVE DATE OF REPEAL

Repeal effective as of date on which 100 percent of ownership of United States Enrichment Corporation has been transferred to private investors (July 28, 1998), see section 3116(a)(1) of Pub. L. 104–134, set out as a note under former section 2297 of this title.

SUBCHAPTER III—RIGHTS, PRIVILEGES, AND ASSETS OF CORPORATION

§§ 2297c to 2297c–7. Repealed. Pub. L. 104–134, title III, § 3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349

Section 2297c, act Aug. 1, 1946, ch. 724, title II, § 1401, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2934; amended Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, related to marketing and contracting authority of United States Enrichment Corporation.

Section 2297c–1, act Aug. 1, 1946, ch. 724, title II, § 1402, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2934, related to Corporation pricing policy for Department of Energy and other customers.

Section 2297c–2, act Aug. 1, 1946, ch. 724, title II, § 1403, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2935, related to leasing of gaseous diffusion facilities of Department of Energy.

Section 2297c–3, act Aug. 1, 1946, ch. 724, title II, § 1404, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2935, related to capital structure of Corporation.

Section 2297c–4, act Aug. 1, 1946, ch. 724, title II, § 1405, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2936, authorized Corporation to apply for licenses for use of patented inventions and discoveries.

Section 2297c–5, act Aug. 1, 1946, ch. 724, title II, § 1406, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2936, related to liability for acts committed before and after transition date.

Section 2297c–6, act Aug. 1, 1946, ch. 724, title II, § 1407, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2937, related to transfer of uranium inventories to Corporation.

Section 2297c–7, act Aug. 1, 1946, ch. 724, title II, § 1408, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2937, related to purchase of highly enriched uranium from former Soviet Union.

EFFECTIVE DATE OF REPEAL

Repeal effective as of date on which 100 percent of ownership of United States Enrichment Corporation has been transferred to private investors (July 28, 1998), see section 3116(a)(1) of Pub. L. 104–134, set out as a note under former section 2297 of this title.

SUBCHAPTER IV—PRIVATIZATION OF CORPORATION

§§ 2297d, 2297d–1. Repealed. Pub. L. 104–134, title III, § 3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349

Section 2297d, act Aug. 1, 1946, ch. 724, title II, § 1501, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2937, related to strategic plan for privatization of United States Enrichment Corporation.

Section 2297d–1, act Aug. 1, 1946, ch. 724, title II, § 1502, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2938, related to implementation of privatization plan of Corporation.

EFFECTIVE DATE OF REPEAL

Repeal effective as of date on which 100 percent of ownership of United States Enrichment Corporation has been transferred to private investors (July 28, 1998), see section 3116(a)(1) of Pub. L. 104–134, set out as a note under former section 2297 of this title.

SUBCHAPTER V—AVLIS AND ALTERNATIVE TECHNOLOGIES FOR URANIUM ENRICHMENT

§§ 2297e to 2297e–7. Repealed. Pub. L. 104–134, title III, § 3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349

Section 2297e, act Aug. 1, 1946, ch. 724, title II, § 1601, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2939, related to assessment by United States Enrichment Corporation of viability of commercialization of AVLIS (atomic vapor laser isotope separation technology) and alternative uranium enrichment technologies.

Section 2297e–1, act Aug. 1, 1946, ch. 724, title II, § 1602, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2939, related to transfer of rights and property to Corporation.

Section 2297e–2, act Aug. 1, 1946, ch. 724, title II, § 1603, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2940, related to predeployment activities by Corporation.

Section 2297e–3, act Aug. 1, 1946, ch. 724, title II, § 1604, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2940; amended Pub. L. 102–572, title IX, § 902(b)(2), Oct. 29, 1992, 106 Stat. 4516, related to Corporation sponsorship of private for-profit corporation to construct AVLIS and alternative technologies.

Section 2297e–4, act Aug. 1, 1946, ch. 724, title II, § 1605, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2942, related to AVLIS Commercialization Fund within Corporation.

Section 2297e–5, act Aug. 1, 1946, ch. 724, title II, § 1606, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2942, related to Department research and development assistance.

Section 2297e–6, act Aug. 1, 1946, ch. 724, title II, § 1607, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2942, related to site selection.

Section 2297e–7, act Aug. 1, 1946, ch. 724, title II, § 1608, as added Pub. L. 102–486, title IX, § 901, Oct. 24, 1992, 106 Stat. 2942, related to exclusion from Price-Anderson coverage.

EFFECTIVE DATE OF REPEAL

Repeal effective as of date on which 100 percent of ownership of United States Enrichment Corporation has been transferred to private investors (July 28, 1998), see section 3116(a)(1) of Pub. L. 104–134, set out as a note under former section 2297 of this title.

SUBCHAPTER VI—LICENSING AND REGULATION OF URANIUM ENRICHMENT FACILITIES

§ 2297f. Gaseous diffusion facilities

(a) Issuance of standards

Within 2 years after October 24, 1992, the Nuclear Regulatory Commission shall establish by regulation such standards as are necessary to govern the gaseous diffusion uranium enrichment facilities of the Department in order to protect the public health and safety from radiological hazard and provide for the common defense and security. Regulations promulgated pursuant to this subsection shall, among other things, require that adequate safeguards (within the meaning of section 2167 of this title) are in place.

(b) Annual report

(1) In general

Not later than the date on which a certificate of compliance is issued under subsection (c) of this section, the Nuclear Regulatory Commission, in consultation with the Department and the Environmental Protection Agency, shall report to the Congress on the status of health, safety, and environmental conditions at the gaseous diffusion uranium enrichment facilities of the Department.

(2) Required determination

Such report shall include a determination regarding whether the gaseous diffusion uranium enrichment facilities of the Department are in compliance with the standards established under subsection (a) of this section and all applicable laws.

(c) Certification process

(1) Establishment

The Nuclear Regulatory Commission shall establish a certification process to ensure that the Corporation complies with standards established under subsection (a) of this section.

(2) Periodic application for certificate of compliance

The Corporation shall apply to the Nuclear Regulatory Commission for a certificate of compliance under paragraph (1) periodically, as determined by the Commission, but not less than every 5 years. The Commission shall review any such application and any determination made under subsection (b)(2) of this section shall be based on the results of any such review.

(3) Treatment of certificate of compliance

The requirement for a certificate of compliance under paragraph (1) shall be in lieu of any requirement for a license for any gaseous diffusion facility of the Department leased by the Corporation.

(4) NRC review

(A) In general

The Nuclear Regulatory Commission, in consultation with the Environmental Protection Agency, shall review the operations of the Corporation with respect to any gaseous diffusion uranium enrichment facilities of the Department leased by the Corporation to ensure that public health and safety are adequately protected.

(B) Access to facilities and information

The Corporation and the Department shall cooperate fully with the Nuclear Regulatory Commission and the Environmental Protection Agency and shall provide the Nuclear Regulatory Commission and the Environmental Protection Agency with the ready access to the facilities, personnel, and information the Nuclear Regulatory Commission and the Environmental Protection Agency consider necessary to carry out their responsibilities under this subsection. A contractor operating a Corporation facility for the Corporation shall provide the Nuclear Regulatory Commission and the Environmental Protection Agency with ready access to the facilities, personnel, and information of the contractor as the Nuclear Regulatory Commission and the Environmental Protection Agency consider necessary to carry out their responsibilities under this subsection.

(C) Limitation

The Nuclear Regulatory Commission shall limit its finding under subsection (b)(2) of this section to a determination of whether the facilities are in compliance with the standards established under subsection (a) of this section.

(d) Requirement for operation

The gaseous diffusion uranium enrichment facilities of the Department may not be operated by the Corporation unless the Nuclear Regulatory Commission, in consultation with the Environmental Protection Agency, makes a determination of compliance under subsection (b) of this section or approves a plan prepared by the Department for achieving compliance required under subsection (b) of this section.

(Aug. 1, 1946, ch. 724, title II, § 1701, as added Pub. L. 102–486, title XI, § 1101, Oct. 24, 1992, 106 Stat. 2951; amended Pub. L. 104–134, title III, § 3116(b)(3), Apr. 26, 1996, 110 Stat. 1321–349; Pub. L. 105–362, title XII, § 1202, Nov. 10, 1998, 112 Stat. 3292.)

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–362 substituted ''Not later than the date on which a certificate of compliance is issued under subsection (c) of this section, the Nuclear'' for ''The Nuclear'' and struck out ''at least annually'' after ''report''.

1996—Subsec. (c)(2). Pub. L. 104–134 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The Corporation shall apply at least annually to the Nuclear Regulatory Commission for a certificate of compliance under paragraph (1). The Nu-

clear Regulatory Commission, in consultation with the Environmental Protection Agency, shall review any such application and any determination made under subsection (b)(2) of this section shall be based on the results of any such review.''

REFERENCES TO UNITED STATES ENRICHMENT CORPORATION

References to the Corporation, meaning the United States Enrichment Corporation, deemed, as of the privatization date (July 28, 1998), to be references to the private corporation, see section 3116(e) of Pub. L. 104–134, set out as a note under former section 2297 of this title.

§ 2297f–1. Licensing of other technologies

(a) In general

Corporation facilities using alternative technologies for uranium enrichment, including AVLIS, shall be licensed under sections 2073, 2093, and 2243 of this title.

(b) Costs for decontamination and decommissioning

The Corporation shall provide for the costs of decontamination and decommissioning of any Corporation facilities described in subsection (a) of this section in accordance with the requirements of the amendments made by section 5 of the Solar, Wind, Waste, and Geothermal Power Production Act of 1990.

(Aug. 1, 1946, ch. 724, title II, § 1702, as added Pub. L. 102–486, title XI, § 1101, Oct. 24, 1992, 106 Stat. 2953; amended Pub. L. 104–134, title III, § 3116(b)(4), Apr. 26, 1996, 110 Stat. 1321–349.)

REFERENCES IN TEXT

Section 5 of the Solar, Wind, Waste, and Geothermal Power Production Act of 1990, referred to in subsec. (b), is section 5 of Pub. L. 101–575, Nov. 15, 1990, 104 Stat. 2835, which enacted section 2243 of this title and amended sections 2014, 2061, 2201, and 2284 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–134 substituted ''including'' for ''other than'' and ''sections 2073, 2093, and 2243'' for ''sections 2073 and 2093''.

REFERENCES TO UNITED STATES ENRICHMENT CORPORATION

References to the Corporation, meaning the United States Enrichment Corporation, deemed, as of the privatization date (July 28, 1998), to be references to the private corporation, see section 3116(e) of Pub. L. 104–134, set out as a note under former section 2297 of this title.

§ 2297f–2. Regulation of Restricted Data

The Corporation shall be subject to this chapter with respect to the use of, or access to, Restricted Data to the same extent as any private corporation.

(Aug. 1, 1946, ch. 724, title II, § 1703, as added Pub. L. 102–486, title XI, § 1101, Oct. 24, 1992, 106 Stat. 2953.)

REFERENCES TO UNITED STATES ENRICHMENT CORPORATION

References to the Corporation, meaning the United States Enrichment Corporation, deemed, as of the privatization date (July 28, 1998), to be references to the private corporation, see section 3116(e) of Pub. L. 104–134, set out as a note under former section 2297 of this title.

SUBCHAPTER VII—DECONTAMINATION AND DECOMMISSIONING

§ 2297g. Uranium Enrichment Decontamination and Decommissioning Fund

(a) Establishment

There is established in the Treasury of the United States an account to be known as the Uranium Enrichment Decontamination and Decommissioning Fund (referred to in this subchapter as the ''Fund''). The Fund, and any amounts deposited in it, including any interest earned thereon, shall be available to the Secretary subject to appropriations for the exclusive purpose of carrying out this subchapter.

(b) Administration

(1) In general

The Secretary of the Treasury shall hold the Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

(2) Investments

The Secretary of the Treasury shall invest amounts contained within the Fund in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate for what the Department determines to be the needs of the Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to these obligations.

(Aug. 1, 1946, ch. 724, title II, § 1801, as added Pub. L. 102–486, title XI, § 1101, Oct. 24, 1992, 106 Stat. 2953.)

§ 2297g–1. Deposits

(a) Amount

The Fund shall consist of deposits in the amount of $518,233,333 per fiscal year (to be annually adjusted for inflation beginning on October 24, 1992, using the Consumer Price Index for all-urban consumers published by the Department of Labor) as provided in this section.

(b) Source

Deposits described in subsection (a) of this section shall be from the following sources:

(1) Sums collected pursuant to subsection (c) of this section.

(2) Appropriations made pursuant to subsection (d) of this section.

(c) Special assessment

The Secretary shall collect a special assessment from domestic utilities. The total amount collected for a fiscal year shall not exceed $150,000,000 (to be annually adjusted for inflation using the Consumer Price Index for all-urban consumers published by the Department of Labor). The amount collected from each utility pursuant to this subsection for a fiscal year shall be in the same ratio to the amount re-

quired under subsection (a) of this section to be deposited for such fiscal year as the total amount of separative work units such utility has purchased from the Department of Energy for the purpose of commercial electricity generation, before October 24, 1992, bears to the total amount of separative work units purchased from the Department of Energy for all purposes (including units purchased or produced for defense purposes) before October 24, 1992. For purposes of this subsection—

(1) a utility shall be considered to have purchased a separative work unit from the Department if such separative work unit was produced by the Department, but purchased by the utility from another source; and

(2) a utility shall not be considered to have purchased a separative work unit from the Department if such separative work unit was purchased by the utility, but sold to another source.

(d) Authorization of appropriations

There are authorized to be appropriated to the Fund, for the period encompassing 15 years after October 24, 1992, such sums as are necessary to ensure that the amount required under subsection (a) of this section is deposited for each fiscal year.

(e) Termination of assessments

The collection of amounts under subsection (c) of this section shall cease after the earlier of—

(1) 15 years after October 24, 1992; or

(2) the collection of $2,250,000,000 (to be annually adjusted for inflation using the Consumer Price Index for all-urban consumers published by the Department of Labor) under such subsection.

(f) Continuation of deposits

Except as provided in subsection (e) of this section, deposits shall continue to be made into the Fund under subsection (d) of this section for the period specified in such subsection.

(g) Treatment of assessment

Any special assessment levied under this section on domestic utilities for the decontamination and decommissioning of the Department's gaseous diffusion enrichment facilities shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as the utility's other fuel cost.

(Aug. 1, 1946, ch. 724, title II, § 1802, as added Pub. L. 102–486, title XI, § 1101, Oct. 24, 1992, 106 Stat. 2953; amended Pub. L. 105–388, § 11(c), Nov. 13, 1998, 112 Stat. 3485; Pub. L. 107–222, § 1(c), Aug. 21, 2002, 116 Stat. 1336.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–222 substituted ''$518,233,333'' for ''$488,333,333'' and inserted ''beginning on October 24, 1992,'' after ''inflation''.

1998—Subsec. (a). Pub. L. 105–388 substituted ''$488,333,333'' for ''$480,000,000''.

§ 2297g–2. Department facilities

(a) Study by National Academy of Sciences

The National Academy of Sciences shall conduct a study and provide recommendations for reducing costs associated with decontamination and decommissioning, and shall report its findings to the Congress within 3 years after October 24, 1992. Such report shall include a determination of the decontamination and decommissioning required for each facility, shall identify alternative methods, using different technologies, shall include site-specific surveys of the actual contamination, and shall provide estimated costs of those activities.

(b) Payment of decontamination and decommissioning costs

The costs of all decontamination and decommissioning activities of the Department shall be paid from the Fund until such time as the Secretary certifies and the Congress concurs, by law, that such activities are complete.

(c) Payment of remedial action costs

The annual cost of remedial action at the Department's gaseous diffusion facilities shall be paid from the Fund to the extent the amount available in the Fund is sufficient. To the extent the amount in the Fund is insufficient, the Department shall be responsible for the cost of remedial action. No provision of this division may be construed to relieve in any way the responsibility or liability of the Department for remedial action under applicable Federal and State laws and regulations.

(Aug. 1, 1946, ch. 724, title II, § 1803, as added Pub. L. 102–486, title XI, § 1101, Oct. 24, 1992, 106 Stat. 2954.)

§ 2297g–3. Employee provisions

All laborers and mechanics employed by contractors or subcontractors in the performance of decontamination or decommissioning of uranium enrichment facilities of the Department shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 64 Stat. 1267) and section 3145 of title 40. This section may not be construed to require the contracting out of activities associated with the decontamination or decommissioning of uranium enrichment facilities.

(Aug. 1, 1946, ch. 724, title II, § 1804, as added Pub. L. 102–486, title XI, § 1101, Oct. 24, 1992, 106 Stat. 2955.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a et seq.)'' and ''section 3145 of title 40'' substituted for ''the Act of June 13, 1934 (40 U.S.C. 276c)'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 2297g–4. Reports to Congress

Within 3 years after October 24, 1992, and at least once every 3 years thereafter, the Secretary shall report to the Congress on progress under this subchapter. The 5th report submitted under this section shall contain recommendations of the Secretary for the reauthorization of the program and Fund under this division.

(Aug. 1, 1946, ch. 724, title II, § 1805, as added Pub. L. 102–486, title XI, § 1101, Oct. 24, 1992, 106 Stat. 2955.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under this section is listed in item 7 on page 83), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SUBCHAPTER VIII—UNITED STATES ENRICHMENT CORPORATION PRIVATIZATION

§ 2297h. Definitions

For purposes of this subchapter:

(1) The term ''AVLIS'' means atomic vapor laser isotope separation technology.

(2) The term ''Corporation'' means the United States Enrichment Corporation and, unless the context otherwise requires, includes the private corporation and any successor thereto following privatization.

(3) The term ''gaseous diffusion plants'' means the Paducah Gaseous Diffusion Plant at Paducah, Kentucky and the Portsmouth Gaseous Diffusion Plant at Piketon, Ohio.

(4) The term ''highly enriched uranium'' means uranium enriched to 20 percent or more of the uranium-235 isotope.

(5) The term ''low-enriched uranium'' means uranium enriched to less than 20 percent of the uranium-235 isotope, including that which is derived from highly enriched uranium.

(6) The term ''low-level radioactive waste'' has the meaning given such term in section 2021b(9) of this title.

(7) The term ''private corporation'' means the corporation established under section 2297h–3 of this title.

(8) The term ''privatization'' means the transfer of ownership of the Corporation to private investors.

(9) The term ''privatization date'' means the date on which 100 percent of the ownership of the Corporation has been transferred to private investors.

(10) The term ''public offering'' means an underwritten offering to the public of the common stock of the private corporation pursuant to section 2297h–2 of this title.

(11) The ''Russian HEU Agreement'' means the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993.

(12) The term ''Secretary'' means the Secretary of Energy.

(13) The ''Suspension Agreement'' means the Agreement to Suspend the Antidumping Investigation on Uranium from the Russian Federation, as amended.

(14) The term ''uranium enrichment'' means the separation of uranium of a given isotopic content into 2 components, 1 having a higher percentage of a fissile isotope and 1 having a lower percentage.

(Pub. L. 104–134, title III, § 3102, Apr. 26, 1996, 110 Stat. 1321–335.)

REFERENCES IN TEXT

This subchapter, referred to in text, means subchapter A of chapter 1 of title III of Pub. L. 104–134, Apr. 26, 1996, 110 Stat. 1321–335, known as the USEC Privatization Act, which is classified principally to this subchapter. For complete classification of subchapter A to the Code, see Short Title of 1996 Amendment note set out under section 2011 of this title and Tables.

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

EX. ORD. NO. 13085. ESTABLISHMENT OF ENRICHMENT OVERSIGHT COMMITTEE

Ex. Ord. No. 13085, May 26, 1998, 63 F.R. 29335, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further the national security and other interests of the United States with regard to uranium enrichment and related businesses after the privatization of the United States Enrichment Corporation (USEC), it is ordered as follows:

SECTION 1. *Establishment*. There is hereby established an Enrichment Oversight Committee (EOC).

SEC. 2. *Objectives*. The EOC shall monitor and coordinate United States Government efforts with respect to the privatized USEC and any successor entities involved in uranium enrichment and related businesses in furtherance of the following objectives:

(a) The full implementation of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium (HEU) Extracted from Nuclear Weapons, dated February 18, 1993 (''HEU Agreement''), and related contracts and agreements by the USEC as executive agent or by any other executive agents;

(b) The application of statutory, regulatory, and contractual restrictions on foreign ownership, control, or influence in the USEC, any successor entities, and any other executive agents;

(c) The development and implementation of United States Government policy regarding uranium enrichment and related technologies, processes, and data; and

(d) The collection and dissemination of information relevant to any of the foregoing on an ongoing basis, including from the Central Intelligence Agency and the Federal Bureau of Investigation.

SEC. 3. *Organization*. (a) The EOC shall be Chaired by a senior official from the National Security Council (NSC). The Chair shall coordinate the carrying out of the purposes and policy objectives of this order. The EOC shall meet as often as appropriate, but at least quarterly, and shall submit reports to the Assistant to the President for National Security Affairs semiannually, or more frequently as appropriate. The EOC shall prepare annually the report for the President's transmittal to the Congress pursuant to section 3112 of the USEC Privatization Act, Public Law 104–134, title III, 3112(b)(10), 110 Stat. 1321–344, 1321–346 (1996) [42 U.S.C. 2297h–10(b)(10)].

(b) The EOC shall consist of representatives from the Departments of State, the Treasury, Defense, Justice, Commerce, Energy, and the Office of Management and Budget, the NSC, the National Economic Council, the Council of Economic Advisers, and the Intelligence Community. The EOC shall formulate internal guidelines for its operations, including guidelines for convening meetings.

(c) The EOC shall coordinate sharing of information and provide direction, while operational responsibilities resulting from the EOC's oversight activities will rest with EOC member agencies.

(d) At the request of the EOC, appropriate agencies, including the Department of Energy, shall provide day-to-day support for the EOC.

SEC. 4. *HEU Agreement Oversight*. The EOC shall form an HEU Agreement Oversight Subcommittee (the ''Subcommittee'') in order to continue coordination of the implementation of the HEU Agreement and related contracts and agreements, monitor actions taken by the executive agent, and make recommendations regarding steps designed to facilitate full implementation of the HEU Agreement, including changes with respect to the executive agent. The Subcommittee shall be chaired by a senior official from the NSC and shall include representatives of the Departments of State, Defense, Justice, Commerce, and Energy, and the Office of Management and Budget, the National Economic Council, the Intelligence Community, and, as appropriate, the United States Trade Representative, and the Council of Economic Advisers. The Subcommittee shall meet as appropriate to review the implementation of the HEU Agreement and consider steps to facilitate full implementation of that Agreement. In particular, the Subcommittee shall:

(a) have access to all information concerning implementation of the HEU Agreement and related contracts and agreements;

(b) monitor negotiations between the executive agent or agents and Russian authorities on implementation of the HEU Agreement, including the proposals of both sides on delivery schedules and on price;

(c) monitor sales of the natural uranium component of low-enriched uranium derived from Russian HEU pursuant to applicable law;

(d) establish procedures for designating alternative executive agents to implement the HEU Agreement;

(e) coordinate policies and procedures regarding the full implementation of the HEU purchase agreement and related contracts and agreements, consistent with applicable law; and

(f) coordinate the position of the United States Government on any issues that arise in the implementation of the Memorandum of Agreement with the USEC for the USEC to serve as the United States Government Executive Agent under the HEU Agreement.

SEC. 5. *Foreign Ownership, Control, or Influence (FOCI)*. The EOC shall collect information and monitor issues relating to foreign ownership, control, or influence of the USEC or any successor entities. Specifically, the EOC shall:

(a) monitor the application and enforcement of the FOCI requirements of the National Industrial Security Program established by Executive Order 12829 [50 U.S.C. 435 note] with respect to the USEC and any successor entities (*see* National Industrial Security Program Operating Manual, Department of Defense 2–3 (Oct. 1994));

(b) monitor and review reports and submissions relating to FOCI issues made by the USEC or any successor entity to the Nuclear Regulatory Commission (NRC) under the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq*. (1994), and the USEC Privatization Act, Public Law 104–134, title III, 110 Stat. 1321–335 *et seq*. (1996) [42 U.S.C. 2297h et seq.];

(c) ensure coordination with the Intelligence Community of the collection and analysis of intelligence and ensure coordination of intelligence with other information related to FOCI issues; and

(d) ensure coordination with the Committee on Foreign Investment in the United States.

SEC. 6. *Domestic Enrichment Services*. The EOC shall collect and analyze information related to the maintenance of domestic uranium mining, enrichment, and conversion industries, provided that such activities shall be undertaken in a manner that provides appropriate protection for such information. In particular, the EOC shall:

(a) collect and review all public filings made by or with respect to the USEC or any successor entities with the Securities and Exchange Commission;

(b) collect information from all available sources necessary for the preparation of the annual report to the Congress required by section 3112 of the USEC Privatization Act [42 U.S.C. 2297h–10], as noted in section 3(a) of this order, including information relating to plans by the USEC or any successor entities to expand or contract materially the enrichment of uranium-using gaseous diffusion technology;

(c) collect information relating to the development and implementation of atomic vapor laser isotope separation technology;

(d) to the extent permitted by law, and as necessary to fulfill the EOC's oversight functions, collect proprietary information from the USEC, or any successor entities, provided that the collection of such information shall be undertaken so as to minimize disruption to the normal functioning of the private corporation. For example, such information would include the USEC's financial statements prepared in accordance with standards applicable to public registrants and the executive summary of the USEC's strategic plan as shared with its Board of Directors, as well as timely information on its unit production costs, capacity utilization rates, average pricing and sales for the current year and for new contracts, employment levels, overseas activities, and research and development initiatives. Such information shall be collected on an annual basis, with quarterly updates as appropriate; and

(e) coordinate with relevant agencies in monitoring the levels of natural and enriched uranium and enrichment services imported into the United States.

SEC. 7. *Coordination with the Nuclear Regulatory Commission*. Upon notification by the NRC that it seeks the views of other agencies of the executive branch regarding determinations necessary for the issuance, reissuance, or renewal of a certificate of compliance or license to the privatized USEC, the EOC shall convey the relevant views of these other agencies of the executive branch, including whether the applicant's performance as the United States agent for the HEU Agreement is acceptable, on a schedule consistent with the NRC's need for timely action on such regulatory decisions.

WILLIAM J. CLINTON.

§ 2297h–1. Sale of Corporation

(a) Authorization

The Board of Directors of the Corporation, with the approval of the Secretary of the Treasury, shall transfer the interest of the United States in the United States Enrichment Corporation to the private sector in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of the operation of the Department of Energy's gaseous diffusion plants, provides for the protection of the public interest in maintaining a reliable and economical domestic source of uranium mining, enrichment and conversion services, and, to the extent not inconsistent with such purposes, secures the maximum proceeds to the United States.

(b) Proceeds

Proceeds from the sale of the United States' interest in the Corporation shall be deposited in the general fund of the Treasury.

(Pub. L. 104–134, title III, § 3103, Apr. 26, 1996, 110 Stat. 1321–336.)

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2297h–2. Method of sale

(a) Authorization

The Board of Directors of the Corporation, with the approval of the Secretary of the Treasury, shall transfer ownership of the assets and obligations of the Corporation to the private corporation established under section 2297h–3 of this title (which may be consummated through a merger or consolidation effected in accordance with, and having the effects provided under, the law of the State of incorporation of the private corporation, as if the Corporation were incorporated thereunder).

(b) Board determination

The Board, with the approval of the Secretary of the Treasury, shall select the method of transfer and establish terms and conditions for the transfer that will provide the maximum proceeds to the Treasury of the United States and will provide for the long-term viability of the private corporation, the continued operation of the gaseous diffusion plants, and the public interest in maintaining reliable and economical domestic uranium mining and enrichment industries.

(c) Adequate proceeds

The Secretary of the Treasury shall not allow the privatization of the Corporation unless before the sale date the Secretary of the Treasury determines that the method of transfer will provide the maximum proceeds to the Treasury consistent with the principles set forth in section 2297h–1(a) of this title.

(d) Application of securities laws

Any offering or sale of securities by the private corporation shall be subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), and the provisions of the Constitution and laws of any State, territory, or possession of the United States relating to transactions in securities.

(e) Expenses

Expenses of privatization shall be paid from Corporation revenue accounts in the United States Treasury.

(Pub. L. 104–134, title III, § 3104, Apr. 26, 1996, 110 Stat. 1321–336.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (d), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (d), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2297h–3. Establishment of private corporation

(a) Incorporation

(1) The directors of the Corporation shall establish a private for-profit corporation under the laws of a State for the purpose of receiving the assets and obligations of the Corporation at privatization and continuing the business operations of the Corporation following privatization.

(2) The directors of the Corporation may serve as incorporators of the private corporation and shall take all steps necessary to establish the private corporation, including the filing of articles of incorporation consistent with the provisions of this subchapter.

(3) Employees and officers of the Corporation (including members of the Board of Directors) acting in accordance with this section on behalf of the private corporation shall be deemed to be acting in their official capacities as employees or officers of the Corporation for purposes of section 205 of title 18.

(b) Status of private corporation

(1) The private corporation shall not be an agency, instrumentality, or establishment of the United States, a Government corporation, or a Government-controlled corporation.

(2) Except as otherwise provided by this subchapter, financial obligations of the private corporation shall not be obligations of, or guaranteed as to principal or interest by, the Corporation or the United States, and the obligations shall so plainly state.

(3) No action under section 1491 of title 28 shall be allowable against the United States based on actions of the private corporation.

(c) Application of post-Government employment restrictions

Beginning on the privatization date, the restrictions stated in section 207(a), (b), (c), and (d) of title 18 shall not apply to the acts of an individual done in carrying out official duties as a director, officer, or employee of the private corporation, if the individual was an officer or employee of the Corporation (including a director) continuously during the 45 days prior to the privatization date.

(d) Dissolution

In the event that the privatization does not occur, the Corporation will provide for the dissolution of the private corporation within 1 year of the private corporation's incorporation unless the Secretary of the Treasury or his delegate, upon the Corporation's request, agrees to delay any such dissolution for an additional year.

(Pub. L. 104–134, title III, § 3105, Apr. 26, 1996, 110 Stat. 1321–337.)

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2297h–4. Transfers to private corporation

Concurrent with privatization, the Corporation shall transfer to the private corporation—

(1) the lease of the gaseous diffusion plants in accordance with section 2297h–5 of this title,

(2) all personal property and inventories of the Corporation,

(3) all contracts, agreements, and leases under section 2297h–6(a) of this title,

(4) the Corporation's right to purchase power from the Secretary under section 2297h–6(b) of this title,

(5) such funds in accounts of the Corporation held by the Treasury or on deposit with any bank or other financial institution as approved by the Secretary of the Treasury, and

(6) all of the Corporation's records, including all of the papers and other documentary materials, regardless of physical form or characteristics, made or received by the Corporation.

(Pub. L. 104–134, title III, § 3106, Apr. 26, 1996, 110 Stat. 1321–338.)

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2297h–5. Leasing of gaseous diffusion facilities

(a) Transfer of lease

Concurrent with privatization, the Corporation shall transfer to the private corporation the lease of the gaseous diffusion plants and related property for the remainder of the term of such lease in accordance with the terms of such lease.

(b) Renewal

The private corporation shall have the exclusive option to lease the gaseous diffusion plants and related property for additional periods following the expiration of the initial term of the lease.

(c) Exclusion of facilities for production of highly enriched uranium

The Secretary shall not lease to the private corporation any facilities necessary for the production of highly enriched uranium but may, subject to the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), grant the Corporation access to such facilities for purposes other than the production of highly enriched uranium.

(d) DOE responsibility for preexisting conditions

The payment of any costs of decontamination and decommissioning, response actions, or corrective actions with respect to conditions existing before July 1, 1993, at the gaseous diffusion plants shall remain the sole responsibility of the Secretary.

(e) Environmental audit

For purposes of subsection (d) of this section, the conditions existing before July 1, 1993, at the gaseous diffusion plants shall be determined from the environmental audit conducted pursuant to section 1403(e) of the Atomic Energy Act of 1954 (42 U.S.C. 2297c–2(e)).

(f) Treatment under Price-Anderson provisions

Any lease executed between the Secretary and the Corporation or the private corporation, and any extension or renewal thereof, under this section shall be deemed to be a contract for purposes of section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)).

(g) Waiver of EIS requirement

The execution or transfer of the lease between the Secretary and the Corporation or the private corporation, and any extension or renewal thereof, shall not be considered to be a major Federal action significantly affecting the quality of the human environment for purposes of section 4332 of this title.

(h) Maintenance of security

(1) In general

With respect to the Paducah Gaseous Diffusion Plant, Kentucky, and the Portsmouth Gaseous Diffusion Plant, Ohio, the guidelines relating to the authority of the Department of Energy's contractors (including any Federal agency, or private entity operating a gaseous diffusion plant under a contract or lease with the Department of Energy) and any subcontractor (at any tier) to carry firearms and make arrests in providing security at Federal installations, issued under section 2201(k) of this title shall require, at a minimum, the presence of all security police officers carrying sidearms at all times to ensure maintenance of security at the gaseous diffusion plants (whether a gaseous diffusion plant is operated directly by a Federal agency or by a private entity under a contract or lease with a Federal agency).

(2) Funding

(A) The costs of arming and providing arrest authority to the security police officers required under paragraph (1) shall be paid as follows:

(i) the Department of Energy (the ''Department'') shall pay the percentage of the costs equal to the percentage of the total number of employees at the gaseous diffusion plant who are: (I) employees of the Department or the contractor or subcontractors of the Department; or (II) employees of the private entity leasing the gaseous diffusion plant who perform work on behalf of the Department (including employees of a contractor or subcontractor of the private entity); and

(ii) the private entity leasing the gaseous diffusion plant shall pay the percentage of the costs equal to the percentage of the total number of employees at the gaseous diffusion plant who are employees of the private entity (including employees of a contractor or subcontractor) other than those employees who perform work for the Department.

(B) Neither the private entity leasing the gaseous diffusion plant nor the Department shall reduce its payments under any contract or lease or take other action to offset its share of the costs referred to in subparagraph (A), and the Department shall not reimburse the private entity for the entity's share of these costs.

(C) Nothing in this subsection shall alter the Department's responsibilities to pay the safety, safeguards and security costs associated with the Department's highly enriched uranium activities.

(Pub. L. 104–134, title III, § 3107, Apr. 26, 1996, 110 Stat. 1321–338; Pub. L. 105–62, title V, § 511, Oct. 13, 1997, 111 Stat. 1341; Pub. L. 105–245, title III, § 310, Oct. 7, 1998, 112 Stat. 1853.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (c), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to this chapter (§ 2011 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

1998—Subsec. (h). Pub. L. 105–245 substituted ''all security police officers'' for ''an adequate number of security guards'' in par. (1) and added par. (2).

1997—Subsec. (h). Pub. L. 105–62 added subsec. (h).

§ 2297h–6. Transfer of contracts

(a) Transfer of contracts

Concurrent with privatization, the Corporation shall transfer to the private corporation all contracts, agreements, and leases, including all uranium enrichment contracts, that were—

(1) transferred by the Secretary to the Corporation pursuant to section 2297c(b) of this title, or

(2) entered into by the Corporation before the privatization date.

(b) Nontransferable power contracts

The Corporation shall transfer to the private corporation the right to purchase power from the Secretary under the power purchase contracts for the gaseous diffusion plants executed by the Secretary before July 1, 1993. The Secretary shall continue to receive power for the gaseous diffusion plants under such contracts and shall continue to resell such power to the private corporation at cost during the term of such contracts.

(c) Effect of transfer

(1) Notwithstanding subsection (a) of this section, the United States shall remain obligated to the parties to the contracts, agreements, and leases transferred under subsection (a) of this section for the performance of its obligations under such contracts, agreements, or leases during their terms. Performance of such obligations by the private corporation shall be considered performance by the United States.

(2) If a contract, agreement, or lease transferred under subsection (a) of this section is terminated, extended, or materially amended after the privatization date—

(A) the private corporation shall be responsible for any obligation arising under such contract, agreement, or lease after any extension or material amendment, and

(B) the United States shall be responsible for any obligation arising under the contract, agreement, or lease before the termination, extension, or material amendment.

(3) The private corporation shall reimburse the United States for any amount paid by the United States under a settlement agreement entered into with the consent of the private corporation or under a judgment, if the settlement or judgment—

(A) arises out of an obligation under a contract, agreement, or lease transferred under subsection (a) of this section, and

(B) arises out of actions of the private corporation between the privatization date and the date of a termination, extension, or material amendment of such contract, agreement, or lease.

(d) Pricing

The Corporation may establish prices for its products, materials, and services provided to customers on a basis that will allow it to attain the normal business objectives of a profit making corporation.

(Pub. L. 104–134, title III, § 3108, Apr. 26, 1996, 110 Stat. 1321–339.)

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2297h–7. Liabilities

(a) Liability of United States

(1) Except as otherwise provided in this subchapter, all liabilities arising out of the operation of the uranium enrichment enterprise before July 1, 1993, shall remain the direct liabilities of the Secretary.

(2) Except as provided in subsection (a)(3) of this section or otherwise provided in a memorandum of agreement entered into by the Corporation and the Office of Management and Budget prior to the privatization date, all liabilities arising out of the operation of the Corporation between July 1, 1993, and the privatization date shall remain the direct liabilities of the United States.

(3) All liabilities arising out of the disposal of depleted uranium generated by the Corporation between July 1, 1993, and the privatization date shall become the direct liabilities of the Secretary.

(4) Any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person for any legal, equitable, or other relief with respect to

any claim arising from any action taken by any agent or officer of the United States in connection with the privatization of the Corporation is hereby withdrawn.

(5) To the extent that any claim against the United States under this section is of the type otherwise required by Federal statute or regulation to be presented to a Federal agency or official for adjudication or review, such claim shall be presented to the Department of Energy in accordance with procedures to be established by the Secretary. Nothing in this paragraph shall be construed to impose on the Department of Energy liability to pay any claim presented pursuant to this paragraph.

(6) The Attorney General shall represent the United States in any action seeking to impose liability under this subsection.

(b) Liability of Corporation

Notwithstanding any provision of any agreement to which the Corporation is a party, the Corporation shall not be considered in breach, default, or violation of any agreement because of the transfer of such agreement to the private corporation under section 2297h–6 of this title or any other action the Corporation is required to take under this subchapter.

(c) Liability of private corporation

Except as provided in this subchapter, the private corporation shall be liable for any liabilities arising out of its operations after the privatization date.

(d) Liability of officers and directors

(1) No officer, director, employee, or agent of the Corporation shall be liable in any civil proceeding to any party in connection with any action taken in connection with the privatization if, with respect to the subject matter of the action, suit, or proceeding, such person was acting within the scope of his employment.

(2) This subsection shall not apply to claims arising under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or under the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities.

(Pub. L. 104–134, title III, § 3109, Apr. 26, 1996, 110 Stat. 1321–339.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (d)(2), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (d)(2), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2297h–8. Employee protections

(a) Contractor employees

(1) Privatization shall not diminish the accrued, vested pension benefits of employees of the Corporation's operating contractor at the two gaseous diffusion plants.

(2) In the event that the private corporation terminates or changes the contractor at either or both of the gaseous diffusion plants, the plan sponsor or other appropriate fiduciary of the pension plan covering employees of the prior operating contractor shall arrange for the transfer of all plan assets and liabilities relating to accrued pension benefits of such plan's participants and beneficiaries from such plant to a pension plan sponsored by the new contractor or the private corporation or a joint labor-management plan, as the case may be.

(3) In addition to any obligations arising under the National Labor Relations Act (29 U.S.C. 151 et seq.), any employer (including the private corporation if it operates a gaseous diffusion plant without a contractor or any contractor of the private corporation) at a gaseous diffusion plant shall—

(A) abide by the terms of any unexpired collective bargaining agreement covering employees in bargaining units at the plant and in effect on the privatization date until the stated expiration or termination date of the agreement; or

(B) in the event a collective bargaining agreement is not in effect upon the privatization date, have the same bargaining obligations under section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d)) as it had immediately before the privatization date.

(4) If the private corporation replaces its operating contractor at a gaseous diffusion plant, the new employer (including the new contractor or the private corporation if it operates a gaseous diffusion plant without a contractor) shall—

(A) offer employment to non-management employees of the predecessor contractor to the extent that their jobs still exist or they are qualified for new jobs, and

(B) abide by the terms of the predecessor contractor's collective bargaining agreement until the agreement expires or a new agreement is signed.

(5) In the event of a plant closing or mass layoff (as such terms are defined in section 2101(a)(2) and (3) of title 29) at either of the gaseous diffusion plants, the Secretary of Energy shall treat any adversely affected employee of an operating contractor at either plant who was an employee at such plant on July 1, 1993, as a Department of Energy employee for purposes of sections 3161 and 3162 of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274h–7274i).[1]

(6)(A) The Secretary and the private corporation shall cause the post-retirement health benefits plan provider (or its successor) to continue to provide benefits for eligible persons, as described under subparagraph (B), employed by an operating contractor at either of the gaseous

[1] See References in Text note below.

diffusion plants in an economically efficient manner and at substantially the same level of coverage as eligible retirees are entitled to receive on the privatization date.

(B) Persons eligible for coverage under subparagraph (A) shall be limited to:

(i) persons who retired from active employment at one of the gaseous diffusion plants on or before the privatization date as vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed prior to July 1, 1993, by the Department of Energy to operate a gaseous diffusion plant; and

(ii) persons who are employed by the Corporation's operating contractor on or before the privatization date and are vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed prior to July 1, 1993, by the Department of Energy to operate a gaseous diffusion plant.

(C) The Secretary shall fund the entire cost of post-retirement health benefits for persons who retired from employment with an operating contractor prior to July 1, 1993.

(D) The Secretary and the Corporation shall fund the cost of post-retirement health benefits for persons who retire from employment with an operating contractor on or after July 1, 1993, in proportion to the retired person's years and months of service at a gaseous diffusion plant under their respective management.

(7)(A) Any suit under this subsection alleging a violation of an agreement between an employer and a labor organization shall be brought in accordance with section 185[1] of title 29.

(B) Any charge under this subsection alleging an unfair labor practice violative of section 8 of the National Labor Relations Act (29 U.S.C. 158) shall be pursued in accordance with section 10 of the National Labor Relations Act (29 U.S.C. 160).

(C) Any suit alleging a violation of any provision of this subsection, to the extent it does not allege a violation of the National Labor Relations Act [29 U.S.C. 151 et seq.], may be brought in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy or the citizenship of the parties.

(8) CONTINUITY OF BENEFITS.—To the extent appropriations are provided in advance for this purpose or are otherwise available, not later than 30 days after August 8, 2005, the Secretary shall implement such actions as are necessary to ensure that any employee who—

(A) is involved in providing infrastructure or environmental remediation services at the Portsmouth, Ohio, or the Paducah, Kentucky, Gaseous Diffusion Plant;

(B) has been an employee of the Department of Energy's predecessor management and integrating contractor (or its first or second tier subcontractors), or of the Corporation, at the Portsmouth, Ohio, or the Paducah, Kentucky, facility; and

(C) was eligible as of April 1, 2005, to participate in or transfer into the Multiple Employer Pension Plan or the associated multiple employer retiree health care benefit plans, as defined in those plans,

shall continue to be eligible to participate in or transfer into such pension or health care benefit plans.

(b) Former Federal employees

(1)(A) An employee of the Corporation that was subject to either the Civil Service Retirement System (referred to in this section as ''CSRS'') or the Federal Employees' Retirement System (referred to in this section as ''FERS'') on the day immediately preceding the privatization date shall elect—

(i) to retain the employee's coverage under either CSRS or FERS, as applicable, in lieu of coverage by the Corporation's retirement system, or

(ii) to receive a deferred annuity or lump-sum benefit payable to a terminated employee under CSRS or FERS, as applicable.

(B) An employee that makes the election under subparagraph (A)(ii) shall have the option to transfer the balance in the employee's Thrift Savings Plan account to a defined contribution plan under the Corporation's retirement system, consistent with applicable law and the terms of the Corporation's defined contribution plan.

(2) The Corporation shall pay to the Civil Service Retirement and Disability Fund—

(A) such employee deductions and agency contributions as are required by sections 8334, 8422, and 8423 of title 5 for those employees who elect to retain their coverage under either CSRS or FERS pursuant to paragraph (1);

(B) such additional agency contributions as are determined necessary by the Office of Personnel Management to pay, in combination with the sums under subparagraph (A), the ''normal cost'' (determined using dynamic assumptions) of retirement benefits for those employees who elect to retain their coverage under CSRS pursuant to paragraph (1), with the concept of ''normal cost'' being used consistent with generally accepted actuarial standards and principles; and

(C) such additional amounts, not to exceed two percent of the amounts under subparagraphs (A) and (B), as are determined necessary by the Office of Personnel Management to pay the cost of administering retirement benefits for employees who retire from the Corporation after the privatization date under either CSRS or FERS, for their survivors, and for survivors of employees of the Corporation who die after the privatization date (which amounts shall be available to the Office of Personnel Management as provided in section 8348(a)(1)(B) of title 5).

(3) The Corporation shall pay to the Thrift Savings Fund such employee and agency contributions as are required or authorized by sections 8432 and 8351 of title 5 for employees who elect to retain their coverage under CSRS or FERS pursuant to paragraph (1).

(4) Any employee of the Corporation who was subject to the Federal Employee Health Benefits Program (referred to in this section as ''FEHBP'') on the day immediately preceding the privatization date and who elects to retain coverage under either CSRS or FERS pursuant to paragraph (1) shall have the option to receive

health benefits from a health benefit plan established by the Corporation or to continue without interruption coverage under the FEHBP, in lieu of coverage by the Corporation's health benefit system.

(5) The Corporation shall pay to the Employees Health Benefits Fund—

(A) such employee deductions and agency contributions as are required by section 8906(a)–(f) of title 5 for those employees who elect to retain their coverage under FEHBP pursuant to paragraph (4); and

(B) such amounts as are determined necessary by the Office of Personnel Management under paragraph (6) to reimburse the Office of Personnel Management for contributions under section 8906(g)(1) of title 5 for those employees who elect to retain their coverage under FEHBP pursuant to paragraph (4).

(6) The amounts required under paragraph (5)(B) shall pay the Government contributions for retired employees who retire from the Corporation after the privatization date under either CSRS or FERS, for survivors of such retired employees, and for survivors of employees of the Corporation who die after the privatization date, with said amounts prorated to reflect only that portion of the total service of such employees and retired persons that was performed for the Corporation after the privatization date.

(Pub. L. 104–134, title III, § 3110, Apr. 26, 1996, 110 Stat. 1321–340; Pub. L. 104–206, title III, Sept. 30, 1996, 110 Stat. 2995; Pub. L. 109–58, title VI, § 633, Aug. 8, 2005, 119 Stat. 790.)

REFERENCES IN TEXT

The National Labor Relations Act, referred to in subsec. (a)(3), (7)(C), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

Sections 3161 and 3162 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsec. (a)(5), were classified to sections 7274h and 7274i, respectively, of this title and were renumbered sections 4604 and 4643, respectively, of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(5)(A)–(C), (14)(A)–(C), Nov. 24, 2003, 117 Stat. 1777, 1779, 1780, which are classified to sections 2704 and 2733, respectively, of Title 50, War and National Defense.

Section 185 of title 29, referred to in subsec. (a)(7)(A), was in the original "section 301 of the Labor Management Relations Act (29 U.S.C. 185)", and has been translated as reading section 301 of the Labor Management Relations Act, 1947, to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

2005—Subsec. (a)(8). Pub. L. 109–58 added par. (8).

1996—Subsec. (b)(3). Pub. L. 104–206 which directed the amendment of subsec. (b) by inserting par. (3), was executed to reflect the probable intent of Congress by substituting par. (3) for former par. (3) which read as follows: "The Corporation shall pay to the Thrift Savings Fund such employee and agency contributions as are required by section 8432 of title 5 for those employees who elect to retain their coverage under FERS pursuant to paragraph (1)."

§ 2297h–9. Ownership limitations

(a) Securities limitations

No director, officer, or employee of the Corporation may acquire any securities, or any rights to acquire any securities of the private corporation on terms more favorable than those offered to the general public—

(1) in a public offering designed to transfer ownership of the Corporation to private investors,

(2) pursuant to any agreement, arrangement, or understanding entered into before the privatization date, or

(3) before the election of the directors of the private corporation.

(b) Ownership limitation

Immediately following the consummation of the transaction or series of transactions pursuant to which 100 percent of the ownership of the Corporation is transferred to private investors, and for a period of three years thereafter, no person may acquire, directly or indirectly, beneficial ownership of securities representing more than 10 percent of the total votes of all outstanding voting securities of the Corporation. The foregoing limitation shall not apply to—

(1) any employee stock ownership plan of the Corporation,

(2) members of the underwriting syndicate purchasing shares in stabilization transactions in connection with the privatization, or

(3) in the case of shares beneficially held in the ordinary course of business for others, any commercial bank, broker-dealer, or clearing agency.

(Pub. L. 104–134, title III, § 3111, Apr. 26, 1996, 110 Stat. 1321–343.)

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2297h–10. Uranium transfers and sales

(a) Transfers and sales by Secretary

The Secretary shall not provide enrichment services or transfer or sell any uranium (including natural uranium concentrates, natural uranium hexafluoride, or enriched uranium in any form) to any person except as consistent with this section.

(b) Russian HEU

(1) On or before December 31, 1996, the United States Executive Agent under the Russian HEU Agreement shall transfer to the Secretary without charge title to an amount of uranium hexafluoride equivalent to the natural uranium component of low-enriched uranium derived from at least 18 metric tons of highly enriched uranium purchased from the Russian Executive Agent

under the Russian HEU Agreement. The quantity of such uranium hexafluoride delivered to the Secretary shall be based on a tails assay of 0.30 U^{235}. Uranium hexafluoride transferred to the Secretary pursuant to this paragraph shall be deemed under United States law for all purposes to be of Russian origin.

(2) Within 7 years of April 26, 1996, the Secretary shall sell, and receive payment for, the uranium hexafluoride transferred to the Secretary pursuant to paragraph (1). Such uranium hexafluoride shall be sold—

(A) at any time for use in the United States for the purpose of overfeeding;

(B) at any time for end use outside the United States;

(C) in 1995 and 1996 to the Russian Executive Agent at the purchase price for use in matched sales pursuant to the Suspension Agreement; or,[1]

(D) in calendar year 2001 for consumption by end users in the United States not prior to January 1, 2002, in volumes not to exceed 3,000,000 pounds U_3O_8 equivalent per year.

(3) With respect to all enriched uranium delivered to the United States Executive Agent under the Russian HEU Agreement on or after January 1, 1997, the United States Executive Agent shall, upon request of the Russian Executive Agent, enter into an agreement to deliver concurrently to the Russian Executive Agent an amount of uranium hexafluoride equivalent to the natural uranium component of such uranium. An agreement executed pursuant to a request of the Russian Executive Agent, as contemplated in this paragraph, may pertain to any deliveries due during any period remaining under the Russian HEU Agreement. The quantity of such uranium hexafluoride delivered to the Russian Executive Agent shall be based on a tails assay of 0.30 U^{235}. Title to uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall transfer to the Russian Executive Agent upon delivery of such material to the Russian Executive Agent, with such delivery to take place at a North American facility designated by the Russian Executive Agent. Uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall be deemed under U.S. law for all purposes to be of Russian origin. Such uranium hexafluoride may be sold to any person or entity for delivery and use in the United States only as permitted in subsections (b)(5), (b)(6) and (b)(7) of this section.

(4) In the event that the Russian Executive Agent does not exercise its right to enter into an agreement to take delivery of the natural uranium component of any low-enriched uranium, as contemplated in paragraph (3), within 90 days of the date such low-enriched uranium is delivered to the United States Executive Agent, or upon request of the Russian Executive Agent, then the United States Executive Agent shall engage an independent entity through a competitive selection process to auction an amount of uranium hexafluoride or U_3O_8 (in the event that the conversion component of such hexafluoride has previously been sold) equivalent to the natural uranium component of such low-enriched uranium. An agreement executed pursuant to a request of the Russian Executive Agent, as contemplated in this paragraph, may pertain to any deliveries due during any period remaining under the Russian HEU Agreement. Such independent entity shall sell such uranium hexafluoride in one or more lots to any person or entity to maximize the proceeds from such sales, for disposition consistent with the limitations set forth in this subsection. The independent entity shall pay to the Russian Executive Agent the proceeds of any such auction less all reasonable transaction and other administrative costs. The quantity of such uranium hexafluoride auctioned shall be based on a tails assay of 0.30 U^{235}. Title to uranium hexafluoride auctioned pursuant to this paragraph shall transfer to the buyer of such material upon delivery of such material to the buyer. Uranium hexafluoride auctioned pursuant to this paragraph shall be deemed under United States law for all purposes to be of Russian origin.

(5) Except as provided in paragraphs (6) and (7), uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4), may not be delivered for consumption by end users in the United States either directly or indirectly prior to January 1, 1998, and thereafter only in accordance with the following schedule:

Annual Maximum Deliveries to End Users

Year:	(millions lbs. U_3O_8 equivalent)
1998	2
1999	4
2000	6
2001	8
2002	10
2003	12
2004	14
2005	16
2006	17
2007	18
2008	19
2009 and each year thereafter	20.

(6) Uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time as Russian-origin natural uranium in a matched sale pursuant to the Suspension Agreement, and in such case shall not be counted against the annual maximum deliveries set forth in paragraph (5).

(7) Uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time for use in the United States for the purpose of overfeeding in the operations of enrichment facilities.

(8) Nothing in this subsection (b) shall restrict the sale of the conversion component of such uranium hexafluoride.

(9) The Secretary of Commerce shall have responsibility for the administration and enforcement of the limitations set forth in this subsection. The Secretary of Commerce may require any person to provide any certifications, information, or take any action that may be

[1] So in original.

necessary to enforce these limitations. The United States Customs Service shall maintain and provide any information required by the Secretary of Commerce and shall take any action requested by the Secretary of Commerce which is necessary for the administration and enforcement of the uranium delivery limitations set forth in this section.

(10) The President shall monitor the actions of the United States Executive Agent under the Russian HEU Agreement and shall report to the Congress not later than December 31 of each year on the effect the low-enriched uranium delivered under the Russian HEU Agreement is having on the domestic uranium mining, conversion, and enrichment industries, and the operation of the gaseous diffusion plants. Such report shall include a description of actions taken or proposed to be taken by the President to prevent or mitigate any material adverse impact on such industries or any loss of employment at the gaseous diffusion plants as a result of the Russian HEU Agreement.

(c) Transfers to Corporation

(1) The Secretary shall transfer to the Corporation without charge up to 50 metric tons of enriched uranium and up to 7,000 metric tons of natural uranium from the Department of Energy's stockpile, subject to the restrictions in subsection (c)(2) of this section.

(2) The Corporation shall not deliver for commercial end use in the United States—

(A) any of the uranium transferred under this subsection before January 1, 1998;

(B) more than 10 percent of the uranium (by uranium hexafluoride equivalent content) transferred under this subsection or more than 4,000,000 pounds, whichever is less, in any calendar year after 1997; or

(C) more than 800,000 separative work units contained in low-enriched uranium transferred under this subsection in any calendar year.

(d) Inventory sales

(1) In addition to the transfers authorized under subsections (c) and (e) of this section, the Secretary may, from time to time, sell natural and low-enriched uranium (including low-enriched uranium derived from highly enriched uranium) from the Department of Energy's stockpile.

(2) Except as provided in subsections (b), (c), and (e) of this section, no sale or transfer of natural or low-enriched uranium shall be made unless—

(A) the President determines that the material is not necessary for national security needs,

(B) the Secretary determines that the sale of the material will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement, and

(C) the price paid to the Secretary will not be less than the fair market value of the material.

(e) Government transfers

Notwithstanding subsection (d)(2) of this section, the Secretary may transfer or sell enriched uranium—

(1) to a Federal agency if the material is transferred for the use of the receiving agency without any resale or transfer to another entity and the material does not meet commercial specifications;

(2) to any person for national security purposes, as determined by the Secretary; or

(3) to any State or local agency or nonprofit, charitable, or educational institution for use other than the generation of electricity for commercial use.

(f) Savings provision

Nothing in this subchapter shall be read to modify the terms of the Russian HEU Agreement.

(Pub. L. 104–134, title III, § 3112, Apr. 26, 1996, 110 Stat. 1321–344.)

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2297h–11. Low-level waste

(a) Responsibility of DOE

(1) The Secretary, at the request of the generator, shall accept for disposal low-level radioactive waste, including depleted uranium if it were ultimately determined to be low-level radioactive waste, generated by—

(A) the Corporation as a result of the operations of the gaseous diffusion plants or as a result of the treatment of such wastes at a location other than the gaseous diffusion plants, or

(B) any person licensed by the Nuclear Regulatory Commission to operate a uranium enrichment facility under sections 2073, 2093, and 2243 of this title.

(2) Except as provided in paragraph (3), the generator shall reimburse the Secretary for the disposal of low-level radioactive waste pursuant to paragraph (1) in an amount equal to the Secretary's costs, including a pro rata share of any capital costs, but in no event more than an amount equal to that which would be charged by commercial, State, regional, or interstate compact entities for disposal of such waste.

(3) In the event depleted uranium were ultimately determined to be low-level radioactive waste, the generator shall reimburse the Secretary for the disposal of depleted uranium pursuant to paragraph (1) in an amount equal to the Secretary's costs, including a pro rata share of any capital costs.

(4) In the event that a licensee requests the Secretary to accept for disposal depleted ura-

nium pursuant to this subsection, the Secretary shall be required to take title to and possession of such depleted uranium at an existing DUF6 storage facility.

(b) Agreements with other persons

The generator may also enter into agreements for the disposal of low-level radioactive waste subject to subsection (a) of this section with any person other than the Secretary that is authorized by applicable laws and regulations to dispose of such wastes.

(c) State or interstate compacts

Notwithstanding any other provision of law, no State or interstate compact shall be liable for the treatment, storage, or disposal of any low-level radioactive waste (including mixed waste) attributable to the operation, decontamination, and decommissioning of any uranium enrichment facility.

(Pub. L. 104–134, title III, § 3113, Apr. 26, 1996, 110 Stat. 1321–347; Pub. L. 108–447, div. C, title III, § 311, Dec. 8, 2004, 118 Stat. 2959.)

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

2004—Subsec. (a)(4). Pub. L. 108–447, § 311, which directed the addition of par. (4) to subsec. (a) of section 3113 of Public Law 102–486 (42 U.S.C. 2297h–11), was executed by adding par. (4) to subsec. (a) of this section, which is section 3113 of Pub. L. 104–134, to reflect the probable intent of Congress.

§ 2297h–12. AVLIS

(a) Exclusive right to commercialize

The Corporation shall have the exclusive commercial right to deploy and use any AVLIS patents, processes, and technical information owned or controlled by the Government, upon completion of a royalty agreement with the Secretary.

(b) Transfer of related property to Corporation

(1) In general

To the extent requested by the Corporation and subject to the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.), the President shall transfer without charge to the Corporation all of the right, title, or interest in and to property owned by the United States under control or custody of the Secretary that is directly related to and materially useful in the performance of the Corporation's purposes regarding AVLIS and alternative technologies for uranium enrichment, including—

(A) facilities, equipment, and materials for research, development, and demonstration activities; and

(B) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases.

(2) Exception

Facilities, real estate, improvements, and equipment related to the gaseous diffusion, and gas centrifuge, uranium enrichment programs of the Secretary shall not transfer under paragraph (1)(B).

(3) Expiration of transfer authority

The President's authority to transfer property under this subsection shall expire upon the privatization date.

(c) Liability for patent and related claims

With respect to any right, title, or interest provided to the Corporation under subsection (a) or (b) of this section, the Corporation shall have sole liability for any payments made or awards under section 157b.(3) of the Atomic Energy Act of 1954 (42 U.S.C. 2187(b)(3)), or any settlements or judgments involving claims for alleged patent infringement. Any royalty agreement under subsection (a) of this section shall provide for a reduction of royalty payments to the Secretary to offset any payments, awards, settlements, or judgments under this subsection.

(Pub. L. 104–134, title III, § 3114, Apr. 26, 1996, 110 Stat. 1321–348.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(1), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to this chapter (§ 2011 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2297h–13. Application of certain laws

(a) OSHA

(1) As of the privatization date, the private corporation shall be subject to and comply with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(2) The Nuclear Regulatory Commission and the Occupational Safety and Health Administration shall, within 90 days after April 26, 1996, enter into a memorandum of agreement to govern the exercise of their authority over occupational safety and health hazards at the gaseous diffusion plants, including inspection, investigation, enforcement, and rulemaking relating to such hazards.

(b) Antitrust laws

For purposes of the antitrust laws, the performance by the private corporation of a ''matched import'' contract under the Suspension Agreement shall be considered to have occurred prior to the privatization date, if at the time of privatization, such contract had been agreed to by the parties in all material terms and confirmed by the Secretary of Commerce under the Suspension Agreement.

(c) Energy Reorganization Act requirements

(1) The private corporation and its contractors and subcontractors shall be subject to the provisions of section 5851 of this title to the same extent as an employer subject to such section.

(2) With respect to the operation of the facilities leased by the private corporation, section 5846 of this title shall apply to the directors and officers of the private corporation.

(Pub. L. 104–134, title III, § 3115, Apr. 26, 1996, 110 Stat. 1321–348.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (a)(1), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CODIFICATION

Section was enacted as part of the USEC Privatization Act and also as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

CHAPTER 24—DISPOSAL OF ATOMIC ENERGY COMMUNITIES

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SUBCHAPTER I—GENERAL PROVISIONS

§ 2301. Congressional declaration of policy

It is declared to be the policy of the United States of America that Government ownership and management of the communities owned by the Atomic Energy Commission shall be terminated in an expeditious manner which is consistent with and will not impede the accomplishment of the purposes and programs established by the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]. To that end, it is desired at each community to—

(a) facilitate the establishment of local self-government;

(b) provide for the orderly transfer to local entities of municipal functions, municipal installations, and utilities; and

(c) provide for the orderly sale to private purchasers of property within those communities with a minimum of dislocation.

(Aug. 4, 1955, ch. 543, ch. 1, § 11, 69 Stat. 472.)

REFERENCES IN TEXT

Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

SHORT TITLE

Section 1 of act Aug. 4, 1955, provided that: ''This Act [enacting this chapter and amending section 1715n of Title 12, Banks and Banking, and section 243 of Title 20, Education] may be cited as the 'Atomic Energy Community Act of 1955'.''

SEPARABILITY

Section 119 of act Aug. 4, 1955, provided that: ''If any provisions of this Act [see Short Title note above], or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act

or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.''

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2302. Congressional findings

The Congress of the United States makes the following findings concerning the communities owned by the Atomic Energy Commission:

(a) The continued morale of project-connected persons is essential to the common defense and security of the United States.

(b) In issuing rules and regulations required or permitted under this chapter for the disposal of the communities and in disposing of the communities in accordance with the provisions of this chapter and in accordance with the rules and regulations required or permitted by this chapter, the Commission is acting under authority delegated to it by the Congress.

(c) Funds of the United States may be provided for the disposal of the communities and for assistance in the operation of the communities thereafter under conditions which will provide for the common defense and promote the general welfare.

(Aug. 4, 1955, ch. 543, ch. 1, § 12, 69 Stat. 472.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2303. Purpose of chapter

It is the purpose of this chapter to effectuate the policies set forth above by providing for—

(a) the maintenance of conditions which will not impede the recruitment and retention of personnel essential to the atomic energy program;

(b) the obligation of the United States to contribute to the support of municipal functions in a manner commensurate with—

(1) the fiscal problems peculiar to the communities by reason of their construction as national defense installations, and

(2) the municipal and other burdens imposed on the governmental or other entities at the communities by the United States in its operations at or near the communities;

(c) the opportunity for the residents of the communities to assume the obligations and privileges of local self-government; and

(d) the encouragement of the construction of new homes at the communities.

(Aug. 4, 1955, ch. 543, ch. 1, § 13, 69 Stat. 472.)

§ 2304. Definitions

The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this chapter—

(a) The term ''Commission'' means the Atomic Energy Commission.

(b) The term ''community'' means that area at—

(1) Oak Ridge, Tennessee, designated on a map on file at the principal office of the Commission, entitled ''Minimum Geographic Area, Oak Ridge, Tennessee'', bearing the legend ''Boundary Line, Minimum Geographic Area, Oak Ridge, Tennessee'' and marked ''Approved, 21 April 1955, K. D. Nichols, General Manager''; or

(2) Richland, Washington, designated on a map on file at the principal office of the Commission, entitled ''Minimum Geographic Area, Richland, Washington'', bearing the legend ''Boundary Line, Minimum Geographic Area, Richland, Washington'' and marked ''Approved, 21 April 1955, K. D. Nichols, General Manager;'' or

(3) Los Alamos, New Mexico, designated on a map on file at the principal office of the Commission, entitled ''Minimum Geographic Area, Los Alamos, New Mexico,'' bearing the legend ''Boundary Line, Minimum Geographic Area, Los Alamos, New Mexico'' and marked ''Approved, April 5, 1962, A. R. Luedecke, General Manager.''

(c) The term ''house'' includes the lot on which the house stands.

(d) The term ''member of a family'' means any person who, on the first offering date, resides in the same dwelling unit with one or more of the following relatives (including those having the same relationship through marriage or legal adoption): spouse, father, mother, grandfather, grandmother, brother, sister, son, daughter, uncle, aunt, nephew, niece, or first cousin.

(e) The term ''mortgage'' shall include deeds of trust and such other classes of lien as are given to secure advances on, or the unpaid purchase price of real estate under the laws of the State in which the real estate is located.

(f) The term ''municipal installation'' includes, without limitation, schools, hospitals, police and fire protection systems, sewerage and refuse disposal plants, water supply and distribution installations, streets and roads, libraries, parks, playgrounds and recreational means, municipal government buildings, other properties suitable for municipal or comparable local public service purposes, and any fixtures, equivalent, or other property appropriate to the operation, maintenance or repair of the foregoing.

(g) The term ''occupant'' means a person who, on the date on which the property in question is first offered for sale, is entitled to residential occupancy of the Government-owned house in question, or of a family dwelling unit in such house, in accordance with a lease or license agreement with the Commission or its property-management contractor.

(h) The term ''offering date'' means the date the property in question is offered for sale.

(i) The term ''project area'' means that area which on August 4, 1955, constitutes the Federal area at Oak Ridge, Tennessee, or Hanford, Washington, or that area which, on the date Los Alamos is included within this chapter, constitutes the County of Los Alamos, New Mexico, excluding therefrom, however, that land which is, on said date, under the administrative control of

the National Park Service of the Department of the Interior.

(j) The term ''project-connected person'' means any person who, on the first offering date, is regularly employed at the project area in one of the following capacities:

(1) An officer or employee of the Commission or any of its contractors or subcontractors, or of the United States or any agency thereof (including members of the Armed Forces), or of a State or political subdivision or agency thereof;

(2) An officer or employee employed at a school or hospital located in the project area;

(3) A person engaged in or employed in the project area by any professional, commercial, or industrial enterprise occupying premises located in the project area; or

(4) An officer or employee of any church or nonprofit organization occupying premises located in the project area.

(k) The term ''resident'' means any person who, on the date on which the property in question is first offered for sale is either—

(1) an occupant in a residential unit designated for sale at the community, or

(2) a project-connected person who is entitled, in accordance with a lease or similar agreement, to residential occupancy of privately owned rental housing in the community.

(*l*) The term ''utility'' means any electrical distribution system, any natural gas distribution system, any public transportation system, or any public communication system, and any fixtures, equipment, or other property appropriate to the operation, maintenance or repair of the foregoing.

(m) The terms ''single'' and ''single family'' when used in connection with ''house'' or ''residential property'' shall include each separate unit of a residential structure which the Commission has classified as a residential structure containing two or more separate single family units pursuant to section 2331(c) of this title.

(Aug. 4, 1955, ch. 543, ch. 2, § 21, 69 Stat. 473; Pub. L. 87–719, §§ 1–4, Sept. 28, 1962, 76 Stat. 664.)

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–719, § 1, added cl. (3).

Subsec. (i). Pub. L. 87–719, § 2, included in definition of ''project area'' the County of Los Alamos, New Mexico, excluding land under administrative control of the National Park Service.

Subsec. (*l*). Pub. L. 87–719, § 3, included in definition of ''utility'' any natural gas distribution system.

Subsec. (m). Pub. L. 87–719, § 4, added subsec. (m).

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2305. Powers of Atomic Energy Commission

The Commission shall have all powers conferred by the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], including the power to make, promulgate, issue, rescind, and amend such rules, regulations, and delegations as may be appropriate to carry out the provisions of this chapter and shall be subject to the limitations contained in chapter 14 of that Act [42 U.S.C. 2201 et seq.]. Nothing contained in this chapter shall impair the powers vested in the Commission by the Atomic Energy Act of 1954, as amended, or any other law.

(Aug. 4, 1955, ch. 543, ch. 11, § 111, 69 Stat. 483.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. Chapter 14 of that Act, referred to in text, is classified to subchapter XIII (§ 2201 et seq.) of division A of chapter 23 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2306. Qualification to purchase

No officer or employee of the Commission or of any other Federal agency (including officers and members of the Armed Forces) shall be disqualified from purchasing any property or exercising any right or privilege under this chapter, but no such officer or employee shall make any determination as to his own eligibility or priority, or as to valuation, price, or terms of sale and financing of property sold to him.

(Aug. 4, 1955, ch. 543, ch. 11, § 112, 69 Stat. 483.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2307. Form and contents of contracts, mortgages, and other instruments

Contracts entered into pursuant to this chapter and other instruments executed pursuant to this chapter shall be in such form and contain such provisions, consistent with this chapter, as the Commission shall prescribe; and shall be as simple and concise as possible. Any mortgage shall contain terms which will place the United States in the same position, with respect to any mortgages it may hold under the provisions of subchapter V of this chapter, as that occupied by a private lender under the applicable State laws for the relief of mortgagors with respect to deficiency judgments.

(Aug. 4, 1955, ch. 543, ch. 11, § 113, 69 Stat. 483.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2308. Conclusive evidence of compliance with chapter

A deed, lease, contract, or other instrument executed by or on behalf of the Commission purporting to transfer title or any other interest in

property disposed of pursuant to this chapter shall be conclusive evidence of compliance with the provisions of this chapter and rules and regulations promulgated thereunder, insofar as concerns title or other interest of any bona fide grantee or transferee for value without notice of lack of such compliance, and his successors in title.

(Aug. 4, 1955, ch. 543, ch. 11, § 114, 69 Stat. 483.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2309. Administrative review

Determinations authorized by this chapter to be made by the Commission as to classification, priorities, prices, and terms and conditions of sale of property disposed under this chapter shall be subject to review only in accordance with such provisions for administrative review or reconsideration as the Commission may prescribe.

(Aug. 4, 1955, ch. 543, ch. 11, § 115, 69 Stat. 483.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2310. Repossession of property; powers of Commission

The Commission is authorized to repossess any property sold by it in accordance with the terms of any contract to purchase, mortgage or other instrument, and to sell or make any other disposition of any property so repossessed and any property purchased by it pursuant to section 2366 of this title. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, the Commission shall have power to deal with, complete, operate, rent, renovate, modernize, insure, or sell for cash or credit, in its discretion, any properties acquired pursuant to this chapter, and to pursue to final collection, by way of compromise or otherwise, all claims arising pursuant to this section: *Provided*, That expenses authorized by this section shall be considered nonadministrative expenses: *Provided further*, That section 5 of title 41 shall not apply to any contract entered into pursuant to this section if the amount thereof does not exceed $1,000.

(Aug. 4, 1955, ch. 543, ch. 11, § 116, 69 Stat. 483; July 25, 1956, ch. 731, § 3, 70 Stat. 653.)

AMENDMENTS

1956—Act July 25, 1956, specifically enumerated powers of the Commission in relation to properties acquired pursuant to this chapter, authorized final collection of claims by way of compromise or otherwise, to provide that expenses authorized by this section shall be considered nonadministrative expenses, and excepted contracts that do not exceed $1,000 from provisions of section 5 of title 41.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2311. Community Disposal Operations Fund

(a) Establishment

There is established as of June 30, 1956, a Community Disposal Operations Fund, and the Commission (or the head of such agency as may be carrying out the sales and financing functions of the Commission pursuant to a delegation by the President under section 2313 of this title) is authorized to credit said fund with all moneys hereafter obtained or now held by it and to account under said fund for all assets and liabilities held or acquired by it in connection with its sales and financing functions under this chapter, and to make temporary advances to such fund, from any other funds available for expenses of operations of such Commission or agency, as may be required to carry out such functions pending the realization of sufficient proceeds under the provisions of this chapter: *Provided*, That any such advances shall be repaid to the source appropriation or fund, to the extent of any unobligated balances available in the Community Disposal Operations Fund, prior to the close of the fiscal year during which such advances are made.

(b) Availability

The Community Disposal Operations Fund shall be available to pay for all necessary costs, expenses (including administrative expenses), losses or obligations incurred in connection with the aforesaid functions, including expenses incident to sale, or other transfer and any financing under section 2362 of this title, indemnities under sections 2363 to 2366 of this title, and expenses authorized by section 2310 of this title, and expenses in connection with the defense and payment of any claims for breaches of warranties and covenants of title of any property disposed of pursuant to this chapter.

(c) Liquidating dividends

Any amount in said fund which is determined to be in excess of requirements for the purposes thereof shall be declared and paid as liquidating dividends to the Treasury, not less often than annually.

(Aug. 4, 1955, ch. 543, ch. 11, § 117, 69 Stat. 483; July 25, 1956, ch. 731, § 4, 70 Stat. 654.)

AMENDMENTS

1956—Act July 25, 1956, amended section generally to establish the Community Disposal Operations Fund, to provide for its availability, and to require excess amounts to be paid as liquidating dividends to the Treasury. Former provisions of this section required that the net proceeds derived by the Commission from the disposal of property pursuant to this chapter were to be covered into the Treasury.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2312. Authorization of appropriations

(a) No appropriation shall be made to carry out the provisions and purposes of this chapter

unless previously authorized by legislation enacted by Congress.

(b) There are authorized to be appropriated the sum of $518,000 at Oak Ridge, the sum of $2,215,000 at Richland and the sum of $8,719,000 at Los Alamos for construction, modification, or expansion of municipal installations and utilities authorized to be transferred pursuant to subchapters VI and VII of this chapter.

(Aug. 4, 1955, ch. 543, ch. 11, § 118, 69 Stat. 484; July 25, 1956, ch. 731, §§ 5, 6, 70 Stat. 654; Pub. L. 87–719, § 24, Sept. 28, 1962, 76 Stat. 666; Pub. L. 90–190, § 4, Dec. 14, 1967, 81 Stat. 576.)

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–190 substituted provisions prohibiting making of appropriations to carry out provisions and purposes of this chapter unless previously authorized by legislation enacted by Congress for provisions granting authority to appropriate such sums as may be necessary and appropriate to carry out provisions and purposes of this chapter.

1962—Subsec. (b). Pub. L. 87–719 authorized an appropriation of $8,719,000 at Los Alamos and use of appropriations for utilities.

1956—Subsec. (b). Act July 25, 1956, § 6, substituted "$2,215,000" for "$2,165,000".

Subsec. (c). Act July 25, 1956, § 5, repealed subsec. (c) which appropriated funds derived from disposal of property to pay any costs, losses, expenses, or obligations incurred by Commission. See section 2311(b) of this title.

§ 2313. Transfer of functions

The President is authorized to delegate the duties and responsibilities placed on the Commission by this chapter to such other agencies of the United States Government as are reasonably qualified to perform those duties and responsibilities. The President may delegate any or all of the duties and responsibilities of the Commission in the operation of the communities to such other agencies of the United States Government that are reasonably qualified to perform those duties and responsibilities. The Commission shall retain no financing duties and responsibilities.

(Aug. 4, 1955, ch. 543, ch. 10, § 101, 69 Stat. 482.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

EXECUTIVE ORDER NO. 10657

Ex. Ord. No. 10657, eff. Feb. 14, 1956, 21 F.R. 1063, as amended by Ex. Ord. No. 10734, eff. Oct. 17, 1957, 22 F.R. 8275; Ex. Ord. No. 11105, eff. Apr. 18, 1963, 28 F.R. 3909, which related to the transfer of certain functions of the Atomic Energy Commission under this chapter to the Housing and Home Finance Administrator, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER NO. 11105

Ex. Ord. No. 11105, eff. Apr. 18, 1963, 28 F.R. 3909, which provided for the transfer of certain functions of the Atomic Energy Commission under this chapter to the Housing and Home Finance Administrator, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 2314. Repealed. Pub. L. 93–608, § 1(22), Jan. 2, 1975, 88 Stat. 1970

Section, act Aug. 4, 1955, ch. 543, ch. 10, § 102, 69 Stat. 483, required a triennial report to the Joint Committee on Atomic Energy by the Commission reviewing its activities under this chapter.

§ 2315. Repealed. Aug. 1, 1946, ch. 724, title I, § 302(b), as added Aug. 30, 1954, ch. 1073, § 1, as added Sept. 20, 1977, Pub. L. 95–110, § 1, 91 Stat. 884; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, § 902(a)(8), 106 Stat. 2944

Section, act Aug. 4, 1955, ch. 543, ch. 10, § 103, 69 Stat. 483, provided that sections 2251 to 2257 of this title were applicable to all matters coming under this chapter.

SUBCHAPTER II—LOTS, APPRAISALS, AND PRICES

§ 2321. Lots; establishment of boundaries

The Commission is authorized to plat each community immediately upon passage of this chapter, or immediately upon the inclusion of the community within the provisions of this chapter. The Commission may establish lot boundaries, and realine, divide, or enlarge existing tracts as it deems appropriate.

(Aug. 4, 1955, ch. 543, ch. 3, § 31, 69 Stat. 474.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2322. Appraisal of property

The Commission shall proceed to secure appraisals of all property at the community which is to be sold pursuant to this chapter. The appraisals shall be made by the Secretary of Housing and Urban Development or his designee. The Secretary of Housing and Urban Development shall be reimbursed from the Community Disposal Operations Fund for the cost of such appraisals. Appraisals made under this section shall be the appraisals on which the Secretary of Housing and Urban Development may insure any mortgage or loan under the National Housing Act [12 U.S.C. 1701 et seq.] until such time as he finds that the appraisal values generally in the community no longer represent the fair market values of the properties.

(Aug. 4, 1955, ch. 543, ch. 3, § 32, 69 Stat. 474; Pub. L. 87–719, § 5, Sept. 28, 1962, 76 Stat. 664; Pub. L. 90–19, § 11, May 25, 1967, 81 Stat. 23.)

REFERENCES IN TEXT

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1967—Pub. L. 90–19 substituted "Secretary of Housing and Urban Development" for "Federal Housing Commissioner" wherever appearing.

1962—Pub. L. 87–719 substituted "The Federal Housing Commissioner shall be reimbursed from the Community Disposal Operations Fund for the cost of such appraisals" for "The Commission shall reimburse the Federal Housing Commissioner for the cost of such appraisals".

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See

also Transfer of Functions notes set out under those sections.

§ 2323. Basis of appraisal

Except for lots sold pursuant to the provisions of section 2347(a) of this title, the appraised value shall be the current fair market value of the Government's interest in the property.

(Aug. 4, 1955, ch. 543, ch. 3, § 33, 69 Stat. 474.)

§ 2324. Posting of lists showing appraised value

Lists showing the appraised value of each parcel of property to be offered for sale to priority purchasers shall, prior to the offering of such property for sale, be made available for public inspection, at reasonable times, at the offices of the Commission at the community.

(Aug. 4, 1955, ch. 543, ch. 3, § 34, 69 Stat. 474.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2325. Sales price

(a) Government-owned single or duplex houses

In the sale to priority purchasers of properties on which are located Government-owned single or duplex houses, the sales price shall be the appraised value less a deduction of 15 per centum of the appraised value and less the deductions provided by section 2326 of this title.

(b) Other properties

In all other cases the sales price to priority purchasers shall be the appraised value less the deductions provided by section 2326 of this title, except that sales made under sections 2343(b) and 2343(c) of this title shall be made at the prices set forth therein.

(c) Appraised value of interest in commercial property

The appraised value of the Government's interest in commercial property shall, in the cases where renegotiation of the lease is requested by the lessee under the provisions of section 2201(e) of this title be based upon the renegotiated lease if any is agreed on. Where such renegotiations are requested, the sales proceedings shall not be initiated until the completion of the renegotiation.

(Aug. 4, 1955, ch. 543, ch. 3, § 35, 69 Stat. 474; Pub. L. 85–162, title II, § 202, Aug. 21, 1957, 71 Stat. 410.)

AMENDMENTS

1957—Subsec. (c). Pub. L. 85–162 added subsec. (c).

REPORT WITH RESPECT TO RENEGOTIATIONS, REAPPRAISALS, AND SALES PROCEEDINGS

Atomic Energy Commission, Federal Housing Administration, and Housing and Home Finance Agency required to report to Joint Committee by Jan. 31, 1958, with respect to renegotiations, reappraisals, and sales proceedings authorized under subsec. (c) of this section, see section 203 of Pub. L. 85–162.

§ 2326. Deductions from sales price

(a) Improvements

In addition to any other deduction which may be permitted from the sales price for property, there shall, upon application by the prospective purchaser, be deducted the amount by which the current fair market value of the Government's interest in the premises is enhanced as a result of improvements to the premises made by, or at the expense of, the prospective purchaser: *Provided*, That, with reference to commercial property, the improvement credit allowed shall be the value of the enhancement of the Government's interest in the property, as determined by the Commission on the basis of the appraisal provided for under section 2322 of this title: *Provided further*, That such credit shall be reduced to the extent that lessee has been previously compensated therefor, as determined by the Commission, under the terms of the lease or otherwise.

(b) Improvements by occupant of single family or duplex house

An occupant of a single family or duplex house shall, upon application therefor, be entitled to a credit, against the purchase price of any residential property purchased through the exercise of a priority right established under the provisions of section 2332 of this title, for the amount by which the current fair market value of the Government's interest in the single family or duplex house of which he was an occupant is enhanced as a result of improvements to the premises of such single family or duplex house made by, or at the expense of, such occupant.

(c) Determination of value of improvements

The value of the improvements as specified in subsections (a) and (b) of this section shall be determined in accordance with the provisions of section 2322 of this title.

(d) Additional deduction to persons purchasing property without benefit of indemnity provisions

Persons purchasing property pursuant to the provisions of section 2342 of this title, who do not desire to avail themselves of the indemnity provisions contained in sections 2363 to 2366 of this title, shall be entitled to an additional deduction of 10 per centum of the appraised value of the property in addition to any other deduction set forth in this section.

(Aug. 4, 1955, ch. 543, ch. 3, § 36, 69 Stat. 474; July 25, 1956, ch. 731, § 1, 70 Stat. 653; Pub. L. 87–719, § 6, Sept. 28, 1962, 76 Stat. 664.)

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–719 substituted authorization of a credit for improvements by occupant of single family or duplex house for such improvements by junior occupant of duplex house.

1956—Subsec. (a). Act July 25, 1956, authorized an improvement credit for commercial property.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

SUBCHAPTER III—CLASSIFICATION OF PROPERTY AND PRIORITIES

§ 2331. Classification of property

(a) Property within each community

Immediately upon passage of this chapter, or, in the case of Los Alamos, upon its inclusion

within this chapter, the Commission shall classify all real property (including such improvements and such fixtures, equipment and other personal property incident thereto as it may deem appropriate) within each community in accordance with such classifications as shall insure reasonably similar treatment for reasonably similar property. The classification shall be made by such procedures, consistent with this subchapter, as it shall determine.

(b) Property at or in vicinity of each community

The Commission may, but shall not be required to, classify any other real property at or in the vicinity of the community, whether within or outside of that community.

(c) Residential structures within each community

Prior to the date any residential property is first offered for sale at Los Alamos, the Commission shall further classify each residential structure within the community of Los Alamos either as a single family house, a duplex house, an apartment house, a dormitory, or as a residential structure containing two or more separate single family units and shall post, at the offices of the Commission at Los Alamos, a list, available for public inspection at reasonable times, showing the classification of each such residential structure. For the purposes of this chapter, each such residential structure will thereafter be deemed to be a single family house, a duplex house, an apartment house, a dormitory, or a residential structure containing two or more separate single family units in accordance with its classification. In determining the classification of each such residential structure containing two or more single family units, the Commission shall consider (1) the practicability of selling separately the single family units, and (2) the insurability of mortgages under section 1715n(a) of title 12.

(Aug. 4, 1955, ch. 543, ch. 4, § 41, 69 Stat. 475; Pub. L. 87–719, §§ 7, 8, Sept. 28, 1962, 76 Stat. 664.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–719, § 7, inserted ‘‘, or, in the case of Los Alamos, upon its inclusion within this chapter’’ after ‘‘chapter’’.

Subsec. (c). Pub. L. 87–719, § 8, added subsec. (c).

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2332. Priorities; uniformity; preferences; impairment of rights

The Commission shall establish, by rule or regulation, a detailed system of reasonable and fair priority rights applicable to the sale of Government-owned property to private purchasers at each community. The priorities shall—

(a) be uniform in each class or subclass of property;

(b) give such preference to occupants and project-connected persons and to incoming employees of the Commission, of a contractor, or of a licensee as the Commission finds necessary or desirable, giving due consideration to the following factors:

(1) The retention and recruitment of personnel essential to the atomic energy program;

(2) The minimization of dislocations within the community;

(3) The expeditious accomplishment of the disposal program; and

(4) The desirability of encouraging private firms to locate or remain in the community;

(c) give the occupant of a Government-owned single family house, and the senior occupant of a duplex house, at least ninety days in which to exercise the first right of priority;

(d) permit persons who have formerly been occupants, project-connected persons, or inhabitants of the community, upon application therefor, to have such priority as the Commission finds to be fair and equitable; and

(e) not impair any rights, including purchase rights, conferred by existing leases and covenants.

(Aug. 4, 1955, ch. 543, ch. 4, § 42, 69 Stat. 475.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2333. Transfer of priorities

No priority shall be transferable, except—

(a) a husband and wife may exercise a priority in their joint names;

(b) a religious organization may exercise the priority which would otherwise belong to its priest, minister, or rabbi, regardless of whether that position happens to be filled at the time of the exercise of the priority;

(c) two or more priority holders having a common interest in a building or location may assign their interests to a single assignee; and

(d) the Commission may permit such other transfers as it finds to be fair and equitable.

(Aug. 4, 1955, ch. 543, ch. 4, § 43, 69 Stat. 476.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

SUBCHAPTER IV—SALES OF PROPERTY FOR PRIVATE USE

§ 2341. Applicability of subchapter

The provisions of this subchapter shall be made applicable at each community as soon as the Commission makes a finding in writing that there is a reasonable possibility that the Government-owned real property at such community can be disposed of in accordance with the provisions of this subchapter.

(Aug. 4, 1955, ch. 543, ch. 5, § 51, 69 Stat. 476.)

§ 2342. Disposal of property

(a) Property under lease or license agreement

The Commission shall offer for disposal all real property (including such improvements thereon and such fixtures, equipment, and other

personal property incident thereto as it may deem appropriate) within the community which is presently under lease or license agreement with the Commission or its community management contractor for residential, commercial or industrial, agricultural, church or other nonprofit use, or which, in the opinion of the Commission, is appropriate for such use, other than—

(1) structures which in the opinion of the Commission should be removed from the community because of their unsatisfactory type of construction, condition, or location; or

(2) property which in the opinion of the Commission should be transferred pursuant to subchapters VI or VII of this chapter; or

(3) property which in the opinion of the Commission should be retained by the Commission for its own use.

(b) Discretionary disposal of other real property

The Commission may, but shall not be required to, dispose of any other real property at the community, whether within or outside of that community.

(c) Terms and conditions; impairment of rights

Such property shall be disposed of on such terms and conditions, consistent with this subchapter, as the Commission shall prescribe in the national interest, and without regard to any preferences or priorities whatever except those provided for pursuant to this chapter. Transfers by the Commission of such property shall not impair rights under existing leases and covenants, including any purchase rights therein conferred.

(Aug. 4, 1955, ch. 543, ch. 5, § 52, 69 Stat. 476; Pub. L. 87–719, § 9, Sept. 28, 1962, 76 Stat. 665.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–719 added cl. (3).

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2343. Sales

(a) Notice to priority holders

Where rights of priority have been granted pursuant to the provisions of this chapter to Government-owned property, it shall be offered for sale to priority purchaser by giving notice to those eligible for such priority. Such notice shall (1) be in such manner as the Commission shall prescribe, (2) identify the property to be sold, and (3) state the terms and conditions of sale and the date of the offer which, in the case of occupants of single family or duplex houses, shall expire not less than ninety days after the date of the offer.

(b) Sale of property to highest bidder

Any property (other than church property) classified for sale under section 2331 of this title and offered for sale under section 2342 of this title, as to which no priority right has been conferred, or as to which all priority rights have expired, shall be advertised for sale to the highest bidder, subject to the right of the Commission to reject any or all bids. No bid shall be accepted which is below the appraised value or, in the case of Government-owned single and duplex houses is below 85 per centum of the appraised value.

(c) Disposal of property not sold at auction

As to any property which has not been sold under subsection (b) of this section within ninety days after the first advertisement for sale under such subsection the Commission may make such disposition, on such terms and conditions, as it may deem appropriate.

(d) Church property

Property for use of churches, in respect of which all priority rights have expired, may be disposed of by advertising and competitive bid, or by negotiated sale or other transfer at such prices, terms, and conditions as the Commission shall determine to be fair and equitable.

(Aug. 4, 1955, ch. 543, ch. 5, § 53, 69 Stat. 476; Pub. L. 87–174, Aug. 30, 1961, 75 Stat. 409; Pub. L. 87–719, §§ 10, 11, Sept. 28, 1962, 76 Stat. 665.)

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–719, § 10, struck out ‘‘, and also subject to the right of an occupant of a Government-owned single family or duplex house to buy such house by paying an amount equal to the highest bid’’ after ‘‘bids’’ in first sentence.

Subsec. (c). Pub. L. 87–719, § 11, struck out ‘‘, but the Commission shall give an occupant of a Government-owned single family or duplex house such further opportunity to purchase such house as shall be fair and equitable’’.

1961—Subsec. (c). Pub. L. 87–174 substituted ‘‘ninety days’’ for ‘‘one year’’.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2344. Cash sales

All sales shall be for cash, and the buyer shall arrange for the necessary financing, except as provided in subchapter V of this chapter.

(Aug. 4, 1955, ch. 543, ch. 5, § 54, 69 Stat. 477.)

§ 2345. Deeds; form and provisions

Deeds executed in connection with the disposal of property pursuant to the provisions of this chapter—

(a) shall be as simple as the Commission shall find to be appropriate, and may contain such warranties or covenants of title and other provisions (including any indemnity) as the Commission may deem appropriate;

(b) with respect to any dormitories or apartment houses and any property used or to be used for construction of housing developments for rental purposes, may retain or acquire such rights to the Commission to designate the future occupants of part or all of such properties as it may deem appropriate to insure the availability of housing for employees of the Commission and its contractors;

(c) may require that the transferee, his heirs, successors, and assigns shall com-

pensate the Commission for any municipal services provided by the Commission at rates which will not be in excess of the average tax for such services in the immediate vicinity of the community; and any amounts due and unpaid for such compensation (together with interest and costs thereon) shall, as of the date on which such amounts become delinquent, be a lien in favor of the United States upon the premises sold by the Commission, though not valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed in accordance with the laws of the State in which the property is situated or in the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, if such State has not by law provided for the filing of such notice;

(d) in transferring any property pursuant to sections 2321 and 2342 of this title, may impose such restrictions and requirements relating to the use of the premises and to public health and safety, as the Commission may deem appropriate, which restrictions and requirements shall not be valid beyond one year after the incorporation of the city at the community or after June 30, 1966, in the case of Los Alamos; and

(e) may require that any payments in lieu of property taxes or assessments for local improvements made by the Commission with respect to the property shall be equitably prorated.

(Aug. 4, 1955, ch. 543, ch. 5, § 55, 69 Stat. 477; Pub. L. 87–719, § 12, Sept. 28, 1962, 76 Stat. 665.)

AMENDMENTS

1962—Subsec. (d). Pub. L. 87–719 inserted ''or after June 30, 1966, in the case of Los Alamos'' after ''community''.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2346. Occupancy by existing tenants

Upon application by any occupant of a single or duplex house made within the period of the first priority when such house is first offered for sale under this chapter, the Commission shall execute a lease to such occupant for a period not to exceed one year from the date on which such property is first offered for sale, or for such period as he remains a project-connected person, whichever is shorter. In selling any house with respect to which a lease executed under this section is in effect, the Commission may provide that the purchaser shall assume any or all obligations of the lessor, but the Commission shall guarantee the lessee's performance under the terms of the lease.

(Aug. 4, 1955, ch. 543, ch. 5, § 56, 69 Stat. 478.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2347. Sale of lots to lessees or individual owners

(a) Notwithstanding any other provision of this chapter, the Commission is authorized, immediately upon passage of this chapter, or immediately upon the inclusion of the community within the provisions of this chapter, to offer for sale to the lessees single residential lots, which were leased by competitive bid and which do not have a Government-owned building thereon, at a price equal to the initial valuation of the lot as stated in the lease.

(b) The Commission is authorized to offer for sale, as soon as possible, other lots, to individual owners, upon which single family or duplex houses may be erected, taking into consideration the zoning restrictions the new city is likely to enact with respect to those lots. The zoning restrictions to be taken into account at Los Alamos shall be those which the local government is likely to enact with respect to those lots.

(Aug. 4, 1955, ch. 543, ch. 5, § 57, 69 Stat. 478; Pub. L. 87–719, § 13, Sept. 28, 1962, 76 Stat. 665.)

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–719 inserted provision that zoning restrictions to be taken into account at Los Alamos shall be those which the local government is likely to enact with respect to those lots.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2348. Priority sale of apartment houses

(a) Grantees eligible; priorities; applicability of deduction, financing and indemnity provisions

The Commission is authorized at Los Alamos to grant to occupants project-connected persons, and persons residing in the community both at the time of offering of an apartment house for sale and for the preceding six months, and to any of the foregoing persons acting together, such priority interests and priority rights for the purchase of the apartment house as the Commission determines to be fair and reasonable: *Provided*, That a first priority right to purchase may be granted only to an occupant or a group of occupants, or an assignee (whose membership or ownership is composed of occupants, or project-connected persons, or persons residing in the community both at the time of offering of an apartment house for sale and for the preceding six months, or any of the foregoing persons) of the priority interests of such occupants, who or which has obtained the priority interest of at least 60 per centum of the occupants of the apartment house: *Provided further*, That a second priority right to purchase may be granted only to an entity whose membership or ownership consists of occupants, or project-connected persons, or persons residing in the community both at the time of offering of an apartment house for sale and for the preceding six months, or any of the foregoing persons (provided that such entity has obtained the priority interest of at least one occupant), and whose membership or ownership

equals in number, and occupies or agrees to occupy, at least 70 per centum of the housing units in the apartment house. The 15 per centum deduction specified by section 2325(a) of this title, the deduction provided by section 2326(d) of this title, the financing provisions of section 2362 of this title, and the indemnity provided by sections 2363 to 2366 of this title shall be applicable to such priority sales of apartment houses. Priority interests granted by the Commission under this section shall be transferable as the Commission may by rule or regulation prescribe, but no priority right to purchase shall be transferred except as provided by section 2333 of this title.

(b) Leasing arrangements by non-participants in apartment house sales; assumption of lessor's obligations

Any occupant who does not participate in the purchase of an apartment house with respect to which a priority right to purchase has been granted shall be entitled, at the time of sale by the Commission, to a lease for occupancy of his housing unit for a period not to exceed fifteen months from the date the property was first offered for sale: *Provided*, That the occupant makes application for such a lease within 30 days of the grant of such priority to purchase. In selling any apartment house with respect to which lease executed under this section is in effect, the Commission is authorized to provide for the purchaser to assume any or all obligations of the lessor. The Commission in such event shall guarantee the lessee's performance of the lease.

(c) Eligibility to participate in priority purchase

Persons who have purchased, either individually or jointly with other persons, a single-family house or duplex house (or a single-family unit in a duplex house) at Los Alamos pursuant to a priority right under this chapter shall not be eligible to participate in the priority purchase of an apartment house.

(d) Rules and regulations

The Commission is authorized to prescribe by rule or regulation such other conditions as it may find necessary or desirable for qualification of priority interests and rights for the purchase of an apartment house.

(Aug. 4, 1955, ch. 543, ch. 5, § 58, as added Pub. L. 87–719, § 14, Sept. 28, 1962, 76 Stat. 665; amended Pub. L. 90–190, § 1, Dec. 14, 1967, 81 Stat. 575.)

AMENDMENTS

1967—Pub. L. 90–190 redesignated existing provisions as subsec. (a), inserted reference to Los Alamos, increased the types of grantees eligible to purchase apartment houses from cooperatives, the entire membership of which is restricted to project-connected persons, inserted provisos which altered the priority right to purchase such apartment houses so as to create a first priority and second priority in lieu of the provision that the priority with respect to each cooperative shall terminate within such time as the Commission may prescribe if the cooperative has not obtained 100 per centum initial membership consisting of project-connected persons, struck out definition of ''cooperative'' as used in this section as a corporation or a trust of the character described in section 1715e(a)(1) of title 12, and added subsecs. (b) to (d).

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2349. Hanford project; disposal of property

In addition to any other authority the Commission may have, the Commission is authorized, without regard to the provisions of section 5 of title 41, to lease land, and to sell, lease, including leases with options to purchase, and otherwise dispose of improvements thereon, and such equipment and other personal property as is determined to be directly related thereto, in the Commission's Hanford project in and near Richland, Washington, upon a determination by the Commission that such disposition will serve to prevent or reduce the adverse economic impact of actual or anticipated reductions in Commission programs in that area: *Provided, however*, That the compensation to the Government for any such disposition shall be the estimated fair market value or estimated fair rental value of the property as determined by the Commission: *Provided further*, That before the Commission makes any disposition of property under the authority of this section, the basis for the proposed disposition (with necessary background and explanatory data) shall be submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives, and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five-days, there shall be excluded the days on which either House is not in session because of adjournment of more than three days): *Provided, however*, That those Committees, after having received the basis for the proposed disposition, may by resolution in writing waive the conditions of, or all or any portion of, such forty-five-day period.

(Aug. 4, 1955, ch. 543, ch. 11, § 120, as added Pub. L. 88–394, § 4, Aug. 1, 1964, 78 Stat. 376; amended Pub. L. 103–437, § 15(i), Nov. 2, 1994, 108 Stat. 4593.)

AMENDMENTS

1994—Pub. L. 103–437 substituted ''submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives'' for ''submitted to the Joint Committee on Atomic Energy'' and ''That those Committees'' for ''That the Joint Committee on Atomic Energy''.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

SUBCHAPTER V—FINANCING

§ 2361. Contract to purchase by priority purchaser

The Commission may, in the sale of any single-family or duplex house to a priority purchaser, enter into a contract to purchase which provides that the purchaser shall conclude his

purchase within not more than three years after the date the contract is entered into. Such contracts to purchase shall provide for such periodic payments, including payments on account of principal, interest, or tax equivalents, as the Commission shall prescribe.

(Aug. 4, 1955, ch. 543, ch. 6, § 61, 69 Stat. 478.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2362. Financing by Commission

(a) Acceptance of residential property notes

In the event that the Commission finds that financing on reasonable terms is not available from other sources, the Commission may, in order to facilitate the sale of residential property under subchapter IV of this chapter, accept, in partial payment of the purchase price of any such property notes secured by first mortgages on such terms and conditions as the Commission shall deem appropriate. In the case of houses and apartment buildings, the maturity and percentage of appraised value in connection with such notes and mortgages shall not exceed those prescribed under section 1715n(a) of title 12, and the interest rate shall equal the interest rate plus the premium being charged (and any periodic service charge being authorized by the Secretary of Housing and Urban Development for properties of similar character) under section 1715n(a) of title 12, at the effective date of such notes and mortgages.

(b) Advances

In connection with the sale of residential property financed under subsection (a) of this section, the Commission is authorized to make advances for necessary repairs, or for the rehabilitation, modernization, rebuilding or enlargement of single and duplex residential properties to priority purchasers, and to include such advances in the amount of the note secured by the mortgage on such property.

(c) Acceptance of commercial property notes

In the event that the Commission finds that financing on reasonable terms is not available from other sources, the Commission may, in order to facilitate the sale of commercial property under subchapter IV of this chapter, accept, in partial payment of the purchase price of any commercial property notes secured by first mortgages on such terms and conditions as the Commission shall deem appropriate.

(d) Sale of notes and mortgages

The Commission may sell any notes and mortgages acquired under subsections (a) and (c) of this section on terms set by the Commission. Notwithstanding any other provisions of law and without regard to the provisions of section 5 of title 41, the Commission may, in accordance with such terms and conditions as it may prescribe, (1) enter into contracts for servicing any of the notes and mortgages it has acquired, and (2) sell or enter into contracts to sell to a servicer any notes and mortgages with respect to which a servicing contract has been entered into by the servicer with the Commission: *Provided*, That with respect to sales of notes and mortgages under (2) the Commission shall comply with section 5 of title 41 unless it determines that such compliance would not be feasible.

(Aug. 4, 1955, ch. 543, ch. 6, § 62, 69 Stat. 478; July 25, 1956, ch. 731, § 2, 70 Stat. 653; Pub. L. 87–719, §§ 15, 16, Sept. 28, 1962, 76 Stat. 665; Pub. L. 90–19, § 11, May 25, 1967, 81 Stat. 23.)

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner''.

1962—Subsec. (a). Pub. L. 87–719, § 15, substituted ''such property'' for ''house, apartment building, or dormitory''.

Subsec. (d). Pub. L. 87–719, § 16, inserted provisions respecting servicing contracts and compliance with advertising requirements for public purchases when feasible.

1956—Subsec. (a). Act July 25, 1956, reenacted subsec. (a) without change.

Subsecs. (b), (c). Act July 25, 1956, added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

Subsec. (d). Act July 25, 1956, redesignated former subsec. (b) as (d) and included notes and mortgages acquired under subsec. (c) of this section.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2363. Indemnity obligation of Commission; incorporation by reference in deed

For a period of not more than fifteen years after August 4, 1955, or, in the case of Los Alamos, not more than fifteen years after the date it is included within this chapter, the Commission shall indemnify the purchaser (except a purchaser taking advantage of the provisions of section 2326(d) of this title), and any successor in title, of any such single family or duplex house as set forth in this subchapter. This indemnity shall be deemed to be incorporated in the deeds given on the sale of Government-owned houses. One person may not invoke the indemnity in respect of more than one house.

(Aug. 4, 1955, ch. 543, ch. 6, § 63, 69 Stat. 479; Pub. L. 87–719, § 17, Sept. 28, 1962, 76 Stat. 666.)

AMENDMENTS

1962—Pub. L. 87–719 inserted ''or, in the case of Los Alamos, not more than fifteen years after the date it is included within this chapter'' after ''August 4, 1955,''.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2364. Community employment and population

The indemnity obligation specified in section 2363 of this title shall arise only if, for the six months just preceding the date on which it is invoked—

(a) the total number of operating, maintenance, and administrative employees in the project area, as determined by the Commis-

sion, has been less than fourteen thousand three hundred and thirty-seven in the case of Oak Ridge or seven thousand six hundred and twenty-two in the case of Richland or four thousand six hundred and twenty in the case of Los Alamos; and

(b) the population in the community has been less than twenty-nine thousand two hundred and fifty in the case of Oak Ridge or twenty-five thousand two hundred in the case of Richland or eleven thousand seven hundred and sixty-nine in the case of Los Alamos.

For purposes of this section employment shall be determined on the basis of the pay period or periods ending nearest the 15th of each month.

(Aug. 4, 1955, ch. 543, ch. 6, § 64, 69 Stat. 479; Pub. L. 87–719, §§ 18, 19, Sept. 28, 1962, 76 Stat. 666.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–719, § 18, inserted ''or four thousand six hundred and twenty in the case of Los Alamos'' after ''Richland''.

Subsec. (b). Pub. L. 87–719, § 19, inserted ''or eleven thousand seven hundred and sixty-nine in the case of Los Alamos'' after ''Richland''.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2365. Amount of indemnity

The indemnity obligation of the Commission specified in section 2363 of this title shall be for such amount, less the sales price of the property, as would have remained unpaid under a loan entered into on the date of the execution of the original deed by the Commission—

(1) which was in the amount of the purchase price from the Commission and provided for equal monthly payments of principal and interest over a period of twenty years computed on the basis of the average interest and other charges recorded for property of the same class at the community; and

(2) on which all payments due to the date when notice was received by the Commission had been made.

(Aug. 4, 1955, ch. 543, ch. 6, § 65, 69 Stat. 479.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2366. Conditions of indemnity; purchase of property by Commission

The Commission shall make the indemnity payment specified by section 2365 of this title only if the Commission receives a notice from the then owner of the property that he is about to sell the property for a sum less than the unpaid balance of the real or hypothetical loan calculated pursuant to such section. Such payment shall be made only if—

(a) notice is given to the Commission at a time when the conditions of section 2364 of this title are satisfied;

(b) the sale is made within such time as the Commission may prescribe and in a manner which the Commission determined to afford adequate assurance of a fair price without excessive costs; and

(c) the Commission is given such prior notice of the sale and such opportunity to become a purchaser as it shall prescribe.

In such circumstances the Commission is authorized to purchase the property. Sales pursuant to this section and payment by the Commission of such amount, if any, as is owing pursuant to sections 2363 to 2366 of this title shall end the obligation of the Commission under sections 2363 to 2366 of this title with respect to that property.

(Aug. 4, 1955, ch. 543, ch. 6, § 66, 69 Stat. 479.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

SUBCHAPTER VI—UTILITIES

§ 2371. Transfer of utilities

The Commission is authorized to transfer to one or more of the entities specified in this subchapter such utilities as in the judgment of the Commission will be appropriate to enable the transferee to meet the needs of the residents of the community for adequate utility services of the kind to be transferred.

(Aug. 4, 1955, ch. 543, ch. 7, § 71, 69 Stat. 480.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2372. Date of transfer of utilities

Transfers of utilities shall be made as soon as possible, but in any event, not later than five years after August 4, 1955, in the case of Oak Ridge and Richland, or, in the case of Los Alamos, not later than June 30, 1998.

(Aug. 4, 1955, ch. 543, ch. 7, § 72, 69 Stat. 480; Pub. L. 87–719, § 20, Sept. 28, 1962, 76 Stat. 666; Pub. L. 104–106, div. C, title XXXI, § 3161(a), Feb. 10, 1996, 110 Stat. 627.)

AMENDMENTS

1996—Pub. L. 104–106 substituted ''not later than June 30, 1998'' for ''not later than five years after the date it is included within this chapter''.

1962—Pub. L. 87–719 inserted ''in the case of Oak Ridge and Richland, or, in the case of Los Alamos, not later than five years after the date it is included within this chapter'' after ''August 4, 1955,''.

§ 2373. Transfer to governmental or other legal entity; determination of transferee

(a) Transfer may be made to one or more of the following, if the transferee has the legal authority to receive and operate the utility.

(1) the city at the community;

(2) the State in which the community is located;

(3) any political subdivision or agency of that State; or

(4) any person, firm, corporation, or other legal entity.

(b) In determining the transferee for any utility, the Commission may consider the following:

(1) the pattern of ownership of the comparable utilities in the State in which the community is located;

(2) the ability of the transferee to operate the utility;

(3) the probable price of the sale of the utility, the ability of the transferee to pay that price, and any probable expense;

(4) the desires of the eligible voters of the community as directly expressed in any vote in any officially recognized procedure or in any procedure established by the Commission; and

(5) the benefit to the United States in reducing possible requirements for local assistance as authorized in subchapters VII and VIII of this chapter.

(Aug. 4, 1955, ch. 543, ch. 7, § 73, 69 Stat. 480.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2374. Utilities transferable

All utilities are authorized to be transferred under this subchapter, but shall not include property which the Commission determines to be needed for its own use.

(Aug. 4, 1955, ch. 543, ch. 7, § 74, 69 Stat. 480.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2375. Gift of utility to city; charges and terms for utilities transferred to other transferees

The Commission may give the utility to the city incorporated at the community; and must charge in selling the utility to any other transferee: *Provided*, That at Los Alamos, utilities may be given to the county or other local governmental entity. The charges and terms for the transfer of any utility may be established by advertising and competitive bid, or by negotiated sale or other transfer at such prices, terms, and conditions as the Commission shall determine to be fair and equitable.

(Aug. 4, 1955, ch. 543, ch. 7, § 75, 69 Stat. 480; Pub. L. 87–719, § 21, Sept. 28, 1962, 76 Stat. 666.)

AMENDMENTS

1962—Pub. L. 87–719 inserted ": *Provided*, That at Los Alamos, utilities may be given to the county or other local governmental entity" after "transferee".

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

SUBCHAPTER VII—MUNICIPALITIES

§ 2381. Assistance in organization

The Commission is authorized, for a period not to extend beyond five years after August 4, 1955, in the case of Oak Ridge and Richland, or, in the case of Los Alamos, not to extend beyond five years after the date it is included within this chapter, to cooperate with and assist the residents of the community in preparation for and establishment of local self-government and in the transfer of municipal installations and responsibilities to local entities. Such assistance may include payment of any amounts reasonably necessary to meet expenses incident to the establishment and organization of a city government and other local entities at the community, until such time as the municipal installations are transferred in accordance with the provisions of this subchapter.

(Aug. 4, 1955, ch. 543, ch. 8, § 81, 69 Stat. 480; Pub. L. 87–719, § 22, Sept. 28, 1962, 76 Stat. 666.)

AMENDMENTS

1962—Pub. L. 87–719 inserted "in the case of Oak Ridge and Richland, or, in the case of Los Alamos, not to extend beyond five years after the date it is included within this chapter" after "August 4, 1955,".

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2382. Transfer of municipal installations

The Commission is authorized to transfer to one or more of the entities specified in this subchapter such municipal installations as in the judgment of the Commission, will be appropriate to enable the transferees to meet the needs of the residents of the community for adequate school, hospital, and other municipal services.

(Aug. 4, 1955, ch. 543, ch. 8, § 82, 69 Stat. 480.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2383. Date of transfer

Transfers of municipal installations may be made at any time, not later than five years after August 4, 1955, in the case of Oak Ridge and Richland, or, in the case of Los Alamos, not later than June 30, 1998.

(Aug. 4, 1955, ch. 543, ch. 8, § 83, 69 Stat. 481; Pub. L. 87–719, § 23, Sept. 28, 1962, 76 Stat. 666; Pub. L. 104–106, div. C, title XXXI, § 3161(b), Feb. 10, 1996, 110 Stat. 627.)

AMENDMENTS

1996—Pub. L. 104–106 substituted "not later than June 30, 1998" for "not later than five years after the date it is included within this chapter".

1962—Pub. L. 87–719 inserted "in the case of Oak Ridge and Richland, or, in the case of Los Alamos, not later than five years after the date it is included within this chapter" after "August 4, 1955,".

§ 2384. Transfer to governmental entity or private nonprofit organization; determination of transferee

(a) Transfers may be made to one or more of the following, if the entity has the legal authority to receive the installation: (1) the city at the community; (2) the State in which the community is located; (3) any political subdivision or agency of that State; or (4) a private nonprofit organization in the case of the hospital installation or cemetery at the community.

(b) In determining the entity to which school, hospital, and other municipal installations, respectively, shall be transferred, the Commission shall be governed, in order, by

(1) the results of a vote in which the eligible voters in the community expressed themselves directly on the transfer in the vote on the incorporation of the city;

(2) the results of a vote in which the eligible voters have directly expressed themselves on the proposed transfer in a referendum or other officially recognized procedure;

(3) there being only one entity which is legally authorized to receive the municipal installation; or

(4) in the absence of the other alternatives, the Commission has conducted a vote of the eligible voters of the community on the proposed transfer under such procedures as it may establish.

(Aug. 4, 1955, ch. 543, ch. 8, § 84, 69 Stat. 481.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2385. Installations transferable

All municipal installations are authorized to be transferred under this subchapter, but shall not include property which the Commission determines to be needed for its own use.

(Aug. 4, 1955, ch. 543, ch. 8, § 85, 69 Stat. 481.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

§ 2386. Transfer of installations without charge

The transfer of any municipal installation authorized to be made under the provisions of this subchapter may be made without charge to the entity receiving the installation.

(Aug. 4, 1955, ch. 543, ch. 8, § 86, 69 Stat. 481.)

SUBCHAPTER VIII—LOCAL ASSISTANCE

§ 2391. Assistance to governmental entities

(a) Annual assistance payments; extensions; determination of amount and recipient

From the date of transfer of any municipal installations to a governmental or other entity at or for the community, the Administrator is authorized, for a period of ten years, to make annual assistance payments of just and reasonable sums to the State, county, or local entity having jurisdiction to collect property taxes or to the entity receiving the installation transferred hereunder: *Provided, however*, That with respect to the cities of Oak Ridge, Tennessee, and Richland, Washington, the Richland School District, the Los Alamos School Board, and the county of Los Alamos, New Mexico, the Administrator is authorized to continue to make assistance payments of just and reasonable sums after expiration of such ten-year period: *Provided further*, That the Administrator is also authorized to make payments of just and reasonable sums to Anderson County and Roane County, Tennessee. In determining the amount and recipient of such payments the Administrator shall consider—

(1) the approximate real property taxes and assessments for local improvements which would be paid to the governmental entity upon property within the community if such property were not exempt from taxation by reason of Federal ownership;

(2) the maintaining of municipal services at a level which will not impede the recruitment or retention of personnel essential to the Energy Research and Development Administration programs;

(3) the fiscal problems peculiar to the governmental entity by reason of the construction at the community as a single-purpose national defense installation under emergency conditions;

(4) the municipal services and other burdens imposed on the governmental or other entities at the community by the United States in its operations in the project area; and

(5) the tax revenues and sources available to the governmental entity, its efforts and diligence in collection of taxes, assessment of property, and the efficiency of its operations.

(b) Special interim payments

Special interim payments may be made under the provisions of this section to any governmental entity which—

(1) has a special burden due to the requirements under law imposed upon it in assisting in effectuating the purposes of this chapter for which it will not otherwise receive adequate compensation or revenues; or

(2) will suffer a tax loss or lapse in place of which it will not receive any other adequate revenues until the new governmental entities contemplated by this subchapter are receiving their normal taxes and performing their normal functions.

(c) Payments for special burdens

Payments made under this section shall be payments made for special burdens imposed on the local governmental entities in accordance with the second sentence of section 2208 of this title. Payments may be made under this section notwithstanding the provisions of the Act of September 30, 1950[1] (Public Law 874, Eighty-first Congress), as amended.

(d) Recommendation for further assistance payments

With respect to any entity not less than six months prior to the expiration of the ten-year

[1] See References in Text note below.

period referred to in subsection (a) of this section (or not less than six months prior to June 30, 1979, in the case of the cities of Oak Ridge, Tennessee, and Richland, Washington, and the Richland School District; or not less than six months prior to June 30, 1986, in the case of Anderson County and Roane County, Tennessee; or not later than June 30, 1996, in the case of the Los Alamos School Board and the county of Los Alamos, New Mexico), the Administrator shall present to the appropriate committees of the House of Representatives and the Senate recommendations as to the need for any further assistance payments to such entity. If the recommendation under the preceding sentence regarding the Los Alamos School Board or the county of Los Alamos, New Mexico, indicates a need for further assistance for the school board or the county, as the case may be, after June 30, 1997, the recommendation shall include a report and plan describing the actions required to eliminate the need for further assistance for the school board or the county, including a proposal for legislative action to carry out the plan.

(e) Reduction or termination of assistance payments; determination by Administrator of financial self-sufficiency

In exercising the authority of subsection (a) of this section the Administrator shall assure that the governmental or other entities receiving assistance hereunder utilize all reasonable, available means to achieve financial self-sufficiency to the end that assistance payments by the Administrator may be reduced or terminated at the earliest practical time.

(Aug. 4, 1955, ch. 543, ch. 9, § 91, 69 Stat. 481; Pub. L. 90–190, § 2, Dec. 14, 1967, 81 Stat. 576; Pub. L. 94–187, title VI, § 601(1)–(6), Dec. 31, 1975, 89 Stat. 1077, 1078; Pub. L. 95–238, title II, § 205(a), Feb. 25, 1978, 92 Stat. 60; Pub. L. 104–106, div. C, title XXXI, § 3161(c), Feb. 10, 1996, 110 Stat. 627.)

REFERENCES IN TEXT

Act of September 30, 1950, referred to in subsec. (c), is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, popularly known as the Educational Agencies Financial Aid Act, which was classified generally to chapter 13 (§ 236 et seq.) of Title 20, Education, prior to repeal by Pub. L. 103–382, title III, § 331(b), Oct. 20, 1994, 108 Stat. 3965. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–106 substituted ''; or not later than June 30, 1996, in the case of the Los Alamos School Board and the county of Los Alamos, New Mexico'' for '', and the Los Alamos School Board; and not less than six months prior to June 30, 1987, in the case of the county of Los Alamos, New Mexico'' and inserted at end ''If the recommendation under the preceding sentence regarding the Los Alamos School Board or the county of Los Alamos, New Mexico, indicates a need for further assistance for the school board or the county, as the case may be, after June 30, 1997, the recommendation shall include a report and plan describing the actions required to eliminate the need for further assistance for the school board or the county, including a proposal for legislative action to carry out the plan.''

1978—Subsec. (a). Pub. L. 95–238, § 205(a)(1), inserted provisions for applicability to the Los Alamos School Board and the county of Los Alamos, New Mexico, and substituted provisions authorizing Administrator to make payments for provisions requiring Administrator to make payments.

Subsec. (d). Pub. L. 95–238, § 205(a)(2), inserted provisions for applicability to the Los Alamos School Board and the county of Los Alamos, New Mexico, and substituted provision requiring presentation to the appropriate committees of the House and the Senate for provision requiring presentation to the Joint Committee on Atomic Energy.

1975—Subsec. (a). Pub. L. 94–187, § 601(1), (5), substituted ''Administrator'' for ''Commission'' in three places and inserted at end of first sentence '': *Provided further*, That the Administrator is also authorized to make payments of just and reasonable sums to Anderson County and Roane County, Tennessee''.

Subsec. (a)(2). Pub. L. 94–187, § 601(2), substituted ''Energy Research and Development Administration'' for ''atomic energy''.

Subsec. (d). Pub. L. 94–187, § 601(1), (3), (6), substituted ''Administrator'' for ''Commission'', struck out ''its'' before ''recommendations'', and inserted ''; or not less than six months prior to June 30, 1986, in the case of Anderson County and Roane County, Tennessee'' after ''Richland School District'' in parenthetical text.

Subsec. (e). Pub. L. 94–187, § 601(1), (4), substituted ''Administrator'' for ''Commission'' in two places and struck out ''itself'' after ''shall assure''.

1967—Subsec. (a). Pub. L. 90–190, § 2(1), authorized the Commission, with respect to the cities of Oak Ridge, Tenn., and Richland, Wash., and the Richland School District, to continue to make assistance payments of just and reasonable sums after the expiration of the ten-year period following the date of transfer of any municipal installation, and added par. (5).

Subsec. (d). Pub. L. 90–190, § 2(2), inserted ''(or not less than six months prior to June 30, 1979, in the case of the Cities of Oak Ridge, Tennessee, and Richland, Washington, and the Richland School District),'' after ''subsection (a) of this section'', substituted ''assistance'' for ''contribution'', and struck out requirement that if Commission proposes further contribution payments, it shall propose a definite schedule of such payments which will provide for an orderly and reasonably prompt withdrawal of Commission from participation in and contribution toward local government.

Subsec. (e). Pub. L. 90–190, § 2(3), added subsec. (e).

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

CONVEYANCE TO LOS ALAMOS, NEW MEXICO

Pub. L. 105–119, title VI, § 632, Nov. 26, 1997, 111 Stat. 2523, as amended by Pub. L. 108–375, div. C, title XXXI, § 3148, Oct. 28, 2004, 118 Stat. 2177; Pub. L. 109–364, div. C, title XXXI, § 3119, Oct. 17, 2006, 120 Stat. 2509, provided that:

''(a) IN GENERAL.—The Secretary of Energy shall—

''(1) except as provided in paragraph (2), convey, without consideration, to the Incorporated County of Los Alamos, New Mexico (in this section referred to as the 'County'), or to the designee of the County, fee title to the parcels of land that are allocated for conveyance to the County in the agreement under subsection (e);

''(2) notwithstanding paragraph (1) and the agreement under subsection (e), convey, without consideration, to the Board of Education of the Los Alamos Public Schools, New Mexico, within the County, fee title to the parcels of land identified by the Department of Energy as Parcel A–8 and Parcel A–15–1 that are currently located in Technical Area–21 of Los Alamos National Laboratory upon the entry of Los Alamos Public Schools and the County into an agreement for the use of the parcel of land identified as Parcel A–8; and

''(3) transfer to the Secretary of the Interior, in trust for the Pueblo of San Ildefonso (in this section

referred to as the 'Pueblo'), administrative jurisdiction over the parcels that are allocated for transfer to the Secretary of the Interior in such agreement.

''(b) PRELIMINARY IDENTIFICATION OF PARCELS OF LAND FOR CONVEYANCE OR TRANSFER.—(1) Not later than 90 days after the date of enactment of this Act [Nov. 26, 1997], the Secretary of Energy shall submit to the congressional defense committees a report identifying the parcels of land under the jurisdiction or administrative control of the Secretary at or in the vicinity of Los Alamos National Laboratory that are suitable for conveyance or transfer under this section.

''(2) A parcel is suitable for conveyance or transfer for purposes of paragraph (1) if the parcel—

''(A) is not required to meet the national security mission of the Department of Energy or will not be required for that purpose before the end of the 10-year period beginning on the date of enactment of this Act;

''(B) is likely to be conveyable or transferable, as the case may be, under this section not later than the end of such period; and

''(C) is suitable for use for a purpose specified in subsection (h).

''(c) REVIEW OF TITLE.—(1) Not later than one year after the date of enactment of this Act [Nov. 26, 1997], the Secretary shall submit to the congressional defense committees a report setting forth the results of a title search on each parcel of land identified as suitable for conveyance or transfer under subsection (b), including an analysis of any claims against or other impairments to the fee title to each such parcel.

''(2) In the period beginning on the date of the completion of the title search with respect to a parcel under paragraph (1) and ending on the date of the submittal of the report under that paragraph, the Secretary shall take appropriate actions to resolve the claims against or other impairments, if any, to fee title that are identified with respect to the parcel in the title search.

''(d) ENVIRONMENTAL RESTORATION.—(1) Not later than 21 months after the date of enactment of this Act [Nov. 26, 1997], the Secretary shall—

''(A) identify the environmental restoration or remediation, if any, that is required with respect to each parcel of land identified under subsection (b) to which the United States has fee title;

''(B) carry out any review of the environmental impact of the conveyance or transfer of each such parcel that is required under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(C) submit to Congress a report setting forth the results of the activities under subparagraphs (A) and (B).

''(2) If the Secretary determines under paragraph (1) that a parcel described in paragraph (1)(A) requires environmental restoration or remediation, the Secretary shall, to the maximum extent practicable, complete the environmental restoration or remediation of the parcel not later than November 26, 2012.

''(e) AGREEMENT FOR ALLOCATION OF PARCELS.—As soon as practicable after completing the review of titles to parcels of land under subsection (c), but not later than 90 days after the submittal of the report under subsection (d)(1)(C), the County and the Pueblo shall submit to the Secretary an agreement between the County and the Pueblo which allocates between the County and the Pueblo the parcels identified for conveyance or transfer under subsection (b).

''(f) PLAN FOR CONVEYANCE AND TRANSFER.—(1) Not later than 90 days after the date of the submittal to the Secretary of Energy of the agreement under subsection (e), the Secretary shall submit to the congressional defense committees a plan for conveying or transferring parcels of land under this section in accordance with the allocation specified in the agreement.

''(2) The plan under paragraph (1) shall provide for the completion of the conveyance or transfer of parcels under this section not later than 9 months after the date of the submittal of the plan under that paragraph.

''(g) CONVEYANCE OR TRANSFER.—(1) Subject to paragraphs (2) and (3), the Secretary shall convey or transfer parcels of land in accordance with the allocation specified in the agreement submitted to the Secretary under subsection (e).

''(2) In the case of a parcel allocated under the agreement that is not available for conveyance or transfer in accordance with the requirement in subsection (f)(2) by reason of its requirement to meet the national security mission of the Department, the Secretary shall convey or transfer the parcel, as the case may be, when the parcel is no longer required for that purpose.

''(3)(A) In the case of a parcel allocated under the agreement that is not available for conveyance or transfer in accordance with such requirement by reason of requirements for environmental restoration or remediation, the Secretary shall convey or transfer the parcel, as the case may be, upon the completion of the environmental restoration or remediation that is required with respect to the parcel.

''(B) If the Secretary determines that environmental restoration or remediation cannot reasonably be expected to be completed with respect to a parcel by November 26, 2012, the Secretary shall not convey or transfer the parcel under this section.

''(h) USE OF CONVEYED OR TRANSFERRED LAND.—The parcels of land conveyed or transferred under this section shall be used for historic, cultural, or environmental preservation purposes, economic diversification purposes, or community self-sufficiency purposes.

''(i) TREATMENT OF CONVEYANCES AND TRANSFERS.—(1) The purpose of the conveyances and transfers under this section is to fulfill the obligations of the United States with respect to Los Alamos National Laboratory, New Mexico, under sections 91 and 94 of the Atomic Energy Community Act of 1955 (42 U.S.C. 2391, 2394).

''(2) Upon the completion of the conveyance or transfer of the parcels of land available for conveyance or transfer under this section, the Secretary shall make no further payments with respect to Los Alamos National Laboratory under section 91 or section 94 of the Atomic Energy Community Act of 1955.

''(j) REPEAL OF SUPERSEDED PROVISION.—In the event of the enactment of the National Defense Authorization Act for Fiscal Year 1998 [Pub. L. 105–85] by reason of the approval of the President of the conference report to accompany the bill (H.R. 1119) of the 105th Congress, section 3165 of such Act [section 3165 of Pub. L. 105–85, see below] is repealed.''

Pub. L. 105–85, div. C, title XXXI, § 3165, Nov. 18, 1997, 111 Stat. 2050, contained provisions similar to section 632 of Pub. L. 105–119, set out above, prior to repeal by Pub. L. 105–119, title VI, § 632(j), Nov. 26, 1997, 111 Stat. 2525.

COMMUNITY ASSISTANCE PAYMENTS

Pub. L. 99–145, title XV, § 1532, Nov. 8, 1985, 99 Stat. 773, as amended by Pub. L. 99–661, div. C, title I, § 3133, Nov. 14, 1986, 100 Stat. 4063; Pub. L. 103–160, div. C, title XXXI, § 3158, Nov. 30, 1993, 107 Stat. 1956, provided that, with certain limitations, the Secretary of Energy may obligate funds during fiscal year 1986 to provide a final financial settlement with Anderson County and Roane County, Tennessee, and the City of Oak Ridge, Tennessee, and terminate all annual assistance payments to those entities and to make advance payment of payments in lieu of property taxes for fiscal years 1986 through 1995, and that the Secretary shall report to Congress by Feb. 1, 1986, the Secretary's recommendations concerning financial assistance payments to local governmental entities.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95–238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95–238 with respect to any authorization or appropriation for any military application of nuclear energy,

etc., see section 209 of Pub. L. 95–238, Feb. 25, 1978, 92 Stat. 76, set out as a note under section 5821 of this title.

§ 2392. Reduction of payments

Any payment which becomes due under section 2391 of this title prior to the transfer of all municipal installations at the community may be reduced by such amount as the Administrator determines to be equitable based on the municipal services then being performed by the Energy Research and Development Administration, and the municipal services then being performed by such governmental entity.

(Aug. 4, 1955, ch. 543, ch. 9, § 92, 69 Stat. 482; Pub. L. 94–187, title VI, § 601(1), (8), Dec. 31, 1975, 89 Stat. 1077, 1078.)

AMENDMENTS

1975—Pub. L. 94–187 substituted ''Administrator'' for ''Commission'' where appearing first time and ''Energy Research and Development Administration'' for ''Commission'' where appearing second time.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2393. Payments in anticipation of services; withholding of payments

The payments made pursuant to section 2391 of this title to transferees of municipal installations are in anticipation that the respective recipients of those payments furnish, or have furnished, for the community, the school, hospital, or other municipal services in respect of which the payments are made. Any such payment may be withheld, in whole or in part, if the Administrator finds that the recipient is not furnishing such services for any part of the area so designated.

(Aug. 4, 1955, ch. 543, ch. 9, § 93, 69 Stat. 482; Pub. L. 94–187, title VI, § 601(1), Dec. 31, 1975, 89 Stat. 1077.)

AMENDMENTS

1975—Pub. L. 94–187 substituted ''Administrator'' for ''Commission''.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2394. Contract to make payments

The Administrator is authorized, without regard to sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of title 31, to enter into a contract with any governmental or other entity to which payments are authorized to be made pursuant to section 2391 of this title, obligating the Administrator to make to such entity the payments directed or authorized to be made by section 2391 of this title: *Provided, however*, That the term of such contracts, in the case of the cities of Oak Ridge, Tennessee, and Richland, Washington, and the Richland School District, shall not extend beyond June 30, 1979; and in the case of the Los Alamos School Board shall not extend beyond June 30, 1997; and in the case of the county of Los Alamos, New Mexico, shall not extend beyond June 30, 1997. The authority to enter into a contract under the preceding sentence with the Los Alamos School Board and with the county of Los Alamos, New Mexico, shall be effective with respect to a period before July 1, 1997, only to the extent or in such amounts as are provided in appropriation Acts.

(Aug. 4, 1955, ch. 543, ch. 9, § 94, 69 Stat. 482; Pub. L. 90–190, § 3, Dec. 14, 1967, 81 Stat. 576; Pub. L. 94–187, title VI, § 601(1), (9), Dec. 31, 1975, 89 Stat. 1077, 1078; Pub. L. 95–238, title II, § 205(b), Feb. 25, 1978, 92 Stat. 61; Pub. L. 99–661, div. C, title I, § 3138(a), (b)(1), Nov. 14, 1986, 100 Stat. 4066; Pub. L. 104–106, div. C, title XXXI, § 3161(d), Feb. 10, 1996, 110 Stat. 627.)

CODIFICATION

''Sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of title 31'' substituted in text for ''section 3679 of the Revised Statutes [31 U.S.C. 665]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1996—Pub. L. 104–106 substituted ''June 30, 1997'' for ''June 30, 1996'' in two places and ''July 1, 1997'' for ''July 1, 1996''.

1986—Pub. L. 99–661, § 3138(a), substituted ''Los Alamos School Board shall not extend beyond June 30, 1996'' for ''Los Alamos School Board shall not extend beyond June 30, 1986'' and ''New Mexico, shall not extend beyond June 30, 1996'' for ''New Mexico, shall not extend beyond June 30, 1987''.

Pub. L. 99–661, § 3138(b)(1), inserted at end ''The authority to enter into a contract under the preceding sentence with the Los Alamos School Board and with the county of Los Alamos, New Mexico, shall be effective with respect to a period before July 1, 1996, only to the extent or in such amounts as are provided in appropriation Acts.''

1978—Pub. L. 95–238 inserted provisions for applicability to the Los Alamos School Board and the county of Los Alamos, New Mexico, substituted ''payments are authorized'' for ''payments are required or authorized'', and struck out applicability of provisions to Anderson and Roane Counties, Tennessee, for contracts not beyond June 30, 1986.

1975—Pub. L. 94–187 substituted ''Administrator'' for ''Commission'' in two places and inserted provision that the term of such contracts shall not extend beyond June 30, 1986, in the case of Anderson County and Roane County, Tennessee. The latter amendment was executed in this section, rather than to section 2393, as the probable intent of Congress.

1967—Pub. L. 90–190 inserted proviso, and ''or authorized'' wherever appearing.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 3138(b)(2) of Pub. L. 99–661 provided that: ''The amendment made by paragraph (1) [amending this section] shall not apply with respect to a contract with the county of Los Alamos, New Mexico, to the extent that it covers the period before July 1, 1987.''

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (un-

less otherwise specifically provided) by sections 7151(a) and 7293 of this title.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95–238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95–238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95–238, Feb. 25, 1978, 92 Stat. 76, set out as a note under section 5821 of this title.

CHAPTER 25—FEDERAL FLOOD INSURANCE

Sec.
2401 to 2413. Repealed.
2414. Issuance of notes by Administrator of Federal Emergency Management Agency; terms and conditions.
2415 to 2421. Repealed.

§§ 2401 to 2413. Repealed. Pub. L. 90–448, title XIII, § 1303(c), Aug. 1, 1968, 82 Stat. 573

Section 2401, act Aug. 7, 1956, ch. 1025, § 2, 70 Stat. 1078, related to findings and declaration of purpose of this chapter.

Section 2402, act Aug. 7, 1956, ch. 1025, § 3, 70 Stat. 1078, provided for administration of this chapter, appointment and compensation of a Commissioner, financial control, and accounting and audit.

Section 2403, act Aug. 7, 1956, ch. 1025, § 4, 70 Stat. 1079, authorized insurance and reinsurance.

Section 2404, act Aug. 7, 1956, ch. 1025, § 5, 70 Stat. 1080, authorized loans and prescribed their terms.

Section 2405, act Aug. 7, 1956, ch. 1025, § 6, 70 Stat. 1080, provided for a combination of insurance and loans.

Section 2406, act Aug. 7, 1956, ch. 1025, § 7, 70 Stat. 1080, required establishment of a schedule of estimated rates and fees.

Section 2407, act Aug. 7, 1956, ch. 1025, § 8, 70 Stat. 1081, related to property and loss limits.

Section 2408, act Aug. 7, 1956, ch. 1025, § 9, 70 Stat. 1081, related to classification, limitation or rejection of risks.

Section 2409, act Aug. 7, 1956, ch. 1025, § 10, 70 Stat. 1081, prescribed policy and program limits.

Section 2410, act Aug. 7, 1956, ch. 1025, § 11, 70 Stat. 1082, authorized reinsurance.

Section 2411, act Aug. 7, 1956, ch. 1025, § 12, 70 Stat. 1082, related to availability of insurance from other sources, violations of flood zoning laws, and flood zoning restrictions to reduce damages from floods.

Section 2412, act Aug. 7, 1956, ch. 1025, § 13, 70 Stat. 1082, provided for use of other public and private facilities and services, information, coordination of programs and consultations.

Section 2413, act Aug. 7, 1956, ch. 1025, § 14, 70 Stat. 1083, related to payment of claims and judicial review.

See section 4001 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 120 days following Aug. 1, 1968, or such later date prescribed by the Secretary but in no event more than 180 days following Aug. 1, 1968, see section 1377 of Pub. L. 90–448, set out as an Effective Date note under section 4001 of this title.

SEPARABILITY

Section 23 of act Aug. 7, 1956, ch. 1025, 70 Stat. 1086, which provided that the invalidity of any provision of act Aug. 7, 1956, or its application, should not affect the remainder thereof, was repealed by Pub. L. 90–448, title XIII, § 1303(c), Aug. 1, 1968, 82 Stat. 573.

§ 2414. Issuance of notes by Administrator of Federal Emergency Management Agency; terms and conditions

(a) to (d) Repealed. Pub. L. 90–448, title XIII, § 1303(c), Aug. 1, 1968, 82 Stat. 573

(e) Issuance of notes by Administrator of Federal Emergency Management Agency; form, terms and conditions; purchase and sale by Secretary of the Treasury; public debt transactions

The Administrator of the Federal Emergency Management Agency is authorized to issue to the Secretary of the Treasury from time to time and have outstanding at any one time, in an amount not exceeding $500,000,000 (or such greater amount as may be approved by the President) notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Administrator of the Federal Emergency Management Agency with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued under this subsection and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such notes and obligations.

The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(Aug. 7, 1956, ch. 1025, § 15, 70 Stat. 1083; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 90–448, title XIII, § 1303, Aug. 1, 1968, 82 Stat. 573; Pub. L. 98–181, title IV, § 451(f), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 98–479, title II, § 203(g), Oct. 17, 1984, 98 Stat. 2230; Pub. L. 100–242, title V, § 545(f), Feb. 5, 1988, 101 Stat. 1942; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

AMENDMENTS

1988—Subsec. (e). Pub. L. 100–242 substituted ''title 31, United States Code,'' for ''title 31, United States Code'', which for purposes of codification was translated as ''title 31'', thus requiring no change in text.

1984—Subsec. (e). Pub. L. 98–479 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'', and ''such chapter'' for ''such Act, as amended,''.

1983—Subsec. (e). Pub. L. 98–181 substituted ''Director of the Federal Emergency Management Agency'' for ''Secretary of Housing and Urban Development'' in two places.

1968—Subsecs. (a) to (d). Pub. L. 90–448, § 1303(c), repealed subsecs. (a) to (d), which created three funds, provided for deposits therein, investment of moneys in the funds, and deposit of salvage proceeds.

Subsec. (e). Pub. L. 90–448, § 1303(a), (b), substituted ''current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month'' for ''current average rate on outstanding marketable obligations of the United States of comparable maturities as of the last day of the month'', and struck out provisions which permitted Secretary of the Treasury to purchase any notes and other obligations to be issued under this subsection.

Subsecs. (f), (g). Pub. L. 90–448, § 1303(c), repealed subsecs. (f) and (g) which provided for use of moneys in the Funds and for payment of administrative expenses.

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (e) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–448 effective 120 days following Aug. 1, 1968, or such later date prescribed by the Secretary but in no event more than 180 days following Aug. 1, 1968, see section 1377 of Pub. L. 90–448, set out as an Effective Date note under section 4001 of this title.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Housing Administration and of Housing and Home Finance Agency (of which Public Housing Administration is a constituent agency) and of heads thereof transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provides that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency and Public Housing Administration have lapsed.

§§ 2415 to 2421. Repealed. Pub. L. 90–448, title XIII, § 1303(c), Aug. 1, 1968, 82 Stat. 573

Section 2415, act Aug. 7, 1956, ch. 1025, § 16, 70 Stat. 1085, authorized appointment of an advisory committee.

Section 2416, act Aug. 7, 1956, ch. 1025, § 17, 70 Stat. 1085, provided for studies.

Section 2417, act Aug. 7, 1956, ch. 1025, § 18, 70 Stat. 1085, prescribed additional functions of the Administrator.

Section 2418, act Aug. 7, 1956, ch. 1025, § 19, 70 Stat. 1086, reserved rights in acquired real estate.

Section 2419, act Aug. 7, 1956, ch. 1025, § 20, 70 Stat. 1086, related to exemption of real estate from taxation.

Section 2420, act Aug. 7, 1956, ch. 1025, § 21, 70 Stat. 1086, provided for annual reports.

Section 2421, act Aug. 7, 1956, ch. 1025, § 22, 70 Stat. 1086, defined terms used in this chapter.

See section 4001 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 120 days following Aug. 1, 1968, or such later date prescribed by the Secretary but in no event more than 180 days following Aug. 1, 1968, see section 1377 of Pub. L. 90–448, set out as an Effective Date note under section 4001 of this title.

CHAPTER 26—NATIONAL SPACE PROGRAM

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SUBCHAPTER III—UPPER ATMOSPHERE RESEARCH

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SUBCHAPTER I—GENERAL PROVISIONS

§ 2451. Congressional declaration of policy and purpose

(a) Devotion of space activities to peaceful purposes for benefit of all mankind

The Congress declares that it is the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all mankind.

(b) Aeronautical and space activities for welfare and security of United States; control by civilian agency; exceptions

The Congress declares that the general welfare and security of the United States require that adequate provision be made for aeronautical and space activities. The Congress further declares that such activities shall be the responsibility of, and shall be directed by, a civilian agency exercising control over aeronautical and space activities sponsored by the United States, except that activities peculiar to or primarily associated with the development of weapons systems, military operations, or the defense of the United States (including the research and development necessary to make effective provision for the defense of the United States) shall be the responsibility of, and shall be directed by, the Department of Defense; and that determination as to which such agency has responsibility for and direction of any such activity shall be made by the President in conformity with section 2471(e) of this title.

(c) Commercial use of space

The Congress declares that the general welfare of the United States requires that the National Aeronautics and Space Administration (as established by subchapter II of this chapter) seek and encourage, to the maximum extent possible, the fullest commercial use of space.

(d) Objectives of aeronautical and space activities

The aeronautical and space activities of the United States shall be conducted so as to contribute materially to one or more of the following objectives:

(1) The expansion of human knowledge of the Earth and of phenomena in the atmosphere and space;

(2) The improvement of the usefulness, performance, speed, safety, and efficiency of aeronautical and space vehicles;

(3) The development and operation of vehicles capable of carrying instruments, equipment, supplies, and living organisms through space;

(4) The establishment of long-range studies of the potential benefits to be gained from, the opportunities for, and the problems involved in the utilization of aeronautical and space activities for peaceful and scientific purposes;

(5) The preservation of the role of the United States as a leader in aeronautical and space science and technology and in the application thereof to the conduct of peaceful activities within and outside the atmosphere;

(6) The making available to agencies directly concerned with national defense of discoveries that have military value or significance, and the furnishing by such agencies, to the civilian agency established to direct and control nonmilitary aeronautical and space activities, of information as to discoveries which have value or significance to that agency;

(7) Cooperation by the United States with other nations and groups of nations in work done pursuant to this chapter and in the peaceful application of the results thereof;

(8) The most effective utilization of the scientific and engineering resources of the United States, with close cooperation among all interested agencies of the United States in order to avoid unnecessary duplication of effort, facilities, and equipment; and

(9) The preservation of the United States preeminent position in aeronautics and space through research and technology development related to associated manufacturing processes.

(e) Ground propulsion systems research and development

The Congress declares that the general welfare of the United States requires that the unique competence in scientific and engineering systems of the National Aeronautics and Space Administration also be directed toward ground propulsion systems research and development. Such development shall be conducted so as to contribute to the objectives of developing energy and

petroleum-conserving ground propulsion systems, and of minimizing the environmental degradation caused by such systems.

(f) Bioengineering research, development, and demonstration programs

The Congress declares that the general welfare of the United States requires that the unique competence of the National Aeronautics and Space Administration in science and engineering systems be directed to assisting in bioengineering research, development, and demonstration programs designed to alleviate and minimize the effects of disability.

(g) Detecting, tracking, cataloguing, and characterizing near-Earth asteroids and comets

The Congress declares that the general welfare and security of the United States require that the unique competence of the National Aeronautics and Space Administration be directed to detecting, tracking, cataloguing, and characterizing near-Earth asteroids and comets in order to provide warning and mitigation of the potential hazard of such near-Earth objects to the Earth.

(h) Purpose of chapter

It is the purpose of this chapter to carry out and effectuate the policies declared in subsections (a), (b), (c), (d), (e), (f), and (g) of this section.

(Pub. L. 85–568, title I, §102, July 29, 1958, 72 Stat. 426; Pub. L. 94–413, §15(a), (b), Sept. 17, 1976, 90 Stat. 1270; Pub. L. 95–238, title III, §311, Feb. 25, 1978, 92 Stat. 83; Pub. L. 95–401, §7, Sept. 30, 1978, 92 Stat. 860; Pub. L. 98–361, title I, §110, July 16, 1984, 98 Stat. 426; Pub. L. 100–685, title II, §214, Nov. 17, 1988, 102 Stat. 4093; Pub. L. 106–391, title III, §302(a), Oct. 30, 2000, 114 Stat. 1591; Pub. L. 109–155, title III, §321(d)(2), Dec. 30, 2005, 119 Stat. 2923.)

REFERENCES IN TEXT

Section 2471 of this title, referred to in subsec. (b), was omitted from the Code.

This chapter, referred to in subsec. (h), was in the original ''this Act'', meaning Pub. L. 85–568, July 29, 1958, 72 Stat. 426, as amended. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

2005—Subsec. (g). Pub. L. 109–155, §321(d)(2)(B), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109–155, §321(d)(2)(A), (C), redesignated subsec. (g) as (h) and substituted ''(f), and (g)'' for ''and (f)''.

2000—Subsecs. (f) to (h). Pub. L. 106–391 redesignated subsecs. (g) and (h) as (f) and (g), respectively, substituted ''and (f)'' for ''(f), and (g)'' in subsec. (g), and struck out former subsec. (f) which read as follows: ''The Congress declares that the general welfare of the United States requires that the unique competence in scientific and engineering systems of the National Aeronautics and Space Administration also be directed toward the development of advanced automobile propulsion systems. Such development shall be conducted so as to contribute to the achievement of the purposes set forth in section 2701(b) of title 15.''

1988—Subsec. (d)(9). Pub. L. 100–685, which directed the amendment of subsec. (c) by adding par. (9), was executed to subsec. (d) to reflect the probable intent of Congress and the redesignation of former subsec. (c) as (d) by Pub. L. 98–361.

1984—Subsec. (c). Pub. L. 98–361, §110(a)(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 98–361, §110(a)(2), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 98–361, §110(b), inserted ''of the Earth''.

Subsecs. (e) to (g). Pub. L. 98–361, §110(a)(2), redesignated former subsecs. (d) to (f) as (e) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 98–361, §110(a)(2), redesignated former subsec. (g) as (h).

Pub. L. 98–361, §110(a)(1), inserted reference to subsec. (g) of this section.

1978—Subsec. (e). Pub. L. 95–238, §311(a), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 95–401, §7(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 95–238, §311(a), (b), redesignated former subsec. (e) as (f) and inserted reference to subsec. (e).

Subsec. (g). Pub. L. 95–401, §7, redesignated former subsec. (f) as (g) and substituted ''(e), and (f)'' for ''and (e)''.

1976—Subsecs. (d), (e). Pub. L. 94–413 added subsec. (d), redesignated former subsec. (d) as (e) and substituted ''(c), and (d)'' for ''and (c)''.

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–611, title II, §201, Nov. 16, 1990, 104 Stat. 3205, provided that: ''This title [enacting sections 2465b to 2465f of this title] may be cited as the 'Launch Services Purchase Act of 1990'.''

SHORT TITLE

Section 101 of Pub. L. 85–568 provided that: ''This Act [enacting this chapter and section 799 of Title 18, Crimes and Criminal Procedure, amending section 22–1 of former Title 5, Executive Departments and Government Officers and Employees (which was repealed and reenacted in pertinent part as sections 7531 and 7532 of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 514), sections 2302 and 2303 of Title 10, Armed Forces, section 1114 of Title 18, sections 511, 512, 513, and 515 of Title 50, War and National Defense, and enacting provisions set out as notes under section 2472 of this title and section 2302 of Title 10] may be cited as the 'National Aeronautics and Space Act of 1958'.''

COMMISSION ON THE FUTURE OF THE UNITED STATES AEROSPACE INDUSTRY

Pub. L. 106–398, §1 [[div. A], title X, §1092], Oct. 30, 2000, 114 Stat. 1654, 1654A–300, as amended by Pub. L. 107–107, div. A, title X, §1062, Dec. 28, 2001, 115 Stat. 1232, provided that:

''(a) ESTABLISHMENT.—There is established a commission to be known as the 'Commission on the Future of the United States Aerospace Industry' (in this section referred to as the 'Commission').

''(b) MEMBERSHIP.—(1) The Commission shall be composed of 12 members appointed, not later than March 1, 2001, as follows:

''(A) Up to six members shall be appointed by the President.

''(B) Two members shall be appointed by the Speaker of the House of Representatives.

''(C) Two members shall be appointed by the majority leader of the Senate.

''(D) One member shall be appointed by the minority leader of the Senate.

''(E) One member shall be appointed by the minority leader of the House of Representatives.

''(2) The members of the Commission shall be appointed from among persons with extensive experience and national reputations in aerospace manufacturing, economics, finance, national security, international trade, or foreign policy and persons who are representative of labor organizations associated with the aerospace industry.

''(3) Members shall be appointed for the life of the Commission. A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

''(4) The President shall designate one member of the Commission to serve as the chairman of the Commission.

''(5) The Commission shall meet at the call of the chairman. A majority of the members shall constitute a quorum, but a lesser number may hold hearings.

''(c) DUTIES.—(1) The Commission shall—

''(A) study the issues associated with the future of the United States aerospace industry in the global economy, particularly in relationship to United States national security; and

''(B) assess the future importance of the domestic aerospace industry for the economic and national security of the United States.

''(2) In order to fulfill its responsibilities, the Commission shall study the following:

''(A) The budget process of the United States Government, particularly with a view to assessing the adequacy of projected budgets of the Federal departments and agencies for aerospace research and development and procurement.

''(B) The acquisition process of the Government, particularly with a view to assessing—

''(i) the adequacy of the current acquisition process of Federal departments and agencies; and

''(ii) the procedures for developing and fielding aerospace systems incorporating new technologies in a timely fashion.

''(C) The policies, procedures, and methods for the financing and payment of Government contracts.

''(D) Statutes and regulations governing international trade and the export of technology, particularly with a view to assessing—

''(i) the extent to which the current system for controlling the export of aerospace goods, services, and technologies reflects an adequate balance between the need to protect national security and the need to ensure unhindered access to the global marketplace; and

''(ii) the adequacy of United States and multilateral trade laws and policies for maintaining the international competitiveness of the United States aerospace industry.

''(E) Policies governing taxation, particularly with a view to assessing the impact of current tax laws and practices on the international competitiveness of the aerospace industry.

''(F) Programs for the maintenance of the national space launch infrastructure, particularly with a view to assessing the adequacy of current and projected programs for maintaining the national space launch infrastructure.

''(G) Programs for the support of science and engineering education, including current programs for supporting aerospace science and engineering efforts at institutions of higher learning, with a view to determining the adequacy of those programs.

''(d) REPORT.—(1) Not later than one year after the date of the first official meeting of the Commission, the Commission shall submit a report on its activities to the President and Congress.

''(2) The report shall include the following:

''(A) The Commission's findings and conclusions.

''(B) The Commission's recommendations for actions by Federal departments and agencies to support the maintenance of a robust aerospace industry in the United States in the 21st century and any recommendations for statutory and regulatory changes to support the implementation of the Commission's findings.

''(C) A discussion of the appropriate means for implementing the Commission's recommendations.

''(e) ADMINISTRATIVE REQUIREMENTS AND AUTHORITIES.—(1) The Director of the Office of Management and Budget shall ensure that the Commission is provided such administrative services, facilities, staff, and other support services as may be necessary. Any expenses of the Commission shall be paid from funds available to the Director.

''(2) The Commission may hold hearings, sit and act at times and places, take testimony, and receive evidence that the Commission considers advisable to carry out the purposes of this section.

''(3) The Commission may request directly from any department or agency of the United States any information that the Commission considers necessary to carry out the provisions of this section. To the extent consistent with applicable requirements of law and regulations, the head of such department or agency shall furnish such information to the Commission.

''(4) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(f) COMMISSION PERSONNEL MATTERS.—(1) Members of the Commission shall serve without additional compensation for their service on the Commission, except that members appointed from among private citizens may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service under subchapter I of chapter 57 of title 5, United States Code, while away from their homes and places of business in the performance of services for the Commission.

''(2) The chairman of the Commission may appoint staff of the Commission, request the detail of Federal employees, and accept temporary and intermittent services in accordance with section 3161 of title 5, United States Code (as added by section 1101 of this Act).

''(g) TERMINATION.—The Commission shall terminate 60 days after the date of the submission of its report under subsection (d).''

INTERNATIONAL SPACE STATION

Pub. L. 106–391, title II, §§ 201–203, 205, Oct. 30, 2000, 114 Stat. 1586–1590, as amended by Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–155, title II, § 207(b), title VII, § 706(a), Dec. 30, 2005, 119 Stat. 2916, 2937, provided that:

''SEC. 201. INTERNATIONAL SPACE STATION CONTINGENCY PLAN.

''(a) BIMONTHLY REPORTING ON RUSSIAN STATUS.—Not later than the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Oct. 30, 2000], and semiannually thereafter until December 31, 2011, the Administrator [of the National Aeronautics and Space Administration] shall report to Congress whether or not the Russians have performed work expected of them and necessary to complete the International Space Station. Each such report shall also include a statement of the Administrator's judgment concerning Russia's ability to perform work anticipated and required to complete the International Space Station before the next report under this subsection. Each such report shall also identify each Russian entity or person to whom NASA has, since the date of the enactment of the Iran Nonproliferation Amendments Act of 2005 [Nov. 22, 2005], made a payment in cash or in-kind for work to be performed or services to be rendered under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, or contract related thereto. Each report shall include the specific purpose of each payment made to each entity or person identified in the report.

''(b) DECISION ON RUSSIAN CRITICAL PATH ITEMS.—The President shall notify Congress within 90 days after the date of the enactment of this Act [Oct. 30, 2000] of the decision on whether or not to proceed with permanent replacement of any Russian elements in the critical path [as defined in section 3 of Pub. L. 106–391, 42 U.S.C. 2452 note] of the International Space Station or any

Russian launch services. Such notification shall include the reasons and justifications for the decision and the costs associated with the decision. Such decision shall include a judgment of when all elements identified in Revision E assembly sequence as of June 1999 will be in orbit and operational. If the President decides to proceed with a permanent replacement for any Russian element in the critical path or any Russian launch services, the President shall notify Congress of the reasons and the justification for the decision to proceed with the permanent replacement and the costs associated with the decision.

''(c) ASSURANCES.—The United States shall seek assurances from the Russian Government that it places a higher priority on fulfilling its commitments to the International Space Station than it places on extending the life of the Mir Space Station, including assurances that Russia will not utilize assets allocated by Russia to the International Space Station for other purposes, including extending the life of Mir.

''(d) EQUITABLE UTILIZATION.—In the event that any International Partner in the International Space Station Program willfully violates any of its commitments or agreements for the provision of agreed-upon Space Station-related hardware or related goods or services, the Administrator should, in a manner consistent with relevant international agreements, seek a commensurate reduction in the utilization rights of that Partner until such time as the violated commitments or agreements have been fulfilled.

''(e) OPERATION COSTS.—The Administrator shall, in a manner consistent with relevant international agreements, seek to reduce the National Aeronautics and Space Administration's share of International Space Station common operating costs, based upon any additional capabilities provided to the International Space Station through the National Aeronautics and Space Administration's Russian Program Assurance activities.

''SEC. 202. COST LIMITATION FOR THE INTERNATIONAL SPACE STATION.

''(a) LIMITATION OF COSTS.—

''(1) IN GENERAL.—Except as provided in subsections (c) and (d), the total amount obligated by the National Aeronautics and Space Administration for—

''(A) costs of the International Space Station may not exceed $25,000,000,000; and

''(B) space shuttle launch costs in connection with the assembly of the International Space Station may not exceed $17,700,000,000.

''(2) CALCULATION OF LAUNCH COSTS.—For purposes of paragraph (1)(B)—

''(A) not more than $380,000,000 in costs for any single space shuttle launch shall be taken into account; and

''(B) if the space shuttle launch costs taken into account for any single space shuttle launch are less than $380,000,000, then the Administrator [of the National Aeronautics and Space Administration] shall arrange for a verification, by the Government Accountability Office, of the accounting used to determine those costs and shall submit that verification to the Congress within 60 days after the date on which the next budget request is transmitted to the Congress.

''(b) COSTS TO WHICH LIMITATION APPLIES.—

''(1) DEVELOPMENT COSTS.—The limitation imposed by subsection (a)(1)(A) does not apply to funding for operations, research, or crew return activities subsequent to substantial completion of the International Space Station.

''(2) LAUNCH COSTS.—The limitation imposed by subsection (a)(1)(B) does not apply—

''(A) to space shuttle launch costs in connection with operations, research, or crew return activities subsequent to substantial completion of the International Space Station;

''(B) to space shuttle launch costs in connection with a launch for a mission on which at least 75 percent of the shuttle payload by mass is devoted to research; nor

''(C) to any additional costs incurred in ensuring or enhancing the safety and reliability of the space shuttle.

''(3) SUBSTANTIAL COMPLETION.—For purposes of this subsection, the International Space Station is considered to be substantially completed when the development costs comprise 5 percent or less of the total International Space Station costs for the fiscal year.

''(c) NOTICE OF CHANGES TO SPACE STATION COSTS.—The Administrator shall provide with each annual budget request a written notice and analysis of any changes under subsection (d) to the amounts set forth in subsection (a) to the Senate Committees on Appropriations and on Commerce, Science, and Transportation and to the House of Representatives Committees on Appropriations and on Science. In addition, such notice may be provided at other times, as deemed necessary by the Administrator. The written notice shall include—

''(1) an explanation of the basis for the change, including the costs associated with the change and the expected benefit to the program to be derived from the change;

''(2) an analysis of the impact on the assembly schedule and annual funding estimates of not receiving the requested increases; and

''(3) an explanation of the reasons that such a change was not anticipated in previous program budgets.

''(d) FUNDING FOR CONTINGENCIES.—

''(1) NOTICE REQUIRED.—If funding in excess of the limitation provided for in subsection (a) is required to address the contingencies described in paragraph (2), then the Administrator shall provide the written notice required by subsection (c). In the case of funding described in paragraph (3)(A), such notice shall be required prior to obligating any of the funding. In the case of funding described in paragraph (3)(B), such notice shall be required within 15 days after making a decision to implement a change that increases the space shuttle launch costs in connection with the assembly of the International Space Station.

''(2) CONTINGENCIES.—The contingencies referred to in paragraph (1) are the following:

''(A) The lack of performance or the termination of participation of any of the International countries party to the Intergovernmental Agreement.

''(B) The loss or failure of a United States-provided element during launch or on-orbit.

''(C) On-orbit assembly problems.

''(D) New technologies or training to improve safety on the International Space Station.

''(E) The need to launch a space shuttle to ensure the safety of the crew or to maintain the integrity of the station.

''(3) AMOUNTS.—The total amount obligated by the National Aeronautics and Space Administration to address the contingencies described in paragraph (2) is limited to—

''(A) $5,000,000,000 for the International Space Station; and

''(B) $3,540,000,000 for the space shuttle launch costs in connection with the assembly of the International Space Station.

''(e) REPORTING AND REVIEW.—

''(1) IDENTIFICATION OF COSTS.—

''(A) SPACE SHUTTLE.—As part of the overall space shuttle program budget request for each fiscal year, the Administrator shall identify separately—

''(i) the amounts of the requested funding that are to be used for completion of the assembly of the International Space Station; and

''(ii) any shuttle research mission described in subsection (b)(2).

''(B) INTERNATIONAL SPACE STATION.—As part of the overall International Space Station budget request for each fiscal year, the Administrator shall identify the amount to be used for development of the International Space Station.

''(2) ACCOUNTING FOR COST LIMITATIONS.—As part of the annual budget request to the Congress, the Administrator shall account for the cost limitations imposed by subsection (a).

''(3) VERIFICATION OF ACCOUNTING.—The Administrator shall arrange for a verification, by the Government Accountability Office, of the accounting submitted to the Congress within 60 days after the date on which the budget request is transmitted to the Congress.

''(4) INSPECTOR GENERAL.—Within 60 days after the Administrator provides a notice and analysis to the Congress under subsection (c), the Inspector General of the National Aeronautics and Space Administration shall review the notice and analysis and report the results of the review to the committees to which the notice and analysis were provided.

''SEC. 203. RESEARCH ON INTERNATIONAL SPACE STATION.

''(a) STUDY.—The Administrator [of the National Aeronautics and Space Administration] shall enter into a contract with the National Research Council and the National Academy of Public Administration to jointly conduct a study of the status of life and microgravity research as it relates to the International Space Station. The study shall include—

''(1) an assessment of the United States scientific community's readiness to use the International Space Station for life and microgravity research;

''(2) an assessment of the current and projected factors limiting the United States scientific community's ability to maximize the research potential of the International Space Station, including, but not limited to, the past and present availability of resources in the life and microgravity research accounts within the Office of Human Spaceflight and the Office of Life and Microgravity Sciences and Applications and the past, present, and projected access to space of the scientific community; and

''(3) recommendations for improving the United States scientific community's ability to maximize the research potential of the International Space Station, including an assessment of the relative costs and benefits of—

''(A) dedicating an annual mission of the Space Shuttle to life and microgravity research during assembly of the International Space Station; and

''(B) maintaining the schedule for assembly in place at the time of the enactment [Oct. 30, 2000].

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Oct. 30, 2000], the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study conducted under this section.

''SEC. 205. SPACE STATION RESEARCH UTILIZATION AND COMMERCIALIZATION MANAGEMENT.

''(a) RESEARCH UTILIZATION AND COMMERCIALIZATION MANAGEMENT ACTIVITIES.—The Administrator of the National Aeronautics and Space Administration shall enter into an agreement with a non-government organization to conduct research utilization and commercialization management activities of the International Space Station subsequent to substantial completion as defined in section 202(b)(3). The agreement may not take effect less than 120 days after the implementation plan for the agreement is submitted to the Congress under subsection (b).

''(b) IMPLEMENTATION PLAN.—Not later than September 30, 2001, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives an implementation plan to incorporate the use of a non-government organization for the International Space Station. The implementation plan shall include—

''(1) a description of the respective roles and responsibilities of the Administration and the non-government organization;

''(2) a proposed structure for the non-government organization;

''(3) a statement of the resources required;

''(4) a schedule for the transition of responsibilities; and

''(5) a statement of the duration of the agreement.''

[Pub. L. 109–155, title VII, § 706(a)(2), Dec. 30, 2005, 119 Stat. 2937, which directed insertion of two sentences at end of section 201 of Pub. L. 106–391, set out above, was executed by making the insertion at the end of section 201(a) of Pub. L. 106–391, to reflect the probable intent of Congress.]

[Section 16636(b) of this title provided that 30 days after the transmittal of the report described in section 16636(a) of this title, section 202 of Pub. L. 106–391, set out above, is repealed.]

AERO-SPACE TRANSPORTATION TECHNOLOGY INTEGRATION

Pub. L. 106–391, title III, § 308, Oct. 30, 2000, 114 Stat. 1592, provided that:

''(a) INTEGRATION PLAN.—The Administrator [of the National Aeronautics and Space Administration] shall develop a plan for the integration of research, development, and experimental demonstration activities in the aeronautics transportation technology and space transportation technology areas where appropriate. The plan shall ensure that integration is accomplished without losing unique capabilities which support the National Aeronautics and Space Administration's defined missions. The plan shall also include appropriate strategies for using aeronautics centers in integration efforts.

''(b) REPORTS TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act [Oct. 30, 2000], the Administrator shall transmit to the Congress a report containing the plan developed under subsection (a). The Administrator shall transmit to the Congress annually thereafter for 5 years a report on progress in achieving such plan, to be transmitted with the annual budget request.''

INNOVATIVE TECHNOLOGIES FOR HUMAN SPACE FLIGHT

Pub. L. 106–391, title III, § 313, Oct. 30, 2000, 114 Stat. 1594, provided that:

''(a) ESTABLISHMENT OF PROGRAM.—In order to promote a 'faster, cheaper, better' approach to the human exploration and development of space, the Administrator [of the National Aeronautics and Space Administration] shall establish a Human Space Flight Innovative Technologies program of ground-based and space-based research and development in innovative technologies. The program shall be part of the Technology and Commercialization program.

''(b) AWARDS.—At least 75 percent of the amount appropriated for Technology and Commercialization under section 101(b)(4) [114 Stat. 1581] for any fiscal year shall be awarded through broadly distributed announcements of opportunity that solicit proposals from educational institutions, industry, nonprofit institutions, National Aeronautics and Space Administration Centers, the Jet Propulsion Laboratory, other Federal agencies, and other interested organizations, and that allow partnerships among any combination of those entities, with evaluation, prioritization, and recommendations made by external peer review panels.

''(c) PLAN.—The Administrator shall provide to the Committee on Science of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate, not later than December 1, 2000, a plan to implement the program established under subsection (a).''

LIFE IN THE UNIVERSE

Pub. L. 106–391, title III, § 314, Oct. 30, 2000, 114 Stat. 1595, provided that:

''(a) REVIEW.—The Administrator [of the National Aeronautics and Space Administration] shall enter into appropriate arrangements with the National Academy of Sciences for the conduct of a review of—

''(1) international efforts to determine the extent of life in the universe; and

''(2) enhancements that can be made to the National Aeronautics and Space Administration's efforts to determine the extent of life in the universe.

''(b) ELEMENTS.—The review required by subsection (a) shall include—

''(1) an assessment of the direction of the National Aeronautics and Space Administration's astrobiology initiatives within the Origins program;

''(2) an assessment of the direction of other initiatives carried out by entities other than the National Aeronautics and Space Administration to determine the extent of life in the universe, including other Federal agencies, foreign space agencies, and private groups such as the Search for Extraterrestrial Intelligence Institute;

''(3) recommendations about scientific and technological enhancements that could be made to the National Aeronautics and Space Administration's astrobiology initiatives to effectively utilize the initiatives of the scientific and technical communities; and

''(4) recommendations for possible coordination or integration of National Aeronautics and Space Administration initiatives with initiatives of other entities described in paragraph (2).

''(c) REPORT TO CONGRESS.—Not later than 20 months after the date of the enactment of this Act [Oct. 30, 2000], the Administrator shall transmit to the Congress a report on the results of the review carried out under this section.''

CARBON CYCLE REMOTE SENSING APPLICATIONS RESEARCH

Pub. L. 106–391, title III, § 315, Oct. 30, 2000, 114 Stat. 1595, provided that:

''(a) CARBON CYCLE REMOTE SENSING APPLICATIONS RESEARCH PROGRAM.—

''(1) IN GENERAL.—The Administrator [of the National Aeronautics and Space Administration] shall develop a carbon cycle remote sensing applications research program—

''(A) to provide a comprehensive view of vegetation conditions;

''(B) to assess and model agricultural carbon sequestration; and

''(C) to encourage the development of commercial products, as appropriate.

''(2) USE OF CENTERS.—The Administrator of the National Aeronautics and Space Administration shall use regional earth science application centers to conduct applications research under this section.

''(3) RESEARCHED AREAS.—The areas that shall be the subjects of research conducted under this section include—

''(A) the mapping of carbon-sequestering land use and land cover;

''(B) the monitoring of changes in land cover and management;

''(C) new approaches for the remote sensing of soil carbon; and

''(D) region-scale carbon sequestration estimation.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000 of funds authorized by section 102 [114 Stat. 1581] for fiscal years 2001 through 2002.''

100TH ANNIVERSARY OF FLIGHT EDUCATIONAL INITIATIVE

Pub. L. 106–391, title III, § 317, Oct. 30, 2000, 114 Stat. 1596, provided that:

''(a) EDUCATIONAL INITIATIVE.—In recognition of the 100th anniversary of the first powered flight, the Administrator [of the National Aeronautics and Space Administration], in coordination with the Secretary of Education, shall develop and provide for the distribution, for use in the 2001–2002 academic year and thereafter, of age-appropriate educational materials, for use at the kindergarten, elementary, and secondary levels, on the history of flight, the contribution of flight to global development in the 20th century, the practical benefits of aeronautics and space flight to society, the scientific and mathematical principles used in flight, and any other related topics the Administrator considers appropriate. The Administrator shall integrate into the educational materials plans for the development and flight of the Mars plane.

''(b) REPORT TO CONGRESS.—Not later than December 1, 2000, the Administrator shall transmit a report to the Congress on activities undertaken pursuant to this section.''

EARTH OBSERVING SYSTEM PROGRAM

Pub. L. 102–588, title I, § 102(g), Nov. 4, 1992, 106 Stat. 5111, provided that:

''(1) The Administrator [of the National Aeronautics and Space Administration] shall carry out an Earth Observing System program that addresses the highest priority international climate change research goals as defined by the Committee on Earth and Environmental Sciences and the Intergovernmental Panel on Climate Change.

''(2)(A) Within 180 days after the date of enactment of this Act [Nov. 4, 1992], the Administrator shall submit to Congress a plan which will ensure that the highest priority measurements are maintained on schedule to the greatest extent practicable while lower priority measurements are deferred, deleted, or obtained through other means.

''(B) Within 90 days after the date of enactment of this Act, the Core System of the Earth Observing System Data and Information System, the Administrator shall submit to Congress a Development Plan which—

''(i) identifies the highest risk elements of the development effort and the key advanced technologies required to significantly increase scientific productivity;

''(ii) provides a plan for the development of one or more prototype systems for use in reducing the development risk of critical system elements and obtaining feedback for scientific users;

''(iii) provides a plan for research into key advanced technologies;

''(iv) identifies sufficient resources for carrying out the Development Plan; and

''(v) identifies how the Earth Observing System Data Information System will connect to and utilize other federally-supported research networks, including the National Research and Education Network.''

CONGRESSIONAL FINDINGS AND POLICY

1991—Pub. L. 102–195, §§ 2, 3, Dec. 9, 1991, 105 Stat. 1605, 1606, provided that:

''SEC. 2. FINDINGS.

''Congress finds that—

''(1) the report of the Advisory Committee on the Future of the United States Space Program has provided a framework within which a consensus on the goals of the space program can be developed;

''(2) a balanced civil space science program should be funded at a level of at least 20 percent of the aggregate amount in the budget of the National Aeronautics and Space Administration for 'Research and development' and 'Space flight, control, and data communications';

''(3) development of an adequate data base for life sciences in space will be greatly enhanced through closer scientific cooperation with the Soviet Union, including active use of manned Soviet space stations;

''(4) the space program can make substantial contributions to health-related research and should be an integral part of the Nation's health research and development program;

''(5) Landsat data and the continuation of the Landsat system beyond Landsat 6 are essential to the Mission to Planet Earth and other long-term environmental research programs;

''(6) increased use of defense-related remote sensing data and data technology by civilian agencies and the scientific community can benefit national environmental study and monitoring programs;

''(7) the generation of trained scientists and engineers through educational initiatives and academic research programs outside of the National Aeronautics and Space Administration is essential to the future of the United States civil space program;

''(8) the strengthening and expansion of the Nation's space transportation infrastructure, including the enhancement of launch sites and launch site support facilities, are essential to support the full range of the Nation's space-related activities;

''(9) the aeronautical program contributes to the Nation's technological competitive advantage, and it has been a key factor in maintaining preeminence in aviation over many decades; and

''(10) the National Aero Space Plane program can have benefits to the military and civilian aviation programs from the new and innovative technologies developed in propulsion systems, aerodynamics, and control systems that could be enormous, especially for high-speed aeronautical and space flight.

''SEC. 3. POLICY.

''It is the policy of the United States that—

''(1) the Administrator of the National Aeronautics and Space Administration (hereinafter referred to as the 'Administrator'), in planning for national programs in environmental study and human space flight and exploration, should ensure the resiliency of the space infrastructure;

''(2) a stable and balanced program of civil space science should be planned to minimize future year funding requirements in order to accommodate a steady stream of new initiatives;

''(3) any new launch system undertaken or jointly undertaken by the National Aeronautics and Space Administration should be based on defined mission and program requirements or national policies established by Congress;

''(4) in fulfilling the mission of the National Aeronautics and Space Administration to improve the usefulness, performance, speed, safety, and efficiency of space vehicles, the Administrator should establish a program of research and development to enhance the competitiveness and cost effectiveness of commercial expendable launch vehicles; and

''(5) the National Aeronautics and Space Administration should promote and support efforts to advance scientific understanding by conducting or otherwise providing for research on environmental problems, including global change, ozone depletion, acid precipitation, deforestation, and smog.''

1990—Pub. L. 101–611, title I, §§101, 102, Nov. 16, 1990, 104 Stat. 3188, 3189, provided that:

''SEC. 101. FINDINGS.

''The Congress finds that—

''(1) over the next decade, the United States aeronautics and space program will be directed toward major national priorities of understanding, preserving, and enhancing our global environment, hypersonic transportation, human exploration, and emerging technology commercialization;

''(2) the United States aeronautics and space program is supported by an overwhelming majority of the American people;

''(3) the United States aeronautics and space program genuinely reflects our Nation's pioneer heritage and demonstrates our quest for leadership, economic growth, and human understanding;

''(4) the United States space program is based on a solid record of achievement and continues to promote the objective of international cooperation in the exploration of the planets and the universe;

''(5) the United States aeronautics and space program generates critical technology breakthroughs that benefit our economy through new products and processes that significantly improve our standard of living;

''(6) the United States aeronautics and space program excites the imagination of every generation and can stimulate the youth of our Nation toward the pursuit of excellence in the fields of science, engineering, and mathematics;

''(7) the United States aeronautics and space program contributes to the Nation's technological competitive advantage;

''(8) the United States aeronautics and space program requires a sustained commitment of financial and human resources as a share of the Nation's Gross National Product;

''(9) the United States space transportation system will depend upon a robust fleet of space shuttle orbiters and expendable and reusable launch vehicles and services;

''(10) the United States space program will be advanced with an assured funding stream for the development of a permanently manned space station with research, experimentation, observation, servicing, manufacturing, and staging capabilities for lunar and Mars missions;

''(11) the United States aeronautics program has been a key factor in maintaining preeminence in aviation over many decades;

''(12) the United States needs to maintain a strong program with respect to transatmospheric research and technology by developing and demonstrating National Aero-Space Plane technology by a mid-decade date certain;

''(13) the National Aeronautics and Space Administration is primarily responsible for formulating and implementing policy that supports and encourages civil aeronautics and space activities in the United States; and

''(14) commercial activities of the private sector will substantially and increasingly contribute to the strength of both the United States space program and the national economy.

''SEC. 102. POLICY.

''It is declared to be national policy that the United States should—

''(1) rededicate itself to the goal of leadership in critical areas of space science, space exploration, and space commercialization;

''(2) increase its commitment of budgetary resources for the space program to reverse the dramatic decline in real spending for such program since the achievements of the Apollo moon program;

''(3) ensure that the long-range environmental impact of all activities carried out under this title [enacting sections 2459a, 2465a, and 2471a of this title and section 1535 of Title 15, Commerce and Trade, amending section 2473 of this title and sections 2601, 2602, 2604, 2614, and 2623 of former Title 49, Transportation, and enacting provisions set out as notes under this section and sections 2459, 2465a, and 2471 of this title] are fully understood and considered;

''(4) promote and support efforts to advance scientific understanding by conducting or otherwise providing for research on environmental problems, including global change, ozone depletion, acid precipitation, deforestation, and smog;

''(5) forge a robust national space program that maintains a healthy balance between manned and unmanned space activities and recognizes the mutually reinforcing benefits of both;

''(6) maintain an active fleet of space shuttle orbiters, including an adequate provision of structural spare parts, and evolve the orbiter design to improve safety and performance, and reduce operational costs;

''(7) sustain a mixed fleet by utilizing commercial expendable launch vehicle services to the fullest extent practicable;

''(8) support an aggressive program of research and development designed to enhance the United States preeminence in launch vehicles;

''(9) continue and complete on schedule the development and deployment of a permanently manned, fully capable, space station;

''(10) develop an advanced, high pressure space suit to support extravehicular activity that will be required for Space Station Freedom when Assembly Complete is reached;

''(11) establish a dual capability for logistics and resupply of the space station utilizing the space shuttle and expendable launch vehicles, including commercial services if available;

''(12) continue to seek opportunities for international cooperation in space and fully support international cooperative agreements;

''(13) maintain an aggressive program of aeronautical research and technology development designed to enhance the United States preeminence in civil and military aviation and improve the safety and efficiency of the United States air transportation system;

''(14) conduct a program of technology maturation, including flight demonstration in 1997, to prove the feasibility of an air-breathing, hypersonic aerospace plane capable of single-stage-to-orbit operation and hypersonic cruise in the atmosphere;

''(15) seek innovative technologies that will make possible advanced human exploration initiatives, such as the establishment of a lunar base and the succeeding mission to Mars, and provide high yield technology advancements for the national economy; and

''(16) enhance the human resources of the Nation and the quality of education.''

LIFE SCIENCES STRATEGIC PLAN

Pub. L. 101–611, title I, § 113, Nov. 16, 1990, 104 Stat. 3199, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the current knowledge base in life sciences is not compatible with the National Aeronautics and Space Administration's current objectives in space, and the National Aeronautics and Space Administration lacks an adequate strategic plan to acquire a knowledge base;

''(2) it is critical to the success of manned missions in space, be they commercial operations of microgravity laboratories or manned missions to Mars, that a realistic appraisal of the influences of the space environment on biological systems is completed and appropriate protective countermeasures developed;

''(3) the space station is rapidly approaching design maturity without a corresponding development of the physiological and other human factors knowledge base necessary for long-term manned operations in space; and

''(4) space station laboratory hardware specifications are being fixed before fully establishing the objectives and requirements for life sciences research.

''(b) STRATEGIC PLAN.—The Administration shall—

''(1) review currently proposed manned space flight missions in order to—

''(A) identify the physiological and other human factors knowledge base necessary to determine the human capacity to adapt to and perform effectively in the space environment according to mission requirements, including identifying which life sciences parameters must be measured and which technologies, processes, and procedures must be developed; and

''(B) develop a schedule indicating when specific components of information, technologies, processes, or procedures identified under subparagraph (A) will need to be acquired or developed in order to verify that human adaptability requirements of manned space flight missions can be achieved;

''(2) develop a strategy plan for life sciences research and technology development sufficient to accomplish the life sciences knowledge base acquisition schedule developed under paragraph (1)(B), including—

''(A) a crew certification plan setting acceptable crew conditioning standards for Extended Duration Orbiter operations and verifying countermeasures sufficient to meet those standards before actual Extended Duration Orbiter operations; and

''(B) a life sciences implementation plan for the design and development of the space station, to be provided as part of the Preliminary Design Review for the space station, and to include crew adaptability standards; and

''(3) verify the physiological and technical feasibility of the life sciences implementation plan developed under paragraph (2)(B), as part of the Critical Design Review for the space station.''

NATIONAL AERO-SPACE PLANE PROGRAM

Pub. L. 101–611, title I, § 116, Nov. 16, 1990, 104 Stat. 3202, provided that:

''(a) NATIONAL AERO-SPACE PLANE PROGRAM.—The Secretary of Defense (hereafter in this section referred to as the 'Secretary') and the Administrator shall jointly pursue on a high priority basis a National Aero-Space Plane program whose objective shall be the development and demonstration, by 1997, of a primarily air breathing single-stage-to-orbit and long range hypersonic cruise research flight vehicle. The program shall be a research program, and to the extent practicable technological information developed shall be transferred to the military and to the domestic civil aviation and other private industries.

''(b) MANAGEMENT PLAN.—

''(1) The Secretary and the Adminstrator [sic] shall jointly develop a management plan for the program established under subsection (a), which shall include goals, major tasks, anticipated schedules, organizational structure, funding profiles, details of the respective responsibilities of the Secretary and the Administrator, and resource procurement strategies.

''(2) The management plan developed pursuant to paragraph (1) shall be submitted to the Congress within 120 days after the date of enactment of this Act [Nov. 16, 1990].''

NATIONAL AERONAUTICS AND SPACE CAPITAL DEVELOPMENT PROGRAM

Section 101 of Pub. L. 100–685 provided that: ''Congress finds that—

''(1) in accordance with section 106 of the National Aeronautics and Space Administration Authorization Act of 1988 (Public Law 100–147) [set out below], a space station, hereafter referred to as the United States International Space Station, shall be constructed in order to establish a permanent presence for man in space for the following purposes—

''(A) the conduct of scientific experiments, applications experiments, and engineering experiments;

''(B) the servicing, rehabilitation, and construction of satellites and space vehicles;

''(C) the development and demonstration of commercial products and processes; and

''(D) the establishment of a space base for other civilian and commercial space activities including an outpost for further exploration of the solar system;

''(2) expendable launch vehicles should be used to launch those payloads that do not require the presence of man;

''(3) the space shuttle launches should be used to fulfill the Nation's needs for manned access to space;

''(4) preeminence in space and aeronautics is key to the national security and economic well being of the United States;

''(5) United States space policy needs long-range goals and direction in order to provide understanding for near-term space projects and programs;

''(6) over the next five years the National Aeronautics and Space Administration, hereafter referred to as the 'Administration', should pursue leadership in science through an aggressive set of major and

moderate missions while maintaining a robust series of cost effective missions that can provide frequent flight opportunities to the scientific community[;]

''(7) over the next five years the Administration should prepare for the transition to the United States International Space Station of those science and technology programs that can be most efficiently and effectively conducted on that facility;

''(8) the Administration should encourage the United States private sector investment in space and, to the maximum extent practicable provide frequent flight opportunities for the development of technologies, processes and products that benefit from the space environment;

''(9) the Administration should enhance the existing space transportation capability through a robust mixed fleet of manned and unmanned vehicles in order to increase the reliability, productivity, and efficiency and reduce the cost of the Nation's access to space;

''(10) the United States faces an increasingly successful foreign challenge to its traditional preeminent position in aeronautics which is rapidly reducing its lead in both civil and military aircraft;

''(11) NASA's personnel are an integral component and resource for the Nation's space program, and an innovative personnel system should be developed;

''(12) the establishment of a permanent presence in space leading ultimately to space settlements is fully consistent with the goals of the National Aeronautics and Space Act of 1958 [this chapter];

''(13) the United States civil space activities should contribute significantly to enhancing the Nation's scientific and technological leadership, economy, pride, and sense of well-being, as well as United States world prestige and leadership;

''(14) civil sector activities should be comprised of a balanced strategy of research, development, operations, and technology for science, exploration, and appropriate applications;

''(15) assured access to space, sufficient to achieve all United States space goals, is an essential element of United States space policy, and the United States space transportation systems must provide a balanced, robust, and flexible capability with sufficient resiliency to allow continued operation despite failures in any single system;

''(16) the goals of the United States space transportation system are—

''(A) to achieve and maintain safe and reliable access to, transportation in, and return from, space;

''(B) to exploit the unique attributes of manned and unmanned launch and recovery systems;

''(C) to encourage, to the maximum extent feasible, the development and use of United States private sector space transportation capabilities; and

''(D) to reduce the costs of space transportation and related services;

''(17) recognizing that communications advancements are critical to all United States space activities, the Administration should continue research and development efforts for future advances in space communications technologies;

''(18) the goal of aeronautical research and technology development and validation activities should be to contribute to a national technology base that will enhance United States preeminence in civil and military aviation and improve the safety and efficiency of the United States air transportation system; and

''(19) aeronautical research and technology development and validation activities should—

''(A) emphasize emerging technologies with potential for breakthrough advances;

''(B) consist of—

''(i) fundamental research in all aeronautical disciplines, aimed at greater understanding of aeronautical phenomena and development of new aeronautical concepts; and

''(ii) technology development and validation activities aimed at laboratory-scale development and proof-of-concept demonstration of selected concepts with high payoff potential;

''(C) assure maintenance of robust aeronautical laboratories, including a first-rate technical staff and modern national facilities for the conduct of research and testing activities;

''(D) be conducted with the close, active participation of the United States aircraft industry so as to accelerate the transfer of research results to aviation products;

''(E) include providing technical assistance and facility support to other government agencies and United States industry;

''(F) include conducting joint projects with other government agencies where such projects contribute materially to the goals set forth in this section;

''(G) assure strong participation of United States universities both in carrying out aeronautical research and training future aeronautical research personnel; and

''(H) be conducted, where practical, so that United States industry receives research results before foreign competitors.''

SPACE SETTLEMENTS

Section 217 of Pub. L. 100–685 provided that:

''(a) The Congress declares that the extension of human life beyond Earth's atmosphere, leading ultimately to the establishment of space settlements, will fulfill the purposes of advancing science, exploration, and development and will enhance the general welfare.

''(b) In pursuit of the establishment of an International Space Year in 1992 pursuant to Public Law 99–170 [Dec. 5, 1985, 99 Stat. 1012], the United States shall exercise leadership and mobilize the international community in furtherance of increasing mankind's knowledge and exploration of the solar system.

''(c) Once every 2 years after the date of the enactment of this Act [Nov. 17, 1988], the National Aeronautics and Space Administration shall submit a report to the President and to the Congress which—

''(1) provides a review of all activities undertaken under this section including an analysis of the focused research and development activities on the Space Station, Moon, and other outposts that are necessary to accomplish a manned mission to Mars;

''(2) analyzes ways in which current science and technology can be applied in the establishment of space settlements;

''(3) identifies scientific and technological capacity for establishing space settlements, including a description of what steps must be taken to develop such capacity;

''(4) examines alternative space settlement locations and architectures;

''(5) examines the status of technologies necessary for extraterrestrial resource development and use and energy production;

''(6) reviews the ways in which the existence of space settlements would enhance science, exploration, and development;

''(7) reviews mechanisms and institutional options which could foster a broad-based plan for international cooperation in establishing space settlements;

''(8) analyzes the economics of financing space settlements, especially with respect to private sector and international participation;

''(9) discusses sociological factors involved in space settlement such as psychology, political science, and legal issues; and

''(10) addresses such other topics as the National Aeronautics and Space Administration considers appropriate.''

[For termination, effective May 15, 2000, of provisions relating to submittal of report to Congress in section 217 of Pub. L. 100–685, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 13 on page 179 of House Document No. 103–7.]

TEN YEAR STRATEGIC PLAN

Title III of Pub. L. 100–685 provided that:

''AERONAUTICS AND SPACE STRATEGIC PLAN

''SEC. 301. The Administrator should develop an aggressive and balanced plan of science and applications including but not limited to—

''(1) the robotic exploration of other solar system bodies;

''(2) the study and observation of other celestial bodies and phenomena at spectral wave lengths and resolutions that will enhance our understanding of the universe;

''(3) the enhanced study and monitoring of Earth as an interacting system;

''(4) the development of a full understanding of the behavior of biological systems in the space environment; and

''(5) the development of a full understanding of physics and chemistry of the macroscopic behavior of materials in the microgravity environment.

''SPACE RESEARCH AND TECHNOLOGY STRATEGIC PLAN

''SEC. 302. The Administrator should develop an aggressive and balanced plan of space research and technology including but not limited to—

''(1) fundamental and innovative research as the seedbed for enabling technologies for future civil space missions;

''(2) focused technology programs keyed to long range, high priority civil space missions;

''(3) technology research and demonstrations, extending laboratory activities from Earth to space-based facilities such as the Space Shuttle, Space Station, orbital platforms, and eventually the Moon and other planetary bodies; and

''(4) cooperation with, and service to, other space program sectors with advanced technology and use of ground and space-based facilities.

''SPACE EXPLORATION STRATEGIC PLAN

''SEC. 303. The Administrator should develop a plan in pursuit of the continued manned exploration of the solar system and low-Earth orbit, including but not limited to—

''(1) the establishment of an operational United States International Space Station that shall be permanently manned; and

''(2) the development of those technologies and systems required for manned exploration of space beyond earth orbit.

''SPACE TRANSPORTATION STRATEGIC PLAN

''SEC. 304. The Administrator should develop a plan to improve the manned and unmanned space transportation system including—

''(1) the continued enhancement of the space shuttle and its ground system in order to increase safety and efficiency and reduce costs;

''(2) the completion of the development of a heavy-lift expendable launch vehicle if consistent with mission requirements of the Administration, the Department of Defense, and other Federal agencies; and

''(3) the initiation of preliminary design activities for the next generation of a manned space launch system beyond the space shuttle.

''AERONAUTICAL RESEARCH AND TECHNOLOGY DEVELOPMENT AND VALIDATION LONG-RANGE PLAN

''SEC. 305. The Administrator should develop a plan in pursuit of—

''(1) a vigorous program in aeronautics research and technology development and validation, emphasizing emerging technologies with the potential for breakthrough advances to enhance United States preeminence in civil and military aviation; and

''(2) in cooperation with the Department of Defense, a technology development program (with an option for a flight demonstration in 1995) to prove the feasibility of an air-breathing hypersonic aerospaceplane capable of single-stage-to-orbit operation and hypersonic cruise in the atmosphere.''

PERMANENTLY MANNED SPACE STATION

Pub. L. 100–147, title I, §§106–112, Oct. 30, 1987, 101 Stat. 863–865, as amended by Pub. L. 102–195, §16, Dec. 9, 1991, 105 Stat. 1614; Pub. L. 105–362, title XI, §1101(c), Nov. 10, 1998, 112 Stat. 3292, provided that:

''SEC. 106. (a) The Administrator is directed to undertake the construction of a permanently manned space station (hereinafter referred to as the 'space station') to become operational in 1995. The space station will be used for the following purposes—

''(1) the conduct of scientific experiments, applications experiments, and engineering experiments;

''(2) the servicing, rehabilitation, and construction of satellites and space vehicles;

''(3) the development and demonstration of commercial products and processes; and

''(4) the establishment of a space base for other civilian and commercial space activities.

''(b) The space station shall be developed and operated in a manner that supports other science and space activities.

''(c) In order to reduce the cost of operations of the space station and its ground support system, the Administrator shall undertake the development of such advanced technologies as may be appropriate within the level of funding authorized in this Act [see Tables for classifications].

''(d) The Administrator shall seek to have portions of the space station constructed and operated by the private sector, where appropriate.

''(e) The Administrator shall promote international cooperation in the space station program by undertaking the development, construction, and operation of the space station in conjunction with (but not limited to) the Governments of Europe, Japan, and Canada.

''(f) The space station shall be designed, developed, and operated in a manner that enables evolutionary enhancement.

''[SEC. 107. Repealed. Pub. L. 105–362, title XI, §1101(c), Nov. 10, 1998, 112 Stat. 3292.]

''SEC. 108. In order to ensure that the development of the space station is part of a balanced civilian space program, the Administrator is instructed to establish as a goal a funding profile that limits (1) space station total annual costs under the capital development plan in section 107 to 25 percent of the total budget request for the National Aeronautics and Space Administration and (2) all space station direct operations costs, except for those costs associated with the utilization of the space station, to 10 percent of the total budget request for the National Aeronautics and Space Administration.

''SEC. 109. (a) It is the sense of the Congress that the launching and servicing of the space station should be accomplished by the most cost-effective use of space transportation systems, including the space shuttle and expendable launch vehicles.

''(b) Not later than January 15, 1988, the Administrator shall submit a preliminary report on the cost-effective use of space transportation systems for the launch of space station elements during the development and operation of the space station. The Administrator shall consider—

''(1) the potential use of future advanced or heavy lift expendable launch vehicles for purposes of the assembly and operation of the space station;

''(2) the use of existing expendable launch vehicles of the National Aeronautics and Space Administration, the Department of Defense, and the Private Sector;

''(3) the requirement for space shuttle launches; and

''(4) the risk of capital losses from the use of expendable launch vehicles and the space shuttle.

''SEC. 110. (a) The Administrator shall set and collect reasonable user fees for the use and maintenance of the space station.

''(b) The Administrator shall set user fees so as to—

''(1) promote the use of the space station consistent with the policy set forth in section 106;

''(2) recover the costs of the use of the space station, including reasonable charges for any enhancement needed for such use; and

''(3) conserve and efficiently allocate the resources of the space station.

''(c) The Administrator may, on a case-by-case basis, waive or modify such user fees when in the Administrator's judgment such waiver or modification will further the goals and purposes of the National Aeronautics and Space Act of 1958 [42 U.S.C. 2451 et seq.], including—

''(1) the advancement of scientific or engineering knowledge;

''(2) international cooperation; and

''(3) the commercial use of space.

''SEC. 111. No later than September 30, 1988, the Administrator shall submit a detailed plan for collecting reimbursements for the utilization of the space station under section 110, including the services to be offered, the methodology and bases by which prices will be charged, and the estimated revenues.

''SEC. 112. The Intergovernmental Agreement currently being negotiated between the United States Government and Canada, Japan, and member governments of the European Space Agency, and the Memorandum of Understanding currently being negotiated between the National Aeronautics and Space Administration and its counterpart agencies in Canada, Japan, and Europe concerning the detailed design, development, construction, operation, or utilization of the space station shall be submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. No such agreement shall take effect until 30 days have passed after the receipt by such committees of the agreement.''

FEASIBILITY STUDY ON FLIGHT OPPORTUNITIES FOR DIVERSE SEGMENT OF AMERICAN PUBLIC

Pub. L. 99–170, title I, § 111, Dec. 5, 1985, 99 Stat. 1016, provided that: ''The Administrator shall initiate an immediate feasibility study to ensure flight opportunities for a diverse segment of the American public, including a physically disabled American.''

NATIONAL COMMISSION ON SPACE

Pub. L. 98–361, title II, July 16, 1984, 98 Stat. 427, as amended by Pub. L. 99–170, title I, § 109, Dec. 5, 1985, 99 Stat. 1016, established a National Commission on Space, required it to study existing and proposed space activities, to formulate an agenda for the civilian space program, to identify long range goals, opportunities, and policy options for the next 20 years, and to submit, within 18 months after establishment, a long range plan for the civilian space activity, and provided that the Commission would cease to exist 60 days after submission of the plan.

EXECUTIVE ORDER NO. 10946

Ex. Ord. No. 10946, May 26, 1961, 26 F.R. 4629, which related to labor disputes at missile and space sites, was revoked by Ex. Ord. No. 11374, Oct. 11, 1967, 32 F.R. 14199, set out below.

EX ORD. NO. 11374. ABOLITION OF MISSILE SITES LABOR COMMISSION

Ex. Ord. No. 11374, Oct. 11, 1967, 32 F.R. 14199, provided:

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. The Missile Sites Labor Commission is hereby abolished and its functions and responsibilities are transferred to the Federal Mediation and Conciliation Service.

SEC. 2. The Director of the Federal Mediation and Conciliation Service shall establish within the Federal Mediation and Conciliation Service such procedures as may be necessary to provide for continued priority for resolution of labor disputes or potential labor disputes at missile and space sites, and shall seek the continued cooperation of manufacturers, contractors, construction concerns, and labor unions in avoiding uneconomical operations and work stoppages at missile and space sites.

SEC. 3. The Department of Defense, the National Aeronautics and Space Administration, and other appropriate government departments and agencies shall continue to cooperate in the avoidance of uneconomical operations and work stoppages at missile and space sites. They shall also assist the Federal Mediation and Conciliation Service in the discharge of its responsibilities under this order.

SEC. 4. All records and property of the Missile Sites Labor Commission are hereby transferred to the Federal Mediation and Conciliation Service.

SEC. 5. Any disputes now before the Missile Sites Labor Commission shall be resolved by the personnel now serving as members of the Missile Sites Labor Commissions under special assignment for such purposes by the Director of the Federal Mediation and Conciliation Service.

SEC. 6. Executive Order No. 10946 of May 26, 1961, is hereby revoked.

LYNDON B. JOHNSON.

EXECUTIVE ORDER NO. 12490

Ex. Ord. No. 12490, Oct. 12, 1984, 49 F.R. 40393, which related to the establishment, functions, administration, and termination of the National Commission on Space, was revoked by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 12675. ESTABLISHING THE NATIONAL SPACE COUNCIL

Ex. Ord. No. 12675, Apr. 20, 1989, 54 F.R. 17691, as amended by Ex. Ord. No. 12712, Apr. 26, 1990, 55 F.R. 18095; Ex. Ord. No. 12869, § 4(f), Sept. 30, 1993, 58 F.R. 51752, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to provide a coordinated process for developing a national space policy and strategy and for monitoring its implementation, it is hereby ordered as follows:

SECTION 1. *Establishment and Composition of the National Space Council.*

(a) There is established the National Space Council (''the Council'').

(b) The Council shall be composed of the following members:

(1) The Vice President, who shall be Chairman of the Council;

(2) The Secretary of State;

(3) The Secretary of the Treasury;

(4) The Secretary of Defense;

(5) The Secretary of Commerce;

(6) The Secretary of Transportation;

(7) The Secretary of Energy;

(8) The Director of the Office of Management and Budget;

(9) The Chief of Staff to the President;

(10) The Assistant to the President for National Security Affairs;

(11) The Assistant to the President for Science and Technology;

(12) The Director of Central Intelligence; and

(13) The Administrator of the National Aeronautics and Space Administration.

(c) The Chairman shall, from time to time, invite the following to participate in meetings of the Council:

(1) The Chairman of the Joint Chiefs of Staff; and

(2) The heads of other executive departments and agencies and other senior officials in the Executive Office of the President.

SEC. 2. *Functions of the Council*. (a) The Council shall advise and assist the President on national space policy and strategy, and perform such other duties as the President may from time to time prescribe.

(b) In addition, the Council is directed to:

(1) review United States Government space policy, including long-range goals, and develop a strategy for national space activities;

(2) develop recommendations for the President on space policy and space-related issues;

(3) monitor and coordinate implementation of the objectives of the President's national space policy by executive departments and agencies; and

(4) foster close coordination, cooperation, and technology and information exchange among the civil, national security, and commercial space sectors, and facilitate resolution of differences concerning major space and space-related policy issues.

(c) The creation and operation of the Council shall not interfere with existing lines of authority and responsibilities in the departments and agencies.

SEC. 3. *Responsibilities of the Chairman*. (a) The Chairman shall serve as the President's principal advisor on national space policy and strategy.

(b) The Chairman shall, in consultation with the members of the Council, establish procedures for the Council and establish the agenda for Council activities.

(c) The Chairman shall report to the President on the activities and recommendations of the Council. The Chairman shall advise the Council as appropriate regarding the President's directions with respect to the Council's activities and national space policy generally.

(d) The Chairman shall authorize the establishment of such committees of the Council, including an executive committee, and of such working groups, composed of senior designees of the Council members and of other officials invited to participate in Council meetings, as he deems necessary or appropriate for the efficient conduct of Council functions.

SEC. 4. *National Space Policy Planning Process*. (a) The Council will establish a process for developing and monitoring the implementation of national space policy and strategy.

(b) To implement this process, each agency represented on the Council shall provide such information regarding its current and planned space activities as the Chairman shall request.

(c) The head of each executive department and agency shall ensure that its space-related activities conform to national space policy and strategy.

SEC. 5. [Revoked by Ex. Ord. No. 12869, § 4(f), Sept. 30, 1993, 58 F.R. 51752.]

SEC. 6. *Microgravity Research Board*. Section 1(c) of Executive Order No. 12660 is amended by deleting ''Economic Policy Council'' and inserting in lieu thereof ''National Space Council.''

SEC. 7. *Administrative Provisions*. (a) The Office of Administration in the Executive Office of the President shall provide the Council with such administrative support on a reimbursable basis as may be necessary for the performance of the functions of the Council.

(b) The President shall appoint an Executive Secretary who shall appoint such staff as may be necessary to assist in the performance of the Council's functions.

(c) All Federal departments, agencies, and interagency councils and committees having an impact on space policy shall extend, as appropriate, such cooperation and assistance to the Council as is necessary to carry out its responsibilities under this order.

(d) The head of each agency serving on the Council or represented on any working group or committee of the Council shall provide such administrative support as may be necessary, in accordance with law and subject to the availability of appropriations, to enable the agency head or its representative to carry out his responsibilities.

SEC. 8. *Report*. The Council shall submit an annual report setting forth its assessment of and recommendations for the space policy and strategy of the United States Government.

§ 2452. Definitions

As used in this chapter—

(1) the term ''aeronautical and space activities'' means (A) research into, and the solution of, problems of flight within and outside the earth's atmosphere, (B) the development, construction, testing, and operation for research purposes of aeronautical and space vehicles, (C) the operation of a space transportation system including the Space Shuttle, upper stages, space platforms, and related equipment, and (D) such other activities as may be required for the exploration of space; and

(2) the term ''aeronautical and space vehicles'' means aircraft, missiles, satellites, and other space vehicles, manned and unmanned, together with related equipment, devices, components, and parts.

(Pub. L. 85–568, title I, § 103, July 29, 1958, 72 Stat. 427; Pub. L. 98–52, title I, § 108, July 15, 1983, 97 Stat. 285.)

REFERENCES IN TEXT

This chapter, referred to in introductory clause, was in the original ''this Act'', meaning Pub. L. 85–568, July 29. 1958, 72 Stat. 426, as amended, known as the National Aeronautics and Space Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

AMENDMENTS

1983—Par. (1)(C), (D). Pub. L. 98–52 added cl. (C) and redesignated former cl. (C) as (D).

DEFINITIONS

Pub. L. 106–391, § 3, Oct. 30, 2000, 114 Stat. 1579, provided that: ''For purposes of this Act [see Tables for classification]—

''(1) the term 'Administrator' means the Administrator of the National Aeronautics and Space Administration;

''(2) the term 'commercial provider' means any person providing space transportation services or other space-related activities, the primary control of which is held by persons other than a Federal, State, local, or foreign government;

''(3) the term 'critical path' means the sequence of events of a schedule of events under which a delay in any event causes a delay in the overall schedule;

''(4) the term 'grant agreement' has the meaning given that term in section 6302(2) of title 31, United States Code;

''(5) the term 'institution of higher education' has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

''(6) the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States; and

''(7) the term 'United States commercial provider' means a commercial provider, organized under the laws of the United States or of a State, which is—

''(A) more than 50 percent owned by United States nationals; or

''(B) a subsidiary of a foreign company and the Secretary of Commerce finds that—

''(i) such subsidiary has in the past evidenced a substantial commitment to the United States market through—

''(I) investments in the United States in long-term research, development, and manufacturing (including the manufacture of major components and subassemblies); and

''(II) significant contributions to employment in the United States; and

''(ii) the country or countries in which such foreign company is incorporated or organized, and, if appropriate, in which it principally conducts its business, affords reciprocal treatment to companies described in subparagraph (A) comparable to that afforded to such foreign company's subsidiary in the United States, as evidenced by—

''(I) providing comparable opportunities for companies described in subparagraph (A) to participate in Government sponsored research and development similar to that authorized under this Act;

''(II) providing no barriers to companies described in subparagraph (A) with respect to local investment opportunities that are not provided to foreign companies in the United States; and

''(III) providing adequate and effective protection for the intellectual property rights of companies described in subparagraph (A).''

§ 2453. Transfer of related functions to Administration

(a) Functions of other departments and agencies; transfer of records, etc.

Subject to the provisions of this section, the President, for a period of four years after July 29, 1958, may transfer to the Administration any functions (including powers, duties, activities, facilities, and parts of functions) of any other department or agency of the United States, or of any officer or organizational entity thereof, which relate primarily to the functions, powers, and duties of the Administration as prescribed by section 2473 of this title. In connection with any such transfer, the President may, under this section or other applicable authority, provide for appropriate transfers of records, property, civilian personnel, and funds.

(b) Transfers prior to January 1, 1959; report to Congress

Whenever any such transfer is made before January 1, 1959, the President shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate a full and complete report concerning the nature and effect of such transfer.

(c) Transfers after December 31, 1958; report to Congress; approval of Congress

After December 31, 1958, no transfer shall be made under this section until (1) a full and complete report concerning the nature and effect of such proposed transfer has been transmitted by the President to the Congress, and (2) the first period of sixty calendar days of regular session of the Congress following the date of receipt of such report by the Congress has expired without the adoption by the Congress of a concurrent resolution stating that the Congress does not favor such transfer.

(Pub. L. 85–568, title III, § 302, July 29, 1958, 72 Stat. 433.)

EX. ORD. NO. 10783. TRANSFER OF FUNCTIONS FROM DEPARTMENT OF DEFENSE TO NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Ex. Ord. No. 10783, Oct. 1, 1958, 23 F.R. 7643, provided:

SECTION 1. All functions (including powers, duties, activities, and parts of functions) of the Department of Defense, or of any officer or organizational entity of the Department of Defense, with respect to the following are hereby transferred to the National Aeronautics and Space Administration:

(a) The United States scientific satellite project (Project VANGUARD).

(b) Specific projects of the Advanced Research Projects Agency [now Defense Advanced Research Projects Agency] and of the Department of the Air Force which relate to space activities (including lunar probes, scientific satellites and superthrust boosters) within the scope of the functions developing upon the National Aeronautics and Space Administration under the provisions of the National Aeronautics and Space Act of 1958 [this chapter], and which shall be more particularly described in one or more supplementary Executive orders hereafter issued.

SEC. 2. (a) The Secretary of the Treasury shall immediately transfer to the appropriation of the National Aeronautics and Space Administration for ''Research and Development'', from such appropriations of the Department of Defense as the Secretary of Defense shall designate, the following amounts:

(1) In connection with the transfer of functions provided for in section 1(a) hereof, such amounts as shall be determined by the Director of the Bureau of the Budget [now Office of Management and Budget] pursuant to section 202(b) of the Budget and Accounting Procedures Act of 1950 [see 31 U.S.C. 1531] and section 1(k) of Executive Order No. 10530 of May 1, 1954 [set out as a note under section 301 of Title 3, The President].

(2) In connection with the transfer of functions of the Advanced Research Projects Agency [now Defense Advanced Research Projects Agency] provided for in section 1(b) hereof, $59,200,000.

(3) In connection with the transfer of functions of the Department of the Air Force provided for in section 1(b) hereof, $57,800,000.

(b) In connection with the transfer of functions provided for in section 1, appropriate transfers of records, property, facilities, and civilian personnel shall be carried out as may be agreed upon from time to time by the National Aeronautics and Space Administration and the Department of Defense.

DWIGHT D. EISENHOWER.

EX. ORD. NO. 10793. TRANSFER OF CERTAIN FUNCTIONS FROM DEPARTMENT OF DEFENSE TO NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Ex. Ord. No. 10793, Dec. 3, 1958, 23 F.R. 9405, provided:

By virtue of the authority vested in me by the National Aeronautics and Space Act of 1958 (Public Law 85–568; 72 Stat. 426) [this chapter] and section 202(b) of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c(b) [see 31 U.S.C. 1531]), and as President of the United States, it is ordered as follows:

SECTION 1. Those functions (including powers, duties, activities, and parts of functions) of the Department of the Army or of any officer or organizational entity thereof which are now being performed at the Jet Propulsion Laboratory of the California Institute of Technology, near Pasadena, California (hereinafter referred to as the Laboratory), except so much thereof as relates primarily to military operations and weapon system development programs, are hereby transferred to the National Aeronautics and Space Administration.

SEC. 2. In connection with the transfer of functions provided for in section 1 of this order, there is hereby transferred to the National Aeronautics and Space Administration custody, possession, and control of the Government-owned property occupied or utilized by the Laboratory except those items of equipment therein which relate primarily to military operations and weapon system development programs of the Department of the Army.

SEC. 3. The Department of Defense and the National Aeronautics and Space Administration shall effect necessary administrative arrangements, including appropriate transfer of records, in connection with the transfers of functions and property provided for in sections 1 and 2 hereof. In order to provide for the most effective

utilization of scientific and engineering resources, the National Aeronautics and Space Administration shall to the extent permitted by its own programs and facilities provide research and development support at the Laboratory in respect of military matters to the Department of Defense.

SEC. 4. The Secretary of the Treasury shall immediately transfer from such appropriations of the Department of Defense pertinent to the functions transferred by section 1 of this order as the Secretary of Defense shall designate, to such appropriations of the National Aeronautics and Space Administration as the Administrator of the National Aeronautics and Space Administration shall specify, the amount of $4,078,250.

DWIGHT D. EISENHOWER.

TRANSFER PLAN

Mar. 15, 1960, 25 F.R. 2151

Transmitted by the President and delivered to the Congress January 14, 1960, pursuant to the provisions of section 302 of the National Aeronautics and Space Act of 1958 (72 Stat. 433) [this section]

MAKING CERTAIN TRANSFERS FROM THE DEPARTMENT OF DEFENSE TO THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SECTION 1. Those functions (including powers, duties, activities, and parts of functions) of the Department of Defense, or of any officer or organizational entity thereof, relating to the development of space vehicle systems (excluding ballistic missiles) and research connected therewith, which are being performed by the Army Ballistic Missile Agency of the Department of the Army, or by any officer or organizational entity of the said Agency, are transferred to the National Aeronautics and Space Administration.

SEC. 2. (a) The following shall be transferred to the National Aeronautics and Space Administration, pursuant to authority conferred by the provisions of section 302(a) of the National Aeronautics and Space Act of 1958 [this section] and other applicable authority, at such time or times as may be appropriate:

(1) So much of the unexpended balances of appropriations, allocations, and other funds of the Department of Defense, available or to be made available, as the Director of the Bureau of the Budget [now Office of Management and Budget] shall determine to relate to the functions transferred by the provisions of section 1 of this transfer plan and to be needed by the National Aeronautics and Space Administration in connection with those functions.

(2) To the extent needed by the National Aeronautics and Space Administration in connection with the aforesaid transferred functions, (i) civilian personnel employed in the Development Operations Division of the Army Ballistic Missile Agency, and other civilian personnel employed in the Department of the Army for administrative and technical support of the Development Operations Division, together with their respective positions, and (ii) records and property of the Department of Defense (including those of any organizational entity of the Department of Defense) relating to the said transferred functions. The Secretary of Defense and the Administrator of the National Aeronautics and Space Administration, jointly, or, to any extent that they shall fail to agree, the Director of the Bureau of the Budget, shall (A) determine the number of employees to be so transferred and the identity of the particular employees who are to be transferred, (B) designate the specific records and property to be transferred, and (C) fix the date or dates of these transfers.

(b) Without limiting the foregoing provisions of this transfer plan, the functions transferred to the National Aeronautics and Space Administration by the provisions of section 1 of this transfer plan shall include so much of the functions of the Department of Defense, or of any officer or organizational entity thereof, as relate to the appointment and pay of civilian personnel employed in the Development Operations Division of the Army Ballistic Missile Agency, including authority to continue certain transferred positions in grades 16, 17, and 18 of the General Schedule of the Classification Act of 1949, as amended, pursuant to the provisions of section 1, of Public Law 86–377 [see sections 3324 and 5708 of Title 5, Government Organization and Employees], and authority to continue certain transferred positions requiring the services of specially qualified scientists or professional personnel pursuant to the provisions of section 2 of Public Law 86–377 [section 1581 of Title 10, Armed Forces].

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate transfers under the foregoing provisions of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 3. The provisions of this transfer plan shall become effective upon the expiration of the first period of sixty calendar days of regular session of the Congress following the date stated in the heading hereof unless the Congress has during that period adopted a concurrent resolution stating that Congress does not favor this transfer plan. Thereafter, as promptly as may be, this transfer plan shall be published in the Federal Register.

§ 2454. Access to information

(a) Information obtained or developed by the Administrator in the performance of his functions under this chapter shall be made available for public inspection, except (A) information authorized or required by Federal statute to be withheld, (B) information classified to protect the national security, and (C) information described in subsection (b) of this section: *Provided*, That nothing in this chapter shall authorize the withholding of information by the Administrator from the duly authorized committees of the Congress.

(b) The Administrator, for a period of up to 5 years after the development of information that results from activities conducted under an agreement entered into under section 2473(c)(5) and (6) of this title, and that would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of section 552(b)(4) of title 5 if the information had been obtained from a non-Federal party participating in such an agreement, may provide appropriate protections against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5.

(Pub. L. 85–568, title III, § 303, July 29, 1958, 72 Stat. 433; Pub. L. 102–588, title V, § 509, Nov. 4, 1992, 106 Stat. 5129.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 85–568, July 29, 1958, 72 Stat. 426, as amended, known as the National Aeronautics and Space Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–588 designated existing provisions as subsec. (a), substituted ''(B)'' for ''and (B)'', inserted cl. (C), and added subsec. (b).

§ 2455. Security requirements

(a) Establishment; investigations; referral to Federal Bureau of Investigation

The Administrator shall establish such security requirements, restrictions, and safeguards as he deems necessary in the interest of the national security. The Administrator may arrange with the Director of the Office of Personnel Management for the conduct of such security or other personnel investigations of the Administration's officers, employees, and consultants, and its contractors and subcontractors and their officers and employees, actual or prospective, as he deems appropriate; and if any such investigation develops any data reflecting that the individual who is the subject thereof is of questionable loyalty the matter shall be referred to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Administrator.

(b) Access to Restricted Data of Atomic Energy Commission

The Atomic Energy Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee, or prospective licensee of the Atomic Energy Commission or any other person authorized to have access to Restricted Data by the Atomic Energy Commission under 2165(b) of this title, to permit any member, officer, or employee of the Council, or the Administrator, or any officer, employee, member of an advisory committee, contractor, subcontractor, or officer or employee of a contractor or subcontractor of the Administration, to have access to Restricted Data relating to aeronautical and space activities which is required in the performance of his duties and so certified by the Council or the Administrator, as the case may be, but only if (1) the Council or Administrator or designee thereof has determined, in accordance with the established personnel security procedures and standards of the Council or Administration, that permitting such individual to have access to such Restricted Data will not endanger the common defense and security, and (2) the Council or Administrator or designee thereof finds that the established personnel and other security procedures and standards of the Council or Administration are adequate and in reasonable conformity to the standards established by the Atomic Energy Commission under section 2165 of this title. Any individual granted access to such Restricted Data pursuant to this subsection may exchange such Data with any individual who (A) is an officer or employee of the Department of Defense, or any department or agency thereof, or a member of the armed forces, or a contractor or subcontractor of any such department, agency, or armed force, or an officer or employee of any such contractor or subcontractor, and (B) has been authorized to have access to Restricted Data under the provisions of section 2163 of this title.

(Pub. L. 85–568, title III, § 304(a), (b), July 29, 1958, 72 Stat. 433, 434; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 304 of Pub. L. 85–568. Subsecs. (c) and (d) of section 304 are classified to sections 799 and 1114, respectively, of Title 18, Crimes and Criminal Procedure. Subsec. (e) of section 304 is classified to section 2456 of this title.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (a), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

ABOLITION OF NATIONAL AERONAUTICS AND SPACE COUNCIL

The National Aeronautics and Space Council, including office of Executive Secretary of Council, together with functions of Council, abolished by section 3(a)(4) of Reorg. Plan No. 1 of 1973, 38 F.R. 9579, 87 Stat. 1089, effective July 1, 1973, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2456. Permission to use firearms

The Administrator may direct such of the officers and employees of the Administration as he deems necessary in the public interest to carry firearms while in the conduct of their official duties. The Administrator may also authorize such of those employees of the contractors and subcontractors of the Administration engaged in the protection of property owned by the United States and located at facilities owned by or contracted to the United States as he deems necessary in the public interest, to carry firearms while in the conduct of their official duties.

(Pub. L. 85–568, title III, § 304(e), July 29, 1958, 72 Stat. 435.)

CODIFICATION

Section is comprised of subsec. (e) of section 304 of Pub. L. 85–568. Subsecs. (a) and (b) of section 304 are classified to section 2455 of this title. Subsecs. (c) and (d) of section 304 are classified to sections 799 and 1114, respectively, of Title 18, Crimes and Criminal Procedure. Subsec. (f) of section 304 is classified to section 2456a of this title.

§ 2456a. Arrest authority

Under regulations to be prescribed by the Administrator and approved by the Attorney General of the United States, those employees of the Administration and of its contractors and subcontractors authorized to carry firearms under section 2456 of this title may arrest without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony. Persons granted authority to make arrests by this section may exercise that authority only while guarding and protecting property owned or leased by, or under the control of, the United States under the administration and control of the Administration or one

of its contractors or subcontractors, at facilities owned by or contracted to the Administration.

(Pub. L. 85–568, title III, § 304(f), as added Pub. L. 100–685, title II, § 206, Nov. 17, 1988, 102 Stat. 4090.)

CODIFICATION

Section is comprised of subsec. (f) of section 304 of Pub. L. 85–568. Subsecs. (a) and (b) of section 304 are classified to section 2455 of this title. Subsecs. (c) and (d) of section 304 are classified to sections 799 and 1114, respectively, of Title 18, Crimes and Criminal Procedure. Subsec. (e) of section 304 is classified to section 2456 of this title.

§ 2457. Property rights in inventions

(a) Exclusive property of United States; issuance of patent

Whenever any invention is made in the performance of any work under any contract of the Administration, and the Administrator determines that—

(1) the person who made the invention was employed or assigned to perform research, development, or exploration work and the invention is related to the work he was employed or assigned to perform, or that it was within the scope of his employment duties, whether or not it was made during working hours, or with a contribution by the Government of the use of Government facilities, equipment, materials, allocated funds, information proprietary to the Government, or services of Government employees during working hours; or

(2) the person who made the invention was not employed or assigned to perform research, development, or exploration work, but the invention is nevertheless related to the contract, or to the work or duties he was employed or assigned to perform, and was made during working hours, or with a contribution from the Government of the sort referred to in clause (1),

such invention shall be the exclusive property of the United States, and if such invention is patentable a patent therefor shall be issued to the United States upon application made by the Administrator, unless the Administrator waives all or any part of the rights of the United States to such invention in conformity with the provisions of subsection (f) of this section.

(b) Contract provisions for furnishing reports of inventions, discoveries, improvements, or innovations

Each contract entered into by the Administrator with any party for the performance of any work shall contain effective provisions under which such party shall furnish promptly to the Administrator a written report containing full and complete technical information concerning any invention, discovery, improvement, or innovation which may be made in the performance of any such work.

(c) Patent application

No patent may be issued to any applicant other than the Administrator for any invention which appears to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (hereafter in this section referred to as the ''Director'') to have significant utility in the conduct of aeronautical and space activities unless the applicant files with the Director, with the application or within thirty days after request therefor by the Director, a written statement executed under oath setting forth the full facts concerning the circumstances under which such invention was made and stating the relationship (if any) of such invention to the performance of any work under any contract of the Administration. Copies of each such statement and the application to which it relates shall be transmitted forthwith by the Director to the Administrator.

(d) Issuance of patent to applicant; request by Administrator; notice; hearing; determination; review

Upon any application as to which any such statement has been transmitted to the Administrator, the Director may, if the invention is patentable, issue a patent to the applicant unless the Administrator, within ninety days after receipt of such application and statement, requests that such patent be issued to him on behalf of the United States. If, within such time, the Administrator files such a request with the Director, the Director shall transmit notice thereof to the applicant, and shall issue such patent to the Administrator unless the applicant within thirty days after receipt of such notice requests a hearing before the Board of Patent Appeals and Interferences on the question whether the Administrator is entitled under this section to receive such patent. The Board may hear and determine, in accordance with rules and procedures established for interference cases, the question so presented, and its determination shall be subject to appeal by the applicant or by the Administrator to the United States Court of Appeals for the Federal Circuit in accordance with procedures governing appeals from decisions of the Board of Patent Appeals and Interferences in other proceedings.

(e) False representations; request for transfer of title to patent; notice; hearing; determination; review

Whenever any patent has been issued to any applicant in conformity with subsection (d) of this section, and the Administrator thereafter has reason to believe that the statement filed by the applicant in connection therewith contained any false representation of any material fact, the Administrator within five years after the date of issuance of such patent may file with the Director a request for the transfer to the Administrator of title to such patent on the records of the Director. Notice of any such request shall be transmitted by the Director to the owner of record of such patent, and title to such patent shall be so transferred to the Administrator unless within thirty days after receipt of such notice such owner of record requests a hearing before the Board of Patent Appeals and Interferences on the question whether any such false representation was contained in such statement. Such question shall be heard and determined, and determination thereof shall be subject to review, in the manner prescribed by subsection (d) of this section for questions arising thereunder. No request made by the Administrator under

this subsection for the transfer of title to any patent, and no prosecution for the violation of any criminal statute, shall be barred by any failure of the Administrator to make a request under subsection (d) of this section for the issuance of such patent to him, or by any notice previously given by the Administrator stating that he had no objection to the issuance of such patent to the applicant therefor.

(f) Waiver of rights to inventions; Inventions and Contributions Board

Under such regulations in conformity with this subsection as the Administrator shall prescribe, he may waive all or any part of the rights of the United States under this section with respect to any invention or class of inventions made or which may be made by any person or class of persons in the performance of any work required by any contract of the Administration if the Administrator determines that the interests of the United States will be served thereby. Any such waiver may be made upon such terms and under such conditions as the Administrator shall determine to be required for the protection of the interests of the United States. Each such waiver made with respect to any invention shall be subject to the reservation by the Administrator of an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government pursuant to any treaty or agreement with the United States. Each proposal for any waiver under this subsection shall be referred to an Inventions and Contributions Board which shall be established by the Administrator within the Administration. Such Board shall accord to each interested party an opportunity for hearing, and shall transmit to the Administrator its findings of fact with respect to such proposal and its recommendations for action to be taken with respect thereto.

(g) Repealed. Pub. L. 96–517, § 7(b), Dec. 12, 1980, 94 Stat. 3027

(h) Protection of title

The Administrator is authorized to take all suitable and necessary steps to protect any invention or discovery to which he has title, and to require that contractors or persons who retain title to inventions or discoveries under this section protect the inventions or discoveries to which the Administration has or may acquire a license of use.

(i) Administration as defense agency

The Administration shall be considered a defense agency of the United States for the purpose of chapter 17 of title 35.

(j) Definitions

As used in this section—

(1) the term ''person'' means any individual, partnership, corporation, association, institution, or other entity;

(2) the term ''contract'' means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder; and

(3) the term ''made'', when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

(k) Objects intended for launch, launched, or assembled in outer space

Any object intended for launch, launched, or assembled in outer space shall be considered a vehicle for the purpose of section 272 of title 35.

(*l*) Use or manufacture of patented inventions incorporated in space vehicles launched for persons other than United States

The use or manufacture of any patented invention incorporated in a space vehicle launched by the United States Government for a person other than the United States shall not be considered to be a use or manufacture by or for the United States within the meaning of section 1498(a) of title 28, unless the Administration gives an express authorization or consent for such use or manufacture.

(Pub. L. 85–568, title III, § 305, July 29, 1958, 72 Stat. 435; Pub. L. 96–517, § 7(b), Dec. 12, 1980, 94 Stat. 3027; Pub. L. 97–96, § 7, Dec. 21, 1981, 95 Stat. 1210; Pub. L. 97–164, title I, § 162(3), Apr. 2, 1982, 96 Stat. 49; Pub. L. 98–622, title II, § 205(c), Nov. 8, 1984, 98 Stat. 3388; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(b)(20)], Nov. 29, 1999, 113 Stat. 1536, 1501A–585.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–113 substituted ''Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (hereafter in this section referred to as the 'Director')'' for ''Commissioner of Patents'' and substituted ''Director'' for ''Commissioner'' wherever appearing.

Subsecs. (d), (e). Pub. L. 106–113, § 1000(a)(9) [title IV, § 4732(b)(20)(B)], substituted ''Director'' for ''Commissioner'' wherever appearing.

1984—Subsec. (d). Pub. L. 98–622, § 205(c)(1), substituted ''the Board of Patent Appeals and Interferences'' for ''a Board of Patent Interferences'' and ''the Board of Patent Interferences''.

Subsec. (e). Pub. L. 98–622, § 205(c)(2), substituted ''the Board of Patent Appeals and Interferences'' for ''a Board of Patent Interferences''.

1982—Subsec. (d). Pub. L. 97–164 substituted ''United States Court of Appeals for the Federal Circuit'' for ''Court of Customs and Patent Appeals''.

1981—Subsecs. (k), (*l*). Pub. L. 97–96 added subsecs. (k) and (*l*).

1980—Subsec. (g). Pub. L. 96–517 repealed subsec. (g) which related to license regulations.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98–622 set out as a note under section 41 of Title 35, Patents.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–517 effective July 1, 1981, but implementing regulations authorized to be issued

earlier, see section 8(f) of Pub. L. 96–517, set out as a note under section 41 of Title 35, Patents.

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING NATIONAL SPACE PROGRAM CASES

Excusal of delayed fees or actions affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, see Pub. L. 92–34, June 30, 1971, 85 Stat. 87, set out as a note under section 111 of Title 35, Patents.

§ 2458. Contributions awards

(a) Applications; referral to Board; hearing; recommendations; determination by Administrator

Subject to the provisions of this section, the Administrator is authorized, upon his own initiative or upon application of any person, to make a monetary award, in such amount and upon such terms as he shall determine to be warranted, to any person (as defined by section 2457 of this title) for any scientific or technical contribution to the Administration which is determined by the Administrator to have significant value in the conduct of aeronautical and space activities. Each application made for any such award shall be referred to the Inventions and Contributions Board established under section 2457 of this title. Such Board shall accord to each such applicant an opportunity for hearing upon such application, and shall transmit to the Administrator its recommendation as to the terms of the award, if any, to be made to such applicant for such contribution. In determining the terms and conditions of any award the Administrator shall take into account—

(1) the value of the contribution to the United States;

(2) the aggregate amount of any sums which have been expended by the applicant for the development of such contribution;

(3) the amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contribution by the United States; and

(4) such other factors as the Administrator shall determine to be material.

(b) Apportionment of awards; surrender of claims to compensation; limitation on amount; reports to Congressional committees

If more than one applicant under subsection (a) of this section claims an interest in the same contribution, the Administrator shall ascertain and determine the respective interests of such applicants, and shall apportion any award to be made with respect to such contribution among such applicants in such proportions as he shall determine to be equitable. No award may be made under subsection (a) of this section with respect to any contribution—

(1) unless the applicant surrenders, by such means as the Administrator shall determine to be effective, all claims which such applicant may have to receive any compensation (other than the award made under this section) for the use of such contribution or any element thereof at any time by or on behalf of the United States, or by or on behalf of any foreign government pursuant to any treaty or agreement with the United States, within the United States or at any other place;

(2) in any amount exceeding $100,000, unless the Administrator has transmitted to the appropriate committees of the Congress a full and complete report concerning the amount and terms of, and the basis for, such proposed award, and thirty calendar days of regular session of the Congress have expired after receipt of such report by such committees.

(Pub. L. 85–568, title III, § 306, July 29, 1958, 72 Stat. 437.)

§ 2458a. Malpractice and negligence suits against United States

(a) Exclusive remedy

The remedy against the United States provided by sections 1346(b) and 2672 of title 28, for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the Administration in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding.

(b) Attorney General to defend any civil action or proceeding for malpractice or negligence; service of process

The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the Administrator to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States Attorney for the district embracing the place wherein the proceeding is brought to the Attorney General and to the Administrator.

(c) Removal of actions; certification by Attorney General; remand to State court

Upon a certification by the Attorney General that any person described in subsection (a) of this section was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place where- in it is pending and the proceeding deemed a tort

action brought against the United States under the provisions of title 28, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

(d) Compromise or settlement of claims

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) Applicability of other provisions of law

For purposes of this section, the provisions of section 2680(h) of title 28, shall not apply to any cause of action arising out of a negligent or wrongful act of omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f) Liability insurance for persons assigned to foreign countries or non-Federal agencies

The Administrator or his designee may, to the extent that the Administrator or his designee deem appropriate, hold harmless or provide liability insurance for any person described in subsection (a) of this section for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of title 28, for such damage or injury.

(Pub. L. 85–568, title III, § 307, as added Pub. L. 94–464, § 3, Oct. 8, 1976, 90 Stat. 1988.)

PRIOR PROVISIONS

A prior section 307 of Pub. L. 85–568 was renumbered section 310 and is classified to section 2459 of this title.

EFFECTIVE DATE

Section effective Oct. 8, 1976, see section 4 of Pub. L. 94–464, set out as a note under section 1089 of Title 10, Armed Forces.

§ 2458b. Insurance and indemnification

(a) Authorization

The Administration is authorized on such terms and to the extent it may deem appropriate to provide liability insurance for any user of a space vehicle to compensate all or a portion of claims by third parties for death, bodily injury, or loss of or damage to property resulting from activities carried on in connection with the launch, operations or recovery of the space vehicle. Appropriations available to the Administration may be used to acquire such insurance, but such appropriations shall be reimbursed to the maximum extent practicable by the users under reimbursement policies established pursuant to section 2473(c) of this title.

(b) Indemnification

Under such regulations in conformity with this section as the Administrator shall prescribe taking into account the availability, cost and terms of liability insurance, any agreement between the Administration and a user of a space vehicle may provide that the United States will indemnify the user against claims (including reasonable expenses of litigation or settlement) by third parties for death, bodily injury, or loss of or damage to property resulting from activities carried on in connection with the launch, operations or recovery of the space vehicle, but only to the extent that such claims are not compensated by liability insurance of the user: *Provided*, That such indemnification may be limited to claims resulting from other than the actual negligence or willful misconduct of the user.

(c) Terms of indemnification agreement; notice; United States control of or assistance in defense

An agreement made under subsection (b) of this section that provides indemnification must also provide for—

(1) notice to the United States of any claim or suit against the user for the death, bodily injury, or loss of or damage to the property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(d) Certification of just and reasonable amount

No payment may be made under subsection (b) of this section unless the Administrator or his designee certifies that the amount is just and reasonable.

(e) Payments

Upon the approval by the Administrator, payments under subsection (b) of this section may be made, at the Administrator's election, either from funds available for research and development not otherwise obligated or from funds appropriated for such payments.

(f) Definitions

As used in this section—

(1) the term ''space vehicle'' means an object intended for launch, launched or assembled in outer space, including the Space Shuttle and other components of a space transportation system, together with related equipment, devices, components and parts;

(2) the term ''user'' includes anyone who enters into an agreement with the Administration for use of all or a portion of a space vehicle, who owns or provides property to be flown on a space vehicle, or who employs a person to be flown on a space vehicle; and

(3) the term ''third party'' means any person who may institute a claim against a user for death, bodily injury or loss of or damage to property.

(Pub. L. 85–568, title III, § 308, as added Pub. L. 96–48, § 6(b)(2), Aug. 8, 1979, 93 Stat. 348.)

PRIOR PROVISIONS

A prior section 308 of Pub. L. 85–568 was renumbered section 310 and is classified to section 2459 of this title.

EFFECTIVE DATE

Section 6(c) of Pub. L. 96–48 provided that: ''This section [enacting this section and amending section 2473 of this title] shall be effective October 1, 1979.''

EXPERIMENTAL AEROSPACE VEHICLE INSURANCE; INDEMNIFICATION; LIABILITY

Pub. L. 105–276, title IV, § 431, Oct. 21, 1998, 112 Stat. 2513, authorized the Administrator to insure or indemnify the developer of an experimental aerospace vehicle developed or used in execution of an agreement between the Administrator and developer, prior to repeal by Pub. L. 106–74, title IV, § 435(b), Oct. 20, 1999, 113 Stat. 1100. See section 2458c of this title.

§ 2458c. Experimental aerospace vehicle

(a) In general

The Administrator may provide liability insurance for, or indemnification to, the developer of an experimental aerospace vehicle developed or used in execution of an agreement between the Administration and the developer.

(b) Terms and conditions

(1) In general

Except as otherwise provided in this section, the insurance and indemnification provided by the Administration under subsection (a) of this section to a developer shall be provided on the same terms and conditions as insurance and indemnification is provided by the Administration under section 2458b of this title to the user of a space vehicle.

(2) Insurance

(A) In general

A developer shall obtain liability insurance or demonstrate financial responsibility in amounts to compensate for the maximum probable loss from claims by—

(i) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with the development or use of an experimental aerospace vehicle; and

(ii) the United States Government for damage or loss to Government property resulting from such an activity.

(B) Maximum required

The Administrator shall determine the amount of insurance required, but, except as provided in subparagraph (C), that amount shall not be greater than the amount required under section 70112(a)(3) of title 49 for a launch. The Administrator shall publish notice of the Administrator's determination and the applicable amount or amounts in the Federal Register within 10 days after making the determination.

(C) Increase in dollar amounts

The Administrator may increase the dollar amounts set forth in section 70112(a)(3)(A) of title 49 for the purpose of applying that section under this section to a developer after consultation with the Comptroller General and such experts and consultants as may be appropriate, and after publishing notice of the increase in the Federal Register not less than 180 days before the increase goes into effect. The Administrator shall make available for public inspection, not later than the date of publication of such notice, a complete record of any correspondence received by the Administration, and a transcript of any meetings in which the Administration participated, regarding the proposed increase.

(D) Safety review required before Administrator provides insurance

The Administrator may not provide liability insurance or indemnification under subsection (a) of this section unless the developer establishes to the satisfaction of the Administrator that appropriate safety procedures and practices are being followed in the development of the experimental aerospace vehicle.

(3) No indemnification without cross-waiver

Notwithstanding subsection (a) of this section, the Administrator may not indemnify a developer of an experimental aerospace vehicle under this section unless there is an agreement between the Administration and the developer described in subsection (c) of this section.

(4) Application of certain procedures

If the Administrator requests additional appropriations to make payments under this section, like the payments that may be made under section 2458b(b) of this title, then the request for those appropriations shall be made in accordance with the procedures established by subsections (d) and (e) of section 70113 of title 49.

(c) Cross-waivers

(1) Administrator authorized to waive

The Administrator, on behalf of the United States, and its departments, agencies, and instrumentalities, may reciprocally waive claims with a developer or cooperating party and with the related entities of that developer or cooperating party under which each party to the waiver agrees to be responsible, and agrees to ensure that its own related entities are responsible, for damage or loss to its property for which it is responsible, or for losses resulting from any injury or death sustained by its own employees or agents, as a result of activities connected to the agreement or use of the experimental aerospace vehicle.

(2) Limitations

(A) Claims

A reciprocal waiver under paragraph (1) may not preclude a claim by any natural person (including, but not limited to, a natural person who is an employee of the United States, the developer, the cooperating party, or their respective subcontractors) or that natural person's estate, survivors, or subrogees for injury or death, except with respect to a subrogee that is a party to the waiver or has otherwise agreed to be bound by the terms of the waiver.

(B) Liability for negligence

A reciprocal waiver under paragraph (1) may not absolve any party of liability to

any natural person (including, but not limited to, a natural person who is an employee of the United States, the developer, the cooperating party, or their respective subcontractors) or such a natural person's estate, survivors, or subrogees for negligence, except with respect to a subrogee that is a party to the waiver or has otherwise agreed to be bound by the terms of the waiver.

(C) Indemnification for damages

A reciprocal waiver under paragraph (1) may not be used as the basis of a claim by the Administration, or the developer or cooperating party, for indemnification against the other for damages paid to a natural person, or that natural person's estate, survivors, or subrogees, for injury or death sustained by that natural person as a result of activities connected to the agreement or use of the experimental aerospace vehicle.

(D) Willful misconduct

A reciprocal waiver under paragraph (1) may not relieve the United States, the developer, the cooperating party, or the related entities of the developer or cooperating party, of liability for damage or loss resulting from willful misconduct.

(3) Effect on previous waivers

Subsection (c) of this section applies to any waiver of claims entered into by the Administration without regard to whether it was entered into before, on, or after October 20, 1999.

(d) Definitions

In this section:

(1) Cooperating party

The term ''cooperating party'' means any person who enters into an agreement with the Administration for the performance of cooperative scientific, aeronautical, or space activities to carry out the purposes of this chapter.

(2) Developer

The term ''developer'' means a United States person (other than a natural person) who—

(A) is a party to an agreement with the Administration for the purpose of developing new technology for an experimental aerospace vehicle;

(B) owns or provides property to be flown or situated on that vehicle; or

(C) employs a natural person to be flown on that vehicle.

(3) Experimental aerospace vehicle

The term ''experimental aerospace vehicle'' means an object intended to be flown in, or launched into, orbital or suborbital flight for the purpose of demonstrating technologies necessary for a reusable launch vehicle, developed under an agreement between the Administration and a developer.

(4) Related entity

The term ''related entity'' includes a contractor or subcontractor at any tier, a supplier, a grantee, and an investigator or detailee.

(e) Relationship to other laws

(1) Section 2458b

This section does not apply to any object, transaction, or operation to which section 2458b of this title applies.

(2) Chapter 701 of title 49

The Administrator may not provide indemnification to a developer under this section for launches subject to license under section 70117(g)(1) of title 49.

(f) Termination

(1) In general

The provisions of this section shall terminate on December 31, 2010.

(2) Effect of termination on agreement

The termination of this section shall not terminate or otherwise affect any cross-waiver agreement, insurance agreement, indemnification agreement, or other agreement entered into under this section, except as may be provided in that agreement.

(Pub. L. 85–568, title III, § 309, formerly title III, as added Pub. L. 106–74, title IV, § 435(a), Oct. 20, 1999, 113 Stat. 1097; designated § 309 and amended Pub. L. 106–391, title III, § 324(a)(2), (b), Oct. 30, 2000, 114 Stat. 1599, 1600; Pub. L. 109–155, title VII, § 702, Dec. 30, 2005, 119 Stat. 2936.)

CODIFICATION

October 20, 1999, referred to in subsec. (c)(3), was in the original ''the date of the enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 106–74, which enacted this section, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 309 of Pub. L. 85–568 was renumbered section 310 and is classified to section 2459 of this title.

AMENDMENTS

2005—Subsec. (f)(1). Pub. L. 109–155 substituted ''December 31, 2010.'' for ''December 31, 2002, except that the Administrator may extend the termination date to a date not later than September 30, 2005, if the Administrator determines that such extension is in the interests of the United States.''

2000—Subsec. (c)(1). Pub. L. 106–391, § 324(b)(1), substituted ''departments, agencies, and instrumentalities'' for ''departments, agencies, and related entities''.

Subsec. (c)(2)(D). Pub. L. 106–391, § 324(b)(2), added subpar. (D).

Subsec. (f). Pub. L. 106–391, § 324(b)(3), added subsec. (f).

§ 2459. Appropriations

(a) Authorization; limitations for uses of capital nature

There are authorized to be appropriated such sums as may be necessary to carry out this chapter, except that nothing in this chapter shall authorize the appropriation of any amount for (1) the acquisition or condemnation of any real property, or (2) any other item of a capital nature (such as plant or facility acquisition, construction, or expansion) which exceeds $250,000. Sums appropriated pursuant to this subsection for the construction of facilities, or for research and development activities, shall remain available until expended.

(b) Use of funds for emergency repairs of existing facilities

Any funds appropriated for the construction of facilities may be used for emergency repairs of existing facilities when such existing facilities are made inoperative by major breakdown, accident, or other circumstances and such repairs are deemed by the Administrator to be of greater urgency than the construction of new facilities.

(c) Termination

Notwithstanding any other provision of law, the authorization of any appropriation to the Administration shall expire (unless an earlier expiration is specifically provided) at the close of the third fiscal year following the fiscal year in which the authorization was enacted, to the extent that such appropriation has not theretofore actually been made.

(Pub. L. 85–568, title III, § 310, formerly § 307, July 29, 1958, 72 Stat. 438; Pub. L. 88–113, § 6, Sept. 6, 1963, 77 Stat. 144; renumbered § 308, Pub. L. 94–464, § 3, Oct. 8, 1976, 90 Stat. 1988; renumbered § 309, Pub. L. 96–48, § 6(b)(1), Aug. 8, 1979, 93 Stat. 348; renumbered § 310, Pub. L. 106–391, title III, § 324(a)(1), Oct. 30, 2000, 114 Stat. 1599.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 85–568, July 29, 1958, 72 Stat. 426, as amended, known as the National Aeronautics and Space Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

PRIOR PROVISIONS

A prior section 310 of Pub. L. 85–568 was renumbered section 311 and is classified to section 2459b of this title.

AMENDMENTS

1963—Subsec. (c). Pub. L. 88–113 added subsec. (c).

DRUG-FREE WORKPLACE

Pub. L. 100–685, title II, § 215, Nov. 17, 1988, 102 Stat. 4093, provided that:

''(a) No funds authorized to be appropriated under this Act, or under any other Act authorizing appropriations for fiscal year 1989 through 1993 for the Administration, shall be obligated or expended unless the Administration has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act [21 U.S.C. 801 et seq.]) by the officers and employees of the Administration.

''(b) No funds authorized to be appropriated to the Administration for fiscal years 1989 through 1993 shall be available for payment in connection with any grant, contract, or other agreement, unless the recipient of such grant, contractor, or party to such agreement, as the case may be, has in place and will continue to administer in good faith a written policy, adopted by the board of directors or other government authority of such recipient, contractor, or party, satisfactory to the Administrator of the Administration, designed to ensure that all of the workplaces of such recipient, contractor, or party are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such recipient, contractor, or party.

''(c) The provisions of this section, and the provisions of the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 [15 U.S.C. 5101 et seq.], the National Institute of Standards and Technology Authorization Act for Fiscal Year 1989 [Pub. L. 100–519, title I, Oct. 24, 1988, 102 Stat. 2589], the National Science Foundation Authorization Act for Fiscal Years 1989 and 1990 [probably means Pub. L. 100–570, Oct. 31, 1988, 102 Stat. 2865], and the National Nutrition Monitoring and Related Research Act of 1988 [probably means S. 1081, One Hundredth Congress, which was pocket vetoed], relating to a drug-free workplace, shall not be effective until January 16, 1989.''

GEOGRAPHICAL DISTRIBUTION OF RESEARCH FUNDS

Provisions stating the sense of Congress that it is in the national interest that consideration be given to geographical distribution of Federal research funds whenever feasible, and that the National Aeronautics and Space Administration should explore ways and means of distributing its research and development funds whenever feasible were contained in the following appropriation authorization acts:

Pub. L. 102–588, title II, § 209, Nov. 4, 1992, 106 Stat. 5115.
Pub. L. 102–195, § 9, Dec. 9, 1991, 105 Stat. 1612.
Pub. L. 101–611, title I, § 109, Nov. 16, 1990, 104 Stat. 3197.
Pub. L. 100–685, title II, § 205, Nov. 17, 1988, 102 Stat. 4090.
Pub. L. 100–147, title I, § 113(a), Oct. 30, 1987, 101 Stat. 865.
Pub. L. 99–170, title I, § 105, Dec. 5, 1985, 99 Stat. 1015.
Pub. L. 98–361, title I, § 105, July 16, 1984, 98 Stat. 425.
Pub. L. 98–52, title I, § 105, July 15, 1983, 97 Stat. 284.
Pub. L. 97–324, title I, § 105, Oct. 15, 1982, 96 Stat. 1600.
Pub. L. 97–96, § 5, Dec. 21, 1981, 95 Stat. 1210.
Pub. L. 96–316, § 5, July 30, 1980, 94 Stat. 963.
Pub. L. 96–48, § 5, Aug. 8, 1979, 93 Stat. 348.
Pub. L. 95–401, § 5, Sept. 30, 1978, 92 Stat. 860.
Pub. L. 95–76, § 5, July 30, 1977, 91 Stat. 315.
Pub. L. 94–307, § 5, June 4, 1976, 90 Stat. 680.
Pub. L. 94–39, § 5, June 19, 1975, 89 Stat. 221.
Pub. L. 93–316, § 5, June 22, 1974, 88 Stat. 243.
Pub. L. 93–74, § 5, July 23, 1973, 87 Stat. 174.
Pub. L. 92–304, § 5, May 19, 1972, 86 Stat. 161.
Pub. L. 92–68, § 5, Aug. 6, 1971, 85 Stat. 176.
Pub. L. 91–303, § 5, July 2, 1970, 84 Stat. 371.
Pub. L. 91–119, § 5, Nov. 18, 1969, 83 Stat. 198.
Pub. L. 90–373, § 6, July 3, 1968, 82 Stat. 283.
Pub. L. 90–67, § 5, Aug. 21, 1967, 81 Stat. 170.
Pub. L. 89–528, § 5, Aug. 5, 1966, 80 Stat. 339.
Pub. L. 89–53, § 5, June 28, 1965, 79 Stat. 194.

DENIAL OF FINANCIAL ASSISTANCE TO CAMPUS DISRUPTERS

Pub. L. 92–304, § 6, May 19, 1972, 86 Stat. 161, provided generally that any institution of higher education deny for a two year period payment under programs authorized by the National Aeronautics and Space Act of 1958 to any individual attending or employed by such institution who has been convicted of any crime committed after May 19, 1972, which involved the use of force, disruption or seizure of property to prevent officers or students from engaging in their duties or pursuing their studies. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 92–68, § 6, Aug. 6, 1971, 85 Stat. 177.
Pub. L. 91–308, § 26, July 2, 1970, 84 Stat. 372.
Pub. L. 91–119, § 7, Nov. 18, 1969, 83 Stat. 201.

APPROPRIATIONS FOR ANY PERIOD PRIOR TO JUNE 30, 1960

Sections 701 of Pub. L. 85–766, title VII, Aug. 27, 1958, 72 Stat. 873, prohibited appropriations to the National Aeronautics and Space Administration for any period prior to June 30, 1960, unless previously authorized.

§ 2459a. Availability of appropriated amounts

Appropriations authorized under this Act for ''Research and Development'', for ''Space

Flight, Control, and Data Communications'', or for ''Construction of Facilities'' may remain available until expended. Contracts may be entered into under ''Inspector General'' and ''Research and Program Management'' for training, investigations, and costs associated with personnel relocation and for other services provided during the fiscal year following the fiscal year in which funds are appropriated.

(Pub. L. 102–588, title II, § 202, Nov. 4, 1992, 106 Stat. 5112.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 102–588, Nov. 4, 1992, 106 Stat. 5107, known as the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is based on the appropriation authorization act cited as a credit to this section.

Section was formerly classified to section 699 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97–258, § 1, Sept. 13, 1982, 96 Stat. 877.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation authorization acts:

Pub. L. 102–195, § 4(g), Dec. 9, 1991, 105 Stat. 1609.
Pub. L. 101–611, title I, § 103(b)(2), Nov. 16, 1990, 104 Stat. 3195.
Pub. L. 100–685, title II, § 201(c), Nov. 17, 1988, 102 Stat. 4089.
Pub. L. 100–147, title I, § 101(g), Oct. 30, 1987, 101 Stat. 862.
Pub. L. 99–170, title I, § 101(f), Dec. 5, 1985, 99 Stat. 1014.
Pub. L. 98–361, title I, § 101(f), July 16, 1984, 98 Stat. 424.
Pub. L. 98–52, title I, § 101(e), July 15, 1983, 97 Stat. 282.
Pub. L. 97–324, title I, § 101(e), Oct. 15, 1982, 96 Stat. 1598.
Pub. L. 97–96, § 1(e), Dec. 21, 1981, 95 Stat. 1208.
Pub. L. 96–316, § 1(e), July 30, 1980, 94 Stat. 962.
Pub. L. 96–48, § 1(e), Aug. 8, 1979, 93 Stat. 347.
Pub. L. 95–401, § 1(e), Sept. 30, 1978, 92 Stat. 858.
Pub. L. 95–76, § 1(e), July 30, 1977, 91 Stat. 313.
Pub. L. 94–307, § 1(e), June 4, 1976, 90 Stat. 678.
Pub. L. 94–39, § 1(e), June 19, 1975, 89 Stat. 219.
Pub. L. 93–316, § 1(e), June 22, 1974, 88 Stat. 242.
Pub. L. 93–74, § 1(e), July 23, 1973, 87 Stat. 173.
Pub. L. 92–304, § 1(e), May 19, 1972, 86 Stat. 159.
Pub. L. 92–68, § 1(e), Aug. 6, 1971, 85 Stat. 175.
Pub. L. 91–303, § 1(e), July 2, 1970, 84 Stat. 370.
Pub. L. 91–119, § 1(e), Nov. 18, 1969, 83 Stat. 197.
Pub. L. 90–373, § 1(e), July 3, 1968, 82 Stat. 281.
Pub. L. 90–67, § 1(e), Aug. 21, 1967, 81 Stat. 169.
Pub. L. 89–528, § 1(e), Aug. 5, 1966, 80 Stat. 337.
Pub. L. 89–53, § 1(e), June 28, 1965, 79 Stat. 193.
Pub. L. 88–369, § 1(e), July 11, 1964, 78 Stat. 311.
Pub. L. 88–113, § 1(e), Sept. 6, 1963, 77 Stat. 142.
Pub. L. 87–584, § 1(d), Aug. 14, 1962, 76 Stat. 382.
Pub. L. 87–98, § 1(e), July 21, 1961, 75 Stat. 216.
Pub. L. 86–481, § 1(g), June 1, 1960, 74 Stat. 151.

§ 2459b. Misuse of agency name and initials; authority of Attorney General to enjoin

(a) No person (as defined by section 2457 of this title) may (1) knowingly use the words ''National Aeronautics and Space Administration'' or the letters ''NASA'', or any combination, variation, or colorable imitation of those words or letters either alone or in combination with other words or letters, as a firm or business name in a manner reasonably calculated to convey the impression that such firm or business has some connection with, endorsement of, or authorization from, the National Aeronautics and Space Administration which does not, in fact, exist; or (2) knowingly use those words or letters or any combination, variation, or colorable imitation thereof either alone or in combination with other words or letters in connection with any product or service being offered or made available to the public in a manner reasonably calculated to convey the impression that such product or service has the authorization, support, sponsorship, or endorsement of, or the development, use, or manufacture by or on behalf of the National Aeronautics and Space Administration which does not, in fact, exist.

(b) Whenever it appears to the Attorney General that any person is engaged in an act or practice which constitutes or will constitute conduct prohibited by subsection (a) of this section, the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice.

(Pub. L. 85–568, title III, § 311, formerly § 310, as added Pub. L. 98–52, title I, § 107, July 15, 1983, 97 Stat. 284; renumbered § 311, Pub. L. 106–391, title III, § 324(a)(1), Oct. 30, 2000, 114 Stat. 1599.)

PRIOR PROVISIONS

A prior section 311 of Pub. L. 85–568 was renumbered section 312 and is classified to section 2459c of this title.

§ 2459c. Contracts regarding expendable launch vehicles

(a) The Administrator may enter into contracts for expendabe[1] launch vehicle services that are for periods in excess of the period for which funds are otherwise available for obligation, provide for the payment for contingent liability which may accrue in excess of available appropriations in the event the Government for its convenience terminates such contracts, and provide for advance payments reasonably related to launch vehicle and related equipment, fabrication, and acquisition costs, if any such contract limits the amount of the payments that the Federal Government is allowed to make under such contract to amounts provided in advance in appropriation Acts. Such contracts may be limited to sources within the United States when the Administrator determines that such limitation is in the public interest.

(b) If funds are not available to continue any such contract, the contract shall be terminated for the convenience of the Government, and the costs of such contract shall be paid from appropriations originally available for performance of the contract, from other, unobligated appropriations currently available for the procurement of launch services, or from funds appropriated for such payments.

(Pub. L. 85–568, title III, § 312, formerly § 311, as added Pub. L. 100–147, title I, § 117, Oct. 30, 1987, 101 Stat. 867; renumbered § 312, Pub. L. 106–391, title III, § 324(a)(1), Oct. 30, 2000, 114 Stat. 1599.)

[1] So in original. Probably should be ''expendable''.

CODIFICATION

Another section 312 of Pub. L. 85–568 was renumbered section 313 and is classified to section 2459f of this title.

§ 2459d. Prohibition of grant or contract providing guaranteed customer base for new commercial space hardware or services

No amount appropriated to the National Aeronautics and Space Administration in this or any other Act with respect to any fiscal year may be used to fund grants, contracts or other agreements with an expected duration of more than one year, when a primary effect of the grant, contract, or agreement is to provide a guaranteed customer base for or establish an anchor tenancy in new commercial space hardware or services unless an appropriations Act specifies the new commercial space hardware or services to be developed or used, or the grant, contract, or agreement is otherwise identified in such Act.

(Pub. L. 102–139, title III, Oct. 28, 1991, 105 Stat. 771.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

§ 2459e. Quality assurance personnel

(a) Exclusion of NASA personnel

A person providing articles to the National Aeronautics and Space Administration under a contract entered into after December 9, 1991, may not exclude National Aeronautics and Space Administration quality assurance personnel from work sites except as provided in a contract provision described in subsection (b) of this section.

(b) Contract provisions

The National Aeronautics and Space Administration shall not enter into any contract which permits the exclusion of National Aeronautics and Space Administration quality assurance personnel from work sites unless the Administrator has submitted a copy of the provision permitting such exclusion to the Congress at least 60 days before entering into such contract.

(Pub. L. 102–195, § 19, Dec. 9, 1991, 105 Stat. 1615.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

§ 2459f. Full cost appropriations account structure

(a) Designation of accounts for appropriations

(1) Appropriations for the Administration for fiscal year 2007 and thereafter shall be made in three accounts, ''Science, Aeronautics, and Education'', ''Exploration Systems and Space Operations'', and an account for amounts appropriated for the necessary expenses of the Office of the Inspector General.

(2) Within the Exploration Systems and Space Operations account, no more than 10 percent of the funds for a fiscal year for Exploration Systems may be reprogrammed for Space Operations, and no more than 10 percent of the funds for a fiscal year for Space Operations may be reprogrammed for Exploration Systems. This paragraph shall not apply to reprogramming for the purposes described in subsection (b)(2) of this section.

(3) Appropriations shall remain available for two fiscal years, unless otherwise specified in law. Each account shall include the planned full costs of Administration activities.

(b) Transfers among accounts

(1) To ensure the safe, timely, and successful accomplishment of Administration missions, the Administration may transfer amounts for Federal salaries and benefits; training, travel and awards; facility and related costs; information technology services; publishing services; science, engineering, fabricating and testing services; and other administrative services among accounts, as necessary.

(2) The Administration may also transfer amounts among accounts for the immediate costs of recovering from damage caused by a major disaster (as defined in section 5122 of this title) or by an act of terrorism, or for the immediate costs associated with an emergency rescue of astronauts.

(c) Transfer of unexpired balances

The unexpired balances of prior appropriations to the Administration for activities authorized under this chapter may be transferred to the new account established for such activity in subsection (a) of this section. Balances so transferred may be merged with funds in the newly established account and thereafter may be accounted for as one fund under the same terms and conditions.

(Pub. L. 85–568, title III, § 313, formerly § 312, as added Pub. L. 106–377, § 1(a)(1) [title IV, § 431], Oct. 27, 2000, 114 Stat. 1441, 1441A–56; renumbered § 313 and amended Pub. L. 108–199, div. G, title IV, § 417, Jan. 23, 2004, 118 Stat. 415; Pub. L. 108–447, div. I, title IV, § 417, Dec. 8, 2004, 118 Stat. 3339; Pub. L. 109–155, title II, § 201, Dec. 30, 2005, 119 Stat. 2915.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this Act'', meaning Pub. L. 85–568, July 29, 1958, 72 Stat. 426, as amended, known as the National Aeronautics and Space Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

CODIFICATION

Pub. L. 108–199, § 417, which directed amendment of section 312 of the National Aeronautics and Space Administration Act of 1958, was executed to this section, which was section 312 of the National Aeronautics and Space Act of 1958, to reflect the probable intent of Congress.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–155, § 201(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Appropriations for the Administration for fiscal year 2005 and thereafter shall be made in three accounts, 'Exploration capabilities', 'Science, aeronautics and exploration', and an account for

amounts appropriated for the necessary expenses of the Office of Inspector General. Appropriations shall remain available for 2 fiscal years. Each account shall include the planned full costs of the Administration's related activities.''

Subsec. (b). Pub. L. 109–155, § 201(2), designated existing provisions as par. (1) and added par. (2).

2004—Pub. L. 108–199, § 417(2), added section catchline.

Subsec. (a). Pub. L. 108–447 substituted ''2005'' for ''2004'' and ''Exploration capabilities'' for ''Space flight capabilities''.

Pub. L. 108–199, § 417(3), substituted ''2004'' for ''2002'', ''Space flight capabilities'' for ''Human space flight'', and ''exploration'' for ''technology''.

Subsec. (c). Pub. L. 108–199, § 417(4), added subsec. (c) and struck out former subsec. (c) which read as follows: ''The Administrator, in consultation with the Director of the Office of Management and Budget, shall determine what balances from the 'Mission support' account are to be transferred to the 'Human space flight' and 'Science, aeronautics and technology' accounts. Such balances shall be transferred and merged with the 'Human space flight' and 'Science, aeronautics and technology' accounts, and remain available for the period of which originally appropriated.''

§ 2459f–1. Prize authority

(a) In general

The Administration may carry out a program to competitively award cash prizes to stimulate innovation in basic and applied research, technology development, and prototype demonstration that have the potential for application to the performance of the space and aeronautical activities of the Administration. The Administration may carry out a program to award prizes only in conformity with this section.

(b) Topics

In selecting topics for prize competitions, the Administrator shall consult widely both within and outside the Federal Government, and may empanel advisory committees.

(c) Advertising

The Administrator shall widely advertise prize competitions to encourage participation.

(d) Requirements and registration

For each prize competition, the Administrator shall publish a notice in the Federal Register announcing the subject of the competition, the rules for being eligible to participate in the competition, the amount of the prize, and the basis on which a winner will be selected.

(e) Eligibility

To be eligible to win a prize under this section, an individual or entity—

(1) shall have registered to participate in the competition pursuant to any rules promulgated by the Administrator under subsection (d) of this section;

(2) shall have complied with all the requirements under this section;

(3) in the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) shall not be a Federal entity or Federal employee acting within the scope of their employment.

(f) Liability

(1) Registered participants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether such injury, death, damage, or loss arises through negligence or otherwise. For the purposes of this paragraph, the term ''related entity'' means a contractor or subcontractor at any tier, and a supplier, user, customer, cooperating party, grantee, investigator, or detailee.

(2) Participants must obtain liability insurance or demonstrate financial responsibility, in amounts determined by the Administrator, for claims by—

(A) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and

(B) the Federal Government for damage or loss to Government property resulting from such an activity.

(g) Judges

For each competition, the Administration, either directly or through an agreement under subsection (h) of this section, shall assemble a panel of qualified judges to select the winner or winners of the prize competition on the basis described pursuant to subsection (d) of this section. Judges for each competition shall include individuals from outside the Administration, including from the private sector. A judge may not—

(1) have personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered participant in a competition; or

(2) have a familial or financial relationship with an individual who is a registered participant.

(h) Administering the competition

The Administrator may enter into an agreement with a private, nonprofit entity to administer the prize competition, subject to the provisions of this section.

(i) Funding

(1) Prizes under this section may consist of Federal appropriated funds and funds provided by the private sector for such cash prizes. The Administrator may accept funds from other Federal agencies for such cash prizes. The Administrator may not give any special consideration to any private sector entity in return for a donation.

(2) Notwithstanding any other provision of law, funds appropriated for prize awards under this section shall remain available until expended, and may be transferred, reprogrammed, or expended for other purposes only after the ex-

piration of 10 fiscal years after the fiscal year for which the funds were originally appropriated. No provision in this section permits obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

(3) No prize may be announced under subsection (d) of this section until all the funds needed to pay out the announced amount of the prize have been appropriated or committed in writing by a private source. The Administrator may increase the amount of a prize after an initial announcement is made under subsection (d) of this section if—

(A) notice of the increase is provided in the same manner as the initial notice of the prize; and

(B) the funds needed to pay out the announced amount of the increase have been appropriated or committed in writing by a private source.

(4) No prize competition under this section may offer a prize in an amount greater than $10,000,000 unless 30 days have elapsed after written notice has been transmitted to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(5) No prize competition under this section may result in the award of more than $1,000,000 in cash prizes without the approval of the Administrator.

(j) Use of NASA name and insignia

A registered participant in a competition under this section may use the Administration's name, initials, or insignia only after prior review and written approval by the Administration.

(k) Compliance with existing law

The Federal Government shall not, by virtue of offering or providing a prize under this section, be responsible for compliance by registered participants in a prize competition with Federal law, including licensing, export control, and non-proliferation laws, and related regulations.

(Pub. L. 85–568, title III, § 314, as added Pub. L. 109–155, title I, § 104, Dec. 30, 2005, 119 Stat. 2910.)

§ 2459g. Requirement for independent cost analysis

(a) Requirement

Before any funds may be obligated for implementation of a project that is projected to cost more than $250,000,000 in total project costs, the Administrator for the National Aeronautics and Space Administration shall conduct and consider an independent life-cycle cost analysis of such project and shall report the results to Congress. In developing cost accounting and reporting standards for carrying out this section, the Administrator shall, to the extent practicable and consistent with other laws, solicit the advice of expertise outside of the National Aeronautics and Space Administration.

(b) Implementation defined

In this section, the term ''implementation'' means all activity in the life cycle of a project after preliminary design, independent assessment of the preliminary design, and approval to proceed into implementation, including critical design, development, certification, launch, operations, disposal of assets, and, for technology programs, development, testing, analysis, and communication of the results.

(Pub. L. 106–391, title III, § 301, Oct. 30, 2000, 114 Stat. 1591; Pub. L. 109–155, title VII, § 704, Dec. 30, 2005, 119 Stat. 2936.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 2000, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–155, § 704(1)–(4), substituted ''implementation'' for ''Phase B'' and ''$250,000,000'' for ''$150,000,000'', substituted ''Administrator'' for ''Chief Financial Officer'' in two places, and inserted ''and consider'' after ''shall conduct''.

Subsec. (b). Pub. L. 109–155, § 704(5), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: ''For purposes of this section, the term 'Phase B' means the latter stages of project formulation, during which the final definition of a project is carried out and before project implementation (which includes the Design, Development, and Operations Phases) begins.''

§ 2459h. Cost effectiveness calculations

Except as otherwise required by law, in calculating the cost effectiveness of the cost of the National Aeronautics and Space Administration engaging in an activity as compared to a commercial provider, the Administrator shall compare the cost of the National Aeronautics and Space Administration engaging in the activity using full cost accounting principles with the price the commercial provider will charge for such activity.

(Pub. L. 106–391, title III, § 304, Oct. 30, 2000, 114 Stat. 1592.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 2000, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

DEFINITIONS

For definitions of the terms ''commercial provider'' and ''Administrator'' used in this section, see section 3 of Pub. L. 106–391, set out as a note under section 2452 of this title.

§ 2459i. Working capital fund

There is hereby established in the United States Treasury a National Aeronautics and Space Administration working capital fund. Amounts in the fund are available for financing activities, services, equipment, information, and facilities as authorized by law to be provided within the Administration; to other agencies or instrumentalities of the United States; to any State, Territory, or possession or political subdivision thereof; to other public or private agencies; or to any person, firm, association, corporation, or educational institution on a reim-

bursable basis. The fund shall also be available for the purpose of funding capital repairs, renovations, rehabilitation, sustainment, demolition, or replacement of NASA real property, on a reimbursable basis within the Administration. Amounts in the fund are available without regard to fiscal year limitation. The capital of the fund consists of amounts appropriated to the fund; the reasonable value of stocks of supplies, equipment, and other assets and inventories on order that the Administrator transfers to the fund, less the related liabilities and unpaid obligations; and payments received for loss or damage to property of the fund. The fund shall be reimbursed, in advance, for supplies and services at rates that will approximate the expenses of operation, such as the accrual of annual leave, depreciation of plant, property and equipment, and overhead.

(Pub. L. 108–7, div. K, title III, Feb. 20, 2003, 117 Stat. 520.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2003, and also as part of the Consolidated Appropriations Resolution, 2003, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

§ 2459j. Enhanced-use lease of real property demonstration

(a) In general

Notwithstanding any other provision of law, the Administrator may enter into a lease under this section with any person or entity (including another department or agency of the Federal Government or an entity of a State or local government) with regard to any real property under the jurisdiction of the Administrator at no more than two (2) National Aeronautics and Space Administration (NASA) centers.

(b) Consideration

(1) A person or entity entering into a lease under this section shall provide consideration for the lease at fair market value as determined by the Administrator, except that in the case of a lease to another department or agency of the Federal Government, that department or agency shall provide consideration for the lease equal to the full costs to NASA in connection with the lease.

(2) Consideration under this subsection may take one or a combination of the following forms—

(A) the payment of cash;

(B) the maintenance, construction, modification or improvement of facilities on real property under the jurisdiction of the Administrator;

(C) the provision of services to NASA, including launch services and payload processing services; or

(D) use by NASA of facilities on the property.

(3)(A) The Administrator may utilize amounts of cash consideration received under this subsection for a lease entered into under this section to cover the full costs to NASA in connection with the lease. These funds shall remain available until expended.

(B) Any amounts of cash consideration received under this subsection that are not utilized in accordance with subparagraph (A) shall be deposited in a capital asset account to be established by the Administrator, shall be available for maintenance, capital revitalization, and improvements of the real property assets of the centers selected for this demonstration program, and shall remain available until expended.

(c) Additional terms and conditions

The Administrator may require such terms and conditions in connection with a lease under this section as the Administrator considers appropriate to protect the interests of the United States.

(d) Relationship to other lease authority

The authority under this section to lease property of NASA is in addition to any other authority to lease property of NASA under law.

(e) Lease restrictions

NASA is not authorized to lease back property under this section during the term of the outlease or enter into other contracts with the lessee respecting the property.

(f) Plan and reporting requirements

At least 15 days prior to the Administrator entering into the first lease under this section, the Administrator shall submit a plan to the Congress on NASA's proposed implementation of this demonstration. The Administrator shall submit an annual report by January 31st of each year regarding the status of the demonstration.

(Pub. L. 85–568, title III, § 315, as added Pub. L. 108–7, div. K, title IV, § 418, Feb. 20, 2003, 117 Stat. 525.)

§ 2459k. Retrocession of jurisdiction

(a) Notwithstanding any other provision of law, the Administrator may relinquish to a State all or part of the legislative jurisdiction of the United States over lands or interests under the control of the Administrator in that State.

(b) For purposes of this section, the term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(Pub. L. 85–568, title III, § 316, as added Pub. L. 109–155, title VII, § 701, Dec. 30, 2005, 119 Stat. 2935.)

§ 2459*l*. Recovery and disposition authority

(a) In general

(1) Control of remains

Subject to paragraphs (2) and (3), when there is an accident or mishap resulting in the death of a crewmember of a NASA human space flight vehicle, the Administrator may take control over the remains of the crewmember and order autopsies and other scientific or medical tests.

(2) Treatment

Each crewmember shall provide the Administrator with his or her preferences regarding

the treatment accorded to his or her remains and the Administrator shall, to the extent possible, respect those stated preferences.

(3) Construction

This section shall not be construed to permit the Administrator to interfere with any Federal investigation of a mishap or accident.

(b) Definitions

In this section:

(1) Crewmember

The term ''crewmember'' means an astronaut or other person assigned to a NASA human space flight vehicle.

(2) NASA human space flight vehicle

The term ''NASA human space flight vehicle'' means a space vehicle, as defined in section 2458b(f)(1) of this title, that

(A) is intended to transport 1 or more persons;

(B) is designed to operate in outer space; and

(C) is either owned by NASA, or owned by a NASA contractor or cooperating party and operated as part of a NASA mission or a joint mission with NASA.

(Pub. L. 85–568, title III, § 317, as added Pub. L. 109–155, title VII, § 705, Dec. 30, 2005, 119 Stat. 2936.)

§ 2460. Appropriations; prior authorization by Congress

Notwithstanding the provisions of any other law, no appropriation may be made to the National Aeronautics and Space Administration unless previously authorized by legislation hereafter enacted by the Congress.

(Pub. L. 86–45, § 4, June 15, 1959, 73 Stat. 75.)

CODIFICATION

Section was not enacted as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

§ 2461. Congressional Space Medal of Honor; appropriations

The President may award, and present in the name of Congress, a medal of appropriate design, which shall be known as the Congressional Space Medal of Honor, to any astronaut who in the performance of his duties has distinguished himself by exceptionally meritorious efforts and contributions to the welfare of the Nation and of mankind.

There is authorized to be appropriated from time to time such sums of money as may be necessary to carry out the purposes of this section.

(Pub. L. 91–76, §§ 1, 2, Sept. 29, 1969, 83 Stat. 124.)

CODIFICATION

Section was not enacted as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

The first and second pars. of this section are comprised of section 1 and 2 of Pub. L. 91–76, respectively.

§ 2462. Repealed. Pub. L. 97–96, § 8, Dec. 21, 1981, 95 Stat. 1211

Section, Pub. L. 91–119, § 6, Nov. 18, 1969, 83 Stat. 199; Pub. L. 91–303, § 7, July 2, 1970, 84 Stat. 372; Pub. L. 94–273, § 24, Apr. 21, 1976, 90 Stat. 379; Pub. L. 96–470, title I, § 118(a), Oct. 19, 1980, 94 Stat. 2240, related to the reporting requirements for former employees of the National Aeronautics and Space Administration and their association with aerospace contractors and the reports of the Administrator to the Congress.

REPORT BY ADMINISTRATOR OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ON ADMINISTRATION POLICY REGARDING CONFLICTS OF INTEREST, STANDARDS OF CONDUCT, AND FINANCIAL DISCLOSURE

Pub. L. 95–401, § 8, Sept. 30, 1978, 92 Stat. 860, provided that the Administrator of the National Aeronautics and Space Administration report to the House Committee on Science and Technology and the Senate Committee on Commerce, Science, and Transportation no later than December 31, 1978, on the Administration policy regarding conflicts of interest, standards of conduct and financial disclosure and the implementation of that policy.

§ 2463. Tracking and data relay satellite services; report to Congressional committees; authorization to contract

The National Aeronautics and Space Administration is authorized, when so provided in an appropriation Act, to enter into and to maintain a contract for tracking and data relay satellite services. Such services shall be furnished to the National Aeronautics and Space Administration in accordance with applicable authorization and appropriations Acts. The Government shall incur no costs under such contract prior to the furnishing of such services except that the contract may provide for the payment for contingent liability of the Government which may accrue in the event the Government should decide for its convenience to terminate the contract before the end of the period of the contract. Facilities which may be required in the performance of the contract may be constructed on Government-owned lands if there is included in the contract a provision under which the Government may acquire title to the facilities, under terms and conditions agreed upon in the contract, upon termination of the contract.

The Administrator shall in January of each year report to the Committee on Science, Space, and Technology and the Committee on Appropriations of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate the projected aggregate contingent liability of the Government under termination provisions of any contract authorized in this section through the next fiscal year. The authority of the National Aeronautics and Space Administration to enter into and to maintain the contract authorized hereunder shall remain in effect unless repealed by legislation enacted by the Congress after July 30, 1977.

(Pub. L. 95–76, § 6, July 30, 1977, 91 Stat. 315; Pub. L. 103–437, § 15(c)(3), Nov. 2, 1994, 108 Stat. 4592.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, 1978, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation authorization acts:

Pub. L. 94–307, § 6, June 4, 1976, 90 Stat. 680.
Pub. L. 94–39, § 6, June 19, 1975, 89 Stat. 221.
Pub. L. 93–316, § 7, June 22, 1974, 88 Stat. 243.

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Science, Space, and Technology'' for ''Science and Technology'' in second par.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 8 on page 178 identifies a reporting provision which, as subsequently amended, is contained in the second par. of this section), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, § 1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

§ 2464. Recovery of fair value of placing Department of Defense payloads in orbit with Space Shuttle

Notwithstanding any other provision of law, or any interagency agreement, the Administrator of the National Aeronautics and Space Administration shall charge such prices as necessary to recover the fair value of placing Department of Defense payloads into orbit by means of the Space Shuttle.

(Pub. L. 97–324, title I, § 106(a), Oct. 15, 1982, 96 Stat. 1600.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, 1983, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

EFFECTIVE DATE

Section 106(b) of Pub. L. 97–324 provided that: ''This section [enacting this section] shall apply to any Department of Defense payloads placed into orbit by means of the Space Shuttle on or after October 1, 1983.''

§ 2464a. Payloads launched on Titan II launch vehicles; cost effectiveness as against space shuttle launches

The Secretary of Defense and the Administrator of the National Aeronautics and Space Administration will jointly determine which payloads will be launched on Titan II launch vehicles and certify by notice to the Congress that such launches are cost effective as compared to launches by the space shuttle and do not diminish the efficient and effective utilization of the space shuttle capability: *Provided*, That this section may be waived only upon certification by the Secretary of Defense that certain classified payloads must be launched on the Titan II launch vehicle as opposed to the space shuttle, for national security reasons.

(Pub. L. 99–190, § 101(b) [title VIII, § 8111], Dec. 19, 1985, 99 Stat. 1185, 1222.)

CODIFICATION

Section was enacted as part of the Department of Defense Appropriations Act, 1986, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

§ 2465. Repealed. Pub. L. 105–362, title XI, § 1101(f), Nov. 10, 1998, 112 Stat. 3292

Section, Pub. L. 98–52, title I, § 110, July 15, 1983, 97 Stat. 285; Pub. L. 103–437, § 15(c)(4), Nov. 2, 1994, 108 Stat. 4592, related to commercialization of expendable launch vehicle technologies, facilities and equipment and congressional review of such action.

§ 2465a. Space Shuttle use policy

(a) Use policy

(1) It shall be the policy of the United States to use the Space Shuttle for purposes that (i) require the presence of man, (ii) require the unique capabilities of the Space Shuttle or (iii) when other compelling circumstances exist.

(2) The term ''compelling circumstances'' includes, but is not limited to, occasions when the Administrator determines, in consultation with the Secretary of Defense and the Secretary of State, that important national security or foreign policy interests would be served by a Shuttle launch.

(3) The policy stated in subsection (a)(1) of this section shall not preclude the use of available cargo space, on a Space Shuttle mission otherwise consistent with the policy described under subsection (a)(1) of this section, for the purpose of carrying secondary payloads (as defined by the Administrator) that do not require the presence of man if such payloads are consistent with the requirements of research, development, demonstration, scientific, commercial, and educational programs authorized by the Administrator.

(b) Implementation plan

The Administrator shall, within six months after November 16, 1990, submit a report to the Congress setting forth a plan for the implementation of the policy described in subsection (a)(1) of this section. Such plan shall include—

(1) details of the implementation plan;

(2) a list of purposes that meet such policy;

(3) a proposed schedule for the implementation of such policy;

(4) an estimate of the costs to the United States of implementing such policy; and

(5) a process for informing the Congress in a timely and regular manner of how the plan is being implemented.

(c) Annual report

At least annually, the Administrator shall submit to the Congress a report certifying that the payloads scheduled to be launched on the space shuttle for the next four years are consistent with the policy set forth in subsection (a)(1) of this section. For each payload scheduled to be launched from the space shuttle, which do not require the presence of man, the Administrator shall, in the certified report to Congress, state the specific circumstances which justified the use of the space shuttle. If, during the period between scheduled reports to the Congress, any additions are made to the list of certified payloads

intended to be launched from the Shuttle, the Administrator shall inform the Congress of the additions and the reasons therefor within 45 days of the change.

(d) NASA payloads

The report described in subsection (c) of this section shall also include those National Aeronautics and Space Administration payloads designed solely to fly on the space shuttle which have begun the phase C/D of its development cycle.

(Pub. L. 101–611, title I, § 112, Nov. 16, 1990, 104 Stat. 3198.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to submittal to Congress at least annually of a report certifying that the payloads scheduled to be launched on the space shuttle for the next four years are consistent with the policy set forth in subsec. (a)(1) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 6 on page 179 of House Document No. 103–7.

DEFINITION OF ''ADMINISTRATOR''

Section 127 of title I of Pub. L. 101–611 provided that: ''For purposes of this title [enacting this section and sections 2459a and 2471a of this title and section 1535 of Title 15, Commerce and Trade, amending section 2473 of this title and sections 2601, 2602, 2604, 2614, and 2623 of former Title 49, Transportation, and enacting provisions set out as notes under sections 2451, 2459, and 2471 of this title], the term 'Administrator' means the Administrator of the National Aeronautics and Space Administration.''

§ 2465b. Repealed. Pub. L. 105–303, title II, § 203(1), Oct. 28, 1998, 112 Stat. 2855

Section, Pub. L. 101–611, title II, § 202, Nov. 16, 1990, 104 Stat. 3205, related to congressional findings in support of the commercial launch industry.

§ 2465c. Definitions

For the purposes of sections 2465b to 2465f of this title—

(1) the term ''launch vehicle'' means any vehicle constructed for the purpose of operating in, or placing a payload in, outer space; and

(2) the term ''payload'' means an object which a person undertakes to place in outer space by means of a launch vehicle, and includes subcomponents of the launch vehicle specifically designed or adapted for that object.

(Pub. L. 101–611, title II, § 203, Nov. 16, 1990, 104 Stat. 3206; Pub. L. 105–303, title II, § 203(2), Oct. 28, 1998, 112 Stat. 2855.)

REFERENCES IN TEXT

Sections 2465b, 2465d, and 2465e of this title, referred to in text, were repealed by Pub. L. 105–303, title II, § 203(1), (3), Oct. 28, 1998, 112 Stat. 2855.

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991, and also as part of the Launch Services Purchase Act of 1990, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

AMENDMENTS

1998—Pars. (1) to (4). Pub. L. 105–303 redesignated pars. (3) and (4) as (1) and (2), respectively, and struck out former pars. (1) and (2) which read as follows:

''(1) the term 'commercial provider' means any person providing launch services, but does not include the Federal Government;

''(2) the term 'launch services' means activities involved in the preparation of a launch vehicle and its payload for space transport and the conduct of transporting a payload;''.

§§ 2465d, 2465e. Repealed. Pub. L. 105–303, title II, § 203(3), Oct. 28, 1998, 112 Stat. 2855

Section 2465d, Pub. L. 101–611, title II, § 204, Nov. 16, 1990, 104 Stat. 3206, related to requirement to procure commercial launch services.

Section 2465e, Pub. L. 101–611, title II, § 205, Nov. 16, 1990, 104 Stat. 3207, related to purchase of commercial launch services.

§ 2465f. Other activities of National Aeronautics and Space Administration

Commercial payloads may not be accepted for launch as primary payloads on the space shuttle unless the Administrator of the National Aeronautics and Space Administration determines that—

(1) the payload requires the unique capabilities of the space shuttle; or

(2) launching of the payload on the space shuttle is important for either national security or foreign policy purposes.

(Pub. L. 101–611, title II, § 206, Nov. 16, 1990, 104 Stat. 3207; Pub. L. 105–303, title II, § 203(4), Oct. 28, 1998, 112 Stat. 2855.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991, and also as part of the Launch Services Purchase Act of 1990, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

AMENDMENTS

1998—Pub. L. 105–303 struck out subsec. (a) designation and heading and struck out heading and text of subsec. (b) which related to report of the Administrator.

§ 2466. Shuttle pricing policy; Congressional findings and declaration of purpose

The Congress finds and declares that—

(1) the Space Transportation System is a vital element of the United States space program, contributing to the United States leadership in space research, technology, and development;

(2) the Space Transportation System is the primary space launch system for both United States national security and civil government missions;

(3) the Space Transportation System contributes to the expansion of United States private sector investment and involvement in space and therefore should serve commercial users;

(4) the availability of the Space Transportation System to foreign users for peaceful purposes is an important means of promoting international cooperative activities in the national interest and in maintaining access to space for activities which enhance the security and welfare of mankind;

(5) the United States is committed to maintaining world leadership in space transportation;

(6) making the Space Transportation System fully operational and cost effective in providing routine access to space will maximize the national economic benefits of the system; and

(7) national goals and the objectives for the Space Transportation System can be furthered by a stable and fair pricing policy for the Space Transportation System.

(Pub. L. 99–170, title II, § 201, Dec. 5, 1985, 99 Stat. 1017.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 1986, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

EFFECTIVE DATE

Section 205 of title II of Pub. L. 99–170 provided that: ''This title [enacting this section and sections 2466a to 2466c of this title] shall apply to flights of the Space Transportation System beginning on and after October 1, 1988.''

§ 2466a. Goals

The purpose of sections 2466 to 2466c of this title is to set the reimbursement pricing policy for the Space Transportation System for commercial and foreign users which is consistent with the findings included in section 2466 of this title, encourages the full and effective use of space, and is designed to achieve the following goals—

(1) the preservation of the role of the United States as a leader in space research, technology, and development;

(2) the efficient and cost effective use of the Space Transportation System;

(3) the achievement of greatly increased commercial space activity; and

(4) the enhancement of the international competitive position of the United States.

(Pub. L. 99–170, title II, § 202, Dec. 5, 1985, 99 Stat. 1017.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 1986, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

EFFECTIVE DATE

Section applicable to flights of the Space Transportation System beginning on and after Oct. 1, 1988, see section 205 of Pub. L. 99–170, set out as a note under section 2466 of this title.

§ 2466b. "Administrator" and "additive cost" defined

For purposes of sections 2466 to 2466c of this title, the term—

(1) ''Administrator'' means the Administrator of the National Aeronautics and Space Administration; and

(2) ''additive cost'' means the average direct and indirect costs to the National Aeronautics and Space Administration of providing additional flights of the Space Transportation System beyond the costs associated with those flights necessary to meet the space transportation needs of the United States Government.

(Pub. L. 99–170, title II, § 203, Dec. 5, 1985, 99 Stat. 1017.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 1986, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

EFFECTIVE DATE

Section applicable to flights of the Space Transportation System beginning on and after Oct. 1, 1988, see section 205 of Pub. L. 99–170, set out as a note under section 2466 of this title.

§ 2466c. Duties of Administrator

(a) Establishment and implementation of reimbursement recovery system; base price

The Administrator shall establish and implement a pricing system to recover reimbursement in accordance with the pricing policy under section 2466a of this title from each commercial or foreign user of the Space Transportation System, which except as provided in subsections (c), (d), and (e) of this section shall include a base price of not less than $74,000,000 for each flight of the Space Transportation System in 1982 dollars.

(b) Reports to Congressional committees

Each year the Administrator shall submit to the President of the Senate, the Speaker of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Science, Space, and Technology of the House of Representatives, a report, transmitted contemporaneously with the annual budget request of the President, which shall inform the Congress how the policy goals contained in section 2466a of this title are being furthered by the shuttle price for foreign and commercial users.

(c) Reduction of base price

(1) If at any time the Administrator finds that the policy goals contained in section 2466a of this title are not being achieved, the Administrator shall have authority to reduce the base price established in subsection (a) of this section after forty-five days following receipt by the President of the Senate, the Speaker of the House, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Science, Space, and Technology of the House of Representatives of a notice by the Administrator containing a description of the proposed reduction together with a full and complete statement of the facts and circumstances which necessitate such proposed reduction.

(2) In no case shall the minimum price established under subsection (c)(1) of this section be less than additive cost.

(d) Lower-priced or no-cost flights for users involved in research, etc., with Space Administration

The Administrator may set a price lower than the price determined under subsection (a) or (c) of this section, or provide no-cost flights, for any commercial or foreign user of the Space Transportation System who is involved in research, development or demonstration programs with the National Aeronautics and Space Administration.

(e) Customer incentives

Notwithstanding the provisions of subsection (a) of this section, the Administrator shall have the authority to offer reasonable customer incentives consistent with the policy goals in section 2466a of this title.

(Pub. L. 99–170, title II, § 204, Dec. 5, 1985, 99 Stat. 1017; Pub. L. 103–437, § 15(c)(5), Nov. 2, 1994, 108 Stat. 4592.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 1986, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

AMENDMENTS

1994—Subsecs. (b), (c)(1). Pub. L. 103–437 substituted ''Science, Space, and Technology'' for ''Science and Technology''.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE

Section applicable to flights of the Space Transportation System beginning on and after Oct. 1, 1988, see section 205 of Pub. L. 99–170, set out as a note under section 2466 of this title.

FEASIBILITY OF PROVIDING SPACE SHUTTLE LAUNCH SERVICES ON BASIS OF ROYALTY RECOVERY OVER ECONOMIC LIFE OF COMMERCIAL PRODUCTS PROCESSED IN SPACE

Section 112 of Pub. L. 99–170 provided that: ''The Administrator shall examine and report to the Congress on the feasibility of providing space shuttle launch services on a basis of royalty recovery over the economic life of commercial products produced or processed in space.''

STUDY ON PROPOSED PRICING POLICY FOR CERTAIN SERVICES

Section 113 of Pub. L. 99–170 provided that: ''The Administrator shall conduct a study and report to the Congress on a proposed pricing policy for certain services such as on-orbit service, repair or recovery of spacecraft.''

§ 2467. Science, Space, and Technology Education Trust Fund; annual report to Congress

There is appropriated, by transfer from funds appropriated in this Act for ''Construction of facilities'', the sum of $15,000,000 to the ''Science, Space, and Technology Education Trust Fund'' which is hereby established in the Treasury of the United States: *Provided*, That the Secretary shall invest such funds in the United States Treasury special issue securities, that such interest shall be credited to the Trust Fund on a quarterly basis, and that such interest shall be available for the purpose of making grants for programs directed at improving science, space, and technology education in the United States: *Provided further*, That the Administrator of the National Aeronautics and Space Administration, after consultation with the Director of the National Science Foundation, shall review applications made for such grants and determine the distribution of such available funds on a competitive basis: *Provided further*, That such grants shall be made available to any awardee only to the extent that said awardee provides matching funds from non-Federal sources to carry out the program for which grants from this Trust Fund are made: *Provided further*, That of the funds made available by this Trust Fund, $250,000 shall be disbursed each calendar quarter hereafter to the Challenger Center for Space Science Education: *Provided further*, That the Administrator of the National Aeronautics and Space Administration shall submit to the Congress an annual report on the grants made pursuant to this paragraph.

(Pub. L. 100–404, title II, Aug. 19, 1988, 102 Stat. 1028; Pub. L. 103–327, title III, Sept. 28, 1994, 108 Stat. 2328.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 100–404, Aug. 19, 1988, 102 Stat. 1014, known as the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

AMENDMENTS

1994—Pub. L. 103–327 substituted ''hereafter'' for ''for a ten-year period''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to submittal of annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 4 on page 179 of House Document No. 103–7.

§ 2467a. National Aeronautics and Space Administration Endeavor Teacher Fellowship Trust Fund

(a) Establishment

There is established in the Treasury of the United States, in tribute to the dedicated crew of the Space Shuttle Challenger, a trust fund to be known as the ''National Aeronautics and Space Administration Endeavor Teacher Fellowship Trust Fund'' (hereafter in this section referred to as the ''Trust Fund''). The Trust Fund shall consist of gifts and donations accepted by the National Aeronautics and Space Administration pursuant to section 2476b of this title, as well as other amounts which may from time to

time, at the discretion of the Administrator, be transferred from the National Aeronautics and Space Administration Gifts and Donations Trust Fund.

(b) Investment of Trust Fund

The Administrator shall direct the Secretary of the Treasury to invest and reinvest funds in the Trust Fund in public debt securities with maturities suitable for the needs of the Trust Fund, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities. Interest earned shall be credited to the Trust Fund.

(c) Purpose

Income accruing from the Trust Fund principal shall be used to create the National Aeronautics and Space Administration Endeavor Teacher Fellowship Program, to the extent provided in advance in appropriation Acts. The Administrator is authorized to use such funds to award fellowships to selected United States nationals who are undergraduate students pursuing a course of study leading to certified teaching degrees in elementary education or in secondary education in mathematics, science, or technology disciplines. Awards shall be made pursuant to standards established for the fellowship program by the Administrator.

(Pub. L. 102–195, § 20, Dec. 9, 1991, 105 Stat. 1615.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

§ 2467b. Requirements

(a) Competition

Making use of the existing infrastructure established in eligible States by the National Science Foundation, the Administrator shall conduct a merit grant competition among the eligible States in areas of research important to the mission of the National Aeronautics and Space Administration. With respect to a grant application by an eligible State, the Administrator shall consider—

(1) the application's merit and relevance to the mission of the National Aeronautics and Space Administration;

(2) the potential for the grant to serve as a catalyst to enhance the ability of researchers in the State to become more competitive for regular National Aeronautics and Space Administration funding;

(3) the potential for the grant to improve the environment for science, mathematics, and engineering education in the State; and

(4) the need to assure the maximum distribution of grants among eligible States, consistent with merit.

(b) Supplemental grants

The Administrator shall endeavor, where appropriate, to supplement grants made under subsection (a) of this section with such grants for fellowships, traineeships, equipment, or instrumentation as are available.

(c) "Eligible State" defined

In this section, the term ''eligible State'' means a State designated by the Administrator as eligible to compete in the Foundation's Experimental Program to Stimulate Competitive Research.

(Pub. L. 102–588, title III, § 304, Nov. 4, 1992, 106 Stat. 5120.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

CONGRESSIONAL FINDINGS AND POLICY

Sections 301 to 303 of title III of Pub. L. 102–588 provided that:

''SEC. 301. SHORT TITLE.

''This title [enacting this section and provisions set out as a note below] may be cited as the 'Experimental Program to Stimulate Competitive Research on Space and Aeronautics Act'.

''SEC. 302. FINDINGS.

''Congress finds that—

''(1) the report of the Advisory Committee on the Future of the United States Space Program has provided a framework within which a consensus on the goals of the space program can be developed;

''(2) the National Aeronautics and Space Administration's space science and applications, aeronautical research and technology, and space research and technology programs will serve as the fulcrum for future initiatives by the United States in civil space and aviation;

''(3) colleges and universities in many States are currently not able to compete successfully for research grants awarded by the National Aeronautics and Space Administration through its space science and applications, aeronautical research and technology, and space research and technology programs;

''(4) balanced programs of space science and applications, aeronautical research and technology, and space research and technology should include initiatives designed to foster competitive research capacity in all geographic areas of the Nation; and

''(5) by strengthening the competitive research capacity in those geographic areas of the Nation which are not currently fully competitive, the education and training of scientists and engineers important to the future of the United States civil space and aviation programs will be fostered.

''SEC. 303. POLICY.

''It is the policy of the United States that—

''(1) the Administrator [of the National Aeronautics and Space Administration], in planning for national programs in space science and applications, aeronautical research, space flight, and exploration, should ensure the resilience of the space and aeronautics research infrastructure;

''(2) a stable and balanced program of space science and applications, aeronautical research and technology, and space research and technology should include programs to assure that geographic areas of the United States that currently do not successfully participate in competitive space and aeronautical research activities are enabled to become more competitive; and

''(3) programs to improve competitive capabilities should be a part of the research and the educational activities of the National Aeronautics and Space Administration.''

AUTHORIZATION OF APPROPRIATIONS

Section 305 of Pub. L. 102–588 provided that: ''In carrying out the programs listed in section 102(a) [106 Stat. 5108], the Administrator [of the National Aeronautics and Space Administration] should ensure that up to $10,000,000 from the appropriations authorized for 'Research and Development', for fiscal year 1993 are also used for purposes of establishing and developing an Experimental Program to Stimulate Competitive Research on Space and Aeronautics.''

''ADMINISTRATOR'' DEFINED

Administrator means Administrator of the National Aeronautics and Space Administration, see section 102(f) of Pub. L. 102–588, 106 Stat. 5110.

SUBCHAPTER II—COORDINATION OF AERONAUTICAL AND SPACE ACTIVITIES

§ 2471. National Space Council

(a) Establishment; chairperson

Effective February 1, 1989, there is established in the Executive Office of the President the National Space Council, which shall be chaired by the Vice President.

(b) Report to Congress on composition and functions

By March 1, 1989, the President shall submit to the Congress a report that outlines the composition and functions of the National Space Council.

(c) Employment of personnel

The Council may employ a staff of not more than seven persons, which is to be headed by a civilian executive secretary, who shall be appointed by the President.

(Pub. L. 100–685, title V, § 501, Nov. 17, 1988, 102 Stat. 4102.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

PRIOR PROVISIONS

A prior section 2471, Pub. L. 85–568, title II, § 201, July 29, 1958, 72 Stat. 427; Pub. L. 87–26, § 1, Apr. 25, 1961, 75 Stat. 46; Pub. L. 87–367, title II, § 207, Oct. 4, 1961, 75 Stat. 792; Pub. L. 87–584, § 7, Aug. 14, 1962, 76 Stat. 385; Pub. L. 88–426, title III, §§ 305(13)(A), 306(c), Aug. 14, 1964, 78 Stat. 423, 428; Pub. L. 91–406, Sept. 23, 1970, 84 Stat. 855, which related to the establishment, membership, duties, and personnel of the National Aeronautics and Space Council, was omitted from the Code, because the Council, including the office of Executive Secretary of the Council, together with the functions of the Council, was abolished by section 3(a)(4) of Reorg. Plan No. 1 of 1973, 38 F.R. 9579, 87 Stat. 1089, effective July 1, 1973, set out in the Appendix to Title 5, Government Organization and Employees.

NATIONAL SPACE COUNCIL AUTHORIZATION

Provisions authorizing appropriations for specific fiscal years to carry out the National Space Council activities established by this section with limitation of $1,000 on amount available for official reception and representation expenses and requiring the National Space Council to reimburse other agencies for not less than one-half of the personnel compensation costs of individuals detailed to it were contained in the following appropriation authorization acts:

Pub. L. 102–588, title II, § 212, Nov. 4, 1992, 106 Stat. 5115.

Pub. L. 102–195, § 14(a), Dec. 9, 1991, 105 Stat. 1613.

Pub. L. 101–611, title I, § 108(a), Nov. 16, 1990, 104 Stat. 3197.

Pub. L. 101–328, § 2, July 8, 1990, 104 Stat. 308.

STUDY ON INTERNATIONAL COOPERATION IN PLANETARY EXPLORATION

Pub. L. 101–611, title I, § 114, Nov. 16, 1990, 104 Stat. 3200, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the President on July 20, 1989, established the long-range goal of establishing a lunar base, followed by manned exploration of Mars in the early twenty-first century;

''(2) the United States and the Soviet Union, in cooperation with other countries, are currently planning further unmanned missions to the Moon and to Mars with the possible goal of landing a human on Mars;

''(3) a series of international missions to expand human presence beyond Earth orbit would further a spirit of, and follow through on the commitment made in, the 1987 agreement between the Soviet Union and the United States for space cooperation, as well as the successful cooperative agreements the United States has pursued with over one hundred countries since its inception, including the agreement with Japan, Canada, and the European countries for Space Station Freedom;

''(4) international manned missions beyond Earth orbit could further encourage a cooperative approach in world affairs unrelated to activities in space;

''(5) international manned missions beyond Earth orbit could save the individual nations involved tens of billions of dollars over national missions; and

''(6) a multilateral effort for manned missions to establish a lunar colony, a Mars mission, and any other missions that have the goal of establishing human presence beyond Earth's orbit and possibly landing a human on Mars would lead to greater understanding of our universe and greater sensitivity to our own planet.

''(b) STUDY.—The National Space Council shall conduct a study on International Cooperation in Planetary Exploration (hereafter in this section referred to as the 'study').

''(c) PURPOSE OF STUDY.—The purpose of the study is—

''(1) to develop an inventory of technologies and intentions of all national space agencies with regard to lunar and planetary exploration, both manned and unmanned;

''(2) to seek ways, through direct communication with appropriate officials of other nations or otherwise, to enhance the planning and exchange of information and data among the United States, the Soviet Union, European countries, Canada, Japan, and other interested countries with respect to unmanned projects beyond Earth orbit, in anticipation of later international manned missions to the Moon and to other bodies, including the possible goal of an international manned mission to Mars;

''(3) to prepare a detailed proposal that most efficiently uses the resources of the national space agencies in cooperative endeavors to establish human presence beyond Earth orbit;

''(4) to develop priority goals that accomplish unmet needs that could not be achieved by any individual country;

''(5) to explore the possibilities of international unmanned probes to the Moon and Mars, and the possibilities for international manned missions beyond Earth's orbit; and

''(6) to devise strategies for such cooperation that would prevent the unwanted transfer of technology.

In developing the inventory under paragraph (1), and in preparing the detailed proposal under paragraph (3), consideration shall be given to the potential contribu-

tions of commercial providers of space goods and services.

''(d) REPORT.—The National Space Council shall, within one year after the date of the enactment of this Act [Nov. 16, 1990], prepare and submit to Congress a report—

''(1) outlining a preliminary strategy for cooperation among the United States, the Soviet Union, European countries, Canada, Japan, and other interested countries, based on their respective national strengths, with respect to unmanned projects beyond Earth orbit, in anticipation of later international manned missions to the Moon and to other bodies, including the possible goal of an international manned mission to Mars;

''(2) including a conceptual design of a possible international manned mission, in coordination with the preliminary strategy referred to in paragraph (1), with target dates and a breakdown of responsibilities by nation;

''(3) containing an inventory of planned and anticipated missions, manned and unmanned, that are being considered by national space agencies and commercial providers of space goods and services; and

''(4) containing an inventory of space exploration technologies that either—

''(A) are not immediately available in the United States but are available from other nations; or

''(B) are available in the United States but are available from other nations in equal or superior form.''

STAFFING

Pub. L. 101–328, § 3(a), July 8, 1990, 104 Stat. 308, provided that: ''Not more than six individuals may be employed by the National Space Council without regard to any provision of law regulating the employment or compensation of persons in the Government service, at rates not to exceed the rate of pay for level VI of the Senior Executive Schedule as provided pursuant to section 5382 of title 5, United States Code.''

EXPERTS AND CONSULTANTS

Pub. L. 101–328, § 4, July 8, 1990, 104 Stat. 308, provided that: ''The National Space Council may, for purposes of carrying out its functions, employ experts and consultants in accordance with section 3109 of title 5, United States Code, and may compensate individuals so employed for each day they are involved in a business of the National Space Council (including traveltime) at rates not in excess of the daily equivalent of the maximum rate of pay for grade GS–18 as provided pursuant to section 5332 of title 5, United States Code.''

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

§ 2471a. Users' Advisory Group

(a) Establishment

(1) The National Space Council shall establish a Users' Advisory Group composed of non-Federal representatives of industries and other persons involved in aeronautical and space activities.

(2) The Vice President shall name a chairman of the Users' Advisory Group.

(3) The National Space Council shall from time to time, but not less than once a year, meet with the Users' Advisory Group.

(4) The function of the Users' Advisory Group shall be to ensure that the interests of industries and other non-Federal entities involved in space activities, including in particular commercial entities, are adequately represented in the National Space Council.

(5) The Users' Advisory Group may be assisted by personnel detailed to the National Space Council.

(b) Exemption

The Users' Advisory Group shall not be subject to section 14(a)(2) of the Federal Advisory Committee Act.

(Pub. L. 101–611, title I, § 121, Nov. 16, 1990, 104 Stat. 3204.)

REFERENCES IN TEXT

Section 14(a)(2) of the Federal Advisory Committee Act, referred to in subsec. (b), is section 14(a)(2) of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

§ 2472. National Aeronautics and Space Administration

(a) Establishment; appointment and duties of Administrator

There is established the National Aeronautics and Space Administration (hereinafter called the ''Administration''). The Administration shall be headed by an Administrator, who shall be appointed from civilian life by the President by and with the advice and consent of the Senate. Under the supervision and direction of the President, the Administrator shall be responsible for the exercise of all powers and the discharge of all duties of the Administration, and shall have authority and control over all personnel and activities thereof.

(b) Deputy Administrator; appointment and duties

There shall be in the Administration a Deputy Administrator, who shall be appointed from civilian life by the President by and with the advice and consent of the Senate and shall perform such duties and exercise such powers as the Administrator may prescribe. The Deputy Administrator shall act for, and exercise the powers of, the Administrator during his absence or disability.

(c) Restriction on engaging in any other business, vocation, or employment

The Administrator and the Deputy Administrator shall not engage in any other business, vocation, or employment while serving as such.

(Pub. L. 85–568, title II, § 202, July 29, 1958, 72 Stat. 429; Pub. L. 88–426, title III, § 305(12), Aug. 14, 1964, 78 Stat. 423.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88–426, § 305(12)(A), repealed provisions which prescribed compensation of Administrator.

Subsec. (b). Pub. L. 88–426, § 305(12)(B), repealed provisions which prescribed compensation of Deputy Administrator.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after

July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Administrator of National Aeronautics and Space Administration, see Parts 1, 2, and 19 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

TERMINATION OF NATIONAL ADVISORY COMMITTEE FOR AERONAUTICS; TRANSFER OF FUNCTIONS

Section 301(a) of Pub. L. 85–568 provided that: ''The National Advisory Committee for Aeronautics, on the effective date of this section [see note set out under section 2302 of Title 10, Armed Forces], shall cease to exist. On such date all functions, powers, duties, and obligations, and all real and personal property, personnel (other than members of the Committee), funds, and records of that organization, shall be transferred to the Administration.''

APPOINTMENT OF COMMISSIONED OFFICER AS DEPUTY ADMINISTRATOR

Pub. L. 107–117, div. B, § 307, Jan. 10, 2002, 115 Stat. 2301, authorized the President, during fiscal year 2002, to appoint a commissioned officer of the Armed Forces to the Office of Deputy Administrator of the National Aeronautics and Space Administration.

APPOINTMENT OF RETIRED MILITARY OFFICER AS ADMINISTRATOR

Pub. L. 101–48, June 30, 1989, 103 Stat. 136, provided: ''That notwithstanding the provisions of section 202(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2472(a)), or any other provision of law, the President, acting by and with the advice and consent of the Senate, is authorized to appoint Rear Admiral Richard Harrison Truly to the Office of Administrator of the National Aeronautics and Space Administration. Admiral Truly's appointment to, acceptance of, and service in that Office shall in no way affect the status, rank, and grade which he holds as an officer on the retired list of the United States Navy, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade, except to the extent that subchapter IV of chapter 55 of title 5, United States Code, affects the amount of retired pay to which he is entitled by law during his service as Administrator. So long as he serves as Administrator, Admiral Truly shall receive the compensation of that Office at the rate which would be applicable if he were not an officer on the retired list of the United States Navy, shall retain the status, rank, and grade which he now holds as an officer on the retired list of the United States Navy, shall retain all emoluments, perquisites, rights, privileges, and benefits incident to or arising out of such status, office, rank, or grade, and shall in addition continue to receive the retired pay to which he is entitled by law, subject to the provisions of subchapter IV of chapter 55 of title 5, United States Code.

''SEC. 2. In the performance of his duties as Administrator of the National Aeronautics and Space Administration, Admiral Truly shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were not an officer on the retired list of the United States Navy.

''SEC. 3. Nothing in this Act shall be construed as approval by the Congress of any future appointments of military persons to the Offices of Administrator and Deputy Administrator of the National Aeronautics and Space Administration.''

EX. ORD. NO. 10849. ESTABLISHMENT OF SEAL FOR NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Ex. Ord. No. 10849, Nov. 27, 1959, 24 F.R. 9559, as amended by Ex. Ord. No. 10942, May 19, 1961, 26 F.R. 4419, provided:

WHEREAS the Administrator of the National Aeronautics and Space Administration has caused to be made, and has recommended that I approve, a seal for the National Aeronautics and Space Administration, the design of which accompanies and is hereby made a part of this order, and which is described as follows:

On a disc of the blue sky strewn with white stars, to dexter a larger yellow sphere bearing a red flight symbol apex in upper sinister and wings enveloping and casting a brown shadow upon the sphere, all partially encircled with a horizontal white orbit, in sinister a small light-blue sphere; circumscribing the disc a white band edged gold inscribed ''National Aeronautics and Space Administration U.S.A.'' in red letters.

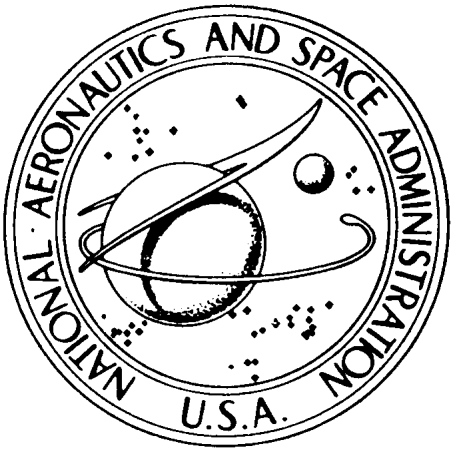

AND WHEREAS it appears that such seal is of suitable design and appropriate for establishment as the official seal of the National Aeronautics and Space Administration:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, I hereby approve such seal as the official seal of the National Aeronautics and Space Administration.

§ 2473. Functions of Administration

(a) Planning, directing and conducting aeronautical and space activities; participation by scientific community; dissemination of information

The Administration, in order to carry out the purpose of this chapter, shall—

(1) plan, direct, and conduct aeronautical and space activities;

(2) arrange for participation by the scientific community in planning scientific measurements and observations to be made through use of aeronautical and space vehicles, and conduct or arrange for the conduct of such measurements and observations;

(3) provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof;

(4) seek and encourage, to the maximum extent possible, the fullest commercial use of space; and

(5) encourage and provide for Federal Government use of commercially provided space services and hardware, consistent with the requirements of the Federal Government.

(b) Research, development, etc., in ground propulsion technologies and solar heating and cooling technologies

(1) The Administration shall, to the extent of appropriated funds, initiate, support, and carry out such research, development, demonstration, and other related activities in ground propulsion technologies as are provided for in sections 2503 through 2509 of title 15.

(2) The Administration shall initiate, support, and carry out such research, development, demonstrations, and other related activities in solar heating and cooling technologies (to the extent that funds are appropriated therefor) as are provided for in sections 5503, 5504, and 5507 of this title.

(c) Powers of Administration in performance of its functions

In the performance of its functions the Administration is authorized—

(1) to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law;

(2) to appoint and fix the compensation of such officers and employees as may be necessary to carry out such functions. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5, except that (A) to the extent the Administrator deems such action necessary to the discharge of his responsibilities, he may appoint not more than four hundred and twenty-five of the scientific, engineering, and administrative personnel of the Administration without regard to such laws, and may fix the compensation of such personnel not in excess of the rate of basic pay payable for level III of the Executive Schedule, and (B) to the extent the Administrator deems such action necessary to recruit specially qualified scientific and engineering talent, he may establish the entrance grade for scientific and engineering personnel without previous service in the Federal Government at a level up to two grades higher than the grade provided for such personnel under the General Schedule, and fix their compensation accordingly;

(3) to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, aeronautical and space vehicles, quarters and related accommodations for employees and dependents of employees of the Administration, and such other real and personal property (including patents), or any interest therein, as the Administration deems necessary within and outside the continental United States; to acquire by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia for the use of the Administration for a period not to exceed ten years without regard to section 8141 of title 40; to lease to others such real and personal property; to sell and otherwise dispose of real and personal property (including patents and rights thereunder) in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended;[1] and to provide by contract or otherwise for cafeterias and other necessary facilities for the welfare of employees of the Administration at its installations and purchase and maintain equipment therefor;

(4) to accept unconditional gifts or donations of services, money, or property, real, personal, or mixed, tangible or intangible;

(5) without regard to section 3324(a) and (b) of title 31, to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its work and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, Territory, or possession, or with any political subdivision thereof, or with any person, firm, association, corporation, or educational institution. To the maximum extent practicable and consistent with the accomplishment of the purpose of this chapter, such contracts, leases, agreements, and other transactions shall be allocated by the Administrator in a manner which will enable small-business concerns to participate equitably and proportionately in the conduct of the work of the Administration;

(6) to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement, and on a similar basis to cooperate with other public and private agencies and instrumentalities in the use of services, equipment, and facilities. Each department and agency of the Federal Government shall cooperate fully with the Administration in making its services, equipment, personnel, and facilities available to the Administration, and any such department or agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administration, without reimbursement, aeronautical and space vehicles, and supplies and equipment other than administrative supplies or equipment;

(7) to appoint such advisory committees as may be appropriate for purposes of consultation and advice to the Administration in the performance of its functions;

(8) to establish within the Administration such offices and procedures as may be appropriate to provide for the greatest possible coordination of its activities under this chapter with related scientific and other activities being carried on by other public and private agencies and organizations;

(9) to obtain services as authorized by section 3109 of title 5, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18;

(10) when determined by the Administrator to be necessary, and subject to such security investigations as he may determine to be appropriate, to employ aliens without regard to statutory provisions prohibiting payment of compensation to aliens;

(11) to provide by concession, without regard to section 1302 of title 40, on such terms as the

[1] See References in Text note below.

Administrator may deem to be appropriate and to be necessary to protect the concessioner against loss of his investment in property (but not anticipated profits) resulting from the Administration's discretionary acts and decisions, for the construction, maintenance, and operation of all manner of facilities and equipment for visitors to the several installations of the Administration and, in connection therewith, to provide services incident to the dissemination of information concerning its activities to such visitors, without charge or with a reasonable charge therefor (with this authority being in addition to any other authority which the Administration may have to provide facilities, equipment, and services for visitors to its installations). A concession agreement under this paragraph may be negotiated with any qualified proposer following due consideration of all proposals received after reasonable public notice of the intention to contract. The concessioner shall be afforded a reasonable opportunity to make a profit commensurate with the capital invested and the obligations assumed, and the consideration paid by him for the concession shall be based on the probable value of such opportunity and not on maximizing revenue to the United States. Each concession agreement shall specify the manner in which the concessioner's records are to be maintained, and shall provide for access to any such records by the Administration and the Comptroller General of the United States for a period of five years after the close of the business year to which such records relate. A concessioner may be accorded a possessory interest, consisting of all incidents of ownership except legal title (which shall vest in the United States), in any structure, fixture, or improvement he constructs or locates upon land owned by the United States; and, with the approval of the Administration, such possessory interest may be assigned, transferred, encumbered, or relinquished by him, and, unless otherwise provided by contract, shall not be extinguished by the expiration or other termination of the concession and may not be taken for public use without just compensation;

(12) with the approval of the President, to enter into cooperative agreements under which members of the Army, Navy, Air Force, and Marine Corps may be detailed by the appropriate Secretary for services in the performance of functions under this chapter to the same extent as that to which they might be lawfully assigned in the Department of Defense;

(13)(A) to consider, ascertain, adjust, determine, settle, and pay, on behalf of the United States, in full satisfaction thereof, any claim for $25,000 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of the Administration's functions as specified in subsection (a) of this section, where such claim is presented to the Administration in writing within two years after the accident or incident out of which the claim arises; and

(B) if the Administration considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by this paragraph, to report the facts and circumstances thereof to the Congress for its consideration.

(Pub. L. 85–568, title II, §203, July 29, 1958, 72 Stat. 429; Pub. L. 86–20, May 13, 1959, 73 Stat. 21; Pub. L. 86–481, §5, June 1, 1960, 74 Stat. 153; Pub. L. 87–367, title II, §206(a), Oct. 4, 1961, 75 Stat. 791; Pub. L. 87–584, §6, Aug. 14, 1962, 76 Stat. 384; Pub. L. 87–793, §1001(f), Oct. 11, 1962, 76 Stat. 864; Pub. L. 88–426, title III, §306(d), Aug. 14, 1964, 78 Stat. 429; Pub. L. 88–448, title IV, §402(a)(34), Aug. 10, 1964, 78 Stat. 495; Pub. L. 91–646, title II, §220(a)(2), Jan. 2, 1971, 84 Stat. 1903; Pub. L. 93–74, §6, July 23, 1973, 87 Stat. 174; Pub. L. 93–316, §6, June 22, 1974, 88 Stat. 243; Pub. L. 93–409, §4, Sept. 3, 1974, 88 Stat. 1070; Pub. L. 94–413, §15(c), Sept. 17, 1976, 90 Stat. 1270; Pub. L. 95–401, §6, Sept. 30, 1978, 92 Stat. 860; Pub. L. 96–48, §6(a), Aug. 8, 1979, 93 Stat. 348; Pub. L. 101–611, title I, §107, Nov. 16, 1990, 104 Stat. 3197; Pub. L. 108–201, §2(a), Feb. 24, 2004, 118 Stat. 461.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(5), (8), (12), was in the original "this Act", meaning Pub. L. 85–568, July 29, 1958, 72 Stat. 426, as amended, known as the National Aeronautics and Space Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

The civil-service laws, referred to in subsec. (c)(2), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

Level III of the Executive Schedule, referred to in subsec. (c)(2), is set out in section 5314 of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (c)(2), is set out under section 5332 of Title 5.

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (c)(3), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

CODIFICATION

In subsec. (c)(2), "chapter 51 and subchapter III of chapter 53 of title 5" substituted for "the Classification Act of 1949, as amended" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (c)(3), "section 8141 of title 40" substituted for "the Act of March 3, 1877 (40 U.S.C. 34)" and, in subsec. (c)(11), "section 1302 of title 40" substituted for "section 321 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b)", on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (c)(5), "section 3324(a) and (b) of title 31" substituted for "section 3648 of the Revised Statutes, as amended (31 U.S.C. 529)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2004—Subsec. (c)(2)(A). Pub. L. 108–201 substituted "the rate of basic pay payable for level III of the Executive Schedule," for "the highest rate of grade 18 of the General Schedule,".

1990—Subsec. (a)(4), (5). Pub. L. 101–611 added pars. (4) and (5).

1979—Subsec. (c)(13). Pub. L. 96–48 substituted ''$25,000'' for ''$5,000''.

1978—Subsec. (b). Pub. L. 95–401 designated existing provisions as par. (1) and redesignated provisions set out in text as the second subsec. (c), relating to research, development, etc., in solar heating and cooling technologies, as par. (2).

Subsec. (c). Pub. L. 95–401 redesignated subsec. (c), relating to research, development, etc., in solar heating and cooling technologies, as subsec. (b)(2).

1976—Subsec. (b). Pub. L. 94–413 added subsec. (b). Former subsec. (b) was redesignated (c) and was set out in text as the second subsec. (c).

Subsec. (c). Pub. L. 94–413 redesignated former subsec. (b), relating to research, development, etc., in solar heating and cooling technologies, as (c) set out in text as the second subsec. (c).

1974—Subsec. (b). Pub. L. 93–409 added subsec. (b), and redesignated former subsec. (b) as (c) set out first.

Subsec. (b)(9). Pub. L. 93–316 substituted ''section 3109 of title 5, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18'' for ''section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates not to exceed $100 per diem for individuals''.

Subsec. (c). Pub. L. 93–409 redesignated former subsec. (b) as (c).

1973—Subsec. (b)(11). Pub. L. 93–74 added par. (11).

1971—Subsec. (b)(14). Pub. L. 91–646 repealed provisions of paragraph for Administration authorization for reimbursement of owners and tenants of land and interests in land acquired on or after Nov. 1, 1961, by the United States for Administration use for expenses and damages incurred by such owners and tenants as result of moving themselves, their families, and their possessions because of said acquisition, limitation on amount, and time for submission of applications. See section 4601 et seq. of this title.

1964—Subsec. (b)(2). Pub. L. 88–426 struck out provisions from cl. (A) which permitted the Administrator to fix compensation at not more than $21,000 for a maximum of thirty positions and provisions which related to the filling of positions prior to Mar. 1, 1962, and July 1, 1962.

Subsec. (b)(11). Pub. L. 88–448 repealed former par. (11) which authorized the employment of retired commissioned officers.

1962—Subsec. (b). Pub. L. 87–793 substituted ''(at not to exceed the highest rate of grade 18 of the General Schedule, or for a maximum of thirty positions, not to exceed $21,000 a year) of'' for ''(up to a limit of $19,000 a year, or up to a limit of $21,000 a year for a maximum of thirty positions) of'', in par (2).

Subsec. (b)(14). Pub. L. 87–584 added par. (14).

1961—Subsec. (b)(2). Pub. L. 87–367 substituted ''thirty'' for ''thirteen'' and ''four hundred and twenty-five (of which not to exceed three hundred and fifty-five may be filled prior to March 1, 1962 and not to exceed three hundred and ninety may be filed prior to July 1, 1962)'' for ''two hundred and ninety''.

1960—Subsec. (b)(2). Pub. L. 86–481 substituted ''thirteen'' for ''ten'' and ''two hundred and ninety'' for ''two hundred and sixty''.

1959—Subsec. (b)(3). Pub. L. 86–20 authorized the Administration to acquire, by lease or otherwise, buildings or parts of buildings in the District of Columbia for a period of not more than 10 years.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–201, § 2(b), Feb. 24, 2004, 118 Stat. 461, provided that: ''The amendment made by this section [amending this section] shall take effect on the first day of the first pay period beginning on or after the date of enactment of this Act [Feb. 24, 2004].''

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–48 effective Oct. 1, 1979, see section 6(c) of Pub. L. 96–48, set out as an Effective Date note under section 2458b of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–646 effective Jan. 2, 1971, see section 221 of Pub. L. 91–646, set out as an Effective Date note under section 4601 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–448 effective on first day of first month which begins later than the ninetieth day following Aug. 19, 1964, see section 403 of Pub. L. 88–448.

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–793 effective on first day of first pay period which begins on or after Oct. 11, 1962, see section 1008 of Pub. L. 87–793.

SAVINGS PROVISION

Any rights or liabilities existing under provisions repealed by section 220(a) of Pub. L. 91–646 as not affected by such repeal, see section 220(b) of Pub. L. 91–646, set out as a note under section 4621 of this title.

OFFICE OF INSPECTOR GENERAL

Functions, powers, and duties of Management Audit Office and Office of Inspections and Security in National Aeronautics and Space Administration transferred to Office of Inspector General in National Aeronautics and Space Administration by section 9(a)(1)(L) of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, Government Organization and Employees, section 2 of which established such Office of Inspector General.

NOTICE OF REPROGRAMMING OR REORGANIZATION

Pub. L. 106–391, title III, § 311, Oct. 30, 2000, 114 Stat. 1594, provided that:

''(a) NOTICE OF REPROGRAMMING.—If any funds authorized by this Act [see Tables for classification] are subject to a reprogramming action that requires notice to be provided to the Appropriations Committees of the House of Representatives and the Senate, notice of such action shall concurrently be provided to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

''(b) NOTICE OF REORGANIZATION.—The Administrator [of the National Aeronautics and Space Administration] shall provide notice to the Committees on Science and Appropriations of the House of Representatives, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, not later than 30 days before any major reorganization of any program, project, or activity of the National Aeronautics and Space Administration.''

PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS

Pub. L. 106–391, title III, § 319, Oct. 30, 2000, 114 Stat. 1597, provided that:

''(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this Act [see Tables for classification], it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

''(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the Administrator [of the National Aeronautics and Space Administration] shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress.''

ENHANCEMENT OF SCIENCE AND MATHEMATICS PROGRAMS

Pub. L. 106–391, title III, § 321, Oct. 30, 2000, 114 Stat. 1597, provided that:

''(a) DEFINITIONS.—In this section:

''(1) EDUCATIONALLY USEFUL FEDERAL EQUIPMENT.—The term 'educationally useful Federal equipment' means computers and related peripheral tools and research equipment that is appropriate for use in schools.

''(2) SCHOOL.—The term 'school' means a public or private educational institution that serves any of the grades of kindergarten through grade 12.

''(b) SENSE OF THE CONGRESS.—

''(1) IN GENERAL.—It is the sense of the Congress that the Administrator [of the National Aeronautics and Space Administration] should, to the greatest extent practicable and in a manner consistent with applicable Federal law (including Executive Order No. 12999 [40 U.S.C. 549 note]), donate educationally useful Federal equipment to schools in order to enhance the science and mathematics programs of those schools.

''(2) REPORTS.—Not later than 1 year after the date of the enactment of this Act [Oct. 30, 2000], and annually thereafter, the Administrator shall prepare and submit to Congress a report describing any donations of educationally useful Federal equipment to schools made during the period covered by the report.''

NASA MID-RANGE PROCUREMENT TEST PROGRAM

Pub. L. 103–355, title V, § 5062, Oct. 13, 1994, 108 Stat. 3356, provided that:

''(a) IN GENERAL.—The Administrator of the National Aeronautics and Space Administration (in this section referred to as the 'Administrator') may conduct a test of alternative notice and publication requirements for procurements conducted by the National Aeronautics and Space Administration. To the extent consistent with this section, such program shall be conducted consistent with section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413).

''(b) APPLICABILITY.—The test conducted under subsection (a) shall apply to acquisitions with an estimated annual total obligation of funds of $500,000 or less.

''(c) LIMITATION ON TOTAL COST.—The total estimated life-cycle cost to the Federal Government for the test conducted under subsection (a) may not exceed $100,000,000.

''(d) WAIVER OF PROCUREMENT REGULATIONS.—(1) In conducting the test under this section, the Administrator, with the approval of the Administrator for Federal Procurement Policy, may waive—

''(A) any provision of the Federal Acquisition Regulation that is not required by statute; and

''(B) any provision of the Federal Acquisition Regulation that is required by a provision of law described in paragraph (2), the waiver of which the Administrator determines in writing to be necessary to conduct the test.

''(2) The provisions of law referred to in paragraph (1) are as follows:

''(A) Subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637).

''(B) Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416).

''(e) REPORT.—Not later than 6 months after completion of the test conducted under subsection (a), the Comptroller General shall submit to Congress a report for the test setting forth in detail the results of the test, including such recommendations as the Comptroller General considers appropriate.

''(f) EXPIRATION OF AUTHORITY.—The authority to conduct the test under subsection (a) and to award contracts under such test shall expire 4 years after the date of the enactment of this Act [Oct. 13, 1994]. Contracts entered into before such authority expires shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section.

''(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the test conducted pursuant to subsection (a).''

TRANSMISSION OF BUDGET ESTIMATES

Pub. L. 102–588, title II, § 210, Nov. 4, 1992, 106 Stat. 5115, provided that: ''The Administrator [of the National Aeronautics and Space Administration] shall, at the time of submission of the President's annual budget, transmit to the Congress—

''(1) a five-year budget detailing the estimated development costs for each individual program under the jurisdiction of the National Aeronautics and Space Administration for which development costs are expected to exceed $200,000,000; and

''(2) an estimate of the life-cycle costs associated with each such program.''

Similar provisions were contained in the following prior appropriation authorization act:

Pub. L. 102–195, § 11, Dec. 9, 1991, 105 Stat. 1612.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 2473a. Repealed. Pub. L. 96–470, title I, § 118(b), Oct. 19, 1980, 94 Stat. 2241

Section, Pub. L. 87–367, title II, § 206(b), Oct. 4, 1961, 75 Stat. 791, required Administrator of National Aeronautics and Space Administration to submit to Congress, not later than 45 days after close of each fiscal year, a report which sets forth, as of close of such fiscal year, the number of positions established, the name, compensation, and qualification of each incumbent, position or positions held in or outside Federal Government by each incumbent during the 5 years immediately preceding date of appointment, and such other information as required by Congress and authorized Administrator to omit any information deemed detrimental to national security, to inform Congress of such omission, and to supply all information concerning such matter at request of any Congressional committee.

§ 2473b. Award of prime and subcontracts to small businesses and disadvantaged individuals

The NASA Administrator shall annually establish a goal of at least 8 per centum of the total value of prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, which funds will be made available to small business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 637(a)(5) and (6) of title 15), including Historically Black Colleges and Universities that are part B institutions (as defined in section 1061(2) of title 20), Hispanic-serving institutions (as defined in section 1101a(a)(5) of title 20), Tribal Colleges or Universities (as defined in section 1059c(b)(3) of title 20), Alaskan[1] Native-serving institutions (as defined in section 1059d(b)(2) of title 20), Native Hawaiian-serving institutions (as defined in section 1059d(b)(4) of title 20), and minority educational institutions (as defined by the Secretary of Education pursuant to the General Education Provisions Act (20 U.S.C. 1221 et seq.)).

To facilitate progress in reaching this goal, the NASA Administrator shall submit within

[1] So in original. Probably should be ''Alaska''.

one year from Nov. 9, 1989, a plan describing the process to be followed to achieve the prescribed level of participation in the shortest practicable time.

(Pub. L. 101–144, title III, Nov. 9, 1989, 103 Stat. 863; Pub. L. 109–155, title VI, § 611, Dec. 30, 2005, 119 Stat. 2932.)

REFERENCES IN TEXT

The General Education Provisions Act, referred to in text, is title IV of Pub. L. 90–247, Jan. 2, 1968, 81 Stat. 814, as amended, which is classified generally to chapter 31 (§ 1221 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1221 of Title 20 and Tables.

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

AMENDMENTS

2005—Pub. L. 109–155, in first par., substituted ''Historically Black Colleges and Universities that are part B institutions (as defined in section 1061(2) of title 20), Hispanic-serving institutions (as defined in section 1101a(a)(5) of title 20), Tribal Colleges or Universities (as defined in section 1059c(b)(3) of title 20), Alaskan Native-serving institutions (as defined in section 1059d(b)(2) of title 20), Native Hawaiian-serving institutions (as defined in section 1059d(b)(4) of title 20), and'' for ''Historically Black Colleges and Universities and''.

§ 2473c. Drug and alcohol testing

(a) Short title

This section may be cited as the ''Civil Space Employee Testing Act of 1991''.

(b) Findings

The Congress finds that—

(1) alcohol abuse and illegal drug use pose significant dangers to the safety and welfare of the Nation;

(2) the success of the United States civil space program is contingent upon the safe and successful development and deployment of the many varied components of that program;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the positions affecting safety, security, and national security;

(4) the use of alcohol and illegal drugs has been demonstrated to adversely affect the performance of individuals, and has been proven to have been a critical factor in accidents in the workplace;

(5) the testing of uniformed personnel of the Armed Forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

(c) Testing program

(1) The Administrator shall establish a program applicable to employees of the National Aeronautics and Space Administration whose duties include responsibility for safety-sensitive, security, or national security functions. Such program shall provide for preemployment, reasonable suspicion, random, and post-accident testing for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, security, and national security, for the conduct of periodic recurring testing of such employees for such use in violation of applicable law or Federal regulation.

(2) The Administrator shall, in the interest of safety, security, and national security, prescribe regulations within 18 months after December 9, 1991. Such regulations shall establish a program which requires National Aeronautics and Space Administration contractors to conduct preemployment, reasonable suspicion, random, and post-accident testing of contractor employees responsible for safety-sensitive, security, or national security functions (as determined by the Administrator) for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, security, and national security, for the conduct of periodic recurring testing of such employees for such use in violation of applicable law or Federal regulation.

(3) In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension, disqualification, or dismissal of any employee to which paragraph (1) or (2) applies, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such employee has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(d) Prohibition on service

(1) No individual who is determined by the Administrator under this section to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance after December 9, 1991, shall serve as a National Aeronautics and Space Administration employee with responsibility for safety-sensitive, security, or national security functions (as determined by the Administrator), or as a National Aeronautics and Space Administration contractor employee with such responsibility, unless such individual has completed a program of rehabilitation described in subsection (e) of this section.

(2) Any such individual determined by the Administrator under this section to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance after December 9, 1991, who—

(A) engaged in such use while on duty;

(B) prior to such use had undertaken or completed a rehabilitation program described in subsection (e) of this section;

(C) following such determination refuses to undertake such a rehabilitation program; or

(D) following such determination fails to complete such a rehabilitation program,

shall not be permitted to perform the duties which such individual performed prior to the date of such determination.

(e) Program for rehabilitation

(1) The Administrator shall prescribe regulations setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of employees referred to in subsection (c) of this section in need of assistance in resolving problems with the use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. Each contractor is encouraged to make such a program available to all of its employees in addition to those employees referred to in subsection (c)(2) of this section. The Administrator shall determine the circumstances under which such employees shall be required to participate in such a program. Nothing in this subsection shall preclude any National Aeronautics and Space Administration contractor from establishing a program under this subsection in cooperation with any other such contractor.

(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the National Aeronautics and Space Administration whose duties include responsibility for safety-sensitive, security, or national security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(f) Procedures for testing

In establishing the programs required under subsection (c) of this section, the Administrator shall develop requirements which shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

(B) establish the minimum list of controlled substances for which individuals may be tested; and

(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that all laboratories involved in the controlled substances testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(4) provide that all tests which indicate the use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within 3 days after being advised of the results of the initial confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

(7) provide for the confidentiality of test results and medical information of employees; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(g) Effect on other laws and regulations

(1) No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section.

(2) Nothing in this section shall be construed to restrict the discretion of the Administrator to continue in force, amend, or further supplement any regulations issued before December 9, 1991, that govern the use of alcohol and controlled substances by National Aeronautics and Space Administration employees with responsibility for safety-sensitive, security, and national security functions (as determined by the Administrator), or by National Aeronautics and Space Administration contractor employees with such responsibility.

(h) "Controlled substance" defined

For the purposes of this section, the term ''controlled substance'' means any substance under section 802(6) of title 21 specified by the Administrator.

(Pub. L. 102–195, § 21, Dec. 9, 1991, 105 Stat. 1616.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

§ 2473d. Use of abandoned and underutilized buildings, grounds, and facilities

(a) In general

In any case in which the Administrator considers the purchase, lease, or expansion of a facility to meet requirements of the National Aeronautics and Space Administration, the Administrator shall consider whether those requirements could be met by the use of one of the following:

(1) Abandoned or underutilized buildings, grounds, and facilities in depressed communities that can be converted to National Aeronautics and Space Administration usage at a reasonable cost, as determined by the Administrator.

(2) Any military installation that is closed or being closed, or any facility at such an installation.

(3) Any other facility or part of a facility that the Administrator determines to be—

(A) owned or leased by the United States for the use of another agency of the Federal Government; and

(B) considered by the head of the agency involved—

(i) to be excess to the needs of that agency; or

(ii) to be underutilized by that agency.

(b) Definition

For the purposes of this section, the term ''depressed communities'' means rural and urban communities that are relatively depressed, in terms of age of housing, extent of poverty, growth of per capita income, extent of unemployment, job lag, or surplus labor.

(Pub. L. 106–391, title III, § 325, Oct. 30, 2000, 114 Stat. 1600.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 2000, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation authorization act:

Pub. L. 102–588, title II, § 220, Nov. 4, 1992, 106 Stat. 5118.

DEFINITIONS

For definition of the term ''Administrator'' used in subsec. (a) of this section, see section 3 of Pub. L. 106–391, set out as a note under section 2452 of this title.

§ 2473e. Repealed. Pub. L. 109–155, title VII, § 703(b), Dec. 30, 2005, 119 Stat. 2936

Section, Pub. L. 108–176, title VII, § 703, Dec. 12, 2003, 117 Stat. 2579, related to the National Aeronautics and Space Administration Science and Technology Scholarship Program.

§ 2474. Omitted

CODIFICATION

Section, Pub. L. 85–568, title II, § 204, July 29, 1958, 72 Stat. 431; Pub. L. 88–426, title III, § 305(13)(B), Aug. 14, 1964, 78 Stat. 423; Pub. L. 88–448, title IV, § 401(g), Aug. 19, 1964, 78 Stat. 490, established Civilian-Military Liaison Committee, and was omitted from the Code because the Committee was abolished and its functions, together with the function of its chairman and other officers, transferred to President of the United States by sections 1(e) and 3(a) of Reorg. Plan No. 4 of 1965, eff. July 27, 1965, 30 F.R. 9353, 79 Stat. 1321, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2475. International cooperation

The Administration, under the foreign policy guidance of the President, may engage in a program of international cooperation in work done pursuant to this chapter, and in the peaceful application of the results thereof, pursuant to agreements made by the President with the advice and consent of the Senate.

(Pub. L. 85–568, title II, § 205, July 29, 1958, 72 Stat. 432.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 85–568, July 29, 1958, 72 Stat. 426, as amended, known as the National Aeronautics and Space Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Oct. 10, 1995, 60 F.R. 53251, provided:

Memorandum for the Administrator of the National and Aeronautics and Space Administration

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to facilitate the efficient operations of the aeronautical and space programs of the National Aeronautics and Space Administration (NASA), it is hereby ordered as follows:

The authority conferred upon the President by the Constitution and the laws of the United States of America to executive mutual waivers of claims of liability on behalf of the United States for damages arising out of cooperative activities is hereby delegated to the Administrator of NASA for agreements with foreign governments and their agents regarding aeronautical, science, and space activities that are executed pursuant to the authority granted NASA by the National Aeronautics and Space Act of 1958, Public Law 85–568, as amended [42 U.S.C. 2451 et seq.]. All such agreements shall be subject to coordination with and the concurrence of the Department of State to the extent provided by applicable law, regulations, and procedures. All such waivers of liability entered into prior to the date of this memorandum are hereby ratified.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 2475a. Competitiveness and international cooperation

(a) Limitation

(1) As part of the evaluation of the costs and benefits of entering into an obligation to conduct a space mission in which a foreign entity will participate as a supplier of the spacecraft, spacecraft system, or launch system, the Administrator shall solicit comment on the poten-

tial impact of such participation through notice published in Commerce Business Daily at least 45 days before entering into such an obligation.

(2) The Administrator shall certify to the Congress at least 15 days in advance of any cooperative agreement with the People's Republic of China, or any company owned by the People's Republic of China or incorporated under the laws of the People's Republic of China, involving spacecraft, spacecraft systems, launch systems, or scientific or technical information that—

(A) the agreement is not detrimental to the United States space launch industry; and

(B) the agreement, including any indirect technical benefit that could be derived from the agreement, will not improve the missile or space launch capabilities of the People's Republic of China.

(3) The Inspector General of the National Aeronautics and Space Administration, in consultation with appropriate agencies, shall conduct an annual audit of the policies and procedures of the National Aeronautics and Space Administration with respect to the export of technologies and the transfer of scientific and technical information, to assess the extent to which the National Aeronautics and Space Administration is carrying out its activities in compliance with Federal export control laws and with paragraph (2).

(b) National interests

Before entering into an obligation described in subsection (a) of this section, the Administrator shall consider the national interests of the United States described in section 2(6).

(Pub. L. 106–391, title I, § 126, Oct. 30, 2000, 114 Stat. 1585.)

REFERENCES IN TEXT

Section 2(6), referred to in subsec. (b), is section 2(6) of Pub. L. 106–391, Oct. 30, 2000, 114 Stat. 1578, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 2000, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

DEFINITIONS

For definition of the term ''Administrator'' used in text of this section, see section 3 of Pub. L. 106–391, set out as a note under section 2452 of this title.

§ 2475b. Foreign contract limitation

The National Aeronautics and Space Administration shall not enter into any agreement or contract with a foreign government that grants the foreign government the right to recover profit in the event that the agreement or contract is terminated.

(Pub. L. 106–391, title III, § 305, Oct. 30, 2000, 114 Stat. 1592.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 2000, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

§ 2476. Reports to Congress

(a) Presidential report; transmittal

The President shall transmit to the Congress in May of each year a report, which shall include (1) a comprehensive description of the programed activities and the accomplishments of all agencies of the United States in the field of aeronautics and space activities during the preceding fiscal year, and (2) an evaluation of such activities and accomplishments in terms of the attainment of, or the failure to attain, the objectives described in section 2451(c)[1] of this title.

(b) Recommendations for additional legislation

Any report made under this section shall contain such recommendations for additional legislation as the Administrator or the President may consider necessary or desirable for the attainment of the objectives described in section 2451(c)[1] of this title.

(c) Classified information

No information which has been classified for reasons of national security shall be included in any report made under this section, unless such information has been declassified by, or pursuant to authorization given by, the President.

(Pub. L. 85–568, title II, § 206, July 29, 1958, 72 Stat. 432; Pub. L. 92–68, § 7, Aug. 6, 1971, 85 Stat. 177; Pub. L. 106–391, title III, § 302(b), Oct. 30, 2000, 114 Stat. 1591.)

REFERENCES IN TEXT

Section 2451(c) of this title, referred to in subsecs. (a) and (b), was redesignated section 2451(d) of this title by Pub. L. 98–361, title I, § 110(a)(2), July 16, 1984, 98 Stat. 426.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–391 substituted ''May'' for ''January'' and ''fiscal'' for ''calendar''.

1971—Subsec. (a). Pub. L. 92–68, § 7(1), (2), repealed provisions for submission of Administration reports to the President semiannually and at other times, and redesignated subsec. (b) as (a).

Subsecs. (b) to (d). Pub. L. 92–68, § 7(2), redesignated subsecs. (b), (c), and (d) as (a), (b), and (c), respectively.

DELEGATION OF CERTAIN REPORTING AUTHORITY

Memorandum of President of the United States, Mar. 5, 2004, 69 F.R. 11489, provided:

Memorandum for the Administrator of the National Aeronautics and Space Administration

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President by section 206 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2476), to provide the specified report to the Congress. Nothing in this delegation shall be construed to impair or otherwise affect the authority of the Director of the Office of Management and Budget with respect to budget, administrative, and legislative proposals.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 2476a. Disposal of excess land; approval by Congressional committees

Notwithstanding the provisions of this or any other law, the Administration may not report to

[1] See References in Text note below.

a disposal agency as excess to the needs of the Administration any land having an estimated value in excess of $50,000 which is owned by the United States and under the jurisdiction and control of the Administration, unless (A) a period of thirty days has passed after the receipt by the Speaker and the Committee on Science, Space, and Technology of the House of Representatives and the President and the Committee on Commerce, Science, and Transportation of the Senate of a report by the Administrator or his designee containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such action, or (B) each such committee before the expiration of such period has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(Pub. L. 85–568, title II, § 207, as added Pub. L. 93–74, § 7, July 23, 1973, 87 Stat. 175; amended Pub. L. 103–437, § 15(j), Nov. 2, 1994, 108 Stat. 4593.)

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Committee on Science, Space, and Technology'' for ''Committee on Science and Astronautics'' and ''Committee on Commerce, Science, and Transportation'' for ''Committee on Aeronautical and Space Sciences''.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 2476b. Donations for space shuttle orbiter

(a) Acceptance by Administrator and use

The Administrator may accept gifts and donations of services, money, and real, personal, tangible, and intangible property, and use such gifts and donations for the construction of a space shuttle orbiter.

(b) Termination of authority to accept; use of unneeded gifts and donations

(1) The authority of the Administrator to accept gifts or donations pursuant to subsection (a) of this section shall terminate five years after October 30, 1987.

(2) All gifts and donations accepted by the Administrator pursuant to subsection (a) of this section which are not needed for construction of a space shuttle orbiter shall be used by the Administrator for an appropriate purpose—

(A) in tribute to the dedicated crew of the space shuttle Challenger; and

(B) in furtherance of the exploration of space.

(c) Name of space shuttle orbiter

The name of a space shuttle orbiter constructed in whole or in part with gifts or donations whose acceptance and use are authorized by subsection (a) of this section shall be selected by the Administrator from among suggestions submitted by students in elementary and secondary schools.

(Pub. L. 85–568, title II, § 208, as added Pub. L. 100–147, title I, § 115, Oct. 30, 1987, 101 Stat. 866.)

§ 2477. Aerospace Safety Advisory Panel; membership; appointment; term; powers and duties of Panel; Chairman; compensation, travel and other necessary expenses; NASA membership restriction

(a) In general

There is hereby established an Aerospace Safety Advisory Panel consisting of a maximum of nine members who shall be appointed by the Administrator for terms of six years each. The Panel shall review safety studies and operations plans referred to it, including evaluating NASA's compliance with the return-to-flight and continue-to-fly recommendations of the Columbia Accident Investigation Board, and shall make reports thereon, shall advise the Administrator and the Congress with respect to the hazards of proposed or existing facilities and proposed operations with respect to the adequacy of proposed or existing safety standards, and with respect to management and culture related to safety. The Panel shall also perform such other duties as the Administrator may request. One member shall be designated by the Panel as its Chairman. Members of the Panel who are officers or employees of the Federal Government shall receive no compensation for their services as such, but shall be allowed necessary travel expenses (or in the alternative, mileage for use of privately owned vehicles and a per diem in lieu of subsistence not to exceed the rates and amounts prescribed in sections 5702, 5704 of title 5), and other necessary expenses incurred by them in the performance of duties vested in the Panel, without regard to the provisions of subchapter I, chapter 57 of title 5, the Standardized Government Travel Regulations, or section 5731 of title 5. Members of the Panel appointed from outside the Federal Government shall each receive compensation at a rate not to exceed the per diem rate equivalent to the rate for GS–18 for each day such member is engaged in the actual performance of duties vested in the Panel in addition to reimbursement for travel, subsistence, and other necessary expenses in accordance with the provisions of the foregoing sentence. Not more than four such members shall be chosen from among the officers and employees of the National Aeronautics and Space Administration.

(b) Annual report

The Panel shall submit an annual report to the Administrator and to the Congress. In the first annual report submitted after December 30, 2005, the Panel shall include an evaluation of NASA's management and culture related to safety. Each annual report shall include an evaluation of the Administration's compliance with the recommendations of the Columbia Accident Investigation Board through retirement of the Space Shuttle.

(Pub. L. 90–67, § 6, Aug. 21, 1967, 81 Stat. 170; Pub. L. 94–307, § 8, June 4, 1976, 90 Stat. 681; Pub. L. 99–234, title I, § 107(f), Jan. 2, 1986, 99 Stat. 1759; Pub. L. 109–155, title I, § 106, Dec. 30, 2005, 119 Stat. 2912.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act,

1968, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

AMENDMENTS

2005—Pub. L. 109–155 designated existing provisions as subsec. (a), inserted heading, substituted ''to it, including evaluating NASA's compliance with the return-to-flight and continue-to-fly recommendations of the Columbia Accident Investigation Board,'' for ''to it'' and ''with respect to the adequacy of proposed or existing safety standards, and with respect to management and culture related to safety. The Panel shall also'' for ''and with respect to the adequacy of proposed or existing safety standards and shall'', inserted ''and the Congress'' after ''advise the Administrator'', and added subsec. (b).

1986—Pub. L. 99–234 substituted ''rates and amounts'' for ''rates''.

1976—Pub. L. 94–307 substituted ''a rate not to exceed the per diem rate equivalent to the rate for GS–18'' for ''the rate of $100'' as daily rate of compensation for members of Panel appointed from outside Federal Government while engaged in actual performance of duties vested in Panel.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–234 effective (1) on the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99–234, set out as a note under section 5701 of Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY PANELS

Advisory panels in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SUBCHAPTER III—UPPER ATMOSPHERE RESEARCH

§ 2481. Congressional declaration of purpose and policy

(a) The purpose of this subchapter is to authorize and direct the Administration to develop and carry out a comprehensive program of research, technology, and monitoring of the phenomena of the upper atmosphere so as to provide for an understanding of and to maintain the chemical and physical integrity of the Earth's upper atmosphere.

(b) The Congress declares that it is the policy of the United States to undertake an immediate and appropriate research, technology, and monitoring program that will provide for understanding the physics and chemistry of the Earth's upper atmosphere.

(Pub. L. 85–568, title IV, § 401, as added Pub. L. 94–39, § 8, June 19, 1975, 89 Stat. 222.)

§ 2482. "Upper atmosphere" defined

For the purpose of this subchapter the term ''upper atmosphere'' means that portion of the Earth's sensible atmosphere above the troposphere.

(Pub. L. 85–568, title IV, § 402, as added Pub. L. 94–39, § 8, June 19, 1975, 89 Stat. 222.)

§ 2483. Program authorized

(a) In order to carry out the purposes of this subchapter the Administration in cooperation with other Federal agencies, shall initiate and carry out a program of research, technology, monitoring, and other appropriate activities directed to understand the physics and chemistry of the upper atmosphere.

(b) In carrying out the provisions of this subchapter the Administration shall—

(1) arrange for participation by the scientific and engineering community, of both the Nation's industrial organizations and institutions of higher education, in planning and carrying out appropriate research, in developing necessary technology and in making necessary observations and measurements;

(2) provide, by way of grant, contract, scholarships or other arrangements, to the maximum extent practicable and consistent with other laws, for the widest practicable and appropriate participation of the scientific and engineering community in the program authorized by this subchapter; and

(3) make all results of the program authorized by this subchapter available to the appropriate regulatory agencies and provide for the widest practicable dissemination of such results.

(Pub. L. 85–568, title IV, § 403, as added Pub. L. 94–39, § 8, June 19, 1975, 89 Stat. 222.)

§ 2484. International cooperation

In carrying out the provisions of this subchapter, the Administration, subject to the direction of the President and after consultation with the Secretary of State, shall make every effort to enlist the support and cooperation of appropriate scientists and engineers of other countries and international organizations.

(Pub. L. 85–568, title IV, § 404, as added Pub. L. 94–39, § 8, June 19, 1975, 89 Stat. 223.)

CHAPTER 26A—NATIONAL SPACE GRANT COLLEGE AND FELLOWSHIP PROGRAM

Sec.
2486. Congressional statement of findings.
2486a. Congressional statement of purposes.
2486b. Definitions.
2486c. National space grant college and fellowship program.
2486d. Grants or contracts.
2486e. Identification of specific national needs and problems relating to space; grants or contracts with respect to such needs or problems, amount, application, terms and conditions.
2486f. Space grant college and space grant regional consortium.

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2486g. Space grant fellowship program.
2486h. Space grant review panel.
2486i. Availability of other Federal personnel and data; cooperation with Administration.
2486j. Repealed.
2486k. Designation or award to be on competitive basis.
2486*l*. Authorization of appropriations.

§ 2486. Congressional statement of findings

The Congress finds that—

(1) the vitality of the Nation and the quality of life of the citizens of the Nation depend increasingly on the understanding, assessment, development, and utilization of space resources;

(2) research and development of space science, space technology, and space commercialization will contribute to the quality of life, national security, and the enhancement of commerce;

(3) the understanding and development of the space frontiers require a broad commitment and an intense involvement on the part of the Federal Government in partnership with State and local governments, private industry, universities, organizations, and individuals concerned with the exploration and utilization of space;

(4) the National Aeronautics and Space Administration, through the national space grant college and fellowship program, offers the most suitable means for such commitment and involvement through the promotion of activities that will result in greater understanding, assessment, development, and utilization; and

(5) Federal support of the establishment, development, and operation of programs and projects by space grant colleges, space grant regional consortia, institutions of higher education, institutes, laboratories, and other appropriate public and private entities is the most cost-effective way to promote such activities.

(Pub. L. 100–147, title II, § 202, Oct. 30, 1987, 101 Stat. 869.)

SHORT TITLE

Section 201 of title II of Pub. L. 100–147 provided that: ''This title [enacting this chapter] may be cited as the 'National Space Grant College and Fellowship Act'.''

§ 2486a. Congressional statement of purposes

The purposes of this chapter are to—

(1) increase the understanding, assessment, development, and utilization of space resources by promoting a strong educational base, responsive research and training activities, and broad and prompt dissemination of knowledge and techniques;

(2) utilize the abilities and talents of the universities of the Nation to support and contribute to the exploration and development of the resources and opportunities afforded by the space environment;

(3) encourage and support the existence of interdisciplinary and multidisciplinary programs of space research within the university community of the Nation, to engage in integrated activities of training, research and public service, to have cooperative programs with industry, and to be coordinated with the overall program of the National Aeronautics and Space Administration;

(4) encourage and support the existence of consortia, made up of university and industry members, to advance the exploration and development of space resources in cases in which national objectives can be better fulfilled than through the programs of single universities;

(5) encourage and support Federal funding for graduate fellowships in fields related to space; and

(6) support activities in colleges and universities generally for the purpose of creating and operating a network of institutional programs that will enhance achievements resulting from efforts under this chapter.

(Pub. L. 100–147, title II, § 203, Oct. 30, 1987, 101 Stat. 869.)

§ 2486b. Definitions

As used in this chapter, the term—

(1) ''Administration'' means the National Aeronautics and Space Administration;

(2) ''Administrator'' means the Administrator of the National Aeronautics and Space Administration;

(3) ''aeronautical and space activities'' has the meaning given to such term in section 2452(1) of this title;

(4) ''field related to space'' means any academic discipline or field of study (including the physical, natural, and biological sciences, and engineering, space technology, education, economics, sociology, communications, planning, law, international affairs, and public administration) which is concerned with or likely to improve the understanding, assessment, development, and utilization of space;

(5) ''panel'' means the space grant review panel established pursuant to section 2486h of this title;

(6) ''person'' means any individual, any public or private corporation, partnership, or other association or entity (including any space grant college, space grant regional consortium, institution of higher education, institute, or laboratory), or any State, political subdivision of a State, or agency or officer of a State or political subdivision of a State;

(7) ''space environment'' means the environment beyond the sensible atmosphere of the Earth;

(8) ''space grant college'' means any public or private institution of higher education which is designated as such by the Administrator pursuant to section 2486f of this title;

(9) ''space grant program'' means any program which—

(A) is administered by any space grant college, space grant regional consortium, institution of higher education, institute, laboratory, or State or local agency; and

(B) includes two or more projects involving education and one or more of the following activities in the fields related to space—

(i) research,

(ii) training, or

(iii) advisory services;

(10) ''space grant regional consortium'' means any association or other alliance which is designated as such by the Administrator pursuant to section 2486f of this title;

(11) ''space resource'' means any tangible or intangible benefit which can only be realized from—

(A) aeronautical and space activities; or

(B) advancements in any field related to space; and

(12) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

(Pub. L. 100–147, title II, § 204, Oct. 30, 1987, 101 Stat. 870.)

§ 2486c. National space grant college and fellowship program

(a) Establishment; long-range guidelines and priorities; program evaluation

The Administrator shall establish and maintain, within the Administration, a program to be known as the national space grant college and fellowship program. The national space grant college and fellowship program shall consist of the financial assistance and other activities provided for in this chapter. The Administrator shall establish long-range planning guidelines and priorities, and adequately evaluate the program.

(b) Functions

Within the Administration, the program shall—

(1) apply the long-range planning guidelines and the priorities established by the Administrator under subsection (a) of this section;

(2) advise the Administrator with respect to the expertise and capabilities which are available through the national space grant college and fellowship program, and make such expertise available to the Administration as directed by the Administrator;

(3) evaluate activities conducted under grants and contracts awarded pursuant to sections 2486d and 2486e of this title to assure that the purposes set forth in section 2486a of this title are implemented;

(4) encourage other Federal departments, agencies, and instrumentalities to use and take advantage of the expertise and capabilities which are available through the national space grant college and fellowship program, on a cooperative or other basis;

(5) encourage cooperation and coordination with other Federal programs concerned with the development of space resources and fields related to space;

(6) advise the Administrator on the designation of recipients supported by the national space grant college and fellowship program and, in appropriate cases, on the termination or suspension of any such designation; and

(7) encourage the formation and growth of space grant and fellowship programs.

(c) Acceptance of gifts and donations; funds from other Federal agencies; issuance of rules and regulations

To carry out the provisions of this chapter, the Administrator may—

(1) accept conditional or unconditional gifts or donations of services, money, or property, real, personal or mixed, tangible or intangible;

(2) accept and use funds from other Federal departments, agencies, and instrumentalities to pay for fellowships, grants, contracts, and other transactions; and

(3) issue such rules and regulations as may be necessary and appropriate.

(Pub. L. 100–147, title II, § 205, Oct. 30, 1987, 101 Stat. 871.)

§ 2486d. Grants or contracts

(a) Authority of Administrator; amount

The Administrator may make grants and enter into contracts or other transactions under this subsection to assist any space grant and fellowship program or project if the Administrator finds that such program or project will carry out the purposes set forth in section 2486a of this title. The total amount paid pursuant to any such grant or contract may equal 66 percent, or any lesser percent, of the total cost of the space grant and fellowship program or project involved, except that this limitation shall not apply in the case of grants or contracts paid for with funds accepted by the Administrator pursuant to section 2486c(c)(2) of this title.

(b) Special grants; amount; prerequisites

The Administrator may make special grants under this subsection to carry out the purposes set forth in section 2486a of this title. The amount of any such grant may equal 100 percent, or any lesser percent, of the total cost of the project involved. No grant may be made under this subsection, unless the Administrator finds that—

(1) no reasonable means is available through which the applicant can meet the matching requirement for a grant under subsection (a) of this section;

(2) the probable benefit of such project outweighs the public interest in such matching requirement; and

(3) the same or equivalent benefit cannot be obtained through the award of a contract or grant under subsection (a) of this section or section 2486e of this title.

(c) Application

Any person may apply to the Administrator for a grant or contract under this section. Application shall be made in such form and manner, and with such content and other submissions, as the Administrator shall by regulation prescribe.

(d) Terms and conditions; limitations; leasing; recordkeeping; audits

(1) Any grant made, or contract entered into, under this section shall be subject to the limitations and provisions set forth in paragraphs (2) and (3) of this subsection and to such other terms, conditions and requirements as the Administrator considers necessary or appropriate.

(2) No payment under any grant or contract under this section may be applied to—

(A) the purchase of any land;

(B) the purchase, construction, preservation, or repair of any building; or

(C) the purchase or construction of any launch facility or launch vehicle.

(3) Notwithstanding paragraph (2) of this subsection, the items in subparagraphs (A), (B), and (C) of such paragraph may be leased upon written approval of the Administrator.

(4) Any person who receives or utilizes any proceeds of any grant or contract under this section shall keep such records as the Administrator shall by regulation prescribe as being necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition by such recipient of such proceeds, the total cost of the program or project in connection with which such proceeds were used, and the amount, if any, of such cost which was provided through other sources. Such records shall be maintained for three years after the completion of such a program or project. The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and evaluation, to any books, documents, papers and records of receipts which, in the opinion of the Administrator or the Comptroller General, may be related or pertinent to such grants and contracts.

(Pub. L. 100–147, title II, § 206, Oct. 30, 1987, 101 Stat. 872.)

§ 2486e. Identification of specific national needs and problems relating to space; grants or contracts with respect to such needs or problems, amount, application, terms and conditions

(a) The Administrator shall identify specific national needs and problems relating to space. The Administrator may make grants or enter into contracts under this section with respect to such needs or problems. The amount of any such grant or contract may equal 100 percent, or any lesser percent, of the total cost of the project involved.

(b) Any person may apply to the Administrator for a grant or contract under this section. In addition, the Administrator may invite applications with respect to specific national needs or problems identified under subsection (a) of this section. Application shall be made in such form and manner, and with such content and other submissions, as the Administrator shall by regulation prescribe. Any grant made, or contract entered into, under this section shall be subject to the limitations and provisions set forth in section 2486d(d)(2) and (4) of this title and to such other terms, conditions, and requirements as the Administrator considers necessary or appropriate.

(Pub. L. 100–147, title II, § 207, Oct. 30, 1987, 101 Stat. 873.)

§ 2486f. Space grant college and space grant regional consortium

(a) Designation; qualifications

(1) The Administrator may designate—

(A) any institution of higher education as a space grant college; and

(B) any association or other alliance of two or more persons, other than individuals, as a space grant regional consortium.

(2) No institution of higher education may be designated as a space grant college, unless the Administrator finds that such institution—

(A) is maintaining a balanced program of research, education, training, and advisory services in fields related to space;

(B) will act in accordance with such guidelines as are prescribed under subsection (b)(2) of this section; and

(C) meets such other qualifications as the Administrator considers necessary or appropriate.

(3) No association or other alliance of two or more persons may be designated as a space grant regional consortium, unless the Administrator finds that such association or alliance—

(A) is established for the purpose of sharing expertise, research, educational facilities or training facilities, and other capabilities in order to facilitate research, education, training, and advisory services, in any field related to space;

(B) will encourage and follow a regional approach to solving problems or meeting needs relating to space, in cooperation with appropriate space grant colleges, space grant programs, and other persons in the region;

(C) will act in accordance with such guidelines as are prescribed under subsection (b)(2) of this section; and

(D) meets such other qualifications as the Administrator considers necessary or appropriate.

(b) Other necessary qualifications and guidelines on activities and responsibilities; regulations

The Administrator shall by regulation prescribe—

(1) the qualifications required to be met under subsection (a)(2)(C) and (3)(D) of this section; and

(2) guidelines relating to the activities and responsibilities of space grant colleges and space grant regional consortia.

(c) Suspension or termination of designation; hearing

The Administrator may, for cause and after an opportunity for hearing, suspend or terminate any designation under subsection (a) of this section.

(Pub. L. 100–147, title II, § 208, Oct. 30, 1987, 101 Stat. 873.)

§ 2486g. Space grant fellowship program

(a) Award of fellowships; guidelines; wide geographic and institutional diversity

The Administrator shall support a space grant fellowship program to provide educational and training assistance to qualified individuals at the graduate level of education in fields related to space. Such fellowships shall be awarded pursuant to guidelines established by the Administrator. Space grant fellowships shall be awarded to individuals at space grant colleges, space

grant regional consortia, other colleges and institutions of higher education, professional associations, and institutes in such a manner as to assure wide geographic and institutional diversity in the pursuit of research under the fellowship program.

(b) Limitation on amount to provide grants

The total amount which may be provided for grants under the space grant fellowship program during any fiscal year shall not exceed an amount equal to 50 percent of the total funds appropriated for such year pursuant to this chapter.

(c) Authority to sponsor other research fellowship programs unaffected

Nothing in this section shall be construed to prohibit the Administrator from sponsoring any research fellowship program, including any special emphasis program, which is established under an authority other than this chapter.

(Pub. L. 100–147, title II, § 209, Oct. 30, 1987, 101 Stat. 874.)

§ 2486h. Space grant review panel

(a) Establishment

The Administrator shall establish an independent committee known as the space grant review panel, which shall not be subject to the provisons[1] of the Federal Advisory Committee Act (5 U.S.C. App.; Public Law 92–463).

(b) Duties

The panel shall take such steps as may be necessary to review, and shall advise the Administrator with respect to—

(1) applications or proposals for, and performance under, grants and contracts awarded pursuant to sections 2486d and 2486e of this title;

(2) the space grant fellowship program;

(3) the designation and operation of space grant colleges and space grant regional consortia, and the operation of space grant and fellowship programs;

(4) the formulation and application of the planning guidelines and priorities pursuant to section 2486c(a) and (b)(1) of this title; and

(5) such other matters as the Administrator refers to the panel for review and advice.

(c) Personnel and administrative services

The Administrator shall make available to the panel any information, personnel and administrative services and assistance which is reasonable to carry out the duties of the panel.

(d) Appointment of voting members; Chairman and Vice Chairman; reimbursement of non-Federal employee members; meetings; powers

(1) The Administrator shall appoint the voting members of the panel. A majority of the voting members shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields related to space. The other voting members shall be individuals who, by reason of knowledge, experience or training, are especially qualified in, or representative of, education, extension services, State government, industry, economics, planning, or any other activity related to efforts to enhance the understanding, assessment, development, or utilization of space resources. The Administrator shall consider the potential conflict of interest of any individual in making appointments to the panel.

(2) The Administrator shall select one voting member to serve as the Chairman and another voting member to serve as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of the Chairman.

(3) Voting members of the panel who are not Federal employees shall be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

(4) The panel shall meet on a biannual basis and, at any other time, at the call of the Chairman or upon the request of a majority of the voting members or of the Administrator.

(5) The panel may exercise such powers as are reasonably necessary in order to carry out the duties enumerated in subsection (b) of this section.

(Pub. L. 100–147, title II, § 210, Oct. 30, 1987, 101 Stat. 874.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 2486i. Availability of other Federal personnel and data; cooperation with Administration

Each department, agency or other instrumentality of the Federal Government which is engaged in or concerned with, or which has authority over, matters relating to space—

(1) may, upon a written request from the Administrator, make available, on a reimbursable basis or otherwise, any personnel (with their consent and without prejudice to their position and rating), service, or facility which the Administrator considers necessary to carry out any provision of this chapter;

(2) may, upon a written request from the Administrator, furnish any available data or other information which the Administrator considers necessary to carry out any provision of this chapter; and

(3) may cooperate with the Administration.

(Pub. L. 100–147, title II, § 211, Oct. 30, 1987, 101 Stat. 875.)

§ 2486j. Repealed. Pub. L. 105–362, title XI, § 1101(a), Nov. 10, 1998, 112 Stat. 3292

Section, Pub. L. 100–147, title II, § 212, Oct. 30, 1987, 101 Stat. 875, related to reports by Administrator to Congress and the President on national space grant and fellowship program and comments and recommendations by Director of Management and Budget and Director of Office of Science and Technology Policy to be included in such reports.

§ 2486k. Designation or award to be on competitive basis

The Administrator shall not under this chapter designate any space grant college or space

[1] So in original. Probably should be ''provisions''.

grant regional consortium or award any fellowship, grant, or contract unless such designation or award is made in accordance with the competitive, merit-based review process employed by the Administration on October 30, 1987.

(Pub. L. 100–147, title II, § 213, Oct. 30, 1987, 101 Stat. 875.)

§ 2486*l*. Authorization of appropriations

(a) There are authorized to be appropriated for the purposes of carrying out the provisions of this chapter sums not to exceed—

(1) $10,000,000 for each of fiscal years 1988 and 1989; and

(2) $15,000,000 for each of fiscal years 1990 and 1991.

(b) Such sums as may be appropriated under this section shall remain available until expended.

(Pub. L. 100–147, title II, § 214, Oct. 30, 1987, 101 Stat. 875.)

CHAPTER 26B—BIOMEDICAL RESEARCH IN SPACE

Sec.
2487. Findings.
2487a. Biomedical research joint working group.
2487b. Biomedical research grants.
2487c. Biomedical research fellowships.
2487d. Repealed.
2487e. Establishment of electronic data archive.
2487f. Establishment of emergency medical service telemedicine capability.
2487g. Authorization of appropriations.

§ 2487. Findings

The Congress finds that—

(1) the space program can make significant contributions to selected areas of health-related research and should be an integral part of the Nation's health research and development program;

(2) the continuing development of trained scientists and engineers is essential to carrying out an effective and sustained program of biomedical research in space and on the ground;

(3) the establishment and maintenance of an electronically accessible archive of data on space-related biomedical research is essential to advancement of the field;

(4) cooperation with the republics of the former Soviet Union, including use of former Soviet orbital facilities, offers the potential for greatly enhanced biomedical research activities and progress; and

(5) the establishment and maintenance of an international telemedicine consultation satellite capability to support emergency medical service provision can provide an important aid to disaster relief efforts.

(Pub. L. 102–588, title VI, § 601, Nov. 4, 1992, 106 Stat. 5130.)

§ 2487a. Biomedical research joint working group

(a) Establishment

The Administrator and the Director of the National Institutes of Health shall jointly establish a working group to coordinate biomedical research activities in areas where a microgravity environment may contribute to significant progress in the understanding and treatment of diseases and other medical conditions. The joint working group shall formulate joint and complementary programs in such areas of research.

(b) Membership

The joint working group shall include equal representation from the National Aeronautics and Space Administration and the National Institutes of Health, and shall include representation from National Institutes of Health councils, as selected by the Director of the National Institutes of Health, and from the National Aeronautics and Space Administration Advisory Council.

(c) Annual reporting requirement

The joint working group shall report annually to Congress on its progress in carrying out this section.

(d) Annual biomedical research symposia

The working group shall organize annual symposia on biomedical research described in subsection (a) of this section under the joint sponsorship of the National Aeronautics and Space Administration and the National Institutes of Health.

(Pub. L. 102–588, title VI, § 602, Nov. 4, 1992, 106 Stat. 5130.)

''ADMINISTRATOR'' DEFINED

Administrator means Administrator of the National Aeronautics and Space Administration, see section 102(f) of Pub. L. 102–588, 106 Stat. 5110.

§ 2487b. Biomedical research grants

(a) Establishment of program

The Administrator and the Director of the National Institutes of Health shall establish a joint program of biomedical research grants in areas described in section 2487a(a) of this title, where such research requires access to a microgravity environment. Such program shall be consistent with actions taken by the joint working group under section 2487a of this title.

(b) Research opportunity announcements

The grants program established under subsection (a) of this section shall annually issue joint research opportunity announcements under the sponsorship of the National Institutes of Health and the National Aeronautics and Space Administration. Responses to the announcements shall be evaluated by a peer review committee whose members shall be selected by the Director of the National Institutes of Health and the Administrator, and shall include individuals not employed by the National Aeronautics and Space Administration or the National Institutes of Health.

(Pub. L. 102–588, title VI, § 603, Nov. 4, 1992, 106 Stat. 5130.)

''ADMINISTRATOR'' DEFINED

Administrator means Administrator of the National Aeronautics and Space Administration, see section 102(f) of Pub. L. 102–588, 106 Stat. 5110.

§ 2487c. Biomedical research fellowships

The Administrator and the Director of the National Institutes of Health shall create a joint program of graduate research fellowships in biomedical research described in section 2487a(a) of this title. Fellowships under such program may provide for participation in approved research conferences and symposia.

(Pub. L. 102–588, title VI, § 604, Nov. 4, 1992, 106 Stat. 5131.)

''ADMINISTRATOR'' DEFINED

Administrator means Administrator of the National Aeronautics and Space Administration, see section 102(f) of Pub. L. 102–588, 106 Stat. 5110.

§ 2487d. Repealed. Pub. L. 105–362, title XI, § 1101(g), Nov. 10, 1998, 112 Stat. 3292

Section, Pub. L. 102–588, title VI, § 605, Nov. 4, 1992, 106 Stat. 5131, related to joint studies with the republics of former Soviet Union in biomedical research.

§ 2487e. Establishment of electronic data archive

The Administrator shall create and maintain a national electronic data archive for biomedical research data obtained from space-based experiments.

(Pub. L. 102–588, title VI, § 606, Nov. 4, 1992, 106 Stat. 5131.)

''ADMINISTRATOR'' DEFINED

Administrator means Administrator of the National Aeronautics and Space Administration, see section 102(f) of Pub. L. 102–588, 106 Stat. 5110.

§ 2487f. Establishment of emergency medical service telemedicine capability

The Administrator shall with the Administrator of the Federal Emergency Management Agency, the Director of the Office of Foreign Disaster, and the Surgeon General of the United States jointly create and maintain an international telemedicine satellite consultation capability to support emergency medical services in disaster-stricken areas.

(Pub. L. 102–588, title VI, § 607, Nov. 4, 1992, 106 Stat. 5131; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

''ADMINISTRATOR'' DEFINED

Administrator means Administrator of the National Aeronautics and Space Administration, see section 102(f) of Pub. L. 102–588, 106 Stat. 5110.

§ 2487g. Authorization of appropriations

The Administrator should ensure that up to $3,750,000 from the appropriations authorized for ''Research and Development'' for fiscal year 1993 are also used to carry out this chapter.

(Pub. L. 102–588, title VI, § 608, Nov. 4, 1992, 106 Stat. 5132.)

''ADMINISTRATOR'' DEFINED

Administrator means Administrator of the National Aeronautics and Space Administration, see section 102(f) of Pub. L. 102–588, 106 Stat. 5110.

CHAPTER 27—LOAN SERVICE OF CAPTIONED FILMS AND EDUCATIONAL MEDIA FOR HANDICAPPED

Sec.
2491 to 2494. Repealed.
2495. National Advisory Committee on Education of the Deaf.

§§ 2491 to 2494. Repealed. Pub. L. 91–230, title VI, § 662(1), Apr. 13, 1970, 84 Stat. 188

Section 2491, Pub. L. 85–905, § 1, Sept. 2, 1958, 72 Stat. 1742; Pub. L. 87–715, § 1(a), Sept. 28, 1962, 76 Stat. 654; Pub. L. 89–258, Oct. 19, 1965, 79 Stat. 983; Pub. L. 90–247, title I, § 155(a), Jan. 2, 1968, 81 Stat. 804, contained statement of purposes for the provisions.

Section 2492, Pub. L. 85–905, § 2, Sept. 2, 1958, 72 Stat. 1742; Pub. L. 89–258, Oct. 19, 1965, 79 Stat. 983; Pub. L. 90–247, title I, § 155(b), Jan. 2, 1968, 81 Stat. 805; Pub. L. 91–61, § 1(2), Aug. 20, 1969, 83 Stat. 103, defined ''Secretary'', ''United States'', ''deaf person'', ''handicapped'', and ''construction''.

Section 2493, Pub. L. 85–905, § 3, Sept. 2, 1958, 72 Stat. 1742; Pub. L. 87–715, § 1(b), Sept. 28, 1962, 76 Stat. 654; Pub. L. 89–258, Oct. 19, 1965, 79 Stat. 983; Pub. L. 90–247, title I, § 155(c), (d)(1), Jan. 2, 1968, 81 Stat. 805; Pub. L. 91–61, § 1(1), Aug. 20, 1969, 83 Stat. 102, provided for establishment of a loan service of captioned films and educational media for handicapped and authority of Secretary.

Section 2494, Pub. L. 85–905, § 4, Sept. 2, 1958, 72 Stat. 1743; Pub. L. 87–715, § 1(c), Sept. 28, 1962, 76 Stat. 654; Pub. L. 89–258, Oct. 19, 1965, 79 Stat. 984; Pub. L. 90–247, title I, § 155(e), Jan. 2, 1968, 81 Stat. 805; Pub. L. 91–61, § 1(3), Aug. 20, 1969, 83 Stat. 103, authorized appropriations for fiscal years ending as indicated: $3,000,000 (June 30, 1966, and 1967), $8,000,000 (June 30, 1968, and 1969), $10,000,000 (June 30, 1970), $12,500,000 (June 30, 1971), $15,000,000 (June 30, 1972), and $20,000,000 (June 30, 1973 and thereafter).

Such former provisions are covered by various sections of Title 20, Education, as follows:

Former Sections	*Title 20 Sections*
2491	1451
2492(1)	1401(14)
2492(2)	1401(2)
2492(3)	Repealed

Former Sections	*Title 20 Sections*
2492(4)	1401(1)
2492(5)	1401(4)
2493(a), (b)	1452(a), (b)
2493(c)(1)(A) to (C)	1453(a)(1) to (3)
2493(c)(1)(D)	1232b
2493(c)(2)	1453(b)
2493(c)(3)	1404
2494	1454

EFFECTIVE DATE OF REPEAL

Section 662 of Pub. L. 91–230 provided that the repeal is effective July 1, 1971.

§ 2495. National Advisory Committee on Education of the Deaf

(a) Establishment; number and appointment of members; representation of interests; Chairman; term of office; vacancies; restriction on term

(1) For the purpose of advising and assisting the Secretary of Education (hereinafter in this section referred to as the ''Secretary'') with respect to the education of the deaf, there is hereby created a National Advisory Committee on Education of the Deaf, which shall consist of twelve persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the civil service laws.

(2) The membership of the Advisory Committee shall include educators of the deaf, persons interested in education of the deaf, educators of the hearing, and deaf individuals.

(3) The Secretary shall from time to time designate one of the members of the Advisory Committee to serve as Chairman of the Advisory Committee.

(4) Each member of the Advisory Committee shall serve for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and except that the terms of the office of the members first taking office shall expire, as designated by the Secretary at the time of appointment, three at the end of the first year, three at the end of the second year, three at the end of the third year, and three at the end of the fourth year after the date of appointment.

(5) A member of the Advisory Committee shall not be eligible to serve continuously for more than one term.

(b) Functions of Advisory Committee

The Advisory Committee shall advise the Secretary concerning the carrying out of existing and the formulating of new or modified programs with respect to the education of the deaf. In carrying out its functions, the Advisory Committee shall (A) make recommendations to the Secretary for the development of a system for gathering information on a periodic basis in order to facilitate the assessment of progress and identification of problems in the education of the deaf; (B) identify emerging needs respecting the education of the deaf, and suggest innovations which give promise of meeting such needs and of otherwise improving the educational prospects of deaf individuals; (C) suggest promising areas of inquiry to give direction to the research efforts of the Federal Government in improving the education of the deaf; and (D) make such other recommendations for administrative action or legislative proposals as may be appropriate.

(c) Advisory professional or technical personnel

The Secretary may, at the request of the Advisory Committee appoint such special advisory professional or technical personnel as may be necessary to enable the Advisory Committee to carry out its duties.

(d) Compensation and travel expenses

Members of the Advisory Committee, and advisory or technical personnel appointed pursuant to subsection (c) of this section, while attending meetings or conferences of the Advisory Committee or otherwise serving on business of the Advisory Committee, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day including travel time and while serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(e) Meetings

The Advisory Committee shall meet at the request of the Secretary, but at least semiannually.

(Pub. L. 85–905, § 5, as added Pub. L. 89–258, Oct. 19, 1965, 79 Stat. 984; amended Pub. L. 96–88, title III, § 301, title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (d), ''section 5703 of title 5'' substituted for ''section 5 of the Administrative Expenses Act'', on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

''Secretary of Education'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(1) pursuant to sections 301 and 507 of Pub. L. 96–88, which are classified to sections 3441 and 3507 of Title 20, Education, and which transferred functions and offices (relating to education) of Secretary of Health, Education, and Welfare to Secretary of Education.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 28—AREA REDEVELOPMENT PROGRAM

§§ 2501 to 2512. Omitted

CODIFICATION

Sections 2501 to 2512 terminated as of Aug. 31, 1965, pursuant to section 2525 of this title.

Section 2501, Pub. L. 87–27, § 2, May 1, 1961, 75 Stat. 47, stated Congressional declaration of purpose for Area Redevelopment Program.

Section 2502, Pub. L. 87–27, § 3, May 1, 1961, 75 Stat. 48; Pub. L. 88–426, title III, § 305(22), Aug. 14, 1964, 78 Stat. 425, provided for appointment and duties of Area Redevelopment Administrator.

Section 2503, Pub. L. 87–27, § 4, May 1, 1961, 75 Stat. 48, provided for creation of membership and functions of Area Redevelopment Advisory Policy Board and for National Public Advisory Committee on Area Redevelopment.

Section 2504, Pub. L. 87–27, § 5, May 1, 1961, 75 Stat. 48, provided for designation of redevelopment areas by Secretary of Commerce and promulgation of standards for determination and use of facts and data.

Section 2505, Pub. L. 87–27, § 6, May 1, 1961, 75 Stat 50, set forth limitations on loans and participation for industrial projects and set terms, conditions, restrictions, and limitations thereon.

Section 2506, Pub. L. 87–27, § 7, May 1, 1961, 75 Stat. 52, provided for application and conditions for loans for public facilities.

Section 2507, Pub. L. 87–27, § 8, May 1, 1961, 75 Stat. 53, provided for application, conditions and amounts of grants for public facilities.

Section 2508, Pub. L. 87–27, § 9, May 1, 1961, 75 Stat. 54, provided for notes and obligations, amount, form and denomination, date of maturity, terms and conditions, interest rate, purchase and sale by Secretary of the Treasury of funds for Area Redevelopment Fund.

Section 2509, Pub. L. 87–27, § 10, May 1, 1961, 75 Stat. 55, provided for assistance, information and advice and business firm list to procurement divisions of Federal instrumentalities.

Section 2510, Pub. L. 87–27, § 11, May 1, 1961, 75 Stat. 55, authorized Secretary of Commerce to provide technical assistance and authorized appropriations for purposes of this section.

Section 2511, Pub. L. 87–27, § 12, May 1, 1961, 75 Stat. 55, set forth powers of Secretary of Commerce in performing his duties under this chapter.

Section 2512, Pub. L. 87–27, § 13, May 1, 1961, 75 Stat. 57, provided for termination of eligibility for further assistance as a redevelopment area.

§§ 2513, 2514. Repealed. Pub. L. 89–15, § 9(b), Apr. 26, 1965, 79 Stat. 79

Section 2513, Pub. L. 87–27, § 16, May 1, 1961, 75 Stat. 58, related to occupational training under the area redevelopment program: studies of various aspects of labor force; area requirements, selection and referral of trainees, agency cooperation in vocational training and retraining programs; additional facilities or services provided by State agencies, public and private institutions; apprenticeship and other training assistance; appropriation; supplementary employment of seasonal workers.

Section 2514, Pub. L. 87–27, § 17, May 1, 1961, 75 Stat. 59, related to retraining subsistence payments: duration, amount of weekly payment; alternative unemployment compensation benefits; administration, finality of determinations; rules and regulations; and appropriation.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1965, see section 9(c) of Pub. L. 89–15.

SAVINGS PROVISION

Section 9(b) of Pub. L. 89–15 provided in part that: ''The repeal of these sections [sections 2513 and 2514 of this title] shall not affect the disbursement of funds under, or the carrying out of, any contract, commitment, or other obligations entered into pursuant to the Area Redevelopment Act [this chapter] prior to the effective date of the repeal of such sections.''

§§ 2515 to 2525. Omitted

CODIFICATION

Sections 2515 to 2525 terminated as of Aug. 31, 1965, pursuant to section 2525 of this title.

Section 2515, Pub. L. 87–27, § 18, May 1, 1961, 75 Stat. 60, set forth penalties for violations of this chapter.

Section 2516, Pub. L. 87–27, § 19, May 1, 1961, 75 Stat. 61, provided for employment of expediters and administrative employees.

Section 2517, Pub. L. 87–27, § 20, May 1, 1961, 75 Stat. 61, provided that Secretary of Commerce maintain as a permanent record a list of applications approved for financial assistance and for public inspection thereof.

Section 2518, Pub. L. 87–27, § 21, May 1, 1961, 75 Stat. 61, provided for labor standards for laborers and mechanics; their rate of wages and overtime and for enforcement thereof.

Section 2519, Pub. L. 87–27, § 22, May 1, 1961, 75 Stat. 62, provided for an annual report to Congress and for contents thereof.

Section 2520, Pub. L. 87–27, § 23, May 1, 1961, 75 Stat. 62, authorized appropriations necessary to carry out provisions of this chapter.

Section 2521, Pub. L. 87–27, § 24, May 1, 1961, 75 Stat. 62; Pub. L. 87–793, § 607(a)(4), Oct. 11, 1962, 76 Stat. 849, provided for use of other available services and facilities of other agencies and instrumentalities of Federal Government and for rules and regulations governing said use.

Section 2522, Pub. L. 87–27, § 25, May 1, 1961, 75 Stat. 63, stated that each recipient of assistance under this chapter shall keep such records as Secretary shall prescribe and provided for audit of such records by Federal Government.

Section 2523, Pub. L. 87–27, § 27, May 1, 1961, 75 Stat. 63, provided that Secretary shall establish and conduct a continuing program of study and research and shall include in his annual report to Congress his findings resulting therefrom and his recommendations for legislative and other action.

Section 2524, Pub. L. 87–27, § 28, May 1, 1961, 75 Stat. 63, defined ''State'', ''States'', and ''United States'' as used in this chapter.

Section 2525, Pub. L. 87–27, § 29, May 1, 1961, 75 Stat. 63; Pub. L. 89–55, June 30, 1965, 79 Stat. 195, stated that termination date of this chapter and all authority conferred thereunder shall be Aug. 31, 1965, and that Secretary of the Treasury shall be responsible for liquidation of affairs and functions conducted under this chapter.

CHAPTER 29—JUVENILE DELINQUENCY AND YOUTH OFFENSES CONTROL

§§ 2541 to 2548. Omitted

CODIFICATION

Section 2541, Pub. L. 87–274, § 2, Sept. 22, 1961, 75 Stat. 572, which set out the Congressional findings and declaration of policy underlying the passage of the ''Juvenile Delinquency and Youth Offenses Control Act of 1961'', Pub. L. 87–274, Sept. 22, 1961, 75 Stat. 572, expired June 30, 1967, pursuant to section 2545 of this title. For the Congressional findings and declaration of purpose underlying the passage of the ''Juvenile Delinquency Prevention and Control Act of 1968, Pub. L. 90–445, July 31, 1968, 82 Stat. 462, the successor provision, see section 3801 of this title.

Section 2542, Pub. L. 87–274, § 3, Sept. 22, 1961, 75 Stat. 572; Pub. L. 88–368, § 1, July 9, 1964, 78 Stat. 309, which provided for demonstration and evaluation projects, expired June 30, 1967, pursuant to section 2545 of this

title. See sections 3812, 3822, 3832, 3861, and 3871 of this title.

Section 2543, Pub. L. 87–274, § 4, Sept. 22, 1961, 75 Stat. 573, which provided for grants for training of personnel in programs, for prevention or control of juvenile delinquency or youth offenses, expired June 30, 1967, pursuant to section 2545 of this title. See section 3861 of this title.

Section 2544, Pub. L. 87–274, § 5, Sept. 22, 1961, 75 Stat. 573, which provided for technical assistance services, expired June 30, 1967, pursuant to section 2545 of this title. See section 3871 et seq. of this title.

Section 2545, Pub. L. 87–274, § 6, Sept. 22, 1961, 75 Stat. 573; Pub. L. 88–368, § 2, July 9, 1964, 78 Stat. 309; Pub. L. 89–69, July 8, 1965, 79 Stat. 212, authorized appropriations for program through June 30, 1967. See section 3882 of this title.

Section 2546, Pub. L. 87–274, § 7, Sept. 22, 1961, 75 Stat. 573, which provided for appointment of technical and advisory committees, expired June 30, 1967, pursuant to section 2545 of this title. See section 3889 of this title.

Section 2547, Pub. L. 87–274, § 8, as added Pub. L. 88–368 § 3, July 9, 1964, 78 Stat. 309, which provided for a special study of school attendance and child labor laws, with a report to be given to the President and Congress by Jan. 31, 1966, expired June 30, 1967, pursuant to section 2545 of this title.

Section 2548, Pub. L. 87–274, § 9, as added Pub. L. 88–368, § 3, July 9, 1964, 78 Stat. 309, which provided for a Washington metropolitan area demonstration project, expired June 30, 1967, pursuant to section 2545 of this title.

CHAPTER 30—MANPOWER DEVELOPMENT AND TRAINING PROGRAM

SUBCHAPTER I—MANPOWER REQUIREMENTS, DEVELOPMENT, AND UTILIZATION

§§ 2571 to 2574. Repealed. Pub. L. 93–203, title VII, § 714, formerly title VI, § 614, Dec. 28, 1973, 87 Stat. 883; renumbered title VII, § 714, Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845

Section 2571, Pub. L. 87–415, title I, § 101, Mar. 15, 1962, 76 Stat. 23; Pub. L. 88–214, § 1, Dec. 19, 1963, 77 Stat. 422; Pub. L. 89–15, § 2, Apr. 26, 1965, 79 Stat. 75, set out Congressional statement of findings and purpose in enacting manpower development and training legislation.

Section 2572, Pub. L. 87–415, title I, § 102, Mar. 15, 1962, 76 Stat. 24; Pub. L. 89–15, §§ 3, 4(b), Apr. 26, 1965, 79 Stat. 75, 76, directed Secretary of Labor to conduct evaluation activities, obtain and supply information, conduct research, and develop projects to try to avoid or minimize individual hardship and widespread unemployment in accomplishing the objectives of technological progress.

Section 2572a, Pub. L. 87–415, title I, § 103, as added Pub. L. 89–15, § 4(a), Apr. 26, 1965, 79 Stat. 75, directed Secretary to develop job development programs.

Section 2572b, Pub. L. 87–415, title I, § 104, as added Pub. L. 89–15, § 4(a), Apr. 26, 1965, 79 Stat. 76; amended Pub. L. 89–792, § 2(a), Nov. 7, 1966, 80 Stat. 1434; Pub. L. 90–636, § 1(1), Oct. 24, 1968, 82 Stat. 1352 made provision for labor mobility demonstration projects.

Section 2572c, Pub. L. 87–415, title I, § 105, as added Pub. L. 89–15, § 4(a), Apr. 26, 1965, 79 Stat. 76; amended Pub. L. 89–792, § 2(b), Nov. 7, 1966, 80 Stat. 1434; Pub. L. 90–636, § 1(2), Oct. 24, 1968, 82 Stat. 1352, made provision for trainee placement assistance demonstration projects.

Section 2573, Pub. L. 87–415, title I, § 106, formerly 103, Mar. 15, 1962, 76 Stat. 25; renumbered § 106, Pub. L. 89–15, § 4(a), Apr. 26, 1965, 79 Stat. 75; amended Pub. L. 90–636, § 2, Oct. 24, 1968, 82 Stat. 1352, made provision for a labor market information and job matching program.

Section 2574, Pub. L. 87–415, title I, § 107, formerly 104, Mar. 15, 1962, 76 Stat. 25; renumbered § 107, Pub. L. 89–15, § 4(a), Apr. 26, 1965, 79 Stat. 75, directed Secretary of Labor to make reports to President and Congress pertaining to manpower requirements, resources, utilization, and training.

EFFECTIVE DATE OF REPEAL

Section 714, formerly § 614, of Pub. L. 93–203 provided that the repeal is effective with respect to fiscal years after June 30, 1974.

SUBCHAPTER II—TRAINING AND SKILL DEVELOPMENT PROGRAMS

PART A—DUTIES OF THE SECRETARY OF LABOR

§§ 2581 to 2587. Repealed. Pub. L. 93–203, title VII, § 714, formerly title VI, § 614, Dec. 28, 1973, 87 Stat. 883; renumbered title VII, § 714, Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845

Section 2581, Pub. L. 87–415, title II, § 201, Mar. 15, 1962, 76 Stat. 25; Pub. L. 89–794, title X, § 1001(a), Nov. 8, 1966, 80 Stat. 1475, set out general responsibility of Secretary of Labor in areas of training and skill development programs.

Section 2582, Pub. L. 87–415, title II, § 202, Mar. 15, 1962, 76 Stat. 25; Pub. L. 88–214, § 2, Dec. 19, 1963, 77 Stat. 422; Pub. L. 89–15, § 5, Apr. 26, 1965, 79 Stat. 77; Pub. L. 89–792, § 3, Nov. 7, 1966, 80 Stat. 1434; Pub. L. 90–636, § 3(a), Oct. 24, 1968, 82 Stat. 1353, covered selection of trainees by Secretary of Labor.

Section 2583, Pub. L. 87–415, title II, § 203, Mar. 15, 1962, 76 Stat. 26; Pub. L. 87–729, Oct. 1, 1962, 76 Stat. 679; Pub. L. 88–214, § 3, Dec. 19, 1963, 77 Stat. 422; Pub. L. 89–15, § 6, Apr. 26, 1965, 79 Stat. 77; Pub. L. 89–792, § 4, Nov. 7, 1966, 80 Stat. 1435; Pub. L. 89–794, title X, § 1001(b), Nov. 8, 1966, 80 Stat. 1475; Pub. L. 90–636, §§ 4, 5(a), Oct. 24, 1968, 82 Stat. 1353, made provision for training allowances covering training and skill development programs.

Section 2584, Pub. L. 87–415, title II, § 204, Mar. 15, 1962, 76 Stat. 28; Pub. L. 90–636, § 6, Oct. 24, 1968, 82 Stat. 1353, provided for on-the-job training programs.

Section 2585, Pub. L. 87–415, title II, § 205, Mar. 15, 1962, 76 Stat. 28; Pub. L. 88–214, § 4, Dec. 19, 1963, 77 Stat. 423, made provision for the appointment of a National Advisory Committee by Secretary.

Section 2586, Pub. L. 87–415, title II, § 206, Mar. 15, 1962, 76 Stat. 29, authorized Secretary to enter into agreements for the utilization of services of appropriate State agencies.

Section 2587, Pub. L. 87–415, title II, § 207, Mar. 15, 1962, 76 Stat. 29, empowered Secretary of Labor to promulgate rules and regulations.

EFFECTIVE DATE OF REPEAL

Section 714, formerly § 614, of Pub. L. 93–203 provided that the repeal is effective with respect to fiscal years after June 30, 1974.

§ 2588. Repealed. Pub. L. 89–15, § 7, Apr. 26, 1965, 79 Stat. 78

Section, Pub. L. 87–415, title II, § 208, as added Pub. L. 88–214, § 5, Dec. 19, 1963, 77 Stat. 423, provided for labor mobility demonstration projects during the period ending June 30, 1965, and for assistance in the form of grants or loans, and limited the amount of grants, loans, and appropriations for such use.

PART B—DUTIES OF THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

§§ 2601 to 2603. Repealed. Pub. L. 93–203, title VII, § 714, formerly title VI, § 614, Dec. 28, 1973, 87 Stat. 883; renumbered title VII, § 714, Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845

Section 2601, Pub. L. 87–415, title II, § 231, Mar. 15, 1962, 76 Stat. 30; Pub. L. 88–214, § 6, Dec. 19, 1963, 77 Stat.

424; Pub. L. 89–15, § 8, Apr. 26, 1965, 79 Stat. 78; Pub. L. 89–792, § 5, Nov. 7, 1966, 80 Stat. 1436; Pub. L. 90–636, §§ 3(b), 5(b), 7, Oct. 24, 1968, 82 Stat. 1353, set out general responsibility of Secretary of Health, Education, and Welfare in areas of training and skill development programs.

Section 2602, Pub. L. 87–415, title II, § 232, Mar. 15, 1962, 76 Stat. 30, empowered Secretary of Health, Education, and Welfare to promulgate rules and regulations.

Section 2603, Pub. L. 87–415, title II, § 233, as added Pub. L. 89–792, § 8(b), Nov. 7, 1966, 80 Stat. 1437, directed Secretary of Health, Education, and Welfare to make an annual report to Congress.

EFFECTIVE DATE OF REPEAL

Section 714, formerly § 614, of Pub. L. 93–203 provided that the repeal is effective with respect to fiscal years after June 30, 1974.

PART C—REDEVELOPMENT AREAS

§ 2610a. Repealed. Pub. L. 93–203, title VII, § 714, formerly title VI, § 614, Dec. 28, 1973, 87 Stat. 883; renumbered title VII, § 714, Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845

Section, Pub. L. 87–415, title II, § 241, as added Pub. L. 89–15, § 9(a), Apr. 26, 1965, 79 Stat. 79, authorized Secretaries of Labor and of Health, Education, and Welfare to provide programs of supplementary training in redevelopment areas.

EFFECTIVE DATE OF REPEAL

Section 714, formerly § 614, of Pub. L. 93–203 provided that the repeal is effective with respect to fiscal years after June 30, 1974.

PART D—CORRECTIONAL INSTITUTIONS

§ 2610b. Repealed. Pub. L. 93–203, title VII, § 714, formerly title VI, § 614, Dec. 28, 1973, 87 Stat. 883; renumbered title VII, § 714, Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845

Section, Pub. L. 87–415, title II, § 251, as added Pub. L. 89–792, § 6(a), Nov. 7, 1966, 80 Stat. 1436; amended Pub. L. 90–636, § 1(3), Oct. 24, 1968, 82 Stat. 1352, made provision for experimental training programs for persons in correctional institutes.

EFFECTIVE DATE OF REPEAL

Section 714, formerly § 614, of Pub. L. 93–203 provided that the repeal is effective with respect to fiscal years after June 30, 1974.

PART E—WORK EXPERIENCE AND TRAINING PROGRAMS

§ 2610c. Repealed. Pub. L. 93–203, title VII, § 714, formerly title VI, § 614, Dec. 28, 1973, 87 Stat. 883; renumbered title VII, § 714, Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.

Section, Pub. L. 87–415, title II, § 261, as added Pub. L. 89–794, Title X, § 1001(c), Nov. 8, 1966, 80 Stat. 1475, made provision for programs for needy persons requiring work experience, supportive services, or training.

EFFECTIVE DATE OF REPEAL

Section 714, formerly § 614, of Pub. L. 93–203 provided that the repeal is effective with respect to fiscal years after June 30, 1974.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§§ 2611 to 2620. Repealed. Pub. L. 93–203, title VII, § 714, formerly title VI, § 614, Dec. 28, 1973, 87 Stat. 883; renumbered title VII, § 714, Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845

Section 2611, Pub. L. 87–415, title III, § 301, Mar. 15, 1962, 76 Stat. 30; Pub. L. 89–15, § 10, Apr. 26, 1965, 79 Stat. 79; Pub. L. 89–792, § 7, Nov. 7, 1966, 80 Stat. 1437; Pub. L. 90–636, §§ 8–10, Oct. 24, 1968, 82 Stat. 1354; Pub. L. 91–4, § 1, Mar. 19, 1969, 83 Stat. 6, provided for apportionment of benefits and State administration of funds.

Section 2612, Pub. L. 87–415, title III, § 302, Mar. 15, 1962, 76 Stat. 31; Pub. L. 89–15, § 11, Apr. 26, 1965, 79 Stat. 79, required maintenance of a State effort as a prerequisite to approval of Federal financing.

Section 2613, Pub. L. 87–415, title III, § 303, Mar. 15, 1962, 76 Stat. 31, called for the utilization of available services and facilities of other Federal agencies and instrumentalities and of resources for skill development.

Section 2614, Pub. L. 87–415, title III, § 304, Mar. 15, 1962, 76 Stat. 31; Pub. L. 88–214, § 7, Dec. 19, 1963, 77 Stat. 424; Pub. L. 89–15, § 12, Apr. 26, 1965, 79 Stat. 80; Pub. L. 89–792, § 6(b), Nov. 7, 1966, 80 Stat. 1437; Pub. L. 90–636, § 1(4), Oct. 24, 1968, 82 Stat. 1352, authorized appropriations.

Section 2615, Pub. L. 87–415, title III, § 305, Mar. 15, 1962, 76 Stat. 32; Pub. L. 88–214, § 8, Dec. 19, 1963, 77 Stat. 424; Pub. L. 89–15, § 13, Apr. 26, 1965, 79 Stat. 80; 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, placed certain limitations on uses of appropriated funds.

Section 2616, Pub. L. 87–415, title III, § 306, Mar. 15, 1962, 76 Stat. 32; Pub. L. 89–15, § 14, Apr. 26, 1965, 79 Stat. 80, set out authority of Secretaries of Labor and of Health, Education, and Welfare to contract, establish procedures, and make payments.

Section 2617, Pub. L. 87–415, title III, § 307, Mar. 15, 1962, 76 Stat. 32, provided that selection of persons for training shall not be contingent upon their membership or non-membership in a labor organization.

Section 2618, Pub. L. 87–415, title III, § 308, Mar. 15, 1962, 76 Stat. 32; Pub. L. 90–636, § 5(c), Oct. 24, 1968, 82 Stat. 1353, defined ''State''.

Section 2619, Pub. L. 87–415, title III, § 309, as added Pub. L. 90–636, § 11, Oct. 24, 1968, 82 Stat. 1354, provided for training and technical assistance.

Section 2620, Pub. L. 87–415, title III, § 310, Mar. 15, 1962, 76 Stat. 33; Pub. L. 88–214, § 10, Dec. 19, 1963, 77 Stat. 424; Pub. L. 89–15, § 16, Apr. 26, 1965, 79 Stat. 80; Pub. L. 90–636, § 1(5), Oct. 24, 1968, 82 Stat. 1352; Pub. L. 92–277, § 1, Apr. 24, 1972, 86 Stat. 124, called for termination of authority to operate training and skill development programs under title II of Pub. L. 87–415 at the close of June 30, 1973.

EFFECTIVE DATE OF REPEAL

Section 714, formerly § 614, of Pub. L. 93–203 provided that the repeal is effective with respect to fiscal years after June 30, 1974.

SUBCHAPTER IV—SEASONAL UNEMPLOYMENT IN THE CONSTRUCTION INDUSTRY

§§ 2621 to 2623. Repealed. Pub. L. 93–203, title VII, § 714 formerly title VI, § 614, Dec. 28, 1973, 87 Stat. 883; renumbered title VII, § 714, Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845

Section 2621, Pub. L. 87–415, title IV, § 401, as added Pub. L. 90–636, § 12, Oct. 24, 1968, 82 Stat. 1354, set out Congressional findings and declaration of purpose in establishing a study of problems of seasonal unemployment in construction industry.

Section 2622, Pub. L. 87–415, title IV, § 402, as added Pub. L. 90–636, § 12, Oct. 24, 1968, 82 Stat. 1355, called for

a study by Secretaries of Labor and Commerce of means to stabilize employment in construction industry and for a report to President and Congress not later than Dec. 31, 1969.

Section 2623, Pub. L. 87–415, title IV, § 403, as added Pub. L. 90–636, § 12, Oct. 24, 1968, 82 Stat. 1355; amended 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, called for consultation with Federal official on reduction of seasonal unemployment.

EFFECTIVE DATE OF REPEAL

Section 714, formerly § 614, of Pub. L. 93–203 provided that the repeal is effective with respect to fiscal years after June 30, 1974.

SUBCHAPTER V—SUPPLEMENTARY STATE PROGRAMS

§§ 2624 to 2628. Repealed. Pub. L. 93–203, title VII, § 714, formerly title VI, § 614, Dec. 28, 1973, 87 Stat. 883; renumbered title VII, § 714, Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845

Section 2624, Pub. L. 87–415, title V, § 501, as added Pub. L. 90–636, § 13, Oct. 24, 1968, 82 Stat. 1355, set out Congressional declaration of purpose in providing for supplementary State programs.

Section 2625, Pub. L. 87–415, title V, § 502, as added Pub. L. 90–636, § 13, Oct. 24, 1968, 82 Stat. 1356, provided authorization for grants for supplementary State programs.

Section 2626, Pub. L. 87–415, title V, § 503, as added Pub. L. 90–636, § 13, Oct. 24, 1968, 82 Stat. 1356, provided for applications for supplementary State programs and conditions for such programs.

Section 2627, Pub. L. 87–415, title V, § 504, as added Pub. L. 90–636, § 13, Oct. 24, 1968, 82 Stat. 1356, provided for promulgation of rules and regulations.

Section 2628, Pub. L. 87–415, title V, § 505, as added Pub. L. 90–636, § 13, Oct. 24, 1968, 82 Stat. 1356, authorized appropriations for supplementary State programs.

EFFECTIVE DATE OF REPEAL

Section 714, formerly § 614, of Pub. L. 93–203 provided that the repeal is effective with respect to fiscal years after June 30, 1974.

CHAPTER 31—PUBLIC WORKS ACCELERATION PROGRAM

Sec.
2641. Congressional declaration of purpose.
2642. Acceleration of public works.
2643. Increase of State or local expenditures.

§ 2641. Congressional declaration of purpose

(a) The Congress finds that (1) certain communities and areas in the Nation are presently burdened by substantial unemployment and underemployment and have failed to share fully in the economic gains of the recovery from the recession of 1960–1961 and (2) action by the Federal Government is necessary, both to provide immediate useful work for the unemployed and underemployed in these communities and to help these communities, through improvement of their facilities, to become more conducive to industrial development and better places in which to live and work. The Nation has a backlog of needed public projects, and an acceleration of these projects now will not only increase employment at a time when jobs are urgently required but will also meet longstanding public needs, improve community services, and enhance the health and welfare of citizens of the Nation.

(b) The Congress further finds that Federal assistance to stimulate public works investment in order to increase employment opportunities is most urgently needed in those areas, both urban and rural, which qualify as redevelopment areas because they suffer from persistent and chronic unemployment and economic underdevelopment, as well as in other areas which have suffered from substantial unemployment for a period of at least twelve months.

(Pub. L. 87–658, § 2, Sept. 14, 1962, 76 Stat. 542.)

SHORT TITLE

Section 1 of Pub. L. 87–658 provided: ''That this Act [enacting this chapter and amending section 462 of former Title 40, Public Buildings, Property, and Works, and section 1492 of this title] may be cited as the 'Public Works Acceleration Act'.''

§ 2642. Acceleration of public works

(a) Eligible areas

For the purposes of this section the term ''eligible area'' means—

(1) those areas which the Secretary of Labor designates each month as having been areas of substantial unemployment for at least nine of the preceding twelve months; and

(2) those areas which are designated by the Secretary of Commerce under subsections (a) and (b) of section 2504 of this title as ''redevelopment areas''.

(b) Authority to initiate and accelerate projects; allocation of funds

The President is authorized to initiate and accelerate in eligible areas those Federal public works projects which have been authorized by Congress, and those public works projects of States and local governments for which Federal financial assistance is authorized under provisions of law other than this chapter, by allocating funds appropriated to carry out this section—

(1) to the heads of the departments, agencies, and instrumentalities of the Federal Government responsible for the construction of Federal public works projects, and

(2) to the heads of the departments, agencies, and instrumentalities of the Federal Government responsible for the administration of laws authorizing Federal financial assistance to public works projects of State and local governments.

(c) Grants-in-aid; law governing; amount of Federal contributions

All grants-in-aid made from allocations made by the President under this section shall be made by the head of the department, agency, or instrumentality of the Federal Government administering the law authorizing such grants, and, except as otherwise provided in this subsection, shall be made in accordance with all of the provisions of such law except (1) provisions requiring allocation of funds among the States, and (2) limitations upon the total amount of such grants for any period. Notwithstanding any provisions of such law requiring the Federal contribution to the State or local government involved to be less than a fixed portion of the cost of a project, grants-in-aid may be made

under authority of this section which bring the total of all Federal contributions to such project up to 50 per centum of the cost of such project, or up to 75 per centum of the cost of such project if the State or local government does not have economic and financial capacity to assume all of the additional financial obligations required.

(d) Authorization of appropriations

There is authorized to be appropriated not to exceed $900,000,000 to be allocated by the President in accordance with subsection (b) of this section, except that not less than $300,000,000 shall be allocated for public works projects in areas designated by the Secretary of Commerce as redevelopment areas under subsection (b) of section 2504 of this title.

(e) Rules and regulations; considerations

The President shall prescribe rules, regulations, and procedures to carry out this section which will assure that adequate consideration is given to the relative needs of eligible areas. In prescribing such rules, regulations, and procedures the President shall consider among other relevant factors (1) the severity of the rates of unemployment in the eligible areas and the duration of such unemployment and (2) the income levels of families and the extent of underemployment in eligible areas.

(f) Restrictions on allocated funds

Funds allocated by the President under this section shall be available only for projects—

(1) which can be initiated or accelerated within a reasonably short period of time;

(2) which will meet an essential public need;

(3) a substantial portion of which can be completed within twelve months after initiation or acceleration;

(4) which will contribute significantly to the reduction of local unemployment;

(5) which are not inconsistent with locally approved comprehensive plans for the jurisdiction affected, wherever such plans exist.

(g) Limit on allocations available for projects in any one State

Not more than 10 per centum of all amounts allocated by the President under this section shall be made available for public works projects within any one State.

(h) Criteria determining substantial unemployment

The criteria to be used by the Secretary of Labor in determining areas of substantial unemployment for the purposes of paragraph (1) of subsection (a) of this section shall be the criteria established in section 6.3 of title 29 of the Code of Federal Regulations as in effect May 1, 1962.

(Pub. L. 87–658, § 3, Sept. 14, 1962, 76 Stat. 542.)

REFERENCES IN TEXT

Section 2504 of this title, referred to in subsecs. (a) and (d), was omitted from the Code.

EXECUTIVE ORDER NO. 11049

Ex. Ord. No. 11049, Sept. 14, 1962, 27 F.R. 9203, which provided for implementation of public works acceleration program, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 2643. Increase of State or local expenditures

(a) No part of any allocation made by the President under this chapter shall be made available during any fiscal year to any State or local government for any public works project, unless the proposed or planned total expenditure (exclusive of Federal funds) of such State or local government during such fiscal year for all its capital improvement projects is increased by an amount approximately equal to the non-Federal funds required to be made available for such public works project.

(b) No part of any allocation made by the President under this chapter shall be made available for any planning or construction, directly or indirectly, of any school or other educational facility.

(Pub. L. 87–658, § 4, Sept. 14, 1962, 76 Stat. 543.)

CHAPTER 32—THIRD PARTY LIABILITY FOR HOSPITAL AND MEDICAL CARE

Sec.
2651. Recovery by United States.
2652. Regulations.
2653. Limitation or repeal of other provisions for recovery of hospital and medical care costs.

§ 2651. Recovery by United States

(a) Conditions; exceptions; persons liable; amount of recovery; subrogation; assignment

In any case in which the United States is authorized or required by law to furnish or pay for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) to a person who is injured or suffers a disease, after the effective date of this Act, under circumstances creating a tort liability upon some third person (other than or in addition to the United States and except employers of seamen treated under the provisions of section 249 of this title) to pay damages therefor, the United States shall have a right to recover (independent of the rights of the injured or diseased person) from said third person, or that person's insurer, the reasonable value of the care and treatment so furnished, to be furnished, paid for, or to be paid for and shall, as to this right be subrogated to any right or claim that the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the reasonable value of the care and treatment so furnished, to be furnished, paid for, or to be paid for. The head of the department or agency of the United States furnishing such care or treatment may also require the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the third person to the extent of that right or claim.

(b) Recovery of cost of pay for member of uniformed services unable to perform duties

If a member of the uniformed services is injured, or contracts a disease, under circumstances creating a tort liability upon a third person (other than or in addition to the United States and except employers of seamen referred to in subsection (a) of this section) for damages

for such injury or disease and the member is unable to perform the member's regular military duties as a result of the injury or disease, the United States shall have a right (independent of the rights of the member) to recover from the third person or an insurer of the third person, or both, the amount equal to the total amount of the pay that accrues and is to accrue to the member for the period for which the member is unable to perform such duties as a result of the injury or disease and is not assigned to perform other military duties.

(c) United States deemed third party beneficiary under alternative system of compensation

(1) If, pursuant to the laws of a State that are applicable in a case of a member of the uniformed services who is injured or contracts a disease as a result of tortious conduct of a third person, there is in effect for such a case (as a substitute or alternative for compensation for damages through tort liability) a system of compensation or reimbursement for expenses of hospital, medical, surgical, or dental care and treatment or for lost pay pursuant to a policy of insurance, contract, medical or hospital service agreement, or similar arrangement, the United States shall be deemed to be a third-party beneficiary of such a policy, contract, agreement, or arrangement.

(2) For the purposes of paragraph (1)—

(A) the expenses incurred or to be incurred by the United States for care and treatment for an injured or diseased member as described in subsection (a) of this section shall be deemed to have been incurred by the member;

(B) the cost to the United States of the pay of the member as described in subsection (b) of this section shall be deemed to have been pay lost by the member as a result of the injury or disease; and

(C) the United States shall be subrogated to any right or claim that the injured or diseased member or the member's guardian, personal representative, estate, dependents, or survivors have under a policy, contract, agreement, or arrangement referred to in paragraph (1) to the extent of the reasonable value of the care and treatment and the total amount of the pay deemed lost under subparagraph (B).

(d) Enforcement procedure; intervention; joinder of parties; State or Federal court proceedings

The United States may, to enforce a right under subsections (a), (b), and (c) of this section (1) intervene or join in any action or proceeding brought by the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, against the third person who is liable for the injury or disease or the insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or lost pay; or (2) if such action or proceeding is not commenced within six months after the first day in which care and treatment is furnished or paid for by the United States in connection with the injury or disease involved, institute and prosecute legal proceedings against the third person who is liable for the injury or disease or the insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or lost pay, in a State or Federal court, either alone (in its own name or in the name of the injured person, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors.

(e) Veterans' exception

The provisions of this section shall not apply with respect to hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished by the Department of Veterans Affairs to an eligible veteran for a service-connected disability under the provisions of chapter 17 of title 38.

(f) Crediting of amounts recovered

(1) Any amount recovered under this section for medical care and related services furnished by a military medical treatment facility or similar military activity shall be credited to the appropriation or appropriations supporting the operation of that facility or activity, as determined under regulations prescribed by the Secretary of Defense.

(2) Any amount recovered under this section for the cost to the United States of pay of an injured or diseased member of the uniformed services shall be credited to the appropriation that supports the operation of the command, activity, or other unit to which the member was assigned at the time of the injury or illness, as determined under regulations prescribed by the Secretary concerned.

(g) Definitions

For the purposes of this section:

(1) The term ''uniformed services'' has the meaning given such term in section 101 of title 10.

(2) The term ''tortious conduct'' includes any tortious omission.

(3) The term ''pay'', with respect to a member of the uniformed services, means basic pay, special pay, and incentive pay that the member is authorized to receive under title 37 or any other law providing pay for service in the uniformed services.

(4) The term ''Secretary concerned'' means—

(A) the Secretary of Defense, with respect to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating as a service in the Navy);

(B) the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy;

(C) the Secretary of Health and Human Services, with respect to the commissioned corps of the Public Health Service; and

(D) the Secretary of Commerce, with respect to the commissioned corps of the National Oceanic and Atmospheric Administration.

(Pub. L. 87–693, § 1, Sept. 25, 1962, 76 Stat. 593; Pub. L. 102–54, § 13(q)(8), June 13, 1991, 105 Stat. 281; Pub. L. 104–201, div. A, title X, § 1075(a), (b), Sept. 23, 1996, 110 Stat. 2661, 2663; Pub. L. 109–241, title IX, § 902(m), July 11, 2006, 120 Stat. 568.)

REFERENCES IN TEXT

Effective date of this Act, referred to in subsec. (a), is the first day of the fourth month following Septem-

ber 1962, see section 4 of Pub. L. 87–693 set out as an Effective Date note below.

AMENDMENTS

2006—Subsec. (g)(4)(B). Pub. L. 109–241 substituted ''of Homeland Security,'' for ''of Transportation,''.

1996—Subsec. (a). Pub. L. 104–201, § 1075(b)(1), inserted ''(independent of the rights of the injured or diseased person)'' after ''a right to recover'' and '', or that person's insurer,'' after ''from said third person''.

Pub. L. 104–201, § 1075(a)(1), (2), inserted ''or pay for'' after ''required by law to furnish'' and substituted '', to be furnished, paid for, or to be paid for'' for ''or to be furnished'' in two places.

Subsecs. (b), (c). Pub. L. 104–201, § 1075(a)(3), added subsecs. (b) and (c). Former subsecs. (b) and (c) redesignated (d) and (e), respectively.

Subsec. (d). Pub. L. 104–201, § 1075(a)(4), (b)(2), substituted ''a right under subsections (a), (b), and (c) of this section'' for ''such right,'' in introductory provisions, inserted ''or paid for'' after ''treatment is furnished'' in par. (2), and inserted ''or the insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or lost pay'' after ''the third person who is liable for the injury or disease'' in pars. (1) and (2).

Pub. L. 104–201, § 1075(a)(2), redesignated subsec. (b) as (d).

Subsec. (e). Pub. L. 104–201, § 1075(a)(2), redesignated subsec. (c) as (e).

Subsecs. (f), (g). Pub. L. 104–201, § 1075(a)(5), added subsecs. (f) and (g).

1991—Subsec. (c). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1075(c) of Pub. L. 104–201 provided that: ''The authority to collect pursuant to the amendments made by this section [amending this section] shall apply to expenses described in the first section of Public Law 87–693 [this section] (as amended by this section) that are incurred, or are to be incurred, by the United States on or after the date of the enactment of this Act [Sept. 23, 1996], whether the event from which the claim arises occurs before, on, or after that date.''

EFFECTIVE DATE

Section 4 of Pub. L. 87–693 provided that: ''This Act [enacting this chapter] becomes effective on the first day of the fourth month following the month [September 1962] in which enacted.''

§ 2652. Regulations

(a) Determination and establishment of reasonable value of care and treatment

The President may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the reasonable value of the hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished.

(b) Settlement, release and waiver of claims

To the extent prescribed by regulations under subsection (a) of this section, the head of the department or agency of the United States concerned may (1) compromise, or settle and execute a release of, any claim which the United States has by virtue of the right established by section 2651 of this title; or (2) waive any such claim, in whole or in part, for the convenience of the Government, or if he determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in care or treatment described in section 2651 of this title.

(c) Damages recoverable for personal injury unaffected

No action taken by the United States in connection with the rights afforded under this legislation shall operate to deny to the injured person the recovery for that portion of his damage not covered hereunder.

(Pub. L. 87–693, § 2, Sept. 25, 1962, 76 Stat. 593.)

EX. ORD. NO. 11060. DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS

Ex. Ord. No. 11060, Nov. 7, 1962, 27 F.R. 10925, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

Under and by virtue of the authority vested in me by Title 3 of the United States Code and by Section 2(a) of the Act of September 25, 1962 (Public Law 87–693) [subsec. (a) of this section], it is hereby ordered as follows:

SECTION 1. The Director of the Office of Management and Budget shall, for the purposes of the Act of September 25, 1962, [this chapter], from time to time, determine and establish rates that represent the reasonable value of hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished.

SEC. 2. Except as provided in Section 1 of this order, the Attorney General shall prescribe regulations to carry out the purposes of the Act of September 25, 1962 [this chapter].

§ 2653. Limitation or repeal of other provisions for recovery of hospital and medical care costs

This chapter does not limit or repeal any other provision of law providing for recovery by the United States of the costs of care and treatment described in section 2651 of this title.

(Pub. L. 87–693, § 3, Sept. 25, 1962, 76 Stat. 594.)

CHAPTER 33—COMMUNITY MENTAL HEALTH CENTERS

EXECUTIVE ORDER NO. 11280

Ex. Ord. No. 11280, May 11, 1966, 31 F.R. 7167, which established the President's Committee on Mental Retardation, was superseded by Ex. Ord. No. 11776, Mar. 28, 1974, 39 F.R. 11865, formerly set out preceding section 6000 of this title.

SUBCHAPTER I—UNIVERSITY-AFFILIATED FACILITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

§§ 2661 to 2666. Omitted

CODIFICATION

Sections 2661 to 2666 were superseded in the general amendment of part B of title I of Pub. L. 88–164 (this subchapter) by Pub. L. 94–103, title I, § 105, title III, § 303, Oct. 4, 1975, 89 Stat. 486, 507, effective with respect to appropriations under Pub. L. 94–103 for fiscal years beginning after June 30, 1975.

Section 2661, Pub. L. 88–164, title I, § 121, Oct. 31, 1963, 77 Stat. 284; Pub. L. 90–170, § 2(a), (b), (d), Dec. 4, 1967, 81 Stat. 527; Pub. L. 91–517, title II, § 201(a), (b), Oct. 30, 1970, 84 Stat. 1325, related to authorization of appropriations.

Section 2661a, Pub. L. 88–164, title I, § 122, as added Pub. L. 91–517, title II, § 202, Oct. 30, 1970, 84 Stat. 1326; amended Pub. L. 93–45, title III, § 301(a), June 18, 1973, 87 Stat. 95; Pub. L. 94–103, title I, § 101(a), Oct. 4, 1975, 89 Stat. 486, related to demonstration and training grants and authorization of appropriations for such grants.

Section 2662, Pub. L. 88–164, title I, § 123, formerly § 122, Oct. 31, 1963, 77 Stat. 284; renumbered § 123 and amended Pub. L. 91–517, title II, §§ 202, 203, Oct. 30, 1970, 84 Stat. 1326, related to applications for grants and conditions for approval by Secretary.

Section 2663, Pub. L. 88–164, title I, § 124, formerly § 123, Oct. 31, 1963, 77 Stat. 285; renumbered § 124 and amended Pub. L. 91–517, title II, §§ 202, 204, Oct. 30, 1970, 84 Stat. 1326, related to amount of grants, including maximum payments, advances or reimbursement, and conditions for payment.

Section 2664, Pub. L. 88–164, title I, § 125, formerly § 124, Oct. 31, 1963, 77 Stat. 285; renumbered § 125 and amended Pub. L. 91–517, title II, §§ 201(c), 202, 205, Oct. 30, 1970, 84 Stat. 1326, related to recovery of expenditures under certain conditions.

Section 2665, Pub. L. 88–164, title I, § 126, formerly § 125, Oct. 31, 1963, 77 Stat. 285; amended Pub. L. 90–170, § 2(c), Dec. 4, 1967, 81 Stat. 527; renumbered § 126 and amended Pub. L. 91–517, title II, §§ 201(c), 202, Oct. 30, 1970, 84 Stat. 1326, related to nonduplication of grants.

Section 2666, Pub. L. 88–164, title I, § 127, as added Pub. L. 91–517, title II, § 206, Oct. 30, 1970, 84 Stat. 1326, related to maintenance of effort.

SUBCHAPTER II—GRANTS FOR PLANNING, PROVISION OF SERVICES, AND CONSTRUCTION AND OPERATION OF FACILITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

§ 2670. Repealed. Pub. L. 94–103, title III, § 302(c), Oct. 4, 1975, 89 Stat. 507

Section, Pub. L. 88–164, title I, § 130, as added Pub. L. 91–517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1316, contained the declaration of purpose for provisions respecting grants for planning, provision of services, and construction and operation of facilities for persons with developmental disabilities.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to appropriations under Pub. L. 94–103 for fiscal years beginning after June 30, 1975, see section 303 of Pub. L. 94–103.

§§ 2671 to 2674. Transferred

CODIFICATION

Section 2671, Pub. L. 88–164, title I, § 131, as added Pub. L. 91–517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1317, which related to authorization of appropriations, was transferred to former section 6061 of this title.

A prior section 2671, Pub. L. 88–164, title I, § 131, Oct. 31, 1963, 77 Stat. 286; Pub. L. 90–170, § 3(a), Dec. 4, 1967, 81 Stat. 528, authorized appropriations through fiscal year ending June 30, 1970, for grants for construction of mental retardation facilities.

Section 2672, Pub. L. 88–164, title I, § 132, as added Pub. L. 91–517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1317, which related to allotments to States, was transferred to former section 6062 of this title.

A prior section 2672, Pub. L. 88–164, title I, § 132, Oct. 31, 1963, 77 Stat. 286; Pub. L. 89–105, § 2(a), Aug. 4, 1965, 79 Stat. 427; Pub. L. 90–170, § 3(c), Dec. 4, 1967, 81 Stat. 528, authorized allotments to States, transfers of allotments between States, and adjustment of allotments to a State for construction of facilities for mentally retarded.

Section 2673, Pub. L. 88–164, title I, § 133, as added Pub. L. 91–517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1318, which related to the National Advisory Council on Services and Facilities for the Developmentally Disabled, was transferred to former section 6007 of this title.

A prior section 2673, Pub. L. 88–164, title I, § 133, Oct. 31, 1963, 77 Stat. 287, provided that within six months after Oct. 31, 1963, the Secretary, after consultation with the Federal Hospital Council, prescribe to the States (1) what constitutes adequate services for mentally retarded persons, (2) the method of determining priority of projects, (3) standards of construction and equipment, and (4) that the State plan provide adequate facilities for the mentally retarded including persons unable to pay therefor.

Section 2674, Pub. L. 88–164, title I, § 133, as added Pub. L. 91–517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1319, which related to State plans, was transferred to former section 6063 of this title.

A prior section 2674, Pub. L. 88–164, title I, § 134, Oct. 31, 1963, 77 Stat. 287; Pub. L. 90–170, § 5, Dec. 4, 1967, 81 Stat. 530, provided for submission to the Secretary of State plans for his approval, set out conditions for approval, and required notice and hearing before final disapproval.

§§ 2675, 2676. Repealed. Pub. L. 94–103, title I, § 112, Oct. 4, 1975, 89 Stat. 492

Section 2675, Pub. L. 88–164, title I, § 135, as added Pub. L. 91–517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1321, related to projects for construction, prescribing in: subsec. (a) for submission of application and its contents, subsec. (b) for approval by Secretary, subsec. (c) for a hearing prior to disapproval, and subsec. (d) for amendment of application.

A prior section 2675, Pub. L. 88–164, title I, § 135, Oct. 31, 1963, 77 Stat. 288, provided for the submission of an application for approval by the Secretary, of projects for construction, set forth the contents of such application, provided for hearing prior to disapproval, and subjected to approval any amendment of an approved application.

Section 2676, Pub. L. 88–164, title I, § 136, as added Pub. L. 91–517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1322; amended Pub. L. 92–157, title III, § 303(b), Nov. 18, 1971, 85 Stat. 464, related to withholding of payments for construction. See section 6000 et seq. of this title.

A prior section 2676, Pub. L. 88–164, title I, § 136, Oct. 31, 1963, 77 Stat. 289, authorized withholding by Secretary of payments for construction.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to appropriations under Pub. L. 94–103 for fiscal years beginning after June 30, 1975, see section 303 of Pub. L. 94–103.

§§ 2677 to 2677c. Transferred

CODIFICATION

Section 2677, Pub. L. 88–164, title I, § 137, as added Pub. L. 91–517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1323, which related to payments to States for planning, administration, and services, was transferred to former section 6064 of this title.

A prior section 2677, Pub. L. 88–164, title I, § 137, Oct. 31, 1963, 77 Stat. 289; Pub. L. 90–170, § 3(b), Dec. 4, 1967, 81 Stat. 528, prohibited duplication of grants for the construction of any facility for the mentally retarded under the Public Health Service Act. See section 201 et seq. of this title.

Section 2677a, Pub. L. 88–164, title I, § 138, as added Pub. L. 91–517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1323, which related to withholding of payments for planning, administration, and services, was transferred to former section 6065 of this title.

Section 2677b, Pub. L. 88–164, title I, § 139, as added Pub. L. 91–517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1323, which related to promulgation of regulations, was transferred to former section 6008 of this title.

Section 2677c, Pub. L. 88–164, title I, § 140, as added Pub. L. 91–517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1324, which related to nonduplication of payments, was transferred to former section 6066 of this title.

SUBCHAPTER IIA—PROFESSIONAL AND TECHNICAL SERVICES FOR COMMUNITY MENTAL RETARDATION FACILITIES

§§ 2678 to 2678d. Omitted

CODIFICATION

Sections 2678 to 2678d were superseded in the general amendment of part D of title I of Pub. L. 88–164 (this subchapter) by Pub. L. 94–103, title I, § 120, title III, § 303, Oct. 4, 1975, 89 Stat. 495, 507, effective with respect to appropriations under Pub. L. 94–103 for fiscal years beginning after June 30, 1975.

Section 2678, Pub. L. 88–164, title I, § 141, as added Pub. L. 90–170, § 4, Dec. 4, 1967, 81 Stat. 528, related to authorization, duration, amount and limitation of grants for professional and technical personnel and determination of grants by Secretary.

Section 2678a, Pub. L. 88–164, title I, § 142, as added Pub. L. 90–170, § 4, Dec. 4, 1967, 81 Stat. 529, related to applications and conditions for approval of grants, and limitations on the availability of grants.

Section 2678b, Pub. L. 88–164, title I, § 143, as added Pub. L. 90–170, § 4, Dec. 4, 1967, 81 Stat. 529, related to payments of grants and adjustments.

Section 2678c, Pub. L. 88–164, title I, § 144, as added Pub. L. 90–170, § 4, Dec. 4, 1967, 81 Stat. 529, related to regulations.

Section 2678d, Pub. L. 88–164, title I, § 145, as added Pub. L. 90–170, § 4, Dec. 4, 1967, 81 Stat. 529, related to authorization of appropriations.

SUBCHAPTER III—COMMUNITY MENTAL HEALTH CENTERS

§§ 2681 to 2688j–1. Omitted

CODIFICATION

Sections 2681 to 2688j–1 were superseded in the general amendment of title II of Pub. L. 88–164, by Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309.

Section 2681, Pub. L. 88–164, title II, § 201, Oct. 31, 1963, 77 Stat. 290; Pub. L. 90–31, § 2(a), June 24, 1967, 81 Stat. 79; Pub. L. 91–211, title I, § 101(a), Mar. 13, 1970, 84 Stat. 54; Pub. L. 93–45, title II, § 202(a), June 18, 1973, 87 Stat. 94; Pub. L. 94–63, title VII, § 701(e)(1), July 29, 1975, 89 Stat. 352, authorized appropriations from fiscal year ending June 30, 1965, through fiscal year ending June 30, 1975, for grants for construction of community mental health centers.

Section 2682, Pub. L. 88–164, title II, § 202, Oct. 31, 1963, 77 Stat. 290; Pub. L. 89–105, § 2(a), Aug. 4, 1965, 79 Stat. 427; Pub. L. 91–211, title I, § 102(a), Mar. 13, 1970, 84 Stat. 54, set forth determination of amount, transfer, and adjustment of allotments to States.

Section 2683, of Pub. L. 88–164, title II, § 203, Oct. 31, 1963, 77 Stat. 291; Pub. L. 89–105, § 2(a), Aug. 4, 1965, 79 Stat. 427, authorized Secretary to promulgate regulations relating to adequacy of services, priority of projects, standards of construction and contents of State plan.

Section 2684, Pub. L. 88–164, title II, § 204, Oct. 31, 1963, 77 Stat. 291; Pub. L. 89–105; § 2(a), Aug. 4, 1965, 79 Stat. 427; Pub. L. 90–31, § 4(b), June 24, 1967, 81 Stat. 79; Pub. L. 92–255, title IV, § 403(b), Mar. 21, 1972, 86 Stat. 77, set forth requirements for submission and approval of State plan.

Section 2685, Pub. L. 88–164, title II, § 205, Oct. 31, 1963, 77 Stat. 292; Pub. L. 89–105, § 2(a), Aug. 4, 1965, 79 Stat. 427, set out prerequisites for approval of construction projects.

Section 2686, Pub. L. 88–164, title II, § 206, Oct. 31, 1963, 77 Stat. 293; Pub. L. 89–105, § 2(a), Aug. 4, 1965, 79 Stat. 427, authorized Secretary to withhold payments for projects under specified conditions and procedures.

Section 2687, Pub. L. 88–164, title II, § 207, Oct. 31, 1963, 77 Stat. 294; Pub. L. 89–105, § 2(a), Aug. 4, 1965, 79 Stat. 427; Pub. L. 90–31, § 2(b), June 24, 1967, 81 Stat. 79; Pub. L. 91–211, title I, § 101(b), Mar. 13, 1970, 84 Stat. 54; Pub. L. 93–45, title II, § 202(b), June 18, 1973, 87 Stat. 94; Pub. L. 94–63, title VII, § 701(e)(2), July 29, 1975, 89 Stat. 352, prohibited duplication of grants under the Public Health Service Act for construction of centers unless Secretary determined nonavailability of funds under provisions authorizing appropriations for construction.

Section 2688, Pub. L. 88–164, title II, § 220, as added Pub. L. 89–105, § 2(b), Aug. 4, 1965, 79 Stat. 428; amended Pub. L. 91–211, title II, § 201(a), Mar. 13, 1970, 84 Stat. 56, set forth authorization, duration and amount of grants for initial costs of professional and technical personnel of centers.

Section 2688a, Pub. L. 88–164, title II, § 221, as added Pub. L. 89–105, § 2(b), Aug. 4, 1965, 79 Stat. 428; amended Pub. L. 90–31, § 3(a), June 24, 1967, 81 Stat. 79; Pub. L. 91–211, title II, §§ 203, 204(c), Mar. 13, 1970, 84 Stat. 57; Pub. L. 92–255, title IV, § 401(a), Mar. 21, 1972, 86 Stat. 76; Pub. L. 93–45, title II, § 203(a), June 18, 1973, 87 Stat. 94; Pub. L. 94–63, title VII, § 701(e)(3), July 29, 1975, 89 Stat. 352, set forth prerequisites and conditions upon grants for initial costs of staffing of centers.

Section 2688b, Pub. L. 88–164, title II, § 222, as added Pub. L. 89–105, § 2(b), Aug. 4, 1965, 79 Stat. 429, authorized Secretary to prescribe the manner, terms and conditions for staffing grants.

Section 2688c, Pub. L. 88–164, title II, § 223, as added Pub. L. 89–105, § 2(b), Aug. 4, 1965, 79 Stat. 429, authorized Secretary to prescribe regulations for grants for initial costs of personnel of centers.

Section 2688d, Pub. L. 88–164, title II, § 224, as added Pub. L. 89–105, § 2(b), Aug. 4, 1965, 79 Stat. 429; amended Pub. L. 90–31, § 3(b), June 24, 1967, 81 Stat. 79; Pub. L. 91–211, title II, §§ 202, 204(a), (b), Mar. 13, 1970, 84 Stat. 56, 57; Pub. L. 93–45, title II, § 203(b), June 18, 1973, 87 Stat. 94; Pub. L. 94–63, title VII, § 701(e)(4), July 29, 1975, 89 Stat. 352, authorized appropriations from fiscal year ending June 30, 1966 through fiscal year ending June 30, 1975, for initial grants for personnel of centers.

Section 2688e, Pub. L. 88–164, title II, § 240, as added Pub. L. 90–574, title III, § 301, Oct. 15, 1968, 82 Stat. 1006, set forth Congressional declaration of purposes for grants for facilities for alcoholic rehabilitation.

Section 2688f, Pub. L. 88–164, title II, § 241, as added Pub. L. 90–574, title III, § 301, Oct. 15, 1968, 82 Stat. 1007; amended Pub. L. 91–211, title III, § 302, Mar. 13, 1970, 84 Stat. 58, authorized grants for the construction of facilities for the prevention and treatment of alcoholism and set forth procedures, and terms and conditions for such grants.

Section 2688g, Pub. L. 88–164, title II, § 242, as added Pub. L. 90–574, title III, § 301, Oct. 15, 1968, 82 Stat. 1008; amended Pub. L. 91–211, title III, § 303(a), Mar. 13, 1970, 84 Stat. 58, authorized grants for the staffing of facilities for alcoholism prevention and treatment and set forth procedures and conditions for such grants.

Section 2688h, Pub. L. 88–164, title II, § 243, as added Pub. L. 90–574, title III, § 301, Oct. 15, 1968, 82 Stat. 1008; amended Pub. L. 91–211, title III, § 302, Mar. 13, 1970, 84 Stat. 58; Pub. L. 91–616, title III, § 332, Dec. 31, 1970, 84 Stat. 1853, authorized grants for specialized facilities and personnel for the prevention and treatment of alcoholism and set forth procedures and conditions for such grants.

Section 2688i, Pub. L. 88–164, title II, § 244, as added Pub. L. 90–574, title III § 301, Oct. 15, 1968, 82 Stat. 1009, set forth eligibility of projects for grants for construction or initial staffing of facilities for the prevention and treatment of alcoholism.

Section 2688j, Pub. L. 88–164, title II, § 245, as added Pub. L. 90–574, title III, § 301, Oct. 15, 1968, 82 Stat. 1009, set forth manner, terms and conditions for grants for alcoholism treatment and prevention.

Section 2688j–1, Pub. L. 88–164, title II, § 246, as added Pub. L. 91–211, title III, § 304, Mar. 13, 1970, 84 Stat. 59; amended Pub. L. 93–45, title II, § 204(a), June 18, 1973, 87 Stat. 94; Pub. L. 94–63, title VII, § 701(e)(5)(A), July 29, 1975, 89 Stat. 352, authorized grants for developing specialized training programs, training personnel, conducting surveys and field trials, and programs of special significance in alcoholism prevention and treatment.

§ 2688j–2. Repealed. Pub. L. 93–282, title III, § 302, May 14, 1974, 88 Stat. 137

Section, Pub. L. 88–164, title II, § 247, formerly § 246, as added Pub. L. 90–574, title III, § 301, Oct. 15, 1968, 82 Stat. 1009; renumbered § 247, Pub. L. 91–211, title III, § 304, Mar. 13, 1970, 84 Stat. 59; amended Pub. L. 91–616, title III, § 311, Dec. 31, 1970, 84 Stat. 1851; Pub. L. 93–45, title II, § 204(b), June 18, 1973, 87 Stat. 94; Pub. L. 94–63, title VII, § 701(e)(5)(B), July 29, 1975, 89 Stat. 352, related to grants and contracts for the prevention and treatment of alcohol abuse and alcoholism. See section 4577 of this title.

§§ 2688k to 2688*o*. Omitted

CODIFICATION

Sections 2688k to 2688*o* were superseded in the general amendment of title II of Pub. L. 88–164 by Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309.

Section 2688k, Pub. L. 88–164, title II, § 251, as added Pub. L. 90–574, title III, § 302, Oct. 15, 1968, 82 Stat. 1009; amended Pub. L. 91–211, title III, § 302, March 13, 1970, 84 Stat. 58; Pub. L. 91–513, title I, § 1(a)(1), Oct. 27, 1970, 84 Stat. 1238; Pub. L. 92–255, title IV, § 401(b), Mar. 21, 1972, 86 Stat. 76, authorized grants for construction, staffing, etc., of narcotic addiction, drug abuse and drug dependence prevention and rehabilitation facilities and set forth procedures and conditions for such grants.

Section 2688*l*, Pub. L. 88–164, title II, § 252, as added Pub. L. 90–574, title III, § 302, Oct. 15, 1968, 82 Stat. 1010; amended Pub. L. 91–211, title III, § 305(a), Mar. 13, 1970, 84 Stat. 59; Pub. L. 91–513, title I, § 1(a)(1), (2), Oct. 27, 1970, 84 Stat. 1238; Pub. L. 93–45, title II, § 205(a), June 18, 1973, 87 Stat. 94; Pub. L. 94–63, title VII, § 701(e)(6)(A), July 29, 1975, 89 Stat. 352, authorized grants for developing specialized training programs, training personnel, conducting surveys and field trails, and programs of special significance in narcotic addiction, etc., prevention and rehabilitation.

Section 2688*l*–1, Pub. L. 88–164, title II, § 253, as added Pub. L. 91–513, title I, § 1(c), Oct. 27, 1970, 84 Stat. 1238; amended Pub. L. 93–45, title II, § 205(b), June 18, 1973, 87 Stat. 94; Pub. L. 94–63, title VII, § 701(e)(6)(B), July 29, 1975, 89 Stat. 353, authorized grants and contracts and set out appropriations for programs in drug abuse education.

Section 2688m, Pub. L. 88–164, title II, § 254, formerly § 253, as added Pub. L. 90–574, title III, § 302, Oct. 15, 1968, 82 Stat. 1010; and renumbered § 254 and amended Pub. L. 91–513, title I, § 1(a)(1), (c), Oct. 27, 1970, 84 Stat. 1238, set forth eligibility of projects for grants for construction or initial staffing of facilities for the prevention and rehabilitation of narcotic addition, etc.

Section 2688n, Pub. L. 88–164, title II, § 255, formerly § 254, as added Pub. L. 90–574, title III, § 302, Oct. 15, 1968, 82 Stat. 1010; and renumbered § 255, Pub. L. 91–513, title I, § 1(c), Oct. 27, 1970, 84 Stat. 1238, set forth manner, terms and conditions for grants for narcotic addiction; etc., prevention and rehabilitation.

Section 2688n–1, Pub. L. 88–164, title II, § 256, as added Pub. L. 91–513, title I, § 1(d), Oct. 27, 1970, 84 Stat. 1239; amended Pub. L. 92–255, title IV, § 401(c), Mar. 21, 1972, 86 Stat. 76; Pub. L. 93–45, title II, § 205(c), June 18, 1973, 87 Stat. 94; Pub. L. 94–63, title VII, § 701(e)(6)(C), July 29, 1975, 89 Stat. 353, authorized grants for special projects for narcotic addicts and drug dependent persons treatment or rehabilitation and set forth procedures and conditions for such grants.

Section 2688*o*, Pub. L. 88–164, title II, § 261, as added Pub. L. 90–574, title III, § 303(a), Oct. 15, 1968, 82 Stat. 1010; amended Pub. L. 91–211, title III, § 301, Mar. 13, 1970, 84 Stat. 57; Pub. L. 91–513, title I, § 1(b)(1)–(3), Oct. 27, 1970, 84 Stat. 1238; Pub. L. 93–45, title II, § 206, June 18, 1973, 87 Stat. 94; Pub. L. 94–63, title VII, § 701(e)(7), July 29, 1975, 89 Stat. 353, authorized appropriations from the fiscal year ending June 30, 1969 through the fiscal year ending June 30, 1975, for project grants for prevention and treatment of alcoholism and prevention and treatment of narcotic addiction, etc., and set out provisions relating to availability of appropriations.

§ 2688p. Repealed. Pub. L. 91–296, title IV, § 401(b)(2), June 30, 1970, 84 Stat. 352

Section, Pub. L. 88–164, title II, § 262, as added Pub. L. 90–574, title III, § 303(a), Oct. 15, 1968, 82 Stat. 1010, authorized use of up to 1 per centum of appropriated funds by Secretary for evaluation of programs authorized by this subchapter.

EFFECTIVE DATE OF REPEAL

Section 401(b)(2) of Pub. L. 91–296 provided that the repeal by that section is effective with respect to appropriations for fiscal years beginning after June 30, 1970.

§§ 2688q to 2688v. Omitted

CODIFICATION

Sections 2688q to 2688v were superseded in the general amendment of title II of Pub. L. 88–164, by Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309.

Section 2688q, Pub. L. 88–164, title II, § 263, as added Pub. L. 90–574, title III, § 303(a), Oct. 15, 1968, 82 Stat. 1011, required consent for alcoholics, narcotic addicts, and persons with drug abuse and drug dependence problems to be subjects of research.

Section 2688r, Pub. L. 88–164, title II, § 264, as added Pub. L. 91–211, title V, § 501, Mar. 13, 1970, 84 Stat. 61; amended Pub. L. 91–513, title I, § 1(b)(3), Oct. 27, 1970, 84 Stat. 1238, authorized grants for consultation services for community mental health centers, alcoholism prevention and treatment facility, etc., and set forth conditions for such grants.

Section 2688s, Pub. L. 88–164, title II, § 265, as added Pub. L. 91–211, title V, § 502, Mar. 13, 1970, 84 Stat. 62, defined ''technical personnel''.

Section 2688t, Pub. L. 88–164, title II, § 266, as added Pub. L. 91–211, title V, § 503(a), Mar. 13, 1970, 84 Stat. 62; amended Pub. L. 91–616, title IV, § 402, Dec. 31, 1970, 84 Stat. 1854; Pub. L. 92–255, title V, § 502(b), Mar. 21, 1972, 86 Stat. 85, required approval of advisory council concerned with area of interest for grants for construction and staffing of centers and facilities.

Section 2688u, Pub. L. 88–164, title II, § 271, as added Pub. L. 91–211, title IV, § 401, Mar. 13, 1970, 84 Stat. 60; amended Pub. L. 93–45, title II, § 207, June 18, 1973, 87 Stat. 94; Pub. L. 94–63, title VII, § 701(e)(8), July 29, 1975, 89 Stat. 353, authorized grants for construction and staffing of treatment facilities concerned with the mental health of children and set forth conditions for such grants.

Section 2688v, Pub. L. 88–164, title II, § 272, as added Pub. L. 91–211, title IV, § 401, Mar. 13, 1970, 84 Stat. 61, authorized grants for developing specialized training programs, training personnel, and conducting surveys and field trials in services concerned with the mental health of children.

PART A—PLANNING AND OPERATIONS ASSISTANCE

§§ 2689 to 2689e. Repealed. Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560

Section 2689, Pub. L. 88–164, title II, § 201, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309; amended Pub. L. 95–622, title I, § 104(a)(1), (b), (c)(1), Nov. 9, 1978, 92 Stat. 3414, 3415, set forth general requirements for community mental health centers.

A prior section 201 of Pub. L. 88–164, title II, was classified to section 2681 of this title.

Section 2689a, Pub. L. 88–164, title II, § 202, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 312; amended Pub. L. 95–83, title III, § 308(a), Aug. 1, 1977, 91 Stat. 395; Pub. L. 95–622, title I, § 102(a), Nov. 9, 1978, 92 Stat. 3412; Pub. L. 96–398, title VII, § 701(a), Oct. 7, 1980, 94 Stat. 1605, set forth prerequisites, amounts, etc., for grants for planning center programs.

A prior section 202 of Pub. L. 88–164, title II, was classified to section 2682 of this title.

Section 2689b, Pub. L. 88–164, title II, § 203, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 312; amended Pub. L. 95–83, title III, § 308(b), (h), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95–622, title I, §§ 102(b), 103(a), (b), formerly § 103, § 110(b)(1), formerly § 110(b), Nov. 9, 1978, 92 Stat. 3412, 3413, 3420, renumbered Pub. L. 96–32, § 8(a)(1), (2), July 10, 1979, 93 Stat. 85; amended Pub. L. 96–398, title VII, § 701(b), Oct. 7, 1980, 94 Stat. 1605, set forth provisions respecting grants for initial operation of centers and related public or nonprofit private entities.

A prior section 203 of Pub. L. 88–164, title II, was classified to section 2683 of this title.

Section 2689c, Pub. L. 88–164, title II, § 204, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 314; amended Pub. L. 95–83, title III, § 308(c), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95–622, title I, §§ 102(c), 104(a)(2), Nov. 9, 1978, 92 Stat. 3412, 3415; Pub. L. 96–398, title VII, § 701(c), Oct. 7, 1980, 94 Stat. 1605, related to annual grants for consultation and education services of centers and related entities.

A prior section 204 of Pub. L. 88–164, title II, was classified to section 2684 of this title.

Section 2689d, Pub. L. 88–164, title II, § 205, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 316; amended Pub. L. 95–83, title III, § 308(d), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95–622, title I, § 102(d), Nov. 9, 1978, 92 Stat. 3412, set forth prerequisites, scope, etc., for conversion grants for related entities.

A prior section 205 of Pub. L. 88–164, title II, was classified to section 2685 of this title.

Section 2689e, Pub. L. 88–164, title II, § 206, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 316; amended Pub. L. 95–83, title III, § 308(i), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95–622, title I, §§ 104(c)(2), 105, 106, Nov. 9, 1978, 92 Stat. 3416; Pub. L. 96–32, § 8(b), July 10, 1979, 93 Stat. 85; Pub. L. 96–398, title VII, § 701(e), Oct. 7, 1980, 94 Stat. 1605, set forth provisions respecting general requirements for grants.

A prior section 206 of Pub. L. 88–164, title II, was classified to section 2686 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

SHORT TITLE

Section 245 of title II of Pub. L. 88–164, as added by section 303 of Pub. L. 94–63, title III, July 29, 1975, 89 Stat. 333, which provided that title II of Pub. L. 88–164 [this subchapter] was to be cited as the ''Community Mental Health Centers Act'', was repealed by section 902(e)(2)(B) of Pub. L. 97–35.

PART B—FINANCIAL DISTRESS GRANTS

§§ 2689f to 2689h. Repealed. Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560

Section 2689f, Pub. L. 88–164, title II, § 211, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 321; amended Pub. L. 95–622, title I, § 110(a), Nov. 9, 1978, 92 Stat. 3420, set forth eligibility requirements for financial distress grants for operation of centers.

Section 2689g, Pub. L. 88–164, title II, § 212, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 321; amended Pub. L. 95–622, title I, § 102(e), Nov. 9, 1978, 92 Stat. 3412; Pub. L. 96–398, title VII, § 701(d)(2), Oct. 7, 1980, 94 Stat. 1605, related to general requirements for grants.

Section 2689h, Pub. L. 88–164, title II, § 213, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 322; amended Pub. L. 95–83, title III, § 308(e), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95–622, title I, § 102(f), Nov. 9, 1978, 92 Stat. 3412; Pub. L. 96–398, title VII, § 701(d)(1), Oct. 7, 1980, 94 Stat. 1605, set forth authorization of appropriations.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

PART C—FACILITIES ASSISTANCE

§§ 2689i to 2689*l*. Repealed. Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560

Section 2689i, Pub. L. 88–164, title II, § 221, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 322; amended Pub. L. 94–273, § 44, Apr. 21, 1976, 90 Stat. 381, set forth provisions respecting Federal share, etc., for facilities assistance.

A prior section 221 of Pub. L. 88–164, title II, was classified to section 2688a of this title.

Section 2689j, Pub. L. 88–164, title II, § 222, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 323, related to approval of projects, and procedures applicable.

A prior section 222 of Pub. L. 88–164, title II, was classified to section 2688b of this title.

Section 2689k, Pub. L. 88–164, title II, § 223, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 325, related to payments for projects.

A prior section 223 of Pub. L. 88–164, title II, was classified to section 2688c of this title.

Section 2689*l*, Pub. L. 88–164, title II, § 224, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 326, related to judicial review of projects.

A prior section 224 of Pub. L. 88–164, title II, was classified to section 2688d of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

§ 2689m. Transferred

CODIFICATION

Section, Pub. L. 88–164, title II, § 225, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 326; amended Pub. L. 95–622, title I, § 110(c), Nov. 9, 1978, 92 Stat. 3420, which related to prerequisites, amount, procedures, etc., for recovery of payments by the United States, was transferred to section 238*l* of this title.

§§ 2689n to 2689p. Repealed. Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560

Section 2689n, Pub. L. 88–164, title II, § 226, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 327, related to nonduplication of grants.

Section 2689*o*, Pub. L. 88–164, title II, § 227, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 327, related to allotments to States.

Section 2689p, Pub. L. 88–164, title II, § 228, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 327; amended Pub. L. 95–83, title III, § 308(f), Aug. 1, 1977, 91 Stat. 396, set forth authorization of appropriations.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

PART D—RAPE PREVENTION AND CONTROL

§ 2689q. Repealed. Pub. L. 96–398, title VI, § 601(f), Oct. 7, 1980, 94 Stat. 1603

Section, Pub. L. 88–164, title II, § 231, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 328; amended Pub. L. 95–83, title III, § 308(g), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95–622, title I, §§ 102(g), 108, Nov. 9, 1978, 92 Stat. 3412, 3417, set forth establishment, functions, etc., of the National Center for the Prevention and Control of Rape. See section 9511 et seq. of this title.

PART E—GENERAL PROVISIONS

§§ 2689r to 2689aa. Repealed. Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560

Section 2689r, Pub. L. 88–164, title II, § 235, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 329; amended Pub. L. 96–88, title V, § 509(b) Oct. 17, 1979, 93 Stat. 695, defined terms applicable to subchapter.

Section 2689s, Pub. L. 88–164, title II, § 236, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 329, set forth requirements respecting promulgation of regulations.

Section 2689t, Pub. L. 88–164, title II, § 237, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 330; amended Pub. L. 96–79, title I, § 115(k)(1), Oct. 4, 1979, 93 Stat. 610, related to required provisions of State plans.

Section 2689u, Pub. L. 88–164, title II, § 238, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 331; amended Pub. L. 95–622, title I, § 107, Nov. 9, 1978, 92 Stat. 3417, set forth provisions respecting catchment areas of centers.

Section 2689v, Pub. L. 88–164, title II, § 239, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 332, related to State control of administration.

Section 2689w, Pub. L. 88–164, title II, § 240, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 332, set forth recordkeeping requirements.

A prior section 240 of Pub. L. 88–164, title II, was classified to section 2688e of this title.

Section 2689x, Pub. L. 88–164, title II, § 241, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 332, related to exclusions from determination of amount of grant.

A prior section 241 of Pub. L. 88–164, title II, was classified to section 2688f of this title.

Section 2689y, Pub. L. 88–164, title II, § 242, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 332, related to determination of poverty area.

A prior section 242 of Pub. L. 88–164, title II, was classified to section 2688g of this title.

Section 2689z, Pub. L. 88–164, title II, § 243, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 333, required protection of personal rights under grants.

A prior section 243 of Pub. L. 88–164, title II, was classified to section 2688h of this title.

Section 2689aa, Pub. L. 88–164, title II, § 244, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 333, related to reimbursement of centers for mental health services.

A prior section 244 of Pub. L. 88–164, title II, was classified to section 2688i of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 2691. Repealed. Pub. L. 94–103, title III, § 302(c), Oct. 4, 1975, 89 Stat. 507

Section, Pub. L. 88–164, title IV, § 401, Oct. 31, 1963, 77 Stat. 296; Pub. L. 90–31, § 4(a), June 24, 1967, 81 Stat. 79; Pub. L. 91–211, title I, §§ 102(b), 104, 105, Mar. 13, 1970, 84 Stat. 54–56; Pub. L. 91–517, title I, § 102(a), Oct. 30, 1970, 84 Stat. 1324; Pub. L. 94–63, title III, § 305(a), July 29, 1975, 89 Stat. 333, related to definitions, Federal percentages, and promulgation of percentages.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to appropriations under Pub. L. 94–103 for fiscal years beginning after June 30, 1975, see section 303 of Pub. L. 94–103.

§ 2692. Repealed. Pub. L. 91–211, title I, § 104, Mar. 13, 1970, 84 Stat. 55

Section, Pub. L. 88–164, title IV, § 402, Oct. 31, 1963, 77 Stat. 297; Pub. L. 89–105, § 2(a), Aug. 4, 1965, 79 Stat. 427, provided for State standards for variable Federal share of cost.

EFFECTIVE DATE OF REPEAL

Section 104 of Pub. L. 91–211 provided that the repeal by that section is effective with respect to projects under subchapter II of this chapter or part A of subchapter III of this chapter approved after June 30, 1970.

§§ 2693 to 2697b. Repealed. Pub. L. 94–103, title III, § 302(c), Oct. 4, 1975, 89 Stat. 507

Section 2693, Pub. L. 88–164, title IV, § 403, Oct. 31, 1963, 77 Stat. 297; Pub. L. 90–574, title V, § 502, Oct. 15, 1968, 82 Stat. 1012; Pub. L. 91–211, title I, § 103, Mar. 13, 1970, 84 Stat. 55; Pub. L. 91–517, title I, § 102(b), Oct. 30, 1970, 84 Stat. 1325; Pub. L. 94–63, title III, § 305(b), July 29, 1975, 89 Stat. 334, related to payments for construction, providing in: subsec. (a) for installments, payments to applicants, withholding of payments, and maximum amounts; subsec. (b) for amendment of application and revision of estimate; and subsec. (c) for use of allotments for cost of administration and limitation of amount.

Section 2694, Pub. L. 88–164, title IV, § 404, Oct. 31, 1963, 77 Stat. 298; Pub. L. 91–517, title I, § 102(c), Oct. 30, 1970, 84 Stat. 1325; Pub. L. 94–63, title III, § 305(c), July 29, 1975, 89 Stat. 334, related to appeals, petition, record, jurisdiction of courts of appeals, conclusiveness of findings, review by Supreme Court, and stay of administrative action. See section 6000 et seq. of this title.

Section 2695, Pub. L. 88–164, title IV, § 405, Oct. 31, 1963, 77 Stat. 298; Pub. L. 91–517, title I, § 102(b), Oct. 30, 1970, 84 Stat. 1325; Pub. L. 94–63, title III, § 305(d), July 29, 1975, 89 Stat. 334, related to recovery of expenditures under certain conditions. See section 6000 et seq. of this title.

Section 2696, Pub. L. 88–164, title IV, § 406, Oct. 31, 1963, 77 Stat. 299; Pub. L. 91–517, title I, § 102(b), Oct. 30, 1970, 84 Stat. 1325; Pub. L. 94–63, title III, § 305(e), July 29, 1975, 89 Stat. 334, related to State control of operations. See section 6000 et seq. of this title.

Section 2697, Pub. L. 88–164, title IV, § 408, as added Pub. L. 89–105, § 3, Aug. 4, 1965, 79 Stat. 429, related to records and audit. See section 6000 et seq. of this title.

Section 2697a, Pub. L. 88–164, title IV, § 409, as added Pub. L. 90–574, title III, § 304, Oct. 15, 1968, 82 Stat. 1011, related to determination of amount of grants and exclusion of duplicated grants. See section 6000 et seq. of this title.

Section 2697b, Pub. L. 88–164, title IV, § 410, as added Pub. L. 91–211, title V, § 504, Mar. 13, 1970, 84 Stat. 62, related to determination of poverty area.

EFFECTIVE DATE OF REPEAL

Repeal effective with request to appropriations under Pub. L. 94–103, for fiscal years beginning after June 30, 1975, see section 303 of Pub. L. 94–103.

SUBCHAPTER V—TRAINING OF PHYSICAL EDUCATORS AND RECREATION PERSONNEL FOR MENTALLY RETARDED AND OTHER HANDICAPPED CHILDREN

§§ 2698 to 2698b. Repealed. Pub. L. 91–230, title VI, § 662(4), Apr. 13, 1970, 84 Stat. 188

Section 2698, Pub. L. 88–164, title V, § 501, as added Pub. L. 90–170, § 7, Dec. 4, 1967, 81 Stat. 530, related to appropriations and grants for training of personnel.

Section 2698a, Pub. L. 88–164, title V, § 502, as added Pub. L. 90–170, § 7, Dec. 4, 1967, 81 Stat. 530, related to grants for research and demonstration projects, payment thereof, and evaluation of such projects.

Section 2698b, Pub. L. 88–164, title V, § 503, as added Pub. L. 90–170, § 7, Dec. 4, 1967, 81 Stat. 531, related to appointment of an advisory committee and compensation of its members and appointees.

EFFECTIVE DATE OF REPEAL

Section 662 of Pub. L. 91–230 provided that the repeal by that section is effective July 1, 1971.

CHAPTER 34—ECONOMIC OPPORTUNITY PROGRAM

Sec.
2701 to 2703. Repealed or Omitted.
2704. Discontinued Job Corps centers; utilization for special youth programs.
2705, 2706. Repealed.
2707. Authorization of appropriations.

SUBCHAPTER I—RESEARCH AND DEMONSTRATIONS

PART A—RESEARCH, DEMONSTRATION, AND PILOT PROECTS

2711 to 2729. Repealed.

PART B—WORK AND TRAINING FOR YOUTH AND ADULTS

2731 to 2749. Repealed or Omitted.

PART C—FEDERAL WORK-STUDY PROGRAMS

2751. Purpose; appropriations authorized.
2752. Allocation of funds.
2753. Grants for Federal work-study programs.
2754. Sources of matching funds.
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2756. Job location and development programs.
2756a. Additional funds to conduct community service work-study programs.
2756b. Work colleges.
2757. Repealed.

PART D—SPECIAL IMPACT PROGRAMS

2761 to 2768. Omitted or Repealed.

PART E—SPECIAL WORK AND CAREER DEVELOPMENT PROGRAMS

2769 to 2769f. Repealed.

PART F—DURATION OF PROGRAMS

2771. Repealed.

SUBCHAPTER II—URBAN AND RURAL COMMUNITY ACTION PROGRAMS

2781. Repealed.

PART A—COMMUNITY ACTION AGENCIES AND PROGRAMS

2782 to 2797. Omitted or Repealed.

PART B—FINANCIAL ASSISTANCE TO COMMUNITY ACTIONS PROGRAMS AND RELATED ACTIVITIES

2801 to 2815. Repealed.

PART C—SUPPLEMENTAL PROGRAMS AND ACTIVITIES

2821 to 2830. Omitted or Repealed.

PART D—GENERAL AND TECHNICAL PROVISIONS

2831 to 2837. Omitted or Repealed.

SUBCHAPTER III—SPECIAL PROGRAMS TO COMBAT POVERTY IN RURAL AREAS

PART A—RURAL LOAN PROGRAM

2841, 2851 to 2856. Repealed.

PART B—ASSISTANCE FOR MIGRANT, AND OTHER SEASONALLY EMPLOYED FARMWORKERS AND THEIR FAMILIES

2861 to 2865. Repealed.

PART C—DURATION OF PROGRAM

2871. Repealed.

PART D—INDEMNITY PAYMENTS TO DAIRY FARMERS

2881. Repealed.

SUBCHAPTER IV—ASSISTANCE FOR MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKERS AND THEIR FAMILIES

2901 to 2907. Repealed.

Sec.

SUBCHAPTER V—HEADSTART AND FOLLOW THROUGH

2921 to 2925. Repealed or Omitted.

PART A—HEADSTART PROGRAMS

2928 to 2928n. Repealed or Omitted.

PART B—FOLLOW THROUGH PROGRAMS

2929 to 2929c. Repealed.

PART C—GENERAL PROVISIONS

2930 to 2930f. Repealed.

PART D—DAY CARE PROJECTS

2931 to 2933. Repealed.

SUBCHAPTER VI—ADMINISTRATION AND COORDINATION

PART A—ADMINISTRATION

2941 to 2951, 2961 to 2971g. Repealed.

PART B—COORDINATION

2972 to 2980. Repealed.

SUBCHAPTER VII—COMMUNITY ECONOMIC DEVELOPMENT

2981 to 2981c. Repealed.

PART A—URBAN AND RURAL SPECIAL IMPACT PROGRAMS

2982 to 2982d. Repealed or Omitted.

PART B—SPECIAL RURAL PROGRAMS

2983 to 2983b. Repealed.

PART C—DEVELOPMENT LOANS TO COMMUNITY ECONOMIC DEVELOPMENT PROGRAMS

2984 to 2984b. Repealed or Omitted.

PART D—SUPPORTIVE PROGRAMS AND ACTIVITIES

2985 to 2985g. Repealed.

SUBCHAPTER VIII—NATIVE AMERICAN PROGRAMS

2991. Short title.
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2991b–1. Loan fund; demonstration project.
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2991c. Technical assistance and training.
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2991d–1. Panel review of applications for assistance.
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2991g. Records and audits.
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2992a–1. Staff.
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2992d. Authorization of appropriations.
2993 to 2994d. Repealed.

SUBCHAPTER IX—EVALUATION

2995 to 2995d. Repealed or Omitted.

Sec.
SUBCHAPTER X—LEGAL SERVICES CORPORATION
2996. Congressional findings and declaration of purpose.
2996a. Definitions.
2996b. Legal Services Corporation.
2996c. Board of Directors.
2996d. Officers and employees.
2996e. Powers, duties, and limitations.
2996f. Grants and contracts.
2996g. Records and reports.
2996h. Audits.
2996i. Financing.
2996j. Special limitations.
2996k. Coordination.
2996*l*. Reservation of right to repeal, alter, or amend.

§ 2701. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section, Pub. L. 88–452, § 2, Aug. 20, 1964, 78 Stat. 508; Pub. L. 89–794, title VI, § 614(b), Nov. 8, 1966, 80 Stat. 1472; Pub. L. 95–568, § 17(a)(1), Nov. 2, 1978, 92 Stat. 2439, set forth Congressional findings and declaration of purpose for the Economic Opportunity Act of 1964.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95–568 provided: ''That this Act [enacting sections 2716, 2856, 2929b to 2929b–3, 2979a, 2981b, 2981c, and 2995c of this title, amending this section, sections 2712, 2713, 2790, 2791, 2796, 2808, 2809, 2812, 2814, 2823 to 2825, 2828, 2830, 2833 to 2837, 2841, 2855, 2901 to 2906, 2928a to 2928h, 2928*l* to 2928n, 2929, 2929a, 2932, 2933, 2941 to 2943, 2945, 2946, 2948, 2950, 2951, 2961, 2965, 2970, 2971g, 2973, 2974, 2977, 2982a to 2982c, 2983a, 2984, 2984a, 2985a, 2985e, 2991b, 2991f, 2992b, 2992d, 2995, and 2995a of this title, repealing sections 2829, 2832, 2861 to 2865, 2871, 2929b, 2971, and 2985c–1 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Economic Opportunity Amendments of 1978'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–222, § 1, Dec. 28, 1977, 91 Stat. 1619, provided that: ''This Act [amending sections 2996, 2996c, and 2996e to 2996j of this title, and enacting provisions set out as notes under sections 2996, 2996f and 2996i of this title] may be cited as the 'Legal Services Corporation Act Amendments of 1977'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–341, § 1, July 6, 1976, 90 Stat. 803, provided that: ''This Act [enacting section 2985c–1 of this title, amending sections 2706, 2707, 2712, 2714, 2781, 2790, 2809, 2812, 2814, 2828, 2829, 2855, 2901, 2902, 2928c, 2928f, 2928*l*, 2928n, 2930e, 2930f, 2941, 2942, 2943, 2944, 2948, 2951, 2971f, 2971g, 2982a, 2982c, 2984, 2984a, and 2985 to 2985g of this title, enacting provision set out as a note under this section, and amending provisions set out as notes under this section and section 2942 of this title] may be cited as the 'Community Services Act Technical Amendments of 1976'.''

SHORT TITLE OF 1975 AMENDMENTS

Pub. L. 94–43, § 1, June 28, 1975, 89 Stat. 233, provided: ''That this Act [amending section 2756 of this title and section 1615 of Title 20, Education, and enacting provisions set out as notes under section 2756 of this title and section 1070a of Title 20] may be cited as the 'Emergency Technical Provisions Act'.''

Pub. L. 93–644, § 1, Jan. 4, 1975, 88 Stat. 2291, provided: ''That this Act [enacting sections 2706, 2707, 2711 to 2715, 2828 to 2830, 2865, 2928 to 2928n, 2929 to 2929c, 2930 to 2930f, 2971f, 2971g, 2981a, 2981b, 2985a to 2985g, 2991 to 2991h, and 2992 to 2992d of this title, amending sections 2790, 2809, 2812, 2813, 2837, 2862, 2871, 2901, 2902, 2921, 2922, 2923, 2932, 2933, 2941, 2942, 2943, 2945, 2965, 2971d, 2974, 2979, 2981, 2982, 2982a, 2982b, 2982c, 2983, 2983a, 2983b, 2984, 2984a, 2985, 2995, 2995a, and 2995b of this title, repealing sections 2703, 2705, 2942 note, and 2949 of this title, and enacting provisions set out as notes under this section and sections 2706, 2865, and 2981 of this title] may be cited as the 'Headstart, Economic Opportunity, and Community Partnership Act of 1974'.''

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–355, § 1, July 25, 1974, 88 Stat. 378, provided: ''That this Act [enacting subchapter X of this title and section 2971e of this title, amending section 2809 of this title, and enacting provisions set out as notes under sections 2809 and 2996b of this title] may be cited as the 'Legal Services Corporation Act of 1974'.''

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–424, § 1, Sept. 19, 1972, 86 Stat. 688, provided: ''That this Act [enacting sections 2702b, 2813 to 2815, 2827, 2971b to 2971d, 2981 to 2985, and 2995 to 2995d of this title, amending sections 2724, 2742, 2749, 2771, 2791, 2809, 2812, 2824, 2836, 2837, 2862, 2864, 2871, 2907, 2932, 2933, 2943, 2949, 2965, 2966, 2974, 2991, 2992a, 2993, 2993a, 2994b, 2994d, and 3044b of this title, repealing sections 2763 to 2768 and 2826 of this title, and enacting provisions set out as notes under sections 2942 and 3044b of this title] may be cited as the 'Economic Opportunity Amendments of 1972'.''

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91–177, § 1, Dec. 30, 1969, 83 Stat. 827, provided: ''That this Act [enacting sections 2702a, 2704, 2705, and 2769 to 2769f of this title, amending sections 2771, 2809, 2834, 2837, 2851, 2871, 2907, 2933, 2949, 2965, 2966, 2994b, and 2994d of this title, and section 8332 of Title 5, Government Officers and Employees, and enacting provisions set out as notes under this section and sections 2809, 2834, 2971a and 2994b of this title] may be cited as the 'Economic Opportunity Amendments of 1969'.''

SHORT TITLE OF 1967 AMENDMENT

Pub. L. 90–222, § 1, Dec. 23, 1967, 81 Stat. 672, provided: ''That this Act [enacting sections 2702, 2703, 2723 to 2729, 2737 to 2749, 2763 to 2768, 2795 to 2797, 2808 to 2812, 2823 to 2826, 2832 to 2837, 2862 to 2864, 2906a, 2906b, 2906c, 2931 to 2933, 2946, 2971, 2972 to 2980, 2992, 2992a, 2992b, 2993, 2993a, 2993b, 2994, 2994a, 2994b, 2994c, and 2994d of this title, amending sections 2711 to 2721, 2781, 2790, 2791, 2841, 2851, 2861, 2901, 2902, 2906, 2907, 2921 to 2925, 2941 to 2944, 2949 to 2951, 2961 to 2963, 2966, 2981, and 2991 of this title and section 105 of Title 3, The President, omitting sections 2722, 2732 to 2736, 2761, 2762, 2782 to 2789, 2792 to 2794, 2821, 2822, 2831, and 2991a to 2991e of this title, redesignating section 2946 as section 2855 of this title, and enacting provisions set out as notes under section 2702 of this title] may be cited as the 'Economic Opportunity Amendments of 1967'.''

SHORT TITLE OF 1966 AMENDMENT

Section 1 of Pub. L. 89–794 provided: ''That this Act [enacting sections 2610c, 2721, 2722, 2762, 2771, 2792, 2793, 2794, 2924, 2925, 2951, 2968, 2969, 2970, and 2991 to 2991e of this title, amending this section, sections 2581, 2583, 2713, 2714, 2716, 2732, 2733, 2734, 2735, 2761, 2782, 2783, 2785, 2786, 2787, 2788, 2802, 2821, 2831, 2851, 2854, 2871, 2881, 2902, 2905, 2906, 2907, 2921, 2922, 2923, 2941, 2942, 2943, 2944, 2945, 2946, 2950, 2961, 2963, 2965, 2966, 2981, and 3161 of this title, and sections 425 and 1077 of Title 20, Education, repealing sections 2731, 2903, and 2904 of this title, and enacting provisions set out as notes under this section and section 2981 of this title and section 425 of Title 20] may be cited as the 'Economic Opportunity Amendments of 1966'.''

SHORT TITLE OF 1965 AMENDMENT

Pub. L. 89–253, § 1, Oct. 9, 1965, 79 Stat. 973, provided: ''That this Act [amending sections 2713, 2714, 2716, 2720, 2734, 2735, 2754, 2761, 2782, 2785, 2788, 2789, 2802, 2805, 2807, 2822, 2831, 2851, 2854, 2861, 2871, 2881, 2922, 2923, 2943, 2945, 2965, and 2966 of this title and section 425 of Title 20, Education, and enacted sections 2806a, 2950, and 2967 of this title] may be cited as the 'Economic Opportunity Amendments of 1965'.''

SHORT TITLE

Section 1 of Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, which provided that Pub. L. 88–452, which enacted this chapter, was to be cited as the ''Economic Opportunity Act of 1964'', was repealed by section 683(a) of Pub. L. 97–35.

Section 3, formerly § 101, of Pub. L. 88–452, as added by section 3 of Pub. L. 93–644, Jan. 4, 1975, 88 Stat. 2292, and renumbered and amended by Pub. L. 94–341, § 2(a)(1), July 6, 1976, 90 Stat. 803, provided that: ''Title I through IX of this Act [subchapters I through IX of this chapter] may be cited as the 'Community Services Act of 1974'.''

Pub. L. 88–452, title X, § 1014, as added by Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 389, provided that: ''This title [subchapter X of this chapter] may be cited as the 'Legal Services Corporation Act'.''

STATEMENT OF PURPOSE OF 1978 AMENDMENT

Section 2 of Pub. L. 95–568 provided that: ''It is the purpose of this Act [see Short Title of 1978 Amendment note above] to extend and revise programs under title I through title IX [subchapter I to IX of this chapter] of the Economic Opportunity Act of 1964 (hereinafter in this Act referred to as the 'Act').''

EXECUTIVE ORDER NO. 11470

Ex. Ord. No. 11470, eff. May 26, 1969, 34 F.R. 8227, which made arrangements for the structure and conduct of a National Voluntary Action Program, was superseded by Ex. Ord. No. 11603, eff. June 30, 1971, 36 F.R. 12675, set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse. Section 401 of Ex. Ord. No. 11603 which transferred the National Voluntary Action Program to ACTION as created by Reorg. Plan No. 1 of 1971 was superseded by section 1–706 of Ex. Ord. No. 12137, May 16, 1979, 44 F.R. 29023, eff. May 16, 1979, set out as a note under section 2501 of Title 22. For continuation of the National Voluntary Action Program in ACTION Agency [now Corporation for National and Community Service], see section 1–501 of Ex. Ord. No. 12137.

§ 2702. Omitted

CODIFICATION

Section, Pub. L. 90–222, § 2, Dec. 23, 1967, 81 Stat. 672, authorized appropriations for fiscal years 1968 and 1969.

EFFECTIVE DATE

Section 401 of Pub. L. 90–222 provided that: ''The amendments made by this Act [see Short Title of 1967 Amendment note set out under section 2701 of this title] shall be in effect immediately upon its enactment [Dec. 23, 1967], except as provided in this section. Until June 30, 1968, the provisions of section 202 of the Economic Opportunity Act of 1964 as in effect immediately prior to the enactment of this Act [section 2782 of this title] shall apply to community action agencies in existence and funded prior to the enactment of this Act [Dec. 23, 1967], except that in any grant or funding agreement made with such an agency prior to June 30, 1968, adequate provision shall be made for transfer of functions, obligations, records, authority, and funds to any community action agency designated pursuant to sections 210 or 211 of the Economic Opportunity Act of 1964 as amended by this Act [sections 2790 or 2791 of this title]: *Provided, however*, That nothing in this Act shall require the termination before February 1, 1969 of an existing community action agency or any program assisted under the Economic Opportunity Act of 1964 [this chapter] prior to the designation of, and provision of financial assistance to, a community action agency or other agency established under sections 210 and 211 of the Economic Opportunity Act [sections 2790 and 2791 of this title] as amended by this Act.''

ACCESS OF GAO TO GRANTEE'S RECORDS

Pub. L. 91–667, title III, Jan. 1, 1971, 84 Stat. 2018, provided in part that all grant agreements were to provide that the General Accounting Office would have access to the records bearing exclusively upon the Federal grant.

Similar provisions were contained in Pub. L. 91–204, title III, Mar. 5, 1970, 84 Stat. 46.

INVESTIGATION AND EVALUATION OF ECONOMIC OPPORTUNITY PROGRAMS BY THE COMPTROLLER GENERAL; SUBMISSION OF FINAL REPORT BY DECEMBER 1, 1968

Title II of Pub. L. 90–222 authorized the Comptroller General of the United States to make an investigation in sufficient depth of programs and activities financed in whole or in part by funds authorized under this section in order to determine the efficiency of the administration of such programs and activities by the Office of Economic Opportunity and by local public and private agencies carrying out such programs and activities, and the extent to which such programs and activities achieve the objectives set forth in the relevant part or title of this chapter which authorizes such programs or activities, and to transmit his final report to the Congress not later than Dec. 1, 1968 containing a detailed statement of his findings and conclusions together with such recommendations, including recommendations for additional legislation as he deemed advisable.

§§ 2702a, 2702b. Omitted

CODIFICATION

Section 2702a, Pub. L. 91–177, title I, § 102, Dec. 30, 1969, 83 Stat. 827, authorized appropriations for fiscal years 1970 and 1971.

Section 2702b, which was based on section 3(a), (b)(1), (3), (c), (d)(1), (2), (e) of Pub. L. 92–424, Sept. 19, 1972, 86 Stat. 688, 689, authorized appropriations for fiscal years 1973 and 1974.

Subsection (b)(2) of section 2702b, was based on section 3(b)(2) of Pub. L. 92–424, and related to functions of Secretary of Health, Education, and Welfare with respect to status of handicapped children in Headstart program. See section 9835(d) of this title.

§ 2703. Repealed. Pub. L. 93–644, § 16(b), Jan. 4, 1975, 88 Stat. 2330

Section, Pub. L. 90–222, title III, § 301, Dec. 23, 1967, 81 Stat. 728, set out criminal provisions covering operations of antipoverty agencies.

§ 2704. Discontinued Job Corps centers; utilization for special youth programs

(a) Notwithstanding any other provision of law, the Director of the Office of Economic Opportunity shall establish procedures and make arrangements which are designed to assure that facilities and equipment of Job Corps centers which are being discontinued will, where feasible, be made available for use by State or Federal agencies and other public or private agencies, institutions, and organizations with satisfactory arrangements for utilizing such facilities and equipment for conducting programs, especially those providing opportunities for low-income disadvantaged youth, including, without limitation—

(1) special remedial programs;

(2) summer youth programs;

(3) exemplary vocational preparation and training programs;

(4) cultural enrichment programs, including music, the arts, and the humanities;

(5) training programs designed to improve the qualifications of educational personnel, including instructors in vocational educational programs; and

(6) youth conservation work and other conservation programs.

(b) To achieve the objectives of this section, the Director of the Office of Economic Opportunity shall consult with, elicit the cooperation of, and utilize the services of the Administrator of the General Services Administration, and the Secretaries of Agriculture, of the Interior, and of Labor.

(Pub. L. 91–177, title I, § 113, Dec. 30, 1969, 83 Stat. 832; Pub. L. 93–644, § 9(a), Jan. 4, 1975, 88 Stat. 2310.)

CODIFICATION

Section was enacted as part of the Economic Opportunity Amendments of 1969, and not as part of the Economic Opportunity Act of 1964 which comprises this chapter.

OFFICE OF ECONOMIC OPPORTUNITY

Pub. L. 93–644, § 9(a), Jan. 4, 1975, 88 Stat. 2310 [42 U.S.C. 2941], amended the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] to create the Community Services Administration, an independent agency in the executive branch, as the successor authority to the Office of Economic Opportunity, and provided that references to the Office of Economic Opportunity or to its Director were deemed to refer to the Community Services Administration or to its Director. The Community Services Administration was terminated when the Economic Opportunity Act of 1964, except for titles VIII and X, was repealed, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 519, which was classified to section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285. An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub. L. 97–35, which was classified to section 9905 of this title, prior to the general amendment of chapter 106 of this title by Pub. L. 105–285. See section 9912 of this title.

§ 2705. Repealed. Pub. L. 93–644, § 16(a), Jan. 4, 1975, 88 Stat. 2330

Section, Pub. L. 91–177, title I, § 115, Dec. 30, 1969, 83 Stat. 833, provided for withholding of Federal taxes by antipoverty agencies.

§ 2706. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section, Pub. L. 88–452, § 4, formerly title I, § 102, as added Pub. L. 93–644, § 3, Jan. 4, 1975, 88 Stat. 2292, renumbered § 4 and amended Pub. L. 94–341, § 2(a)(2), July 6, 1976, 90 Stat. 803, defined terms applicable to subchapters I to IX of this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§ 2707. Authorization of appropriations

(a)(1) For the purpose of carrying out subchapters I, II, III, IV, V, VI, VII, VIII, and IX of this chapter, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1975 through 1977.

(2) For the purpose of carrying out the programs authorized under section 2808 of this title there is authorized to be appropriated $330,000,000 for the fiscal year 1975 and such sums as may be necessary for each of the two succeeding fiscal years.

(b) Unless the Congress has passed or formally rejected legislation extending the authorizations of appropriations for carrying out any subchapter of this chapter specified in subsection (a) of this section, or adopts a concurrent resolution providing that the provisions of this subsection shall not apply, the authorizations of appropriations specified in subsection (a) of this section are hereby automatically extended for one additional fiscal year beyond the terminal year specified in this chapter or in this section.

(c) Any funds appropriated to carry out any program under subchapters I to X of this chapter which are not obligated prior to the end of the fiscal year for which such funds were appropriated shall remain available for obligation during the succeeding fiscal year.

(Pub. L. 93–644, § 15, Jan. 4, 1975, 88 Stat. 2329; Pub. L. 94–341, § 3(d), July 6, 1976, 90 Stat. 807.)

REFERENCES IN TEXT

Subchapters I to VII, and IX of this chapter, referred to in subsecs. (a)(1) and (c), and section 2808 of this title, referred to in subsec. (a)(2), were repealed by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519.

CODIFICATION

Section was enacted as part of the Headstart, Economic Opportunity, and Community Partnership Act of 1974, and not as part of the Economic Opportunity Act of 1964 which comprises this chapter.

AMENDMENTS

1976—Subsec. (a)(2). Pub. L. 94–341, § 3(d)(1), inserted "of such Act" after "section 221".

Subsec. (c). Pub. L. 94–341, § 3(d)(2), added subsec. (c).

SUBCHAPTER I—RESEARCH AND DEMONSTRATIONS

CODIFICATION

In the original, section 4 of Pub. L. 93–644, Jan. 4, 1975, 88 Stat. 2292, provided in part that "Title I of the Economic Opportunity Act of 1964 is amended to read as follows: 'Title II—Research and Demonstrations' ". Section 4 also added sections 101 to 105 to such title II of the Economic Opportunity Act of 1964. However, title II was subsequently redesignated title I of the Act by section 2(a)(3) of Pub. L. 94–341, July 6, 1976, 90 Stat. 803, and classified as subchapter I of this chapter.

EXECUTIVE ORDER NO. 11330

Ex. Ord. No. 11330, Mar. 5, 1967, 32 F.R. 3871, as amended by Ex. Ord. No. 11547, July 10, 1970, 35 F.R. 11221; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which established the President's Council on Youth Opportunity and the Citizens Advisory Board on Youth Opportunity and provided for their respective memberships, functions, etc., was revoked by Ex. Ord. No. 12379, § 17, Aug. 17, 1982, 47 F.R. 36100, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

AUTHORIZATION OF APPROPRIATIONS FOR PRESIDENT'S COUNCIL ON YOUTH OPPORTUNITY

Pub. L. 91–176, Dec. 30, 1969, 83 Stat. 826, provided: "That there is hereby authorized to be appropriated

such sums as may be necessary for the expenses of the President's Council on Youth Opportunity, established by Executive Order Numbered 11330 of March 5, 1967.''

PART A—RESEARCH, DEMONSTRATION, AND PILOT PROJECTS

§§ 2711 to 2716. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2711, Pub. L. 88–452, title I, § 101, as added Pub. L. 93–644, § 4, Jan. 4, 1975, 88 Stat. 2292, set forth Congressional statement of purpose for provisions respecting research and demonstrations.

A prior section 2711, Pub. L. 88–452, title I, § 101, Aug. 20, 1964, 78 Stat. 508; Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 672, set out Congressional statement of purpose in enacting Job Corps program, prior to repeal by Pub. L. 93–203, title VI, § 614, Dec. 28, 1973, 87 Stat. 883.

Section 2712, Pub. L. 88–452, title I, § 102, as added Pub. L. 93–644, § 4, Jan. 4, 1975, 88 Stat. 2293; amended Pub. L. 94–341, § 2(a)(4), July 6, 1976, 90 Stat. 803; Pub. L. 95–568, § 17(a)(2), Nov. 2, 1978, 92 Stat. 2439, set forth provisions respecting research, demonstration, and pilot projects.

A prior section 2712, Pub. L. 88–452, title I, § 102, Aug. 20, 1964, 78 Stat. 508; Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 673, provided for establishment of a Job Corps, prior to repeal by Pub. L. 93–203, title VI, § 614, Dec. 28, 1973, 87 Stat. 883.

Section 2713, Pub. L. 88–452, title I, § 103, as added Pub. L. 93–644, § 4, Jan. 4, 1975, 88 Stat. 2293; amended Pub. L. 95–568, § 3(a), Nov. 2, 1978, 92 Stat. 2425, related to consultative requirements.

A prior section 2713, Pub. L. 83–452, title I, § 103, Aug. 20, 1964, 78 Stat. 508; Pub. L. 89–253, §§ 2, 3, Oct. 9, 1965, 79 Stat. 973; Pub. L. 89–794, title I, §§ 101, 102, Nov. 8, 1966, 80 Stat. 1451; Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 673, covered eligibility of individuals for Job Corps, prior to repeal by Pub. L. 93–203, title VI, § 614, Dec. 28, 1973, 87 Stat. 883.

Section 2714, Pub. L. 88–452, title I, § 104, as added Pub. L. 93–644, § 4, Jan. 4, 1975, 88 Stat. 2293; amended Pub. L. 94–341, § 2(a)(5), July 6, 1976, 90 Stat. 803, related to public announcement of projects.

A prior section 2714, Pub. L. 88–452, title I, § 104, Aug. 20, 1964, 78 Stat. 509; Pub. L. 80–253, §§ 4, 5, Oct. 9, 1965, 79 Stat. 973; Pub. L. 89–794, title I, §§ 103–108, Nov. 8, 1966, 80 Stat. 1452, 1453; Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 673, provided for screening and selection of applicants for Job Corps, prior to repeal by Pub. L. 93–203, title VI, § 614, Dec. 28, 1973, 87 Stat. 883.

Section 2715, Pub. L. 88–452, title I, § 105, as added Pub. L. 93–644, § 4, Jan. 4, 1975, 88 Stat. 2294, prohibited Federal control over curriculum, etc.

A prior section 2715, Pub. L. 88–452, title I, § 105, Aug. 20, 1964, 78 Stat. 509; Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 674, covered the area of reasonable likelihood of successful participation by Job Corps enrollees, prior to repeal by Pub. L. 93–203, title VI, § 614, Dec. 28, 1973, 87 Stat. 883.

Section 2716, Pub. L. 88–452, title I, § 106, as added Pub. L. 95–568, § 3(b), Nov. 2, 1978, 92 Stat. 2425, set forth authorization of appropriations.

A prior section 2716, Pub. L. 88–452, title I, § 106, Aug. 20, 1964, 78 Stat. 510; Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 662; Pub. L. 90–83, § 10(b), Sept. 11, 1967, 81 Stat. 223; Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 674, related to enrollment and assignment of Job Corps enrollees, prior to repeal by Pub. L. 93–203, title VI, § 614, Dec. 28, 1973, 87 Stat. 883.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§§ 2717 to 2729. Repealed. Pub. L. 93–203, title VI, § 614, Dec. 28, 1973, 87 Stat. 883

Section 2717, Pub. L. 88–452, title I, § 107, Aug. 20, 1964, 78 Stat. 511; Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 675, provided for establishment of Job Corps centers.

Section 2718, Pub. L. 88–452, title I, § 108, Aug. 20, 1964, 78 Stat. 511; Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 676, covered Job Corps program activities.

Section 2719, Pub. L. 88–452, title I, § 109, Aug. 20, 1964, 78 Stat. 511; Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 676, covered allowances and support for Job Corps enrollees.

Section 2720, Pub. L. 88–452, title I, § 110, Aug. 20, 1964, 78 Stat. 511; Pub. L. 89–253, § 7, Oct. 9, 1965, 79 Stat. 974; Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 677, set out standards of conduct and discipline for Job Corps enrollees.

Section 2721, Pub. L. 88–452, title I, § 111, as added Pub. L. 89–794, title I, § 110, Nov. 8, 1966, 80 Stat. 1453; amended Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 677, covered community participation in Job Corps activities.

Section 2722, Pub. L. 88–452, title I, § 111–1, as added Pub. L. 89–794, title I, § 111, Nov. 8, 1966, 80 Stat. 1454, provided for experimental and demonstration projects and directed Director to report to Congress no later than Mar. 1, 1968.

Section 2723, Pub. L. 88–452, title I, § 112, as added Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 678, provided for counseling and job placement.

Section 2724, Pub. L. 88–452, title I, § 113, as added Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 679; amended Pub. L. 92–424, § 27(b)(1), Sept. 19, 1972, 86 Stat. 705, covered experimental and development projects.

Section 2725, Pub. L. 88–452, title I, § 114, as added Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 680, covered advisory boards and committees.

Section 2726, Pub. L. 88–452, title I, § 115, as added Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 680, covered participation of States.

Section 2727, Pub. L. 88–452, title I, § 116, as added Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 681; amended Pub. L. 90–623, § 5(a), Oct. 22, 1968, 82 Stat. 1315, covered the application of provisions of Federal law.

Section 2728, Pub. L. 88–452, title I, § 117, as added Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 682, set out certain special limitations.

Section 2729, Pub. L. 88–452, title I, § 118, as added Pub. L. 90–222, title I, § 101, Dec. 23, 1967, 81 Stat. 682, prohibited political discrimination and political activity.

EFFECTIVE DATE OF REPEAL

Section 614 of Pub. L. 93–203 provided that the repeal by that section is effective with respect to fiscal years after June 30, 1974.

PART B—WORK AND TRAINING FOR YOUTH AND ADULTS

§ 2731. Repealed. Pub. L. 89–794, title I, § 112(a), Nov. 8, 1966, 80 Stat. 1454

Section, Pub. L. 88–452, title I, § 111, Aug. 20, 1964, 78 Stat. 512, set out the statement of purpose for the work-training programs.

§§ 2732 to 2736. Omitted

CODIFICATION

Sections were omitted in the general amendment of Part B of this subchapter by Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 682.

Section 2732, Pub. L. 88–452, title I, § 112, Aug. 20, 1964, 78 Stat. 512; Pub. L. 89–794, title I, § 112(a), Nov. 8, 1966, 80 Stat. 1454, provided for the formulation and implementation of programs for students of low-income fam-

ilies in need of earnings to allow them to stay in school and for individuals 16 through 21 years to develop maximum occupational potential.

Section 2733, Pub. L. 88–452, title I, § 113, Aug. 20, 1964, 78 Stat. 512; Pub. L. 89–794, title I, § 112(a), Nov. 8, 1966, 80 Stat. 1454, set out the required conditions to allow payment of part or all of the costs of programs, including employment on public or locally sponsored projects, nonpolitical projects, and rates of pay, prohibited payment of wages for services on unauthorized projects, and provided for high priority projects.

Section 2734, Pub. L. 88–452, title I, § 114, Aug. 20, 1964, 78 Stat. 513; Pub. L. 89–253, § 8, Oct. 9, 1965, 79 Stat. 974; Pub. L. 89–794, title I, § 112(b), (c), Nov. 8, 1966, 80 Stat. 1455, covered the eligibility of enrollees in program, Cuban refugees, non-applicability of Federal employment laws, and the use of public agencies and private organizations in the testing, counseling, job development, and referral services to youths.

Section 2735, Pub. L. 88–452, title I, § 115, Aug. 20, 1964, 78 Stat. 513; Pub. L. 89–253, § 9, Oct. 9, 1965, 79 Stat. 974; Pub. L. 89–794, title I, § 112(d), Nov. 8, 1966, 80 Stat. 1455, limited to 90 percent of the costs the Federal assistance in any program pursuant to this part with provisions for exceptions and allowed the non-Federal contribution to be in cash or in kind, fairly evaluated.

Section 2736, Pub. L. 88–452, title I, § 116, Aug. 20, 1964, 78 Stat. 513, required the Director to establish criteria in order to achieve equitable distribution among the States.

§§ 2737 to 2749. Repealed. Pub. L. 93–203, title VI, § 614, Dec. 28, 1973, 87 Stat. 883

Section 2737, Pub. L. 88–452, title I, § 120, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 683, set out the Congressional statement of purpose in enacting provisions for a program of work and training for youth and adults.

Section 2738, Pub. L. 88–452, title I, § 121, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 683, covered community program areas and comprehensive work and training programs.

Section 2739, Pub. L. 88–452, title I, § 122, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 683, set out provisions covering prime sponsors and delegate agencies. See section 812 of Title 29, Labor.

Section 2740, Pub. L. 88–452, title I, § 123, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 684, set out the eligible activities for work and training programs.

Section 2741, Pub. L. 88–452, title I, § 124, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 686; amended Pub. L. 90–575, title V, § 503, Oct. 16, 1968, 82 Stat. 1062, set out special conditions for programs.

Section 2742, Pub. L. 88–452, title I, § 125, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 686; amended Pub. L. 92–424, § 5, Sept. 19, 1972, 86 Stat. 690, covered program participants.

Section 2743, Pub. L. 88–452, title I, § 126, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 686, provided for programs dealing with long-term unemployment of persons fifty-five years and older.

Section 2744, Pub. L. 88–452, title I, § 127, as added, Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 687, provided for pilot projects.

Section 2745, Pub. L. 88–452, title I, § 128, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 687, covered technical assistance and training.

Section 2746, Pub. L. 88–452, title I, § 129, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 687, provided for role to be played by States.

Section 2747, Pub. L. 88–452, title I, § 130, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 687, provided for equitable distribution of assistance.

Section 2748, Pub. L. 88–452, title I, § 131, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 687, set limitation on Federal assistance.

Section 2749, Pub. L. 88–452, title I, § 132, as added Pub. L. 90–222, title I, § 102, Dec. 23, 1967, 81 Stat. 688; amended Pub. L. 92–424, § 27(b)(1), (3), Sept. 19, 1972, 86 Stat. 705, provided for development and implementation of program data.

EFFECTIVE DATE OF REPEAL

Section 614 of Pub. L. 93–203 provided that the repeal by that section is effective with respect to fiscal years after June 30, 1974.

PART C—FEDERAL WORK-STUDY PROGRAMS

CODIFICATION

This part is part C of title IV of the Higher Education Act of 1965, Pub. L. 89–329, and not part C of Title I of the Economic Opportunity Act of 1964, Pub. L. 88–452, which comprises this chapter.

§ 2751. Purpose; appropriations authorized

(a) Purpose

The purpose of this part is to stimulate and promote the part-time employment of students who are enrolled as undergraduate, graduate, or professional students and who are in need of earnings from employment to pursue courses of study at eligible institutions, and to encourage students receiving Federal student financial assistance to participate in community service activities that will benefit the Nation and engender in the students a sense of social responsibility and commitment to the community.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this part, $1,000,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(c) "Community services" defined

For purposes of this part, the term ''community services'' means services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs, including—

(1) such fields as health care, child care (including child care services provided on campus that are open and accessible to the community), literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

(2) work in a project, as defined in section 12511(20) of this title;

(3) support services to students with disabilities, including students with disabilities who are enrolled at the institution; and

(4) activities in which a student serves as a mentor for such purposes as—

(A) tutoring;

(B) supporting educational and recreational activities; and

(C) counseling, including career counseling.

(Pub. L. 89–329, title IV, § 441, formerly title I, § 141, as added, renumbered, and amended Pub. L. 90–575, title I, §§ 131(a), (b)(1), 132, 133(a), Oct. 16,

1968, 82 Stat. 1028, 1029; Pub. L. 91–95, § 5, Oct. 22, 1969, 83 Stat. 143; Pub. L. 92–318, title I, §§ 135, 135A(a), June 23, 1972, 86 Stat. 270; Pub. L. 94–482, title I, § 128(a), Oct. 12, 1976, 90 Stat. 2143; Pub. L. 96–374, title IV, § 431, Oct. 3, 1980, 94 Stat. 1433; Pub. L. 99–498, title IV, § 403(a), Oct. 17, 1986, 100 Stat. 1429; Pub. L. 102–325, title IV, § 441(b)–(d), July 23, 1992, 106 Stat. 563; Pub. L. 103–82, title I, § 111(b)(3), Sept. 21, 1993, 107 Stat. 860; Pub. L. 105–244, title IV, § 441, Oct. 7, 1998, 112 Stat. 1711.)

CODIFICATION

Section was originally enacted as section 121 of the Economic Opportunity Act of 1964, Pub. L. 88–452, title I, Aug. 20, 1964, 78 Stat. 513. As such, it had been amended by Pub. L. 89–329, title IV, § 441(2), Nov. 8, 1965, 79 Stat. 1249, and renumbered section 141 by Pub. L. 90–222, title I, § 111(a), Dec. 23, 1967, 81 Stat. 726.

Under Pub. L. 90–575, title I, § 131(a), Oct. 16, 1968, 82 Stat. 1028, section was transferred along with the remainder of part C of title I of the Economic Opportunity Act of 1964, Pub. L. 88–452, and inserted as Part C of title IV of the Higher Education Act of 1965, Pub. L. 89–329. Former Part C of title IV of Pub. L. 89–329, as originally enacted, comprising sections 441 and 442 thereof, was stricken to accommodate the transferal but the amendment of this section by section 441(2) of Pub. L. 89–329 has not been stricken. For amendment of section in addition to the transfers and redesignations treated above, see 1968 Amendment note below.

PRIOR PROVISIONS

A prior section 441 of Pub. L. 89–329 amended this section and sections 2752 to 2756 and 2761 of this title, prior to repeal by section 131(a) of Pub. L. 90–575.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–244, § 441(a), substituted ''$1,000,000,000 for fiscal year 1999'' for ''$800,000,000 for fiscal year 1993''.

Subsec. (c)(1). Pub. L. 105–244, § 441(b)(1), inserted ''(including child care services provided on campus that are open and accessible to the community)'' after ''child care''.

Subsec. (c)(3). Pub. L. 105–244, § 441(b)(2), inserted '', including students with disabilities who are enrolled at the institution'' before the semicolon.

1993—Subsec. (c)(2). Pub. L. 103–82 substituted ''a project, as defined in section 12511(20) of this title'' for ''service opportunities or youth corps as defined in section 12511 of this title, and service in the agencies, institutions and activities designated in section 12544(a) of this title''.

1992—Subsec. (a). Pub. L. 102–325, § 441(b), inserted before period at end '', and to encourage students receiving Federal student financial assistance to participate in community service activities that will benefit the Nation and engender in the students a sense of social responsibility and commitment to the community''.

Subsec. (b). Pub. L. 102–325, § 441(c), amended subsec. (b) generally, substituting present provisions for former provisions which authorized appropriations for fiscal years 1987 to 1991.

Subsec. (c). Pub. L. 102–325, § 441(d), added subsec. (c).

1986—Pub. L. 99–498 amended section generally. Prior to amendment, section read as follows:

''(a) The purpose of this part is to stimulate and promote the part-time employment of students, particularly students who are in need of earnings from employment to pursue courses of study at eligible institutions.

''(b) There are authorized to be appropriated for carrying out this part $670,000,000 for fiscal year 1981, $720,000,000 for fiscal year 1982, $760,000,000 for fiscal year 1983, $800,000,000 for fiscal year 1984, and $830,000,000 for fiscal year 1985.''

1980—Subsec. (a). Pub. L. 96–374 substituted ''particularly students who are in need of earnings from employment to pursue courses of study at eligible institutions'' for ''particularly students with great financial need, in eligible institutions who are in need of the earnings from such employment to pursue courses of study at such institutions''.

Subsec. (b). Pub. L. 96–374 substituted provisions authorizing appropriations for fiscal years 1981, 1982, 1983, 1984, and 1985 for provisions that had authorized appropriations for fiscal year 1969 through fiscal year 1982.

1976—Subsec. (b). Pub. L. 94–482 inserted provisions authorizing appropriations for fiscal year ending June 30, 1976, through fiscal year ending Sept. 30, 1982.

1972—Subsec. (a). Pub. L. 92–318, § 135, substituted ''with great financial need'' for ''from low-income families''.

Subsec. (b). Pub. L. 92–318, § 135A(a), authorized appropriations of $330,000,000, $360,000,000, $390,000,000, and $420,000,000 for fiscal years ending June 30, 1972, 1973, 1974, and 1975, respectively.

1969—Subsec. (b). Pub. L. 91–95 increased general authorization of appropriations for fiscal years ending June 30, 1970, and June 30, 1971.

1968—Subsec. (a). Pub. L. 90–575, §§ 132, 133(a), designated existing provisions as subsec. (a) and substituted ''eligible institutions'' for ''institutions of higher education''.

Subsec. (b). Pub. L. 90–575, § 132, added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–374 effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96–374, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94–482, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 135A(b) of Pub. L. 92–318 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective after June 30, 1971.''

REFERENCES TO PART C OF TITLE I OF THE ECONOMIC OPPORTUNITY ACT OF 1964

Section 131(c) of Pub. L. 90–575 provided that: ''Any reference to any provision of part C of title I of the Economic Opportunity Act of 1964 in any law of the United States shall be deemed to be a reference to the corresponding provision of part C of title IV of the Higher Education Act of 1965 as amended by this section [this part].''

§ 2752. Allocation of funds

(a) Allocation based on previous allocation

(1) From the amount appropriated pursuant to section 2751(b) of this title for each fiscal year,

the Secretary shall first allocate to each eligible institution for each succeeding fiscal year, an amount equal to 100 percent of the amount such institution received under subsections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year).

(2)(A) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this part after fiscal year 1999 but is not a first or second time participant, an amount equal to the greater of—

(i) $5,000; or

(ii) 90 percent of the amount received and used under this part for the first year it participated in the program.

(B) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this part after fiscal year 1999 and is a first or second time participant, an amount equal to the greatest of—

(i) $5,000;

(ii) an amount equal to (I) 90 percent of the amount received and used under this part in the second preceding fiscal year by eligible institutions offering comparable programs of instruction, divided by (II) the number of students enrolled at such comparable institutions in such fiscal year, multiplied by (III) the number of students enrolled at the applicant institution in such fiscal year; or

(iii) 90 percent of the institution's allocation under this part for the preceding fiscal year.

(C) Notwithstanding subparagraphs (A) and (B) of this paragraph, the Secretary shall allocate to each eligible institution which—

(i) was a first-time participant in the program in fiscal year 2000 or any subsequent fiscal year, and

(ii) received a larger amount under this subsection in the second year of participation,

an amount equal to 90 percent of the amount it received under this subsection in its second year of participation.

(3)(A) If the amount appropriated for any fiscal year is less than the amount required to be allocated to all institutions under paragraph (1) of this subsection, then the amount of the allocation to each such institution shall be ratably reduced.

(B) If the amount appropriated for any fiscal year is more than the amount required to be allocated to all institutions under paragraph (1) but less than the amount required to be allocated to all institutions under paragraph (2), then—

(i) the Secretary shall allot the amount required to be allocated to all institutions under paragraph (1), and

(ii) the amount of the allocation to each institution under paragraph (2) shall be ratably reduced.

(C) If additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced (until the amount allocated equals the amount required to be allocated under paragraphs (1) and (2) of this subsection).

(4)(A) Notwithstanding any other provision of this section, the Secretary may allocate an amount equal to not more than 10 percent of the amount by which the amount appropriated in any fiscal year to carry out this part exceeds $700,000,000 among eligible institutions described in subparagraph (B).

(B) In order to receive an allocation pursuant to subparagraph (A) an institution shall be an eligible institution from which 50 percent or more of the Pell Grant recipients attending such eligible institution graduate or transfer to a 4-year institution of higher education.

(b) Allocation of excess based on share of excess eligible amounts

(1) From the remainder of the amount appropriated pursuant to section 2751(b) of this title after making the allocations required by subsection (a) of this section, the Secretary shall allocate to each eligible institution which has an excess eligible amount an amount which bears the same ratio to such remainder as such excess eligible amount bears to the sum of the excess eligible amounts of all such eligible institutions (having such excess eligible amounts).

(2) For any eligible institution, the excess eligible amount is the amount, if any, by which—

(A)(i) the amount of that institution's need (as determined under subsection (c) of this section), divided by (ii) the sum of the need of all institutions (as so determined), multiplied by (iii) the amount appropriated pursuant to section 2751(b) of this title for the fiscal year; exceeds

(B) the amount required to be allocated to that institution under subsection (a) of this section.

(c) Determination of institution's need

(1) The amount of an institution's need is equal to the sum of the self-help need of the institution's eligible undergraduate students and the self-help need of the institution's eligible graduate and professional students.

(2) To determine the self-help need of an institution's eligible undergraduate students, the Secretary shall—

(A) establish various income categories for dependent and independent undergraduate students;

(B) establish an expected family contribution for each income category of dependent and independent undergraduate students, determined on the basis of the average expected family contribution (computed in accordance with part F of this title [20 U.S.C. 1087kk et seq.]) of a representative sample within each income category for the second preceding fiscal year;

(C) compute 25 percent of the average cost of attendance for all undergraduate students;

(D) multiply the number of eligible dependent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, ex-

cept that the amount computed by such subtraction shall not be less than zero;

(E) add the amounts determined under subparagraph (D) for each income category of dependent students; and

(F) multiply the number of eligible independent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction for any income category shall not be less than zero;

(G) add the amounts determined under subparagraph (F) for each income category of independent students; and

(H) add the amounts determined under subparagraphs (E) and (G).

(3) To determine the self-help need of an institution's eligible graduate and professional students, the Secretary shall—

(A) establish various income categories of graduate and professional students;

(B) establish an expected family contribution for each income category of graduate and professional students, determined on the basis of the average expected family contribution (computed in accordance with part F of this title [20 U.S.C. 1087kk et seq.]) of a representative sample within each income category for the second preceding fiscal year;

(C) determine the average cost of attendance for all graduate and professional students;

(D) subtract from the average cost of attendance for all graduate and professional students (determined under subparagraph (C)), the expected family contribution (determined under subparagraph (B)) for each income category, except that the amount computed by such subtraction for any income category shall not be less than zero;

(E) multiply the amounts determined under subparagraph (D) by the number of eligible students in each category; and

(F) add the amounts determined under subparagraph (E) of this paragraph for each income category.

(4)(A) For purposes of paragraphs (2) and (3), the term ''average cost of attendance'' means the average of the attendance costs for undergraduate students and for graduate and professional students, which shall include (i) tuition and fees determined in accordance with subparagraph (B), (ii) standard living expenses determined in accordance with subparagraph (C), and (iii) books and supplies determined in accordance with subparagraph (D).

(B) The average undergraduate and graduate and professional tuition and fees described in subparagraph (A)(i) shall be computed on the basis of information reported by the institution to the Secretary, which shall include (i) total revenue received by the institution from undergraduate and graduate tuition and fees for the second year preceding the year for which it is applying for an allocation, and (ii) the institution's enrollment for such second preceding year.

(C) The standard living expense described in subparagraph (A)(ii) is equal to 150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college for a single independent student.

(D) The allowance for books and supplies described in subparagraph (A)(iii) is equal to $450.

(d) Reallocation of excess allocations

(1) If institutions return to the Secretary any portion of the sums allocated to such institutions under this section for any fiscal year, the Secretary shall reallot such excess to eligible institutions which used at least 5 percent of the total amount of funds granted to such institution under this section to compensate students employed in tutoring in reading and family literacy activities in the preceding fiscal year. Such excess funds shall be reallotted to institutions which qualify under this subsection on the same basis as excess eligible amounts are allocated to institutions pursuant to subsection (b) of this section. Funds received by institutions pursuant to this subsection shall be used to compensate students employed in community service.

(2) If, under paragraph (1) of this subsection, an institution returns more than 10 percent of its allocation, the institution's allocation for the next fiscal year shall be reduced by the amount returned. The Secretary may waive this paragraph for a specific institution if the Secretary finds that enforcing this paragraph would be contrary to the interest of the program.

(e) Filing deadlines

The Secretary shall, from time to time, set dates before which institutions must file applications for allocations under this part.

(Pub. L. 89–329, title IV, § 442, formerly title I, § 142, as added, renumbered, and amended Pub. L. 90–575, title I, §§ 131(a), (b)(1), (3), 133(a), 135, Oct. 16, 1968, 82 Stat. 1028, 1029; Pub. L. 92–318, title I, § 135B, June 23, 1972, 86 Stat. 270; Pub. L. 96–374, title IV, §§ 432, 433, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1433, 1503; Pub. L. 99–498, title IV, § 403(a), Oct. 17, 1986, 100 Stat. 1429; Pub. L. 100–50, § 11(a), June 3, 1987, 101 Stat. 348; Pub. L. 102–325, title IV, § 442, July 23, 1992, 106 Stat. 564; Pub. L. 103–208, § 2(d)(1), (2), Dec. 20, 1993, 107 Stat. 2470; Pub. L. 105–244, title IV, § 442(a), (b), Oct. 7, 1998, 112 Stat. 1712.)

REFERENCES IN TEXT

Part F of this title, referred to in subsec. (c)(2)(B), (3)(B), means part F of title IV of Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, known as the Higher Education Act of 1965. Part F of title IV of such Act is classified generally to part E (§ 1087kk et seq.) of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

CODIFICATION

Section was originally enacted as section 122 of the Economic Opportunity Act of 1964, Pub. L. 88–452, title

I, Aug. 20, 1964, 78 Stat. 514. As such, it had been amended by Pub. L. 89–329, title IV, § 441(1), Nov. 8, 1965, 79 Stat. 1249, and renumbered section 142 by Pub. L. 90–222, title I, § 111(a), Dec. 23, 1967, 81 Stat. 726.

Under Pub. L. 90–575, title I, § 131(a), Oct. 16, 1968, 82 Stat. 1028, section was transferred along with the remainder of Part C of title I of the Economic Opportunity Act of 1964, Pub. L. 88–452, and inserted as Part C of title IV of the Higher Education Act of 1965, Pub. L. 89–329. Former Part C of title IV of Pub. L. 89–329, as originally enacted, comprising sections 441 and 442 thereof, was stricken to accommodate the transferal but the amendment of this section by section 441(1) of Pub. L. 89–329 has not been stricken. For amendment of section in addition to the transfers and redesignations treated above, see 1968 Amendment note below.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–244, § 442(a)(1), substituted ''received under subsections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year)'' for ''received and used under this part for fiscal year 1985''.

Subsec. (a)(2)(A), (B). Pub. L. 105–244, § 442(a)(2)(A), substituted ''1999'' for ''1985'' in introductory provisions.

Subsec. (a)(2)(C)(i). Pub. L. 105–244, § 442(a)(2)(B), substituted ''2000'' for ''1986''.

Subsec. (b). Pub. L. 105–244, § 442(b)(1), (2), redesignated subsec. (c) as (b), and struck out heading and text of former subsec. (b). Text read as follows: ''From one-quarter of the remainder of the amount appropriated pursuant to section 2751(b) of this title for any fiscal year (after making the allocations required by subsection (a) of this section), the Secretary shall allocate to each eligible institution an amount which bears the same ratio to such one-quarter as the amount the eligible institution receives for such fiscal year under subsection (a) of this section bears to the amount all such institutions receive under such subsection (a) of this section.''

Subsec. (b)(1). Pub. L. 105–244, § 442(b)(3), struck out ''three-quarters of'' after ''From''.

Subsec. (b)(2)(A)(i). Pub. L. 105–244, § 442(b)(4), substituted ''subsection (c)'' for ''subsection (d)''.

Subsec. (c). Pub. L. 105–244, § 442(b)(2), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(3). Pub. L. 105–244, § 442(b)(5), struck out ''the Secretary, for academic year 1988–1989 shall use the procedures employed for academic year 1986–1987, and, for any subsequent academic years,'' after ''professional students,'' in introductory provisions.

Subsec. (d). Pub. L. 105–244, § 442(b)(2), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 105–244, § 442(b)(6), substituted ''5 percent'' for ''10 percent'', ''in tutoring in reading and family literacy activities in'' for ''in community service in'', and ''subsection (b)'' for ''subsection (c)''.

Subsecs. (e), (f). Pub. L. 105–244, § 442(b)(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1993—Subsec. (d)(4)(C). Pub. L. 103–208, § 2(d)(1), substituted ''150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college'' for ''three-fourths in the Pell Grant family size offset''.

Subsec. (e). Pub. L. 103–208, § 2(d)(2), designated existing provisions as par. (1) and added par. (2).

1992—Subsec. (a)(4). Pub. L. 102–325, § 442(a), added par. (4).

Subsec. (e). Pub. L. 102–325, § 442(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

''(1) If an institution returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year the Secretary shall reallocate such excess in accordance with paragraph (2). Any sums reallocated under this subsection may be used in accordance with section 2755(a)(2) of this title.

''(2) The Secretary shall reallot not to exceed 25 percent of the amount available pursuant to paragraph (1) to eligible institutions for use in initiating, improving, and expanding programs of community service-learning conducted in accordance with section 2756a of this title. The Secretary shall allocate the remainder of the amounts available pursuant to paragraph (1) to eligible institutions based upon the criteria described in section 2756a(c) of this title.''

1987—Subsec. (e)(2). Pub. L. 100–50, substituted ''not to exceed 25 percent'' for ''25 percent'' and ''section 2756a(c) of this title'' for ''subsection (c) of this section'', and made technical amendment to reference to section 2756a of this title to correct numerical designation of corresponding section of original act.

1986—Pub. L. 99–498 amended section generally, substituting provisions relating to allocation of funds for provisions relating to allotments to States.

1980—Subsec. (a). Pub. L. 96–374, §§ 432(1)–(3), 1391(a)(1), substituted ''Secretary'' for ''Commissioner'' in provisions preceding cl. (1), substituted ''1 per centum'' for ''2 per centum'' and struck out reference to Puerto Rico in cl. (1), and substituted ''subsection (f) of this section'' for ''subsection (e) of this section'' in cl. (2).

Subsecs. (b)(1), (2), (c). Pub. L. 96–374, § 1391(a)(1), substituted ''Secretary'' for ''Commissioner''.

Subsec. (d). Pub. L. 96–374, §§ 432(4), 433, designated existing provisions as par. (1), inserted ''except that the Secretary shall give preference for the first 50 per centum of such reallotments to eligible institutions for use for initiating, improving, and expanding programs of cooperative education in accordance with title VIII of this Act'' after ''this Act'' and ''second'' after ''until the close of the'' and substituted ''Secretary'' for ''Commissioner'', and added par. (2).

Subsec. (e). Pub. L. 96–374, § 432(5), struck out reference to Puerto Rico.

Subsec. (f). Pub. L. 96–374, § 1391(a)(1), substituted ''Secretary'' for ''Commissioner''.

1972—Subsec. (a). Pub. L. 92–318, § 135B(a)(2), substituted ''Ninety per centum of the remainder'' for ''The remainder''.

Subsecs. (c) to (f). Pub. L. 92–318, § 135B(a)(2), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

1968—Subsec. (a). Pub. L. 90–575, §§ 131(b)(3), 135(a), struck out reference to reservation of an amount needed for making grants under section 2753 of this title and inserted reference to reservation of amount provided by subsec. (e).

Subsec. (c). Pub. L. 90–575, § 133(a), substituted ''eligible institution'' for ''institution of higher education''.

Subsec. (e). Pub. L. 90–575, § 135(b), added subsec. (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–244, title IV, § 442(c), Oct. 7, 1998, 112 Stat. 1712, provided that: ''The amendments made by this section [amending this section] shall apply with respect to allocations of amounts appropriated pursuant to section 441(b) for fiscal year 2000 or any succeeding fiscal year.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of Title 20, Education.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 403(b)(1) of Pub. L. 99–498, as enacted by Pub. L. 100–50, § 22(c), June 3, 1987, 101 Stat. 361, provided that: ''Section 442 of the Act [this section] shall apply with respect to the allocation of funds for academic year 1988–1989 and succeeding academic years.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–374 effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96–374, set out as a note under section 1001 of Title 20, Education.

COLLEGE WORK-STUDY ALLOTMENT FOR SPECIFIC FISCAL YEARS

Pub. L. 98–8, title I, § 100, Mar. 24, 1983, 97 Stat. 27, provided that notwithstanding subsecs. (a), (b), (c), and (e) of this section and section 11 of Public Law 97–301, set out as a note below, the Secretary should allot the sums appropriated pursuant to section 2751(b) of this title for fiscal year 1983 among the States so that each State's allotment bore the same ratio to the total amount appropriated as that State's allotment in fiscal year 1981 bore to the total amount appropriated pursuant to that section for fiscal year 1981.

Pub. L. 97–301, § 11, Oct. 13, 1982, 96 Stat. 1403, which provided that notwithstanding subsecs. (a), (b), (c), and (e) of this section, if in fiscal year 1983, fiscal year 1984, or fiscal year 1985 the sums appropriated pursuant to section 2751(b) of this title were less than the sums appropriated pursuant to such section for the fiscal year 1981, the Secretary should allot the sums appropriated pursuant to that section for such fiscal year among the States so that each State's allotment bore the same ratio to the total amount appropriated as that State's allotment in fiscal year 1981 bore to the total amount appropriated pursuant to that section for fiscal year 1981 was repealed by Pub. L. 99–498, title IV, § 408(b), Oct. 17, 1986, 100 Stat. 1495, eff. with respect to any academic year beginning on or after July 1, 1988.

§ 2753. Grants for Federal work-study programs

(a) Agreements required

The Secretary is authorized to enter into agreements with institutions of higher education under which the Secretary will make grants to such institutions to assist in the operation of work-study programs as provided in this part.

(b) Contents of agreements

An agreement entered into pursuant to this section shall—

(1) provide for the operation by the institution of a program for the part-time employment, including internships, practica, or research assistantships as determined by the Secretary, of its students in work for the institution itself, work in community service or work in the public interest for a Federal, State, or local public agency or private nonprofit organization under an arrangement between the institution and such agency or organization, and such work—

(A) will not result in the displacement of employed workers or impair existing contracts for services;

(B) will be governed by such conditions of employment as will be appropriate and reasonable in light of such factors as type of work performed, geographical region, and proficiency of the employee;

(C) does not involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for sectarian instruction or as a place for religious worship; and

(D) will not pay any wage to students employed under this subpart[1] that is less than the current Federal minimum wage as mandated by section 206 of title 29;

(2) provide that funds granted an institution of higher education, pursuant to this section, may be used only to make payments to students participating in work-study programs, except that—

(A) for fiscal year 1999, an institution shall use at least 5 percent of the total amount of funds granted to such institution under this section in any fiscal year to compensate students employed in community service (including a reasonable amount of time spent in travel or training directly related to such community service), except that the Secretary may waive this subparagraph if the Secretary determines that enforcing it would cause hardship for students at an institution;

(B) for fiscal year 2000 and succeeding fiscal years, an institution shall use at least 7 percent of the total amount of funds granted to such institution under this section for such fiscal year to compensate students employed in community service, and shall ensure that not less than 1 tutoring or family literacy project (as described in subsection (d) of this section) is included in meeting the requirement of this subparagraph, except that the Secretary may waive this subparagraph if the Secretary determines that enforcing this subparagraph would cause hardship for students at the institution; and

(C) an institution may use a portion of the sums granted to it to meet administrative expenses in accordance with section 1096 of title 20, may use a portion of the sums granted to it to meet the cost of a job location and development program in accordance with section 2756 of this title, and may transfer funds in accordance with the provisions of section 1095 of title 20;

(3) provide that in the selection of students for employment under such work-study program, only students who demonstrate financial need in accordance with part F [20 U.S.C. 1087kk et seq.] and meet the requirements of section 1091 of title 20 will be assisted, except that if the institution's grant under this part is directly or indirectly based in part on the financial need demonstrated by students who are (A) attending the institution on less than a full-time basis, or (B) independent students, a reasonable portion of the grant shall be made available to such students;

(4) provide that for a student employed in a work-study program under this part, at the time income derived from any need-based employment is in excess of the determination of the amount of such student's need by more than $300, continued employment shall not be subsidized with funds appropriated under this part;

(5) provide that the Federal share of the compensation of students employed in the

[1] So in original. Probably should be ''part''.

work-study program in accordance with the agreement shall not exceed 75 percent, except that—

(A) the Federal share may exceed 75 percent, but not exceed 90 percent, if, consistent with regulations of the Secretary—

(i) the student is employed at a nonprofit private organization or a government agency that—

(I) is not a part of, and is not owned, operated, or controlled by, or under common ownership, operation, or control with, the institution;

(II) is selected by the institution on an individual case-by-case basis for such student; and

(III) would otherwise be unable to afford the costs of such employment; and

(ii) not more than 10 percent of the students compensated through the institution's grant under this part during the academic year are employed in positions for which the Federal share exceeds 75 percent; and

(B) the Federal share may exceed 75 percent if the Secretary determines, pursuant to regulations promulgated by the Secretary establishing objective criteria for such determinations, that a Federal share in excess of such amounts is required in furtherance of the purpose of this part;

(6) include provisions to make employment under such work-study program reasonably available (to the extent of available funds) to all eligible students in the institution in need thereof;

(7) provide assurances that employment made available from funds under this part will, to the maximum extent practicable, complement and reinforce the educational program or vocational goals of each student receiving assistance under this part;

(8) provide assurances, in the case of each proprietary institution, that students attending the proprietary institution receiving assistance under this part who are employed by the institution may be employed in jobs—

(A) that are only on campus and that—

(i) to the maximum extent practicable, complement and reinforce the education programs or vocational goals of such students; and

(ii) furnish student services that are directly related to the student's education, as determined by the Secretary pursuant to regulations, except that no student shall be employed in any position that would involve the solicitation of other potential students to enroll in the school; or

(B) in community service in accordance with paragraph (2)(A) of this subsection;

(9) provide assurances that employment made available from funds under this part may be used to support programs for supportive services to students with disabilities;

(10) provide assurances that the institution will inform all eligible students of the opportunity to perform community service, and will consult with local nonprofit, governmental, and community-based organizations to identify such opportunities; and

(11) include such other reasonable provisions as the Secretary shall deem necessary or appropriate to carry out the purpose of this part.

(c) Private sector employment agreement

As part of its agreement agreement[2] described in subsection (b) of this section, an institution of higher education may, at its option, enter into an additional agreement with the Secretary which shall—

(1) provide for the operation by the institution of a program of part-time employment of its students in work for a private for-profit organization under an arrangement between the institution and such organization that complies with the requirements of subparagraphs (A) through (D) of subsection (b)(1) of this section and subsection (b)(3) of this section;

(2) provide that the institution will use not more than 25 percent of the funds made available to such institution under this part for any fiscal year for the operation of the program described in paragraph (1);

(3) provide that, notwithstanding subsection (b)(5) of this section, the Federal share of the compensation of students employed in such program will not exceed 60 percent for academic years 1987–1988 and 1988–1989, 55 percent for academic year 1989–1990, and 50 percent for academic year 1990–1991 and succeeding academic years, and that the non-Federal share of such compensation will be provided by the private for-profit organization in which the student is employed;

(4) provide that jobs under the work study program will be academically relevant, to the maximum extent practicable; and

(5) provide that the for-profit organization will not use funds made available under this part to pay any employee who would otherwise be employed by the organization.

(d) Tutoring and literacy activities

(1) Use of funds

In any academic year to which subsection (b)(2)(B) of this section applies, an institution shall ensure that funds granted to such institution under this section are used in accordance with such subsection to compensate (including compensation for time spent in training and travel directly related to tutoring in reading and family literacy activities) students—

(A) employed as reading tutors for children who are preschool age or are in elementary school; or

(B) employed in family literacy projects.

(2) Priority for schools

To the extent practicable, an institution shall—

(A) give priority to the employment of students in the provision of tutoring in reading in schools that are participating in a reading reform project that—

(i) is designed to train teachers how to teach reading on the basis of scientifically-based research on reading; and

[2] So in original.

(ii) is funded under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.]; and

(B) ensure that any student compensated with the funds described in paragraph (1) who is employed in a school participating in a reading reform project described in subparagraph (A) receives training from the employing school in the instructional practices used by the school.

(3) Federal share

The Federal share of the compensation of work-study students compensated under this subsection may exceed 75 percent.

(Pub. L. 89–329, title IV, § 443, as added Pub. L. 96–374, title IV, § 434, Oct. 3, 1980, 94 Stat. 1434; amended Pub. L. 99–498, title IV, § 403(a), Oct. 17, 1986, 100 Stat. 1432; Pub. L. 100–50, § 11(b), (c), June 3, 1987, 101 Stat. 348; Pub. L. 102–325, title IV, §§ 441(a)(2), 443, July 23, 1992, 106 Stat. 563, 564; Pub. L. 103–208, § 2(d)(3)–(5), Dec. 20, 1993, 107 Stat. 2470; Pub. L. 105–244, title IV, § 443, Oct. 7, 1998, 112 Stat. 1712.)

REFERENCES IN TEXT

Part F, referred to in subsec. (b)(3), means part F of title IV of Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, known as the Higher Education Act of 1965. Part F of title IV of the Act is classified generally to part E (§ 1087kk et seq.) of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(2)(A)(ii), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§ 6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 2753, Pub. L. 89–329, title IV, § 443, formerly title I, § 143, as added, renumbered title IV, § 443, and amended Pub. L. 90–575, title I, §§ 131(a), (b)(1), 133(a), (b), 139(1), Oct. 16, 1968, 82 Stat. 1028, 1029, 1030; Pub. L. 94–482, title I, § 128(b), Oct. 12, 1976, 90 Stat. 2143, made provision for the grants for work-study programs, prior to repeal by Pub. L. 96–374, § 434.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–244, § 443(a), inserted ", including internships, practica, or research assistantships as determined by the Secretary," after "part-time employment".

Pub. L. 105–244, § 443(b), (c)(1)(A), substituted "for fiscal year 1999," for "in fiscal year 1994 and succeeding fiscal years,", inserted "(including a reasonable amount of time spent in travel or training directly related to such community service)" after "community service", and struck out "and" at end.

Subsec. (b)(2)(B), (C). Pub. L. 105–244, § 443(c)(1)(B), (C), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(3). Pub. L. 105–244, § 443(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "provide that in the selection of students for employment under such work-study program, only students, who demonstrate financial need in accordance with part F of this title, and who meet the requirements of section 1091 of title 20 will be assisted, except that—

"(A) if the institution's grant under this part is directly or indirectly based in part on the financial need demonstrated by students who are (i) attending the institution less than full time, or (ii) independent students; and

"(B) if the total financial need of all such less than full-time and independent students at the institution exceeds 5 percent of the total financial need of all students at such institution,

then at least 5 percent of the grant shall be made available to such less than full-time and independent students;".

Subsec. (b)(5). Pub. L. 105–244, § 443(e), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "provide that the Federal share of the compensation of students employed in the work-study program in accordance with the agreement shall not exceed 75 percent for academic year 1993–1994 and succeeding academic years, except that the Federal share may exceed such amounts of compensation if the Secretary determines, pursuant to regulations promulgated by the Secretary establishing objective criteria for such determinations, that a Federal share in excess of such amounts is required in furtherance of the purpose of this part;".

Subsec. (b)(6). Pub. L. 105–244, § 443(f), struck out ", and to make equivalent employment offered or arranged by the institution reasonably available (to the extent of available funds) to all students in the institution who desire such employment" after "in need thereof".

Subsec. (c)(4). Pub. L. 105–244, § 443(g), inserted ", to the maximum extent practicable" before the semicolon at end.

Subsec. (d). Pub. L. 105–244, § 443(c)(2), added subsec. (d).

1993—Subsec. (b)(2)(A). Pub. L. 103–208, § 2(d)(3), substituted "institution; and" for "institution;".

Subsec. (b)(5). Pub. L. 103–208, § 2(d)(4), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "provide that the Federal share of the compensation of students employed in the work-study program in accordance with the agreement shall not exceed 75 percent for academic year 1993–1994 and succeeding academic years, except that—

"(A) the Federal share may exceed such amounts of such compensation if the Secretary determines, pursuant to regulations promulgated by the Secretary establishing objective criteria for such determinations, that a Federal share in excess of such amounts is required in furtherance of the purpose of this part; and

"(B) when a student engaged in work in community service performs such work for a private nonprofit organization other than the eligible institution, the contribution of such agency or organization shall not exceed 40 percent of the institution's share of the compensation of the student, and the eligible institution in its discretion may count such contribution toward satisfaction of the non-Federal share of the compensation of the student;".

Subsec. (b)(8)(A) to (C). Pub. L. 103–208, § 2(d)(5), added subpars. (A) and (B) and struck out former subpars. (A) to (C) which read as follows:

"(A) on campus only, except as required in subparagraph (A) of paragraph (2);

"(B) that, to the maximum extent practicable, complement and reinforce the educational programs or vocational goals of such students; and

"(C) furnishing student services that are directly related to the student's education, as determined by the Secretary pursuant to regulations, except that no student shall be employed in any position that would involve the solicitation of other potential students to enroll in the school;".

1992—Pub. L. 102–325, § 441(a)(2), inserted "Federal" after "Grants for" in section catchline.

Subsec. (b)(1). Pub. L. 102–325, § 443(a), inserted ", work in community service" after "institution itself".

Subsec. (b)(2)(A). Pub. L. 102–325, § 443(b), amended subpar. (A) generally. Prior to amendment, subpar. (A)

read as follows: ''an institution may use not to exceed 10 percent of the funds granted to the institution in any fiscal year to carry out the work study program described in section 2756a of this title at the increased Federal share specified in paragraph (5)(B) of this subsection, and''.

Subsec. (b)(3) to (5). Pub. L. 102–325, § 443(c)–(e), amended par. (3) to (5) generally. Prior to amendment, pars. (3) to (5) read as follows:

''(3) provide that in the selection of students for employment under such work-study program, only students who demonstrate financial need in accordance with part F of this title, and who meet the requirements of section 1091 of title 20 will be assisted, except that, if the institution's grant under this part is directly or indirectly based in part on the financial need demonstrated by students attending the institution less than full time, a reasonable proportion of the institution's grant shall be made available to such students;

''(4) provide that for a student employed in a work-study program under this part, at the time income derived from any employment (including non-work-study or both) is in excess of the determination of the amount of such student's need by more than $200, continued employment shall not be subsidized with funds appropriated under this part;

''(5) provide that the Federal share of the compensation of students employed in the work study program in accordance with the agreement will not exceed 80 percent for academic years 1987–1988 and 1988–1989, 75 percent for academic year 1989–1990, and 70 percent for academic year 1990–1991 and succeeding academic years, except that—

''(A) the Federal share may exceed such amounts of such compensation if the Secretary determines, pursuant to regulations promulgated by the Secretary establishing objective criteria for such determinations, that a Federal share in excess of such amounts is required in furtherance of the purpose of this part; and

''(B) the Federal share of the compensation of the students employed in the work study for community service-learning programs described in section 2756a of this title from funds available under paragraph (2)(A) in accordance with the agreement will not exceed 90 percent of such compensation;''.

Subsec. (b)(8)(A). Pub. L. 102–325, § 443(f)(1), inserted '', except as required in subparagraph (A) of paragraph (2)'' before semicolon at end.

Subsec. (b)(8)(C). Pub. L. 102–325, § 443(f)(2), (g)(2), inserted ''that are directly related to the student's education'' after ''student services'' and struck out ''and'' at end.

Subsec. (b)(9) to (11). Pub. L. 102–325, § 443(g)(1), (3), added pars. (9) and (10) and redesignated former par. (9) as (11).

1987—Subsec. (b). Pub. L. 100–50, § 11(b), substituted ''paragraph (5)(B)'' for ''clause (6)(B)'' in par. (2)(A), and ''paragraph (2)(A)'' for ''clause (2)(A)'' in par. (5)(B).

Subsec. (c). Pub. L. 100–50, § 11(c), substituted ''As part of its agreement'' for ''In addition to the'' and inserted ''and subsection (b)(3) of this section'' before semicolon at end of par. (1).

1986—Pub. L. 99–498 amended section generally, inserting provisions relating to private sector employment agreements.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of Title 20, Education.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 403(b)(2), formerly section 403(b), of Pub. L. 99–498, as redesignated by Pub. L. 100–50, § 22(c), June 3, 1987, 101 Stat. 361, provided that: ''Sections 443(c), 446, and 447 of the Act [sections 2753(c), 2756, and 2756a of this title] as amended by this section shall apply to periods of enrollment beginning on or after July 1, 1987.''

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 1393 of Pub. L. 96–374, set out as an Effective Date of 1980 Amendment note under section 1001 of Title 20, Education.

§ 2754. Sources of matching funds

Nothing in this part shall be construed as restricting the source (other than this part) from which the institution may pay its share of the compensation of a student employed under a work-study program covered by an agreement under this part, and such share may be paid to such student in the form of services and equipment (including tuition, room, board, and books) furnished by such institution.

(Pub. L. 89–329, title IV, § 444, as added Pub. L. 99–498, title IV, § 403(a), Oct. 17, 1986, 100 Stat. 1435.)

PRIOR PROVISIONS

A prior section 2754, Pub. L. 89–329, title IV, § 444, formerly title I, § 144, as added, renumbered, and amended Pub. L. 90–575, title I, §§ 131(a), (b)(1), 133(a), (c), 134, 136, 137, 138, 139(2), Oct. 16, 1968, 82 Stat. 1028, 1029, 1030; Pub. L. 92–318, title I, §§ 135C(a)(1), 135D, 135E, June 23, 1972, 86 Stat. 271; Pub. L. 94–482, title I, § 128(c), Oct. 12, 1976, 90 Stat. 2143, set out conditions required of agreements with eligible institutions, prior to repeal by Pub. L. 96–374, title IV, § 434, Oct. 3, 1980, 94 Stat. 1434, eff. Oct. 1, 1980. See section 2753(b) of this title.

Section was originally enacted as section 124 of the Economic Opportunity Act of 1964, Pub. L. 88–452, title I, Aug. 20, 1964, 78 Stat. 514. As such, it had been amended by Pub. L. 89–253, § 10, Oct. 9, 1965, 79 Stat. 974; Pub. L. 89–329, title IV, § 441(1), (4), (5), Nov. 8, 1965, 79 Stat. 1249; Pub. L. 90–82, §§ 1, 2, Sept. 6, 1967, 81 Stat. 194, and renumbered section 144 by Pub. L. 90–222, title I, § 111(a), Dec. 23, 1967, 81 Stat. 726.

Under Pub. L. 90–575, title I, § 131(a), Oct. 16, 1968, 82 Stat. 1028, section was transferred along with the remainder of Part C of title I of the Economic Opportunity Act of 1964, Pub. L. 88–452, and inserted as Part C of title IV of the Higher Education Act of 1964, Pub. L. 89–329. Former Part C of title IV of Pub. L. 89–329, as originally enacted, comprising sections 441 and 442 thereof, was struck out to accommodate the transferal but the amendment of this section by section 441(1), (4), (5) of Pub. L. 89–239 was not struck out.

§ 2755. Flexible use of funds

(a) Carry-over authority

(1) Of the sums granted to an eligible institution under this part for any fiscal year, 10 percent may, at the discretion of the institution, remain available for expenditure during the suc-

ceeding fiscal year to carry out programs under this part.

(2) Any of the sums so granted to an institution for a fiscal year which are not needed by that institution to operate work-study programs during that fiscal year, and which it does not wish to use during the next fiscal year as authorized in the preceding sentence, shall remain available to the Secretary for making grants under section 2753 of this title to other institutions in the same State until the close of the second fiscal year next succeeding the fiscal year for which such funds were appropriated.

(b) Carry-back authority

(1) Up to 10 percent of the sums the Secretary determines an eligible institution may receive from funds which have been appropriated for a fiscal year may be used by the Secretary to make grants under this part to such institution for expenditure during the fiscal year preceding the fiscal year for which the sums were appropriated.

(2) An eligible institution may make payments to students of wages earned after the end of the academic year, but prior to the beginning of the succeeding fiscal year, from such succeeding fiscal year's appropriations.

(c) Flexible use of funds

An eligible institution may, upon the request of a student, make payments to the student under this part by crediting the student's account at the institution or by making a direct deposit to the student's account at a depository institution. An eligible institution may only credit the student's account at the institution for (1) tuition and fees, (2) in the case of institutionally owned housing, room and board, and (3) other institutionally provided goods and services.

(Pub. L. 89–329, title IV, § 445, formerly title I, § 145, as added and renumbered Pub. L. 90–575, title I, § 131(a), (b)(1), Oct. 16, 1968, 82 Stat. 1028; amended Pub. L. 99–498, title IV, § 403(a), Oct. 17, 1986, 100 Stat. 1435; Pub. L. 102–325, title IV, § 444, July 23, 1992, 106 Stat. 566; Pub. L. 105–244, title IV, § 444, Oct. 7, 1998, 112 Stat. 1714.)

CODIFICATION

Section was originally enacted as section 125 of the Economic Opportunity Act of 1964, Pub. L. 88–452, title I, Aug. 20, 1964, 78 Stat. 516. As such, it had been amended by Pub. L. 89–329, title IV, § 441(6), Nov. 8, 1965, 79 Stat. 1250, and renumbered section 145 by Pub. L. 90–222, title I, § 111(a), Dec. 23, 1967, 81 Stat. 726.

Under Pub. L. 90–575, title I, § 131(a), Oct. 16, 1968, 82 Stat. 1028, section was transferred along with the remainder of Part C of title I of the Economic Opportunity Act of 1964, Pub. L. 88–452, and inserted as Part C of title IV of the Higher Education Act of 1965, Pub. L. 89–329. Former Part C of title IV of Pub. L. 89–329, as originally enacted, comprising sections 441 and 442 thereof, was struck out to accommodate the transferal but the amendment of this section by section 441(6) of Pub. L. 89–329 has not been struck out.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–244 added subsec. (c).

1992—Subsec. (b). Pub. L. 102–325 designated existing provisions as par. (1) and added par. (2).

1986—Pub. L. 99–498 amended section generally, substituting provisions relating to flexible use of funds for provisions relating to sources of matching funds.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of Title 20, Education.

§ 2756. Job location and development programs

(a) Agreements required

(1) The Secretary is authorized to enter into agreements with eligible institutions under which such institution may use not more than 10 percent or $50,000 of its allotment under section 2752 of this title, whichever is less, to establish or expand a program under which such institution, separately or in combination with other eligible institutions, locates and develops jobs, including community service jobs, for currently enrolled students.

(2) Jobs located and developed under this section shall be jobs that are suitable to the scheduling and other needs of such students and that, to the maximum extent practicable, complement and reinforce the educational programs or vocational goals of such students.

(b) Contents of agreements

Agreements under subsection (a) of this section shall—

(1) provide that the Federal share of the cost of any program under this section will not exceed 80 percent of such cost;

(2) provide satisfactory assurance that funds available under this section will not be used to locate or develop jobs at an eligible institution;

(3) provide satisfactory assurance that funds available under this section will not be used for the location or development of jobs for students to obtain upon graduation, but rather for the location and development of jobs available to students during and between periods of attendance at such institution;

(4) provide satisfactory assurance that the location or development of jobs pursuant to programs assisted under this section will not result in the displacement of employed workers or impair existing contracts for services;

(5) provide satisfactory assurance that Federal funds used for the purpose of this section can realistically be expected to help generate student wages exceeding, in the aggregate, the amount of such funds, and that if such funds are used to contract with another organization, appropriate performance standards are part of such contract; and

(6) provide that the institution will submit to the Secretary an annual report on the uses made of funds provided under this section and an evaluation of the effectiveness of such program in benefiting the students of such institution.

(Pub. L. 89–329, title IV, § 446, formerly title I, § 126, as added, renumbered, and amended Pub. L. 90–575, title I, §§ 131(a), (b)(2), 133(a), Oct. 16, 1968, 82 Stat. 1028, 1029; Pub. L. 94–43, § 2, June 28, 1975, 89 Stat. 233; Pub. L. 96–374, title IV, § 435, title

XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1435, 1503; Pub. L. 99–498, title IV, § 403(a), Oct. 17, 1986, 100 Stat. 1435; Pub. L. 100–50, § 11(d), June 3, 1987, 101 Stat. 348; Pub. L. 102–325, title IV, § 445, July 23, 1992, 106 Stat. 566.)

CODIFICATION

Section was originally enacted, as section 126 of the Economic Opportunity Act of 1964, Pub. L. 88–452, title I, Aug. 20, 1964, 78 Stat. 516. As such, it had been amended by Pub. L. 89–329, title IV, § 441(1), Nov. 8, 1965, 79 Stat. 1249.

Under Pub. L. 90–575, title I, § 131(a), Oct. 16, 1968, 82 Stat. 1028, section was transferred along with the remainder of Part C of title I of the Economic Opportunity Act of 1964, Pub. L. 88–452, and inserted as Part C of title IV of the Higher Education Act of 1965, Pub. L. 89–329. Former Part C of title IV of Pub. L. 89–329, as originally enacted, comprising sections 441 and 442 thereof, was struck out to accommodate the transferal but the amendment of this section by section 441(1) of Pub. L. 89–329 has not been struck out. For amendment of section in addition to the transfers and redesignations treated above, see 1968 Amendment note below.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 2756a of this title prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1992—Pub. L. 102–325 amended section generally, restating subsecs. (a) and (b) with changes in substance and structure and striking out subsec. (c) which defined ''community services''.

1987—Subsec. (b)(3) to (7). Pub. L. 100–50 redesignated pars. (4) to (7) as (3) to (6), respectively, and struck out former par. (3) which read as follows: ''provide satisfactory assurance that the institution will continue to spend in its own job location and development programs, from sources other than funds received under this section, not less than the average expenditures per year made during the most recent 3 fiscal years preceding the effective date of the agreement;''.

1986—Pub. L. 99–498 amended section generally, substituting provisions relating to job location and development programs for provisions relating to equitable distribution of assistance.

1980—Subsec. (a). Pub. L. 96–374, §§ 435(a), 1391(a)(1), substituted ''Secretary'' for ''Commissioner'' and inserted provision that criteria established under this subsection not result in institution's receiving an amount less than institution used under this section for fiscal year 1979, unless there has been a substantial decline in student enrollment of institution.

Subsec. (b). Pub. L. 96–374, § 435(b), inserted provision that, of sums granted to an eligible institution under this part for any fiscal year, 10 per centum may, at discretion of institution, remain available for expenditure during succeeding fiscal year to carry out programs under this part, and substituted ''close of the second fiscal year next succeeding the fiscal year for which funds were appropriated'' for ''close of the fiscal year next succeeding the fiscal year for which such funds were appropriated'' in provision covering available time period during which funds not used remain available to Secretary for making grants to other institutions in same State.

Subsec. (c). Pub. L. 96–374, § 435(b), added subsec. (c).

1975—Pub. L. 94–43 designated existing provisions as subsec. (a) and added subsec. (b).

1968—Pub. L. 90–575, § 133(a), substituted ''eligible institutions'' for ''institutions of higher education''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to periods of enrollment beginning on or after July 1, 1987, see section 403(b)(2) of Pub. L. 99–498, set out as a note under section 2753 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–374 effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96–374, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 5 of Pub. L. 94–43 provided that:

''(a) The amendment made by the provisions of section 2 of this Act [amending this section] shall be effective with respect to appropriations for fiscal years beginning after June 30, 1974.

''(b) Subsections (b) and (d) of section 431 [now 437] of the General Education Provisions Act [section 1232(b) and (d) of Title 20, Education] shall not operate to delay the effectiveness of regulations issued by the Commissioner of Education to implement the provisions of this Act [see Short Title of 1975 Amendment note set out under section 2701 of this title].''

§ 2756a. Additional funds to conduct community service work-study programs

Each institution participating under this part may use up to 10 percent of the funds made available under section 1096(a) of title 20 and attributable to the amount of the institution's expenditures under this part to conduct that institution's program of community service-learning, including—

(1) development of mechanisms to assure the academic quality of the student experience,

(2) assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives, and

(3) collaboration with public and private nonprofit agencies, and programs assisted under the National and Community Service Act of 1990 [42 U.S.C. 12501 et seq.] in the planning, development, and administration of such programs.

(Pub. L. 89–329, title IV, § 447, as added Pub. L. 92–318, title I, § 135F, June 23, 1972, 86 Stat. 271; amended Pub. L. 94–482, title I, § 128(d), Oct. 12, 1976, 90 Stat. 2143; Pub. L. 96–374, title IV, § 436, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1436, 1503; Pub. L. 99–498, title IV, § 403(a), Oct. 17, 1986, 100 Stat. 1436; Pub. L. 102–325, title IV, § 446(a), (b), July 23, 1992, 106 Stat. 567.)

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in par. (3), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to chapter 129 (§ 12501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 2756b of this title prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1992—Pub. L. 102–325 amended section catchline generally, struck out subsecs. (a) and (b) which related to

purpose and definitions, respectively, struck out subsec. (c) designation and heading before ''Each institution participating'', substituted ''up to 10 percent of the funds made available under section 1096(a) of title 20 and attributable to the amount of the institution's expenditures under this part'' for ''funds made available under the last sentence of section 1096(a) of title 20'', and inserted '', and programs assisted under the National and Community Service Act of 1990'' after ''nonprofit agencies''.

1986—Pub. L. 99–498 amended section generally, substituting provisions relating to work-study for community service-learning on behalf of low-income individuals and families for provisions relating to job location and development programs and agreements with eligible institutions. See section 2756 of this title.

1980—Subsec. (a). Pub. L. 96–374, §§ 436, 1391(a)(1), substituted ''$25,000'' for ''$15,000'' and ''Secretary'' for ''Commissioner''.

Subsec. (b)(7). Pub. L. 96–374, § 1391(a)(1), substituted ''Secretary'' for ''Commissioner''.

1976—Subsec. (a). Pub. L. 94–482 substituted provisions authorizing agreements for job location and development programs by Commissioner, for provisions setting forth statement of purpose of community service learning programs.

Subsec. (b). Pub. L. 94–482 substituted provisions setting forth requirements for agreements for job location and development programs, for provisions authorizing appropriations for community service learning programs.

Subsec. (c). Pub. L. 94–482 struck out subsec. (c) which authorized agreements by the Commissioner for grants for community service learning programs.

Subsec. (d). Pub. L. 94–482 struck out subsec. (d) which set forth requirements for agreements for grants for community service learning programs.

Subsec. (e). Pub. L. 94–482 struck out subsec. (e) which defined ''community service''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to periods of enrollment beginning on or after July 1, 1987, see section 403(b)(2) of Pub. L. 99–498, set out as a note under section 2753 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94–482, set out as a note under section 1001 of Title 20, Education.

§ 2756b. Work colleges

(a) Purpose

The purpose of this section is to recognize, encourage, and promote the use of comprehensive work-learning programs as a valuable educational approach when it is an integral part of the institution's educational program and a part of a financial plan which decreases reliance on grants and loans.

(b) Source and use of funds

(1) Source of funds

In addition to the sums appropriated under subsection (f) of this section, funds allocated to the institution under this part and part E of this title [20 U.S.C. 1087aa et seq.] may be transferred for use under this section to provide flexibility in strengthening the self-help-through-work element in financial aid packaging.

(2) Activities authorized

From the sums appropriated pursuant to subsection (f) of this section, and from the funds available under paragraph (1), eligible institutions may, following approval of an application under subsection (c) of this section by the Secretary—

(A) support the educational costs of qualified students through self-help payments or credits provided under the work-learning program of the institution within the limits of part F of this title [20 U.S.C. 1087kk et seq.];

(B) promote the work-learning-service experience as a tool of postsecondary education, financial self-help and community service-learning opportunities;

(C) carry out activities described in section 2753 or 2756 of this title;

(D) be used for the administration, development and assessment of comprehensive work-learning programs, including—

(i) community-based work-learning alternatives that expand opportunities for community service and career-related work; and

(ii) alternatives that develop sound citizenship, encourage student persistence, and make optimum use of assistance under this part in education and student development;

(E) coordinate and carry out joint projects and activities to promote work service learning; and

(F) carry out a comprehensive, longitudinal study of student academic progress and academic and career outcomes, relative to student self-sufficiency in financing their higher education, repayment of student loans, continued community service, kind and quality of service performed, and career choice and community service selected after graduation.

(c) Application

Each eligible institution may submit an application for funds authorized by subsection (f) of this section to use funds under subsection (b)(1) of this section at such time and in such manner as the Secretary, by regulation, may reasonably require.

(d) Match required

Funds made available to work-colleges pursuant to this section shall be matched on a dollar-for-dollar basis from non-Federal sources.

(e) Definitions

For the purpose of this section—

(1) the term ''work-college'' means an eligible institution that—

(A) has been a public or private nonprofit institution with a commitment to community service;

(B) has operated a comprehensive work-learning program for at least 2 years;

(C) requires all resident students who reside on campus to participate in a compre-

hensive work-learning program and the provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and

(D) provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole; and

(2) the term ''comprehensive student work-learning program'' means a student work/service program that is an integral and stated part of the institution's educational philosophy and program; requires participation of all resident students for enrollment, participation, and graduation; includes learning objectives, evaluation and a record of work performance as part of the student's college record; provides programmatic leadership by college personnel at levels comparable to traditional academic programs; recognizes the educational role of work-learning supervisors; and includes consequences for nonperformance or failure in the work-learning program similar to the consequences for failure in the regular academic program.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(Pub. L. 89–329, title IV, § 448, as added Pub. L. 102–325, title IV, § 447, July 23, 1992, 106 Stat. 567; amended Pub. L. 105–244, title IV, § 445, Oct. 7, 1998, 112 Stat. 1714.)

REFERENCES IN TEXT

Parts E and F of this title, referred to in subsec. (b)(1), (2)(A), mean parts E and F, respectively, of title IV of Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, known as the Higher Education Act of 1965. Parts E and F of title IV of such Act are classified generally to parts D (§ 1087aa et seq.) and E (§ 1087kk et seq.), respectively, of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 2756b, Pub. L. 89–329, title IV, § 448, as added Pub. L. 96–374, title IV, § 437, Oct. 3, 1980, 94 Stat. 1436, related to work study programs for community service-learning, prior to the general revision of this part by Pub. L. 99–498. See section 2756a of this title.

AMENDMENTS

1998—Subsec. (b)(2)(E), (F). Pub. L. 105–244, § 445(1), added subpars. (E) and (F).

Subsec. (f). Pub. L. 105–244, § 445(2), substituted ''1999'' for ''1993''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE

Section effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as an Effective Date of 1992 Amendment note under section 1001 of Title 20, Education.

§ 2757. Repealed. Pub. L. 90–575, title I, § 131(a), Oct. 16, 1968, 82 Stat. 1028

Section, Pub. L. 89–329, title IV, § 442, Nov. 8, 1965, 79 Stat. 1251, authorized appropriations for the fiscal years ending June 30, 1966, 1967, and 1968, to carry out the provisions of this part. Another section 442 of Pub. L. 89–329 was added by section 131 of Pub. L. 90–575 and is set out as section 2752 of this title. For authorization of appropriations to carry out the provisions of this part for fiscal years ending after June 30, 1968, see section 2751(b) of this title.

PART D—SPECIAL IMPACT PROGRAMS

§§ 2761, 2762. Omitted

CODIFICATION

Sections were omitted in the general amendment of Part D of this subchapter by Pub. L. 90–222, title I, § 103, Dec. 23, 1967, 81 Stat. 688.

Section 2761, Pub. L. 88–452, title I, § 131, Aug. 20, 1964, 78 Stat. 516; Pub. L. 89–253, § 30(a), Oct. 9, 1965, 79 Stat. 978; Pub. L. 89–329, title IV, § 441(7), Nov. 8, 1965, 79 Stat. 1250; Pub. L. 89–794, title I, § 113(2), Nov. 8, 1966, 80 Stat. 1455, provided for establishment of special impact programs and the grants, criteria, and procedures to be used in carrying them out.

Section 2762, Pub. L. 88–452, title I, § 132, as added Pub. L. 89–794, title I, § 113(2), Nov. 8, 1966, 80 Stat. 1456, placed a limitation on Federal share of cost of special impact programs.

§§ 2763 to 2768. Repealed. Pub. L. 92–424, § 25(b), Sept. 19, 1972, 86 Stat. 703

Section 2763, Pub. L. 88–452, title I, § 150, as added Pub. L. 90–222, title I, § 103, Dec. 23, 1967, 81 Stat. 688, related to Congressional statement of purpose.

Section 2764, Pub. L. 88–452, title I, § 151, as added Pub. L. 90–222, title I, § 103, Dec. 23, 1967, 81 Stat. 688, related to establishment of programs.

Section 2765, Pub. L. 88–452, title I, § 152, as added Pub. L. 90–222, title I, § 103, Dec. 23, 1967, 81 Stat. 689, related to requirements for financial assistance.

Section 2766, Pub. L. 88–452, title I, § 153, as added Pub. L. 90–222, title I, § 103, Dec. 23, 1967, 81 Stat. 689, related to application of other Federal resources.

Section 2767, Pub. L. 88–452, title I, § 154, as added Pub. L. 90–222, title I, § 103, Dec. 23, 1967, 81 Stat. 690, related to an evaluation of effectiveness of the program.

Section 2768, Pub. L. 88–452, title I, § 155, as added Pub. L. 90–222, title I, § 103, Dec. 23, 1967, 81 Stat. 690, related to Federal share of program costs.

PART E—SPECIAL WORK AND CAREER DEVELOPMENT PROGRAMS

§§ 2769 to 2769f. Repealed. Pub. L. 93–203, title VI, § 614, Dec. 28, 1973, 87 Stat. 883

Section 2769, Pub. L. 88–452, title I, § 161, as added Pub. L. 91–177, title II, § 201, Dec. 30, 1969, 83 Stat. 833, set out Congressional statement of purpose in providing for special work and career development programs.

Section 2769a, Pub. L. 88–452, title I, § 162, as added Pub. L. 91–177, title II, § 201, Dec. 30, 1969, 83 Stat. 834, provided for special programs for unemployed.

Section 2769b, Pub. L. 88–452, title I, § 163, as added Pub. L. 91–177, title II, § 201, Dec. 30, 1969, 83 Stat. 834, provided for establishment of internal administrative procedures by Director covering special work and career development programs.

Section 2769c, Pub. L. 88–452, title I, § 164, as added Pub. L. 91–177, title II, § 201, Dec. 30, 1969, 83 Stat. 835, set out certain special conditions covering special work and career development programs.

Section 2769d, Pub. L. 88–452, title I, § 165, as added Pub. L. 91–177, title II, § 201, Dec. 30, 1969, 83 Stat. 835, set out criteria for program participants.

Section 2769e, Pub. L. 88–452, title I, § 166, as added Pub. L. 91–177, title II, § 201, Dec. 30, 1969, 83 Stat. 835, set out criteria for equitable distribution of assistance among States.

Section 2769f, Pub. L. 88–452, title I, § 167, as added Pub. L. 91–177, title II, § 201, Dec. 30, 1969, 83 Stat. 836, set limitations on Federal assistance.

EFFECTIVE DATE OF REPEAL

Section 614 of Pub. L. 93–203 provided that the repeal by that section is effective with respect to fiscal years after June 30, 1974.

PART F—DURATION OF PROGRAMS

§ 2771. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section, Pub. L. 88–452, title I, § 171, formerly § 141, as added Pub. L. 89–794, title I, § 114, Nov. 8, 1966, 80 Stat. 1456; renumbered § 161, Pub. L. 90–222, title I, § 111(b), Dec. 23, 1967, 81 Stat. 726; renumbered § 171 and amended Pub. L. 91–177, title I, § 101(a), title II, § 201, Dec. 30, 1969, 83 Stat. 827, 833; Pub. L. 92–424, § 2(a), Sept. 19, 1972, 86 Stat. 688, authorized implementation of programs during the fiscal year ending June 30, 1967, and the eight succeeding fiscal years.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

SUBCHAPTER II—URBAN AND RURAL COMMUNITY ACTION PROGRAMS

§ 2781. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section, Pub. L. 88–452, title II, § 201, Aug. 20, 1964, 78 Stat. 516; Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 690; Pub. L. 94–341, § 2(a)(6), July 6, 1976, 90 Stat. 803, set forth Congressional statement of purpose for urban and rural community action programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

PART A—COMMUNITY ACTION AGENCIES AND PROGRAMS

§§ 2782 to 2789. Omitted

CODIFICATION

Sections were omitted in the general amendment of part A of this subchapter by Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 691.

Section 2782, Pub. L. 88–452, title II, § 202, Aug. 20, 1964, 78 Stat. 516; Pub. L. 89–253, § 11, Oct. 9, 1965, 79 Stat. 974; Pub. L. 89–794, title II, §§ 201–203, Nov. 8, 1966, 80 Stat. 1456, 1457, defined ''community action program'', authorized promulgation of additional criteria, provided for the residence of board members in geographical areas represented, neighborhood participation, and procedures for adequate representation of groups of the poor.

Section 2783, Pub. L. 88–452, title II, § 203, Aug. 20, 1964, 78 Stat. 517; Pub. L. 89–794, title II, § 204, Nov. 8, 1966, 80 Stat. 1458, covered allotment of appropriated funds to States, reservation of appropriations, limitation on allotments to Territories and possessions, manner of allotment and reallotment, and definition of ''State''.

Section 2784, Pub. L. 88–452, title II, § 204, Aug. 20, 1964, 78 Stat. 517, authorized grants and contracts for development of community action programs.

Section 2785, Pub. L. 88–452, title II, § 205, Aug. 20, 1964, 78 Stat. 518; Pub. L. 89–253, §§ 12, 13, Oct. 9, 1965, 79 Stat. 974; Pub. L. 89–794, title II, §§ 205–211, Nov. 8, 1966, 80 Stat. 1458–1460, covered making of grants or contracts for the conduct and administration of community action programs, salary limits, a prohibition on aid to elementary and secondary education in schools, assistance eligibility, chronically unemployed poor, betterment and beautification of program area, funding of independent programs, independent programs in rural and urban areas, prohibition against membership of personnel of Office of Economic Opportunity in sponsoring organizations, financial controls within sponsoring organizations, audits, accounting, and family planning services.

Section 2786, Pub. L. 88–452, title II, § 206, Aug. 20, 1964, 78 Stat. 518; Pub. L. 89–794, title II, § 212(a), Nov. 8, 1966, 80 Stat. 1461, authorized Director to provide technical assistance and training for communities and to formulate and carry out small loan programs for small families to meet immediate and urgent family needs.

Section 2787, Pub. L. 88–452, title II, § 207, Aug. 20, 1964, 78 Stat. 518; Pub. L. 89–794, title II, § 213, Nov. 8, 1966, 80 Stat. 1461, covered research and demonstrations pertaining to the purposes of this part, limitation on expenditures, overall plans, reports, filing, review, and recommendations.

Section 2788, Pub. L. 88–452, title II, § 208, Aug. 20, 1964, 78 Stat. 519; Pub. L. 89–253, § 14, Oct. 9, 1965, 79 Stat. 975; Pub. L. 89–794, title II, § 214, Nov. 8, 1966, 80 Stat. 1462, set out limitations on Federal assistance and provided for non-Federal contributions.

Section 2789, Pub. L. 88–452, title II, § 209, Aug. 20, 1964, 78 Stat. 519; Pub. L. 89–253, §§ 15, 16, 17, Oct. 9, 1965, 79 Stat. 975, 976, provided for participation of State agencies, establishment of procedures in connection therewith, grant and contract authority, State approval of plans, notice to the Governor and the community action agency of application for programs, and limitations upon the participation of private institutions.

SAVINGS PROVISION

Applicability until June 30, 1968, of the provisions of section 2782 of this title as in effect immediately prior to the enactment of Pub. L. 90–222, which was approved Dec. 23, 1967, and which omitted section 2782 of this title in the general reorganization of part A of this subchapter by section 104 of Pub. L. 90–222, to community action agencies in existence and funded prior to the enactment of Pub. L. 90–222, with certain exceptions, and provision for the transfer of functions, obligations, records, authority, and funds in agreements made prior to June 30, 1968, to agencies designated pursuant to sections 2790 and 2791 of this title as amended by Pub. L. 90–222, see section 401 of Pub. L. 90–222, set out as an Effective Date note under section 2702 of this title.

§§ 2790, 2791. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2790, Pub. L. 88–452, title II, § 210, Aug. 20, 1964, 78 Stat. 519; Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 691; Pub. L. 93–644, §§ 5(a), (b), 9(a), Jan. 4, 1975, 88 Stat. 2294, 2310; Pub. L. 94–341, § 2(a)(7), July 6, 1976, 90 Stat. 803; Pub. L. 95–568, §§ 4(a), (b), 17(a)(3), Nov. 2, 1978, 92 Stat. 2425, 2439, related to designation of community action agencies.

Section 2791, Pub. L. 88–452, title II, § 211, Aug. 20, 1964, 78 Stat. 520; Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 693; Pub. L. 92–424, §§ 6, 7, Sept. 19, 1972, 86 Stat. 690; Pub. L. 95–568, §§ 4(c), 17(a)(4), Nov. 2, 1978, 92 Stat. 2425, 2439, related to community action agencies and boards.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§§ 2792 to 2794. Omitted

CODIFICATION

Sections were omitted in the general amendment of Part A of this subchapter by Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 691.

Section 2792, Pub. L. 88–452, title II, § 211–1, as added Pub. L. 89–794, title II, § 215, Nov. 8, 1966, 80 Stat. 1462, created the Headstart program for preschool children, and provided a program for legal services with the recommendations of local bar associations.

Section 2793, Pub. L. 88–452, title II, § 211–2, as added Pub. L. 89–794, title II, § 216, Nov. 8, 1966, 80 Stat. 1463, provided for comprehensive health services programs, the consultation with health agencies to assure professional supervision, covered narcotic addition, and provided for reports to Congress and the President.

Section 2794, Pub. L. 88–452, title II, § 211–3, as added Pub. L. 89–794, title II, § 217, Nov. 8, 1966, 80 Stat. 1464, provided for special projects on adult basic education.

§§ 2795 to 2797. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2795, Pub. L. 88–452, title II, § 212, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 694, related to specific powers and functions of community action agencies.

A prior section 212 of Pub. L. 88–452 was classified to section 2801 of this title, prior to repeal by Pub. L. 89–750, title III, § 315, Nov. 8, 1966, 80 Stat. 1222.

Section 2796, Pub. L. 88–452, title II, § 213, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 695; amended Pub. L. 95–568, §§ 4(d), 17(a)(5), Nov. 2, 1978, 92 Stat. 2426, 2439, related to administrative standards, rules and regulations, and review and consultative requirements.

A prior section 213 of Pub. L. 88–452 was classified to section 2802 of this title, prior to repeal by Pub. L. 89–750, title III, § 315, Nov. 3, 1966, 80 Stat. 1222.

Section 2797, Pub. L. 88–452, title II, § 214, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 696, related to housing development and service organizations.

A prior section 214 of Pub. L. 88–452 was classified to section 2803 of this title, prior to repeal by Pub. L. 89–750, title III, § 315, Nov. 3, 1966, 80 Stat. 1222.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

PART B—FINANCIAL ASSISTANCE TO COMMUNITY ACTION PROGRAMS AND RELATED ACTIVITIES

§§ 2801 to 2807. Repealed. Pub. L. 89–750, title III, § 315, Nov. 3, 1966, 80 Stat. 1222

Section 2801, Pub. L. 88–452, title II, § 212, Aug. 20, 1964, 78 Stat. 520, set out the declaration of purpose for adult basic education programs.

Section 2802, Pub. L. 88–452, title II, § 213, Aug. 20, 1964, 78 Stat. 520; Pub. L. 89–253, § 19(1), Oct. 9, 1965, 79 Stat. 976; Pub. L. 89–794, title IX, § 901(c), Nov. 8, 1966, 80 Stat. 1475, provided for the making of grants to States having approved plans for adult basic education programs.

Section 2803, Pub. L. 88–452, title II, § 214, Aug. 20, 1964, 78 Stat. 520, set out the requirements for State plans and made provision for a hearing.

Section 2804, Pub. L. 88–452, title II, § 215, Aug. 20, 1964, 78 Stat. 521, set out the manner of allotting grant funds to the States and outlying areas.

Section 2805, Pub. L. 88–452, title II, § 216, Aug. 20, 1964, 78 Stat. 522; Pub. L. 89–253, § 18, Oct. 9, 1965, 79 Stat. 976, provided for the methods of payment of the Federal share of expenditures.

Section 2806, Pub. L. 88–452, title II, § 217, Aug. 20, 1964, 78 Stat. 522, provided for termination of payments for noncompliance with the State plan and for hearings and judicial review.

Section 2806a, Pub. L. 88–452, title II, § 218, as added Pub. L. 89–253, § 19(2), Oct. 9, 1965, 79 Stat. 976, made provision for teacher training projects.

Section 2807, Pub. L. 88–452, title II, § 219, formerly § 218, Aug. 20, 1964, 78 Stat. 523, renumbered Pub. L. 89–253, § 19(2), Oct. 9, 1965, 79 Stat. 976, set out the definitions of terms.

§§ 2808 to 2815. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2808, Pub. L. 88–452, title II, § 221, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 696; amended Pub. L. 95–568, § 17(a)(6), Nov. 2, 1978, 92 Stat. 2439, set forth general provisions for financial assistance for programs and related activities.

A prior section 221 of Pub. L. 88–452 was classified to section 2831 of this title, prior to the general reorganization of Part D of this subchapter by section 104 of Pub. L. 90–222.

Section 2809, Pub. L. 88–452, title II, § 222, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 698; amended Pub. L. 90–575, title I, § 105(b), Oct. 16, 1968, 82 Stat. 1019; Pub. L. 91–177, title I, §§ 103–106, Dec. 30, 1969, 83 Stat. 828, 829; Pub. L. 92–424, §§ 8–11, Sept. 19, 1972, 86 Stat. 690, 691; Pub. L. 93–202, Dec. 28, 1973, 87 Stat. 838; Pub. L. 93–355, § 3(d)(2), July 25, 1974, 88 Stat. 390; Pub. L. 93–644, § 5(c), (d)(1), Jan. 4, 1975, 88 Stat. 2294; Pub. L. 94–341, § 2(a)(8)–(10), July 6, 1976, 90 Stat. 804; Pub. L. 95–568, §§ 5(a)–(f), 17(a)(7), Nov. 2, 1978, 92 Stat. 2426, 2427, 2439, 2440; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to special programs and assistance.

Section 2810, Pub. L. 88–452, title II, § 223, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 701, related to resident employment.

Section 2811, Pub. L. 88–452, title II, § 224, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 701, related to neighborhood centers.

Section 2812, Pub. L. 88–452, title II, § 225, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 702; amended Pub. L. 92–424, §§ 12(a), 13, Sept. 19, 1972, 86 Stat. 692; Pub. L. 93–644, § 5(e), Jan. 4, 1975, 88 Stat. 2295; Pub. L. 94–341, § 2(a)(11), July 6, 1976, 90 Stat. 804; Pub. L. 95–568, §§ 5(g), 17(a)(8), (b), Nov. 2, 1978, 92 Stat. 2427, 2440, 2443, related to allotment of funds and limitations on assistance.

Section 2813, Pub. L. 88–452, title II, § 226, as added Pub. L. 92–424, § 14, Sept. 19, 1972, 86 Stat. 693; amended Pub. L. 93–644, § 5(d)(2), Jan. 4, 1975, 88 Stat. 2295, related to design and planning assistance programs.

Section 2814, Pub. L. 88–452, title II, § 227, as added Pub. L. 92–424, § 14, Sept. 19, 1972, 86 Stat. 693; amended Pub. L. 94–341, § 2(a)(12), July 6, 1976, 90 Stat. 804; Pub. L. 95–568, § 17(a)(9), Nov. 2, 1978, 92 Stat. 2440, set forth provisions respecting national youth sports program.

Section 2815, Pub. L. 88–452, title II, § 228, as added Pub. L. 92–424, § 14, Sept. 19, 1972, 86 Stat. 694; amended Pub. L. 93–644, § 5(a)(2), Jan. 4, 1975, 88 Stat. 2295, related to consumer action and cooperative programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

PART C—SUPPLEMENTAL PROGRAMS AND ACTIVITIES

§§ 2821, 2822. Omitted

CODIFICATION

Sections were omitted in the general amendment of part C of this subchapter by Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 703.

Section 2821, Pub. L. 88–452, title II, § 219–1, formerly § 219, Aug. 20, 1964, 78 Stat. 523; renumbered § 219–1, Pub. L. 89–794, title IX, § 901(b), Nov. 8, 1966, 80 Stat. 1475, set

out the statement of purpose for the voluntary assistance program for needy children.

Section 2822, Pub. L. 88–452, title II, § 220, Aug. 20, 1964, 78 Stat. 523; Pub. L. 89–253, § 20, Oct. 9, 1965, 79 Stat. 976, provided for the establishment within the Office of Economic Opportunity of an information and coordinating center but prohibiting the interference with jurisdiction of State and local welfare agencies with respect to programs for needy children.

§§ 2823 to 2825. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2823, Pub. L. 88–452, title II, § 230, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 703; amended Pub. L. 95–568, § 6(a), Nov. 2, 1978, 92 Stat. 2427, related to technical assistance and training.

Section 2824, Pub. L. 88–452, title II, § 231, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 703; amended Pub. L. 92–424, § 15, Sept. 19, 1972, 86 Stat. 695; Pub. L. 95–568, §§ 6(b), 17(a)(10), Nov. 2, 1978, 92 Stat. 2428, 2440, set forth provisions relating to commencement and termination of State agency assistance.

Section 2825, Pub. L. 88–452, title II, § 232, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 703; amended Pub. L. 95–568, §§ 6(c), 17(a)(11), Nov. 2, 1978, 92 Stat. 2428, 2440, related to development, etc., of research and pilot programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§ 2826. Repealed. Pub. L. 92–424, § 27(b)(1), Sept. 19, 1972, 86 Stat. 705

Section, Pub. L. 88–452, title II, § 233, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 704, related to evaluations, reports, and independent studies.

§§ 2827, 2828. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2827, Pub. L. 88–452, title II, § 234, as added Pub. L. 92–424, § 16, Sept. 19, 1972, 86 Stat. 695, related to special assistance for projects.

Section 2828, Pub. L. 88–452, title II, § 235, as added Pub. L. 93–644, § 5(f), Jan. 4, 1975, 88 Stat. 2296; amended Pub. L. 94–341, § 2(a)(13), July 6, 1976, 90 Stat. 804; Pub. L. 95–568, § 17(a)(12), Nov. 2, 1978, 92 Stat. 2440, related to demonstration community partnership agreements.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§ 2829. Repealed. Pub. L. 95–568, § 6(d), Nov. 2, 1978, 92 Stat. 2428

Section, Pub. L. 88–452, title II, § 236, as added Pub. L. 93–644, § 5(f), Jan. 4, 1975, 88 Stat. 2297; amended Pub. L. 94–341, § 2(a)(14) July 6, 1976, 90 Stat. 804, set forth provisions relating to the establishment, etc., of the Intergovernmental Advisory Council on Community Services.

§ 2830. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section, Pub. L. 88–452, title II, § 236, formerly § 237, as added Pub. L. 93–644, § 5(f), Jan. 4, 1975, 88 Stat. 2297; renumbered § 237 and amended Pub. L. 95–568, § 6(d), (e), Nov. 2, 1978, 92 Stat. 2428, set forth authorization of appropriations.

A prior section 236 of Pub. L. 88–452, title II, as added Pub. L. 93–644, § 5(f), Jan. 4, 1975, 88 Stat. 2297; amended Pub. L. 94–341, § 2(a)(14), July 6, 1976, 90 Stat. 804, related to establishment of Intergovernmental Advisory Council on Community Services and was classified to section 2829 of this title, prior to repeal by Pub. L. 95–568, § 6(d), Nov. 2, 1978, 92 Stat. 2428.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

PART D—GENERAL AND TECHNICAL PROVISIONS

§ 2831. Omitted

CODIFICATION

Section, Pub. L. 88–452, title II, § 221, Aug. 20, 1964, 78 Stat. 524; Pub. L. 89–253, § 30(b), Oct. 9, 1965, 79 Stat. 979; Pub. L. 89–794, title II, § 218, Nov. 8, 1966, 80 Stat. 1464, extended the program through June 30, 1970, and provided that only such sums may be appropriated as the Congress might authorize by law, prior to the general amendment of Part D of this subchapter by Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 705. See section 2837 of this title.

§ 2832. Repealed. Pub. L. 95–568, § 7(a), Nov. 2, 1978, 92 Stat. 2428

Section, Pub. L. 88–452, title II, § 240, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 705, set forth provisions relating to Assistant Directors for Community Action.

§§ 2833 to 2837. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2833, Pub. L. 88–452, title II, § 241, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 705; amended Pub. L. 95–568, § 17(a)(13), Nov. 2, 1978, 92 Stat. 2440, related to extension of benefits to rural areas.

Section 2834, Pub. L. 88–452, title II, § 242, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 706; amended Pub. L. 91–177, title I, § 107(a), Dec. 30, 1969, 83 Stat. 830; Pub. L. 95–568, § 17(a)(14), Nov. 2, 1978, 92 Stat. 2440, set forth provisions respecting submission of plans to governors.

Section 2835, Pub. L. 88–452, title II, § 243, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 706; amended Pub. L. 95–568, § 17(a)(15), Nov. 2, 1978, 92 Stat. 2440, related to fiscal responsibility and audits.

Section 2836, Pub. L. 88–452, title II, § 244, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 707; amended 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 92–424, § 17, Sept. 19, 1972, 86 Stat. 695; Pub. L. 93–644, § 9(a), Jan. 4, 1975, 88 Stat. 2310; Pub. L. 95–568, §§ 7(b), 17(a)(16), Nov. 2, 1978, 92 Stat. 2428, 2440, set forth special limitations applicable to programs.

Section 2837, Pub. L. 88–452, title II, § 245, as added Pub. L. 90–222, title I, § 104, Dec. 23, 1967, 81 Stat. 709; amended Pub. L. 91–177, title I, § 101(b), Dec. 30, 1969, 83 Stat. 827; Pub. L. 92–424, § 2(a), Sept. 19, 1972, 86 Stat. 688; Pub. L. 93–644, § 14(a), Jan. 4, 1975, 88 Stat. 2329; Pub. L. 95–568, § 7(c), Nov. 2, 1978, 92 Stat. 2428, set forth provisions for program duration.

Provisions similar to section 2837 were contained in section 2831 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

SUBCHAPTER III—SPECIAL PROGRAMS TO COMBAT POVERTY IN RURAL AREAS

PART A—RURAL LOAN PROGRAM

§§ 2841, 2851 to 2856. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2841, Pub. L. 88–452, title III, § 301, Aug. 20, 1964, 78 Stat. 524; Pub. L. 90–222, title I, § 105(b), Dec. 23,

1967, 81 Stat. 709; Pub. L. 95–568, § 8(b)(1), Nov. 2, 1978, 92 Stat. 2428, set forth Congressional statement of purpose for special programs to combat poverty in rural areas.

Section 2851, Pub. L. 88–452, title III, § 302, Aug. 20, 1964, 78 Stat. 524; Pub. L. 89–253, § 21, Oct. 9, 1965, 79 Stat. 976; Pub. L. 89–794, title III, § 301(a), Nov. 8, 1966, 80 Stat. 1464; Pub. L. 90–222, title I, § 105(c), Dec. 23, 1967, 81 Stat. 709; Pub. L. 91–177, title I, § 108, Dec. 30, 1969, 83 Stat. 830, set forth amount, maturity date, etc., for loans to low income rural families.

Section 2852, Pub. L. 88–452, title III, § 303, Aug. 20, 1964, 78 Stat. 524, set forth provisions respecting loans to rural cooperative associations.

Section 2853, Pub. L. 88–452, title III, § 304, Aug. 20, 1964, 78 Stat. 524, set forth provisions relating to limitations on loans.

Section 2854, Pub. L. 88–452, title III, § 305, Aug. 20, 1964, 78 Stat. 524; Pub. L. 89–253, § 22, Oct. 9, 1965, 79 Stat. 977; Pub. L. 89–794, title III, § 301(b), Nov. 8, 1966, 80 Stat. 1464, set forth provisions respecting terms and conditions for loans.

Section 2855, Pub. L. 88–452, title III, § 306, formerly title VI, § 606, Aug. 20, 1964, 78 Stat. 531; Pub. L. 89–794, title IV, § 407, Nov. 8, 1966, 80 Stat. 1465; renumbered title III, § 306, and amended Pub. L. 90–222, title I, § 105(d), Dec. 23, 1967, 81 Stat. 709; Pub. L. 93–386, § 2(b), Aug. 23, 1974, 88 Stat. 745; Pub. L. 94–341, § 2(a)(15), July 6, 1976, 90 Stat. 804; Pub. L. 95–568, § 8(b)(2), Nov. 2, 1978, 92 Stat. 2428, set forth provisions respecting establishment, capital, etc., for revolving fund.

Section 2856, Pub. L. 88–452, title III, § 307, as added Pub. L. 95–568, § 8(a)(3), Nov. 2, 1978, 92 Stat. 2428, related to authorization of appropriations.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

PART B—ASSISTANCE FOR MIGRANT, AND OTHER SEASONALLY EMPLOYED FARMWORKERS AND THEIR FAMILIES

§§ 2861 to 2865. Repealed. Pub. L. 95–568, § 8(a)(2), Nov. 2, 1978, 92 Stat. 2428

Section 2861, Pub. L. 88–452, title III, § 311, Aug. 20, 1964, 78 Stat. 525; Pub. L. 89–253, § 23, Oct. 9, 1965, 79 Stat. 977; Pub. L. 90–222, title I, § 105(e), Dec. 23, 1967, 81 Stat. 709, set forth Congressional statement of purpose for financial assistance programs for migrant and other seasonally employed farmworkers and their families.

Section 2862, Pub. L. 88–452, title III, § 312, as added Pub. L. 90–222, title I, § 105(e), Dec. 23, 1967, 81 Stat. 709; amended Pub. L. 92–424, § 18, Sept. 19, 1972, 86 Stat. 696; Pub. L. 93–644, § 6(a), Jan. 4, 1975, 88 Stat. 2298, set forth requirements for financial assistance programs.

Section 2863, Pub. L. 88–452, title III, § 313, as added Pub. L. 90–222, title I, § 105(e), Dec. 23, 1967, 81 Stat. 710, set forth limitations on program assistance.

Section 2864, Pub. L. 88–452, title III, § 314, as added Pub. L. 90–222, title I, § 105(e), Dec. 23, 1967, 81 Stat. 710; amended Pub. L. 92–424, § 27(b)(1), (3), Sept. 19, 1972, 86 Stat. 705, set forth authorization for technical assistance and training for programs.

Section 2865, Pub. L. 88–452, title III, § 315, as added Pub. L. 93–644, § 6(b), Jan. 4, 1975, 88 Stat. 2298, set forth requirements for coordination, monitoring, and review of programs.

PART C—DURATION OF PROGRAM

§ 2871. Repealed. Pub. L. 95–568, § 8(a)(2), Nov. 2, 1978, 92 Stat. 2428

Section, Pub. L. 88–452, title III, § 321, Aug. 20, 1964, 78 Stat. 525; Pub. L. 89–253, § 30(c), Oct. 9, 1965, 79 Stat. 979; Pub. L. 89–794, title III, § 302, Nov. 8, 1966, 80 Stat. 1465; Pub. L. 91–177, title I, § 101(b), Dec. 30, 1969, 83 Stat. 827; Pub. L. 92–424, § 2(a), Sept. 19, 1972, 86 Stat. 688; Pub. L. 93–644, § 14(a), Jan. 4, 1975, 88 Stat. 2329, set forth provisions relating to duration of and authorization for appropriations for program.

PART D—INDEMNITY PAYMENTS TO DAIRY FARMERS

§ 2881. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section, Pub. L. 88–452, title III, § 331, Aug. 20, 1964, 78 Stat. 525; Pub. L. 89–16, title III, § 303, Apr. 30, 1965, 79 Stat. 108; Pub. L. 89–253, § 24, Oct. 29, 1965, 79 Stat. 977; Pub. L. 89–794, title III, § 301(c), Nov. 8, 1966, 80 Stat. 1465, related to indemnity payments to farmers.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

SUBCHAPTER IV—ASSISTANCE FOR MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKERS AND THEIR FAMILIES

§§ 2901 to 2906. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2901, Pub. L. 88–452, title IV, § 401, as added Pub. L. 95–568, § 9, Nov. 2, 1978, 92 Stat. 2429, set forth statement of purpose for program assistance.

A prior section 2901, Pub. L. 88–452, title IV, § 401, as added Pub. L. 93–644, § 7, Jan. 4, 1975, 88 Stat. 2298; amended Pub. L. 94–341, § 2(a)(16), July 6, 1976, 90 Stat. 804, related to establishment of Comprehensive Health Services Program, prior to the general revision of this subchapter by Pub. L. 95–568.

Another prior section 2901, Pub. L. 88–452, title IV, § 401, Aug. 20, 1964, 78 Stat. 526; Pub. L. 90–222, title I, § 106(a), Dec. 23, 1967, 81 Stat. 710, set forth Congressional statement of purpose of this subchapter as establishment, preservation, and strengthening of small business concerns and improvement of managerial skills employed in such enterprises, prior to repeal by Pub. L. 93–386, § 2(b), Aug. 23, 1974, 88 Stat. 745. See section 636 of Title 15, Commerce and Trade.

Section 2902, Pub. L. 88–452, title IV, § 402, as added Pub. L. 95–568, § 9, Nov. 2, 1978, 92 Stat. 2429, related to financial assistance for programs.

A prior section 2902, Pub. L. 88–452, title IV, § 402, as added Pub. L. 93–644, § 7, Jan. 4, 1975, 88 Stat. 2299; amended Pub. L. 94–341, § 2(a)(17), July 6, 1976, 90 Stat. 804, related to establishment of Alcoholic Counseling and Recovery Program and Drug Rehabilitation Program, prior to the general reorganization of this subchapter by Pub. L. 95–568.

Another prior section 2902, Pub. L. 88–452, title IV, § 402, Aug. 20, 1964, 78 Stat. 526; Pub. L. 89–794, title IV, §§ 401, 402, 405, Nov. 8, 1966, 80 Stat. 1465; Pub. L. 90–104, title I, § 108, Oct. 11, 1967, 81 Stat. 269; Pub. L. 90–222, title I, § 106(b), (c), Dec. 23, 1967, 81 Stat. 710; Pub. L. 92–320, § 2, June 27, 1972, 86 Stat. 382, related to powers of Administrator of Small Business Administration with respect to loans, and guarantees to small businesses, prior to repeal by Pub. L. 93–386, § 2(b), Aug. 23, 1974, 88 Stat. 745.

Section 2903, Pub. L. 88–452, title IV, § 403, as added Pub. L. 95–568, § 9, Nov. 2, 1978, 92 Stat. 2429, set forth limitations on assistance for programs.

A prior section 2903, Pub. L. 88–452, title IV, § 403, Aug. 20, 1964, 78 Stat. 526, required that financial assistance under former section 2902 of this title be coordinated with any community action program covering same community, prior to repeal by Pub. L. 89–794, title IV, § 403, Nov. 8, 1966, 80 Stat. 1465.

Section 2904, Pub. L. 88–452, title IV, § 404, as added Pub. L. 95–568, § 9, Nov. 2, 1978, 92 Stat. 2429, related to technical assistance, training and evaluation.

A prior section 2904, Pub. L. 88–452, title IV, § 404, Aug. 20, 1964, 78 Stat. 526, provided that lending and guaranty functions which are delegated to Small Business Administration may be financed with funds under revolving fund established by section 633(c) of Title 15, Commerce and Trade, for the purposes of sections 636(a), 636(b), and 637(a) of Title 15, prior to repeal by Pub. L. 89–794, title IV, § 403, Nov. 8, 1966, 80 Stat. 1465.

Section 2905, Pub. L. 88–452, title IV, § 405, as added Pub. L. 95–568, § 9, Nov. 2, 1978, 92 Stat. 2430, set forth special responsibilities of the Director.

A prior section 2905, Pub. L. 88–452, title IV, § 403, formerly § 405, Aug. 20, 1964, 78 Stat. 526; renumbered § 403 and amended Pub. L. 89–794, title IV, §§ 401, 406, Nov. 8, 1966, 80 Stat. 1465, set forth terms and conditions of any loans made pursuant to former section 2902 of this title, prior to repeal by Pub. L. 93–386, § 2(b), Aug. 23, 1974, 88 Stat. 745.

Section 2906, Pub. L. 88–452, title IV, § 406, as added Pub. L. 95–568, § 9, Nov. 2, 1978, 92 Stat. 2430, related to authorization of appropriations.

A prior section 2906, Pub. L. 88–452, title IV, § 404, formerly § 406, Aug. 20, 1964, 78 Stat. 527; renumbered § 404 and amended Pub. L. 89–794, title IV, §§ 401, 406, Nov. 8, 1966, 80 Stat. 1465; Pub. L. 90–222, title I, § 106(d), (3), Dec. 23, 1967, 81 Stat. 711, required Administrator to distribute financial assistance to insure that at least 50 per centum of amounts loaned or guaranteed are allotted to small business concerns located in designated urban areas, prior to repeal by Pub. L. 93–386, § 2(b), Aug. 23, 1974, 88 Stat. 745.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§§ 2906a to 2907. Repealed. Pub. L. 93–386, § 2(b), Aug. 23, 1974, 88 Stat. 745

Section 2906a, Pub. L. 88–452, title IV, § 405, as added Pub. L. 90–222, title I, § 106(d)(3), Dec. 23, 1967, 81 Stat. 711, prohibited financial assistance for relocation which would increase unemployment in the area of original location.

Section 2906b, Pub. L. 88–452, title IV, § 406, as added Pub. L. 90–222, title I, § 106(d)(3), Dec. 23, 1967, 81 Stat. 711, authorized Administrator to provide financial assistance for payment of costs of projects supplying technical and management assistance to eligible individuals and enterprises.

Section 2906c, Pub. L. 88–452, title IV, § 407, as added Pub. L. 90–222, title I, § 106(d)(3), Dec. 23, 1967, 81 Stat. 712, authorized Administrator to insure that government contracts, subcontracts, and deposits are placed in such a way as to aid small business concerns.

Section 2907, Pub. L. 88–452, title IV, § 408, formerly § 407, Aug. 20, 1964, 78 Stat. 527; renumbered § 405 and amended Pub. L. 89–794, title IV, §§ 404, 406, Nov. 8, 1966, 80 Stat. 1465; renumbered § 408 and amended Pub. L. 90–222, title I, § 106(d)(1), Dec. 23, 1967, 81 Stat. 711; Pub. L. 91–177, title I, § 101(b), Dec. 30, 1969, 83 Stat. 827; Pub. L. 92–424, § 2(a), Sept. 19, 1972, 86 Stat. 688, set forth the duration of the program as the eight succeeding fiscal years after the start of the program in the fiscal year ending June 30, 1967.

SUBCHAPTER V—HEADSTART AND FOLLOW THROUGH

§§ 2921 to 2923. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2921, Pub. L. 88–452, title V, § 501, Aug. 20, 1964, 78 Stat. 527; Pub. L. 89–794, title V, § 501(a), Nov. 8, 1966, 80 Stat. 1466; Pub. L. 90–222, title I, § 107(d), Dec. 23, 1967, 81 Stat. 714; Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2300, set forth short title for this subchapter as ''Headstart-Follow Through Act''.

Section 2922, Pub. L. 88–452, title V, § 502, Aug. 20, 1964, 78 Stat. 527; Pub. L. 89–253, § 25, Oct. 9, 1965, 79 Stat. 977; Pub. L. 89–794, title V, § 501(a), Nov. 8, 1966, 80 Stat. 1466; Pub. L. 90–222, title I, § 107(d), Dec. 23, 1967, 81 Stat. 714; Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2300, set forth Congressional statement of purpose for Project Headstart.

Section 2923, Pub. L. 88–452, title V, § 503, Aug. 20, 1964, 78 Stat. 528; Pub. L. 89–253, § 30(d), Oct. 9, 1965, 79 Stat. 979; Pub. L. 89–794, title V, § 501(a), Nov. 8, 1966, 80 Stat. 1466; Pub. L. 90–222, title I, § 107(d), Dec. 23, 1967, 81 Stat. 714; Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2300, set forth Congressional statement of policy with respect to migrant and Indian children.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§§ 2924, 2925. Omitted

CODIFICATION

Section 2924, Pub. L. 88–452, title V, § 504, as added Pub. L. 89–794, title V, § 501(a), Nov. 8, 1966, 80 Stat. 1467; amended Pub. L. 90–222, title I, § 107(d), Dec. 23, 1967, 81 Stat. 714, set the fiscal year ending June 30, 1967, and the three succeeding fiscal years as the duration of the work experience, training, and day care programs, prior to the general amendment of this subchapter by Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2300.

Section 2925, Pub. L. 88–452, title V, § 505, as added Pub. L. 89–794, title V, § 501(a), Nov. 8, 1966, 80 Stat. 1467; amended Pub. L. 90–222, title I, § 107(d), Dec. 23, 1967, 81 Stat. 714, provided for the transition of training programs for needy persons requiring special family and supportive services, prior to the general amendment of this subchapter by Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2300.

PART A—HEADSTART PROGRAMS

§§ 2928 to 2928g. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2928, Pub. L. 88–452, title V, § 511, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2300, provided for financial assistance for Headstart programs.

Section 2928a, Pub. L. 88–452, title V, § 512, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2301; amended Pub. L. 95–568, § 10(a), Nov. 2, 1978, 92 Stat. 2430, set forth authorization of appropriations for programs.

Section 2928b, Pub. L. 88–452, title V, § 513, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2301; amended Pub. L. 95–568, §§ 10(b), 17(a)(17), Nov. 2, 1978, 92 Stat. 2430, 2441, related to allotments, reservations, etc., for program funds.

Section 2928c, Pub. L. 88–452, title V, § 514, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2302; amended Pub. L. 94–341, § 2(a)(18), July 6, 1976, 90 Stat. 804; Pub. L. 95–568, § 10(c), Nov. 2, 1978, 92 Stat. 2432, related to designation of Headstart agencies.

Section 2928d, Pub. L. 88–452, title V, § 515, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2302; amended Pub. L. 95–568, § 10(d), Nov. 2, 1978, 92 Stat. 2432, set forth powers and functions of Headstart agencies.

Section 2928e, Pub. L. 88–452, title V, § 516, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2302; amended Pub. L. 95–568, § 17(a)(18), Nov. 2, 1978, 92 Stat. 2441, related to submission of plans to Governors.

Section 2928f, Pub. L. 88–452, title V, § 517, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2303; amended Pub. L. 94–341, § 2(a)(19), July 6, 1976, 90 Stat. 804; Pub. L. 95–568, §§ 10(e), 17(a)(19), Nov. 2, 1978, 92 Stat. 2432, 2441, related to administrative requirements and standards.

Section 2928g, Pub. L. 88–452, title V, § 518, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2304; amended Pub. L. 95–568, § 10(f), Nov. 2, 1978, 92 Stat. 2432, set forth provisions respecting participation in Headstart programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§ 2928g–1. Omitted

CODIFICATION

Section, Pub. L. 92–424, § 3(b)(2), Sept. 19, 1972, 86 Stat. 688, required the Secretary of Health, Education, and Welfare to establish policies and procedures to assure that handicapped children received certain enrollment opportunities in Headstart programs and that services were provided to meet their special needs and to report annually to Congress on the status of handicapped children in the Headstart programs. See section 9835(d) of this title.

§§ 2928h to 2928n. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2928h, Pub. L. 88–452, title V, § 519, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2304; amended Pub. L. 95–568, § 17(a)(20), Nov. 2, 1978, 92 Stat. 2441, set forth provisions respecting appeals, notice, and hearing.

Section 2928i, Pub. L. 88–452, title V, § 520, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2305, related to records and audits of recipients of financial assistance.

Section 2928j, Pub. L. 88–452, title V, § 521, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2305, related to technical assistance and training.

Section 2928k, Pub. L. 88–452, title V, § 522, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2305, related to research, demonstration, and pilot projects.

Section 2928*l*, Pub. L. 88–452, title V, § 523, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2305; amended Pub. L. 94–341, § 2(a)(20), July 6, 1976, 90 Stat. 805; Pub. L. 95–568, § 10(g), (h), Nov. 2, 1978, 92 Stat. 2433, related to announcement of research, demonstration, and pilot project contracts.

Section 2928m, Pub. L. 88–452, title V, § 524, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2306; amended Pub. L. 95–568, § 10(i), Nov. 2, 1978, 92 Stat. 2433, related to evaluation of programs.

Section 2928n, Pub. L. 88–452, title V, § 525, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2309; amended Pub. L. 94–341, § 2(a)(22), July 6, 1976, 90 Stat. 805; Pub. L. 95–568, § 17(a)(21), Nov. 2, 1978, 92 Stat. 2441, set forth provisions respecting determination of poverty line.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

PART B—FOLLOW THROUGH PROGRAMS

§§ 2929 to 2929c. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2929, Pub. L. 88–452, title V, § 551, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2306; amended Pub. L. 95–568, §§ 11(a), (b), 17(a)(22), Nov. 2, 1978, 92 Stat. 2433, 2441, set forth provisions respecting financial assistance for Follow Through programs.

Section 2929a, Pub. L. 88–452, title V, § 552, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2307; amended Pub. L. 95–568, §§ 11(c), 17(a)(23), Nov. 2, 1978, 92 Stat. 2433, 2441, related to authorization of appropriations.

Section 2929b, Pub. L. 88–452, title V, § 553, as added Pub. L. 95–568, § 11(d)(3), Nov. 2, 1978, 92 Stat. 2434, related to research, demonstration, and pilot projects.

A prior section 2929b, Pub. L. 88–452, title V, § 553, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2307, related to research, demonstration, and pilot projects, and was repealed by Pub. L. 95–568, § 11(d)(1), Nov. 2, 1978, 92 Stat. 2433.

Section 2929b–1, Pub. L. 88–452, title V, § 554, as added Pub. L. 95–568, § 11(d)(3), Nov. 2, 1978, 92 Stat. 2434, related to announcement of research, demonstration, and pilot project programs.

A prior section 554 of Pub. L. 88–452 was redesignated 557, and is classified to section 2929c of this title.

Section 2929b–2, Pub. L. 88–452, title V, § 555, as added Pub. L. 95–568, § 11(d)(3), Nov. 2, 1978, 92 Stat. 2434, set forth provisions respecting evaluation of programs.

Section 2929b–3, Pub. L. 88–452, title V, § 556, as added Pub. L. 95–568, § 11(d)(3), Nov. 2, 1978, 92 Stat. 2435, related to technical assistance and training.

Section 2929c, Pub. L. 88–452, title V, § 557, formerly § 554, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2308; renumbered § 557, Pub. L. 95–568, § 11(d)(2), Nov. 2, 1978, 92 Stat. 2433, set forth special conditions for recipients of financial assistance.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

PART C—GENERAL PROVISIONS

§§ 2930 to 2930f. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2930, Pub. L. 88–452, title V, § 571, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2308; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, defined ''Secretary'', ''State'', and ''financial assistance''.

Section 2930a, Pub. L. 88–452, title V, § 572, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2308, related to applicable labor standards.

Section 2930b, Pub. L. 88–452, title V, § 573, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2309, related to comparability of wages.

Section 2930c, Pub. L. 88–452, title V, § 574, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2309, related to nondiscrimination requirements.

Section 2930d, Pub. L. 88–452, title V, § 575, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2309, related to unlawful demonstrations, rioting, or civil disturbances.

Section 2930e, Pub. L. 88–452, title V, § 576, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2309; amended Pub. L. 94–341, § 2(a)(22), July 6, 1976, 90 Stat. 805, related to political activities.

Section 2930f, Pub. L. 88–452, title V, § 577, as added Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2310; amended Pub. L. 94–341, § 2(a)(22), July 6, 1976, 90 Stat. 805, provided for advance funding.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

PART D—DAY CARE PROJECTS

CODIFICATION

This part, formerly designated as Part B, was redesignated Part D by Pub. L. 93–644, § 8(a), Jan. 4, 1975, 88 Stat. 2300, as part of the general revision and amendment of this subchapter by Pub. L. 93–644.

§§ 2931 to 2933. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2931, Pub. L. 88–452, title V, § 581, formerly § 521, as added Pub. L. 90–222, title I, § 107(a), Dec. 23, 1967, 81 Stat. 713; renumbered § 581, Pub. L. 93–644, § 8(c), Jan. 4, 1975, 88 Stat. 2310, set forth Congressional statement of purpose for day care projects.

Section 2932, Pub. L. 88–452, title V, § 582, formerly § 522, as added Pub. L. 90–222, title I, § 107(a), Dec. 23, 1967, 81 Stat. 713; amended Pub. L. 92–424, § 19, Sept. 19,

1972, 86 Stat. 696; renumbered § 582 and amended Pub. L. 93–644, § 8(b), (c), Jan. 4, 1975, 88 Stat. 2310; Pub. L. 95–568, § 17(a)(24), Nov. 2, 1978, 92 Stat. 2441, set forth authority, etc., for projects.

Section 2933, Pub. L. 88–452, title V, § 583, formerly § 523, as added Pub. L. 90–222, title I, § 107(a), Dec. 23, 1967, 81 Stat. 714; amended Pub. L. 91–177, title I, § 101(c), Dec. 30, 1969, 83 Stat. 827; Pub. L. 92–424, § 2(b), Sept. 19, 1972, 86 Stat. 688; renumbered § 583 and amended Pub. L. 93–644, §§ 8(b), (c), 14(b), Jan. 4, 1975, 88 Stat. 2310, 2329; Pub. L. 94–341, § 3(c), July 6, 1976, 90 Stat. 807; Pub. L. 95–568, § 12, Nov. 2, 1978, 92 Stat. 2435, related to program duration.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

SUBCHAPTER VI—ADMINISTRATION AND COORDINATION

PART A—ADMINISTRATION

§§ 2941 to 2948. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2941, Pub. L. 88–452, title VI, § 601, Aug. 20, 1964, 78 Stat. 528; Pub. L. 89–794, title VI, § 601(a), Nov. 8, 1966, 80 Stat. 1468; Pub. L. 90–222, title I, § 108(a), Dec. 23, 1967, 81 Stat. 714; Pub. L. 93–644, § 9(a), Jan. 4, 1975, 88 Stat. 2310; Pub. L. 94–341, § 2(a)(23)–(28), July 6, 1976, 90 Stat. 805; Pub. L. 95–568, §§ 13(a), 17(a)(25), Nov. 2, 1978, 92 Stat. 2435, 2441, related to establishment, etc., of Community Services Administration.

Section 2942, Pub. L. 88–452, title VI, § 602, Aug. 20, 1964, 78 Stat. 528; Pub. L. 89–794, title VI, §§ 602, 603, Nov. 8, 1966, 80 Stat. 1468; Pub. L. 90–222, title I, § 108(b), Dec. 23, 1967, 81 Stat. 714; Pub. L. 91–375, § 6(n), Aug. 12, 1970, 84 Stat. 783; Pub. L. 93–386, § 2(b), Aug. 23, 1974, 88 Stat. 745; Pub. L. 93–644, § 9(c)(1), Jan. 4, 1975, 88 Stat. 2314; Pub. L. 94–341, § 2(a)(29), (30), July 6, 1976, 90 Stat. 805; Pub. L. 95–568, §§ 13(b), 17(a)(26), Nov. 2, 1978, 92 Stat. 2435, 2441, related to authority of Director.

Section 2943, Pub. L. 88–452, title VI, § 603, Aug. 20, 1964, 78 Stat. 530; Pub. L. 89–253, § 26, Oct. 9, 1965, 79 Stat. 977; Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 662; Pub. L. 89–794, title VI, § 604, Nov. 8, 1966, 80 Stat. 1469; Pub. L. 90–222, title I, § 108(c), Dec. 23, 1967, 81 Stat. 714; Pub. L. 92–424, § 20, Sept. 19, 1972, 86 Stat. 696; Pub. L. 93–644, § 9(c)(2), Jan. 4, 1975, 88 Stat. 2314; Pub. L. 94–341, § 2(a)(31), July 6, 1976, 90 Stat. 805; Pub. L. 95–568, § 17(a)(27), Nov. 2, 1978, 92 Stat. 2442; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783, related to political activities of personnel of overall community action agencies.

Section 2944, Pub. L. 88–452, title VI, § 604, Aug. 20, 1964, 78 Stat. 531; Pub. L. 89–794, title IX, § 901(d), Nov. 8, 1966, 80 Stat. 1475; Pub. L. 90–222, title I, § 108(d), Dec. 23, 1967, 81 Stat. 715; Pub. L. 94–341, § 2(a)(32), (33), July 6, 1976, 90 Stat. 805, set forth appeals, notice, and hearing procedures.

Section 2945, Pub. L. 88–452, title VI, § 605, Aug. 20, 1964, 78 Stat. 531; Pub. L. 89–253, § 27, Oct. 9, 1965, 79 Stat. 978; Pub. L. 89–794, title VI, § 605, Nov. 8, 1966, 80 Stat. 1469; Pub. L. 93–644, § 9(c)(3), Jan. 4, 1975, 88 Stat. 2314; Pub. L. 95–568, § 13(c), Nov. 2, 1978, 92 Stat. 2435, related to establishment, etc., of National Advisory Council on Economic Opportunity.

Section 2946, Pub. L. 88–452, title VI, § 606, as added Pub. L. 90–222, title I, § 108(e), Dec. 23, 1967, 81 Stat. 715; amended Pub. L. 95–568, § 17(a)(28), Nov. 2, 1978, 92 Stat. 2442, related to announcement of research and demonstration contracts.

A prior section 606 of Pub. L. 88–452, which was classified to this section, was renumbered as section 306 of Pub. L. 88–452 by section 105(d) of Pub. L. 90–222 and classified to section 2855 of this title.

Section 2947, Pub. L. 88–452, title VI, § 607, Aug. 20, 1964, 78 Stat. 532, related to labor standards.

Section 2948, Pub. L. 88–452, title VI, § 608, Aug. 20, 1964, 78 Stat. 532; Pub. L. 94–341, § 2(a)(34), July 6, 1976, 90 Stat. 805; Pub. L. 95–568, § 13(d), Nov. 2, 1978, 92 Stat. 2435, related to annual reports by Director.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

COMMUNITY ACTION PROGRAMS AND COMMUNITY ECONOMIC DEVELOPMENT POWERS NOT SUBJECT TO DELEGATION

Pub. L. 92–424, § 28, Sept. 19, 1972, 86 Stat. 705, which prohibited the Director of the Office of Economic Opportunity from delegating his functions under section 221 and title VII of such Act [section 2808 of this title and subchapter VII of this chapter] to any other agency, was repealed by section 9(b) of Pub. L. 93–644, Jan. 4, 1975, 88 Stat. 2314, as amended by Pub. L. 94–341, § 3(b)(1), July 6, 1976, 90 Stat. 807, effective on the date on which a reorganization plan is effective under section 2941 of this title, as amended by section 9(a) of Pub. L. 93–644.

§ 2949. Repealed. Pub. L. 93–644, § 9(c)(6), Jan. 4, 1975, 88 Stat. 2314

Section, Pub. L. 88–452, title VI, § 609, Aug. 20, 1964, 78 Stat. 532; Pub. L. 90–222, title I, § 108(f), Dec. 23, 1967, 81 Stat. 715; Pub. L. 91–177, title I, § 109, Dec. 30, 1969, 83 Stat. 830; Pub. L. 92–424, §§ 12(b), 21, Sept. 19, 1972, 86 Stat. 692, 696; Pub. L. 93–386, § 2(b), Aug. 23, 1974, 88 Stat. 745, defined the terms ''State'', ''financial assistance'', ''permanent resident of the United States'', ''Director'', and ''lower living standard budget''.

§§ 2950, 2951. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2950, Pub. L. 88–452, title VI, § 609, formerly § 610, as added Pub. L. 89–253, § 28, Oct. 9, 1965, 79 Stat. 978; amended Pub. L. 89–794, title VI, § 601(b), Nov. 8, 1966, 80 Stat. 1468; Pub. L. 90–222, title I, § 108(g), Dec. 23, 1967, 81 Stat. 716; renumbered § 609 and amended Pub. L. 95–568, §§ 13(e), 17(a)(29), Nov. 2, 1978, 92 Stat. 2436, 2442, related to programs for the elderly poor.

Section 2951, Pub. L. 88–452, title VI, § 610, formerly § 610–1, as added Pub. L. 89–794, title VI, § 606, Nov. 8, 1966, 80 Stat. 1470; amended Pub. L. 90–222, title I, § 108(h), Dec. 23, 1967, 81 Stat. 716; Pub. L. 93–608, § 1(23), Jan. 2, 1975, 88 Stat. 1970; Pub. L. 94–341, § 2(a)(35), July 6, 1976, 90 Stat. 805; renumbered § 610 and amended Pub. L. 95–568, §§ 13(e), (f), 17(a)(30), Nov. 2, 1978, 92 Stat. 2436, 2442, set forth provisions respecting wage comparability, minimum wages, salary relationship to previous earnings, and adjustments.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§§ 2961 to 2970. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2961, Pub. L. 88–452, title VI, § 611, Aug. 20, 1964, 78 Stat. 532; Pub. L. 89–794, title VI, § 607, Nov. 8, 1966, 80 Stat. 1470; Pub. L. 90–222, title I, § 108(i), Dec. 23, 1967, 81 Stat. 716; Pub. L. 95–568, § 17(a)(31), Nov. 2, 1978, 92 Stat. 2442, related to benefit limitations for those voluntarily poor.

Section 2962, Pub. L. 88–452, title VI, § 612, Aug. 20, 1964, 78 Stat. 533; Pub. L. 90–222, title I, § 108(j), Dec. 23, 1967, 81 Stat. 716, related to joint funding.

Section 2963, Pub. L. 88–452, title VI, § 613, Aug. 20, 1964, 78 Stat. 533; Pub. L. 89–794, title VI, § 608, Nov. 8, 1966, 80 Stat. 1471; Pub. L. 90–222, title I, § 108(k), Dec. 23, 1967, 81 Stat. 717, related to unlawful activities.

Section 2964, Pub. L. 88–452, title VI, § 614, Aug. 20, 1964, 78 Stat. 533, prohibited Federal control over curriculum, personnel, etc.

Section 2965, Pub. L. 88–452, title VI, § 615, Aug. 20, 1964, 78 Stat. 533; Pub. L. 89–253, § 30(e), Oct. 9, 1965, 79 Stat. 979; Pub. L. 89–794, title VI, § 609, Nov. 8, 1966, 80 Stat. 1471; Pub. L. 91–177, title I, § 101(b), Dec. 30, 1969, 83 Stat. 827; Pub. L. 92–424, § 2(a), Sept. 19, 1972, 86 Stat. 688; Pub. L. 93–644, § 14(a), Jan. 4, 1975, 88 Stat. 2329; Pub. L. 95–568, § 13(g), Nov. 2, 1978, 92 Stat. 2436, related to duration of program.

Section 2966, Pub. L. 88–452, title VI, § 616, Aug. 20, 1964, 78 Stat. 533; Pub. L. 89–253, § 29, Oct. 9, 1965, 79 Stat. 978; Pub. L. 89–794, title VI, § 610, Nov. 8, 1966, 80 Stat. 1471; Pub. L. 90–222, title I, § 108(*l*), Dec. 23, 1967, 81 Stat. 717; Pub. L. 91–177, title I, § 110, Dec. 30, 1969, 83 Stat. 831; Pub. L. 92–424, § 4, Sept. 19, 1972, 86 Stat. 690, related to transfer of funds.

Section 2967, Pub. L. 88–452, title VI, § 617, as added Pub. L. 89–253, § 30(f), Oct. 9, 1965, 79 Stat. 979, related to benefit distribution between urban and rural areas.

Section 2968, Pub. L. 88–452, title VI, § 618, as added Pub. L. 89–794, title VI, § 611, Nov. 8, 1966, 80 Stat. 1471, related to restrictions on additional positions.

Section 2969, Pub. L. 88–452, title VI, § 619, as added Pub. L. 89–794, title VI, § 612, Nov. 8, 1966, 80 Stat. 1472, set forth limitations on Federal administrative expenses.

Section 2970, Pub. L. 88–452, title VI, § 620, as added Pub. L. 89–794, title VI, § 614(a), Nov. 8, 1966, 80 Stat. 1472; amended Pub. L. 95–568, § 13(h), Nov. 2, 1978, 92 Stat. 2436, related to maximum use of private enterprise resources.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

EXECUTIVE ORDER NO. 11466

Ex. Ord. No. 11466, eff. Apr. 18, 1969, 34 F.R. 6727, formerly set out as a note under section 2962 of this title, which related to the administration of certain jointly funded projects, was superseded by Ex. Ord. No. 11867, eff. June 19, 1975, 40 F.R. 26253, formerly set out as a note under section 7103 of Title 31, Money and Finance.

§ 2971. Repealed. Pub. L. 95–568, § 13(i), Nov. 2, 1978, 92 Stat. 2436

Section, Pub. L. 88–452, title VI, § 621, as added Pub. L. 90–222, title I, § 108(m)(1), Dec. 23, 1967, 81 Stat. 717, related to responsibilities for ''Follow Through'' program.

§§ 2971a to 2971g. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2971a, Pub. L. 88–452, title VI, § 621, formerly § 622, as added Pub. L. 91–177, title I, § 111(a), Dec. 30, 1969, 83 Stat. 831; renumbered § 621, Pub. L. 95–568, § 13(i), Nov. 2, 1978, 92 Stat. 2436, set forth advance funding requirements.

Section 2971b, Pub. L. 88–452, title VI, § 622, formerly § 623, as added Pub. L. 92–424, § 22, Sept. 19, 1972, 86 Stat. 696; renumbered § 622, Pub. L. 95–568, § 13(i), Nov. 2, 1978, 92 Stat. 2436, related to publication of guidelines in the Federal Register.

Section 2971c, Pub. L. 88–452, title VI, § 623, formerly § 624, as added Pub. L. 92–424, § 23, Sept. 19, 1972, 86 Stat. 696; renumbered § 623, Pub. L. 95–568, § 13(i), Nov. 2, 1978, 92 Stat. 2436, set forth nondiscrimination provisions.

Section 2971d, Pub. L. 88–452, title VI, § 624, formerly § 625, as added Pub. L. 92–424, § 24, Sept. 19, 1972, 86 Stat. 697; amended Pub. L. 93–644, § 9(d), Jan. 4, 1975, 88 Stat. 2314; renumbered § 624, Pub. L. 95–568, § 13(i), Nov. 2, 1978, 92 Stat. 2436, related to applicability, etc., of the poverty line.

Section 2971e, Pub. L. 88–452, title VI, § 625, formerly § 626, as added Pub. L. 93–355, § 3(f), July 25, 1974, 88 Stat. 390; renumbered § 625, Pub. L. 95–568, § 13(i), Nov. 2, 1978, 92 Stat. 2436, related to independence of the Legal Services Corporation.

Section 2971f, Pub. L. 88–452, title VI, § 626, as added Pub. L. 93–644, § 9(e), Jan. 4, 1975, 88 Stat. 2314; renumbered § 627, Pub. L. 94–341, § 2(c), July 6, 1976, 90 Stat. 806; renumbered § 626, Pub. L. 95–568, § 13(i), Nov. 2, 1978, 92 Stat. 2436, set forth provisions relating to criminal activity and penalties.

Section 2971g, Pub. L. 88–452, title VI, § 627, as added Pub. L. 93–644, § 9(e), Jan. 4, 1975, 88 Stat. 2314; renumbered § 628, Pub. L. 94–341, § 2(c), July 6, 1976, 90 Stat. 806; renumbered § 627 and amended Pub. L. 95–568, §§ 13(i), 17(a)(32), Nov. 2, 1978, 92 Stat. 2436, 2442, related to withholding of certain Federal taxes by antipoverty agencies.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

PART B—COORDINATION

§§ 2972 to 2978. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2972, Pub. L. 88–452, title VI, § 630, as added Pub. L. 90–222, title I, § 108(m)(3), Dec. 23, 1967, 81 Stat. 717, related to coordination of activities and policy statement attendant thereto.

Section 2973, Pub. L. 88–452, title VI, § 631, as added Pub. L. 90–222, title I, § 108(m)(3), Dec. 23, 1967, 81 Stat. 718; amended Pub. L. 95–568, § 17(a)(33), Nov. 2, 1978, 92 Stat. 2442, related to establishment, etc., of Economic Opportunity Council.

Section 2974, Pub. L. 88–452, title VI, § 632, as added Pub. L. 90–222, title I, § 108(m)(3), Dec. 23, 1967, 81 Stat. 718; amended Pub. L. 92–424, § 27(b)(2), Sept. 19, 1972, 86 Stat. 705; Pub. L. 93–644, § 9(c)(4), Jan. 4, 1975, 88 Stat. 2314; Pub. L. 95–568, §§ 13(j), 17(a)(34), Nov. 2, 1978, 92 Stat. 2436, 2442, set forth responsibilities of the Director.

Section 2975, Pub. L. 88–452, title VI, § 633, as added Pub. L. 90–222, title I, § 108(m)(3), Dec. 23, 1967, 81 Stat. 719, related to cooperation of other Federal agencies.

Section 2976, Pub. L. 88–452, title VI, § 634, as added Pub. L. 90–222, title I, § 108(m)(3), Dec. 23, 1967, 81 Stat. 719, related to combinations among projects and programs.

Section 2977, Pub. L. 88–452, title VI, § 635, as added Pub. L. 90–222, title I, § 108(m)(3), Dec. 23, 1967, 81 Stat. 719; amended Pub. L. 95–568, § 17(a)(35), Nov. 2, 1978, 92 Stat. 2443, related to establishment, etc., of information center.

Section 2978, Pub. L. 88–452, title VI, § 636, as added Pub. L. 90–222, title I, § 108(m)(3), Dec. 23, 1967, 81 Stat. 720, prohibited duplication of existing functions by new departments or agencies.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§ 2979. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section, Pub. L. 88–452, title VI, § 637, as added Pub. L. 90–222, title I, § 108(m)(3), Dec. 23, 1967, 81 Stat. 720; amended Pub. L. 93–644, § 9(c)(5), Jan. 4, 1975, 88 Stat. 2314, related to special responsibilities and training programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§§ 2979a, 2980. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2979a, Pub. L. 88–452, title VI, § 638, as added Pub. L. 95–568, § 13(k), Nov. 2, 1978, 92 Stat. 2436, related to utilization, etc., of regional offices.

Section 2980, Pub. L. 88–452, title VI, § 639, formerly § 638, as added Pub. L. 90–222, title I, § 108(m)(3), Dec. 23, 1967, 81 Stat. 721; renumbered § 639, Pub. L. 95–568, § 13(k), Nov. 2, 1978, 92 Stat. 2436, defined applicable terms.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

SUBCHAPTER VII—COMMUNITY ECONOMIC DEVELOPMENT

§§ 2981 to 2981c. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2981, Pub. L. 88–452, title VII, § 701, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 697; amended Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2315, set forth Congressional statement of purpose with respect to community economic development programs.

A prior section 2981, Pub. L. 88–452, title VII, § 701, Aug. 20, 1964, 78 Stat. 534; Pub. L. 89–794, title VII, § 701(a), Nov. 8, 1966, 80 Stat. 1472; Pub. L. 90–222, title I, § 109, Dec. 23, 1967, 81 Stat. 722, respecting treatment of income for certain public assistance purposes, related to provisions of State plans and withholding of payments.

Section 2981a, Pub. L. 88–452, title VII, § 702, as added Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2315, defined ''community development corporation''.

Section 2981b, Pub. L. 88–452, title VII, § 703, as added Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2316; amended Pub. L. 95–568, § 14(a), Nov. 2, 1978, 92 Stat. 2436, related to authorization of appropriations.

Section 2981c, Pub. L. 88–452, title VII, § 704, as added Pub. L. 95–568, § 14(b), Nov. 2, 1978, 92 Stat. 2436, related to establishment, etc., of advisory community investment boards, and the National Board.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

PART A—URBAN AND RURAL SPECIAL IMPACT PROGRAMS

§§ 2982 to 2982c. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2982, Pub. L. 88–452, title VII, § 711, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 698; amended Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2316, set forth Congressional statement of policy with respect to urban and rural special impact programs.

Section 2982a, Pub. L. 88–452, title VII, § 712, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 698; amended Pub. L. 93–386, § 2(b), Aug. 23, 1974, 88 Stat. 745; Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2316; Pub. L. 94–341, § 2(b)(1), July 6, 1976, 90 Stat. 805; Pub. L. 95–568, § 14(c), Nov. 2, 1978, 92 Stat. 2437, related to establishment and scope of programs.

Section 2982b, Pub. L. 88–452, title VII, § 713, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 698; amended Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2317; Pub. L. 95–568, §§ 14(d), (e), 17(a)(36), Nov. 2, 1978, 92 Stat. 2437, 2443, set forth financial assistance requirements for programs.

Section 2982c, Pub. L. 88–452, title VII, § 714, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 699; amended Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2318; Pub. L. 94–341, § 2(b)(2), (3), July 6, 1976, 90 Stat. 805; Pub. L. 95–568, § 14(f), Nov. 2, 1978, 92 Stat. 2438, related to Federal share of program costs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§ 2982d. Omitted

CODIFICATION

Section, Pub. L. 88–452, title VII, § 715, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 700, related to Federal share of program costs, prior to general amendment of this subchapter by Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2315, and was covered by section 2982c of this title.

PART B—SPECIAL RURAL PROGRAMS

§§ 2983 to 2983b. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2983, Pub. L. 88–452, title VII, § 721, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 700; amended Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2318, set forth Congressional statement of purpose for special rural programs.

Section 2983a, Pub. L. 88–452, title VII, § 722, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 700; amended Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2318; Pub. L. 95–568, § 14(g), Nov. 2, 1978, 92 Stat. 2438, related to financial assistance for programs.

Section 2983b, Pub. L. 88–452, title VII, § 723, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 701; amended Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2319, set forth limitations on assistance.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

PART C—DEVELOPMENT LOANS TO COMMUNITY ECONOMIC DEVELOPMENT PROGRAMS

§§ 2984, 2984a. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2984, Pub. L. 88–452, title VII, § 731, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 701; amended Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2319; Pub. L. 94–341, § 2(b)(4), (5), 90 Stat. 805, 806; Pub. L. 95–568, §§ 14(h), 17(a)(37), Nov. 2, 1978, 92 Stat. 2438, 2443, set forth prerequisites, etc., for development loans for community economic development programs.

Section 2984a, Pub. L. 88–452, title VII, § 732, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 702; amended Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2320; Pub. L. 94–341, § 2(b)(6), July 6, 1976, 90 Stat. 806; Pub. L. 95–568, § 14(i), Nov. 2, 1978, 92 Stat. 2438, related to Model Community Economic Development Finance Corporation.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§ 2984b. Omitted

CODIFICATION

Section, Pub. L. 88–452, title VII, § 733, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 703, provided for evaluation and research and a report to Congress, prior to the general amendment of this subchapter by Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2315.

PART D—SUPPORTIVE PROGRAMS AND ACTIVITIES

§§ 2985 to 2985c. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2985, Pub. L. 88–452, title VII, § 741, as added Pub. L. 92–424, § 25(a), Sept. 19, 1972, 86 Stat. 703; amended Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2321; Pub. L. 94–341, § 2(b)(7), (8), July 6, 1976, 90 Stat. 806, related to technical and training assistance for supportive programs and activities.

Section 2985a, Pub. L. 88–452, title VII, § 742, as added Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2321; amended 94–341, § 2(b)(9)–(12), July 6, 1976, 90 Stat. 806; Pub. L. 95–568, § 14(j), Nov. 2, 1978, 92 Stat. 2438, related to application of other resources.

Section 2985b, Pub. L. 88–452, title VII, § 743, as added Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2322; amended Pub. L. 94–341, § 2(b)(13), July 6, 1976, 90 Stat. 806, related to application of Department of Housing and Urban Development programs.

Section 2985c, Pub. L. 88–452, title VII, § 744, as added Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2322; amended Pub. L. 94–341, § 2(b)(14), (17)(A), (B), July 6, 1976, 90 Stat. 806, related to applicability of Department of Agriculture and Farmers Home Administration programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§ 2985c–1. Repealed. Pub. L. 95–568, § 14(k), Nov. 2, 1978, 92 Stat. 2438

Section, Pub. L. 88–452, title VII, § 745, formerly § 744(b), as added Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2322; renumbered § 745 and amended Pub. L. 94–341, § 2(b)(15), (17)(C), July 6, 1976, 90 Stat. 806, set forth provisions relating to report by Director on availability and effectiveness of Federal agency programs.

§§ 2985d to 2985g. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2985d, Pub. L. 88–452, title VII, § 745, as added Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2322; renumbered § 746, Pub. L. 94–341, § 2(b)(16), July 6, 1976, 90 Stat. 806; renumbered § 745, Pub. L. 95–568, § 14(k), Nov. 2, 1978, 92 Stat. 2438, related to coordination and eligibility.

Section 2985e, Pub. L. 88–452, title VII, § 746, as added Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2322; renumbered § 747, Pub. L. 94–341, § 2(b)(16), July 6, 1976, 90 Stat. 806; renumbered § 746 and amended Pub. L. 95–568, § 14(k), (*l*), Nov. 2, 1978, 92 Stat. 2438, 2439, related to evaluation, research, and demonstration.

Section 2985f, Pub. L. 88–452, title VII, § 747, as added Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2323; renumbered § 748, Pub. L. 94–341, § 2(b)(16), July 6, 1976, 90 Stat. 806; renumbered § 747, Pub. L. 95–568, § 14(k), Nov. 2, 1978, 92 Stat. 2438, related to program planning grants.

Section 2985g, Pub. L. 88–452, title VII, § 748, as added Pub. L. 93–644, § 10(a), Jan. 4, 1975, 88 Stat. 2323; renumbered § 749, Pub. L. 94–341, § 2(16), July 6, 1976, 90 Stat. 806; renumbered § 748, Pub. L. 95–568, § 14(k), Nov. 2, 1978, 92 Stat. 2438, set forth nondiscrimination provisions.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

SUBCHAPTER VIII—NATIVE AMERICAN PROGRAMS

§ 2991. Short title

This subchapter may be cited as the ''Native American Programs Act of 1974''.

(Pub. L. 88–452, title VIII, § 801, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2323.)

PRIOR PROVISIONS

A prior section 2991, Pub. L. 88–452, title VIII, § 801, as added Pub. L. 89–794, title VIII, § 801. Nov. 8, 1966, 80 Stat. 1472; amended Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722; Pub. L. 92–424, § 26(a), Sept. 19, 1972, 86 Stat. 703, related to Congressional statement of purpose, prior to repeal by Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417. See section 4951 of this title.

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–394, § 1, Dec. 14, 2006, 120 Stat. 2705, provided that: ''This Act [amending sections 2991b–3, 2992c, and 2992d of this title] may be cited as the 'Esther Martinez Native American Languages Preservation Act of 2006'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–361, § 1, Nov. 10, 1998, 112 Stat. 3278, provided that: ''This Act [amending sections 2991b–1 and 2992d of this title] may be cited as the 'Native American Programs Act Amendments of 1998'.''

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–524, § 1, Oct. 26, 1992, 106 Stat. 3434, provided that: ''This Act [enacting section 2991b–3 of this title and amending section 2992d of this title], other than section 4 [enacting provisions set out as a note under section 2001 of Title 25, Indians], may be cited as the 'Native American Languages Act of 1992'.''

Pub. L. 102–375, title VIII, § 821, Sept. 30, 1992, 106 Stat. 1295, provided that: ''This subtitle [subtitle C (§§ 821, 822) of title VIII of Pub. L. 102–375, enacting sections 2991b–2, 2991c, 2992–1, 2992a–1, and 2992b of this title, amending sections 2991a to 2991b–1, 2991d to 2992, 2992c, and 2992d of this title, and repealing former sections 2991c and 2992b of this title] may be cited as the 'Native American Programs Act Amendments of 1992'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–408, § 1, Oct. 4, 1990, 104 Stat. 883, provided that: ''This Act [amending sections 2991b and 2992d of this title] may be cited as the 'Indian Environmental Regulatory Enhancement Act of 1990'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–175, title V, § 501, Nov. 29, 1987, 101 Stat. 973, provided that: ''This title [enacting sections 2991b–1, 2991d–1 and 2992b–1 of this title and amending sections 2991a, 2991b, 2991d–1, 2991f, 2992c, and 2992d of this title] may be cited as the 'Native American Programs Act Amendments of 1987'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–558, title X, § 1001, Oct. 30, 1984, 98 Stat. 2905, provided that: ''This title [amending sections 2991b, 2992b to 2992d of this title] may be cited as the 'Native American Programs Act Amendments of 1984'.''

§ 2991a. Congressional statement of purpose

The purpose of this subchapter is to promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives.

(Pub. L. 88–452, title VIII, § 802, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2324; amended Pub. L. 100–175, title V, §§ 504(b)(1), 506(c)(1), Nov. 29, 1987, 101 Stat. 975, 978; Pub. L. 102–375, title VIII, § 822(21), Sept. 30, 1992, 106 Stat. 1300; Pub. L. 103–171, § 5(1), Dec. 2, 1993, 107 Stat. 1991.)

PRIOR PROVISIONS

A prior section 2991a, Pub. L. 88–452, title VIII, § 802, as added Pub. L. 89–794, title VIII, § 801, Nov. 8, 1966, 80 Stat. 1473, covered recruitment, selection, training, re-

ferral, and assignment of volunteers and consent of Governors of States in which these activities were conducted, prior to the general amendment of this subchapter by Pub. L. 90–222, title I, §110, Dec. 23, 1967, 81 Stat. 722.

AMENDMENTS

1993—Pub. L. 103–171 substituted ''Alaska'' for ''Alaskan''.

1992—Pub. L. 102–375, which directed the substitution of ''Alaska Native'' for ''Alaskan Native'', could not be executed because the words ''Alaskan Native'' did not appear.

1987—Pub. L. 100–175, §506(c)(1), substituted ''Native Hawaiians'' for ''Hawaiian Natives''.

Pub. L. 100–175, §504(b)(1), inserted '', other Native American Pacific Islanders (including American Samoan Natives),'' after ''Hawaiian Natives''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 504(b)(1) of Pub. L. 100–175 effective Oct. 1, 1987, and amendment by section 506(c)(1) of Pub. L. 100–175 effective upon expiration of 90-day period beginning Nov. 29, 1987, see section 701(a), (c) of Pub. L. 100–175, set out as a note under section 3001 of this title.

ALASKA FEDERATION OF NATIVES' STUDY AND REPORT WITH PROPOSALS TO IMPLEMENT RECOMMENDATIONS OF ALASKA NATIVES COMMISSION

Pub. L. 104–270, Oct. 9, 1996, 110 Stat. 3301, provided that:

''SECTION 1. CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY.

''The Congress finds and declares the following:

''(1) The Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives (hereafter in this Act referred to as the 'Alaska Natives Commission') was established by Public Law 101–379 (42 U.S.C. 2991a note) following the publication in 1989 of the 'Report on the Status of Alaska Natives: A Call for Action' by the Alaska Federation of Natives and after extensive congressional hearings which focused on the need for the first comprehensive assessment of the social, cultural, and economic condition of Alaska's 86,000 Natives since the enactment of the Alaska Native Claims Settlement Act, Public Law 92–203 [43 U.S.C. 1601 et seq.].

''(2) The 14-member Alaska Natives Commission held 15 regional hearings throughout Alaska between July 1992 and October 1993, and 2 statewide hearings in Anchorage coinciding with the Conventions of 1992 and 1993 of the Alaska Federation of Natives. In May 1994, the Alaska Natives Commission issued its 3 volume, 440 page report. As required by Public Law 101–379, the report was formally conveyed to the Congress, the President of the United States, and the Governor of Alaska.

''(3) The Alaska Natives Commission found that many Alaska Native individuals, families, and communities were experiencing a social, cultural, and economic crisis marked by rampant unemployment, lack of economic opportunity, alcohol abuse, depression, and morbidity and mortality rates that have been described by health care professionals as 'staggering'.

''(4) The Alaska Natives Commission found that due to the high rate of unemployment and lack of economic opportunities for Alaska Natives, government programs for the poor have become the foundation of many village economies. Displacing traditional Alaska Native social safety nets, these well-meaning programs have undermined the healthy interdependence and self-sufficiency of Native tribes and families and have put Native tribes and families at risk of becoming permanent dependencies of Government.

''(5) Despite these seemingly insurmountable problems, the Alaska Natives Commission found that Alaska Natives, building on the Alaska Native Claims Settlement Act, had begun a unique process of critical self-examination which, if supported by the United States Congress through innovative legislation, and effective public administration at all levels including traditional Native governance, could provide the basis for an Alaska Native social, cultural, economic, and spiritual renewal.

''(6) The Alaska Natives Commission recognized that the key to the future well-being of Alaska Natives lay in—

''(A) the systematic resumption of responsibility by Alaska Natives for the well-being of their members,

''(B) the strengthening of their economies,

''(C) the strengthening, operation, and control of their systems of governance, social services, education, health care, and law enforcement, and

''(D) exercising rights they have from their special relationship with the Federal Government and as citizens of the United States and Alaska.

''(7) The Alaska Natives Commission recognized that the following 3 basic principles must be respected in addressing the myriad of problems facing Alaska Natives:

''(A) Self-reliance.

''(B) Self-determination.

''(C) Integrity of Native cultures.

''(8) There is a need to address the problems confronting Alaska Natives. This should be done rapidly, with certainty, and in conformity with the real economic, social, and cultural needs of Alaska Natives.

''(9) Congress retains and has exercised its constitutional authority over Native affairs in Alaska subsequent to the Treaty of Cession and does so now through this Act.

''SEC. 2. ALASKA NATIVE IMPLEMENTATION STUDY.

''(a) FINDINGS.—The Congress finds and declares that—

''(1) the Alaska Natives Commission adopted certain recommendations raising important policy questions which are unresolved in Alaska and which require further study and review before Congress considers legislation to implement solutions to address these recommendations; and

''(2) the Alaska Federation of Natives is the representative body of statewide Alaska Native interests best suited to further investigate and report to Congress with proposals to implement the recommendations of the Alaska Natives Commission.

''(b) GRANT.—The Secretary of Health and Human Services shall make a grant to the Alaska Federation of Natives to conduct the study and submit the report required by this section. Such grant may only be made if the Alaska Federation of Natives agrees to abide by the requirements of this section.

''(c) STUDY.—Pursuant to subsection (b), the Alaska Federation of Natives shall—

''(1) examine the recommendations of the Alaska Natives Commission;

''(2) examine initiatives in the United States, Canada, and elsewhere for successful ways that issues similar to the issues addressed by the Alaska Natives Commission have been addressed;

''(3) conduct hearings within the Alaska Native community on further ways in which the Commission's recommendations might be implemented; and

''(4) recommend enactment of specific provisions of law and other actions the Congress should take to implement such recommendations.

''(d) CONSIDERATION OF LOCAL CONTROL.—In developing its recommendations pursuant to subsection (c)(4), the Alaska Federation of Natives shall give specific attention to the ways in which the recommendations may be achieved at the local level with maximum local control of the implementation of the recommendations.

''(e) REPORT.—Not later than 12 months after the date on which the grant is made under subsection (b), the

Alaska Federation of Natives shall submit a report on the study conducted under this section, together with the recommendations developed pursuant to subsection (c)(4), to the President and the Congress and to the Governor and legislature of the State of Alaska. In addition, the Alaska Federation of Natives shall make the report available to Alaska Native villages and organizations and to the general public.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $350,000 for the grant under subsection (b).

''(g) ADDITIONAL STATE FUNDING.—The Congress encourages the State of Alaska to provide the additional funding necessary for the completion of the study under this section.''

ALASKA NATIVES COMMISSION

Pub. L. 101–379, § 12, Aug. 18, 1990, 104 Stat. 478, established a Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives to conduct a comprehensive review of Federal and State policies and programs affecting Alaska Natives in order to identify specific actions that could be taken to help assure that public policy goals were more fully realized among Alaska Natives, further provided for membership, meetings, and other administrative affairs of the Commission, as well as specific powers and duties, further directed the Commission to submit, by no later than 18 months after its first meeting, a report with recommendations to the President, the Congress, the Governor of Alaska, and the legislature of the State of Alaska, and further provided for funding as well as termination of the Commission 180 days after the date of submission of its report.

NATIVE HAWAIIANS STUDY COMMISSION

Pub. L. 96–565, title III, §§ 301–307, Dec. 22, 1980, 94 Stat. 3324–3326, known as the Native Hawaiians Study Commission Act, established the Native Hawaiians Study Commission to study the culture, needs, and concerns of Native Hawaiians, and to issue a report and make recommendations to Congress. The Commission was required to have its first meeting not less than 90-days after Dec. 22, 1980, produce a draft report no later than 1 year after its first meeting and a final report no later than 9 months later. The Commission ceased to exist upon the expiration of the 60-day period following the submission of its final report.

§ 2991b. Financial assistance for Native American projects

(a) Authorization for financial assistance to public and nonprofit agencies; consultation with other Federal agencies to avoid duplication

The Commissioner is authorized to provide financial assistance, on a single year or multiyear basis, to public and nonprofit private agencies, including but not limited to, governing bodies of Indian tribes on Federal and State reservations, Alaska Native villages and regional corporations established by the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], and such public and nonprofit private agencies serving Native Hawaiians, and Indian and Alaska Native organizations in urban or rural areas that are not Indian reservations or Alaska Native villages, for projects pertaining to the purposes of this subchapter. The Commissioner is authorized to provide financial assistance to public and nonprofit private agencies serving other Native American Pacific Islanders (including American Samoan Natives) for projects pertaining to the purposes of this Act. In determining the projects to be assisted under this subchapter, the Commissioner shall consult with other Federal agencies for the purpose of eliminating duplication or conflict among similar activities or projects and for the purpose of determining whether the findings resulting from those projects may be incorporated into one or more programs for which those agencies are responsible. Every determination made with respect to a request for financial assistance under this section shall be made without regard to whether the agency making such request serves, or the project to be assisted is for the benefit of, Indians who are not members of a federally recognized tribe. To the greatest extent practicable, the Commissioner shall ensure that each project to be assisted under this subchapter is consistent with the priorities established by the agency which receives such assistance.

(b) Limitations of financial assistance; exceptions; non-Federal contributions

Financial assistance extended to an agency under this subchapter shall not exceed 80 per centum of the approved costs of the assisted project, except that the Commissioner may approve assistance in excess of such percentage if the Commissioner determines, in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purposes of this subchapter. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services. The Commissioner shall not require non-Federal contributions in excess of 20 per centum of the approved costs of programs or activities assisted under this subchapter.

(c) Assistance as addition to, and not substitution for, activities previously carried out without Federal assistance; waiver; nonreservation areas

(1) No project shall be approved for assistance under this subchapter unless the Commissioner is satisfied that the activities to be carried out under such project will be in addition to, and not in substitution for, comparable activities previously carried out without Federal assistance, except that the Commissioner may waive this requirement in any case in which the Commissioner determines, in accordance with regulations establishing objective criteria, that application of the requirement would result in unnecessary hardship or otherwise be inconsistent with the purposes of this subchapter.

(2) No project may be disapproved for assistance under this subchapter solely because the agency requesting such assistance is an Indian organization in a nonreservation area or serves Indians in a nonreservation area.

(d) Grants to improve tribal regulation of environmental quality

(1) The Commissioner shall award grants to Indian tribes for the purpose of funding 80 percent of the costs of planning, developing, and implementing programs designed to improve the capability of the governing body of the Indian tribe to regulate environmental quality pursuant to Federal and tribal environmental laws.

(2) The purposes for which funds provided under any grant awarded under paragraph (1) may be used include, but are not limited to—

(A) the training and education of employees responsible for enforcing, or monitoring compliance with, environmental quality laws,

(B) the development of tribal laws on environmental quality, and

(C) the enforcement and monitoring of environmental quality laws.

(3) The 20 percent of the costs of planning, developing, and implementing a program for which a grant is awarded under paragraph (1) that are not to be paid from such grant may be paid by the grant recipient in cash or through the provision of property or services, but only to the extent that such cash or property is from any source (including any Federal agency) other than a program, contract, or grant authorized under this subchapter.

(4) Grants shall be awarded under paragraph (1) on the basis of applications that are submitted by Indian tribes to the Commissioner in such form as the Commissioner shall prescribe.

(Pub. L. 88–452, title VIII, § 803, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2324; amended Pub. L. 95–568, § 17(a)(39), Nov. 2, 1978, 92 Stat. 2443; Pub. L. 98–558, title X, § 1002, Oct. 30, 1984, 98 Stat. 2905; Pub. L. 100–175, title V, §§ 502(1), 504(a), 506(c)(2), Nov. 29, 1987, 101 Stat. 973, 975, 978; Pub. L. 101–408, § 2, Oct. 4, 1990, 104 Stat. 883; Pub. L. 102–375, title VIII, § 822(1), (21), Sept. 30, 1992, 106 Stat. 1295, 1300; Pub. L. 102–497, § 9(a), Oct. 24, 1992, 106 Stat. 3257; Pub. L. 103–171, § 5(2), Dec. 2, 1993, 107 Stat. 1991.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (a), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

This Act, referred to in subsec. (a), probably means the Native American Programs Act of 1974, Pub. L. 88–452, title VIII, as added by Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2324, which is classified generally to this subchapter, see section 2991 of this title.

PRIOR PROVISIONS

A prior section 2991b, Pub. L. 88–452, title VIII, § 803, as added Pub. L. 89–794, title VIII, § 801, Nov. 8, 1966, 80 Stat. 1473, provided for stipend for volunteers, living, travel, and leave allowances, and subsistence, prior to the general amendment of this subchapter by Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–171 substituted ''areas that are not Indian reservations or Alaska Native villages'' for ''nonreservation areas''.

1992—Subsec. (a). Pub. L. 102–497 struck out '', subject to the availability of funds appropriated under the authority of section 2992d(c) of this title,'' after ''Commissioner is authorized'' in second sentence.

Pub. L. 102–375, § 822(21), substituted ''Alaska Native villages'' for ''Alaskan Native villages''.

Pub. L. 102–375, § 822(1)(A), (B)(i), substituted ''Commissioner'' for ''Secretary'' wherever appearing and substituted ''Indian and Alaska Native organizations'' for ''Indian organizations''.

Pub. L. 102–375, § 822(1)(B)(ii), which directed the substitution of ''area that is not an Indian reservation or Alaska Native village'' for ''nonreservation area'', could not be executed because the words ''nonreservation area'' did not appear.

Subsecs. (b), (c)(1), (d)(1), (4). Pub. L. 102–375, § 822(1)(A), substituted ''Commissioner'' for ''Secretary'' wherever appearing.

1990—Subsec. (d). Pub. L. 101–408 added subsec. (d).

1987—Subsec. (a). Pub. L. 100–175, § 506(c)(2), substituted ''Native Hawaiians'' for ''Hawaiian Natives''.

Pub. L. 100–175, §§ 502(1), 504(a), inserted '', on a single year or multiyear basis,'' after ''assistance'' in first sentence and inserted after first sentence ''The Secretary is authorized, subject to the availability of funds appropriated under the authority of section 2992d(c) of this title, to provide financial assistance to public and nonprofit private agencies serving other Native American Pacific Islanders (including American Samoan Natives) for projects pertaining to the purposes of this Act.''

1984—Subsec. (a). Pub. L. 98–558, § 1002(a), inserted at end ''Every determination made with respect to a request for financial assistance under this section shall be made without regard to whether the agency making such request serves, or the project to be assisted is for the benefit of, Indians who are not members of a federally recognized tribe. To the greatest extent practicable, the Secretary shall ensure that each project to be assisted under this subchapter is consistent with the priorities established by the agency which receives such assistance.''

Subsec. (c)(1). Pub. L. 98–558, § 1002(b), designated existing provisions as par. (1) and added par. (2).

1978—Pub. L. 95–568 substituted in subsecs. (b) and (c) ''the Secretary determines'' for ''he determines''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by sections 502(1) and 504(a) of Pub. L. 100–175 effective Oct. 1, 1987, and amendment by section 506(c)(2) of Pub. L. 100–175 effective upon expiration of 90-day period beginning Nov. 29, 1987, see section 701(a), (c) of Pub. L. 100–175, set out as a note under section 3001 of this title.

§ 2991b–1. Loan fund; demonstration project

(a) Grant to Office of Hawaiian Affairs to establish revolving loan fund; purposes of fund; administrative costs; matching funds

(1) In order to provide funding that is not available from private sources, the Commissioner shall award a grant to the Office of Hawaiian Affairs of the State of Hawaii (referred to in this section as the ''Office''), which shall use that grant to carry out, in the State of Hawaii, a demonstration project involving the establishment of a revolving loan fund—

(A) from which the Office shall make loans or loan guarantees to Native Hawaiian organizations and to individual Native Hawaiians for the purpose of promoting economic development in the State of Hawaii; and

(B) into which all payments, interest, charges, and other amounts collected from loans made under subparagraph (A) shall be deposited notwithstanding any other provision of law.

(2) The agreement under which a grant is awarded under paragraph (1) shall contain provisions which set forth the administrative costs of the grantee that are to be paid out of the funds provided under the grant and a requirement that the grantee contribute to the revolving loan fund an amount of non-Federal funds equal to the amount of such grant.

(b) Loans or loan guarantees to borrowers; determinations; term; interest rate; default and collection procedures; prohibition on self-lending

(1) The Office may make a loan or loan guarantee to a borrower under subsection (a)(1)(A) of this section only if the Office determines that—

(A) the borrower is unable to obtain financing from other sources on reasonable terms and conditions; and

(B) there is a reasonable prospect that the borrower will repay the loan.

(2) Each loan or loan guarantee made under subsection (a)(1)(A) of this section shall be—

(A) for a term that does not exceed 7 years; and

(B) at a rate of interest that does not exceed a rate equal to the sum of—

(I) the most recently published prime rate (as published in the newspapers of general circulation in the State of Hawaii before the date on which the loan is made); and

(II) 3 percentage points.

(3) The Office may require any borrower of a loan made under subsection (a)(1)(A) of this section to provide such collateral as the Office determines to be necessary to secure the loan.

(4) Prior to making loans under subsection (a)(1)(A) of this section, the Office shall establish written procedures and definitions pertaining to defaults and collections of payments under the loans which shall be subject to the review and approval of the Commissioner. Such Office shall provide to each applicant for a loan under subsection (a)(1)(A) of this section, at the time application for the loan is made, a written copy of such procedures and definitions.

(5) The Office may not lend to itself any of the funds awarded under the grant.

(c) Notice to Commissioner of loans in default and uncollectability of such loans; instructions by Commissioner

(1) The Office shall provide the Commissioner at regular intervals written notice of each loan made under subsection (a)(1)(A) of this section that is in default and the status of such loan.

(2)(A) After making reasonable efforts to collect all amounts payable under a loan made under subsection (a)(1)(A) of this section that is in default, the Office shall notify the Commissioner that such loan is uncollectable or collectable only at an unreasonable cost. Such notice shall include recommendations for future action to be taken by the Office.

(B) Upon receiving such notice, the Commissioner shall instruct the Office—

(i) to continue with its collection activities;

(ii) to cancel, adjust, compromise, or reduce the amount of such loan; or

(iii) to modify any term or condition of such loan, including any term or condition relating to the rate of interest or the time of payment of any installment of principal or interest, or portion thereof, that is payable under such loan.

(C) The Office shall carry out all instructions received under subparagraph (B) from the Commissioner.

(d) Payment of administrative costs; management and technical assistance

(1) The Office shall, out of funds available in the revolving loan fund established under such subsection—

(A) pay expenses incurred by the Office in administering the revolving loan fund; and

(B) provide competent management and technical assistance to borrowers of loans made under subsection (a)(1)(A) of this section to assist the borrowers to achieve the purposes of such loans.

(2) The Commissioner shall provide to the Office such management and technical assistance as the Office may request in order to carry out the provisions of this section.

(e) Regulations

Not later than 120 days after November 29, 1987, the Commissioner, in consultation with appropriate agencies of the State of Hawaii and community-based Native Hawaiian organizations, shall prescribe regulations which set forth the procedures and criteria to be used—

(1) in making loans under subsection (a)(1)(A) of this section; and

(2) in canceling, adjusting, compromising, and reducing under subsection (c) of this section the outstanding amounts of such loans.

The Commissioner may prescribe such other regulations as may be necessary to carry out the purposes of this section, including regulations involving reporting and auditing.

(f) Authorization of appropriations; investment in obligations of United States

(1) There is authorized to be appropriated for each of the fiscal years 2000 and 2001, $1,000,000 for the purpose of carrying out the provisions of this section. Any amount appropriated under this paragraph shall remain available for expenditure without fiscal year limitation.

(2) The revolving loan fund that is required to be established under subsection (a)(1) of this section shall be maintained as a separate account. Any portion of the revolving loan fund that is not required for expenditure shall be invested in obligations of the United States or in obligations guaranteed or insured by the United States.

(g) Reports to Congress; contents

(1) The Commissioner, in consultation with the Office, shall submit a report to the President pro tempore of the Senate and the Speaker of the House of Representatives not later than January 1 following each fiscal year, regarding the administration of this section in such fiscal year.

(2) Such report shall include the views and recommendations of the Commissioner with respect to the revolving loan fund established under subsection (a)(1) of this section and with respect to loans made from such fund, and shall—

(A) describe the effectiveness of the operation of such fund in improving the economic and social self-sufficiency of Native Hawaiians;

(B) specify the number of loans made in such fiscal year;

(C) specify the number of loans outstanding as of the end of such fiscal year; and

(D) specify the number of borrowers who fail in such fiscal year to repay loans in accordance with the agreements under which such loans are required to be repaid.

(Pub. L. 88–452, title VIII, § 803A, as added Pub. L. 100–175, title V, § 506(a), Nov. 29, 1987, 101 Stat. 976; amended Pub. L. 102–375, title VIII, § 822(2), Sept. 30, 1992, 106 Stat. 1296; Pub. L. 103–171, § 5(3), Dec. 2, 1993, 107 Stat. 1991; Pub. L. 105–361, § 3, Nov. 10, 1998, 112 Stat. 3278.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–361, § 3(a)(1)(A), in introductory provisions, substituted ''award a grant'' for ''award grants'' and ''use that grant to carry out'' for ''use such grants to establish and carry out''.

Subsec. (a)(1)(A). Pub. L. 105–361, § 3(a)(1)(B), inserted ''or loan guarantees'' after ''make loans''.

Subsec. (b)(1). Pub. L. 105–361, § 3(a)(2)(A), substituted ''a loan or loan guarantee to a borrower'' for ''loans to a borrower'' in introductory provisions.

Subsec. (b)(2). Pub. L. 105–361, § 3(a)(2)(B)(i), substituted ''Each loan or loan guarantee made'' for ''Loans made'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 105–361, § 3(a)(2)(B)(ii), substituted ''7 years'' for ''5 years''.

Subsec. (b)(2)(B). Pub. L. 105–361, § 3(a)(2)(B)(iii), substituted ''that does not exceed a rate equal to the sum of—'' for ''that is 2 percentage points below the average market yield on the most recent public offering of United States Treasury bills occurring before the date on which the loan is made.'' and added cls. (I) and (II).

Subsec. (f)(1). Pub. L. 105–361, § 3(a)(3), substituted ''2000 and 2001,'' for ''1992, 1993, and 1994,''.

1993—Subsecs. (b) to (d)(1). Pub. L. 103–171, § 5(3)(A), struck out ''to which a grant is awarded under subsection (a)(1) of this section'' before ''may make loans'' in subsec. (b)(1), before ''may require any borrower'' in subsec. (b)(3), before ''shall establish written'' in subsec. (b)(4), before ''may not lend'' in subsec. (b)(5), before ''shall provide the Commissioner'' in subsec. (c)(1), before ''shall notify the Commissioner'' in subsec. (c)(2)(A), and before ''shall, out of funds'' in subsec. (d)(1).

Subsec. (d)(2). Pub. L. 103–171, § 5(3)(B), struck out ''to which a grant is made under subsection (a)(1) of this section'' after ''Commissioner shall provide to the Office''.

Subsec. (f)(1). Pub. L. 103–171, § 5(3)(C), substituted ''each of the fiscal years 1992, 1993, and 1994, $1,000,000'' for ''fiscal years 1988, 1989, and 1990 the aggregate amount $3,000,000 for all such fiscal years''.

1992—Pub. L. 102–375, § 822(2)(C), (D), substituted ''Commissioner'' for ''Secretary'' wherever appearing in subsecs. (a)(1), (b)(4), (c), (d)(2), and (e) and ''Office'' for ''agency or organization'' wherever appearing in subsecs. (b)(1), (3) to (5), (c), and (d).

Pub. L. 102–375, § 822(2)(B), which directed the amendment of this section by substituting ''Office'' for ''agency or organization to which a grant is awarded under subsection (a)(1) of this section'' wherever appearing, could not be executed because the words ''agency or organization to which a grant is awarded under subsection (a)(1) of this section'' did not appear in the original.

Subsec. (a)(1). Pub. L. 102–375, § 822(2)(A), substituted ''the Office of Hawaiian Affairs of the State of Hawaii (referred to in this section as the 'Office')'' for ''one agency of the State of Hawaii, or to one community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians'', struck out ''5-year'' before ''demonstration'', and in subpar. (A) substituted ''the Office'' for ''such agency or Native Hawaiian organization''.

Subsec. (a)(2). Pub. L. 102–375, § 822(2)(E), inserted before period at end ''and a requirement that the grantee contribute to the revolving loan fund an amount of non-Federal funds equal to the amount of such grant''.

Subsec. (b)(6). Pub. L. 102–375, § 822(2)(F) struck out par. (6) which prohibited making of loan from revolving fund after close of 5-year period beginning on Nov. 29, 1987.

Subsec. (f)(1). Pub. L. 102–375, § 822(2)(G), which directed substitution of ''each of the fiscal years 1992, 1993, and 1994, $1,000,000'' for ''fiscal years 1988, 1989, and 1990 the aggregate amount of $3,000,000 for all such fiscal years'', could not be executed because the words ''fiscal years 1988, 1989, and 1990 the aggregate amount of $3,000,000 for all such fiscal years'' did not appear.

Subsec. (f)(3). Pub. L. 102–375, § 822(2)(H), struck out par. (3) which read as follows:

''(A) All monies that are in the revolving loan fund at the close of the 5-year period beginning on November 29, 1987, and that are not otherwise needed (as determined by the Secretary) to carry out the provisions of this section shall be deposited in the Treasury of the United States as miscellaneous receipts.

''(B) All monies deposited in the revolving loan fund after the close of such period pursuant to subsection (a)(1)(B) of this section shall be deposited into the Treasury of the United States as miscellaneous receipts.''

Subsec. (g). Pub. L. 102–375, § 822(2)(I), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows:

''(1) The Secretary, in consultation with the agency or organization to which a grant is awarded under subsection (a)(1) of this section, shall submit to the Congress—

''(A) an interim report not later than 2 years after November 29, 1987; and

''(B) a final report not later than 4 years after November 29, 1987;

regarding the administration of this section.

''(2) Each such report shall include the views and recommendations of the Secretary regarding—

''(A) the effectiveness of the demonstration project;

''(B) whether the demonstration project should be expanded to other groups eligible for assistance under this subchapter; and

''(C) whether the duration of the demonstration project should be extended.''

EFFECTIVE DATE

Section effective upon expiration of 90-day period beginning Nov. 29, 1987, see section 701(c) of Pub. L. 100–175, set out as an Effective Date of 1987 Amendment note under section 3001 of this title.

§ 2991b–2. Establishment of Administration for Native Americans

(a) Establishment

There is established in the Department of Health and Human Services (referred to in this subchapter as the ''Department'') the Administration for Native Americans (referred to in this subchapter as the ''Administration''), which shall be headed by a Commissioner of the Administration for Native Americans (referred to in this subchapter as the ''Commissioner''). The Administration shall be the agency responsible for carrying out the provisions of this subchapter.

(b) Commissioner

The Commissioner shall be appointed by the President, by and with the advice and consent of the Senate.

(c) Duties

The Commissioner shall—

(1) provide for financial assistance, loan funds, technical assistance, training, research and demonstration projects, and other activities, described in this subchapter;

(2) serve as the effective and visible advocate on behalf of Native Americans within the Department, and with other departments and agencies of the Federal Government regarding all Federal policies affecting Native Americans;

(3) with the assistance of the Intra-Departmental Council on Native American Affairs established by subsection (d)(1) of this section, coordinate activities within the Department leading to the development of policies, programs, and budgets, and their administration affecting Native Americans, and provide quarterly reports and recommendations to the Secretary;

(4) collect and disseminate information related to the social and economic conditions of Native Americans, and assist the Secretary in preparing an annual report to the Congress about such conditions;

(5) give preference to agencies described in section 2991b(a) of this title that are eligible for assistance under this subchapter, in entering into contracts for technical assistance, training, and evaluation under this subchapter; and

(6) encourage agencies that carry out projects under this subchapter, to give preference to Native Americans, in hiring and entering into contracts to carry out such projects.

(d) Intra-Departmental Council on Native American Affairs

(1) There is established in the Office of the Secretary the Intra-Departmental Council on Native American Affairs. The Commissioner shall be the chairperson of such Council and shall advise the Secretary on all matters affecting Native Americans that involve the Department. The Director of the Indian Health Service shall serve as vice chairperson of the Council.

(2) The membership of the Council shall be the heads of principal operating divisions within the Department, as determined by the Secretary, and such persons in the Office of the Secretary as the Secretary may designate.

(3) In addition to the duties described in subsection (c)(3) of this section, the Council shall, within 180 days following September 30, 1992, prepare a plan, including legislative recommendations, to allow tribal governments and other organizations described in section 2991b(a) of this title to consolidate grants administered by the Department and to designate a single office to oversee and audit the grants. Such plan shall be submitted to the committees of the Senate and the House of Representatives having jurisdiction over the Administration for Native Americans.

(e) Staffing levels

The Secretary shall assure that adequate staff and administrative support is provided to carry out the purpose of this subchapter. In determining the staffing levels of the Administration, the Secretary shall consider among other factors the unmet needs of the Native American population, the need to provide adequate oversight and technical assistance to grantees, the need to carry out the activities of the Council, the additional reporting requirements established, and the staffing levels previously maintained in support of the Administration.

(Pub. L. 88–452, title VIII, § 803B, as added Pub. L. 102–375, title VIII, § 822(3), Sept. 30, 1992, 106 Stat. 1296; amended Pub. L. 103–171, § 5(4), Dec. 2, 1993, 107 Stat. 1992.)

AMENDMENTS

1993—Subsec. (c)(5). Pub. L. 103–171, § 5(4)(A), substituted ''agencies described in section 2991b(a) of this title that'' for ''individuals who''.

Subsec. (c)(6). Pub. L. 103–171, § 5(4)(B), substituted ''Native Americans,'' for ''such individuals''.

§ 2991b–3. Grant program to ensure survival and continuing vitality of Native American languages

(a) Authority to award grants

The Secretary shall award a grant to any agency or organization that is—

(1) eligible for financial assistance under section 2991b(a) of this title; and

(2) selected under subsection (c) of this section;

to be used to assist Native Americans in ensuring the survival and continuing vitality of Native American languages.

(b) Purposes for which grants may be used

The purposes for which each grant awarded under subsection (a) of this section may be used include, but are not limited to—

(1) the establishment and support of a community Native American language project to bring older and younger Native Americans together to facilitate and encourage the transfer of Native American language skills from one generation to another;

(2) the establishment of a project to train Native Americans to teach a Native American language to others or to enable them to serve as interpreters or translators of such language;

(3) the development, printing, and dissemination of materials to be used for the teaching and enhancement of a Native American language;

(4) the establishment or support of a project to train Native Americans to produce or participate in a television or radio program to be broadcast in a Native American language;

(5) the compilation, transcription, and analysis of oral testimony to record and preserve a Native American language;

(6) the purchase of equipment (including audio and video recording equipment, computers, and software) required to conduct a Native American language project; and

(7)(A) Native American language nests, which are site-based educational programs that—

(i) provide instruction and child care through the use of a Native American language for at least 10 children under the age of 7 for an average of at least 500 hours per year per student;

(ii) provide classes in a Native American language for parents (or legal guardians) of students enrolled in a Native American language nest (including Native American language-speaking parents); and

(iii) ensure that a Native American language is the dominant medium of instruction in the Native American language nest;

(B) Native American language survival schools, which are site-based educational programs for school-age students that—

(i) provide an average of at least 500 hours of instruction through the use of 1 or more Native American languages for at least 15 students for whom a Native American language survival school is their principal place of instruction;

(ii) develop instructional courses and materials for learning Native American languages and for instruction through the use of Native American languages;

(iii) provide for teacher training;

(iv) work toward a goal of all students achieving—

(I) fluency in a Native American language; and

(II) academic proficiency in mathematics, reading (or language arts), and science; and

(v) are located in areas that have high numbers or percentages of Native American students; and

(C) Native American language restoration programs, which are educational programs that—

(i) operate at least 1 Native American language program for the community in which it serves;

(ii) provide training programs for teachers of Native American languages;

(iii) develop instructional materials for the programs;

(iv) work toward a goal of increasing proficiency and fluency in at least 1 Native American language;

(v) provide instruction in at least 1 Native American language; and

(vi) may use funds received under this section for—

(I) Native American language programs, such as Native American language immersion programs, Native American language and culture camps, Native American language programs provided in coordination and cooperation with educational entities, Native American language programs provided in coordination and cooperation with local universities and colleges, Native American language programs that use a master-apprentice model of learning languages, and Native American language programs provided through a regional program to better serve geographically dispersed students;

(II) Native American language teacher training programs, such as training programs in Native American language translation for fluent speakers, training programs for Native American language teachers, training programs for teachers in schools to utilize Native American language materials, tools, and interactive media to teach Native American language; and

(III) the development of Native American language materials, such as books, audio and visual tools, and interactive media programs.

(c) Applications

For the purpose of making grants under subsection (a) of this section, the Secretary shall select applicants from among agencies and organizations described in such subsection on the basis of applications submitted to the Secretary at such time, in such form, and containing such information as the Secretary shall require, but each application shall include at a minimum—

(1) a detailed description of the current status of the Native American language to be addressed by the project for which a grant under subsection (a) of this section is requested, including a description of existing programs and projects, if any, in support of such language;

(2) a detailed description of the project for which such grant is requested;

(3) a statement of objectives that are consonant with the purpose described in subsection (a) of this section;

(4) a detailed description of a plan to be carried out by the applicant to evaluate such project, consonant with the purpose for which such grant is made;

(5) if appropriate, an identification of opportunities for the replication of such project or the modification of such project for use by other Native Americans;

(6) a plan for the preservation of the products of the Native American language project for the benefit of future generations of Native Americans and other interested persons; and

(7) in the case of an application for a grant to carry out any purpose specified in subsection (b)(7)(B), a certification by the applicant that the applicant has not less than 3 years of experience in operating and administering a Native American language survival school, a Native American language nest, or any other educational program in which instruction is conducted in a Native American language.

(d) Participating organizations

If a tribal organization or other eligible applicant decides that the objectives of its proposed Native American language project would be accomplished more effectively through a partnership arrangement with a school, college, or university, the applicant shall identify such school, college, or university as a participating organization in the application submitted under subsection (c) of this section.

(e) Limitations on funding

(1) Share

Notwithstanding any other provision of this subchapter, a grant made under subsection (a) of this section may not be expended to pay more than 80 percent of the cost of the project that is assisted by such grant. Not less than 20 percent of such cost—

(A) shall be in cash or in kind, fairly evaluated, including plant, equipment, or services; and

(B)(i) may be provided from any private or non-Federal source; and

(ii) may include funds (including interest) distributed to a tribe—

(I) by the Federal Government pursuant to the satisfaction of a claim made under Federal law;

(II) from funds collected and administered by the Federal Government on behalf of such tribe or its constituent members; or

(III) by the Federal Government for general tribal administration or tribal development under a formula or subject to a tribal budgeting priority system, such as, but not limited to, funds involved in the settlement of land or other judgment claims, severance or other royalty payments, or payments under the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or tribal budget priority system.

(2) Duration

The Secretary may make grants made under subsection (a) of this section on a 1-year, 2-year, or 3-year basis, except that grants made under such subsection for any purpose specified in subsection (b)(7) may be made only on a 3-year basis.

(f) Administration

(1) The Secretary shall carry out this section through the Administration for Native Americans.

(2)(A) Not later than 180 days after October 26, 1992, the Secretary shall appoint a panel of experts for the purpose of assisting the Secretary to review—

(i) applications submitted under subsection (a) of this section;

(ii) evaluations carried out to comply with subsection (c)(4) of this section; and

(iii) the preservation of products required by subsection (c)(5) of this section.

(B) Such panel shall include, but not be limited to—

(i) a designee of the Institute of American Indian and Alaska Native Culture and Arts Development;

(ii) a designee of the regional centers funded under section 3215[1] of title 20;

(iii) representatives of national, tribal, and regional organizations that focus on Native American language, or Native American cultural,[2] research, development, or training; and

(iv) other individuals who are recognized for their expertise in the area of Native American language.

Recommendations for appointment to such panel shall be solicited from Indian tribes and tribal organizations.

(C) The duties of such panel include—

(i) making recommendations regarding the development and implementation of regulations, policies, procedures, and rules of general applicability with respect to the administration of this section;

(ii) reviewing applications received under subsection (c) of this section;

(iii) providing to the Secretary a list of recommendations for the approval of such applications—

(I) in accordance with regulations issued by the Secretary; and

(II) the relative need for the project; and

(iv) reviewing evaluations submitted to comply with subsection (c)(4) of this section.

(D)(i) Subject to clause (ii), a copy of the products of the Native American language project for which a grant is made under subsection (a) of this section—

(I) shall be transmitted to the Institute of American Indian and Alaska Native Culture and Arts Development; and

(II) may be transmitted, in the discretion of the grantee, to national and regional repositories of similar material;

for preservation and use consonant with their respective responsibilities under other Federal law.

(ii) Based on the Federal recognition of the sovereign authority of Indian tribes over all aspects of their cultures and language and except as provided in clause (iii), an Indian tribe may make a determination—

(I) not to transmit copies of such products under clause (i) or not to permit the redistribution of such copies; or

(II) to restrict in any manner the use or redistribution of such copies after transmission under such clause.

(iii) Clause (ii) shall not be construed to authorize Indian tribes—

(I) to limit the access of the Secretary to such products for purposes of administering this section or evaluating such products; or

(II) to sell such products, or copies of such products, for profit to the entities referred to in clause (i).

(Pub. L. 88–452, title VIII, § 803C, as added Pub. L. 102–524, § 2, Oct. 26, 1992, 106 Stat. 3434; amended Pub. L. 109–394, § 2, Dec. 14, 2006, 120 Stat. 2705.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (e)(1)(B)(ii)(III), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

Section 3215 of title 20, referred to in subsec. (f)(2)(B)(ii), was in the original a reference to section 5135 of the Elementary and Secondary Education Act of 1965, Pub. L. 89–10. Section 5135 of that Act was omitted in the general amendment of Pub. L. 89–10 by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519.

AMENDMENTS

2006—Subsec. (b)(7). Pub. L. 109–394, § 2(1), added par. (7).

Subsec. (c)(7). Pub. L. 109–394, § 2(2), added par. (7).

Subsec. (e)(2). Pub. L. 109–394, § 2(3), inserted " ,except that grants made under such subsection for any purpose specified in subsection (b)(7) may be made only on a 3-year basis" before period at end.

§ 2991c. Technical assistance and training

The Commissioner shall provide, directly or through other arrangements—

(1) technical assistance to the public and private agencies in planning, developing, con-

[1] See References in Text note below.

[2] So in original. The comma probably should not appear.

ducting, and administering projects under this subchapter;

(2) short-term in-service training for specialized or other personnel that is needed in connection with projects receiving financial assistance under this subchapter; and

(3) upon denial of a grant application, technical assistance to a potential grantee in revising a grant proposal.

(Pub. L. 88–452, title VIII, § 804, as added Pub. L. 102–375, title VIII, § 822(4), Sept. 30, 1992, 106 Stat. 1298.)

PRIOR PROVISIONS

A prior section 2991c, Pub. L. 88–452, title VIII, § 804, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2324, authorized Secretary to provide technical assistance and training in developing, conducting, and administering projects under this subchapter and short-term in-service training for specialized personnel, prior to repeal by Pub. L. 102–375, § 822(4).

Another prior section 2991c, Pub. L. 88–452, title VIII, § 804, as added Pub. L. 89–794, title VIII, § 801, Nov. 8, 1966, 80 Stat. 1473; amended Pub. L. 90–83, § 10(b), Sept. 11, 1967, 81 Stat. 224, provided for applicability of specified Federal laws, oath or affirmation, and status of volunteers as Federal employees and as persons employed in executive branch of Federal Government, prior to the general amendment of this subchapter by Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722.

§ 2991d. Research, demonstration, and pilot projects

(a) The Commissioner may provide financial assistance through grants or contracts for research, demonstration, or pilot projects conducted by public or private agencies which are designed to test or assist in the development of new approaches or methods that will aid in overcoming special problems or otherwise furthering the purposes of this subchapter.

(b) The Commissioner shall establish an overall plan to govern the approval of research, demonstration, and pilot projects and the use of all research authority under this subchapter. The plan shall set forth specific objectives to be achieved and priorities among such objectives.

(Pub. L. 88–452, title VIII, § 805, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2324; amended Pub. L. 102–375, title VIII, § 822(5), Sept. 30, 1992, 106 Stat. 1298.)

PRIOR PROVISIONS

A prior section 2991d, Pub. L. 88–452, title VIII, § 805, as added Pub. L. 89–794, title VIII, § 801, Nov. 8, 1966, 80 Stat. 1474, provided for special programs and projects and placing limitations on the use of appropriated funds, prior to the general amendment of this subchapter by Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722.

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102–375 substituted ''Commissioner'' for ''Secretary''.

§ 2991d–1. Panel review of applications for assistance

(a) Establishment of formal panel; members

(1) The Commissioner shall establish a formal panel review process for purposes of—

(A) evaluating applications for financial assistance under sections 2991b and 2991d of this title; and

(B) determining the relative merits of the projects for which such assistance is requested.

(2) To implement the process established under paragraph (1), the Commissioner shall appoint members of review panels from among individuals who are not officers or employees of the Administration for Native Americans. In making appointments to such panels, the Commissioner shall give preference to American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives.

(b) Duties of panel

Each review panel appointed under subsection (a)(2) of this section that reviews any application for financial assistance shall—

(1) determine the merit of each project described in such application;

(2) rank such application with respect to all other applications it reviews for the fiscal year involved, according to the relative merit of all of the projects that are described in such application and for which financial assistance is requested; and

(3) submit to the Commissioner a list that identifies all applications reviewed by such panel and arranges such applications according to rank determined under paragraph (2).

(c) Notice to Congressional committee chairman; information required

Upon the request of the chairman of the Committee on Indian Affairs of the Senate or of the chairman of the Committee on Education and Labor of the House of Representatives made with respect to any application for financial assistance under section 2991b or 2991d of this title, the Commissioner shall transmit to the chairman written notice—

(1) identifying such application;

(2) containing a copy of the list submitted to the Commissioner under subsection (b)(3) of this section in which such application is ranked;

(3) specifying which other applications ranked in such list have been approved by the Commissioner under sections 2991b and 2991d of this title; and

(4) if the Commissioner has not approved each application superior in merit, as indicated on such list, to the application with respect to which such notice is transmitted, containing a statement of the reasons relied upon by the Commissioner for—

(A) approving the application with respect to which such notice is transmitted; and

(B) failing to approve each pending application that is superior in merit, as indicated on such list, to the application described in subparagraph (A).

(Pub. L. 88–452, title VIII, § 806, as added and amended Pub. L. 100–175, title V, §§ 502(4), 504(b)(2), Nov. 29, 1987, 101 Stat. 973, 975; Pub. L. 102–375, title VIII, § 822(6), (21), Sept. 30, 1992, 106 Stat. 1298, 1300; Pub. L. 103–171, § 5(5), Dec. 2, 1993, 107 Stat. 1992; Pub. L. 103–437, § 15(k), Nov. 2, 1994, 108 Stat. 4593.)

PRIOR PROVISIONS

A prior section 806 of Pub. L. 88–452 was renumbered section 807 and is classified to section 2991e of this title.

Another prior section 806 of Pub. L. 88–452, title VIII, as added Pub. L. 89–794, title VIII, § 801, Nov. 8, 1966, 80 Stat. 1474, provided for duration of VISTA program through June 30, 1970, and was classified to section 2991e of this title, prior to the general amendment of this subchapter by Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–437 substituted ''Committee on Indian Affairs'' for ''Select Committee on Indian Affairs''.

1993—Subsec. (a)(2). Pub. L. 103–171 substituted ''Alaska'' for ''Alaskan''.

1992—Pub. L. 102–375, § 822(6), substituted ''Commissioner'' for ''Secretary'' wherever appearing.

Subsec. (a)(2). Pub. L. 102–375, § 822(21), which directed the substitution of ''Alaska Native'' for ''Alaskan Native'', could not be executed because the words ''Alaskan Native'' did not appear.

1987—Subsec. (a)(2). Pub. L. 100–175, § 504(b)(2), which directed that par. (2) be amended by inserting ''other Native American Pacific Islanders (including American Samoan Natives),'' after ''Hawaiian Natives,'' was executed by making the insertion after ''Native Hawaiians,'' to reflect the probable intent of Congress.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

EFFECTIVE DATE

Enactment and amendment by Pub. L. 100–175 effective Oct. 1, 1987, see section 701 of Pub. L. 100–175, set out as an Effective Date of 1987 Amendment note under section 3001 of this title.

§ 2991e. Announcement of research, demonstration, or pilot projects

(a) The Commissioner shall make a public announcement concerning—

(1) the title, purpose, intended completion date, identity of the grantee or contractor, and proposed cost of any grant or contract with a private or non-Federal public agency for a research, demonstration, or pilot project; and

(2) except in cases in which the Commissioner determines that it would not be consistent with the purposes of this subchapter, the results, findings, data, or recommendations made or reported as a result of such activities.

(b) The public announcements required by subsection (a) of this section shall be made within thirty days of making such grants or contracts, and the public announcements required by subsection (b) of this section shall be made within thirty days of the receipt of such results.

(Pub. L. 88–452, title VIII, § 807, formerly § 806, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2325; renumbered § 807, Pub. L. 100–175, title V, § 502(3), Nov. 29, 1987, 101 Stat. 973; amended Pub. L. 102–375, title VIII, § 822(7), Sept. 30, 1992, 106 Stat. 1298.)

PRIOR PROVISIONS

A prior section 807 of Pub. L. 88–452 was renumbered section 808 and is classified to section 2991f of this title.

A prior section 2991e, Pub. L. 88–452, title VIII, § 806, as added Pub. L. 89–794, title VIII, § 801, Nov. 8, 1966, 80 Stat. 1474, provided for duration of the VISTA program through June 30, 1970, prior to the general amendment of this subchapter by Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–375 substituted ''Commissioner'' for ''Secretary'' in two places.

§ 2991f. Submission of plans to State and local officials

(a) Submission to governing body of Indian reservation or Alaska Native village

No financial assistance may be provided to any project under section 2991b of this title or any research, demonstration, or pilot project under section 2991d of this title, which is to be carried out on or in an Indian reservation or Alaska Native village, unless a plan setting forth the project has been submitted to the governing body of that reservation or village and the plan has not been disapproved by the governing body within thirty days of its submission.

(b) Notification to chief executive officer of State or Territory

No financial assistance may be provided to any project under section 2991b of this title or any research, demonstration, or pilot project under section 2991d of this title, which is to be carried out in a State or Territory other than on or in an Indian reservation or Alaska Native village or Hawaiian Homestead, unless the Commissioner has notified the chief executive officer of the State or Territory of the decision of the Commissioner to provide that assistance.

(c) Notification to local governing officials of political subdivision

No financial assistance may be provided to any project under section 2991b of this title or any research, demonstration, or pilot project under section 2991d of this title, which is to be carried out in a city, county, or other major political subdivision of a State or Territory, other than on or in an Indian reservation or Alaska Native village, or Hawaiian Homestead, unless the Commissioner has notified the local governing officials of the political subdivision of the decision of the Commissioner to provide that assistance.

(Pub. L. 88–452, title VIII, § 808, formerly § 807, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2325; amended Pub. L. 95–568, § 17(a)(40), Nov. 2, 1978, 92 Stat. 2443; renumbered § 808 and amended Pub. L. 100–175, title V, §§ 502(3), 504(b)(3), Nov. 29, 1987, 101 Stat. 973, 975; Pub. L. 102–375, title VIII, § 822(8), (21), Sept. 30, 1992, 106 Stat. 1298, 1300.)

PRIOR PROVISIONS

A prior section 808 of Pub. L. 88–452 was renumbered section 809 and is classified to section 2991g of this title.

AMENDMENTS

1992—Pub. L. 102–375 substituted ''Alaska Native village'' for ''Alaskan Native village'' and ''Commissioner'' for ''Secretary'' wherever appearing.

1987—Subsecs. (b), (c). Pub. L. 100–175, § 504(b)(3), inserted ''or territory'' after ''State'' wherever appearing.

1978—Subsecs. (b), (c). Pub. L. 95–568 substituted ''the decision of the Secretary'' for ''his decision''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, see section 701(a) of Pub. L. 100–175, set out as a note under section 3001 of this title.

§ 2991g. Records and audits

(a) Each agency which receives financial assistance under this subchapter shall keep such records as the Commissioner may prescribe, including records which fully disclose the amount and disposition by that agency of such financial assistance, the total cost of the project in connection with which such financial assistance is given or used, the amount of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Commissioner and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any agency which receives financial assistance under this subchapter that are pertinent to the financial assistance received under this subchapter.

(Pub. L. 88–452, title VIII, § 809, formerly § 808, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2325; renumbered § 809, Pub. L. 100–175, title V, § 502(3), Nov. 29, 1987, 101 Stat. 973; amended Pub. L. 102–375, title VIII, § 822(9), Sept. 30, 1992, 106 Stat. 1298.)

PRIOR PROVISIONS

A prior section 809 of Pub. L. 88–452 was renumbered section 810 and is classified to section 2991h of this title.

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102–375 substituted ''Commissioner'' for ''Secretary''.

§ 2991h. Appeals, notice, and hearing

(a) The Commissioner shall prescribe procedures to assure that—

(1) financial assistance under this subchapter shall not be suspended, except in emergency situations, unless the assisted agency has been given reasonable notice and opportunity to show cause why such action should not be taken; and

(2) financial assistance under this subchapter shall not be terminated, and application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the assisted agency has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) If an application is rejected on the grounds that the applicant is ineligible or that activities proposed by the applicant are ineligible for funding, the applicant may appeal to the Secretary, not later than 30 days after the date of receipt of notification of such rejection, for a review of the grounds for such rejection. On appeal, if the Secretary finds that an applicant is eligible or that its proposed activities are eligible, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration.

(Pub. L. 88–452, title VIII, § 810, formerly § 809, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2326; renumbered § 810, Pub. L. 100–175, title V, § 502(3), Nov. 29, 1987, 101 Stat. 973; amended Pub. L. 102–375, title VIII, § 822(10), Sept. 30, 1992, 106 Stat. 1298.)

PRIOR PROVISIONS

A prior section 810 of Pub. L. 88–452 was renumbered section 811 and is classified to section 2992 of this title.

Another prior section 810 of Pub. L. 88–452, title VIII, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722, related to authority to establish full-time programs and was classified to section 2992 of this title, prior to repeal by Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417.

AMENDMENTS

1992—Pub. L. 102–375 substituted ''Commissioner'' for ''Secretary'', designated existing provisions as subsec. (a), and added subsec. (b).

§ 2992. Evaluation of projects

(a) Description and measurement of project impact, effectiveness, and structure and mechanisms for delivery of services; frequency of evaluations

(1) The Commissioner shall provide, directly or through grants or contracts, for the evaluation of projects assisted under this subchapter including evaluations that describe and measure the impact of such projects, their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such projects. Evaluations shall be conducted by persons not directly involved in the administration of the program or project evaluated.

(2) The projects assisted under this subchapter shall be evaluated in accordance with this section not less frequently than at 3-year intervals.

(b) General standards for evaluation

Prior to obligating funds for the programs and projects covered by this subchapter with respect to fiscal year 1976, the Commissioner shall develop and publish general standards for evaluation of program and project effectiveness in achieving the objectives of this subchapter. The extent to which such standards have been met shall be considered in deciding whether to renew or supplement financial assistance authorized under this subchapter.

(c) Independent evaluations

In carrying out evaluations under this subchapter, the Commissioner may require agencies which receive assistance under this subchapter to provide for independent evaluations.

(d) Specificity of views

In carrying out evaluations under this subchapter, the Commissioner shall, whenever feasible, arrange to obtain the specific views of persons participating in and served by programs and projects assisted under this subchapter about such programs and projects.

(e) Publication of results; submission to Congress

The Commissioner shall publish the results of evaluative research and summaries of evaluations of program and project impact and effectiveness not later than ninety days after the completion thereof. The Commissioner shall submit to the appropriate committees of the Congress copies of all such research studies and evaluation summaries.

(f) Evaluation results as United States property

The Commissioner shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with assistance under this subchapter shall become the property of the United States.

(Pub. L. 88–452, title VIII, § 811, formerly § 810, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2326; renumbered § 811, Pub. L. 100–175, title V, § 502(3), Nov. 29, 1987, 101 Stat. 973; amended Pub. L. 102–375, title VIII, § 822(11), Sept. 30, 1992, 106 Stat. 1298.)

PRIOR PROVISIONS

A prior section 2992, Pub. L. 88–452, title VIII, § 810, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722, related to authority to establish full-time programs, prior to repeal by Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417.

A prior section 811 of Pub. L. 88–452 was renumbered section 812 and is classified to section 2992a of this title.

Another prior section 811 of Pub. L. 88–452, title VIII, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 723; amended Pub. L. 92–424, § 26(b), Sept. 19, 1972, 86 Stat. 703, related to terms of service and was classified to section 2992a of this title, prior to repeal by Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–375 substituted ''Commissioner'' for ''Secretary'', designated existing provisions as par. (1), and added par. (2).

Subsecs. (b) to (f). Pub. L. 102–375, § 822(11)(A), substituted ''Commissioner'' for ''Secretary'' wherever appearing.

§ 2992–1. Annual report

The Secretary shall, not later than January 31 of each year, prepare and transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives an annual report on the social and economic conditions of American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives, together with such recommendations to Congress as the Secretary considers to be appropriate.

(Pub. L. 88–452, title VIII, § 811A, as added Pub. L. 102–375, title VIII, § 822(12), Sept. 30, 1992, 106 Stat. 1299.)

§ 2992a. Labor standards

All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting or decorating, of buildings or other facilities in connection with projects assisted under this subchapter, shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950, and section 3145 of title 40.

(Pub. L. 88–452, title VIII, § 812, formerly § 811, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2327; renumbered § 812, Pub. L. 100–175, title V, § 502(3), Nov. 29, 1987, 101 Stat. 973.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is Reorg. Plan No. 14 of 1950, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 1, 1934'', meaning section 2 of the Act of June 13, 1934, on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 2992a, Pub. L. 88–452, title VIII, § 811, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 723; amended Pub. L. 92–424, § 26(b), Sept. 19, 1972, 86 Stat. 703, related to terms of service, providing in: subsec. (a) for commitment to full-time service; subsec. (b) for one-year enrollment and shorter enrollment for volunteer associates; and subsec. (c) for oath or affirmation, prior to repeal by Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417.

A prior section 812 of Pub. L. 88–452 was renumbered section 813 and is classified to section 2992b of this title.

Another prior section 812 of Pub. L. 88–452, title VIII, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 723, related to support of full-time volunteers and was classified to section 2992b of this title, prior to repeal by Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417.

§ 2992a–1. Staff

In all personnel actions of the Administration, preference shall be given to individuals who are eligible for assistance under this subchapter. Such preference shall be implemented in the same fashion as the preference given to veterans referred to in section 2108(3)(C) of title 5. The Commissioner shall take such additional actions as may be necessary to promote recruitment of such individuals for employment in the Administration.

(Pub. L. 88–452, title VIII, § 812A, as added Pub. L. 102–375, title VIII, § 822(13), Sept. 30, 1992, 106 Stat. 1299.)

§ 2992b. Administration

Nothing in this subchapter shall be construed to prohibit interagency funding agreements made between the Administration and other agencies of the Federal Government for the development and implementation of specific grants or projects.

(Pub. L. 88–452, title VIII, § 813, as added Pub. L. 102–375, title VIII, § 822(14), Sept. 30, 1992, 106 Stat. 1299.)

PRIOR PROVISIONS

A prior section 2992b, Pub. L. 88–452, title VIII, § 813, formerly § 812, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2327; amended Pub. L. 95–568, § 17(a)(41), Nov. 2, 1978, 92 Stat. 2443; Pub. L. 98–558, title X, § 1003, Oct. 30, 1984, 98 Stat. 2905; renumbered § 813, Pub. L. 100–175, title V, § 502(3), Nov. 29, 1987, 101 Stat. 973, related to administration, delegation of authority, and interagency funding agreements, prior to repeal by Pub. L. 102–375, title VIII, § 822(14), Sept. 30, 1992, 106 Stat. 1299.

Another prior section 2992b, Pub. L. 88–452, title VIII, § 812, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 723, related to support of full-time volunteers, providing in: subsec. (a) for stipend and allowances; subsec. (b) for payment upon completion of term and advancement of accrued stipend; and subsec. (c) for counseling, prior to repeal by Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417.

A prior section 813 of Pub. L. 88–452 was renumbered section 815 and is classified to section 2992c of this title.

§ 2992b–1. Additional requirements applicable to rulemaking

(a) In general

Notwithstanding subsection (a) of section 553 of title 5, and except as otherwise provided in this section, such section 553 shall apply with respect to the establishment and general operation of any program that provides loans, grants, benefits, or contracts authorized by this subchapter.

(b) Interpretative rule or general statement of policy; waiver of notice and public procedure regarding any other rule

(1) Subparagraph (A) of the last sentence of section 553(b) of title 5 shall not apply with respect to any interpretative rule or general statement of policy—

(A) proposed under this subchapter; or

(B) applicable exclusively to any program, project, or activity authorized by, or carried out under, this subchapter.

(2) Subparagraph (B) of the last sentence of section 553(b) of title 5, shall not apply with respect to any rule (other than an interpretative rule or a general statement of policy)—

(A) proposed under this subchapter; or

(B) applicable exclusively to any program, project, or activity authorized by, or carried out under, this subchapter.

(3) The first 2 sentences of section 553(b) of title 5 shall apply with respect to any rule (other than an interpretative rule, a general statement of policy, or a rule of agency organization, procedure, or practice) that is—

(A) proposed under this subchapter; or

(B) applicable exclusively to any program, project, or activity authorized by, or carried out under, this subchapter;

unless the Secretary for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in such rule) that notice and public procedure thereon are contrary to the public interest or would impair the effective administration of any program, project, or activity with respect to which such rule is issued.

(c) Effective date of rule or general statement of policy

Notwithstanding section 553(d) of title 5, no rule (including an interpretative rule) or general statement of policy that—

(1) is issued to carry out this subchapter; or

(2) applies exclusively to any program, project, or activity authorized by, or carried out under, this subchapter;

may take effect until 30 days after the publication required under the first 2 sentences of section 553(b) of title 5.

(d) Statutory citation required

Each rule (including an interpretative rule) and each general statement of policy to which this section applies shall contain after each of its sections, paragraphs, or similar textual units a citation to the particular provision of statutory or other law that is the legal authority for such section, paragraph, or unit.

(e) Rule or general statement of policy necessary as result of legislation; time for issuance

Except as provided in subsection (c) of this section, if as a result of the enactment of any law affecting the administration of this subchapter it is necessary or appropriate for the Secretary to issue any rule (including any interpretative rule) or a general statement of policy, the Secretary shall issue such rule or such general statement of policy not later than 180 days after the date of the enactment of such law.

(f) Copy of rule or general statement of policy to Congressional leaders

Whenever an agency publishes in the Federal Register a rule (including an interpretative rule) or a general statement of policy to which subsection (c) of this section applies, such agency shall transmit a copy of such rule or such general statement of policy to the Speaker of the House of Representatives and the President pro tempore of the Senate.

(Pub. L. 88–452, title VIII, § 814, as added Pub. L. 100–175, title V, § 503(a), Nov. 29, 1987, 101 Stat. 974.)

PRIOR PROVISIONS

A prior section 814 of Pub. L. 88–452 was renumbered section 816 and is classified to section 2992d of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1987, see section 701(a) of Pub. L. 100–175, set out as an Effective Date of 1987 Amendment note under section 3001 of this title.

§ 2992c. Definitions

As used in this subchapter, the term—

(1) ''average'' means the aggregate number of hours of instruction through the use of a Native American language to all students enrolled in a native language immersion program during a school year divided by the total number of students enrolled in the immersion program;

(2) ''financial assistance'' includes assistance advanced by grant, agreement, or contract, but does not include the procurement of plant or equipment, or goods or services;

(3) ''Indian reservation or Alaska Native village'' includes the reservation of any federally or State recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, and community

under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands or lands subject to a restriction against alienation imposed by the United States or a State, and any lands of or under the jurisdiction of an Alaska Native village or group, including any lands selected by Alaska Natives or Alaska Native organizations under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.];

(4) ''Native Hawaiian'' means any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778;

(5) the term ''rule'' has the meaning given it in section 551(4) of title 5, as amended from time to time;

(6) ''Secretary'' means the Secretary of Health and Human Services; and

(7) the term ''Native American Pacific Islander'' means an individual who is indigenous to a United States territory or possession located in the Pacific Ocean, and includes such individual while residing in the United States.

(Pub. L. 88–452, title VIII, § 815, formerly § 813, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2327; amended Pub. L. 98–558, title X, § 1004, Oct. 30, 1984, 98 Stat. 2906; renumbered § 815 and amended Pub. L. 100–175, title V, §§ 502(2), 503(b), Nov. 29, 1987, 101 Stat. 973, 975; Pub. L. 102–375, title VIII, § 822(21), Sept. 30, 1992, 106 Stat. 1300; Pub. L. 102–497, § 9(b), Oct. 24, 1992, 106 Stat. 3257; Pub. L. 103–171, § 5(6), Dec. 2, 1993, 107 Stat. 1992; Pub. L. 109–394, § 3, Dec. 14, 2006, 120 Stat. 2707.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (3), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

2006—Pub. L. 109–394 added par. (1) and redesignated former pars. (1) to (6) as (2) to (7), respectively.

1993—Par. (2). Pub. L. 103–171, § 5(6)(A), substituted ''selected by Alaska Natives'' for ''selected by Alaskan Natives''.

Par. (4). Pub. L. 103–171, § 5(6)(B), inserted semicolon at end.

1992—Par. (2). Pub. L. 102–375 substituted ''Alaska Native village'' for ''Alaskan Native village'' in two places and ''Alaska Native organizations'' for ''Alaskan Native organizations''.

Par. (6). Pub. L. 102–497 added par. (6).

1987—Pars. (4), (5). Pub. L. 100–175, § 503(b), added par. (4) and redesignated former par. (4) as (5).

1984—Par. (4). Pub. L. 98–558 added par. (4).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, see section 701(a) of Pub. L. 100–175, set out as a note under section 3001 of this title.

§ 2992d. Authorization of appropriations

(a) There are authorized to be appropriated for the purpose of carrying out the provisions of this subchapter (other than sections 2991b(d), 2991b–1, 2991b–3 of this title, subsection (e)[1] of this section, and any other provision of this subchapter for which there is an express authorization of appropriations), such sums as may be necessary for each of fiscal years 1999, 2000, 2001, and 2002.

(b) Not less than 90 per centum of the funds made available to carry out the provisions of this subchapter (other than sections 2991b(d), 2991b–1, 2991b–3, 2991c of this title, subsection (e)[1] of this section, and any other provision of this subchapter for which there is an express authorization of appropriations) for a fiscal year shall be expended to carry out section 2991b(a) of this title for such fiscal year.

(c) There is authorized to be appropriated $8,000,000 for each of fiscal years 1999, 2000, 2001, and 2002, for the purpose of carrying out the provisions of section 2991b(d) of this title.

(d)(1) For fiscal year 1994, there are authorized to be appropriated such sums as may be necessary for the purpose of—

(A) establishing demonstration projects to conduct research related to Native American studies and Indian policy development; and

(B) continuing the development of a detailed plan, based in part on the results of the projects, for the establishment of a National Center for Native American Studies and Indian Policy Development.

(2) Such a plan shall be delivered to the Congress not later than 30 days after September 30, 1992.

(e) There are authorized to be appropriated to carry out section 2991b–3 of this title such sums as may be necessary for each of fiscal years 2008, 2009, 2010, 2011, and 2012.

(Pub. L. 88–452, title VIII, § 816, formerly § 814, as added Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2327; amended Pub. L. 95–568, § 15, Nov. 2, 1978, 92 Stat. 2439; Pub. L. 98–558, title X, § 1005, Oct. 30, 1984, 98 Stat. 2906; renumbered § 816 and amended Pub. L. 100–175, title V, §§ 502(2), 505, 506(b), Nov. 29, 1987, 101 Stat. 973, 975, 978; Pub. L. 100–581, title II, § 215, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101–408, § 3, Oct. 4, 1990, 104 Stat. 883; Pub. L. 102–375, title VIII, § 822(15)–(20), Sept. 30, 1992, 106 Stat. 1299; Pub. L. 102–497, § 9(c), Oct. 24, 1992, 106 Stat. 3258; Pub. L. 102–524, § 3, Oct. 26, 1992, 106 Stat. 3437; Pub. L. 103–171, § 5(6), Dec. 2, 1993, 107 Stat. 1992; Pub. L. 105–361, § 2, Nov. 10, 1998, 112 Stat. 3278; Pub. L. 109–394, § 4, Dec. 14, 2006, 120 Stat. 2707.)

REFERENCES IN TEXT

Subsection (e) of this section, referred to in subsecs. (a) and (b), was redesignated subsec. (d) of this section by Pub. L. 103–171, § 5(6)(D), Dec. 2, 1993, 107 Stat. 1992.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–394 substituted ''2008, 2009, 2010, 2011, and 2012'' for ''1999, 2000, 2001, and 2002''.

1998—Subsec. (a). Pub. L. 105–361, § 2(1), substituted ''for each of fiscal years 1999, 2000, 2001, and 2002.'' for ''for fiscal years 1992, 1993, 1994, and 1995.''

Subsec. (c). Pub. L. 105–361, § 2(2), substituted ''for each of fiscal years 1999, 2000, 2001, and 2002,'' for ''for each of the fiscal years 1992, 1993, 1994, 1995, and 1996,''.

Subsec. (e). Pub. L. 105–361, § 2(3), substituted ''such sums as may be necessary for each of fiscal years 1999, 2000, 2001, and 2002.'' for '', $2,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, 1996, and 1997.''

1993—Subsecs. (a), (b). Pub. L. 103–171, § 5(6)(A), substituted ''2991b–1,'' for ''2991b–1''.

[1] See References in Text note below.

Subsec. (c). Pub. L. 103–171, § 5(6)(B), substituted ''is'' for ''are''.

Subsec. (d). Pub. L. 103–171, § 5(6)(D), redesignated subsec. (e) as (d).

Subsec. (e). Pub. L. 103–171, § 5(6)(D), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Pub. L. 103–171, § 5(6)(C), substituted ''fiscal year 1994'' for ''fiscal years 1992 and 1993''.

Subsec. (f). Pub. L. 103–171, § 5(6)(D), redesignated subsec. (f) as (e).

1992—Subsec. (a). Pub. L. 102–524, § 3(1), inserted reference to section 2991b–3 of this title.

Pub. L. 102–375, § 822(15), substituted '', 2991b–1 of this title, subsection (e) of this section, and any other provision of this subchapter for which there is an express authorization of appropriations'' for ''and 2991b–1 of this title'' and ''1992, 1993, 1994, and 1995'' for ''1988, 1989, 1990, and 1991''.

Subsec. (b). Pub. L. 102–524, § 3(1), inserted reference to section 2991b–3 of this title.

Pub. L. 102–375, § 822(16), substituted '', 2991b–1, 2991c of this title, subsection (e) of this section, and any other provision of this subchapter for which there is an express authorization of appropriations'' for ''and 2991b–1 of this title''.

Subsec. (c). Pub. L. 102–497 redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''There are authorized to be appropriated $500,000 for each of the fiscal years 1992, 1993, 1994, and 1995 for the purpose of providing financial assistance to other Native American Pacific Islanders (including American Samoan Natives) under section 2991b(a) of this title.''

Pub. L. 102–375, § 822(17), (18), redesignated par. (1) as subsec. (c), substituted ''There are'' for ''Except as provided in paragraph (2), there are'', substituted ''1992, 1993, 1994, and 1995'' for ''1988, 1989, 1990, and 1991'', and struck out par. (2) which read as follows: ''No funds may be appropriated under paragraph (1) for a fiscal year unless the amount appropriated under subsection (a) of this section for such fiscal year exceeds 105 percent of the amount appropriated under subsection (a) of this section for fiscal year 1987.''

Subsec. (d). Pub. L. 102–497, § 9(c)(2), redesignated subsec. (d) as (c).

Pub. L. 102–375, § 822(19), struck out ''1991,'' before ''1992,''.

Subsec. (e). Pub. L. 102–375, § 822(20), added subsec. (e).

Subsec. (f). Pub. L. 102–524, § 3(2), added subsec. (f).

1990—Subsecs. (a), (b). Pub. L. 101–408, § 3(1), inserted reference to section 2991b(d).

Subsec. (d). Pub. L. 101–408, § 3(2), added subsec. (d).

1988—Subsec. (c)(2). Pub. L. 100–581 substituted ''fiscal year 1987'' for ''the preceding fiscal year''.

1987—Subsec. (a). Pub. L. 100–175, § 506(b), inserted ''(other than section 2991b–1 of this title)'' after ''this subchapter''.

Pub. L. 100–175, § 505(1), substituted ''1988, 1989, 1990, and 1991'' for ''1979 through 1986''.

Subsec. (b). Pub. L. 100–175, § 506(b), inserted ''(other than section 2991b–1 of this title)'' after ''this subchapter''.

Subsec. (c). Pub. L. 100–175, § 505(2), added subsec. (c).

1984—Pub. L. 98–558 designated existing provisions as subsec. (a), substituted ''1986'' for ''1981'', and added subsec. (b).

1978—Pub. L. 95–568 substituted appropriations authorization for fiscal years 1979 through 1981 for prior such authorization for fiscal years 1975 through 1977.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 505 of Pub. L. 100–175 effective Oct. 1, 1987, and amendment by section 506(b) of Pub. L. 100–175 effective upon expiration of 90-day period beginning Nov. 29, 1987, see section 701(a), (c) of Pub. L. 100–175, set out as a note under section 3001 of this title.

§§ 2993 to 2993b. Repealed. Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417

Section 2993, Pub. L. 88–452, title VIII, § 820, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 724; amended Pub. L. 92–424, § 26(c), Sept. 19, 1972, 86 Stat. 703, related to community service programs, providing in: subsec. (a) for term of service and range of activities; subsec. (b) for support and allowances; and subsec. (c) for allowance of service as non-Federal contribution.

Section 2993a, Pub. L. 88–452, title VIII, § 821, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 724; amended Pub. L. 92–424, § 26(d), Sept. 19, 1972, 86 Stat. 703, related to special volunteer programs.

Section 2993b, Pub. L. 88–452, title VIII, § 822, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 724, related to demonstration projects to help young adult criminal offenders.

Such former provisions are covered by various sections as follows:

Former Sections	*Present Sections*
2993(a)	See 4992(a)
2993(b)	See 4974(c)
2993(c)	Repealed
2993a	4973(a), 4992(a)
2993b	Repealed

§§ 2994 to 2994d. Repealed. Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417

Section 2994, Pub. L. 88–452, title VIII, § 831, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 725, related to coordination with other programs.

Section 2994a, Pub. L. 88–452, title VIII, § 832, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 725, related to participation of older persons.

Section 2994b, Pub. L. 88–452, title VIII, § 833, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 726; amended Pub. L. 90–623, § 5(b), Oct. 22, 1968, 82 Stat. 1315; Pub. L. 91–177, title I, § 112(b), Dec. 30, 1969, 83 Stat. 832; Pub. L. 92–424, § 3(d)(3), Sept. 19, 1972, 86 Stat. 689, related to application of Federal law.

Section 2994c, Pub. L. 88–452, title VIII, § 834, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 726, related to special limitations.

Section 2994d, Pub. L. 88–452, title VIII, § 835, as added Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 726; amended Pub. L. 91–177, title I, § 101(b), Dec. 30, 1969, 83 Stat. 827; Pub. L. 92–424, § 2(a), Sept. 19, 1972, 86 Stat. 688, related to duration of program.

Such former provisions are covered by various sections as follows:

Former Sections	*Present Sections*
2994	5050
2994a	4957
2994b(a)	5055(a)
2994b(b)(1), (2)	5055(b)(1) to (3)
2994b(c)(1), (2)	5055(c)(1), (2)
2994c	5044
2994d	5053

SUBCHAPTER IX—EVALUATION

§§ 2995 to 2995c. Repealed. Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519

Section 2995, Pub. L. 88–452, title IX, § 901, as added Pub. L. 92–424, § 27(a), Sept. 19, 1972, 86 Stat. 704; amended Pub. L. 93–644, § 12, Jan. 4, 1975, 88 Stat. 2328; Pub. L. 95–568, § 17(a)(42), Nov. 2, 1978, 92 Stat. 2443, related to program and project evaluation.

Section 2995a, Pub. L. 88–452, title IX, § 902, as added Pub. L. 92–424, § 27(a), Sept. 19, 1972, 86 Stat. 704; amended Pub. L. 93–644, § 12, Jan. 4, 1975, 88 Stat. 2329; Pub. L. 95–568, § 17(a)(43), Nov. 2, 1978, 92 Stat. 2443, related to cooperation and consultation with other Federal agencies.

Section 2995b, Pub. L. 88–452, title IX, § 903, as added Pub. L. 92–424, § 27(a), Sept. 19, 1972, 86 Stat. 704; amended Pub. L. 93–644, § 12, Jan. 4, 1975, 88 Stat. 2329, related to evaluation by other Federal agencies.

Section 2995c, Pub. L. 88–452, title IX, § 904, as added Pub. L. 95–568, § 16, Nov. 2, 1978, 92 Stat. 2439, set forth authorization of appropriations.

A prior section 2995c, Pub. L. 88–452, title IX, § 904, as added Pub. L. 92–424, § 27(a), Sept. 19, 1972, 86 Stat. 705, which provided for the publication of summaries of evaluations of the results of research, was omitted as superseded in the general reorganization and amendment of this subchapter by Pub. L. 93–644, § 12, Jan. 4, 1975, 88 Stat. 2327.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 9912(a) of this title, prior to the general amendment of chapter 106 (§ 9901 et seq.) of this title by Pub. L. 105–285.

§ 2995d. Omitted

CODIFICATION

Section, Pub. L. 88–452, title IX, § 905, as added Pub. L. 92–424, § 27(a), Sept. 19, 1972, 86 Stat. 705, allowed head of any agency administering a program authorized under this chapter to conduct evaluations and take other action to same extent as Director under this subchapter, prior to the general amendment of this subchapter by Pub. L. 93–644, § 12, Jan. 4, 1975, 88 Stat. 2327.

SUBCHAPTER X—LEGAL SERVICES CORPORATION

§ 2996. Congressional findings and declaration of purpose

The Congress finds and declares that—

(1) there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;

(2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program;

(3) providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this chapter;

(4) for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws;

(5) to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures; and

(6) attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession.

(Pub. L. 88–452, title X, § 1001, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 378; amended Pub. L. 95–222, § 2, Dec. 28, 1977, 91 Stat. 1619.)

AMENDMENTS

1977—Par. (3). Pub. L. 95–222 inserted provision relating to assistance in improving opportunities for low-income persons consistent with this chapter.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 17(b) of Pub. L. 95–222 provided that: ''The amendments made by provisions of this Act other than sections 11 and 15 [amending this section and sections 2996c, 2996e, 2996f, 2996g, 2996h, 2996i, and 2996j of this title] shall be effective on the date of enactment of this Act [Dec. 28, 1977].''

SHORT TITLE

This subchapter is known as the ''Legal Services Corporation Act'', see Short Title note set out under section 2701 of this title.

§ 2996a. Definitions

As used in this subchapter, the term—

(1) ''Board'' means the Board of Directors of the Legal Services Corporation;

(2) ''Corporation'' means the Legal Services Corporation established under this subchapter;

(3) ''eligible client'' means any person financially unable to afford legal assistance;

(4) ''Governor'' means the chief executive officer of a State;

(5) ''legal assistance'' means the provision of any legal services consistent with the purposes and provisions of this subchapter;

(6) ''recipient'' means any grantee, contractee, or recipient of financial assistance described in clause (A) of section 2996e(a)(1) of this title;

(7) ''staff attorney'' means an attorney who receives more than one-half of his annual professional income from a recipient organized solely for the provision of legal assistance to eligible clients under this subchapter; and

(8) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 88–452, title X, § 1002, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 378.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 2996b. Legal Services Corporation

(a) Establishment; purpose

There is established in the District of Columbia a private nonmembership nonprofit corporation, which shall be known as the Legal Services Corporation, for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.

(b) Principal office; agent for service of process

The Corporation shall maintain its principal office in the District of Columbia and shall maintain therein a designated agent to accept service of process for the Corporation. Notice to or service upon the agent shall be deemed notice to or service upon the Corporation.

(c) Status of Corporation under tax laws

The Corporation, and any legal assistance program assisted by the Corporation, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of title 26 and as an organization described in section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26. If such treatments are conferred in accordance with the provisions of title 26, the Corporation, and legal assistance programs assisted by the Corporation, shall be subject to all provisions of title 26 relevant to the conduct of organizations exempt from taxation.

(Pub. L. 88–452, title X, § 1003, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 379; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

TRANSITION TO LEGAL SERVICES CORPORATION PROGRAM

Section 3(a)–(d)(1), (e) of Pub. L. 93–355 provided that:

''(a) Notwithstanding any other provision of law, effective ninety days after the date of the first meeting of the Board of Directors of the Legal Services Corporation established under the Legal Services Corporation Act (title X of the Economic Opportunity Act of 1964, as added by this Act) [this subchapter], the Legal Services Corporation shall succeed to all rights of the Federal Government to capital equipment in the possession of legal services programs or activities assisted pursuant to section 222(a)(3), 230, 232 [sections 2809(a)(3), 2823, and 2825 of this title], or any other provision of the Economic Opportunity Act of 1964 [this chapter].

''(b) Within ninety days after the first meeting of the Board, all assets, liabilities, obligations, property, and records as determined by the Director of the Office of Management and Budget, in consultation with the Director of the Office of Economic Opportunity [now the Director of the Office of Community Services] or the head of any successor authority, to be employed directly or held or used primarily, in connection with any function of the Director of the Office of Economic Opportunity or the head of any successor authority in carrying out legal services activities under the Economic Opportunity Act of 1964 [this chapter], shall be transferred to the Corporation. Personnel transferred to the Corporation from the Office of Economic Opportunity or any successor authority shall be transferred in accordance with applicable laws and regulations, and shall not be reduced in compensation for one year after such transfer, except for cause. The Director of the Office of Economic Opportunity or the head of any successor authority shall take whatever action is necessary and reasonable to seek suitable employment for personnel who do not transfer to the Corporation.

''(c) Collective-bargaining agreements in effect on the date of enactment of this Act [July 25, 1974], covering employees transferred to the Corporation shall continue to be recognized by the Corporation until the termination date of such agreements, or until mutually modified by the parties.

''(d)(1) Notwithstanding any other provision of law, the Director of the Office of Economic Opportunity [now the Director of the Office of Community Services] or the head of any successor authority shall take such action as may be necessary, in cooperation with the president of the Legal Services Corporation, including the provision (by grant or otherwise) of financial assistance to recipients and the Corporation and the furnishing of services and facilities to the Corporation—

''(A) to assist the Corporation in preparing to undertake, and in the initial undertaking of, its responsibilities under this title [this subchapter];

''(B) out of appropriations available to him, to make funds available to meet the organizational and administrative expenses of the Corporation;

''(C) within ninety days after the first meeting of the Board, to transfer to the Corporation all unexpended balances of funds appropriated for the purpose of carrying out legal services programs and activities under the Economic Opportunity Act of 1964 [this chapter] or successor authority; and

''(D) to arrange for the orderly continuation by such Corporation of financial assistance to legal services programs and activities assisted pursuant to the Economic Opportunity Act of 1964 [this chapter] or successor authority.

Whenever the Director of the Office of Economic Opportunity or the head of any successor authority determines that an obligation to provide financial assistance pursuant to any contract or grant for such legal services will extend beyond six months after the date of enactment of this Act [July 25, 1974], he shall include, in any such contract or grant, provisions to assure that the obligation to provide such financial assistance may be assumed by the Legal Services Corporation, subject to such modifications of the terms and conditions of such contract or grant as the Corporation determines to be necessary.

''(2) [Omitted. Provided for the repeal of section 2809(a)(3) of this title.]

''(e) There are authorized to be appropriated for the fiscal year ending June 30, 1975, such sums as may be necessary for carrying out this section.''

§ 2996c. Board of Directors

(a) Establishment; membership

The Corporation shall have a Board of Directors consisting of eleven voting members appointed by the President, by and with the advice and consent of the Senate, no more than six of whom shall be of the same political party. A majority shall be members of the bar of the highest court of any State, and none shall be a full-time employee of the United States. Effective with respect to appointments made after December 28, 1977, but not later than July 31, 1978, the membership of the Board shall be appointed so as to include eligible clients, and to be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public.

(b) Term of office

The term of office of each member of the Board shall be three years, except that five of the members first appointed, as designated by the President at the time of appointment, shall serve for a term of two years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified. The term of initial members shall be computed from the date of the first meeting of the Board. The term of each member other than initial members shall be computed from the date of termination of the preceding term. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(c) Board members not deemed officers or employees of United States

The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States.

(d) Chairman

The President shall select from among the voting members of the Board a chairman, who shall serve for a term of three years. Thereafter the Board shall annually elect a chairman from among its voting members.

(e) Removal

A member of the Board may be removed by a vote of seven members for malfeasance in office or for persistent neglect of or inability to discharge duties, or for offenses involving moral turpitude, and for no other cause.

(f) State advisory councils

Within six months after the first meeting of the Board, the Board shall request the Governor of each State to appoint a nine-member advisory council for such State. A majority of the members of the advisory council shall be appointed, after recommendations have been received from the State bar association, from among the attorneys admitted to practice in the State, and the membership of the council shall be subject to annual reappointment. If ninety days have elapsed without such an advisory council appointed by the Governor, the Board is authorized to appoint such a council. The advisory council shall be charged with notifying the Corporation of any apparent violation of the provisions of this subchapter and applicable rules, regulations, and guidelines promulgated pursuant to this subchapter. The advisory council shall, at the same time, furnish a copy of the notification to any recipient affected thereby, and the Corporation shall allow such recipient a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notification.

(g) Open meetings; applicability of Government in the Sunshine provisions

All meetings of the Board, of any executive committee of the Board, and of any advisory council established in connection with this subchapter shall be open and shall be subject to the requirements and provisions of section 552b of title 5 (relating to open meetings).

(h) Quarterly meetings

The Board shall meet at least four times during each calendar year.

(Pub. L. 88–452, title X, § 1004, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 379; amended Pub. L. 95–222, §§ 3, 4, Dec. 28, 1977, 91 Stat. 1619.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–222, § 3, inserted provision relating to appointments made after Dec. 28, 1977.

Subsec. (g). Pub. L. 95–222, § 4, substituted provisions relating to applicability of section 552b of title 5, for provisions setting forth requirements respecting availability of minutes of public meetings.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

COMPENSATION OF MEMBERS OF BOARD OF DIRECTORS

Pub. L. 97–377, title I, § 101(d), Dec. 21, 1982, 96 Stat. 1876, provided: ''That no member of the Board of Directors of the Legal Services Corporation shall be compensated for his services to the Corporation except for the payment of an attendance fee at meetings of the Board at a rate not to exceed the highest daily rate for grade fifteen (15) of the General Schedule and necessary travel expenses to attend Board meetings in accordance with the Standard Government Travel Regulations.''

§ 2996d. Officers and employees

(a) Appointment of president; outside compensation of officers prohibited; terms

The Board shall appoint the president of the Corporation, who shall be a member of the bar of the highest court of a State and shall be a non-voting ex officio member of the Board, and such other officers as the Board determines to be necessary. No officer of the Corporation may receive any salary or other compensation for services from any source other than the Corporation during his period of employment by the Corporation, except as authorized by the Board. All officers shall serve at the pleasure of the Board.

(b) Power of president to appoint and remove employees; nonpartisan appointments

(1) The president of the Corporation, subject to general policies established by the Board, may appoint and remove such employees of the Corporation as he determines necessary to carry out the purposes of the Corporation.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Corporation or of any recipient, or in selecting or monitoring any grantee, contractor, or person or entity receiving financial assistance under this subchapter.

(c) Conflict of interest

No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years.

(d) Compensation

Officers and employees of the Corporation shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5.

(e) Officers and employees not deemed officers and employees of Federal Government; Corporation not deemed a department, agency, or instrumentality of Federal Government; review of annual budget

(1) Except as otherwise specifically provided in this subchapter, officers and employees of the Corporation shall not be considered officers or employees, and the Corporation shall not be considered a department, agency, or instrumentality, of the Federal Government.

(2) Nothing in this subchapter shall be construed as limiting the authority of the Office of Management and Budget to review and submit comments upon the Corporation's annual budget request at the time it is transmitted to the Congress.

(f) Exceptions

Officers and employees of the Corporation shall be considered officers and employees of the Federal Government for purposes of the following provisions of title 5: subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Corporation shall make contributions at the same rates applicable to agencies of the Federal Government under the provisions referred to in this subsection.

(g) Freedom of information

The Corporation and its officers and employees shall be subject to the provisions of section 552 of title 5 (relating to freedom of information).

(Pub. L. 88–452, title X, § 1005, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 380.)

REIMBURSEMENT OF OFFICERS OR EMPLOYEES

Pub. L. 97–377, title I, § 101(d), Dec. 21, 1982, 96 Stat. 1876, provided: ''That no officer or employee of the Legal Services Corporation or a recipient program shall be reimbursed for membership in a private club, or be paid severance pay in excess of what would be paid a Federal employee for comparable service.''

§ 2996e. Powers, duties, and limitations

(a) Powers of nonprofit corporation; additional powers

To the extent consistent with the provisions of this subchapter, the Corporation shall exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (except for section 1005(*o*) of title 29 of the District of Columbia Code). In addition, the Corporation is authorized—

(1)(A) to provide financial assistance to qualified programs furnishing legal assistance to eligible clients, and to make grants to and contracts with—

(i) individuals, partnerships, firms, corporations, and nonprofit organizations, and

(ii) State and local governments (only upon application by an appropriate State or local agency or institution and upon a special determination by the Board that the arrangements to be made by such agency or institution will provide services which will not be provided adequately through non-governmental arrangements),

for the purpose of providing legal assistance to eligible clients under this subchapter, and (B) to make such other grants and contracts as are necessary to carry out the purposes and provisions of this subchapter;

(2) to accept in the name of the Corporation, and employ or dispose of in furtherance of the purposes of this subchapter, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise; and

(3) to undertake directly, or by grant or contract, the following activities relating to the delivery of legal assistance—

(A) research, except that broad general legal or policy research unrelated to representation of eligible clients may not be undertaken by grant or contract,

(B) training and technical assistance, and

(C) to serve as a clearinghouse for information.

(b) Disciplinary powers; representational questions; interference with professional responsibilities of attorneys; bar membership; restrictions; languages other than English

(1)(A) The Corporation shall have authority to insure the compliance of recipients and their employees with the provisions of this subchapter and the rules, regulations, and guidelines promulgated pursuant to this subchapter, and to terminate, after a hearing in accordance with section 2996j of this title, financial support to a recipient which fails to comply.

(B) No question of whether representation is authorized under this subchapter, or the rules, regulations or guidelines promulgated pursuant to this subchapter, shall be considered in, or affect the final disposition of, any proceeding in which a person is represented by a recipient or an employee of a recipient. A litigant in such a proceeding may refer any such question to the Corporation which shall review and dispose of the question promptly, and take appropriate action. This subparagraph shall not preclude judicial review available under applicable law.

(2) If a recipient finds that any of its employees has violated or caused the recipient to violate the provisions of this subchapter or the rules, regulations, and guidelines promulgated pursuant to this subchapter, the recipient shall take appropriate remedial or disciplinary action in accordance with the types of procedures prescribed in the provisions of section 2996j of this title.

(3) The Corporation shall not, under any provision of this subchapter, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association (referred to collectively in this subchapter as ''professional responsibilities'') or abrogate as to attorneys in programs assisted under this subchapter the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction. The Corporation shall ensure that activities under this subchapter are carried out in a manner consistent with attorneys' professional responsibilities.

(4) No attorney shall receive any compensation, either directly or indirectly, for the provision of legal assistance under this subchapter unless such attorney is admitted or otherwise authorized by law, rule, or regulation to practice law or provide such assistance in the jurisdiction where such assistance is initiated.

(5) The Corporation shall insure that (A) no employee of the Corporation or of any recipient (except as permitted by law in connection with such employee's own employment situation), while carrying out legal assistance activities under this subchapter, engage in, or encourage others to engage in, any public demonstration or picketing, boycott, or strike; and (B) no such employee shall, at any time, engage in, or encourage others to engage in, any of the following activities: (i) any rioting or civil disturbance, (ii) any activity which is in violation of an outstanding injunction of any court of competent jurisdiction, (iii) any other illegal activity, or (iv) any intentional identification of the Corporation or any recipient with any political activity prohibited by section 2996f(a)(6) of this title. The Board, within ninety days after its first meeting, shall issue rules and regulations to provide for the enforcement of this paragraph and section 2996f(a)(5) of this title, which rules shall include, among available remedies, provisions, in accordance with the types of proce-

dures prescribed in the provisions of section 2996j of this title, for suspension of legal assistance supported under this subchapter, suspension of an employee of the Corporation or of any employee of any recipient by such recipient, and, after consideration of other remedial measures and after a hearing in accordance with section 2996j of this title, the termination of such assistance or employment, as deemed appropriate for the violation in question.

(6) In areas where significant numbers of eligible clients speak a language other than English as their principal language, the Corporation shall, to the extent feasible, provide that their principal language is used in the provision of legal assistance to such clients under this subchapter.

(c) Participation in litigation; lobbying activities

The Corporation shall not itself—

(1) participate in litigation unless the Corporation or a recipient of the Corporation is a party, or a recipient is representing an eligible client in litigation in which the interpretation of this subchapter or a regulation promulgated under this subchapter is an issue, and shall not participate on behalf of any client other than itself; or

(2) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, except that personnel of the Corporation may testify or make other appropriate communication (A) when formally requested to do so by a legislative body, a committee, or a member thereof, or (B) in connection with legislation or appropriations directly affecting the activities of the Corporation.

(d) Miscellaneous prohibitions

(1) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment for use in advocating or opposing any ballot measures, initiatives, or referendums. However, an attorney may provide legal advice and representation as an attorney to any eligible client with respect to such client's legal rights.

(5) No class action suit, class action appeal, or amicus curiae class action may be undertaken, directly or through others, by a staff attorney, except with the express approval of a project director of a recipient in accordance with policies established by the governing body of such recipient.

(6) Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

(e) Political activities of Corporation employees and staff attorneys

(1) Employees of the Corporation or of recipients shall not at any time intentionally identify the Corporation or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

(2) Employees of the Corporation and staff attorneys shall be deemed to be State or local employees for purposes of chapter 15 of title 5, except that no staff attorney may be a candidate in a partisan political election.

(f) Harassment; malicious abuse of legal process

If an action is commenced by the Corporation or by a recipient and a final order is entered in favor of the defendant and against the Corporation or a recipient's plaintiff, the court shall, upon motion by the defendant and upon a finding by the court that the action was commenced or pursued for the sole purpose of harassment of the defendant or that the Corporation or a recipient's plaintiff maliciously abused legal process, enter an order (which shall be appealable before being made final) awarding reasonable costs and legal fees incurred by the defendant in defense of the action, except when in contravention of a State law, a rule of court, or a statute of general applicability. Any such costs and fees shall be directly paid by the Corporation.

(Pub. L. 88–452, title X, § 1006, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 381; amended Pub. L. 95–222, §§ 5(a), (b), 6, 7(a), 8, Dec. 28, 1977, 91 Stat. 1619, 1620.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95–222, § 5(a), (b), substituted ", or" for "and not" and in par. (A) inserted exception for broad general legal or policy research.

Subsec. (b)(1). Pub. L. 95–222, § 6(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(1). Pub. L. 95–222, § 6(b), inserted provisions setting forth situations when the Corporation may participate in litigation.

Subsec. (d)(6). Pub. L. 95–222, § 6(c), added par. (6).

Subsec. (e)(2). Pub. L. 95–222, § 7(a), inserted provisions relating to staff attorneys.

Subsec. (f). Pub. L. 95–222, § 8, substituted "the court shall" for "the court may".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

§ 2996f. Grants and contracts

(a) Requisites

With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this subchapter, the Corporation shall—

(1) insure the maintenance of the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to eligible clients;

(2)(A) establish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several States, maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for individuals eligible for legal assistance under this subchapter;

(B) establish guidelines to insure that eligibility of clients will be determined by recipients on the basis of factors which include—

(i) the liquid assets and income level of the client,

(ii) the fixed debts, medical expenses, and other factors which affect the client's ability to pay,

(iii) the cost of living in the locality, and

(iv) such other factors as relate to financial inability to afford legal assistance, which may include evidence of a prior determination that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and

(C) insure that (i) recipients, consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance (including such outreach, training, and support services as may be necessary), including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems (including elderly and handicapped individuals); and (ii) appropriate training and support services are provided in order to provide such assistance to such significant segments of the population of eligible clients;

(3) insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas;

(4) insure that attorneys employed full time in legal assistance activities supported in major part by the Corporation refrain from (A) any compensated outside practice of law, and (B) any uncompensated outside practice of law except as authorized in guidelines promulgated by the Corporation;

(5) insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, or State proposals by initiative petition, except where—

(A) representation by an employee of a recipient for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities (which shall not be construed to permit an attorney or a recipient employee to solicit a client, in violation of professional responsibilities, for the purpose of making such representation possible); or

(B) a governmental agency, legislative body, a committee, or a member thereof—

(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or

(ii) is considering a measure directly affecting the activities under this subchapter of the recipient or the Corporation.

(6) insure that all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from—

(A) any political activity, or

(B) any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election (other than legal advice and representation), or

(C) any voter registration activity (other than legal advice and representation);

(7) require recipients to establish guidelines, consistent with regulations promulgated by the Corporation, for a system for review of appeals to insure the efficient utilization of resources and to avoid frivolous appeals (except that such guidelines or regulations shall in no way interfere with attorneys' professional responsibilities);

(8) insure that recipients solicit the recommendations of the organized bar in the community being served before filling staff attorney positions in any project funded pursuant to this subchapter and give preference in filling such positions to qualified persons who reside in the community to be served;

(9) insure that every grantee, contractor, or person or entity receiving financial assistance under this subchapter or predecessor authority under this chapter which files with the Corporation a timely application for refunding is provided interim funding necessary to maintain its current level of activities until (A) the application for refunding has been approved and funds pursuant thereto received, or (B) the application for refunding has been finally denied in accordance with section 2996j of this title;

(10) insure that all attorneys, while engaged in legal assistance activities supported in whole or in part by the Corporation, refrain from the persistent incitement of litigation and any other activity prohibited by the Canons of Ethics and Code of Professional Responsibility of the American Bar Association, and insure that such attorneys refrain from personal representation for a private fee in any cases in which they were involved while engaged in such legal assistance activities; and

(11) ensure that an indigent individual whose primary residence is subject to civil forfeiture is represented by an attorney for the Corporation in such civil action.

(b) Limitations on uses

No funds made available by the Corporation under this subchapter, either by grant or contract, may be used—

(1) to provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating case (which guidelines shall not preclude the provision of legal assistance in cases in which a client seeks only statutory benefits and appropriate private representation is not available);

(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with a misdemeanor or lesser offense or its equivalent in an Indian tribal court;

(3) to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction;

(4) for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;

(5) to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public;

(6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients;

(7) to initiate the formation, or act as an organizer, of any association, federation, or similar entity, except that this paragraph shall not be construed to prohibit the provision of legal assistance to eligible clients;

(8) to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution;

(9) to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities;

(10) to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act [50 U.S.C. App. 451 et seq.] or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior corresponding law; or

(11) to provide legal assistance in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(c) Recipient organizations

In making grants or entering into contracts for legal assistance, the Corporation shall insure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body at least 60 percent of which consists of attorneys who are members of the bar of a State in which the legal assistance is to be provided (except that the Corporation (1) shall, upon application, grant waivers to permit a legal services program, supported under section 2809(a)(3)[1] of this title, which on July 25, 1974, has a majority of persons who are not attorneys on its policy-making board to continue such a non-attorney majority under the provisions of this subchapter, and (2) may grant, pursuant to regulations issued by the Corporation, such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement) and at least one-third of which consists of persons who are, when selected, eligible clients who may also be representatives of associations or organizations of eligible clients. Any such attorney, while serving on such board, shall not receive compensation from a recipient.

(d) Program evaluation

The Corporation shall monitor and evaluate and provide for independent evaluations of programs supported in whole or in part under this subchapter to insure that the provisions of this subchapter and the bylaws of the Corporation and applicable rules, regulations, and guidelines promulgated pursuant to this subchapter are carried out.

(e) Corporation president authorized to make grants and enter into contracts

The president of the Corporation is authorized to make grants and enter into contracts under this subchapter.

(f) Public notification

At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor, the State bar association of any State, and the principal local bar associations (if there be any) of any community, where legal assistance will thereby be initiated, of such grant, contract, or project. Notification shall include a reasonable description of the grant application or proposed contract or project and request comments and recommendations.

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[1] See References in Text note below.

(g) Staff-attorney program study

The Corporation shall provide for comprehensive, independent study of the existing staff-attorney program under this chapter and, through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms; and, based upon the results of such study, shall make recommendations to the President and the Congress, not later than two years after the first meeting of the Board, concerning improvements, changes, or alternative methods for the economical and effective delivery of such services.

(h) Study and report to Congress on special needs of eligible clients

The Corporation shall conduct a study on whether eligible clients who are—

(1) veterans,

(2) native Americans,

(3) migrants or seasonal farm workers,

(4) persons with limited English-speaking abilities, and

(5) persons in sparsely populated areas where a harsh climate and an inadequate transportation system are significant impediments to receipt of legal services[2]

have special difficulties of access to legal services or special legal problems which are not being met. The Corporation shall report to Congress not later than January 1, 1979, on the extent and nature of any such problems and difficulties and shall include in the report and implement appropriate recommendations.

(Pub. L. 88–452, title X, § 1007, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 383; amended Pub. L. 95–222, §§ 7(b), 9(a), (b)(1), (c), 10–13, Dec. 28, 1977, 91 Stat. 1620–1623; Pub. L. 105–12, § 9(*o*), Apr. 30, 1997, 111 Stat. 28; Pub. L. 106–185, § 2(d), Apr. 25, 2000, 114 Stat. 211.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (b)(10), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix and Tables.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (b)(11), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

Section 2809 of this title, referred to in subsec. (c), was repealed by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519.

AMENDMENTS

2000—Subsec. (a)(11). Pub. L. 106–185 added par. (11).

1997—Subsec. (b)(11). Pub. L. 105–12 added par. (11).

1977—Subsec. (a)(2)(B)(iv). Pub. L. 95–222, § 9(a), substituted provisions setting forth factors which may be included in determining financial ability, for provisions setting forth factors required to be included in determining financial ability.

Subsec. (a)(2)(C). Pub. L. 95–222, § 9(b)(1), expanded existing provisions by requiring the Corporation to establish procedures for determining and implementing priorities and criteria for such priorities, and inserted provisions relating to appropriate training and support services.

Subsec. (a)(5). Pub. L. 95–222, § 9(c), in introductory text inserted prohibition relating to influencing the passage or defeat of State proposals by initiative referendum, in subpar. (A) substituted provisions relating to representation by an employee of a recipient for any eligible client, for provisions relating to representation by an attorney as attorney for any eligible client, and in subpar. (B) designated existing provision as cl. (i), inserted exception for testifying, drafting, or reviewing measures, and added cl. (ii).

Subsec. (a)(6). Pub. L. 95–222, § 7(b), struck out provisions relating to prohibitions against political activities by staff attorneys of the types described under cls. (B) and (C) of this par. and section 1502(a) of title 5.

Subsec. (b). Pub. L. 95–222, § 10, redesignated and reorganized provisions of former par. (1) as pars. (1) to (3) and, as so redesignated, enumerated criteria for assistance under such pars., redesignated former pars. (2) and (3) as (4) and (5), respectively, struck out former par. (4) relating to assistance to any unemancipated person of less than eighteen years of age, redesignated former par. (5) as (6), redesignated former par. (6) as (7) and, as so redesignated, inserted provision relating to initiation and provision relating to acting as an organizer, and struck out provisions relating to organization, assistance or encouragement to organize, or to plan for the creation, formation or structuring of entities, and provision respecting guidelines for assistance to clients, redesignated former par. (7) as (9) and, as so redesignated, inserted exception for legal advice to clients, reenacted par. (8) without change, and redesignated former par. (9) as (10) and, as so redesignated, inserted exception for actions concerning classifications prior to July 1, 1973.

Subsec. (c). Pub. L. 95–222, § 11, substituted provisions requiring recipients to include at least one-third membership of eligible clients or eligible clients who may also be representatives of associations or organizations of eligible clients, for provisions requiring recipients to include at least one individual eligible to receive legal assistance.

Subsec. (f). Pub. L. 95–222, § 12, inserted provision requiring notice to principal local bar association, if any, of community.

Subsec. (h). Pub. L. 95–222, § 13, added subsec. (h).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on and after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, and also subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by sections 7(b), 9(a), (b)(1), (c), 10, 12, and 13 of Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

Section 17(a)(1) of Pub. L. 95–222 provided that: ''The amendment made by section 11 of this Act [amending this section] shall be effective six months after the first day of the first calendar month following the date of enactment of this Act [Dec. 28, 1977].''

[2] So in original. Probably should be followed by a comma.

IMPLEMENTATION OF SYSTEM FOR COMPETITIVE AWARD OF GRANTS AND CONTRACTS

Pub. L. 101–515, title VI, § 607 (part), Nov. 5, 1991, 104 Stat. 2153, provided: ''That after October 1, 1991, (but not before) the Board of Directors of the Legal Services Corporation shall develop and implement a system for the competitive award of all grants and contracts, including support centers, except that nothing herein shall prohibit the Corporation Board, members, or staff from engaging in in-house reviews of or holding hearings on proposals for a system for the competitive award of all grants and contracts, including support centers, and that nothing herein shall apply to any competitive awards program currently in existence''.

Pub. L. 101–162, title VI, § 608 (part), Nov. 21, 1989, 103 Stat. 1036, provided: ''That none of the funds appropriated under this Act or under any prior Acts for the Legal Services Corporation shall be used to consider, develop, or implement any system for the competitive award of grants or contracts until such action is authorized pursuant to a majority vote of a Board of Directors of the Legal Services Corporation composed of eleven individuals nominated by the President after January 20, 1989, and subsequently confirmed by the United States Senate, except that nothing herein shall prohibit the Corporation Board, members, or staff from engaging in in-house reviews of or holding hearings on proposals for a system for the competitive award of all grants and contracts, including support centers, and that nothing herein shall apply to any competitive awards program currently in existence; subsequent to confirmation such new Board of Directors shall develop and implement a proposed system for the competitive award of all grants and contracts''.

Pub. L. 100–459, title VI, § 605, Oct. 1, 1988, 102 Stat. 2227, provided: ''That a Board of Directors of the Legal Services Corporation, composed of individuals nominated by the President after January 20, 1989 and subsequently confirmed by the United States Senate, shall develop and implement a system for the competitive award of all grants and contracts, including support centers, to take effect after September 30, 1989.''

§ 2996g. Records and reports

(a) Authority to require reports

The Corporation is authorized to require such reports as it deems necessary from any grantee, contractor, or person or entity receiving financial assistance under this subchapter regarding activities carried out pursuant to this subchapter.

(b) Authority to require recordkeeping; access to records

The Corporation is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or the terms and conditions upon which financial assistance was provided.

(c) Annual report to President and Congress; contents

The Corporation shall publish an annual report which shall be filed by the Corporation with the President and the Congress. Such report shall include a description of services provided pursuant to section 2996f(a)(2)(C)(i) and (ii) of this title.

(d) Copies and retention of reports

Copies of all reports pertinent to the evaluation, inspection, or monitoring of any grantee, contractor, or person or entity receiving financial assistance under this subchapter shall be submitted on a timely basis to such grantee, contractor, or person or entity, and shall be maintained in the principal office of the Corporation for a period of at least five years subsequent to such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Corporation may establish.

(e) Publication in Federal Register of rules, regulations, guidelines and instructions

The Corporation shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the Federal Register at least 30 days prior to their effective date all its rules, regulations, guidelines, and instructions.

(Pub. L. 88–452, title X, § 1008, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 386; amended Pub. L. 95–222, § 9(b)(2), Dec. 28, 1977, 91 Stat. 1621.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95–222 inserted provisions setting forth required contents of annual report.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to filing annual report with Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 2 on page 202 of House Document No. 103–7.

§ 2996h. Audits

(a) Annual audit; availability of records; filing and inspection of report

(1) The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the Government Accountability Office and shall be available for public inspection during business hours at the principal office of the Corporation.

(b) Audit by Government Accountability Office

(1) In addition to the annual audit, the financial transactions of the Corporation for any fis-

cal year during which Federal funds are available to finance any portion of its operations may be audited by the Government Accountability Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the Government Accountability Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audit; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Corporation shall remain in the possession and custody of the Corporation throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the Government Accountability Office may require the retention of such books, accounts, financial records, reports, files, papers, or property for a longer period under section 3523(c) of title 31.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the President, together with such recommendations with respect thereto as he shall deem advisable.

(c) Annual financial audit of recipient persons or bodies

(1) The Corporation shall conduct, or require each grantee, contractor, or person or entity receiving financial assistance under this subchapter to provide for, an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Corporation.

(2) Upon request, the Corporation shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, or person or entity, which relate to the disposition or use of funds received from the Corporation. Such audit reports shall be available for public inspection, during regular business hours, at the principal office of the Corporation.

(d) Attorney-client privilege

Notwithstanding the provisions of this section or section 2996g of this title, neither the Corporation nor the Comptroller General shall have access to any reports or records subject to the attorney-client privilege.

(Pub. L. 88–452, title X, § 1009, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 387; amended Pub. L. 95–222, § 14, Dec. 28, 1977, 91 Stat. 1623; Pub. L. 104–66, title II, § 2111, Dec. 21, 1995, 109 Stat. 730; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

CODIFICATION

In subsec. (b)(2), ''section 3523(c) of title 31'' substituted for ''section 117(b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 67(b))'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2004—Subsecs. (a)(3), (b)(1), (2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' wherever appearing.

1995—Subsec. (c)(2). Pub. L. 104–66 substituted ''Upon request, the'' for ''The'' in first sentence.

1977—Subsec. (b)(2). Pub. L. 95–222 inserted provisions relating to duration of retention of books, etc., by Corporation.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

§ 2996i. Financing

(a) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation, $90,000,000 for fiscal year 1975, $100,000,000 for fiscal year 1976, and such sums as may be necessary for fiscal year 1977. There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation $205,000,000 for the fiscal year 1978, and such sums as may be necessary for each of the two succeeding fiscal years. The first appropriation may be made available to the Corporation at any time after six or more members of the Board have been appointed and qualified. Appropriations for that purpose shall be made for not more than two fiscal years, and shall be paid to the Corporation in annual installments at the beginning of each fiscal year in such amounts as may be specified in Acts of Congress making appropriations.

(b) Availability of funds

Funds appropriated pursuant to this section shall remain available until expended.

(c) Non-Federal funds

Non-Federal funds received by the Corporation, and funds received by any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds; but any funds so received for the provision of legal assistance shall not be expended by recipients for any purpose prohibited by this subchapter, except that this provision shall not be construed to prevent recipients from receiving other public funds or tribal funds (including foundation funds benefiting Indians or Indian tribes) and expending them in accordance with the purposes for which they are provided, or to prevent contracting or making other arrangements with private attorneys, private law firms, or other State or local entities of attorneys, or with legal aid societies having separate public defender programs, for the provision of legal assistance to eligible clients under this subchapter.

(d) Limitations on grant or contract authority

Not more than 10 percent of the amounts appropriated pursuant to subsection (a) of this section for any fiscal year shall be available for grants or contracts under section 2996e(a)(3) of this title in any such year.

(Pub. L. 88–452, title X, § 1010, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 388; amended Pub. L. 95–222, §§ 5(c), 15, Dec. 28, 1977, 91 Stat. 1619, 1623.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–222, § 15, inserted provisions authorizing appropriations for fiscal year 1978 and two succeeding fiscal years, and substituted provisions requiring appropriations to be made for not more than two fiscal years and payments in annual installments at beginning of each fiscal year in appropriated amounts, for provisions requiring appropriations to be for not more than two fiscal years, and, if for more than one year, in payments in annual installments at beginning of each fiscal year in appropriated amounts.

Subsec. (d). Pub. L. 95–222, § 5(c), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 5(c) of Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

Section 17(a)(2) of Pub. L. 95–222 provided that: ''The amendment made by section 15 of this Act [amending this section] shall be effective with respect to fiscal years beginning after September 30, 1977.''

§ 2996j. Special limitations

The Corporation shall prescribe procedures to insure that—

(1) financial assistance under this subchapter shall not be suspended unless the grantee, contractor, or person or entity receiving financial assistance under this subchapter has been given reasonable notice and opportunity to show cause why such action should not be taken; and

(2) financial assistance under this subchapter shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee, contractor, or person or entity receiving financial assistance under this subchapter has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Corporation to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Corporation in accordance with procedures established in regulations promulgated by the Corporation.

(Pub. L. 88–452, title X, § 1011, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 388; amended Pub. L. 95–222, § 16, Dec. 28, 1977, 91 Stat. 1624.)

AMENDMENTS

1977—Par. (2). Pub. L. 95–222 inserted provisions relating to function and appointment of an independent hearing examiner, and the time for any hearings.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

§ 2996k. Coordination

The President may direct that appropriate support functions of the Federal Government may be made available to the Corporation in carrying out its activities under this subchapter, to the extent not inconsistent with other applicable law.

(Pub. L. 88–452, title X, § 1012, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 388.)

EX. ORD. NO. 11874. DELEGATION OF FUNCTIONS TO DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET

Ex. Ord. No. 11874 eff. July 25, 1975, 40 F.R. 31737, provided:

By virtue of the authority vested in me by Section 1012 of the Economic Opportunity Act of 1964, as amended by the Legal Services Corporation Act of 1974 (88 Stat. 388, 42 U.S.C. 2996k), and Section 301 of Title 3 of the United States Code, and as President of the United States, the Director of the Office of Management and Budget is hereby designated and empowered to exercise the authority vested in the President by said Section 1012 of the Economic Opportunity Act of 1964, as amended [this section], to direct that appropriate support functions of the Federal Government may be made available to the Legal Services Corporation in carrying out its activities, to the extent not inconsistent with other applicable law. Such functions shall be provided under terms and conditions as may be agreed upon by the Legal Services Corporation and the Federal agencies involved.

GERALD R. FORD.

§ 2996*l*. Reservation of right to repeal, alter, or amend

The right to repeal, alter, or amend this subchapter at any time is expressly reserved.

(Pub. L. 88–452, title X, § 1013, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 388.)

CHAPTER 35—PROGRAMS FOR OLDER AMERICANS

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3058dd. Technical assistance.
3058ee. Audits.
3058ff. Rule of construction.

SUBCHAPTER I—DECLARATION OF OBJECTIVES AND DEFINITIONS

§ 3001. Congressional declaration of objectives

The Congress hereby finds and declares that, in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society, the older people of our Nation are entitled to, and it is the joint and several duty and responsibility of the governments of the United States, of the several States and their political subdivisions, and of Indian tribes to assist our older people to secure equal opportunity to the full and free enjoyment of the following objectives:

(1) An adequate income in retirement in accordance with the American standard of living.

(2) The best possible physical and mental health which science can make available and without regard to economic status.

(3) Obtaining and maintaining suitable housing, independently selected, designed and located with reference to special needs and available at costs which older citizens can afford.

(4) Full restoration services for those who require institutional care, and a comprehensive array of community-based, long-term care services adequate to appropriately sustain older people in their communities and in their homes, including support to family members and other persons providing voluntary care to older individuals needing long-term care services.

(5) Opportunity for employment with no discriminatory personnel practices because of age.

(6) Retirement in health, honor, dignity—after years of contribution to the economy.

(7) Participating in and contributing to meaningful activity within the widest range of civic, cultural, education and training and recreational opportunities.

(8) Efficient community services, including access to low-cost transportation, which provide a choice in supported living arrangements and social assistance in a coordinated manner and which are readily available when needed, with emphasis on maintaining a continuum of care for vulnerable older individuals.

(9) Immediate benefit from proven research knowledge which can sustain and improve health and happiness.

(10) Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives, full participation in the planning and operation of community-based services and programs provided for their benefit, and protection against abuse, neglect, and exploitation.

(Pub. L. 89–73, title I, § 101, July 14, 1965, 79 Stat. 219; Pub. L. 93–29, title I, § 102, May 3, 1973, 87 Stat. 30; Pub. L. 95–478, title I, § 101, Oct. 18, 1978, 92 Stat. 1513; Pub. L. 97–115, § 2(a)(1), Dec. 29, 1981, 95 Stat. 1595; Pub. L. 98–459, title I, § 102, Oct. 9, 1984, 98 Stat. 1767; Pub. L. 100–175, title I, § 101, Nov. 29, 1987, 101 Stat. 928; Pub. L. 102–375, title I, § 101, title IX, § 904(a)(1), Sept. 30, 1992, 106 Stat. 1197, 1305.)

AMENDMENTS

1992—Par. (4). Pub. L. 102–375, § 101, inserted ", including support to family members and other persons providing voluntary care to older individuals needing long-term care services" after "homes".

Par. (8). Pub. L. 102–375, § 904(a)(1), substituted "vulnerable older individuals" for "the vulnerable elderly".

1987—Pub. L. 100–175, § 101(1), substituted "United States," for "United States and" and inserted ", and of Indian tribes" after "subdivisions".

Par. (3). Pub. L. 100–175, § 101(2), substituted "Obtaining and maintaining suitable" for "Suitable".

Par. (7). Pub. L. 100–175, § 101(3), substituted "Participating in and contributing to" for "Pursuit of".

Par. (10). Pub. L. 100–175, § 101(4), substituted "lives," for "lives and", and inserted ", and protection against abuse, neglect, and exploitation" before period at end.

1984—Par. (4). Pub. L. 98–459, § 102(a), inserted reference to a comprehensive array of community-based, long-term care services adequate to appropriately sustain older people in their communities and in their homes.

Par. (8). Pub. L. 98–459, § 102(b), inserted reference to emphasis on maintaining a continuum of care for the vulnerable elderly.

Par. (10). Pub. L. 98–459, § 102(c), inserted reference to full participation in the planning and operation of com-

munity-based services and programs provided for the benefit of older people.

1981—Par. (7). Pub. L. 97–115 included a reference to education and training.

1978—Par. (8). Pub. L. 95–478 included objective of community services which provide a choice in supported living arrangements.

1973—Par. (8). Pub. L. 93–29 inserted reference to access to low-cost transportation.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 103–171, § 4(b), Dec. 2, 1993, 107 Stat. 1991, provided that: ''The amendments made by—

''(1) sections 303(a)(2), 303(a)(3), 304 (excluding paragraphs (1) and (2) of subsection (a)), 305, 306, 307, and 317 [enacting sections 3030g–21 and 3030g–22 of this title and amending sections 3023 to 3027 of this title], and

''(2) title VII [enacting sections 3058 to 3058ee of this title and amending sections 1395i–3, 1396r, 3012, 3018, 3021, 3023, 3027, 3030d, and 3030*l* of this title],

of the Older Americans Act Amendments of 1992 (Public Law 102–375; 106 Stat. 1221 et seq.) shall not apply with respect to fiscal year 1993.''

Section 905 of Pub. L. 102–375 provided that:

''(a) IN GENERAL.—Except as provided in section 811(b) [42 U.S.C. 1766 note], any other provision of this Act [see Tables for classification] (other than this section), and in subsection (b) of this section, this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act [Sept. 30, 1992].

''(b) APPLICATION OF AMENDMENTS.—

''(1) FEDERAL COUNCIL ON AGING.—Incumbent members of the Federal Council on Aging may serve on the Council until their successors are appointed under section 204 of the Older Americans Act of 1965 (42 U.S.C. 3015) as amended by section 205 of this Act.

''(2) STATE AND COMMUNITY PROGRAMS ON AGING.—The amendments made by sections 303(a)(2), 303(a)(3), 303(f), 304, 305, 306, 307, 316, 317, and 320 [enacting sections 3030g–11 to 3030g–13, 3030g–21, 3030g–22, and 3030p to 3030r of this title and amending sections 3023 to 3027 of this title] shall not apply with respect to fiscal year 1992.

''(3) PROJECT REPORTS.—The amendments made by sections 410, 411, 413, 414, 415, 416, 418, and 419 [enacting sections 3035i, 3035j, 3035*l* to 3035*o*, 3035q, and 3035r of this title] shall not apply with respect to fiscal year 1992.

''(4) COMMUNITY SERVICE EMPLOYMENT.—The amendments made by sections 501, 504, and 506 [enacting section 3056h of this title and amending sections 3056, 3056d, and 3056e of this title] shall not apply with respect to fiscal year 1992.

''(5) INDIAN AND NATIVE HAWAIIAN PROGRAMS.—The amendments made by sections 601 and 603 [amending sections 3057e and 3057j of this title] shall not apply with respect to fiscal year 1992.

''(6) VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES.—The amendments made by title VII [enacting sections 3058 to 3058k and 3058aa to 3058ee of this title and amending sections 1395i–3, 1396r, 3012, 3018, 3021, 3023, 3027, 3030d, and 3030*l* of this title] shall not apply with respect to fiscal year 1992.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 701 of Pub. L. 100–175 provided that:

''(a) GENERAL EFFECTIVE DATE.—Except as provided in subsections (b) and (c), this Act and the amendments made by this Act [see Short Title of 1987 Amendment note below] shall take effect on October 1, 1987.

''(b) APPLICATION OF AMENDMENTS.—The amendments made by title I of this Act [enacting sections 3030h to 3030p, 3035f, 3035g, 3056g, and 3057 to 3057n of this title, amending sections 3001, 3002, 3011 to 3013, 3015 to 3018, 3020c, 3021 to 3029, 3030a, 3030d, 3030g, 3030aa, 3030bb, 3030jj, 3031, 3032, 3035a, 3035b, 3035d, 3037, 3056, 3056a, 3056d, 3056e, and 3056f of this title, repealing sections 3058 to 3058d of this title, enacting provisions set out as notes under this section, sections 3026, 3027, and 3057b of this title, and section 2 of Title 29, and repealing provisions set out as a note under section 3058 of this title] shall not apply with respect to—

''(1) any area plan submitted under section 306(a) of the Older Americans Act of 1965 [section 3026(a) of this title], or

''(2) any State plan submitted under section 307(a) of such Act [section 3027(a) of this title],

and approved for any fiscal year beginning before the date of the enactment of this Act [Nov. 29, 1987].

''(c) EFFECTIVE DATE OF SECTION 506.—The amendments made by section 506 of this Act [enacting section 2991b–1 of this title and amending sections 2991a, 2991b, and 2992d of this title] shall take effect upon the expiration of the 90-day period beginning on the date of the enactment of this Act [Nov. 29, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 803 of Pub. L. 98–459 provided that:

''(a) Except as provided in subsection (b), this Act and the amendments made by this Act [enacting sections 3030aa, 3030bb, 3030jj, 3034, and 3037b of this title, amending this section, sections 1762a, 3011 to 3013, 3015 to 3018, 3020b, 3021 to 3029, 3030a, 3030c, 3030d, 3031, 3032, 3035, 3035a to 3035e, 3037, 3037a, 3056, 3056a, 3056d to 3056f, 3057a, 3057c, and 3057g of this title and sections 623, 630, and 631 of Title 29, Labor, and enacting provisions set out as notes under this section, section 3056 of this title, and section 631 of Title 29, and amending provisions set out as a note under former section 3045 of this title] shall take effect on the date of the enactment of this Act [Oct. 9, 1984].

''(b)(1) The amendment made by section 206(a) [amending section 3017 of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 9, 1984].

''(2) The amendment made by section 206(d) [amending section 3017 of this title] shall take effect on the first day of the first fiscal year beginnning [sic] after the date of the enactment of this Act [Oct. 9, 1984].

''(3) The amendment made by section 411(b) [amending section 3037 of this title] shall not apply with respect to any grant or payment made before the date of the enactment of this Act [Oct. 9, 1984].

''(4) The amendment made by section 701 [enacting subchapter XI of this chapter] shall take effect on October 1, 1984.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 504 of Pub. L. 95–478 provided that: ''This Act [see Short Title of 1978 Amendment note below], and the amendments made by this Act, shall take effect at the close of September 30, 1978.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–365, § 1(a), Oct. 17, 2006, 120 Stat. 2522, provided that: ''This Act [see Tables for classification] may be cited as the 'Older Americans Act Amendments of 2006'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–501, § 1, Nov. 13, 2000, 114 Stat. 2226, provided that: ''This Act [see Tables for classification] may be cited as the 'Older Americans Act Amendments of 2000'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–171, § 1, Dec. 2, 1993, 107 Stat. 1988, provided that: ''This Act [see Tables for classification] may be cited as the 'Older Americans Act Technical Amendments of 1993'.''

SHORT TITLE OF 1992 AMENDMENT

Section 1(a) of Pub. L. 102–375 provided that: ''This Act [see Tables for classification] may be cited as the 'Older Americans Act Amendments of 1992'.''

SHORT TITLE OF 1987 AMENDMENT

Section 1 of Pub. L. 100–175 provided that: ''This Act [enacting sections 280c to 280c–5, 2991b–1, 2991d–1,

2992b–1, 3030h to 3030p, 3035f, 3035g, 3056g, and 3057 to 3057n of this title, amending this section and sections 1766, 2991a, 2991b, 2991d–1, 2991f, 2992c, 2992d, 3002, 3011 to 3013, 3015 to 3018, 3020c, 3021 to 3029, 3030a, 3030d, 3030g, 3030aa, 3030bb, 3030jj, 3031, 3032, 3035a, 3035b, 3035d, 3037, 3056, 3056a, 3056d, 3056e, and 3056f of this title, repealing sections 3058 to 3058d, of this title, enacting provisions set out as notes under this section, sections 201, 285e–2, 2991, 3026, 3027, and 3057b of this title, and section 2 of Title 29, Labor, and repealing provisions set out as a note under section 3058 of this title] may be cited as the 'Older Americans Act Amendments of 1987'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–269, § 1, Apr. 1, 1986, 100 Stat. 78, provided: ''That this Act [amending section 3030a of this title and enacting provisions set out as notes under section 3030a of this title] may be cited as the 'Older Americans Act Amendments of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98–459 provided that: ''This Act [enacting sections 3030aa, 3030bb, 3030jj, 3034, 3037b, and 3058 to 3058d of this title, amending this section, sections 1762a, 3011 to 3013, 3015 to 3018, 3020b, 3021 to 3029, 3030a, 3030c, 3030d, 3031, 3032, 3035, 3035a to 3035e, 3037, 3037a, 3056, 3056a, 3056d to 3056f, 3057a, 3057c, and 3057g of this title, and sections 623, 630, and 631 of Title 29, Labor, and enacting provisions set out as notes under this section, sections 3056 and 3058 of this title, and section 631 of Title 29, and amending provisions set out as a note under section 3045 of this title] may be cited as the 'Older Americans Act Amendments of 1984'.''

SHORT TITLE OF 1981 AMENDMENT

Section 1(a) of Pub. L. 97–115 provided that: ''This act [enacting sections 3031, 3032, 3035 to 3035e, 3037, and 3037a of this title, amending this section, sections 3002 to 3003, 3012, 3013, 3015 to 3020d, 3021 to 3028, 3030, 3030a, 3030d, 3030g, 3035b, 3035e, 3036, 3056, 3056a, 3056c, 3056d, 3056f, 3057 to 3057g, 8622, 9902 to 9904, and 9911 of this title, and section 1087–2 of Title 20, Education, repealing section 3014 of this title, and enacting a provision set out as a note under section 3045 of this title] may be cited as the 'Older Americans Act Amendments of 1981'.''

SHORT TITLE OF 1978 AMENDMENT

Section 1(a) of Pub. L. 95–478 provided that: ''This Act [enacting sections 3020b to 3020d, 3030 to 3030g, 3035b to 3035h, 3057 to 3057g and 6106a of this title, amending this section, sections 3002, 3011 to 3017, 3020a, 3021 to 3029, 3031 to 3035, 3036 to 3037a, 3056 to 3056f, 5001, 5011, 5012, 5082, 6101, 6103 and 6104 of this title, repealing sections 3035a, 3041 to 3041f, 3042 and 3045 to 3045i of this title, enacting provisions set out as notes under this section and sections 1975c, 3021, and 3045 of this title, amending provisions set out as a note under this section, and repealing provision set out as a note under section 3056 of this title] may be cited as the 'Comprehensive Older Americans Act Amendments of 1978'.''

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94–135, § 1, Nov. 28, 1975, 89 Stat. 713, provided: ''That this Act [enacting chapter 76 and sections 3002, 3020a, 3024, 3028, 3034, 3045f, and 3056 to 3056f of this title, amending sections 289k–5, 3002, 3012, 3014, 3015, 3022, 3023, 3024, 3025, 3026, 3028, 3033, 3034, 3037, 3037a, 3041d, 3041f, 3045b, 3045d, 3045e, 3045f, 3045g, 5011, 5012, and 5082 of this title and sections 1008a, 1208a, and 1341 of Title 20, Education, repealing sections 3061 to 3067 of this title, enacting provisions set out as notes under section 5001 of this title and section 871 of Title 29, Labor, and amending provisions set out as a note under section 2809 of this title] may be cited as the 'Older Americans Amendments of 1975'.''

SHORT TITLE OF 1973 AMENDMENT

Section 1 of Pub. L. 93–29 provided: ''That this Act [enacting chapter 35A of this title, subchs. III to V of this chapter, sections 3003, 3012, 3013 to 3020, 3044, 3045 of this title, and sections 351, 351c, 361 to 364, 1008a, and 1208a of Title 20, Education, amending this section, sections 3011, 3012, 3044a, 3044b, 3044e, and 3045a to 3045f of this title, and sections 351c, 351d, 351e, 1211, 1504, and 1505 of Title 20, repealing former subchs. III (sections 3021 to 3024a, and 3025 of this title), IV (sections 3031 and 3032 of this title), V (sections 3041 to 3043 of this title), and VIII (sections 3051 to 3055 of this title) of this chapter, and enacting provisions set out as notes under sections 2809, 3044b, and 3061 of this title and section 361 of Title 20] may be cited as the 'Older Americans Comprehensive Services Amendments of 1973'.''

SHORT TITLE OF 1967 AMENDMENT

Pub. L. 90–42, § 1, July 1, 1967, 81 Stat. 106, provided: ''That this Act [enacting section 3043 of this title and amending sections 3002, 3021, 3022, 3024, 3031, and 3051 to 3053 of this title] may be cited as the 'Older Americans Act Amendments of 1967'.''

SHORT TITLE

Section 1 of Pub. L. 89–73 provided: ''That this Act [enacting this chapter] may be cited as the 'Older Americans Act of 1965'.''

Pub. L. 89–73, title III, § 371, as added Pub. L. 106–501, title III, § 316(2), Nov. 13, 2000, 114 Stat. 2253, provided that: ''This part [part E (§§ 371–376) of title III of Pub. L. 89–73, enacting part E of subchapter III of this chapter] may be cited as the 'National Family Caregiver Support Act'.''

Pub. L. 89–73, title V, § 501, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2563, provided that: ''This title [enacting subchapter IX of this chapter] may be cited as the 'Community Service Senior Opportunities Act'.''

Pub. L. 89–73, title V, § 501, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2267, provided that title V of Pub. L. 89–73, enacting former subchapter IX of this chapter, could be cited as the ''Older American Community Service Employment Act'', prior to the general amendment of title V of Pub. L. 89–73 by Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2563.

Pub. L. 89–73, title V, § 501, formerly title IX, § 901, as added by Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 720, and renumbered by Pub. L. 95–478, title I, § 105(a), Oct. 18, 1978, 92 Stat. 1547, provided that title V of Pub. L. 89–73, enacting former subchapter IX of this chapter, could be cited as the ''Older American Community Service Employment Act'', prior to the general amendment of title V of Pub. L. 89–73 by Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2267.

REGULATIONS

Section 902 of Pub. L. 102–375 provided that: ''Except as otherwise specifically provided, the Secretary of Health and Human Services shall, not later than 120 days after the date of the enactment of this Act [Sept. 30, 1992], issue proposed regulations to carry out the amendments made by titles I through VII [see Tables for classification].''

STUDY OF EFFECTIVENESS OF STATE LONG-TERM CARE OMBUDSMAN PROGRAMS

Section 211 of Pub. L. 102–375, as amended by Pub. L. 103–171, § 4(a)(2), Dec. 2, 1993, 107 Stat. 1991, provided that not later than Jan. 1, 1995, the Assistant Secretary for Aging, in consultation with State agencies, State Long-Term Care Ombudsmen, the National Ombudsman Resource Center, and professional ombudsmen associations, directly, or by grant or contract, was to conduct a study and submit a report to Congress analyzing separately with respect to each State effectiveness of State long-term care ombudsman programs.

STUDY ON BOARD AND CARE FACILITY QUALITY

Section 212 of Pub. L. 102–375 provided that:

''(a) ARRANGEMENT FOR STUDY COMMITTEE.—The Secretary of Health and Human Services shall enter into

an arrangement, in accordance with subsection (d), to establish a study committee described in subsection (c) to conduct a study through the Institute of Medicine of the National Academy of Sciences on the quality of board and care facilities for older individuals (as defined in section 102 [42 U.S.C. 3002] of the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.)) and the disabled.

''(b) SCOPE OF STUDY.—The study shall include—

''(1) an examination of existing quality, health, and safety requirements for board and care facilities and the enforcement of such requirements for their adequacy and effectiveness, with special attention to their effectiveness in promoting good personal care;

''(2) an examination of, and recommendations with respect to, the appropriate role of Federal, State, and local governments in assuring the health and safety of residents of board and care facilities; and

''(3) specific recommendations to the Congress and the Secretary, by not later than 20 months after the date of the enactment of this Act [Sept. 30, 1992], concerning the establishment of minimum national standards for the quality, health, and safety of residents of such facilities and the enforcement of such standards.

''(c) COMPOSITION OF STUDY COMMITTEE.—The study committee shall be composed of members as appointed from among the following:

''(1) NATIONAL ACADEMY OF SCIENCES.—The members of the National Academy of Sciences with experience in long-term care. The members so appointed shall include—

''(A) physicians;

''(B) experts on the administration of drugs to older individuals, and disabled individuals receiving long-term care services; and

''(C) experts on the enforcement of life-safety codes in long-term care facilities.

''(2) RESIDENTS.—Residents of board and care facilities (including privately owned board and care facilities), and representatives of such residents or of organizations that advocate on behalf of such residents. Members so appointed shall include—

''(A) residents of a nonprofit board and care facility; or

''(B) individuals who represent—

''(i) residents of nonprofit board and care facilities; or

''(ii) organizations that advocate on behalf of residents of nonprofit board and care facilities.

''(3) OPERATORS.—Operators of board and care facilities (including privately owned board and care facilities), and individuals who represent such operators or organizations that represent the interests of such operators. Members so appointed shall include—

''(A) operators of a nonprofit board and care facility; or

''(B) individuals who represent—

''(i) operators of nonprofit board and care facilities; or

''(ii) organizations that represent the interests of operators of nonprofit board and care facilities.

''(4) OFFICERS.—

''(A) STATE OFFICERS.—Elected and appointed State officers who have responsibility relating to the health and safety of residents of board and care facilities.

''(B) REPRESENTATIVES.—Representatives of such officers or of organizations representing such officers.

''(C) OTHER INDIVIDUALS.—Other individuals with relevant expertise.

''(d) USE OF INSTITUTE OF MEDICINE.—The Secretary shall request the National Academy of Sciences, through the Institute of Medicine, to establish, appoint, and provide administrative support for the study committee under an arrangement under which the actual expenses incurred by the Academy in carrying out such functions will be paid by the Secretary. If the National Academy of Sciences is willing to do so, the Secretary shall enter into such arrangement with the Academy.

''(e) INVOLVEMENT OF OTHERS.—

''(1) GOVERNMENT OFFICIALS.—The study committee shall conduct its work in a manner that provides for the consultation with Members of Congress or their representatives, officials of the Department of Health and Human Services, and officials of State and local governments who are not members of the study committee.

''(2) EXPERTS.—The study committee may consult with any individual or organization with expertise relating to the issues involved in the activities of the study committee.

''(f) REPORT.—Not later than 20 months after an arrangement is entered into under subsection (d), the study committee shall submit, to the Secretary, the Speaker of the House of Representatives, and the President pro tempore of the Senate, a report containing the results of the study referred to in subsection (a) and the recommendations made under subsection (b).

''(g) BOARD AND CARE FACILITY DEFINED.—In this section, the term 'board and care facility' means a facility described in section 1616(e) of the Social Security Act (42 U.S.C. 1372e(e) [42 U.S.C. 1382e(e)]).

''(h) AUTHORIZATION.—There are authorized to be appropriated to carry out this section $1,500,000 for fiscal year 1992 and such sums as may be necessary for subsequent fiscal years.''

STUDY ON HOME CARE QUALITY

Section 213 of Pub. L. 102–375 provided that:

''(a) ESTABLISHMENT STUDY OF COMMITTEE.—The Secretary of Health and Human Services shall enter into an arrangement, in accordance with subsection (d), to establish a study committee described in subsection (c) to conduct a study through the Institute of Medicine of the National Academy of Sciences on the quality of home care services for older individuals and disabled individuals.

''(b) SCOPE OF STUDY.—The study shall include—

''(1) an examination of existing quality, health and safety requirements for home care services and the enforcement of such requirements for their adequacy, effectiveness, and appropriateness;

''(2) an examination of, and recommendations with respect to, the appropriate role of Federal, State, and local governments in ensuring the health and safety of patients and clients of home care services; and

''(3) specific recommendations to the Congress and the Secretary, not later than 20 months after the date of the enactment of this Act [Sept. 30, 1992], concerning the establishment of minimum national standards for the quality, health, and safety of patients and clients of such services and the enforcement of such standards.

''(c) COMPOSITION OF STUDY COMMITTEE.—The study committee shall be composed of members appointed from among—

''(1) individuals with experience in long-term care, including nonmedical home care services;

''(2) patients and clients of home care services (including privately provided home care services and services funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.]) or individuals who represent such patients and clients or organizations that advocate on behalf of such patients and clients;

''(3) providers of home care services (including privately provided home care services and services funded under the Older Americans Act of 1965) or individuals who represent such providers or organizations that advocate on behalf of such providers;

''(4) elected and appointed State officers who have responsibility relating to the health and safety of patients and clients of home care services, or representatives of such officers or of organizations representing such officers; and

''(5) other individuals with relevant expertise.

''(d) USE OF INSTITUTE OF MEDICINE.—The Secretary shall request the National Academy of Sciences,

through the Institute of Medicine, to establish, appoint, and provide administrative support for the committee under an arrangement under which the actual expenses incurred by the Academy in carrying out such functions will be paid by the Secretary. If the National Academy of Sciences is willing to do so, the Secretary shall enter into such arrangement with the Academy.

''(e) INVOLVEMENT OF OTHERS.—

''(1) MEMBERS AND OFFICIALS.—The committee shall conduct its work in a manner that provides for consultation with Members of Congress or their representatives, officials of the Department of Health and Human Services, and officials of State and local governments who are not members of the committee.

''(2) INDIVIDUAL OR ORGANIZATION WITH EXPERTISE.—The committee may consult with any individual or organization with expertise relating to the issues involved in the activities of the committee.

''(f) REPORT.—Not later than 20 months after an arrangement is entered into under subsection (d), the committee shall submit, to the Secretary, the Speaker of the House of Representatives, and the President pro tempore of the Senate, a report containing the results of the study referred to in subsection (a).

''(g) AUTHORIZATION.—There are authorized to be appropriated to carry out this section $1,000,000 for fiscal year 1992 and such sums as may be necessary for subsequent fiscal years.''

LONG-TERM HEALTH CARE WORKERS

Subtitle A of title VIII of Pub. L. 102–375 provided that:

''SEC. 801. DEFINITIONS.

''As used in this subtitle:

''(1) NURSING HOME NURSE AIDE.—The term 'nursing home nurse aide' means an individual employed at a nursing or convalescent home who assists in the care of patients at such home under the direction of nursing and medical staff.

''(2) HOME HEALTH CARE AIDE.—The term 'home health care aide' means an individual who—

''(A) is employed by a government, charitable, nonprofit, or proprietary agency; and

''(B) cares for elderly, convalescent, or handicapped individuals in the home of the individuals by performing routine home assistance (such as housecleaning, cooking, and laundry) and assisting in the health care of such individuals under the direction of a physician or nurse.

''SEC. 802. INFORMATION REQUIREMENTS.

''(a) NATIONAL CENTER FOR HEALTH STATISTICS.—The Director of the National Center for Health Statistics of the Centers for Disease Control [now Centers for Disease Control and Prevention] shall collect, and prepare a report containing—

''(1) demographic information on home health care aides and nursing home nurse aides, including information on the—

''(A) age, race, marital status, education, number of children and other dependents, gender, and primary language, of the aides; and

''(B) location of facilities at which the aides are employed in—

''(i) rural communities; or

''(ii) urban or suburban communities; and

''(2) information on the role of the aides in providing institution-based and home-based long-term care.

''(b) DEPARTMENT OF LABOR.—The Secretary of Labor shall—

''(1) collect, and prepare a report containing, information on home health care aides, including—

''(A) information on conditions of employment, including—

''(i) the length of employment of the aides with the current employer of the aides;

''(ii) the number of aides who are—

''(I) employed by a for-profit employer;

''(II) employed by a nonprofit private employer;

''(III) employed by a charitable employer;

''(IV) employed by a government employer; or

''(V) independent contractors;

''(iii) the number of full-time, part-time, and temporary positions for the aides;

''(iv) the ratio of the aides to professional staff;

''(v) the types of tasks performed by the aides, the level of skill needed to perform the tasks, and whether the tasks are completed in a institution-based or home-based setting; and

''(vi) the average number and range of hours worked each week by the aides; and

''(B) information on availability of the employment benefits for home health care aides and a description of the benefits, including—

''(i) information on health insurance coverage;

''(ii) the type of pension plan coverage;

''(iii) the amount of vacation leave;

''(iv) wage rates; and

''(v) the extent of work-related training provided; and

''(2) collect, and prepare a report containing, information on nursing home nurse aides, including—

''(A) the information described in subparagraphs (A) and (B) of paragraph (1); and

''(B) information on—

''(i) the type of facility of the employer of the aides, such as a skilled nursing facility, as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a)), or an intermediate care facility within the meaning of section 1121(a) of the Social Security Act (42 U.S.C. 1320a(a));

''(ii) the number of beds at the facility; and

''(iii) the ratio of the aides to residents of the facility.

''SEC. 803. REPORTS.

''(a) REPORTS TO COMMISSIONER ON AGING [now ASSISTANT SECRETARY FOR AGING].—

''(1) TRANSMITTAL.—

''(A) NATIONAL CENTER FOR HEALTH STATISTICS REPORT.—Not later than March 1, 1994, the Director of the National Center for Health Statistics of the Centers for Disease Control [now Centers for Disease Control and Prevention] shall transmit to the Commissioner on Aging the report required by section 802(a).

''(B) DEPARTMENT OF LABOR REPORTS.—

''(i) HOME HEALTH CARE AIDES.—Not later than March 1, 1993, the Secretary of Labor shall transmit to the Commissioner on Aging a plan for the collection of the information described in section 802(b)(1). Not later than March 1, 1995, the Secretary of Labor shall transmit to the Commissioner on Aging the report required by section 802(b)(1).

''(ii) NURSING HOME NURSE AIDES.—Not later than March 1, 1994, the Secretary of Labor shall transmit to the Commissioner on Aging the report required by section 802(b)(2).

''(2) PREPARATION.—

''(A) NATIONAL CENTER FOR HEALTH STATISTICS REPORT.—The report required by section 802(a) shall be prepared and organized in such a manner as the Director of the National Center for Health Statistics may determine to be appropriate.

''(B) DEPARTMENT OF LABOR REPORTS.—The reports required by paragraphs (1) and (2) of section 802(b) shall be prepared and organized in such a manner as the Secretary of Labor may determine to be appropriate.

''(3) PRESENTATION OF INFORMATION.—The reports required by section 802 shall not identify by name individuals supplying information for purposes of the reports. The reports shall present information collected in the aggregate.

''(b) REPORT TO CONGRESS.—The Commissioner on Aging [now Assistant Secretary for Aging] shall review the reports required by section 802 and shall submit to the appropriate committees of Congress a report containing—

''(1) the reports required by section 802;

''(2) the comments of the Commissioner on the reports; and

''(3) additional information, regarding the roles of nursing home nurse aides and home health care aides in providing long-term care, obtained through the State Long-Term Care Ombudsman program established under sections 307(a)(12) and 712 of the Older Americans Act of 1965 [now 42 U.S.C. 3027(a)(9), 3058g].

''SEC. 804. OCCUPATIONAL CODE.

''The Secretary of Labor shall include an occupational code covering nursing home nurse aides and an occupational code covering home health care aides in each wage survey of relevant industries conducted by the Department of Labor that begins after the date of enactment of this Act [Sept. 30, 1992].''

LIMITATION ON AUTHORITY TO ENTER INTO CONTRACTS

Section 901 of Pub. L. 102–375 provided that: ''Any authority to enter into contracts under this Act [see Tables for classification] or an amendment made by this Act shall be effective only to the extent or in such amounts as are provided in advance in appropriations Acts.''

WHITE HOUSE CONFERENCE ON AGING

Title II of Pub. L. 100–175, as amended by Pub. L. 102–375, title VIII, §§ 831–836, 839(a), Sept. 30, 1992, 106 Stat. 1300–1305; Pub. L. 103–171, § 6, Dec. 2, 1993, 107 Stat. 1992; Pub. L. 106–501, § 211, Nov. 13, 2000, 114 Stat. 2235; Pub. L. 109–365, title IX, § 901(a), Oct. 17, 2006, 120 Stat. 2598, provided that:

''SEC. 201. AUTHORIZATION OF THE CONFERENCE.

''(a) AUTHORITY TO CALL CONFERENCE.—Not later than December 31, 2005, the President shall convene the White House Conference on Aging in order to fulfill the purpose set forth in subsection (c) and to make fundamental policy recommendations regarding programs that are important to older individuals and to the families and communities of such individuals.

''(b) PLANNING AND DIRECTION.—The Conference described in subsection (a) shall be planned and conducted under the direction of the Secretary, in cooperation with the Assistant Secretary for Aging, the Director of the National Institute on Aging, the Administrator of the Health Care Financing Administration, the Social Security Administrator, and the heads of such other Federal agencies serving older individuals as are appropriate. Planning and conducting the Conference includes the assignment of personnel.

''(c) PURPOSE.—The purpose of the Conference described in subsection (a) shall be to gather individuals representing the spectrum of thought and experience in the field of aging to—

''(1) evaluate the manner in which the objectives of this Act [probably means the Older Americans Act of 1965, Pub. L. 89–73, which enacted this chapter] can be met by using the resources and talents of older individuals, of families and communities of such individuals, and of individuals from the public and private sectors;

''(2) evaluate the manner in which national policies that are related to economic security and health care are prepared so that such policies serve individuals born from 1946 to 1964 and later, as the individuals become older individuals, including an examination of the Social Security, Medicare, and Medicaid programs carried out under titles II, XVIII, and XIX of the Social Security Act (42 U.S.C. 401 et seq., 1395 et seq., and 1396 et seq.) in relation to providing services under this Act, and determine how well such policies respond to the needs of older individuals; and

''(3) develop not more than 50 recommendations to guide the President, Congress, and Federal agencies in serving older individuals.

''(d) CONFERENCE PARTICIPANTS AND DELEGATES.—

''(1) PARTICIPANTS.—In order to carry out the purposes of this section, the Conference shall bring together—

''(A) representatives of Federal, State, and local governments,

''(B) professional and lay people who are working in the field of aging, and

''(C) representatives of the general public, particularly older individuals.

''(2) SELECTION OF DELEGATES.—The delegates shall be selected without regard to political affiliation or past partisan activity and shall, to the best of the appointing authority's ability, be representative of the spectrum of thought in the field of aging. Delegates shall include individuals who are professionals, individuals who are nonprofessionals, minority individuals, individuals from low-income families, representatives of Federal, State, and local governments, and individuals from rural areas. A majority of such delegates shall be age 55 or older.

''SEC. 202. CONFERENCE ADMINISTRATION.

''(a) ADMINISTRATION.—In administering this section, the Secretary shall—

''(1) provide written notice to all members of the Policy Committee of each meeting, hearing, or working session of the Policy Committee not later than 48 hours before the occurrence of such meeting, hearing, or working session,

''(2) request the cooperation and assistance of the heads of such other Federal departments and agencies as may be appropriate in the carrying out of this section,

''(3) make available for public comment a proposed agenda, prepared by the Policy Committee, for the Conference which will reflect to the greatest extent possible the major issues facing older individuals consistent with the provisions of subsection (a),

''(4) prepare and make available background materials for the use of delegates to the Conference which the Secretary deems necessary, and

''(5) engage such additional personnel as may be necessary to carry out the provisions of this section without regard to provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

''(b) DUTIES.—The Secretary shall, in carrying out the Secretary's responsibilities and functions under this section, and as part of the White House Conference on Aging, ensure that—

''(1) the agenda prepared under subsection (a)(3) for the Conference is published in the Federal Register not later than 30 days after such agenda is approved by the Policy Committee, and the Secretary may republish such agenda together with the recommendations of the Secretary regarding such agenda, and

''(2) the personnel engaged under subsection (a)(5) shall be fairly balanced in terms of points of views represented and shall be appointed without regard to political affiliation or previous partisan activities, [and]

''(3) the recommendations of the Conference are not inappropriately influenced by any appointing authority or by any special interest, but will instead be the result of the independent judgment of the Conference, and

''(4) current and adequate statistical data, including decennial census data, and other information on the well-being of older individuals in the United States are readily available, in advance of the Conference, to the delegates of the Conference, together with such information as may be necessary to evaluate Federal programs and policies relating to aging. In carrying out this subparagraph, the Secretary is authorized to make grants to, and enter into cooperative agreements with, public agencies and nonprofit private organizations.

''(c) GIFTS.—The Secretary may accept, on behalf of the United States, gifts (in cash or in kind, including voluntary and uncompensated services), which shall be available to carry out this title. Gifts of cash shall be

available in addition to amounts appropriated to carry out this title. Gifts may be earmarked by the donor or the executive committee for a specific purpose.

''(d) RECORDS.—The Secretary shall maintain records regarding—

''(1) the sources, amounts, and uses of gifts accepted under subsection (c); and

''(2) the identity of each person receiving assistance to carry out this title, and the amount of such assistance received by each such person.

''SEC. 203. POLICY COMMITTEE; RELATED COMMITTEES.

''(a) POLICY COMMITTEE.—

''(1) ESTABLISHMENT.—There is established a Policy Committee comprised of 17 members to be selected, not later than 2 years prior to the date on which the Conference convenes, as follows:

''(A) PRESIDENTIAL APPOINTEES.—Nine members shall be selected by the President and shall include—

''(i) three members who are officers or employees of the United States; and

''(ii) six members with experience in the field of aging, including providers and consumers of aging services.

''(B) HOUSE APPOINTEES.—Two members shall be selected by the Speaker of the House of Representatives, after consultation with the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives, and two members shall be selected by the Minority Leader of the House of Representatives, after consultation with such committees.

''(C) SENATE APPOINTEES.—Two members shall be selected by the Majority Leader of the Senate, after consultation with members of the Committee on Health, Education, Labor, and Pensions and the Special Committee on Aging of the Senate, and two members shall be selected by the Minority Leader of the Senate, after consultation with members of such committees.

''(2) DUTIES OF THE POLICY COMMITTEE.—The Policy Committee shall initially meet at the call of the Secretary, but not later than 30 days after the last member is selected under subsection (a). Subsequent meetings of the Policy Committee shall be held at the call of the chairperson of the Policy Committee. Through meetings, hearings, and working sessions, the Policy Committee shall—

''(A) make recommendations to the Secretary to facilitate the timely convening of the Conference;

''(B) formulate and approve a proposed agenda for the Conference not later than 90 days after the first meeting of the Policy Committee for the Secretary;

''(C) make recommendations for participants and delegates of the Conference;

''(D) establish the number of delegates to be selected under section 201(d)(2);

''(E) establish an executive committee consisting of three to five members, with a majority of such members being age 55 or older, to work with Conference staff; and

''(F) establish other committees as needed that have a majority of members who are age 55 or older.

''(3) VOTING; CHAIRPERSON.—

''(A) VOTING.—The Policy Committee shall act by the vote of a majority of the members present. A quorum of Committee members shall not be required to conduct Committee business.

''(B) CHAIRPERSON.—The President shall select the chairperson from among the members of the Policy Committee. The chairperson may vote only to break a tie vote of the other members of the Policy Committee.

''(b) ADVISORY AND OTHER COMMITTEES.—

''(1) IN GENERAL.—The President shall establish an advisory committee to the Conference which shall include representation from the Federal Council on Aging and other public agencies and private nonprofit organizations as appropriate. The President shall consider for appointment to the advisory committee individuals recommended by the Policy Committee.

''(2) OTHER COMMITTEES.—The Secretary may establish such other committees, including technical committees, as may be necessary to assist in the planning, conducting, and reviewing of the Conference.

''(c) COMPOSITION OF COMMITTEES.—Each committee established under subsection (b) shall be composed of professionals and public members, and shall include individuals from low-income families and from minority groups. A majority of the public members of each such committee shall be 55 years of age or older, and individuals who are Native Americans.

''(d) COMPENSATION.—Appointed members of any such committee (other than any officers or employees of the Federal Government), while attending conferences or meetings of the committee or otherwise serving at the request of the Secretary, shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not to exceed the daily equivalent of the maximum rate of pay payable under section 5376 of title 5, United States Code (including travel time). While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of such title for persons employed intermittently in Federal Government service.

''SEC. 204. REPORT OF THE CONFERENCE.

''(a) PRELIMINARY REPORT.—Not later than 100 days after the date on which the Conference adjourns, the Policy Committee shall publish and deliver to the chief executive officers of the States a preliminary report on the Conference. Comments on the preliminary report of the Conference shall be accepted by the Policy Committee.

''(b) FINAL REPORT.—Not later than 6 months after the date on which the Conference adjourns, the Policy Committee shall publish and transmit to the President and to Congress recommendations resulting from the Conference and suggestions for any administrative action and legislation necessary to implement the recommendations contained within the report.

''SEC. 205. DEFINITIONS.

''For the purposes of this title—

''(1) the term 'area agency on aging' has the meaning given the term in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002),

''(2) the term 'State agency on aging' means the State agency designated under section 305(a)(1) of the Act,

''(3) the term 'Secretary' means the Secretary of Health and Human Services,

''(4) the term 'Conference' means the White House Conference on Aging, and

''(5) the term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

''SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

''(a) AUTHORIZATION.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section [title]—

''(A) such sums as may be necessary for the first fiscal year in which the Policy Committee plans the Conference and for the following fiscal year; and

''(B) such sums as may be necessary for the fiscal year in which the Conference is held.

''(2) CONTRACTS.—Authority to enter into contracts under this title shall be effective only to the extent, or in such amounts as are, provided in advance in appropriations Acts.

''(b) AVAILABILITY OF FUNDS.—

''(1) IN GENERAL.—Except as provided in paragraph (3), funds appropriated to carry out this title and

funds received as gifts under section 202(c) shall remain available for obligation or expenditure until the expiration of the one-year period beginning on the date the Conference adjourns.

''(2) UNOBLIGATED FUNDS.—Except as provided in paragraph (3), any such funds neither expended nor obligated before the expiration of the one-year period beginning on the date the Conference adjourns shall be available to carry out the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).

''(3) CONFERENCE NOT CONVENED.—If the Conference is not convened before December 31, 2005, such funds neither expended nor obligated before such date shall be available to carry out the Older Americans Act of 1965.''

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

[Section 837 of Pub. L. 102–375 provided that: ''All personnel assigned or engaged under [former] section 202(b) or section 203(a)(5) [now section 202(a)(5)] of the Older Americans Act Amendments of 1987 [Pub. L. 100–175, set out above] (42 U.S.C. 3001 note) as in effect immediately before the date of the enactment of this Act [Sept. 30, 1992] shall continue to be assigned or engaged under such section after such date notwithstanding the amendments made by this subtitle [amending title II of Pub. L. 100–175, set out above].'']

Pub. L. 95–478, title II, §§ 201–207, Oct. 18, 1978, 92 Stat. 1551–1554, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, authorized the President to call a White House Conference on Aging in 1981 to develop recommendations relating to economic well-being, health care, housing, social services, and employment of the aging.

EXECUTIVE ORDER NO. 11022

Ex. Ord. No. 11022, May 14, 1962, 27 F.R. 4659, as amended by Ex. Ord. No. 11376, Oct. 17, 1967, 32 F.R. 14545; Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053, which established the President's Council on Aging and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, § 12, Aug. 17, 1982, 47 F.R. 36099, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 3002. Definitions

For the purposes of this chapter—

(1) The term ''abuse'' means the willful—

(A) infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or

(B) deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

(2) The term ''Administration'' means the Administration on Aging.

(3) The term ''adult child with a disability'' means a child who—

(A) is 18 years of age or older;

(B) is financially dependent on an older individual who is a parent of the child; and

(C) has a disability.

(4) The term ''Aging and Disability Resource Center'' means an entity established by a State as part of the State system of long-term care, to provide a coordinated system for providing—

(A) comprehensive information on the full range of available public and private long-term care programs, options, service providers, and resources within a community, including information on the availability of integrated long-term care;

(B) personal counseling to assist individuals in assessing their existing or anticipated long-term care needs, and developing and implementing a plan for long-term care designed to meet their specific needs and circumstances; and

(C) consumers access to the range of publicly-supported long-term care programs for which consumers may be eligible, by serving as a convenient point of entry for such programs.

(5) The term ''aging network'' means the network of—

(A) State agencies, area agencies on aging, title VI [subchapter X of this chapter] grantees, and the Administration; and

(B) organizations that—

(i)(I) are providers of direct services to older individuals; or

(II) are institutions of higher education; and

(ii) receive funding under this chapter.

(6) The term ''area agency on aging'' means an area agency on aging designated under section 3025(a)(2)(A) of this title or a State agency performing the functions of an area agency on aging under section 3025(b)(5) of this title.

(7) The term ''Assistant Secretary'' means the Assistant Secretary for Aging.

(8)(A) The term ''assistive device'' includes an assistive technology device.

(B) The terms ''assistive technology'', ''assistive technology device'', and ''assistive technology service'' have the meanings given such terms in section 3002 of title 29.

(9) The term ''at risk for institutional placement'' means, with respect to an older individual, that such individual is unable to perform at least 2 activities of daily living without substantial assistance (including verbal reminding, physical cuing, or supervision) and is determined by the State involved to be in need of placement in a long-term care facility.

(10) The term ''board and care facility'' means an institution regulated by a State pursuant to section 1382e(e) of this title.

(11) The term ''case management service''—

(A) means a service provided to an older individual, at the direction of the older individual or a family member of the individual—

(i) by an individual who is trained or experienced in the case management skills that are required to deliver the services and coordination described in subparagraph (B); and

(ii) to assess the needs, and to arrange, coordinate, and monitor an optimum package of services to meet the needs, of the older individual; and

(B) includes services and coordination such as—

(i) comprehensive assessment of the older individual (including the physical, psychological, and social needs of the individual);

(ii) development and implementation of a service plan with the older individual to

mobilize the formal and informal resources and services identified in the assessment to meet the needs of the older individual, including coordination of the resources and services—

(I) with any other plans that exist for various formal services, such as hospital discharge plans; and

(II) with the information and assistance services provided under this chapter;

(iii) coordination and monitoring of formal and informal service delivery, including coordination and monitoring to ensure that services specified in the plan are being provided;

(iv) periodic reassessment and revision of the status of the older individual with—

(I) the older individual; or

(II) if necessary, a primary caregiver or family member of the older individual; and

(v) in accordance with the wishes of the older individual, advocacy on behalf of the older individual for needed services or resources.

(12) The term ''civic engagement'' means an individual or collective action designed to address a public concern or an unmet human, educational, health care, environmental, or public safety need.

(13) The term ''disability'' means (except when such term is used in the phrase ''severe disability'', ''developmental disabilities'', ''physical or mental disability'', ''physical and mental disabilities'', or ''physical disabilities'') a disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in 1 or more of the following areas of major life activity: (A) self-care, (B) receptive and expressive language, (C) learning, (D) mobility, (E) self-direction, (F) capacity for independent living, (G) economic self-sufficiency, (H) cognitive functioning, and (I) emotional adjustment.

(14) The term ''disease prevention and health promotion services'' means—

(A) health risk assessments;

(B) routine health screening, which may include hypertension, glaucoma, cholesterol, cancer, vision, hearing, diabetes, bone density, and nutrition screening;

(C) nutritional counseling and educational services for individuals and their primary caregivers;

(D) evidence-based health promotion programs, including programs related to the prevention and mitigation of the effects of chronic disease (including osteoporosis, hypertension, obesity, diabetes, and cardiovascular disease), alcohol and substance abuse reduction, smoking cessation, weight loss and control, stress management, falls prevention, physical activity, and improved nutrition;

(E) programs regarding physical fitness, group exercise, and music therapy, art therapy, and dance-movement therapy, including programs for multigenerational participation that are provided by—

(i) an institution of higher education;

(ii) a local educational agency, as defined in section 8801[1] of title 20; or

(iii) a community-based organization;

(F) home injury control services, including screening of high-risk home environments and provision of educational programs on injury prevention (including fall and fracture prevention) in the home environment;

(G) screening for the prevention of depression, coordination of community mental health services, provision of educational activities, and referral to psychiatric and psychological services;

(H) educational programs on the availability, benefits, and appropriate use of preventive health services covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(I) medication management screening and education to prevent incorrect medication and adverse drug reactions;

(J) information concerning diagnosis, prevention, treatment, and rehabilitation concerning age-related diseases and chronic disabling conditions, including osteoporosis, cardiovascular diseases, diabetes, and Alzheimer's disease and related disorders with neurological and organic brain dysfunction;

(K) gerontological counseling; and

(L) counseling regarding social services and followup health services based on any of the services described in subparagraphs (A) through (K).

The term shall not include services for which payment may be made under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.).

(15) The term ''elder abuse'' means abuse of an older individual.

(16) The term ''elder abuse, neglect, and exploitation'' means abuse, neglect, and exploitation, of an older individual.

(17) The term ''elder justice''—

(A) used with respect to older individuals, collectively, means efforts to prevent, detect, treat, intervene in, and respond to elder abuse, neglect, and exploitation and to protect older individuals with diminished capacity while maximizing their autonomy; and

(B) used with respect to an individual who is an older individual, means the recognition of the individual's rights, including the right to be free of abuse, neglect, and exploitation.

(18)(A) The term ''exploitation'' means the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets.

(B) In subparagraph (A), the term ''caregiver'' means an individual who has the responsibility for the care of an older individual, either voluntarily, by contract, by receipt of

[1] See References in Text note below.

payment for care, or as a result of the operation of law and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an older individual.

(19) The term ''family violence'' has the same meaning given the term in the Family Violence Prevention and Services Act [42 U.S.C. 10401 et seq.].

(20) The term ''fiduciary''—

(A) means a person or entity with the legal responsibility—

(i) to make decisions on behalf of and for the benefit of another person; and

(ii) to act in good faith and with fairness; and

(B) includes a trustee, a guardian, a conservator, an executor, an agent under a financial power of attorney or health care power of attorney, or a representative payee.

(21) The term ''focal point'' means a facility established to encourage the maximum collocation and coordination of services for older individuals.

(22) The term ''frail'' means, with respect to an older individual in a State, that the older individual is determined to be functionally impaired because the individual—

(A)(i) is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or

(ii) at the option of the State, is unable to perform at least three such activities without such assistance; or

(B) due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual.

(23) The term ''greatest economic need'' means the need resulting from an income level at or below the poverty line.

(24) The term ''greatest social need'' means the need caused by noneconomic factors, which include—

(A) physical and mental disabilities;

(B) language barriers; and

(C) cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that—

(i) restricts the ability of an individual to perform normal daily tasks; or

(ii) threatens the capacity of the individual to live independently.

(25) The term ''Hispanic-serving institution'' has the meaning given the term in section 1101a of title 20.

(26) The term ''Indian'' means a person who is a member of an Indian tribe.

(27) Except for the purposes of subchapter X of this chapter, the term ''Indian tribe'' means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92–203; 85 Stat. 688) [43 U.S.C. 1601 et seq.]) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.

(28) The term ''information and assistance service'' means a service for older individuals that—

(A) provides the individuals with current information on opportunities and services available to the individuals within their communities, including information relating to assistive technology;

(B) assesses the problems and capacities of the individuals;

(C) links the individuals to the opportunities and services that are available;

(D) to the maximum extent practicable, ensures that the individuals receive the services needed by the individuals, and are aware of the opportunities available to the individuals, by establishing adequate follow-up procedures; and

(E) serves the entire community of older individuals, particularly—

(i) older individuals with greatest social need;

(ii) older individuals with greatest economic need; and

(iii) older individuals at risk for institutional placement.

(29) The term ''information and referral'' includes information relating to assistive technology.

(30) The term ''in-home services'' includes—

(A) services of homemakers and home health aides;

(B) visiting and telephone reassurance;

(C) chore maintenance;

(D) in-home respite care for families, and adult day care as a respite service for families;

(E) minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home and that is not available under another program (other than a program carried out under this chapter);

(F) personal care services; and

(G) other in-home services as defined—

(i) by the State agency in the State plan submitted in accordance with section 3027 of this title; and

(ii) by the area agency on aging in the area plan submitted in accordance with section 3026 of this title.

(31) The term ''institution of higher education'' has the meaning given the term in section 1001 of title 20.

(32) The term ''integrated long-term care''—

(A) means items and services that consist of—

(i) with respect to long-term care—

(I) long-term care items or services provided under a State plan for medical assistance under the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), including nursing facility services, home

and community-based services, personal care services, and case management services provided under the plan; and

(II) any other supports, items, or services that are available under any federally funded long-term care program; and

(ii) with respect to other health care, items and services covered under—

(I) the Medicare program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(II) the State plan for medical assistance under the Medicaid program; or

(III) any other federally funded health care program; and

(B) includes items or services described in subparagraph (A) that are provided under a public or private managed care plan or through any other service provider.

(33) The term ''legal assistance''—

(A) means legal advice and representation provided by an attorney to older individuals with economic or social needs; and

(B) includes—

(i) to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney; and

(ii) counseling or representation by a nonlawyer where permitted by law.

(34) The term ''long-term care'' means any service, care, or item (including an assistive device), including a disease prevention and health promotion service, an in-home service, and a case management service—

(A) intended to assist individuals in coping with, and to the extent practicable compensate for, a functional impairment in carrying out activities of daily living;

(B) furnished at home, in a community care setting (including a small community care setting as defined in subsection (g)(1), and a large community care setting as defined in subsection (h)(1), of section 1929 of the Social Security Act (42 U.S.C. 1396t)), or in a long-term care facility; and

(C) not furnished to prevent, diagnose, treat, or cure a medical disease or condition.

(35) The term ''long-term care facility'' means—

(A) any skilled nursing facility, as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a));

(B) any nursing facility, as defined in section 1919(a) of the Social Security Act (42 U.S.C. 1396r(a));

(C) for purposes of sections 3027(a)(9) and 3058g of this title, a board and care facility; and

(D) any other adult care home, including an assisted living facility, similar to a facility or institution described in subparagraphs (A) through (C).

(36) The term ''multipurpose senior center'' means a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health (including mental health), social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals.

(37) The term ''Native American'' means—

(A) an Indian as defined in paragraph (5);[2] and

(B) a Native Hawaiian, as defined in section 3057k of this title.

(38) The term ''neglect'' means—

(A) the failure of a caregiver (as defined in paragraph (18)(B)) or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an older individual; or

(B) self-neglect.

(39) The term ''nonprofit'' as applied to any agency, institution, or organization means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(40) The term ''older individual'' means an individual who is 60 years of age or older.

(41) The term ''physical harm'' means bodily injury, impairment, or disease.

(42) The term ''planning and service area'' means an area designated by a State agency under section 3025(a)(1)(E) of this title, including a single planning and service area described in section 3025(b)(5)(A) of this title.

(43) The term ''poverty line'' means the official poverty line (as defined by the Office of Management and Budget, and adjusted by the Secretary in accordance with section 9902(2) of this title.[3]

(44) The term ''representative payee'' means a person who is appointed by a governmental entity to receive, on behalf of an older individual who is unable to manage funds by reason of a physical or mental incapacity, any funds owed to such individual by such entity.

(45) The term ''Secretary'' means the Secretary of Health and Human Services, except that for purposes of subchapter IX of this chapter such term means the Secretary of Labor.

(46) The term ''self-directed care'' means an approach to providing services (including programs, benefits, supports, and technology) under this chapter intended to assist an individual with activities of daily living, in which—

(A) such services (including the amount, duration, scope, provider, and location of such services) are planned, budgeted, and purchased under the direction and control of such individual;

(B) such individual is provided with such information and assistance as are necessary and appropriate to enable such individual to make informed decisions about the individual's care options;

(C) the needs, capabilities, and preferences of such individual with respect to such serv-

[2] So in original. Probably should refer to paragraph (26).

[3] So in original. A closing parenthesis probably should follow ''this title''.

ices, and such individual's ability to direct and control the individual's receipt of such services, are assessed by the area agency on aging (or other agency designated by the area agency on aging) involved;

(D) based on the assessment made under subparagraph (C), the area agency on aging (or other agency designated by the area agency on aging) develops together with such individual and the individual's family, caregiver (as defined in paragraph (18)(B)), or legal representative—

(i) a plan of services for such individual that specifies which services such individual will be responsible for directing;

(ii) a determination of the role of family members (and others whose participation is sought by such individual) in providing services under such plan; and

(iii) a budget for such services; and

(E) the area agency on aging or State agency provides for oversight of such individual's self-directed receipt of services, including steps to ensure the quality of services provided and the appropriate use of funds under this chapter.

(47) The term ''self-neglect'' means an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including—

(A) obtaining essential food, clothing, shelter, and medical care;

(B) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or

(C) managing one's own financial affairs.

(48) The term ''severe disability'' means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that—

(A) is likely to continue indefinitely; and

(B) results in substantial functional limitation in 3 or more of the major life activities specified in subparagraphs (A) through (G) of paragraph (8).[4]

(49) The term ''sexual assault'' has the meaning given the term in section 3796gg–2 of this title.[1]

(50) The term ''State'' means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(51) The term ''State agency'' means the agency designated under section 3025(a)(1) of this title.

(52) The term ''State system of long-term care'' means the Federal, State, and local programs and activities administered by a State that provide, support, or facilitate access to long-term care for individuals in such State.

(53) The term ''supportive service'' means a service described in section 3030d(a) of this title.

(54) Except for the purposes of subchapter X of this chapter, the term ''tribal organization'' means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body. In any case in which a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

(Pub. L. 89–73, title I, § 102, July 14, 1965, 79 Stat. 219; Pub. L. 90–42, § 5(a), July 1, 1967, 81 Stat. 107; Pub. L. 91–69, § 10(a), Sept. 17, 1969, 83 Stat. 114; Pub. L. 94–135, title I, §§ 104(b), 114(a), Nov. 28, 1975, 89 Stat. 714, 725; Pub. L. 95–478, title V, § 503(a), Oct. 18, 1978, 92 Stat. 1559; Pub. L. 97–115, § 2(a)(2), (3), Dec. 29, 1981, 95 Stat. 1595; Pub. L. 100–175, title I, §§ 136(a)(1), 146(a), 182(a), (b)(1), Nov. 29, 1987, 101 Stat. 942, 950, 964; Pub. L. 100–628, title VII, § 705(1), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 102–375, title I, § 102(a), (b)(1)(A), title IX, § 904(a)(2), Sept. 30, 1992, 106 Stat. 1197, 1200, 1306; Pub. L. 103–171, §§ 2(1), 3(a)(1), Dec. 2, 1993, 107 Stat. 1988, 1989; Pub. L. 105–244, title I, § 102(a)(13)(C), Oct. 7, 1998, 112 Stat. 1620; Pub. L. 106–501, title I, § 101, title VIII, § 801(a), Nov. 13, 2000, 114 Stat. 2227, 2291; Pub. L. 108–36, title IV, § 416, June 25, 2003, 117 Stat. 831; Pub. L. 109–365, title I, § 101, Oct. 17, 2006, 120 Stat. 2523.)

REFERENCES IN TEXT

The Social Security Act, referred to in pars. (14) and (32), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 8801 of title 20, referred to in par. (14)(E)(ii), was repealed by Pub. L. 107–110, title X, § 1011(5)(C), Jan. 8, 2002, 115 Stat. 1986. See section 7801 of Title 20, Education.

The Family Violence Prevention and Services Act, referred to in par. (19), is title III of Pub. L. 98–457, Oct. 9, 1984, 98 Stat. 1757, which is classified generally to chapter 110 (§ 10401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10401 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in par. (27), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act of the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 3796gg–2 of this title, referred to in par. (49), was subsequently amended and no longer defines ''sexual assault''. However, it now refers to definitions in section 13925 of this title, which defines ''sexual assault'' in subsec. (a)(23).

AMENDMENTS

2006—Pub. L. 109–365, § 101(b), redesignated pars. (1) to (54) as (45), (7), (50), (39), (26), (27), (54), (13), (48), (8), (29), (14), (1), (2), (3), (5), (6), (10), (30), (37), (11), (15), (16), (18), (21), (22), (23), (24), (28), (31), (33), (35), (36), (38), (40), (41), (42), (43), (44), (51), (53), (19), (49), (4), (9), (12), (17), (20), (25), (34), (46), (47), (52), and (32), respectively.

Par. (10). Pub. L. 109–365, § 101(a)(1), added par. (10) and struck out former par. (10) which read as follows: ''The term 'assistive technology' means technology, engineering methodologies, or scientific principles appropriate to meet the needs of, and address the barriers confronted by, older individuals with functional limitations.''

Par. (12)(D). Pub. L. 109–365, § 101(a)(2), added subpar. (D) and struck out former subpar. (D) which read as fol-

[4] So in original. Probably should refer to paragraph (13).

lows: ''health promotion programs, including but not limited to programs relating to prevention and reduction of effects of chronic disabling conditions (including osteoporosis and cardiovascular disease), alcohol and substance abuse reduction, smoking cessation, weight loss and control, and stress management;''.

Par. (24). Pub. L. 109–365, §101(a)(3), added par. (24) and struck out former par. (24) which read as follows: ''The term 'exploitation' means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.''

Par. (29)(E)(iii). Pub. L. 109–365, §101(a)(4), added cl. (iii).

Par. (32)(D). Pub. L. 109–365, §101(a)(5), inserted '', including an assisted living facility,'' after ''home''.

Par. (34). Pub. L. 109–365, §101(a)(6), added par. (34) and struck out former par. (34) which read as follows: ''The term 'neglect' means—

''(A) the failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or

''(B) the failure of a caregiver to provide the goods or services.''

Pars. (44) to (54). Pub. L. 109–365, §101(a)(7), added pars. (44) to (54).

2003—Par. (42). Pub. L. 108–36 struck out ''(42 U.S.C. 10408)'' before period at end.

2000—Par. (3). Pub. L. 106–501, §101(1), substituted ''and the Commonwealth of the Northern Mariana Islands'' for ''the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands''.

Par. (12). Pub. L. 106–501, §101(2), added par. (12) and struck out former par. (12) which read as follows: ''The term 'Trust Territory of the Pacific Islands' includes the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.''

Par. (18). Pub. L. 106–501, §101(3), redesignated par. (19) as (18) and struck out former par. (18) which read as follows: ''The term 'art therapy' means the use of art and artistic processes specifically selected and administered by an art therapist, to accomplish the restoration, maintenance, or improvement of the mental, emotional, or social functioning of an older individual.''

Par. (19). Pub. L. 106–501, §101(4), added par. (19) and struck out former par. (19) which read as follows: ''The term 'caregiver' means an individual who has the responsibility for the care of an older individual, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law.''

Pub. L. 106–501, §101(3), redesignated par. (20) as (19). Former par. (19) redesignated (18).

Par. (20). Pub. L. 106–501, §101(4), added par. (20) and struck out former par. (20) which read as follows: ''The term 'caretaker' means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) uncompensated care to an older individual who needs supportive services.''

Pub. L. 106–501, §101(3), redesignated par. (21) as (20). Former par. (20) redesignated (19).

Par. (21). Pub. L. 106–501, §101(3), redesignated par. (22) as (21). Former par. (21) redesignated (20).

Par. (22). Pub. L. 106–501, §101(5), redesignated par. (24) as (22). Former par. (22) redesignated (21).

Par. (23). Pub. L. 106–501, §101(5), redesignated par. (25) as (23) and struck out former par. (23) which read as follows: ''The term 'dance-movement therapy' means the use of psychotherapeutic movement as a process facilitated by a dance-movement therapist, to further the emotional, cognitive, or physical health of an older individual.''

Pars. (24) to (31). Pub. L. 106–501, §101(5), redesignated pars. (26) to (33) as (24) to (31), respectively. Former pars. (24) and (25) redesignated (22) and (23), respectively.

Par. (32). Pub. L. 106–501, §101(5), redesignated par. (34) as (32). Former par. (32) redesignated (30).

Par. (32)(C). Pub. L. 106–501, §801(a), which directed that par. (34)(C) be amended by substituting ''3027(a)(9)'' for ''3027(a)(12)'', was executed by making the substitution in par. (32)(C), to reflect the probable intent of Congress and the redesignation of par. (34) as (32) by Pub. L. 106–501, §101(5). See above.

Par. (33). Pub. L. 106–501, §101(5), redesignated par. (35) as (33). Former par. (33) redesignated (31).

Pars. (34), (35). Pub. L. 106–501, §101(6), redesignated pars. (37) and (38) as (34) and (35), respectively. Former pars. (34) and (35) redesignated (32) and (33), respectively.

Par. (36). Pub. L. 106–501, §101(6), redesignated par. (39) as (36) and struck out former par.(36) which read as follows: ''The term 'music therapy' means the use of musical or rhythmic interventions specifically selected by a music therapist to accomplish the restoration, maintenance, or improvement of social or emotional functioning, mental processing, or physical health of an older individual.''

Pars. (37) to (41). Pub. L. 106–501, §101(6), redesignated pars. (40) to (44) as (37) to (41), respectively. Former pars. (37) to (39) redesignated (34) to (36), respectively.

Pars. (42), (43). Pub. L. 106–501, §101(7), added pars. (42) and (43). Former pars. (42) and (43) redesignated (39) and (40), respectively.

Par. (44). Pub. L. 106–501, §101(6), redesignated par. (44) as (41).

1998—Par. (32). Pub. L. 105–244 substituted ''section 1001'' for ''section 1141(a)''.

1993—Par. (2). Pub. L. 103–171, §3(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'Commissioner' means, unless the context otherwise requires, the Commissioner of the Administration.''

Par. (3). Pub. L. 103–171, §2(1), substituted ''Virgin Islands of the United States'' for ''Virgin Islands''.

1992—Par. (2). Pub. L. 102–375, §904(a)(2), which directed amendment of par. (2) by substituting ''United States Virgin Islands'' for ''Virgin Islands'', could not be executed because ''Virgin Islands'' did not appear in par. (2).

Pub. L. 102–375, §102(b)(1)(A), substituted ''Administration'' for ''Administration on Aging''.

Pars. (13) to (44). Pub. L. 102–375, §102(a), added pars. (13) to (44).

1988—Par. (10). Pub. L. 100–628, §705(1)(A), redesignated par. (8) defining ''assistive technology'' as (10).

Par. (11). Pub. L. 100–628, §705(1)(A), redesignated par. (9) defining ''information and referral'' as (11).

Par. (12). Pub. L. 100–628, §705(1)(B), redesignated par. (8) defining ''Trust Territory of the Pacific Islands'' as (12).

1987—Par. (1). Pub. L. 100–175, §182(a), substituted ''except that for purposes of subchapter IX of this chapter such term means the Secretary of Labor'' for ''other than for purposes of subchapter IX of this chapter''.

Par. (3). Pub. L. 100–175, §182(b)(1)(A), substituted ''means any of the several States,'' for ''includes'' and ''the Commonwealth of Puerto Rico'' for ''Puerto Rico''.

Par. (8). Pub. L. 100–175, §182(b)(1)(B), added par. (8) defining ''Trust Territory of the Pacific Islands''.

Pub. L. 100–175, §146(a), added par. (8) defining ''assistive technology''.

Pub. L. 100–175, §136(a)(1), added par. (8) defining ''disability''.

Par. (9). Pub. L. 100–175, §146(a), added par. (9) defining ''information and referral''.

Pub. L. 100–175, §136(a)(1), added par. (9) defining ''severe disability''.

1981—Par. (1). Pub. L. 97–115, §2(a)(2), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Par. (3). Pub. L. 97–115, §2(a)(3)(A), inserted reference to the Commonwealth of the Northern Mariana Islands.

Pars. (6), (7). Pub. L. 97–115, §2(a)(3)(B), (C), substituted ''Except for the purposes of subchapter X of this chapter, the term'' for ''The term''.

1978—Par. (1). Pub. L. 95–478, §503(a)(1), inserted '', other than for purposes of subchapter IX of this chapter''.

Pars. (4) to (7). Pub. L. 95–478, § 503(a)(2), redesignated second par. (4), which was enacted by Pub. L. 94–135, § 104(b), as par. (5) and redesignated existing pars. (5) and (6) as (6) and (7), respectively.

1975—Par. (1). Pub. L. 94–135, § 114(a), substituted a period for the semicolon.

Pars. (4) to (6). Pub. 94–135, § 104(b), added pars. (4) to (6).

1969—Par. (3). Pub. L. 91–69 enlarged term ''State'' to include the Trust Territory of the Pacific Islands.

1967—Par. (2). Pub. L. 90–42, § 5(a)(1), inserted '', unless the context otherwise requires,'' after ''means''.

Par. (4). Pub. L. 90–42, § 5(a)(2), enlarged term nonprofit institution or organization to include nonprofit agencies.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

§ 3003. Congressional declaration of additional objectives

The Congress finds that millions of older citizens in this Nation are suffering unnecessary harm from the lack of adequate services. It is therefore the purpose of this Act, in support of the objectives of this chapter, to—

(1) make available comprehensive programs which include a full range of health, education, and supportive services to our older citizens who need them,

(2) give full and special consideration to older citizens with special needs in planning such programs, and, pending the availability of such programs for all older citizens, give priority to the elderly with the greatest economic and social need.

(3) provide comprehensive programs which will assure the coordinated delivery of a full range of essential services to our older citizens, and, where applicable, also furnish meaningful employment opportunities for many individuals, including older persons, young persons, and volunteers from the community, and

(4) insure that the planning and operation of such programs will be undertaken as a partnership of older citizens, community agencies, and State and local governments, with appropriate assistance from the Federal Government.

(Pub. L. 93–29, title I, § 101, May 3, 1973, 87 Stat. 30; Pub. L. 97–115, § 3(d), Dec. 29, 1981, 95 Stat. 1597.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 93–29, May 3, 1973, 87 Stat. 30, as amended, known as the Older Americans Comprehensive Services Amendments of 1973. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 3001 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Older Americans Act of 1965 which comprises this chapter.

AMENDMENTS

1981—Par. (1). Pub. L. 97–115 substituted ''supportive services'' for ''social services''.

SUBCHAPTER II—ADMINISTRATION ON AGING

§ 3011. Establishment of Administration on Aging

(a) Function and operation

There is established in the Office of the Secretary an Administration on Aging which shall be headed by an Assistant Secretary for Aging. Except for subchapter IX of this chapter, the Administration shall be the agency for carrying out this chapter. There shall be a direct reporting relationship between the Assistant Secretary and the Secretary. In the performance of the functions of the Assistant Secretary, the Assistant Secretary shall be directly responsible to the Secretary. The Secretary shall not approve or require any delegation of the functions of the Assistant Secretary (including the functions of the Assistant Secretary carried out through regional offices) to any other officer not directly responsible to the Assistant Secretary.

(b) Appointment of Assistant Secretary

The Assistant Secretary shall be appointed by the President by and with the advice and consent of the Senate.

(c) Office for American Indian, Alaskan Native, and Native Hawaiian Programs; Director

(1) There is established in the Administration an Office for American Indian, Alaskan Native, and Native Hawaiian Programs.

(2) The Office shall be headed by a Director of the Office for American Indian, Alaskan Native, and Native Hawaiian Aging appointed by the Assistant Secretary.

(3) The Director of the Office for American Indian, Alaskan Native, and Native Hawaiian Aging shall—

(A)(i) evaluate the adequacy of outreach under subchapter III of this chapter and subchapter X of this chapter for older individuals who are Native Americans and recommend to the Assistant Secretary necessary action to improve service delivery, outreach, coordination between subchapter III and subchapter X services, and particular problems faced by older Indians and Native Hawaiians; and

(ii) include a description of the results of such evaluation and recommendations in the annual report required by section 3018(a) of this title to be submitted by the Assistant Secretary;

(B) serve as the effective and visible advocate in behalf of older individuals who are Native Americans within the Department of Health and Human Services and with other departments and agencies of the Federal Government regarding all Federal policies affecting

such individuals, with particular attention to services provided to Native Americans by the Indian Health Service;

(C) coordinate activities between other Federal departments and agencies to assure a continuum of improved services through memoranda of agreements or through other appropriate means of coordination;

(D) administer and evaluate the grants provided under this chapter to Indian tribes, public agencies and nonprofit private organizations serving Native Hawaiians;

(E) recommend to the Assistant Secretary policies and priorities with respect to the development and operation of programs and activities conducted under this chapter relating to older individuals who are Native Americans;

(F) collect and disseminate information related to problems experienced by older Native Americans, including information (compiled with assistance from public or nonprofit private entities, including institutions of higher education, with experience in assessing the characteristics and health status of older individuals who are Native Americans) on elder abuse, in-home care, health problems, and other problems unique to Native Americans;

(G) develop research plans, and conduct and arrange for research, in the field of American Native aging with a special emphasis on the gathering of statistics on the status of older individuals who are Native Americans;

(H) develop and provide technical assistance and training programs to grantees under subchapter X of this chapter;

(I) promote coordination—

(i) between the administration of subchapter III of this chapter and the administration of subchapter X of this chapter; and

(ii) between programs established under subchapter III of this chapter by the Assistant Secretary and programs established under subchapter X of this chapter by the Assistant Secretary;

including sharing among grantees information on programs funded, and on training and technical assistance provided, under such subchapters; and

(J) serve as the effective and visible advocate on behalf of older individuals who are Indians, Alaskan Natives, and Native Hawaiians, in the States to promote the enhanced delivery of services and implementation of programs, under this chapter and other Federal Acts, for the benefit of such individuals.

(d) Office of Long-Term Care Ombudsman Programs

(1) There is established in the Administration the Office of Long-Term Care Ombudsman Programs (in this subsection referred to as the ''Office'').

(2)(A) The Office shall be headed by a Director of the Office of Long-Term Care Ombudsman Programs (in this subsection referred to as the ''Director'') who shall be appointed by the Assistant Secretary from among individuals who have expertise and background in the fields of long-term care advocacy and management. The Director shall report directly to the Assistant Secretary.

(B) No individual shall be appointed Director if—

(i) the individual has been employed within the previous 2 years by—

(I) a long-term care facility;

(II) a corporation that then owned or operated a long-term care facility; or

(III) an association of long-term care facilities;

(ii) the individual—

(I) has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or long-term care service; or

(II) receives, or has the right to receive, directly or indirectly remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; or

(iii) the individual, or any member of the immediate family of the individual, is subject to a conflict of interest.

(3) The Director shall—

(A) serve as an effective and visible advocate on behalf of older individuals who reside in long-term care facilities, within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government regarding all Federal policies affecting such individuals;

(B) review and make recommendations to the Assistant Secretary regarding—

(i) the approval of the provisions in State plans submitted under section 3027(a) of this title that relate to State Long-Term Care Ombudsman programs; and

(ii) the adequacy of State budgets and policies relating to the programs;

(C) after consultation with State Long-Term Care Ombudsmen and the State agencies, make recommendations to the Assistant Secretary regarding—

(i) policies designed to assist State Long-Term Care Ombudsmen; and

(ii) methods to periodically monitor and evaluate the operation of State Long-Term Care Ombudsman programs, to ensure that the programs satisfy the requirements of section 3027(a)(9) of this title and section 3058g of this title, including provision of service to residents of board and care facilities and of similar adult care facilities;

(D) keep the Assistant Secretary and the Secretary fully and currently informed about—

(i) problems relating to State Long-Term Care Ombudsman programs; and

(ii) the necessity for, and the progress toward, solving the problems;

(E) review, and make recommendations to the Secretary and the Assistant Secretary regarding, existing and proposed Federal legislation, regulations, and policies regarding the operation of State Long-Term Care Ombudsman programs;

(F) make recommendations to the Assistant Secretary and the Secretary regarding the policies of the Administration, and coordinate

the activities of the Administration with the activities of other Federal entities, State and local entities, and nongovernmental entities, relating to State Long-Term Care Ombudsman programs;

(G) supervise the activities carried out under the authority of the Administration that relate to State Long-Term Care Ombudsman programs;

(H) administer the National Ombudsman Resource Center established under section 3012(a)(21)[1] of this title and make recommendations to the Assistant Secretary regarding the operation of the National Ombudsman Resource Center;

(I) advocate, monitor, and coordinate Federal and State activities of Long-Term Care Ombudsmen under this chapter;

(J) submit to the Speaker of the House of Representatives and the President pro tempore of the Senate an annual report on the effectiveness of services provided under section 3027(a)(9) of this title and section 3058g of this title;

(K) have authority to investigate the operation or violation of any Federal law administered by the Department of Health and Human Services that may adversely affect the health, safety, welfare, or rights of older individuals; and

(L) not later than 180 days after September 30, 1992, establish standards applicable to the training required by section 3058g(h)(4) of this title.

(e) Elder abuse prevention and services

(1) The Assistant Secretary is authorized to designate within the Administration a person to have responsibility for elder abuse prevention and services.

(2) It shall be the duty of the Assistant Secretary, acting through the person designated to have responsibility for elder abuse prevention and services—

(A) to develop objectives, priorities, policy, and a long-term plan for—

(i) facilitating the development, implementation, and continuous improvement of a coordinated, multidisciplinary elder justice system in the United States;

(ii) providing Federal leadership to support State efforts in carrying out elder justice programs and activities relating to—

(I) elder abuse prevention, detection, treatment, intervention, and response;

(II) training of individuals regarding the matters described in subclause (I); and

(III) the development of a State comprehensive elder justice system, as defined in section 3058aa–1(b) of this title;

(iii) establishing Federal guidelines and disseminating best practices for uniform data collection and reporting by States;

(iv) working with States, the Department of Justice, and other Federal entities to annually collect, maintain, and disseminate data relating to elder abuse, neglect, and exploitation, to the extent practicable;

(v) establishing an information clearinghouse to collect, maintain, and disseminate information concerning best practices and resources for training, technical assistance, and other activities to assist States and communities to carry out evidence-based programs to prevent and address elder abuse, neglect, and exploitation;

(vi) conducting research related to elder abuse, neglect, and exploitation;

(vii) providing technical assistance to States and other eligible entities that provide or fund the provision of the services described in subchapter XI;

(viii) carrying out a study to determine the national incidence and prevalence of elder abuse, neglect, and exploitation in all settings; and

(ix) promoting collaborative efforts and diminishing duplicative efforts in the development and carrying out of elder justice programs at the Federal, State and local levels; and

(B) to assist States and other eligible entities under subchapter XI to develop strategic plans to better coordinate elder justice activities, research, and training.

(3) The Secretary, acting through the Assistant Secretary, may issue such regulations as may be necessary to carry out this subsection and section 3058aa–1 of this title.

(f) Mental health services

(1) The Assistant Secretary may designate an officer or employee who shall be responsible for the administration of mental health services authorized under this chapter.

(2) It shall be the duty of the Assistant Secretary, acting through the individual designated under paragraph (1), to develop objectives, priorities, and a long-term plan for supporting State and local efforts involving education about and prevention, detection, and treatment of mental disorders, including age-related dementia, depression, and Alzheimer's disease and related neurological disorders with neurological and organic brain dysfunction.

(Pub. L. 89–73, title II, § 201, July 14, 1965, 79 Stat. 220; Pub. L. 93–29, title II, § 201(a), May 3, 1973, 87 Stat. 30; Pub. L. 93–351, § 2(a), July 12, 1974, 88 Stat. 357; Pub. L. 95–478, title V, § 503(b)(1), Oct. 18, 1978, 92 Stat. 1559; Pub. L. 98–459, title II, § 201, Oct. 9, 1984, 98 Stat. 1767; Pub. L. 100–175, title I, §§ 102, 107(a), 182(c), Nov. 29, 1987, 101 Stat. 928, 931, 964; Pub. L. 102–375, title I, § 102(b)(1)(A), (2), title II, § 201, title IX, § 904(a)(3), Sept. 30, 1992, 106 Stat. 1200, 1201, 1202, 1306; Pub. L. 103–171, § 3(a)(2), Dec. 2, 1993, 107 Stat. 1989; Pub. L. 106–501, title VIII, § 801(b)(1), Nov. 13, 2000, 114 Stat. 2291; Pub. L. 109–365, title II, § 201, Oct. 17, 2006, 120 Stat. 2527.)

REFERENCES IN TEXT

Section 3012(a)(21) of this title, referred to in subsec. (d)(3)(H), was redesignated section 3012(a)(18) of this title and section 3012(a)(24) was redesignated section 3012(a)(21) by Pub. L. 106–501, title II, § 201(1)(B), Nov. 13, 2000, 114 Stat. 2229.

AMENDMENTS

2006—Subsecs. (e), (f). Pub. L. 109–365 added subsecs. (e) and (f).

2000—Subsec. (d)(3)(C)(ii), (J). Pub. L. 106–501 substituted "3027(a)(9)" for "3027(a)(12)".

[1] See References in Text note below.

1993—Subsec. (a). Pub. L. 103–171, § 3(a)(2)(A), (D), substituted ''an Assistant Secretary for Aging'' for ''a Commissioner on Aging'' and substituted ''the Assistant Secretary'' for ''the Commissioner'' wherever appearing.

Subsec. (b). Pub. L. 103–171, § 3(a)(2)(D), substituted ''Assistant Secretary'' for ''Commissioner''.

Subsec. (c)(2). Pub. L. 103–171, § 3(a)(2)(B)(i), (D), substituted ''a Director of the Office for'' for ''an Associate Commissioner on'' and ''Assistant Secretary'' for ''Commissioner''.

Subsec. (c)(3). Pub. L. 103–171, § 3(a)(2)(B)(ii), (D), substituted ''Director of the Office for'' for ''Associate Commissioner on'' in introductory provisions and ''Assistant Secretary'' for ''Commissioner'' wherever appearing in subpars. (A), (E), and (I)(ii).

Subsec. (d)(2). Pub. L. 103–171, § 3(a)(2)(C), (D), substituted ''a Director of the Office of Long-Term Care Ombudsman Programs'' for ''an Associate Commissioner for Ombudsman Programs'' in subpar. (A), ''Director'' for ''Associate Commissioner'' wherever appearing, and ''Assistant Secretary'' for ''Commissioner'' in two places in subpar. (A).

Subsec. (d)(3). Pub. L. 103–171, § 3(a)(2)(C)(ii), (D), substituted ''Director'' for ''Associate Commissioner'' in introductory provisions and ''Assistant Secretary'' for ''Commissioner'' in subpars. (B) to (F) and (H).

1992—Subsec. (a). Pub. L. 102–375, §§ 102(b)(2), 201(a), struck out ''(hereinafter in this chapter referred to as the 'Administration')'' after ''Administration on Aging'' and ''(hereinafter in this chapter referred to as the 'Commissioner')'' after ''Commissioner on Aging'' and inserted ''(including the functions of the Commissioner carried out through regional offices)'' after ''functions of the Commissioner''.

Subsec. (c)(1). Pub. L. 102–375, § 102(b)(1)(A), substituted ''Administration'' for ''Administration on Aging''.

Subsec. (c)(3)(A)(i). Pub. L. 102–375, § 904(a)(3)(A), inserted ''individuals who are'' before ''Native Americans''.

Subsec. (c)(3)(B). Pub. L. 102–375, §§ 201(b)(1), 904(a)(3)(A), (B), inserted ''individuals who are'' before ''Native Americans within'' and substituted ''affecting such individuals, with particular attention to services provided to Native Americans by the Indian Health Service'' for ''affecting older Native Americans''.

Subsec. (c)(3)(E). Pub. L. 102–375, § 904(a)(3)(A), (C), substituted ''this chapter'' for ''the chapter'' and inserted ''individuals who are'' after ''older''.

Subsec. (c)(3)(F). Pub. L. 102–375, § 201(b)(2), inserted before semicolon '', including information (compiled with assistance from public or nonprofit private entities, including institutions of higher education, with experience in assessing the characteristics and health status of older individuals who are Native Americans) on elder abuse, in-home care, health problems, and other problems unique to Native Americans''.

Subsec. (c)(3)(G). Pub. L. 102–375, § 904(a)(3)(A), inserted ''individuals who are'' before ''Native Americans''.

Subsec. (c)(3)(I), (J). Pub. L. 102–375, § 201(b)(3)–(5), added subpars. (I) and (J).

Subsec. (d). Pub. L. 102–375, § 201(c), added subsec. (d).

1987—Subsec. (a). Pub. L. 100–175, § 182(c), substituted ''the functions of the Commissioner'' for ''his functions''.

Pub. L. 100–175, § 102, substituted ''between the Commissioner and the Secretary'' for ''between the Commissioner and the Office of the Secretary'' and ''responsible to the Secretary'' for ''responsible to the Office of the Secretary''.

Subsec. (c). Pub. L. 100–175, § 107(a), added subsec. (c).

1984—Subsec. (a). Pub. L. 98–459, § 201(1), (3), (4), substituted ''the agency'' for ''the principal agency'', inserted provision requiring establishment of a direct reporting relationship between Commissioner and Office of the Secretary, and substituted ''approve or require'' for ''approve''.

Pub. L. 98–459, § 201(2), which directed that ''the functions of the Administration'' be substituted for ''his functions'' in second sentence could not be executed because ''his functions'' appeared only in third sentence.

1978—Subsec. (a). Pub. L. 95–478 substituted ''subchapter IX of this chapter'' for ''subchapter VI of this chapter and as otherwise specifically provided by the Older Americans Comprehensive Services Amendments of 1973''.

1974—Subsec. (a). Pub. L. 93–351 struck out provisions which had authorized the Secretary of Health, Education, and Welfare, under certain conditions, to approve a delegation of the functions of the Commissioner on Aging to officers not directly responsible to the Commissioner.

1973—Subsec. (a). Pub. L. 93–29 added subsec. (a). Former provision established the Administration on Aging in the Department of Health, Education, and Welfare.

Subsec. (b). Pub. L. 93–29 struck out provision respecting the direction of the Administration by a Commissioner on Aging, now incorporated in subsec. (a) of this section.

CHANGE OF NAME

Section 3(c) of Pub. L. 103–171 provided that: ''Any reference to the Commissioner on Aging in any order, rule, guideline, contract, grant, suit, or proceeding that is pending, enforceable, or in effect on the date of the enactment of this Act [Dec. 2, 1993] shall be deemed to be a reference to the Assistant Secretary for Aging.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

MODIFICATION OF DELEGATION OF FUNCTIONS OF COMMISSIONER ON AGING IN EFFECT ON JULY 12, 1974

Section 2(b) of Pub. L. 93–351 provided that: ''Any delegation of the functions of the Commissioner on Aging [now Assistant Secretary for Aging] in effect on the date of enactment of this Act [July 12, 1974], issued pursuant to section 201(a) of such Act [subsec. (a) of this section], shall be modified by the Commissioner to comply with the provisions of the amendment made by this section [amending this section].''

§ 3012. Functions of Assistant Secretary

(a) Duties and functions of Administration

It shall be the duty and function of the Administration to—

(1) serve as the effective and visible advocate for older individuals within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government by maintaining active review and commenting responsibilities over all Federal policies affecting older individuals;

(2) collect and disseminate information related to problems of the aged and aging;

(3) directly assist the Secretary in all matters pertaining to problems of the aged and aging;

(4) administer the grants provided by this chapter;

(5) develop plans, conduct and arrange for research in the field of aging, and assist in the establishment and implementation of programs designed to meet the needs of older individuals for supportive services, including nutrition, hospitalization, education and training services (including preretirement training, and continuing education), low-cost transportation and housing, assistive technology, and health (including mental health) services;

(6) provide technical assistance and consultation to States and political subdivisions thereof with respect to programs for the aged and aging;

(7) prepare, publish, and disseminate educational materials dealing with the welfare of older individuals;

(8) gather statistics in the field of aging which other Federal agencies are not collecting, and take whatever action is necessary to achieve coordination of activities carried out or assisted by all departments, agencies, and instrumentalities of the Federal Government with respect to the collection, preparation, and dissemination of information relevant to older individuals;

(9) develop basic policies and set priorities with respect to the development and operation of programs and activities conducted under authority of this chapter;

(10) coordinate Federal programs and activities related to such purposes;

(11) coordinate, and assist in, the planning and development by public (including Federal, State, and local agencies) and private organizations of programs for older individuals, with a view to the establishment of a nationwide network of comprehensive, coordinated services and opportunities for such individuals;

(12)(A) consult and coordinate activities with the Administrator of the Centers for Medicare & Medicaid Services and the heads of other Federal entities to implement and build awareness of programs providing benefits affecting older individuals; and

(B) carry on a continuing evaluation of the programs and activities related to the objectives of this chapter, with particular attention to the impact of the programs and activities carried out under—

(i) titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.);

(ii) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.); and

(iii) the National Housing Act (12 U.S.C. 1701 et seq.) relating to housing for older individuals and the setting of standards for the licensing of nursing homes, intermediate care homes, and other facilities providing care for such individuals;

(13) provide information and assistance to private organizations for the establishment and operation by them of programs and activities related to the objectives of this chapter;

(14) develop, in coordination with other agencies, a national plan for meeting the needs for trained personnel in the field of aging, and for training persons for carrying out programs related to the objectives of this chapter, and conduct and provide for the conducting of such training;

(15) consult with national organizations representing minority individuals to develop and disseminate training packages and to provide technical assistance efforts designed to assist State and area agencies on aging, and service providers, in providing services to older individuals with greatest economic need or individuals with greatest social need, with particular attention to and specific objectives for providing services to low-income minority individuals and older individuals residing in rural areas;

(16) collect for each fiscal year, for fiscal years beginning after September 30, 1988, directly or by contract, statistical data regarding programs and activities carried out with funds provided under this chapter, including—

(A) with respect to each type of service or activity provided with such funds—

(i) the aggregate amount of such funds expended to provide such service or activity;

(ii) the number of individuals who received such service or activity; and

(iii) the number of units of such service or activity provided;

(B) the number of senior centers which received such funds; and

(C) the extent to which each area agency on aging designated under section 3025(a) of this title satisfied the requirements of paragraphs (2) and (4)(A) of section 3026(a) of this title;

(17) obtain from—

(A) the Department of Agriculture information explaining the requirements for eligibility to receive benefits under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(B) the Social Security Administration information explaining the requirements for eligibility to receive supplemental security income benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] (or assistance under a State plan program under title XVI of that Act);

and distribute such information, in written form, to State agencies, for redistribution to area agencies on aging, to carry out outreach activities and application assistance;

(18)(A) establish and operate the National Ombudsman Resource Center (in this paragraph referred to as the ''Center''), under the administration of the Director of the Office of Long-Term Care Ombudsman Programs, that will—

(i) by grant or contract—

(I) conduct research;

(II) provide training, technical assistance, and information to State Long-Term Care Ombudsmen;

(III) analyze laws, regulations, programs, and practices; and

(IV) provide assistance in recruiting and retaining volunteers for State Long-Term Care Ombudsman programs by establishing a national program for recruitment efforts that utilizes the organizations that have established a successful record in re-

cruiting and retaining volunteers for ombudsman or other programs;

relating to Federal, State, and local long-term care ombudsman policies; and

(ii) assist State Long-Term Care Ombudsmen in the implementation of State Long-Term Care Ombudsman programs; and

(B) make available to the Center not less than the amount of resources made available to the Long-Term Care Ombudsman National Resource Center for fiscal year 2000;

(19) conduct strict monitoring of State compliance with the requirements in effect, under this chapter to prohibit conflicts of interest and to maintain the integrity and public purpose of services provided and service providers, under this chapter in all contractual and commercial relationships;

(20)(A) encourage, and provide technical assistance to, States, area agencies on aging, and service providers to carry out outreach and benefits enrollment assistance to inform and enroll older individuals with greatest economic need, who may be eligible to participate, but who are not participating, in Federal and State programs providing benefits for which the individuals are eligible, including—

(i) supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), or assistance under a State plan program under such title;

(ii) medical assistance under title XIX of such Act (42 U.S.C. 1396 et seq.);

(iii) benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

(iv) benefits under any other applicable program; and

(B) at the election of the Assistant Secretary and in cooperation with related Federal agency partners administering the Federal programs, make a grant to or enter into a contract with a qualified, experienced entity to establish a National Center on Senior Benefits Outreach and Enrollment, which shall—

(i) maintain and update web-based decision support and enrollment tools, and integrated, person-centered systems, designed to inform older individuals about the full range of benefits for which the individuals may be eligible under Federal and State programs;

(ii) utilize cost-effective strategies to find older individuals with greatest economic need and enroll the individuals in the programs;

(iii) create and support efforts for Aging and Disability Resource Centers, and other public and private State and community-based organizations, including faith-based organizations and coalitions, to serve as benefits enrollment centers for the programs;

(iv) develop and maintain an information clearinghouse on best practices and cost-effective methods for finding and enrolling older individuals with greatest economic need in the programs for which the individuals are eligible; and

(v) provide, in collaboration with related Federal agency partners administering the Federal programs, training and technical assistance on effective outreach, screening, enrollment, and follow-up strategies;

(21) establish information and assistance services as priority services for older individuals, and develop and operate, either directly or through contracts, grants, or cooperative agreements, a National Eldercare Locator Service, providing information and assistance services through a nationwide toll-free number to identify community resources for older individuals;

(22) develop guidelines for area agencies on aging to follow in choosing and evaluating providers of legal assistance;

(23) develop guidelines and a model job description for choosing and evaluating legal assistance developers referred to in section 3027(a)(13) of this title and section 3058j of this title;

(24) establish and carry out pension counseling and information programs described in section 3020e–1 of this title;

(25) provide technical assistance, training, and other means of assistance to State agencies, area agencies on aging, and service providers regarding State and local data collection and analysis;

(26) design and implement, for purposes of compliance with paragraph (19), uniform data collection procedures for use by State agencies, including—

(A) uniform definitions and nomenclature;

(B) standardized data collection procedures;

(C) a participant identification and description system;

(D) procedures for collecting information on services needed by older individuals (including services that would permit such individuals to receive long-term care in home and community-based settings), as identified by service providers in assisting clients through the provision of the supportive services; and

(E) procedures for the assessment of unmet needs for services under this chapter;

(27) improve the delivery of services to older individuals living in rural areas through—

(A) synthesizing results of research on how best to meet the service needs of older individuals in rural areas;

(B) developing a resource guide on best practices for States, area agencies on aging, and service providers; and

(C) providing training and technical assistance to States to implement these best practices of service delivery; and

(28) make available to States, area agencies on aging, and service providers information and technical assistance to support the provision of evidence-based disease prevention and health promotion services.

(b) Development and implementation of comprehensive, coordinated systems for long-term care

To promote the development and implementation of comprehensive, coordinated systems at Federal, State, and local levels that enable older individuals to receive long-term care in home

and community-based settings, in a manner responsive to the needs and preferences of older individuals and their family caregivers, the Assistant Secretary shall, consistent with the applicable provisions of this subchapter—

(1) collaborate, coordinate, and consult with other Federal entities responsible for formulating and implementing programs, benefits, and services related to providing long-term care, and may make grants, contracts, and cooperative agreements with funds received from other Federal entities;

(2) conduct research and demonstration projects to identify innovative, cost-effective strategies for modifying State systems of long-term care to—

(A) respond to the needs and preferences of older individuals and family caregivers; and

(B) target services to individuals at risk for institutional placement, to permit such individuals to remain in home and community-based settings;

(3) establish criteria for and promote the implementation (through area agencies on aging, service providers, and such other entities as the Assistant Secretary determines to be appropriate) of evidence-based programs to assist older individuals and their family caregivers in learning about and making behavioral changes intended to reduce the risk of injury, disease, and disability among older individuals;

(4) facilitate, in coordination with the Administrator of the Centers for Medicare & Medicaid Services, and other heads of Federal entities as appropriate, the provision of long-term care in home and community-based settings, including the provision of such care through self-directed care models that—

(A) provide for the assessment of the needs and preferences of an individual at risk for institutional placement to help such individual avoid unnecessary institutional placement and depletion of income and assets to qualify for benefits under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(B) respond to the needs and preferences of such individual and provide the option—

(i) for the individual to direct and control the receipt of supportive services provided; or

(ii) as appropriate, for a person who was appointed by the individual, or is legally acting on the individual's behalf, in order to represent or advise the individual in financial or service coordination matters (referred to in this paragraph as a ''representative'' of the individual), to direct and control the receipt of those services; and

(C) assist an older individual (or, as appropriate, a representative of the individual) to develop a plan for long-term support, including selecting, budgeting for, and purchasing home and community-based long-term care and supportive services;

(5) provide for the Administration to play a lead role with respect to issues concerning home and community-based long-term care, including—

(A) directing (as the Secretary or the President determines to be appropriate) or otherwise participating in departmental and interdepartmental activities concerning long-term care;

(B) reviewing and commenting on departmental rules, regulations, and policies related to providing long-term care; and

(C) making recommendations to the Secretary with respect to home and community-based long-term care, including recommendations based on findings made through projects conducted under paragraph (2);

(6) promote, in coordination with other appropriate Federal agencies—

(A) enhanced awareness by the public of the importance of planning in advance for long-term care; and

(B) the availability of information and resources to assist in such planning;

(7) ensure access to, and the dissemination of, information about all long-term care options and service providers, including the availability of integrated long-term care;

(8) implement in all States Aging and Disability Resource Centers—

(A) to serve as visible and trusted sources of information on the full range of long-term care options, including both institutional and home and community-based care, which are available in the community;

(B) to provide personalized and consumer-friendly assistance to empower individuals to make informed decisions about their care options;

(C) to provide coordinated and streamlined access to all publicly supported long-term care options so that consumers can obtain the care they need through a single intake, assessment, and eligibility determination process;

(D) to help individuals to plan ahead for their future long-term care needs; and

(E) to assist (in coordination with the entities carrying out the health insurance information, counseling, and assistance program (receiving funding under section 1395b–4 of this title) in the States) beneficiaries, and prospective beneficiaries, under the Medicare program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) in understanding and accessing prescription drug and preventative health benefits under the provisions of, and amendments made by, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003;

(9) establish, either directly or through grants or contracts, national technical assistance programs to assist State agencies, area agencies on aging, and community-based service providers funded under this chapter in implementing—

(A) home and community-based long-term care systems, including evidence-based programs; and

(B) evidence-based disease prevention and health promotion services programs;

(10) develop, in collaboration with the Administrator of the Centers for Medicare &

Medicaid Services, performance standards and measures for use by States to determine the extent to which their State systems of long-term care fulfill the objectives described in this subsection; and

(11) conduct such other activities as the Assistant Secretary determines to be appropriate.

(c) Encouragement of participation by volunteer groups, utilization of older individuals, and cost savings

The Assistant Secretary, in consultation with the Chief Executive Officer of the Corporation for National and Community Service, shall—

(1) encourage and permit volunteer groups (including organizations carrying out national service programs and including organizations of youth in secondary or postsecondary school) that are active in supportive services and civic engagement to participate and be involved individually or through representative groups in supportive service and civic engagement programs or activities to the maximum extent feasible;

(2) develop a comprehensive strategy for utilizing older individuals to address critical local needs of national concern, including the engagement of older individuals in the activities of public and nonprofit organizations such as community-based organizations, including faith-based organizations; and

(3) encourage other community capacity-building initiatives involving older individuals, with particular attention to initiatives that demonstrate effectiveness and cost savings in meeting critical needs.

(d) National Center on Elder Abuse

(1) The Assistant Secretary shall establish and operate the National Center on Elder Abuse (in this subsection referred to as the ''Center'').

(2) In operating the Center, the Assistant Secretary shall—

(A) annually compile, publish, and disseminate a summary of recently conducted research on elder abuse, neglect, and exploitation;

(B) develop and maintain an information clearinghouse on all programs (including private programs) showing promise of success, for the prevention, identification, and treatment of elder abuse, neglect, and exploitation;

(C) compile, publish, and disseminate training materials for personnel who are engaged or intend to engage in the prevention, identification, and treatment of elder abuse, neglect, and exploitation;

(D) provide technical assistance to State agencies and to other public and nonprofit private agencies and organizations to assist the agencies and organizations in planning, improving, developing, and carrying out programs and activities relating to the special problems of elder abuse, neglect, and exploitation; and

(E) conduct research and demonstration projects regarding the causes, prevention, identification, and treatment of elder abuse, neglect, and exploitation.

(3)(A) The Assistant Secretary shall carry out paragraph (2) through grants or contracts.

(B) The Assistant Secretary shall issue criteria applicable to the recipients of funds under this subsection. To be eligible to receive a grant or enter into a contract under subparagraph (A), an entity shall submit an application to the Assistant Secretary at such time, in such manner, and containing such information as the Assistant Secretary may require.

(C) The Assistant Secretary shall—

(i) establish research priorities for making grants or contracts to carry out paragraph (2)(E); and

(ii) not later than 60 days before the date on which the Assistant Secretary establishes such priorities, publish in the Federal Register for public comment a statement of such proposed priorities.

(4) The Assistant Secretary shall make available to the Center such resources as are necessary for the Center to carry out effectively the functions of the Center under this chapter and not less than the amount of resources made available to the Resource Center on Elder Abuse for fiscal year 2000.

(e) National Aging Information Center

(1)(A) The Assistant Secretary shall make grants or enter into contracts with eligible entities to establish the National Aging Information Center (in this subsection referred to as the ''Center'') to—

(i) provide information about grants and projects under subchapter IV of this chapter;

(ii) annually compile, analyze, publish, and disseminate—

(I) statistical data collected under subsection (a)(19) of this section;

(II) census data on aging demographics; and

(III) data from other Federal agencies on the health, social, and economic status of older individuals and on the services provided to older individuals;

(iii) biennially compile, analyze, publish, and disseminate statistical data collected on the functions, staffing patterns, and funding sources of State agencies and area agencies on aging;

(iv) analyze the information collected under section 3011(c)(3)(F) of this title by the Director of the Office for American Indian, Alaskan Native, and Native Hawaiian Aging;

(v) provide technical assistance, training, and other means of assistance to State agencies, area agencies on aging, and service providers, regarding State and local data collection and analysis; and

(vi) be a national resource on statistical data regarding aging.

(B) To be eligible to receive a grant or enter into a contract under subparagraph (A), an entity shall submit an application to the Assistant Secretary at such time, in such manner, and containing such information as the Assistant Secretary may require.

(C) Entities eligible to receive a grant or enter into a contract under subparagraph (A) shall be organizations with a demonstrated record of experience in education and information dissemination.

(2)(A) The Assistant Secretary shall establish procedures specifying the length of time that the Center shall provide the information described in paragraph (1) with respect to a particular project or activity. The procedures shall require the Center to maintain the information beyond the term of the grant awarded, or contract entered into, to carry out the project or activity.

(B) The Assistant Secretary shall establish the procedures described in subparagraph (A) after consultation with—

(i) practitioners in the field of aging;

(ii) older individuals;

(iii) representatives of institutions of higher education;

(iv) national aging organizations;

(v) State agencies;

(vi) area agencies on aging;

(vii) legal assistance providers;

(viii) service providers; and

(ix) other persons with an interest in the field of aging.

(f) Development of performance outcome measures

(1) The Assistant Secretary, in accordance with the process described in paragraph (2), and in collaboration with a representative group of State agencies, tribal organizations, area agencies on aging, and providers of services involved in the performance outcome measures shall develop and publish by December 31, 2001, a set of performance outcome measures for planning, managing, and evaluating activities performed and services provided under this chapter. To the maximum extent possible, the Assistant Secretary shall use data currently collected (as of the date of development of the measures) by State agencies, area agencies on aging, and service providers through the National Aging Program Information System and other applicable sources of information in developing such measures.

(2) The process for developing the performance outcome measures described in paragraph (1) shall include—

(A) a review of such measures currently in use by State agencies and area agencies on aging (as of the date of the review);

(B) development of a proposed set of such measures that provides information about the major activities performed and services provided under this chapter;

(C) pilot testing of the proposed set of such measures, including an identification of resource, infrastructure, and data collection issues at the State and local levels; and

(D) evaluation of the pilot test and recommendations for modification of the proposed set of such measures.

(Pub. L. 89–73, title II, § 202, July 14, 1965, 79 Stat. 220; Pub. L. 93–29, title II, § 201(b), May 3, 1973, 87 Stat. 31; Pub. L. 94–135, title I, § 114(b), (c), Nov. 28, 1975, 89 Stat. 725; Pub. L. 95–478, title I, § 102(a), title V, § 503(b)(2), (4), Oct. 18, 1978, 92 Stat. 1513, 1559; Pub. L. 97–115, §§ 2(b), (c), 3(d), Dec. 29, 1981, 95 Stat. 1595, 1597; Pub. L. 98–459, title II, § 202, Oct. 9, 1984, 98 Stat. 1768; Pub. L. 100–175, title I, §§ 103(a), 105(a), 106(a), 155(a), Nov. 29, 1987, 101 Stat. 928, 930, 952; Pub. L. 102–321, title I, § 163(c)(2)(A), July 10, 1992, 106 Stat. 377; Pub. L. 102–375, title I, § 102(b)(10)(A), title II, § 202(a)–(f), title VII, § 708(c)(1), title IX, § 904(a)(4), Sept. 30, 1992, 106 Stat. 1202, 1205–1208, 1292, 1306; Pub. L. 103–82, title IV, § 405(g)(1), Sept. 21, 1993, 107 Stat. 921; Pub. L. 103–171, §§ 2(2), (3), 3(a)(3), Dec. 2, 1993, 107 Stat. 1988, 1990; Pub. L. 106–501, title II, § 201, title VIII, § 801(b)(2), Nov. 13, 2000, 114 Stat. 2229, 2291; Pub. L. 109–365, title II, § 202, Oct. 17, 2006, 120 Stat. 2528.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(12)(B)(i), (17)(B), (20)(A)(i), (ii) and (b)(4)(A), (8)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI, XVIII, and XIX of that Act are classified generally to subchapters XVI (§ 1381 et seq.), XVIII (§ 1395 et seq.), and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Age Discrimination in Employment Act of 1967, referred to in subsec. (a)(12)(B)(ii), is Pub. L. 90–202, Dec. 15, 1967, 81 Stat. 602, as amended, which is classified generally to chapter 14 (§ 621 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 29 and Tables.

The National Housing Act, referred to in subsec. (a)(12)(B)(iii), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The Food Stamp Act of 1977, referred to in subsec. (a)(17)(A), (20)(A)(iii), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (b)(8)(E), is Pub. L. 108–173, Dec. 8, 2003, 117 Stat. 2066. For complete classification of this Act to the Code, see Short Title of 2003 Amendment note set out under section 1305 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(5). Pub. L. 109–365, § 202(1)(A), inserted ''assistive technology,'' after ''housing,''.

Subsec. (a)(12). Pub. L. 109–365, § 202(1)(B), added par. (12) and struck out former par. (12) which read as follows: ''carry on a continuing evaluation of the programs and activities related to the objectives of this chapter, with particular attention to the impact of medicare and medicaid, the Age Discrimination in Employment Act of 1967, and the programs of the National Housing Act relating to housing for older individuals and the setting of standards for the licensing of nursing homes, intermediate care homes, and other facilities providing care for such individuals;''.

Subsec. (a)(20). Pub. L. 109–365, § 202(1)(C), added par. (20) and struck out former par. (20) which read as follows: ''encourage, and provide technical assistance to, States and area agencies on aging to carry out outreach to inform older individuals with greatest economic need who may be eligible to receive, but are not receiving, supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) (or assistance under a State plan program under such title), medical assistance under title XIX of such Act (42 U.S.C. 1396 et seq.), and benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), of the requirements for eligibility to receive such benefits and such assistance;''.

Subsec. (a)(26)(D). Pub. L. 109–365, § 202(1)(D)(i), struck out ''gaps in'' after ''collecting information on'' and in-

serted ''(including services that would permit such individuals to receive long-term care in home and community-based settings)'' after ''individuals''.

Subsec. (a)(27)(B). Pub. L. 109–365, § 202(1)(E)(i), inserted ''and'' at end.

Subsec. (a)(27)(D). Pub. L. 109–365, § 202(1)(E)(ii), struck out subpar. (D) which read as follows: ''submitting a report on the States' experiences in implementing these best practices and the effect these innovations are having on improving service delivery in rural areas to the relevant committees not later than 36 months after November 13, 2000.''

Subsec. (a)(28). Pub. L. 109–365, § 202(1)(D)(ii), (F), added par. (28).

Subsecs. (b), (c). Pub. L. 109–365, § 202(2), added subsecs. (b) and (c) and struck out former subsecs. (b) and (c), which related to policy alternatives in long-term care and participation of volunteer groups in programs and activities.

Subsec. (e)(1)(A). Pub. L. 109–365, § 202(3), substituted a period for semicolon at end.

2000—Subsec. (a)(9). Pub. L. 106–501, § 201(1)(A), redesignated par. (10) as (9) and struck out former par. (9) which read as follows: ''stimulate more effective use of existing resources and available services for the aged and aging, including existing legislative protections with particular emphasis on the application of the Age Discrimination in Employment Act of 1967;''.

Subsec. (a)(10), (11). Pub. L. 106–501, § 201(1)(A), redesignated pars. (11) and (12) as (10) and (11), respectively. Former par. (10) redesignated (9).

Subsec. (a)(12). Pub. L. 106–501, § 201(1)(B), redesignated par. (15) as (12). Former par. (12) redesignated (11).

Subsec. (a)(13), (14). Pub. L. 106–501, § 201(1)(B), redesignated pars. (16) and (17) as (13) and (14), respectively, and struck out former pars. (13) and (14), which read as follows:

''(13) convene conferences of such authorities and officials of public (including Federal, State, and local agencies) and nonprofit private organizations concerned with the development and operation of programs for older individuals as the Assistant Secretary deems necessary or proper for the development and implementation of policies related to the objectives of this chapter;

''(14) develop and operate programs providing services and opportunities as authorized by this chapter which are not otherwise provided by existing programs for older individuals;''.

Subsec. (a)(15). Pub. L. 106–501, § 201(1)(B), (C), redesignated par. (18) as (15) and inserted ''and older individuals residing in rural areas'' after ''low-income minority individuals''. Former par. (15) redesignated (12).

Subsec. (a)(16). Pub. L. 106–501, § 201(1)(B), redesignated par. (19) as (16). Former par. (16) redesignated (13).

Subsec. (a)(16)(C). Pub. L. 106–501, § 801(b)(2)(A)(i), which directed that par. (19)(C) be amended by substituting ''paragraphs (2) and (4)(A) of section 3026(a)'' for ''paragraphs (2) and (5)(A) of section 3026(a)'', was executed by making the substitution in par. (16)(C), to reflect the probable intent of Congress and the redesignation of par. (19) as (16) by Pub. L. 106–501, § 201(1)(B). See above.

Subsec. (a)(17). Pub. L. 106–501, § 201(1)(B), redesignated par. (20) as (17). Former par. (17) redesignated (14).

Subsec. (a)(18). Pub. L. 106–501, § 201(1)(B), (D), redesignated par. (21) as (18) and substituted ''2000'' for ''1990'' in subpar. (B). Former par. (18) redesignated (15).

Subsec. (a)(19). Pub. L. 106–501, § 201(1)(E), added par. (19) and struck out former par. (19) which directed the Administration to issue regulations, and conduct strict monitoring of State compliance with the requirements in effect, under this chapter to prohibit conflicts of interest and to maintain the integrity and public purpose of services provided and service providers, under this chapter in all contractual and commercial relationships, and to include in such regulations certain conditions for being designated as an area agency on aging.

Pub. L. 106–501, § 201(1)(B), redesignated par. (22) as (19). Former par. (19) redesignated (16).

Subsec. (a)(20). Pub. L. 106–501, § 201(1)(B), redesignated par. (23) as (20). Former par. (20) redesignated (17).

Subsec. (a)(21). Pub. L. 106–501, § 201(1)(F), added par. (21) and struck out former par. (21) which read as follows: ''establish information and assistance services as priority services for older individuals;''.

Pub. L. 106–501, § 201(1)(B), redesignated par. (24) as (21). Former par. (21) redesignated (18).

Subsec. (a)(22). Pub. L. 106–501, § 201(1)(B), redesignated par. (25) as (22). Former par. (22) redesignated (19).

Subsec. (a)(23). Pub. L. 106–501, § 801(b)(2)(A)(ii), which directed that par. (26) be amended by substituting ''section 3027(a)(13) of this title and section 3058j of this title'' for ''sections 3027(a)(18) and 3058j(b)(2) of this title'', was executed by making the substitution in par. (23), to reflect the probable intent of Congress and the redesignation of par. (26) as (23) by Pub. L. 106–501, § 201(1)(B). See below.

Pub. L. 106–501, § 201(1)(B), redesignated par. (26) as (23). Former par. (23) redesignated (20).

Subsec. (a)(24). Pub. L. 106–501, § 201(1)(G), added par. (24) and struck out former par. (24) which read as follows:

''(24)(A) conduct a study to determine ways in which Federal funds might be more effectively targeted to low-income minority older individuals, and older individuals residing in rural areas, to better meet the needs of States with a disproportionate number of older individuals with greatest economic need and older individuals with greatest social need;

''(B) conduct a study to determine ways in which Federal funds might be more effectively targeted to better meet the needs of States with disproportionate numbers of older individuals, including methods of allotting funds under subchapter III of this chapter, using the most recent estimates of the population of older individuals; and

''(C) not later than January 1, 1995, submit a report containing the findings resulting from the studies described in subparagraphs (A) and (B) to the Speaker of the House of Representatives and the President pro tempore of the Senate;''.

Pub. L. 106–501, § 201(1)(B), redesignated par. (27) as (24). Former par. (24) redesignated (21).

Subsec. (a)(25), (26). Pub. L. 106–501, § 201(1)(B), redesignated pars. (28) and (29) as (25) and (26), respectively. Former pars. (25) and (26) redesignated (22) and (23), respectively.

Subsec. (a)(27). Pub. L. 106–501, § 201(1)(I), added par. (27).

Pub. L. 106–501, § 201(1)(H), which directed amendment of subsec. (a) by striking out par. (27) and redesignating the remaining pars., could only be executed by striking out par. (27) because there were no remaining pars. in subsec. (a) after amendment by Pub. L. 106–501, § 201(1)(B). Prior to amendment, par. (27) read as follows: ''require that all Federal grants and contracts made under this subchapter and subchapter IV of this chapter be made in accordance with a competitive bidding process established by the Assistant Secretary by regulation.''

Pub. L. 106–501, § 201(1)(B), redesignated par. (30) as (27). Former par. (27) redesignated (24).

Subsec. (a)(28) to (30). Pub. L. 106–501, § 201(1)(B), redesignated pars. (28) to (30) as (25) to (27), respectively.

Subsec. (c). Pub. L. 106–501, § 801(b)(2)(B), struck out par. (1) designation before ''In executing the duties'' and struck out par. (2) which read as follows:

''(2)(A) In executing the duties and functions of the Administration under this chapter and in carrying out the programs and activities provided for by this chapter, the Assistant Secretary shall act to encourage and assist the establishment and use of—

''(i) area volunteer service coordinators, as described in section 3026(a)(12) of this title, by area agencies on aging; and

''(ii) State volunteer service coordinators, as described in section 3027(a)(31) of this title, by State agencies.

''(B) The Assistant Secretary shall provide technical assistance to the area and State volunteer services coordinators.''

Subsec. (d)(4). Pub. L. 106–501, § 201(2), substituted ''2000'' for ''1990''.

Subsec. (e)(1)(A)(i). Pub. L. 106–501, § 801(b)(2)(C)(i), added cl. (i) and struck out former cl. (i) which read as follows: ''provide information about education and training projects established under part A, and research and demonstration projects, and other activities, established under part B, of subchapter IV of this chapter to persons requesting such information;''.

Subsec. (e)(1)(A)(iv). Pub. L. 106–501, § 801(b)(2)(C)(ii), struck out '', and the information provided by the Resource Centers on Native American Elders under section 3035m of this title'' before semicolon at end.

Subsec. (f). Pub. L. 106–501, § 201(3), added subsec. (f).

1993—Pub. L. 103–171, § 3(a)(3)(A), substituted ''Assistant Secretary'' for ''Commissioner'' in section catchline.

Subsec. (a)(13). Pub. L. 103–171, § 3(a)(3)(D), substituted ''Assistant Secretary'' for ''Commissioner''.

Subsec. (a)(18). Pub. L. 103–171, § 2(2), struck out '', and service providers,'' after ''area agencies'' and inserted the phrase after ''on aging''.

Subsec. (a)(21)(A). Pub. L. 103–171, § 3(a)(3)(B), substituted ''Director of the Office of Long-Term Care Ombudsman Programs'' for ''Associate Commissioner for Ombudsman Programs''.

Subsec. (a)(22)(A), (D). Pub. L. 103–171, § 3(a)(3)(D), substituted ''Assistant Secretary'' for ''Commissioner''.

Subsec. (a)(27)(C). Pub. L. 103–171, § 2(3), substituted ''1995'' for ''1994''.

Subsecs. (a)(30), (b), (c). Pub. L. 103–171, § 3(a)(3)(D), substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

Subsec. (c)(1). Pub. L. 103–82 substituted ''the Corporation for National and Community Service'' for ''the Director of the ACTION Agency''.

Subsecs. (d), (e). Pub. L. 103–171, § 3(a)(3)(D), substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

Subsec. (e)(1)(A)(iv). Pub. L. 103–171, § 3(a)(3)(C), substituted ''Director of the Office for'' for ''Associate Commissioner on''.

1992—Subsec. (a)(1). Pub. L. 102–375, § 904(a)(4)(A)(i), substituted ''older individuals'' for ''the elderly'' in two places.

Subsec. (a)(3). Pub. L. 102–375, § 202(a)(1), inserted ''directly'' before ''assist''.

Subsec. (a)(11). Pub. L. 102–375, § 202(a)(2), substituted ''coordinate'' for ''provide for the coordination of''.

Subsec. (a)(13). Pub. L. 102–375, § 904(a)(4)(A)(iii), substituted ''objectives'' for ''purposes''.

Subsec. (a)(15). Pub. L. 102–375, § 904(a)(4)(A)(ii), (iii), substituted ''objectives'' for ''purposes'', ''older individuals'' for ''the elderly'', and ''such individuals'' for ''older people''.

Subsec. (a)(16), (17). Pub. L. 102–375, § 904(a)(4)(A)(iii), substituted ''objectives'' for ''purposes''.

Subsec. (a)(18). Pub. L. 102–375, § 202(a)(3)(B), substituted ''greatest economic need or individuals with greatest social need, with particular attention to and specific objectives for providing services to low-income minority individuals'' for ''the greatest economic or social needs''.

Pub. L. 102–375, § 202(a)(3)(A), inserted '', and service providers,'' after ''agencies''.

Pub. L. 102–375, § 102(b)(10)(A), substituted ''area agencies on aging'' for ''area agencies''.

Subsec. (a)(19)(A). Pub. L. 102–375, § 202(a)(4)(A), inserted ''or activity'' after ''service'' wherever appearing.

Subsec. (a)(20). Pub. L. 102–375, § 708(c)(1), struck out ''under section 3027(a)(31) of this title'' after ''application assistance''.

Subsec. (a)(21) to (30). Pub. L. 102–375, § 202(a)(4)(B), (b), added pars. (21) to (30).

Subsec. (b)(1). Pub. L. 102–375, § 904(a)(4)(B)(i), struck out ''with health systems agencies designated under section 300*l*–4 of this title,'' after ''linkages''.

Pub. L. 102–321, § 163(c)(2)(A), substituted ''the Substance Abuse and Mental Health Services Administration'' for ''the Alcohol, Drug Abuse, and Mental Health Administration''.

Subsec. (b)(3). Pub. L. 102–375, § 904(a)(4)(B)(ii), substituted ''older individuals'' for ''the elderly''.

Subsec. (b)(4). Pub. L. 102–375, § 202(c), added par. (4).

Subsec. (c). Pub. L. 102–375, § 202(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 102–375, § 202(e), added subsec. (d).

Subsec. (e). Pub. L. 102–375, § 202(f), added subsec. (e).

1987—Subsec. (a)(5). Pub. L. 100–175, § 105(a), inserted ''(including mental health)'' after ''health''.

Subsec. (a)(19), (20). Pub. L. 100–175, §§ 103(a), 155(a), added pars. (19) and (20).

Subsec. (b)(1). Pub. L. 100–175, § 106(a), inserted reference to the Alcohol, Drug Abuse, and Mental Health Administration and the Administration on Developmental Disabilities.

1984—Subsec. (a)(5). Pub. L. 98–459, § 202(a)(1), substituted ''establishment and implementation of'' for ''establishment of and carry out''.

Subsec. (a)(9). Pub. L. 98–459, § 202(a)(2), inserted '', including existing legislative protections with particular emphasis on the application of the Age Discrimination in Employment Act of 1967''.

Subsec. (a)(18). Pub. L. 98–459, § 202(a)(3)–(5), added par. (18).

Subsec. (b)(1). Pub. L. 98–459, § 202(b), inserted ''and with utilization and quality control peer review organizations under title XI of the Social Security Act''.

Subsec. (c). Pub. L. 98–459, § 202(c), substituted ''the duties and functions of the Administration'' for ''his duties and functions''.

1981—Pub. L. 97–115, § 2(b)(1), substituted ''Commissioner'' for ''Administration'' in section catchline.

Subsec. (a)(1). Pub. L. 97–115, § 2(b)(2), substituted ''Department of Health and Human Services'' for ''Department of Health, Education, and Welfare''.

Subsec. (a)(2). Pub. L. 97–115, § 2(b)(3), substituted ''collect and disseminate'' for ''serve as a clearinghouse for''.

Subsec. (a)(5). Pub. L. 97–115, §§ 2(b)(4), 3(d), substituted ''supportive services'' for ''social services'' and ''hospitalization, education and training services (including preretirement training, and continuing education), low-cost transportation and housing'' for ''hospitalization, preretirement training, continuing education, low-cost transportation and housing''.

Subsec. (a)(8). Pub. L. 97–115, § 2(b)(5), inserted provisions authorizing and directing Administration to take whatever action is necessary to achieve coordination of activities carried out or assisted by all departments, agencies, and instrumentalities of the Federal Government with respect to collection, preparation, and dissemination of information relevant to older individuals.

Subsec. (a)(12), (16). Pub. L. 97–115, § 2(b)(6), (7), substituted ''private organizations'' for ''nonprofit private organizations''.

Subsec. (c). Pub. L. 97–115, §§ 2(c), 3(d), substituted ''Director of the ACTION Agency'' for ''Director of Action'' and ''supportive services'' for ''social services''.

1978—Subsec. (a)(1) to (4). Pub. L. 95–478, § 102(a)(1), added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 95–478, §§ 102(a)(1), 503(b)(4)(A), redesignated former par. (4) as (5) and substituted ''older individuals'' for ''older persons''. Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 95–478, § 102(a)(1), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 95–478, §§ 102(a)(1), 503(b)(4)(A), redesignated former par. (6) as (7) and substituted ''older individuals'' for ''older persons''. Former par. (7) redesignated (8).

Subsec. (a)(8) to (11). Pub. L. 95–478, § 102(a)(1), redesignated former pars. (7) to (10) as (8) to (11). Former par. (11) redesignated (12).

Subsec. (a)(12). Pub. L. 95–478, §§102(a)(1), 503(b)(4), redesignated former par. (11) as (12) and substituted ''older individuals'' and ''such individuals'' for ''older persons'' and ''such persons''. Former par. (12) redesignated (13).

Subsec. (a)(13). Pub. L. 95–478, §§102(a)(1), 503(b)(4)(A), redesignated former par. (12) as (13) and substituted ''older individuals'' for ''older persons''. Former par. (13) redesignated (14).

Subsec. (a)(14). Pub. L. 95–478, §102(a)(1), redesignated former par. (13) as (14). Former par. (14) redesignated (15).

Subsec. (a)(15) to (17). Pub. L. 95–478, §§102(a)(1), 503(b)(2), redesignated former par. (14) as (15), substituted ''Age Discrimination in Employment Act of 1967'' for ''Age Discrimination Act of 1967'' and redesignated former pars. (15) and (16) as (16) and (17), respectively.

Subsecs. (b), (c). Pub. L. 95–478, §102(a)(2), added subsec. (b) and redesignated former subsec. (b) as (c).

1975—Pub. L. 94–135, §114(b), substituted ''Administration'' for ''Office'' in section catchline.

Subsec. (a)(8). Pub. L. 94–135, §114(c), struck out ''and'' after ''aged and aging;''.

1973—Subsec. (a). Pub. L. 93–29, §201(b)(1)–(3), in par. (4), substituted ''research'' for ''research and demonstration programs'' and made it the function of the Administration to assist in the establishment of any carry out programs designed to meet the needs of older persons for social services, including nutrition, hospitalization, preretirement training, continuing education, low-cost transportation and housing, and health services; added pars. (9) to (16); and designated existing provisions as subsec. (a), respectively.

Subsec. (b). Pub. L. 93–29, §201(b)(3), added subsec. (b).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by section 708(c)(1) of Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by section 708(c)(1) of Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, see section 801(c) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

DEADLINE FOR DEVELOPMENT OF DATA COLLECTION PROCEDURES

Pub. L. 102–375, title II, §202(h), Sept. 30, 1992, 106 Stat. 1210, provided that, not later than 1 year after Sept. 30, 1992, the data collection procedures required by section 3012(a)(29) of this title would be developed jointly by the Commissioner on Aging and the Assistant Secretary of Planning and Evaluation of the Department of Health and Human Services with advisory information from State and local agencies, recipients, and providers and considering the data collection systems carried out by States identified as exemplary by the GAO; and that, not later than 1 year after developing such data collection procedures, the Commissioner was to test, report to Congress on, and implement appropriately such procedures.

§ 3013. Federal agency cooperation

(a) In general

(1) The Assistant Secretary, in carrying out the objectives and provisions of this chapter, shall coordinate, advise, consult with, and cooperate with the head of each department, agency, or instrumentality of the Federal Government proposing or administering programs or services substantially related to the objectives of this chapter, with respect to such programs or services. In particular, the Assistant Secretary shall coordinate, advise, consult, and cooperate with the Secretary of Labor in carrying out subchapter IX of this chapter and with the Corporation for National and Community Service in carrying out this chapter.

(2) The head of each department, agency, or instrumentality of the Federal Government proposing to establish programs and services substantially related to the objectives of this chapter shall consult with the Assistant Secretary prior to the establishment of such programs and services. To achieve appropriate coordination, the head of each department, agency, or instrumentality of the Federal Government administering any program substantially related to the objectives of this chapter, particularly administering any program referred to in subsection (b) of this section, shall consult and cooperate with the Assistant Secretary in carrying out such program. In particular, the Secretary of Labor shall consult and cooperate with the Assistant Secretary in carrying out title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].

(3) The head of each department, agency, or instrumentality of the Federal Government administering programs and services substantially related to the objectives of this chapter shall collaborate with the Assistant Secretary in carrying out this chapter, and shall develop a written analysis, for review and comment by the Assistant Secretary, of the impact of such programs and services on—

(A) older individuals (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) and eligible individuals (as defined in section 3056p of this title); and

(B) the functions and responsibilities of State agencies and area agencies on aging.

(b) Federal programs related to chapter objectives

For the purposes of subsection (a) of this section, programs related to the objectives of this chapter shall include—

(1) title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.],

(2) title II of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 5000 et seq.],

(3) titles XVI, XVIII, XIX, and XX of the Social Security Act [42 U.S.C. 1381 et seq., 1395 et seq., 1396 et seq., 1397 et seq.],

(4) sections 1715v and 1715w of title 12,

(5) the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.],

(6) section 1701q of title 12,

(7) title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.],

(8) title I of Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] and the Adult Education and Family Literacy Act [20 U.S.C. 9201 et seq.],

(9) sections 5309 and 5310 of title 49,

(10) the Public Health Service Act [42 U.S.C. 201 et seq.], including block grants under title XIX of such Act [42 U.S.C. 300w et seq.],

(11) the Low-Income Home Energy Assistance Act of 1981 [42 U.S.C. 8621 et seq.],

(12) part A of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6861 et seq.], relating to weatherization assistance for low income persons,

(13) the Community Services Block Grant Act [42 U.S.C. 9901 et seq.],

(14) demographic statistics and analysis programs conducted by the Bureau of the Census under title 13,

(15) parts II and III of title 38,

(16) the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.],

(17) the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15001 et seq.],

(18) the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, established under part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750–3766b)), and

(19) sections 3003 and 3004 of title 29.

(c) Interagency Coordinating Committee on Aging

(1) The Secretary, in collaboration with the Federal officials specified in paragraph (2), shall establish an Interagency Coordinating Committee on Aging (referred to in this subsection as the ''Committee'') focusing on the coordination of agencies with respect to aging issues.

(2) The officials referred to in paragraph (1) shall include the Secretary of Labor and the Secretary of Housing and Urban Development, and may include, at the direction of the President, the Attorney General, the Secretary of Transportation, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Homeland Security, the Commissioner of Social Security, and such other Federal officials as the President may direct. An official described in this paragraph may appoint a designee to carry out the official's duties under paragraph (1).

(3) The Secretary of Health and Human Services shall serve as the first chairperson of the Committee, for 1 term, and the Secretary of Housing and Urban Development shall serve as the chairperson for the following term. After that following term, the Committee shall select a chairperson from among the members of the Committee, and any member may serve as the chairperson. No member may serve as the chairperson for more than 1 consecutive term.

(4) For purposes of this subsection, a term shall be a period of 2 calendar years.

(5) The Committee shall meet not less often than once each year.

(6) The Committee shall—

(A) share information with and establish an ongoing system to improve coordination among Federal agencies with responsibility for programs and services for older individuals and recommend improvements to such system with an emphasis on—

(i) improving access to programs and services for older individuals;

(ii) maximizing the impact of federally funded programs and services for older individuals by increasing the efficiency, effectiveness, and delivery of such programs and services;

(iii) planning and preparing for the impact of demographic changes on programs and services for older individuals; and

(iv) reducing or eliminating areas of overlap and duplication by Federal agencies in the provision and accessibility of such programs and services;

(B) identify, promote, and implement (as appropriate), best practices and evidence-based program and service models to assist older individuals in meeting their housing, health care, and other supportive service needs, including—

(i) consumer-directed care models for home and community-based care and supportive services that link housing, health care, and other supportive services and that facilitate aging in place, enabling older individuals to remain in their homes and communities as the individuals age; and

(ii) innovations in technology applications (including assistive technology devices and assistive technology services) that give older individuals access to information on available services or that help in providing services to older individuals;

(C) collect and disseminate information about older individuals and the programs and services available to the individuals to ensure that the individuals can access comprehensive information;

(D) work with the Federal Interagency Forum on Aging-Related Statistics, the Bureau of the Census, and member agencies to ensure the continued collection of data relating to the housing, health care, and other supportive service needs of older individuals and to support efforts to identify and address unmet data needs;

(E) actively seek input from and consult with nongovernmental experts and organizations, including public health interest and research groups and foundations about the activities described in subparagraphs (A) through (F);

(F) identify any barriers and impediments, including barriers and impediments in statutory and regulatory law, to the access and use

by older individuals of federally funded programs and services; and

(G) work with States to better provide housing, health care, and other supportive services to older individuals by—

(i) holding meetings with State agencies;

(ii) providing ongoing technical assistance to States about better meeting the needs of older individuals; and

(iii) working with States to designate liaisons, from the State agencies, to the Committee.

(7) Not later than 90 days following the end of each term, the Committee shall prepare and submit to the Committee on Financial Services of the House of Representatives, the Committee on Education and the Workforce of the House of Representatives, the Committee on Energy and Commerce of the House of Representatives, the Committee on Ways and Means of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Special Committee on Aging of the Senate, a report that—

(A) describes the activities and accomplishments of the Committee in—

(i) enhancing the overall coordination of federally funded programs and services for older individuals; and

(ii) meeting the requirements of paragraph (6);

(B) incorporates an analysis from the head of each agency that is a member of the interagency coordinating committee established under paragraph (1) that describes the barriers and impediments, including barriers and impediments in statutory and regulatory law (as the chairperson of the Committee determines to be appropriate), to the access and use by older individuals of programs and services administered by such agency; and

(C) makes such recommendations as the chairman determines to be appropriate for actions to meet the needs described in paragraph (6) and for coordinating programs and services designed to meet those needs.

(8) On the request of the Committee, any Federal Government employee may be detailed to the Committee without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(Pub. L. 89–73, title II, § 203, as added Pub. L. 93–29, title II, § 201(c), May 3, 1973, 87 Stat. 32; amended Pub. L. 95–478, title I, § 102(b), Oct. 18, 1978, 92 Stat. 1513; Pub. L. 97–115, § 2(d), Dec. 29, 1981, 95 Stat. 1595; Pub. L. 98–459, title II, § 203, Oct. 9, 1984, 98 Stat. 1768; Pub. L. 100–175, title I, §§ 104(a), 105(b), 106(b), Nov. 29, 1987, 101 Stat. 929, 930; Pub. L. 102–240, title III, § 3003(b), Dec. 18, 1991, 105 Stat. 2088; Pub. L. 102–375, title II, § 203, title IX, § 904(a)(5), Sept. 30, 1992, 106 Stat. 1210, 1306; Pub. L. 103–82, title IV, § 405(g)(2), Sept. 21, 1993, 107 Stat. 921; Pub. L. 103–171, §§ 2(4), 3(a)(13), Dec. 2, 1993, 107 Stat. 1988, 1990; Pub. L. 105–220, title II, § 251(b)(3), Aug. 7, 1998, 112 Stat. 1080; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(33)(A), (f)(25)(A)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–425, 2681–433; Pub. L. 106–402, title IV, § 401(b)(9)(A), Oct. 30, 2000, 114 Stat. 1739; Pub. L. 106–501, title II, § 202(1), Nov. 13, 2000, 114 Stat. 2230; Pub. L. 109–365, title II, § 203, Oct. 17, 2006, 120 Stat. 2532.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsecs. (a)(2) and (b)(1), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b)(2), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended. Title II of the Domestic Volunteer Service Act of 1973 is classified generally to subchapter II (§ 5000 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI, XVIII, XIX, and XX of the Social Security Act are classified generally to subchapters XVI (§ 1381 et seq.), XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b)(5), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (b)(7), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (b)(8), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title I of the Higher Education Act of 1965 is classified generally to subchapter I (§ 1001 et seq.) of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Adult Education and Family Literacy Act, referred to in subsec. (b)(8), is title II of Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 1059, as amended, which is classified principally to subchapter I (§ 9201 et seq.) of chapter 73 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (b)(10), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. Title XIX of the Public Health Service Act is classified to subchapter XVII (§ 300w et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Low-Income Home Energy Assistance Act of 1981, referred to in subsec. (b)(11), is title XXVI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 893, as amended, which is classified generally to subchapter II (§ 8621 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see note set out under section 8621 of this title and Tables.

The Energy Conservation in Existing Buildings Act of 1976, referred to in subsec. (b)(12), is title IV of Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1150, as amended. Part A of the Energy Conservation in Existing Buildings Act of 1976 is classified generally to part A (§ 6861 et seq.) of subchapter III of chapter 81 of this title. For complete

classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

The Community Services Block Grant Act, referred to in subsec. (b)(13), is subtitle B (§671 et seq.) of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b)(16), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (b)(17), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677, which is classified principally to chapter 144 (§15001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (b)(18), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. Part E of title I of the Act is classified generally to subchapter V (§3750 et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables. References to the Edward Byrne Memorial State and Local Law Enforcement Assistance Program to be deemed to be a reference to the grant program referred to in section 3750(a) of this title. See section 3750(b)(1) of this title.

CODIFICATION

In subsec. (b)(9), ''sections 5309 and 5310 of title 49'' substituted for ''sections 3, 9, and 16 of the Federal Transit Act'' on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation. Previously, section 9 of the Federal Transit Act, classified to section 1607a of former Title 49, Transportation, was repealed by Pub. L. 95–599, title III, §305(a), Nov. 6, 1978, 92 Stat. 2473, and a new section 9 of the Act, classified to section 1607a of former Title 49, was enacted by Pub. L. 97–424, title III, §303, formerly §303(a), Jan. 6, 1983, 96 Stat. 2141. The new section 9 of the Act was repealed and reenacted as sections 5307 and 5336 of Title 49, Transportation, by Pub. L. 103–272, §§1(b), 7(b), July 5, 1994, 108 Stat. 795, 840, 1379.

AMENDMENTS

2006—Subsec. (a)(3)(A). Pub. L. 109–365, §203(1), substituted ''(with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas)'' for ''(with particular attention to low-income minority older individuals and older individuals residing in rural areas)'' and ''section 3056p'' for ''section 3056e''.

Subsec. (b)(19). Pub. L. 109–365, §203(2), added par. (19).

Subsec. (c). Pub. L. 109–365, §203(3), added subsec. (c).

2000—Subsec. (a)(3)(A). Pub. L. 106–501 inserted ''and older individuals residing in rural areas'' after ''low-income minority older individuals''.

Subsec. (b)(17). Pub. L. 106–402 substituted ''Developmental Disabilities Assistance and Bill of Rights Act of 2000'' for ''Developmental Disabilities and Bill of Rights Act''.

1998—Subsec. (a)(2). Pub. L. 105–277, §101(f) [title VIII, §405(f)(25)(A)(i)], struck out ''the Job Training Partnership Act and'' after ''in carrying out''.

Pub. L. 105–277, §101(f) [title VIII, §405(d)(33)(A)(i)], substituted last sentence for former last sentence which read as follows: ''In particular, the Secretary of Labor shall consult and cooperate with the Assistant Secretary in carrying out the Job Training Partnership Act (29 U.S.C. 1501 et seq.).''

Subsec. (b)(1). Pub. L. 105–277, §101(f) [title VIII, §405(f)(25)(A)(ii)], added par. (1) and struck out former par. (1) which read as follows: ''the Job Training Partnership Act or title I of the Workforce Investment Act of 1998,''.

Pub. L. 105–277, §101(f) [title VIII, §405(d)(33)(A)(ii)], added par. (1) and struck out former par. (1) which read as follows: ''the Job Training Partnership Act,''.

Subsec. (b)(8). Pub. L. 105–220 substituted ''Adult Education and Family Literacy Act'' for ''Adult Education Act''.

1993—Subsec. (a). Pub. L. 103–171, §3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

Subsec. (a)(1). Pub. L. 103–82 substituted ''the Corporation for National and Community Service'' for ''the ACTION Agency''.

Subsec. (a)(3). Pub. L. 103–171, §2(4), struck out ''Federal'' before ''department'' in introductory provisions.

1992—Subsec. (a). Pub. L. 102–375, §203(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Commissioner, in carrying out the purposes and provisions of this chapter, shall advise, consult, and cooperate with the head of each Federal agency or department proposing or administering programs or services substantially related to the purposes of this chapter, with respect to such programs or services. The head of each Federal agency or department proposing to establish programs and services substantially related to the purposes of this chapter shall consult with the Commissioner prior to the establishment of such programs and services. The head of each Federal agency administering any program substantially related to the purposes of this chapter, particularly administering any program set forth in subsection (b) of this section, shall, to achieve appropriate coordination, consult and cooperate with the Commissioner in carrying out such program.''

Subsec. (b). Pub. L. 102–375, §904(a)(5), substituted ''objectives of this chapter'' for ''purposes of this chapter''.

Subsec. (b)(18). Pub. L. 102–375, §203(b), added par. (18).

1991—Subsec. (b)(9). Pub. L. 102–240 substituted references to sections of the Federal Transit Act for sections of the Urban Mass Transportation Act of 1964, which for purposes of codification were translated as sections of title 49, Appendix, thus requiring no change in text.

1987—Subsec. (b)(10). Pub. L. 100–175, §105(b), inserted reference to block grants under title XIX of the Public Health Service Act.

Subsec. (b)(15). Pub. L. 100–175, §104(a), added par. (15).

Subsec. (b)(16), (17). Pub. L. 100–175, §106(b), added pars. (16) and (17).

1984—Subsec. (b)(1). Pub. L. 98–459, §203(a), substituted ''Job Training Partnership Act'' for ''Comprehensive Employment and Training Act''.

Subsec. (b)(3). Pub. L. 98–459, §203(b), inserted reference to title XVI of the Social Security Act.

Subsec. (b)(8). Pub. L. 98–459, §203(c), struck out ''the community schools program under the Elementary and Secondary Education Act of 1965,'' before ''title I'' and the comma after ''Higher Education Act of 1965''.

Subsec. (b)(9). Pub. L. 98–459, §203(d), struck out reference to section 1604 of title 49, Appendix.

Subsec. (b)(10) to (14). Pub. L. 98–459, §203(e), added pars. (10) to (14).

1981—Subsec. (a). Pub. L. 97–115, §2(d)(1), substituted ''purposes'' for ''purpose''.

Subsec. (b). Pub. L. 97–115, §2(d)(2), substituted ''purposes of this chapter'' for ''purpose of this chapter'' in provisions preceding par. (1), substituted ''Comprehensive Employment and Training Act'' for ''Comprehensive Employment and Training Act of 1973'' in par. (1), struck out par. (8) which referred to section 2809(a)(8) of this title, redesignated par. (9) as (8) and inserted references to title I of the Higher Education Act of 1965 and to the Adult Education Act, and redesignated par. (10) as (9).

1978—Subsec. (a). Pub. L. 95–478 added subsec. (a) and struck out similar prior provisions stating that ''Fed-

eral agencies proposing to establish programs substantially related to the purposes of this chapter shall consult with the Administration on Aging prior to the establishment of such services, and Federal agencies administering such programs shall cooperate with the Administration on Aging in carrying out such services''.

Subsec. (b). Pub. L. 95–478 added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(33)(A)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(25)(A)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

§ 3013a. Consultation with State agencies, area agencies on aging, and Native American grant recipients

The Assistant Secretary shall consult and coordinate with State agencies, area agencies on aging, and recipients of grants under subchapter X of this chapter in the development of Federal goals, regulations, program instructions, and policies under this chapter.

(Pub. L. 89–73, title II, § 203A, as added Pub. L. 102–375, title II, § 204, Sept. 30, 1992, 106 Stat. 1211; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990.)

AMENDMENTS

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

§ 3014. Repealed. Pub. L. 97–115, § 2(e)(1), Dec. 29, 1981, 95 Stat. 1596

Section, Pub. L. 89–73, title II, § 204, as added Pub. L. 93–29, title II, § 201(c), May 3, 1973, 87 Stat. 32; amended Pub. L. 94–135, title I, § 112(a), Nov. 28, 1975, 89 Stat. 719; Pub. L. 95–478, title I, § 102(c), (d), title V, § 503(b)(4)(A), Oct. 18, 1978, 92 Stat. 1514, 1559, provided for establishment of a National Information and Resource Clearing House for the Aging.

§ 3015. Gifts and donations

(a) Gifts and donations

The Assistant Secretary may accept, use, and dispose of, on behalf of the United States, gifts or donations (in cash or in kind, including voluntary and uncompensated services or property), which shall be available until expended for the purposes specified in subsection (b) of this section. Gifts of cash and proceeds of the sale of property shall be available in addition to amounts appropriated to carry out this chapter.

(b) Use of gifts and donations

Gifts and donations accepted pursuant to subsection (a) of this section may be used either directly, or for grants to or contracts with public or nonprofit private entities, for the following activities:

(1) The design and implementation of demonstrations of innovative ideas and best practices in programs and services for older individuals.

(2) The planning and conduct of conferences for the purpose of exchanging information, among concerned individuals and public and private entities and organizations, relating to programs and services provided under this chapter and other programs and services for older individuals.

(3) The development, publication, and dissemination of informational materials (in print, visual, electronic, or other media) relating to the programs and services provided under this chapter and other matters of concern to older individuals.

(c) Ethics guidelines

The Assistant Secretary shall establish written guidelines setting forth the criteria to be used in determining whether a gift or donation should be declined under this section because the acceptance of the gift or donation would—

(1) reflect unfavorably upon the ability of the Administration, the Department of Health and Human Services, or any employee of the Administration or Department, to carry out responsibilities or official duties under this chapter in a fair and objective manner; or

(2) compromise the integrity or the appearance of integrity of programs or services provided under this chapter or of any official involved in those programs or services.

(Pub. L. 89–73, title II, § 204, as added Pub. L. 106–501, title II, § 202(2), Nov. 13, 2000, 114 Stat. 2230.)

PRIOR PROVISIONS

A prior section 3015, Pub. L. 89–73, title II, § 204, formerly § 205, as added Pub. L. 93–29, title II, § 201(c), May 3, 1973, 87 Stat. 33; amended Pub. L. 94–135, title I, § 101, Nov. 28, 1975, 89 Stat. 713; Pub. L. 95–478, title I, § 102(e), title V, § 503(b)(3), (4)(A), Oct. 18, 1978, 92 Stat. 1514, 1559; renumbered § 204 and amended Pub. L. 97–115, §§ 2(e)(2), (f), 11(b)(1), Dec. 29, 1981, 95 Stat. 1596, 1606; Pub. L. 98–459, title II, § 204, Oct. 9, 1984, 98 Stat. 1769; Pub. L. 100–175, title I, §§ 107(b), 108, 182(d), Nov. 29, 1987, 101 Stat. 931, 932, 964; Pub. L. 100–628, title VII, § 705(2), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 102–375, title II, § 205, title IX, § 904(a)(6), Sept. 30, 1992, 106 Stat. 1211, 1306; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, established a Federal Council on the Aging and provided for its membership, duties, etc., and authorized appropriations for fiscal years 1992 through 1995, prior to repeal by Pub. L. 106–501, title II, § 202(2), Nov. 13, 2000, 114 Stat. 2230.

A prior section 204 of Pub. L. 89–73 was classified to section 3014 of this title prior to repeal by Pub. L. 97–115.

§ 3016. Authority of Assistant Secretary

(a) Consultative services and technical assistance; short-term training and technical instruction; research and demonstrations; preparation and dissemination of informational materials; staff and technical assistance to Federal Council on the Aging; designation of full-time nutrition professional as administrator of nutrition services

(1) In carrying out the objectives of this chapter, the Assistant Secretary is authorized to—

(A) provide consultative services and technical assistance to public or nonprofit private agencies and organizations;

(B) provide short-term training and technical instruction;

(C) conduct research and demonstrations; and

(D) collect, prepare, publish, and disseminate special educational or informational materials, including reports of the projects for which funds are provided under this chapter.

(2)(A) The Assistant Secretary shall designate an officer or employee who shall serve on a full-time basis and who shall be responsible for the administration of the nutrition services described in subparts I and II of part C of subchapter III of this chapter and shall have duties that include—

(i) designing, implementing, and evaluating evidence-based programs to support improved nutrition and regular physical activity for older individuals;

(ii) developing guidelines for nutrition providers concerning safety, sanitary handling of food, equipment, preparation, and food storage;

(iii) conducting outreach and disseminating evidence-based information to nutrition service providers about the benefits of healthful diets and regular physical activity, including information about the most current Dietary Guidelines for Americans published under section 5341 of title 7, the Food Guidance System of the Department of Agriculture, and advances in nutrition science;

(iv) promoting coordination between nutrition service providers and community-based organizations serving older individuals;

(v) developing guidelines on cost containment;

(vi) defining a long range role for the nutrition services in community-based care systems;

(vii) developing model menus and other appropriate materials for serving special needs populations and meeting cultural meal preferences;

(viii) disseminating guidance that describes strategies for improving the nutritional quality of meals provided under subchapter III, including strategies for increasing the consumption of whole grains, lowfat dairy products, fruits, and vegetables;

(ix) developing and disseminating guidelines for conducting nutrient analyses of meals provided under subparts I and II of part C of subchapter III, including guidelines for averaging key nutrients over an appropriate period of time; and

(x) providing technical assistance to the regional offices of the Administration with respect to each duty described in clauses (i) through (ix).

(B) The regional offices of the Administration shall be responsible for disseminating, and providing technical assistance regarding, the guidelines and information described in clauses (ii), (iii), and (v) of subparagraph (A) to State agencies, area agencies on aging, and persons that provide nutrition services under part C of subchapter III of this chapter.

(C) The officer or employee designated under subparagraph (A) shall—

(i) have expertise in nutrition, energy balance, and meal planning; and

(ii)(I) be a registered dietitian;

(II) be a credentialed nutrition professional; or

(III) have education and training that is substantially equivalent to the education and training for a registered dietitian or a credentialed nutrition professional.

(b) Utilization of services and facilities of Federal and other public or nonprofit agencies; advance or reimbursement payments for such use

In administering the functions of the Administration under this chapter, the Assistant Secretary may utilize the services and facilities of any agency of the Federal Government and of any other public or nonprofit agency or organization, in accordance with agreements between the Assistant Secretary and the head thereof, and is authorized to pay therefor, in advance or by way of reimbursement, as may be provided in the agreement.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(Pub. L. 89–73, title II, § 205, formerly § 206, as added Pub. L. 93–29, title II, § 201(c), May 3, 1973, 87 Stat. 34; amended Pub. L. 95–478, title I, § 102(f), Oct. 18, 1978, 92 Stat. 1515; renumbered § 205 and amended Pub. L. 97–115, § 2(e)(2), (g), Dec. 29, 1981, 95 Stat. 1596; Pub. L. 98–459, title II, § 205, Oct. 9, 1984, 98 Stat. 1770; Pub. L. 100–175, title I, §§ 109, 110, Nov. 29, 1987, 101 Stat. 932; Pub. L. 102–375, title II, § 206, title IX, § 904(a)(7), Sept. 30, 1992, 106 Stat. 1212, 1306; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title II, § 202(3), title VIII, § 801(b)(3), Nov. 13, 2000, 114 Stat. 2231, 2292; Pub. L. 109–365, title II, § 204, Oct. 17, 2006, 120 Stat. 2535.)

PRIOR PROVISIONS

A prior section 205 of Pub. L. 89–73 was renumbered section 204 and is classified to section 3015 of this title.

AMENDMENTS

2006—Subsec. (a)(1)(C) to (E). Pub. L. 109–365, § 204(1)(A), in subpar. (C) inserted ''and'' at end, in subpar. (D) substituted period for ''; and'' at end, and struck out subpar. (E) which read as follows: ''provide staff and other technical assistance to the Federal Council on the Aging.''

Subsec. (a)(2)(A)(i). Pub. L. 109–365, § 204(1)(B)(i)(I), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''designing, implementing, and evaluating nutrition programs;''.

Subsec. (a)(2)(A)(iii). Pub. L. 109–365, § 204(1)(B)(i)(II), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''disseminating information to nutrition service providers about nutrition advancements and developments;''.

Subsec. (a)(2)(A)(viii) to (x). Pub. L. 109–365, § 204(1)(B)(i)(III), (IV), added cls. (viii) to (x) and struck out former cl. (viii) which read as follows: ''providing technical assistance to the regional offices of the Administration with respect to each duty described in clauses (i) through (vii).''

Subsec. (a)(2)(C)(i). Pub. L. 109–365, § 204(1)(B)(ii), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''have expertise in nutrition and dietary services and planning; and''.

2000—Subsec. (a)(2)(A). Pub. L. 106–501, § 801(b)(3), substituted ''subparts I and II'' for ''subparts I, II, and III'' in introductory provisions.

Subsecs. (c) to (e). Pub. L. 106–501, § 202(3), redesignated subsec. (e) as (c) and struck out former subsecs. (c) and (d) which read as follows:

''(c) Not later than 120 days after October 9, 1987, the Secretary shall issue and publish in the Federal Register proposed regulations for the administration of this chapter. After allowing a reasonable period for public comment on such proposed rules and not later than 90 days after such publication, the Secretary shall issue, in final form, regulations for the administration of this chapter.

''(d) Not later than September 1 of each fiscal year, the Assistant Secretary shall make available to the public, for the purpose of facilitating informed public comment, a statement of proposed specific goals to be achieved by implementing this chapter in the first fiscal year beginning after the date on which such statement is made available.''

1993—Subsecs. (a), (b), (d). Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

1992—Subsec. (a). Pub. L. 102–375 designated existing provisions as par. (1), substituted ''objectives'' for ''purposes'' and ''to—'' for ''to:'' in introductory provisions, redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, and added par. (2).

1987—Subsec. (c). Pub. L. 100–175, § 109, substituted ''October 9, 1987'' for ''October 9, 1984''.

Subsecs. (d), (e). Pub. L. 100–175, § 110, added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (b). Pub. L. 98–459, § 205(a), substituted ''the functions of the Administration'' for ''his functions''.

Subsecs. (c), (d). Pub. L. 98–459, § 205(b), added subsec. (c) and redesignated former subsec. (c) as (d).

1981—Subsecs. (b) to (d). Pub. L. 97–115, § 2(g), struck out subsec. (b) providing that a report be prepared and submitted to Congress by the Commissioner not later than Sept. 30, 1980, and redesignated subsecs. (c) and (d) as (b) and (c), respectively.

1978—Subsecs. (b) to (d). Pub. L. 95–478 added subsec. (b) and redesignated existing subsecs. (b) and (c) as (c) and (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

§ 3017. Evaluation of programs

(a) Authority of Secretary; scope of evaluation; persons conducting evaluation

The Secretary shall measure and evaluate the impact of all programs authorized by this chapter, their effectiveness in achieving stated goals in general, and in relation to their cost, their impact on related programs, their effectiveness in targeting for services under this chapter unserved older individuals with greatest economic need (including low-income minority individuals and older individuals residing in rural areas) and unserved older individuals with greatest social need (including low-income minority individuals and older individuals residing in rural areas), and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such programs. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated.

(b) General standards

The Secretary may not make grants or contracts under subchapter IV of this chapter until the Secretary develops and publishes general standards to be used by the Secretary in evaluating the programs and projects assisted under such subchapter. Results of evaluations conducted pursuant to such standards shall be included in the reports required by section 3018 of this title.

(c) Opinions of program and project participants; comparison of effectiveness of related programs; consultation with organizations concerned with older individuals

In carrying out evaluations under this section, the Secretary shall, whenever possible, arrange to obtain the opinions of program and project participants about the strengths and weaknesses of the programs and projects, and conduct, where appropriate, evaluations which compare the effectiveness of related programs in achieving common objectives. In carrying out such evaluations, the Secretary shall consult with organizations concerned with older individuals, including those representing minority individuals, older individuals residing in rural areas and older individuals with disabilities.

(d) Annual summaries and analyses of evaluation; demonstration projects; transmittal to Congress; dissemination to Federal, State, and local agencies and private organizations; accessibility to public

The Secretary shall annually publish summaries and analyses of the results of evaluative research and evaluation of program and project impact and effectiveness, including, as appropriate, health and nutrition education demonstration projects conducted under section 3027(f)[1] of this title, the full contents of which shall be transmitted to Congress, be disseminated to Federal, State, and local agencies and

[1] See References in Text note below.

private organizations with an interest in aging, and be accessible to the public.

(e) Federal property

The Secretary shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds shall become the property of the United States.

(f) Availability to Secretary of information from executive agencies

Such information as the Secretary may deem necessary for purposes of the evaluations conducted under this section shall be made available to him, upon request, by the departments and agencies of the executive branch.

(g) Funds

From the total amount appropriated for each fiscal year to carry out subchapter III, the Secretary may use such sums as may be necessary, but not to exceed ½ of 1 percent of such amount, for purposes of conducting evaluations under this section, either directly or through grants or contracts. No part of such sums may be reprogrammed, transferred, or used for any other purpose. Funds expended under this subsection shall be justified and accounted for by the Secretary.

(Pub. L. 89–73, title II, § 206, formerly § 207, as added Pub. L. 93–29, title II, § 201(c), May 3, 1973, 87 Stat. 35; amended Pub. L. 95–478, title I, § 102(g), Oct. 18, 1978, 92 Stat. 1515; renumbered § 206 and amended Pub. L. 97–115, § 2(e)(2), (h), Dec. 29, 1981, 95 Stat. 1596; Pub. L. 98–459, title II, § 206, Oct. 9, 1984, 98 Stat. 1770; Pub. L. 100–175, title I, § 106(c), Nov. 29, 1987, 101 Stat. 930; Pub. L. 102–375, title II, § 207, Sept. 30, 1992, 106 Stat. 1213; Pub. L. 103–171, §§ 2(5), 3(a)(13), Dec. 2, 1993, 107 Stat. 1988, 1990; Pub. L. 106–501, title II, § 203, Nov. 13, 2000, 114 Stat. 2234; Pub. L. 109–365, title II, § 205, Oct. 17, 2006, 120 Stat. 2535.)

REFERENCES IN TEXT

Section 3027(f) of this title, referred to in subsec. (d), which related to demonstration projects for health and nutrition education, was repealed by Pub. L. 102–375, title III, § 307(q), Sept. 30, 1992, 106 Stat. 1223, and subsec. (g) of section 3027 was redesignated (f).

PRIOR PROVISIONS

A prior section 206 of Pub. L. 89–73 was renumbered section 205 and is classified to section 3016 of this title.

AMENDMENTS

2006—Subsec. (g). Pub. L. 109–365 substituted ''From the total amount appropriated for each fiscal year to carry out subchapter III, the Secretary may use such sums as may be necessary, but not to exceed ½ of 1 percent of such amount, for purposes of conducting evaluations under this section, either directly or through grants or contracts.'' for ''The Secretary may use such sums as may be necessary, but not to exceed $3,000,000 (of which not to exceed $1,500,000 shall be available from funds appropriated to carry out subchapter III of this chapter and not to exceed $1,500,000 shall be available from funds appropriated to carry out subchapter IV of this chapter), to conduct directly evaluations under this section.''

2000—Subsec. (a). Pub. L. 106–501, § 203(1), inserted ''and older individuals residing in rural areas'' after ''low-income minority individuals'' in two places.

Subsec. (c). Pub. L. 106–501, § 203(2), inserted '', older individuals residing in rural areas'' after ''minority individuals''.

Subsecs. (g), (h). Pub. L. 106–501, § 203(3), (4), redesignated subsec. (h) as (g) and struck out former subsec. (g) which related to evaluation of nutritional services provided under this chapter, establishment of an advisory council to develop recommendations for guidelines on efficiency and quality in furnishing nutrition services, and reporting to the President and Congress on recommendations and final guidelines to improve nutrition services provided under this chapter.

1993—Subsec. (g)(1). Pub. L. 103–171, §§ 2(5)(A), 3(a)(13), substituted ''1995'' for ''1994'' and ''Assistant Secretary'' for ''Commissioner''.

Subsec. (g)(2). Pub. L. 103–171, §§ 2(5)(B), 3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing and ''1994'' for ''1993'' in subpar. (B).

Subsec. (g)(3). Pub. L. 103–171, §§ 2(5)(C), 3(a)(13), substituted ''1995'' for ''1994'' in introductory provisions and ''Assistant Secretary'' for ''Commissioner'' in subpar. (B).

1992—Subsec. (a). Pub. L. 102–375, § 207(1), inserted ''their effectiveness in targeting for services under this chapter unserved older individuals with greatest economic need (including low-income minority individuals) and unserved older individuals with greatest social need (including low-income minority individuals),'' after ''related programs,''.

Subsecs. (g), (h). Pub. L. 102–375, § 207(2), added subsecs. (g) and (h) and struck out former subsec. (g) which read as follows: ''The Secretary is authorized to use such sums as may be required, but not to exceed one-tenth of 1 percent of the funds appropriated under this chapter for each fiscal year, or $300,000 whichever is lower, to conduct program and project evaluations (directly, or by grants or contracts) as required by this subchapter. In the case of allotments from such an appropriation, the amount available for such allotments (and the amount deemed appropriated therefor) shall be reduced accordingly.''

1987—Subsec. (c). Pub. L. 100–175 inserted ''and older individuals with disabilities'' before period at end.

1984—Subsec. (b). Pub. L. 98–459, § 206(a), substituted ''the Secretary develops and publishes general standards to be used by the Secretary in evaluating the programs and projects assisted under such subchapter'' for ''he has developed and published general standards to be used by him in evaluating the programs and projects assisted under such section or subchapter''.

Subsec. (c). Pub. L. 98–459, § 206(b), inserted provision requiring the Secretary to consult with organizations concerned with older individuals, including those representing minority individuals, in carrying out evaluations under this section.

Subsec. (d). Pub. L. 98–459, § 206(c), inserted reference to health and nutrition education demonstration projects conducted under section 3027(f) of this title and inserted provision requiring dissemination of summaries and analyses required by this subsection to Federal, State, and local agencies and private organizations with an interest in aging.

Subsec. (g). Pub. L. 98–459, § 206, substituted ''one-tenth of 1 percent'' for ''1 per centum'', ''under this chapter for each fiscal year'' for ''under this chapter'', and ''$300,000 whichever is lower'' for ''$1,000,000 whichever is greater''.

1981—Subsec. (b). Pub. L. 97–115, § 2(h), struck out ''under section 3028 of this title'' after ''The Secretary may not make grants or contracts''.

1978—Subsec. (c). Pub. L. 95–478, § 102(g)(1), required the Secretary to conduct, where appropriate, evaluations which compare the effectiveness of related programs in achieving common objectives.

Subsec. (d). Pub. L. 95–478, § 102(g)(2), required publication of analyses of evaluations and substituted ''full contents of which shall be transmitted to Congress and be accessible to the public'' for ''full contents of which shall be available to Congress and the public''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan sub-

mitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 206(a) of Pub. L. 98–459 effective 60 days after Oct. 9, 1984, see section 803(b)(1) of Pub. L. 98–459, set out as a note under section 3001 of this title.

Amendment by section 206(b), (c) of Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

Amendment by section 206(d) of Pub. L. 98–459 effective on first day of first fiscal year beginning after Oct. 9, 1984, see section 803(b)(2) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

§ 3018. Reports to Congress

(a) Annual report

Not later than one hundred and twenty days after the close of each fiscal year, the Assistant Secretary shall prepare and submit to the President and to the Congress a full and complete report on the activities carried out under this chapter. Such annual reports shall include—

(1) statistical data reflecting services and activities provided to individuals during the preceding fiscal year;

(2) statistical data collected under section 3012(a)(19)[1] of this title;

(3) statistical data and an analysis of information regarding the effectiveness of the State agency and area agencies on aging in targeting services to older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low-income minority individuals, older individuals residing in rural areas, low-income individuals, and frail individuals (including individuals with any physical or mental functional impairment); and

(4) a description of the implementation of the plan required by section 3012(a)(17)[1] of this title.

(b) Report on ombudsman program

(1) Not later than March 1 of each year, the Assistant Secretary shall compile a report—

(A) summarizing and analyzing the data collected under subchapters III and XI of this chapter in accordance with section 3058g(c) of this title for the then most recently concluded fiscal year;

(B) identifying significant problems and issues revealed by such data (with special emphasis on problems relating to quality of care and residents' rights);

(C) discussing current issues concerning the long-term care ombudsman programs of the States; and

(D) making recommendations regarding legislation and administrative actions to resolve such problems.

(2) The Assistant Secretary shall submit the report required by paragraph (1) to—

(A) the Special Committee on Aging of the Senate;

(B) the Committee on Education and the Workforce of the House of Representatives; and

(C) the Committee on Health, Education, Labor, and Pensions of the Senate.

(3) The Assistant Secretary shall provide the report required by paragraph (1), and make the State reports required under subchapters III and XI of this chapter in accordance with section 3058g(h)(1) of this title available, to—

(A) the Administrator of the Health Care Finance Administration;

(B) the Office of the Inspector General of the Department of Health and Human Services;

(C) the Office of Civil Rights of the Department of Health and Human Services;

(D) the Secretary of Veterans Affairs; and

(E) each public agency or private organization designated as an Office of the State Long-Term Care Ombudsman under subchapter III or XI of this chapter in accordance with section 3058g(a)(4)(A) of this title.

(c) Outreach activities; report on evaluations to be included in annual report

The Assistant Secretary shall, as part of the annual report submitted under subsection (a) of this section, prepare and submit a report on the outreach activities supported under this chapter, together with such recommendations as the Assistant Secretary deems appropriate. In carrying out this subsection, the Assistant Secretary shall consider—

(1) the number of older individuals reached through the activities;

(2) the dollar amount of the assistance and benefits received by older individuals as a result of such activities;

(3) the cost of such activities in terms of the number of individuals reached and the dollar amount described in paragraph (2);

(4) the effect of such activities on supportive services and nutrition services furnished under subchapter III of this chapter; and

(5) the effectiveness of State and local efforts to target older individuals with greatest economic need (including low-income minority individuals and older individuals residing in rural areas) and older individuals with greatest social need (including low-income minority individuals and older individuals residing in rural areas) to receive services under this chapter.

(Pub. L. 89–73, title II, § 207, formerly § 208, as added Pub. L. 93–29, title II, § 201(c), May 3, 1973, 87 Stat. 35; renumbered § 207, Pub. L. 97–115, § 2(e)(2), Dec. 29, 1981, 95 Stat. 1596; amended Pub. L. 98–459, title II, § 207, Oct. 9, 1984, 98 Stat. 1770; Pub. L. 100–175, title I, §§ 103(b), (c), 155(f), Nov. 29, 1987, 101 Stat. 928, 929, 954; Pub. L. 102–54, § 13(q)(9)(A), June 13, 1991, 105 Stat. 281; Pub. L. 102–375, title II, § 208, title VII, § 708(a)(2)(A), (c)(2), title IX, § 904(a)(8), Sept. 30, 1992, 106 Stat. 1214, 1292, 1306; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 103–437, § 15(*l*), Nov. 2, 1994, 108 Stat. 4593; Pub. L. 106–501, title II, § 204, title VIII, § 801(b)(4), Nov. 13, 2000, 114 Stat. 2234, 2292; Pub. L. 109–365, title II, § 206, Oct. 17, 2006, 120 Stat. 2535.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 3012(a)(17), (19) of this title, referred to in subsec. (a)(2), (4), was redesignated section 3012(a)(14) and (16), respectively, of this title and section 3012(a)(20), (22) was redesignated section 3012(a)(17), (19), respectively, by Pub. L. 106–501, title II, § 201(1)(B), Nov. 13, 2000, 114 Stat. 2229.

PRIOR PROVISIONS

A prior section 207 of Pub. L. 89–73 was renumbered section 206 and is classified to section 3017 of this title.

AMENDMENTS

2006—Subsec. (b)(2)(B). Pub. L. 109–365, § 206(1), substituted ''the Workforce'' for ''Labor''.

Subsec. (b)(2)(C). Pub. L. 109–365, § 206(2), substituted ''Health, Education, Labor, and Pensions'' for ''Labor and Human Resources''.

2000—Subsec. (a)(3). Pub. L. 106–501, § 801(b)(4), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''an analysis of the information received under section 3026(b)(2)(D) of this title by the Assistant Secretary;''.

Subsec. (a)(4). Pub. L. 106–501, § 801(b)(4)(B), redesignated par. (5) as (4).

Pub. L. 106–501, § 204(1), inserted ''older individuals residing in rural areas,'' after ''low-income minority individuals,''.

Subsec. (a)(5). Pub. L. 106–501, § 801(b)(4)(B), redesignated par. (5) as (4).

Subsec. (c)(5). Pub. L. 106–501, § 204(2), inserted ''and older individuals residing in rural areas'' after ''low-income minority individuals'' in two places.

1994—Subsec. (b)(2). Pub. L. 103–437 redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: ''the Select Committee on Aging of the House of Representatives;''.

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

1992—Subsec. (a)(4). Pub. L. 102–375, § 904(a)(8), substituted ''greatest economic need and older individuals with greatest social need'' for ''the greatest economic or social needs''.

Subsec. (a)(5). Pub. L. 102–375, § 208(a), added par. (5).

Subsec. (b)(1). Pub. L. 102–375, § 208(b), substituted ''March 1'' for ''January 15'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 102–375, § 708(a)(2)(A)(i), substituted ''subchapters III and XI of this chapter in accordance with section 3058g(c) of this title'' for ''section 3027(a)(12)(C) of this title''.

Subsec. (b)(3). Pub. L. 102–375, § 708(a)(2)(A)(ii)(I), substituted ''under subchapters III and XI of this chapter in accordance with section 3058g(h)(1) of this title'' for ''by section 3027(a)(12)(H)(i) of this title''.

Subsec. (b)(3)(E). Pub. L. 102–375, § 708(a)(2)(A)(ii)(II), added subpar. (E) and struck out former subpar. (E) which read as follows: ''the public agencies and private organizations designated under section 3027(a)(12)(A) of this title.''

Subsec. (c). Pub. L. 102–375, § 708(c)(2)(A), substituted ''on the outreach activities supported under this chapter'' for ''on the evaluations required to be submitted under section 3027(a)(31)(D) of this title''.

Subsec. (c)(1). Pub. L. 102–375, § 708(c)(2)(B), substituted ''the activities'' for ''outreach activities supported under section 3026(a)(6)(P) of this title''.

Subsec. (c)(5). Pub. L. 102–375, § 208(c), added par. (5).

1991—Subsec. (b)(3)(D). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of the Veterans' Administration''.

1987—Subsec. (a). Pub. L. 100–175, § 103(b), amended last sentence generally. Prior to amendment, last sentence read as follows: ''Such annual reports shall include statistical data reflecting services and activities provided individuals during the preceding fiscal year.''

Subsec. (b). Pub. L. 100–175, § 103(c), added subsec. (b) and struck out former subsec. (b) which read as follows: ''Not later than 2 years after October 9, 1984, the Commissioner shall prepare and submit a report to the Congress on the extent to which the need for services for the prevention of the abuse of individuals is unmet, based on information gathered pursuant to section 3026(a)(6)(J) of this title.''

Subsec. (c). Pub. L. 100–175, § 155(f), added subsec. (c).

1984—Pub. L. 98–459 designated existing provisions as subsec. (a), substituted ''submit to the President and to the Congress'' for ''submit to the President for transmittal to the Congress'', and added subsec. (b).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 708(a)(2)(A) and (c)(2) of Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by section 708(a)(2)(A) and (c)(2) of Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

§ 3019. Joint funding of projects

Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this chapter, where funds are provided for a single project by more than one Federal agency to any agency or organization assisted under this chapter, the Federal agency principally involved may be designated to act for all in administering the funds provided. In such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each Federal agency, and any such agency may waive any technical grant or contract requirement (as defined by such regulations) which is inconsistent with the similar requirements of the administering agency or which the administering agency does not impose.

(Pub. L. 89–73, title II, § 208, formerly § 209, as added Pub. L. 93–29, title II, § 201(c), May 3, 1973, 87 Stat. 35; renumbered § 208, Pub. L. 97–115, § 2(e)(2), Dec. 29, 1981, 95 Stat. 1596.)

PRIOR PROVISIONS

A prior section 208 of Pub. L. 89–73 was renumbered section 207 and is classified to section 3018 of this title.

Provisions similar to those comprising this section were contained in Pub. L. 89–73, title VIII, § 805, formerly title VII, § 705, as added Pub. L. 91–69, § 13, Sept. 17, 1969, 83 Stat. 114; renumbered title VIII, § 805, Pub. L. 92–258, § 1, Mar. 22, 1972, 86 Stat. 88, which was classified to section 3055 of this title, prior to repeal by Pub. L. 93–29, § 202.

§ 3020. Advance funding

(a) For the purpose of affording adequate notice of funding available under this chapter, appropriations under this chapter are authorized to be included in the appropriation Act for the

fiscal year preceding the fiscal year for which they are available for obligation.

(b) In order to effect a transition to the advance funding method of timing appropriation action, subsection (a) of this section shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(Pub. L. 89–73, title II, § 209, formerly § 210, as added Pub. L. 93–29, title II, § 201(c), May 3, 1973, 87 Stat. 36; renumbered § 209 and amended Pub. L. 97–115, § 2(e)(2), (i), Dec. 29, 1981, 95 Stat. 1596.)

PRIOR PROVISIONS

A prior section 209 of Pub. L. 89–73 was renumbered section 208 and is classified to section 3019 of this title.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–115, § 2(i), substituted ''subsection (a) of this section shall apply'' for ''the amendment made by subsection (a) of this section shall apply''.

§ 3020a. Application of other laws; costs of projects under this chapter not treated as income or benefits under other laws

(a) The provisions and requirements of chapter 71 of title 31 shall not apply to the administration of the provisions of this chapter or to the administration of any program or activity under this chapter.

(b) No part of the costs of any project under any subchapter of this chapter may be treated as income or benefits to any eligible individual (other than any wage or salary to such individual) for the purpose of any other program or provision of Federal or State law.

(Pub. L. 89–73, title II, § 210, formerly § 211, as added Pub. L. 94–135, title I, § 102, Nov. 28, 1975, 89 Stat. 713; amended Pub. L. 95–478, title I, § 102(h), Oct. 18, 1978, 92 Stat. 1515; renumbered § 210 and amended Pub. L. 97–115, § 2(e)(2), (j), Dec. 29, 1981, 95 Stat. 1596.)

CODIFICATION

In subsec. (a), ''chapter 71 of title 31'' substituted for ''the Act of December 5, 1974 (Public Law 93–510; 88 Stat. 1604) [42 U.S.C. 4251 et seq.]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 210 of Pub. L. 89–73 was renumbered section 209 and is classified to section 3020 of this title.

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–115, § (2)(j), struck out ''and section 1469a of title 48'' after ''chapter 52A of this chapter''.

1978—Subsec. (a). Pub. L. 95–478, § 102(h)(1), (2), designated existing provisions as subsec. (a) and provided for nonapplication of provisions relating to Congressional declaration of policy respecting ''Insular Areas''.

Subsec. (b). Pub. L. 95–478, § 102(h)(1), added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

§ 3020b. Reduction of paperwork

In order to reduce unnecessary, duplicative, or disruptive demands for information, the Assistant Secretary, in consultation with State agencies and other appropriate agencies and organizations, shall continually review and evaluate all requests by the Administration for information under this chapter and take such action as may be necessary to reduce the paperwork required under this chapter. The Assistant Secretary shall request only such information as the Assistant Secretary deems essential to carry out the objectives and provisions of this chapter and, in gathering such information, shall make use of uniform service definitions to the extent that such definitions are available.

(Pub. L. 89–73, title II, § 211, formerly § 212, as added Pub. L. 95–478, title I, § 102(i), Oct. 18, 1978, 92 Stat. 1515; renumbered § 211, Pub. L. 97–115, § 2(e)(2), Dec. 29, 1981, 95 Stat. 1596; amended Pub. L. 98–459, title II, § 208, Oct. 9, 1984, 98 Stat. 1771; Pub. L. 102–375, title I, § 102(b)(1)(A), (9)(A), title IX, § 904(a)(9), Sept. 30, 1992, 106 Stat. 1200, 1201, 1306; Pub. L. 103–171, §§ 2(6), 3(a)(13), Dec. 2, 1993, 107 Stat. 1988, 1990.)

PRIOR PROVISIONS

A prior section 211 of Pub. L. 89–73 was renumbered section 210 and is classified to section 3020a of this title.

AMENDMENTS

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing and ''State agencies'' for ''State agencies,''.

1992—Pub. L. 102–375, § 904(a)(9), substituted ''objectives'' for ''purposes'' in last sentence.

Pub. L. 102–375, § 102(b)(9)(A), struck out ''designated under section 3025(a)(1) of this title'' after ''in consultation with State agencies''.

Pub. L. 102–375, § 102(b)(1)(A), substituted ''Administration'' for ''Administration on Aging''.

1984—Pub. L. 98–459 inserted provision requiring the Commissioner, in gathering information, to make use of uniform service definitions to the extent that such definitions are available.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE

Section effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3020c. Contracting and grant authority; private pay relationships; appropriate use of funds

(a) In general

Subject to subsection (b), this chapter shall not be construed to prevent a recipient of a grant or a contract under this chapter (other than subchapter IX) from entering into an agreement with a profitmaking organization for the recipient to provide services to individuals or entities not otherwise receiving services under this chapter, provided that—

(1) if funds provided under this chapter to such recipient are initially used by the recipient to pay part or all of a cost incurred by the recipient in developing and carrying out such

agreement, such agreement guarantees that the cost is reimbursed to the recipient;

(2) if such agreement provides for the provision of 1 or more services, of the type provided under this chapter by or on behalf of such recipient, to an individual or entity seeking to receive such services—

(A) the individuals and entities may only purchase such services at their fair market rate;

(B) all costs incurred by the recipient in providing such services (and not otherwise reimbursed under paragraph (1)), are reimbursed to such recipient; and

(C) the recipient reports the rates for providing such services under such agreement in accordance with subsection (c) and the rates are consistent with the prevailing market rate for provision of such services in the relevant geographic area as determined by the State agency or area agency on aging (as applicable); and

(3) any amount of payment to the recipient under the agreement that exceeds reimbursement under this subsection of the recipient's costs is used to provide, or support the provision of, services under this chapter.

(b) Ensuring appropriate use of funds

An agreement described in subsection (a) may not—

(1) be made without the prior approval of the State agency (or, in the case of a grantee under subchapter X, without the prior recommendation of the Director of the Office for American Indian, Alaska Native, and Native Hawaiian Aging and the prior approval of the Assistant Secretary), after timely submission of all relevant documents related to the agreement including information on all costs incurred;

(2) directly or indirectly provide for, or have the effect of, paying, reimbursing, subsidizing, or otherwise compensating an individual or entity in an amount that exceeds the fair market value of the services subject to such agreement;

(3) result in the displacement of services otherwise available to an older individual with greatest social need, an older individual with greatest economic need, or an older individual who is at risk for institutional placement; or

(4) in any other way compromise, undermine, or be inconsistent with the objective of serving the needs of older individuals, as determined by the Assistant Secretary.

(c) Monitoring and reporting

To ensure that any agreement described in subsection (a) complies with the requirements of this section and other applicable provisions of this chapter, the Assistant Secretary shall develop and implement uniform monitoring procedures and reporting requirements consistent with the provisions of subparagraphs (A) through (E) of section 3026(a)(13) of this title in consultation with the State agencies and area agencies on aging. The Assistant Secretary shall annually prepare and submit to the chairpersons and ranking members of the appropriate committees of Congress a report analyzing all such agreements, and the costs incurred and services provided under the agreements. This report shall contain information on the number of the agreements per State, summaries of all the agreements, and information on the type of organizations participating in the agreements, types of services provided under the agreements, and the net proceeds from, and documentation of funds spent and reimbursed, under the agreements.

(d) Timely reimbursement

All reimbursements made under this section shall be made in a timely manner, according to standards specified by the Assistant Secretary.

(e) Cost

In this section, the term ''cost'' means an expense, including an administrative expense, incurred by a recipient in developing or carrying out an agreement described in subsection (a), whether the recipient contributed funds, staff time, or other plant, equipment, or services to meet the expense.

(Pub. L. 89–73, title II, § 212, formerly § 213, as added Pub. L. 95–478, title I, § 102(i), Oct. 18, 1978, 92 Stat. 1516; amended Pub. L. 97–35, title VI, § 606(c), Aug. 13, 1981, 95 Stat. 486; renumbered § 212, Pub. L. 97–115, § 2(e)(2), Dec. 29, 1981, 95 Stat. 1596; Pub. L. 100–175, title I, § 107(c), Nov. 29, 1987, 101 Stat. 931; Pub. L. 103–171, § 3(a)(4), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 109–365, title II, § 207, Oct. 17, 2006, 120 Stat. 2536.)

PRIOR PROVISIONS

A prior section 212 of Pub. L. 89–73 was renumbered section 211 and is classified to section 3020b of this title.

AMENDMENTS

2006—Pub. L. 109–365 amended section generally. Prior to amendment, text read as follows: ''None of the provisions of this chapter shall be construed to prevent a recipient of a grant or a contract from entering into an agreement, subject to the approval of the State agency (or in the case of a grantee under subchapter X of this chapter, subject to the recommendation of the Director of the Office for American Indian, Alaskan Native, and Native Hawaiian Aging and the approval of the Assistant Secretary), with a profitmaking organization to carry out the provisions of this chapter and of the appropriate State plan.''

1993—Pub. L. 103–171 substituted ''Director of the Office for'' for ''Associate Commissioner on'' and ''Assistant Secretary'' for ''Commissioner''.

1987—Pub. L. 100–175 inserted ''(or in the case of a grantee under subchapter X of this chapter, subject to the recommendation of the Associate Commissioner on American Indian, Alaskan Native, and Native Hawaiian Aging and the approval of the Commissioner)'' after ''State agency''.

1981—Pub. L. 97–35 struck out provisions respecting demonstration of superiority by the organization.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE

Section effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3020d. Surplus property eligibility

Any State or local government agency, and any nonprofit organization or institution, which receives funds appropriated for programs for older individuals under this chapter, under title IV or title XX of the Social Security Act [42 U.S.C. 601 et seq., 1397 et seq.], or under titles VIII and X of the Economic Opportunity Act of 1964 [42 U.S.C. 2991 et seq., 2996 et seq.] and the Community Services Block Grant Act [42 U.S.C. 9901 et seq.], shall be deemed eligible to receive for such programs, property which is declared surplus to the needs of the Federal Government in accordance with laws applicable to surplus property.

(Pub. L. 89–73, title II, § 213, formerly § 214, as added Pub. L. 95–478, title I, § 102(i), Oct. 18, 1978, 92 Stat. 1516; renumbered § 213 and amended Pub. L. 97–115, § 2(e)(2), (k), Dec. 29, 1981, 95 Stat. 1596.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as Titles IV and XX of the Social Security Act are classified generally to subchapters IV (§ 601 et seq.) and XX (§ 1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, which was classified generally to chapter 34 (§ 2701 et seq.) of this title prior to repeal, except for titles VIII and X, by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Economic Opportunity Act of 1964 are classified generally to subchapters VIII (§ 2991 et seq.) and X (§ 2996 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Tables.

The Community Services Block Grant Act, referred to in text, is subtitle B (§ 671 et seq.) of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§ 9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

PRIOR PROVISIONS

A prior section 213 of Pub. L. 89–73 was renumbered section 212 and is classified to section 3020c of this title.

AMENDMENTS

1981—Pub. L. 97–115, § 2(k), substituted ''titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act'' for ''the Economic Opportunity Act of 1964''.

EFFECTIVE DATE

Section effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3020e. Nutrition education

The Assistant Secretary, in consultation with the Secretary of Agriculture, shall conduct outreach and provide technical assistance to agencies and organizations that serve older individuals to assist such agencies and organizations to carry out integrated health promotion and disease prevention programs that—

(1) are designed for older individuals; and

(2) include—

(A) nutrition education;

(B) physical activity; and

(C) other activities to modify behavior and to improve health literacy, including providing information on optimal nutrient intake, through nutrition education and nutrition assessment and counseling, in accordance with section 3030g–21(2)(J) of this title.

(Pub. L. 89–73, title II, § 214, as added Pub. L. 102–375, title II, § 209, Sept. 30, 1992, 106 Stat. 1215; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title VIII, § 801(b)(5), Nov. 13, 2000, 114 Stat. 2292; Pub. L. 109–365, title II, § 208, Oct. 17, 2006, 120 Stat. 2537.)

AMENDMENTS

2006—Pub. L. 109–365 amended section generally. Prior to amendment, text read as follows: ''The Assistant Secretary and the Secretary of Agriculture may provide technical assistance and appropriate material to agencies carrying out nutrition education programs in accordance with section 3030g–21(2)(J) of this title.''

2000—Pub. L. 106–501 substituted ''3030g–21(2)(J)'' for ''3027(a)(13)(J)''.

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

§ 3020e–1. Pension counseling and information programs

(a) Definitions

In this section:

(1) Pension and other retirement benefits

The term ''pension and other retirement benefits'' means private, civil service, and other public pensions and retirement benefits, including benefits provided under—

(A) the Social Security program under title II of the Social Security Act (42 U.S.C. 401 et seq.);

(B) the railroad retirement program under the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.);

(C) the government retirement benefits programs under the Civil Service Retirement System set forth in chapter 83 of title 5, the Federal Employees Retirement System set forth in chapter 84 of title 5, or other Federal retirement systems; or

(D) employee pension benefit plans as defined in section 1002(2) of title 29.

(2) Pension counseling and information program

The term ''pension counseling and information program'' means a program described in subsection (b) of this section.

(b) Program authorized

The Assistant Secretary shall award grants to eligible entities to establish and carry out pension counseling and information programs that create or continue a sufficient number of pension assistance and counseling programs to provide outreach, information, counseling, referral, and other assistance regarding pension and other retirement benefits, and rights related to such benefits, to individuals in the United States.

(c) Eligible entities

The Assistant Secretary shall award grants under this section to—

(1) State agencies or area agencies on aging; and

(2) nonprofit organizations with a proven record of providing—

(A) services related to retirement of older individuals;

(B) services to Native Americans; or

(C) specific pension counseling.

(d) Citizen advisory panel

The Assistant Secretary shall establish a citizen advisory panel to advise the Assistant Secretary regarding which entities should receive grant awards under this section. Such panel shall include representatives of business, labor, national senior advocates, and national pension rights advocates. The Assistant Secretary shall consult such panel prior to awarding grants under this section.

(e) Application

To be eligible to receive a grant under this section, an entity shall submit an application to the Assistant Secretary at such time, in such manner, and containing such information as the Assistant Secretary may require, including—

(1) a plan to establish a pension counseling and information program that—

(A) establishes or continues a State or area pension counseling and information program;

(B) serves a specific geographic area;

(C) provides counseling (including direct counseling and assistance to individuals who need information regarding pension and other retirement benefits) and information that may assist individuals in obtaining, or establishing rights to, and filing claims or complaints regarding, pension and other retirement benefits;

(D) provides information on sources of pension and other retirement benefits;

(E) establishes a system to make referrals for legal services and other advocacy programs;

(F) establishes a system of referral to Federal, State, and local departments or agencies related to pension and other retirement benefits;

(G) provides a sufficient number of staff positions (including volunteer positions) to ensure information, counseling, referral, and assistance regarding pension and other retirement benefits;

(H) provides training programs for staff members, including volunteer staff members, of pension and other retirement benefits programs;

(I) makes recommendations to the Administration, the Department of Labor and other Federal, State, and local agencies concerning issues for older individuals related to pension and other retirement benefits; and

(J) establishes or continues an outreach program to provide information, counseling, referral and assistance regarding pension and other retirement benefits, with particular emphasis on outreach to women, minorities, older individuals residing in rural areas, low-income retirees, and older individuals with limited English proficiency; and

(2) an assurance that staff members (including volunteer staff members) have no conflict of interest in providing the services described in the plan described in paragraph (1).

(f) Criteria

The Assistant Secretary shall consider the following criteria in awarding grants under this section:

(1) Evidence of a commitment by the entity to carry out a proposed pension counseling and information program.

(2) The ability of the entity to perform effective outreach to affected populations, particularly populations with limited English proficiency and other populations that are identified as in need of special outreach.

(3) Reliable information that the population to be served by the entity has a demonstrable need for the services proposed to be provided under the program.

(4) The ability of the entity to provide services under the program on a statewide or regional basis.

(g) Training and technical assistance program

(1) In general

The Assistant Secretary shall award grants to eligible entities to establish training and technical assistance programs that shall provide information and technical assistance to the staffs of entities operating pension counseling and information programs described in subsection (b) of this section, and general assistance to such entities, including assistance in the design of program evaluation tools.

(2) Eligible entities

Entities that are eligible to receive a grant under this subsection include nonprofit private organizations with a record of providing national information, referral, and advocacy in matters related to pension and other retirement benefits.

(3) Application

To be eligible to receive a grant under this subsection, an entity shall submit an application to the Assistant Secretary at such time, in such manner, and containing such information as the Assistant Secretary may require.

(h) Pension assistance hotline and intragency coordination

(1) Hotline

The Assistant Secretary shall enter into agreements with other Federal agencies to establish and administer a national telephone hotline that shall provide information regarding pension and other retirement benefits, and rights related to such benefits.

(2) Content

Such hotline described in paragraph (1) shall provide information for individuals (including individuals with limited English proficiency) seeking outreach, information, counseling, referral, and assistance regarding pension and other retirement benefits, and rights related to such benefits.

(3) Agreements

The Assistant Secretary may enter into agreements with the Secretary of Labor and the heads of other Federal agencies that regu-

late the provision of pension and other retirement benefits in order to carry out this subsection.

(i) Report to Congress

Not later than 30 months after November 13, 2000, the Assistant Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate a report that—

(1) summarizes the distribution of funds authorized for grants under this section and the expenditure of such funds;

(2) summarizes the scope and content of training and assistance provided under a program carried out under this section and the degree to which the training and assistance can be replicated;

(3) outlines the problems that individuals participating in programs funded under this section encountered concerning rights related to pension and other retirement benefits; and

(4) makes recommendations regarding the manner in which services provided in programs funded under this section can be incorporated into the ongoing programs of State agencies, area agencies on aging, multipurpose senior centers and other similar entities.

(j) Administrative expenses

Of the funds appropriated under section 3020f of this title to carry out this section for a fiscal year, not more than $100,000 may be used by the Administration for administrative expenses.

(Pub. L. 89–73, title II, § 215, as added Pub. L. 106–501, title II, § 202(5), Nov. 13, 2000, 114 Stat. 2231; amended Pub. L. 109–365, title II, § 209, Oct. 17, 2006, 120 Stat. 2537.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1)(B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

PRIOR PROVISIONS

A prior section 215 of Pub. L. 89–73 was renumbered section 216 and is classified to section 3020f of this title.

AMENDMENTS

2006—Subsec. (e)(1)(J). Pub. L. 109–365, § 209(1), substituted ", low-income retirees, and older individuals with limited English proficiency" for "and low income retirees".

Subsec. (f)(2). Pub. L. 109–365, § 209(2), added par. (2) and struck out former par. (2) which read as follows: "The ability of the entity to perform effective outreach to affected populations, particularly populations that are identified in need of special outreach."

Subsec. (h)(2). Pub. L. 109–365, § 209(3), inserted "(including individuals with limited English proficiency)" after "for individuals".

§ 3020f. Authorization of appropriations

(a) In general

For purposes of carrying out this chapter, there are authorized to be appropriated for administration, salaries, and expenses of the Administration such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.

(b) Eldercare Locator Service

There are authorized to be appropriated to carry out section 3012(a)(24)[1] of this title (relating to the National Eldercare Locator Service) such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.

(c) Pension counseling and information programs

There are authorized to be appropriated to carry out section 3020e–1 of this title, such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.

(Pub. L. 89–73, title II, § 216, formerly § 215, as added Pub. L. 102–375, title II, § 210, Sept. 30, 1992, 106 Stat. 1215; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; renumbered § 216 and amended Pub. L. 106–501, title II, §§ 202(4), 205, Nov. 13, 2000, 114 Stat. 2231, 2234; Pub. L. 109–365, title II, § 210, Oct. 17, 2006, 120 Stat. 2538.)

REFERENCES IN TEXT

Section 3012(a)(24) of this title, referred to in subsec. (b), does not relate to the National Eldercare Locator Service. Provisions relating to that Service are found elsewhere in section 3012.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–365, § 210(1), substituted "2007, 2008, 2009, 2010, and 2011." for "2001, 2002, 2003, 2004, and 2005".

Subsec. (b). Pub. L. 109–365, § 210(2), substituted "years 2007, 2008, 2009, 2010, and 2011" for "year 2001, and such sums as may be necessary for each of the 4 succeeding fiscal years".

Subsec. (c). Pub. L. 109–365, § 210(2), substituted "years 2007, 2008, 2009, 2010, and 2011" for "year 2001 and for each of the 4 succeeding fiscal years".

2000—Subsec. (a). Pub. L. 106–501, § 205(1), in heading, substituted "In general" for "Administration", and in text, inserted "administration, salaries, and expenses of" after "appropriated for" and substituted "2001, 2002, 2003, 2004, and 2005" for "1992, 1993, 1994, and 1995."

Subsecs. (b), (c). Pub. L. 106–501, § 205(2), added subsecs. (b) and (c) and struck out heading and text of former subsec. (b). Text read as follows: "There are authorized to be appropriated for salaries and expenses of the Administration on Aging—

"(1) $17,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, $24,000,000 for fiscal year 1994, and $29,000,000 for fiscal year 1995; and

"(2) such additional sums as may be necessary for each such fiscal year to enable the Assistant Secretary to provide for not fewer than 300 full-time employees (or the equivalent thereof) in the Administration on Aging."

1993—Subsec. (b)(2). Pub. L. 103–171 substituted "Assistant Secretary" for "Commissioner".

[1] See References in Text note below.

SUBCHAPTER III—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

PART A—GENERAL PROVISIONS

§ 3021. Purpose and program

(a) Congressional declaration of purpose

(1) It is the purpose of this subchapter to encourage and assist State agencies and area agencies on aging to concentrate resources in order to develop greater capacity and foster the development and implementation of comprehensive and coordinated systems to serve older individuals by entering into new cooperative arrangements in each State with the persons described in paragraph (2), for the planning, and for the provision of, supportive services, and multipurpose senior centers, in order to—

(A) secure and maintain maximum independence and dignity in a home environment for older individuals capable of self care with appropriate supportive services;

(B) remove individual and social barriers to economic and personal independence for older individuals;

(C) provide a continuum of care for vulnerable older individuals; and

(D) secure the opportunity for older individuals to receive managed in-home and community-based long-term care services.

(2) The persons referred to in paragraph (1) include—

(A) State agencies and area agencies on aging;

(B) other State agencies, including agencies that administer home and community care programs;

(C) Indian tribes, tribal organizations, and Native Hawaiian organizations;

(D) the providers, including voluntary organizations or other private sector organizations, of supportive services, nutrition services, and multipurpose senior centers;

(E) organizations representing or employing older individuals or their families; and

(F) organizations that have experience in providing training, placement, and stipends for volunteers or participants who are older individuals (such as organizations carrying out Federal service programs administered by the Corporation for National and Community Service), in community service settings.

(b) Administration of program

(1) In order to effectively carry out the purpose of this subchapter, the Assistant Secretary shall administer programs under this subchapter through the Administration.

(2) In carrying out the provisions of this subchapter, the Assistant Secretary may request the technical assistance and cooperation of the Department of Education, the Department of Labor, the Department of Housing and Urban Development, the Department of Transportation, the Office of Community Services, the Department of Veterans Affairs, the Substance Abuse and Mental Health Services Administration,,[1] and such other agencies and departments of the Federal Government as may be appropriate.

(c) Ombudsman program

The Assistant Secretary shall provide technical assistance and training (by contract, grant, or otherwise) to State long-term care ombudsman programs established under section 3027(a)(9) of this title in accordance with section 3058g of this title, and to individuals within such programs designated under section 3058g of this title to be representatives of a long-term care ombudsman, in order to enable such ombudsmen and such representatives to carry out the ombudsman program effectively.

(d) Use of funds

(1) Any funds received under an allotment as described in section 3024(a) of this title, or funds contributed toward the non-Federal share under section 3024(d) of this title, shall be used only for activities and services to benefit older individuals and other individuals as specifically provided for in this subchapter.

(2) No provision of this subchapter shall be construed as prohibiting a State agency or area agency on aging from providing services by using funds from sources not described in paragraph (1).

(Pub. L. 89–73, title III, § 301, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1516; amended Pub. L. 97–115, § 3(a), (d), Dec. 29, 1981, 95 Stat. 1596, 1597; Pub. L. 98–459, title III, § 301, Oct. 9, 1984, 98 Stat. 1771; Pub. L. 100–175, title I, §§ 104(b), 105(c), 121, 129(a), Nov. 29, 1987, 101 Stat. 929, 930, 933, 934; Pub. L. 100–628, title VII, § 705(3), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 102–54, § 13(q)(9)(B), June 13, 1991, 105 Stat. 281; Pub. L. 102–321, title I, § 163(c)(2)(B), July 10, 1992, 106 Stat. 377; Pub. L. 102–375, title I, § 102(b)(1)(A), title III, § 301, title VII, § 708(a)(2)(B), Sept. 30, 1992, 106 Stat. 1200, 1219, 1292; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title III, § 301, title VIII, § 801(c)(1), Nov. 13, 2000, 114 Stat. 2238, 2292; Pub. L. 109–365, title III, § 301, Oct. 17, 2006, 120 Stat. 2538.)

PRIOR PROVISIONS

A prior section 3021, Pub. L. 89–73, title III, § 301, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 36, related to the purpose of this subchapter, prior to the general amendment of this subchapter by Pub. L. 95–478.

Another prior section 3021, Pub. L. 89–73, title III, § 301, July 14, 1965, 79 Stat. 220; Pub. L. 90–42, § 2(a), July 1, 1967, 81 Stat. 106; Pub. L. 91–69, § 2(a), Sept. 17, 1969, 83 Stat. 108, related to a description of activities and authorized appropriations for fiscal years ending June 30, 1966, through 1972, prior to repeal by Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 36.

AMENDMENTS

2006—Subsec. (a)(2)(F). Pub. L. 109–365 added subpar. (F).

2000—Subsec. (c). Pub. L. 106–501, § 801(c)(1), substituted ''3027(a)(9)'' for ''3027(a)(12)''.

Subsec. (d). Pub. L. 106–501, § 301, added subsec. (d).

1993—Subsecs. (b), (c). Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

1992—Subsec. (a). Pub. L. 102–375, § 301, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''It is the purpose of this subchapter to encourage and assist State and area agencies to con-

[1] So in original.

centrate resources in order to develop greater capacity and foster the development and implementation of comprehensive and coordinated service systems to serve older individuals by entering into new cooperative arrangements in each State with State and area agencies, with Indian tribes, tribal organizations, and Native Hawaiian organizations, and with the providers, including voluntary organizations, of supportive services, including nutrition services and multipurpose senior centers, for the planning, and for the provision of, supportive services, nutrition services, and multipurpose senior centers, in order to—

''(1) secure and maintain maximum independence and dignity in a home environment for older individuals capable of self care with appropriate supportive services;

''(2) remove individual and social barriers to economic and personal independence for older individuals; and

''(3) provide a continuum of care for the vulnerable elderly.''

Subsec. (b)(1). Pub. L. 102–375, §102(b)(1)(A), substituted ''Administration'' for ''Administration on Aging''.

Subsec. (b)(2). Pub. L. 102–321 substituted ''the Substance Abuse and Mental Health Services Administration'' for ''the Alcohol, Drug Abuse, and Mental Health Administration''.

Subsec. (c). Pub. L. 102–375, §708(a)(2)(B), substituted ''in accordance with section 3058g of this title, and to individuals within such programs designated under section 3058g of this title'' for '', and to individuals designated under such section''.

1991—Subsec. (b)(2). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1988—Subsec. (a). Pub. L. 100–628 substituted ''Native Hawaiian organizations,'' for ''Native Hawaiian organizations,,''.

1987—Subsec. (a). Pub. L. 100–175, §121, inserted '', with Indian tribes, tribal organizations, and Native Hawaiian organizations,'' after second reference to ''agencies''.

Subsec. (b)(2). Pub. L. 100–175, §105(c), inserted ''the Alcohol, Drug Abuse, and Mental Health Administration,'' after ''Veterans' Administration,''.

Pub. L. 100–175, §104(b), inserted '', the Veterans' Administration,'' after ''Office of Community Services''.

Subsec. (c). Pub. L. 100–175, §129(a), added subsec. (c).

1984—Subsec. (a). Pub. L. 98–459 substituted ''area agencies'' for ''local agencies'' in two places, inserted ''and implementation'', inserted '', including voluntary organizations,'', and struck out ''for the provision of'' after ''planning''.

1981—Subsec. (a). Pub. L. 97–115, §3(d), substituted ''supportive services'' for ''social services'' in two places.

Subsec. (b)(2). Pub. L. 97–115, §3(a), substituted ''cooperation of the Department of Education, the Department of Labor, the Department of Housing and Urban Development, the Department of Transportation, the Office of Community Services, and such other agencies and departments'' for ''cooperation of the Department of Labor, the Community Services Administration, the Department of Housing and Urban Development, the Department of Transportation, and such other agencies and departments''.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by section 708(a)(2)(B) of Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by section 708(a)(2)(B) of Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, see section 801(c) of Pub. L. 102–321, set out as a note under section 836 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE

Part effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

COORDINATION AND CONSOLIDATION OF SERVICES UNDER CHAPTER

Section 103(a) of Pub. L. 95–478 provided that:

''(1) The Congress finds that—

''(A) approximately 3 percent of the eligible population is presently served under community services programs authorized under the Older Americans Act of 1965 [this chapter], 17 percent of whom are minority group members;

''(B) approximately 1 percent of the eligible population is presently served by the nutrition program authorized under the Older Americans Act of 1965 [this chapter], 21 percent of whom are minority group members;

''(C) there is program fragmentation at the national, State, and local levels which inhibits effective use of existing resources; and

''(D) coordination and consolidation of services provided under the Older Americans Act of 1965 [this chapter] allowing greater local determination to assess the need for services will facilitate achieving the goals of the Older Americans Act of 1965.

''(2) It is the purpose of the amendments made by subsection (b) [amending sections 3021 to 3029 of this title and enacting sections 3030 to 3030g of this title] to combine within a consolidated title, subject to the modifications imposed by the provisions and requirements of the amendments made by subsection (b), the programs authorized by title III, title V, and title VII of the Older Americans Act of 1965 [former subchapters III, V, and VII of this chapter, respectively, as in effect prior to their revision by Pub. L. 95–478] in the fiscal year 1978, and funds appropriated to carry out such consolidated title shall be used solely for the purposes and for the assistance of the same types of programs authorized under the provisions of such titles.''

§ 3022. Definitions

For the purpose of this subchapter—

(1) The term ''comprehensive and coordinated system'' means a system for providing all necessary supportive services, including nutrition services, in a manner designed to—

(A) facilitate accessibility to, and utilization of, all supportive services and nutrition services provided within the geographic area served by such system by any public or private agency or organization;

(B) develop and make the most efficient use of supportive services and nutrition services in meeting the needs of older individuals;

(C) use available resources efficiently and with a minimum of duplication; and

(D) encourage and assist public and private entities that have unrealized potential for meeting the service needs of older individ-

uals to assist the older individuals on a voluntary basis.

(2) The term ''education and training service'' means a supportive service designed to assist older individuals to better cope with their economic, health, and personal needs through services such as consumer education, continuing education, health education, preretirement education, financial planning, and other education and training services which will advance the objectives of this chapter.

(3) The term ''family caregiver'' means an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual or to an individual with Alzheimer's disease or a related disorder with neurological and organic brain dysfunction.

(4) The term ''unit of general purpose local government'' means—

(A) a political subdivision of the State whose authority is general and not limited to only one function or combination of related functions; or

(B) an Indian tribal organization.

(Pub. L. 89–73, title III, § 302, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1517; amended Pub. L. 97–115, § 3(b), (d), Dec. 29, 1981, 95 Stat. 1596, 1597; Pub. L. 98–459, title III, § 302, Oct. 9, 1984, 98 Stat. 1771; Pub. L. 100–175, title I, §§ 136(a)(2), 144(a), 182(b)(2), (e)(1), Nov. 29, 1987, 101 Stat. 943, 948, 964; Pub. L. 102–375, title I, § 102(b)(3), title III, § 302, Sept. 30, 1992, 106 Stat. 1201, 1220; Pub. L. 103–171, § 2(7), Dec. 2, 1993, 107 Stat. 1988; Pub. L. 109–365, title III, § 302, Oct. 17, 2006, 120 Stat. 2538.)

PRIOR PROVISIONS

A prior section 3022, Pub. L. 89–73, title III, § 302, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 36, Pub. L. 94–135, title I, § 103, Nov. 28, 1975, 89 Stat. 713, related to definitions, prior to the general amendment of this subchapter by Pub. L. 95–478.

Another prior section 3022, Pub. L. 89–73, title III, § 302, July 14, 1965, 79 Stat. 221; Pub. L. 90–42, §§ 2(b), 5(g), July 1, 1967, 81 Stat. 107, 108; Pub. L. 91–69, §§ 3(a), 4(d), 6, 10(b), Sept. 17, 1969, 83 Stat. 108, 110, 114, related to allotments to States, providing in subsec. (a) amount of allotments, subsec. (b) reallotments, and subsec. (c) availability for grant percentage payments, and duration of project support, prior to repeal by Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 36.

AMENDMENTS

2006—Pars. (2) to (4). Pub. L. 109–365 added par. (4), redesignated pars. (2), (3), and (4) as pars. (4), (2), and (3), respectively, and moved par. (4) to end of section.

1993—Par. (10). Pub. L. 103–171 struck out par. (10) which defined ''multipurpose senior center''.

1992—Par. (1)(D). Pub. L. 102–375, § 302, added subpar. (D).

Pars. (2), (3). Pub. L. 102–375, § 102(b)(3)(A), (B), redesignated pars. (7) and (8) as (2) and (3), respectively, and struck out former pars. (2) and (3) which defined ''information and referral source'' and ''long-term care facility'', respectively.

Pars. (4) to (6). Pub. L. 102–375, § 102(b)(3)(A), struck out pars. (4) to (6) which defined ''legal assistance'', ''planning and service area'', and ''State agency'', respectively.

Pars. (7), (8). Pub. L. 102–375, § 102(b)(3)(B), redesignated pars. (7) and (8) as (2) and (3), respectively.

Par. (9). Pub. L. 102–375, § 102(b)(3)(A), struck out par. (9) which defined ''older individual''.

Par. (11). Pub. L. 102–375, § 102(b)(3)(A), struck out par. (11) which defined ''focal point''.

Pars. (14) to (21). Pub. L. 102–375, § 102(b)(3)(A), struck out pars. (14) to (21) which defined ''abuse'', ''elder abuse'', ''caretaker'', ''exploitation'', ''neglect'', ''physical harm'', ''greatest economic need'', and ''greatest social need'', respectively.

1987—Par. (6). Pub. L. 100–175, § 182(b)(2), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.''

Pars. (7) to (9). Pub. L. 100–175, § 182(b)(2)(B), redesignated pars. (8) to (10) as (7) to (9), respectively. Former par. (7) redesignated (6).

Par. (10). Pub. L. 100–175, §§ 136(a)(2), 182(b)(2)(B), redesignated par. (11) as (10) and inserted ''(including mental health)'' after ''health''. Former par. (10) redesignated (9).

Par. (11). Pub. L. 100–175, § 182(b)(2)(B), redesignated par. (12) as (11). Former par. (11) redesignated (10).

Pars. (12), (13). Pub. L. 100–175, § 182(b)(2)(B), which directed the redesignation of pars. (13) and (14) as (12) and (13), respectively, could not be executed because no pars. (13) and (14) had been enacted. A former par. (12) was redesignated (11).

Pars. (14) to (19). Pub. L. 100–175, §§ 144(a), 182(b)(2)(B), added pars. (15) to (20) and redesignated them as (14) to (19), respectively.

Par. (20). Pub. L. 100–175, § 182(b)(2)(B), (e)(1), added par. (20) and redesignated former par. (20) as (19).

Pub. L. 100–175, § 144(a), added par. (20).

Par. (21). Pub. L. 100–175, § 182(e)(1), added par. (21).

1984—Par. (2)(B). Pub. L. 98–459, § 302(1), substituted ''employs, where feasible,'' for ''employs'', and inserted ''to assess the needs and capacities of older individuals,''.

Par. (4). Pub. L. 98–459, § 302(2), substituted ''legal assistance'' for ''legal services''.

Par. (6). Pub. L. 98–459, § 302(3), substituted '', and the Commonwealth of the Northern Mariana Islands'' for ''and the Northern Mariana Islands''.

Pars. (10) to (12). Pub. L. 98–459, § 302(4), added pars. (10) to (12).

1981—Par. (1). Pub. L. 97–115, § 3(d), substituted ''supportive services'' for ''social services'' in provisions preceding subpar. (A) and in subpars. (A) and (B).

Par. (3). Pub. L. 97–115, § 3(b)(1), inserted provision relating to any category of institutions regulated by a State pursuant to provisions of section 1382e(e) of this title (for purposes of section 3027(a)(12) of this title).

Par. (9). Pub. L. 97–115, § 3(b)(2), added par. (9).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

§ 3023. Authorization of appropriations; uses of funds

(a)(1) There are authorized to be appropriated to carry out part B of this subchapter (relating to supportive services) such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.

(2) Funds appropriated under paragraph (1) shall be available to carry out section 3058g of this title.

(b)(1) There are authorized to be appropriated to carry out subpart I of part C of this subchapter (relating to congregate nutrition services) such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.

(2) There are authorized to be appropriated to carry out subpart II of part C of this subchapter (relating to home delivered nutrition services) such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.

(c) Grants made under part B, and subparts I and II of part C, of this subchapter may be used for paying part of the cost of—

(1) the administration of area plans by area agencies on aging designated under section 3025(a)(2)(A) of this title, including the preparation of area plans on aging consistent with section 3026 of this title and the evaluation of activities carried out under such plans; and

(2) the development of comprehensive and coordinated systems for supportive services, congregate and home delivered nutrition services under subparts I and II of part C of this subchapter, the development and operation of multipurpose senior centers, and the delivery of legal assistance.

(d) There are authorized to be appropriated to carry out part D of this subchapter (relating to disease prevention and health promotion services) such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.

(e)(1) There are authorized to be appropriated to carry out part E of this subchapter (relating to family caregiver support) $160,000,000 for fiscal year 2007.

(2) There are authorized to be appropriated to carry out part E of this subchapter (relating to family caregiver support) $166,500,000 for fiscal year 2008, $173,000,000 for fiscal year 2009, $180,000,000 for fiscal year 2010, and $187,000,000 for fiscal year 2011.

(3) Of the funds appropriated under paragraphs (1) and (2), not more than 1 percent of such funds may be reserved to carry out activities described in section 3032(a)(11) of this title.

(Pub. L. 89–73, title III, § 303, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1518; amended Pub. L. 97–115, § 3(c), (d), Dec. 29, 1981, 95 Stat. 1597; Pub. L. 98–459, title III, § 303, Oct. 9, 1984, 98 Stat. 1771; Pub. L. 100–175, title I, §§ 122(a), (b), 129(c)(1), 140(a), 141(a), 143(a), 144(b), 145, 155(b), Nov. 29, 1987, 101 Stat. 933, 935, 944, 946, 947, 949, 950, 952; Pub. L. 102–375, title III, §§ 303, 316(b), title VII, § 708(c)(3), Sept. 30, 1992, 106 Stat. 1220, 1241, 1293; Pub. L. 106–501, title III, § 302, Nov. 13, 2000, 114 Stat. 2238; Pub. L. 109–365, title III, § 303, Oct. 17, 2006, 120 Stat. 2538.)

PRIOR PROVISIONS

A prior section 3023, Pub. L. 89–73, title III, § 303, as added Pub. L. 93–29, title III, § 301 May 3, 1973, 87 Stat. 37; Pub. L. 94–135, title I, §§ 104(a), (c), (d), 112(b), 114(d), Nov. 28, 1975, 89 Stat. 714, 715, 719, 725, related to area planning and social service programs, prior to the general amendment of this subchapter by Pub. L. 95–478.

Another prior section 3023, Pub. L. 89–73, title III, § 303, July 14, 1965, 79 Stat. 222; Pub. L. 91–69, §§ 3(b), 4(a), Sept. 17, 1969, 83 Stat. 108, related to state plans, providing in subsec. (a) for approval by Secretary, contents, notice and hearing prior to disapproval; subsec. (b) noncompliance and cancellation of payments; and subsec. (c) appeals, petitions, record, jurisdiction of courts of appeals, conclusiveness of findings, review by Supreme Court, and stay of administrative action, prior to repeal by Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 36.

AMENDMENTS

2006—Subsecs. (a)(1), (b)(1), (2), (d). Pub. L. 109–365, § 303(1), substituted ''years 2007, 2008, 2009, 2010, and 2011'' for ''year 2001, and such sums as may be necessary for each of the 4 succeeding fiscal years''.

Subsec. (e)(1). Pub. L. 109–365, § 303(2)(A), substituted ''$160,000,000 for fiscal year 2007'' for ''$125,000,000 for fiscal year 2001 if the aggregate amount appropriated under subsection (a)(1) of this section (relating to part B of this subchapter, supportive services), paragraphs (1) (relating to subpart I of part C of this subchapter, congregate nutrition services) and (2) (relating to subpart II of part C of this subchapter, home delivered nutrition services) of subsection (b) of this section, and (d) (relating to part D of this subchapter, disease prevention and health promotion services) of this section for fiscal year 2001 is not less than the aggregate amount appropriated under subsection (a)(1) of this section, paragraphs (1) and (2) of subsection (b) of this section, and subsection (d) of this section for fiscal year 2000''.

Subsec. (e)(2). Pub. L. 109–365, § 303(2)(B), substituted ''$166,500,000 for fiscal year 2008, $173,000,000 for fiscal year 2009, $180,000,000 for fiscal year 2010, and $187,000,000 for fiscal year 2011'' for ''such sums as may be necessary for each of the 4 succeeding fiscal years''.

Subsec. (e)(3). Pub. L. 109–365, § 303(2)(C), substituted ''may'' for ''shall'', ''section 3032(a)(11)'' for ''section 3030s–12'', and ''(2), not more than 1 percent'' for ''(2)—

''(A) 4 percent of such funds shall be reserved to carry out activities described in section 3030s–11 of this title; and

''(B) 1 percent''.

2000—Subsec. (a)(1). Pub. L. 106–501, § 302(1), added par. (1) and struck out former par. (1) which read as follows: ''There are authorized to be appropriated $461,376,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993, 1994, and 1995, for the purpose of making grants under part B of this subchapter (relating to supportive services and senior centers).''

Subsec. (b). Pub. L. 106–501, § 302(2), added subsec. (b) and struck out former subsec. (b) which read as follows:

''(b)(1) There are authorized to be appropriated $505,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993, 1994, and 1995, for the purpose of making grants under subpart I of part C of this subchapter (relating to congregate nutrition services).

''(2) There are authorized to be appropriated $120,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993, 1994, and 1995, for the purpose of making grants under subpart II of part C of this subchapter (relating to home delivered nutrition services).

''(3) There are authorized to be appropriated $15,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993, 1994, and 1995, to carry out subpart III of part C of this subchapter (relating to school-based meals for volunteer older individuals and multigenerational programs).''

Subsecs. (d) to (g). Pub. L. 106–501, § 302(3), added subsecs. (d) and (e) and struck out former subsecs. (d) to (g) which authorized appropriations for fiscal years 1992 to 1995 to carry out parts D to G of this subchapter.

1992—Subsec. (a)(1). Pub. L. 102–375, § 708(c)(3), struck out ''for purposes other than outreach activities and application assistance under section 3027(a)(31) of this title'' after ''senior centers)''.

Pub. L. 102–375, § 303(a)(1), substituted ''$461,376,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993, 1994, and 1995'' for ''$379,575,000 for the fiscal year 1988, $398,554,000 for the fiscal year 1989, $418,481,000 for the fiscal year 1990, and $439,406,000 for the fiscal year 1991''.

Subsec. (a)(2). Pub. L. 102–375, § 303(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Subject to subsection (h) of this section, there are authorized to be appropriated $20,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991 to carry out section 3027(a)(12) of this title.''

Subsec. (a)(3). Pub. L. 102–375, § 303(a)(3), struck out par. (3) which read as follows: ''Subject to subsection (h) of this section, there are authorized to be appropriated $10,000,000 for fiscal year 1989, $10,000,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991 to carry out section 3026(a)(6)(P) of this title. Amounts appropriated under this subsection shall remain available until expended.''

Subsec. (b)(1). Pub. L. 102–375, § 303(b)(1), substituted ''$505,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993, 1994, and 1995'' for ''$414,750,000 for the fiscal year 1988, $435,488,000 for the fiscal year 1989, $457,262,000 for the fiscal year 1990, and $480,125,000 for the fiscal year 1991''.

Subsec. (b)(2). Pub. L. 102–375, § 303(b)(2), substituted ''$120,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993, 1994, and 1995'' for ''$79,380,000 for the fiscal year 1988, $83,349,000 for the fiscal year 1989, $87,516,000 for the fiscal year 1990, and $91,892,000 for the fiscal year 1991''.

Subsec. (b)(3). Pub. L. 102–375, § 303(b)(3), added par. (3).

Subsec. (c). Pub. L. 102–375, § 316(b)(1), substituted ''part B, and subparts I and II of part C, of this subchapter'' for ''parts B and C of this subchapter''.

Subsec. (c)(2). Pub. L. 102–375, § 316(b)(2), inserted ''under subparts I and II of part C of this subchapter'' after ''nutrition services''.

Subsec. (d). Pub. L. 102–375, § 303(c), substituted ''$45,388,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993, 1994, and 1995,'' for ''$25,000,000 for fiscal year 1988, $26,250,000 for fiscal year 1989, $27,563,000 for fiscal year 1990, and $28,941,000 for fiscal year 1991''.

Subsec. (e). Pub. L. 102–375, § 303(d), substituted ''There are authorized to be appropriated such sums as may be necessary for the fiscal years 1992, 1993, 1994, and 1995,'' for ''Subject to subsection (h) of this section, there are authorized to be appropriated $25,000,000 for fiscal year 1988, $25,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991''.

Subsec. (f). Pub. L. 102–375, § 303(e), substituted ''There are authorized to be appropriated $25,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993, 1994, and 1995,'' for ''Subject to subsection (h) of this section, there are authorized to be appropriated $5,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991''.

Subsec. (g). Pub. L. 102–375, § 303(f), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''Subject to subsection (h) of this section, there are authorized to be appropriated $5,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991, to carry out part G of this subchapter (relating to abuse, neglect, and exploitation of older individuals).''

Subsec. (h). Pub. L. 102–375, § 303(g), struck out subsec. (h) which read as follows: ''No funds may be appropriated under subsection (a)(2), (a)(3), (e), (f), or (g) of this section for a fiscal year unless the aggregate amount appropriated for such fiscal year to carry out this subchapter (other than sections 3026(a)(6)(P), 3027(a)(12), and 3030a of this title, and parts E, F, and G of this subchapter), subchapter IV of this chapter (other than sections 3035f and 3035g of this title), subchapter IX of this chapter, and subchapter X of this chapter exceeds 105 percent of the aggregate amount appropriated for the preceding fiscal year to carry out such subchapters.''

1987—Subsec. (a). Pub. L. 100–175, §§ 129(c)(1), 155(b), designated existing provisions as par. (1), inserted ''for purposes other than outreach activities and application assistance under section 3027(a)(31) of this title'', and added pars. (2) and (3).

Pub. L. 100–175, § 122(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There are authorized to be appropriated $350,300,000 for fiscal year 1984, $325,700,000 for fiscal year 1985, $343,600,000 for fiscal year 1986, and $361,500,000 for fiscal year 1987, for the purpose of making grants under part B of this subchapter (relating to supportive services and senior centers).''

Subsec. (b). Pub. L. 100–175, § 122(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) There are authorized to be appropriated $365,300,000 for fiscal year 1984, $360,800,000 for fiscal year 1985, $376,500,000 for fiscal year 1986, and $395,000,000 for fiscal year 1987, for the purpose of making grants under subpart I of part C of this subchapter (relating to congregate nutrition services).

''(2) There are authorized to be appropriated $68,700,000 for fiscal year 1984, $69,100,000 for fiscal year 1985, $72,000,000 for fiscal year 1986, and $75,600,000 for fiscal year 1987, for the purpose of making grants under subpart II of part C of this subchapter (relating to home delivered nutrition services).''

Subsec. (d). Pub. L. 100–175, § 140(a), added subsec. (d).

Subsec. (e). Pub. L. 100–175, § 141(a), added subsec. (e).

Subsec. (f). Pub. L. 100–175, § 143(a), added subsec. (f).

Subsec. (g). Pub. L. 100–175, § 144(b), added subsec. (g).

Subsec. (h). Pub. L. 100–175, § 145, added subsec. (h).

1984—Subsec. (a). Pub. L. 98–459, § 303(a), struck out provisions authorizing appropriations of $300,000,000 for fiscal year 1979, $360,000,000 for fiscal year 1980, $480,000,000 for fiscal year 1981, $306,000,000 for fiscal year 1982, and $327,400,000 for fiscal year 1983, and inserted provisions authorizing appropriations of $325,700,000 for fiscal year 1985, $343,600,000 for fiscal year 1986, and $361,500,000 for fiscal year 1987.

Subsec. (b)(1). Pub. L. 98–459, § 303(b)(1), struck out provisions authorizing appropriations of $350,000,000 for fiscal year 1979, $375,000,000 for fiscal year 1980, $400,000,000 for fiscal year 1981, $319,100,000 for fiscal year 1982, and $341,400,000 for fiscal year 1983, and inserted provisions authorizing appropriations of $360,800,000 for fiscal year 1985, $376,500,000 for fiscal year 1986, and $395,000,000 for fiscal year 1987.

Subsec. (b)(2). Pub. L. 98–459, § 303(b)(2), struck out provisions authorizing appropriations of $80,000,000 for fiscal year 1979, $100,000,000 for fiscal year 1980, $120,000,000 for fiscal year 1981, $60,000,000 for fiscal year 1982, and $64,200,000 for fiscal year 1983, and inserted provisions authorizing appropriations of $69,100,000 for fiscal year 1985, $72,000,000 for fiscal year 1986, and $75,600,000 for fiscal year 1987.

Subsec. (c)(2). Pub. L. 98–459, § 303(c), substituted ''legal assistance'' for ''legal services''.

1981—Subsec. (a). Pub. L. 97–115, § 3(c)(1), inserted provisions authorizing appropriations of $306,000,000 for fiscal year 1982, $327,400,000 for fiscal year 1983, and $350,300,000 for fiscal year 1984, and substituted ''(relating to supportive services and senior centers)'' for ''(relating to social services)''.

Subsec. (b)(1). Pub. L. 97–115, § 3(c)(2), inserted provisions authorizing appropriations of $319,100,000 for fiscal year 1982, $341,400,000 for fiscal year 1983, and $365,300,000 for fiscal year 1984.

Subsec. (b)(2). Pub. L. 97–115, § 3(c)(3), inserted provisions authorizing appropriations of $60,000,000 for fiscal year 1982, $64,200,000 for fiscal year 1983, and $68,700,000 for fiscal year 1984.

Subsec. (c)(2). Pub. L. 97–115, § 3(d), substituted ''supportive services'' for ''social services''.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by sections 303(a)(2), (3) and 708(c)(3) of Pub. L. 103–171 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by sections 303(a)(2), (3), (f), 316(b), and 708(c)(3) of Pub. L. 102–375 inapplicable with respect to

fiscal year 1992, see section 905(b)(2), (6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

§ 3024. Allotment to States

(a) In general

(1) From the sums appropriated under subsections (a) through (d) of section 3023 of this title for each fiscal year, each State shall be allotted an amount which bears the same ratio to such sums as the population of older individuals in such State bears to the population of older individuals in all States.

(2) In determining the amounts allotted to States from the sums appropriated under section 3023 of this title for a fiscal year, the Assistant Secretary shall first determine the amount allotted to each State under paragraph (1) and then proportionately adjust such amounts, if necessary, to meet the requirements of paragraph (3).

(3)(A) No State shall be allotted less than ½ of 1 percent of the sum appropriated for the fiscal year for which the determination is made.

(B) Guam and the United States Virgin Islands shall each be allotted not less than ¼ of 1 percent of the sum appropriated for the fiscal year for which the determination is made.

(C) American Samoa and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than 1/16 of 1 percent of the sum appropriated for the fiscal year for which the determination is made. For the purposes of the exception contained in subparagraph (A) only, the term ''State'' does not include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(D)(i) No State shall be allotted less than the total amount allotted to the State for fiscal year 2006.

(ii) No State shall receive a percentage increase in an allotment, above the State's fiscal year 2006 allotment, that is less than—

(I) for fiscal year 2007, 20 percent of the percentage increase above the fiscal year 2006 allotments for all of the States;

(II) for fiscal year 2008, 15 percent of the percentage increase above the fiscal year 2006 allotments for all of the States;

(III) for fiscal year 2009, 10 percent of the percentage increase above the fiscal year 2006 allotments for all of the States; and

(IV) For[1] fiscal year 2010, 5 percent of the percentage increase above the fiscal year 2006 allotments for all of the States.

(4) The number of individuals aged 60 or older in any State and in all States shall be determined by the Assistant Secretary on the basis of the most recent data available from the Bureau of the Census, and other reliable demographic data satisfactory to the Assistant Secretary.

(5) State allotments for a fiscal year under this section shall be proportionally reduced to the extent that appropriations may be insufficient to provide the full allotments of the prior year.

(b) Unused funds

Whenever the Assistant Secretary determines that any amount allotted to a State under part B or C of this subchapter, or subpart I of part E of this subchapter, for a fiscal year under this section will not be used by such State for carrying out the purpose for which the allotment was made, the Assistant Secretary shall make such allotment available for carrying out such purpose to one or more other States to the extent the Assistant Secretary determines that such other States will be able to use such additional amount for carrying out such purpose. Any amount made available to a State from an appropriation for a fiscal year in accordance with the preceding sentence shall, for purposes of this subchapter, be regarded as part of such State's allotment (as determined under subsection (a) of this section) for such year, but shall remain available until the end of the succeeding fiscal year.

(c) Withholding of funds; disbursement

If the Assistant Secretary finds that any State has failed to qualify under the State plan requirements of section 3027 of this title or the Assistant Secretary does not approve the funding formula required under section 3025(a)(2)(C) of this title, the Assistant Secretary shall withhold the allotment of funds to such State referred to in subsection (a) of this section. The Assistant Secretary shall disburse the funds so withheld directly to any public or private nonprofit institution or organization, agency, or political subdivision of such State submitting an approved plan under section 3027 of this title, which includes an agreement that any such payment shall be matched in the proportion determined under subsection (d)(1)(D) of this section for such State, by funds or in-kind resources from non-Federal sources.

(d) Costs of administration, ombudsman program, demonstration projects, supportive services, senior centers and nutrition services; payment and determination of non-Federal share

(1) From any State's allotment, after the application of section 3028(b) of this title, under this section for any fiscal year—

(A) such amount as the State agency determines, but not more than 10 percent thereof, shall be available for paying such percentage as the agency determines, but not more than 75 percent, of the cost of administration of area plans;

(B) such amount (excluding any amount attributable to funds appropriated under section 3023(a)(3) of this title) as the State agency determines to be adequate for conducting an effective ombudsman program under section 3027(a)(9) of this title shall be available for conducting such program;

[1] So in original. Probably should be ''for''.

(C) not less than $150,000 and not more than 4 percent of the amount allotted to the State for carrying out part B of this subchapter, shall be available for conducting outreach demonstration projects under section 3058e of this title; and

(D) the remainder of such allotment shall be available to such State only for paying such percentage as the State agency determines, but not more than 85 percent of the cost of supportive services, senior centers, and nutrition services under this subchapter provided in the State as part of a comprehensive and coordinated system in planning and service areas for which there is an area plan approved by the State agency.

(2) The non-Federal share shall be in cash or in kind. In determining the amount of the non-Federal share, the Assistant Secretary may attribute fair market value to services and facilities contributed from non-Federal sources.

(Pub. L. 89–73, title III, § 304, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1519; amended Pub. L. 97–115, § 4, Dec. 29, 1981, 95 Stat. 1597; Pub. L. 98–459, title III, § 304, Oct. 9, 1984, 98 Stat. 1772; Pub. L. 100–175, title I, §§ 123, 155(c), (d), 182(f), Nov. 29, 1987, 101 Stat. 933, 952, 965; Pub. L. 102–375, title III, § 304, title IX, § 904(a)(10), Sept. 30, 1992, 106 Stat. 1221, 1306; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title III, § 303, title VIII, § 801(c)(2), Nov. 13, 2000, 114 Stat. 2239, 2292; Pub. L. 109–365, title III, § 304, Oct. 17, 2006, 120 Stat. 2539.)

PRIOR PROVISIONS

A prior section 3024, Pub. L. 89–73, title III, § 304, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 38; Pub. L. 94–135, title I, §§ 105, 106(c), Nov. 28, 1975, 89 Stat. 715, 716, related to designation of state and area agencies, area plan provisions, and transportation services and funds, prior to the general amendment of this subchapter by Pub. L. 95–478. See sections 3025 and 3026 of this title.

Another prior section 3024, Pub. L. 89–73, title III, § 304, July 14, 1965, 79 Stat. 223; Pub. L. 90–42, § 3, July 1, 1967, 81 Stat. 107; Pub. L. 91–69, § 4(b), Sept. 17, 1969, 83 Stat. 108, related to planning, coordination, and evaluation and administration of State plans, providing in: subsec. (a) authorization of appropriations, amount of payment, and availability of unexpended funds; subsec. (b) amount of allotment, determination of additional amount, adjustments, minimum amount, and availability of unexpended amount; subsec. (c) reallotment to other States; and subsec. (d) minimum State expenditure of funds, prior to repeal by Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 36.

Provisions similar to those comprising this section were contained in Pub. L. 89–73, title III, § 303, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 37; Pub. L. 94–135, title I, §§ 104(a), (c), (d), 112(b), 114(d), Nov. 28, 1975, 89 Stat. 714, 715, 719, 725, which was classified to section 3023 of this title prior to repeal by Pub. L. 95–478.

A prior section 3024a, Pub. L. 89–73, title III, § 305, as added Pub. L. 91–69, § 5, Sept. 17, 1969, 83 Stat. 110, related to areawide model projects, grants to or contracts with State agencies, amount, purposes of projects, and authorization of appropriations, prior to repeal by Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 36.

AMENDMENTS

2006—Subsec. (a)(3)(D). Pub. L. 109–365 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''No State shall be allotted less than the total amount allotted to the State for fiscal year 2000 and no State shall receive a percentage increase above the fiscal year 2000 allotment that is less than 20 percent of the percentage increase above the fiscal year 2000 allotments for all of the States.''

2000—Subsec. (a). Pub. L. 106–501, § 303(a), added subsec. (a) and struck out former subsec. (a) which read as follows:

''(a)(1) Subject to paragraphs (2) and (3), from the sums appropriated under section 3023 of this title for each fiscal year, each State shall be allotted an amount which bears the same ratio to such sums as the population of older individuals in such State bears to the population of older individuals in all States, except that (A) no State shall be allotted less than one-half of 1 percent of the sum appropriated for the fiscal year for which the determination is made; (B) Guam, the United States Virgin Islands, and the Trust Territory of the Pacific Islands, shall each be allotted not less than one-fourth of 1 percent of the sum appropriated for the fiscal year for which the determination is made; and (C) American Samoa and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than one-sixteenth of 1 percent of the sum appropriated for the fiscal year for which the determination is made. For the purposes of paragraph (3) and the exception contained in subparagraph (A) only, the term 'State' does not include Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

''(2) No State shall be allotted less than the total amount allotted to the State under paragraph (1) of this subsection and section 3028 of this title for fiscal year 1987.

''(3) No State shall be allotted, from the amount appropriated under section 3023(g) of this title, less than $50,000 for any fiscal year.

''(4) The number of individuals aged 60 or older in any State and in all States shall be determined by the Assistant Secretary on the basis of the most recent data available from the Bureau of the Census, and other reliable demographic data satisfactory to the Assistant Secretary.''

Subsec. (b). Pub. L. 106–501, § 303(b), substituted ''part B or C of this subchapter, or subpart I of part E of this subchapter,'' for ''part B or C of this subchapter'' in first sentence.

Subsec. (d)(1)(B). Pub. L. 106–501, § 801(c)(2)(A), substituted ''3027(a)(9)'' for ''3027(a)(12)''.

Subsec. (e). Pub. L. 106–501, § 801(c)(2)(B), struck out subsec. (e) which read as follows: ''Grants made from allotments received under this subchapter may be used for paying for the costs of providing for an area volunteer services coordinator (as described in section 3026(a)(12) of this title) or a State volunteer services coordinator (as described in section 3027(a)(31) of this title).''

1993—Subsecs. (a)(4), (b), (c), (d)(2). Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

1992—Subsec. (a)(1). Pub. L. 102–375, § 904(a)(10), substituted ''of older individuals'' for ''aged 60 or older'' in two places, ''United States Virgin Islands'' for ''Virgin Islands'' in two places, and ''contained in subparagraph (A)'' for ''contained in clause (A)''.

Subsec. (a)(2). Pub. L. 102–375, § 304(a)(1), substituted ''1987'' for ''1984''.

Subsec. (a)(3). Pub. L. 102–375, § 304(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''No State shall be allotted, from the amount appropriated pursuant to section 3023(a)(3) of this title, less than $50,000 for any fiscal year.''

Subsec. (a)(4). Pub. L. 102–375, § 304(a)(3), substituted ''data available from the Bureau of the Census, and other reliable demographic data satisfactory'' for ''satisfactory data available''.

Subsec. (c). Pub. L. 102–375, § 304(b), inserted ''or the Commissioner does not approve the funding formula re-

quired under section 3025(a)(2)(C) of this title'' after ''requirements of section 3027 of this title''.

Subsec. (d)(1)(C). Pub. L. 102–375, § 304(c), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''after September 30, 1986, such amount (excluding any amount attributable to funds appropriated under section 3023(a)(3) of this title) as the State agency determines to be adequate, but not more than 1 percent, for conducting effective demonstration projects in health and nutrition education under section 3027(f) of this title shall be available for conducting such projects; and''.

Subsec. (e). Pub. L. 102–375, § 304(d), added subsec. (e).

1987—Subsec. (a)(1). Pub. L. 100–175, § 155(c)(1), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)'' and ''purposes of paragraph (3) and'' for ''purpose of''.

Subsec. (a)(3), (4). Pub. L. 100–175, § 155(c)(2), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d)(1). Pub. L. 100–175, § 182(f), inserted a comma after ''section 3028(b) of this title''.

Subsec. (d)(1)(A). Pub. L. 100–175, § 123, substituted ''10 percent'' for ''8.5 percent''.

Subsec. (d)(1)(B), (C). Pub. L. 100–175, § 155(d), inserted ''(excluding any amount attributable to funds appropriated under section 3023(a)(3) of this title)'' after ''amount''.

1984—Subsec. (a)(1). Pub. L. 98–459, § 304(a)(1)–(5), substituted ''Subject to paragraph (2), from'' for ''From'', substituted ''under section 3023 of this title'' for ''under parts B and C'', substituted ''Commonwealth of the Northern Mariana Islands'' for ''Northern Mariana Islands'' in two places, substituted ''and (C)'' for ''(C)'', and struck out ''; and (D) no State shall be allotted an amount less than the State received for fiscal year 1978''.

Subsec. (a)(2), (3). Pub. L. 98–459, § 304(a)(6)–(8), added par. (2), redesignated former par. (2) as (3), and substituted ''available to the Commissioner'' for ''available to him''.

Subsec. (b). Pub. L. 98–459, § 304(b), substituted ''the Commissioner shall make'' for ''he shall make'' and ''to the extent the Commissioner determines'' for ''to the extent he determines''.

Subsec. (c). Pub. L. 98–459, § 304(c), substituted ''subsection (d)(1)(D) of this section'' for ''subsection (d)(1)(B) of this section'' and ''or in-kind resources'' for ''for in-kind resources''.

Subsec. (d)(1). Pub. L. 98–459, § 304(d), inserted '', after the application of section 3028(b) of this title'' in provisions before par. (1), added subpar. (C), and redesignated former subpar. (C) as (D).

1981—Subsec. (a)(1). Pub. L. 97–115, § 4(a), substituted ''under parts B and C for each fiscal year'' for ''under parts B and C for fiscal years 1979, 1980, and 1981''.

Subsec. (d)(1)(B). Pub. L. 97–115, § 4(c)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (d)(1)(C). Pub. L. 97–115, § 4(b), (c)(2), redesignated subpar. (B) as (C) and substituted ''85 percent of the cost of supportive services, senior centers, and nutrition services under this subchapter'' for ''90 percent in fiscal years 1979 and 1980, and 85 percent in fiscal year 1981, of the cost of social services and nutrition services authorized under parts B and C''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 304 (excluding pars. (1) and (2) of subsec. (a)) of Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by section 304 of Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(2) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

§ 3025. Designation of State agencies

(a) Duties of designated agency

In order for a State to be eligible to participate in programs of grants to States from allotments under this subchapter—

(1) the State shall, in accordance with regulations of the Assistant Secretary, designate a State agency as the sole State agency to—

(A) develop a State plan to be submitted to the Assistant Secretary for approval under section 3027 of this title;

(B) administer the State plan within such State;

(C) be primarily responsible for the planning, policy development, administration, coordination, priority setting, and evaluation of all State activities related to the objectives of this chapter;

(D) serve as an effective and visible advocate for older individuals by reviewing and commenting upon all State plans, budgets, and policies which affect older individuals and providing technical assistance to any agency, organization, association, or individual representing the needs of older individuals; and

(E) divide the State into distinct planning and service areas (or in the case of a State specified in subsection (b)(5)(A) of this section, designate the entire State as a single planning and service area), in accordance with guidelines issued by the Assistant Secretary, after considering the geographical distribution of older individuals in the State, the incidence of the need for supportive services, nutrition services, multipurpose senior centers, and legal assistance, the distribution of older individuals who have greatest economic need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) residing in such areas, the distribution of older individuals who have greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) residing in such areas, the distribution of older individuals who are Indians residing in such areas, the distribution of resources available to provide such services or centers, the boundaries of existing areas within the State which were drawn for the planning or administration of supportive services programs, the location of units of general purpose local government within the State, and any other relevant factors;

(2) the State agency shall—

(A) except as provided in subsection (b)(5) of this section, designate for each such area after consideration of the views offered by the unit or units of general purpose local government in such area, a public or private nonprofit agency or organization as the area agency on aging for such area;

(B) provide assurances, satisfactory to the Assistant Secretary, that the State agency will take into account, in connection with matters of general policy arising in the development and administration of the State plan for any fiscal year, the views of recipients of supportive services or nutrition services, or individuals using multipurpose senior centers provided under such plan;

(C) in consultation with area agencies, in accordance with guidelines issued by the Assistant Secretary, and using the best available data, develop and publish for review and comment a formula for distribution within the State of funds received under this subchapter that takes into account—

(i) the geographical distribution of older individuals in the State; and

(ii) the distribution among planning and service areas of older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low-income minority older individuals;

(D) submit its formula developed under subparagraph (C) to the Assistant Secretary for approval;

(E) provide assurances that preference will be given to providing services to older individuals with greatest economic need and older individuals with greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas), and include proposed methods of carrying out the preference in the State plan;

(F) provide assurances that the State agency will require use of outreach efforts described in section 3027(a)(16) of this title; and

(G)(i) set specific objectives, in consultation with area agencies on aging, for each planning and service area for providing services funded under this subchapter to low-income minority older individuals and older individuals residing in rural areas;

(ii) provide an assurance that the State agency will undertake specific program development, advocacy, and outreach efforts focused on the needs of low-income minority older individuals and older individuals residing in rural areas; and

(iii) provide a description of the efforts described in clause (ii) that will be undertaken by the State agency; and

(3) the State agency shall, consistent with this section, promote the development and implementation of a State system of long-term care that is a comprehensive, coordinated system that enables older individuals to receive long-term care in home and community-based settings, in a manner responsive to the needs and preferences of the older individuals and their family caregivers, by—

(A) collaborating, coordinating, and consulting with other agencies in such State responsible for formulating, implementing, and administering programs, benefits, and services related to providing long-term care;

(B) participating in any State government activities concerning long-term care, including reviewing and commenting on any State rules, regulations, and policies related to long-term care;

(C) conducting analyses and making recommendations with respect to strategies for modifying the State system of long-term care to better—

(i) respond to the needs and preferences of older individuals and family caregivers;

(ii) facilitate the provision, by service providers, of long-term care in home and community-based settings; and

(iii) target services to individuals at risk for institutional placement, to permit such individuals to remain in home and community-based settings;

(D) implementing (through area agencies on aging, service providers, and such other entities as the State determines to be appropriate) evidence-based programs to assist older individuals and their family caregivers in learning about and making behavioral changes intended to reduce the risk of injury, disease, and disability among older individuals; and

(E) providing for the availability and distribution (through public education campaigns, Aging and Disability Resource Centers, area agencies on aging, and other appropriate means) of information relating to—

(i) the need to plan in advance for long-term care; and

(ii) the full range of available public and private long-term care (including integrated long-term care) programs, options, service providers, and resources.

(b) Planning and service areas

(1) In carrying out the requirement of subsection (a)(1) of this section, the State may designate as a planning and service area any unit of general purpose local government which has a population of 100,000 or more. In any case in which a unit of general purpose local government makes application to the State agency under the preceding sentence to be designated as a planning and service area, the State agency shall, upon request, provide an opportunity for a hearing to such unit of general purpose local government. A State may designate as a planning and service area under subsection (a)(1) of this section, any region within the State recognized for purposes of areawide planning which includes one or more such units of general purpose local government when the State determines that the designation of such a regional planning and service area is necessary for, and will enhance, the effective administration of the programs authorized by this subchapter. The State may include in any planning and service

area designated under subsection (a)(1) of this section such additional areas adjacent to the unit of general purpose local government or regions so designated as the State determines to be necessary for, and will enhance the effective administration of the programs authorized by this subchapter.

(2) The State is encouraged in carrying out the requirement of subsection (a)(1) of this section to include the area covered by the appropriate economic development district involved in any planning and service area designated under subsection (a)(1) of this section, and to include all portions of an Indian reservation within a single planning and service area, if feasible.

(3) The chief executive officer of each State in which a planning and service area crosses State boundaries, or in which an interstate Indian reservation is located, may apply to the Assistant Secretary to request redesignation as an interstate planning and service area comprising the entire metropolitan area or Indian reservation. If the Assistant Secretary approves such an application, the Assistant Secretary shall adjust the State allotments of the areas within the planning and service area in which the interstate planning and service area is established to reflect the number of older individuals within the area who will be served by an interstate planning and service area not within the State.

(4) Whenever a unit of general purpose local government, a region, a metropolitan area or an Indian reservation is denied designation under the provisions of subsection (a)(1) of this section, such unit of general purpose local government, region, metropolitan area, or Indian reservation may appeal the decision of the State agency to the Assistant Secretary. The Assistant Secretary shall afford such unit, region, metropolitan area, or Indian reservation an opportunity for a hearing. In carrying out the provisions of this paragraph, the Assistant Secretary may approve the decision of the State agency, disapprove the decision of the State agency and require the State agency to designate the unit, region, area, or Indian reservation appealing the decision as a planning and service area, or take such other action as the Assistant Secretary deems appropriate.

(5)(A) A State which on or before October 1, 1980, had designated, with the approval of the Assistant Secretary, a single planning and service area covering all of the older individuals in the State, in which the State agency was administering the area plan, may after that date designate one or more additional planning and service areas within the State to be administered by public or private nonprofit agencies or organizations as area agencies on aging, after considering the factors specified in subsection (a)(1)(E) of this section. The State agency shall continue to perform the functions of an area agency on aging for any area of the State not included in a planning and service area for which an area agency on aging has been designated.

(B) Whenever a State agency designates a new area agency on aging after October 9, 1984, the State agency shall give the right to first refusal to a unit of general purpose local government if (i) such unit can meet the requirements of subsection (c) of this section, and (ii) the boundaries of such a unit and the boundaries of the area are reasonably contiguous.

(C)(i) A State agency shall establish and follow appropriate procedures to provide due process to affected parties, if the State agency initiates an action or proceeding to—

(I) revoke the designation of the area agency on aging under subsection (a) of this section;

(II) designate an additional planning and service area in a State;

(III) divide the State into different planning and services[1] areas; or

(IV) otherwise affect the boundaries of the planning and service areas in the State.

(ii) The procedures described in clause (i) shall include procedures for—

(I) providing notice of an action or proceeding described in clause (i);

(II) documenting the need for the action or proceeding;

(III) conducting a public hearing for the action or proceeding;

(IV) involving area agencies on aging, service providers, and older individuals in the action or proceeding; and

(V) allowing an appeal of the decision of the State agency in the action or proceeding to the Assistant Secretary.

(iii) An adversely affected party involved in an action or proceeding described in clause (i) may bring an appeal described in clause (ii)(V) on the basis of—

(I) the facts and merits of the matter that is the subject of the action or proceeding; or

(II) procedural grounds.

(iv) In deciding an appeal described in clause (ii)(V), the Assistant Secretary may affirm or set aside the decision of the State agency. If the Assistant Secretary sets aside the decision, and the State agency has taken an action described in subclauses (I) through (III) of clause (i), the State agency shall nullify the action.

(c) Eligible State area agencies; development of area; preferred area agency on aging designees

An area agency on aging designated under subsection (a) of this section shall be—

(1) an established office of aging which is operating within a planning and service area designated under subsection (a) of this section;

(2) any office or agency of a unit of general purpose local government, which is designated to function only for the purpose of serving as an area agency on aging by the chief elected official of such unit;

(3) any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act only on behalf of such combination for such purpose;

(4) any public or nonprofit private agency in a planning and service area, or any separate organizational unit within such agency, which is under the supervision or direction for this purpose of the designated State agency and which can and will engage only in the planning or provision of a broad range of support-

[1] So in original. Probably should be ''service''.

ive services, or nutrition services within such planning and service area; or

(5) in the case of a State specified in subsection (b)(5) of this section, the State agency;

and shall provide assurance, determined adequate by the State agency, that the area agency on aging will have the ability to develop an area plan and to carry out, directly or through contractual or other arrangements, a program in accordance with the plan within the planning and service area. In designating an area agency on aging within the planning and service area or within any unit of general purpose local government designated as a planning and service area the State shall give preference to an established office on aging, unless the State agency finds that no such office within the planning and service area will have the capacity to carry out the area plan.

(d) Publication for review and comment; contents

The publication for review and comment required by paragraph (2)(C) of subsection (a) of this section shall include—

(1) a descriptive statement of the formula's assumptions and goals, and the application of the definitions of greatest economic or social need,

(2) a numerical statement of the actual funding formula to be used,

(3) a listing of the population, economic, and social data to be used for each planning and service area in the State, and

(4) a demonstration of the allocation of funds, pursuant to the funding formula, to each planning and service area in the State.

(Pub. L. 89–73, title III, § 305, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1520; amended Pub. L. 97–115, §§ 3(d), 5, Dec. 29, 1981, 95 Stat. 1597; Pub. L. 98–459, title III, § 305, Oct. 9, 1984, 98 Stat. 1773; Pub. L. 100–175, title I, §§ 124, 132(a), 134(a)(1), 182(e)(2), (g), (h), Nov. 29, 1987, 101 Stat. 933, 939, 940, 965; Pub. L. 100–628, title VII, § 705(4), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 102–375, title I, § 102(b)(9)(B), (10)(B)–(D), title III, § 305, title IX, § 904(a)(11), Sept. 30, 1992, 106 Stat. 1201, 1202, 1222, 1306; Pub. L. 103–171, §§ 2(8), 3(a)(13), Dec. 2, 1993, 107 Stat. 1988, 1990; Pub. L. 106–501, title III, § 304, title VIII, § 801(c)(3), Nov. 13, 2000, 114 Stat. 2239, 2292; Pub. L. 109–365, title III, § 305, Oct. 17, 2006, 120 Stat. 2539.)

PRIOR PROVISIONS

A prior section 3025, Pub. L. 89–73, title III, § 305, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 41; Pub. L. 94–135, title I, §§ 106(a), (b), 114(e), Nov. 28, 1975, 89 Stat. 715, 725, related to State plans, prior to the general amendment of this subchapter by Pub. L. 95–478. See section 3027 of this title.

Another prior section 3025, Pub. L. 89–73, title III, § 306, formerly § 305, July 14, 1965, 79 Stat. 224; renumbered § 306, Pub. L. 91–69, § 5, Sept. 17, 1969, 83 Stat. 110, related to payments of grants for State and community programs on aging, adjustments, advances or reimbursement, and installments, prior to repeal by Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 36.

Provisions similar to those comprising this section were contained in Pub. L. 89–73, title III, § 304, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 38; Pub. L. 94–135, title I, §§ 105, 106(c), Nov. 28, 1975, 89 Stat. 715, 716, which was classified to section 3024 of this title prior to repeal by Pub. L. 95–478.

AMENDMENTS

2006—Subsec. (a)(1)(E). Pub. L. 109–365, § 305(1)(A), substituted ''(with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas)'' for ''(with particular attention to low-income minority individuals and older individuals residing in rural areas)'' in two places.

Subsec. (a)(2)(E). Pub. L. 109–365, § 305(2)(A), substituted ''(with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas)'' for '', with particular attention to low-income minority individuals and older individuals residing in rural areas''.

Subsec. (a)(3). Pub. L. 109–365, § 305(1)(B), (2)(B), (3), added par. (3).

2000—Subsec. (a)(1)(E). Pub. L. 106–501, § 304(1), inserted ''and older individuals residing in rural areas'' after ''low-income minority individuals'' in two places.

Subsec. (a)(2)(E). Pub. L. 106–501, § 304(2)(A), struck out comma and inserted ''and older individuals residing in rural areas,'' after ''low-income minority individuals''.

Subsec. (a)(2)(F). Pub. L. 106–501, § 801(c)(3), substituted ''3027(a)(16)'' for ''3027(a)(24)''.

Subsec. (a)(2)(G)(i). Pub. L. 106–501, § 304(2)(B), inserted ''and older individuals residing in rural areas'' after ''low-income minority older individuals''.

Subsec. (a)(2)(G)(ii). Pub. L. 106–501, § 304(2)(C), which directed the insertion of ''and older individuals residing in rural areas'' after ''low-income minority individuals'', was executed by making the insertion after ''low-income minority older individuals'', to reflect the probable intent of Congress.

1993—Subsec. (a). Pub. L. 103–171, § 3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

Subsec. (b)(1). Pub. L. 103–171, § 2(8), substituted ''area under subsection (a)(1) of this section'' for ''area under clause (1) of subsection (a) of this section'' and ''designated under subsection (a)(1) of this section'' for ''designated under clause (1) of subsection (a) of this section''.

Subsec. (b)(2). Pub. L. 103–171, § 2(8), substituted ''requirement of subsection (a)(1) of this section'' for ''requirement of clause (1) of subsection (a) of this section''.

Subsec. (b)(3) to (5). Pub. L. 103–171, § 3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

1992—Subsec. (a)(1)(C). Pub. L. 102–375, § 305(a)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''be primarily responsible for the coordination of all State activities related to the purposes of this chapter;''.

Subsec. (a)(1)(D). Pub. L. 102–375, § 904(a)(11)(A)(i)(I), substituted ''older individuals'' for ''the elderly'' wherever appearing.

Subsec. (a)(1)(E). Pub. L. 102–375, § 904(a)(11)(A)(i)(II), (III), inserted ''individuals who are'' before ''Indians'' and substituted ''older individuals'' for ''individuals aged 60 and older''.

Subsec. (a)(2). Pub. L. 102–375, § 904(a)(11)(A)(ii)(I), which directed the substitution of ''subparagraph'' for ''clause'', could not be executed because of the intervening amendment by Pub. L. 102–375, § 102(b)(9)(B). See below.

Pub. L. 102–375, § 102(b)(9)(B), struck out ''designated under clause (1)'' after ''agency'' in introductory provisions.

Subsec. (a)(2)(C). Pub. L. 102–375, § 305(a)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''develop a formula, in accordance with guidelines issued by the Commissioner, for the distribution within the State of funds received under this subchapter, taking into account, to the maximum ex-

tent feasible, the best available statistics on the geographical distribution of individuals aged 60 and older in the State, and publish such formula for review and comment in accordance with subsection (d) of this section;''.

Subsec. (a)(2)(D). Pub. L. 102–375, § 904(a)(11)(A)(ii)(II), substituted ''subparagraph'' for ''subclause''.

Pub. L. 102–375, § 305(a)(2)(B), substituted ''for approval'' for ''for review and comment''.

Subsec. (a)(2)(E). Pub. L. 102–375, § 904(a)(11)(A)(ii)(III), substituted ''greatest economic need and older individuals with greatest social need'' for ''the greatest economic or social needs''.

Pub. L. 102–375, § 305(a)(2)(C), struck out ''and'' at end.

Subsec. (a)(2)(F). Pub. L. 102–375, § 305(a)(2)(D), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''assure the use of outreach efforts that will identify individuals eligible for assistance under this chapter, with special emphasis on older individuals with the greatest economic or social needs (with particular attention to low-income minority individuals) and inform such individuals of the availability of such assistance.''

Subsec. (a)(2)(G). Pub. L. 102–375, § 305(a)(2)(E), added subpar. (G).

Subsec. (b)(1). Pub. L. 102–375, § 904(a)(11)(B)(i), substituted ''requirement of subsection (a)(1) of this section'' for ''requirement of clause (1) of subsection (a) of this section''.

Subsec. (b)(2). Pub. L. 102–375, § 904(a)(11)(B)(ii), substituted ''designated under subsection (a)(1) of this section'' for ''designated under such clause''.

Subsec. (b)(4). Pub. L. 102–375, § 904(a)(11)(B)(i), substituted ''subsection (a)(1) of this section'' for ''clause (1) of subsection (a) of this section''.

Subsec. (b)(5)(A). Pub. L. 102–375, § 102(b)(10)(B), substituted ''area agency on aging'' for ''area agency'' in two places.

Subsec. (b)(5)(C). Pub. L. 102–375, § 305(b), added subpar. (C).

Subsec. (c). Pub. L. 102–375, § 102(b)(10)(D), substituted ''area agency on aging'' for ''area agency'' in concluding provisions of first sentence.

Subsec. (c)(2). Pub. L. 102–375, § 102(b)(10)(C), substituted ''area agency on aging'' for ''area agency''.

Subsec. (d). Pub. L. 102–375, § 904(a)(11)(C), substituted ''paragraph'' for ''clause'' in introductory provisions.

1988—Subsec. (a)(1)(E). Pub. L. 100–628, § 705(4)(A), substituted ''such areas,'' for ''such areas,,'' before ''distribution of resources''.

Subsec. (d). Pub. L. 100–628, § 705(4)(B), redesignated subpars. (A), (B), (C), and (D) as pars. (1), (2), (3), and (4), respectively.

1987—Subsec. (a)(1)(E). Pub. L. 100–175, §§ 132(a)(1), 134(a)(1), 182(g), substituted ''the distribution of older individuals who have greatest economic need (with particular attention to low-income minority individuals) residing in such areas, the distribution of older individuals who have greatest social need (with particular attention to low-income minority individuals) residing in such areas,'' for ''the distribution of older individuals who have low incomes residing in such areas'', inserted ''the distribution of older Indians residing in such areas,'' after second reference to ''such areas,'', and substituted ''legal assistance'' for ''legal services''.

Subsec. (a)(2)(C). Pub. L. 100–175, § 182(h), inserted ''in accordance with subsection (d) of this section'' before semicolon at end.

Subsec. (a)(2)(F). Pub. L. 100–175, § 132(a)(2), added subpar. (F).

Subsec. (c)(2). Pub. L. 100–175, § 124(1), inserted ''to function only'' after ''designated''.

Subsec. (c)(3). Pub. L. 100–175, § 124(2), inserted ''only'' after ''to act''.

Subsec. (c)(4). Pub. L. 100–175, § 124(3), inserted '', or any separate organizational unit within such agency,'' after first reference to ''area'' and substituted ''and will engage only'' for ''engage''.

Subsec. (d). Pub. L. 100–175, § 182(e)(2), struck out par. (1) designation before ''The publication for review'' and struck out par. (2) which read as follows: ''For purposes of clause (2)(E) of subsection (a) of this section and paragraph (1) of this subsection, the term 'greatest economic need' means the need resulting from an income level at or below the poverty threshold established by the Bureau of the Census, and the term 'greatest social need' means the need caused by noneconomic factors which include physical and mental disabilities, language barriers, and cultural or social isolation including that caused by racial or ethnic status which restricts an individual's ability to perform normal daily tasks or which threatens his or her capacity to live independently.''

1984—Subsec. (a)(1)(E). Pub. L. 98–459, § 305(a)(1), substituted ''subsection (b)(5)(A) of this section'' for ''subsection (b)(5) of this section''.

Subsec. (a)(2)(E). Pub. L. 98–459, § 305(a)(2), inserted '', with particular attention to low-income minority individuals,''.

Subsec. (b)(3). Pub. L. 98–459, § 305(b)(1), substituted ''the Commissioner shall adjust'' for ''he shall adjust''.

Subsec. (b)(5). Pub. L. 98–459, § 305(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d). Pub. L. 98–459, § 305(c), added subsec. (d).

1981—Subsec. (a)(1)(E). Pub. L. 97–115, §§ 3(d), 5(a), substituted ''divide the State into distinct planning and service areas (or in the case of a State specified in subsection (b)(5) of this section, designate the entire State as a single planning and service area)'' for ''divide the State into distinct areas'' and ''supportive services'' for ''social services'' in two places.

Subsec. (a)(2)(A). Pub. L. 97–115, § 5(b), substituted ''except as provided in subsection (b)(5) of this section, designate for each such area'' for ''determine for which planning and service area an area plan will be developed, in accordance with section 3026 of this title, and for each such area designate,''.

Subsec. (a)(2)(B). Pub. L. 97–115, § 3(d), substituted ''supportive services'' for ''social services''.

Subsec. (b)(5). Pub. L. 97–115, § 5(c), added par. (5).

Subsec. (c)(4). Pub. L. 97–115, § 3(d), substituted ''supportive services'' for ''social services''.

Subsec. (c)(5). Pub. L. 97–115, § 5(d), added par. (5).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 305 of Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by section 305 of Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(2) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

§ 3026. Area plans

(a) Preparation and development by area agency on aging; requirements

Each area agency on aging designated under section 3025(a)(2)(A) of this title shall, in order to be approved by the State agency, prepare and develop an area plan for a planning and service area for a two-, three-, or four-year period determined by the State agency, with such annual ad-

justments as may be necessary. Each such plan shall be based upon a uniform format for area plans within the State prepared in accordance with section 3027(a)(1) of this title. Each such plan shall—

(1) provide, through a comprehensive and coordinated system, for supportive services, nutrition services, and, where appropriate, for the establishment, maintenance, or construction of multipurpose senior centers, within the planning and service area covered by the plan, including determining the extent of need for supportive services, nutrition services, and multipurpose senior centers in such area (taking into consideration, among other things, the number of older individuals with low incomes residing in such area, the number of older individuals who have greatest economic need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) residing in such area, the number of older individuals who have greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) residing in such area, the number of older individuals at risk for institutional placement residing in such area, and the number of older individuals who are Indians residing in such area, and the efforts of voluntary organizations in the community), evaluating the effectiveness of the use of resources in meeting such need, and entering into agreements with providers of supportive services, nutrition services, or multipurpose senior centers in such area, for the provision of such services or centers to meet such need;

(2) provide assurances that an adequate proportion, as required under section 3027(a)(2) of this title, of the amount allotted for part B of this subchapter to the planning and service area will be expended for the delivery of each of the following categories of services—

(A) services associated with access to services (transportation, health services (including mental health services), outreach, information and assistance (which may include information and assistance to consumers on availability of services under part B and how to receive benefits under and participate in publicly supported programs for which the consumer may be eligible), and case management services);

(B) in-home services, including supportive services for families of older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction);[1] and

(C) legal assistance;

and assurances that the area agency on aging will report annually to the State agency in detail the amount of funds expended for each such category during the fiscal year most recently concluded;

(3)(A) designate, where feasible, a focal point for comprehensive service delivery in each community, giving special consideration to designating multipurpose senior centers (including multipurpose senior centers operated by organizations referred to in paragraph (6)(C)) as such focal point; and

(B) specify, in grants, contracts, and agreements implementing the plan, the identity of each focal point so designated;

(4)(A)(i)(I) provide assurances that the area agency on aging will—

(aa) set specific objectives, consistent with State policy, for providing services to older individuals with greatest economic need, older individuals with greatest social need, and older individuals at risk for institutional placement;

(bb) include specific objectives for providing services to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas; and

(II) include proposed methods to achieve the objectives described in items (aa) and (bb) of subclause (I);

(ii) provide assurances that the area agency on aging will include in each agreement made with a provider of any service under this subchapter, a requirement that such provider will—

(I) specify how the provider intends to satisfy the service needs of low-income minority individuals, older individuals with limited English proficiency, and older individuals residing in rural areas in the area served by the provider;

(II) to the maximum extent feasible, provide services to low-income minority individuals, older individuals with limited English proficiency, and older individuals residing in rural areas in accordance with their need for such services; and

(III) meet specific objectives established by the area agency on aging, for providing services to low-income minority individuals, older individuals with limited English proficiency, and older individuals residing in rural areas within the planning and service area; and

(iii) with respect to the fiscal year preceding the fiscal year for which such plan is prepared—

(I) identify the number of low-income minority older individuals in the planning and service area;

(II) describe the methods used to satisfy the service needs of such minority older individuals; and

(III) provide information on the extent to which the area agency on aging met the objectives described in clause (i);

(B) provide assurances that the area agency on aging will use outreach efforts that will—

(i) identify individuals eligible for assistance under this chapter, with special emphasis on—

(I) older individuals residing in rural areas;

(II) older individuals with greatest economic need (with particular attention to

[1] So in original. A closing parenthesis probably should not appear.

low-income minority individuals and older individuals residing in rural areas);

(III) older individuals with greatest social need (with particular attention to low-income minority individuals and older individuals residing in rural areas);

(IV) older individuals with severe disabilities;

(V) older individuals with limited English proficiency;

(VI) older individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction (and the caretakers of such individuals); and

(VII) older individuals at risk for institutional placement; and

(ii) inform the older individuals referred to in subclauses (I) through (VI) of clause (i), and the caretakers of such individuals, of the availability of such assistance; and

(C) contain an assurance that the area agency on aging will ensure that each activity undertaken by the agency, including planning, advocacy, and systems development, will include a focus on the needs of low-income minority older individuals and older individuals residing in rural areas;

(5) provide assurances that the area agency on aging will coordinate planning, identification, assessment of needs, and provision of services for older individuals with disabilities, with particular attention to individuals with severe disabilities and individuals at risk for institutional placement, with agencies that develop or provide services for individuals with disabilities;

(6) provide that the area agency on aging will—

(A) take into account in connection with matters of general policy arising in the development and administration of the area plan, the views of recipients of services under such plan;

(B) serve as the advocate and focal point for older individuals within the community by (in cooperation with agencies, organizations, and individuals participating in activities under the plan) monitoring, evaluating, and commenting upon all policies, programs, hearings, levies, and community actions which will affect older individuals;

(C)(i) where possible, enter into arrangements with organizations providing day care services for children, assistance to older individuals caring for relatives who are children, and respite for families, so as to provide opportunities for older individuals to aid or assist on a voluntary basis in the delivery of such services to children, adults, and families;

(ii) if possible regarding the provision of services under this subchapter, enter into arrangements and coordinate with organizations that have a proven record of providing services to older individuals, that—

(I) were officially designated as community action agencies or community action programs under section 210 of the Economic Opportunity Act of 1964 (42 U.S.C. 2790)[2] for fiscal year 1981, and did not lose the designation as a result of failure to comply with such Act; or

(II) came into existence during fiscal year 1982 as direct successors in interest to such community action agencies or community action programs; and

(iii) make use of trained volunteers in providing direct services delivered to older individuals and individuals with disabilities needing such services and, if possible, work in coordination with organizations that have experience in providing training, placement, and stipends for volunteers or participants (such as organizations carrying out Federal service programs administered by the Corporation for National and Community Service), in community service settings;

and that meet the requirements under section 9910 of this title;

(D) establish an advisory council consisting of older individuals (including minority individuals and older individuals residing in rural areas) who are participants or who are eligible to participate in programs assisted under this chapter, family caregivers of such individuals, representatives of older individuals, service providers, representatives of the business community, local elected officials, providers of veterans' health care (if appropriate), and the general public, to advise continuously the area agency on aging on all matters relating to the development of the area plan, the administration of the plan and operations conducted under the plan;

(E) establish effective and efficient procedures for coordination of—

(i) entities conducting programs that receive assistance under this chapter within the planning and service area served by the agency; and

(ii) entities conducting other Federal programs for older individuals at the local level, with particular emphasis on entities conducting programs described in section 3013(b) of this title, within the area;

(F) in coordination with the State agency and with the State agency responsible for mental health services, increase public awareness of mental health disorders, remove barriers to diagnosis and treatment, and coordinate mental health services (including mental health screenings) provided with funds expended by the area agency on aging with mental health services provided by community health centers and by other public agencies and nonprofit private organizations;

(G) if there is a significant population of older individuals who are Indians in the planning and service area of the area agency on aging, the area agency on aging shall conduct outreach activities to identify such individuals in such area and shall inform such individuals of the availability of assistance under this chapter;

(7) provide that the area agency on aging shall, consistent with this section, facilitate the area-wide development and implementa-

[2] See References in Text note below.

tion of a comprehensive, coordinated system for providing long-term care in home and community-based settings, in a manner responsive to the needs and preferences of older individuals and their family caregivers, by—

(A) collaborating, coordinating activities, and consulting with other local public and private agencies and organizations responsible for administering programs, benefits, and services related to providing long-term care;

(B) conducting analyses and making recommendations with respect to strategies for modifying the local system of long-term care to better—

(i) respond to the needs and preferences of older individuals and family caregivers;

(ii) facilitate the provision, by service providers, of long-term care in home and community-based settings; and

(iii) target services to older individuals at risk for institutional placement, to permit such individuals to remain in home and community-based settings;

(C) implementing, through the agency or service providers, evidence-based programs to assist older individuals and their family caregivers in learning about and making behavioral changes intended to reduce the risk of injury, disease, and disability among older individuals; and

(D) providing for the availability and distribution (through public education campaigns, Aging and Disability Resource Centers, the area agency on aging itself, and other appropriate means) of information relating to—

(i) the need to plan in advance for long-term care; and

(ii) the full range of available public and private long-term care (including integrated long-term care) programs, options, service providers, and resources;

(8) provide that case management services provided under this subchapter through the area agency on aging will—

(A) not duplicate case management services provided through other Federal and State programs;

(B) be coordinated with services described in subparagraph (A); and

(C) be provided by a public agency or a nonprofit private agency that—

(i) gives each older individual seeking services under this subchapter a list of agencies that provide similar services within the jurisdiction of the area agency on aging;

(ii) gives each individual described in clause (i) a statement specifying that the individual has a right to make an independent choice of service providers and documents receipt by such individual of such statement;

(iii) has case managers acting as agents for the individuals receiving the services and not as promoters for the agency providing such services; or

(iv) is located in a rural area and obtains a waiver of the requirements described in clauses (i) through (iii);

(9) provide assurances that the area agency on aging, in carrying out the State Long-Term Care Ombudsman program under section 3027(a)(9) of this title, will expend not less than the total amount of funds appropriated under this chapter and expended by the agency in fiscal year 2000 in carrying out such a program under this subchapter;

(10) provide a grievance procedure for older individuals who are dissatisfied with or denied services under this subchapter;

(11) provide information and assurances concerning services to older individuals who are Native Americans (referred to in this paragraph as ''older Native Americans''), including—

(A) information concerning whether there is a significant population of older Native Americans in the planning and service area and if so, an assurance that the area agency on aging will pursue activities, including outreach, to increase access of those older Native Americans to programs and benefits provided under this subchapter;

(B) an assurance that the area agency on aging will, to the maximum extent practicable, coordinate the services the agency provides under this subchapter with services provided under subchapter X of this chapter; and

(C) an assurance that the area agency on aging will make services under the area plan available, to the same extent as such services are available to older individuals within the planning and service area, to older Native Americans; and[3]

(12) provide that the area agency on aging will establish procedures for coordination of services with entities conducting other Federal or federally assisted programs for older individuals at the local level, with particular emphasis on entities conducting programs described in section 3013(b) of this title within the planning and service area.[4]

(13) provide assurances that the area agency on aging will—

(A) maintain the integrity and public purpose of services provided, and service providers, under this subchapter in all contractual and commercial relationships;

(B) disclose to the Assistant Secretary and the State agency—

(i) the identity of each nongovernmental entity with which such agency has a contract or commercial relationship relating to providing any service to older individuals; and

(ii) the nature of such contract or such relationship;

(C) demonstrate that a loss or diminution in the quantity or quality of the services provided, or to be provided, under this subchapter by such agency has not resulted and will not result from such contract or such relationship;

(D) demonstrate that the quantity or quality of the services to be provided under this

[3] So in original. The word ''and'' probably should not appear.

[4] So in original. The period probably should be a semicolon.

subchapter by such agency will be enhanced as a result of such contract or such relationship; and

(E) on the request of the Assistant Secretary or the State, for the purpose of monitoring compliance with this chapter (including conducting an audit), disclose all sources and expenditures of funds such agency receives or expends to provide services to older individuals;

(14) provide assurances that preference in receiving services under this subchapter will not be given by the area agency on aging to particular older individuals as a result of a contract or commercial relationship that is not carried out to implement this subchapter;

(15) provide assurances that funds received under this subchapter will be used—

(A) to provide benefits and services to older individuals, giving priority to older individuals identified in paragraph (4)(A)(i); and

(B) in compliance with the assurances specified in paragraph (13) and the limitations specified in section 3020c of this title;

(16) provide, to the extent feasible, for the furnishing of services under this chapter, consistent with self-directed care; and

(17) include information detailing how the area agency on aging will coordinate activities, and develop long-range emergency preparedness plans, with local and State emergency response agencies, relief organizations, local and State governments, and any other institutions that have responsibility for disaster relief service delivery.

(b) Assessment of preparation of area agencies

(1) An area agency on aging may include in the area plan an assessment of how prepared the area agency on aging and service providers in the planning and service area are for any anticipated change in the number of older individuals during the 10-year period following the fiscal year for which the plan is submitted.

(2) Such assessment may include—

(A) the projected change in the number of older individuals in the planning and service area;

(B) an analysis of how such change may affect such individuals, including individuals with low incomes, individuals with greatest economic need, minority older individuals, older individuals residing in rural areas, and older individuals with limited English proficiency;

(C) an analysis of how the programs, policies, and services provided by such area agency can be improved, and how resource levels can be adjusted to meet the needs of the changing population of older individuals in the planning and service area; and

(D) an analysis of how the change in the number of individuals age 85 and older in the planning and service area is expected to affect the need for supportive services.

(3) An area agency on aging, in cooperation with government officials, State agencies, tribal organizations, or local entities, may make recommendations to government officials in the planning and service area and the State, on actions determined by the area agency to build the capacity in the planning and service area to meet the needs of older individuals for—

(A) health and human services;

(B) land use;

(C) housing;

(D) transportation;

(E) public safety;

(F) workforce and economic development;

(G) recreation;

(H) education;

(I) civic engagement;

(J) emergency preparedness; and

(K) any other service as determined by such agency.

(c) Waiver of requirements

Each State, in approving area agency on aging plans under this section, shall waive the requirement described in paragraph (2) of subsection (a) of this section for any category of services described in such paragraph if the area agency on aging demonstrates to the State agency that services being furnished for such category in the area are sufficient to meet the need for such services in such area and had conducted a timely public hearing upon request.

(d) Transportation services; funds

(1) Subject to regulations prescribed by the Assistant Secretary, an area agency on aging designated under section 3025(a)(2)(A) of this title or, in areas of a State where no such agency has been designated, the State agency, may enter into agreements with agencies administering programs under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], and titles XIX and XX of the Social Security Act [42 U.S.C. 1396 et seq., 1397 et seq.] for the purpose of developing and implementing plans for meeting the common need for transportation services of individuals receiving benefits under such Acts and older individuals participating in programs authorized by this subchapter.

(2) In accordance with an agreement entered into under paragraph (1), funds appropriated under this subchapter may be used to purchase transportation services for older individuals and may be pooled with funds made available for the provision of transportation services under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], and titles XIX and XX of the Social Security Act [42 U.S.C. 1396 et seq., 1397 et seq.].

(e) Confidentiality of information relating to legal assistance

An area agency on aging may not require any provider of legal assistance under this subchapter to reveal any information that is protected by the attorney-client privilege.

(f) Withholding of area funds

(1) If the head of a State agency finds that an area agency on aging has failed to comply with Federal or State laws, including the area plan requirements of this section, regulations, or policies, the State may withhold a portion of the funds to the area agency on aging available under this subchapter.

(2)(A) The head of a State agency shall not make a final determination withholding funds

under paragraph (1) without first affording the area agency on aging due process in accordance with procedures established by the State agency.

(B) At a minimum, such procedures shall include procedures for—

(i) providing notice of an action to withhold funds;

(ii) providing documentation of the need for such action; and

(iii) at the request of the area agency on aging, conducting a public hearing concerning the action.

(3)(A) If a State agency withholds the funds, the State agency may use the funds withheld to directly administer programs under this subchapter in the planning and service area served by the area agency on aging for a period not to exceed 180 days, except as provided in subparagraph (B).

(B) If the State agency determines that the area agency on aging has not taken corrective action, or if the State agency does not approve the corrective action, during the 180-day period described in subparagraph (A), the State agency may extend the period for not more than 90 days.

(Pub. L. 89–73, title III, § 306, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1522; amended Pub. L. 97–115, §§ 3(d), 6, Dec. 29, 1981, 95 Stat. 1597, 1598; Pub. L. 98–459, title III, § 306, Oct. 9, 1984, 98 Stat. 1774; Pub. L. 100–175, title I, §§ 104(c), 125–127, 130(a), 131(a), 132(b), 133, 134(a)(2), (b), 135, 136(b), 137(a), 140(b), 141(b), 143(b), 144(c), 155(e)(1), 182(e)(3), (i), (j), Nov. 29, 1987, 101 Stat. 930, 934, 938–944, 946, 947, 949, 952, 965; Pub. L. 100–628, title VII, § 705(5), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 102–375, title I, § 102(b)(4), (10)(C), (E), title III, § 306, title IX, § 904(a)(12), Sept. 30, 1992, 106 Stat. 1201, 1202, 1223, 1307; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 105–285, title II, § 202(a), Oct. 27, 1998, 112 Stat. 2755; Pub. L. 106–501, title III, § 305, Nov. 13, 2000, 114 Stat. 2240; Pub. L. 109–365, title III, § 306, Oct. 17, 2006, 120 Stat. 2540.)

References in Text

The Economic Opportunity Act of 1964, referred to in subsec. (a)(6)(C)(ii)(I), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, which was classified generally to chapter 34 (§ 2701 et seq.) of this title prior to repeal, except for titles VIII and X, by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§ 2991 et seq.) and X (§ 2996 et seq.) of chapter 34 of this title. Section 210 of the Act was classified to section 2790 of this title prior to repeal by Pub. L. 97–35. For complete classification of this Act to the Code, see Tables.

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XX of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XX (§ 1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (d), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Prior Provisions

A prior section 3026, Pub. L. 89–73, title III, § 306, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 43; amended Pub. L. 94–135, title I, § 107, Nov. 28, 1975, 89 Stat. 716, related to the planning, coordination, evaluation, and administration of State plans, prior to the general amendment of this subchapter by Pub. L. 95–478. See section 3028 of this title.

Provisions similar to those comprising this section were contained in Pub. L. 89–73, title III, § 304, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 38; amended Pub. L. 94–135, title I, §§ 105, 106(c), Nov. 28, 1975, 89 Stat. 715, 716, which was classified to section 3024 of this title prior to repeal by Pub. L. 95–478.

Amendments

2006—Subsec. (a)(1). Pub. L. 109–365, § 306(1)(A)(iii), which directed the insertion of ''the number of older individuals at risk for institutional placement residing in such area,'' after ''individuals) residing in such area,'', was executed by making the insertion after ''individuals residing in rural areas) residing in such area,'' to reflect the probable intent of Congress and amendments by Pub. L. 106–501, § 305(a)(1) and Pub. L. 109–365, § 306(1)(A)(ii). See notes below.

Pub. L. 109–365, § 306(1)(A)(ii), which directed the substitution of ''(with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas)'' for ''(with particular attention to low-income minority individuals)'', was executed by making the substitution for ''(with particular attention to low-income minority individuals and older individuals residing in rural areas)'' the second place that phrase appeared, to reflect the probable intent of Congress and amendment by Pub. L. 106–501, § 305(a)(1). See 2000 Amendment note below.

Pub. L. 109–365, § 306(1)(A)(i), substituted ''(with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas)'' for ''(with particular attention to low-income minority individuals and older individuals residing in rural areas)'', the first place that phrase appeared.

Subsec. (a)(2)(A). Pub. L. 109–365, § 306(1)(B), inserted ''health services (including mental health services),'' after ''transportation,'' and ''(which may include information and assistance to consumers on availability of services under part B and how to receive benefits under and participate in publicly supported programs for which the consumer may be eligible)'' after ''information and assistance''.

Subsec. (a)(4)(A)(i). Pub. L. 109–365, § 306(1)(C)(i)(I), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''provide assurances that the area agency on aging will set specific objectives for providing services to older individuals with greatest economic need and older individuals with greatest social need, include specific objectives for providing services to low-income minority individuals and older individuals residing in rural areas, and include proposed methods of carrying out the preference in the area plan;''.

Subsec. (a)(4)(A)(ii). Pub. L. 109–365, § 306(1)(C)(i)(II), inserted '', older individuals with limited English proficiency,'' after ''low-income minority individuals'' in subcls. (I) to (III).

Subsec. (a)(4)(B). Pub. L. 109–365, § 306(1)(C)(ii)(I), realigned margins.

Subsec. (a)(4)(B)(i)(V). Pub. L. 109–365, § 306(1)(C)(ii)(II)(aa), substituted ''with limited English proficiency;'' for ''with limited English-speaking ability; and''.

Subsec. (a)(4)(B)(i)(VI). Pub. L. 109–365, § 306(1)(C)(ii)(II)(bb), substituted ''and related'' for ''or related''.

Subsec. (a)(4)(B)(i)(VII). Pub. L. 109–365, § 306(1)(C)(ii)(II)(cc), added subcl. (VII).

Subsec. (a)(5). Pub. L. 109–365, § 306(1)(D), inserted ''and individuals at risk for institutional placement'' after ''severe disabilities''.

Subsec. (a)(6)(C)(iii). Pub. L. 109–365, § 306(1)(E)(i), added cl. (iii).

Subsec. (a)(6)(D). Pub. L. 109–365, § 306(1)(E)(ii), inserted ''family caregivers of such individuals,'' after ''chapter,'' and ''service providers, representatives of the business community,'' after ''older individuals,''.

Subsec. (a)(6)(F). Pub. L. 109–365, § 306(1)(E)(iii), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''coordinate any mental health services provided with funds expended by the area agency on aging for part B of this subchapter with the mental health services provided by community health centers and by other public agencies and nonprofit private organizations; and''.

Subsec. (a)(7). Pub. L. 109–365, § 306(1)(F), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''provide that the area agency on aging will facilitate the coordination of community-based, long-term care services designed to enable older individuals to remain in their homes, by means including—

''(A) development of case management services as a component of the long-term care services, consistent with the requirements of paragraph (8);

''(B) involvement of long-term care providers in the coordination of such services; and

''(C) increasing community awareness of and involvement in addressing the needs of residents of long-term care facilities;''.

Subsec. (a)(14) to (17). Pub. L. 109–365, § 306(1)(G)–(I), added pars. (15) to (17), redesignated former par. (16) as (14), and struck out former pars. (14) and two pars. (15) which read as follows:

''(14) provide assurances that funds received under this subchapter will not be used to pay any part of a cost (including an administrative cost) incurred by the area agency on aging to carry out a contract or commercial relationship that is not carried out to implement this subchapter; and

''(15) provide assurances that preference in receiving services under this subchapter will not be given by the area agency on aging to particular older individuals as a result of a contract or commercial relationship that is not carried out to implement this subchapter.

''(15) provide assurances that funds received under this subchapter will not be used to pay any part of a cost (including an administrative cost) incurred by the area agency on aging to carry out a contract or commercial relationship that is not carried out to implement this subchapter;''.

Subsecs. (b) to (f). Pub. L. 109–365, § 306(2), (3), added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

2000—Subsec. (a)(1). Pub. L. 106–501, § 305(a)(1), inserted ''and older individuals residing in rural areas'' after ''low-income minority individuals'' in two places.

Subsec. (a)(2). Pub. L. 106–501, § 305(a)(2)(A), (C), in introductory provisions substituted ''section 3027(a)(2)'' for ''section 3027(a)(22)'' and, in concluding provisions, substituted ''and assurances that the area agency on aging will report annually to the State agency'' for ''and specify annually in such plan, as submitted or as amended,''.

Subsec. (a)(2)(B). Pub. L. 106–501, § 305(a)(2)(B), substituted ''services, including'' for ''services (homemaker and home health aide, visiting and telephone reassurance, chore maintenance, and''.

Subsec. (a)(3)(A). Pub. L. 106–501, § 305(a)(3), substituted ''paragraph (6)(C)'' for ''paragraph (6)(E)(ii)''.

Subsec. (a)(4). Pub. L. 106–501, § 305(a)(4), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''provide for the establishment and maintenance of information and assistance services in sufficient numbers to assure that all older individuals within the planning and service area covered by the plan will have reasonably convenient access to such services, with particular emphasis on linking services available to isolated older individuals and older individuals with Alzheimer's disease or related disorders with neurological and organic brain dysfunction (and the caretakers of individuals with such disease or disorders);''.

Subsec. (a)(4)(A)(i). Pub. L. 106–501, § 305(a)(5), inserted ''and older individuals residing in rural areas'' after ''low-income minority individuals''.

Subsec. (a)(4)(A)(ii)(I) to (III). Pub. L. 106–501, § 305(a)(6), inserted ''and older individuals residing in rural areas'' after ''low-income minority individuals''.

Subsec. (a)(4)(B)(i)(II), (III). Pub. L. 106–501, § 305(a)(7), inserted ''and older individuals residing in rural areas'' after ''low-income minority individuals''.

Subsec. (a)(4)(C). Pub. L. 106–501, § 305(a)(8), inserted ''and older individuals residing in rural areas'' after ''low-income minority older individuals''.

Subsec. (a)(5). Pub. L. 106–501, § 305(a)(9), added par. (5). Former par. (5) redesignated (4).

Subsec. (a)(6)(A). Pub. L. 106–501, § 305(a)(10)(A), (B), redesignated subpar. (C) as (A) and struck out former subpar. (A) which read as follows: ''conduct periodic evaluations of, and public hearings on, activities carried out under the area plan and an annual evaluation of the effectiveness of outreach conducted under paragraph (5)(B);''.

Subsec. (a)(6)(B). Pub. L. 106–501, § 305(a)(10)(A), (B), redesignated subpar. (D) as (B) and struck out former subpar. (B) which read as follows: ''furnish appropriate technical assistance, and timely information in a timely manner, to providers of supportive services, nutrition services, or multipurpose senior centers in the planning and service area covered by the area plan;''.

Subsec. (a)(6)(C). Pub. L. 106–501, § 305(a)(10)(B), (C), redesignated subpar. (E) as (C) and substituted '', assistance to older individuals caring for relatives who are children'' for ''or adults'' in cl. (i). Former subpar. (C) redesignated (A).

Subsec. (a)(6)(D). Pub. L. 106–501, § 305(a)(10)(B), (D), redesignated subpar. (F) as (D) and inserted ''and older individuals residing in rural areas'' after ''minority individuals''. Former subpar. (D) redesignated (B).

Subsec. (a)(6)(E). Pub. L. 106–501, § 305(a)(10)(B), redesignated subpar. (H) as (E). Former subpar. (E) redesignated (C).

Subsec. (a)(6)(F). Pub. L. 106–501, § 305(a)(10)(B), (E), redesignated subpar. (M) as (F) and inserted ''and'' after semicolon at end. Former subpar. (F) redesignated (D).

Subsec. (a)(6)(G). Pub. L. 106–501, § 305(a)(10)(A), (B), redesignated subpar. (N) as (G) and struck out former subpar. (G) which read as follows: ''develop and publish methods by which priority of services is determined, particularly with respect to the delivery of services under paragraph (2);''.

Subsec. (a)(6)(H). Pub. L. 106–501, § 305(a)(10)(B), redesignated subpar. (H) as (E).

Subsec. (a)(6)(I) to (L). Pub. L. 106–501, § 305(a)(10)(A), struck out subpars. (I) to (L) which read as follows:

''(I) conduct efforts to facilitate the coordination of community-based, long-term care services designed to retain individuals in their homes, thereby deferring unnecessary, costly institutionalization, and designed to include the development of case management services as a component of the long-term care services;

''(J) identify the public and private nonprofit entities involved in the prevention, identification, and treatment of the abuse, neglect, and exploitation of older individuals, and based on such identification, determine the extent to which the need for appropriate services for such individuals is unmet;

''(K) facilitate the involvement of long-term care providers in the coordination of community-based long-term care services and work to ensure community awareness of and involvement in addressing the needs of residents of long-term care facilities;

''(L) coordinate the categories of services specified in paragraph (2) for which the area agency on aging is required to expend funds under part B of this subchapter, with activities of community-based organizations established for the benefit of victims of Alzheimer's disease and the families of such victims;''.

Subsec. (a)(6)(M), (N). Pub. L. 106–501, § 305(a)(10)(B), redesignated subpars. (M) and (N) as (F) and (G), respectively.

Subsec. (a)(6)(O) to (S). Pub. L. 106–501, § 305(a)(10)(A), struck out subpars. (O) to (S) which provided that each area plan provide that the area agency on aging would: in subpar. (O), compile information on institutions of higher education in planning and service area, in subpar. (P), establish grievance procedure for older individuals dissatisfied with or denied services under this subchapter, in subpar. (Q), enter into voluntary arrangements with nonprofit entities that provide housing to older individuals, in subpar. (R), list telephone number of agency in each telephone directory published by provider of local telephone service, for residents in any geographical area that lay in whole or in part in service and planning area served by agency, and, in subpar. (S), identify needs of older individuals and describe methods area agency on aging would use to coordinate planning and delivery of transportation services to assist older individuals, including those with special needs.

Subsec. (a)(7) to (12). Pub. L. 106–501, § 305(a)(11), added pars. (7) to (12) and struck out former pars. (7) to (12) which required each area plan: in pars. (7) to (10): to provide assurances that any amount received under parts D to G of this subchapter would be expended in accordance with such parts, in par. (11) to provide assurances that the area agency on aging, in carrying out the State Long-Term Care Ombudsman program under section 3027(a)(12) of this title, would expend not less than the amount of funds expended in fiscal year 1991, and, in par. (12), to provide an area volunteer services coordinator in the discretion of the area agency on aging.

Subsec. (a)(13). Pub. L. 106–501, § 305(a)(11), (12), redesignated par. (14) as (13) and struck out former par. (13) which read as follows:

''(13)(A) describe all activities of the area agency on aging, whether funded by public or private funds; and

''(B) provide an assurance that the activities conform with—

''(i) the responsibilities of the area agency on aging, as set forth in this subsection; and

''(ii) the laws, regulations, and policies of the State served by the area agency on aging;''.

Subsec. (a)(14). Pub. L. 106–501, § 305(a)(13), added par. (14). Former par. (14) redesignated (13).

Subsec. (a)(15). Pub. L. 106–501, § 305(a)(13), added par. (15) relating to assurances that preference in receiving services under this subchapter would not be given by the area agency on aging to particular older individuals as a result of a contract or commercial relationship not being carried out to implement this subchapter.

Subsec. (a)(17) to (20). Pub. L. 106–501, § 305(a)(14), struck out pars. (17) to (20) which required each area plan to provide: in par. (17), assurances that projects in the planning and service area would reasonably accommodate particular dietary needs of participants, in par. (18), assurances that the area agency on aging would coordinate its services under this subchapter with services provided under subchapter X of this chapter, in par. (19), assurance that the area agency on aging would pursue activities to increase access by older individuals who are Native Americans to all aging programs and benefits provided by the agency, and, in par. (20), that case management services provided under this subchapter through the area agency on aging would be coordinated with and not duplicate other Federal and State programs and would be provided by a public agency or a nonprofit private agency either not providing services other than case management services or located in a rural area and having obtained a waiver of that requirement.

Subsec. (b). Pub. L. 106–501, § 305(b), struck out par. (1) designation before ''Each State'', inserted ''and had conducted a timely public hearing upon request'' before period at end, and struck out par. (2) which related to public notice and hearing requirements applicable to an area agency on aging before it could request a waiver of the requirement described in subsec. (a)(2) and requirements of a State agency with regard to granting the waiver to an area agency on aging.

1998—Subsec. (a)(6)(E)(ii). Pub. L. 105–285 substituted ''section 9910 of this title'' for ''section 9904(c)(3) of this title'' in concluding provisions.

1993—Subsecs. (a)(6)(R)(iii), (14)(B), (E), (b)(2)(D), (c)(1). Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

1992—Subsec. (a)(1). Pub. L. 102–375, § 904(a)(12)(A)(i), inserted ''individuals who are'' before ''Indians''.

Subsec. (a)(2)(A). Pub. L. 102–375, § 306(a), substituted '', information and assistance, and case management services'' for '', and information and assistance''.

Pub. L. 102–375, § 102(b)(4), substituted ''information and assistance'' for ''information and referral''.

Subsec. (a)(2)(B). Pub. L. 102–375, § 904(a)(12)(A)(ii), substituted ''older individuals who are'' for ''elderly''.

Subsec. (a)(3). Pub. L. 102–375, § 306(b), designated existing provisions as subpar. (A), inserted ''(including multipurpose senior centers operated by organizations referred to in paragraph (6)(E)(ii))'' after ''centers'', and added subpar. (B).

Subsec. (a)(4). Pub. L. 102–375, § 306(c)(1), inserted before semicolon at end '', with particular emphasis on linking services available to isolated older individuals and older individuals with Alzheimer's disease or related disorders with neurological and organic brain dysfunction (and the caretakers of individuals with such disease or disorders)''.

Pub. L. 102–375, § 102(b)(4), substituted ''information and assistance'' for ''information and referral''.

Subsec. (a)(5)(A)(i). Pub. L. 102–375, § 904(a)(12)(A)(iii), substituted ''greatest economic need and older individuals with greatest social need'' for ''the greatest economic or social needs''.

Pub. L. 102–375, § 306(c)(2)(A)(i), substituted ''the area agency on aging will set specific objectives for'' for ''preference will be given to'' and ''include specific objectives for providing services'' for ''with particular attention''.

Subsec. (a)(5)(A)(ii). Pub. L. 102–375, § 102(b)(10)(C), substituted ''area agency on aging'' for ''area agency''.

Subsec. (a)(5)(A)(ii)(I). Pub. L. 102–375, § 306(c)(2)(A)(ii)(I), struck out ''and'' at end.

Subsec. (a)(5)(ii)(II). Pub. L. 102–375, § 306(c)(2)(A)(ii)(II), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''attempt to provide services to low-income minority individuals in at least the same proportion as the population of low-income minority older individuals bears to the population of older individuals of the area served by such provider; and''.

Subsec. (a)(5)(A)(ii)(III). Pub. L. 102–375, § 306(c)(2)(A)(ii)(III), added subcl. (III).

Subsec. (a)(5)(A)(iii)(III). Pub. L. 102–375, § 306(c)(2)(A)(iii), added subcl. (III).

Subsec. (a)(5)(B). Pub. L. 102–375, § 306(c)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''assure the use of outreach efforts that will identify individuals eligible for assistance under this chapter, with special emphasis on rural elderly, older individuals who have greatest economic need (with particular attention to low-income minority individuals), older individuals who have greatest social need (with particular attention to low-income minority individuals), and older individuals with severe disabilities, and inform such individuals of the availability of such assistance;''.

Subsec. (a)(5)(C). Pub. L. 102–375, § 306(c)(2)(C), added subpar. (C).

Subsec. (a)(6)(B). Pub. L. 102–375, § 306(d)(1), inserted '', and timely information in a timely manner,'' after ''assistance''.

Subsec. (a)(6)(D). Pub. L. 102–375, § 904(a)(12)(A)(iv)(I), substituted ''older individuals'' for ''the elderly'' in two places.

Pub. L. 102–375, § 306(d)(2), inserted ''(in cooperation with agencies, organizations, and individuals participating in activities under the plan)'' after ''community by''.

Subsec. (a)(6)(E). Pub. L. 102–375, § 306(d)(3), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(6)(F). Pub. L. 102–375, § 102(b)(10)(C), substituted ''area agency on aging'' for ''area agency''.

Subsec. (a)(6)(G). Pub. L. 102–375, § 904(a)(12)(A)(iv)(II), substituted ''paragraph'' for ''clause''.

Subsec. (a)(6)(H). Pub. L. 102–375, § 306(d)(4), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: ''establish effective and efficient procedures for coordination between the programs assisted under this subchapter and programs described in section 3013(b) of this title;''.

Subsec. (a)(6)(I). Pub. L. 102–375, § 306(d)(5), substituted ''include the development of case management services as a component of the long-term care services'' for ''emphasize the development of client-centered case management systems as a component of such services''.

Subsec. (a)(6)(N). Pub. L. 102–375, § 904(a)(12)(A)(iv)(IV), which directed substitution of ''such individuals in such area and shall inform such individuals'' for ''elder Indians in such area and shall inform such older Indians'', was executed by making the substitution for ''older Indians in such area and shall inform such older Indians'' to reflect the probable intent of Congress.

Pub. L. 102–375, §§ 102(b)(10)(E), 904(a)(12)(A)(iv)(III), substituted ''population of older individuals who are Indians'' for ''population of older Indians'' and ''area agency on aging'' for ''area agency'' in two places.

Subsec. (a)(6)(O)(ii). Pub. L. 102–375, § 306(d)(6), struck out ''and'' at end.

Subsec. (a)(6)(P) to (S). Pub. L. 102–375, § 306(d)(7), (8), added subpars. (P) to (S) and struck out former subpar. (P) which read as follows: ''with funds and information received under section 3027(a)(31) of this title from the State agency—

''(i) carry out activities to identify older individuals with greatest economic need who may be eligible to receive, but are not receiving, supplemental security income benefits under title XVI of the Social Security Act (or assistance under a State plan program under title XVI of that Act), medical assistance under title XIX of the Social Security Act, and benefits under the Food Stamp Act of 1977;

''(ii) conduct outreach activities to inform older individuals of the requirements for eligibility to receive such assistance and such benefits; and

''(iii) assist older individuals to apply for such assistance and such benefits;''.

Subsec. (a)(11). Pub. L. 102–375, § 306(e), added par. (11).

Subsec. (a)(12) to (20). Pub. L. 102–375, § 306(f), added pars. (12) to (20).

Subsec. (b)(1). Pub. L. 102–375, § 904(a)(12)(B)(i), inserted ''on aging'' before ''plans'' and substituted ''paragraph'' for ''clause'' in two places.

Subsec. (b)(2)(C). Pub. L. 102–375, § 102(b)(10)(C), substituted ''area agency on aging'' for ''area agency''.

Subsec. (b)(2)(D). Pub. L. 102–375, § 904(a)(12)(B)(ii), substituted ''paragraph'' for ''clause''.

Subsec. (e). Pub. L. 102–375, § 306(g), added subsec. (e).

1988—Subsec. (a)(1). Pub. L. 100–628 substituted ''such area,'' for ''such area,,'' before ''and the number of older Indians''.

1987—Subsec. (a). Pub. L. 100–175, § 182(e)(3), struck out last sentence which read as follows: ''For purposes of clause (5)(A), the term 'greatest economic need' means the need resulting from an income level at or below the poverty threshold established by the Bureau of the Census and the term 'greatest social need' means the need caused by noneconomic factors which include physical and mental disabilities, language barriers, cultural or social isolation including that caused by racial or ethnic status which restricts an individual's ability to perform normal daily tasks or which threaten his or her capacity to live independently.''

Subsec. (a)(1). Pub. L. 100–175, § 134(a)(2), inserted '', and the number of older Indians residing in such area,'' before last reference to ''and'' in parenthetical.

Pub. L. 100–175, § 132(b)(1), inserted '', the number of older individuals who have greatest economic need (with particular attention to low-income minority individuals) residing in such area, the number of older individuals who have greatest social need (with particular attention to low-income minority individuals) residing in such area,'' after ''residing in such area''.

Subsec. (a)(2). Pub. L. 100–175, § 130(a)(1), inserted '', as required under section 3027(a)(22) of this title,'' after ''adequate proportion''.

Subsec. (a)(2)(B). Pub. L. 100–175, § 182(j), substituted ''related disorders with neurological and organic brain dysfunction'' for ''other neurological and organic brain disorders of the Alzheimer's type''.

Subsec. (a)(5)(A). Pub. L. 100–175, § 131(a), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (a)(5)(B). Pub. L. 100–175, § 136(b), inserted ''and older individuals with severe disabilities,'' after second reference to ''individuals),''.

Pub. L. 100–175, § 132(b)(2), inserted ''older individuals who have greatest economic need (with particular attention to low-income minority individuals), older individuals who have greatest social need (with particular attention to low-income minority individuals),'' after ''rural elderly''.

Subsec. (a)(6)(A). Pub. L. 100–175, §§ 125, 132(b)(3), inserted '', and public hearings on,'' after ''evaluations of'' and ''and an annual evaluation of the effectiveness of outreach conducted under paragraph (5)(B)'' before semicolon at end.

Subsec. (a)(6)(E). Pub. L. 100–175, § 126, inserted ''or adults, and respite for families,'' after ''for children'' and '', adults, and families'' after ''to children''.

Subsec. (a)(6)(F). Pub. L. 100–175, § 104(c), inserted ''providers of veterans' health care (if appropriate),'' after ''elected officials,''.

Subsec. (a)(6)(G). Pub. L. 100–175, § 182(i), struck out ''and'' after ''clause (2);''.

Subsec. (a)(6)(L). Pub. L. 100–175, § 127, added subpar. (L).

Subsec. (a)(6)(M). Pub. L. 100–175, § 133, added subpar. (M).

Subsec. (a)(6)(N). Pub. L. 100–175, § 134(b), added subpar. (N).

Subsec. (a)(6)(O). Pub. L. 100–175, § 135, added subpar. (O).

Subsec. (a)(6)(P). Pub. L. 100–175, § 155(e)(1), added subpar. (P).

Subsec. (a)(7). Pub. L. 100–175, § 140(b), added par. (7).

Subsec. (a)(8). Pub. L. 100–175, § 141(b), added par. (8).

Subsec. (a)(9). Pub. L. 100–175, § 143(b), added par. (9).

Subsec. (a)(10). Pub. L. 100–175, § 144(c), added par. (10).

Subsec. (b)(2)(C), (D). Pub. L. 100–175, § 130(a)(2), added subpars. (C) and (D).

Subsec. (d). Pub. L. 100–175, § 137(a), added subsec. (d).

1984—Subsec. (a). Pub. L. 98–459, § 306(a)(5)(E), inserted provisions defining ''greatest economic need'' and ''greatest social need'' following par. (6).

Subsec. (a)(1). Pub. L. 98–459, § 306(a)(1), inserted ''and the efforts of voluntary organizations in the community''.

Subsec. (a)(2). Pub. L. 98–459, § 306(a)(2)(A), inserted ''each of the following categories of services'' in provisions preceding subpar. (A).

Pub. L. 98–459, § 306(a)(2)(D), substituted ''and specify annually in such plan, as submitted or as amended, in detail the amount of funds expended for each such category during the fiscal year most recently concluded'' for ''and that some funds will be expended for each such category of services'' in provisions following subpar. (C).

Subsec. (a)(2)(B). Pub. L. 98–459, § 306(a)(2)(B), substituted ''chore maintenance, and supportive services for families of elderly victims of Alzheimer's disease and other neurological and organic brain disorders of the Alzheimer's type'' for ''and chore maintenance''.

Subsec. (a)(2)(C). Pub. L. 98–459, § 306(a)(2)(C), substituted ''legal assistance'' for ''legal services''.

Subsec. (a)(3). Pub. L. 98–459, § 306(a)(3), substituted '', giving special consideration'' for ''to encourage the maximum collocation and coordination of services for older individuals, and give special consideration''.

Subsec. (a)(5)(A). Pub. L. 98–459, § 306(a)(4), inserted ", with particular attention to low-income minority individuals,".

Subsec. (a)(6)(F). Pub. L. 98–459, § 306(a)(5)(A), (B), (D), redesignated subpar. (G) as (F), substituted "consisting of older individuals (including minority individuals)" for "consisting of older individuals", and struck out former subpar. (F) which had required the area agency on aging to enter, where possible, into arrangements with local educational agencies, institutions of higher education, and nonprofit private organizations, to use services provided for older individuals under the community schools program under the Elementary and Secondary Education Act of 1965.

Subsec. (a)(6)(G), (H). Pub. L. 98–459, § 306(a)(5)(D), redesignated subpars. (H) and (I) as (G) and (H), respectively. Former subpar. (G) redesignated (F).

Subsec. (a)(6)(I). Pub. L. 98–459, § 306(a)(5)(C)–(E), added subpar. (I). Former subpar. (I) redesignated (H).

Subsec. (a)(6)(J), (K). Pub. L. 98–459, § 306(a)(5)(E), added subpars. (J) and (K).

Subsec. (b). Pub. L. 98–459, § 306(b), designated existing provisions as par. (1) and added par. (2).

1981—Subsec. (a). Pub. L. 97–115, §§ 3(d), 6(a), (b), substituted "for a two-, three-, or four-year period determined by the State agency," for "for a 3-year period" in provisions preceding par. (1), substituted "supportive services" for "social services" in par. (1) in three places, substituted "an adequate portion" for "at least 50 percent" in provisions of par. (2) preceding subpar. (A), and substituted "supportive services" for "social services" in par. (6)(B).

Subsec. (b). Pub. L. 97–115, § 6(c), struck out par. (1) providing that each State, in approving area agency plans under this section, could, for fiscal years 1979 and 1980, waive any particular requirement relating to the delivery of services or the establishment or operation of multipurpose senior centers which such agency could not meet because of the consolidation authorized by the Comprehensive Older Americans Act Amendments of 1978, except that the State agency could grant such a waiver only if the area agency demonstrated to the State agency that it was taking steps to meet the requirements of this subchapter, but that in any event the State agency could not grant a waiver for any requirement of this chapter in effect on Sept. 30, 1978, struck out par. (2) designation, made mandatory the formerly discretionary waiver by each State, in approving area agency plans under this section, of the requirement described in clause (2) of subsection (a) of this section for any category of services described in such clause if the area agency on aging demonstrates to the State agency that services being furnished for such category in the area are sufficient to meet the need for such services in such area, and struck out provisions that if the State agency granted a waiver with respect to any category, then the area agency had to expend under clause (2) of subsection (a) of this section a percentage of the amount allotted for part B to the planning and service area, for the categories with respect to which such waiver did not apply, that had been agreed upon by the State agency and the area agency.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 306 of Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by section 306 of Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(2) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

IMPLEMENTATION INFORMATION

Section 155(g) of Pub. L. 100–175 directed Commissioner on Aging, not later than Sept. 1, 1988, to analyze and compile information on successful and unsuccessful activities carried out to conduct outreach of the type described in 42 U.S.C. 3026(a)(6)(P) and distribute such information to State agencies on aging for dissemination to interested area agencies on aging to assist such area agencies in designing outreach activities.

EVALUATION OF GUIDELINES

Section 155(h) of Pub. L. 100–175 directed Commissioner on Aging to issue guidelines to be followed by State agencies on aging and area agencies on aging in conducting evaluations of outreach activities carried out under former subsec. (a)(6)(P) of this section that would ensure that such evaluations are based on uniform criteria that provide a basis for the valid comparison of such outreach activities conducted by the various area agencies.

§ 3027. State plans

(a) Criteria for eligibility; contents

Except as provided in the succeeding sentence and section 3029(a) of this title, each State, in order to be eligible for grants from its allotment under this subchapter for any fiscal year, shall submit to the Assistant Secretary a State plan for a two-, three-, or four-year period determined by the State agency, with such annual revisions as are necessary, which meets such criteria as the Assistant Secretary may by regulation prescribe. If the Assistant Secretary determines, in the discretion of the Assistant Secretary, that a State failed in 2 successive years to comply with the requirements under this subchapter, then the State shall submit to the Assistant Secretary a State plan for a 1-year period that meets such criteria, for subsequent years until the Assistant Secretary determines that the State is in compliance with such requirements. Each such plan shall comply with all of the following requirements:

(1) The plan shall—

(A) require each area agency on aging designated under section 3025(a)(2)(A) of this title to develop and submit to the State agency for approval, in accordance with a uniform format developed by the State agency, an area plan meeting the requirements of section 3026 of this title; and

(B) be based on such area plans.

(2) The plan shall provide that the State agency will—

(A) evaluate, using uniform procedures described in section 3012(a)(29)[1] of this title,

[1] See References in Text note below.

the need for supportive services (including legal assistance pursuant to subsection (a)(11) of this section, information and assistance, and transportation services), nutrition services, and multipurpose senior centers within the State;

(B) develop a standardized process to determine the extent to which public or private programs and resources (including volunteers and programs and services of voluntary organizations) that have the capacity and actually meet such need;

(C) specify a minimum proportion of the funds received by each area agency on aging in the State to carry out part B of this subchapter that will be expended (in the absence of a waiver under section 3026(c) or 3030c–3 of this title) by such area agency on aging to provide each of the categories of services specified in section 3026(a)(2) of this title.

(3) The plan shall—

(A) include (and may not be approved unless the Assistant Secretary approves) the statement and demonstration required by paragraphs (2) and (4) of section 3025(d) of this title (concerning intrastate distribution of funds); and

(B) with respect to services for older individuals residing in rural areas—

(i) provide assurances that the State agency will spend for each fiscal year, not less than the amount expended for such services for fiscal year 2000;

(ii) identify, for each fiscal year to which the plan applies, the projected costs of providing such services (including the cost of providing access to such services); and

(iii) describe the methods used to meet the needs for such services in the fiscal year preceding the first year to which such plan applies.

(4) The plan shall provide that the State agency will conduct periodic evaluations of, and public hearings on, activities and projects carried out in the State under this subchapter and subchapter XI of this chapter, including evaluations of the effectiveness of services provided to individuals with greatest economic need, greatest social need, or disabilities (with particular attention to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas).

(5) The plan shall provide that the State agency will—

(A) afford an opportunity for a hearing upon request, in accordance with published procedures, to any area agency on aging submitting a plan under this subchapter, to any provider of (or applicant to provide) services;

(B) issue guidelines applicable to grievance procedures required by section 3026(a)(10) of this title; and

(C) afford an opportunity for a public hearing, upon request, by any area agency on aging, by any provider of (or applicant to provide) services, or by any recipient of services under this subchapter regarding any waiver request, including those under section 3030c–3 of this title.

(6) The plan shall provide that the State agency will make such reports, in such form, and containing such information, as the Assistant Secretary may require, and comply with such requirements as the Assistant Secretary may impose to insure the correctness of such reports.

(7)(A) The plan shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this subchapter to the State, including any such funds paid to the recipients of a grant or contract.

(B) The plan shall provide assurances that—

(i) no individual (appointed or otherwise) involved in the designation of the State agency or an area agency on aging, or in the designation of the head of any subdivision of the State agency or of an area agency on aging, is subject to a conflict of interest prohibited under this chapter;

(ii) no officer, employee, or other representative of the State agency or an area agency on aging is subject to a conflict of interest prohibited under this chapter; and

(iii) mechanisms are in place to identify and remove conflicts of interest prohibited under this chapter.

(8)(A) The plan shall provide that no supportive services, nutrition services, or in-home services will be directly provided by the State agency or an area agency on aging in the State, unless, in the judgment of the State agency—

(i) provision of such services by the State agency or the area agency on aging is necessary to assure an adequate supply of such services;

(ii) such services are directly related to such State agency's or area agency on aging's administrative functions; or

(iii) such services can be provided more economically, and with comparable quality, by such State agency or area agency on aging.

(B) Regarding case management services, if the State agency or area agency on aging is already providing case management services (as of the date of submission of the plan) under a State program, the plan may specify that such agency is allowed to continue to provide case management services.

(C) The plan may specify that an area agency on aging is allowed to directly provide information and assistance services and outreach.

(9) The plan shall provide assurances that the State agency will carry out, through the Office of the State Long-Term Care Ombudsman, a State Long-Term Care Ombudsman program in accordance with section 3058g of this title and this subchapter, and will expend for such purpose an amount that is not less than an amount expended by the State agency with funds received under this subchapter for fiscal year 2000, and an amount that is not less than the amount expended by the State agency with funds received under subchapter XI of this chapter for fiscal year 2000.

(10) The plan shall provide assurances that the special needs of older individuals residing in rural areas will be taken into consideration and shall describe how those needs have been met and describe how funds have been allocated to meet those needs.

(11) The plan shall provide that with respect to legal assistance—

(A) the plan contains assurances that area agencies on aging will (i) enter into contracts with providers of legal assistance which can demonstrate the experience or capacity to deliver legal assistance; (ii) include in any such contract provisions to assure that any recipient of funds under division (i) will be subject to specific restrictions and regulations promulgated under the Legal Services Corporation Act [42 U.S.C. 2996 et seq.] (other than restrictions and regulations governing eligibility for legal assistance under such Act and governing membership of local governing boards) as determined appropriate by the Assistant Secretary; and (iii) attempt to involve the private bar in legal assistance activities authorized under this subchapter, including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis;

(B) the plan contains assurances that no legal assistance will be furnished unless the grantee administers a program designed to provide legal assistance to older individuals with social or economic need and has agreed, if the grantee is not a Legal Services Corporation project grantee, to coordinate its services with existing Legal Services Corporation projects in the planning and service area in order to concentrate the use of funds provided under this subchapter on individuals with the greatest such need; and the area agency on aging makes a finding, after assessment, pursuant to standards for service promulgated by the Assistant Secretary, that any grantee selected is the entity best able to provide the particular services;

(C) the State agency will provide for the coordination of the furnishing of legal services to older individuals within the State, and provide advice and technical assistance in the provision of legal services to older individuals within the State and support the furnishing of training and technical assistance for legal services for older individuals;

(D) the plan contains assurances, to the extent practicable, that legal services furnished under the plan will be in addition to any legal services for older individuals being furnished with funds from sources other than this chapter and that reasonable efforts will be made to maintain existing levels of legal services for older individuals; and

(E) the plan contains assurances that area agencies on aging will give priority to legal assistance related to income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination.

(12) The plan shall provide, whenever the State desires to provide for a fiscal year for services for the prevention of abuse of older individuals—

(A) the plan contains assurances that any area agency on aging carrying out such services will conduct a program consistent with relevant State law and coordinated with existing State adult protective service activities for—

(i) public education to identify and prevent abuse of older individuals;

(ii) receipt of reports of abuse of older individuals;

(iii) active participation of older individuals participating in programs under this chapter through outreach, conferences, and referral of such individuals to other social service agencies or sources of assistance where appropriate and consented to by the parties to be referred; and

(iv) referral of complaints to law enforcement or public protective service agencies where appropriate;

(B) the State will not permit involuntary or coerced participation in the program of services described in this paragraph by alleged victims, abusers, or their households; and

(C) all information gathered in the course of receiving reports and making referrals shall remain confidential unless all parties to the complaint consent in writing to the release of such information, except that such information may be released to a law enforcement or public protective service agency.

(13) The plan shall provide assurances that each State will assign personnel (one of whom shall be known as a legal assistance developer) to provide State leadership in developing legal assistance programs for older individuals throughout the State.

(14) The plan shall, with respect to the fiscal year preceding the fiscal year for which such plan is prepared—

(A) identify the number of low-income minority older individuals in the State, including the number of low-income minority older individuals with limited English proficiency; and

(B) describe the methods used to satisfy the service needs of the low-income minority older individuals described in subparagraph (A), including the plan to meet the needs of low-income minority older individuals with limited English proficiency.

(15) The plan shall provide assurances that, if a substantial number of the older individuals residing in any planning and service area in the State are of limited English-speaking ability, then the State will require the area agency on aging for each such planning and service area—

(A) to utilize, in the delivery of outreach services under section 3026(a)(2)(A) of this title, the services of workers who are fluent in the language spoken by a predominant number of such older individuals who are of limited English-speaking ability; and

(B) to designate an individual employed by the area agency on aging, or available to such area agency on aging on a full-time basis, whose responsibilities will include—

(i) taking such action as may be appropriate to assure that counseling assistance is made available to such older individuals who are of limited English-speaking ability in order to assist such older individuals in participating in programs and receiving assistance under this chapter; and

(ii) providing guidance to individuals engaged in the delivery of supportive services under the area plan involved to enable such individuals to be aware of cultural sensitivities and to take into account effectively linguistic and cultural differences.

(16) The plan shall provide assurances that the State agency will require outreach efforts that will—

(A) identify individuals eligible for assistance under this chapter, with special emphasis on—

(i) older individuals residing in rural areas;

(ii) older individuals with greatest economic need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas);

(iii) older individuals with greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas);

(iv) older individuals with severe disabilities;

(v) older individuals with limited English-speaking ability; and

(vi) older individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction (and the caretakers of such individuals); and

(B) inform the older individuals referred to in clauses (i) through (vi) of subparagraph (A), and the caretakers of such individuals, of the availability of such assistance.

(17) The plan shall provide, with respect to the needs of older individuals with severe disabilities, assurances that the State will coordinate planning, identification, assessment of needs, and service for older individuals with disabilities with particular attention to individuals with severe disabilities with the State agencies with primary responsibility for individuals with disabilities, including severe disabilities, to enhance services and develop collaborative programs, where appropriate, to meet the needs of older individuals with disabilities.

(18) The plan shall provide assurances that area agencies on aging will conduct efforts to facilitate the coordination of community-based, long-term care services, pursuant to section 3026(a)(7) of this title, for older individuals who—

(A) reside at home and are at risk of institutionalization because of limitations on their ability to function independently;

(B) are patients in hospitals and are at risk of prolonged institutionalization; or

(C) are patients in long-term care facilities, but who can return to their homes if community-based services are provided to them.

(19) The plan shall include the assurances and description required by section 3058d(a) of this title.

(20) The plan shall provide assurances that special efforts will be made to provide technical assistance to minority providers of services.

(21) The plan shall—

(A) provide an assurance that the State agency will coordinate programs under this subchapter and programs under subchapter X of this chapter, if applicable; and

(B) provide an assurance that the State agency will pursue activities to increase access by older individuals who are Native Americans to all aging programs and benefits provided by the agency, including programs and benefits provided under this subchapter, if applicable, and specify the ways in which the State agency intends to implement the activities.

(22) If case management services are offered to provide access to supportive services, the plan shall provide that the State agency shall ensure compliance with the requirements specified in section 3026(a)(8) of this title.

(23) The plan shall provide assurances that demonstrable efforts will be made—

(A) to coordinate services provided under this chapter with other State services that benefit older individuals; and

(B) to provide multigenerational activities, such as opportunities for older individuals to serve as mentors or advisers in child care, youth day care, educational assistance, at-risk youth intervention, juvenile delinquency treatment, and family support programs.

(24) The plan shall provide assurances that the State will coordinate public services within the State to assist older individuals to obtain transportation services associated with access to services provided under this subchapter, to services under subchapter X of this chapter, to comprehensive counseling services, and to legal assistance.

(25) The plan shall include assurances that the State has in effect a mechanism to provide for quality in the provision of in-home services under this subchapter.

(26) The plan shall provide assurances that funds received under this subchapter will not be used to pay any part of a cost (including an administrative cost) incurred by the State agency or an area agency on aging to carry out a contract or commercial relationship that is not carried out to implement this subchapter.

(27) The plan shall provide assurances that area agencies on aging will provide, to the extent feasible, for the furnishing of services under this chapter, consistent with self-directed care.

(28)(A) The plan shall include, at the election of the State, an assessment of how pre-

pared the State is, under the State's statewide service delivery model, for any anticipated change in the number of older individuals during the 10-year period following the fiscal year for which the plan is submitted.

(B) Such assessment may include—

(i) the projected change in the number of older individuals in the State;

(ii) an analysis of how such change may affect such individuals, including individuals with low incomes, individuals with greatest economic need, minority older individuals, older individuals residing in rural areas, and older individuals with limited English proficiency;

(iii) an analysis of how the programs, policies, and services provided by the State can be improved, including coordinating with area agencies on aging, and how resource levels can be adjusted to meet the needs of the changing population of older individuals in the State; and

(iv) an analysis of how the change in the number of individuals age 85 and older in the State is expected to affect the need for supportive services.

(29) The plan shall include information detailing how the State will coordinate activities, and develop long-range emergency preparedness plans, with area agencies on aging, local emergency response agencies, relief organizations, local governments, State agencies responsible for emergency preparedness, and any other institutions that have responsibility for disaster relief service delivery.

(30) The plan shall include information describing the involvement of the head of the State agency in the development, revision, and implementation of emergency preparedness plans, including the State Public Health Emergency Preparedness and Response Plan.

(b) Approval by Assistant Secretary; waiver of requirements

(1) The Assistant Secretary shall approve any State plan which the Assistant Secretary finds fulfills the requirements of subsection (a) of this section, except the Assistant Secretary may not approve such plan unless the Assistant Secretary determines that the formula submitted under section 3025(a)(2)(D) of this title complies with the guidelines in effect under section 3025(a)(2)(C) of this title.

(2) The Assistant Secretary, in approving any State plan under this section, may waive the requirement described in paragraph (3)(B) of subsection (a) of this section if the State agency demonstrates to the Assistant Secretary that the service needs of older individuals residing in rural areas in the State are being met, or that the number of older individuals residing in such rural areas is not sufficient to require the State agency to comply with such requirement.

(c) Notice and hearing prior to disapproval

(1) The Assistant Secretary shall not make a final determination disapproving any State plan, or any modification thereof, or make a final determination that a State is ineligible under section 3025 of this title, without first affording the State reasonable notice and opportunity for a hearing.

(2) Not later than 30 days after such final determination, a State dissatisfied with such final determination may appeal such final determination to the Secretary for review. If the State timely appeals such final determination in accordance with subsection (e)(1) of this section, the Secretary shall dismiss the appeal filed under this paragraph.

(3) If the State is dissatisfied with the decision of the Secretary after review under paragraph (2), the State may appeal such decision not later than 30 days after such decision and in the manner described in subsection (e) of this section. For purposes of appellate review under the preceding sentence, a reference in subsection (e) of this section to the Assistant Secretary shall be deemed to be a reference to the Secretary.

(d) Discontinuance of payments; disbursement of withheld funds to agencies with approved plans; matching funds

Whenever the Assistant Secretary, after reasonable notice and opportunity for a hearing to the State agency, finds that—

(1) the State is not eligible under section 3025 of this title,

(2) the State plan has been so changed that it no longer complies substantially with the provisions of subsection (a) of this section, or

(3) in the administration of the plan there is a failure to comply substantially with any such provision of subsection (a) of this section,

the Assistant Secretary shall notify such State agency that no further payments from its allotments under section 3024 of this title and section 3028 of this title will be made to the State (or, in the Assistant Secretary's discretion, that further payments to the State will be limited to projects under or portions of the State plan not affected by such failure), until the Assistant Secretary is satisfied that there will no longer be any failure to comply. Until the Assistant Secretary is so satisfied, no further payments shall be made to such State from its allotments under section 3024 of this title and section 3028 of this title (or payments shall be limited to projects under or portions of the State plan not affected by such failure). The Assistant Secretary shall, in accordance with regulations the Assistant Secretary shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency or political subdivision of such State submitting an approved plan in accordance with the provisions of this section. Any such payment shall be matched in the proportions specified in section 3024 of this title.

(e) Appeal

(1) A State which is dissatisfied with a final action of the Assistant Secretary under subsection (b), (c), or (d) of this section may appeal to the United States court of appeals for the circuit in which the State is located, by filing a petition with such court within 30 days after such final action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Assistant Secretary, or any officer designated by the Assistant Secretary for such purpose. The Assistant Secretary thereupon shall file in the court the record of the proceedings on

which the Assistant Secretary's action is based, as provided in section 2112 of title 28.

(2) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Assistant Secretary or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Assistant Secretary may modify or set aside the Assistant Secretary's order. The findings of the Assistant Secretary as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Assistant Secretary to take further evidence, and the Assistant Secretary shall, within 30 days, file in the court the record of those further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Assistant Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(3) The commencement of proceedings under this subsection shall not, unless so specifically ordered by the court, operate as a stay of the Assistant Secretary's action.

(f) Confidentiality of information relating to legal assistance

Neither a State, nor a State agency, may require any provider of legal assistance under this subchapter to reveal any information that is protected by the attorney-client privilege.

(Pub. L. 89–73, title III, § 307, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1524; amended Pub. L. 97–115, §§ 3(d), 7, Dec. 29, 1981, 95 Stat. 1597, 1598; Pub. L. 98–459, title III, § 307, Oct. 9, 1984, 98 Stat. 1775; Pub. L. 100–175, title I, §§ 128, 129(d), (e), 130(b), 131(b), 132(c), 136(c), 137(b), 138, 140(c), 141(c), 142, 144(d), 155(e)(2), 182(k), Nov. 29, 1987, 101 Stat. 934, 935, 938–940, 943, 944, 946, 947, 949, 953, 965; Pub. L. 100–628, title VII, § 705(6), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 102–375, title I, § 102(b)(4), (5), (10)(A), (C), (E), (F), title III, § 307, title VII, § 708(c)(4), title IX, § 904(a)(13), Sept. 30, 1992, 106 Stat. 1201, 1202, 1228, 1293, 1308; Pub. L. 103–171, §§ 2(9), 3(a)(5), Dec. 2, 1993, 107 Stat. 1988, 1990; Pub. L. 106–501, title III, § 306, title VIII, § 801(c)(4), Nov. 13, 2000, 114 Stat. 2242, 2292; Pub. L. 109–365, title III, § 307, Oct. 17, 2006, 120 Stat. 2544.)

REFERENCES IN TEXT

Section 3012(a) of this title, referred to in subsec. (a)(2)(A), does not contain a par. (29). A former section 3012(a)(29) of this title, relating to uniform data collection procedures, was redesignated section 3012(a)(26) by Pub. L. 106–501, title II, § 201(1)(B), Nov. 13, 2000, 114 Stat. 2229.

The Legal Services Corporation Act, referred to in subsec. (a)(11)(A), is title X of Pub. L. 88–452, as added by Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 378, as amended, which is classified generally to subchapter X (§ 2996 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

PRIOR PROVISIONS

A prior section 3027, Pub. L. 89–73, title III, § 307, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 44, related to payment of grants or contracts, prior to the general amendment of this subchapter by Pub. L. 95–478. See section 3029 of this title.

Provisions similar to those comprising this section were contained in Pub. L. 89–73, title III, § 305, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 41; Pub. L. 94–135, title I, §§ 106(a), (b), 114(e), Nov. 28, 1975, 89 Stat. 715, 725, which was classified to section 3025 of this title prior to repeal by Pub. L. 95–478.

AMENDMENTS

2006—Subsec. (a)(2)(C). Pub. L. 109–365, § 307(1), substituted "section 3026(c)" for "section 3026(b)".

Subsec. (a)(4). Pub. L. 109–365, § 307(2), substituted "(with particular attention to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas)" for ", with particular attention to low-income minority individuals and older individuals residing in rural areas".

Subsec. (a)(14), (15). Pub. L. 109–365, § 307(3)–(5), added par. (14), redesignated former par. (14) as (15), and struck out former par. (15) which read as follows: "The plan shall, with respect to the fiscal year preceding the fiscal year for which such plan is prepared—

"(A) identify the number of low-income minority older individuals in the State; and

"(B) describe the methods used to satisfy the service needs of such minority older individuals."

Subsec. (a)(16)(A)(ii), (iii). Pub. L. 109–365, § 307(6)(A), substituted "(with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas)" for "(with particular attention to low-income minority individuals and older individuals residing in rural areas)".

Subsec. (a)(16)(A)(vi). Pub. L. 109–365, § 307(6)(B), substituted "and related" for "or related".

Subsec. (a)(27) to (30). Pub. L. 109–365, § 307(7), added pars. (27) to (30).

2000—Subsec. (a)(1) to (5). Pub. L. 106–501, § 306(1), added pars. (1) to (5) and struck out former pars. (1) to (5) which required each State plan to: in par. (1), contain assurances that the State plan would be based on area plans and that the State would distribute a uniform format for developing area plans, in par. (2), provide that each area agency on aging develop an area plan for approval by the State agency, in par. (3), provide that the State agency would evaluate the need for supportive services, nutrition services, and multipurpose senior centers within the State and spend not less than 105 percent of fiscal year 1978 expenditures for services to older individuals residing in rural areas in the State, in par. (4), provide methods of administration of the plan and any necessary reorganization and reassignment of functions to assure efficient administration, and, in par. (5), provide that the State agency would conduct hearings upon request by an area agency on aging submitting a plan, a service provider under a plan, or an applicant to provide service under a plan.

Subsec. (a)(7)(C). Pub. L. 106–501, § 306(2), struck out subpar. (C) which required the plan to provide assurances that the State agency and each area agency on aging would maintain the integrity and public purpose of services provided and service providers under the State plan in all contractual and commercial relationships, disclose the parties to and the nature of a contract or relationship relating to services to older individuals, demonstrate no loss or diminution in quantity or quality of services as a result of such contract or relationship, demonstrate enhancement of quantity and quality of services as a result of such contract or relationship, and disclose on request all sources and expenditures of funds the State agency and area agency on aging received or expended to provide services to older individuals.

Subsec. (a)(8), (9). Pub. L. 106–501, § 306(3), added pars. (8) and (9) and struck out former pars. (8) and (9) which read as follows:

"(8) The plan shall provide that the State agency will conduct periodic evaluations of, and public hearings on,

activities and projects carried out under the State plan, including an evaluation of the effectiveness of the State agency in reaching older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low-income minority individuals. In conducting such evaluations and public hearings, the State agency shall solicit the views and experiences of entities that are knowledgeable about the needs and concerns of low-income minority older individuals.

''(9) The plan shall provide for establishing and maintaining information and assistance services in sufficient numbers to assure that all older individuals in the State who are not furnished adequate information and assistance services under section 3026(a)(4) of this title will have reasonably convenient access to such services.''

Subsec. (a)(10). Pub. L. 106–501, § 306(4), added par. (10) and struck out former par. (10) which read as follows: ''The plan shall provide that no supportive services, nutrition services, or in-home services (as defined in section 3030i of this title) will be directly provided by the State agency or an area agency on aging, except where, in the judgment of the State agency, provision of such services by the State agency or an area agency on aging is necessary to assure an adequate supply of such services, or where such services are directly related to such State or area agency on aging's administrative functions, or where such services of comparable quality can be provided more economically by such State or area agency on aging.''

Subsec. (a)(11). Pub. L. 106–501, § 306(5), (6), redesignated par. (15) as (11) and struck out former par. (11) which read as follows: ''The plan shall provide that subject to the requirements of merit employment systems of State and local governments—

''(A) preference shall be given to older individuals; and

''(B) special consideration shall be given to individuals with formal training in the field of aging (including an educational specialty or emphasis in aging and a training degree or certificate in aging) or equivalent professional experience in the field of aging;

for any staff positions (full time or part time) in State and area agencies for which such individuals qualify.''

Subsec. (a)(12). Pub. L. 106–501, § 306(5), (6), redesignated par. (16) as (12) and struck out former par. (12) which read as follows: ''The plan shall provide assurances that the State agency will carry out, through the Office of the State Long-Term Care Ombudsman, a State Long-Term Care Ombudsman program in accordance with section 3058g of this title and this subchapter.''

Subsec. (a)(13). Pub. L. 106–501, § 306(5), (8), redesignated par. (18) as (13) and struck out former par. (13) which related to a list of requirements that the plan was to provide with respect to nutrition services.

Subsec. (a)(14). Pub. L. 106–501, § 306(5), (10), redesignated par. (20) as (14) and struck out former par. (14) which related to required provisions of the plan with respect to acquisition, alteration, or renovation of existing facilities to serve as multipurpose senior centers.

Subsec. (a)(15). Pub. L. 106–501, § 306(12), redesignated par. (23) as (15). Former par. (15) redesignated (11).

Subsec. (a)(16). Pub. L. 106–501, § 306(12), (13), redesignated par. (24) as (16) and inserted ''and older individuals residing in rural areas'' after ''low-income minority individuals'' in cls. (ii) and (iii). Former par. (16) redesignated (12).

Subsec. (a)(17). Pub. L. 106–501, § 306(14), inserted ''to enhance services'' before ''and develop collaborative programs''.

Pub. L. 106–501, § 306(7), (12), redesignated par. (25) as (17) and struck out former par. (17) which read as follows: ''The plan shall provide assurances that each State will provide inservice training opportunities for personnel of agencies and programs funded under this chapter.''

Subsec. (a)(18). Pub. L. 106–501, § 306(12), (15), redesignated par. (26) as (18) and, in introductory provisions, substituted ''section 3026(a)(7)'' for ''section 3026(a)(6)(I)''. Former par. (18) redesignated (13).

Subsec. (a)(19). Pub. L. 106–501, § 306(9), (17), redesignated par. (30) as (19) and struck out former par. (19) which read as follows: ''The plan shall provide, with respect to education and training services, assurances that area agencies on aging may enter into grants and contracts with providers of education and training services which can demonstrate the experience or capacity to provide such services (except that such contract authority shall be effective for any fiscal year only to such extent, or in such amounts, as are provided in appropriations Acts).''

Subsec. (a)(20). Pub. L. 106–501, § 306(17), redesignated par. (32) as (20). Former par. (20) redesignated (14).

Subsec. (a)(21). Pub. L. 106–501, § 306(11), (18), added par. (21) and struck out former par. (21) which read as follows: ''The plan shall provide assurances that the State agency, in carrying out the State Long-Term Care Ombudsman program under subsection (a)(12) of this section, will expend not less than the total amount expended by the agency in fiscal year 1991 in carrying out such a program under this subchapter.''

Subsec. (a)(22). Pub. L. 106–501, § 801(c)(4)(A), substituted ''3026(a)(8)'' for ''3026(a)(20)''.

Pub. L. 106–501, § 306(11), (19), redesignated par. (36) as (22) and struck out former par. (22) which read as follows: ''The plan shall specify a minimum percentage of the funds received by each area agency on aging for part B of this subchapter that will be expended, in the absence of the waiver granted under section 3026(b)(1) of this title, by such area agency on aging to provide each of the categories of services specified in section 3026(a)(2) of this title.''

Subsec. (a)(23) to (25). Pub. L. 106–501, § 306(21), redesignated pars. (41), (42), and (44) as (23) to (25), respectively. Former pars. (23), (24), and (25) redesignated (15) to (17), respectively.

Subsec. (a)(26). Pub. L. 106–501, § 306(22), added par. (26). Former par. (26) redesignated (18).

Subsec. (a)(27) to (29). Pub. L. 106–501, § 306(16), struck out pars. (27) to (29) which read as follows:

''(27) The plan shall provide assurances of consultation and coordination in planning and provision of in-home services under section 3030h of this title with State and local agencies and private nonprofit organizations which administer and provide services relating to health, social services, rehabilitation, and mental health services.

''(28) The plan shall provide assurances that if the State receives funds appropriated under section 3023(e) of this title, the State agency and area agencies on aging will expend such funds to carry out part E of this subchapter.

''(29) The plan shall, with respect to the fiscal year preceding the fiscal year for which such plan is prepared, describe the methods used to satisfy the service needs of older individuals who reside in rural areas.''

Subsec. (a)(30). Pub. L. 106–501, § 306(17), redesignated par. (30) as (19).

Subsec. (a)(31). Pub. L. 106–501, § 306(16), struck out par. (31) which read as follows:

''(31)(A) If 50 percent or more of the area plans in the State provide for an area volunteer services coordinator, as described in section 3026(a)(12) of this title, the State plan shall provide for a State volunteer services coordinator, who shall—

''(i) encourage area agencies on aging to provide for area volunteer services coordinators;

''(ii) coordinate the volunteer services offered between the various area agencies on aging;

''(iii) encourage, organize, and promote the use of older individuals as volunteers to the State;

''(iv) provide technical assistance, which may include training, to area volunteer services coordinators; and

''(v) promote the recognition of the contribution made by volunteers to the programs administered under the State plan.

''(B) If fewer than 50 percent of the area plans in the State provide for an area volunteer services coordina-

tor, the State plan may provide for the State volunteer services coordinator described in subparagraph (A).''

Subsec. (a)(32). Pub. L. 106–501, § 306(17), redesignated par. (32) as (20).

Subsec. (a)(33) to (35). Pub. L. 106–501, § 306(18), struck out pars. (33) to (35) which read as follows:

''(33) The plan—

''(A) shall include the statement and the demonstration required by paragraphs (2) and (4) of section 3025(d) of this title; and

''(B) may not be approved unless the Assistant Secretary approves such statement and such demonstration.

''(34) The plan shall provide an assurance that the State agency will coordinate programs under this subchapter and subchapter X of this chapter, if applicable.

''(35) The plan shall—

''(A) provide an assurance that the State agency will pursue activities to increase access by older individuals who are Native Americans to all aging programs and benefits provided by the agency, including programs and benefits under this subchapter, if applicable; and

''(B) specify the ways in which the State agency intends to implement the activities.''

Subsec. (a)(36). Pub. L. 106–501, § 306(19), redesignated par. (36) as (22).

Subsec. (a)(37) to (40). Pub. L. 106–501, § 306(20), struck out pars. (37) to (40) which read as follows:

''(37) The plan shall identify for each fiscal year, the actual and projected additional costs of providing services under this subchapter, including the cost of providing access to such services, to older individuals residing in rural areas in the State (in accordance with a standard definition of rural areas specified by the Assistant Secretary).

''(38) The plan shall provide assurances that funds received under this subchapter will not be used to pay any part of a cost (including an administrative cost) incurred by the State or an area agency on aging to carry out a contract or commercial relationship that is not carried out to implement this subchapter.

''(39) The plan shall provide assurances that preference in receiving services under this subchapter will not be given by the area agency on aging to particular older individuals as a result of a contract or commercial relationship that is not carried out to implement this subchapter.

''(40) The plan shall provide assurances that if the State receives funds appropriated under section 3023(g) of this title the State agency and area agencies on aging will expend such funds to carry out part G of this subchapter.''

Subsec. (a)(41), (42). Pub. L. 106–501, § 306(21), redesignated pars. (41) and (42) as (23) and (24), respectively.

Subsec. (a)(43). Pub. L. 106–501, § 306(20), struck out par. (43) which read as follows: ''The plan shall provide that the State agency shall issue guidelines applicable to grievance procedures required by section 3026(a)(6)(P) of this title.''

Subsec. (a)(44). Pub. L. 106–501, § 306(21), redesignated par. (44) as (25).

Subsec. (f). Pub. L. 106–501, § 801(c)(4)(B), struck out par. (1) designation before ''Neither a State'' and struck out par. (2) which read as follows: ''Information disclosed under section 3026(a)(14)(B)(i) of this title or subsection (a)(7)(C)(ii)(I) of this section may be disclosed to the public by the State agency or the State only if such information could be disclosed under section 552 of title 5 by an agency of the United States.''

1993—Pub. L. 103–171, § 3(a)(5)(B), substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

Subsec. (a)(8). Pub. L. 103–171, § 2(9)(A)(i), substituted ''knowledgeable'' for ''knowledgable''.

Subsec. (a)(24). Pub. L. 103–171, § 2(9)(A)(ii), substituted period for semicolon at end.

Subsec. (b)(2). Pub. L. 103–171, § 2(9)(B), substituted ''such requirement'' for ''the requirement described in clause (3)(B) of subsection (a) of this section''.

Subsecs. (d), (e). Pub. L. 103–171, § 3(a)(5)(A), substituted ''Assistant Secretary's'' for ''Commissioner's'' wherever appearing.

1992—Subsec. (a). Pub. L. 102–375, § 307(a)(1), (2), inserted ''the succeeding sentence and'' after ''provided in'' in first sentence and inserted after first sentence ''If the Commissioner determines, in the discretion of the Commissioner, that a State failed in 2 successive years to comply with the requirements under this subchapter, then the State shall submit to the Commissioner a State plan for a 1-year period that meets such criteria, for subsequent years until the Commissioner determines that the State is in compliance with such requirements.'' before ''Each such plan shall comply''.

Subsec. (a)(1). Pub. L. 102–375, § 102(b)(10)(F), substituted ''agencies on aging in'' for ''agencies in''.

Subsec. (a)(3)(A). Pub. L. 102–375, § 307(a)(3), inserted ''and transportation services'' after ''legal assistance'' and inserted at end ''To conduct the evaluation, the State agency shall use the procedures implemented under section 3012(a)(29) of this title.''

Subsec. (a)(5). Pub. L. 102–375, § 307(b), inserted at end ''The State agency shall establish and publish procedures for requesting and conducting such hearing.''

Subsec. (a)(7). Pub. L. 102–375, § 307(c), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (a)(8). Pub. L. 102–375, § 904(a)(13)(A)(i), substituted ''greatest economic need and older individuals with greatest social need'' for ''the greatest economic or social needs''.

Pub. L. 102–375, § 307(d), inserted at end ''In conducting such evaluations and public hearings, the State agency shall solicit the views and experiences of entities that are knowledgable about the needs and concerns of low-income minority older individuals.''

Subsec. (a)(9). Pub. L. 102–375, § 102(b)(4), substituted ''information and assistance'' for ''information and referral'' in two places.

Subsec. (a)(10). Pub. L. 102–375, § 102(b)(5), substituted ''section 3030i of this title'' for ''section 3030i(1) of this title''.

Subsec. (a)(11). Pub. L. 102–375, § 307(e), substituted ''governments—'' for ''governments, preference shall be given to individuals aged 60 or older'' and added subpars. (A) and (B).

Subsec. (a)(12). Pub. L. 102–375, § 307(f), amended par. (12) generally, substituting provisions requiring the plan to provide assurances that a State Long-Term Care Ombudsman program be carried out in accordance with section 3058g of this title for provisions setting out, in subpars. (A) to (K), the assurances required to be provided by the plan with respect to such a program.

Subsec. (a)(13)(A). Pub. L. 102–375, § 904(a)(13)(A)(ii)(I), (II), substituted ''to older individuals'' for ''to individuals aged 60 or older'' and ''by older individuals'' for ''by the elderly''.

Subsec. (a)(13)(B). Pub. L. 102–375, § 904(a)(13)(A)(ii)(III), substituted ''subparagraph'' for ''subclause''.

Pub. L. 102–375, § 307(g)(1), inserted ''(other than under section 3023(b)(3) of this title)'' after ''available under this subchapter''.

Pub. L. 102–375, § 102(b)(10)(C), substituted ''area agency on aging'' for ''area agency''.

Subsec. (a)(13)(F). Pub. L. 102–375, § 307(g)(2), inserted ''dietitians (or individuals with comparable experience),'' after ''advice of'' and substituted ''project will'' for ''project may''.

Subsec. (a)(13)(H). Pub. L. 102–375, § 307(g)(3), struck out ''and'' at end.

Pub. L. 102–375, § 102(b)(10)(E), substituted ''area agency on aging'' for ''area agency'' in two places.

Subsec. (a)(13)(I). Pub. L. 102–375, § 904(a)(13)(A)(ii)(IV), substituted ''participating older individuals'' for ''elderly participants''.

Pub. L. 102–375, § 307(g)(4), substituted semicolon for period at end.

Pub. L. 102–375, § 102(b)(10)(C), substituted ''area agency on aging'' for ''area agency''.

Subsec. (a)(13)(J) to (M). Pub. L. 102–375, § 307(g)(5), added subpars. (J) to (M).

Subsec. (a)(14). Pub. L. 102–375, § 102(b)(10)(A), substituted ''area agencies on aging'' for ''area agencies''.

Subsec. (a)(14)(D). Pub. L. 102–375, § 904(a)(13)(A)(iii), substituted ''subparagraph'' for ''clause''.

Subsec. (a)(15)(B). Pub. L. 102–375, § 102(b)(10)(C), substituted ''area agency on aging'' for ''area agency''.

Subsec. (a)(15)(E). Pub. L. 102–375, § 307(h), added subpar. (E).

Subsec. (a)(16). Pub. L. 102–375, § 307(i), substituted ''shall provide,'' for ''shall provide that'' and ''provide for a'' for '', if funds are not appropriated under section 3023(g) of this title for a fiscal year, provide that for such''.

Subsec. (a)(16)(B). Pub. L. 102–375, § 904(a)(13)(A)(iv), substituted ''paragraph'' for ''clause''.

Subsec. (a)(18). Pub. L. 102–375, § 307(j), inserted ''(one of whom shall be known as a legal assistance developer)'' after ''personnel''.

Subsec. (a)(20)(A). Pub. L. 102–375, § 708(c)(4), substituted ''section 3026(a)(2)(A) of this title'' for ''sections 3026(a)(2)(A) and 3026(a)(6)(P) of this title''.

Subsec. (a)(21). Pub. L. 102–375, § 307(k), amended par. (21) generally. Prior to amendment, par. (21) read as follows: ''The State plan shall provide that the State agency, from funds allotted under section 3024(a) of this title for part B of this subchapter and for paragraph (12) (relating to the State long-term care ombudsman) shall expend to carry out paragraph (12), for each fiscal year in which the allotment for part B of this subchapter for the State is not less than the allotment for fiscal year 1987 for part B of this subchapter for such State, an amount which is not less than the amount expended from funds received under this chapter by such State in fiscal year 1987 to carry out paragraph (12) as in effect before the effective date of the Older Americans Act Amendments of 1987. This paragraph shall not apply to American Samoa, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.''

Subsec. (a)(22). Pub. L. 102–375, § 102(b)(10)(E), substituted ''area agency on aging'' for ''area agency'' in two places.

Subsec. (a)(24). Pub. L. 102–375, § 307(*l*), amended par. (24) generally. Prior to amendment, par. (24) read as follows: ''The plan shall provide assurances that the State agency will require outreach efforts that will—

''(A) identify older individuals who are eligible for assistance under this subchapter, with special emphasis on older individuals with greatest economic need (with particular attention to low-income minority individuals), older individuals with greatest social need (with particular attention to low-income minority individuals), and older individuals who reside in rural areas; and

''(B) inform such individuals of the availability of such assistance.''

Subsec. (a)(30). Pub. L. 102–375, § 307(m), amended par. (30) generally. Prior to amendment, par. (30) read as follows: ''The plan shall provide assurances that if the State receives funds appropriated under section 3023(g) of this title, the State agency and area agencies on aging will expend such funds to carry out part G of this subchapter.''

Subsec. (a)(31). Pub. L. 102–375, § 307(n), amended par. (31) generally, substituting provisions relating to an area or State volunteer services coordinator for provisions that State agency make funds available to eligible area agencies on aging based on number of older individuals with greatest economic need and inadequacy of outreach activities and application assistance, that State agency require area agency to submit application describing and evaluating activities for which funds were sought, that State agency distribute to area agencies certain eligibility information, and that State agency submit to Commissioner a report on evaluations required to be submitted to it by area agencies.

Subsec. (a)(32) to (44). Pub. L. 102–375, § 307(n), added pars. (32) to (44).

Subsec. (b)(1). Pub. L. 102–375, § 307(*o*), inserted before period at end '', except the Commissioner may not approve such plan unless the Commissioner determines that the formula submitted under section 3025(a)(2)(D) of this title complies with the guidelines in effect under section 3025(a)(2)(C) of this title''.

Subsec. (b)(2). Pub. L. 102–375, § 904(a)(13)(B), substituted ''described in paragraph'' for ''described in clause''.

Subsec. (c). Pub. L. 102–375, § 307(p), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f). Pub. L. 102–375, § 307(q), (r), redesignated subsec. (g) as subsec. (f)(1), added subsec. (f)(2), and struck out former subsec. (f) which related to demonstration projects for health and nutrition education.

Subsec. (g). Pub. L. 102–375, § 307(r)(1), redesignated subsec. (g) as subsec. (f)(1).

1988—Subsec. (a)(3)(A). Pub. L. 100–628 substituted a period for ''; and'' at end.

1987—Subsec. (a). Pub. L. 100–175, § 182(k)(1), substituted ''Each such plan shall comply with all of the following requirements:'' for ''Each such plan shall—''.

Subsec. (a)(1), (2). Pub. L. 100–175, § 182(k)(2), (3), inserted ''The plan shall'' and substituted a period for semicolon.

Subsec. (a)(3)(A). Pub. L. 100–175, § 182(k)(4)(A), inserted ''The plan shall''.

Subsec. (a)(3)(B), (4) to (7). Pub. L. 100–175, § 182(k)(4)(B), (5)–(8), inserted ''The plan shall'' and substituted a period for semicolon.

Subsec. (a)(8). Pub. L. 100–175, § 182(k)(9), inserted ''The plan shall'' and substituted a period for semicolon.

Pub. L. 100–175, § 132(c)(1), inserted '', including an evaluation of the effectiveness of the State agency in reaching older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals'' before semicolon.

Pub. L. 100–175, § 128, inserted '', and public hearings on,'' after ''evaluations of''.

Subsec. (a)(9). Pub. L. 100–175, § 182(k)(10), inserted ''The plan shall'' and substituted a period for semicolon.

Subsec. (a)(10). Pub. L. 100–175, § 182(k)(11), inserted ''The plan shall'' and substituted a period for semicolon.

Pub. L. 100–175, § 140(c)(1), which directed that par. (10) be amended by substituting ''nutrition services, or in-home services (as defined in section 3030i(1) of this title)'' for ''including nutrition services,'', was executed by making the substitution for ''or nutrition services,'' to reflect the probable intent of Congress and a previous amendment made by Pub. L. 98–459, § 307(a)(2). See 1984 Amendment note below.

Subsec. (a)(11). Pub. L. 100–175, § 182(k)(12), inserted ''The plan shall'' and substituted a period for semicolon.

Subsec. (a)(12). Pub. L. 100–175, § 129(d), amended par. (12) generally, revising and restating as subpars. (A) to (K) provisions of former subpars. (A) to (E).

Subsec. (a)(13). Pub. L. 100–175, § 182(k)(13), inserted ''The plan shall'', and in subpar. (I) substituted a period for semicolon.

Subsec. (a)(13)(I). Pub. L. 100–175, § 136(c)(1), inserted '', and to individuals with disabilities who reside at home with and accompany older individuals who are eligible under this chapter'' before semicolon.

Subsec. (a)(14). Pub. L. 100–175, § 182(k)(14), inserted ''The plan shall'', and in subpar. (E) substituted a period for semicolon.

Subsec. (a)(15). Pub. L. 100–175, § 182(k)(15), inserted ''The plan shall'', and in subpar. (D) substituted a period for semicolon.

Subsec. (a)(16). Pub. L. 100–175, § 182(k)(16), inserted ''The plan shall'', and in subpar. (C) substituted a period for semicolon.

Pub. L. 100–175, § 144(d)(1), substituted '', if funds are not appropriated under section 3023(g) of this title for a fiscal year, provide that for such fiscal year'' for second reference to ''provide''.

Subsec. (a)(17) to (19). Pub. L. 100–175, § 182(k)(17)–(19), inserted ''The plan shall'' and substituted a period for semicolon.

Subsec. (a)(20). Pub. L. 100–175, § 182(k)(20), inserted ''The plan shall'', and in subpar. (B)(ii) substituted a period for ''; and''.

Subsec. (a)(20)(A). Pub. L. 100–175, § 155(e)(2)(A), substituted ''sections 3026(a)(2)(A) and 3026(a)(6)(P) of this title'' for ''section 3026(a)(2)(A) of this title''.

Subsec. (a)(21). Pub. L. 100–175, § 129(e), amended par. (21) generally. Prior to amendment, par. (21) read as follows: ''provide that the State agency, from funds allotted under section 3024(a) of this title for part B will use an amount equal to an amount not less than 1 percent of such allotment or $20,000, whichever is greater, for the purpose of carrying out the provisions of clause (12), except that (A) the requirement of this clause shall not apply in any fiscal year in which a State spends from State or local sources an amount equal to the amount required to be spent by this clause; and (B) the provisions of this clause shall not apply to American Samoa, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.''

Subsec. (a)(22). Pub. L. 100–175, § 130(b), added par. (22).

Subsec. (a)(23). Pub. L. 100–175, § 131(b), added par. (23).

Subsec. (a)(24). Pub. L. 100–175, § 132(c)(2), added par. (24).

Subsec. (a)(25). Pub. L. 100–175, § 136(c)(2), added par. (25).

Subsec. (a)(26). Pub. L. 100–175, § 138, added par. (26).

Subsec. (a)(27). Pub. L. 100–175, § 140(c)(2), added par. (27).

Subsec. (a)(28). Pub. L. 100–175, § 141(c), added par. (28).

Subsec. (a)(29). Pub. L. 100–175, § 142, added par. (29).

Subsec. (a)(30). Pub. L. 100–175, § 144(d)(2), added par. (30).

Subsec. (a)(31). Pub. L. 100–175, § 155(e)(2)(B), added par. (31).

Subsec. (g). Pub. L. 100–175, § 137(b), added subsec. (g).

1984—Subsec. (a)(3)(A). Pub. L. 98–459, § 307(a)(1), substituted ''legal assistance'' for ''legal services''.

Subsec. (a)(10). Pub. L. 98–459, § 307(a)(2), substituted ''supportive services or nutrition services'' for ''supportive services, including nutrition services'', and inserted '', or where such services are directly related to such State or area agency on aging's administrative functions, or where such services of comparable quality can be provided more economically by such State or area agency on aging''.

Subsec. (a)(12)(A). Pub. L. 98–459, § 307(a)(3)(A)–(C), substituted '', other than an agency or organization which is responsible'' for ''which is not responsible'', ''which is an association'' for ''which is not an association'', and ''which provides an individual who will, on a full-time basis—'' for ''which will—'', in provision preceding cl. (i).

Subsec. (a)(12)(A)(iv). Pub. L. 98–459, § 307(a)(3)(D), substituted ''training staff and volunteers'' for ''training volunteers''.

Subsec. (a)(12)(E). Pub. L. 98–459, § 307(a)(3)(E)–(G), added subpar. (E).

Subsec. (a)(13)(B). Pub. L. 98–459, § 307(a)(4)(A), substituted ''subclause (H)'' for ''subparagraph (H)''.

Subsec. (a)(13)(C)(i). Pub. L. 98–459, § 307(a)(4)(B), substituted ''solicit voluntary contributions'' for ''charge participating individuals''.

Subsec. (a)(13)(C)(ii). Pub. L. 98–459, § 307(a)(4)(C), substituted ''voluntary contributions'' for ''charges''.

Subsec. (a)(15). Pub. L. 98–459, § 307(a)(5), substituted ''legal assistance'' for ''legal services'' in provision preceding subpar. (A).

Subsec. (a)(15)(A). Pub. L. 98–459, § 307(a)(5), substituted ''legal assistance'' for ''legal services'' wherever appearing.

Subsec. (a)(15)(B). Pub. L. 98–459, § 307(a)(6), in amending subpar. (B) generally, substituted provisions requiring assurances regarding the furnishing of legal assistance by grantees administering programs designed to provide legal assistance to older individuals with social or economic need for provisions requiring assurances regarding the furnishing of legal services by grantees who were either recipients of funds under the Legal Services Corporation Act or who administered programs designed to provide legal services to all older individuals with social or economic need.

Subsec. (a)(16) to (18). Pub. L. 98–459, § 307(a)(10), added pars. (16) to (18). Former pars. (16) to (18) redesignated (19) to (21), respectively.

Subsec. (a)(19), (20). Pub. L. 98–459, § 307(a)(9), redesignated former pars. (16) and (17) as (19) and (20), respectively.

Subsec. (a)(20)(B)(ii). Pub. L. 98–459, § 307(a)(7), substituted ''; and'' for the period at the end.

Subsec. (a)(21). Pub. L. 98–459, § 307(a)(9), redesignated former par. (18) as (21).

Subsec. (a)(21)(B). Pub. L. 98–459, § 307(a)(8), substituted ''Commonwealth of the Northern Mariana Islands'' for ''Northern Mariana Islands''.

Subsec. (b)(1). Pub. L. 98–459, § 307(b), substituted ''the Commissioner finds'' for ''he finds''.

Subsec. (d). Pub. L. 98–459, § 307(c), substituted ''in the Commissioner's discretion'' for ''in his discretion'', ''until the Commissioner is satisfied'' for ''until he is satisfied'', ''Until the Commissioner is so satisfied'' for ''Until he is so satisfied'', ''the Commissioner shall prescribe'' for ''he shall prescribe'', and ''the provisions of this section'' for ''the provisions of section 307''.

Subsec. (e)(1). Pub. L. 98–459, § 307(d)(1), substituted ''designated by the Commissioner'' for ''designated by him'' and ''the Commissioner's action is based'' for ''he based his action''.

Subsec. (e)(2). Pub. L. 98–459, § 307(d)(2), substituted ''set aside the Commissioner's order'' for ''set aside his order''.

Subsec. (f). Pub. L. 98–459, § 307(e), added subsec. (f).

1981—Subsec. (a). Pub. L. 97–115, § 7(a), substituted ''for a two-, three-, or four-year period determined by the State agency'' for ''for a 3-year period'' in provisions preceding par. (1).

Subsec. (a)(3)(A), (10). Pub. L. 97–115, § 3(d), substituted ''supportive services'' for ''social services''.

Subsec. (a)(13)(A). Pub. L. 97–115, § 7(b), substituted ''aged 60 or older and to their spouses, and may be made available to handicapped or disabled individuals who have not attained 60 years of age but who reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided'' for ''aged 60 or older, and to their spouses''.

Subsec. (a)(13)(B). Pub. L. 97–115, § 7(c), substituted ''primary consideration shall be given to the provision of meals in a congregate setting, except that each area agency (i) may award funds made available under this subchapter to organizations for the provision of home delivered meals to older individuals in accordance with the provisions of subpart II of part C, based upon a determination of need made by the recipient of a grant or contract entered into under this subchapter, without requiring that such organizations also provide meals to older individuals in a congregate setting; and (ii) shall, in awarding such funds, select such organizations in a manner which complies with the provisions of subparagraph (H)'' for ''each project will provide meals in a congregate setting, except that each such project may provide home delivered meals based upon a determination of need made by the recipient of a grant or contract entered into under this subchapter''.

Subsec. (a)(13)(C)(ii). Pub. L. 97–115, § 7(d), inserted '', to facilitate access to such meals, and to provide other supportive services directly related to nutrition services'' after ''the project involved''.

Subsec. (a)(13)(D). Pub. L. 97–115, §§ 3(d), 7(e), inserted ''in the case of meals served in a congregate setting,'' before ''a site for such services'', substituted ''supportive services'' for ''social services'', and struck out ''or home delivered meals are furnished to eligible individuals who are homebound'' after ''transportation to such site is furnished''.

Subsec. (a)(13)(I). Pub. L. 97–115, § 7(f), substituted ''each area agency shall establish procedures that will

allow nutrition project administrators the option to offer a meal, on the same basis as meals are provided to elderly participants, to individuals providing volunteer services during the meal hours'' for ''each State agency may only for fiscal years 1979 and 1980, use not to exceed 20 percent for the amounts allotted under part C to the State for supportive services, including recreational activities, informational services, health and welfare counseling, and referral services, directly related to the delivery of congregate or home delivered meals, except that the Commissioner may approve an application from a State to use not to exceed 50 percent of its amount allotted under part C in areas with unusually high supportive services costs''.

Subsec. (a)(16) to (18). Pub. L. 97–115, § 7(g), added pars. (16) and (17) and redesignated former par. (16) as (18).

Subsec. (b)(2), (3). Pub. L. 97–115, § 7(h), redesignated par. (3) as (2). Former par. (2), which related to the authority of the Commissioner to waive particular requirements of State plans for fiscal years 1979 and 1980, was struck out.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by sections 307 and 708(c)(4) of Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by sections 307 and 708(c)(4) of Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(2), (6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

ASSESSMENT OF UNSATISFIED DEMAND FOR SUPPORTIVE SERVICES PROVIDED AT SENIOR CENTERS AND OTHER SITES

Section 111 of Pub. L. 100–175 directed Commissioner on Aging, not later than Sept. 30, 1989, to submit to Congress a report assessing national unmet need for supportive services, nutrition services, and multipurpose senior centers by summarizing in detail for each State the results of the most recent evaluation conducted by the State agency under the then current plan submitted under 42 U.S.C. 3027(a)(3)(A) and containing recommendations of the Secretary with respect to need for administrative action and legislation relating to satisfying the demand for supportive services provided at senior centers and other sites.

STUDY OF OMBUDSMAN PROGRAM

Section 129(b) of Pub. L. 100–175 directed Commissioner on Aging, not later than Dec. 31, 1989, to conduct a study and submit a report to Congress concerning involvement in the ombudsman program established under 42 U.S.C. 3027(a)(12) and its impact upon issues and problems affecting residents of board and care facilities and other similar adult care homes who are older individuals as defined in 42 U.S.C. 3022(10), and the effectiveness of recruiting, supervising, and retaining volunteer ombudsmen.

§ 3028. Cost of administration of State plans

(a) Activities constituting administration; use of excess funds to supplement cost of administration of area plans; election to pay costs from sums received for administration of area plans

(1) Amounts available to States under subsection (b)(1) of this section may be used to make grants to States for paying such percentages as each State agency determines, but not more than 75 percent, of the cost of the administration of its State plan, including the preparation of the State plan, the evaluation of activities carried out under such plan, the collection of data and the carrying out of analyses related to the need for supportive services, nutrition services, and multipurpose senior centers within the State, and dissemination of information so obtained, the provision of short-term training to personnel of public or nonprofit private agencies and organizations engaged in the operation of programs authorized by this chapter, and the carrying out of demonstration projects of statewide significance relating to the initiation, expansion, or improvement of services assisted under this subchapter.

(2) Any sums available to a State under subsection (b)(1) of this section for part of the cost of the administration of its State plan which the State determines is not needed for such purpose may be used by the State to supplement the amount available under section 3024(d)(1)(A) of this title to cover part of the cost of the administration of area plans.

(3) Any State which has been designated a single planning and service area under section 3025(a)(1)(E) of this title covering all, or substantially all, of the older individuals in such State, as determined by the Assistant Secretary, may elect to pay part of the costs of the administration of State and area plans either out of sums received under this section of out of sums made available for the administration of area plans under section 3024(d)(1)(A) of this title, but shall not pay such costs out of sums received or allotted under both such sections.

(b) Formula for computation of allotment; application for additional funds; approval of application by Assistant Secretary; limitation on amount of additional funds; transfer of funds

(1) If for any fiscal year the aggregate amount appropriated under section 3023 of this title does not exceed $800,000,000, then—

(A) except as provided in clause (ii), the greater of 5 percent of the allotment to a State under section 3024(a)(1) of this title or $300,000; and

(B) in the case of Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, the greater of 5 percent of such allotment or $75,000;

shall be available to such State to carry out the purposes of this section.

(2) If for any fiscal year the aggregate amount appropriated under section 3023 of this title exceeds $800,000,000, then—

(A) except as provided in clause (ii), the greater of 5 percent of the allotment to a State under section 3024(a)(1) of this title or $500,000; and

(B) in the case of Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, the greater of 5 percent of such allotment or $100,000;

shall be available to such State to carry out the purposes of this section.

(3)(A) If the aggregate amount appropriated under section 3023 of this title for a fiscal year does not exceed $800,000,000, then any State which desires to receive amounts, in addition to amounts allotted to such State under paragraph (1), to be used in the administration of its State plan in accordance with subsection (a) of this section may transmit an application to the Assistant Secretary in accordance with this paragraph. Any such application shall be transmitted in such form, and according to such procedures, as the Assistant Secretary may require, except that such application may not be made as part of, or as an amendment to, the State plan.

(B) The Assistant Secretary may approve any application transmitted by a State under subparagraph (A) if the Assistant Secretary determines, based upon a particularized showing of need, that—

(i) the State will be unable to fully and effectively administer its State plan and to carry out programs and projects authorized by this subchapter unless such additional amounts are made available by the Assistant Secretary;

(ii) the State is making full and effective use of its allotment under paragraph (1) and of the personnel of the State agency and area agencies designated under section 3025(a)(2)(A) of this title in the administration of its State plan in accordance with subsection (a) of this section; and

(iii) the State agency and area agencies on aging of such State are carrying out, on a full-time basis, programs and activities which are in furtherance of the objectives of this chapter.

(C) The Assistant Secretary may approve that portion of the amount requested by a State in its application under subparagraph (A) which the Assistant Secretary determines has been justified in such application.

(D) Amounts which any State may receive in any fiscal year under this paragraph may not exceed three-fourths of 1 percent of the sum of the amounts allotted under section 3024(a) of this title to such State to carry out the State plan for such fiscal year.

(E) No application by a State under subparagraph (A) shall be approved unless it contains assurances that no amounts received by the State under this paragraph will be used to hire any individual to fill a job opening created by the action of the State in laying off or terminating the employment of any regular employee not supported under this chapter in anticipation of filling the vacancy so created by hiring an employee to be supported through use of amounts received under this paragraph.

(4)(A) Notwithstanding any other provision of this subchapter and except as provided in subparagraph (B), with respect to funds received by a State and attributable to funds appropriated under paragraph (1) or (2) of section 3023(b) of this title, the State may elect to transfer not more than 40 percent of the funds so received between subpart I and subpart II of part C of this subchapter, for use as the State considers appropriate to meet the needs of the area served. The Assistant Secretary shall approve any such transfer unless the Assistant Secretary determines that such transfer is not consistent with the objectives of this chapter.

(B) If a State demonstrates, to the satisfaction of the Assistant Secretary, that funds received by the State and attributable to funds appropriated under paragraph (1) or (2) of section 3023(b) of this title, including funds transferred under subparagraph (A) without regard to this subparagraph, for any fiscal year are insufficient to satisfy the need for services under subpart I or subpart II of part C of this subchapter, then the Assistant Secretary may grant a waiver that permits the State to transfer under subparagraph (A) to satisfy such need an additional 10 percent of the funds so received by a State and attributable to funds appropriated under paragraph (1) or (2) of section 3023(b) of this title.

(C) A State's request for a waiver under subparagraph (B) shall—

(i) be not more than one page in length;

(ii) include a request that the waiver be granted;

(iii) specify the amount of the funds received by a State and attributable to funds appropriated under paragraph (1) or (2) of section 3023(b) of this title, over the permissible 40 percent referred to in subparagraph (A), that the State requires to satisfy the need for services under subpart I or II of part C of this subchapter; and

(iv) not include a request for a waiver with respect to an amount if the transfer of the amount would jeopardize the appropriate provision of services under subpart I or II of part C of this subchapter.

(5)(A) Notwithstanding any other provision of this subchapter, of the funds received by a State attributable to funds appropriated under subsection (a)(1), and paragraphs (1) and (2) of subsection (b), of section 3023 of this title, the State may elect to transfer not more than 30 percent for any fiscal year between programs under part B of this subchapter and part C of this subchapter, for use as the State considers appropriate. The State shall notify the Assistant Secretary of any such election.

(B) At a minimum, the notification described in subparagraph (A) shall include a description of the amount to be transferred, the purposes of the transfer, the need for the transfer, and the impact of the transfer on the provision of services from which the funding will be transferred.

(6) A State agency may not delegate to an area agency on aging or any other entity the authority to make a transfer under paragraph (4)(A) or (5)(A).

(7) The Assistant Secretary shall annually collect, and include in the report required by section 3018(a) of this title, data regarding the transfers described in paragraphs (4)(A) and (5)(A), including—

(A) the amount of funds involved in the transfers, analyzed by State;

(B) the rationales for the transfers;

(C) in the case of transfers described in paragraphs (4)(A) and (5)(A), the effect of the transfers of the provision of services, including the effect on the number of meals served, under—

(i) subpart I of part C of this subchapter; and

(ii) subpart II of part C of this subchapter; and

(D) in the case of transfers described in paragraph (5)(A)—

(i) in the case of transfers to part B of this subchapter, information on the supportive services, or services provided through senior centers, for which the transfers were used; and

(ii) the effect of the transfers on the provision of services provided under—

(I) part B of this subchapter; and

(II) part C of this subchapter, including the effect on the number of meals served.

(c) Availability of funds under this section to provide services under parts B and C

The amounts of any State's allotment under subsection (b) of this section for any fiscal year which the Assistant Secretary determines will not be required for that year for the purposes described in subsection (a)(1) of this section shall be available to provide services under part B of this subchapter or part C of this subchapter, or both, in the State.

(Pub. L. 89–73, title III, § 308, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1530; amended Pub. L. 97–115, §§ 3(d), 8, Dec. 29, 1981, 95 Stat. 1597, 1600; Pub. L. 98–459, title III, § 308, Oct. 9, 1984, 98 Stat. 1777; Pub. L. 100–175, title I, §§ 129(c)(2), 182(*l*), Nov. 29, 1987, 101 Stat. 935, 966; Pub. L. 102–375, title I, § 102(b)(9)(C), (10)(A), title III, § 308, title IX, § 904(a)(14), Sept. 30, 1992, 106 Stat. 1202, 1234, 1308; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title III, § 307, Nov. 13, 2000, 114 Stat. 2245.)

PRIOR PROVISIONS

A prior section 3028, Pub. L. 89–73, title III, § 308, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 44; Pub. L. 94–135, title I, §§ 108, 112(c), Nov. 28, 1975, 89 Stat. 717, 719, related to model projects, prior to the general amendment of this subchapter by Pub. L. 95–478.

Provisions similar to those comprising this section were contained in Pub. L. 89–73, title III, § 306, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 43; Pub. L. 94–135, title I, § 107, Nov. 28, 1975, 89 Stat. 716, which was classified to section 3026 of this title prior to repeal by Pub. L. 95–478.

AMENDMENTS

2000—Subsec. (b)(4)(A). Pub. L. 106–501, § 307(1)(A)(ii), substituted ''40 percent'' for ''30 percent''.

Pub. L. 106–501, § 307(1)(A)(i), which directed amendment of subpar. (A) by striking ''in its plan under section 3027(a)(13) of this title regarding Part C of this subchapter,'' was executed by striking ''in its plan under section 3027(a)(13) regarding part C of this subchapter,'' after ''the State may elect'' to reflect the probable intent of Congress.

Subsec. (b)(4)(B). Pub. L. 106–501, § 307(1)(B), substituted ''for any fiscal year'' for ''for fiscal year 1993, 1994, 1995, or 1996'' and ''to satisfy such need an additional 10 percent of the funds so received by a State and attributable to funds appropriated under paragraph (1) or (2) of section 3023(b) of this title.'' for ''to satisfy such need—

''(i) an additional 18 percent of the funds so received for fiscal year 1993;

''(ii) an additional 15 percent of the funds so received for each of the fiscal years 1994 and 1995; and

''(iii) an additional 10 percent of the funds so received for fiscal year 1996.''

Subsec. (b)(4)(C). Pub. L. 106–501, § 307(1)(C), added subpar. (C).

Subsec. (b)(5). Pub. L. 106–501, § 307(2), added par. (5) and struck out former par. (5) which authorized election by a State to transfer funds for fiscal years 1993 through 1996 between programs under parts B and C of this subchapter, provided for a State to obtain a need-based waiver to transfer additional funds, and related to required contents and approval of the application for such transfer of funds.

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

1992—Subsec. (a)(3). Pub. L. 102–375, § 308(1), inserted ''been'' after ''Any State which has''.

Subsec. (b)(1)(B), (2)(B). Pub. L. 102–375, § 904(a)(14)(A), inserted ''United States'' before ''Virgin Islands''.

Subsec. (b)(3)(B)(iii). Pub. L. 102–375, §§ 102(b)(9)(C), (10)(A), 904(a)(14)(B), inserted ''on aging'' after ''area agencies'', struck out ''designated under section 3025 of this title'' after ''such State'', and substituted ''objectives'' for ''purposes''.

Subsec. (b)(4). Pub. L. 102–375, §§ 308(2)(A), 904(a)(14)(B), designated existing provisions as subpar. (A), inserted ''and except as provided in subparagraph (B)'' after ''provision of this subchapter'', substituted ''received by a State and attributable to funds appropriated under paragraph (1) or (2) of section 3023(b) of this title, the'' for ''received under section 3023(b)(1) and (2) of this title, a'', ''not more than 30 percent of the funds so received'' for ''a portion of the funds appropriated'', and ''objectives'' for ''purposes'', and added subpar. (B).

Subsec. (b)(5) to (7). Pub. L. 102–375, § 308(2)(B), added pars. (5) to (7) and struck out former par. (5) which read as follows:

''(A) Notwithstanding any other provisions of this subchapter and except as provided in subparagraph (B), with respect to funds received under subsection (a)(1) and subsection (b) of section 3023 of this title, a State may elect to transfer not more than 20 per centum of the funds allotted for any fiscal year between programs under part B and part C of this subchapter, for use as the State considers appropriate. The State shall notify the Commissioner of any such election.

''(B) Of the funds received under subsections (a)(1) and (b) of section 3023 of this title, a State may elect to transfer under subparagraph (A) not more than 30 percent of the funds allotted for any fiscal year.''

1987—Subsec. (b)(1). Pub. L. 100–175, § 182(*l*)(1), (2), struck designation ''(A)'' after ''(1)'' and redesignated former cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (b)(2). Pub. L. 100–175, § 182(*l*)(3), struck designation ''(A)'' after ''(1)'' and redesignated former cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (b)(3)(C). Pub. L. 100–175, § 182(*l*)(4), substituted ''the Commissioner'' for ''he''.

Subsec. (b)(5)(A). Pub. L. 100–175, § 182(*l*)(5), substituted ''allotted'' for ''appropriated''.

Pub. L. 100–175, § 129(c)(2)(A), substituted ''received under subsection (a)(1)'' for ''received under subsection (a)''.

Subsec. (b)(5)(B). Pub. L. 100–175, § 182(*l*)(6), substituted provision that State may elect to transfer not

more than 30 percent of funds allotted for any fiscal year for provision that State may elect to transfer not more than 27 percent of funds allotted for fiscal year 1985, not more than 29 percent of funds allotted for fiscal year 1986, and not more than 30 percent of funds allotted for fiscal year 1987.

Pub. L. 100–175, § 182(*l*)(5), substituted ''allotted'' for ''appropriated''.

Pub. L. 100–175, § 129(c)(2)(B), inserted ''subsections (a)(1) and (b) of'' after first reference to ''under''.

1984—Subsec. (a)(1). Pub. L. 98–459, § 308(a)(1), substituted ''Amounts available to States under subsection (b)(1) of this section'' for ''Amounts appropriated under section 3023 of this title''.

Subsec. (a)(2). Pub. L. 98–459, § 308(a)(2), substituted ''available to a State under subsection (b)(1) of this section'' for ''received by a State under this section''.

Subsec. (b)(1). Pub. L. 98–459, § 308(b)(6), added par. (1). Former par. (1), which contained provisions, with respect to allotments to States for State planning, coordination, evaluation, and administration of State plans, that each State had to be allotted funds on the basis of its population aged 60 or older as compared to all States, and specifying minimum amounts for each State of no less than one-half of 1 percent of appropriations or $300,000, whichever was greater, and for territories of no less than one-fourth of 1 percent of appropriations or $75,000, whichever was greater, was struck out.

Subsec. (b)(2). Pub. L. 98–459, § 308(b)(6), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 98–459, § 308(b)(4), (5), redesignated former par. (2) as (3) and struck out former par. (3) which had provided that each State would be entitled to an allotment under this section for any fiscal year in an amount which is not less than the amount of the allotment to which such State was entitled under former par. (1) for the fiscal year ending June 30, 1975.

Subsec. (b)(3)(A). Pub. L. 98–459, § 308(b)(1), substituted ''If the aggregate amount appropriated under section 3023 of this title for a fiscal year does not exceed $800,000,000, then any'' for ''Any''.

Subsec. (b)(4). Pub. L. 98–459, § 308(b)(2), (4), (5), redesignated par. (5) as (4), and substituted ''unless the Commissioner determines'' for ''unless he determines'', and struck out former par. (4) which had provided that the number of individuals aged 60 or older in any State and in all States had to be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

Subsec. (b)(5), (6). Pub. L. 98–459, § 308(b)(3), (5), redesignated par. (6) as (5), inserted ''(A)'' after paragraph designation and ''and except as provided in subparagraph (B)'', and added subpar. (B). Former par. (5) redesignated (4).

1981—Subsec. (a)(1). Pub. L. 97–115, § 3(d), substituted ''supportive services'' for ''social services''.

Subsec. (b)(6). Pub. L. 97–115, § 8, added par. (6).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 3029. Payments of grants or contracts

(a) Advances or reimbursement; installments; assistance in development of State plan

Payments of grants or contracts under this subchapter may be made (after necessary adjustments resulting from previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Assistant Secretary may determine. From a State's allotment for a fiscal year which is available under section 3028 of this title the Assistant Secretary may pay to a State which does not have a State plan approved under section 3027 of this title such amounts as the Assistant Secretary deems appropriate for the purpose of assisting such State in developing a State plan.

(b) Matching funds; percentage limitation

(1) For each fiscal year, not less than 25 percent of the non-Federal share of the total expenditures under the State plan which is required by section 3024(d) of this title shall be met from funds from State or local public sources.

(2) Funds required to meet the non-Federal share required by section 3024(d)(1)(D) of this title, in amounts exceeding 10 percent of the cost of the services specified in such section 3024(d)(1)(D) of this title, shall be met from State sources.

(c) Reduction of State allotment

A State's allotment under section 3024 of this title for a fiscal year shall be reduced by the percentage (if any) by which its expenditures for such year from State sources under its State plan approved under section 3027 of this title are less than its average annual expenditures from such sources for the period of 3 fiscal years preceding such year.

(Pub. L. 89–73, title III, § 309, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1532; amended Pub. L. 98–459, title III, § 309, Oct. 9, 1984, 98 Stat. 1779; Pub. L. 100–175, title I, § 139, Nov. 29, 1987, 101 Stat. 944; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 109–365, title III, § 308, Oct. 17, 2006, 120 Stat. 2545.)

PRIOR PROVISIONS

A prior section 3029, Pub. L. 89–73, title III, § 309, as added Pub. L. 93–351, § 3, July 12, 1974, 88 Stat. 357, related to transportation projects, prior to the general amendment of this subchapter by Pub. L. 95–478. See section 3026 of this title.

Provisions similar to those comprising this section were contained in Pub. L. 89–73, title III, § 307, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 44, which was classified to section 3027 of this title prior to repeal by Pub. L. 95–478.

AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109–365 substituted ''10 percent of the cost of the services specified in such section 3024(d)(1)(D) of this title'' for ''the non-Federal share required prior to fiscal year 1981''.

1993—Subsec. (a). Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

1987—Subsec. (c). Pub. L. 100–175 substituted ''its average annual expenditures from such sources for the period of 3 fiscal years preceding such year'' for ''its expenditures from such sources for the preceding fiscal year''.

1984—Subsec. (a). Pub. L. 98–459, § 309(a), substituted ''as the Commissioner deems appropriate'' for ''as he deems appropriate''.

Subsec. (b)(2). Pub. L. 98–459, § 309(b), substituted ''section 3024(d)(1)(D)'' for ''section 3024(d)(1)(B)''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

§ 3030. Disaster relief reimbursements

(a) Application; limitations

(1) The Assistant Secretary may provide reimbursements to any State (or to any tribal organization receiving a grant under subchapter X of this chapter), upon application for such reimbursement, for funds such State makes available to area agencies on aging in such State (or funds used by such tribal organization) for the delivery of supportive services (and related supplies) during any major disaster declared by the President in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.].

(2) Total payments to all States and such tribal organizations under paragraph (1) in any fiscal year shall not exceed 2 percent of the total amount appropriated and available to carry out subchapter IV of this chapter.

(3) If the Assistant Secretary decides, in the 5-day period beginning on the date such disaster is declared by the President, to provide an amount of reimbursement under paragraph (1) to a State or such tribal organization, then the Assistant Secretary shall provide not less than 75 percent of such amount to such State or such tribal organization not later than 5 days after the date of such decision.

(b) Setting aside of funds by Assistant Secretary

(1) At the beginning of each fiscal year the Assistant Secretary shall set aside, for payment to States and such tribal organizations under subsection (a) of this section, an amount equal to 2 percent of the total amount appropriated and available to carry out subchapter IV of this chapter.

(2) Amounts set aside under paragraph (1) which are not obligated by the end of the third quarter of any fiscal year shall be made available to carry out subchapter IV of this chapter.

(c) Effect on other laws

Nothing in this section shall be construed to prohibit expenditures by States and such tribal organizations for disaster relief for older individuals in excess of amounts reimbursable under this section, by using funds made available to them under other sections of this chapter or under other provisions of Federal or State law, or from private sources.

(Pub. L. 89–73, title III, § 310, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1533; amended Pub. L. 97–115, §§ 3(d), 11(b)(2), Dec. 29, 1981, 95 Stat. 1597, 1606; Pub. L. 100–707, title I, § 109(q), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 102–375, title I, § 102(b)(10)(A), title III, § 309, Sept. 30, 1992, 106 Stat. 1202, 1235; Pub. L. 103–171, §§ 2(10), 3(a)(13), Dec. 2, 1993, 107 Stat. 1989, 1990; Pub. L. 106–501, title III, § 308, Nov. 13, 2000, 114 Stat. 2246.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(1), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–501, § 308(1)(A), inserted ''(or to any tribal organization receiving a grant under subchapter X of this chapter)'' after ''any State'' and ''(or funds used by such tribal organization)'' before ''for the delivery of supportive services''.

Subsec. (a)(2). Pub. L. 106–501, § 308(1)(B), inserted ''and such tribal organizations'' after ''States''.

Subsec. (a)(3). Pub. L. 106–501, § 308(1)(C), inserted ''or such tribal organization'' after ''State'' in two places.

Subsecs. (b)(1), (c). Pub. L. 106–501, § 308(2), inserted ''and such tribal organizations'' after ''States''.

1993—Pub. L. 103–171, § 3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a)(1), (3) and (b)(1).

Subsec. (a)(1). Pub. L. 103–171, § 2(10), substituted ''Robert T. Stafford Disaster Relief and Emergency Assistance Act'' for ''Disaster Relief and Emergency Assistance Act''.

1992—Subsec. (a)(1). Pub. L. 102–375, §§ 102(b)(10)(A), 309(1)(A), substituted ''area agencies on aging'' for ''area agencies'' and inserted ''(and related supplies)'' after ''supportive services''.

Subsec. (a)(2). Pub. L. 102–375, § 309(2), substituted ''2 percent'' for ''5 percent'' and ''to carry out subchapter IV of this chapter'' for ''for carrying out the purposes of section 3035a of this title''.

Subsec. (a)(3). Pub. L. 102–375, § 309(1)(B), added par. (3).

Subsec. (b)(1). Pub. L. 102–375, § 309(2), substituted ''2 percent'' for ''5 percent'' and ''to carry out subchapter IV of this chapter'' for ''for carrying out the purposes of section 3035a of this title''.

Subsec. (b)(2). Pub. L. 102–375, § 309(2)(B), substituted ''to carry out subchapter IV of this chapter'' for ''for carrying out the purposes of section 3035a of this title''.

1988—Subsec. (a)(1). Pub. L. 100–707 substituted ''Disaster Relief and Emergency Assistance Act'' for ''Disaster Relief Act of 1974''.

1981—Subsec. (a)(1). Pub. L. 97–115, § 3(d), substituted ''supportive services'' for ''social services''.

Subsecs. (a)(2), (b)(1), (2). Pub. L. 97–115, § 11(b)(2), substituted reference to section 3035a of this title for reference to section 3035b of this title.

EFFECTIVE DATE

Section effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3030a. Nutrition services incentive program

(a) Purpose

The purpose of this section is to provide incentives to encourage and reward effective performance by States and tribal organizations in the efficient delivery of nutritious meals to older individuals.

(b) Allotment and provision and payment

(1) The Secretary shall allot and provide, in accordance with this section, to or on behalf of

each State agency with a plan approved under this subchapter for a fiscal year, and to or on behalf of each grantee with an application approved under subchapter X of this chapter for such fiscal year, an amount bearing the same ratio to the total amount appropriated for such fiscal year under subsection (e) of this section as the number of meals served in the State under such plan approved for the preceding fiscal year (or the number of meals served by the subchapter X grantee, under such application approved for such preceding fiscal year), bears to the total number of such meals served in all States and by all subchapter X grantees under all such plans and applications approved for such preceding fiscal year.

(2) For purposes of paragraph (1), in the case of a grantee that has an application approved under subchapter X of this chapter for a fiscal year but that did not receive assistance under this section for the preceding fiscal year, the number of meals served by the subchapter X grantee for the preceding fiscal year shall be deemed to equal the number of meals that the Assistant Secretary estimates will be served by the subchapter X grantee in the fiscal year for which the application was approved.

(3) State agencies that elect to make grants and enter into contracts for purposes of this section shall promptly and equitably disburse amounts received under this subsection to the recipients of the grants and contracts.

(c) Donation of products

(1) Agricultural commodities (including bonus commodities) and products purchased by the Secretary of Agriculture under section 612c of title 7, shall be donated to a recipient of a grant or contract to be used for providing nutrition services in accordance with the provisions of this subchapter.

(2) The Commodity Credit Corporation shall dispose of food commodities (including bonus commodities) under section 1431 of title 7 by donating them to a recipient of a grant or contract to be used for providing nutrition services in accordance with the provisions of this subchapter.

(3) Dairy products (including bonus commodities) purchased by the Secretary of Agriculture under section 1446a–1 of title 7 shall be used to meet the requirements of programs providing nutrition services in accordance with the provisions of this subchapter.

(4) Among the commodities provided under this subsection, the Secretary of Agriculture shall give special emphasis to foods of high nutritional value to support the health of older individuals. The Secretary of Agriculture, in consultation with the Assistant Secretary, is authorized to prescribe the terms and conditions respecting the provision of commodities under this subsection.

(d) Purchase of commodities; payments to school food authority

(1) Amounts provided under subsection (b) shall be available only for the purchase, by State agencies, recipients of grants and contracts from the State agencies (as applicable), and title VI [subchapter X] grantees, of United States agricultural commodities and other foods for their respective nutrition projects, subject to paragraph (2).

(2) An entity specified in paragraph (1) may, at the option of such entity, use part or all of the amounts received by the entity under subsection (b) to pay a school food authority (within the meaning of the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.)) to obtain United States agricultural commodities for such entity's nutrition projects, in accordance with an agreement between the entity and the school food authority, under which such payments—

(A) shall cover the cost of such commodities; and

(B) may cover related expenses incurred by the school food authority, including the cost of transporting, distributing, processing, storing, and handling such commodities.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section (other than subsection (c)(1) of this section) such sums as may be necessary for fiscal year 2007 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(f) Dissemination of information

In each fiscal year, the Assistant Secretary and the Secretary of Agriculture shall jointly disseminate to State agencies, area agencies on aging, and providers of nutrition services assisted under this subchapter, information concerning—

(1) school food authorities participating in programs authorized under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] within the geographic area served by each such State agency, area agency on aging, and provider; and

(2) the foods available to such State agencies, area agencies on aging, and providers under subsection (c).

(Pub. L. 89–73, title III, § 311, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1533; amended Pub. L. 97–115, § 9, Dec. 29, 1981, 95 Stat. 1600; Pub. L. 98–459, title III, § 310, Oct. 9, 1984, 98 Stat. 1779; Pub. L. 99–269, §§ 2, 3(b), 4, Apr. 1, 1986, 100 Stat. 78; Pub. L. 100–175, title I, § 122(c), Nov. 29, 1987, 101 Stat. 933; Pub. L. 102–375, title I, § 102(b)(10)(A), title III, § 310, Sept. 30, 1992, 106 Stat. 1202, 1236; Pub. L. 103–171, § 3(a)(6), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title III, § 309, Nov. 13, 2000, 114 Stat. 2246; Pub. L. 108–7, div. G, title II, § 217(a), Feb. 20, 2003, 117 Stat. 325; Pub. L. 109–365, title III, § 309, Oct. 17, 2006, 120 Stat. 2545.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsecs. (d)(2) and (f)(1), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–365, § 309(1), added par. (3).

Subsec. (c)(1), (2). Pub. L. 109–365, § 309(2)(A), (B), inserted ''(including bonus commodities)'' after ''commodities''.

Subsec. (c)(3). Pub. L. 109–365, § 309(2)(C), inserted ''(including bonus commodities)'' after ''products''.

Subsec. (c)(4). Pub. L. 109–365, §309(2)(D), added par. (4).

Subsec. (d). Pub. L. 109–365, §309(3), amended subsec. (d) generally, substituting provisions relating to purchase of agricultural commodities and payments to a school food authority to obtain commodities for provisions relating to entitlement to obtain commodities, report on amounts elected to be received, reimbursement for costs, disbursement of amounts, and emphasis on high protein foods.

Subsec. (e). Pub. L. 109–365, §309(4), substituted ''2007'' for ''2001''.

Subsec. (f). Pub. L. 109–365, §309(5), substituted ''the Assistant Secretary and the Secretary of Agriculture'' for ''the Secretary of Agriculture and the Secretary of Health and Human Services'' in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

''(1) the existence of any Federal commodity processing program in which such State agencies, area agencies on aging, and providers may be eligible to participate; and

''(2) the procedures to be followed to participate in the program.''

2003—Subsec. (b). Pub. L. 108–7, §217(a)(1)(A), substituted ''and payment'' for ''of cash or commodities'' in heading that had been supplied editorially.

Subsec. (b)(1). Pub. L. 108–7, §217(a)(1)(B), substituted ''The Secretary shall allot and provide, in accordance with this section, to or on behalf of each State agency'' for ''The Secretary of Agriculture shall allot and provide in the form of cash or commodities or a combination thereof (at the discretion of the State) to each State agency'' and ''to or on behalf of each grantee'' for ''to each grantee''.

Subsec. (d). Pub. L. 108–7, §217(a)(2)(A), inserted heading.

Subsec. (d)(1). Pub. L. 108–7, §217(a)(2)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In any case in which a State elects to receive cash payments,, the Secretary of Agriculture shall make cash payments to such State in an amount equivalent in value to the donated foods which the State otherwise would have received if such State had retained its commodity distribution.''

Subsec. (d)(2). Pub. L. 108–7, §217(a)(2)(E), added par. (2). Former par. (2) redesignated (4).

Subsec. (d)(3). Pub. L. 108–7, §217(a)(2)(D), (E), added par. (3) and struck out former par. (3) which read as follows: ''Nothing in this subsection shall be construed to authorize the Secretary of Agriculture to require any State to elect to receive cash payments under this subsection.''

Subsec. (d)(4). Pub. L. 108–7, §217(a)(2)(F), amended first sentence generally. Prior to amendment, first sentence read as follows: ''When such payments are made, the State agency shall promptly and equitably disburse any cash it receives in lieu of commodities to recipients of grants or contracts.''

Pub. L. 108–7, §217(a)(2)(C), redesignated par. (2) as par. (4). Former par. (4) redesignated (5).

Subsec. (d)(5). Pub. L. 108–7, §217(a)(2)(G), which directed the substitution of ''provision'' for ''donation'', was executed by substituting ''provision'' for ''donating'', to reflect the probable intent of Congress.

Pub. L. 108–7, §217(a)(2)(C), redesignated par. (4) as (5).

2000—Pub. L. 106–501, §309(1), in section catchline substituted ''Nutrition services incentive program'' for ''Availability of surplus commodities''.

Subsecs. (a), (b). Pub. L. 106–501, §309(3), added subsecs. (a) and (b). Former subsecs. (a) and (b) redesignated (c) and (d), respectively.

Subsec. (c). Pub. L. 106–501, §309(2), (4), redesignated subsec. (a) as (c) and struck out par. (4) which related to the level of assistance the Secretary of Agriculture was to maintain in donating commodities under this subsection for fiscal years 1992 and 1993 and required the Secretary to give emphasis to high protein foods, meat, and meat alternates. Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 106–501, §309(2), redesignated subsec. (b) as (d). Former subsec. (d) redesignated (f).

Subsec. (d)(1). Pub. L. 106–501, §309(5), substituted ''In any case in which a State elects to receive cash payments,'' for ''Notwithstanding any other provision of law, a State may, for purposes of the programs authorized by this chapter, elect to receive cash payments in lieu of donated foods for all or any portion of its project. In any case in which a State makes such an election''.

Subsec. (d)(4). Pub. L. 106–501, §309(6), added par. (4).

Subsec. (e). Pub. L. 106–501, §309(7), added subsec. (e) and struck out former subsec. (e) which authorized appropriations for fiscal years 1992 to 1995 to carry out this section, set a deadline for final reimbursement claims for meals, provided for a reduction of the cents-per-meal level in any fiscal year in which costs exceed amounts authorized, and required adjustment of final reimbursement claims to use the full amount appropriated for a fiscal year.

Pub. L. 106–501, §309(2), redesignated subsec. (c) as (e).

Subsec. (f). Pub. L. 106–501, §309(2), redesignated subsec. (d) as (f).

1993—Subsec. (a)(4)(B). Pub. L. 103–171 substituted ''Assistant Secretary for Aging'' for ''Commissioner''.

1992—Subsec. (a)(4). Pub. L. 102–375, §310(1), designated existing provisions as subpars. (A) and (B) and, in subpar. (A), substituted ''shall maintain—'' for ''shall maintain an annually programmed level of assistance of not less than 56.76 cents per meal during fiscal years 1986 through 1991.'' and added cls. (i) and (ii).

Subsec. (c)(1)(A). Pub. L. 102–375, §310(2)(A), substituted ''$250,000,000 for fiscal year 1992, $310,000,000 for fiscal year 1993, $380,000,000 for fiscal year 1994, and $460,000,000 for fiscal year 1995'' for ''$151,000,000 for the fiscal year 1988, $166,000,000 for the fiscal year 1989, $183,000,000 for the fiscal year 1990, and $201,000,000 for the fiscal year 1991''.

Subsec. (c)(2). Pub. L. 102–375, §310(2)(B), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), in'' for ''In'', and added subpar. (B).

Subsec. (d)(1). Pub. L. 102–375, §102(b)(10)(A), substituted ''area agencies on aging'' for ''area agencies''.

1987—Subsec. (a)(4). Pub. L. 100–175, §122(c)(1), substituted ''fiscal years 1986 through 1991'' for ''fiscal year 1986 and during each fiscal year thereafter'' and struck out after first sentence ''The amount specified in this paragraph shall be adjusted on an annual basis for each fiscal year after September 30, 1986, to reflect changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. Such adjustment shall be computed to the nearest one-fourth cent.''

Subsec. (c)(1)(A). Pub. L. 100–175, §122(c)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

''(i) There are authorized to be appropriated $144,000,000 for fiscal year 1986 and $144,000,000 for fiscal year 1987 to carry out this section (other than subsection (a)(1) of this section).

''(ii) The provisions of the second and third sentences of subsection (a)(4) of this section shall not apply for fiscal years 1986 and 1987.''

1986—Subsec. (a)(4). Pub. L. 99–269, §2, substituted ''56.76 cents per meal during fiscal year 1986 and during'' for ''15 cents per meal during fiscal year 1976, 25 cents per meal during fiscal year 1977 and fiscal year 1978, and 30 cents per meal for'' and ''September 30, 1986'' for ''June 30, 1975''.

Subsec. (c)(1)(A). Pub. L. 99–269, §3(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''There are authorized to be appropriated $105,000,000 for fiscal year 1984, $120,800,000 for fiscal year 1985, $125,900,000 for fiscal year 1986, and $132,000,000 for fiscal year 1987, to carry out the provisions of this section (other than the provisions of subsection (a)(1) of this section) and such additional sums as may be necessary for each such fiscal year to main-

tain the level of reimbursement for the number of meals served under such provisions in fiscal year 1983.''

Subsec. (d). Pub. L. 99–269, § 4, added subsec. (d).

1984—Subsec. (a)(4). Pub. L. 98–459, § 310(a)(1), (2), substituted ''subsection (c) of this section'' for ''subsection (d) of this section'' and ''Consumer Price Index for All Urban Consumers'' for ''Consumer Price Index''.

Subsec. (c). Pub. L. 98–459, § 310(b)(1), which directed the amendment of this section by redesignating subsec. (d)(1) as (c)(1), was executed by redesignating subsec. (d) as (c) to reflect the probable intent of Congress.

Subsec. (c)(1). Pub. L. 98–459, § 310(b)(2), (3), inserted ''(A)'' after paragraph designation, struck out therein provisions authorizing appropriations of $93,200,000 for fiscal year 1982 and $100,000,000 for fiscal year 1983, inserted provisions authorizing appropriations of $120,800,000 for fiscal year 1985, $125,900,000 for fiscal year 1986, and $132,000,000 for fiscal year 1987, substituted ''fiscal year 1983'' for ''fiscal year 1981'' at the end, and added subpar. (B).

Subsec. (c)(2). Pub. L. 98–459, § 310(b)(4), substituted ''appropriations'' for ''appropriation''.

Subsec. (d). Pub. L. 98–459, § 310(b)(1), redesignated subsec. (d) as (c). See 1984 Amendment note for subsec. (c) above.

1981—Subsec. (a)(4). Pub. L. 97–115, § 9(a), substituted ''Subject to the authorization of appropriations specified in subsection (d) of this section, in donating'' and ''30 cents per meal for each fiscal year thereafter'' for ''In donating'' and ''30 cents per meal during the three succeeding fiscal years'', respectively.

Subsecs. (b), (c). Pub. L. 97–115, § 9(b), redesignated subsec. (c) as (b). Former subsec. (b), providing for the purchase, during fiscal years ending before Oct. 1, 1981, of high protein foods, meats, and meat alternatives by the Secretary of Agriculture for distribution to recipients of grants or contracts to be used for providing nutrition services in accordance with the provisions of this subchapter, was struck out.

Subsec. (d). Pub. L. 97–115, § 9(c), added subsec. (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 5 of Pub. L. 99–269 provided that: ''This Act and the amendments made by this Act [amending this section and enacting provisions set out as notes under this section and section 3001 of this title] shall take effect on October 1, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE

Section effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

ESTABLISHMENT OF MAXIMUM RATE OF REIMBURSEMENT TO STATES FOR MEALS; AVAILABILITY OF FUNDS

Pub. L. 104–37, title IV, Oct. 21, 1995, 109 Stat. 324, provided in part: ''That hereafter notwithstanding any other provision of law, for meals provided pursuant to the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], a maximum rate of reimbursement to States will be established by the Secretary, subject to reduction if obligations would exceed the amount of available funds, with any unobligated funds to remain available only for obligation in the fiscal year beginning October 1, 1996.''

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 99–269, § 3(a), Apr. 1, 1986, 100 Stat. 78, authorized appropriations for fiscal year 1985 in order to provide reimbursement at the level of 56.76 cents per meal during fiscal year 1985 determined under subsec. (a)(4) of this section.

§ 3030b. Recapture of payments made for multipurpose senior centers

If, within 10 years after acquisition, or within 20 years after the completion of construction, of any facility for which funds have been paid under this subchapter—

(1) the owner of the facility ceases to be a public or nonprofit private agency or organization; or

(2) the facility ceases to be used for the purposes for which it was acquired (unless the Assistant Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so);

the United States shall be entitled to recover from the applicant or other owner of the facility an amount which bears to the then value of the facility (or so much thereof as constituted an approved project or projects) the same ratio as the amount of such Federal funds bore to the cost of the facility financed with the aid of such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

(Pub. L. 89–73, title III, § 312, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1534; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990.)

AMENDMENTS

1993—Par. (2). Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

EFFECTIVE DATE

Section effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3030c. Audit; request for information

(a) The Assistant Secretary and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to a grant or contract received under this subchapter.

(b) State agencies and area agencies on aging shall not request information or data from providers which is not pertinent to services furnished pursuant to this chapter or a payment made for such services.

(Pub. L. 89–73, title III, § 313, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1535; amended Pub. L. 98–459, title III, § 311, Oct. 9, 1984, 98 Stat. 1779; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

1984—Pub. L. 98–459 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE

Section effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3030c–1. Rights relating to in-home services for frail older individuals

The Assistant Secretary shall require entities that provide in-home services under this subchapter to promote the rights of each older individual who receives such services. Such rights include the following:

(1) The right—

(A) to be fully informed in advance about each in-home service provided by such entity under this subchapter and about any change in such service that may affect the well-being of such individual; and

(B) to participate in planning and changing an in-home service provided under this subchapter by such entity unless such individual is judicially adjudged incompetent.

(2) The right to voice a grievance with respect to such service that is or fails to be so provided, without discrimination or reprisal as a result of voicing such grievance.

(3) The right to confidentiality of records relating to such individual.

(4) The right to have the property of such individual treated with respect.

(5) The right to be fully informed (orally and in writing), in advance of receiving an in-home service under this subchapter, of such individual's rights and obligations under this subchapter.

(Pub. L. 89–73, title III, § 314, as added Pub. L. 102–375, title III, § 311, Sept. 30, 1992, 106 Stat. 1237; amended Pub. L. 103–171, §§ 2(11), 3(a)(13), Dec. 2, 1993, 107 Stat. 1989, 1990.)

AMENDMENTS

1993—Pub. L. 103–171 struck out ''(a) PROMOTION.—'' before ''The Assistant'' and substituted ''Assistant Secretary'' for ''Commissioner''.

§ 3030c–2. Consumer contributions

(a) Cost sharing

(1) In general

Except as provided in paragraphs (2) and (3), a State is permitted to implement cost sharing for all services funded by this chapter by recipients of the services.

(2) Exception

The State is not permitted to implement the cost sharing described in paragraph (1) for the following services:

(A) Information and assistance, outreach, benefits counseling, or case management services.

(B) Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services.

(C) Congregate and home delivered meals.

(D) Any services delivered through tribal organizations.

(3) Prohibitions

A State or tribal organization shall not permit the cost sharing described in paragraph (1) for any services delivered through tribal organizations. A State shall not permit cost sharing by a low-income older individual if the income of such individual is at or below the Federal poverty line. A State may exclude from cost sharing low-income individuals whose incomes are above the Federal poverty line. A State shall not consider any assets, savings, or other property owned by older individuals when defining low-income individuals who are exempt from cost sharing, when creating a sliding scale for the cost sharing, or when seeking contributions from any older individual.

(4) Payment rates

If a State permits the cost sharing described in paragraph (1), such State shall establish a sliding scale, based solely on individual income and the cost of delivering services.

(5) Requirements

If a State permits the cost sharing described in paragraph (1), such State shall require each area agency on aging in the State to ensure that each service provider involved, and the area agency on aging, will—

(A) protect the privacy and confidentiality of each older individual with respect to the declaration or nondeclaration of individual income and to any share of costs paid or unpaid by an individual;

(B) establish appropriate procedures to safeguard and account for cost share payments;

(C) use each collected cost share payment to expand the service for which such payment was given;

(D) not consider assets, savings, or other property owned by an older individual in determining whether cost sharing is permitted;

(E) not deny any service for which funds are received under this chapter for an older individual due to the income of such individual or such individual's failure to make a cost sharing payment;

(F) determine the eligibility of older individuals to cost share solely by a confidential declaration of income and with no requirement for verification; and

(G) widely distribute State created written materials in languages reflecting the reading abilities of older individuals that describe the criteria for cost sharing, the State's sliding scale, and the mandate described under subparagraph (E).

(6) Waiver

An area agency on aging may request a waiver to the State's cost sharing policies, and the State shall approve such a waiver if the area agency on aging can adequately demonstrate that—

(A) a significant proportion of persons receiving services under this chapter subject to cost sharing in the planning and service area have incomes below the threshold established in State policy; or

(B) cost sharing would be an unreasonable administrative or financial burden upon the area agency on aging.

(b) Voluntary contributions

(1) In general

Voluntary contributions shall be allowed and may be solicited for all services for which funds are received under this chapter if the method of solicitation is noncoercive. Such contributions shall be encouraged for individuals whose self-declared income is at or above 185 percent of the poverty line, at contribution levels based on the actual cost of services.

(2) Local decision

The area agency on aging shall consult with the relevant service providers and older individuals in agency's planning and service area in a State to determine the best method for accepting voluntary contributions under this subsection.

(3) Prohibited acts

The area agency on aging and service providers shall not means test for any service for which contributions are accepted or deny services to any individual who does not contribute to the cost of the service.

(4) Required acts

The area agency on aging shall ensure that each service provider will—

(A) provide each recipient with an opportunity to voluntarily contribute to the cost of the service;

(B) clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;

(C) protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution;

(D) establish appropriate procedures to safeguard and account for all contributions; and

(E) use all collected contributions to expand the service for which the contributions were given and to supplement (not supplant) funds received under this chapter.

(c) Participation

(1) In general

The State and area agencies on aging, in conducting public hearings on State and area plans, shall solicit the views of older individuals, providers, and other stakeholders on implementation of cost-sharing in the service area or the State.

(2) Plans

Prior to the implementation of cost sharing under subsection (a) of this section, each State and area agency on aging shall develop plans that are designed to ensure that the participation of low-income older individuals (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) receiving services will not decrease with the implementation of the cost sharing under such subsection.

(d) Evaluation

Not later than 1 year after November 13, 2000, and annually thereafter, the Assistant Secretary shall conduct a comprehensive evaluation of practices for cost sharing to determine its impact on participation rates (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas). If the Assistant Secretary finds that there is a disparate impact upon low-income or minority older individuals or older individuals residing in rural areas in any State or region within the State regarding the provision of services, the Assistant Secretary shall take corrective action to assure that such services are provided to all older individuals without regard to the cost sharing criteria.

(Pub. L. 89–73, title III, § 315, as added Pub. L. 106–501, title III, § 310, Nov. 13, 2000, 114 Stat. 2247; amended Pub. L. 109–365, title III, § 310, Oct. 17, 2006, 120 Stat. 2546.)

CODIFICATION

Pub. L. 106–501, § 310, which directed the addition of this section at the end of Part A of title III (42 U.S.C. 3021 et seq.), was executed by adding this section at the end of Part A of title III of the Older Americans Act of 1965 to reflect the probable intent of Congress.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–365, § 310(1)(A), substituted "if" for "provided that" and inserted at end "Such contributions shall be encouraged for individuals whose self-declared income is at or above 185 percent of the poverty line, at contribution levels based on the actual cost of services."

Subsec. (b)(4)(E). Pub. L. 109–365, § 310(1)(B), inserted "and to supplement (not supplant) funds received under this chapter" after "given".

Subsec. (c)(2). Pub. L. 109–365, § 310(2), substituted "(with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas)" for "(with particular attention to low-income minority individuals and older individuals residing in rural areas)".

Subsec. (d). Pub. L. 109–365, § 310(3), substituted "(with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas)" for "with particular attention to low-income and minority older individuals and older individuals residing in rural areas".

§ 3030c–3. Waivers

(a) In general

The Assistant Secretary may waive any of the provisions specified in subsection (b) of this section with respect to a State, upon receiving an application by the State agency containing or accompanied by documentation sufficient to establish, to the satisfaction of the Assistant Secretary, that—

(1) approval of the State legislature has been obtained or is not required with respect to the proposal for which waiver is sought;

(2) the State agency has collaborated with the area agencies on aging in the State and other organizations that would be affected with respect to the proposal for which waiver is sought;

(3) the proposal has been made available for public review and comment, including the opportunity for a public hearing upon request, within the State (and a summary of all of the comments received has been included in the application); and

(4) the State agency has given adequate consideration to the probable positive and negative consequences of approval of the waiver application, and the probable benefits for older individuals can reasonably be expected to outweigh any negative consequences, or particular circumstances in the State otherwise justify the waiver.

(b) Requirements subject to waiver

The provisions of this subchapter that may be waived under this section are—

(1) any provision of sections 3025, 3026, and 3027 of this title requiring statewide uniformity of programs carried out under this subchapter, to the extent necessary to permit demonstrations, in limited areas of a State, of innovative approaches to assist older individuals;

(2) any area plan requirement described in section 3026(a) of this title if granting the waiver will promote innovations or improve service delivery and will not diminish services already provided under this chapter;

(3) any State plan requirement described in section 3027(a) of this title if granting the waiver will promote innovations or improve service delivery and will not diminish services already provided under this chapter;

(4) any restriction under paragraph (5) of section 3028(b) of this title, on the amount that may be transferred between programs carried out under part B of this subchapter and part C of this subchapter; and

(5) the requirement of section 3029(c) of this title that certain amounts of a State allotment be used for the provision of services, with respect to a State that reduces expenditures under the State plan of the State (but only to the extent that the non-Federal share of the expenditures is not reduced below any minimum specified in section 3024(d) of this title or any other provision of this subchapter).

(c) Duration of waiver

The application by a State agency for a waiver under this section shall include a recommendation as to the duration of the waiver (not to exceed the duration of the State plan of the State). The Assistant Secretary, in granting such a waiver, shall specify the duration of the waiver, which may be the duration recommended by the State agency or such shorter time period as the Assistant Secretary finds to be appropriate.

(d) Reports to Secretary

With respect to each waiver granted under this section, not later than 1 year after the expiration of such waiver, and at any time during the waiver period that the Assistant Secretary may require, the State agency shall prepare and submit to the Assistant Secretary a report evaluating the impact of the waiver on the operation and effectiveness of programs and services provided under this subchapter.

(Pub. L. 89–73, title III, § 316, as added Pub. L. 106–501, title III, § 310, Nov. 13, 2000, 114 Stat. 2249.)

CODIFICATION

Pub. L. 106–501, § 310, which directed the addition of this section at the end of Part A of title III (42 U.S.C. 3021 et seq.), was executed by adding this section at the end of Part A of title III of the Older Americans Act of 1965 to reflect the probable intent of Congress.

PART B—SUPPORTIVE SERVICES

§ 3030d. Grants for supportive services

(a) Grants

The Assistant Secretary shall carry out a program for making grants to States under State plans approved under section 3027 of this title for any of the following supportive services:

(1) health (including mental health), education and training, welfare, informational, recreational, homemaker, counseling, or referral services;

(2) transportation services to facilitate access to supportive services or nutrition services, and services provided by an area agency on aging, in conjunction with local transportation service providers, public transportation agencies, and other local government agencies, that result in increased provision of such transportation services for older individuals;

(3) services designed to encourage and assist older individuals to use the facilities and services (including information and assistance services) available to them, including language translation services to assist older individuals with limited-English speaking ability to obtain services under this subchapter;

(4) services designed (A) to assist older individuals to obtain adequate housing, including residential repair and renovation projects designed to enable older individuals to maintain their homes in conformity with minimum housing standards; (B) to adapt homes to meet the needs of older individuals who have physical disabilities; (C) to prevent unlawful entry into residences of older individuals, through the installation of security devices and through structural modifications or alterations of such residences; or (D) to assist older individuals in obtaining housing for which assistance is provided under programs of the Department of Housing and Urban Development;

(5) services designed to assist older individuals in avoiding institutionalization and to assist individuals in long-term care institutions who are able to return to their communities, including—

(A) client assessment, case management services, and development and coordination of community services;

(B) supportive activities to meet the special needs of caregivers, including caretakers who provide in-home services to frail older individuals; and

(C) in-home services and other community services, including home health, homemaker, shopping, escort, reader, and letter writing services, to assist older individuals to live independently in a home environment;

(6) services designed to provide to older individuals legal assistance and other counseling services and assistance, including—

(A) tax counseling and assistance, financial counseling, and counseling regarding appropriate health and life insurance coverage;

(B) representation—

(i) of individuals who are wards (or are allegedly incapacitated); and

(ii) in guardianship proceedings of older individuals who seek to become guardians, if other adequate representation is unavailable in the proceedings; and

(C) provision, to older individuals who provide uncompensated care to their adult children with disabilities, of counseling to assist such older individuals with permanency planning for such children;

(7) services designed to enable older individuals to attain and maintain physical and mental well-being through programs of regular physical activity, exercise, music therapy, art therapy, and dance-movement therapy;

(8) services designed to provide health screening (including mental health screening) to detect or prevent illnesses, or both, that occur most frequently in older individuals;

(9) services designed to provide, for older individuals, preretirement counseling and assistance in planning for and assessing future postretirement needs with regard to public and private insurance, public benefits, lifestyle changes, relocation, legal matters, leisure time, and other appropriate matters;

(10) services of an ombudsman at the State level to receive, investigate, and act on complaints by older individuals who are residents of long-term care facilities and to advocate for the well-being of such individuals;

(11) provision of services and assistive devices (including provision of assistive technology services and assistive technology devices) which are designed to meet the unique needs of older individuals who are disabled, and of older individuals who provide uncompensated care to their adult children with disabilities;

(12) services to encourage the employment of older workers, including job and second career counseling and, where appropriate, job development, referral, and placement, and including the coordination of the services with programs administered by or receiving assistance from the Department of Labor, including programs carried out under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

(13) crime prevention services and victim assistance programs for older individuals;

(14) a program, to be known as ''Senior Opportunities and Services'', designed to identify and meet the needs of low-income older individuals in one or more of the following areas: (A) development and provision of new volunteer services; (B) effective referral to existing health (including mental health), employment, housing, legal, consumer, transportation, and other services; (C) stimulation and creation of additional services and programs to remedy gaps and deficiencies in presently existing services and programs; and (D) such other services as the Assistant Secretary may determine are necessary or especially appropriate to meet the needs of low-income older individuals and to assure them greater self-sufficiency;

(15) services for the prevention of abuse of older individuals in accordance with subpart III of part A of subchapter XI of this chapter and section 3027(a)(12) of this title;

(16) inservice training and State leadership for legal assistance activities;

(17) health and nutrition education services, including information concerning prevention, diagnosis, treatment, and rehabilitation of age-related diseases and chronic disabling conditions;

(18) services designed to enable mentally impaired older individuals to attain and maintain emotional well-being and independent living through a coordinated system of support services;

(19) services designed to support family members and other persons providing voluntary care to older individuals that need long-term care services;

(20) services designed to provide information and training for individuals who are or may become guardians or representative payees of older individuals, including information on the powers and duties of guardians and representative payees and on alternatives to guardianships;

(21) services to encourage and facilitate regular interaction between students and older individuals, including services for older individuals with limited English proficiency and visits in long-term care facilities, multipurpose senior centers, and other settings;

(22) in-home services for frail older individuals, including individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and their families, including in-home services defined by a State agency in the State plan submitted under section 3027 of this title, taking into consideration the age, economic need, and noneconomic and nonhealth factors contributing to the frail condition and need for services of the individuals described in this paragraph, and in-home services defined by an area agency on aging in the area plan submitted under section 3026 of this title;

(23) services designed to support States, area agencies on aging, and local service providers in carrying out and coordinating activities for older individuals with respect to mental health services, including outreach for, education concerning, and screening for such services, and referral to such services for treatment;

(24) activities to promote and disseminate information about life-long learning programs, including opportunities for distance learning; and

(25) any other services necessary for the general welfare of older individuals;

if such services meet standards prescribed by the Assistant Secretary and are necessary for the general welfare of older individuals. For purposes of paragraph (5), the term ''client assessment through case management'' includes pro-

viding information relating to assistive technology.

(b) Existing facilities

(1) The Assistant Secretary shall carry out a program for making grants to States under State plans approved under section 3027 of this title for the acquisition, alteration, or renovation of existing facilities, including mobile units, and, where appropriate, construction of facilities to serve as multipurpose senior centers.

(2) Funds made available to a State under this part may be used for the purpose of assisting in the operation of multipurpose senior centers and meeting all or part of the costs of compensating professional and technical personnel required for the operation of multipurpose senior centers.

(c) Coordination of services with other providers

In carrying out the provisions of this part, to more efficiently and effectively deliver services to older individuals, each area agency on aging shall coordinate services described in subsection (a) of this section with other community agencies and voluntary organizations providing the same services. In coordinating the services, the area agency on aging shall make efforts to coordinate the services with agencies and organizations carrying out intergenerational programs or projects.

(d) Relationship to other funding sources

Funds made available under this part shall supplement, and not supplant, any Federal, State, or local funds expended by a State or unit of general purpose local government (including an area agency on aging) to provide services described in subsection (a) of this section.

(Pub. L. 89–73, title III, § 321, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1535; amended Pub. L. 97–115, §§ 3(d), 10(a)–(c), Dec. 29, 1981, 95 Stat. 1597, 1600; Pub. L. 98–459, title III, § 312, Oct. 9, 1984, 98 Stat. 1779; Pub. L. 100–175, title I, §§ 136(d), 146(b), 182(m), Nov. 29, 1987, 101 Stat. 943, 950, 967; Pub. L. 102–375, title III, § 312, title VII, § 708(b), title IX, § 904(a)(15), Sept. 30, 1992, 106 Stat. 1237, 1292, 1308; Pub. L. 103–171, §§ 2(12), 3(a)(13), Dec. 2, 1993, 107 Stat. 1989, 1990; Pub. L. 106–501, title III, § 311, title VIII, § 801(c)(5), Nov. 13, 2000, 114 Stat. 2251, 2292; Pub. L. 109–365, title III, § 311, Oct. 17, 2006, 120 Stat. 2547.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(12), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

2006—Subsec. (a)(8). Pub. L. 109–365, § 311(1), inserted ''(including mental health screening)'' after ''provide health screening''.

Subsec. (a)(11). Pub. L. 109–365, § 311(2), substituted ''provision of services and assistive devices (including provision of assistive technology services and assistive technology devices)'' for ''services''.

Subsec. (a)(14)(B). Pub. L. 109–365, § 311(3), inserted ''(including mental health)'' after ''existing health''.

Subsec. (a)(21). Pub. L. 109–365, § 311(4), substituted ''students'' for ''school-age children'' and inserted ''services for older individuals with limited English proficiency and'' after ''including''.

Subsec. (a)(23) to (25). Pub. L. 109–365, § 311(5)–(7), added pars. (23) and (24) and redesignated former par. (23) as (25).

2000—Subsec. (a)(2). Pub. L. 106–501, § 311(1)(A), substituted ''and services provided by an area agency on aging, in conjunction with local transportation service providers, public transportation agencies, and other local government agencies, that result in increased provision of such transportation services for older individuals'' for ''or both''.

Subsec. (a)(4). Pub. L. 106–501, § 311(1)(B), substituted ''or (D) to assist older individuals in obtaining housing for which assistance is provided under programs of the Department of Housing and Urban Development;'' for ''or (D) to receive applications from older individuals for housing under section 1701q of title 12;''.

Subsec. (a)(5). Pub. L. 106–501, § 311(1)(C), substituted ''including—'' and subpars. (A) to (C) for ''including client assessment through case management and integration and coordination of community services such as preinstitution evaluation and screening and home health services, homemaker services, shopping services, escort services, reader services, and letter writing services, through resource development and management to assist such individuals to live independently in a home environment;''.

Subsec. (a)(12). Pub. L. 106–501, § 311(1)(D), inserted before semicolon at end '', and including the coordination of the services with programs administered by or receiving assistance from the Department of Labor, including programs carried out under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.)''.

Subsec. (a)(15). Pub. L. 106–501, § 801(c)(5), substituted ''section 3027(a)(12)'' for ''section 3027(a)(16)''.

Subsec. (a)(22). Pub. L. 106–501, § 311(1)(E), (F), added par. (22). Former par. (22) redesignated (23).

Subsec. (a)(23). Pub. L. 106–501, § 311(1)(G), (H), redesignated par. (22) as (23) and inserted ''necessary for the general welfare of older individuals'' before semicolon at end.

Subsecs. (c), (d). Pub. L. 106–501, § 311(2), added subsecs. (c) and (d).

1993—Subsec. (a). Pub. L. 103–171, § 3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner'' in introductory and concluding provisions and in par. (14).

Subsec. (a)(15). Pub. L. 103–171, § 2(12), which directed amendment of par. (15) by substituting ''subpart III of part A of subchapter XI of this chapter and section 3027(a)(16) of this title'' for ''clause (16) of section 3027(a) of this title'', was executed by making the substitution for ''paragraph (16) of section 3027(a) of this title'' to reflect the probable intent of Congress and amendment by Pub. L. 102–375, § 904(a)(15)(C). See 1992 Amendment note below.

Subsec. (b)(1). Pub. L. 103–171, § 3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner''.

1992—Subsec. (a)(3). Pub. L. 102–375, § 312(1), (2), inserted ''(including information and assistance services)'' after ''and services'' and '', including language translation services to assist older individuals with limited-English speaking ability to obtain services under this subchapter'' before semicolon at end.

Subsec. (a)(4)(C). Pub. L. 102–375, § 904(a)(15)(A), substituted ''residences of older'' for ''residences of elderly''.

Subsec. (a)(4)(D). Pub. L. 102–375, § 312(3), added subpar. (D).

Subsec. (a)(6). Pub. L. 102–375, § 312(4), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''services designed to provide legal assistance and other counseling services and assistance, including tax counseling and assistance, financial counseling, and counseling regarding appropriate health and life insurance coverage, to older individuals;''.

Subsec. (a)(7). Pub. L. 102–375, § 312(5), substituted ''physical activity, exercise, music therapy, art ther-

apy, and dance-movement therapy'' for ''physical activity and exercise''.

Subsec. (a)(9). Pub. L. 102–375, § 312(6), substituted '', for older individuals, preretirement counseling and assistance in planning for and assessing future post-retirement needs with regard to public and private insurance, public benefits, lifestyle changes, relocation, legal matters, leisure time, and other appropriate matters'' for ''preretirement and second career counseling for older individuals''.

Subsec. (a)(11). Pub. L. 102–375, § 312(7), inserted before semicolon at end '', and of older individuals who provide uncompensated care to their adult children with disabilities''.

Subsec. (a)(12). Pub. L. 102–375, § 312(8), inserted ''and second career'' after ''including job''.

Subsec. (a)(14). Pub. L. 102–375, § 904(a)(15)(B)(i), substituted ''low-income older individuals'' for ''older, poor individuals 60 years of age or older''.

Subsec. (a)(14)(D). Pub. L. 102–375, § 904(a)(15)(B)(ii), substituted ''low-income older individuals'' for ''the older poor''.

Subsec. (a)(15). Pub. L. 102–375, § 904(a)(15)(C), substituted ''paragraph'' for ''clause''.

Pub. L. 102–375, § 708(b), which directed the substitution of ''subpart III of part A of subchapter XI of this chapter and section 3027(a)(16) of this title'' for ''clause (16) of section 3027(a) of this title'' in par. (15) of this section could not be executed because this section does not contain a par. (15).

Subsec. (a)(17). Pub. L. 102–375, § 312(9), inserted before semicolon at end '', including information concerning prevention, diagnosis, treatment, and rehabilitation of age-related diseases and chronic disabling conditions''.

Subsec. (a)(19) to (22). Pub. L. 102–375, § 312(10)–(12), added pars. (19) to (21) and redesignated former par. (19) as (22).

1987—Subsec. (a). Pub. L. 100–175, § 146(b), inserted sentence at end defining ''client assessment through case management'' for purposes of par. (5).

Subsec. (a)(1). Pub. L. 100–175, § 136(d)(1), inserted ''(including mental health)'' after ''health''.

Subsec. (a)(4)(B). Pub. L. 100–175, § 136(d)(2), substituted ''who have physical disabilities'' for ''suffering from physical disabilities''.

Subsec. (a)(10). Pub. L. 100–175, § 182(m), inserted ''for'' after ''advocate''.

1984—Subsec. (a)(5). Pub. L. 98–459, § 312(a)(1), in amending par. (5) generally, substituted ''services designed to assist older individuals in avoiding institutionalization and to assist individuals in long-term care institutions who are able to return to their communities, including client assessment through case management and integration and coordination of community services such as'' for ''services designed to assist older individuals in avoiding institutionalization, including'' and ''and letter writing services, through resource development and management to assist such individuals to live'' for ''letter writing services, and other similar services designed to assist such individuals to continue living''.

Subsec. (a)(6). Pub. L. 98–459, § 312(a)(2), substituted ''legal assistance'' for ''legal services'' and '', financial counseling, and counseling regarding appropriate health and life insurance coverage'' for ''and financial counseling''.

Subsec. (a)(8). Pub. L. 98–459, § 312(a)(3), substituted ''illnesses'' for ''illness''.

Subsec. (a)(15) to (19). Pub. L. 98–459, § 312(a)(4)–(6), added pars. (15) to (18) and redesignated former par. (15) as (19).

Subsec. (b)(1). Pub. L. 98–459, § 312(b)(1), struck out provision that senior centers had to be community facilities for the organization and provision of a broad spectrum of services, including provision of health, social, nutritional, and educational services and provision of facilities for recreational activities for older individuals.

Subsec. (b)(2). Pub. L. 98–459, § 312(b)(2), struck out the comma after ''may be used'' and substituted ''centers and meeting'' for ''centers, to meet''.

1981—Subsec. (a). Pub. L. 97–115, § 3(d), substituted ''supportive services'' for ''social services'' in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 97–115, § 10(a), substituted ''education and training'' for ''continuing education''.

Subsec. (a)(2). Pub. L. 97–115, § 3(d), substituted ''supportive services'' for ''social services''.

Subsec. (a)(4). Pub. L. 97–115, § 10(b), designated existing provisions as cls. (A) and (B) and added cl. (C).

Subsec. (a)(12) to (15). Pub. L. 97–115, § 10(c), added pars. (12) to (14) and redesignated former par. (12) as (15).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 708(b) of Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by section 708(b) of Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE

Part effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

PART C—NUTRITION SERVICES

§ 3030d–21. Purposes

The purposes of this part are—

(1) to reduce hunger and food insecurity;

(2) to promote socialization of older individuals; and

(3) to promote the health and well-being of older individuals by assisting such individuals to gain access to nutrition and other disease prevention and health promotion services to delay the onset of adverse health conditions resulting from poor nutritional health or sedentary behavior.

(Pub. L. 89–73, title III, § 330, as added Pub. L. 109–365, title III, § 312, Oct. 17, 2006, 120 Stat. 2547.)

SUBPART I—CONGREGATE NUTRITION SERVICES

§ 3030e. Grants for establishment and operation of nutrition projects

The Assistant Secretary shall carry out a program for making grants to States under State plans approved under section 3027 of this title for the establishment and operation of nutrition projects that—

(1) 5 or more days a week (except in a rural area where such frequency is not feasible (as defined by the Assistant Secretary by regulation) and a lesser frequency is approved by the State agency), provide at least one hot or

other appropriate meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide;

(2) shall be provided in congregate settings, including adult day care facilities and multigenerational meal sites; and

(3) provide nutrition education, nutrition counseling, and other nutrition services, as appropriate, based on the needs of meal participants.

(Pub. L. 89–73, title III, § 331, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1536; amended Pub. L. 102–375, title III, § 313, Sept. 30, 1992, 106 Stat. 1238; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title III, § 312(c), Nov. 13, 2000, 114 Stat. 2252; Pub. L. 109–365, title III, § 313, Oct. 17, 2006, 120 Stat. 2548.)

AMENDMENTS

2006—Pub. L. 109–365, § 313(1), substituted ''projects that—'' for ''projects—'' in introductory provisions.

Par. (1). Pub. L. 109–365, § 313(2), struck out ''which,'' before ''5 or more days''.

Par. (2). Pub. L. 109–365, § 313(3), struck out ''which'' before ''shall be provided''.

Par. (3). Pub. L. 109–365, § 313(4), added par. (3) and struck out former par. (3) which read as follows: ''which may include nutrition education services and other appropriate nutrition services for older individuals.''

2000—Par. (2). Pub. L. 106–501 inserted '', including adult day care facilities and multigenerational meal sites'' before semicolon.

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' in introductory provisions and par. (1).

1992—Par. (1). Pub. L. 102–375 inserted ''(except in a rural area where such frequency is not feasible (as defined by the Commissioner by regulation) and a lesser frequency is approved by the State agency)'' after ''week'' and struck out before semicolon at end '', each of which assures a minimum of one-third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council''.

EFFECTIVE DATE

Subpart effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

NUTRITION PROJECTS FOR ELDERLY UNDER PRIOR PROVISIONS, QUALIFIED UNDER SUCCESSOR PROVISIONS, ELIGIBLE FOR FUNDS UNDER SUCH PROVISIONS; DISCONTINUANCE OF PAYMENTS FOR INEFFECTIVE ACTIVITIES

Operation of predecessor projects under successor provisions, see section 501(b) of Pub. L. 95–478, set out as a note under section 3045 of this title.

SUBPART II—HOME DELIVERED NUTRITION SERVICES

§ 3030f. Program authorized

The Assistant Secretary shall establish and carry out a program to make grants to States under State plans approved under section 3027 of this title for the establishment and operation of nutrition projects for older individuals that provide—

(1) on 5 or more days a week (except in a rural area where such frequency is not feasible (as defined by the Assistant Secretary by rule) and a lesser frequency is approved by the State agency) at least 1 home delivered meal per day, which may consist of hot, cold, frozen, dried, canned, fresh, or supplemental foods and any additional meals that the recipient of a grant or contract under this subpart elects to provide; and

(2) nutrition education, nutrition counseling, and other nutrition services, as appropriate, based on the needs of meal recipients.

(Pub. L. 89–73, title III, § 336, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1536; amended Pub. L. 102–375, title III, § 314, Sept. 30, 1992, 106 Stat. 1238; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 109–365, title III, § 314, Oct. 17, 2006, 120 Stat. 2548.)

AMENDMENTS

2006—Pub. L. 109–365 amended section generally. Prior to amendment, text read as follows: ''The Assistant Secretary shall carry out a program for making grants to States under State plans approved under section 3027 of this title for the establishment and operation of nutrition projects for older individuals which, 5 or more days a week (except in a rural area where such frequency is not feasible (as defined by the Assistant Secretary by regulation) and a lesser frequency is approved by the State agency), provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental foods (with a satisfactory storage life) meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide.''

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' in two places.

1992—Pub. L. 102–375 inserted ''(except in a rural area where such frequency is not feasible (as defined by the Commissioner by regulation) and a lesser frequency is approved by the State agency)'' after ''week'' and struck out before period at end '', each of which assures a minimum of one-third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council''.

EFFECTIVE DATE

Subpart effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3030g. Criteria

The Assistant Secretary, in consultation with recognized experts in the fields of nutrition science, dietetics, meal planning and food service management, and aging, shall develop minimum criteria of efficiency and quality for the furnishing of home delivered meal services for projects described in section 3030f of this title.

(Pub. L. 89–73, title III, § 337, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1536; amended Pub. L. 97–115, § 10(e), Dec. 29, 1981, 95 Stat. 1601; Pub. L. 100–175, title I, § 182(n), Nov. 29, 1987, 101 Stat. 967; Pub. L. 102–375, title III, § 315, Sept. 30, 1992, 106 Stat. 1239; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 109–365, title III, § 315, Oct. 17, 2006, 120 Stat. 2548.)

AMENDMENTS

2006—Pub. L. 109–365 amended section generally. Prior to amendment, text read as follows: ''The Assistant Secretary, in consultation with organizations of and for the aged, blind, and disabled, and with representatives from the American Dietetic Association, the Di-

etary Managers Association, the National Association of Area Agencies on Aging, the National Association of Nutrition and Aging Services Programs, the National Association of Meals Programs, Incorporated, and any other appropriate group, shall develop minimum criteria of efficiency and quality for the furnishing of home delivered meal services for projects described in section 3030f of this title. The criteria required by this section shall take into account the ability of established home delivered meals programs to continue such services without major alteration in the furnishing of such services.''

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

1992—Pub. L. 102–375 inserted ''the Dietary Managers Association,'' after ''Dietetic Association,''.

1987—Pub. L. 100–175 substituted ''National Association of Area Agencies'' for ''Association of Area Agencies''.

1981—Pub. L. 97–115 substituted ''National Association of Nutrition and Aging Services Programs'' for ''National Association of Title VII Project Directors''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

SUBPART III—GENERAL PROVISIONS

CODIFICATION

Pub. L. 106–501, title III, § 312(b), Nov. 13, 2000, 114 Stat. 2252, redesignated subpart IV of this part as subpart III.

PRIOR PROVISIONS

A prior subpart III, consisting of sections 3030g–11 to 3030g–13 of this title, related to school-based meals for volunteer older individuals and multigenerational programs, prior to repeal by Pub. L. 106–501, title III, § 312(a), Nov. 13, 2000, 114 Stat. 2252.

Section 3030g–11, Pub. L. 89–73, title III, § 338, as added Pub. L. 102–375, title III, § 316(a), Sept. 30, 1992, 106 Stat. 1239; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, provided for establishment and implementation of the programs.

Section 3030g–12, Pub. L. 89–73, title III, § 338A, as added Pub. L. 102–375, title III, § 316(a), Sept. 30, 1992, 106 Stat. 1240; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 103–382, title III, § 391(r)(1), Oct. 20, 1994, 108 Stat. 4024, described required contents of application and criteria for selection among applicants.

Section 3030g–13, Pub. L. 89–73, title III, § 338B, as added Pub. L. 102–375, title III, § 316(a), Sept. 30, 1992, 106 Stat. 1240; amended Pub. L. 103–171, § 3(a)(11), (13), Dec. 2, 1993, 107 Stat. 1990, required States receiving grants to submit reports evaluating projects.

§ 3030g–21. Nutrition

A State that establishes and operates a nutrition project under this chapter[1] shall—

(1) solicit the expertise of a dietitian or other individual with equivalent education and training in nutrition science, or if such an individual is not available, an individual with comparable expertise in the planning of nutritional services, and

(2) ensure that the project—

(A) provides meals that—

(i) comply with the most recent Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture, and

(ii) provide to each participating older individual—

(I) a minimum of 33⅓ percent of the dietary reference intakes established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences, if the project provides one meal per day,

(II) a minimum of 66⅔ percent of the allowances if the project provides two meals per day, and

(III) 100 percent of the allowances if the project provides three meals per day, and

(iii) to the maximum extent practicable, are adjusted to meet any special dietary needs of program participants,

(B) provides flexibility to local nutrition providers in designing meals that are appealing to program participants,

(C) encourages providers to enter into contracts that limit the amount of time meals must spend in transit before they are consumed,

(D) where feasible, encourages joint arrangements with schools and other facilities serving meals to children in order to promote intergenerational meal programs,

(E) provides that meals, other than in-home meals, are provided in settings in as close proximity to the majority of eligible older individuals' residences as feasible,

(F) comply[2] with applicable provisions of State or local laws regarding the safe and sanitary handling of food, equipment, and supplies used in the storage, preparation, service, and delivery of meals to an older individual,

(G) ensures that meal providers solicit the advice and expertise of—

(i) a dietitian or other individual described in paragraph (1),

(ii) meal participants, and

(iii) other individuals knowledgeable with regard to the needs of older individuals,

(H) ensures that each participating area agency on aging establishes procedures that allow nutrition project administrators the option to offer a meal, on the same basis as meals provided to participating older individuals, to individuals providing volunteer services during the meal hours, and to individuals with disabilities who reside at home with older individuals eligible under this chapter,[1]

(I) ensures that nutrition services will be available to older individuals and to their spouses, and may be made available to individuals with disabilities who are not older individuals but who reside in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided,

[1] So in original. Title III of Pub. L. 89–73, as amended, contained parts and subparts, but not chapters.

[2] So in original. Probably should be ''complies''.

(J) provides for nutrition screening and nutrition education, and nutrition assessment and counseling if appropriate, and

(K) encourages individuals who distribute nutrition services under subpart II to provide, to homebound older individuals, available medical information approved by health care professionals, such as informational brochures and information on how to get vaccines, including vaccines for influenza, pneumonia, and shingles, in the individuals' communities.

(Pub. L. 89–73, title III, § 339, as added Pub. L. 106–501, title III, § 313, Nov. 13, 2000, 114 Stat. 2252; amended Pub. L. 109–365, title III, § 316, Oct. 17, 2006, 120 Stat. 2548.)

CODIFICATION

Pub. L. 106–501, § 313, which directed amendment of subpart 4 of part C of title III of the Older Americans Act of 1965 (Pub. L. 89–73) by striking section 339 and inserting this section, was executed in this subpart, which is subpart 3 of part C of title III of the Act, by repealing prior section 3030g–21, and inserting this section, to reflect the probable intent of Congress and the redesignation of subpart 4 of part C of title III of the Act as subpart 3 by Pub. L. 106–501, § 312(b).

PRIOR PROVISIONS

A prior section 3030g–21, Pub. L. 89–73, title III, § 339, as added Pub. L. 102–375, title III, § 317, Sept. 30, 1992, 106 Stat. 1241, related to compliance with dietary guidelines prior to repeal by Pub. L. 106–501, title III, § 313, Nov. 13, 2000, 114 Stat. 2252. See Codification note above.

AMENDMENTS

2006—Par. (1). Pub. L. 109–365, § 316(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''solicit the advice of a dietitian or individual with comparable expertise in the planning of nutritional services, and''.

Par. (2)(A)(i). Pub. L. 109–365, § 316(2)(A)(i), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''comply with the Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture,''.

Par. (2)(A)(ii)(I). Pub. L. 109–365, § 316(2)(A)(ii), substituted ''dietary reference intakes'' for ''daily recommended dietary allowances as''.

Par. (2)(D). Pub. L. 109–365, § 316(2)(B), inserted ''joint'' after ''encourages''.

Par. (2)(G). Pub. L. 109–365, § 316(2)(C), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''ensures that meal providers carry out such project with the advice of dietitians (or individuals with comparable expertise), meal participants, and other individuals knowledgeable with regard to the needs of older individuals,''.

Par. (2)(H). Pub. L. 109–365, § 316(2)(D), struck out ''and accompany'' after ''home with''.

Par. (2)(J), (K). Pub. L. 109–365, § 316(2)(E), (F), added subpars. (J) and (K) and struck out former subpar. (J) which read as follows: ''provide for nutrition screening and, where appropriate, for nutrition education and counseling.''

§ 3030g–22. Payment requirement

Payments made by a State agency or an area agency on aging for nutrition services (including meals) provided under part A, B, or C of this subchapter may not be reduced to reflect any increase in the level of assistance provided under section 3030a of this title.

(Pub. L. 89–73, title III, § 339A, as added Pub. L. 102–375, title III, § 317, Sept. 30, 1992, 106 Stat. 1241.)

PRIOR PROVISIONS

Prior sections 3030h to 3030*l* were repealed by Pub. L. 106–501, title III, § 314(1), Nov. 13, 2000, 114 Stat. 2253.

Section 3030h, Pub. L. 89–73, title III, § 341, as added Pub. L. 100–175, title I, § 140(d), Nov. 29, 1987, 101 Stat. 945; amended Pub. L. 102–375, title I, § 102(b)(6), (10)(C), Sept. 30, 1992, 106 Stat. 1201, 1202; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, authorized a grant program for States.

Section 3030i, Pub. L. 89–73, title III, § 342, as added Pub. L. 100–175, title I, § 140(d), Nov. 29, 1987, 101 Stat. 945; amended Pub. L. 102–375, title I, § 102(b)(7), title III, § 318, Sept. 30, 1992, 106 Stat. 1201, 1241, defined ''in-home services''.

Section 3030j, Pub. L. 89–73, title III, § 343, as added Pub. L. 100–175, title I, § 140(d), Nov. 29, 1987, 101 Stat. 945, provided for the State agency to develop eligibility criteria.

Section 3030k, Pub. L. 89–73, title III, § 344, as added Pub. L. 100–175, title I, § 140(d), Nov. 29, 1987, 101 Stat. 946, required that funds available under former part D of this subchapter be in addition to funds otherwise expended.

Section 3030*l*, Pub. L. 89–73, title III, § 351, as added Pub. L. 100–175, title I, § 141(d), Nov. 29, 1987, 101 Stat. 946; amended Pub. L. 102–375, title VII, § 708(a)(2)(C), Sept. 30, 1992, 106 Stat. 1292; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, authorized program of grants to satisfy special needs of older individuals.

PART D—DISEASE PREVENTION AND HEALTH PROMOTION SERVICES

CODIFICATION

Pub. L. 106–501, title III, § 314(2), Nov. 13, 2000, 114 Stat. 2253, redesignated part F of this subchapter as part D.

PRIOR PROVISIONS

A prior part D, consisting of sections 3030h to 3030k of this title, related to in-home services for frail older individuals, prior to repeal by Pub. L. 106–501, title III, § 314(1), Nov. 13, 2000, 114 Stat. 2253. See prior provisions notes under section 3030g–22 of this title.

§ 3030m. Program authorized

(a) Grants to States

The Assistant Secretary shall carry out a program for making grants to States under State plans approved under section 3027 of this title to provide disease prevention and health promotion services and information at multipurpose senior centers, at congregate meal sites, through home delivered meals programs, or at other appropriate sites. In carrying out such program, the Assistant Secretary shall consult with the Directors of the Centers for Disease Control and Prevention and the National Institute on Aging.

(b) Community organizations and agencies

The Assistant Secretary shall, to the extent possible, assure that services provided by other community organizations and agencies are used to carry out the provisions of this part.

(c) Improving indoor air quality

The Assistant Secretary shall work in consultation with qualified experts to provide information on methods of improving indoor air quality in buildings where older individuals congregate.

(Pub. L. 89–73, title III, § 361, as added Pub. L. 100–175, title I, § 143(c), Nov. 29, 1987, 101 Stat. 947; amended Pub. L. 102–375, title III, § 319(a), Sept.

30, 1992, 106 Stat. 1241; Pub. L. 103–171, §§ 2(13), 3(a)(13), Dec. 2, 1993, 107 Stat. 1989, 1990; Pub. L. 109–365, title III, § 319, Oct. 17, 2006, 120 Stat. 2551.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–365 added subsec. (c).

1993—Subsec. (a). Pub. L. 103–171, §§ 2(13), 3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner'' in two places and inserted ''and Prevention'' after ''Control''.

Subsec. (b). Pub. L. 103–171, § 3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner''.

1992—Subsec. (a). Pub. L. 102–375, § 319(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Commissioner shall carry out a program for making grants to States under State plans approved under section 3027 of this title for periodic preventive health services to be provided at senior centers or alternative sites as appropriate.''

Subsecs. (b), (c). Pub. L. 102–375, § 319(a)(2), (3), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Preventive health services under this part may not include services eligible for reimbursement under Medicare.''

EFFECTIVE DATE

Part effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as an Effective Date of 1987 Amendment note under section 3001 of this title.

§ 3030n. Distribution to area agencies on aging

The State agency shall give priority, in carrying out this part, to areas of the State—

(1) which are medically underserved; and

(2) in which there are a large number of older individuals who have the greatest economic need for such services.

(Pub. L. 89–73, title III, § 362, as added Pub. L. 100–175, title I, § 143(c), Nov. 29, 1987, 101 Stat. 948; amended Pub. L. 102–375, title I, § 102(b)(10)(G), Sept. 30, 1992, 106 Stat. 1202.)

PRIOR PROVISIONS

Prior sections 3030*o* to 3030r were repealed by Pub. L. 106–501, title III, §§ 315, 316(1), Nov. 13, 2000, 114 Stat. 2253.

Section 3030*o*, Pub. L. 89–73, title III, § 363, as added Pub. L. 100–175, title I, § 143(c), Nov. 29, 1987, 101 Stat. 948; amended Pub. L. 102–375, title III, § 319(b), Sept. 30, 1992, 106 Stat. 1242; Pub. L. 103–382, title III, § 391(r)(2), Oct. 20, 1994, 108 Stat. 4024, defined ''disease prevention and health promotion services''.

Section 3030p, Pub. L. 89–73, title III, § 381, as added Pub. L. 102–375, title III, § 320, Sept. 30, 1992, 106 Stat. 1243; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, authorized grant program for States to provide supportive activities for caretakers who provide in-home services to frail older individuals.

Another prior section 3030p, Pub. L. 89–73, title III, § 371, as added Pub. L. 100–175, title I, § 144(e), Nov. 29, 1987, 101 Stat. 949, authorized program for prevention of abuse, neglect and exploitation of older individuals, prior to the general amendment of former part G of this subchapter by section 320 of Pub. L. 102–375.

Section 3030q, Pub. L. 89–73, title III, § 382, as added Pub. L. 102–375, title III, § 320, Sept. 30, 1992, 106 Stat. 1243, defined ''in-home services''.

Section 3030r, Pub. L. 89–73, title III, § 383, as added Pub. L. 102–375, title III, § 320, Sept. 30, 1992, 106 Stat. 1243, required that funds available under former part G of this subchapter be in addition to funds otherwise expended.

AMENDMENTS

1992—Pub. L. 102–375 substituted ''area agencies on aging'' for ''area agencies'' in section catchline.

PART E—NATIONAL FAMILY CAREGIVER SUPPORT PROGRAM

PRIOR PROVISIONS

A prior part E, consisting of section 3030*l* of this title, related to authorization of grant program for States to provide additional assistance for special needs of older individuals, prior to repeal by Pub. L. 106–501, title III, § 314(1), Nov. 13, 2000, 114 Stat. 2253. See Prior Provisions note set out under section 3030g–22 of this title.

A prior part F of this subchapter, consisting of sections 3030m to 3030*o* of this title, was redesignated part D of this subchapter.

A prior part G of this subchapter consisting of sections 3030p to 3030r of this title, related to supportive activities for caretakers who provide in-home services to frail older individuals, prior to repeal by Pub. L. 106–501, title III, § 316(1), Nov. 13, 2000, 114 Stat. 2253. See Prior Provisions notes set out under section 3030n of this title.

SUBPART I—CAREGIVER SUPPORT PROGRAM

§ 3030s. Definitions

(a) In general

In this subpart:

(1) Child

The term ''child'' means an individual who is not more than 18 years of age or who is an individual with a disability.

(2) Grandparent or older individual who is a relative caregiver

The term ''grandparent or older individual who is a relative caregiver'' means a grandparent or stepgrandparent of a child, or a relative of a child by blood, marriage, or adoption, who is 55 years of age or older and—

(A) lives with the child;

(B) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and

(C) has a legal relationship to the child, as such legal custody or guardianship, or is raising the child informally.

(b) Rule

In providing services under this subpart—

(1) for family caregivers who provide care for individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction, the State involved shall give priority to caregivers who provide care for older individuals with such disease or disorder; and

(2) for grandparents or older individuals who are relative caregivers, the State involved shall give priority to caregivers who provide care for children with severe disabilities.

(Pub. L. 89–73, title III, § 372, as added Pub. L. 106–501, title III, § 316(2), Nov. 13, 2000, 114 Stat. 2254; amended Pub. L. 109–365, title III, § 320, Oct. 17, 2006, 120 Stat. 2551.)

AMENDMENTS

2006—Pub. L. 109–365 designated existing provisions as subsec. (a) and inserted heading, inserted ''or who is an

individual with a disability'' after ''age'' in par. (1), substituted ''a child by blood, marriage, or adoption'' for ''a child by blood or marriage'' and ''55 years'' for ''60 years'' in par. (3), redesignated par. (3) as (2), struck out former par. (2) which defined term ''family caregiver'', and added subsec. (b).

SHORT TITLE

For short title of this part as the ''National Family Caregiver Support Act'', see section 371 of Pub. L. 89–73, set out as a Short Title note under section 3001 of this title.

§ 3030s–1. Program authorized

(a) In general

The Assistant Secretary shall carry out a program for making grants to States with State plans approved under section 3027 of this title, to pay for the Federal share of the cost of carrying out State programs, to enable area agencies on aging, or entities that such area agencies on aging contract with, to provide multifaceted systems of support services—

(1) for family caregivers; and

(2) for grandparents or older individuals who are relative caregivers.

(b) Support services

The services provided, in a State program under subsection (a) of this section, by an area agency on aging, or entity that such agency has contracted with, shall include—

(1) information to caregivers about available services;

(2) assistance to caregivers in gaining access to the services;

(3) individual counseling, organization of support groups, and caregiver training to assist the caregivers in the areas of health, nutrition, and financial literacy, and in making decisions and solving problems relating to their caregiving roles;

(4) respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and

(5) supplemental services, on a limited basis, to complement the care provided by caregivers.

(c) Population served; priority

(1) Population served

Services under a State program under this subpart shall be provided to family caregivers, and grandparents and older individuals who are relative caregivers, and who—

(A) are described in paragraph (1) or (2) of subsection (a) of this section; and

(B) with regard to the services specified in paragraphs (4) and (5) of subsection (b) of this section, in the case of a caregiver described in paragraph (1), is providing care to an older individual who meets the condition specified in subparagraph (A)(i) or (B) of section 3002(22) of this title.

(2) Priority

In providing services under this subpart, the State, in addition to giving the priority described in section 3030s(b) of this title, shall give priority—

(A) to caregivers who are older individuals with greatest social need, and older individuals with greatest economic need (with particular attention to low-income older individuals); and

(B) to older individuals providing care to individuals with severe disabilities, including children with severe disabilities.

(d) Use of volunteers

In carrying out this subpart, each area agency on aging shall make use of trained volunteers to expand the provision of the available services described in subsection (b) and, if possible, work in coordination with organizations that have experience in providing training, placement, and stipends for volunteers or participants (such as organizations carrying out Federal service programs administered by the Corporation for National and Community Service), in community service settings.

(e) Quality standards and mechanisms and accountability

(1) Quality standards and mechanisms

The State shall establish standards and mechanisms designed to assure the quality of services provided with assistance made available under this subpart.

(2) Data and records

The State shall collect data and maintain records relating to the State program in a standardized format specified by the Assistant Secretary. The State shall furnish the records to the Assistant Secretary, at such time as the Assistant Secretary may require, in order to enable the Assistant Secretary to monitor State program administration and compliance, and to evaluate and compare the effectiveness of the State programs.

(3) Reports

The State shall prepare and submit to the Assistant Secretary reports on the data and records required under paragraph (2), including information on the services funded under this subpart, and standards and mechanisms by which the quality of the services shall be assured. The reports shall describe any mechanisms used in the State to provide to persons who are family caregivers, or grandparents or older individuals who are relative caregivers, information about and access to various services so that the persons can better carry out their care responsibilities.

(f) Caregiver allotment

(1) In general

(A) From sums appropriated under section 3023(e) of this title for fiscal years 2007, 2008, 2009, 2010, and 2011, the Assistant Secretary shall allot amounts among the States proportionately based on the population of individuals 70 years of age or older in the States.

(B) In determining the amounts allotted to States from the sums appropriated under section 3023 of this title for a fiscal year, the Assistant Secretary shall first determine the amount allotted to each State under subparagraph (A) and then proportionately adjust such amounts, if necessary, to meet the requirements of paragraph (2).

(C) The number of individuals 70 years of age or older in any State and in all States shall be

determined by the Assistant Secretary on the basis of the most recent data available from the Bureau of the Census and other reliable demographic data satisfactory to the Assistant Secretary.

(2) Minimum allotment

(A) The amounts allotted under paragraph (1) shall be reduced proportionately to the extent necessary to increase other allotments under such paragraph to achieve the amounts described in subparagraph (B).

(B)(i) Each State shall be allotted ½ of 1 percent of the amount appropriated for the fiscal year for which the determination is made.

(ii) Guam and the Virgin Islands of the United States shall each be allotted ¼ of 1 percent of the amount appropriated for the fiscal year for which the determination is made.

(iii) American Samoa and the Commonwealth of the Northern Mariana Islands shall each be allotted 1/16 of 1 percent of the amount appropriated for the fiscal year for which the determination is made.

(C) For the purposes of subparagraph (B)(i), the term ''State'' does not include Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(g) Availability of funds

(1) Use of funds for administration of area plans

Amounts made available to a State to carry out the State program under this subpart may be used, in addition to amounts available in accordance with section 3023(c)(1) of this title, for costs of administration of area plans.

(2) Federal share

(A) In general

Notwithstanding section 3024(d)(1)(D) of this title, the Federal share of the cost of carrying out a State program under this subpart shall be 75 percent.

(B) Non-Federal share

The non-Federal share of the cost shall be provided from State and local sources.

(C) Limitation

A State may use not more than 10 percent of the total Federal and non-Federal share available to the State to provide support services to grandparents and older individuals who are relative caregivers of a child who is not more than 18 years of age.

(Pub. L. 89–73, title III, § 373, as added Pub. L. 106–501, title III, § 316(2), Nov. 13, 2000, 114 Stat. 2254; amended Pub. L. 109–365, title III, § 321, Oct. 17, 2006, 120 Stat. 2551.)

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–365, § 321(1), substituted ''assist the caregivers in the areas of health, nutrition, and financial literacy, and in making decisions and solving problems relating to their caregiving roles;'' for ''caregivers to assist the caregivers in making decisions and solving problems relating to their caregiving roles;''.

Subsec. (c)(1)(B). Pub. L. 109–365, § 321(2)(A), substituted ''subparagraph (A)(i) or (B) of section 3002(22)'' for ''subparagraph (A)(i) or (B) of section 3002(28)''.

Subsec. (c)(2). Pub. L. 109–365, § 321(2)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: ''In providing services under this subpart, the State shall give priority for services to older individuals with greatest social and economic need, (with particular attention to low-income older individuals) and older individuals providing care and support to persons with mental retardation and related developmental disabilities (as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001)) (referred to in this subpart as 'developmental disabilities').''

Subsec. (d). Pub. L. 109–365, § 321(3), amended subsec. (d) generally. Prior to amendment, text read as follows: ''In carrying out this subpart, each area agency on aging shall coordinate the activities of the agency, or entity that such agency has contracted with, with the activities of other community agencies and voluntary organizations providing the types of services described in subsection (b) of this section.''

Subsec. (e)(3). Pub. L. 109–365, § 321(4), inserted at end ''The reports shall describe any mechanisms used in the State to provide to persons who are family caregivers, or grandparents or older individuals who are relative caregivers, information about and access to various services so that the persons can better carry out their care responsibilities.''

Subsec. (f)(1)(A). Pub. L. 109–365, § 321(5), substituted ''2007, 2008, 2009, 2010, and 2011'' for ''2001 through 2005''.

Subsec. (g)(2)(C). Pub. L. 109–365, § 321(6), inserted ''of a child who is not more than 18 years of age'' before period at end.

§ 3030s–2. Maintenance of effort

Funds made available under this subpart shall supplement, and not supplant, any Federal, State, or local funds expended by a State or unit of general purpose local government (including an area agency on aging) to provide services described in section 3030s–1 of this title.

(Pub. L. 89–73, title III, § 374, as added Pub. L. 106–501, title III, § 316(2), Nov. 13, 2000, 114 Stat. 2256.)

SUBPART II—NATIONAL INNOVATION PROGRAMS

§§ 3030s–11, 3030s–12. Repealed. Pub. L. 109–365, title III, § 322, Oct. 17, 2006, 120 Stat. 2552

Section 3030s–11, Pub. L. 89–73, title III, § 375, as added Pub. L. 106–501, title III, § 316(2), Nov. 13, 2000, 114 Stat. 2256, provided for an innovation grant program.

Section 3030s–12, Pub. L. 89–73, title III, § 376, as added Pub. L. 106–501, title III, § 316(2), Nov. 13, 2000, 114 Stat. 2257, directed Assistant Secretary to carry out activities of national significance to promote quality and continuous improvement in the support provided to family and other informal caregivers of older individuals.

SUBCHAPTER IV—ACTIVITIES FOR HEALTH, INDEPENDENCE, AND LONGEVITY

CODIFICATION

Title IV of the Older Americans Act of 1965, comprising this subchapter, was originally enacted by Pub. L. 89–73, title IV, as added Pub. L. 93–29, title IV, § 401, May 3, 1973, 87 Stat. 45, and amended by Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 717; Pub. L. 95–478, Oct. 18, 1978, 92 Stat. 1537; Pub. L. 97–115, § 11(a), Dec. 29, 1981, 95 Stat. 1601. Such title is shown herein, however, as having been added by Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2257, without reference to such intervening amendments because of the extensive revision of the title's provisions by Pub. L. 106–501.

Prior sections 3030aa to 3030jj were omitted in the general amendment of this subchapter by Pub. L. 106–501.

A prior section 3030aa, Pub. L. 89–73, title IV, § 401, as added Pub. L. 98–459, title IV, § 401, Oct. 9, 1984, 98 Stat. 1780; amended Pub. L. 100–175, title I, § 151, Nov. 29, 1987, 101 Stat. 951; Pub. L. 102–375, title IV, § 401, Sept. 30, 1992, 106 Stat. 1243, related to statement of purpose of this subchapter.

A prior section 3030bb, Pub. L. 89–73, title IV, § 402, as added Pub. L. 98–459, title IV, § 401, Oct. 9, 1984, 98 Stat. 1781; amended Pub. L. 100–175, title I, §§ 104(d), 105(d), 134(c)(1), Nov. 29, 1987, 101 Stat. 930, 941; Pub. L. 102–54, § 13(q)(9)(C), June 13, 1991, 105 Stat. 281; Pub. L. 102–321, title I, § 163(c)(2)(C), July 10, 1992, 106 Stat. 377; Pub. L. 102–375, title I, § 102(b)(1)(A), title IV, § 402, title IX, § 904(a)(16), Sept. 30, 1992, 106 Stat. 1200, 1244, 1308; Pub. L. 103–171, §§ 2(14), 3(a)(13), Dec. 2, 1993, 107 Stat. 1989, 1990, related to administration.

A prior section 3030jj, Pub. L. 89–73, title IV, § 410, as added Pub. L. 98–459, title IV, § 402, Oct. 9, 1984, 98 Stat. 1781; amended Pub. L. 100–175, title I, § 134(c)(2), Nov. 29, 1987, 101 Stat. 941; Pub. L. 102–375, title IV, § 403, Sept. 30, 1992, 106 Stat. 1244, related to purpose of former part A of this subchapter.

§ 3031. Purposes

The purposes of this subchapter are—

(1) to expand the Nation's knowledge and understanding of the older population and the aging process;

(2) to design, test, and promote the use of innovative ideas and best practices in programs and services for older individuals;

(3) to help meet the needs for trained personnel in the field of aging; and

(4) to increase awareness of citizens of all ages of the need to assume personal responsibility for their own longevity.

(Pub. L. 89–73, title IV, § 401, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2257.)

PRIOR PROVISIONS

A prior section 3031, Pub. L. 89–73, title IV, § 411, as added Pub. L. 97–115, § 11(a), Dec. 29, 1981, 95 Stat. 1601; amended Pub. L. 98–459, title IV, § 403, Oct. 9, 1984, 98 Stat. 1781; Pub. L. 100–175, title I, §§ 105(e)(1), 134(c)(3), 156(a), Nov. 29, 1987, 101 Stat. 930, 941, 954; Pub. L. 100–628, title VII, § 705(7), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 102–375, title I, § 102(b)(1)(A), (10)(A), (H), title IV, § 404, Sept. 30, 1992, 106 Stat. 1200, 1202, 1244; Pub. L. 103–171, §§ 2(15), 3(a)(13), Dec. 2, 1993, 107 Stat. 1989, 1990, related to purposes and requirements of grants and contracts, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 3031, Pub. L. 89–73, title IV, § 401, as added Pub. L. 93–29, title IV, § 401, May 3, 1973, 87 Stat. 45; amended Pub. L. 95–478, title I, § 104(a)(1), Oct. 18, 1973, 92 Stat. 1537, related to Congressional statement of purpose in developing and implementing a national manpower policy for the field of aging, prior to the general amendment of this subchapter by Pub. L. 97–115.

Another prior section 3031, Pub. L. 89–73, title IV, § 401, July 14, 1965, 79 Stat. 224; Pub. L. 90–42, § 5(b), July 1, 1967, 81 Stat. 107; Pub. L. 91–69, § 7, Sept. 17, 1969, 83 Stat. 111, related to description of activities, prior to repeal by Pub. L. 93–29, title IV, § 401, May 3, 1973, 87 Stat. 45.

A prior section 401 of Pub. L. 89–73 was classified to section 3030aa of this title, prior to the general amendment of this subchapter by Pub. L. 106–501.

PART A—GRANT PROGRAMS

§ 3032. Program authorized

(a) In general

For the purpose of carrying out this section, the Assistant Secretary may make grants to and enter into contracts with States, public agencies, private nonprofit agencies, institutions of higher education, and organizations, including tribal organizations, for—

(1) education and training to develop an adequately trained workforce to work with and on behalf of older individuals;

(2) applied social research and analysis to improve access to and delivery of services for older individuals;

(3) evaluation of the performance of the programs, activities, and services provided under this section;

(4) the development of methods and practices to improve the quality and effectiveness of the programs, services, and activities provided under this section;

(5) the demonstration of new approaches to design, deliver, and coordinate programs and services for older individuals;

(6) technical assistance in planning, developing, implementing, and improving the programs, services, and activities provided under this section;

(7) coordination with the designated State agency described in section 101(a)(2)(A)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(2)(A)(i)) to provide services to older individuals who are blind as described in such Act [29 U.S.C. 701 et seq.];

(8) the training of graduate level professionals specializing in the mental health needs of older individuals;

(9) planning activities to prepare communities for the aging of the population, which activities may include—

(A) efforts to assess the aging population;

(B) activities to coordinate the activities of State and local agencies in order to meet the needs of older individuals; and

(C) training and technical assistance to support States, area agencies on aging, and organizations receiving grants under subchapter X, in engaging in community planning activities;

(10) the development, implementation, and assessment of technology-based service models and best practices, to support the use of health monitoring and assessment technologies, communication devices, assistive technologies, and other technologies that may remotely connect family and professional caregivers to frail older individuals residing in home and community-based settings or rural areas;

(11) conducting activities of national significance to promote quality and continuous improvement in the support provided to family and other informal caregivers of older individuals through activities that include program evaluation, training, technical assistance, and research, including—

(A) programs addressing unique issues faced by rural caregivers;

(B) programs focusing on the needs of older individuals with cognitive impairment such as Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and their caregivers; and

(C) programs supporting caregivers in the role they play in providing disease prevention and health promotion services;

(12) building public awareness of cognitive impairments such as Alzheimer's disease and related disorders with neurological and organic brain dysfunction, depression, and mental disorders; and

(13) any other activities that the Assistant Secretary determines will achieve the objectives of this section.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.

(Pub. L. 89–73, title IV, § 411, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2257; amended Pub. L. 109–365, title IV, § 402, Oct. 17, 2006, 120 Stat. 2552.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (a)(7), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 3032, Pub. L. 89–73, title IV, § 412, as added Pub. L. 97–115, § 11(a), Dec. 29, 1981, 95 Stat. 1601; amended Pub. L. 98–459, title IV, § 404, Oct. 9, 1984, 98 Stat. 1782; Pub. L. 100–175, title I, §§ 105(e)(2), 134(c)(4), 146(c), 156(b), Nov. 29, 1987, 101 Stat. 930, 941, 950, 954; Pub. L. 102–375, title I, § 102(b)(10)(I), title IV, § 405, title IX, § 904(a)(17), Sept. 30, 1992, 106 Stat. 1202, 1245, 1308; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to establishment and support of multidisciplinary centers of gerontology and gerontology centers of special emphasis, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 3032, Pub. L. 89–73, title IV, § 402, as added Pub. L. 93–29, title IV, § 401, May 3, 1973, 87 Stat. 45; amended Pub. L. 95–478, title I, § 104(a)(2), Oct. 18, 1978, 92 Stat. 1537, related to appraisal and assessment of personnel needs of field of aging, prior to the general amendment of this subchapter by Pub. L. 97–115.

Another prior section 3032, Pub. L. 89–73, title IV, § 402, July 14, 1965, 79 Stat. 224, related to payments of grants, providing in: subsec. (a) for contribution by recipients; subsec. (b) adjustments, advances or reimbursement, installments and conditions; and subsec. (c) consultation of Secretary with State agency prior to making grants or contracts, prior to repeal by Pub. L. 93–29, title IV, § 401, May 3, 1973, 87 Stat. 45.

A prior section 411 of Pub. L. 89–73 was classified to section 3031 of this title, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 411 of Pub. L. 89–73 was classified to section 3035 of this title, prior to the general amendment of this subchapter by Pub. L. 97–115.

AMENDMENTS

2006—Subsec. (a)(9) to (13). Pub. L. 109–365, § 402(1), added pars. (9) to (12) and redesignated former par. (9) as (13).

Subsec. (b). Pub. L. 109–365, § 402(2), substituted "years 2007, 2008, 2009, 2010, and 2011" for "year 2001, and such sums as may be necessary for subsequent fiscal years".

§ 3032a. Career preparation for the field of aging

(a) Grants

The Assistant Secretary shall make grants to institutions of higher education, including historically Black colleges or universities, Hispanic-serving institutions, and Hispanic Centers of Excellence in Applied Gerontology, to provide education and training that prepares students for careers in the field of aging.

(b) Definitions

For purposes of subsection (a) of this section:

(1) Hispanic Center of Excellence in Applied Gerontology

The term "Hispanic Center of Excellence in Applied Gerontology" means an institution of higher education with a program in applied gerontology that—

(A) has a significant number of Hispanic individuals enrolled in the program, including individuals accepted for enrollment in the program;

(B) has been effective in assisting Hispanic students of the program to complete the program and receive the degree involved;

(C) has been effective in recruiting Hispanic individuals to attend the program, including providing scholarships and other financial assistance to such individuals and encouraging Hispanic students of secondary educational institutions to attend the program; and

(D) has made significant recruitment efforts to increase the number and placement of Hispanic individuals serving in faculty or administrative positions in the program.

(2) Historically Black college or university

The term "historically Black college or university" has the meaning given the term "part B institution" in section 1061(2) of title 20.

(Pub. L. 89–73, title IV, § 412, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2258; amended Pub. L. 109–365, title IV, § 403, Oct. 17, 2006, 120 Stat. 2553.)

PRIOR PROVISIONS

A prior section 412 of Pub. L. 89–73 was classified to section 3032 of this title, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 412 of Pub. L. 89–73 was classified to section 3035a of this title, prior to repeal by Pub. L. 95–478, title I, § 104(b)(3), Oct. 18, 1978, 92 Stat. 1539.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–365 amended subsec. (a) generally. Prior to amendment, text read as follows: "The Assistant Secretary shall make grants to institutions of higher education, historically Black colleges or universities, Hispanic Centers of Excellence in Applied Gerontology, and other educational institutions that serve the needs of minority students, to provide education and training to prepare students for careers in the field of aging."

§ 3032b. Older individuals' protection from violence projects

(a) Program authorized

The Assistant Secretary shall make grants to States, area agencies on aging, nonprofit organizations, or tribal organizations to carry out the activities described in subsection (b) of this section.

(b) Activities

A State, an area agency on aging, a nonprofit organization, or a tribal organization that re-

ceives a grant under subsection (a) of this section shall use such grant to—

(1) support projects in local communities, involving diverse sectors of each community, to coordinate activities concerning intervention in and prevention of elder abuse, neglect, and exploitation, including family violence and sexual assault, against older individuals;

(2) develop and implement outreach programs directed toward assisting older individuals who are victims of elder abuse, neglect, and exploitation (including family violence and sexual assault, against older individuals), including programs directed toward assisting the individuals in senior housing complexes, nursing homes, board and care facilities, and senior centers;

(3) expand access to family violence and sexual assault programs (including shelters, rape crisis centers, and support groups), including mental health services, safety planning and legal advocacy for older individuals and encourage the use of senior housing, hotels, or other suitable facilities or services when appropriate as emergency short-term shelters for older individuals who are the victims of elder abuse, including family violence and sexual assault; or

(4) promote research on legal, organizational, or training impediments to providing services to older individuals through shelters and other programs, such as impediments to provision of services in coordination with delivery of health care or services delivered under this chapter.

(c) Preference

In awarding grants under subsection (a) of this section, the Assistant Secretary shall give preference to a State, an area agency on aging, a nonprofit organization, or a tribal organization that has the ability to carry out the activities described in this section and subchapter XI of this chapter.

(d) Coordination

The Assistant Secretary shall encourage each State, area agency on aging, nonprofit organization, and tribal organization that receives a grant under subsection (a) of this section to coordinate activities provided under this section with activities provided by other area agencies on aging, tribal organizations, State adult protective service programs, private nonprofit organizations, and by other entities receiving funds under subchapter XI of this chapter.

(Pub. L. 89–73, title IV, § 413, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2259.)

§ 3032c. Health care service demonstration projects in rural areas

(a) Authority

The Assistant Secretary, after consultation with the State agency of the State involved, shall make grants to eligible public agencies and nonprofit private organizations to pay part or all of the cost of developing or operating model health care service projects (including related home health care services, adult day health care, mental health services, outreach, and transportation) through multipurpose senior centers that are located in rural areas and that provide nutrition services under section 3030e of this title, to meet the health care needs of medically underserved older individuals residing in such areas.

(b) Eligibility

To be eligible to receive a grant under subsection (a) of this section, a public agency or nonprofit private organization shall submit to the Assistant Secretary an application containing such information and assurances as the Secretary may require, including—

(1) information describing the nature and extent of the applicant's—

(A) experience in providing medical services of the type to be provided in the project for which a grant is requested; and

(B) coordination and cooperation with—

(i) institutions of higher education having graduate programs with capability in public health, mental health, the medical sciences, psychology, pharmacology, nursing, social work, health education, nutrition, or gerontology, for the purpose of designing and developing such project; and

(ii) critical access hospitals (as defined in section 1395x(mm)(1) of this title and rural health clinics (as defined in section 1395x(aa)(2) of this title);

(2) assurances that the applicant will carry out the project for which a grant is requested, through a multipurpose senior center located—

(A)(i) in a rural area that has a population of less than 5,000; or

(ii) in a county that has fewer than seven individuals per square mile; and

(B) in a State in which—

(i) not less than 33⅓ of the population resides in rural areas; and

(ii) not less than 5 percent of the population resides in counties with fewer than seven individuals per square mile,

as defined by and determined in accordance with the most recent data available from the Bureau of the Census; and

(3) assurances that the applicant will submit to the Assistant Secretary such evaluations and reports as the Assistant Secretary may require.

(c) Reports

The Assistant Secretary shall prepare and submit to the appropriate committees of Congress a report that includes summaries of the evaluations and reports required under subsection (b) of this section.

(Pub. L. 89–73, title IV, § 414, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2259; amended Pub. L. 109–365, title IV, § 404, Oct. 17, 2006, 120 Stat. 2553.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–365, § 404(1), inserted ''mental health services,'' after ''adult day health care,''.

Subsec. (b)(1)(B)(i). Pub. L. 109–365, § 404(2), inserted ''mental health,'' after ''public health,''.

§ 3032d. Computer training

(a) Program authorized

The Assistant Secretary, in consultation with the Assistant Secretary of Commerce for Communications and Information, may award grants or contracts to entities to provide computer training and enhanced Internet access for older individuals.

(b) Priority

If the Assistant Secretary awards grants under subsection (a) of this section, the Assistant Secretary shall give priority to an entity that—

(1) will provide services to older individuals living in rural areas;

(2) has demonstrated expertise in providing computer training to older individuals; or

(3) has demonstrated that it has a variety of training delivery methods, including facility-based, computer-based, and Internet-based training, that may facilitate a determination of the best method of training older individuals.

(c) Special consideration

In awarding grants under this section, the Assistant Secretary shall give special consideration to applicants that have entered into a partnership with one or more private entities providing such applicants with donated information technologies including software, hardware, or training.

(d) Use of funds

An entity that receives a grant or contract under subsection (a) of this section shall use funds received under such grant or contract to provide training for older individuals that—

(1) relates to the use of computers and related equipment, in order to improve the self-employment and employment-related technology skills of older individuals, as well as their ability to use the Internet; and

(2) is provided at senior centers, housing facilities for older individuals, elementary schools, secondary schools, and institutions of higher education.

(Pub. L. 89–73, title IV, § 415, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2260.)

§ 3032e. Technical assistance and innovation to improve transportation for older individuals

(a) In general

The Secretary may award grants or contracts to nonprofit organizations to improve transportation services for older individuals.

(b) Use of funds

(1) In general

A nonprofit organization receiving a grant or contract under subsection (a) shall use the funds received through such grant or contract to carry out a demonstration project, or to provide technical assistance to assist local transit providers, area agencies on aging, senior centers, and local senior support groups, to encourage and facilitate coordination of Federal, State, and local transportation services and resources for older individuals. The organization may use the funds to develop and carry out an innovative transportation demonstration project to create transportation services for older individuals.

(2) Specific activities

In carrying out a demonstration project or providing technical assistance under paragraph (1) the organization may carry out activities that include—

(A) developing innovative approaches for improving access by older individuals to transportation services, including volunteer driver programs, economically sustainable transportation programs, and programs that allow older individuals to transfer their automobiles to a provider of transportation services in exchange for the services;

(B) preparing information on transportation options and resources for older individuals and organizations serving such individuals, and disseminating the information by establishing and operating a toll-free telephone number;

(C) developing models and best practices for providing comprehensive integrated transportation services for older individuals, including services administered by the Secretary of Transportation, by providing ongoing technical assistance to agencies providing services under subchapter III and by assisting in coordination of public and community transportation services; and

(D) providing special services to link older individuals to transportation services not provided under subchapter III.

(c) Economically sustainable transportation

In this section, the term ''economically sustainable transportation'' means demand responsive transportation for older individuals—

(1) that may be provided through volunteers; and

(2) that the provider will provide without receiving Federal or other public financial assistance, after a period of not more than 5 years of providing the services under this section.

(Pub. L. 89–73, title IV, § 416, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2261; amended Pub. L. 109–365, title IV, § 405, Oct. 17, 2006, 120 Stat. 2554.)

AMENDMENTS

2006—Pub. L. 109–365 amended section generally. Prior to amendment, text consisted of subsecs. (a) and (b) relating to grants and contracts to provide technical assistance to improve transportation for seniors.

§ 3032f. Demonstration, support, and research projects for multigenerational and civic engagement activities

(a) Grants and contracts

The Assistant Secretary shall award grants and enter into contracts with eligible organizations to carry out projects to—

(1) provide opportunities for older individuals to participate in multigenerational activities and civic engagement activities designed to meet critical community needs, and use the full range of time, skills, and experi-

ence of older individuals, including demonstration and support projects that—

(A) provide support for grandparents and other older individuals who are relative caregivers raising children (such as kinship navigator programs); or

(B) involve volunteers who are older individuals who provide support and information to families who have a child with a disability or chronic illness, or other families in need of such family support; and

(2) coordinate multigenerational activities and civic engagement activities, promote volunteerism, and facilitate development of and participation in multigenerational activities and civic engagement activities.

(b) Use of funds

An eligible organization shall use funds made available under a grant awarded, or a contract entered into, under this section to—

(1) carry out a project described in subsection (a); and

(2) evaluate the project in accordance with subsection (f).

(c) Preference

In awarding grants and entering into contracts to carry out a project described in subsection (a), the Assistant Secretary shall give preference to—

(1) eligible organizations with a demonstrated record of carrying out multigenerational activities or civic engagement activities;

(2) eligible organizations proposing multigenerational activity projects that will serve older individuals and communities with the greatest need (with particular attention to low-income minority individuals, older individuals with limited English proficiency, older individuals residing in rural areas, and low-income minority communities);

(3) eligible organizations proposing civic engagement projects that will serve communities with the greatest need; and

(4) eligible organizations with the capacity to develop meaningful roles and assignments that use the time, skills, and experience of older individuals to serve public and nonprofit organizations.

(d) Application

To be eligible to receive a grant or enter into a contract under subsection (a), an organization shall submit an application to the Assistant Secretary at such time, in such manner, and accompanied by such information as the Assistant Secretary may reasonably require.

(e) Eligible organizations

Organizations eligible to receive a grant or enter into a contract under subsection (a)—

(1) to carry out activities described in subsection (a)(1), shall be organizations that provide opportunities for older individuals to participate in activities described in subsection (a)(1); and

(2) to carry out activities described in subsection (a)(2), shall be organizations with the capacity to conduct the coordination, promotion, and facilitation described in subsection (a)(2), through the use of multigenerational coordinators.

(f) Local evaluation and report

(1) Evaluation

Each organization receiving a grant or a contract under subsection (a) to carry out a project described in subsection (a) shall evaluate the multigenerational activities or civic engagement activities carried out under the project to determine—

(A) the effectiveness of the activities involved;

(B) the impact of such activities on the community being served and the organization providing the activities; and

(C) the impact of such activities on older individuals involved in such project.

(2) Report

The organization shall submit a report to the Assistant Secretary containing the evaluation not later than 6 months after the expiration of the period for which the grant or contract is in effect.

(g) Report to Congress

Not later than 6 months after the Assistant Secretary receives the reports described in subsection (f)(2), the Assistant Secretary shall prepare and submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that assesses the evaluations and includes, at a minimum—

(1) the names or descriptive titles of the projects funded under subsection (a);

(2) a description of the nature and operation of the projects;

(3) the names and addresses of organizations that conducted the projects;

(4) in the case of projects carried out under subsection (a)(1), a description of the methods and success of the projects in recruiting older individuals as employees and as volunteers to participate in the projects;

(5) in the case of projects carried out under subsection (a)(1), a description of the success of the projects in retaining older individuals participating in the projects as employees and as volunteers;

(6) in the case of projects carried out under subsection (a)(1), the rate of turnover of older individual employees and volunteers in the projects;

(7) a strategy for disseminating the findings resulting from the projects described in paragraph (1); and

(8) any policy change recommendations relating to the projects.

(h) Definitions

As used in this section:

(1) Multigenerational activity

The term ''multigenerational activity'' means an activity that provides an opportunity for interaction between 2 or more individuals of different generations, including activities connecting older individuals and youth in a child care program, a youth day care program, an educational assistance program, an at-risk youth intervention program,

a juvenile delinquency treatment program, a before- or after-school program, a library program, or a family support program.

(2) Multigenerational coordinator

The term ''multigenerational coordinator'' means a person who—

(A) builds the capacity of public and nonprofit organizations to develop meaningful roles and assignments, that use the time, skill, and experience of older individuals to serve those organizations; and

(B) nurtures productive, sustainable working relationships between—

(i) individuals from the generations with older individuals; and

(ii) individuals in younger generations.

(Pub. L. 89–73, title IV, § 417, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2261; amended Pub. L. 109–365, title IV, § 406, Oct. 17, 2006, 120 Stat. 2555.)

AMENDMENTS

2006—Pub. L. 109–365 amended section generally, substituting provisions relating to demonstration, support, and research projects for multigenerational and civic engagement activities for provisions relating to demonstration projects for multigenerational activities.

§ 3032g. Native American programs

(a) Establishment

(1) In general

The Assistant Secretary shall make grants or enter into contracts with not fewer than two and not more than four eligible entities to establish and operate Resource Centers on Native American Elders (referred to in this section as ''Resource Centers''). The Assistant Secretary shall make such grants or enter into such contracts for periods of not less than 3 years.

(2) Functions

(A) In general

Each Resource Center that receives funds under this section shall—

(i) gather information;

(ii) perform research;

(iii) provide for the dissemination of results of the research; and

(iv) provide technical assistance and training to entities that provide services to Native Americans who are older individuals.

(B) Areas of concern

In conducting the functions described in subparagraph (A), a Resource Center shall focus on priority areas of concern for the Resource Centers regarding Native Americans who are older individuals, which areas shall be—

(i) health (including mental health) problems;

(ii) long-term care, including in-home care;

(iii) elder abuse; and

(iv) other problems and issues that the Assistant Secretary determines are of particular importance to Native Americans who are older individuals.

(3) Preference

In awarding grants and entering into contracts under paragraph (1), the Assistant Secretary shall give preference to institutions of higher education that have conducted research on, and assessments of, the characteristics and needs of Native Americans who are older individuals.

(4) Consultation

In determining the type of information to be sought from, and activities to be performed by, Resource Centers, the Assistant Secretary shall consult with the Director of the Office for American Indian, Alaskan Native, and Native Hawaiian Aging and with national organizations with special expertise in serving Native Americans who are older individuals.

(5) Eligible entities

To be eligible to receive a grant or enter into a contract under paragraph (1), an entity shall be an institution of higher education with experience conducting research and assessment on the needs of older individuals.

(6) Report to Congress

The Assistant Secretary, with assistance from each Resource Center, shall prepare and submit to the Speaker of the House of Representatives and the President pro tempore of the Senate an annual report on the status and needs, including the priority areas of concern, of Native Americans who are older individuals.

(b) Training grants

The Assistant Secretary shall make grants and enter into contracts to provide in-service training opportunities and courses of instruction on aging to Indian tribes through public or nonprofit Indian aging organizations and to provide annually a national meeting to train directors of programs under this subchapter.

(Pub. L. 89–73, title IV, § 418, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2263; amended Pub. L. 109–365, title IV, § 407, Oct. 17, 2006, 120 Stat. 2557.)

AMENDMENTS

2006—Subsec. (a)(2)(B)(i). Pub. L. 109–365 inserted ''(including mental health)'' after ''health''.

§ 3032h. Multidisciplinary centers and multidisciplinary systems

(a) Multidisciplinary centers

(1) Program authorized

The Assistant Secretary may make grants to public and private nonprofit agencies, organizations, and institutions for the purpose of establishing or supporting multidisciplinary centers of gerontology, and gerontology centers of special emphasis (including emphasis on nutrition, employment, health (including mental health), disabilities (including severe disabilities), income maintenance, counseling services, supportive services, minority populations, diverse populations of older individuals residing in urban communities, and older individuals residing in rural areas).

(2) Use of funds

(A) In general

The centers described in paragraph (1) shall conduct research and policy analysis and function as a technical resource for the Assistant Secretary, policymakers, service providers, and Congress.

(B) Multidisciplinary centers

The multidisciplinary centers of gerontology described in paragraph (1) shall—

(i) recruit and train personnel;

(ii) conduct basic and applied research toward the development of information related to aging;

(iii) stimulate the incorporation of information on aging into the teaching of biological, behavioral, and social sciences at colleges and universities;

(iv) help to develop training programs in the field of aging at schools of public health, education, social work, and psychology, and other appropriate schools within colleges and universities;

(v) serve as a repository of information and knowledge on aging, including information about best practices in long-term care service delivery, housing, and transportation;

(vi) provide information and other technical assistance to public and voluntary organizations, including State agencies and area agencies on aging, which serve the needs of older individuals in planning and developing services provided under other provisions of this chapter;

(vii) if appropriate, provide information relating to assistive technology; and

(viii) provide training and technical assistance to support the provision of community-based mental health services for older individuals.

(3) Data

(A) In general

Each center that receives a grant under paragraph (1) shall provide data to the Assistant Secretary on the projects and activities carried out with funds received under such paragraph.

(B) Information included

Such data described in subparagraph (A) shall include—

(i) information on the number of personnel trained;

(ii) information on the number of older individuals served;

(iii) information on the number of schools assisted; and

(iv) other information that will facilitate achieving the objectives of this subsection.

(b) Multidisciplinary health services in communities

(1) Program authorized

The Assistant Secretary shall make grants to States, on a competitive basis, for the development and operation of—

(A) systems for the delivery of mental health screening and treatment services for older individuals who lack access to such services; and

(B) programs to—

(i) increase public awareness regarding the benefits of prevention and treatment of mental disorders in older individuals;

(ii) reduce the stigma associated with mental disorders in older individuals and other barriers to the diagnosis and treatment of the disorders; and

(iii) reduce age-related prejudice and discrimination regarding mental disorders in older individuals.

(2) Application

To be eligible to receive a grant under this subsection for a State, a State agency shall submit an application to the Assistant Secretary at such time, in such manner, and containing such information as the Assistant Secretary may require.

(3) State allocation and priorities

A State agency that receives funds through a grant made under this subsection shall allocate the funds to area agencies on aging to carry out this subsection in planning and service areas in the State. In allocating the funds, the State agency shall give priority to planning and service areas in the State—

(A) that are medically underserved; and

(B) in which there are large numbers of older individuals.

(4) Area coordination of services with other providers

In carrying out this subsection, to more efficiently and effectively deliver services to older individuals, each area agency on aging shall—

(A) coordinate services described in subparagraphs (A) and (B) of paragraph (1) with such services or similar or related services of other community agencies, and voluntary organizations; and

(B) to the greatest extent practicable, integrate outreach and educational activities with such activities of existing (as of the date of the integration) social service and health care (including mental health) providers serving older individuals in the planning and service area involved.

(5) Relationship to other funding sources

Funds made available under this subsection shall supplement, and not supplant, any Federal, State, and local funds expended by a State or unit of general purpose local government (including an area agency on aging) to provide the services described in subparagraphs (A) and (B) of paragraph (1).

(6) Definition

In this subsection, the term ''mental health screening and treatment services'' means patient screening, diagnostic services, care planning and oversight, therapeutic interventions, and referrals, that are—

(A) provided pursuant to evidence-based intervention and treatment protocols (to the extent such protocols are available) for mental disorders prevalent in older individuals; and

(B) coordinated and integrated with the services of social service and health care (including mental health) providers in an area in order to—

(i) improve patient outcomes; and

(ii) ensure, to the maximum extent feasible, the continuing independence of older individuals who are residing in the area.

(Pub. L. 89–73, title IV, § 419, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2264; amended Pub. L. 109–365, title IV, § 408, Oct. 17, 2006, 120 Stat. 2557.)

AMENDMENTS

2006—Pub. L. 109–365, § 408(1)–(6), substituted ''Multidisciplinary centers and multidisciplinary systems'' for ''Multidisciplinary centers'' in section catchline, redesignated subsecs. (a) to (c) as pars. (1) to (3), respectively, of subsec. (a), in subsec. (a) inserted heading, redesignated former pars. and subpars. as subpars. and cls., respectively, made conforming amendments to internal references, and realigned margins.

Subsec. (a)(1). Pub. L. 109–365, § 408(7)(A), inserted ''diverse populations of older individuals residing in urban communities,'' after ''minority populations,''.

Subsec. (a)(2). Pub. L. 109–365, § 408(7)(B), (C), in cl. (v) inserted '', including information about best practices in long-term care service delivery, housing, and transportation'' before semicolon at end, in cl. (vi) substituted ''information and other technical assistance'' for ''consultation and information'', and added cl. (viii).

Subsec. (b). Pub. L. 109–365, § 408(8), added subsec. (b). Former subsec. (b) redesignated (a)(2).

§ 3032i. Demonstration and support projects for legal assistance for older individuals

(a) Program authorized

The Assistant Secretary shall make grants and enter into contracts, in order to—

(1) provide a national legal assistance support system (operated by one or more grantees or contractors) of activities to State and area agencies on aging for providing, developing, or supporting legal assistance for older individuals, including—

(A) case consultations;

(B) training;

(C) provision of substantive legal advice and assistance; and

(D) assistance in the design, implementation, and administration of legal assistance delivery systems to local providers of legal assistance for older individuals; and

(2) support demonstration projects to expand or improve the delivery of legal assistance to older individuals with social or economic needs.

(b) Assurances

Any grants or contracts made under subsection (a)(2) of this section shall contain assurances that the requirements of section 3027(a)(11) of this title are met.

(c) Assistance

To carry out subsection (a)(1) of this section, the Assistant Secretary shall make grants to or enter into contracts with national nonprofit organizations experienced in providing support and technical assistance on a nationwide basis to States, area agencies on aging, legal assistance providers, ombudsmen, elder abuse prevention programs, and other organizations interested in the legal rights of older individuals.

(Pub. L. 89–73, title IV, § 420, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2265.)

PRIOR PROVISIONS

A prior section 420 of Pub. L. 89–73 was classified to section 3034 of this title, prior to the general amendment of this subchapter by Pub. L. 106–501.

§ 3032j. Ombudsman and advocacy demonstration projects

(a) Program authorized

The Assistant Secretary shall award grants to not fewer than three and not more than 10 States to conduct demonstrations and evaluate cooperative projects between the State long-term care ombudsman program, legal assistance agencies, and the State protection and advocacy systems for individuals with developmental disabilities and individuals with mental illness, established under part C of the Developmental Disabilities Assistance and Bill of Rights Act[1] (42 U.S.C. 6041 et seq.) and under the Protection and Advocacy for Mentally Ill Individuals Act of 1986[1] (42 U.S.C. 10801 et seq.).

(b) Report

The Assistant Secretary shall prepare and submit to Congress a report containing the results of the evaluation required by subsection (a) of this section. Such report shall contain such recommendations as the Assistant Secretary determines to be appropriate.

(Pub. L. 89–73, title IV, § 421, as added Pub. L. 106–501, title IV, § 401, Nov. 13, 2000, 114 Stat. 2265.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (a), is title I of Pub. L. 88–164, Oct. 31, 1963, 77 Stat. 282, as amended generally by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, as further amended, which was repealed by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. Part C of the Act was classified generally to subchapter III (§ 6041 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (a), was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

PRIOR PROVISIONS

A prior section 421 of Pub. L. 89–73 was classified to section 3035 of this title, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 421 of Pub. L. 89–73 was classified to section 3035b of this title, prior to the general amendment of this subchapter by Pub. L. 97–115.

§ 3032k. Community innovations for aging in place

(a) Definitions

In this section:

[1] See References in Text note below.

(1) Eligible entity

The term ''eligible entity''—

(A) means a nonprofit health or social service organization, a community-based nonprofit organization, an area agency on aging or other local government agency, a tribal organization, or another entity that—

(i) the Assistant Secretary determines to be appropriate to carry out a project under this part; and

(ii) demonstrates a record of, and experience in, providing or administering group and individual health and social services for older individuals; and

(B) does not include an entity providing housing under the congregate housing services program carried out under section 8011 of this title or the multifamily service coordinator program carried out under section 1701q(g) of title 12.

(2) Naturally Occurring Retirement Community

The term ''Naturally Occurring Retirement Community'' means a community with a concentrated population of older individuals, which may include a residential building, a housing complex, an area (including a rural area) of single family residences, or a neighborhood composed of age-integrated housing—

(A) where—

(i) 40 percent of the heads of households are older individuals; or

(ii) a critical mass of older individuals exists, based on local factors that, taken in total, allow an organization to achieve efficiencies in the provision of health and social services to older individuals living in the community; and

(B) that is not an institutional care or assisted living setting.

(b) Grants

(1) In general

The Assistant Secretary shall make grants, on a competitive basis, to eligible entities to develop and carry out model aging in place projects. The projects shall promote aging in place for older individuals (including such individuals who reside in Naturally Occurring Retirement Communities), in order to sustain the independence of older individuals. A recipient of a grant under this subsection shall identify innovative strategies for providing, and linking older individuals to programs and services that provide, comprehensive and coordinated health and social services to sustain the quality of life of older individuals and support aging in place.

(2) Grant periods

The Assistant Secretary shall make the grants for periods of 3 years.

(c) Applications

(1) In general

To be eligible to receive a grant under subsection (b) for a project, an entity shall submit an application to the Assistant Secretary at such time, in such manner, and containing such information as the Assistant Secretary may require.

(2) Contents

The application shall include—

(A) a detailed description of the entity's experience in providing services to older individuals in age-integrated settings;

(B) a definition of the contiguous service area and a description of the project area in which the older individuals reside or carry out activities to sustain their well-being;

(C) the results of a needs assessment that identifies—

(i) existing (as of the date of the assessment) community-based health and social services available to individuals residing in the project area;

(ii) the strengths and gaps of such existing services in the project area;

(iii) the needs of older individuals who reside in the project area; and

(iv) services not being delivered that would promote aging in place and contribute to the well-being of older individuals residing in the project area;

(D) a plan for the development and implementation of an innovative model for service coordination and delivery within the project area;

(E) a description of how the plan described in subparagraph (D) will enhance existing services described in subparagraph (C)(i) and support the goal of this section to promote aging in place;

(F) a description of proposed actions by the entity to prevent the duplication of services funded under a provision of this chapter, other than this section, and a description of how the entity will cooperate, and coordinate planning and services (including any formal agreements), with agencies and organizations that provide publicly supported services for older individuals in the project area, including the State agency and area agencies on aging with planning and service areas in the project area;

(G) an assurance that the entity will seek to establish cooperative relationships with interested local entities, including private agencies and businesses that provide health and social services, housing entities, community development organizations, philanthropic organizations, foundations, and other non-Federal entities;

(H) a description of the entity's protocol for referral of residents who may require long-term care services, including coordination with local agencies, including area agencies on aging and Aging and Disability Resource Centers that serve as single points of entry to public services;

(I) a description of how the entity will offer opportunities for older individuals to be involved in the governance, oversight, and operation of the project;

(J) an assurance that the entity will submit to the Assistant Secretary such evaluations and reports as the Assistant Secretary may require; and

(K) a plan for long-term sustainability of the project.

(d) Use of funds

(1) In general

An eligible entity that receives a grant under subsection (b) shall use the funds made available through the grant to—

(A) ensure access by older individuals in the project area to community-based health and social services consisting of—

(i) case management, case assistance, and social work services;

(ii) health care management and health care assistance, including disease prevention and health promotion services;

(iii) education, socialization, and recreational activities; and

(iv) volunteer opportunities for project participants;

(B) conduct outreach to older individuals within the project area; and

(C) develop and implement innovative, comprehensive, and cost-effective approaches for the delivery and coordination of community-based health and social services, including those identified in subparagraph (A)(iv), which may include mental health services, for eligible older individuals.

(2) Coordination

An eligible entity receiving a grant under subsection (b) for a project shall coordinate activities with organizations providing services funded under subchapter III to support such services for or facilitate the delivery of such services to eligible older individuals served by the project.

(3) Preference

In carrying out an aging in place project, an eligible entity shall, to the extent practicable, serve a community of low-income individuals and operate or locate the project and services in or in close proximity to a location where a large concentration of older individuals has aged in place and resided, such as a Naturally Occurring Retirement Community.

(4) Supplement not supplant

Funds made available to an eligible entity under subsection (b) shall be used to supplement, not supplant, any Federal, State, or other funds otherwise available to the entity to provide health and social services to eligible older individuals.

(e) Competitive grants for technical assistance

(1) Grants

The Assistant Secretary shall (or shall make a grant, on a competitive basis, to an eligible nonprofit organization, to enable the organization to)—

(A) provide technical assistance to recipients of grants under subsection (b); and

(B) carry out other duties, as determined by the Assistant Secretary.

(2) Eligible organization

To be eligible to receive a grant under this subsection, an organization shall be a nonprofit organization (including a partnership of nonprofit organizations), that—

(A) has experience and expertise in providing technical assistance to a range of entities serving older individuals and experience evaluating and reporting on programs; and

(B) has demonstrated knowledge of and expertise in community-based health and social services.

(3) Application

To be eligible to receive a grant under this subsection, an organization (including a partnership of nonprofit organizations) shall submit an application to the Assistant Secretary at such time, in such manner, and containing such information as the Assistant Secretary may require, including an assurance that the organization will submit to the Assistant Secretary such evaluations and reports as the Assistant Secretary may require.

(f) Report

The Assistant Secretary shall annually prepare and submit a report to Congress that shall include—

(1) the findings resulting from the evaluations of the model projects conducted under this section;

(2) a description of recommended best practices regarding carrying out health and social service projects for older individuals aging in place; and

(3) recommendations for legislative or administrative action, as the Assistant Secretary determines appropriate.

(Pub. L. 89–73, title IV, § 422, as added Pub. L. 109–365, title IV, § 409, Oct. 17, 2006, 120 Stat. 2559.)

PRIOR PROVISIONS

A prior section 422 of Pub. L. 89–73 was classified to section 3035a of this title prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 422 of Pub. L. 89–73 was classified to section 3035c of this title prior to the general amendment of this subchapter by Pub. L. 97–115.

PART B—GENERAL PROVISIONS

§ 3033. Payment of grants

(a) Contributions

To the extent the Assistant Secretary determines a contribution to be appropriate, the Assistant Secretary shall require the recipient of any grant or contract under this subchapter to contribute money, facilities, or services for carrying out the project for which such grant or contract was made.

(b) Payments

Payments under this subchapter pursuant to a grant or contract may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Assistant Secretary may determine.

(c) Consultation

The Assistant Secretary shall make no grant or contract under this subchapter in any State that has established or designated a State agency for purposes of subchapter III of this chapter unless the Assistant Secretary—

(1) consults with the State agency prior to issuing the grant or contract; and

(2) informs the State agency of the purposes of the grant or contract when the grant or contract is issued.

(Pub. L. 89–73, title IV, §431, as added Pub. L. 106–501, title IV, §401, Nov. 13, 2000, 114 Stat. 2265.)

PRIOR PROVISIONS

A prior section 3033, Pub. L. 89–73, title IV, §403, as added Pub. L. 93–29, title IV, §401, May 3, 1973, 87 Stat. 46; amended Pub. L. 94–135, title I, §109, Nov. 28, 1975, 89 Stat. 717; Pub. L. 95–478, title I, §104(a)(3), Oct. 18, 1978, 92 Stat. 1537, related to task of attracting qualified persons to field of aging, prior to the general amendment of this subchapter by Pub. L. 97–115.

A prior section 431 of Pub. L. 89–73 was classified to section 3037 of this title, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 431 of Pub. L. 89–73 was classified to section 3035g of this title, prior to the general amendment of this subchapter by Pub. L. 97–115.

Another prior section 431 of Pub. L. 89–73 was renumbered section 451, and was classified to section 3037 of this title, prior to the general amendment of this subchapter by Pub. L. 97–115.

§3033a. Responsibilities of Assistant Secretary

(a) In general

The Assistant Secretary shall be responsible for the administration, implementation, and making of grants and contracts under this subchapter and shall not delegate authority under this subchapter to any other individual, agency, or organization.

(b) Report

(1) In general

Not later than January 1 following each fiscal year, the Assistant Secretary shall submit, to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report for such fiscal year that describes each project and each program—

(A) for which funds were provided under this subchapter; and

(B) that was completed in the fiscal year for which such report is prepared.

(2) Contents

Such report shall contain—

(A) the name or descriptive title of each project or program;

(B) the name and address of the individual or governmental entity that conducted such project or program;

(C) a specification of the period throughout which such project or program was conducted;

(D) the identity of each source of funds expended to carry out such project or program and the amount of funds provided by each such source;

(E) an abstract describing the nature and operation of such project or program; and

(F) a bibliography identifying all published information relating to such project or program.

(c) Evaluations

(1) In general

The Assistant Secretary shall establish by regulation and implement a process to evaluate the results of projects and programs carried out under this subchapter.

(2) Results

The Assistant Secretary shall—

(A) make available to the public the results of each evaluation carried out under paragraph (1); and

(B) use such evaluation to improve services delivered, or the operation of projects and programs carried out, under this chapter, including preparing an analysis of such services, projects, and programs, and of how the evaluation relates to improvements in such services, projects, and programs and in the strategic plan of the Administration.

(Pub. L. 89–73, title IV, §432, as added Pub. L. 106–501, title IV, §401, Nov. 13, 2000, 114 Stat. 2266; amended Pub. L. 109–365, title IV, §410, Oct. 17, 2006, 120 Stat. 2563.)

PRIOR PROVISIONS

A prior section 432 of Pub. L. 89–73 was classified to section 3035h of this title, prior to the general amendment of this subchapter by Pub. L. 97–115.

Prior sections 3034 to 3037b were omitted in the general amendment of this subchapter by Pub. L. 106–501.

Section 3034, Pub. L. 89–73, title IV, §420, as added Pub. L. 98–459, title IV, §405, Oct. 9, 1984, 98 Stat. 1783, related to purpose of former part B of this subchapter.

Another prior section 3034, Pub. L. 89–73, title IV, §404, as added Pub. L. 93–29, title IV, §401, May 3, 1973, 87 Stat. 46; amended Pub. L. 94–135, title I, §110, Nov. 28, 1975, 89 Stat. 718; Pub. L. 95–478, title I, §104(a)(4), title V, §503(c), Oct. 18, 1978, 92 Stat. 1538, 1559, provided for grants for training programs for personnel in field of aging, prior to the general amendment of this subchapter by Pub. L. 97–115.

Section 3035, Pub. L. 89–73, title IV, §421, as added Pub. L. 97–115, §11(a), Dec. 29, 1981, 95 Stat. 1601; amended Pub. L. 98–459, title IV, §406, Oct. 9, 1984, 98 Stat. 1783; Pub. L. 102–375, title IX, §904(a)(18), Sept. 30, 1992, 106 Stat. 1308; Pub. L. 103–171, §§2(16), 3(a)(13), Dec. 2, 1993, 107 Stat. 1989, 1990, related to research and development projects.

Another prior section 3035, Pub. L. 89–73, title IV, §411, as added Pub. L. 93–29, title IV, §401, May 3, 1973, 87 Stat. 47; amended Pub. L. 95–478, title I, §104(b)(1), (2), title V, §503(c)(3), Oct. 18, 1978, 92 Stat. 1538, 1559, related to grants and contracts for research and development projects, prior to the general amendment of this subchapter by Pub. L. 97–115.

Section 3035a, Pub. L. 89–73, title IV, §422, as added Pub. L. 97–115, §11(a), Dec. 29, 1981, 95 Stat. 1602; amended Pub. L. 98–459, title IV, §407, Oct. 9, 1984, 98 Stat. 1784; Pub. L. 100–175, title I, §§152, 153, 156(c), 182(*o*), Nov. 29, 1987, 101 Stat. 951, 954, 967; Pub. L. 100–628, title VII, §705(8), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 102–375, title I, §102(b)(4), title IV, §406, title IX, §904(a)(19), Sept. 30, 1992, 106 Stat. 1201, 1245, 1308; Pub. L. 103–82, title IV, §405(g)(3), Sept. 21, 1993, 107 Stat. 921; Pub. L. 103–171, §3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to demonstration projects.

Another prior section 3035a, Pub. L. 89–73, title IV, §412, as added Pub. L. 93–29, title IV, §401, May 3, 1973, 87 Stat. 47, related to special comprehensive study and demonstration projects on transportation problems of older Americans, prior to repeal by Pub. L. 95–478, title I, §104(b)(3), Oct. 18, 1978, 92 Stat. 1539.

Section 3035b, Pub. L. 89–73, title IV, §423, as added Pub. L. 97–115, §11(a), Dec. 29, 1981, 95 Stat. 1603; amended Pub. L. 98–459, title IV, §408, Oct. 9, 1984, 98 Stat. 1784; Pub. L. 100–175, title I, §§105(f), 134(c)(5), 154, 156(d), Nov. 29, 1987, 101 Stat. 930, 941, 951, 955; Pub. L. 102–375, title IV, §407(a), Sept. 30, 1992, 106 Stat. 1246; Pub. L. 103–171, §3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to special projects in comprehensive long-term care.

Another prior section 3035b, Pub. L. 89–73, title IV, § 421, as added Pub. L. 95–478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1539, authorized demonstration projects showing methods of improving or expanding social services or nutrition services or otherwise promoting the well-being of older individuals, prior to the general amendment of this subchapter by Pub. L. 97–115.

Section 3035c, Pub. L. 89–73, title IV, § 424, as added Pub. L. 97–115, § 11(a), Dec. 29, 1981, 95 Stat. 1604; amended Pub. L. 98–459, title IV, § 409, Oct. 9, 1984, 98 Stat. 1784; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to special demonstration and support projects for legal assistance for older individuals.

Another prior section 3035c, Pub. L. 89–73, title IV, § 422, as added Pub. L. 95–478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1541, related to special projects in comprehensive long-term care, prior to the general amendment of this subchapter by Pub. L. 97–115.

Section 3035d, Pub. L. 89–73, title IV, § 425, as added Pub. L. 97–115, § 11(a), Dec. 29, 1981, 95 Stat. 1605; amended Pub. L. 98–459, title IV, § 410(a), Oct. 9, 1984, 98 Stat. 1785; Pub. L. 100–175, title I, § 134(c)(6), Nov. 29, 1987, 101 Stat. 941; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to national impact activities.

Another prior section 3035d, Pub. L. 89–73, title IV, § 423, as added Pub. L. 95–478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1542, related to special demonstration projects on legal services for older Americans, prior to the general amendment of this subchapter by Pub. L. 97–115.

Section 3035e, Pub. L. 89–73, title IV, § 426, as added Pub. L. 97–115, § 11(a), Dec. 29, 1981, 95 Stat. 1605; amended Pub. L. 98–459, title IV, § 410(b), Oct. 9, 1984, 98 Stat. 1785; Pub. L. 102–375, title I, § 102(b)(9)(D), Sept. 30, 1992, 106 Stat. 1202, related to utility and home heating cost demonstration projects.

Another prior section 3035e, Pub. L. 89–73, title IV, § 424, as added Pub. L. 95–478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1543, provided for national impact demonstrations, prior to the general amendment of this subchapter by Pub. L. 97–115.

Section 3035f, Pub. L. 89–73, title IV, § 427, as added Pub. L. 100–175, title I, § 156(e)(1), Nov. 29, 1987, 101 Stat. 955; amended Pub. L. 102–375, title IV, § 408, Sept. 30, 1992, 106 Stat. 1249; Pub. L. 103–171, § 3(a)(7), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–402, title IV, § 401(b)(9)(B), Oct. 30, 2000, 114 Stat. 1739, related to ombudsman, legal assistance, and advocacy demonstration projects.

Another prior section 3035f, Pub. L. 89–73, title IV, § 425, as added Pub. L. 95–478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1543, provided for utility and home heating cost demonstration projects, prior to the general amendment of this subchapter by Pub. L. 97–115.

Section 3035g, Pub. L. 89–73, title IV, § 428, as added Pub. L. 100–175, title I, § 157(a), Nov. 29, 1987, 101 Stat. 955; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to consumer protection demonstration projects for services provided in the home.

Another prior section 3035g, Pub. L. 89–73, title IV, § 431, as added Pub. L. 95–478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1543, related to mortgage insurance grants for multipurpose senior centers, prior to the general amendment of this subchapter by Pub. L. 97–115.

Section 3035h, Pub. L. 89–73, title IV, § 429, as added Pub. L. 102–375, title IV, § 409, Sept. 30, 1992, 106 Stat. 1249; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to demonstration projects for multigenerational activities.

Another prior section 3035h, Pub. L. 89–73, title IV, § 432, as added Pub. L. 95–478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1545, related to mortgage interest grants for multipurpose senior centers, prior to the general amendment of this subchapter by Pub. L. 97–115.

Section 3035i, Pub. L. 89–73, title IV, § 429A, as added Pub. L. 102–375, title IV, § 410, Sept. 30, 1992, 106 Stat. 1251; amended Pub. L. 103–171, § 3(a)(11), (13), Dec. 2, 1993, 107 Stat. 1990, related to supportive services in the federally assisted housing demonstration program.

Section 3035j, Pub. L. 89–73, title IV, § 429B, as added Pub. L. 102–375, title IV, § 411, Sept. 30, 1992, 106 Stat. 1252; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to the neighborhood senior care program.

Section 3035k, Pub. L. 89–73, title IV, § 429C, as added Pub. L. 102–375, title IV, § 412, Sept. 30, 1992, 106 Stat. 1253; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to information and assistance systems development projects.

Section 3035*l*, Pub. L. 89–73, title IV, § 429D, as added Pub. L. 102–375, title IV, § 413, Sept. 30, 1992, 106 Stat. 1254; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to senior transportation demonstration program grants.

Section 3035m, Pub. L. 89–73, title IV, § 429E, as added Pub. L. 102–375, title IV, § 414, Sept. 30, 1992, 106 Stat. 1256; amended Pub. L. 103–171, § 3(a)(4), Dec. 2, 1993, 107 Stat. 1990, related to Resource Centers on Native American Elders.

Section 3035n, Pub. L. 89–73, title IV, § 429F, as added Pub. L. 102–375, title IV, § 415, Sept. 30, 1992, 106 Stat. 1257; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–402, title IV, § 401(b)(9)(C), Oct. 30, 2000, 114 Stat. 1739, related to demonstration programs for older individuals with developmental disabilities.

Section 3035*o*, Pub. L. 89–73, title IV, § 429G, as added Pub. L. 102–375, title IV, § 416, Sept. 30, 1992, 106 Stat. 1257; amended Pub. L. 103–171, §§ 2(17), 3(a)(11), (13), Dec. 2, 1993, 107 Stat. 1989, 1990, related to housing demonstration programs.

Section 3035p, Pub. L. 89–73, title IV, § 429H, as added Pub. L. 102–375, title IV, § 417, Sept. 30, 1992, 106 Stat. 1260; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to private resource enhancement projects.

Section 3035q, Pub. L. 89–73, title IV, § 429I, as added Pub. L. 102–375, title IV, § 418, Sept. 30, 1992, 106 Stat. 1261; amended Pub. L. 103–171, §§ 2(18), 3(a)(13), Dec. 2, 1993, 107 Stat. 1989, 1990, related to career preparation for the field of aging.

Section 3035r, Pub. L. 89–73, title IV, § 429J, as added Pub. L. 102–375, title IV, § 419, Sept. 30, 1992, 106 Stat. 1261; amended Pub. L. 103–171, §§ 2(19), 3(a)(13), Dec. 2, 1993, 107 Stat. 1989, 1990, related to pension rights demonstration projects.

A prior section 3036, Pub. L. 89–73, title IV, § 441, formerly § 421, as added Pub. L. 93–29, title IV, § 401, May 3, 1973, 87 Stat. 48; renumbered and amended Pub. L. 95–478, title I, § 104(c)(1)(B), (d), Oct. 18, 1978, 92 Stat. 1539, 1546, related to applications for grants for establishment or support of multidisciplinary centers of gerontology and gerontology centers of special emphasis, prior to the general amendment of this subchapter by Pub. L. 97–115.

Section 3037, Pub. L. 89–73, title IV, § 431, as added Pub. L. 97–115, § 11(a), Dec. 29, 1981, 95 Stat. 1605; amended Pub. L. 98–459, title IV, § 411, Oct. 9, 1984, 98 Stat. 1785; Pub. L. 100–175, title I, §§ 156(e)(2), 157(b)–159, Nov. 29, 1987, 101 Stat. 955, 956; Pub. L. 102–375, title IV, § 420, Sept. 30, 1992, 106 Stat. 1264; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, authorized appropriations.

Another prior section 3037, Pub. L. 89–73, title IV, § 451, formerly § 431, as added Pub. L. 93–29, title IV, § 401, May 3, 1973, 87 Stat. 49; amended Pub. L. 94–135, title I, § 112(d), Nov. 28, 1975, 89 Stat. 720; renumbered § 451 and amended Pub. L. 95–478, title I, § 104(c)(1)(B), (e)(1), Oct. 18, 1978, 92 Stat. 1539, 1546, authorized appropriation of funds for fiscal years ending prior to Oct. 1, 1981, and prohibited transfer of funds to offices not directly responsible to Commissioner or for research programs or activities not specifically authorized by this subchapter, prior to the general amendment of this subchapter by Pub. L. 97–115.

Section 3037a, Pub. L. 89–73, title IV, § 432, as added Pub. L. 97–115, § 11(a), Dec. 29, 1981, 95 Stat. 1605; amended Pub. L. 98–459, title IV, § 412, Oct. 9, 1984, 98 Stat. 1785; Pub. L. 102–375, title IV, § 421, Sept. 30, 1992, 106 Stat. 1264; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to payments of grants.

Another prior section 3037a, Pub. L. 89–73, title IV, § 452, formerly § 432, as added Pub. L. 93–29, title IV, § 401, May 3, 1973, 87 Stat. 49; amended Pub. L. 94–135, title I, § 114(f), Nov. 28, 1975, 89 Stat. 725; renumbered § 452 and amended Pub. L. 95–478, title I, § 104(c)(1)(B), (e)(2), Oct. 18, 1978, 92 Stat. 1539, 1547, related to payments of grants, prior to the general revision of this subchapter by Pub. L. 97–115.

Section 3037b, Pub. L. 89–73, title IV, § 433, as added Pub. L. 98–459, title IV, § 413, Oct. 9, 1984, 98 Stat. 1785; amended Pub. L. 102–375, title IV, § 422, Sept. 30, 1992, 106 Stat. 1265; Pub. L. 103–171, § 3(a)(12), (13), Dec. 2, 1993, 107 Stat. 1990, related to responsibilities of the Assistant Secretary.

AMENDMENTS

2006—Subsec. (c)(2)(B). Pub. L. 109–365 inserted before period at end ‘‘, including preparing an analysis of such services, projects, and programs, and of how the evaluation relates to improvements in such services, projects, and programs and in the strategic plan of the Administration’’.

SUBCHAPTER V—MULTIPURPOSE SENIOR CENTERS

PART A—ACQUISITION, ALTERATION, OR RENOVATION OF MULTIPURPOSE SENIOR CENTERS

§§ 3041 to 3041f. Repealed. Pub. L. 95–478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558

Section 3041, Pub. L. 89–73, title V, § 501, as added Pub. L. 93–29, title V, § 501, May 3, 1973, 87 Stat. 50, related to provisions for grants or contracts. See sections 3028 and 3030d(b)(1) of this title.

A prior section 3041, Pub. L. 89–73, title V, § 501, July 14, 1965, 79 Stat. 224; Pub. L. 91–69, § 8, Sept. 17, 1969, 83 Stat. 111, which related to training project grants and contracts, training programs, studies, preparation and dissemination of materials, and conferences, was repealed by Pub. L. 93–29, title IV, § 401, May 3, 1973, 87 Stat. 45.

Section 3041a, Pub. L. 89–73, title V, § 502, as added Pub. L. 93–29, title V, § 501, May 3, 1973, 87 Stat. 50, related to requirements for approval of applications, preferred areas, and agency cooperation.

Section 3041b, Pub. L. 89–73, title V § 503, as added Pub. L. 93–29, title V, § 501, May 3, 1973, 87 Stat. 51, provided for payments, reservation from appropriations amount of grant or contract, amendments, advances, reimbursement, and installments.

Section 3041c, Pub. L. 89–73, title V, § 504, as added Pub. L. 93–29, title V, § 501, May 3, 1973, 87 Stat. 51, provided for recapture of payments. See section 3030b of this title.

Section 3041d, Pub. L. 89–73, title V, § 505, as added Pub. L. 93–29, title V, § 501, May 3, 1973, 87 Stat. 51; amended Pub. L. 94–135, title I, § 112(e), Nov. 28, 1975, 89 Stat. 720, provided for authorization of appropriations. See section 3023 of this title.

Section 3041e, Pub. L. 89–73, title V, § 506, as added Pub. L. 93–29, title V, § 501, May 3, 1973, 87 Stat. 51, related to mortgage insurance for Multipurpose Senior Centers.

Section 3041f, Pub. L. 89–73, title V, § 507, as added Pub. L. 93–29, title V, § 501, May 3, 1973, 87 Stat. 54; amended Pub. L. 94–135, title I, § 114(g), Nov. 28, 1975, 89 Stat. 725, related to annual interest grants.

EFFECTIVE DATE OF REPEAL

Section 501(a) of Pub. L. 95–478 provided that the repeal by that section is effective at the close of Sept. 30, 1978.

PART B—INITIAL STAFFING OF MULTIPURPOSE SENIOR CENTERS

§ 3042. Repealed. Pub. L. 95–478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558

Section, Pub. L. 89–73, title V, § 511, as added Pub. L. 93–29, title V, § 501, May 3, 1973, 87 Stat. 54, related to personnel staffing grant program. See section 3030d(b)(2) of this title.

A prior section 3042, Pub. L. 89–73, title V, § 502, July 14, 1965, 79 Stat. 225, related to payments of training project grants, providing in subsec. (a) for contribution by recipients; subsec. (b) adjustments, advances or reimbursement, installments, and conditions; and subsec. (c) consultation of Secretary with State agency prior to making grants or contracts, prior to repeal by Pub. L. 93–29, title IV, § 401, May 3, 1973, 87 Stat. 45.

A prior section 3043, Pub. L. 89–73, title V, § 503, as added Pub. L. 90–42, § 6, July 1, 1967, 81 Stat. 108, related to study of need for trained personnel; and consultations with other government and private agencies and organizations, prior to repeal by Pub. L. 93–29, title IV, § 401, May 3, 1973, 87 Stat. 45.

EFFECTIVE DATE OF REPEAL

Section 501(a) of Pub. L. 94–478 provided that the repeal by that section is effective at the close of Sept. 30, 1978.

SUBCHAPTER VI—NATIONAL OLDER AMERICANS VOLUNTEER PROGRAM

§§ 3044 to 3044e. Repealed. Pub. L. 93–113, title VI, § 604(a), Oct. 1, 1973, 87 Stat. 417

Section 3044, Pub. L. 89–73, title VI, § 601, as added Pub. L. 91–69, § 9, Sept. 17, 1969, 83 Stat. 111; amended Pub. L. 93–29, title VI, § 601, May 3, 1973, 87 Stat. 55, related to grants and contracts for volunteer service projects, providing in: subsec. (a) for approval of programs and rules and regulations; subsec. (b) for method of payment; subsec. (c) for conditions upon award of grant or contract, and subsec. (d) for exclusion as income of compensation to individual volunteers.

Section 3044a, Pub. L. 89–73, title VI, § 603, as added Pub. L. 91–69, § 9, Sept. 17, 1969, 83 Stat. 112; amended Pub. L. 93–29, title VI, § 602, May 3, 1973, 87 Stat. 55, related to authorization of appropriations.

Section 3044b, Pub. L. 89–73, title VI, § 611, as added Pub. L. 91–69, § 9, Sept. 17, 1969, 83 Stat. 112; amended Pub. L. 92–424, § 29(a), Sept. 19, 1972, 86 Stat. 705; Pub. L. 93–29, title VI, § 603(b), May 3, 1973, 87 Stat. 55, related to grants and contracts for Foster Grandparent projects and for services as senior health aides and senior companions, amount of award, method of payment, and exclusion as income of compensation to individual volunteers.

Section 3044c, Pub. L. 89–73, title VI, § 612, as added Pub. L. 91–69, § 9, Sept. 17, 1969, 83 Stat. 113, related to conditions upon award of grantor contract and defined ‘‘community action agency’’.

Section 3044d, Pub. L. 89–73, title VI, § 613, as added Pub. L. 91–69, § 9, Sept. 17, 1969, 83 Stat. 113; amended Pub. L. 93–29, title VI, § 603(c), May 3, 1973, 87 Stat. 55, related to interagency cooperation.

Section 3044e, Pub. L. 89–73, title VI, § 614, as added Pub. L. 91–69, § 9, Sept. 17, 1969, 83 Stat. 114; amended Pub. L. 93–29, title VI, § 604, May 3, 1973, 87 Stat. 55, related to authorization of appropriations.

SUBCHAPTER VII—NUTRITION PROGRAM FOR THE ELDERLY

§§ 3045 to 3045i. Repealed. Pub. L. 95–478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558

Section 3045, Pub. L. 89–73, title VII, § 701, as added Pub. L. 92–258, § 2, Mar. 22, 1972, 86 Stat. 88, stated Congressional findings and declaration of policy.

Section 3045a, Pub. L. 89–73, title VII, § 702, as added Pub. L. 92–258, § 2, Mar. 22, 1972, 86 Stat. 89; amended Pub. L. 93–29, title VII, § 704(c), May 3, 1973, 87 Stat. 57; Pub. L. 93–644, § 9(a), Jan. 4, 1975, 88 Stat. 2310, related to administration of program. See section 3021(b) of this title.

Section 3045b, Pub. L. 89–73, title VII, § 703, as added Pub. L. 92–258, § 2, Mar. 22, 1972, 86 Stat. 90; amended Pub. L. 93–29, title VII, § 704(c), May 3, 1973, 87 Stat. 57; Pub. L. 94–135, title I, § 114(i), (j), Nov. 28, 1975, 89 Stat. 726, related to allotment of funds. See section 3024 of this title.

Section 3045c, Pub. L. 89–73, title VII, § 704, as added Pub. L. 92–258, § 2, Mar. 22, 1972, 86 Stat. 91; amended Pub. L. 93–29, title VII, § 704(c), May 3, 1973, 87 Stat. 57, related to payment of grants. See section 3029(a) of this title.

Section 3045d, Pub. L. 89–73, title VII, § 705, as added Pub. L. 92–258, § 2, Mar. 22, 1972, 86 Stat. 91; amended Pub. L. 93–29, title VII, §§ 702–704, May 3, 1973, 87 Stat. 56, 57; Pub. L. 94–135, title I, § 114(k)–(n), Nov. 28, 1975, 89 Stat. 726, related to provisions for State plans. See section 3027 of this title.

Section 3045e, Pub. L. 89–73, title VII, § 706, as added Pub. L. 92–258, § 2, Mar. 22, 1972, 86 Stat. 93; amended Pub. L. 93–29, title VII, § 704(c), May 3, 1973, 87 Stat. 57; Pub. L. 94–135, title I, § 114(*o*), (p), Nov. 28, 1975, 89 Stat. 726, related to nutrition and other program requirements.

Section 3045f, Pub. L. 89–73, title VII, § 707, as added Pub. L. 92–258, § 2, Mar. 22, 1972, 86 Stat. 94; amended Pub. L. 93–29, title VII, § 701, May 3, 1973, 87 Stat. 56; Pub. L. 93–351, § 5, July 12, 1974, 88 Stat. 358; Pub. L. 94–135, title I, § 111(a)–(d), (f), Nov. 28, 1975, 89 Stat. 718, 719; Pub. L. 95–65, § 2, July 11, 1977, 91 Stat. 269, related to surplus commodities. See section 3030a of this title.

Section 3045g, Pub. L. 89–73, title VII, § 708, as added Pub. L. 92–258, § 2, Mar. 22, 1972, 86 Stat. 94; amended Pub. L. 93–351, § 1, July 12, 1974, 88 Stat. 357; Pub. L. 94–135, title I, §§ 111(e), 112(f), Nov. 28, 1975, 89 Stat. 719, 720, provided for authorization of appropriations. See section 3023 of this title.

Section 3045h, Pub. L. 89–73, title VII, § 709, as added Pub. L. 92–258, § 2, Mar. 22, 1972, 86 Stat. 95, concerned with relationship to other laws. See section 3020a(b) of this title.

Section 3045i, Pub. L. 89–73, title VII, § 710, as added Pub. L. 92–258, § 2, Mar. 22, 1972, 86 Stat. 95, related to agreements with profitmaking organizations. See section 3020c of this title.

EFFECTIVE DATE OF REPEAL

Section 501(a) of Pub. L. 95–478 provided that the repeal by that section is effective at the close of Sept. 30, 1978.

NUTRITION PROJECTS FOR ELDERLY UNDER PRIOR PROVISIONS, QUALIFIED UNDER SUCCESSOR PROVISIONS, ELIGIBLE FOR FUNDS UNDER SUCH PROVISIONS; COMPETITIVE BIDDING; DISCONTINUANCE OF PAYMENTS FOR INEFFECTIVE ACTIVITIES

Pub. L. 95–478, title V, § 501(b), Oct. 18, 1978, 92 Stat. 1558, as amended by Pub. L. 97–115, § 14(a), Dec. 29, 1981, 95 Stat. 1608; Pub. L. 98–459, title VIII, § 801(b), Oct. 9, 1984, 98 Stat. 1792, provided that: ''No contract awarded after September 30, 1982, shall be entered into for the provision of nutrition services unless such contract has been awarded through a competitive process. Such process shall include evaluation of each bidder's experience in providing services to older individuals. Whenever there is no evidence of improved quality of service and cost effectiveness on the part of another bidder, a provider of services who received funds under title VII of the Older Americans Act of 1965 [former sections 3045 to 3045i of this title] as in effect on September 29, 1978, shall be given preference.''

SUBCHAPTER VIII—GENERAL PROVISIONS

§§ 3051 to 3055. Repealed. Pub. L. 93–29, title II, § 202, May 3, 1973, 87 Stat. 36

Section 3051, Pub. L. 89–73, title VIII, § 801, formerly title VI, § 601, July 14, 1965, 79 Stat. 225; Pub. L. 90–42, § 5(c), (d), July 1, 1967, 81 Stat. 107; renumbered title VII, § 701, Pub. L. 91–69, § 9, Sept. 17, 1969, 83 Stat. 111; renumbered title VIII, § 801, Pub. L. 92–258, § 1, Mar. 22, 1972, 86 Stat. 88, related to advisory committees in general, providing in: subsec. (a) for establishment of Advisory Committee on Older Americans, its membership, and term of office; subsec. (b) for appointment of technical advisory committees; subsec. (c) for compensation and travel expenses; and subsec. (d) for technical and clerical assistance for Advisory Committee. See section 3015 of this title.

Section 3052, Pub. L. 89–73, title VIII, § 802, formerly title VI, § 602, July 14, 1965, 79 Stat. 226; Pub. L. 90–42, § 5(e), (f), July 1, 1967, 81 Stat. 107, 108; renumbered title VII, § 702, Pub. L. 91–69, § 9, Sept. 17, 1969, 83 Stat. 111; renumbered title VIII, § 802, Pub. L. 92–258, § 1, Mar. 22, 1972, 86 Stat. 88, related to administration. See section 3016(a), (b) of this title.

Section 3053, Pub. L. 89–73, title VIII, § 803, formerly title VI, § 603, July 14, 1965, 79 Stat. 226; Pub. L. 90–42, § 4, July 1, 1967, 81 Stat. 107; renumbered title VII, § 703 and amended Pub. L. 91–69, §§ 2(b), 9, Sept. 17, 1969, 83 Stat. 108, 111; renumbered title VIII, § 803, Pub. L. 92–258, § 1, Mar. 22, 1972, 86 Stat. 88, related to authorization of appropriations.

Section 3054, Pub. L. 89–73, title VIII, § 804, formerly title VII, § 704, as added Pub. L. 91–69, § 12, Sept. 17, 1969, 83 Stat. 114; renumbered title VIII, § 804, Pub. L. 92–258, § 1, Mar. 22, 1972, 86 Stat. 88, related to evaluation of programs. See section 3017 of this title.

Section 3055, Pub. L. 89–73, title VIII, § 805, formerly title VII, § 705, as added Pub. L. 91–69, § 13, Sept. 17, 1969, 83 Stat. 114; renumbered title VIII, § 805, Pub. L. 92–258, § 1, Mar. 22, 1972, 86 Stat. 88, related to joint funding of projects. See section 3019 of this title.

SUBCHAPTER IX—COMMUNITY SERVICE SENIOR OPPORTUNITIES

CODIFICATION

Title V of the Older Americans Act of 1965, comprising this subchapter, was originally enacted as title IX of Pub. L. 89–73 by Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 720, and was renumbered title V and amended by Pub. L. 95–478, title I, § 105, title V, § 503(d), Oct. 18, 1978, 92 Stat. 1547, 1559; Pub. L. 97–115, Dec. 29, 1981, 95 Stat. 1595; Pub. L. 98–459, Oct. 9, 1984, 98 Stat. 1767; Pub. L. 100–175, Nov. 29, 1987, 101 Stat. 926; Pub. L. 100–628, Nov. 7, 1988, 102 Stat. 3224; Pub. L. 102–375, Sept. 30, 1992, 106 Stat. 1195; Pub. L. 103–171, Dec. 2, 1993, 107 Stat. 1988; Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936; Pub. L. 105–277, Oct. 21, 1998, 112 Stat. 2681; Pub. L. 105–332, Oct. 31, 1998, 112 Stat. 3076; Pub. L. 106–501, Nov. 13, 2000, 114 Stat. 2226; Pub. L. 109–270, Aug. 12, 2006, 120 Stat. 683. Title V is shown herein, however, as having been added by Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2563, without reference to intervening amendments because of the extensive revision of the title's provisions by Pub. L. 109–365.

§ 3056. Older American community service employment program

(a) In general

(1) Establishment of program

To foster individual economic self-sufficiency and promote useful opportunities in community service activities (which shall include community service employment) for unemployed low-income persons who are age 55 or older, particularly persons who have poor

employment prospects, and to increase the number of persons who may enjoy the benefits of unsubsidized employment in both the public and private sectors, the Secretary of Labor (referred to in this subchapter as the ''Secretary'') may establish an older American community service employment program.

(2) Use of appropriated amounts

Amounts appropriated to carry out this subchapter shall be used only to carry out the provisions contained in this subchapter.

(b) Grant authority

(1) Projects

To carry out this subchapter, the Secretary may make grants to public and nonprofit private agencies and organizations, agencies of a State, and tribal organizations to carry out the program established under subsection (a). Such grants may provide for the payment of costs, as provided in subsection (c), of projects developed by such organizations and agencies in cooperation with the Secretary in order to make such program effective or to supplement such program. The Secretary shall make the grants from allotments made under section 3056d of this title, and in accordance with section 3056*l* of this title. No payment shall be made by the Secretary toward the cost of any project established or administered by such an organization or agency unless the Secretary determines that such project—

(A) will provide community service employment only for eligible individuals except for necessary technical, administrative, and supervisory personnel, and such personnel will, to the fullest extent possible, be recruited from among eligible individuals;

(B)(i) will provide community service employment and other authorized activities for eligible individuals in the community in which such individuals reside, or in nearby communities; or

(ii) if such project is carried out by a tribal organization that receives a grant under this subsection or receives assistance from a State that receives a grant under this subsection, will provide community service employment and other authorized activities for such individuals, including those who are Indians residing on an Indian reservation, as defined in section 3501 of title 25;

(C) will comply with an average participation cap for eligible individuals (in the aggregate) of—

(i) 27 months; or

(ii) pursuant to the request of a grantee, an extended period of participation established by the Secretary for a specific project area for such grantee, up to a period of not more than 36 months, if the Secretary determines that extenuating circumstances exist relating to the factors identified in section 3056k(a)(2)(D) of this title that justify such an extended period for the program year involved;

(D) will employ eligible individuals in service related to publicly owned and operated facilities and projects, or projects sponsored by nonprofit organizations (excluding political parties exempt from taxation under section 501(c)(3) of title 26), but excluding projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship;

(E) will contribute to the general welfare of the community, which may include support for children, youth, and families;

(F) will provide community service employment and other authorized activities for eligible individuals;

(G)(i) will not reduce the number of employment opportunities or vacancies that would otherwise be available to individuals not participating in the program;

(ii) will not displace currently employed workers (including partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits);

(iii) will not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed; and

(iv) will not employ or continue to employ any eligible individual to perform the same work or substantially the same work as that performed by any other individual who is on layoff;

(H) will coordinate activities with training and other services provided under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), including utilizing the one-stop delivery system of the local workforce investment areas involved to recruit eligible individuals to ensure that the maximum number of eligible individuals will have an opportunity to participate in the project;

(I) will include such training (such as work experience, on-the-job training, and classroom training) as may be necessary to make the most effective use of the skills and talents of those individuals who are participating, and will provide for the payment of the reasonable expenses of individuals being trained, including a reasonable subsistence allowance equivalent to the wage described in subparagraph (J);

(J) will ensure that safe and healthy employment conditions will be provided, and will ensure that participants employed in community service and other jobs assisted under this subchapter will be paid wages that shall not be lower than whichever is the highest of—

(i) the minimum wage that would be applicable to such a participant under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), if section 6(a)(1) of such Act (29 U.S.C. 206(a)(1)) applied to the participant and if the participant were not exempt under section 13 of such Act (29 U.S.C. 213);

(ii) the State or local minimum wage for the most nearly comparable covered employment; or

(iii) the prevailing rates of pay for individuals employed in similar public occupations by the same employer;

(K) will be established or administered with the advice of persons competent in the

field of service in which community service employment or other authorized activities are being provided, and of persons who are knowledgeable about the needs of older individuals;

(L) will authorize payment for necessary supportive services costs (including transportation costs) of eligible individuals that may be incurred in training in any project funded under this subchapter, in accordance with rules issued by the Secretary;

(M) will ensure that, to the extent feasible, such project will serve the needs of minority and Indian eligible individuals, eligible individuals with limited English proficiency, and eligible individuals with greatest economic need, at least in proportion to their numbers in the area served and take into consideration their rates of poverty and unemployment;

(N)(i) will prepare an assessment of the participants' skills and talents and their needs for services, except to the extent such project has, for the participant involved, recently prepared an assessment of such skills and talents, and such needs, pursuant to another employment or training program (such as a program under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.), or part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) and will prepare a related service strategy;

(ii) will provide training and employment counseling to eligible individuals based on strategies that identify appropriate employment objectives and the need for supportive services, developed as a result of the assessment and service strategy provided for in clause (i), and provide other appropriate information regarding such project; and

(iii) will provide counseling to participants on their progress in meeting such objectives and satisfying their need for supportive services;

(O) will provide appropriate services for participants, or refer the participants to appropriate services, through the one-stop delivery system of the local workforce investment areas involved as established under section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)), and will be involved in the planning and operations of such system pursuant to a memorandum of understanding with the local workforce investment board in accordance with section 121(c) of such Act (29 U.S.C. 2841(c));

(P) will post in such project workplace a notice, and will make available to each person associated with such project a written explanation—

(i) clarifying the law with respect to political activities allowable and unallowable under chapter 15 of title 5 applicable to the project and to each category of individuals associated with such project; and

(ii) containing the address and telephone number of the Inspector General of the Department of Labor, to whom questions regarding the application of such chapter may be addressed;

(Q) will provide to the Secretary the description and information described in—

(i) paragraph (8), relating to coordination with other Federal programs, of section 112(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2822(b)); and

(ii) paragraph (14), relating to implementation of one-stop delivery systems, of section 112(b) of the Workforce Investment Act of 1998; and

(R) will ensure that entities that carry out activities under the project (including State agencies, local entities, subgrantees, and subcontractors) and affiliates of such entities receive an amount of the administrative cost allocation determined by the Secretary, in consultation with grantees, to be sufficient.

(2) Regulations

The Secretary may establish, issue, and amend such regulations as may be necessary to effectively carry out this subchapter.

(3) Assessment and service strategies

(A) Prepared under this chapter

An assessment and service strategy required by paragraph (1)(N) to be prepared for an eligible individual shall satisfy any condition for an assessment and service strategy or individual employment plan for an adult participant under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.), in order to determine whether such eligible individual also qualifies for intensive or training services described in section 134(d) of such Act (29 U.S.C. 2864(d)).

(B) Prepared under Workforce Investment Act of 1998

An assessment and service strategy or individual employment plan prepared under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.) for an eligible individual may be used to comply with the requirement specified in subparagraph (A).

(c) Federal share and use of funds

(1) Federal share

The Secretary may pay a Federal share not to exceed 90 percent of the cost of any project for which a grant is made under subsection (b), except that the Secretary may pay all of such cost if such project is—

(A) an emergency or disaster project; or

(B) a project located in an economically depressed area, as determined by the Secretary in consultation with the Secretary of Commerce and the Secretary of Health and Human Services.

(2) Non-Federal share

The non-Federal share shall be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to services and facilities contributed from non-Federal sources.

(3) Use of funds for administrative costs

Of the grant amount to be paid under this subsection by the Secretary for a project, not

to exceed 13.5 percent shall be available for any fiscal year to pay the administrative costs of such project, except that—

(A) the Secretary may increase the amount available to pay the administrative costs to an amount not to exceed 15 percent of the grant amount if the Secretary determines, based on information submitted by the grantee under subsection (b), that such increase is necessary to carry out such project; and

(B) if the grantee under subsection (b) demonstrates to the Secretary that—

(i) major administrative cost increases are being incurred in necessary program components, including liability insurance, payments for workers' compensation, costs associated with achieving unsubsidized placement goals, and costs associated with other operation requirements imposed by the Secretary;

(ii) the number of community service employment positions in the project or the number of minority eligible individuals participating in the project will decline if the amount available to pay the administrative costs is not increased; or

(iii) the size of the project is so small that the amount of administrative costs incurred to carry out the project necessarily exceeds 13.5 percent of the grant amount;

the Secretary shall increase the amount available for such fiscal year to pay the administrative costs to an amount not to exceed 15 percent of the grant amount.

(4) Administrative costs

For purposes of this subchapter, administrative costs are the costs, both personnel-related and nonpersonnel-related and both direct and indirect, associated with the following:

(A) The costs of performing general administrative functions and of providing for the coordination of functions, such as the costs of—

(i) accounting, budgeting, and financial and cash management;

(ii) procurement and purchasing;

(iii) property management;

(iv) personnel management;

(v) payroll functions;

(vi) coordinating the resolution of findings arising from audits, reviews, investigations, and incident reports;

(vii) audits;

(viii) general legal services;

(ix) developing systems and procedures, including information systems, required for administrative functions;

(x) preparing administrative reports; and

(xi) other activities necessary for the general administration of government funds and associated programs.

(B) The costs of performing oversight and monitoring responsibilities related to administrative functions.

(C) The costs of goods and services required for administrative functions of the project involved, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space.

(D) The travel costs incurred for official business in carrying out administrative activities or overall management.

(E) The costs of information systems related to administrative functions (such as personnel, procurement, purchasing, property management, accounting, and payroll systems), including the purchase, systems development, and operating costs of such systems.

(F) The costs of technical assistance, professional organization membership dues, and evaluating results obtained by the project involved against stated objectives.

(5) Non-Federal share of administrative costs

To the extent practicable, an entity that carries out a project under this subchapter shall provide for the payment of the expenses described in paragraph (4) from non-Federal sources.

(6) Use of funds for wages and benefits and programmatic activity costs

(A) In general

Amounts made available for a project under this subchapter that are not used to pay for the administrative costs shall be used to pay for the costs of programmatic activities, including the costs of—

(i) participant wages, such benefits as are required by law (such as workers' compensation or unemployment compensation), the costs of physical examinations, compensation for scheduled work hours during which an employer's business is closed for a Federal holiday, and necessary sick leave that is not part of an accumulated sick leave program, except that no amounts provided under this subchapter may be used to pay the cost of pension benefits, annual leave, accumulated sick leave, or bonuses;

(ii) participant training (including the payment of reasonable costs of instructors, classroom rental, training supplies, materials, equipment, and tuition), which may be provided prior to or subsequent to placement and which may be provided on the job, in a classroom setting, or pursuant to other appropriate arrangements;

(iii) job placement assistance, including job development and job search assistance;

(iv) participant supportive services to enable a participant to successfully participate in a project under this subchapter, which may include the payment of reasonable costs of transportation, health and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eyeglasses, and tools), child and adult care, temporary shelter, and follow-up services; and

(v) outreach, recruitment and selection, intake, orientation, and assessments.

(B) Use of funds for wages and benefits

From the funds made available through a grant made under subsection (b), a grantee under this subchapter—

(i) except as provided in clause (ii), shall use not less than 75 percent of the grant funds to pay the wages, benefits, and other costs described in subparagraph (A)(i) for eligible individuals who are employed under projects carried out under this subchapter; or

(ii) that obtains approval for a request described in subparagraph (C) may use not less than 65 percent of the grant funds to pay the wages, benefits, and other costs described in subparagraph (A)(i).

(C) Request to use additional funds for programmatic activity costs

(i) In general

A grantee may submit to the Secretary a request for approval—

(I) to use not less than 65 percent of the grant funds to pay the wages, benefits, and other costs described in subparagraph (A)(i);

(II) to use the percentage of grant funds described in paragraph (3) to pay for administrative costs, as specified in that paragraph;

(III) to use not more than 10 percent of the grant funds for individual participants to provide activities described in clauses (ii) and (iv) of subparagraph (A), in which case the grantee shall provide (from the funds described in this subclause) the subsistence allowance described in subsection (b)(1)(I) for those individual participants who are receiving training described in that subsection from the funds described in this subclause, but may not use the funds described in this subclause to pay for any administrative costs; and

(IV) to use the remaining grant funds to provide activities described in clauses (ii) through (v) of subparagraph (A).

(ii) Contents

In submitting the request the grantee shall include in the request—

(I) a description of the activities for which the grantee will spend the grant funds described in subclauses (III) and (IV) of clause (i), consistent with those subclauses;

(II) an explanation documenting how the provision of such activities will improve the effectiveness of the project, including an explanation concerning whether any displacement of eligible individuals or elimination of positions for such individuals will occur, information on the number of such individuals to be displaced and of such positions to be eliminated, and an explanation concerning how the activities will improve employment outcomes for individuals served, based on the assessment conducted under subsection (b)(1)(N); and

(III) a proposed budget and work plan for the activities, including a detailed description of the funds to be spent on the activities described in subclauses (III) and (IV) of clause (i).

(iii) Submission

The grantee shall submit a request described in clause (i) not later than 90 days before the proposed date of implementation contained in the request. Not later than 30 days before the proposed date of implementation, the Secretary shall approve, approve as modified, or reject the request, on the basis of the information included in the request as described in clause (ii).

(D) Report

Each grantee under subsection (b) shall annually prepare and submit to the Secretary a report documenting the grantee's use of funds for activities described in clauses (i) through (v) of subparagraph (A).

(d) Project description

Whenever a grantee conducts a project within a planning and service area in a State, such grantee shall conduct such project in consultation with the area agency on aging of the planning and service area and shall submit to the State agency and the area agency on aging a description of such project to be conducted in the State, including the location of the project, 90 days prior to undertaking the project, for review and public comment according to guidelines the Secretary shall issue to assure efficient and effective coordination of projects under this subchapter.

(e) Pilot, demonstration, and evaluation projects

(1) In general

The Secretary, in addition to exercising any other authority contained in this subchapter, shall use funds reserved under section 3056d(a)(1) of this title to carry out demonstration projects, pilot projects, and evaluation projects, for the purpose of developing and implementing techniques and approaches, and demonstrating the effectiveness of the techniques and approaches, in addressing the employment and training needs of eligible individuals. The Secretary shall enter into such agreements with States, public agencies, nonprofit private organizations, or private business concerns, as may be necessary, to conduct the projects authorized by this subsection. To the extent practicable, the Secretary shall provide an opportunity, prior to the development of a demonstration or pilot project, for the appropriate area agency on aging to submit comments on such a project in order to ensure coordination of activities under this subchapter.

(2) Projects

Such projects may include—

(A) activities linking businesses and eligible individuals, including activities providing assistance to participants transitioning from subsidized activities to private sector employment;

(B) demonstration projects and pilot projects designed to—

(i) attract more eligible individuals into the labor force;

(ii) improve the provision of services to eligible individuals under one-stop deliv-

ery systems established under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

(iii) enhance the technological skills of eligible individuals; and

(iv) provide incentives to grantees under this subchapter for exemplary performance and incentives to businesses to promote their participation in the program under this subchapter;

(C) demonstration projects and pilot projects, as described in subparagraph (B), for workers who are older individuals (but targeted to eligible individuals) only if such demonstration projects and pilot projects are designed to assist in developing and implementing techniques and approaches in addressing the employment and training needs of eligible individuals;

(D) provision of training and technical assistance to support any project funded under this subchapter;

(E) dissemination of best practices relating to employment of eligible individuals; and

(F) evaluation of the activities authorized under this subchapter.

(3) Consultation

To the extent practicable, entities carrying out projects under this subsection shall consult with appropriate area agencies on aging and with other appropriate agencies and entities to promote coordination of activities under this subchapter.

(Pub. L. 89–73, title V, § 502, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2563.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsecs. (b)(1)(H), (N)(i), (3) and (e)(2)(B)(ii), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, which enacted chapter 73 (§ 9201 et seq.) of Title 20, Education, and chapter 30 (§ 2801 et seq.) of Title 29, Labor, and enacted, amended, and repealed numerous other sections and notes in the Code. Title I of the Act is classified principally to chapter 30 of Title 29. Subtitle B of title I of the Act is classified generally to subchapter II (§ 2811 et seq.) of chapter 30 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20 and Tables.

The Fair Labor Standards Act of 1938, referred to in subsec. (b)(1)(J)(i), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (b)(1)(N)(i), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109–270, § 1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Social Security Act, referred to in subsec. (b)(1)(N)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 3056, Pub. L. 89–73, title V, § 502, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2267; amended Pub. L. 109–270, § 2(k)(1), Aug. 12, 2006, 120 Stat. 748, related to the older American community service employment program, prior to the general amendment of this subchapter by Pub. L. 109–365.

Another prior section 3056, Pub. L. 89–73, title V, § 502, formerly title IX, § 902, as added Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 720; renumbered title V, § 502, and amended Pub. L. 95–478, title I, § 105(a), (b), Oct. 18, 1978, 92 Stat. 1547; Pub. L. 97–115, § 12(a)(1), (2), (b)(1), (c), Dec. 29, 1981, 95 Stat. 1606; Pub. L. 98–459, title V, § 501, Oct. 9, 1984, 98 Stat. 1786; Pub. L. 100–175, title I, §§ 161, 162(a), Nov. 29, 1987, 101 Stat. 957; Pub. L. 102–375, title V, §§ 501, 504(c)(1), (2), title IX, § 904(b)(1), Sept. 30, 1992, 106 Stat. 1265, 1269, 1309; Pub. L. 105–220, title III, § 323, Aug. 7, 1998, 112 Stat. 1087; Pub. L. 105–277, div. A, § 101(f) [title VIII, §§ 403(b), 405(d)(33)(B), (f)(25)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–416, 2681–426, 2681–433; Pub. L. 105–332, § 3(i)(1), Oct. 31, 1998, 112 Stat. 3126, related to the older American community service employment program, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 502 of Pub. L. 89–73, title V, as added Pub. L. 93–29, title V, § 501, May 3, 1973, 87 Stat. 50, related to requirements for approval of applications, preferred areas, and agency application and was classified to section 3041a of this title, prior to repeal by Pub. L. 95–478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

EFFECTIVE DATE

Pub. L. 109–365, title V, § 502, Oct. 17, 2006, 120 Stat. 2590, provided that:

''(a) IN GENERAL.—Title V of the Older Americans Act of 1965 [42 U.S.C. 3056 et seq.] (as amended by section 501) takes effect July 1, 2007.

''(b) REGULATIONS AND EXPECTED LEVELS OF PERFORMANCE.—

''(1) REGULATIONS.—Effective on the date of enactment of this Act [Oct. 17, 2006], the Secretary of Labor may issue rules and regulations authorized in such title V.

''(2) EXPECTED LEVELS OF PERFORMANCE.—Prior to July 1, 2007, the Secretary of Labor may carry out the activities authorized in section 513(a)(2) of the Older Americans Act of 1965 [42 U.S.C. 3056k(a)(2)] (as so amended), in preparation for program year 2007.''

SHORT TITLE

For short title of this subchapter as the ''Community Service Senior Opportunities Act'', see section 501 of Pub. L. 89–73, set out as a note under section 3001 of this title.

§ 3056a. Administration

(a) State plan

(1) Governor

For a State to be eligible to receive an allotment under section 3056d of this title, the Governor of the State shall submit to the Secretary for consideration and approval, a single State plan (referred to in this subchapter as the ''State plan'') that outlines a 4-year strategy for the statewide provision of community service employment and other authorized activities for eligible individuals under this subchapter. The plan shall contain such provisions as the Secretary may require, consistent with this subchapter, including a description of the process used to ensure the participation of individuals described in paragraph (2). Not less often than every 2 years, the Governor shall review the State plan and submit an update to the State plan to the Secretary for consideration and approval.

(2) Recommendations

In developing the State plan prior to its submission to the Secretary, the Governor shall seek the advice and recommendations of—

(A) individuals representing the State agency and the area agencies on aging in the State, and the State and local workforce investment boards established under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

(B) individuals representing public and nonprofit private agencies and organizations providing employment services, including each grantee operating a project under this subchapter in the State; and

(C) individuals representing social service organizations providing services to older individuals, grantees under subchapter III of this chapter, affected communities, unemployed older individuals, community-based organizations serving the needs of older individuals, business organizations, and labor organizations.

(3) Comments

Any State plan submitted by the Governor in accordance with paragraph (1) shall be accompanied by copies of public comments relating to the plan received pursuant to paragraph (7), and a summary of the comments.

(4) Plan provisions

The State plan shall identify and address—

(A) the relationship that the number of eligible individuals in each area bears to the total number of eligible individuals, respectively, in the State;

(B) the relative distribution of eligible individuals residing in rural and urban areas in the State; and

(C) the relative distribution of—

(i) eligible individuals who are individuals with greatest economic need;

(ii) eligible individuals who are minority individuals;

(iii) eligible individuals who are limited English proficient; and

(iv) eligible individuals who are individuals with greatest social need;

(D) the current and projected employment opportunities in the State (such as by providing information available under section 49*l*–2 of title 29 by occupation), and the type of skills possessed by local eligible individuals;

(E) the localities and populations for which projects of the type authorized by this subchapter are most needed; and

(F) plans for facilitating the coordination of activities of grantees in the State under this subchapter with activities carried out in the State under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(5) Governor's recommendations

Before a proposal for a grant under this subchapter for any fiscal year is submitted to the Secretary, the Governor of the State in which projects are proposed to be conducted under such grant shall be afforded a reasonable opportunity to submit to the Secretary—

(A) recommendations regarding the anticipated effect of each such proposal upon the overall distribution of enrollment positions under this subchapter in the State (including such distribution among urban and rural areas), taking into account the total number of positions to be provided by all grantees in the State;

(B) any recommendations for redistribution of positions to underserved areas as vacancies occur in previously encumbered positions in other areas; and

(C) in the case of any increase in funding that may be available for use in the State under this subchapter for the fiscal year, any recommendations for distribution of newly available positions in excess of those available during the preceding year to underserved areas.

(6) Disruptions

In developing a plan or considering a recommendation under this subsection, the Governor shall avoid disruptions in the provision of services for participants to the greatest possible extent.

(7) Determination; review

(A) Determination

In order to effectively carry out this subchapter, each State shall make the State plan available for public comment. The Secretary, in consultation with the Assistant Secretary, shall review the plan and make a written determination with findings and a decision regarding the plan.

(B) Review

The Secretary may review, on the Secretary's own initiative or at the request of any public or private agency or organization or of any agency of the State, the distribution of projects and services under this subchapter in the State, including the distribution between urban and rural areas in the State. For each proposed reallocation of projects or services in a State, the Secretary shall give notice and opportunity for public comment.

(8) Exemption

The grantees that serve eligible individuals who are older Indians or Pacific Island and Asian Americans with funds reserved under section 3056d(a)(3) of this title may not be required to participate in the State planning processes described in this section but shall collaborate with the Secretary to develop a plan for projects and services to eligible individuals who are Indians or Pacific Island and Asian Americans, respectively.

(b) Coordination with other Federal programs

(1) In general

The Secretary and the Assistant Secretary shall coordinate the program carried out under this subchapter with programs carried out under other subchapters of this chapter, to increase employment opportunities available to older individuals.

(2) Programs

(A) In general

The Secretary shall coordinate programs carried out under this subchapter with the program carried out under the Workforce In-

vestment Act of 1998 (29 U.S.C. 2801 et seq.), the Community Services Block Grant Act (42 U.S.C. 9901 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.), the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.), and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.). The Secretary shall coordinate the administration of this subchapter with the administration of other subchapters of this chapter by the Assistant Secretary to increase the likelihood that eligible individuals for whom employment opportunities under this subchapter are available and who need services under such subchapters receive such services.

(B) Use of funds

(i) Prohibition

Funds appropriated to carry out this subchapter may not be used to carry out any program under the Workforce Investment Act of 1998, the Community Services Block Grant Act, the Rehabilitation Act of 1973, the Carl D. Perkins Career and Technical Education Act of 2006, the National and Community Service Act of 1990, or the Domestic Volunteer Service Act of 1973.

(ii) Joint activities

Clause (i) shall not be construed to prohibit carrying out projects under this subchapter jointly with programs, projects, or activities under any Act specified in clause (i), or from carrying out section 3056i of this title.

(3) Informational materials on age discrimination

The Secretary shall distribute to grantees under this subchapter, for distribution to program participants, and at no cost to grantees or participants, informational materials developed and supplied by the Equal Employment Opportunity Commission and other appropriate Federal agencies that the Secretary determines are designed to help participants identify age discrimination and to understand their rights under the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.).

(c) Use of services, equipment, personnel, and facilities

In carrying out this subchapter, the Secretary may use the services, equipment, personnel, and facilities of Federal and other agencies, with their consent, with or without reimbursement, and on a similar basis cooperate with other public and nonprofit private agencies and organizations in the use of services, equipment, and facilities.

(d) Payments

Payments under this subchapter may be made in advance or by way of reimbursement and in such installments as the Secretary may determine.

(e) No delegation of functions

The Secretary shall not delegate any function of the Secretary under this subchapter to any other Federal officer or entity.

(f) Compliance

(1) Monitoring

The Secretary shall monitor projects for which grants are made under this subchapter to determine whether the grantees are complying with rules and regulations issued to carry out this subchapter (including the statewide planning, consultation, and coordination requirements of this subchapter).

(2) Compliance with uniform cost principles and administrative requirements

Each grantee that receives funds under this subchapter shall comply with the applicable uniform cost principles and appropriate administrative requirements for grants and contracts that are applicable to the type of entity that receives funds, as issued as circulars or rules of the Office of Management and Budget.

(3) Reports

Each grantee described in paragraph (2) shall prepare and submit a report in such manner and containing such information as the Secretary may require regarding activities carried out under this subchapter.

(4) Records

Each grantee described in paragraph (2) shall keep records that—

(A) are sufficient to permit the preparation of reports required by this subchapter;

(B) are sufficient to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully; and

(C) contain any other information that the Secretary determines to be appropriate.

(g) Evaluations

The Secretary shall establish by rule and implement a process to evaluate, in accordance with section 3056k of this title, the performance of projects carried out and services provided under this subchapter. The Secretary shall report to Congress, and make available to the public, the results of each such evaluation and shall use such evaluation to improve services delivered by, or the operation of, projects carried out under this subchapter.

(Pub. L. 89–73, title V, §503, as added Pub. L. 109–365, title V, §501, Oct. 17, 2006, 120 Stat. 2571.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsecs. (a)(2)(A), (4)(F) and (b)(2)(A), (B)(i), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, which enacted chapter 73 (§9201 et seq.) of Title 20, Education, and chapter 30 (§2801 et seq.) of Title 29, Labor, and enacted, amended, and repealed numerous other sections and notes in the Code. Title I of the Act is classified principally to chapter 30 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20 and Tables.

The Community Services Block Grant Act, referred to in subsec. (b)(2)(A), (B)(i), is subtitle B (§671 et seq.) of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 511, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b)(2)(A), (B)(i), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat.

355, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (b)(2)(A), (B)(i), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109–270, § 1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The National and Community Service Act of 1990, referred to in subsec. (b)(2)(A), (B)(i), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, which is classified principally to chapter 129 (§ 12501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b)(2)(A), (B)(i), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, which is classified principally to chapter 66 (§ 4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables

The Age Discrimination in Employment Act of 1967, referred to in subsec. (b)(3), is Pub. L. 90–202, Dec. 15, 1967, 81 Stat. 602, which is classified generally to chapter 14 (§ 621 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 3056a, Pub. L. 89–73, title V, § 503, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2272; amended Pub. L. 109–270, § 2(k)(2), Aug. 12, 2006, 120 Stat. 748, related to administration of community service projects, prior to the general amendment of this subchapter by Pub. L. 109–365.

Another prior section 3056a, Pub. L. 89–73, title V, § 503, formerly title IX, § 903, as added Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 722; renumbered title V, § 503, and amended Pub. L. 95–478, title I, § 105(a), (c)(1), (3), Oct. 18, 1978, 92 Stat. 1547, 1548; Pub. L. 97–115, § 12(d), Dec. 29, 1981, 95 Stat. 1607; Pub. L. 98–459, title V, § 502, Oct. 9, 1984, 98 Stat. 1786; Pub. L. 100–175, title I, § 163, Nov. 29, 1987, 101 Stat. 958; Pub. L. 102–375, title I, § 102(b)(1)(B), (9)(E), title V, § 502, Sept. 30, 1992, 106 Stat. 1201, 1202, 1266; Pub. L. 103–171, §§ 3(a)(8), 4(a)(3), Dec. 2, 1993, 107 Stat. 1990, 1991; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(33)(C), (f)(25)(C)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–426, 2681–433, related to administration of community service projects, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 503 of Pub. L. 89–73 was classified to section 3041b of this title, prior to repeal by Pub. L. 95–478.

§ 3056b. Participants not Federal employees

(a) Inapplicability of certain provisions covering Federal employees

Eligible individuals who are participants in any project funded under this subchapter shall not be considered to be Federal employees as a result of such participation and shall not be subject to part III of title 5.

(b) Workers' compensation

No grant or subgrant shall be made and no contract or subcontract shall be entered into under this subchapter with an entity who is, or whose employees are, under State law, exempted from operation of the State workers' compensation law, generally applicable to employees, unless the entity shall undertake to provide either through insurance by a recognized carrier or by self-insurance, as authorized by State law, that the persons employed under the grant, subgrant, contract, or subcontract shall enjoy workers' compensation coverage equal to that provided by law for covered employment.

(Pub. L. 89–73, title V, § 504, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2575.)

PRIOR PROVISIONS

A prior section 3056b, Pub. L. 89–73, title V, § 504, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2276, related to participants not having status as Federal employees and contractual requirement of workmen's compensation, prior to the general amendment of this subchapter by Pub. L. 109–365.

Another prior section 3056b, Pub. L. 89–73, title V, § 504, formerly title IX, § 904, as added Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 723; renumbered title V, § 504, and amended Pub. L. 95–478, title I, § 105(a), title V, § 503(d), Oct. 18, 1978, 92 Stat. 1547, 1559, related to participants not having status as Federal employees and contractual requirement of workmen's compensation, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 504 of Pub. L. 89–73 was classified to section 3041c of this title, prior to repeal by Pub. L. 95–478.

§ 3056c. Interagency cooperation

(a) Consultation with the Assistant Secretary

The Secretary shall consult with and obtain the written views of the Assistant Secretary before issuing rules and before establishing general policy in the administration of this subchapter.

(b) Consultation with heads of other agencies

The Secretary shall consult and cooperate with the Secretary of Health and Human Services (acting through officers including the Director of the Office of Community Services), and the heads of other Federal agencies that carry out programs related to the program carried out under this subchapter, in order to achieve optimal coordination of the program carried out under this subchapter with such related programs. Each head of a Federal agency shall cooperate with the Secretary in disseminating information relating to the availability of assistance under this subchapter and in promoting the identification and interests of individuals eligible for employment in projects assisted under this subchapter.

(c) Coordination

(1) In general

The Secretary shall promote and coordinate efforts to carry out projects under this subchapter jointly with programs, projects, or activities carried out under other Acts, especially activities provided under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), including activities provided through one-stop delivery systems established under section 134(c)) of such Act (29 U.S.C. 2864(c)), that provide training and employment opportunities to eligible individuals.

(2) Coordination with certain activities

The Secretary shall consult with the Secretary of Education to promote and coordinate efforts to carry out projects under this subchapter jointly with activities in which eligi-

ble individuals may participate that are carried out under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.).

(Pub. L. 89–73, title V, § 505, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2575.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (c)(1), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (c)(2), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109–270, § 1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 3056c, Pub. L. 89–73, title V, § 505, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2276; amended Pub. L. 109–270, § 2(k)(3), Aug. 12, 2006, 120 Stat. 749, related to interagency cooperation, prior to the general amendment of this subchapter by Pub. L. 109–365.

Another prior section 3056c, Pub. L. 89–73, title V, § 505, formerly title IX, § 905, as added Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 723; renumbered title V, § 505, and amended Pub. L. 95–478, title I, § 105(a), (d), Oct. 18, 1978, 92 Stat. 1547, 1548; Pub. L. 97–115, § 12(b)(2), Dec. 29, 1981, 95 Stat. 1606; Pub. L. 102–375, title V, § 503, Sept. 30, 1992, 106 Stat. 1267; Pub. L. 103–171, § 3(a)(8), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 105–332, § 3(i)(2), Oct. 31, 1998, 112 Stat. 3126, related to interagency cooperation, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 505 of Pub. L. 89–73 was classified to section 3041d of this title, prior to repeal by Pub. L. 95–478.

§ 3056d. Distribution of assistance

(a) Reservations

(1) Reservation for pilot demonstration and evaluation projects

Of the funds appropriated to carry out this subchapter for each fiscal year, the Secretary may first reserve not more than 1.5 percent to carry out demonstration projects, pilot projects, and evaluation projects under section 3056(e) of this title.

(2) Reservation for territories

Of the funds appropriated to carry out this subchapter for each fiscal year, the Secretary shall reserve 0.75 percent, of which—

(A) Guam, American Samoa, and the United States Virgin Islands shall each receive 30 percent of the funds so reserved; and

(B) the Commonwealth of the Northern Mariana Islands shall receive 10 percent of the funds so reserved.

(3) Reservation for organizations

Of the funds appropriated to carry out this subchapter for each fiscal year, the Secretary shall reserve such amount as may be necessary to make national grants to public or nonprofit national Indian aging organizations with the ability to provide community service employment and other authorized activities for eligible individuals who are Indians and to national public or nonprofit Pacific Island and Asian American aging organizations with the ability to provide community service employment and other authorized activities for eligible individuals who are Pacific Island and Asian Americans.

(b) State allotments

The allotment for each State shall be the sum of the amounts allotted for national grants in such State under subsection (d) and for the grant to such State under subsection (e).

(c) Division between national grants and grants to States

The funds appropriated to carry out this subchapter for any fiscal year that remain after amounts are reserved under paragraphs (1), (2), and (3) of subsection (a) shall be divided by the Secretary between national grants and grants to States as follows:

(1) Reservation of funds for fiscal year 2000 level of activities

(A) In general

The Secretary shall reserve the amount of funds necessary to maintain the fiscal year 2000 level of activities supported by grantees that operate under this subchapter under national grants from the Secretary, and the fiscal year 2000 level of activities supported by State grantees under this subchapter, in proportion to their respective fiscal year 2000 levels of activities.

(B) Insufficient appropriations

If in any fiscal year the funds appropriated to carry out this subchapter are insufficient to satisfy the requirement specified in subparagraph (A), then the amount described in subparagraph (A) shall be reduced proportionally.

(2) Funding in excess of fiscal year 2000 level of activities

(A) Up to $35,000,000

The amount of funds remaining (if any) after the application of paragraph (1), but not to exceed $35,000,000, shall be divided so that 75 percent shall be provided to State grantees and 25 percent shall be provided to grantees that operate under this subchapter under national grants from the Secretary.

(B) Over $35,000,000

The amount of funds remaining (if any) after the application of subparagraph (A) shall be divided so that 50 percent shall be provided to State grantees and 50 percent shall be provided to grantees that operate under this subchapter under national grants from the Secretary.

(d) Allotments for national grants

From funds available under subsection (c) for national grants, the Secretary shall allot for public and nonprofit private agency and organization grantees that operate under this subchapter under national grants from the Secretary in each State, an amount that bears the same ratio to such funds as the product of the number of individuals age 55 or older in the

State and the allotment percentage of such State bears to the sum of the corresponding products for all States, except as follows:

(1) Minimum allotment

No State shall be provided an amount under this subsection that is less than ½ of 1 percent of the amount provided under subsection (c) for public and nonprofit private agency and organization grantees that operate under this subchapter under national grants from the Secretary in all of the States.

(2) Hold harmless

If such amount provided under subsection (c) is—

(A) equal to or less than the amount necessary to maintain the fiscal year 2000 level of activities, allotments for grantees that operate under this subchapter under national grants from the Secretary in each State shall be proportional to the amount necessary to maintain their fiscal year 2000 level of activities; or

(B) greater than the amount necessary to maintain the fiscal year 2000 level of activities, no State shall be provided a percentage increase above the amount necessary to maintain the fiscal year 2000 level of activities for grantees that operate under this subchapter under national grants from the Secretary in the State that is less than 30 percent of the percentage increase above the amount necessary to maintain the fiscal year 2000 level of activities for public and private nonprofit agency and organization grantees that operate under this subchapter under national grants from the Secretary in all of the States.

(3) Reduction

Allotments for States not affected by paragraphs (1) and (2)(B) shall be reduced proportionally to satisfy the conditions in such paragraphs.

(e) Allotments for grants to States

From the amount provided for grants to States under subsection (c), the Secretary shall allot for the State grantee in each State an amount that bears the same ratio to such amount as the product of the number of individuals age 55 or older in the State and the allotment percentage of such State bears to the sum of the corresponding products for all States, except as follows:

(1) Minimum allotment

No State shall be provided an amount under this subsection that is less than ½ of 1 percent of the amount provided under subsection (c) for State grantees in all of the States.

(2) Hold harmless

If such amount provided under subsection (c) is—

(A) equal to or less than the amount necessary to maintain the fiscal year 2000 level of activities, allotments for State grantees in each State shall be proportional to the amount necessary to maintain their fiscal year 2000 level of activities; or

(B) greater than the amount necessary to maintain the fiscal year 2000 level of activities, no State shall be provided a percentage increase above the amount necessary to maintain the fiscal year 2000 level of activities for State grantees in the State that is less than 30 percent of the percentage increase above the amount necessary to maintain the fiscal year 2000 level of activities for State grantees in all of the States.

(3) Reduction

Allotments for States not affected by paragraphs (1) and (2)(B) shall be reduced proportionally to satisfy the conditions in such paragraphs.

(f) Allotment percentage

For purposes of subsections (d) and (e) and this subsection—

(1) the allotment percentage of each State shall be 100 percent less that percentage that bears the same ratio to 50 percent as the per capita income of such State bears to the per capita income of the United States, except that—

(A) the allotment percentage shall be not more than 75 percent and not less than 33 percent; and

(B) the allotment percentage for the District of Columbia and the Commonwealth of Puerto Rico shall be 75 percent;

(2) the number of individuals age 55 or older in any State and in all States, and the per capita income in any State and in all States, shall be determined by the Secretary on the basis of the most satisfactory data available to the Secretary; and

(3) for the purpose of determining the allotment percentage, the term ''United States'' means the 50 States,[1] and the District of Columbia.

(g) Definitions

In this section:

(1) Cost per authorized position

The term ''cost per authorized position'' means the sum of—

(A) the hourly minimum wage rate specified in section 206(a)(1) of title 29, multiplied by the number of hours equal to the product of 21 hours and 52 weeks;

(B) an amount equal to 11 percent of the amount specified under subparagraph (A), for the purpose of covering Federal payments for fringe benefits; and

(C) an amount determined by the Secretary, for the purpose of covering Federal payments for the remainder of all other program and administrative costs.

(2) Fiscal year 2000 level of activities

The term ''fiscal year 2000 level of activities'' means—

(A) with respect to public and nonprofit private agency and organization grantees that operate under this subchapter under national grants from the Secretary, their level of activities for fiscal year 2000; and

(B) with respect to State grantees, their level of activities for fiscal year 2000.

[1] So in original. The comma probably should not appear.

(3) Grants to States

The term ''grants to States'' means grants made under this subchapter by the Secretary to the States.

(4) Level of activities

The term ''level of activities'' means the number of authorized positions multiplied by the cost per authorized position.

(5) National grants

The term ''national grants'' means grants made under this subchapter by the Secretary to public and nonprofit private agency and organization grantees that operate under this subchapter.

(6) State

The term ''State'' does not include Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands.

(Pub. L. 89–73, title V, § 506, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2576.)

PRIOR PROVISIONS

A prior section 3056d, Pub. L. 89–73, title V, § 506, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2276, related to distribution of assistance, prior to the general amendment of this subchapter by Pub. L. 109–365.

Another prior section 3056d, Pub. L. 89–73, title V, § 506, formerly title IX, § 906, as added Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 723; renumbered title V, § 506, and amended Pub. L. 95–478, title I, § 105(a), (e), Oct. 18, 1978, 92 Stat. 1547, 1548; Pub. L. 97–115, § 12(e), Dec. 29, 1981, 95 Stat. 1607; Pub. L. 98–459, title V, § 503(a), (b), Oct. 9, 1984, 98 Stat. 1787; Pub. L. 100–175, title I, §§ 162(b), 182(b)(3), Nov. 29, 1987, 101 Stat. 957, 964; Pub. L. 102–375, title V, § 504(a)–(c)(1), (3), title IX, § 904(b)(2), Sept. 30, 1992, 106 Stat. 1267–1269, 1309, related to national grants or contracts and State allotments for projects, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 506 of Pub. L. 89–73 was classified to section 3041e of this title, prior to repeal by Pub. L. 95–478.

§ 3056e. Equitable distribution

(a) Interstate allocation

In making grants under section 3056(b) of this title from allotments made under section 3056d of this title, the Secretary shall ensure, to the extent feasible, an equitable distribution of activities under such grants, in the aggregate, among the States, taking into account the needs of underserved States.

(b) Intrastate allocation

The amount allocated for projects within each State under section 3056d of this title shall be allocated among areas in the State in an equitable manner, taking into consideration the State priorities set out in the State plan in effect under section 3056a(a) of this title.

(Pub. L. 89–73, title V, § 507, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2579.)

PRIOR PROVISIONS

A prior section 3056e, Pub. L. 89–73, title V, § 507, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2280, related to equitable distribution of activities and projects, prior to the general amendment of this subchapter by Pub. L. 109–365.

Another prior section 3056e, Pub. L. 89–73, title V, § 507, formerly title IX, § 907, as added Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 724; renumbered title V, § 507, and amended Pub. L. 95–478, title I, § 105(a), (f), Oct. 18, 1978, 92 Stat. 1547, 1548; Pub. L. 97–115, § 12(a)(3), (f), Dec. 29, 1981, 95 Stat. 1606, 1607; Pub. L. 98–459, title V, § 503(c), Oct. 9, 1984, 98 Stat. 1787; Pub. L. 100–175, title I, §§ 164, 182(b)(4), (p), Nov. 29, 1987, 101 Stat. 958, 964, 967; Pub. L. 100–628, title VII, § 705(9), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 102–375, title I, § 102(b)(8), title V, § 504(c)(1), Sept. 30, 1992, 106 Stat. 1201, 1269, related to definitions, prior to the general amendment of this subchapter by Pub. L. 106–501.

Another prior section 507 of Pub. L. 89–73 was classified to section 3041f of this title, prior to repeal by Pub. L. 95–478.

§ 3056f. Report

To carry out the Secretary's responsibilities for reporting in section 3056a(g) of this title, the Secretary shall require the State agency for each State that receives funds under this subchapter to prepare and submit a report at the beginning of each fiscal year on such State's compliance with section 3056e(b) of this title. Such report shall include the names and geographic location of all projects assisted under this subchapter and carried out in the State and the amount allocated to each such project under section 3056d of this title.

(Pub. L. 89–73, title V, § 508, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2579.)

PRIOR PROVISIONS

A prior section 3056f, Pub. L. 89–73, title V, § 508, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2280, required annual report on State's compliance with section 3056e(b) of this title, prior to the general amendment of this subchapter by Pub. L. 109–365.

Another prior section 3056f, Pub. L. 89–73, title V, § 508, formerly title IX, § 908, as added Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 725; renumbered title V, § 508, and amended Pub. L. 95–478, title I, § 105(a), (g), Oct. 18, 1978, 92 Stat. 1547, 1548; Pub. L. 97–115, § 12(g), Dec. 29, 1981, 95 Stat. 1607; Pub. L. 98–459, title V, § 504, Oct. 9, 1984, 98 Stat. 1787; Pub. L. 100–175, title I, § 165, Nov. 29, 1987, 101 Stat. 958; Pub. L. 102–375, title V, § 505, Sept. 30, 1992, 106 Stat. 1269, related to authorization of appropriations, prior to the general amendment of this subchapter by Pub. L. 106–501.

§ 3056g. Employment assistance and Federal housing and food stamp programs

Funds received by eligible individuals from projects carried out under the program established under this subchapter shall not be considered to be income of such individuals for purposes of determining the eligibility of such individuals, or of any other individuals, to participate in any housing program for which Federal funds may be available or for any income determination under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(Pub. L. 89–73, title V, § 509, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2579.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, referred to in text, is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 3056g, Pub. L. 89–73, title V, § 509, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2280, related to employment assistance and Federal housing and food stamp programs, prior to the general amendment of this subchapter by Pub. L. 109–365.

Another prior section 3056g, Pub. L. 89–73, title V, § 509, as added Pub. L. 100–175, title I, § 166, Nov. 29, 1987, 101 Stat. 958, related to employment assistance and Federal housing and food stamp programs, prior to the general amendment of this subchapter by Pub. L. 106–501.

§ 3056h. Eligibility for workforce investment activities

Eligible individuals under this subchapter may be considered by local workforce investment boards and one-stop operators established under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.) to satisfy the requirements for receiving services under such title I that are applicable to adults.

(Pub. L. 89–73, title V, § 510, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2580.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in text, is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

PRIOR PROVISIONS

A prior section 3056h, Pub. L. 89–73, title V, § 510, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2280, related to eligibility for workforce investment activities, prior to the general amendment of this subchapter by Pub. L. 109–365.

Another prior section 3056h, Pub. L. 89–73, title V, § 510, as added Pub. L. 102–375, title V, § 506, Sept. 30, 1992, 106 Stat. 1269; amended Pub. L. 103–171, § 2(20), Dec. 2, 1993, 107 Stat. 1989; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(33)(D), (f)(25)(D)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–426, 2681–433, related to dual eligibility, prior to the general amendment of this subchapter by Pub. L. 106–501.

§ 3056i. Coordination with the Workforce Investment Act of 1998

(a) Partners

Grantees under this subchapter shall be one-stop partners as described in subparagraphs (A) and (B)(vi) of section 121(b)(1) of the Workforce Investment Act of 1998 (29 U.S.C. 2841(b)(1)) in the one-stop delivery system established under section 134(c) of such Act (29 U.S.C. 2864(c)) for the appropriate local workforce investment areas, and shall carry out the responsibilities relating to such partners.

(b) Coordination

In local workforce investment areas where more than 1 grantee under this subchapter provides services, the grantees shall—

(1) coordinate their activities related to the one-stop delivery systems; and

(2) be signatories of the memorandum of understanding established under section 121(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2841(c)).

(Pub. L. 89–73, title V, § 511, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2580.)

PRIOR PROVISIONS

A prior section 3056i, Pub. L. 89–73, title V, § 511, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2280, provided that assistance under this subchapter was not financial assistance described in section 1255a(h)(1)(A) of title 8, prior to the general amendment of this subchapter by Pub. L. 109–365. See section 3056j of this title.

Another prior section 3056i, Pub. L. 89–73, title V, § 511, as added Pub. L. 102–375, title V, § 507, Sept. 30, 1992, 106 Stat. 1269, related to treatment of assistance, prior to the general amendment of this subchapter by Pub. L. 106–501.

§ 3056j. Treatment of assistance

Assistance provided under this subchapter shall not be considered to be financial assistance described in section 1255a(h)(1)(A) of title 8.

(Pub. L. 89–73, title V, § 512, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2580.)

PRIOR PROVISIONS

A prior section 3056j, Pub. L. 89–73, title V, § 512, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2280, related to coordination with the Workforce Investment Act of 1998, prior to the general amendment of this subchapter by Pub. L. 109–365. See section 3056i of this title.

§ 3056k. Performance

(a) Measures and indicators

(1) Establishment and implementation of measures and indicators

The Secretary shall establish and implement, after consultation with grantees, subgrantees, and host agencies under this subchapter, States, older individuals, area agencies on aging, and other organizations serving older individuals, core measures of performance and additional indicators of performance for each grantee for projects and services carried out under this subchapter. The core measures of performance and additional indicators of performance shall be applicable to each grantee under this subchapter without regard to whether such grantee operates the program directly or through subcontracts, subgrants, or agreements with other entities.

(2) Content

(A) Composition of measures and indicators

(i) Measures

The core measures of performance established by the Secretary in accordance with paragraph (1) shall consist of core indicators of performance specified in subsection (b)(1) and the expected levels of performance applicable to each core indicator of performance.

(ii) Additional indicators

The additional indicators of performance established by the Secretary in accordance with paragraph (1) shall be the additional indicators of performance specified in subsection (b)(2).

(B) Continuous improvement

The measures described in subparagraph (A)(i) shall be designed to promote continuous improvement in performance.

(C) Expected levels of performance

The Secretary and each grantee shall reach agreement on the expected levels of performance for each program year for each of the core indicators of performance specified in subparagraph (A)(i). The agreement shall take into account the requirement of subparagraph (B) and the factors described in subparagraph (D), and other appropriate factors as determined by the Secretary, and shall be consistent with the requirements of subparagraph (E). Funds may not be awarded under the grant until such agreement is reached. At the conclusion of negotiations concerning the levels with all grantees, the Secretary shall make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

(D) Adjustment

The expected levels of performance described in subparagraph (C) applicable to a grantee shall be adjusted after the agreement under subparagraph (C) has been reached only with respect to the following factors:

(i) High rates of unemployment or of poverty or participation in the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), in the areas served by a grantee, relative to other areas of the State involved or Nation.

(ii) Significant downturns in the areas served by the grantee or in the national economy.

(iii) Significant numbers or proportions of participants with 1 or more barriers to employment, including individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 3056p of this title, served by a grantee relative to such numbers or proportions for grantees serving other areas of the State or Nation.

(iv) Changes in Federal, State, or local minimum wage requirements.

(v) Limited economies of scale for the provision of community service employment and other authorized activities in the areas served by the grantee.

(E) Placement

(i) Level of performance

For all grantees, the Secretary shall establish an expected level of performance of not less than the percentage specified in clause (ii) (adjusted in accordance with subparagraph (D)) for the entry into unsubsidized employment core indicator of performance described in subsection (b)(1)(B).

(ii) Required placement percentages

The minimum percentage for the expected level of performance for the entry into unsubsidized employment core indicator of performance described in subsection (b)(1)(B) is—

(I) 21 percent for fiscal year 2007;

(II) 22 percent for fiscal year 2008;

(III) 23 percent for fiscal year 2009;

(IV) 24 percent for fiscal year 2010; and

(V) 25 percent for fiscal year 2011.

(3) Limitation

An agreement to be evaluated on the core measures of performance and to report information on the additional indicators of performance shall be a requirement for application for, and a condition of, all grants authorized by this subchapter.

(b) Indicators of performance

(1) Core indicators

The core indicators of performance described in subsection (a)(2)(A)(i) shall consist of—

(A) hours (in the aggregate) of community service employment;

(B) entry into unsubsidized employment;

(C) retention in unsubsidized employment for 6 months;

(D) earnings; and

(E) the number of eligible individuals served, including the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 3056p of the title.

(2) Additional indicators

The additional indicators of performance described in subsection (a)(2)(A)(ii) shall consist of—

(A) retention in unsubsidized employment for 1 year;

(B) satisfaction of the participants, employers, and their host agencies with their experiences and the services provided;

(C) any other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance.

(3) Definitions of indicators

The Secretary, after consultation with national and State grantees, representatives of business and labor organizations, and providers of services, shall, by regulation, issue definitions of the indicators of performance described in paragraphs (1) and (2).

(c) Evaluation

The Secretary shall—

(1) annually evaluate, and publish and make available for public review information on, the actual performance of each grantee with respect to the levels achieved for each of the core indicators of performance, compared to the expected levels of performance established under subsection (a)(2)(C) (including any adjustments to such levels made in accordance with subsection (a)(2)(D)); and

(2) annually publish and make available for public review information on the actual performance of each grantee with respect to the levels achieved for each of the additional indicators of performance.

(d) Technical assistance and corrective efforts

(1) Initial determinations

(A) In general

As soon as practicable after July 1, 2007, the Secretary shall determine if a grantee

under this subchapter has, for program year 2006—

(i) met the expected levels of performance established under subsection (a)(2)(C) (including any adjustments to such levels made in accordance with subsection (a)(2)(D)) for the core indicators of performance described in subparagraphs (A), (C), (D), and (E) of subsection (b)(1); and

(ii) achieved the applicable percentage specified in subsection (a)(2)(E)(ii) for the core indicator of performance described in subsection (b)(1)(B).

(B) Technical assistance

If the Secretary determines that the grantee, for program year 2006—

(i) failed to meet the expected levels of performance described in subparagraph (A)(i); or

(ii) failed to achieve the applicable percentage described in subparagraph (A)(ii),

the Secretary shall provide technical assistance to assist the grantee to meet the expected levels of performance and achieve the applicable percentage.

(2) National grantees

(A) In general

Not later than 120 days after the end of each program year, the Secretary shall determine if a national grantee awarded a grant under section 3056(b) of this title in accordance with section 3056*l* of this title has met the expected levels of performance established under subsection (a)(2)(C) (including any adjustments to such levels made in accordance with subsection (a)(2)(D)) for the core indicators of performance described in subsection (b)(1).

(B) Technical assistance and corrective action plan

(i) In general

If the Secretary determines that a national grantee fails to meet the expected levels of performance described in subparagraph (A), the Secretary after each year of such failure, shall provide technical assistance and require such grantee to submit a corrective action plan not later than 160 days after the end of the program year.

(ii) Content

The plan submitted under clause (i) shall detail the steps the grantee will take to meet the expected levels of performance in the next program year.

(iii) Recompetition

Any grantee who has failed to meet the expected levels of performance for 4 consecutive years (beginning with program year 2007) shall not be allowed to compete in the subsequent grant competition under section 3056*l* of this title following the fourth consecutive year of failure but may compete in the next such grant competition after that subsequent competition.

(3) State grantees

(A) In general

Not later than 120 days after the end of each program year, the Secretary shall determine if a State grantee allotted funds under section 3056d(e) of this title has met the expected levels of performance established under subsection (a)(2)(C) (including any adjustments to such levels made in accordance with subsection (a)(2)(D)) for the core indicators of performance described in subsection (b)(1).

(B) Technical assistance and corrective action plan

(i) In general

If the Secretary determines that a State fails to meet the expected levels of performance described in subparagraph (A), the Secretary, after each year of such failure, shall provide technical assistance and require the State to submit a corrective action plan not later than 160 days after the end of the program year.

(ii) Content

The plan submitted under clause (i) shall detail the steps the State will take to meet the expected levels of performance in the next program year.

(iii) Competition

If the Secretary determines that the State fails to meet the expected levels of performance described in subparagraph (A) for 3 consecutive program years (beginning with program year 2007), the Secretary shall provide for the conduct by the State of a competition to award the funds allotted to the State under section 3056d(e) of this title for the first full program year following the Secretary's determination.

(4) Special rule for establishment and implementation

The Secretary shall establish and implement the core measures of performance and additional indicators of performance described in this section, including all required indicators described in subsection (b), not later than July 1, 2007.

(e) Impact on grant competition

The Secretary may not publish a notice announcing a grant competition under this subchapter, and solicit proposals for grants, until the day that is the later of—

(1) the date on which the Secretary implements the core measures of performance and additional indicators of performance described in this section; and

(2) January 1, 2010.

(Pub. L. 89–73, title V, § 513, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2580.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2)(D)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 3056k, Pub. L. 89–73, title V, § 513, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2281, related to performance measures, prior to

the general amendment of this subchapter by Pub. L. 109–365.

§ 3056*l*. Competitive requirements relating to grant awards

(a) Program authorized

(1) Initial approval of grant applications

From the funds available for national grants under section 3056d(d) of this title, the Secretary shall award grants under section 3056(b) of this title to eligible applicants, through a competitive process that emphasizes meeting performance requirements, to carry out projects under this subchapter for a period of 4 years, except as provided in paragraph (2). The Secretary may not conduct a grant competition under this subchapter until the day described in section 3056k(e) of this title.

(2) Continuation of approval based on performance

If the recipient of a grant made under paragraph (1) meets the expected levels of performance described in section 3056k(d)(2)(A) of this title for each year of such 4-year period with respect to a project, the Secretary may award a grant under section 3056(b) of this title to such recipient to continue such project beyond such 4-year period for 1 additional year without regard to such process.

(b) Eligible applicants

An applicant shall be eligible to receive a grant under section 3056(b) of this title in accordance with subsections (a), (c), and (d).

(c) Criteria

For purposes of subsection (a)(1), the Secretary shall select the eligible applicants to receive grants based on the following:

(1) The applicant's ability to administer a project that serves the greatest number of eligible individuals, giving particular consideration to individuals with greatest economic need, individuals with greatest social need, and individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 3056p of this title.

(2) The applicant's ability to administer a project that provides employment for eligible individuals in the communities in which such individuals reside, or in nearby communities, that will contribute to the general welfare of the communities involved.

(3) The applicant's ability to administer a project that moves eligible individuals into unsubsidized employment.

(4) The applicant's prior performance, if any, in meeting core measures of performance and addressing additional indicators of performance under this subchapter and the applicant's ability to address core indicators of performance and additional indicators of performance under this subchapter and under other Federal or State programs in the case of an applicant that has not previously received a grant under this subchapter.

(5) The applicant's ability to move individuals with multiple barriers to employment, including individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 3056p of this title, into unsubsidized employment.

(6) The applicant's ability to coordinate activities with other organizations at the State and local level.

(7) The applicant's plan for fiscal management of the project to be administered with funds received in accordance with this section.

(8) The applicant's ability to administer a project that provides community service.

(9) The applicant's ability to minimize disruption in services for participants and in community services provided.

(10) Any additional criteria that the Secretary considers to be appropriate in order to minimize disruption in services for participants.

(d) Responsibility tests

(1) In general

Before final selection of a grantee, the Secretary shall conduct a review of available records to assess the applicant's overall responsibility to administer Federal funds.

(2) Review

As part of the review described in paragraph (1), the Secretary may consider any information, including the applicant's history with regard to the management of other grants.

(3) Failure to satisfy test

The failure to satisfy a responsibility test with respect to any 1 factor that is listed in paragraph (4), excluding those listed in subparagraphs (A) and (B) of such paragraph, does not establish that the applicant is not responsible unless such failure is substantial or persists for 2 or more consecutive years.

(4) Test

The responsibility tests include review of the following factors:

(A) Unsuccessful efforts by the applicant to recover debts, after 3 demand letters have been sent, that are established by final agency action, or a failure to comply with an approved repayment plan.

(B) Established fraud or criminal activity of a significant nature within the organization or agency involved.

(C) Serious administrative deficiencies identified by the Secretary, such as failure to maintain a financial management system as required by Federal rules or regulations.

(D) Willful obstruction of the audit process.

(E) Failure to provide services to participants for a current or recent grant or to meet applicable core measures of performance or address applicable indicators of performance.

(F) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities.

(G) Failure to return a grant closeout package or outstanding advances within 90 days of the grant expiration date or receipt of the closeout package, whichever is later, unless an extension has been requested and granted.

(H) Failure to submit required reports.

(I) Failure to properly report and dispose of Government property as instructed by the Secretary.

(J) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand.

(K) Failure to ensure that a subrecipient complies with its Office of Management and Budget Circular A–133 audit requirements specified at section 667.200(b) of title 20, Code of Federal Regulations.

(L) Failure to audit a subrecipient within the required period.

(M) Final disallowed costs in excess of 5 percent of the grant or contract award if, in the judgment of the grant officer, the disallowances are egregious.

(N) Failure to establish a mechanism to resolve a subrecipient's audit in a timely fashion.

(5) Determination

Applicants that are determined to be not responsible shall not be selected as grantees.

(6) Disallowed costs

Interest on disallowed costs shall accrue in accordance with the Debt Collection Improvement Act of 1996, including the amendments made by that Act.

(e) Grantees serving individuals with barriers to employment

(1) Definition

In this subsection, the term ''individuals with barriers to employment'' means minority individuals, Indian individuals, individuals with greatest economic need, and individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 3056p of this title.

(2) Special consideration

In areas where a substantial population of individuals with barriers to employment exists, a grantee that receives a national grant in accordance with this section shall, in selecting subgrantees, give special consideration to organizations (including former recipients of such national grants) with demonstrated expertise in serving individuals with barriers to employment.

(f) Minority-serving grantees

The Secretary may not promulgate rules or regulations affecting grantees in areas where a substantial population of minority individuals exists, that would significantly compromise the ability of the grantees to serve their targeted population of minority older individuals.

(Pub. L. 89–73, title V, § 514, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2584.)

REFERENCES IN TEXT

The Debt Collection Improvement Act of 1996, referred to in subsec. (d)(6), is section 31001 of title III of Pub. L. 104–134, Apr. 26, 1996, 110 Stat. 1321–358. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 3701 of Title 31, Money and Finance, and Tables.

PRIOR PROVISIONS

A prior section 3056*l*, Pub. L. 89–73, title V, § 514, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2282, related to competitive requirements relating to grant awards, prior to the general amendment of this subchapter by Pub. L. 109–365.

§ 3056m. Report on service to minority individuals

(a) In general

The Secretary shall annually prepare a report on the levels of participation and performance outcomes of minority individuals served by the program carried out under this subchapter.

(b) Contents

(1) Organization and data

Such report shall present information on the levels of participation and the outcomes achieved by such minority individuals with respect to each grantee under this subchapter, by service area, and in the aggregate, beginning with data that applies to program year 2005.

(2) Efforts

The report shall also include a description of each grantee's efforts to serve minority individuals, based on information submitted to the Secretary by each grantee at such time and in such manner as the Secretary determines to be appropriate.

(3) Related matters

The report shall also include—

(A) an assessment of individual grantees based on the criteria established under subsection (c);

(B) an analysis of whether any changes in grantees have affected participation rates of such minority individuals;

(C) information on factors affecting participation rates among such minority individuals; and

(D) recommendations for increasing participation of minority individuals in the program.

(c) Criteria

The Secretary shall establish criteria for determining the effectiveness of grantees in serving minority individuals in accordance with the goals set forth in section 3056(a)(1) of title.

(d) Submission

The Secretary shall annually submit such a report to the appropriate committees of Congress.

(Pub. L. 89–73, title V, § 515, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2587.)

PRIOR PROVISIONS

A prior section 3056m, Pub. L. 89–73, title V, § 515, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2286, related to authorization of appropriations, prior to the general amendment of this subchapter by Pub. L. 109–365. See section 3056*o* of this title.

§ 3056n. Sense of Congress

It is the sense of Congress that—

(1) the older American community service employment program described in this subchapter was established with the intent of placing older individuals in community service positions and providing job training; and

(2) placing older individuals in community service positions strengthens the ability of the individuals to become self-sufficient, provides

much-needed support to organizations that benefit from increased civic engagement, and strengthens the communities that are served by such organizations.

(Pub. L. 89–73, title V, § 516, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2587.)

PRIOR PROVISIONS

A prior section 3056n, Pub. L. 89–73, title V, § 516, as added Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2287, related to definitions, prior to the general amendment of this subchapter by Pub. L. 109–365. See section 3056p(a) of this title.

§ 3056*o*. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.

(b) Obligation

Amounts appropriated under this section for any fiscal year shall be available for obligation during the annual period that begins on July 1 of the calendar year immediately following the beginning of such fiscal year and that ends on June 30 of the following calendar year. The Secretary may extend the period during which such amounts may be obligated or expended in the case of a particular organization or agency that receives funds under this subchapter if the Secretary determines that such extension is necessary to ensure the effective use of such funds by such organization or agency.

(c) Recapturing funds

At the end of the program year, the Secretary may recapture any unexpended funds for the program year, and reobligate such funds within the 2 succeeding program years for—

(1) incentive grants to entities that are State grantees or national grantees under section 3056(b) of this title;

(2) technical assistance; or

(3) grants or contracts for any other activity under this subchapter.

(Pub. L. 89–73, title V, § 517, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2587.)

§ 3056p. Definitions and rule

(a) Definitions

For purposes of this subchapter:

(1) Community service

The term ''community service'' means—

(A) social, health, welfare, and educational services (including literacy tutoring), legal and other counseling services and assistance, including tax counseling and assistance and financial counseling, and library, recreational, and other similar services;

(B) conservation, maintenance, or restoration of natural resources;

(C) community betterment or beautification;

(D) antipollution and environmental quality efforts;

(E) weatherization activities;

(F) economic development; and

(G) such other services essential and necessary to the community as the Secretary determines by rule to be appropriate.

(2) Community service employment

The term ''community service employment'' means part-time, temporary employment paid with grant funds in projects described in section 3056(b)(1)(D) of this title, through which eligible individuals are engaged in community service and receive work experience and job skills that can lead to unsubsidized employment.

(3) Eligible individual

(A) In general

The term ''eligible individual'' means an individual who is age 55 or older and who has a low income (including any such individual whose income is not more than 125 percent of the poverty line), excluding any income that is unemployment compensation, a benefit received under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), a payment made to or on behalf of veterans or former members of the Armed Forces under the laws administered by the Secretary of Veterans Affairs, or 25 percent of a benefit received under title II of the Social Security Act (42 U.S.C. 401 et seq.), subject to subsection (b).

(B) Participation

(i) Exclusion

Notwithstanding any other provision of this paragraph, the term ''eligible individual'' does not include an individual who has participated in projects under this subchapter for a period of 48 months in the aggregate (whether or not consecutive) after July 1, 2007, unless the period was increased as described in clause (ii).

(ii) Increased periods of participation

The Secretary shall authorize a grantee for a project to increase the period of participation described in clause (i), pursuant to a request submitted by the grantee, for individuals who—

(I) have a severe disability;

(II) are frail or are age 75 or older;

(III) meet the eligibility requirements related to age for, but do not receive, benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.);

(IV) live in an area with persistent unemployment and are individuals with severely limited employment prospects; or

(V) have limited English proficiency or low literacy skills.

(4) Income

In this section, the term ''income'' means income received during the 12-month period (or, at the option of the grantee involved, the annualized income for the 6-month period) ending on the date an eligible individual submits an application to participate in a project carried out under this subchapter by such grantee.

(5) Pacific Island and Asian Americans

The term ''Pacific Island and Asian Americans'' means Americans having origins in any

of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.

(6) Program

The term ''program'' means the older American community service employment program established under this subchapter.

(7) Supportive services

The term ''supportive services'' means services, such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under this subchapter, consistent with the provisions of this subchapter.

(8) Unemployed

The term ''unemployed'', used with respect to a person or individual, means an individual who is without a job and who wants and is available for work, including an individual who may have occasional employment that does not result in a constant source of income.

(b) Rule

Pursuant to regulations prescribed by the Secretary, an eligible individual shall have priority for the community service employment and other authorized activities provided under this subchapter if the individual—

(1) is 65 years of age or older; or

(2)(A) has a disability;

(B) has limited English proficiency or low literacy skills;

(C) resides in a rural area;

(D) is a veteran;

(E) has low employment prospects;

(F) has failed to find employment after utilizing services provided under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.); or

(G) is homeless or at risk for homelessness.

(Pub. L. 89–73, title V, § 518, as added Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat. 2588.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3)(A), (B)(ii)(III), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II and XVI of the Act are classified generally to subchapters II (§ 401 et seq.) and XVI (§ 1381 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Workforce Investment Act of 1998, referred to in (b)(2)(F), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

SUBCHAPTER X—GRANTS FOR NATIVE AMERICANS

§ 3057. Statement of purpose

It is the purpose of this subchapter to promote the delivery of supportive services, including nutrition services to American Indians, Alaskan Natives, and Native Hawaiians that are comparable to services provided under subchapter III of this chapter.

(Pub. L. 89–73, title VI, § 601, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 959.)

PRIOR PROVISIONS

A prior section 3057, Pub. L. 89–73, title VI, § 601, as added Pub. L. 95–478, title I, § 106, Oct. 18, 1978, 92 Stat. 1548; amended Pub. L. 97–115, § 3(d), Dec. 29, 1981, 95 Stat. 1597, related to statement of purpose for grants to Indian tribes, prior to the general amendment of this subchapter by Pub. L. 100–175.

A prior section 601 of Pub. L. 89–73, title VI, as added Pub. L. 91–69, § 9, Sept. 17, 1969, 83 Stat. 111; amended Pub. L. 93–29, title VI, § 601, May 3, 1973, 87 Stat. 55, related to grants and contracts for volunteer service projects and was classified to section 3044 of this title, prior to repeal by Pub. L. 93–113, title VI, § 604(a), Oct. 1, 1973, 87 Stat. 417.

EFFECTIVE DATE

Subchapter effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026(a) of this title or any State plan submitted under section 3027(a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as an Effective Date of 1987 Amendment note under section 3001 of this title.

§ 3057a. Sense of Congress

It is the sense of the Congress that older individuals who are Indians, older individuals who are Alaskan Natives, and older individuals who are Native Hawaiians are a vital resource entitled to all benefits and services available and that such services and benefits should be provided in a manner that preserves and restores their respective dignity, self-respect, and cultural identities.

(Pub. L. 89–73, title VI, § 602, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 959; amended Pub. L. 102–375, title IX, § 904(a)(20), Sept. 30, 1992, 106 Stat. 1309.)

PRIOR PROVISIONS

A prior section 3057a, Pub. L. 89–73, title VI, § 602, as added Pub. L. 95–478, title I, § 106, Oct. 18, 1978, 92 Stat. 1549; amended Pub. L. 97–115, § 3(d), Dec. 29, 1981, 95 Stat. 1597; Pub. L. 98–459, title VI, § 601, Oct. 9, 1984, 98 Stat. 1787, related to eligibility of an Indian tribe for assistance and definitions, prior to the general amendment of this subchapter by Pub. L. 100–175. See section 3057c of this title.

AMENDMENTS

1992—Pub. L. 102–375 substituted ''older individuals who are Indians, older individuals who are Alaskan Natives, and older individuals who are Native Hawaiians'' for ''older Indians, older Alaskan Natives, and older Native Hawaiians''.

PART A—INDIAN PROGRAM

§ 3057b. Findings

(a)[1] The Congress finds that the older individuals who are Indians of the United States—

(1) are a rapidly increasing population;

(2) suffer from high unemployment;

(3) live in poverty at a rate estimated to be as high as 61 percent;

(4) have a life expectancy between 3 and 4 years less than the general population;

(5) lack sufficient nursing homes, other long-term care facilities, and other health care facilities;

[1] So in original. No subsec. (b) has been enacted.

(6) lack sufficient Indian area agencies on aging;

(7) frequently live in substandard and overcrowded housing;

(8) receive less than adequate health care;

(9) are served under this subchapter at a rate of less than 19 percent of the total national population of older individuals who are Indians living on Indian reservations; and

(10) are served under subchapter III of this chapter at a rate of less than 1 percent of the total participants under that subchapter.

(Pub. L. 89–73, title VI, § 611, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 959; amended Pub. L. 102–375, title IX, § 904(a)(21), Sept. 30, 1992, 106 Stat. 1309.)

PRIOR PROVISIONS

A prior section 3057b, Pub. L. 89–73, title VI, § 603, as added Pub. L. 95–478, title I, § 106, Oct. 18, 1978, 92 Stat. 1549; amended Pub. L. 97–115, §§ 3(d), 13(a), Dec. 29, 1981, 95 Stat. 1597, 1608, related to authority of Commissioner to make grants to pay all costs for delivery of supportive services and nutritional services for older Indians, prior to the general revision of this subchapter by Pub. L. 100–175. See section 3057d of this title.

A prior section 603 of Pub. L. 89–73, title VI, as added Pub. L. 91–69, § 9, Sept. 17, 1969, 83 Stat. 112; amended Pub. L. 93–29, title VI, § 602, May 3, 1973, 87 Stat. 55, related to authorization of appropriations and was classified to section 3044a of this title, prior to repeal by Pub. L. 93–113, title VI, § 604(a), Oct. 1, 1973, 87 Stat. 417.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–375, § 904(a)(21)(A), inserted ''individuals who are'' after ''older'' in introductory provisions.

Subsec. (a)(9). Pub. L. 102–375, § 904(a)(21)(B), substituted ''population of older individuals who are Indians'' for ''Indian elderly population''.

TASK FORCE

Section 134(d) of Pub. L. 100–175 provided that:

''(1) The Commissioner on Aging [now Assistant Secretary for Aging] shall establish a permanent interagency task force that is representative of departments and agencies of the Federal Government with an interest in older Indians and their welfare, and is designed to make recommendations with respect to facilitating the coordination of services and the improvement of services to older Indians.

''(2) The task force shall be chaired by the Associate Commissioner on [now Director of the Office for] American Indian, Alaskan Native, and Native Hawaiian Aging and shall submit its findings and recommendations to the Commissioner at 6-month intervals beginning after the date of the enactment of this Act [Nov. 29, 1987]. Such findings and recommendations shall be included in the annual report required by section 207(a) of the Older Americans Act of 1965 [42 U.S.C. 3018(a)] to be submitted by the Commissioner.''

SPECIAL REPORT ON SERVICES FOR OLDER INDIANS

Section 134(e) of Pub. L. 100–175 directed Commissioner on Aging to enter into a contract with a public agency or nonprofit private organization to conduct a thorough study of availability and quality of services under the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., to older Indians and, not later than Dec. 31, 1988, submit to Congress a report and recommendations based on the study.

§ 3057c. Eligibility

(a) Criteria

A tribal organization of an Indian tribe is eligible for assistance under this part only if—

(1) the tribal organization represents at least 50 individuals who are 60 years of age or older; and

(2) the tribal organization demonstrates the ability to deliver supportive services, including nutritional services.

(b) Limitation

An Indian tribe represented by an organization specified in subsection (a) of this section shall be eligible for only one grant under this part for any fiscal year. Nothing in this subsection shall preclude an Indian tribe represented by an organization specified in subsection (a) of this section from receiving a grant under section 3057k–11 of this title.

(c) "Indian tribe" and "tribal organization" defined

For the purposes of this part the terms ''Indian tribe'' and ''tribal organization'' have the same meaning as in section 450b of title 25.

(Pub. L. 89–73, title VI, § 612, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 959; amended Pub. L. 106–501, title VI, § 601, Nov. 13, 2000, 114 Stat. 2287.)

PRIOR PROVISIONS

A prior section 3057c, Pub. L. 89–73, title VI, § 604, as added Pub. L. 95–478, title I, § 106, Oct. 18, 1978, 92 Stat. 1549; amended Pub. L. 97–115, § 13(b), Dec. 29, 1981, 95 Stat. 1608; Pub. L. 98–459, title VI, § 602, Oct. 9, 1984, 98 Stat. 1788, related to applications for assistance, prior to the general amendment of this subchapter by Pub. L. 100–175. See section 3057e of this title.

AMENDMENTS

2000—Subsecs. (b), (c). Pub. L. 106–501 added subsec. (b) and redesignated former subsec. (b) as (c).

§ 3057d. Grants authorized

The Assistant Secretary may make grants to eligible tribal organizations to pay all of the costs for delivery of supportive services and nutrition services for older individuals who are Indians.

(Pub. L. 89–73, title VI, § 613, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 960; amended Pub. L. 102–375, title IX, § 904(a)(22), Sept. 30, 1992, 106 Stat. 1309; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990.)

PRIOR PROVISIONS

A prior section 3057d, Pub. L. 89–73, title VI, § 605, as added Pub. L. 95–478, title I, § 106, Oct. 18, 1978, 92 Stat. 1551; amended Pub. L. 97–115, § 13(c), Dec. 29, 1981, 95 Stat. 1608, provided that in establishing administrative regulations the Commissioner consult with the Secretary of the Interior, prior to the general amendment of this subchapter by Pub. L. 100–175. See section 3057*l* of this title.

AMENDMENTS

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

1992—Pub. L. 102–375 inserted ''individuals who are'' after ''older''.

§ 3057e. Applications

(a) Approval criteria; provisions and assurances

No grant may be made under this part unless the eligible tribal organization submits an appli-

cation to the Assistant Secretary which meets such criteria as the Assistant Secretary may by regulation prescribe. Each such application shall—

(1) provide that the eligible tribal organization will evaluate the need for supportive and nutrition services among older individuals who are Indians to be represented by the tribal organization;

(2) provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) provide that the tribal organization will make such reports in such form and containing such information, as the Assistant Secretary may reasonably require, and comply with such requirements as the Assistant Secretary may impose to assure the correctness of such reports;

(4) provide for periodic evaluation of activities and projects carried out under the application;

(5) establish objectives consistent with the purposes of this part toward which activities under the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the tribal organization proposes to overcome such obstacles;

(6) provide for establishing and maintaining information and assistance services to assure that older individuals who are Indians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(7) provide a preference for older individuals who are Indians for full or part-time staff positions wherever feasible;

(8) provide assurances that either directly or by way of grant or contract with appropriate entities nutrition services will be delivered to older individuals who are Indians represented by the tribal organization substantially in compliance with the provisions of part C of subchapter III of this chapter, except that in any case in which the need for nutritional services for older individuals who are Indians represented by the tribal organization is already met from other sources, the tribal organization may use the funds otherwise required to be expended under this paragraph for supportive services;

(9) provide that any legal or ombudsman services made available to older individuals who are Indians represented by the tribal organization will be substantially in compliance with the provisions of subchapter III of this chapter relating to the furnishing of similar services;

(10) provide satisfactory assurance that fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the tribal organization, including any funds paid by the tribal organization to a recipient of a grant or contract; and

(11) contain assurances that the tribal organization will coordinate services provided under this part with services provided under subchapter III of this chapter in the same geographical area.

(b) Population statistics development

For the purpose of any application submitted under this part, the tribal organization may develop its own population statistics, with approval from the Bureau of Indian Affairs, in order to establish eligibility.

(c) Approval by Assistant Secretary

(1) The Assistant Secretary shall approve any application which complies with the provisions of subsection (a) of this section.

(2) The Assistant Secretary shall provide waivers and exemptions of the reporting requirements of subsection (a)(3) of this section for applicants that serve Indian populations in geographically isolated areas, or applicants that serve small Indian populations, where the small scale of the project, the nature of the applicant, or other factors make the reporting requirements unreasonable under the circumstances. The Assistant Secretary shall consult with such applicants in establishing appropriate waivers and exemptions.

(3) The Assistant Secretary shall approve any application that complies with the provisions of subsection (a) of this section, except that in determining whether an application complies with the requirements of subsection (a)(8) of this section, the Assistant Secretary shall provide maximum flexibility to an applicant that seeks to take into account subsistence needs, local customs, and other characteristics that are appropriate to the unique cultural, regional, and geographic needs of the Indian populations to be served.

(4) In determining whether an application complies with the requirements of subsection (a)(12)[1] of this section, the Assistant Secretary shall require only that an applicant provide an appropriate narrative description of the geographic area to be served and an assurance that procedures will be adopted to ensure against duplicate services being provided to the same recipients.

(d) Disapproval by Assistant Secretary

Whenever the Assistant Secretary determines not to approve an application submitted under subsection (a) of this section the Assistant Secretary shall—

(1) state objections in writing to the tribal organization within 60 days after such decision;

(2) provide to the extent practicable technical assistance to the tribal organization to overcome such stated objections; and

(3) provide the tribal organization with a hearing, under such rules and regulations as the Assistant Secretary may prescribe.

(e) Funds per year

Whenever the Assistant Secretary approves an application of a tribal organization under this part, funds shall be awarded for not less than 12 months.

(Pub. L. 89–73, title VI, § 614, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 960;

[1] See References in Text note below.

amended Pub. L. 102–375, title I, § 102(b)(4), title VI, § 601, title IX, § 904(a)(23), Sept. 30, 1992, 106 Stat. 1201, 1269, 1309; Pub. L. 103–171, §§ 2(21), 3(a)(13), Dec. 2, 1993, 107 Stat. 1989, 1990; Pub. L. 106–501, title VI, § 602, title VIII, § 801(d), Nov. 13, 2000, 114 Stat. 2287, 2292.)

REFERENCES IN TEXT

Subsection (a)(12) of this section, referred to in subsec. (c)(4), was redesignated subsec. (a)(11) of this section by Pub. L. 106–501, title VIII, § 801(d)(2), Nov. 13, 2000, 114 Stat. 2292.

PRIOR PROVISIONS

A prior section 3057e, Pub. L. 89–73, title VI, § 606, as added Pub. L. 95–478, title I, § 106, Oct. 18, 1978, 92 Stat. 1551; amended Pub. L. 97–115, § 3(d), Dec. 29, 1981, 95 Stat. 1597, related to surplus educational facilities, prior to the general amendment of this subchapter by Pub. L. 100–175. See section 3057f of this title.

AMENDMENTS

2000—Subsec. (a)(9) to (12). Pub. L. 106–501, § 801(d), redesignated pars. (10) to (12) as (9) to (11), respectively, and struck out former par. (9) which read as follows: ''contain assurances that the provisions of sections 3027(a)(14)(A)(i) and (iii), 3027(a)(14)(B), and 3027(a)(14)(C) of this title will be complied with whenever the application contains provisions for the acquisition, alteration, or renovation of facilities to serve as multipurpose senior centers;''.

Subsec. (b). Pub. L. 106–501, § 602(1), substituted ''approval'' for ''certification''.

Subsec. (c). Pub. L. 106–501, § 602(2), designated existing provisions as par. (1) and added pars. (2) to (4).

1993—Subsec. (a). Pub. L. 103–171, § 3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing in introductory provisions and in par. (3).

Subsec. (c). Pub. L. 103–171, § 2(21), substituted ''Assistant Secretary'' for ''Commission''.

Subsec. (d). Pub. L. 103–171, §§ 2(21), 3(a)(13), in introductory provisions, substituted ''Assistant Secretary determines'' for ''Commissioner determines'' and ''Assistant Secretary shall'' for ''Commission shall'' and, in par. (3), substituted ''Assistant Secretary'' for ''Commissioner''.

Subsec. (e). Pub. L. 103–171, § 3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner''.

1992—Subsec. (a)(1). Pub. L. 102–375, § 904(a)(23)(C), inserted ''individuals who are'' after ''older''.

Subsec. (a)(6). Pub. L. 102–375, §§ 102(b)(4), 904(a)(23)(C), substituted ''information and assistance'' for ''information and referral'' and inserted ''individuals who are'' after ''older''.

Subsec. (a)(7). Pub. L. 102–375, § 904(a)(23)(A), substituted ''older individuals who are Indians'' for ''Indians aged 60 and older''.

Subsec. (a)(8). Pub. L. 102–375, § 904(a)(23)(B), (C), inserted ''individuals who are'' after ''older'' in two places and substituted ''paragraph'' for ''clause''.

Subsec. (a)(10). Pub. L. 102–375, § 904(a)(23)(C), inserted ''individuals who are'' after ''older''.

Subsec. (a)(12). Pub. L. 102–375, § 601, added par. (12).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 601 of Pub. L. 102–375 inapplicable to fiscal year 1992, see section 905(b)(5) of Pub. L. 102–375, set out as a note under section 3001 of this title.

§ 3057e–1. Distribution of funds among tribal organizations

(a) Maintenance of 1991 amounts

Subject to the availability of appropriations to carry out this part, the amount of the grant (if any) made under this part to a tribal organization for fiscal year 1992 and for each subsequent fiscal year shall be not less than the amount of the grant made under this part to the tribal organization for fiscal year 1991.

(b) Use of additional amounts appropriated

If the funds appropriated to carry out this part in a fiscal year subsequent to fiscal year 1991 exceed the funds appropriated to carry out this part in fiscal year 1991, then the amount of the grant (if any) made under this part to a tribal organization for the subsequent fiscal year shall be—

(1) increased by such amount as the Assistant Secretary considers to be appropriate, in addition to the amount of any increase required by subsection (a) of this section, so that the grant equals or more closely approaches the amount of the grant made under this part to the tribal organization for fiscal year 1980; or

(2) an amount the Assistant Secretary considers to be sufficient if the tribal organization did not receive a grant under this part for either fiscal year 1980 or fiscal year 1991.

(c) Clarification

(1) Definition

In this subsection, the term ''covered year'' means fiscal year 2006 or a subsequent fiscal year.

(2) Consortia of tribal organizations

If a tribal organization received a grant under this part for fiscal year 1991 as part of a consortium, the Assistant Secretary shall consider the tribal organization to have received a grant under this part for fiscal year 1991 for purposes of subsections (a) and (b), and shall apply the provisions of subsections (a) and (b)(1) (under the conditions described in subsection (b)) to the tribal organization for each covered year for which the tribal organization submits an application under this part, even if the tribal organization submits—

(A) a separate application from the remaining members of the consortium; or

(B) an application as 1 of the remaining members of the consortium.

(Pub. L. 89–73, title VI, § 614A, as added Pub. L. 102–375, title VI, § 602, Sept. 30, 1992, 106 Stat. 1270; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 109–365, title VI, § 601(a), Oct. 17, 2006, 120 Stat. 2590.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–365 added subsec. (c).

1993—Subsec. (b). Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' in pars. (1) and (2).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–365, title VI, § 601(b), Oct. 17, 2006, 120 Stat. 2590, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to grants awarded under part A of title VI of the Older Americans Act of 1965 (42 U.S.C. 3057b et seq.) during the grant period beginning April 1, 2008, and all subsequent grant periods.''

§ 3057f. Surplus educational facilities

(a) Multipurpose senior centers

Notwithstanding any other provision of law, the Secretary of the Interior through the Bu-

reau of Indian Affairs shall make available surplus Indian educational facilities to tribal organizations, and nonprofit organizations with tribal approval, for use as multipurpose senior centers. Such centers may be altered so as to provide extended care facilities, community center facilities, nutrition services, child care services, and other supportive services.

(b) Applications; submission; contents

Each eligible tribal organization desiring to take advantage of such surplus facilities shall submit an application to the Secretary of the Interior at such time and in such manner, and containing or accompanied by such information, as the Secretary of the Interior determines to be necessary to carry out the provisions of this section.

(Pub. L. 89–73, title VI, § 615, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 961.)

PRIOR PROVISIONS

A prior section 3057f, Pub. L. 89–73, title VI, § 607, as added Pub. L. 95–478, title I, § 106, Oct. 18, 1978, 92 Stat. 1551, related to payments, prior to the general amendment of this subchapter by Pub. L. 100–175. See section 3057m of this title.

PART B—NATIVE HAWAIIAN PROGRAM

§ 3057g. Findings

The Congress finds the older Native Hawaiians—

(1) have a life expectancy 10 years less than any other ethnic group in the State of Hawaii;

(2) rank lowest on 9 of 11 standard health indicies[1] for all ethnic groups in Hawaii;

(3) are often unaware of social services and do not know how to go about seeking such assistance; and

(4) live in poverty at a rate of 34 percent.

(Pub. L. 89–73, title VI, § 621, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 961.)

PRIOR PROVISIONS

A prior section 3057g, Pub. L. 89–73, title VI, § 608, as added Pub. L. 95–478, title I, § 106, Oct. 18, 1978, 92 Stat. 1551; amended Pub. L. 97–115, § 13(d), Dec. 29, 1981, 95 Stat. 1608; Pub. L. 98–459, title VI, § 603, Oct. 9, 1984, 98 Stat. 1788, authorized appropriations for grants for Indian tribes, prior to the general amendment of this subchapter by Pub. L. 100–175. See section 3057n of this title.

§ 3057h. Eligibility

A public or nonprofit private organization having the capacity to provide services under this part for Native Hawaiians is eligible for assistance under this part only if—

(1) the organization will serve at least 50 individuals who have attained 60 years of age or older; and

(2) the organization demonstrates the ability to deliver supportive services, including nutrition services.

(Pub. L. 89–73, title VI, § 622, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 961.)

§ 3057i. Grants authorized

The Assistant Secretary may make grants to public and nonprofit private organizations to pay all of the costs for the delivery of supportive services and nutrition services to older Native Hawaiians.

(Pub. L. 89–73, title VI, § 623, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 962; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990.)

AMENDMENTS

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

§ 3057j. Application

(a) Approval criteria; provisions and assurances

No grant may be made under this part unless the public or nonprofit private organization submits an application to the Assistant Secretary which meets such criteria as the Assistant Secretary may by regulation prescribe. Each such application shall—

(1) provide that the organization will evaluate the need for supportive and nutrition services among older Native Hawaiians to be represented by the organization;

(2) provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) provide assurances that the organization will coordinate its activities with the State agency on aging and with the activities carried out under subchapter III of this chapter in the same geographical area;

(4) provide that the organization will make such reports in such form and containing such information as the Assistant Secretary may reasonably require, and comply with such requirements as the Assistant Secretary may impose to ensure the correctness of such reports;

(5) provide for periodic evaluation of activities and projects carried out under the application;

(6) establish objectives, consistent with the purpose of this subchapter, toward which activities described in the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the organization proposes to overcome such obstacles;

(7) provide for establishing and maintaining information and assistance services to assure that older Native Hawaiians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(8) provide a preference for Native Hawaiians 60 years of age and older for full or part-time staff positions wherever feasible;

(9) provide that any legal or ombudsman services made available to older Native Hawaiians represented by the nonprofit private organization will be substantially in compliance with the provisions of subchapter III of this chapter relating to the furnishing and similar services; and

(10) provide satisfactory assurances that the fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for,

[1] So in original. Probably should be ''indices''.

Federal funds paid under this part to the nonprofit private organization, including any funds paid by the organization to a recipient of a grant or contract.

(b) Approval by Assistant Secretary

The Assistant Secretary shall approve any application which complies with the provisions of subsection (a) of this section.

(c) Disapproval by Assistant Secretary

Whenever the Assistant Secretary determines not to approve an application submitted under subsection (a) of this section the Assistant Secretary shall—

(1) state objections in writing to the nonprofit private organization within 60 days after such decision;

(2) provide to the extent practicable technical assistance to the nonprofit private organization to overcome such stated objections; and

(3) provide the organization with a hearing under such rules and regulations as the Assistant Secretary may prescribe.

(d) Funds per year

Whenever the Assistant Secretary approves an application of a nonprofit private or public organization under this part funds shall be awarded for not less than 12 months.

(Pub. L. 89–73, title VI, § 624, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 962; amended Pub. L. 102–375, title I, § 102(b)(4), title VI, § 603, Sept. 30, 1992, 106 Stat. 1201, 1270; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990.)

AMENDMENTS

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

1992—Subsec. (a)(3). Pub. L. 102–375, § 603, inserted before semicolon at end ''and with the activities carried out under subchapter III of this chapter in the same geographical area''.

Subsec. (a)(7). Pub. L. 102–375, § 102(b)(4), substituted ''information and assistance'' for ''information and referral''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 603 of Pub. L. 102–375 inapplicable to fiscal year 1992, see section 905(b)(5) of Pub. L. 102–375, set out as a note under section 3001 of this title.

§ 3057j–1. Distribution of funds among organizations

Subject to the availability of appropriations to carry out this part, the amount of the grant (if any) made under this part to an organization for fiscal year 1992 and for each subsequent fiscal year shall be not less than the amount of the grant made under this part to the organization for fiscal year 1991.

(Pub. L. 89–73, title VI, § 624A, as added Pub. L. 102–375, title VI, § 604, Sept. 30, 1992, 106 Stat. 1270.)

§ 3057k. "Native Hawaiian" defined

For the purpose of this part, the term ''Native Hawaiian'' means any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

(Pub. L. 89–73, title VI, § 625, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 963.)

PART C—NATIVE AMERICAN CAREGIVER SUPPORT PROGRAM

PRIOR PROVISIONS

A prior part C, consisting of sections 3057*l* to 3057n of this title, was redesignated part D of this subchapter.

§ 3057k–11. Program

(a) In general

The Assistant Secretary shall carry out a program for making grants to tribal organizations with applications approved under parts A and B of this subchapter, to pay for the Federal share of carrying out tribal programs, to enable the tribal organizations to provide multifaceted systems of the support services described in section 3030s–1 of this title for caregivers described in section 3030s–1 of this title.

(b) Requirements

In providing services under subsection (a) of this section, a tribal organization shall meet the requirements specified for an area agency on aging and for a State in the provisions of subsections (c), (d), and (e) of section 3030s–1 of this title and of section 3030s–2 of this title. For purposes of this subsection, references in such provisions to a State program shall be considered to be references to a tribal program under this part.

(Pub. L. 89–73, title VI, § 631, as added Pub. L. 106–501, title VI, § 604(3), Nov. 13, 2000, 114 Stat. 2288.)

PRIOR PROVISIONS

A prior section 631 of Pub. L. 89–73 was renumbered section 641 and is classified to section 3057*l* of this title.

PART D—GENERAL PROVISIONS

CODIFICATION

Pub. L. 106–501, title VI, § 604(1), Nov. 13, 2000, 114 Stat. 2288, redesignated part C of this subchapter as part D.

§ 3057*l*. Administration

In establishing regulations for the purpose of part A of this subchapter the Assistant Secretary shall consult with the Secretary of the Interior.

(Pub. L. 89–73, title VI, § 641, formerly § 631, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 963; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; renumbered § 641, Pub. L. 106–501, title VI, § 604(2), Nov. 13, 2000, 114 Stat. 2288.)

AMENDMENTS

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

§ 3057m. Payments

Payments may be made under this subchapter (after necessary adjustments, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement in such installments and on such conditions, as the Assistant Secretary may determine.

(Pub. L. 89–73, title VI, § 642, formerly § 632, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 963; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; renumbered § 642, Pub. L. 106–501, title VI, § 604(2), Nov. 13, 2000, 114 Stat. 2288.)

AMENDMENTS

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

§ 3057n. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter—

(1) for parts A and B of this subchapter, such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years; and

(2) for part C of this subchapter, $6,500,000 for fiscal year 2007, $6,800,000 for fiscal year 2008, $7,200,000 for fiscal year 2009, $7,500,000 for fiscal year 2010, and $7,900,000 for fiscal year 2011.

(Pub. L. 89–73, title VI, § 643, formerly § 633, as added Pub. L. 100–175, title I, § 171, Nov. 29, 1987, 101 Stat. 963; amended Pub. L. 102–375, title VI, § 605, Sept. 30, 1992, 106 Stat. 1270; renumbered § 643 and amended Pub. L. 106–501, title VI, §§ 603, 604(2), Nov. 13, 2000, 114 Stat. 2288; Pub. L. 109–365, title VI, § 602, Oct. 17, 2006, 120 Stat. 2590.)

AMENDMENTS

2006—Par. (1). Pub. L. 109–365, § 602(1), substituted ''2007'' for ''2001''.

Par. (2). Pub. L. 109–365, § 602(2), substituted ''$6,500,000 for fiscal year 2007, $6,800,000 for fiscal year 2008, $7,200,000 for fiscal year 2009, $7,500,000 for fiscal year 2010, and $7,900,000 for fiscal year 2011'' for ''$5,000,000 for fiscal year 2001, and such sums as may be necessary for subsequent fiscal years''.

2000—Pub. L. 106–501, § 603, amended section catchline and text generally, substituting provisions authorizing appropriations for fiscal year 2001 and subsequent years for provisions authorizing appropriations for fiscal years 1992 through 1995.

1992—Pub. L. 102–375 amended section generally, substituting provisions authorizing appropriations of $30,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993, 1994, and 1995, and designating 90 percent of such appropriations to carry out part A of this subchapter and 10 percent of such appropriations to carry out part B of this subchapter for provisions authorizing appropriations of $13,400,000 for fiscal year 1988, $16,265,000 for fiscal year 1989, $19,133,000 for fiscal year 1990, and $22,105,000 for fiscal year 1991, designating over 90 percent of such appropriations to carry out part A of this subchapter and less than 10 percent of such appropriations to carry out part B of this subchapter, along with provisions providing a preference for funding of such part A if actual amounts of appropriations fall below 1987 levels and a preference for funding of such part B if the actual amounts of appropriations exceed 1987 levels.

SUBCHAPTER XI—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

PART A—STATE PROVISIONS

SUBPART I—GENERAL STATE PROVISIONS

§ 3058. Establishment

The Assistant Secretary, acting through the Administration, shall establish and carry out a program for making allotments to States to pay for the cost of carrying out vulnerable elder rights protection activities.

(Pub. L. 89–73, title VII, § 701, as added Pub. L. 102–375, title VII, § 701, Sept. 30, 1992, 106 Stat. 1271; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990.)

PRIOR PROVISIONS

A prior section 3058, Pub. L. 89–73, title VII, § 702, as added Pub. L. 98–459, title VII, § 701, Oct. 9, 1984, 98 Stat. 1788, related to Congressional declaration of findings, prior to repeal by Pub. L. 100–175, title I, § 181, title VII, § 701(a), (b), Nov. 29, 1987, 101 Stat. 964, 983, effective Oct. 1, 1987, with certain exceptions.

A prior section 701 of title VII of Pub. L. 89–73, as added by Pub. L. 98–459, title VII, § 701, Oct. 9, 1984, 98 Stat. 1788, provided that this subchapter be cited as the ''Older Americans Personal Health Education and Training Act'', prior to repeal by Pub. L. 100–175, title I, § 181, title VII, § 701(a), (b), Nov. 29, 1987, 101 Stat. 964, 983, effective Oct. 1, 1987, with certain exceptions.

Another prior section 701 of Pub. L. 89–73 was classified to section 3045 of this title prior to repeal by Pub. L. 95–478.

AMENDMENTS

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

EFFECTIVE DATE

Subchapter inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as an Effective Date of 1992 Amendment note under section 3001 of this title.

Subchapter inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as an Effective Date of 1992 Amendment note under section 3001 of this title.

§ 3058a. Authorization of appropriations

(a) Ombudsman program

There are authorized to be appropriated to carry out subpart II of this part, such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years.

(b) Prevention of elder abuse, neglect, and exploitation

There are authorized to be appropriated to carry out subpart III of this part, such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years.

(c) Legal assistance development program

There are authorized to be appropriated to carry out subpart IV of this part, such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years.

(Pub. L. 89–73, title VII, § 702, as added Pub. L. 102–375, title VII, § 701, Sept. 30, 1992, 106 Stat. 1271; amended Pub. L. 106–501, title VII, § 701, Nov. 13, 2000, 114 Stat. 2289; Pub. L. 109–365, title VII, § 701, Oct. 17, 2006, 120 Stat. 2591.)

PRIOR PROVISIONS

A prior section 3058a, Pub. L. 89–73, title VII, § 703, as added Pub. L. 98–459, title VII, § 701, Oct. 9, 1984, 98 Stat. 1789, related to statement of purposes, prior to repeal by Pub. L. 100–175, title I, § 181, title VIII, § 701(a), (b),

Nov. 29, 1987, 101 Stat. 964, 983, effective Oct. 1, 1987, with certain exceptions.

A prior section 702 of Pub. L. 89–73 was classified to section 3045a of this title prior to repeal by Pub. L. 95–478.

AMENDMENTS

2006—Pub. L. 109–365 substituted ''2007'' for ''2001'' in subsecs. (a) to (c).

2000—Pub. L. 106–501 amended section catchline and text generally, substituting provisions authorizing appropriations for subparts II, III, and IV of this part for fiscal year 2001 and subsequent fiscal years for provisions authorizing appropriations for subparts II, III, IV, and V of this part for fiscal years 1992 through 1995.

§ 3058b. Allotment

(a) In general

(1) Population

In carrying out the program described in section 3058 of this title, the Assistant Secretary shall initially allot to each State, from the funds appropriated under section 3058a of this title for each fiscal year, an amount that bears the same ratio to the funds as the population of older individuals in the State bears to the population of older individuals in all States.

(2) Minimum allotments

(A) In general

After making the initial allotments described in paragraph (1), the Assistant Secretary shall adjust the allotments on a pro rata basis in accordance with subparagraphs (B) and (C).

(B) General minimum allotments

(i) Minimum allotment for States

No State shall be allotted less than one-half of 1 percent of the funds appropriated under section 3058a of this title for the fiscal year for which the determination is made.

(ii) Minimum allotment for territories

Guam, the United States Virgin Islands, and the Trust Territory of the Pacific Islands, shall each be allotted not less than one-fourth of 1 percent of the funds appropriated under section 3058a of this title for the fiscal year for which the determination is made. American Samoa and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than one-sixteenth of 1 percent of the sum appropriated under section 3058a of this title for the fiscal year for which the determination is made.

(C) Minimum allotments for ombudsman and elder abuse programs

(i) Ombudsman program

No State shall be allotted for a fiscal year, from the funds appropriated under section 3058a of this title and made available to carry out subpart II of this part, less than the amount allotted to the State under section 3024 of this title in fiscal year 2000 to carry out the State Long-Term Care Ombudsman program under subchapter III of this chapter.

(ii) Elder abuse programs

No State shall be allotted for a fiscal year, from the funds appropriated under section 3058a of this title and made available to carry out subpart III of this part, less than the amount allotted to the State under section 3024 of this title in fiscal year 2000 to carry out programs with respect to the prevention of elder abuse, neglect, and exploitation under subchapter III of this chapter.

(D) "State" defined

For the purposes of this paragraph, the term ''State'' does not include Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(b) Reallotment

(1) In general

If the Assistant Secretary determines that any amount allotted to a State for a fiscal year under this section will not be used by the State for carrying out the purpose for which the allotment was made, the Assistant Secretary shall make the amount available to a State that the Assistant Secretary determines will be able to use the amount for carrying out the purpose.

(2) Availability

Any amount made available to a State from an appropriation for a fiscal year in accordance with paragraph (1) shall, for purposes of this part, be regarded as part of the allotment of the State (as determined under subsection (a) of this section) for the year, but shall remain available until the end of the succeeding fiscal year.

(c) Withholding

If the Assistant Secretary finds that any State has failed to carry out this subchapter in accordance with the assurances made and description provided under section 3058d of this title, the Assistant Secretary shall withhold the allotment of funds to the State. The Assistant Secretary shall disburse the funds withheld directly to any public or nonprofit private institution or organization, agency, or political subdivision of the State submitting an approved plan containing the assurances and description.

(Pub. L. 89–73, title VII, § 703, as added Pub. L. 102–375, title VII, § 701, Sept. 30, 1992, 106 Stat. 1271; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title VII, § 702, title VIII, § 801(e)(1), Nov. 13, 2000, 114 Stat. 2289, 2293.)

PRIOR PROVISIONS

A prior section 3058b, Pub. L. 89–73, title VII, § 704, as added Pub. L. 98–459, title VII, § 701, Oct. 9, 1984, 98 Stat. 1789, related to older Americans personal health education and training program, prior to repeal by Pub. L. 100–175, title I, § 181, title VII, § 701(a), (b), Nov. 29, 1987, 101 Stat. 964, 983, effective Oct. 1, 1987, with certain exceptions.

A prior section 703 of Pub. L. 89–73 was classified to section 3045b of this title prior to repeal by Pub. L. 95–478.

AMENDMENTS

2000—Subsec. (a)(2)(C)(i). Pub. L. 106–501, §§ 702, 801(e)(1)(A), substituted ''section 3058a of this title and made available to carry out subpart II of this part'' for ''section 3058a(a) of this title'' and ''2000'' for ''1991''.

Subsec. (a)(2)(C)(ii). Pub. L. 106–501, §§ 702, 801(e)(1)(B), substituted ''section 3058a of this title and made available to carry out subpart III of this part'' for ''section 3058a(b) of this title'' and ''2000'' for ''1991''.

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' wherever appearing.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 3058c. Organization

In order for a State to be eligible to receive allotments under this part—

(1) the State shall demonstrate eligibility under section 3025 of this title;

(2) the State agency designated by the State shall demonstrate compliance with the applicable requirements of section 3025 of this title; and

(3) each area agency on aging designated by the State agency and participating in such a program shall demonstrate compliance with the applicable requirements of section 3025 of this title.

(Pub. L. 89–73, title VII, § 704, as added Pub. L. 102–375, title VII, § 701, Sept. 30, 1992, 106 Stat. 1273.)

PRIOR PROVISIONS

A prior section 3058c, Pub. L. 89–73, title VII, § 705, as added Pub. L. 98–459, title VII, § 701, Oct. 9, 1984, 98 Stat. 1791, related to administration of program, prior to repeal by Pub. L. 100–175, title I, § 181, title VII, § 701(a), (b), Nov. 29, 1987, 101 Stat. 964, 983, effective Oct. 1, 1987, with certain exceptions.

A prior section 704 of Pub. L. 89–73 was classified to section 3045c of this title prior to repeal by Pub. L. 95–478.

§ 3058d. Additional State plan requirements

(a) Eligibility

In order to be eligible to receive an allotment under this part, a State shall include in the State plan submitted under section 3027 of this title—

(1) an assurance that the State, in carrying out any subpart of this part for which the State receives funding under this part, will establish programs in accordance with the requirements of the subpart and this subpart;

(2) an assurance that the State will hold public hearings, and use other means, to obtain the views of older individuals, area agencies on aging, recipients of grants under subchapter X of this chapter, and other interested persons and entities regarding programs carried out under this part;

(3) an assurance that the State, in consultation with area agencies on aging, will identify and prioritize statewide activities aimed at ensuring that older individuals have access to, and assistance in securing and maintaining, benefits and rights;

(4) an assurance that the State will use funds made available under this part for a subpart in addition to, and will not supplant, any funds that are expended under any Federal or State law in existence on the day before September 30, 1992, to carry out each of the vulnerable elder rights protection activities described in the subpart;

(5) an assurance that the State will place no restrictions, other than the requirements referred to in clauses (i) through (iv) of section 3058g(a)(5)(C) of this title, on the eligibility of entities for designation as local Ombudsman entities under section 3058g(a)(5) of this title;

(6) an assurance that, with respect to programs for the prevention of elder abuse, neglect, and exploitation under subpart III of this part—

(A) in carrying out such programs the State agency will conduct a program of services consistent with relevant State law and coordinated with existing State adult protective service activities for—

(i) public education to identify and prevent elder abuse;

(ii) receipt of reports of elder abuse;

(iii) active participation of older individuals participating in programs under this chapter through outreach, conferences, and referral of such individuals to other social service agencies or sources of assistance if appropriate and if the individuals to be referred consent; and

(iv) referral of complaints to law enforcement or public protective service agencies if appropriate;

(B) the State will not permit involuntary or coerced participation in the program of services described in subparagraph (A) by alleged victims, abusers, or their households; and

(C) all information gathered in the course of receiving reports and making referrals shall remain confidential except—

(i) if all parties to such complaint consent in writing to the release of such information;

(ii) if the release of such information is to a law enforcement agency, public protective service agency, licensing or certification agency, ombudsman program, or protection or advocacy system; or

(iii) upon court order; and

(7) a description of the manner in which the State agency will carry out this subchapter in accordance with the assurances described in paragraphs (1) through (6).

(b) Privilege

Neither a State, nor a State agency, may require any provider of legal assistance under this part to reveal any information that is protected by the attorney-client privilege.

(Pub. L. 89–73, title VII, § 705, as added Pub. L. 102–375, title VII, § 701, Sept. 30, 1992, 106 Stat. 1273; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title VII, § 703, Nov. 13, 2000, 114 Stat. 2289.)

PRIOR PROVISIONS

A prior section 3058d, Pub. L. 89–73, title VII, § 706, as added Pub. L. 98–459, title VII, § 701, Oct. 9, 1984, 98 Stat.

1791, authorized appropriations for fiscal years 1985, 1986, and 1987, prior to repeal by Pub. L. 100–175, title I, § 181, title VII, § 701(a), (b), Nov. 29, 1987, 101 Stat. 964, 983, effective Oct. 1, 1987, with certain exceptions.

A prior section 705 of Pub. L. 89–73 was classified to section 3045d of this title prior to repeal by Pub. L. 95–478.

AMENDMENTS

2000—Subsec. (a)(4). Pub. L. 106–501, § 703(1), inserted ''each of'' after ''carry out''.

Subsec. (a)(6)(C)(iii). Pub. L. 106–501, § 703(2), inserted ''and'' at end.

Subsec. (a)(7), (8). Pub. L. 106–501, § 703(3) to (5), redesignated par. (8) as (7), substituted ''paragraphs (1) through (6)'' for ''paragraphs (1) through (7)'', and struck out former par. (7) which required inclusion in the State plan of assurances that the State agency would make funds available to carry out subpart V, giving priority to area agencies on aging based on greatest need for funds, would require certain conditions of eligibility, would distribute eligibility information to area agencies on aging, and would submit certain reports.

1993—Subsec. (a)(7)(D). Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

§ 3058e. Demonstration projects

(a) Establishment

From amounts made available under section 3024(d)(1)(C) of this title after September 30, 1992, each State may provide for the establishment of at least one demonstration project, to be conducted by one or more area agencies on aging within the State, for outreach to older individuals with greatest economic need with respect to—

(1) benefits available under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) (or assistance under a State program established in accordance with such title);

(2) medical assistance available under title XIX of such Act (42 U.S.C. 1396 et seq.); and

(3) benefits available under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(b) Benefits

Each outreach project carried out under subsection (a) of this section shall—

(1) provide to older individuals with greatest economic need information and assistance regarding their eligibility to receive the benefits and assistance described in paragraphs (1) through (3) of subsection (a) of this section;

(2) be carried out in a planning and service area that has a high proportion of older individuals with greatest economic need, relative to the aggregate number of older individuals in such area; and

(3) be coordinated with State and local entities that administer benefits under such titles.

(Pub. L. 89–73, title VII, § 706, as added Pub. L. 102–375, title VII, § 701, Sept. 30, 1992, 106 Stat. 1275.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1), (2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI and XIX of the Act are classified generally to subchapters XVI (§ 1381 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (a)(3), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 706 of Pub. L. 89–73 was classified to section 3045e of this title prior to repeal by Pub. L. 95–478.

SUBPART II—OMBUDSMAN PROGRAMS

§ 3058f. Definitions

As used in this subpart:

(1) Office

The term ''Office'' means the office established in section 3058g(a)(1)(A) of this title.

(2) Ombudsman

The term ''Ombudsman'' means the individual described in section 3058g(a)(2) of this title.

(3) Local Ombudsman entity

The term ''local Ombudsman entity'' means an entity designated under section 3058g(a)(5)(A) of this title to carry out the duties described in section 3058g(a)(5)(B) of this title with respect to a planning and service area or other substate area.

(4) Program

The term ''program'' means the State Long-Term Care Ombudsman program established in section 3058g(a)(1)(B) of this title.

(5) Representative

The term ''representative'' includes an employee or volunteer who represents an entity designated under section 3058g(a)(5)(A) of this title and who is individually designated by the Ombudsman.

(6) Resident

The term ''resident'' means an older individual who resides in a long-term care facility.

(Pub. L. 89–73, title VII, § 711, as added Pub. L. 102–375, title VII, § 702, Sept. 30, 1992, 106 Stat. 1275.)

§ 3058g. State Long-Term Care Ombudsman program

(a) Establishment

(1) In general

In order to be eligible to receive an allotment under section 3058b of this title from funds appropriated under section 3058a of this title and made available to carry out this subpart, a State agency shall, in accordance with this section—

(A) establish and operate an Office of the State Long-Term Care Ombudsman; and

(B) carry out through the Office a State Long-Term Care Ombudsman program.

(2) Ombudsman

The Office shall be headed by an individual, to be known as the State Long-Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy.

(3) Functions

The Ombudsman shall serve on a full-time basis, and shall, personally or through representatives of the Office—

(A) identify, investigate, and resolve complaints that—

(i) are made by, or on behalf of, residents; and

(ii) relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of—

(I) providers, or representatives of providers, of long-term care services;

(II) public agencies; or

(III) health and social service agencies;

(B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;

(C) inform the residents about means of obtaining services provided by providers or agencies described in subparagraph (A)(ii) or services described in subparagraph (B);

(D) ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;

(E) represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(F) provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program;

(G)(i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;

(H)(i) provide for training representatives of the Office;

(ii) promote the development of citizen organizations, to participate in the program; and

(iii) provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and

(I) carry out such other activities as the Assistant Secretary determines to be appropriate.

(4) Contracts and arrangements

(A) In general

Except as provided in subparagraph (B), the State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.

(B) Licensing and certification organizations; associations

The State agency may not enter into the contract or other arrangement described in subparagraph (A) with—

(i) an agency or organization that is responsible for licensing or certifying long-term care services in the State; or

(ii) an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals.

(5) Designation of local Ombudsman entities and representatives

(A) Designation

In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.

(B) Duties

An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—

(i) provide services to protect the health, safety, welfare[1] and rights of residents;

(ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;

(iii) identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;

(iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(v)(I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and

(II) facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

(vi) support the development of resident and family councils; and

(vii) carry out other activities that the Ombudsman determines to be appropriate.

(C) Eligibility for designation

Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall—

(i) have demonstrated capability to carry out the responsibilities of the Office;

(ii) be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves;

[1] So in original. Probably should be followed by a comma.

(iii) in the case of the entities, be public or nonprofit private entities; and

(iv) meet such additional requirements as the Ombudsman may specify.

(D) Policies and procedures

(i) In general

The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office.

(ii) Policies

In a case in which the entities are grantees, or the representatives are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. The policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity.

(iii) Confidentiality and disclosure

The State agency shall develop the policies and procedures in accordance with all provisions of this part regarding confidentiality and conflict of interest.

(b) Procedures for access

(1) In general

The State shall ensure that representatives of the Office shall have—

(A) access to long-term care facilities and residents;

(B)(i) appropriate access to review the medical and social records of a resident, if—

(I) the representative has the permission of the resident, or the legal representative of the resident; or

(II) the resident is unable to consent to the review and has no legal representative; or

(ii) access to the records as is necessary to investigate a complaint if—

(I) a legal guardian of the resident refuses to give the permission;

(II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(III) the representative obtains the approval of the Ombudsman;

(C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities; and

(D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.

(2) Procedures

The State agency shall establish procedures to ensure the access described in paragraph (1).

(c) Reporting system

The State agency shall establish a statewide uniform reporting system to—

(1) collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems; and

(2) submit the data, on a regular basis, to—

(A) the agency of the State responsible for licensing or certifying long-term care facilities in the State;

(B) other State and Federal entities that the Ombudsman determines to be appropriate;

(C) the Assistant Secretary; and

(D) the National Ombudsman Resource Center established in section 3012(a)(21)[2] of this title.

(d) Disclosure

(1) In general

The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c) of this section.

(2) Identity of complainant or resident

The procedures described in paragraph (1) shall—

(A) provide that, subject to subparagraph (B), the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and

(B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless—

(i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;

(ii)(I) the complainant or resident gives consent orally; and

(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or

(iii) the disclosure is required by court order.

(e) Consultation

In planning and operating the program, the State agency shall consider the views of area agencies on aging, older individuals, and providers of long-term care.

(f) Conflict of interest

The State agency shall—

(1) ensure that no individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under subsection (a)(5) of this section, is subject to a conflict of interest;

(2) ensure that no officer or employee of the Office, representative of a local Ombudsman entity, or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest;

[2] See References in Text note below.

(3) ensure that the Ombudsman—

(A) does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(B) does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;

(C) is not employed by, or participating in the management of, a long-term care facility; and

(D) does not receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; and

(4) establish, and specify in writing, mechanisms to identify and remove conflicts of interest referred to in paragraphs (1) and (2), and to identify and eliminate the relationships described in subparagraphs (A) through (D) of paragraph (3), including such mechanisms as—

(A) the methods by which the State agency will examine individuals, and immediate family members, to identify the conflicts; and

(B) the actions that the State agency will require the individuals and such family members to take to remove such conflicts.

(g) Legal counsel

The State agency shall ensure that—

(1)(A) adequate legal counsel is available, and is able, without conflict of interest, to—

(i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and

(ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and

(B) legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative; and

(2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.

(h) Administration

The State agency shall require the Office to—

(1) prepare an annual report—

(A) describing the activities carried out by the Office in the year for which the report is prepared;

(B) containing and analyzing the data collected under subsection (c) of this section;

(C) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

(D) containing recommendations for—

(i) improving quality of the care and life of the residents; and

(ii) protecting the health, safety, welfare, and rights of the residents;

(E)(i) analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and

(ii) identifying barriers that prevent the optimal operation of the program; and

(F) providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;

(2) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3)(A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding—

(i) the problems and concerns of older individuals residing in long-term care facilities; and

(ii) recommendations related to the problems and concerns; and

(B) make available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities, each report prepared under paragraph (1);

(4) strengthen and update procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs, in consultation with representatives of citizen groups, long-term care providers, and the Office, that—

(A) specify a minimum number of hours of initial training;

(B) specify the content of the training, including training relating to—

(i) Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;

(ii) investigative techniques; and

(iii) such other matters as the State determines to be appropriate; and

(C) specify an annual number of hours of in-service training for all designated representatives;

(5) prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in subparagraphs (A) through (G) of subsection (a)(3) of this section unless the representative—

(A) has received the training required under paragraph (4); and

(B) has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;

(6) coordinate ombudsman services with the protection and advocacy systems for individ-

uals with developmental disabilities and mental illnesses established under—

(A) subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.]; and

(B) the Protection and Advocacy for Mentally Ill Individuals Act of 1986[3] (42 U.S.C. 10801 et seq.);

(7) coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 3026(a)(2)(C) of this title, through adoption of memoranda of understanding and other means;

(8) coordinate services with State and local law enforcement agencies and courts of competent jurisdiction; and

(9) permit any local Ombudsman entity to carry out the responsibilities described in paragraph (1), (2), (3), (6), or (7).

(i) Liability

The State shall ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

(j) Noninterference

The State shall—

(1) ensure that willful interference with representatives of the Office in the performance of the official duties of the representatives (as defined by the Assistant Secretary) shall be unlawful;

(2) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and

(3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.

(Pub. L. 89–73, title VII, § 712, as added Pub. L. 102–375, title VII, § 702, Sept. 30, 1992, 106 Stat. 1276; amended Pub. L. 103–171, § 3(a)(9), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–402, title IV, § 401(b)(9)(D), Oct. 30, 2000, 114 Stat. 1739; Pub. L. 106–501, title VII, § 704, title VIII, § 801(e)(2), Nov. 13, 2000, 114 Stat. 2289, 2293.)

REFERENCES IN TEXT

Section 3012(a)(21) of this title, referred to in subsec. (c)(2)(D), was redesignated section 3012(a)(18) of this title by Pub. L. 106–501, title II, § 201(1)(B), Nov. 13, 2000, 114 Stat. 2229.

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (h)(6)(A), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§ 15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (h)(6)(B), was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–501, § 801(e)(2), substituted ''section 3058a of this title and made available to carry out this subpart'' for ''section 3058a(a) of this title'' in introductory provisions.

Subsec. (a)(5)(C)(ii). Pub. L. 106–501, § 704(1), inserted ''and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves'' after ''interest''.

Subsec. (h)(4). Pub. L. 106–501, § 704(2)(A), substituted ''strengthen and update'' for ''(A) not later than 1 year after September 30, 1992, establish'' in introductory provisions, redesignated cls. (i) and (ii) of former subpar. (A) as subpars. (A) and (B), respectively, redesignated subcls. (I) to (III) of former subpar. (A)(ii) as cls. (i) to (iii), respectively, of subpar. (B), redesignated cl. (iii) of former subpar. (A) as subpar. (C) and struck out ''and'' at end, and struck out former subpar. (B) which read as follows: ''require implementation of the procedures not later than 21 months after September 30, 1992;''.

Subsec. (h)(6)(A). Pub. L. 106–402 substituted ''subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000'' for ''part A of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.)''.

Subsec. (h)(8), (9). Pub. L. 106–501, § 704(2)(B)–(D), added par. (8) and redesignated former par. (8) as (9).

1993—Subsecs. (a)(3)(I), (c)(2)(C), (h)(3)(B). Pub. L. 103–171, § 3(a)(9)(B), substituted ''Assistant Secretary'' for ''Commissioner''.

Subsec. (h)(4)(A). Pub. L. 103–171, § 3(a)(9)(A), substituted ''Director of the Office of Long-Term Care Ombudsman Programs'' for ''Associate Commissioner for Ombudsman Programs''.

Subsec. (j)(1). Pub. L. 103–171, § 3(a)(9)(B), substituted ''Assistant Secretary'' for ''Commissioner''.

§ 3058h. Regulations

The Assistant Secretary shall issue and periodically update regulations respecting—

(1) conflicts of interest by persons described in paragraphs (1) and (2) of section 3058g(f) of this title; and

(2) the relationships described in subparagraphs (A) through (D) of section 3058g(f)(3) of this title.

(Pub. L. 89–73, title VII, § 713, as added Pub. L. 102–375, title VII, § 702, Sept. 30, 1992, 106 Stat. 1282; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990.)

AMENDMENTS

1993—Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner''.

SUBPART III—PROGRAMS FOR PREVENTION OF ELDER ABUSE, NEGLECT, AND EXPLOITATION

§ 3058i. Prevention of elder abuse, neglect, and exploitation

(a) Establishment

In order to be eligible to receive an allotment under section 3058b of this title from funds appropriated under section 3058a of this title and made available to carry out this subpart, a State agency shall, in accordance with this section, and in consultation with area agencies on aging, develop and enhance programs to address elder abuse, neglect, and exploitation.

(b) Use of allotments

The State agency shall use an allotment made under subsection (a) of this section to carry out,

[3] See References in Text note below.

through the programs described in subsection (a) of this section, activities to develop, strengthen, and carry out programs for the prevention, detection, assessment, and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation (including financial exploitation), including—

(1) providing for public education and outreach to identify and prevent elder abuse, neglect, and exploitation;

(2) providing for public education and outreach to promote financial literacy and prevent identity theft and financial exploitation of older individuals;

(3) ensuring the coordination of services provided by area agencies on aging with services instituted under the State adult protection service program, State and local law enforcement systems, and courts of competent jurisdiction;

(4) promoting the development of information and data systems, including elder abuse reporting systems, to quantify the extent of elder abuse, neglect, and exploitation in the State;

(5) conducting analyses of State information concerning elder abuse, neglect, and exploitation and identifying unmet service, enforcement, or intervention needs;

(6) conducting training for individuals, including caregivers described in part E of subchapter III of this chapter, professionals, and paraprofessionals, in relevant fields on the identification, prevention, and treatment of elder abuse, neglect, and exploitation, with particular focus on prevention and enhancement of self-determination and autonomy;

(7) providing technical assistance to programs that provide or have the potential to provide services for victims of elder abuse, neglect, and exploitation and for family members of the victims;

(8) conducting special and on-going training, for individuals involved in serving victims of elder abuse, neglect, and exploitation, on the topics of self-determination, individual rights, State and Federal requirements concerning confidentiality, and other topics determined by a State agency to be appropriate;

(9) promoting the development of an elder abuse, neglect, and exploitation system—

(A) that includes a State elder abuse, neglect, and exploitation law that includes provisions for immunity, for persons reporting instances of elder abuse, neglect, and exploitation, from prosecution arising out of such reporting, under any State or local law;

(B) under which a State agency—

(i) on receipt of a report of known or suspected instances of elder abuse, neglect, or exploitation, shall promptly initiate an investigation to substantiate the accuracy of the report; and

(ii) on a finding of elder abuse, neglect, or exploitation, shall take steps, including appropriate referral, to protect the health and welfare of the abused, neglected, or exploited older individual;

(C) that includes, throughout the State, in connection with the enforcement of elder abuse, neglect, and exploitation laws and with the reporting of suspected instances of elder abuse, neglect, and exploitation—

(i) such administrative procedures;

(ii) such personnel trained in the special problems of elder abuse, neglect, and exploitation prevention and treatment;

(iii) such training procedures;

(iv) such institutional and other facilities (public and private); and

(v) such related multidisciplinary programs and services,

as may be necessary or appropriate to ensure that the State will deal effectively with elder abuse, neglect, and exploitation cases in the State;

(D) that preserves the confidentiality of records in order to protect the rights of older individuals;

(E) that provides for the cooperation of law enforcement officials, courts of competent jurisdiction, and State agencies providing human services with respect to special problems of elder abuse, neglect, and exploitation;

(F) that enables an older individual to participate in decisions regarding the welfare of the older individual, and makes the least restrictive alternatives available to an older individual who is abused, neglected, or exploited; and

(G) that includes a State clearinghouse for dissemination of information to the general public with respect to—

(i) the problems of elder abuse, neglect, and exploitation;

(ii) the facilities described in subparagraph (C)(iv); and

(iii) prevention and treatment methods available to combat instances of elder abuse, neglect, and exploitation;

(10) examining various types of shelters serving older individuals (in this paragraph referred to as ''safe havens''), and testing various safe haven models for establishing safe havens (at home or elsewhere), that recognize autonomy and self-determination, and fully protect the due process rights of older individuals;

(11) supporting multidisciplinary elder justice activities, such as—

(A) supporting and studying team approaches for bringing a coordinated multidisciplinary or interdisciplinary response to elder abuse, neglect, and exploitation, including a response from individuals in social service, health care, public safety, and legal disciplines;

(B) establishing a State coordinating council, which shall identify the individual State's needs and provide the Assistant Secretary with information and recommendations relating to efforts by the State to combat elder abuse, neglect, and exploitation;

(C) providing training, technical assistance, and other methods of support to groups carrying out multidisciplinary efforts at the State (referred to in some States as ''State Working Groups'');

(D) broadening and studying various models for elder fatality and serious injury re-

view teams, to make recommendations about their composition, protocols, functions, timing, roles, and responsibilities, with a goal of producing models and information that will allow for replication based on the needs of States and communities (other than the ones in which the review teams were used); and

(E) developing best practices, for use in long-term care facilities, that reduce the risk of elder abuse for residents, including the risk of resident-to-resident abuse; and

(12) addressing underserved populations of older individuals, such as—

(A) older individuals living in rural locations;

(B) older individuals in minority populations; or

(C) low-income older individuals.

(c) Approach

In developing and enhancing programs under subsection (a) of this section, the State agency shall use a comprehensive approach, in consultation with area agencies on aging, to identify and assist older individuals who are subject to abuse, neglect, and exploitation, including older individuals who live in State licensed facilities, unlicensed facilities, or domestic or community-based settings.

(d) Coordination

In developing and enhancing programs under subsection (a) of this section, the State agency shall coordinate the programs with other State and local programs and services for the protection of vulnerable adults, particularly vulnerable older individuals, including programs and services such as—

(1) area agency on aging programs;

(2) adult protective service programs;

(3) the State Long-Term Care Ombudsman program established in subpart II of this part;

(4) protection and advocacy programs;

(5) facility and long-term care provider licensure and certification programs;

(6) medicaid fraud and abuse services, including services provided by a State medicaid fraud control unit, as defined in section 1396b(q) of this title;

(7) victim assistance programs; and

(8) consumer protection and State and local law enforcement programs, as well as other State and local programs that identify and assist vulnerable older individuals, and services provided by agencies and courts of competent jurisdiction.

(e) Requirements

In developing and enhancing programs under subsection (a) of this section, the State agency shall—

(1) not permit involuntary or coerced participation in such programs by alleged victims, abusers, or members of their households;

(2) require that all information gathered in the course of receiving a report described in subsection (b)(9)(B)(i) of this section, and making a referral described in subsection (b)(9)(B)(ii) of this section, shall remain confidential except—

(A) if all parties to such complaint or report consent in writing to the release of such information;

(B) if the release of such information is to a law enforcement agency, public protective service agency, licensing or certification agency, ombudsman program, or protection or advocacy system; or

(C) upon court order; and

(3) make all reasonable efforts to resolve any conflicts with other public agencies with respect to confidentiality of the information described in paragraph (2) by entering into memoranda of understanding that narrowly limit disclosure of information, consistent with the requirement described in paragraph (2).

(f) Designation

The State agency may designate a State entity to carry out the programs and activities described in this subpart.

(g) Study and report

(1) Study

The Secretary, in consultation with the Department of the Treasury and the Attorney General of the United States, State attorneys general, and tribal and local prosecutors, shall conduct a study of the nature and extent of financial exploitation of older individuals. The purpose of this study would be to define and describe the scope of the problem of financial exploitation of the elderly and to provide an estimate of the number and type of financial transactions considered to constitute financial exploitation faced by older individuals. The study shall also examine the adequacy of current Federal and State legal protections to prevent such exploitation.

(2) Report

Not later than 18 months after November 13, 2000, the Secretary shall submit to Congress a report, which shall include—

(A) the results of the study conducted under this subsection; and

(B) recommendations for future actions to combat the financial exploitation of older individuals.

(h) Accountability measures

The Assistant Secretary shall develop accountability measures to ensure the effectiveness of the activities carried out under this section.

(i) Evaluating programs

The Assistant Secretary shall evaluate the activities carried out under this section, using funds made available under section 3017(g) of this title.

(j) Compliance with applicable laws

In order to receive funds made available to carry out this section, an entity shall comply with all applicable laws, regulations, and guidelines.

(Pub. L. 89–73, title VII, § 721, as added Pub. L. 102–375, title VII, § 703(b), Sept. 30, 1992, 106 Stat. 1282; amended Pub. L. 106–501, title VII, § 705, title VIII, § 801(e)(3), Nov. 13, 2000, 114 Stat. 2290, 2293; Pub. L. 109–365, title VII, § 702, Oct. 17, 2006, 120 Stat. 2591.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–365, § 702(1), substituted ''programs to address'' for ''programs for the prevention of''.

Subsec. (b). Pub. L. 109–365, § 702(2)(A), substituted ''programs for the prevention, detection, assessment, and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation (including financial exploitation), including—'' for ''programs for the prevention and treatment of elder abuse, neglect, and exploitation (including financial exploitation), including—'' in introductory provisions.

Subsec. (b)(2) to (9). Pub. L. 109–365, § 702(2)(B), (C), added par. (2) and redesignated former pars. (2) to (8) as (3) to (9), respectively.

Subsec. (b)(10) to (12). Pub. L. 109–365, § 702(2)(D)–(F), added pars. (10) to (12).

Subsec. (e)(2). Pub. L. 109–365, § 702(3), substituted ''subsection (b)(9)(B)(i)'' for ''subsection (b)(8)(B)(i)'' and ''subsection (b)(9)(B)(ii)'' for ''subsection (b)(8)(B)(ii)''.

Subsecs. (h) to (j). Pub. L. 109–365, § 702(4), added subsecs. (h) to (j).

2000—Subsec. (a). Pub. L. 106–501, § 801(e)(3), substituted ''section 3058a of this title and made available to carry out this subpart'' for ''section 3058a(b) of this title''.

Subsec. (b). Pub. L. 106–501, § 705(1)(A), in introductory provisions, inserted ''(including financial exploitation)'' after ''exploitation''.

Subsec. (b)(2). Pub. L. 106–501, § 705(1)(B), inserted '', State and local law enforcement systems, and courts of competent jurisdiction'' after ''service program''.

Subsec. (b)(5). Pub. L. 106–501, § 705(1)(C), inserted ''including caregivers described in part E of subchapter III of this chapter,'' after ''individuals,''.

Subsec. (d)(8). Pub. L. 106–501, § 705(2), inserted ''State and local'' before ''law enforcement programs'' and '', and services provided by agencies and courts of competent jurisdiction'' before period at end.

Subsec. (g). Pub. L. 106–501, § 705(3), added subsec. (g).

DECLARATION OF PURPOSE

Section 703(a) of Pub. L. 102–375 provided that: ''The purpose of this section [enacting this subpart] is to assist States in the design, development, and coordination of comprehensive services of the State and local levels to prevent, treat, and remedy elder abuse, neglect, and exploitation.''

SUBPART IV—STATE LEGAL ASSISTANCE DEVELOPMENT PROGRAM

§ 3058j. State legal assistance development

A State agency shall provide the services of an individual who shall be known as a State legal assistance developer, and the services of other personnel, sufficient to ensure—

(1) State leadership in securing and maintaining the legal rights of older individuals;

(2) State capacity for coordinating the provision of legal assistance;

(3) State capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and other persons, as appropriate;

(4) State capacity to promote financial management services to older individuals at risk of conservatorship;

(5) State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship; and

(6) State capacity to improve the quality and quantity of legal services provided to older individuals.

(Pub. L. 89–73, title VII, § 731, as added Pub. L. 106–501, title VII, § 706, Nov. 13, 2000, 114 Stat. 2291.)

PRIOR PROVISIONS

A prior section 3058j, Pub. L. 89–73, title VII, § 731, as added Pub. L. 102–375, title VII, § 704, Sept. 30, 1992, 106 Stat. 1285, related to State elder rights and legal assistance development, prior to repeal by Pub. L. 106–501, title VII, § 706, Nov. 13, 2000, 114 Stat. 2291.

SUBPART V—OUTREACH, COUNSELING, AND ASSISTANCE PROGRAM

§ 3058k. Repealed. Pub. L. 106–501, title VII, § 706, Nov. 13, 2000, 114 Stat. 2291

Section, Pub. L. 89–73, title VII, § 741, as added Pub. L. 102–375, title VII, § 705(b), Sept. 30, 1992, 106 Stat. 1287; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990, related to State outreach, counseling, and assistance program for insurance and public benefits.

PART B—NATIVE AMERICAN ORGANIZATION AND ELDER JUSTICE PROVISIONS

§ 3058aa. Native American program

(a) Establishment

The Assistant Secretary, acting through the Director of the Office for American Indian, Alaskan Native, and Native Hawaiian Aging, shall establish and carry out a program for—

(1) assisting eligible entities in prioritizing, on a continuing basis, the needs of the service population of the entities relating to elder rights;

(2) making grants to eligible entities to carry out vulnerable elder rights protection activities that the entities determine to be priorities; and

(3) enabling the eligible entities to support multidisciplinary elder justice activities, such as—

(A) establishing a coordinating council, which shall identify the needs of an individual Indian tribe or other Native American group and provide the Assistant Secretary with information and recommendations relating to efforts by the Indian tribe or the governing entity of the Native American group to combat elder abuse, neglect, and exploitation;

(B) providing training, technical assistance, and other methods of support to groups carrying out multidisciplinary efforts for an Indian tribe or other Native American group; and

(C) broadening and studying various models for elder fatality and serious injury review teams, to make recommendations about their composition, protocols, functions, timing, roles, and responsibilities, with a goal of producing models and information that will allow for replication based on the needs of Indian tribes and other Native American groups (other than the ones in which the review teams were used).

(b) Application

In order to be eligible to receive assistance under this section, an entity shall submit an ap-

plication to the Assistant Secretary, at such time, in such manner, and containing such information as the Assistant Secretary may require.

(c) Eligible entity

An entity eligible to receive assistance under this section shall be—

(1) an Indian tribe; or

(2) a public agency, or a nonprofit organization, serving older individuals who are Native Americans.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years.

(Pub. L. 89–73, title VII, § 751, as added Pub. L. 102–375, title VII, § 706, Sept. 30, 1992, 106 Stat. 1290; amended Pub. L. 103–171, § 3(a)(10), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title VII, § 707, Nov. 13, 2000, 114 Stat. 2291; Pub. L. 109–365, title VII, § 703, Oct. 17, 2006, 120 Stat. 2592.)

AMENDMENTS

2006—Subsec. (a)(3). Pub. L. 109–365, § 703(1), added par. (3).

Subsec. (b). Pub. L. 109–365, § 703(2), substituted ''this section'' for ''this part''.

Subsec. (d). Pub. L. 109–365, § 703(3), substituted ''this part'' for ''this section'' and ''2007'' for ''2001''.

2000—Subsec. (d). Pub. L. 106–501 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out this section, $5,000,000 for fiscal year 1992, and such sums as may be necessary for fiscal years 1993, 1994, and 1995.''

1993—Subsecs. (a), (b). Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' and ''Director of the Office for'' for ''Associate Commissioner on'' in subsec. (a) and ''Assistant Secretary'' for ''Commissioner'' in two places in subsec. (b).

§ 3058aa–1. Grants to promote comprehensive State elder justice systems

(a) Purpose and authority

For each fiscal year, the Assistant Secretary may make grants to States, on a competitive basis, in accordance with this section, to promote the development and implementation, within each such State, of a comprehensive elder justice system, as defined in subsection (b).

(b) Comprehensive elder justice system defined

In this section, the term ''comprehensive elder justice system'' means an integrated, multidisciplinary, and collaborative system for preventing, detecting, and addressing elder abuse, neglect, and exploitation in a manner that—

(1) provides for widespread, convenient public access to the range of available elder justice information, programs, and services;

(2) coordinates the efforts of public health, social service, and law enforcement authorities, as well as other appropriate public and private entities, to identify and diminish duplication and gaps in the system;

(3) provides a uniform method for the standardization, collection, management, analysis, and reporting of data; and

(4) provides such other elements as the Assistant Secretary determines appropriate.

(c) Applications

To be eligible to receive a grant under this section for a fiscal year, a State shall submit an application to the Assistant Secretary, at such time, in such manner, and containing such information and assurances as the Assistant Secretary determines appropriate.

(d) Amount of grants

The amount of a grant to a State with an application approved under this section for a fiscal year shall be such amount as the Assistant Secretary determines appropriate.

(e) Use of funds

(1) In general

A State that receives a grant under this section shall use funds made available through such grant to promote the development and implementation of a comprehensive elder justice system by—

(A) establishing formal working relationships among public and private providers of elder justice programs, service providers, and stakeholders in order to create a unified elder justice network across such State to coordinate programmatic efforts;

(B) facilitating and supporting the development of a management information system and standard data elements;

(C) providing for appropriate education (including educating the public about the range of available elder justice information, programs, and services), training, and technical assistance; and

(D) taking such other steps as the Assistant Secretary determines appropriate.

(2) Maintenance of effort

Funds made available to States pursuant to this section shall be used to supplement and not supplant other Federal, State, and local funds expended to support activities described in paragraph (1).

(Pub. L. 89–73, title VII, § 752, as added Pub. L. 109–365, title VII, § 704(2), Oct. 17, 2006, 120 Stat. 2593.)

PART C—GENERAL PROVISIONS

§ 3058bb. Definitions

As used in this subchapter:

(1) Elder right

The term ''elder right'' means a right of an older individual.

(2) Vulnerable elder rights protection activity

The term ''vulnerable elder rights protection activity'' means an activity funded under part A of this subchapter.

(Pub. L. 89–73, title VII, § 761, as added Pub. L. 102–375, title VII, § 707, Sept. 30, 1992, 106 Stat. 1291; amended Pub. L. 106–501, title VIII, § 801(e)(4), Nov. 13, 2000, 114 Stat. 2293.)

AMENDMENTS

2000—Par. (2). Pub. L. 106–501 substituted ''part A of this subchapter'' for ''subpart II, III, IV, or V of this subchapter''.

§ 3058cc. Administration

A State agency may carry out vulnerable elder rights protection activities either directly

or through contracts or agreements with public or nonprofit private agencies or organizations, such as—

(1) other State agencies;
(2) area agencies on aging;
(3) county governments;
(4) institutions of higher education;
(5) Indian tribes; or
(6) nonprofit service providers or volunteer organizations.

(Pub. L. 89–73, title VII, § 762, as added Pub. L. 102–375, title VII, § 707, Sept. 30, 1992, 106 Stat. 1291; amended Pub. L. 106–501, title VIII, § 801(e)(5), Nov. 13, 2000, 114 Stat. 2293.)

AMENDMENTS

2000—Pub. L. 106–501 struck out ''or an entity described in section 3058aa(c) of this title'' after ''A State agency'' in introductory provisions.

§ 3058dd. Technical assistance

(a) Other agencies

In carrying out the provisions of this subchapter, the Assistant Secretary may request the technical assistance and cooperation of such Federal entities as may be appropriate.

(b) Assistant Secretary

The Assistant Secretary shall provide technical assistance and training (by contract, grant, or otherwise) to persons and entities that administer programs established under this subchapter.

(Pub. L. 89–73, title VII, § 763, as added Pub. L. 102–375, title VII, § 707, Sept. 30, 1992, 106 Stat. 1291; amended Pub. L. 103–171, § 3(a)(11), (13), Dec. 2, 1993, 107 Stat. 1990.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–171, § 3(a)(13), substituted ''Assistant Secretary'' for ''Commissioner''.

Subsec. (b). Pub. L. 103–171, § 13(a)(11), (13), substituted ''Assistant Secretary'' for ''Commissioner'' in heading and text.

§ 3058ee. Audits

(a) Access

The Assistant Secretary, the Comptroller General of the United States, and any duly authorized representative of the Assistant Secretary or the Comptroller shall have access, for the purpose of conducting an audit or examination, to any books, documents, papers, and records that are pertinent to financial assistance received under this subchapter.

(b) Limitation

State agencies and area agencies on aging shall not request information or data from providers that is not pertinent to services furnished under this subchapter or to a payment made for the services.

(Pub. L. 89–73, title VII, § 764, as added Pub. L. 102–375, title VII, § 707, Sept. 30, 1992, 106 Stat. 1291; amended Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title VIII, § 801(e)(6), Nov. 13, 2000, 114 Stat. 2293.)

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–501 substituted ''and area agencies on aging'' for '', area agencies on aging, and entities described in section 3058aa(c) of this title''.

1993—Subsec. (a). Pub. L. 103–171 substituted ''Assistant Secretary'' for ''Commissioner'' in two places.

§ 3058ff. Rule of construction

Nothing in this subchapter shall be construed to interfere with or abridge the right of an older individual to practice the individual's religion through reliance on prayer alone for healing, in a case in which a decision to so practice the religion—

(1) is contemporaneously expressed by the older individual—
(A) either orally or in writing;
(B) with respect to a specific illness or injury that the older individual has at the time of the decision; and
(C) when the older individual is competent to make the decision;

(2) is set forth prior to the occurrence of the illness or injury in a living will, health care proxy, or other advance directive document that is validly executed and applied under State law; or

(3) may be unambiguously deduced from the older individual's life history.

(Pub. L. 89–73, title VII, § 765, as added Pub. L. 109–365, title VII, § 705, Oct. 17, 2006, 120 Stat. 2594.)

CHAPTER 35A—COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

§§ 3061 to 3067. Repealed. Pub. L. 94–135, title I, § 113(b), Nov. 28, 1975, 89 Stat. 725

Section 3061, Pub. L. 93–29, title IX, § 902, May 3, 1973, 87 Stat. 60, related to establishment of Older American Community Service Employment Program authority of Secretary, execution of agreements with terms and conditions for furthering purposes and goals of program, and regulations for execution of chapter provisions and costs and non-Federal share.

Section 3062, Pub. L. 93–29, title IX, § 903, May 3, 1973, 87 Stat. 62, related to administration of community service projects: consideration of needs of localities, employment situation and skills of eligible participants, and potential projects and number and percentage of eligible individuals in local population; agency cooperation, community service projects as part of general manpower programs, expenditure of project appropriations for manpower programs prohibited; use of services, equipment, personnel, facilities of Federal and other agencies, and cooperation with other public and private agencies in such use; community service projects: criteria for equitable participation in administration of such projects; payments, advances, reimbursement, and installments; and prohibition of delegation of functions and duties.

Section 3063, Pub. L. 93–29, title IX, § 904, May 3, 1973, 87 Stat. 63, related to participants without status of Federal employees; contractual requirement of workmen's compensation coverage and severance benefits.

Section 3064, Pub. L. 93–29, title IX, § 905, May 3, 1973, 87 Stat. 63, related to interagency cooperation.

Section 3065, Pub. L. 93–29, title IX, § 906, May 3, 1973, 87 Stat. 63, related to allotment for projects: allotment formula, reallotments, and equitable distribution of assistance.

Section 3066, Pub. L. 93–29, title IX, § 907, May 3, 1973, 87 Stat. 64, related to definitions.

Section 3067, Pub. L. 93–29, title IX, § 908, May 8, 1973, 87 Stat. 64; Pub. L. 93–113, title VI, § 604(b), Oct. 1, 1973, 87 Stat. 417, related to authorization of appropriations.

Subject matter is covered by section 3056 et seq. of this title.

CHAPTER 36—COMPENSATION OF CONDEMNEES IN DEVELOPMENT PROGRAMS

§§ 3071 to 3074. Repealed. Pub. L. 91–646, title II, § 220(a)(8), title III, § 306, Jan. 2, 1971, 84 Stat. 1903, 1907

Section 3071, Pub. L. 89–117, title IV, § 401, Aug. 10, 1965, 79 Stat. 485; Pub. L. 90–19, § 22(f), May 25, 1967, 81 Stat. 27, related to definitions.

Section 3072, Pub. L. 89–117, title IV, § 402, Aug. 10, 1965, 79 Stat. 485; Pub. L. 90–19, § 22(a), May 25, 1967, 81 Stat. 26, related to acquisition of realty by eminent domain.

Section 3073, Pub. L. 89–117, title IV, § 403, Aug. 10, 1965, 79 Stat. 485, related to financing of payments in eminent domain where amount is in dispute.

Section 3074, Pub. L. 89–117, title IV, § 404(a), Aug. 10, 1965, 79 Stat. 485; Pub. L. 90–19, § 22(a), May 25, 1967, 81 Stat. 26, related to relocation payments under federally assisted development programs.

Subject matter is covered by section 4601 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any State so long as sections 4630 and 4655 of this title are not applicable in such State; but such sections completely applicable to all States after July 1, 1972, but until such date applicable to a State to extent the State is able under its laws to comply with such sections, see section 221 of Pub. L. 91–646, set out as an Effective Date note under section 4601 of this title.

SAVINGS PROVISION

Any rights or liabilities existing under sections 3071 to 3074 as not affected by such repeal, see sections 220(b) and 306 of Pub. L. 91–646, set out as Savings Provision notes under sections 4621 and 4651 of this title.

CHAPTER 37—COMMUNITY FACILITIES AND ADVANCE LAND ACQUISITION

Sec.
3101. Congressional declaration of purpose.
3102, 3103. Omitted.
3104. Advance acquisition of land for public purposes.
3105. Powers and duties of Secretary.
3106. Definitions.
3107. Labor standards.
3108. Authorization of appropriations.

§ 3101. Congressional declaration of purpose

The purpose of this chapter is to assist and encourage the communities of the Nation fully to meet the needs of their citizens by making it possible, with Federal grant assistance, for their governmental bodies (1) to construct adequate basic water and sewer facilities needed to promote the efficient and orderly growth and development of our communities, (2) to construct neighborhood facilities needed to enable them to carry on programs of necessary social services, and (3) to acquire, in a planned and orderly fashion, land to be utilized in the future for public purposes.

(Pub. L. 89–117, title VII, § 701, Aug. 10, 1965, 79 Stat. 489; Pub. L. 90–448, title VI, § 603(a), Aug. 1, 1968, 82 Stat. 533.)

AMENDMENTS

1968—Pub. L. 90–448 substituted "in the future for public purposes" for "in connection with the future construction of public works and facilities" in cl. (3).

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–431, § 1, Oct. 6, 1970, 84 Stat. 886, provided: "That this Act [amending sections 3102 and 3108 of this title and enacting provisions set out as a note under section 3108 of this title] may be cited as the 'Emergency Community Facilities Act of 1970'."

§§ 3102, 3103. Omitted

CODIFICATION

Section 3102, Pub. L. 89–117, title VII, § 702, Aug. 10, 1965, 79 Stat. 490; 1966 Reorg. Plan No. 2, eff. May 10, 1966, 31 F.R. 6857, 80 Stat. 1608; Pub. L. 90–19, § 22(b), (g), May 25, 1967, 81 Stat. 26, 27; Pub. L. 90–448, title VI, § 604, Aug. 1, 1968, 82 Stat. 534; Pub. L. 91–152, title III, § 305(a), Dec. 24, 1969, 83 Stat. 391; Pub. L. 91–431, § 3(c), Oct. 6, 1970, 84 Stat. 886; 1970 Reorg. Plan No. 3, § 2(a)(1), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2087; Pub. L. 92–213, § 6, Dec. 22, 1971, 85 Stat. 776; Pub. L. 92–335, § 7, July 1, 1972, 86 Stat. 405; Pub. L. 93–117, § 9, Oct. 2, 1973, 87 Stat. 423, which authorized grants for basic water and sewer facilities, was omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this section after Jan. 1, 1975.

Section 3103, Pub. L. 89–117, title VII, § 703, Aug. 10, 1965, 79 Stat. 491; Pub. L. 90–19, § 22(b), May 25, 1967, 81 Stat. 26; Pub. L. 98–181, title I, § 126(b)(2), Nov. 30, 1983, 97 Stat. 1175, which authorized grants for neighborhood facilities, was omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this section after Jan. 1, 1975.

§ 3104. Advance acquisition of land for public purposes

(a) Authority to make grants

In order to encourage and assist the timely acquisition of land planned to be utilized in the future for public purposes, the Secretary is authorized to make grants to States and local public bodies and agencies to assist in financing the acquisition of a fee simple estate or other interest in such land.

(b) Maximum amount of grants

The amount of any grant made under this section shall not exceed the aggregate amount of reasonable interest charges on the loans or other financial obligations incurred to finance the acquisition of such land for a period not in excess of the lesser of (1) five years from the date of acquisition of such land or (2) the period of time between the date on which the land was acquired and the date its use began for the purpose for which it was acquired: *Provided*, That where all or any portion of the cost of such land is not financed through borrowings, the amount of the grant shall be computed on the basis of the aggregate amount of reasonable interest charges that the Secretary determines would have been required.

(c) Utilization of land for public purpose within reasonable period of time

No grant shall be made under this section unless the Secretary determines that the land will be utilized for a public purpose within a reasonable period of time and that such utilization will contribute to economy, efficiency, and the comprehensively planned development of the area. The Secretary shall in all cases require that land acquired with the assistance of a grant under this section be utilized for a public purpose within five years after the date on which a contract to make such grant is entered into, unless the Secretary determines that due to unusual circumstances a longer period of time is necessary and in the public interest.

(d) Diversion of land; repayment; interim use

No land acquired with assistance under this section shall, without approval of the Secretary, be diverted from the purpose originally approved. The Secretary shall approve no such diversion unless he finds that the diversion is in accord with the then applicable comprehensive plan for the area. In cases of a diversion of land to other than a public purpose, the Secretary may require repayment of the grant, or substitution of land of approximately equal fair market value, whichever he deems appropriate. An interim use of the land for a public or private purpose in accordance with standards prescribed by the Secretary, or approved by him, shall not constitute a diversion within the meaning of this subsection.

(e) Eligibility for other Federal loans or grant programs

Notwithstanding any other provision of law, no project for which land is acquired with assistance under this section shall, solely as a result of such advance acquisition, be considered ineligible for the purpose of any other Federal loan or grant program, and the amount of the purchase price paid for the land by the recipient of a grant under this section may be considered an eligible cost for the purpose of such other Federal loan or grant program.

(Pub. L. 89–117, title VII, § 704, Aug. 10, 1965, 79 Stat. 491; Pub. L. 90–19, § 22(b), May 25, 1967, 81 Stat. 26; Pub. L. 90–448, title VI, § 603(b), Aug. 1, 1968, 82 Stat. 533; Pub. L. 96–470, title I, § 107(c), Oct. 19, 1980, 94 Stat. 2238.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–470 substituted ''unless the Secretary determines that due to unusual circumstances a longer period of time is necessary and in the public interest'' for ''unless the Secretary (1) determines that due to unusual circumstances a longer period of time is necessary and in the public interest, and (2) reports such determination promptly to the Committees on Banking and Currency of the Senate and House of Representatives''.

1968—Subsec. (a). Pub. L. 90–448 substituted ''to be utilized in the future for public purposes'' for ''to be utilized in connection with the future construction of public works or facilities''.

Subsec. (b). Pub. L. 90–448 changed the period from not more than the lesser of (1) five years from the date such loan was made or such financial obligation was incurred, or (2) the period of time between the date such loan was made or such financial obligation was incurred and the date construction is begun on the public work or facility, to not more than the lesser of (1) five years from the date of acquisition of such land, or (2) the period of time between the date on which the land was acquired and the date its use began for the purpose for which it was acquired, and inserted proviso requiring the amount of the grant, where all or any portion of the cost of land is not financed through borrowings, to be computed on the basis of the aggregate amount of reasonable interest charges that the Secretary determines would have been required.

Subsec. (c). Pub. L. 90–448 substituted provisions requiring the Secretary to determine that the land will be utilized for a public purpose within a reasonable period of time, for provisions which required a determination that the public work or facility for which the land is to be utilized is planned to be constructed or initiated within a reasonable period of time, empowered the Secretary to extend the time if he determines that due to unusual circumstances a longer period of time is necessary and in the public interest, and required a prompt report of such determination to Congressional Committees.

Subsec. (d). Pub. L. 90–448 inserted provisions prohibiting diversion of land without approval of the Secretary, directing the Secretary to disapprove any diversion unless he finds that the diversion is in accord with the then applicable comprehensive plan for the area, authorizing the Secretary to accept, in cases of repayment, substitution of land of approximately equal fair market value, and stating that an interim use of land for a public or private purpose in accordance with prescribed standards shall not constitute a diversion, and eliminated provisions which required repayment if the land purchased with assistance is not utilized within five years after the agreement is entered into in connection with the construction of the public work or facility for which the land was acquired.

Subsec. (e). Pub. L. 90–448 added subsec. (e).

1967—Subsecs. (a), (c), (d). Pub. L. 90–19 substituted ''Secretary'' for ''Administrator'' wherever appearing.

§ 3105. Powers and duties of Secretary

(a) In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter, the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in section 1749a[1] of title 12, except subsections (a), (c)(2), and (f) thereof.

(b) The Secretary is authorized, notwithstanding the provisions of section 3324(a) and (b) of title 31, to make advance or progress payments on account of any grant made pursuant to this chapter. No part of any grant authorized to be made by the provisions of this chapter shall be used for the payment of ordinary governmental operating expenses.

(Pub. L. 89–117, title VII, § 705, Aug. 10, 1965, 79 Stat. 492; Pub. L. 90–19, § 22(b), May 25, 1967, 81 Stat. 26.)

REFERENCES IN TEXT

Section 1749a of title 12, referred to in subsec. (a), was repealed by Pub. L. 99–498, title VII, § 702, Oct. 17, 1986, 100 Stat. 1545.

CODIFICATION

In subsec. (b), ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes [31 U.S.C. 529]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Administrator'' wherever appearing.

§ 3106. Definitions

As used in this chapter—

(a) The term ''State'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(b) The term ''local public bodies and agencies'' includes public corporate bodies or political subdivisions; public agencies or instrumentalities of one or more States, municipalities, or political subdivisions of one or more States (including public agencies and instrumentalities of one or more municipalities or other political

[1] See References in Text note below.

subdivisions of one or more States); Indian tribes; and boards or commissions established under the laws of any State to finance specific capital improvement projects.

(c) The term ''development cost'' means the cost of constructing the facility and of acquiring the land on which it is located, including necessary site improvements to permit its use as a site for the facility.

(Pub. L. 89–117, title VII, § 706, Aug. 10, 1965, 79 Stat. 492.)

§ 3107. Labor standards

All laborers and mechanics employed by contractors or subcontractors on projects assisted under sections 3102 and 3103 of this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. No such project shall be approved without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.

(Pub. L. 89–117, title VII, § 707, Aug. 10, 1965, 79 Stat. 492.)

REFERENCES IN TEXT

Sections 3102 and 3103 of this title, referred to in text, were omitted from the Code pursuant to section 5316 of this title which terminated the authority to make grants or loans under those sections after Jan. 1, 1975.

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)'' and ''section 3145 of title 40'' substituted ''section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c)'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 3108. Authorization of appropriations

(a) There are authorized to be appropriated for each fiscal year commencing after June 30, 1965, and ending prior to July 1, 1969, not to exceed (1) $200,000,000 (or $350,000,000 in the case of the fiscal year commencing July 1, 1968) for grants under section 3102 of this title, (2) $50,000,000 for grants under section 3103 of this title, and (3) $25,000,000 for grants under section 3104 of this title. In addition, there is authorized to be appropriated for grants under section 3102 of this title not to exceed $115,000,000 for the fiscal year commencing July 1, 1969, and not to exceed $100,000,000 for the fiscal year commencing July 1, 1970. In addition, upon the enactment of the Emergency Community Facilities Act of 1970, there is authorized to be appropriated for grants under section 3102 of this title not to exceed $1,000,000,000 for the fiscal year commencing July 1, 1970. In addition, there is authorized to be appropriated for the fiscal year commencing July 1, 1971, not to exceed $50,000,000 for grants under section 3103 of this title. In addition, there are authorized to be appropriated for the fiscal year commencing July 1, 1973, not to exceed $40,000,000 for grants under section 3103 of this title.

(b) Any amounts appropriated under this section shall remain available until expended, and any amounts authorized for any fiscal year under this section but not appropriated may be appropriated for any succeeding fiscal year commencing prior to July 1, 1974.

(Pub. L. 89–117, title VII, § 708, Aug. 10, 1965, 79 Stat. 493; Pub. L. 90–448, title VI, § 605, Aug. 1, 1968, 82 Stat. 534; Pub. L. 91–152, title III, § 305(b), (c), Dec. 24, 1969, 83 Stat. 391; Pub. L. 91–431, § 3(a), (b), Oct. 6, 1970, 84 Stat. 886; Pub. L. 91–609, title III, § 304, Dec. 31, 1970, 84 Stat. 1780; Pub. L. 92–335, § 3, July 1, 1972, 86 Stat. 405; Pub. L. 93–117, § 8, Oct. 2, 1973, 87 Stat. 422.)

REFERENCES IN TEXT

Sections 3102 and 3103 of this title, referred to in subsec. (a), were omitted from the Code pursuant to section 5316 of this title which terminated the authority to make grants or loans under those sections after Jan. 1, 1975.

The Emergency Community Facilities Act of 1970, referred to in subsec. (a), is Pub. L. 91–431, Oct. 6, 1970, 84 Stat. 886, which amended sections 3102 and 3108 of this title, and enacted a provision set out as a note under this section. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–117, § 8(a), provided for neighborhood facility grant authorization of $40,000,000 for fiscal year commencing July 1, 1973.

Subsec. (b). Pub. L. 93–117, § 8(b), substituted ''July 1, 1974'' for ''September 30, 1972''.

1972—Subsec. (b). Pub. L. 92–335 substituted ''September 30, 1972'' for ''July 1, 1972''.

1970—Subsec. (a). Pub. L. 91–609, § 304(a), authorized appropriation of $50,000,000 for fiscal year commencing July 1, 1971, for grants under section 3103 of this title.

Pub. L. 91–431, § 3(a), authorized appropriations for grants under section 3102 of this title of not to exceed $1,000,000,000 for fiscal year commencing July 1, 1970.

Subsec. (b). Pub. L. 91–609, § 304(b), substituted ''July 1, 1972'' for ''July 1, 1971''.

Pub. L. 91–431, § 3(b), substituted ''July 1, 1972'' for ''July 1, 1971''.

1969—Subsec. (a). Pub. L. 91–152, § 305(c), authorized appropriations of not more than $100,000,000 for fiscal year commencing July 1, 1970.

Subsec. (b). Pub. L. 91–152, § 305(b), substituted ''July 1, 1971'' for ''July 1, 1970''.

1968—Subsec. (a). Pub. L. 90–448, § 605(b), authorized appropriations of not more than $350,000,000 for fiscal year commencing July 1, 1968, and not more than $115,000,000 for fiscal year commencing July 1, 1969.

Subsec. (b). Pub. L. 90–448, § 605(a), substituted ''July 1, 1970'' for ''July 1, 1969''.

CONGRESSIONAL STATEMENT OF FINDINGS

Section 2 of Pub. L. 91–431 provided that:

''(a) The Congress finds that a large number of municipalities and other entities of local government throughout the Nation are unable to finance construction of vital and urgently needed public facilities because of the shortage of funds for long-term borrowing.

''(b) The Congress further finds that there is an immediate need for such facilities in order to provide basic safeguards for the health and well-being of the

people of the United States, to check widespread pollution of irreplaceable water sources, and to provide an effective and practical method of combating rising unemployment.''

ADMINISTRATIVE PRIORITY FOR APPLICATIONS RELATING TO ACTIVITIES IN AREAS AFFECTED BY BASE CLOSINGS

State or unit of local government or agency thereof affected by reduction in level of expenditure or employment at Department of Defense installation located in or near such State or unit of local government, priority in processing applications for assistance under this section, see section 1453a of this title.

CHAPTER 38—PUBLIC WORKS AND ECONOMIC DEVELOPMENT

Sec.
3121. Findings and declarations.
3122. Definitions.
3123. Discrimination on basis of sex prohibited in federally assisted programs.

SUBCHAPTER I—ECONOMIC DEVELOPMENT PARTNERSHIPS COOPERATION AND COORDINATION

3131. Establishment of economic development partnerships.
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3141. Grants for public works and economic development.
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3191. Assistant Secretary for Economic Development.
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SUBCHAPTER VI—MISCELLANEOUS

3211. Powers of Secretary.
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3213. Annual report to Congress.
3214. Delegation of functions and transfer of funds among Federal agencies.
3215. Penalties.
3216. Employment of expediters and administrative employees.
3217. Maintenance and public inspection of list of approved applications for financial assistance.
3218. Records and audits.
3219. Relationship to assistance under other law.
3220. Acceptance of certifications by applicants.
3221. Brownfields redevelopment report.
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SUBCHAPTER VII—FUNDING

3231. General authorization of appropriations.
3232. Authorization of appropriations for defense conversion activities.
3233. Authorization of appropriations for disaster economic recovery activities.
3234. Funding for grants for planning and grants for administrative expenses.

§ 3121. Findings and declarations

(a) Findings

Congress finds that—

(1) there continue to be areas of the United States experiencing chronic high unemployment, underemployment, outmigration, and low per capita incomes, as well as areas facing sudden and severe economic dislocations because of structural economic changes, changing trade patterns, certain Federal actions (including environmental requirements that result in the removal of economic activities from a locality), and natural disasters;

(2) economic growth in the States, cities, and rural areas of the United States is produced by expanding economic opportunities, expanding free enterprise through trade, developing and strengthening public infrastructure, and creating a climate for job creation and business development;

(3) the goal of Federal economic development programs is to raise the standard of living for all citizens and increase the wealth and overall rate of growth of the economy by encouraging communities to develop a more competitive and diversified economic base by—

(A) creating an environment that promotes economic activity by improving and expanding public infrastructure;

(B) promoting job creation through increased innovation, productivity, and entrepreneurship; and

(C) empowering local and regional communities experiencing chronic high unemployment and low per capita income to develop private sector business and attract increased private sector capital investment;

(4) while economic development is an inherently local process, the Federal Government should work in partnership with public and private State, regional, tribal, and local organizations to maximize the impact of existing resources and enable regions, communities, and citizens to participate more fully in the American dream and national prosperity;

(5) in order to avoid duplication of effort and achieve meaningful, long-lasting results, Federal, State, tribal, and local economic development activities should have a clear focus, improved coordination, a comprehensive approach, and simplified and consistent requirements; and

(6) Federal economic development efforts will be more effective if the efforts are coordinated with, and build upon, the trade, workforce investment, transportation, and technology programs of the United States.

(b) Declarations

In order to promote a strong and growing economy throughout the United States, Congress declares that—

(1) assistance under this chapter should be made available to both rural- and urban-distressed communities;

(2) local communities should work in partnership with neighboring communities, the States, Indian tribes, and the Federal Government to increase the capacity of the local communities to develop and implement comprehensive economic development strategies to alleviate economic distress and enhance competitiveness in the global economy;

(3) whether suffering from long-term distress or a sudden dislocation, distressed communities should be encouraged to support entrepreneurship to take advantage of the development opportunities afforded by technological innovation and expanding newly opened global markets; and

(4) assistance under this chapter should be made available to promote the productive reuse of abandoned industrial facilities and the redevelopment of brownfields.

(Pub. L. 89–136, §2, as added Pub. L. 105–393, title I, §102(a), Nov. 13, 1998, 112 Stat. 3598; amended Pub. L. 108–373, title I, §101, Oct. 27, 2004, 118 Stat. 1757.)

PRIOR PROVISIONS

A prior section 3121, Pub. L. 89–136, §2, Aug. 26, 1965, 79 Stat. 552; Pub. L. 94–487, title I, §102, Oct. 12, 1976, 90 Stat. 2331, set forth congressional findings and statement of purpose of chapter, prior to repeal by Pub. L. 105–393, §102(a).

AMENDMENTS

2004—Pub. L. 108–373 reenacted section catchline without change and amended text generally, substituting pars. (1) to (6) for former pars. (1) to (8) in subsec. (a) and pars. (1) to (4) for former pars. (1) to (3) in subsec. (b).

EFFECTIVE DATE

Pub. L. 105–393, title I, §105, Nov. 13, 1998, 112 Stat. 3618, provided that: ''This title [see Short Title of 1998 Amendment note set out below] and the amendments made by this title shall take effect on a date determined by the Secretary of Commerce, but not later than 90 days after the date of enactment of this Act [Nov. 13, 1998].'' [Effective Feb. 11, 1999, see 64 F.R. 9222.]

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–373, §1(a), Oct. 27, 2004, 118 Stat. 1756, provided that: ''This Act [enacting sections 3154 to 3154d, 3221, 3222, and 3234 of this title, amending this section and sections 3122, 3131, 3133, 3143 to 3147, 3149, 3151, 3161, 3162, 3174, 3192, 3196, 3212, 3213, 3219, and 3231 of this title, and repealing sections 3148, 3173, and 3195 of this title] may be cited as the 'Economic Development Administration Reauthorization Act of 2004'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–393, §1(a), Nov. 13, 1998, 112 Stat. 3596, provided that: ''This Act [see Tables for classification] may be cited as the 'Economic Development Administration and Appalachian Regional Development Reform Act of 1998'.''

Pub. L. 105–393, title I, §101, Nov. 13, 1998, 112 Stat. 3597, provided that: ''This title [enacting subchapters I to VII of this chapter, transferring section 3222 of this title to section 3212 of this title, amending section 5316 of Title 5, Government Organization and Employees, repealing former subchapters I to X of this chapter, enacting provisions set out as notes under this section, and repealing provisions set out as a note under this section] may be cited as the 'Economic Development Administration Reform Act of 1998'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–487, §101, Oct. 12, 1976, 90 Stat. 2331, provided that: ''This Act [enacting sections 3137, 3144, 3173, and 3246h of this title, amending this section and sections 3131, 3132, 3135, 3141, 3142, 3151a, 3152, 3153, 3161, 3171, 3172, 3188a, 3214, 3241, 3243, 3245, 3246a to 3246c, and 3246e to 3246g of this title, repealing section 3246d of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 3162 of this title] may be cited as the 'Public Works and Economic Development Act Amendments of 1976'.''

SHORT TITLE OF 1975 AMENDMENTS

Pub. L. 94–188, §1, Dec. 31, 1975, 89 Stat. 1079, provided: ''That this Act [enacting sections 3194 to 3196 of this title and sections 225 and 303 of the Appendix to former Title 40, Public Buildings, Property, and Works, amending sections 3181, 3182, 3188a and 3192 of this title, and sections 2, 101, 102, 105–107, 201, 202, 205, 207, 211, 214, 223, 224, 302, 401 and 405 of the Appendix to former Title 40, repealing section 3134 of this title, and enacting provisions set out as notes under sections 3181 and 3183 of this title and sections 1, 2 and 201 of the Appendix of former Title 40] may be cited as the 'Regional Development Act of 1975'.''

Pub. L. 94–188, title II, §201, Dec. 31, 1975, 89 Stat. 1087, provided that: ''This title [enacting sections 3194 to 3196 of this title, amending sections 3181, 3182, 3188a, and 3192 of this title, and enacting provisions set out as note under section 3183 of this title] may be cited as the 'Regional Action Planning Commission Improvement Act of 1975'.''

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–567, §1, Dec. 31, 1974, 88 Stat. 1845, provided: ''That this Act [enacting sections 3246 to 3246g of this title and sections 961 to 966 of Title 29, Labor, amending section 1244 of Title 20, Education, and sections 841, 842, 844, 845, 849 to 851, 981, and 983 of Title 29, and enacting provisions set out as notes under sections 3304 of Title 26, Internal Revenue Code, and 4102 of Title 38, Veterans' Benefits] may be cited as the 'Emergency Jobs and Unemployment Assistance Act of 1974'.''

SHORT TITLE OF 1971 AMENDMENT

Pub. L. 92–65, title I, §101, Aug. 5, 1971, 85 Stat. 166, provided that: ''This title [enacting section 3123 of this title and amending this section, sections 3135, 3141, 3152, 3161, 3162, 3171, 3188a, and 3191 of this title, and provisions set out as a note under section 3162 of this title]

may be cited as the 'Public Works and Economic Development Act Amendments of 1971'.''

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91–123, title II, § 201, Nov. 25, 1969, 83 Stat. 216, provided that: ''This title [enacting sections 3190, 3191, and 3192 of this title and amending this section and sections 3185, 3186, and 3188a of this title] may be cited as the 'Regional Action Planning Commission Amendments of 1969'.''

SHORT TITLE

Pub. L. 89–136, § 1(a), as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3597, provided that: ''This Act [enacting this chapter] may be cited as the 'Public Works and Economic Development Act of 1965'.''

A prior section 1 of Pub. L. 89–136, which provided that Pub. L. 89–136 could be cited as the ''Public Works and Economic Development Act of 1965'', was repealed by Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3597.

TRANSITION PROVISIONS

Pub. L. 105–393, title I, § 104, Nov. 13, 1998, 112 Stat. 3617, provided that:

''(a) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS.—This title [see Short Title of 1998 Amendment note set out above], including the amendments made by this title, does not affect the validity of any right, duty, or obligation of the United States or any other person arising under any contract, loan, or other instrument or agreement that was in effect on the day before the effective date of this title [see Effective Date note set out above].

''(b) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against any officer or employee of the Economic Development Administration shall abate by reason of the enactment of this title.

''(c) LIQUIDATING ACCOUNT.—The Economic Development Revolving Fund established under section 203 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3143) (as in effect on the day before the effective date of this title) shall continue to be available to the Secretary of Commerce as a liquidating account (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) for payment of obligations and expenses in connection with financial assistance provided under—

''(1) the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 et seq.);

''(2) the Area Redevelopment Act (42 U.S.C. 2501 et seq.); and

''(3) the Trade Act of 1974 (19 U.S.C. 2101 et seq.).

''(d) ADMINISTRATION.—The Secretary of Commerce shall take such actions authorized before the effective date of this title as are appropriate to administer and liquidate grants, contracts, agreements, loans, obligations, debentures, or guarantees made by the Secretary under law in effect before the effective date of this title.''

DENALI COMMISSION

Pub. L. 105–277, div. C, title III, Oct. 21, 1998, 112 Stat. 2681–637, as amended by Pub. L. 106–31, title I, § 105(a), May 21, 1999, 113 Stat. 62; Pub. L. 106–113, div. B, § 1000(a)(4) [title VII, § 701], Nov. 29, 1999, 113 Stat. 1535, 1501A–280; Pub. L. 108–7, div. A, title VII, § 749, div. D, title V, § 504, Feb. 20, 2003, 117 Stat. 44, 158; Pub. L. 108–199, div. B, title I, § 112(d), div. E, title II, § 222, Jan. 23, 2004, 118 Stat. 63, 256; Pub. L. 108–447, div. H, title V, § 521, Dec. 8, 2004, 118 Stat. 3268; Pub. L. 109–59, title I, § 1960, Aug. 10, 2005, 119 Stat. 1516, provided that:

''SEC. 301. SHORT TITLE.

''This title may be cited as the 'Denali Commission Act of 1998'.

''SEC. 302. PURPOSES.

''The purposes of this title are as follows:

''(1) To deliver the services of the Federal Government in the most cost-effective manner practicable by reducing administrative and overhead costs.

''(2) To provide job training and other economic development services in rural communities particularly distressed communities (many of which have a rate of unemployment that exceeds 50 percent).

''(3) To promote rural development, provide power generation and transmission facilities, modern communication systems, water and sewer systems and other infrastructure needs.

''SEC. 303. ESTABLISHMENT OF COMMISSION.

''(a) ESTABLISHMENT.—There is established a commission to be known as the Denali Commission (referred to in this title as the 'Commission').

''(b) MEMBERSHIP.—

''(1) COMPOSITION.—The Commission shall be composed of 7 members, who shall be appointed by the Secretary of Commerce (referred to in this title as the 'Secretary'), of whom—

''(A) one shall be the Governor of the State of Alaska, or an individual selected from nominations submitted by the Governor, who shall serve as the State Cochairperson;

''(B) one shall be the President of the University of Alaska, or an individual selected from nominations submitted by the President of the University of Alaska;

''(C) one shall be the President of the Alaska Municipal League or an individual selected from nominations submitted by the President of the Alaska Municipal League;

''(D) one shall be the President of the Alaska Federation of Natives or an individual selected from nominations submitted by the President of the Alaska Federation of Natives;

''(E) one shall be the Executive President of the Alaska State AFL–CIO or an individual selected from nominations submitted by the Executive President;

''(F) one shall be the President of the Associated General Contractors of Alaska or an individual selected from nominations submitted by the President of the Associated General Contractors of Alaska; and

''(G) one shall be the Federal Cochairperson, who shall be selected in accordance with the requirements of paragraph (2).

''(2) FEDERAL COCHAIRPERSON.—

''(A) IN GENERAL.—The President pro temporare [sic] of the Senate and the Speaker of the House of Representatives shall each submit a list of nominations for the position of the Federal Cochairperson under paragraph (1)(G), including pertinent biographical information, to the Secretary.

''(B) APPOINTMENT.—The Secretary shall appoint the Federal Cochairperson from among the list of nominations submitted under subparagraph (A). The Federal Cochairperson shall serve as an employee of the Department of Commerce, and may be removed by the Secretary for cause.

''(C) FEDERAL COCHAIRPERSON VOTE.—The Federal Cochairperson appointed under this paragraph shall break any tie in the voting of the Commission.

''(4) DATE.—The appointments of the members of the Commission shall be made no later than January 1, 1999.

''(c) PERIOD OF APPOINTMENT; VACANCIES.—The Federal Cochairperson shall serve for a term of four years and may be reappointed. All other members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

''(d) MEETINGS.—

''(1) IN GENERAL.—The Commission shall meet at the call of the Federal Cochairperson not less frequently than 2 times each year, and may, as appropriate, conduct business by telephone or other electronic means.

''(2) NOTIFICATION.—Not later than 2 weeks before calling a meeting under this subsection, the Federal Cochairperson shall—

''(A) notify each member of the Commission of the time, date and location of that meeting; and

''(B) provide each member of the Commission with a written agenda for the meeting, including any proposals for discussion and consideration, and any appropriate background materials.

''(e) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

''SEC. 304. DUTIES OF THE COMMISSION.

''(a) WORK PLAN.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Oct. 21, 1998] and annually thereafter, the Commission shall develop a proposed work plan for Alaska that meets the requirements of paragraph (2) and submit that plan to the Federal Cochairperson for review in accordance with the requirements of subsection (b).

''(2) WORK PLAN.—In developing the work plan, the Commission shall—

''(A) solicit project proposals from local governments and other entities and organizations; and

''(B) provide for a comprehensive work plan for rural and infrastructure development and necessary job training in the area covered under the work plan.

''(3) REPORT.—Upon completion of a work plan under this subsection, the Commission shall prepare, and submit to the Secretary, the Federal Cochairperson, and the Director of the Office of Management and Budget, a report that outlines the work plan and contains recommendations for funding priorities.

''(b) REVIEW BY FEDERAL COCHAIRPERSON.—

''(1) IN GENERAL.—Upon receiving a work plan under this section, the Secretary, acting through the Federal Cochairperson, shall publish the work plan in the Federal Register, with notice and an opportunity for public comment. The period for public review and comment shall be the 30-day period beginning on the date of publication of that notice.

''(2) CRITERIA FOR REVIEW.—In conducting a review under paragraph (1), the Secretary, acting through the Federal Cochairperson, shall—

''(A) take into consideration the information, views, and comments received from interested parties through the public review and comment process specified in paragraph (1); and

''(B) consult with appropriate Federal officials in Alaska including but not limited to Bureau of Indian Affairs, Economic Development Administration, and Rural Development Administration.

''(3) APPROVAL.—Not later than 30 days after the end of the period specified in paragraph (1), the Secretary acting through the Federal Cochairperson, shall—

''(A) approve, disapprove, or partially approve the work plan that is the subject of the review; and

''(B) issue to the Commission a notice of the approval, disapproval, or partial approval that—

''(i) specifies the reasons for disapproving any portion of the work plan; and

''(ii) if applicable, includes recommendations for revisions to the work plan to make the plan subject to approval.

''(4) REVIEW OF DISAPPROVAL OR PARTIAL APPROVAL.—If the Secretary, acting through the Federal Cochairperson, disapproves or partially approves a work plan, the Federal Cochairperson shall submit that work plan to the Commission for review and revision.

''SEC. 305. POWERS OF THE COMMISSION.

''(a) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as it considers necessary to carry out the provisions of this Act [title]. Upon request of the Federal Cochairperson of the Commission, the head of such department or agency shall furnish such information to the Commission. Agencies must provide the Commission with the requested information in a timely manner. Agencies are not required to provide the Commission any information that is exempt from disclosure by the Freedom of Information Act [5 U.S.C. 552]. Agenices [sic] may, upon request by the Commission, make services and personnel available to the Commission to carry out the duties of the Commission. To the maximum extent practicable, the Commission shall contract for completion of necesssary [sic] work utilizing local firms and labor to minimize costs.

''(b) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(c) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

''(d) The Commission, acting through the Federal Cochairperson, is authorized to enter into contracts and cooperative agreements, award grants, and make payments necessary to carry out the purposes of the Commission. With respect to funds appropriated to the Commission for fiscal year 1999, the Commission, acting through the Federal Cochairperson, is authorized to enter into contracts and cooperative agreements, award grants, and make payments to implement an interim work plan for fiscal year 1999 approved by the Commission.

''SEC. 306. COMMISSION PERSONNEL MATTERS.

''(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during the time such member is engaged in the performance of the duties of the Commission. The Federal Cochairperson shall be compensated at the annual rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code. All members of the Commission who are officers or employees of the United States shall serve without compensation that is in addition to that received for their services as officers or employees of the United States.

''(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

''(c) STAFF.—

''(1) IN GENERAL.—The Federal Cochairperson of the Commission may, without regard to the civil service laws and regulations, appoint such personnel as may be necessary to enable the Commission to perform its duties.

''(2) COMPENSATION.—The Federal Cochairperson of the Commission may fix the compensation of personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

''(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

''(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Federal Cochairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

''(f) OFFICES.—The principal office of the Commission shall be located in Alaska, at a location that the Commission shall select.

''(g) ADMINISTRATIVE EXPENSES AND RECORDS.—The Commission is hereby prohibited from using more than 5 percent of the amounts appropriated under the authority of this Act [probably means this title] or transferred pursuant to section 329 of the Department of Transportation and Related Agencies Appropriations Act, 1999 (section 101(g) of division A of this Act) [43 U.S.C. 1653 note] for administrative expenses. The Commission and its grantees shall maintain accurate and complete records which shall be available for audit and examination by the Comptroller General or his or her designee.

''(h) INSPECTOR GENERAL.—[Amended section 8G of the Inspector General Act, 5 U.S.C. App.]

''SEC. 307. SPECIAL FUNCTIONS.

''(a) RURAL UTILITIES.—In carrying out its functions under this title, the Commission shall as appropriate, provide assistance, seek to avoid duplicating services and assistance, and complement the water and sewer wastewater programs under section 306D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926d) and section 303 of the Safe Drinking Water Act Amendments of 1996 (33 U.S.C. 1263a).

''(b) BULK FUELS.—Funds transferred to the Commission pursuant to section 329 of the Department of Transportation and Related Agencies Appropriations Act, 1999 (section 101(g) of division A of this Act) [43 U.S.C. 1653 note] shall be available without further appropriation and until expended. The Commission, in consultation with the Commandant of the Coast Guard, shall develop a plan to provide for the repair or replacement of bulk fuel storage tanks in Alaska that are not in compliance with applicable—

''(1) Federal law, including the Oil Pollution Act of 1990 (104 Stat. 484) [33 U.S.C. 2701 et seq.]; or

''(2) State law.

''(c) DEMONSTRATION HEALTH PROJECTS.—In order to demonstrate the value of adequate health facilities and services to the economic development of the region, the Secretary of Health and Human Services is authorized to make interagency transfers to the Denali Commission to plan, construct, and equip demonstration health, nutrition, and child care projects, including hospitals, health care clinics, and mental health facilities (including drug and alcohol treatment centers) in accordance with the Work Plan referred to under section 304 of Title III—Denali Commission of Division C—Other Matters of Public Law 105–277. No grant for construction or equipment of a demonstration project shall exceed 50 percentum of such costs, unless the project is located in a severely economically distressed community, as identified in the Work Plan referred to under section 304 of Title III—Denali Commission of Division C—Other Matters of Public Law 105–277, in which case no grant shall exceed 80 percentum of such costs. To carry out this section, there is authorized to be appropriated such sums as may be necessary.

''(d) SOLID WASTE.—The Secretary of Agriculture is authorized to make direct lump sum payments which shall remain available until expended to the Denali Commission to address deficiencies in solid waste disposal sites which threaten to contaminate rural drinking water supplies.

''(e) DOCKS, WATERFRONT TRANSPORTATION DEVELOPMENT, AND RELATED INFRASTRUCTURE PROJECTS.—The Secretary of Transportation is authorized to make direct lump sum payments to the Commission to construct docks, waterfront development projects, and related transportation infrastructure, provided the local community provides a ten percent non-Federal match in the form of any necessary land or planning and design funds. To carry out this section, there is authorized to be appropriated such sums as may be necessary.

''SEC. 308. EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.

''The Federal Advisory Committee Act [5 U.S.C. App.] shall not apply to the Commission.

''SEC. 309. DENALI ACCESS SYSTEM PROGRAM.

''(a) ESTABLISHMENT OF THE DENALI ACCESS SYSTEM PROGRAM.—Not later than 3 months after the date of enactment of the SAFETEA–LU [Aug. 10, 2005], the Secretary of Transportation shall establish a program to pay the costs of planning, designing, engineering, and constructing road and other surface transportation infrastructure identified for the Denali access system program under this section.

''(b) DENALI ACCESS SYSTEM PROGRAM ADVISORY COMMITTEE.—

''(1) ESTABLISHMENT.—Not later than 3 months after the date of enactment of the SAFETEA–LU [Aug. 10, 2005], the Denali Commission shall establish a Denali Access System Program Advisory Committee (referred to in this section as the 'advisory committee').

''(2) MEMBERSHIP.—The advisory committee shall be composed of nine members to be appointed by the Governor of the State of Alaska as follows:

''(A) The chairman of the Denali Commission.

''(B) Four members who represent existing regional native corporations, native nonprofit entities, or tribal governments, including one member who is a civil engineer.

''(C) Four members who represent rural Alaska regions or villages, including one member who is a civil engineer.

''(3) TERMS.—

''(A) IN GENERAL.—Except for the chairman of the Commission who shall remain a member of the advisory committee, members shall be appointed to serve a term of 4 years.

''(B) INITIAL MEMBERS.—Except for the chairman of the Commission, of the eight initial members appointed to the advisory committee, two shall be appointed for a term of 1 year, two shall be appointed for a term of 2 years, two shall be appointed for a term of 3 years, and two shall be appointed for a term of 4 years. All subsequent appointments shall be for 4 years.

''(4) RESPONSIBILITIES.—The advisory committee shall be responsible for the following activities:

''(A) Advising the Commission on the surface transportation needs of Alaska Native villages and rural communities, including projects for the construction of essential access routes within remote Alaska Native villages and rural communities and for the construction of roads and facilities necessary to connect isolated rural communities to a road system.

''(B) Advising the Commission on considerations for coordinatedtransportation [sic] planning among the Alaska Native villages, Alaska rural villages, the State of Alaska, and other government entities.

''(C) Establishing a list of transportation priorities for Alaska Native village and rural community transportation projects on an annual basis, including funding recommendations.

''(D) Facilitate the Commission's work on transportation projects involving more than one region.

''(5) FACA EXEMPTION.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory committee.

''(c) ALLOCATION OF FUNDS.—

''(1) IN GENERAL.—The Secretary shall allocate funding authorized and made available for the Denali access system program to the Commission to carry out this section.

''(2) DISTRIBUTION OF FUNDING.—In distributing funds for surface transportation projects funded under the program, the Commission shall consult the list of transportation priorities developed by the advisory committee.

''(d) PREFERENCE TO ALASKA MATERIALS AND PRODUCTS.—To construct a project under this section, the Commission shall encourage, to the maximum extent practicable, the use of employees and businesses that are residents of Alaska.

''(e) DESIGN STANDARDS.—Each project carried out under this section shall use technology and design standards determined by the Commission to be appropriate given the location and the functionality of the project.

''(f) MAINTENANCE.—Funding for a construction project under this section may include an additional amount equal to not more than 10 percent of the total cost of construction, to be retained for future maintenance of the project. All such retained funds shall be dedicated for maintenance of the project and may not be used for other purposes.

''(g) LEAD AGENCY DESIGNATION.—For purposes of projects carried out under this section, the Commission shall be designated as the lead agency for purposes of accepting Federal funds and for purposes of carrying out this project.

''(h) NON-FEDERAL SHARE.—Notwithstanding any other provision of law, funds made available to carry out this section may be used to meet the non-Federal share of the cost of projects under title 23, United States Code.

''(i) SURFACE TRANSPORTATION PROGRAM TRANSFERABILITY.—

''(1) TRANSFERABILITY.—In any fiscal year, up to 15 percent of the amounts made available to the State of Alaska for surface transportation by section 133 of title 23, United States Code, may be transferred to the Denali access system program.

''(2) NO EFFECT ON SET-ASIDE.—Paragraph (2) of section 133(d) [of title 23], United States Code, shall not apply to funds transferred under paragraph (1).

''(j) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $15,000,000 for each of fiscal years 2006 through 2009.

''(2) APPLICABILITY OF TITLE 23.—Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of any project carried out using such funds shall be determined in accordance with section 120(b).

''SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated to the Commission to carry out the duties of the Commission consistent with the purposes of this title and pursuant to the work plan approved under section 4 [304] under this Act, $20,000,000 for fiscal year 1999, and such sums as may be necessary for fiscal years 2000, 2001, 2002, and 2008[.]

''(b) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available until expended.

''SEC. 310 [311]. (a) The Federal Co-chairman of the Denali Commission shall appoint an Economic Development Committee to be chaired by the president of the Alaska Federation of Natives which shall include the Commissioner of Community and Economic Affairs for the State of Alaska, a representative from the Alaska Bankers Association, the chairman of the Alaska Permanent Fund, a representative from the Alaska State Chamber of Commerce, and a representative from each region. Of the regional representatives, at least two each shall be from Native regional corporations, Native non-profit corporations, tribes, and borough governments.

''(b) The Economic Development Committee is authorized to consider and approve applications from Regional Advisory Committees for grants and loans to promote economic development and promote private sector investment to reduce poverty in economically distressed rural villages. The Economic Development Committee may make mini-grants to individual applicants and may issue loans under such terms and conditions as it determines.

''(c) The State Co-chairman of the Denali Commission shall appoint a Regional Advisory Committee for each region which may include representatives from local, borough, and tribal governments, the Alaska Native non-profit corporation operating in the region, local Chambers of Commerce, and representatives of the private sector. Each Regional Advisory Committee shall develop a regional economic development plan for consideration by the Economic Development Committee.

''(d) The Economic Development Committee, in consultation with the First Alaskans Institute, may develop rural development performance measures linking economic growth to poverty reduction to measure the success of its program which may include economic, educational, social, and cultural indicators. The performance measures will be tested in one region for 2 years and evaluated by the University of Alaska before being deployed statewide. Thereafter, performance in each region shall be evaluated using the performance measures, and the Economic Development Committee shall not fund projects which do not demonstrate success.

''(e) Within the amounts made available annually to the Denali Commission for training, the Commission may make a grant to the First Alaskans Foundation upon submittal of an acceptable work plan to assist Alaska Natives and other rural residents in acquiring the skills and training necessary to participate fully in private sector business and economic and development opportunities through fellowships, scholarships, internships, public service programs, and other leadership initiatives.

''(f) The Committee shall sponsor a statewide economic development summit in consultation with the World Bank to evaluate the best practices for economic development worldwide and how they can be incorporated into regional economic development plans.

''(g) There is authorized to be appropriated such sums as may be necessary to the following agencies which shall be transferred to the Denali Commission as a direct lump sum payment to implement this section—

''(1) Department of Commerce, Economic Development Administration,

''(2) Department of Housing and Urban Development,

''(3) Department of the Interior, Bureau of Indian Affairs,

''(4) Department of Agriculture, Rural Development Administration, and

''(5) Small Business Administration.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Pub. L. 100–460, title II, Oct. 1, 1988, 102 Stat. 2246, as amended by Pub. L. 106–554, §1(a)(4) [div. B, title I, §153(a), title V, §504], Dec. 21, 2000, 114 Stat. 2763, 2763A–252, 2763A–281; Pub. L. 107–171, title VI, §6027(j), May 13, 2002, 116 Stat. 374, incorporated by reference and made a part of that public law the provisions of S. 2836, the Delta Development Act, as introduced in the Senate on Sept. 27, 1988, which provided for establishment of Lower Mississippi Delta Development Commission to study and make recommendations regarding economic needs and development of Lower Mississippi Delta region, set forth membership, compensation, powers, and administrative provisions for Commission, required submission to Congress, President, and Governors of certain States of interim and final reports, and provided for termination of Commission no later than two years after Oct. 1, 1988.

Prior to amendment by Pub. L. 106–554, Pub. L. 100–460 also incorporated by reference and made a part of that public law the provisions of H.R. 5378, as introduced in the House of Representatives on Sept. 26, 1988, and known as the ''Lower Mississippi Delta Development Act'', which contained provisions similar to those in S. 2836.

Pub. L. 101–161, title II, Nov. 21, 1989, 103 Stat. 969, extended date for submission of the Commission's interim report to Oct. 16, 1989.

PUBLIC WORKS IMPROVEMENT

Pub. L. 98–501, title I, Oct. 19, 1984, 98 Stat. 2320, known as the ''Public Works Improvement Act of 1984'', established the National Council on Public Works Improvement, to prepare and submit to the President and Congress reports in 1986, 1987, and 1988 on the state of the Nation's infrastructure. Pursuant to section 109 of Pub. L. 98–501, the Council ceased to exist on Apr. 15, 1988.

WHITE HOUSE CONFERENCE ON BALANCED NATIONAL GROWTH AND ECONOMIC DEVELOPMENT

Title II of Pub. L. 94–487, as amended by Pub. L. 95–31, title II, §§ 201, 202, May 23, 1977, 91 Stat. 170, provided for calling of a White House Conference on Balanced National Growth and Economic Development within 18 months of Oct. 12, 1976, set forth powers, functions, membership, etc., of Conference, and required submission to President of a final report within 180 days after calling of Conference, with President to forward recommendations to Congress within 90 days after submission of report.

EXECUTIVE ORDER NO. 11386

Ex. Ord. No. 11386, Dec. 28, 1967, 33 F.R. 5, which related to coordination of activities of regional commissions and Federal Government relating to regional economic development and which established Federal Advisory Council on Regional Economic Development, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER NO. 11422

Ex. Ord. No. 11422, Aug. 15, 1968, 33 F.R. 11739, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which related to Cooperative Area Manpower Planning System, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER NO. 11493

Ex. Ord. No. 11493, Nov. 13, 1969, 34 F.R. 18289, which created Council for Rural Affairs to advise President with respect to further development of non-metropolitan areas of country, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237. Council terminated and its functions transferred to Domestic Council by section 2(b) of Ex. Ord. No. 11541, July 1, 1970, 35 F.R. 10737, set out as a note under section 501 of Title 31, Money and Finance.

EX. ORD. NO. 13122. INTERAGENCY TASK FORCE ON THE ECONOMIC DEVELOPMENT OF THE SOUTHWEST BORDER

Ex. Ord. No. 13122, May 25, 1999, 64 F.R. 29201, as amended by Ex. Ord. No. 13284, § 6, Jan. 23, 2003, 68 F.R. 4075, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide a more rapid and integrated Federal response to the economic development challenges of the Southwest Border region, it is hereby ordered as follows:

SECTION 1. *Establishment of an Interagency Task Force on the Economic Development of the Southwest Border*. (a) There is established the ''Interagency Task Force on the Economic Development of the Southwest Border'' (Task Force) that reports to the Vice President, as Chair of the President's Community Empowerment Board (PCEB), and to the Assistant to the President for Economic Policy, as Vice Chair of the PCEB.

(b) The Task Force shall comprise the Secretary of State, Secretary of Agriculture, Secretary of Commerce, Secretary of Defense, the Attorney General, Secretary of the Interior, Secretary of Education, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Energy, Secretary of Labor, Secretary of Transportation, Secretary of the Treasury, Secretary of Homeland Security, Director of the Office of Management and Budget, Director of National Drug Control Policy, Administrator of General Services, Administrator of the Small Business Administration, Administrator of the Environmental Protection Agency, or their designees, and such other senior executive branch officials as may be determined by the Co-Chairs of the Task Force. The Secretaries of the Treasury, Agriculture, and Labor shall Co-Chair the Task Force, rotating annually. The agency chairing the Task Force will provide administrative support for the Task Force.

(c) The purpose of the Task Force is to coordinate and better leverage existing Administration efforts for the Southwest Border, in concert with locally led efforts, in order to increase the living standards and the overall economic profile of the Southwest Border so that it may achieve the average of the Nation. Specifically, the Task Force shall:

(1) analyze the existing programs and policies of Task Force members that relate to the Southwest Border to determine what changes, modifications, and innovations should be considered;

(2) consider statistical and data analysis, research, and policy studies related to the Southwest Border;

(3) develop and recommend short-term and long-term options for promoting sustainable economic development;

(4) consult and coordinate activities with State, tribal, and local governments, community leaders, Members of Congress, the private sector, and other interested parties, paying particular attention to maintaining existing authorities of the States, tribes, and local governments, and preserving their existing working relationships with other agencies, organizations, or individuals;

(5) coordinate and collaborate on research and demonstration priorities of Task Force member agencies related to the Southwest Border;

(6) integrate Administration initiatives and programs into the design of sustainable economic development actions for the Southwest Border; and

(7) focus initial efforts on pilot communities for implementing a coordinated and expedited Federal response to local economic development and other needs.

(d) The Task Force shall issue an interim report to the Vice President by November 15, 1999. The Task Force shall issue its first annual report to the Vice President by April 15, 2000, with subsequent reports to follow yearly and a final report on April 15, 2002. The reports shall describe the actions taken by, and progress of, each member of the Task Force in carrying out this order. The Task Force shall terminate 30 days after submitting its final report unless a Task Force consensus recommends continuation of activities.

SEC. 2. *Specific Activities by Task Force Members and Other Agencies*. The agencies represented on the Task Force shall work together and report their actions and progress in carrying out this order to the Task Force Chair 1 month before the reports are due to the Vice President under section 1(d) of this order.

SEC. 3. *Cooperation*. All efforts taken by agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation with organizations that represent the Southwest Border and with State and local governments.

SEC. 4. *(a) ''Agency'' means an executive agency as defined in 5 U.S.C. 105.*

(b) The ''Southwest Border'' or ''Southwest Border region'' is defined as including the areas up to 150 miles north of the United States-Mexican border in the States of Arizona, New Mexico, Texas, and California.

SEC. 5. *Judicial Review*. This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

§ 3122. Definitions

In this chapter:

(1) Comprehensive economic development strategy

The term ''comprehensive economic development strategy'' means a comprehensive economic development strategy approved by the Secretary under section 3162 of this title.

(2) Department

The term ''Department'' means the Department of Commerce.

(3) Economic development district

(A) In general

The term ''economic development district'' means any area in the United States that—

(i) is composed of areas described in section 3161(a) of this title and, to the extent appropriate, neighboring counties or communities; and

(ii) has been designated by the Secretary as an economic development district under section 3171 of this title.

(B) Inclusion

The term ''economic development district'' includes any economic development district designated by the Secretary under section 3173 of this title (as in effect on the day before the effective date of the Economic Development Administration Reform Act of 1998).

(4) Eligible recipient

(A) In general

The term ''eligible recipient'' means—

(i) an economic development district;

(ii) an Indian tribe;

(iii) a State;

(iv) a city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions;

(v) an institution of higher education or a consortium of institutions of higher education; or

(vi) a public or private nonprofit organization or association acting in cooperation with officials of a political subdivision of a State.

(B) Training, research, and technical assistance grants

In the case of grants under section 3147 of this title, the term ''eligible recipient'' also includes private individuals and for-profit organizations.

(5) Federal agency

The term ''Federal agency'' means a department, agency, or instrumentality of the United States.

(6) Grant

The term ''grant'' includes a cooperative agreement (within the meaning of chapter 63 of title 31).

(7) Indian tribe

The term ''Indian tribe'' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) Regional Commissions

The term ''Regional Commissions'' means—

(A) the Appalachian Regional Commission established under chapter 143 of title 40;

(B) the Delta Regional Authority established under subtitle F of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa et seq.);

(C) the Denali Commission established under the Denali Commission Act of 1998 (42 U.S.C. 3121 note; 112 Stat. 2681–637 et seq.); and

(D) the Northern Great Plains Regional Authority established under subtitle G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb et seq.).

(9) Secretary

The term ''Secretary'' means the Secretary of Commerce.

(10) State

The term ''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(11) United States

The term ''United States'' means all of the States.

(12) University center

The term ''university center'' means an institution of higher education or a consortium of institutions of higher education established as a University Center for Economic Development under section 3147(a)(2)(D) of this title.

(Pub. L. 89–136, § 3, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3599; amended Pub. L. 108–373, title I, § 102, Oct. 27, 2004, 118 Stat. 1758.)

REFERENCES IN TEXT

Section 3173 of this title (as in effect on the day before the effective date of the Economic Development Administration Reform Act of 1998), referred to in par. (3)(B), means section 3173 of this title prior to its repeal by Pub. L. 105–393, § 102(a). See Prior Provisions note set out under section 3173 of this title and section 105 of Pub. L. 105–393, set out as an Effective Date note under section 3121 of this title.

The Alaska Native Claims Settlement Act, referred to in par. (7), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Consolidated Farm and Rural Development Act, referred to in par. (8)(B), (D), is title III of Pub. L. 87–128, Aug. 8, 1961, 75 Stat. 307, as amended. Subtitles F and G of the Act are classified generally to subchapters VI (§ 2009aa et seq.) and VII (§ 2009bb et seq.),

respectively, of chapter 50 of Title 7, Agriculture. For complete classification of the Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

The Denali Commission Act of 1998, referred to in par. (8)(C), is title III of Pub. L. 105–277, div. C, Oct. 21, 1998, 112 Stat. 2681-637, which is set out as a note under section 3121 of this title. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 3122, Pub. L. 91–524, title IX, § 901, Nov. 30, 1970, 84 Stat. 1383; Pub. L. 92–419, title VI, § 601, Aug. 30, 1972, 86 Stat. 674; Pub. L. 94–273, § 7(3), Apr. 21, 1976, 90 Stat. 378; Pub. L. 96–355, § 6, Sept. 24, 1980, 94 Stat. 1174, which related to priority to be given to revitalization and development of rural areas, was transferred to section 2204b–1 of Title 7, Agriculture.

AMENDMENTS

2004—Par. (4)(A). Pub. L. 108–373, § 102(a), redesignated cls. (ii) to (vii) as (i) to (vi), respectively, inserted ‘‘, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities,’’ after ‘‘State’’ in cl. (iv), and struck out cl. (i) which read as follows: ‘‘an area described in section 3161(a) of this title;’’.

Pars. (8) to (12). Pub. L. 108–373, § 102(b), added pars. (8) and (12) and redesignated former pars. (8) to (10) as (9) to (11), respectively.

§ 3123. Discrimination on basis of sex prohibited in federally assisted programs

No person in the United States shall, on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance under the Public Works and Economic Development Act of 1965 [42 U.S.C. 3121 et seq.].

(Pub. L. 92–65, title I, § 112, Aug. 5, 1971, 85 Stat. 168.)

REFERENCES IN TEXT

The Public Works and Economic Development Act of 1965, referred to in text, is Pub. L. 89–136, Aug. 26, 1965, 79 Stat. 552, as amended, which is classified generally to this chapter (§ 3121 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Public Works and Economic Development Act of 1965 which comprises this chapter.

SUBCHAPTER I—ECONOMIC DEVELOPMENT PARTNERSHIPS COOPERATION AND COORDINATION

§ 3131. Establishment of economic development partnerships

(a) In general

In providing assistance under this subchapter, the Secretary shall cooperate with States and other entities to ensure that, consistent with national objectives, Federal programs are compatible with and further the objectives of State, regional, and local economic development plans and comprehensive economic development strategies.

(b) Technical assistance

The Secretary may provide such technical assistance to States, political subdivisions of States, sub-State regional organizations (including organizations that cross State boundaries), multi-State regional organizations, and nonprofit organizations as the Secretary determines is appropriate to—

(1) alleviate economic distress;

(2) encourage and support public-private partnerships for the formation and improvement of economic development strategies that sustain and promote economic development across the United States; and

(3) promote investment in infrastructure and technological capacity to keep pace with the changing global economy.

(c) Intergovernmental review

The Secretary shall promulgate regulations to ensure that appropriate State and local government agencies have been given a reasonable opportunity to review and comment on proposed projects under this subchapter that the Secretary determines may have a significant direct impact on the economy of the area.

(d) Cooperation agreements

(1) In general

The Secretary may enter into a cooperation agreement with any 2 or more States, or an organization of any 2 or more States, in support of effective economic development.

(2) Participation

Each cooperation agreement shall provide for suitable participation by other governmental and nongovernmental entities that are representative of significant interests in and perspectives on economic development in an area.

(Pub. L. 89–136, title I, § 101, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3600; amended Pub. L. 108–373, title I, § 103, Oct. 27, 2004, 118 Stat. 1759.)

PRIOR PROVISIONS

A prior section 3131, Pub. L. 89–136, title I, § 101, Aug. 26, 1965, 79 Stat. 552; Pub. L. 91–123, title III, § 301(1), Nov. 25, 1969, 83 Stat. 219; Pub. L. 92–65, title I, § 102, Aug. 5, 1971, 85 Stat. 166; Pub. L. 94–487, title I, § 103, Oct. 12, 1976, 90 Stat. 2331, authorized direct and supplementary grants, prior to repeal by Pub. L. 105–393, § 102(a).

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–373, § 103(1), substituted ‘‘multi-State regional organizations, and nonprofit organizations’’ for ‘‘and multi-State regional organizations’’ in introductory provisions.

Subsec. (d)(1). Pub. L. 108–373, § 103(2), struck out ‘‘adjoining’’ before ‘‘States’’ in two places.

§ 3132. Cooperation of Federal agencies

In accordance with applicable laws and subject to the availability of appropriations, each Federal agency shall exercise its powers, duties and functions, and shall cooperate with the Secretary, in such manner as will assist the Secretary in carrying out this subchapter.

(Pub. L. 89–136, title I, § 102, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3601.)

PRIOR PROVISIONS

A prior section 3132, Pub. L. 89–136, title I, § 102, Aug. 26, 1965, 79 Stat. 554; Pub. L. 93–423, § 2, Sept. 27, 1974, 88

Stat. 1158; Pub. L. 94–487, title I, § 104, Oct. 12, 1976, 90 Stat. 2331; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96–506, § 1(1), Dec. 8, 1980, 94 Stat. 2745, authorized grants for operation of health projects, prior to repeal by Pub. L. 105–393, § 102(a).

§ 3133. Coordination

(a) In general

The Secretary shall coordinate activities relating to the preparation and implementation of comprehensive economic development strategies under this chapter with Federal agencies carrying out other Federal programs, States, economic development districts, Indian tribes, and other appropriate planning and development organizations.

(b) Meetings

To carry out subsection (a) of this section, or for any other purpose relating to economic development activities, the Secretary may convene meetings with Federal agencies, State and local governments, economic development districts, Indian tribes, and other appropriate planning and development organizations.

(Pub. L. 89–136, title I, § 103, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3601; amended Pub. L. 108–373, title I, § 104, Oct. 27, 2004, 118 Stat. 1759.)

PRIOR PROVISIONS

A prior section 3133, Pub. L. 89–136, title I, § 103, Aug. 26, 1965, 79 Stat. 554, set limitation on funds which could be expended in any one State, prior to repeal by Pub. L. 105–393, § 102(a).

A prior section 3134, Pub. L. 89–136, title I, § 104, Aug. 26, 1965, 79 Stat. 554, related to the ineligibility of Appalachian region projects for appropriations under this subchapter, prior to repeal by Pub. L. 94–188, title I, § 123, Dec. 31, 1975, 89 Stat. 1086.

Prior sections 3135 to 3137 were repealed by Pub. L. 105–393, § 102(a).

Section 3135, Pub. L. 89–136, title I, § 105, Aug. 26, 1965, 79 Stat. 554; Pub. L. 91–123, title III, § 301(2), Nov. 25, 1969, 83 Stat. 219; Pub. L. 91–304, § 1(a), July 6, 1970, 84 Stat. 375; Pub. L. 92–65, title I, § 103, Aug. 5, 1971, 85 Stat. 166; Pub. L. 93–46, § 1, June 18, 1973, 87 Stat. 96; Pub. L. 93–423, § 1, Sept. 27, 1974, 88 Stat. 1158; Pub. L. 94–487, title I, § 105, Oct. 12, 1976, 90 Stat. 2331; Pub. L. 96–506, § 1(2), Dec. 8, 1980, 94 Stat. 2745; Pub. L. 97–35, title XVIII, § 1821(a)(1), Aug. 13, 1981, 95 Stat. 766, authorized appropriations to carry out this subchapter from fiscal year ending June 30, 1966, to fiscal year ending Sept. 30, 1982.

Section 3136, Pub. L. 89–136, title I, § 106, Aug. 26, 1965, 79 Stat. 554; 1966 Reorg. Plan No. 2, § 1(h)(3), eff. May 10, 1966, 31 F.R. 6857, 80 Stat. 1608; 1970 Reorg. Plan No. 3, § 2(a)(1), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2087, conditioned use of financial assistance for sewer or other waste disposal facilities upon certification by Administrator of Environmental Protection Agency.

Section 3137, Pub. L. 89–136, title I, § 107, as added Pub. L. 94–487, title I, § 106, Oct. 12, 1976, 90 Stat. 2332, authorized increase in amount of grant for construction cost increases after grant had been made.

AMENDMENTS

2004—Pub. L. 108–373 designated existing provisions as subsec. (a), inserted heading, inserted ''Indian tribes,'' after ''districts,'', and added subsec. (b).

SUBCHAPTER II—GRANTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT

§ 3141. Grants for public works and economic development

(a) In general

On the application of an eligible recipient, the Secretary may make grants for—

(1) acquisition or development of land and improvements for use for a public works, public service, or development facility; and

(2) acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment.

(b) Criteria for grant

The Secretary may make a grant under this section only if the Secretary determines that—

(1) the project for which the grant is applied for will, directly or indirectly—

(A) improve the opportunities, in the area where the project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities;

(B) assist in the creation of additional long-term employment opportunities in the area; or

(C) primarily benefit the long-term unemployed and members of low-income families;

(2) the project for which the grant is applied for will fulfill a pressing need of the area, or a part of the area, in which the project is or will be located; and

(3) the area for which the project is to be carried out has a comprehensive economic development strategy and the project is consistent with the strategy.

(c) Maximum assistance for each State

Not more than 15 percent of the amounts made available to carry out this section may be expended in any 1 State.

(Pub. L. 89–136, title II, § 201, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3601.)

PRIOR PROVISIONS

A prior section 3141, Pub. L. 89–136, title II, § 201, Aug. 26, 1965, 79 Stat. 554; Pub. L. 91–304, § 1(b), July 6, 1970, 84 Stat. 375; Pub. L. 92–65, title I, § 104, Aug. 5, 1971, 85 Stat. 167; Pub. L. 93–46, § 2, June 18, 1973, 87 Stat. 96; Pub. L. 93–423, § 4(a), Sept. 27, 1974, 88 Stat. 1158; Pub. L. 94–487, title I, § 107(a), (b), Oct. 12, 1976, 90 Stat. 2332; Pub. L. 96–506, § 1(3), Dec. 8, 1980, 94 Stat. 2745; Pub. L. 97–35, title XVIII, § 1821(a)(2), Aug. 13, 1981, 95 Stat. 766, authorized public works and development facility loans, prior to repeal by Pub. L. 105–393, § 102(a).

§ 3142. Base closings and realignments

Notwithstanding any other provision of law, the Secretary may provide to an eligible recipient any assistance available under this subchapter for a project to be carried out on a military or Department of Energy installation that is closed or scheduled for closure or realignment without requiring that the eligible recipient have title to the property or a leasehold interest in the property for any specified term.

(Pub. L. 89–136, title II, § 202, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3602.)

PRIOR PROVISIONS

A prior section 3142, Pub. L. 89–136, title II, § 202, Aug. 26, 1965, 79 Stat. 556; Pub. L. 93–423, § 4(b), Sept. 27, 1974, 88 Stat. 1158; Pub. L. 94–487, title I, §§ 107(c), (d), 108, Oct. 12, 1976, 90 Stat. 2332, authorized business loans and loan guarantees, prior to repeal by Pub. L. 105–393, § 102(a).

A prior section 3142–1, Pub. L. 91–596, § 28(d), Dec. 29, 1970, 84 Stat. 1618; Pub. L. 93–237, § 2(c), Jan. 2, 1974, 87 Stat. 1024, which authorized loans for small business compliance with occupational safety and health standards, was omitted from the Code in view of the repeal of subchapter II of this chapter by Pub. L. 105–393.

A prior section 3142a, Pub. L. 89–298, title II, § 217, Oct. 27, 1965, 79 Stat. 1088, which authorized purchase of indebtedness and loans for waterways projects, was transferred to section 2220 of Title 33, Navigation and Navigable Waters.

§ 3143. Grants for planning and grants for administrative expenses

(a) In general

On the application of an eligible recipient, the Secretary may make grants to pay the costs of economic development planning and the administrative expenses of organizations that carry out the planning.

(b) Planning process

Planning assisted under this subchapter shall be a continuous process involving public officials and private citizens in—

(1) analyzing local economies;

(2) defining economic development goals;

(3) determining project opportunities; and

(4) formulating and implementing an economic development program that includes systematic efforts to reduce unemployment and increase incomes.

(c) Use of planning assistance

Planning assistance under this subchapter shall be used in conjunction with any other available Federal planning assistance to ensure adequate and effective planning and economical use of funds.

(d) State plans

(1) Development

Any State plan developed with assistance under this section shall be developed, to the maximum extent practicable, cooperatively by the State, political subdivisions of the State, and the economic development districts located wholly or partially in the State.

(2) Comprehensive economic development strategy

As a condition of receipt of assistance for a State plan under this subsection, the State shall have or develop a comprehensive economic development strategy.

(3) Coordination

Before providing assistance for a State plan under this section, the Secretary shall consider the extent to which the State will consider local and economic development district plans.

(4) Comprehensive planning process

Any overall State economic development planning assisted under this section shall be a part of a comprehensive planning process that shall consider the provision of public works to—

(A) promote economic development and opportunity;

(B) foster effective transportation access;

(C) enhance and protect the environment;

(D) assist in carrying out the workforce investment strategy of a State;

(E) promote the use of technology in economic development, including access to high-speed telecommunications; and

(F) balance resources through the sound management of physical development.

(5) Report to Secretary

Each State that receives assistance for the development of a plan under this subsection shall submit to the Secretary an annual report on the planning process assisted under this subsection.

(Pub. L. 89–136, title II, § 203, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3602; amended Pub. L. 108–373, title II, § 201, Oct. 27, 2004, 118 Stat. 1759.)

PRIOR PROVISIONS

A prior section 3143, Pub. L. 89–136, title II, § 203, Aug. 26, 1965, 79 Stat. 558; Pub. L. 94–273, § 2(25), Apr. 21, 1976, 90 Stat. 376, directed deposit of funds into Economic Development Revolving Fund, prior to repeal by Pub. L. 105–393, § 102(a).

AMENDMENTS

2004—Subsec. (d)(1). Pub. L. 108–373, § 201(1), inserted ‘‘, to the maximum extent practicable,’’ after ‘‘shall be developed’’.

Subsec. (d)(3). Pub. L. 108–373, § 201(2), added par. (3) and struck out heading and text of former par. (3). Text read as follows: ‘‘On completion of a State plan developed with assistance under this section, the State shall—

‘‘(A) certify to the Secretary that, in the development of the State plan, local and economic development district plans were considered and, to the maximum extent practicable, the State plan is consistent with the local and economic development district plans; and

‘‘(B) identify any inconsistencies between the State plan and the local and economic development district plans and provide a justification for each inconsistency.’’

Subsec. (d)(4)(D) to (F). Pub. L. 108–373, § 201(3), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

§ 3144. Cost sharing

(a) Federal share

Except as provided in subsection (c) of this section, the Federal share of the cost of any project carried out under this subchapter shall not exceed—

(1) 50 percent; plus

(2) an additional percent that—

(A) shall not exceed 30 percent; and

(B) is based on the relative needs of the area in which the project will be located, as determined in accordance with regulations promulgated by the Secretary.

(b) Non-Federal share

In determining the amount of the non-Federal share of the cost of a project, the Secretary may provide credit toward the non-Federal share for

all contributions both in cash and in-kind, fairly evaluated, including contributions of space, equipment, assumptions of debt, and services.

(c) Increase in Federal share

(1) Indian tribes

In the case of a grant to an Indian tribe for a project under this subchapter, the Secretary may increase the Federal share above the percentage specified in subsection (a) of this section up to 100 percent of the cost of the project.

(2) Certain States, political subdivisions, and nonprofit organizations

In the case of a grant to a State, or a political subdivision of a State, that the Secretary determines has exhausted the effective taxing and borrowing capacity of the State or political subdivision, or in the case of a grant to a nonprofit organization that the Secretary determines has exhausted the effective borrowing capacity of the nonprofit organization, the Secretary may increase the Federal share above the percentage specified in subsection (a) of this section up to 100 percent of the cost of the project.

(3) Training, research, and technical assistance

In the case of a grant provided under section 3147 of this title, the Secretary may increase the Federal share above the percentage specified in subsection (a) of this section up to 100 percent of the cost of the project if the Secretary determines that the project funded by the grant merits, and is not feasible without, such an increase.

(Pub. L. 89–136, title II, § 204, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3603; amended Pub. L. 108–373, title II, § 202, Oct. 27, 2004, 118 Stat. 1759.)

PRIOR PROVISIONS

A prior section 3144, Pub. L. 89–136, title II, § 204, as added Pub. L. 94–487, title I, § 109, Oct. 12, 1976, 90 Stat. 2333; amended Pub. L. 96–470, title I, § 201(d), Oct. 19, 1980, 94 Stat. 2241; Pub. L. 96–506, § 1(4), Dec. 8, 1980, 94 Stat. 2745; Pub. L. 97–35, title XVIII, § 1821(a)(3), Aug. 13, 1981, 95 Stat. 766, authorized interest free loans to carry out approved redevelopment area plans, prior to repeal by Pub. L. 105–393, § 102(a).

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–373, § 202(a), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''Subject to section 3145 of this title, the amount of a grant for a project under this subchapter shall not exceed 50 percent of the cost of the project.''

Subsec. (b). Pub. L. 108–373, § 202(b), inserted ''assumptions of debt,'' after ''equipment,''.

Subsec. (c). Pub. L. 108–373, § 202(c), added subsec. (c).

§ 3145. Supplementary grants

(a) Definition of designated Federal grant program

In this section, the term ''designated Federal grant program'' means any Federal grant program that—

(1) provides assistance in the construction or equipping of public works, public service, or development facilities;

(2) the Secretary designates as eligible for an allocation of funds under this section; and

(3) assists projects that are—

(A) eligible for assistance under this subchapter; and

(B) consistent with a comprehensive economic development strategy.

(b) Supplementary grants

Subject to subsection (c) of this section, in order to assist eligible recipients in taking advantage of designated Federal grant programs, on the application of an eligible recipient, the Secretary may make a supplementary grant for a project for which the recipient is eligible but for which the recipient cannot provide the required non-Federal share because of the economic situation of the recipient.

(c) Requirements applicable to supplementary grants

(1) Amount of supplementary grants

The share of the project cost supported by a supplementary grant under this section may not exceed the applicable Federal share under section 3144 of this title.

(2) Form of supplementary grants

The Secretary shall make supplementary grants by—

(A) the payment of funds made available under this chapter to the heads of the Federal agencies responsible for carrying out the applicable Federal programs; or

(B) the award of funds under this chapter, which will be combined with funds transferred from other Federal agencies in projects administered by the Secretary.

(3) Federal share limitations specified in other laws

Notwithstanding any requirement as to the amount or source of non-Federal funds that may be applicable to a Federal program, funds provided under this section may be used to increase the Federal share for specific projects under the program that are carried out in areas described in section 3161(a) of this title above the Federal share of the cost of the project authorized by the law governing the program.

(Pub. L. 89–136, title II, § 205, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3603; amended Pub. L. 108–373, title II, § 203, Oct. 27, 2004, 118 Stat. 1760.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–373, § 203(a), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows:

''(1) IN GENERAL.—On the application of an eligible recipient, the Secretary may make a supplementary grant for a project for which the eligible recipient is eligible but, because of the eligible recipient's economic situation, for which the eligible recipient cannot provide the required non-Federal share.

''(2) PURPOSES OF GRANTS.—Supplementary grants under paragraph (1) may be made for purposes that shall include enabling eligible recipients to use—

''(A) designated Federal grant programs; and

''(B) direct grants authorized under this subchapter.''

Subsec. (c)(1), (2). Pub. L. 108–373, § 203(b)(1), added pars. (1) and (2) and struck out former pars. (1) and (2), which read as follows:

''(1) AMOUNT OF SUPPLEMENTARY GRANTS.—Subject to paragraph (4), the amount of a supplementary grant under this subchapter for a project shall not exceed the applicable percentage of the cost of the project established by regulations promulgated by the Secretary, except that the non-Federal share of the cost of a project (including assumptions of debt) shall not be less than 20 percent.

''(2) FORM OF SUPPLEMENTARY GRANTS.—In accordance with such regulations as the Secretary may promulgate, the Secretary shall make supplementary grants by increasing the amounts of grants authorized under this subchapter or by the payment of funds made available under this chapter to the heads of the Federal agencies responsible for carrying out the applicable Federal programs.''

Subsec. (c)(4). Pub. L. 108–373, § 203(b)(2), struck out heading and text of par. (4). Text read as follows:

''(A) INDIAN TRIBES.—In the case of a grant to an Indian tribe, the Secretary may reduce the non-Federal share below the percentage specified in paragraph (1) or may waive the non-Federal share.

''(B) CERTAIN STATES, POLITICAL SUBDIVISIONS, AND NONPROFIT ORGANIZATIONS.—In the case of a grant to a State, or a political subdivision of a State, that the Secretary determines has exhausted its effective taxing and borrowing capacity, or in the case of a grant to a nonprofit organization that the Secretary determines has exhausted its effective borrowing capacity, the Secretary may reduce the non-Federal share below the percentage specified in paragraph (1).''

§ 3146. Regulations on relative needs and allocations

In promulgating rules, regulations, and procedures for assistance under this subchapter, the Secretary shall ensure that—

(1) the relative needs of eligible areas are given adequate consideration by the Secretary, as determined based on, among other relevant factors—

(A) the severity of the rates of unemployment in the eligible areas and the duration of the unemployment;

(B) the income levels and the extent of underemployment in eligible areas; and

(C) the outmigration of population from eligible areas and the extent to which the outmigration is causing economic injury in the eligible areas;

(2) allocations of assistance under this subchapter are prioritized to ensure that the level of economic distress of an area, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating the assistance;

(3)(A) rural and urban economically distressed areas are not harmed by the establishment or implementation by the Secretary of a private sector leveraging goal for a project under this subchapter;

(B) any private sector leveraging goal established by the Secretary does not prohibit or discourage grant applicants under this subchapter from public works in, or economic development of, rural or urban economically distressed areas; and

(C) the relevant Committees of Congress are notified prior to making any changes to any private sector leveraging goal; and

(4) grants made under this subchapter promote job creation and will have a high probability of meeting or exceeding applicable performance requirements established in connection with the grants.

(Pub. L. 89–136, title II, § 206, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3604; amended Pub. L. 108–373, title II, § 204, Oct. 27, 2004, 118 Stat. 1761.)

AMENDMENTS

2004—Pars. (3), (4). Pub. L. 108–373 added pars. (3) and (4).

§ 3147. Grants for training, research, and technical assistance

(a) In general

(1) Grants

On the application of an eligible recipient, the Secretary may make grants for training, research, and technical assistance, including grants for program evaluation and economic impact analyses, that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment.

(2) Types of assistance

Grants under paragraph (1) may be used for—

(A) project planning and feasibility studies;

(B) demonstrations of innovative activities or strategic economic development investments;

(C) management and operational assistance;

(D) establishment of university centers;

(E) establishment of business outreach centers;

(F) studies evaluating the needs of, and development potential for, economic growth of areas that the Secretary determines have substantial need for the assistance;

(G) studies that evaluate the effectiveness of coordinating projects funded under this chapter with projects funded under other Acts;

(H) assessment, marketing, and establishment of business clusters; and

(I) other activities determined by the Secretary to be appropriate.

(3) Cooperation requirement

In the case of a project assisted under this section that is national or regional in scope, the Secretary may waive the provision in section 3122(4)(A)(vi) of this title requiring a nonprofit organization or association to act in cooperation with officials of a political subdivision of a State.

(b) Methods of provision of assistance

In providing research and technical assistance under this section, the Secretary, in addition to making grants under subsection (a) of this section, may—

(1) provide research and technical assistance through officers or employees of the Department;

(2) pay funds made available to carry out this section to Federal agencies; or

(3) employ private individuals, partnerships, businesses, corporations, or appropriate institutions under contracts entered into for that purpose.

(Pub. L. 89–136, title II, § 207, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat.

3604; amended Pub. L. 108–373, title II, § 205, Oct. 27, 2004, 118 Stat. 1761.)

AMENDMENTS

2004—Subsec. (a)(2)(G) to (I). Pub. L. 108–373, § 205(a), added subpars. (G) and (H) and redesignated former subpar. (G) as (I).

Subsec. (a)(3). Pub. L. 108–373, § 205(b), added par. (3) and struck out heading and text of former par. (3). Text read as follows: ''In the case of a project assisted under this section, the Secretary may reduce or waive the non-Federal share, without regard to section 3144 or 3145 of this title, if the Secretary finds that the project is not feasible without, and merits, such a reduction or waiver.''

§ 3148. Repealed. Pub. L. 108–373, title II, § 206(a), Oct. 27, 2004, 118 Stat. 1761

Section, Pub. L. 89–136, title II, § 208, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3605, related to prevention of unfair competition.

§ 3149. Grants for economic adjustment

(a) In general

On the application of an eligible recipient, the Secretary may make grants for development of public facilities, public services, business development (including funding of a revolving loan fund), planning, technical assistance, training, and any other assistance to alleviate long-term economic deterioration and sudden and severe economic dislocation and further the economic adjustment objectives of this subchapter.

(b) Criteria for assistance

The Secretary may provide assistance under this section only if the Secretary determines that—

(1) the project will help the area to meet a special need arising from—

(A) actual or threatened severe unemployment; or

(B) economic adjustment problems resulting from severe changes in economic conditions; and

(2) the area for which a project is to be carried out has a comprehensive economic development strategy and the project is consistent with the strategy, except that this paragraph shall not apply to planning projects.

(c) Particular community assistance

Assistance under this section may include assistance provided for activities identified by communities, the economies of which are injured by—

(1) military base closures or realignments, defense contractor reductions in force, or Department of Energy defense-related funding reductions, for help in diversifying their economies through projects to be carried out on Federal Government installations or elsewhere in the communities;

(2) disasters or emergencies, in areas with respect to which a major disaster or emergency has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), for post-disaster economic recovery;

(3) international trade, for help in economic restructuring of the communities;

(4) fishery failures, in areas with respect to which a determination that there is a commercial fishery failure has been made under section 1861a(a) of title 16; or

(5) the loss of manufacturing jobs, for reinvesting in and diversifying the economies of the communities.

(d) Special provisions relating to revolving loan fund grants

(1) In general

The Secretary shall promulgate regulations to maintain the proper operation and financial integrity of revolving loan funds established by recipients with assistance under this section.

(2) Efficient administration

The Secretary may—

(A) at the request of a grantee, amend and consolidate grant agreements governing revolving loan funds to provide flexibility with respect to lending areas and borrower criteria;

(B) assign or transfer assets of a revolving loan fund to third party for the purpose of liquidation, and the third party may retain assets of the fund to defray costs related to liquidation; and

(C) take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans (except that the actions may not include issuance of a Federal guaranty by the Secretary).

(3) Treatment of actions

An action taken by the Secretary under this subsection with respect to a revolving loan fund shall not constitute a new obligation if all grant funds associated with the original grant award have been disbursed to the recipient.

(4) Preservation of securities laws

(A) Not treated as exempted securities

No securities issued pursuant to paragraph (2)(C) shall be treated as exempted securities for purposes of the Securities Act of 1933 (15 U.S.C. 77a et seq.) or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless exempted by rule or regulation of the Securities and Exchange Commission.

(B) Preservation

Except as provided in subparagraph (A), no provision of this subsection or any regulation promulgated by the Secretary under this subsection supersedes or otherwise affects the application of the securities laws (as the term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))) or the rules, regulations, or orders of the Securities and Exchange Commission or a self-regulatory organization under that Commission.

(Pub. L. 89–136, title II, § 209, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3605; amended Pub. L. 108–373, title II, § 207, Oct. 27, 2004, 118 Stat. 1762.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (c)(2), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended,

which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

The Securities Act of 1933, referred to in subsec. (d)(4)(A), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (d)(4)(A), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(5). Pub. L. 108–373, § 207(a), added par. (5).

Subsec. (d). Pub. L. 108–373, § 207(b), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows:

''(1) IN GENERAL.—Subject to paragraph (2), an eligible recipient of a grant under this section may directly expend the grant funds or may redistribute the funds to public and private entities in the form of a grant, loan, loan guarantee, payment to reduce interest on a loan guarantee, or other appropriate assistance.

''(2) LIMITATION.—Under paragraph (1), an eligible recipient may not provide any grant to a private for-profit entity.''

§ 3150. Changed project circumstances

In any case in which a grant (including a supplementary grant described in section 3145 of this title) has been made by the Secretary under this subchapter (or made under this chapter, as in effect on the day before the effective date of the Economic Development Administration Reform Act of 1998) for a project, and, after the grant has been made but before completion of the project, the purpose or scope of the project that was the basis of the grant is modified, the Secretary may approve, subject (except for a grant for which funds were obligated in fiscal year 1995) to the availability of appropriations, the use of grant funds for the modified project if the Secretary determines that—

(1) the modified project meets the requirements of this subchapter and is consistent with the comprehensive economic development strategy submitted as part of the application for the grant; and

(2) the modifications are necessary to enhance economic development in the area for which the project is being carried out.

(Pub. L. 89–136, title II, § 210, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3606.)

REFERENCES IN TEXT

For the effective date of the Economic Development Administration Reform Act of 1998, referred to in text, see section 105 of Pub. L. 105–393, set out as an Effective Date note under section 3121 of this title.

§ 3151. Use of funds in projects constructed under projected cost

(a) In general

In the case of a grant to a recipient for a construction project under section 3141 or 3149 of this title, if the Secretary determines, before closeout of the project, that the cost of the project, based on the designs and specifications that were the basis of the grant, has decreased because of decreases in costs, the Secretary may approve, without further appropriation, the use of the excess funds (or a portion of the excess funds) by the recipient—

(1) to increase the Federal share of the cost of a project under this title to the maximum percentage allowable under section 3144 of this title; or

(2) to improve the project.

(b) Other uses of excess funds

Any amount of excess funds remaining after application of subsection (a) of this section may be used by the Secretary for providing assistance under this chapter.

(c) Transferred funds

In the case of excess funds described in subsection (a) of this section in projects using funds transferred from other Federal agencies pursuant to section 3214 of this title, the Secretary shall—

(1) use the funds in accordance with subsection (a) of this section, with the approval of the originating agency; or

(2) return the funds to the originating agency.

(d) Review by Comptroller General

(1) Review

The Comptroller General of the United States shall regularly review the implementation of this section.

(2) Report

Not later than 1 year after October 27, 2004, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the findings of the Comptroller General on implementation of this subsection.

(Pub. L. 89–136, title II, § 211, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3606; amended Pub. L. 108–373, title II, § 208, Oct. 27, 2004, 118 Stat. 1763.)

PRIOR PROVISIONS

Prior sections 3151 and 3151a were repealed by Pub. L. 105–393, § 102(a).

Section 3151, Pub. L. 89–136, title III, § 301, Aug. 26, 1965, 79 Stat. 558; Pub. L. 91–123, title III, § 302, Nov. 25, 1969, 83 Stat. 219; Pub. L. 93–46, § 3(a), June 18, 1973, 87 Stat. 96, authorized technical assistance to alleviate or prevent excessive unemployment or underemployment.

Section 3151a, Pub. L. 89–136, title III, § 302, as added Pub. L. 93–423, § 5(b), Sept. 27, 1974, 88 Stat. 1159; amended Pub. L. 94–487, title I, § 110, Oct. 12, 1976, 90 Stat. 2333, authorized grants for economic development planning.

AMENDMENTS

2004—Pub. L. 108–373 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''In any case in which a grant (including a supplementary grant described in section 3145 of this title) has been made by the Secretary under this subchapter (or made under this chapter, as in effect on the day before the effective date of the Economic Development Administration Reform Act of 1998) for a construction project, and, after the grant

has been made but before completion of the project, the cost of the project based on the designs and specifications that was the basis of the grant has decreased because of decreases in costs—

"(1) the Secretary may approve, subject to the availability of appropriations, the use of the excess funds or a portion of the funds to improve the project; and

"(2) any amount of excess funds remaining after application of paragraph (1) shall be deposited in the general fund of the Treasury."

§3152. Reports by recipients

(a) In general

Each recipient of assistance under this subchapter shall submit reports to the Secretary at such intervals and in such manner as the Secretary shall require by regulation, except that no report shall be required to be submitted more than 10 years after the date of closeout of the assistance award.

(b) Contents

Each report shall contain an evaluation of the effectiveness of the economic assistance provided under this subchapter in meeting the need that the assistance was designed to address and in meeting the objectives of this chapter.

(Pub. L. 89–136, title II, §212, as added Pub. L. 105–393, title I, §102(a), Nov. 13, 1998, 112 Stat. 3606.)

PRIOR PROVISIONS

A prior section 3152, Pub. L. 89–136, title III, §303, formerly §302, Aug. 26, 1965, 79 Stat. 560, amended Pub. L. 91–123, title III, §303, Nov. 25, 1969, 83 Stat. 219; Pub. L. 91–304, §1(c), July 6, 1970, 84 Stat. 375; Pub. L. 92–65, title I, §105, Aug. 5, 1971, 85 Stat. 167; Pub. L. 93–46, §3(b), June 18, 1973, 87 Stat. 96; renumbered §303 and amended Pub. L. 93–423, §5(a), (c), Sept. 27, 1974, 88 Stat. 1159, 1160; Pub. L. 94–487, title I, §111, Oct. 12, 1976, 90 Stat. 2334; Pub. L. 96–506, §1(5), Dec. 8, 1980, 94 Stat. 2745; Pub. L. 97–35, title XVIII, §1821(a)(4), Aug. 13, 1981, 95 Stat. 766, authorized appropriations for technical assistance and economic development planning, prior to repeal by Pub. L. 105–393, §102(a).

§3153. Prohibition on use of funds for attorney's and consultant's fees

Assistance made available under this subchapter shall not be used directly or indirectly for an attorney's or consultant's fee incurred in connection with obtaining grants and contracts under this subchapter.

(Pub. L. 89–136, title II, §213, as added Pub. L. 105–393, title I, §102(a), Nov. 13, 1998, 112 Stat. 3607.)

PRIOR PROVISIONS

A prior section 3153, Pub. L. 89–136, title III, §304, as added Pub. L. 93–423, §5(d), Sept. 27, 1974, 88 Stat. 1160; amended Pub. L. 94–487, title I, §112, Oct. 12, 1976, 90 Stat. 2334; Pub. L. 96–506, §1(6), Dec. 8, 1980, 94 Stat. 2745; Pub. L. 97–35, title XVIII, §1821(a)(5), Aug. 13, 1981, 95 Stat. 766, authorized appropriations for supplemental and basic grants and loans, prior to repeal by Pub. L. 105–393, §102(a).

§3154. Special impact areas

(a) In general

On the application of an eligible recipient that is determined by the Secretary to be unable to comply with the requirements of section 3162 of this title, the Secretary may waive, in whole or in part, the requirements of section 3162 of this title and designate the area represented by the recipient as a special impact area.

(b) Conditions

The Secretary may make a designation under subsection (a) of this section only after determining that—

(1) the project will fulfill a pressing need of the area; and

(2) the project will—

(A) be useful in alleviating or preventing conditions of excessive unemployment or underemployment; or

(B) assist in providing useful employment opportunities for the unemployed or underemployed residents in the area.

(c) Notification

At the time of the designation under subsection (a) of this section, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a written notice of the designation, including a justification for the designation.

(Pub. L. 89–136, title II, §214, as added Pub. L. 108–373, title II, §209(a), Oct. 27, 2004, 118 Stat. 1763.)

§3154a. Performance awards

(a) In general

The Secretary may make a performance award in connection with a grant made, on or after October 27, 2004, to an eligible recipient for a project under section 3141 or 3149 of this title.

(b) Performance measures

(1) Regulations

The Secretary shall promulgate regulations to establish performance measures for making performance awards under subsection (a) of this section.

(2) Considerations

In promulgating regulations under paragraph (1), the Secretary shall consider the inclusion of performance measures that assess—

(A) whether the recipient meets or exceeds scheduling goals;

(B) whether the recipient meets or exceeds job creation goals;

(C) amounts of private sector capital investments leveraged; and

(D) such other factors as the Secretary determines to be appropriate.

(c) Amount of awards

(1) In general

The Secretary shall base the amount of a performance award made under subsection (a) of this section in connection with a grant on the extent to which a recipient meets or exceeds performance measures established in connection with the grant.

(2) Maximum amount

The amount of a performance award may not exceed 10 percent of the amount of the grant.

(d) Use of awards

A recipient of a performance award under subsection (a) of this section may use the award for any eligible purpose under this chapter, in accordance with section 3212 of this title and such regulations as the Secretary may promulgate.

(e) Federal share

Notwithstanding section 3144 of this title, the funds of a performance award may be used to pay up to 100 percent of the cost of an eligible project or activity.

(f) Treatment in meeting non-Federal share requirements

For the purposes of meeting the non-Federal share requirements under this, or any other, Act the funds of a performance award shall be treated as funds from a non-Federal source.

(g) Terms and conditions

In making performance awards under subsection (a) of this section, the Secretary shall establish such terms and conditions as the Secretary considers to be appropriate.

(h) Funding

The Secretary shall use any amounts made available for economic development assistance programs to carry out this section.

(i) Reporting requirement

The Secretary shall include information regarding performance awards made under this section in the annual report required under section 3213 of this title.

(j) Review by Comptroller General

(1) Review

The Comptroller General shall regularly review the implementation of this section.

(2) Report

Not later than 1 year after October 27, 2004, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the findings of the Comptroller on implementation of this subsection.

(Pub. L. 89–136, title II, § 215, as added Pub. L. 108–373, title II, § 210(a), Oct. 27, 2004, 118 Stat. 1764.)

§ 3154b. Planning performance awards

(a) In general

The Secretary may make a planning performance award in connection with a grant made, on or after October 27, 2004, to an eligible recipient for a project under this subchapter located in an economic development district.

(b) Eligibility

The Secretary may make a planning performance award to an eligible recipient under subsection (a) of this section in connection with a grant for a project if the Secretary determines before closeout of the project that—

(1) the recipient actively participated in the economic development activities of the economic development district in which the project is located;

(2) the project is consistent with the comprehensive economic development strategy of the district;

(3) the recipient worked with Federal, State, and local economic development entities throughout the development of the project; and

(4) the project was completed in accordance with the comprehensive economic development strategy of the district.

(c) Maximum amount

The amount of a planning performance award made under subsection (a) of this section in connection with a grant may not exceed 5 percent of the amount of the grant.

(d) Use of awards

A recipient of a planning performance award under subsection (a) of this section shall use the award to increase the Federal share of the cost of a project under this subchapter.

(e) Federal share

Notwithstanding section 3144 of this title, the funds of a planning performance award may be used to pay up to 100 percent of the cost of a project under this subchapter.

(f) Funding

The Secretary shall use any amounts made available for economic development assistance programs to carry out this section.

(Pub. L. 89–136, title II, § 216, as added Pub. L. 108–373, title II, § 211(a), Oct. 27, 2004, 118 Stat. 1765.)

§ 3154c. Direct expenditure or redistribution by recipient

(a) In general

Subject to subsection (b) of this section, a recipient of a grant under section 3141, 3143, or 3147 of this title may directly expend the grant funds or may redistribute the funds in the form of a subgrant to other eligible recipients to fund required components of the scope of work approved for the project.

(b) Limitation

A recipient may not redistribute grant funds received under section 3141 or 3143 of this title to a for-profit entity.

(c) Economic adjustment

Subject to subsection (d) of this section, a recipient of a grant under section 3149 of this title may directly expend the grant funds or may redistribute the funds to public and private entities in the form of a grant, loan, loan guarantee, payment to reduce interest on a loan guarantee, or other appropriate assistance.

(d) Limitation

Under subsection (c) of this section, a recipient may not provide any grant to a private for-profit entity.

(Pub. L. 89–136, title II, § 217, as added Pub. L. 108–373, title II, § 212(a), Oct. 27, 2004, 118 Stat. 1766.)

§ 3154d. Brightfields demonstration program

(a) Definition of brightfield site

In this section, the term ''brightfield site'' means a brownfield site that is redeveloped

through the incorporation of 1 or more solar energy technologies.

(b) Demonstration program

On the application of an eligible recipient, the Secretary may make a grant for a project for the development of a brightfield site if the Secretary determines that the project will—

(1) use 1 or more solar energy technologies to develop abandoned or contaminated sites for commercial use; and

(2) improve the commercial and economic opportunities in the area in which the project is located.

(c) Savings clause

To the extent that any portion of a grant awarded under subsection (b) of this section involves remediation, the remediation shall be subject to section 3222 of this title.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2004 through 2008, to remain available until expended.

(Pub. L. 89–136, title II, § 218, as added Pub. L. 108–373, title II, § 213(a), Oct. 27, 2004, 118 Stat. 1766.)

SUBCHAPTER III—ELIGIBILITY; COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

§ 3161. Eligibility of areas

(a) In general

For a project to be eligible for assistance under section 3141 or 3149 of this title, the project shall be located in an area that, on the date of submission of the application, meets 1 or more of the following criteria:

(1) Low per capita income

The area has a per capita income of 80 percent or less of the national average.

(2) Unemployment rate above national average

The area has an unemployment rate that is, for the most recent 24-month period for which data are available, at least 1 percent greater than the national average unemployment rate.

(3) Unemployment or economic adjustment problems

The area is an area that the Secretary determines has experienced or is about to experience a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions.

(b) Political boundaries of areas

An area that meets 1 or more of the criteria of subsection (a) of this section, including a small area of poverty or high unemployment within a larger community in less economic distress, shall be eligible for assistance under section 3141 or 3149 of this title without regard to political or other subdivisions or boundaries.

(c) Documentation

(1) In general

A determination of eligibility under subsection (a) of this section shall be supported by the most recent Federal data available (including data available from the Bureau of Economic Analysis, the Bureau of Labor Statistics, the Census Bureau, the Bureau of Indian Affairs, or any other Federal source determined by the Secretary to be appropriate), or, if no recent Federal data is available, by the most recent data available through the government of the State in which the area is located.

(2) Acceptance by Secretary

The documentation shall be accepted by the Secretary unless the Secretary determines that the documentation is inaccurate.

(d) Prior designations

Any designation of a redevelopment area made before the effective date of the Economic Development Administration Reform Act of 1998 shall not be effective after that effective date.

(Pub. L. 89–136, title III, § 301, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3607; amended Pub. L. 108–373, title III, § 301, Oct. 27, 2004, 118 Stat. 1767.)

REFERENCES IN TEXT

For the effective date of the Economic Development Administration Reform Act of 1998, referred to in subsec. (d), see section 105 of Pub. L. 105–393, set out as an Effective Date note under section 3121 of this title.

PRIOR PROVISIONS

A prior section 3161, Pub. L. 89–136, title IV, § 401, Aug. 26, 1965, 79 Stat. 560; Pub. L. 89–794, title XI, § 1102, Nov. 8, 1966, 80 Stat. 1477; Pub. L. 91–123, title III, § 304, Nov. 25, 1969, 83 Stat. 219; Pub. L. 92–65, title I, § 106, Aug. 5, 1971, 85 Stat. 167; Pub. L. 93–423, §§ 3(a), 6, Sept. 27, 1974, 88 Stat. 1158, 1161; Pub. L. 94–487, title I, §§ 113, 114, Oct. 12, 1976, 90 Stat. 2334, set forth criteria for determining eligible redevelopment areas, prior to repeal by Pub. L. 105–393, § 102(a).

A prior section 301 of Pub. L. 89–136 was classified to section 3151 of this title prior to repeal by Pub. L. 105–393, § 102(a).

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108–373 inserted ''(including data available from the Bureau of Economic Analysis, the Bureau of Labor Statistics, the Census Bureau, the Bureau of Indian Affairs, or any other Federal source determined by the Secretary to be appropriate)'' after ''most recent Federal data available''.

§ 3162. Comprehensive economic development strategies

(a) In general

The Secretary may provide assistance under section 3141 or 3149 of this title (except for planning assistance under section 3149 of this title) to an eligible recipient for a project only if the eligible recipient submits to the Secretary, as part of an application for the assistance—

(1) an identification of the economic development problems to be addressed using the assistance;

(2) an identification of the past, present, and projected future economic development investments in the area receiving the assistance and public and private participants and sources of funding for the investments; and

(3)(A) a comprehensive economic development strategy for addressing the economic

problems identified under paragraph (1) in a manner that promotes economic development and opportunity, fosters effective transportation access, maximizes effective development and use of the workforce consistent with any applicable State or local workforce investment strategy, promotes the use of technology in economic development (including access to high-speed telecommunications), enhances and protects the environment, and balances resources through sound management of development; and

(B) a description of how the strategy will solve the problems.

(b) Approval of comprehensive economic development strategy

The Secretary shall approve a comprehensive economic development strategy that meets the requirements of subsection (a) of this section to the satisfaction of the Secretary.

(c) Approval of other plan

(1) In general

The Secretary may accept as a comprehensive economic development strategy a satisfactory plan developed under another federally supported program.

(2) Existing strategy

To the maximum extent practicable, a plan submitted under this paragraph shall be consistent and coordinated with any existing comprehensive economic development strategy for the area.

(Pub. L. 89–136, title III, § 302, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3608; amended Pub. L. 108–373, title III, § 302, Oct. 27, 2004, 118 Stat. 1767.)

PRIOR PROVISIONS

A prior section 3162, Pub. L. 89–136, title IV, § 402, Aug. 26, 1965, 79 Stat. 561; Pub. L. 92–65, title I, § 107, Aug. 5, 1971, 85 Stat. 167, required annual review of area eligibility, prior to repeal by Pub. L. 105–393, § 102(a).

A prior section 302 of Pub. L. 89–136 was classified to section 3151a of this title prior to repeal by Pub. L. 105–393, § 102(a).

AMENDMENTS

2004—Subsec. (a)(3)(A). Pub. L. 108–373, § 302(a), inserted ''maximizes effective development and use of the workforce consistent with any applicable State or local workforce investment strategy, promotes the use of technology in economic development (including access to high-speed telecommunications),'' after ''access,''.

Subsec. (c). Pub. L. 108–373, § 302(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

SUBCHAPTER IV—ECONOMIC DEVELOPMENT DISTRICTS

§ 3171. Designation of economic development districts

(a) In general

In order that economic development projects of broad geographic significance may be planned and carried out, the Secretary may designate appropriate economic development districts in the United States, with the concurrence of the States in which the districts will be wholly or partially located, if—

(1) the proposed district is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single area described in section 3161(a) of this title;

(2) the proposed district contains at least 1 area described in section 3161(a) of this title; and

(3) the proposed district has a comprehensive economic development strategy that—

(A) contains a specific program for intradistrict cooperation, self-help, and public investment; and

(B) is approved by each affected State and by the Secretary.

(b) Authorities

The Secretary may, under regulations promulgated by the Secretary—

(1) invite the States to determine boundaries for proposed economic development districts;

(2) cooperate with the States—

(A) in sponsoring and assisting district economic planning and economic development groups; and

(B) in assisting the district groups in formulating comprehensive economic development strategies for districts; and

(3) encourage participation by appropriate local government entities in the economic development districts.

(Pub. L. 89–136, title IV, § 401, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3608.)

PRIOR PROVISIONS

A prior section 3171, Pub. L. 89–136, title IV, § 403, Aug. 26, 1965, 79 Stat. 562; Pub. L. 91–304, § 1(d), July 6, 1970, 84 Stat. 375; Pub. L. 92–65, title I, § 108, Aug. 5, 1971, 85 Stat. 167; Pub. L. 93–46, § 4, June 18, 1973, 87 Stat. 96; Pub. L. 93–423, § 7, Sept. 27, 1974, 88 Stat. 1161; Pub. L. 94–487, title I, § 115, Oct. 12, 1976, 90 Stat. 2335; Pub. L. 96–506, § 1(7), Dec. 8, 1980, 94 Stat. 2745; Pub. L. 97–35, title XVIII, § 1821(a)(6), Aug. 13, 1981, 95 Stat. 766, authorized Secretary to designate economic development districts and centers, prior to repeal by Pub. L. 105–393, § 102(a).

A prior section 401 of Pub. L. 89–136 was classified to section 3161 of this title prior to repeal by Pub. L. 105–393, § 102(a).

§ 3172. Termination or modification of economic development districts

The Secretary shall, by regulation, promulgate standards for the termination or modification of the designation of economic development districts.

(Pub. L. 89–136, title IV, § 402, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3609.)

PRIOR PROVISIONS

A prior section 3172, Pub. L. 89–136, title IV, § 404, as added Pub. L. 93–423, § 8, Sept. 27, 1974, 88 Stat. 1162; amended Pub. L. 94–487, title I, § 116, Oct. 12, 1976, 90 Stat. 2335; Pub. L. 96–506, § 1(8), Dec. 8, 1980, 94 Stat. 2745; Pub. L. 97–35, title XVIII, § 1821(a)(7), Aug. 13, 1981, 95 Stat. 766, authorized additional appropriations for Indian economic development, prior to repeal by Pub. L. 105–393, § 102(a).

A prior section 402 of Pub. L. 89–136 was classified to section 3162 of this title prior to repeal by Pub. L. 105–393, § 102(a).

§3173. Repealed. Pub. L. 108–373, title IV, §401(a), Oct. 27, 2004, 118 Stat. 1767

Section, Pub. L. 89–136, title IV, §403, as added Pub. L. 105–393, title I, §102(a), Nov. 13, 1998, 112 Stat. 3609, related to incentives for projects in economic development districts.

PRIOR PROVISIONS

A prior section 3173, Pub. L. 89–136, title IV, §405, as added Pub. L. 94–487, title I, §117, Oct. 12, 1976, 90 Stat. 2335, directed furnishing of unemployment rate information by either Federal Government or State, prior to repeal by Pub. L. 105–393, §102(a).

A prior section 403 of Pub. L. 89–136 was classified to section 3171 of this title prior to repeal by Pub. L. 105–393, §102(a).

§3174. Provision of comprehensive economic development strategies to Regional Commissions

If any part of an economic development district is in a region covered by 1 or more of the Regional Commissions, the economic development district shall ensure that a copy of the comprehensive economic development strategy of the district is provided to the affected Regional Commission.

(Pub. L. 89–136, title IV, §404, as added Pub. L. 105–393, title I, §102(a), Nov. 13, 1998, 112 Stat. 3609; amended Pub. L. 108–373, title IV, §402(a), Oct. 27, 2004, 118 Stat. 1768.)

PRIOR PROVISIONS

A prior section 404 of Pub. L. 89–136 was classified to section 3172 of this title prior to repeal by Pub. L. 105–393, §102(a).

AMENDMENTS

2004—Pub. L. 108–373 amended section catchline and text generally. Prior to amendment, text read as follows: "If any part of an economic development district is in the Appalachian region (as defined in section 403 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.)), the economic development district shall ensure that a copy of the comprehensive economic development strategy of the district is provided to the Appalachian Regional Commission established under that Act."

§3175. Assistance to parts of economic development districts not in eligible areas

Notwithstanding section 3161 of this title, the Secretary may provide such assistance as is available under this chapter for a project in a part of an economic development district that is not in an area described in section 3161(a) of this title, if the project will be of a substantial direct benefit to an area described in section 3161(a) of this title that is located in the district.

(Pub. L. 89–136, title IV, §405, as added Pub. L. 105–393, title I, §102(a), Nov. 13, 1998, 112 Stat. 3609.)

PRIOR PROVISIONS

A prior section 405 of Pub. L. 89–136 was classified to section 3173 of this title prior to repeal by Pub. L. 105–393, §102(a).

Prior sections 3181 to 3190 were repealed by Pub. L. 97–35, title XVIII, §1821(a)(8), Aug. 13, 1981, 95 Stat. 766, effective Sept. 30, 1981.

Section 3181, Pub. L. 89–136, title V, §501, Aug. 26, 1965, 79 Stat. 564; Pub. L. 91–123, title II, §202, Nov. 25, 1969, 83 Stat. 216; Pub. L. 94–188, title II, §209(a), Dec. 31, 1975, 89 Stat. 1091, related to designation, etc., of economic development regions.

Section 3182, Pub. L. 89–136, title V, §502, Aug. 26, 1965, 79 Stat. 564; Pub. L. 94–188, title II, §§208, 209(b), Dec. 31, 1975, 89 Stat. 1091, related to establishment, membership, etc., of regional commissions.

Section 3183, Pub. L. 89–136, title V, §503, Aug. 26, 1965, 79 Stat. 565; Pub. L. 90–103, title II, §201, Oct. 11, 1967, 81 Stat. 266; Pub. L. 93–423, §9(a), Sept. 27, 1974, 88 Stat. 1162, set forth functions of Commissions.

Section 3184, Pub. L. 89–136, title V, §504, Aug. 26, 1965, 79 Stat. 566, set out program development criteria.

Section 3185, Pub. L. 89–136, title V, §505, Aug. 26, 1965, 79 Stat. 566; Pub. L. 90–103, title II, §202, Oct. 11, 1967, 81 Stat. 266; Pub. L. 91–123, title II, §203, Nov. 25, 1969, 83 Stat. 216; Pub. L. 93–423, §9(b), Sept. 27, 1974, 88 Stat. 1162; Pub. L. 94–273, §2(25), Apr. 21, 1976, 90 Stat. 376, set out provisions relating to technical and planning assistance to regional commissions.

Section 3186, Pub. L. 89–136, title V, §506, Aug. 26, 1965, 79 Stat. 567; Pub. L. 91–123, title II, §204, Nov. 25, 1969, 83 Stat. 217, related to administrative powers of regional commissions and headquarters of Federal cochairman.

Section 3187, Pub. L. 89–136, title V, §507, Aug. 26, 1965, 79 Stat. 568, related to information procurement.

Section 3188, Pub. L. 89–136, title V, §508, Aug. 26, 1965, 79 Stat. 568, related to personal financial interests of commission personnel.

Section 3188a, Pub. L. 89–136, title V, §509, as added Pub. L. 90–103, title II, §203, Oct. 11, 1967, 81 Stat. 266; amended Pub. L. 91–123, title II, §205, Nov. 25, 1969, 83 Stat. 217; Pub. L. 91–258, title I, §52(b)(2), May 21, 1970, 84 Stat. 235; Pub. L. 92–65, title I, §109, Aug. 5, 1971, 85 Stat. 167; Pub. L. 93–46, §5, June 18, 1973, 87 Stat. 97; Pub. L. 93–423, §9(c), Sept. 27, 1974, 88 Stat. 1162; Pub. L. 94–188, title II, §202, Dec. 31, 1975, 89 Stat. 1087; Pub. L. 94–487, title I, §§118, 119, Oct. 12, 1976, 90 Stat. 2335, 2336; Pub. L. 96–506, §1(9), Dec. 8, 1980, 94 Stat. 2745, related to supplements to Federal grant-in-aid programs.

Section 3189, Pub. L. 89–136, title V, §510, formerly §509, Aug. 26, 1965, 79 Stat. 569; renumbered §510, Pub. L. 90–103, title II, §203, Oct. 11, 1967, 81 Stat. 266; Pub. L. 94–273, §25, Apr. 21, 1976, 90 Stat. 380, related to annual reports to Congress.

Section 3190, Pub. L. 89–136, title V, §511, as added Pub. L. 91–123, title II, §206, Nov. 25, 1969, 83 Stat. 218; amended Pub. L. 93–423, §9(d), Sept. 27, 1974, 88 Stat. 1162, required coordination of activities between Secretary and Federal cochairmen in grants and loans.

SUBCHAPTER V—ADMINISTRATION

§3191. Assistant Secretary for Economic Development

(a) In general

The Secretary shall carry out this chapter through an Assistant Secretary of Commerce for Economic Development, to be appointed by the President, by and with the advice and consent of the Senate.

(b) Compensation

The Assistant Secretary of Commerce for Economic Development shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5.

(c) Duties

The Assistant Secretary of Commerce for Economic Development shall carry out such duties as the Secretary shall require and shall serve as the administrator of the Economic Development Administration of the Department.

(Pub. L. 89–136, title V, §501, as added Pub. L. 105–393, title I, §102(a), Nov. 13, 1998, 112 Stat. 3610.)

PRIOR PROVISIONS

A prior section 3191, Pub. L. 89–136, title V, § 512, as added Pub. L. 91–123, title II, § 206, Nov. 25, 1969, 83 Stat. 218; amended Pub. L. 92–65, title I, § 110, Aug. 5, 1971, 85 Stat. 167, related to Federal Field Committee for Development Planning in Alaska, prior to repeal by Pub. L. 97–35, title XVIII, § 1821(a)(8), Aug. 13, 1981, 95 Stat. 766, effective Sept. 30, 1981.

A prior section 501 of Pub. L. 89–136 was classified to section 3181 of this title prior to repeal by Pub. L. 97–35, § 1821(a)(8).

§ 3192. Economic development information clearinghouse

In carrying out this chapter, the Secretary shall—

(1) maintain a central information clearinghouse on the Internet with—

(A) information on economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal Government;

(B) links to State economic development organizations; and

(C) links to other appropriate economic development resources;

(2) assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal and State laws in locating and applying for the assistance;

(3) assist areas described in section 3161(a) of this title and other areas by providing to interested persons, communities, industries, and businesses in the areas any technical information, market research, or other forms of assistance, information, or advice that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment in the areas; and

(4) obtain appropriate information from other Federal agencies needed to carry out the duties under this chapter.

(Pub. L. 89–136, title V, § 502, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3610; amended Pub. L. 108–373, title V, § 501, Oct. 27, 2004, 118 Stat. 1768.)

PRIOR PROVISIONS

A prior section 3192, Pub. L. 89–136, title V, § 513, as added Pub. L. 91–123, title II, § 206, Nov. 25, 1969, 83 Stat. 219; amended Pub. L. 94–188, title II, § 203, Dec. 31, 1975, 89 Stat. 1087, related to regional transportation systems, prior to repeal by Pub. L. 97–35, title XVIII, § 1821(a)(8), Aug. 13, 1981, 95 Stat. 766, effective Sept. 30, 1981.

A prior section 502 of Pub. L. 89–136 was classified to section 3182 of this title prior to repeal by Pub. L. 97–35, § 1821(a)(8).

AMENDMENTS

2004—Par. (1). Pub. L. 108–373, § 501(1), added par. (1) and struck out former par. (1) which read as follows: ''maintain a central information clearinghouse on matters relating to economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal and State governments, including political subdivisions of States;''.

Par. (2). Pub. L. 108–373, § 501(2), added par. (2) and struck out former par. (2) which read as follows: ''assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal, State, and local laws in locating and applying for the assistance; and''.

Par. (4). Pub. L. 108–373, § 501(3), (4), added par. (4).

§ 3193. Consultation with other persons and agencies

(a) Consultation on problems relating to employment

The Secretary may consult with any persons, including representatives of labor, management, agriculture, and government, who can assist in addressing the problems of area and regional unemployment or underemployment.

(b) Consultation on administration of chapter

The Secretary may provide for such consultation with interested Federal agencies as the Secretary determines to be appropriate in the performance of the duties of the Secretary under this chapter.

(Pub. L. 89–136, title V, § 503, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3610.)

PRIOR PROVISIONS

A prior section 3193, Pub. L. 89–136, title V, § 514, as added Pub. L. 93–423, § 11, Sept. 27, 1974, 88 Stat. 1162, provided for the acquisition and disposal of excess property from the Administrator of General Services by the Federal cochairman of each regional action planning commission, prior to repeal by Pub. L. 94–519, §§ 6, 9, Oct. 17, 1976, 90 Stat. 2456, 2457, effective Oct. 17, 1977.

A prior section 503 of Pub. L. 89–136 was classified to section 3183 of this title prior to repeal by Pub. L. 97–35, § 1821(a)(8).

§ 3194. Administration, operation, and maintenance

The Secretary shall approve Federal assistance under this chapter only if the Secretary is satisfied that the project for which Federal assistance is granted will be properly and efficiently administered, operated, and maintained.

(Pub. L. 89–136, title V, § 504, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3610.)

PRIOR PROVISIONS

A prior section 3194, Pub. L. 89–136, title V, § 515, as added Pub. L. 94–188, title II, § 204, Dec. 31, 1975, 89 Stat. 1088, related to energy demonstration projects and programs, prior to repeal by Pub. L. 97–35, title XVIII, § 1821(a)(8), Aug. 13, 1981, 95 Stat. 766, effective Sept. 30, 1981.

A prior section 504 of Pub. L. 89–136 was classified to section 3184 of this title prior to repeal by Pub. L. 97–35, § 1821(a)(8).

§ 3195. Repealed. Pub. L. 108–373, title V, § 502(a), Oct. 27, 2004, 118 Stat. 1768

Section, Pub. L. 89–136, title V, § 505, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3610, related to businesses desiring Federal contracts.

PRIOR PROVISIONS

A prior section 3195, Pub. L. 89–136, title V, § 516, as added Pub. L. 94–188, title II, § 205, Dec. 31, 1975, 89 Stat. 1088, related to health and nutrition demonstration projects, prior to repeal by Pub. L. 97–35, title XVIII, § 1821(a)(8), Aug. 13, 1981, 95 Stat. 766, effective Sept. 30, 1981.

A prior section 505 of Pub. L. 89–136 was classified to section 3185 of this title prior to repeal by Pub. L. 97–35, § 1821(a)(8).

§ 3196. Performance evaluations of grant recipients

(a) In general

The Secretary shall conduct an evaluation of each university center and each economic development district that receives grant assistance under this chapter (each referred to in this section as a ''grantee'') to assess the grantee's performance and contribution toward retention and creation of employment.

(b) Purpose of evaluations of university centers

The purpose of the evaluations of university centers under subsection (a) of this section shall be to determine which university centers are performing well and are worthy of continued grant assistance under this chapter, and which should not receive continued assistance, so that university centers that have not previously received assistance may receive assistance.

(c) Timing of evaluations

Evaluations under subsection (a) of this section shall be conducted on a continuing basis so that each grantee is evaluated within 3 years after the first award of assistance to the grantee, and at least once every 3 years thereafter, so long as the grantee receives the assistance.

(d) Evaluation criteria

(1) Establishment

The Secretary shall establish criteria for use in conducting evaluations under subsection (a) of this section.

(2) Evaluation criteria for university centers

The criteria for evaluation of a university center shall, at a minimum, provide for an assessment of the center's contribution to providing technical assistance, conducting applied research, program performance, and disseminating results of the activities of the center.

(3) Evaluation criteria for economic development districts

The criteria for evaluation of an economic development district shall, at a minimum, provide for an assessment of management standards, financial accountability, and program performance.

(e) Peer review

In conducting an evaluation of a university center or economic development district under subsection (a) of this section, the Secretary shall provide for the participation of at least 1 other university center or economic development district, as appropriate, on a cost-reimbursement basis.

(Pub. L. 89–136, title V, § 506, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3611; amended Pub. L. 108–373, title V, § 503, Oct. 27, 2004, 118 Stat. 1769.)

PRIOR PROVISIONS

A prior section 3196, Pub. L. 89–136, title V, § 517, as added Pub. L. 94–188, title II, § 206, Dec. 31, 1975, 89 Stat. 1090, related to vocational and technical educational demonstration projects, prior to repeal by Pub. L. 97–35, title XVIII, § 1821(a)(8), Aug. 13, 1981, 95 Stat. 766, effective Sept. 30, 1981.

A prior section 506 of Pub. L. 89–136 was classified to section 3186 of this title prior to repeal by Pub. L. 97–35, § 1821(a)(8).

AMENDMENTS

2004–Subsec. (c). Pub. L. 108–373, § 503(a), struck out ''after the effective date of the Economic Development Administration Reform Act of 1998'' after ''assistance to the grantee''.

Subsec. (d)(2). Pub. L. 108–373, § 503(b), inserted ''program performance,'' after ''applied research,''.

§ 3197. Notification of reorganization

Not later than 30 days before the date of any reorganization of the offices, programs, or activities of the Economic Development Administration, the Secretary shall provide notification of the reorganization to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate, and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

(Pub. L. 89–136, title V, § 507, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3611.)

PRIOR PROVISIONS

A prior section 507 of Pub. L. 89–136 was classified to section 3187 of this title prior to repeal by Pub. L. 97–35, § 1821(a)(8).

Prior sections 3201 to 3204 were repealed by Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3597.

Section 3201, Pub. L. 89–136, title VI, § 601(a), Aug. 26, 1965, 79 Stat. 569; Pub. L. 97–195, § 1(c)(3), June 16, 1982, 96 Stat. 115, related to appointment of Assistant Secretary of Commerce and Administrator for Economic Development.

Section 3202, Pub. L. 89–136, title VI, § 602, Aug. 26, 1965, 79 Stat. 570, related to National Public Advisory Committee on Regional Economic Development.

Section 3203, Pub. L. 89–136, title VI, § 603, Aug. 26, 1965, 79 Stat. 570, authorized Secretary to consult with other persons and agencies.

Section 3204, Pub. L. 89–136, title VI, § 604, as added Pub. L. 90–103, title II, § 204, Oct. 11, 1967, 81 Stat. 268, conditioned assistance upon proper administration, operation, and maintenance of project.

SUBCHAPTER VI—MISCELLANEOUS

§ 3211. Powers of Secretary

(a) In general

In carrying out the duties of the Secretary under this chapter, the Secretary may—

(1) adopt, alter, and use a seal, which shall be judicially noticed;

(2) subject to the civil service and classification laws, select, employ, appoint, and fix the compensation of such personnel as are necessary to carry out this chapter;

(3) hold such hearings, sit and act at such times and places, and take such testimony, as the Secretary determines to be appropriate;

(4) request directly, from any Federal agency, board, commission, office, or independent establishment, such information, suggestions, estimates, and statistics as the Secretary determines to be necessary to carry out this

chapter (and each Federal agency, board, commission, office, or independent establishment may provide such information, suggestions, estimates, and statistics directly to the Secretary);

(5) under regulations promulgated by the Secretary—

(A) assign or sell at public or private sale, or otherwise dispose of for cash or credit, in the Secretary's discretion and on such terms and conditions and for such consideration as the Secretary determines to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by the Secretary in connection with assistance provided under this chapter; and

(B) collect or compromise all obligations assigned to or held by the Secretary in connection with that assistance until such time as the obligations are referred to the Attorney General for suit or collection;

(6) deal with, complete, renovate, improve, modernize, insure, rent, or sell for cash or credit, on such terms and conditions and for such consideration as the Secretary determines to be reasonable, any real or personal property conveyed to or otherwise acquired by the Secretary in connection with assistance provided under this chapter;

(7) pursue to final collection, by means of compromise or other administrative action, before referral to the Attorney General, all claims against third parties assigned to the Secretary in connection with assistance provided under this chapter;

(8) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), to the extent appropriate in connection with assistance provided under this chapter;

(9) in addition to any powers, functions, privileges, and immunities otherwise vested in the Secretary, take any action, including the procurement of the services of attorneys by contract, determined by the Secretary to be necessary or desirable in making, purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with assets held in connection with financial assistance provided under this chapter;

(10)(A) employ experts and consultants or organizations as authorized by section 3109 of title 5 except that contracts for such employment may be renewed annually;

(B) compensate individuals so employed, including compensation for travel time; and

(C) allow individuals so employed, while away from their homes or regular places of business, travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons employed intermittently in the Federal Government service;

(11) establish performance measures for grants and other assistance provided under this chapter, and use the performance measures to evaluate the economic impact of economic development assistance programs under this chapter, which establishment and use of performance measures shall be provided by the Secretary through—

(A) officers or employees of the Department;

(B) the employment of persons under contracts entered into for such purposes; or

(C) grants to persons, using funds made available to carry out this chapter;

(12) conduct environmental reviews and incur necessary expenses to evaluate and monitor the environmental impact of economic development assistance provided and proposed to be provided under this chapter, including expenses associated with the representation and defense of the actions of the Secretary relating to the environmental impact of the assistance, using any funds made available to carry out section 3147 of this title;

(13) sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, except that no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or the property of the Secretary; and

(14) establish such rules, regulations, and procedures as the Secretary considers appropriate for carrying out this chapter.

(b) Deficiency judgments

The authority under subsection (a)(7) of this section to pursue claims shall include the authority to obtain deficiency judgments or otherwise pursue claims relating to mortgages assigned to the Secretary.

(c) Inapplicability of certain other requirements

Section 5 of title 41 shall not apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Secretary as a result of assistance provided under this chapter if the premium for the insurance or the amount of the services or supplies does not exceed $1,000.

(d) Property interests

(1) In general

The powers of the Secretary under this section, relating to property acquired by the Secretary in connection with assistance provided under this chapter, shall extend to property interests of the Secretary relating to projects approved under—

(A) this chapter;

(B) title I of the Public Works Employment Act of 1976 (42 U.S.C. 6701 et seq.);

(C) title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.); and

(D) the Community Emergency Drought Relief Act of 1977 (42 U.S.C. 5184 note; Public Law 95–31).

(2) Release

The Secretary may release, in whole or in part, any real property interest, or tangible personal property interest, in connection with a grant after the date that is 20 years after the date on which the grant was awarded.

(e) Powers of conveyance and execution

The power to convey and to execute, in the name of the Secretary, deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest in such property acquired by the Sec-

retary under this chapter may be exercised by the Secretary, or by any officer or agent appointed by the Secretary for that purpose, without the execution of any express delegation of power or power of attorney.

(Pub. L. 89–136, title VI, § 601, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3611.)

REFERENCES IN TEXT

The civil service and classification laws, referred to in subsec. (a)(2), are the civil service laws which are set forth in Title 5, Government Organization and Employees, particularly section 3301 et seq. of Title 5, and the classification laws which are set forth in chapter 51 and subchapter III of chapter 53 of Title 5.

The Public Works Employment Act of 1976, referred to in subsec. (d)(1)(B), is Pub. L. 94–369, July 22, 1976, 90 Stat. 999, as amended. Title I of the Act, known as the Local Public Works Capital Development and Investment Act of 1976, is classified generally to subchapter I (§ 6701 et seq.) of chapter 80 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6701 of this title and Tables.

The Trade Act of 1974, referred to in subsec. (d)(1)(C), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Title II of the Act is classified generally to subchapter II (§ 2251 et seq.) of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The Community Emergency Drought Relief Act of 1977, referred to in subsec. (d)(1)(D), is Pub. L. 95–31, May 23, 1977, 91 Stat. 169. Title I of the Act is set out as a note under section 5184 of this title. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 3211, Pub. L. 89–136, title VII, § 701, Aug. 26, 1965, 79 Stat. 570, set forth powers of Secretary, prior to repeal by Pub. L. 105–393, § 102(b)(3).

A prior section 601(a) of Pub. L. 89–136 was classified to section 3201 of this title prior to repeal by Pub. L. 105–393, § 102(a).

§ 3212. Maintenance of standards

All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.

(Pub. L. 89–136, title VI, § 602, formerly title VII, § 712, Aug. 26, 1965, 79 Stat. 575; Pub. L. 93–567, title III, § 302, Dec. 31, 1974, 88 Stat. 1855; renumbered title VI, § 602, and amended Pub. L. 105–393, title I, § 102(b)(1), (2), Nov. 13, 1998, 112 Stat. 3616; Pub. L. 108–373, title V, § 504, Oct. 27, 2004, 118 Stat. 1769.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was formerly classified to section 3222 of this title prior to renumbering by Pub. L. 105–393.

PRIOR PROVISIONS

A prior section 3212, Pub. L. 89–136, title VII, § 702, Aug. 26, 1965, 79 Stat. 572, related to prevention of unfair competition, prior to repeal by Pub. L. 105–393, § 102(b)(3).

A prior section 602 of Pub. L. 89–136 was classified to section 3202 of this title prior to repeal by Pub. L. 105–393, § 102(a).

AMENDMENTS

2004—Pub. L. 108–373 substituted ''in accordance with subchapter IV of chapter 31 of title 40'' for ''in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5)'' in first sentence and ''section 3145 of title 40'' for ''section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)'' in third sentence.

1998—Pub. L. 105–393, § 102(b)(2)(A), substituted section catchline for former section catchline.

Pub. L. 105–393, § 102(b)(2)(B), which directed amendment of text by substituting ''this chapter'' for ''sections 3131, 3141, 3142, 3171, 3243, and 3246b of this title'' in second sentence, was executed by making the substitution for phrase which began with ''section 3131'' rather than ''sections 3131'', to reflect the probable intent of Congress.

1974—Pub. L. 93–567 inserted references to sections 3243 and 3236b of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–393 effective on date determined by Secretary of Commerce, but not later than 90 days after Nov. 13, 1998, see section 105 of Pub. L. 105–393, set out as an Effective Date note under section 3121 of this title.

§ 3213. Annual report to Congress

(a) In general

Not later than July 1, 2000, and July 1 of each year thereafter, the Secretary shall submit to Congress a comprehensive and detailed annual report on the activities of the Secretary under this chapter during the most recently completed fiscal year.

(b) Inclusions

Each report required under subsection (a) of this section shall—

(1) include a list of all grant recipients by State, including the projected private sector dollar to Federal dollar investment ratio for each grant recipient;

(2) include a discussion of any private sector leveraging goal with respect to grants awarded to—

(A) rural and urban economically distressed areas; and

(B) highly distressed areas; and

(3) after the completion of a project, include the realized private sector dollar to Federal dollar investment ratio for the project.

(Pub. L. 89–136, title VI, § 603, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3614; amended Pub. L. 108–373, title VI, § 601, Oct. 27, 2004, 118 Stat. 1769.)

PRIOR PROVISIONS

A prior section 3213, Pub. L. 89–136, title VII, § 703, Aug. 26, 1965, 79 Stat. 572, set forth savings provisions, prior to repeal by Pub. L. 105–393, § 102(b)(3).

A prior section 603 of Pub. L. 89–136 was classified to section 3203 of this title prior to repeal by Pub. L. 105–393, § 102(a).

AMENDMENTS

2004—Pub. L. 108–373 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 3214. Delegation of functions and transfer of funds among Federal agencies

(a) Delegation of functions to other Federal agencies

The Secretary may—

(1) delegate to the heads of other Federal agencies such functions, powers, and duties of the Secretary under this chapter as the Secretary determines to be appropriate; and

(2) authorize the redelegation of the functions, powers, and duties by the heads of the agencies.

(b) Transfer of funds to other Federal agencies

Funds authorized to be appropriated to carry out this chapter may be transferred between Federal agencies, if the funds are used for the purposes for which the funds are specifically authorized and appropriated.

(c) Transfer of funds from other Federal agencies

(1) In general

Subject to paragraph (2), for the purposes of this chapter, the Secretary may accept transfers of funds from other Federal agencies if the funds are used for the purposes for which (and in accordance with the terms under which) the funds are specifically authorized and appropriated.

(2) Use of funds

The transferred funds—

(A) shall remain available until expended; and

(B) may, to the extent necessary to carry out this chapter, be transferred to and merged by the Secretary with the appropriations for salaries and expenses.

(Pub. L. 89–136, title VI, § 604, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3614.)

PRIOR PROVISIONS

A prior section 3214, Pub. L. 89–136, title VII, § 704, Aug. 26, 1965, 79 Stat. 572; Pub. L. 94–487, title I, § 120, Oct. 12, 1976, 90 Stat. 2336, related to transfer of functions of Area Redevelopment Administration, prior to repeal by Pub. L. 105–393, § 102(b)(3).

A prior section 604 of Pub. L. 89–136 was classified to section 3204 of this title prior to repeal by Pub. L. 105–393, § 102(a).

§ 3215. Penalties

(a) False statements; security overvaluation

A person that makes any statement that the person knows to be false, or willfully overvalues any security, for the purpose of—

(1) obtaining for the person or for any applicant any financial assistance under this chapter or any extension of the assistance by renewal, deferment, or action, or by any other means, or the acceptance, release, or substitution of security for the assistance;

(2) influencing in any manner the action of the Secretary; or

(3) obtaining money, property, or any thing of value, under this chapter;

shall be fined under title 18, imprisoned not more than 5 years, or both.

(b) Embezzlement and fraud-related crimes

A person that is connected in any capacity with the Secretary in the administration of this chapter and that—

(1) embezzles, abstracts, purloins, or willfully misapplies any funds, securities, or other thing of value, that is pledged or otherwise entrusted to the person;

(2) with intent to defraud the Secretary or any other person or entity, or to deceive any officer, auditor, or examiner—

(A) makes any false entry in any book, report, or statement of or to the Secretary; or

(B) without being duly authorized, draws any order or issue, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof;

(3) with intent to defraud, participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, grant, commission, contract, or any other act of the Secretary; or

(4) gives any unauthorized information concerning any future action or plan of the Secretary that might affect the value of securities, or having such knowledge invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans, grants, or other assistance from the Secretary;

shall be fined under title 18, imprisoned not more than 5 years, or both.

(Pub. L. 89–136, title VI, § 605, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3614.)

PRIOR PROVISIONS

A prior section 3215, Pub. L. 89–136, title VII, § 705, Aug. 26, 1965, 79 Stat. 573, related to separability of provisions, prior to repeal by Pub. L. 105–393, § 102(b)(3).

§ 3216. Employment of expediters and administrative employees

Assistance shall not be provided by the Secretary under this chapter to any business unless the owners, partners, or officers of the business—

(1) certify to the Secretary the names of any attorneys, agents, and other persons engaged by or on behalf of the business for the purpose of expediting applications made to the Secretary for assistance of any kind, under this chapter, and the fees paid or to be paid to the person for expediting the applications; and

(2) execute an agreement binding the business, for the 2-year period beginning on the date on which the assistance is provided by the Secretary to the business, to refrain from employing, offering any office or employment to, or retaining for professional services, any person who, on the date on which the assistance or any part of the assistance was pro-

vided, or within the 1-year period ending on that date—

(A) served as an officer, attorney, agent, or employee of the Department; and

(B) occupied a position or engaged in activities that the Secretary determines involved discretion with respect to the granting of assistance under this chapter.

(Pub. L. 89–136, title VI, § 606, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3615.)

PRIOR PROVISIONS

A prior section 3216, Pub. L. 89–136, title VII, § 706, Aug. 26, 1965, 79 Stat. 573, defined terms as used in this chapter, prior to repeal by Pub. L. 105–393, § 102(b)(3).

§ 3217. Maintenance and public inspection of list of approved applications for financial assistance

(a) In general

The Secretary shall—

(1) maintain as a permanent part of the records of the Department a list of applications approved for financial assistance under this chapter; and

(2) make the list available for public inspection during the regular business hours of the Department.

(b) Additions to list

The following information shall be added to the list maintained under subsection (a) of this section as soon as an application described in subsection (a)(1) of this section is approved:

(1) The name of the applicant and, in the case of a corporate application, the name of each officer and director of the corporation.

(2) The amount and duration of the financial assistance for which application is made.

(3) The purposes for which the proceeds of the financial assistance are to be used.

(Pub. L. 89–136, title VI, § 607, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3615.)

PRIOR PROVISIONS

A prior section 3217, Pub. L. 89–136, title VII, § 707, Aug. 26, 1965, 79 Stat. 573; Pub. L. 94–273, § 26, Apr. 21, 1976, 90 Stat. 380, required annual report to Congress on operations under this chapter, prior to repeal by Pub. L. 105–393, § 102(b)(3).

§ 3218. Records and audits

(a) Recordkeeping and disclosure requirements

Each recipient of assistance under this chapter shall keep such records as the Secretary shall require, including records that fully disclose—

(1) the amount and the disposition by the recipient of the proceeds of the assistance;

(2) the total cost of the project in connection with which the assistance is given or used;

(3) the amount and nature of the portion of the cost of the project provided by other sources; and

(4) such other records as will facilitate an effective audit.

(b) Access to books for examination and audit

The Secretary, the Inspector General of the Department, and the Comptroller General of the United States, or any duly authorized representative, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that relate to assistance received under this chapter.

(Pub. L. 89–136, title VI, § 608, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3616.)

PRIOR PROVISIONS

A prior section 3218, Pub. L. 89–136, title VII, § 708, Aug. 26, 1965, 79 Stat. 573, authorized delegation of functions and transfer of funds, prior to repeal by Pub. L. 105–393, § 102(b)(3).

§ 3219. Relationship to assistance under other law

Nothing in this chapter authorizes or permits any reduction in the amount of Federal assistance that any State or other entity eligible under this chapter is entitled to receive under any other Act.

(Pub. L. 89–136, title VI, § 609, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3616; amended Pub. L. 108–373, title VI, § 602, Oct. 27, 2004, 118 Stat. 1769.)

PRIOR PROVISIONS

A prior section 3219, Pub. L. 89–136, title VII, § 709, Aug. 26, 1965, 79 Stat. 574; Pub. L. 97–35, title XVIII, § 1821(a)(9), Aug. 13, 1981, 95 Stat. 766, authorized appropriations for which specific authority was not otherwise provided, prior to repeal by Pub. L. 105–393, § 102(b)(3).

AMENDMENTS

2004—Pub. L. 108–373 designated text of subsec. (b) as entire section and struck out subsec. (b) heading and heading and text of subsec. (a). Prior to amendment, text of subsec. (a) read as follows: ''Except as otherwise provided in this chapter, all financial and technical assistance authorized under this chapter shall be in addition to any Federal assistance authorized before the effective date of the Economic Development Administration Reform Act of 1998.''

§ 3220. Acceptance of certifications by applicants

Under terms and conditions determined by the Secretary, the Secretary may accept the certifications of an applicant for assistance under this chapter that the applicant meets the requirements of this chapter.

(Pub. L. 89–136, title VI, § 610, as added Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3616.)

PRIOR PROVISIONS

A prior section 3220, Pub. L. 89–136, title VII, § 710, Aug. 26, 1965, 79 Stat. 574, set forth penalties for false statements, securities overvaluation, embezzlement, misapplication of funds, false book entries, schemes to defraud, and speculation, prior to repeal by Pub. L. 105–393, title I, § 102(b)(3), Nov. 13, 1998, 112 Stat. 3617.

§ 3221. Brownfields redevelopment report

(a) Definition of brownfield site

In this section, the term ''brownfield site'' has the meaning given the term in section 9601(39) of this title.

(b) Report

(1) In general

Not later than 1 year after October 27, 2004, the Comptroller General shall prepare a report

that evaluates the grants made by the Economic Development Administration for the economic development of brownfield sites.

(2) Contents

The report shall—

(A) identify each project conducted during the previous 10-year period in which grant funds have been used for brownfield sites redevelopment activities; and

(B) include for each project a description of—

(i) the type of economic development activities conducted;

(ii) if remediation activities were conducted—

(I) the type of remediation activities; and

(II) the amount of grant money used for those activities in dollars and as a percentage of the total grant award;

(iii) the economic development and environmental standards applied, if applicable;

(iv) the economic development impact of the project;

(v) the role of Federal, State, or local environmental agencies, if any; and

(vi) public participation in the project.

(3) Submission of report

The Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a copy of the report.

(Pub. L. 89–136, title VI, § 611, as added Pub. L. 108–373, title VI, § 603(a), Oct. 27, 2004, 118 Stat. 1769.)

PRIOR PROVISIONS

A prior section 3221, Pub. L. 89–136, title VII, § 711, Aug. 26, 1965, 79 Stat. 574, related to employment of expediters and administrative employees, prior to repeal by Pub. L. 105–393, title I, § 102(b)(3), Nov. 13, 1998, 112 Stat. 3617.

§ 3222. Savings clause

To the extent that any portion of grants made under this chapter are used for an economic development project that involves remediation, the remediation shall be conducted in compliance with all applicable Federal, State, and local laws and standards.

(Pub. L. 89–136, title VI, § 612, as added Pub. L. 108–373, title VI, § 604(a), Oct. 27, 2004, 118 Stat. 1770.)

PRIOR PROVISIONS

A prior section 3222, Pub. L. 89–136, title VII, § 712, Aug. 26, 1965, 79 Stat. 575; Pub. L. 93–567, title III, § 302, Dec. 31, 1974, 88 Stat. 1855, which related to labor standards and rate of wages, was renumbered section 602 of Pub. L. 89–136 by Pub. L. 105–393 and transferred to section 3212 of this title.

Prior sections 3223 to 3226 were repealed by Pub. L. 105–393, title I, § 102(b)(3), Nov. 13, 1998, 112 Stat. 3617.

Section 3223, Pub. L. 89–136, title VII, § 713, Aug. 26, 1965, 79 Stat. 575, required maintenance of records of approved applications and availability for public inspection.

Section 3224, Pub. L. 89–136, title VII, § 714, Aug. 26, 1965, 79 Stat. 575, related to recordkeeping and audits.

Section 3225, Pub. L. 89–136, title VII, § 715, Aug. 26, 1965, 79 Stat. 575, extended benefits to redevelopment areas under former section 2504 of this title.

Section 3226, Pub. L. 89–136, title VII, § 716, Aug. 26, 1965, 79 Stat. 576, prohibited statutory construction which could cause diminution in other Federal assistance.

SUBCHAPTER VII—FUNDING

§ 3231. General authorization of appropriations

(a) Economic development assistance programs

There are authorized to be appropriated for economic development assistance programs to carry out this chapter, to remain available until expended—

(1) $400,000,000 for fiscal year 2004;

(2) $425,000,000 for fiscal year 2005;

(3) $450,000,000 for fiscal year 2006;

(4) $475,000,000 for fiscal year 2007; and

(5) $500,000,000 for fiscal year 2008.

(b) Salaries and expenses

There are authorized to be appropriated for salaries and expenses of administering this chapter, to remain available until expended—

(1) $33,377,000 for fiscal year 2004; and

(2) such sums as are necessary for each fiscal year thereafter.

(Pub. L. 89–136, title VII, § 701, as added Pub. L. 105–393, title I, § 102(b)(3), Nov. 13, 1998, 112 Stat. 3617; amended Pub. L. 108–373, title VII, § 701, Oct. 27, 2004, 118 Stat. 1771.)

PRIOR PROVISIONS

A prior section 3231, Pub. L. 89–136, title VIII, § 801, as added Pub. L. 93–288, title V, § 501, May 22, 1974, 88 Stat. 160; amended Pub. L. 100–707, title I, § 109(r)(1), Nov. 23, 1988, 102 Stat. 4710, set forth congressional statement of purpose and defined ''major disaster'', prior to repeal by Pub. L. 105–393, § 102(c).

A prior section 701 of Pub. L. 89–136 was classified to section 3211 of this title prior to repeal by Pub. L. 105–393, § 102(b)(3).

AMENDMENTS

2004—Pub. L. 108–373 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out this chapter $397,969,000 for fiscal year 1999, $368,000,000 for fiscal year 2000, $335,000,000 for fiscal year 2001, $335,000,000 for fiscal year 2002, and $335,000,000 for fiscal year 2003, to remain available until expended.''

§ 3232. Authorization of appropriations for defense conversion activities

(a) In general

In addition to amounts made available under section 3231 of this title, there are authorized to be appropriated such sums as are necessary to carry out section 3149(c)(1) of this title, to remain available until expended.

(b) Pilot projects

Funds made available under subsection (a) of this section may be used for activities including pilot projects for privatization of, and economic development activities for, closed or realigned military or Department of Energy installations.

(Pub. L. 89–136, title VII, § 702, as added Pub. L. 105–393, title I, § 102(b)(3), Nov. 13, 1998, 112 Stat. 3617.)

PRIOR PROVISIONS

A prior section 3232, Pub. L. 89–136, title VIII, § 802, as added Pub. L. 93–288, title V, § 501, May 22, 1974, 88 Stat. 160; amended Pub. L. 100–707, title I, § 109(r)(2), Nov. 23, 1988, 102 Stat. 4710, related to disaster recovery planning, prior to repeal by Pub. L. 105–393, § 102(c).

A prior section 702 of Pub. L. 89–136 was classified to section 3212 of this title prior to repeal by Pub. L. 105–393, § 102(b)(3).

§ 3233. Authorization of appropriations for disaster economic recovery activities

(a) In general

In addition to amounts made available under section 3231 of this title, there are authorized to be appropriated such sums as are necessary to carry out section 3149(c)(2) of this title, to remain available until expended.

(b) Federal share

The Federal share of the cost of activities funded with amounts made available under subsection (a) of this section shall be up to 100 percent.

(Pub. L. 89–136, title VII, § 703, as added Pub. L. 105–393, title I, § 102(b)(3), Nov. 13, 1998, 112 Stat. 3617.)

PRIOR PROVISIONS

A prior section 3233, Pub. L. 89–136, title VIII, § 803, as added Pub. L. 93–288, title V, § 501, May 22, 1974, 88 Stat. 161, authorized provision of funds for recovery investment plans, prior to repeal by Pub. L. 105–393, title I, § 102(c), Nov. 13, 1998, 112 Stat. 3617.

A prior section 703 of Pub. L. 89–136 was classified to section 3213 of this title prior to repeal by Pub. L. 105–393, § 102(b)(3).

§ 3234. Funding for grants for planning and grants for administrative expenses

Of the amounts made available under section 3231 of this title for each fiscal year, not less than $27,000,000 shall be made available for grants provided under section 3143 of this title.

(Pub. L. 89–136, title VII, § 704, as added Pub. L. 108–373, title VII, § 702(a), Oct. 27, 2004, 118 Stat. 1771.)

PRIOR PROVISIONS

Prior sections 3234 and 3235 were repealed by Pub. L. 105–393, title I, § 102(c), Nov. 13, 1998, 112 Stat. 3617.

Section 3234, Pub. L. 89–136, title VIII, § 804, as added Pub. L. 93–288, title V, § 501, May 22, 1974, 88 Stat. 162, authorized disaster area loan guarantees.

Section 3235, Pub. L. 89–136, title VIII, § 805, as added Pub. L. 93–288, title V, § 501, May 22, 1974, 88 Stat. 162, authorized provision of technical assistance for facilitation of economic recovery in disaster areas.

A prior section 3236, Pub. L. 89–136, title VIII, § 806, as added Pub. L. 93–288, title V, § 501, May 22, 1974, 88 Stat. 163, related to authorization of appropriations for subchapter, prior to repeal by Pub. L. 97–35, title XVIII, § 1821(a)(10), Aug. 13, 1981, 95 Stat. 766.

Prior sections 3241 to 3246c were repealed by Pub. L. 105–393, title I § 102(c), Nov. 13, 1998, 112 Stat. 3617.

Section 3241, Pub. L. 89–136, title IX, § 901, as added Pub. L. 93–423, § 12, Sept. 27, 1974, 88 Stat. 1164; amended Pub. L. 94–487, title I, § 121(a), Oct. 12, 1976, 90 Stat. 2336, stated purpose of former subchapter IX.

Section 3242, Pub. L. 89–136, title IX, § 902, as added Pub. L. 93–423, § 12, Sept. 27, 1974, 88 Stat. 1164, defined ''eligible recipient''.

Section 3243, Pub. L. 89–136, title IX, § 903, as added Pub. L. 93–423, § 12, Sept. 27, 1974, 88 Stat. 1164; amended Pub. L. 94–487, title I, § 121(b), (c), Oct. 12, 1976, 90 Stat. 2336, authorized grants to eligible recipients.

Section 3244, Pub. L. 89–136, title IX, § 904, as added Pub. L. 93–423, § 12, Sept. 27, 1974, 88 Stat. 1165; amended Pub. L. 96–470, title II, § 201(c), Oct. 19, 1980, 94 Stat. 2241, required annual reports by recipients and Secretary.

Section 3245, Pub. L. 89–136, title IX, § 905, as added Pub. L. 93–423, § 12, Sept. 27, 1974, 88 Stat. 1166; amended Pub. L. 94–487, title I, § 121(d), Oct. 12, 1976, 90 Stat. 2336; Pub. L. 96–506, § 1(10), Dec. 8, 1980, 94 Stat. 2746; Pub. L. 97–35, title XVIII, § 1821(a)(11), Aug. 13, 1981, 95 Stat. 766, authorized appropriations.

Section 3246, Pub. L. 89–136, title X, § 1001, as added Pub. L. 93–567, title III, § 301, Dec. 31, 1974, 88 Stat. 1853, stated the purpose of former subchapter X.

Section 3246a, Pub. L. 89–136, title X, § 1002, as added Pub. L. 93–567, title III, § 301, Dec. 31, 1974, 88 Stat. 1853; amended Pub. L. 94–487, title I, § 122, Oct. 12, 1976, 90 Stat. 2337, defined ''eligible area''.

Section 3246b, Pub. L. 89–136, title X, § 1003, as added Pub. L. 93–567, title III, § 301, Dec. 31, 1974, 88 Stat. 1853; amended Pub. L. 94–487, title I, § 123, Oct. 12, 1976, 90 Stat. 2337, authorized a job opportunities program.

Section 3246c, Pub. L. 89–136, title X, § 1004, as added Pub. L. 93–567, title III, § 301, Dec. 31, 1974, 88 Stat. 1854; amended Pub. L. 94–487, title I, § 124, Oct. 12, 1976, 90 Stat. 2337, related to program review.

A prior section 3246d, Pub. L. 89–136, title X, § 1005, as added Pub. L. 93–567, title III, § 301, Dec. 31, 1974, 88 Stat. 1855, related to the limitations on the use of funds appropriated pursuant to section 3246f of this title for programs and projects, prior to repeal by Pub. L. 94–487, title I, § 125, Oct. 12, 1976, 90 Stat. 2338.

Prior sections 3246e to 3246h were repealed by Pub. L. 105–393, title I, § 102(c), Nov. 13, 1998, 112 Stat. 3617.

Section 3246e, Pub. L. 89–136, title X, § 1005, formerly § 1006, as added Pub. L. 93–567, title III, § 301, Dec. 31, 1974, 88 Stat. 1855; renumbered § 1005 and amended Pub. L. 94–487, title I, §§ 125, 126, Oct. 12, 1976, 90 Stat. 2338, authorized the prescription of rules, regulations, and procedures.

Section 3246f, Pub. L. 89–136, title X, § 1006, formerly § 1007, as added Pub. L. 93–567, title III, § 301, Dec. 31, 1974, 88 Stat. 1855; renumbered § 1006 and amended Pub. L. 94–487, title I, §§ 125, 127, Oct. 12, 1976, 90 Stat. 2338, authorized appropriations.

Section 3246g, Pub. L. 89–136, title X, § 1007, formerly § 1008, as added Pub. L. 93–567, title III, § 301, Dec. 31, 1976, 88 Stat. 1855; renumbered § 1007 and amended Pub. L. 94–487, title I, §§ 125, 128, Oct. 12, 1976, 90 Stat. 2338; Pub. L. 96–506, § 1(11), Dec. 8, 1980, 94 Stat. 2746; Pub. L. 97–35, title XVIII, § 1821(a)(12), Aug. 13, 1981, 95 Stat. 766, provided that no further obligation of funds appropriated under former subchapter X could be made by the Secretary of Commerce after Sept. 30, 1981.

Section 3246h, Pub. L. 89–136, title X, § 1008, as added Pub. L. 94–487, title I, § 129, Oct. 12, 1976, 90 Stat. 2339, provided that a program or project was not ineligible for financial assistance solely because of increased construction costs.

CHAPTER 39—SOLID WASTE DISPOSAL

§§ 3251 to 3254f. Omitted

CODIFICATION

Sections 3251 to 3254f were omitted in the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795.

Section 3251, Pub. L. 89–272, title II, § 202, Oct. 20, 1965, 79 Stat. 997; Pub. L. 91–512, title I, § 101, Oct. 26, 1970, 84 Stat. 1227, set out Congressional findings and declaration of purpose. See sections 6901 and 6902 of this title.

Section 3252, Pub. L. 89–272, title II, § 203, Oct. 20, 1965, 79 Stat. 998; Pub. L. 91–512, title I, § 102, Oct. 26, 1970, 84 Stat. 1228, defined terms. See section 6903 of this title.

Section 3253, Pub. L. 89–272, title II, § 204, Oct. 20, 1965, 79 Stat. 998; Pub. L. 91–512, title I, § 103, Oct. 26, 1970, 84 Stat. 1228, made provisions for research, demonstra-

tions, training, and other activities relating to solid waste disposal. See section 6981 of this title.

Section 3253a, Pub. L. 89–272, title II, § 205, as added Pub. L. 91–512, title I, § 104(a), Oct. 26, 1970, 84 Stat. 1228, directed Secretary to study methods of recovering useful energy and materials. See section 6985 of this title.

Section 3254, Pub. L. 89–272, title II, § 206, formerly § 205, Oct. 20, 1965, 79 Stat. 999; renumbered § 206, Pub. L. 91–512, title I, § 104(a), Oct. 26, 1970, 84 Stat. 1228, directed Secretary to encourage interstate and interlocal cooperation. See section 6941 of this title.

Section 3254a, Pub. L. 89–272, title II, § 207, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1229, authorized Secretary to make grants for State, interstate, and local planning.

Section 3254b, Pub. L. 89–272, title II, § 208, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1230, authorized Secretary to make grants for resource recovery systems and improved solid waste disposal facilities. See section 6986 of this title.

Section 3254c, Pub. L. 89–272, title II, § 209, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1232, provided for recommendation of guidelines by the Secretary. See section 6907 of this title.

Section 3254d, Pub. L. 89–272, title II, § 210, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1232, authorized the Secretary to enter into contracts with and to make grants to eligible organizations. See section 6977 of this title.

Section 3254e, Pub. L. 89–272, title II, § 211, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1233, provided for applicability of solid waste disposal guidelines to Executive agencies. See section 6964 of this title.

Section 3254f, Pub. L. 89–272, title II, § 212, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1233, provided for a national disposal sites study for storage and disposal of hazardous wastes. See section 6921 et seq. of this title.

§ 3255. Repealed. Pub. L. 91–512, title I, § 104(a), Oct. 26, 1970, 84 Stat. 1228

Section, Pub. L. 89–272, title II, § 206, Oct. 20, 1965, 79 Stat. 999, authorized grants to State and interstate agencies for surveys of solid-waste disposal practices and problems, and for development of solid-waste disposal plans.

§§ 3256 to 3259. Omitted

CODIFICATION

Sections 3256 to 3259 were omitted in the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795.

Section 3256, Pub. L. 89–272, title II, § 213, formerly § 207, Oct. 20, 1965, 79 Stat. 1000, renumbered Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1229, set the labor standards for construction projects funded by grants under this chapter. See section 6979 of this title.

Section 3257, Pub. L. 89–272, title II, § 214, formerly § 208, Oct. 20, 1965, 79 Stat. 1000, renumbered Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1229, prohibited a construction of this chapter which might supersede or limit the authorities and responsibilities of Federal officers under other provisions of law. See section 6905 of this title.

Section 3258, Pub. L. 89–272, title II, § 215, formerly § 209, Oct. 20, 1965, 79 Stat. 1001, renumbered and amended Pub. L. 91–512, title I, § 104(b), (c), Oct. 26, 1970, 84 Stat. 1229, 1233, 1234, provided for mode of payments and prohibited making of grants to profitmaking organizations. See section 6978 of this title.

Section 3259, Pub. L. 89–272, title II, § 216, formerly § 210, Oct. 20, 1965, 79 Stat. 1001, amended Pub. L. 90–574, title V, § 506, Oct. 15, 1968, 82 Stat. 1013, and renumbered and amended Pub. L. 91–512, title I, §§ 104(b), 105, Oct. 26, 1970, 84 Stat. 1229, 1234; Pub. L. 93–14, § 1, Apr. 9, 1973, 87 Stat. 11; Pub. L. 93–611, Jan. 2, 1975, 88 Stat. 1974, authorized appropriations. See section 6987 of this title.

CHAPTER 40—SOIL INFORMATION ASSISTANCE FOR COMMUNITY PLANNING AND RESOURCE DEVELOPMENT

Sec.
3271. Availability of soil surveys under soil survey program.
3272. Cooperative assistance to State and other public agencies; types of assistance; private engineering services.
3273. Contributions of State or other public agencies toward cost of soil surveys.
3274. Authorization of appropriations.

§ 3271. Availability of soil surveys under soil survey program

In recognition of the increasing need for soil surveys by the States and other public agencies in connection with community planning and resource development for protecting and improving the quality of the environment, meeting recreational needs, conserving land and water resources, providing for multiple uses of such resources, and controlling and reducing pollution from sediment and other pollutants in areas of rapidly changing uses, including farmlands being shifted to other uses, resulting from rapid expansions in the uses of land for industry, housing, transportation, recreation, and related services, it is the sense of Congress that the soil survey program of the United States Department of Agriculture should be conducted so as to make available soil surveys to meet such needs of the States and other public agencies in connection with community planning and resource development.

(Pub. L. 89–560, § 1, Sept. 7, 1966, 80 Stat. 706.)

§ 3272. Cooperative assistance to State and other public agencies; types of assistance; private engineering services

In order to provide soil surveys to assist States, their political subdivisions, soil and water conservation districts, towns, cities, planning boards and commissions, community development districts, and other public agencies in community planning and resource development for the protection and improvement of the quality of the environment, recreational development, the conservation of land and water resources, the development of multiple uses of such resources, and the control and prevention of pollution from sediment and other pollutants in areas of rapidly changing uses, including farm and nonfarm areas, the Secretary of Agriculture shall, upon the request of a State or other public agency, provide by means of such cooperative arrangements with the State or other public agency as he may deem advisable, the following assistance with respect to such areas and purposes:

(1) the making of studies and reports necessary for the classification and interpretation of kinds of soil;

(2) an intensification of the use and benefits of the National Cooperative Soil Survey;

(3) the furnishing of technical and other assistance needed for use of soil surveys; and

(4) consultation with other Federal agencies participating or assisting in the planning and development of such areas in order to assure

the coordination of the work under this chapter with the related work of such other agencies.

The provision by the Secretary of such assistance shall not interfere with the furnishing of engineering services by private engineering firms or consultants for on-site sampling and testing of sites or for design and construction of specific engineering works.

(Pub. L. 89–560, § 2, Sept. 7, 1966, 80 Stat. 706.)

§ 3273. Contributions of State or other public agencies toward cost of soil surveys

It is further the sense of the Congress that the Secretary shall make a reasonable effort to assure that the contributions of any State or other public agency under any cooperative agreement which may be entered into between the Secretary and such State or other public agency with respect to a soil survey shall be a substantial portion of the cost of such soil survey.

(Pub. L. 89–560, § 3, Sept. 7, 1966, 80 Stat. 706.)

§ 3274. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter, such sums to remain available until expended.

(Pub. L. 89–560, § 4, Sept. 7, 1966, 80 Stat. 706.)

CHAPTER 41—DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT PROGRAM

SUBCHAPTER I—COMPREHENSIVE CITY DEMONSTRATION PROGRAMS

Sec.
3301 to 3313. Omitted.

SUBCHAPTER II—PLANNED AREAWIDE DEVELOPMENT

3331. Congressional findings and declaration of purpose.
3332. Cooperation between Federal agencies.
3333. Metropolitan expediters.
3334. Coordination of Federal aids with local governments.
3335. Grants to assist in planned areawide development.
3336. Amount of grant.
3337. Consultations and certifications.
3338. Definitions.
3339. Limitation on amount of grant.

SUBCHAPTER III—URBAN INFORMATION AND TECHNICAL ASSISTANCE SERVICES

3351 to 3356. Omitted.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

3371. Assistance for housing in Alaska.
3372, 3373. Repealed.
3374. Acquisition of property at or near military bases which have been ordered to be closed.

SUBCHAPTER I—COMPREHENSIVE CITY DEMONSTRATION PROGRAMS

§§ 3301 to 3313. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title, which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 3301, Pub. L. 89–754, title I, § 101, Nov. 3, 1966, 80 Stat. 1255, set out Congressional findings and declaration of purpose for this subchapter.

Section 3302, Pub. L. 89–754, title I, § 102, Nov. 3, 1966, 80 Stat. 1255, set out basic authority of Secretary of Housing and Urban Development under this subchapter.

Section 3303, Pub. L. 89–754, title I, § 103, Nov. 3, 1966, 80 Stat. 1256; Pub. L. 93–503, title I, § 105, Nov. 26, 1974, 88 Stat. 1572, related to demonstration programs.

Section 3304, Pub. L. 89–754, title I, § 104, Nov. 3, 1966, 80 Stat. 1257, related to financial assistance for planning and developing programs under this subchapter.

Section 3305, Pub. L. 89–754, title I, § 105, Nov. 3, 1966, 80 Stat. 1257, related to financial assistance for approved programs under this subchapter.

Section 3306, Pub. L. 89–754, title I, § 106, Nov. 3, 1966, 80 Stat. 1258, related to technical assistance under this subchapter.

Section 3307, Pub. L. 89–754, title I, § 107, Nov. 3, 1966, 80 Stat. 1259; Pub. L. 91–646, title II, § 220(a)(9), Jan. 2, 1971, 84 Stat. 1903, related to relocation requirements and payments.

Section 3308, Pub. L. 89–754, title I, § 108, Nov. 3, 1966, 80 Stat. 1259, related to continued availability of Federal grant-in-aid program funds.

Section 3309, Pub. L. 89–754, title I, § 109, Nov. 3, 1966, 80 Stat. 1259, related to consultations by the Secretary with other Federal departments and agencies administering Federal grant-in-aid programs.

Section 3310, Pub. L. 89–754, title I, § 110, Nov. 3, 1966, 80 Stat. 1259, related to labor standards.

Section 3311, Pub. L. 89–754, title I, § 111, Nov. 3, 1966, 80 Stat. 1260; Pub. L. 90–448, title XVII, § 1701, Aug. 1, 1968, 82 Stat. 602; Pub. L. 91–152, title III, § 301, Dec. 24, 1969, 83 Stat. 391; Pub. L. 91–609, title III, § 301, Dec. 31, 1970, 84 Stat. 1780; Pub. L. 92–335, § 2, July 1, 1972, 86 Stat. 405; Pub. L. 93–117, § 6, Oct. 2, 1973, 87 Stat. 422; Pub. L. 93–383, title I, § 116(d), Aug. 22, 1974, 88 Stat. 652, authorized appropriations.

Section 3312, Pub. L. 89–754, title I, § 112, Nov. 3, 1966, 80 Stat. 1260, provided definitions of ''Federal grant-in-aid program'', ''city demonstration agency'', ''city'', and ''local agencies''.

Section 3313, Pub. L. 89–754, title I, § 114, Nov. 3, 1966, 80 Stat. 1261, provided for limitations on amount of grants.

SUBCHAPTER II—PLANNED AREAWIDE DEVELOPMENT

§ 3331. Congressional findings and declaration of purpose

(a) The Congress hereby finds that the welfare of the Nation and of its people is directly dependent upon the sound and orderly development and the effective organization and functioning of our State and local governments.

It further finds that it is essential that our State and local governments prepare, keep current, and carry out comprehensive plans and programs for their orderly physical development with a view to meeting efficiently all their economic and social needs.

It further finds that our State and local governments are especially handicapped in this task by the complexity and scope of governmental services required, the multiplicity of political jurisdictions and agencies involved, and the inadequacy of the operational and administrative arrangements available for cooperation among them.

It further finds that present requirements for areawide planning and programing in connection with various Federal programs have materially assisted in the solution of areawide problems, but that greater coordination of Federal

programs and additional participation and cooperation are needed from the States and localities in perfecting and carrying out such efforts.

(b) It is the purpose of this subchapter to provide through greater coordination of Federal programs, and through supplementary grants for certain federally assisted development projects, additional encouragement and assistance to States and localities for making comprehensive areawide planning and programing effective.

(Pub. L. 89–754, title II, § 201, Nov. 3, 1966, 80 Stat. 1261; Pub. L. 90–448, title VI, § 602(b), Aug. 1, 1968, 82 Stat. 531.)

AMENDMENTS

1968—Pub. L. 90–448 extended scope from metropolitan planning and programing to areawide planning and programing.

SHORT TITLE

Section 1 of Pub. L. 89–754 provided: ''That this Act [enacting this chapter, section 1500d–1 of this title, sections 1735f–1, 1749cc–1, and 1749aaa to 1749aaa–5 of Title 12, Banks and Banking, and section 470b–1 of Title 16, Conservation, amending sections 1416, 1421, 1421b, 1453, 1455, 1456, 1460, 1463, 1471, 1472, 1474, 1485, 1487, 1492, 1500, 1500a, 1500c–2, 1500d, and 1500e of this title, section 663 of former Title 11, Bankruptcy, sections 24, 371, 1432, 1438, 1702, 1709, 1715c, 1715e, 1715k, 1715*l*, 1715n, 1715r, 1717, 1719, 1720, 1723, 1731a, 1735g, 1749, 1749c, 1749aa, 1749bb, 1749dd, 1749ee of Title 12, sections 77ddd and 637 of Title 15, Commerce and Trade, and section 461 of former Title 40, Public Buildings, Property, and Works, repealing section 1735h of Title 12, enacting provisions set out as notes under sections 1455 and 1500d–1 of this title and sections 1718, 1749cc–1, and 1749aaa of Title 12, and amending provisions set out as notes under sections 1701d–3, 1701q, and 1715e of Title 12] may be cited as the 'Demonstration Cities and Metropolitan Development Act of 1966'.''

§ 3332. Cooperation between Federal agencies

In order to insure that all Federal programs related to areawide development are carried out in a coordinated manner—

(1) the Secretary is authorized to call upon other Federal agencies to supply such statistical data, program reports, and other materials as he deems necessary to discharge his responsibilities for areawide development, and to assist the President in coordinating the areawide development efforts of all Federal agencies; and

(2) all Federal agencies which are engaged in administering programs related to areawide development, or which otherwise perform functions relating thereto, shall, to the maximum extent practicable, consult with and seek advice from all other significantly affected Federal departments and agencies in an effort to assure fully coordinated programs.

(Pub. L. 89–754, title II, § 202, Nov. 3, 1966, 80 Stat. 1261; Pub. L. 90–448, title VI, § 602(c), Aug. 1, 1968, 82 Stat. 532.)

AMENDMENTS

1968—Pub. L. 90–448 substituted ''areawide'' for ''metropolitan'' wherever appearing.

§ 3333. Metropolitan expediters

Upon the request of the duly authorized local officials of the central city in any metropolitan area, and after consultation with local governmental authorities throughout the metropolitan area with respect to whether or not the Secretary should make an appointment under this section (and with respect to the individuals who might be so appointed), the Secretary may appoint a metropolitan expediter for such area whenever he finds a need for the services specified in this section. The metropolitan expediter shall provide information, data, and assistance to local authorities and private individuals and entities within the metropolitan area, and to all relevant Federal departments and agencies, with respect to all programs and activities conducted within such metropolitan area by the Department of Housing and Urban Development, and with respect to other public and private activities and needs within such metropolitan area which relate to the programs and activities of the Department.

(Pub. L. 89–754, title II, § 203, Nov. 3, 1966, 80 Stat. 1262.)

§ 3334. Coordination of Federal aids with local governments

(a) Review of projects by areawide agency or local government

All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review—

(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

(b) Comments and recommendations by areawide agency and local government

(1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local

government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph (1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c) of this section, or such application, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this subchapter, involves a major change in the project covered by the application prior to such amendment.

(c) Rules and regulations

The Office of Management and Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.

(Pub. L. 89–754, title II, § 204, Nov. 3, 1966, 80 Stat. 1262; Pub. L. 90–351, title I, § 522, June 19, 1968, 82 Stat. 208; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 215.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–83 reenacted amendment by Pub. L. 90–351, inserting ''law enforcement facilities,'' after ''transportation facilities,''.

1968—Subsec. (a). Pub. L. 90–351 inserted ''law enforcement facilities,'' after ''transportation facilities,''.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President of United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget.

§ 3335. Grants to assist in planned areawide development

(a) Supplementary grants

The Secretary is authorized to make supplementary grants to applicant State and local public bodies and agencies carrying out, or assisting in carrying out, areawide development projects meeting the requirements of this section.

(b) Criteria

Grants may be made under this section only for areawide development projects in areas for which it has been demonstrated, to the satisfaction of the Secretary, that—

(1) areawide comprehensive planning and programing provide an adequate basis for evaluating (A) the location, financing, and scheduling of individual public facility projects (including but not limited to hospitals and libraries; sewer, water, and sewage treatment facilities; highway, mass transit, airport, and other transportation facilities; and recreation and other open-space areas) whether or not federally assisted; and (B) other proposed land development or uses, which projects or uses, because of their size, density, type, or location, have public areawide or interjurisdictional significance;

(2) adequate areawide institutional or other arrangements exist for coordinating, on the basis of such areawide comprehensive planning and programing, local public policies and activities affecting the development of the area; and

(3) public facility projects and other land development or uses which have a major impact on the development of the area are, in fact, being carried out in accord with such areawide comprehensive planning and programing.

(c) Grant to unit of general local government or other applicant

(1) Where the applicant for a grant under this section is a unit of general local government, it must demonstrate to the satisfaction of the Secretary that, taking into consideration the scope of its authority and responsibilities, it is adequately assuring that public facility projects and other land development or uses of public areawide or interjurisdictional significance are being, and will be, carried out in accord with areawide planning and programing meeting the requirements of subsection (b) of this section. In making this determination the Secretary shall give special consideration to whether the applicant is effectively assisting in, and conforming to, areawide planning and programing through (A) the location and scheduling of public facility projects, whether or not federally assisted; and (B) where appropriate, the establishment and consistent administration of zoning codes, subdivision regulations, and similar land-use and density controls.

(2) Where the applicant for a grant under this section is not a unit of general local government, both it and the unit of general local government having jurisdiction over the location of the project must meet the requirements of this subsection.

(d) Secretary's consideration of comments of State bodies

In making the determinations required under this section, the Secretary shall obtain, and give full consideration to, the comments of the body or bodies (State or local) responsible for comprehensive planning and programing for the area.

(e) Restriction on grants to certain areawide development projects

No grant shall be made under this section with respect to an areawide development project for

which a Federal grant has been made, or a contract of assistance has been entered into, under the legislation referred to in paragraph (2) of section 3338 of this title, prior to February 21, 1966, or more than one year prior to the date on which the Secretary has made the determinations required under this section with respect to the applicant and to the area in which the project is located: *Provided*, That in the case of a project for which a contract of assistance under the legislation referred to in paragraph (2) of section 3338 of this title has been entered into after June 30, 1967, no grant shall be made under this section unless an application for such grant has been made on or before the date of such contract.

(f) Racial balance or imbalance within school districts

Nothing in this section shall authorize the Secretary to require (or condition the availability or amount of financial assistance authorized to be provided under this subchapter upon) the adoption by any community of a program to achieve a racial balance or to eliminate racial imbalance within school districts.

(Pub. L. 89–754, title II, § 205, Nov. 3, 1966, 80 Stat. 1263; Pub. L. 90–448, title VI, § 602(d), Aug. 1, 1968, 82 Stat. 532.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–448, § 602(d)(1), substituted ''areawide development'' for ''metropolitan development''.

Subsec. (b). Pub. L. 90–448, § 602(d)(1)–(3), substituted ''areawide development projects in areas'' for ''metropolitan development projects in metropolitan areas'', ''areawide comprehensive planning'' for ''metropolitanwide comprehensive planning'' in three places, ''public areawide'' for ''public metropolitanwide'', and ''adequate areawide'' for ''adequate metropolitanwide''.

Subsec. (c). Pub. L. 90–448, § 602(d)(3)–(5), substituted ''public areawide'' for ''public metropolitanwide'', and ''areawide planning'' for ''metropolitan planning'' in two places, and inserted ''where appropriate,'' after ''(B)''.

Subsec. (d). Pub. L. 90–448, § 602(d)(2), substituted ''programing for the area'' for ''programing for the metropolitan area''.

Subsec. (e). Pub. L. 90–448, § 602(d)(1), substituted ''areawide development project'' for ''metropolitan development project''.

Subsec. (f). Pub. L. 90–448, § 602(d)(6), struck out ''within the metropolitanwide area'' after ''school districts''.

§ 3336. Amount of grant

(a) Limitation; Federal and non-Federal contributions; projects or activities eligible for assistance

A grant under section 3335 of this title shall not exceed (1) 20 per centum of the cost of the project for which the grant is made; nor (2) the Federal grant made with respect to the project under the legislation referred to in paragraph (2) of section 3338 of this title. In no case shall the total Federal contributions to the cost of such project be more than 80 per centum. Notwithstanding any other provision of law, including requirements with respect to non-Federal contributions, grants under section 3335 of this title shall be eligible for inclusion (directly or through refunds or credits) as part of the financing for such projects: *Provided*, That projects or activities on the basis of which assistance is provided under section 3305(c) of this title shall not be eligible for assistance under section 3335 of this title.

(b) Authorization of appropriations; availability of funds for expenditures

There are authorized to be appropriated for grants under section 3335 of this title not to exceed $25,000,000 for the fiscal year ending June 30, 1967, and not to exceed $50,000,000 for the fiscal year ending June 30, 1968. Any amounts appropriated under this section shall remain available until expended, and any amounts authorized for any fiscal year under this section but not appropriated may be appropriated for any succeeding fiscal year commencing prior to July 1, 1970.

(Pub. L. 89–754, title II, § 206, Nov. 3, 1966, 80 Stat. 1264; Pub. L. 90–448, title VI, § 602(f), Aug. 1, 1968, 82 Stat. 532.)

REFERENCES IN TEXT

Section 3305 of this title, referred to in subsec. (a), was omitted from the Code pursuant to section 5316 of this title, which terminated the authority to make grants and loans under subchapter I of this chapter after Jan. 1, 1975.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–448 permitted any amounts authorized for any fiscal year but not appropriated to be appropriated for any succeeding fiscal year commencing prior to July 1, 1970.

§ 3337. Consultations and certifications

In carrying out his authority under section 3335 of this title, including the issuance of regulations, the Secretary shall consult with the Department of the Interior; the Department of Health and Human Services; the Department of Commerce; and the Federal Aviation Agency with respect to metropolitan development projects assisted by those departments and agencies; and he shall, for the purpose of section 3336 of this title, accept their respective certifications as to the cost of those projects and the amount of the non-Federal contribution paid or to be paid to that cost.

(Pub. L. 89–754, title II, § 207, Nov. 3, 1966, 80 Stat. 1264; Pub. L. 98–479, title II, § 201(f), Oct. 17, 1984, 98 Stat. 2228.)

AMENDMENTS

1984—Pub. L. 98–479 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Federal Aviation Agency and of Administrator and other offices and officers thereof transferred by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, to Secretary of Transportation, with functions, powers, and duties of Secretary of Transportation pertaining to aviation safety to be exercised by Federal Aviation Administrator in Department of Transportation, see section 106 of Title 49, Transportation.

§ 3338. Definitions

As used in this subchapter—

(1) ''Areawide development'' means all projects or programs for the acquisition, use, and

development of open-space land; and the planning and construction of hospitals, libraries, airports, water supply and distribution facilities, sewerage facilities and waste treatment works, transportation facilities, highways, water development and land conservation, and other public works facilities.

(2) ''Areawide development project'' means a project assisted or to be assisted under section 702 of the Housing and Urban Development Act of 1965 [42 U.S.C. 3102]; section 606 of the Public Health Service Act [42 U.S.C. 291f]; section 8[1] of the Federal Water Pollution Control Act [33 U.S.C. 1158]; section 120(a) of title 23; section 12[1] of the Federal Airport Act; section 19[1] of the Airport and Airway Development Act of 1970; section 5309 of title 49; title VII of the Housing Act of 1961 [42 U.S.C. 1500 et seq.]; or section 5(e) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 460*l*–8(e)]; or under section 101(a)(1)[1] of the Public Works and Economic Development Act of 1965 (for a project of a type which the Secretary determines to be eligible for assistance under any of the other provisions listed above).

(3) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or an agency or instrumentality of any of the foregoing.

(4) ''Metropolitan area'' means a standard metropolitan statistical area as established by the Office of Management and Budget, subject however to such modifications and extensions as the Secretary may determine to be appropriate for the purposes of this subchapter.

(5) ''Comprehensive planning'' includes the following, to the extent directly related to area needs or needs of a unit of general local government: (A) preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities; (B) programing of capital improvements based on a determination of relative urgency; (C) long-range fiscal plans for implementing such plans and programs; and (D) proposed regulatory and administrative measures which aid in achieving coordination of all related plans of the departments or subdivisions of the governments concerned and intergovernmental coordination of related planned activities among the State and local governmental agencies concerned.

(6) ''Hospital'' means any public health center or general, tuberculosis, mental, chronic disease, or other type of hospital and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities normally operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care.

(7) ''Areawide agency'' means an official State, metropolitan, regional, or district agency empowered under State or local laws or under an interstate compact or agreement to perform comprehensive planning in an area, an organization of the type referred to in section 701(g)[1] of the Housing Act of 1954; or such other agency or instrumentality as may be designated by the Governor (or, in the case of areas crossing State lines, any one or more of such agencies or instrumentalities as may be designated by the Governors of the States involved) to perform such planning.

(8) ''Special purpose unit of local government'' means any special district, public-purpose corporation, or other limited-purpose political subdivision of a State, but shall not include a school district.

(9) ''Unit of general local government'' means any city, county, town, parish, village, or other general-purpose political subdivision of a State.

(10) ''Secretary'' means the Secretary of Housing and Urban Development.

(Pub. L. 89–754, title II, § 208, Nov. 3, 1966, 80 Stat. 1265; Pub. L. 90–448, title VI, § 602(e), Aug. 1, 1968, 82 Stat. 532; Pub. L. 91–258, title I, § 52(b)(3), May 21, 1970, 84 Stat. 235; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 102–240, title III, § 3003(b), Dec. 18, 1991, 105 Stat. 2088; Pub. L. 104–208, div. A, title I, § 101(e) [title VII, § 709(a)(6)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–312.)

REFERENCES IN TEXT

Section 702 of the Housing and Urban Development Act of 1965 [42 U.S.C. 3102], referred to in par. (2), was omitted from the Code pursuant to section 5316 of this title which terminated the authority to make grants or loans under that section after Jan. 1, 1975.

Section 8 of the Federal Water Pollution Control Act, referred to in par. (2), which related to grants for construction of sewerage treatment works, was formerly classified to section 1158 of Title 33, Navigation and Navigable Waters, prior to the reorganization of that Act by Pub. L. 92–500, Oct. 18, 1972, 86 Stat. 816. See Codification note set out under section 1251 of Title 33. Provisions of the Act relating to grants for construction of treatment works appear in section 1281 et seq. of Title 33.

Section 12 of the Federal Airport Act, referred to in par. (2), is section 12 of act May 13, 1946, ch. 251, 60 Stat. 177, as amended, which was classified to section 1111 of former Title 49, Transportation, prior to repeal by Pub. L. 91–258, title I, § 52(a), May 21, 1970, 84 Stat. 235.

Section 19 of the Airport and Airway Development Act of 1970, referred to in par. (2), is section 19 of Pub. L. 91–258, title I, May 21, 1970, 84 Stat. 230, as amended, which was classified to section 1719 of former Title 49, prior to repeal by Pub. L. 97–248, title V, § 523(a), Sept. 3, 1982, 96 Stat. 695.

The Housing Act of 1961, referred to in par. (2), is Pub. L. 87–70, June 30, 1961, 75 Stat. 149, as amended. Title VII of the Housing Act of 1961 which was classified generally to chapter 8C (§ 1500 et seq.) of this title, was omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under such title VII after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 12, Banks and Banking, and Tables.

Section 101(a)(1) of the Public Works and Economic Development Act of 1965, referred to in par. (2), is section 101(a)(1) of Pub. L. 89–136, title I, Aug. 26, 1965, 79 Stat. 552, as amended, which was classified to section 3131 of this title prior to repeal by Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3597.

Section 701 of the Housing Act of 1954, referred to in par. (7), is section 701 of act Aug. 2, 1954, ch. 649, 68 Stat. 640, as amended, which was classified to section 461 of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97–35, title III, § 313(b), Aug. 13, 1981, 95 Stat. 398.

[1] See References in Text note below.

CODIFICATION

In par. (2), ''section 5309 of title 49'' substituted for ''section 3 of the Federal Transit Act [49 App. U.S.C. 1602]'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1996—Par. (2). Pub. L. 104–208 struck out ''title II of the Library Services and Construction Act;'' before ''section 606 of the Public Health Service Act''.

1991—Par. (2). Pub. L. 102–240 substituted ''Federal Transit Act'' for ''Urban Mass Transportation Act of 1964''.

1970—Par. (2). Pub. L. 91–258 inserted ''section 19 of the Airport and Airway Development Act of 1970;'' after ''section 12 of the Federal Airport Act;''.

1968—Par. (1). Pub. L. 90–448, § 602(e)(1), substituted ''Areawide development'' for ''Metropolitan development.''

Par. (2). Pub. L. 90–448, § 602(e)(1), substituted ''Areawide development project'' for ''Metropolitan development project''.

Par. (7). Pub. L. 90–448, § 602(e)(2), substituted ''official State, metropolitan, regional, or district agency'' for ''official State or metropolitan or regional agency'', and ''in the case of areas'' for ''in the case of metropolitan areas''.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President of United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget.

§ 3339. Limitation on amount of grant

Grants made under section 3335 of this title for projects in any one State shall not exceed in the aggregate 15 per centum of the aggregate amount of funds authorized to be appropriated pursuant to section 3336(b) of this title.

(Pub. L. 89–754, title II, § 209, Nov. 3, 1966, 80 Stat. 1266.)

SUBCHAPTER III—URBAN INFORMATION AND TECHNICAL ASSISTANCE SERVICES

§§ 3351 to 3356. Omitted

CODIFICATION

Appropriations for this subchapter have not been authorized for fiscal years commencing after June 30, 1972.

Section 3351, Pub. L. 89–754, title IX, § 901, Nov. 3, 1966, 80 Stat. 1282, set out the declaration of purpose for this subchapter.

Section 3352, Pub. L. 89–754, title IX, § 902, Nov. 3, 1966, 80 Stat. 1283, related to grant authority, scope of assistance, and terms and conditions of programs under this subchapter.

Section 3353, Pub. L. 89–754, title IX, § 903, Nov. 3, 1966, 80 Stat. 1283, related to amounts and restrictions on grants under this subchapter.

Section 3354, Pub. L. 89–754, title IX, § 904, Nov. 3, 1966, 80 Stat. 1283, related to cooperation of Federal departments and agencies with States, and coordination by Secretary of urban information and technical assistance programs under this subchapter.

Section 3355, Pub. L. 89–754, title IX, § 905, Nov. 3, 1966, 80 Stat. 1283, defined ''State'', ''Secretary'', and ''small communities''.

Section 3356, Pub. L. 89–754, title IX, § 906, Nov. 3, 1966, 80 Stat. 1284; Pub. L. 90–448, title XVII, § 1703, Aug. 1, 1968, 82 Stat. 603; Pub. L. 91–152, title III, § 308, Dec. 24, 1969, 83 Stat. 394; Pub. L. 91–609, title III, § 305, Dec. 31, 1970, 84 Stat. 1781, authorized appropriations.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 3371. Assistance for housing in Alaska

(a) Loans and grants; authorization; purposes

The Secretary of Housing and Urban Development (hereinafter referred to as the ''Secretary'') may make loans and grants on the basis of need to the regional native housing authorities duly constituted under the laws of the State of Alaska for the purpose of providing planning assistance, housing rehabilitation, and maintaining an adequate administrative structure in conjunction with the provision of housing and related facilities for Alaska residents.

(b) Amount of grants

Grants under this section shall not exceed 75 per centum of the aggregate cost of the housing and related facilities to be constructed under an approved program, except that the Secretary may make a grant in excess of such limitation in any case, after consultation with State officials.

(c) Authorization of appropriations

There is authorized to be appropriated not to exceed $10,000,000 to carry out the purposes of this section.

(Pub. L. 89–754, title X, § 1004, Nov. 3, 1966, 80 Stat. 1284; Pub. L. 91–152, title II, § 220, Dec. 24, 1969, 83 Stat. 390; Pub. L. 95–557, title IX, § 904, Oct. 31, 1978, 92 Stat. 2125.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–557, § 904(a), revised subsec. (a) generally to require that the Department of Housing and Urban Development make loans and grants, on the basis of need, to regional Alaska Native housing authorities for certain planning, administrative, and other expenses in conjunction with the provision of housing and related facilities for Alaska residents.

Subsec. (b). Pub. L. 95–557, § 904(b), inserted ''except that the Secretary may make a grant in excess of such limitation in any case, after consultation with State officials''.

1969—Subsec. (a). Pub. L. 91–152 substituted ''$10,875'' for ''$7,500''.

§§ 3372, 3373. Repealed. Pub. L. 91–609, title V, § 503(6), Dec. 31, 1970, 84 Stat. 1786

Section 3372, Pub. L. 89–754, title X, § 1010, Nov. 3, 1966, 80 Stat. 1286; Pub. L. 90–448, title XVII, § 1704, Aug. 1, 1968, 82 Stat. 603; Pub. L. 91–152, title IV, §§ 402, 417, Dec. 24, 1969, 83 Stat. 395, 401, related to application of advances in technology to housing and urban development and provided for: statement of purpose and duties of Secretary; objectives of research and studies; execution of research and studies directly or by contract, acquisition of property, and limitation on contracts; authorization of appropriations and availability of funds for expenditures; and limitation of authority under other provisions of law. See sections 1701z–1 to 1701z–4 of Title 12, Banks and Banking.

Section 3373, Pub. L. 89–754, title X, § 1011, Nov. 3, 1966, 80 Stat. 1287, related to environmental studies and provided for: Congressional findings and comprehensive

program of research, studies, surveys, and analyses; powers and duties of Secretary; advisory committees, functions, personnel, compensation, travel, and other necessary expenses; execution of studies, surveys, research, and analyses directly or by contract, and limitation on contracts; and authorization of appropriations and availability of funds for expenditures. See sections 1701z–1 to 1701z–4 of Title 12, Banks and Banking.

§ 3374. Acquisition of property at or near military bases which have been ordered to be closed

(a) Authorization; conditions precedent

Notwithstanding any other provision of law, the Secretary of Defense is authorized to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling which is situated at or near a military base or installation which the Department of Defense has, subsequent to November 1, 1964, ordered to be closed in whole or in part, if he determines—

(1) that the owner of such property is, or has been, a Federal employee employed at or in connection with such base or installation (other than a temporary employee serving under a time limitation), a nonappropriated fund instrumentality employee employed at a nonappropriated fund instrumentality operated in connection with such base or installation, or a member of the Armed Forces of the United States assigned thereto;

(2) that the closing of such base or installation, in whole or in part, has required or will require the termination of such owner's employment or service at or in connection with such base or installation or, in the case of a member of the Armed Forces not assigned to that base or installation at the time of public announcement of such closing, will prevent any reassignment of such member to the base or installation; and

(3) that as the result of the actual or pending closing of such base or installation in whole or in part, or if as the result of such action and other similar action in the same area, there is no present market for the sale of such property upon reasonable terms and conditions.

(b) Eligibility for benefits; criteria

(1) In order to be eligible for the benefits of this section, a civilian employee or a member of the Armed Forces—

(A) must be assigned to or employed at or in connection with the installation or activity at the time of public announcement of the closure action, or employed by a nonappropriated fund instrumentality operated in connection with such base or installation;

(B) must have been transferred from such installation or activity, or terminated as an employee as a result of a reduction in force, within six months prior to public announcement of the closure action; or

(C) must have been transferred from the installation or activity on an overseas tour within three years prior to public announcement of the closure action.

(2) A member of the Armed Forces shall also be eligible for the benefits of this section if the member—

(A) was transferred from the installation or activity within three years prior to public announcement of the closure action; and

(B) in connection with the transfer, was informed of a future, programmed reassignment to the installation.

(3) The eligibility of a civilian employee and member of the Armed Forces under paragraph (1) and a member of the Armed Forces under paragraph (2) for benefits under this section in connection with the closure of an installation or activity is subject to the additional conditions set out in paragraphs (4) and (5).

(4) At the time of public announcement of the closure action, or at the time of transfer or termination as set forth above, such personnel or employees must—

(A) have been the owner-occupant of the dwelling, or

(B) have vacated the owned dwelling as a result of being ordered into on-post housing during a six-month period prior to the closure announcement.

(5) As a consequence of such closure such employees or personnel must—

(A) be required to relocate because of military transfer or acceptance of employment beyond a normal commuting distance from the dwelling for which compensation is sought, or

(B) be unemployed, not as a matter of personal choice, and able to demonstrate such financial hardship that they are unable to meet their mortgage payments and related expenses.

(c) Election of benefits; mortgage loan encumbrance; foreclosure expenses

Such persons as the Secretary of Defense may determine to be eligible under the criteria set forth above shall elect either (1) to receive a cash payment as compensation for losses which may be or have been sustained in a private sale, in an amount not to exceed the difference between (A) 95 per centum of the fair market value of their property (as such value is determined by the Secretary of Defense) prior to public announcement of intention to close all or part of the military base or installation and (B) the fair market value of such property (as such value is so determined) at the time of the sale, or (2) to receive, as purchase price for their property, an amount not to exceed 90 per centum of prior fair market value as such value is determined by the Secretary of Defense, or the amount of the outstanding mortgages. The Secretary may also pay a person who elects to receive a cash payment under clause (1) of the preceding sentence an amount that the Secretary determines appropriate to reimburse the person for the costs incurred by the person in the sale of the property if the Secretary determines that such payment will benefit the person and is in the best interest of the Federal Government. Cash payment as compensation for losses sustained in a private sale shall not be made in any case in which the property is encumbered by a mortgage loan guaranteed, insured, or held by a Federal agency

unless such mortgage loan is paid, assumed by a purchaser satisfactory to such Federal agency, or otherwise fully satisfied at or prior to the time such cash payment is made. Except in cases of payment as compensation for losses, in the event of foreclosure by mortgagees commenced on or after public announcement of intention to close all or part of the military base or installation the Secretary of Defense may reimburse or pay on account of eligible persons such sums as may be paid or be otherwise due and owing by such persons as the result of such foreclosure, including (without limiting the generality of the foregoing) direct costs of judicial foreclosure, expenses and liabilities enforceable according to the terms of their mortgages or promissory notes, and the amount of debts, if any, established against such persons by a Federal agency in the case of loans made, guaranteed, or insured by such agency following liquidation of the security for such loans.

(d) Fund for extension of financial assistance; capital and receipts; availability of monies; covering into Treasury as miscellaneous receipts; Federal title to and control of property; other laws unaffected; foreign properties, exclusion

There shall be in the Treasury a fund which shall be available to the Secretary of Defense for the purpose of extending the financial assistance provided above. The capital of such fund shall consist of such sums as may, from time to time, be appropriated thereto, and shall consist also of receipts from the management, rental, or sale of properties acquired under this section, which receipts shall be credited to the fund and shall be available, together with funds appropriated therefor, for purchase or reimbursement purposes as provided above, as well as to defray expenses arising in connection with the acquisition, management, and disposal of such properties, including payment of principal, interest, and expenses of mortgages or other indebtedness thereon, and including the cost of staff services and contract services, costs of insurance, and other indemnity. Any part of such receipts not required for such expenses shall be covered into the Treasury as miscellaneous receipts. Properties acquired under this section shall be conveyed to, and acquired in the name of, the United States. The Secretary of Defense shall have the power to deal with, rent, renovate, and dispose of, whether by sales for cash or credit or otherwise, any properties so acquired: *Provided, however*, That no contract for acquisition, or acquisition, shall be deemed to constitute a contract for or acquisition of family housing units in support of military installations or activities within the meaning of section 1594i[1] of this title, nor shall it be deemed a transaction within the contemplation of section 2662 of title 10: *Provided further*, That no properties in foreign countries shall be acquired under this section, except in connection with compensation for property located on a base or installation pursuant to subsection (*l*) of this section.

[1] See References in Text note below.

(e) Fund as source of payments to States in lieu of taxes; limitation on amount; allowance for public service expenditures

Payments from the fund created by this section may be made in lieu of taxes to any State or political subdivision thereof, with respect to real property, including improvements thereon, acquired and held under this section. The amount so paid for any year upon such property shall not exceed the taxes which would be paid to the State or subdivision, as the case may be, upon such property if it were not exempt from taxation, and shall reflect such allowance as may be considered appropriate for expenditures, if any, by the Government for streets, utilities, or other public services to serve such property.

(f) Title requirements; terms and conditions of payment; finality of decisions

The title to any property acquired under this section, the eligibility for, and the amounts of, cash payable, and the administration of the preceding provisions of this section, shall conform to such requirements, and shall be administered under such conditions and regulations, as the Secretary of Defense may prescribe. Such regulations shall also prescribe the terms and conditions under which payments may be made and instruments accepted under this section, and all the determinations and decisions made pursuant to such regulations by the Secretary of Defense regarding such payments and conveyances and the terms and conditions under which they are approved or disapproved, shall be final and conclusive and shall not be subject to judicial review.

(g) Agreements between executive departments; delegation of functions; finality of determinations; availability of Fund

The Secretary of Defense is authorized to enter into such agreement with the Secretary of Housing and Urban Development as may be appropriate for the purposes of economy and efficiency of administration of this section. Such agreement may provide authority to the Secretary of Housing and Urban Development and his designee to make any or all of the determinations and take any or all of the actions which the Secretary of Defense is authorized to undertake pursuant to the preceding provisions of this section. Any such determinations shall be entitled to finality to the same extent as if made by the Secretary of Defense, and, in event the Secretaries of Defense and Housing and Urban Development so elect, the fund established pursuant to subsection (d) of this section shall be available to the Secretary of Housing and Urban Development to carry out the purposes thereof.

(h) Omitted

(i) Specific authorization for funds; expenditure of monies in Fund

No funds may be appropriated for the acquisition of any property under authority of this section unless such funds have been specifically authorized for such purpose in a military construction authorization act, and no moneys in the fund created pursuant to subsection (d) of this section may be expended for any purpose except as may be provided in appropriation Acts.

(j) Omitted

(k) Reduction of operations at military base or installation

The authority provided by this section to the Secretary of Defense shall also be available when the Department of Defense has ordered a reduction in the scope of operations at a military base or installation. All references in subsections (a), (b), (c), (n), and (*o*) of this section to ''closures'' or ''closings'' or words of similar effect shall be deemed to include the reduction in scope of operations at a base or installation.

(*l*) Foreign property losses

Notwithstanding the provisions of subsection (a)(2) and subsection (b)(5) of this section, Federal employees or military personnel employed at or near a military base or installation outside the United States who are otherwise eligible under the criteria as set forth above shall be entitled to compensation for losses arising (1) out of the sale of property, or (2) out of the inability to sell property located on a base or installation, incident to the owner's transfer, reassignment, or involuntary termination of employment, which results in his relocation. Such employees or military personnel whose property is located off a base or installation shall be entitled to compensation under subsection (c) of this section for losses sustained in private sales. Such employees or personnel whose property is located on a base or installation, who sell or are unable to find a purchaser for such property, may surrender their interest in such property to the United States, and shall be entitled to compensation, notwithstanding lack of ownership of the land on which such property is located, in an amount equal to (A) 90 per centum of the sum of the present owner's purchase price of the dwelling and improvements, and all costs of ownership including interest on notes, utilities and services, maintenance and insurance, less (B) the total of all housing allowances received from the Government during ownership and occupancy of the dwelling, all rents collected, and the sale price, if any, received for the property, as determined by the Secretary of Defense: *Provided, however*, That the maximum compensation shall in no event exceed 90 per centum of the unamortized portion of the cost of the property, including improvements, at the time ownership is terminated, as reflected in the amortization schedule, if any, relating to such property. For the purpose of this subsection, the term ''United States'' means the several States and the District of Columbia.

(m) Eligibility for benefits as to closure actions announced after April 1, 1973; criteria

In addition to the coverage provided above, the benefits of this section shall apply, as to closure actions in the several States and the District of Columbia announced after April 1, 1973, to otherwise eligible employees or personnel who are (1) employed or assigned either at or near the base or installation affected by the closure action, and (2) are required to relocate, due to transfer, reassignment or involuntary termination of employment, for reasons other than the closure action.

(n) Relocation assistance for Coast Guard personnel

(1) Assistance under this section shall be provided by the Secretary of Defense with respect to Coast Guard bases and installations ordered to be closed, in whole or in part, after January 1, 1987. Such assistance shall be provided under terms equivalent to those under which assistance is provided under this section for closings of military bases and installations which are under the jurisdiction of the Secretary of Defense.

(2) The Secretary of the department in which the Coast Guard is operating, if other than the Department of Defense, shall reimburse the Secretary of Defense for expenditures under this section made by the Secretary of Defense with respect to closings of Coast Guard bases and installations ordered when the Coast Guard is not operating as a service in the Navy. The Secretary of Defense and the Secretary of the department in which the Coast Guard is operating shall enter into an agreement under which the Secretary of the department in which the Coast Guard is operating shall carry out such reimbursement.

(*o*) Relocation assistance for nonappropriated fund instrumentality and other civilian employees

(1) Assistance under this section shall be provided by the Secretary of Defense with respect to nonappropriated fund instrumentality employees adversely affected by the closure of a base or installation ordered to be closed, in whole or in part, after December 31, 1988.

(2) Notwithstanding subsection (b) of this section, a civilian employee who is serving overseas and is entitled to reemployment by the Federal Government (including a nonappropriated fund instrumentality of the United States) at or in connection with a base or installation ordered to be closed, in whole or in part, shall be entitled to the benefits of this section to the same extent as an employee employed at or in connection with that base or installation.

(3) All payments to a nonappropriated fund instrumentality employee under this section shall be made from the funds available to the Secretary of Defense under subsection (d) of this section.

(4) For purposes of this section:

(A) The term ''nonappropriated fund instrumentality employee'' means a civilian employee who—

(i) is a citizen of the United States; and

(ii) is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Resale and Services Support Office, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the Armed Forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

(B) The term ''civilian employee'' has the meaning given the term ''employee'' in section 2105(a) of title 5.

(Pub. L. 89–754, title X, § 1013, Nov. 3, 1966, 80 Stat. 1290; Pub. L. 91–142, title VI, § 602, Dec. 5,

1969, 83 Stat. 313; Pub. L. 91–511, title VI, § 612, Oct. 26, 1970, 84 Stat. 1225; Pub. L. 92–545, title VI, § 601, Oct. 25, 1972, 86 Stat. 1150; Pub. L. 93–166, title V, § 513(b), Nov. 29, 1973, 87 Stat. 679; Pub. L. 100–448, § 11, Sept. 28, 1988, 102 Stat. 1842; Pub. L. 101–510, div. A, title III, § 331, Nov. 5, 1990, 104 Stat. 1535; Pub. L. 102–190, div. B, title XXVIII, § 2823, Dec. 5, 1991, 105 Stat. 1547; Pub. L. 102–484, div. A, title X, § 1054(i), Oct. 23, 1992, 106 Stat. 2503; Pub. L. 103–337, div. B, title XXVIII, § 2805, Oct. 5, 1994, 108 Stat. 3053.)

REFERENCES IN TEXT

Section 1594i of this title, referred to in subsec. (d), was repealed by Pub. L. 97–214, § 7(3), July 12, 1982, 96 Stat. 173.

CODIFICATION

Subsecs. (h) and (j) of this section amended section 1715n(a)(8) and repealed section 1735h of Title 12, Banks and Banking, respectively, with such repealed section being covered by this section.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–337 inserted after first sentence ''The Secretary may also pay a person who elects to receive a cash payment under clause (1) of the preceding sentence an amount that the Secretary determines appropriate to reimburse the person for the costs incurred by the person in the sale of the property if the Secretary determines that such payment will benefit the person and is in the best interest of the Federal Government.''

1992—Subsec. (a)(1). Pub. L. 102–484 substituted ''member of the Armed Forces of the United States'' for ''serviceman''.

1991—Subsec. (a)(1). Pub. L. 102–190, § 2823(b)(1)(A), which directed the substitution of ''member of the Armed Forces of the United States'' for ''servicemen'' could not be executed because the word ''servicemen'' did not appear. See 1992 Amendment note above.

Subsec. (a)(2). Pub. L. 102–190, § 2823(b)(1)(B), inserted before semicolon ''or, in the case of a member of the Armed Forces not assigned to that base or installation at the time of public announcement of such closing, will prevent any reassignment of such member to the base or installation''.

Subsec. (b). Pub. L. 102–190, § 2823(a), (b)(2), (3), substituted pars. (1) to (3) for former introductory provisions and pars. (1) to (3); designated first proviso of subsec. (b) as par. (4) and substituted ''At'' for ''*Provided*, That, at'', redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and substituted period for colon at end of subpar. (B); and designated second proviso of subsec. (b) as par. (5) and substituted ''As'' for ''*Provided further*, That as'' and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively. Prior to amendment, former introductory provisions and pars. (1) to (3) read as follows: ''In order to be eligible for the benefits of this section such employees or military personnel must be or have been—

''(1) assigned to or employed at or in connection with the installation or activity at the time of public announcement of the closure action, or employed by a nonappropriated fund instrumentality operated in connection with such base or installation,

''(2) transferred from such installation or activity, or terminated as employees as a result of reduction-in-force, within six months prior to public announcement of the closure action, or

''(3) transferred from the installation or activity on an overseas tour unaccompanied by dependents within fifteen months prior to public announcement of the closure action:''.

Subsec. (*l*). Pub. L. 102–190, § 2823(b)(4), substituted ''subsection (b)(5)'' for ''the second proviso of subsection (b)''.

1990—Subsec. (a)(1). Pub. L. 101–510, § 331(1), inserted '', a nonappropriated fund instrumentality employee employed at a nonappropriated fund instrumentality operated in connection with such base or installation,'' after ''limitation)''.

Subsec. (b)(1). Pub. L. 101–510, § 331(2), inserted at end ''or employed by a nonappropriated fund instrumentality operated in connection with such base or installation,''.

Subsec. (k). Pub. L. 101–510, § 331(3), substituted ''(n), and (*o*)'' for ''and (n)''.

Subsec. (*o*). Pub. L. 101–510, § 331(4), added subsec. (*o*).

1988—Subsec. (k). Pub. L. 100–448, § 11(1), substituted ''(c), and (n)'' for ''and (c)''.

Subsec. (n). Pub. L. 100–448, § 11(2), added subsec. (n).

1973—Subsec. (m). Pub. L. 93–166 added subsec. (m).

1972—Subsec. (d). Pub. L. 92–545 inserted '', except in connection with compensation for property located on a base or installation pursuant to subsection (j) of this section'' to provision prohibiting acquisition of properties in foreign countries under this section.

Subsec. (*l*). Pub. L. 92–545 added subsec. (*l*).

1970—Subsec. (a)(3). Pub. L. 91–511 inserted ''or if as the result of such action and other similar action in the same area,'' after ''part,''.

Subsec. (k). Pub. L. 91–511 added subsec. (k).

1969—Subsec. (c). Pub. L. 91–142, § 602(a), struck out ''and prior to the one hundred and twentieth day after November 3, 1966,'' after ''installation'' in third sentence.

Subsec. (d). Pub. L. 91–142, § 602(b), excluded acquisition of foreign properties under this section.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 612 of Pub. L. 91–511 provided that the amendment made by that section is effective Oct. 28, 1969.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 42—NARCOTIC ADDICT REHABILITATION

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
3401. Declaration of policy.
3402. State facilities and personnel for care and treatment; encouragement of adequate provision; benefit of experience of Surgeon General and Attorney General.

SUBCHAPTER II—CIVIL COMMITMENT OF PERSONS NOT CHARGED WITH ANY CRIMINAL OFFENSE

3411 to 3426. Repealed.

SUBCHAPTER III—REHABILITATION AND POST-HOSPITALIZATION CARE PROGRAMS AND ASSISTANCE TO STATES AND LOCALITIES

3441, 3442. Repealed.

SUBCHAPTER I—GENERAL PROVISIONS

§ 3401. Declaration of policy

It is the policy of the Congress that certain persons charged with or convicted of violating Federal criminal laws, who are determined to be addicted to narcotic drugs, and likely to be rehabilitated through treatment, should, in lieu of prosecution or sentencing, be civilly committed for confinement and treatment designed to ef-

fect their restoration to health, and return to society as useful members.

It is the further policy of the Congress that certain persons addicted to narcotic drugs who are not charged with the commission of any offense should be afforded the opportunity, through civil commitment, for treatment, in order that they may be rehabilitated and returned to society as useful members and in order that society may be protected more effectively from crime and delinquency which result from narcotic addiction.

(Pub. L. 89–793, § 2, Nov. 8, 1966, 80 Stat. 1438.)

CODIFICATION

Section was not enacted as part of the Narcotic Addict Rehabilitation Act of 1966, which is classified to subchapters II and III of this chapter, chapter 314 (section 4251 et seq.) of Title 18, Crimes and Criminal Procedure, and chapter 175 (section 2901 et seq.) of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section 605 of Pub. L. 89–793 provided that: ''Title I of this Act [enacting chapter 175 (§ 2901 et seq.) of Title 28, Judiciary and Judicial Procedure] shall take effect three months after the date of its enactment [Nov. 8, 1966], and shall apply to any case pending in a district court of the United States in which an appearance has not been made prior to such effective date. Titles II [enacting chapter 314 (§ 4251 et seq.) of Title 18, Crimes and Criminal Procedure] and V of this Act [amending section 7237(d) of Title 26, Internal Revenue Code and enacting provisions set out as note under section 4202 of Title 18] shall take effect three months after the date of its enactment [Nov. 8, 1966] and shall apply to any case pending in any court of the United States in which sentence has not yet been imposed as of such effective date. Title III of this Act [enacting section 3411 et seq. of this title] shall take effect three months after the date of its enactment [Nov. 8, 1966].''

SHORT TITLE OF 1971 AMENDMENT

Pub. L. 92–420, § 1, Sept. 16, 1972, 86 Stat. 677, provided: ''That this Act [amending section 3411 of this title, section 4251 of Title 18, Crimes and Criminal Procedure, and section 2901 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under section 2901 of Title 28] may be cited as the 'Narcotic Addict Rehabilitation Amendments of 1971'.''

SHORT TITLE

Section 1 of Pub. L. 89–793 provided: ''That titles I, II, III, and IV of this Act [enacting subchapters II and III of this chapter, chapter 314 (§ 4251 et seq.) of Title 18, Crimes and Criminal Procedure, and chapter 175 (§ 2901 et seq.) of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Narcotic Addict Rehabilitation Act of 1966'.''

SEPARABILITY

Section 604 of Pub. L. 89–793 provided that: ''If any provision of this Act [enacting this chapter, chapter 314 (§ 4251 et seq.) of Title 18, Crimes and Criminal Procedure, and chapter 175 (§ 2901 et seq.) of Title 28, Judiciary and Judicial Procedure, amending section 257 of this title and section 7237 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under this section and section 4202 of Title 18] or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.''

AUTHORIZATION OF APPROPRIATIONS

Section 607 of Pub. L. 89–793 provided that: ''There are authorized to be appropriated such sums as are necessary to carry out the provisions of this Act [enacting this chapter, chapter 314 (§ 4251 et seq.) of Title 18, Crimes and Criminal Procedure, and chapter 175 (§ 2901 et seq.) of Title 28, Judiciary and Judicial Procedure, amending section 257 of this title and section 7237 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under this section and section 4202 of Title 18].''

REORGANIZATION PLAN NO. 3 OF 1966

Section 606 of Pub. L. 89–793 provided that: ''The provisions of this Act [enacting this chapter, chapter 314 (§ 4251 et seq.) of Title 18, Crimes and Criminal Procedure, and chapter 175 (§ 2901 et seq.) of Title 28, Judiciary and Judicial Procedure, amending section 257 of this title and section 7237 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under this section and section 4202 of Title 18] shall be subject to the provisions of Reorganization Plan No. 3 of 1966 [set out as a note under section 202 of this title].''

§ 3402. State facilities and personnel for care and treatment; encouragement of adequate provision; benefit of experience of Surgeon General and Attorney General

The Surgeon General and the Attorney General are authorized to give representatives of States and local subdivisions thereof the benefit of their experience in the care, treatment, and rehabilitation of narcotic addicts so that each State may be encouraged to provide adequate facilities and personnel for the care and treatment of narcotic addicts in its jurisdiction.

(Pub. L. 89–793, title VI, § 602, Nov. 8, 1966, 80 Stat. 1450.)

CODIFICATION

Section was not enacted as part of the Narcotic Addict Rehabilitation Act of 1966, which is classified to subchapters II and III of this chapter, chapter 314 (§ 4251 et seq.) of Title 18, Crimes and Criminal Procedure, and chapter 175 (§ 2901 et seq.) of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1956, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

SUBCHAPTER II—CIVIL COMMITMENT OF PERSONS NOT CHARGED WITH ANY CRIMINAL OFFENSE

§§ 3411 to 3426. Repealed. Pub. L. 106–310, div. B, title XXXIV, § 3405(b), Oct. 17, 2000, 114 Stat. 1221

Section 3411, Pub. L. 89–793, title III, § 301, Nov. 8, 1966, 80 Stat. 1444; Pub. L. 91–513, title III, § 1102(p), Oct. 27, 1970, 84 Stat. 1293; Pub. L. 92–420, § 4, Sept. 16, 1972, 86 Stat. 677, defined terms used in this subchapter.

Section 3412, Pub. L. 89–793, title III, § 302, Nov. 8, 1966, 80 Stat. 1444, related to preliminary proceedings.

Section 3413, Pub. L. 89–793, title III, § 303, Nov. 8, 1966, 80 Stat. 1445, related to judicial proceedings, advisement of patient, appointment of physicians, examination of patient, conduct and report of examination, and return of patient for further proceedings.

Section 3414, Pub. L. 89–793, title III, § 304, Nov. 8, 1966, 80 Stat. 1446, related to hearings.

Section 3415, Pub. L. 89–793, title III, § 305, Nov. 8, 1966, 80 Stat. 1446, related to order of commitment for treatment to care and custody of Surgeon General and reports of Surgeon General.

Section 3416, Pub. L. 89–793, title III, § 306, Nov. 8, 1966, 80 Stat. 1446, related to period of commitment to care and custody of Surgeon General, patient subject to posthospitalization program, and release from confinement.

Section 3417, Pub. L. 89–793, title III, § 307, Nov. 8, 1966, 80 Stat. 1446, related to release from confinement.

Section 3418, Pub. L. 89–793, title III, § 308, Nov. 8, 1966, 80 Stat. 1447, related to petition for inquiry into health and general condition and necessity for continuation of confinement, order for release from confinement and return to court, and placing patient under posthospitalization treatment.

Section 3419, Pub. L. 89–793, title III, § 309, Nov. 8, 1966, 80 Stat. 1447, related to criminal conviction or criminal appellation from determination of being narcotic addict and criminal proceedings prohibited from using information gained in addiction inquiry.

Section 3420, Pub. L. 89–793, title III, § 310, Nov. 8, 1966, 80 Stat. 1447, related to evidence, examining physician as a competent and compellable witness, and physician-patient privilege.

Section 3421, Pub. L. 89–793, title III, § 311, Nov. 8, 1966, 80 Stat. 1447, related to inapplicability of subchapter to persons with criminal charge pending, on probation, or with sentence unserved and consent to commitment of such persons by authority with power over their custody.

Section 3422, Pub. L. 89–793, title III, § 312, Nov. 8, 1966, 80 Stat. 1447, related to commitment to hospital of the Service being dependent upon certification of availability of facilities or personnel for treatment.

Section 3423, Pub. L. 89–793, title III, § 313, Nov. 8, 1966, 80 Stat. 1447, related to compensation of physicians and counsel and source of funds.

Section 3424, Pub. L. 89–793, title III, § 314, Nov. 8, 1966, 80 Stat. 1448, related to authority of Surgeon General.

Section 3425, Pub. L. 89–793, title III, § 315, Nov. 8, 1966, 80 Stat. 1448, related to penalties for escape or rescue from custody.

Section 3426, Pub. L. 89–793, title III, § 316, Nov. 8, 1966, 80 Stat. 1448, related to penalties for false statements.

SUBCHAPTER III—REHABILITATION AND POSTHOSPITALIZATION CARE PROGRAMS AND ASSISTANCE TO STATES AND LOCALITIES

§ 3441. Repealed. Pub. L. 106–310, div. B, title XXXIV, § 3405(b), Oct. 17, 2000, 114 Stat. 1221

Section, Pub. L. 89–793, title IV, § 401, Nov. 8, 1966, 80 Stat. 1448, related to establishment of outpatient services.

§ 3442. Repealed. Pub. L. 90–574, title III, § 303(b), Oct. 15, 1968, 82 Stat. 1011

Section, Pub. L. 89–793, title IV, § 402, Nov. 8, 1966, 80 Stat. 1448, authorized appropriations for grants to States and political subdivisions thereof and to private organizations and institutions for development of narcotic addict rehabilitation and treatment programs.

CHAPTER 43—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
3501. Establishment of Department; effective date.
3501a. Additional Assistant Secretaries.
3502. Assistant Secretary for Administration; appointment and duties.
3502a. Administrator of Social and Rehabilitation Service; appointment and confirmation.
3503. Omitted.
3504. General Counsel; appointment.
3505. Seal.
3505a. Office of Population Affairs; establishment; Deputy Assistant Secretary for Population Affairs; appointment; staff and consultants.
3505b. Functions and duties of Deputy Assistant Secretary for Population Affairs.
3505c. Repealed.
3505d. National Health Professional Shortage Clearinghouse.
3506. Travel and subsistence expenses of officers and employees in connection with attendance at meetings or in performing advisory services.
3507. Transfer of personnel and household goods; delegation of Secretary's authority.
3508 to 3511. Omitted, Repealed, or Transferred.
3512. Office to assist small manufacturers of medical devices; establishment.
3513. Working capital fund; establishment; amount; use; reimbursement.
3513a. Working capital fund; availability for centralized personnel data collection and reporting and common regional administrative support services.
3513b. Working capital fund; availability for common personnel support services.
3514. Special account for grants of Department; reports.
3515. Performance of one-year contracts during two fiscal years.
3515a. Dedicated telephone service between employee residences and computer centers.
3515b. Prohibition on funding certain experiments involving human participants.
3515c. Offset against Federal payments to States for provision of services.
3515d. Expenses of Office of Inspector General; protective services; investigating non-payment of child support.

SUBCHAPTER II—OFFICE OF INSPECTOR GENERAL

3521 to 3527. Repealed.

SUBCHAPTER I—GENERAL PROVISIONS

§ 3501. Establishment of Department; effective date

The provisions of Reorganization Plan Numbered 1 of 1953, submitted to the Congress on March 12, 1953, shall take effect ten days after April 1, 1953, and its approval by the President, notwithstanding the provisions of the Reorganization Act of 1949, as amended, except that section 9 of such Act shall apply to such reorganization plan and to the reorganization made thereby.

(Apr. 1, 1953, ch. 14, 67 Stat. 18.)

REFERENCES IN TEXT

Reorganization Plan Numbered 1 of 1953, referred to in text, is Reorg. Plan No. 1 of 1953, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which is set out as a note below and in the Appendix to Title 5, Government Organization and Employees.

The Reorganization Act of 1949, as amended, referred to in text, is act June 20, 1949, ch. 226, 63 Stat. 203, which enacted sections 133z to 133z–15 of former Title 5, Executive Departments and Government Officers and Employees. Sections 133z to 133z–15 of former Title 5 were repealed and reenacted as sections 901 to 913 of Title 5, Government Organizations and Employees, by

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378. Section 913 of Title 5 has been omitted from the Code. Section 9 of the Reorganization Act of 1949, which enacted section 133z–7 of former Title 5, was also repealed and reenacted as section 907(a) to (c) of Title 5 by Pub. L. 89–554.

CODIFICATION

Section was formerly classified to section 623 of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness [now Assistant Secretary for Preparedness and Response] relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(5) and (6), and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Secretary of Health and Human Services, see Parts 1, 2, and 8 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

ORDER OF SUCCESSION

For order of succession during any period when both Secretary and Deputy Secretary of Health and Human Services are unable to perform functions and duties of office of Secretary, see Ex. Ord. No. 13250, Dec. 28, 2001, 67 F.R. 1597, set out as a note under section 3345 of Title 5, Government Organization and Employees.

DATA COLLECTION RELATING TO RACE OR ETHNICITY

Pub. L. 106–525, title III, § 301, Nov. 22, 2000, 114 Stat. 2507, provided that:

''(a) STUDY.—The National Academy of Sciences shall conduct a comprehensive study of the Department of Health and Human Services' data collection systems and practices, and any data collection or reporting systems required under any of the programs or activities of the Department, relating to the collection of data on race or ethnicity, including other Federal data collection systems (such as the Social Security Administration) with which the Department interacts to collect relevant data on race and ethnicity.

''(b) REPORT.—Not later than 1 year after the date of enactment of this Act [Nov. 22, 2000], the National Academy of Sciences shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives, a report that—

''(1) identifies the data needed to support efforts to evaluate the effects of socioeconomic status, race and ethnicity on access to health care and other services and on disparity in health and other social outcomes and the data needed to enforce existing protections for equal access to health care;

''(2) examines the effectiveness of the systems and practices of the Department of Health and Human Services described in subsection (a), including pilot and demonstration projects of the Department, and the effectiveness of selected systems and practices of other Federal, State, and tribal agencies and the private sector, in collecting and analyzing such data;

''(3) contains recommendations for ensuring that the Department of Health and Human Services, in administering its entire array of programs and activities, collects, or causes to be collected, reliable and complete information relating to race and ethnicity; and

''(4) includes projections about the costs associated with the implementation of the recommendations described in paragraph (3), and the possible effects of the costs on program operations.

''(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for fiscal year 2001.''

UNDER SECRETARY RETITLED DEPUTY SECRETARY

Pub. L. 101–509, title V, § 529 [title I, § 112(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1454, provided that: ''The position of Under Secretary of Health and Human Services, established by section 2 of Reorganization Plan No. 1 of 1953 (67 Stat. 631) [set out below], is retitled the Deputy Secretary of Health and Human Services.''

[Section 529 [title I, § 112(a)(1)] of Pub. L. 101–509 effective on first day of first pay period that begins on or after Nov. 5, 1990, with continued service by incumbent Under Secretary of Health and Human Services, see section 529 [title I, § 112(e)(1), (2)(A)] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment; Continued Service by Incumbents note under section 3404 of Title 20, Education.]

INVESTIGATION OF YOUTH CAMP SAFETY

Pub. L. 92–318, title VI, §§ 601–603, June 23, 1972, 86 Stat. 353, 354, authorized the Secretary of Health, Education, and Welfare to make a study of the field of youth camp safety to determine the need for Federal legislation, required the Secretary to submit a report on his investigation to the Congress before Mar. 1, 1973, and authorized $300,000 in appropriations to carry out the study.

REORGANIZATION PLAN NO. 1 OF 1953

Eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, as amended Sept. 11, 1967, Pub. L. 90–83, § 10(c), 81 Stat. 224

Prepared by the President and transmitted to the Senate and to the House of Representatives in Congress assembled, March 12, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see 5 U.S.C. 901 et seq.].

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SECTION 1. CREATION OF DEPARTMENT; SECRETARY

There is hereby established an executive department, which shall be known as the Department of Health, Education, and Welfare (hereafter in this reorganization plan referred to as the Department). There shall be at the head of the Department a Secretary of Health, Education, and Welfare (hereafter in this reorganization plan referred to as the Secretary), who shall be appointed by the President by and with the advice and consent of the Senate, and who shall receive compensation at the rate now or hereafter prescribed by law for the heads of executive departments. The Department shall be administered under the supervision and direction of the Secretary.

SEC. 2. UNDER SECRETARY AND ASSISTANT SECRETARIES

There shall be in the Department an Under Secretary of Health, Education, and Welfare and two Assistant Secretaries of Health, Education, and Welfare, each of whom shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions as the Secretary may prescribe, and shall receive compensation at the rate now or hereafter provided by law for under secretaries and assistant secretaries, respectively, of executive departments. The Under Secretary (or, during the absence or disability of the Under Secretary or in the event of a vacancy in the

office of Under Secretary, an Assistant Secretary determined according to such order as the Secretary shall prescribe) shall act as Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of Secretary.

SEC. 3. SPECIAL ASSISTANT

[Repealed. Pub. L. 90–83, § 10(c), Sept. 11, 1967, 81 Stat. 224. Section provided for the appointment of Special Assistant to the Secretary (Health and Medical Affairs).]

SEC. 4. COMMISSIONER OF SOCIAL SECURITY

There shall be in the Department a Commissioner of Social Security who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions concerning social security and public welfare as the Secretary may prescribe, and shall receive compensation at the rate now or hereafter fixed by law for grade GS–18 of the general schedule established by the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees].

SEC. 5. TRANSFERS TO THE DEPARTMENT

All functions of the Federal Security Administrator are hereby transferred to the Secretary. All agencies of the Federal Security Agency, together with their respective functions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available), and all other functions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available) of the Federal Security Agency are hereby transferred to the Department.

SEC. 6. PERFORMANCE OF FUNCTIONS OF THE SECRETARY

The Secretary may from time to time make such provisions as the Secretary deems appropriate authorizing the performance of any of the functions of the Secretary by any other officer, or by any agency or employee, of the Department.

SEC. 7. ADMINISTRATIVE SERVICE

In the interest of economy and efficiency the Secretary may from time to time establish central administrative services in the fields of procurement, budgeting, accounting, personnel, library, legal, and other services and activities common to the several agencies of the Department; and the Secretary may effect such transfers within the Department of the personnel employed, the property and records used or held, and the funds available for use in connection with such administrative-service activities as the Secretary may deem necessary for the conduct of any services so established: *Provided*, That no professional or substantive function vested by law in any officer shall be removed from the jurisdiction of such officer under this section.

SEC. 8. ABOLITIONS

The Federal Security Agency (exclusive of the agencies thereof transferred by section 5 of this reorganization plan), the offices of Federal Security Administrator and Assistant Federal Security Administrator created by Reorganization Plan No. I [of 1939] (53 Stat. 1423), the two offices of assistant heads of the Federal Security Agency created by Reorganization Plan No. 2 of 1946 (60 Stat. 1095), and the office for Commissioner for Social Security created by section 701 of the Social Security Act, as amended (64 Stat. 558) [former section 901 of this title], are hereby abolished. The Secretary shall make such provisions as may be necessary in order to wind up any outstanding affairs of the Agency and offices abolished by this section which are not otherwise provided for in this reorganization plan.

SEC. 9. INTERIM PROVISIONS

The President may authorize the persons who immediately prior to the time this reorganization plan takes effect occupy the offices of Federal Security Administrator, Assistant Federal Security Administrator, assistant heads of the Federal Security Agency, and Commissioner for Social Security to act as Secretary, Under Secretary, and Assistant Secretaries of Health, Education, and Welfare, and as Commissioner of Social Security, respectively, until those offices are filled by appointment in the manner provided by sections 1, 2, and 4 of this reorganization plan, but not for a period of more than 60 days. While so acting, such persons shall receive compensation at the rates provided by this reorganization plan for the offices the functions of which they perform.

[The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services, respectively, by 20 U.S.C. 3508. For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions, see 20 U.S.C. 3441 and 3503.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1953, prepared in accordance with the provisions of the Reorganization Act of 1949, as amended.

In my message of February 2, 1953, I stated that I would send to the Congress a reorganization plan defining a new administrative status for Federal activities in health, education, and social security. This plan carries out that intention by creating a Department of Health, Education, and Welfare as one of the executive departments of the Government and by transferring to it the various units of the Federal Security Agency. The Department will be headed by a Secretary of Health, Education, and Welfare, who will be assisted by an Under Secretary and two Assistant Secretaries.

The purpose of this plan is to improve the administration of the vital health, education, and social-security functions now being carried on in the Federal Security Agency by giving them departmental rank. Such action is demanded by the importance and magnitude of these functions, which affect the well-being of millions of our citizens. The programs carried on by the Public Health Service include, for example, the conduct and promotion of research into the prevention and cure of such dangerous ailments as cancer and heart disease. The Public Health Service also administers payments to the States for the support of their health services and for urgently needed hospital construction. The Office of Education collects, analyzes, and distributes to school administrators throughout the country information relating to the organization and management of educational systems. Among its other functions is the provision of financial help to school districts burdened by activities of the United States Government. State assistance to the aged, the blind, the totally disabled, and dependent children is heavily supported by grants-in-aid administered through the Social Security Administration. The old-age and survivors insurance system and child development and welfare programs are additional responsibilities of that Administration. Other offices of the Federal Security Agency are responsible for the conduct of Federal vocational rehabilitation programs and for the enforcement of food and drug laws.

There should be an unremitting effort to improve those health, education, and social-security programs which have proved their value. I have already recommended the expansion of the social-security system to cover persons not now protected, the continuation of assistance to school districts whose population has been greatly increased by the expansion of defense activities, and the strengthening of our food and drug laws.

But good intent and high purpose are not enough; all such programs depend for their success upon efficient, responsible administration. I have recently taken ac-

tion to assure that the Federal Security Administrator's views are given proper consideration in executive councils by inviting her to attend meetings of the Cabinet. Now the establishment of the new Department provided for in Reorganization Plan No. 1 of 1953 will give the needed additional assurance that these matters will receive the full consideration they deserve in the whole operation of the Government.

This need has long been recognized. In 1923, President Harding proposed a Department of Education and Welfare, which was also to include health functions. In 1924, the Joint Committee on Reorganization recommended a new department similar to that suggested by President Harding. In 1932, one of President Hoover's reorganization proposals called for the concentration of health, education, and recreational activities in a single executive department. The President's Committee on Administrative Management in 1937 recommended the placing of health, education, and social-security functions in a Department of Social Welfare. This recommendation was partially implemented in 1939 by the creation of the Federal Security Agency—by which action the Congress indicated its approval of the grouping of these functions in a single agency. A new department could not be proposed at that time because the Reorganization Act of 1939 prohibited the creation of additional executive departments. In 1949, the Commission on Organization of the Executive Branch of the Government proposed the creation of a department for social security and education.

The present plan will make it possible to give the officials directing the Department titles indicative of their responsibilities and salaries comparable to those received by their counterparts in other executive departments. As the Under Secretary of an executive department, the Secretary's principal assistant will be better equipped to give leadership in the Department's organization and management activities, for which he will be primarily responsible. The plan opens the way to further administrative improvement by authorizing the Secretary to centralize services and activities common to the several agencies of the Department. It also established a uniform method of appointment for the heads of the three major constituent agencies. At present, the Surgeon General and the Commissioner of Education are appointed by the President and confirmed by the Senate, while the Commissioner for Social Security is appointed by the Federal Security Administrator. Hereafter, all three will be Presidential appointees subject to Senate confirmation.

I believe, and this plan reflects my conviction, that these several fields of Federal activity should continue within the framework of a single department. The plan at the same time assures that the Office of Education and the Public Health Service retain the professional and substantive responsibilities vested by law in those agencies or in their heads. The Surgeon General, the Commissioner of Education, and the Commissioner of Social Security will all have direct access to the Secretary.

There should be in the Department an Advisory Committee on Education, made up of persons chosen by the Secretary from outside the Federal Government, which would advise the Secretary with respect to the educational programs of the Department. I recommend the enactment of legislation authorizing the defrayal of the expenses of this Committee. The creation of such a Committee as an advisory body to the Secretary will help insure the maintenance of responsibility for the public educational system in State and local governments while preserving the national interest in education through appropriate Federal action.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 1 of 1953 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended. I have also found and hereby declare that by reason of these reorganizations, it is necessary to include in the reorganization plan provisions for the appointment and compensation of the new officers specified in sections 1, 2, 3, and 4 of the reorganization plan. The rates of compensation fixed for these officers are, respectively, those which I have found to prevail in respect of comparable officers in the executive branch of the Government.

Although the effecting of the reorganizations provided for in the reorganization plan will not in itself result in immediate savings, the improvement achieved in administration will in the future allow the performance of necessary services at greater savings than present operations would permit. An itemization of these savings in advance of actual experience is not practicable.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, March 12, 1953.

EX. ORD. NO. 11583. OFFICE OF CONSUMER AFFAIRS

Ex. Ord. No. 11583, Feb. 24, 1971, 36 F.R. 3509, as amended by Ex. Ord. No. 11595, May 26, 1971, 36 F.R. 9763; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

Consumer protection fosters a market place in which our competitive economic system flourishes best. It is good for businessmen because it gives the consumer greater confidence in the goods and services provided by business. It is good for consumers because it reinforces the concept of buyers' rights:

—the right to make an intelligent choice among products and services;

—the right to accurate information on which to make a free choice;

—the right to expect that the health and safety of the buyer is taken into account by those who seek his patronage;

—the right to register dissatisfaction, and have a complaint heard and weighed, when a buyer's interests are badly served.

The Special Assistant to the President for Consumer Affairs is performing an important role in representing consumer interests in the Federal Government. It is important that the role of the office of the Special Assistant be reinforced by increasing its responsibilities and reemphasizing its importance.

There is need for a consumer office within the Executive Office of the President, which not only advises and represents the President on matters of consumer interest, but also analyzes and coordinates the implementation of all Federal activities in the field of consumer protection, helping to establish priorities and resolve conflicts, and recommending ways in which governmental consumer programs can be made more effective.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Office of Consumer Affairs*. The Office of Consumer Affairs (hereinafter referred to as the ''Office'') is hereby established in the Executive Office of the President. The Office shall be headed by a Director, who shall be appointed by the President, and there shall be in the Office two Deputy Directors who shall also be appointed by the President. The Deputy Directors shall perform such duties as the Director may designate, and in case of a vacancy in the office of Director or during the absence or incapacity of the Director, the Deputy Directors, in the order designated by the President, shall act as Director. The Director and Deputy Directors shall receive compensation at such rates as the President, consonant with law, may hereafter determine.

SEC. 2. *Powers and duties of the Director*. (a) The Director shall be responsible for the exercise of the powers and the discharge of the duties of the Office, and shall have the authority to direct and supervise all personnel and activities thereof. The Director shall take all actions as may be necessary to organize the Office so as to carry out the functions and to achieve the purposes set forth in this order.

(b) In addition to any other authority conferred upon him by this order, the Director is authorized, in carrying out his functions hereunder, to—

(1) appoint one or more advisory committees composed of such private citizens and officials of the Federal, State, and local governments as he deems desirable to advise him with respect to his functions. Members of such committees (including the Consumer Advisory Council established in section 5 of this order) other than those regularly employed by the Federal Government, while attending meetings of such committees or otherwise serving at the request of the Director, shall be entitled to receive compensation and travel expenses as authorized by law for persons serving intermittently;

(2) promulgate such rules, regulations, and procedures as may be necessary to carry out the functions vested in him or in the Office, and delegate authority for the performance of any function to any officer or employee under his direction and supervision;

(3) utilize, with their consent, the services, personnel, and facilities of other Federal, State, local and private agencies and instrumentalities with or without reimbursement thereof except as reimbursement may be required by law; and

(c) The Director shall report periodically to the President on significant developments affecting the interests of consumers together with such recommendations including legislative recommendations as he deems appropriate.

SEC. 3. *Functions*. (a) The Office shall advise the President as to all matters affecting the interest of consumers.

(b) The Office shall—

(1) with respect to consumer interests in Federal policies and programs, encourage and assist in development and implementation of consumer programs; coordinate and review policies and programs; seek resolution of conflicts; advise and make recommendations to Federal agencies with respect to policy matters, the effectiveness of their programs and operations, and the elimination of duplications;

(2) assure that the interests of consumers are presented and considered in a timely manner by the appropriate levels of the Federal Government in the formulation of policies and in the operation of programs that affect the consumer interest;

(3) conduct investigations, conferences, and surveys concerning the needs, interests and problems of consumers, except that it shall, where feasible, avoid duplicating activities conducted by other Federal agencies;

(4) submit recommendations to the President on how Federal programs and activities affecting consumers can be improved;

(5) take action with respect to consumer complaints to the extent authorized by section 4 of this order;

(6) perform the functions assigned to the President's Committee on Consumer Interests in Executive Order No. 11566 of October 26, 1970;

(7) encourage and coordinate the development of information of interest to consumers by Federal agencies and the publication and distribution of materials which will inform consumers of matters of interest to them in language which is readily understandable by the layman;

(8) encourage and coordinate research conducted by Federal agencies leading to improved consumer products, services, and consumer information;

(9) encourage, initiate, coordinate, evaluate, and participate in consumer education programs and consumer counseling programs;

(10) encourage, cooperate with, and assist State and local governments in the promotion and protection of consumer interests; and

(11) cooperate with and encourage private enterprise in the promotion and protection of consumer interest.

SEC. 4. *Consumer complaints*. (a) Whenever the Office receives from any source complaints or other information disclosing a possible violation of (1) any law of the United States or (2) any rule or order of any Federal agency concerning consumer interests, the Office shall promptly transmit such complaint or other information to the Federal agency charged with the duty of enforcing such law, rule, or order, for appropriate action.

(b) Whenever the Office receives complaints or other information disclosing any commercial or trade practice which it deems detrimental to the general interests of consumers within the United States, and which is not included within the category specified in subsection (a) of this section, the Office may transmit such complaint or other information promptly to the Federal, State, or local agency whose regulatory or other authority provides the most effective means to act upon them; the Office may in its discretion also refer such complaint or other information to the private persons or industry against whom the complaint is made.

SEC. 5. *Consumer Advisory Council*. (a) There is hereby established in the Office a Consumer Advisory Council to be composed of not more than 12 members appointed by the President. Members shall be appointed on the basis of their knowledge and experience in areas of interest to consumers and their demonstrated ability to exercise independent, informed, and critical judgment.

(b)(1) Members shall be appointed for two-year terms. Members of the Consumer Advisory Council, established pursuant to Executive Order No. 11136 of January 3, 1964, as amended, shall continue in office in accordance with the terms of their original appointments.

(2) Any member chosen to fill a vacancy shall be appointed for the unexpired term of the member he succeeds.

(3) A vacancy in the Council shall not affect its authority to act, and a majority of the members thereof shall constitute a quorum.

(c) The President shall designate the Chairman from among the members composing the Council. The Council shall meet at the call of the Director. The Director shall be an ex-officio member of the Council and its Executive Secretary.

(d) The Council shall advise the Director with respect to—

(1) policy matters relating to consumer interests; and

(2) the effectiveness of Federal programs and operations, which affect the interests of consumers; and

(3) problems of primary importance to consumers, and ways in which unmet consumer needs can appropriately be met through Federal Government action.

SEC. 6. *Consideration of the consumer interest in Federal agency determinations*. Every Federal agency in taking any action of a nature which can reasonably be construed as substantially affecting the interests of consumers of products and services, including, but not limited to, (1) the promulgation of rules, regulations, or guidelines, (2) the formulation of written policy decisions, or (3) the issuance of orders, decrees, or standards, shall, in taking such action, give due consideration to the valid interests of consumers.

SEC. 7. *Abolition of Committee and Council*. Except as otherwise provided herein, the President's Committee on Consumer Interests and the Consumer Advisory Council established under Executive Order No. 11136 of January 3, 1964, as amended by Executive Order No. 11349 of May 1, 1967, are abolished.

SEC. 8. *Construction*. Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any Federal agency or the head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

SEC. 9. *Orders superseded*. Executive Order No. 11136 of January 3, 1964, and Executive Order No. 11349 of May 1, 1967, are hereby superseded.

EX. ORD. NO. 11702. TRANSFER OF OFFICE OF CONSUMER AFFAIRS

Ex. Ord. No. 11702, Jan. 25, 1973, 38 F.R. 2957, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

Under and by virtue of the authority vested in me by section 301 of title 3 of the United States Code [section 301 of title 3, The President] and as President of the

United States of America, it is hereby ordered as follows:

SECTION 1. The Office of Consumer Affairs, established by Executive Order No. 11583 of February 24, 1971, as amended by Executive Order No. 11595 of May 26, 1971 [set out above], together with its functions, is hereby transferred from the Executive Office of the President to the Department of Health and Human Services. The Director of the Office of Consumer Affairs shall continue as the Special Assistant to the President for Consumer Affairs.

SEC. 2. In view of the establishment of the Council on Economic Policy, the Cabinet Committee on Economic Policy, together with its functions, is hereby abolished and Executive Order No. 11453 of January 24, 1969, is hereby revoked.

EX. ORD. NO. 12160. ENHANCEMENT AND COORDINATION OF FEDERAL CONSUMER PROGRAMS

Ex. Ord. No. 12160, Sept. 26, 1979, 44 F.R. 55787, as amended by Ex. Ord. No. 12265, Jan. 15, 1981, 46 F.R. 4665; Ex. Ord. No. 13286, § 51, Feb. 28, 2003, 68 F.R. 10628, provided:

By virtue of the authority vested in me as President by the Constitution of the United States of America, and in order to improve the management, coordination, and effectiveness of agency consumer programs, it is ordered as follows:

1–1. ESTABLISHMENT OF THE CONSUMER AFFAIRS COUNCIL

1–101. There is hereby established the Consumer Affairs Council (hereinafter referred to as the ''Council'').

1–102. The Council shall consist of representatives of the following agencies and such other officers or employees of the United States as the President may designate as members:

(a) Department of Agriculture.
(b) Department of Commerce.
(c) Department of Defense.
(d) Department of Energy.
(e) Department of Health and Human Services.
(f) Department of Housing and Urban Development.
(g) Department of the Interior.
(h) Department of Justice.
(i) Department of Labor.
(j) Department of State.
(k) Department of Transportation.
(*l*) Department of the Treasury.
(m) Department of Homeland Security.
(n) ACTION Agency [now Corporation for National and Community Service].
(*o*) Administrative Conference of the United States.
(p) Community Services Administration.
(q) Department of Education.
(r) Environmental Protection Agency.
(s) Equal Employment Opportunity Commission.
(t) General Services Administration.
(u) Small Business Administration.
(v) Tennessee Valley Authority.
(w) Veterans Administration [now Department of Veterans Affairs].
(x) Commission on Civil Rights is invited to participate.

Each agency on the Council shall be represented by the head of the agency or by a senior-level official designated by the head of the agency.

1–2. FUNCTIONS OF THE COUNCIL

1–201. The Council shall provide leadership and coordination to ensure that agency consumer programs are implemented effectively; and shall strive to maximize effort, promote efficiency and interagency cooperation, and to eliminate duplication and inconsistency among agency consumer programs.

1–3. DESIGNATION AND FUNCTIONS OF THE CHAIRPERSON

1–301. The President shall designate the chairperson of the Council (hereinafter referred to as the ''Chairperson'').

1–302. The Chairperson shall be the presiding officer of the Council and shall determine the times when the Council shall convene.

1–303. The Chairperson shall establish such policies, definitions, procedures, and standards to govern the implementation, interpretation, and application of this Order, and generally perform such functions and take such steps, as are necessary or appropriate to carry out the provisions of this Order.

1–4. CONSUMER PROGRAM REFORMS

1–401. The Chairperson, assisted by the Council, shall ensure that agencies review and revise their operating procedures so that consumer needs and interests are adequately considered and addressed. Agency consumer programs should be tailored to fit particular agency characteristics, but those programs shall include, at a minimum, the following five elements:

(a) *Consumer Affairs Perspective*. Agencies shall have identifiable, accessible professional staffs of consumer affairs personnel authorized to participate, in a manner not inconsistent with applicable statutes, in the development and review of all agency rules, policies, programs, and legislation.

(b) *Consumer Participation*. Agencies shall establish procedures for the early and meaningful participation by consumers in the development and review of all agency rules, policies, and programs. Such procedures shall include provisions to assure that consumer concerns are adequately analyzed and considered in decisionmaking. To facilitate the expression of those concerns, agencies shall provide for forums at which consumers can meet with agency decisionmakers. In addition, agencies shall make affirmative efforts to inform consumers of pending proceedings and of the opportunities available for participation therein.

(c) *Informational Materials*. Agencies shall produce and distribute materials to inform consumers about the agencies' responsibilities and services, about their procedures for consumer participation, and about aspects of the marketplace for which they have responsibility. In addition, each agency shall make available to consumers who attend agency meetings open to the public materials designed to make those meetings comprehensible to them.

(d) *Education and Training*. Agencies shall educate their staff members about the Federal consumer policy embodied in this Order and about the agencies' programs for carrying out that policy. Specialized training shall be provided to agency consumer affairs personnel and, to the extent considered appropriate by each agency and in a manner not inconsistent with applicable statutes, technical assistance shall be made available to consumers and their organizations.

(e) *Complaint Handling*. Agencies shall establish procedures for systematically logging in, investigating, and responding to consumer complaints, and for integrating analyses of complaints into the development of policy.

1–402. The head of each agency shall designate a senior-level official within that agency to exercise, as the official's sole responsibility, policy direction for, and coordination and oversight of, the agency's consumer activities. The designated official shall report directly to the head of the agency and shall apprise the agency head of the potential impact on consumers of particular policy initiatives under development or review within the agency.

1–5. IMPLEMENTATION OF CONSUMER PROGRAM REFORMS

1–501. Within 60 days after the issuance of this Order, each agency shall prepare a draft report setting forth with specificity its program for complying with the requirements of Section 1–4 above. Each agency shall publish its draft consumer program in the Federal Register and shall give the public 60 days to comment on the program. A copy of the program shall be sent to the Council.

1–502. Each agency shall, within 30 days after the close of the public comment period on its draft con-

sumer program, submit a revised program to the Chairperson. The Chairperson shall be responsible, on behalf of the President, for approving agency programs for compliance with this Order before their final publication in the Federal Register. Each agency's final program shall be published no later than 90 days after the close of the public comment period, and shall include a summary of public comments on the draft program and a discussion of how those comments are reflected in the final program.

1–503. Each agency's consumer program shall take effect no later than 30 days after its final publication in the Federal Register.

1–504. The Chairperson, with the assistance and advice of the Council, shall monitor the implementation by agencies of their consumer programs.

1–505. The Chairperson shall, promptly after the close of the fiscal year, submit to the President a full report on government-wide progress under this Order during the previous fiscal year. In addition, the Chairperson shall evaluate, from time to time, the consumer programs of particular agencies and shall report to the President as appropriate. Such evaluations shall be informed by appropriate consultations with interested parties.

1–6. BUDGET REVIEW

1–601. Each agency shall include a separate consumer program exhibit in its yearly budget submission to the Office of Management and Budget. By October 1 of each year the Director of the Office of Management and Budget shall provide the Chairperson with a copy of each of these exhibits. The Chairperson shall thereafter provide OMB with an analysis of the adequacy of the management of, and the funding and staff levels for, particular agency consumer programs.

1–7. CIVIL SERVICE INITIATIVES

1–701. In order to strengthen the professional standing of consumer affairs personnel, and to improve the recruitment and training of such personnel, the Office of Personnel Management shall consult with the Council regarding:

(a) the need for new or revised classification and qualification standard(s), consistent with the requirements of Title 5, United States Code, to be used by agencies in their classification of positions which include significant consumer affairs duties;

(b) the recruitment and selection of employees for the performance of consumer affairs duties; and

(c) the training and development of employees for the performance of such duties.

1–8. ADMINISTRATIVE PROVISIONS

1–801. Executive agencies shall cooperate with and assist the Council and the Chairperson in the performance of their functions under this Order and shall on a timely basis furnish them with such reports as they may request.

1–802. The Chairperson shall utilize the assistance of the United States Office of Consumer Affairs in fulfilling the responsibilities assigned to the Chairperson under this Order.

1–803. The Chairperson shall be responsible for providing the Council with such administrative services and support as may be necessary or appropriate; agencies shall assign, to the extent not inconsistent with applicable statutes, such personnel and resources to the activities of the Council and the Chairperson as will enable the Council and the Chairperson to fulfill their responsibilities under this Order.

1–804. The Chairperson may invite representatives of non-member agencies, including independent regulatory agencies, to participate from time to time in the functions of the Council.

1–9. DEFINITIONS

1–901. ''Consumer'' means any individual who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intangible goods, services, or credit for personal, family, or household purposes.

1–902. ''Agency'' or ''agencies'' means any department or agency in the executive branch of the Federal government, except that the term shall not include:

(a) independent regulatory agencies, except as noted in subsection 1–804;

(b) agencies to the extent that their activities fall within the categories excepted in Sections 6(b)(2), (3), (4), and (6) of Executive Order No. 12044 [5 U.S.C. 553 note].

(c) agencies to the extent that they demonstrate within 30 days of the date of issuance of this Order, to the satisfaction of the Chairperson with the advice of the Council, that their activities have no substantial impact upon consumers.

EX. ORD. NO. 13125. INCREASING OPPORTUNITY AND IMPROVING QUALITY OF LIFE OF ASIAN AMERICANS AND PACIFIC ISLANDERS

Ex. Ord. No. 13125, June 7, 1999, 64 F.R. 31105, as amended by Ex. Ord. No. 13216, June 6, 2001, 66 F.R. 31373, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs where they may be underserved (e.g., health, human services, education, housing, labor, transportation, and economic and community development), it is hereby ordered as follows:

SECTION 1. (a) There is established in the Department of Health and Human Services the President's Advisory Commission on Asian Americans and Pacific Islanders (Commission). The Commission shall consist of not more than 15 members appointed by the President, one of which shall be designated by the President as Chair. The Commission shall include members who: (i) have a history of involvement with the Asian American and Pacific Islander communities; (ii) are from the fields of health, human services, education, housing, labor, transportation, economic and community development, civil rights, and the business community; (iii) are from civic associations representing one or more of the diverse Asian American and Pacific Islander communities; and (iv) have such other experience as the President deems appropriate.

(b) The Secretary of the Department of Health and Human Services (Secretary) shall appoint an Executive Director for the Commission.

SEC. 2. The Commission shall provide advice to the President, through the Secretary, on: (a) the development, monitoring, and coordination of Federal efforts to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs where such persons may be underserved and the collection of data related to Asian American and Pacific Islander populations and sub-populations; (b) ways to increase public-sector, private-sector, and community involvement in improving the health and well-being of Asian Americans and Pacific Islanders; and (c) ways to foster research and data on Asian Americans and Pacific Islanders, including research and data on public health.

SEC. 3. The Department of Health and Human Services shall establish the White House Initiative on Asian Americans and Pacific Islanders (Initiative), an interagency working group (working group) whose members shall be appointed by their respective agencies. The Executive Director of the Commission shall also serve as the Director of the Initiative, and shall report to the Secretary or the Secretary's designee. The working group shall include both career and noncareer civil service staff and commissioned officers of the Public Health Service with expertise in health, human services, education, housing, labor, transportation, economic and community development, and other relevant

issues. The working group shall advise the Secretary on the implementation and coordination of Federal programs as they relate to Asian Americans and Pacific Islanders across executive departments and agencies.

SEC. 4. The head of each executive department and each agency designated by the Secretary shall appoint a senior Federal official responsible for management or program administration to report directly to the agency head on activity under this Executive order, and to serve as a liaison to the Initiative. The Secretary also may designate additional Federal Government officials, with the agreement of the relevant agency head, to carry out the functions of the Initiative. To the extent permitted by law and to the extent practicable, each executive department and designated agency shall provide any appropriate information requested by the working group, including data relating to the eligibility for and participation of Asian Americans and Pacific Islanders in Federal programs. Where adequate data are not available, the Initiative shall suggest the means of collecting such data.

SEC. 5. Each executive department and designated agency (collectively, the ''agency'') shall prepare a plan for, and shall document, its efforts to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs where Asian Americans and Pacific Islanders may be underserved. This plan shall address, among other things, Federal efforts to: (a) improve the quality of life for Asian Americans and Pacific Islanders through increased participation in Federal programs where they may be underserved and the collection of data related to Asian American and Pacific Islander populations and sub-populations; (b) increase public-sector, private-sector, and community involvement in improving the health and well-being of Asian Americans and Pacific Islanders; and (c) foster research and data on Asian Americans and Pacific Islanders, including research and data on public health. Each agency's plan shall provide appropriate measurable objectives and, after the first year, shall assess that agency's performance on the goals set in the previous year's plan. Each plan shall be submitted at a date to be established by the Secretary.

SEC. 6. The Secretary shall review the agency plans and develop for submission to the President an integrated Federal plan (Federal Plan) to improve the quality of life of Asian American and Pacific Islanders through increased participation in Federal programs where such persons may be underserved. Actions described in the Federal Plan shall address improving access by Asian Americans and Pacific Islanders to Federal programs and fostering advances in relevant research and data. The Secretary shall ensure that the working group is given the opportunity to comment on the proposed Federal Plan prior to its submission to the President. The Secretary shall disseminate the Federal Plan to appropriate members of the executive branch. The findings and recommendations in the Federal Plan shall be considered by the agencies in their policies and activities.

SEC. 7. Notwithstanding any other Executive order, the responsibilities of the President that are applicable to the Commission under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, shall be performed by the Secretary in accordance with the guidelines and procedures established by the Administrator of General Services.

SEC. 8. Members of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707). To the extent permitted by law and appropriations, and where practicable, agencies shall, upon request by the Secretary, provide assistance to the Commission and to the Initiative. The Department of Health and Human Services shall provide administrative support and funding for the Commission.

SEC. 9. The Commission shall terminate on June 7, 2003, unless renewed by the President prior to that date.

SEC. 10. For the purposes of this order, the terms: (a) ''Asian American'' includes persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent; and

(b) ''Pacific Islander'' includes the aboriginal, indigenous, native peoples of Hawaii and other Pacific Islands within the jurisdiction of the United States.

§ 3501a. Additional Assistant Secretaries

There shall be in the Department of Health and Human Services, in addition to the Assistant Secretaries now provided for by law, three additional Assistant Secretaries of Health and Human Services, who shall be appointed by the President, by and with the advice and consent of the Senate. The provisions of section 2 of the Reorganization Plan Numbered 1 of 1953 (67 Stat. 631) shall be applicable to such additional Assistant Secretaries to the same extent as they are applicable to the Assistant Secretaries authorized by that section.

(Pub. L. 89–115, § 4(a), Aug. 9, 1965, 79 Stat. 449; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Reorganization Plan Numbered 1 of 1953, referred to in text, is set out as a note under section 202 of this title.

CODIFICATION

Section was formerly classified to section 623h of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

CHANGE OF NAME

''Department of Health and Human Services'' and ''Assistant Secretaries of Health and Human Services'' substituted in text for ''Department of Health, Education, and Welfare'' and ''Assistant Secretaries of Health, Education, and Welfare'', respectively, pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3502. Assistant Secretary for Administration; appointment and duties

There shall be in the Department of Health and Human Services an Assistant Secretary of Health and Human Services for Administration who shall be appointed, with the approval of the President, by the Secretary of Health and Human Services under the classified civil service, who shall perform such duties as the Secretary shall prescribe.

(Pub. L. 86–568, title II, § 202, July 1, 1960, 74 Stat. 305; Pub. L. 88–426, title III, §§ 305(34), 307, Aug. 14, 1964, 78 Stat. 426, 432; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was formerly classified to section 623g of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

AMENDMENTS

1964—Pub. L. 88–426, § 305(34), struck out provisions which prescribed compensation of Administrative Assistant Secretary.

CHANGE OF NAME

''Department of Health and Human Services'', ''Assistant Secretary of Health and Human Services'', and ''Secretary of Health and Human Services'' substituted in text for ''Department of Health, Education, and Welfare'', ''Assistant Secretary of Health, Education, and Welfare'', and ''Secretary of Health, Education, and Welfare'', respectively, pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

''Assistant Secretary of Health, Education, and Welfare for Administration'' substituted for ''Administrative Assistant Secretary of Health, Education, and Welfare'' pursuant to section 307 of Pub. L. 88–426.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

EFFECTIVE DATE

Section effective on the first day of the first pay period which begins on or after July 1, 1960, see section 122 of Pub. L. 86–568.

§ 3502a. Administrator of Social and Rehabilitation Service; appointment and confirmation

Appointments made on or after October 30, 1972, to the office of Administrator of the Social and Rehabilitation Service, within the Department of Health and Human Services, shall be made by the President, by and with the advice and consent of the Senate.

(Pub. L. 92–603, title II, § 294, Oct. 30, 1972, 86 Stat. 1459; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

''Department of Health and Human Services'' substituted in text for ''Department of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3503. Omitted

CODIFICATION

Section, act July 31, 1956, ch. 802, § 2, 70 Stat. 733, provided for the appointment and compensation of a General Counsel in the Department of Health, Education, and Welfare, and has been omitted in view of section 3504 of this title, which abolished the office as it existed on July 31, 1956, upon appointment and qualification of General Counsel provided for by section 3504(a) of this title, or Apr. 1, 1957, whichever occurred earlier. See section 3504(b) of this title.

Section was formerly classified to section 623b of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

§ 3504. General Counsel; appointment

(a) The President shall appoint on and after July 31, 1956, by and with the advice and consent of the Senate, a General Counsel of the Department of Health and Human Services.

(b) The existing office of General Counsel of the Department of Health and Human Services shall be abolished effective upon the appointment and qualification of the General Counsel provided for by subsection (a) of this section or April 1, 1957, whichever is earlier.

(July 31, 1956, ch. 804, title III, § 301, 70 Stat. 742; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section is based on that part of section 301 of act July 31, 1956, relating to the General Counsel of the Department of Health, Education, and Welfare [now Health and Human Services]. That part of such section 301 relating to the General Counsel of the Department of Agriculture, is classified to section 2214 of Title 7, Agriculture. That part of such section 301 relating to the General Counsel of the Post Office Department was enacted as section 307 of Title 39 by Pub. L. 86–682, Sept. 2, 1960, 74 Stat. 580. Such provisions were eliminated from Title 39 by the Postal Reorganization Act, Pub. L. 91–375, Aug. 12, 1970, 84 Stat. 719.

Section was formerly classified to section 623c of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

CHANGE OF NAME

''Department of Health and Human Services'' substituted in text for ''Department of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3505. Seal

The Secretary of the Department of Health and Human Services is authorized to adopt an official seal to be used as directed by the said Secretary on appropriate occasions in connection with the functions of such Department or of any office, bureau, board, or establishment which is or shall hereafter become a part of such Department, and such seal shall be judicially noticed. Copies of any books, records, papers, or other documents in the Department of Health and Human Services shall be admitted in evidence equally with the originals thereof when authenticated under such seal.

(May 9, 1941, ch. 97, 55 Stat. 184; 1953 Reorg. Plan No. I, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was formerly classified to section 623d of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

CREATION OF FEDERAL SECURITY AGENCY

The Federal Security Agency was created by Reorg. Plan No. 1 of 1939, § 201, eff. July 1, 1939, 4 F.R. 2727, 53 Stat. 1423, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3505a. Office of Population Affairs; establishment; Deputy Assistant Secretary for Population Affairs; appointment; staff and consultants

(a) There is established within the Department of Health and Human Services an Office of Population Affairs to be directed by a Deputy Assistant Secretary for Population Affairs under the direct supervision of the Assistant Secretary for Health and Scientific Affairs. The Deputy Assistant Secretary for Population Affairs shall be appointed by the Secretary.

(b) The Secretary is authorized to provide the Office of Population Affairs with such full-time professional and clerical staff and with the services of such consultants as may be necessary for it to carry out its duties and functions.

(Pub. L. 91–572, § 3, Dec. 24, 1970, 84 Stat. 1504; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3505b. Functions and duties of Deputy Assistant Secretary for Population Affairs

The Secretary shall utilize the Deputy Assistant Secretary for Population Affairs—

(1) to administer all Federal laws for which the Secretary has administrative responsibility and which provide for or authorize the making of grants or contracts related to population research and family planning programs;

(2) to administer and be responsible for all population and family planning research carried on directly by the Department of Health and Human Services or supported by the Department through grants to, or contracts with, entities and individuals;

(3) to act as a clearinghouse for information pertaining to domestic and international population research and family planning programs for use by all interested persons and public and private entities;

(4) to provide a liaison with the activities carried on by other agencies and instrumentalities of the Federal Government relating to population research and family planning;

(5) to provide or support training for necessary manpower for domestic programs of population research and family planning programs of service and research; and

(6) to coordinate and be responsible for the evaluation of the other Department of Health and Human Services programs related to population research and family planning and to make periodic recommendations to the Secretary.

(Pub. L. 91–572, § 4, Dec. 24, 1970, 84 Stat. 1505; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in pars. (2) and (6) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3505c. Repealed. Pub. L. 94–63, title II, § 203(b), July 29, 1975, 89 Stat. 307

Section, Pub. L. 91–572, § 5, Dec. 24, 1970, 84 Stat. 1505, required the Secretary to submit a report to Congress not later than six months after Dec. 24, 1970, setting forth a plan for the implementation of family planning and population research programs under section 300 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

§ 3505d. National Health Professional Shortage Clearinghouse

(a) Establishment; function

There is established in the Department of Health and Human Services a National Health Professional Shortage Clearinghouse. It shall be the function of the Clearinghouse to provide information to, and maintain listings of, (1) communities and areas with health professional needs, and (2) prospective health workers interested in such opportunities.

(b) Information and listing services available without charge

Information and listing services performed by the Clearinghouse shall be provided free of charge to all interested health professionals and to all communities and groups within the areas determined by the Secretary under section 294n(f)[1] of this title to have a shortage of and need for health professionals.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to establish, operate, and maintain the Clearinghouse created by subsection (a) of this section.

(Pub. L. 92–157, title II, § 202, Nov. 18, 1971, 85 Stat. 461; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 101–597, title IV, § 401(d), Nov. 16, 1990, 104 Stat. 3035.)

REFERENCES IN TEXT

Section 294n of this title, referred to in subsec. (b), was in the original a reference to section 741 of act July 1, 1944. Section 741 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 776 of act July 1, 1944, relating to acquired immune deficiency syndrome, which was classified to section 294n of this title and was subsequently renumbered section 2692 and transferred to section 300ff–111 of this title.

CHANGE OF NAME

''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

[1] See References in Text note below.

AMENDMENTS

1990—Pub. L. 101–597 substituted ''National Health Professional Shortage Clearinghouse'' for ''National Health Manpower Shortage Clearinghouse'' in section catchline and subsec. (a).

§ 3506. Travel and subsistence expenses of officers and employees in connection with attendance at meetings or in performing advisory services

To the extent and under the conditions provided by regulations of the Secretary, officers (including commissioned officers of the Public Health Service) and employees of the Department of Health and Human Services may on and after June 29, 1957, in connection with their attendance at meetings or in performing advisory services concerned with the functions or activities of the Department, be permitted to accept payment, in cash or in kind, from non-Federal agencies, organizations, and individuals, for travel and subsistence expenses, to be retained by them to cover the cost thereof or deposited to the credit of the appropriation from which the cost thereof is paid, as may be provided, in such regulations.

(Pub. L. 85–67, title II, § 211, June 29, 1957, 71 Stat. 224; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was formerly classified to section 623f of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out in the Appendix to Title 5, Government Organization and Employees. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3507. Transfer of personnel and household goods; delegation of Secretary's authority

The Secretary of Health and Human Services may on and after July 12, 1943, delegate to such officers and employees as he may designate for the purpose all his authority in connection with the transfer of personnel and household goods and effects from one official station to another.

(July 12, 1943, ch. 221, title II, 57 Stat. 513; 1953 Reorg. Plan No. I, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was formerly classified to section 623e of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

Section is from the Labor-Federal Security Appropriation Act, 1944.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

July 2, 1942, ch. 475, title II, 56 Stat. 587.
Apr. 28, 1942, ch. 247, title III, 56 Stat. 235.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953 set out as a note under section 202 of this title. Federal Security Agency and office of Administrator abolished by section 8 of said Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3508. Omitted

CODIFICATION

Section, which authorized the Secretary to make transfers of motor vehicles between bureaus and offices without transfer of funds, was from section 202 of the Department of Labor, and Health, Education, and Welfare Appropriation Act, 1976 (Pub. L. 94–206, title II, Jan. 28, 1976, 90 Stat. 20), and was not repeated in subsequent appropriation acts.

Similar provisions were contained in the following prior appropriation acts:

Dec. 7, 1974, Pub. L. 93–517, title II, § 202, 88 Stat. 1647.
Dec. 18, 1973, Pub. L. 93–192, title II, § 202, 87 Stat. 760.
Aug. 10, 1971, Pub. L. 92–80, title II, § 202, 85 Stat. 298.
Jan. 11, 1971, Pub. L. 91–667, title II, § 202, 84 Stat. 2015.
Mar. 5, 1970, Pub. L. 91–204, title II, § 202, 84 Stat. 43.
Oct. 11, 1968, Pub. L. 90–557, title II, § 202, 82 Stat. 991.
Nov. 8, 1967, Pub. L. 90–132, title II, § 202, 81 Stat. 407.
Nov. 7, 1966, Pub. L. 89–787, title II, § 202, 80 Stat. 1400.
Aug. 31, 1965, Pub. L. 89–156, title II, § 202, 79 Stat. 608.
Sept. 19, 1964, Pub. L. 88–605, title II, § 202, 78 Stat. 979.
Oct. 11, 1963, Pub. L. 88–136, title II, § 202, 77 Stat. 244.
Aug. 14, 1962, Pub. L. 87–582, title II, § 202, 76 Stat. 379.
Sept. 22, 1961, Pub. L. 87–290, title II, § 203, 75 Stat. 608.
Sept. 2, 1960, Pub. L. 86–703, title II, § 203, 74 Stat. 773.
Aug. 14, 1959, Pub. L. 86–158, title II, § 205, 73 Stat. 355.
Aug. 1, 1958, Pub. L. 85–580, title II, § 206, 72 Stat. 473.
June 29, 1957, Pub. L. 85–67, title II, § 207, 71 Stat. 224.
June 29, 1956, ch. 477, title II, § 207, 70 Stat. 436.
Aug. 1, 1955, ch. 437, title II, § 206, 69 Stat. 410.
July 2, 1954, ch. 457, title II, § 206, 68 Stat. 445.
July 31, 1953, ch. 296, title II, § 206, 67 Stat. 257.

Section was formerly classified to section 623a of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

§ 3509. Repealed. Pub. L. 105–362, title VI, § 601(a)(2)(C), Nov. 10, 1998, 112 Stat. 3285

Section, Pub. L. 91–513, title IV, § 1200, Oct. 27, 1970, 84 Stat. 1296; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 103–437, § 15(m), Nov. 2, 1994, 108 Stat. 4593, related to annual report by Secretary of Health and Human Services on statutory advisory councils.

§§ 3510, 3511. Transferred

CODIFICATION

Section 3510, Pub. L. 91–667, title II, Jan. 11, 1971, 84 Stat. 2015, which related to the Working Capital Fund, was transferred to section 3513a of this title.

Section 3511, Pub. L. 93–282, title II, § 201, May 14, 1974, 88 Stat. 134; Pub. L. 94–371, § 8, July 26, 1976, 90 Stat.

1040; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which established the Alcohol, Drug Abuse, and Mental Health Administration and National Panel on Alcohol, Drug Abuse, and Mental Health, was redesignated section 501 of the Public Health Service Act by Pub. L. 98–24, § 2(b)(2), Apr. 26, 1983, 97 Stat. 176, and is classified to section 290aa of this title.

§ 3512. Office to assist small manufacturers of medical devices; establishment

The Secretary of Health and Human Services shall establish within the Department of Health and Human Services an identifiable office to provide technical and other nonfinancial assistance to small manufacturers of medical devices to assist them in complying with the requirements of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], as amended by this Act.

(Pub. L. 94–295, § 10, May 28, 1976, 90 Stat. 583; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Federal Food, Drug, and Cosmetic Act, referred to in text, is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

This Act, referred to in text, means Pub. L. 94–295, May 28, 1976, 90 Stat. 539, known as the Medical Device Amendments of 1976, which enacted this section, sections 360c to 360k, 379, 379a, of Title 21, amended sections 321, 331, 334, 351, 352, 358, 360, 374, 376 [now 379e], and 381 of Title 21, section 55 of Title 15, Commerce and Trade, and enacted provisions set out as notes under section 301 of Title 21. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 301 of Title 21 and Tables.

CHANGE OF NAME

''Secretary of Health and Human Services'' and ''Department of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' and ''Department of Health, Education, and Welfare'', respectively, pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3513. Working capital fund; establishment; amount; use; reimbursement

There is established a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of (1) a central reproduction service; (2) a central visual exhibit service; (3) a central supply service for supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department; (4) a central tabulating service; (5) telephone, mail, and messenger services; (6) a central accounting and payroll service; and (7) a central laborers' service: *Provided*, That any stocks of supplies and equipment on hand or on order shall be used to capitalize such fund: *Provided further*, That such fund shall be reimbursed in advance from funds available to bureaus, offices, and agencies for which such centralized services are performed at rates which will return in full all expenses of operation, including reserves for accrued annual leave and depreciation of equipment.

(July 5, 1952, ch. 575, title II, § 201, 66 Stat. 369; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 86–703, title II, § 201, Sept. 2, 1960, 74 Stat. 773.)

CODIFICATION

Section was enacted as part of title II of act July 5, 1952, popularly known as the Federal Security Agency Appropriation Act, 1953.

Section was formerly classified to section 905 of this title.

AMENDMENTS

1960—Pub. L. 86–703 made fund available for maintenance and operation of a central visual exhibit service, telephone, mail and messenger services, a central accounting and payroll service, and a central laborers' service.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. No. 1 of 1953, set out as a note under section 202 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3513a. Working capital fund; availability for centralized personnel data collection and reporting and common regional administrative support services

The Working Capital Fund of the Department of Health and Human Services shall on and after January 11, 1971, be available for expenses necessary for centralized personnel data collection and reporting and common regional administrative support services.

(Pub. L. 91–667, title II, Jan. 11, 1971, 84 Stat. 2015; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was enacted as part of title II of Pub. L. 91–667, popularly known as the Department of Health, Education, and Welfare Appropriation Act, 1971.

Section was formerly classified to section 3510 of this title.

CHANGE OF NAME

''Department of Health and Human Services'' substituted in text for ''Department of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3513b. Working capital fund; availability for common personnel support services

The Working Capital Fund of the Department of Health and Human Services shall on and after August 10, 1971, be available for expenses necessary for common personnel support services in the Washington area.

(Pub. L. 92–80, title II, Aug. 10, 1971, 85 Stat. 297; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was enacted as part of title II of Pub. L. 92–80, popularly known as the Department of Health, Education, and Welfare Appropriation Act, 1972.

Section was formerly classified to section 905a of this title.

CHANGE OF NAME

''Department of Health and Human Services'' substituted in text for ''Department of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3514. Special account for grants of Department; reports

There is hereby established on the books of the Treasury an account or accounts without fiscal year limitation. There shall be deposited in such account, to the extent provided by the Secretary of Health and Human Services or his designee, all or part of any grant awarded by the Secretary or any other officer or employee of the Department of Health and Human Services. Payments of any such grant shall from time to time be made to the grantee from such account or accounts, subject to such limitations relating to fund accumulation as the Secretary may prescribe, to the extent needed to carry out the purposes of any such grant. Such reports as the Secretary or other officer awarding the grant may find necessary to assure expenditure of funds for the purpose of and in accordance with the terms and conditions of the grant shall be made to the Secretary or such officer by any such grantee.

(Pub. L. 89–105, § 6, Aug. 4, 1965, 79 Stat. 430; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was formerly classified to section 553 of former Title 31, Money and Finance.

CHANGE OF NAME

''Secretary of Health and Human Services'' and ''Department of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' and ''Department of Health, Education, and Welfare'', respectively, pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 3515. Performance of one-year contracts during two fiscal years

Funds provided in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts may be used for one-year contracts which are to be performed in two fiscal years, so long as the total amount for such contracts is obligated in the year for which the funds are appropriated.

(Pub. L. 102–394, title II, § 208, Oct. 6, 1992, 106 Stat. 1811.)

PRIOR PROVISIONS

Provisions similar to this section were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 208, Nov. 26, 1991, 105 Stat. 1127.

Pub. L. 101–517, title II, § 208, Nov. 5, 1990, 104 Stat. 2209.

Pub. L. 101–166, title II, § 210, Nov. 21, 1989, 103 Stat. 1177.

Pub. L. 100–202, § 101(h) [title II, § 210], Dec. 22, 1987, 101 Stat. 1329–256, 1329–274.

Pub. L. 99–500, § 101(i) [H.R. 5233, title II, § 210], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title II, § 210], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, § 210, Dec. 12, 1985, 99 Stat. 1120.

§ 3515a. Dedicated telephone service between employee residences and computer centers

For the purpose of insuring proper management of federally supported computer systems and data bases, funds appropriated by this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts are available for the purchase of dedicated telephone service between the private residences of employees assigned to computer centers funded under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, and the computer centers to which such employees are assigned.

(Pub. L. 102–394, title II, § 210, Oct. 6, 1992, 106 Stat. 1812.)

PRIOR PROVISIONS

Provisions similar to this section were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 210, Nov. 26, 1991, 105 Stat. 1127.

Pub. L. 101–517, title II, § 210, Nov. 5, 1990, 104 Stat. 2209.

Pub. L. 101–166, title II, § 212, Nov. 21, 1989, 103 Stat. 1177.

Pub. L. 100–202, § 101(h) [title II, § 213], Dec. 22, 1987, 101 Stat. 1329–256, 1329–275.

§ 3515b. Prohibition on funding certain experiments involving human participants

None of the funds appropriated by this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be used to pay for any research program or project or any program, project, or course which is of an experimental nature, or any other activity involving human participants, which is determined by the Secretary or a court of competent jurisdiction to present a danger to the physical, mental, or emotional well-being of a participant or subject of such program, project, or course, without the written, informed consent of each participant or subject, or a participant's parents or legal guardian, if such participant or subject is under eighteen years of age. The Secretary shall adopt appropriate regulations respecting this section.

(Pub. L. 102–394, title II, § 211, Oct. 6, 1992, 106 Stat. 1812.)

PRIOR PROVISIONS

Provisions similar to this section were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 211, Nov. 26, 1991, 105 Stat. 1127.

Pub. L. 101–517, title II, § 212, Nov. 5, 1990, 104 Stat. 2209.

Pub. L. 101–166, title II, § 215, Nov. 21, 1989, 103 Stat. 1178.

§ 3515c. Offset against Federal payments to States for provision of services

For any program funded in this Act or subsequent Departments of Labor, Health and Human

Services, and Education, and Related Agencies Appropriations Acts, the Secretary of Health and Human Services is authorized, when providing services or conducting activities for a State with respect to such program for which the Secretary is entitled to reimbursement by the State, to obtain such reimbursement as an offset against Federal payments to which the State would otherwise be entitled under such program from funds appropriated for the same or any subsequent fiscal year. Such offsets shall be credited to the appropriation account which bore the expense of providing the service or conducting the activity, and shall remain available until expended.

(Pub. L. 102–394, title II, § 214, Oct. 6, 1992, 106 Stat. 1812.)

§ 3515d. Expenses of Office of Inspector General; protective services; investigating non-payment of child support

For expenses necessary for the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $33,849,000: *Provided*, That of such amount, necessary sums are available for providing protective services to the Secretary and investigating non-payment of child support cases for which non-payment is a Federal offense under section 228 of title 18, each of which activities is hereby authorized in this and subsequent fiscal years.

(Pub. L. 106–554, § 1(a)(1) [title II], Dec. 21, 2000, 114 Stat. 2763, 2763A–24.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in text, is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section is from the Department of Health and Human Services Appropriations Act, 2001.

SUBCHAPTER II—OFFICE OF INSPECTOR GENERAL

§§ 3521 to 3527. Repealed. Pub. L. 100–504, title I, § 102(e)(2), Oct. 18, 1988, 102 Stat. 2517

Section 3521, Pub. L. 94–505, title II, § 201, Oct. 15, 1976, 90 Stat. 2429; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, established Office of Inspector General.

Section 3522, Pub. L. 94–505, title II, § 202, Oct. 15, 1976, 90 Stat. 2430; Pub. L. 95–452, § 10(c), Oct. 12, 1978, 92 Stat. 1109, provided for Inspector General and Deputy Inspector General, removal of such officers, political activities restriction, and appointment of Assistant Inspector General for Auditing and Assistant Inspector General for Investigations.

Section 3523, Pub. L. 94–505, title II, § 203, Oct. 15, 1976, 90 Stat. 2430; Pub. L. 96–226, title II, § 201, Apr. 3, 1980, 94 Stat. 315, prescribed duties and responsibilities of Inspector General.

Section 3524, Pub. L. 94–505, title II, § 204, Oct. 15, 1976, 90 Stat. 2431; Pub. L. 95–142, § 4(c), Oct. 25, 1977, 91 Stat. 1183; Pub. L. 97–375, title II, § 206(c), Dec. 21, 1982, 96 Stat. 1824, required preparation and submission of reports.

Section 3525, Pub. L. 94–505, title II, § 205, Oct. 15, 1976, 90 Stat. 2432, related to administrative provisions.

Section 3526, Pub. L. 94–505, title II, § 206, Oct. 15, 1976, 90 Stat. 2433, provided for transfer of functions.

Section 3527, Pub. L. 94–505, title II, § 207, Oct. 15, 1976, 90 Stat. 2434; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, defined ''Secretary'', ''Department'', ''Inspector General'', ''Deputy'', and ''Federal agency''.

For transfer of functions under sections 3521 to 3527 to and establishment of the Office of Inspector General of the Department of Health and Human Services, see the Inspector General Act of 1978, Pub. L. 95–452, as amended, set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 18, 1988, see section 113 of Pub. L. 100–504, set out as an Effective Date of 1988 Amendment note under section 5 of Pub. L. 95–452 [Inspector General Act of 1978] in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 44—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.
3531. Congressional declaration of purpose.
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3533. Officers of Department.
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3540. Repealed.
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3544. Preventing fraud and abuse in housing and urban development programs.
3545. HUD accountability.
3546. Use of domestic products.
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3548. Semiannual report on contracts and task orders.
3549. Investigation of violations.

§ 3531. Congressional declaration of purpose

The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of our people require, as a matter of national purpose, sound development of the Nation's communities and metropolitan areas in which the vast majority of its people live and work.

To carry out such purpose, and in recognition of the increasing importance of housing and urban development in our national life, the Congress finds that establishment of an executive department is desirable to achieve the best administration of the principal programs of the Federal Government which provide assistance for housing and for the development of the Nation's communities; to assist the President in achieving maximum coordination of the various Federal activities which have a major effect upon urban community, suburban, or metropolitan development; to encourage the solution of problems of housing, urban development, and mass transportation through State, county, town, village, or other local and private action,

including promotion of interstate, regional, and metropolitan cooperation; to encourage the maximum contributions that may be made by vigorous private homebuilding and mortgage lending industries to housing, urban development, and the national economy; and to provide for full and appropriate consideration, at the national level, of the needs and interests of the Nation's communities and of the people who live and work in them.

(Pub. L. 89–174, § 2, Sept. 9, 1965, 79 Stat. 667.)

CODIFICATION

Section was formerly classified to section 624 of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employee by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

EFFECTIVE DATE: INTERIM APPOINTMENTS

Section 11 of Pub. L. 89–174 provided that:

''(a) The provisions of this Act [enacting this chapter and amending sections 1 and 2211 of former Title 5, Executive Departments and Government Officers and Employees, section 19(d)(1) of Title 3, the President, section 1723 of Title 12, Banks and Banking and section 1451(c) of this title] shall take effect upon the expiration of the first period of sixty calendar days following the date on which this Act is approved by the President [Sept. 9, 1965], or on such earlier date as the President shall specify by Executive order published in the Federal Register, except that any of the officers provided for in sections 3(a), 4(a), and 4(b) of this Act [sections 3532(a), 3533(a), and 3533(b) of this title] may be nominated and appointed, as provided in such sections, at any time after the date this Act is approved by the President [Sept. 9, 1965].

''(b) In the event that one or more officers required by this Act, to be appointed, by and with the advice and consent of the Senate, shall not have entered upon office on the effective date of this Act, the President may designate any person who was an officer of the Housing and Home Finance Agency immediately prior to said effective date to act in such office until the office is filled as provided in this Act or until the expiration of the first period of sixty days following said effective date, whichever shall first occur. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.''

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–235, § 1(a), Dec. 15, 1989, 103 Stat. 1987, provided that: ''This Act [see Tables for classification] may be cited as the 'Department of Housing and Urban Development Reform Act of 1989'.''

SHORT TITLE

Section 1 of Pub. L. 89–174 provided: ''That this Act [enacting this chapter, amending section 1451 of this title, sections 1 and 2211 of former Title 5, Executive Departments and Government Officers and Employees (see sections 101 and 5312 of Title 5, Government Organization and Employees), section 19 of Title 3, The President, and section 1723 of Title 12, Banks and Banking] may be cited as the 'Department of Housing and Urban Development Act'.''

SAVINGS PROVISION: ABATEMENT OF ACTIONS; CONTINUATION OF RULES, REGULATIONS, ETC.; REFERENCES IN OTHER LAWS TO HOUSING AND HOME FINANCE AGENCY; LAPSE OF AGENCIES

Section 9 of Pub. L. 89–174 provided that:

''(a) No cause of action by or against any agency whose functions are transferred by this Act [see Short Title note above and section 3534 of this title], or by or against any officer of any agency in his official capacity, shall abate by reason of this enactment. Such causes of action may be asserted by or against the United States or such official of the Department as may be appropriate.

''(b) No suit, action, or other proceeding commenced by or against any agency whose functions are transferred by this Act [see Short Title note above and section 3534 of this title], or by or against any officer of any such agency in his official capacity, shall abate by reason of the enactment of this Act. A court may at any time during the pendency of the litigation, on its own motion or that of any party, order that the same may be maintained by or against the United States or such official of the Department as may be appropriate.

''(c) Except as may be otherwise expressly provided in this Act [see Short Title note above], all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing. All rules, regulations, orders, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to applicable law, prior to the effective date of this Act [see Effective Date note above] by any agency, officer, or office pertaining to any functions, powers, and duties transferred by this Act shall continue in full force and effect after the effective date of this Act until modified or rescinded by the Secretary or such other officer or office of the Department as, in accordance with applicable law, may be appropriate. With respect to any function, power, or duty transferred by or under this Act and exercised hereafter, reference in another Federal law to the Housing and Home Finance Agency or to any officer, office, or agency therein, except the Federal National Mortgage Association and its officers, shall be deemed to mean the Secretary. The positions and agencies heretofore established by law in connection with the functions, powers, and duties transferred under section 5(a) of this Act [section 3534(a) of this title] shall lapse.''

EXECUTIVE ORDER NO. 11452

Ex. Ord. No. 11452, Jan. 23, 1969, 34 F.R. 1223, as amended, which established the Council for Urban Affairs to advise the President with respect to urban affairs, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237. The Council was terminated and its functions transferred to the Domestic Council by section 2(b) of Ex. Ord. No. 11541, July 1, 1970, 35 F.R. 10737, set out as a note under section 501 of Title 31, Money and Finance.

EX. ORD. NO. 11668. NATIONAL CENTER FOR HOUSING MANAGEMENT

Ex. Ord. No. 11668, Apr. 21, 1972, 37 F.R. 8057, provided:

By virtue of the authority vested in me as President of the United States and in accordance with the provisions of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3531 et seq.), title VIII of the Housing Act of 1964, as amended (20 U.S.C. 801 et seq.), and title V of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 et seq.), it is ordered as follows:

SECTION 1. *Policy*. The Nation's housing stock represents an important national resource which must be preserved and well managed if public and private investments are to be protected, and if we are to meet our goal of providing a decent home and suitable living environment for low and moderate income residents. The production of Federally-assisted housing has greatly expanded in recent years, creating a need for a balanced strategy to ensure that such housing remains viable for the purposes intended.

This expansion also creates a need for a growing supply of new management manpower for the years ahead. Special skills must be developed among these managers so that they can effectively overcome the social and economic problems facing many residents of Federally-assisted housing, including the elderly. Training, the

improvement of career opportunities, and the upgrading of industry standards are all essential to the improvement of the Nation's housing management capability, particularly for low and moderate income housing.

SEC. 2. *Establishment of a National Center for Housing Management.* (a) The Secretary of Housing and Urban Development is directed to call upon public-spirited citizens, dedicated and experienced in the appropriate disciplines, to create, in accordance with existing laws, a new, non-governmental, not-for-profit institution to serve as a National Center for Housing Management (referred to herein as the Center).

(b) The Center should be designed to provide objective and independent leadership at the national level in helping meet the Nation's housing management and training needs and should work cooperatively with the Department of Housing and Urban Development and with the public and private organizations and institutions involved in, or affected by, its activities.

SEC. 3. *Activities of the Center.* The activities of the Center should be developed along lines that include the following objectives:

(1) Development of training and educational programs for housing management and personnel:

(2) Cooperation with public and private national, State, and local organizations and institutions in extending housing management training and educational opportunities, using to the fullest extent possible the services and facilities of existing agencies with expertise in training and education.

(3) Cooperation with national, State, and local organizations and institutions in establishing or expanding recruitment and placement systems that will link training in housing management to job opportunities in that field.

(4) Development of improved housing management practices and assistance in professionalizing the housing management industry; and

(5) Stimulating the creation of new management entities, and strengthening the effectiveness of existing management entities.

SEC. 4. *Assistance by Federal Agencies.* To the extent consistent with law, all other Federal executive departments and agencies shall cooperate and work with the Department of Housing and Urban Development and the Center in providing appropriate advice and financial support so as to ensure that the above described objectives are carried out with the most effective and efficient use of Federal, State and local resources, both public and private.

RICHARD NIXON.

§ 3532. Establishment of Department

(a) Designation; appointment and supervision of Secretary

There is hereby established at the seat of government an executive department to be known as the Department of Housing and Urban Development (hereinafter referred to as the ''Department''). There shall be at the head of the Department a Secretary of Housing and Urban Development (hereinafter referred to as the ''Secretary''), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered under the supervision and direction of the Secretary.

(b) General duties of Secretary

The Secretary shall, among his responsibilities, advise the President with respect to Federal programs and activities relating to housing and urban development; develop and recommend to the President policies for fostering the orderly growth and development of the Nation's urban areas; exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development; provide technical assistance and information, including a clearinghouse service to aid State, county, town, village, or other local governments in developing solutions to community and metropolitan development problems; consult and cooperate with State Governors and State agencies, including, when appropriate, holding informal public hearings, with respect to Federal and State programs for assisting communities in developing solutions to community and metropolitan development problems and for encouraging effective regional cooperation in the planning and conduct of community and metropolitan development programs and projects; encourage comprehensive planning by the State aud[1] local governments with a view to coordinating Federal, State, and local urban and community development activities; encourage private enterprise to serve as large a part of the Nation's total housing and urban development needs as it can and develop the fullest cooperation with private enterprise in achieving the objectives of the Department; and conduct continuing comprehensive studies, and make available findings, with respect to the problems of housing and urban development.

(c) Denial or limitation of benefits of departmental programs, functions, or activities on basis of population or corporate status of community

Nothing in this chapter shall be construed to deny or limit the benefits of any program, function, or activity assigned to the Department by this chapter or any other Act to any community on the basis of its population or corporate status, except as may be expressly provided by law.

(d) Coordination of housing and urban development programs in enterprise zones

The Secretary shall—

(1) promote the coordination of all programs under the jurisdiction of the Secretary that are carried on within an enterprise zone designated pursuant to section 11501 of this title;

(2) expedite, to the greatest extent possible, the consideration of applications for programs referred to in paragraph (1) through the consolidation of forms or otherwise; and

(3) provide, whenever possible, for the consolidation of periodic reports required under programs referred to in paragraph (1) into one summary report submitted at such intervals as may be designated by the Secretary.

(Pub. L. 89–174, § 3, Sept. 9, 1965, 79 Stat. 667; Pub. L. 90–83, § 10(b), Sept. 11, 1967, 81 Stat. 223; Pub. L. 100–242, title VII, § 705, Feb. 5, 1988, 101 Stat. 1963.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this Act'', meaning Pub. L. 89–174, Sept. 9, 1965, 79 Stat. 667, as amended, known as the Department of Housing and Urban Development Act, which enacted this chapter, amended section 1451 of this title, sections 1 and 2211 of former Title 5, Executive Depart-

[1] So in original. Probably should be ''and''.

ments and Government Officers and Employees, section 19 of Title 3, The President, and section 1723 of Title 12, Banks and Banking, and enacted provisions set out as notes under section 3531 of this title. Section 1 of former Title 5 was repealed and reenacted as section 101 of Title 5, Government Organization and Employees, and section 2211 of former Title 5 was repealed and reenacted as sections 5312 to 5317 of Title 5 by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378. For complete classification of this Act to the Code, see Short Title note set out under section 3531 of this title and Tables.

CODIFICATION

Section was formerly classified to section 624a of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employee by Pub. L. 89–554, §1, Sept. 1, 1966, 80 Stat. 378.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–242 added subsec. (d).

1967—Subsec. (a). Pub. L. 90–83 struck out provision for compensation of Secretary.

EFFECTIVE DATE; INTERIM APPOINTMENTS

Nomination and appointment of Secretary of Housing and Urban Development any time after Sept. 9, 1965, and interim designation and compensation of officer of Housing and Home Finance Agency for that office upon nonentry upon the office upon expiration of first period of sixty calendar days following Sept. 9, 1965, or on earlier date specified by Executive order, see section 11 of Pub. L. 89–174, set out as a note under section 3531 of this title.

ORDER OF SUCCESSION

For order of succession during any period when both Secretary and Deputy Secretary of Housing and Urban Development are unable to perform functions and duties of office of Secretary, see Ex. Ord. No. 13243, Dec. 18, 2001, 66 F.R. 66262, set out as a note under section 3345 of Title 5, Government Organization and Employees.

OFFICE OF LEAD BASED PAINT ABATEMENT AND POISONING PREVENTION

Pub. L. 102–389, title II, Oct. 6, 1992, 106 Stat. 1593, provided in part that: ''Notwithstanding any other provision of this or any other Act with respect to any fiscal year, the Office of Lead-Based Paint Abatement and Poisoning Prevention shall be contained within the Office of the Secretary, and said Office shall have ultimate responsibility within the Department of Housing and Urban Development, except for the Secretary, for all matters related to the abatement of lead in housing, and research related to lead abatement, consistent with the responsibilities outlined for the Office in Senate Report 102–107.''

Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 753, provided in part: ''That there shall be established, in the Office of the Secretary, an Office of Lead Based Paint Abatement and Poisoning Prevention to be headed by a career Senior Executive Service employee who shall be responsible for all lead-based paint abatement and poisoning prevention activities (including, but not limited to, research, abatement, training regulations and policy development): *Provided further*, That such office shall be allocated a staffing level of twenty staff years.''

CONDOMINIUM AND COOPERATIVE STUDY AND REPORT; SUBMISSION TO CONGRESS

Pub. L. 93–383, title VII, §821, Aug. 22, 1974, 88 Stat. 740, authorized the Secretary of Housing and Urban Development to conduct a full and complete investigation and study, and report to Congress not later than one year after Aug. 22, 1974, with respect to condominiums and cooperatives, and the problems, difficulties, and abuses or potential abuses applicable to condominium and cooperative housing.

EX. ORD. NO. 11297. COORDINATION OF FEDERAL URBAN PROGRAM

Ex. Ord. No. 11297, Aug. 11, 1966, 31 F.R. 10765, provided:

WHEREAS our Nation has become predominantly urban in character and is confronted by serious problems arising from inherited urban decay and rapid urban growth; and

WHEREAS the living standards and general welfare of its people depend upon the solution of the problems of urban life; and

WHEREAS the Congress has provided in the Department of Housing and Urban Development Act [see Short Title note under section 3531 of this title] that the Secretary of Housing and Urban Development (hereinafter referred to as the Secretary) shall ''advise the President with respect to Federal programs and activities relating to housing and urban development; develop and recommend to the President policies for fostering the orderly growth and development of the Nation's urban areas; and exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development''; and

WHEREAS such activities are closely interrelated with other important Federal activities affecting urban areas so that there is a need for maximum consultation and cooperation among Federal departments and agencies in their administration of programs having impact on urban areas; and

WHEREAS such consultation and cooperation are also essential to enable the Secretary to carry out his responsibilities under that Act to ''provide technical assistance and information, including a clearinghouse service to aid State, county, town, village, or other local governments in developing solutions to community and metropolitan development problems; consult and cooperate with State Governors and State agencies . . . with respect to Federal and State programs for assisting communities in developing solutions to community and metropolitan development problems and for encouraging effective regional cooperation in the planning and conduct of community and metropolitan development programs and projects''.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

SECTION 1. *Functions of the Secretary of Housing and Urban Development*. (a) To assist the Secretary in carrying out his responsibilities pursuant to the Department of Housing and Urban Development Act, he shall convene, or authorize his representatives to convene, meetings at appropriate times and places of the heads, or representatives designated by them, of such Federal departments and agencies with programs affecting urban areas as he deems necessary or desirable for the following purposes:

(1) To provide a forum for consideration of mutual problems concerning Federal programs and activities affecting the development of urban areas and for the exchange of current information needed to achieve coordination of, and to avoid duplication in, such programs and activities.

(2) To promote cooperations among Federal departments and agencies in achieving consistent policies, practices, and procedures for administration of their programs affecting urban areas.

(3) To consult with and obtain the advice of the Federal departments and agencies with respect to:

(A) consultation and cooperation with State Governors and State and local agencies concerning Federal and State programs for assisting communities;

(B) provision of technical information, a clearinghouse service, and other assistance to State and local governments in solving community and metropolitan development problems; and

(C) encouragement of comprehensive planning of, and effective regional cooperation in, local urban, community, and metropolitan development activities.

(4) To identify urban development problems of particular States, metropolitan areas, or communities which require interagency or intergovernmental coordination.

(b) The Secretary shall make arrangements with such Federal departments and agencies for working groups to consider special problems arising with respect to matters described in subsection (a) of this section.

SECTION 2. *Agency responsibilities*. The heads of Federal departments and agencies have programs which have an impact on urban areas, or representatives designated by them, shall participate in meetings convened pursuant to this Order and, to the extent permitted by law and funds available, shall furnish information, at the request of the Secretary, pertaining to programs within the responsibilities of such departments or agencies, and such additional information as will assist the Secretary in providing a clearinghouse service to aid State and local governments in developing solutions to community and metropolitan development problems.

SECTION 3. *Construction*. Nothing in this Order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

SECTION 4. *Administrative arrangements*. (a) Each executive department and agency participating under section 1 or section 2 shall furnish necessary assistance for effectuating the provisions of this Order as authorized by section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691) [31 U.S.C. 1346(b)].

(b) The Department of Housing and Urban Development shall provide necessary administrative services pursuant to this Order.

LYNDON B. JOHNSON.

§ 3533. Officers of Department

(a) Deputy Secretary, Assistant Secretaries, and General Counsel

There shall be in the Department a Deputy Secretary, eight Assistant Secretaries, and a General Counsel, who shall be appointed by the President by and with the advice and consent of the Senate, and who shall perform such functions, powers, and duties as the Secretary shall prescribe from time to time.

(b) Federal Housing Commissioner

There shall be in the Department a Federal Housing Commissioner, who shall be one of the Assistant Secretaries, who shall head a Federal Housing Administration within the Department, who shall have such duties and powers as may be prescribed by the Secretary, and who shall administer, under the supervision and direction of the Secretary, departmental programs relating to the private mortgage market. The Secretary shall ensure, to the extent practicable, that managers of Federal Housing Administration programs, at each level of the Department, shall be accountable for program operation, risk management, management of cash and other Federal assets, and program financing related to activities over which such managers have responsibility.

(c) Director of Urban Program Coordination; designation; powers and duties; studies of urban and community problems and recommendations for administration of Federal programs affecting such problems

There shall be in the Department a Director of Urban Program Coordination, who shall be designated by the Secretary. He shall assist the Secretary in carrying out his responsibilities to the President with respect to achieving maximum coordination of the programs of the various departments and agencies of the Government which have a major impact on community development. In providing such assistance, the Director shall make such studies of urban and community problems as the Secretary shall request, and shall develop recommendations relating to the administration of Federal programs affecting such problems, particularly with respect to achieving effective cooperation among the Federal, State, and local agencies concerned. Subject to the direction of the Secretary, the Director shall, in carrying out his responsibilities, (1) establish and maintain close liaison with the Federal departments and agencies concerned and (2) consult with State, local, and regional officials, and consider their recommendations with respect to such programs.

(d) Assistant to Secretary; designation; duty to provide information and advice to nonprofit project sponsors

There shall be in the Department an Assistant to the Secretary, designated by the Secretary, who shall be responsible for providing information and advice to nonprofit organizations desiring to sponsor housing projects assisted under programs administered by the Department.

(e) Special Assistant for Indian and Alaska Native Programs; report to Congress

(1)(A) There shall be in the Department a Special Assistant for Indian and Alaska Native Programs, who shall be located in the Office of the Assistant Secretary for Public and Indian Housing. The Special Assistant for Indian and Alaska Native Programs shall be designated by the Secretary not later than 60 days after October 12, 1977.

(B) The Special Assistant for Indian and Alaska Native Programs shall be appointed based solely on merit and shall be covered under the provisions of title 5 governing appointments in the competitive service.

(C) The Special Assistant for Indian and Alaska Native Programs shall be responsible for—

(i) administering, in coordination with the relevant office in the Department, the provision of housing assistance to Indian tribes or Indian housing authorities under each program of the Department that provides for such assistance;

(ii) administering the community development block grant program for Indian tribes under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] and the provision of assistance to Indian tribes under such Act;

(iii) directing, coordinating, and assisting in managing any regional offices of the Department that administer Indian programs to the extent of such programs; and

(iv) coordinating all programs of the Department relating to Indian and Alaska Native housing and community development.

(D) The Secretary shall include in the annual report under section 3536 of this title a description of the extent of the housing needs for Indian families and community development needs of Indian tribes in the United States and the activities of the Department, and extent of such activities, in meeting such needs.

(2) The Secretary shall, not later than December 1 of each year, submit to Congress an annual report which shall include—

(A) a description of his actions during the current year and a projection of his activities during the succeeding years;

(B) estimates of the cost of the projected activities for succeeding fiscal years;

(C) a statistical report on the conditions of Indian and Alaska Native housing; and

(D) recommendations for such legislative, administrative, and other actions, as he deems appropriate.

(f) Federal Housing Administration Comptroller

There shall be in the Department a Federal Housing Administration Comptroller, designated by the Secretary, who shall be responsible for overseeing the financial operations of the Federal Housing Administration.

(Pub. L. 89–174, § 4, Sept. 9, 1965, 79 Stat. 668; Pub. L. 90–83, § 10(b), Sept. 11, 1967, 81 Stat. 223; Pub. L. 90–284, title VIII, § 808(b)(1), Apr. 11, 1968, 82 Stat. 84; Pub. L. 90–448, title XVII, § 1708(a), Aug. 1, 1968, 82 Stat. 606; Pub. L. 91–609, title IX, § 917, Dec. 31, 1970, 84 Stat. 1816; Pub. L. 93–383, title VIII, § 818(a), Aug. 22, 1974, 88 Stat. 740; Pub. L. 95–128, title IX, § 901, Oct. 12, 1977, 91 Stat. 1148; Pub. L. 101–235, title I, §§ 121, 122, 140, Dec. 15, 1989, 103 Stat. 2021, 2030; Pub. L. 101–509, title V, § 529 [title I, § 112(a)(4)], Nov. 5, 1990, 104 Stat.1427, 1454; Pub. L. 101–576, title II, § 205(c)(2), Nov. 15, 1990, 104 Stat. 2845; Pub. L. 102–550, title IX, § 902(a)(1), Oct. 28, 1992, 106 Stat. 3866.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (e)(1)(B), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The Housing and Community Development Act of 1974, referred to in subsec. (e)(1)(C)(ii), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Act is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 624b of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employee, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

AMENDMENTS

1992—Subsec. (e)(1). Pub. L. 102–550 designated existing provisions as subpar. (A), substituted ''located in the Office of the Assistant Secretary for Public and Indian Housing'' for ''responsible for coordinating all programs of the Department relating to Indian and Alaska Native housing and community development'', and added subpars. (B) through (D).

1990—Subsec. (a). Pub. L. 101–509 substituted ''a Deputy Secretary'' for ''an Under Secretary''.

Subsec. (e). Pub. L. 101–576 struck out subsec. (e), added by section 121 of Pub. L. 101–235, which related to Chief Financial Officer.

1989—Subsec. (a). Pub. L. 101–235, § 140(2), designated second sentence of subsec. (a), relating to appointment, function, and duties of Federal Housing Commissioner, as (b).

Subsec. (b). Pub. L. 101–235, § 140, designated second sentence of subsec. (a), relating to appointment, function, and duties of Federal Housing Commissioner, as subsec. (b) and sentence at end requiring Secretary to ensure that managers are accountable for certain aspects of the programs. Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub. L. 101–235, § 140(1), redesignated subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101–235, § 140(1), redesignated former subsec. (d), relating to Special Assistant for Indian and Alaska Native Programs, as (e).

Pub. L. 101–235, § 121, added subsec. (e) relating to Chief Financial Officer.

Subsec. (f). Pub. L. 101–235, § 122, added subsec. (f).

1977—Subsec. (d). Pub. L. 95–128 added subsec. (d).

1974—Subsec. (a). Pub. L. 93–383, § 818(a)(1), increased number of Assistant Secretaries from six to eight.

Subsec. (b). Pub. L. 93–383, § 818(a)(2), (3), redesignated former subsec. (c) as (b). Former subsec. (b), which related to appointment and functions of an Assistant Secretary for Administration, was struck out.

Subsecs. (c), (d). Pub. L. 93–383, § 818(a)(3), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

1970—Subsec. (d). Pub. L. 91–609 added subsec. (d).

1968—Subsec. (a). Pub. L. 90–448 increased number of Assistant Secretaries from five to six.

Pub. L. 90–284 increased number of Assistant Secretaries from four to five.

1967—Subsec. (a). Pub. L. 90–83 struck out provision setting compensation for the Under Secretary, Assistant Secretaries, and General Counsel.

Subsec. (b). Pub. L. 90–83 struck out provision covering the compensation to be paid the Assistant Secretary for Administration.

EFFECTIVE DATE OF 1990 AMENDMENT; CONTINUED SERVICE BY INCUMBENTS

Amendment by Pub. L. 101–509 effective on first day of first pay period that begins on or after Nov. 5, 1990, with continued service by incumbent Under Secretary of Housing and Urban Development, see section 529 [title I, § 112(e)(1), (2)(D)] of Pub. L. 101–509, set out as a note under section 3404 of Title 20, Education.

EFFECTIVE DATE; INTERIM APPOINTMENTS

Nomination and appointment of Under Secretary, Assistant Secretaries, General Counsel, Federal Housing Commissioner, and Assistant Secretary for Administration of Department of Housing and Urban Development any time after Sept. 9, 1965, and interim designation and compensation of officers of Housing and Home Finance Agency for those offices upon non-entry upon the offices upon expiration of first period of sixty calendar days following Sept. 9, 1965 or on earlier date specified by Executive order, see section 11 of Pub. L. 89–174, set out as a note under section 3531 of this title.

TRANSFER OF FUNCTIONS

Section 902(a)(2), (3) of Pub. L. 102–550 provided that: ''(2) TRANSFER OF FUNCTIONS.—Not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development shall transfer to the Special Assistant for Indian and Alaska Native Programs any functions and duties described in section 4(e)(1)(B) of the Department of Housing and Urban Development Act [42 U.S.C. 3533(e)(1)(B)] (as added by paragraph (1) of this subsection).

''(3) STAFF.—Not later than the expiration of the 1-year period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall transfer from offices within the Department of Housing and Urban Development to the office of the Special Assistant for Indian and Alaska Native Programs such staff, having experience and capacity to administer Indian housing and community development programs, as may be necessary and appropriate to assist the Special Assistant in carrying out the responsibilities under section 4(e)(1)(B) of the Department of Housing and Urban Development Act (as added by paragraph (1) of this subsection).''

OFFICE OF INSPECTOR GENERAL

Functions, powers, and duties of Office of Inspector General in Department of Housing and Urban Development transferred to Office of Inspector General in Department of Housing and Urban Development, as established by Pub. L. 95–452, § 2, Oct. 12, 1978, 92 Stat. 1101, set out in the Appendix to Title 5, Government Organization and Employees. See section 9(a)(1)(G) of Pub. L. 95–452, as amended, set out in Appendix to Title 5.

§ 3533a. Transferred

Section, Pub. L. 90–448, title XI, § 1105(a), Aug. 1, 1968, 82 Stat. 567; Pub. L. 96–153, title VI, § 603(a), Dec. 21, 1979, 93 Stat. 1138, which established in Federal Emergency Management Agency position of Federal Insurance Administrator, was transferred to section 4129 of this title.

§ 3534. Transfer of functions

(a) Housing and Home Finance Agency, Federal Housing Administration, and Public Housing Administration

Except as otherwise provided in subsection (b) of this section, there are hereby transferred to and vested in the Secretary all of the functions, powers, and duties of the Housing and Home Finance Agency, of the Federal Housing Administration and the Public Housing Administration in that Agency, and of the heads and other officers and offices of said agencies.

(b) Government National Mortgage Association

The Government National Mortgage Association, together with its functions, powers, and duties, is hereby transferred to the Department.

(c) Studies of organization of housing and urban development functions and programs and recommendations regarding transfer of such functions and programs to or from Department

The President shall undertake studies of the organization of housing and urban development functions and programs within the Federal Government, and he shall provide the Congress with the findings and conclusions of such studies, together with his recommendations regarding the transfer of such functions and programs to or from the Department. Notwithstanding any other provision of this chapter, none of the functions of the Secretary of the Interior authorized under the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 460*l*–4 et seq.] or other functions carried out by the Bureau of Outdoor Recreation shall be transferred from the Department of the Interior or in any way be limited geographically unless specifically provided for by reorganization plan pursuant to provisions of chapter 9 of title 5, or by statute.

(d) Prohibition of merger of Office

Notwithstanding any other provision of this chapter, the Secretary may not merge or consolidate the Office of Federal Housing Enterprise Oversight of the Department, or any of the functions or responsibilities of such Office, with any function or program administered by the Secretary.

(Pub. L. 89–174, § 5, Sept. 9, 1965, 79 Stat. 669; Pub. L. 90–83, § 10(b), Sept. 11, 1967, 81 Stat. 223; Pub. L. 90–448, title VIII, § 807(c), Aug. 1, 1968, 82 Stat. 544; Pub. L. 102–550, title XIII, § 1352, Oct. 28, 1992, 106 Stat. 3969.)

REFERENCES IN TEXT

The Land and Water Conservation Fund Act of 1965, referred to in subsec. (c), is Pub. L. 88–578, Sept. 3, 1964, 78 Stat. 897, as amended, which is classified generally to part B (§ 460*l*–4 et seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 460*l*–4 of Title 16 and Tables.

CODIFICATION

In subsec. (c) ''chapter 9 of title 5'' substituted for ''the Reorganization Act of 1949, as amended,'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 624c of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–550 added subsec. (d).

1968—Subsec. (b). Pub. L. 90–448 substituted ''Government National Mortgage Association'' for ''Federal National Mortgage Association'', and struck out provisions which allocated the position of the President of the Federal National Mortgage Association among the positions referred to in section 3535(c) of this title.

1967—Subsec. (b). Pub. L. 90–83 struck out ''and the item numbered (94) of section 303(e) of the Federal Executive Salary Act of 1964 of this title'' after ''The next to the last sentence of section 1723 of title 12'' in repealing provision.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–448 effective from and after a date, no more than 120 days following Aug. 1, 1968, as established by the Secretary of Housing and Urban Development, see section 808 of Pub. L. 90–448, set out as an Effective Date note under section 1716b of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

Pub. L. 89–174, § 9(c), Sept. 9, 1965, 79 Stat. 670, set out as a note under section 3531 of this title, provides that references to the Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean the Secretary of Housing and Urban Development, pursuant to the transfer of functions under this section, and that the Housing and Home Finance Agency and the Public Housing Administration, a constituent agency therein, have lapsed.

§ 3535. Administrative provisions

(a) Transfer of personnel, assets, etc.

The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, or other funds

held, used, arising from, or available or to be made available in connection with, the functions, powers, and duties transferred by section 3534 of this title are hereby transferred with such functions, powers, and duties, respectively.

(b) Repealed. Pub. L. 90–448, title VIII, § 807(d), Aug. 1, 1968, 82 Stat. 544

(c) Employment, compensation, authority, and duties of personnel

The Secretary is authorized, subject to the civil service and classification laws, to select, appoint, employ, and fix the compensation of such officers and employees, including attorneys, as shall be necessary to carry out the provisions of this chapter and to prescribe their authority and duties: *Provided*, That any other provision of law to the contrary notwithstanding, the Secretary may fix the compensation for not more than six positions in the Department at the annual rate applicable to positions in level V of the Executive Schedule provided by subchapter II of chapter 53 of title 5.

(d) Delegation of authority; rules and regulations

The Secretary may delegate any of his functions, powers, and duties to such officers and employees of the Department as he may designate, may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable, and may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.

(e) Temporary employment of experts or consultants; compensation

The Secretary may obtain services as authorized by section 3109 of title 5, at rates for individuals not to exceed the per diem equivalent to the highest rate for grade GS–18 of the General Schedule under section 5332 of title 5. The Secretary is authorized to enter into contracts with private companies for the provision of such managerial support to the Federal Housing Administration as the Secretary determines to be appropriate, including but not limited to the management of insurance risk and the improvement of the delivery of mortgage insurance.

(f) Working capital fund; establishment; uses; appropriations; capitalization; reimbursement

The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interest of economy and efficiency in the Department, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space; central services for document reproduction and for graphics and visual aids; and a central library service. In addition to amounts appropriated to provide capital for said fund, which appropriations are hereby authorized, the fund shall be capitalized by transfer to it of such stock of supplies and equipment on hand or on order as the Secretary shall direct. Such fund shall be reimbursed from available funds of agencies and offices in the Department for which services are performed at rates which will return in full all expenses of operation, including reserves for accrued annual leave and for depreciation of equipment.

(g) Seal

The Secretary shall cause a seal of office to be made for the Department of such device as he shall approve, and judicial notice shall be taken of such seal.

(h) Financial transactions, finality; checking accounts for funds in Treasury; availability of funds for administrative expenses; consolidation of cash for banking and checking purposes

Except as such authority is otherwise expressly provided in any other Act administered by the Secretary, such financial transactions of the Secretary as the making of loans or grants (and vouchers approved by the Secretary in connection with such financial transactions) shall be final and conclusive upon all officers of the Government. Funds made available to the Secretary pursuant to any provision of law for such financial transactions shall be deposited in a checking account or accounts with the Treasury of the United States. Such funds and any receipts and assets obtained or held by the Secretary in connection with such financial transactions shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Secretary in connection with such financial transactions. Notwithstanding the provisions of any other law, the Secretary may, with the approval of the Comptroller General, consolidate into one or more accounts for banking and checking purposes all cash obtained or held in connection with such financial transactions, including amounts appropriated, from whatever source derived.

(i) Foreclosure of property; actions for protection and enforcement of rights; purchase of property; dealing with property after such acquisition; deprivation of State court civil and criminal jurisdiction; impairment of civil rights under State laws; application of section 5 of title 41; annual payments in lieu of local property taxes; sale and exchanges of property; insurance; modification of interest, time for installment payment, and other terms; other covenants, conditions, and provisions

Except as such authority is otherwise expressly provided in any other Act administered by the Secretary, the Secretary is authorized to—

(1) foreclose on any property or commence any action to protect or enforce any right conferred upon him by any law, contract, or other agreement, and bid for and purchase at any foreclosure or any other sale any property in connection with which he has made a loan or grant. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel

and convert, dispose of, lease, and otherwise deal with, such property: *Provided*, That any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property: *Provided further*, That section 5 of title 41 shall not apply to any contract for services or supplies on account of any property so acquired or owned if the amount of such contract does not exceed $2,500;

(2) enter into agreements to pay annual sums in lieu of taxes to any State or local taxing authority with respect to any real property so acquired or owned;

(3) sell or exchange at public or private sale, or lease, real or personal property, and sell or exchange any securities or obligations, upon such terms as he may fix;

(4) obtain insurance against loss in connection with property and other assets held;

(5) consent to the modification, with respect to the rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which he is a party or which has been transferred to him; and

(6) include in any contract or instrument such other covenants, conditions, or provisions as he may deem necessary, including any provisions relating to the authority or requirements under paragraph (5).

(j) Fees and charges

Notwithstanding any other provision of law the Secretary is authorized to establish fees and charges, chargeable against program beneficiaries and project participants, which shall be adequate to cover over the long run, costs of inspection, project review and financing service, audit by Federal or federally authorized auditors, and other beneficial rights, privileges, licenses, and services. Such fees and charges heretofore or hereafter collected shall be considered nonadministrative and shall remain available for operating expenses of the Department in providing similar services on a consolidated basis.

(k) Gifts and services, acceptance; taxable status of property; investments; disbursements

(1) The Secretary is authorized to accept and utilize voluntary and uncompensated services and accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Secretary. Property accepted pursuant to this paragraph, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(2) For the purpose of Federal income, estate, and gift taxes, property accepted under paragraph (1) shall be considered as a gift or bequest to or for use of the United States.

(3) Upon the request of the Secretary, the Secretary of the Treasury may invest and reinvest in securities of the United States or in securities guaranteed as to principal and interest by the United States any moneys contained in the fund provided for in paragraph (1). Income accruing from such securities and from any other property held by the Secretary pursuant to paragraph (1) shall be deposited to the credit of the fund and shall be disbursed upon order of the Secretary.

(*l*) Consultants; appointment of advisory committees; compensation and travel expenses

The Secretary is authorized to appoint, without regard to the civil service laws, such advisory committees as shall be appropriate for the purpose of consultation with and advice to the Department in performance of its functions. Members of such committees, other than those regularly employed by the Federal Government, while attending meetings of such committees or otherwise serving at the request of the Secretary, may be paid compensation at rates not exceeding those authorized for individuals under subsection (e) of this section, and while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(m) Occupancy preference in rental housing for military personnel

Whenever he shall determine that, because of location, or other considerations, any rental housing project assisted under title II of the National Housing Act [12 U.S.C. 1707 et seq.] or title I of the Housing and Urban Development Act of 1965 could ordinarily be expected substantially to serve the family housing needs of lower income military personnel serving on active duty, the Secretary is authorized to provide for or approve such preference or priority of occupancy of such project by such military personnel as he shall determine is appropriate to assure that the project will serve their needs on a continuing basis notwithstanding the frequency with which individual members of such personnel may be transferred or reassigned to new duty stations.

(n) Day care center for children of employees of Department; establishment; fees and charges

Notwithstanding any other provision of law, the Secretary is authorized by contract or otherwise to establish, equip, and operate a day care center facility or facilities, or to assist in establishing, equipping, and operating interagency day care facilities for the purpose of serving children who are members of households of employees of the Department. The Secretary is authorized to establish or provide for the establishment of appropriate fees and charges to be chargeable against the Department of Housing and Urban Development employees or others who are beneficiaries of services provided by any such day care center. In addition, limited start-up costs may be provided by the Secretary in an amount limited to 3 per centum of the first year's operating budget, but not to exceed $3,500.

(*o*) Agenda of rules or regulations under development or review; transmittal to Congress

(1) Notwithstanding any other provision of law, the Secretary shall transmit to the Com-

mittee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives an agenda of all rules or regulations which are under development or review by the Department. Such an agenda shall be transmitted to such Committees within 30 days of October 31, 1978, and at least semi-annually thereafter.

(2)(A) Any rule or regulation which is on any agenda submitted under paragraph (1) may not be published for comment prior to or during the 15-calendar day period beginning on the day after the date on which such agenda was transmitted. If within such period, either Committee notifies the Secretary in writing that it intends to review any rule or regulation or portion thereof which appears on the agenda, the Secretary shall submit to both Committees a copy of any such rule or regulation, in the form it is intended to be proposed, at least 15 calendar days prior to its being published for comment in the Federal Register.

(B) Any rule or regulation which has not been published for comment before October 31, 1978, and which does not appear on an agenda submitted under paragraph (1) shall be submitted to both such Committees at least 15 calendar days prior to its being published for comment.

(3) No rule or regulation may become effective until after the expiration of the 30-calendar day period beginning on the day after the day on which such rule or regulation is published as final. Any regulation implementing any provision of the Department of Housing and Urban Development Reform Act of 1989 that authorizes the imposition of a civil money penalty may not become effective until after the expiration of a public comment period of not less than 60 days.

(4) The provisions of paragraphs (2) and (3) may be waived upon the written request of the Secretary, if agreed to by the Chairmen and Ranking Minority Members of both Committees.

(5), (6) Repealed. Pub. L. 101–235, title I, § 123(4), Dec. 15, 1989, 103 Stat. 2021.

(7) The Secretary shall include with each rule or regulation required to be transmitted to the Committees under this subsection a detailed summary of all changes required by the Office of Management and Budget that prohibit, modify, postpone, or disapprove such rule or regulation in whole or part.

(p) Cost-benefit analysis of field reorganizations; requirements, contents, etc.

A plan for the reorganization of any regional, area, insuring, or other field office of the Department of Housing and Urban Development may take effect only upon the expiration of 90 days after publication in the Federal Register of a cost-benefit analysis of the effect of the plan on each office involved. Such cost-benefit analysis shall include, but not be limited to—

(1) an estimate of cost savings supported by background information detailing the source and substantiating the amount of the savings;

(2) an estimate of the additional cost which will result from the reorganization;

(3) a study of the impact on the local economy; and

(4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services,

where any of the above factors cannot be quantified, the Secretary shall provide a statement on the nature and extent of those factors in the cost-benefit analysis.

(q) Waiver of regulations

(1) Any waiver of regulations of the Department shall be in writing and shall specify the grounds for approving the waiver.

(2) The Secretary may delegate authority to approve a waiver of a regulation only to an individual of Assistant Secretary rank or equivalent rank, who is authorized to issue the regulation to be waived.

(3) The Secretary shall notify the public of all waivers of regulations approved by the Department. The notification shall be included in a notice in the Federal Register published not less than quarterly. Each notification shall cover the period beginning on the day after the last date covered by the prior notification, and shall—

(A) identify the project, activity, or undertaking involved;

(B) describe the nature of the requirement that has been waived and specify the provision involved;

(C) specify the name and title of the official who granted the waiver request;

(D) include a brief description of the grounds for approval of the waiver; and

(E) state how more information about the waiver and a copy of the request and the approval may be obtained.

(4) Any waiver of a provision of a handbook of the Department shall—

(A) be in writing;

(B) specify the grounds for approving the waiver; and

(C) be maintained in indexed form and made available for public inspection for not less than the 3-year period beginning on the date of the waiver.

(r) Program evaluation and monitoring

(1) For the programs listed in paragraph (2), amounts appropriated under this subsection shall be available to the Secretary for evaluating and monitoring of all such programs (including all aspects of the public housing and section 202 programs) and collecting and maintaining data for such purposes. The Secretary shall expend amounts made available under this subsection in accordance with the need and complexity of evaluating and monitoring each such program and collecting and maintaining data for such purposes.

(2) The programs subject to this subsection shall be the programs authorized under—

(A) titles I [42 U.S.C. 1437 et seq.] and II[1] of the United States Housing Act of 1937;

(B) section 202 of the Housing Act of 1959 [12 U.S.C. 1701q];

(C) section 106 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701x];

(D) the Fair Housing Act [42 U.S.C. 3601 et seq.];

[1] See References in Text note below.

(E) title I [42 U.S.C. 5301 et seq.] and section 810[1] of the Housing and Community Development Act of 1974;

(F) section 201 of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1715z–1a];

(G) the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.];

(H) section 222 of the Housing and Urban-Rural Recovery Act of 1983;

(I) section 3616a of this title;

(J) title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.]; and

(K) titles II [42 U.S.C. 12721 et seq.], III, and IV and section 811 [42 U.S.C. 8013] of the Cranston-Gonzalez National Affordable Housing Act.

(3) In conducting evaluations and monitoring pursuant to the authority under this subsection, and collecting and maintaining data pursuant to the authority under this subsection, the Secretary shall determine any need for additional staff and funding relating to evaluating and monitoring the programs under paragraph (2) and collecting and maintaining data for such purposes.

(4)(A) The Secretary may provide for evaluation and monitoring under this subsection and collecting and maintaining data for such purposes directly or by grants, contracts, or interagency agreements. Not more than 50 percent of the amounts made available under paragraph (1) may be used for grants, contracts, or interagency agreements.

(B) Any amounts not used for grants, contracts, or interagency agreements under subparagraph (A) shall be used in a manner that increases and strengthens the ability of the Department to monitor and evaluate the programs under paragraph (2) and to collect and maintain data for such purposes through officers and employees of the Department.

(5) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1993 and fiscal year 1994. Such amounts shall remain available until expended.

(s) Authorization of appropriations; allocations for staff and training

(1) Notwithstanding any other provision of law, there is authorized to be appropriated for salaries and expenses to carry out the purposes of this section $988,000,000 for fiscal year 1993 and $1,029,496,000 for fiscal year 1994.

(2) Of the amounts authorized to be appropriated by this section, $96,000,000 shall be available for each of the fiscal years 1993 and 1994, which amounts shall be used to provide staff in regional, field, or zone offices of the Department of Housing and Urban Development to review, process, approve, and service applications for mortgage insurance under title II of the National Housing Act [12 U.S.C. 1707 et seq.] for housing consisting of 5 or more dwelling units.

(3) Of the amounts authorized to be appropriated to carry out this section, not less than $5,000,000 of such amount shall be available for each fiscal year exclusively for the purposes of providing ongoing training and capacity building for Department personnel.

(t) Training regarding issues relating to grandparent-headed and relative-headed families

The Secretary shall ensure that all personnel employed in field offices of the Department who have responsibilities for administering the housing assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) or the supportive housing program under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), and an appropriate number of personnel in the headquarters office of the Department who have responsibilities for those programs, have received adequate training regarding how covered families (as that term is defined in section 202 of the LEGACY Act of 2003) can be served by existing affordable housing programs.

(Pub. L. 89–174, § 7, Sept. 9, 1965, 79 Stat. 669; Pub. L. 90–284, title VIII, § 808(b)(2), Apr. 11, 1968, 82 Stat. 84; Pub. L. 90–448, title VIII, § 807(d), Aug. 1, 1968, 82 Stat. 544; Pub. L. 91–609, title I, § 120(c), title IX, §§ 905, 906, Dec. 31, 1970, 84 Stat. 1775, 1809, 1811; Pub. L. 94–375, §§ 17(d), 21, Aug. 3, 1976, 90 Stat. 1077; Pub. L. 95–557, title III, §§ 316, 324, title IX, § 908, Oct. 31, 1978, 92 Stat. 2099, 2103, 2129; Pub. L. 96–399, title III, § 334(a), Oct. 8, 1980, 94 Stat. 1653; Pub. L. 98–479, title I, § 104(b), Oct. 17, 1984, 98 Stat. 2225; Pub. L. 100–242, title V, § 563(a), Feb. 5, 1988, 101 Stat. 1944; Pub. L. 101–235, title I, §§ 106, 123, 124, 141, Dec. 15, 1989, 103 Stat. 2000, 2021, 2022, 2030; Pub. L. 101–625, title IX, § 954(a), Nov. 28, 1990, 104 Stat. 4420; Pub. L. 102–550, title IX, §§ 902(b), (c), 929, Oct. 28, 1992, 106 Stat. 3867, 3887; Pub. L. 103–233, title I, § 104, Apr. 11, 1994, 108 Stat. 363; Pub. L. 105–362, title VII, § 701(a), Nov. 10, 1998, 112 Stat. 3287; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 108–186, title II, § 204, Dec. 16, 2003, 117 Stat. 2691.)

REFERENCES IN TEXT

The civil service laws, referred to in subsecs. (c) and (*l*), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsec. (c), are classified generally to chapter 51 (§ 5101 et seq.) and to subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

The National Housing Act, referred to in subsecs. (m) and (s)(2), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. Title II of the Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The Housing and Urban Development Act of 1965, referred to in subsec. (m), is Pub. L. 89–117, Aug. 10, 1965, 79 Stat. 451, as amended. Title I of the Housing and Urban Development Act of 1965 enacted sections 1421b, 1466 of this title, and sections 1701q, 1701s, 1735g, 1735h of Title 12, amended sections 1402, 1422, 1451, 1465 of this title, sections 1715c, 1715*l*, 1715n, 1717 of Title 12, and section 1816 [now 3732] of Title 38, Veterans' Benefits, and enacted provisions set out as notes under section 1466 of this title and section 1701q of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 12 and Tables.

The Department of Housing and Urban Development Reform Act of 1989, referred to in subsec. (*o*)(3), is Pub. L. 101–235, Dec. 15, 1989, 103 Stat. 1987. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 3531 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (r)(2)(A), is act Sept. 1, 1937, ch. 896, as revised

generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended. Title I of the Act is classified generally to subchapter I (§ 1437 et seq.) of chapter 8 of this title. Title II of the Act, which was classified generally to subchapter II (§ 1437aa et seq.) of chapter 8 of this title, was repealed by Pub. L. 104–330, title V, § 501(a), Oct. 26, 1996, 110 Stat. 4041. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Fair Housing Act, referred to in subsec. (r)(2)(D), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I of chapter 45 (§ 3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (r)(2)(E), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Act is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables. Section 810 of the Act which was classified to section 1706e of Title 12, Banks and Banking, was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

Section 201 of the Housing and Community Development Amendments of 1978, referred to in subsec. (r)(2)(F), is section 201 of Pub. L. 95–557, title II, Oct. 31, 1978, 92 Stat. 2084, which enacted section 1715z–1a of Title 12, Banks and Banking, and amended section 1715z–1 of Title 12.

The Congregate Housing Services Act of 1978, referred to in subsec. (r)(2)(G), is title IV of Pub. L. 95–557, Oct. 31, 1978, 92 Stat. 2104, as amended, which is classified principally to chapter 89 (§ 8001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8001 of this title and Tables.

Section 222 of the Housing and Urban-Rural Recovery Act of 1983, referred to in subsec. (r)(2)(H), is section 222 of Pub. L. 98–181, which is set out as a note under section 1701z–6 of Title 12, Banks and Banking.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (r)(2)(J), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended. Title IV of the Act is classified generally to subchapter IV (§ 11361 et seq.) of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (r)(2)(K), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of this title. Title III of the Act enacted subchapter III (§ 12851 et seq.) of chapter 130 of this title and sections 1735f–17 and 1735f–18 of Title 12, Banks and Banking, amended sections 1703, 1708, 1709, 1715d, 1715z–20, 1721, and 1735f–9 of Title 12, and enacted provisions set out as notes under sections 1703, 1709, 1713, and 1735f–18 of Title 12. Title IV of the Act, known as the Homeownership and Opportunity Through HOPE Act, enacted subchapter II–A (§ 1437aaa et seq.) of chapter 8 of this title and subchapter IV (§ 12871 et seq.) of chapter 130 of this title, amended sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

Section 202 of the LEGACY Act of 2003, referred to in subsec. (t), is section 202 of Pub. L. 108–186, which is set out in a note under section 1701q of Title 12, Banks and Banking.

CODIFICATION

In subsec. (c), ''the Executive Schedule provided by subchapter II of chapter 53 of title 5'' substituted for ''the Federal Executive Salary Schedule provided by the Federal Executive Salary Act of 1964'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (e), ''section 3109 of title 5'' substituted for ''section 15 of the Act of August 2, 1946'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5. Prior to the enactment of Title 5, section 15 of the Act of Aug. 2, 1946, was classified to section 55a of former Title 5.

Section was formerly classified to section 624d of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

Subsec. (d) is comprised of the first sentence of subsec. (d) of section 7 of Pub. L. 89–174. The second sentence of subsec. (d) repealed the second proviso of section 1451(c) of this title.

AMENDMENTS

2003—Subsec. (t). Pub. L. 108–186 added subsec. (t).

2000—Subsec. (r)(2)(J). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

1998—Subsec. (r)(5), (6). Pub. L. 105–362 redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''Not later than December 31 of each year, the Secretary shall submit to the Congress a report regarding the use of amounts made available under this subsection during the fiscal year ending on September 30 of that year, including an analysis of the ability of the Department to monitor and evaluate the programs under paragraph (2) and a statement of any needs determined under paragraph (3).''

1994—Subsec. (i)(5). Pub. L. 103–233 struck out before last semicolon ''; except that with respect to any mortgage held by the Secretary, the Secretary shall, subject to the availability of amounts provided in appropriation Acts, implement the authority under this paragraph to reduce the interest rate on the mortgage to a rate not less than the rate for recently issued marketable obligations of the Treasury having a comparable maturity if (and to the extent that) such a reduction, when taken together with other actions authorized under the National Housing Act, is necessary to avoid foreclosure on the mortgage; and except that for any mortgage for which the interest rate is reduced pursuant to an appropriation under the preceding clause, if the Secretary determines that the income or ability of the mortgagor to make interest payments has increased, the Secretary may (not more than once for each such mortgage) increase such interest rate to a rate not exceeding the prevailing market rate, as determined by the Secretary''.

1992—Subsec. (i)(5). Pub. L. 102–550, § 902(b)(1), inserted before semicolon ''; except that with respect to any mortgage held by the Secretary, the Secretary shall, subject to the availability of amounts provided in appropriation Acts, implement the authority under this paragraph to reduce the interest rate on the mortgage to a rate not less than the rate for recently issued marketable obligations of the Treasury having a comparable maturity if (and to the extent that) such a reduction, when taken together with other actions authorized under the National Housing Act, is necessary to avoid foreclosure on the mortgage; and except that for any mortgage for which the interest rate is reduced pursuant to an appropriation under the preceding clause, if the Secretary determines that the income or ability of the mortgagor to make interest payments has increased, the Secretary may (not more than once for each such mortgage) increase such interest rate to a rate not exceeding the prevailing market rate, as determined by the Secretary''.

Subsec. (i)(6). Pub. L. 102–550, § 902(b)(2), inserted before period '', including any provisions relating to the authority or requirements under paragraph (5)''.

Subsec. (r)(6). Pub. L. 102–550, § 902(c), amended first sentence generally. Prior to amendment, first sentence read as follows: ''There is authorized to be appropriated to carry out this subsection $25,000,000 for fiscal year 1991.''

Subsec. (s). Pub. L. 102–550, § 929, added subsec. (s).

1990—Subsec. (r)(1). Pub. L. 101–625, § 954(a)(1), inserted ''and collecting and maintaining data for such purposes'' before periods at end of first and last sentences.

Subsec. (r)(2)(K). Pub. L. 101–625, § 954(a)(2), added subpar. (K).

Subsec. (r)(3). Pub. L. 101–625, § 954(a)(3), inserted ''and collecting and maintaining data pursuant to the authority under this subsection,'' after comma and ''and collecting and maintaining data for such purposes'' before period at end.

Subsec. (r)(4)(A). Pub. L. 101–625, § 954(a)(4)(A), inserted ''and collecting and maintaining data for such purposes'' after ''subsection''.

Subsec. (r)(4)(B). Pub. L. 101–625, § 954(a)(4)(B), inserted ''and to collect and maintain data for such purposes'' after ''paragraph (2)''.

1989—Subsec. (e). Pub. L. 101–235, § 141, inserted at end ''The Secretary is authorized to enter into contracts with private companies for the provision of such managerial support to the Federal Housing Administration as the Secretary determines to be appropriate, including but not limited to the management of insurance risk and the improvement of the delivery of mortgage insurance.''

Subsec. (*o*)(2)(A). Pub. L. 101–235, § 123(1), substituted ''15-calendar day period beginning on the day'' for ''first period of 15 calendar days of continuous session of Congress which occurs'' and struck out ''of continuous session'' before ''prior to its being published''.

Subsec. (*o*)(2)(B). Pub. L. 101–235, § 123(2), struck out ''of continuous session of Congress'' before ''prior to its being published''.

Subsec. (*o*)(3). Pub. L. 101–235, § 123(3)(A), substituted ''expiration of the 30-calendar day period beginning on the day'' for ''first period of 30 calendar days of continuous session of Congress which occurs''.

Pub. L. 101–235, § 123(3)(B), substituted ''Any regulation implementing any provision of the Department of Housing and Urban Development Reform Act of 1989 that authorizes the imposition of a civil money penalty may not become effective until after the expiration of a public comment period of not less than 60 days.'' for ''If within such 30-day period, either Committee has reported out or been discharged from further consideration of a joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, the rule or regulation or portion thereof so addressed shall not become effective for a period of 90 calendar days from the date of Committee action or discharge unless the House to which such Committee reports has rejected such resolution or legislation, in which case the rule or regulation may go into effect only after the expiration of the 30 calendar days described in the first sentence of this paragraph if the other House does not have such a resolution or legislation pending or adopted, and if the requirements of section 553 of title 5 are met.''

Subsec. (*o*)(5). Pub. L. 101–235, § 123(4), struck out par. (5) which read as follows: ''Congressional inaction on any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved.''

Subsec. (*o*)(6). Pub. L. 101–235, § 123(4), struck out par. (6) which read as follows: ''For purposes of this subsection—

''(A) continuity of session is broken only by an adjournment of Congress sine die;

''(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of calendar days of continuous session of Congress; and

''(C) the term 'rule or regulation' does not include the setting of interest rates pursuant to section 235 or 236 of the National Housing Act.''

Subsec. (q). Pub. L. 101–235, § 106, added subsec. (q).

Subsec. (r). Pub. L. 101–235, § 124, added subsec. (r).

1988—Subsec. (*o*)(7). Pub. L. 100–242 added par. (7).

1984—Subsec. (*o*)(6)(C). Pub. L. 98–479 substituted ''section 235 or 236 of the National Housing Act'' for ''section 3 of Public Law 90–301''.

1980—Subsec. (*o*)(3). Pub. L. 96–399 substituted ''30'' for ''20'' wherever appearing.

1978—Subsec. (n). Pub. L. 95–557, § 316, inserted ''or facilities, or to assist in establishing, equipping, and operating interagency day care facilities'' after ''a day care center facility'', substituted ''any such day care center'' for ''such a day care center'' and inserted provision relating to limited start-up costs in an amount limited to 3 per centum of the first year's operating budget, but not to exceed $3,500.

Subsec. (*o*). Pub. L. 95–557, § 324, added subsec. (*o*).

Subsec. (p). Pub. L. 95–557, § 908, added subsec. (p).

1976—Subsec. (c). Pub. L. 94–375, § 17(d), substituted ''six'' for ''seven'' in proviso.

Subsec. (n). Pub. L. 94–375, § 21, added subsec. (n).

1970—Subsec. (e). Pub. L. 91–609, § 906, substituted ''for individuals not to exceed the per diem equivalent to the highest rate for grade GS–18 of the General Schedule under section 5332 of title 5'' for ''not to exceed $100 per diem for individuals''.

Subsecs. (h) to (*l*). Pub. L. 91–609, § 905, added subsecs. (h) to (*l*).

Subsec. (m). Pub. L. 91–609, § 120(c), added subsec. (m).

1968—Subsec. (b). Pub. L. 90–448 repealed subsec. (b) which restricted transfer of functions in connection with secondary market operations of the Federal National Mortgage Association.

Subsec. (c). Pub. L. 90–284 increased from six to seven the number of positions in the Department whose compensation may be fixed at annual rate applicable to positions in level V.

Change of Name

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Effective Date of 1980 Amendment

Section 334(b) of Pub. L. 96–399 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to rules and regulations which are published as final on or after the date of enactment of this Act [Oct. 8, 1980].''

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–448 effective from and after a date, no more than 120 days following Aug. 1, 1968, as established by the Secretary of Housing and Urban Development, see section 808 of Pub. L. 90–448, set out as an Effective Date note under section 1716b of Title 12, Banks and Banking.

Report on Single Family and Multifamily Homes

Pub. L. 105–276, title V, § 591, Oct. 21, 1998, 112 Stat. 2652, provided that:

''(a) In General.—Not later than 12 months after the date of the enactment of this Act [Oct. 21, 1998], the Inspector General of the Department of Housing and Urban Development shall submit to the Congress a report, which shall include information relating to—

''(1) with respect to 1- to 4-family dwellings owned by the Department of Housing and Urban Development, on a monthly average basis—

''(A) the total number of units in those dwellings;

''(B) the number and percentage of units in those dwellings that are unoccupied, and their average period of vacancy, and the number and percentage of units in those dwellings that have been unoccupied for more than 1 year, as of that date; and

''(C) the number and percentage of units in those projects that are determined by the Inspector General to be substandard, based on any—

''(i) lack of hot or cold piped water;

''(ii) lack of working toilets;

''(iii) regular and prolonged breakdowns in heating;

''(iv) dangerous electrical problems;

''(v) unsafe hallways or stairways;

''(vi) leaking roofs, windows, or pipes;

''(vii) open holes in walls and ceilings; and

''(viii) indications of rodent infestation; and

''(2) with respect to multifamily housing projects (as that term is defined in section 203 of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1701z–11]) owned by the Department of Housing and Urban Development on a monthly average basis—

''(A) the total number of units in those projects;

''(B) the number and percentage of units in those projects that are unoccupied, and their average period of vacancy, and the number and percentage of units in those projects that have been unoccupied for more than 1 year, as of that date; and

''(C) the number and percentage of units in those projects that are determined by the Inspector General to be substandard, based on any—

''(i) lack of hot or cold piped water;

''(ii) lack of working toilets;

''(iii) regular and prolonged breakdowns in heating;

''(iv) dangerous electrical problems;

''(v) unsafe hallways or stairways;

''(vi) leaking roofs, windows, or pipes;

''(vii) open holes in walls and ceilings; and

''(viii) indications of rodent infestation; and

''(3) the Department's plans and operations to address vacancies and substandard physical conditions described in paragraphs (1) and (2).

''(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 3536. Annual reports

The Secretary shall, as soon as practicable after the end of each calendar year, make a report to the President for submission to the Congress on the activities of the Department during the preceding calendar year. The report required under this section shall include the reports required under paragraphs (2) and (6) of section 3608(e) of this title, the reports required under subsections (a) and (b) of section 4856 of this title, the report required under section 1701*o* of title 12, and the report required under section 3533(e)(2) of this title.

(Pub. L. 89–174, § 8, Sept. 9, 1965, 79 Stat. 670; Pub. L. 106–569, title XI, § 1103(e), Dec. 27, 2000, 114 Stat. 3031.)

CODIFICATION

Section was formerly classified to section 624e of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

AMENDMENTS

2000—Pub. L. 106–569 inserted at end ''The report required under this section shall include the reports required under paragraphs (2) and (6) of section 3608(e) of this title, the reports required under subsections (a) and (b) of section 4856 of this title, the report required under section 1701*o* of title 12, and the report required under section 3533(e)(2) of this title.''

PERFORMANCE GOALS FOR DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Pub. L. 102–550, title IX, § 925(a), Oct. 28, 1992, 106 Stat. 3884, provided that:

''(1) IN GENERAL.—The Secretary of the Department of Housing and Urban Development (hereafter in this Act [see Short Title of 1992 Amendment note set out under section 5301 of this title] referred to as the 'Secretary') may establish performance goals for the major programs of the Department of Housing and Urban Development in order to measure progress towards meeting the objectives of national housing policy.

''(2) FORM OF GOALS.—The performance goals referred to in paragraph (1) shall be expressed in terms sufficient to measure progress.

''(3) REPORT.—The Secretary shall include in the Secretary's annual report to the Congress a description of the progress made in attaining the performance goals for each program, citing the results achieved in each program for the previous year.

''(4) FAILURE TO MEET GOALS.—If a performance standard or goal has not been met, the description under paragraph (3) shall include an explanation of why the goal was not met, propose plans for achieving the performance goal, and recommend any legislative or regulatory changes necessary for achievement of the goal.''

ANNUAL REPORT ON CHARACTERISTICS OF FAMILIES IN ASSISTED HOUSING

Pub. L. 100–242, title I, § 166, Feb. 5, 1988, 101 Stat. 1864, as amended by Pub. L. 101–625, title IX, § 954(b), Nov. 28, 1990, 104 Stat. 4420, provided that:

''(a) IN GENERAL.—The Secretary of Housing and Urban Development shall include in the annual report under section 8 of the Housing and Urban Development Act [probably means section 8 of the Department of Housing and Urban Development Act, 42 U.S.C. 3536] descriptions of the characteristics of families assisted under each of the following programs of assistance: public housing, section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] (other than subsection (*o*) of such section), section 8(*o*) of the United States Housing Act of 1937, and section 202 of the Housing Act of 1959 [12 U.S.C. 1701q].

''(b) SPECIFIC REQUIREMENTS.—The descriptions required in subsection (a) shall include information with respect to—

''(1) family size, including the number of children;
''(2) amount and sources of family income;
''(3) the age, race, and sex of family members; and
''(4) whether the head of the family (or the spouse of such person) is a member of the armed forces.

''(c) COLLECTION AND MAINTENANCE OF DATA.—The Secretary shall collect and maintain data necessary to carry out the purposes of this section and shall coordinate such efforts, to the greatest extent possible, with activities and responsibilities under section 8 of the Department of Housing and Urban Development Act [42 U.S.C. 3536].''

§ 3537. Separability

Notwithstanding any other evidence of the intent of Congress, it is hereby declared to be the intent of Congress that if any provision of this chapter, or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this chapter or its application to other persons and circumstances, but shall be confined in its operation to the provision of this chapter, or the application thereof to the persons and circumstances, directly involved in the controversy in which such judgment shall have been rendered.

(Pub. L. 89–174, § 10, Sept. 9, 1965, 79 Stat. 671.)

CODIFICATION

Section was formerly classified to section 624f of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 1, 1966, 80 Stat. 378.

§ 3537a. Prohibition of advance disclosure of funding decisions

(a) Prohibited actions

During any selection process, no officer or employee of the Department of Housing and Urban Development shall knowingly disclose any covered selection information regarding such selection, directly or indirectly, to any person other than a person authorized by the Secretary to receive such information.

(b) Administrative remedies

If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (a) of this section has occurred, the Secretary shall—

(1) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate actions; and

(2) in the case of a selection that has been made, determine whether to—

(A) void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

(B) impose sanctions upon the violating applicant selected, subject to review and determination on the record after opportunity for a hearing;

(C) permit the violating applicant selected to continue to participate in the program; or

(D) take any other actions that the Secretary considers appropriate.

(c) Civil money penalties

(1) In general

Whenever any employee of the Department knowingly and materially violates the prohibition in subsection (a) of this section, the Secretary may impose a civil money penalty on the employee in accordance with the provisions of this subsection. This penalty shall be in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary takes other disciplinary actions.

(2) Amount

The amount of the penalty, as determined by the Secretary, may not exceed $10,000 for each violation.

(3) Agency procedures

(A) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under this subsection. The standards and procedures—

(i) shall provide for the Secretary or other official of the Department to make the determination to impose a penalty or to use an administrative entity to make the determination;

(ii) shall provide for the imposition of a penalty only after the employee has been given an opportunity for a hearing on the record; and

(iii) may provide for review of any determination or order, or interlocutory ruling, arising from a hearing.

(B) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable order. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(C) Factors in determining amount of penalty

In determining the amount of a penalty under paragraph (2), consideration shall be given to such factors as the gravity of the offense, any history of prior disclosures of information on pending funding decisions made after December 15, 1989, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(D) Reviewability of imposition of a penalty

The Secretary's determination or order imposing a penalty under paragraph (1) shall not be subject to review, except as provided in paragraph (4).

(4) Judicial review of agency determination

(A) In general

After exhausting all administrative remedies established by the Secretary under

paragraph (3)(A), an employee against whom the Secretary has imposed a civil money penalty under paragraph (1) may obtain a review of the penalty and such ancillary issues (such as any administrative sanctions under 24 C.F.R. part 25) as may be addressed in the notice of determination to impose a penalty under paragraph (3)(A)(i) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

(B) Objections not raised in hearing

The court shall not consider any objection that was not raised in the hearing conducted pursuant to paragraph (3)(A) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(C) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(D) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(5) Action to collect penalty

If any employee fails to comply with the Secretary's determination or order imposing a civil money penalty under paragraph (1), after the determination or order is no longer subject to review as provided by paragraphs (3)(A) and (4), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the employee and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(6) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this subsection.

(7) Deposit of penalties

The Secretary shall deposit all civil money penalties collected under this subsection into miscellaneous receipts of the Treasury.

(d) Criminal penalties

Whoever willfully violates subsection (a) of this section by making a disclosure prohibited by subsection (a) of this section to any applicant, or any officer, employee, representative, agent, or consultant of any applicant, shall be imprisoned not more than 5 years, or fined in accordance with title 18, or both.

(e) Definitions

For purposes of this section:

(1) Applicant

The term ''applicant'' means any applicant or candidate that is being considered for receiving assistance.

(2) Assistance

The term ''assistance'' means any grant, loan, subsidy, guarantee, or other financial assistance under a program administered by the Secretary that provides by statute, regulation, or otherwise for the competitive distribution of such assistance. The term does not include any mortgage insurance provided under a program administered by the Secretary.

(3) Covered selection information

The term ''covered selection information'' means—

(A) any information that is contained in any application or request for assistance, or any information regarding the decision of the Secretary to make available assistance or other information that is determined by the Secretary to be information that is not generally available to the public (not including program requirements and timing of the decision to make assistance available); and

(B) any information that is required by statute, regulation, or order to be confidential.

(4) Knowingly

The term ''knowingly'' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(5) Selection

The term ''selection'' means the determination of which applicants for assistance are to receive assistance under the program.

(6) Selection process

The term ''selection process'' means the period with respect to a selection for assistance that begins with the development, preparation, and issuance of a solicitation or request for applications for the assistance and concludes with the selection of recipients of assistance, and includes the evaluation of applications.

(f) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(g) Applicability

This section shall apply only with respect to violations that occur on or after December, 15, 1989.

(Pub. L. 89–174, § 12, as added Pub. L. 101–235, title I, § 103, Dec. 15, 1989, 103 Stat. 1995.)

§ 3537b. Repealed. Pub. L. 104–65, § 11(b)(1), Dec. 19, 1995, 109 Stat. 701

Section, Pub. L. 89–174, § 13, as added Pub. L. 101–235, title I, § 112, Dec. 15, 1989, 103 Stat. 2016; amended Pub. L. 102–550, title IX, § 926, Oct. 28, 1992, 106 Stat. 3885, related to registration of and reports by persons spending money to influence Department decisions.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104–65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

§ 3537c. Prohibition of lump-sum payments

In providing relocation assistance in connection with any program administered by the Department of Housing and Urban Development, the Secretary may not make lump-sum payments to any displaced residential tenant, except where necessary to cover—

(1) moving expenses;

(2) a downpayment on the purchase of a replacement residence, including a condominium unit or membership in a cooperative housing association; or

(3) any incidental expenses related to paragraph (1) or (2).

(Pub. L. 89–174, § 14, as added Pub. L. 102–550, title IX, § 922, Oct. 28, 1992, 106 Stat. 3884.)

§ 3538. Rescheduling and refinancing of Federal loans

The Secretary of Housing and Urban Development is authorized to refinance any note or other obligation which is held by him in connection with any loan made by the Department of Housing and Urban Development or its predecessor in interest, or which is included within the revolving fund for liquidating programs established by the Independent Offices Appropriation Act of 1955 [12 U.S.C. 1701g–5], where he finds such refinancing necessary because of the loss, destruction, or damage (as a result of a major disaster) to property or facilities securing such obligations. The Secretary may authorize a suspension in the payment of principal and interest charges on, and an additional extension in the maturity of, any such loan for a period not to exceed five years if he determines that such action is necessary to avoid severe financial hardship.

(Pub. L. 91–606, title II, § 236(b), Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

The Independent Offices Appropriation Act of 1955, referred to in text, is act June 24, 1954, ch. 359, 68 Stat. 272. Provisions of the act which established the revolving fund for liquidating programs are classified to section 1701g–5 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Department of Housing and Urban Development Act which comprises this chapter.

Section was formerly classified to section 4455(b) of this title.

EFFECTIVE DATE

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

§ 3539. Housing and Urban Development Disaster Assistance Fund

The Secretary of Housing and Urban Development is authorized to establish a fund and to transfer to such fund from appropriations or funds available to the Department of Housing and Urban Development, such amounts as may be necessary to provide disaster assistance for which the Secretary has been requested by the President to make resources available pursuant to the authority of the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.].

(Pub. L. 92–383, title IV, § 406, Aug. 14, 1972, 86 Stat. 553; 1973 Reorg. Plan No. 1, §§ 1, 3(a)(1), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089; Ex. Ord. No. 11749, § 2(1), Dec. 10, 1973, 38 F.R. 34177; Ex. Ord. No. 12148, § 4–201, July 20, 1979, 44 F.R. 43239; Pub. L. 100–707, title I, § 109(s), Nov. 23, 1988, 102 Stat. 4710.)

REFERENCES IN TEXT

The Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Department of Housing and Urban Development Act which comprises this chapter.

Section was formerly classified to section 4413a of this title.

AMENDMENTS

1988—Pub. L. 100–707 substituted ''Disaster Relief and Emergency Assistance Act'' for ''Disaster Relief Act of 1970 (84 Stat. 1744)''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

''President'' substituted in text for ''Director of the Office of Emergency Preparedness'' pursuant to section 1 of Reorganization Plan No. 1 of 1973, eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out in the Appendix to Title 5, Government Organization and Employees.

Previously, functions of Director of Office of Emergency Preparedness under Disaster Relief Act of 1970, transferred to President by Reorg. Plan No. 1 of 1973, had been transferred to Secretary of Housing and Urban Development by Ex. Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177, which superseded Ex. Ord. No. 11725, June

27, 1973, 38 F.R. 17175, which had provided for a similar transfer to Secretary of Housing and Urban Development. Both of these Executive Orders were subsequently revoked, see Delegation of Functions note below.

Office of Emergency Preparedness [formerly Office of Emergency Planning], including offices of Director, Deputy Director, Assistant Directors, and Regional Directors, abolished and functions vested by law in Office of Emergency Preparedness or Director of Office of Emergency Preparedness transferred to President of United States by sections 1 and 3(a)(1) of Reorg. Plan No. 1 of 1973, eff. July 1, 1973, set out in the Appendix to Title 5, Government Organization and Employees.

DELEGATION OF FUNCTIONS

Functions of President under Disaster Relief Act of 1970 delegated to Secretary of Homeland Security by section 4–201 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended, set out as a note under section 5195 of this title. Sections 5–112 and 5–113 of Ex. Ord. No. 12148, revoked Ex. Ord. Nos. 11725 and 11749, respectively, which had previously transferred President's functions under Disaster Relief Act of 1970 to Secretary of Housing and Urban Development. See Transfer of Functions note above.

§ 3540. Repealed. Pub. L. 100–242, title IV, § 420, Feb. 5, 1988, 101 Stat. 1913

Section, Pub. L. 95–128, title IX, § 904, Oct. 12, 1977, 91 Stat. 1149, required annual publication of prototype housing costs for one- to four-family dwelling units.

§ 3541. Paperwork reduction

(a) Declaration of policy

The Congress finds and declares—

(1) that various departments, agencies, and instrumentalities of the Federal Government with responsibilities involving housing and housing finance programs, require, approve, use or otherwise employ a variety of different forms as residential mortgages (or deeds of trust or similar security instruments) as notes secured by those mortgages, and for applications, appraisals and other purposes, and that such duplication of forms constitutes a paperwork burden that adds to the costs imposed on the Nation's homeowners and home buyers;

(2) that unnecessary paperwork impairs the effectiveness of Federal housing and housing finance programs;

(3) that both single-family and multi-family programs are affected; and

(4) that simplification of paperwork imposed by Federal housing and housing finance programs would contribute to achieving the Nation's housing goals by reducing housing costs.

(b) Uniform legal and other forms for use by agencies in housing programs

(1) Not later than October 1, 1980, the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Secretary of Veterans Affairs shall, consistent with provisions of law governing the conduct of housing programs, employ in their respective programs—

(A) uniform single-family and multi-family note and mortgage forms;

(B) a uniform application form for mortgage approval and commitment for mortgage insurance;

(C) a uniform form for computation of the monthly net effective income of applicants;

(D) a uniform property appraisal form;

(E) a uniform settlement statement which shall satisfy the requirements of the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.]; and

(F) such other consolidated or simplified forms, particularly those which solicit identical or nearly identical information from the same persons in the conduct of two or more such programs, the consolidation or simplification of which the Secretaries of Housing and Urban Development and Agriculture and the Secretary of Veterans Affairs mutually agree would contribute to a reduction in the paperwork and regulatory burden of such programs.

(2) The Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Secretary of Veterans Affairs shall, consistent with provisions of law governing their respective programs, provide by regulation for the elimination of forms which solicit information which is already available from other available sources through indexing or other means of identifying such forms.

(3) Each agency referred to in subsection (b) of this section may employ riders, addenda, or similar forms of modification agreements to adapt such uniform forms to its respective programs and policies, consistent with the goals of minimizing the use and extent of such modification agreements and maximizing the suitability of such forms for the use of all participants, public and private.

(c) Coordination and reports by Director of Office of Management and Budget

The Director of the Office of Management and Budget shall coordinate and monitor the development and implementation by Federal departments and agencies of the efforts required by subsection (b) of this section and shall report to the Congress on such development and implementation and with respect to any provisions of law which unnecessarily prevent such departments and agencies from carrying out the provisions of this section as part of each report required under Public Law 93–556. Such report shall include an estimate of the reduction of the level of paperwork burden hours of the affected agencies as allocated by the Office of Management and Budget.

(Pub. L. 95–557, title IX, § 905, Oct. 31, 1978, 92 Stat. 2126; Pub. L. 96–153, title III, § 328, Dec. 21, 1979, 93 Stat. 1121; Pub. L. 98–479, title II, § 204(n)(4), Oct. 17, 1984, 98 Stat. 2234; Pub. L. 102–54, § 13(q)(10), June 13, 1991, 105 Stat. 281.)

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b)(1)(E), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, as amended, which is classified principally to chapter 27 (§ 2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

Public Law 93–556, referred to in subsec. (c), is Pub. L. 93–556, Dec. 27, 1974, 88 Stat. 1789, which is set out as a note under section 3501 of Title 44, Public Printing and Documents.

CODIFICATION

Section was not enacted as part of the Department of Housing and Urban Development Act which comprises this chapter.

AMENDMENTS

1991—Subsec. (b)(1), (2). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' wherever appearing.

1984—Subsec. (b)(1)(E). Pub. L. 98–479 inserted ''of 1974'' after ''Act''.

1979—Subsec. (a). Pub. L. 96–153 reenacted subsec. (a) without change.

Subsec. (b). Pub. L. 96–153 substituted, in provision preceding par. (1)(A), ''Not later than October 1, 1980, the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Administrator of Veterans' Affairs shall, consistent with provisions of law governing the conduct of housing programs,'' for ''Insofar as it is practicable and to the extent that such action would result in a reduction in paperwork and regulatory burden, the Department of Housing and Urban Development and the Veterans' Administration shall'', inserted reference to Secretary of Agriculture in par. (1)(F), added par. (2), redesignated former par. (2) as (3), and struck out former par. (3), which authorized the President to require the Farmers Home Administration and Administrator of the Farmers Home Administration to comply with the requirements of this section if such compliance would contribute to a reduction in the paperwork and regulatory burden of housing and housing finance programs administered by that agency.

Subsec. (c). Pub. L. 96–153 inserted provision requiring the reports to include an estimate of the reduction of the level of paperwork burden hours of the affected agencies as allocated by the Office of Management and Budget.

§ 3542. Public notice and comment regarding demonstration programs not expressly authorized in law

(a) No demonstration program not expressly authorized in law may be commenced by the Secretary of Housing and Urban Development until (1) a description of such demonstration program is published in the Federal Register, which description may be included in a notice of funding availability; and (2) there expires a period of sixty calendar days following the date of such publication, during which period the Secretary shall fully consider any public comments submitted with respect to such demonstration program.

(b) Nothing in this section may be considered to authorize the conducting of any demonstration program by the Secretary of Housing and Urban Development.

(Pub. L. 98–181, title IV, § 470, Nov. 30, 1983, 97 Stat. 1237.)

CODIFICATION

Section was enacted as part of the Supplemental Appropriations Act, 1984, and not as part of the Department of Housing and Urban Development Act which comprises this chapter.

§ 3543. Preventing fraud and abuse in Department of Housing and Urban Development programs

(a) Disclosure of social security account number

As a condition of initial or continuing eligibility for participation in any program of the Department of Housing and Urban Development involving loans, grants, interest or rental assistance of any kind, or mortgage or loan insurance, and to ensure that the level of benefits provided under such programs is proper, the Secretary of Housing and Urban Development may require that an applicant or participant (including members of the household of an applicant or participant) disclose his or her social security account number or employer identification number to the Secretary.

(b) Definitions

For purposes of this section, the terms ''applicant'' and ''participant'' shall have such meanings as the Secretary of Housing and Urban Development by regulation shall prescribe. Such terms shall not include persons whose involvement is only in their official capacity, such as State or local government officials or officers of lending institutions.

(Pub. L. 100–242, title I, § 165, Feb. 5, 1988, 101 Stat. 1864.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of the Department of Housing and Urban Development Act which comprises this chapter.

§ 3544. Preventing fraud and abuse in housing and urban development programs

(a) Definitions

As used in this section:

(1) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(2) Applicant; participant

The terms ''applicant'' and ''participant'' shall have such meanings as the Secretary by regulation shall prescribe, except that such terms shall include members of an applicant's or participant's household, and such terms shall not include persons whose involvement is only in their official capacity, such as State or local government officials and officers of lending institutions.

(3) Public housing agency

The term ''public housing agency'' means any agency described in section 3(b)(6) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(6)].

(4) Program of the Department of Housing and Urban Development

The term ''program of the Department of Housing and Urban Development'' includes Indian housing programs assisted under title II[1] of the United States Housing Act of 1937.

(b) Applicant and participant consent

As a condition of initial or continuing eligibility for participation in any program of the Department of Housing and Urban Development involving initial and periodic review of an applicant's or participant's income, and to assure that the level of benefits provided under the program is correct, the Secretary may require that an applicant or participant—

[1] See References in Text note below.

(1) sign a consent form approved by the Secretary authorizing the Secretary, the public housing agency, or the owner responsible for determining eligibility for or level of benefits to request current or previous employers to verify salary and wage information pertinent to the applicant's or participant's eligibility or level of benefits;

(2) sign a consent form approved by the Secretary authorizing the Secretary or the public housing agency responsible for determining eligibility or level of benefits to request a State agency charged with the administration of the State unemployment law to release wage information with respect to such applicant or participant or information regarding whether such applicant or participant is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such applicant or participant;

(3) sign a consent form approved by the Secretary authorizing the Secretary to request the Commissioner of Social Security and the Secretary of the Treasury to release information pursuant to section 6103(*l*)(7)(D)(ix) of title 26 with respect to such applicant or participant for the sole purpose of the Secretary verifying income information pertinent to the applicant's or participant's eligibility or level of benefits; and

(4) only in the case of an applicant or participant that is a member of a family described in section 3(f)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a(f)(2)), sign an agreement under which the applicant or participant agrees to provide to the appropriate public housing agency, or the owner responsible for determining the participant's eligibility or level of benefits, the information required under section 3(f)(1) of such Act [42 U.S.C. 1437a(f)(1)] for the sole purpose of verifying income information pertinent to the applicant's or participant's eligibility or level of benefits, and comply with such agreement.

Except as provided in this subsection, this consent form shall not be used to request taxpayer return information protected by section 6103 of title 26.

(c) Access to records

(1) Omitted

(2) Applicant and participant protections

(A) In order to protect applicants for, and recipients of, benefits under the programs of the Department of Housing and Urban Development from the improper use of information obtained pursuant to the requirements of section 503(i) of this title from the State agency charged with the administration of the State unemployment compensation law, pursuant to section 3(d)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437a(d)(1)] from the applicant or participant, or pursuant to section 6103(*l*)(7)(D)(ix) of title 26 from the Commissioner of Social Security or the Secretary of the Treasury, officers and employees of the Department of Housing and Urban Development and (in the case of information obtained pursuant to such section 503(i) or 3(d)(1) [42 U.S.C. 1437a(d)(1)]) representatives of public housing agencies may only use such information—

(i) to verify an applicant's or participant's eligibility for or level of benefits; or

(ii) in the case of an owner or public housing agency responsible for determining eligibility for or level of benefits, to inform such owner or public housing agency that an applicant's or participant's eligibility for or level of benefits is uncertain and to request such owner or public housing agency to verify such applicant's or participant's income information.

(B) No Federal, State, or local agency, or public housing agency, or owner responsible for determining eligibility for or level of benefits receiving such information may terminate, deny, suspend, or reduce any benefits of an applicant or participant until such agency or owner has taken appropriate steps to independently verify information relating to—

(i) the amount of the wages, other earnings or income, or unemployment compensation involved,

(ii) whether such applicant or participant actually has (or had) access to such wages, other earnings or income, or benefits for his or her own use, and

(iii) the period or periods when, or with respect to which, the applicant or participant actually received such wages, other earnings or income, or benefits.

(C) Such applicant or participant shall be informed by the agency or owner of the findings made by the agency or owner on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(3) Penalty

(A) Any person who knowingly and willfully requests or obtains any information concerning an applicant or participant pursuant to the authority contained in section 503(i) of this title, section 3(d)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437a(d)(1)], or section 6103(*l*)(7)(D)(ix) of title 26 without consent or agreement, as applicable, pursuant to subsection (b) of this section or under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. The term ''person'' as used in this paragraph shall include an officer or employee of the Department of Housing and Urban Development, an officer or employee of any public housing agency, and any owner responsible for determining eligibility for or level of benefits (or employee thereof).

(B) Any applicant or participant affected by (i) a negligent or knowing disclosure of information referred to in this section, section 503(i) of this title, section 3(d)(1) of the United States Housing Act of 1937 [42 U.S.C.

1437a(d)(1)], or section 6103(*l*)(7)(D)(ix) of title 26 about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 503(i), such section 3(d)(1) [42 U.S.C. 1437a(d)(1)], such section 6103(*l*)(7)(D)(ix), or any regulation implementing this section, such section 503(i), such section 3(d)(1) [42 U.S.C. 1437a(d)(1)], or such section 6103(*l*)(7)(D)(ix), or for which consent, pursuant to subsection (b) of this section, has not been granted, or (ii) any other negligent or knowing action that is inconsistent with this section, such section 503(i), such section 3(d)(1) [42 U.S.C. 1437a(d)(1)], such section 6103(*l*)(7)(D)(ix), or any such implementing regulation may bring a civil action for damages and such other relief as may be appropriate against any officer or employee of any public housing agency or owner (or employee thereof) responsible for any such unauthorized action. The district court of the United States in the district in which the affected applicant or participant resides, in which such unauthorized action occurred, or in which the applicant or participant alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney's fees and other litigation costs.

(d) Effective date

(1) In general

Except as provided in paragraphs (2) and (3), the provisions of this section shall take effect on September 30, 1989.

(2) Optional early implementation

At the initiative of a State or an agency of the State, and with the approval of the Secretary of Labor, the amendments made by subsection (c)(1) may be made effective in such State on any date before September 30, 1989, which is more than 90 days after November 7, 1988.

(3) Requirements for State agencies

In the case of any State the legislature of which has not been in session for at least 30 calendar days (whether or not consecutive) between November 7, 1988, and September 30, 1989, the amendments made by subsection (c)(1) shall take effect 30 calendar days after the first day on which such legislature is in session on or after September 30, 1989.

(e) Conditions of release of information by third parties

An applicant or participant under any program of the Department of Housing and Urban Development may not be required or requested to consent to the release of information by third parties as a condition of initial or continuing eligibility for participation in the program unless—

(1) the request for consent is made, and the information secured is maintained, in accordance with this section,[2] section 552a of title 5; and

(2) the consent that is requested is appropriately limited, with respect to time and information relevant and necessary to meet the requirements of this section.

(Pub. L. 100–628, title IX, §904, Nov. 7, 1988, 102 Stat. 3259; Pub. L. 102–550, title IX, §903(a), Oct. 28, 1992, 106 Stat. 3867; Pub. L. 103–66, title III, §3003, Aug. 10, 1993, 107 Stat. 338; Pub. L. 105–276, title V, §508(d)(2), Oct. 21, 1998, 112 Stat. 2529; Pub. L. 106–74, title II, §214(b), Oct. 20, 1999, 113 Stat. 1074.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a)(4), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, and amended. Title II of the Act, which was classified generally to subchapter II (§1437aa et seq.) of chapter 8 of this title, was repealed by Pub. L. 104–330, title V, §501(a), Oct. 26, 1996, 110 Stat. 4041. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The amendments made by subsection (c)(1), referred to in subsec. (d)(2), (3), mean the amendments made by section 904(c)(1) of Pub. L. 100–628, which enacted section 503(i) and amended section 504(a)(2) of this title. See Codification note below.

CODIFICATION

Section is comprised of section 904 of Pub. L. 100–628. Subsec. (c)(1) of section 904 of Pub. L. 100–628 amended sections 503 and 504 of this title.

Section was enacted as part of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, and not as part of the Department of Housing and Urban Development Act which comprises this chapter.

AMENDMENTS

1999—Subsec. (b)(4). Pub. L. 106–74 inserted ", or the owner responsible for determining the participant's eligibility or level of benefits," after "appropriate public housing agency" and substituted "verifying income" for "the public housing agency verifying income".

1998—Subsec. (b)(4). Pub. L. 105–276, §508(d)(2)(A), which directed the amendment of subsec. (b) by adding par. (4) at end, was executed by adding par. (4) after par. (3), to reflect the probable intent of Congress.

Subsec. (c)(2)(A). Pub. L. 105–276, §508(d)(2)(B)(i), in introductory provisions, inserted ", pursuant to section 3(d)(1) of the United States Housing Act of 1937 from the applicant or participant," after "unemployment compensation law" and "or 3(d)(1)" after "such section 503(i)".

Subsec. (c)(3)(A). Pub. L. 105–276, §508(d)(2)(B)(ii)(I), (II), in first sentence, inserted ", section 3(d)(1) of the United States Housing Act of 1937," after "503(i) of this title" and "or agreement, as applicable," after "consent".

Subsec. (c)(3)(B). Pub. L. 105–276, §508(d)(2)(B)(ii)(III), (IV), in first sentence, inserted "section 3(d)(1) of the United States Housing Act of 1937," after "503(i) of this title," and "such section 3(d)(1)," after "such section 503(i)," wherever appearing.

1993—Subsec. (a)(4). Pub. L. 103–66, §3003(1), added par. (4).

Subsec. (b). Pub. L. 103–66, §3003(2)(D), in concluding provisions, substituted "Except as provided in this subsection, this" for "This".

Subsec. (b)(3). Pub. L. 103–66, §3003(2)(A)–(C), added par. (3).

Subsec. (c). Pub. L. 103–66, §3003(5), struck out "State employment" after "Access to" in heading.

Subsec. (c)(2)(A). Pub. L. 103–66, §3003(3)(A)(i), in introductory provisions, inserted "or pursuant to section 6103(*l*)(7)(D)(ix) of title 26 from the Commissioner of Social Security or the Secretary of the Treasury" after

[2] So in original. The comma probably should be "and".

''compensation law'' and ''(in the case of information obtained pursuant to such section 503(i))'' before ''representatives''.

Subsec. (c)(2)(A)(ii). Pub. L. 103–66, § 3003(3)(A)(ii), substituted ''owner or public housing agency'' for ''owner'' wherever appearing.

Subsec. (c)(2)(B)(i) to (iii). Pub. L. 103–66, § 3003(3)(B), substituted ''wages, other earnings or income,'' for ''wages'' wherever appearing.

Subsec. (c)(3)(A). Pub. L. 103–66, § 3003(4)(A), inserted ''or section 6103(*l*)(7)(D)(ix) of title 26 without consent pursuant to subsection (b) of this section or'' after ''section 503(i) of this title''.

Subsec. (c)(3)(B)(i). Pub. L. 103–66, § 3003(4)(B)(i), added cl. (i) and struck out former cl. (i) which read as follows: ''a negligent or knowing disclosure of information referred to in this section or in section 503(i) of this title about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 503(i), or any regulation implementing this section or such section 503(i), or''.

Subsec. (c)(3)(B)(ii). Pub. L. 103–66, § 3003(4)(B)(ii), inserted ''such section 6103(*l*)(7)(D)(ix),'' after ''503(i)''.

1992—Subsec. (e). Pub. L. 102–550 added subsec. (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

RELEASE FORMS

Section 903(b) of Pub. L. 102–550 directed Secretary of Housing and Urban Development, not later than the expiration of the 180-day period beginning Oct. 28, 1992, to develop a release form that fulfilled the requirements of this section and provided that during the period beginning Oct. 28, 1992, and ending upon implementation of the use of the new form, the benefits provided to an applicant or participant under any program of Department of Housing and Urban Development, or eligibility for such benefits, could not be terminated, denied, suspended, or reduced because of any failure to sign any form authorizing the release of information from any third party, if the applicant or participant otherwise disclosed all financial information relating to the application or recertification.

§ 3545. HUD accountability

(a) Notice regarding assistance

(1) Publication of notice of availability

The Secretary shall publish in the Federal Register notice of the availability of any assistance under any program or discretionary fund administered by the Secretary.

(2) Publication of application procedures

The Secretary shall publish in the Federal Register a description of the form and procedures by which application for the assistance may be made, and any deadlines relating to the award or allocation of the assistance. Such description shall be designed to help eligible applicants to apply for such assistance.

(3) Publication of selection criteria

Not less than 30 days before any deadline by which applications or requests for assistance under any program or discretionary fund administered by the Secretary must be submitted, the Secretary shall publish in the Federal Register the criteria by which selection for the assistance will be made. Subject to section 1439 of this title, such criteria shall include any objective measures of housing need, project merit, or efficient use of resources that the Secretary determines are appropriate and consistent with the statute under which the assistance is made available.

(4) Documentation of decisions

(A) The Secretary shall award or allocate assistance only in response to a written application in a form approved in advance by the Secretary, except where other award or allocation procedures are specified in statute.

(B) The Secretary shall ensure that documentation and other information regarding each application for assistance is sufficient to indicate the basis on which any award or allocation was made or denied. The preceding sentence shall apply to—

(i) any application for an award or allocation of assistance made by the Secretary to a State, unit of general local government, or other recipient of assistance, and

(ii) any application for a subsequent award or allocation of such assistance by such State, unit of general local government or other recipient.

(C)(i) The Secretary shall notify the public of all funding decisions made by the Department. The Secretary shall require any State or unit of general local government to notify the public of the award or allocation of such funding to subsequent recipients. The notification shall include the following elements for each funding decision:

(I) the name and address of each funding recipient;

(II) the name or other means of identifying the project, activity, or undertaking for each funding recipient;

(III) the dollar amount of the funding for each project, activity, or undertaking;

(IV) the citation to the statutory, regulatory, or other criteria under which the funding decision was made; and

(V) such additional information as the Secretary deems appropriate for a clear and full understanding of the funding decision.

(ii) The notification referred to in clause (i) of this subsection shall be published as a Notice in the Federal Register at least quarterly.

(iii) For purposes of this subparagraph, the term ''funding decision'' means the decision of the Secretary to make available grants, loans, or any other form of financial assistance to an individual or to an entity, including (but not limited to) a State or local government or agency thereof (including a public housing agency), an Indian tribe, or a nonprofit organization, under any program administered by the Department that provides, by statute, regulation, or otherwise, for the competitive distribution of financial assistance.

(D) The Secretary shall publish a notice in the Federal Register at least annually informing the public of the allocation of assistance under section 1439(d)(1)(A) of this title.

(E) The Secretary shall ensure that each application and all related documentation and

other information referred to in subparagraph (B), including each letter of support, is readily available for public inspection for a period of not less than 5 years, beginning not less than 30 days following the date on which the award or allocation is made.

(5) Emergency exception

The Secretary may waive the requirements of paragraphs (1), (2), and (3) if the Secretary determines that the waiver is required for appropriate response to an emergency. Not less than 30 days after providing a waiver under the preceding sentence, the Secretary shall publish in the Federal Register the Secretary's reasons for so doing.

(b) Disclosures by applicants

The Secretary shall require the disclosure of information with respect to any application for assistance within the jurisdiction of the Department for a project application submitted to the Secretary or to any State or unit of general local government by any applicant who has received or, in the determination of the Secretary, can reasonably be expected to receive assistance within the jurisdiction of the Department in excess of $200,000 in the aggregate during any fiscal year or such lower amount as the Secretary may establish by regulation. Such information shall include the following:

(1) Other government assistance

Information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to the project or activities for which the applicant is seeking assistance. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

(2) Interested parties

The name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the application for assistance or the planning, development, or implementation of the project or activity. For purposes of this paragraph, residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

(3) Expected sources and uses

A report satisfactory to the Secretary of the expected sources and uses of funds that are to be made available for the project or activity.

(c) Updating of disclosure

During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required under the previous subsection within 30 days of any substantial change.

(d) Limitation of assistance

The Secretary shall certify that assistance within the jurisdiction of the Department to any housing project shall not be more than is necessary to provide affordable housing after taking account of assistance described in subsection (b)(1) of this section. The Secretary shall adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as the Secretary determines to be appropriate, for any changes reported under subsection (c) of this section.

(e) Administrative remedies

If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (b) or (c) of this section has occurred, the Secretary shall—

(1) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate actions; and

(2) in the case of a selection that has been made, determine whether to—

(A) void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

(B) impose sanctions upon the violator, including debarment, subject to review and determination on the record after opportunity for a hearing;

(C) recapture any funds that have been disbursed;

(D) permit the violating applicant selected to continue to participate in the program; or

(E) take any other actions that the Secretary considers appropriate.

The Secretary shall publish in the Federal Register a descriptive statement of each determination made and action taken under this subsection.

(f) Civil money penalties

(1) In general

Whenever any person knowingly and materially violates any provision of subsection (b) or (c) of this section, the Secretary may impose a civil money penalty on that person in accordance with the provisions of this section. This penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, may not exceed $10,000 for each violation.

(g) Agency procedures

(1) In general

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (f) of this section. These standards and procedures—

(A) shall provide for the Secretary to make the determination to impose the penalty or to use an administrative entity to make the determination;

(B) shall provide for the imposition of a penalty only after the person has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order, the determination or order shall be final.

(2) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (f) of this section, consideration shall be given to such factors as the gravity of the offense, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(3) Reviewability of imposition of a penalty

The Secretary's determination or order imposing a penalty under subsection (f) of this section shall not be subject to review, except as provided in subsection (h) of this section.

(h) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (g)(1) of this section, a person against whom the Secretary has imposed a civil money penalty under subsection (f) of this section may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (g)(1)(A) of this section in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the order or determination of the Secretary be modified or be set aside in whole or in part.

(2) Objections not raised in hearing

The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (g)(1) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(4) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(i) Action to collect penalty

If any person fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (f) of this section, after the determination or order is no longer subject to review as provided by subsections (g)(1) and (h) of this section, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(j) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(k) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(*l*) Deposit of penalties

The Secretary shall deposit all civil money penalties collected under this section into miscellaneous receipts of the Treasury.

(m) Definitions

For the purpose of this section—

(1) The term ''Department'' means the Department of Housing and Urban Development.

(2) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(3) The term ''person'' means an individual (including a consultant, lobbyist, or lawyer), corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

(4) The term ''assistance within the jurisdiction of the Department'' includes any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.

(5) The term ''knowingly'' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(n) Effective date

This section shall take effect on the date specified in regulations implementing this section that are issued by the Secretary after notice and public comment.

(Pub. L. 101–235, title I, § 102, Dec. 15, 1989, 103 Stat. 1990.)

CODIFICATION

Section was enacted as part of the Department of Housing and Urban Development Reform Act of 1989, and not as part of the Department of Housing and Urban Development Act which comprises this chapter.

SUBSIDY LAYERING REVIEW

Pub. L. 102–550, title IX, § 911, Oct. 28, 1992, 106 Stat. 3875, as amended by Pub. L. 103–233, title III, § 308, Apr. 11, 1994, 108 Stat. 379, provided that:

''(a) CERTIFICATION OF SUBSIDY LAYERING COMPLIANCE.—The requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545(d)] may be satisfied in connection with a project receiving assistance under a program that is within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 [26 U.S.C. 42] by a certification by a housing credit agency to the Secretary, submitted in accordance with guidelines established by the Secretary, that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which assistance is to be provided within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 shall not be any greater than is necessary to provide affordable housing.

''(b) IN PARTICULAR.—The guidelines established pursuant to subsection (a) shall—

''(1) require that the amount of equity capital contributed by investors to a project partnership is not less than the amount generally contributed by investors in current market conditions, as determined by the housing credit agency; and

''(2) require that project costs, including developer fees, are within a reasonable range, taking into account project size, project characteristics, project location and project risk factors, as determined by the housing credit agency.

''(c) REVOCATION BY SECRETARY.—If the Secretary determines that a housing credit agency has failed to comply with the guidelines established under subsection (a), the Secretary—

''(1) may inform the housing credit agency that the agency may no longer submit certification of subsidy layering compliance under this section; and

''(2) shall carry out section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545(d)] relating to affected projects allocated a low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986 [26 U.S.C. 42].

''(d) APPLICABILITY.—Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)) shall apply only to projects for which an application for assistance or insurance was filed after the date of enactment of the Housing and Urban Development Reform Act [probably should be Department of Housing and Urban Development Reform Act of 1989, enacted Dec. 15, 1989].''

§ 3546. Use of domestic products

(a) Prohibition against fraudulent use of "Made in America" labels

A person shall not intentionally affix a label bearing the inscription of ''Made in America'', or any inscription with that meaning, to any product sold in or shipped to the United States, if that product is not a domestic product.

(b) Report

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall each submit, before January 1, 1994, a report to the Congress on procurements of products that are not domestic products.

(c) "Domestic product" defined

For the purposes of this section, the term ''domestic product'' means a product—

(1) that is manufactured or produced in the United States; and

(2) at least 50 percent of the cost of the articles, materials, or supplies of which are mined, produced, or manufactured in the United States.

(Pub. L. 102–550, title IX, § 920, Oct. 28, 1992, 106 Stat. 3883.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of the Department of Housing and Urban Development Act which comprises this chapter.

§ 3547. Special projects

(1) In general

(A) Release of funds

In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds for special projects appropriated under an appropriations Act for the Department of Housing and Urban Development, such as special projects under the head ''Annual Contributions for Assisted Housing'' in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, and to assure to the public undiminished protection of the environment, the Secretary of Housing and Urban Development may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for the release of funds for particular special projects upon the request of recipients of special projects assistance, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would otherwise apply to the Secretary were the Secretary to undertake such special projects as Federal projects.

(B) Implementation

The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality. Such regulations shall—

(i) provide for monitoring of the performance of environmental reviews under this section;

(ii) in the discretion of the Secretary, provide for the provision or facilitation of training for such performance; and

(iii) subject to the discretion of the Secretary, provide for suspension or termination by the Secretary of the assumption under subparagraph (A).

(C) Responsibilities of State or unit of general local government

The Secretary's duty under subparagraph (B) shall not be construed to limit any responsibility assumed by a State or unit of general local government with respect to any particular release of funds under subparagraph (A).

(2) Procedure

The Secretary shall approve the release of funds for projects subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects, the recipient submits to the Secretary a request for such release, accompanied by a certification of the State or unit of general local government which meets the requirements of paragraph (3). The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for special projects to be carried out pursuant thereto which are covered by such certification.

(3) Certification

A certification under the procedures authorized by this section shall—

(A) be in a form acceptable to the Secretary;

(B) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

(C) specify that the State or unit of general local government under this section has fully carried out its responsibilities as described under paragraph (1); and

(D) specify that the certifying officer—

(i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to paragraph (1); and

(ii) is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities as such an official.

(4) Approval by States

In cases in which a unit of general local government carries out the responsibilities described in paragraph (1), the Secretary may permit the State to perform those actions of the Secretary described in paragraph (2) and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of paragraph (2).

(Pub. L. 103–233, title III, § 305(c), Apr. 11, 1994, 108 Stat. 372.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in pars. (1)(A), (2), and (3)(D)(i), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, referred to in par. (1)(A), is Pub. L. 102–389, Oct. 6, 1992, 106 Stat. 1571. Provisions under the head ''Annual Contributions for Assisted Housing'' in title II of the Act appear at 106 Stat. 1582 and are not classified to the Code. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Multifamily Housing Property Disposition Reform Act of 1994, and not as part of the Department of Housing and Urban Development Act which comprises this chapter.

§ 3548. Semiannual report on contracts and task orders

The Secretary shall submit semi-annually to the Committees on Appropriations a list of all contracts and task orders issued under such contracts in excess of $250,000 which were entered into during the prior 6-month period by the Secretary, the Government National Mortgage Association, and the Office of Federal Housing Enterprise Oversight (or by any officer of the Department of Housing and Urban Development, the Government National Mortgage Association, or the Office of Federal Housing Enterprise Oversight acting in his or her capacity to represent the Secretary or these entities). Each listing shall identify the parties to the contract, the term and amount of the contract, and the subject matter and responsibilities of the parties to the contract.

(Pub. L. 105–18, title II, § 10001, June 12, 1997, 111 Stat. 201.)

CODIFICATION

Section was enacted as part of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia, and not as part of the Department of Housing and Urban Development Act which comprises this chapter.

§ 3549. Investigation of violations

Notwithstanding any other provision of law, on and after February 20, 2003, the Chief Financial Officer of the Department of Housing and Urban Development shall, in consultation with the Budget Officer, have sole authority to investigate potential or actual violations under the Anti-Deficiency Act (31 U.S.C. 1341 et seq.) and all other statutes and regulations related to the obligation and expenditure of funds made available in this, or any other Act; shall determine whether violations exist; and shall submit final reports on violations to the Secretary, the President, the Office of Management and Budget and the Congress in accordance with applicable statutes and Office of Management and Budget circulars.

(Pub. L. 108–7, div. K, title II, Feb. 20, 2003, 117 Stat. 499.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2003, and also as part of the Consolidated Appropriations Resolution, 2003, and not as part of the Department of Housing and Urban Development Act which comprises this chapter.

DUTIES OF CHIEF FINANCIAL OFFICER

Pub. L. 109–115, div. A, title III, Nov. 30, 2005, 119 Stat. 2457, provided in part: ''That the Chief Financial Officer

shall establish positive control of and maintain adequate systems of accounting for appropriations and other available funds as required by 31 U.S.C. 1514: *Provided further*, That for purposes of funds control and determining whether a violation exists under the Anti-Deficiency Act (31 U.S.C. 1341 et seq.), the point of obligation shall be the executed agreement or contract, except with respect to insurance and guarantee programs, certain types of salaries and expenses funding, and incremental funding that is authorized under an executed agreement or contract, and shall be designated in the approved funds control plan: *Provided further*, That the Chief Financial Officer shall: (1) appoint qualified personnel to conduct investigations of potential or actual violations; (2) establish minimum training requirements and other qualifications for personnel that may be appointed to conduct investigations; (3) establish guidelines and timeframes for the conduct and completion of investigations; (4) prescribe the content, format and other requirements for the submission of final reports on violations; and (5) prescribe such additional policies and procedures as may be required for conducting investigations of, and administering, processing, and reporting on, potential and actual violations of the Anti-Deficiency Act and all other statutes and regulations governing the obligation and expenditure of funds made available in this or any other Act''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. I, title II, Dec. 8, 2004, 118 Stat. 3312.

Pub. L. 108–199, div. G, title II, Jan. 23, 2004, 118 Stat. 389.

Pub. L. 108–7, div. K, title II, Feb. 20, 2003, 117 Stat. 499, as amended by Pub. L. 108–199, div. G, title II, Jan. 23, 2004, 118 Stat. 389.

CHAPTER 45—FAIR HOUSING

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SUBCHAPTER I—GENERALLY

§ 3601. Declaration of policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

(Pub. L. 90–284, title VIII, § 801, Apr. 11, 1968, 82 Stat. 81.)

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–430, § 13(a), Sept. 13, 1988, 102 Stat. 1636, provided that: ''This Act and the amendments made by this Act [see Short Title of 1988 Amendment note below] shall take effect on the 180th day beginning after the date of the enactment of this Act [Sept. 13, 1988].''

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–76, § 1, Dec. 28, 1995, 109 Stat. 787, provided that: ''This Act [amending section 3607 of this title] may be cited as the 'Housing for Older Persons Act of 1995'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–430, § 1, Sept. 13, 1988, 102 Stat. 1619, provided that: ''This Act [enacting sections 3610 to 3614a of this title, amending sections 3602, 3604 to 3608, 3615 to 3619, and 3631 of this title and sections 2341 and 2342 of Title 28, Judiciary and Judicial Procedure, repealing former sections 3610 to 3613 of this title, and enacting provisions set out as notes under this section and section 3602 of this title] may be cited as the 'Fair Housing Amendments Act of 1988'.''

SHORT TITLE

Section 1 of Pub. L. 90–284, as added by Pub. L. 100–430, § 2, Sept. 13, 1988, 102 Stat. 1619, provided: ''That this Act [enacting this chapter, sections 231 to 233, 245, 2101, and 2102 of Title 18, Crimes and Criminal Procedure, and sections 1301 to 1303, 1311, 1312, 1321 to 1326, 1331, and 1341 of Title 25, Indians, amending sections 1973j, 3533, 3535 of this title, and sections 241, 242, and 1153 of Title 18, enacting provisions set out as notes under sections 231 and 245 of Title 18, and repealing provisions set out as notes under section 1360 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Civil Rights Act of 1968'.''

Section 800 of Pub. L. 90–284, title VIII, as added by Pub. L. 100–430, § 4, Sept. 13, 1988, 102 Stat. 1619, provided that: ''This title [enacting this subchapter and amending sections 3533 and 3535 of this title] may be cited as the 'Fair Housing Act'.''

SEPARABILITY

Pub. L. 100–430, § 14, Sept. 13, 1988, 102 Stat. 1636, provided that: ''If any provision of this Act [see Short Title of 1988 Amendment note above] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.''

DISCLAIMER OF PREEMPTIVE EFFECT ON OTHER ACTS

Pub. L. 100–430, § 12, Sept. 13, 1988, 102 Stat. 1636, provided that: ''Nothing in the Fair Housing Act [this subchapter] as amended by this Act [see Short Title of 1988 Amendment note above] limits any right, procedure, or remedy available under the Constitution or any other Act of the Congress not so amended.''

INITIAL RULEMAKING

Pub. L. 100–430, § 13(b), Sept. 13, 1988, 102 Stat. 1636, provided that: ''In consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the date of the enactment of this Act [Sept. 13, 1988], issue rules to implement title VIII

[this subchapter] as amended by this Act [see Short Title of 1988 Amendment note above]. The Secretary shall give public notice and opportunity for comment with respect to such rules.''

FEDERALLY PROTECTED ACTIVITIES; PENALTIES

Penalties for violations respecting federally protected activities not applicable to and not affecting activities under this subchapter, see section 101(b) of Pub. L. 90–284, set out as a note under section 245 of Title 18, Crimes and Criminal Procedure.

§ 3602. Definitions

As used in this subchapter—

(a) ''Secretary'' means the Secretary of Housing and Urban Development.

(b) ''Dwelling'' means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) ''Family'' includes a single individual.

(d) ''Person'' includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, receivers, and fiduciaries.

(e) ''To rent'' includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) ''Discriminatory housing practice'' means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

(g) ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) ''Handicap'' means, with respect to a person—

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of title 21).

(i) ''Aggrieved person'' includes any person who—

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

(j) ''Complainant'' means the person (including the Secretary) who files a complaint under section 3610 of this title.

(k) ''Familial status'' means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(*l*) ''Conciliation'' means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) ''Conciliation agreement'' means a written agreement setting forth the resolution of the issues in conciliation.

(n) ''Respondent'' means—

(1) the person or other entity accused in a complaint of an unfair housing practice; and

(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 3610(a) of this title.

(*o*) ''Prevailing party'' has the same meaning as such term has in section 1988 of this title.

(Pub. L. 90–284, title VIII, § 802, Apr. 11, 1968, 82 Stat. 81; Pub. L. 95–598, title III, § 331, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 100–430, § 5, Sept. 13, 1988, 102 Stat. 1619.)

AMENDMENTS

1988—Subsec. (f). Pub. L. 100–430, § 5(a), substituted ''3606, or 3617'' for ''or 3606''.

Subsecs. (h) to (*o*). Pub. L. 100–430, § 5(b), added subsecs. (h) to (*o*).

1978—Subsec. (d). Pub. L. 95–598 substituted ''trustees in cases under title 11'' for ''trustees in bankruptcy''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

TRANSVESTISM

Section 6(b)(3) of Pub. L. 100–430 provided that: ''For the purposes of this Act [see Short Title of 1988 Amendment note set out under section 3601 of this title] as well as chapter 16 of title 29 of the United States Code [29 U.S.C. 701 et seq.], neither the term 'individual with handicaps' nor the term 'handicap' shall apply to an individual solely because that individual is a transvestite.''

§ 3603. Effective dates of certain prohibitions

(a) Application to certain described dwellings

Subject to the provisions of subsection (b) of this section and section 3607 of this title, the prohibitions against discrimination in the sale or rental of housing set forth in section 3604 of this title shall apply:

(1) Upon enactment of this subchapter, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to April 11, 1968;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b) of this section.

(b) Exemptions

Nothing in section 3604 of this title (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) Business of selling or renting dwellings defined

For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(Pub. L. 90–284, title VIII, § 803, Apr. 11, 1968, 82 Stat. 82.)

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(A) that buyer or renter,[1]

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

[1] So in original. The comma probably should be a semicolon.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes—

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.[2]

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that—

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as ''ANSI A117.1'') suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term ''covered multifamily dwellings'' means—

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(Pub. L. 90–284, title VIII, § 804, Apr. 11, 1968, 82 Stat. 83; Pub. L. 93–383, title VIII, § 808(b)(1), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100–430, §§ 6(a)–(b)(2), (e), 15, Sept. 13, 1988, 102 Stat. 1620, 1622, 1623, 1636.)

AMENDMENTS

1988—Pub. L. 100–430, § 6(e), inserted ''and other prohibited practices'' in section catchline.

Subsecs. (a), (b). Pub. L. 100–430, § 6(b)(2), inserted ''familial status,'' after ''sex,''.

Subsecs. (c) to (e). Pub. L. 100–430, § 6(b)(1), inserted ''handicap, familial status,'' after ''sex,''.

Subsec. (f). Pub. L. 100–430, § 6(a), added subsec. (f).

Subsec. (f)(3)(A). Pub. L. 100–430, § 15, which directed the substitution of ''except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agree-

[2] So in original. The period probably should be a semicolon.

ing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.'' for the period at the end of subpar. (A) was executed by making the substitution for a semicolon as the probable intent of Congress because subpar. (A) ended with a semicolon, not a period.

1974—Pub. L. 93–383 inserted '', sex'' after ''religion'' wherever appearing in cls. (a) to (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

§ 3605. Discrimination in residential real estate-related transactions

(a) In general

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) "Residential real estate-related transaction" defined

As used in this section, the term ''residential real estate-related transaction'' means any of the following:

(1) The making or purchasing of loans or providing other financial assistance—

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) Appraisal exemption

Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

(Pub. L. 90–284, title VIII, § 805, Apr. 11, 1968, 82 Stat. 83; Pub. L. 93–383, title VIII, § 808(b)(2), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100–430, § 6(c), Sept. 13, 1988, 102 Stat. 1622.)

AMENDMENTS

1988—Pub. L. 100–430 amended section generally. Prior to amendment, section read as follows: ''After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 3603(b) of this title.''

1974—Pub. L. 93–383 inserted '', sex'' after ''religion''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

§ 3606. Discrimination in the provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

(Pub. L. 90–284, title VIII, § 806, Apr. 11, 1968, 82 Stat. 84; Pub. L. 93–383, title VIII, § 808(b)(3), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100–430, § 6(b)(1), Sept. 13, 1988, 102 Stat. 1622.)

AMENDMENTS

1988—Pub. L. 100–430 inserted ''handicap, familial status,'' after ''sex,''.

1974—Pub. L. 93–383 inserted '', sex'' after ''religion''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

§ 3607. Religious organization or private club exemption

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)(1) Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons.

(2) As used in this section, ''housing for older persons'' means housing—

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by persons 55 years of age or older, and—

(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall—

(I) provide for verification by reliable surveys and affidavits; and

(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of September 13, 1988, who do not meet the age requirements of subsections[1] (2)(B) or (C): *Provided*, That new occupants of such housing meet the age requirements of subsections[1] (2)(B) or (C); or

(B) unoccupied units: *Provided*, That such units are reserved for occupancy by persons who meet the age requirements of subsections[1] (2)(B) or (C).

(4) Nothing in this subchapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 802 of title 21.

(5)(A) A person shall not be held personally liable for monetary damages for a violation of this subchapter if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that—

(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

(Pub. L. 90–284, title VIII, § 807, Apr. 11, 1968, 82 Stat. 84; Pub. L. 100–430, § 6(d), Sept. 13, 1988, 102 Stat. 1622; Pub. L. 104–76, §§ 2, 3, Dec. 28, 1995, 109 Stat. 787.)

CODIFICATION

September 13, 1988, referred to in subsec. (b)(3)(A), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 100–430, which enacted subsec. (b) of this section, to reflect the probable intent of Congress.

[1] So in original. Probably should be ''paragraph''.

AMENDMENTS

1995—Subsec. (b)(2)(C). Pub. L. 104–76, § 2, amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

''(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

''(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

''(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.''

Subsec. (b)(5). Pub. L. 104–76, § 3, added par. (5).

1988—Pub. L. 100–430 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

REGULATIONS

Pub. L. 102–550, title IX, § 919, Oct. 28, 1992, 106 Stat. 3883, provided that: ''The Secretary of Housing and Urban Development shall, not later than 180 days after the date of the enactment of this Act [Oct. 28, 1992], make rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act [42 U.S.C. 3607(b)(2)] to meet the definition of the term 'housing for older persons' in such section.''

§ 3608. Administration

(a) Authority and responsibility

The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary

The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review

The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The person to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The

Secretary shall by rule prescribe such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes

All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary

The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Congress—

(A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this subchapter, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

(B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which—

(i) investigations are not completed as required by section 3610(a)(1)(B) of this title;

(ii) determinations are not made within the time specified in section 3610(g) of this title; and

(iii) hearings are not commenced or findings and conclusions are not made as required by section 3612(g) of this title;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices;

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter; and

(6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) of this section which apply to such programs (and in order to develop the data to be included and made available to the public under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).

(f) Provisions of law applicable to Department programs

The provisions of law and Executive orders to which subsection (e)(6) of this section applies are—

(1) title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.];

(2) this subchapter;

(3) section 794 of title 29;

(4) the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.];

(5) the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.];

(6) section 1982 of this title;

(7) section 637(a) of title 15;

(8) section 1735f–5 of title 12;

(9) section 5309 of this title;

(10) section 1701u of title 12;

(11) Executive orders 11063, 11246, 11625, 12250, 12259, and 12432; and

(12) any other provision of law which the Secretary specifies by publication in the Federal Register for the purpose of this subsection.

(Pub. L. 90–284, title VIII, § 808, Apr. 11, 1968, 82 Stat. 84; Pub. L. 95–251, § 3, Mar. 27, 1978, 92 Stat. 184; Pub. L. 95–454, title VIII, § 801(a)(3)(J), Oct. 13, 1978, 92 Stat. 1222; Pub. L. 100–430, § 7, Sept. 13, 1988, 102 Stat. 1623.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, as amended, known as the Civil Rights Act of 1968, which enacted this chapter, sections 231 to 233, 245, 2101, and 2102 of Title 18, Crimes and Criminal Procedure, and sections 1301 to 1303, 1311, 1312, 1321 to 1326, 1331, and 1341 of Title 25, Indians, amended sections 1973j, 3533, 3535 of this title, and sections 241, 242, and 1153 of Title 18, enacted provisions set out as notes under sections 231 and 245 of Title 18, and repealed provisions set out as notes under section 1360 of Title 28, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Tables.

The Civil Rights Act of 1964, referred to in subsec. (f)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (f)(4), is title III of Pub. L. 94–135, Nov. 28, 1975, 78 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Equal Credit Opportunity Act, referred to in subsec. (f)(5), is title VII of Pub. L. 90–321, as added by Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1521, as

amended, which is classified generally to subchapter IV (§ 1691 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Executive orders referred to in subsec. (f)(11) are set out as notes under sections of the Code as follows:

Ex. Ord. No. 11063: 42 U.S.C. 1982,
Ex. Ord. No. 11246: 42 U.S.C. 2000e,
Ex. Ord. No. 11625: 15 U.S.C. 631,
Ex. Ord. No. 12250: 42 U.S.C. 2000d–1, and
Ex. Ord. No. 12432: 15 U.S.C. 631.

Ex. Ord. No. 12259, referred to in subsec. (f)(11), was set out below, prior to revocation by Ex. Ord. No. 12892, Jan. 17, 1994, 59 F.R. 2939, set out below.

CODIFICATION

The second sentence of subsec. (b) of this section has been omitted as it amended sections 3533(a) and 3535(c) of this title.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–430, § 7(a), inserted ''(including any Federal agency having regulatory or supervisory authority over financial institutions)'' after ''urban development''.

Subsec. (e)(2). Pub. L. 100–430, § 7(b)(1)(A), inserted provisions relating to annual report to Congress.

Subsec. (e)(6). Pub. L. 100–430, § 7(b)(1)(B)–(D), added par. (6).

Subsec. (f). Pub. L. 100–430, § 7(b)(2), added subsec. (f).

1978—Subsec. (c). Pub. L. 95–251 substituted ''administrative law judges'' for ''hearing examiners''.

Pub. L. 95–454 substituted ''5372'' for ''5362''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4)(A) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of Title 5, Government Organization and Employees.

TREATMENT OF OCCUPANCY STANDARDS

Pub. L. 105–276, title V, § 589, Oct. 21, 1998, 112 Stat. 2651, provided that:

''(a) ESTABLISHMENT OF POLICY.—Not later than 60 days after the date of the enactment of this Act [Oct. 21, 1998], the Secretary of Housing and Urban Development shall publish a notice in the Federal Register for effect that takes effect upon publication and provides that the specific and unmodified standards provided in the March 20, 1991, Memorandum from the General Counsel of the Department of Housing and Urban Development to all Regional Counsel shall be the policy of the Department of Housing and Urban Development with respect to complaints of discrimination under the Fair Housing Act (42 U.S.C. 3601 et seq.) on the basis of familial status which involve an occupancy standard established by a housing provider.

''(b) PROHIBITION OF NATIONAL STANDARD.—The Secretary of Housing and Urban Development shall not directly or indirectly establish a national occupancy standard.''

EXECUTIVE ORDER NO. 12259

Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253, which related to leadership and coordination by Secretary of Housing and Urban Development of fair housing programs and activities in Federal programs, was revoked by Ex. Ord. No. 12892, § 6–607, Jan. 17, 1994, 59 F.R. 2939, set out below.

EX. ORD. NO. 12892. LEADERSHIP AND COORDINATION OF FAIR HOUSING IN FEDERAL PROGRAMS: AFFIRMATIVELY FURTHERING FAIR HOUSING

Ex. Ord. No. 12892, Jan. 17, 1994, 59 F.R. 2939, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the Fair Housing Act, as amended (42 U.S.C. 3601 *et seq.*) (''Act''), in order to affirmatively further fair housing in all Federal programs and activities relating to housing and urban development throughout the United States, it is hereby ordered as follows:

SECTION 1. *Administration of Programs and Activities Relating to Housing and Urban Development.*

1–101. Section 808(d) of the Act, as amended [42 U.S.C. 3608(d)], provides that all executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of the Act and shall cooperate with the Secretary of Housing and Urban Development to further such purposes.

1–102. As used in this order, the phrase ''programs and activities'' shall include programs and activities operated, administered, or undertaken by the Federal Government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility (including regulatory or supervisory authority over financial institutions).

SEC. 2. *Responsibilities of Executive Agencies.*

2–201. The primary authority and responsibility for administering the programs and activities relating to housing and urban development affirmatively to further fair housing is vested in the Secretary of Housing and Urban Development.

2–202. The head of each executive agency is responsible for ensuring that its programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing as required by section 808 of the Act [42 U.S.C. 3608] and for cooperating with the Secretary of Housing and Urban Development, who shall be responsible for exercising leadership in furthering the purposes of the Act.

2–203. In carrying out the responsibilities in this order, the head of each executive agency shall take appropriate steps to require that all persons or other entities who are applicants for, or participants in, or who are supervised or regulated under, agency programs and activities relating to housing and urban development shall comply with this order.

2–204. Upon receipt of a complaint alleging facts that may constitute a violation of the Act or upon receipt of information from a consumer compliance examination or other information suggesting a violation of the Act, each executive agency shall forward such facts or information to the Secretary of Housing and Urban Development for processing under the Act. Where such facts or information indicate a possible pattern or practice of discrimination in violation of the Act, they also shall be forwarded to the Attorney General. The authority of the Federal depository institution regulatory agencies to take appropriate action under their statutory authority remains unaffected.

SEC. 3. *President's Fair Housing Council.*

3–301. There is hereby established an advisory council entitled the ''President's Fair Housing Council'' (''Council''). The Council shall be chaired by the Secretary of Housing and Urban Development and shall consist of the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Education, the Secretary of Labor, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Veterans Affairs, the Secretary of the Treasury, the Attorney General, the Secretary of the Interior, the Chair of the Federal Reserve, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chair of the Federal Deposit Insurance Cor-

poration, and such other officials of executive departments and agencies as the President may, from time to time, designate.

3–302. The President's Fair Housing Council shall review the design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing. The Council shall propose revisions to existing programs or activities, develop pilot programs and activities, and propose new programs and activities to achieve its goals.

3–303. In support of cooperative efforts among all executive agencies, the Secretary of Housing and Urban Development shall:

(a) cooperate with, and render assistance to, the heads of all executive agencies in the formulation of policies and procedures to implement this order and to provide information and guidance on the affirmative administration of programs and activities relating to housing and urban development and the protection of the rights accorded by the Act; and

(b) develop memoranda of understanding and any necessary implementing procedures among executive agencies designed to provide for consultation and the coordination of Federal efforts to further fair housing through the affirmative administration of programs and activities relating to housing and urban development, including coordination of the investigation of complaints or other information referred to the Secretary as required by section 2–204 of this order that would constitute a violation of the Act or, where relevant, other Federal laws. Existing memoranda of understanding shall remain in effect until superseded.

3–304. In connection with carrying out functions under this order, the Secretary of Housing and Urban Development is authorized to request from any executive agency such information and assistance as the Secretary deems necessary. Each agency shall furnish such information to the extent permitted by law and, to the extent practicable, provide assistance to the Secretary.

SEC. 4. *Specific Responsibilities.*

4–401. In implementing the responsibilities under sections 2–201, 2–202, 2–203, and section 3 of this order, the Secretary of Housing and Urban Development shall, to the extent permitted by law:

(a) promulgate regulations in consultation with the Department of Justice and Federal banking agencies regarding programs and activities of executive agencies related to housing and urban development that shall:

(1) describe the functions, organization, and operations of the President's Fair Housing Council;

(2) describe the types of programs and activities defined in section 1–102 of this order that are subject to the order;

(3) describe the responsibilities and obligations of executive agencies in ensuring that programs and activities are administered and executed in a manner that furthers fair housing;

(4) describe the responsibilities and obligations of applicants, participants, and other persons and entities involved in housing and urban development programs and activities affirmatively to further the goal of fair housing; and

(5) describe a method to identify impediments in programs or activities that restrict fair housing choice and implement incentives that will maximize the achievement of practices that affirmatively further fair housing.

(b) coordinate executive agency implementation of the requirements of this order and issue standards and procedures regarding:

(1) the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing; and

(2) the cooperation of executive agencies in furtherance of the Secretary of Housing and Urban Development's authority and responsibility under the Act.

4–402. Within 180 days of the publication of final regulations by the Secretary of Housing and Urban Development under section 4–401 of this order, the head of each executive agency shall publish proposed regulations providing for the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing, consistent with the Secretary of Housing and Urban Development's regulations, and with the standards and procedures issued pursuant to section 4–401(b) of this order. As soon as practicable thereafter, each executive agency shall issue its final regulations. All executive agencies shall formally submit all such proposed and final regulations, and any related issuances or standards, to the Secretary of Housing and Urban Development at least 30 days prior to public announcement.

4–403. The Secretary of Housing and Urban Development shall review proposed regulations and standards prepared pursuant to section 4–402 of this order to ensure conformity with the purposes of the Act and consistency among the operations of the various executive agencies and shall provide comments to executive agencies with respect thereto on a timely basis.

4–404. In addition to promulgating the regulations described in section 4–401 of this order, the Secretary of Housing and Urban Development shall promulgate regulations describing the nature and scope of coverage and the conduct prohibited, including mortgage lending discrimination and property insurance discrimination.

SEC. 5. *Administrative Enforcement.*

5–501. The head of each executive agency shall be responsible for enforcement of this order and, unless prohibited by law, shall cooperate and provide records, data, and documentation in connection with any other agency's investigation of compliance with provisions of this order.

5–502. If any executive agency concludes that any person or entity (including any State or local public agency) applying for or participating in, or supervised or regulated under, a program or activity relating to housing and urban development has not complied with this order or any applicable rule, regulation, or procedure issued or adopted pursuant to this order, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion. An executive agency need not pursue informal resolution of matters where similar efforts made by another executive agency have been unsuccessful, except where otherwise required by law. In the event of failure of such informal means, the executive agency, in conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to section 4 of this order hereof, shall impose such sanctions as may be authorized by law. To the extent authorized by law, such sanctions may include:

(a) cancellation or termination of agreements or contracts with such person, entity, or any State or local public agency;

(b) refusal to extend any further aid under any program or activity administered by it and affected by this order until it is satisfied that the affected person, entity, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order;

(c) refusal to grant supervisory or regulatory approval to such person, entity, or State or local public agency under any program or activity administered by it that is affected by this order or revoke such approval if previously given; and

(d) any other action as may be appropriate under law.

5–503. Findings of any violation under section 5–502 of this order shall be promptly reported by the head of each executive agency to the Secretary of Housing and Urban Development and the Attorney General. The Secretary of Housing and Urban Development shall forward this information to all other executive agencies.

5–504. Any executive agency shall also consider invoking appropriate sanctions against any person or entity where any other executive department or agency has initiated action against that person or entity pursuant to section 5–502 of this order, where the Secretary of Housing and Urban Development has issued a charge against such person or entity that has not been re-

solved, or where the Attorney General has filed a civil action in Federal Court against such person or entity.

5–505. Each executive agency shall consult with the Secretary of Housing and Urban Development, and the Attorney General where a civil action in Federal Court has been filed, regarding agency actions to invoke sanctions under the Act. The Department of Housing and Urban Development, the Department of Justice, and Federal banking agencies shall develop and coordinate appropriate policies and procedures for taking action under their respective authorities. Each decision to invoke sanctions and the reasons therefor shall be documented and shall be provided to the Secretary of Housing and Urban Development and, where appropriate, to the Attorney General in a timely manner.

SEC. 6. *General Provisions.*

6–601. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order No. 12250 [42 U.S.C. 2000d–1 note].

6–602. All provisions of regulations, guidelines, and procedures proposed to be issued by executive agencies pursuant to this order that implement nondiscrimination requirements of laws covered by Executive Order No. 12250 [42 U.S.C. 2000d–1 note] shall be submitted to the Attorney General for review in accordance with that Executive order. In addition, the Secretary shall consult with the Attorney General regarding all regulations and procedures proposed to be issued under sections 4–401 and 4–402 of this order to assure consistency with coordinated Federal efforts to enforce nondiscrimination requirements in programs of Federal financial assistance pursuant to Executive Order No. 12250.

6–603. Nothing in this order shall affect the authority and responsibility of the Attorney General to commence any civil action authorized by the Act.

6–604. (a) Part IV and sections 501 and 503 of Executive Order No. 11063 [42 U.S.C. 1982 note] are revoked. The activities and functions of the President's Committee on Equal Opportunity in Housing described in that Executive order shall be performed by the Secretary of Housing and Urban Development.

(b) Sections 101 and 502(a) of Executive Order No. 11063 are revised to apply to discrimination because of "race, color, religion (creed), sex, disability, familial status or national origin." All executive agencies shall revise regulations, guidelines, and procedures issued pursuant to Part II of Executive Order No. 11063 to reflect this amendment to coverage.

(c) Section 102 of Executive Order No. 11063 is revised by deleting the term "Housing and Home Finance Agency" and inserting in lieu thereof the term "Department of Housing and Urban Development."

6–605. Nothing in this order shall affect any requirement imposed under the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) or the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*).

6–606. Nothing in this order shall limit the authority of the Federal banking agencies to carry out their responsibilities under current law or regulations.

6–607. Executive Order No. 12259 is hereby revoked.

SEC. 7. *Report.*

7–701. The Secretary of Housing and Urban Development shall submit to the President an annual report commenting on the progress that the Department of Housing and Urban Development and other executive agencies have made in carrying out requirements and responsibilities under this Executive order. The annual report may be consolidated with the annual report on the state of fair housing required by section 808(e)(2) of the Act [42 U.S.C. 3608(e)(2)].

WILLIAM J. CLINTON.

FEDERAL LEADERSHIP OF FAIR HOUSING

Memorandum of President of the United States, Jan. 17, 1994, 59 F.R. 8513, provided:

Memorandum for the Heads of Executive Departments and Agencies

On April 11, 1968, one week after the assassination of the great civil rights leader Martin Luther King, Jr., the Fair Housing Act [42 U.S.C. 3601 et seq.] was enacted (1) to prohibit discrimination in housing, and (2) to direct the Secretary of Housing and Urban Development to affirmatively further fair housing in Federal housing and urban development programs. Twenty-five years later, despite a strengthening of the Fair Housing Act 5 years ago, hundreds of acts of housing discrimination occur in our Nation each day.

Americans of every income level, seeking to live where they choose, feel the weight of discrimination because of the color of their skin, their race, their religion, their gender, their country of origin, or because they are disabled or have children.

An increasing body of evidence indicates that barriers to fair housing are pervasive. Forty percent of all families move every 5 years. This statistic is significant given the results of a recent study, commissioned by the Department of Housing and Urban Development (HUD), which found that more than half of the African Americans and Latinos seeking to rent or buy a home are treated differently than whites with the same qualifications. Moreover, based upon Home Mortgage Disclosure Act [12 U.S.C. 2801 et seq.] data, the number of minority persons who are rejected when attempting to obtain loans to purchase homes is two to three times higher than it is for nonminorities in almost every metropolitan area of this country.

Racial and ethnic segregation, both in the private housing market and in public and assisted housing, has been well documented. Despite legislation (the Fair Housing Act) and Executive action (Executive Order No. 11063 [42 U.S.C. 1982 note]), the divisive impact of housing segregation persists in metropolitan areas all across this country. Too many lower income and minority Americans face barriers to housing outside of central cities. Segregation in housing and schools deprives too many of our children and youth of an opportunity to enter the marketplace or work on an equal footing. For too many families, our cities are no longer the launching pads for economic self-sufficiency and upward mobility that they have been for countless immigrants and minorities since the country's birth. And many Americans who are better off abandon the cities.

The resulting decline in the very heart of too many of our metropolitan areas threatens all of us: the health of our dynamic regional economies—the very lifeblood of future national economic growth and higher living standards for all of us and all of our children—is placed at risk.

We can do better. We can start by making sure that our own Federal policies and programs across all of our agencies support the fair housing and equal opportunity goals to which all Americans are committed. If all of our executive agencies affirmatively further fair housing in the design of their policies and administration of their programs relating to housing and urban development, a truly nondiscriminatory housing market will be closer to achievement.

By an Executive Order [Ex. Ord. No. 12892, set out above] ("the Order") I am issuing today and this memorandum, I am addressing those needs. The Secretary of Housing and Urban Development and, where appropriate, the Attorney General—the officials with the primary responsibility for the enforcement of Federal fair housing laws—will take the lead in developing and coordinating measures to carry out the purposes of this Order.

Through this Order, I am first expanding Executive Order No. 11063 to provide protection against discrimination in programs of Federal insurance or guaranty to persons who are disabled and to families with children.

Second, I am revoking the old Executive Order No. 12259 entitled "Leadership and Coordination of Fair Housing in Federal Programs." The new Executive order reflects the expanded authority of the Secretary of Housing and Urban Development and I am directing

him to take stronger measures to provide leadership and coordination in affirmatively furthering fair housing in Federal programs.

Third, I ask the heads of departments and agencies, including the Federal banking agencies, to cooperate with the Secretary of Housing and Urban Development in identifying ways to structure agency programs and activities to affirmatively further fair housing and to promptly negotiate memoranda of understanding with him to accomplish that goal.

Further, I direct the Secretary of Housing and Urban Development to review all of HUD's programs to assure that they truly provide equal opportunity and promote economic self-sufficiency for those who are beneficiaries and recipients of those programs.

I also direct the Secretary to review HUD's programs to assure that they contain the maximum incentives to affirmatively further fair housing and to eliminate barriers to free choice where they continue to exist. This review shall include Federally assisted housing, Federally insured housing and other housing and housing related programs, including those of the Government National Mortgage Association and the Federal Housing Administration.

Today, I am establishing a new Cabinet-level organization to focus the cooperative efforts of all agencies on fair housing. The President's Fair Housing Council will be chaired by the Secretary of Housing and Urban Development and will consist of the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Education, the Secretary of Labor, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Veterans Affairs, the Secretary of the Treasury, the Attorney General, the Secretary of the Interior, the Chair of the Federal Reserve, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Chair of the Federal Deposit Insurance Corporation.

The President's Fair Housing Council shall review the design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing. The Council shall propose revisions to existing programs or activities, develop pilot programs and activities, and propose new programs and activities to achieve its goals.

I direct the Secretary of Housing and Urban Development and the President's Fair Housing Council to develop a pilot program to be implemented in selected metropolitan areas. This initiative will promote fair housing choice by helping inner-city families to move to suburban neighborhoods and by making the central city more attractive to those who have left it. I direct the members of the Council to undertake a demonstration program that will reinvent the way assisted housing is offered to applicants, will break down jurisdictional barriers in housing opportunities, and will promote the use of subsidies that diminish residential segregation, and will combine these initiatives with refined educational incentives aimed at improving the effectiveness of inner-city schools. I am directing that transportation alternatives be considered along with targeted social service and job training programs as part of the support necessary to create a one-stop, metropolitan area-wide fair housing opportunity pilot program that will effectively offer Federally assisted housing, Federally insured housing, and private market housing within a metropolitan area to all residents of the area. The pilot program should call upon realtors, mortgage lenders, housing providers, and local governments, among others, to assist in expanding housing choices.

To address the findings of recent studies, I hereby direct the Secretary of Housing and Urban Development and the Attorney General and, where appropriate, the heads of the Federal banking agencies to exercise national leadership to end discrimination in mortgage lending, the secondary mortgage market, and property insurance practices. The Secretary is directed to issue regulations to define discriminatory practices in these areas and the Secretary and the Attorney General are directed to aggressively enforce the laws prohibiting these practices.

In each of these areas, I direct the Secretary of Housing and Urban Development to take the lead with the other Federal agencies in working to gain the voluntary cooperation, participation, and expertise of all of those in private industry, the States and localities who can assist in achieving the Nation's fair housing goals.

The Secretary of Housing and Urban Development is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 3608a. Collection of certain data

(a) In general

To assess the extent of compliance with Federal fair housing requirements (including the requirements established under title VI of Public Law 88–352 [42 U.S.C. 2000d et seq.] and title VIII of Public Law 90–284 [42 U.S.C. 3601 et seq.]), the Secretary of Agriculture shall collect, not less than annually, data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefiting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by such Secretary. Such data shall be collected on a building by building basis if the Secretary determines such collection to be appropriate.

(b) Reports to Congress

The Secretary of Agriculture shall include in the annual report of such Secretary to the Congress a summary and evaluation of the data collected by such Secretary under subsection (a) of this section during the preceding year.

(Pub. L. 100–242, title V, § 562, Feb. 5, 1988, 101 Stat. 1944; Pub. L. 104–66, title I, § 1071(e), Dec. 21, 1995, 109 Stat. 720.)

REFERENCES IN TEXT

Public Law 88–352, referred to in subsec. (a), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Title VIII of Public Law 90–284, referred to in subsec. (a), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, known as the Fair Housing Act, which is classified principally to subchapter I (§ 3601 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of title VIII of Pub. L. 90–284, popularly known as the Fair Housing Act, which comprises this subchapter.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–66, § 1071(e)(1), struck out "the Secretary of Housing and Urban Development and" before "the Secretary of Agriculture", "each" before "collect, not less than annually", and "involved" before "determines such collection".

Subsec. (b). Pub. L. 104–66, § 1071(e)(2), substituted "The" for "The Secretary of Housing and Urban Development and the" before "Secretary of Agriculture" and struck out "each" before "include in the".

§ 3609. Education and conciliation; conferences and consultations; reports

Immediately after April 11, 1968, the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this subchapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this subchapter and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of title 5. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this subchapter. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

(Pub. L. 90–284, title VIII, § 809, Apr. 11, 1968, 82 Stat. 85.)

§ 3610. Administrative enforcement; preliminary matters

(a) Complaints and answers

(1)(A)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such a complaint—

(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this subchapter;

(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this subchapter, together with a copy of the original complaint;

(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

(2)(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative report and conciliation

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this subchapter.

(5)(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing—

(i) the names and dates of contacts with witnesses;

(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(iii) a summary description of other pertinent records;

(iv) a summary of witness statements; and

(v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to comply with conciliation agreement

Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 3614 of this title for the enforcement of such agreement.

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt judicial action

(1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this subchapter, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 3612 of this title.

(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any respondent under sections 3614(a) and 3614(c) of this title or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Referral for State or local proceedings

(1) Whenever a complaint alleges a discriminatory housing practice—

(A) within the jurisdiction of a State or local public agency; and

(B) as to which such agency has been certified by the Secretary under this subsection;

the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless—

(A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;

(B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or

(C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

(3)(A) The Secretary may certify an agency under this subsection only if the Secretary determines that—

(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;

(ii) the procedures followed by such agency;

(iii) the remedies available to such agency; and

(iv) the availability of judicial review of such agency's action;

are substantially equivalent to those created by and under this subchapter.

(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

(4) During the period which begins on September 13, 1988, and ends 40 months after September 13, 1988, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this subchapter on the day before September 13, 1988, shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on September 13, 1988. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

(g) Reasonable cause determination and effect

(1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(2)(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 3612 of this title.

(B) Such charge—

(i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a

discriminatory housing practice has occurred or is about to occur;

(ii) shall be based on the final investigative report; and

(iii) need not be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 3614 of this title, instead of issuing such charge.

(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The Secretary shall make public disclosure of each such dismissal.

(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(h) Service of copies of charge

After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section 3612(a) of this title and the effect of such an election, to be served—

(1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

(2) on each aggrieved person on whose behalf the complaint was filed.

(Pub. L. 90–284, title VIII, § 810, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1625.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (e)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

A prior section 3610, Pub. L. 90–284, title VIII, § 810, Apr. 11, 1968, 82 Stat. 85, related to enforcement, prior to repeal by Pub. L. 100–430, § 8(2).

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

§ 3611. Subpoenas; giving of evidence

(a) In general

The Secretary may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this subchapter. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the United States district court for the district in which the investigation is taking place.

(b) Witness fees

Witnesses summoned by a subpoena under this subchapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Secretary.

(c) Criminal penalties

(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a) of this section, shall be fined not more than $100,000 or imprisoned not more than one year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this subchapter—

(A) makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a) of this section;

(B) willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(C) willfully mutilates, alters, or by any other means falsifies any documentary evidence;

shall be fined not more than $100,000 or imprisoned not more than one year, or both.

(Pub. L. 90–284, title VIII, § 811, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1628.)

PRIOR PROVISIONS

A prior section 3611, Pub. L. 90–284, title VIII, § 811, Apr. 11, 1968, 82 Stat. 87, related to evidence, prior to repeal by Pub. L. 100–430, § 8(2).

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

§ 3612. Enforcement by Secretary

(a) Election of judicial determination

When a charge is filed under section 3610 of this title, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (*o*) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under section 3610(h) of this title or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative law judge hearing in absence of election

If an election is not made under subsection (a) of this section with respect to a charge filed

under section 3610 of this title, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 3610 of this title. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of title 5. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of parties

At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 3611 of this title. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

(d) Expedited discovery and hearing

(1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The Secretary shall, not later than 180 days after September 13, 1988, issue rules to implement this subsection.

(e) Resolution of charge

Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) Effect of trial of civil action on administrative proceedings

An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(g) Hearings, findings and conclusions, and order

(1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent—

(A) in an amount not exceeding $10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(B) in an amount not exceeding $25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

(C) in an amount not exceeding $50,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge;

except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this subchapter.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Secretary shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review)—

(A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

(B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Secretary shall send a copy of each such order to the Attorney General.

(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law

judge shall enter an order dismissing the charge. The Secretary shall make public disclosure of each such dismissal.

(h) Review by Secretary; service of final order

(1) The Secretary may review any finding, conclusion, or order issued under subsection (g) of this section. Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.

(2) The Secretary shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) Judicial review

(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of title 28.

(2) Notwithstanding such chapter, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred, and filing of the petition for review shall be not later than 30 days after the order is entered.

(j) Court enforcement of administrative order upon petition by Secretary

(1) The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.

(2) The Secretary shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k) Relief which may be granted

(1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may—

(A) grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;

(B) affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(C) enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the administrative law judge may intervene in the court of appeals.

(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(*l*) Enforcement decree in absence of petition for review

If no petition for review is filed under subsection (i) of this section before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement—

(1) which is filed by the Secretary under subsection (j) of this section after the end of such day; or

(2) under subsection (m) of this section.

(m) Court enforcement of administrative order upon petition of any person entitled to relief

If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i) of this section, and the Secretary has not sought enforcement of the order under subsection (j) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) Entry of decree

The clerk of the court of appeals in which a petition for enforcement is filed under subsection (*l*) or (m) of this section shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.

(*o*) Civil action for enforcement when election is made for such civil action

(1) If an election is made under subsection (a) of this section, the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of title 28.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 3613 of this title. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 3613 of this title shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) Attorney's fees

In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court,

as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5 or by section 2412 of title 28.

(Pub. L. 90–284, title VIII, § 812, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1629.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

A prior section 3612, Pub. L. 90–284, title VIII, § 812, Apr. 11, 1968, 82 Stat. 88, related to enforcement by private persons, prior to repeal by Pub. L. 100–430, § 8(2).

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

§ 3613. Enforcement by private persons

(a) Civil action

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 3610(a) of this title and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

(b) Appointment of attorney by court

Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may—

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) of this section without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) Relief which may be granted

(1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a) of this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

(d) Effect on certain sales, encumbrances, and rentals

Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this subchapter.

(e) Intervention by Attorney General

Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 3614(e) of this title in a civil action to which such section applies.

(Pub. L. 90–284, title VIII, § 813, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1633.)

PRIOR PROVISIONS

A prior section 3613, Pub. L. 90–284, title VIII, § 813, Apr. 11, 1968, 82 Stat. 88, related to enforcement by Attorney General by bringing civil action requesting preventive relief, prior to repeal by Pub. L. 100–430, § 8(2).

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

§ 3614. Enforcement by Attorney General

(a) Pattern or practice cases

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a

civil action in any appropriate United States district court.

(b) On referral of discriminatory housing practice or conciliation agreement for enforcement

(1)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 3610(g) of this title.

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 3610(c) of this title.

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 3610(c) of this title.

(c) Enforcement of subpoenas

The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this subchapter, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d) Relief which may be granted in civil actions under subsections (a) and (b)

(1) In a civil action under subsection (a) or (b) of this section, the court—

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter;

(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

(i) in an amount not exceeding $50,000, for a first violation; and

(ii) in an amount not exceeding $100,000, for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28.

(e) Intervention in civil actions

Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 3613 of this title.

(Pub. L. 90–284, title VIII, § 814, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1634.)

PRIOR PROVISIONS

A prior section 3614, Pub. L. 90–284, title VIII, § 814, Apr. 11, 1968, 82 Stat. 88, related to expedition of court proceedings under section 3612 or 3613 of this title, prior to repeal by Pub. L. 98–620, title IV, § 402(40), Nov. 8, 1984, 98 Stat. 3360.

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

§ 3614–1. Incentives for self-testing and self-correction

(a) Privileged information

(1) Conditions for privilege

A report or result of a self-test (as that term is defined by regulation of the Secretary) shall be considered to be privileged under paragraph (2) if any person—

(A) conducts, or authorizes an independent third party to conduct, a self-test of any aspect of a residential real estate related lending transaction of that person, or any part of that transaction, in order to determine the level or effectiveness of compliance with this subchapter by that person; and

(B) has identified any possible violation of this subchapter by that person and has taken, or is taking, appropriate corrective action to address any such possible violation.

(2) Privileged self-test

If a person meets the conditions specified in subparagraphs (A) and (B) of paragraph (1) with respect to a self-test described in that paragraph, any report or results of that self-test—

(A) shall be privileged; and

(B) may not be obtained or used by any applicant, department, or agency in any—

(i) proceeding or civil action in which one or more violations of this subchapter are alleged; or

(ii) examination or investigation relating to compliance with this subchapter.

(b) Results of self-testing

(1) In general

No provision of this section may be construed to prevent an aggrieved person, complainant, department, or agency from obtaining or using a report or results of any self-test in any proceeding or civil action in which a violation of this subchapter is alleged, or in any examination or investigation of compliance with this subchapter if—

(A) the person to whom the self-test relates or any person with lawful access to the report or the results—

(i) voluntarily releases or discloses all, or any part of, the report or results to the

aggrieved person, complainant, department, or agency, or to the general public; or

(ii) refers to or describes the report or results as a defense to charges of violations of this subchapter against the person to whom the self-test relates; or

(B) the report or results are sought in conjunction with an adjudication or admission of a violation of this subchapter for the sole purpose of determining an appropriate penalty or remedy.

(2) Disclosure for determination of penalty or remedy

Any report or results of a self-test that are disclosed for the purpose specified in paragraph (1)(B)—

(A) shall be used only for the particular proceeding in which the adjudication or admission referred to in paragraph (1)(B) is made; and

(B) may not be used in any other action or proceeding.

(c) Adjudication

An aggrieved person, complainant, department, or agency that challenges a privilege asserted under this section may seek a determination of the existence and application of that privilege in—

(1) a court of competent jurisdiction; or

(2) an administrative law proceeding with appropriate jurisdiction.

(Pub. L. 90–284, title VIII, § 814A, as added Pub. L. 104–208, div. A, title II, § 2302(b)(1), Sept. 30, 1996, 110 Stat. 3009–421.)

EFFECTIVE DATE

Privilege provided for in this section applicable to self-test conducted before, on, or after effective date of regulations prescribed under section 2302(b)(2) of Pub. L. 104–208, set out below, with certain exception, see section 2302(c) of Pub. L. 104–208, set out as a note under section 1691c–1 of Title 15, Commerce and Trade.

REGULATIONS

Section 2302(b)(2) of div. A of Pub. L. 104–208 provided that:

''(A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [Sept. 30, 1996], in consultation with the Board and after providing notice and an opportunity for public comment, the Secretary of Housing and Urban Development shall prescribe final regulations to implement section 814A of the Fair Housing Act [42 U.S.C. 3614–1], as added by this section.

''(B) SELF-TEST.—

''(i) DEFINITION.—The regulations prescribed by the Secretary under subparagraph (A) shall include a definition of the term ''self-test'' for purposes of section 814A of the Fair Housing Act, as added by this section.

''(ii) REQUIREMENT FOR SELF-TEST.—The regulations prescribed by the Secretary under subparagraph (A) shall specify that a self-test shall be sufficiently extensive to constitute a determination of the level and effectiveness of the compliance by a person engaged in residential real estate related lending activities with the Fair Housing Act [42 U.S.C. 3601 et seq.].

''(iii) SUBSTANTIAL SIMILARITY TO CERTAIN EQUAL CREDIT OPPORTUNITY ACT REGULATIONS.—The regulations prescribed under subparagraph (A) shall be substantially similar to the regulations prescribed by the Board to carry out section 704A of the Equal Credit Opportunity Act [15 U.S.C. 1691c–1], as added by this section.''

§ 3614a. Rules to implement subchapter

The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this subchapter. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.

(Pub. L. 90–284, title VIII, § 815, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1635.)

PRIOR PROVISIONS

A prior section 815 of Pub. L. 90–284 was renumbered section 816 and is classified to section 3615 of this title.

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

INITIAL RULEMAKING

Secretary to issue rules to implement this subchapter as amended by Pub. L. 100–430 not later than the 180th day after Sept. 13, 1988, see section 13(b) of Pub. L. 100–430, set out as a note under section 3601 of this title.

§ 3615. Effect on State laws

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

(Pub. L. 90–284, title VIII, § 816, formerly § 815, Apr. 11, 1968, 82 Stat. 89; renumbered § 816, Pub. L. 100–430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

PRIOR PROVISIONS

A prior section 816 of Pub. L. 90–284 was renumbered section 817 and is classified to section 3616 of this title.

§ 3616. Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in Federal Register

The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

(Pub. L. 90–284, title VIII, § 817, formerly § 816, Apr. 11, 1968, 82 Stat. 89; renumbered § 817, Pub. L. 100–430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

PRIOR PROVISIONS

A prior section 817 of Pub. L. 90–284 was renumbered section 818 and is classified to section 3617 of this title.

FAIR HOUSING INITIATIVES PROGRAM

Pub. L. 100–242, title V, § 561, Feb. 5, 1988, 101 Stat. 1942, as amended, which established a demonstration program on fair housing initiatives and was formerly set out as a note under this section, was transferred to section 3616a of this title.

§ 3616a. Fair housing initiatives program

(a) In general

The Secretary of Housing and Urban Development (in this section referred to as the ''Secretary'') may make grants to, or (to the extent of amounts provided in appropriation Acts) enter into contracts or cooperative agreements with, State or local governments or their agencies, public or private nonprofit organizations or institutions, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, to develop, implement, carry out, or coordinate—

(1) programs or activities designed to obtain enforcement of the rights granted by title VIII of the Act of April 11, 1968 [42 U.S.C. 3601 et seq.] (commonly referred to as the Civil Rights Act of 1968), or by State or local laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in such title VIII, through such appropriate judicial or administrative proceedings (including informal methods of conference, conciliation, and persuasion) as are available therefor; and

(2) education and outreach programs designed to inform the public concerning rights and obligations under the laws referred to in paragraph (1).

(b) Private enforcement initiatives

(1) In general

The Secretary shall use funds made available under this subsection to conduct, through contracts with private nonprofit fair housing enforcement organizations, investigations of violations of the rights granted under title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], and such enforcement activities as appropriate to remedy such violations. The Secretary may enter into multiyear contracts and take such other action as is appropriate to enhance the effectiveness of such investigations and enforcement activities.

(2) Activities

The Secretary shall use funds made available under this subsection to conduct, through contracts with private nonprofit fair housing enforcement organizations, a range of investigative and enforcement activities designed to—

(A) carry out testing and other investigative activities in accordance with subsection (b)(1) of this section, including building the capacity for housing investigative activities in unserved or underserved areas;

(B) discover and remedy discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans or the provision of other financial assistance sales and rentals of housing and housing advertising;

(C) carry out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.];

(D) provide technical assistance to local fair housing organizations, and assist in the formation and development of new fair housing organizations; and

(E) provide funds for the costs and expenses of litigation, including expert witness fees.

(c) Funding of fair housing organizations

(1) In general

The Secretary shall use funds made available under this section to enter into contracts or cooperative agreements with qualified fair housing enforcement organizations, other private nonprofit fair housing enforcement organizations, and nonprofit groups organizing to build their capacity to provide fair housing enforcement, for the purpose of supporting the continued development or implementation of initiatives which enforce the rights granted under title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], as amended. Contracts or cooperative agreements may not provide more than 50 percent of the operating budget of the recipient organization for any one year.

(2) Capacity enhancement

The Secretary shall use funds made available under this section to help establish, organize, and build the capacity of fair housing enforcement organizations, particularly in those areas of the country which are currently underserved by fair housing enforcement organizations as well as those areas where large concentrations of protected classes exist. For purposes of meeting the objectives of this paragraph, the Secretary may enter into contracts or cooperative agreements with qualified fair housing enforcement organizations. The Secretary shall establish annual goals which reflect the national need for private fair housing enforcement organizations.

(d) Education and outreach

(1) In general

The Secretary, through contracts with one or more qualified fair housing enforcement organizations, other fair housing enforcement organizations, and other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], shall establish a national education and outreach program. The national program shall be designed to provide a centralized, coordinated effort for the development and dissemination of fair housing media products, including—

(A) public service announcements, both audio and video;

(B) television, radio and print advertisements;

(C) posters; and

(D) pamphlets and brochures.

The Secretary shall designate a portion of the amounts provided in subsection (g)(4) of this section for a national program specifically for activities related to the annual national fair housing month. The Secretary shall encourage cooperation with real estate industry organizations in the national education and outreach program. The Secretary shall also encourage the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Act Amendments of 1988.

(2) Regional and local programs

The Secretary, through contracts with fair housing enforcement organizations, other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], State and local agencies certified by the Secretary under section 810(f) of the Fair Housing Act [42 U.S.C. 3610(f)], or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, shall establish or support education and outreach programs at the regional and local levels.

(3) Community-based programs

The Secretary shall provide funding to fair housing organizations and other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, to support community-based education and outreach activities, including school, church, and community presentations, conferences, and other educational activities.

(e) Program administration

(1) Not less than 30 days before providing a grant or entering into any contract or cooperative agreement to carry out activities authorized by this section, the Secretary shall submit notification of such proposed grant, contract, or cooperative agreement (including a description of the geographical distribution of such contracts) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(2) Repealed. Pub. L. 104–66, title I, §1071(d), Dec. 21, 1995, 109 Stat. 720.

(f) Regulations

(1) The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section.

(2) The Secretary shall, for use during the demonstration authorized in this section, establish guidelines for testing activities funded under the private enforcement initiative of the fair housing initiatives program. The purpose of such guidelines shall be to ensure that investigations in support of fair housing enforcement efforts described in subsection (a)(1) of this section shall develop credible and objective evidence of discriminatory housing practices. Such guidelines shall apply only to activities funded under this section, shall not be construed to limit or otherwise restrict the use of facts secured through testing not funded under this section in any legal proceeding under Federal fair housing laws, and shall not be used to restrict individuals or entities, including those participating in the fair housing initiatives program, from pursuing any right or remedy guaranteed by Federal law. Not later than 6 months after the end of the demonstration period authorized in this section,[1] the Secretary shall submit to Congress the evaluation of the Secretary of the effectiveness of such guidelines in achieving the purposes of this section.

(3) Such regulations shall include provisions governing applications for assistance under this section, and shall require each such application to contain—

(A) a description of the assisted activities proposed to be undertaken by the applicant, together with the estimated costs and schedule for completion of such activities;

(B) a description of the experience of the applicant in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(C) available information, including studies made by or available to the applicant, indicating the nature and extent of discriminatory housing practices occurring in the general location where the applicant proposes to conduct its assisted activities, and the relationship of such activities to such practices;

(D) an estimate of such other public or private resources as may be available to assist the proposed activities;

(E) a description of proposed procedures to be used by the applicant for monitoring conduct and evaluating results of the proposed activities; and

(F) any additional information required by the Secretary.

(4) Regulations issued under this subsection shall not become effective prior to the expiration of 90 days after the Secretary transmits such regulations, in the form such regulations are intended to be published, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(5) The Secretary shall not obligate or expend any amount under this section before the effective date of the regulations required under this subsection.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this section,[2] $21,000,000 for fiscal year 1993 and $26,000,000 for fiscal year 1994, of which—

(1) not less than $3,820,000 for fiscal year 1993 and $8,500,000 for fiscal year 1994 shall be for private enforcement initiatives authorized under subsection (b) of this section, divided equally between activities specified under sub-

[1] See References in Text note below.

[2] So in original. The comma probably should not appear.

section (b)(1) of this section and those specified under subsection (b)(2) of this section;

(2) not less than $2,230,000 for fiscal year 1993 and $8,500,000 for fiscal year 1994 shall be for qualified fair housing enforcement organizations authorized under subsection (c)(1) of this section;

(3) not less than $2,010,000 for fiscal year 1993 and $4,000,000 for fiscal year 1994 shall be for the creation of new fair housing enforcement organizations authorized under subsection (c)(2) of this section; and

(4) not less than $2,540,000 for fiscal year 1993 and $5,000,000 for fiscal year 1994 shall be for education and outreach programs authorized under subsection (d) of this section, to be divided equally between activities specified under subsection (d)(1) of this section and those specified under subsections (d)(2) and (d)(3) of this section.

Any amount appropriated under this section shall remain available until expended.

(h) Qualified fair housing enforcement organization

(1) The term ''qualified fair housing enforcement organization'' means any organization that—

(A) is organized as a private, tax-exempt, nonprofit, charitable organization;

(B) has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(C) is engaged in all the activities listed in paragraph (1)(B) at the time of application for assistance under this section.

An organization which is not solely engaged in fair housing enforcement activities may qualify as a qualified fair housing enforcement organization, provided that the organization is actively engaged in each of the activities listed in subparagraph (B).

(2) The term ''fair housing enforcement organization'' means any organization that—

(A) meets the requirements specified in paragraph (1)(A);

(B) is currently engaged in the activities specified in paragraph (1)(B);

(C) upon the receipt of funds under this section will become engaged in all of the activities specified in paragraph (1)(B); and

(D) for purposes of funding under subsection (b) of this section, has at least 1 year of experience in the activities specified in paragraph (1)(B).

(i) Prohibition on use of funds

None of the funds authorized under this section may be used by the Secretary for purposes of settling claims, satisfying judgments or fulfilling court orders in any litigation action involving either the Department or housing providers funded by the Department. None of the funds authorized under this section may be used by the Department for administrative costs.

(j) Reporting requirements

Not later than 180 days after the close of each fiscal year in which assistance under this section is furnished, the Secretary shall prepare and submit to the Congress a comprehensive report which shall contain—

(1) a description of the progress made in accomplishing the objectives of this section;

(2) a summary of all the private enforcement activities carried out under this section and the use of such funds during the preceding fiscal year;

(3) a list of all fair housing enforcement organizations funded under this section during the preceding fiscal year, identified on a State-by-State basis;

(4) a summary of all education and outreach activities funded under this section and the use of such funds during the preceding fiscal year; and

(5) any findings, conclusions, or recommendations of the Secretary as a result of the funded activities.

(Pub. L. 100–242, title V, § 561, Feb. 5, 1988, 101 Stat. 1942; Pub. L. 101–625, title IX, § 953, Nov. 28, 1990, 104 Stat. 4419; Pub. L. 102–550, title IX, § 905(b), Oct. 28, 1992, 106 Stat. 3869; Pub. L. 104–66, title I, § 1071(d), Dec. 21, 1995, 109 Stat. 720.)

REFERENCES IN TEXT

The Civil Rights Act of 1968, referred to in subsecs. (a)(1), (b)(1), (2)(C), (c)(1), and (d), is Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, as amended. Title VIII of the Act, known as the Fair Housing Act, is classified principally to subchapter I (§ 3601 et seq.) of this chapter. For complete classification of these Acts to the Code, see Short Title notes set out under section 3601 of this title and Tables.

The Fair Housing Act Amendments of 1988, referred to in subsec. (d)(1), probably means the Fair Housing Amendments Act of 1988, Pub. L. 100–430, Sept. 13, 1988, 102 Stat. 1619, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 3601 of this title and Tables.

The phrase ''Not later than 6 months after the end of the demonstration period authorized in this section'', referred to in subsec. (f)(2), probably means the end of the demonstration period pursuant to former subsec. (e) of this section, which provided that such period was to end Sept. 30, 1992. However, subsec. (e) was redesignated (h) and struck out by Pub. L. 102–550. See 1992 Amendment notes below.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of title VIII of Pub. L. 90–284, known as the Fair Housing Act, which comprises this subchapter.

Section was formerly set out as a note under section 3616 of this title.

AMENDMENTS

1995—Subsec. (e)(2). Pub. L. 104–66 struck out par. (2) which read as follows: ''The Secretary shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a quarterly report that summarizes the activities funded under this section and describes the geographical distribution of grants, contracts, or cooperative agreements funded under this section.''

1992—Subsecs. (b) to (f). Pub. L. 102–550, § 905(b)(1), (2), added subsecs. (b) to (d) and redesignated former subsecs. (b) and (c) as (e) and (f), respectively.

Subsec. (g). Pub. L. 102–550, § 905(b)(1), (3), redesignated subsec. (d) as (g) and, in first sentence, substituted ''$21,000,000 for fiscal year 1993 and $26,000,000

for fiscal year 1994, of which—'' and pars. (1) to (4) for ''including any program evaluations, $6,000,000 for fiscal year 1991 and $6,300,000 for fiscal year 1992, of which not more than $3,000,000 in each year shall be for the private enforcement initiative demonstration.''

Subsec. (h). Pub. L. 102–550, § 905(b)(4), added subsec. (h) and struck out former subsec. (h) which provided that the demonstration period authorized by this section would end Sept. 30, 1992.

Pub. L. 102–550, § 905(b)(1), redesignated subsec. (e) as (h).

Subsecs. (i), (j). Pub. L. 102–550, § 905(b)(4), added subsecs. (i) and (j).

1990—Subsec. (d). Pub. L. 101–625, § 953(a), amended first sentence generally. Prior to amendment, first sentence read as follows: ''There are authorized to be appropriated to carry out the provisions of this section, including any program evaluations, $5,000,000 for fiscal year 1988, and $5,000,000 for fiscal year 1989, of which not more than $3,000,000 in each year shall be for the private enforcement initiative demonstration.''

Subsec. (e). Pub. L. 101–625, § 953(b), substituted ''1992'' for ''1989''.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

CONGRESSIONAL FINDINGS

Section 905(a) of Pub. L. 102–550 provided that: ''The Congress finds that—

''(1) in the past half decade, there have been major legislative and administrative changes in Federal fair housing and fair lending laws and substantial improvements in the Nation's understanding of discrimination in the housing markets;

''(2) in response to evidence of continuing housing discrimination, the Congress passed the Fair Housing Act Amendments of 1988 [probably should be the Fair Housing Amendments Act of 1988, Pub. L. 100–430, see Short Title of 1988 Amendment note set out under section 3601 of this title], to provide for more effective enforcement of fair housing rights through judicial and administrative avenues and to expand the number of protected classes covered under Federal fair housing laws;

''(3) in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 [Pub. L. 101–73, see Short Title of 1989 Amendment note set out under 12 U.S.C. 1811], the Congress expanded the disclosure provisions under the Home Mortgage Disclosure Act [probably should be the Home Mortgage Disclosure Act of 1975; 12 U.S.C. 2801 et seq.] to provide increased information on the mortgage lending patterns of financial institutions;

''(4) in the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], the Congress provided a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

''(5) in 1991, data collected under the Home Mortgage Disclosure Act disclosed evidence of pervasive discrimination in the Nation's mortgage lending markets;

''(6) the Housing Discrimination Survey, released by the Department of Housing and Urban Development in 1991, found that Hispanic and African-American homeseekers experience some form of discrimination in at least half of their encounters with sales and rental agents;

''(7) the Fair Housing Initiatives Program should be revised and expanded to reflect the significant changes in the fair housing and fair lending area that have taken place since the Program's initial authorization in the Housing and Community Development Act of 1987 [Pub. L. 100–242, see Short Title of 1988 Amendment note under section 5301 of this title];

''(8) continuing educational efforts by the real estate industry are a useful way to increase understanding by the public of their fair housing rights and responsibilities; and

''(9) the proven efficacy of private nonprofit fair housing enforcement organizations and community-based efforts makes support for these organizations a necessary component of the fair housing enforcement system.''

§ 3617. Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

(Pub. L. 90–284, title VIII, § 818, formerly § 817, Apr. 11, 1968, 82 Stat. 89; renumbered § 818 and amended Pub. L. 100–430, §§ 8(1), 10, Sept. 13, 1988, 102 Stat. 1625, 1635.)

PRIOR PROVISIONS

A prior section 818 of Pub. L. 90–284 was renumbered section 819 and is classified to section 3618 of this title.

AMENDMENTS

1988—Pub. L. 100–430 struck out at end ''This section may be enforced by appropriate civil action.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

§ 3618. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subchapter.

(Pub. L. 90–284, title VIII, § 819, formerly § 818, Apr. 11, 1968, 82 Stat. 89; renumbered § 819, Pub. L. 100–430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

PRIOR PROVISIONS

A prior section 819 of Pub. L. 90–284 was renumbered section 820 and is classified to section 3619 of this title.

§ 3619. Separability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the remainder of the subchapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Pub. L. 90–284, title VIII, § 820, formerly § 819, Apr. 11, 1968, 82 Stat. 89; renumbered § 820, Pub. L. 100–430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

SUBCHAPTER II—PREVENTION OF INTIMIDATION

§ 3631. Violations; penalties

Whoever, whether or not acting under color of law, by force or threat of force willfully injuries, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(a) any person because of his race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(b) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(1) participating, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section; or

(2) affording another person or class of persons opportunity or protection so to participate; or

(c) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined under title 18 or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined under title 18 or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under title 18 or imprisoned for any term of years or for life, or both.

(Pub. L. 90–284, title IX, § 901, Apr. 11, 1968, 82 Stat. 89; Pub. L. 93–383, title VIII, § 808(b)(4), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100–430, § 9, Sept. 13, 1988, 102 Stat. 1635; Pub. L. 103–322, title XXXII, § 320103(e), Sept. 13, 1994, 108 Stat. 2110; Pub. L. 104–294, title VI, § 604(b)(15), (27), Oct. 11, 1996, 110 Stat. 3507, 3508.)

AMENDMENTS

1996—Pub. L. 104–294, § 604(b)(27), substituted ''under title 18'' for ''under this title'' wherever appearing in closing provisions.

Pub. L. 104–294, § 604(b)(15), made technical amendment to directory language of Pub. L. 103–322, § 320103(e). See 1994 Amendment note below.

1994—Pub. L. 103–322, § 320103(e)(1), as amended by Pub. L. 104–294, § 604(b)(15), which directed amendment in the caption by striking ''bodily injury; death;'', could not be executed because the words ''bodily injury; death;'' do not appear in the section catchline in the original.

Pub. L. 103–322, § 320103(e)(2)–(7), as amended by Pub. L. 104–294, § 604(b)(15), in concluding provisions, substituted ''under this title'' for ''not more than $1,000,'' before ''or imprisoned not more than one year'', inserted ''from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire'' after ''bodily injury results'', substituted ''under this title'' for ''not more than $10,000,'' before ''or imprisoned not more than ten years'', inserted ''from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill,'' after ''death results'', substituted ''fined under this title or imprisoned'' for ''subject to imprisonment'' before ''for any term of years'', and inserted '', or both'' before period at end.

1988—Cls. (a), (b)(1), (c). Pub. L. 100–430 inserted '', handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title),'' after ''sex''.

1974—Pub. L. 93–383 inserted '', sex'' after ''religion'' wherever appearing in cls. (a), (b)(1), and (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

FEDERALLY PROTECTED ACTIVITIES; PENALTIES

Penalties for violations respecting federally protected activities not applicable to and not affecting activities under fair housing provisions of subchapter I of this chapter, see section 101(b) of Pub. L. 90–284, set out as a note under section 245 of Title 18, Crimes and Criminal Procedure.

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3722. National Institute of Justice.
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3732. Bureau of Justice Statistics.
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3797ee–1. Juvenile sex offender treatment grants.

CODIFICATION

Title I of the Omnibus Crime Control and Safe Streets Act of 1968, comprising this chapter, was originally enacted by Pub. L. 90–351, June 19, 1968, 82 Stat. 197, and amended by Pub. L. 91–644, Jan. 2, 1971, 84 Stat. 1880; Pub. L. 93–83, Aug. 6, 1973, 87 Stat. 197; Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109; Pub. L. 94–237, Mar. 19, 1976, 90 Stat. 241; Pub. L. 94–273, Apr. 21, 1976, 90 Stat. 375; Pub. L. 94–430, Sept. 29, 1976, 90 Stat. 1346; Pub. L. 94–503, Oct. 15, 1976, 90 Stat. 2407; Pub. L. 95–115, Oct. 3, 1977, 91 Stat. 1048. Such title is shown herein, however, as having been added by Pub. L. 96–157, Dec. 27, 1979, 93 Stat. 1167, without reference to such intervening amendments because of the extensive revision of the title's provisions by Pub. L. 96–157.

§ 3701. Repealed. Pub. L. 98–473, title II, § 602, Oct. 12, 1984, 98 Stat. 2077

Section, Pub. L. 90–351, title I, § 100, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1169, set out the Congressional findings, declaration of policy, and statement of purpose for this chapter.

A prior section 3701, Pub. L. 90–351, title I, § 100, June 19, 1968, 82 Stat. 197; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 197; Pub. L. 93–415, title V, § 541, Sept. 7, 1974, 88 Stat. 1142; Pub. L. 94–503, title I, § 101, Oct. 15, 1976, 90 Stat. 2407, set out the Congressional findings, declaration of policy, and statement of purpose in enacting this chapter, prior to the general amendment of this chapter by Pub. L. 96–157.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

SUBCHAPTER I—OFFICE OF JUSTICE PROGRAMS

§ 3711. Establishment of Office of Justice Programs

There is hereby established an Office of Justice Programs within the Department of Justice under the general authority of the Attorney General. The Office of Justice Programs (hereinafter referred to in this chapter as the ''Office'') shall be headed by an Assistant Attorney General (hereinafter in this chapter referred to as the ''Assistant Attorney General'') appointed by the President, by and with the advice and consent of the Senate.

(Pub. L. 90–351, title I, § 101, as added Pub. L. 98–473, title II, § 603(a), Oct. 12, 1984, 98 Stat. 2077.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title I of Pub. L. 90–351, as added by Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1167, as amended, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

PRIOR PROVISIONS

A prior section 3711, Pub. L. 90–351, title I, § 101, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1170, established Law Enforcement Assistance Administration, prior to the general amendment of this subchapter by Pub. L. 98–473.

Another prior section 3711, Pub. L. 90–351, title I, § 101, June 19, 1968, 82 Stat. 198; Pub. L. 91–644, title I, § 2, Jan. 2, 1971, 84 Stat. 1881; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 197; Pub. L. 94–503, title I, §§ 102, 103, Oct. 15, 1976, 90 Stat. 2407, established Law Enforcement Assistance Administration and Office of Community Anti-Crime Programs, prior to the general amendment of this chapter by Pub. L. 96–157.

EFFECTIVE DATE

Section 609AA of Pub. L. 98–473 provided that:

''(a) Except as provided in subsection (b), this division and the amendments made by this title [probably means division, see Short Title of 1984 Amendment note below] shall take effect on the date of the enactment of this joint resolution [Oct. 12, 1984] or October 1, 1984, whichever is later.

''(b)(1) The amendment made by section 609F [amending sections 3796 to 3796c of this title] shall take effect on October 1, 1984, and shall not apply with respect to injuries sustained before October 1, 1984.

''(2) Section 609Z [repealing section 204 of Pub. L. 98–411, which had amended sections 3796 to 3796b of this title and enacted provisions set out as a note under section 3796 of this title] shall take effect on October 1, 1984.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–414, § 1, Oct. 30, 2004, 118 Stat. 2327, provided that: ''This Act [enacting subchapter XIX of this chapter and provisions set out as notes under section 3797aa of this title] may be cited as the 'Mentally Ill Offender Treatment and Crime Reduction Act of 2004'.''

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–182, § 1, Dec. 15, 2003, 117 Stat. 2649, provided that: ''This Act [amending section 3796 of this

title] may be cited as the 'Hometown Heroes Survivors Benefits Act of 2003'.''

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107–273, div. A, title IV, § 401, Nov. 2, 2002, 116 Stat. 1789, provided that: ''This title [enacting sections 3796gg–0 to 3796gg–0d of this title, amending sections 3796gg–1 to 3796gg–5 of this title, and enacting provisions set out as a note under section 3796gg–0 of this title] may be cited as the 'Violence Against Women Office Act'.''

Pub. L. 107–273, div. B, title II, § 2001, Nov. 2, 2002, 116 Stat. 1792, provided that: ''This title [enacting subchapter XVI of this chapter and sections 3797w and 3797w–1 of this title, amending sections 285*o*–2, 3793, 3796ff, 3796ff–1, and 3797ff–3 of this title, sections 3565 and 3583 of Title 18, Crimes and Criminal Procedure, and section 823 of Title 21, Food and Drugs, and enacting provisions set out as notes under sections 3722 and 3797u of this title and section 3601 of Title 18] may be cited as the 'Drug Abuse Education, Prevention, and Treatment Act of 2002'.''

Pub. L. 107–273, div. C, title I, § 11027(a), Nov. 2, 2002, 116 Stat. 1834, provided that: ''This section [enacting subchapter XVIII of this chapter] may be cited as the 'Crime-Free Rural States Act of 2002'.''

Pub. L. 107–273, div. C, title II, § 12101, Nov. 2, 2002, 116 Stat. 1859, provided that: ''This subtitle [subtitle A (§§ 12101, 12102) of title II of div. C of Pub. L. 107–273, enacting subchapter XII–F of this chapter and provisions set out as a note under section 3796ee of this title] may be cited as the 'Consequences for Juvenile Offenders Act of 2002'.''

Pub. L. 107–196, § 1, June 24, 2002, 116 Stat. 719, provided that: ''This Act [amending sections 3796 and 3796b of this title and enacting provisions set out as a note under section 3796 of this title] may be cited as the 'Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act of 2002'.''

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–572, § 1, Dec. 28, 2000, 114 Stat. 3058, provided that: ''This Act [enacting section 3713 of this title] may be cited as the 'Computer Crime Enforcement Act'.''

Pub. L. 106–561, § 1, Dec. 21, 2000, 114 Stat. 2787, provided that: ''This Act [enacting subchapter XV of this chapter, amending sections 3751, 3753, 3793, and 14601 of this title and section 983 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under section 14135 of this title and section 983 of Title 18] may be cited as the 'Paul Coverdell National Forensic Sciences Improvement Act of 2000'.''

Pub. L. 106–517, § 1, Nov. 13, 2000, 114 Stat. 2407, provided that: ''This Act [amending sections 3793 and 3796*ll* to 3796*ll–2* of this title and enacting provisions set out as notes under sections 3796*ll* and 3796*ll*–2 of this title] may be cited as the 'Bulletproof Vest Partnership Grant Act of 2000'.''

Pub. L. 106–515, § 1, Nov. 13, 2000, 114 Stat. 2399, provided that: ''This Act [enacting subchapter XII–J of this chapter, amending section 3793 of this title, and enacting provisions set out as a note under section 3796ii of this title] may be cited as the 'America's Law Enforcement and Mental Health Project'.''

Pub. L. 106–177, title I, § 101, Mar. 10, 2000, 114 Stat. 35, provided that: ''This title [amending sections 3751, 10601, and 14601 of this title and enacting provisions set out as a note under section 10601 of this title] may be cited as the 'Child Abuse Prevention and Enforcement Act'.''

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105–390, § 1, Nov. 13, 1998, 112 Stat. 3495, provided that: ''This Act [amending sections 3796d, 3796d–1, 3796d–3, 3796d–5, and 3796d–6 of this title] may be cited as the 'Police, Fire, and Emergency Officers Educational Assistance Act of 1998'.''

Pub. L. 105–181, § 1, June 16, 1998, 112 Stat. 512, provided that: ''This Act [enacting subchapter XII–M of this chapter, amending sections 3793 and 3797 of this title, and enacting provisions set out as a note under section 3796*ll* of this title] may be cited as the 'Bulletproof Vest Partnership Grant Act of 1998'.''

Pub. L. 105–180, § 1, June 16, 1998, 112 Stat. 511, provided that: ''This Act [amending sections 3796a–1 and 3796c of this title] may be cited as the 'Care for Police Survivors Act of 1998'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–238, § 1, Oct. 3, 1996, 110 Stat. 3114, provided that: ''This Act [enacting part B of subchapter XII of this chapter] may be cited as the 'Federal Law Enforcement Dependents Assistance Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–322, title I, § 10001, Sept. 13, 1994, 108 Stat. 1807, provided that: ''This title [enacting subchapter XII–E of this chapter, amending sections 3793 and 3797 of this title, and enacting provisions set out as a note under section 3796dd of this title] may be cited as the 'Public Safety Partnership and Community Policing Act of 1994'.''

Pub. L. 103–322, title XXXII, § 320701, Sept. 13, 1994, 108 Stat. 2121, provided that: ''This subtitle [subtitle G (§§ 320701, 320702) of title XXXII of Pub. L. 103–322, amending section 3760 of this title and enacting provisions set out as a note under section 3760 of this title] may be cited as the 'Safer Streets and Neighborhoods Act of 1994'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–570, title I, § 1551, Oct. 27, 1986, 100 Stat. 3207–41, provided that: ''This subtitle [subtitle K (§§ 1551, 1552) of title I of Pub. L. 99–570, enacting subchapter XII–A of this chapter and amending sections 3741, 3782, 3783, 3789, 3793, and 3797 of this title] may be cited as the 'State and Local Law Enforcement Assistance Act of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Section 601 of Pub. L. 98–473 provided that: ''This division [division I (§§ 601–609AA) of chapter VI of title II of Pub. L. 98–473, enacting chapter 111, this section, and sections 3712, 3741 to 3748, 3769 to 3769d, 3771, 3786 to 3789 of this title, amending sections 3721, 3722, 3731, 3732, 3761 to 3766, 3782 to 3785, 3789d to 3789*g*, 3789i, 3789*l*, 3791, 3793, 3795, 3795b, 3796 to 3796c, and 3797 of this title, sections 5314 and 5315 of Title 5, Government Organization and Employees, and section 1761 of Title 18, Crimes and Criminal Procedure, omitting sections 3713 and 3772 to 3775 of this title, repealing sections 3701, 3724, 3734, 3751 to 3755, 3781, 3786 to 3789c, 3789h, 3789*o*, 3793b, and 3796 to 3796b of this title, enacting provisions set out as notes under this section and section 1028 of Title 18, and amending provisions set out as a note under section 1761 of Title 18] may be cited as the 'Justice Assistance Act of 1984'.''

SHORT TITLE OF 1979 AMENDMENT

Section 1 of Pub. L. 96–157 provided: ''That this Act [enacting this chapter, amending sections 5314 and 5315 of Title 5, Government Organization and Employees, section 1761 of Title 18, Crimes and Criminal Procedure, and section 35 of Title 41, Public Contracts, and enacting provisions set out as a note under section 1761 of Title 18] may be cited as the 'Justice System Improvement Act of 1979'.''

SHORT TITLE OF 1976 AMENDMENTS

Pub. L. 94–503, § 1, Oct. 15, 1976, 90 Stat. 2407, provided: ''That this Act [enacting sections 3726 and 3739 of this title, amending this section, sections 3701, 3721, 3723, 3724, 3725, 3731, 3732, 3733, 3734, 3736, 3737, 3738, 3742, 3750b, 3750d, 3751, 3755, 3757, 3763, 3766, 3767, 3768, 3769, 3781, 5633, 5635, and 5671 of this title, and sections 5108, 5315, and 5316 of Title 5, Government Organization and Employees, repealing section 3760 of this title, and enacting

provisions set out as notes under sections 501, 509, and 532 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Crime Control Act of 1976'.''

Pub. L. 94–430, § 1, Sept. 29, 1976, 90 Stat. 1346, provided: ''That this Act [enacting sections 3796 to 3796c of this title, amending section 3768 of this title, and enacting provisions set out as notes under section 3796 of this title] may be cited as the 'Public Safety Officers' Benefits Act of 1976'.''

SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93–83, § 1, Aug. 6, 1973, 87 Stat. 197, provided: ''That this Act [enacting sections 3738, 3770, and 3771 of this title, reenacting sections 3334(a), 3734, 3735, 3745, 3750, 3750a, 3751 to 3755, 3757 to 3759, 3761 to 3765, and 3792 of this title and section 5314(55) of Title 5, Government Organization and Employees, renumbering former section 3748 as 3747 and repealing former section 3747 of this title, and amending this section, sections 3701, 3721 to 3725, 3731 to 3733, 3736, 3737, 3741 to 3744, 3746, 3750b to 3750d, 3756, 3760, 3766 to 3769, 3781, 3791, 3793, and 3795 of this title, sections 5108(c)(10), 5315(90), and 5316(133) of Title 5, and section 484(n) of former Title 40, Public Buildings, Property, and Works] may be cited as the 'Crime Control Act of 1973'.''

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–644, § 1, Jan. 2, 1971, 84 Stat. 1880, provided: ''That this Act [enacting sections 3747, 3748, 3750 to 3750d, 3791 to 3793, and 3795 of this title and sections 351 and 1752 of Title 18, Crimes and Criminal Procedure, amending this section, sections 3723, 3724, 3731, 3733, 3735, 3736, 3746, 3756, 3763 to 3765, 3767 to 3769, and 3781 of this title, sections 5108 and 5313 to 5316 of Title 5, Government Organization and Employees, and sections 924, 3056, and 3731 of Title 18, enacting provisions set out as notes under section 3731 of Title 18, amending provisions set out as notes under section 2510 of Title 18, and repealing provisions set out as notes under section 2510 of Title 18] may be cited as the 'Omnibus Crime Control Act of 1970'.''

SHORT TITLE

Section 1 of Pub. L. 90–351, June 19, 1968, 82 Stat. 197, provided: ''That this Act [enacting this chapter, sections 5315(90), 5316(126), and 7313 of Title 5, Government Organization and Employees, sections 921 to 928 (chapter 44), 2510 to 2520 (chapter 119), 3103a, 3501, and 3502 of Title 18, Crimes and Criminal Procedure, and Appendix to Title 18, amending section 3334(a) of this title, section 3731 of Title 18, and section 605 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, repealing sections 901 to 910 of Title 15, Commerce and Trade, enacting provisions set out as notes under sections 7313 of Title 5, sections 921 and 2510 of Title 18, and section 532 of Title 28, Judiciary and Judicial Procedure, and repealing provisions set out as a note preceding section 3001 of Title 18] may be cited as the 'Omnibus Crime Control and Safe Streets Act of 1968'.''

SEPARABILITY

Section 1601 of Pub. L. 90–351, title XI, June 19, 1968, 82 Stat. 239, provided that: ''If the provisions of any part of this Act [see Short Title note above] or any amendments made thereby or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.'' [Another section 1601 of Pub. L. 90–351 is classified to section 3796cc of this title.]

REFERENCES IN OTHER LAWS

Section 609I of Pub. L. 98–473 provided that:

''(a) Any reference to the Law Enforcement Assistance Administration, or to the Administrator of the Law Enforcement Assistance Administration, in any law other than this Act [see Short Title of 1984 Amendment note set out above] and the Omnibus Crime Control and Safe Streets Act of 1968 [see Short Title note set out above], applicable to activities, functions, powers, and duties that after the date of the enactment of this Act [Oct. 12, 1984] are carried out by the Bureau of Justice Assistance shall be deemed to be a reference to the Bureau of Justice Assistance, or to the Director of the Bureau of Justice Assistance, as the case may be.

''(b) Any reference to the Office of Justice Assistance, Research, and Statistics, or to the Director of the Office of Justice Assistance, Research, and Statistics, in any law other than this Act and the Omnibus Crime Control and Safe Streets Act of 1968, applicable to activities, functions, powers, and duties that after the date of the enactment of this Act are carried out by the Office of Justice Programs, the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, or the Office of Juvenile Justice [and] Delinquency Prevention shall be deemed to be a reference to the Office of Justice Programs, the Bureau of Justice Assistance, the Bureau of Justice Statistics, National Institute of Justice, or Office of Juvenile Justice [and] Delinquency Prevention, or to the Director of the Office of Justice Programs, the Director of the Bureau of Justice Assistance, the Director of the Bureau of Justice Statistics, the Director of the National Institute of Justice, or the Administrator of the Office of Juvenile Justice and Delinquency Prevention, as the case may be.''

§ 3712. Duties and functions of Assistant Attorney General

(a) Specific, general and delegated powers

The Assistant Attorney General shall—

(1) publish and disseminate information on the conditions and progress of the criminal justice systems;

(2) maintain liaison with the executive and judicial branches of the Federal and State governments in matters relating to criminal justice;

(3) provide information to the President, the Congress, the judiciary, State and local governments, and the general public relating to criminal justice;

(4) maintain liaison with public and private educational and research institutions, State and local governments, and governments of other nations relating to criminal justice;

(5) coordinate and provide staff support to coordinate the activities of the Office and the Bureau of Justice Assistance, the National Institute of Justice, the Bureau of Justice Statistics, the Office for Victims of Crime, and the Office of Juvenile Justice and Delinquency Prevention; and

(6) exercise such other powers and functions as may be vested in the Assistant Attorney General pursuant to this chapter or by delegation of the Attorney General, including placing special conditions on all grants, and determining priority purposes for formula grants.

(b) Annual report to President and Congress

The Assistant Attorney General shall submit an annual report to the President and to the Congress not later than March 31 of each year.

(Pub. L. 90–351, title I, § 102, as added Pub. L. 98–473, title II, § 603(a), Oct. 12, 1984, 98 Stat. 2078; amended Pub. L. 107–296, title II, § 236, Nov. 25, 2002, 116 Stat. 2162; Pub. L. 109–162, title XI, § 1152, Jan. 5, 2006, 119 Stat. 3113.)

PRIOR PROVISIONS

A prior section 3712, Pub. L. 90–351, title I, § 102, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1170, de-

scribed duties and functions of Administrator of Law Enforcement Assistance Administration, prior to the general amendment of this subchapter by Pub. L. 98–473.

AMENDMENTS

2006—Subsec. (a)(5). Pub. L. 109–162, § 1152(a), inserted ''the Office for Victims of Crime,'' after ''the Bureau of Justice Statistics,''.

Subsec. (a)(6). Pub. L. 109–162, § 1152(b), inserted '', including placing special conditions on all grants, and determining priority purposes for formula grants'' before period at end.

2002—Subsec. (a)(5). Pub. L. 107–296 inserted ''coordinate and'' before ''provide''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as a note under section 3711 of this title.

§ 3712a. Office of Weed and Seed Strategies

(a) Establishment

There is established within the Office an Office of Weed and Seed Strategies, headed by a Director appointed by the Attorney General.

(b) Assistance

The Director may assist States, units of local government, and neighborhood and community-based organizations in developing Weed and Seed strategies, as provided in section 3712b of this title.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section $60,000,000 for fiscal year 2006, and such sums as may be necessary for each of fiscal years 2007, 2008, and 2009, to remain available until expended.

(Pub. L. 90–351, title I, § 103, as added Pub. L. 109–162, title XI, § 1121(a), Jan. 5, 2006, 119 Stat. 3104.)

EFFECTIVE DATE

Pub. L. 109–162, title XI, § 1121(c), Jan. 5, 2006, 119 Stat. 3107, as amended by Pub. L. 109–271, § 8(n)(1), Aug. 12, 2006, 120 Stat. 767, provided that: ''This section [enacting this section and sections 3712b and 3712c of this title and provisions set out as a note below] and the amendments made by this section take effect with respect to appropriations for fiscal year 2007 and for each fiscal year thereafter.''

ABOLISHMENT OF EXECUTIVE OFFICE OF WEED AND SEED; TRANSFERS OF FUNCTIONS

Pub. L. 109–162, title XI, § 1121(b), Jan. 5, 2006, 119 Stat. 3107, provided that:

''(1) ABOLISHMENT.—The Executive Office of Weed and Seed is abolished.

''(2) TRANSFER.—There are hereby transferred to the Office of Weed and Seed Strategies all functions and activities performed immediately before the date of the enactment of this Act [Jan. 5, 2006] by the Executive Office of Weed and Seed Strategies.''

§ 3712b. Weed and Seed strategies

(a) In general

From amounts made available under section 3712a(c) of this title, the Director of the Office of Weed and Seed Strategies may implement strategies, to be known as Weed and Seed strategies, to prevent, control, and reduce violent crime, criminal drug-related activity, and gang activity in designated Weed-and-Seed communities. Each such strategy shall involve both of the following activities:

(1) Weeding

Activities, to be known as Weeding activities, which shall include promoting and coordinating a broad spectrum of community efforts (especially those of law enforcement agencies and prosecutors) to arrest, and to sanction or incarcerate, persons in that community who participate or engage in violent crime, criminal drug-related activity, and other crimes that threaten the quality of life in that community.

(2) Seeding

Activities, to be known as Seeding activities, which shall include promoting and coordinating a broad spectrum of community efforts (such as drug abuse education, mentoring, and employment counseling) to provide—

(A) human services, relating to prevention, intervention, or treatment, for at-risk individuals and families; and

(B) community revitalization efforts, including enforcement of building codes and development of the economy.

(b) Guidelines

The Director shall issue guidelines for the development and implementation of Weed and Seed strategies under this section. The guidelines shall ensure that the Weed and Seed strategy for a community referred to in subsection (a) of this section shall—

(1) be planned and implemented through and under the auspices of a steering committee, properly established in the community, comprised of—

(A) in a voting capacity, representatives of—

(i) appropriate law enforcement agencies; and

(ii) other public and private agencies, and neighborhood and community-based organizations, interested in criminal justice and community-based development and revitalization in the community; and

(B) in a voting capacity, both—

(i) the Drug Enforcement Administration's special agent in charge for the jurisdiction encompassing the community; and

(ii) the United States Attorney for the District encompassing the community;

(2) describe how law enforcement agencies, other public and private agencies, neighborhood and community-based organizations, and interested citizens are to cooperate in implementing the strategy; and

(3) incorporate a community-policing component that shall serve as a bridge between the Weeding activities under subsection (a)(1) of this section and the Seeding activities under subsection (a)(2) of this section.

(c) Designation

For a community to be designated as a Weed-and-Seed community for purposes of subsection (a) of this section—

(1) the United States Attorney for the District encompassing the community must certify to the Director that—

(A) the community suffers from consistently high levels of crime or otherwise is appropriate for such designation;

(B) the Weed and Seed strategy proposed, adopted, or implemented by the steering committee has a high probability of improving the criminal justice system within the community and contains all the elements required by the Director; and

(C) the steering committee is capable of implementing the strategy appropriately; and

(2) the community must agree to formulate a timely and effective plan to independently sustain the strategy (or, at a minimum, a majority of the best practices of the strategy) when assistance under this section is no longer available.

(d) Application

An application for designation as a Weed-and-Seed community for purposes of subsection (a) of this section shall be submitted to the Director by the steering committee of the community in such form, and containing such information and assurances, as the Director may require. The application shall propose—

(1) a sustainable Weed and Seed strategy that includes—

(A) the active involvement of the United States Attorney for the District encompassing the community, the Drug Enforcement Administration's special agent in charge for the jurisdiction encompassing the community, and other Federal law enforcement agencies operating in the vicinity;

(B) a significant community-oriented policing component; and

(C) demonstrated coordination with complementary neighborhood and community-based programs and initiatives; and

(2) a methodology with outcome measures and specific objective indicia of performance to be used to evaluate the effectiveness of the strategy.

(e) Grants

(1) In general

In implementing a strategy for a community under subsection (a) of this section, the Director may make grants to that community.

(2) Uses

For each grant under this subsection, the community receiving that grant may not use any of the grant amounts for construction, except that the Assistant Attorney General may authorize use of grant amounts for incidental or minor construction, renovation, or remodeling.

(3) Limitations

A community may not receive grants under this subsection (or fall within such a community)—

(A) for a period of more than 10 fiscal years;

(B) for more than 5 separate fiscal years, except that the Assistant Attorney General may, in single increments and only upon a showing of extraordinary circumstances, authorize grants for not more than 3 additional separate fiscal years; or

(C) in an aggregate amount of more than $1,000,000, except that the Assistant Attorney General may, upon a showing of extraordinary circumstances, authorize grants for not more than an additional $500,000.

(4) Distribution

In making grants under this subsection, the Director shall ensure that—

(A) to the extent practicable, the distribution of such grants is geographically equitable and includes both urban and rural areas of varying population and area; and

(B) priority is given to communities that clearly and effectively coordinate crime prevention programs with other Federal programs in a manner that addresses the overall needs of such communities.

(5) Federal share

(A) Subject to subparagraph (B), the Federal share of a grant under this subsection may not exceed 75 percent of the total costs of the projects described in the application for which the grant was made.

(B) The requirement of subparagraph (A)—

(i) may be satisfied in cash or in kind; and

(ii) may be waived by the Assistant Attorney General upon a determination that the financial circumstances affecting the applicant warrant a finding that such a waiver is equitable.

(6) Supplement, not supplant

To receive a grant under this subsection, the applicant must provide assurances that the amounts received under the grant shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for programs or services provided in the community.

(Pub. L. 90–351, title I, § 104, as added Pub. L. 109–162, title XI, § 1121(a), Jan. 5, 2006, 119 Stat. 3104.)

EFFECTIVE DATE

Section effective with respect to appropriations for fiscal year 2007 and for each fiscal year thereafter, see section 1121(c) of Pub. L. 109–162, set out as a note under section 3712a of this title.

§ 3712c. Inclusion of Indian tribes

For purposes of sections 3712a and 3712b of this title, the term ''State'' includes an Indian tribal government.

(Pub. L. 90–351, title I, § 105, as added Pub. L. 109–162, title XI, § 1121(a), Jan. 5, 2006, 119 Stat. 3107.)

CODIFICATION

Another section 105 of Pub. L. 90–351 was renumbered section 109 and is classified to section 3712h of this title.

EFFECTIVE DATE

Section effective with respect to appropriations for fiscal year 2007 and for each fiscal year thereafter, see section 1121(c) of Pub. L. 109–162, set out as a note under section 3712a of this title.

§ 3712d. Transferred

CODIFICATION

Section, Pub. L. 90–351, title I, § 105, as added Pub. L. 109–162, title XI, § 1158(a), Jan. 5, 2006, 119 Stat. 3114, which related to Office of Audit, Assessment, and Management, was renumbered section 109 of Pub. L. 90–351 by Pub. L. 109–271, § 8(e), Aug. 12, 2006, 120 Stat. 766, and transferred to section 3712h of this title.

§ 3712e. Community Capacity Development Office

(a) Establishment

(1) In general

There is established within the Office a Community Capacity Development Office, headed by a Director appointed by the Attorney General. In carrying out the functions of the Office, the Director shall be subject to the authority, direction, and control of the Attorney General. Such authority, direction, and control may be delegated only to the Assistant Attorney General, without redelegation.

(2) Purpose

The purpose of the Office shall be to provide training to actual and prospective participants under programs covered by section 3712a(b)[1] of this title to assist such participants in understanding the substantive and procedural requirements for participating in such programs.

(3) Exclusivity

The Office shall be the exclusive element of the Department of Justice performing functions and activities for the purpose specified in paragraph (2). There are hereby transferred to the Office all functions and activities for such purpose performed immediately before January 5, 2006, by any other element of the Department. This does not preclude a grant-making office from providing specialized training and technical assistance in its area of expertise.

(b) Means

The Director shall, in coordination with the heads of the other elements of the Department, carry out the purpose of the Office through the following means:

(1) Promoting coordination of public and private efforts and resources within or available to States, units of local government, and neighborhood and community-based organizations.

(2) Providing information, training, and technical assistance.

(3) Providing support for inter- and intra-agency task forces and other agreements and for assessment of the effectiveness of programs, projects, approaches, or practices.

(4) Providing in the assessment of the effectiveness of neighborhood and community-based law enforcement and crime prevention strategies and techniques, in coordination with the National Institute of Justice.

(5) Any other similar means.

(c) Locations

Training referred to in subsection (a) of this section shall be provided on a regional basis to groups of such participants. In a case in which remedial training is appropriate, as recommended by the Director or the head of any element of the Department, such training may be provided on a local basis to a single such participant.

(d) Best practices

The Director shall—

(1) identify grants under which clearly beneficial outcomes were obtained, and the characteristics of those grants that were responsible for obtaining those outcomes; and

(2) incorporate those characteristics into the training provided under this section.

(e) Availability of funds

not[2] to exceed 3 percent of all funding made available for a fiscal year for the programs covered by section 3712a(b)[1] of this title shall be reserved for the Community Capacity Development Office for the activities authorized by this section.

(Pub. L. 90–351, title I, § 106, as added Pub. L. 109–162, title XI, § 1159(a), Jan. 5, 2006, 119 Stat. 3116; amended Pub. L. 109–271, § 8(f), Aug. 12, 2006, 120 Stat. 766.)

REFERENCES IN TEXT

Section 3712a(b) of this title, referred to in subsecs. (a)(2) and (e), probably should be a reference to section 3712h(b) of this title because section 3712a(b) relates to Director assistance and section 3712h(b) specifically sets out covered programs.

January 5, 2006, referred to in subsec. (a)(3), was in the original ''the date of the enactment of this Act'' and was translated as meaning the date of enactment of Pub. L. 109–162, which enacted this section, to reflect the probable intent of Congress.

AMENDMENTS

2006—Subsecs. (a)(2), (e). Pub. L. 109–217 substituted ''section 3712a(b)'' for ''section 3712d(b)''.

EFFECTIVE DATE

Pub. L. 109–162, title XI, § 1159(b), Jan. 5, 2006, 119 Stat. 3117, provided that: ''This section [enacting this section] and the amendment made by this section take effect 90 days after the date of the enactment of this Act [Jan. 5, 2006].''

§ 3712f. Division of Applied Law Enforcement Technology

(a) Establishment

There is established within the Office of Science and Technology, the Division of Applied Law Enforcement Technology, headed by an individual appointed by the Attorney General. The purpose of the Division shall be to provide leadership and focus to those grants of the Department of Justice that are made for the purpose of using or improving law enforcement computer systems.

(b) Duties

In carrying out the purpose of the Division, the head of the Division shall—

(1) establish clear minimum standards for computer systems that can be purchased using amounts awarded under such grants; and

(2) ensure that recipients of such grants use such systems to participate in crime reporting

[1] See References in Text Note below.

[2] So in original. Probably should be capitalized.

programs administered by the Department, such as Uniform Crime Reports or the National Incident-Based Reporting System.

(Pub. L. 90–351, title I, § 107, as added Pub. L. 109–162, title XI, § 1160(a), Jan. 5, 2006, 119 Stat. 3117.)

EFFECTIVE DATE

Pub. L. 109–162, title XI, § 1160(b), Jan. 5, 2006, 119 Stat. 3117, as amended by Pub. L. 109–271, § 8(n)(4)(A), Aug. 12, 2006, 120 Stat. 768, provided that: ''This section [enacting this section] and the amendment made by this section take effect on October 1, 2006.''

§ 3712g. Availability of funds

(a) Period for awarding grant funds

(1) In general

Unless otherwise specifically provided in an authorization, DOJ grant funds for a fiscal year shall remain available to be awarded and distributed to a grantee only in that fiscal year and the three succeeding fiscal years, subject to paragraphs (2) and (3). DOJ grant funds not so awarded and distributed shall revert to the Treasury.

(2) Treatment of reprogrammed funds

DOJ grant funds for a fiscal year that are reprogrammed in a later fiscal year shall be treated for purposes of paragraph (1) as DOJ grant funds for such later fiscal year.

(3) Treatment of deobligated funds

If DOJ grant funds were obligated and then deobligated, the period of availability that applies to those grant funds under paragraph (1) shall be extended by a number of days equal to the number of days from the date on which those grant funds were obligated to the date on which those grant funds were deobligated.

(b) Period for expending grant funds

DOJ grant funds for a fiscal year that have been awarded and distributed to a grantee may be expended by that grantee only in the period permitted under the terms of the grant. DOJ grant funds not so expended shall be deobligated.

(c) Definition

In this section, the term ''DOJ grant funds'' means, for a fiscal year, amounts appropriated for activities of the Department of Justice in carrying out grant programs for that fiscal year.

(d) Applicability

This section applies to DOJ grant funds for fiscal years beginning with fiscal year 2006.

(Pub. L. 90–351, title I, § 108, as added Pub. L. 109–162, title XI, § 1161(a), Jan. 5, 2006, 119 Stat. 3118; amended Pub. L. 109–271, § 8(g), Aug. 12, 2006, 120 Stat. 767.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–271 substituted ''be deobligated'' for ''revert to the Treasury''.

EFFECTIVE DATE

Pub. L. 109–162, title XI, § 1161(b), Jan. 5, 2006, 119 Stat. 3118, as amended by Pub. L. 109–271, § 8(n)(4)(B), Aug. 12, 2006, 120 Stat. 768, provided that: ''This section [enacting this section] and the amendment made by this section take effect on October 1, 2006.''

§ 3712h. Office of Audit, Assessment, and Management

(a) Establishment

(1) In general

There is established within the Office an Office of Audit, Assessment, and Management, headed by a Director appointed by the Attorney General. In carrying out the functions of the Office, the Director shall be subject to the authority, direction, and control of the Attorney General. Such authority, direction, and control may be delegated only to the Assistant Attorney General, without redelegation.

(2) Purpose

The purpose of the Office shall be to carry out and coordinate program assessments of, take actions to ensure compliance with the terms of, and manage information with respect to, grants under programs covered by subsection (b). The Director shall take special conditions of the grant into account and consult with the office that issued those conditions to ensure appropriate compliance.

(3) Exclusivity

The Office shall be the exclusive element of the Department of Justice, other than the Inspector General, performing functions and activities for the purpose specified in paragraph (2). There are hereby transferred to the Office all functions and activities, other than functions and activities of the Inspector General, for such purpose performed immediately before January 5, 2006, by any other element of the Department.

(b) Covered programs

The programs referred to in subsection (a) are the following:

(1) The program under subchapter XII–E of this chapter.

(2) Any grant program carried out by the Office of Justice Programs.

(3) Any other grant program carried out by the Department of Justice that the Attorney General considers appropriate.

(c) Program assessments required

(1) In general

The Director shall select grants awarded under the programs covered by subsection (b) and carry out program assessments on such grants. In selecting such grants, the Director shall ensure that the aggregate amount awarded under the grants so selected represent not less than 10 percent of the aggregate amount of money awarded under all such grant programs.

(2) Relationship to NIJ evaluations

This subsection does not affect the authority or duty of the Director of the National Institute of Justice to carry out overall evaluations of programs covered by subsection (b), except that such Director shall consult with the Director of the Office in carrying out such evaluations.

(3) Timing of program assessments

The program assessment required by paragraph (1) of a grant selected under paragraph (1) shall be carried out—

(A) not later than the end of the grant period, if the grant period is not more than 1 year; and

(B) at the end of each year of the grant period, if the grant period is more than 1 year.

(d) Compliance actions required

The Director shall take such actions to ensure compliance with the terms of a grant as the Director considers appropriate with respect to each grant that the Director determines (in consultation with the head of the element of the Department of Justice concerned), through a program assessment under subsection (a) or other means, is not in compliance with such terms. In the case of a misuse of more than 1 percent of the grant amount concerned, the Director shall, in addition to any other action to ensure compliance that the Director considers appropriate, ensure that the entity responsible for such misuse ceases to receive any funds under any program covered by subsection (b) until such entity repays to the Attorney General an amount equal to the amounts misused. The Director may, in unusual circumstances, grant relief from this requirement to ensure that an innocent party is not punished.

(e) Grant management system

The Director shall establish and maintain, in consultation with the chief information officer of the Office, a modern, automated system for managing all information relating to the grants made under the programs covered by subsection (b).

(f) Availability of funds

Not to exceed 3 percent of all funding made available for a fiscal year for the programs covered by subsection (b) shall be reserved for the Office of Audit, Assessment and Management for the activities authorized by this section.

(Pub. L. 90–351, title I, § 109, formerly § 105, as added Pub. L. 109–162, title XI, § 1158(a), Jan. 5, 2006, 119 Stat. 3114; renumbered § 109, Pub. L. 109–271, § 8(e), Aug. 12, 2006, 120 Stat. 766.)

REFERENCES IN TEXT

January 5, 2006, referred to in subsec. (a)(3), was in the original ''the date of the enactment of this Act'' and was translated as meaning the date of enactment of Pub. L. 109–162, which enacted this section, to reflect the probable intent of Congress.

CODIFICATION

Section was formerly classified to section 3712d of this title prior to renumbering by Pub. L. 109–271.

EFFECTIVE DATE

Pub. L. 109–162, title XI, § 1158(b), Jan. 5, 2006, 119 Stat. 3116, as amended by Pub. L. 109–271, § 8(n)(3), Aug. 12, 2006, 120 Stat. 768, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), section 109 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712d) [now 3712h] shall take effect on April 5, 2006.

''(2) CERTAIN PROVISIONS.—Subsections (c), (d), and (e) of section 109 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712d) [now 3712h] shall take effect on October 1, 2006.''

§ 3713. State grant program for training and prosecution of computer crimes

(a) In general

Subject to the availability of amounts provided in advance in appropriations Acts, the Office of Justice Programs shall make a grant to each State, which shall be used by the State, in conjunction with units of local government, State and local courts, other States, or combinations thereof in accordance with subsection (b) of this section.

(b) Use of grant amounts

Grants under this section may be used to establish and develop programs to—

(1) assist State and local law enforcement agencies in enforcing State and local criminal laws relating to computer crime;

(2) assist State and local law enforcement agencies in educating the public to prevent and identify computer crime;

(3) educate and train State and local law enforcement officers and prosecutors to conduct investigations and forensic analyses of evidence and prosecutions of computer crime;

(4) assist State and local law enforcement officers and prosecutors in acquiring computer and other equipment to conduct investigations and forensic analysis of evidence of computer crimes; and

(5) facilitate and promote the sharing of Federal law enforcement expertise and information about the investigation, analysis, and prosecution of computer crimes with State and local law enforcement officers and prosecutors, including the use of multijurisdictional task forces.

(c) Assurances

To be eligible to receive a grant under this section, a State shall provide assurances to the Attorney General that the State—

(1) has in effect laws that penalize computer crime, such as criminal laws prohibiting—

(A) fraudulent schemes executed by means of a computer system or network;

(B) the unlawful damaging, destroying, altering, deleting, removing of computer software, or data contained in a computer, computer system, computer program, or computer network; or

(C) the unlawful interference with the operation of or denial of access to a computer, computer program, computer system, or computer network;

(2) an assessment of the State and local resource needs, including criminal justice resources being devoted to the investigation and enforcement of computer crime laws; and

(3) a plan for coordinating the programs funded under this section with other federally funded technical assistant and training programs, including directly funded local programs such as the Local Law Enforcement Block Grant program (described under the heading ''Violent Crime Reduction Programs, State and Local Law Enforcement Assistance'' of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105–119)).

(d) Matching funds

The Federal share of a grant received under this section may not exceed 90 percent of the costs of a program or proposal funded under this section unless the Attorney General waives, wholly or in part, the requirements of this subsection.

(e) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 2001 through 2004.

(2) Limitations

Of the amount made available to carry out this section in any fiscal year not more than 3 percent may be used by the Attorney General for salaries and administrative expenses.

(3) Minimum amount

Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands each shall be allocated 0.25 percent.

(f) Grants to Indian tribes

Notwithstanding any other provision of this section, the Attorney General may use amounts made available under this section to make grants to Indian tribes for use in accordance with this section.

(Pub. L. 106–572, § 2, Dec. 28, 2000, 114 Stat. 3058.)

REFERENCES IN TEXT

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, referred to in subsec. (c)(3), is Pub. L. 105–119, Nov. 26, 1997, 111 Stat. 2440. Provisions under the heading ''Violent Crime Reduction Programs, State and Local Law Enforcement Assistance'', 111 Stat. 2452, are not classified to the Code.

CODIFICATION

Section was enacted as part of the Computer Crime Enforcement Act, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

PRIOR PROVISIONS

A prior section 3713, Pub. L. 90–351, title I, § 103, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1170, provided for an Office of Community Anti-Crime Programs, prior to the general amendment of this subchapter by Pub. L. 98–473.

§ 3714. Grant program for State and local domestic preparedness support

(a) In general

The Office for Domestic Preparedness of the Office of Justice Programs shall make a grant to each State, which shall be used by the State, in conjunction with units of local government, to enhance the capability of State and local jurisdictions to prepare for and respond to terrorist acts including events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices.

(b) Use of grant amounts

Grants under this section may be used to purchase needed equipment and to provide training and technical assistance to State and local first responders. In addition, grants under this section may be used to construct, develop, expand, modify, operate, or improve facilities to provide training or assistance to State and local first responders.

(c) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section such sums as necessary for each of fiscal years 2002 through 2007.

(2) Limitations

Of the amount made available to carry out this section in any fiscal year not more than 3 percent may be used by the Attorney General for salaries and administrative expenses.

(3) Minimum amount

Each State shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section, except that the United States Virgin Islands, America Samoa, Guam, and the Northern Mariana Islands each shall be allocated not less than 0.25 percent.

(Pub. L. 107–56, title X, § 1014, Oct. 26, 2001, 115 Stat. 399; Pub. L. 107–273, div. C, title I, § 11003, Nov. 2, 2002, 116 Stat. 1816.)

CODIFICATION

Section was enacted as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or USA PATRIOT Act, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273, § 11003(a)(1), which directed amendment of subsec. (a) by substituting ''Office for Domestic Preparedness'' for ''Office of State and Local Domestic Preparedness Support'', was executed by making the substitution for ''Office for State and Local Domestic Preparedness Support'' to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 107–273, § 11003(b), inserted at end ''In addition, grants under this section may be used to construct, develop, expand, modify, operate, or improve facilities to provide training or assistance to State and local first responders.''

Subsec. (c)(3). Pub. L. 107–273, § 11003(a)(2), inserted ''not less than'' before ''0.25 percent''.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(5), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November

25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 3715. Office of Justice Programs grants, cooperative agreements, and contracts

Notwithstanding any other provision of law, during any fiscal year the Attorney General—

(1) may make grants, or enter into cooperative agreements and contracts, for the Office of Justice Programs and the component organizations of that Office (including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351);[1] and

(2) shall have final authority over all functions, including any grants, cooperative agreements, and contracts made, or entered into, for the Office of Justice Programs and the component organizations of that Office (including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351).[1]

(Pub. L. 105–277, div. A, § 101(b) [title I, § 112], Oct. 21, 1998, 112 Stat. 2681–50, 2681–67; Pub. L. 107–56, title VI, § 614, Oct. 26, 2001, 115 Stat. 370; Pub. L. 107–273, div. A, title II, § 205(d), Nov. 2, 2002, 116 Stat. 1778.)

REFERENCES IN TEXT

Public Law 90–351, referred to in pars. (1) and (2), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended, known as the Omnibus Crime Control and Safe Streets Act of 1968. Title 1 of Public Law 90–351 probably means title I of the Act which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of Justice Appropriations Act, 1999, and also as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

Section was formerly classified as a note under section 3712 of this title.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''any fiscal year the Attorney General—'' for ''fiscal year 1999, the Assistant Attorney General for the Office of Justice Programs of the Department of Justice—'' in introductory provisions.

2001—Par. (1). Pub. L. 107–56, § 614(1), inserted ''(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351)'' after ''that Office''.

Par. (2). Pub. L. 107–56, § 614, inserted ''functions, including any'' after ''all'' and ''(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351)'' after ''that Office''.

[1] See References in Text note below.

OFFICE OF JUSTICE PROGRAMS GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS

Pub. L. 106–113, div. B, § 1000(a)(1) [title I, § 108(a)], Nov. 29, 1999, 113 Stat. 1535, 1501A–20, as amended by Pub. L. 107–56, title VI, § 614, Oct. 26, 2001, 115 Stat. 370, provided that: ''Notwithstanding any other provision of law, for fiscal year 2000, the Assistant Attorney General for the Office of Justice Programs of the Department of Justice—

''(1) may make grants, or enter into cooperative agreements and contracts, for the Office of Justice Programs and the component organizations of that Office (including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351 [see References in Text note above]); and

''(2) shall have final authority over all functions, including any grants, cooperative agreements and contracts made, or entered into, for the Office of Justice Programs and the component organizations of that Office (including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351 [see References in Text note above]), except for grants made under the provisions of sections 201, 202, 301, and 302 of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3721, 3722, 3731, 3732], as amended; and sections 204(b)(3), 241(e)(1), 243(a)(1), 243(a)(14) and 287A(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5614(b)(3) and former 42 U.S.C. 5651(e)(1), 5653(a)(1), (14), 5667d–1(3)], as amended.''

[Pub. L. 106–553, § 1(a)(2) [title I, § 108], Dec. 21, 2000, 114 Stat. 2762, 2762A–67, provided that: ''Section 108(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2000 (as enacted into law by section 1000(a)(1) of Public Law 106–113) [set out above] shall apply for fiscal year 2001 and thereafter.'']

§ 3715a. Consolidation of financial management systems of Office of Justice Programs

(a) Consolidation of accounting activities and procurement activities

The Assistant Attorney General of the Office of Justice Programs, in coordination with the Chief Information Officer and Chief Financial Officer of the Department of Justice, shall ensure that—

(1) all accounting activities for all elements of the Office of Justice Programs are carried out under the direct management of the Office of the Comptroller; and

(2) all procurement activities for all elements of the Office are carried out under the direct management of the Office of Administration.

(b) Further consolidation of procurement activities

The Assistant Attorney General, in coordination with the Chief Information Officer and Chief Financial Officer of the Department of Justice, shall ensure that, on and after September 30, 2008—

(1) all procurement activities for all elements of the Office are carried out through a single management office; and

(2) all contracts and purchase orders used in carrying out those activities are processed through a single procurement system.

(c) Consolidation of financial management systems

The Assistant Attorney General, in coordination with the Chief Information Officer and Chief Financial Officer of the Department of Justice, shall ensure that, on and after September 30, 2010, all financial management activities (including human resources, payroll, and accounting activities, as well as procurement activities) of all elements of the Office are carried out through a single financial management system.

(d) Achieving compliance

(1) Schedule

The Assistant Attorney General shall undertake a scheduled consolidation of operations to achieve compliance with the requirements of this section.

(2) Specific requirements

With respect to achieving compliance with the requirements of—

(A) subsection (a) of this section, the consolidation of operations shall be initiated not later than 90 days after January 5, 2006; and

(B) subsections (b) and (c) of this section, the consolidation of operations shall be initiated not later than September 30, 2006, and shall be carried out by the Office of Administration, in consultation with the Chief Information Officer and the Office of Audit, Assessment, and Management.

(Pub. L. 109–162, title XI, § 1162, Jan. 5, 2006, 119 Stat. 3118.)

CODIFICATION

Section was enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

SUBCHAPTER II—NATIONAL INSTITUTE OF JUSTICE

§ 3721. Statement of purpose

It is the purpose of this subchapter to establish a National Institute of Justice, which shall provide for and encourage research and demonstration efforts for the purpose of—

(1) improving Federal, State, and local criminal justice systems and related aspects of the civil justice system;

(2) preventing and reducing crimes;

(3) insuring citizen access to appropriate dispute-resolution forums; and

(4) identifying programs of proven effectiveness, programs having a record of proven success, or programs which offer a high probability of improving the functioning of the criminal justice system.

The Institute shall have authority to engage in and encourage research and development to improve and strengthen the criminal justice system and related aspects of the civil justice system and to disseminate the results of such efforts to Federal, State, and local governments, to evaluate the effectiveness of programs funded under this chapter, to develop and demonstrate new or improved approaches and techniques, to improve and strengthen the administration of justice, and to identify programs or projects carried out under this chapter which have demonstrated success in improving the quality of justice systems and which offer the likelihood of success if continued or repeated. In carrying out the provisions of this subchapter, the Institute shall give primary emphasis to the problems of State and local justice systems and shall insure that there is a balance between basic and applied research.

(Pub. L. 90–351, title I, § 201, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1172; amended Pub. L. 98–473, title II, § 604(a), Oct. 12, 1984, 98 Stat. 2078.)

PRIOR PROVISIONS

A prior section 3721, Pub. L. 90–351, title I, § 201, June 19, 1968, 82 Stat. 198; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 197; Pub. L. 94–503, title I, § 104, Oct. 15, 1976, 90 Stat. 2408, set out Congressional statement of purpose in providing for a program of planning grants, prior to the general amendment of this chapter by Pub. L. 96–157.

AMENDMENTS

1984—Pub. L. 98–473 redesignated par. (5) as (4), struck out former par. (4) relating to improvement of efforts to detect, investigate, prosecute, and otherwise combat and prevent white-collar crime and public corruption, and in closing provisions struck out ''to develop alternatives to judicial resolution of disputes,'' after ''local governments,'', and inserted ''and demonstrate'' after ''to develop''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

ASSESSING AND REDUCING THREAT TO LAW ENFORCEMENT OFFICERS FROM CRIMINAL USE OF FIREARMS AND AMMUNITION

Pub. L. 104–132, title VIII, § 809, Apr. 24, 1996, 110 Stat. 1311, provided that:

''(a) The Secretary of the Treasury, in conjunction with the Attorney General, shall conduct a study and make recommendations concerning—

''(1) the extent and nature of the deaths and serious injuries, in the line of duty during the last decade, for law enforcement officers, including—

''(A) those officers who were feloniously killed or seriously injured and those that died or were seriously injured as a result of accidents or other nonfelonious causes;

''(B) those officers feloniously killed or seriously injured with firearms, those killed or seriously injured with, separately, handguns firing handgun caliber ammunition, handguns firing rifle caliber ammunition, rifles firing rifle caliber ammunition, rifles firing handgun caliber ammunition and shotguns;

''(C) those officers feloniously killed or seriously injured with firearms, and killings or serious injuries committed with firearms taken by officers' assailants from officers, and those committed with other officers' firearms; and

''(D) those killed or seriously injured because shots attributable to projectiles defined as 'armor piercing ammunition' under section 921(a)(17)(B)(i) and (ii) of title 18, United States Code, pierced the protective material of bullet resistant vests and bullet resistant headgear;

''(2) whether current passive defensive strategies, such as body armor, are adequate to counter the criminal use of firearms against law officers; and

''(3) the calibers of ammunition that are—

''(A) sold in the greatest quantities;

''(B) their common uses, according to consultations with industry, sporting organizations and law enforcement;

''(C) the calibers commonly used for civilian defensive or sporting uses that would be affected by any prohibition on non-law enforcement sales of such ammunition, if such ammunition is capable of penetrating minimum level bullet resistant vests; and

''(D) recommendations for increase in body armor capabilities to further protect law enforcement from threat.

''(b) In conducting the study, the Secretary shall consult with other Federal, State and local officials, nongovernmental organizations, including all national police organizations, national sporting organizations and national industry associations with expertise in this area and such other individuals as shall be deemed necessary. Such study shall be presented to Congress twelve months after the enactment of this Act [Apr. 24, 1996] and made available to the public, including any data tapes or data used to form such recommendations.

''(c) There are authorized to be appropriated for the study and recommendations such sums as may be necessary.''

NATIONAL COMMISSION TO SUPPORT LAW ENFORCEMENT

Pub. L. 101–647, title XXXIV, Nov. 29, 1990, 104 Stat. 4918, as amended by Pub. L. 103–322, title XXVI, § 260002, Sept. 13, 1994, 108 Stat. 2089, provided that:

''SEC. 3401. CONGRESSIONAL FINDINGS.

''The Congress finds that—

''(1) law enforcement officers risk their lives daily to protect citizens, for modest rewards and too little recognition;

''(2) a significant shift has occurred in the problems that law enforcement officers face without a corresponding change in the support from the Federal Government;

''(3) law enforcement officers are on the front line in the war against drugs and crime;

''(4) the rate of violent crime continues to increase along with the increase in drug use;

''(5) a large percentage of individuals arrested test positive for drug usage;

''(6) the Presidential Commission on Law Enforcement and the Administration of Justice of 1965 focused attention on many issues affecting law enforcement, and a review 25 years later would help to evaluate current problems, including drug-related crime, violence, racial conflict, and decreased funding; and

''(7) a comprehensive study of law enforcement issues, including the role of the Federal Government in supporting law enforcement officers, working conditions, and responsibility for crime control would assist in redefining the relationships between the Federal Government, the public, and law enforcement officials.

''SEC. 3402. ESTABLISHMENT.

''There is hereby established the National Commission to Support Law Enforcement (hereafter in this title referred to as the 'Commission').

''SEC. 3403. DUTIES.

''(a) IN GENERAL.—The Commission shall study and include in the report made under section 3407 recommendations for changes regarding law enforcement agencies and law enforcement issues on the Federal, State, and local levels, including the following:

''(1) FUNDING.—The sufficiency of funding, including a review of grant programs at the Federal level.

''(2) EMPLOYMENT.—The conditions of law enforcement employment.

''(3) INFORMATION.—The effectiveness of information-sharing systems, intelligence, infrastructure, and procedures among law enforcement agencies of Federal, State, and local governments.

''(4) RESEARCH AND TRAINING.—The status of law enforcement research and education and training.

''(5) EQUIPMENT AND RESOURCES.—The adequacy of equipment, physical resources, and human resources.

''(6) COOPERATION.—The cooperation among Federal, State, and local law enforcement agencies.

''(7) RESPONSIBILITY.—The responsibility of governments and law enforcement agencies in solving the crime problem.

''(8) IMPACT.—The impact of the criminal justice system, including court schedules and prison overcrowding, on law enforcement.

''(b) CONSULTATION.—The Commission shall conduct surveys and consult with focus groups of law enforcement officers, local officials, and community leaders across the Nation to obtain information and seek advice on important law enforcement issues.

''SEC. 3404. MEMBERSHIP.

''(a) [Repealed. Pub. L. 103–322, title XXVI, § 260002, Sept. 13, 1994, 108 Stat. 2089.]

''(b) COMPENSATION.—

''(1) IN GENERAL.—Members of the Commission shall receive no additional pay, allowances, or benefits by reason of service on the Commission.

''(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''SEC. 3405. EXPERTS AND CONSULTANTS.

''(a) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

''(b) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of that agency to the Commission to assist the Commission in carrying out its duties under this title.

''(c) ADMINISTRATIVE SUPPORT.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, administrative support services as the Commission may request.

''SEC. 3406. POWERS OF COMMISSION.

''(a) HEARINGS.—The Commission may, for purposes of this title, hold hearings, sit and act at the times and places, take testimony, and receive evidence, as the Commission considers appropriate.

''(b) DELEGATION OF AUTHORITY.—Any member or agent of the Commission may, if authorized by the Commission, take any action the Commission is authorized to take by this section.

''(c) INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this title. Upon request of the chairperson of the Commission, the head of an agency shall furnish the information to the Commission to the extent permitted by law.

''(d) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

''(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

''SEC. 3407. REPORT.

''Not later than the expiration of the 18-month period beginning on the date of the enactment of this title [Nov. 29, 1990], the Commission shall submit to the Congress a report containing the findings of the Commission and specific proposals for legislation and administrative actions that the Commission has determined to be appropriate.

''SEC. 3408. TERMINATION.

''The Commission shall cease to exist upon the expiration of the 60-day period beginning on the date on which the Commission submits its report under section 3407.''

Pub. L. 101–515, title II, § 211(B), Nov. 5, 1990, 104 Stat. 2122, as amended by Pub. L. 103–322, title XXVI, § 260001,

Sept. 13, 1994, 108 Stat. 2088; Pub. L. 104–316, title I, § 122(m), Oct. 19, 1996, 110 Stat. 3838, provided that:

''(B)(a) This subsection may be cited as the 'National Commission to Support Law Enforcement Act'.

''(b) The Congress finds that—

''(1) law enforcement officers risk their lives daily to protect citizens, for modest rewards and too little recognition;

''(2) a significant shift has occurred in the problems that law enforcement officers face without a corresponding change in the support from the Federal Government;

''(3) law enforcement officers are on the front line in the war against drugs and crime;

''(4) the rate of violent crime continues to increase along with the increase in drug use;

''(5) a large percentage of individuals arrested test positive for drug usage;

''(6) the Presidential Commission on Law Enforcement and the Administration of Justice of 1965 focused attention on many issues affecting law enforcement, and a review twenty-five years later would help to evaluate current problems, including drug-related crime, violence, racial conflict, and decrease[d] funding; and

''(7) a comprehensive study of law enforcement issues, including the role of the Federal Government in supporting law enforcement officers, working conditions, and responsibility for crime control would assist in redefining the relationships between the Federal Government, the public, and law enforcement officials.

''(c) There is established a national commission to be known as the 'National Commission to Support Law Enforcement' (referred to in this section as the 'Commission').

''(d) The Commission shall study and recommend changes regarding law enforcement agencies and law enforcement issues on the Federal, State, and local levels, including the following:

''(1) The sufficiency of funding, including a review of grant programs at the Federal level.

''(2) The conditions of law enforcement employment.

''(3) The effectiveness of information-sharing systems, intelligence, infrastructure, and procedures among law enforcement agencies of Federal, State, and local governments.

''(4) The status of law enforcement research and education and training.

''(5) The adequacy of equipment, physical resources, and human resources.

''(6) The cooperation among Federal, State, and local law enforcement agencies.

''(7) The responsibility of governments and law enforcement agencies in solving the crime problem.

''(8) The impact of the criminal justice system, including court schedules and prison overcrowding, on law enforcement.

''(e) The Commission shall conduct surveys and consult with focus groups of law enforcement officers, local officials, and community leaders across the Nation to obtain information and seek advice on important law enforcement issues.

''(f) NUMBER AND APPOINTMENT.—

''(1) IN GENERAL.—The Commission shall be composed of 29 members as follows:

''(A) Nine individuals appointed from national law enforcement organizations representing law enforcement officers, of whom—

''(i) two shall be appointed by the Speaker of the House of Representatives;

''(ii) two shall be appointed by the majority leader of the Senate;

''(iii) two shall be appointed by the minority leader of the House of Representatives;

''(iv) two shall be appointed by the minority leader of the Senate; and

''(v) one shall be appointed by the President.

''(B) Nine individuals appointed from national law enforcement organizations representing law enforcement management, of whom—

''(i) two shall be appointed by the Speaker of the House of Representatives;

''(ii) two shall be appointed by the majority leader of the Senate;

''(iii) two shall be appointed by the minority leader of the House of Representatives;

''(iv) two shall be appointed by the minority leader of the Senate; and

''(v) one shall be appointed by the President.

''(C) Two individuals appointed with academic expertise regarding law enforcement issues, of whom—

''(i) one shall be appointed by the Speaker of the House of Representatives and the majority leader of the Senate; and

''(ii) one shall be appointed by the minority leader of the Senate and the minority leader of the House of Representatives.

''(D) Two Members of the House of Representatives, appointed by the Speaker and the minority leader of the House of Representatives.

''(E) Two Members of the Senate, appointed by the majority leader and the minority leader of the Senate.

''(F) One individual from the Department of Justice, appointed by the President.

''(G) Two individuals representing a State or local governmental entity, such as a Governor, mayor, or State attorney general, to be appointed jointly by the majority leader and the minority leader of the Senate.

''(H) Two individuals representing a State or local governmental entity, such as a Governor, mayor, or State attorney general, to be appointed jointly by the Speaker and the minority leader of the House of Representatives.

''(2) COMPTROLLER GENERAL.—The Comptroller General may serve in an advisory capacity, may oversee the methodology, and may approve of the Commission study.

''(3) CHAIRPERSON.—Upon their appointment the members of the Commission shall select one of their number to act as chairperson.

''(4) APPOINTMENT DATE.—Members of the Commission shall be appointed no later than 90 days after the enactment of this Act [probably means enactment of Pub. L. 103–322, which was approved Sept. 13, 1994].

''(g)(1) Members of the Commission shall receive no additional pay, allowance, or benefit by reason of service on the Commission.

''(2) Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(h) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

''(i) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of that agency to the Commission to assist the Commission in carrying out its duties under this section.

''(j) The Administrator of General Services shall provide to the Commission, on a reimbursable basis, administrative support services as the Commission may request.

''(k) The Commission may, for purposes of this section, hold hearings, sit and act at the times and places, take testimony, and receive evidence, as the Commission considers appropriate.

''(*l*) Any member or agent of the Commission may, if authorized by the Commission, take any action the Commission is authorized to take by this section.

''(m) The Commission may secure directly from any Federal agency information necessary to enable it to carry out this section. Upon request of the chairperson of the Commission, the head of an agency shall furnish the information to the Commission to the extent permitted by law.

''(n) The Commission may accept, use, and dispose of gifts or donations of services or property.

''(*o*) The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

''(p) Not later than March 31, 1996, the Commission shall submit to the Congress a report containing the findings of the Commission and specific proposals for legislation and administrative actions that the Commission has determined to be appropriate.

''(q) The Commission shall cease to exist upon the expiration of the sixty-day period beginning on the date on which the Commission submits its report under subsection (p).''

§ 3722. National Institute of Justice

(a) Establishment; general authority of Attorney General over Institute

There is established within the Department of Justice, under the general authority of the Attorney General, a National Institute of Justice (hereinafter referred to in this subchapter as the ''Institute'').

(b) Director of Institute; appointment by President; authority; restrictions

The Institute shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate. The Director shall have had experience in justice research. The Director shall report to the Attorney General through the Assistant Attorney General. The Director shall have final authority over all grants, cooperative agreements, and contracts awarded by the Institute. The Director shall not engage in any other employment than that of serving as Director; nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Institute makes any contract or other arrangement under this chapter.

(c) Duties and functions

The Institute is authorized to—

(1) make grants to, or enter into cooperative agreements or contracts with, public agencies, institutions of higher education, private organizations, or individuals to conduct research, demonstrations, or special projects pertaining to the purposes described in this subchapter, and provide technical assistance and training in support of tests, demonstrations, and special projects;

(2) conduct or authorize multiyear and short-term research and development concerning the criminal and civil justice systems in an effort—

(A) to identify alternative programs for achieving system goals;

(B) to provide more accurate information on the causes and correlates of crime;

(C) to analyze the correlates of crime and juvenile delinquency and provide more accurate information on the causes and correlates of crime and juvenile delinquency;

(D) to improve the functioning of the criminal justice system;

(E) to develop new methods for the prevention and reduction of crime, including the development of programs to facilitate cooperation among the States and units of local government, the detection and apprehension of criminals, the expeditious, efficient, and fair disposition of criminal and juvenile delinquency cases, the improvement of police and minority relations, the conduct of research into the problems of victims and witnesses of crime, the feasibility and consequences of allowing victims to participate in criminal justice decisionmaking, the feasibility and desirability of adopting procedures and programs which increase the victim's participation in the criminal justice process, the reduction in the need to seek court resolution of civil disputes, and the development of adequate corrections facilities and effective programs of correction; and

(F) to develop programs and projects to improve and expand the capacity of States and units of local government and combinations of such units, to detect, investigate, prosecute, and otherwise combat and prevent white-collar crime and public corruption, to improve and expand cooperation among the Federal Government, States, and units of local government in order to enhance the overall criminal justice system response to white-collar crime and public corruption, and to foster the creation and implementation of a comprehensive national strategy to prevent and combat white-collar crime and public corruption.

In carrying out the provisions of this subsection, the Institute may request the assistance of both public and private research agencies;

(3) evaluate the effectiveness, including cost effectiveness where practical, of projects or programs carried out under this chapter;

(4) make recommendations for action which can be taken by Federal, State, and local governments and by private persons and organizations to improve and strengthen criminal and civil justice systems;

(5) provide research fellowships and clinical internships and carry out programs of training and special workshops for the presentation and dissemination of information resulting from research, demonstrations, and special projects including those authorized by this subchapter;

(6) collect and disseminate information obtained by the Institute or other Federal agencies, public agencies, institutions of higher education, and private organizations relating to the purposes of this subchapter;

(7) serve as a national and international clearinghouse for the exchange of information with respect to the purposes of this subchapter;

(8) after consultation with appropriate agencies and officials of States and units of local government, make recommendations for the designation of programs or projects which will be effective in improving the functioning of the criminal justice system, for funding as discretionary grants under subchapter V of this chapter;

(9) encourage, assist, and serve in a consulting capacity to Federal, State, and local justice system agencies in the development, maintenance, and coordination of criminal and civil justice programs and services; and

(10) research and development of tools and technologies relating to prevention, detection, investigation, and prosecution of crime; and

(11) support research, development, testing, training, and evaluation of tools and technology for Federal, State, and local law enforcement agencies.

(d) Criminal and civil justice research

To insure that all criminal and civil justice research is carried out in a coordinated manner, the Director is authorized to—

(1) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

(2) confer with and avail itself of the cooperation, services, records, and facilities of State or of municipal or other local agencies;

(3) request such information, data, and reports from any Federal agency as may be required to carry out the purposes of this section, and the agencies shall provide such information to the Institute as required to carry out the purposes of this subchapter;

(4) seek the cooperation of the judicial branches of Federal and State Government in coordinating civil and criminal justice research and development; and

(5) exercise the powers and functions set out in subchapter VIII of this chapter.

(Pub. L. 90–351, title I, § 202, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1172; amended Pub. L. 98–473, title II, § 604(b), Oct. 12, 1984, 98 Stat. 2078; Pub. L. 103–322, title XXXIII, § 330001(h)(1), Sept. 13, 1994, 108 Stat. 2139; Pub. L. 107–296, title II, § 237, Nov. 25, 2002, 116 Stat. 2162.)

PRIOR PROVISIONS

A prior section 3722, Pub. L. 90–351, title I, § 202, June 19, 1968, 82 Stat. 198; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 198, provided for making of grants to State planning agencies, prior to the general amendment of this chapter by Pub. L. 96–157.

AMENDMENTS

2002—Subsec. (c)(3). Pub. L. 107–296, § 237(1), inserted ", including cost effectiveness where practical," after "evaluate the effectiveness".

Subsec. (c)(10), (11). Pub. L. 107–296, § 237(2), added pars. (10) and (11).

1994—Subsec. (c)(2)(E). Pub. L. 103–322 substituted "crime," for "crime,,".

1984—Subsec. (b). Pub. L. 98–473, § 604(b)(1), required Director to report to Attorney General through Assistant Attorney General.

Subsec. (c)(2)(A). Pub. L. 98–473, § 604(b)(2)(A)(i), struck out ", including programs authorized by section 3713 of this title" after "system goals".

Subsec. (c)(2)(E). Pub. L. 98–473, § 604(b)(2)(A)(ii), struck out "the prevention and reduction of parental kidnaping" after "reduction of crime,".

Subsec. (c)(3). Pub. L. 98–473, § 604(b)(2)(B), substituted "chapter" for "subchapter".

Subsec. (c)(4) to (7). Pub. L. 98–473, § 604(b)(2)(C), (F), redesignated pars. (5) to (8) as (4) to (7), respectively, and struck out former par. (4) relating to evaluation of programs and projects under other subchapters of this chapter to determine their impact upon criminal and civil justice systems and achievement of purposes and policies of this chapter and for dissemination of information.

Subsec. (c)(8). Pub. L. 98–473, § 604(b)(2)(D)(i), (ii), (F), redesignated par. (10) as (8) and, in par. (8) as so designated, struck out "nationality priority grants under subchapter V of this chapter and" after "for funding as" and substituted "subchapter V of this chapter" for "subchapter VI of this chapter". Former par. (8) redesignated (7).

Subsec. (c)(9). Pub. L. 98–473, § 604(b)(2)(E), (F), redesignated par. (11) as (9), and struck out former par. (9) relating to a biennial report to President and Congress on state of justice research.

Subsec. (c)(10), (11). Pub. L. 98–473, § 604(b)(2)(F), redesignated pars. (10) and (11) as (8) and (9), respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

REPORT ON DRUG-TESTING TECHNOLOGIES

Pub. L. 107–273, div. B, title II, § 2201, Nov. 2, 2002, 116 Stat. 1793, provided that:

"(a) REQUIREMENT.—The National Institute of Justice shall conduct a study of drug-testing technologies in order to identify and assess the efficacy, accuracy, and usefulness for purposes of the National effort to detect the use of illicit drugs of any drug-testing technologies (including the testing of hair) that may be used as alternatives or complements to urinalysis as a means of detecting the use of such drugs.

"(b) REPORT.—Not later than 2 years after the date of enactment of this Act [Nov. 2, 2002], the Institute shall submit to Congress a report on the results of the study conducted under subsection (a)."

ANTI-STALKING LEGISLATION EVALUATION, MODEL DEVELOPMENT, DISSEMINATION AND REPORT

Pub. L. 102–395, title I, § 109(b), Oct. 6, 1992, 106 Stat. 1842, directed Attorney General, acting through Director of National Institute of Justice, to evaluate existing and proposed anti-stalking legislation in the States, develop model anti-stalking legislation that is constitutional and enforceable, prepare and disseminate to State authorities the findings made as a result of such evaluation, and report to Congress the findings and the need or appropriateness of further action by the Federal Government by Sept. 30, 1993.

§ 3723. Authority for 100 per centum grants

A grant authorized under this subchapter may be up to 100 per centum of the total cost of each project for which such grant is made. The Institute shall require, whenever feasible, as a condition of approval of a grant under this subchapter, that the recipient contribute money, facilities, or services to carry out the purposes for which the grant is sought.

(Pub. L. 90–351, title I, § 203, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1174.)

PRIOR PROVISIONS

A prior section 3723, Pub. L. 90–351, title I, § 203, June 19, 1968, 82 Stat. 199; Pub. L. 91–644, title I, § 3(a)–(c), Jan. 2, 1971, 84 Stat. 1881; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 198; Pub. L. 93–415, title V, § 542, Sept. 7, 1974, 88 Stat. 1142; Pub. L. 94–503, title I, § 105, Oct. 15, 1976, 90 Stat. 2408; Pub. L. 95–115, § 9(b), Oct. 3, 1977, 91 Stat. 1061, provided for establishment of State planning agencies, prior to the general amendment of this chapter by Pub. L. 96–157.

§ 3724. Repealed. Pub. L. 98–473, title II, § 604(c), Oct. 12, 1984, 98 Stat. 2079

Section, Pub. L. 90–351, title I, § 204, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1174, provided for a Na-

tional Institute of Justice Advisory Board, including the establishment and composition of the Board, rules respecting organization and procedure, term of office, duties of the Board, and delegation of powers and duties to the Director.

Prior sections 3724 to 3726 were omitted in the general revision of this chapter by Pub. L. 96–157.

Section 3724, Pub. L. 90–351, title I, § 204, June 19, 1968, 82 Stat. 199; Pub. L. 91–644, title I, § 3(d), Jan. 2, 1971, 84 Stat. 1881; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 199; Pub. L. 94–503, title I, § 106, Oct. 15, 1976, 90 Stat. 2410, related to maximum percentage of Federal grant funds in expenses incurred by States.

Section 3725, Pub. L. 90–351, title I, § 205, June 19, 1968, 82 Stat. 199; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 199; Pub. L. 94–503, title I, § 107, Oct. 15, 1976, 90 Stat. 2410, related to allocation of funds and reallocation of unused funds.

Section 3726, Pub. L. 90–351, title I, § 206, as added Pub. L. 94–503, title I, § 108, Oct. 15, 1976, 90 Stat. 2411, related to advisory review of comprehensive statewide plans by States.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

SUBCHAPTER III—BUREAU OF JUSTICE STATISTICS

§ 3731. Statement of purpose

It is the purpose of this subchapter to provide for and encourage the collection and analysis of statistical information concerning crime, juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system and to support the development of information and statistical systems at the Federal, State, and local levels to improve the efforts of these levels of government to measure and understand the levels of crime, juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system. The Bureau shall utilize to the maximum extent feasible State governmental organizations and facilities responsible for the collection and analysis of criminal justice data and statistics. In carrying out the provisions of this subchapter, the Bureau shall give primary emphasis to the problems of State and local justice systems.

(Pub. L. 90–351, title I, § 301, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1176; amended Pub. L. 98–473, title II, § 605(a), Oct. 12, 1984, 98 Stat. 2079.)

PRIOR PROVISIONS

A prior section 3731, Pub. L. 90–351, title I, § 301, June 19, 1968, 82 Stat. 199; Pub. L. 91–644, title I, § 4(1)–(4), Jan. 2, 1971, 84 Stat. 1882; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 199; Pub. L. 94–503, title I, §§ 109, 128(b), Oct. 15, 1976, 90 Stat. 2411, 2424, related to purposes and categories of grants for law enforcement and criminal justice purposes, prior to the general amendment of this chapter by Pub. L. 96–157.

AMENDMENTS

1984—Pub. L. 98–473 struck out ''(including white-collar crime and public corruption)'' after ''information concerning crime'' and ''(including crimes against the elderly, white-collar crime, and public corruption)'' after ''levels of crime''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3732. Bureau of Justice Statistics

(a) Establishment

There is established within the Department of Justice, under the general authority of the Attorney General, a Bureau of Justice Statistics (hereinafter referred to in this subchapter as ''Bureau'').

(b) Appointment of Director; experience; authority; restrictions

The Bureau shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate. The Director shall have had experience in statistical programs. The Director shall have final authority for all grants, cooperative agreements, and contracts awarded by the Bureau. The Director shall be responsible for the integrity of data and statistics and shall protect against improper or illegal use or disclosure. The Director shall report to the Attorney General through the Assistant Attorney General. The Director shall not engage in any other employment than that of serving as Director; nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Bureau makes any contract or other arrangement under this Act.

(c) Duties and functions of Bureau

The Bureau is authorized to—

(1) make grants to, or enter into cooperative agreements or contracts with public agencies, institutions of higher education, private organizations, or private individuals for purposes related to this subchapter; grants shall be made subject to continuing compliance with standards for gathering justice statistics set forth in rules and regulations promulgated by the Director;

(2) collect and analyze information concerning criminal victimization, including crimes against the elderly, and civil disputes;

(3) collect and analyze data that will serve as a continuous and comparable national social indication of the prevalence, incidence, rates, extent, distribution, and attributes of crime, juvenile delinquency, civil disputes, and other statistical factors related to crime, civil disputes, and juvenile delinquency, in support of national, State, and local justice policy and decisionmaking;

(4) collect and analyze statistical information, concerning the operations of the criminal justice system at the Federal, State, and local levels;

(5) collect and analyze statistical information concerning the prevalence, incidence, rates, extent, distribution, and attributes of crime, and juvenile delinquency, at the Federal, State, and local levels;

(6) analyze the correlates of crime, civil disputes and juvenile delinquency, by the use of statistical information, about criminal and civil justice systems at the Federal, State, and local levels, and about the extent, distribution

and attributes of crime, and juvenile delinquency, in the Nation and at the Federal, State, and local levels;

(7) compile, collate, analyze, publish, and disseminate uniform national statistics concerning all aspects of criminal justice and related aspects of civil justice, crime, including crimes against the elderly, juvenile delinquency, criminal offenders, juvenile delinquents, and civil disputes in the various States;

(8) recommend national standards for justice statistics and for insuring the reliability and validity of justice statistics supplied pursuant to this chapter;

(9) maintain liaison with the judicial branches of the Federal and State Governments in matters relating to justice statistics, and cooperate with the judicial branch in assuring as much uniformity as feasible in statistical systems of the executive and judicial branches;

(10) provide information to the President, the Congress, the judiciary, State and local governments, and the general public on justice statistics;

(11) establish or assist in the establishment of a system to provide State and local governments with access to Federal informational resources useful in the planning, implementation, and evaluation of programs under this Act;

(12) conduct or support research relating to methods of gathering or analyzing justice statistics;

(13) provide for the development of justice information systems programs and assistance to the States and units of local government relating to collection, analysis, or dissemination of justice statistics;

(14) develop and maintain a data processing capability to support the collection, aggregation, analysis and dissemination of information on the incidence of crime and the operation of the criminal justice system;

(15) collect, analyze and disseminate comprehensive Federal justice transaction statistics (including statistics on issues of Federal justice interest such as public fraud and high technology crime) and to provide technical assistance to and work jointly with other Federal agencies to improve the availability and quality of Federal justice data;

(16) provide for the collection, compilation, analysis, publication and dissemination of information and statistics about the prevalence, incidence, rates, extent, distribution and attributes of drug offenses, drug related offenses and drug dependent offenders and further provide for the establishment of a national clearinghouse to maintain and update a comprehensive and timely data base on all criminal justice aspects of the drug crisis and to disseminate such information;

(17) provide for the collection, analysis, dissemination and publication of statistics on the condition and progress of drug control activities at the Federal, State and local levels with particular attention to programs and intervention efforts demonstrated to be of value in the overall national anti-drug strategy and to provide for the establishment of a national clearinghouse for the gathering of data generated by Federal, State, and local criminal justice agencies on their drug enforcement activities;

(18) provide for the development and enhancement of State and local criminal justice information systems, and the standardization of data reporting relating to the collection, analysis or dissemination of data and statistics about drug offenses, drug related offenses, or drug dependent offenders;

(19) provide for improvements in the accuracy, quality, timeliness, immediate accessibility, and integration of State criminal history and related records, support the development and enhancement of national systems of criminal history and related records including the National Instant Criminal Background Check System, the National Incident-Based Reporting System, and the records of the National Crime Information Center, facilitate State participation in national records and information systems, and support statistical research for critical analysis of the improvement and utilization of criminal history records;

(20) maintain liaison with State and local governments and governments of other nations concerning justice statistics;

(21) cooperate in and participate with national and international organizations in the development of uniform justice statistics;

(22) ensure conformance with security and privacy requirement of section 3789g of this title and identify, analyze, and participate in the development and implementation of privacy, security and information policies which impact on Federal and State criminal justice operations and related statistical activities; and

(23) exercise the powers and functions set out in subchapter VIII of this chapter.

(d) Justice statistical collection, analysis, and dissemination

To insure that all justice statistical collection, analysis, and dissemination is carried out in a coordinated manner, the Director is authorized to—

(1) utilize, with their consent, the services, equipment, records, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor, and to enter into agreements with such agencies and instrumentalities for purposes of data collection and analysis;

(2) confer and cooperate with State, municipal, and other local agencies;

(3) request such information, data, and reports from any Federal agency as may be required to carry out the purposes of this chapter;

(4) seek the cooperation of the judicial branch of the Federal Government in gathering data from criminal justice records;

(5) encourage replication, coordination and sharing among justice agencies regarding information systems, information policy, and data; and

(6) confer and cooperate with Federal statistical agencies as needed to carry out the purposes of this subchapter, including by entering into cooperative data sharing agreements in conformity with all laws and regulations applicable to the disclosure and use of data.

(e) Furnishing of information, data, or reports by Federal agencies

Federal agencies requested to furnish information, data, or reports pursuant to subsection (d)(3) of this section shall provide such information to the Bureau as is required to carry out the purposes of this section.

(f) Consultation with representatives of State and local government and judiciary

In recommending standards for gathering justice statistics under this section, the Director shall consult with representatives of State and local government, including, where appropriate, representatives of the judiciary.

(Pub. L. 90–351, title I, § 302, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1176; amended Pub. L. 98–473, title II, § 605(b), Oct. 12, 1984, 98 Stat. 2079; Pub. L. 100–690, title VI, § 6092(a), Nov. 18, 1988, 102 Stat. 4339; Pub. L. 103–322, title XXXIII, § 330001(h)(2), Sept. 13, 1994, 108 Stat. 2139; Pub. L. 109–162, title XI, § 1115(a), Jan. 5, 2006, 119 Stat. 3103.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b) and (c)(11), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended, known as the Omnibus Crime Control and Safe Streets Act of 1968. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

PRIOR PROVISIONS

A prior section 3732, Pub. L. 90–351, title I, § 302, June 19, 1968, 82 Stat. 200; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 201; Pub. L. 94–503, title I, § 110, Oct. 15, 1976, 90 Stat. 2412, related to establishment of State planning agencies to develop comprehensive State plans for grants for law enforcement and criminal justice purposes, prior to the general amendment of this chapter by Pub. L. 96–157.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–162, § 1115(a)(1), inserted after third sentence ''The Director shall be responsible for the integrity of data and statistics and shall protect against improper or illegal use or disclosure.''

Subsec. (c)(19). Pub. L. 109–162, § 1115(a)(2), amended par. (19) generally. Prior to amendment, par. (19) read as follows: ''provide for research and improvements in the accuracy, completeness, and inclusiveness of criminal history record information, information systems, arrest warrant, and stolen vehicle record information and information systems and support research concerning the accuracy, completeness, and inclusiveness of other criminal justice record information;''.

Subsec. (d)(6). Pub. L. 109–162, § 1115(a)(3), added par. (6).

1994—Subsec. (c)(19). Pub. L. 103–322 substituted a semicolon for period at end.

1988—Subsec. (c)(16) to (23). Pub. L. 100–690 added pars. (16) to (19) and redesignated former pars. (16) to (19) as (20) to (23), respectively.

1984—Subsec. (b). Pub. L. 98–473, § 605(b)(1), inserted provision requiring Director to report to Attorney General through Assistant Attorney General.

Subsec. (c)(13). Pub. L. 98–473, § 605(b)(2)(A), (C), added par. (13) and struck out former par. (13) relating to provision of financial and technical assistance to States and units of local government relating to collection, analysis, or dissemination of justice statistics.

Subsec. (c)(14), (15). Pub. L. 98–473, § 605(b)(2)(C), added pars. (14) and (15). Former pars. (14) and (15) redesignated (16) and (17), respectively.

Subsec. (c)(16). Pub. L. 98–473, § 605(b)(2)(A), (B), redesignated par. (14) as (16) and struck out former par. (16) relating to insuring conformance with security and privacy regulations issued under section 3789g of this title.

Subsec. (c)(17). Pub. L. 98–473, § 605(b)(2)(B), redesignated par. (15) as (17). Former par. (17) redesignated (19).

Subsec. (c)(18). Pub. L. 98–473, § 605(b)(2)(D), added par. (18).

Subsec. (c)(19). Pub. L. 98–473, § 605(b)(2)(B), redesignated former par. (17) as (19).

Subsec. (d)(1). Pub. L. 98–473, § 605(b)(3)(A), inserted '', and to enter into agreements with such agencies and instrumentalities for purposes of data collection and analysis''.

Subsec. (d)(5). Pub. L. 98–473, § 605(b)(3)(B)–(D), added par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

STUDY OF CRIMES AGAINST SENIORS

Pub. L. 106–534, § 5, Nov. 22, 2000, 114 Stat. 2557, provided that:

''(a) IN GENERAL.—The Attorney General shall conduct a study relating to crimes against seniors, in order to assist in developing new strategies to prevent and otherwise reduce the incidence of those crimes.

''(b) ISSUES ADDRESSED.—The study conducted under this section shall include an analysis of—

''(1) the nature and type of crimes perpetrated against seniors, with special focus on—

''(A) the most common types of crimes that affect seniors;

''(B) the nature and extent of telemarketing, sweepstakes, and repair fraud against seniors; and

''(C) the nature and extent of financial and material fraud targeted at seniors;

''(2) the risk factors associated with seniors who have been victimized;

''(3) the manner in which the Federal and State criminal justice systems respond to crimes against seniors;

''(4) the feasibility of States establishing and maintaining a centralized computer database on the incidence of crimes against seniors that will promote the uniform identification and reporting of such crimes;

''(5) the effectiveness of damage awards in court actions and other means by which seniors receive reimbursement and other damages after fraud has been established; and

''(6) other effective ways to prevent or reduce the occurrence of crimes against seniors.''

INCLUSION OF SENIORS IN NATIONAL CRIME VICTIMIZATION SURVEY

Pub. L. 106–534, § 6, Nov. 22, 2000, 114 Stat. 2557, provided that: ''Beginning not later than 2 years after the date of enactment of this Act [Nov. 22, 2000], as part of each National Crime Victimization Survey, the Attorney General shall include statistics relating to—

''(1) crimes targeting or disproportionately affecting seniors;

''(2) crime risk factors for seniors, including the times and locations at which crimes victimizing seniors are most likely to occur; and

''(3) specific characteristics of the victims of crimes who are seniors, including age, gender, race or ethnicity, and socioeconomic status.''

CRIME VICTIMS WITH DISABILITIES AWARENESS

Pub. L. 105–301, Oct. 27, 1998, 112 Stat. 2838, as amended by Pub. L. 106–402, title IV, § 401(b)(10), Oct. 30, 2000, 114 Stat. 1739, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Crime Victims With Disabilities Awareness Act'.

''SEC. 2. FINDINGS; PURPOSES.

''(a) FINDINGS.—Congress finds that—

''(1) although research conducted abroad demonstrates that individuals with developmental disabilities are at a 4 to 10 times higher risk of becoming crime victims than those without disabilities, there have been no significant studies on this subject conducted in the United States;

''(2) in fact, the National Crime Victim's Survey, conducted annually by the Bureau of Justice Statistics of the Department of Justice, does not specifically collect data relating to crimes against individuals with developmental disabilities;

''(3) studies in Canada, Australia, and Great Britain consistently show that victims with developmental disabilities suffer repeated victimization because so few of the crimes against them are reported, and even when they are, there is sometimes a reluctance by police, prosecutors, and judges to rely on the testimony of a disabled individual, making individuals with developmental disabilities a target for criminal predators;

''(4) research in the United States needs to be done to—

''(A) understand the nature and extent of crimes against individuals with developmental disabilities;

''(B) describe the manner in which the justice system responds to crimes against individuals with developmental disabilities; and

''(C) identify programs, policies, or laws that hold promises for making the justice system more responsive to crimes against individuals with developmental disabilities; and

''(5) the National Academy of Science Committee on Law and Justice of the National Research Council is a premier research institution with unique experience in developing seminal, multidisciplinary studies to establish a strong research base from which to make public policy.

''(b) PURPOSES.—The purposes of this Act are—

''(1) to increase public awareness of the plight of victims of crime who are individuals with developmental disabilities;

''(2) to collect data to measure the extent of the problem of crimes against individuals with developmental disabilities; and

''(3) to develop a basis to find new strategies to address the safety and justice needs of victims of crime who are individuals with developmental disabilities.

''SEC. 3. DEFINITION OF DEVELOPMENTAL DISABILITY.

''In this Act, the term 'developmental disability' has the meaning given the term in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15002].

''SEC. 4. STUDY.

''(a) IN GENERAL.—The Attorney General shall conduct a study to increase knowledge and information about crimes against individuals with developmental disabilities that will be useful in developing new strategies to reduce the incidence of crimes against those individuals.

''(b) ISSUES ADDRESSED.—The study conducted under this section shall address such issues as—

''(1) the nature and extent of crimes against individuals with developmental disabilities;

''(2) the risk factors associated with victimization of individuals with developmental disabilities;

''(3) the manner in which the justice system responds to crimes against individuals with developmental disabilities; and

''(4) the means by which States may establish and maintain a centralized computer database on the incidence of crimes against individuals with disabilities within a State.

''(c) NATIONAL ACADEMY OF SCIENCES.—In carrying out this section, the Attorney General shall consider contracting with the Committee on Law and Justice of the National Research Council of the National Academy of Sciences to provide research for the study conducted under this section.

''(d) REPORT.—Not later than 18 months after the date of enactment of this Act [Oct. 27, 1998], the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report describing the results of the study conducted under this section.

''SEC. 5. NATIONAL CRIME VICTIM'S SURVEY.

''Not later than 2 years after the date of enactment of this Act, as part of each National Crime Victim's Survey, the Attorney General shall include statistics relating to—

''(1) the nature of crimes against individuals with developmental disabilities; and

''(2) the specific characteristics of the victims of those crimes.''

§ 3733. Authority for 100 per centum grants

A grant authorized under this subchapter may be up to 100 per centum of the total cost of each project for which such grant is made. The Bureau shall require, whenever feasible as a condition of approval of a grant under this subchapter, that the recipient contribute money, facilities, or services to carry out the purposes for which the grant is sought.

(Pub. L. 90–351, title I, § 303, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1178.)

PRIOR PROVISIONS

A prior section 3733, Pub. L. 90–351, title I, § 303, June 19, 1968, 82 Stat. 201; Pub. L. 91–644, title I, § 4(5), (6), Jan. 2, 1971, 84 Stat. 1883; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 201; Pub. L. 93–415, title V, § 543, Sept. 7, 1974, 88 Stat. 1142; Pub. L. 94–503, title I, § 111, Oct. 15, 1976, 90 Stat. 2413; Pub. L. 96–181, § 15(b), Jan. 2, 1980, 93 Stat. 1316, set out requirements of State plans in order to qualify for grants for law enforcement and criminal justice purposes, prior to the general amendment of this chapter by Pub. L. 96–157.

§ 3734. Repealed. Pub. L. 98–473, title II, § 605(c), Oct. 12, 1984, 98 Stat. 2080

Section, Pub. L. 90–351, title I, § 304, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1178, provided for a Bureau of Justice Statistics Advisory Board, including establishment and composition of Board, rules respecting organization and procedure, term of office, duties and functions of Board, and delegation of powers and duties to Director.

A prior section 3734, Pub. L. 90–351, title I, § 304, June 19, 1968, 82 Stat. 202; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 203; Pub. L. 94–503, title I, § 112, Oct. 15, 1976, 90 Stat. 2414, related to plans or applications for financial assistance from local government units, prior to the general revision of this chapter by Pub. L. 96–157.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3735. Use of data

Data collected by the Bureau shall be used only for statistical or research purposes, and shall be gathered in a manner that precludes their use for law enforcement or any purpose relating to a private person or public agency other than statistical or research purposes.

(Pub. L. 90–351, title I, § 304, formerly § 305, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1179; renumbered § 304, Pub. L. 98–473, title II, § 605(d), Oct. 12, 1984, 98 Stat. 2080; amended Pub. L. 109–162, title XI, § 1115(b), Jan. 5, 2006, 119 Stat. 3104.)

PRIOR PROVISIONS

A prior section 304 of Pub. L. 90–351, as added by Pub. L. 96–157, was classified to section 3734 of this title prior to repeal by Pub. L. 98–473, title II, § 605(c), Oct. 12, 1984, 98 Stat. 2080.

Prior sections 3735 to 3739 were omitted in the general amendment of this chapter by Pub. L. 96–157.

Section 3735, Pub. L. 90–351, title I, § 305, June 19, 1968, 82 Stat. 202; Pub. L. 91–644, title I, § 4(7), Jan. 2, 1971, 84 Stat. 1883; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 203, related to reallocation of funds.

Section 3736, Pub. L. 90–351, title I, § 306, June 19, 1968, 82 Stat. 202; Pub. L. 91–644, title I, § 4(8), Jan. 2, 1971, 84 Stat. 1883; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 203; Pub. L. 94–503, title I, § 113, Oct. 15, 1976, 90 Stat. 2415, related to allocation of funds.

Section 3737, Pub. L. 90–351, title I, § 307, June 19, 1968, 82 Stat. 202; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 204; Pub. L. 94–503, title I, § 114, Oct. 15, 1976, 90 Stat. 2415, related to priority programs and projects.

Section 3738, Pub. L. 90–351, title I, § 308, as added Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 204; amended Pub. L. 94–503, title I, § 115, Oct. 15, 1976, 90 Stat. 2415, related to Administration action upon State plans within prescribed time after date of submission.

Section 3739, Pub. L. 90–351, title I, § 309, as added Pub. L. 94–503, title I, § 116, Oct. 15, 1976, 90 Stat. 2415, related to assistance and grants to aid State antitrust enforcement.

AMENDMENTS

2006—Pub. L. 109–162 substituted ''private person or public agency'' for ''particular individual''.

SUBCHAPTER IV—ESTABLISHMENT OF BUREAU OF JUSTICE ASSISTANCE

PRIOR PROVISIONS

A prior subchapter IV, consisting of sections 3741 to 3748, related to block grants by Bureau of Justice Assistance, prior to repeal by Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4328. For similar provisions, see part A (§ 3750 et seq.) of subchapter V of this chapter.

Section 3741, Pub. L. 90–351, title I, § 401, as added Pub. L. 98–473, title II, § 606, Oct. 12, 1984, 98 Stat. 2080; amended Pub. L. 99–570, title I, § 1552(b)(1), Oct. 27, 1986, 100 Stat. 3207–46, related to establishment of Bureau of Justice Assistance, appointment of Director, and authority and restrictions with regard to Director.

Section 3742, Pub. L. 90–351, title I, § 402, as added Pub. L. 98–473, title II, § 606, Oct. 12, 1984, 98 Stat. 2080, related to duties and functions of Director.

Section 3743, Pub. L. 90–351, title I, § 403, as added Pub. L. 98–473, title II, § 606, Oct. 12, 1984, 98 Stat. 2081, described grant program.

Section 3744, Pub. L. 90–351, title I, § 404, as added Pub. L. 98–473, title II, § 606, Oct. 12, 1984, 98 Stat. 2082, authorized Bureau to make financial assistance under this subchapter available to States.

Section 3745, Pub. L. 90–351, title I, § 405, as added Pub. L. 98–473, title II, § 606, Oct. 12, 1984, 98 Stat. 2082, related to applications for assistance and contents of applications.

Section 3746, Pub. L. 90–351, title I, § 406, as added Pub. L. 98–473, title II, § 606, Oct. 12, 1984, 98 Stat. 2084, related to review of applications.

Section 3747, Pub. L. 90–351, title I, § 407, as added Pub. L. 98–473, title II, § 606, Oct. 12, 1984, 98 Stat. 2084, related to allocation and distribution of funds.

Section 3748, Pub. L. 90–351, title I, § 408, as added Pub. L. 98–473, title II, § 606, Oct. 12, 1984, 98 Stat. 2085, related to designation of a State office to prepare applications and administer funds.

Another prior subchapter IV, consisting of sections 3741 to 3745, related to formula grant program, prior to the general amendment of this subchapter by Pub. L. 98–473.

Section 3741, Pub. L. 90–351, title I, § 401, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1179, described formula grant program.

Section 3742, Pub. L. 90–351, title I, § 402, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1181, related to eligibility provisions for formula grants.

Section 3743, Pub. L. 90–351, title I, § 403, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1187, concerned application requirements for formula grants.

Section 3744, Pub. L. 90–351, title I, § 404, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1188, provided for review of applications for formula grants.

Section 3745, Pub. L. 90–351, title I, § 405, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1189, provided for allocation and distribution of funds for formula grants.

Another prior subchapter IV, consisting of sections 3741 to 3748 and 3750 to 3750d, related to training, education, research, demonstration, and special grants prior to the general amendment of this chapter by Pub. L. 96–157.

Section 3741, Pub. L. 90–351, title I, § 401, June 19, 1968, 82 Stat. 203; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 205, set out the Congressional statement of purposes in making provision for training, education, research, demonstration, and special grants.

Section 3742, Pub. L. 90–351, title I, § 402, June 19, 1968, 82 Stat. 203; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 205; Pub. L. 94–503, title I, § 117, Oct. 15, 1976, 90 Stat. 2416, provided for creation of a National Institute of Law Enforcement and Criminal Justice.

Section 3743, Pub. L. 90–351, title I, § 403, June 19, 1968, 82 Stat. 203; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 206, related to limitations on size of grants and contributions requirements for grants.

Section 3744, Pub. L. 90–351, title I, § 404, June 19, 1968, 82 Stat. 204; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 207, provided for Federal Bureau of Investigation law enforcement training programs.

Section 3745, Pub. L. 90–351, title I, § 405, June 19, 1968, 82 Stat. 204; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 207, repealed Law Enforcement Assistance Act of 1965 and provided for funds to continue projects started thereunder.

Section 3746, Pub. L. 90–351, title I, § 406, June 19, 1968, 82 Stat. 204; Pub. L. 91–644, title I, § 5(1), Jan. 2, 1971, 84 Stat. 1884; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 207, provided for academic educational assistance.

Section 3747, Pub. L. 90–351, title I, § 407, formerly § 408, as added Pub. L. 91–644, title I, § 5(2), Jan. 2, 1971, 84 Stat. 1885; renumbered § 407, Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 209, related to administration of training programs for prosecuting attorneys.

Another prior section 3747, Pub. L. 90–351, title I, § 407, as added Pub. L. 91–644, title I, § 5(2), Jan. 2, 1971, 84 Stat. 1885, related to Administration law enforcement training program for enforcement personnel, prior to the general amendment of this chapter by section 2 of Pub. L. 93–83.

Section 3748, Pub. L. 90–351, title I, § 408, as added Pub. L. 91–644, title I, § 5(2), Jan. 2, 1971, 84 Stat. 1885, was renumbered section 407 of Pub. L. 90–351 by Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 209, and was classified to prior section 3747 of this title.

Section 3750, Pub. L. 90–351, title I, § 451, as added Pub. L. 91–644, title I, § 6(a), Jan. 2, 1971, 84 Stat. 1885; amended Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 209, set out Congressional statement of purpose in providing a system of grants for correctional institutions and facilities.

Section 3750a, Pub. L. 90–351, title I, § 452, as added Pub. L. 91–644, title I, § 6(a), Jan. 2, 1971, 84 Stat. 1885; amended Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 209, related to applications for grants and their incorporation into comprehensive State plans.

Section 3750b, Pub. L. 90–351, title I, § 453, as added Pub. L. 91–644, title I, § 6(a), Jan. 2, 1971, 84 Stat. 1886; amended Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 209; Pub. L. 94–503, title I, § 118, Oct. 15, 1976, 90 Stat. 2417, set out required contents of an application for a grant for correctional institutions and facilities.

Section 3750c, Pub. L. 90–351, title I, § 454, as added Pub. L. 91–644, title I, § 6(a), Jan. 2, 1971, 84 Stat. 1886; amended Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 210; Pub. L. 94–237, § 4(c)(5)(C), Mar. 19, 1976, 90 Stat. 244, set out guidelines and basic criteria for applicants and grantees.

Section 3750d, Pub. L. 90–351, title I, § 455, as added Pub. L. 91–644, title I, § 6(a), Jan. 2, 1971, 84 Stat. 1886; amended Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 210; Pub. L. 94–503, title I, § 119(a), Oct. 15, 1976, 90 Stat. 2417, related to allocation and reallocation of funds.

§ 3741. Establishment of Bureau of Justice Assistance

(a) There is established within the Department of Justice, under the general authority of the Attorney General, a Bureau of Justice Assistance (hereafter in this subchapter referred to as the ''Bureau'').

(b) The Bureau shall be headed by a Director (hereafter in this subchapter referred to as the ''Director'') who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Attorney General through the Assistant Attorney General. The Director shall have final authority for all grants, cooperative agreements, and contracts awarded by the Bureau. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Bureau makes any contract or other arrangement under this chapter.

(Pub. L. 90–351, title I, § 401, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4328.)

PRIOR PROVISIONS

For prior sections 401 of Pub. L. 90–351 and prior sections 3741 of this title, see note set out preceding this section.

TRANSFER OF FUNCTIONS

Pub. L. 106–113, div. B, § 1000(a)(1) [title I, § 108(b)], Nov. 29, 1999, 113 Stat. 1535, 1501A–20, provided that: ''Notwithstanding any other provision of law, effective August 1, 2000, all functions of the Director of the Bureau of Justice Assistance, other than those enumerated in the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. 3742(3) through (6), are transferred to the Assistant Attorney General for the Office of Justice Programs.''

§ 3742. Duties and functions of Director

The Director shall have the following duties:

(1) Providing funds to eligible States, units of local government, and nonprofit organizations pursuant to subchapters V and XII–B of this chapter.

(2) Establishing programs in accordance with part B of subchapter V of this chapter and, following public announcement of such programs, awarding and allocating funds and technical assistance in accordance with the criteria of part B of subchapter V of this chapter, and on terms and conditions determined by the Director to be consistent with part B of subchapter V of this chapter.

(3) Cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in criminal justice activities.

(4) Providing for the development of technical assistance and training programs for State and local criminal justice agencies and fostering local participation in such activities.

(5) Encouraging the targeting of State and local resources on efforts to reduce the incidence of drug abuse and crime and on programs relating to the apprehension and prosecution of drug offenders.

(6) Establishing and carrying on a specific and continuing program of cooperation with the States and units of local government designed to encourage and promote consultation and coordination concerning decisions made by the Bureau affecting State and local drug control and criminal justice priorities.

(7) Preparing recommendations on the State and local drug enforcement component of the National Drug Control Strategy which shall be submitted to the Associate Director of the Office on National Drug Control Policy. In making such recommendations, the Director shall review the statewide strategies submitted by such States under subchapter V of this chapter, and shall obtain input from State and local drug enforcement officials. The recommendations made under this paragraph shall be provided at such time and in such form as the Director of National Drug Control Policy shall require.

(8) Exercising such other powers and functions as may be vested in the Director pursuant to this chapter or by delegation of the Attorney General or Assistant Attorney General.

(Pub. L. 90–351, title I, § 402, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4328; amended Pub. L. 101–647, title II, § 241(b)(1), Nov. 29, 1990, 104 Stat. 4813.)

PRIOR PROVISIONS

For prior sections 402 of Pub. L. 90–351 and prior sections 3742 of this title, see note set out preceding section 3741 of this title.

AMENDMENTS

1990—Par. (1). Pub. L. 101–647 substituted ''subchapters V and XII–B'' for ''subchapter V''.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in pars. (3) to (6) of this section, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3743. Grants for young witness assistance

(a) In general

The Director of the Bureau of Justice Assistance of the Office of Justice Programs may make grants to State and local prosecutors and law enforcement agencies in support of juvenile and young adult witness assistance programs.

(b) Use of funds

Grants made available under this section may be used—

(1) to assess the needs of juvenile and young adult witnesses;

(2) to develop appropriate program goals and objectives; and

(3) to develop and administer a variety of witness assistance services, which includes—

(A) counseling services to young witnesses dealing with trauma associated in witnessing a violent crime;

(B) pre- and post-trial assistance for the youth and their family;

(C) providing education services if the child is removed from or changes their school for safety concerns;

(D) protective services for young witnesses and their families when a serious threat of harm from the perpetrators or their associates is made; and

(E) community outreach and school-based initiatives that stimulate and maintain public awareness and support.

(c) Definitions

In this section:

(1) The term ''juvenile'' means an individual who is age 17 or younger.

(2) The term ''young adult'' means an individual who is age 21 or younger but not a juvenile.

(3) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2006 through 2009.

(Pub. L. 109–162, title XI, § 1136, Jan. 5, 2006, 119 Stat. 3109; Pub. L. 109–271, § 8(c), Aug. 12, 2006, 120 Stat. 766.)

CODIFICATION

Section was enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

PRIOR PROVISIONS

For prior sections 3743 of this title, see note set out preceding section 3741 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–271 substituted ''The Director of the Bureau of Justice Assistance of the Office of Justice Programs may'' for ''The Attorney General, acting through the Bureau of Justice Assistance, may''.

SUBCHAPTER V—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

PRIOR PROVISIONS

A prior subchapter V, consisting of sections 3761 to 3766, related to discretionary grants, prior to repeal by Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4328.

Section 3761, Pub. L. 90–351, title I, § 501, formerly § 601, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1195; renumbered § 501 and amended Pub. L. 98–473, title II, § 608(a), Oct. 12, 1984, 98 Stat. 2086, related to Congressional statement of purpose regarding discretionary grants.

Section 3762, Pub. L. 90–351, title I, § 502, formerly § 602, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1195; renumbered § 502 and amended Pub. L. 98–473, title II, § 608(a), Oct. 12, 1984, 98 Stat. 2086, related to percentage of appropriation for discretionary grant program.

Section 3763, Pub. L. 90–351, title I, § 503, formerly § 603, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1196; renumbered § 503 and amended Pub. L. 98–473, title II, § 608(a), Oct. 12, 1984, 98 Stat. 2086, related to procedure for establishing discretionary programs.

Section 3764, Pub. L. 90–351, title I, § 504, formerly § 604, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1197; renumbered § 504 and amended Pub. L. 98–473, title II, § 608(b), (f), Oct. 12, 1984, 98 Stat. 2087, related to application requirements for discretionary grants.

Section 3765, Pub. L. 90–351, title I, § 505, formerly § 605, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1197; renumbered § 505 and amended Pub. L. 98–473, title II, § 608(c), Oct. 12, 1984, 98 Stat. 2087, related to criteria for award.

Section 3766, Pub. L. 90–351, title I, § 506, formerly § 606, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1197; renumbered § 506 and amended Pub. L. 98–473, title II, § 608(d), Oct. 12, 1984, 98 Stat. 2087, related to period for award of discretionary grants.

Another prior subchapter V, consisting of sections 3751 to 3755, related to national priority grants, prior to repeal by Pub. L. 98–473, title II, § 607, Oct. 12, 1984, 98 Stat. 2086.

Section 3751, Pub. L. 90–351, title I, § 501, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1192, set out Congressional statement of purpose of national priority grants.

Section 3752, Pub. L. 90–351, title I, § 502, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1192, prescribed percentage of appropriation for national priority grant program.

Section 3753, Pub. L. 90–351, title I, § 503, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1192, prescribed procedure for designating national priority programs, including periodic and joint designations by Director of Office of Justice Assistance, Research, and Statistics and Administrator of Law Enforcement Assistance Administration and requests to outside agencies for suggestions.

Section 3754, Pub. L. 90–351, title I, § 504, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1193, prescribed application requirements, including contents of applications, certifications, review by State criminal justice councils, and private nonprofit organizations.

Section 3755, Pub. L. 90–351, title I, § 505, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1194, set out criteria for award of national priority grants, including establishment of reasonable requirements, maximum per centum of grant funds, funds reserved or set aside but not used in the fiscal year, and three-year period for financial aid and assistance and extension or renewal of period.

Another prior subchapter V, consisting of sections 3751 to 3774, related to administrative provisions, prior to the general amendment of this chapter by Pub. L. 96–157.

Section 3751, Pub. L. 90–351, title I, § 501, June 19, 1968, 82 Stat. 205; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 94–503, title I, § 120, Oct. 15, 1976, 90 Stat. 2418, related to administrative rules, regulations, and procedures.

Section 3752, Pub. L. 90–351, title I, § 502, June 19, 1968, 82 Stat. 205; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 211, made provision for delegation of functions of Law Enforcement Assistance Administration to other officers of Department of Justice.

Section 3753, Pub. L. 90–351, title I, § 503, June 19, 1968, 82 Stat. 205; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 211, required specific Congressional authorization to transfer functions, powers, and duties of Law Enforcement Assistance Administration within the Department of Justice.

Section 3754, Pub. L. 90–351, title I, §504, June 19, 1968, 82 Stat. 205; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 211, provided for place for holding of hearings, signing and issuance of subpenas, administering of oaths, the examination of witnesses, and reception of evidence by Administration personnel.

A prior section 505 of Pub. L. 90–351, title I, June 19, 1968, 82 Stat. 205, amended section 5315 of Title 5, Government Organization and Employees.

Section 3755, Pub. L. 90–351, title I, §507, June 19, 1968, 82 Stat. 205; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 94–503, title I, §§119(b), 121, Oct. 15, 1976, 90 Stat. 2417, 2418, related to officers, employees, and hearing examiners.

Section 3756, Pub. L. 90–351, title I, §508, June 19, 1968, 82 Stat. 205; Pub. L. 91–644, title I, §7(3), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 211, related to use of services, equipment, personnel, and facilities of other Federal agencies.

Section 3757, Pub. L. 90–351, title I, §509, June 19, 1968, 82 Stat. 206; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 94–503, title I, §122(a), Oct. 15, 1976, 90 Stat. 2418, provided for withholding of payments for noncompliance with certain requirements and for notice and hearing in event of such withholding of payments.

Section 3758, Pub. L. 90–351, title I, §510, June 19, 1968, 82 Stat. 206; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 212, made provision for administrative proceedings.

Section 3759, Pub. L. 90–351, title I, §511, June 19, 1968, 82 Stat. 206; Pub. L. 90–351, title I, §511, June 19, 1968, 82 Stat. 206; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 212, provided for judicial review.

Section 3760, Pub. L. 90–351, title I, §512, June 19, 1968, 82 Stat. 207; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 213, authorized Administration to carry out programs provided for under this chapter during fiscal year ending June 30, 1974, and two succeeding fiscal years, prior to repeal by Pub. L. 94–503, title I, §123, Oct. 15, 1976, 90 Stat. 2419.

Section 3761, Pub. L. 90–351, title I, §513, June 19, 1968, 82 Stat. 207; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 213, provided for coordination of law enforcement assistance and related Federal programs.

Section 3762, Pub. L. 90–351, title I, §514, June 19, 1968, 82 Stat. 207; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 213, provided for reimbursement of Federal agencies.

Section 3763, Pub. L. 90–351, title I, §515, June 19, 1968, 82 Stat. 207; Pub. L. 91–644, title I, §7(4), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 213; Pub. L. 94–503, title I, §124, Oct. 15, 1976, 90 Stat. 2421, provided for functions, powers, and duties of Law Enforcement Assistance Administration.

Section 3764, Pub. L. 90–351, title I, §516, June 19, 1968, 82 Stat. 207; Pub. L. 91–644, title I, §7(5), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 213, provided for making of payments under this chapter.

Section 3765, Pub. L. 90–351, title I, §517, June 19, 1968, 82 Stat. 207; Pub. L. 91–644, title I, §7(6), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 213, provided for personnel of Administration.

Section 3766, Pub. L. 90–351, title I, §518, June 19, 1968, 82 Stat. 208; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 214; Pub. L. 94–503, title I, §122(b), Oct. 15, 1976, 90 Stat. 2418, prohibited certain constructions of provisions of this chapter.

Section 3767, Pub. L. 90–351, title I, §519, June 19, 1968, 82 Stat. 208; Pub. L. 91–644, title I, §7(7), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 214; Pub. L. 94–273, §5(5), Apr. 21, 1976, 90 Stat. 377; Pub. L. 94–503, title I, §125, Oct. 15, 1976, 90 Stat. 2422; Pub. L. 95–115, §9(a), Oct. 3, 1977, 91 Stat. 1060, related to annual reports to President and Congress.

Section 3768, Pub. L. 90–351, title I, §520, June 19, 1968, 82 Stat. 208; Pub. L. 90–462, §1, Aug. 8, 1968, 82 Stat. 638; Pub. L. 91–644, title I, §7(8), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 214; Pub. L. 93–415, title V, §544, Sept. 7, 1974, 88 Stat. 1142; Pub. L. 94–430, §3, Sept. 29, 1976, 90 Stat. 1348; Pub. L. 94–503, title I, §126, Oct. 15, 1976, 90 Stat. 2423, related to authorization of appropriations.

Section 3769, Pub. L. 90–351, title I, §521, June 19, 1968, 82 Stat. 208; Pub. L. 91–644, title I, §7(9), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 215; Pub. L. 94–503, title I, §§127, 128(a), Oct. 15, 1976, 90 Stat. 2424, related to recordkeeping requirements.

Section 3770, Pub. L. 90–351, title I, §523, as added Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 215, provided for use of unobligated Federal funds for 90 percent of costs.

Section 3771 of this title, Pub. L. 90–351, title I, §524, as added Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 215, related to availability of information for prescribed purposes.

Section 3772 of this title, Pub. L. 90–351, title I, §526, as added Pub. L. 93–415, title V, §545, Sept. 7, 1974, 88 Stat. 1143, related to acceptance of volunteer services.

Section 3773 of this title, Pub. L. 90–351, title I, §527, as added Pub. L. 93–415, title V, §545, Sept. 7, 1974, 88 Stat. 1143, related to administration of juvenile delinquency programs by Office of Juvenile Justice and Delinquency Prevention.

Section 3774 of this title, Pub. L. 90–351, title I, §528, as added Pub. L. 93–415, title V, §545, Sept. 7, 1974, 88 Stat. 1143, authorized employment of personnel by Law Enforcement Assistance Administration.

PART A—EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM

PRIOR PROVISIONS

A prior part A, consisting of sections 3751 to 3759, related to the drug control and system improvement grant program, prior to repeal by Pub. L. 109–162, title XI, §1111(a)(1), (d), Jan. 5, 2006, 119 Stat. 3094, 3102, applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter.

Section 3751, Pub. L. 90–351, title I, §501, as added and amended Pub. L. 100–690, title V, §5104, title VI, §6091(a), Nov. 18, 1988, 102 Stat. 4301, 4329; Pub. L. 101–647, title VI, §601(b), Nov. 29, 1990, 104 Stat. 4823; Pub. L. 103–322, title X, §100003, title XIV, §140004, title XV, §150003, title XXI, §210302(a), Sept. 13, 1994, 108 Stat. 1996, 2032, 2035, 2065; Pub. L. 104–132, title VIII, §822(a), Apr. 24, 1996, 110 Stat. 1317; Pub. L. 106–177, title I, §103, Mar. 10, 2000, 114 Stat. 35; Pub. L. 106–310, div. B, title XXXVI, §3621(b), Oct. 17, 2000, 114 Stat. 1231; Pub. L. 106–561, §2(a), Dec. 21, 2000, 114 Stat. 2787, related to description of drug control and system improvement grant program.

Section 3752, Pub. L. 90–351, title I, §502, as added Pub. L. 100–690, title VI, §6091(a), Nov. 18, 1988, 102 Stat. 4331, related to eligibility of a State for financial assistance.

Section 3753, Pub. L. 90–351, title I, §503, as added Pub. L. 100–690, title VI, §6091(a), Nov. 18, 1988, 102 Stat. 4331; amended Pub. L. 101–649, title V, §507(a), Nov. 29, 1990, 104 Stat. 5050; Pub. L. 102–232, title III, §306(a)(6), Dec. 12, 1991, 105 Stat. 1751; Pub. L. 103–322, title XXI, §210302(b), Sept. 13, 1994, 108 Stat. 2065; Pub. L. 106–546, §8(a), Dec. 19, 2000, 114 Stat. 2734; Pub. L. 106–561, §2(b), Dec. 21, 2000, 114 Stat. 2787; Pub. L. 107–273, div. B, title V, §5001(a), Nov. 2, 2002, 116 Stat. 1813, related to State applications. See section 3752 of this title.

Section 3754, Pub. L. 90–351, title I, §504, as added Pub. L. 100–690, title VI, §6091(a), Nov. 18, 1988, 102 Stat. 4333; amended Pub. L. 101–162, title II, §211, Nov. 21, 1989, 103 Stat. 1006; Pub. L. 101–515, title II, §207, Nov. 5, 1990, 104 Stat. 2119; Pub. L. 101–647, title VI, §601(a), Nov. 29, 1990, 104 Stat. 4823; Pub. L. 102–140, title I, §§108, 109, Oct. 28, 1991, 105 Stat. 794; Pub. L. 103–322, title XV, §150009, Sept. 13, 1994, 108 Stat. 2036; Pub. L. 107–273, div. A, title II, §203(a)(1), Nov. 2, 2002, 116 Stat. 1775, related to grant limitations.

Section 3755, Pub. L. 90–351, title I, §505, as added Pub. L. 100–690, title VI, §6091(a), Nov. 18, 1988, 102 Stat. 4333, related to review of State applications.

Section 3756, Pub. L. 90–351, title I, §506, as added Pub. L. 100–690, title VI, §6091(a), Nov. 18, 1988, 102 Stat. 4334; amended Pub. L. 101–162, title II, §212, Nov. 21, 1989, 103 Stat. 998, 1006; Pub. L. 101–302, title III,

§ 320(c)(1), May 25, 1990, 104 Stat. 248; Pub. L. 101–647, title XVIII, § 1804, Nov. 29, 1990, 104 Stat. 4851; Pub. L. 103–322, title XXXIII, § 330001(a), Sept. 13, 1994, 108 Stat. 2138; Pub. L. 107–273, div. A, title II, § 203(a)(2), Nov. 2, 2002, 116 Stat. 1775, related to allocation and distribution of funds under formula grants. See section 3755(a) of this title.

Section 3757, Pub. L. 90–351, title I, § 507, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4335, related to designation and purposes of a State office.

Section 3758, Pub. L. 90–351, title I, § 508, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4335, related to distribution of grants to local government.

Section 3759, Pub. L. 90–351, title I, § 509, as added Pub. L. 101–647, title XVIII, § 1803(a), Nov. 29, 1990, 104 Stat. 4850; amended Pub. L. 103–159, title I, § 106(a), Nov. 30, 1993, 107 Stat. 1543; Pub. L. 103–209, § 4(a), Dec. 20, 1993, 107 Stat. 2493, related to improvement of criminal justice records.

§ 3750. Name of program

(a) In general

The grant program established under this part shall be known as the ''Edward Byrne Memorial Justice Assistance Grant Program''.

(b) References to former programs

(1) Any reference in a law, regulation, document, paper, or other record of the United States to the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, or to the Local Government Law Enforcement Block Grants program, shall be deemed to be a reference to the grant program referred to in subsection (a) of this section.

(2) Any reference in a law, regulation, document, paper, or other record of the United States to section 3756 of this title as such section was in effect on the date of the enactment of the Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009,[1] shall be deemed to be a reference to section 3755(a) of this title as amended by the Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009.[1]

(Pub. L. 90–351, title I, § 500, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4329; amended Pub. L. 109–162, title XI, § 1111(a)(2)(B), Jan. 5, 2006, 119 Stat. 3094.)

REFERENCES IN TEXT

The Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009, referred to in subsec. (b)(2), probably means the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109–162, Jan. 5, 2006, 119 Stat. 2960, which repealed section 3756 of this title and enacted section 3755 of this title.

PRIOR PROVISIONS

Prior sections 3750a to 3750d were repealed by Pub. L. 109–162, title XI, § 1111(b)(2), (d), Jan. 5, 2006, 119 Stat. 3101, 3102, applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter.

Section 3750a, Pub. L. 102–519, title I, § 130, Oct. 25, 1992, 106 Stat. 3386, related to the purpose of former sections 3750a to 3750d, to supplement the provisions of the Edward Byrne Memorial State and Local Law Enforcement Assistance Program to help States to curb motor vehicle thefts and related violence, and authorization of grants to Anti Car Theft Committees.

Section 3750b, Pub. L. 102–519, title I, § 131, Oct. 25, 1992, 106 Stat. 3386, related to application for grants.

Section 3750c, Pub. L. 102–519, title I, § 132, Oct. 25, 1992, 106 Stat. 3387, related to award of grants.

Section 3750d, Pub. L. 102–519, title I, § 133, Oct. 25, 1992, 106 Stat. 3387, related to authorization of appropriations.

For other prior sections 3750 to 3750d of this title, see note set out preceding section 3741 of this title.

AMENDMENTS

2006—Pub. L. 109–162 substituted ''Name of program'' for ''Name of programs'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''The grant programs established under this subchapter shall be known as the 'Edward Byrne Memorial State and Local Law Enforcement Assistance Programs'.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–162, title XI, § 1111(d), Jan. 5, 2006, 119 Stat. 3102, provided that: ''The amendments made by this section [enacting sections 3751 to 3758 of this title, amending this section and sections 3763, 3766, 3766b, 3782, 3789, 3791, 3796bb–1, 3796cc–1, 3796dd–1, 3796ff–1, and 14601 of this title, and repealing sections 3750a to 3750d, former sections 3751 to 3759, and sections 3760 to 3762 of this title] shall apply with respect to the first fiscal year beginning after the date of the enactment of this Act [Jan. 5, 2006] and each fiscal year thereafter.''

§ 3751. Description

(a) Grants authorized

(1) In general

From amounts made available to carry out this part, the Attorney General may, in accordance with the formula established under section 3755 of this title, make grants to States and units of local government, for use by the State or unit of local government to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice, including for any one or more of the following programs:

(A) Law enforcement programs.

(B) Prosecution and court programs.

(C) Prevention and education programs.

(D) Corrections and community corrections programs.

(E) Drug treatment and enforcement programs.

(F) Planning, evaluation, and technology improvement programs.

(G) Crime victim and witness programs (other than compensation).

(2) Rule of construction

Paragraph (1) shall be construed to ensure that a grant under that paragraph may be used for any purpose for which a grant was authorized to be used under either or both of the programs specified in section 3750(b) of this title, as those programs were in effect immediately before January 5, 2006.

(b) Contracts and subawards

A State or unit of local government may, in using a grant under this part for purposes authorized by subsection (a) of this section, use all or a portion of that grant to contract with or make one or more subawards to one or more—

[1] See References in Text notes below.

(1) neighborhood or community-based organizations that are private and nonprofit; or

(2) units of local government.

(c) Program assessment component; waiver

(1) Each program funded under this part shall contain a program assessment component, developed pursuant to guidelines established by the Attorney General, in coordination with the National Institute of Justice.

(2) The Attorney General may waive the requirement of paragraph (1) with respect to a program if, in the opinion of the Attorney General, the program is not of sufficient size to justify a full program assessment.

(d) Prohibited uses

Notwithstanding any other provision of this Act, no funds provided under this part may be used, directly or indirectly, to provide any of the following matters:

(1) Any security enhancements or any equipment to any nongovernmental entity that is not engaged in criminal justice or public safety.

(2) Unless the Attorney General certifies that extraordinary and exigent circumstances exist that make the use of such funds to provide such matters essential to the maintenance of public safety and good order—

(A) vehicles (excluding police cruisers), vessels (excluding police boats), or aircraft (excluding police helicopters);

(B) luxury items;

(C) real estate;

(D) construction projects (other than penal or correctional institutions); or

(E) any similar matters.

(e) Administrative costs

Not more than 10 percent of a grant made under this part may be used for costs incurred to administer such grant.

(f) Period

The period of a grant made under this part shall be four years, except that renewals and extensions beyond that period may be granted at the discretion of the Attorney General.

(g) Rule of construction

Subparagraph (d)(1) shall not be construed to prohibit the use, directly or indirectly, of funds provided under this part to provide security at a public event, such as a political convention or major sports event, so long as such security is provided under applicable laws and procedures.

(Pub. L. 90–351, title I, § 501, as added Pub. L. 109–162, title XI, § 1111(a)(2)(C), Jan. 5, 2006, 119 Stat. 3095; amended Pub. L. 109–271, § 8(h), Aug. 12, 2006, 120 Stat. 767.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended, known as the Omnibus Crime Control and Safe Streets Act of 1968. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

PRIOR PROVISIONS

For prior sections 501 of Pub. L. 90–351 and prior sections 3751 of this title, see notes set out preceding section 3750 of this title.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–271 struck out par. (3) which read as follows: ''tribal governments.''

EFFECTIVE DATE

Section applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3750 of this title.

§ 3752. Applications

To request a grant under this part, the chief executive officer of a State or unit of local government shall submit an application to the Attorney General within 120 days after the date on which funds to carry out this part are appropriated for a fiscal year, in such form as the Attorney General may require. Such application shall include the following:

(1) A certification that Federal funds made available under this part will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for law enforcement activities.

(2) An assurance that, not fewer than 30 days before the application (or any amendment to the application) was submitted to the Attorney General, the application (or amendment) was submitted for review to the governing body of the State or unit of local government (or to an organization designated by that governing body).

(3) An assurance that, before the application (or any amendment to the application) was submitted to the Attorney General—

(A) the application (or amendment) was made public; and

(B) an opportunity to comment on the application (or amendment) was provided to citizens and to neighborhood or community-based organizations, to the extent applicable law or established procedure makes such an opportunity available.

(4) An assurance that, for each fiscal year covered by an application, the applicant shall maintain and report such data, records, and information (programmatic and financial) as the Attorney General may reasonably require.

(5) A certification, made in a form acceptable to the Attorney General and executed by the chief executive officer of the applicant (or by another officer of the applicant, if qualified under regulations promulgated by the Attorney General), that—

(A) the programs to be funded by the grant meet all the requirements of this part;

(B) all the information contained in the application is correct;

(C) there has been appropriate coordination with affected agencies; and

(D) the applicant will comply with all provisions of this part and all other applicable Federal laws.

(Pub. L. 90–351, title I, § 502, as added Pub. L. 109–162, title XI, § 1111(a)(2)(C), Jan. 5, 2006, 119 Stat. 3096; amended Pub. L. 109–271, § 8(i), Aug. 12, 2006, 120 Stat. 767.)

PRIOR PROVISIONS

For prior sections 502 of Pub. L. 90–351 and prior sections 3752 of this title, see notes set out preceding section 3750 of this title.

AMENDMENTS

2006—Pub. L. 109–271 substituted ''120 days'' for ''90 days'' in introductory provisions.

EFFECTIVE DATE

Section applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3750 of this title.

§ 3753. Review of applications

The Attorney General shall not finally disapprove any application (or any amendment to that application) submitted under this part without first affording the applicant reasonable notice of any deficiencies in the application and opportunity for correction and reconsideration.

(Pub. L. 90–351, title I, § 503, as added Pub. L. 109–162, title XI, § 1111(a)(2)(C), Jan. 5, 2006, 119 Stat. 3097.)

PRIOR PROVISIONS

For prior sections 503 of Pub. L. 90–351 and prior sections 3753 of this title, see notes set out preceding section 3750 of this title.

EFFECTIVE DATE

Section applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3750 of this title.

§ 3754. Rules

The Attorney General shall issue rules to carry out this part. The first such rules shall be issued not later than one year after the date on which amounts are first made available to carry out this part.

(Pub. L. 90–351, title I, § 504, as added Pub. L. 109–162, title XI, § 1111(a)(2)(C), Jan. 5, 2006, 119 Stat. 3097.)

PRIOR PROVISIONS

For prior sections 504 of Pub. L. 90–351 and prior sections 3754 of this title, see notes set out preceding section 3750 of this title.

EFFECTIVE DATE

Section applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3750 of this title.

§ 3755. Formula

(a) Allocation among States

(1) In general

Of the total amount appropriated for this part, the Attorney General shall, except as provided in paragraph (2), allocate—

(A) 50 percent of such remaining amount to each State in amounts that bear the same ratio of—

(i) the total population of a State to—

(ii) the total population of the United States; and

(B) 50 percent of such remaining amount to each State in amounts that bear the same ratio of—

(i) the average annual number of part 1 violent crimes of the Uniform Crime Reports of the Federal Bureau of Investigation reported by such State for the three most recent years reported by such State to—

(ii) the average annual number of such crimes reported by all States for such years.

(2) Minimum allocation

If carrying out paragraph (1) would result in any State receiving an allocation less than 0.25 percent of the total amount (in this paragraph referred to as a ''minimum allocation State''), then paragraph (1), as so carried out, shall not apply, and the Attorney General shall instead—

(A) allocate 0.25 percent of the total amount to each State; and

(B) using the amount remaining after carrying out subparagraph (A), carry out paragraph (1) in a manner that excludes each minimum allocation State, including the population of and the crimes reported by such State.

(b) Allocation between States and units of local government

Of the amounts allocated under subsection (a) of this section—

(1) 60 percent shall be for direct grants to States, to be allocated under subsection (c) of this section; and

(2) 40 percent shall be for grants to be allocated under subsection (d) of this section.

(c) Allocation for State governments

(1) In general

Of the amounts allocated under subsection (b)(1) of this section, each State may retain for the purposes described in section 3751 of this title an amount that bears the same ratio of—

(A) total expenditures on criminal justice by the State government in the most recently completed fiscal year to—

(B) the total expenditure on criminal justice by the State government and units of local government within the State in such year.

(2) Remaining amounts

Except as provided in subsection (e)(1) of this section, any amounts remaining after the allocation required by paragraph (1) shall be made available to units of local government by the State for the purposes described in section 3751 of this title.

(d) Allocations to local governments

(1) In general

Of the amounts allocated under subsection (b)(2) of this section, grants for the purposes described in section 3751 of this title shall be made directly to units of local government within each State in accordance with this sub-

section, subject to subsection (e) of this section.

(2) Allocation

(A) In general

From the amounts referred to in paragraph (1) with respect to a State (in this subsection referred to as the ''local amount''), the Attorney General shall allocate to each unit of local government an amount which bears the same ratio to such share as the average annual number of part 1 violent crimes reported by such unit to the Federal Bureau of Investigation for the 3 most recent calendar years for which such data is available bears to the number of part 1 violent crimes reported by all units of local government in the State in which the unit is located to the Federal Bureau of Investigation for such years.

(B) Transitional rule

Notwithstanding subparagraph (A), for fiscal years 2006, 2007, and 2008, the Attorney General shall allocate the local amount to units of local government in the same manner that, under the Local Government Law Enforcement Block Grants program in effect immediately before January 5, 2006, the reserved amount was allocated among reporting and nonreporting units of local government.

(3) Annexed units

If a unit of local government in the State has been annexed since the date of the collection of the data used by the Attorney General in making allocations pursuant to this section, the Attorney General shall pay the amount that would have been allocated to such unit of local government to the unit of local government that annexed it.

(4) Resolution of disparate allocations

(A) Notwithstanding any other provision of this part, if—

(i) the Attorney General certifies that a unit of local government bears more than 50 percent of the costs of prosecution or incarceration that arise with respect to part 1 violent crimes reported by a specified geographically constituent unit of local government; and

(ii) but for this paragraph, the amount of funds allocated under this section to—

(I) any one such specified geographically constituent unit of local government exceeds 150 percent of the amount allocated to the unit of local government certified pursuant to clause (i); or

(II) more than one such specified geographically constituent unit of local government exceeds 400 percent of the amount allocated to the unit of local government certified pursuant to clause (i),

then in order to qualify for payment under this subsection, the unit of local government certified pursuant to clause (i), together with any such specified geographically constituent units of local government described in clause (ii), shall submit to the Attorney General a joint application for the aggregate of funds allocated to such units of local government. Such application shall specify the amount of such funds that are to be distributed to each of the units of local government and the purposes for which such funds are to be used. The units of local government involved may establish a joint local advisory board for the purposes of carrying out this paragraph.

(B) In this paragraph, the term ''geographically constituent unit of local government'' means a unit of local government that has jurisdiction over areas located within the boundaries of an area over which a unit of local government certified pursuant to clause (i) has jurisdiction.

(e) Limitation on allocations to units of local government

(1) Maximum allocation

No unit of local government shall receive a total allocation under this section that exceeds such unit's total expenditures on criminal justice services for the most recently completed fiscal year for which data are available. Any amount in excess of such total expenditures shall be allocated proportionally among units of local government whose allocations under this section do not exceed their total expenditures on such services.

(2) Allocations under $10,000

If the allocation under this section to a unit of local government is less than $10,000 for any fiscal year, the direct grant to the State under subsection (c) of this section shall be increased by the amount of such allocation, to be distributed (for the purposes described in section 3751 of this title) among State police departments that provide criminal justice services to units of local government and units of local government whose allocation under this section is less than $10,000.

(3) Non-reporting units

No allocation under this section shall be made to a unit of local government that has not reported at least three years of data on part 1 violent crimes of the Uniform Crime Reports to the Federal Bureau of Investigation within the immediately preceding 10 years.

(f) Funds not used by the State

If the Attorney General determines, on the basis of information available during any grant period, that any allocation (or portion thereof) under this section to a State for such grant period will not be required, or that a State will be unable to qualify or receive funds under this part, or that a State chooses not to participate in the program established under this part, then such State's allocation (or portion thereof) shall be awarded by the Attorney General to units of local government, or combinations thereof, within such State, giving priority to those jurisdictions with the highest annual number of part 1 violent crimes of the Uniform Crime Reports reported by the unit of local government to the Federal Bureau of Investigation for the three most recent calendar years for which such data are available.

(g) Special rules for Puerto Rico

(1) All funds set aside for Commonwealth government

Notwithstanding any other provision of this part, the amounts allocated under subsection (a) of this section to Puerto Rico, 100 percent shall be for direct grants to the Commonwealth government of Puerto Rico.

(2) No local allocations

Subsections (c) and (d) of this section shall not apply to Puerto Rico.

(h) Units of local government in Louisiana

In carrying out this section with respect to the State of Louisiana, the term ''unit of local government'' means a district attorney or a parish sheriff.

(Pub. L. 90–351, title I, § 505, as added Pub. L. 109–162, title XI, § 1111(a)(2)(C), Jan. 5, 2006, 119 Stat. 3097.)

PRIOR PROVISIONS

For prior sections 505 of Pub. L. 90–351 and prior sections 3755 of this title, see notes set out preceding section 3750 of this title.

EFFECTIVE DATE

Section applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3750 of this title.

§ 3756. Reserved funds

(a) Of the total amount made available to carry out this part for a fiscal year, the Attorney General shall reserve not more than—

(1) $20,000,000, for use by the National Institute of Justice in assisting units of local government to identify, select, develop, modernize, and purchase new technologies for use by law enforcement, of which $1,000,000 shall be for use by the Bureau of Justice Statistics to collect data necessary for carrying out this part; and

(2) $20,000,000, to be granted by the Attorney General to States and units of local government to develop and implement antiterrorism training programs.

(b) Of the total amount made available to carry out this part for a fiscal year, the Attorney General may reserve not more than 5 percent, to be granted to 1 or more States or units of local government, for 1 or more of the purposes specified in section 3751 of this title, pursuant to his determination that the same is necessary—

(1) to combat, address, or otherwise respond to precipitous or extraordinary increases in crime, or in a type or types of crime; or

(2) to prevent, compensate for, or mitigate significant programmatic harm resulting from operation of the formula established under section 3755 of this title.

(Pub. L. 90–351, title I, § 506, as added Pub. L. 109–162, title XI, § 1111(a)(2)(C), Jan. 5, 2006, 119 Stat. 3100.)

PRIOR PROVISIONS

For prior sections 506 of Pub. L. 90–351 and prior sections 3756 of this title, see notes set out preceding section 3750 of this title.

EFFECTIVE DATE

Section applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3750 of this title.

§ 3757. Interest-bearing trust funds

(a) Trust fund required

A State or unit of local government shall establish a trust fund in which to deposit amounts received under this part.

(b) Expenditures

(1) In general

Each amount received under this part (including interest on such amount) shall be expended before the date on which the grant period expires.

(2) Repayment

A State or unit of local government that fails to expend an entire amount (including interest on such amount) as required by paragraph (1) shall repay the unexpended portion to the Attorney General not later than 3 months after the date on which the grant period expires.

(3) Reduction of future amounts

If a State or unit of local government fails to comply with paragraphs (1) and (2), the Attorney General shall reduce amounts to be provided to that State or unit of local government accordingly.

(c) Repaid amounts

Amounts received as repayments under this section shall be subject to section 3712g of this title as if such amounts had not been granted and repaid. Such amounts shall be deposited in the Treasury in a dedicated fund for use by the Attorney General to carry out this part. Such funds are hereby made available to carry out this part.

(Pub. L. 90–351, title I, § 507, as added Pub. L. 109–162, title XI, § 1111(a)(2)(C), Jan. 5, 2006, 119 Stat. 3100.)

PRIOR PROVISIONS

For prior sections 507 of Pub. L. 90–351 and prior sections 3757 of this title, see notes set out preceding section 3750 of this title.

EFFECTIVE DATE

Section applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3750 of this title.

§ 3758. Authorization of appropriations

There is authorized to be appropriated to carry out this part $1,095,000,000 for fiscal year 2006 and such sums as may be necessary for each of fiscal years 2007 through 2009.

(Pub. L. 90–351, title I, § 508, as added Pub. L. 109–162, title XI, § 1111(a)(2)(C), Jan. 5, 2006, 119 Stat. 3101.)

PRIOR PROVISIONS

For prior sections 508 of Pub. L. 90–351 and prior sections 3758 and 3759 of this title, see notes set out preceding section 3750 of this title.

EFFECTIVE DATE

Section applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3750 of this title.

PART B—DISCRETIONARY GRANTS

SUBPART 1—GRANTS TO PUBLIC AND PRIVATE ENTITIES

§§ 3760 to 3762. Repealed. Pub. L. 109–162, title XI, § 1111(b)(1), Jan. 5, 2006, 119 Stat. 3101

Section 3760, Pub. L. 90–351, title I, § 510, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4335; amended Pub. L. 101–647, title XVIII, § 1801(a)(2), Nov. 29, 1990, 104 Stat. 4847; Pub. L. 103–322, title XXXII, § 320702(a), Sept. 13, 1994, 108 Stat. 2121; Pub. L. 105–277, div. A, § 101(b) [title I, § 120(a)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–70; Pub. L. 107–273, div. A, title II, § 203(a)(3), (4), Nov. 2, 2002, 116 Stat. 1775, related to purposes of grants to public and private entities.

Section 3761, Pub. L. 90–351, title I, § 511, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4336; amended Pub. L. 101–647, title XVIII, § 1801(a)(3), Nov. 29, 1990, 104 Stat. 4847; Pub. L. 107–273, div. A, title II, § 203(a)(5), Nov. 2, 2002, 116 Stat. 1775, related to allocation of funds for grants.

Section 3762, Pub. L. 90–351, title I, § 512, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4336, related to limitation on use of discretionary grant funds.

PRIOR PROVISIONS

For prior sections 510 to 512 of Pub. L. 90–351 and prior sections 3760 to 3762 of this title, see notes set out preceding section 3750 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note set out under section 3750 of this title.

SUBPART 2—GRANTS TO PUBLIC AGENCIES

§ 3762a. Correctional options grants

(a) Authority to make grants

The Director, in consultation with the Director of the National Institute of Corrections, may make—

(1) 4 grants in each fiscal year, in various geographical areas throughout the United States, to public agencies for correctional options (including the cost of construction) that provide alternatives to traditional modes of incarceration and offender release programs—

(A) to provide more appropriate intervention for youthful offenders who are not career criminals, but who, without such intervention, are likely to become career criminals or more serious offenders;

(B) to provide a degree of security and discipline appropriate for the offender involved;

(C) to provide diagnosis, and treatment and services (including counseling, substance abuse treatment, education, job training and placement assistance while under correctional supervision, and linkage to similar outside services), to increase the success rate of offenders who decide to pursue a course of lawful and productive conduct after release from legal restraint;

(D) to reduce criminal recidivism by offenders who receive punishment through such alternatives;

(E) to reduce the cost of correctional services and facilities by reducing criminal recidivism; and

(F) to provide work that promotes development of industrial and service skills in connection with a correctional option;

(2) grants to private nonprofit organizations—

(A) for any of the purposes specified in subparagraphs (A) through (F) of paragraph (1);

(B) to undertake educational and training programs for criminal justice personnel;

(C) to provide technical assistance to States and local units of government; and

(D) to carry out demonstration projects which, in view of previous research or experience, are likely to be a success in more than one jurisdiction;

in connection with a correctional option (excluding the cost of construction); and

(3) grants to public agencies to establish, operate, and support boot camp prisons.

(b) Selection of grantees

The selection of applicants to receive grants under paragraphs (1) and (2) of subsection (a) of this section shall be based on their potential for developing or testing various innovative alternatives to traditional modes of incarceration and offender release programs. In selecting the applicants to receive grants under subsection (a)(3) of this section, the Director shall—

(1) consider the overall quality of an applicant's shock incarceration program, including the existence of substance abuse treatment, drug testing, counseling literacy education, vocational education, and job training programs during incarceration or after release; and

(2) give priority to public agencies that clearly demonstrate that the capacity of their correctional facilities is inadequate to accommodate the number of individuals who are convicted of offenses punishable by a term of imprisonment exceeding 1 year.

(c) Consultations

The Director shall consult with the Commission on Alternative Utilization of Military Facilities created by Public Law 100–456 in order to identify military facilities that may be used as sites for correctional programs receiving assistance under this subpart.

(Pub. L. 90–351, title I, § 515, as added Pub. L. 101–647, title XVIII, § 1801(a)(7), Nov. 29, 1990, 104 Stat. 4847; amended Pub. L. 103–322, title XXXIII, § 330001(b)(1), Sept. 13, 1994, 108 Stat. 2138.)

REFERENCES IN TEXT

The Commission on Alternative Utilization of Military Facilities, referred to in subsec. (c), was created by section 2819 of Pub. L. 100–456, as amended, which was set out as a note under section 2391 of Title 10, Armed Forces, prior to repeal by Pub. L. 105–261, div. A, title X, § 1031(b), Oct. 17, 1998, 112 Stat. 2123.

PRIOR PROVISIONS

For prior section 515 of Pub. L. 90–351, see note set out preceding section 3750 of this title.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322, in introductory provisions substituted ''paragraphs (1) and (2) of subsection (a)'' for ''subsection (a)(1) and (2)'', and in par. (2) substituted ''public agencies'' for ''States''.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3762b. Allocation of funds; administrative provisions

(a) Allocation of funds

Of the total amount appropriated for this subpart in any fiscal year, 80 percent shall be used to make grants under section 3762a(a)(1) of this title, 10 percent shall be used to make grants under section 3762a(a)(2) of this title, and 10 percent shall be used to make grants under section 3762a(a)(3) of this title.

(b) Limit on grant share of cost

A grant made under paragraph (1) or (3) of section 3762a(a) of this title may be made for an amount up to 75 percent of the cost of the correctional option contained in the approved application.

(c) Rules; report; request for applications

The Director shall—

(1) not later than 90 days after funds are first appropriated to carry out this subpart, issue rules to carry out this subpart; and

(2) not later than 180 days after funds are first appropriated to carry out this subpart—

(A) submit to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report describing such rules; and

(B) request applications for grants under this subpart.

(Pub. L. 90–351, title I, § 516, as added Pub. L. 101–647, title XVIII, § 1801(a)(7), Nov. 29, 1990, 104 Stat. 4848; amended Pub. L. 103–322, title XXXIII, § 330001(b)(2), Sept. 13, 1994, 108 Stat. 2138.)

PRIOR PROVISIONS

For prior section 516 of Pub. L. 90–351, see note set out preceding section 3750 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322, § 330001(b)(2)(A), substituted ''10 percent shall be used to make grants under section'' for ''10 percent for section'' in two places.

Subsec. (b). Pub. L. 103–322, § 330001(b)(2)(B), substituted ''paragraph (1) or (3) of section 3762a(a)'' for ''section 3762a(a)(1) or (a)(3)''.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

SUBPART 3—GENERAL REQUIREMENTS

§ 3763. Application requirements

(a) No grant may be made under this part unless an application has been submitted to the Director in which the applicant—

(1) sets forth a program or project which is eligible for funding pursuant to section 3762a of this title;

(2) describes the services to be provided, performance goals, and the manner in which the program is to be carried out;

(3) describes the method to be used to evaluate the program or project in order to determine its impact and effectiveness in achieving the stated goals; and

(4) agrees to conduct such evaluation according to the procedures and terms established by the Bureau.

(b) Each applicant for funds under this part shall certify that its program or project meets all the applicable requirements of this section, that all the applicable information contained in the application is correct, and that the applicant will comply with all the applicable provisions of this part and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Director.

(Pub. L. 90–351, title I, § 517, formerly § 513, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4336; renumbered § 517 and amended Pub. L. 101–647, title XVIII, § 1801(a)(4), (6), Nov. 29, 1990, 104 Stat. 4847; Pub. L. 109–162, title XI, § 1111(c)(2)(A), Jan. 5, 2006, 119 Stat. 3101.)

PRIOR PROVISIONS

For prior section 517 of Pub. L. 90–351 and prior sections 3763 of this title, see note set out preceding section 3750 of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–162 substituted ''pursuant to section 3762a'' for ''pursuant to section 3761 or 3762a''.

1990—Subsec. (a)(1). Pub. L. 101–647, § 1801(a)(4)(A), inserted ''or 3762a'' after ''3761''.

Subsec. (b). Pub. L. 101–647, § 1801(a)(4)(B), inserted ''applicable'' after ''all the'' in three places.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 3750 of this title.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3764. Period of award

The Bureau may provide financial aid and assistance to programs or projects under this part for a period of not to exceed 4 years. Grants made pursuant to this part may be extended or renewed by the Bureau for an additional period of up to 2 years if—

(1) an evaluation of the program or project indicates that it has been effective in achieving the stated goals or offers the potential for improving the functioning of the criminal justice system; and

(2) the applicant that conducts such program or project agrees to provide at least one-half

of the total cost of such program or project from any source of funds, including Federal grants, available to the eligible jurisdiction.

(Pub. L. 90–351, title I, § 518, formerly § 514, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4336; renumbered § 518 and amended Pub. L. 101–647, title XVIII, § 1801(a)(5), (6), Nov. 29, 1990, 104 Stat. 4847.)

PRIOR PROVISIONS

For prior section 518 of Pub. L. 90–351 and prior sections 3764 and 3765 of this title, see note set out preceding section 3750 of this title.

AMENDMENTS

1990—Par. (2). Pub. L. 101–647, § 1801(a)(5), substituted ''applicant that conducts such program or project'' for ''public agency or private nonprofit organization within which the program or project has been conducted''.

SUBPART 4—GRANTS TO PRIVATE ENTITIES

CODIFICATION

Pub. L. 109–248, title VI, § 626, July 27, 2006, 120 Stat. 636, which directed amendment of ''subpart 2 of part E of title I of the Omnibus Crime Control and Safe Street Act of 1968'' by adding chapter 4 at end, was treated as meaning chapter D, which was changed to subpart 4 for purposes of codification, to reflect the probable intent of Congress.

§ 3765. Crime prevention campaign grant

(a) Grant authorization

The Attorney General may provide a grant to a national private, nonprofit organization that has expertise in promoting crime prevention through public outreach and media campaigns in coordination with law enforcement agencies and other local government officials, and representatives of community public interest organizations, including schools and youth-serving organizations, faith-based, and victims' organizations and employers.

(b) Application

To request a grant under this section, an organization described in subsection (a) shall submit an application to the Attorney General in such form and containing such information as the Attorney General may require.

(c) Use of funds

An organization that receives a grant under this section shall—

(1) create and promote national public communications campaigns;

(2) develop and distribute publications and other educational materials that promote crime prevention;

(3) design and maintain web sites and related web-based materials and tools;

(4) design and deliver training for law enforcement personnel, community leaders, and other partners in public safety and hometown security initiatives;

(5) design and deliver technical assistance to States, local jurisdictions, and crime prevention practitioners and associations;

(6) coordinate a coalition of Federal, national, and statewide organizations and communities supporting crime prevention;

(7) design, deliver, and assess demonstration programs;

(8) operate McGruff-related programs, including McGruff Club;

(9) operate the Teens, Crime, and Community Program; and

(10) evaluate crime prevention programs and trends.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) for fiscal year 2007, $7,000,000;

(2) for fiscal year 2008, $8,000,000;

(3) for fiscal year 2009, $9,000,000; and

(4) for fiscal year 2010, $10,000,000.

(Pub. L. 90–351, title I, § 519, as added Pub. L. 109–248, title VI, § 626, July 27, 2006, 120 Stat. 636.)

PRIOR PROVISIONS

For prior section 519 of Pub. L. 90–351 and prior sections 3765 of this title, see note set out preceding section 3750 of this title.

PART C—ADMINISTRATIVE PROVISIONS

§ 3766. Evaluation

(a) Guidelines and comprehensive evaluations

To increase the efficiency and effectiveness of programs funded under this subchapter, the National Institute of Justice shall—

(1) develop guidelines, in cooperation with the Bureau of Justice Assistance, to assist State and local units of government to conduct program evaluations; and

(2) conduct a reasonable number of comprehensive evaluations of programs funded under section 3755 (formula grants) and section 3762a (discretionary grants) of this title.

(b) Criteria for selecting programs for review

In selecting programs for review, the Director of the National Institute of Justice should consider—

(1) whether the program establishes or demonstrates a new and innovative approach to drug or crime control;

(2) the cost of the program to be evaluated and the number of similar programs funded under section 3755 (formula grants) of this title;

(3) whether the program has a high potential to be replicated in other jurisdictions; and

(4) whether there is substantial public awareness and community involvement in the program. Routine auditing, monitoring, and internal assessment of a State and local drug control program's progress shall be the sole responsibility of the Bureau of Justice Assistance.

(c) Annual report

The Director of the National Institute of Justice shall annually report to the President, the Attorney General, and the Congress on the nature and findings of the evaluation and research and development activities funded under this section.

(Pub. L. 90–351, title I, § 520, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4337; amended Pub. L. 101–647, title XVIII, § 1801(b), Nov. 29, 1990, 104 Stat. 4848; Pub. L. 109–162, title XI, § 1111(c)(2)(B), Jan. 5, 2006, 119 Stat. 3101.)

PRIOR PROVISIONS

For prior section 520 of Pub. L. 90–351 and prior sections 3766 of this title, see note set out preceding section 3750 of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–162, § 1111(c)(2)(B)(i), substituted ''program evaluations'' for ''the program evaluations as required by section 3751(c) of this title''.

Subsec. (a)(2). Pub. L. 109–162, § 1111(c)(2)(B)(ii), substituted ''evaluations of programs funded under section 3755 (formula grants) and section 3762a (discretionary grants) of this title'' for ''evaluations of programs funded under section 3756 (formula grants) and sections 3761 and 3762a (discretionary grants) of this title''.

Subsec. (b)(2). Pub. L. 109–162, § 1111(c)(2)(B)(iii), substituted ''programs funded under section 3755 (formula grants)'' for ''programs funded under section 3756 (formula grants) and section 3761 (discretionary grants)''.

1990—Subsec. (a)(2). Pub. L. 101–647 substituted ''sections 3761 and 3762a'' for ''section 3761''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 3750 of this title.

§ 3766a. General provisions

(a) The Bureau shall prepare both a ''Program Brief'' and ''Implementation Guide'' document for proven programs and projects to be funded under this subchapter.

(b) The functions, powers, and duties specified in this subchapter to be carried out by the Bureau shall not be transferred elsewhere in the Department of Justice unless specifically hereafter authorized by the Congress by law.

(Pub. L. 90–351, title I, § 521, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4337.)

PRIOR PROVISIONS

For prior section 521 of Pub. L. 90–351, see note set out preceding section 3750 of this title.

§ 3766b. Reports

(a) Each State which receives a grant under section 3755 of this title shall submit to the Director, for each year in which any part of such grant is expended by a State or unit of local government, a report which contains—

(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the purposes of part A of this subchapter;

(2) a summary of the activities carried out in such year with any grant received under part B of this subchapter by such State;

(3) the evaluation result of programs and projects;

(4) an explanation of how the Federal funds provided under this subchapter were coordinated with State agencies receiving Federal funds for drug abuse education, prevention, treatment, and research activities; and

(5) such other information as the Director may require by rule.

Such report shall be submitted in such form and by such time as the Director may require by rule.

(b) Not later than 180 days after the end of each fiscal year for which grants are made under this subchapter, the Director shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

(1) the aggregate amount of grants made under part A of this subchapter and part B of this subchapter to such State for such fiscal year;

(2) the amount of such grants awarded for each of the purposes specified in part A of this subchapter;

(3) a summary of the information provided in compliance with paragraphs (1) and (2) of subsection (a) of this section;

(4) an explanation of how Federal funds provided under this subchapter have been coordinated with Federal funds provided to States for drug abuse education, prevention, treatment, and research activities; and

(5) evaluation results of programs and projects and State strategy implementation.

(Pub. L. 90–351, title I, § 522, as added Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4337; amended Pub. L. 109–162, title XI, § 1111(c)(2)(C), Jan. 5, 2006, 119 Stat. 3101.)

PRIOR PROVISIONS

For prior sections 523, 524, and 526 to 528 of Pub. L. 90–351 and prior sections 3767 and 3768 of this title, see note set out preceding section 3750 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162 substituted ''section 3755'' for ''section 3756'' in introductory provisions and ''an assessment of the impact of such activities on meeting the purposes of part A of this subchapter'' for ''an assessment of the impact of such activities on meeting the needs identified in the State strategy submitted under section 3753 of this title'' in par. (1).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 3750 of this title.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

SUBCHAPTER VI—CRIMINAL JUSTICE FACILITY CONSTRUCTION: PILOT PROGRAM

§§ 3769 to 3769d. Repealed. Pub. L. 109–162, title XI, § 1154(a), Jan. 5, 2006, 119 Stat. 3113

Section 3769, Pub. L. 90–351, title I, § 601, as added Pub. L. 98–473, title II, § 609, Oct. 12, 1984, 98 Stat. 2088, related to authority for payments.

For prior section 3769, see note set out preceding section 3750 of this title.

A prior section 601 of Pub. L. 90–351 was renumbered section 501 and classified to section 3761 of this title. See note set out preceding section 3750 of this title.

Another prior section 601 of Pub. L. 90–351, title I, June 19, 1968, 82 Stat. 209, was classified to section 3781 of this title and defined terms used in this chapter, prior to the general amendment of this chapter by Pub. L. 96–157. See section 3791 of this title.

Section 3769a, Pub. L. 90–351, title I, § 602, as added Pub. L. 98–473, title II, § 609, Oct. 12, 1984, 98 Stat. 2088; amended Pub. L. 103–322, title XXXIII, § 330001(h)(3), Sept. 13, 1994, 108 Stat. 2139, related to eligibility for assistance.

A prior section 602 of Pub. L. 90–351 was renumbered section 502 and classified to section 3762 of this title. See note set out preceding section 3750 of this title.

Section 3769b, Pub. L. 90–351, title I, § 603, as added Pub. L. 98–473, title II, § 609, Oct. 12, 1984, 98 Stat. 2088; amended Pub. L. 103–322, title XXXIII, § 330001(h)(4), Sept. 13, 1994, 108 Stat. 2139, related to application, approval of application, and payment.

A prior section 603 of Pub. L. 90–351 was renumbered section 503 and classified to section 3763 of this title. See note set out preceding section 3750 of this title.

Section 3769c, Pub. L. 90–351, title I, § 605, as added Pub. L. 98–473, title II, § 609, Oct. 12, 1984, 98 Stat. 2089; amended Pub. L. 103–322, title XXXIII, § 330001(h)(5), Sept. 13, 1994, 108 Stat. 2139, related to recapture of funds from recipient of assistance.

A prior section 605 of Pub. L. 90–351 was renumbered section 505 and classified to section 3765 of this title. See note set out preceding section 3750 of this title.

Section 3769d, Pub. L. 90–351, title I, § 606, as added Pub. L. 98–473, title II, § 609, Oct. 12, 1984, 98 Stat. 2090; amended Pub. L. 103–322, title XXXIII, § 330001(h)(6), Sept. 13, 1994, 108 Stat. 2139, related to a clearinghouse on the construction and modernization of criminal justice facilities.

A prior section 606 of Pub. L. 90–351 was renumbered section 506 and classified to section 3766 of this title. See note set out preceding section 3750 of this title.

For prior section 3770, see note set out preceding section 3750 of this title.

SUBCHAPTER VII—FBI TRAINING OF STATE AND LOCAL CRIMINAL JUSTICE PERSONNEL

§ 3771. Training and manpower development

(a) Functions, powers, and duties of Director of Federal Bureau of Investigation

The Director of the Federal Bureau of Investigation is authorized to—

(1) establish and conduct training programs at the Federal Bureau of Investigation National Academy at Quantico, Virginia, to provide, at the request of a State, unit of local government, or rail carrier, training for State and local criminal justice personnel, including railroad police officers;

(2) develop new or improved approaches, techniques, systems, equipment, and devices to improve and strengthen criminal justice; and

(3) assist in conducting, at the request of a State, unit of local government, or rail carrier, local and regional training programs for the training of State and local criminal justice personnel engaged in the investigation of crime and the apprehension of criminals. Training for rural criminal justice personnel shall include, when appropriate, effective use of regional resources and methods to improve coordination among criminal justice personnel in different areas and in different levels of government. Such training shall be provided only for persons actually employed as State police or highway patrol, police of a unit of local government, sheriffs, and their deputies, railroad police officer,[1] and other persons as the State, unit of local government, or rail carrier may nominate for police training while such persons are actually employed as officers of such State, unit of local government, or rail carrier.

(b) General authority of Attorney General over Director

In the exercise of the functions, powers, and duties established under this section the Director of the Federal Bureau of Investigation shall be under the general authority of the Attorney General.

(c) Training programs for State and local personnel at Federal Training Center

Notwithstanding the provisions of subsection (a) of this section, the Secretary of the Treasury is authorized to establish, develop, and conduct training programs at the Federal Law Enforcement Training Center at Glynco, Georgia, to provide, at the request of a State or unit of local government, training for State and local criminal justice personnel provided that such training does not interfere with the Center's mission to train Federal law enforcement personnel.

(d) Rail carrier costs

No Federal funds may be used for any travel, transportation, or subsistence expenses incurred in connection with the participation of a railroad police officer in a training program conducted under subsection (a) of this section.

(e) Definitions

In this section—

(1) the terms ''rail carrier'' and ''railroad'' have the meanings given such terms in section 20102 of title 49; and

(2) the term ''railroad police officer'' means a peace officer who is commissioned in his or her State of legal residence or State of primary employment and employed by a rail carrier to enforce State laws for the protection of railroad property, personnel, passengers, or cargo.

(Pub. L. 90–351, title I, § 701, as added Pub. L. 98–473, title II, § 609A(a), Oct. 12, 1984, 98 Stat. 2090; amended Pub. L. 106–110, § 1, Nov. 24, 1999, 113 Stat. 1497.)

PRIOR PROVISIONS

A prior section 3771, Pub. L. 90–351, title I, § 701, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1198, contained Congressional statement of purpose for training and manpower development, prior to the general amendment of this subchapter by Pub. L. 98–473.

For another prior section 3771, see note set out preceding section 3750 of this title.

A prior section 701 of Pub. L. 90–351, title I, as added Pub. L. 94–430, § 2, Sept. 29, 1976, 90 Stat. 1346, provided for payments of Public safety officers' death benefits and was classified to former section 3796 of this title, prior to the general amendment of this chapter by Pub. L. 96–157.

Another prior section 701 of Pub. L. 90–351, title II, June 19, 1968, 82 Stat. 210, is classified to sections 3501 and 3502 of Title 18, Crimes and Criminal Procedure.

Prior sections 3772 to 3775 were omitted in the general revision of this subchapter by section 609A(a) of Pub. L. 98–473.

Section 3772, Pub. L. 90–351, title I, § 702, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1198, provided for a program to train prosecuting attorneys.

[1] So in original. Probably should be ''officers,''.

A prior section 702 of Pub. L. 90–351, title I, as added Pub. L. 94–430, § 2, Sept. 29, 1976, 90 Stat. 1347, provided limits on the payment of public safety officers' death benefits and was classified to former section 3796a of this title, prior to the general amendment of this chapter by Pub. L. 96–157.

Section 3773, Pub. L. 90–351, title I, § 703, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1198, provided for a program to train State and local criminal justice personnel.

A prior section 703 of Pub. L. 90–351, as added Pub. L. 94–430, § 2, Sept. 29, 1976, 90 Stat. 1347, defined the terms used in the provisions for public safety officers' death benefits and was classified to former section 3796b of this title, prior to the general amendment of this chapter by Pub. L. 96–157.

Section 3774, Pub. L. 90–351, title I, § 704, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1199, related to the training of State and local criminal justice personnel by the Federal Bureau of Investigation.

A prior section 704 of Pub. L. 96–351, title I, as added Pub. L. 94–430, § 2, Sept. 29, 1976, 90 Stat. 1347, provided for the administration of the program of public safety officers' death benefits and was classified to former section 3796c of this title, prior to the general amendment of this chapter by Pub. L. 96–157.

Section 3775, Pub. L. 90–351, title I, § 705, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1199; amended Pub. L. 96–88, title III, §§ 301(a)(1), 305, title V, § 507, Oct. 17, 1979, 93 Stat. 677, 680, 692, authorized a criminal justice education program.

For other prior sections 3772 to 3774, see note set out preceding section 3750 of this title.

AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106–110, § 1(a)(1), substituted ''State, unit of local government, or rail carrier'' for ''State or unit of local government'' and inserted '', including railroad police officers'' before semicolon at end.

Subsec. (a)(3). Pub. L. 106–110, § 1(a)(2), substituted ''State, unit of local government, or rail carrier'' for ''State or unit of local government'', ''State or such unit'', and ''State or unit'' and inserted ''railroad police officer,'' after ''deputies,''.

Subsecs. (d), (e). Pub. L. 106–110, § 1(b), (c), added subsecs. (d) and (e).

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as a note under section 3711 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Law Enforcement Training Center of the Department of the Treasury to the Secretary of Homeland Security, and for treatment of related references, see sections 203(4), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EMPLOYMENT OF ANNUITANTS BY FEDERAL LAW ENFORCEMENT TRAINING CENTER

Pub. L. 107–206, title I, § 1202, Aug. 2, 2002, 116 Stat. 887, as amended by Pub. L. 109–295, title IV, Oct. 4, 2006, 120 Stat. 1374, provided that:

''(a) The Federal Law Enforcement Training Center may, for a period ending not later than December 31, 2007, appoint and maintain a cadre of up to 350 Federal annuitants: (1) without regard to any provision of title 5, United States Code, which might otherwise require the application of competitive hiring procedures; and (2) who shall not be subject to any reduction in pay (for annuity allocable to the period of actual employment) under the provisions of section 8344 or 8468 of such title 5 or similar provision of any other retirement system for employees. A reemployed Federal annuitant as to whom a waiver of reduction under paragraph (2) applies shall not, for any period during which such waiver is in effect, be considered an employee for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or such other retirement system (referred to in paragraph (2)) as may apply.

''(b) No appointment under this section may be made which would result in the displacement of any employee.

''(c) For purposes of this section—

''(1) the term 'Federal annuitant' means an employee who has retired under the Civil Service Retirement System, the Federal Employees' Retirement System, or any other retirement system for employees;

''(2) the term 'employee' has the meaning given such term by section 2105 of such title 5; and

''(3) the counting of Federal annuitants shall be done on a full time equivalent basis.''

ANNUAL OUTSTANDING STUDENT AWARD

Pub. L. 107–67, title I, Nov. 12, 2001, 115 Stat. 516, and similar provisions authorizing the Federal Law Enforcement Training Center to use gifts of property for authorized purposes, including funding of an annual gift to the outstanding student who graduated from a basic training program at the Center during the previous fiscal year, were transferred to a note set out under section 464a of Title 6, Domestic Security.

TRAVEL AND SUBSISTENCE EXPENSES OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS ATTENDING MEETINGS, COURSES, ETC., AT FBI NATIONAL ACADEMY

Pub. L. 99–500, § 101(b) [title II], Oct. 18, 1986, 100 Stat. 1783–39, 1783–48, and Pub. L. 99–591, § 101(b) [title II], Oct. 30, 1986, 100 Stat. 3341–39, 3341–48, provided that: ''Notwithstanding section 1345 of title 31, United States Code, funds made available to the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expenses of State, county, and local law enforcement officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.''

FEES TO PROVIDE TRAINING FOR STATE AND LOCAL LAW ENFORCEMENT OFFICERS AT FBI NATIONAL ACADEMY; PROHIBITION; REIMBURSEMENT

Pub. L. 99–500, § 101(b) [title II, § 210], Oct. 18, 1986, 100 Stat. 1783–39, 1783–56, and Pub. L. 99–591, § 101(b) [title II, § 210], Oct. 30, 1986, 100 Stat. 3341–39, 3341–56, provided that: ''The Director of the Federal Bureau of Investigation and the Administrator of the Drug Enforcement Administration shall not establish and collect fees to provide training to State and local law enforcement officers at the FBI National Academy. Any fees collected for training of State and local law enforcement officers, which occurred at the National Academy on or after October 1, 1986, shall be reimbursed to the appropriate official or agency. In addition, the Director of the National Institute of Corrections shall not establish and collect fees to provide training to State and local officers which was not provided on a reimbursable basis prior to October 1, 1986.''

SUBCHAPTER VIII—ADMINISTRATIVE PROVISIONS

§ 3781. Repealed. Pub. L. 98–473, title II, § 609B(a), Oct. 12, 1984, 98 Stat. 2091

Section, Pub. L. 90–351, title I, § 801, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1201, related to establishment of Office of Justice Assistance, Research, and Statistics.

A prior section 3781, Pub. L. 90–351, title I, § 601, June 19, 1968, 82 Stat. 209; 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 91–644, title I,

§§ 6(b), 9, Jan. 2, 1971, 84 Stat. 1887, 1888; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 216; Pub. L. 94–503, title I, § 129, Oct. 15, 1976, 90 Stat. 2424, defined the terms used in this subchapter, prior to the general amendment of this chapter by Pub. L. 96–157. See section 3791 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3782. Rules, regulations, and procedures; consultations and establishment

(a) General authorization of certain Federal agencies

The Office of Justice Programs, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Statistics, and the National Institute of Justice are authorized, after appropriate consultation with representatives of States and units of local government, to establish such rules, regulations, and procedures as are necessary to the exercise of their functions, and as are consistent with the stated purposes of this chapter.

(b) Continuing evaluation of selected programs or projects; cost, effectiveness, impact value, and comparative considerations; annual performance report; assessment of activity effectiveness; suspension of funds for nonsubmission of report

The Bureau of Justice Assistance shall, after consultation with the National Institute of Justice, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, State and local governments, and the appropriate public and private agencies, establish such rules and regulations as are necessary to assure the continuing evaluation of selected programs or projects conducted pursuant to subchapters V, XII–A, XII–B, XII–C, and XII–I of this chapter, in order to determine—

(1) whether such programs or projects have achieved the performance goals stated in the original application, are of proven effectiveness, have a record of proven success, or offer a high probability of improving the criminal justice system;

(2) whether such programs or projects have contributed or are likely to contribute to the improvement of the criminal justice system and the reduction and prevention of crime;

(3) their cost in relation to their effectiveness in achieving stated goals;

(4) their impact on communities and participants; and

(5) their implication for related programs.

In conducting evaluations described in this subsection, the Bureau of Justice Assistance shall, when practical, compare the effectiveness of programs conducted by similar applicants and different applicants. The Bureau of Justice Assistance shall also require applicants under part A of subchapter V of this chapter to submit an annual performance report concerning activities carried out pursuant to part A of subchapter V of this chapter together with an assessment by the applicant of the effectiveness of those activities in achieving the purposes of such part A and the relationships of those activities to the needs and objectives specified by the applicant in the application submitted pursuant to section 3752 of this title. Such report shall include details identifying each applicant that used any funds to purchase any cruiser, boat, or helicopter and, with respect to such applicant, specifying both the amount of funds used by such applicant for each purchase of any cruiser, boat, or helicopter and a justification of each such purchase (and the Bureau of Justice Assistance shall submit to the Committee of the Judiciary of the House of Representatives and the Committee of the Judiciary of the Senate, promptly after preparation of such report a written copy of the portion of such report containing the information required by this sentence). The Bureau shall suspend funding for an approved application under part A of subchapter V of this chapter if an applicant fails to submit such an annual performance report.

(c) Procedures for paperwork minimization and prevention of duplication and delays in award and expenditure of funds

The procedures established to implement the provisions of this chapter shall minimize paperwork and prevent needless duplication and unnecessary delays in award and expenditure of funds at all levels of government.

(Pub. L. 90–351, title I, § 801, formerly § 802, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1201; renumbered § 801 and amended Pub. L. 98–473, title II, § 609B(b), Oct. 12, 1984, 98 Stat. 2091; Pub. L. 99–570, title I, § 1552(b)(2), Oct. 27, 1986, 100 Stat. 3207–46; Pub. L. 101–647, title II, § 241(b)(2), title VIII, § 801(c)(1), Nov. 29, 1990, 104 Stat. 4813, 4826; Pub. L. 103–322, title IV, § 40231(d)(1), title XXXIII, § 330001(h)(7), Sept. 13, 1994, 108 Stat. 1934, 2139; Pub. L. 109–162, title XI, § 1111(c)(2)(D), Jan. 5, 2006, 119 Stat. 3102.)

PRIOR PROVISIONS

A prior section 801 of Pub. L. 90–351 was classified to section 3781 of this title prior to repeal by section 609B(a) of Pub. L. 98–473.

Another prior section 801 of Pub. L. 90–351, title III, June 19, 1968, 82 Stat. 211, is set out as a note under section 2510 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–162 substituted ''the purposes of such part A'' for ''the purposes of section 3751 of this title'' and ''the application submitted pursuant to section 3752 of this title. Such report shall include details identifying each applicant that used any funds to purchase any cruiser, boat, or helicopter and, with respect to such applicant, specifying both the amount of funds used by such applicant for each purchase of any cruiser, boat, or helicopter and a justification of each such purchase (and the Bureau of Justice Assistance shall submit to the Committee of the Judiciary of the House of Representatives and the Committee of the Judiciary of the Senate, promptly after preparation of such report a written copy of the portion of such report containing the information required by this sentence)'' for ''the application submitted pursuant to section 3753 of this title'' in concluding provisions.

1994—Subsec. (b). Pub. L. 103–322, in introductory provisions substituted ''subchapters'' for ''subchapters IV,'' and ''XII–C, and XII–I'' for ''and XII–C'', and in concluding provisions substituted ''part A of subchapter V of this chapter'' for ''subchapter IV of this chapter'' wherever appearing, ''3751'' for ''3743(a)'', and ''3753'' for ''3743''.

1990—Subsec. (b). Pub. L. 101–647, § 801(c)(1), substituted ''XII–B, and XII–C'' for ''and XII–B''.

Pub. L. 101–647, § 241(b)(2), substituted ''XII–A, and XII–B'' for ''and XII–A''.

1986—Subsec. (b). Pub. L. 99–570 inserted reference to subchapter XII–A of this chapter in introductory provisions.

1984—Subsec. (a). Pub. L. 98–473 in amending subsec. (a) generally, substituted ''Office of Justice Programs'' for ''Office of Justice Assistance, Research, and Statistics'' and ''Bureau of Justice Assistance'' for ''Law Enforcement Assistance Administration'' and also included authority for the Office of Juvenile Justice and Delinquency Prevention to establish rules, regulations, and procedures for exercise of its functions.

Subsec. (b). Pub. L. 98–473 in amending subsec. (b) generally, substituted ''Bureau of Justice Assistance'' for ''Law Enforcement Assistance Administration'' wherever appearing; provided for consultations with the Office of Juvenile Justice and Delinquency Prevention; and struck out provisions respecting: rules, regulations, and procedures affecting national priority grant programs or projects; evaluations in addition to the requirements of former sections 3743 and 3744 of this title; and requirement for comparison of effectiveness of formula grant programs or projects of States or local units of government with similar national priority and discretionary grant programs or projects.

Subsec. (c). Pub. L. 98–473 in amending section generally, reenacted subsec. (c) without change.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 3750 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3783. Notice and hearing on denial or termination of grant

Whenever, after reasonable notice and opportunity for a hearing on the record in accordance with section 554 of title 5, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics finds that a recipient of assistance under this chapter has failed to comply substantially with—

(1) any provisions of this chapter;

(2) any regulations or guidelines promulgated under this chapter; or

(3) any application submitted in accordance with the provisions of this chapter, or the provisions of any other applicable Federal Act;

the Director involved shall, until satisfied that there is no longer any such failure to comply, terminate payments to the recipient under this chapter, reduce payments to the recipient under this chapter by an amount equal to the amount of such payments which were not expended in accordance with this chapter, or limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply.

(Pub. L. 90–351, title I, § 802, formerly § 803, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1202; renumbered § 802 and amended Pub. L. 98–473, title II, § 609B(b), Oct. 12, 1984, 98 Stat. 2092; Pub. L. 99–570, title I, § 1552(b)(3), Oct. 27, 1986, 100 Stat. 3207–46; Pub. L. 101–647, title II, § 241(b)(3), title VIII, § 801(c)(2), Nov. 29, 1990, 104 Stat. 4813, 4826; Pub. L. 103–322, title IV, § 40231(d)(2), title XXXIII, § 330001(c), (h)(8), Sept. 13, 1994, 108 Stat. 1934, 2138, 2139; Pub. L. 107–273, div. C, title I, § 11012, Nov. 2, 2002, 116 Stat. 1823; Pub. L. 109–162, title XI, § 1155(1), Jan. 5, 2006, 119 Stat. 3113.)

PRIOR PROVISIONS

A prior section 802 of Pub. L. 90–351 was renumbered section 801 and is classified to section 3782 of this title.

Another prior section 802 of Pub. L. 90–351, title III, June 19, 1968, 82 Stat. 212–223, enacted sections 2510 to 2520 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

2006—Pub. L. 109–162 struck out subsec. (a) designation before ''Whenever, after reasonable notice'', struck out subsec. (b) which related to notice of and reasons for action, hearing or investigation, and finality of findings and determinations, and struck out subsec. (c) which related to rehearing, regulations and procedures, and presentation of additional information.

2002—Subsec. (b). Pub. L. 107–273, which directed amendment of subsec. (b) by substituting ''T,'' for ''U,'' in the original, was executed by substituting ''XII–H'' for ''XII–I'' in text to reflect the probable intent of Congress, notwithstanding that ''U'' was not followed by a comma in the original.

1994—Subsec. (b). Pub. L. 103–322 substituted ''part A of subchapter V of this chapter or under subchapter XII–A, XII–B, XII–C, or XII–I'' for ''subchapter IV, XII–A,, XII–B, or XII–C''.

1990—Subsec. (b). Pub. L. 101–647, § 801(c)(2), substituted '', XII–B, or XII–C'' for ''or XII–B''.

Pub. L. 101–647, § 241(b)(3), substituted '', XII–A, or XII–B'' for ''or XII–A''.

1986—Subsec. (b). Pub. L. 99–570 inserted reference to subchapter XII–A of this chapter.

1984—Subsec. (a). Pub. L. 98–473 in amending subsec. (a) generally, included provision for finding of noncompliance by the Bureau of Justice Assistance and excluded similar provision for Law Enforcement Assistance Administration, substituted ''the Director involved shall, until satisfied that there is no longer any such failure to comply,'' for ''they, until satisfied that there is no longer any such failure to comply, shall—'', and struck out designations ''(A)'' before ''terminate payment'', ''(B)'' before ''reduce payments'', and ''(C)'' before ''limit the availability of payments''.

Subsec. (b). Pub. L. 98–473 in amending subsec. (b) generally, substituted ''If any grant application submitted under subchapter IV of this chapter has been denied, or any grant under this chapter has been terminated'' for ''If a State grant application filed under subchapter IV of this chapter or any grant application filed under any other subchapter of this chapter has been rejected or a State applicant under subchapter IV of this chapter or applicant under any other subchapter of this chapter has been denied a grant or has had a grant, or any portion of a grant, discontinued, terminated or has been given a grant in a lesser amount that such applicant believes appropriate under the provisions of this chapter'' struck out ''or grantee'' after ''notify the applicant'' and before ''requests a hearing''; substituted requirement for notice by the Bureau of Justice Assistance rather than the Law Enforcement Assistance Administration; and inserted provisions for taking final action without hearing but requiring a more detailed statement of reasons for agency action to be made available to the applicant.

Subsec. (c). Pub. L. 98–473 in amending subsec. (c) generally, substituted provisions for findings and rehearings by the Bureau of Justice Assistance for similar provisions for Law Enforcement Assistance Administration; and substituted description of the party as ''applicant'' for prior designation as ''recipient''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3784. Finality of determinations

In carrying out the functions vested by this chapter in the Bureau of Justice Assistance, the Bureau of Justice Statistics, or the National Institute of Justice, their determinations, findings, and conclusions shall be final and conclusive upon all applications.

(Pub. L. 90–351, title I, § 803, formerly § 804, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1203; renumbered § 803 and amended Pub. L. 98–473, title II, § 609B(c), (f), Oct. 12, 1984, 98 Stat. 2093; Pub. L. 109–162, title XI, § 1155(2), Jan. 5, 2006, 119 Stat. 3113.)

PRIOR PROVISIONS

A prior section 803 of Pub. L. 90–351 was renumbered section 802 and is classified to section 3783 of this title.

Another prior section 803 of Pub. L. 90–351, title III, June 19, 1968, 82 Stat. 223, amended section 605 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

AMENDMENTS

2006—Pub. L. 109–162 struck out ", after reasonable notice and opportunity for a hearing," after "conclusions shall" and ", except as otherwise provided herein" before period at end.

1984—Pub. L. 98–473, § 609B(c), substituted "Bureau of Justice Assistance" for "Law Enforcement Assistance Administration".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(c) of Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3785. Repealed. Pub. L. 109–162, title XI, § 1155(3), Jan. 5, 2006, 119 Stat. 3114

Section, Pub. L. 90–351, title I, § 804, formerly § 805, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1203; renumbered § 804 and amended Pub. L. 98–473, title II, § 609B(d), (f), Oct. 12, 1984, 98 Stat. 2093; Pub. L. 103–322, title XXXIII, § 330001(h)(9), Sept. 13, 1994, 108 Stat. 2139, related to appellate court review.

A prior section 804 of Pub. L. 90–351 was renumbered section 803 and is classified to section 3784 of this title.

Another prior section 804 of Pub. L. 90–351, title III, June 19, 1968, 82 Stat. 223, was set out as a note under section 2510 of Title 18, Crimes and Criminal Procedure.

§ 3786. Delegation of functions

The Attorney General, the Assistant Attorney General, the Director of the National Institute of Justice, the Director of the Bureau of Justice Statistics, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, and the Director of the Bureau of Justice Assistance may delegate to any of their respective officers or employees such functions under this chapter as they deem appropriate.

(Pub. L. 90–351, title I, § 805, as added Pub. L. 98–473, title II, § 609B(g), Oct. 12, 1984, 98 Stat. 2093.)

PRIOR PROVISIONS

A prior section 3786, Pub. L. 90–351, title I, § 806, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1204, contained provisions similar to this section, prior to repeal by section 609B(e) of Pub. L. 98–473.

A prior section 805 of Pub. L. 90–351 was renumbered section 804 and was classified to section 3785 of this title prior to repeal by Pub. L. 109–162.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as a note under section 3711 of this title.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3787. Subpoena power; employment of hearing officers; authority to hold hearings

The Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may appoint such hearing examiners or administrative law judges or request the use of such administrative law judges selected by the Office of Personnel Management pursuant to section 3344 of title 5, as shall be necessary to carry out their respective powers and duties under this chapter. The Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics or upon authorization, any member thereof or any hearing examiner or administrative law judge assigned to or employed thereby shall have the power to hold hearings and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States they respectively may designate.

(Pub. L. 90–351, title I, § 806, as added Pub. L. 98–473, title II, § 609B(g), Oct. 12, 1984, 98 Stat. 2094.)

PRIOR PROVISIONS

A prior section 3787, Pub. L. 90–351, title I, § 807, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1204, contained provisions similar to this section, prior to repeal by section 609B(e) of Pub. L. 98–473.

A prior section 806 of Pub. L. 90–351 was classified to section 3786 of this title prior to repeal by section 609B(e) of Pub. L. 98–473.

Provisions similar to this section were contained in part in section 3788 of this title prior to repeal of such section by section 609B(e) of Pub. L. 98–473.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as a note under section 3711 of this title.

§ 3788. Personnel and administrative authority

(a) Officers and employees of certain Federal agencies; employment; compensation

The Assistant Attorney General, the Director of the Bureau of Justice Assistance, the Director of the Institute, and the Director of the Bu-

reau of Justice Statistics are authorized to select, appoint, employ, and fix compensation of such officers and employees as shall be necessary to carry out the powers and duties of the Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics, respectively, under this chapter.

(b) Use of available services; reimbursement

The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics are authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of Federal, State, and local agencies to the extent deemed appropriate after giving due consideration to the effectiveness of such existing services, equipment, personnel, and facilities.

(c) Other Federal agency performance of functions under this chapter; reimbursement

The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may arrange with and reimburse the heads of other Federal departments and agencies for the performance of any of the functions under this chapter.

(d) Experts and consultants; compensation

The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may procure the services of experts and consultants in accordance with section 3109 of title 5, relating to appointments in the Federal service, at rates of compensation for individuals not to exceed the daily equivalent of the rate of pay payable from time to time for GS–18 of the General Schedule under section 5332 of title 5.

(e) Advisory committees; compensation and travel expenses of committee members

The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics are authorized to appoint, without regard to the provisions of title 5, advisory committees to advise them with respect to the administration of this chapter as they deem necessary. Such committees shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.). Members of such committees not otherwise in the employ of the United States, while engaged in advising or attending meetings of such committees, shall be compensated at rates to be fixed by the Office but not to exceed the daily equivalent of the rate of pay payable from time to time for GS–18 of the General Schedule under section 5332 of title 5, and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(f) Payments; installments; advances or reimbursement; transportation and subsistence expenses for attendance at conferences or other assemblages

Payments under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Office, the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics, and may be used to pay the transportation and subsistence expenses of persons attending conferences or other assemblages notwithstanding section 1345 of title 31.

(g) Voluntary services; status as Federal employees; exceptions

The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics are authorized to accept and employ, in carrying out the provisions of this chapter, voluntary and uncompensated services notwithstanding section 1342 of title 31. Such individuals shall not be considered Federal employees except for purposes of chapter 81 of title 5 with respect to job-incurred disability and title 28 with respect to tort claims.

(Pub. L. 90–351, title I, § 807, as added Pub. L. 98–473, title II, § 609B(g), Oct. 12, 1984, 98 Stat. 2094.)

REFERENCES IN TEXT

Provisions of title 5 relating to appointments, referred to in subsec. (c), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

PRIOR PROVISIONS

A prior section 3788, Pub. L. 90–351, title I, § 810, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1204, contained in part provisions similar to subsec. (a) of this section, prior to repeal by section 609B(e) of Pub. L. 98–473.

A prior section 807 of Pub. L. 90–351 was classified to section 3787 of this title prior to repeal by section 609B(e) of Pub. L. 98–473.

Provisions similar to subsecs. (b), (c), (d) to (f), and (g) of this section were contained in sections 3789, 3789b(a), 3789c(a) to (c), and 3789h of this title, respectively, prior to repeal by section 609B(e) of Pub. L. 98–473.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as a note under section 3711 of this title.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 3789. Title to personal property

Notwithstanding any other provision of law, title to all expendable and nonexpendable personal property purchased with funds made avail-

able under this chapter, including such property purchased with funds made available under this chapter as in effect before October 12, 1984, shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office responsible for the trust fund required by section 3757 of this title, or the State office described in section 3796aa–7[1] of this title,,[2] as the case may be, that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

(Pub. L. 90–351, title I, § 808, as added Pub. L. 98–473, title II, § 609B(g), Oct. 12, 1984, 98 Stat. 2095; amended Pub. L. 99–570, title I, § 1552(b)(4), Oct. 27, 1986, 100 Stat. 3207–46; Pub. L. 101–647, title II, § 241(b)(4), Nov. 29, 1990, 104 Stat. 4813; Pub. L. 103–322, title XXXIII, § 330001(h)(10), Sept. 13, 1994, 108 Stat. 2139; Pub. L. 109–162, title XI, § 1111(c)(2)(E), Jan. 5, 2006, 119 Stat. 3102.)

REFERENCES IN TEXT

Section 3796aa–7 of this title, referred to in text, was repealed by Pub. L. 103–322, title IV, § 40156(c)(8), Sept. 13, 1994, 108 Stat. 1924.

PRIOR PROVISIONS

A prior section 3789, Pub. L. 90–351, title I, § 811, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1205, authorized use of available services, prior to repeal by section 609B(e) of Pub. L. 98–473. See section 3788(b) of this title.

A prior section 808 of Pub. L. 90–351, title I, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1204, amended section 5314 of Title 5, Government Organization and Employees, prior to repeal by section 609B(e) of Pub. L. 98–473.

AMENDMENTS

2006—Pub. L. 109–162 substituted ''the State office responsible for the trust fund required by section 3757 of this title, or the State office described in section 3796aa–7 of this title,'' for ''the State office described in section 3757 or 3796aa–7 of this title''.

1994—Pub. L. 103–322 substituted ''3757'' for ''3748, 3796*o*,''.

1990—Pub. L. 101–647 substituted '', 3796*o*, or 3796aa–7 of this title'' for ''or 3796*o* of this title''.

1986—Pub. L. 99–570 inserted reference to section 3796*o* of this title and '', as the case may be,''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 3750 of this title.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as a note under section 3711 of this title.

§§ 3789a to 3789c. Repealed. Pub. L. 98–473, title II, § 609B(e), Oct. 12, 1984, 98 Stat. 2093

Section 3789a, Pub. L. 90–351, title I, § 812, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1205, authorized consultations with other Federal, State, and local officials.

Section 3789b, Pub. L. 90–351, title I, § 813, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1205, provided for reimbursement authority and authorized use of grants, contracts, or cooperative agreements under chapter 63 of title 31. See section 3788(c) of this title.

Section 3789c, Pub. L. 90–351, title I, § 814, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1205, provided for employment of services of experts and consultants and appointment of advisory committees. See section 3788(d) to (f) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3789d. Prohibition of Federal control over State and local criminal justice agencies; prohibition of discrimination

(a) General rule

Nothing in this chapter or any other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other criminal justice agency of any State or any political subdivision thereof.

(b) Racial imbalance requirement restriction

Notwithstanding any other provision of law, nothing contained in this chapter shall be construed to authorize the National Institute of Justice, the Bureau of Justice Statistics, or the Law Enforcement Assistance Administration—

(1) to require, or condition the availability or amount of a grant upon the adoption by an applicant or grantee under this chapter of a percentage ratio, quota system, or other program to achieve racial balance in any criminal justice agency; or

(2) to deny or discontinue a grant because of the refusal of an applicant or grantee under this chapter to adopt such a ratio, system, or other program.

(c) Discrimination prohibited; notice of non-compliance; suspension and restoration of payments; hearing; civil action by Attorney General; private action, attorney fees, intervention by Attorney General

(1) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this chapter.

(2)(A) Whenever there has been—

(i) receipt of notice of a finding, after notice and opportunity for a hearing, by a Federal court (other than in an action brought by the Attorney General) or State court, or by a Federal or State administrative agency, to the effect that there has been a pattern or practice of discrimination in violation of paragraph (1); or

(ii) a determination after an investigation by the Office of Justice Programs (prior to a hearing under subparagraph (F) but including an opportunity for the State government or unit of local government to make a documen-

[1] See References in Text note below.

[2] So in original.

tary submission regarding the allegation of discrimination with respect to such program or activity, with funds made available under this chapter) that a State government or unit of local government is not in compliance with paragraph (1);

the Office of Justice Programs shall, within ten days after such occurrence, notify the chief executive of the affected State, or the State in which the affected unit of local government is located, and the chief executive of such unit of local government, that such program or activity has been so found or determined not to be in compliance with paragraph (1), and shall request each chief executive, notified under this subparagraph with respect to such violation, to secure compliance. For purposes of clause (i) a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of chapter 5 of title 5.

(B) In the event the chief executive secures compliance after notice pursuant to subparagraph (A), the terms and conditions with which the affected State government or unit of local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of local government), and by the Office of Justice Programs. On or prior to the effective date of the agreement, the Office of Justice Programs shall send a copy of the agreement to each complainant, if any, with respect to such violation. The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of local government) shall file semiannual reports with the Office of Justice Programs detailing the steps taken to comply with the agreement. These reports shall cease to be filed upon the determination of the Office of Justice Programs that compliance has been secured, or upon the determination by a Federal or State court that such State government or local governmental unit is in compliance with this section. Within fifteen days of receipt of such reports, the Office of Justice Programs shall send a copy thereof to each such complainant.

(C) If, at the conclusion of ninety days after notification under subparagraph (A)—

(i) compliance has not been secured by the chief executive of that State or the chief executive of that unit of local government; and

(ii) an administrative law judge has not made a determination under subparagraph (F) that it is likely the State government or unit of local government will prevail on the merits;

the Office of Justice Programs shall notify the Attorney General that compliance has not been secured and caused to have suspended further payment of any funds under this chapter to that program or activity. Such suspension shall be limited to the specific program or activity cited by the Office of Justice Programs in the notice under subparagraph (A). Such suspension shall be effective for a period of not more than one hundred and twenty days, or, if there is a hearing under subparagraph (G), not more than thirty days after the conclusion of such hearing, unless there has been an express finding by the Office of Justice Programs, after notice and opportunity for such a hearing, that the recipient is not in compliance with paragraph (1).

(D) Payment of the suspended funds shall resume only if—

(i) such State government or unit of local government enters into a compliance agreement approved by the Office of Justice Programs and the Attorney General in accordance with subparagraph (B);

(ii) such State government or unit of local government complies fully with the final order or judgment of a Federal or State court, or by a Federal or State administrative agency if that order or judgment covers all the matters raised by the Office of Justice Programs in the notice pursuant to subparagraph (A), or is found to be in compliance with paragraph (1) by such court; or

(iii) after a hearing the Office of Justice Programs pursuant to subparagraph (F) finds that noncompliance has not been demonstrated.

(E) Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, national origin, or sex in any program or activity of a State government or unit of local government which State government or unit of local government receives funds made available under this chapter, and the conduct allegedly violates the provisions of this section and neither party within forty-five days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may be otherwise available by law, the Office of Justice Programs shall cause to have suspended further payment of any funds under this chapter to that specific program or activity alleged by the Attorney General to be in violation of the provisions of this subsection until such time as the court orders resumption of payment.

(F) Prior to the suspension of funds under subparagraph (C), but within the ninety-day period after notification under subparagraph (C), the State government or unit of local government may request an expedited preliminary hearing on the record in accordance with section 554 of title 5, in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under subparagraph (G), prevail on the merits on the issue of the alleged noncompliance. A finding under this subparagraph by the administrative law judge in favor of the State government or unit of local government shall defer the suspension of funds under subparagraph (C) pending a finding of noncompliance at the conclusion of the hearing on the merits under subparagraph (G).

(G)(i) At any time after notification under subparagraph (A), but before the conclusion of the one-hundred-and-twenty-day period referred to in subparagraph (C), a State government or unit of local government may request a hearing on the record in accordance with section 554 of title 5, which the Office of Justice Programs shall initiate within sixty days of such request.

(ii) Within thirty days after the conclusion of the hearing, or, in the absence of a hearing, at

the conclusion of the one-hundred-and-twenty-day period referred to in subparagraph (C), the Office of Justice Programs shall make a finding of compliance or noncompliance. If the Office of Justice Programs makes a finding of noncompliance, the Office of Justice Programs shall notify the Attorney General in order that the Attorney General may institute a civil action under paragraph (3), cause to have terminated the payment of funds under this chapter, and, if appropriate, seek repayment of such funds.

(iii) If the Office of Justice Programs makes a finding of compliance, payment of the suspended funds shall resume as provided in subparagraph (D).

(H) Any State government or unit of local government aggrieved by a final determination of the Office of Justice Programs under subparagraph (G) may appeal such determination as provided in section 3785[1] of this title.

(3) Whenever the Attorney General has reason to believe that a State government or unit of local government has engaged in or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of the rights described in this section, including the suspension, termination, or repayment of such funds made available under this chapter as the court may deem appropriate, or placing any further such funds in escrow pending the outcome of the litigation.

(4)(A) Whenever a State government or unit of local government, or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by this subsection, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction. Administrative remedies shall be deemed to be exhausted upon the expiration of sixty days after the date the administrative complaint was filed with the Office of Justice Programs or any other administrative enforcement agency, unless within such period there has been a determination by the Office of Justice Programs or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

(B) In any civil action brought by a private person to enforce compliance with any provision of this subsection, the court may grant to a prevailing plaintiff reasonable attorney fees, unless the court determines that the lawsuit is frivolous, vexatious, brought for harassment purposes, or brought principally for the purpose of gaining attorney fees.

(C) In any action instituted under this section to enforce compliance with paragraph (1), the Attorney General, or a specially designated assistant for or in the name of the United States, may intervene upon timely application if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

(Pub. L. 90–351, title I, § 809, formerly § 815, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1206; renumbered § 809 and amended Pub. L. 98–473, title II, § 609B(f), (h)), Oct. 12, 1984, 98 Stat. 2093, 2095; Pub. L. 103–322, title XXXIII, § 330001(h)(11), Sept. 13, 1994, 108 Stat. 2139.)

REFERENCES IN TEXT

Section 3785 of this title, referred to in subsec. (c)(2)(H), was repealed by Pub. L. 109–162, title XI, § 1155(3), Jan. 5, 2006, 119 Stat. 3114.

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3766 of this title prior to the general amendment of this chapter by Pub. L. 96–157.

A prior section 809 of Pub. L. 90–351, title I, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1204, amended section 5315 of Title 5, Government Organization and Employees, prior to repeal by section 609B(e) of Pub. L. 98–473.

AMENDMENTS

1994—Subsec. (c)(2)(H). Pub. L. 103–322 made technical amendment to reference to section 3785 of this title to correct reference to corresponding section of original act.

1984—Subsec. (a). Pub. L. 98–473, § 609B(h)(2), struck out ''contained'' after ''Nothing''.

Subsec. (c). Pub. L. 98–473, § 609B(h)(3), substituted ''Office of Justice Programs'' for ''Office of Justice Assistance, Research, and Statistics'' wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(h) of Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3789e. Report to President and Congress

Not later than April 1 of each year, the Assistant Attorney General, the Director of the Bureau of Justice Assistance, the Director of the Bureau of Justice Statistics, and the Director of the National Institute of Justice shall each submit a report to the President and to the Speaker of the House of Representatives and the President of the Senate, on their activities under this chapter during the fiscal year next preceding such date.

(Pub. L. 90–351, title I, § 810, formerly § 816, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1209; renumbered § 810 and amended Pub. L. 98–473, title II, § 609B(f), (i), Oct. 12, 1984, 98 Stat. 2093, 2095.)

PRIOR PROVISIONS

A prior section 810 of Pub. L. 90–351 was classified to section 3788 of this title prior to repeal by section 609B(e) of Pub. L. 98–473.

AMENDMENTS

1984—Pub. L. 98–473, § 609B(i), substituted requirement of individual reports by certain officials of listed agencies to the President and the Speaker of the House and President of the Senate for former subsec. (a) through (e) provisions which included requirement of an annual report on or before March 31 of each year to the President and Committees on the Judiciary of the Senate and the House, including description of scope of coverage; report covering receipt and compilation of eval-

[1] See References in Text note below.

uations, statistics, and performance reports, comprehensive statistics, analyses, and findings respecting attainment of described objectives; plan for collection, analysis, and evaluation of data for measurement of progress in prescribed and additional areas, definition of ''comprehensive statistics'' and ''reasonably expected contribution''; attainment of reasonably expected contribution in prescribed and added areas; and data collection, including minimum duplication.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(i) of Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3789f. Other administrative provisions

(a) Recordkeeping requirement; scope of disclosure; other sources of funds

Each recipient of funds under this chapter shall keep such records as the Office of Justice Programs shall prescribe, including records which fully disclose the amount and disposition by such recipient of the funds, the total cost of the project or undertaking for which such funds are used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Access to records for audit and examination

The Office of Justice Programs or any of its duly authorized representatives, shall have access for purpose of audit and examination of any books, documents, papers, and records of the recipients of funds under this chapter which in the opinion of the Office of Justice Programs may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to under this chapter.

(c) Audit and examination period after completion of program or project

The Comptroller General of the United States or any of his duly authorized representatives, shall, until the expiration of three years after the completion of the program or project with which the assistance is used, have access for the purpose of audit and examination to any books, documents, papers, and records of recipients of Federal funds under this chapter which in the opinion of the Comptroller General may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to under this chapter.

(d) Recipients of assistance subject to provisions of section

The provisions of this section shall apply to all recipients of assistance under this chapter, whether by direct grant, cooperative agreement, or contract under this chapter or by subgrant or subcontract from primary grantees or contractors under this chapter.

(e) Revolving fund for acquisition of stolen goods and property within Bureau of Justice Assistance

There is hereby established within the Bureau of Justice Assistance a revolving fund for the purpose of supporting projects that will acquire stolen goods and property in an effort to disrupt illicit commerce in such goods and property. Notwithstanding any other provision of law, any income or royalties generated from such projects together with income generated from any sale or use of such goods or property, where such goods or property are not claimed by their lawful owner, shall be paid into the revolving fund. Where a party establishes a legal right to such goods or property, the Administrator of the fund may in his discretion assert a claim against the property or goods in the amount of Federal funds used to purchase such goods or property. Proceeds from such claims shall be paid into the revolving fund. The Administrator is authorized to make disbursements by appropriate means, including grants, from the fund for the purpose of this section.

(Pub. L. 90–351, title I, § 811, formerly § 817, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1212; renumbered § 811 and amended Pub. L. 98–473, title II, § 609B(f), (j), Oct. 12, 1984, 98 Stat. 2093, 2096; Pub. L. 103–322, title XXXIII, § 330001(h)(12), Sept. 13, 1994, 108 Stat. 2139.)

PRIOR PROVISIONS

A prior section 811 of Pub. L. 90–351 was classified to section 3789 of this title prior to repeal by section 609B(e) of Pub. L. 98–473.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–322 substituted ''Bureau of Justice Assistance'' for ''Law Enforcement Assistance Administration''.

1984—Subsecs. (a), (b). Pub. L. 98–473, § 609B(j)(1), substituted ''Office of Justice Programs'' for ''Office of Justice Assistance, Research, and Statistics'' wherever appearing.

Subsecs. (d) to (f). Pub. L. 98–473, § 609B(j)(2), (3), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) relating to civil rights regulations and conforming changes of the regulations.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(j) of Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3789g. Confidentiality of information

(a) Research or statistical information; immunity from process; prohibition against admission as evidence or use in any proceedings

No officer or employee of the Federal Government, and no recipient of assistance under the provisions of this chapter shall use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this chapter. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any

purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

(b) Criminal history information; disposition and arrest data; procedures for collection, storage, dissemination, and current status; security and privacy; availability for law enforcement, criminal justice, and other lawful purposes; automated systems: review, challenge, and correction of information

All criminal history information collected, stored, or disseminated through support under this chapter shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Office of Justice Programs shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this chapter, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction.

(c) Criminal intelligence systems and information; prohibition against violation of privacy and constitutional rights of individuals

All criminal intelligence systems operating through support under this chapter shall collect, maintain, and disseminate criminal intelligence information in conformance with policy standards which are prescribed by the Office of Justice Programs and which are written to assure that the funding and operation of these systems furthers the purpose of this chapter and to assure that such systems are not utilized in violation of the privacy and constitutional rights of individuals.

(d) Violations; fine as additional penalty

Any person violating the provisions of this section, or of any rule, regulation, or order issued thereunder, shall be fined not to exceed $10,000, in addition to any other penalty imposed by law.

(Pub. L. 90–351, title I, § 812, formerly § 818, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1213; renumbered § 812 and amended Pub. L. 98–473, title II, § 609B(f), (k), Oct. 12, 1984, 98 Stat. 2093, 2096; Pub. L. 109–162, title XI, § 1115(c), Jan. 5, 2006, 119 Stat. 3104.)

PRIOR PROVISIONS

A prior section 812 of Pub. L. 90–351 was classified to section 3789a of this title prior to repeal by section 609B(e) of Pub. L. 98–473.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162 substituted ''No'' for ''Except as provided by Federal law other than this chapter, no''.

1984—Subsecs. (b), (c). Pub. L. 98–473, 609B(k), substituted ''Office of Justice Programs'' for ''Office of Justice Assistance, Research, and Statistics''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(k) of Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3789h. Repealed. Pub. L. 98–473, title II, § 609B(e), (*l*), Oct. 12, 1984, 98 Stat. 2093, 2096

Section, Pub. L. 90–351, title I, § 819, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1213, authorized acceptance of voluntary services. See section 3788(g) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3789i. Administration of juvenile delinquency programs

The Director of the National Institute of Justice and the Director of the Bureau of Justice Statistics shall work closely with the Administrator of the Office of Juvenile Justice and Delinquency Prevention in developing and implementing programs in the juvenile justice and delinquency prevention field.

(Pub. L. 90–351, title I, § 813, formerly § 820, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1214; renumbered § 813 and amended Pub. L. 98–473, title II, § 609B(f), (m), Oct. 12, 1984, 98 Stat. 2093, 2096.)

PRIOR PROVISIONS

A prior section 813 of Pub. L. 90–351 was classified to section 3789b of this title prior to repeal by section 609B(e) of Pub. L. 98–473.

AMENDMENTS

1984—Pub. L. 98–473, § 609B(m), struck out subsec. (a) relating to programs concerned with juvenile delinquency and administered by the Law Enforcement Assistance Administration and struck out subsec. (b) designation.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(m) of Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3789j. Prohibition on land acquisition

No funds under this chapter shall be used for land acquisition.

(Pub. L. 90–351, title I, § 814, formerly § 821, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1214; renumbered § 814, Pub. L. 98–473, title II, § 609B(f), Oct. 12, 1984, 98 Stat. 2093.)

PRIOR PROVISIONS

A prior section 814 of Pub. L. 90–351 was classified to section 3789c of this title prior to repeal by section 609B(e) of Pub. L. 98–473.

§ 3789k. Prohibition on use of Central Intelligence Agency services

Notwithstanding any other provision of this chapter, no use will be made of services, facilities, or personnel of the Central Intelligence Agency.

(Pub. L. 90–351, title I, § 815, formerly § 822, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat.

1214; renumbered § 815, Pub. L. 98–473, title II, § 609B(f), Oct. 12, 1984, 98 Stat. 2093.)

PRIOR PROVISIONS

A prior section 815 of Pub. L. 90–351 was renumbered section 809 and is classified to section 3789d of this title.

§ 3789*l*. Indian liability waiver

Where a State does not have an adequate forum to enforce grant provisions imposing liability on Indian tribes, the Assistant Attorney General is authorized to waive State liability and may pursue such legal remedies as are necessary.

(Pub. L. 90–351, title I, § 816, formerly § 823, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1214; renumbered § 816 and amended Pub. L. 98–473, title II, § 609B(f), (n), Oct. 12, 1984, 98 Stat. 2093, 2096.)

PRIOR PROVISIONS

A prior section 816 of Pub. L. 90–351 was renumbered section 810 and is classified to section 3789e of this title.

AMENDMENTS

1984—Pub. L. 98–473, § 609B(n), substituted ''Assistant Attorney General'' for ''Administration''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(n) of Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3789m. District of Columbia matching fund source

Funds appropriated by the Congress for the activities of any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia may be used to provide the non-Federal share of the cost of programs or projects funded under this chapter.

(Pub. L. 90–351, title I, § 817, formerly § 824, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1214; renumbered § 817, Pub. L. 98–473, title II, § 609B(f), Oct. 12, 1984, 98 Stat. 2093.)

PRIOR PROVISIONS

A prior section 817 of Pub. L. 90–351 was renumbered section 811 and is classified to section 3789f of this title.

§ 3789n. Limitation on civil justice matters

Authority of any entity established under this chapter shall extend to civil justice matters only to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters.

(Pub. L. 90–351, title I, § 818, formerly § 825, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1214; renumbered § 818, Pub. L. 98–473, title II, § 609B(f), Oct. 12, 1984, 98 Stat. 2093.)

PRIOR PROVISIONS

A prior section 818 of Pub. L. 90–351 was renumbered section 812 and is classified to section 3789g of this title.

§ 3789*o*. Repealed. Pub. L. 98–473, title II, § 609B(e), Oct. 12, 1984, 98 Stat. 2093

Section, Pub. L. 90–351, title I, § 826, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1214, required reimbursement of Federal assistance for unused equipment.

§ 3789p. Accountability and oversight

(a) Report by grant recipients

The Attorney General or Secretary of Health and Human Services, as applicable, shall require grantees under any program authorized or reauthorized by this division or an amendment made by this division to report on the effectiveness of the activities carried out with amounts made available to carry out that program, including number of persons served, if applicable, numbers of persons seeking services who could not be served and such other information as the Attorney General or Secretary may prescribe.

(b) Report to Congress

The Attorney General or Secretary of Health and Human Services, as applicable, shall report biennially to the Committees on the Judiciary of the House of Representatives and the Senate on the grant programs described in subsection (a) of this section, including the information contained in any report under that subsection.

(Pub. L. 106–386, div. B, § 1003, Oct. 28, 2000, 114 Stat. 1491.)

REFERENCES IN TEXT

This division, referred to in subsec. (a), is division B of Pub. L. 106–386, Oct. 28, 2000, 114 Stat. 1491, known as the Violence Against Women Act of 2000. For complete classification of division B to the Code, see Short Title of 2000 Amendment note set out under section 13701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Violence Against Women Act of 2000, and also as part of the Victims of Trafficking and Violence Protection Act of 2000, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

SUBCHAPTER IX—DEFINITIONS

§ 3791. General provisions

(a) Definitions

As used in this chapter—

(1) ''criminal justice'' means activities pertaining to crime prevention, control, or reduction, or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control, or reduce crime or to apprehend criminals, including juveniles, activities of courts having criminal jurisdiction, and related agencies (including but not limited to prosecutorial and defender services, juvenile delinquency agencies and pretrial service or release agencies), activities of corrections, probation, or parole authorities and related agencies assisting in the rehabilitation, supervision, and care of criminal offenders, and programs relating to the prevention, control, or reduction of narcotic addiction and juvenile delinquency;

(2) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands,

American Samoa, Guam, and the Northern Mariana Islands: *Provided*, That for the purposes of section 3755(a) of this title, American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one state[1] and that for these purposes 67 per centum of the amounts allocated shall be allocated to American Samoa, and 33 per centum to the Commonwealth of the Northern Mariana Islands.[2]

(3) ''unit of local government'' means—

(A) any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State;

(B) any law enforcement district or judicial enforcement district that—

(i) is established under applicable State law; and

(ii) has the authority to, in a manner independent of other State entities, establish a budget and impose taxes;

(C) an Indian Tribe that performs law enforcement functions, as determined by the Secretary of the Interior; or

(D) for the purposes of assistance eligibility, any agency of the government of the District of Columbia or the Federal Government that performs law enforcement functions in and for—

(i) the District of Columbia; or

(ii) any Trust Territory of the United States;

(4) ''construction'' means the erection, acquisition, renovation, repairs, remodeling, or expansion of new or existing buildings or other physical facilities, and the acquisition or installation of initial equipment therefor;

(5) ''combination'' as applied to States or units of local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a criminal justice program, plan, or project;

(6) ''public agency'' means any State, unit of local government, combination of such States or units, or any department, agency, or instrumentality of any of the foregoing;

(7) ''correctional facility'' means any place for the confinement or rehabilitation of offenders or individuals charged with or convicted of criminal offenses;

(8) ''correctional facility project'' means a project for the construction, replacement, alteration or expansion of a prison or jail for the purpose of relieving overcrowding or substandard conditions;

(9) ''criminal history information'' includes records and related data, contained in an automated or manual criminal justice informational system, compiled by law enforcement agencies for the purpose of identifying criminal offenders and alleged offenders and maintaining as to such persons records of arrests, the nature and disposition of criminal charges, sentencing, confinement, rehabilitation, and release;

(10) ''evaluation'' means the administration and conduct of studies and analyses to determine the impact and value of a project or program in accomplishing the statutory objectives of this chapter;

(11) ''neighborhood or community-based organizations'' means organizations, including faith-based, that are representative of communities or significant segments of communities;

(12) ''chief executive'' means the highest official of a State or local jurisdiction;

(13) ''cost of construction'' means all expenses found by the Director to be necessary for the construction of the project, including architect and engineering fees, but excluding land acquisition costs;

(14) ''population'' means total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period in time;

(15) ''Attorney General'' means the Attorney General of the United States or his designee;

(16) ''court of last resort'' means that State court having the highest and final appellate authority of the State. In States having two or more such courts, court of last resort shall mean that State court, if any, having highest and final appellate authority, as well as both administrative responsibility for the State's judicial system and the institutions of the State judicial branch and rulemaking authority. In other States having two or more courts with highest and final appellate authority, court of last resort shall mean the highest appellate court which also has either rulemaking authority or administrative responsibility for the State's judicial system and the institutions of the State judicial branch. Except as used in the definition of the term ''court of last resort'' the term ''court'' means a tribunal recognized as a part of the judicial branch of a State or of its local government units;

(17) ''institution of higher education'' means any such institution as defined by section 1001 of title 20, subject, however, to such modifications and extensions as the Office may determine to be appropriate;

(18) ''white-collar crime'' means an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage;

(19) ''proven effectiveness'' means that a program, project, approach, or practice has been shown by analysis of performance and results to make a significant contribution to the accomplishment of the objectives for which it was undertaken or to have a significant effect in improving the condition or problem it was undertaken to address;

(20) ''record of proven success'' means that a program, project, approach, or practice has been demonstrated by evaluation or by analysis of performance data and information to be successful in a number of jurisdictions or over a period of time in contributing to the accomplishment of objectives or to improving conditions identified with the problem, to which it is addressed;

(21) ''high probability of improving the criminal justice system'' means that a prudent assessment of the concepts and imple-

[1] So in original. Probably should be capitalized.

[2] So in original. The period probably should be a semicolon.

mentation plans included in a proposed program, project, approach, or practice, together with an assessment of the problem to which it is addressed and of data and information bearing on the problem, concept, and implementation plan, provides strong evidence that the proposed activities would result in identifiable improvements in the criminal justice system if implemented as proposed;

(22) ''correctional option'' includes community-based incarceration, weekend incarceration, boot camp prison, electronic monitoring of offenders, intensive probation, and any other innovative punishment designed to have the greatest impact on offenders who can be punished more effectively in an environment other than a traditional correctional facility;

(23) ''boot camp prison'' includes a correctional facility in which inmates are required to participate in a highly regimented program that provides strict discipline, physical training, and hard labor, together with extensive rehabilitative activities and with educational, job training, and drug treatment support;

(24) the term ''young offender'' means a non-violent first-time offender or a non-violent offender with a minor criminal record who is 22 years of age or younger (including juveniles);

(25) the term ''residential substance abuse treatment program'' means a course of individual and group activities, lasting between 6 and 12 months, in residential treatment facilities set apart from the general prison population—

(A) directed at the substance abuse problems of the prisoner; and

(B) intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems;

(26) the term ''Indian Tribe'' has the meaning given the term ''Indian tribe'' in section 450b(e) of title 25; and

(27) the term ''private person'' means any individual (including an individual acting in his official capacity) and any private partnership, corporation, association, organization, or entity (or any combination thereof).

(b) Data basis for definitions; reflection of technical changes or modifications

Where appropriate, the definitions in subsection (a) of this section shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available ninety days prior to the beginning of such fiscal year. The Office may by regulation change or otherwise modify the meaning of the terms defined in subsection (a) of this section in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

(c) Designation of public agencies for undertaking a program or project

One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of local government to undertake a program or project in whole or in part.

(Pub. L. 90–351, title I, § 901, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1216; amended Pub. L. 98–473, title II, § 609C, Oct. 12, 1984, 98 Stat. 2096; Pub. L. 99–396, § 7, Aug. 27, 1986, 100 Stat. 839; Pub. L. 100–690, title VI, § 6092(b), Nov. 18, 1988, 102 Stat. 4339; Pub. L. 101–219, title II, § 206, Dec. 12, 1989, 103 Stat. 1874; Pub. L. 101–647, title XVIII, § 1801(c), Nov. 29, 1990, 104 Stat. 4849; Pub. L. 103–322, title II, § 20201(c), title III, § 32101(c), title XXXIII, § 330001(d), (h)(13), Sept. 13, 1994, 108 Stat. 1822, 1900, 2138, 2140; Pub. L. 105–244, title I, § 102(a)(13)(D), Oct. 7, 1998, 112 Stat. 1620; Pub. L. 105–277, div. A, § 101(b) [title I, § 129(b)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–76; Pub. L. 109–162, title XI, §§ 1111(c)(2)(F), 1156, Jan. 5, 2006, 119 Stat. 3102, 3114.)

PRIOR PROVISIONS

A prior section 3791 of this title, Pub. L. 90–351, title I, § 651, as added Pub. L. 91–644, title I, § 10, Jan. 2, 1971, 84 Stat. 1889; amended Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 218, related to embezzlement, theft, and fraud, prior to the general amendment of this chapter by Pub. L. 96–157. See section 3795 of this title.

A prior section 901 of Pub. L. 90–351, title IV, June 19, 1968, 82 Stat. 225, was classified as a note under section 921 of Title 18, Crimes and Criminal Procedure.

A prior section 3792 of this title, Pub. L. 90–351, title I, § 652, as added Pub. L. 91–644, title I, § 10, Jan. 2, 1971, 84 Stat. 1889; amended Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 218, related to fraudulent and false statements or entries, prior to the general amendment of this chapter by Pub. L. 96–157. See section 3795a of this title.

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–162, § 1111(c)(2)(F), which directed the substitution of ''for the purposes of section 3755(a) of this title'' for ''for the purposes of section 3756(a) of this title'', was executed by making the substitution for ''for the purpose of section 3756(a) of this title'', to reflect the probable intent of Congress.

Subsec. (a)(3)(C). Pub. L. 109–162, § 1156(1), struck out ''(as that term is defined in section 5603 of this title)'' after ''an Indian Tribe''.

Subsec. (a)(5). Pub. L. 109–162, § 1156(2), substituted ''program, plan, or project'' for ''program or project''.

Subsec. (a)(11). Pub. L. 109–162, § 1156(3), substituted '', including faith-based, that'' for ''which''.

Subsec. (a)(26), (27). Pub. L. 109–162, § 1156(4), added pars. (26) and (27).

1998—Subsec. (a)(3). Pub. L. 105–277, which directed the general amendment of par. (3) of this section, was executed to subsec. (a)(3) of this section, to reflect the probable intent of Congress. Prior to amendment, subsec. (a)(3) read as follows: ''''unit of local government' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia, and the Trust Territory of the Pacific Islands;''.

Subsec. (a)(17). Pub. L. 105–244, which directed amendment of par. (17) of this section by substituting ''1001'' for ''1141(a)'', was executed to subsec. (a)(17) of this section, to reflect the probable intent of Congress.

1994—Subsec. (a)(3). Pub. L. 103–322, § 330001(h)(13), substituted ''Columbia, and'' for ''Columbia and,''.

Subsec. (a)(21). Pub. L. 103–322, §§ 20201(c)(1), 330001(d), amended par. (21) identically, inserting a semicolon at end.

Subsec. (a)(22). Pub. L. 103–322, § 20201(c)(2), struck out ''and'' at end.

Subsec. (a)(23). Pub. L. 103–322, § 32101(c)(1), which directed the striking out of ''and'' at end of par. (23), could not be executed because the word ''and'' did not appear at end of par. (23).

Pub. L. 103–322, § 20201(c)(3), substituted a semicolon for period at end.

Subsec. (a)(24). Pub. L. 103–322, § 32101(c)(2), substituted ''; and'' for period at end.

Pub. L. 103–322, § 20201(c)(4), added par. (24).

Subsec. (a)(25). Pub. L. 103–322, § 32101(c)(3), added par. (25).

1990—Subsec. (a)(22), (23). Pub. L. 101–647 added pars. (22) and (23).

1989—Subsec. (a)(2). Pub. L. 101–219 substituted ''*Provided*, That for the purpose of section 3756(a) of this title, American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one state and that for these purposes 67 per centum of the amounts allocated shall be allocated to American Samoa, and 33 per centum to the Commonwealth of the Northern Mariana Islands.'' for ''*Provided*, That for the purposes of section 3756(a) of this title American Samoa, Guam, and the Northern Mariana Islands shall be considered as one State and that, for these purposes, 33 per centum of the amounts allocated shall be allocated to American Samoa, 50 per centum to Guam, and 17 per centum to the Northern Mariana Islands;''.

1988—Subsec. (a)(2). Pub. L. 100–690 substituted ''section 3756(a)'' for ''section 3747(a)''.

1986—Subsec. (a)(2). Pub. L. 99–396, § 7(1), included American Samoa, Guam, and the Northern Mariana Islands in definition of ''State'' and inserted proviso directing that for purposes of section 3747(a) of this title American Samoa, Guam, and the Northern Mariana Islands shall be considered as one State.

Subsec. (a)(3). Pub. L. 99–396, § 7(2), substituted ''and'' for '', Guam, American Samoa'' after ''in and for the District of Columbia'' and struck out '', or the Commonwealth of the Northern Mariana Islands'' after ''Trust Territory of the Pacific Islands''.

1984—Subsec. (a)(2). Pub. L. 98–473, § 609C(b)(1), struck out references to Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Subsec. (a)(3). Pub. L. 98–473, § 609C(b)(2), inserted references to Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Subsec. (a)(4). Pub. L. 98–473, § 609C(b)(3), extended definition of ''construction'' to include renovation, repairs, and remodeling and struck out previous exclusion of such items from definition.

Subsec. (a)(7). Pub. L. 98–473, § 609C(b)(4), substituted ''correctional facility'' for ''correctional institution or facility''.

Subsec. (a)(8). Pub. L. 98–473, § 609C(b)(5), substituted definition of ''correctional facility project'' for ''comprehensive''.

Subsec. (a)(13). Pub. L. 98–473, § 609C(b)(6), substituted definition of ''cost of construction'' for ''municipality''.

Subsecs. (a)(17), (b). Pub. L. 98–473, § 609C(a), substituted ''Office'' for ''Administration''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1111(c)(2)(F) of Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 3750 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

SUBCHAPTER X—FUNDING

§ 3793. Authorization of appropriations

(a)(1) There is authorized to be appropriated $30,000,000 for fiscal year 1992 and $33,000,000 for each of the fiscal years 1994 and 1995 to carry out the functions of the Bureau of Justice Statistics.

(2) There is authorized to be appropriated $30,000,000 for fiscal year 1992 and $33,000,000 for each of the fiscal years 1994 and 1995 to carry out the functions of the National Institute of Justice.

(3) There are authorized to be appropriated such sums as may be necessary for fiscal year 1992 and $28,000,000 for each of the fiscal years 1994 and 1995 to carry out the remaining functions of the Office of Justice Programs and the Bureau of Justice Assistance other than functions under subchapters IV, V, VI,[1] VII, XII, XII–A, XII–B, XII–C, XII–D, XII–E, XII–F, XII–G, XII–H, XII–I, XII–J,[1] XII–K, and XII–L or[2] XVI of this chapter.

(4) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out subchapter XII of this chapter.

(5) There are authorized to be appropriated such sums as may be necessary for fiscal year 1992 and $1,000,000,000 for each of the fiscal years 1994 and 1995 to carry out the programs under subchapters IV and V (other than subpart 2 of part B)[3] (other than subpart 2 of part B of subchapter V) of this chapter.

(6) There are authorized to be appropriated such sums as may be necessary for fiscal year 1992, $245,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year[4] 1994 and 1995 to carry out subpart 2 of part B of subchapter V of this chapter.

(7) There is authorized to be appropriated to carry out subchapter XII–B of this chapter $1,000,000 for each of fiscal years 2001 through 2005.

(8) There are authorized to be appropriated such sums as may be necessary for fiscal year 1992, $16,500,000 for fiscal year 1993, and such sums as may be necessary for fiscal year[4] 1994 and 1995.

(9) There are authorized to be appropriated to carry out subchapter XII–C of this chapter—

(A) $24,000,000 for fiscal year 1996;
(B) $40,000,000 for fiscal year 1997;
(C) $50,000,000 for fiscal year 1998;
(D) $60,000,000 for fiscal year 1999; and
(E) $66,000,000 for fiscal year 2000.

(10) There are[5] authorized to be appropriated $10,000,000 for each of the fiscal years 1994, 1995, and 1996 to carry out projects under subchapter XII–D of this chapter.

(11)(A) There are authorized to be appropriated to carry out subchapter XII–E of this chapter, to remain available until expended $1,047,119,000 for each of fiscal years 2006 through 2009.

(B) Of funds available under subchapter XII–E of this chapter in any fiscal year, up to 3 percent

[1] See References in Text note below.

[2] So in original.

[3] So in original. Phrase ''(other than subpart 2 of part B)'' probably should not appear.

[4] So in original. Probably should be ''years''.

[5] So in original. Probably should be ''is''.

may be used for technical assistance under section 3796dd(d) of this title or for evaluations or studies carried out or commissioned by the Attorney General in furtherance of the purposes of subchapter XII–E of this chapter. Of the remaining funds, 50 percent shall be allocated for grants pursuant to applications submitted by units of local government or law enforcement agencies having jurisdiction over areas with populations exceeding 150,000 or by public and private entities that serve areas with populations exceeding 150,000, and 50 percent shall be allocated for grants pursuant to applications submitted by units of local government or law enforcement agencies having jurisdiction over areas with populations 150,000 or less or by public and private entities that serve areas with populations 150,000 or less. In view of the extraordinary need for law enforcement assistance in Indian country, an appropriate amount of funds available under subchapter XII–E of this chapter shall be made available for grants to Indian tribal governments or tribal law enforcement agencies.

(16)[6] There are authorized to be appropriated to carry out projects under subchapter XII–F of this chapter—

(A) $20,000,000 for fiscal year 1996;
(B) $25,000,000 for fiscal year 1997;
(C) $30,000,000 for fiscal year 1998;
(D) $35,000,000 for fiscal year 1999; and
(E) $40,000,000 for fiscal year 2000.

(17) There are authorized to be appropriated to carry out the projects under subchapter XII–G of this chapter—

(A) $27,000,000 for fiscal year 1996;
(B) $36,000,000 for fiscal year 1997;
(C) $63,000,000 for fiscal year 1998;
(D) $72,000,000 for fiscal year 1999; and
(E) $72,000,000 for fiscal year 2000.

(18) There is authorized to be appropriated to carry out subchapter XII–H of this chapter $225,000,000 for each of fiscal years 2007 through 2011.

(19) There is authorized to be appropriated to carry out subchapter XII–I of this chapter $75,000,000 for each of fiscal years 2007 through 2011. Funds appropriated under this paragraph shall remain available until expended..[7]

(20) There are authorized to be appropriated to carry out subchapter XII–J of this chapter, $10,000,000 for each of fiscal years 2001 through 2004.

(21) There are authorized to be appropriated to carry out subchapter XII–K of this chapter—

(1) $2,500,000 for fiscal year 1996;
(2) $4,000,000 for fiscal year 1997;
(3) $5,000,000 for fiscal year 1998;
(4) $6,000,000 for fiscal year 1999; and
(5) $7,500,000 for fiscal year 2000.

(22) There are authorized to be appropriated to carry out subchapter XII–L of this chapter—

(1) $1,000,000 for fiscal year 1996;
(2) $3,000,000 for fiscal year 1997;
(3) $5,000,000 for fiscal year 1998;
(4) $13,500,000 for fiscal year 1999; and
(5) $17,500,000 for fiscal year 2000.

(23) There are authorized to be appropriated to carry out subchapter XII–M of this chapter, $25,000,000 for each of fiscal years 1999 through 2001, and $50,000,000 for each of fiscal years 2002 through 2009.

(24) There are authorized to be appropriated to carry out subchapter XV of this chapter, to remain available until expended—

(A) $35,000,000 for fiscal year 2001;
(B) $85,400,000 for fiscal year 2002;
(C) $134,733,000 for fiscal year 2003;
(D) $128,067,000 for fiscal year 2004;
(E) $56,733,000 for fiscal year 2005;
(F) $42,067,000 for fiscal year 2006;
(G) $20,000,000 for fiscal year 2007;
(H) $20,000,000 for fiscal year 2008; and
(I) $20,000,000 for fiscal year 2009.

(25)(A) Except as provided in subparagraph (C), there are authorized to be appropriated to carry out subchapter XVI of this chapter—

(i) $50,000,000 for fiscal year 2002;
(ii) $54,000,000 for fiscal year 2003;
(iii) $58,000,000 for fiscal year 2004; and[8]
(iv) $60,000,000 for fiscal year 2005.[9]
(v)[10] $70,000,000 for each of fiscal years 2007 and 2008.[11]
(v)[10] $70,000,000 for fiscal year 2006.

(B) The Attorney General shall reserve not less than 1 percent and not more than 4.5 percent of the sums appropriated for this program in each fiscal year for research and evaluation of this program.

(C) No funds made available to carry out subchapter XVI of this chapter shall be expended if the Attorney General fails to submit the report required to be submitted under section 2401(c) of title II of Division B of the 21st Century Department of Justice Appropriations Authorization Act.[1]

(b) Funds appropriated for any fiscal year may remain available for obligation until expended.

(c) Notwithstanding any other provision of law, no funds appropriated under this section for subchapter V of this chapter may be transferred or reprogrammed for carrying out any activity which is not authorized under such subchapter.

(Pub. L. 90–351, title I, § 1001, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1218; amended Pub. L. 98–473, title II, § 609D(a), Oct. 12, 1984, 98 Stat. 2097; Pub. L. 99–570, title I, § 1552(c), Oct. 27, 1986, 100 Stat. 3207–46; Pub. L. 100–690, title VI, § 6093, Nov. 18, 1988, 102 Stat. 4339; Pub. L. 101–647, title II, § 241(c), title VIII, § 801(b), title XVIII, § 1801(e), title XXVIII, § 2801, Nov. 29, 1990, 104 Stat. 4814, 4826, 4849, 4912; Pub. L. 102–521, § 4(c), Oct. 25, 1992, 106 Stat. 3406; Pub. L. 102–534, § 1, Oct. 27, 1992, 106 Stat. 3524; Pub. L. 103–322, title I, § 10003(c), title II, § 20201(d), title III, § 32101(d), title IV, §§ 40121(c), 40156(c)(1), 40231(c), title V, § 50001(c), title XVIII, § 180101(a), title XXI, §§ 210201(c), 210302(c)(3), 210601, title XXXIII, § 330001(b)(3), (h)(14), Sept. 13, 1994, 108 Stat. 1814, 1823, 1901, 1916, 1923, 1934, 1958, 2045, 2064, 2068, 2073, 2138, 2140; Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(B)(i)], Apr. 26, 1996, 110 Stat.

[6] So in original. No pars. (12) to (15) have been enacted.
[7] So in original.
[8] So in original. The word ''and'' probably should not appear.
[9] So in original. The period probably should be a semicolon.
[10] So in original. Two cls. (v) have been enacted.
[11] So in original. The period probably should be ''; and''.

1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–181, § 3(b), June 16, 1998, 112 Stat. 515; Pub. L. 106–386, div. B, title I, §§ 1103(a), 1104, title III, § 1302(c), Oct. 28, 2000, 114 Stat. 1495, 1497, 1511; Pub. L. 106–515, § 3(c), Nov. 13, 2000, 114 Stat. 2403; Pub. L. 106–517, § 3(f), Nov. 13, 2000, 114 Stat. 2409; Pub. L. 106–561, § 2(c)(2)(A), Dec. 21, 2000, 114 Stat. 2791; Pub. L. 107–273, div. B, title II, § 2302, Nov. 2, 2002, 116 Stat. 1798; Pub. L. 108–372, § 4, Oct. 25, 2004, 118 Stat. 1755; Pub. L. 108–405, title III, § 311(c), (d), Oct. 30, 2004, 118 Stat. 2277; Pub. L. 109–162, title I, §§ 101(a), 102(a), title XI, §§ 1116, 1142(b), 1163(c), Jan. 5, 2006, 119 Stat. 2972, 2975, 3104, 3110, 3120; Pub. L. 109–177, title VII, § 752, Mar. 9, 2006, 120 Stat. 273.)

REFERENCES IN TEXT

Subchapter VI of this chapter, referred to in subsec. (a)(3), was repealed by Pub. L. 109–162, title XI, § 1154(a), Jan. 5, 2006, 119 Stat. 3113.

Subchapter XII–J of this chapter, referred to in subsec. (a)(3), was repealed by Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(A)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

Section 2401(c) of title II of Division B of the 21st Century Department of Justice Appropriations Authorization Act, referred to in subsec. (a)(25)(C), probably means section 2301(c) of title II of div. B of Pub. L. 107–273, Nov. 2, 2002, 116 Stat. 1798, which is not classified to the Code. Pub. L. 107–273 does not contain a section 2401.

PRIOR PROVISIONS

A prior section 3793, Pub. L. 90–351, title I, § 653, as added Pub. L. 91–644, title I, § 10, Jan. 2, 1971, 84 Stat. 1889; amended Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 218, subjected the operation of the law enforcement and criminal justice program under this chapter to section 371 of Title 18, Crimes and Criminal Procedure, prior to the general amendment of this chapter by Pub. L. 96–157. See section 3795b of this title.

A prior section 1001 of Pub. L. 90–351, title V, June 19, 1968, 82 Stat. 235, enacted section 7313 of Title 5, Government Organization and Employees.

AMENDMENTS

2006—Subsec. (a)(11)(A). Pub. L. 109–162, § 1163(c)(1), substituted provisions authorizing appropriations for fiscal years 2006 through 2009 for provisions authorizing appropriations for fiscal years 1995 through 2000.

Subsec. (a)(11)(B). Pub. L. 109–162, § 1163(c)(2), substituted ''section 3796dd(d) of this title'' for ''section 3796dd(f) of this title'' and struck out ''Of the funds available in relation to grants under subchapter XII–E of this chapter, at least 85 percent shall be applied to grants for the purposes specified in section 3796dd(b) of this title, and no more than 15 percent may be applied to other grants in furtherance of the purposes of subchapter XII–E of this chapter.'' after second sentence.

Subsec. (a)(18). Pub. L. 109–162, § 101(a), substituted ''$225,000,000 for each of fiscal years 2007 through 2011'' for ''$185,000,000 for each of fiscal years 2001 through 2005''.

Subsec. (a)(19). Pub. L. 109–162, § 102(a), substituted ''$75,000,000 for each of fiscal years 2007 through 2011. Funds appropriated under this paragraph shall remain available until expended.'' for ''$65,000,000 for each of fiscal years 2001 through 2005''.

Subsec. (a)(23). Pub. L. 109–162, § 1116, substituted ''2009'' for ''2007''.

Subsec. (a)(25)(A)(v). Pub. L. 109–177, which directed amendment of par. (25)(A) of this section by adding cl. (v), relating to fiscal year 2006, at end, was executed by adding that cl. (v) at end of subsec. (a)(25)(A) of this section, to reflect the probable intent of Congress.

Pub. L. 109–162, § 1142(b), which directed amendment of par. (25)(A) of this section by adding cl. (v), relating to fiscal years 2007 and 2008, at end, was executed by adding cl. (v) at end of subsec. (a)(25)(A) of this section, to reflect the probable intent of Congress.

2004—Subsec. (a)(23). Pub. L. 108–372 substituted ''2007'' for ''2004''.

Subsec. (a)(24). Pub. L. 108–405, § 311(d), realigned margins.

Subsec. (a)(24)(G) to (I). Pub. L. 108–405, § 311(c), added subpars. (G) to (I).

Subsec. (a)(25). Pub. L. 108–405, § 311(d), realigned margins.

2002—Subsec. (a)(3). Pub. L. 107–273, § 2302(1), inserted ''or XVI'' after ''and XII–L''.

Subsec. (a)(25). Pub. L. 107–273, § 2302(2), added par. (25).

2000—Subsec. (a)(7). Pub. L. 106–386, § 1302(c), added par. (7) and struck out former par. (7) which read as follows: ''There are authorized to be appropriated to carry out subchapter XII–B of this chapter—

''(A) $250,000 for fiscal year 1996;
''(B) $1,000,000 for fiscal year 1997;
''(C) $1,000,000 for fiscal year 1998;
''(D) $1,000,000 for fiscal year 1999; and
''(E) $1,000,000 for fiscal year 2000.''

Subsec. (a)(18). Pub. L. 106–386, § 1103(a), added par. (18) and struck out former par. (18) which read as follows: ''There are authorized to be appropriated to carry out subchapter XII–H of this chapter—

''(A) $26,000,000 for fiscal year 1995;
''(B) $130,000,000 for fiscal year 1996;
''(C) $145,000,000 for fiscal year 1997;
''(D) $160,000,000 for fiscal year 1998;
''(E) $165,000,000 for fiscal year 1999; and
''(F) $174,000,000 for fiscal year 2000.''

Subsec. (a)(19). Pub. L. 106–386, § 1104, added par. (19) and struck out former par. (19) which read as follows: ''There are authorized to be appropriated to carry out subchapter XII–I of this chapter—

''(A) $28,000,000 for fiscal year 1996;
''(B) $33,000,000 for fiscal year 1997; and
''(C) $59,000,000 for fiscal year 1998.''

Subsec. (a)(20). Pub. L. 106–515 added par. (20).

Subsec. (a)(23). Pub. L. 106–517 inserted '', and $50,000,000 for each of fiscal years 2002 through 2004'' before period at end.

Subsec. (a)(24). Pub. L. 106–561 added par. (24).

1998—Subsec. (a)(23). Pub. L. 105–181 added par. (23).

1996—Subsec. (a)(20). Pub. L. 104–134 struck out par. (20) which read as follows: ''There are authorized to be appropriated to carry out subchapter XII–J of this chapter—

''(A) $100,000,000 for fiscal year 1995;
''(B) $150,000,000 for fiscal year 1996;
''(C) $150,000,000 for fiscal year 1997;
''(D) $200,000,000 for fiscal year 1998;
''(E) $200,000,000 for fiscal year 1999; and
''(F) $200,000,000 for fiscal year 2000.''

1994—Subsec. (a)(1), (2). Pub. L. 103–322, § 210601(1), (2), substituted ''1994 and 1995'' for ''1993 and 1994''.

Subsec. (a)(3). Pub. L. 103–322, § 210601(3), substituted ''1994 and 1995'' for ''1993 and 1994''.

Pub. L. 103–322, § 210302(c)(3)(A), which directed the substitution of ''XII–K, and XII–L'' for ''and XII–K'' in par. (3) of this section, was executed by making the substitution in par. (3) of subsec. (a) to reflect the probable intent of Congress.

Pub. L. 103–322, § 210201(c)(1), substituted ''XII–J, and XII–K'' for ''and XII–J''.

Pub. L. 103–322, § 50001(c)(1), substituted ''XII–I, and XII–J'' for ''and XII–I''.

Pub. L. 103–322, § 40231(c)(1), substituted ''XII–H, and XII–I'' for ''and XII–H''.

Pub. L. 103–322, § 40121(c)(1), which directed the substitution of ''XII–G, and XII–H'' for ''and XII–G'', was executed by making the substitution for ''or XII–G'', to reflect the probable intent of Congress. See below.

Pub. L. 103–322, § 32101(d)(1), which directed the substitution of ''XII–F, or XII–G'' for ''and XII–F'', was exe-

cuted by making the substitution for ''or XII–F'' to reflect the probable intent of Congress. See below.

Pub. L. 103–322, § 20201(d)(1), substituted ''XII–E, or XII–F'' for ''and XII–E''.

Pub. L. 103–322, § 10003(c)(1), substituted ''XII–C, XII–D, and XII–E'' for ''and XII–C''.

Subsec. (a)(5). Pub. L. 103–322, § 330001(b)(3), inserted ''(other than subpart 2 of part B)'' after ''and V''.

Pub. L. 103–322, § 210601(4), substituted ''1994 and 1995'' for ''1993 and 1994''.

Subsec. (a)(6). Pub. L. 103–322, § 210601(5), inserted ''and 1995'' after ''1994''.

Subsec. (a)(7). Pub. L. 103–322, § 210601(6), which directed the substitution of ''1994 and 1995'' for ''1991, 1992, 1993, and 1994,'', could not be executed because ''1991, 1992, 1993, and 1994,'' did not appear in text of par. (7). See below.

Pub. L. 103–322, § 40156(c)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''There is authorized to be appropriated $25,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the programs under subchapter XII–B of this chapter.''

Subsec. (a)(8). Pub. L. 103–322, § 210601(7), inserted ''and 1995'' after ''1994''.

Subsec. (a)(9). Pub. L. 103–322, § 210601(8), which directed the insertion of ''and 1995'' after ''1994'', could not be executed because ''1994'' did not appear in text subsequent to amendment by Pub. L. 103–322, § 180101(a). See below.

Pub. L. 103–322, § 180101(a), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''There are authorized to be appropriated such sums as may be necessary for fiscal year 1992, $22,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994 to carry out subchapter XII–C of this chapter.''

Subsec. (a)(11). Pub. L. 103–322, § 10003(c)(2), added par. (11).

Subsec. (a)(16). Pub. L. 103–322, § 20201(d)(2), added par. (16).

Subsec. (a)(17). Pub. L. 103–322, § 32101(d)(2), added par. (17).

Subsec. (a)(18). Pub. L. 103–322, § 40121(c)(2), added par. (18).

Subsec. (a)(19). Pub. L. 103–322, § 40231(c)(2), added par. (19).

Subsec. (a)(20). Pub. L. 103–322, § 50001(c)(2), added par. (20).

Subsec. (a)(21). Pub. L. 103–322, § 210201(c)(2), added par. (21).

Subsec. (a)(22). Pub. L. 103–322, § 210302(c)(3)(B), which directed amendment of this section by adding at the end a new par. (22), was executed by adding par. (22) at the end of subsec. (a) to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 103–322, § 330001(h)(14), substituted ''such subchapter'' for ''such subchapters''.

1992—Subsec. (a)(1). Pub. L. 102–534, § 1(2), substituted ''fiscal year 1992 and $33,000,000 for each of the fiscal years 1993 and 1994'' for ''each of the fiscal years 1989, 1990, 1991, and 1992''.

Subsec. (a)(2). Pub. L. 102–534, § 1(3), substituted ''fiscal year 1992 and $33,000,000 for each of the fiscal years 1993 and 1994'' for ''each of the fiscal years 1989, 1990, 1991, and 1992''.

Subsec. (a)(3). Pub. L. 102–534, § 1(4), substituted ''such sums as may be necessary for fiscal year 1992 and $28,000,000 for each of the fiscal years 1993 and 1994 to carry out the remaining functions of the Office of Justice Programs and the Bureau of Justice Assistance other than functions under subchapters IV, V, VI, VII, XII, XII–A, XII–B, and XII–C of this chapter'' for ''$25,500,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the remaining functions of the Office of Justice Programs and the Bureau of Justice Assistance, other than functions under subchapters IV, V, VI, VII, XII, XII–A, and XII–B of this chapter''.

Subsec. (a)(5). Pub. L. 102–534, § 1(5), substituted ''such sums as may be necessary for fiscal year 1992 and $1,000,000,000 for each of the fiscal years 1993 and 1994 to carry out the programs under subchapters IV and V (other than subpart 2 of part B of subchapter V)'' for ''$900,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal year 1992 to carry out the programs under subchapters IV and V''.

Subsec. (a)(6). Pub. L. 102–534, § 1(6), substituted ''such sums as may be necessary for fiscal year 1992, $245,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994'' for ''$220,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal year 1992''.

Subsec. (a)(7). Pub. L. 102–534, § 1(7), substituted ''1992, 1993, and 1994'' for ''1991, 1992, and 1993''.

Pub. L. 102–521, § 4(c)(1), and Pub. L. 102–534, § 1(1), amended subsec. (a) identically, redesignating par. (6), relating to authorization of appropriations for subchapter XII–B of this chapter, as (7). Former pars. (7) redesignated (8) and (9).

Subsec. (a)(8). Pub. L. 102–534, § 1(8), substituted ''such sums as may be necessary for fiscal year 1992, $16,500,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994'' for ''$15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the programs under subchapter XII–A of this chapter''.

Pub. L. 102–521, § 4(c)(1), and Pub. L. 102–534, § 1(1), amended subsec. (a) identically, redesignating par. (7), relating to authorization of appropriations for subchapter XII–A of this chapter, as (8).

Subsec. (a)(9). Pub. L. 102–534, § 1(9)(C), which directed the amendment of subsec. (a)(9) by substituting ''such subchapter'' for ''such subchapters'' in ''subsection (c)'', could not be executed because ''such subchapters'' did not appear in text of subsec. (a)(9).

Pub. L. 102–534, § 1(9)(A), (B), substituted ''such sums as may be necessary for fiscal year 1992, $22,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994'' for ''$20,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992 and 1993,''.

Pub. L. 102–521, § 4(c)(1), and Pub. L. 102–534, § 1(1), amended subsec. (a) identically, redesignating par. (7), relating to authorization of appropriations for subchapter XII–C of this chapter, as (9).

Subsec. (a)(10). Pub. L. 102–521, § 4(c)(2), added par. (10).

1990—Subsec. (a)(3). Pub. L. 101–647, § 241(c)(1)(A), substituted ''XII–A, and XII–B'' for ''and XII–A''.

Subsec. (a)(5). Pub. L. 101–647, § 2801, amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''There are authorized to be appropriated $275,000,000 for fiscal year 1989; $350,000,000 for fiscal year 1990; $400,000,000 for fiscal year 1991; and such sums as may be necessary for fiscal year 1992 to carry out the programs under subchapters IV and V of this chapter.''

Subsec. (a)(6). Pub. L. 101–647, § 1801(e), added par. (6) relating to authorization of appropriations for subpart 2 of part B of subchapter V of this chapter.

Pub. L. 101–647, § 241(c)(1)(C), added par. (6) relating to authorization of appropriations for subchapter XII–B of this chapter. Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 101–647, § 801(b), added par. (7) relating to authorization of appropriations for subchapter XII–C of this chapter.

Pub. L. 101–647, § 241(c)(1)(B), redesignated par. (6), relating to authorization of appropriations for subchapter XII–A of this chapter, as (7).

Subsec. (b). Pub. L. 101–647, § 241(c)(2), which directed substitution of ''XII–A, and XII–B'' for ''and XII–A'', could not be executed because the words ''and XII–A'' did not appear.

1988—Pub. L. 100–690 amended section generally, substituting provisions authorizing appropriations for fiscal years 1989 through 1992 for provisions authorizing appropriations for fiscal years 1984 through 1988.

1986—Subsec. (a)(3). Pub. L. 99–570, § 1552(c)(1)(A), inserted reference to subchapter XII–A of this chapter.

Subsec. (a)(6), (7). Pub. L. 99–570, § 1552(c)(1)(B), (C), added par. (6) and redesignated former par. (6) as (7).

Subsec. (b). Pub. L. 99–570, § 1552(c)(2), inserted reference to subchapter XII–A of this chapter.

1984—Pub. L. 98–473, in amending section generally, designated existing provisions as subsec. (a), substituted appropriations authorization of necessary sums for fiscal years 1984 through 1988 for authorizations for fiscal years ending Sept. 30, 1980, through 1983, struck out provisions authorizing appropriations for subchapter VIII and for carrying out remaining functions of the Law Enforcement Assistance Administration, and added subsec. (b).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–162, § 4, as added by Pub. L. 109–271, § 1(b), Aug. 12, 2006, 120 Stat. 750, provided that: ''Notwithstanding any other provision of this Act or any other law, sections 101, 102 (except the amendment to section 2101(d) of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3796hh(d)] included in that section), 103, 121, 203, 204, 205, 304, 306, 602, 906, and 907 of this Act [enacting sections 3796gg–8, 3796gg–10, 3796gg–11, 3796hh–5, 14045a, and 14045b of this title, amending this section and sections 3796gg, 3796gg–1, 3796gg–4, 3796gg–6, 3796gg–7, 3796hh, 3796hh–1, 10420, 13971, 13975, 14041a, and 14041b, of this title, and repealing section 1152 of Title 20, Education] shall not take effect until the beginning of fiscal year 2007.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 210302(c)(3) of Pub. L. 103–322 effective 60 days after Sept. 13, 1994, see section 210302(c)(4) of Pub. L. 103–322, set out as an Effective Date note under section 3796kk of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

DISSEMINATION OF INFORMATION

Pub. L. 106–386, div. B, title III, § 1302(d), Oct. 28, 2000, 114 Stat. 1511, provided that: ''The Attorney General shall—

''(1) annually compile and disseminate information (including through electronic publication) about the use of amounts expended and the projects funded under section 218(a) [now 219(a)] of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13014(a)), section 224(a) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13024(a)), and section 1007(a)(7) [1001(a)(7)] of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(7)), including any evaluations of the projects and information to enable replication and adoption of the strategies identified in the projects; and

''(2) focus dissemination of the information described in paragraph (1) toward community-based programs, including domestic violence and sexual assault programs.''

[For definitions of terms used in section 1302(d)(2) of Pub. L. 106–386, set out above, see section 1002 of Pub. L. 106–386, set out as a note under section 3796gg–2 of this title.]

USE OF FUNDS AVAILABLE UNDER FORMER SUBSECTION (a)(20)

Section 101[(a)] [title I, § 114(b)(1)(B)(ii)] of Pub. L. 104–134 provided that: ''Notwithstanding the provisions of subparagraph (A) [repealing sections 3796ii to 3796ii–8 of this title], any funds that remain available to an applicant under paragraph (20) of [section 1001(a) of] title I of the Omnibus Crime Control and Safe Streets Act of 1968 [former 42 U.S.C. 3793(a)(20)] shall be used in accordance with part V of [title I of] such Act [former 42 U.S.C. 3796ii to 3796ii–8] as if [sic] such Act [part] was in effect on the day preceding the date of enactment of this Act [Apr. 26, 1996].''

FINANCIAL SUPPORT FOR PROGRAMS, ETC., DEVOTED TO INTERNATIONAL ASPECTS OF CRIME PREVENTION AND CRIMINAL JUSTICE

Pub. L. 96–132, § 20(a), Nov. 30, 1979, 93 Stat. 1049, provided that: ''The National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration are authorized to use funds, and to authorize States to use funds, for programs, projects or events devoted to the international aspects of crime prevention and criminal justice.''

§§ 3793a, 3793b. Repealed. Pub. L. 98–473, title II, § 609D(b), Oct. 12, 1984, 98 Stat. 2097

Section 3793a, Pub. L. 90–351, title I, § 1002, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1218, required maintenance of a fund for juvenile delinquency programs consisting of minimum of 19.15 per centum of the appropriations each fiscal year for this chapter.

A prior section 1002 of Pub. L. 90–351, title V, June 19, 1968, 82 Stat. 235, was classified as a note under section 7313 of Title 5, Government Organization and Employees.

Section 3793b, Pub. L. 90–351, title I, § 1003, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1219, authorized annual appropriations of $25,000,000 for fiscal years ending Sept. 30, 1980, through 1983, for Office of Community Anti-Crime Programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

SUBCHAPTER XI—CRIMINAL PENALTIES

§ 3795. Misuse of Federal assistance

Whoever embezzles, willfully misapplies, steals, or obtains by fraud or endeavors to embezzle, willfully misapply, steal, or obtain by fraud any funds, assets, or property which are the subject of a grant or contract or other form of assistance pursuant to this chapter, whether received directly or indirectly from the Office of Justice Programs, Bureau of Justice Assistance, the National Institute of Justice, the Bureau of Justice Statistics, or whoever receives, conceals, or retains such funds, assets or property with intent to convert such funds, assets or property to his use or gain, knowing such funds, assets, or property has been embezzled, willfully misapplied, stolen or obtained by fraud, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(Pub. L. 90–351, title I, § 1101, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1219; amended Pub. L. 98–473, title II, § 609E(a), Oct. 12, 1984, 98 Stat. 2097.)

PRIOR PROVISIONS

A prior section 3795, Pub. L. 90–351, title I, § 670, as added Pub. L. 91–644, title I, § 12, Jan. 2, 1971, 84 Stat. 1889; amended Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 218, related to reports to Congress and President, prior to the general amendment of this chapter by Pub. L. 96–157. See section 3789e of this title.

A prior section 1101 of Pub. L. 90–351, title VI, June 19, 1968, 82 Stat. 236, was classified as a note under section 532 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Pub. L. 98–473 substituted ''Office of Justice Programs, Bureau of Justice Assistance'' for ''Law Enforcement Assistance Administration''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

§ 3795a. Falsification or concealment of facts

Whoever knowingly and willfully falsifies, conceals, or covers up by trick, scheme, or device, any material fact in any application for assistance submitted pursuant to this chapter or in any records required to be maintained pursuant to this chapter shall be subject to prosecution under the provisions of section 1001 of title 18.

(Pub. L. 90–351, title I, § 1102, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1219.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3792 of this title prior to the general amendment of this chapter by Pub. L. 96–157.

§ 3795b. Conspiracy to commit offense against United States

Any law enforcement or criminal justice program or project underwritten, in whole or in part, by any grant, or contract or other form of assistance pursuant to this chapter, whether received directly or indirectly from the Office of Justice Programs, Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics shall be subject to the provisions of section 371 of title 18.

(Pub. L. 90–351, title I, § 1103, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1219; amended Pub. L. 98–473, title II, § 609E(b), Oct. 12, 1984, 98 Stat. 2098.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3793 of this title prior to the general amendment of this chapter by Pub. L. 96–157.

AMENDMENTS

1984—Pub. L. 98–473 substituted ''Office of Justice Programs, Bureau of Justice Assistance'' for ''Law Enforcement Assistance Administration''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

SUBCHAPTER XII—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

PART A—DEATH BENEFITS

§ 3796. Payment of death benefits

(a) Amount; recipients

In any case in which the Bureau of Justice Assistance (hereinafter in this subchapter referred to as the ''Bureau'') determines, under regulations issued pursuant to this subchapter, that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Bureau shall pay a benefit of $250,000, adjusted in accordance with subsection (h) of this section, as follows:

(1) if there is no surviving child of such officer, to the surviving spouse of such officer;

(2) if there is a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal shares and one-half to the surviving spouse;

(3) if there is no surviving spouse, to the child or children of such officer in equal shares;

(4) if there is no surviving spouse or surviving child—

(A) in the case of a claim made on or after the date that is 90 days after January 5, 2006, to the individual designated by such officer as beneficiary under this section in such officer's most recently executed designation of beneficiary on file at the time of death with such officer's public safety agency, organization, or unit, provided that such individual survived such officer; or

(B) if there is no individual qualifying under subparagraph (A), to the individual designated by such officer as beneficiary under such officer's most recently executed life insurance policy on file at the time of death with such officer's public safety agency, organization, or unit, provided that such individual survived such officer; or

(5) if none of the above, to the parent or parents of such officer in equal shares.

(6) The public safety agency, organization, or unit responsible for maintaining on file an executed designation of beneficiary or recently executed life insurance policy pursuant to paragraph (4) shall maintain the confidentiality of such designation or policy in the same manner as it maintains personnel or other similar records of the officer.

(b) Benefits for permanent and total disability

In accordance with regulations issued pursuant to this subchapter, in any case in which the Bureau determines that a public safety officer has become permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty, the Bureau shall pay, to the extent that appropriations are provided, the same benefit in any year that is payable under subsection (a) of this section in such year, adjusted in accordance with subsection (h) of this section, to such officer: *Provided*, That the total annual benefits paid under this subsection may not exceed $5,000,000. For the purposes of making these benefit payments, there are authorized to be appropriated for each fiscal year such sums as may be necessary: *Provided further*, That these benefit payments are subject to the availability of appropriations and that each beneficiary's payment shall be reduced by a proportionate share to the extent that sufficient funds are not appropriated.

(c) Interim benefit payment

Whenever the Bureau determines upon showing of need and prior to final action that the death of a public safety officer is one with respect to which a benefit will probably be paid, the Bureau may make an interim benefit payment not exceeding $3,000 to the individual entitled to receive a benefit under subsection (a) of this section.

(d) Deduction of interim payment

The amount of an interim payment under subsection (c) of this section shall be deducted from the amount of any final benefit paid to such individual.

(e) Repayment of interim payment; waiver

Where there is no final benefit paid, the recipient of any interim payment under subsection (c) of this section shall be liable for repayment of such amount. The Bureau may waive all or part of such repayment, considering for this purpose the hardship which would result from such repayment.

(f) Reductions from final benefit payment

The benefit payable under this subchapter shall be in addition to any other benefit that may be due from any other source, except—

(1) payments authorized by section 12(k) of the Act of September 1, 1916, as amended (D.C. Code, sec. 4–622); or

(2) benefits authorized by section 8191 of title 5. Such beneficiaries shall only receive benefits under such section 8191 that are in excess of the benefits received under this subchapter.

(g) Execution or attachment prohibited

No benefit paid under this subchapter shall be subject to execution or attachment.

(h) Consumer Price Index adjustment

On October 1 of each fiscal year beginning after June 1, 1988, the Bureau shall adjust the level of the benefit payable immediately before such October 1 under subsection (a) of this section, to reflect the annual percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, occurring in the 1-year period ending on June 1 immediately preceding such October 1.

(i) Amount payable determined as of date of death

The amount payable under subsection (a) of this section with respect to the death of a public safety officer shall be the amount payable under subsection (a) of this section as of the date of death of such officer.

(j) Limitations on benefits

(1) No benefit is payable under this subchapter with respect to the death of a public safety officer if a benefit is paid under this subchapter with respect to the disability of such officer.

(2) No benefit is payable under this subchapter with respect to the disability of a public safety officer if a benefit is payable under this subchapter with respect to the death of such public safety officer.

(k) Death by heart attack or stroke; presumption

For purposes of this section, if a public safety officer dies as the direct and proximate result of a heart attack or stroke, that officer shall be presumed to have died as the direct and proximate result of a personal injury sustained in the line of duty, if—

(1) that officer, while on duty—

(A) engaged in a situation, and such engagement involved nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity; or

(B) participated in a training exercise, and such participation involved nonroutine stressful or strenuous physical activity;

(2) that officer died as a result of a heart attack or stroke suffered—

(A) while engaging or participating as described under paragraph (1);

(B) while still on that duty after so engaging or participating; or

(C) not later than 24 hours after so engaging or participating; and

(3) such presumption is not overcome by competent medical evidence to the contrary.

(*l*) Definition

For purposes of subsection (k) of this section, ''nonroutine stressful or strenuous physical'' excludes actions of a clerical, administrative, or nonmanual nature.

(m) Suspension or end of collection action

The Bureau may suspend or end collection action on an amount disbursed pursuant to a statute enacted retroactively or otherwise disbursed in error under subsection (a) or (c) of this section, where such collection would be impractical, or would cause undue hardship to a debtor who acted in good faith.

(Pub. L. 90–351, title I, § 1201, as added Pub. L. 98–473, title II, § 609F, Oct. 12, 1984, 98 Stat. 2098; amended Pub. L. 100–690, title VI, § 6105(a)–(c), Nov. 18, 1988, 102 Stat. 4341; Pub. L. 101–647, title XIII, § 1301(a), Nov. 29, 1990, 104 Stat. 4834; Pub. L. 102–520, § 1, Oct. 25, 1992, 106 Stat. 3402; Pub. L. 103–322, title XXXIII, § 330001(e)(1), Sept. 13, 1994, 108 Stat. 2138; Pub. L. 107–56, title VI, § 613(a), Oct. 26, 2001, 115 Stat. 369; Pub. L. 107–196, § 2(b), June 24, 2002, 116 Stat. 719; Pub. L. 108–182, § 2, Dec. 15, 2003, 117 Stat. 2649; Pub. L. 109–162, title XI, § 1164(c)–(e), Jan. 5, 2006, 119 Stat. 3120, 3121.)

REFERENCES IN TEXT

Section 12 of the Act of September 1, 1916, as amended, referred to in subsec. (f)(1), is section 12 of act Sept. 1, 1916, ch. 433, 39 Stat. 718, as amended, which is not classified to the Code.

PRIOR PROVISIONS

A prior section 3796, Pub. L. 90–351, title I, § 1201, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1219; amended Pub. L. 98–411, title II, § 204(a)(1), Aug. 30, 1984, 98 Stat. 1561; Pub. L. 98–473, title II, § 609Z, Oct. 12, 1984, 98 Stat. 2107, contained provisions similar to this section, prior to the general amendment of this subchapter by section 609F of Pub. L. 98–473.

Another prior section 3796, Pub. L. 90–351, title I, § 701, as added Pub. L. 94–430, § 2, Sept. 29, 1976, 90 Stat. 1346, contained provisions similar to this section, prior to the general amendment of this chapter by Pub. L. 96–157.

A prior section 1201 of Pub. L. 90–351, title VII, June 19, 1968, 82 Stat. 236, was set out in the Appendix to Title 18, Crimes and Criminal Procedure, prior to repeal by Pub. L. 99–308, § 104(b), May 19, 1986, 100 Stat. 459.

AMENDMENTS

2006—Subsec. (a)(4). Pub. L. 109–162, § 1164(d), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''if there is no surviving spouse or surviving child, to the individual designated by such officer as beneficiary under such officer's most recently executed life insurance policy, provided that such individual survived such officer; or''.

Subsec. (a)(6). Pub. L. 109–162, § 1164(e), which directed amendment of section 1201(1)(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796(a))

by adding par. (6) at end, was executed by adding par. (6) at end of subsec. (a) of this section to reflect the probable intent of Congress.

Subsec. (m). Pub. L. 109–162, § 1164(c), added subsec. (m).

2003—Subsecs. (k), (*l*). Pub. L. 108–182 added subsecs. (k) and (*l*).

2002—Subsec. (a)(4), (5). Pub. L. 107–196 added par. (4) and redesignated former par. (4) as (5).

2001—Subsec. (a). Pub. L. 107–56 substituted ''$250,000'' for ''$100,000'' in introductory provisions.

1994—Subsec. (a). Pub. L. 103–322, § 330001(e)(1)(A), substituted ''subsection (h) of this section,'' for ''subsection (g) of this section'' in introductory provisions.

Subsec. (b). Pub. L. 103–322, § 330001(e)(1)(B), substituted ''catastrophic injury'' for ''catastrophic personal injury'', ''subsection (h)'' for ''subsection (g)'', and ''benefits paid under this subsection'' for ''benefits paid under this section''.

1992—Subsec. (b). Pub. L. 102–520 substituted ''the same benefit in any year that is payable under subsection (a) of this section in such year,'' for ''a benefit of up to $100,000,''.

1990—Subsec. (b). Pub. L. 101–647, § 1301(a)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 101–647, § 1301(a)(2), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsecs. (d), (e). Pub. L. 101–647, § 1301(a)(1), (2), redesignated subsecs. (c) and (d) as (d) and (e), respectively, and substituted ''(c)'' for ''(b)''. Former subsec. (e) redesignated (f).

Subsecs. (f) to (i). Pub. L. 101–647, § 1301(a)(2), redesignated former subsecs. (e) to (h) as (f) to (i), respectively.

Subsec. (j). Pub. L. 101–647, § 1301(a)(4), added subsec. (j).

1988—Subsec. (a). Pub. L. 100–690, § 6105(a), substituted ''$100,000, adjusted in accordance with subsection (g) of this section'' for ''$50,000''.

Subsec. (a)(4). Pub. L. 100–690, § 6105(c), struck out ''dependent'' before ''parent''.

Subsecs. (g), (h). Pub. L. 100–690, § 6105(b), added subsecs. (g) and (h).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–196, § 2(c), June 24, 2002, 116 Stat. 720, provided that: ''The amendments made by this section [amending this section and section 3796b of this title] shall take effect on September 11, 2001, and shall apply to injuries or deaths that occur in the line of duty on or after such date.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–56, title VI, § 613(b), Oct. 26, 2001, 115 Stat. 370, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any death or disability occurring on or after January 1, 2001.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2 of Pub. L. 102–520 provided that: ''The amendments made by section 1 of this Act [amending this section] shall apply with respect to injuries occurring on or after November 29, 1990, using the calculation method used to determine benefits under section 1201(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [subsec. (a) of this section].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1303 of title XIII of Pub. L. 101–647 provided that: ''The amendments made by this title [amending this section and sections 3796a and 3796b of this title] shall take effect upon enactment [Nov. 29, 1990] and shall not apply with respect to injuries occurring before the effective date of such amendments.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6105(e) of Pub. L. 100–690 provided that: ''The amendments made by this section [amending this section and section 3796b of this title] shall take effect on June 1, 1988.''

EFFECTIVE DATE

Subchapter effective Oct. 1, 1984, and inapplicable with respect to injuries sustained before Oct. 1, 1984, see section 609AA(b)(1) of Pub. L. 98–473, set out as a note under section 3711 of this title.

§ 3796a. Limitations on benefits

No benefit shall be paid under this subchapter—

(1) if the death or catastrophic injury was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about his death or catastrophic injury;

(2) if the public safety officer was voluntarily intoxicated at the time of his death or catastrophic injury;

(3) if the public safety officer was performing his duties in a grossly negligent manner at the time of his death or catastrophic injury;

(4) to any individual who would otherwise be entitled to a benefit under this subchapter if such individual's actions were a substantial contributing factor to the death or catastrophic injury of the public safety officer; or

(5) with respect to any individual employed in a capacity other than a civilian capacity.

(Pub. L. 90–351, title I, § 1202, as added Pub. L. 98–473, title II, § 609F, Oct. 12, 1984, 98 Stat. 2099; amended Pub. L. 101–647, title XIII, § 1301(b), Nov. 29, 1990, 104 Stat. 4834; Pub. L. 109–162, title XI, § 1164(b), Jan. 5, 2006, 119 Stat. 3120.)

PRIOR PROVISIONS

A prior section 3796a, Pub. L. 90–351, title I, § 1202, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1220; amended Pub. L. 98–411, title II, § 204(a)(2), Aug. 30, 1984, 98 Stat. 1561; Pub. L. 98–473, title II, § 609Z, Oct. 12, 1984, 98 Stat. 2107, contained provisions similar to this section, prior to the general amendment of this subchapter by section 609F of Pub. L. 98–473.

Another prior section 3796a, Pub. L. 90–351, title I, § 702, as added Pub. L. 94–430, § 2, Sept. 29, 1976, 90 Stat. 1347, contained provisions similar to this section, prior to the general amendment of this chapter by Pub. L. 96–157.

A prior section 1202 of Pub. L. 90–351, title VII, June 19, 1968, 82 Stat. 236, was set out in the Appendix to Title 18, Crimes and Criminal Procedure, prior to repeal by Pub. L. 99–308, § 104(b), May 19, 1986, 100 Stat. 459.

AMENDMENTS

2006—Par. (5). Pub. L. 109–162 inserted ''with respect'' before ''to any individual''.

1990—Pars. (1) to (4). Pub. L. 101–647 inserted ''or catastrophic injury'' after ''death'' wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–647 effective Nov. 29, 1990, and not applicable with respect to injuries occurring before Nov. 29, 1990, see section 1303 of Pub. L. 101–647, set out as a note under section 3796 of this title.

§ 3796a–1. National programs for families of public safety officers who have died in line of duty

The Director is authorized to use no less than $150,000 of the funds appropriated for this subchapter to maintain and enhance national peer

support and counseling programs to assist families of public safety officers who have died in the line of duty.

(Pub. L. 90–351, title I, § 1203, as added Pub. L. 100–690, title VI, § 6106(a)(2), Nov. 18, 1988, 102 Stat. 4341; amended Pub. L. 105–180, § 2(a), June 16, 1998, 112 Stat. 511.)

PRIOR PROVISIONS

A prior section 1203 of Pub. L. 90–351 was renumbered section 1204 and is classified to section 3796b of this title.

Another prior section 1203 of Pub. L. 90–351, title VII, June 19, 1968, 82 Stat. 237, was set out in the Appendix to Title 18, Crimes and Criminal Procedure, prior to repeal by Pub. L. 99–308, § 104(b), May 19, 1986, 100 Stat. 459.

AMENDMENTS

1998—Pub. L. 105–180 amended text generally. Prior to amendment, text read as follows: ''The Director is authorized and directed to use up to $150,000 of the funds appropriated for this subchapter to establish national programs to assist the families of public safety officers who have died in the line of duty.''

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3796b. Definitions

As used in this subchapter—

(1) ''catastrophic injury'' means consequences of an injury that permanently prevent an individual from performing any gainful work;

(2) ''chaplain'' includes any individual serving as an officially recognized or designated member of a legally organized volunteer fire department or legally organized police department, or an officially recognized or designated public employee of a legally organized fire or police department who was responding to a fire, rescue, or police emergency;

(3) ''child'' means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is—

(i) 18 years of age or under;

(ii) over 18 years of age and a student as defined in section 8101 of title 5; or

(iii) over 18 years of age and incapable of self-support because of physical or mental disability;

(4) ''firefighter'' includes an individual serving as an officially recognized or designated member of a legally organized volunteer fire department;

(5) ''intoxication'' means a disturbance of mental or physical faculties resulting from the introduction of alcohol into the body as evidenced by—

(i) a post-mortem blood alcohol level of .20 per centum or greater; or

(ii) a post-mortem blood alcohol level of at least .10 per centum but less than .20 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to his death;

or resulting from drugs or other substances in the body;

(6) ''law enforcement officer'' means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency).,[1] including, but not limited to, police, corrections, probation, parole, and judicial officers;

(7) ''member of a rescue squad or ambulance crew'' means an officially recognized or designated public employee member of a rescue squad or ambulance crew;

(8) ''public agency'' means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, department, agency, or instrumentality of any of the foregoing; and

(9) ''public safety officer'' means—

(A) an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew;

(B) an employee of the Federal Emergency Management Agency who is performing official duties of the Agency in an area, if those official duties—

(i) are related to a major disaster or emergency that has been, or is later, declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and

(ii) are determined by the Administrator of the Federal Emergency Management Agency to be hazardous duties; or

(C) an employee of a State, local, or tribal emergency management or civil defense agency who is performing official duties in cooperation with the Federal Emergency Management Agency in an area, if those official duties—

(i) are related to a major disaster or emergency that has been, or is later, declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and

(ii) are determined by the head of the agency to be hazardous duties.

(Pub. L. 90–351, title I, § 1204, formerly § 1203, as added Pub. L. 98–473, title II, § 609F, Oct. 12, 1984, 98 Stat. 2099; amended Pub. L. 99–500, § 101(b) [title II, § 207], Oct. 18, 1986, 100 Stat. 1783–39, 1783–56, and Pub. L. 99–591, § 101(b) [title II, § 207], Oct. 30, 1986, 100 Stat. 3341–39, 3341–56; renumbered § 1204 and amended Pub. L. 100–690, title VI, §§ 6105(d), 6106(a)(1), Nov. 18, 1988, 102 Stat. 4341; Pub. L. 101–647, title XIII, §§ 1301(c), 1302,

[1] So in original. The period probably should not appear.

Nov. 29, 1990, 104 Stat. 4834; Pub. L. 103–322, title XXXIII, § 330001(e)(2), Sept. 13, 1994, 108 Stat. 2139; Pub. L. 106–390, title III, § 305(a), Oct. 30, 2000, 114 Stat. 1573; Pub. L. 107–196, § 2(a), June 24, 2002, 116 Stat. 719; Pub. L. 109–162, title XI, § 1164(a), Jan. 5, 2006, 119 Stat. 3120; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in par. (9), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 3796b, Pub. L. 90–351, title I, § 1203, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1220; amended Pub. L. 98–411, title II, § 204(a)(3), Aug. 30, 1984, 98 Stat. 1561; Pub. L. 98–473, title II, § 609Z, Oct. 12, 1984, 98 Stat. 2107, contained provisions similar to this section, prior to the general amendment of this subchapter by section 609F of Pub. L. 98–473.

Another prior section 3796b, Pub. L. 90–351, title I, § 703, as added Pub. L. 94–430, § 2, Sept. 29, 1976, 90 Stat. 1347, contained provisions similar to this section, prior to the general amendment of this chapter by Pub. L. 96–157.

A prior section 1204 of Pub. L. 90–351 was renumbered section 1205 and is classified to section 3796c of this title.

AMENDMENTS

2006—Par. (4). Pub. L. 109–162, § 1164(a)(3), struck out ''and an officially recognized or designated public employee member of a rescue squad or ambulance crew'' before semicolon at end.

Par. (6). Pub. L. 109–162, § 1164(a)(4), substituted ''enforcement of the criminal laws (including juvenile delinquency).'' for ''enforcement of the laws''.

Pars. (7) to (9). Pub. L. 109–162, § 1164(a)(1), (2), added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively.

2002—Pars. (2) to (7). Pub. L. 107–196, § 2(a)(1), (2), added par. (2) and redesignated former pars. (2) to (6) as (3) to (7), respectively. Former par. (7) redesignated (8).

Par. (8). Pub. L. 107–196, § 2(a)(1), (3), redesignated par. (7) as (8) and inserted ''as a chaplain,'' after ''firefighter,'' in subpar. (A).

2000—Par. (7). Pub. L. 106–390 added par. (7) and struck out former par. (7) which read as follows: '' 'public safety officer' means an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, or rescue squad or ambulance crew''.

1994—Par. (3). Pub. L. 103–322 struck out before semicolon at end ''who was responding to a fire, rescue or police emergency''.

1990—Par. (1). Pub. L. 101–647, § 1301(c), added par. (1). Former par. (1) redesignated (2).

Par. (2). Pub. L. 101–647, § 1302, which directed amendment of par. (2) by inserting a period after ''ambulance crew'' and striking out ''who was responding to a fire, rescue or police emergency.'', could not be executed because the phrases ''ambulance crew'' and ''who was responding to a fire, rescue or police emergency.'' did not appear in text of par. (2).

Pub. L. 101–647, § 1301(c)(1), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Pars. (3) to (7). Pub. L. 101–647, § 1301(c)(1), redesignated pars. (2) to (6) as (3) to (7), respectively.

1988—Pars. (2) to (7). Pub. L. 100–690, § 6105(d), redesignated pars. (3) to (7) as (2) to (6), respectively, and struck out former par. (2) defining a ''dependent'' as any individual substantially reliant for support upon income of deceased public safety officer.

1986—Pub. L. 99–500 and Pub. L. 99–591 inserted ''and an officially recognized or designated public employee member of a rescue squad or ambulance crew who was responding to a fire, rescue or police emergency'' in par. (3), and substituted '', a firefighter, or rescue squad or ambulance crew'' for ''or a firefighter.'' in par. (7).

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in par. (9)(B)(ii) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–196 effective Sept. 11, 2001, and applicable to injuries or deaths that occur in the line of duty on or after such date, see section 2(c) of Pub. L. 107–196, set out as a note under section 3796 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–390, title III, § 305(b), Oct. 30, 2000, 114 Stat. 1574, provided that: ''The amendment made by subsection (a) [amending this section] applies only to employees described in subparagraphs (B) and (C) of section 1204(7) of the Omnibus Crime Control and Safe Streets Act of 1968 [subpars. (B) and (C) of par. (7) of this section] (as amended by subsection (a)) who are injured or who die in the line of duty on or after the date of the enactment of this Act [Oct. 30, 2000].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–647 effective Nov. 29, 1990, and not applicable with respect to injuries occurring before Nov. 29, 1990, see section 1303 of Pub. L. 101–647, set out as a note under section 3796 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 6105(d) of Pub. L. 100–690 effective June 1, 1988, see section 6105(e) of Pub. L. 100–690, set out as a note under section 3796 of this title.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 3796c. Administrative provisions

(a) Rules, regulations, and procedures

The Bureau is authorized to establish such rules, regulations, and procedures as may be necessary to carry out the purposes of this subchapter. Such rules, regulations, and procedures will be determinative of conflict of laws issues arising under this subchapter. Rules, regulations, and procedures issued under this subchapter may include regulations governing the recognition of agents or other persons representing claimants under this subchapter before the Bureau. The Bureau may prescribe the maximum fees which may be charged for services performed in connection with any claim under this subchapter before the Bureau, and any agreement in violation of such rules and regulations shall be void.

(b) Use of State and local administrative and investigative assistance

In making determinations under section 3796 of this title, the Bureau may utilize such administrative and investigative assistance as may be available from State and local agencies. Responsibility for making final determinations shall rest with the Bureau.

(c) Use of appropriated funds to conduct appeals

Notwithstanding any other provision of law, the Bureau is authorized to use appropriated funds to conduct appeals of public safety officers' death and disability claims.

(Pub. L. 90–351, title I, § 1205, formerly § 1204, as added Pub. L. 98–473, title II, § 609F, Oct. 12, 1984, 98 Stat. 2100; renumbered § 1205, Pub. L. 100–690, title VI, § 6106(a)(1), Nov. 18, 1988, 102 Stat. 4341; amended Pub. L. 105–180, § 2(b), June 16, 1998, 112 Stat. 511.)

PRIOR PROVISIONS

A prior section 3796c, Pub. L. 90–351, title I, § 1204, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1221, contained provisions similar to this section, prior to the general amendment of this subchapter by section 609F of Pub. L. 98–473.

Another prior section 3796c, Pub. L. 90–351, title I, § 704, as added Pub. L. 94–430, § 2, Sept. 29, 1976, 90 Stat. 1347, contained provisions similar to this section, prior to the general amendment of this chapter by Pub. L. 96–157.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–180 added subsec. (c).

§ 3796c–1. Expedited payment for public safety officers involved in the prevention, investigation, rescue, or recovery efforts related to a terrorist attack

(a) In general

Notwithstanding the limitations of subsection (b) of section 1201 or the provisions of subsections (c), (d), and (e) of such section or section 1202 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796, 3796a), upon certification (containing identification of all eligible payees of benefits pursuant to section 1201 of such Act) by a public agency that a public safety officer employed by such agency was killed or suffered a catastrophic injury producing permanent and total disability as a direct and proximate result of a personal injury sustained in the line of duty as described in section 1201 of such Act in connection with prevention, investigation, rescue, or recovery efforts related to a terrorist attack, the Director of the Bureau of Justice Assistance shall authorize payment to qualified beneficiaries, said payment to be made not later than 30 days after receipt of such certification, benefits described under subpart 1 of part L of such Act (42 U.S.C. 3796 et seq.).

(b) Definitions

For purposes of this section, the terms ''catastrophic injury'', ''public agency'', and ''public safety officer'' have the same meanings given such terms in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b).

(Pub. L. 107–56, title VI, § 611, Oct. 26, 2001, 115 Stat. 369.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (a), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. The reference to subpart 1 of part L of the Act probably means subpart 1 of part L of title I of the Act which is classified generally to this part. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

CODIFICATION

Section was enacted as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or USA PATRIOT Act, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

PART B—EDUCATIONAL ASSISTANCE TO DEPENDENTS OF CIVILIAN FEDERAL LAW ENFORCEMENT OFFICERS KILLED OR DISABLED IN LINE OF DUTY

§ 3796d. Purposes

The purposes of this part are—

(1) to enhance the appeal of service in public safety agencies;

(2) to extend the benefits of higher education to qualified and deserving persons who, by virtue of the death of or total disability of an eligible officer, may not be able to afford it otherwise; and

(3) to allow the family members of eligible officers to attain the vocational and educational status which they would have attained had a parent or spouse not been killed or disabled in the line of duty.

(Pub. L. 90–351, title I, § 1211, as added Pub. L. 104–238, § 2(2), Oct. 3, 1996, 110 Stat. 3114; amended Pub. L. 105–390, § 2(2), Nov. 13, 1998, 112 Stat. 3495.)

AMENDMENTS

1998—Par. (1). Pub. L. 105–390 substituted ''public safety'' for ''civilian Federal law enforcement''.

§ 3796d–1. Basic eligibility

(a) Benefits

(1) Subject to the availability of appropriations, the Attorney General shall provide finan-

cial assistance to a dependent who attends a program of education and is—

(A) the child of any eligible public safety officer under part A of this subchapter; or

(B) the spouse of an officer described in subparagraph (A) at the time of the officer's death or on the date of a totally and permanently disabling injury.

(2) Except as provided in paragraph (3), financial assistance under this part shall consist of direct payments to an eligible dependent and shall be computed on the basis set forth in section 3532 of title 38.

(3) The financial assistance referred to in paragraph (2) shall be reduced by the sum of—

(A) the amount of educational assistance benefits from other Federal, State, or local governmental sources to which the eligible dependent would otherwise be entitled to receive; and

(B) the amount, if any, determined under section 3796d–3(b) of this title.

(b) Duration of benefits

No dependent shall receive assistance under this part for a period in excess of forty-five months of full-time education or training or a proportional period of time for a part-time program.

(c) Age limitation for dependent children

No dependent child shall be eligible for assistance under this part after the child's 27th birthday absent a finding by the Attorney General of extraordinary circumstances precluding the child from pursuing a program of education.

(Pub. L. 90–351, title I, § 1212, as added Pub. L. 104–238, § 2(2), Oct. 3, 1996, 110 Stat. 3114; amended Pub. L. 105–390, § 2(3), Nov. 13, 1998, 112 Stat. 3495.)

AMENDMENTS

1998—Subsec. (a)(1)(A). Pub. L. 105–390, § 2(3)(A), substituted ''public safety'' for ''Federal law enforcement''.

Subsec. (a)(2). Pub. L. 105–390, § 2(3)(B), substituted ''Except as provided in paragraph (3), financial'' for ''Financial''.

Subsec. (a)(3). Pub. L. 105–390, § 2(3)(C), added par. (3).

§ 3796d–2. Applications; approval

(a) Application

A person seeking assistance under this part shall submit an application to the Attorney General in such form and containing such information as the Attorney General reasonably may require.

(b) Approval

The Attorney General shall approve an application for assistance under this part unless the Attorney General finds that—

(1) the dependent is not eligible for, is no longer eligible for, or is not entitled to the assistance for which application is made;

(2) the dependent's selected educational institution fails to meet a requirement under this part for eligibility;

(3) the dependent's enrollment in or pursuit of the educational program selected would fail to meet the criteria established in this part for programs; or

(4) the dependent already is qualified by previous education or training for the educational, professional, or vocational objective for which the educational program is offered.

(c) Notification

The Attorney General shall notify a dependent applying for assistance under this part of approval or disapproval of the application in writing.

(Pub. L. 90–351, title I, § 1213, as added Pub. L. 104–238, § 2(2), Oct. 3, 1996, 110 Stat. 3115.)

§ 3796d–3. Regulations

(a) In general

The Attorney General may promulgate reasonable and necessary regulations to implement this part.

(b) Sliding scale

Notwithstanding section 3796d–2(b) of this title, the Attorney General shall issue regulations regarding the use of a sliding scale based on financial need to ensure that an eligible dependent who is in financial need receives priority in receiving funds under this part.

(Pub. L. 90–351, title I, § 1214, as added Pub. L. 104–238, § 2(2), Oct. 3, 1996, 110 Stat. 3115; amended Pub. L. 105–390, § 2(4), Nov. 13, 1998, 112 Stat. 3495.)

AMENDMENTS

1998—Pub. L. 105–390 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 3796d–4. Discontinuation for unsatisfactory conduct or progress

The Attorney General may discontinue assistance under this part when the Attorney General finds that, according to the regularly prescribed standards and practices of the educational institution, the recipient fails to maintain satisfactory progress as described in section 1091(c) of title 20.

(Pub. L. 90–351, title I, § 1215, as added Pub. L. 104–238, § 2(2), Oct. 3, 1996, 110 Stat. 3115.)

§ 3796d–5. Special rule

(a) Retroactive eligibility

Notwithstanding any other provision of law, each dependent of a Federal law enforcement officer killed in the line of duty on or after January 1, 1978,,[1] and each dependent of a public safety officer killed in the line of duty on or after January 1, 1978, shall be eligible for assistance under this part, subject to the other limitations of this part.

(b) Retroactive assistance

The Attorney General may provide retroactive assistance to dependents eligible under this section for each month in which the dependent pursued a program of education at an eligible educational institution. The Attorney General shall apply the limitations contained in this part to retroactive assistance.

(c) Prospective assistance

The Attorney General may provide prospective assistance to dependents eligible under this

[1] So in original.

section on the same basis as assistance to dependents otherwise eligible. In applying the limitations on assistance under this part, the Attorney General shall include assistance provided retroactively. A dependent eligible under this section may waive retroactive assistance and apply only for prospective assistance on the same basis as dependents otherwise eligible.

(Pub. L. 90–351, title I, § 1216, as added Pub. L. 104–238, § 2(2), Oct. 3, 1996, 110 Stat. 3115; amended Pub. L. 105–390, § 2(5), Nov. 13, 1998, 112 Stat. 3496; Pub. L. 106–276, § 1(a), Oct. 2, 2000, 114 Stat. 812.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–276 substituted ''January 1, 1978,'' for ''May 1, 1992'' and ''January 1, 1978, shall'' for ''October 1, 1997, shall''.

1998—Subsec. (a). Pub. L. 105–390 inserted ''and each dependent of a public safety officer killed in the line of duty on or after October 1, 1997,'' after ''1992,''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–276, § 1(b), Oct. 2, 2000, 114 Stat. 812, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect October 1, 1999.''

§ 3796d–6. Definitions

For purposes of this part:

(1) The term ''Attorney General'' means the Attorney General of the United States.

(2) The term ''program of education'' means any curriculum or any combination of unit courses or subjects pursued at an eligible educational institution, which generally is accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. It includes course work for the attainment of more than one objective if in addition to the previous requirements, all the objectives generally are recognized as reasonably related to a single career field.

(3) The term ''eligible educational institution'' means an institution which—

(A) is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on October 3, 1996; and

(B) is eligible to participate in programs under title IV of such Act [20 U.S.C. 1070 et seq. and 42 U.S.C. 2751 et seq.].

(Pub. L. 90–351, title I, § 1217, as added Pub. L. 104–238, § 2(2), Oct. 3, 1996, 110 Stat. 3116; amended Pub. L. 105–390, § 2(6), Nov. 13, 1998, 112 Stat. 3496.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in par. (3)(B), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1998—Pars. (2) to (4). Pub. L. 105–390 redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''The term 'Federal law enforcement officer' has the same meaning as under part A of this subchapter.''

§ 3796d–7. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary.

(Pub. L. 90–351, title I, § 1218, as added Pub. L. 104–238, § 2(2), Oct. 3, 1996, 110 Stat. 3117.)

SUBCHAPTER XII–A—REGIONAL INFORMATION SHARING SYSTEMS

PRIOR PROVISIONS

A prior subchapter XII–A, consisted of sections 3796h to 3796s, related to grants for law enforcement programs, prior to repeal by Pub. L. 100–690, title VI, § 6101(a), Nov. 18, 1988, 102 Stat. 4340. For similar provisions, see subchapter V of this chapter.

Section 3796h, Pub. L. 90–351, title I, § 1301, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–41, authorized Director to provide grants for drug law enforcement programs to eligible States and units of local government.

A prior section 1301 of Pub. L. 90–351 was renumbered section 2501 and is classified to section 3797 of this title.

Section 3796i, Pub. L. 90–351, title I, § 1302, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–41, provided for a description of the drug law enforcement grant program.

Section 3796j, Pub. L. 90–351, title I, § 1303, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–42, related to applications to receive drug law enforcement program grants.

Section 3796k, Pub. L. 90–351, title I, § 1304, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–43, related to review of applications to receive drug law enforcement program grants.

Section 3796*l*, Pub. L. 90–351, title I, § 1305, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–43, related to allocation and distribution of funds under formula drug law enforcement grants.

Section 3796m, Pub. L. 90–351, title I, § 1306, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–44, required each State and unit of local government receiving drug law enforcement grants to report each year to the Director and required Director to report annually to Congress.

Section 3796n, Pub. L. 90–351, title I, § 1307, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–44, related to limitations on expenditures of funds, payment of the non-Federal portion in cash, and maintenance of records by States and units of local government.

Section 3796*o*, Pub. L. 90–351, title I, § 1308, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–45, provided for designation of a State office for program administration.

Section 3796p, Pub. L. 90–351, title I, § 1309, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–45, provided for discretionary grants for drug law enforcement programs.

Section 3796q, Pub. L. 90–351, title I, § 1310, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–45, provided application requirements for discretionary grants.

Section 3796r, Pub. L. 90–351, title I, § 1311, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–45, related to allocation of funds for discretionary grants.

Section 3796s, Pub. L. 90–351, title I, § 1312, as added Pub. L. 99–570, title I, § 1552(a)(3), Oct. 27, 1986, 100 Stat. 3207–46, provided for a limitation on use of discretionary grant funds.

§ 3796h. Regional information sharing systems grants

(a) Authority of Director

The Director of the Bureau of Justice Assistance is authorized to make grants and enter into

contracts with State and local criminal justice agencies and nonprofit organizations for the purposes of identifying, targeting, and removing criminal conspiracies and activities and terrorist conspiracies and activities spanning jurisdictional boundaries.

(b) Purposes

Grants and contracts awarded under this subchapter shall be made for—

(1) maintaining and operating regional information sharing systems that are responsive to the needs of participating enforcement agencies in addressing multijurisdictional offenses and conspiracies, and that are capable of providing controlling input, dissemination, rapid retrieval, and systematized updating of information to authorized agencies;

(2) establishing and operating an analytical component to assist participating agencies and projects in the compilation, interpretation, and presentation of information provided to a project;

(3) establishing and maintaining a secure telecommunications system for regional information sharing between Federal, State, tribal, and local law enforcement agencies;

(4) establishing and operating secure information sharing systems to enhance the investigation and prosecution abilities of participating enforcement agencies in addressing multi-jurisdictional terrorist conspiracies and activities; and

(5) other programs designated by the Director that are designed to further the purposes of this subchapter.

(c) Rules and regulations

The Director is authorized to promulgate such rules and regulations as are necessary to carry out the purposes of this section, including rules and regulations for submitting and reviewing applications.

(d) Authorization of appropriation to the Bureau of Justice Assistance

There are authorized to be appropriated to the Bureau of Justice Assistance to carry out this section $50,000,000 for fiscal year 2002 and $100,000,000 for fiscal year 2003.

(Pub. L. 90–351, title I, § 1301, as added Pub. L. 100–690, title VI, § 6101(a), Nov. 18, 1988, 102 Stat. 4340; amended Pub. L. 107–56, title VII, § 701, Oct. 26, 2001, 115 Stat. 374; Pub. L. 109–162, title XI, § 1114, Jan. 5, 2006, 119 Stat. 3103.)

PRIOR PROVISIONS

A prior section 1301 of Pub. L. 90–351 was renumbered section 2501 and is classified to section 3797 of this title.

Another prior section 1301 of Pub. L. 90–351, title VIII, June 19, 1968, 82 Stat. 237, amended section 3731 of Title 18, Crimes and Criminal Procedure.

For other prior sections 1301 of Pub. L. 90–351 and prior section 3796h of this title, see note set out preceding this section.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–162, § 1114(1), inserted ''regional'' before ''information sharing systems''.

Subsec. (b)(3). Pub. L. 109–162, § 1114(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''establishing and maintaining a telecommunication of the information sharing and analytical programs in clauses (1) and (2);''.

Subsec. (b)(4). Pub. L. 109–162, § 1114(3), struck out ''(5)'' at end.

2001—Subsec. (a). Pub. L. 107–56, § 701(1), inserted ''and terrorist conspiracies and activities'' after ''criminal conspiracies and activities''.

Subsec. (b)(4), (5). Pub. L. 107–56, § 701(2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d). Pub. L. 107–56, § 701(3), added subsec. (d).

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

SUBCHAPTER XII–B—GRANTS FOR CLOSED-CIRCUIT TELEVISING OF TESTIMONY OF CHILDREN WHO ARE VICTIMS OF ABUSE

§ 3796aa. Function of Director

The Director shall provide funds to eligible States and units of local government pursuant to this subchapter.

(Pub. L. 90–351, title I, § 1401, as added Pub. L. 101–647, title II, § 241(a)(2), Nov. 29, 1990, 104 Stat. 4810.)

PRIOR PROVISIONS

A prior section 1401 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

Another prior section 1401 of Pub. L. 90–351, title IX, June 19, 1968, 82 Stat. 238, enacted section 3103a of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3796aa–1. Description of grant program

The Director is authorized to make grants to provide equipment and personnel training for the closed-circuit televising and video taping of the testimony of children in criminal proceedings for the violation of laws relating to the abuse of children.

(Pub. L. 90–351, title I, § 1402, as added Pub. L. 101–647, title II, § 241(a)(2), Nov. 29, 1990, 104 Stat. 4810; amended Pub. L. 103–322, title IV, § 40156(c)(2), Sept. 13, 1994, 108 Stat. 1923.)

AMENDMENTS

1994—Pub. L. 103–322 struck out ''to States, for the use of States and units of local government in the States'' after ''make grants''.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3796aa–2. Applications to receive grants

To request a grant under section 3796aa–1 of this title, the chief executive officer of a State or unit of local government shall submit to the

Director an application at such time and in such form as the Director may require. Such application shall include—

(1) a certification that Federal funds made available under section 3796aa–1 of this title will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of such funds, be made available for criminal proceedings for the violation of laws relating to the abuse of children; and

(2) a certification that funds required to pay the non-Federal portion of the cost of equipment and personnel training for which such grant is made shall be in addition to funds that would otherwise be made available by the recipients of grant funds for criminal proceedings for the violation of laws relating to the abuse of children.

(Pub. L. 90–351, title I, § 1403, as added Pub. L. 101–647, title II, § 241(a)(2), Nov. 29, 1990, 104 Stat. 4810; amended Pub. L. 103–322, title IV, § 40156(c)(3), Sept. 13, 1994, 108 Stat. 1923.)

AMENDMENTS

1994—Pub. L. 103–322, in introductory provisions inserted ''or unit of local government'' after ''of a State'', in par. (1) inserted ''and'' at end, in par. (2) substituted a period for the semicolon at end, and struck out pars. (3) and (4) which read as follows:

''(3) an assurance that the State application described in this section, and any amendment to such application, has been submitted for review to the State legislature or its designated body (for purposes of this section, such application or amendment shall be deemed to be reviewed if the State legislature or such body does not review such application or amendment within the 60-day period beginning on the date such application or amendment is so submitted); and

''(4) an assurance that the State application and any amendment thereto was made public before submission to the Bureau and, to the extent provided under State law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups.''

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3796aa–3. Review of applications

(a) Eligibility for grants

An applicant is eligible to receive a grant under this subchapter if—

(1) the applicant certifies and the Director determines that there is in effect in the State a law that permits the closed-circuit televising and video taping of testimony of children in criminal proceedings for the violation of laws relating to the abuse of children;

(2) the applicant certifies and the Director determines that State law meets the following criteria:

(A) the judges determination that a child witness will be traumatized by the presence of the defendant must be made on a case-by-case basis;

(B) the trauma suffered must be more than de minimis;

(C) the child witness must give his/her statements under oath;

(D) the child witness must submit to cross-examination; and

(E) the finder of fact must be permitted to observe the demeanor of the child witness in making his or her statement and the defendant must be able to contemporaneously communicate with his defense attorney; and

(3) the Director determines that the application submitted under section 3796aa–1 of this title or amendment to such application is consistent with the requirements of this chapter.

(b) Applications deemed approved

Each application or amendment made and submitted for approval to the Director pursuant to section 3796aa–2 of this title shall be deemed approved, in whole or in part, by the Director not later than 60 days after first received unless the Director informs the applicant of specific reasons for disapproval.

(c) Reconsideration of applications

The Director shall not finally disapprove any application, or any amendment thereto, submitted to the Director under this section without first affording the applicant reasonable notice and opportunity for reconsideration.

(Pub. L. 90–351, title I, § 1404, as added Pub. L. 101–647, title II, § 241(a)(2), Nov. 29, 1990, 104 Stat. 4811; amended Pub. L. 103–322, title IV, § 40156(c)(4), Sept. 13, 1994, 108 Stat. 1923.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322, § 40156(c)(4)(A)(i), (vii), substituted ''An applicant is eligible to receive a grant under this subchapter if—'' for ''The Bureau shall provide financial assistance to each State applicant under section 3796aa–1 of this title to provide equipment and personnel training for the closed-circuit televising and video taping of the testimony of children in criminal proceedings for the violation of laws relating to the abuse of children, upon determining that'' in introductory provisions and designated concluding provisions as subsec. (b). See below.

Subsec. (a)(1). Pub. L. 103–322, § 40156(c)(4)(A)(ii), substituted ''the applicant certifies and the Director determines that there is in effect in the State'' for ''there is in effect in such State''.

Subsec. (a)(2). Pub. L. 103–322, § 40156(c)(4)(A)(iii), in introductory provisions substituted ''the applicant certifies and the Director determines that State law meets'' for ''such State law shall meet''.

Subsec. (a)(2)(E). Pub. L. 103–322, § 40156(c)(4)(A)(iv), which directed the insertion of ''and'' at the end of ''subparagraph (E)'', without indicating which paragraph of subsec. (a) was to be amended, was executed by making the insertion at end of par. (2)(E) to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 103–322, § 40156(c)(4)(A)(v), inserted ''the Director determines that'' before ''the application'' and substituted a period for ''; and'' at end.

Subsec. (a)(4). Pub. L. 103–322, § 40156(c)(4)(A)(vi), struck out par. (4) which read as follows: ''before the approval of such application and any amendment thereto the Bureau has made an affirmative finding in writing that such equipment and personnel training has been reviewed in accordance with section 3796aa–2 of this title.''

Subsec. (b). Pub. L. 103–322, § 40156(c)(4)(A)(vii), (viii), designated concluding provisions of subsec. (a) as subsec. (b) and substituted ''the Director'' for ''the Bureau'' wherever appearing. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 103–322, § 40156(c)(4)(B), redesignated subsec. (b), relating to reconsideration of applications, as (c) and substituted ''The Director'' for ''The Bureau''.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3796aa–4. Repealed. Pub. L. 103–322, title IV, § 40156(c)(5), Sept. 13, 1994, 108 Stat. 1924

Section, Pub. L. 90–351, title I, § 1405, as added Pub. L. 101–647, title II, § 241(a)(2), Nov. 29, 1990, 104 Stat. 4811, related to allocation and distribution of funds under formula grants, limitation on use of funds, and waiver of assistance by States.

§ 3796aa–5. Reports

(a) Each State or unit of local government that receives a grant under this subchapter shall submit to the Director, for each year in which any part of such grant is expended by a State or unit of local government, a report which contains—

(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the needs identified in the application submitted under section 3796aa–2 of this title; and

(2) such other information as the Director may require by rule.

Such report shall be submitted in such form and by such time as the Director may require by rule.

(b) Not later than 90 days after the end of each fiscal year for which grants are made under this subchapter, the Director shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

(1) the aggregate amount of grants made under this chapter to the State and units of local government in the State for such fiscal year; and

(2) a summary of the information provided in compliance with subsection (a)(1) of this section.

(Pub. L. 90–351, title I, § 1406, as added Pub. L. 101–647, title II, § 241(a)(2), Nov. 29, 1990, 104 Stat. 4812; amended Pub. L. 103–322, title IV, § 40156(c)(6), Sept. 13, 1994, 108 Stat. 1924.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322, § 40156(c)(6)(A)(i), (ii), substituted ''State or unit of local government that'' for ''State which'' and ''subchapter'' for ''chapter'' in introductory provisions.

Subsec. (a)(1). Pub. L. 103–322, § 40156(c)(6)(A)(iii), struck out ''State'' before ''application submitted''.

Subsec. (b)(1). Pub. L. 103–322, § 40156(c)(6)(B), substituted ''the State and units of local government in the State'' for ''such State''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 13 on page 121 identifies a reporting provision which, as subsequently amended, is contained in subsec. (b) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3796aa–6. Expenditure of grants; records

(a) Identified uses

A grant made under this subchapter may not be expended for more than 75 percent of the cost of the identified uses, in the aggregate, for which such grant is received to carry out section 3796aa–1 of this title, except that in the case of funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any such program or project, the amount of such grant shall be equal to 100 percent of such cost. The non-Federal portion of the expenditures for such uses shall be paid in cash.

(b) Administration

Not more than 10 percent of a grant made under this subchapter may be used for costs incurred to administer such grant.

(c) Records

(1) Grant recipients (or private organizations with which grant recipients have contracted to provide equipment or training using grant funds) shall keep such records as the Director may require by rule to facilitate such an audit..[1]

(2) The Director and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of grant recipients (or private organizations with which grant recipients have contracted to provide equipment or training using grant funds) if, in the opinion of the Director or the Comptroller General, such books, documents, and records are related to the receipt or use of any such grant.

(d) Utilization of private sector

Nothing in this subchapter shall prohibit the utilization of any grant funds to contract with a private organization to provide equipment or training for the televising of testimony as contemplated by the application submitted by an applicant.

(Pub. L. 90–351, title I, § 1407, as added Pub. L. 101–647, title II, § 241(a)(2), Nov. 29, 1990, 104 Stat. 4813; amended Pub. L. 103–322, title IV, § 40156(c)(7), Sept. 13, 1994, 108 Stat. 1924.)

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–322, § 40156(c)(7)(A)(i), substituted ''Grant recipients (or private organizations with which grant recipients have contracted to provide equipment or training using grant funds) shall keep such records as the Director may require by rule to facilitate such an audit.'' for ''Each State which receives a grant under this chapter shall keep, and shall require units of local government which receive any part of

[1] So in original.

such grant to keep, such records as the Director may require by rule to facilitate an effective audit''.

Subsec. (c)(2). Pub. L. 103–322, § 40156(c)(7)(A)(ii), substituted ''grant recipients (or private organizations with which grant recipients have contracted to provide equipment or training using grant funds)'' for ''States which receive grants, and of units of local government which receive any part of a grant made under this subchapter''.

Subsec. (d). Pub. L. 103–322, § 40156(c)(7)(B), added subsec. (d).

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3796aa–7. Repealed. Pub. L. 103–322, title IV, § 40156(c)(8), Sept. 13, 1994, 108 Stat. 1924

Section, Pub. L. 90–351, title I, § 1408, as added Pub. L. 101–647, title II, § 241(a)(2), Nov. 29, 1990, 104 Stat. 4813, directed the chief executive of each participating State to designate a State office for purposes of applying for and administering funds under this subchapter.

§ 3796aa–8. Definitions

For purposes of this subchapter—

(1) the term ''child'' means an individual under the age of 18 years; and

(2) the term ''abuse'' means physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.

(Pub. L. 90–351, title I, § 1409, as added Pub. L. 101–647, title II, § 241(a)(2), Nov. 29, 1990, 104 Stat. 4813.)

SUBCHAPTER XII–C—RURAL DRUG ENFORCEMENT

§ 3796bb. Rural drug enforcement assistance

(a) Of the total amount appropriated for this section in any fiscal year:

(1) 50 percent shall be allocated to and shared equally among rural States as described in subsection (b) of this section; and

(2) 50 percent shall be allocated to the remaining States for use in nonmetropolitan areas within those States, as follows:

(A) $250,000 to each nonrural State; and

(B) of the total funds remaining after the allocation in subparagraph (A), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described as the population of such State bears to the population of all States.

(b) For the purpose of this section, the term ''rural State'' means a State that has a population density of fifty-two or fewer persons per square mile or a State in which the largest county has fewer than one hundred and fifty thousand people, based on the decennial census of 1990 through fiscal year 1997.

(Pub. L. 90–351, title I, § 1501, as added Pub. L. 101–647, title VIII, § 801(a)(3), Nov. 29, 1990, 104 Stat. 4825; amended Pub. L. 103–322, title XVIII, § 180101(b), (c), Sept. 13, 1994, 108 Stat. 2045.)

PRIOR PROVISIONS

A prior section 1501 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

Another prior section 1501 of Pub. L. 90–351, title X, June 19, 1968, 82 Stat. 238, was not classified to the Code.

AMENDMENTS

1994—Subsec. (a)(2)(A). Pub. L. 103–322, § 180101(b), substituted ''$250,000'' for ''$100,000''.

Subsec. (b). Pub. L. 103–322, § 180101(c), inserted before period at end '', based on the decennial census of 1990 through fiscal year 1997''.

§ 3796bb–1. Other requirements

Parts A and C of subchapter V of this chapter shall apply with respect to funds appropriated to carry out this subchapter, in the same manner as such parts apply to funds appropriated to carry out subchapter V of this chapter, except that—

(1) section 3755(a) of this title shall not apply with respect to this subchapter; and

(2) in addition to satisfying the requirements of section 3752 of this title, each application for a grant under this subchapter shall include in its application a statement specifying how such grant will be coordinated with a grant received under section 3755 of this title for the same fiscal year.

(Pub. L. 90–351, title I, § 1502, as added Pub. L. 101–647, title VIII, § 801(a)(3), Nov. 29, 1990, 104 Stat. 4825; amended Pub. L. 109–162, title XI, § 1111(c)(2)(G), Jan. 5, 2006, 119 Stat. 3102.)

AMENDMENTS

2006—Par. (1). Pub. L. 109–162, § 1111(c)(2)(G)(i), substituted ''section 3755(a)'' for ''section 3756(a)''.

Par. (2). Pub. L. 109–162, § 1111(c)(2)(G)(ii), substituted ''section 3752'' for ''section 3753(a)'' and ''section 3755'' for ''section 3756''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 3750 of this title.

SUBCHAPTER XII–D—CRIMINAL CHILD SUPPORT ENFORCEMENT

§ 3796cc. Grant authorization

(a) In general

The Director of the Bureau of Justice Assistance may make grants under this subchapter to States, for the use by States, and local entities in the States to develop, implement, and enforce criminal interstate child support legislation and coordinate criminal interstate child support enforcement efforts.

(b) Uses of funds

Funds distributed under this subchapter shall be used to—

(1) develop a comprehensive assessment of existing criminal interstate child support enforcement efforts, including the identification of gaps in, and barriers to, the enforcement of such efforts;

(2) plan and implement comprehensive long-range strategies for criminal interstate child support enforcement;

(3) reach an agreement within the State regarding the priorities of such State in the en-

forcement of criminal interstate child support legislation;

(4) develop a plan to implement such priorities; and

(5) coordinate criminal interstate child support enforcement efforts.

(Pub. L. 90–351, title I, § 1601, as added Pub. L. 102–521, § 4(a)(3), Oct. 25, 1992, 106 Stat. 3404.)

CODIFICATION

Another section 1601 of Pub. L. 90–351, title XI, June 19, 1968, 82 Stat. 239, is set out as a note under section 3711 of this title.

PRIOR PROVISIONS

A prior section 1601 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3796cc–1. State applications

(a) In general

(1) To request a grant under this subchapter, the chief executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

(2) An application under paragraph (1) shall include assurances that Federal funds received under this subchapter shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subchapter.

(b) State office

The office responsible for the trust fund required by section 3757 of this title—

(1) shall prepare the application required under this section; and

(2) shall administer grant funds received under this subchapter, including, review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

(Pub. L. 90–351, title I, § 1602, as added Pub. L. 102–521, § 4(a)(3), Oct. 25, 1992, 106 Stat. 3404; amended Pub. L. 109–162, title XI, § 1111(c)(2)(H), Jan. 5, 2006, 119 Stat. 3102.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–162 substituted ''The office responsible for the trust fund required by section 3757 of this title'' for ''The office designated under section 3757 of this title''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 3750 of this title.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3796cc–2. Review of State applications

(a) In general

The Bureau shall make a grant under section 3796cc(a) of this title to carry out the projects described in the application submitted by an applicant under section 3796cc–1 of this title upon determining that—

(1) the application is consistent with the requirements of this subchapter; and

(2) before the approval of the application, the Bureau has made an affirmative finding in writing that the proposed project has been reviewed in accordance with this subchapter.

(b) Approval

Each application submitted under section 3796cc–1 of this title shall be considered approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

(c) Disapproval notice and reconsideration

The Bureau shall not disapprove any application without first affording the applicant reasonable notice and an opportunity for reconsideration.

(Pub. L. 90–351, title I, § 1603, as added Pub. L. 102–521, § 4(a)(3), Oct. 25, 1992, 106 Stat. 3405.)

§ 3796cc–3. Local applications

(a) In general

(1) To request funds under this subchapter from a State, the chief executive of a local entity shall submit an application to the office designated under section 3796cc–1(b) of this title.

(2) An application under paragraph (1) shall be considered approved, in whole or in part, by the State not later than 45 days after such application is first received unless the State informs the applicant in writing of specific reasons for disapproval.

(3) The State shall not disapprove any application submitted to the State without first affording the applicant reasonable notice and an opportunity for reconsideration.

(4) If an application under paragraph (1) is approved, the local entity is eligible to receive funds under this subchapter.

(b) Distribution to local entities

A State that receives funds under section 3796cc of this title in a fiscal year shall make such funds available to a local entity with an approved application within 45 days after the Bureau has approved the application submitted by the State and has made funds available to the State. The Director may waive the 45-day requirement in this section upon a finding that the State is unable to satisfy the requirement of the preceding sentence under State statutes.

(Pub. L. 90–351, title I, § 1604, as added Pub. L. 102–521, § 4(a)(3), Oct. 25, 1992, 106 Stat. 3405.)

§ 3796cc–4. Distribution of funds

The Federal share of a grant made under this subchapter may not exceed 75 percent of the

total costs of the project described in the application submitted under section 3796cc–1(a) of this title for the fiscal year for which the project receives assistance under this subchapter.

(Pub. L. 90–351, title I, § 1605, as added Pub. L. 102–521, § 4(a)(3), Oct. 25, 1992, 106 Stat. 3405.)

§ 3796cc–5. Evaluation

(a) In general

(1) Each State and local entity that receives a grant under this subchapter shall submit to the Director an evaluation not later than March 1 of each year in accordance with guidelines issued by the Director and in consultation with the Director of the National Institute of Justice.

(2) The Director may waive the requirement specified in subsection (a) of this section if the Director determines that such evaluation is not warranted in the case of the State or local entity involved.

(b) Distribution

The Director shall make available to the public on a timely basis evaluations received under subsection (a) of this section.

(c) Administrative costs

A State or local entity may use not more than 5 percent of the funds it receives under this subchapter to develop an evaluation program under this section.

(Pub. L. 90–351, title I, § 1606, as added Pub. L. 102–521, § 4(a)(3), Oct. 25, 1992, 106 Stat. 3405.)

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3796cc–6. "Local entity" defined

For purposes of this subchapter, the term ''local entity'' means a child support enforcement agency, law enforcement agency, prosecuting attorney, or unit of local government.

(Pub. L. 90–351, title I, § 1607, as added Pub. L. 102–521, § 4(a)(3), Oct. 25, 1992, 106 Stat. 3406.)

SUBCHAPTER XII–E—PUBLIC SAFETY AND COMMUNITY POLICING; ''COPS ON THE BEAT''

§ 3796dd. Authority to make public safety and community policing grants

(a) Grant authorization

The Attorney General shall carry out a single grant program under which the Attorney General makes grants to States, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia for the purposes described in subsection (b) of this section.

(b) Uses of grant amounts

The purposes for which grants made under subsection (a) of this section may be made are—

(1) rehire law enforcement officers who have been laid off as a result of State and local budget reductions for deployment in community-oriented policing;

(2) hire and train new, additional career law enforcement officers for deployment in community-oriented policing across the Nation;

(3) procure equipment, technology, or support systems, or pay overtime, to increase the number of officers deployed in community-oriented policing;

(4) award grants to pay for offices hired to perform intelligence, anti-terror, or homeland security duties;

(6)[1] increase the number of law enforcement officers involved in activities that are focused on interaction with members of the community on proactive crime control and prevention by redeploying officers to such activities;

(7) provide specialized training to law enforcement officers to enhance their conflict resolution, mediation, problem solving, service, and other skills needed to work in partnership with members of the community;

(8) increase police participation in multidisciplinary early intervention teams;

(9) develop new technologies, including interoperable communications technologies, modernized criminal record technology, and forensic technology, to assist State and local law enforcement agencies in reorienting the emphasis of their activities from reacting to crime to preventing crime and to train law enforcement officers to use such technologies;

(10) develop and implement innovative programs to permit members of the community to assist State and local law enforcement agencies in the prevention of crime in the community, such as a citizens' police academy, including programs designed to increase the level of access to the criminal justice system enjoyed by victims, witnesses, and ordinary citizens by establishing decentralized satellite offices (including video facilities) of principal criminal courts buildings;

(11) establish innovative programs to reduce, and keep to a minimum, the amount of time that law enforcement officers must be away from the community while awaiting court appearances;

(12) establish and implement innovative programs to increase and enhance proactive crime control and prevention programs involving law enforcement officers and young persons in the community;

(13) establish school-based partnerships between local law enforcement agencies and local school systems by using school resource officers who operate in and around elementary and secondary schools to combat school-related crime and disorder problems, gangs, and drug activities;

(14) develop and establish new administrative and managerial systems to facilitate the adoption of community-oriented policing as an organization-wide philosophy;

(15) assist a State in enforcing a law throughout the State which requires that a convicted sex offender register his or her address with a State or local law enforcement agency and be subject to criminal prosecution for failure to comply;

[1] No par. (5) has been enacted.

(16) establish, implement, and coordinate crime prevention and control programs (involving law enforcement officers working with community members) with other Federal programs that serve the community and community members to better address the comprehensive needs of the community and its members; and

(17) support the purchase by a law enforcement agency of no more than 1 service weapon per officer, upon hiring for deployment in community-oriented policing or, if necessary, upon existing officers' initial redeployment to community-oriented policing.

(c) Preferential consideration of applications for certain grants

In awarding grants under this subchapter, the Attorney General may give preferential consideration, where feasible, to applications for hiring and rehiring additional career law enforcement officers that involve a non-Federal contribution exceeding the 25 percent minimum under subsection (g) of this section.

(d) Technical assistance

(1) In general

The Attorney General may provide technical assistance to States, units of local government, Indian tribal governments, and to other public and private entities, in furtherance of the purposes of the Public Safety Partnership and Community Policing Act of 1994.

(2) Model

The technical assistance provided by the Attorney General may include the development of a flexible model that will define for State and local governments, and other public and private entities, definitions and strategies associated with community or problem-oriented policing and methodologies for its implementation.

(3) Training centers and facilities

The technical assistance provided by the Attorney General may include the establishment and operation of training centers or facilities, either directly or by contracting or cooperative arrangements. The functions of the centers or facilities established under this paragraph may include instruction and seminars for police executives, managers, trainers, supervisors, and such others as the Attorney General considers to be appropriate concerning community or problem-oriented policing and improvements in police-community interaction and cooperation that further the purposes of the Public Safety Partnership and Community Policing Act of 1994.

(e) Utilization of components

The Attorney General may utilize any component or components of the Department of Justice in carrying out this subchapter.

(f) Minimum amount

Unless all applications submitted by any State and grantee within the State pursuant to subsection (a) of this section have been funded, each qualifying State, together with grantees within the State, shall receive in each fiscal year pursuant to subsection (a) of this section not less than 0.5 percent of the total amount appropriated in the fiscal year for grants pursuant to that subsection. In this subsection, ''qualifying State'' means any State which has submitted an application for a grant, or in which an eligible entity has submitted an application for a grant, which meets the requirements prescribed by the Attorney General and the conditions set out in this subchapter.

(g) Matching funds

The portion of the costs of a program, project, or activity provided by a grant under subsection (a) of this section may not exceed 75 percent, unless the Attorney General waives, wholly or in part, the requirement under this subsection of a non-Federal contribution to the costs of a program, project, or activity. In relation to a grant for a period exceeding 1 year for hiring or rehiring career law enforcement officers, the Federal share shall decrease from year to year for up to 5 years, looking toward the continuation of the increased hiring level using State or local sources of funding following the conclusion of Federal support, as provided in an approved plan pursuant to section 3796dd–1(c)(8) of this title.

(h) Allocation of funds

The funds available under this subchapter shall be allocated as provided in section 3793(a)(11)(B) of this title.

(i) Termination of grants for hiring officers

The authority under subsection (a) of this section to make grants for the hiring and rehiring of additional career law enforcement officers shall lapse at the conclusion of 6 years from September 13, 1994. Prior to the expiration of this grant authority, the Attorney General shall submit a report to Congress concerning the experience with and effects of such grants. The report may include any recommendations the Attorney General may have for amendments to this subchapter and related provisions of law in light of the termination of the authority to make grants for the hiring and rehiring of additional career law enforcement officers.

(Pub. L. 90–351, title I, § 1701, as added Pub. L. 103–322, title I, § 10003(a)(3), Sept. 13, 1994, 108 Stat. 1808; amended Pub. L. 105–119, title I, § 119, Nov. 26, 1997, 111 Stat. 2468; Pub. L. 105–302, § 1(1), Oct. 27, 1998, 112 Stat. 2841; Pub. L. 108–21, title III, § 341, Apr. 30, 2003, 117 Stat. 665; Pub. L. 109–162, title XI, § 1163(a), Jan. 5, 2006, 119 Stat. 3119.)

REFERENCES IN TEXT

The Public Safety Partnership and Community Policing Act of 1994, referred to in subsec. (d)(1), (3), is title I of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1807, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 3711 of this title and Tables.

PRIOR PROVISIONS

A prior section 1701 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162, § 1163(a)(1), reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as fol-

lows: ''The Attorney General may make grants to States, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia thereof to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and members of the community to address crime and disorder problems, and otherwise to enhance public safety.''

Subsec. (b). Pub. L. 109–162, § 1163(a)(3)(A), substituted ''Uses of grant amounts'' for ''Additional grant projects'' in subsec. heading and ''The purposes for which grants made under subsection (a) of this section may be made are—'' for ''Grants made under subsection (a) of this section may include programs, projects, and other activities to—'' in introductory provisions.

Pub. L. 109–162, § 1163(a)(2), (3), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to rehiring, hiring, and initial redeployment grant projects.

Subsec. (b)(1) to (4). Pub. L. 109–162, § 1163(a)(3)(C), added pars. (1) to (4). Former pars. (1) to (4) redesignated (6) to (9), respectively.

Subsec. (b)(5). Pub. L. 109–162, § 1163(a)(3)(B), redesignated par. (5) as (10).

Subsec. (b)(6) to (8). Pub. L. 109–162, § 1163(a)(3)(B), redesignated pars. (1) to (3) as (6) to (8), respectively. Former pars. (6) to (8) redesignated (11) to (13), respectively.

Subsec. (b)(9). Pub. L. 109–162, § 1163(a)(3)(B), (D), redesignated par. (4) as (9) and amended it generally. Prior to amendment, par. (9) read as follows: ''develop new technologies to assist State and local law enforcement agencies in reorienting the emphasis of their activities from reacting to crime to preventing crime;''. Former par. (9) redesignated (14).

Subsec. (b)(10) to (17). Pub. L. 109–162, § 1163(a)(3)(B), redesignated pars. (5) to (12) as (10) to (17), respectively.

Subsec. (c). Pub. L. 109–162, § 1163(a)(2), (4), (5), redesignated subsec. (e) as (c), substituted ''subsection (g) of this section'' for ''subsection (i) of this section'', and struck out former subsec. (c) which related to use of grants for troops-to-cops programs.

Subsecs. (d) to (k). Pub. L. 109–162, § 1163(a)(4), redesignated subsecs. (f) to (k) as (d) to (i), respectively. Former subsecs. (d) and (e) redesignated (b) and (c), respectively.

2003—Subsec. (d)(10) to (12). Pub. L. 108–21 added par. (10) and redesignated former pars. (10) and (11) as (11) and (12), respectively.

1998—Subsec. (d)(8) to (11). Pub. L. 105–302 added par. (8) and redesignated former pars. (8) to (10) as (9) to (11), respectively.

1997—Subsec. (b)(2)(A). Pub. L. 105–119 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''may not exceed—

''(i) 20 percent of the funds available for grants pursuant to this subsection in fiscal year 1995;

''(ii) 20 percent of the funds available for grants pursuant to this subsection in fiscal year 1996; or

''(iii) 10 percent of the funds available for grants pursuant to this subsection in fiscal years 1997, 1998, 1999, and 2000; and''.

PURPOSES OF 1994 AMENDMENTS

Section 10002 of title I of Pub. L. 103–322 provided that: ''The purposes of this title [see Short Title of 1994 Amendment note set out under section 3711 of this title] are to—

''(1) substantially increase the number of law enforcement officers interacting directly with members of the community ('cops on the beat');

''(2) provide additional and more effective training to law enforcement officers to enhance their problem solving, service, and other skills needed in interacting with members of the community;

''(3) encourage the development and implementation of innovative programs to permit members of the community to assist State, Indian tribal government, and local law enforcement agencies in the prevention of crime in the community; and

''(4) encourage the development of new technologies to assist State, Indian tribal government, and local law enforcement agencies in reorienting the emphasis of their activities from reacting to crime to preventing crime,

by establishing a program of grants and assistance in furtherance of these objectives, including the authorization for a period of 6 years of grants for the hiring and rehiring of additional career law enforcement officers.''

§ 3796dd–1. Applications

(a) In general

No grant may be made under this subchapter unless an application has been submitted to, and approved by, the Attorney General.

(b) Application

An application for a grant under this subchapter shall be submitted in such form, and contain such information, as the Attorney General may prescribe by regulation or guidelines.

(c) Contents

In accordance with the regulations or guidelines established by the Attorney General, each application for a grant under this subchapter shall—

(1) include a long-term strategy and detailed implementation plan that reflects consultation with community groups and appropriate private and public agencies;

(2) demonstrate a specific public safety need;

(3) explain the applicant's inability to address the need without Federal assistance;

(4) identify related governmental and community initiatives which complement or will be coordinated with the proposal;

(5) certify that there has been appropriate coordination with all affected agencies;

(6) outline the initial and ongoing level of community support for implementing the proposal including financial and in-kind contributions or other tangible commitments;

(7) specify plans for obtaining necessary support and continuing the proposed program, project, or activity following the conclusion of Federal support;

(8) if the application is for a grant for hiring or rehiring additional career law enforcement officers, specify plans for the assumption by the applicant of a progressively larger share of the cost in the course of time, looking toward the continuation of the increased hiring level using State or local sources of funding following the conclusion of Federal support;

(9) assess the impact, if any, of the increase in police resources on other components of the criminal justice system;

(10) explain how the grant will be utilized to reorient the affected law enforcement agency's mission toward community-oriented policing or enhance its involvement in or commitment to community-oriented policing; and

(11) provide assurances that the applicant will, to the extent practicable, seek, recruit, and hire members of racial and ethnic minority groups and women in order to increase their ranks within the sworn positions in the law enforcement agency.

(d) Special provisions

(1) Small jurisdictions

Notwithstanding any other provision of this subchapter, in relation to applications under

this subchapter of units of local government or law enforcement agencies having jurisdiction over areas with populations of less than 50,000, the Attorney General may waive 1 or more of the requirements of subsection (c) of this section and may otherwise make special provisions to facilitate the expedited submission, processing, and approval of such applications.

(2) Small grant amount

Notwithstanding any other provision of this subchapter, in relation to applications under section 3796dd(b) of this title for grants of less than $1,000,000, the Attorney General may waive 1 or more of the requirements of subsection (c) of this section and may otherwise make special provisions to facilitate the expedited submission, processing, and approval of such applications.

(Pub. L. 90–351, title I, § 1702, as added Pub. L. 103–322, title I, § 10003(a)(3), Sept. 13, 1994, 108 Stat. 1811; amended Pub. L. 109–162, title XI, §§ 1111(c)(2)(I), 1163(b), Jan. 5, 2006, 119 Stat. 3102, 3120.)

AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109–162, § 1111(c)(2)(I), struck out ''and reflects consideration of the statewide strategy under section 3753(a)(1) of this title'' before semicolon at end.

Subsec. (d)(2). Pub. L. 109–162, § 1163(b), substituted ''section 3796dd(b)'' for ''section 3796dd(d)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1111(c)(2)(I) of Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 3750 of this title.

§ 3796dd–2. Renewal of grants

(a) In general

Except for grants made for hiring or rehiring additional career law enforcement officers, a grant under this subchapter may be renewed for up to 2 additional years after the first fiscal year during which a recipient receives its initial grant, if the Attorney General determines that the funds made available to the recipient were used in a manner required under an approved application and if the recipient can demonstrate significant progress in achieving the objectives of the initial application.

(b) Grants for hiring

Grants made for hiring or rehiring additional career law enforcement officers may be renewed for up to 5 years, subject to the requirements of subsection (a) of this section, but notwithstanding the limitation in that subsection concerning the number of years for which grants may be renewed.

(c) Multiyear grants

A grant for a period exceeding 1 year may be renewed as provided in this section, except that the total duration of such a grant including any renewals may not exceed 3 years, or 5 years if it is a grant made for hiring or rehiring additional career law enforcement officers.

(Pub. L. 90–351, title I, § 1703, as added Pub. L. 103–322, title I, § 10003(a)(3), Sept. 13, 1994, 108 Stat. 1812.)

§ 3796dd–3. Limitation on use of funds

(a) Nonsupplanting requirement

Funds made available under this subchapter to States or units of local government shall not be used to supplant State or local funds, or, in the case of Indian tribal governments, funds supplied by the Bureau of Indian Affairs, but shall be used to increase the amount of funds that would, in the absence of Federal funds received under this subchapter, be made available from State or local sources, or in the case of Indian tribal governments, from funds supplied by the Bureau of Indian Affairs.

(b) Non-Federal costs

(1) In general

States and units of local government may use assets received through the Assets Forfeiture equitable sharing program to provide the non-Federal share of the cost of programs, projects, and activities funded under this subchapter.

(2) Indian tribal governments

Funds appropriated by the Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of the cost of programs or projects funded under this subchapter.

(c) Hiring costs

Funding provided under this subchapter for hiring or rehiring a career law enforcement officer may not exceed $75,000, unless the Attorney General grants a waiver from this limitation.

(Pub. L. 90–351, title I, § 1704, as added Pub. L. 103–322, title I, § 10003(a)(3), Sept. 13, 1994, 108 Stat. 1812.)

§ 3796dd–4. Performance evaluation

(a) Monitoring components

Each program, project, or activity funded under this subchapter shall contain a monitoring component, developed pursuant to guidelines established by the Attorney General. The monitoring required by this subsection shall include systematic identification and collection of data about activities, accomplishments, and programs throughout the life of the program, project, or activity and presentation of such data in a usable form.

(b) Evaluation components

Selected grant recipients shall be evaluated on the local level or as part of a national evaluation, pursuant to guidelines established by the Attorney General. Such evaluations may include assessments of individual program implementations. In selected jurisdictions that are able to support outcome evaluations, the effectiveness of funded programs, projects, and activities may be required. Outcome measures may include crime and victimization indicators, quality of life measures, community perceptions, and police perceptions of their own work.

(c) Periodic review and reports

The Attorney General may require a grant recipient to submit to the Attorney General the

results of the monitoring and evaluations required under subsections (a) and (b) of this section and such other data and information as the Attorney General deems reasonably necessary.

(Pub. L. 90–351, title I, §1705, as added Pub. L. 103–322, title I, §10003(a)(3), Sept. 13, 1994, 108 Stat. 1813.)

§ 3796dd–5. Revocation or suspension of funding

If the Attorney General determines, as a result of the reviews required by section 3796dd–4 of this title, or otherwise, that a grant recipient under this subchapter is not in substantial compliance with the terms and requirements of an approved grant application submitted under section 3796dd–1 of this title, the Attorney General may revoke or suspend funding of that grant, in whole or in part.

(Pub. L. 90–351, title I, §1706, as added Pub. L. 103–322, title I, §10003(a)(3), Sept. 13, 1994, 108 Stat. 1813.)

§ 3796dd–6. Access to documents

(a) By Attorney General

The Attorney General shall have access for the purpose of audit and examination to any pertinent books, documents, papers, or records of a grant recipient under this subchapter and to the pertinent books, documents, papers, or records of State and local governments, persons, businesses, and other entities that are involved in programs, projects, or activities for which assistance is provided under this subchapter.

(b) By Comptroller General

Subsection (a) of this section shall apply with respect to audits and examinations conducted by the Comptroller General of the United States or by an authorized representative of the Comptroller General.

(Pub. L. 90–351, title I, §1707, as added Pub. L. 103–322, title I, §10003(a)(3), Sept. 13, 1994, 108 Stat. 1813.)

§ 3796dd–7. General regulatory authority

The Attorney General may promulgate regulations and guidelines to carry out this subchapter.

(Pub. L. 90–351, title I, §1708, as added Pub. L. 103–322, title I, §10003(a)(3), Sept. 13, 1994, 108 Stat. 1813.)

§ 3796dd–8. Definitions

In this subchapter—

(1) ''career law enforcement officer'' means a person hired on a permanent basis who is authorized by law or by a State or local public agency to engage in or supervise the prevention, detection, or investigation of violations of criminal laws.

(2) ''citizens' police academy'' means a program by local law enforcement agencies or private nonprofit organizations in which citizens, especially those who participate in neighborhood watch programs, are trained in ways of facilitating communication between the community and local law enforcement in the prevention of crime.

(3) ''Indian tribe'' means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(4) ''school resource officer'' means a career law enforcement officer, with sworn authority, deployed in community-oriented policing, and assigned by the employing police department or agency to work in collaboration with schools and community-based organizations—

(A) to address crime and disorder problems, gangs, and drug activities affecting or occurring in or around an elementary or secondary school;

(B) to develop or expand crime prevention efforts for students;

(C) to educate likely school-age victims in crime prevention and safety;

(D) to develop or expand community justice initiatives for students;

(E) to train students in conflict resolution, restorative justice, and crime awareness;

(F) to assist in the identification of physical changes in the environment that may reduce crime in or around the school; and

(G) to assist in developing school policy that addresses crime and to recommend procedural changes.

(Pub. L. 90–351, title I, §1709, as added Pub. L. 103–322, title I, §10003(a)(3), Sept. 13, 1994, 108 Stat. 1813; amended Pub. L. 105–302, §1(2), Oct. 27, 1998, 112 Stat. 2841.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (3), is Pub. L. 92–203, §2, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1998—Pub. L. 105–302 designated first three undesignated paragraphs as pars. (1) to (3), respectively, and added par. (4).

SUBCHAPTER XII–F—JUVENILE ACCOUNTABILITY BLOCK GRANTS

CODIFICATION

Part R of title I of the Omnibus Crime Control and Safe Streets Act of 1968, comprising this subchapter, was originally added to Pub. L. 90–351, title I, by Pub. L. 103–322, title II, §20201(a)(3), Sept. 13, 1994, 108 Stat. 1819, and amended by Pub. L. 105–277, Oct. 21, 1998, 112 Stat. 2681. Part R is shown herein, however, as having been added by Pub. L. 107–273, div. C, title II, §12102(a), Nov. 2, 2002, 116 Stat. 1859, without reference to those intervening amendments because of the extensive revision of the Part R by Pub. L. 107–273.

§ 3796ee. Program authorized

(a) In general

The Attorney General is authorized to provide grants to States, for use by States and units of local government, and in certain cases directly to specially qualified units.

(b) Authorized activities

Amounts paid to a State or a unit of local government under this subchapter shall be used by the State or unit of local government for the purpose of strengthening the juvenile justice system, which includes—

(1) developing, implementing, and administering graduated sanctions for juvenile offenders;

(2) building, expanding, renovating, or operating temporary or permanent juvenile correction, detention, or community corrections facilities;

(3) hiring juvenile court judges, probation officers, and court-appointed defenders and special advocates, and funding pretrial services (including mental health screening and assessment) for juvenile offenders, to promote the effective and expeditious administration of the juvenile justice system;

(4) hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and case backlogs reduced;

(5) providing funding to enable prosecutors to address drug, gang, and youth violence problems more effectively and for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;

(6) establishing and maintaining training programs for law enforcement and other court personnel with respect to preventing and controlling juvenile crime;

(7) establishing juvenile gun courts for the prosecution and adjudication of juvenile firearms offenders;

(8) establishing drug court programs for juvenile offenders that provide continuing judicial supervision over juvenile offenders with substance abuse problems and the integrated administration of other sanctions and services for such offenders;

(9) establishing and maintaining a system of juvenile records designed to promote public safety;

(10) establishing and maintaining interagency information-sharing programs that enable the juvenile and criminal justice systems, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;

(11) establishing and maintaining accountability-based programs designed to reduce recidivism among juveniles who are referred by law enforcement personnel or agencies;

(12) establishing and maintaining programs to conduct risk and need assessments of juvenile offenders that facilitate the effective early intervention and the provision of comprehensive services, including mental health screening and treatment and substance abuse testing and treatment to such offenders;

(13) establishing and maintaining accountability-based programs that are designed to enhance school safety, which programs may include research-based bullying, cyberbullying, and gang prevention programs;

(14) establishing and maintaining restorative justice programs;

(15) establishing and maintaining programs to enable juvenile courts and juvenile probation officers to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism;

(16) hiring detention and corrections personnel, and establishing and maintaining training programs for such personnel to improve facility practices and programming; or

(17) establishing, improving, and coordinating pre-release and post-release systems and programs to facilitate the successful reentry of juvenile offenders from State or local custody in the community.

(c) Definition

In this section the term ''restorative justice program'' means a program that emphasizes the moral accountability of an offender toward the victim and the affected community and may include community reparations boards, restitution (in the form of monetary payment or service to the victim or, where no victim can be identified, service to the affected community), and mediation between victim and offender.

(Pub. L. 90–351, title I, § 1801, as added Pub. L. 107–273, div. C, title II, § 12102(a), Nov. 2, 2002, 116 Stat. 1859; amended Pub. L. 109–162, title XI, §§ 1165, 1186, Jan. 5, 2006, 119 Stat. 3121, 3127.)

PRIOR PROVISIONS

A prior section 3796ee, Pub. L. 90–351, title I, § 1801, as added Pub. L. 103–322, title II, § 20201(a)(3), Sept. 13, 1994, 108 Stat. 1819; amended Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(34), (f)(26)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–426, 2681–433, authorized grants for the purpose of developing alternative methods of punishment for young offenders, prior to the general amendment of this subchapter by Pub. L. 107–273.

A prior section 1801 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

AMENDMENTS

2006—Subsec. (b)(13). Pub. L. 109–162, § 1186, amended par. (13) generally. Prior to amendment, par. (13) read as follows: ''establishing and maintaining accountability-based programs that are designed to enhance school safety;''.

Subsec. (b)(17). Pub. L. 109–162, § 1165, added par. (17).

EFFECTIVE DATE

Pub. L. 107–273, div. C, title II, § 12102(b), Nov. 2, 2002, 116 Stat. 1869, provided that: ''The amendments made by subsection (a) [enacting this subchapter] shall take effect on the first day of the first fiscal year that begins after the date of enactment of this Act [Nov. 2, 2002].''

§ 3796ee–1. Tribal grant program authorized

(a) In general

From the amount reserved under section 3796ee–10(b) of this title, the Attorney General shall make grants to Indian tribes for programs to strengthen tribal juvenile justice systems and to hold tribal youth accountable.

(b) Eligibility

Indian tribes, as defined by section 479a of title 25, or a consortia of such tribes, shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. Only tribes that carry out tribal juvenile justice functions

shall be eligible to receive a grant under this section.

(c) Awards

The Attorney General shall award grants under this section on a competitive basis.

(d) Guidelines

The Attorney General shall issue guidelines establishing application, use, and award criteria and processes consistent with the purposes and requirements of this Act.

(Pub. L. 90–351, title I, § 1801A, as added Pub. L. 107–273, div. C, title II, § 12102(a), Nov. 2, 2002, 116 Stat. 1861.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended, known as the Omnibus Crime Control and Safe Streets Act of 1968. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

PRIOR PROVISIONS

A prior section 3796ee–1, Pub. L. 90–351, title I, § 1802, as added Pub. L. 103–322, title II, § 20201(a)(3), Sept. 13, 1994, 108 Stat. 1820, related to State applications for grants, prior to the general amendment of this subchapter by Pub. L. 107–273.

§ 3796ee–2. Grant eligibility

(a) State eligibility

To be eligible to receive a grant under this subchapter, a State shall submit to the Attorney General an application at such time, in such form, and containing such assurances and information as the Attorney General may require by guidelines, including—

(1) information about—

(A) the activities proposed to be carried out with such grant; and

(B) the criteria by which the State proposes to assess the effectiveness of such activities on achieving the purposes of this subchapter, including the extent to which evidence-based approaches are utilized; and

(2) assurances that the State and any unit of local government to which the State provides funding under section 3796ee–3(b) of this title, has in effect (or shall have in effect, not later than 1 year after the date that the State submits such application) laws, or has implemented (or shall implement, not later than 1 year after the date that the State submits such application) policies and programs, that provide for a system of graduated sanctions described in subsection (d) of this section.

(b) Local eligibility

(1) Subgrant eligibility

To be eligible to receive a subgrant, a unit of local government, other than a specially qualified unit, shall provide to the State—

(A) information about—

(i) the activities proposed to be carried out with such subgrant; and

(ii) the criteria by which the unit proposes to assess the effectiveness of such activities on achieving the purposes of this subchapter, including the extent to which evidence-based approaches are utilized; and

(B) such assurances as the State shall require, that, to the maximum extent applicable, the unit of local government has in effect (or shall have in effect, not later than 1 year after the date that the unit submits such application) laws, or has implemented (or shall implement, not later than 1 year after the date that the unit submits such application) policies and programs, that provide for a system of graduated sanctions described in subsection (d) of this section.

(2) Special rule

The requirements of paragraph (1) shall apply to a specially qualified unit that receives funds from the Attorney General under section 3796ee–3(e) of this title, except that information that is otherwise required to be submitted to the State shall be submitted to the Attorney General.

(c) Role of courts

In the development of the grant application, the States and units of local governments shall take into consideration the needs of the judicial branch in strengthening the juvenile justice system and specifically seek the advice of the chief of the highest court of the State and where appropriate, the chief judge of the local court, with respect to the application.

(d) Graduated sanctions

A system of graduated sanctions, which may be discretionary as provided in subsection (e) of this section, shall ensure, at a minimum, that—

(1) sanctions are imposed on a juvenile offender for each delinquent offense;

(2) sanctions escalate in intensity with each subsequent, more serious delinquent offense;

(3) there is sufficient flexibility to allow for individualized sanctions and services suited to the individual juvenile offender; and

(4) appropriate consideration is given to public safety and victims of crime.

(e) Discretionary use of sanctions

(1) Voluntary participation

A State or unit of local government may be eligible to receive a grant under this subchapter if—

(A) its system of graduated sanctions is discretionary; and

(B) it demonstrates that it has promoted the use of a system of graduated sanctions by taking steps to encourage implementation of such a system by juvenile courts.

(2) Reporting requirement if graduated sanctions not used

(A) Juvenile courts

A State or unit of local government in which the imposition of graduated sanctions is discretionary shall require each juvenile court within its jurisdiction—

(i) which has not implemented a system of graduated sanctions, to submit an annual report that explains why such court did not implement graduated sanctions; and

(ii) which has implemented a system of graduated sanctions but has not imposed

graduated sanctions in all cases, to submit an annual report that explains why such court did not impose graduated sanctions in all cases.

(B) Units of local government

Each unit of local government, other than a specially qualified unit, that has 1 or more juvenile courts that use a discretionary system of graduated sanctions shall collect the information reported under subparagraph (A) for submission to the State each year.

(C) States

Each State and specially qualified unit that has 1 or more juvenile courts that use a discretionary system of graduated sanctions shall collect the information reported under subparagraph (A) for submission to the Attorney General each year. A State shall also collect and submit to the Attorney General the information collected under subparagraph (B).

(f) Definitions

In this section:

(1) Discretionary

The term ''discretionary'' means that a system of graduated sanctions is not required to be imposed by each and every juvenile court in a State or unit of local government.

(2) Sanctions

The term ''sanctions'' means tangible, proportional consequences that hold the juvenile offender accountable for the offense committed. A sanction may include counseling, restitution, community service, a fine, supervised probation, or confinement.

(Pub. L. 90–351, title I, § 1802, as added Pub. L. 107–273, div. C, title II, § 12102(a), Nov. 2, 2002, 116 Stat. 1861; amended Pub. L. 109–162, title XI, § 1168(a), formerly § 1168, Jan. 5, 2006, 119 Stat. 3122, renumbered § 1168(a), Pub. L. 109–271, § 8(n)(5)(A), Aug. 12, 2006, 120 Stat. 768.)

PRIOR PROVISIONS

A prior section 3796ee–2, Pub. L. 90–351, title I, § 1803, as added Pub. L. 103–322, title II, § 20201(a)(3), Sept. 13, 1994, 108 Stat. 1820, related to review of State applications, prior to the general amendment of this subchapter by Pub. L. 107–273.

A prior section 1802 of Pub. L. 90–351 was classified to section 3796ee–1 of this title prior to the general amendment of this subchapter by Pub. L. 107–273.

AMENDMENTS

2006—Subsecs. (a)(1)(B), (b)(1)(A)(ii). Pub. L. 109–162, § 1168(a), formerly § 1168, as renumbered by Pub. L. 109–271, inserted '', including the extent to which evidence-based approaches are utilized'' after ''subchapter''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–162, title XI, § 1168(b), as added by Pub. L. 109–271, § 8(n)(5)(B), Aug. 12, 2006, 120 Stat. 768, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2006.''

§ 3796ee–3. Allocation and distribution of funds

(a) State allocation

(1) In general

In accordance with regulations promulgated pursuant to this subchapter and except as provided in paragraph (3), the Attorney General shall allocate—

(A) 0.50 percent for each State; and

(B) of the total funds remaining after the allocation under subparagraph (A), to each State, an amount which bears the same ratio to the amount of remaining funds described in this subparagraph as the population of people under the age of 18 living in such State for the most recent calendar year in which such data is available bears to the population of people under the age of 18 of all the States for such fiscal year.

(2) Prohibition

No funds allocated to a State under this subsection or received by a State for distribution under subsection (b) of this section may be distributed by the Attorney General or by the State involved for any program other than a program contained in an approved application.

(b) Local distribution

(1) In general

Except as provided in paragraph (2), each State which receives funds under subsection (a)(1) of this section in a fiscal year shall distribute among units of local government, for the purposes specified in section 3796ee of this title, not less than 75 percent of such amounts received.

(2) Waiver

If a State submits to the Attorney General an application for waiver that demonstrates and certifies to the Attorney General that—

(A) the State's juvenile justice expenditures in the fiscal year preceding the date in which an application is submitted under this subchapter (the ''State percentage'') is more than 25 percent of the aggregate amount of juvenile justice expenditures by the State and its eligible units of local government; and

(B) the State has consulted with as many units of local government in such State, or organizations representing such units, as practicable regarding the State's calculation of expenditures under subparagraph (A), the State's application for waiver under this paragraph, and the State's proposed uses of funds.

(3) Allocation

In making the distribution under paragraph (1), the State shall allocate to such units of local government an amount which bears the same ratio to the aggregate amount of such funds as—

(A) the sum of—

(i) the product of—

(I) three-quarters; multiplied by

(II) the average juvenile justice expenditure for such unit of local government for the 3 most recent calendar years for which such data is available; plus

(ii) the product of—

(I) one-quarter; multiplied by

(II) the average annual number of part 1 violent crimes in such unit of local government for the 3 most recent cal-

endar years for which such data is available, bears to—

(B) the sum of the products determined under subparagraph (A) for all such units of local government in the State.

(4) Expenditures

The allocation any unit of local government shall receive under paragraph (3) for a payment period shall not exceed 100 percent of juvenile justice expenditures of the unit for such payment period.

(5) Reallocation

The amount of any unit of local government's allocation that is not available to such unit by operation of paragraph (4) shall be available to other units of local government that are not affected by such operation in accordance with this subsection.

(c) Unavailability of data for units of local government

If the State has reason to believe that the reported rate of part 1 violent crimes or juvenile justice expenditures for a unit of local government is insufficient or inaccurate, the State shall—

(1) investigate the methodology used by the unit to determine the accuracy of the submitted data; and

(2) if necessary, use the best available comparable data regarding the number of violent crimes or juvenile justice expenditures for the relevant years for the unit of local government.

(d) Local government with allocations less than $10,000

If under this section a unit of local government is allocated less than $10,000 for a payment period, the amount allotted shall be expended by the State on services to units of local government whose allotment is less than such amount in a manner consistent with this subchapter.

(e) Direct grants to specially qualified units

(1) In general

If a State does not qualify or apply for funds reserved for allocation under subsection (a) of this section by the application deadline established by the Attorney General, the Attorney General shall reserve not more than 75 percent of the allocation that the State would have received under subsection (a) of this section for such fiscal year to provide grants to specially qualified units which meet the requirements for funding under section 3796ee–2 of this title.

(2) Award basis

In addition to the qualification requirements for direct grants for specially qualified units the Attorney General may use the average amount allocated by the States to units of local government as a basis for awarding grants under this section.

(Pub. L. 90–351, title I, § 1803, as added Pub. L. 107–273, div. C, title II, § 12102(a), Nov. 2, 2002, 116 Stat. 1863.)

PRIOR PROVISIONS

A prior section 3796ee–3, Pub. L. 90–351, title I, § 1804, as added Pub. L. 103–322, title II, § 20201(a)(3), Sept. 13, 1994, 108 Stat. 1820, related to applications by local governments, prior to the general amendment of this subchapter by Pub. L. 107–273.

A prior section 1803 of Pub. L. 90–351 was classified to section 3796ee–2 of this title prior to the general amendment of this subchapter by Pub. L. 107–273.

§ 3796ee–4. Guidelines

(a) In general

The Attorney General shall issue guidelines establishing procedures under which a State or specifically[1] qualified unit of local government that receives funds under section 3796ee–3 of this title is required to provide notice to the Attorney General regarding the proposed use of funds made available under this subchapter.

(b) Advisory board

(1) In general

The guidelines referred to in subsection (a) of this section shall include a requirement that such eligible State or unit of local government establish and convene an advisory board to recommend a coordinated enforcement plan for the use of such funds.

(2) Membership

The board shall include representation from, if appropriate—

(A) the State or local police department;

(B) the local sheriff's department;

(C) the State or local prosecutor's office;

(D) the State or local juvenile court;

(E) the State or local probation office;

(F) the State or local educational agency;

(G) a State or local social service agency;

(H) a nonprofit, nongovernmental victim advocacy organization; and

(I) a nonprofit, religious, or community group.

(Pub. L. 90–351, title I, § 1804, as added Pub. L. 107–273, div. C, title II, § 12102(a), Nov. 2, 2002, 116 Stat. 1865.)

PRIOR PROVISIONS

A prior section 3796ee–4, Pub. L. 90–351, title I, § 1805, as added Pub. L. 103–322, title II, § 20201(a)(3), Sept. 13, 1994, 108 Stat. 1821, related to allocation and distribution of funds, prior to the general amendment of this subchapter by Pub. L. 107–273.

A prior section 1804 of Pub. L. 90–351 was classified to section 3796ee–3 of this title prior to the general amendment of this subchapter by Pub. L. 107–273.

§ 3796ee–5. Payment requirements

(a) Timing of payments

The Attorney General shall pay to each State or specifically[1] qualified unit of local government that receives funds under section 3796ee–3 of this title that has submitted an application under this subchapter the amount awarded to such State or unit of local government not later than the later of—

(1) the date that is 180 days after the date that the amount is available; or

(2) the first day of the payment period if the State has provided the Attorney General with the assurances required by subsection (c) of this section.

[1] So in original. Probably should be "specially".

[1] So in original. Probably should be "specially".

(b) Repayment of unexpended amounts

(1) Repayment required

From amounts awarded under this subchapter, a State or specially qualified unit shall repay to the Attorney General, before the expiration of the 36-month period beginning on the date of the award, any amount that is not expended by such State or unit.

(2) Extension

The Attorney General may adopt policies and procedures providing for a one-time extension, by not more than 12 months, of the period referred to in paragraph (1).

(3) Penalty for failure to repay

If the amount required to be repaid is not repaid, the Attorney General shall reduce payment in future payment periods accordingly.

(4) Deposit of amounts repaid

Amounts received by the Attorney General as repayments under this subsection shall be deposited in a designated fund for future payments to States and specially qualified units.

(c) Administrative costs

A State or unit of local government that receives funds under this subchapter may use not more than 5 percent of such funds to pay for administrative costs.

(d) Nonsupplanting requirement

Funds made available under this subchapter to States and units of local government shall not be used to supplant State or local funds as the case may be, but shall be used to increase the amount of funds that would, in the absence of funds made available under this subchapter, be made available from State or local sources, as the case may be.

(e) Matching funds

(1) In general

The Federal share of a grant received under this subchapter may not exceed 90 percent of the total program costs.

(2) Construction of facilities

Notwithstanding paragraph (1), with respect to the cost of constructing juvenile detention or correctional facilities, the Federal share of a grant received under this subchapter may not exceed 50 percent of approved cost.

(Pub. L. 90–351, title I, § 1805, as added Pub. L. 107–273, div. C, title II, § 12102(a), Nov. 2, 2002, 116 Stat. 1865.)

PRIOR PROVISIONS

A prior section 3796ee–5, Pub. L. 90–351, title I, § 1806, as added Pub. L. 103–322, title II, § 20201(a)(3), Sept. 13, 1994, 108 Stat. 1822, required each State and unit of local government to submit an annual evaluation of programs, prior to the general amendment of this subchapter by Pub.L. 107–273.

A prior section 1805 of Pub. L. 90–351 was classified to section 3796ee–4 of this title prior to the general amendment of this subchapter by Pub. L. 107–273.

§ 3796ee–6. Utilization of private sector

Funds or a portion of funds allocated under this subchapter may be used by a State or unit of local government that receives a grant under this subchapter to contract with private, nonprofit entities, or community-based organizations to carry out the purposes specified under section 3796ee(b) of this title.

(Pub. L. 90–351, title I, § 1806, as added Pub. L. 107–273, div. C, title II, § 12102(a), Nov. 2, 2002, 116 Stat. 1866.)

PRIOR PROVISIONS

A prior section 1806 of Pub. L. 90–351 was classified to section 3796ee–5 of this title prior to the general amendment of this subchapter by Pub.L. 107–273.

§ 3796ee–7. Administrative provisions

(a) In general

A State or specially qualified unit that receives funds under this subchapter shall—

(1) establish a trust fund in which the government will deposit all payments received under this subchapter;

(2) use amounts in the trust fund (including interest) during the period specified in section 3796ee–5(b)(1) of this title and any extension of that period under section 3796ee–5(b)(2) of this title;

(3) designate an official of the State or specially qualified unit to submit reports as the Attorney General reasonably requires, in addition to the annual reports required under this subchapter; and

(4) spend the funds only for the purpose of strengthening the juvenile justice system.

(b) Chapter provisions

Except as otherwise provided, the administrative provisions of subchapter VIII of this chapter shall apply to this subchapter and for purposes of this section any reference in such provisions to this chapter shall be deemed to include a reference to this subchapter.

(Pub. L. 90–351, title I, § 1807, as added Pub. L. 107–273, div. C, title II, § 12102(a), Nov. 2, 2002, 116 Stat. 1866.)

§ 3796ee–8. Assessment reports

(a) Reports to Attorney General

(1) In general

Except as provided in paragraph (4), for each fiscal year for which a grant or subgrant is awarded under this subchapter, each State or specially qualified unit of local government that receives such a grant shall submit to the Attorney General a grant report, and each unit of local government that receives such a subgrant shall submit to the State a subgrant report, at such time and in such manner as the Attorney General may reasonably require.

(2) Grant report

Each grant report required by paragraph (1) shall include—

(A) a summary of the activities carried out with such grant;

(B) if such activities included any subgrant, a summary of the activities carried out with each such subgrant; and

(C) an assessment of the effectiveness of such activities on achieving the purposes of this subchapter.

(3) Subgrant report

Each subgrant report required by paragraph (1) shall include—

(A) a summary of the activities carried out with such subgrant; and

(B) an assessment of the effectiveness of such activities on achieving the purposes of this subchapter.

(4) Waivers

The Attorney General may waive the requirement of an assessment in paragraph (2)(C) for a State or specially qualified unit of local government, or in paragraph (3)(B) for a unit of local government, if the Attorney General determines that—

(A) the nature of the activities are such that assessing their effectiveness would not be practical or insightful;

(B) the amount of the grant or subgrant is such that carrying out the assessment would not be an effective use of those amounts; or

(C) the resources available to the State or unit are such that carrying out the assessment would pose a financial hardship on the State or unit.

(b) Reports to Congress

Not later than 120 days after the last day of each fiscal year for which 1 or more grants are awarded under this subchapter, the Attorney General shall submit to Congress a report, which shall include—

(1) a summary of the information provided under subsection (a) of this section;

(2) an assessment by the Attorney General of the grant program carried out under this subchapter; and

(3) such other information as the Attorney General considers appropriate.

(Pub. L. 90–351, title I, § 1808, as added Pub. L. 107–273, div. C, title II, § 12102(a), Nov. 2, 2002, 116 Stat. 1867.)

§ 3796ee–9. Definitions

In this subchapter:

(1) Unit of local government

The term ''unit of local government'' means—

(A) a county, township, city, or political subdivision of a county, township, or city, that is a unit of local government as determined by the Secretary of Commerce for general statistical purposes;

(B) any law enforcement district or judicial enforcement district that—

(i) is established under applicable State law; and

(ii) has the authority, in a manner independent of other State entities, to establish a budget and raise revenues; and

(C) the District of Columbia and the recognized governing body of an Indian tribe or Alaskan Native village that carries out substantial governmental duties and powers.

(2) Specially qualified unit

The term ''specially qualified unit'' means a unit of local government which may receive funds under this subchapter only in accordance with section 3796ee–3(e) of this title.

(3) State

The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, except that—

(A) the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands (the ''partial States'') shall collectively be considered as 1 State; and

(B) for purposes of section 3796ee–3(a) of this title, the amount allocated to a partial State shall bear the same proportion to the amount collectively allocated to the partial States as the population of the partial State bears to the collective population of the partial States.

(4) Juvenile

The term ''juvenile'' means an individual who is 17 years of age or younger.

(5) Juvenile justice expenditures

The term ''juvenile justice expenditures'' means expenditures in connection with the juvenile justice system, including expenditures in connection with such system to carry out—

(A) activities specified in section 3796ee(b) of this title; and

(B) other activities associated with prosecutorial and judicial services and corrections as reported to the Bureau of the Census for the fiscal year preceding the fiscal year for which a determination is made under this subchapter.

(6) Part 1 violent crimes

The term ''part 1 violent crimes'' means murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports.

(Pub. L. 90–351, title I, § 1809, as added Pub. L. 107–273, div. C, title II, § 12102(a), Nov. 2, 2002, 116 Stat. 1867.)

§ 3796ee–10. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subchapter, $350,000,000 for each of fiscal years 2006 through 2009.

(b) Oversight accountability and administration

(1) In general

Of the amount authorized to be appropriated under section 5665 of this title, there shall be available to the Attorney General, for each of the fiscal years 2002 through 2004 (as applicable), to remain available until expended—

(A) not more than 2 percent of that amount, for research, evaluation, and demonstration consistent with this subchapter;

(B) not more than 2 percent of that amount, for training and technical assistance; and

(C) not more than 1 percent, for administrative costs to carry out the purposes of this subchapter.

(2) Oversight plan

The Attorney General shall establish and execute an oversight plan for monitoring the activities of grant recipients.

(c) Tribal set-aside

Of the amounts appropriated under subsection (a) of this section, 2 percent shall be made available for programs that receive grants under section 3796ee–1 of this title.

(Pub. L. 90–351, title I, § 1810, as added Pub. L. 107–273, div. C, title II, § 12102(a), Nov. 2, 2002, 116 Stat. 1868; amended Pub. L. 109–162, title XI, § 1166, Jan. 5, 2006, 119 Stat. 3121.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162 substituted ''2006 through 2009'' for ''2002 through 2005''.

SUBCHAPTER XII–G—RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR STATE PRISONERS

§ 3796ff. Grant authorization

(a) In general

The Attorney General may make grants under this subchapter to States, for use by States and units of local government for the purpose of—

(1) developing and implementing residential substance abuse treatment programs within State correctional facilities, as well as within local correctional and detention facilities in which inmates are incarcerated for a period of time sufficient to permit substance abuse treatment; and

(2) encouraging the establishment and maintenance of drug-free prisons and jails.

(b) Consultation

The Attorney General shall consult with the Secretary of Health and Human Services to ensure that projects of substance abuse treatment and related services for State prisoners incorporate applicable components of existing comprehensive approaches including relapse prevention and aftercare services.

(c) Additional use of funds

States that demonstrate that they have existing in-prison drug treatment programs that are in compliance with Federal requirements may use funds awarded under this subchapter for treatment and sanctions both during incarceration and after release.

(Pub. L. 90–351, title I, § 1901, as added Pub. L. 103–322, title III, § 32101(a)(3), Sept. 13, 1994, 108 Stat. 1898; amended Pub. L. 107–273, div. B, title II, §§ 2101, 2102(1), Nov. 2, 2002, 116 Stat. 1792.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273, § 2102(1), substituted ''purpose of—'' for ''purpose of'', inserted par. (1) designation before ''developing'', and added par. (2).

Subsec. (c). Pub. L. 107–273, § 2101, added subsec. (c).

PRIOR PROVISIONS

A prior section 1901 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

§ 3796ff–1. State applications

(a) In general

(1) To request a grant under this subchapter the chief executive of a State shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

(2) Such application shall include assurances that Federal funds received under this subchapter shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subchapter.

(3) Such application shall coordinate the design and implementation of treatment programs between State correctional representatives and the State Alcohol[1] and Drug[1] Abuse[1] agency (and, if appropriate, between representatives of local correctional agencies and representatives of either the State alcohol and drug abuse agency or any appropriate local alcohol and drug abuse agency).

(b) Substance abuse testing requirement

To be eligible to receive funds under this subchapter, a State must agree to implement or continue to require urinalysis or other proven reliable forms of testing, including both periodic and random testing—

(1) of an individual before the individual enters a residential substance abuse treatment program and during the period in which the individual participates in the treatment program; and

(2) of an individual released from a residential substance abuse treatment program if the individual remains in the custody of the State.

(c) Aftercare services requirement

(1) To be eligible for funding under this subchapter, a State shall ensure that individuals who participate in the substance abuse treatment program established or implemented with assistance provided under this subchapter will be provided with after care[2] services.

(2) State aftercare services must involve the coordination of the correctional facility treatment program with other human service and rehabilitation programs, such as educational and job training programs, parole supervision programs, half-way house programs, and participation in self-help and peer group programs, that may aid in the rehabilitation of individuals in the substance abuse treatment program.

(3) To qualify as an aftercare program, the head of the substance abuse treatment program, in conjunction with State and local authorities and organizations involved in substance abuse treatment, shall assist in placement of substance abuse treatment program participants with appropriate community substance abuse treatment facilities when such individuals leave the correctional facility at the end of a sentence or on parole.

(4) After care[3] services required by this subsection shall be funded through funds provided for this subchapter.

(d) Coordination of Federal assistance

Each application submitted for a grant under this section shall include a description of how the funds made available under this section will be coordinated with Federal assistance for substance abuse treatment and aftercare services currently provided by the Department of Health

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should be ''aftercare''.

[3] So in original. Probably should be ''Aftercare''.

and Human Services' Substance Abuse and Mental Health Services Administration.

(e) State office

The office responsible for the trust fund required by section 3757 of this title—

(1) shall prepare the application as required under this section; and

(2) shall administer grant funds received under this subchapter, including review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

(f) Use of grant amounts for nonresidential aftercare services

A State may use amounts received under this subchapter to provide nonresidential substance abuse treatment aftercare services for inmates or former inmates that meet the requirements of subsection (c) of this section, if the chief executive officer of the State certifies to the Attorney General that the State is providing, and will continue to provide, an adequate level of residential treatment services.

(Pub. L. 90–351, title I, § 1902, as added Pub. L. 103–322, title III, § 32101(a)(3), Sept. 13, 1994, 108 Stat. 1898; amended Pub. L. 107–273, div. B, title II, § 2102(2), Nov. 2, 2002, 116 Stat. 1792; Pub. L. 109–162, title XI, §§ 1111(c)(2)(J), 1145(a), (b), Jan. 5, 2006, 119 Stat. 3102, 3111.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–162, § 1145(a), reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: ''To be eligible to receive funds under this subchapter, a State must agree to implement or continue to require urinalysis or other proven reliable forms of testing of individuals in correctional residential substance abuse treatment programs. Such testing shall include individuals released from residential substance abuse treatment programs who remain in the custody of the State.''

Subsec. (c). Pub. L. 109–162, § 1145(b)(1), substituted ''Aftercare services requirement'' for ''Eligibility for preference with after care component'' in subsec. heading.

Subsec. (c)(1). Pub. L. 109–162, § 1145(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''To be eligible for a preference under this subchapter, a State must ensure that individuals who participate in the substance abuse treatment program established or implemented with assistance provided under this subchapter will be provided with aftercare services.''

Subsec. (c)(4). Pub. L. 109–162, § 1145(b)(3), added par. (4).

Subsec. (e). Pub. L. 109–162, § 1111(c)(2)(J), substituted ''The office responsible for the trust fund required by section 3757 of this title'' for ''The Office designated under section 3757 of this title'' in introductory provisions.

2002—Subsec. (f). Pub. L. 107–273 added subsec. (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1111(c)(2)(J) of Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 3750 of this title.

Pub. L. 109–162, title XI, § 1147, as added by Pub. L. 109–271, § 8(n)(2)(A), Aug. 12, 2006, 120 Stat. 767, provided that: ''The amendments made by sections 1144 and 1145 [amending this section and sections 3796ff–2 and 3796ff–3 of this title] shall take effect on October 1, 2006.''

§ 3796ff–2. Review of State applications

(a) In general

The Attorney General shall make a grant under section 3796ff of this title to carry out the projects described in the application submitted under section 3796ff–1 of this title upon determining that—

(1) the application is consistent with the requirements of this subchapter; and

(2) before the approval of the application the Attorney General has made an affirmative finding in writing that the proposed project has been reviewed in accordance with this subchapter.

(b) Approval

Each application submitted under section 3796ff–1 of this title shall be considered approved, in whole or in part, by the Attorney General not later than 90 days after first received unless the Attorney General informs the applicant of specific reasons for disapproval.

(c) Restriction

Grant funds received under this subchapter shall not be used for land acquisition or construction projects.

(d) Disapproval notice and reconsideration

The Attorney General shall not disapprove any application without first affording the applicant reasonable notice and an opportunity for reconsideration.

(e) Priority for partnerships with community-based drug treatment programs

In considering an application submitted by a State under section 3796ff–1 of this title, the Attorney General shall give priority to an application that involves a partnership between the State and a community-based drug treatment program within the State.

(Pub. L. 90–351, title I, § 1903, as added Pub. L. 103–322, title III, § 32101(a)(3), Sept. 13, 1994, 108 Stat. 1899; amended Pub. L. 109–162, title XI, § 1145(c), Jan. 5, 2006, 119 Stat. 3112.)

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–162 added subsec. (e).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 effective Oct. 1, 2006, see section 1147 of Pub. L. 109–162, set out as a note under section 3796ff–1 of this title.

§ 3796ff–3. Allocation and distribution of funds

(a) Allocation

Of the total amount appropriated under this subchapter in any fiscal year—

(1) 0.4 percent shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each of the participating States an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the State prison population of such State bears to the total prison population of all the participating States.

(b) Federal share

The Federal share of a grant made under this subchapter may not exceed 75 percent of the

total costs of the projects described in the application submitted under section 3796ff–1 of this title for the fiscal year for which the projects receive assistance under this subchapter.

(c) Local allocation

At least 10 percent of the total amount made available to a State under subsection (a) of this section for any fiscal year shall be used by the State to make grants to local correctional and detention facilities in the State (provided such facilities exist therein), for the purpose of assisting jail-based substance abuse treatment programs that are effective and science-based established by those local correctional facilities.

(d) Definition

In this section, the term ''residential substance abuse treatment program'' means a course of individual and group activities, lasting between 6 and 12 months, in residential treatment facilities set apart from the general prison population—

(1) directed at the substance abuse problems of the prisoners;

(2) intended to develop the prisoner's cognitive, behavioral, social, vocational and other skills so as to solve the prisoner's substance abuse and other problems; and

(3) which may include the use of pharmacotherapies, where appropriate, that may extend beyond the treatment period.

(Pub. L. 90–351, title I, § 1904, as added Pub. L. 103–322, title III, § 32101(a)(3), Sept. 13, 1994, 108 Stat. 1900; amended Pub. L. 107–273, div. B, title II, § 2102(3), Nov. 2, 2002, 116 Stat. 1792; Pub. L. 109–162, title XI, § 1144, Jan. 5, 2006, 119 Stat. 3111.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–162 added subsec. (d).
2002—Subsec. (c). Pub. L. 107–273 added subsec. (c).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 effective Oct. 1, 2006, see section 1147 of Pub. L. 109–162, set out as a note under section 3796ff–1 of this title.

§ 3796ff–4. Evaluation

Each State that receives a grant under this subchapter shall submit to the Attorney General an evaluation not later than March 1 of each year in such form and containing such information as the Attorney General may reasonably require.

(Pub. L. 90–351, title I, § 1905, as added Pub. L. 103–322, title III, § 32101(a)(3), Sept. 13, 1994, 108 Stat. 1900.)

SUBCHAPTER XII–H—GRANTS TO COMBAT VIOLENT CRIMES AGAINST WOMEN

§ 3796gg. Purpose of program and grants

(a) General program purpose

The purpose of this subchapter is to assist States, State and local courts (including juvenile courts), Indian tribal governments, tribal courts, and units of local government to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women.

(b) Purposes for which grants may be used

Grants under this subchapter shall provide personnel, training, technical assistance, data collection and other equipment for the more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women, and specifically, for the purposes of—

(1) training law enforcement officers, judges, other court personnel, and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of sexual assault, domestic violence, and dating violence;

(2) developing, training, or expanding units of law enforcement officers, judges, other court personnel, and prosecutors specifically targeting violent crimes against women, including the crimes of sexual assault and domestic violence;

(3) developing and implementing more effective police, court, and prosecution policies, protocols, orders, and services specifically devoted to preventing, identifying, and responding to violent crimes against women, including the crimes of sexual assault and domestic violence;

(4) developing, installing, or expanding data collection and communication systems, including computerized systems, linking police, prosecutors, and courts or for the purpose of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions for violent crimes against women, including the crimes of sexual assault and domestic violence;

(5) developing, enlarging, or strengthening victim services programs, including sexual assault, domestic violence, and dating violence programs, developing or improving delivery of victim services to underserved populations, providing specialized domestic violence court advocates in courts where a significant number of protection orders are granted, and increasing reporting and reducing attrition rates for cases involving violent crimes against women, including crimes of sexual assault and domestic violence;

(6) developing, enlarging, or strengthening programs addressing stalking;

(7) developing, enlarging, or strengthening programs addressing the needs and circumstances of Indian tribes in dealing with violent crimes against women, including the crimes of sexual assault and domestic violence;

(8) supporting formal and informal statewide, multidisciplinary efforts, to the extent not supported by State funds, to coordinate the response of State law enforcement agencies, prosecutors, courts, victim services agencies, and other State agencies and departments, to violent crimes against women, including the crimes of sexual assault, domestic violence, and dating violence;

(9) training of sexual assault forensic medical personnel examiners in the collection and preservation of evidence, analysis, prevention, and providing expert testimony and treatment of trauma related to sexual assault;

(10) developing, enlarging, or strengthening programs to assist law enforcement, prosecutors, courts, and others to address the needs and circumstances of older and disabled women who are victims of domestic violence or sexual assault, including recognizing, investigating, and prosecuting instances of such violence or assault and targeting outreach and support, counseling, and other victim services to such older and disabled individuals;

(11) providing assistance to victims of domestic violence and sexual assault in immigration matters;

(12) maintaining core victim services and criminal justice initiatives, while supporting complementary new initiatives and emergency services for victims and their families;

(13) supporting the placement of special victim assistants (to be known as ''Jessica Gonzales Victim Assistants'') in local law enforcement agencies to serve as liaisons between victims of domestic violence, dating violence, sexual assault, and stalking and personnel in local law enforcement agencies in order to improve the enforcement of protection orders. Jessica Gonzales Victim Assistants shall have expertise in domestic violence, dating violence, sexual assault, or stalking and may undertake the following activities—

(A) developing, in collaboration with prosecutors, courts, and victim service providers, standardized response policies for local law enforcement agencies, including triage protocols to ensure that dangerous or potentially lethal cases are identified and prioritized;

(B) notifying persons seeking enforcement of protection orders as to what responses will be provided by the relevant law enforcement agency;

(C) referring persons seeking enforcement of protection orders to supplementary services (such as emergency shelter programs, hotlines, or legal assistance services); and

(D) taking other appropriate action to assist or secure the safety of the person seeking enforcement of a protection order; and

(14) to provide funding to law enforcement agencies, nonprofit nongovernmental victim services providers, and State, tribal, territorial, and local governments,[1] (which funding stream shall be known as the Crystal Judson Domestic Violence Protocol Program) to promote—

(A) the development and implementation of training for local victim domestic violence service providers, and to fund victim services personnel, to be known as ''Crystal Judson Victim Advocates,'' to provide supportive services and advocacy for victims of domestic violence committed by law enforcement personnel;

(B) the implementation of protocols within law enforcement agencies to ensure consistent and effective responses to the commission of domestic violence by personnel within such agencies (such as the model policy promulgated by the International Association of Chiefs of Police (''Domestic Violence by Police Officers: A Policy of the IACP, Police Response to Violence Against Women Project'' July 2003));

(C) the development of such protocols in collaboration with State, tribal, territorial and local victim service providers and domestic violence coalitions.

Any law enforcement, State, tribal, territorial, or local government agency receiving funding under the Crystal Judson Domestic Violence Protocol Program under paragraph (14) shall on an annual basis, receive additional training on the topic of incidents of domestic violence committed by law enforcement personnel from domestic violence and sexual assault nonprofit organizations and, after a period of 2 years, provide a report of the adopted protocol to the Department of Justice, including a summary of progress in implementing such protocol.

(c) State coalition grants

(1) Purpose

The Attorney General shall award grants to each State domestic violence coalition and sexual assault coalition for the purposes of coordinating State victim services activities, and collaborating and coordinating with Federal, State, and local entities engaged in violence against women activities.

(2) Grants to State coalitions

The Attorney General shall award grants to—

(A) each State domestic violence coalition, as determined by the Secretary of Health and Human Services through the Family Violence Prevention and Services Act (42 U.S.C. 10410 et seq.); and

(B) each State sexual assault coalition, as determined by the Center for Injury Prevention and Control of the Centers for Disease Control and Prevention under the Public Health Service Act (42 U.S.C. 280b et seq.).

(3) Eligibility for other grants

Receipt of an award under this subsection by each State domestic violence and sexual assault coalition shall not preclude the coalition from receiving additional grants under this part to carry out the purposes described in subsection (b) of this section.

(d) Tribal coalition grants

(1) Purpose

The Attorney General shall award grants to tribal domestic violence and sexual assault coalitions for purposes of—

(A) increasing awareness of domestic violence and sexual assault against American Indian and Alaska Native women;

(B) enhancing the response to violence against American Indian and Alaska Native women at the tribal, Federal, and State levels; and

(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to American Indian women victimized by domestic and sexual violence.

[1] So in original. The comma probably should not appear.

(2) Grants to tribal coalitions

The Attorney General shall award grants under paragraph (1) to—

(A) established nonprofit, nongovernmental tribal coalitions addressing domestic violence and sexual assault against American Indian and Alaska Native women; and

(B) individuals or organizations that propose to incorporate as nonprofit, nongovernmental tribal coalitions to address domestic violence and sexual assault against American Indian and Alaska Native women.

(3) Eligibility for other grants

Receipt of an award under this subsection by tribal domestic violence and sexual assault coalitions shall not preclude the coalition from receiving additional grants under this chapter to carry out the purposes described in subsection (b) of this section.

(Pub. L. 90–351, title I, § 2001, as added Pub. L. 103–322, title IV, § 40121(a)(3), Sept. 13, 1994, 108 Stat. 1910; amended Pub. L. 106–386, div. B, title I, §§ 1102(a)(1), 1103(b)(1), 1109(b), title II, § 1209(c), title V, § 1512(a), Oct. 28, 2000, 114 Stat. 1494, 1495, 1503, 1509, 1533; Pub. L. 108–405, title III, § 310(a), Oct. 30, 2004, 118 Stat. 2276; Pub. L. 109–162, title I, § 101(b), Jan. 5, 2006, 119 Stat. 2972.)

REFERENCES IN TEXT

The Family Violence Prevention and Services Act, referred to in subsec. (c)(2)(A), is title III of Pub. L. 98–457, Oct. 9, 1984, 98 Stat. 1757, as amended, which is classified generally to chapter 110 (§ 10401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10401 of this title and Tables.

The Public Health Service Act, referred to in subsec. (c)(2)(B), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

This chapter, referred to in subsec. (d)(3), was in the original ''this title'', meaning title I of Pub. L. 90–351, as added by Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1167, as amended, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

PRIOR PROVISIONS

A prior section 2001 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–162 added pars. (12) to (14).

2004—Subsec. (d). Pub. L. 108–405 added subsec. (d).

2000—Subsec. (a). Pub. L. 106–386, § 1102(a)(1)(A), substituted ''State and local courts (including juvenile courts), Indian tribal governments, tribal courts,'' for ''Indian tribal governments,''.

Subsec. (b)(1). Pub. L. 106–386, §§ 1102(a)(1)(B)(i), 1109(b)(1), inserted '', judges, other court personnel,'' after ''law enforcement officers'' and substituted ''sexual assault, domestic violence, and dating violence'' for ''sexual assault and domestic violence''.

Subsec. (b)(2). Pub. L. 106–386, § 1102(a)(1)(B)(ii), inserted '', judges, other court personnel,'' after ''law enforcement officers''.

Subsec. (b)(3). Pub. L. 106–386, § 1102(a)(1)(B)(iii), inserted '', court,'' after ''police''.

Subsec. (b)(5). Pub. L. 106–386, §§ 1103(b)(1)(A)(i), 1109(b)(2), substituted ''including sexual assault, domestic violence, and dating violence'' for ''including sexual assault and domestic violence'' and ''underserved populations'' for ''racial, cultural, ethnic, and language minorities''.

Subsec. (b)(8), (9). Pub. L. 106–386, § 1103(b)(1)(A)(ii)–(iv), added pars. (8) and (9).

Subsec. (b)(10). Pub. L. 106–386, § 1209(c), added par. (10).

Subsec. (b)(11). Pub. L. 106–386, § 1512(a), added par. (11).

Subsec. (c). Pub. L. 106–386, § 1103(b)(1)(B), added subsec. (c).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

STANDARDS, PRACTICE, AND TRAINING FOR SEXUAL ASSAULT FORENSIC EXAMINATIONS

Pub. L. 106–386, div. B, title IV, § 1405, Oct. 28, 2000, 114 Stat. 1515, provided that:

''(a) IN GENERAL.—The Attorney General shall—

''(1) evaluate existing standards of training and practice for licensed health care professionals performing sexual assault forensic examinations and develop a national recommended standard for training;

''(2) recommend sexual assault forensic examination training for all health care students to improve the recognition of injuries suggestive of rape and sexual assault and baseline knowledge of appropriate referrals in victim treatment and evidence collection; and

''(3) review existing national, State, tribal, and local protocols on sexual assault forensic examinations, and based on this review, develop a recommended national protocol and establish a mechanism for its nationwide dissemination.

''(b) CONSULTATION.—The Attorney General shall consult with national, State, tribal, and local experts in the area of rape and sexual assault, including rape crisis centers, State and tribal sexual assault and domestic violence coalitions and programs, and programs for criminal justice, forensic nursing, forensic science, emergency room medicine, law, social services, and sex crimes in underserved communities (as defined in [former] section 2003(7) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 ([former] 42 U.S.C. 3796gg–2(7)), as amended by this division).

''(c) REPORT.—The Attorney General shall ensure that not later than 1 year after the date of the enactment of this Act [Oct. 28, 2000], a report of the actions taken pursuant to subsection (a) is submitted to Congress.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $200,000 for fiscal year 2001.''

[For definitions of terms used in section 1405 of Pub. L. 106–386, set out above, see section 1002 of Pub. L. 106–386, set out as a note under section 3796gg–2 of this title.]

§ 3796gg–0. Establishment of Violence Against Women Office

(a) In general

There is hereby established within the Department of Justice, under the general authority of the Attorney General, a Violence Against Women Office (in this subchapter referred to as the ''Office'').

(b) Separate office

The Office shall be a separate and distinct office within the Department of Justice, headed by a Director, who shall report to the Attorney General and serve as Counsel to the Attorney General on the subject of violence against women, and who shall have final authority over

all grants, cooperative agreements, and contracts awarded by the Office.

(c) Jurisdiction

Under the general authority of the Attorney General, the Office—

(1) shall have sole jurisdiction over all duties and functions described in section 3796gg–0b of this title; and

(2) shall be solely responsible for coordination with other departments, agencies, or offices of all activities authorized or undertaken under the Violence Against Women Act of 1994 (title VI[1] of Public 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386).

(Pub. L. 90–351, title I, § 2002, as added Pub. L. 107–273, div. A, title IV, § 402(3), Nov. 2, 2002, 116 Stat. 1789.)

REFERENCES IN TEXT

The Violence Against Women Act of 1994, referred to in subsec. (c)(2), is title IV of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1902, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Violence Against Women Act of 2000, referred to in subsec. (c)(2), is div. B of Pub. L. 106–386, Oct. 28, 2000, 114 Stat. 1491. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 13701 of this title and Tables.

PRIOR PROVISIONS

A prior section 2002 of Pub. L. 90–351 was renumbered section 2007 and is classified to section 3796gg–1 of this title.

EFFECTIVE DATE

Pub. L. 107–273, div. A, title IV, § 403, Nov. 2, 2002, 116 Stat. 1791, provided that: ''This title [enacting this section and sections 3796gg–0a to 3796gg–0d of this title, amending sections 3796gg–1 to 3796gg–5 of this title, and enacting provisions set out as a note under section 3711 of this title] shall take effect 90 days after this bill becomes law [Nov. 2, 2002].''

§ 3796gg–0a. Director of Violence Against Women Office

(a) Appointment

The President, by and with the advice and consent of the Senate, shall appoint a Director for the Violence Against Women Office (in this subchapter[1] referred to as the ''Director'') to be responsible, under the general authority of the Attorney General, for the administration, coordination, and implementation of the programs and activities of the Office.

(b) Other employment

The Director shall not—

(1) engage in any employment other than that of serving as Director; or

(2) hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under the Violence Against Women Act of 1994 (title IV of Public Law 103–322) or the Violence Against Women Act of 2000 (division B of Public Law 106–386).

[1] So in original. Probably should be ''title IV''.

[1] See References in Text note below.

(c) Vacancy

In the case of a vacancy, the President may designate an officer or employee who shall act as Director during the vacancy.

(d) Compensation

The Director shall be compensated at a rate of pay not to exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5.

(Pub. L. 90–351, title I, § 2003, as added Pub. L. 107–273, div. A, title IV, § 402(3), Nov. 2, 2002, 116 Stat. 1789.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original ''this title'', and was translated as reading ''this part'', meaning part T of title I of Pub. L. 90–351, to reflect the probable intent of Congress.

The Violence Against Women Act of 1994, referred to in subsec. (b)(2), is title IV of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1902, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Violence Against Women Act of 2000, referred to in (b)(2), is div. B of Pub. L. 106–386, Oct. 28, 2000, 114 Stat. 1491. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 13701 of this title and Tables.

PRIOR PROVISIONS

A prior section 2003 of Pub. L. 90–351 was renumbered section 2008 and is classified to section 3796gg–2 of this title.

EFFECTIVE DATE

Section effective 90 days after Nov. 2, 2002, see section 403 of Pub. L. 107–273, set out as a note under section 3796gg–0 of this title.

§ 3796gg–0b. Duties and functions of Director of Violence Against Women Office

The Director shall have the following duties:

(1) Maintaining liaison with the judicial branches of the Federal and State Governments on matters relating to violence against women.

(2) Providing information to the President, the Congress, the judiciary, State, local, and tribal governments, and the general public on matters relating to violence against women.

(3) Serving, at the request of the Attorney General, as the representative of the Department of Justice on domestic task forces, committees, or commissions addressing policy or issues relating to violence against women.

(4) Serving, at the request of the President, acting through the Attorney General, as the representative of the United States Government on human rights and economic justice matters related to violence against women in international fora, including, but not limited to, the United Nations.

(5) Carrying out the functions of the Department of Justice under the Violence Against Women Act of 1994 (title IV of Public Law 103–322) and the Violence Against Women Act of 2000 (division B of Public Law 106–386), including with respect to those functions—

(A) the development of policy, protocols, and guidelines;

(B) the development and management of grant programs and other programs, and the

provision of technical assistance under such programs; and

(C) the award and termination of grants, cooperative agreements, and contracts.

(6) Providing technical assistance, coordination, and support to—

(A) other components of the Department of Justice, in efforts to develop policy and to enforce Federal laws relating to violence against women, including the litigation of civil and criminal actions relating to enforcing such laws;

(B) other Federal, State, local, and tribal agencies, in efforts to develop policy, provide technical assistance, and improve coordination among agencies carrying out efforts to eliminate violence against women, including Indian or indigenous women; and

(C) grantees, in efforts to combat violence against women and to provide support and assistance to victims of such violence.

(7) Exercising such other powers and functions as may be vested in the Director pursuant to this subchapter or by delegation of the Attorney General.

(8) Establishing such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Office.

(Pub. L. 90–351, title I, § 2004, as added Pub. L. 107–273, div. A, title IV, § 402(3), Nov. 2, 2002, 116 Stat. 1790.)

REFERENCES IN TEXT

The Violence Against Women Act of 1994, referred to in par. (5), is title IV of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1902, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Violence Against Women Act of 2000, referred to in par. (5), is div. B of Pub. L. 106–386, Oct. 28, 2000, 114 Stat. 1491. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 13701 of this title and Tables.

PRIOR PROVISIONS

A prior section 2004 of Pub. L. 90–351 was renumbered section 2009 and is classified to section 3796gg–3 of this title.

EFFECTIVE DATE

Section effective 90 days after Nov. 2, 2002, see section 403 of Pub. L. 107–273, set out as a note under section 3796gg–0 of this title.

§ 3796gg–0c. Staff of Violence Against Women Office

The Attorney General shall ensure that the Director has adequate staff to support the Director in carrying out the Director's responsibilities under this subchapter.

(Pub. L. 90–351, title I, § 2005, as added Pub. L. 107–273, div. A, title IV, § 402(3), Nov. 2, 2002, 116 Stat. 1791.)

PRIOR PROVISIONS

A prior section 2005 of Pub. L. 90–351 was renumbered section 2010 and is classified to section 3796gg–4 of this title.

EFFECTIVE DATE

Section effective 90 days after Nov. 2, 2002, see section 403 of Pub. L. 107–273, set out as a note under section 3796gg–0 of this title.

§ 3796gg–0d. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subchapter for each fiscal year until fiscal year 2005.

(Pub. L. 90–351, title I, § 2006, as added Pub. L. 107–273, div. A, title IV, § 402(3), Nov. 2, 2002, 116 Stat. 1791.)

PRIOR PROVISIONS

A prior section 2006 of Pub. L. 90–351 was renumbered section 2011 and is classified to section 3796gg–5 of this title.

EFFECTIVE DATE

Section effective 90 days after Nov. 2, 2002, see section 403 of Pub. L. 107–273, set out as a note under section 3796gg–0 of this title.

§ 3796gg–1. State grants

(a) General grants

The Attorney General may make grants to States, for use by States, State and local courts (including juvenile courts), units of local government, nonprofit nongovernmental victim services programs, and Indian tribal governments for the purposes described in section 3796gg(b) of this title.

(b) Amounts

Of the amounts appropriated for the purposes of this subchapter—

(1) 10 percent shall be available for grants under the program authorized by section 3796gg–10 of this title, which shall not otherwise be subject to the requirements of this subchapter (other than section 3796gg–2 of this title);

(2) 2.5 percent shall be available for grants for State domestic violence coalitions under section 3796gg(c) of this title, with the coalition for each State, the coalition for the District of Columbia, the coalition for the Commonwealth of Puerto Rico, the coalition for Guam, the coalition for American Samoa, the coalition for the United States Virgin Islands, and the coalition for the Commonwealth of the Northern Mariana Islands.,[1] each receiving an amount equal to 1/56 of the total amount made available under this paragraph for each fiscal year;

(3) 2.5 percent shall be available for grants for State sexual assault coalitions under section 3796gg(c) of this title, with the coalition for each State, the coalition for the District of Columbia, the coalition for the Commonwealth of Puerto Rico, coalitions for Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, each receiving an amount equal to 1/56 of the total amount made available under this paragraph for each fiscal year;

(4) 1/56 shall be available for grants under section 3796gg(d) of this title;

(5) $600,000 shall be available for grants to applicants in each State; and

(6) the remaining funds shall be available for grants to applicants in each State in an

[1] So in original.

amount that bears the same ratio to the amount of remaining funds as the population of the State bears to the population of all of the States that results from a distribution among the States on the basis of each State's population in relation to the population of all States (not including populations of Indian tribes).

(c) Qualification

Upon satisfying the terms of subsection (d) of this section, any State shall be qualified for funds provided under this subchapter upon certification that—

(1) the funds shall be used for any of the purposes described in section 3796gg(b) of this title;

(2) grantees and subgrantees shall develop a plan for implementation and shall consult and coordinate with nonprofit, nongovernmental victim services programs, including sexual assault and domestic violence victim services programs and describe how the State will address the needs of underserved populations;

(3) of the amount granted—

(A) not less than 25 percent shall be allocated for law enforcement and not less than 25 percent shall be allocated for prosecutors;

(B) not less than 30 percent shall be allocated for victims services of which at least 10 percent shall be distributed to culturally specific community-based organizations; and

(C) not less than 5 percent shall be allocated for State and local courts (including juvenile courts); and

(4) any Federal funds received under this subchapter shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subchapter.[2]

(d) Application requirements

The application requirements provided in section 3763[2] of this title shall apply to grants made under this subchapter. In addition, each application shall include the certifications of qualification required by subsection (c) of this section, including documentation from nonprofit, nongovernmental victim services programs, describing their participation in developing the plan required by subsection (c)(2) of this section. An application shall include—

(1) documentation from the prosecution, law enforcement, court, and victim services programs to be assisted, demonstrating—

(A) need for the grant funds;

(B) intended use of the grant funds;

(C) expected results from the use of grant funds; and

(D) demographic characteristics of the populations to be served, including age, marital status, disability, race, ethnicity and language background;

(2) proof of compliance with the requirements for the payment of forensic medical exams provided in section 3796gg–4 of this title; and[3]

(3) proof of compliance with the requirements for paying filing and service fees for domestic violence cases provided in section 3796gg–5 of this title; and

(4) documentation showing that tribal, territorial, State or local prosecution, law enforcement, and courts have consulted with tribal, territorial, State, or local victim service programs during the course of developing their grant applications in order to ensure that proposed services, activities and equipment acquisitions are designed to promote the safety, confidentiality, and economic independence of victims of domestic violence, sexual assault, stalking, and dating violence.

(e) Disbursement

(1) In general

Not later than 60 days after the receipt of an application under this subchapter, the Attorney General shall—

(A) disburse the appropriate sums provided for under this subchapter; or

(B) inform the applicant why the application does not conform to the terms of section 3763[2] of this title or to the requirements of this section.

(2) Regulations

In disbursing monies under this subchapter, the Attorney General shall issue regulations to ensure that States will—

(A) give priority to areas of varying geographic size with the greatest showing of need based on the availability of existing domestic violence and sexual assault programs in the population and geographic area to be served in relation to the availability of such programs in other such populations and geographic areas;

(B) determine the amount of subgrants based on the population and geographic area to be served;

(C) equitably distribute monies on a geographic basis including nonurban and rural areas of various geographic sizes; and

(D) recognize and meaningfully respond to the needs of underserved populations and ensure that monies set aside to fund linguistically and culturally specific services and activities for underserved populations are distributed equitably among those populations.

(f) Federal share

The Federal share of a grant made under this subchapter[2] may not exceed 75 percent of the total costs of the projects described in the application submitted.

(g) Indian tribes

Funds appropriated by the Congress for the activities of any agency of an Indian tribal government or of the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of the cost of programs or projects funded under this subchapter.

(h) Grantee reporting

(1) In general

Upon completion of the grant period under this subchapter, a State or Indian tribal grantee shall file a performance report with the At-

[2] See References in Text note below.

[3] So in original. The word "and" probably should not appear.

torney General explaining the activities carried out, which report shall include an assessment of the effectiveness of those activities in achieving the purposes of this subchapter.

(2) Certification by grantee and subgrantees

A section of the performance report shall be completed by each grantee and subgrantee that performed the direct services contemplated in the application, certifying performance of direct services under the grant.

(3) Suspension of funding

The Attorney General shall suspend funding for an approved application if—

(A) an applicant fails to submit an annual performance report;

(B) funds are expended for purposes other than those described in this subchapter; or

(C) a report under paragraph (1) or accompanying assessments demonstrate to the Attorney General that the program is ineffective or financially unsound.

(Pub. L. 90–351, title I, § 2007, formerly § 2002, as added Pub. L. 103–322, title IV, § 40121(a)(3), Sept. 13, 1994, 108 Stat. 1911; amended Pub. L. 106–386, div. B, title I, §§ 1102(a)(2), 1103(b)(2), Oct. 28, 2000, 114 Stat. 1494, 1496; renumbered § 2007 and amended Pub. L. 107–273, div. A, title IV, § 402(1), (2), Nov. 2, 2002, 116 Stat. 1789; Pub. L. 108–405, title III, § 310(b), (c), Oct. 30, 2004, 118 Stat. 2276; Pub. L. 109–162, title I, § 101(c)–(e), title IX, § 906(b), title XI, § 1134(a), Jan. 5, 2006, 119 Stat. 2973, 2974, 3081, 3108; Pub. L. 109–271, §§ 2(d), (f)(1), (g), (*l*), 7(a)(2), 8(b), Aug. 12, 2006, 120 Stat. 752, 754, 763, 766.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (c)(4), the second place it appears, and (f), was in the original ''this subtitle'', and was translated as reading ''this part'', meaning part T of title I of Pub. L. 90–351, to reflect the probable intent of Congress. Title I of Pub. L. 90–351 does not contain subtitles.

Section 3763 of this title, referred to in subsecs. (d) and (e)(1)(B), was in the original ''section 513'', and was translated as reading ''section 517'', meaning section 517 of title I of Pub. L. 90–351, to reflect the probable intent of Congress. Pub. L. 90–351 does not contain a section 513, but section 3763 of this title was section 513 of Pub. L. 90–351 prior to renumbering as section 517 by Pub. L. 101–647, title XVIII, § 1801(a)(6), Nov. 29, 1990, 104 Stat. 4847.

CODIFICATION

Another section 2007 of Pub. L. 90–351 was renumbered section 2015 and is classified to section 3796gg–10 of this title.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–271, § 7(a)(2), added par. (1) and struck out former par. (1) which read as follows: ''Ten percent shall be available for grants under the program authorized in section 3796gg–10 of this title. The requirements of this subchapter shall not apply to funds allocated for such program.''

Pub. L. 109–162, § 906(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''10 percent shall be available for grants to Indian tribal governments;''.

Pub. L. 109–162, § 101(d)(1)(A), substituted ''10 percent'' for ''5 percent''.

Subsec. (b)(2). Pub. L. 109–271, § 2(g), which directed the substitution of ''the coalition for Guam, the coalition for American Samoa, the coalition for the United States Virgin Islands, and the coalition for the Commonwealth of the Northern Mariana Islands.'' for ''and the coalitions for combined Territories of the United States'', was executed by making the substitution for ''and the coalition for the combined Territories of the United States'', to reflect the probable intent of Congress.

Pub. L. 109–162, § 101(d)(1)(B), substituted ''1/56'' for ''1/54''.

Subsec. (b)(3). Pub. L. 109–162, § 101(d)(1)(C), substituted ''coalitions for Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, each receiving an amount equal to 1/56'' for ''and the coalition for the combined Territories of the United States, each receiving an amount equal to 1/54''.

Subsec. (b)(4). Pub. L. 109–162, § 101(d)(1)(D), substituted ''1/56'' for ''1/54''.

Subsec. (c)(2). Pub. L. 109–162, § 101(c)(1), inserted ''and describe how the State will address the needs of underserved populations'' before semicolon at end.

Subsec. (c)(3)(A). Pub. L. 109–271, § 2(*l*), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''not less than 25 percent shall be allocated to police and not less than 25 percent shall be allocated to prosecutors;''.

Pub. L. 109–162, § 1134(a)(1), which directed substitution of ''law enforcement'' for ''police'', was repealed by Pub. L. 109–271, §§ 2(d) and 8(b).

Subsec. (c)(3)(B). Pub. L. 109–271, § 2(*l*), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''not less than 30 percent shall be allocated to victim services, of which at least 10 percent shall be distributed to culturally specific community-based organization; and''.

Pub. L. 109–162, § 101(d)(2), inserted '', of which at least 10 percent shall be distributed to culturally specific community-based organization'' after ''victim services''.

Subsec. (d). Pub. L. 109–162, § 1134(a)(2), which directed insertion of ''submitted by a State'' after ''each application'' in second sentence and substitution of ''In addition, each application submitted by a State or tribal government'' for ''An application'' in third sentence, was repealed by Pub. L. 109–271, §§ 2(d) and 8(b).

Subsec. (d)(4). Pub. L. 109–162, § 101(d)(3), added par. (4).

Subsec. (e)(2)(D). Pub. L. 109–162, § 101(c)(2), added subpar. (D) and struck out former subpar. (D) which read as follows: ''recognize and address the needs of underserved populations.''

Subsec. (i). Pub. L. 109–271, § 2(f)(1), struck out subsec. (i) which related to training, technical assistance, and data collection.

Pub. L. 109–162, § 101(e), added subsec. (i).

2004—Pub. L. 108–405, § 310(b), made technical amendment to directory language of Pub. L. 107–273, § 402(2), which renumbered this section as section 2007 of Pub. L. 90–351.

Subsec. (b)(4). Pub. L. 108–405, § 310(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''1/54 shall be available for the development and operation of nonprofit tribal domestic violence and sexual assault coalitions in Indian country;''.

2002—Subsec. (d)(2). Pub. L. 107–273, § 402(1)(A), made technical amendment to reference in original act which appears in text as reference to section 3796gg–4 of this title.

Subsec. (d)(3). Pub. L. 107–273, § 402(1)(B), made technical amendment to reference in original act which appears in text as reference to section 3796gg–5 of this title.

2000—Subsec. (a). Pub. L. 106–386, § 1102(a)(2)(A), inserted ''State and local courts (including juvenile courts),'' after ''for use by States,''.

Subsec. (b)(1). Pub. L. 106–386, § 1103(b)(2)(B), substituted ''5 percent'' for ''4 percent''.

Subsec. (b)(2) to (4). Pub. L. 106–386, § 1103(b)(2)(D), added pars. (2) to (4). Former pars. (2) and (3) redesignated (5) and (6), respectively.

Subsec. (b)(5). Pub. L. 106–386, § 1103(b)(2)(A), (C), redesignated par. (2) as (5) and substituted ''$600,000'' for ''$500,000''.

Subsec. (b)(6). Pub. L. 106–386, § 1103(b)(2)(A), redesignated par. (3) as (6).

Subsec. (c)(3). Pub. L. 106–386, § 1102(a)(2)(B), added par. (3) and struck out former par. (3) which read as follows: ''at least 25 percent of the amount granted shall be allocated, without duplication, to each of the following 3 areas: prosecution, law enforcement, and victim services; and''.

Subsec. (d)(1). Pub. L. 106–386, § 1102(a)(2)(C), inserted ''court,'' after ''law enforcement,'' in introductory provisions.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by sections 101(c)–(e) and 906(b) of Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–405, title III, § 310(b), Oct. 30, 2004, 118 Stat. 2276, provided that amendment by section 310(b) (amending this section and sections 3796gg–2 to 3796gg–5 of this title) is effective as of Nov. 2, 2002, and as if included in Pub. L. 107–273, as enacted.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective 90 days after Nov. 2, 2002, see section 403 of Pub. L. 107–273, set out as an Effective Date note under section 3796gg–0 of this title.

§ 3796gg–2. Definitions and grant conditions

In this subchapter the definitions and grant conditions in section 13925 of this title shall apply.

(Pub. L. 90–351, title I, § 2008, as added Pub. L. 109–162, § 3(c)(1), Jan. 5, 2006, 119 Stat. 2971.)

CODIFICATION

Another section 2008 of Pub. L. 90–351 was renumbered section 2016 and is classified to section 3796gg–11 of this title.

PRIOR PROVISIONS

A prior section 3796gg–2, Pub. L. 90–351, title I, § 2008, formerly § 2003, as added Pub. L. 103–322, title IV, § 40121(a)(3), Sept. 13, 1994, 108 Stat. 1913; amended Pub. L. 106–386, div. B, title I, §§ 1103(b)(3), 1109(a)(1), Oct. 28, 2000, 114 Stat. 1496, 1502; renumbered § 2008, Pub. L. 107–273, div. A, title IV, § 402(2), Nov. 2, 2002, 116 Stat. 1789; Pub. L. 108–405, title III, § 310(b), Oct. 30, 2004, 118 Stat. 2276, related to definitions of terms in this subchapter, prior to repeal by Pub. L. 109–162, § 3(c)(1), Jan. 5, 2006, 119 Stat. 2971.

DEFINITIONS AND GRANT CONDITIONS APPLICABLE TO DIVISION B OF PUB. L. 106–386

Pub. L. 106–386, div. B, § 1002, Oct. 28, 2000, 114 Stat. 1491, as amended by Pub. L. 109–162, § 3(d), Jan. 5, 2006, 119 Stat. 2972, provided that: ''In this division [see section 1001 of Pub. L. 106–386, set out as a Short Title of 2000 Amendments note under section 13701 of this title] the definitions and grant conditions in section 40002 of the Violence Against Women Act of 1994 [42 U.S.C. 13925] shall apply.''

§ 3796gg–3. General terms and conditions

(a) Nonmonetary assistance

In addition to the assistance provided under this subchapter, the Attorney General may request any Federal agency to use its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State, tribal, and local assistance efforts.

(b) Reporting

Not later than 1 month after the end of each even-numbered fiscal year, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that includes, for each State and for each grantee Indian tribe—

(1) the number of grants made and funds distributed under this subchapter;

(2) a summary of the purposes for which those grants were provided and an evaluation of their progress;

(3) a statistical summary of persons served, detailing the nature of victimization, and providing data on age, sex, relationship of victim to offender, geographic distribution, race, ethnicity, language, and disability, and the membership of persons served in any underserved population; and

(4) an evaluation of the effectiveness of programs funded under this subchapter.

(c) Regulations or guidelines

Not later than 120 days after September 13, 1994, the Attorney General shall publish proposed regulations or guidelines implementing this subchapter. Not later than 180 days after September 13, 1994, the Attorney General shall publish final regulations or guidelines implementing this subchapter.

(Pub. L. 90–351, title I, § 2009, formerly § 2004, as added Pub. L. 103–322, title IV, § 40121(a)(3), Sept. 13, 1994, 108 Stat. 1914; amended Pub. L. 106–386, div. B, title I, § 1103(b)(4), Oct. 28, 2000, 114 Stat. 1497; renumbered § 2009, Pub. L. 107–273, div. A, title IV, § 402(2), Nov. 2, 2002, 116 Stat. 1789; Pub. L. 108–405, title III, § 310(b), Oct. 30, 2004, 118 Stat. 2276; Pub. L. 109–162, § 3(b)(3), title XI, §§ 1134(b), 1135(c), Jan. 5, 2006, 119 Stat. 2971, 3108, 3109; Pub. L. 109–271, §§ 2(d), 8(b), Aug. 12, 2006, 120 Stat. 752, 766.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–162, §§ 1134(b) and 1135(c), which directed an amendment substantially identical to that made by Pub. L. 109–162, § 3(b)(3), were repealed by Pub. L. 109–271, §§ 2(d) and 8(b).

Pub. L. 109–162, § 3(b)(3), substituted ''Not later than 1 month after the end of each even-numbered fiscal year, the Attorney General shall submit'' for ''Not later than 180 days after the end of each fiscal year for which grants are made under this subchapter, the Attorney General shall submit'' in introductory provisions.

2000—Subsec. (b)(3). Pub. L. 106–386 inserted '', and the membership of persons served in any underserved population'' before the semicolon.

§ 3796gg–4. Rape exam payments

(a) Restriction of funds

(1) In general

A State, Indian tribal government, or unit of local government, shall not be entitled to funds under this subchapter unless the State, Indian tribal government, unit of local government, or another governmental entity incurs

the full out-of-pocket cost of forensic medical exams described in subsection (b) of this section for victims of sexual assault.

(2) Redistribution

Funds withheld from a State or unit of local government under paragraph (1) shall be distributed to other States or units of local government pro rata. Funds withheld from an Indian tribal government under paragraph (1) shall be distributed to other Indian tribal governments pro rata.

(b) Medical costs

A State, Indian tribal government, or unit of local government shall be deemed to incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault if any government entity—

(1) provides such exams to victims free of charge to the victim;

(2) arranges for victims to obtain such exams free of charge to the victims; or

(3) reimburses victims for the cost of such exams if—

(A) the reimbursement covers the full cost of such exams, without any deductible requirement or limit on the amount of a reimbursement;

(B) the reimbursing governmental entity permits victims to apply for reimbursement for not less than one year from the date of the exam;

(C) the reimbursing governmental entity provides reimbursement not later than 90 days after written notification of the victim's expense; and

(D) the State, Indian tribal government, unit of local government, or reimbursing governmental entity provides information at the time of the exam to all victims, including victims with limited or no English proficiency, regarding how to obtain reimbursement.

(c) Use of funds

A State or Indian tribal government may use Federal grant funds under this subchapter to pay for forensic medical exams performed by trained examiners for victims of sexual assault, except that such funds may not be used to pay for forensic medical exams by any State, Indian tribal government, or territorial government that requires victims of sexual assault to seek reimbursement for such exams from their insurance carriers.

(d) Rule of construction

(1) In general

in[1] this section shall be construed to permit a State, Indian tribal government, or territorial government to require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both.

(2) Compliance period

States, territories, and Indian tribal governments shall have 3 years from January 5, 2006, to come into compliance with this subsection.

[1] So in original. Probably should be preceded by ''Nothing''.

(e) Judicial notification

(1) In general

A State or unit of local government shall not be entitled to funds under this subchapter unless the State or unit of local government—

(A) certifies that its judicial administrative policies and practices include notification to domestic violence offenders of the requirements delineated in section 922(g)(8) and (g)(9) of title 18 and any applicable related Federal, State, or local laws; or

(B) gives the Attorney General assurances that its judicial administrative policies and practices will be in compliance with the requirements of subparagraph (A) within the later of—

(i) the period ending on the date on which the next session of the State legislature ends; or

(ii) 2 years.

(2) Redistribution

Funds withheld from a State or unit of local government under subsection (a) of this section shall be distributed to other States and units of local government, pro rata.

(Pub. L. 90–351, title I, § 2010, formerly § 2005, as added Pub. L. 103–322, title IV, § 40121(a)(3), Sept. 13, 1994, 108 Stat. 1914; renumbered § 2010, Pub. L. 107–273, div. A, title IV, § 402(2), Nov. 2, 2002, 116 Stat. 1789; amended Pub. L. 108–405, title III, § 310(b), Oct. 30, 2004, 118 Stat. 2276; Pub. L. 109–162, title I, § 101(f), Jan. 5, 2006, 119 Stat. 2974; Pub. L. 109–271, § 2(j), Aug. 12, 2006, 120 Stat. 753.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–162 added subsec. (c).

Subsec. (d). Pub. L. 109–271 designated existing provisions as par. (1), inserted par. heading, struck out ''Nothing'' before ''in this section'', and added par. (2).

Pub. L. 109–162 added subsec. (d).

Subsec. (e). Pub. L. 109–162 added subsec. (e).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

§ 3796gg–5. Costs for criminal charges and protection orders

(a) In general

A State, Indian tribal government, or unit of local government, shall not be entitled to funds under this subchapter unless the State, Indian tribal government, or unit of local government—

(1) certifies that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction; or

(2) gives the Attorney General assurances that its laws, policies and practices will be in compliance with the requirements of paragraph (1) within the later of—

(A) the period ending on the date on which the next session of the State legislature ends; or

(B) 2 years after October 28, 2000.

(b) Redistribution

Funds withheld from a State, unit of local government, or Indian tribal government under subsection (a) of this section shall be distributed to other States, units of local government, and Indian tribal government, respectively, pro rata.

(c) Definition

In this section, the term ''protection order'' has the meaning given the term in section 2266 of title 18.

(Pub. L. 90–351, title I, § 2011, formerly § 2006, as added Pub. L. 103–322, title IV, § 40121(a)(3), Sept. 13, 1994, 108 Stat. 1915; amended Pub. L. 106–386, div. B, title I, § 1101(b)(1), Oct. 28, 2000, 114 Stat. 1492; renumbered § 2011, Pub. L. 107–273, div. A, title IV, § 402(2), Nov. 2, 2002, 116 Stat. 1789; Pub. L. 108–405, title III, § 310(b), Oct. 30, 2004, 118 Stat. 2276.)

AMENDMENTS

2000—Pub. L. 106–386, § 1101(b)(1)(A), in section catchline, substituted ''Costs'' for ''Filing costs'' and inserted ''and protection orders'' after ''charges''.

Subsec. (a)(1). Pub. L. 106–386, § 1101(b)(1)(B)(i), added par. (1) and struck out former par. (1) which read as follows: ''certifies that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that the abused bear the costs associated with the filing of criminal charges against the domestic violence offender, or the costs associated with the issuance or service of a warrant, protection order, or witness subpoena; or''.

Subsec. (a)(2)(B). Pub. L. 106–386, § 1101(b)(1)(B)(ii), substituted ''2 years after October 28, 2000'' for ''2 years''.

Subsec. (c). Pub. L. 106–386, § 1101(b)(1)(C), added subsec. (c).

§ 3796gg–6. Legal assistance for victims

(a) In general

The purpose of this section is to enable the Attorney General to award grants to increase the availability of civil and criminal legal assistance necessary to provide effective aid to adult and youth victims of domestic violence, dating violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence, at minimal or no cost to the victims. Criminal legal assistance provided for under this section shall be limited to criminal matters relating to domestic violence, sexual assault, dating violence, and stalking.

(b) Definitions

In this section, the definitions provided in section 13925 of this title shall apply.

(c) Legal assistance for victims grants

The Attorney General may award grants under this subsection to private nonprofit entities, Indian tribal governments and tribal organizations, territorial organizations, and publicly funded organizations not acting in a governmental capacity such as law schools, and which shall be used—

(1) to implement, expand, and establish cooperative efforts and projects between domestic violence, dating violence, and sexual assault victim services organizations and legal assistance providers to provide legal assistance for victims of domestic violence, dating violence, stalking, and sexual assault;

(2) to implement, expand, and establish efforts and projects to provide legal assistance for victims of domestic violence, dating violence, stalking, and sexual assault by organizations with a demonstrated history of providing direct legal or advocacy services on behalf of these victims; and

(3) to provide training, technical assistance, and data collection to improve the capacity of grantees and other entities to offer legal assistance to victims of domestic violence, dating violence, stalking, and sexual assault.

(d) Eligibility

To be eligible for a grant under subsection (c) of this section, applicants shall certify in writing that—

(1) any person providing legal assistance through a program funded under subsection (c) of this section has completed or will complete training in connection with domestic violence, dating violence, or sexual assault and related legal issues;

(2) any training program conducted in satisfaction of the requirement of paragraph (1) has been or will be developed with input from and in collaboration with a tribal, State, territorial, or local domestic violence, dating violence, sexual assault or stalking organization or coalition, as well as appropriate tribal, State, territorial, and local law enforcement officials;

(3) any person or organization providing legal assistance through a program funded under subsection (c) of this section has informed and will continue to inform State, local, or tribal domestic violence, dating violence, or sexual assault programs and coalitions, as well as appropriate State and local law enforcement officials of their work; and

(4) the grantee's organizational policies do not require mediation or counseling involving offenders and victims physically together, in cases where sexual assault, domestic violence, dating violence, or child sexual abuse is an issue.

(e) Evaluation

The Attorney General may evaluate the grants funded under this section through contracts or other arrangements with entities expert on domestic violence, dating violence, stalking, and sexual assault, and on evaluation research.

(f) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section $65,000,000 for each of fiscal years 2007 through 2011.

(2) Allocation of funds

(A) Tribal programs

Of the amount made available under this subsection in each fiscal year, not less than 3 percent shall be used for grants for programs that assist adult and youth victims of domestic violence, dating violence, stalking, and sexual assault on lands within the jurisdiction of an Indian tribe.

(B) Tribal government program

(i) In general

Not less than 7 percent of the total amount available under this section for each fiscal year shall be available for grants under the program authorized by section 3796gg–10 of this title.

(ii) Applicability of subchapter

The requirements of this section shall not apply to funds allocated for the program described in clause (i).

(C) Victims of sexual assault

Of the amount made available under this subsection in each fiscal year, not less than 25 percent shall be used for direct services, training, and technical assistance to support projects focused solely or primarily on providing legal assistance to victims of sexual assault.

(3) Nonsupplantation

Amounts made available under this section shall be used to supplement and not supplant other Federal, State, and local funds expended to further the purpose of this section.

(Pub. L. 106–386, div. B, title II, § 1201, Oct. 28, 2000, 114 Stat. 1504; Pub. L. 108–405, title II, § 205, Oct. 30, 2004, 118 Stat. 2271; Pub. L. 109–162, title I, § 103, title IX, § 906(f), formerly § 906(g), Jan. 5, 2006, 119 Stat. 2978, 3082, renumbered § 906(f), Pub. L. 109–271, § 7(b)(2)(B), Aug. 12, 2006, 120 Stat. 764; Pub. L. 109–271, § 7(d)(1), Aug. 12, 2006, 120 Stat. 765.)

CODIFICATION

Section was enacted as part of the Violence Against Women Act of 2000 and also as part of the Victims of Trafficking and Violence Protection Act of 2000, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162, § 103(1), inserted ''civil and criminal'' after ''availability of'', ''adult and youth'' after ''effective aid to'', and ''Criminal legal assistance provided for under this section shall be limited to criminal matters relating to domestic violence, sexual assault, dating violence, and stalking.'' at end.

Subsec. (b). Pub. L. 109–162, § 103(2), reenacted subsec. heading without change and amended text generally. Prior to amendment, text defined for purposes of this section the terms ''dating violence'', ''domestic violence'', ''legal assistance'', and ''sexual assault''.

Subsec. (c). Pub. L. 109–162, § 103(3), inserted ''and tribal organizations, territorial organizations'' after ''Indian tribal governments'' in introductory provisions.

Subsec. (d)(2). Pub. L. 109–162, § 103(4), added par. (2) and struck out former par. (2) which read as follows: ''any training program conducted in satisfaction of the requirement of paragraph (1) has been or will be developed with input from and in collaboration with a State, local, or tribal domestic violence, dating violence, or sexual assault program or coalition, as well as appropriate State and local law enforcement officials;''.

Subsec. (e). Pub. L. 109–162, § 103(5), which directed amendment identical to that made by Pub. L. 108–405, § 205(5), was not executed. See 2004 Amendment note below.

Subsec. (f)(1). Pub. L. 109–162, § 103(6)(A), added par. (1) and struck out former par. (1). Former text read as follows: ''There is authorized to be appropriated to carry out this section $40,000,000 for each of fiscal years 2001 through 2005.''

Subsec. (f)(2)(A). Pub. L. 109–271, § 7(d)(1)(A)(i), substituted ''3 percent'' for ''10 percent''.

Pub. L. 109–162, § 103(6)(B), substituted ''10 percent'' for ''5 percent'' and inserted ''adult and youth'' after ''that assist''.

Subsec. (f)(2)(B), (C). Pub. L. 109–271, § 7(d)(1)(A)(ii), (iii), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(4). Pub. L. 109–271, § 7(d)(1)(B), struck out par. (4) which read as follows: ''Not less than 10 percent of the total amount available under this section for each fiscal year shall be available for grants under the program authorized in section 3796gg–10 of this title. The requirements of this paragraph shall not apply to funds allocated for such program.''

Pub. L. 109–162, § 906(f), formerly § 906(g), as renumbered by Pub. L. 109–271, § 7(b)(2)(B), added par. (4).

2004—Subsec. (a). Pub. L. 108–405, § 205(1), inserted ''dating violence,'' after ''domestic violence,''.

Subsec. (b)(1) to (4). Pub. L. 108–405, § 205(2), added par. (1), redesignated former pars. (1) to (3) as (2) to (4), respectively, and inserted ''dating violence,'' after ''domestic violence,'' in par. (3).

Subsec. (c)(1). Pub. L. 108–405, § 205(3)(A), inserted '', dating violence,'' after ''between domestic violence'' and ''dating violence,'' after ''victims of domestic violence,''.

Subsec. (c)(2), (3). Pub. L. 108–405, § 205(3)(B), (C), inserted ''dating violence,'' after ''domestic violence,''.

Subsec. (d)(1) to (3). Pub. L. 108–405, § 205(4)(A)–(C), inserted '', dating violence,'' after ''domestic violence''.

Subsec. (d)(4). Pub. L. 108–405, § 205(4)(D), inserted ''dating violence,'' after ''domestic violence,''.

Subsec. (e). Pub. L. 108–405, § 205(5), inserted ''dating violence,'' after ''domestic violence,''.

Subsec. (f)(2)(A). Pub. L. 108–405, § 205(6), inserted ''dating violence,'' after ''domestic violence,''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

§ 3796gg–7. Education, training, and enhanced services to end violence against and abuse of women with disabilities

(a) In general

The Attorney General, in consultation with the Secretary of Health and Human Services, may award grants to eligible entities—

(1) to provide training, consultation, and information on domestic violence, dating violence, stalking, and sexual assault against individuals with disabilities (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)); and

(2) to enhance direct services to such individuals.

(b) Use of funds

Grants awarded under this section shall be used—

(1) to provide personnel, training, technical assistance, advocacy, intervention, risk reduc-

tion and prevention of domestic violence, dating violence, stalking, and sexual assault against disabled individuals;

(2) to conduct outreach activities to ensure that disabled individuals who are victims of domestic violence, dating violence, stalking, or sexual assault receive appropriate assistance;

(3) to conduct cross-training for victim service organizations, governmental agencies, courts, law enforcement, and nonprofit, nongovernmental organizations serving individuals with disabilities about risk reduction, intervention, prevention and the nature of domestic violence, dating violence, stalking, and sexual assault for disabled individuals;

(4) to provide technical assistance to assist with modifications to existing policies, protocols, and procedures to ensure equal access to the services, programs, and activities of victim service organizations for disabled individuals;

(5) to provide training and technical assistance on the requirements of shelters and victim services organizations under Federal antidiscrimination laws, including—

(A) the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.]; and

(B) section 794 of title 29;

(6) to modify facilities, purchase equipment, and provide personnel so that shelters and victim service organizations can accommodate the needs of disabled individuals;

(7) to provide advocacy and intervention services for disabled individuals who are victims of domestic violence, dating violence, stalking, or sexual assault; or

(8) to develop model programs providing advocacy and intervention services within organizations serving disabled individuals who are victims of domestic violence, dating violence, sexual assault, or stalking.

(c) Eligible entities

(1) In general

An entity shall be eligible to receive a grant under this section if the entity is—

(A) a State;

(B) a unit of local government;

(C) an Indian tribal government or tribal organization; or

(D) a nonprofit and nongovernmental victim services organization, such as a State domestic violence or sexual assault coalition or a nonprofit, nongovernmental organization serving disabled individuals.

(2) Limitation

A grant awarded for the purpose described in subsection (b)(8) of this section shall only be awarded to an eligible agency (as defined in section 796f–5[1] of title 29).

(d) Underserved populations

In awarding grants under this section, the Director shall ensure that the needs of underserved populations are being addressed.

(e) Authorization of appropriations

There are authorized to be appropriated $10,000,000 for each of the fiscal years 2007 through 2011 to carry out this section.

[1] See References in Text note below.

(Pub. L. 106–386, div. B, title IV, § 1402, Oct. 28, 2000, 114 Stat. 1513; Pub. L. 109–162, title II, § 204(a), Jan. 5, 2006, 119 Stat. 3000.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (b)(5)(A), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§ 12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

Section 796f–5 of title 29, referred to in subsec. (c)(2), was in the original ''section 410 of the Rehabilitation Act of 1973 (29 U.S.C. 796f–5)'' and was translated as meaning section 726 of the Rehabilitation Act of 1973, to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the Violence Against Women Act of 2000 and also as part of the Victims of Trafficking and Violence Protection Act of 2000, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

AMENDMENTS

2006—Pub. L. 109–162 substituted ''Education, training, and enhanced services to end violence against and abuse of women with disabilities'' for ''Education and training to end violence against and abuse of women with disabilities'' in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (d) relating to award of grants to provide education and technical assistance for the purpose of providing training, consultation, and information on domestic violence, stalking, and sexual assault against women who are individuals with disabilities and authorized appropriations for fiscal years 2001 through 2005.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

DEFINITIONS

For definitions of terms used in this section, see section 1002 of Pub. L. 106–386, set out as a note under section 3796gg–2 of this title.

§ 3796gg–8. Polygraph testing prohibition

(a) In general

In order to be eligible for grants under this subchapter, a State, Indian tribal government, territorial government, or unit of local government shall certify that, not later than 3 years after January 5, 2006, their laws, policies, or practices will ensure that no law enforcement officer, prosecuting officer or other government official shall ask or require an adult, youth, or child victim of an alleged sex offense as defined under Federal, tribal, State, territorial, or local law to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense.

(b) Prosecution

The refusal of a victim to submit to an examination described in subsection (a) of this section shall not prevent the investigation, charging, or prosecution of the offense.

(Pub. L. 90–351, title I, § 2013, as added Pub. L. 109–162, title I, § 101(g), Jan. 5, 2006, 119 Stat. 2975.)

EFFECTIVE DATE

Section not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3793 of this title.

§ 3796gg–9. Repealed. Pub. L. 109–271, § 3(a), Aug. 12, 2006, 120 Stat. 754

Section, Pub. L. 90–351, title I, § 2014, as added Pub. L. 109–162, title II, § 202, Jan. 5, 2006, 119 Stat. 2994, related to sexual assault services. See section 14043g of this title.

CODIFICATION

Pub. L. 109–271, which directed the repeal of section 202 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162), was executed by repealing this section, which was section 2014 of the Omnibus Crime Control and Safe Streets Act of 1968 as added by section 202 of Pub. L. 109–162, to reflect the probable intent of Congress.

§ 3796gg–10. Grants to Indian tribal governments

(a) Grants

The Attorney General may make grants to Indian tribal governments or authorized designees of Indian tribal governments to—

(1) develop and enhance effective governmental strategies to curtail violent crimes against and increase the safety of Indian women consistent with tribal law and custom;

(2) increase tribal capacity to respond to domestic violence, dating violence, sexual assault, and stalking crimes against Indian women;

(3) strengthen tribal justice interventions including tribal law enforcement, prosecution, courts, probation,[1] correctional facilities;

(4) enhance services to Indian women victimized by domestic violence, dating violence, sexual assault, and stalking;

(5) work in cooperation with the community to develop education and prevention strategies directed toward issues of domestic violence, dating violence, and stalking programs and to address the needs of children exposed to domestic violence;

(6) provide programs for supervised visitation and safe visitation exchange of children in situations involving domestic violence, sexual assault, or stalking committed by one parent against the other with appropriate security measures, policies, and procedures to protect the safety of victims and their children;

(7) provide transitional housing for victims of domestic violence, dating violence, sexual assault, or stalking, including rental or utilities payments assistance and assistance with related expenses such as security deposits and other costs incidental to relocation to transitional housing, and support services to enable a victim of domestic violence, dating violence, sexual assault, or stalking to locate and secure permanent housing and integrate into a community; and

(8) provide legal assistance necessary to provide effective aid to victims of domestic violence, dating violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence, at minimal or no cost to the victims.

(b) Collaboration

All applicants under this section shall demonstrate their proposal was developed in consultation with a nonprofit, nongovernmental Indian victim services program, including sexual assault and domestic violence victim services providers in the tribal or local community, or a nonprofit tribal domestic violence and sexual assault coalition to the extent that they exist. In the absence of such a demonstration, the applicant may meet the requirement of this subsection through consultation with women in the community to be served.

(Pub. L. 90–351, title I, § 2015, formerly § 2007, as added Pub. L. 109–162, title IX, § 906(a), Jan. 5, 2006, 119 Stat. 3080; renumbered § 2015 and amended Pub. L. 109–271, § 7(a)(1)(A), (C), (3), Aug. 12, 2006, 120 Stat. 763.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–271, § 7(a)(3)(A), substituted ''or authorized designees of Indian tribal governments'' for ''and tribal organizations'' in introductory provisions and added par. (8).

Subsec. (c). Pub. L. 109–271, § 7(a)(3)(B), struck out subsec. (c). Prior to amendment, text read as follows: ''The Federal share of a grant made under this section may not exceed 90 percent of the total costs of the project described in the application submitted, except that the Attorney General may grant a waiver of this match requirement on the basis of demonstrated financial hardship. Funds appropriated for the activities of any agency of an Indian tribal government or of the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of the cost of programs or projects funded under this section.''

EFFECTIVE DATE

Section not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3793 of this title.

FINDINGS AND PURPOSES

Pub. L. 109–162, title IX, §§ 901, 902, Jan. 5, 2006, 119 Stat. 3077, 3078, provided that:

''SEC. 901. FINDINGS.

''Congress finds that—

''(1) 1 out of every 3 Indian (including Alaska Native) women are raped in their lifetimes;

''(2) Indian women experience 7 sexual assaults per 1,000, compared with 4 per 1,000 among Black Americans, 3 per 1,000 among Caucasians, 2 per 1,000 among Hispanic women, and 1 per 1,000 among Asian women;

''(3) Indian women experience the violent crime of battering at a rate of 23.2 per 1,000, compared with 8 per 1,000 among Caucasian women;

''(4) during the period 1979 through 1992, homicide was the third leading cause of death of Indian females aged 15 to 34, and 75 percent were killed by family members or acquaintances;

''(5) Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and

''(6) the unique legal relationship of the United States to Indian tribes creates a Federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.

''SEC. 902. PURPOSES.

''The purposes of this title [enacting this section, sections 3796gg–11 and 14045d of this title, and section 117

[1] So in original. Probably should be followed by ''and''.

of Title 18, Crimes and Criminal Procedure, amending sections 3796gg–1, 3796gg–6, 3796hh, 13971, 13975, and 10420 of this title, section 921 of Title 18, section 2803 of Title 25, Indians, and section 534 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section and section 534 of Title 28] are—

"(1) to decrease the incidence of violent crimes against Indian women;

"(2) to strengthen the capacity of Indian tribes to exercise their sovereign authority to respond to violent crimes committed against Indian women; and

"(3) to ensure that perpetrators of violent crimes committed against Indian women are held accountable for their criminal behavior."

NATIONAL BASELINE STUDY ON VIOLENCE AGAINST INDIAN WOMEN

Pub. L. 109–162, title IX, § 904(a), Jan. 5, 2006, 119 Stat. 3078, provided that:

"(1) IN GENERAL.—The National Institute of Justice, in consultation with the Office on Violence Against Women, shall conduct a national baseline study to examine violence against Indian women in Indian country.

"(2) SCOPE.—

"(A) IN GENERAL.—The study shall examine violence committed against Indian women, including—

"(i) domestic violence;

"(ii) dating violence;

"(iii) sexual assault;

"(iv) stalking; and

"(v) murder.

"(B) EVALUATION.—The study shall evaluate the effectiveness of Federal, State, tribal, and local responses to the violations described in subparagraph (A) committed against Indian women.

"(C) RECOMMENDATIONS.—The study shall propose recommendations to improve the effectiveness of Federal, State, tribal, and local responses to the violation described in subparagraph (A) committed against Indian women.

"(3) TASK FORCE.—

"(A) IN GENERAL.—The Attorney General, acting through the Director of the Office on Violence Against Women, shall establish a task force to assist in the development and implementation of the study under paragraph (1) and guide implementation of the recommendation in paragraph (2)(C).

"(B) MEMBERS.—The Director shall appoint to the task force representatives from—

"(i) national tribal domestic violence and sexual assault nonprofit organizations;

"(ii) tribal governments; and

"(iii) the national tribal organizations.

"(4) REPORT.—Not later than 2 years after the date of enactment of this Act [Jan. 5, 2006], the Attorney General shall submit to the Committee on Indian Affairs of the Senate, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report that describes the study.

"(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section [probably should be "subsection"] $1,000,000 for each of fiscal years 2007 and 2008, to remain available until expended."

§ 3796gg–11. Tribal Deputy

(a) Establishment

There is established in the Office on Violence Against Women a Deputy Director for Tribal Affairs.

(b) Duties

(1)[1] In general

The Deputy Director shall under the guidance and authority of the Director of the Office on Violence Against Women—

(A) oversee and manage the administration of grants to and contracts with Indian tribes, tribal courts, tribal organizations, or tribal nonprofit organizations;

(B) ensure that, if a grant under this Act or a contract pursuant to such a grant is made to an organization to perform services that benefit more than 1 Indian tribe, the approval of each Indian tribe to be benefitted shall be a prerequisite to the making of the grant or letting of the contract;

(C) coordinate development of Federal policy, protocols, and guidelines on matters relating to violence against Indian women;

(D) advise the Director of the Office on Violence Against Women concerning policies, legislation, implementation of laws, and other issues relating to violence against Indian women;

(E) represent the Office on Violence Against Women in the annual consultations under section 14045d[2] of this title;

(F) provide technical assistance, coordination, and support to other offices and bureaus in the Department of Justice to develop policy and to enforce Federal laws relating to violence against Indian women, including through litigation of civil and criminal actions relating to those laws;

(G) maintain a liaison with the judicial branches of Federal, State, and tribal governments on matters relating to violence against Indian women;

(H) support enforcement of tribal protection orders and implementation of full faith and credit educational projects and comity agreements between Indian tribes and States; and

(I) ensure that adequate tribal technical assistance that is developed and provided by entities having expertise in tribal law, customary practices, and Federal Indian law is made available to Indian tribes, tribal courts, tribal organizations, and tribal nonprofit organizations for all programs relating to violence against Indian women.

(c) Authority

(1) In general

The Deputy Director shall ensure that a portion of the tribal set-aside funds from any grant awarded under this Act, the Violence Against Women Act of 1994 (title IV of Public Law 103–322; 108 Stat. 1902), or the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491) is used to enhance the capacity of Indian tribes to address the safety of Indian women.

(2) Accountability

The Deputy Director shall ensure that some portion of the tribal set-aside funds from any grant made under this subchapter is used to hold offenders accountable through—

(A) enhancement of the response of Indian tribes to crimes of domestic violence, dating violence, sexual assault, and stalking against Indian women, including legal services for victims and Indian-specific offender programs;

[1] So in original. There is no par. (2).

[2] See References in Text note below.

(B) development and maintenance of tribal domestic violence shelters or programs for battered Indian women, including sexual assault services, that are based upon the unique circumstances of the Indian women to be served;

(C) development of tribal educational awareness programs and materials;

(D) support for customary tribal activities to strengthen the intolerance of an Indian tribe to violence against Indian women; and

(E) development, implementation, and maintenance of tribal electronic databases for tribal protection order registries.

(Pub. L. 90–351, title I, § 2016, formerly § 2008, as added Pub. L. 109–162, title IX, § 907, Jan. 5, 2006, 119 Stat. 3082; renumbered § 2016 and amended Pub. L. 109–271, § 7(a)(1)(B), (C), (4), Aug. 12, 2006, 120 Stat. 763, 764.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b)(1)(B) and (c)(1), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended, known as the Omnibus Crime Control and Safe Streets Act of 1968. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

Section 14045d of this title, referred to in subsec. (b)(1)(E), was in the original ''section 903'' and was translated as meaning section 903 of Pub. L. 109–162, to reflect the probable intent of Congress, because there is no section 903 of Pub. L. 90–351.

The Violence Against Women Act of 1994, referred to in subsec. (c)(1), is title IV of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1902, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Violence Against Women Act of 2000, referred to in subsec. (c)(1), is div. B of Pub. L. 106–386, Oct. 28, 2000, 114 Stat. 1491. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 13701 of this title and Tables.

AMENDMENTS

2006—Subsec. (b)(1)(I). Pub. L. 109–271, § 7(a)(4), inserted ''that is developed and provided by entities having expertise in tribal law, customary practices, and Federal Indian law'' after ''technical assistance''.

EFFECTIVE DATE

Section not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3793 of this title.

SUBCHAPTER XII–I—GRANTS TO ENCOURAGE ARREST POLICIES AND ENFORCEMENT OF PROTECTION ORDERS

§ 3796hh. Grants

(a) Purpose

The purpose of this subchapter is to encourage States, Indian tribal governments, State and local courts (including juvenile courts), tribal courts, and units of local government to treat domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law.

(b) Grant authority

The Attorney General may make grants to eligible States, Indian tribal governments[1] State, tribal, territorial, and local courts (including juvenile courts),,[2] or units of local government for the following purposes:

(1) To implement proarrest programs and policies in police departments, including policies for protection order violations.

(2) To develop policies, educational programs, protection order registries, and training in police departments to improve tracking of cases involving domestic violence, dating violence, sexual assault, and stalking. Policies, educational programs, protection order registries, and training described in this paragraph shall incorporate confidentiality, and privacy protections for victims of domestic violence, dating violence, sexual assault, and stalking.

(3) To centralize and coordinate police enforcement, prosecution, or judicial responsibility for domestic violence, dating violence, sexual assault, and stalking cases in teams or units of police officers, prosecutors, parole and probation officers, or judges.

(4) To coordinate computer tracking systems to ensure communication between police, prosecutors, parole and probation officers, and both criminal and family courts.

(5) To strengthen legal advocacy service programs for victims of domestic violence, dating violence, sexual assault, and stalking, including strengthening assistance to such victims in immigration matters.

(6) To educate judges in criminal and civil courts (including juvenile courts) about domestic violence, dating violence, sexual assault, and stalking and to improve judicial handling of such cases.

(7) To provide technical assistance and computer and other equipment to police departments, prosecutors, courts, and tribal jurisdictions to facilitate the widespread enforcement of protection orders, including interstate enforcement, enforcement between States and tribal jurisdictions, and enforcement between tribal jurisdictions.

(8) To develop or strengthen policies and training for police, prosecutors, and the judiciary in recognizing, investigating, and prosecuting instances of domestic violence and sexual assault against older individuals (as defined in section 3002 of this title) and individuals with disabilities (as defined in section 12102(2) of this title).

(9) To develop State, tribal, territorial, or local policies, procedures, and protocols for preventing dual arrests and prosecutions in cases of domestic violence, dating violence, sexual assault, and stalking, and to develop effective methods for identifying the pattern and history of abuse that indicates which party is the actual perpetrator of abuse.

(10) To plan, develop and establish comprehensive victim service and support centers, such as family justice centers, designed to bring together victim advocates from nonprofit, non-governmental victim services organizations, law enforcement officers, prosecutors, probation officers, governmental victim assistants, forensic medical professionals,

[1] So in original. Probably should be followed by a comma.

[2] So in original.

civil legal attorneys, chaplains, legal advocates, representatives from community-based organizations and other relevant public or private agencies or organizations into one centralized location, in order to improve safety, access to services, and confidentiality for victims and families. Although funds may be used to support the colocation of project partners under this paragraph, funds may not support construction or major renovation expenses or activities that fall outside of the scope of the other statutory purpose areas.

(11) To develop and implement policies and training for police, prosecutors, probation and parole officers, and the judiciary in recognizing, investigating, and prosecuting instances of sexual assault, with an emphasis on recognizing the threat to the community for repeat crime perpetration by such individuals.

(12) To develop, enhance, and maintain protection order registries.

(13) To develop human immunodeficiency virus (HIV) testing programs for sexual assault perpetrators and notification and counseling protocols.

(c) Eligibility

Eligible grantees are States, Indian tribal governments[1] State and local courts (including juvenile courts),,[2] or units of local government that—

(1) certify that their laws or official policies—

(A) encourage or mandate arrests of domestic violence offenders based on probable cause that an offense has been committed; and

(B) encourage or mandate arrest of domestic violence offenders who violate the terms of a valid and outstanding protection order;

(2) demonstrate that their laws, policies, or practices and their training programs discourage dual arrests of offender and victim;

(3) certify that their laws, policies, or practices prohibit issuance of mutual restraining orders of protection except in cases where both spouses file a claim and the court makes detailed findings of fact indicating that both spouses acted primarily as aggressors and that neither spouse acted primarily in self-defense;

(4) certify that their laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction; and

(5) certify that, not later than 3 years after January 5, 2006, their laws, policies, or practices will ensure that—

(A) no law enforcement officer, prosecuting officer or other government official shall ask or require an adult, youth, or child victim of a sex offense as defined under Federal, tribal, State, territorial, or local law to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense; and

(B) the refusal of a victim to submit to an examination described in subparagraph (A) shall not prevent the investigation of the offense.

(d) Speedy notice to victims

A State or unit of local government shall not be entitled to 5 percent of the funds allocated under this subchapter unless the State or unit of local government—

(1) certifies that it has a law or regulation that requires—

(A) the State or unit of local government at the request of a victim to administer to a defendant, against whom an information or indictment is presented for a crime in which by force or threat of force the perpetrator compels the victim to engage in sexual activity, testing for the immunodeficiency virus (HIV) not later than 48 hours after the date on which the information or indictment is presented;

(B) as soon as practicable notification to the victim, or parent and guardian of the victim, and defendant of the testing results; and

(C) follow-up tests for HIV as may be medically appropriate, and that as soon as practicable after each such test the results be made available in accordance with subparagraph (B); or

(2) gives the Attorney General assurances that it[3] laws and regulations will be in compliance with requirements of paragraph (1) within the later of—

(A) the period ending on the date on which the next session of the State legislature ends; or

(B) 2 years.

(e) Allotment for Indian tribes

(1) In general

Not less than 10 percent of the total amount available under this section for each fiscal year shall be available for grants under the program authorized by section 3796gg–10 of this title.

(2) Applicability of subchapter

The requirements of this subchapter shall not apply to funds allocated for the program described in paragraph (1).

(Pub. L. 90–351, title I, § 2101, as added Pub. L. 103–322, title IV, § 40231(a)(3), Sept. 13, 1994, 108 Stat. 1932; amended Pub. L. 106–386, div. B, title I, §§ 1101(a)(2), (b)(2), 1102(b), 1109(c), title II, § 1209(b), title V, § 1512(b), Oct. 28, 2000, 114 Stat. 1492, 1493, 1495, 1503, 1509, 1533; Pub. L. 109–162, title I, § 102(b), title IX, § 906(c), Jan. 5, 2006, 119 Stat. 2975, 3081; Pub. L. 109–271, § 7(a)(5), Aug. 12, 2006, 120 Stat. 764.)

REFERENCES IN TEXT

January 5, 2006, referred to in subsec. (c)(5), was in the original ''the date of enactment of this section'',

[3] So in original. Probably should be ''its''.

which was translated as meaning the date of enactment of Pub. L. 109–162, which enacted par. (5) of subsec. (c), to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 2101 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162, § 102(b)(1), substituted ''to treat domestic violence, dating violence, sexual assault, and stalking as serious violations'' for ''to treat domestic violence as a serious violation''.

Subsec. (b). Pub. L. 109–162, § 102(b)(2)(A), inserted '', tribal, territorial,'' after ''State'' in introductory provisions.

Subsec. (b)(1). Pub. L. 109–162, § 102(b)(2)(B), struck out ''mandatory arrest or'' after ''implement'' and ''mandatory arrest programs and'' after ''including''.

Subsec. (b)(2). Pub. L. 109–162, § 102(b)(2)(C), inserted ''protection order registries,'' after ''educational programs,'' and substituted ''domestic violence, dating violence, sexual assault, and stalking. Policies, educational programs, protection order registries, and training described in this paragraph shall incorporate confidentiality, and privacy protections for victims of domestic violence, dating violence, sexual assault, and stalking'' for ''domestic violence and dating violence''.

Subsec. (b)(3). Pub. L. 109–162, § 102(b)(2)(D), substituted ''domestic violence, dating violence, sexual assault, and stalking cases'' for ''domestic violence cases'' and ''teams'' for ''groups''.

Subsec. (b)(5). Pub. L. 109–162, § 102(b)(2)(E), substituted ''domestic violence, dating violence, sexual assault, and stalking'' for ''domestic violence and dating violence''.

Subsec. (b)(6). Pub. L. 109–162, § 102(b)(2)(F), substituted ''civil'' for ''other'' and inserted '', dating violence, sexual assault, and stalking'' after ''domestic violence''.

Subsec. (b)(9) to (13). Pub. L. 109–162, § 102(b)(2)(G), added pars. (9) to (13).

Subsec. (c)(5). Pub. L. 109–162, § 102(b)(3), added par. (5).

Subsec. (d). Pub. L. 109–162, § 102(b)(4), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''In this section, the term 'protection order' has the meaning given the term in section 2266 of title 18.''

Subsec. (e). Pub. L. 109–271 added subsec. (e) and struck out former subsec. (e) which read as follows: ''Not less than 10 percent of the total amount available under this section for each fiscal year shall be available for grants under the program authorized in section 3796gg–10 of this title. The requirements of this subchapter shall not apply to funds allocated for such program.''

Pub. L. 109–162, § 906(c), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: ''Not less than 10 percent of the total amount made available for grants under this section for each fiscal year shall be available for grants to Indian tribal governments.''

Pub. L. 109–162, § 102(b)(4), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows: ''Not less than 5 percent of the total amount made available for grants under this section for each fiscal year shall be available for grants to Indian tribal governments.''

2000—Subsec. (a). Pub. L. 106–386, § 1102(b)(1), inserted ''State and local courts (including juvenile courts), tribal courts,'' after ''Indian tribal governments,''.

Subsec. (b). Pub. L. 106–386, § 1102(b)(2)(A), inserted ''State and local courts (including juvenile courts),'' after ''Indian tribal governments'' in introductory provisions.

Subsec. (b)(2). Pub. L. 106–386, §§ 1102(b)(2)(B), 1109(c)(1), substituted ''policies, educational programs, and'' for ''policies and'' and inserted ''and dating violence'' before period at end.

Subsec. (b)(3), (4). Pub. L. 106–386, § 1102(b)(2)(C), (D), inserted ''parole and probation officers,'' after ''prosecutors,''.

Subsec. (b)(5). Pub. L. 106–386, §§ 1109(c)(2), 1512(b), inserted ''and dating violence, including strengthening assistance to such victims in immigration matters'' before period at end.

Subsec. (b)(6). Pub. L. 106–386, § 1101(a)(2)(A), inserted ''(including juvenile courts)'' after ''courts''.

Subsec. (b)(7). Pub. L. 106–386, § 1101(a)(2)(B), added par. (7).

Subsec. (b)(8). Pub. L. 106–386, § 1209(b), added par. (8).

Subsec. (c). Pub. L. 106–386, § 1102(b)(3), inserted ''State and local courts (including juvenile courts),'' after ''Indian tribal governments'' in introductory provisions.

Subsec. (c)(4). Pub. L. 106–386, § 1101(b)(2)(A), added par. (4) and struck out former par. (4) which read as follows: ''certify that their laws, policies, or practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that the abused bear the costs associated with the filing of criminal charges or the service of such charges on an abuser, or that the abused bear the costs associated with the issuance or service of a warrant, protection order, or witness subpoena.''

Subsec. (d). Pub. L. 106–386, § 1101(b)(2)(B), added subsec. (d).

Subsec. (e). Pub. L. 106–386, § 1102(b)(4), added subsec. (e).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by sections 102(b) (except the amendment to subsec. (d) of this section included in that section) and 906(c) of Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

§ 3796hh–1. Applications

(a) Application

An eligible grantee shall submit an application to the Attorney General that—

(1) contains a certification by the chief executive officer of the State, Indian tribal government, or local government entity that the conditions of section 3796hh(c) of this title are met or will be met within the later of—

(A) the period ending on the date on which the next session of the State or Indian tribal legislature ends; or

(B) 2 years of September 13, 1994 or, in the case of the condition set forth in subsection[1] 3796hh(c)(4) of this title, the expiration of the 2-year period beginning on October 28, 2000;

(2) describes plans to further the purposes stated in section 3796hh(a) of this title;

(3) identifies the agency or office or groups of agencies or offices responsible for carrying out the program; and

(4) includes documentation from nonprofit, private sexual assault and domestic violence programs demonstrating their participation in developing the application, and identifying such programs in which such groups will be consulted for development and implementation.

(b) Priority

In awarding grants under this subchapter, the Attorney General shall give priority to applicants that—

[1] So in original. Probably should be ''section''.

(1) do not currently provide for centralized handling of cases involving domestic violence, dating violence, sexual assault, or stalking by police, prosecutors, and courts;

(2) demonstrate a commitment to strong enforcement of laws, and prosecution of cases, involving domestic violence, dating violence, sexual assault, or stalking, including the enforcement of protection orders from other States and jurisdictions (including tribal jurisdictions);

(3) have established cooperative agreements or can demonstrate effective ongoing collaborative arrangements with neighboring jurisdictions to facilitate the enforcement of protection orders from other States and jurisdictions (including tribal jurisdictions); and

(4) in applications describing plans to further the purposes stated in paragraph (4) or (7) of section 3796hh(b) of this title, will give priority to using the grant to develop and install data collection and communication systems, including computerized systems, and training on how to use these systems effectively to link police, prosecutors, courts, and tribal jurisdictions for the purpose of identifying and tracking protection orders and violations of protection orders, in those jurisdictions where such systems do not exist or are not fully effective.

(c) Dissemination of information

The Attorney General shall annually compile and broadly disseminate (including through electronic publication) information about successful data collection and communication systems that meet the purposes described in this section. Such dissemination shall target States, State and local courts, Indian tribal governments, and units of local government.

(Pub. L. 90–351, title I, § 2102, as added Pub. L. 103–322, title IV, § 40231(a)(3), Sept. 13, 1994, 108 Stat. 1933; amended Pub. L. 106–386, div. B, title I, § 1101(a)(3), (b)(3), Oct. 28, 2000, 114 Stat. 1492, 1493; Pub. L. 109–162, title I, § 102(c), Jan. 5, 2006, 119 Stat. 2977.)

AMENDMENTS

2006—Subsec. (b)(1), (2). Pub. L. 109–162 inserted ‘‘, dating violence, sexual assault, or stalking’’ after ‘‘involving domestic violence’’.

2000—Subsec. (a)(1)(B). Pub. L. 106–386, § 1101(b)(3), inserted before semicolon ‘‘or, in the case of the condition set forth in subsection 3796hh(c)(4) of this title, the expiration of the 2-year period beginning on October 28, 2000’’.

Subsec. (b)(1). Pub. L. 106–386, § 1101(a)(3)(A)(i), struck out ‘‘and’’ at the end.

Subsec. (b)(2). Pub. L. 106–386, § 1101(a)(3)(A)(ii), substituted ‘‘, including the enforcement of protection orders from other States and jurisdictions (including tribal jurisdictions);’’ for period at end.

Subsec. (b)(3), (4). Pub. L. 106–386, § 1101(a)(3)(A)(iii), added pars. (3) and (4).

Subsec. (c). Pub. L. 106–386, § 1101(a)(3)(B), added subsec. (c).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

§ 3796hh–2. Reports

Each grantee receiving funds under this subchapter shall submit a report to the Attorney General evaluating the effectiveness of projects developed with funds provided under this subchapter and containing such additional information as the Attorney General may prescribe.

(Pub. L. 90–351, title I, § 2103, as added Pub. L. 103–322, title IV, § 40231(a)(3), Sept. 13, 1994, 108 Stat. 1933.)

§ 3796hh–3. Regulations or guidelines

Not later than 120 days after September 13, 1994, the Attorney General shall publish proposed regulations or guidelines implementing this subchapter. Not later than 180 days after September 13, 1994, the Attorney General shall publish final regulations or guidelines implementing this subchapter.

(Pub. L. 90–351, title I, § 2104, as added Pub. L. 103–322, title IV, § 40231(a)(3), Sept. 13, 1994, 108 Stat. 1933.)

§ 3796hh–4. Definitions and grant conditions

In this subchapter the definitions and grant conditions in section 13925 of this title shall apply.

(Pub. L. 90–351, title I, § 2105, as added Pub. L. 103–322, title IV, § 40231(a)(3), Sept. 13, 1994, 108 Stat. 1933; amended Pub. L. 106–386, div. B, title I, § 1109(a)(2), Oct. 28, 2000, 114 Stat. 1503; Pub. L. 109–162, § 3(c)(2), Jan. 5, 2006, 119 Stat. 2972.)

AMENDMENTS

2006—Pub. L. 109–162 amended section generally. Prior to amendment, section consisted of pars. (1) to (3) defining for purposes of this subchapter ‘‘domestic violence’’, ‘‘protection order’’, and ‘‘dating violence’’.

2000—Par. (3). Pub. L. 106–386 added par. (3).

§ 3796hh–5. Repealed. Pub. L. 109–271, § 2(f)(2), Aug. 12, 2006, 120 Stat. 752

Section, Pub. L. 90–351, title I, § 2106, as added Pub. L. 109–162, title I, § 102(d), Jan. 5, 2006, 119 Stat. 2978, related to training and technical assistance.

SUBCHAPTER XII–J—MENTAL HEALTH COURTS

PRIOR PROVISIONS

A prior subchapter XII–J, consisting of sections 3796ii to 3796ii–8, related to grants for drug courts, prior to repeal by Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(A)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

§ 3796ii. Grant authority

The Attorney General shall make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or nonprofit entities, for not more than 100 programs that involve—

(1) continuing judicial supervision, including periodic review, over preliminarily qualified offenders with mental illness, mental retardation, or co-occurring mental illness and substance abuse disorders, who are charged with misdemeanors or nonviolent offenses; and

(2) the coordinated delivery of services, which includes—

(A) specialized training of law enforcement and judicial personnel to identify and ad-

dress the unique needs of a mentally ill or mentally retarded offender;

(B) voluntary outpatient or inpatient mental health treatment, in the least restrictive manner appropriate, as determined by the court, that carries with it the possibility of dismissal of charges or reduced sentencing upon successful completion of treatment;

(C) centralized case management involving the consolidation of all of a mentally ill or mentally retarded defendant's cases, including violations of probation, and the coordination of all mental health treatment plans and social services, including life skills training, such as housing placement, vocational training, education, job placement, health care, and relapse prevention for each participant who requires such services; and

(D) continuing supervision of treatment plan compliance for a term not to exceed the maximum allowable sentence or probation for the charged or relevant offense and, to the extent practicable, continuity of psychiatric care at the end of the supervised period.

(Pub. L. 90–351, title I, § 2201, as added Pub. L. 106–515, § 3(a), Nov. 13, 2000, 114 Stat. 2399.)

PRIOR PROVISIONS

A prior section 3796ii, Pub. L. 90–351, title I, § 2201, as added Pub. L. 103–322, title V, § 50001(a)(3), Sept. 13, 1994, 108 Stat. 1956, related to grant authority, prior to repeal by Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(A)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

A prior section 2201 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

STUDY ON REENTRY, MENTAL ILLNESS, AND PUBLIC SAFETY

Pub. L. 107–273, div. C, title I, § 11011, Nov. 2, 2002, 116 Stat. 1823, provided that:

''(a) STUDY.—The Attorney General shall commission a study of offenders, or a sampling of such offenders, with mental illness released from prison or jail in 2 or more jurisdictions, including at least 1 State or local and 1 Federal, to determine the extent to which participation in public benefit programs correlates with successful reentry and improved public safety.

''(b) REPORT.—Not later than 2 years after the date of enactment of this Act [Nov. 2, 2002], the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives—

''(1) a report detailing the results of the study conducted under subsection (a) with findings that address—

''(A) the number of offenders with mental illness released from the prison or jail who qualify for medicaid, SSI, or SSDI;

''(B) the number of offenders with mental illness who qualify for medicaid, SSI, or SSDI benefits and who are enrolled in these programs upon release from prison or jail; and

''(C) how enrollment in medicaid, SSI, or SSDI affects—

''(i) rearrest;

''(ii) violation of condition(s) of release;

''(iii) reincarceration;

''(iv) rehospitalization;

''(v) the length of time upon release from prison or jail time to the first contact with a mental health or substance abuse service; and

''(vi) the number of contacts with a mental health or substance abuse services [service] within the first 90 days of release; and

''(2) any recommendations.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized such sums as necessary to conduct the study and issue the report required by this section.''

FINDINGS

Pub. L. 106–515, § 2, Nov. 13, 2000, 114 Stat. 2399, provided that: ''Congress finds that—

''(1) fully 16 percent of all inmates in State prisons and local jails suffer from mental illness, according to a July, 1999 report, conducted by the Bureau of Justice Statistics;

''(2) between 600,000 and 700,000 mentally ill persons are annually booked in jail alone, according to the American Jail Association;

''(3) estimates say 25 to 40 percent of America's mentally ill will come into contact with the criminal justice system, according to National Alliance for the Mentally Ill;

''(4) 75 percent of mentally ill inmates have been sentenced to time in prison or jail or probation at least once prior to their current sentence, according to the Bureau of Justice Statistics in July, 1999; and

''(5) Broward County, Florida and King County, Washington, have created separate Mental Health Courts to place nonviolent mentally ill offenders into judicially monitored inpatient and outpatient mental health treatment programs, where appropriate, with positive results.''

§ 3796ii–1. Definitions

In this subchapter—

(1) the term ''mental illness'' means a diagnosable mental, behavioral, or emotional disorder—

(A) of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; and

(B) that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities; and

(2) the term ''preliminarily qualified offender with mental illness, mental retardation, or co-occurring mental and substance abuse disorders'' means a person who—

(A)(i) previously or currently has been diagnosed by a qualified mental health professional as having a mental illness, mental retardation, or co-occurring mental illness and substance abuse disorders; or

(ii) manifests obvious signs of mental illness, mental retardation, or co-occurring mental illness and substance abuse disorders during arrest or confinement or before any court; and

(B) is deemed eligible by designated judges.

(Pub. L. 90–351, title I, § 2202, as added Pub. L. 106–515, § 3(a), Nov. 13, 2000, 114 Stat. 2400.)

PRIOR PROVISIONS

A prior section 3796ii–1, Pub. L. 90–351, title I, § 2202, as added Pub. L. 103–322, title V, § 50001(a)(3), Sept. 13, 1994, 108 Stat. 1956, related to prohibition of participation by violent offenders, prior to repeal by Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(A)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

§ 3796ii–2. Administration

(a) Consultation

The Attorney General shall consult with the Secretary of Health and Human Services and

any other appropriate officials in carrying out this subchapter.

(b) Use of components

The Attorney General may utilize any component or components of the Department of Justice in carrying out this subchapter.

(c) Regulatory authority

The Attorney General shall issue regulations and guidelines necessary to carry out this subchapter which include, but are not limited to, the methodologies and outcome measures proposed for evaluating each applicant program.

(d) Applications

In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this subchapter shall—

(1) include a long-term strategy and detailed implementation plan;

(2) explain the applicant's inability to fund the program adequately without Federal assistance;

(3) certify that the Federal support provided will be used to supplement, and not supplant, State, Indian tribal, and local sources of funding that would otherwise be available;

(4) identify related governmental or community initiatives which complement or will be coordinated with the proposal;

(5) certify that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program, including the State mental health authority;

(6) certify that participating offenders will be supervised by one or more designated judges with responsibility for the mental health court program;

(7) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support;

(8) describe the methodology and outcome measures that will be used in evaluating the program; and

(9) certify that participating first time offenders without a history of a mental illness will receive a mental health evaluation.

(Pub. L. 90–351, title I, § 2203, as added Pub. L. 106–515, § 3(a), Nov. 13, 2000, 114 Stat. 2400.)

PRIOR PROVISIONS

A prior section 3796ii–2, Pub. L. 90–351, title I, § 2203, as added Pub. L. 103–322, title V, § 50001(a)(3), Sept. 13, 1994, 108 Stat. 1956, defined ''violent offender'', prior to repeal by Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(A)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

§ 3796ii–3. Applications

To request funds under this subchapter, the chief executive or the chief justice of a State or the chief executive or chief judge of a unit of local government or Indian tribal government shall submit to the Attorney General an application in such form and containing such information as the Attorney General may reasonably require.

(Pub. L. 90–351, title I, § 2204, as added Pub. L. 106–515, § 3(a), Nov. 13, 2000, 114 Stat. 2401.)

PRIOR PROVISIONS

A prior section 3796ii–3, Pub. L. 90–351, title I, § 2204, as added Pub. L. 103–322, title V, § 50001(a)(3), Sept. 13, 1994, 108 Stat. 1956, related to administration, prior to repeal by Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(A)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

§ 3796ii–4. Federal share

The Federal share of a grant made under this subchapter may not exceed 75 percent of the total costs of the program described in the application submitted under section 3796ii–3 of this title for the fiscal year for which the program receives assistance under this subchapter, unless the Attorney General waives, wholly or in part, the requirement of a matching contribution under this section. The use of the Federal share of a grant made under this subchapter shall be limited to new expenses necessitated by the proposed program, including the development of treatment services and the hiring and training of personnel. In-kind contributions may constitute a portion of the non-Federal share of a grant.

(Pub. L. 90–351, title I, § 2205, as added Pub. L. 106–515, § 3(a), Nov. 13, 2000, 114 Stat. 2401.)

PRIOR PROVISIONS

A prior section 3796ii–4, Pub. L. 90–351, title I, § 2205, as added Pub. L. 103–322, title V, § 50001(a)(3), Sept. 13, 1994, 108 Stat. 1957, related to applications to request funds, prior to repeal by Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(A)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

§ 3796ii–5. Geographic distribution

The Attorney General shall ensure that, to the extent practicable, an equitable geographic distribution of grant awards is made that considers the special needs of rural communities, Indian tribes, and Alaska Natives.

(Pub. L. 90–351, title I, § 2206, as added Pub. L. 106–515, § 3(a), Nov. 13, 2000, 114 Stat. 2401.)

PRIOR PROVISIONS

A prior section 3796ii–5, Pub. L. 90–351, title I, § 2206, as added Pub. L. 103–322, title V, § 50001(a)(3), Sept. 13, 1994, 108 Stat. 1957, related to Federal share of grants, prior to repeal by Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(A)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

§ 3796ii–6. Report

A State, Indian tribal government, or unit of local government that receives funds under this subchapter during a fiscal year shall submit to the Attorney General a report in March of the following year regarding the effectiveness of this subchapter.

(Pub. L. 90–351, title I, § 2207, as added Pub. L. 106–515, § 3(a), Nov. 13, 2000, 114 Stat. 2402.)

PRIOR PROVISIONS

A prior section 3796ii–6, Pub. L. 90–351, title I, § 2207, as added Pub. L. 103–322, title V, § 50001(a)(3), Sept. 13,

1994, 108 Stat. 1957, related to geographic distribution of grant awards, prior to repeal by Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(A)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

§ 3796ii–7. Technical assistance, training, and evaluation

(a) Technical assistance and training

The Attorney General may provide technical assistance and training in furtherance of the purposes of this subchapter.

(b) Evaluations

In addition to any evaluation requirements that may be prescribed for grantees, the Attorney General may carry out or make arrangements for evaluations of programs that receive support under this subchapter.

(c) Administration

The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.

(Pub. L. 90–351, title I, § 2208, as added Pub. L. 106–515, § 3(a), Nov. 13, 2000, 114 Stat. 2402.)

PRIOR PROVISIONS

A prior section 3796ii–7, Pub. L. 90–351, title I, § 2208, as added Pub. L. 103–322, title V, § 50001(a)(3), Sept. 13, 1994, 108 Stat. 1957, required reports by entities receiving funds, prior to repeal by Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(A)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

A prior section 3796ii–8, Pub. L. 90–351, title I, § 2209, as added Pub. L. 103–322, title V, § 50001(a)(3), Sept. 13, 1994, 108 Stat. 1958, related to technical assistance, training, and evaluation, prior to repeal by Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(b)(1)(A)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

SUBCHAPTER XII–K—FAMILY SUPPORT

§ 3796jj. Duties

The Attorney General shall—

(1) establish guidelines and oversee the implementation of family-friendly policies within law enforcement-related offices and divisions in the Department of Justice;

(2) study the effects of stress on law enforcement personnel and family well-being and disseminate the findings of such studies to Federal, State, and local law enforcement agencies, related organizations, and other interested parties;

(3) identify and evaluate model programs that provide support services to law enforcement personnel and families;

(4) provide technical assistance and training programs to develop stress reduction and family support to State and local law enforcement agencies;

(5) collect and disseminate information regarding family support, stress reduction, and psychological services to Federal, State, and local law enforcement agencies, law enforcement-related organizations, and other interested entities; and

(6) determine issues to be researched by the Department of Justice and by grant recipients.

(Pub. L. 90–351, title I, § 2301, as added Pub. L. 103–322, title XXI, § 210201(a)(3), Sept. 13, 1994, 108 Stat. 2062.)

PRIOR PROVISIONS

A prior section 2301 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

§ 3796jj–1. General authorization

The Attorney General may make grants to States and local law enforcement agencies and to organizations representing State or local law enforcement personnel to provide family support services to law enforcement personnel.

(Pub. L. 90–351, title I, § 2302, as added Pub. L. 103–322, title XXI, § 210201(a)(3), Sept. 13, 1994, 108 Stat. 2062.)

§ 3796jj–2. Uses of funds

(a) In general

A State or local law enforcement agency or organization that receives a grant under this subchapter[1] shall use amounts provided under the grant to establish or improve training and support programs for law enforcement personnel.

(b) Required activities

A law enforcement agency or organization that receives funds under this subchapter shall provide at least one of the following services:

(1) Counseling for law enforcement family members.

(2) Child care on a 24-hour basis.

(3) Marital and adolescent support groups.

(4) Stress reduction programs.

(5) Stress education for law enforcement recruits and families.

(6) Technical assistance and training programs to support any or all of the services described in paragraphs (1), (2), (3), (4), and (5).

(c) Optional activities

A law enforcement agency or organization that receives funds under this subchapter may provide the following services:

(1) Post-shooting debriefing for officers and their spouses.

(2) Group therapy.

(3) Hypertension clinics.

(4) Critical incident response on a 24-hour basis.

(5) Law enforcement family crisis telephone services on a 24-hour basis.

(6) Counseling for law enforcement personnel exposed to the human immunodeficiency virus.

(7) Counseling for peers.

(8) Counseling for families of personnel killed in the line of duty.

(9) Seminars regarding alcohol, drug use, gambling, and overeating.

(10) Technical assistance and training to support any or all of the services described in paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9).

(Pub. L. 90–351, title I, § 2303, as added Pub. L. 103–322, title XXI, § 210201(a)(3), Sept. 13, 1994, 108 Stat. 2062.)

[1] See References in Text note below.

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original ''this Act'', and was translated as reading ''this part'', meaning part W of title I of Pub. L. 90–351, to reflect the probable intent of Congress.

§ 3796jj–3. Applications

A law enforcement agency or organization desiring to receive a grant under this subchapter shall submit to the Attorney General an application at such time, in such manner, and containing or accompanied by such information as the Attorney General may reasonably require. Such application shall—

(1) certify that the law enforcement agency shall match all Federal funds with an equal amount of cash or in-kind goods or services from other non-Federal sources;

(2) include a statement from the highest ranking law enforcement official from the State or locality or from the highest ranking official from the organization applying for the grant that attests to the need and intended use of services to be provided with grant funds; and

(3) assure that the Attorney General or the Comptroller General of the United States shall have access to all records related to the receipt and use of grant funds received under this subchapter.

(Pub. L. 90–351, title I, § 2304, as added Pub. L. 103–322, title XXI, § 210201(a)(3), Sept. 13, 1994, 108 Stat. 2063.)

§ 3796jj–4. Award of grants; limitation

(a) Grant distribution

In approving grants under this subchapter, the Attorney General shall assure an equitable distribution of assistance among the States, among urban and rural areas of the United States, and among urban and rural areas of a State.

(b) Duration

The Attorney General may award a grant each fiscal year, not to exceed $100,000 to a State or local law enforcement agency or $250,000 to a law enforcement organization for a period not to exceed 5 years. In any application from a State or local law enforcement agency or organization for a grant to continue a program for the second, third, fourth, or fifth fiscal year following the first fiscal year in which a grant was awarded to such agency, the Attorney General shall review the progress made toward meeting the objectives of the program. The Attorney General may refuse to award a grant if the Attorney General finds sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for reconsideration.

(c) Limitation

Not more than 5 percent of grant funds received by a State or a local law enforcement agency or organization may be used for administrative purposes.

(Pub. L. 90–351, title I, § 2305, as added Pub. L. 103–322, title XXI, § 210201(a)(3), Sept. 13, 1994, 108 Stat. 2063.)

§ 3796jj–5. Discretionary research grants

The Attorney General may reserve 10 percent of funds to award research grants to a State or local law enforcement agency or organization to study issues of importance in the law enforcement field as determined by the Attorney General.

(Pub. L. 90–351, title I, § 2306, as added Pub. L. 103–322, title XXI, § 210201(a)(3), Sept. 13, 1994, 108 Stat. 2064.)

§ 3796jj–6. Reports

A State or local law enforcement agency or organization that receives a grant under this subchapter shall submit to the Attorney General an annual report that includes—

(1) program descriptions;

(2) the number of staff employed to administer programs;

(3) the number of individuals who participated in programs; and

(4) an evaluation of the effectiveness of grant programs.

(Pub. L. 90–351, title I, § 2307, as added Pub. L. 103–322, title XXI, § 210201(a)(3), Sept. 13, 1994, 108 Stat. 2064.)

§ 3796jj–7. Definitions

For purposes of this subchapter—

(1) the term ''family-friendly policy'' means a policy to promote or improve the morale and well being of law enforcement personnel and their families; and

(2) the term ''law enforcement personnel'' means individuals employed by Federal, State, and local law enforcement agencies.

(Pub. L. 90–351, title I, § 2308, as added Pub. L. 103–322, title XXI, § 210201(a)(3), Sept. 13, 1994, 108 Stat. 2064.)

SUBCHAPTER XII–L—DNA IDENTIFICATION GRANTS

CODIFICATION

This subchapter is comprised of part X of title I of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351. Another part X of title I of Pub. L. 90–351 is classified to subchapter XXI (§ 3797ee et seq.) of this chapter.

§ 3796kk. Grant authorization

The Attorney General may make funds available under this subchapter to States and units of local government, or combinations thereof, to carry out all or a substantial part of a program or project intended to develop or improve the capability to analyze deoxyribonucleic acid (referred to in this subchapter as ''DNA'') in a forensic laboratory.

(Pub. L. 90–351, title I, § 2401, as added Pub. L. 103–322, title XXI, § 210302(c)(1)(C), Sept. 13, 1994, 108 Stat. 2066.)

PRIOR PROVISIONS

A prior section 2401 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

EFFECTIVE DATE

Pub. L. 103–322, title XXI, § 210302(c)(4), Sept. 13, 1994, 108 Stat. 2068, provided that: ''The amendments made

by this section [enacting this subchapter and amending sections 3751, 3753, 3793, and 3797 of this title] shall take effect on the date that is 60 days after the date of enactment of this Act [Sept. 13, 1994].''

§ 3796kk–1. Applications

To request a grant under this subchapter, the chief executive officer of a State or unit of local government shall submit an application in such form as the Attorney General may require.

(Pub. L. 90–351, title I, § 2402, as added Pub. L. 103–322, title XXI, § 210302(c)(1)(C), Sept. 13, 1994, 108 Stat. 2066.)

§ 3796kk–2. Application requirements

No grant may be made under this subchapter unless an application has been submitted to the Attorney General in which the applicant certifies that—

(1) DNA analyses performed at the laboratory will satisfy or exceed then current standards for a quality assurance program for DNA analysis issued by the Director of the Federal Bureau of Investigation under section 14131 of this title.[1]

(2) DNA samples obtained by and DNA analyses performed at the laboratory shall be made available only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;

(C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which the defendant is charged; or

(D) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes; and

(3) the laboratory and each analyst performing DNA analyses at the laboratory shall undergo semiannual external proficiency testing by a DNA proficiency testing program that meets the standards issued under section 14131 of this title.

(Pub. L. 90–351, title I, § 2403, as added Pub. L. 103–322, title XXI, § 210302(c)(1)(C), Sept. 13, 1994, 108 Stat. 2066; amended Pub. L. 106–546, § 8(b), Dec. 19, 2000, 114 Stat. 2735.)

AMENDMENTS

2000—Par. (3). Pub. L. 106–546 substituted ''semiannual'' for '', at regular intervals not exceeding 180 days,''.

§ 3796kk–3. Administrative provisions

(a) Regulation authority

The Attorney General may promulgate guidelines, regulations, and procedures, as necessary to carry out the purposes of this subchapter, including limitations on the number of awards made during each fiscal year, the submission and review of applications, selection criteria, and the extension or continuation of awards.

(b) Award authority

The Attorney General shall have final authority over all funds awarded under this subchapter.

(c) Technical assistance

To assist and measure the effectiveness and performance of programs and activities funded under this subchapter, the Attorney General may provide technical assistance as required.

(Pub. L. 90–351, title I, § 2404, as added Pub. L. 103–322, title XXI, § 210302(c)(1)(C), Sept. 13, 1994, 108 Stat. 2066.)

§ 3796kk–4. Restrictions on use of funds

(a) Federal share

The Federal share of a grant, contract, or cooperative agreement made under this subchapter may not exceed 75 percent of the total costs of the project described in the application submitted for the fiscal year for which the project receives assistance.

(b) Administrative costs

A State or unit of local government may not use more than 10 percent of the funds it receives from[1] this subchapter for administrative expenses.

(Pub. L. 90–351, title I, § 2405, as added Pub. L. 103–322, title XXI, § 210302(c)(1)(C), Sept. 13, 1994, 108 Stat. 2067.)

§ 3796kk–5. Reports

(a) Reports to Attorney General

Each State or unit of local government which receives a grant under this subchapter shall submit to the Attorney General, for each year in which funds from a grant received under this subchapter is expended, a report at such time and in such manner as the Attorney General may reasonably require which contains—

(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application submitted under section 3796kk–1 of this title; and

(2) such other information as the Attorney General may require.

(b) Reports to Congress

Not later than 90 days after the end of each fiscal year for which grants are made under this subchapter, the Attorney General shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report that includes—

(1) the aggregate amount of grants made under this subchapter to each State or unit of local government for such fiscal year; and

(2) a summary of the information provided in compliance with subsection (a)(1) of this section.

(Pub. L. 90–351, title I, § 2406, as added Pub. L. 103–322, title XXI, § 210302(c)(1)(C), Sept. 13, 1994, 108 Stat. 2067.)

[1] So in original. The period probably should be a semicolon.

[1] So in original. Probably should be ''under''.

§ 3796kk–6. Expenditure records

(a) Records

Each State or unit of local government which receives a grant under this subchapter shall keep records as the Attorney General may require to facilitate an effective audit.

(b) Access

The Attorney General, the Comptroller General, or their designated agents shall have access, for the purpose of audit and examination, to any books, documents, and records of States and units of local government which receive grants made under this subchapter if, in the opinion of the Attorney General, the Comptroller General, or their designated agents, such books, documents, and records are related to the receipt or use of any such grant.

(Pub. L. 90–351, title I, § 2407, as added Pub. L. 103–322, title XXI, § 210302(c)(1)(C), Sept. 13, 1994, 108 Stat. 2067.)

SUBCHAPTER XII–M—MATCHING GRANT PROGRAM FOR LAW ENFORCEMENT ARMOR VESTS

§ 3796*ll*. Program authorized

(a) In general

The Director of the Bureau of Justice Assistance is authorized to make grants to States, units of local government, and Indian tribes to purchase armor vests for use by State, local, and tribal law enforcement officers.

(b) Uses of funds

Grants awarded under this section shall be—

(1) distributed directly to the State, unit of local government, or Indian tribe; and

(2) used for the purchase of armor vests for law enforcement officers in the jurisdiction of the grantee.

(c) Preferential consideration

In awarding grants under this subchapter, the Director of the Bureau of Justice Assistance may give preferential consideration, if feasible, to an application from a jurisdiction that—

(1) has the greatest need for armor vests based on the percentage of law enforcement officers in the department who do not have access to a vest;

(2) has, or will institute, a mandatory wear policy that requires on-duty law enforcement officers to wear armor vests whenever feasible; and

(3) has a violent crime rate at or above the national average as determined by the Federal Bureau of Investigation; or

(4) has not received a block grant under the Local Law Enforcement Block Grant program described under the heading ''Violent Crime Reduction Programs, State and Local Law Enforcement Assistance'' of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105–119).

(d) Minimum amount

Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.50 percent of the total amount appropriated in the fiscal year for grants pursuant to this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated .25 percent.

(e) Maximum amount

A qualifying State, unit of local government, or Indian tribe may not receive more than 5 percent of the total amount appropriated in each fiscal year for grants under this section, except that a State, together with the grantees within the State may not receive more than 20 percent of the total amount appropriated in each fiscal year for grants under this section.

(f) Matching funds

(1) In general

The portion of the costs of a program provided by a grant under subsection (a) of this section—

(A) may not exceed 50 percent; and

(B) shall equal 50 percent, if—

(i) such grant is to a unit of local government with fewer than 100,000 residents;

(ii) the Director of the Bureau of Justice Assistance determines that the quantity of vests to be purchased with such grant is reasonable; and

(iii) such portion does not cause such grant to violate the requirements of subsection (e) of this section.

(2) Indian assistance

Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of a matching requirement funded under this subsection.

(g) Allocation of funds

Funds available under this subchapter shall be awarded, without regard to subsection (c) of this section, to each qualifying unit of local government with fewer than 100,000 residents. Any remaining funds available under this subchapter shall be awarded to other qualifying applicants.

(Pub. L. 90–351, title I, § 2501, as added Pub. L. 105–181, § 3(a)(3), June 16, 1998, 112 Stat. 513; amended Pub. L. 106–517, § 3(a), (b), Nov. 13, 2000, 114 Stat. 2407, 2408.)

REFERENCES IN TEXT

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, referred to in subsec. (c)(4), is Pub. L. 105–119, Nov. 26, 1997, 111 Stat. 2440. Provisions under the heading ''Violent Crime Reduction Programs, State and Local Law Enforcement Assistance'', 111 Stat. 2452, are not classified to the Code.

PRIOR PROVISIONS

A prior section 2501 of Pub. L. 90–351 was renumbered section 2601 and is classified to section 3797 of this title.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106–517, § 3(a), designated first sentence as par. (1), inserted par. heading, sub-

stituted ''subsection (a) of this section—'' and subpars. (A) and (B) for ''subsection (a) of this section may not exceed 50 percent.'', and designated second sentence as par. (2) and inserted par. heading.

Subsec. (g). Pub. L. 106–517, § 3(b), amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: ''At least half of the funds available under this subchapter shall be awarded to units of local government with fewer than 100,000 residents.''

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) through (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

FINDINGS OF 2000 AMENDMENTS

Pub. L. 106–517, § 2, Nov. 13, 2000, 114 Stat. 2407, provided that: ''Congress finds that—

''(1) the number of law enforcement officers who are killed in the line of duty would significantly decrease if every law enforcement officer in the United States had the protection of an armor vest;

''(2) according to studies, between 1985 and 1994, 709 law enforcement officers in the United States were killed in the line of duty;

''(3) the Federal Bureau of Investigation estimates that the risk of fatality to law enforcement officers while not wearing an armor vest is 14 times higher than for officers wearing an armor vest;

''(4) according to studies, between 1985 and 1994, bullet-resistant materials helped save the lives of more than 2,000 law enforcement officers in the United States; and

''(5) the Executive Committee for Indian Country Law Enforcement Improvements reports that violent crime in Indian country has risen sharply, despite a decrease in the national crime rate, and has concluded that there is a 'public safety crisis in Indian country'.''

FINDINGS AND PURPOSE OF 1998 AMENDMENTS

Pub. L. 105–181, § 2, June 16, 1998, 112 Stat. 512, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) the number of law enforcement officers who are killed in the line of duty would significantly decrease if every law enforcement officer in the United States had the protection of an armor vest;

''(2) according to studies, between 1985 and 1994, 709 law enforcement officers in the United States were feloniously killed in the line of duty;

''(3) the Federal Bureau of Investigation estimates that the risk of fatality to law enforcement officers while not wearing an armor vest is 14 times higher than for officers wearing an armor vest;

''(4) the Department of Justice estimates that approximately 150,000 State, local, and tribal law enforcement officers, nearly 25 percent, are not issued body armor;

''(5) according to studies, between 1985 and 1994, bullet-resistant materials helped save the lives of more than 2,000 law enforcement officers in the United States; and

''(6) the Executive Committee for Indian Country Law Enforcement Improvements reports that violent crime in Indian country has risen sharply, despite a decrease in the national crime rate, and has concluded that there is a 'public safety crisis in Indian country'.

''(b) PURPOSE.—The purpose of this Act [see Short Title of 1998 Amendments note set out under section 3711 of this title] is to save lives of law enforcement officers by helping State, local, and tribal law enforcement agencies provide officers with armor vests.''

§ 3796*ll*–1. Applications

(a) In general

To request a grant under this subchapter, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Director of the Bureau of Justice Assistance in such form and containing such information as the Director may reasonably require.

(b) Regulations

Not later than 90 days after June 16, 1998, the Director of the Bureau of Justice Assistance shall promulgate regulations to implement this section (including the information that must be included and the requirements that the States, units of local government, and Indian tribes must meet) in submitting the applications required under this section.

(c) Eligibility

A unit of local government that receives funding under the Local Law Enforcement Block Grant program (described under the heading ''Violent Crime Reduction Programs, State and Local Law Enforcement Assistance'' of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105–119)) during a fiscal year in which it submits an application under this subchapter shall not be eligible for a grant under this subchapter unless the chief executive officer of such unit of local government certifies and provides an explanation to the Director that the unit of local government considered or will consider using funding received under the block grant program for any or all of the costs relating to the purchase of armor vests, but did not, or does not expect to use such funds for such purpose.

(d) Applications in conjunction with purchases

If an application under this section is submitted in conjunction with a transaction for the purchase of armor vests, grant amounts under this section may not be used to fund any portion of that purchase unless, before the application is submitted, the applicant—

(1) receives clear and conspicuous notice that receipt of the grant amounts requested in the application is uncertain; and

(2) expressly assumes the obligation to carry out the transaction, regardless of whether such amounts are received.

(Pub. L. 90–351, title I, § 2502, as added Pub. L. 105–181, § 3(a)(3), June 16, 1998, 112 Stat. 514; amended Pub. L. 106–517, § 3(c), Nov. 13, 2000, 114 Stat. 2408.)

REFERENCES IN TEXT

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, referred to in subsec. (c), is Pub. L. 105–119, Nov. 26, 1997, 111 Stat. 2440. Provisions under the heading ''Violent Crime Reduction Programs, State and Local Law Enforcement Assistance'', 111 Stat. 2452, are not classified to the Code.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–517 added subsec. (d).

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumer-

ated in section 3742(3) through (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 3796*ll*–2. Definitions

For purposes of this subchapter—

(1) the term ''armor vest'' means—

(A) body armor, no less than Type I, which has been tested through the voluntary compliance testing program operated by the National Law Enforcement and Corrections Technology Center of the National Institute of Justice (NIJ), and found to meet or exceed the requirements of NIJ Standard 0101.03, or any subsequent revision of such standard; or

(B) body armor that has been tested through the voluntary compliance testing program, and found to meet or exceed the requirements of NIJ Standard 0115.00, or any revision of such standard;

(2) the term ''body armor'' means any product sold or offered for sale as personal protective body covering intended to protect against gunfire, stabbing, or other physical harm;

(3) the term ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands;

(4) the term ''unit of local government'' means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level;

(5) the term ''Indian tribe'' has the same meaning as in section 450b(e) of title 25; and

(6) the term ''law enforcement officer'' means any officer, agent, or employee of a State, unit of local government, or Indian tribe authorized by law or by a government agency to engage in or supervise the prevention, detection, or investigation of any violation of criminal law, or authorized by law to supervise sentenced criminal offenders.

(Pub. L. 90–351, title I, § 2503, as added Pub. L. 105–181, § 3(a)(3), June 16, 1998, 112 Stat. 514; amended Pub. L. 106–517, § 3(d), Nov. 13, 2000, 114 Stat. 2408.)

AMENDMENTS

2000—Par. (1). Pub. L. 106–517 designated provisions after '' 'armor vest' means'' as subpar. (A) and added subpar. (B).

INTERIM DEFINITION OF ARMOR VEST

Pub. L. 106–517, § 3(e), Nov. 13, 2000, 114 Stat. 2408, provided that: ''For purposes of part Y of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3796*ll* et seq.], as amended by this Act, the meaning of the term 'armor vest' (as defined in section 2503 of such Act (42 U.S.C. 3796*ll*–2)) shall, until the date on which a final NIJ Standard 0115.00 is first fully approved and implemented, also include body armor which has been found to meet or exceed the requirements for protection against stabbing established by the State in which the grantee is located.''

§ 3796*ll*–3. James Guelff and Chris McCurley Body Armor Act of 2002

(a) Short title

This section may be cited as the ''James Guelff and Chris McCurley Body Armor Act of 2002''.

(b) Findings

Congress finds that—

(1) nationally, police officers and ordinary citizens are facing increased danger as criminals use more deadly weaponry, body armor, and other sophisticated assault gear;

(2) crime at the local level is exacerbated by the interstate movement of body armor and other assault gear;

(3) there is a traffic in body armor moving in or otherwise affecting interstate commerce, and existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power;

(4) recent incidents, such as the murder of San Francisco Police Officer James Guelff by an assailant wearing 2 layers of body armor, a 1997 bank shoot out in north Hollywood, California, between police and 2 heavily armed suspects outfitted in body armor, and the 1997 murder of Captain Chris McCurley of the Etowah County, Alabama Drug Task Force by a drug dealer shielded by protective body armor, demonstrate the serious threat to community safety posed by criminals who wear body armor during the commission of a violent crime;

(5) of the approximately 1,500 officers killed in the line of duty since 1980, more than 30 percent could have been saved by body armor, and the risk of dying from gunfire is 14 times higher for an officer without a bulletproof vest;

(6) the Department of Justice has estimated that 25 percent of State and local police are not issued body armor;

(7) the Federal Government is well-equipped to grant local police departments access to body armor that is no longer needed by Federal agencies; and

(8) Congress has the power, under the interstate commerce clause and other provisions of the Constitution of the United States, to enact legislation to regulate interstate commerce that affects the integrity and safety of our communities.

(c) Definitions

In this section:

(1) Body armor

The term ''body armor'' means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

(2) Law enforcement agency

The term ''law enforcement agency'' means an agency of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or

supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

(3) Law enforcement officer

The term ''law enforcement officer'' means any officer, agent, or employee of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

(d) Amendment of sentencing guidelines with respect to body armor

(1) In general

Pursuant to its authority under section 994(p) of title 28, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence (as defined in section 16 of title 18) or drug trafficking crime (as defined in section 924(c) of title 18) (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) in which the defendant used body armor.

(2) Sense of Congress

It is the sense of Congress that any sentencing enhancement under this subsection should be at least 2 levels.

(e) Omitted

(f) Donation of Federal surplus body armor

(1) Definitions

In this subsection, the terms ''Federal agency'' and ''surplus property'' have the meanings given such terms under section 102 of title 40.

(2) Donation of body armor

Notwithstanding sections 541–555 of title 40, the head of a Federal agency may donate body armor directly to any State or local law enforcement agency, if such body armor—

(A) is in serviceable condition;

(B) is surplus property; and

(C) meets or exceeds the requirements of National Institute of Justice Standard 0101.03 (as in effect on November 2, 2002).

(3) Notice to Administrator

The head of a Federal agency who donates body armor under this subsection shall submit to the Administrator of General Services a written notice identifying the amount of body armor donated and each State or local law enforcement agency that received the body armor.

(4) Donation by certain officers

(A) Department of Justice

In the administration of this subsection with respect to the Department of Justice, in addition to any other officer of the Department of Justice designated by the Attorney General, the following officers may act as the head of a Federal agency:

(i) The Administrator of the Drug Enforcement Administration.

(ii) The Director of the Federal Bureau of Investigation.

(iii) The Commissioner of the Immigration and Naturalization Service.

(iv) The Director of the United States Marshals Service.

(B) Department of the Treasury

In the administration of this subsection with respect to the Department of the Treasury, in addition to any other officer of the Department of the Treasury designated by the Secretary of the Treasury, the following officers may act as the head of a Federal agency:

(i) The Director of the Bureau of Alcohol, Tobacco, and Firearms.

(ii) The Commissioner of Customs.

(iii) The Director of the United States Secret Service.

(5) No liability

Notwithstanding any other provision of law, the United States shall not be liable for any harm occurring in connection with the use or misuse of any body armor donated under this subsection.

(Pub. L. 107–273, div. C, title I, § 11009, Nov. 2, 2002, 116 Stat. 1819.)

CODIFICATION

Section is comprised of section 11009 of Pub. L. 107–273. Subsec. (e) of section 11009 of Pub. L. 107–273 enacted section 931 of Title 18, Crimes and Criminal Procedure, and amended sections 921 and 924 of Title 18.

Section was enacted as part of the 21st Century Department of Justice Appropriations Authorization Act, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

In subsec. (f), ''section 102 of title 40'' substituted for ''section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)'' in par. (1), and ''sections 541–555 of title 40'' substituted for ''section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484)'' in par. (2), on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, including the related functions of the Secretary of the Treasury, to the Department of Justice, see section 531(c) of Title 6, Domestic Security, and section 599A(c)(1) of Title 28, Judiciary and Judicial Procedure.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

SUBCHAPTER XIII—TRANSITION; EFFECTIVE DATE; REPEALER

CODIFICATION

Subchapter is based on part Z, formerly part M, of title I of Pub. L. 90–351, as added by Pub. L. 96–157, § 2, and redesignated by Pub. L. 99–570, § 1552(a)(1), Pub. L. 101–647, §§ 241(a)(1)(A), 801(a)(1), Pub. L. 102–521, § 4(a)(1), Pub. L. 103–322, §§ 10003(a)(1), 20201(a)(1), 32101(a)(1), 40121(a)(1), 40231(a)(1), 50001(a)(1), 210201(a)(1), 210302(c)(1)(A), and Pub. L. 105–181, § 3(a)(1).

§ 3797. Continuation of rules, authorities, and proceedings

(a) Continuing status until otherwise affected

(1) All orders, determinations, rules, regulations, and instructions of the Law Enforcement Assistance Administration which are in effect on December 27, 1979, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President or the Attorney General, the Office of Justice Assistance, Research, and Statistics or the Director of the Bureau of Justice Statistics, the National Institute of Justice, or the Administrator of the Law Enforcement Assistance Administration with respect to their functions under this chapter or by operation of law.

(2) All orders, determinations, rules, regulations, and instructions issued under this chapter which are in effect on October 12, 1984, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Attorney General, the Assistant Attorney General, the Director of the Bureau of Justice Statistics, the Director of the National Institute of Justice, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, or the Director of the Bureau of Justice Assistance with respect to their functions under this chapter or by operation of law.

(b) Obligation by Director of National Institute of Justice of previously appropriated unused or reversionary funds for continuation of research and development projects or purposes of this chapter

The Director of the National Institute of Justice may award new grants, enter into new contracts or cooperative agreements, or otherwise obligate previously appropriated unused or reversionary funds for the continuation of research and development projects in accordance with the provisions of this chapter as in effect on the day before December 27, 1979, based upon applications received under this chapter before December 27, 1979, or for purposes consistent with provisions of this chapter.

(c) Obligation by Director of Bureau of Justice Statistics of pre-fiscal year 1980 appropriated funds for statistical projects or purposes of this chapter

The Director of the Bureau of Justice Statistics may award new grants, enter into new contracts or cooperative agreements or otherwise obligate funds appropriated for fiscal years before 1980 for statistical projects to be expended in accordance with the provisions of this chapter, as in effect on the day before December 27, 1979, based upon applications received under this chapter before December 27, 1979, or for purposes consistent with provisions of this chapter.

(d) Obligation by Administrator of Law Enforcement Assistance Administration of previously appropriated unused or reversionary funds or presently appropriated funds for continuation of projects or purposes of this chapter

The Administrator of the Law Enforcement Assistance Administration may award new grants, enter into new contracts or cooperative agreements, approve comprehensive plans for the fiscal year beginning October 1, 1979, and otherwise obligate previously appropriated unused or reversionary funds or funds appropriated for the fiscal year beginning October 1, 1979, for the continuation of projects in accordance with the provisions of this chapter, as in effect on the day before December 27, 1979, or for purposes consistent with provisions of this chapter.

(e) Pending suits, actions, or other proceedings unaffected

The amendments made to this chapter by the Justice System Improvement Act of 1979 shall not affect any suit, action, or other proceeding commenced by or against the Government before December 27, 1979.

(f) Appropriated funds available for audit matters and continuing programs and projects

Nothing in this chapter prevents the utilization of funds appropriated for purposes of this chapter for all activities necessary or appropriate for the review, audit, investigation, and judicial or administrative resolution of audit matters for those grants or contracts that were awarded under this chapter. The final disposition and dissemination of program and project accomplishments with respect to programs and projects approved in accordance with this chapter, as in effect before December 27, 1979, which continue in operation beyond December 27, 1979, may be carried out with funds appropriated for purposes of this chapter.

(g) Transfer of personnel pursuant to performance-of-functions standard; determination of interim positions for Administrator and Deputy Administrators by Attorney General

Except as otherwise provided in this chapter, the personnel employed on December 27, 1979, by the Law Enforcement Assistance Administration are transferred as appropriate to the Office of Justice Assistance, Research, and Statistics, the National Institute of Justice or the Bureau of Justice Statistics, considering the function to be performed by these organizational units and the functions previously performed by the employee. Determinations as to specific positions to be filled in an acting capacity for a period of not more than ninety days by the Administrator and Deputy Administrators employed on December 27, 1979, may be made by the Attorney General notwithstanding any other provision of law.

(h) Unobligated funds of a State or unit of local government available for cost of any program or project

Any funds made available under subchapters II, III, and V[1] of this chapter, as in effect before December 27, 1979, which are not obligated by a State or unit of local government, may be used to provide up to 100 per centum of the cost of any program or project.

(i) State criminal justice council as the State planning agency for carrying out predecessor provisions

Notwithstanding any other provision of this chapter, all provisions of this chapter, as in effect on the day before December 27, 1979, which are necessary to carry out the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5601 et seq.], remain in effect for the sole purpose of carrying out the Juvenile Justice and Delinquency Prevention Act of 1974, and the State criminal justice council established under this chapter shall serve as the State planning agency for the purposes of the Juvenile Justice and Delinquency Prevention Act of 1974.

(j) Construction project funding for additional two years

Notwithstanding the provisions of section 3744(c)(3)[1] of this title, any construction projects which were funded under this chapter, as in effect before December 27, 1979, and which were budgeted in anticipation of receiving additional Federal funding for such construction may continue for two years to be funded under this chapter.

(Pub. L. 90–351, title I, § 2601, formerly § 1301, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1221; amended Pub. L. 98–473, title II, § 609G, Oct. 12, 1984, 98 Stat. 2100; renumbered § 1401, Pub. L. 99–570, title I, § 1552(a)(2), Oct. 27, 1986, 100 Stat. 3207–41; renumbered § 1501, renumbered § 1601, Pub. L. 101–647, title II, § 241(a)(1)(B), title VIII, § 801(a)(2), Nov. 29, 1990, 104 Stat. 4810, 4825; renumbered § 1701, Pub. L. 102–521, § 4(a)(2), Oct. 25, 1992, 106 Stat. 3404; renumbered § 1801, renumbered § 1901, renumbered § 2001, renumbered § 2101, renumbered § 2201, renumbered § 2301, renumbered § 2401, renumbered § 2501, Pub. L. 103–322, title I, § 10003(a)(2), title II, § 20201(a)(2), title III, § 32101(a)(2), title IV, §§ 40121(a)(2), 40231(a)(2), title V, § 50001(a)(2), title XXI, §§ 210201(a)(2), 210302(c)(1)(B), Sept. 13, 1994, 108 Stat. 1808, 1819, 1898, 1910, 1932, 1955, 2062, 2066, renumbered § 2601, Pub. L. 105–181, § 3(a)(2), June 16, 1998, 112 Stat. 512.)

REFERENCES IN TEXT

The Justice System Improvement Act of 1979, referred to in subsec. (e), is Pub. L. 96–157, Dec. 27, 1979, 93 Stat. 1167, as amended, which is classified principally to this chapter (§ 3701 et seq.). For complete classification of this Act to the Code, see Short Title of 1979 Amendment note under section 3711 of this title and Tables.

Subchapter V of this chapter, referred to in subsec. (h), was repealed and former subchapter VI was redesignated as V by Pub. L. 98–473, title II, §§ 607, 608(e), Oct. 12, 1984, 98 Stat. 2086, 2087, which was also repealed and a new subchapter V enacted by Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4328.

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (i), is Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended, which is classified principally to chapter 72 (§ 5601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note under section 5601 of this title and Tables.

Section 3744(c)(3) of this title, referred to in subsec. (j), is a reference to section 3744(c)(3) of this title as in effect prior to the general amendment of section 3744 of this title by Pub. L. 98–473, and subsequent repeal by Pub. L. 100–690, title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4328.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–473, § 609G(1), designated existing provisions as par. (1) and added par. (2).

Subsecs. (j), (k). Pub. L. 98–473, § 609G(2), (3), redesignated subsec. (k) as (j) and struck out former subsec. (j) relating to State planning agency meeting representation requirement as competent to carry out functions, powers, and duties of State criminal justice council.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as an Effective Date note under section 3711 of this title.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) through (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION; CLOSEOUT OF OPERATIONS AND TRANSFER OF REMAINING FUNCTIONS

The operations of the Law Enforcement Assistance Administration were closed out by the Justice Department due to lack of appropriations, and the remaining programs and staff transferred to the Office of Justice Assistance, Research, and Statistics, effective Apr. 15, 1982, see Notice of Department of Justice, Office of Justice Assistance, Research, and Statistics, Apr. 19, 1982, 47 F.R. 16694.

SUBCHAPTER XIV—MATCHING GRANT PROGRAM FOR SCHOOL SECURITY

§ 3797a. Program authorized

(a) In general

The Director of the Office of Community Oriented Policing Services (in this section referred to as the ''Director'') is authorized to make grants to States, units of local government, and Indian tribes to provide improved security, including the placement and use of metal detectors and other deterrent measures, at schools and on school grounds.

(b) Uses of funds

Grants awarded under this section shall be distributed directly to the State, unit of local government, or Indian tribe, and shall be used to improve security at schools and on school grounds in the jurisdiction of the grantee through one or more of the following:

(1) Placement and use of metal detectors, locks, lighting, and other deterrent measures.

(2) Security assessments.

(3) Security training of personnel and students.

[1] See References in Text note below.

(4) Coordination with local law enforcement.

(5) Any other measure that, in the determination of the Director, may provide a significant improvement in security.

(c) Preferential consideration

In awarding grants under this subchapter, the Director shall give preferential consideration, if feasible, to an application from a jurisdiction that has a demonstrated need for improved security, has a demonstrated need for financial assistance, and has evidenced the ability to make the improvements for which the grant amounts are sought.

(d) Matching funds

(1) The portion of the costs of a program provided by a grant under subsection (a) of this section may not exceed 50 percent.

(2) Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of a matching requirement funded under this subsection.

(3) The Director may provide, in the guidelines implementing this section, for the requirement of paragraph (1) to be waived or altered in the case of a recipient with a financial need for such a waiver or alteration.

(e) Equitable distribution

In awarding grants under this subchapter, the Director shall ensure, to the extent practicable, an equitable geographic distribution among the regions of the United States and among urban, suburban, and rural areas.

(f) Administrative costs

The Director may reserve not more than 2 percent from amounts appropriated to carry out this subchapter for administrative costs.

(Pub. L. 90–351, title I, § 2701, as added Pub. L. 106–386, div. B, title I, § 1108(b), Oct. 28, 2000, 114 Stat. 1501; amended Pub. L. 109–162, title XI, § 1169(b), Jan. 5, 2006, 119 Stat. 3122; Pub. L. 109–271, § 8(j), Aug. 12, 2006, 120 Stat. 767.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–271, § 8(j)(1), substituted ''The Director of the Office of Community Oriented Policing Services (in this section referred to as the 'Director')'' for ''The Attorney General, acting through the Office of Community Oriented Policing Services,''.

Pub. L. 109–162 inserted '', acting through the Office of Community Oriented Policing Services,'' after ''The Attorney General''.

Subsecs. (b) to (f). Pub. L. 109–271, § 8(j)(2), substituted ''Director'' for ''Attorney General'' wherever appearing.

§ 3797b. Applications

(a) In general

To request a grant under this subchapter, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may require. Each application shall—

(1) include a detailed explanation of—

(A) the intended uses of funds provided under the grant; and

(B) how the activities funded under the grant will meet the purpose of this subchapter; and

(2) be accompanied by an assurance that the application was prepared after consultation with individuals not limited to law enforcement officers (such as school violence researchers, child psychologists, social workers, teachers, principals, and other school personnel) to ensure that the improvements to be funded under the grant are—

(A) consistent with a comprehensive approach to preventing school violence; and

(B) individualized to the needs of each school at which those improvements are to be made.

(b) Guidelines

Not later than 90 days after October 28, 2000, the Director shall promulgate guidelines to implement this section (including the information that must be included and the requirements that the States, units of local government, and Indian tribes must meet) in submitting the applications required under this section.

(Pub. L. 90–351, title I, § 2702, as added Pub. L. 106–386, div. B, title I, § 1108(b), Oct. 28, 2000, 114 Stat. 1502; amended Pub. L. 109–271, § 8(j)(2), Aug. 12, 2006, 120 Stat. 767.)

AMENDMENTS

2006—Pub. L. 109–271 substituted ''Director'' for ''Attorney General'' wherever appearing.

§ 3797c. Annual report to Congress

Not later than November 30th of each year, the Director shall submit a report to the Congress regarding the activities carried out under this subchapter. Each such report shall include, for the preceding fiscal year, the number of grants funded under this subchapter, the amount of funds provided under those grants, and the activities for which those funds were used.

(Pub. L. 90–351, title I, § 2703, as added Pub. L. 106–386, div. B, title I, § 1108(b), Oct. 28, 2000, 114 Stat. 1502; amended Pub. L. 109–271, § 8(j)(2), Aug. 12, 2006, 120 Stat. 767.)

AMENDMENTS

2006—Pub. L. 109–271 substituted ''Director'' for ''Attorney General''.

§ 3797d. Definitions

For purposes of this subchapter—

(1) the term ''school'' means a public elementary or secondary school;

(2) the term ''unit of local government'' means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level; and

(3) the term ''Indian tribe'' has the same meaning as in section 450b(e) of title 25.

(Pub. L. 90–351, title I, § 2704, as added Pub. L. 106–386, div. B, title I, § 1108(b), Oct. 28, 2000, 114 Stat. 1502.)

§ 3797e. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $30,000,000 for each of fiscal years 2001 through 2009.

(Pub. L. 90–351, title I, § 2705, as added Pub. L. 106–386, div. B, title I, § 1108(b), Oct. 28, 2000, 114 Stat. 1502; amended Pub. L. 109–162, title XI, § 1169(a), Jan. 5, 2006, 119 Stat. 3122.)

AMENDMENTS

2006—Pub. L. 109–162 substituted ''2009'' for ''2003''.

SUBCHAPTER XV—PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS

§ 3797j. Grant authorization

The Attorney General shall award grants to States and units of local government in accordance with this subchapter.

(Pub. L. 90–351, title I, § 2801, as added Pub. L. 106–561, § 2(c)(1), Dec. 21, 2000, 114 Stat. 2788; amended Pub. L. 107–273, div. B, title V, § 5001(b)(1), Nov. 2, 2002, 116 Stat. 1813.)

AMENDMENTS

2002—Pub. L. 107–273 inserted ''and units of local government'' after ''States''.

§ 3797k. Applications

To request a grant under this subchapter, a State or unit of local government shall submit to the Attorney General—

(1) a certification that the State or unit of local government has developed a plan for forensic science laboratories under a program described in section 3797m(a) of this title, and a specific description of the manner in which the grant will be used to carry out that plan;

(2) a certification that any forensic science laboratory system, medical examiner's office, or coroner's office in the State, including any laboratory operated by a unit of local government within the State, that will receive any portion of the grant amount uses generally accepted laboratory practices and procedures, established by accrediting organizations or appropriate certifying bodies;

(3) a specific description of any new facility to be constructed as part of the program for a State or local plan described in paragraph (1), and the estimated costs of that facility, and a certification that the amount of the grant used for the costs of the facility will not exceed the limitations set forth in section 3797m(c) of this title; and

(4) a certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.

(Pub. L. 90–351, title I, § 2802, as added Pub. L. 106–561, § 2(c)(1), Dec. 21, 2000, 114 Stat. 2788; amended Pub. L. 107–273, div. B, title V, § 5001(b)(2), Nov. 2, 2002, 116 Stat. 1813; Pub. L. 108–405, title III, § 311(b), Oct. 30, 2004, 118 Stat. 2277.)

AMENDMENTS

2004—Par. (4). Pub. L. 108–405 added par. (4).

2002—Pub. L. 107–273, § 5001(b)(2)(A), inserted ''or unit of local government'' after ''State'' in introductory provisions.

Par. (1). Pub. L. 107–273, § 5001(b)(2)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''a certification that the State has developed a consolidated State plan for forensic science laboratories operated by the State or by other units of local government within the State under a program described in section 3797m(a) of this title, and a specific description of the manner in which the grant will be used to carry out that plan;''.

Par. (2). Pub. L. 107–273, § 5001(b)(2)(C), inserted ''or appropriate certifying bodies'' after ''accrediting organizations''.

Par. (3). Pub. L. 107–273, § 5001(b)(2)(D), inserted ''for a State or local plan'' after ''program''.

§ 3797*l*. Allocation

(a) In general

(1) Population allocation

Seventy-five percent of the amount made available to carry out this subchapter in each fiscal year shall be allocated to each State that meets the requirements of section 3797k of this title so that each State shall receive an amount that bears the same ratio to the 75 percent of the total amount made available to carry out this subchapter for that fiscal year as the population of the State bears to the population of all States.

(2) Discretionary allocation

Twenty-five percent of the amount made available to carry out this subchapter in each fiscal year shall be allocated pursuant to the Attorney General's discretion for competitive awards to States and units of local government. In making awards under this subchapter, the Attorney General shall consider the average annual number of part 1 violent crimes reported by each State to the Federal Bureau of Investigation for the 3 most recent calendar years for which data is available and consider the existing resources and current needs of the potential grant recipient.

(3) Minimum requirement

Each State shall receive not less than 0.6 percent of the amount made available to carry out this subchapter in each fiscal year.

(4) Proportional reduction

If the amounts available to carry out this subchapter in each fiscal year are insufficient to pay in full the total payment that any State is otherwise eligible to receive under paragraph (3), then the Attorney General shall reduce payments under paragraph (1) for such payment period to the extent of such insufficiency. Reductions under the preceding sentence shall be allocated among the States (other than States whose payment is determined under paragraph (3)) in the same proportions as amounts would be allocated under paragraph (1) without regard to paragraph (3).

(b) State defined

In this section, the term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, except that—

(1) for purposes of the allocation under this section, American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as 1 State; and

(2) for purposes of paragraph (1), 67 percent of the amount allocated shall be allocated to American Samoa, and 33 percent shall be allocated to the Commonwealth of the Northern Mariana Islands.

(Pub. L. 90–351, title I, § 2803, as added Pub. L. 106–561, § 2(c)(1), Dec. 21, 2000, 114 Stat. 2788; amended Pub. L. 107–273, div. B, title V, § 5001(b)(3), Nov. 2, 2002, 116 Stat. 1814.)

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–273 substituted ''for competitive awards to States and units of local government. In making awards under this subchapter, the Attorney General shall consider the average annual number of part 1 violent crimes reported by each State to the Federal Bureau of Investigation for the 3 most recent calendar years for which data is available and consider the existing resources and current needs of the potential grant recipient'' for ''to States with above average rates of part 1 violent crimes based on the average annual number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 most recent calendar years for which such data is available''.

§ 3797m. Use of grants

(a) In general

A State or unit of local government that receives a grant under this subchapter shall use the grant to do any one or more of the following:

(1) To carry out all or a substantial part of a program intended to improve the quality and timeliness of forensic science or medical examiner services in the State, including such services provided by the laboratories operated by the State and those operated by units of local government within the State.

(2) To eliminate a backlog in the analysis of forensic science evidence, including firearms examination, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence.

(3) To train, assist, and employ forensic laboratory personnel, as needed, to eliminate such a backlog.

(b) Permitted categories of funding

Subject to subsections (c) and (d) of this section, a grant awarded for the purpose set forth in subsection (a)(1) of this section—

(1) may only be used for program expenses relating to facilities, personnel, computerization, equipment, supplies, accreditation and certification, education, and training; and

(2) may not be used for any general law enforcement or nonforensic investigatory function.

(c) Facilities costs

(1) States receiving minimum grant amount

With respect to a State that receives a grant under this subchapter (including grants received by units of local government within a State) in an amount that does not exceed 0.6 percent of the total amount made available to carry out this subchapter for a fiscal year, not more than 80 percent of the total amount of the grant may be used for the costs of any new facility constructed as part of a program described in subsection (a) of this section.

(2) Other States

With respect to a State that receives a grant under this subchapter in an amount that exceeds 0.6 percent of the total amount made available to carry out this subchapter for a fiscal year—

(A) not more than 80 percent of the amount of the grant up to that 0.6 percent may be used for the costs of any new facility constructed as part of a program described in subsection (a) of this section; and

(B) not more than 40 percent of the amount of the grant in excess of that 0.6 percent may be used for the costs of any new facility constructed as part of a program described in subsection (a) of this section.

(d) Administrative costs

Not more than 10 percent of the total amount of a grant awarded under this subchapter may be used for administrative expenses.

(e) Backlog defined

For purposes of this section, a backlog in the analysis of forensic science evidence exists if such evidence—

(1) has been stored in a laboratory, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility; and

(2) has not been subjected to all appropriate forensic testing because of a lack of resources or personnel.

(Pub. L. 90–351, title I, § 2804, as added Pub. L. 106–561, § 2(c)(1), Dec. 21, 2000, 114 Stat. 2789; amended Pub. L. 107–273, div. B, title V, § 5001(b)(4), Nov. 2, 2002, 116 Stat. 1814; Pub. L. 108–405, title III, § 311(a), Oct. 30, 2004, 118 Stat. 2276.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–405, § 311(a)(1), substituted ''shall use the grant to do any one or more of the following:

''(1) To carry out''

for ''shall use the grant to carry out'' and added pars. (2) and (3).

Subsec. (b). Pub. L. 108–405, § 311(a)(2), substituted ''for the purpose set forth in subsection (a)(1) of this section'' for ''under this subchapter'' in introductory provisions.

Subsec. (e). Pub. L. 108–405, § 311(a)(3), added subsec. (e).

2002—Subsec. (a). Pub. L. 107–273, § 5001(b)(4)(A), inserted ''or unit of local government'' after ''A State''.

Subsec. (c)(1). Pub. L. 107–273, § 5001(b)(4)(B), inserted ''(including grants received by units of local government within a State)'' after ''under this subchapter''.

§ 3797n. Administrative provisions

(a) Regulations

The Attorney General may promulgate such guidelines, regulations, and procedures as may be necessary to carry out this subchapter, in-

cluding guidelines, regulations, and procedures relating to the submission and review of applications for grants under section 3797k of this title.

(b) Expenditure records

(1) Records

Each State, or unit of local government within the State, that receives a grant under this subchapter shall maintain such records as the Attorney General may require to facilitate an effective audit relating to the receipt of the grant, or the use of the grant amount.

(2) Access

The Attorney General and the Comptroller General of the United States, or a designee thereof, shall have access, for the purpose of audit and examination, to any book, document, or record of a State, or unit of local government within the State, that receives a grant under this subchapter, if, in the determination of the Attorney General, Comptroller General, or designee thereof, the book, document, or record is related to the receipt of the grant, or the use of the grant amount.

(Pub. L. 90–351, title I, § 2805, as added Pub. L. 106–561, § 2(c)(1), Dec. 21, 2000, 114 Stat. 2790.)

§ 3797*o*. Reports

(a) Reports to Attorney General

For each fiscal year for which a grant is awarded under this subchapter, each State or unit of local government that receives such a grant shall submit to the Attorney General a report, at such time and in such manner as the Attorney General may reasonably require, which report shall include—

(1) a summary and assessment of the program carried out with the grant, which shall include a comparison of pre-grant and post-grant forensic science capabilities;

(2) the average number of days between submission of a sample to a forensic science laboratory or forensic science laboratory system in that State operated by the State or by a unit of local government and the delivery of test results to the requesting office or agency;

(3) an identification of the number and type of cases currently accepted by the laboratory; and

(4) such other information as the Attorney General may require.

(b) Reports to Congress

Not later than 90 days after the last day of each fiscal year for which 1 or more grants are awarded under this subchapter, the Attorney General shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report, which shall include—

(1) the aggregate amount of grants awarded under this subchapter for that fiscal year; and

(2) a summary of the information provided under subsection (a) of this section.

(Pub. L. 90–351, title I, § 2806, as added Pub. L. 106–561, § 2(c)(1), Dec. 21, 2000, 114 Stat. 2790; amended Pub. L. 107–273, div. B, title V, § 5001(b)(5), Nov. 2, 2002, 116 Stat. 1814.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273, § 5001(b)(5)(A), inserted ''or unit of local government'' after ''each State'' in introductory provisions.

Subsec. (a)(1). Pub. L. 107–273, § 5001(b)(5)(B), inserted '', which shall include a comparison of pre-grant and post-grant forensic science capabilities'' before semicolon at end.

Subsec. (a)(3), (4). Pub. L. 107–273, § 5001(b)(5)(C)–(E), added par. (3) and redesignated former par. (3) as (4).

SUBCHAPTER XVI—DRUG COURTS

CODIFICATION

Pub. L. 107–273, div. B, title II, § 2301(a), Nov. 2, 2002, 116 Stat. 1794, which directed that part EE (this subchapter) be inserted after part DD of title I of Pub. L. 90–351, was executed by adding part EE to title I of Pub. L. 90–351 to reflect the probable intent of Congress, notwithstanding that title I of Pub. L. 90–351 does not contain a part DD.

§ 3797u. Grant authority

(a) In general

The Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, for adult drug courts, juvenile drug courts, family drug courts, and tribal drug courts that involve—

(1) continuing judicial supervision over offenders, and other individuals under the jurisdiction of the court, with substance abuse problems who are not violent offenders;

(2) coordination with the appropriate State or local prosecutor; and

(3) the integrated administration of other sanctions and services, which shall include—

(A) mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

(B) substance abuse treatment for each participant;

(C) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress;

(D) offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant who requires such services;

(E) payment, in whole or part, by the offender of treatment costs, to the extent practicable, such as costs for urinalysis or counseling; and

(F) payment, in whole or part, by the offender of restitution, to the extent practicable, to either a victim of the offender's offense or to a restitution or similar victim support fund.

(b) Limitation

Economic sanctions imposed on an offender pursuant to this section shall not be at a level that would interfere with the offender's rehabilitation.

(c) Mandatory drug testing and mandatory sanctions

(1) Mandatory testing

Grant amounts under this subchapter may be used for a drug court only if the drug court has mandatory periodic testing as described in subsection (a)(3)(A). The Attorney General shall, by prescribing guidelines or regulations, specify standards for the timing and manner of complying with such requirements. The standards—

(A) shall ensure that—

(i) each participant is tested for every controlled substance that the participant has been known to abuse, and for any other controlled substance the Attorney General or the court may require; and

(ii) the testing is accurate and practicable; and

(B) may require approval of the drug testing regime to ensure that adequate testing occurs.

(2) Mandatory sanctions

The Attorney General shall, by prescribing guidelines or regulations, specify that grant amounts under this subchapter may be used for a drug court only if the drug court imposes graduated sanctions that increase punitive measures, therapeutic measures, or both whenever a participant fails a drug test. Such sanctions and measures may include, but are not limited to, one or more of the following:

(A) Incarceration.
(B) Detoxification treatment.
(C) Residential treatment.
(D) Increased time in program.
(E) Termination from the program.
(F) Increased drug screening requirements.
(G) Increased court appearances.
(H) Increased counseling.
(I) Increased supervision.
(J) Electronic monitoring.
(K) In-home restriction.
(L) Community service.
(M) Family counseling.
(N) Anger management classes.

(Pub. L. 90–351, title I, § 2951, as added Pub. L. 107–273, div. B, title II, § 2301(a), Nov. 2, 2002, 116 Stat. 1794; amended Pub. L. 109–162, title XI, § 1143, Jan. 5, 2006, 119 Stat. 3111; Pub. L. 109–177, title VII, § 751, Mar. 9, 2006, 120 Stat. 273.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–162 substituted ''offenders, and other individuals under the jurisdiction of the court, with substance abuse problems'' for ''offenders with substance abuse problems''.

Subsec. (c). Pub. L. 109–177 added subsec. (c).

STUDY BY THE GOVERNMENT ACCOUNTABILITY OFFICE

Pub. L. 107–273, div. B, title II, § 2303, Nov. 2, 2002, 116 Stat. 1799, provided that:

''(a) IN GENERAL.—The Comptroller General of the United States shall study and assess the effectiveness and impact of grants authorized by part EE of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3797u et seq.] as added by section 2401 [2301] and report to Congress the results of the study on or before January 1, 2005.

''(b) DOCUMENTS AND INFORMATION.—The Attorney General and grant recipients shall provide the Comptroller General with all relevant documents and information that the Comptroller General deems necessary to conduct the study under subsection (a), including the identities and criminal records of program participants.

''(c) CRITERIA.—In assessing the effectiveness of the grants made under programs authorized by part EE of [title I of] the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3797u et seq.], the Comptroller General shall consider, among other things—

''(1) recidivism rates of program participants;
''(2) completion rates among program participants;
''(3) drug use by program participants; and
''(4) the costs of the program to the criminal justice system.''

§ 3797u–1. Prohibition of participation by violent offenders

The Attorney General shall—

(1) issue regulations or guidelines to ensure that the programs authorized in this subchapter do not permit participation by violent offenders; and

(2) immediately suspend funding for any grant under this subchapter, pending compliance, if the Attorney General finds that violent offenders are participating in any program funded under this subchapter.

(Pub. L. 90–351, title I, § 2952, as added Pub. L. 107–273, div. B, title II, § 2301(a), Nov. 2, 2002, 116 Stat. 1795.)

§ 3797u–2. Definition

(a) In general

Except as provided in subsection (b) of this section, in this subchapter, the term ''violent offender'' means a person who—

(1) is charged with or convicted of an offense, during the course of which offense or conduct—

(A) the person carried, possessed, or used a firearm or dangerous weapon;

(B) there occurred the death of or serious bodily injury to any person; or

(C) there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A) or (B) is an element of the offense or conduct of which or for which the person is charged or convicted; or

(2) has 1 or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

(b) Definition for purposes of juvenile drug courts

For purposes of juvenile drug courts, the term ''violent offender'' means a juvenile who has been convicted of, or adjudicated delinquent for, a felony-level offense that—

(1) has as an element, the use, attempted use, or threatened use of physical force against the person or property of another, or the possession or use of a firearm; or

(2) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(Pub. L. 90–351, title I, § 2953, as added Pub. L. 107–273, div. B, title II, § 2301(a), Nov. 2, 2002, 116

Stat. 1795; amended Pub. L. 109–162, title XI, § 1141, Jan. 5, 2006, 119 Stat. 3110.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–162 substituted ''a felony-level offense that'' for ''an offense that'' in introductory provisions.

§ 3797u–3. Administration

(a) Consultation

The Attorney General shall consult with the Secretary of Health and Human Services and any other appropriate officials in carrying out this subchapter.

(b) Use of components

The Attorney General may utilize any component or components of the Department of Justice in carrying out this subchapter.

(c) Regulatory authority

The Attorney General may issue regulations and guidelines necessary to carry out this subchapter.

(d) Applications

In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this subchapter shall—

(1) include a long-term strategy and detailed implementation plan that shall provide for the consultation and coordination with appropriate State and local prosecutors, particularly when program participants fail to comply with program requirements;

(2) explain the applicant's inability to fund the program adequately without Federal assistance;

(3) certify that the Federal support provided will be used to supplement, and not supplant, State, Indian tribal, and local sources of funding that would otherwise be available;

(4) identify related governmental or community initiatives which complement or will be coordinated with the proposal;

(5) certify that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program;

(6) certify that participating offenders will be supervised by 1 or more designated judges with responsibility for the drug court program;

(7) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

(8) describe the methodology that will be used in evaluating the program.

(Pub. L. 90–351, title I, § 2954, as added Pub. L. 107–273, div. B, title II, § 2301(a), Nov. 2, 2002, 116 Stat. 1796.)

§ 3797u–4. Applications

To request funds under this subchapter, the chief executive or the chief justice of a State or the chief executive or judge of a unit of local government or Indian tribal government, or the chief judge of a State court or the judge of a local court or Indian tribal court shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

(Pub. L. 90–351, title I, § 2955, as added Pub. L. 107–273, div. B, title II, § 2301(a), Nov. 2, 2002, 116 Stat. 1797.)

§ 3797u–5. Federal share

(a) In general

The Federal share of a grant made under this subchapter may not exceed 75 percent of the total costs of the program described in the application submitted under section 3797u–4 of this title for the fiscal year for which the program receives assistance under this subchapter, unless the Attorney General waives, wholly or in part, the requirement of a matching contribution under this section.

(b) In-kind contributions

In-kind contributions may constitute a portion of the non-Federal share of a grant.

(Pub. L. 90–351, title I, § 2956, as added Pub. L. 107–273, div. B, title II, § 2301(a), Nov. 2, 2002, 116 Stat. 1797.)

§ 3797u–6. Distribution and allocation

(a) Geographic distribution

The Attorney General shall ensure that, to the extent practicable, an equitable geographic distribution of grant awards is made.

(b) Technical assistance and training

Unless one or more applications submitted by any State or unit of local government within such State (other than an Indian tribe) for a grant under this subchapter has been funded in any fiscal year, such State, together with eligible applicants within such State, shall be provided targeted technical assistance and training by the Bureau of Justice Assistance to assist such State and such eligible applicants to successfully compete for future funding under this subchapter, and to strengthen existing State drug court systems. In providing such technical assistance and training, the Bureau of Justice Assistance shall consider and respond to the unique needs of rural States, rural areas and rural communities.

(Pub. L. 90–351, title I, § 2957, as added Pub. L. 107–273, div. B, title II, § 2301(a), Nov. 2, 2002, 116 Stat. 1797; amended Pub. L. 109–162, title XI, § 1142(a), Jan. 5, 2006, 119 Stat. 3110; Pub. L. 109–271, § 8(*l*), Aug. 12, 2006, 120 Stat. 767.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–271 substituted ''Bureau of Justice Assistance'' for ''Community Capacity Development Office'' in two places.

Pub. L. 109–162 added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: ''Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this subchapter have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this subchapter not less than 0.50 percent of the total amount appropriated in the fiscal year for grants pursuant to this subchapter.''

§ 3797u–7. Report

A State, Indian tribal government, or unit of local government that receives funds under this

subchapter during a fiscal year shall submit to the Attorney General a description and an evaluation report on a date specified by the Attorney General regarding the effectiveness of this subchapter.

(Pub. L. 90–351, title I, § 2958, as added Pub. L. 107–273, div. B, title II, § 2301(a), Nov. 2, 2002, 116 Stat. 1797.)

§ 3797u–8. Technical assistance, training, and evaluation

(a) Technical assistance and training

The Attorney General may provide technical assistance and training in furtherance of the purposes of this subchapter.

(b) Evaluations

In addition to any evaluation requirements that may be prescribed for grantees (including uniform data collection standards and reporting requirements), the Attorney General shall carry out or make arrangements for evaluations of programs that receive support under this subchapter.

(c) Administration

The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.

(Pub. L. 90–351, title I, § 2959, as added Pub. L. 107–273, div. B, title II, § 2301(a), Nov. 2, 2002, 116 Stat. 1797.)

SUBCHAPTER XVII—OFFENDER REENTRY AND COMMUNITY SAFETY

§ 3797w. Adult and juvenile offender State and local reentry demonstration projects

(a) Grant authorization

The Attorney General shall make grants of up to $1,000,000 to States, Territories, and Indian tribes, in partnership with units of local government and nonprofit organizations, for the purpose of establishing adult and juvenile offender reentry demonstration projects.

(b) Adult offender reentry demonstration projects

Funds for adult offender demonstration projects may be expended for—

(1) oversight/monitoring of released offenders;

(2) substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and basic educational training, and other programming to promote effective reintegration into the community as needed;

(3) convening community impact panels, victim impact panels or victim impact educational classes; and

(4) establishing and implementing graduated sanctions and incentives.

(c) Juvenile offender reentry demonstration projects

Funds for the juvenile offender reentry demonstration projects may be expended for—

(1) providing returning juvenile offenders with drug and alcohol testing and treatment and mental and medical health assessment and services;

(2) convening victim impact panels, restorative justice panels, or victim impact educational classes for juvenile offenders;

(3) oversight/monitoring of released juvenile offenders; and

(4) providing for the planning of reentry services when the youth is initially incarcerated and coordinating the delivery of community-based services, such as education, family involvement and support, and other services as needed.

(d) Submission of application

In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this subchapter[1] shall—

(1) describe a long-term strategy and detailed implementation plan, including how the jurisdiction plans to pay for the program after the Federal funding ends;

(2) identify the governmental and community agencies that will be coordinated by this project;

(3) certify that there has been appropriate consultation with all affected agencies and there will be appropriate coordination with all affected agencies in the implementation of the program, including existing community corrections and parole; and

(4) describe the methodology and outcome measures that will be used in evaluating the program.

(e) Applicants

The applicants as designated under[2] 3797(a) of this title—

(1) shall prepare the application as required under subsection[3] 3797(b) of this title; and

(2) shall administer grant funds in accordance with the guidelines, regulations, and procedures promulgated by the Attorney General, as necessary to carry out the purposes of this subchapter.

(f) Matching funds

The Federal share of a grant received under this chapter may not exceed 75 percent of the costs of the project funded under this chapter unless the Attorney General waives, wholly or in part, the requirements of this section.

(g) Reports

Each entity that receives a grant under this subchapter shall submit to the Attorney General, for each year in which funds from a grant received under this subchapter is expended, a description and an evaluation report at such time and in such manner as the Attorney General may reasonably require that contains—

(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application funded under this subchapter; and

[1] See References in Text note below.

[2] So in original. Probably should be followed by ''section''.

[3] So in original. Probably should be ''section''.

(2) such other information as the Attorney General may require.

(h) Authorization of appropriations

(1) In general

To carry out this section, there are authorized to be appropriated $15,000,000 for fiscal year 2003, $15,500,000 for fiscal year 2004, and $16,000,000 for fiscal year 2005.

(2) Limitations

Of the amount made available to carry out this section in any fiscal year—

(A) not more than 2 percent or less than 1 percent may be used by the Attorney General for salaries and administrative expenses; and

(B) not more than 3 percent or less than 2 percent may be used for technical assistance and training.

(Pub. L. 90–351, title I, § 2976, as added Pub. L. 107–273, div. B, title II, § 2421(a), Nov. 2, 2002, 116 Stat. 1801.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (d), was in the original ''this subpart'', and was translated as reading ''this part'', meaning part FF of title I of Pub. L. 90–351, to reflect the probable intent of Congress.

§ 3797w–1. State reentry project evaluation

(a) Evaluation

The Attorney General shall evaluate the demonstration projects authorized by section 3797w of this title to determine their effectiveness.

(b) Report

Not later than April 30, 2005, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate containing—

(1) the findings of the evaluation required by subsection (a) of this section; and

(2) any recommendations the Attorney General has with regard to expanding, changing, or eliminating the demonstration projects.

(Pub. L. 90–351, title I, § 2977, as added Pub. L. 107–273, div. B, title II, § 2421(a), Nov. 2, 2002, 116 Stat. 1802.)

SUBCHAPTER XVIII—CRIME FREE RURAL STATE GRANTS

§ 3797y. Grant authority

The Attorney General shall award grants to rural State criminal justice agencies, Byrne agencies, or other agencies as designated by the Governor of that State and approved by the Attorney General, to develop rural States' capacity to assist local communities in the prevention and reduction of crime, violence, and substance abuse.

(Pub. L. 90–351, title I, § 2985, as added Pub. L. 107–273, div. C, title I, § 11027(b), Nov. 2, 2002, 116 Stat. 1834.)

§ 3797y–1. Use of funds

(a) In general

A capacity building grant shall be used to develop a statewide strategic plan as described in section 3797y–2 of this title to prevent and reduce crime, violence, and substance abuse.

(b) Permissive use

A rural State may also use its grant to provide training and technical assistance to communities and promote innovation in the development of policies, technologies, and programs to prevent and reduce crime.

(c) Data collection

A rural State may use up to 5 percent of the grant to assist grant recipients in collecting statewide data related to the costs of crime, violence, and substance abuse for purposes of supporting the statewide strategic plan.

(Pub. L. 90–351, title I, § 2986, as added Pub. L. 107–273, div. C, title I, § 11027(b), Nov. 2, 2002, 116 Stat. 1834.)

§ 3797y–2. Statewide strategic prevention plan

(a) In general

A statewide strategic prevention plan shall be used by the rural State to assist local communities, both directly and through existing State programs and services, in building comprehensive, strategic, and innovative approaches to reducing crime, violence, and substance abuse based on local conditions and needs.

(b) Goals

The plan must contain statewide long-term goals and measurable annual objectives for reducing crime, violence, and substance abuse.

(c) Accountability

The rural State shall be required to develop and report in its plan relevant performance targets and measures for the goals and objectives to track changes in crime, violence, and substance abuse.

(d) Consultation

The rural State shall form a State crime free communities commission that includes representatives of State and local government, and community leaders who will provide advice and recommendations on relevant community goals and objectives, and performance targets and measures.

(Pub. L. 90–351, title I, § 2987, as added Pub. L. 107–273, div. C, title I, § 11027(b), Nov. 2, 2002, 116 Stat. 1834.)

§ 3797y–3. Requirements

(a) Training and technical assistance

The rural State shall provide training and technical assistance, including through such groups as the National Crime Prevention Council, to assist local communities in developing Crime Prevention Plans that reflect statewide strategic goals and objectives, and performance targets and measures.

(b) Reports

The rural State shall provide a report on its statewide strategic plan to the Attorney General, including information about—

(1) involvement of relevant State-level agencies to assist communities in the development and implementation of their Crime Prevention Plans;

(2) support for local applications for Community Grants; and

(3) community progress toward reducing crime, violence, and substance abuse.

(c) Certification

Beginning in the third year of the program, States must certify that the local grantee's project funded under the community grant is generally consistent with statewide strategic goals and objectives, and performance targets and measures.

(Pub. L. 90–351, title I, § 2988, as added Pub. L. 107–273, div. C, title I, § 11027(b), Nov. 2, 2002, 116 Stat. 1835.)

§ 3797y–4. Authorization of appropriations

There are authorized to be appropriated $10,000,000 to carry out this subchapter for each of fiscal years 2003, 2004, and 2005.

(Pub. L. 90–351, title I, § 2989, as added Pub. L. 107–273, div. C, title I, § 11027(b), Nov. 2, 2002, 116 Stat. 1835.)

SUBCHAPTER XIX—ADULT AND JUVENILE COLLABORATION PROGRAM GRANTS

§ 3797aa. Adult and juvenile collaboration programs

(a) Definitions

In this section, the following definitions shall apply:

(1) Applicant

The term ''applicant'' means States, units of local government, Indian tribes, and tribal organizations that apply for a grant under this section.

(2) Collaboration program

The term ''collaboration program'' means a program to promote public safety by ensuring access to adequate mental health and other treatment services for mentally ill adults or juveniles that is overseen cooperatively by—

(A) a criminal or juvenile justice agency or a mental health court; and

(B) a mental health agency.

(3) Criminal or juvenile justice agency

The term ''criminal or juvenile justice agency'' means an agency of a State or local government or its contracted agency that is responsible for detection, arrest, enforcement, prosecution, defense, adjudication, incarceration, probation, or parole relating to the violation of the criminal laws of that State or local government.

(4) Diversion and alternative prosecution and sentencing

(A) In general

The terms ''diversion'' and ''alternative prosecution and sentencing'' mean the appropriate use of effective mental health treatment alternatives to juvenile justice or criminal justice system institutional placements for preliminarily qualified offenders.

(B) Appropriate use

In this paragraph, the term ''appropriate use'' includes the discretion of the judge or supervising authority, the leveraging of graduated sanctions to encourage compliance with treatment, and law enforcement diversion, including crisis intervention teams.

(C) Graduated sanctions

In this paragraph, the term ''graduated sanctions'' means an accountability-based graduated series of sanctions (including incentives, treatments, and services) applicable to mentally ill offenders within both the juvenile and adult justice system to hold individuals accountable for their actions and to protect communities by providing appropriate sanctions for inducing law-abiding behavior and preventing subsequent involvement in the criminal justice system.

(5) Mental health agency

The term ''mental health agency'' means an agency of a State or local government or its contracted agency that is responsible for mental health services or co-occurring mental health and substance abuse services.

(6) Mental health court

The term ''mental health court'' means a judicial program that meets the requirements of subchapter XII–J of this chapter.

(7) Mental illness

The term ''mental illness'' means a diagnosable mental, behavioral, or emotional disorder—

(A) of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; and

(B)(i) that, in the case of an adult, has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities; or

(ii) that, in the case of a juvenile, has resulted in functional impairment that substantially interferes with or limits the juvenile's role or functioning in family, school, or community activities.

(8) Nonviolent offense

The term ''nonviolent offense'' means an offense that does not have as an element the use, attempted use, or threatened use of physical force against the person or property of another or is not a felony that by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(9) Preliminarily qualified offender

The term ''preliminarily qualified offender'' means an adult or juvenile accused of a nonviolent offense who—

(A)(i) previously or currently has been diagnosed by a qualified mental health professional as having a mental illness or co-occurring mental illness and substance abuse disorders; or

(ii) manifests obvious signs of mental illness or co-occurring mental illness and substance abuse disorders during arrest or confinement or before any court; and

(B) has faced, is facing, or could face criminal charges for a misdemeanor or nonviolent offense and is deemed eligible by a diversion process, designated pretrial screening process, or by a magistrate or judge, on the ground that the commission of the offense is the product of the person's mental illness.

(10) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(11) Unit of local government

The term ''unit of local government'' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, including a State court, local court, or a governmental agency located within a city, county, township, town, borough, parish, or village.

(b) Planning and implementation grants

(1) In general

The Attorney General, in consultation with the Secretary, may award nonrenewable grants to eligible applicants to prepare a comprehensive plan for and implement an adult or juvenile collaboration program, which targets preliminarily qualified offenders in order to promote public safety and public health.

(2) Purposes

Grants awarded under this section shall be used to create or expand—

(A) mental health courts or other court-based programs for preliminarily qualified offenders;

(B) programs that offer specialized training to the officers and employees of a criminal or juvenile justice agency and mental health personnel serving those with co-occurring mental illness and substance abuse problems in procedures for identifying the symptoms of preliminarily qualified offenders in order to respond appropriately to individuals with such illnesses;

(C) programs that support cooperative efforts by criminal and juvenile justice agencies and mental health agencies to promote public safety by offering mental health treatment services and, where appropriate, substance abuse treatment services for—

(i) preliminarily qualified offenders with mental illness or co-occurring mental illness and substance abuse disorders; or

(ii) adult offenders with mental illness during periods of incarceration, while under the supervision of a criminal justice agency, or following release from correctional facilities; and

(D) programs that support intergovernmental cooperation between State and local governments with respect to the mentally ill offender.

(3) Applications

(A) In general

To receive a planning grant or an implementation grant, the joint applicants shall prepare and submit a single application to the Attorney General at such time, in such manner, and containing such information as the Attorney General and the Secretary shall reasonably require. An application under subchapter XII–J of this chapter may be made in conjunction with an application under this section.

(B) Combined planning and implementation grant application

The Attorney General and the Secretary shall develop a procedure under which applicants may apply at the same time and in a single application for a planning grant and an implementation grant, with receipt of the implementation grant conditioned on successful completion of the activities funded by the planning grant.

(4) Planning grants

(A) Application

The joint applicants may apply to the Attorney General for a nonrenewable planning grant to develop a collaboration program.

(B) Contents

The Attorney General and the Secretary may not approve a planning grant unless the application for the grant includes or provides, at a minimum, for a budget and a budget justification, a description of the outcome measures that will be used to measure the effectiveness of the program in promoting public safety and public health, the activities proposed (including the provision of substance abuse treatment services, where appropriate) and a schedule for completion of such activities, and the personnel necessary to complete such activities.

(C) Period of grant

A planning grant shall be effective for a period of 1 year, beginning on the first day of the month in which the planning grant is made. Applicants may not receive more than 1 such planning grant.

(D) Amount

The amount of a planning grant may not exceed $75,000, except that the Attorney General may, for good cause, approve a grant in a higher amount.

(E) Collaboration set aside

Up to 5 percent of all planning funds shall be used to foster collaboration between State and local governments in furtherance of the purposes set forth in the Mentally Ill Offender Treatment and Crime Reduction Act of 2004.

(5) Implementation grants

(A) Application

Joint applicants that have prepared a planning grant application may apply to the Attorney General for approval of a nonrenewable implementation grant to develop a collaboration program.

(B) Collaboration

To receive an implementation grant, the joint applicants shall—

(i) document that at least 1 criminal or juvenile justice agency (which can include

a mental health court) and 1 mental health agency will participate in the administration of the collaboration program;

(ii) describe the responsibilities of each participating agency, including how each agency will use grant resources to provide supervision of offenders and jointly ensure that the provision of mental health treatment services and substance abuse services for individuals with co-occurring mental health and substance abuse disorders are coordinated, which may range from consultation or collaboration to integration in a single setting or treatment model;

(iii) in the case of an application from a unit of local government, document that a State mental health authority has provided comment and review; and

(iv) involve, to the extent practicable, in developing the grant application—

(I) preliminarily qualified offenders;

(II) the families and advocates of such individuals under subclause (I); and

(III) advocates for victims of crime.

(C) Content

To be eligible for an implementation grant, joint applicants shall comply with the following:

(i) Definition of target population

Applicants for an implementation grant shall—

(I) describe the population with mental illness or co-occurring mental illness and substance abuse disorders that is targeted for the collaboration program; and

(II) develop guidelines that can be used by personnel of an adult or juvenile justice agency to identify preliminarily qualified offenders.

(ii) Services

Applicants for an implementation grant shall—

(I) ensure that preliminarily qualified offenders who are to receive treatment services under the collaboration program will first receive individualized, validated, needs-based assessments to determine, plan, and coordinate the most appropriate services for such individuals;

(II) specify plans for making mental health, or mental health and substance abuse, treatment services available and accessible to preliminarily qualified offenders at the time of their release from the criminal justice system, including outside of normal business hours;

(III) ensure that there are substance abuse personnel available to respond appropriately to the treatment needs of preliminarily qualified offenders;

(IV) determine eligibility for Federal benefits;

(V) ensure that preliminarily qualified offenders served by the collaboration program will have adequate supervision and access to effective and appropriate community-based mental health services, including, in the case of individuals with co-occurring mental health and substance abuse disorders, coordinated services, which may range from consultation or collaboration to integration in a single setting treatment model;

(VI) make available, to the extent practicable, other support services that will ensure the preliminarily qualified offender's successful reintegration into the community (such as housing, education, job placement, mentoring, and health care and benefits, as well as the services of faith-based and community organizations for mentally ill individuals served by the collaboration program); and

(VII) include strategies, to the extent practicable, to address developmental and learning disabilities and problems arising from a documented history of physical or sexual abuse.

(D) Housing and job placement

Recipients of an implementation grant may use grant funds to assist mentally ill offenders compliant with the program in seeking housing or employment assistance.

(E) Policies and procedures

Applicants for an implementation grant shall strive to ensure prompt access to defense counsel by criminal defendants with mental illness who are facing charges that would trigger a constitutional right to counsel.

(F) Financial

Applicants for an implementation grant shall—

(i) explain the applicant's inability to fund the collaboration program adequately without Federal assistance;

(ii) specify how the Federal support provided will be used to supplement, and not supplant, State, local, Indian tribe, or tribal organization sources of funding that would otherwise be available, including billing third-party resources for services already covered under programs (such as Medicaid, Medicare, and the State Children's Insurance Program); and

(iii) outline plans for obtaining necessary support and continuing the proposed collaboration program following the conclusion of Federal support.

(G) Outcomes

Applicants for an implementation grant shall—

(i) identify methodology and outcome measures, as required by the Attorney General and the Secretary, to be used in evaluating the effectiveness of the collaboration program;

(ii) ensure mechanisms are in place to capture data, consistent with the methodology and outcome measures under clause (i); and

(iii) submit specific agreements from affected agencies to provide the data needed by the Attorney General and the Secretary to accomplish the evaluation under clause (i).

(H) State plans

Applicants for an implementation grant shall describe how the adult or juvenile collaboration program relates to existing State criminal or juvenile justice and mental health plans and programs.

(I) Use of funds

Applicants that receive an implementation grant may use funds for 1 or more of the following purposes:

(i) Mental health courts and diversion/alternative prosecution and sentencing programs

Funds may be used to create or expand existing mental health courts that meet program requirements established by the Attorney General under subchapter XII–J of this chapter, other court-based programs, or diversion and alternative prosecution and sentencing programs (including crisis intervention teams and treatment accountability services for communities) that meet requirements established by the Attorney General and the Secretary.

(ii) Training

Funds may be used to create or expand programs, such as crisis intervention training, which offer specialized training to—

(I) criminal justice system personnel to identify and respond appropriately to the unique needs of preliminarily qualified offenders; or

(II) mental health system personnel to respond appropriately to the treatment needs of preliminarily qualified offenders.

(iii) Service delivery

Funds may be used to create or expand programs that promote public safety by providing the services described in subparagraph (C)(ii) to preliminarily qualified offenders.

(iv) In-jail and transitional services

Funds may be used to promote and provide mental health treatment and transitional services for those incarcerated or for transitional re-entry programs for those released from any penal or correctional institution.

(J) Geographic distribution of grants

The Attorney General, in consultation with the Secretary, shall ensure that planning and implementation grants are equitably distributed among the geographical regions of the United States and between urban and rural populations.

(c) Priority

The Attorney General, in awarding funds under this section, shall give priority to applications that—

(1) demonstrate the strongest commitment to ensuring that such funds are used to promote both public health and public safety;

(2) demonstrate the active participation of each co-applicant in the administration of the collaboration program;

(3) document, in the case of an application for a grant to be used in whole or in part to fund treatment services for adults or juveniles during periods of incarceration or detention, that treatment programs will be available to provide transition and re-entry services for such individuals; and

(4) have the support of both the Attorney General and the Secretary.

(d) Matching requirements

(1) Federal share

The Federal share of the cost of a collaboration program carried out by a State, unit of local government, Indian tribe, or tribal organization under this section shall not exceed—

(A) 80 percent of the total cost of the program during the first 2 years of the grant;

(B) 60 percent of the total cost of the program in year 3; and

(C) 25 percent of the total cost of the program in years 4 and 5.

(2) Non-Federal share

The non-Federal share of payments made under this section may be made in cash or in-kind fairly evaluated, including planned equipment or services.

(e) Federal use of funds

The Attorney General, in consultation with the Secretary, in administering grants under this section, may use up to 3 percent of funds appropriated to—

(1) research the use of alternatives to prosecution through pretrial diversion in appropriate cases involving individuals with mental illness;

(2) offer specialized training to personnel of criminal and juvenile justice agencies in appropriate diversion techniques;

(3) provide technical assistance to local governments, mental health courts, and diversion programs, including technical assistance relating to program evaluation;

(4) help localities build public understanding and support for community reintegration of individuals with mental illness;

(5) develop a uniform program evaluation process; and

(6) conduct a national evaluation of the collaboration program that will include an assessment of its cost-effectiveness.

(f) Interagency task force

(1) In general

The Attorney General and the Secretary shall establish an interagency task force with the Secretaries of Housing and Urban Development, Labor, Education, and Veterans Affairs and the Commissioner of Social Security, or their designees.

(2) Responsibilities

The task force established under paragraph (1) shall—

(A) identify policies within their departments that hinder or facilitate local collaborative initiatives for preliminarily qualified offenders; and

(B) submit, not later than 2 years after October 30, 2004, a report to Congress contain-

ing recommendations for improved interdepartmental collaboration regarding the provision of services to preliminarily qualified offenders.

(g) Minimum allocation

Unless all eligible applications submitted by any State or unit of local government within such State for a planning or implementation grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for planning or implementation grants pursuant to this section.

(h) Authorization of appropriations

There are authorized to be appropriated to the Department of Justice to carry out this section—

(1) $50,000,000 for fiscal year 2005; and

(2) such sums as may be necessary for fiscal years 2006 through 2009.

(Pub. L. 90–351, title I, § 2991, as added Pub. L. 108–414, § 4(a), Oct. 30, 2004, 118 Stat. 2328.)

REFERENCES IN TEXT

The Mentally Ill Offender Treatment and Crime Reduction Act of 2004, referred to in subsec. (b)(4)(E), is Pub. L. 108–414, Oct. 30, 2004, 118 Stat. 2327, which enacted this subchapter and provisions set out as notes below. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 3711 of this title and Tables.

FINDINGS

Pub. L. 108–414, § 2, Oct. 30, 2004, 118 Stat. 2327, provided that: ''Congress finds the following:

''(1) According to the Bureau of Justice Statistics, over 16 percent of adults incarcerated in United States jails and prisons have a mental illness.

''(2) According to the Office of Juvenile Justice and Delinquency Prevention, approximately 20 percent of youth in the juvenile justice system have serious mental health problems, and a significant number have co-occurring mental health and substance abuse disorders.

''(3) According to the National Alliance for the Mentally Ill, up to 40 percent of adults who suffer from a serious mental illness will come into contact with the American criminal justice system at some point in their lives.

''(4) According to the Office of Juvenile Justice and Delinquency Prevention, over 150,000 juveniles who come into contact with the juvenile justice system each year meet the diagnostic criteria for at least 1 mental or emotional disorder.

''(5) A significant proportion of adults with a serious mental illness who are involved with the criminal justice system are homeless or at imminent risk of homelessness, and many of these individuals are arrested and jailed for minor, nonviolent offenses.

''(6) The majority of individuals with a mental illness or emotional disorder who are involved in the criminal or juvenile justice systems are responsive to medical and psychological interventions that integrate treatment, rehabilitation, and support services.

''(7) Collaborative programs between mental health, substance abuse, and criminal or juvenile justice systems that ensure the provision of services for those with mental illness or co-occurring mental illness and substance abuse disorders can reduce the number of such individuals in adult and juvenile corrections facilities, while providing improved public safety.''

PURPOSE

Pub. L. 108–414, § 3, Oct. 30, 2004, 118 Stat. 2328, provided that: ''The purpose of this Act [see Short Title of 2004 Amendment note set out under section 3711 of this title] is to increase public safety by facilitating collaboration among the criminal justice, juvenile justice, mental health treatment, and substance abuse systems. Such collaboration is needed to—

''(1) protect public safety by intervening with adult and juvenile offenders with mental illness or co-occurring mental illness and substance abuse disorders;

''(2) provide courts, including existing and new mental health courts, with appropriate mental health and substance abuse treatment options;

''(3) maximize the use of alternatives to prosecution through graduated sanctions in appropriate cases involving nonviolent offenders with mental illness;

''(4) promote adequate training for criminal justice system personnel about mental illness and substance abuse disorders and the appropriate responses to people with such illnesses;

''(5) promote adequate training for mental health and substance abuse treatment personnel about criminal offenders with mental illness or co-occurring substance abuse disorders and the appropriate response to such offenders in the criminal justice system;

''(6) promote communication among adult or juvenile justice personnel, mental health and co-occurring mental illness and substance abuse disorders treatment personnel, nonviolent offenders with mental illness or co-occurring mental illness and substance abuse disorders, and support services such as housing, job placement, community, faith-based, and crime victims organizations; and

''(7) promote communication, collaboration, and intergovernmental partnerships among municipal, county, and State elected officials with respect to mentally ill offenders.''

SUBCHAPTER XX—CONFRONTING USE OF METHAMPHETAMINE

§ 3797cc. Authority to make grants to address public safety and methamphetamine manufacturing, sale, and use in hot spots

(a) Purpose and program authority

(1) Purpose

It is the purpose of this subchapter to assist States—

(A) to carry out programs to address the manufacture, sale, and use of methamphetamine drugs; and

(B) to improve the ability of State and local government institutions of[1] to carry out such programs.

(2) Grant authorization

The Attorney General, through the Bureau of Justice Assistance in the Office of Justice Programs may make grants to States to address the manufacture, sale, and use of methamphetamine to enhance public safety.

(3) Grant projects to address methamphetamine manufacture sale and use

Grants made under subsection (a) may be used for programs, projects, and other activities to—

(A) investigate, arrest and prosecute individuals violating laws related to the use, manufacture, or sale of methamphetamine;

(B) reimburse the Drug Enforcement Administration for expenses related to the clean up of methamphetamine clandestine labs;

[1] So in original. The word ''of'' probably should not appear.

(C) support State and local health department and environmental agency services deployed to address methamphetamine; and

(D) procure equipment, technology, or support systems, or pay for resources, if the applicant for such a grant demonstrates to the satisfaction of the Attorney General that expenditures for such purposes would result in the reduction in the use, sale, and manufacture of methamphetamine.

(Pub. L. 90–351, title I, § 2996, as added Pub. L. 109–177, title VII, § 754, Mar. 9, 2006, 120 Stat. 274.)

§ 3797cc–1. Funding

There are authorized to be appropriated to carry out this subchapter $99,000,000 for each fiscal year 2006, 2007, 2008, 2009, and 2010.

(Pub. L. 90–351, title I, § 2997, as added Pub. L. 109–177, title VII, § 754, Mar. 9, 2006, 120 Stat. 274.)

§ 3797cc–2. Grants for programs for drug-endangered children

(a) In general

The Attorney General shall make grants to States for the purpose of carrying out programs to provide comprehensive services to aid children who are living in a home in which methamphetamine or other controlled substances are unlawfully manufactured, distributed, dispensed, or used.

(b) Certain requirements

The Attorney General shall ensure that the services carried out with grants under subsection (a) include the following:

(1) Coordination among law enforcement agencies, prosecutors, child protective services, social services, health care services, and any other services determined to be appropriate by the Attorney General to provide assistance regarding the problems of children described in subsection (a).

(2) Transition of children from toxic or drug-endangering environments to appropriate residential environments.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $20,000,000 for each of the fiscal years 2006 and 2007. Amounts appropriated under the preceding sentence shall remain available until expended.

(Pub. L. 109–177, title VII, § 755, Mar. 9, 2006, 120 Stat. 275.)

CODIFICATION

Section was enacted as part of the Combat Methamphetamine Epidemic Act of 2005, and also as part of the USA PATRIOT Improvement and Reauthorization Act of 2005, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

§ 3797cc–3. Authority to award competitive grants to address methamphetamine use by pregnant and parenting women offenders

(a) Purpose and program authority

(1) Grant authorization

The Attorney General may award competitive grants to address the use of methamphetamine among pregnant and parenting women offenders to promote public safety, public health, family permanence and well being.

(2) Purposes and program authority

Grants awarded under this section shall be used to facilitate or enhance and[1] collaboration between the criminal justice, child welfare, and State substance abuse systems in order to carry out programs to address the use of methamphetamine drugs by pregnant and parenting women offenders.

(b) Definitions

In this section, the following definitions shall apply:

(1) Child welfare agency

The term ''child welfare agency'' means the State agency responsible for child and/or family services and welfare.

(2) Criminal justice agency

The term ''criminal justice agency'' means an agency of the State or local government or its contracted agency that is responsible for detection, arrest, enforcement, prosecution, defense, adjudication, incarceration, probation, or parole relating to the violation of the criminal laws of that State or local government.

(c) Applications

(1) In general

No grant may be awarded under this section unless an application has been submitted to, and approved by, the Attorney General.

(2) Application

An application for a grant under this section shall be submitted in such form, and contain such information, as the Attorney General,[2] may prescribe by regulation or guidelines.

(3) Eligible entities

The Attorney General shall make grants to States, territories, and Indian Tribes. Applicants must demonstrate extensive collaboration with the State criminal justice agency and child welfare agency in the planning and implementation of the program.

(4) Contents

In accordance with the regulations or guidelines established by the Attorney General in consultation with the Secretary of Health and Human Services, each application for a grant under this section shall contain a plan to expand the State's services for pregnant and parenting women offenders who are pregnant women and/or women with dependent children for the use of methamphetamine or methamphetamine and other drugs and include the following in the plan:

(A) A description of how the applicant will work jointly with the State criminal justice and child welfare agencies needs[3] associated with the use of methamphetamine or methamphetamine and other drugs by pregnant

[1] So in original. The word ''and'' probably should not appear.

[2] So in original. The comma probably should not appear.

[3] So in original. The word ''needs'' probably should not appear.

and parenting women offenders to promote family stability and permanence.

(B) A description of the nature and the extent of the problem of methamphetamine use by pregnant and parenting women offenders.

(C) A certification that the State has involved counties and other units of local government, when appropriate, in the development, expansion, modification, operation or improvement of proposed programs to address the use, manufacture, or sale of methamphetamine.

(D) A certification that funds received under this section will be used to supplement, not supplant, other Federal, State, and local funds.

(E) A description of clinically appropriate practices and procedures to—

(i) screen and assess pregnant and parenting women offenders for addiction to methamphetamine and other drugs;

(ii) when clinically appropriate for both the women and children, provide family treatment for pregnant and parenting women offenders, with clinically appropriate services in the same location to promote family permanence and self sufficiency; and

(iii) provide for a process to enhance or ensure the abilities of the child welfare agency, criminal justice agency and State substance agency to work together to reunite families when appropriate in the case where family treatment is not provided.

(d) Period of grant

The grant shall be a three-year grant. Successful applicants may reapply for only one additional three-year funding cycle and the Attorney General may approve such applications.

(e) Performance accountability; reports and evaluations

(1) Reports

Successful applicants shall submit to the Attorney General a report on the activities carried out under the grant at the end of each fiscal year.

(2) Evaluations

Not later than 12 months at[4] the end of the 3 year funding cycle under this section, the Attorney General shall submit a report to the appropriate committees of jurisdiction that summarizes the results of the evaluations conducted by recipients and recommendations for further legislative action.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary.

(Pub. L. 109–177, title VII, § 756, Mar. 9, 2006, 120 Stat. 275.)

CODIFICATION

Section was enacted as part of the Combat Methamphetamine Epidemic Act of 2005, and also as part of the USA PATRIOT Improvement and Reauthorization Act of 2005, and not as part of title I of the Omnibus Crime Control and Safe Streets Act of 1968 which comprises this chapter.

[4] So in original. Probably should be ''after''.

SUBCHAPTER XXI—SEX OFFENDER APPREHENSION GRANTS; JUVENILE SEX OFFENDER TREATMENT GRANTS

CODIFICATION

This subchapter is comprised of part X of title I of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351. Another part X of title I of Pub. L. 90–351 is classified to subchapter XII–L (§ 3796kk et seq.) of this chapter.

§ 3797ee. Sex offender apprehension grants

(a) Authority to make sex offender apprehension grants

(1) In general

From amounts made available to carry out this subchapter, the Attorney General may make grants to States, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia thereof for activities specified in paragraph (2).

(2) Covered activities

An activity referred to in paragraph (1) is any program, project, or other activity to assist a State in enforcing sex offender registration requirements.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 2007 through 2009 to carry out this subchapter.

(Pub. L. 90–351, title I, § 3011, as added Pub. L. 109–248, title VI, § 623, July 27, 2006, 120 Stat. 635.)

§ 3797ee–1. Juvenile sex offender treatment grants

(a) Authority to make juvenile sex offender treatment grants

(1) In general

From amounts made available to carry out this subchapter, the Attorney General may make grants to units of local government, Indian tribal governments, correctional facilities, other public and private entities, and multijurisdictional or regional consortia thereof for activities specified in paragraph (2).

(2) Covered activities

An activity referred to in paragraph (1) is any program, project, or other activity to assist in the treatment of juvenile sex offenders.

(b) Juvenile sex offender defined

For purposes of this section, the term ''juvenile sex offender'' is a sex offender who had not attained the age of 18 years at the time of his or her offense.

(c) Authorization of appropriations

There are authorized to be appropriated $10,000,000 for each of fiscal years 2007 through 2009 to carry out this subchapter.

(Pub. L. 90–351, title I, § 3012, as added Pub. L. 109–248, title VI, § 623, July 27, 2006, 120 Stat. 635.)

CHAPTER 47—JUVENILE DELINQUENCY PREVENTION AND CONTROL

§ 3801. Omitted

CODIFICATION

Section, Pub. L. 90–445, § 2, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 532, which set out the Congressional findings and declaration of purpose for this chapter, was omitted in view of appropriations not being authorized for fiscal years after 1975.

A prior section 3801, Pub. L. 90–445, § 2, July 31, 1968, 82 Stat. 462, related to similar subject matter, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

SUBCHAPTER I—PREVENTIVE SERVICES AND DEMONSTRATION PROGRAMS

PART A—COMMUNITY-BASED COORDINATED YOUTH SERVICES

§§ 3811 to 3814. Omitted

CODIFICATION

Appropriations for this part have not been authorized for fiscal years after 1975.

Section 3811, Pub. L. 90–445, title I, § 101, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 532; amended Pub. L. 93–415, title IV, § 401(3), Sept. 7, 1974, 88 Stat. 1132, set out Congressional statement of purpose for community-based coordinated youth services.

A prior section 3811, Pub. L. 90–445, title I, § 101, July 31, 1968, 82 Stat. 463, related to Secretary's authority to make grants for State and local planning, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Provisions similar to those comprising this section were contained in prior sections 3821 and 3831, Pub. L. 90–445, title I, §§ 111, 121, July 31, 1968, 82 Stat. 463, 465, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Title IV of Pub. L. 93–415 was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

Section 3812, Pub. L. 90–445, title I, § 102, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 532; amended Pub. L. 93–415, title IV, § 401(3), Sept. 7, 1974, 88 Stat. 1132, related to grants for planning community-based programs.

A prior section 3812, Pub. L. 90–445, title I, § 102, July 31, 1968, 82 Stat. 463, related to grants for planning projects or programs, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Provisions similar to those comprising subsec. (b) of this section were contained in prior sections 3822, 3823, 3832, 3833, Pub. L. 90–445, title I, §§ 112, 113, 122, 123, July 31, 1968, 82 Stat. 464, 465, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Title IV of Pub. L. 93–415 was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

Section 3813, Pub. L. 90–445, title I, § 103, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 533; amended Pub. L. 93–415, title IV, § 401(3), Sept. 7, 1974, 88 Stat. 1132, related to use of funds for community-based youth services.

Provisions similar to those comprising this section were contained in prior section 3843, Pub. L. 90–445, title I, § 133, July 31, 1968, 82 Stat. 468, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Title IV of Pub. L. 93–415 was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

Section 3814, Pub. L. 90–445, title I, § 104, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 534; amended Pub. L. 93–415, title IV, § 401(3), Sept. 7, 1974, 88 Stat. 1132, related to considerations in the approval of applications for grants or contracts involving community-based youth services.

Title IV of Pub. L. 93–415 was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

PART B—DEMONSTRATIONS IN YOUTH DEVELOPMENT

§ 3821. Omitted

CODIFICATION

Section, Pub. L. 90–445, title I, § 105, as added Pub. L. 93–415, title IV, § 401(4), Sept. 7, 1974, 88 Stat. 1132, which related to grants for demonstrations of innovative approaches to youth development, was omitted in view of appropriations not being authorized for fiscal years after 1975.

Prior sections 3821 to 3845 were omitted in the general amendment of Pub. L. 90–445 by Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 532.

A prior section 3821, Pub. L. 90–445, title I, § 111, July 31, 1968, 82 Stat. 463, set out Congressional statement of purpose of rehabilitative services.

A prior section 3822, Pub. L. 90–445, title I, § 112, July 31, 1968, 82 Stat. 463; Pub. L. 92–31, § 2(a), June 30, 1971, 85 Stat. 84, related to authorization of grants.

A prior section 3823, Pub. L. 90–445, title I, § 113, July 31, 1968, 82 Stat. 464; Pub. L. 92–31, § 2(b), June 30, 1971, 85 Stat. 84, related to assurances and information required to be presented in applications for grants.

A prior section 3831, Pub. L. 90–445, title I, § 121, July 31, 1968, 82 Stat. 465, related to Congressional statement of purpose of preventive services.

A prior section 3832, Pub. L. 90–445, title I, § 122, July 31, 1968, 82 Stat. 465, related to authorization of grants.

A prior section 3833, Pub. L. 90–445, title I, § 123, July 31, 1968, 82 Stat. 465, related to assurances and information required to be presented in application for grants.

A prior section 3841, Pub. L. 90–445, title I, § 131, July 31, 1968, 82 Stat. 466, related to requirements, procedure for approval, and approval of State plans for grants.

A prior section 3842, Pub. L. 90–445, title I, § 132, July 31, 1968, 82 Stat. 468, related to making of grants directly to public and other agencies.

A prior section 3843, Pub. L. 90–445, title I, § 133, July 31, 1968, 82 Stat. 468, related to use of funds and labor standards.

A prior section 3844, Pub. L. 90–445, title I, § 134, July 31, 1968, 82 Stat. 469, related to submission of copies of applications for grants to State officials and evaluation of projects by them.

A prior section 3845, Pub. L. 90–445, title I, § 135, July 31, 1968, 82 Stat. 469, related to considerations for approval of applications.

Title IV of Pub. L. 93–415 was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

SUBCHAPTER II—TRAINING

§§ 3861, 3862. Omitted

CODIFICATION

Appropriations for this subchapter have not been authorized for fiscal years after 1975.

Section 3861, Pub. L. 90–445, title II, § 201, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 534, related to project grants and contracts for the training of personnel in fields related to diagnosis and treatment of delinquent youths and parental counseling or instruction.

A prior section 3861, Pub. L. 90–445, title II, § 201, July 31, 1968, 82 Stat. 470, related to similar subject matter, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Section 3862, Pub. L. 90–445, title II, § 202, as added Pub. L. 92–381, § 1 Aug. 14, 1972, 86 Stat. 535, related to recipients and conditions of grants and contracts.

A prior section 3862, Pub. L. 90–445, title II, § 202, July 31, 1968, 82 Stat. 470, related to similar subject matter,

prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

SUBCHAPTER III—TECHNICAL ASSISTANCE AND INFORMATION SERVICES

§§ 3871 to 3873. Omitted

CODIFICATION

Appropriations for this subchapter have not been authorized for fiscal years after 1975.

Section 3871, Pub. L. 90–445, title III, § 301, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 535, related to technical assistance to agencies in matters relating to prevention of delinquency.

A prior section 3871, Pub. L. 90–445, title III, § 301, July 31, 1968, 82 Stat. 470, related to development of improved techniques and practices for prevention of juvenile delinquency, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Provisions similar to those comprising this section were contained in prior section 3872, Pub. L. 90–445, title III, § 301, July 31, 1968, 82 Stat. 470, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Section 3872, Pub. L. 90–445, title III, § 302, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 535, related to State assistance to local units concerning activities under this chapter.

A prior section 3872, Pub. L. 90–445, title III, § 302, July 31, 1968, 82 Stat. 471, related to technical assistance for prevention of juvenile delinquency, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Provisions similar to those comprising this section were contained in prior section 3873, Pub. L. 90–445, title III, § 303, July 31, 1968, 82 Stat. 471, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Section 3873, Pub. L. 90–445, title III, § 303, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 535, related to information and other services to the general public.

A prior section 3873, Pub. L. 90–445, title III, § 303, July 31, 1968, 82 Stat. 471, related to State assistance to local units, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Provisions similar to those comprising section 3873 were contained in prior section 3874, Pub. L. 90–445, title III, § 304, July 31, 1968, 82 Stat. 471, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

A prior section 3874, Pub. L. 90–445, title III, § 304, July 31, 1968, 82 Stat. 471, related to information services, prior to the general amendment of Pub. L. 90–445 by Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 535.

SUBCHAPTER IV—ADMINISTRATION

§§ 3881 to 3888. Omitted

CODIFICATION

Appropriations for this subchapter have not been authorized for fiscal years after 1975.

Section 3881, Pub. L. 90–445, title IV, § 401, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 535, related to payment procedures for grants and contracts under this chapter.

A prior section 3881, Pub. L. 90–445, title VI, § 401, July 31, 1968, 82 Stat. 471, related to similar subject matter, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Section 3882, Pub. L. 90–445, title IV, § 402, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 536; amended Pub. L. 93–415, title IV, § 404, Sept. 7, 1974, 88 Stat. 1133, authorized appropriations for fiscal years 1973 to 1975.

A prior section 3882, Pub. L. 90–445, title IV, § 402, July 31, 1968, 82 Stat. 471, as amended by Pub. L. 92–31, § 3, June 30, 1971, 85 Stat. 84, related to similar subject matter, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Title IV of Pub. L. 93–415 was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

Section 3883, Pub. L. 90–445, title IV, § 403, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 536; amended Pub. L. 93–415, title IV, § 403, Sept. 7, 1974, 88 Stat. 1133, related to amounts available to each State pursuant to grants and contracts under this chapter.

A prior section 3883, Pub. L. 90–445, title IV, § 403, July 31, 1968, 82 Stat. 471, related to similar subject matter, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Title IV of Pub. L. 93–415 was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

Section 3884, Pub. L. 90–445, title IV, § 404, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 536, related to maintenance of labor standards as condition for grants under this chapter.

A prior section 3884, Pub. L. 90–445, title IV, § 404, July 31, 1968, 82 Stat. 472, related to evaluation of programs, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Provisions similar to those comprising this section were contained in prior section 3843, Pub. L. 90–445, title I. § 133, July 31, 1968, 82 Stat. 468, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Section 3885, Pub. L. 90–445, title IV, § 405, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 536, related to evaluation by the Secretary of activities under this chapter.

A prior section 3885, Pub. L. 90–445, title IV, § 405, July 31, 1968, 82 Stat. 472, related to judicial review, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Provisions similar to those comprising this section were contained in prior section 3884, Pub. L. 90–445, title IV, § 404, July 31, 1968, 82 Stat. 472, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Section 3886, Pub. L. 90–445, title IV, § 406, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 537, related to judicial review in the case of action taken by the Secretary terminating or refusing to continue financial assistance under this chapter.

A prior section 3886, Pub. L. 90–445, title IV, § 406, July 31, 1968, 82 Stat. 472, related to joint funding by several agencies, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Provisions similar to those comprising this section were contained in prior section 3885, Pub. L. 90–445, title IV, § 405, July 31, 1968, 82 Stat. 472, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Section 3887, Pub. L. 90–445, title IV, § 407, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 537, related to administration of funds in cases of joint funding.

A prior section 3887, Pub. L. 90–445, title IV, § 407, July 31, 1968, 82 Stat. 472; amended Pub. L. 92–31, § 4, June 30, 1971, 85 Stat. 84, related to coordination of efforts of Federal officers, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Provisions similar to those comprising this section were contained in prior section 3886, Pub. L. 90–445, title IV, § 406, July 31, 1968, 82 Stat. 472, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Section 3888, Pub. L. 90–445, title IV, § 408, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 537; amended Pub. L. 93–415, title IV, § 402(a), Sept. 7, 1974, 88 Stat. 1133, related to limitations on assistance under this chapter and provided for coordination of programs and activities under this chapter with those under the Omnibus Crime Control and Safe Streets Act of 1968.

A prior section 3888, Pub. L. 90–445, title IV, § 408, July 31, 1968, 82 Stat. 472, related to annual reports to Congress, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Provisions similar to those comprising this section were contained in prior section 3887, Pub. L. 90–445,

title IV. § 407, July 31, 1968, 82 Stat. 472, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Title IV of Pub. L. 93–415 was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

§ 3889. Repealed. Pub. L. 93–415, title IV, § 402(b), Sept. 7, 1974, 88 Stat. 1133

Section, Pub. L. 90–445, title IV, § 409, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 537, related to preparation and submission of a report to the President by the Interdepartmental Council concerning all Federal activities in the field of juvenile delinquency.

A prior section 3889, Pub. L. 90–445, title IV, § 409, July 31, 1968, 82 Stat. 473, related to appointment of advisory committees by the Secretary in respect to activities under prior chapter 47, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

REPEALS

Title IV of Pub. L. 93–415, which repealed this section, was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

Repeal by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§§ 3890, 3891. Omitted

CODIFICATION

Appropriations for this subchapter have not been authorized for fiscal years after 1975.

Section 3890, Pub. L. 90–445, title IV, § 410, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 538, prohibited application of this chapter in such a way as to be detrimental to parental and individual rights.

A prior section 3890, Pub. L. 90–445, title IV, § 410, July 31, 1968, 82 Stat. 473, related to definitions, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

Section 3891, Pub. L. 90–445, title IV, § 411, as added Pub. L. 92–381, § 1, Aug. 14, 1972, 86 Stat. 538; amended Pub. L. 93–644, § 9(a), Jan. 4, 1975, 88 Stat. 805, provided definitions for purposes of this chapter.

Provisions similar to those comprising this section were contained in prior section 3890, Pub. L. 90–445, title IV, § 410, July 31, 1968, 82 Stat. 473, prior to the general amendment of Pub. L. 90–445 by section 1 of Pub. L. 92–381.

CHAPTER 48—GUARANTEES FOR FINANCING NEW COMMUNITY LAND DEVELOPMENT

§§ 3901 to 3906. Repealed. Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

Section 3901, Pub. L. 90–448, title IV, § 402, Aug. 1, 1968, 82 Stat. 513, set out a Congressional statement of purpose for this chapter.

Section 3902, Pub. L. 90–448, title IV, § 403, Aug. 1, 1968, 82 Stat. 514, provided Secretary with authority to guarantee obligations.

Section 3903, Pub. L. 90–448, title IV, § 404, Aug. 1, 1968, 82 Stat. 514, related to eligible new community development entitled to guarantees under this chapter.

Section 3904, Pub. L. 90–448, title IV, § 405, Aug. 1, 1968, 82 Stat. 514, related to eligibility of bonds, debentures, notes, and other obligations under this chapter.

Section 3905, Pub. L. 90–448, title IV, § 406, Aug. 1, 1968, 82 Stat. 515, related to fees and charges for guarantees and the submission of a report to Congress concerning such fees and charges.

Section 3906, Pub. L. 90–448, title IV, § 407, Aug. 1, 1968, 82 Stat. 515; Pub. L. 91–351, title VII, § 703, July 24, 1970, 84 Stat. 462; Pub. L. 91–609, title III, § 303(a), Dec. 31, 1970, 84 Stat. 1780, provided for a revolving guarantee fund. Section 4528 of this title transferred all receipts, funds, or other assets and all liabilities of the revolving fund established under this section to the revolving fund established under section 4518 of this title.

SHORT TITLE

Section 401 of title IV of Pub. L. 90–448 which provided that this title, which enacted this chapter and amended section 1492 of this title and sections 371 and 1464 of Title 12, Banks and Banking, may be referred to as the ''New Communities Act of 1968'', was repealed by Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239.

SAVINGS PROVISION

Section 474(e) of Pub. L. 98–181 provided that: ''Any actions taken, prior to repeal, under the authority of any of the sections which are repealed by this section [repealing sections 3901 to 3906, 3908, 3909, 3911, 3914, 4511 to 4524, and 4528 to 4532 of this title] shall continue to be valid. Nothing in this subsection shall impair the validity of any guarantees which have been made pursuant to title IV [of the Housing and Urban Development Act of 1968, 42 U.S.C. 3901 et seq.] or title VII [of the Housing and Urban Development Act of 1970, 42 U.S.C. 4501 et seq.] and any such guarantees shall continue to be governed by the provisions of title IV or title VII, as applicable, as they existed immediately before the date of the enactment of this Act [Nov. 30, 1983].''

§ 3907. Omitted

CODIFICATION

Section, Pub. L. 90–448, title IV, § 408, Aug. 1, 1968, 82 Stat. 516; Pub. L. 91–609, title III, § 303(c), Dec. 31, 1970, 84 Stat. 1780, which related to incontestability of guarantees was omitted pursuant to section 4528 of this title, which terminated authority to guarantee bonds, debentures, notes, or other obligations under this chapter after Dec. 31, 1970, with exceptions now inapplicable.

§§ 3908, 3909. Repealed. Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

Section 3908, Pub. L. 90–448, title IV, § 409, Aug. 1, 1968, 82 Stat. 516, related to encouragement of small builders in new community construction under this chapter.

Section 3909, Pub. L. 90–448, title IV, § 410, Aug. 1, 1968, 82 Stat. 516, related to labor standards in construction under this chapter.

§ 3910. Omitted

CODIFICATION

Section, Pub. L. 90–448, title IV, § 411, Aug. 1, 1968, 82 Stat. 516, which related to real property taxation was omitted pursuant to section 4528 of this title, which terminated authority to guarantee bonds, debentures, notes, or other obligations under this chapter after Dec. 31, 1970, with exceptions now inapplicable.

§ 3911. Repealed. Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

Section, Pub. L. 90–448, title IV, § 412, 1, 1968, 82 Stat. 516; Pub. L. 91–152, title III, § 304, Dec. 24, 1969, 83 Stat. 391; Pub. L. 91–609, title III, § 303(b), Dec. 31, 1970, 84 Stat. 1780, provided for supplementary grants under this chapter.

§§ 3912, 3913. Omitted

CODIFICATION

Sections were omitted pursuant to section 4528 of this title, which terminated authority to guarantee bonds, debentures, notes, or other obligations under this chapter after Dec. 31, 1970, with exceptions now inapplicable.

Section 3912, Pub. L. 90–448, title IV, § 413, Aug. 1, 1968, 82 Stat. 517, set out functions, powers and duties of the Secretary under this chapter.

Section 3913, Pub. L. 90–448, title IV, § 414, Aug. 1, 1968, 82 Stat. 517, related to audit of financial transactions of those whose obligations are guaranteed under this chapter.

§ 3914. Repealed. Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

Section, Pub. L. 90–448, title IV, § 415, Aug. 1, 1968, 82 Stat. 517, defined ''land development'', ''actual costs'', and ''new community assistance projects'' for purposes of this chapter.

CHAPTER 49—NATIONAL HOUSING PARTNERSHIPS

Sec.
3931. Congressional statement of purpose.
3932. Creation of corporations.
3933. Organization of corporation.
3934. Board of Directors; membership; appointment; term.
3935. Financing the corporation.
3936. Purposes and powers of corporation.
3937. National housing partnership.
3938. Annual report of corporation; audit of accounts.
3939. Applicability of antitrust laws.
3940. Reservation of right to repeal, alter, or amend chapter.
3941. State or local taxation or regulation; access to judicial process.

§ 3931. Congressional statement of purpose

The Congress finds that the volume of housing being produced for families and individuals of low or moderate income must be increased to meet the national goal of a decent home and a suitable living environment for every American family, and declares that it is the policy of the United States to encourage the widest possible participation by private enterprise in the provision of housing for low or moderate income families. The Congress has therefore determined that one or more private organizations should be created to encourage maximum participation by private investors in programs and projects to provide low and moderate income housing.

(Pub. L. 90–448, title IX, § 901, Aug. 1, 1968, 82 Stat. 547.)

§ 3932. Creation of corporations

(a) Authorization

There is hereby authorized to be created a private corporation for profit (hereinafter in this chapter referred to as the ''corporation''). The corporation will not be an agency or establishment of the United States Government. The corporation shall be subject to the provisions of this chapter and, to the extent consistent with this chapter, to the District of Columbia Business Corporation Act.

(b) Creation of additional corporations

Whenever the President finds it in the national interest to do so, he may cause the creation of an additional corporation or additional corporations to carry out the purposes of this chapter. All the provisions of this chapter shall thereupon become applicable to each such corporation, and to the limited partnership formed by it pursuant to section 3937 of this title.

(c) Creation of corporations and organization of other partnerships, joint ventures, or associations by private persons

Nothing in this chapter shall be construed to preclude private persons from creating other corporations and organizing other partnerships, joint ventures, or associations for the purposes set forth in this chapter as the purposes of the corporation and the partnership described in section 3937 of this title.

(Pub. L. 90–448, title IX, § 902, Aug. 1, 1968, 82 Stat. 547.)

REFERENCES IN TEXT

The District of Columbia Business Corporation Act, referred to in subsec. (a), is act June 8, 1954, ch. 269, 68 Stat. 179, as amended, which is not classified to the Code.

§ 3933. Organization of corporation

(a) Appointment of incorporators; Chairman; initial board of directors

The President of the United States shall appoint, by and with the advice and consent of the Senate, incorporators of the corporation, one of whom shall be designated by the President to serve as chairman. The incorporators shall serve as the initial board of directors until the first annual meeting of stockholders or until their successors are elected and have qualified.

(b) Action by incorporators; filing articles of incorporation

The incorporators shall take whatever actions are necessary or appropriate to establish the corporation, including the filing of articles of incorporation as approved by the President.

(c) Initial offering of stock in corporation and of interests in partnership; terms of offering

The incorporators shall also arrange for an initial offering of shares of stock in the corporation and of interests in the partnership described in section 3937 of this title. If the incorporators deem it advisable in order to carry out the purposes of this chapter, the initial offering may be made upon terms which require the purchase of other securities of the corporation or of interests in such partnership.

(Pub. L. 90–448, title IX, § 903, Aug. 1, 1968, 82 Stat. 547.)

§ 3934. Board of Directors; membership; appointment; term

The corporation shall have a board of directors (hereinafter in this section referred to as the ''board''), consisting of fifteen members. Three members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, effective on the date on which the other members are elected, and for terms of three years or until their successors have been appointed and have qualified, except that the first three members of the board so appointed shall continue in office for terms of one, two, and three years, respectively, and any member so appointed to fill a vacancy shall be appointed only for the unexpired term of the director whom he succeeds. Twelve members of the board shall be elected by the stockholders.

(Pub. L. 90–448, title IX, § 904, Aug. 1, 1968, 82 Stat. 547.)

§ 3935. Financing the corporation

The corporation shall have the power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, voting powers, and special or relative rights and such limitations, restrictions, or qualifications thereof as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting power of the shares of any class.

(Pub. L. 90–448, title IX, § 905, Aug. 1, 1968, 82 Stat. 548.)

§ 3936. Purposes and powers of corporation

(a) Building, rehabilitation, acquisition, and financing of housing and related facilities for families and individuals of low or moderate income; acquisition and disposal of property; funds

In order to achieve the objectives and carry out the purposes of this chapter, the corporation is authorized to—

(1) plan, initiate, and carry out, pursuant to Federal programs or otherwise, the building, rehabilitation, acquisition, and financing of housing and related facilities primarily for the benefit of families and individuals of low or moderate income;

(2) buy, own, manage, lease, or otherwise acquire or dispose of property in connection with the developments, projects, or undertakings referred to in paragraph (1);

(3) provide such funds as may be necessary to accomplish the developments, projects, or undertakings referred to in paragraph (1); and

(4) for the purpose of generating income to support the building or rehabilitation of housing primarily for the benefit of families and individuals of low or moderate income (A) design, develop, manufacture and sell products and services for use in the construction, sale, or financing of housing, and (B) design and develop commercial, industrial, or retail facilities that are not directly related to housing, except that the development and preservation of housing for families and individuals of low or moderate income shall be the primary activity of the corporation.

(b) Authorization to enter into partnerships, limited partnerships, joint ventures, and other associations; manager or general partner of partnership, venture, or association; research and studies; technical assistance; loans or grants; hire or acceptance of services of consultants, experts, advisory boards and panels

Included in the activities authorized to the corporation for the accomplishment of the purposes indicated in subsection (a) of this section are, among others not specifically named—

(1) to enter into partnerships, limited partnerships, joint ventures, and other associations with individuals, corporations, and private and governmental agencies, organizations, and institutions;

(2) to act as manager or general partner of any such partnership, venture, or association;

(3) to conduct or contract for research and studies related to the development, demonstration, and evaluation of improved techniques and methods of constructing, rehabilitating, and maintaining housing;

(4) to provide technical assistance to nonprofit corporations, limited dividend corporations, and others with respect to the planning, refinancing, construction, rehabilitation, maintenance, and management of housing for low and moderate income families and individuals;

(5) to make loans or grants including grants of interests in housing and related facilities, to nonprofit corporations, limited dividend corporations, and others, in carrying out its activities under subsection (a) of this section; and

(6) to hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the corporation in carrying out the purposes of this chapter.

(c) Exercise of powers conferred upon stock corporation by District of Columbia Business Corporation Act

To carry out the foregoing purposes and engaged in the foregoing activities, the corporation shall have the usual powers conferred upon a stock corporation by the District of Columbia Business Corporation Act.

(d) Labor standards

Nothing in this chapter shall have the effect of waiving or otherwise affecting the applicability of the provisions of sections 3141–3144, 3146, and 3147 of title 40, or any other law requiring compliance with labor standards, in the case of any construction to which such provisions would otherwise apply.

(e) Maximum combined outstanding equity commitment

The combined outstanding equity commitment of the corporation and the partnership with respect to activities undertaken under subsection (a)(4) of this section may not exceed (1) 7 percent of their total combined equity commitment outstanding during the first 12-month period following October 17, 1984; (2) 14 percent of their total combined equity commitment outstanding during the second 12-month period following October 17, 1984; or (3) 20 percent of their total combined equity commitment outstanding at any time thereafter.

(Pub. L. 90–448, title IX, § 906, Aug. 1, 1968, 82 Stat. 548; Pub. L. 98–181, title IV, § 467, Nov. 30, 1983, 97 Stat. 1236; Pub. L. 98–479, title I, § 104(c)(1), (2), Oct. 17, 1984, 98 Stat. 2225.)

REFERENCES IN TEXT

The District of Columbia Business Corporation Act, referred to in subsec. (c), is act June 8, 1954, ch. 269, 68 Stat. 179, as amended, which is not classified to the Code.

CODIFICATION

In subsec. (d), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act (40

U.S.C. 267a—276a–5)'', meaning 40 U.S.C. 276a—276a–5, on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98–479, §104(c)(1), added par. (4).

Subsec. (e). Pub. L. 98–479, §104(c)(2), added subsec. (e).

1983—Subsec. (a)(1). Pub. L. 98–181 inserted references to acquisition and financing.

§ 3937. National housing partnership

(a) Formation of limited partnership; partnership agreement

The corporation is authorized to arrange for the formation, as a separate organization, of a limited partnership (hereinafter in this chapter referred to as the ''partnership'') under the District of Columbia Uniform Limited Partnership Act for the purpose of engaging in any of the activities authorized for the corporation under section 3936 of this title, and to enter into a partnership agreement governing the affairs of such limited partnership.

(b) Applicability of other laws; legal status of limited partnership

The partnership shall be subject to the provisions, to the extent consistent with this chapter, of (1) the District of Columbia Uniform Limited Partnership Act and (2) those provisions of the District of Columbia Uniform Partnership Act made applicable by section 6(2) of that Act. Notwithstanding any inconsistency between the provisions of such Acts, or of any other law, and the provisions of this section, the partnership organized pursuant to this section shall be deemed to have the legal status of a limited partnership.

(c) Authorization to enter into partnerships, limited partnerships, or joint ventures organized under State or local laws for purpose of engaging in low and moderate income housing developments, projects, or undertakings

The partnership is authorized to enter into partnerships, limited partnerships, or joint ventures organized under applicable State or local law for the purpose of engaging in low and moderate income housing developments, projects, or undertakings in particular localities.

(d) General partner; capital of partnership; contribution of partners

The corporation shall be the general partner in the partnership. The capital of the partnership and the contributions of the partners shall be in such amounts and at such times as are set forth in or pursuant to the partnership agreement.

(e) Partnership agreement; participation in low and moderate income housing developments, projects, or undertakings; limitation on aggregate initial equity investment

The partnership agreement shall include provisions designed to assure that (1) the partnership shall participate in low and moderate income housing developments, projects, or undertakings in a manner designed to encourage the participation therein of local interests, and (2) in any such development, project, or undertaking the partnership shall not subscribe to more than 25 per centum (including equity investments made in services or property) of the aggregate initial equity investment unless, in the judgment of the corporation as general partner, the balance of the required equity investment is not readily obtainable from other responsible investors residing or doing business in the local community.

(f) Partnership agreement; authorization for stockholders to become limited partners; inclusion of other limited partners; acquisition of assignor's stock by assignee of limited partner; approval of substitution or addition of partnership member

The partnership agreement may without limitation (1) permit each of the stockholders of the corporation to become a member of the partnership as a limited partner, (2) authorize the inclusion of other limited partners in addition to the stockholders of the corporation, (3) provide that the assignee of the partnership interest of a limited partner of the partnership who is also a stockholder of the corporation may not become a substituted limited partner unless he also acquires the assignor's stock of the corporation, and (4) include provisions requiring that the corporation as a general partner approve the substitution or addition of a member of the partnership.

(g) Liability of corporation as general partner; treatment of interest of limited partner in partnership

A corporation which is a limited partner in the partnership shall not become liable as a general partner by reason of the fact that (1) such corporation is a holder of shares of voting stock of the corporation constituting not more than 5 per centum of the total number of outstanding shares of such stock and exercises any of the rights (including voting rights) of a holder of such shares, and/or (2) a person who is an officer or director of such corporation (or of another corporation which controls or is subject to the control of, or is under common control with, such corporation) is a director of the corporation and performs the duties of that office. The interest of a limited partner in the partnership shall not be treated as a stock interest in the corporation, notwithstanding that such interest of a limited partner may be proportionate to his stock interest in the corporation.

(h) Execution of certificate of partnership and amendments

The certificate of the partnership and any amendment thereof required by the District of Columbia Uniform Limited Partnership Act shall be executed and acknowledged by the corporation as member and by each other member of the partnership or his attorney-in-fact duly authorized by power of attorney in writing. The corporation may execute and acknowledge the certificate and any amendment thereof as attorney-in-fact for any member, member to be substituted or added, or assigning member, by whom the certificate or amendment is required to be executed and acknowledged and who has appointed the corporation as such attorney.

(Pub. L. 90–448, title IX, § 907, Aug. 1, 1968, 82 Stat. 549.)

REFERENCES IN TEXT

The District of Columbia Uniform Limited Partnership Act, referred to in subsecs. (a) and (h), is Pub. L. 87–716, Sept. 28, 1962, 76 Stat. 655, as amended, which is not classified to the Code.

The District of Columbia Uniform Partnership Act, referred to in subsec. (b), is Pub. L. 87–709, Sept. 27, 1962, 76 Stat. 636, as amended, which is not classified to the Code.

§ 3938. Annual report of corporation; audit of accounts

(a)(1) The corporation shall submit an annual report to the President for transmittal to the Congress within six months after the end of its fiscal year. The report shall include a comprehensive and detailed report of the operations, activities, and financial condition of the corporation and the partnership under this chapter.

(2) The report shall contain a description of the activities undertaken under section 3936(a)(4) of this title, and shall specify, as a percentage of equity and in dollars, the extent of the corporation's and the partnership's investment in housing for the benefit of families and individuals of low or moderate income, the extent of the corporation's and the partnership's investment in other housing, and the extent of the corporation's and the partnership's activities which are undertaken under section 3936(a)(4) of this title.

(b) The accounts of the corporation and of the partnership shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

(Pub. L. 90–448, title IX, § 908, Aug. 1, 1968, 82 Stat. 550; Pub. L. 98–479, title I, § 104(c)(3), Oct. 17, 1984, 98 Stat. 2225.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–479 designated existing provisions as par. (1) and added par. (2).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section relating to transmittal of annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 2 on page 182 of House Document No. 103–7.

§ 3939. Applicability of antitrust laws

Nothing contained herein shall affect the applicability of the Federal antitrust laws to the activities of the corporation and the partnership created under this chapter and of the persons participating therein or in partnerships, limited partnerships, or joint ventures with either of them.

(Pub. L. 90–448, title IX, § 909, Aug. 1, 1968, 82 Stat. 550.)

§ 3940. Reservation of right to repeal, alter, or amend chapter

The right to repeal, alter, or amend this chapter at any time is expressly reserved.

(Pub. L. 90–448, title IX, § 910, Aug. 1, 1968, 82 Stat. 550.)

§ 3941. State or local taxation or regulation; access to judicial process

Nothing contained in this chapter shall preclude a State or other local jurisdiction from imposing, in accordance with the laws of such State or other local jurisdiction, any valid nondiscriminatory tax, obligation, or regulation on the partnership as a taxable and or legal entity, but no limited partner of the partnership not otherwise subject to taxation or regulation by or judicial process of a State or other local jurisdiction shall be subject to taxation or regulation by or subject to or denied access to judicial process of such State or other local jurisdiction, or be subject or denied access to any greater extent, because of activities of the corporation or partnership within such State or other local jurisdiction.

(Pub. L. 90–448, title IX, § 912, as added Pub. L. 91–351, title VIII, § 711, July 24, 1970, 84 Stat. 463.)

CHAPTER 50—NATIONAL FLOOD INSURANCE

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§ 4001. Congressional findings and declaration of purpose

(a) Necessity and reasons for flood insurance program

The Congress finds that (1) from time to time flood disasters have created personal hardships and economic distress which have required unforeseen disaster relief measures and have placed an increasing burden on the Nation's resources; (2) despite the installation of preventive and protective works and the adoption of other public programs designed to reduce losses caused by flood damage, these methods have not been sufficient to protect adequately against growing exposure to future flood losses; (3) as a matter of national policy, a reasonable method of sharing the risk of flood losses is through a program of flood insurance which can complement and encourage preventive and protective measures; and (4) if such a program is initiated and carried out gradually, it can be expanded as knowledge is gained and experience is appraised, thus eventually making flood insurance coverage available on reasonable terms and conditions to persons who have need for such protection.

(b) Participation of Federal Government in flood insurance program carried out by private insurance industry

The Congress also finds that (1) many factors have made it uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions; but (2) a program of flood insurance with large-scale participation of the Federal Government and carried out to the maximum extent practicable by the private insurance industry is feasible and can be initiated.

(c) Unified national program for flood plain management

The Congress further finds that (1) a program of flood insurance can promote the public interest by providing appropriate protection against the perils of flood losses and encouraging sound land use by minimizing exposure of property to flood losses; and (2) the objectives of a flood insurance program should be integrally related to a unified national program for flood plain management and, to this end, it is the sense of Congress that within two years following the effective date of this chapter the President should transmit to the Congress for its consideration any further proposals necessary for such a unified program, including proposals for the allocation of costs among beneficiaries of flood protection.

(d) Authorization of flood insurance program; flexibility in program

It is therefore the purpose of this chapter to (1) authorize a flood insurance program by means of which flood insurance, over a period of time, can be made available on a nationwide basis through the cooperative efforts of the Federal Government and the private insurance industry, and (2) provide flexibility in the program so that such flood insurance may be based on workable methods of pooling risks, minimizing costs, and distributing burdens equitably among those who will be protected by flood insurance and the general public.

(e) Land use adjustments by State and local governments; development of proposed future construction; assistance of lending and credit institutions; relation of Federal assistance to all flood-related programs; continuing studies

It is the further purpose of this chapter to (1) encourage State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses, (2) guide the development of proposed future construction, where practicable, away from locations which are threatened by flood hazards, (3) encourage lending and credit institutions, as a matter of national policy, to

assist in furthering the objectives of the flood insurance program, (4) assure that any Federal assistance provided under the program will be related closely to all flood-related programs and activities of the Federal Government, and (5) authorize continuing studies of flood hazards in order to provide for a constant reappraisal of the flood insurance program and its effect on land use requirements.

(f) Mudslides

The Congress also finds that (1) the damage and loss which results from mudslides is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems involved in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program, are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this chapter to make available, by means of the methods, procedures, and instrumentalities which are otherwise established or available under this chapter for purposes of the flood insurance program, protection against damage and loss resulting from mudslides that are caused by accumulations of water on or under the ground.

(Pub. L. 90–448, title XIII, § 1302, Aug. 1, 1968, 82 Stat. 572; Pub. L. 91–152, title IV, § 409(a), Dec. 24, 1969, 83 Stat. 397; Pub. L. 93–234, title I, § 108(a), Dec. 31, 1973, 87 Stat. 979; Pub. L. 103–325, title V, § 552(d), Sept. 23, 1994, 108 Stat. 2269.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in subsec. (c), see section 1377 of Pub. L. 90–448, set out as an Effective Date note below.

This chapter, referred to in subsecs. (d) to (f), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1994—Subsec. (g). Pub. L. 103–325 struck out subsec. (g) which read as follows: ''The Congress also finds that (1) the damage and loss which may result from the erosion and undermining of shorelines by waves or currents in lakes and other bodies of water exceeding anticipated cyclical levels is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems involved in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program, are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this chapter to make available, by means of the methods, procedures, and instrumentalities which are otherwise established or available under this chapter for purposes of the flood insurance program, protection against damage and loss resulting from the erosion and undermining of shorelines by waves or currents in lakes and other bodies of water exceeding anticipated cyclical levels.''

1973—Subsec. (g). Pub. L. 93–234 added subsec. (g).

1969—Subsec. (f). Pub. L. 91–152 added subsec. (f).

EFFECTIVE DATE

Section 1377 of title XIII of Pub. L. 90–448 provided that: ''This title [enacting this chapter, amending section 2414 of this title, repealing sections 2401 to 2413 and 2415 to 2421 of this title, and enacting provisions set out as notes under this section] shall take effect one hundred and twenty days following the date of its enactment [Aug. 1, 1968], except that the Secretary, on the basis of a finding that conditions exist necessitating the prescribing of an additional period, may prescribe a later effective date which in no event shall be more than one hundred and eighty days following such date of enactment.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–208, § 1, Mar. 23, 2006, 120 Stat. 317, provided that: ''This Act [amending section 4016 of this title] may be cited as the 'National Flood Insurance Program Enhanced Borrowing Authority Act of 2006'.''

SHORT TITLE OF 2005 AMENDMENTS

Pub. L. 109–106, § 1, Nov. 21, 2005, 119 Stat. 2288, provided that: ''This Act [amending section 4016 of this title] may be cited as the 'National Flood Insurance Program Further Enhanced Borrowing Authority Act of 2005'.''

Pub. L. 109–65, § 1, Sept. 20, 2005, 119 Stat. 1998, provided that: ''This Act [amending section 4016 of this title] may be cited as the 'National Flood Insurance Program Enhanced Borrowing Authority Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–264, § 1(a), June 30, 2004, 118 Stat. 712, provided that: ''This Act [enacting sections 4030 and 4102a of this title, amending sections 4011, 4015 to 4017, 4022, 4026, 4056, 4104c, 4104d, 4121, and 4127 of this title, and enacting provisions set out as notes under this section and sections 4011 and 4101 of this title] may be cited as the 'Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004'.''

SHORT TITLE OF 2003 AMENDMENTS

Pub. L. 108–171, § 1, Dec. 6, 2003, 117 Stat. 2064, provided that: ''This Act [amending sections 4016, 4026, 4056, and 4127 of this title and enacting provisions set out as a note under section 4016 of this title] may be cited as the 'National Flood Insurance Program Reauthorization Act of 2004'.''

Pub. L. 108–3, § 1, Jan. 13, 2003, 117 Stat. 7, provided that: ''This Act [amending sections 4016, 4026, 4056, and 4127 of this title and enacting provisions set out as a note under section 4016 of this title] may be cited as the 'National Flood Insurance Program Reauthorization Act of 2003'.''

SHORT TITLE OF 1994 AMENDMENT

Section 501 of title V of Pub. L. 103–325 provided that: ''This title [enacting sections 4104b to 4104d and 5154a of this title, amending this section, sections 4003, 4011, 4012a, 4013, 4015, 4017, 4022, 4026, 4027, 4029, 4056, 4081, 4101, 4104a, 4106, 4121, and 5154 of this title, and sections 1784, 1820, 3305, and 4521 of Title 12, Banks and Banking, repealing section 4103 of this title, enacting provisions set out as notes under this section and sections 4011, 4013, 4014, 4101 to 4103, and 4104c of this title, and repealing provisions set out as a note under section 4015 of this title] may be cited as the 'National Flood Insurance Reform Act of 1994'.''

SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93–234, § 1, Dec. 31, 1973, 87 Stat. 975, provided: ''That this Act [enacting sections 4002, 4003, 4012a, 4104, 4105 to 4107, and 4128 of this title, amending this section, sections 4013 to 4016, 4026, 4054, 4056, 4101, and 4121 of this title, and sections 24 and 1709–1 of Title 12, Banks and Banking, and repealing section 4021 of this

title] may be cited as the 'Flood Disaster Protection Act of 1973'.''

SHORT TITLE

Section 1301 of title XIII of Pub. L. 90–448 provided that: ''This title [enacting this chapter, amending section 2414 of this title, repealing sections 2401 to 2413 and 2415 to 2421 of this title, and enacting provisions set out as a note under this section] may be cited as the 'National Flood Insurance Act of 1968'.''

REGULATIONS

Pub. L. 103–325, title V, § 583, Sept. 23, 1994, 108 Stat. 2287, as amended by Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410, provided that: ''The Administrator of the Federal Emergency Management Agency and any appropriate Federal agency may each issue any regulations necessary to carry out the applicable provisions of this title [see Short Title of 1994 Amendment note above] and the applicable amendments made by this title.''

[For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.]

[For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

EVALUATION OF EROSION HAZARDS

Pub. L. 103–325, title V, § 577(a)–(g), Sept. 23, 1994, 108 Stat. 2281–2283, required the Director of the Federal Emergency Management Agency to submit a report no later than two years after Sept. 23, 1994, evaluating erosion hazards and estimating the impact of erosion on flood insurance claims.

RELATION OF TITLE V OF PUB. L. 103–325 TO STATE AND LOCAL LAWS

Section 584 of title V of Pub. L. 103–325 provided that: ''This title [see Short Title of 1994 Amendment note above] and the amendments made by this title may not be construed to preempt, annul, alter, amend, or exempt any person from compliance with any law, ordinance, or regulation of any State or local government with respect to land use, management, or control.''

FLOODPLAIN MANAGEMENT

For provisions relating to the reduction of the risk of flood loss, the minimization of the impact of floods on human safety, health and welfare, and the management of floodplains, see Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, set out as a note under section 4321 of this title.

§ 4002. Additional Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) annual losses throughout the Nation from floods and mudslides are increasing at an alarming rate, largely as a result of the accelerating development of, and concentration of population in, areas of flood and mudslide hazards;

(2) the availability of Federal loans, grants, guaranties, insurance, and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of public and of private industrial, commercial, and residential facilities;

(3) property acquired or constructed with grants or other Federal assistance may be exposed to risk of loss through floods, thus frustrating the purpose for which such assistance was extended;

(4) Federal instrumentalities insure or otherwise provide financial protection to banking and credit institutions whose assets include a substantial number of mortgage loans and other indebtedness secured by property exposed to loss and damage from floods and mudslides;

(5) the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood victims, most of whom are still inadequately compensated despite the provision of costly disaster relief benefits; and

(6) it is in the public interest for persons already living in flood-prone areas to have both an opportunity to purchase flood insurance and access to more adequate limits of coverage, so that they will be indemnified, for their losses in the event of future flood disasters.

(b) The purpose of this Act, therefore, is to—

(1) substantially increase the limits of coverage authorized under the national flood insurance program;

(2) provide for the expeditious identification of, and the dissemination of information concerning, flood-prone areas;

(3) require States or local communities, as a condition of future Federal financial assistance, to participate in the flood insurance program and to adopt adequate flood plan ordinances with effective enforcement provisions consistent with Federal standards to reduce or avoid future flood losses; and

(4) require the purchase of flood insurance by property owners who are being assisted by Federal programs or by federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards.

(Pub. L. 93–234, § 2, Dec. 31, 1973, 87 Stat. 975.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), means Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 975, as amended, known as the Flood Disaster Protection Act of 1973. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of this title and Tables.

CODIFICATION

Section was enacted as part of Flood Disaster Protection Act of 1973, and not as part of National Flood Insurance Act of 1968 which comprises this chapter.

§ 4003. Additional definitions

(a) As used in this Act, unless the context otherwise requires, the term—

(1) ''community'' means a State or a political subdivision thereof which has zoning and building code jurisdiction over a particular area having special flood hazards;

(2) ''Federal agency'' means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(3) ''financial assistance'' means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States;

(4) ''financial assistance for acquisition or construction purposes'' means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] (other than assistance under such Act in connection with a flood);

(5) ''Federal entity for lending regulation'' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;

(6) ''Director'' means the Administrator of the Federal Emergency Management Agency;

(7) ''Federal agency lender'' means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity;

(8) the term ''improved real estate'' means real estate upon which a building is located;

(9) ''lender'' means a regulated lending institution or Federal agency lender;

(10) ''regulated lending institution'' means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation; and

(11) ''servicer'' means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

(b) The Director is authorized to define or redefine, by rules and regulations, any scientific or technical term used in this Act, insofar as such definition is not inconsistent with the purposes of this Act.

(Pub. L. 93–234, § 3, Dec. 31, 1973, 87 Stat. 976; Pub. L. 95–128, title VII, § 703(b), Oct. 12, 1977, 91 Stat. 1145; Pub. L. 98–181, title IV, § 451(e), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 100–707, title I, § 109(t), Nov. 23, 1988, 102 Stat. 4710; Pub. L. 103–325, title V, § 511(a), Sept. 23, 1994, 108 Stat. 2255; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 975, as amended, known as the Flood Disaster Protection Act of 1973. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of this title and Tables.

The Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(4), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

CODIFICATION

Section was enacted as part of Flood Disaster Protection Act of 1973, and not as part of National Flood Insurance Act of 1968 which comprises this chapter.

AMENDMENTS

1994—Subsec. (a)(5). Pub. L. 103–325, § 511(a)(1), added par. (5) and struck out former par. (5) which read as follows: '''Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration; and''.

Subsec. (a)(7) to (11). Pub. L. 103–325, § 511(a)(2), (3), added pars. (7) to (11).

1988—Subsec. (a)(4). Pub. L. 100–707 substituted ''Disaster Relief and Emergency Assistance Act'' for ''Disaster Relief Act of 1974''.

1983—Subsec. (a)(6). Pub. L. 98–181, § 451(e)(2), substituted definition of ''Director'' meaning the Director of the Federal Emergency Management Agency for definition of ''Secretary'' meaning the Secretary of Housing and Urban Development.

Subsec. (b). Pub. L. 98–181, § 451(e)(1), substituted ''Director'' for ''Secretary''.

1977—Subsec. (a)(4). Pub. L. 95–128 substituted ''assistance pursuant to the Disaster Relief Act of 1974 (other than assistance under such Act in connection with a flood)'' for ''assistance for emergency work essential for the protection and preservation of life and property performed pursuant to the Disaster Relief Act of 1970 or any subsequent Act of Congress which supersedes or modifies the Disaster Relief Act of 1970''.

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (a)(6) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of

the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

§ 4011. Authorization to establish and carry out program

(a) Authorization and establishment

To carry out the purposes of this chapter, the Administrator of the Federal Emergency Management Agency is authorized to establish and carry out a national flood insurance program which will enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real property or personal property related thereto arising from any flood occurring in the United States.

(b) Additional coverage for compliance with land use and control measures

The national flood insurance program established pursuant to subsection (a) of this section shall enable the purchase of insurance to cover the cost of implementing measures that are consistent with land use and control measures established by the community under section 4102 of this title for—

(1) properties that are repetitive loss structures;

(2) properties that are substantially damaged structures;

(3) properties that have sustained flood damage on multiple occasions, if the Director determines that it is cost-effective and in the best interests of the National Flood Insurance Fund to require the implementation of such measures; and

(4) properties for which an offer of mitigation assistance is made under—

(A) section 4104c of this title (Flood Mitigation Assistance Program);

(B) section 1368[1] (Repetitive Loss Priority Program and Individual Priority Property Program);

(C) the Hazard Mitigation Grant Program authorized under section 5170c of this title;

(D) the Predisaster Hazard Mitigation Program under section 5133 of this title; and

(E) any programs authorized or for which funds are appropriated to address any unmet needs or for which supplemental funds are made available.

The Director shall impose a surcharge on each insured of not more than $75 per policy to provide cost of compliance coverage in accordance with the provisions of this subsection.

[1] So in original. Pub. L. 90–448 does not contain a section 1368.

(c) Participation and risk sharing by insurers

In carrying out the flood insurance program the Director shall, to the maximum extent practicable, encourage and arrange for—

(1) appropriate financial participation and risk sharing in the program by insurance companies and other insurers, and

(2) other appropriate participation, on other than a risk-sharing basis, by insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations,

in accordance with the provisions of subchapter II of this chapter.

(Pub. L. 90–448, title XIII, § 1304, Aug. 1, 1968, 82 Stat. 574; Pub. L. 98–181, title IV, § 451(d)(1), (2), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 103–325, title V, § 555(a), Sept. 23, 1994, 108 Stat. 2274; Pub. L. 108–264, title I, § 105(a), June 30, 2004, 118 Stat. 723; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–264, § 105(a)(1)(B), which directed insertion of ''by the community'' after ''established'' in introductory provisions, was executed by making the insertion after ''established'' the second time appearing to reflect the probable intent of Congress.

Pub. L. 108–264, § 105(a)(1)(A), substituted ''implementing measures that are consistent'' for ''compliance'' in introductory provisions.

Subsec. (b)(2). Pub. L. 108–264, § 105(a)(2), substituted ''are substantially damaged structures;'' for ''have flood damage in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the flood event; and''.

Subsec. (b)(3). Pub. L. 108–264, § 105(a)(3), which directed the substitution of ''the implementation of such measures; and'' for ''compliance with land use and control measures.'', was executed by making the substitution for ''compliance with the land use and control measures.'', to reflect the probable intent of Congress.

Subsec. (b)(4). Pub. L. 108–264, § 105(a)(4), added par. (4).

1994—Subsecs. (b), (c). Pub. L. 103–325 added subsec. (b) and redesignated former subsec. (b) as (c).

1983—Subsec. (a). Pub. L. 98–181, § 451(d)(2), substituted ''Director of the Federal Emergency Management Agency'' for ''Secretary of Housing and Urban Development''.

Subsec. (b). Pub. L. 98–181, § 451(d)(1), substituted ''Director'' for ''Secretary''.

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (a) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 555(b) of Pub. L. 103–325 provided that: ''The provisions of subsection (a) [amending this section] shall apply only to properties that sustain flood-related damage after the date of enactment of this Act [Sept. 23, 1994].''

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CONGRESSIONAL FINDINGS

Pub. L. 108–264, § 2, June 30, 2004, 118 Stat. 712, provided that: ''The Congress finds that—

''(1) the national flood insurance program—

''(A) identifies the flood risk;

''(B) provides flood risk information to the public;

''(C) encourages State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses; and

''(D) makes flood insurance available on a nationwide basis that would otherwise not be available, to accelerate recovery from floods, mitigate future losses, save lives, and reduce the personal and national costs of flood disasters;

''(2) the national flood insurance program insures approximately 4,400,000 policyholders;

''(3) approximately 48,000 properties currently insured under the program have experienced, within a 10-year period, 2 or more flood losses where each such loss exceeds the amount $1,000;

''(4) approximately 10,000 of these repetitive-loss properties have experienced either 2 or 3 losses that cumulatively exceed building value or 4 or more losses, each exceeding $1,000;

''(5) repetitive-loss properties constitute a significant drain on the resources of the national flood insurance program, costing about $200,000,000 annually;

''(6) repetitive-loss properties comprise approximately 1 percent of currently insured properties but are expected to account for 25 to 30 percent of claims losses;

''(7) the vast majority of repetitive-loss properties were built before local community implementation of floodplain management standards under the program and thus are eligible for subsidized flood insurance;

''(8) while some property owners take advantage of the program allowing subsidized flood insurance without requiring mitigation action, others are trapped in a vicious cycle of suffering flooding, then repairing flood damage, then suffering flooding, without the means to mitigate losses or move out of harm's way;

''(9) mitigation of repetitive-loss properties through buyouts, elevations, relocations, or flood-proofing will produce savings for policyholders under the program and for Federal taxpayers through reduced flood insurance losses and reduced Federal disaster assistance;

''(10) a strategy of making mitigation offers aimed at high-priority repetitive-loss properties and shifting more of the burden of recovery costs to property owners who choose to remain vulnerable to repetitive flood damage can encourage property owners to take appropriate actions that reduce loss of life and property damage and benefit the financial soundness of the program;

''(11) the method for addressing repetitive-loss properties should be flexible enough to take into consideration legitimate circumstances that may prevent an owner from taking a mitigation action; and

''(12) focusing the mitigation and buy-out of repetitive loss properties upon communities and property owners that choose to voluntarily participate in a mitigation and buy-out program will maximize the benefits of such a program, while minimizing any adverse impact on communities and property owners.''

MISCELLANEOUS FLOOD INSURANCE PROVISIONS

Pub. L. 108–264, title II, June 30, 2004, 118 Stat. 725, as amended by Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410, provided that:

''SEC. 201. DEFINITIONS.

''In this title, the following definitions shall apply:

''(1) DIRECTOR.—The term 'Director' means the Administrator of the Federal Emergency Management Agency.

''(2) FLOOD INSURANCE POLICY.—The term 'flood insurance policy' means a flood insurance policy issued under the National Flood Insurance Act of 1968 (42 U.S.C. [4001] et seq.).

''(3) PROGRAM.—The term 'Program' means the National Flood Insurance Program established under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

''SEC. 202. SUPPLEMENTAL FORMS.

''(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [June 30, 2004], the Director shall develop supplemental forms to be issued in conjunction with the issuance of a flood insurance policy that set forth, in simple terms—

''(1) the exact coverages being purchased by a policyholder;

''(2) any exclusions from coverage that apply to the coverages purchased;

''(3) an explanation, including illustrations, of how lost items and damages will be valued under the policy at the time of loss;

''(4) the number and dollar value of claims filed under a flood insurance policy over the life of the property, and the effect, under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), of the filing of any further claims under a flood insurance policy with respect to that property; and

''(5) any other information that the Director determines will be helpful to policyholders in understanding flood insurance coverage.

''(b) DISTRIBUTION.—The forms developed under subsection (a) shall be given to—

''(1) all holders of a flood insurance policy at the time of purchase and renewal; and

''(2) insurance companies and agents that are authorized to sell flood insurance policies.

''SEC. 203. ACKNOWLEDGEMENT FORM.

''(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [June 30, 2004], the Director shall develop an acknowledgement form to be signed by the purchaser of a flood insurance policy that contains—

''(1) an acknowledgement that the purchaser has received a copy of the standard flood insurance policy, and any forms developed under section 202; and

''(2) an acknowledgement that the purchaser has been told that the contents of a property or dwelling are not covered under the terms of the standard flood insurance policy, and that the policyholder has the option to purchase additional coverage for such contents.

''(b) DISTRIBUTION.—Copies of an acknowledgement form executed under subsection (a) shall be made available to the purchaser and the Director.

''SEC. 204. FLOOD INSURANCE CLAIMS HANDBOOK.

''(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [June 30, 2004], the Director shall develop a flood insurance claims handbook that contains—

''(1) a description of the procedures to be followed to file a claim under the Program, including how to pursue a claim to completion;

''(2) how to file supplementary claims, proof of loss, and any other information relating to the filing of claims under the Program; and

''(3) detailed information regarding the appeals process established under section 205.

''(b) DISTRIBUTION.—The handbook developed under subsection (a) shall be made available to—

''(1) each insurance company and agent authorized to sell flood insurance policies; and

''(2) each purchaser, at the time of purchase and renewal, of a flood insurance policy, and at the time of any flood loss sustained by such purchaser.

''SEC. 205. APPEAL OF DECISIONS RELATING TO FLOOD INSURANCE COVERAGE.

''Not later than 6 months after the date of enactment of this Act [June 30, 2004], the Director shall, by regulation, establish an appeals process through which holders of a flood insurance policy may appeal the decisions, with respect to claims, proofs of loss, and loss estimates relating to such flood insurance policy, of—

''(1) any insurance agent or adjuster, or insurance company; or

''(2) any employee or contractor of the Federal Emergency Management Agency.

''SEC. 206. STUDY AND REPORT ON USE OF COST COMPLIANCE COVERAGE.

''Not later than 1 year after the date of enactment of this Act [June 30, 2004], the Administrator of the Federal Emergency Management Agency shall submit to Congress a report that sets forth—

''(1) the use of cost of compliance coverage under section 1304(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(b)) in connection with flood insurance policies;

''(2) any barriers to policyholders using the funds provided by cost of compliance coverage under that section 1304(b) under a flood insurance policy, and recommendations to address those barriers; and

''(3) the steps that the Federal Emergency Management Agency has taken to ensure that funds paid for cost of compliance coverage under that section 1304(b) are being used to lessen the burdens on all homeowners and the Program.

''SEC. 207. MINIMUM TRAINING AND EDUCATION REQUIREMENTS.

''The Administrator of the Federal Emergency Management Agency shall, in cooperation with the insurance industry, State insurance regulators, and other interested parties—

''(1) establish minimum training and education requirements for all insurance agents who sell flood insurance policies; and

''(2) not later than 6 months after the date of enactment of this Act [June 30, 2004], publish these requirements in the Federal Register, and inform insurance companies and agents of the requirements.

''SEC. 208. GAO STUDY AND REPORT.

''(a) STUDY.—The Comptroller General of the United States shall conduct a study of—

''(1) the adequacy of the scope of coverage provided under flood insurance policies in meeting the intended goal of Congress that flood victims be restored to their pre-flood conditions, and any recommendations to ensure that goal is being met;

''(2) the adequacy of payments to flood victims under flood insurance policies; and

''(3) the practices of the Federal Emergency Management Agency and insurance adjusters in estimating losses incurred during a flood, and how such practices affect the adequacy of payments to flood victims.

''(b) REPORT.—Not later than 1 year after the date of enactment of this Act [June 30, 2004], the Comptroller General shall submit to Congress a report regarding the results of the study under subsection (a).

''SEC. 209. PROSPECTIVE PAYMENT OF FLOOD INSURANCE PREMIUMS.

[Amended section 4015 of this title.]

''SEC. 210. REPORT ON CHANGES TO FEE SCHEDULE OR FEE PAYMENT ARRANGEMENTS.

''Not later than 3 months after the date of enactment of this Act [June 30, 2004], the Director shall submit a report on any changes or modifications made to the fee schedule or fee payment arrangements between the Federal Emergency Management Agency and insurance adjusters who provide services with respect to flood insurance policies to—

''(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(2) the Committee on Financial Services of the House of Representatives.''

FLOOD INSURANCE INTERAGENCY TASK FORCE

Section 561 of Pub. L. 103–325 provided that:

''(a) ESTABLISHMENT.—There is hereby established an interagency task force to be known as the Flood Insurance Task Force (in this section referred to as the 'Task Force').

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Task Force shall be composed of 10 members, who shall be the designees of—

''(A) the Federal Insurance Administrator;

''(B) the Federal Housing Commissioner;

''(C) the Secretary of Veterans Affairs;

''(D) the Administrator of the Farmers Home Administration;

''(E) the Administrator of the Small Business Administration;

''(F) the Chairman of the Board of Directors of the Farm Credit Administration;

''(G) a designee of the Financial Institutions Examination Council;

''(H) the Director of the Office of Federal Housing Enterprise Oversight;

''(I) the chairman of the Board of Directors of the Federal Home Loan Mortgage Corporation; and

''(J) the chairman of the Board of Directors of the Federal National Mortgage Association.

''(2) QUALIFICATIONS.—Members of the Task Force shall be designated for membership on the Task Force by reason of demonstrated knowledge and competence regarding the national flood insurance program.

''(c) DUTIES.—The Task Force shall carry out the following duties:

''(1) RECOMMENDATIONS OF STANDARDIZED ENFORCEMENT PROCEDURES.—Make recommendations to the head of each Federal agency and enterprise referred to under subsection (b)(1) regarding establishment or adoption of standardized enforcement procedures among such agencies and corporations responsible for enforcing compliance with the requirements under the national flood insurance program to ensure fullest possible compliance with such requirements.

''(2) STUDY OF COMPLIANCE ASSISTANCE.—Conduct a study of the extent to which Federal agencies and the secondary mortgage market can provide assistance in ensuring compliance with the requirements under the national flood insurance program and submit to the Congress a report describing the study and any conclusions.

''(3) STUDY OF COMPLIANCE MODEL.—Conduct a study of the extent to which existing programs of Federal agencies and corporations for compliance with the requirements under the national flood insurance program can serve as a model for other Federal agencies responsible for enforcing compliance, and submit to

the Congress a report describing the study and any conclusions.

''(4) RECOMMENDATIONS FOR ENFORCEMENT AND COMPLIANCE PROCEDURES.—Develop recommendations regarding enforcement and compliance procedures, based on the studies and findings of the Task Force, and publish such recommendations.

''(5) STUDY OF DETERMINATION FEES.—Conduct a study of—

''(A) the reasonableness of fees charged pursuant to 102(h) of the Flood Disaster Protection Act of 1973 [42 U.S.C. 4012a(h)] for costs of determining whether the property securing a loan is located in an area having special flood hazards; and

''(B) whether the fees charged pursuant to such section by lenders and servicers are greater than the amounts paid by such lenders and servicers to persons actually conducting such determinations and the extent to which the fees exceed such amounts.

''(d) NONCOMPENSATION.—Members of the Task Force shall receive no additional pay by reason of their service on the Task Force.

''(e) CHAIRPERSON.—The members of the Task Force shall elect one member as chairperson of the Task Force.

''(f) MEETINGS AND ACTION.—The Task Force shall meet at the call of the chairman or a majority of the members of the Task Force and may take action by a vote of the majority of the members. The Federal Insurance Administrator shall coordinate and call the initial meeting of the Task Force.

''(g) OFFICERS.—The chairperson of the Task Force may appoint any officers to carry out the duties of the Task Force under subsection (c).

''(h) STAFF OF FEDERAL AGENCIES.—Upon request of the chairperson of the Task Force, the head of any of the Federal agencies and entities referred to under subsection (b)(1) may detail, on a nonreimbursable basis, any of the personnel of such agency to the Task Force to assist the Task Force in carrying out its duties under this section.

''(i) POWERS.—In carrying out this section, the Task Force may hold hearings, sit and act at times and places, take testimony, receive evidence and assistance, provide information, and conduct research as the Task Force considers appropriate.

''(j) TERMINATION.—The Task Force shall terminate upon the expiration of the 24-month period beginning upon the designation of the last member to be designated under subsection (b)(1).''

§ 4012. Scope of program and priorities

(a) Priority for insurance for certain residential and church properties and business concerns

In carrying out the flood insurance program the Director shall afford a priority to making flood insurance available to cover residential properties which are designed for the occupancy of from one to four families, church properties, and business properties which are owned or leased and operated by small business concerns.

(b) Availability of insurance for other properties

If on the basis of—

(1) studies and investigations undertaken and carried out and information received or exchanged under section 4014 of this title, and

(2) such other information as may be necessary,

the Director determines that it would be feasible to extend the flood insurance program to cover other properties, he may take such action under this chapter as from time to time may be necessary in order to make flood insurance available to cover, on such basis as may be feasible, any types and classes of—

(A) other residential properties,

(B) other business properties,

(C) agricultural properties,

(D) properties occupied by private nonprofit organizations, and

(E) properties owned by State and local governments and agencies thereof,

and any such extensions of the program to any types and classes of these properties shall from time to time be prescribed in regulations.

(c) Availability of insurance in States or areas evidencing positive interest in securing insurance and assuring adoption of adequate land use and control measures

The Director shall make flood insurance available in only those States or areas (or subdivisions thereof) which he has determined have—

(1) evidenced a positive interest in securing flood insurance coverage under the flood insurance program, and

(2) given satisfactory assurance that by December 31, 1971, adequate land use and control measures will have been adopted for the State or area (or subdivision) which are consistent with the comprehensive criteria for land management and use developed under section 4102 of this title, and that the application and enforcement of such measures will commence as soon as technical information on floodways and on controlling flood elevations is available.

(Pub. L. 90–448, title XIII, § 1305, Aug. 1, 1968, 82 Stat. 574; Pub. L. 91–152, title IV, § 410(a), Dec. 24, 1969, 83 Stat. 397; Pub. L. 92–213, § 2(c)(1), Dec. 22, 1971, 85 Stat. 775; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

1971—Subsec. (a). Pub. L. 92–213 inserted reference to church properties.

1969—Subsec. (c)(2). Pub. L. 91–152 substituted ''December 31, 1971, adequate'' for ''June 30, 1970, permanent''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4012a. Flood insurance purchase and compliance requirements and escrow accounts

(a) Amount and term of coverage

After the expiration of sixty days following December 31, 1973, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.], unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: *Provided*, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.

(b) Requirement for mortgage loans

(1) Regulated lending institutions

Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974 [12 U.S.C. 3301 et seq.]) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.], unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less.

(2) Federal agency lenders

A Federal agency lender may not make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1). Each Federal agency lender shall issue any regulations necessary to carry out this paragraph. Such regulations shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) Government-sponsored enterprises for housing

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall implement procedures reasonably designed to ensure that, for any loan that is—

(A) secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, and

(B) purchased by such entity,

the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1).

(4) Applicability

(A) Existing coverage

Except as provided in subparagraph (B), paragraph (1) shall apply on September 23, 1994.

(B) New coverage

Paragraphs (2) and (3) shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on September 23, 1994. Paragraph (1) shall apply with respect to any loan made, increased, extended, or renewed by any lender supervised by the Farm Credit Administration only after the expiration of the period under this subparagraph.

(C) Continued effect of regulations

Notwithstanding any other provision of this subsection, the regulations to carry out paragraph (1), as in effect immediately before September 23, 1994, shall continue to apply until the regulations issued to carry out paragraph (1) as amended by section 522(a) of Public Law 103–325 take effect.

(c) Exceptions to purchase requirements

(1) State-owned property

Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Director. The Director shall publish and periodically revise the list of States to which this subsection applies.

(2) Small loans

Notwithstanding any other provision of this section, subsections (a) and (b) of this section shall not apply to any loan having—

(A) an original outstanding principal balance of $5,000 or less; and

(B) a repayment term of 1 year or less.

(d) Escrow of flood insurance payments

(1) Regulated lending institutions

Each Federal entity for lending regulation (after consultation and coordination with the

Financial Institutions Examination Council) shall by regulation require that, if a regulated lending institution requires the escrowing of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home, then all premiums and fees for flood insurance under the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.] for the real estate or mobile home shall be paid to the regulated lending institution or other servicer for the loan in a manner sufficient to make payments as due for the duration of the loan. Upon receipt of the premiums, the regulated lending institution or servicer of the loan shall deposit the premiums in an escrow account on behalf of the borrower. Upon receipt of a notice from the Director or the provider of the insurance that insurance premiums are due, the regulated lending institution or servicer shall pay from the escrow account to the provider of the insurance the amount of insurance premiums owed.

(2) Federal agency lenders

Each Federal agency lender shall by regulation require and provide for escrow and payment of any flood insurance premiums and fees relating to residential improved real estate and mobile homes securing loans made by the Federal agency lender under the circumstances and in the manner provided under paragraph (1). Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) Applicability of RESPA

Escrow accounts established pursuant to this subsection shall be subject to the provisions of section 10 of the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2609].

(4) "Residential improved real estate" defined

For purposes of this subsection, the term ''residential improved real estate'' means improved real estate for which the improvement is a residential building.

(5) Applicability

This subsection shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on September 23, 1994.

(e) Placement of flood insurance by lender

(1) Notification to borrower of lack of coverage

If, at the time of origination or at any time during the term of a loan secured by improved real estate or by a mobile home located in an area that has been identified by the Director (at the time of the origination of the loan or at any time during the term of the loan) as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.], the lender or servicer for the loan determines that the building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by such insurance in an amount less than the amount required for the property pursuant to paragraph (1), (2), or (3) of subsection (b) of this section, the lender or servicer shall notify the borrower under the loan that the borrower should obtain, at the borrower's expense, an amount of flood insurance for the building or mobile home and such personal property that is not less than the amount under subsection (b)(1) of this section, for the term of the loan.

(2) Purchase of coverage on behalf of borrower

If the borrower fails to purchase such flood insurance within 45 days after notification under paragraph (1), the lender or servicer for the loan shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer for the loan in purchasing the insurance.

(3) Review of determination regarding required purchase

(A) In general

The borrower and lender for a loan secured by improved real estate or a mobile home may jointly request the Director to review a determination of whether the building or mobile home is located in an area having special flood hazards. Such request shall be supported by technical information relating to the improved real estate or mobile home. Not later than 45 days after the Director receives the request, the Director shall review the determination and provide to the borrower and the lender with a letter stating whether or not the building or mobile home is in an area having special flood hazards. The determination of the Director shall be final.

(B) Effect of determination

Any person to whom a borrower provides a letter issued by the Director pursuant to subparagraph (A), stating that the building or mobile home securing the loan of the borrower is not in an area having special flood hazards, shall have no obligation under this title[1] to require the purchase of flood insurance for such building or mobile home during the period determined by the Director, which shall be specified in the letter and shall begin on the date on which such letter is provided.

(C) Effect of failure to respond

If a request under subparagraph (A) is made in connection with the origination of a loan and the Director fails to provide a letter under subparagraph (A) before the later of (i) the expiration of the 45-day period under such subparagraph, or (ii) the closing of the loan, no person shall have an obligation under this title[1] to require the purchase of flood insurance for the building or mobile home securing the loan until such letter is provided.

(4) Applicability

This subsection shall apply to all loans outstanding on or after September 23, 1994.

[1] See References in Text note below.

(f) Civil monetary penalties for failure to require flood insurance or notify

(1) Civil monetary penalties against regulated lenders

Any regulated lending institution that is found to have a pattern or practice of committing violations under paragraph (2) shall be assessed a civil penalty by the appropriate Federal entity for lending regulation in the amount provided under paragraph (5).

(2) Lender violations

The violations referred to in paragraph (1) shall include—

(A) making, increasing, extending, or renewing loans in violation of—

(i) the regulations issued pursuant to subsection (b) of this section;

(ii) the escrow requirements under subsection (d) of this section; or

(iii) the notice requirements under section 1364 of the National Flood Insurance Act of 1968 [42 U.S.C. 4104a]; or

(B) failure to provide notice or purchase flood insurance coverage in violation of subsection (e) of this section.

(3) Civil monetary penalties against GSE's

(A) In general

If the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is found by the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to subsection (b)(3) of this section, the Director of such Office shall assess a civil penalty against such enterprise in the amount provided under paragraph (5) of this subsection.

(B) "Enterprise" defined

For purposes of this subsection, the term ''enterprise'' means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(4) Notice and hearing

A penalty under this subsection may be issued only after notice and an opportunity for a hearing on the record.

(5) Amount

A civil monetary penalty under this subsection may not exceed $350 for each violation under paragraph (2) or paragraph (3). The total amount of penalties assessed under this subsection against any single regulated lending institution or enterprise during any calendar year may not exceed $100,000.

(6) Lender compliance

Notwithstanding any State or local law, for purposes of this subsection, any regulated lending institution that purchases flood insurance or renews a contract for flood insurance on behalf of or as an agent of a borrower of a loan for which flood insurance is required shall be considered to have complied with the regulations issued under subsection (b) of this section.

(7) Effect of transfer on liability

Any sale or other transfer of a loan by a regulated lending institution that has committed a violation under paragraph (1), that occurs subsequent to the violation, shall not affect the liability of the transferring lender with respect to any penalty under this subsection. A lender shall not be liable for any violations relating to a loan committed by another regulated lending institution that previously held the loan.

(8) Deposit of penalties

Any penalties collected under this subsection shall be paid into the National Flood Mitigation Fund under section 1367 of the National Flood Insurance Act of 1968 [42 U.S.C. 4104d].

(9) Additional penalties

Any penalty under this subsection shall be in addition to any civil remedy or criminal penalty otherwise available.

(10) Statute of limitations

No penalty may be imposed under this subsection after the expiration of the 4-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this subsection.

(g) Other actions to remedy pattern of noncompliance

(1) Authority of Federal entities for lending regulation

A Federal entity for lending regulation may require a regulated lending institution to take such remedial actions as are necessary to ensure that the regulated lending institution complies with the requirements of the national flood insurance program if the Federal agency for lending regulation makes a determination under paragraph (2) regarding the regulated lending institution.

(2) Determination of violations

A determination under this paragraph shall be a finding that—

(A) the regulated lending institution has engaged in a pattern and practice of noncompliance in violation of the regulations issued pursuant to subsection (b), (d), or (e) of this section or the notice requirements under section 1364 of the National Flood Insurance Act of 1968 [42 U.S.C. 4104a]; and

(B) the regulated lending institution has not demonstrated measurable improvement in compliance despite the assessment of civil monetary penalties under subsection (f) of this section.

(h) Fee for determining location

Notwithstanding any other Federal or State law, any person who makes a loan secured by improved real estate or a mobile home or any servicer for such a loan may charge a reasonable fee for the costs of determining whether the building or mobile home securing the loan is located in an area having special flood hazards, but only in accordance with the following requirements:

(1) Borrower fee

The borrower under such a loan may be charged the fee, but only if the determination—

(A) is made pursuant to the making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(B) is made pursuant to a revision or updating under section 1360(f)[2] [42 U.S.C. 4101(f)] of the floodplain areas and flood-risk zones or publication of a notice or compendia under subsection (h) or (i) of section 1360[2] [42 U.S.C. 4101(h), (i)] that affects the area in which the improved real estate or mobile home securing the loan is located or that, in the determination of the Director, may reasonably be considered to require a determination under this subsection; or

(C) results in the purchase of flood insurance coverage pursuant to the requirement under subsection (e)(2) of this section.

(2) Purchaser or transferee fee

The purchaser or transferee of such a loan may be charged the fee in the case of sale or transfer of the loan.

(Pub. L. 93–234, title I, § 102, Dec. 31, 1973, 87 Stat. 978; Pub. L. 98–181, title IV, § 451(e)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 103–325, title V, §§ 522–526, 531, 582(c), Sept. 23, 1994, 108 Stat. 2257–2262, 2267, 2287.)

REFERENCES IN TEXT

The National Flood Insurance Act of 1968, referred to in subsecs. (a), (b), (d)(1), and (e)(1), and the Act, referred to in subsec. (b), is title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to this chapter (§ 4001 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

The Federal Financial Institutions Examination Council Act of 1974, referred to in subsec. (b)(1), probably means the Federal Financial Institutions Examination Council Act of 1978, Pub. L. 95–630, title X, Nov. 10, 1978, 92 Stat. 3694, as amended, which is classified principally to chapter 34 (§ 3301 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 12 and Tables.

Section 522(a) of Public Law 103–325, referred to in subsec. (b)(4)(C), was in original ''section 522(a) of such Act'', which generally amended subsec. (b) of this section.

This title, referred to in subsec. (e)(3)(B), (C), means title I of Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 977, which enacted this section and section 4104 of this title and amended sections 4001, 4013 to 4016, 4026, 4054, 4056, and 4121 of this title.

CODIFICATION

Section was enacted as part of Flood Disaster Protection Act of 1973, and not as part of National Flood Insurance Act of 1968 which comprises this chapter.

AMENDMENTS

1994—Pub. L. 103–325, § 531, substituted section catchline for former section catchline.

Subsec. (a). Pub. L. 103–325, § 582(c), struck out '', during the anticipated economic or useful life of the project,'' before ''covered by flood insurance'' and inserted at end ''The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.''

Subsec. (b). Pub. L. 103–325, § 522(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation direct such institutions not to make, increase, extend, or renew after the expiration of sixty days following December 31, 1973, any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or to the maximum limit of coverage made available with respect to the particular type of property under the Act, whichever is less.''

Subsec. (c). Pub. L. 103–325, § 522(b), inserted heading, designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Subsecs. (d) to (h). Pub. L. 103–325, §§ 523–526, added subsecs. (d) to (h).

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 582(c) of Pub. L. 103–325 applicable to disasters declared after Sept. 23, 1994, see section 5154a(e) of this title.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4013. Nature and limitation of insurance coverage

(a) Regulations respecting general terms and conditions of insurability

The Director shall from time to time, after consultation with the advisory committee authorized under section 4025 of this title, appropriate representatives of the pool formed or otherwise created under section 4051 of this title, and appropriate representatives of the insurance authorities of the respective States, provide by regulation for general terms and conditions of insurability which shall be applicable to properties eligible for flood insurance coverage under section 4012 of this title, including—

(1) the types, classes, and locations of any such properties which shall be eligible for flood insurance;

(2) the nature and limits of loss or damage in any areas (or subdivisions thereof) which may be covered by such insurance;

(3) the classification, limitation, and rejection of any risks which may be advisable;

[2] So in original. Probably should be followed by ''of the National Flood Insurance Act of 1968''.

(4) appropriate minimum premiums;

(5) appropriate loss-deductibles; and

(6) any other terms and conditions relating to insurance coverage or exclusion which may be necessary to carry out the purposes of this chapter.

(b) Regulations respecting amount of coverage

In addition to any other terms and conditions under subsection (a) of this section, such regulations shall provide that—

(1) any flood insurance coverage based on chargeable premium rates under section 4015 of this title which are less than the estimated premium rates under section 4014(a)(1) of this title shall not exceed—

(A) in the case of residential properties—

(i) $35,000 aggregate liability for any single-family dwelling, and $100,000 for any residential structure containing more than one dwelling unit,

(ii) $10,000 aggregate liability per dwelling unit for any contents related to such unit, and

(iii) in the States of Alaska and Hawaii, and in the Virgin Islands and Guam; the limits provided in clause (i) of this sentence shall be: $50,000 aggregate liability for any single-family dwelling, and $150,000 for any residential structure containing more than one dwelling unit;

(B) in the case of business properties which are owned or leased and operated by small business concerns, an aggregate liability with respect to any single structure, including any contents thereof related to premises of small business occupants (as that term is defined by the Director), which shall be equal to (i) $100,000 plus (ii) $100,000 multiplied by the number of such occupants and shall be allocated among such occupants (or among the occupant or occupants and the owner) under regulations prescribed by the Director; except that the aggregate liability for the structure itself may in no case exceed $100,000; and

(C) in the case of church properties and any other properties which may become eligible for flood insurance under section 4012 of this title—

(i) $100,000 aggregate liability for any single structure, and

(ii) $100,000 aggregate liability per unit for any contents related to such unit; and

(2) in the case of any residential property for which the risk premium rate is determined in accordance with the provisions of section 4014(a)(1) of this title, additional flood insurance in excess of the limits specified in clause (i) of subparagraph (A) of paragraph (1) shall be made available to every insured upon renewal and every applicant for insurance so as to enable such insured or applicant to receive coverage up to a total amount (including such limits specified in paragraph (1)(A)(i)) of $250,000;

(3) in the case of any residential property for which the risk premium rate is determined in accordance with the provisions of section 4014(a)(1) of this title, additional flood insurance in excess of the limits specified in clause (ii) of subparagraph (A) of paragraph (1) shall be made available to every insured upon renewal and every applicant for insurance so as to enable any such insured or applicant to receive coverage up to a total amount (including such limits specified in paragraph (1)(A)(ii)) of $100,000;

(4) in the case of any nonresidential property, including churches, for which the risk premium rate is determined in accordance with the provisions of section 4014(a)(1) of this title, additional flood insurance in excess of the limits specified in subparagraphs (B) and (C) of paragraph (1) shall be made available to every insured upon renewal and every applicant for insurance, in respect to any single structure, up to a total amount (including such limit specified in subparagraph (B) or (C) of paragraph (1), as applicable) of $500,000 for each structure and $500,000 for any contents related to each structure; and

(5) any flood insurance coverage which may be made available in excess of the limits specified in subparagraph (A), (B), or (C) of paragraph (1), shall be based only on chargeable premium rates under section 4015 of this title, which are not less than the estimated premium rates under section 4014(a)(1) of this title, and the amount of such excess coverage shall not in any case exceed an amount equal to the applicable limit so specified (or allocated) under paragraph (1)(C), (2), (3), or (4), as applicable.

(c) Effective date of policies

(1) Waiting period

Except as provided in paragraph (2), coverage under a new contract for flood insurance coverage under this chapter entered into after September 23, 1994, and any modification to coverage under an existing flood insurance contract made after September 23, 1994, shall become effective upon the expiration of the 30-day period beginning on the date that all obligations for such coverage (including completion of the application and payment of any initial premiums owed) are satisfactorily completed.

(2) Exception

The provisions of paragraph (1) shall not apply to—

(A) the initial purchase of flood insurance coverage under this chapter when the purchase of insurance is in connection with the making, increasing, extension, or renewal of a loan; or

(B) the initial purchase of flood insurance coverage pursuant to a revision or updating of floodplain areas or flood-risk zones under section 4101(f) of this title, if such purchase occurs during the 1-year period beginning upon publication of notice of the revision or updating under section 4101(h) of this title.

(Pub. L. 90–448, title XIII, § 1306, Aug. 1, 1968, 82 Stat. 575; Pub. L. 92–213, § 2(c)(2), Dec. 22, 1971, 85 Stat. 775; Pub. L. 93–234, title I, § 101, Dec. 31, 1973, 87 Stat. 977; Pub. L. 95–128, title VII, § 704(a), Oct. 12, 1977, 91 Stat. 1145; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229;

Pub. L. 100–242, title V, § 544(a), Feb. 5, 1988, 101 Stat. 1940; Pub. L. 100–628, title X, § 1086(a), Nov. 7, 1988, 102 Stat. 3278; Pub. L. 100–707, title I, § 109(*o*), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 101–137, § 1(c), Nov. 3, 1989, 103 Stat. 824; Pub. L. 101–508, title II, § 2302(d), Nov. 5, 1990, 104 Stat. 1388–23; Pub. L. 103–325, title V, §§ 552(a), 573, 579(a), Sept. 23, 1994, 108 Stat. 2269, 2278, 2284.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(6) and (c)(1), (2)(A), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–325, § 573(a)(1), substituted ''a total amount (including such limits specified in paragraph (1)(A)(i)) of $250,000'' for ''an amount of $150,000 under the provisions of this clause''.

Subsec. (b)(3). Pub. L. 103–325, § 573(a)(2), substituted ''a total amount (including such limits specified in paragraph (1)(A)(ii)) of $100,000'' for ''an amount of $50,000 under the provisions of this clause''.

Subsec. (b)(4). Pub. L. 103–325, § 573(a)(3), added par. (4) and struck out former par. (4) which read as follows: ''in the case of business property owned, leased, or operated by small business concerns for which the risk premium rate is determined in accordance with the provisions of section 4014(a)(1) of this title, additional flood insurance in excess of the limits specified in subparagraph (B) of paragraph (1) shall be made available to every such owner, lessee, or operator in respect to any single structure, including any contents thereof, related to premises of small business occupants (as that term is defined by the Director), up to an amount equal to (i) $250,000 plus (ii) $200,000 multiplied by the number of such occupants which coverage shall be allocated among such occupants (or among the occupant or occupants and the owner) in accordance with the regulations prescribed by the Director pursuant to such subparagraph (B), except that the aggregate liability for the structure itself may in no case exceed $250,000;''.

Subsec. (b)(5). Pub. L. 103–325, § 573(b)(1), substituted a period for ''; and'' at end.

Subsec. (b)(6). Pub. L. 103–325, § 573(b)(2), struck out par. (6) which read as follows: ''the flood insurance purchase requirements of section 4012a of this title do not apply to the additional flood insurance limits made available in excess of twice the limits made available under paragraph (1).''

Subsec. (c). Pub. L. 103–325, § 579(a), added subsec. (c).

Pub. L. 103–325, § 552(a), struck out subsec. (c) which related to schedule for payment of flood insurance for structures on land subject to imminent collapse or subsidence.

1990—Subsec. (c)(7). Pub. L. 101–508 substituted ''September 30, 1995'' for ''September 30, 1991''.

1989—Subsec. (c)(7). Pub. L. 101–137 substituted ''September 30, 1991'' for ''September 30, 1989''.

1988—Subsec. (c). Pub. L. 100–242 added subsec. (c).

Subsec. (c)(1)(A). Pub. L. 100–628 substituted ''following'' for ''Following'' in cls. (i) and (ii).

Subsec. (c)(5). Pub. L. 100–707 substituted ''Disaster Relief and Emergency Assistance Act'' for ''Disaster Relief Act of 1974''.

1983—Subsecs. (a), (b)(1)(B), (4). Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

1977—Subsec. (b)(2). Pub. L. 95–128 added par. (2) and redesignated former par. (2) as (5).

Subsec. (b)(3), (4). Pub. L. 95–128 added pars. (3) and (4).

Subsec. (b)(5). Pub. L. 95–128 redesignated former par. (2) as (5), struck out ''(or allocated to any person under subparagraph (B) of such paragraph)'' after ''paragraph (1)'', and inserted ''under paragraph (1)(C), (2), (3), or (4), as applicable'' after ''(or allocated)''.

Subsec. (b)(6). Pub. L. 95–128 added par. (6).

1973—Subsec. (b)(1)(A). Pub. L. 93–234, § 101(a), in increasing limits of coverage, struck out following introductory text ''residential properties'' the clause ''which are designed for the occupancy of from one to four families''; substituted provisions in cl. (i) ''$35,000 aggregate liability for any single-family dwelling, and $100,000 for any residential structure containing more than one dwelling unit'' for ''$17,500 aggregate liability for any dwelling unit, and $30,000 for any single dwelling structure containing more than one dwelling unit''; increased cl. (ii) limits to $10,000 from $5,000 and added cl. (iii).

Subsec. (b)(1)(B). Pub. L. 93–234, § 101(b), substituted ''$100,000'' for ''$30,000'' in cl. (i), for ''$5,000'' in cl. (ii), and for ''$30,000'' in exception provision.

Subsec. (b)(1)(C). Pub. L. 93–234, § 101(c), increased cl. (i) limits to $100,000 from $30,000 and substituted cl. (ii) ''$100,000 aggregate liability per unit for any contents related to such unit'' for ''$5,000 aggregate liability per dwelling unit for any contents related to such unit in the case of residential properties, or per occupant (as that term is defined by the Secretary) for any contents related to the premises occupied in the case of any other properties''.

1971—Subsec. (b)(1)(C). Pub. L. 92–213 inserted ''church properties, and'' before ''any other properties which may become''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 544(b) of Pub. L. 100–242 provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Feb. 5, 1988].''

SAVINGS PROVISION

Pub. L. 103–325, title V, § 552(c), Sept. 23, 1994, 108 Stat. 2269, required the Director of the Federal Emergency Management Agency to make payments under flood insurance contracts based on commitments made before the expiration of the 1-year period beginning on Sept. 23, 1994, pursuant to the authority under subsec. (c) of this section or section 552(b) of Pub. L. 103–325, formerly set out below.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TRANSITION PHASE

Pub. L. 103–325, title V, § 552(b), Sept. 23, 1994, 108 Stat. 2269, permitted the Director of the Federal Emergency Management Agency to pay amounts under flood insurance contracts for demolition or relocation of structures as provided in subsec. (c) of this section (as in effect immediately before the enactment of Pub. L. 103–325), during the 1-year period beginning on Sept. 23, 1994.

§ 4014. Estimates of premium rates

(a) Studies and investigations

The Director is authorized to undertake and carry out such studies and investigations and receive or exchange such information as may be necessary to estimate, and shall from time to time estimate, on an area, subdivision, or other appropriate basis—

(1) the risk premium rates for flood insurance which—

(A) based on consideration of the risk involved and accepted actuarial principles, and

(B) including—

(i) the applicable operating costs and allowances set forth in the schedules prescribed under section 4018 of this title and reflected in such rates,

(ii) any administrative expenses (or portion of such expenses) of carrying out the flood insurance program which, in his discretion, should properly be reflected in such rates, and

(iii) any remaining administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 4101 of this title) not included under clause (ii), which shall be recovered by a fee charged to policyholders and such fee shall not be subject to any agents' commissions, company expense allowances, or State or local premium taxes,

would be required in order to make such insurance available on an actuarial basis for any types and classes of properties for which insurance coverage is available under section 4012(a) of this title (or is recommended to the Congress under section 4012(b) of this title);

(2) the rates, if less than the rates estimated under paragraph (1), which would be reasonable, would encourage prospective insureds to purchase flood insurance, and would be consistent with the purposes of this chapter, and which, together with a fee charged to policyholders that shall not be not subject to any agents' commission, company expenses allowances, or State or local premium taxes, shall include any administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 4101 of this title); and

(3) the extent, if any, to which federally assisted or other flood protection measures initiated after August 1, 1968, affect such rates.

(b) Utilization of services of other Departments and agencies

In carrying out subsection (a) of this section, the Director shall, to the maximum extent feasible and on a reimbursement basis, utilize the services of the Department of the Army, the Department of the Interior, the Department of Agriculture, the Department of Commerce, and the Tennessee Valley Authority, and, as appropriate, other Federal departments or agencies, and for such purposes may enter into agreements or other appropriate arrangements with any persons.

(c) Priority to studies and investigations in States or areas evidencing positive interest in securing insurance under program

The Director shall give priority to conducting studies and investigations and making estimates under this section in those States or areas (or subdivisions thereof) which he has determined have evidenced a positive interest in securing flood insurance coverage under the flood insurance program.

(d) Parishes of Louisiana; premium rates

Notwithstanding any other provision of law, any structure existing on December 31, 1973, and located within Avoyelles, Evangeline, Rapides, or Saint Landry Parish in the State of Louisiana, which the Secretary determines is subject to additional flood hazards as a result of the construction or operation of the Atchafalaya Basin Levee System, shall be eligible for flood insurance under this chapter (if and to the extent it is eligible for such insurance under the other provisions of this chapter) at premium rates that shall not exceed those which would be applicable if such additional hazards did not exist.

(e) Eligibility of community making adequate progress on construction of flood protection system for rates not exceeding those applicable to completed flood protection system; determination of adequate progress

Notwithstanding any other provision of law, any community that has made adequate progress, acceptable to the Director, on the construction of a flood protection system which will afford flood protection for the one-hundred year frequency flood as determined by the Director, shall be eligible for flood insurance under this chapter (if and to the extent it is eligible for such insurance under the other provisions of this chapter) at premium rates not exceeding those which would be applicable under this section if such flood protection system had been completed. The Director shall find that adequate progress on the construction of a flood protection system as required herein has been only if (1) 100 percent of the project cost of the system has been authorized, (2) at least 60 percent of the project cost of the system has been appropriated, (3) at least 50 percent of the project cost of the system has been expended, and (4) the system is at least 50 percent completed.

(f) Availability of flood insurance in communities restoring disaccredited flood protection systems; criteria; rates

Notwithstanding any other provision of law, this subsection shall only apply in a community which has been determined by the Administrator of the Federal Emergency Management Agency to be in the process of restoring flood protection afforded by a flood protection system that had been previously accredited on a Flood Insurance Rate Map as providing 100-year frequency flood protection but no longer does so. Except as provided in this subsection, in such a community, flood insurance shall be made available to those properties impacted by the disaccreditation of the flood protection system at premium rates that do not exceed those

which would be applicable to any property located in an area of special flood hazard, the construction of which was started prior to the effective date of the initial Flood Insurance Rate Map published by the Director for the community in which such property is located. A revised Flood Insurance Rate Map shall be prepared for the community to delineate as Zone AR the areas of special flood hazard that result from the disaccreditation of the flood protection system. A community will be considered to be in the process of restoration if—

(1) the flood protection system has been deemed restorable by a Federal agency in consultation with the local project sponsor;

(2) a minimum level of flood protection is still provided to the community by the disaccredited system; and

(3) restoration of the flood protection system is scheduled to occur within a designated time period and in accordance with a progress plan negotiated between the community and the Federal Emergency Management Agency.

Communities that the Administrator of the Federal Emergency Management Agency determines to meet the criteria set forth in paragraphs (1) and (2) as of January 1, 1992, shall not be subject to revised Flood Insurance Rate Maps that contravene the intent of this subsection. Such communities shall remain eligible for C zone rates for properties located in zone AR for any policy written prior to promulgation of final regulations for this section. Floodplain management criteria for such communities shall not require the elevation of improvements to existing structures and shall not exceed 3 feet above existing grade for new construction, provided the base flood elevation based on the disaccredited flood control system does not exceed five feet above existing grade, or the remaining new construction in such communities is limited to infill sites, rehabilitation of existing structures, or redevelopment of previously developed areas.

The Administrator of the Federal Emergency Management Agency shall develop and promulgate regulations to implement this subsection, including minimum floodplain management criteria, within 24 months after October 28, 1992.

(Pub. L. 90–448, title XIII, § 1307, Aug. 1, 1968, 82 Stat. 576; Pub. L. 93–234, title I, § 109, Dec. 31, 1973, 87 Stat. 980; Pub. L. 93–383, title VIII, § 816(b), Aug. 22, 1974, 88 Stat. 739; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 101–508, title II, § 2302(e)(1), Nov. 5, 1990, 104 Stat. 1388–24; Pub. L. 102–550, title IX, § 928, Oct. 28, 1992, 106 Stat. 3886; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2), (d), and (e), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–550 added subsec. (f).

1990—Subsec. (a)(1)(B)(iii). Pub. L. 101–508, § 2302(e)(1)(A)–(C), added cl. (iii).

Subsec. (a)(2). Pub. L. 101–508, § 2302(e)(1)(D), inserted before semicolon '', and which, together with a fee charged to policyholders that shall not be not subject to any agents' commission, company expenses allowances, or State or local premium taxes, shall include any administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 4101 of this title)''.

1983—Subsecs. (a) to (c), (e). Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

1974—Subsec. (e). Pub. L. 93–383 added subsec. (e).

1973—Subsec. (d). Pub. L. 93–234 added subsec. (d).

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (f) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

FEES

Pub. L. 108–7, div. K, title III, Feb. 20, 2003, 117 Stat. 517, provided in part: ''That beginning in fiscal year 2003 and thereafter, fees authorized in 42 U.S.C. 4014(a)(1)(B)(iii) shall be collected only if provided in advance in appropriations acts.''

STUDY OF ECONOMIC EFFECTS OF CHARGING ACTUARIALLY BASED PREMIUM RATES FOR PRE-FIRM STRUCTURES

Pub. L. 103–325, title V, § 578, Sept. 23, 1994, 108 Stat. 2284, required the Director of the Federal Emergency Management Agency to conduct a study of the economic effects that would result from increasing premium rates for flood insurance coverage for pre-FIRM structures and submit a report to Congress no later than 12 months after Sept. 23, 1994.

SEA LEVEL RISE STUDY

Pub. L. 101–137, § 5, Nov. 3, 1989, 103 Stat. 825, directed Director of Federal Emergency Management Agency to conduct a study to determine the impact of relative sea level rise on the flood insurance rate maps, such study also to project the economic losses associated with estimated sea level rise and aggregate such data for the United States as a whole and by region, with Director to report results of study to Congress not later than one year after Nov. 3, 1989.

§ 4015. Chargeable premium rates

(a) Establishment; terms and conditions

On the basis of estimates made under section 4014 of this title, and such other information as may be necessary, the Director shall from time to time, after consultation with the advisory committee authorized under section 4025 of this title, appropriate representatives of the pool formed or otherwise created under section 4051 of this title, and appropriate representatives of the insurance authorities of the respective States, prescribe by regulation—

(1) chargeable premium rates for any types and classes of properties for which insurance coverage shall be available under section 4012 of this title (at less than the estimated risk premium rates under section 4014(a)(1) of this title, where necessary), and

(2) the terms and conditions under which, and the areas (including subdivisions thereof) within which, such rates shall apply.

(b) Considerations for rates

Such rates shall, insofar as practicable, be—

(1) based on a consideration of the respective risks involved, including differences in risks due to land use measures, flood-proofing, flood forecasting, and similar measures.

(2) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or, if less than such amount, consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance and with the purposes of this chapter,

(3) adequate, together with the fee under paragraph (1)(B)(iii) or (2) of section 4014(a) of this title, to provide for any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 4101 of this title), and

(4) stated so as to reflect the basis for such rates, including the differences (if any) between the estimated risk premium rates under section 4014(a)(1) of this title and the estimated rates under section 4014(a)(2) of this title.

(c) Actuarial rate properties

Subject only to the limitations provided under paragraphs (1) and (2), the chargeable rate shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 4014(a)(1) of this title with respect to the following properties:

(1) Post-firm properties

Any property the construction or substantial improvement of which the Director determines has been started after December 31, 1974, or started after the effective date of the initial rate map published by the Director under paragraph (2) of section 4101 of this title for the area in which such property is located, whichever is later, except that the chargeable rate for properties under this paragraph shall be subject to the limitation under subsection (e) of this section.

(2) Certain leased coastal and river properties

Any property leased from the Federal Government (including residential and nonresidential properties) that the Director determines is located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.

(d) Payment of certain sums to Director; deposits in Fund

With respect to any chargeable premium rate prescribed under this section, a sum equal to the portion of the rate that covers any administrative expenses of carrying out the flood insurance and floodplain management programs which have been estimated under paragraphs (1)(B)(ii) and (1)(B)(iii) of section 4014(a) of this title or paragraph (2) of such section (including the fees under such paragraphs), shall be paid to the Director. The Director shall deposit the sum in the National Flood Insurance Fund established under section 4017 of this title.

(e) Annual limitation on premium increases

Except with respect to properties described under paragraph (2) or (3)[1] of subsection (c) of this section, and notwithstanding any other provision of this chapter, the chargeable risk premium rates for flood insurance under this chapter for any properties within any single risk classification may not be increased by an amount that would result in the average of such rate increases for properties within the risk classification during any 12-month period exceeding 10 percent of the average of the risk premium rates for properties within the risk classification upon the commencement of such 12-month period.

(f) Adjustment of premium

Notwithstanding any other provision of law, if the Director determines that the holder of a flood insurance policy issued under this chapter is paying a lower premium than is required under this section due to an error in the flood plain determination, the Director may only prospectively charge the higher premium rate.

(Pub. L. 90–448, title XIII, § 1308, Aug. 1, 1968, 82 Stat. 576; Pub. L. 93–234, title I, § 103, Dec. 31, 1973, 87 Stat. 978; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 101–508, title II, § 2302(e)(2), Nov. 5, 1990, 104 Stat. 1388–24; Pub. L. 103–325, title V, § 572(a), Sept. 23, 1994, 108 Stat. 2277; Pub. L. 108–264, title I, § 106, title II, § 209, June 30, 2004, 118 Stat. 724, 727.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2) and (e), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

This chapter, referred to in subsec. (f), was in the original ''this Act'', and was translated as reading ''this title'', meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, as amended, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter, to reflect the probable intent of Congress. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

[1] So in original. Subsec. (c) of this section does not contain a par. (3).

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–264, § 106(a), added subsec. (c) and struck out former subsec. (c) which read as follows ''Subject only to the limitation under subsection (e) of this section, the chargeable rate with respect to any property, the construction or substantial improvements of which the Director determines has been started after December 31, 1974, or the effective date of the initial rate map published by the Director under paragraph (2) of section 4101 of this title for the area in which such property is located, whichever is later, shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 4014(a)(1) of this title.''

Subsec. (e). Pub. L. 108–264, § 106(b), substituted ''Except with respect to properties described under paragraph (2) or (3) of subsection (c) of this section, and notwithstanding'' for ''Notwithstanding''.

Subsec. (f). Pub. L. 108–264, § 209, added subsec. (f).

1994—Subsec. (c). Pub. L. 103–325, § 572(a)(1), substituted ''Subject only to the limitation under subsection (e) of this section'' for ''Notwithstanding any other provision of this chapter''.

Subsec. (e). Pub. L. 103–325, § 572(a)(2), added subsec. (e).

1990—Subsec. (b)(3), (4). Pub. L. 101–508, § 2302(e)(2)(A), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d). Pub. L. 101–508, § 2302(e)(2)(B), added subsec. (d) and struck out former subsec. (d) which read as follows: ''In the event any chargeable premium rate prescribed under this section—

''(1) is a rate which is not less than the applicable estimated risk premium rate under section 4014(a)(1) of this title, and

''(2) includes any amount for administrative expenses of carrying out the flood insurance program which have been estimated under clause (ii) of section 4014(a)(1)(B) of this title,

a sum equal to such amount shall be paid to the Director, and he shall deposit such sum in the National Flood Insurance Fund established under section 4017 of this title.''

1983—Subsecs. (a), (c), (d). Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

1973—Subsec. (c). Pub. L. 93–234 substituted ''started after December 31, 1974, or the effective date of the initial rate map published by the Secretary under paragraph (2) of section 4101 of this title for the area in which such property is located, whichever is later'' for ''started after the identification of the area in which such property is located has been published under paragraph (1) of section 4101 of this title''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

LIMITATION ON PREMIUMS

Section 2302(e)(5) of Pub. L. 101–508 provided that, notwithstanding section 541(d) of Pub. L. 100–242, formerly set out below, premium rates charged for flood insurance under any program established pursuant to this chapter could be increased by more than 10 percent during fiscal year 1991, with certain exceptions.

Pub. L. 100–242, title V, § 541(d), Feb. 5, 1988, 101 Stat. 1939, as amended by Pub. L. 101–137, § 1(d), Nov. 3, 1989, 103 Stat. 824; Pub. L. 101–508, title II, § 2302(c), Nov. 5, 1990, 104 Stat. 1388–23, limited increases in premium rates charged for flood insurance under programs established pursuant to this chapter during period beginning Feb. 5, 1988, and ending Sept. 30, 1995, to prorated annual rate of 10 percent, prior to repeal by Pub. L. 103–325, title V, § 572(b), Sept. 23, 1994, 108 Stat. 2278.

Section 451(g)(1) of Pub. L. 98–181 provided that premium rates charged for flood insurance under any program established pursuant to this chapter could not be increased during the period beginning Nov. 30, 1983, and ending Sept. 30, 1984.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4016. Financing provisions; issuance of notes or other obligations; limitation; report to Congressional committees; deposits in Fund

(a) All authority which was vested in the Director by virtue of section 2414(e) of this title (pertaining to the issue of notes or other obligations to the Secretary of the Treasury), as amended by subsections (a) and (b) of section 1303 of this Act, shall be available to the Director for the purpose of carrying out the flood insurance program under this chapter; except that the total amount of notes and obligations which may be issued by the Director pursuant to such authority (1) without the approval of the President, may not exceed $500,000,000, and (2) with the approval of the President, may not exceed $1,500,000,000 through the date specified in section 4026 of this title, and $1,000,000,000 thereafter; except that, through September 30, 2008, clause (2) of this sentence shall be applied by substituting ''$20,775,000,000'' for ''$1,500,000,000''. The Director shall report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at any time when he requests the approval of the President in accordance with the preceding sentence.

(b) Any funds borrowed by the Director under this authority shall, from time to time, be deposited in the National Flood Insurance Fund established under section 4017 of this title.

(Pub. L. 90–448, title XIII, § 1309, Aug. 1, 1968, 82 Stat. 577; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 93–234, title I, § 104, Dec. 31, 1973, 87 Stat. 979; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 98–479, title II, § 204(g), Oct. 17, 1984, 98 Stat. 2233;

Pub. L. 104–208, div. A, title V, Sept. 30, 1996, 110 Stat. 3009–521; Pub. L. 105–65, title III, Oct. 27, 1997, 111 Stat. 1377; Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2502; Pub. L. 106–74, title III, Oct. 20, 1999, 113 Stat. 1088; Pub. L. 106–377, §1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–47; Pub. L. 107–73, title III, Nov. 26, 2001, 115 Stat. 689; Pub. L. 108–3, §2(a)(1), Jan. 13, 2003, 117 Stat. 7; Pub. L. 108–171, §2(a)(2), Dec. 6, 2003, 117 Stat. 2064; Pub. L. 108–199, div. H, §136(a)(2), Jan. 23, 2004, 118 Stat. 442; Pub. L. 108–264, title I, §101(a), June 30, 2004, 118 Stat. 714; Pub. L. 109–65, §2, Sept. 20, 2005, 119 Stat. 1998; Pub. L. 109–106, §2, Nov. 21, 2005, 119 Stat. 2288; Pub. L. 109–208, §2, Mar. 23, 2006, 120 Stat. 317.)

REFERENCES IN TEXT

Section 1303 of this Act, referred to in subsec. (a), means section 1303 of Pub. L. 90–448, which amended section 2414(e) of this title.

This chapter, referred to in subsec. (a), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–208 substituted ''$20,775,000,000'' for ''$18,500,000,000'' in first sentence.

2005—Subsec. (a). Pub. L. 109–106 substituted ''$18,500,000,000'' for ''$3,500,000,000'' in first sentence.

Pub. L. 109–65 inserted ''; except that, through September 30, 2008, clause (2) of this sentence shall be applied by substituting '$3,500,000,000' for '$1,500,000,000' '' before period at end of first sentence.

2004—Subsec. (a). Pub. L. 108–264, §101(a), which directed amendment of first sentence of subsec. (a) by substituting ''through the date specified in section 4026 of this title, and'' for '' 'through December' and all that follows through ', and' '', could not be executed because the language to be struck out did not appear subsequent to amendment by Pub. L. 108–171. See 2003 Amendment note below.

Pub. L. 108–199 made amendment identical to that made by Pub. L. 108–171. See 2003 Amendment note below.

2003—Subsec. (a)(2). Pub. L. 108–171 substituted ''the date specified in section 4026 of this title'' for ''December 31, 2003''.

Pub. L. 108–3 substituted ''December 31, 2003'' for ''December 31, 2002''.

2001—Subsec. (a)(2). Pub. L. 107–73 substituted ''2002'' for ''2001''.

2000—Subsec. (a)(2). Pub. L. 106–377 substituted ''December 31, 2001'' for ''September 30, 2000''.

1999—Subsec. (a)(2). Pub. L. 106–74, which directed substitution of ''2000'' for ''1999'' in section ''1309(a)(2) of the National Flood Insurance Act'', was executed to subsec. (a)(2) of this section, which is section 1309 of the National Flood Insurance Act of 1968, to reflect the probable intent of Congress.

1998—Subsec. (a)(2). Pub. L. 105–276, which directed substitution of ''1999'' for ''1998'' in section ''1309(a)(2) of the National Flood Insurance Act'', was executed by making the substitution in subsec. (a)(2) of this section, which is section 1309 of the National Flood Insurance Act of 1968, to reflect the probable intent of Congress.

1997—Subsec. (a)(2). Pub. L. 105–65, which directed substitution of ''1998'' for ''1997'' in section ''1309(a)(2) of the National Flood Insurance Act'', was executed by making the substitution in subsec. (a)(2) of this section, which is section 1309 of the National Flood Insurance Act of 1968, to reflect the probable intent of Congress.

1996—Subsec. (a)(2). Pub. L. 104–208 substituted ''$1,500,000,000 through September 30, 1997, and $1,000,000,000 thereafter'' for ''$1,000,000,000''.

1984—Subsec. (a). Pub. L. 98–479 substituted '', Finance and Urban Affairs'' for ''and Currency'' and inserted a comma after ''Housing'' in last sentence.

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

1973—Subsec. (a). Pub. L. 93–234 substituted provisions respecting issuance of notes and obligation for $500,000,000 without approval of President and for $1,000,000,000 with approval of President, for former provision prescribing a $250,000,000 limitation, struck out provision rescinding authority of Secretary to issue notes and obligations under section 2414(e) of this title, and provided for report to Congressional Committees when the approval of the President is requested.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–199, div. H, §136(b), Jan. 23, 2004, 118 Stat. 442, provided that: ''The amendments made by this section [amending this section and sections 4026, 4056, and 4127 of this title] shall be considered to have taken effect on December 31, 2003.''

EFFECTIVE DATE OF 2003 AMENDMENTS

Pub. L. 108–171, §2(b), Dec. 6, 2003, 117 Stat. 2064, provided that: ''The amendments made by this section [amending this section and sections 4026, 4056, and 4127 of this title] shall be considered to have taken effect on December 31, 2003.''

Pub. L. 108–3, §2(b), Jan. 13, 2003, 117 Stat. 7, provided that: ''The amendments made by this section [amending this section and sections 4026, 4056, and 4127 of this title] shall be considered to have taken effect on December 31, 2002.''

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Housing and Home Finance Agency and head thereof transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provides that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency has lapsed.

§ 4017. National Flood Insurance Fund

(a) Establishment; availability

To carry out the flood insurance program authorized by this chapter, the Director shall establish in the Treasury of the United States a National Flood Insurance Fund (hereinafter referred to as the ''fund'') which shall be an account separate from any other accounts or funds available to the Director and shall be available as described in subsection (f) of this section, without fiscal year limitation (except as otherwise provided in this section)—

(1) for making such payments as may, from time to time, be required under section 4054 of this title;

(2) to pay reinsurance claims under the excess loss reinsurance coverage provided under section 4055 of this title;

(3) to repay to the Secretary of the Treasury such sums as may be borrowed from him (together with interest) in accordance with the authority provided in section 4016 of this title; and

(4) to the extent approved in appropriations Acts, to pay any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 4101 of this title);

(5) for the purposes specified in subsection (d) of this section under the conditions provided therein;

(6) for carrying out the program under section 4022(b) of this title;

(7) for transfers to the National Flood Mitigation Fund, but only to the extent provided in section 4104d(b)(1) of this title;

(8) for financial assistance under section 4102a of this title to States and communities for taking actions under such section with respect to severe repetitive loss properties, but only to the extent provided in section 4102a(i) of this title; and

(9) for funding, not to exceed $10,000,000 in any fiscal year, for mitigation actions under section 4030 of this title, except that, notwithstanding any other provision of this chapter, amounts made available pursuant to this paragraph shall not be subject to offsetting collections through premium rates for flood insurance coverage under this chapter.

(b) Credits to Fund

The fund shall be credited with—

(1) such funds borrowed in accordance with the authority provided in section 4016 of this title as may from time to time be deposited in the fund;

(2) premiums, fees, or other charges which may be paid or collected in connection with the excess loss reinsurance coverage provided under section 4055 of this title;

(3) such amounts as may be advanced to the fund from appropriations in order to maintain the fund in an operative condition adequate to meet its liabilities;

(4) interest which may be earned on investments of the fund pursuant to subsection (c) of this section;

(5) such sums as are required to be paid to the Director under section 4015(d) of this title; and

(6) receipts from any other operations under this chapter (including premiums under the conditions specified in subsection (d) of this section, and salvage proceeds, if any, resulting from reinsurance coverage).

(c) Investment of moneys in obligations issued or guaranteed by United States

If, after—

(1) all outstanding obligations of the fund have been liquidated, and

(2) any outstanding amounts which may have been advanced to the fund from appropriations authorized under section 4127(a)(2)(B) of this title have been credited to the appropriation from which advanced, with interest accrued at the rate prescribed under section 2414(e) of this title, as in effect immediately prior to August 1, 1968,

the Director determines that the moneys of the fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

(d) Availability of Fund if operation of program is carried out through facilities of Federal Government

In the event the Director makes a determination in accordance with the provisions of section 4071 of this title that operation of the flood insurance program, in whole or in part, should be carried out through the facilities of the Federal Government, the fund shall be available for all purposes incident thereto, including—

(1) cost incurred in the adjustment and payment of any claims for losses, and

(2) payment of applicable operating costs set forth in the schedules prescribed under section 4018 of this title,

for so long as the program is so carried out, and in such event any premiums paid shall be deposited by the Director to the credit of the fund.

(e) Annual budget

An annual business-type budget for the fund shall be prepared, transmitted to the Congress, considered, and enacted in the manner prescribed by sections 9103 and 9104 of title 31 for wholly-owned Government corporations.

(f) Availability of funds dependent on future appropriations acts

The fund shall be available, with respect to any fiscal year beginning on or after October 1, 1981, only to the extent approved in appropriation Acts; except that the fund shall be available for the purpose described in subsection (d)(1) of this section without such approval.

(Pub. L. 90–448, title XIII, § 1310, Aug. 1, 1968, 82 Stat. 577; Pub. L. 97–35, title III, § 341(c), Aug. 13, 1981, 95 Stat. 419; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 98–479, title II, § 203(j)(1), Oct. 17, 1984, 98 Stat. 2231; Pub. L. 100–242, title V, § 545(d), Feb. 5, 1988, 101 Stat. 1942; Pub. L. 101–508, title II, § 2302(e)(3), Nov. 5, 1990, 104 Stat. 1388–24; Pub. L. 103–325, title V, §§ 542, 554(b), 577(h), Sept. 23, 1994, 108 Stat. 2269, 2274, 2283; Pub. L. 108–264, title I, §§ 102(b), 104(b), June 30, 2004, 118 Stat. 721, 723.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(6), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

2004—Subsec. (a)(7), (8). Pub. L. 108–264, § 102(b), struck out ''and'' at end of par. (7), added par. (8), and struck out former par. (8) which read as follows: ''for costs of preparing the report under section 577 of the Riegle Community Development and Regulatory Improvement Act of 1994, except that the fund shall be available for the purpose under this paragraph in an amount not to exceed an aggregate of $5,000,000 over the 2-year period beginning on September 23, 1994.''

Subsec. (a)(9). Pub. L. 108–264, § 104(b), added par. (9).

1994—Subsec. (a). Pub. L. 103–325, §§ 554(b)(1), 577(h)(1), in introductory provisions, substituted ''shall'' for ''is authorized to'' after ''Director'', inserted ''an account separate from any other accounts or funds available to the Director and shall be'' after ''which shall be'', and inserted ''(except as otherwise provided in this section)'' after ''without fiscal year limitation''.

Subsec. (a)(6) to (8). Pub. L. 103–325, §§ 542, 554(b)(2), 577(h)(2), added pars. (6) to (8), respectively.

1990—Subsec. (a)(4). Pub. L. 101–508 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''to pay such administrative expenses (or portion of such expenses) of carrying out the flood insurance program as he may deem necessary; and''.

1988—Subsec. (e). Pub. L. 100–242 substituted ''title 31, United States Code,'' for ''title 31, United States Code'', which for purposes of codification was translated as ''title 31'', requiring no change in text.

1984—Subsec. (e). Pub. L. 98–479 substituted ''sections 9103 and 9104 of title 31'' for ''law (sections 102, 103, and 104 of the Government Corporations Control Act (31 U.S.C. 847–849))''.

1983—Subsecs. (a), (b)(5), (c), (d). Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

1981—Subsec. (a). Pub. L. 97–35, § 341(c)(1), inserted reference to subsec. (f) of this section.

Subsec. (f). Pub. L. 97–35, § 341(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4018. Operating costs and allowances; definitions

(a) The Director shall from time to time negotiate with appropriate representatives of the insurance industry for the purpose of establishing—

(1) a current schedule of operating costs applicable both to risk-sharing insurance companies and other insurers and to insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations participating on other than a risk-sharing basis, and

(2) a current schedule of operating allowances applicable to risk-sharing insurance companies and other insurers,

which may be payable in accordance with the provisions of subchapter II of this chapter, and such schedules shall from time to time be prescribed in regulations.

(b) For purposes of subsection (a) of this section—

(1) the term ''operating costs'' shall (without limiting such term) include—

(A) expense reimbursements covering the direct, actual, and necessary expenses incurred in connection with selling and servicing flood insurance coverage;

(B) reasonable compensation payable for selling and servicing flood insurance coverage, or commissions or service fees paid to producers;

(C) loss adjustment expenses; and

(D) other direct, actual, and necessary expenses which the Director finds are incurred in connection with selling or servicing flood insurance coverage; and

(2) the term ''operating allowances'' shall (without limiting such term) include amounts for profit and contingencies which the Director finds reasonable and necessary to carry out the purposes of this chapter.

(Pub. L. 90–448, title XIII, § 1311, Aug. 1, 1968, 82 Stat. 579; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(2), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Subsecs. (a), (b)(1)(D), (2). Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4019. Payment of claims

The Director is authorized to prescribe regulations establishing the general method or methods by which proved and approved claims for losses may be adjusted and paid for any damage to or loss of property which is covered by flood insurance made available under the provisions of this chapter.

(Pub. L. 90–448, title XIII, § 1312, Aug. 1, 1968, 82 Stat. 579; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4020. Dissemination of flood insurance information

The Director shall from time to time take such action as may be necessary in order to make information and data available to the public, and to any State or local agency or official, with regard to—

(1) the flood insurance program, its coverage and objectives, and

(2) estimated and chargeable flood insurance premium rates, including the basis for and differences between such rates in accordance with the provisions of section 4015 of this title.

(Pub. L. 90–448, title XIII, § 1313, Aug. 1, 1968, 82 Stat. 579; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' in provisions preceding par. (1).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4021. Repealed. Pub. L. 93–234, title II, § 203, Dec. 31, 1973, 87 Stat. 982

Section, Pub. L. 90–448, title XIII, § 1314, Aug. 1, 1968, 82 Stat. 579, denied Federal disaster assistance after Dec. 31, 1973, to persons who for a period of a year or more could have purchased flood insurance but did not do so, and defined ''Federal disaster assistance'' and ''financial assistance''.

LOSS, DESTRUCTION, OR DAMAGE OCCURRING ON OR BEFORE DECEMBER 31, 1973

Pub. L. 92–213, § 2(b), Dec. 22, 1971, 85 Stat. 775, made the provisions of subsec. (a)(2) of section 4021 inapplicable with respect to any loss, destruction, or damage of real or personal property that occurred on or before Dec. 31, 1973.

§ 4022. State and local land use controls

(a) Requirement for participation in flood insurance program

(1) In general

After December 31, 1971, no new flood insurance coverage shall be provided under this chapter in any area (or subdivision thereof) unless an appropriate public body shall have adopted adequate land use and control measures (with effective enforcement provisions) which the Director finds are consistent with the comprehensive criteria for land management and use under section 4102 of this title.

(2) Agricultural structures

(A) Activity restrictions

Notwithstanding any other provision of law, the adequate land use and control measures required to be adopted in an area (or subdivision thereof) pursuant to paragraph (1) may provide, at the discretion of the appropriate State or local authority, for the repair and restoration to predamaged conditions of an agricultural structure that—

(i) is a repetitive loss structure; or

(ii) has incurred flood-related damage to the extent that the cost of restoring the structure to its predamaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(B) Premium rates and coverage

To the extent applicable, an agricultural structure repaired or restored pursuant to subparagraph (A) shall pay chargeable premium rates established under section 4015 of this title at the estimated risk premium rates under section 4014(a)(1) of this title. If resources are available, the Director shall provide technical assistance and counseling, upon request of the owner of the structure, regarding wet flood-proofing and other flood damage reduction measures for agricultural

structures. The Director shall not be required to make flood insurance coverage available for such an agricultural structure unless the structure is wet flood-proofed through permanent or contingent measures applied to the structure or its contents that prevent or provide resistance to damage from flooding by allowing flood waters to pass through the structure, as determined by the Director.

(C) Prohibition on disaster relief

Notwithstanding any other provision of law, any agricultural structure repaired or restored pursuant to subparagraph (A) shall not be eligible for disaster relief assistance under any program administered by the Director or any other Federal agency.

(D) Definitions

For purposes of this paragraph—

(i) the term ''agricultural structure'' means any structure used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities; and

(ii) the term ''agricultural commodities'' means agricultural commodities and livestock.

(b) Community rating system and incentives for community floodplain management

(1) Authority and goals

The Director shall carry out a community rating system program, under which communities participate voluntarily—

(A) to provide incentives for measures that reduce the risk of flood or erosion damage that exceed the criteria set forth in section 4102 of this title and evaluate such measures;

(B) to encourage adoption of more effective measures that protect natural and beneficial floodplain functions;

(C) to encourage floodplain and erosion management; and

(D) to promote the reduction of Federal flood insurance losses.

(2) Incentives

The program shall provide incentives in the form of credits on premium rates for flood insurance coverage in communities that the Director determines have adopted and enforced measures that reduce the risk of flood and erosion damage that exceed the criteria set forth in section 4102 of this title. In providing incentives under this paragraph, the Director may provide for credits to flood insurance premium rates in communities that the Director determines have implemented measures that protect natural and beneficial floodplain functions.

(3) Credits

The credits on premium rates for flood insurance coverage shall be based on the estimated reduction in flood and erosion damage risks resulting from the measures adopted by the community under this program. If a community has received mitigation assistance under section 4104c of this title, the credits shall be phased in a manner, determined by the Director, to recover the amount of such assistance provided for the community.

(4) Reports

Not later than 2 years after September 23, 1994, and not less than every 2 years thereafter, the Director shall submit a report to the Congress regarding the program under this subsection. Each report shall include an analysis of the cost-effectiveness of the program, any other accomplishments or shortcomings of the program, and any recommendations of the Director for legislation regarding the program.

(c) Replacement of mobile homes on original sites

(1) Community participation

The placement of any mobile home on any site shall not affect the eligibility of any community to participate in the flood insurance program under this chapter and the Flood Disaster Protection Act of 1973 (notwithstanding that such placement may fail to comply with any elevation or flood damage mitigation requirements), if—

(A) such mobile home was previously located on such site;

(B) such mobile home was relocated from such site because of flooding that threatened or affected such site; and

(C) such replacement is conducted not later than the expiration of the 180-day period that begins upon the subsidence (in the area of such site) of the body of water that flooded to a level considered lower than flood levels.

(2) Definition

For purposes of this subsection, the term ''mobile home'' has the meaning given such term in the law of the State in which the mobile home is located.

(Pub. L. 90–448, title XIII, § 1315, Aug. 1, 1968, 82 Stat. 580; Pub. L. 91–152, title IV, § 410(b), Dec. 24, 1969, 83 Stat. 397; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 103–325, title V, §§ 541, 580, Sept. 23, 1994, 108 Stat. 2268, 2285; Pub. L. 108–264, title I, § 108, June 30, 2004, 118 Stat. 724.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (c)(1), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

The Flood Disaster Protection Act of 1973, referred to in subsec. (c)(1), is Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 975, as amended. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of this title and Tables.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–264 added subsec. (c).

1994—Subsec. (a)(1). Pub. L. 103–325, § 541(1), designated existing provisions as subsec. (a)(1) and inserted headings.

Subsec. (a)(2). Pub. L. 103–325, § 580, added par. (2).

Subsec. (b). Pub. L. 103–325, § 541(2), added subsec. (b).

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary''.

1969—Pub. L. 91–152 substituted provisions prohibiting new flood insurance coverage after Dec. 31, 1971, unless adequate land use measures have been adopted, for provisions prohibiting such coverage after June 30, 1970, unless permanent land use measures have been adopted.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4023. Properties in violation of State and local law

No new flood insurance coverage shall be provided under this chapter for any property which the Director finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

(Pub. L. 90–448, title XIII, § 1316, Aug. 1, 1968, 82 Stat. 580; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4024. Coordination with other programs

In carrying out this chapter, the Director shall consult with other departments and agencies of the Federal Government, and with interstate, State, and local agencies having responsibilities for flood control, flood forecasting, or flood damage prevention, in order to assure that the programs of such agencies and the flood insurance program authorized under this chapter are mutually consistent.

(Pub. L. 90–448, title XIII, § 1317, Aug. 1, 1968, 82 Stat. 581; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4025. Flood insurance advisory committee

(a) Appointment; duties

The Director shall appoint a flood insurance advisory committee without regard to the provisions of title 5 governing appointments in the competitive service, and such committee shall advise the Director in the preparation of any regulations prescribed in accordance with this chapter and with respect to policy matters arising in the administration of this chapter, and shall perform such other responsibilities as the Director may, from time to time, assign to such committee.

(b) Membership

Such committee shall consist of not more than fifteen persons and such persons shall be selected from among representatives of—

(1) the insurance industry,
(2) State and local governments,
(3) lending institutions,
(4) the homebuilding industry, and
(5) the general public.

(c) Compensation and travel expenses

Members of the committee shall, while attending conferences or meetings thereof, be entitled to receive compensation at a rate fixed by the Director but not exceeding $100 per day, including traveltime, and while so serving away from

their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5 for persons in the Government service employed intermittently.

(Pub. L. 90–448, title XIII, § 1318, Aug. 1, 1968, 82 Stat. 581; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

This chapter, referred to in subsec. (a), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Subsecs. (a), (c). Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4026. Expiration of program

No new contract for flood insurance under this chapter shall be entered into after September 30, 2008.

(Pub. L. 90–448, title XIII, § 1319, Aug. 1, 1968, 82 Stat. 581; Pub. L. 93–4, Feb. 2, 1973, 87 Stat. 4; Pub. L. 93–38, June 5, 1973, 87 Stat. 73; Pub. L. 93–234, title I, § 105, Dec. 31, 1973, 87 Stat. 979; Pub. L. 95–60, § 3, June 30, 1977, 91 Stat. 257; Pub. L. 95–80, § 3, July 31, 1977, 91 Stat. 339; Pub. L. 95–128, title VII, § 701(a), Oct. 12, 1977, 91 Stat. 1144; Pub. L. 95–406, § 6(a), Sept. 30, 1978, 92 Stat. 880; Pub. L. 95–557, title III, § 308(a), Oct. 31, 1978, 92 Stat. 2098; Pub. L. 96–153, title VI, § 602(a), Dec. 21, 1979, 93 Stat. 1137; Pub. L. 97–35, title III, § 341(b)(1), Aug. 13, 1981, 95 Stat. 418; Pub. L. 97–289, § 4(a), Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98–35, § 4(a), May 26, 1983, 97 Stat. 198; Pub. L. 98–109, § 5(a), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–181, title IV, § 451(a), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 99–120, § 4(a)(1), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, § 4(a)(1), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 4(a)(1), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 4(a)(1), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3010(a)(1), Apr. 7, 1986, 100 Stat. 106; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title V, § 541(a), Feb. 5, 1988, 101 Stat. 1939; Pub. L. 101–137, § 1(a), Nov. 3, 1989, 103 Stat. 824; Pub. L. 101–508, title II, § 2302(a), Nov. 5, 1990, 104 Stat. 1388–23; Pub. L. 103–325, title V, § 571(a), Sept. 23, 1994, 108 Stat. 2277; Pub. L. 104–204, title III, Sept. 26, 1996, 110 Stat. 2915; Pub. L. 105–46, § 118, Sept. 30, 1997, 111 Stat. 1157; Pub. L. 105–65, title III, Oct. 27, 1997, 111 Stat. 1377; Pub. L. 105–276, title III, title V, § 599D(a), Oct. 21, 1998, 112 Stat. 2502, 2663; Pub. L. 107–73, title III, Nov. 26, 2001, 115 Stat. 689; Pub. L. 108–3, § 2(a)(2), Jan. 13, 2003, 117 Stat. 7; Pub. L. 108–171, § 2(a)(1), Dec. 6, 2003, 117 Stat. 2064; Pub. L. 108–199, div. H, § 136(a)(1), Jan. 23, 2004, 118 Stat. 442; Pub. L. 108–264, title I, § 101(b), June 30, 2004, 118 Stat. 714.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

2004—Pub. L. 108–264 substituted ''after September 30, 2008'' for ''after March 31, 2004''.

Pub. L. 108–199, which directed the substitution of ''June 30, 2004.'' for ''December 31, 2003'', could not be executed because of the amendment by Pub. L. 108–171. See 2003 Amendment note below.

2003—Pub. L. 108–171 substituted ''March 31, 2004'' for ''December 31, 2003''.

Pub. L. 108–3 substituted ''after December 31, 2003'' for ''after December 31, 2002''.

2001—Pub. L. 107–73 substituted ''December 31, 2002'' for ''September 30, 2001''.

1998—Pub. L. 105–276, § 599D(a), which directed the substitution of ''2001'' for ''1998'', was executed by substituting ''2001'' for ''1999'' to reflect the probable intent of Congress and the amendment by Pub. L. 105–276, title III, see below.

Pub. L. 105–276, title III, substituted ''1999'' for ''1998''.

1997—Pub. L. 105–65 substituted ''September 30, 1998'' for ''October 23, 1997''.

Pub. L. 105–46 substituted ''October 23, 1997'' for ''September 30, 1997''.

1996—Pub. L. 104–204 substituted ''September 30, 1997'' for ''September 30, 1996''.

1994—Pub. L. 103–325 substituted ''September 30, 1996'' for ''September 30, 1995''.
1990—Pub. L. 101–508 substituted ''September 30, 1995'' for ''September 30, 1991''.
1989—Pub. L. 101–137 substituted ''September 30, 1991'' for ''September 30, 1989''.
1988—Pub. L. 100–242 substituted ''September 30, 1989'' for ''March 15, 1988''.
1987—Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.
Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.
Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.
Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.
Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.
1986—Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.
Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.
Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.
Pub. L. 99–272 directed amendment identical to Pub. L. 99–219 substituting ''March 17, 1986'' for ''December 15, 1985''.
Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.
1985—Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.
Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.
Pub. L. 99–120 substituted ''November 14, 1985'' for ''September 30, 1985''.
1983—Pub. L. 98–181 substituted ''September 30, 1985'' for ''November 30, 1983''.
Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983''.
Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983''.
1982—Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982''.
1981—Pub. L. 97–35 substituted ''1982'' for ''1981''.
1979—Pub. L. 96–153 substituted ''September 30, 1981'' for ''September 30, 1980''.
1978—Pub. L. 95–557 substituted ''September 30, 1980'' for ''October 31, 1978''.
Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.
1977—Pub. L. 95–128 substituted ''September 30, 1978'' for ''September 30, 1977''.
Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977''.
Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977''.
1973—Pub. L. 93–234 substituted expiration of program provisions for $6,000,000,000 limitation on flood insurance coverage outstanding.
Pub. L. 93–38 substituted ''$6,000,000,000'' for ''$4,000,000,000''.
Pub. L. 93–4 substituted ''$4,000,000,000'' for ''$2,500,000,000''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–199 considered to have taken effect on Dec. 31, 2003, see section 136(b) of div. H of Pub. L. 108–199, set out as a note under section 4016 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108–171 effective Dec. 31, 2003, see section 2(b) of Pub. L. 108–171, set out as a note under section 4016 of this title.

Amendment by Pub. L. 108–3 effective Dec. 31, 2002, see section 2(b) of Pub. L. 108–3, set out as a note under section 4016 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 599D(c), Oct. 21, 1998, 112 Stat. 2663, provided that: ''The amendments made by this section [amending this section and section 4056 of this title] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1998

The expiration date of Oct. 23, 1997 (see 1997 Amendment note above) was temporarily extended to Nov. 7, 1997, by Pub. L. 105–64, Oct. 23, 1997, 111 Stat. 1343.

§ 4027. Biennial report to President

(a) In general

The Director shall biennially submit a report of operations under this chapter to the President for submission to the Congress.

(b) Effects of flood insurance program

The Director shall include, as part of the biennial report submitted under subsection (a) of this section, a chapter reporting on the effects on the flood insurance program observed through implementation of requirements under the Riegle Community Development and Regulatory Improvement Act of 1994.

(Pub. L. 90–448, title XIII, § 1320, Aug. 1, 1968, 82 Stat. 581; Pub. L. 96–470, title II, § 205(b), Oct. 19, 1980, 94 Stat. 2244; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 103–325, title V, § 581, Sept. 23, 1994, 108 Stat. 2286.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

The Riegle Community Development and Regulatory Improvement Act of 1994, referred to in subsec. (b), is Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2160. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

1994—Pub. L. 103–325 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).
1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary''.
1980—Pub. L. 96–470 substituted ''biennially submit'' for ''include'' and struck out ''in the annual report'' after ''under this chapter'' and ''required by section 3536 of this title'' after ''the Congress''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Secu-

rity, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4028. John H. Chafee Coastal Barrier Resources System

(a) No new flood insurance coverage may be provided under this chapter on or after October 1, 1983, for any new construction or substantial improvements of structures located on any coastal barrier within the John H. Chafee Coastal Barrier Resources System established by section 3503 of title 16. A federally insured financial institution may make loans secured by structures which are not eligible for flood insurance by reason of this section.

(b) No new flood insurance coverage may be provided under this chapter after the expiration of the 1-year period beginning on November 16, 1990, for any new construction or substantial improvements of structures located in any area identified and depicted on the maps referred to in section 3503(a) of title 16 as an area that is (1) not within the John H. Chafee Coastal Barrier Resources System and (2) is in an otherwise protected area. Notwithstanding the preceding sentence, new flood insurance coverage may be provided for structures in such protected areas that are used in a manner consistent with the purpose for which the area is protected.

(Pub. L. 90–448, title XIII, § 1321, as added Pub. L. 97–35, title III, § 341(d)(1), Aug. 13, 1981, 95 Stat. 419; amended Pub. L. 97–348, § 11(a), Oct. 18, 1982, 96 Stat. 1658; Pub. L. 101–591, § 9, Nov. 16, 1990, 104 Stat. 2938; Pub. L. 106–167, § 3(c)(7), Dec. 9, 1999, 113 Stat. 1804.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106–167 amended section catchline and substituted ''John H. Chafee Coastal Barrier Resources System'' for ''Coastal Barrier Resources System'' in subsecs. (a) and (b).

1990—Pub. L. 101–591 designated existing provisions as subsec. (a) and added subsec. (b).

1982—Subsecs. (a) to (c). Pub. L. 97–348 struck out subsec. designations in subsecs. (a) and (c), in provisions of former subsec. (a) substituted ''on any coastal barrier within the Coastal Barrier Resources System established by section 3503 of title 16'' for ''on undeveloped coastal barriers which shall be designated by the Secretary of the Interior'', and struck out subsec. (b) which provided definitions for purposes of this section.

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as a note under section 3701 of Title 12, Banks and Banking.

STUDY FOR DESIGNATION OF UNDEVELOPED COASTAL BARRIERS; REPORT AND RECOMMENDATIONS TO CONGRESS

Section 341(d)(2) of Pub. L. 97–35, relating to a study by the Secretary of the Interior for the purpose of designating the undeveloped coastal barriers affected by this section, and transmittal to Congress of a report on such study, was repealed by Pub. L. 97–348, § 11(b), Oct. 18, 1982, 96 Stat. 1659.

§ 4029. Colorado River Floodway

(a) Renewal and transfer of policies; acquisition of policies after filing of maps

Owners of existing National Flood Insurance Act policies with respect to structures located within the Floodway established under section 1600c of title 43 shall have the right to renew and transfer such policies. Owners of existing structures located within said Floodway on October 8, 1986, who have not acquired National Flood Insurance Act policies shall have the right to acquire policies with respect to such structures for six months after the Secretary of the Interior files the Floodway maps required by section 1600c(b)(2)[1] of title 43 and to renew and transfer such policies.

(b) New coverage for new construction or substantial improvements

No new flood insurance coverage may be provided under this chapter on or after a date six months after October 8, 1986, for any new construction or substantial improvements of structures located within the Colorado River Floodway established by section 1600c of title 43. New construction includes all structures that are not insurable prior to that date.

(c) Establishment of temporary boundaries

The Secretary of the Interior may by rule after notice and comment pursuant to section 553 of title 5 establish temporary Floodway boundaries to be in effect until the maps required by section 1600c(b)(2)[1] of title 43 are filed, for the purpose of enforcing subsections (b) and (d) of this section.

(d) Loans by federally supervised, approved, regulated, or insured financial institutions

A regulated lending institution or Federal agency lender may make loans secured by structures which are not eligible for flood insurance by reason of this section: *Provided*, That prior to making such a loan, such institution determines that the loans or structures securing the loan are within the Floodway.

(Pub. L. 90–448, title XIII, § 1322, as added Pub. L. 99–450, § 12, Oct. 8, 1986, 100 Stat. 1135; amended Pub. L. 100–242, title V, § 545(e), Feb. 5, 1988, 101 Stat. 1942; Pub. L. 103–325, title V, § 512(b), Sept. 23, 1994, 108 Stat. 2257.)

REFERENCES IN TEXT

The National Flood Insurance Act, referred to in subsec. (a), probably means the National Flood Insurance Act of 1968, title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to this chapter (§ 4001 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

Section 1600c(b)(2) of title 43, referred to in subsecs. (a) and (c), was struck out and former subsec. (b)(1)(ii) redesignated (b)(2) of section 1600c by Pub. L. 105–362, title IX, § 901(d)(1), Nov. 10, 1998, 112 Stat. 3289. As amended, section 1600c(b)(2) no longer relates to maps required to be prepared and filed by the Secretary.

This chapter, referred to in subsec. (b), was in the original a reference to ''this title'' meaning title XIII

[1] See References in Text note below.

of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–325 substituted ''regulated lending institution or Federal agency lender'' for ''federally supervised, approved, regulated or insured financial institution''.

1988—Pub. L. 100–242 inserted section catchline.

§ 4030. Grants for repetitive insurance claims properties

(a) In general

The Director may provide funding for mitigation actions that reduce flood damages to individual properties for which 1 or more claim payments for losses have been made under flood insurance coverage under this chapter, but only if the Director determines that—

(1) such activities are in the best interest of the National Flood Insurance Fund; and

(2) such activities cannot be funded under the program under section 4104c of this title because—

(A) the requirements of section 4104c(g) of this title are not being met by the State or community in which the property is located; or

(B) the State or community does not have the capacity to manage such activities.

(b) Priority for worst-case properties

In determining the properties for which funding is to be provided under this section, the Director shall consult with the States in which such properties are located and provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time.

(Pub. L. 90–448, title XIII, § 1323, as added Pub. L. 108–264, title I, § 104(a), June 30, 2004, 118 Stat. 722.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

§ 4031. Treatment of certain payments

Assistance provided under a program under this chapter for flood mitigation activities (including any assistance provided under the mitigation pilot program under section 4102a of this title, any assistance provided under the mitigation assistance program under section 4104c of this title, and any funding provided under section 4030 of this title) with respect to a property shall not be considered income or a resource of the owner of the property when determining eligibility for or benefit levels under any income assistance or resource-tested program that is funded in whole or in part by an agency of the United States or by appropriated funds of the United States.

(Pub. L. 90–448, title XIII, § 1324, as added Pub. L. 109–64, § 1, Sept. 20, 2005, 119 Stat. 1997.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATION OF FLOOD INSURANCE PROGRAM

§ 4041. Implementation of program

Following such consultation with representatives of the insurance industry as may be necessary, the Director shall implement the flood insurance program authorized under subchapter I of this chapter in accordance with the provisions of part A of this subchapter and, if a determination is made by him under section 4071 of this title, under part B of this subchapter.

(Pub. L. 90–448, title XIII, § 1330, Aug. 1, 1968, 82 Stat. 581; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PART A—INDUSTRY PROGRAM WITH FEDERAL FINANCIAL ASSISTANCE

§ 4051. Industry flood insurance pool; requirements for participation

(a) The Director is authorized to encourage and otherwise assist any insurance companies and other insurers which meet the requirements prescribed under subsection (b) of this section to form, associate, or otherwise join together in a pool—

(1) in order to provide the flood insurance coverage authorized under subchapter I of this chapter; and

(2) for the purpose of assuming, on such terms and conditions as may be agreed upon, such financial responsibility as will enable such companies and other insurers, with the Federal financial and other assistance available under this chapter, to assume a reasonable proportion of responsibility for the ad-

justment and payment of claims for losses under the flood insurance program.

(b) In order to promote the effective administration of the flood insurance program under this part, and to assure that the objectives of this chapter are furthered, the Director is authorized to prescribe appropriate requirements for insurance companies and other insurers participating in such pool including, but not limited to, minimum requirements for capital or surplus or assets.

(Pub. L. 90–448, title XIII, § 1331, Aug. 1, 1968, 82 Stat. 582; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2) and (b), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4052. Agreements with flood insurance pool

(a) Authorization

The Director is authorized to enter into such agreements with the pool formed or otherwise created under this part as he deems necessary to carry out the purposes of this chapter.

(b) Terms and conditions

Such agreements shall specify—

(1) the terms and conditions under which risk capital will be available for the adjustment and payment of claims,

(2) the terms and conditions under which the pool (and the companies and other insurers participating therein) shall participate in premiums received and profits or losses realized or sustained,

(3) the maximum amount of profit, established by the Director and set forth in the schedules prescribed under section 4018 of this title, which may be realized by such pool (and the companies and other insurers participating therein),

(4) the terms and conditions under which operating costs and allowances set forth in the schedules prescribed under section 4018 of this title may be paid, and

(5) the terms and conditions under which premium equalization payments under section 4054 of this title will be made and reinsurance claims under section 4055 of this title will be paid.

(c) Additional provisions

In addition, such agreements shall contain such provisions as the Director finds necessary to assure that—

(1) no insurance company or other insurer which meets the requirements prescribed under section 4051(b) of this title, and which has indicated an intention to participate in the flood insurance program on a risk-sharing basis, will be excluded from participating in the pool,

(2) the insurance companies and other insurers participating in the pool will take whatever action may be necessary to provide continuity of flood insurance coverage by the pool, and

(3) any insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations will be permitted to cooperate with the pool as fiscal agents or otherwise, on other than a risk-sharing basis, to the maximum extent practicable.

(Pub. L. 90–448, title XIII, § 1332, Aug. 1, 1968, 82 Stat. 582; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Subsecs. (a), (b)(3), (c). Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4053. Adjustment and payment of claims; judicial review; limitations; jurisdiction

The insurance companies and other insurers which form, associate, or otherwise join together in the pool under this part may adjust and pay all claims for proved and approved losses covered by flood insurance in accordance with the provisions of this chapter and, upon the disallowance by any such company or other in-

surer of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance of the claim, may institute an action on such claim against such company or other insurer in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy.

(Pub. L. 90–448, title XIII, § 1333, Aug. 1, 1968, 82 Stat. 583; Pub. L. 98–181, title IV, § 451(d)(3), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98–181 inserted ''original exclusive'' before ''jurisdiction''.

§ 4054. Premium equalization payments; basis; aggregate amount; establishment of designated periods

(a) The Director, on such terms and conditions as he may from time to time prescribe, shall make periodic payments to the pool formed or otherwise created under section 4051 of this title, in recognition of such reductions in chargeable premium rates under section 4015 of this title below estimated premium rates under section 4014(a)(1) of this title as are required in order to make flood insurance available on reasonable terms and conditions.

(b) Designated periods under this section and the methods for determining the sum of premiums paid or payable during such periods shall be established by the Director.

(Pub. L. 90–448, title XIII, § 1334, Aug. 1, 1968, 82 Stat. 583; Pub. L. 93–234, title I, § 111, Dec. 31, 1973, 87 Stat. 981; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

1973—Subsecs. (b), (c). Pub. L. 93–234 redesignated subsec. (c) as (b) and struck out former subsec. (b) prescribing formula for sharing losses between Government and industry and permit necessary flexibility in loss sharing to take into account longer-term loss experience trends and to compensate for lack of precision in actuarial computations.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4055. Reinsurance coverage

(a) Availability for excess losses

The Director is authorized to take such action as may be necessary in order to make available, to the pool formed or otherwise created under section 4051 of this title, reinsurance for losses (due to claims for proved and approved losses covered by flood insurance) which are in excess of losses assumed by such pool in accordance with the excess loss agreement entered into under subsection (c) of this section.

(b) Availability pursuant to contract, agreement, or other arrangement; payment of premium, fee, or other charge

Such reinsurance shall be made available pursuant to contract, agreement, or any other arrangement, in consideration of such payment of a premium, fee, or other charge as the Director finds necessary to cover anticipated losses and other costs of providing such reinsurance.

(c) Excess loss agreement; negotiation

The Director is authorized to negotiate an excess loss agreement, from time to time, under which the amount of flood insurance retained by the pool, after ceding reinsurance, shall be adequate to further the purposes of this chapter, consistent with the objective of maintaining appropriate financial participation and risk sharing to the maximum extent practicable on the part of participating insurance companies and other insurers.

(d) Submission of excess losses on portfolio basis

All reinsurance claims for losses in excess of losses assumed by the pool shall be submitted on a portfolio basis by such pool in accordance with terms and conditions established by the Director.

(Pub. L. 90–448, title XIII, § 1335, Aug. 1, 1968, 82 Stat. 583; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4056. Emergency implementation of flood insurance program; applicability of other provisions of law

(a) Notwithstanding any other provisions of this chapter, for the purpose of providing flood insurance coverage at the earliest possible time, the Director shall carry out the flood insurance program authorized under subchapter I of this chapter during the period ending on the date specified in section 4026 of this title, in accordance with the provisions of this part and the other provisions of this chapter insofar as they relate to this part but subject to the modifications made by or under subsection (b) of this section.

(b) In carrying out the flood insurance program pursuant to subsection (a) of this section, the Director—

(1) shall provide insurance coverage without regard to any estimated risk premium rates which would otherwise be determined under section 4014 of this title; and

(2) shall utilize the provisions and procedures contained in or prescribed by this part (other than section 4054 of this title) and sections 4081 and 4082 of this title to such extent and in such manner as he may consider necessary or appropriate to carry out the purpose of this section.

(Pub. L. 90–448, title XIII, § 1336, as added Pub. L. 91–152, title IV, § 408, Dec. 24, 1969, 83 Stat. 396; amended Pub. L. 92–213, § 2(a), Dec. 22, 1971, 85 Stat. 775; Pub. L. 93–234, title I, § 106, Dec. 31, 1973, 87 Stat. 979; Pub. L. 94–173, § 5, Dec. 23, 1975, 89 Stat. 1028; Pub. L. 94–375, § 14(b), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 95–128, title VII, § 701(b), Oct. 12, 1977, 91 Stat. 1144; Pub. L. 95–406, § 6(b), Sept. 30, 1978, 92 Stat. 880; Pub. L. 95–557, title III, § 308(b), Oct. 31, 1978, 92 Stat. 2098; Pub. L. 96–153, title VI, § 602(b), Dec. 21, 1979, 93 Stat. 1137; Pub. L. 97–35, title III, § 341(b)(2), Aug. 13, 1981, 95 Stat. 419; Pub. L. 97–289, § 4(b), Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98–35, § 4(b), May 26, 1983, 97 Stat. 198; Pub. L. 98–109, § 5(b), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–181, title IV, § 451(b), (d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 99–120, § 4(a)(2), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, § 4(a)(2), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 4(a)(2), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 4(a)(2), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3010(a)(2), Apr. 7, 1986, 100 Stat. 106; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title V, § 541(b), Feb. 5, 1988, 101 Stat. 1939; Pub. L. 101–137, § 1(b), Nov. 3, 1989, 103 Stat. 824; Pub. L. 101–508, title II, § 2302(b), Nov. 5, 1990, 104 Stat. 1388–23; Pub. L. 103–325, title V, § 571(b), Sept. 23, 1994, 108 Stat. 2277; Pub. L. 105–46, § 118, Sept. 30, 1997, 111 Stat. 1157; Pub. L. 105–65, title III, Oct. 27, 1997, 111 Stat. 1377; Pub. L. 105–276, title III, title V, § 599D(b), Oct. 21, 1998, 112 Stat. 2502, 2663; Pub. L. 107–73, title III, Nov. 26, 2001, 115 Stat. 689; Pub. L. 108–3, § 2(a)(3), Jan. 13, 2003, 117 Stat. 7; Pub. L. 108–171, § 2(a)(3), Dec. 6, 2003, 117 Stat. 2064; Pub. L. 108–199, div. H, § 136(a)(3), Jan. 23, 2004, 118 Stat. 442; Pub. L. 108–264, title I, § 101(c), June 30, 2004, 118 Stat. 714.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–264 substituted ''during the period ending on the date specified in section 4026 of this title, in accordance'' for identical language.

Pub. L. 108–199 made amendment identical to that made by Pub. L. 108–171. See 2003 Amendment note below.

2003—Subsec. (a). Pub. L. 108–171 substituted ''on the date specified in section 4026 of this title'' for ''December 31, 2003''.

Pub. L. 108–3 substituted ''ending December 31, 2003, in'' for ''ending December 31, 2002, in''.

2001—Subsec. (a). Pub. L. 107–73 substituted ''December 31, 2002'' for ''September 30, 2001''.

1998—Subsec. (a). Pub. L. 105–276, § 599D(b), which directed the substitution of ''2001'' for ''1998'', was executed by substituting ''2001'' for ''1999'' to reflect the probable intent of Congress and the amendment by Pub. L. 105–276, title III, see below.

Pub. L. 105–276, title III, substituted ''1999'' for ''1998''.

1997—Subsec. (a). Pub. L. 105–65 substituted ''September 30, 1998'' for ''October 23, 1997''.

Pub. L. 105–46 substituted ''October 23, 1997'' for ''September 30, 1996''.

1994—Subsec. (a). Pub. L. 103–325 substituted ''September 30, 1996'' for ''September 30, 1995''.

1990—Subsec. (a). Pub. L. 101–508 substituted ''September 30, 1995'' for ''September 30, 1991''.

1989—Subsec. (a). Pub. L. 101–137 substituted ''September 30, 1991'' for ''September 30, 1989''.

1988—Subsec. (a). Pub. L. 100–242 substituted ''September 30, 1989'' for ''March 15, 1988''.

1987—Subsec. (a). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Subsec. (a). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 directed amendment identical to Pub. L. 99–219 substituting ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsec. (a). Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''September 30, 1985''.

1983—Subsec. (a). Pub. L. 98–181, § 451(d)(1), substituted ''Director'' for ''Secretary''.

Pub. L. 98–181, § 451(b), substituted ''September 30, 1985'' for ''November 30, 1983''.

Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983''.

Subsec. (b). Pub. L. 98–181, § 451(d)(1), substituted ''Director'' for ''Secretary''.

1982—Subsec. (a). Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982''.

1981—Subsec. (a). Pub. L. 97–35 substituted ''1982'' for ''1981''.

1979—Subsec. (a). Pub. L. 96–153 substituted ''1981'' for ''1980''.

1978—Subsec. (a). Pub. L. 95–557 substituted ''September 30, 1980'' for ''October 31, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.

1977—Subsec. (a). Pub. L. 95–128 substituted ''1978'' for ''1977''.

1976—Subsec. (a). Pub. L. 94–375 substituted ''September 30, 1977'' for ''December 31, 1976''.

1975—Subsec. (a). Pub. L. 94–173 substituted ''1976'' for ''1975''.

1973—Subsec. (a). Pub. L. 93–234 substituted ''1975'' for ''1973''.

1971—Subsec. (a). Pub. L. 92–213 substituted ''1973'' for ''1971''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–199 considered to have taken effect on Dec. 31, 2003, see section 136(b) of div. H of Pub. L. 108–199, set out as a note under section 4016 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108–171 effective Dec. 31, 2003, see section 2(b) of Pub. L. 108–171, set out as a note under section 4016 of this title.

Amendment by Pub. L. 108–3 effective Dec. 31, 2002, see section 2(b) of Pub. L. 108–3, set out as a note under section 4016 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1998

The expiration date of Oct. 23, 1997 (see 1997 Amendment note above) was temporarily extended to Nov. 7, 1997, by Pub. L. 105–64, Oct. 23, 1997, 111 Stat. 1343.

PART B—GOVERNMENT PROGRAM WITH INDUSTRY ASSISTANCE

§ 4071. Federal operation of program; determination by Director; fiscal agents; report to Congress

(a) If at any time, after consultation with representatives of the insurance industry, the Director determines that operation of the flood insurance program as provided under part A cannot be carried out, or that such operation, in itself, would be assisted materially by the Federal Government's assumption, in whole or in part, of the operational responsibility for flood insurance under this chapter (on a temporary or other basis) he shall promptly undertake any necessary arrangements to carry out the program of flood insurance authorized under subchapter I of this chapter through the facilities of the Federal Government, utilizing, for purposes of providing flood insurance coverage, either—

(1) insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, as fiscal agents of the United States,

(2) such other officers and employees of any executive agency (as defined in section 105 of title 5) as the Director and the head of any such agency may from time to time, agree upon, on a reimbursement or other basis, or

(3) both the alternatives specified in paragraphs (1) and (2).

(b) Upon making the determination referred to in subsection (a) of this section, the Director shall make a report to the Congress and, at the same time, to the private insurance companies participating in the National Flood Insurance Program pursuant to section 4017 of this title. Such report shall—

(1) state the reason for such determinations,

(2) be supported by pertinent findings,

(3) indicate the extent to which it is anticipated that the insurance industry will be utilized in providing flood insurance coverage under the program, and

(4) contain such recommendations as the Director deems advisable.

The Director shall not implement the program of flood insurance authorized under subchapter I of this chapter through the facilities of the Federal Government until 9 months after the date of submission of the report under this subsection unless it would be impossible to continue to effectively carry out the National Flood Insurance Program operations during this time.

(Pub. L. 90–448, title XIII, § 1340, Aug. 1, 1968, 82 Stat. 584; Pub. L. 98–181, title IV, § 451(d)(1), (4), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 101–137, § 3, Nov. 3, 1989, 103 Stat. 824.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–137 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Upon making the determination referred to in subsection (a) of this section, and at least thirty days prior to implementing the program of flood insurance authorized under subchapter I of this chapter through the facilities of the Federal Government, the Director shall make a report to the Congress and such report shall—

''(1) state the reasons for such determination,

''(2) be supported by pertinent findings,

''(3) indicate the extent to which it is anticipated that the insurance industry will be utilized in providing flood insurance coverage under the program, and

''(4) contain such recommendations as the Director deems advisable.''

1983—Subsec. (a). Pub. L. 98–181, § 451(d)(1), in provisions preceding par. (1), substituted ''Director'' for ''Secretary''.

Subsec. (a)(2). Pub. L. 98–181, § 451(d)(4), struck out ''officers and employees of the Department of Housing and Urban Development, and'' before ''such other officers''.

Pub. L. 98–181, § 451(d)(1), substituted ''Director'' for ''Secretary''.

Subsec. (b). Pub. L. 98–181, § 451(d)(1), substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4072. Adjustment and payment of claims; judicial review; limitations; jurisdiction

In the event the program is carried out as provided in section 4071 of this title, the Director shall be authorized to adjust and make payment of any claims for proved and approved losses covered by flood insurance, and upon the disallowance by the Director of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance by the Director, may institute an action against the Director on such claim in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in the controversy.

(Pub. L. 90–448, title XIII, § 1341, Aug. 1, 1968, 82 Stat. 584; Pub. L. 98–181, title IV, § 451(d)(1), (5), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98–181, § 451(d)(5), inserted ''original exclusive'' before ''jurisdiction''.

Pub. L. 98–181, § 451(d)(1), substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PART C—GENERAL PROVISIONS

§ 4081. Services by insurance industry; contracts, agreements, or other arrangements

(a) In administering the flood insurance program under this subchapter, the Director is authorized to enter into any contracts, agreements, or other appropriate arrangements which may, from time to time, be necessary for the purpose of utilizing, on such terms and conditions as may be agreed upon, the facilities and services of any insurance companies or other insurers, insurance agents and brokers, or insurance adjustment organizations; and such contracts, agreements, or arrangements may include provision for payment of applicable operating costs and allowances for such facilities and services as set forth in the schedules prescribed under section 4018 of this title.

(b) Any such contracts, agreements, or other arrangements may be entered into without regard to the provisions of section 5 of title 41 or any other provision of law requiring competitive bidding and without regard to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) The Administrator of the Federal Emergency Management Agency shall hold any agent or broker selling or undertaking to sell flood insurance under this chapter harmless from any judgment for damages against such agent or broker as a result of any court action by a policyholder or applicant arising out of an error or omission on the part of the Federal Emergency Management Agency, and shall provide any such agent or broker with indemnification, including court costs and reasonable attorney fees, arising out of and caused by an error or omission on the part of the Federal Emergency Management Agency and its contractors. The Administrator of the Federal Emergency Management Agency may not hold harmless or indemnify an agent or broker for his or her error or omission.

(Pub. L. 90–448, title XIII, § 1345, Aug. 1, 1968, 82 Stat. 585; Pub. L. 97–35, title III, § 341(e), Aug. 13, 1981, 95 Stat. 419; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 103–325, title V, § 574, Sept. 23, 1994, 108 Stat. 2278; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

This chapter, referred to in subsec. (c), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–325 inserted before period at end ''and without regard to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)''.

1983—Subsec. (a). Pub. L. 98–181 substituted ''Director'' for ''Secretary''.

1981—Subsec. (c). Pub. L. 97–35 added subsec. (c).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (c) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4082. Use of insurance pool, companies, or other private organizations for certain payments

(a) Authorization to enter into contracts for certain responsibilities

In order to provide for maximum efficiency in the administration of the flood insurance program and in order to facilitate the expeditious payment of any Federal funds under such program, the Director may enter into contracts with pool formed or otherwise created under section 4051 of this title, or any insurance company or other private organizations, for the purpose of securing performance by such pool, company, or organization of any or all of the following responsibilities:

(1) estimating and later determining any amounts of payments to be made;

(2) receiving from the Director, disbursing, and accounting for funds in making such payments;

(3) making such audits of the records of any insurance company or other insurer, insurance agent or broker, or insurance adjustment organization as may be necessary to assure that proper payments are made; and

(4) otherwise assisting in such manner as the contract may provide to further the purposes of this chapter.

(b) Terms and conditions of contract

Any contract with the pool or an insurance company or other private organization under this section may contain such terms and conditions as the Director finds necessary or appropriate for carrying out responsibilities under subsection (a) of this section, and may provide for payment of any costs which the Director determines are incidental to carrying out such responsibilities which are covered by the contract.

(c) Competitive bidding

Any contract entered into under subsection (a) of this section may be entered into without regard to section 5 of title 41 or any other provision of law requiring competitive bidding.

(d) Findings of Director

No contract may be entered into under this section unless the Director finds that the pool, company, or organization will perform its obligations under the contract efficiently and effectively, and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(e) Bond; liability of certifying officers and disbursing officers

(1) Any such contract may require the pool, company, or organization or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Director may deem appropriate.

(2) No individual designated pursuant to a contract under this section to certify payments shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this section.

(3) No officer disbursing funds shall in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by an individual designated to certify payments as provided in paragraph (2) of this subsection.

(f) Term of contract; renewals; termination

Any contract entered into under this section shall be for a term of one year, and may be made automatically renewable from term to term in the absence of notice by either party of an intention to terminate at the end of the current term; except that the Director may terminate any such contract at any time (after reasonable notice to the pool, company, or organization involved) if he finds that the pool, company, or or-

ganization has failed substantially to carry out the contract, or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the flood insurance program authorized under this chapter.

(Pub. L. 90–448, title XIII, § 1346, Aug. 1, 1968, 82 Stat. 585; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(4) and (f), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Subsecs. (a), (b), (d), (e)(1), (f). Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4083. Settlement of claims; arbitration

(a) The Director is authorized to make final settlement of any claims or demands which may arise as a result of any financial transactions which he is authorized to carry out under this subchapter, and may, to assist him in making any such settlement, refer any disputes relating to such claims or demands to arbitration, with the consent of the parties concerned.

(b) Such arbitration shall be advisory in nature, and any award, decision, or recommendation which may be made shall become final only upon the approval of the Director.

(Pub. L. 90–448, title XIII, § 1347, Aug. 1, 1968, 82 Stat. 586; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4084. Records and audits

(a) The flood insurance pool formed or otherwise created under part A of this subchapter, and any insurance company or other private organization executing any contract, agreement, or other appropriate arrangement with the Director under part B of this subchapter or this part, shall keep such records as the Director shall prescribe, including records which fully disclose the total costs of the program undertaken or the services being rendered, and such other records as will facilitate an effective audit.

(b) The Director and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the pool and any such insurance company or other private organization that are pertinent to the costs of the program undertaken or the services being rendered.

(Pub. L. 90–448, title XIII, § 1348, Aug. 1, 1968, 82 Stat. 586; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER III—COORDINATION OF FLOOD INSURANCE WITH LAND-MANAGEMENT PROGRAMS IN FLOOD-PRONE AREAS

§ 4101. Identification of flood-prone areas

(a) Publication of information; establishment of flood-risk zones; estimates of flood-caused loss

The Director is authorized to consult with, receive information from, and enter into any agreements or other arrangements with the Secretaries of the Army, the Interior, Agriculture, and Commerce, the Tennessee Valley Authority, and the heads of other Federal departments or agencies, on a reimbursement basis, or with the

head of any State or local agency, or enter into contracts with any persons or private firms, in order that he may—

(1) identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which has special flood hazards, within five years following August 1, 1968, and

(2) establish or update flood-risk zone data in all such areas, and make estimates with respect to the rates of probable flood caused loss for the various flood risk zones for each of these areas until the date specified in section 4026 of this title.

(b) Accelerated identification of flood-risk zones; authority of Director: grants, technical assistance, transactions, and payments

The Director is directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of this section, in order to make known the degree of hazard within each such zone at the earliest possible date. To accomplish this objective, the Director is authorized, without regard to subsections (a) and (b) of section 3324 of title 31 and section 5 of title 41, to make grants, provide technical assistance, and enter into contracts, cooperative agreements, or other transactions, on such terms as he may deem appropriate, or consent to modifications thereof, and to make advance or progress payments in connection therewith.

(c) Priority in allocation of manpower and other available resources for identification and mapping of flood hazard areas and flood-risk zones

The Secretary of Defense (through the Army Corps of Engineers), the Secretary of the Interior (through the United States Geological Survey), the Secretary of Agriculture (through the Soil Conservation Service), the Secretary of Commerce (through the National Oceanic and Atmospheric Administration), the head of the Tennessee Valley Authority, and the heads of all other Federal agencies engaged in the identification or delineation of flood-risk zones within the several States shall, in consultation with the Director, give the highest practicable priority in the allocation of available manpower and other available resources to the identification and mapping of flood hazard areas and flood-risk zones, in order to assist the Director to meet the deadline established by this section.

(d) Plan for bringing communities with flood-risk zones into full program status

The Director shall, not later than September 30, 1984, submit to the Congress a plan for bringing all communities containing flood-risk zones into full program status by September 30, 1987.

(e) Review of flood maps

Once during each 5-year period (the 1st such period beginning on September 23, 1994) or more often as the Director determines necessary, the Director shall assess the need to revise and update all floodplain areas and flood risk zones identified, delineated, or established under this section, based on an analysis of all natural hazards affecting flood risks.

(f) Updating flood maps

The Director shall revise and update any floodplain areas and flood-risk zones—

(1) upon the determination of the Director, according to the assessment under subsection (e) of this section, that revision and updating are necessary for the areas and zones; or

(2) upon the request from any State or local government stating that specific floodplain areas or flood-risk zones in the State or locality need revision or updating, if sufficient technical data justifying the request is submitted and the unit of government making the request agrees to provide funds in an amount determined by the Director, but which may not exceed 50 percent of the cost of carrying out the requested revision or update.

(g) Availability of flood maps

To promote compliance with the requirements of this chapter, the Director shall make flood insurance rate maps and related information available free of charge to the Federal entities for lending regulation, Federal agency lenders, State agencies directly responsible for coordinating the national flood insurance program, and appropriate representatives of communities participating in the national flood insurance program, and at a reasonable cost to all other persons. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 4017(b)(6) of this title.

(h) Notification of flood map changes

The Director shall cause notice to be published in the Federal Register (or shall provide notice by another comparable method) of any change to flood insurance map panels and any change to flood insurance map panels issued in the form of a letter of map amendment or a letter of map revision. Such notice shall be published or otherwise provided not later than 30 days after the map change or revision becomes effective. Notice by any method other than publication in the Federal Register shall include all pertinent information, provide for regular and frequent distribution, and be at least as accessible to map users as notice in the Federal Register. All notices under this subsection shall include information on how to obtain copies of the changes or revisions.

(i) Compendia of flood map changes

Every 6 months, the Director shall publish separately in their entirety within a compendium, all changes and revisions to flood insurance map panels and all letters of map amendment and letters of map revision for which notice was published in the Federal Register or otherwise provided during the preceding 6 months. The Director shall make such compendia available, free of charge, to Federal entities for lending regulation, Federal agency lenders, and States and communities participating in the national flood insurance program pursuant to section 4017 of this title and at cost to all other parties. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 4017(b)(6) of this title.

(j) Provision of information

In the implementation of revisions to and updates of flood insurance rate maps, the Director shall share information, to the extent appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere and representatives from State coastal zone management programs.

(Pub. L. 90–448, title XIII, § 1360, Aug. 1, 1968, 82 Stat. 587; Pub. L. 93–234, title II, § 204, Dec. 31, 1973, 87 Stat. 983; Pub. L. 98–181, title IV, § 451(d)(1), (6), (7), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 98–479, title II, § 203(j)(2), Oct. 17, 1984, 98 Stat. 2231; Pub. L. 99–120, § 4(a)(3), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, § 4(a)(3), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 4(a)(3), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 4(a)(3), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3010(a)(3), Apr. 7, 1986, 100 Stat. 106; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title V, § 541(c), Feb. 5, 1988, 101 Stat. 1939; Pub. L. 101–137, § 2, Nov. 3, 1989, 103 Stat. 824; Pub. L. 103–325, title V, § 575, Sept. 23, 1994, 108 Stat. 2278.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (g), was in the original a reference to "this title" meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1994—Subsecs. (e) to (j). Pub. L. 103–325 added subsecs. (e) to (j).

1989—Subsec. (a)(2). Pub. L. 101–137 added par. (2) and struck out former par. (2) which read as follows: "establish flood-risk zones in all such areas, and make estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas, by September 30, 1989."

1988—Subsec. (a)(2). Pub. L. 100–242 substituted "September 30, 1989" for "March 15, 1988".

1987—Subsec. (a)(2). Pub. L. 100–200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100–179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100–170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100–154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100–122 substituted "October 31, 1987" for "September 30, 1987".

1986—Subsec. (a)(2). Pub. L. 99–430 substituted "September 30, 1987" for "September 30, 1986".

Pub. L. 99–345 substituted "September 30, 1986" for "June 6, 1986".

Pub. L. 99–289 substituted "June 6, 1986" for "April 30, 1986".

Pub. L. 99–272 directed amendment identical to Pub. L. 99–219 substituting "March 17, 1986" for "December 15, 1985".

Pub. L. 99–267 substituted "April 30, 1986" for "March 17, 1986".

1985—Subsec. (a)(2). Pub. L. 99–219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99–156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99–120 substituted "November 14, 1985" for "September 30, 1985".

1984—Subsec. (b). Pub. L. 98–479 substituted reference to subsections (a) and (b) of section 3324 of title 31 for reference to section 3648 of the Revised Statutes, as amended (31 U.S.C. 529).

1983—Subsec. (a). Pub. L. 98–181, § 451(d)(1), in provisions preceding par. (1) substituted "Director" for "Secretary".

Subsec. (a)(2). Pub. L. 98–181, § 451(d)(6), substituted "by September 30, 1985" for "within fifteen years following such date".

Subsecs. (b), (c). Pub. L. 98–181, § 451(d)(1), substituted "Director" for "Secretary" wherever appearing.

Subsec. (d). Pub. L. 98–181, § 451(d)(7), added subsec. (d).

1973—Pub. L. 93–234 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

GEOSPATIAL DIGITAL FLOOD HAZARD DATA

Pub. L. 108–264, title I, § 107, June 30, 2004, 118 Stat. 724, provided that: "For the purposes of flood insurance and floodplain management activities conducted pursuant to the National Flood Insurance Program under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), geospatial digital flood hazard data distributed by the Federal Emergency Management Agency, or its designee, or the printed products derived from that data, are interchangeable and legally equivalent for the determination of the location of 1 in 100 year and 1 in 500 year flood planes [sic], provided that all other geospatial data shown on the printed product meets or exceeds any accuracy standard promulgated by the Federal Emergency Management Agency."

REITERATION OF FEMA RESPONSIBILITY TO MAP MUDSLIDES

Pub. L. 108–264, title I, § 109, June 30, 2004, 118 Stat. 725, as amended by Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410, provided that: "As directed in section 1360(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(b)), the Administrator of the Federal Emergency Management Agency is again directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of such section 1360, in order to make known the degree of hazard within each such zone at the earliest possible date."

TECHNICAL MAPPING ADVISORY COUNCIL

Pub. L. 103–325, title V, § 576, Sept. 23, 1994, 108 Stat. 2280, established the Technical Mapping Advisory Council to help improve flood insurance rate maps and provided for its termination 5 years after the appointment of all its members.

§ 4102. Criteria for land management and use

(a) Studies and investigations

The Director is authorized to carry out studies and investigations, utilizing to the maximum

extent practicable the existing facilities and services of other Federal departments or agencies, and State and local governmental agencies, and any other organizations, with respect to the adequacy of State and local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention, and may enter into any contracts, agreements, or other appropriate arrangements to carry out such authority.

(b) Extent of studies and investigations

Such studies and investigations shall include, but not be limited to, laws, regulations, or ordinances relating to encroachments and obstructions on stream channels and floodways, the orderly development and use of flood plains of rivers or streams, floodway encroachment lines, and flood plain zoning, building codes, building permits, and subdivision or other building restrictions.

(c) Development of comprehensive criteria designed to encourage adoption of adequate State and local measures

On the basis of such studies and investigations, and such other information as he deems necessary, the Director shall from time to time develop comprehensive criteria designed to encourage, where necessary, the adoption of adequate State and local measures which, to the maximum extent feasible, will—

(1) constrict the development of land which is exposed to flood damage where appropriate,

(2) guide the development of proposed construction away from locations which are threatened by flood hazards,

(3) assist in reducing damage caused by floods, and

(4) otherwise improve the long-range land management and use of flood-prone areas,

and he shall work closely with and provide any necessary technical assistance to State, interstate, and local governmental agencies, to encourage the application of such criteria and the adoption and enforcement of such measures.

(Pub. L. 90–448, title XIII, § 1361, Aug. 1, 1968, 82 Stat. 587; Pub. L. 91–152, title IV, § 410(c), Dec. 24, 1969, 83 Stat. 397; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Subsecs. (a), (c). Pub. L. 98–181 substituted ''Director'' for ''Secretary''.

1969—Subsec. (c). Pub. L. 91–152 substituted provisions requiring development of criteria designed to encourage adoption of adequate State and local measures, for provisions requiring development of criteria designed to encourage adoption of permanent State and local measures.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TASK FORCE ON NATURAL AND BENEFICIAL FUNCTIONS OF THE FLOODPLAIN

Pub. L. 103–325, title V, § 562, Sept. 23, 1994, 108 Stat. 2276, established the Task Force on Natural and Beneficial Functions of the Floodplain to conduct a study on the functions of the floodplain that reduce flood-related losses and provided for its termination 24 months after its last member was designated.

§ 4102a. Pilot program for mitigation of severe repetitive loss properties

(a) Authority

To the extent amounts are made available for use under this section, the Director may, subject to the limitations of this section, provide financial assistance to States and communities that decide to participate in the pilot program established under this section for taking actions with respect to severe repetitive loss properties (as such term is defined in subsection (b) of this section) to mitigate flood damage to such properties and losses to the National Flood Insurance Fund from such properties.

(b) Severe repetitive loss property

For purposes of this section, the term ''severe repetitive loss property'' has the following meaning:

(1) Single-family properties

In the case of a property consisting of 1 to 4 residences, such term means a property that—

(A) is covered under a contract for flood insurance made available under this chapter; and

(B) has incurred flood-related damage—

(i) for which 4 or more separate claims payments have been made under flood insurance coverage under this chapter, with the amount of each such claim exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or

(ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the property.

(2) Multifamily properties

In the case of a property consisting of 5 or more residences, such term shall have such meaning as the Director shall by regulation provide.

(c) Eligible activities

Amounts provided under this section to a State or community may be used only for the following activities:

(1) Mitigation activities

To carry out mitigation activities that reduce flood damages to severe repetitive loss properties, including elevation, relocation, demolition, and floodproofing of structures, and minor physical localized flood control projects, and the demolition and rebuilding of properties to at least Base Flood Elevation or greater, if required by any local ordinance.

(2) Purchase

To purchase severe repetitive loss properties, subject to subsection (g) of this section.

(d) Matching requirement

(1) In general

Except as provided in paragraph (2), in any fiscal year the Director may not provide assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds for carrying out the eligible activities to be funded with such assistance amounts.

(2) Reduced community match

With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 5165 of this title that specifies how the State intends to reduce the number of severe repetitive loss properties; and

(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.

(3) Non-Federal funds

For purposes of this subsection, the term ''non-Federal funds'' includes State or local agency funds, in-kind contributions, any salary paid to staff to carry out the eligible activities of the recipient, the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and the value of any donated material or building and the value of any lease on a building.

(e) Notice of mitigation program

(1) In general

Upon selecting a State or community to receive assistance under subsection (a) of this section to carry out eligible activities, the Director shall notify the owners of a severe repetitive loss property, in plain language, within that State or community—

(A) that their property meets the definition of a severe repetitive loss property under this section;

(B) that they may receive an offer of assistance under this section;

(C) of the types of assistance potentially available under this section;

(D) of the implications of declining such offer of assistance under this section; and

(E) that there is a right to appeal under this section.

(2) Identification of severe repetitive loss properties

The Director shall take such steps as are necessary to identify severe repetitive loss properties, and submit that information to the relevant States and communities.

(f) Standards for mitigation offers

The program under this section for providing assistance for eligible activities for severe repetitive loss properties shall be subject to the following limitations:

(1) Priority

In determining the properties for which to provide assistance for eligible activities under subsection (c) of this section, the Director shall provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time, in a manner consistent with the allocation formula under paragraph (5).

(2) Offers

The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties to take eligible activities under subsection (c) of this section as soon as practicable.

(3) Consultation

In determining for which eligible activities under subsection (c) of this section to provide assistance with respect to a severe repetitive loss property, the relevant States and communities shall consult, to the extent practicable, with the owner of the property.

(4) Deference to local mitigation decisions

The Director shall not, by rule, regulation, or order, establish a priority for funding eligible activities under this section that gives preference to one type or category of eligible activity over any other type or category of eligible activity.

(5) Allocation

(A) In general

Subject to subparagraphs (B) and (C), of the total amount made available for assistance under this section in any fiscal year, the Director shall allocate assistance to a State, and the communities located within that State, based upon the percentage of the total number of severe repetitive loss properties located within that State.

(B) Redistribution

Any funds allocated to a State, and the communities within the State, under subparagraph (A) that have not been obligated by the end of each fiscal year shall be redistributed by the Director to other States and communities to carry out eligible activities in accordance with this section.

(C) Exception

Of the total amount made available for assistance under this section in any fiscal year, 10 percent shall be made available to communities that—

(i) contain one or more severe repetitive loss properties; and

(ii) are located in States that receive little or no assistance, as determined by the

Director, under the allocation formula under subparagraph (A).

(6) Notice

Upon making an offer to provide assistance with respect to a property for any eligible activity under subsection (c) of this section, the State or community shall notify each holder of a recorded interest on the property of such offer and activity.

(g) Purchase offers

A State or community may take action under subsection (c)(2) of this section to purchase a severe repetitive loss property only if the following requirements are met:

(1) Use of property

The State or community enters into an agreement with the Director that provides assurances that the property purchased will be used in a manner that is consistent with the requirements of section 5170c(b)(2)(B) of this title for properties acquired, accepted, or from which a structure will be removed pursuant to a project provided property acquisition and relocation assistance under such section 5170c(b) of this title.

(2) Offers

The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties and of associated land to engage in eligible activities as soon as possible.

(3) Purchase price

The amount of purchase offer is not less than the greatest of—

(A) the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this chapter;

(B) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property; and

(C) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property, or an amount equal to the current fair market value of the property.

(4) Comparable housing payment

If a purchase offer made under paragraph (2) is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the flood hazard area in the same community, the Director shall make available an additional relocation payment to the homeowner-occupant to apply to the difference.

(h) Increased premiums in cases of refusal to mitigate

(1) In general

In any case in which the owner of a severe repetitive loss property refuses an offer to take action under paragraph (1) or (2) of subsection (c) of this section with respect to such property, the Director shall—

(A) notify each holder of a recorded interest on the property of such refusal; and

(B) notwithstanding subsections (a) through (c) of section 4015 of this title, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time that the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to paragraph (2) and subject to the limitation under paragraph (3).

(2) Increased premiums upon subsequent flood damage

Notwithstanding subsections (a) through (c) of section 4015 of this title, if the owner of a severe repetitive loss property does not accept an offer to take action under paragraph (1) or (2) of subsection (c) of this section with respect to such property and a claim payment exceeding $1,500 is made under flood insurance coverage under this chapter for damage to the property caused by a flood event occurring after such offer is made, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time of such flood event, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to this paragraph and subject to the limitation under paragraph (3).

(3) Limitation on increased premiums

In no case may the chargeable premium rate for a severe repetitive loss property be increased pursuant to this subsection to an amount exceeding the applicable estimated risk premium rate for the area (or subdivision thereof) under section 4014(a)(1) of this title.

(4) Treatment of deductibles

Any increase in chargeable premium rates required under this subsection for a severe repetitive loss property may be carried out, to the extent appropriate, as determined by the Director, by adjusting any deductible charged in connection with flood insurance coverage under this chapter for the property.

(5) Notice of continued offer

Upon each renewal or modification of any flood insurance coverage under this chapter for a severe repetitive loss property, the Director shall notify the owner that the offer made pursuant to subsection (c) of this section is still open.

(6) Appeals

(A) In general

Any owner of a severe repetitive loss property may appeal a determination of the Director to take action under paragraph (1)(B) or (2) with respect to such property, based only upon the following grounds:

(i) As a result of such action, the owner of the property will not be able to purchase a replacement primary residence of comparable value and that is functionally equivalent.

(ii) Based on independent information, such as contractor estimates or appraisals,

the property owner believes that the price offered for purchasing the property is not an accurate estimation of the value of the property, or the amount of Federal funds offered for mitigation activities, when combined with funds from non-Federal sources, will not cover the actual cost of mitigation.

(iii) As a result of such action, the preservation or maintenance of any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places will be interfered with, impaired, or disrupted.

(iv) The flooding that resulted in the flood insurance claims described in subsection (b)(2) of this section for the property resulted from significant actions by a third party in violation of Federal, State, or local law, ordinance, or regulation.

(v) In purchasing the property, the owner relied upon flood insurance rate maps of the Federal Emergency Management Agency that were current at the time and did not indicate that the property was located in an area having special flood hazards.

(vi) The owner of the property, based on independent information, such as contractor estimates or other appraisals, demonstrates that an alternative eligible activity under subsection (c) of this section is at least as cost effective as the initial offer of assistance.

(B) Procedure

An appeal under this paragraph of a determination of the Director shall be made by filing, with the Director, a request for an appeal within 90 days after receiving notice of such determination. Upon receiving the request, the Director shall select, from a list of independent third parties compiled by the Director for such purpose, a party to hear such appeal. Within 90 days after filing of the request for the appeal, such third party shall review the determination of the Director and shall set aside such determination if the third party determines that the grounds under subparagraph (A) exist. During the pendency of an appeal under this paragraph, the Director shall stay the applicability of the rates established pursuant to paragraph (1)(B) or (2), as applicable.

(C) Effect of final determination

In an appeal under this paragraph—

(i) if a final determination is made in favor of the property owner under subparagraph (A) exist,[1] the third party hearing such appeal shall require the Director to reduce the chargeable risk premium rate for flood insurance coverage for the property involved in the appeal from the amount required under paragraph (1)(B) or (2) to the amount paid prior to the offer to take action under paragraph (1) or (2) of subsection (c) of this section; and

(ii) if a final determination is made that the grounds under subparagraph (A) do not exist, the Director shall promptly increase the chargeable risk premium rate for such property to the amount established pursuant to paragraph (1)(B) or (2), as applicable, and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates during the pendency of the appeal.

(D) Costs

If the third party hearing an appeal under this paragraph is compensated for such service, the costs of such compensation shall be borne—

(i) by the owner of the property requesting the appeal, if the final determination in the appeal is that the grounds under subparagraph (A) do not exist; and

(ii) by the National Flood Insurance Fund, if such final determination is that the grounds under subparagraph (A) do exist.

(E) Report

Not later than 6 months after June 30, 2004, the Director shall submit a report describing the rules, procedures, and administration for appeals under this paragraph to—

(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(ii) the Committee on Financial Services of the House of Representatives.

(i) Discretionary actions in cases of fraudulent claims

If the Director determines that a fraudulent claim was made under flood insurance coverage under this chapter for a severe repetitive loss property, the Director may—

(1) cancel the policy and deny the provision to such policyholder of any new flood insurance coverage under this chapter for the property; or

(2) refuse to renew the policy with such policyholder upon expiration and deny the provision of any new flood insurance coverage under this chapter to such policyholder for the property.

(j) Rules

(1) In general

The Director shall, by rule—

(A) subject to subsection (f)(4) of this section, develop procedures for the distribution of funds to States and communities to carry out eligible activities under this section; and

(B) ensure that the procedures developed under paragraph (1)—

(i) require the Director to notify States and communities of the availability of funding under this section, and that participation in the pilot program under this section is optional;

(ii) provide that the Director may assist States and communities in identifying severe repetitive loss properties within States or communities;

(iii) allow each State and community to select properties to be the subject of eligible activities, and the appropriate eligible activity to be performed with respect to each severe repetitive loss property; and

[1] So in original. Word ''exist'' probably should not appear.

(iv) require each State or community to submit a list of severe repetitive loss properties to the Director that the State or community would like to be the subject of eligible activities under this section.

(2) Consultation

Not later than 90 days after June 30, 2004, the Director shall consult with State and local officials in carrying out paragraph (1)(A), and provide an opportunity for an oral presentation, on the record, of data and arguments from such officials.

(k) Funding

(1) In general

Pursuant to section 4017(a)(8) of this title, the Director may use amounts from the National Flood Insurance Fund to provide assistance under this section in each of fiscal years 2005, 2006, 2007, 2008, and 2009, except that the amount so used in each such fiscal year may not exceed $40,000,000 and shall remain available until expended. Notwithstanding any other provision of this chapter, amounts made available pursuant to this subsection shall not be subject to offsetting collections through premium rates for flood insurance coverage under this chapter.

(2) Administrative expenses

Of the amounts made available under this subsection, the Director may use up to 5 percent for expenses associated with the administration of this section.

(*l*) Termination

The Director may not provide assistance under this section to any State or community after September 30, 2009.

(Pub. L. 90–448, title XIII, § 1361A, as added Pub. L. 108–264, title I, § 102(a), June 30, 2004, 118 Stat. 714.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

CODIFICATION

June 30, 2004, referred to in subsec. (j)(2), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 108–264, which enacted this section, to reflect the probable intent of Congress.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

§ 4103. Repealed. Pub. L. 103–325, title V, § 551(a), Sept. 23, 1994, 108 Stat. 2269

Section, Pub. L. 90–448, title XIII, § 1362, Aug. 1, 1968, 82 Stat. 588; Pub. L. 95–128, title VII, § 704(b), Oct. 12, 1977, 91 Stat. 1145; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229, related to purchase, by Director, of insured properties damaged substantially beyond repair by flood, for subsequent transfer to State or local agency upon negotiated conditions.

SAVINGS PROVISION

Pub. L. 103–325, title V, § 551(c), Sept. 23, 1994, 108 Stat. 2269, required the Director of the Federal Emergency Management Agency to comply with any purchase or loan commitment entered into before the expiration of the 1-year period beginning on Sept. 23, 1994, pursuant to authority under this section or section 551(b) of Pub. L. 103–325.

TRANSITION PHASE

Pub. L. 103–325, title V, § 551(b), Sept. 23, 1994, 108 Stat. 2269, permitted the Director of the Federal Emergency Management Agency to enter into loan and purchase commitments as provided under this section (as in effect immediately before the enactment of Pub. L. 103–325) during the 1-year period beginning on Sept. 23, 1994.

§ 4104. Flood elevation determinations

(a) Publication or notification of proposed flood elevation determinations

In establishing projected flood elevations for land use purposes with respect to any community pursuant to section 4102 of this title, the Director shall first propose such determinations by publication for comment in the Federal Register, by direct notification to the chief executive officer of the community, and by publication in a prominent local newspaper.

(b) Publication of flood elevation determinations; appeal of owner or lessee to local government; scientific or technical knowledge or information as basis for appeal; modification of proposed determinations

The Director shall publish notification of flood elevation determinations in a prominent local newspaper at least twice during the ten-day period following notification to the local government. During the ninety-day period following the second publication, any owner or lessee of real property within the community who believes his property rights to be adversely affected by the Director's proposed determination may appeal such determination to the local government. The sole basis for such appeal shall be the possession of knowledge or information indicating that the elevations being proposed by the Director with respect to an identified area having special flood hazards are scientifically or technically incorrect, and the sole relief which shall be granted under the authority of this section in the event that such appeal is sustained in accordance with subsection (e) or (f) of this section is a modification of the Director's proposed determination accordingly.

(c) Appeals by private persons; submission of negativing or contradicting data to community; opinion of community respecting justification for appeal by community; transmission of individual appeals to Director; filing of community action with Director

Appeals by private persons shall be made to the chief executive officer of the community, or to such agency as he shall publicly designate, and shall set forth the data that tend to negate

or contradict the Director's finding in such form as the chief executive officer may specify. The community shall review and consolidate all such appeals and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name. Whether or not the community decides to appeal the Director's determination, copies of individual appeals shall be sent to the Director as they are received by the community, and the community's appeal or a copy of its decision not to appeal shall be filed with the Director not later than ninety days after the date of the second newspaper publication of the Director's notification.

(d) Administrative review of appeals by private persons; modification of proposed determinations; decision of Director: form and distribution

In the event the Director does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits, in accordance with the procedures set forth in subsection (e) of this section, the appeals filed within the community by private persons and shall make such modifications of his proposed determinations as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals. The Director's decision shall be in written form, and copies thereof shall be sent both to the chief executive officer of the community and to each individual appellant.

(e) Administrative review of appeals by community; agencies for resolution of conflicting data; availability of flood insurance pending such resolution; time for determination of Director; community adoption of local land use and control measures within reasonable time of final determination; public inspection and admissibility in evidence of reports and other administrative information

Upon appeal by any community, as provided by this section, the Director shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his proposed determination is based. The Director shall resolve such appeal by consultation with officials of the local government involved, by administrative hearing, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice. Until the conflict in data is resolved, and the Director makes a final determination on the basis of his findings in the Federal Register, and so notifies the governing body of the community, flood insurance previously available within the community shall continue to be available, and no person shall be denied the right to purchase such insurance at chargeable rates. The Director shall make his determination within a reasonable time. The community shall be given a reasonable time after the Director's final determination in which to adopt local land use and control measures consistent with the Director's determination. The reports and other information used by the Director in making his final determination shall be made available for public inspection and shall be admissible in a court of law in the event the community seeks judicial review as provided by this section.

(f) Reimbursement of certain expenses; appropriation authorization

When, incident to any appeal under subsection (b) or (c) of this section, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the Director shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Director in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection, not to exceed $250,000.

(g) Judicial review of final administrative determinations; venue; time for appeal; scope of review; good cause for stay of final determinations

Any appellant aggrieved by any final determination of the Director upon administrative appeal, as provided by this section, may appeal such determination to the United States district court for the district within which the community is located not more than sixty days after receipt of notice of such determination. The scope of review by the court shall be as provided by chapter 7 of title 5. During the pendency of any such litigation, all final determinations of the Director shall be effective for the purposes of this chapter unless stayed by the court for good cause shown.

(Pub. L. 90–448, title XIII, § 1363, as added Pub. L. 93–234, title I, § 110, Dec. 31, 1973, 87 Stat. 980; amended Pub. L. 95–128, title VII, § 704(c), Oct. 12, 1977, 91 Stat. 1146; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (g), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' and ''Director's'' for ''Secretary's'' wherever appearing.

1977—Subsecs. (f), (g). Pub. L. 95–128 added subsec. (f) and redesignated former subsec. (f) as (g).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4104a. Notice requirements

(a) Notification of special flood hazards

(1) Regulated lending institutions

Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, as a condition of making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home that the regulated lending institution determines is located or is to be located in an area that has been identified by the Director under this chapter or the Flood Disaster Protection Act of 1973 as an area having special flood hazards, to notify the purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) and the servicer of the loan of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction. The regulations shall also require that the regulated lending institution retain a record of the receipt of the notices by the purchaser or lessee and the servicer.

(2) Federal agency lenders

Each Federal agency lender shall by regulation require notification in the manner provided under paragraph (1) with respect to any loan that is made by the Federal agency lender and secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director under this chapter or the Flood Disaster Protection Act of 1973 as an area having special flood hazards. Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) Contents of notice

Written notification required under this subsection shall include—

(A) a warning, in a form to be established by the Director, stating that the building on the improved real estate securing the loan is located, or the mobile home securing the loan is or is to be located, in an area having special flood hazards;

(B) a description of the flood insurance purchase requirements under section 102(b) of the Flood Disaster Protection Act of 1973 [42 U.S.C. 4012a(b)];

(C) a statement that flood insurance coverage may be purchased under the national flood insurance program and is also available from private insurers; and

(D) any other information that the Director considers necessary to carry out the purposes of the national flood insurance program.

(b) Notification of change of servicer

(1) Lending institutions

Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, in connection with the making, increasing, extending, renewing, selling, or transferring any loan described in subsection (a)(1) of this section, to notify the Director (or the designee of the Director) in writing during the term of the loan of the servicer of the loan. Such institutions shall also notify the Director (or such designee) of any change in the servicer of the loan, not later than 60 days after the effective date of such change. The regulations under this subsection shall provide that upon any change in the servicing of a loan, the duty to provide notification under this subsection shall transfer to the transferee servicer of the loan.

(2) Federal agency lenders

Each Federal agency lender shall by regulation provide for notification in the manner provided under paragraph (1) with respect to any loan described in subsection (a)(1) of this section that is made by the Federal agency lender. Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1) of this subsection.

(c) Notification of expiration of insurance

The Director (or the designee of the Director) shall, not less than 45 days before the expiration of any contract for flood insurance under this chapter, issue notice of such expiration by first class mail to the owner of the property covered by the contract, the servicer of any loan secured by the property covered by the contract, and (if known to the Director) the owner of the loan.

(Pub. L. 90–448, title XIII, § 1364, as added Pub. L. 93–383, title VIII, § 816(a), Aug. 22, 1974, 88 Stat. 739; amended Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 103–325, title V, § 527, Sept. 23, 1994, 108 Stat. 2263.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (2) and (c), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

The Flood Disaster Protection Act of 1973, referred to in subsec. (a)(1), (2), is Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 975, as amended, which enacted sections 4002, 4003, 4012a, 4104, 4104a, 4105 to 4107, and 4128 of this title, amended sections 4001, 4013 to 4016, 4026, 4054, 4056, 4101, and 4121 of this title and sections 24 and 1709–1 of Title 12, Banks and Banking, repealed section 4021 of this title, and enacted provision set out as a note under section 4001 of this title. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of this title and Tables.

AMENDMENTS

1994—Pub. L. 103–325 amended section generally. Prior to amendment, section read as follows: ''Each Federal

instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation require such institutions, as a condition of making, increasing, extending, or renewing (after the expiration of thirty days following August 22, 1974) any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director under this chapter or Public Law 93–234 as an area having special flood hazards, to notify the purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction.''

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4104b. Standard hazard determination forms

(a) Development

The Director, in consultation with representatives of the mortgage and lending industry, the Federal entities for lending regulation, the Federal agency lenders, and any other appropriate individuals, shall develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the Director as an area having special flood hazards and in which flood insurance under this chapter is available. The form shall be established by regulations issued not later than 270 days after September 23, 1994.

(b) Design and contents

(1) Purpose

The form under subsection (a) of this section shall be designed to facilitate compliance with the flood insurance purchase requirements of this chapter.

(2) Contents

The form shall require identification of the type of flood-risk zone in which the building or mobile home is located, the complete map and panel numbers for the improved real estate or property on which the mobile home is located, the community identification number and community participation status (for purposes of the national flood insurance program) of the community in which the improved real estate or such property is located, and the date of the map used for the determination, with respect to flood hazard information on file with the Director. If the building or mobile home is not located in an area having special flood hazards the form shall require a statement to such effect and shall indicate the complete map and panel numbers of the improved real estate or property on which the mobile home is located. If the complete map and panel numbers are not available because the building or mobile home is not located in a community that is participating in the national flood insurance program or because no map exists for the relevant area, the form shall require a statement to such effect. The form shall provide for inclusion or attachment of any relevant documents indicating revisions or amendments to maps.

(c) Required use

The Federal entities for lending regulation shall by regulation require the use of the form under this section by regulated lending institutions. Each Federal agency lender shall by regulation provide for the use of the form with respect to any loan made by such Federal agency lender. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association shall require the use of the form with respect to any loan purchased by such entities. A lender or other person may comply with the requirement under this subsection by using the form in a printed, computerized, or electronic manner.

(d) Guarantees regarding information

In providing information regarding special flood hazards on the form developed under this section, any lender (or other person required to use the form) who makes, increases, extends, or renews a loan secured by improved real estate or a mobile home may provide for the acquisition or determination of such information to be made by a person other than such lender (or other person), only to the extent such person guarantees the accuracy of the information.

(e) Reliance on previous determination

Any person increasing, extending, renewing, or purchasing a loan secured by improved real estate or a mobile home may rely on a previous determination of whether the building or mobile home is located in an area having special flood hazards (and shall not be liable for any error in such previous determination), if the previous determination was made not more than 7 years before the date of the transaction and the basis for the previous determination has been set forth on a form under this section, unless—

(1) map revisions or updates pursuant to section 4101(f) of this title after such previous determination have resulted in the building or mobile home being located in an area having special flood hazards; or

(2) the person contacts the Director to determine when the most recent map revisions or updates affecting such property occurred and such revisions and updates have occurred after such previous determination.

(f) Effective date

The regulations under this section requiring use of the form established pursuant to this section shall be issued together with the regula-

tions required under subsection (a) of this section and shall take effect upon the expiration of the 180-day period beginning on such issuance.

(Pub. L. 90–448, title XIII, § 1365, as added Pub. L. 103–325, title V, § 528, Sept. 23, 1994, 108 Stat. 2264.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4104c. Mitigation assistance

(a) Authority

The Director shall carry out a program to provide financial assistance to States and communities, using amounts made available from the National Flood Mitigation Fund under section 4104d of this title, for planning and carrying out activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance under this chapter. Such financial assistance shall be made available to States and communities in the form of grants under subsection (b) of this section for planning assistance and in the form of grants under this section for carrying out mitigation activities.

(b) Planning assistance grants

(1) In general

The Director may make grants under this subsection to States and communities to assist in developing mitigation plans under subsection (c) of this section.

(2) Funding

Of any amounts made available from the National Flood Mitigation Fund for use under this section in any fiscal year, the Director may use not more than 7.5 percent of the available funds under this section to provide planning assistance grants under this subsection.

(3) Limitations

(A) Timing

A grant under this subsection may be awarded to a State or community not more than once every 5 years and each grant may cover a period of 1 to 3 years.

(B) Single grantee amount

A grant for planning assistance may not exceed—

(i) $150,000, to any State; or

(ii) $50,000, to any community.

(C) Cumulative State grant amount

The sum of the amounts of grants made under this subsection in any fiscal year to any one State and all communities located in such State may not exceed $300,000.

(c) Eligibility for mitigation assistance

To be eligible to receive financial assistance under this section for mitigation activities, a State or community shall develop, and have approved by the Director, a flood risk mitigation plan (in this section referred to as a ''mitigation plan''), that describes the mitigation activities to be carried out with assistance provided under this section, is consistent with the criteria established by the Director under section 4102 of this title, and provides protection against flood losses to structures for which contracts for flood insurance are available under this chapter. The mitigation plan shall be consistent with a comprehensive strategy for mitigation activities for the area affected by the mitigation plan, that has been adopted by the State or community following a public hearing.

(d) Notification of approval and grant award

(1) In general

The Director shall notify a State or community submitting a mitigation plan of the approval or disapproval of the plan not later than 120 days after submission of the plan.

(2) Notification of disapproval

If the Director does not approve a mitigation plan submitted under this subsection, the Director shall notify, in writing, the State or community submitting the plan of the reasons for such disapproval.

(e) Eligible mitigation activities

(1) Use of amounts

Amounts provided under this section (other than under subsection (b) of this section) may be used only for mitigation activities specified in a mitigation plan approved by the Director under subsection (d) of this section. The Director shall provide assistance under this section to the extent amounts are available in the National Flood Mitigation Fund pursuant to appropriation Acts, subject only to the absence of approvable mitigation plans.

(2) Determination of eligible plans

The Director may approve only mitigation plans that specify mitigation activities that the Director determines are technically feasible and cost-effective and only such plans that propose activities that are cost-beneficial to the National Flood Mitigation Fund.

(3) Standard for approval

The Director shall approve mitigation plans meeting the requirements for approval under paragraph (1) that will be most cost-beneficial to the National Flood Mitigation Fund. The Director may approve only mitigation plans

that give priority for funding to such properties, or to such subsets of properties, as are in the best interest of the National Flood Insurance Fund.

(4) Priority for mitigation assistance

In providing grants under this subsection for mitigation activities, the Director shall give first priority for funding to such properties, or to such subsets of such properties as the Director may establish, that the Director determines are in the best interests of the National Flood Insurance Fund and for which matching amounts under subsection (f) of this section are available.

(5) Eligible activities

The Director shall determine whether mitigation activities described in a mitigation plan submitted under subsection (d) of this section comply with the requirements under paragraph (1). Such activities may include—

(A) demolition or relocation of any structure located on land that is along the shore of a lake or other body of water and is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or flooding;

(B) elevation, relocation, demolition, or floodproofing of structures (including public structures) located in areas having special flood hazards or other areas of flood risk;

(C) acquisition by States and communities of properties (including public properties) located in areas having special flood hazards or other areas of flood risk and properties substantially damaged by flood, for public use, as the Director determines is consistent with sound land management and use in such area;

(D) minor physical mitigation efforts that do not duplicate the flood prevention activities of other Federal agencies and that lessen the frequency or severity of flooding and decrease predicted flood damages, which shall not include major flood control projects such as dikes, levees, seawalls, groins, and jetties unless the Director specifically determines in approving a mitigation plan that such activities are the most cost-effective mitigation activities for the National Flood Mitigation Fund;

(E) beach nourishment activities;

(F) the provision of technical assistance by States to communities and individuals to conduct eligible mitigation activities;

(G) other activities that the Director considers appropriate and specifies in regulation; and

(H) other mitigation activities not described in subparagraphs (A) through (F) or the regulations issued under subparagraph (G), that are described in the mitigation plan of a State or community.

(f) Limitations on amount of assistance

(1) Amount

The sum of the amounts of mitigation assistance provided under this section during any 5-year period may not exceed—

(A) $10,000,000, to any State; or

(B) $3,300,000, to any community.

(2) Geographic

The sum of the amounts of mitigation assistance provided under this section during any 5-year period to any one State and all communities located in such State may not exceed $20,000,000.

(3) Waiver

The Director may waive the dollar amount limitations under paragraphs (1) and (2) for any State or community for any 5-year period during which a major disaster or emergency declared by the President (pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.]) as a result of flood conditions is in effect with respect to areas in the State or community.

(g) Matching requirement

(1) In general

The Director may not provide mitigation assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds to develop a mitigation plan under subsection (c) of this section and to carry out mitigation activities under the approved mitigation plan. In no case shall any in-kind contribution by any State or community exceed one-half of the amount of non-Federal funds contributed by the State or community.

(2) Reduced community match

With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) that specifies how the State intends to reduce the number of severe repetitive loss properties; and

(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.

(3) Non-Federal funds

For purposes of this subsection, the term ''non-Federal funds'' includes State or local agency funds, in-kind contributions, any salary paid to staff to carry out the mitigation activities of the recipient, the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and the value of any donated material or building and the value of any lease on a building.

(h) Oversight of mitigation plans

The Director shall conduct oversight of recipients of mitigation assistance under this section

to ensure that the assistance is used in compliance with the approved mitigation plans of the recipients and that matching funds certified under subsection (g) of this section are used in accordance with such certification.

(i) Recapture

(1) Noncompliance with plan

If the Director determines that a State or community that has received mitigation assistance under this section has not carried out the mitigation activities as set forth in the mitigation plan, the Director shall recapture any unexpended amounts and deposit the amounts in the National Flood Mitigation Fund under section 4104d of this title.

(2) Failure to provide matching funds

If the Director determines that a State or community that has received mitigation assistance under this section has not provided matching funds in the amount certified under subsection (g) of this section, the Director shall recapture any unexpended amounts of mitigation assistance exceeding 3 times the amount of such matching funds actually provided and deposit the amounts in the National Flood Mitigation Fund under section 4104d of this title.

(j) Reports

Not later than 1 year after September 23, 1994, and biennially thereafter, the Director shall submit a report to the Congress describing the status of mitigation activities carried out with assistance provided under this section.

(k) "Community" defined

For purposes of this section, the term ''community'' means—

(1) a political subdivision that (A) has zoning and building code jurisdiction over a particular area having special flood hazards, and (B) is participating in the national flood insurance program; or

(2) a political subdivision of a State, or other authority, that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of paragraph (1).

(m)[1] Coordination with States and communities

The Director shall, in consultation and coordination with States and communities take such actions as are appropriate to encourage and improve participation in the national flood insurance program of owners of properties, including owners of properties that are not located in areas having special flood hazards (the 100-year floodplain), but are located within flood prone areas.

(Pub. L. 90–448, title XIII, § 1366, as added Pub. L. 103–325, title V, § 553(a), Sept. 23, 1994, 108 Stat. 2270; amended Pub. L. 108–264, title I, § 103(a)–(c), (e), (f), June 30, 2004, 118 Stat. 721, 722.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (f)(3), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108–264, § 103(f), substituted ''7.5 percent of the available funds under this section'' for ''$1,500,000''.

Subsec. (e)(3). Pub. L. 108–264, § 103(a), inserted at end ''The Director may approve only mitigation plans that give priority for funding to such properties, or to such subsets of properties, as are in the best interest of the National Flood Insurance Fund.''

Subsec. (e)(4). Pub. L. 108–264, § 103(b), added par. (4) and struck out heading and text of former par. (4). Text read as follows: ''The Director shall make every effort to provide mitigation assistance under this section for mitigation plans proposing activities for repetitive loss structures and structures that have incurred substantial damage.''

Subsec. (g)(2), (3). Pub. L. 108–264, § 103(e), added par. (2) and redesignated former par. (2) as (3).

Subsec. (m). Pub. L. 108–264, § 103(c), added subsec. (m).

REGULATIONS

Pub. L. 103–325, title V, § 553(b), Sept. 23, 1994, 108 Stat. 2273, required the Director of the Federal Emergency Management Agency to issue regulations no later than 6 months after Sept. 23, 1994, to carry out this section.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4104d. National Flood Mitigation Fund

(a) Establishment and availability

The Director shall establish in the Treasury of the United States a fund to be known as the National Flood Mitigation Fund, which shall be credited with amounts described in subsection (b) of this section and shall be available, to the extent provided in appropriation Acts, for providing assistance under section 4104c of this title.

(b) Credits

The National Flood Mitigation Fund shall be credited with—

(1) in each fiscal year, amounts from the National Flood Insurance Fund not exceeding $40,000,000, to remain available until expended;

[1] So in original. No subsec. (*l*) has been enacted.

(2) any penalties collected under section 4012a(f) of this title; and

(3) any amounts recaptured under section 4104c(i) of this title.

(c) Administrative expenses

The Director may use not more than 5 percent of amounts made available under subsection (b) of this section to cover salaries, expenses, and other administrative costs incurred by the Director to make grants and provide assistance under sections 4104c and 4030 of this title.

(d) Investment

If the Director determines that the amounts in the National Flood Mitigation Fund are in excess of amounts needed under subsection (a) of this section, the Director may invest any excess amounts the Director determines advisable in interest-bearing obligations issued or guaranteed by the United States.

(e) Report

The Director shall submit a report to the Congress not later than the expiration of the 1-year period beginning on September 23, 1994, and not less than once during each successive 2-year period thereafter. The report shall describe the status of the Fund and any activities carried out with amounts from the Fund.

(Pub. L. 90–448, title XIII, § 1367, as added Pub. L. 103–325, title V, § 554(a), Sept. 23, 1994, 108 Stat. 2273; amended Pub. L. 108–264, title I, § 103(d), June 30, 2004, 118 Stat. 721.)

CODIFICATION

September 23, 1994, referred to in subsec. (e), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 103–325, which enacted this section, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L 108–264, § 103(d)(1), added par. (1) and struck out former par. (1) which read as follows: ''amounts from the National Flood Insurance Fund, in amounts not exceeding—

''(A) $10,000,000 in the fiscal year ending September 30, 1994;

''(B) $15,000,000 in the fiscal year ending September 30, 1995;

''(C) $20,000,000 in the fiscal year ending September 30, 1996; and

''(D) $20,000,000 in each fiscal year thereafter;''.

Subsecs. (c) to (e). Pub. L. 108–264, § 103(d)(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4105. Disaster mitigation requirements; notification to flood-prone areas

(a) Initial notification

Not later than six months following December 31, 1973, the Director shall publish information in accordance with section 4101(1) of this title, and shall notify the chief executive officer of each known flood-prone community not already participating in the national flood insurance program of its tentative identification as a community containing one or more areas having special flood hazards.

(b) Alternative actions of tentatively identified communities; public hearing; opportunity for submission of evidence; finality of administrative determination of existence or extent of flood hazard area

After such notification, each tentatively identified community shall either (1) promptly make proper application to participate in the national flood insurance program or (2) within six months submit technical data sufficient to establish to the satisfaction of the Director that the community either is not seriously flood prone or that such flood hazards as may have existed have been corrected by flood-works or other flood control methods. The Director may, in his discretion, grant a public hearing to any community with respect to which conflicting data exist as to the nature and extent of a flood hazard. If the Director decides not to hold a hearing, the community shall be given an opportunity to submit written and documentary evidence. Whether or not such hearing is granted, the Director's final determination as to the existence or extent of a flood hazard area in a particular community shall be deemed conclusive for the purposes of this Act if supported by substantial evidence in the record considered as a whole.

(c) Subsequent notification to additional communities known to be flood prone areas

As information becomes available to the Director concerning the existence of flood hazards in communities not known to be flood prone at the time of the initial notification provided for by subsection (a) of this section he shall provide similar notifications to the chief executive officers of such additional communities, which shall then be subject to the requirements of subsection (b) of this section.

(d) Provisions of section 4106 applicable to flood-prone communities disqualified for flood insurance program

Formally identified flood-prone communities that do not qualify for the national flood insurance program within one year after such notification or by the date specified in section 4106 of this title, whichever is later, shall thereafter be subject to the provisions of that section relating to flood-prone communities which are not participating in the program.

(e) Administrative procedures; establishment; reimbursement of certain expenses; appropriation authorization

The Director is authorized to establish administrative procedures whereby the identification

under this section of one or more areas in the community as having special flood hazards may be appealed to the Director by the community or any owner or lessee of real property within the community who believes his property has been inadvertently included in a special flood hazard area by the identification. When, incident to any appeal under this subsection, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the Director shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Director in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection not to exceed $250,000.

(Pub. L. 93–234, title II, § 201, Dec. 31, 1973, 87 Stat. 982; Pub. L. 95–128, title VII, § 704(d), Oct. 12, 1977, 91 Stat. 1146; Pub. L. 98–181, title IV, § 451(e)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 98–479, title II, § 204(j), Oct. 17, 1984, 98 Stat. 2233.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), means Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 975, as amended, known as the Flood Disaster Protection Act of 1973. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of this title and Tables.

CODIFICATION

Section was enacted as part of Flood Disaster Protection Act of 1973, and not as part of National Flood Insurance Act of 1968 which comprises this chapter.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98–479 struck out quotation marks before ''$250,000''.

1983—Subsecs. (a) to (c), (e). Pub. L. 98–181 substituted ''Director'' for ''Secretary'' and ''Director's'' for ''Secretary's'' wherever appearing.

1977—Subsec. (e). Pub. L. 95–128 added subsec. (e).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4106. Nonparticipation in flood insurance program

(a) Prohibition against Federal approval of financial assistance

No Federal officer or agency shall approve any financial assistance for acquisition or construction purposes on and after July 1, 1975, for use in any area that has been identified by the Director as an area having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

(b) Notification of purchaser or lessee of property in flood hazard area of availability of Federal disaster relief assistance in event of a flood disaster

In addition to the requirements of section 4104a of this title, each Federal entity for lending regulation shall by regulation require the regulated lending institutions described in such section, and each Federal agency lender shall issue regulations requiring the Federal agency lender, described in such section to notify (as a condition of making, increasing, extending, or renewing any loan secured by property described in such section) the purchaser or lessee of such property of whether, in the event of a disaster caused by flood to such property, Federal disaster relief assistance will be available to such property.

(Pub. L. 93–234, title II, § 202, Dec. 31, 1973, 87 Stat. 982; Pub. L. 94–50, title III, § 303, July 2, 1975, 89 Stat. 256; Pub. L. 94–198, Dec. 31, 1975, 89 Stat. 1116; Pub. L. 94–375, § 14(a), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 95–128, title VII, § 703(a), Oct. 12, 1977, 91 Stat. 1144; Pub. L. 98–181, title IV, § 451(e)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 103–325, title V, § 511(b), Sept. 23, 1994, 108 Stat. 2256.)

CODIFICATION

Section was enacted as part of Flood Disaster Protection Act of 1973, and not as part of National Flood Insurance Act of 1968 which comprises this chapter.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–325 substituted ''Federal entity for lending regulation shall by regulation require the regulated lending institutions described in such section, and each Federal agency lender shall issue regulations requiring the Federal agency lender,'' for ''Federal instrumentality described in such section shall by regulation require the institutions''.

1983—Subsec. (a). Pub. L. 98–181 substituted ''Director'' for ''Secretary''.

1977—Subsec. (b). Pub. L. 95–128 substituted provisions respecting notification of purchaser or lessee of property in flood hazards area of availability of Federal disaster relief assistance in the event of a flood disaster for prior provisions relating to: Federal regulations against loans by financial institutions, unaffected pre-March 1, 1976, residences, small business concerns, improvements under $5,000 and nonresidential farm improvement.

1976—Subsec. (b). Pub. L. 94–375 incorporated provision regarding any loan made prior to March 1, 1976, to finance the acquisition of a previously occupied residential dwelling into cl. (1) as so designated, added remainder of cl. (1), and cls. (2) to (4).

1975—Subsec. (b). Pub. L. 94–198 substituted ''March 1, 1976'' for ''January 1, 1976''.

Pub. L. 94–50 inserted provision excepting from the prohibition of this section any loan made prior to Jan-

uary 1, 1976, to finance the acquisition of a previously occupied residential dwelling.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

FLOODPLAIN MANAGEMENT

For provisions relating to the reduction of the risk of flood loss, the minimization of the impact of floods on human safety, health and welfare, and the management of floodplains, see Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951 set out as a note under section 4321 of this title.

§ 4107. Consultation with local officials; scope

In carrying out his responsibilities under the provisions of this title[1] and the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.] which relate to notification to and identification of flood-prone areas and the application of criteria for land management and use, including criteria derived from data reflecting new developments that may indicate the desirability of modifying elevations based on previous flood studies, the Director shall establish procedures assuring adequate consultation with the appropriate elected officials of general purpose local governments, including but not limited to those local governments whose prior eligibility under the program has been suspended. Such consultation shall include, but not be limited to, fully informing local officials at the commencement of any flood elevation study or investigation undertaken by any agency on behalf of the Director concerning the nature and purpose of the study, the areas involved, the manner in which the study is to be undertaken, the general principles to be applied, and the use to be made of the data obtained. The Director shall encourage local officials to disseminate information concerning such study widely within the community, so that interested persons will have an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the agency during the course of the study.

(Pub. L. 93–234, title II, § 206, Dec. 31, 1973, 87 Stat. 983; Pub. L. 98–181, title IV, § 451(e)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This title, referred to in text, means title II of Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 975, as amended, which enacted sections 4105 to 4107 and 4128 of this title and amended section 4101 of this title and sections 24 and 1709–1 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of this title and Tables.

The National Flood Insurance Act of 1968, referred to in text, is title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to this chapter (§ 4001 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

CODIFICATION

Section was enacted as part of Flood Disaster Protection Act of 1973, and not as part of National Flood Insurance Act of 1968 which comprises this chapter.

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 4121. Definitions

(a) As used in this chapter—

(1) the term ''flood'' shall have such meaning as may be prescribed in regulations of the Director, and may include inundation from rising waters or from the overflow of streams, rivers, or other bodies of water, or from tidal surges, abnormally high tidal water, tidal waves, tsunamis, hurricanes, or other severe storms or deluge;

(2) the terms ''United States'' (when used in a geographic sense) and ''State'' includes the several States, the District of Columbia, the territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands;

(3) the terms ''Insurance company'', ''other insurer'' and ''insurance agent or broker'' include any organizations and persons authorized to engage in the insurance business under the laws of any State;

(4) the term ''insurance adjustment organization'' includes any organizations and persons engaged in the business of adjusting loss claims arising under insurance policies issued by any insurance company or other insurer;

(5) the term ''person'' includes any individual or group of individuals, corporation, partnership, association, or any other organized group of persons, including State and local governments and agencies thereof;

(6) the term ''Director'' means the Administrator of the Federal Emergency Management Agency;

[1] See References in Text note below.

(7) the term ''repetitive loss structure'' means a structure covered by a contract for flood insurance that—

(A) has incurred flood-related damage on 2 occasions, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event; and

(B) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.[1]

(8) the term ''Federal agency lender'' means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity;

(9) the term ''Federal entity for lending regulation'' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;

(10) the term ''improved real estate'' means real estate upon which a building is located;

(11) the term ''lender'' means a regulated lending institution or Federal agency lender;

(12) the term ''natural and beneficial floodplain functions'' means—

(A) the functions associated with the natural or relatively undisturbed floodplain that (i) moderate flooding, retain flood waters, reduce erosion and sedimentation, and mitigate the effect of waves and storm surge from storms, and (ii) reduce flood related damage; and

(B) ancillary beneficial functions, including maintenance of water quality and recharge of ground water, that reduce flood related damage;

(13) the term ''regulated lending institution'' means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation;

(14) the term ''servicer'' means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan; and

(15) the term ''substantially damaged structure'' means a structure covered by a contract for flood insurance that has incurred damage for which the cost of repair exceeds an amount specified in any regulation promulgated by the Director, or by a community ordinance, whichever is lower.

[1] So in original. The period probably should be a semicolon.

(b) The term ''flood'' shall also include inundation from mudslides which are proximately caused by accumulations of water on or under the ground; and all of the provisions of this chapter shall apply with respect to such mudslides in the same manner and to the same extent as with respect to floods described in subsection (a)(1) of this section, subject to and in accordance with such regulations, modifying the provisions of this chapter (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Director may prescribe to achieve (with respect to such mudslides) the purposes of this chapter and the objectives of the program.

(c) The term ''flood'' shall also include the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, and all of the provisions of this chapter shall apply with respect to such collapse or subsidence in the same manner and to the same extent as with respect to floods described in subsection (a)(1) of this section, subject to and in accordance with such regulations, modifying the provisions of this chapter (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Director may prescribe to achieve (with respect to such collapse or subsidence) the purposes of this chapter and the objectives of the program.

(Pub. L. 90–448, title XIII, § 1370, Aug. 1, 1968, 82 Stat. 588; Pub. L. 91–152, title IV, § 409(b), Dec. 24, 1969, 83 Stat. 397; Pub. L. 93–234, title I, §§ 107, 108(b), Dec. 31, 1973, 87 Stat. 979, 980; Pub. L. 98–181, title IV, § 451(d)(1), (8), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 100–628, title X, § 1086(b), Nov. 7, 1988, 102 Stat. 3278; Pub. L. 103–325, title V, § 512(a), Sept. 23, 1994, 108 Stat. 2256; Pub. L. 108–264, title I, § 105(b), June 30, 2004, 118 Stat. 723; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

2004—Subsec. (a)(7). Pub. L. 108–264, § 105(b)(1), added par. (7) and struck out former par. (7) which read as follows: ''the term 'repetitive loss structure' means a structure covered by a contract for flood insurance under this chapter that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event;''.

Subsec. (a)(15). Pub. L. 108–264, § 105(b)(2)–(4), added par. (15).

1994—Subsec. (a)(7) to (14). Pub. L. 103–325 added pars. (7) to (14).

1988—Subsecs. (b), (c). Pub. L. 100–628 substituted ''subsection (a)(1) of this section'' for ''paragraph (1)''.

1983—Subsec. (a)(1). Pub. L. 98–181, § 451(d)(1), substituted ''Director'' for ''Secretary''.

Subsec. (a)(6). Pub. L. 98–181, § 451(d)(8), substituted definition of ''Director'' as the Director of the Federal Emergency Management Agency for definition of ''Secretary'' as the Secretary of Housing and Urban Development.

Subsecs. (b), (c). Pub. L. 98–181, § 451(d)(1), substituted ''Director'' for ''Secretary''.

1973—Subsec. (b). Pub. L. 93–234, § 107, inserted ''proximately'' before ''caused''.

Subsec. (c). Pub. L. 93–234, § 108(b), added subsec. (c).

1969—Pub. L. 91–152 designated existing provisions as subsec. (a) and added subsec. (b).

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (a)(6) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 4122. Studies of other natural disasters; cooperation and consultation with other departments and agencies

(a) The Director is authorized to undertake such studies as may be necessary for the purpose of determining the extent to which insurance protection against earthquakes or any other natural disaster perils, other than flood, is not available from public or private sources, and the feasibility of such insurance protection being made available.

(b) Studies under this section shall be carried out, to the maximum extent practicable, with the cooperation of other Federal departments and agencies and State and local agencies, and the Director is authorized to consult with, receive information from, and enter into any necessary agreements or other arrangements with such other Federal departments and agencies (on a reimbursement basis) and such State and local agencies.

(Pub. L. 90–448, title XIII, § 1371, Aug. 1, 1968, 82 Stat. 588; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

STUDY OF SINKHOLE INSURANCE

Pub. L. 98–181, title IV, § 453, Nov. 30, 1983, 97 Stat. 1230, permitted the Director of the Federal Emergency Management Agency to make a grant to a nonprofit organization, educational institution, or State or local agency to study the feasibility of expanding the national flood insurance program to cover damage or loss arising from sinkholes and authorized appropriations.

§ 4123. Advance payments

Any payments under this chapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Director may determine.

(Pub. L. 90–448, title XIII, § 1372, Aug. 1, 1968, 82 Stat. 589; Pub. L. 98–181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4124. Applicability of fiscal controls

The provisions of chapter 91 of title 31 shall apply to the program authorized under this

chapter to the same extent as they apply to wholly owned Government corporations.

(Pub. L. 90–448, title XIII, § 1373, Aug. 1, 1968, 82 Stat. 589; Pub. L. 98–479, title II, § 203(j)(3), Oct. 17, 1984, 98 Stat. 2231.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1984—Pub. L. 98–479 substituted ''chapter 91 of title 31'' for ''the Government Corporation Control Act''.

§ 4125. Finality of certain financial transactions

Notwithstanding the provisions of any other law—

(1) any financial transaction authorized to be carried out under this chapter, and

(2) any payment authorized to be made or to be received in connection with any such financial transaction,

shall be final and conclusive upon all officers of the Government.

(Pub. L. 90–448, title XIII, § 1374, Aug. 1, 1968, 82 Stat. 589.)

REFERENCES IN TEXT

This chapter, referred to in par. (1), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

§ 4126. Administrative expenses

Any administrative expenses which may be sustained by the Federal Government in carrying out the flood insurance and floodplain management programs authorized under this chapter may be paid with amounts from the National Flood Insurance Fund (as provided under section 4017(a)(4) of this title), subject to approval in appropriations Acts.

(Pub. L. 90–448, title XIII, § 1375, Aug. 1, 1968, 82 Stat. 589; Pub. L. 101–508, title II, § 2302(e)(4), Nov. 5, 1990, 104 Stat. 1388–25.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

1990—Pub. L. 101–508 substituted ''and floodplain management programs authorized under this chapter may be paid with amounts from the National Flood Insurance Fund (as provided under section 4017(a)(4) of this title), subject to approval in appropriations Acts'' for ''program authorized under this chapter may be paid out of appropriated funds''.

§ 4127. Authorization of appropriations; availability

(a) There are hereby authorized to be appropriated such sums as may from time to time be necessary to carry out this chapter, including sums—

(1) to cover administrative expenses authorized under section 4126 of this title;

(2) to reimburse the National Flood Insurance Fund established under section 4017 of this title for—

(A) premium equalization payments under section 4054 of this title which have been made from such fund; and

(B) reinsurance claims paid under the excess loss reinsurance coverage provided under section 4055 of this title; and

(3) to make such other payments as may be necessary to carry out the purposes of this chapter.

(b) All such funds shall be available without fiscal year limitation.

(c) There are authorized to be appropriated such sums as may be necessary through the date specified in section 4026 of this title, for studies under this chapter.

(Pub. L. 90–448, title XIII, § 1376, Aug. 1, 1968, 82 Stat. 589; Pub. L. 94–375, § 14(c), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 95–128, title VII, § 702, Oct. 12, 1977, 91 Stat. 1144; Pub. L. 95–557, title III, § 309, Oct. 31, 1978, 92 Stat. 2098; Pub. L. 96–153, title VI, § 602(c), Dec. 21, 1979, 93 Stat. 1137; Pub. L. 96–399, title III, § 304, Oct. 8, 1980, 94 Stat. 1639; Pub. L. 97–35, title III, § 341(a), Aug. 13, 1981, 95 Stat. 418; Pub. L. 98–181, title IV, § 451(c), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 100–242, title V, § 543, Feb. 5, 1988, 101 Stat. 1940; Pub. L. 101–137, § 4, Nov. 3, 1989, 103 Stat. 825; Pub. L. 104–204, title III, Sept. 26, 1996, 110 Stat. 2915; Pub. L. 105–65, title III, Oct. 27, 1997, 111 Stat. 1377; Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2503; Pub. L. 106–74, title III, Oct. 20, 1999, 113 Stat. 1088; Pub. L. 106–377, § 1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–47; Pub. L. 107–73, title III, Nov. 26, 2001, 115 Stat. 689; Pub. L. 108–3, § 2(a)(4), Jan. 13, 2003, 117 Stat. 7; Pub. L. 108–171, § 2(a)(4), Dec. 6, 2003, 117 Stat. 2064; Pub. L. 108–199, div. H, § 136(a)(4), Jan. 23, 2004, 118 Stat. 442; Pub. L. 108–264, title I, § 101(d), June 30, 2004, 118 Stat. 714.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original a reference to ''this title'' meaning title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–264 substituted ''through the date specified in section 4026 of this title, for studies under this chapter.'' for ''through the date specified in section 4026 of this title, for studies under this chapter. Any amount appropriated under this subsection shall remain available until expended.''

Pub. L. 108–199 made amendment identical to that made by Pub. L. 108–171. See 2003 Amendment note below.

2003—Subsec. (c). Pub. L. 108–171 substituted ''the date specified in section 4026 of this title'' for ''December 31, 2003''.

Pub. L. 108–3 substituted ''December 31, 2003'' for ''December 31, 2002''.

2001—Subsec. (c). Pub. L. 107–73 substituted ''2002'' for ''2001''.

2000—Subsec. (c). Pub. L. 106–377 substituted ''December 31, 2001'' for ''September 30, 2000''.

1999—Subsec. (c). Pub. L. 106–74 substituted ''2000'' for ''1999''.

1998—Subsec. (c). Pub. L. 105–276 substituted ''1999'' for ''1998''.

1997—Subsec. (c). Pub. L. 105–65 substituted ''such sums as may be necessary through September 30, 1998, for studies under this chapter'' for ''for studies under this chapter not to exceed $36,283,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991''.

1996—Subsec. (c). Pub. L. 104–204, which directed amendment of first sentence by substituting ''such sums as may be necessary through September 30, 1997 for studies under this chapter.'' for ''this subsection'' and all that follows, could not be executed because phrase ''this subsection'' does not appear in first sentence.

1989—Subsec. (c). Pub. L. 101–137 substituted provisions authorizing appropriations of not to exceed $36,283,000 for fiscal year 1990 and such sums as may be necessary for fiscal year 1991 for provisions authorizing appropriations of $37,000,000 for fiscal year 1988, and $37,000,000 for fiscal year 1989.

1988—Subsec. (c). Pub. L. 100–242 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''There are authorized to be appropriated for studies under this chapter not to exceed $100,000,000 for the fiscal year 1977, not to exceed $108,000,000 for the fiscal year 1978, not to exceed $114,000,000 for the fiscal year 1979, not to exceed $74,000,000 for the fiscal year 1980, not to exceed $61,600,000 for the fiscal year 1981, not to exceed $42,600,000 for the fiscal year 1982, not to exceed $49,752,000 for the fiscal year 1984, and such sums as may be necessary for fiscal year 1985.''

1983—Subsec. (c). Pub. L. 98–181 inserted ''not to exceed $49,752,000 for the fiscal year 1984, and such sums as may be necessary for fiscal year 1985''.

1981—Subsec. (c). Pub. L. 97–35 authorized appropriation of not to exceed $42,600,000 for fiscal year 1982.

1980—Subsec. (c). Pub. L. 96–399 authorized appropriation of not to exceed $61,600,000 for fiscal year 1981.

1979—Subsec. (c). Pub. L. 96–153 authorized appropriation of $74,000,000 for fiscal year 1980.

1978—Subsec. (c). Pub. L. 95–557 substituted ''not to exceed $108,000,000 for the fiscal year 1978, and not to exceed $114,000,000 for the fiscal year 1979'' for ''and not to exceed $108,000,000 for the fiscal year 1978''.

1977—Subsec. (c). Pub. L. 95–128 authorized appropriation of $108,000,000 for fiscal year 1978.

1976—Subsec. (c). Pub. L. 94–375 added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–199 considered to have taken effect on Dec. 31, 2003, see section 136(b) of div. H of Pub. L. 108–199, set out as a note under section 4016 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108–171 effective Dec. 31, 2003, see section 2(b) of Pub. L. 108–171, set out as a note under section 4016 of this title.

Amendment by Pub. L. 108–3 effective Dec. 31, 2002, see section 2(b) of Pub. L. 108–3, set out as a note under section 4016 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 4128. Rules and regulations

(a) The Director is authorized to issue such regulations as may be necessary to carry out the purpose of this Act.

(b) The head of each Federal agency that administers a program of financial assistance relating to the acquisition, construction, reconstruction, repair, or improvement of publicly or privately owned land or facilities, and each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions, shall, in cooperation with the Director, issue appropriate rules and regulations to govern the carrying out of the agency's responsibilities under this Act.

(Pub. L. 93–234, title II, § 205, Dec. 31, 1973, 87 Stat. 983; Pub. L. 98–181, title IV, § 451(e)(1), Nov. 30, 1983, 97 Stat. 1229.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 975, as amended, known as the Flood Disaster Protection Act of 1973. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of this title and Tables.

CODIFICATION

Section was enacted as part of Flood Disaster Protection Act of 1973, and not as part of National Flood Insurance Act of 1968 which comprises this chapter.

AMENDMENTS

1983—Pub. L. 98–181 substituted ''Director'' for ''Secretary'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

FLOODPLAIN MANAGEMENT

For provisions relating to the reduction of the risk of flood loss, the minimization of the impact of floods on human safety, health and welfare, and the management of floodplains, see Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, set out as a note under section 4321 of this title.

§ 4129. Federal Insurance Administrator; establishment of position

There is hereby established in the Federal Emergency Management Agency the position of Federal Insurance Administrator.

(Pub. L. 90–448, title XI, § 1105(a), Aug. 1, 1968, 82 Stat. 567; Pub. L. 96–153, title VI, § 603(a), Dec. 21, 1979, 93 Stat. 1138.)

CODIFICATION

Section was formerly classified to section 3533a of this title.

Section was enacted as part of the Urban Property Protection and Reinsurance Act of 1968 and also as part

of the Housing and Urban Development Act of 1968, and not as part of the National Flood Insurance Act of 1968 which comprises this chapter.

AMENDMENTS

1979—Pub. L. 96–153 substituted ''Federal Emergency Management Agency'' for ''Department of Housing and Urban Development''.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 51—DESIGN AND CONSTRUCTION OF PUBLIC BUILDINGS TO ACCOMMODATE PHYSICALLY HANDICAPPED

Sec.
4151. ''Building'' defined.
4152. Standards for design, construction, and alteration of buildings; Administrator of General Services.
4153. Standards for design, construction, and alteration of buildings; Secretary of Housing and Urban Development.
4154. Standards for design, construction, and alteration of buildings; Secretary of Defense.
4154a. Standards for design, construction, and alteration of buildings; United States Postal Service.
4155. Effective date of standards.
4156. Waiver and modification of standards.
4157. Omitted.

§ 4151. "Building" defined

As used in this chapter, the term ''building'' means any building or facility (other than (A) a privately owned residential structure not leased by the Government for subsidized housing programs and (B) any building or facility on a military installation designed and constructed primarily for use by able bodied military personnel) the intended use for which either will require that such building or facility be accessible to the public, or may result in the employment or residence therein of physically handicapped persons, which building or facility is—

(1) to be constructed or altered by or on behalf of the United States;

(2) to be leased in whole or in part by the United States after August 12, 1968;

(3) to be financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan; or

(4) to be constructed under authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or title III of the Washington Metropolitan Area Transit Regulation Compact.

(Pub. L. 90–480, § 1, Aug. 12, 1968, 82 Stat. 718; Pub. L. 91–205, Mar. 5, 1970, 84 Stat. 49; Pub. L. 94–541, title II, § 201(1), Oct. 18, 1976, 90 Stat. 2507.)

REFERENCES IN TEXT

The National Capital Transportation Act of 1960, referred to in par. (4), is Pub. L. 86–669, July 14, 1960, 74 Stat. 537, which enacted sections 651, 652, 661 to 665, and 671 of former Title 40, Public Buildings, Property, and Works, and enacted provisions set out as notes under section 651 of former Title 40 and which was repealed by Pub. L. 91–143, § 8(a)(1), Dec. 9, 1969, 83 Stat. 322.

The National Capital Transportation Act of 1965, referred to in par. (4), is Pub. L. 89–173, Sept. 8, 1965, 79 Stat. 663, as amended. Section 1 of the Act, which was classified to a note under section 681 of former Title 40, Public Buildings, Property, and Works, was repealed by Pub. L. 107–217, § 6(b), Aug. 21, 2002, 116 Stat. 1304. Section 2 of the Act, which was classified to section 681 of former Title 40, has been omitted from the Code. Sections 3 and 4 of the Act, which were classified to sections 682 and 683, respectively, of former Title 40, were repealed by Pub. L. 91–143, § 8(a)(2), Dec. 9, 1969, 83 Stat. 323. Sections 5(a) (no subsec. (b) was enacted) and 6 of the Act, which were classified to sections 684 and 685, respectively, of former Title 40, were repealed by Pub. L. 107–217, § 6(b), Aug. 21, 2002, 116 Stat. 1304. Section 7 of the Act amended provisions classified to section 662 of former Title 40, which was repealed by Pub. L. 89–774, § 5(b), Nov. 6, 1966, 80 Stat. 1353. Section 8 of the Act, which was classified to a note under section 681 of former Title 40, has been omitted from the Code.

AMENDMENTS

1976—Pub. L. 94–541 inserted in parenthetical text ''not leased by the Government for subsidized housing programs'' after ''structure'' and struck out from par. (2) '', after construction or alteration in accordance with plans and specifications of the United States'' after ''August 12, 1968''.

1970—Par. (4). Pub. L. 91–205 added par. (4).

SHORT TITLE

Pub. L. 90–480, Aug. 12, 1968, 82 Stat. 718, which enacted this chapter, is popularly known as the ''Architectural Barriers Act of 1968''.

APPLICABILITY OF 1976 AMENDMENT TO LEASES ENTERED INTO BEFORE, ON, OR AFTER JANUARY 1, 1977

Section 202 of Pub. L. 94–541 provided that: ''The amendment made by paragraph (1) of section 201 of this Act [amending this section] shall not apply to any lease entered into before January 1, 1977. It shall apply to every lease entered into on or after January 1, 1977, including any renewal of a lease entered into before such date which renewal is on or after such date.''

§ 4152. Standards for design, construction, and alteration of buildings; Administrator of General Services

The Administrator of General Services, in consultation with the Secretary of Health and Human Services, shall prescribe standards for the design, construction, and alteration of buildings (other than residential structures subject to this chapter and buildings, structures, and facilities of the Department of Defense and of the United States Postal Service subject to this chapter) to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

(Pub. L. 90–480, § 2, Aug. 12, 1968, 82 Stat. 719; Pub. L. 94–541, title II, § 201(2), Oct. 18, 1976, 90 Stat. 2507; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1976—Pub. L. 94–541 substituted ''shall prescribe'' and ''to insure whenever possible'' for ''is authorized to prescribe such'' and ''as may be necessary to insure'', respectively, and inserted in parenthetical text ''and of the United States Postal Service'' after ''Department of Defense''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 4153. Standards for design, construction, and alteration of buildings; Secretary of Housing and Urban Development

The Secretary of Housing and Urban Development, in consultation with the Secretary of Health and Human Services, shall prescribe standards for the design, construction, and alteration of buildings which are residential structures subject to this chapter to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

(Pub. L. 90–480, § 3, Aug. 12, 1968, 82 Stat. 719; Pub. L. 94–541, title II, § 201(3), Oct. 18, 1976, 90 Stat. 2507; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1976—Pub. L. 94–541 substituted ''shall prescribe'' and ''to insure whenever possible'' for ''is authorized to prescribe such'' and ''as may be necessary to insure'', respectively.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 4154. Standards for design, construction, and alteration of buildings; Secretary of Defense

The Secretary of Defense, in consultation with the Secretary of Health and Human Services, shall prescribe standards for the design, construction, and alteration of buildings, structures, and facilities of the Department of Defense subject to this chapter to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

(Pub. L. 90–480, § 4, Aug. 12, 1968, 82 Stat. 719; Pub. L. 94–541, title II, § 201(4), Oct. 18, 1976, 90 Stat. 2507; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1976—Pub. L. 94–541 substituted ''shall prescribe'' and ''to insure whenever possible'' for ''is authorized to prescribe such'' and ''as may be necessary to insure'', respectively.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 4154a. Standards for design, construction, and alteration of buildings; United States Postal Service

The United States Postal Service, in consultation with the Secretary of Health and Human Services, shall prescribe such standards for the design, construction, and alteration of its buildings to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

(Pub. L. 90–480, § 4a, as added Pub. L. 94–541, title II, § 201(5), Oct. 18, 1976, 90 Stat. 2508; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 4155. Effective date of standards

Every building designed, constructed, or altered after the effective date of a standard issued under this chapter which is applicable to such building, shall be designed, constructed, or altered in accordance with such standard.

(Pub. L. 90–480, § 5, Aug. 12, 1968, 82 Stat. 719.)

§ 4156. Waiver and modification of standards

The Administrator of General Services, with respect to standards issued under section 4152 of this title, and the Secretary of Housing and Urban Development, with respect to standards issued under section 4153 of this title, and the Secretary of Defense with respect to standards issued under section 4154 of this title, and the United States Postal Service with respect to standards issued under section 4154a of this title—

(1) is authorized to modify or waive any such standard, on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned, and upon a determination by the Administrator or Secretary, as the case may be, that such modification or waiver is clearly necessary, and

(2) shall establish a system of continuing surveys and investigations to insure compliance with such standards.

(Pub. L. 90–480, § 6, Aug. 12, 1968, 82 Stat. 719; Pub. L. 94–541, title II, § 201(6), Oct. 18, 1976, 90 Stat. 2508.)

AMENDMENTS

1976—Pub. L. 94–541, in introductory text, inserted reference to the United States Postal Service with respect to standards issued under section 4154a of this title and struck out ''is authorized'' at end; in par. (1), inserted introductory words ''is authorized''; and in par. (2), substituted ''shall establish a system of continuing surveys and investigations'' for ''to conduct such surveys and investigations as he deems necessary''.

§ 4157. Omitted

CODIFICATION

Section, Pub. L. 90–480, § 7, as added Pub. L. 94–541, title II, § 201(7), Oct. 18, 1976, 90 Stat. 2508; amended Pub.

L. 103–437, § 15(n), Nov. 2, 1994, 108 Stat. 4593, which required the Administrator of General Services to report to Congress during the first week of January of each year on his activities and those of other departments, agencies, and instrumentalities of the Federal Government under this chapter during the preceding fiscal year and required the Architectural and Transportation Barriers Compliance Board established by section 792 of title 29 to report to the Public Works and Transportation Committee of the House of Representatives and the Environment and Public Works Committee of the Senate during the first week of January of each year on its activities and actions to insure compliance with the standards prescribed under this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 6 on page 155 and item 10 on page 173 of House Document No. 103–7.

CHAPTER 52—INTERGOVERNMENTAL COOPERATION

SUBCHAPTER I—GENERAL PROVISIONS

§ 4201. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section, Pub. L. 90–577, title I, §§ 101–110, Oct. 16, 1968, 82 Stat. 1098–1101, defined terms used in this chapter. See sections 6501 and 6505(a) of Title 31, Money and Finance.

SHORT TITLE

Pub. L. 90–577, § 1, Oct. 16, 1968, 82 Stat. 1098, which provided that Pub. L. 90–577 could be cited as the ''Intergovernmental Cooperation Act of 1968'', was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1080.

SUBCHAPTER II—GRANTS-IN-AID TO THE STATES; IMPROVED ADMINISTRATION

§§ 4211 to 4214. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section 4211, Pub. L. 90–577, title II, § 201, Oct. 16, 1968, 82 Stat. 1101, required the Federal Government to provide to States full information on grant-in-aid funds. See section 6502 of Title 31, Money and Finance.

Section 4212, Pub. L. 90–577, title II, § 202, Oct. 16, 1968, 82 Stat. 1101, related to deposit of grants-in-aid. See section 6503(b) of Title 31.

Section 4213, Pub. L. 90–577, title II, § 203, Oct. 16, 1968, 82 Stat. 1101, related to scheduling of Federal grant-in-aid transfers to States. See section 6503(a) of Title 31.

Section 4214, Pub. L. 90–577, title II, § 204, Oct. 16, 1968, 82 Stat. 1101, related to eligibility of State agencies to administer a grant-in-aid program. See section 6504 of Title 31.

SUBCHAPTER III—SPECIAL OR TECHNICAL SERVICES PROVIDED FOR STATE AND LOCAL UNITS OF GOVERNMENT BY FEDERAL DEPARTMENTS AND AGENCIES

§§ 4221 to 4223. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section 4221, Pub. L. 90–577, title III, § 301, Oct. 16, 1968, 82 Stat. 1102, set out the statement of purpose for the provision of special or technical services to State and local units of government by Federal departments and agencies.

Section 4222, Pub. L. 90–577, title III, § 302, Oct. 16, 1968, 82 Stat. 1102; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, authorized Federal departments and agencies to provide specialized or technical services to States or their political subdivisions. See section 6505(a), (b) of Title 31, Money and Finance.

Section 4223, Pub. L. 90–577, title III, § 303, Oct. 16, 1968, 82 Stat. 1102, related to reimbursement of appropriations to Federal departments and agencies. See section 6505(c) of Title 31.

§ 4224. Repealed. Pub. L. 96–470, title I, § 101(b), Oct. 19, 1980, 94 Stat. 2237

Section, Pub. L. 90–577, title III, § 304, Oct. 16, 1968, 82 Stat. 1102, provided that the Secretary of any department or the administrative head of any agency of the executive branch of the Federal Government furnish annually to the respective Committees on Government Operations of the Senate and House of Representatives a summary report on the scope of the services provided under the administration of this subchapter.

§ 4225. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section, Pub. L. 90–577, title III, § 305, Oct. 16, 1968, 82 Stat. 1103, provided for the reservation of existing authority of Federal departments and agencies with respect to furnishing services to State and local units of government. See section 6505(d) of Title 31, Money and Finance.

SUBCHAPTER IV—DEVELOPMENT ASSISTANCE PROGRAMS; COORDINATED INTERGOVERNMENTAL POLICY AND ADMINISTRATION

§§ 4231 to 4233. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section 4231, Pub. L. 90–577, title IV, § 401, Oct. 16, 1968, 82 Stat. 1103, set out the declaration of a development assistance policy. See section 6506(a)–(e) of Title 31, Money and Finance.

Section 4232, Pub. L. 90–577, title IV, § 402, Oct. 16, 1968, 82 Stat. 1104, related to the favoring of units of general local government in the provision of loans or grants-in-aid. See section 6506(f) of Title 31.

Section 4233, Pub. L. 90–577, title IV, § 403, Oct. 16, 1968, 82 Stat. 1104; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, related to rules and regulations for the effective administration of this subchapter. See section 6506(g) of Title 31.

SUBCHAPTER V—REVIEW OF FEDERAL GRANT-IN-AID PROGRAMS

§§ 4241 to 4244. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section 4241, Pub. L. 90–577, title VI, § 601, Oct. 16, 1968, 82 Stat. 1106, related to Congressional review of grant-in-aid programs. See section 6507 of Title 31, Money and Finance.

Section 4242, Pub. L. 90–577, title VI, § 602, Oct. 16, 1968, 82 Stat. 1107, related to studies by the Comptroller General of Federal grant-in-aid programs and reports to Congress. See section 6508(a) of Title 31.

Section 4243, Pub. L. 90–577, title VI, § 603, Oct. 16, 1968, 82 Stat. 1107, related to studies by the Advisory Commission on Intergovernmental Relations and a report of its findings to Congress. See section 6508(b) of Title 31.

Section 4244, Pub. L. 90–577, title VI, § 604, Oct. 16, 1968, 82 Stat. 1107, provided for preservation of House and Senate committee jurisdiction.

CHAPTER 52A—JOINT FUNDING SIMPLIFICATION

§§ 4251 to 4261. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section 4251, Pub. L. 93–510, § 2, Dec. 5, 1974, 88 Stat. 1604, set out Congressional statement of purpose. See section 7101 of Title 31, Money and Finance.

Section 4252, Pub. L. 93–510, § 3, Dec. 5, 1974, 88 Stat. 1604, related to implementation of joint funding provisions by Federal officials. See section 7103 of Title 31.

Section 4253, Pub. L. 93–510, § 4, Dec. 5, 1974, 88 Stat. 1605, related to activities by heads of Federal agencies relating to application processing or assistance requests under two or more Federal programs supporting any project. See section 7104 of Title 31.

Section 4254, Pub. L. 93–510, § 5, Dec. 5, 1974, 88 Stat. 1605, related to special authorities of heads of Federal agencies with respect to projects assisted under more than one Federal assistance program and exercise of these authorities pursuant to regulations prescribed by President. See section 7108 of Title 31.

Section 4255, Pub. L. 93–510, § 6, Dec. 5, 1974, 88 Stat. 1606, provided for establishment by heads of Federal agencies of uniform technical and administrative provisions. See section 7105 of Title 31.

Section 4256, Pub. L. 93–510, § 7, Dec. 5, 1974, 88 Stat. 1606, related to delegation by Federal agency heads of powers and functions relating to supervision, etc., of Federal assistance with the approval of President. See section 7106 of Title 31.

Section 4257, Pub. L. 93–510, § 8, Dec. 5, 1974, 88 Stat. 1606, provided for a joint management fund for financing of projects under this chapter. See section 7107 of Title 31.

Section 4258, Pub. L. 93–510, § 9, Dec. 5, 1974, 88 Stat. 1607, related to availability of appropriations for joint funding of programs under this chapter. See section 7109 of Title 31.

Section 4259, Pub. L. 93–510, § 10, Dec. 5, 1974, 88 Stat. 1607, provided for agreements between Federal agencies and States extending joint funding provisions to assisted projects subject to Presidential regulations. See section 7110 of Title 31.

Section 4260, Pub. L. 93–510, § 11, Dec. 5, 1974, 88 Stat. 1608, provided for a report by the President to Congress concerning actions taken under this chapter and the contents of such report. See section 7111 of Title 31.

Section 4261, Pub. L. 93–510, § 12, Dec. 5, 1974, 88 Stat. 1608, provided definitions for use in this chapter. See section 7102 of Title 31.

EFFECTIVE AND EXPIRATION DATES

Pub. L. 93–510, § 13, Dec. 5, 1974, 88 Stat. 1608, as amended by Pub. L. 96–534, Dec. 16, 1980, 94 Stat. 3164, which provided for the effective and expiration dates of that Act, was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068. See section 7112 of Title 31, Money and Finance.

SHORT TITLE

Pub. L. 93–510, § 1, Dec. 5, 1974, 88 Stat. 1604, which provided that Pub. L. 93–510 could be cited as the ''Joint Funding Simplification Act of 1974'', was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068.

CHAPTER 53—ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Sec.
4271. Establishment.
4272. Declaration of purpose.
4273. Membership of Commission; appointment of members; term.
4274. Organization of Commission.
4275. Duties of Commission.
4276. Powers and administrative provisions.
4277. Compensation of members.
4278. Authorization of appropriations.
4279. Receipt of funds; consideration by Congress.

CONTINUATION AND TERMINATION OF COMMISSION TO PERFORM CONTRACTS FOR RESEARCH ON SOCIAL AND ECONOMIC IMPACTS OF GAMBLING

Pub. L. 104–328, § 1, Oct. 19, 1996, 110 Stat. 4004, provided that the Advisory Commission on Intergovernmental Relations could continue in existence solely for the purpose of performing any contract entered into under section 7(a) of the National Gambling Impact Study Commission Act, Pub. L. 104–169, Aug. 3, 1996, 110 Stat. 1487, formerly set out in a note under section 1955 of Title 18, Crimes and Criminal Procedure, and would terminate on the date of the completion of such contract.

APPROPRIATIONS; UNFUNDED MANDATES; TERMINATION OF ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Pub. L. 104–52, title IV, Nov. 19, 1995, 109 Stat. 480, provided in part that: ''For necessary expenses of the Advisory Commission on Intergovernmental Relations, $784,000, of which $334,000 is to carry out the provisions of Public Law 104–4 [see Short Title note set out under section 1501 of Title 2, The Congress], and of which $450,000 shall be available only for the purposes of the prompt and orderly termination of the Advisory Commission on Intergovernmental Relations.''

§ 4271. Establishment

There is established a permanent bipartisan commission to be known as the Advisory Commission on Intergovernmental Relations, hereinafter referred to as the ''Commission''.

(Pub. L. 86–380, § 1, Sept. 24, 1959, 73 Stat. 703.)

CODIFICATION

Section was formerly classified to section 2371 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1. Sept. 6, 1966, 80 Stat. 378.

EXECUTIVE ORDER NO. 11455

Ex. Ord. No. 11455, eff. Feb. 14, 1969, 34 F.R. 2299, which established the Office of Intergovernmental Relations, was revoked by Ex. Ord. No. 11690, eff. Dec. 14, 1972, 37 F.R. 26815, set out as a note under section 301 of Title 3, The President.

OFFICE OF INTERGOVERNMENTAL RELATIONS; AUTHORIZATION OF APPROPRIATIONS; COMPENSATION OF DIRECTOR; APPOINTMENT OF PERSONNEL; EXPERTS AND CONSULTANTS

Pub. L. 91–186, Dec. 30, 1969, 83 Stat. 849, authorized the appropriation of such sums as may be necessary for the expenses of the Office of Intergovernmental Relations, established by Ex. Ord. No. 11455, formerly set out above, prescribed the compensation of the Director of the Office, and authorized the Director to appoint such personnel as he deems necessary and to obtain the services of experts and consultants.

EXECUTIVE ORDER NO. 12303

Ex. Ord. No. 12303, Apr. 8, 1981, 46 F.R. 21341, which established the Presidential Advisory Committee on Federalism and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12399, § 4(e), Dec. 31, 1982, 48 F.R. 380, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 4272. Declaration of purpose

Because the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation and coordination of activities between the levels of government, and because population growth and scientific developments portend an increasingly complex society in future years, it is essential that an appropriate agency be established to give continuing attention to intergovernmental problems.

It is intended that the Commission, in the performance of its duties, will—

(1) bring together representatives of the Federal, State, and local governments for the consideration of common problems;

(2) provide a forum for discussing the administration and coordination of Federal grant and other programs requiring intergovernmental cooperation;

(3) give critical attention to the conditions and controls involved in the administration of Federal grant programs;

(4) make available technical assistance to the executive and legislative branches of the Federal Government in the review of proposed legislation to determine its overall effect on the Federal system;

(5) encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation;

(6) recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues among the several levels of government; and

(7) recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers.

(Pub. L. 86–380, § 2, Sept. 24, 1959, 73 Stat. 703.)

CODIFICATION

Section was formerly classified to section 2372 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378.

§ 4273. Membership of Commission; appointment of members; term

(a) Number of members; appointment; qualifications

The Commission shall be composed of twenty-six members, as follows:

(1) Six appointed by the President of the United States, three of whom shall be officers of the executive branch of the Government, and three private citizens, all of whom shall have had experience or familiarity with relations between the levels of government;

(2) Three appointed by the President of the Senate, who shall be Members of the Senate;

(3) Three appointed by the Speaker of the House of Representatives, who shall be Members of the House;

(4) Four appointed by the President from a panel of at least eight Governors submitted by the Governors' Conference;

(5) Three appointed by the President from a panel of at least six members of State legislative bodies submitted by the board of managers of the Council of State Governments;

(6) Four appointed by the President from a panel of at least eight mayors submitted jointly by the National League of Cities and the United States Conference of Mayors; and

(7) Three appointed by the President from a panel of at least six elected county officers submitted by the National Association of Counties.

(b) Political and geographical composition

The members appointed from private life under paragraph (1) of subsection (a) of this section shall be appointed without regard to political affiliation; of each class of members enumerated in paragraphs (2) and (3) of subsection (a) of this section, two shall be from the majority party of the respective houses; of each class of members enumerated in paragraphs (4), (5), (6), and (7) of subsection (a) of this section, not more than two shall be from any one political party; of each class of members enumerated in paragraphs (5), (6) and (7) of subsection (a) of this section, not more than one shall be from any one State; at least two of the appointees under paragraph (6) of subsection (a) of this section shall be from cities under five hundred thousand population.

(c) Term of office; reappointment; period of service

The term of office of each member of the Commission shall be two years; members shall be eligible for reappointment; and, except as provided in section 4274(d) of this title, members shall serve until their successors are appointed.

(Pub. L. 86–380, § 3, Sept. 24, 1959, 73 Stat. 704; Pub. L. 89–733, §§ 1, 2, Nov. 2, 1966, 80 Stat. 1162.)

CODIFICATION

Section was formerly classified to section 2373 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1966—Subsec. (a)(6). Pub. L. 89–733, § 1, substituted ''National League of Cities'' for ''American Municipal Association''.

Subsec. (a)(7). Pub. L. 89–733, § 1, substituted ''National Association of Counties'' for ''National Association of County Officials''.

Subsec. (c). Pub. L. 89–733, § 2, inserted provision that members shall serve until their successors are appointed, except as provided in section 4274(d) of this title.

§ 4274. Organization of Commission

(a) Initial meeting

The President shall convene the Commission within ninety days following September 24, 1959 at such time and place as he may designate for the Commission's initial meeting.

(b) Chairman and Vice Chairman

The President shall designate a Chairman and a Vice Chairman from among members of the Commission.

(c) Vacancies in membership

Any vacancy in the membership of the Commission shall be filed in the same manner in which the original appointment was made; except that where the number of vacancies is fewer than the number of members specified in paragraphs (4), (5), (6), and (7) of section 4273(a) of this title, each panel of names submitted in accordance with the aforementioned paragraphs shall contain at least two names for each vacancy.

(d) Termination of service in official position from which originally appointed

Where any member ceases to serve in the official position from which originally appointed under section 4273(a) of this title, his place on the Commission shall be deemed to be vacant.

(e) Quorum

Thirteen members of the Commission shall constitute a quorum, but two or more members shall constitute a quorum for the purpose of conducting hearings.

(Pub. L. 86–380, § 4, Sept. 24, 1959, 73 Stat. 705.)

CODIFICATION

Section was formerly classified to section 2374 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378.

§ 4275. Duties of Commission

It shall be the duty of the Commission—

(1) to engage in such activities and to make such studies and investigations as are necessary or desirable in the accomplishment of the purposes set forth in section 4272 of this title;

(2) to consider, on its own initiative, ways and means for fostering better relations between the levels of government;

(3) to submit an annual report to the President and the Congress on or before January 31 of each year. The Commission may also submit such additional reports to the President, to the Congress or any committee of the Congress, and to any unit of government or organization as the Commission may deem appropriate.

(Pub. L. 86–380, § 5, Sept. 24, 1959, 73 Stat. 705.)

CODIFICATION

Section was formerly classified to section 2375 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in cl. (3) of this section relating to submittal of an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 12 on page 153 of House Document No. 103–7.

STUDY AND REPORT TO CONGRESS OF EFFECT ON FUNDS AVAILABLE FOR HOUSING AND STATE AND LOCAL BOND MARKETS OF FULL DEPOSIT INSURANCE FOR PUBLIC FUNDS; SUBMISSION DATE; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 93–495, title I, § 101(f), Oct. 28, 1974, 88 Stat. 1502, required the Advisory Commission on Intergovernmental Relations to conduct a study of the impact of section 101 of Pub. L. 93–495 [amending sections 1464, 1724, 1728, 1757, 1787, 1813, 1817 and 1821 of Title 12, Banks and Banking, and enacting provision set out as a note under section 1813 of Title 12] on funds available for housing and on State and local bond markets, and to make a report to the Congress of the results of its study not later than two years after Oct. 28, 1974, and authorized the appropriation of such sums as may be necessary to carry out section 101(f) of Pub. L. 93–495.

§ 4276. Powers and administrative provisions

(a) Hearings; oaths and affirmations

The Commission or, on the authorization of the Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this chapter, hold such hearings, take such testimony, and sit and act at such times and places as the Commission deems advisable. Any member authorized by the Commission may administer oaths or affirmations to witnesses appearing before the Commission or any subcommittee or members thereof.

(b) Cooperation by Federal agencies

Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairman, such information as the Commission deems necessary to carry out its functions under this chapter.

(c) Executive director

The Commission shall have power to appoint, fix the compensation of, and remove an executive director without regard to the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5. Such appointment shall be made solely on the basis of fitness to perform the duties of the position and without regard to political affiliation.

(d) Appointment and compensation of other personnel; temporary and intermittent services

Subject to such rules and regulations as may be adopted by the Commission, the Chairman, without regard to the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5, and without reference to political affiliation, shall have the power—

(1) to appoint, fix the compensation of, and remove such other personnel as he deems necessary,

(2) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5 but at rates not to exceed $50 a day for individuals.

(e) Applicability of other laws to employees

Except as otherwise provided in this chapter, persons in the employ of the Commission under subsections (c) and (d)(1) of this section shall be considered to be Federal employees for all purposes, including—

(1) subchapter III of chapter 83 of title 5,

(2) chapter 87 of title 5,

(3) annual and sick leave, and

(4) subchapter I of chapter 57 of this title 5.

(f) Maximum compensation of employees

No individual employed in the service of the Commission shall be paid compensation for such employment at a rate in excess of the highest rate provided for grade 18 under the General Schedule, except that the executive director of the Commission may be paid compensation at any rate not exceeding the rate prescribed for level V in the Executive Schedule of subchapter II of chapter 53 of title 5.

(Pub. L. 86–380, § 6, Sept. 24, 1959, 73 Stat. 705; Pub. L. 88–426, title III, § 306(e), Aug. 14, 1964, 78

Stat. 429; Pub. L. 89–733, §§3, 4, Nov. 2, 1966, 80 Stat. 1162.)

REFERENCES IN TEXT

The civil service laws, referred to in subsecs. (c) and (d), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

Annual and sick leave, referred to in subsec. (e)(3), is covered generally by section 6301 et seq. of Title 5.

CODIFICATION

The following substitutions were made on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees:

In subsecs. (c) and (d), ''chapter 51 and subchapter III of chapter 53 of title 5'' substituted for ''the Classification Act of 1949''.

In subsec. (d)(2), ''section 3109 of title 5'' substituted for ''section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a)''.

In subsec. (e), ''subchapter III of chapter 83 of title 5'', ''chapter 87 of title 5'', and ''subchapter I of chapter 57 of title 5'' substituted for ''the Civil Service Retirement Act, as amended'', ''the Federal Employees' Group Life Insurance Act of 1954, as amended'', and ''the Travel Expense Act of 1949, as amended'', respectively.

In subsec. (f), ''the Executive Schedule of subchapter II of chapter 53 of title 5'' substituted for ''the Federal Executive Salary Schedule of the Federal Executive Salary Act of 1964''.

Section was formerly classified to section 2376 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1966—Subsec. (c). Pub. L. 89–733, §3, substituted ''executive director'' for ''staff director''.

Subsec. (f). Pub. L. 89–733, §4, authorized the executive director of the Commission to be paid compensation at any rate not exceeding the rate prescribed for level V in the Federal Executive Salary Schedule.

1964—Subsec. (f). Pub. L. 88–426 substituted ''at a rate in excess of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended'' for ''at a rate in excess of $20,000 per annum''.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 4277. Compensation of members

(a) Members of the Commission who are Members of Congress, officers of the executive branch of the Federal Government, Governors, or full-time salaries officers of city and county governments shall serve without compensation in addition to that received in their regular public employment, but shall be allowed necessary travel expenses (or, in the alternative, a per diem in lieu of subsistence and mileage not to exceed the rates prescribed in subchapter I of chapter 57 of title 5), without regard to subchapter I of chapter 57 of title 5, the Standardized Government Travel Regulations, or section 5731(a) of title 5, and other necessary expenses incurred by them in the performance of duties vested in the Commission.

(b) Unless prohibited by State or local law, members of the Commission, other than those to whom subsection (a) of this section is applicable, shall receive compensation at the rate of $50 per day for each day they are engaged in the performance of their duties as members of the Commission and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission, as provided for in subsection (a) of this section.

(Pub. L. 86–380, §7, Sept. 24, 1959, 73 Stat. 706; Pub. L. 89–733, §5, Nov. 2, 1966, 80 Stat. 1162.)

CODIFICATION

In subsec. (a), ''subchapter I of chapter 57 of title 5'' substituted for ''the Travel Expense Act of 1949, as amended'' and for ''the Travel Expense Act of 1949, as amended (5 U.S.C. 835–842)'', and ''section 5731(a) of title 5'' substituted for ''section 10 of the Act of March 3, 1933, (5 U.S.C. 73(b)'', on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 2377 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89–733 inserted ''Unless prohibited by State or local law''.

§ 4278. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(Pub. L. 86–380, §8, Sept. 24, 1959, 73 Stat. 706.)

CODIFICATION

Section was formerly classified to section 2378 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

§ 4279. Receipt of funds; consideration by Congress

The Commission is authorized to receive funds through grants, contracts, and contributions from State and local governments and organizations thereof, and from nonprofit organizations. Such funds may be received and expended by the Commission only for purposes of this chapter. In making appropriations to the Commission the Congress shall consider the amount of any funds received by the Commission in addition to those funds appropriated to it by the Congress.

(Pub. L. 86–380, §9, as added Pub. L. 89–733, §6, Nov. 2, 1966, 80 Stat. 1162.)

CODIFICATION

Section was formerly classified to section 2379 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

CHAPTER 54—CABINET COMMITTEE ON OPPORTUNITIES FOR SPANISH-SPEAKING PEOPLE

§§ 4301 to 4312. Omitted

CODIFICATION

Sections 4301 to 4312 of this title, Pub. L. 91–181, §§1–12, Dec. 30, 1969, 83 Stat. 838, were omitted pursuant to section 4312 of this title which provided that Pub. L. 91–181 shall expire five years after Dec. 30, 1969.

Section 4301, Pub. L. 91–181, §1, Dec. 30, 1969, 83 Stat. 838, related to Congressional declaration of purpose.

Section 4302, Pub. L. 91–181, §2, Dec. 30, 1969, 83 Stat. 838, related to establishment of Cabinet Committee on Opportunities for Spanish-Speaking People, its composition, appointment of Chairman.

Section 4303, Pub. L. 91–181, §3, Dec. 30, 1969, 83 Stat. 838, related to functions of Committee.

Section 4304, Pub. L. 91–181, §4, Dec. 30, 1969, 83 Stat. 839, related to administrative powers of the Committee.

Section 4305, Pub. L. 91–181, §5, Dec. 30, 1969, 83 Stat. 839, related to utilization of services and facilities of governmental agencies.

Section 4306, Pub. L. 91–181, §6, Dec. 30, 1969, 83 Stat. 839, related to compensation of personnel and transfer of personnel from other Federal departments and agencies.

Section 4307, Pub. L. 91–181, §7, Dec. 30, 1969, 83 Stat. 839, related to establishment of an Advisory Council on Spanish-Speaking Americans.

Section 4308, Pub. L. 91–181, §8, Dec. 30, 1969, 83 Stat. 840, related to nonimpairment of existing powers of other Federal departments and agencies.

Section 4309, Pub. L. 91–181, §9, Dec. 30, 1969, 93 Stat. 840, related to restrictions on political activities of Committee and Advisory Council.

Section 4310, Pub. L. 91–181, §10, Dec. 30, 1969, 83 Stat. 840; Pub. L. 92–122, Aug. 16, 1971, 85 Stat. 342, related to authorization of appropriations.

Section 4311, Pub. L. 91–181, §11, Dec. 30, 1969, 83 Stat. 840, related to submission of reports to the President and Congress.

Section 4312, Pub. L. 91–181, §12, Dec. 30, 1969, 83 Stat. 840, provided that this chapter shall expire five years after Dec. 30, 1969.

CHAPTER 55—NATIONAL ENVIRONMENTAL POLICY

Sec.
4321. Congressional declaration of purpose.

SUBCHAPTER I—POLICIES AND GOALS

4331. Congressional declaration of national environmental policy.
4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts.
4333. Conformity of administrative procedures to national environmental policy.
4334. Other statutory obligations of agencies.
4335. Efforts supplemental to existing authorizations.

SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY

4341. Omitted.
4342. Establishment; membership; Chairman; appointments.
4343. Employment of personnel, experts and consultants.
4344. Duties and functions.
4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives.
4346. Tenure and compensation of members.
4346a. Travel reimbursement by private organizations and Federal, State, and local governments.
4346b. Expenditures in support of international activities.
4347. Authorization of appropriations.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

4361, 4361a. Repealed.
4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of ''CHESS'' Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration.
4361c. Staff management.
4362. Interagency cooperation on prevention of environmental cancer and heart and lung disease.
4362a. Membership of Task Force on Environmental Cancer and Heart and Lung Disease.
4363. Continuing and long-term environmental research and development.
4363a. Pollution control technologies demonstrations.
4364. Expenditure of funds for research and development related to regulatory program activities.
4365. Science Advisory Board.
4366. Identification and coordination of research, development, and demonstration activities.
4366a. Omitted.
4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency.
4368. Grants to qualified citizens groups.
4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control.
4368b. General assistance program.
4369. Miscellaneous reports.
4369a. Reports on environmental research and development activities of Agency.
4370. Reimbursement for use of facilities.
4370a. Assistant Administrators of Environmental Protection Agency; appointment; duties.
4370b. Availability of fees and charges to carry out Agency programs.
4370c. Environmental Protection Agency fees.
4370d. Percentage of Federal funding for organizations owned by socially and economically disadvantaged individuals.
4370e. Working capital fund in Treasury.
4370f. Availability of funds after expiration of period for liquidating obligations.

§ 4321. Congressional declaration of purpose

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

(Pub. L. 91–190, §2, Jan. 1, 1970, 83 Stat. 852.)

SHORT TITLE

Section 1 Pub. L. 91–190 provided: ''That this Act [enacting this chapter] may be cited as the 'National Environmental Policy Act of 1969'.''

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior related to compliance with system activities requiring coordination and ap-

proval under this chapter, and enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Administrator of Environmental Protection Agency, see Parts 1, 2, and 16 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

NECESSITY OF MILITARY LOW-LEVEL FLIGHT TRAINING TO PROTECT NATIONAL SECURITY AND ENHANCE MILITARY READINESS

Pub. L. 106–398, §1 [[div. A], title III, §317], Oct. 30, 2000, 114 Stat. 1654, 1654A–57, provided that: ''Nothing in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or the regulations implementing such law shall require the Secretary of Defense or the Secretary of a military department to prepare a programmatic, nation-wide environmental impact statement for low-level flight training as a precondition to the use by the Armed Forces of an airspace for the performance of low-level training flights.''

POLLUTION PROSECUTION

Pub. L. 101–593, title II, Nov. 16, 1990, 104 Stat. 2962, provided that:

''SEC. 201. SHORT TITLE.

''This title may be cited as the 'Pollution Prosecution Act of 1990'.

''SEC. 202. EPA OFFICE OF CRIMINAL INVESTIGATION.

''(a) The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') shall increase the number of criminal investigators assigned to the Office of Criminal Investigations by such numbers as may be necessary to assure that the number of criminal investigators assigned to the office—

''(1) for the period October 1, 1991, through September 30, 1992, is not less than 72;

''(2) for the period October 1, 1992, through September 30, 1993, is not less than 110;

''(3) for the period October 1, 1993, through September 30, 1994, is not less than 123;

''(4) for the period October 1, 1994, through September 30, 1995, is not less than 160;

''(5) beginning October 1, 1995, is not less than 200.

''(b) For fiscal year 1991 and in each of the following 4 fiscal years, the Administrator shall, during each such fiscal year, provide increasing numbers of additional support staff to the Office of Criminal Investigations.

''(c) The head of the Office of Criminal Investigations shall be a position in the competitive service as defined in 2102 of title 5 U.S.C. or a career reserve [reserved] position as defined in 3132(A) [3132(a)] of title 5 U.S.C. and the head of such office shall report directly, without intervening review or approval, to the Assistant Administrator for Enforcement.

''SEC. 203. CIVIL INVESTIGATORS.

''The Administrator, as soon as practicable following the date of the enactment of this Act [Nov. 16, 1990], but no later than September 30, 1991, shall increase by fifty the number of civil investigators assigned to assist the Office of Enforcement in developing and prosecuting civil and administrative actions and carrying out its other functions.

''SEC. 204. NATIONAL TRAINING INSTITUTE.

''The Administrator shall, as soon as practicable but no later than September 30, 1991 establish within the Office of Enforcement the National Enforcement Training Institute. It shall be the function of the Institute, among others, to train Federal, State, and local lawyers, inspectors, civil and criminal investigators, and technical experts in the enforcement of the Nation's environmental laws.

''SEC. 205. AUTHORIZATION.

''For the purposes of carrying out the provisions of this Act [probably should be ''this title''], there is authorized to be appropriated to the Environmental Protection Agency $13,000,000 for fiscal year 1991, $18,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, $26,000,000 for fiscal year 1994, and $33,000,000 for fiscal year 1995.''

REORGANIZATION PLAN NO. 3 OF 1970

Eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, as amended Pub. L. 98–80, §2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

ENVIRONMENTAL PROTECTION AGENCY

SECTION 1. ESTABLISHMENT OF AGENCY

(a) There is hereby established the Environmental Protection Agency, hereinafter referred to as the ''Agency.''

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the ''Administrator.'' The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate. [As amended Pub. L. 98–80, §2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486.]

SEC. 2. TRANSFERS TO ENVIRONMENTAL PROTECTION AGENCY

(a) There are hereby transferred to the Administrator:

(1) All functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered through the Federal Water Quality Administration, all functions which were transferred to the Secretary of the Interior by Reorganization Plan

No. 2 of 1966 (80 Stat. 1608), and all functions vested in the Secretary of the Interior or the Department of the Interior by the Federal Water Pollution Control Act or by provisions of law amendatory or supplementary thereof [see 33 U.S.C. 1251 et seq.].

(2)(i) The functions vested in the Secretary of the Interior by the Act of August 1, 1958, 72 Stat. 479, 16 U.S.C. 742d–1 (being an Act relating to studies on the effects of insecticides, herbicides, fungicides, and pesticides upon the fish and wildlife resources of the United States), and (ii) the functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered by the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries at Gulf Breeze, Florida.

(3) The functions vested by law in the Secretary of Health, Education, and Welfare or in the Department of Health, Education, and Welfare which are administered through the Environmental Health Service, including the functions exercised by the following components thereof:

(i) The National Air Pollution Control Administration,

(ii) The Environmental Control Administration:

(A) Bureau of Solid Waste Management,

(B) Bureau of Water Hygiene,

(C) Bureau of Radiological Health,

except that functions carried out by the following components of the Environmental Control Administration of the Environmental Health Service are not transferred: (i) Bureau of Community Environmental Management, (ii) Bureau of Occupational Safety and Health, and (iii) Bureau of Radiological Health, insofar as the functions carried out by the latter Bureau pertain to (A) regulation of radiation from consumer products, including electronic product radiation, (B) radiation as used in the healing arts, (C) occupational exposures to radiation, and (D) research, technical assistance, and training related to clauses (A), (B), and (C).

(4) The functions vested in the Secretary of Health, Education, and Welfare of establishing tolerances for pesticide chemicals under the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 346, 346a, and 348, together with authority, in connection with the functions transferred, (i) to monitor compliance with the tolerances and the effectiveness of surveillance and enforcement, and (ii) to provide technical assistance to the States and conduct research under the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 301 et seq.], and the Public Health Service Act, as amended [42 U.S.C. 201 et seq.].

(5) So much of the functions of the Council on Environmental Quality under section 204(5) of the National Environmental Policy Act of 1969 (Public Law 91–190, approved January 1, 1970, 83 Stat. 855) [42 U.S.C. 4344(5)], as pertains to ecological systems.

(6) The functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], administered through its Division of Radiation Protection Standards, to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radio-active material.

(7) All functions of the Federal Radiation Council (42 U.S.C. 2021(h)).

(8)(i) The functions of the Secretary of Agriculture and the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135–135k) [7 U.S.C. 136 et seq.], (ii) the functions of the Secretary of Agriculture and the Department of Agriculture under section 408(*l*) of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346a(*l*)), and (iii) the functions vested by law in the Secretary of Agriculture and the Department of Agriculture which are administered through the Environmental Quality Branch of the Plant Protection Division of the Agricultural Research Service.

(9) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Administrator of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Administrator made by this section shall be deemed to include the transfer of (1) authority, provided by law, to prescribe regulations relating primarily to the transferred functions, and (2) the functions vested in the Secretary of the Interior and the Secretary of Health, Education, and Welfare by section 169(d)(1)(B) and (3) of the Internal Revenue Code of 1954 (as enacted by section 704 of the Tax Reform Act of 1969, 83 Stat. 668); but shall be deemed to exclude the transfer of the functions of the Bureau of Reclamation under section 3(b)(1) of the Water Pollution Control Act (33 U.S.C. [former] 466a(b)(1)).

(b) There are hereby transferred to the Agency:

(1) From the Department of the Interior, (i) the Water Pollution Control Advisory Board (33 U.S.C. [former] 466f) [see 33 U.S.C. 1363], together with its functions, and (ii) the hearing boards provided for in sections 10(c)(4) and 10(f) of the Federal Water Pollution Control Act, as amended (33 U.S.C. [former] 466g(c)(4); 466g(f)). The functions of the Secretary of the Interior with respect to being or designating the Chairman of the Water Pollution Control Advisory Board are hereby transferred to the Administrator.

(2) From the Department of Health, Education, and Welfare, the Air Quality Advisory Board (42 U.S.C. 1857e) [42 U.S.C. 7417], together with its functions. The functions of the Secretary of Health, Education, and Welfare with respect to being a member and the Chairman of that Board are hereby transferred to the Administrator.

SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Administrator may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any other officer, or by any organizational entity or employee, of the Agency.

SEC. 4. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Administrator or the Agency by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Agency at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 5. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator, authorize any such person to act as Assistant Administrator, and authorize any such person to act as the head of any principal constituent organizational entity of the Administration.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

SEC. 6. ABOLITIONS

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Federal Water Quality Administration in the Department of the Interior (33 U.S.C. [former] 466–1).

(2) The Federal Radiation Council (73 Stat. 690; 42 U.S.C. 2021(h)).

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of the Interior in the case of the Federal Water Quality Administration and by the Administrator of General Services in the case of the Federal Radiation Council.

SEC. 7. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect sixty days after the date they would take effect under 5 U.S.C. 906(a) in the absence of this section.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code and providing for an Environmental Protection Agency. My reasons for transmitting this plan are stated in a more extended accompanying message.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 3 of 1970 is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), ''to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;'' and section 901(a)(3), ''to increase the efficiency of the operations of the Government to the fullest extent practicable.''

The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in section 1 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

Section 907 of title 5 of the United States Code will operate to preserve administrative proceedings, including any public hearing proceedings, related to the transferred functions, which are pending immediately prior to the taking effect of the reorganization plan.

The reorganization plan should result in more efficient operation of the Government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

RICHARD NIXON.

THE WHITE HOUSE, July 9, 1970.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

As concern with the condition of our physical environment has intensified, it has become increasingly clear that we need to know more about the total environment—land, water and air. It also has become increasingly clear that only by reorganizing our Federal efforts can we develop that knowledge, and effectively ensure the protection, development and enhancement of the total environment itself.

The Government's environmentally-related activities have grown up piecemeal over the years. The time has come to organize them rationally and systematically. As a major step in this direction, I am transmitting today two reorganization plans: one to establish an Environmental Protection Agency, and one to establish, within the Department of Commerce, a National Oceanic and Atmospheric Administration.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Our national government today is not structured to make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food. Indeed, the present governmental structure for dealing with environmental pollution often defies effective and concerted action.

Despite its complexity, for pollution control purposes the environment must be perceived as a single, interrelated system. Present assignments of departmental responsibilities do not reflect this interrelatedness.

Many agency missions, for example, are designed primarily along media lines—air, water, and land. Yet the sources of air, water, and land pollution are interrelated and often interchangeable. A single source may pollute the air with smoke and chemicals, the land with solid wastes, and a river or lake with chemical and other wastes. Control of the air pollution may produce more solid wastes, which then pollute the land or water. Control of the water-polluting effluent may convert it into solid wastes, which must be disposed of on land.

Similarly, some pollutants—chemicals, radiation, pesticides—appear in all media. Successful control of them at present requires the coordinated efforts of a variety of separate agencies and departments. The results are not always successful.

A far more effective approach to pollution control would:

—identify pollutants.
—trace them through the entire ecological chain, observing and recording changes in form as they occur.
—Determine the total exposure of man his environment.
—Examine interactions among forms of pollution.
—Identify where in the ecological chain interdiction would be most appropriate.

In organizational terms, this requires pulling together into one agency a variety of research, monitoring, standard-setting and enforcement activities now scattered through several departments and agencies. It also requires that the new agency include sufficient support elements—in research and in aids to State and local anti-pollution programs, for example—to give it the needed strength and potential for carrying out its mission. The new agency would also, of course, draw upon the results of research conducted by other agencies.

COMPONENTS OF THE EPA

Under the terms of Reorganization Plan No. 3, the following would be moved to the new Environmental Protection Agency:

—The functions carried out by the Federal Water Quality Administration (from the Department of the Interior).
—Functions with respect to pesticides studies now vested in the Department of the Interior.
—The functions carried out by the National Air Pollution Control Administration (from the Department of Health, Education, and Welfare).
—The functions carried out by the Bureau of Solid Waste Management and the Bureau of Water Hygiene, and portions of the functions carried out by the Bureau of Radiological Health of the Environmental Control Administration (from the Department of Health, Education, and Welfare).
—Certain functions with respect to pesticides carried out by the Food and Drug Administration (from the Department of Health, Education, and Welfare).
—Authority to perform studies relating to ecological systems now vested in the Council on Environmental Quality.

—Certain functions respecting radiation criteria and standards now vested in the Atomic Energy Commission and the Federal Radiation Council.

—Functions respecting pesticides registration and related activities now carried out by the Agricultural Research Service (from the Department of Agriculture).

With its broad mandate, EPA would also develop competence in areas of environmental protection that have not previously been given enough attention, such, for example, as the problem of noise, and it would provide an organization to which new programs in these areas could be added.

In brief, these are the principal functions to be transferred:

Federal Water Quality Administration.—Charged with the control of pollutants which impair water quality, it is broadly concerned with the impact of degraded water quality. It performs a wide variety of functions, including research, standard-setting and enforcement, and provides construction grants and technical assistance.

Certain pesticides research authority from the Department of the Interior.—Authority for research on the effects of pesticides on fish and wildlife would be provided to the EPA through transfer of the specialized research authority of the pesticides act enacted in 1958. Interior would retain its responsibility to do research on all factors affecting fish and wildlife. Under this provision, only one laboratory would be transferred to the EPA—the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries. The EPA would work closely with the fish and wildlife laboratories remaining with the Bureau of Sport Fisheries and Wildlife.

National Air Pollution Control Administration.—As the principal Federal agency concerned with air pollution, it conducts research on the effects of air pollution, operates a monitoring network, and promulgates criteria which serve as the basis for setting air quality standards. Its regulatory functions are similar to those of the Federal Water Quality Administration. NAPCA is responsible for administering the Clean Air Act, which involves designating air quality regions, approving State standards and providing financial and technical assistance to State Control agencies to enable them to comply with the Act's provisions. It also sets and enforces Federal automotive emission standards.

Elements of the Environmental Control Administration.—ECA is the focal point within HEW for evaluation and control of a broad range of environmental health problems, including water quality, solid wastes, and radiation. Programs in the ECA involve research, development of criteria and standards, and the administration of planning and demonstration grants. From the ECA, the activities of the Bureaus of Water Hygiene and Solid Waste Management and portions of the activities of the Bureau of Radiological Health would be transferred. Other functions of the ECA including those related to the regulation of radiation from consumer products and occupational safety and health would remain in HEW.

Pesticides research and standard-setting programs of the Food and Drug Administration.—FDA's pesticides program consists of setting and enforcing standards which limit pesticide residues in food. EPA would have the authority to set pesticide standards and to monitor compliance with them, as well as to conduct related research. However, as an integral part of its food protection activities, FDA would retain its authority to remove from the market food with excess pesticide residues.

General ecological research from the Council on Environmental Quality.—This authority to perform studies and research relating to ecological systems would be in addition to EPA's other specific research authorities, and it would help EPA to measure the impact of pollutants. The Council on Environmental Quality would retain its authority to conduct studies and research relating to environmental quality.

Environmental radiation standards programs.—The Atomic Energy Commission is now responsible for establishing environmental radiation standards and emission limits for radioactivity. Those standards have been based largely on broad guidelines recommended by the Federal Radiation Council. The Atomic Energy Commission's authority to set standards for the protection of the general environment from radioactive material would be transferred to the Environmental Protection Agency. The functions of the Federal Radiation Council would also be transferred. AEC would retain responsibility for the implementation and enforcement of radiation standards through its licensing authority.

Pesticides registration program of the Agricultural Research Service.—The Department of Agriculture is currently responsible for several distinct functions related to pesticides use. It conducts research on the efficacy of various pesticides as related to other pest control methods and on the effects of pesticides on nontarget plants, livestock, and poultry. It registers pesticides, monitors their persistence and carries out an educational program on pesticide use through the extension service. It conducts extensive pest control programs which utilize pesticides.

By transferring the Department of Agriculture's pesticides registration and monitoring function to the EPA and merging it with the pesticides programs being transferred from HEW and Interior, the new agency would be given a broad capability for control over the introduction of pesticides into the environment.

The Department of Agriculture would continue to conduct research on the effectiveness of pesticides. The Department would furnish this information to the EPA, which would have the responsibility for actually licensing pesticides for use after considering environmental and health effects. Thus the new agency would be able to make use of the expertise of the Department.

ADVANTAGES OF REORGANIZATION

This reorganization would permit response to environmental problems in a manner beyond the previous capability of our pollution control programs. The EPA would have the capacity to do research on important pollutants irrespective of the media in which they appear, and on the impact of these pollutants on the total environment. Both by itself and together with other agencies, the EPA would monitor the condition of the environment—biological as well as physical. With these data, the EPA would be able to establish quantitative ''environmental baselines''—critical if we are to measure adequately the success or failure of our pollution abatement efforts.

As no disjointed array of separate programs can, the EPA would be able—in concert with the States—to set and enforce standards for air and water quality and for individual pollutants. This consolidation of pollution control authorities would help assure that we do not create new environmental problems in the process of controlling existing ones. Industries seeking to minimize the adverse impact of their activities on the environment would be assured of consistent standards covering the full range of their waste disposal problems. As the States develop and expand their own pollution control programs, they would be able to look to one agency to support their efforts with financial and technical assistance and training.

In proposing that the Environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another of the existing departments and agencies are compelling.

In the first place, almost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission—such as resource development, transportation, health, defense, urban growth or agriculture—which necessarily affects its own view of environmental questions.

In the second place, if the critical standard-setting functions were centralized within any one existing department, it would require that department constantly to make decisions affecting other departments—in which, whether fairly or unfairly, its own objectivity as an impartial arbiter could be called into question.

Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed. That agency would, of course, work closely with and draw upon the expertise and assistance of other agencies having experience in the environmental area.

ROLES AND FUNCTIONS OF EPA

The principal roles and functions of the EPA would include:

—The establishment and enforcement of environmental protection standards consistent with national environmental goals.

—The conduct of research on the adverse effects of pollution and on methods and equipment for controlling it, the gathering of information on pollution, and the use of this information in strengthening environmental protection programs and recommending policy changes.

—Assisting others, through grants, technical assistance and other means in arresting pollution of the environment.

—Assisting the Council on Environmental Quality in developing and recommending to the President new policies for the protection of the environment.

One natural question concerns the relationship between the EPA and the Council on Environmental Quality, recently established by Act of Congress.

It is my intention and expectation that the two will work in close harmony, reinforcing each other's mission. Essentially, the Council is a top-level advisory group (which might be compared with the Council of Economic Advisers), while the EPA would be an operating, ''line'' organization. The Council will continue to be a part of the Executive Office of the President and will perform its overall coordinating and advisory roles with respect to all Federal programs related to environmental quality.

The Council, then, is concerned with all aspects of environmental quality—wildlife preservation, parklands, land use, and population growth, as well as pollution. The EPA would be charged with protecting the environment by abating pollution. In short, the Council focuses on what our broad policies in the environment field should be; the EPA would focus on setting and enforcing pollution control standards. The two are not competing, but complementary—and taken together, they should give us, for the first time, the means to mount an effectively coordinated campaign against environmental degradation in all of its many forms.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

The oceans and the atmosphere are interacting parts of the total environmental system upon which we depend not only for the quality of our lives, but for life itself.

We face immediate and compelling needs for better protection of life and property from natural hazards, and for a better understanding of the total environment—and understanding which will enable us more effectively to monitor and predict its actions, and ultimately, perhaps to exercise some degree of control over them.

We also face a compelling need for exploration and development leading to the intelligent use of our marine resources. The global oceans, which constitute nearly three-fourths of the surface of our planet, are today the least-understood, the least-developed, and the least-protected part of our earth. Food from the oceans will increasingly be a key element in the world's fight against hunger. The mineral resources of the ocean beds and of the oceans themselves, are being increasingly tapped to meet the growing world demand. We must understand the nature of these resources, and assure their development without either contaminating the marine environment or upsetting its balance.

Establishment of the National Oceanic and Atmospheric Administration—NOAA—within the Department of Commerce would enable us to approach these tasks in a coordinated way. By employing a unified approach to the problems of the oceans and atmosphere, we can increase our knowledge and expand our opportunities not only in those areas, but in the third major component of our environment, the solid earth, as well.

Scattered through various Federal departments and agencies, we already have the scientific, technological, and administrative resources to make an effective, unified approach possible. What we need is to bring them together. Establishment of NOAA would do so.

By far the largest of the components being merged would be the Commerce Department's Environmental Science Services Administration (ESSA), with some 10,000 employees (70 percent of NOAA's total personnel strength) and estimated Fiscal 1970 expenditures of almost $200 million. Placing NOAA within the Department of Commerce therefore entails the least dislocation, while also placing it within a Department which has traditionally been a center for service activities in the scientific and technological area.

COMPONENTS OF NOAA

Under terms of Reorganization Plan No. 4, the programs of the following organizations would be moved into NOAA:

—The Environmental Science Services Administration (from within the Department of Commerce).

—Elements of the Bureau of Commercial Fisheries (from the Department of the Interior).

—The marine sport fish program of the Bureau of Sport Fisheries and Wildlife (from the Department of the Interior).

—The Marine Minerals Technology Center of the Bureau of Mines (from the Department of the Interior).

—The Office of Sea Grant Programs (from the National Science Foundation).

—Elements of the United States Lake Survey (from the Department of the Army).

In addition, by executive action, the programs of the following organizations would be transferred to NOAA:

—The National Oceanographic Data Center (from the Department of the Navy).

—The National Oceanographic Instrumentation Center (from the Department of the Navy).

—The National Data Buoy Project (from the Department of Transportation).

In brief, these are the principal functions of the programs and agencies to be combined:

THE ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

(ESSA) comprises the following components:

—The Weather Bureau (weather, marine, river and flood forecasting and warning).

—The Coast and Geodetic Survey (earth and marine description, mapping and charting).

—The Environmental Data Service (storage and retrieval of environmental data).

—The National Environmental Satellite Center (observation of the global environment from earth-orbiting satellites).

—The ESSA Research Laboratories (research on physical environmental problems).

ESSA's activities include observing and predicting the state of the oceans, the state of the lower and upper atmosphere, and the size and shape of the earth. It maintains the nation's warning systems for such natural hazards as hurricanes, tornadoes, floods, earthquakes and seismic sea waves. It provides information

for national defense, agriculture, transportation and industry.

ESSA monitors atmospheric, oceanic and geophysical phenomena on a global basis, through an unparalleled complex of air, ocean, earth and space facilities. It also prepares aeronautical and marine maps and charts.

Bureau of Commercial Fisheries and marine sport fish activities.—Those fishery activities of the Department of the Interior's U.S. Fish and Wildlife Service which are ocean related and those which are directed toward commercial fishing would be transferred. The Fish and Wildlife Service's Bureau of Commercial Fisheries has the dual function of strengthening the fishing industry and promoting conservation of fishery stocks. It conducts research on important marine species and on fundamental oceanography, and operates a fleet of oceanographic vessels and a number of laboratories. Most of its activities would be transferred. From the Fish and Wildlife Service's Bureau of Sport Fisheries and Wildlife, the marine sport fishing program would be transferred. This involves five supporting laboratories and three ships engaged in activities to enhance marine sport fishing opportunities.

The Marine Minerals Technology Center is concerned with the development of marine mining technology.

Office of Sea Grant Programs.—The Sea Grant Program was authorized in 1966 to permit the Federal Government to assist the academic and industrial communities in developing marine resources and technology. It aims at strengthening education and training of marine specialists, supporting applied research in the recovery and use of marine resources, and developing extension and advisory services. The Office carries out these objectives by making grants to selected academic institutions.

The U.S. Lake Survey has two primary missions. It prepares and publishes navigation charts of the Great Lakes and tributary waters and conducts research on a variety of hydraulic and hydrologic phenomena of the Great Lakes' waters. Its activities are very similar to those conducted along the Atlantic and Pacific coasts by ESSA's Coast and Geodetic Survey.

The National Oceanographic Data Center is responsible for the collection and dissemination of oceanographic data accumulated by all Federal agencies.

The National Oceanographic Instrumentation Center provides a central Federal service for the calibration and testing of oceanographic instruments.

The National Data Buoy Development Project was established to determine the feasibility of deploying a system of automatic ocean buoys to obtain oceanic and atmospheric data.

ROLE OF NOAA

Drawing these activities together into a single agency would make possible a balanced Federal program to improve our understanding of the resources of the sea, and permit their development and use while guarding against the sort of thoughtless exploitation that in the past laid waste to so many of our precious natural assets. It would make possible a consolidated program for achieving a more comprehensive understanding of oceanic and atmospheric phenomena, which so greatly affect our lives and activities. It would facilitate the cooperation between public and private interests that can best serve the interests of all.

I expect that NOAA would exercise leadership in developing a national oceanic and atmospheric program of research and development. It would coordinate its own scientific and technical resources with the technical and operational capabilities of other government agencies and private institutions. As important, NOAA would continue to provide those services to other agencies of government, industry and private individuals which have become essential to the efficient operation of our transportation systems, our agriculture and our national security. I expect it to maintain continuing and close liaison with the new Environmental Protection Agency and the Council on Environmental Quality as part of an effort to ensure that environmental questions are dealt with in their totality and they benefit from the full range of the government's technical and human resources.

Authorities who have studied this matter, including the Commission on Marine Science, Engineering and Resources, strongly recommended the creation of a National Advisory Committee for the Oceans. I agree. Consequently, I will request, upon approval of the plan, that the Secretary of Commerce establish a National Advisory Committee for the Oceans and the Atmosphere to advise him on the progress of governmental and private programs in achieving the nation's oceanic and atmospheric objectives.

AN ON-GOING PROCESS

The reorganizations which I am here proposing afford both the Congress and the Executive Branch an opportunity to re-evaluate the adequacy of existing program authorities involved in these consolidations. As these two new organizations come into being, we may well find that supplementary legislation to perfect their authorities will be necessary. I look forward to working with the Congress in this task.

In formulating these reorganization plans, I have been greatly aided by the work of the President's Advisory Council on Executive Organization (the Ash Council), the Commission on Marine Science, Engineering and Resources (the Stratton Commission, appointed by President Johnson), my special task force on oceanography headed by Dr. James Wakelin, and by the information developed during both House and Senate hearings on proposed NOAA legislation.

Many of those who have advised me have proposed additional reorganizations, and it may well be that in the future I shall recommend further changes. For the present, however, I think the two reorganizations transmitted today represent a sound and significant beginning. I also think that in practical terms, in this sensitive and rapidly developing area, it is better to proceed a step at a time—and thus to be sure that we are not caught up in a form of organizational indigestion from trying to rearrange too much at once. As we see how these changes work out, we will gain a better understanding of what further changes—in addition to these—might be desirable.

Ultimately, our objective should be to insure that the nation's environmental and resource protection activities are so organized as to maximize both the effective coordination of all and the effective functioning of each.

The Congress, the Administration and the public all share a profound commitment to the rescue of our natural environment, and the preservation of the Earth as a place both habitable by and hospitable to man. With its acceptance of these reorganization plans, the Congress will help us fulfill that commitment.

RICHARD NIXON.

THE WHITE HOUSE, July 9, 1970.

EX. ORD. NO. 11472. CABINET COMMITTEE ON THE ENVIRONMENT AND CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

Ex. Ord. No. 11472, May 29, 1969, 34 F.R. 8693, as amended by Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247; Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, provided:

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

PART I—CABINET COMMITTEE ON THE ENVIRONMENT

SECTION 101. *Establishment of the Cabinet Committee*. (a) There is hereby established the Cabinet Committee on the Environment (hereinafter referred to as ''the Cabinet Committee'').

(b) The President of the United States shall preside over meetings of the Cabinet Committee. The Vice President shall preside in the absence of the President.

(c) The Cabinet Committee shall be composed of the following members:

The Vice President of the United States

Secretary of Agriculture
Secretary of Commerce
Secretary of Health, Education, and Welfare
Secretary of Housing and Urban Development
Secretary of the Interior
Secretary of Transportation

and such other heads of departments and agencies and others as the President may from time to time direct.

(d) Each member of the Cabinet Committee may designate an alternate, who shall serve as a member of the Cabinet Committee whenever the regular member is unable to attend any meeting of the Cabinet Committee.

(e) When matters which affect the interest of Federal agencies the heads of which are not members of the Cabinet Committee are to be considered by the Cabinet Committee, the President or his representative may invite such agency heads or their alternates to participate in the deliberations of the Cabinet Committee.

(f) The Director of the Bureau of the Budget [now the Director of the Office of Management and Budget], the Director of the Office of Science and Technology, the Chairman of the Council of Economic Advisers, and the Executive Secretary of the Council for Urban Affairs or their representatives may participate in the deliberations of the Cabinet Committee on the Environment as observers.

(g) The Chairman of the Council on Environmental Quality (established by Public Law 91–190) [this chapter] shall assist the President in directing the affairs of the Cabinet Committee.

SEC. 102. *Functions of the Cabinet Committee*. (a) The Cabinet Committee shall advise and assist the President with respect to environmental quality matters and shall perform such other related duties as the President may from time to time prescribe. In addition thereto, the Cabinet Committee is directed to:

(1) Recommend measures to ensure that Federal policies and programs, including those for development and conservation of natural resources, take adequate account of environmental effects.

(2) Review the adequacy of existing systems for monitoring and predicting environmental changes so as to achieve effective coverage and efficient use of facilities and other resources.

(3) Foster cooperation between the Federal Government, State and local governments, and private organizations in environmental programs.

(4) Seek advancement of scientific knowledge of changes in the environment and encourage the development of technology to prevent or minimize adverse effects that endanger man's health and well-being.

(5) Stimulate public and private participation in programs and activities to protect against pollution of the Nation's air, water, and land and its living resources.

(6) Encourage timely public disclosure by all levels of government and by private parties of plans that would affect the quality of environment.

(7) Assure assessment of new and changing technologies for their potential effects on the environment.

(8) Facilitate coordination among departments and agencies of the Federal Government in protecting and improving the environment.

(b) The Cabinet Committee shall review plans and actions of Federal agencies affecting outdoor recreation and natural beauty. The Cabinet Committee may conduct studies and make recommendations to the President on matters of policy in the fields of outdoor recreation and natural beauty. In carrying out the foregoing provisions of this subsection, the Cabinet Committee shall, as far as may be practical, advise Federal agencies with respect to the effect of their respective plans and programs on recreation and natural beauty, and may suggest to such agencies ways to accomplish the purposes of this order. For the purposes of this order, plans and programs may include, but are not limited to, those for or affecting: (1) Development, restoration, and preservation of the beauty of the countryside, urban and suburban areas, water resources, wild rivers, scenic roads, parkways and highways, (2) the protection and appropriate management of scenic or primitive areas, natural wonders, historic sites, and recreation areas, (3) the management of Federal land and water resources, including fish and wildlife, to enhance natural beauty and recreational opportunities consistent with other essential uses, (4) cooperation with the States and their local subdivisions and private organizations and individuals in areas of mutual interest, (5) interstate arrangements, including Federal participation where authorized and necessary, and (6) leadership in a nationwide recreation and beautification effort.

SEC. 103. *Coordination*. The Secretary of the Interior may make available to the Cabinet Committee for coordination of outdoor recreation the authorities and resources available to him under the Act of May 28, 1963, 77 Stat. 49 [16 U.S.C. 460*l* et seq.], to the extent permitted by law, he may make such authorities and resources available to the Cabinet Committee also for promoting such coordination of other matters assigned to the Cabinet Committee by this order.

SEC. 104. *Assistance for the Cabinet Committee*. In compliance with provisions of applicable law, and as necessary to serve the purposes of this order, (1) the Council on Environmental Quality (established by Public Law 91–190) [this chapter] shall provide or arrange for necessary administrative and staff services, support, and facilities for the Cabinet Committee, and (2) each department and agency which has membership on the Cabinet Committee under Section 101(c) hereof shall furnish the Cabinet Committee such information and other assistance as may be available.

PART II—CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

[Revoked. Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839.]

PART III—GENERAL PROVISIONS

SEC. 301. *Construction*. Nothing in this order shall be construed as subjecting any department, establishment, or other instrumentality of the executive branch of the Federal Government or the head thereof, or any function vested by law in or assigned pursuant to law to any such agency or head, to the authority of any other such agency or head or as abrogating, modifying, or restricting any such function in any manner.

SEC. 302. *Prior bodies and orders*. The President's Council on Recreation and Natural Beauty and the Citizens' Advisory Committee on Recreation and Natural Beauty are hereby terminated and the following are revoked:

(1) Executive Order No. 11278 of May 4, 1966.
(2) Executive Order No. 11359A of June 29, 1967.
(3) Executive Order No. 11402 of March 29, 1968.

TERMINATION OF CABINET COMMITTEE ON THE ENVIRONMENT

The Cabinet Committee on the Environment was terminated and its functions transferred to the Domestic Council, see section 2(b) of Ex. Ord. No. 11541, eff. July 1, 1970, 35 F.R. 10737, set out as a note under section 501 of Title 31, Money and Finance.

The Domestic Council was abolished by Reorg. Plan No. 1 of 1977, §3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5D of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Domestic Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

TERMINATION OF CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

For provisions relating to termination of Citizens' Advisory Committee on Environmental Quality see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 11514. PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247, as amended by Ex. Ord. No. 11991, May 24, 1977, 42 F.R. 26967, provided:

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91–190, approved January 1, 1970) [this chapter], it is ordered as follows:

SECTION 1. *Policy*. The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

SEC. 2. *Responsibilities of Federal agencies*. Consonant with Title I of the National Environmental Policy Act of 1969 [42 U.S.C. 4331 et seq.], hereafter referred to as the ''Act'', the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act [42 U.S.C. 4332].

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

SEC. 3. *Responsibilities of Council on Environmental Quality*. The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended [this chapter], and Section 309 of the Clean Air Act, as amended [42 U.S.C. 7609], for the Council's recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act [42 U.S.C. 4341].

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

SEC. 4. *Amendments of E.O. 11472*. Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term ''the Environmental Quality Council'', wherever it occurs, the following: ''the Cabinet Committee on the Environment''.

(2) By substituting for the term ''the Council'', wherever it occurs, the following: ''the Cabinet Committee''.

(3) By inserting in subsection (f) of section 101, after ''Budget,'', the following: ''the Director of the Office of Science and Technology,''.

(4) By substituting for subsection (g) of section 101 the following:

''(g) The Chairman of the Council on Environmental Quality (established by Public Law 91–190) [this chapter] shall assist the President in directing the affairs of the Cabinet Committee.''

(5) By deleting subsection (c) of section 102.

(6) By substituting for ''the Office of Science and Technology'', in section 104, the following: ''the Council on Environmental Quality (established by Public Law 91–190) [this chapter]''.

(7) By substituting for ''(hereinafter referred to as the 'Committee')'', in section 201, the following: ''(hereinafter referred to as the 'Citizens' Committee')''.

(8) By substituting for the term ''the Committee'', wherever it occurs, the following: ''the Citizens' Committee''.

EX. ORD. NO. 11523. NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL

Ex. Ord. No. 11523, eff. Apr. 9, 1970, 35 F.R. 5993, provided:

By virtue of the authority vested in me as President of the United States, and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law 91–190, approved January 1, 1970) [this chapter], it is ordered as follows:

SECTION 1. *Establishment of the Council.* (a) There is hereby established the National Industrial Pollution Control Council (hereinafter referred to as ''the Industrial Council'') which shall be composed of a Chairman, a Vice-chairman, and other representatives of business and industry appointed by the Secretary of Commerce (hereinafter referred to as ''the Secretary'').

(b) The Secretary, with the concurrence of the Chairman, shall appoint an Executive Director of the Industrial Council.

SEC. 2. *Functions of the Industrial Council.* The Industrial Council shall advise the President and the Chairman of the Council on Environmental Quality, through the Secretary, on programs of industry relating to the quality of the environment. In particular, the Industrial Council may—

(1) Survey and evaluate the plans and actions of industry in the field of environmental quality.

(2) Identify and examine problems of the effects on the environment of industrial practices and the needs of industry for improvements in the quality of the environment, and recommend solutions to those problems.

(3) Provide liaison among members of the business and industrial community on environmental quality matters.

(4) Encourage the business and industrial community to improve the quality of the environment.

(5) Advise on plans and actions of Federal, State, and local agencies involving environmental quality policies affecting industry which are referred to it by the Secretary, or by the Chairman of the Council on Environmental Quality through the Secretary.

SEC. 3. *Subordinate Committees.* The Industrial Council may establish, with the concurrence of the Secretary, such subordinate committees as it may deem appropriate to assist in the performance of its functions. Each subordinate committee shall be headed by a chairman appointed by the Chairman of the Industrial Council with the concurrence of the Secretary.

SEC. 4. *Assistance for the Industrial Council.* In compliance with applicable law, and as necessary to serve the purposes of this order, the Secretary shall provide or arrange for administrative and staff services, support, and facilities for the Industrial Council and any of its subordinate committees.

SEC. 5. *Expenses.* Members of the Industrial Council or any of its subordinate committees shall receive no compensation from the United States by reason of their services hereunder, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

SEC. 6. *Regulations.* The provisions of Executive Order No. 11007 of February 26, 1962 (3 CFR 573) [see 5 U.S.C. 901 note] prescribing regulations for the formation and use of advisory committees, are hereby made applicable to the Industrial Council and each of its subordinate committees. The Secretary may exercise the discretionary powers set forth in that order.

SEC. 7. *Construction.* Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency to the authority of any other Federal agency or of the Industrial Council or of any of its subordinate committees, or as abrogating or restricting any such function in any manner.

RICHARD NIXON.

EXECUTIVE ORDER NO. 11643

Ex. Ord. No. 11643, eff. Feb. 8, 1972, 37 F.R. 2875, as amended by Ex. Ord. No. 11870, eff. July 18, 1975, 40 F.R. 30611; Ex. Ord. No. 11917, eff. May 28, 1976, 41 F.R. 22239, which related to environmental safeguards on activities for animal damage control on Federal lands, was revoked by Ex. Ord. No. 12342, Jan. 27, 1982, 47 F.R. 4223.

EX. ORD. NO. 11644. USE OF OFF-ROAD VEHICLES ON PUBLIC LANDS

Ex. Ord. No. 11644, Feb. 8, 1972, 37 F.R. 2877, as amended by Ex. Ord. No. 11989, May 24, 1977, 42 F.R. 26959; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

An estimated 5 million off-road recreational vehicles—motorcycles, minibikes, trail bikes, snowmobiles, dunebuggies, all-terrain vehicles, and others—are in use in the United States today, and their popularity continues to increase rapidly. The widespread use of such vehicles on the public lands—often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity—has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), it is hereby ordered as follows:

SECTION 1. *Purpose.* It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

SEC. 2. *Definitions.* As used in this order, the term:

(1) ''public lands'' means (A) all lands under the custody and control of the Secretary of the Interior and the Secretary of Agriculture, except Indian lands, (B) lands under the custody and control of the Tennessee Valley Authority that are situated in western Kentucky and Tennessee and are designated as ''Land Between the Lakes,'' and (C) lands under the custody and control of the Secretary of Defense;

(2) ''respective agency head'' means the Secretary of the Interior, the Secretary of Defense, the Secretary of Agriculture, and the Board of Directors of the Tennessee Valley Authority, with respect to public lands under the custody and control of each;

(3) ''off-road vehicle'' means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract; and

(4) ''official use'' means use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his employment, agency, or representation.

SEC. 3. *Zones of Use*. (a) Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed. Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations shall further require that the designation of such areas and trails shall be in accordance with the following—

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.

(b) The respective agency head shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails under this section.

(c) The limitations on off-road vehicle use imposed under this section shall not apply to official use.

SEC. 4. *Operating Conditions*. Each respective agency head shall develop and publish, within one year of the date of this order, regulations prescribing operating conditions for off-road vehicles on the public lands. These regulations shall be directed at protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts.

SEC. 5. *Public Information*. The respective agency head shall ensure that areas and trails where off-road vehicle use is permitted are well marked and shall provide for the publication and distribution of information, including maps, describing such areas and trails and explaining the conditions on vehicle use. He shall seek cooperation of relevant State agencies in the dissemination of this information.

SEC. 6. *Enforcement*. The respective agency head shall, where authorized by law, prescribe appropriate penalties for violation of regulations adopted pursuant to this order, and shall establish procedures for the enforcement of those regulations. To the extent permitted by law, he may enter into agreements with State or local governmental agencies for cooperative enforcement of laws and regulations relating to off-road vehicle use.

SEC. 7. *Consultation*. Before issuing the regulations or administrative instructions required by this order or designating areas or trails are required by this order and those regulations and administrative instructions, the Secretary of the Interior shall, as appropriate, consult with the Secretary of Energy and the Nuclear Regulatory Commission.

SEC. 8. *Monitoring of Effects and Review*. (a) The respective agency head shall monitor the effects of the use of off-road vehicles on lands under their jurisdictions. On the basis of the information gathered, they shall from time to time amend or rescind designation of areas or other actions taken pursuant to this order as necessary to further the policy of this order.

(b) The Council on Environmental Quality shall maintain a continuing review of the implementation of this order.

SEC. 9. *Special Protection of the Public Lands*. (a) Notwithstanding the provisions of Section 3 of this Order, the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

(b) Each respective agency head is authorized to adopt the policy that portions of the public lands within his jurisdiction shall be closed to use by off-road vehicles except those areas or trails which are suitable and specifically designated as open to such use pursuant to Section 3 of this Order.

EXECUTIVE ORDER NO. 11987

Ex. Ord. No. 11987, May 24, 1977, 42 F.R. 26949, which directed executive agencies, and encouraged States, local governments, and private citizens, to restrict the introduction of exotic species into the natural ecosystems on lands and waters under their control, and which directed executive agencies to restrict the exportation of native species for introduction of such species into ecosystems outside the United States where they do not naturally occur, unless such introduction or exportation was found not to have an adverse effect on natural ecosystems, was revoked by Ex. Ord. No. 13112, § 6(b), Feb. 3, 1999, 64 F.R. 6186, set out below.

EX. ORD. NO. 11988. FLOODPLAIN MANAGEMENT

Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93–234, 87 Stat. 975) [see Short Title of 1973 Amendment note set out under 42 U.S.C. 4001], in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

SEC. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain—for major Federal actions significantly affecting the quality of the human environment, the

evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act [42 U.S.C. 4332(2)(C)]. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A–95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A–95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended [set out above], including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4332(2)(C)].

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Director of the Federal Emergency Management Agency, and the Council on Environmental Quality, and shall update such procedures as necessary.

SEC. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

SEC. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

SEC. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

SEC. 6. As used in this Order:

(a) The term ''agency'' shall have the same meaning as the term ''Executive agency'' in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term ''base flood'' shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term ''floodplain'' shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

SEC. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

SEC. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decision-making, and action pursuant to the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4321].

JIMMY CARTER.

EX. ORD. NO. 11990. PROTECTION OF WETLANDS

Ex. Ord. No. 11990, May 24, 1977, 42 F.R. 26961, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

SEC. 2. (a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended [set out above], including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4332(2)(C)].

SEC. 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

SEC. 4. When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

SEC. 5. In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

SEC. 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality, shall be utilized to fulfill the requirements of this Order.

SEC. 7. As used in this Order:

(a) The term ''agency'' shall have the same meaning as the term ''Executive agency'' in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

(b) The term ''new construction'' shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term ''wetlands'' means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

SEC. 8. This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

SEC. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 10. To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4321 et seq.].

EX. ORD. NO. 12088. FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, as amended by Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2928; Ex. Ord. No. 13148, § 901, Apr. 21, 2000, 65 F.R. 24604, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of

America, including Section 22 of the Toxic Substances Control Act (15 U.S.C. 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act [now Safe Drinking Water Act of 1974] (42 U.S.C. 300j–6), Section 118 of the Clean Air Act, as amended (42 U.S.C. 7418(b)), Section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6961), and Section 301 of Title 3 of the United States Code, and to ensure Federal compliance with applicable pollution control standards, it is hereby ordered as follows:

1–1. APPLICABILITY OF POLLUTION CONTROL STANDARDS

1–101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1–102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to, but not limited to, the following:

(a) Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(b) Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

(c) Public Health Service Act, as amended by the Safe Drinking Water Act [now Safe Drinking Water Act of 1974] (42 U.S.C. 300f et seq.).

(d) Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

(e) Noise Control Act of 1972 (42 U.S.C. 4901 et seq.).

(f) Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.).

(g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(h); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays approved by the President on January 26, 1978 and published at page 4377 of the Federal Register on February 1, 1978).

(h) Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411–1421, 1441–1444 and 16 U.S.C. 1431–1434) [16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 1401 et seq., 2801 et seq.].

(i) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.).

1–103. ''Applicable pollution control standards'' means the same substantive, procedural, and other requirements that would apply to a private person.

1–2. AGENCY COORDINATION

1–201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1–202. Each Executive agency shall consult with the Administrator and with State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

1–3. TECHNICAL ADVICE AND OVERSIGHT

1–301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1–302. The administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

1–4. POLLUTION CONTROL PLAN

[Revoked by Ex. Ord. No. 13148, § 901, Apr. 21, 2000, 65 F.R. 24604.]

1–5. FUNDING

1–501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.

1–502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

1–6. COMPLIANCE WITH POLLUTION CONTROLS

1–601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1–102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

1–602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1–603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statues and regulations.

1–604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1–605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

1–7. LIMITATION ON EXEMPTIONS

1–701. Exemptions from applicable pollution control standards may only be granted under statues cited in Section 1–102(a) through 1–102(f) if the President makes the required appropriate statutory determination: that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1–702. The head of an Executive agency may, from time to time, recommend to the President through the Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

1–703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefor.

1–704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

1–8. GENERAL PROVISIONS

1–801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1–802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

1–803. Executive Order No. 11752 of December 17, 1973, is revoked.

EX. ORD. NO. 12114. ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

Ex. Ord. No. 12114, Jan. 4, 1979, 44 F.R. 1957, provided:

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

SECTION 1

1–1. *Purpose and Scope*. The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] and the Marine Protection Research and Sanctuaries Act [16 U.S.C. 1431 et seq. and 33 U.S.C. 1401 et seq.] and the Deepwater Port Act [33 U.S.C. 1501 et seq.] consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

SECTION 2

2–1. *Agency Procedures*. Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2–2. *Information Exchange*. To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2–3. *Actions Included*. Agencies in their procedures under Section 2–1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2–4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2–4. *Applicable Procedures*. (a) There are the following types of documents to be used in connection with actions described in Section 2–3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one [or more] more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2–4(a), with respect to actions described in Section 2–3, as follows:

(i) for effects described in Section 2–3(a), an environmental impact statement described in Section 2–4(a)(i);

(ii) for effects described in Section 2–3(b), a document described in Section 2–4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2–3(c), a document described in Section 2–4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2–3(d), a document described in Section 2–4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2–4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act [43 U.S.C. 4321 et seq.] and other environmental laws, including the Marine Protection Research and Sanctuaries Act [16 U.S.C. 1431 et seq. and 33 U.S.C. 1401 et seq.], and the Deepwater Port Act [33 U.S.C. 1501 et seq.], consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2–5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2–1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3–2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

2–5. *Exemptions and Considerations*. (a) Notwithstanding Section 2–3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2–1 implementing Section 2–4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2–1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2–5 do not apply to actions described in Section 2–3(a) unless permitted by law.

SECTION 3

3–1. *Rights of Action*. This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3–2. *Foreign Relations*. The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3–3. *Multi-Agency Actions*. Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3–4. *Certain Terms*. For purposes of this Order, ''environment'' means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term ''export approvals'' in Section 2–5(a)(v) does not mean or include direct loans to finance exports.

3–5. *Multiple Impacts*. If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12194

Ex. Ord. No. 12194, Feb. 21, 1980, 45 F.R. 12209, which established the Radiation Policy Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §23, Aug. 17, 1982, 47 F.R. 36100, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12737

Ex. Ord. No. 12737, Dec. 12, 1990, 55 F.R. 51681, which established President's Commission on Environmental Quality and provided for its functions and administration, was revoked by Ex. Ord. No. 12852, §4(c), June 29, 1993, 58 F.R. 35841, formerly set out below.

EX. ORD. NO. 12761. ESTABLISHMENT OF PRESIDENT'S ENVIRONMENT AND CONSERVATION CHALLENGE AWARDS

Ex. Ord. No. 12761, May 21, 1991, 56 F.R. 23645, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish, in accordance with the goals and purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), and the National Environmental Education Act, Public Law 101–619, 104 Stat. 3325 (1990) [20 U.S.C. 5501 et seq.], an awards program to raise environmental awareness and to recognize outstanding achievements in the United States and in its territories in the areas of conservation and environmental protection by both the public and private sectors, it is hereby ordered as follows:

SECTION 1. *Establishment*. The President's Environment and Conservation Challenge Awards program is established for the purposes of recognizing outstanding environmental achievements by U.S. citizens, enterprises, or programs; providing an incentive for environmental accomplishment; promoting cooperative partnerships between diverse groups working together to achieve common environmental goals; and identifying successful environmental programs that can be replicated.

SEC. 2. *Administration*. (a) The Council on Environmental Quality, with the assistance of the President's Commission on Environmental Quality, shall organize, manage, and administer the awards program, including the development of selection criteria, the nomination of eligible individuals to receive the award, and the selection of award recipients.

(b) Any expenses of the program shall be paid from funds available for the expenses of the Council on Environmental Quality.

SEC. 3. *Awards*. (a) Up to three awards in each of the following four categories shall be made annually to eligible individuals, organizations, groups, or entities:

(i) Quality Environmental Management Awards (incorporation of environmental concerns into management decisions and practices);

(ii) Partnership Awards (successful coalition building efforts);

(iii) Innovation Awards (innovative technology programs, products, or processes); and

(iv) Education and Communication Awards (education and information programs contributing to the development of an ethic fostering conservation and environmental protection).

(b) Presidential citations shall be given to eligible program finalists who demonstrate notable or unique achievements, but who are not selected to receive awards.

SEC. 4. *Eligibility*. Only residents of the United States and organizations, groups, or entities doing business in the United States are eligible to receive an award under this program. An award under this program shall be given only for achievements in the United States or its territories. Organizations, groups, or entities may be profit or nonprofit, public or private entities.

SEC. 5. *Information System.* The Council on Environmental Quality shall establish and maintain a data bank with information about award nominees to catalogue and publicize model conservation or environmental protection programs which could be replicated.

GEORGE BUSH.

EXECUTIVE ORDER NO. 12852

Ex. Ord. No. 12852, June 29, 1993, 58 F.R. 35841, as amended by Ex. Ord. No. 12855, July 19, 1993, 58 F.R. 39107; Ex. Ord. No. 12965, June 27, 1995, 60 F.R. 34087; Ex. Ord. No. 12980, Nov. 17, 1995, 60 F.R. 57819; Ex. Ord. No. 13053, June 30, 1997, 62 F.R. 39945 [35945]; Ex. Ord. No. 13114, Feb. 25, 1999, 64 F.R. 10099, which established the President's Council on Sustainable Development, was revoked by Ex. Ord. No. 13138, §3(f), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 12898. FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

Ex. Ord. No. 12898, Feb. 11, 1994, 59 F.R. 7629, as amended by Ex. Ord. No. 12948, Jan. 30, 1995, 60 F.R. 6381, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1–1. IMPLEMENTATION.

1–101. *Agency Responsibilities.* To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1–102. *Creation of an Interagency Working Group on Environmental Justice.* (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency (''Administrator'') or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice (''Working Group''). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (*l*) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (*o*) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1–103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3–3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5–502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1–103. *Development of Agency Strategies.* (a) Except as provided in section 6–605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)–(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) By March 24, 1995, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. From the date of this order through March 24, 1995, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1–104. *Reports to the President.* Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1–103(e) of this order.

SEC. 2–2. FEDERAL AGENCY RESPONSIBILITIES FOR FEDERAL PROGRAMS. Each Federal agency shall conduct its programs, policies, and activities that

substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

SEC. 3–3. RESEARCH, DATA COLLECTION, AND ANALYSIS.

3–301. *Human Health and Environmental Research and Analysis*. (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3–302. *Human Health and Environmental Data Collection and Analysis*. To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1–103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001–11050 as mandated in Executive Order No. 12856 [former 42 U.S.C. 11001 note]; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

SEC. 4–4. SUBSISTENCE CONSUMPTION OF FISH AND WILDLIFE.

4–401. *Consumption Patterns*. In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4–402. *Guidance*. Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

SEC. 5–5. PUBLIC PARTICIPATION AND ACCESS TO INFORMATION. (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

SEC. 6–6. GENERAL PROVISIONS.

6–601. *Responsibility for Agency Implementation*. The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6–602. *Executive Order No. 12250*. This Executive order is intended to supplement but not supersede Executive Order No. 12250 [42 U.S.C. 2000d–1 note], which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6–603. *Executive Order No. 12875*. This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875 [former 5 U.S.C. 601 note].

6–604. *Scope*. For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6–605. *Petitions for Exemptions*. The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6–606. *Native American Programs*. Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

6–607. *Costs*. Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6–608. *General*. Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6–609. *Judicial Review*. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party

against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

WILLIAM J. CLINTON.

EX. ORD. NO. 13045. PROTECTION OF CHILDREN FROM ENVIRONMENTAL HEALTH RISKS AND SAFETY RISKS

Ex. Ord. No. 13045, Apr. 21, 1997, 62 F.R. 19885, as amended by Ex. Ord. No. 13229, Oct. 9, 2001, 66 F.R. 52013; Ex. Ord. No. 13296, Apr. 18, 2003, 68 F.R. 19931, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy*.

1–101. A growing body of scientific knowledge demonstrates that children may suffer disproportionately from environmental health risks and safety risks. These risks arise because: children's neurological, immunological, digestive, and other bodily systems are still developing; children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults; children's size and weight may diminish their protection from standard safety features; and children's behavior patterns may make them more susceptible to accidents because they are less able to protect themselves. Therefore, to the extent permitted by law and appropriate, and consistent with the agency's mission, each Federal agency:

(a) shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children; and

(b) shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

1–102. Each independent regulatory agency is encouraged to participate in the implementation of this order and comply with its provisions.

SEC. 2. *Definitions*. The following definitions shall apply to this order.

2–201. ''Federal agency'' means any authority of the United States that is an agency under 44 U.S.C. 3502(1) other than those considered to be independent regulatory agencies under 44 U.S.C. 3502(5). For purposes of this order, ''military departments,'' as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2–202. ''Covered regulatory action'' means any substantive action in a rulemaking, initiated after the date of this order or for which a Notice of Proposed Rulemaking is published 1 year after the date of this order, that is likely to result in a rule that may:

(a) be ''economically significant'' under Executive Order 12866 [5 U.S.C. 601 note] (a rulemaking that has an annual effect on the economy of $100 million or more or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities); and

(b) concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children.

2–203. ''Environmental health risks and safety risks'' mean risks to health or to safety that are attributable to products or substances that the child is likely to come in contact with or ingest (such as the air we breath, the food we eat, the water we drink or use for recreation, the soil we live on, and the products we use or are exposed to).

SEC. 3. *Task Force on Environmental Health Risks and Safety Risks to Children*.

3–301. There is hereby established the Task Force on Environmental Health Risks and Safety Risks to Children (''Task Force'').

3–302. The Task Force will report to the President in consultation with the Domestic Policy Council, the National Science and Technology Council, the Council on Environmental Quality, and the Office of Management and Budget (OMB).

3–303. *Membership*. The Task Force shall be composed of the:

(a) Secretary of Health and Human Services, who shall serve as a Co-Chair of the Council;

(b) Administrator of the Environmental Protection Agency, who shall serve as a Co-Chair of the Council;

(c) Secretary of Education;

(d) Secretary of Labor;

(e) Attorney General;

(f) Secretary of Energy;

(g) Secretary of Housing and Urban Development;

(h) Secretary of Agriculture;

(i) Secretary of Transportation;

(j) Director of the Office of Management and Budget;

(k) Chair of the Council on Environmental Quality;

(l) Chair of the Consumer Product Safety Commission;

(m) Assistant to the President for Economic Policy;

(n) Assistant to the President for Domestic Policy;

(o) Director of the Office of Science and Technology Policy;

(p) Chair of the Council of Economic Advisers; and

(q) Such other officials of executive departments and agencies as the President may, from time to time, designate.

Members of the Task Force may delegate their responsibilities under this order to subordinates.

3–304. *Functions*. The Task Force shall recommend to the President Federal strategies for children's environmental health and safety, within the limits of the Administration's budget, to include the following elements:

(a) statements of principles, general policy, and targeted annual priorities to guide the Federal approach to achieving the goals of this order;

(b) a coordinated research agenda for the Federal Government, including steps to implement the review of research databases described in section 4 of this order;

(c) recommendations for appropriate partnerships among Federal, State, local, and tribal governments and the private, academic, and nonprofit sectors;

(d) proposals to enhance public outreach and communication to assist families in evaluating risks to children and in making informed consumer choices;

(e) an identification of high-priority initiatives that the Federal Government has undertaken or will undertake in advancing protection of children's environmental health and safety; and

(f) a statement regarding the desirability of new legislation to fulfill or promote the purposes of this order.

3–305. The Task Force shall prepare a biennial report on research, data, or other information that would enhance our ability to understand, analyze, and respond to environmental health risks and safety risks to children. For purposes of this report, executive departments, the Environmental Protection Agency, and other agencies identified by the Task Force shall identify and specifically describe for the Task Force key data needs related to environmental health risks and safety risks to children that have arisen in the course of the agency's programs and activities. Each report shall also detail the accomplishments of the Task Force from the date of the preceding report. The Task Force shall incorporate agency submissions into its report and ensure that this report is publicly available and widely disseminated. The Office of Science and Technology Policy and the National Science and Technology Council shall ensure that this report is fully considered in establishing research priorities.

3–306. The Task Force shall exist for 8 years from the date of this order.

SEC. 4. *Research Coordination and Integration*.

4–401. Within 6 months of the date of this order, the Task Force shall develop or direct to be developed a review of existing and planned data resources and a proposed plan for ensuring that researchers and Federal

research agencies have access to information on all research conducted or funded by the Federal Government that is related to adverse health risks in children resulting from exposure to environmental health risks or safety risks. The National Science and Technology Council shall review the plan.

4–402. The plan shall promote the sharing of information on academic and private research. It shall include recommendations to encourage that such data, to the extent permitted by law, is available to the public, the scientific and academic communities, and all Federal agencies.

SEC. 5. *Agency Environmental Health Risk or Safety Risk Regulations.*

5–501. For each covered regulatory action submitted to OMB's Office of Information and Regulatory Affairs (OIRA) for review pursuant to Executive Order 12866 [5 U.S.C. 601 note], the issuing agency shall provide to OIRA the following information developed as part of the agency's decisionmaking process, unless prohibited by law:

(a) an evaluation of the environmental health or safety effects of the planned regulation on children; and

(b) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

5–502. In emergency situations, or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall comply with the provisions of this section to the extent practicable. For those covered regulatory actions that are governed by a court-imposed or statutory deadline, the agency shall, to the extent practicable, schedule any rulemaking proceedings so as to permit sufficient time for completing the analysis required by this section.

5–503. The analysis required by this section may be included as part of any other required analysis, and shall be made part of the administrative record for the covered regulatory action or otherwise made available to the public, to the extent permitted by law.

SEC. 6. *Interagency Forum on Child and Family Statistics.*

6–601. The Director of the OMB (''Director'') shall convene an Interagency Forum on Child and Family Statistics (''Forum''), which will include representatives from the appropriate Federal statistics and research agencies. The Forum shall produce a biennial compendium (''Report'') of the most important indicators of the well-being of the Nation's children.

6–602. The Forum shall determine the indicators to be included in each Report and identify the sources of data to be used for each indicator. The Forum shall provide an ongoing review of Federal collection and dissemination of data on children and families, and shall make recommendations to improve the coverage and coordination of data collection and to reduce duplication and overlap.

6–603. The Report shall be published by the Forum in collaboration with the National Institute of Child Health and Human Development. The Forum shall present the first annual Report to the President, through the Director, by July 31, 1997. The Report shall be published biennially thereafter, using the most recently available data.

SEC. 7. *General Provisions.*

7–701. This order is intended only for internal management of the executive branch. This order is not intended, and should not be construed to create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or its employees. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance with this order by the United States, its agencies, its officers, or any other person.

7–702. Executive Order 12606 of September 2, 1987 is revoked.

7–703. Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

EX. ORD. NO. 13061. FEDERAL SUPPORT OF COMMUNITY EFFORTS ALONG AMERICAN HERITAGE RIVERS

Ex. Ord. No. 13061, Sept. 11, 1997, 62 F.R. 48445, as amended by Ex. Ord. No. 13093, July 27, 1998, 63 F.R. 40357, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969 (Public Law 91–190) [42 U.S.C. 4321 et seq.], and in order to protect and restore rivers and their adjacent communities, it is hereby ordered as follows:

SECTION 1. *Policies.*

(a) The American Heritage Rivers initiative has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation.

(b) Executive agencies (''agencies''), to the extent permitted by law and consistent with their missions and resources, shall coordinate Federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage.

(c) Agencies shall develop plans to bring increased efficiencies to existing and authorized programs with goals that are supportive of protection and restoration of communities along rivers.

(d) In accordance with Executive Order 12630 [5 U.S.C. 601 note], agencies shall act with due regard for the protection of private property provided for by the Fifth Amendment to the United States Constitution. No new regulatory authority is created as a result of the American Heritage Rivers initiative. This initiative will not interfere with matters of State, local, and tribal government jurisdiction.

(e) In furtherance of these policies, the President will designate rivers that meet certain criteria as ''American Heritage Rivers.''

(f) It is the policy of the Federal Government that communities shall nominate rivers as American Heritage Rivers and the Federal role will be solely to support community-based efforts to preserve, protect, and restore these rivers and their communities.

(g) Agencies should, to the extent practicable, help identify resources in the private and nonprofit sectors to aid revitalization efforts.

(h) Agencies are encouraged, to the extent permitted by law, to develop partnerships with State, local, and tribal governments and community and nongovernmental organizations. Agencies will be responsive to the diverse needs of different kinds of communities from the core of our cities to remote rural areas and shall seek to ensure that the role played by the Federal Government is complementary to the plans and work being carried out by State, local, and tribal governments. To the extent possible, Federal resources will be strategically directed to complement resources being spent by these governments.

(i) Agencies shall establish a method for field offices to assess the success of the American Heritage River initiative and provide a means to recommend changes that will improve the delivery and accessibility of Federal services and programs. Agencies are directed, where appropriate, to reduce and make more flexible procedural requirements and paperwork related to providing assistance to communities along designated rivers.

(j) Agencies shall commit to a policy under which they will seek to ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of American Heritage River communities. The policy will require agencies to consult with American Heritage River communities early in the planning stages of Federal actions, take into account the communities' goals and objectives and ensure that actions are compatible with the overall character of these communities. Agencies shall seek to ensure that their help for one community does not adversely affect neighboring communities. Additionally, agencies are encouraged to develop formal and informal partner-

ships to assist communities. Local Federal facilities, to the extent permitted by law and consistent with the agencies' missions and resources, should provide public access, physical space, technical assistance, and other support for American Heritage River communities.

(k) In addition to providing support to designated rivers, agencies will work together to provide information and services to all communities seeking support.

SEC. 2. *Process for Nominating an American Heritage River*.

(a) *Nomination*. Communities, in coordination with their State, local, or tribal governments, can nominate their river, river stretch, or river confluence for designation as an American Heritage River. When several communities are involved in the nomination of the same river, nominations will detail the coordination among the interested communities and the role each will play in the process. Individuals living outside the community may not nominate a river.

(b) *Selection Criteria*. Nominations will be judged based on the following:

(1) the characteristics of the natural, economic, agricultural, scenic, historic, cultural, or recreational resources of the river that render it distinctive or unique;

(2) the effectiveness with which the community has defined its plan of action and the extent to which the plan addresses, either through planned actions or past accomplishments, all three American Heritage Rivers objectives, which are set forth in section 1(a) of this order;

(3) the strength and diversity of community support for the nomination as evidenced by letters from elected officials; landowners; private citizens; businesses; and especially State, local, and tribal governments. Broad community support is essential to receiving the American Heritage River designation; and

(4) willingness and capability of the community to forge partnerships and agreements to implement their plan to meet their goals and objectives.

(c) *Recommendation Process*.

The Chair of the Council on Environmental Quality (''CEQ'') shall develop a fair and objective procedure to obtain the views of a diverse group of experts for the purpose of making recommendations to the President as to which rivers shall be designated. These experts shall reflect a variety of viewpoints, such as those representing natural, cultural, and historic resources; scenic, environmental, and recreation interests; tourism, transportation, and economic development interests; and industries such as agriculture, hydropower, manufacturing, mining, and forest management. The Chair of the CEQ will ensure that the rivers recommended represent a variety of stream sizes, diverse geographical locations, and a wide range of settings from urban to rural and ensure that relatively pristine, successful revitalization efforts are considered as well as degraded rivers in need of restoration.

(d) *Designation*.

(1) The President will designate certain rivers as American Heritage Rivers. Based on the receipt of a sufficient number of qualified nominations, up to 20 rivers will be designated in the first phase of the initiative.

(2) The Interagency Committee provided for in section 3 of this order shall develop a process by which any community that nominates and has its river designated may have this designation terminated at its request.

(3) Upon a determination by the Chair of the CEQ that a community has failed to implement its plan, the Chair may recommend to the President that a designation be revoked. The Chair shall notify the community at least 30 days prior to making such a recommendation to the President. Based on that recommendation, the President may revoke the designation.

SEC. 3. *Establishment of an Interagency Committee*. There is hereby established the American Heritage Rivers Interagency Committee (''Committee''). The Committee shall have two co-chairs. The Chair of the CEQ shall be a permanent co-chair. The other co-chair will rotate among the heads of the agencies listed below.

(a) The Committee shall be composed of the following members or their designees at the Assistant Secretary level or equivalent:

(1) The Secretary of Defense;

(2) The Attorney General;

(3) The Secretary of the Interior;

(4) The Secretary of Agriculture;

(5) The Secretary of Commerce;

(6) The Secretary of Housing and Urban Development;

(7) The Secretary of Transportation;

(8) The Secretary of Energy;

(9) The Administrator of the Environmental Protection Agency;

(10) The Chair of the Advisory Council on Historic Preservation;

(11) The Chairperson of the National Endowment for the Arts; and

(12) The Chairperson of the National Endowment for the Humanities.

The Chair of the CEQ may invite to participate in meetings of the Committee, representatives of other agencies, as appropriate.

(b) The Committee shall:

(1) establish formal guidelines for designation as an American Heritage River;

(2) periodically review the actions of agencies in support of the American Heritage Rivers;

(3) report to the President on the progress, accomplishments, and effectiveness of the American Heritage Rivers initiative; and

(4) perform other duties as directed by the Chair of the CEQ.

SEC. 4. *Responsibilities of the Federal Agencies*. Consistent with Title I of the National Environmental Policy Act of 1969 [42 U.S.C. 4331 et seq.], agencies shall:

(a) identify their existing programs and plans that give them the authority to offer assistance to communities involved in river conservation and community health and revitalization;

(b) to the extent practicable and permitted by law and regulation, refocus programs, grants, and technical assistance to provide support for communities adjacent to American Heritage Rivers;

(c) identify all technical tools, including those developed for purposes other than river conservation, that can be applied to river protection, restoration, and community revitalization;

(d) provide access to existing scientific data and information to the extent permitted by law and consistent with the agencies mission and resources;

(e) cooperate with State, local, and tribal governments and communities with respect to their activities that take place in, or affect the area around, an American Heritage River;

(f) commit to a policy, as set forth in section 1(j) of this order, in making decisions affecting the quality of an American Heritage River;

(g) select from among all the agencies a single individual called the ''River Navigator,'' for each river that is designated an American Heritage River, with whom the communities can communicate goals and needs and who will facilitate community-agency interchange;

(h) allow public access to the river, for agencies with facilities along American Heritage Rivers, to the extent practicable and consistent with their mission; and

(i) cooperate, as appropriate, with communities on projects that protect or preserve stretches of the river that are on Federal property or adjacent to a Federal facility.

SEC. 5. *Responsibilities of the Committee and the Council on Environmental Quality*. The CEQ shall serve as Executive agent for the Committee, and the CEQ and the Committee shall ensure the implementation of the policies and purposes of this initiative.

SEC. 6. *Definition*. For the purposes of this order, Executive agency means any agency on the Committee and such other agency as may be designated by the President.

SEC. 7. *Judicial Review*. This order does not create any right or benefit, substantive or procedural, enforceable

by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

EXECUTIVE ORDER NO. 13080

Ex. Ord. No. 13080, Apr. 7, 1998, 63 F.R. 17667, as amended by Ex. Ord. No. 13093, July 27, 1998, 63 F.R. 40357, which established the American Heritage Rivers Initiative Advisory Committee, was revoked by Ex. Ord. No. 13225, § 3(b), Sept. 28, 2001, 66 F.R. 50292, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

PROC. NO. 7112. DESIGNATION OF AMERICAN HERITAGE RIVERS

Proc. No. 7112, July 30, 1998, 63 F.R. 41949, provided:

In celebration of America's rivers, and to recognize and reward grassroots efforts to restore them, last year I announced the American Heritage Rivers initiative. My goal was to help communities realize their visions for their rivers by making it easier for them to tap existing programs and resources of the Federal Government. From across the country, hundreds of communities answered my call for nominations, asking that their rivers be designated American Heritage Rivers. I applaud all of the communities that have drawn together and dedicated themselves to the goal of healthy rivers, now and forever.

Having reviewed the recommendations of the American Heritage Rivers Initiative Advisory Committee, I am pleased to be able to recognize a select group of rivers and communities that reflect the true diversity and splendor of America's natural endowment, and the tremendous energy and commitment of its citizenry.

Pursuant to Executive Orders 13061 [set out above], 13080, and 13093 [set out above], I hereby designate the following American Heritage Rivers:

- The Blackstone and Woonasquatucket Rivers, in the States of Massachusetts and Rhode Island;
- The Connecticut River, in the States of Connecticut, Massachusetts, New Hampshire, and Vermont;
- The Cuyahoga River, in the State of Ohio;
- The Detroit River, in the State of Michigan;
- The Hanalei River, in the State of Hawaii;
- The Hudson River, in the State of New York;
- The Upper Mississippi River, in the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin;
- The Lower Mississippi River, in the States of Louisiana and Tennessee;
- The New River, in the States of North Carolina, Virginia, and West Virginia;
- The Rio Grande, in the State of Texas;
- The Potomac River, in the District of Columbia and the States of Maryland, Pennsylvania, Virginia, and West Virginia;
- The St. Johns River, in the State of Florida;
- The Upper Susquehanna and Lackawanna Rivers, in the State of Pennsylvania;
- The Willamette River, in the State of Oregon.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of July, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

WILLIAM J. CLINTON.

EX. ORD. NO. 13112. INVASIVE SPECIES

Ex. Ord. No. 13112, Feb. 3, 1999, 64 F.R. 6183, as amended by Ex. Ord. No. 13286, § 15, Feb. 28, 2003, 68 F.R. 10623, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 *et seq.*), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 *et seq.*), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

SECTION 1. *Definitions*.

(a) ''Alien species'' means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

(b) ''Control'' means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.

(c) ''Ecosystem'' means the complex of a community of organisms and its environment.

(d) ''Federal agency'' means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(e) ''Introduction'' means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.

(f) ''Invasive species'' means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

(g) ''Native species'' means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

(h) ''Species'' means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.

(i) ''Stakeholders'' means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, nongovernmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.

(j) ''United States'' means the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

SEC. 2. *Federal Agency Duties*. (a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law,

(1) identify such actions;

(2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and

(3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Spe-

cies Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

SEC. 3. *Invasive Species Council.* (a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, the Secretary of Homeland Security, and the Administrator of the Environmental Protection Agency. The Council shall be Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council.

(b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

SEC. 4. *Duties of the Invasive Species Council.* The Invasive Species Council shall provide national leadership regarding invasive species, and shall:

(a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources;

(b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species;

(c) develop recommendations for international cooperation in addressing invasive species;

(d) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species;

(e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health;

(f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and

(g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

SEC. 5. *Invasive Species Management Plan.* (a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders.

(b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority.

(c) The Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

SEC. 6. *Judicial Review and Administration.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

(b) Executive Order 11987 of May 24, 1977, is hereby revoked.

(c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs.

(d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

EX. ORD. NO. 13148. GREENING THE GOVERNMENT THROUGH LEADERSHIP IN ENVIRONMENTAL MANAGEMENT

Ex. Ord. No. 13148, Apr. 21, 2000, 65 F.R. 24595, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Emergency Planning and Com-

munity Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) (EPCRA), the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) (PPA), the Clean Air Act (42 U.S.C. 7401–7671q) (CAA), and section 301 of title 3, United States Code, it is hereby ordered as follows:

PART 1—PREAMBLE

SECTION 101. *Federal Environmental Leadership*. The head of each Federal agency is responsible for ensuring that all necessary actions are taken to integrate environmental accountability into agency day-to-day decisionmaking and long-term planning processes, across all agency missions, activities, and functions. Consequently, environmental management considerations must be a fundamental and integral component of Federal Government policies, operations, planning, and management. The head of each Federal agency is responsible for meeting the goals and requirements of this order.

PART 2—GOALS

SEC. 201. *Environmental Management*. Through development and implementation of environmental management systems, each agency shall ensure that strategies are established to support environmental leadership programs, policies, and procedures and that agency senior level managers explicitly and actively endorse these strategies.

SEC. 202. *Environmental Compliance*. Each agency shall comply with environmental regulations by establishing and implementing environmental compliance audit programs and policies that emphasize pollution prevention as a means to both achieve and maintain environmental compliance.

SEC. 203. *Right-to-Know and Pollution Prevention*. Through timely planning and reporting under the EPCRA, Federal facilities shall be leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations. Each agency shall strive to reduce or eliminate harm to human health and the environment from releases of pollutants to the environment. Each agency shall advance the national policy that, whenever feasible and cost-effective, pollution should be prevented or reduced at the source. Funding for regulatory compliance programs shall emphasize pollution prevention as a means to address environmental compliance.

SEC. 204. *Release Reduction: Toxic Chemicals*. Through innovative pollution prevention, effective facility management, and sound acquisition and procurement practices, each agency shall reduce its reported Toxic Release Inventory (TRI) releases and off-site transfers of toxic chemicals for treatment and disposal by 10 percent annually, or by 40 percent overall by December 31, 2006.

SEC. 205. *Use Reduction: Toxic Chemicals and Hazardous Substances and Other Pollutants*. Through identification of proven substitutes and established facility management practices, including pollution prevention, each agency shall reduce its use of selected toxic chemicals, hazardous substances, and pollutants, or its generation of hazardous and radioactive waste types at its facilities by 50 percent by December 31, 2006. If an agency is unable to reduce the use of selected chemicals, that agency will reduce the use of selected hazardous substances or its generation of other pollutants, such as hazardous and radioactive waste types, at its facilities by 50 percent by December 31, 2006.

SEC. 206. *Reductions in Ozone-Depleting Substances*. Through evaluating present and future uses of ozone-depleting substances and maximizing the purchase and the use of safe, cost effective, and environmentally preferable alternatives, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all nonexcepted uses by December 31, 2010.

SEC. 207. *Environmentally and Economically Beneficial Landscaping*. Each agency shall strive to promote the sustainable management of Federal facility lands through the implementation of cost-effective, environmentally sound landscaping practices, and programs to reduce adverse impacts to the natural environment.

PART 3—PLANNING AND ACCOUNTABILITY

SEC. 301. *Annual Budget Submission*. Federal agencies shall place high priority on obtaining funding and resources needed for implementation of the Greening the Government Executive Orders, including funding to address findings and recommendations from environmental management system audits or facility compliance audits conducted under sections 401 and 402 of this order. Federal agencies shall make such requests as required in Office of Management and Budget (OMB) Circular A–11.

SEC. 302. *Application of Life Cycle Assessment Concepts*. Each agency with facilities shall establish a pilot program to apply life cycle assessment and environmental cost accounting principles. To the maximum extent feasible and cost-effective, agencies shall apply those principles elsewhere in the agency to meet the goals and requirements of this order. Such analysis shall be considered in the process established in the OMB Capital Programming Guide and OMB Circular A–11. The Environmental Protection Agency (EPA), in coordination with the Workgroup established in section 306 of this order, shall, to the extent feasible, assist agencies in identifying, applying, and developing tools that reflect life cycle assessment and environmental cost accounting principles and provide technical assistance to agencies in developing life cycle assessments and environmental cost accounting assessments under this Part.

SEC. 303. *Pollution Prevention to Address Compliance*. Each agency shall ensure that its environmental regulatory compliance funding policies promote the use of pollution prevention to achieve and maintain environmental compliance at the agency's facilities. Agencies shall adopt a policy to preferentially use pollution prevention projects and activities to correct and prevent noncompliance with environmental regulatory requirements. Agency funding requests for facility compliance with Federal, State, and local environmental regulatory requirements shall emphasize pollution prevention through source reduction as the means of first choice to ensure compliance, with reuse and recycling alternatives having second priority as a means of compliance.

SEC. 304. *Pollution Prevention Return-on-Investment Programs*. Each agency shall develop and implement a pollution prevention program at its facilities that compares the life cycle costs of treatment and/or disposal of waste and pollutant streams to the life cycle costs of alternatives that eliminate or reduce toxic chemicals or pollutants at the source. Each agency shall implement those projects that are life-cycle cost-effective, or otherwise offer substantial environmental or economic benefits.

SEC. 305. *Policies, Strategies, and Plans*.

(a) Within 12 months of the date of this order, each agency shall ensure that the goals and requirements of this order are incorporated into existing agency environmental directives, policies, and documents affected by the requirements and goals of this order. Where such directives and policies do not already exist, each agency shall, within 12 months of the date of this order, prepare and endorse a written agency environmental management strategy to achieve the requirements and goals of this order. Agency preparation of directives, policies, and documents shall reflect the nature, scale, and environmental impacts of the agency's activities, products, or services. Agencies are encouraged to include elements of relevant agency policies or strategies developed under this part in agency planning documents prepared under the Government Performance and Results Act of 1993, Public Law 103–62 [see Short Title of 1993 Amendment note set out under 31 U.S.C. 1101].

(b) By March 31, 2002, each agency shall ensure that its facilities develop a written plan that sets forth the

facility's contribution to the goals and requirements established in this order. The plan should reflect the size and complexity of the facility. Where pollution prevention plans or other formal environmental planning instruments have been prepared for agency facilities, an agency may elect to update those plans to meet the requirements and goals of this section.

(c) The Federal Acquisition Regulation (FAR) Council shall develop acquisition policies and procedures for contractors to supply agencies with all information necessary for compliance with this order. Once the appropriate FAR clauses have been published, agencies shall use them in all applicable contracts. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, or concessioners, each agency shall take practical steps to obtain the information needed to comply with this order from such contractors or concessioners.

SEC. 306. *Interagency Environmental Leadership Workgroup*. Within 4 months of the date of this order, EPA shall convene and chair an Interagency Environmental Leadership Workgroup (the Workgroup) with senior-level representatives from all executive agencies and other interested independent Government agencies affected by this order. The Workgroup shall develop policies and guidance required by this order and member agencies shall facilitate implementation of the requirements of this order in their respective agencies. Workgroup members shall coordinate with their Agency Environmental Executive (AEE) designated under section 301(d) of Executive Order 13101 [42 U.S.C. 6961 note] and may request the assistance of their AEE in resolving issues that may arise among members in developing policies and guidance related to this order. If the AEEs are unable to resolve the issues, they may request the assistance of the Chair of the Council on Environmental Quality (CEQ).

SEC. 307. *Annual Reports*. Each agency shall submit an annual progress report to the Administrator on implementation of this order. The reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including, but not limited to, progress in achieving the reduction goals in sections 502, 503, and 505 of this order. Each agency may prepare and submit the annual report in electronic format. A copy of the report shall be submitted to the Federal Environmental Executive (FEE) by EPA for use in the biennial Greening the Government Report to the President prepared in accordance with Executive Order 13101 [42 U.S.C. 6961 note]. Within 9 months of the date of this order, EPA, in coordination with the Workgroup established under section 306 of this order, shall prepare guidance regarding the information and timing for the annual report. The Workgroup shall coordinate with those agencies responsible for Federal agency reporting guidance under the Greening the Government Executive orders to streamline reporting requirements and reduce agency and facility-level reporting burdens. The first annual report shall cover calendar year 2000 activities.

PART 4—PROMOTING ENVIRONMENTAL MANAGEMENT AND LEADERSHIP

SEC. 401. *Agency and Facility Environmental Management Systems*. To attain the goals of section 201 of this order:

(a) Within 18 months of the date of this order, each agency shall conduct an agency-level environmental management system self assessment based on the Code of Environmental Management Principles for Federal Agencies developed by the EPA (61 Fed. Reg. 54062) and/or another appropriate environmental management system framework. Each assessment shall include a review of agency environmental leadership goals, objectives, and targets. Where appropriate, the assessments may be conducted at the service, bureau, or other comparable level.

(b) Within 24 months of the date of this order, each agency shall implement environmental management systems through pilot projects at selected agency facilities based on the Code of Environmental Management Principles for Federal Agencies and/or another appropriate environmental management system framework. By December 31, 2005, each agency shall implement an environmental management system at all appropriate agency facilities based on facility size, complexity, and the environmental aspects of facility operations. The facility environmental management system shall include measurable environmental goals, objectives, and targets that are reviewed and updated annually. Once established, environmental management system performance measures shall be incorporated in agency facility audit protocols.

SEC. 402. *Facility Compliance Audits*. To attain the goals of section 202 of this order:

(a) Within 12 months of the date of this order, each agency that does not have an established regulatory environmental compliance audit program shall develop and implement a program to conduct facility environmental compliance audits and begin auditing at its facilities within 6 months of the development of that program.

(b) An agency with an established regulatory environmental compliance audit program may elect to conduct environmental management system audits in lieu of regulatory environmental compliance audits at selected facilities.

(c) Facility environmental audits shall be conducted periodically. Each agency is encouraged to conduct audits not less than every 3 years from the date of the initial or previous audit. The scope and frequency of audits shall be based on facility size, complexity, and the environmental aspects of facility operations. As appropriate, each agency shall include tenant, contractor, and concessioner activities in facility audits.

(d) Each agency shall conduct internal reviews and audits and shall take such other steps, as may be necessary, to monitor its facilities' compliance with sections 501 and 504 of this order.

(e) Each agency shall consider findings from the assessments or audits conducted under Part 4 in program planning under section 301 of this order and in the preparation and revisions to facility plans prepared under section 305 of this order.

(f) Upon request and to the extent practicable, the EPA shall provide technical assistance in meeting the requirements of Part 4 by conducting environmental management reviews at Federal facilities and developing policies and guidance for conducting environmental compliance audits and implementing environmental management systems at Federal facilities.

SEC. 403. *Environmental Leadership and Agency Awards Programs*.

(a) Within 12 months of the date of this order, the Administrator shall establish a Federal Government environmental leadership program to promote and recognize outstanding environmental management performance in agencies and facilities.

(b) Each agency shall develop an internal agency-wide awards program to reward and highlight innovative programs and individuals showing outstanding environmental leadership in implementing this order. In addition, based upon criteria developed by the EPA in coordination with the Workgroup established in section 306 of this order, Federal employees who demonstrate outstanding leadership in implementation of this order may be considered for recognition under the White House awards program set forth in section 803 of Executive Order 13101 of September 14, 1998 [42 U.S.C. 6961 note].

SEC. 404. *Management Leadership and Performance Evaluations*.

(a) To ensure awareness of and support for the environmental requirements of this order, each agency shall include training on the provisions of the Greening the Government Executive orders in standard senior level management training as well as training for program managers, contracting personnel, procurement and acquisition personnel, facility managers, contrac-

tors, concessioners, and other personnel as appropriate. In coordination with the Workgroup established under section 306 of this order, the EPA shall prepare guidance on implementation of this section.

(b) To recognize and reinforce the responsibilities of facility and senior headquarters program managers, regional environmental coordinators and officers, their superiors, and, to the extent practicable and appropriate, others vital to the implementation of this order, each agency shall include successful implementation of pollution prevention, community awareness, and environmental management into its position descriptions and performance evaluations for those positions.

SEC. 405. *Compliance Assistance.*

(a) Upon request and to the extent practicable, the EPA shall provide technical advice and assistance to agencies to foster full compliance with environmental regulations and all aspects of this order.

(b) Within 12 months of the date of this order, the EPA shall develop a compliance assistance center to provide technical assistance for Federal facility compliance with environmental regulations and all aspects of this order.

(c) To enhance landscaping options and awareness, the United States Department of Agriculture (USDA) shall provide information on the suitability, propagation, and the use of native plants for landscaping to all agencies and the general public by USDA in conjunction with the center under subsection (b) of this section. In implementing Part 6 of this order, agencies are encouraged to develop model demonstration programs in coordination with the USDA.

SEC. 406. *Compliance Assurance.*

(a) In consultation with other agencies, the EPA may conduct such reviews and inspections as may be necessary to monitor compliance with sections 501 and 504 of this order. Each agency is encouraged to cooperate fully with the efforts of the EPA to ensure compliance with those sections.

(b) Whenever the Administrator notifies an agency that it is not in compliance with section 501 or 504 of this order, the agency shall provide the EPA a detailed plan for achieving compliance as promptly as practicable.

(c) The Administrator shall report annually to the President and the public on agency compliance with the provisions of sections 501 and 504 of this order.

SEC. 407. *Improving Environmental Management.* To ensure that government-wide goals for pollution prevention are advanced, each agency is encouraged to incorporate its environmental leadership goals into its Strategic and Annual Performance Plans required by the Government Performance and Results Act of 1993, Public Law 103–62 [see Short Title of 1993 Amendment note set out under 31 U.S.C. 1101], starting with performance plans accompanying the FY 2002 budget.

PART 5—EMERGENCY PLANNING, COMMUNITY RIGHT-TO-KNOW, AND POLLUTION PREVENTION

SEC. 501. *Toxics Release Inventory/Pollution Prevention Act Reporting.* To attain the goals of section 203 of this order:

(a) Each agency shall comply with the provisions set forth in section 313 of EPCRA [42 U.S.C. 11023], section 6607 of PPA [42 U.S.C. 13106], all implementing regulations, and future amendments to these authorities, in light of applicable EPA guidance.

(b) Each agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) or North American Industrial Classification System (NAICS) delineations. Except as described in subsection (d) of this section, all other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 to specific activities at specific agency facilities apply to the reporting requirements set forth in subsection (a) of this section.

(c) Each agency required to report under subsection (a) of this section shall do so using electronic reporting as provided in EPA's EPCRA section 313 guidance.

(d) Within 12 months of the date of this order, the Administrator shall review the impact on reporting of existing regulatory exemptions on the application of EPCRA section 313 at Federal facilities. Where feasible, this review shall include pilot studies at Federal facilities. If the review indicates that application of existing exemptions to Federal Government reporting under this section precludes public reporting of substantial amounts of toxic chemicals under subsection 501(a), the EPA shall prepare guidance, in coordination with the Workgroup established under section 306 of this order, clarifying application of the exemptions at Federal facilities. In developing the guidance, the EPA should consider similar application of such regulatory limitations and exemptions by the private sector. To the extent feasible, the guidance developed by the EPA shall be consistent with the reasonable application of such regulatory limitations and exemptions in the private sector. The guidance shall ensure reporting consistent with the goal of public access to information under section 313 of EPCRA and section 6607 of PPA. The guidance shall be submitted to the AEEs established under section 301(d) of Executive Order 13101 [42 U.S.C. 6961 note] for review and endorsement. Each agency shall apply any guidance to reporting at its facilities as soon as practicable but no later than for reporting for the next calendar year following release of the guidance.

(e) The EPA shall coordinate with other interested Federal agencies to carry out pilot projects to collect and disseminate information about the release and other waste management of chemicals associated with the environmental response and restoration at their facilities and sites. The pilot projects will focus on releases and other waste management of chemicals associated with environmental response and restoration at facilities and sites where the activities generating wastes do not otherwise meet EPCRA section 313 thresholds for manufacture, process, or other use. Each agency is encouraged to identify applicable facilities and voluntarily report under subsection (a) of this section the releases and other waste management of toxic chemicals managed during environmental response and restoration, regardless of whether the facility otherwise would report under subsection (a). The releases and other waste management of chemicals associated with environmental response and restoration voluntarily reported under this subsection will not be included in the accounting established under sections 503(a) and (c) of this order.

SEC. 502. *Release Reduction: Toxic Chemicals.* To attain the goals of section 204 of this order:

(a) Beginning with reporting for calendar year 2001 activities, each agency reporting under section 501 of this order shall adopt a goal of reducing, where cost effective, the agency's total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal by at least 10 percent annually, or by 40 percent overall by December 31, 2006. Beginning with activities for calendar year 2001, the baseline for measuring progress in meeting the reduction goal will be the aggregate of all such releases and off-site transfers of such chemicals for treatment and disposal as reported by all of the agency's facilities under section 501 of this order. The list of toxic chemicals applicable to this goal is the EPCRA section 313 [42 U.S.C. 11023] list as of December 1, 2000. If an agency achieves the 40 percent reduction goal prior to December 31, 2006, that agency shall establish a new baseline and reduction goal based on agency priorities.

(b) Where an agency is unable to pursue the reduction goal established in subsection (a) for certain chemicals that are mission critical and/or needed to protect human health and the environment or where agency off-site transfer of toxic chemicals for treatment is directly associated with environmental restoration activities, that agency may request a waiver from the EPA for all or part of the requirement in subsection (a) of this section. As appropriate, waiver requests must provide: (1) an explanation of the mission critical use of the chemical; (2) an explanation of the nature of the need for the chemical to protect human health; (3) a description of efforts to identify a less harmful substitute

chemical or alternative processes to reduce the release and transfer of the chemical in question; and (4) a description of the off-site transfers of toxic chemicals for treatment directly associated with environmental restoration activities. The EPA shall respond to the waiver request within 90 days and may grant such a waiver for no longer than 2 years. An agency may resubmit a request for waiver at the end of that period. The waiver under this section shall not alter requirements to report under section 501 of this order.

(c) Where a specific component (e.g., bureau, service, or command) within an agency achieves a 75 percent reduction in its 1999 reporting year publicly reported total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal, based on the 1994 baseline established in Executive Order 12856 [former 42 U.S.C. 11001 note], that agency may independently elect to establish a reduction goal for that component lower than the 40 percent target established in subsection (a) of this section. The agency shall formally notify the Workgroup established in section 306 of this order of the elected reduction target.

SEC. 503. *Use Reduction: Toxic Chemicals, Hazardous Substances, and Other Pollutants.* To attain the goals of section 205 of this order:

(a) Within 18 months of the date of this order, each agency with facilities shall develop and support goals to reduce the use at such agencies' facilities of the priority chemicals on the list under subsection (b) of this section for identified applications and purposes, or alternative chemicals and pollutants the agency identifies under subsection (c) of this section, by at least 50 percent by December 31, 2006.

(b) Within 9 months of the date of this order the Administrator, in coordination with the Workgroup established in section 306 of this order, shall develop a list of not less than 15 priority chemicals used by the Federal Government that may result in significant harm to human health or the environment and that have known, readily available, less harmful substitutes for identified applications and purposes. In addition to identifying the applications and purposes to which such reductions apply, the Administrator, in coordination with the Workgroup shall identify a usage threshold below which this section shall not apply. The chemicals will be selected from listed EPCRA section 313 [42 U.S.C. 11023] toxic chemicals and, where appropriate, other regulated hazardous substances or pollutants. In developing the list, the Administrator, in coordination with the Workgroup shall consider: (1) environmental factors including toxicity, persistence, and bio-accumulation; (2) availability of known, less environmentally harmful substitute chemicals that can be used in place of the priority chemical for identified applications and purposes; (3) availability of known, less environmentally harmful processes that can be used in place of the priority chemical for identified applications and purposes; (4) relative costs of alternative chemicals or processes; and (5) potential risk and environmental and human exposure based upon applications and uses of the chemicals by Federal agencies and facilities. In identifying alternatives, the Administrator should take into consideration the guidance issued under section 503 of Executive Order 13101 [42 U.S.C. 6961 note].

(c) If an agency, which has facilities required to report under EPCRA, uses at its facilities less than five of the priority chemicals on the list developed in subsection (b) of this section for the identified applications and purposes, the agency shall develop, within 12 months of the date of this order, a list of not less than five chemicals that may include priority chemicals under subsection (b) of this section or other toxic chemicals, hazardous substances, and/or other pollutants the agency uses or generates, the release, transfer or waste management of which may result in significant harm to human health or the environment.

(d) In lieu of requirements under subsection (a) of this section, an agency may, upon concurrence with the Workgroup established under section 306 of this order, develop within 12 months of the date of this order, a list of not less than five priority hazardous or radioactive waste types generated by its facilities. Within 18 months of the date of this order, the agency shall develop and support goals to reduce the agency's generation of these wastes by at least 50 percent by December 31, 2006. To the maximum extent possible, such reductions shall be achieved by implementing source reduction practices.

(e) The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal in subsections (a) and (d) of this section for each agency is the first calendar year following the development of the list of priority chemicals under subsection (b) of this section.

(f) Each agency shall undertake pilot projects at selected facilities to gather and make publicly available materials accounting data related to the toxic chemicals, hazardous substances, and/or other pollutants identified under subsections (b), (c), or (d) of this section.

(g) Within 12 months of the date of this order, the Administrator shall develop guidance on implementing this section in coordination with the Workgroup. The EPA shall develop technical assistance materials to assist agencies in meeting the 50 percent reduction goal of this section.

(h) Where an agency can demonstrate to the Workgroup that it has previously reduced the use of a priority chemical identified in subsection 503(b) by 50 percent, then the agency may elect to waive the 50 percent reduction goal for that chemical.

SEC. 504. *Emergency Planning and Reporting Responsibilities.* Each agency shall comply with the provisions set forth in sections 301 through 312 of the EPCRA [42 U.S.C. 11001–11022], all implementing regulations, and any future amendments to these authorities, in light of any applicable guidance as provided by the EPA.

SEC. 505. *Reductions in Ozone-Depleting Substances.* To attain the goals of section 206 of this order:

(a) Each agency shall ensure that its facilities: (1) maximize the use of safe alternatives to ozone-depleting substances, as approved by the EPA's Significant New Alternatives Policy (SNAP) program; (2) consistent with subsection (b) of this section, evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs for such materials, and evaluate use of, and plans for recycling, refrigerants, and halons; and (3) exercise leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

(b) Within 12 months of the date of this order, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all non-excepted uses by December 31, 2010. Plans should target cost effective reduction of environmental risk by phasing out Class I ozone depleting substance applications as the equipment using those substances reaches its expected service life. Exceptions to this requirement include all exceptions found in current or future applicable law, treaty, regulation, or Executive order.

(c) Each agency shall amend its personal property management policies and procedures to preclude disposal of ozone depleting substances removed or reclaimed from its facilities or equipment, including disposal as part of a contract, trade, or donation, without prior coordination with the Department of Defense (DoD). Where the recovered ozone-depleting substance is a critical requirement for DoD missions, the agency shall transfer the materials to the DoD. The DoD will bear the costs of such transfer.

PART 6—LANDSCAPING MANAGEMENT PRACTICES

SEC. 601. *Implementation.*

(a) Within 12 months from the date of this order, each agency shall incorporate the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped

Grounds (60 Fed. Reg. 40837) developed by the FEE into landscaping programs, policies, and practices.

(b) Within 12 months of the date of this order, the FEE shall form a workgroup of appropriate Federal agency representatives to review and update the guidance in subsection (a) of this section, as appropriate.

(c) Each agency providing funding for nonfederal projects involving landscaping projects shall furnish funding recipients with information on environmentally and economically beneficial landscaping practices and work with the recipients to support and encourage application of such practices on Federally funded projects.

SEC. 602. *Technical Assistance and Outreach*. The EPA, the General Services Administration (GSA), and the USDA shall provide technical assistance in accordance with their respective authorities on environmentally and economically beneficial landscaping practices to agencies and their facilities.

PART 7—ACQUISITION AND PROCUREMENT

SEC. 701. *Limiting Procurement of Toxic Chemicals, Hazardous Substances, and Other Pollutants*.

(a) Within 12 months of the date of this order, each agency shall implement training programs to ensure that agency procurement officials and acquisition program managers are aware of the requirements of this order and its applicability to those individuals.

(b) Within 24 months of the date of this order, each agency shall determine the feasibility of implementing centralized procurement and distribution (e.g., ''pharmacy'') programs at its facilities for tracking, distribution, and management of toxic or hazardous materials and, where appropriate, implement such programs.

(c) Under established schedules for review of standardized documents, DoD and GSA, and other agencies, as appropriate, shall review their standardized documents and identify opportunities to eliminate or reduce their use of chemicals included on the list of priority chemicals developed by the EPA under subsection 503(b) of this order, and make revisions as appropriate.

(d) Each agency shall follow the policies and procedures for toxic chemical release reporting in accordance with FAR section 23.9 effective as of the date of this order and policies and procedures on Federal compliance with right-to-know laws and pollution prevention requirements in accordance with FAR section 23.10 effective as of the date of this order.

SEC. 702. *Environmentally Benign Adhesives*. Within 12 months after environmentally benign pressure sensitive adhesives for paper products become commercially available, each agency shall revise its specifications for paper products using adhesives and direct the purchase of paper products using those adhesives, whenever technically practicable and cost effective. Each agency should consider products using the environmentally benign pressure sensitive adhesives approved by the U.S. Postal Service (USPS) and listed on the USPS Qualified Products List for pressure sensitive recyclable adhesives.

SEC. 703. *Ozone-Depleting Substances*. Each agency shall follow the policies and procedures for the acquisition of items that contain, use, or are manufactured with ozone-depleting substances in accordance with FAR section 23.8 and other applicable FAR provisions.

SEC. 704. *Environmentally and Economically Beneficial Landscaping Practices*.

(a) Within 18 months of the date of this order, each agency shall have in place acquisition and procurement practices, including provision of landscaping services that conform to the guidance referred to in section 601 of this order, for the use of environmentally and economically beneficial landscaping practices. At a minimum, such practices shall be consistent with the policies in the guidance referred to in section 601 of this order.

(b) In implementing landscaping policies, each agency shall purchase environmentally preferable and recycled content products, including EPA-designated items such as compost and mulch, that contribute to environmentally and economically beneficial practices.

PART 8—EXEMPTIONS

SEC. 801. *National Security Exemptions*. Subject to subsection 902(c) of this order and except as otherwise required by applicable law, in the interest of national security, the head of any agency may request from the President an exemption from complying with the provisions of any or all provisions of this order for particular agency facilities, provided that the procedures set forth in section 120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(j)(1)), are followed, with the following exceptions: (a) an exemption issued under this section will be for a specified period of time that may exceed 1 year; (b) notice of any exemption granted under this section for provisions not otherwise required by law is only required to the Director of OMB, the Chair of the CEQ, and the Director of the National Security Council; and (c) an exemption under this section may be issued due to lack of appropriations, provided that the head of the agency requesting the exemption shows that necessary funds were requested by the agency in its budget submission and agency plan under Executive Order 12088 of October 13, 1978 [set out as a note above], and were not contained in the President's budget request or the Congress failed to make available the requested appropriation. To the maximum extent practicable, and without compromising national security, each agency shall strive to comply with the purposes, goals, and implementation steps in this order. Nothing in this order affects limitations on the dissemination of classified information pursuant to law, regulation, or Executive order.

SEC. 802. *Compliance*. After January 1, 2002, OMB, in consultation with the Chair of the Workgroup established by section 306 of this order, may modify the compliance requirements for an agency under this order, if the agency is unable to comply with the requirements of the order. An agency requesting modification must show that it has made substantial good faith efforts to comply with the order. The cost-effectiveness of implementation of the order can be a factor in OMB's decision to modify the requirements for that agency's compliance with the order.

PART 9—GENERAL PROVISIONS

SEC. 901. *Revocation*. Executive Order 12843 of April 21, 1993 [former 42 U.S.C. 7671*l* note], Executive Order 12856 of August 3, 1993 [former 42 U.S.C. 11001 note], the Executive Memorandum on Environmentally Beneficial Landscaping of April 26, 1994 [not classified to the Code], Executive Order 12969 of August 8, 1995 [former 41 U.S.C. 401 note], and section 1–4. ''Pollution Control Plan'' of Executive Order 12088 of October 13, 1978 [set out as a note above], are revoked.

SEC. 902. *Limitations*.

(a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to Federal facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Each agency with facilities outside of these areas, however, is encouraged to make best efforts to comply with the goals of this order for those facilities.

(c) Nothing in this order alters the obligations under EPCRA, PPA, and CAA independent of this order for Government-owned, contractor-operated facilities and Government corporations owning or operating facilities or subjects such facilities to EPCRA, PPA, or CAA if they are otherwise excluded. However, each agency shall include the releases and other waste management of chemicals for all such facilities to meet the agency's reporting responsibilities under section 501 of this order.

(d) Nothing in this order shall be construed to make the provisions of CAA sections [sic] 304 [42 U.S.C. 7604] and EPCRA sections 325 and 326 [42 U.S.C. 11045, 11046] applicable to any agency or facility, except to the extent that an agency or facility would independently be subject to such provisions.

SEC. 903. *Community Outreach*. Each agency is encouraged to establish a process for local community advice and outreach for its facilities relevant to aspects of this and other related Greening the Government Executive orders. All strategies and plans developed under this order shall be made available to the public upon request.

PART 10—DEFINITIONS

For purposes of this order:

SEC. 1001. *General*. Terms that are not defined in this part but that are defined in Executive Orders 13101 [42 U.S.C. 6961 note] and 13123 [42 U.S.C. 8251 note] have the meaning given in those Executive orders. For the purposes of Part 5 of this order all definitions in EPCRA and PPA and implementing regulations at 40 CFR Parts 370 and 372 apply.

SEC. 1002. ''Administrator'' means the Administrator of the EPA.

SEC. 1003. ''Environmental cost accounting'' means the modification of cost attribution systems and financial analysis practices specifically to directly track environmental costs that are traditionally hidden in overhead accounts to the responsible products, processes, facilities or activities.

SEC. 1004. ''Facility'' means any building, installation, structure, land, and other property owned or operated by, or constructed or manufactured and leased to, the Federal Government, where the Federal Government is formally accountable for compliance under environmental regulation (e.g., permits, reports/records and/or planning requirements) with requirements pertaining to discharge, emission, release, spill, or management of any waste, contaminant, hazardous chemical, or pollutant. This term includes a group of facilities at a single location managed as an integrated operation, as well as government owned contractor operated facilities.

SEC. 1005. ''Environmentally benign pressure sensitive adhesives'' means adhesives for stamps, labels, and other paper products that can be easily treated and removed during the paper recycling process.

SEC. 1006. ''Ozone-depleting substance'' means any substance designated as a Class I or Class II substance by EPA in 40 CFR Part 82.

SEC. 1007. ''Pollution prevention'' means ''source reduction,'' as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

SEC. 1008. ''Greening the Government Executive orders'' means this order and the series of orders on greening the government including Executive Order 13101 of September 14, 1998 [42 U.S.C. 6961 note], Executive Order 13123 of June 3, 1999 [42 U.S.C. 8251 note], Executive Order 13134 of August 12, 1999 [7 U.S.C. 7624 note], and other future orders as appropriate.

SEC. 1009. ''Environmental aspects'' means the elements of an organization's activities, products, or services that can interact with the environment.

WILLIAM J. CLINTON.

SUBCHAPTER I—POLICIES AND GOALS

§ 4331. Congressional declaration of national environmental policy

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(Pub. L. 91–190, title I, § 101, Jan. 1, 1970, 83 Stat. 852.)

COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

Pub. L. 91–213, §§ 1–9, Mar. 16, 1970, 84 Stat. 67–69, established the Commission on Population Growth and the American Future to conduct and sponsor such studies and research and make such recommendations as might be necessary to provide information and education to all levels of government in the United States, and to our people regarding a broad range of problems associated with population growth and their implications for America's future; prescribed the composition of the Commission; provided for the appointment of its members, and the designation of a Chairman and Vice Chairman; required a majority of the members of the Commission to constitute a quorum, but allowed a lesser number to conduct hearings; prescribed the compensation of members of the Commission; required the Commission to conduct an inquiry into certain pre-

scribed aspects of population growth in the United States and its foreseeable social consequences; provided for the appointment of an Executive Director and other personnel and prescribed their compensation; authorized the Commission to enter into contracts with public agencies, private firms, institutions, and individuals for the conduct of research and surveys, the preparation of reports, and other activities necessary to the discharge of its duties, and to request from any Federal department or agency any information and assistance it deems necessary to carry out its functions; required the General Services Administration to provide administrative services for the Commission on a reimbursable basis; required the Commission to submit an interim report to the President and the Congress one year after it was established and to submit its final report two years after Mar. 16, 1970; terminated the Commission sixty days after the date of the submission of its final report; and authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as might be necessary to carry out the provisions of Pub. L. 91–213.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, eff. Feb. 4, 1970, 35 F.R. 2573, which related to prevention, control, and abatement of air and water pollution at federal facilities was superseded by Ex. Ord. No. 11752, eff. Dec. 17, 1973, 38 F.R. 34793, formerly set out below.

EXECUTIVE ORDER NO. 11752

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, which related to the prevention, control, and abatement of environmental pollution at Federal facilities, was revoked by Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.[1]

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in antici-

[1] So in original. The period probably should be a semicolon.

pating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(Pub. L. 91–190, title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub. L. 94–83, Aug. 9, 1975, 89 Stat. 424.)

AMENDMENTS

1975—Subpars. (D) to (I). Pub. L. 94–83 added subpar. (D) and redesignated former subpars. (D) to (H) as (E) to (I), respectively.

CERTAIN COMMERCIAL SPACE LAUNCH ACTIVITIES

Pub. L. 104–88, title IV, § 401, Dec. 29, 1995, 109 Stat. 955, provided that: "The licensing of a launch vehicle or launch site operator (including any amendment, extension, or renewal of the license) under chapter 701 of title 49, United States Code, shall not be considered a major Federal action for purposes of section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) if—

"(1) the Department of the Army has issued a permit for the activity; and

"(2) the Army Corps of Engineers has found that the activity has no significant impact."

EX. ORD. NO. 13352. FACILITATION OF COOPERATIVE CONSERVATION

Ex. Ord. No. 13352, Aug. 26, 2004, 69 F.R. 52989, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Purpose*. The purpose of this order is to ensure that the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decisionmaking, in accordance with their respective agency missions, policies, and regulations.

SEC. 2. *Definition*. As used in this order, the term "cooperative conservation" means actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals.

SEC. 3. *Federal Activities*. To carry out the purpose of this order, the Secretaries of the Interior, Agriculture, Commerce, and Defense and the Administrator of the Environmental Protection Agency shall, to the extent permitted by law and subject to the availability of appropriations and in coordination with each other as appropriate:

(a) carry out the programs, projects, and activities of the agency that they respectively head that implement laws relating to the environment and natural resources in a manner that:

(i) facilitates cooperative conservation;

(ii) takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land and other natural resources;

(iii) properly accommodates local participation in Federal decisionmaking; and

(iv) provides that the programs, projects, and activities are consistent with protecting public health and safety;

(b) report annually to the Chairman of the Council on Environmental Quality on actions taken to implement this order; and

(c) provide funding to the Office of Environmental Quality Management Fund (42 U.S.C. 4375) for the Conference for which section 4 of this order provides.

SEC. 4. *White House Conference on Cooperative Conservation*. The Chairman of the Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations:

(a) convene not later than 1 year after the date of this order, and thereafter at such times as the Chairman deems appropriate, a White House Conference on Cooperative Conservation (Conference) to facilitate the exchange of information and advice relating to (i) cooperative conservation and (ii) means for achievement of the purpose of this order; and

(b) ensure that the Conference obtains information in a manner that seeks from Conference participants their individual advice and does not involve collective judgment or consensus advice or deliberation.

SEC. 5. *General Provision*. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

§ 4333. Conformity of administrative procedures to national environmental policy

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter.

(Pub. L. 91–190, title I, § 103, Jan. 1, 1970, 83 Stat. 854.)

§ 4334. Other statutory obligations of agencies

Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

(Pub. L. 91–190, title I, § 104, Jan. 1, 1970, 83 Stat. 854.)

§ 4335. Efforts supplemental to existing authorizations

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

(Pub. L. 91–190, title I, § 105, Jan. 1, 1970, 83 Stat. 854.)

SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY

§ 4341. Omitted

CODIFICATION

Section, Pub. L. 91–190, title II, § 201, Jan. 1, 1970, 83 Stat. 854, which required the President to transmit to Congress annually an Environmental Quality Report, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 1 on page 41 of House Document No. 103–7.

§ 4342. Establishment; membership; Chairman; appointments

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the ''Council''). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

(Pub. L. 91–190, title II, § 202, Jan. 1, 1970, 83 Stat. 854.)

COUNCIL ON ENVIRONMENTAL QUALITY; REDUCTION OF MEMBERS

Pub. L. 109–54, title III, Aug. 2, 2005, 119 Stat. 543, provided in part: ''That notwithstanding section 202 of the National Environmental Policy Act of 1970 [1969, 42 U.S.C. 4342], the Council shall consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. I, title III, Dec. 8, 2004, 118 Stat. 3332.

Pub. L. 108–199, div. G, title III, Jan. 23, 2004, 118 Stat. 408.

Pub. L. 108–7, div. K, title III, Feb. 20, 2003, 117 Stat. 514.

Pub. L. 107–73, title III, Nov. 26, 2001, 115 Stat. 686.

Pub. L. 106–377, § 1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–45.

Pub. L. 106–74, title III, Oct. 20, 1999, 113 Stat. 1084.

Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2500.

Pub. L. 105–65, title III, Oct. 27, 1997, 111 Stat. 1375.

§ 4343. Employment of personnel, experts and consultants

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this chapter, in accordance with section 3109 of title 5 (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

(Pub. L. 91–190, title II, § 203, Jan. 1, 1970, 83 Stat. 855; Pub. L. 94–52, § 2, July 3, 1975, 89 Stat. 258.)

REFERENCES IN TEXT

The last sentence of section 3109 of title 5, referred to in subsec. (a), probably means the last sentence of section 3109(b) of title 5, which was the last sentence of that section when the reference was enacted. Since then, section 3109 of title 5 has been amended to add subsecs. (c) to (e) at the end.

CODIFICATION

In subsec. (b), ''section 1342 of title 31'' substituted for ''section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1975—Pub. L. 94–52 designated existing provisions as subsec. (a) and added subsec. (b).

§ 4344. Duties and functions

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341[1] of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in subchapter I of this chapter, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

[1] See References in Text note below.

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

(Pub. L. 91–190, title II, § 204, Jan. 1, 1970, 83 Stat. 855.)

REFERENCES IN TEXT

Section 4341 of this title, referred to in par. (1), was omitted from the Code.

TRANSFER OF FUNCTIONS

So much of functions of Council on Environmental Quality under par. (5) of this section as pertains to ecological systems transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 3 of 1970, § 2(a)(5), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out under section 4321 of this title.

§ 4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives

In exercising its powers, functions, and duties under this chapter, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

(Pub. L. 91–190, title II, § 205, Jan. 1, 1970, 83 Stat. 855.)

REFERENCES IN TEXT

Executive Order numbered 11472, dated May 29, 1969, referred to in par. (1), is set out as a note under section 4321 of this title.

CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

For provisions relating to termination of Citizens' Advisory Committee on Environmental Quality, see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 4346. Tenure and compensation of members

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or[1] the Executive Schedule Pay Rates (5 U.S.C. 5315).

(Pub. L. 91–190, title II, § 206, Jan. 1, 1970, 83 Stat. 856.)

[1] So in original. Probably should be "of".

§ 4346a. Travel reimbursement by private organizations and Federal, State, and local governments

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

(Pub. L. 91–190, title II, § 207, as added Pub. L. 94–52, § 3, July 3, 1975, 89 Stat. 258.)

§ 4346b. Expenditures in support of international activities

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

(Pub. L. 91–190, title II, § 208, as added Pub. L. 94–52, § 3, July 3, 1975, 89 Stat. 258.)

§ 4347. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

(Pub. L. 91–190, title II, § 209, formerly § 207, Jan. 1, 1970, 83 Stat. 856, renumbered § 209, Pub. L. 94–52, § 3, July 3, 1975, 89 Stat. 258.)

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§§ 4361, 4361a. Repealed. Pub. L. 104–66, title II, § 2021(k)(1), (2), Dec. 21, 1995, 109 Stat. 728

Section 4361, Pub. L. 94–475, § 5, Oct. 11, 1976, 90 Stat. 2071, related to 5-year plan for research, development, and demonstration.

Section 4361a, Pub. L. 95–155, § 4, Nov. 8, 1977, 91 Stat. 1258, related to budget projections in annual revisions of the plan for research, development, and demonstration.

§ 4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of "CHESS" Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration

The Administrator of the Environmental Protection Agency shall implement the recommendations of the report prepared for the House Committee on Science and Technology entitled "The Environmental Protection Agency Research Program with primary emphasis on the Community Health and Environmental Surveillance System (CHESS): An Investigative Report", unless for any specific recommendation he determines (1) that such recommendation has been implemented, (2) that implementation of such recommendation would not enhance the quality of the research, or (3) that implementa-

tion of such recommendation will require funding which is not available. Where such funding is not available, the Administrator shall request the required authorization or appropriation for such implementation. The Administrator shall report the status of such implementation in each annual revision of the five-year plan transmitted to the Congress under section 4361[1] of this title.

(Pub. L. 95–155, § 10, Nov. 8, 1977, 91 Stat. 1262.)

REFERENCES IN TEXT

Section 4361 of this title, referred to in text, was repealed by Pub. L. 104–66, title II, § 2021(k)(1), Dec. 21, 1995, 109 Stat. 728.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 4361c. Staff management

(a) Appointments for educational programs

(1) The Administrator is authorized to select and appoint up to 75 full-time permanent staff members in the Office of Research and Development to pursue full-time educational programs for the purpose of (A) securing an advanced degree or (B) securing academic training, for the purpose of making a career change in order to better carry out the Agency's research mission.

(2) The Administrator shall select and appoint staff members for these assignments according to rules and criteria promulgated by him. The Agency may continue to pay the salary and benefits of the appointees as well as reasonable and appropriate relocation expenses and tuition.

(3) The term of each appointment shall be for up to one year, with a single renewal of up to one year in appropriate cases at the discretion of the Administrator.

(4) Staff members appointed to this program shall not count against any Agency personnel ceiling during the term of their appointment.

(b) Post-doctoral research fellows

(1) The Administrator is authorized to appoint up to 25 Post-doctoral Research Fellows in accordance with the provisions of section 213.3102(aa) of title 5 of the Code of Federal Regulations.

(2) Persons holding these appointments shall not count against any personnel ceiling of the Agency.

(c) Non-Government research associates

(1) The Administrator is authorized and encouraged to utilize research associates from outside the Federal Government in conducting the research, development, and demonstration programs of the Agency.

(2) These persons shall be selected and shall serve according to rules and criteria promulgated by the Administrator.

(d) Women and minority groups

For all programs in this section, the Administrator shall place special emphasis on providing opportunities for education and training of women and minority groups.

(Pub. L. 95–477, § 6, Oct. 18, 1978, 92 Stat. 1510.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CONTRACTS BY OFFICE OF RESEARCH AND DEVELOPMENT OF THE ENVIRONMENTAL PROTECTION AGENCY

Pub. L. 108–7, div. K, title III, Feb. 20, 2003, 117 Stat. 509, provided in part: ''That the Office of Research and Development of the Environmental Protection Agency may hereafter contract directly with individuals or indirectly with institutions or nonprofit organizations, without regard to 41 U.S.C. 5, for the temporary or intermittent personal services of students or recent graduates, who shall be considered employees for the purposes of chapters 57 and 81 of title 5, United States Code, relating to compensation for travel and work injuries, and chapter 171 of title 28, United States Code, relating to tort claims, but shall not be considered to be Federal employees for any other purposes.''

§ 4362. Interagency cooperation on prevention of environmental cancer and heart and lung disease

(a) Not later than three months after August 7, 1977, there shall be established a Task Force on Environmental Cancer and Heart and Lung Disease (hereinafter referred to as the ''Task Force''). The Task Force shall include representatives of the Environmental Protection Agency, the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Occupational Safety and Health, and the National Institute on Environmental Health Sciences, and shall be chaired by the Administrator (or his delegate).

(b) The Task Force shall—

(1) recommend a comprehensive research program to determine and quantify the relationship between environmental pollution and human cancer and heart and lung disease;

(2) recommend comprehensive strategies to reduce or eliminate the risks of cancer or such other diseases associated with environmental pollution;

(3) recommend research and such other measures as may be appropriate to prevent or reduce the incidence of environmentally related cancer and heart and lung diseases;

(4) coordinate research by, and stimulate cooperation between, the Environmental Protection Agency, the Department of Health and Human Services, and such other agencies as may be appropriate to prevent environmentally related cancer and heart and lung diseases; and

(5) report to Congress, not later than one year after August 7, 1977, and annually there-

[1] See References in Text note below.

after, on the problems and progress in carrying out this section.

(Pub. L. 95–95, title IV, § 402, Aug. 7, 1977, 91 Stat. 791; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was enacted as part of the Clean Air Act Amendments of 1977, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHANGE OF NAME

''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (b)(4) pursuant to section 507(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b)(5) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 18 on page 164 of House Document No. 103–7.

§ 4362a. Membership of Task Force on Environmental Cancer and Heart and Lung Disease

The Director of the National Center for Health Statistics and the head of the Center for Disease Control (or the successor to such entity) shall each serve as members of the Task Force on Environmental Cancer and Heart and Lung Disease established under section 4362 of this title.

(Pub. L. 95–623, § 9, Nov. 9, 1978, 92 Stat. 3455.)

CODIFICATION

Section was enacted as part of the Health Services Research, Health Statistics, and Health Care Technology Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 4363. Continuing and long-term environmental research and development

The Administrator of the Environmental Protection Agency shall establish a separately identified program of continuing, long-term environmental research and development for each activity listed in section 2(a) of this Act. Unless otherwise specified by law, at least 15 per centum of funds appropriated to the Administrator for environmental research and development for each activity listed in section 2(a) of this Act shall be obligated and expended for such long-term environmental research and development under this section.

(Pub. L. 96–569, § 2(f), Dec. 22, 1980, 94 Stat. 3337.)

REFERENCES IN TEXT

Section 2(a) of this Act, referred to in text, is section 2(a) of Pub. L. 96–569, Dec. 22, 1980, 94 Stat. 3335, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1981, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior authorization acts:

1980—Pub. L. 96–229, § 2(e), Apr. 7, 1980, 94 Stat. 327.

1977—Pub. L. 95–155, § 6, Nov. 8, 1977, 91 Stat. 1259.

§ 4363a. Pollution control technologies demonstrations

(1) The Administrator shall continue to be responsible for conducting and shall continue to conduct full-scale demonstrations of energy-related pollution control technologies as necessary in his judgment to fulfill the provisions of the Clean Air Act as amended [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act as amended [33 U.S.C. 1251 et seq.], and other pertinent pollution control statutes.

(2) Energy-related environmental protection projects authorized to be administered by the Environmental Protection Agency under this Act shall not be transferred administratively to the Department of Energy or reduced through budget amendment. No action shall be taken through administrative or budgetary means to diminish the ability of the Environmental Protection Agency to initiate such projects.

(Pub. L. 96–229, § 2(d), Apr. 7, 1980, 94 Stat. 327.)

REFERENCES IN TEXT

The Clean Air Act as amended, referred to in par. (1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act as amended, referred to in par. (1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

This Act, referred to in par. (2), is Pub. L. 96–229, Apr. 7, 1980, 94 Stat. 325, known as the Environmental, Research, Development, and Demonstration Authorization Act of 1980, which enacted sections 4363, 4363a, 4369a, and 4370 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior authorization act:

1979—Pub. L. 95–477, § 2(d), Oct. 18, 1978, 92 Stat. 1508.

§ 4364. Expenditure of funds for research and development related to regulatory program activities

(a) Coordination, etc., with research needs and priorities of program offices and Environmental Protection Agency

The Administrator of the Environmental Protection Agency shall assure that the expenditure of any funds appropriated pursuant to this Act or any other provision of law for environmental research and development related to regulatory program activities shall be coordinated with and reflect the research needs and priorities of the program offices, as well as the overall research needs and priorities of the Agency, including those defined in the five-year research plan.

(b) Program offices subject to coverage

For purposes of subsection (a) of this section, the appropriate program offices are—

(1) the Office of Air and Waste Management, for air quality activities;

(2) the Office of Water and Hazardous Materials, for water quality activities and water supply activities;

(3) the Office of Pesticides, for environmental effects of pesticides;

(4) the Office of Solid Waste, for solid waste activities;

(5) the Office of Toxic Substances, for toxic substance activities;

(6) the Office of Radiation Programs, for radiation activities; and

(7) the Office of Noise Abatement and Control, for noise activities.

(c) Report to Congress; contents

The Administrator shall submit to the President and the Congress a report concerning the most appropriate means of assuring, on a continuing basis, that the research efforts of the Agency reflect the needs and priorities of the regulatory program offices, while maintaining a high level of scientific quality. Such report shall be submitted on or before March 31, 1978.

(Pub. L. 95–155, § 7, Nov. 8, 1977, 91 Stat. 1259.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 95–155, Nov. 8, 1977, 91 Stat. 1257, as amended, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which to the extent classified to the Code enacted sections 300j–3a, 4361a, 4361b, and 4363 to 4367 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4365. Science Advisory Board

(a) Establishment; requests for advice by Administrator of Environmental Protection Agency and Congressional committees

The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committee on Science, Space, and Technology, on Energy and Commerce, or on Public Works and Transportation of the House of Representatives.

(b) Membership; Chairman; meetings; qualifications of members

Such Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

(c) Proposed environmental criteria document, standard, limitation, or regulation; functions respecting in conjunction with Administrator

(1) The Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Resource Conservation and Recovery Act of 1976 [42 U.S.C. 6901 et seq.], the Noise Control Act [42 U.S.C. 4901 et seq.], the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], or the Safe Drinking Water Act [42 U.S.C. 300f et seq.], or under any other authority of the Administrator, is provided to any other Federal agency for formal review and comment, shall make available to the Board such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.

(2) The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession.

(d) Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc.

In preparing such advice and comments, the Board shall avail itself of the technical and scientific capabilities of any Federal agency, including the Environmental Protection Agency and any national environmental laboratories.

(e) Member committees and investigative panels; establishment; chairmenship

The Board is authorized to constitute such member committees and investigative panels as the Administrator and the Board find necessary to carry out this section. Each such member committee or investigative panel shall be chaired by a member of the Board.

(f) Appointment and compensation of secretary and other personnel; compensation of members

(1) Upon the recommendation of the Board, the Administrator shall appoint a secretary, and

such other employees as deemed necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(2) Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS–18, as provided in the General Schedule under section 5332 of title 5.

(g) Consultation and coordination with Scientific Advisory Panel

In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator pursuant to section 136w(d) of title 7.

(Pub. L. 95–155, § 8, Nov. 8, 1977, 91 Stat. 1260; Pub. L. 96–569, § 3, Dec. 22, 1980, 94 Stat. 3337; Pub. L. 103–437, § 15(*o*), Nov. 2, 1994, 108 Stat. 4593; Pub. L. 104–66, title II, § 2021(k)(3), Dec. 21, 1995, 109 Stat. 728.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (c)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Resource Conservation and Recovery Act of 1976, referred to in subsec. (c)(1), is Pub. L. 94–580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 6901 of this title and Tables.

The Noise Control Act, referred to in subsec. (c)(1), probably means the Noise Control Act of 1972, Pub. L. 92–574, Oct. 27, 1972, 86 Stat. 1234, as amended, which is classified principally to chapter 65 (§ 4901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4901 of this title and Tables.

The Toxic Substances Control Act, referred to in subsec. (c)(1), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (c)(1), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

1995—Subsecs. (c) to (i). Pub. L. 104–66 redesignated subsecs. (e) to (i) as (c) to (g), respectively, and struck out former subsec. (c) which read as follows: ''In addition to providing scientific advice when requested by the Administrator under subsection (a) of this section, the Board shall review and comment on the Administration's five-year plan for environmental research, development, and demonstration provided for by section 4361 of this title and on each annual revision thereof. Such review and comment shall be transmitted to the Congress by the Administrator, together with his comments thereon, at the time of the transmission to the Congress of the annual revision involved.''

1994—Subsec. (a). Pub. L. 103–437, § 15(*o*)(1), substituted ''Committee on Science, Space, and Technology, on Energy and Commerce, or on'' for ''Committees on Science and Technology, Interstate and Foreign Commerce, or''.

Subsec. (d). Pub. L. 103–437, § 15(*o*)(2), struck out subsec. (d) which related to review and report to Administrator, President, and Congress on health effects research.

1980—Subsec. (a). Pub. L. 96–569 inserted provisions relating to requests by the enumerated Congressional committees.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 4366. Identification and coordination of research, development, and demonstration activities

(a) Consultation and cooperation of Administrator of Environmental Protection Agency with heads of Federal agencies; inclusion of activities in annual revisions of plan for research, etc.

The Administrator of the Environmental Protection Agency, in consultation and cooperation with the heads of other Federal agencies, shall take such actions on a continuing basis as may be necessary or appropriate—

(1) to identify environmental research, development, and demonstration activities, within and outside the Federal Government, which may need to be more effectively coordinated in order to minimize unnecessary duplication of programs, projects, and research facilities;

(2) to determine the steps which might be taken under existing law, by him and by the heads of such other agencies, to accomplish or promote such coordination, and to provide for or encourage the taking of such steps; and

(3) to determine the additional legislative actions which would be needed to assure such coordination to the maximum extent possible.

The Administrator shall include in each annual revision of the five-year plan provided for by section 4361[1] of this title a full and complete report on the actions taken and determinations made during the preceding year under this subsection, and may submit interim reports on such actions and determinations at such other times as he deems appropriate.

(b) Coordination of programs by Administrator

The Administrator of the Environmental Protection Agency shall coordinate environmental research, development, and demonstration programs of such Agency with the heads of other Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

(c) Joint study by Council on Environmental Quality in consultation with Office of Science and Technology Policy for coordination of activities; report to President and Congress; report by President to Congress on implementation of joint study and report

(1) In order to promote the coordination of environmental research and development activities, and to assure that the action taken and methods used (under subsection (a) of this section and otherwise) to bring about such coordination will be as effective as possible for that purpose, the Council on Environmental Quality in consultation with the Office of Science and Technology Policy shall promptly undertake and carry out a joint study of all aspects of the coordination of environmental research and development. The Chairman of the Council shall prepare a report on the results of such study, together with such recommendations (including legislative recommendations) as he deems appropriate, and shall submit such report to the President and the Congress not later than May 31, 1978.

(2) Not later than September 30, 1978, the President shall report to the Congress on steps he has taken to implement the recommendations included in the report under paragraph (1), including any recommendations he may have for legislation.

(Pub. L. 95–155, § 9, Nov. 8, 1977, 91 Stat. 1261.)

REFERENCES IN TEXT

Section 4361 of this title, referred to in subsec. (a), was repealed by Pub. L. 104–66, title II, § 2021(k)(1), Dec. 21, 1995, 109 Stat. 728.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

COORDINATION OF ENVIRONMENTAL RESEARCH, DEVELOPMENT, AND DEMONSTRATION EFFORTS; STUDY AND REPORT

Pub. L. 95–477, § 3(c), Oct. 18, 1978, 92 Stat. 1509, authorized to be appropriated to the Environmental Protection Agency for the fiscal year 1979, $1,000,000, and for the fiscal year 1980, $1,000,000, for a study and report, under a contract let by the Administrator, to be conducted outside the Federal Government, on coordination of the Federal Government's efforts in environmental research, development, and demonstration, and the application of the results of such efforts to environmental problems, with the report on the study submitted to the President, the Administrator, and the Congress within two years after Oct. 18, 1978, accompanied by recommendations for action by the President, the Administrator, other agencies, or the Congress, as may be appropriate.

§ 4366a. Omitted

CODIFICATION

Section, Pub. L. 101–617, § 4, Nov. 16, 1990, 104 Stat. 3287, which related to development of data base of environmental research articles indexed by geographic location, expired 10 years after Nov. 16, 1990, pursuant to section 6 of Pub. L. 101–617, formerly set out as a Termination Date note under this section.

TERMINATION DATE

Pub. L. 101–617, § 6, Nov. 16, 1990, 104 Stat. 3287, provided that Pub. L. 101–617, which enacted this section and provisions formerly set out under this section, was to expire 10 years after Nov. 16, 1990.

SHORT TITLE; FINDINGS; PURPOSE; AUTHORIZATION

Pub. L. 101–617, §§ 1–3, 5, Nov. 16, 1990, 104 Stat. 3287, which provided that Pub. L. 101–617, which enacted this section and provisions formerly set out under this section, could be cited as the "Environmental Research Geographic Location Information Act", and further provided for findings, purpose to develop data base of environmental research articles indexed by geographic location, and authorization of appropriations, expired 10 years after Nov. 16, 1990, pursuant to section 6 of Pub. L. 101–617, formerly set out as a note under this section.

§ 4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency

(a) Covered officers and employees

Each officer or employee of the Environmental Protection Agency who—

[1] See References in Text note below.

(1) performs any function or duty under this Act; and

(2) has any known financial interest in any person who applies for or receives grants, contracts, or other forms of financial assistance under this Act,

shall, beginning on February 1, 1978, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Implementation of requirements by Administrator

The Administrator shall—

(1) act within ninety days after November 8, 1977—

(A) to define the term ''known financial interest'' for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

(2) Omitted.

(c) Exemption of positions by Administrator

In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions of a nonpolicymaking nature within the Administration and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Violations; penalties

Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(Pub. L. 95–155, § 12, Nov. 8, 1977, 91 Stat. 1263.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), (2), is Pub. L. 95–155, Nov. 8, 1977, 91 Stat. 1257, as amended, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which to the extent classified to the Code enacted sections 300j–3a, 4361a, 4361b, and 4363 to 4367 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Subsec. (b)(2) of this section, which required the Administrator to report to Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 9 on page 164 of House Document No. 103–7.

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4368. Grants to qualified citizens groups

(1) There is authorized to be appropriated to the Environmental Protection Agency, for grants to qualified citizens groups in States and regions, $3,000,000.

(2) Grants under this section may be made for the purpose of supporting and encouraging participation by qualified citizens groups in determining how scientific, technological, and social trends and changes affect the future environment and quality of life of an area, and for setting goals and identifying measures for improvement.

(3) The term ''qualified citizens group'' shall mean a nonprofit organization of citizens having an area based focus, which is not single-issue oriented and which can demonstrate a prior record of interest and involvement in goal-setting and research concerned with improving the quality of life, including plans to identify, protect and enhance significant natural and cultural resources and the environment.

(4) A citizens group shall be eligible for assistance only if certified by the Governor in consultation with the State legislature as a bona-fide organization entitled to receive Federal assistance to pursue the aims of this program. The group shall further demonstrate its capacity to employ usefully the funds for the purposes of this program and its broad-based representative nature.

(5) After an initial application for assistance under this section has been approved, the Administrator may make grants on an annual basis, on condition that the Governor recertify the group and that the applicant submits to the Administrator annually—

(A) an evaluation of the progress made during the previous year in meeting the objectives for which the grant was made;

(B) a description of any changes in the objectives of the activities; and

(C) a description of the proposed activities for the succeeding one year period.

(6) A grant made under this program shall not exceed 75 per centum of the estimated cost of the project or program for which the grant is made, and no group shall receive more than $50,000 in any one year.

(7) No financial assistance provided under this section shall be used to support lobbying or litigation by any recipient group.

(Pub. L. 95–477, § 3(d), Oct. 18, 1978, 92 Stat. 1509.)

REFERENCES IN TEXT

This section, referred to in par. (5), means section 3 of Pub. L. 95–477, in its entirety, subsec. (d) of which enacted this section, subsecs. (a) and (b) of which were not classified to the Code, and subsec. (c) of which is set out as a note under section 4366 of this title.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control

(a) Technical assistance to environmental agencies

Notwithstanding any other provision of law relating to Federal grants and cooperative

agreements, the Administrator of the Environmental Protection Agency is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations designated by the Secretary of Labor under title V of the Older Americans Act of 1965 [42 U.S.C. 3056 et seq.] to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Administrator (and consistent with such provisions of law) in providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control. Funding for such grants or agreements may be made available from such programs or through title V of the Older Americans Act of 1965 and subtitle D of title I of the Workforce Investment Act of 1998 [29 U.S.C. 2911 et seq.].

(b) Pre-award certifications

Prior to awarding any grant or agreement under subsection (a) of this section, the applicable Federal, State, or local environmental agency shall certify to the Administrator that such grants or agreements will not—

(1) result in the displacement of individuals currently employed by the environmental agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the environmental agency concerned; or

(3) affect existing contracts for services.

(c) Prior appropriation Acts

Grants or agreements awarded under this section shall be subject to prior appropriation Acts.

(Pub. L. 98–313, § 2, June 12, 1984, 98 Stat. 235; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(35), (f)(27)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–426, 2681–434.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (a), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Title V of the Act, known as the ''Older American Community Service Employment Act'', is classified generally to subchapter IX (§ 3056 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (a), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Subtitle D of title I of the Act is classified generally to subchapter IV (§ 2911 et seq.) of chapter 30 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

CODIFICATION

Section was enacted as part of the Environmental Programs Assistance Act of 1984, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(27)], struck out ''title IV of the Job Training Partnership Act or'' after ''title V of the Older Americans Act of 1965 and'' in last sentence.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(35)], substituted ''and title IV of the Job Training Partnership Act or subtitle D of title I of the Workforce Investment Act of 1998'' for ''and title IV of the Job Training Partnership Act'' in second sentence.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(35)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(27)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

SHORT TITLE

Section 1 of Pub. L. 98–313 provided that: ''This Act [enacting this section] may be cited as the 'Environmental Programs Assistance Act of 1984'.''

§ 4368b. General assistance program

(a) Short title

This section may be cited as the ''Indian Environmental General Assistance Program Act of 1992''.

(b) Purposes

The purposes of this section are to—

(1) provide general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs that may be delegated by the Environmental Protection Agency on Indian lands; and

(2) provide technical assistance from the Environmental Protection Agency to Indian tribal governments and intertribal consortia in the development of multimedia programs to address environmental issues on Indian lands.

(c) Definitions

For purposes of this section:

(1) The term ''Indian tribal government'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601, et seq.)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

(2) The term ''intertribal consortia'' or ''intertribal consortium'' means a partnership between two or more Indian tribal governments authorized by the governing bodies of those tribes to apply for and receive assistance pursuant to this section.

(3) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(d) General assistance program

(1) The Administrator of the Environmental Protection Agency shall establish an Indian Environmental General Assistance Program that provides grants to eligible Indian tribal governments or intertribal consortia to cover the costs of planning, developing, and establishing environmental protection programs consistent with other applicable provisions of law providing for enforcement of such laws by Indian tribes on Indian lands.

(2) Each grant awarded for general assistance under this subsection for a fiscal year shall be

no less than $75,000, and no single grant may be awarded to an Indian tribal government or intertribal consortium for more than 10 percent of the funds appropriated under subsection (h) of this section.

(3) The term of any general assistance award made under this subsection may exceed one year. Any awards made pursuant to this section shall remain available until expended. An Indian tribal government or intertribal consortium may receive a general assistance grant for a period of up to four years in each specific media area.

(e) No reduction in amounts

In no case shall the award of a general assistance grant to an Indian tribal government or intertribal consortium under this section result in a reduction of Environmental Protection Agency grants for environmental programs to that tribal government or consortium. Nothing in this section shall preclude an Indian tribal government or intertribal consortium from receiving individual media grants or cooperative agreements. Funds provided by the Environmental Protection Agency through the general assistance program shall be used by an Indian tribal government or intertribal consortium to supplement other funds provided by the Environmental Protection Agency through individual media grants or cooperative agreements.

(f) Expenditure of general assistance

Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency and specified in the assistance agreement. Purposes and programs authorized under this section shall include the development and implementation of solid and hazardous waste programs for Indian lands. An Indian tribal government or intertribal consortium receiving general assistance pursuant to this section shall utilize such funds for programs and purposes to be carried out in accordance with the terms of the assistance agreement. Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(g) Procedures

(1) Within 12 months following October 24, 1992, the Administrator shall promulgate regulations establishing procedures under which an Indian tribal government or intertribal consortium may apply for general assistance grants under this section.

(2) The Administrator shall publish regulations issued pursuant to this section in the Federal Register.

(3) The Administrator shall establish procedures for accounting, auditing, evaluating, and reviewing any programs or activities funded in whole or in part for a general assistance grant under this section.

(h) Authorization

There are authorized to be appropriated to carry out the provisions of this section, such sums as may be necessary for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(i) Report to Congress

The Administrator shall transmit an annual report to the appropriate Committees of the Congress with jurisdiction over the applicable environmental laws and Indian tribes describing which Indian tribes or intertribal consortia have been granted approval by the Administrator pursuant to law to enforce certain environmental laws and the effectiveness of any such enforcement.

(Pub. L. 95–134, title V, § 502, as added Pub. L. 102–497, § 11, Oct. 24, 1992, 106 Stat. 3258; amended Pub. L. 103–155, Nov. 24, 1993, 107 Stat. 1523; Pub. L. 104–233, § 1, Oct. 2, 1996, 110 Stat. 3057.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(1), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (f), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Section was enacted as the Indian Environmental General Assistance Program Act of 1992 and as part of the Omnibus Territories Act of 1977, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

1996—Subsec. (h). Pub. L. 104–233 substituted ''such sums as may be necessary'' for ''$15,000,000''.

1993—Subsec. (d)(1). Pub. L. 103–155, § 3(a), inserted ''consistent with other applicable provisions of law providing for enforcement of such laws by Indian tribes'' after ''programs''.

Subsec. (f). Pub. L. 103–155, § 3(b), inserted at end ''Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).''

Subsec. (h). Pub. L. 103–155, § 1, substituted '', 1994, 1995, 1996, 1997, and 1998'' for ''and 1994''.

Subsec. (i). Pub. L. 103–155, § 2, added subsec. (i).

§ 4369. Miscellaneous reports

(a) Availability to Congressional committees

All reports to or by the Administrator relevant to the Agency's program of research, development, and demonstration shall promptly be made available to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate, unless otherwise prohibited by law.

(b) Transmittal of jurisdictional information

The Administrator shall keep the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate fully and currently informed with respect to matters

falling within or related to the jurisdiction of the committees.

(c) Comment by Government agencies and the public

The reports provided for in section 5910[1] of this title shall be made available to the public for comment, and to the heads of affected agencies for comment and, in the case of recommendations for action, for response.

(d) Transmittal of research information to the Department of Energy

For the purpose of assisting the Department of Energy in planning and assigning priorities in research development and demonstration activities related to environmental control technologies, the Administrator shall actively make available to the Department all information on research activities and results of research programs of the Environmental Protection Agency.

(Pub. L. 95–477, § 5, Oct. 18, 1978, 92 Stat. 1510; Pub. L. 103–437, § 15(c)(6), Nov. 2, 1994, 108 Stat. 4592.)

REFERENCES IN TEXT

Section 5910 of this title, referred to in subsec. (c), was repealed by Pub. L. 104–66, title II, § 2021(i), Dec. 21, 1995, 109 Stat. 727.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–437 substituted ''Science, Space, and Technology'' for ''Science and Technology''.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 4369a. Reports on environmental research and development activities of Agency

(a) Reports to keep Congressional committees fully and currently informed

The Administrator shall keep the appropriate committees of the House and the Senate fully and currently informed about all aspects of the environmental research and development activities of the Environmental Protection Agency.

(b) Omitted

(Pub. L. 96–229, § 4, Apr. 7, 1980, 94 Stat. 328.)

CODIFICATION

Subsec. (b) of this section, which required the Administrator to annually make available to the appropriate committees of Congress sufficient copies of a report fully describing funds requested and the environmental research and development activities to be carried out with these funds, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 24 on page 163 of House Document No. 103–7.

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370. Reimbursement for use of facilities

(a) Authority to allow outside groups or individuals to use research and test facilities; reimbursement

The Administrator is authorized to allow appropriate use of special Environmental Protection Agency research and test facilities by outside groups or individuals and to receive reimbursement or fees for costs incurred thereby when he finds this to be in the public interest. Such reimbursement or fees are to be used by the Agency to defray the costs of use by outside groups or individuals.

(b) Rules and regulations

The Administrator may promulgate regulations to cover such use of Agency facilities in accordance with generally accepted accounting, safety, and laboratory practices.

(c) Waiver of reimbursement by Administrator

When he finds it is in the public interest the Administrator may waive reimbursement or fees for outside use of Agency facilities by nonprofit private or public entities.

(Pub. L. 96–229, § 5, Apr. 7, 1980, 94 Stat. 328.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370a. Assistant Administrators of Environmental Protection Agency; appointment; duties

(a) The President, by and with the advice and consent of the Senate, may appoint three Assistant Administrators of the Environmental Protection Agency in addition to—

(1) the five Assistant Administrators provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 (5 U.S.C. Appendix);

(2) the Assistant Administrator provided by section 2625(g) of title 15; and

(3) the Assistant Administrator provided by section 6911a of this title.

(b) Each Assistant Administrator appointed under subsection (a) of this section shall perform such duties as the Administrator of the Environmental Protection Agency may prescribe.

(Pub. L. 98–80, § 1, Aug. 23, 1983, 97 Stat. 485.)

REFERENCES IN TEXT

Reorganization Plan Numbered 3 of 1970, referred to in subsec. (a)(1), is set out under section 4321 of this title.

CODIFICATION

Section was not enacted as part of the National Environmental Policy Act of 1969 which comprises this chapter.

[1] See References in Text note below.

§ 4370b. Availability of fees and charges to carry out Agency programs

Notwithstanding any other provision of law, after September 30, 1990, amounts deposited in the Licensing and Other Services Fund from fees and charges assessed and collected by the Administrator for services and activities carried out pursuant to the statutes administered by the Environmental Protection Agency shall thereafter be available to carry out the Agency's activities in the programs for which the fees or charges are made.

(Pub. L. 101–144, title III, Nov. 9, 1989, 103 Stat. 858.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370c. Environmental Protection Agency fees

(a) Assessment and collection

The Administrator of the Environmental Protection Agency shall, by regulation, assess and collect fees and charges for services and activities carried out pursuant to laws administered by the Environmental Protection Agency.

(b) Amount of fees and charges

Fees and charges assessed pursuant to this section shall be in such amounts as may be necessary to ensure that the aggregate amount of fees and charges collected pursuant to this section, in excess of the amount of fees and charges collected under current law—

(1) in fiscal year 1991, is not less than $28,000,000; and

(2) in each of fiscal years 1992, 1993, 1994, and 1995, is not less than $38,000,000.

(c) Limitation on fees and charges

(1) The maximum aggregate amount of fees and charges in excess of the amounts being collected under current law which may be assessed and collected pursuant to this section in a fiscal year—

(A) for services and activities carried out pursuant ot[1] the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] is $10,000,000; and

(B) for services and activities in programs within the jurisdiction of the House Committee on Energy and Commerce and administered by the Environmental Protection Agency through the Administrator, shall be limited to such sums collected as of November 5, 1990, pursuant to sections 2625(b) and 2665(e)(2)[2] of title 15, and such sums specifically authorized by the Clean Air Act Amendments of 1990.

(2) Any remaining amounts required to be collected under this section shall be collected from services and programs administered by the Environmental Protection Agency other than those specified in subparagraphs (A) and (B) of paragraph (1).

[1] So in original. Probably should be ''to''.

[2] See References in Text note below.

(d) Rule of construction

Nothing in this section increases or diminishes the authority of the Administrator to promulgate regulations pursuant to section 9701 of title 31.

(e) Uses of fees

Fees and charges collected pursuant to this section shall be deposited into a special account for environmental services in the Treasury of the United States. Subject to appropriation Acts, such funds shall be available to the Environmental Protection Agency to carry out the activities for which such fees and charges are collected. Such funds shall remain available until expended.

(Pub. L. 101–508, title VI, § 6501, Nov. 5, 1990, 104 Stat. 1388–320.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (c)(1)(A), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

Section 2665(e)(2) of title 15, referred to in subsec. (c)(1)(B), was redesignated section 2665(d)(2) of Title 15, Commerce and Trade, by Pub. L. 104–66, title II, § 2021(*l*)(2), Dec. 21, 1995, 109 Stat. 728.

The Clean Air Act Amendments of 1990, referred to in subsec. (c)(1)(B), means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

CODIFICATION

In subsec. (d), ''section 9701 of title 31'' was in the original ''the Independent Office Appropriations Act (31 U.S.C. 9701)'' and substitution was made as if it read for ''title V of the Independent Offices Appropriation Act of 1952'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4370d. Percentage of Federal funding for organizations owned by socially and economically disadvantaged individuals

The Administrator of the Environmental Protection Agency shall, on and after October 6, 1992, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans, and contracts for wastewater treatment and

leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 637(a)(5) and (6) of title 15), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.

(Pub. L. 102–389, title III, Oct. 6, 1992, 106 Stat. 1602.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370e. Working capital fund in Treasury

There is hereby established in the Treasury a ''Working capital fund'', to be available without fiscal year limitation for expenses and equipment necessary for the maintenance and operation of such administrative services as the Administrator determines may be performed more advantageously as central services: *Provided*, That any inventories, equipment, and other assets pertaining to the services to be provided by such fund, either on hand or on order, less the related liabilities or unpaid obligations, and any appropriations made hereafter for the purpose of providing capital, shall be used to capitalize such fund: *Provided further*, That such fund shall be paid in advance or reimbursed from funds available to the Agency and other Federal agencies for which such centralized services are performed, at rates which will return in full all expenses of operation, including accrued leave, depreciation of fund plant and equipment, amortization of automated data processing (ADP) software and systems (either acquired or donated), and an amount necessary to maintain a reasonable operating reserve, as determined by the Administrator: *Provided further*, That such fund shall provide services on a competitive basis: *Provided further*, That an amount not to exceed four percent of the total annual income to such fund may be retained in the fund for fiscal year 1997 and each fiscal year thereafter, to remain available until expended, to be used for the acquisition of capital equipment and for the improvement and implementation of Agency financial management, ADP, and other support systems: *Provided further*, That no later than thirty days after the end of each fiscal year amounts in excess of this reserve limitation shall be transferred to the Treasury.

(Pub. L. 104–204, title III, Sept. 26, 1996, 110 Stat. 2912; Pub. L. 105–65, title III, Oct. 27, 1997, 111 Stat. 1374; Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2499.)

CODIFICATION

Section was formerly set out as a note under section 501 of Title 31, Money and Finance.

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

1998—Pub. L. 105–276, which directed the insertion of ''or reimbursed'' after ''that such fund shall be paid in advance'', was executed by making the insertion after ''That such fund shall be paid in advance'', to reflect the probable intent of Congress.

1997—Pub. L. 105–65 substituted ''a 'Working capital fund' to be available without fiscal year limitation for expenses and equipment'' for ''a franchise fund pilot to be known as the 'Working capital fund', as authorized by section 403 of Public Law 103–356, to be available as provided in such section for expenses and equipment'' and struck out proviso at end which read '': *Provided further*, That such franchise fund pilot shall terminate pursuant to section 403(f) of Public Law 103–356''.

§ 4370f. Availability of funds after expiration of period for liquidating obligations

For fiscal year 2001 and thereafter, the obligated balances of sums available in multiple-year appropriations accounts shall remain available through the seventh fiscal year after their period of availability has expired for liquidating obligations made during the period of availability.

(Pub. L. 106–377, § 1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–44.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHAPTER 56—ENVIRONMENTAL QUALITY IMPROVEMENT

Sec.
4371. Congressional findings, declarations, and purposes.
4372. Office of Environmental Quality.
4373. Referral of Environmental Quality Reports to standing committees having jurisdiction.
4374. Authorization of appropriations.
4375. Office of Environmental Quality Management Fund.

§ 4371. Congressional findings, declarations, and purposes

(a) The Congress finds—

(1) that man has caused changes in the environment;

(2) that many of these changes may affect the relationship between man and his environment; and

(3) that population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b)(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local government.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law.

(c) The purposes of this chapter are—

(1) to assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement the policies established under existing law; and

(2) to authorize an Office of Environmental Quality, which, notwithstanding any other provision of law, shall provide the professional and administrative staff for the Council on Environmental Quality established by Public Law 91–190.

(Pub. L. 91–224, title II, § 202, Apr. 3, 1970, 84 Stat. 114.)

REFERENCES IN TEXT

Public Law 91–190, referred to in subsec. (c)(2), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, known as the National Environmental Policy Act of 1969, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

SHORT TITLE

Section 201 of Pub. L. 91–224 provided that: ''This title [enacting this chapter] may be cited as the 'Environmental Quality Improvement Act of 1970'.''

§ 4372. Office of Environmental Quality

(a) Establishment; Director; Deputy Director

There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the ''Office''). The Chairman of the Council on Environmental Quality established by Public Law 91–190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Compensation of Deputy Director

The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) Employment of personnel, experts, and consultants; compensation

The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions under this chapter and Public Law 91–190, except that he may employ no more than ten specialists and other experts without regard to the provisions of title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of title 5.

(d) Duties and functions of Director

In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by—

(1) providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91–190;

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

(3) reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encourage[1] the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

(6) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established through the Federal Government;

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) Authority of Director to contract

The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of title 31 and section 5 of title 41 in carrying out his functions.

(Pub. L. 91–224, title II, § 203, Apr. 3, 1970, 84 Stat. 114; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

REFERENCES IN TEXT

Public Law 91–190, referred to in subsecs. (a), (c), and (d), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, known as the National Environmental Policy Act of 1969, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The provisions of title 5, governing appointments in the competitive service, referred to in subsec. (c), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (c), is set out under section 5332 of Title 5.

CODIFICATION

In subsec. (e), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of

[1] So in original. Probably should be ''encouraging''.

the Budget transferred to President by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970, redesignated Bureau of the Budget as Office of Management and Budget.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 4373. Referral of Environmental Quality Reports to standing committees having jurisdiction

Each Environmental Quality Report required by Public Law 91–190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

(Pub. L. 91–224, title II, § 204, Apr. 3, 1970, 84 Stat. 115.)

REFERENCES IN TEXT

Public Law 91–190, referred to in text, is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, known as the National Environmental Policy Act of 1969, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

§ 4374. Authorization of appropriations

There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91–190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for each of the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and September 30, 1986.

(Pub. L. 91–224, title II, § 205, Apr. 3, 1970, 84 Stat. 115; Pub. L. 93–36, May 18, 1973, 87 Stat. 72; Pub. L. 94–52, § 1, July 3, 1975, 89 Stat. 258; Pub. L. 94–298, May 29, 1976, 90 Stat. 587; Pub. L. 95–300, June 26, 1978, 92 Stat. 342; Pub. L. 97–350, § 1, Oct. 18, 1982, 96 Stat. 1661; Pub. L. 98–581, § 1, Oct. 30, 1984, 98 Stat. 3093.)

REFERENCES IN TEXT

Public Law 91–190, referred to in text, is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, known as the National Environmental Policy Act of 1969, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1984—Cl. (d). Pub. L. 98–581 added cl. (d).

1982—Cl. (c). Pub. L. 97–350 added cl. (c).

1978—Pub. L. 95–300 added cls. (a) and (b). Former cls. (a) to (d), which authorized appropriations of $2,000,000 for fiscal year ending June 30, 1976, $500,000 for transition period of July 1, 1976 to Sept. 30, 1976, $3,000,000 for fiscal year ending Sept. 30, 1977, and $3,000,000 for fiscal year ending Sept. 30, 1978, respectively, were struck out.

1976—Pub. L. 94–298 made changes in structure by designating existing provisions as cls. (a) and (b) and adding cls. (c) and (d).

1975—Pub. L. 94–52 substituted ''$2,000,000 for the fiscal year ending June 30, 1976, and not to exceed $500,000 for the transition period (July 1, 1976 to September 30, 1976)'' for ''$1,500,000 for the fiscal year ending June 30, 1974, and $2,000,000 for the fiscal year ending June 30, 1975''.

1973—Pub. L. 93–36 substituted provisions authorizing to be appropriated for operations of the Office of Environmental Quality and the Council on Environmental Quality $1,500,000 for fiscal year ending June 30, 1974, and $2,000,000 for fiscal year ending June 30, 1975, for provisions authorizing to be appropriated not to exceed $500,000 for fiscal year ending June 30, 1970, not to exceed $750,000 for fiscal year ending June 30, 1971, not to exceed $1,250,000 for fiscal year ending June 30, 1972, and not to exceed $1,500,000 for fiscal year ending June 30, 1973.

§ 4375. Office of Environmental Quality Management Fund

(a) Establishment; financing of study contracts and Federal interagency environmental projects

There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the ''Fund'') to receive advance payments from other agencies or accounts that may be used solely to finance—

(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

(2) Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Study contract or project initiative

Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) Regulations

The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

(Pub. L. 91–224, title II, § 206, as added Pub. L. 98–581, § 2, Oct. 30, 1984, 98 Stat. 3093.)

CHAPTER 57—ENVIRONMENTAL POLLUTION STUDY

Sec.
4391. Congressional statement of findings.
4392. Presidential study.
4393. Report to Congress by President.
4394. Omitted.
4395. Authorization of appropriations.

§ 4391. Congressional statement of findings

The Congress finds that there is general agreement that air, water, and other common environmental pollution may be hazardous to the health of individuals resident in the United States, but that despite the existence of various

research papers and other technical reports on the health hazards of such pollution, there is no authoritative source of information about (1) the nature and gravity of these hazards, (2) the availability of medical and other assistance to persons affected by such pollution, especially when such pollution reaches emergency levels, and (3) the measures, other than those relating solely to abatement of the pollution, that may be taken to avoid or reduce the effects of such pollution on the health of individuals.

(Pub. L. 91–515, title V, § 501(a), Oct. 30, 1970, 84 Stat. 1309.)

§ 4392. Presidential study

The President shall immediately commence (1) a study of the nature and gravity of the hazards to human health and safety created by air, water, and other common environmental pollution, (2) a survey of the medical and other assistance available to persons affected by such pollution, especially when such pollution reaches emergency levels, and (3) a survey of the measures, other than those relating solely to abatement of the pollution, that may be taken to avoid or reduce the effects of such pollution on the health of individuals.

(Pub. L. 91–515, title V, § 501(b), Oct. 30, 1970, 84 Stat. 1310.)

§ 4393. Report to Congress by President

The President shall, within nine months of October 30, 1970, transmit to the Congress a report of the study and surveys required by section 4392 of this title, including (1) his conclusions regarding the nature and gravity of the hazards to human health and safety created by environmental pollution, (2) his evaluation of the medical and other assistance available to persons affected by such pollution, especially when such pollution reaches emergency levels, (3) his assessment of the measures, other than those relating solely to abatement of the pollution, that may be taken to avoid or reduce the effects of such pollution on the health of individuals, and (4) such legislative or other recommendations as he may deem appropriate.

(Pub. L. 91–515, title V, § 501(c), Oct. 30, 1970, 84 Stat. 1310.)

§ 4394. Omitted

CODIFICATION

Section, Pub. L. 91–515, title V, § 501(d), Oct. 30, 1970, 84 Stat. 1310, which required the President, within one year of his transmittal to Congress of the report required by section 4393 of this title, and annually thereafter, to supplement that report with such new data, evaluations, or recommendations as he may deem appropriate, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 6 on page 20 of House Document No. 103–7.

§ 4395. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(Pub. L. 91–515, title V, § 501(e), Oct. 30, 1970, 84 Stat. 1310.)

CHAPTER 58—DISASTER RELIEF

SUBCHAPTER I—GENERALLY

§§ 4401, 4402. Repealed. Pub. L. 93–288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4401, Pub. L. 91–606, title I, § 101, Dec. 31, 1970, 84 Stat. 1744, related to Congressional findings and declarations.

Section 4402, Pub. L. 91–606, title I, § 102, Dec. 31, 1970, 84 Stat. 1745, related to definitions.

EFFECTIVE DATE OF REPEAL

Repeal of sections 4401 and 4402 effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of this title.

SHORT TITLE

Pub. L. 91–606, § 1, Dec. 31, 1970, 84 Stat. 1744, provided that Pub. L. 91–606 which enacted this chapter, amended section 1926 of Title 7, Agriculture, sections 1706c, 1709, and 1715*l* of Title 12, Banks and Banking, sections 241–1, 646, and 758 of Title 20, Education, sections 165, 5064, and 5708 of Title 26, Internal Revenue Code, section 1820 [now 3720] of Title 38, Veterans' Benefits, and section 461 of former Title 40, Public Buildings, Property, and Works, repealed sections 1855 to 1855g, 1855aa, 1855aa note, 1855bb to 1855ii, 1855aaa, 1855aaa note, 1855bbb to 1855nnn of this title, and enacted provisions set out as notes under sections 4401 and 4434 of this title, and amended provisions set out as a note under section 1681 of Title 48, Territories and Insular Possessions, may be cited as the ''Disaster Relief Act of 1970''.

SAVINGS PROVISION

Section 703, formerly section 603, of Pub. L. 93–288, as renumbered by Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100, provided in part that notwithstanding repeal of the provisions of Disaster Relief Act of 1970, such provisions should continue in effect with respect to any major disaster declared prior to May 22, 1974.

DELEGATION OF FUNCTIONS

Functions of President under the Disaster Relief Acts of 1970 and 1974 delegated, with certain exceptions, to Secretary of Homeland Security, see sections 4–201 and 4–203 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended, set out as a note under section 5195 of this title.

REFERENCES TO DISASTER RELIEF ACT OF 1970

Section 702(m), formerly section 602(m), of Pub. L. 93–288, as renumbered by Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100, provided that: ''Whenever reference is made in any provision of law (other than this Act [the Disaster Relief Act of 1974, see Short Title note set out under section 5121 of this title]), regulation rule, record, or documents of the United States to provisions of the Disaster Relief Act of 1970 (84 Stat. 1744) [see Short Title note above], repealed by this Act such reference shall be deemed to be a reference to the appropriate provision of this Act.''

REFERENCES TO ACT OF SEPTEMBER 30, 1950

Pub. L. 91–606, title III, § 301(*l*), Dec. 31, 1970, 84 Stat. 1758, provided that whenever reference is made in any provision of law (other than this chapter), regulation, rule, record, or document of the United States to the Act of Sept. 30, 1950, ch. 1125, 64 Stat. 1109, (classified to sections 1855 to 1855g of this title), or to any provision of such Act, such reference shall be deemed to be a reference to the Disaster Relief Act of 1970 or to the appropriate provision of the Disaster Relief Act of 1970

unless no such provision was included therein, prior to repeal by Pub. L. 93–288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164, renumbered title VII, § 703, Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100.

AVAILABILITY OF FUNDS APPROPRIATED UNDER THIS CHAPTER FOR USE UNDER CHAPTER 68

Section 704, formerly section 604, of Pub. L. 93–288, as renumbered by Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100, provided that: ''Funds heretofore appropriated and available under Public Laws 91–606, as amended [this chapter], and 92–385 [amending section 4451 of this title and sections 633 and 636 of Title 15, Commerce and Trade, repealing section 1969 of Title 7, Agriculture, enacting provisions set out as notes under section 4401 of this title and section 636 of Title 15] shall continue to be available for the purpose of providing assistance under those Acts as well as for the purposes of this Act [see Short Title note set out under section 5121 of this title].''

USE OF FUNDS ALLOCATED BEFORE DECEMBER 31, 1970

Pub. L. 91–606, title III, § 303, Dec. 31, 1970, 84 Stat. 1759, provided that funds allocated before Dec. 31, 1970, under a Federal-State Disaster Agreement for the relief of a major disaster and not expended on Dec. 31, 1970, may be used by the state to make payments to any person for reimbursement of expenses actually incurred by such person in the removal of debris from community areas, but not to exceed the amount that such expenses exceed the salvage value of such debris, or in otherwise carrying out the act of Sept. 30, 1950, or this chapter.

REPORT TO CONGRESS; PROPOSALS FOR LEGISLATION

Pub. L. 92–385, § 3, Aug. 16, 1972, 86 Stat. 556, required President to conduct a thorough review of existing disaster relief legislation and to submit a report to Congress not later than Jan. 1, 1973.

EXECUTIVE ORDER NO. 11526

Ex. Ord. No. 11526, eff. Apr. 22, 1970, 35 F.R. 6569, which provided for establishment of National Council on Federal Disaster Assistance, was superseded by Ex. Ord. No. 11749, formerly set out below.

EXECUTIVE ORDER NO. 11575

Ex. Ord. No. 11575, eff. Dec. 31, 1970, 36 F.R. 37, which related to administration of this chapter, was superseded by Ex. Ord. No. 11749, formerly set out below.

EXECUTIVE ORDER NO. 11749

Ex. Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177, which related to consolidation of functions assigned to Secretary of Housing and Urban Development, was revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 5195 of this title. See Delegation of Functions note above.

SUBCHAPTER II—ADMINISTRATION OF DISASTER ASSISTANCE

§§ 4411 to 4413. Repealed. Pub. L. 93–288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4411, Pub. L. 91–606, title II, § 201, Dec. 31, 1970, 84 Stat. 1746, related to cooperation of Federal agencies of a Federal coordinating officer.

Section 4412, Pub. L. 91–606, title II, § 202, Dec. 31, 1970, 84 Stat. 1746, related to formation of emergency support teams of Federal personnel.

Section 4413, Pub. L. 91–606, title II, § 203, Dec. 31, 1970, 84 Stat. 1747, related to cooperation of Federal agencies in rendering emergency assistance, the scope of services, non-liability of the Federal government, employment of temporary personnel, rules and regulations, review of programs, and reports to Congress.

EFFECTIVE DATE OF REPEAL

Repeal effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of this title.

§ 4413a. Transferred

CODIFICATION

Section, Pub. L. 92–383, title IV, § 406, Aug. 14, 1972, 86 Stat. 553, which related to Housing and Urban Development Disaster Assistance Fund, and which was enacted as part of the Department of Housing and Urban Development; Space, Science, Veterans' and Certain Other Independent Agencies Appropriation Act, 1973, and not as part of the Disaster Relief Act of 1970, was transferred to section 3539 of this title.

§§ 4414 to 4420. Repealed. Pub. L. 93–288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4414, Pub. L. 91–606, title II, § 204, Dec. 31, 1970, 84 Stat. 1748, related to use of local firms and individuals.

Section 4415, Pub. L. 91–606, title II, § 205, Dec. 31, 1970, 84 Stat. 1748, related to Federal grant-in-aid programs.

Section 4416, Pub. L. 91–606, title II, § 206, Dec. 31, 1970, 84 Stat. 1749, related to State disaster plans.

Section 4417, Pub. L. 91–606, title II, § 207, Dec. 31, 1970, 84 Stat. 1749, related to use and coordination of relief organizations.

Section 4418, Pub. L. 91–606, title II, § 208, Dec. 31, 1970, 84 Stat. 1750, related to restriction on duplication of benefits.

Section 4419, Pub. L. 91–606, title II, § 209, Dec. 31, 1970, 84 Stat. 1750, related to nondiscrimination restrictions in disaster assistance.

Section 4420, Pub. L. 91–606, title II, § 210, Dec. 31, 1970, 84 Stat. 1750, related to disaster warnings.

EFFECTIVE DATE OF REPEAL

Repeal effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of this title.

§§ 4431 to 4436. Repealed. Pub. L. 93–288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4431, Pub. L. 91–606, title II, § 221, Dec. 31, 1970, 84 Stat. 1751, related to predisaster assistance.

Section 4432, Pub. L. 91–606, title II, § 222, Dec. 31, 1970, 84 Stat. 1751, related to emergency communications.

Section 4433, Pub. L. 91–606, title II, § 223, Dec. 31, 1970, 84 Stat. 1751, related to emergency transportation.

Section 4434, Pub. L. 91–606, title II, § 224, Dec. 31, 1970, 84 Stat. 1751, related to removal of debris.

Section 4435, Pub. L. 91–606, title II, § 225, Dec. 31, 1970, 84 Stat. 1751, related to fire suppression.

Section 4436, Pub. L. 91–606, title II, § 226, Dec. 31, 1970, 84 Stat. 1751, related to temporary housing assistance.

EFFECTIVE DATE OF REPEAL

Repeal effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of this title.

§ 4451. Transferred

CODIFICATION

Section, Pub. L. 91–606, title II, § 231, Dec. 31, 1970, 84 Stat. 1752; Pub. L. 92–385, § 6, Aug. 16, 1972, 86 Stat. 559,

which related to small business disaster loans, was transferred to section 636a of Title 15, Commerce and Trade, and subsequently repealed.

§ 4452. Repealed. Pub. L. 93–24, § 7, Apr. 20, 1973, 87 Stat. 25

Section, Pub. L. 91–606, title II, § 232, Dec. 31, 1970, 84 Stat. 1753, provided for emergency farm loans. See section 1961 of Title 7, Agriculture.

§§ 4453 to 4456. Transferred

CODIFICATION

Section 4453, Pub. L. 91–606, title II, § 234, Dec. 31, 1970, 84 Stat. 1754, which related to disaster loan interest rates, was transferred to section 636b of Title 15, Commerce and Trade.

Section 4454, Pub. L. 91–606, title II, § 235, Dec. 31, 1970, 84 Stat. 1754, which related to prohibition on consideration of age of applicant for disaster loans, was transferred to section 636c of Title 15.

Section 4455(a), Pub. L. 91–606, title II, § 236(a), Dec. 31, 1970, 84 Stat. 1754, which related to authority of the Secretary of Agriculture to reschedule and refinance Federal loans under the Rural Electrification Administration, was transferred to section 912a of Title 7, Agriculture.

Section 4455(b), Pub. L. 91–606, title II, § 236(b), Dec. 31, 1970, 84 Stat. 1754, which related to authority of the Secretary of Housing and Urban Development to reschedule and refinance Federal loans, was transferred to section 3538 of this title.

Section 4456, Pub. L. 91–606, title II, § 237, Dec. 31, 1970, 84 Stat. 1754, which related to disaster aid to major sources of employment, was transferred to section 636d of Title 15, Commerce and Trade.

§§ 4457 to 4462. Repealed. Pub. L. 93–288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4457, Pub. L. 91–606, title II, § 238, Dec. 31, 1970, 84 Stat. 1755, related to food stamp and surplus commodities programs.

Section 4458, Pub. L. 91–606, title II, § 239, Dec. 31, 1970, 84 Stat. 1755, related to legal services.

Section 4459, Pub. L. 91–606, title II, § 240, Dec. 31, 1970, 84 Stat. 1755, related to unemployment assistance.

Section 4460, Pub. L. 91–606, title II, § 241, Dec. 31, 1970, 84 Stat. 1756, related to community disaster grants to local governments.

Section 4461, Pub. L. 91–606, title II, § 242, Dec. 31, 1970, 84 Stat. 1756, related to timber sale contracts.

Section 4462, Pub. L. 91–606, title II, § 243, Dec. 31, 1970, 84 Stat. 1757, related to standards for residential structure restoration.

EFFECTIVE DATE OF REPEAL

Repeal effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of this title.

§§ 4481 to 4485. Repealed. Pub. L. 93–288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4481, Pub. L. 91–606, title II, § 251, Dec. 31, 1970, 84 Stat. 1757, related to repair and restoration of damaged United States facilities.

Section 4482, Pub. L. 91–606, title II, § 252, Dec. 31, 1970, 84 Stat. 1757; Pub. L. 93–251 title I, § 45(a), Mar. 7, 1974, 88 Stat. 24, related to restoration of State and local public facilities.

Section 4483, Pub. L. 91–606, title II, § 253, Dec. 31, 1970, 84 Stat. 1758, related to priority to applications for public facility and public housing assistance in major disaster areas.

Section 4484, Pub. L. 91–606, title II, § 254, Dec. 31, 1970, 84 Stat. 1758, related to relocation assistance.

Section 4485, Pub. L. 91–606, title II, § 255, as added Pub. L. 92–209, § 1, Dec. 18, 1971, 85 Stat. 742, related to private medical care facilities grants for repair, reconstruction, or replacement of damaged or destroyed facilities.

EFFECTIVE DATE OF REPEAL

Repeal effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of this title.

CHAPTER 59—NATIONAL URBAN POLICY AND NEW COMMUNITY DEVELOPMENT

Sec.
4501. Congressional statement of purpose.

PART A—DEVELOPMENT OF A NATIONAL URBAN POLICY

4502. Congressional findings and declaration of policy.
4503. National Urban Policy Report.

PART B—DEVELOPMENT OF NEW COMMUNITIES

4511 to 4524. Repealed.
4525. Real property taxation.
4526. Audit by Government Accountability Office.
4527. General powers of Secretary.
4528 to 4532. Repealed.

§ 4501. Congressional statement of purpose

It is the policy of the Congress and the purpose of this chapter to provide for the development of a national urban policy and to encourage the rational, orderly, efficient, and economic growth, development, and redevelopment of our States, metropolitan areas, cities, counties, towns, and communities in predominantly rural areas which demonstrate a special potential for accelerated growth; to encourage the prudent use and conservation of energy and our natural resources; and to encourage and support development which will assure our communities and their residents of adequate tax bases, community services, job opportunities, and good housing in well-balanced neighborhoods in socially, economically, and physically attractive living environments.

(Pub. L. 91–609, title VII, § 701(b), Dec. 31, 1970, 84 Stat. 1791; Pub. L. 95–128, title VI, § 601(a)(2)–(5), Oct. 12, 1977, 91 Stat. 1143.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title VII of Pub. L. 91–609, Dec. 31, 1970, 84 Stat. 1791, as amended, known as the Urban Growth and New Community Development Act of 1970, which enacted this chapter, amended sections 1453, 1460, and 1492 of this title, sections 371 and 1464 of Title 12, Banks and Banking, and section 461 of former Title 40, Public Buildings, Property, and Works, and enacted provisions set out as notes under sections 1453 and 4501 of this title. For complete classification of title VII to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1977—Pub. L. 95–128 substituted ''national urban policy'' for ''national urban growth policy'', encouraged prudent use and conservation of energy, and provided for the assurance of the residents of the communities, and of good housing.

SHORT TITLE

Section 701(a) of title VII of Pub. L. 91–609, as amended by Pub. L. 95–128, title VI, § 601(a)(1), Oct. 12, 1977, 91

Stat. 1142, provided that: ''This title [enacting this chapter, amending sections 1453, 1460, and 1492, of this title, sections 371 and 1464 of Title 12, Banks and Banking, and section 461 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as notes under section 1453 of this title] may be cited as the 'National Urban Policy and New Community Development Act of 1970'.''

PART A—DEVELOPMENT OF A NATIONAL URBAN POLICY

§ 4502. Congressional findings and declaration of policy

(a) The Congress finds that rapid changes in patterns of urban settlement, including change in population distribution and economic bases of urban areas, have created an imbalance between the Nation's needs and resources and seriously threaten our physical and social environment, and the financial viability of our cities, and that the economic and social development of the Nation, the proper conservation of our energy and other natural resources, and the achievement of satisfactory living standards depend upon the sound, orderly, and more balanced development of all areas of the Nation.

(b) The Congress further finds that Federal programs affect the location of population, economic growth, and the character of urban development; that such programs frequently conflict and result in undesirable and costly patterns of urban development and redevelopment which adversely affect the environment and wastefully use energy and other natural resources; and that existing and future programs must be interrelated and coordinated within a system of orderly development and established priorities consistent with a national urban policy.

(c) To promote the general welfare and properly apply the resources of the Federal Government in strengthening the economic and social health of all areas of the Nation and more adequately protect the physical environment and conserve energy and other natural resources, the Congress declares that the Federal Government, consistent with the responsibilities of State and local government and the private sector, must assume responsibility for the development of a national urban policy which shall incorporate social, economic, and other appropriate factors. Such policy shall serve as a guide in making specific decisions at the national level which affect the pattern of urban development and redevelopment and shall provide a framework for development of interstate, State, and local urban policy.

(d) The Congress further declares that the national urban policy should—

(1) favor patterns of urbanization and economic development and stabilization which offer a range of alternative locations and encourage the wise and balanced use of physical and human resources in metropolitan and urban regions as well as in smaller urban places which have a potential for accelerated growth;

(2) foster the continued economic strength of all parts of the United States, including central cities, suburbs, smaller communities, local neighborhoods, and rural areas;

(3) encourage patterns of development and redevelopment which minimize disparities among States, regions, and cities;

(4) treat comprehensively the problems of poverty and employment (including the erosion of tax bases, and the need for better community services and job opportunities) which are associated with disorderly urbanization and rural decline;

(5) develop means to encourage good housing for all Americans without regard to race or creed;

(6) refine the role of the Federal Government in revitalizing existing communities and encouraging planned, large-scale urban and new community development;

(7) strengthen the capacity of general governmental institutions to contribute to balanced urban growth and stabilization; and

(8) increase coordination among Federal programs that seek to promote job opportunities and skills, decent and affordable housing, public safety, access to health care, educational opportunities, and fiscal soundness for urban communities and their residents.

(Pub. L. 91–609, title VII, § 702, Dec. 31, 1970, 84 Stat. 1791; Pub. L. 95–128, title VI, § 601(b), Oct. 12, 1977, 91 Stat. 1143; Pub. L. 98–479, title II, § 204(i), Oct. 17, 1984, 98 Stat. 2233; Pub. L. 102–550, title IX, § 921(1), Oct. 28, 1992, 106 Stat. 3883.)

AMENDMENTS

1992—Subsec. (d)(8). Pub. L. 102–550 added par. (8) and struck out former par. (8) which read as follows: ''facilitate increased coordination in the administration of Federal programs so as to encourage desirable patterns of urban development and redevelopment, encourage the prudent use of energy and other natural resources, and protect the physical environment.''

1984—Subsec. (d)(8). Pub. L. 98–479 struck out ''of'' before ''the physical environment''.

1977—Subsec. (a). Pub. L. 95–128, § 601(b)(1), substituted ''rapid changes in patterns of urban settlement, including change in population distribution and economic bases of urban areas, have created'' for ''the rapid growth of urban population and uneven expansion of urban development in the United States, together with a decline in farm population, slower growth in rural areas, and migration to the cities, has created'' and included the threat to ''social'' environment and the financial viability of our cities, and conservation of ''energy''.

Subsec. (b). Pub. L. 95–128, § 601(b)(2), included findings respecting costly urban redevelopment and wasteful use of energy and struck out ''growth'' after ''national urban''.

Subsec. (c). Pub. L. 95–128, § 601(b)(3), included conservation of ''energy'', struck out ''growth'' after ''nation urban'' in first sentence and substituted in second sentence ''urban development and redevelopment'' for ''urban growth'' and ''urban policy'' for ''growth and stabilization policy''.

Subsec. (d). Pub. L. 95–128, § 601(b)(4)–(6), struck out ''growth'' before ''policy'' in introductory text; substituted in par. (3) ''encourage patterns of development and redevelopment which minimize'' for ''help reverse trends of migration and physical growth which reinforce''; and in par. (8) substituted ''urban development and redevelopment'' for ''urban growth and stabilization'' and ''protect'' for ''the protection'' and required the national urban policy to ''encourage'' prudent use of resources, including ''energy''.

§ 4503. National Urban Policy Report

(a) Transmittal to Congress; contents

The President shall transmit to the Congress, not later than June 1, 1993, and not later than the first day of June of every odd-numbered year thereafter, a Report on National Urban Policy which shall contribute to the formulation of such a policy, and in addition shall include—

(1) information, statistics, and significant trends relating to the pattern of urban development for the preceding two years;

(2) a summary of significant problems facing the United States as a result of urban trends and developments affecting the well-being of urban areas;

(3) an examination of the housing and related community development problems experienced by cities undergoing a growth rate which equals or exceeds the national average;

(4) an evaluation of the progress and effectiveness of Federal efforts designed to meet such problems and to carry out the national urban policy;

(5) an assessment of the policies and structure of existing and proposed interstate planning and developments affecting such policy;

(6) a review of State, local, and private policies, plans, and programs relevant to such policy;

(7) current and foreseeable needs in the areas served by policies, plans, and programs designed to carry out such policy, and the steps being taken to meet such needs; and

(8) recommendations for programs and policies for carrying out such policy, including legislative or administrative proposals—

(A) to promote coordination among Federal programs to assist urban areas;

(B) to enhance the fiscal capacity of fiscally distressed urban areas;

(C) to promote job opportunities in economically distressed urban areas and to enhance the job skills of residents of such areas;

(D) to generate decent and affordable housing;

(E) to reduce racial tensions and to combat racial and ethnic violence in urban areas;

(F) to combat urban drug abuse and drug-related crime and violence;

(G) to promote the delivery of health care to low-income communities in urban areas;

(H) to expand educational opportunities in urban areas; and

(I) to achieve the goals of the national urban policy.

(b) Supplementary reports

The President may transmit from time to time to the Congress supplementary reports on urban policy which shall include such supplementary and revised recommendations as may be appropriate.

(c) Advisory board

To assist in the preparation of the National Urban Policy Report and any supplementary reports, the President may establish an advisory board, or seek the advice from time to time of temporary advisory boards, the members of whom shall be drawn from among private citizens familiar with the problems of urban areas and from among Federal officials, Governors of States, mayors, county officials, members of State and local legislative bodies, and others qualified to assist in the preparation of such reports.

(d) Referral

The National Urban Policy Report shall, when transmitted to Congress, be referred in the Senate to the Committee on Banking, Housing, and Urban Affairs, and in the House of Representatives to the Committee on Banking, Finance and Urban Affairs.

(Pub. L. 91–609, title VII, § 703, Dec. 31, 1970, 84 Stat. 1792; Pub. L. 95–128, title VI, § 601(c), Oct. 12, 1977, 91 Stat. 1143; Pub. L. 102–550, title IX, § 921(2), (3), Oct. 28, 1992, 106 Stat. 3883, 3884.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, § 921(2)(A), substituted ", not later than June 1, 1993, and not later than the first day of June of every odd-numbered year thereafter," for "during February 1978, and during February of every even-numbered year thereafter," in introductory provisions.

Subsec. (a)(8). Pub. L. 102–550, § 921(2)(B), which directed the substitution of "legislative or administrative proposals—" and subpars. (A) to (I) for " 'such' and all that follows through the end of the sentence", was executed by making the substitution for "such legislation and administrative actions as may be deemed necessary and desirable." which followed "such" the second place it appeared to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 102–550, § 921(3), added subsec. (d).

1977—Subsec. (a). Pub. L. 95–128, § 601(c)(1), inserted provisions in introductory text respecting transmittal of a Report on National Urban Policy to the Congress and struck out prior similar provisions which required the President to utilize the capacity of his office, adequately organized and staffed for the purpose, through an identified unit of the Domestic Council, and of the departments and agencies within the executive branch to collect, analyze, and evaluate such statistics, data, and other information (including demographic, economic, social, land use, environmental, and governmental information) as would enable the President to transmit to the Congress during the month of February 1972 and every other year thereafter a Report on Urban Growth for the preceding two calendar years.

Subsec. (a)(1) to (8). Pub. L. 95–128, § 601(c)(2)–(6), in amending paragraphs, provided as follows:

par. (1), substituted ", statistics, and significant trends relating to the pattern of urban development for the preceding two years" for "and statistics, describing characteristics of urban growth and stabilization and identifying significant trends and developments";

par. (2), struck out "growth" after "urban" and inserted end text "affecting the well-being of urban areas";

par. (3), inserted provisions respecting problems experienced by cities with a growth rate equalling or exceeding the national average and redesignated former par. (3) as (4);

par. (4), redesignated former par. (3) as (4), and as so redesignated struck out "growth" before "policy", and redesignated former par. (4) as (5); and

pars. (5) to (8), redesignated former pars. (4) to (7) as (5) to (8), respectively.

Subsec. (b). Pub. L. 95–128, § 601(c)(7), substituted "urban policy" for "urban growth".

Subsec. (c). Pub. L. 95–128, § 601(c)(8), substituted "National Urban Policy Report" and "urban areas" for "Report on Urban Growth" and "urban growth", respectively.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (a) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 1 on page 40 of House Document No. 103–7.

PART B—DEVELOPMENT OF NEW COMMUNITIES

§§ 4511 to 4524. Repealed. Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

The new communities program was liquidated and its assets and liabilities transferred pursuant to sections 1701g–5a and 1701g–5b of Title 12, Banks and Banking.

Section 4511, Pub. L. 91–609, title VII, § 710, Dec. 31, 1970, 84 Stat. 1793, set out Congressional findings and purpose in setting up program for development of new communities.

Section 4512, Pub. L. 91–609, title VII, § 711, Dec. 31, 1970, 84 Stat. 1795; Pub. L. 93–383, title VIII, § 803(a)(1), (e), Aug. 22, 1974, 88 Stat. 725, defined terms used in this part.

Section 4513, Pub. L. 91–609, title VII, § 712, Dec. 31, 1970, 84 Stat. 1796, set out conditions under which a new community development program qualified for assistance under this part.

Section 4514, Pub. L. 91–609, title VII, § 713, Dec. 31, 1970, 84 Stat. 1796; Pub. L. 93–117, § 12, Oct. 2, 1973, 87 Stat. 423; Pub. L. 93–383, title VIII, § 803(a)(1), (c), Aug. 22, 1974, 88 Stat. 725, authorized guarantee of bonds, notes, debentures, and other obligations in connection with approved new community developments.

Section 4515, Pub. L. 91–609, title VII, § 714, Dec. 31, 1970, 84 Stat. 1797; Pub. L. 93–383, title VIII, § 803(a)(1), Aug. 22, 1974, 88 Stat. 725, authorized making of loans by Secretary in connection with new community developments.

Section 4516, Pub. L. 91–609, title VII, § 715, Dec. 31, 1970, 84 Stat. 1798; Pub. L. 93–383, title VIII, § 803(a)(1), Aug. 22, 1974, 88 Stat. 725, provided for public service grants and authorized appropriations therefor.

Section 4517, Pub. L. 91–609, title VII, § 716, Dec. 31, 1970, 84 Stat. 1798, set limitations on guarantees and loans.

Section 4518, Pub. L. 91–609, title VII, § 717, Dec. 31, 1970, 84 Stat. 1798; Pub. L. 97–35, title III, § 339F, Aug. 13, 1981, 95 Stat. 418, created a revolving fund for use in connection with the new communities development program.

Section 4519, Pub. L. 91–609, title VII, § 718, Dec. 31, 1970, 84 Stat. 1799; Pub. L. 92–213, § 7, Dec. 22, 1971, 85 Stat. 776; Pub. L. 93–383, title VIII, § 803(d), Aug. 22, 1974, 88 Stat. 725, provided for supplementary grants for carrying out new community assistance projects.

Section 4520, Pub. L. 91–609, title VII, § 719, Dec. 31, 1970, 84 Stat. 1800, authorized Secretary to provide technical assistance to private and public bodies in carrying out new community development programs.

Section 4521, Pub. L. 91–609, title VII, § 720, Dec. 31, 1970, 84 Stat. 1800; Pub. L. 94–375, § 19, Aug. 3, 1976, 90 Stat. 1077; Pub. L. 95–128, title II, § 208, Oct. 12, 1977, 91 Stat. 1130; Pub. L. 95–406, § 4, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95–557, title III, § 306, Oct. 31, 1978, 92 Stat. 2097, provided for financial assistance for planning new community development programs.

Section 4522, Pub. L. 91–609, title VII, § 721, Dec. 31, 1970, 84 Stat. 1801, authorized establishment and collection of fees and charges for the guarantees and other assistance provided in the new communities development program.

Section 4523, Pub. L. 91–609, title VII, § 722, Dec. 31, 1970, 84 Stat. 1801, directed Secretary to develop methods of encouraging involvement of small builders in new communities development program.

Section 4524, Pub. L. 91–609, title VII, § 723, Dec. 31, 1970, 84 Stat. 1801, provided authority for new communities demonstration projects.

SAVINGS PROVISION

Section 474(e) of Pub. L. 98–181 provided in part that: ''Section 717 of title VII [42 U.S.C. 4518] shall remain in effect until completion of the transfer required in title I of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984 [12 U.S.C. 1701g–5a].''

Any actions taken, prior to repeal, under the authority of sections 4511 to 4524 and 4528 to 4532 of this title to continue to be valid, with nothing in the repeal impairing the validity of any guarantees which have been made pursuant to this chapter and with such guarantees continuing to be governed by the provisions of this chapter, as it existed immediately before Nov. 30, 1983, see section 474(e) of Pub. L. 98–181, set out in part as a note under section 3901 of this title.

§ 4525. Real property taxation

Nothing in this part shall be construed to exempt any real property that may be acquired and held by the Secretary as a result of the exercise of lien or subrogation rights from real property taxation to the same extent, according to its value, as other real property is taxed.

(Pub. L. 91–609, title VII, § 724, Dec. 31, 1970, 84 Stat. 1801.)

§ 4526. Audit by Government Accountability Office

Insofar as they relate to any guarantees, loans, or grants made pursuant to this part, the financial transactions of recipients of Federal assistance may be audited by the Government Accountability Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the Government Accountability Office shall have access to all books, accounts, records, reports, files and all other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(Pub. L. 91–609, title VII, § 725, Dec. 31, 1970, 84 Stat. 1801; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in section catchline and two places in text.

§ 4527. General powers of Secretary

In the performance of, and with respect to, the functions, powers, and duties vested in him by this part, the Secretary, in addition to any authority otherwise vested in him, shall—

(1) have the functions, powers, and duties (including the authority to issue rules and

regulations) set forth in section 1749a,[1] except subsections (c)(2), (c)(4), (d), and (f), of title 12: *Provided*, That subsection (a)(1) of section 1749a[1] of title 12 shall not apply with respect to functions, powers, and duties under section 4520[1] of this title;

(2) have the power, notwithstanding any other provision of law, in connection with any assistance under this part, whether before or after any default, to provide by contract for the extinguishment upon default of any redemption, equitable, legal, or other right, title, or interest of the private new community developer or State land development agency in any mortgage, deed, trust, or other instrument held by or on behalf of the Secretary for the protection of the security interests of the United States; and

(3) have the power to foreclose on any property or commence any action to protect or enforce any right conferred upon him by law, contract, or other agreement, and bid for and purchase at any foreclosure or other sale any property in connection with which he has provided assistance pursuant to this part. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease, and otherwise deal with, such property. Notwithstanding any other provision of law, the Secretary shall also have power to pursue to final collection by way of compromise or otherwise all claims acquired by him in connection with any security, subrogation, or other rights obtained by him in administering this part.

(Pub. L. 91–609, title VII, § 726, Dec. 31, 1970, 84 Stat. 1801.)

REFERENCES IN TEXT

Section 1749a of title 12, referred to in par. (1), was repealed by Pub. L. 99–498, title VII, § 702, Oct. 17, 1986, 100 Stat. 1545.

Section 4520 of this title, referred to in par. (1), was repealed by Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239.

§§ 4528 to 4532. Repealed. Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

Section 4528, Pub. L. 91–609, title VII, § 727(a), Dec. 31, 1970, 84 Stat. 1802, provided for termination of new community development projects under chapter 48 (§ 3901 et seq.) of this title and transition provisions for projects under this part.

Section 4529, Pub. L. 91–609, title VII, § 727(f), Dec. 31, 1970, 84 Stat. 1803, provided for application of Federal labor standards for laborers and mechanics employed by contractors and subcontractors in new communities development program.

Section 4530, Pub. L. 91–609, title VII, § 727(g), Dec. 31, 1970, 84 Stat. 1803, directed that the interest paid on obligations issued by State land development agencies be included as gross income for purposes of chapter 1 of title 26.

Section 4531, Pub. L. 91–609, title VII, § 728, Dec. 31, 1970, 84 Stat. 1803, authorized use of funds under the new communities development program jointly with funds available under other Federal assistance programs.

Section 4532, Pub. L. 91–609, title VII, § 729, Dec. 31, 1970, 84 Stat. 1804; Pub. L. 93–383, title VIII, § 803(a), (b), Aug. 22, 1974, 88 Stat. 725, provided for establishment and operation of New Community Development Corporation within Department of Housing and Urban Development.

CHAPTER 60—COMPREHENSIVE ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION PROGRAM

Sec.
4541. Congressional findings and declaration of purpose.
4542. Congressional declaration for utilization of programs under other Federal laws in fields of health and social services.

SUBCHAPTER I—NATIONAL INSTITUTE ON, AND INTERAGENCY COMMITTEE ON FEDERAL ACTIVITIES FOR, ALCOHOL ABUSE AND ALCOHOLISM; REPORTS AND RECOMMENDATIONS

4551 to 4553. Repealed or Transferred.

SUBCHAPTER II—ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION PROGRAMS FOR GOVERNMENT AND OTHER EMPLOYEES

4561. Transferred.

SUBCHAPTER III—TECHNICAL ASSISTANCE AND FEDERAL GRANTS AND CONTRACTS

PART A—TECHNICAL ASSISTANCE

4571 to 4574. Repealed or Transferred.

PART B—IMPLEMENTATION AND PROJECT GRANTS AND CONTRACTS

4576. Repealed.
4577. Grants and contracts for demonstration of new and more effective drug and alcohol abuse prevention, treatment, and rehabilitation programs.
4578. Authorizations of appropriations.

PART C—ADMISSION TO HOSPITALS AND OUTPATIENT FACILITIES; CONFIDENTIALITY OF RECORDS

4581, 4582. Transferred.

SUBCHAPTER IV—RESEARCH

4585 to 4588. Repealed or Transferred.

SUBCHAPTER V—GENERAL PROVISIONS

4591. Separability.
4592. Recordkeeping for audit.
4593. Payments.
4594. Contract authority in appropriation Acts.

§ 4541. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) alcohol is one of the most dangerous drugs and the drug most frequently abused in the United States;

(2) approximately ten million, or 7 percent, of the adults in the United States are alcoholics or problem drinkers;

(3) it is estimated that alcoholism and other alcohol related problems cost the United States over $43,000,000,000 annually in lost production, medical and public assistance expenditures, police and court costs, and motor vehicle and other accidents;

(4) alcohol abuse is found with increasing frequency among persons who are multiple-drug abusers and among former heroin users

[1] See References in Text note below.

who are being treated in methadone maintenance programs;

(5) alcohol abuse is being discovered among growning numbers of youth;

(6) alcohol abuse and alcoholism have a substantial impact on the families of alcohol abusers and alcoholics and contributes to domestic violence;

(7) alcohol abuse and alcoholism, together with abuse of other legal and illegal drugs, present a need for prevention and intervention programs designed to reach the general population and members of high risk populations such as youth, women, the elderly, and families of alcohol abusers and alcoholics; and

(8) alcoholism is an illness requiring treatment and rehabilitation through the assistance of a broad range of community health and social services and with the cooperation of law enforcement agencies, employers, employee associations, and associations of concerned individuals.

(b) It is the policy of the United States and the purpose of this chapter to approach alcohol abuse and alcoholism from a comprehensive community care standpoint, and to meet the problems of alcohol abuse and alcoholism through—

(1) comprehensive Federal, State, and local planning for, and effective use of, Federal assistance to States, and direct Federal assistance to community-based programs to meet the urgent needs of special populations, in coordination with all other governmental and nongovernmental sources of assistance;

(2) the development of methods for diverting problem drinkers from criminal justice systems into prevention and treatment programs;

(3) the development and encouragement of prevention programs designed to combat the spread of alcoholism, alcohol abuse, and abuse of other legal and illegal drugs;

(4) the development and encouragement of effective occupational prevention and treatment programs within government and in cooperation with the private sector; and

(5) increased Federal commitment to research into the behavioral and biomedical etiology of, the treatment of, and the mental and physical health and social and economic consequences of, alcohol abuse and alcoholism.

(Pub. L. 91–616, § 2, as added Pub. L. 93–282, title I, § 102(a), May 14, 1974, 88 Stat. 126; amended Pub. L. 94–371, § 2, July 26, 1976, 90 Stat. 1035; Pub. L. 95–622, title II, § 268(a), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96–180, § 2, Jan. 2, 1980, 93 Stat. 1301.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 91–616, Dec. 31, 1970, 84 Stat. 1848, as amended, known as the ''Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970''. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1980—Subsec. (a)(2). Pub. L. 96–180, § 2(a), substituted current findings of number of alcoholics or problem drinkers in the country (approximately ten million or 7 percent of the adults) for 1974 findings of number of alcohol abusers and alcoholics of estimated number of ninety-five million drinkers in the Nation (minimum of nine million or 7 per centum of the adults).

Subsec. (a)(3). Pub. L. 96–180, § 2(a), substituted current findings respecting annual cost of over $43,000,000,000 to the United States for alcoholism and other related problems in lost production, motor vehicle and other accidents, and other items, for 1974 findings respecting minimum annual problem drinking costs of $15,000,000 to the national economy in lost working time and identical other items.

Subsec. (a)(6). Pub. L. 96–180, § 2(b)(1), inserted congressional finding respecting contribution of alcohol abuse and alcoholism to domestic violence.

Subsec. (a)(7). Pub. L. 96–180, § 2(b)(3), added par. (7). Former par. (7) redesignated (8).

Subsec. (a)(8). Pub. L. 96–180, § 2(b)(2), redesignated former par. (7) as (8) and enlisted cooperation of employers, employee associations, and associations of concerned individuals in treatment and rehabilitation of alcoholics.

Subsec. (b)(2). Pub. L. 96–180, § 2(c)(1), struck out ''and'' at end.

Subsec. (b)(3) to (5). Pub. L. 96–180, § 2(c)(3), added pars. (3) and (4) and redesignated former par. (3) as (5).

1978—Subsec. (a)(6), (7). Pub. L. 95–622 added par. (6) and redesignated former par. (6) as (7).

1976—Subsec. (b). Pub. L. 94–371 restructured provisions and inserted authorization for increased Federal commitment to research into the behavioral and biomedical etiology of alcohol abuse and alcoholism and the treatment and consequences of alcohol abuse and alcoholism.

SHORT TITLE OF 1980 AMENDMENT

Section 1(a) of Pub. L. 96–180 provided that: ''This Act [enacting section 4594, amending this section and sections 4551 to 4553, 4561, 4571 to 4573, 4576 to 4578, 4585, 4587, and 4588 of this title, and enacting provisions set out as notes under this section and section 4552 of this title] may be cited as the 'Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1979'.''

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94–371 provided: ''That this Act [enacting sections 4578 and 4585 to 4588 of this title, amending this section, sections 218, 3511, 4571 to 4573, 4576, 4577, and 4581 of this title, and sections 1176 and 1177 of Title 21, Food and Drugs, and enacting provisions set out as notes under sections 4573 and 4577 of this title, and sections 1176 and 1177 of Title 21] may be cited as the 'Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1976'.''

SHORT TITLE OF 1974 AMENDMENT

Section 101 of title I of Pub. L. 93–282 provided that: ''This title [enacting this section and sections 4542, 4553, 4576, and 4577 of this title, amending sections 242a, 4571, 4572, 4573, 4581, and 4582 of this title, and enacting provisions set out as notes under sections 4581 and 4582 of this title] may be cited as the 'Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974'.''

SHORT TITLE

Section 1 of Pub. L. 91–616 provided that: ''This Act [enacting this chapter and section 2688j–2 of this title and amending sections 218, 246, 2688h and 2688t of this title] may be cited as the 'Comprehensive Alcohol

Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970'.''

NATIONAL COMMISSION ON ALCOHOLISM AND OTHER ALCOHOL-RELATED PROBLEMS; ESTABLISHMENT; EXECUTIVE SECRETARY; INTERIM AND FINAL REPORTS OF STUDY; TERMINATION; AUTHORIZATION OF APPROPRIATIONS

Section 18 of Pub. L. 96–180 as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979; Pub. L. 98–24, § 5(a)(2), Apr. 26, 1983, 97 Stat. 183, 93 Stat. 695, provided that:

''(a)(1) There is established a Commission to be known as the National Commission on Alcoholism and Other Alcohol-Related Problems (hereinafter in this section referred to as the 'Commission'). The Commission shall be composed of—

''(A) four Members of the Senate appointed by the President of the Senate upon the recommendation of the majority and minority leaders;

''(B) four Members of the House of Representatives appointed by the Speaker of the House of Representatives upon the recommendation of the majority and minority leaders;

''(C) nine public members appointed by the President; and

''(D) not more than four nonvoting members appointed by the President from individuals employed in the administration of programs of the Federal Government which affect the prevention and treatment of alcoholism and the rehabilitation of alcoholics and alcohol abusers.

At no time shall more than two members appointed under subparagraph (A), more that two of the members appointed under subparagraph (B), or more than five of the members appointed under subparagraph (C) be members of the same political party.

''(2)(A) The President shall designate one of the members of the Commission as Chairman, and one as Vice Chairman. Nine members of the Commission shall constitute a quorum, but a lesser number may conduct hearings. Members appointed under paragraph (1)(D) shall not be considered in determining a quorum of the Commission.

''(B) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Commission.

''(C) The Commission shall meet at the call of the Chairman or at the call of the majority of the members thereof.

''(3)(A) The Commission may appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, an executive secretary to assist the Commission in carrying out its functions.

''(B) The Secretary shall provide the Commission with such additional professional and clerical staff, such information, and the services of such consultants as the Secretary determines necessary for the Commission to carry out effectively its functions.

''(C) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission consistent with applicable laws and regulations with respect to the privacy of medical records.

''(b) The Commission shall conduct a study of alcoholism and alcohol-related problems and shall include in the study—

''(1) an assessment of unmet treatment and rehabilitation needs of alcoholics and their families;

''(2) an assessment of personnel needs in the fields of research, treatment, rehabilitation, and prevention;

''(3) an assessment of the integration and financing of alcoholism treatment and rehabilitation into health and social health care services within communities;

''(4) a study of the relationship of alcohol use to aggressive behavior and crime;

''(5) a study of the relationship of alcohol use to family violence;

''(6) a study of the relationship of alcoholism to illnesses, particularly those illnesses with a high stress component, among family members of alcoholics;

''(7) an evaluation of the effectiveness of prevention programs, including the relevance of alcohol control laws and regulations to alcoholism and alcohol-related problems;

''(8) a survey of the unmet research needs in the area of alcoholism and alcohol-related problems;

''(9) a survey of the prevalence of occupational alcoholism and alcohol abuse programs offered by Federal contractors; and

''(10) an evaluation of the needs of special and underserved population groups, including American Indians, Alaskan Natives, Native Hawaiians, Native American Pacific Islanders, youth, the elderly, women, and the handicapped and assess the adequacy of existing services to fulfill such needs.

''(c) The Commission shall submit to the President and the Congress such interim reports as it deems advisable and shall within two years after the date on which funds first become available to carry out this section submit to the President and the Congress a final report which shall contain a detailed statement of its findings and conclusions and also such recommendations for legislation and administrative actions as it deems appropriate. The Commission shall cease to exist sixty days after the final report is submitted under this subsection.

''(d) The Secretary of Health and Human Services shall be responsible for the coordination of the activities of the Commission.

''(e) There are authorized to be appropriated for the purposes of this section $1,000,000 to remain available until the expiration of the Commission.''

§ 4542. Congressional declaration for utilization of programs under other Federal laws in fields of health and social services

The Congress declares that, in addition to the programs under the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4541 et seq.], programs under other Federal laws which provide Federal or federally assisted research, prevention, treatment, or rehabilitation in the fields of health and social services should be appropriately utilized to help eradicate alcohol abuse and alcoholism as a major problem.

(Pub. L. 93–282, title I, § 102(b), May 14, 1974, 88 Stat. 126.)

REFERENCES IN TEXT

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, referred to in text, is Pub. L. 91–616, Dec. 31, 1970, 84 Stat. 1848, as amended, which is classified principally to this chapter (§ 4541 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 4541 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 which comprises this chapter.

SUBCHAPTER I—NATIONAL INSTITUTE ON, AND INTERAGENCY COMMITTEE ON FEDERAL ACTIVITIES FOR, ALCOHOL ABUSE AND ALCOHOLISM; REPORTS AND RECOMMENDATIONS

§ 4551. Transferred

CODIFICATION

Section, Pub. L. 91–616, title I, § 101, Dec. 31, 1970, 84 Stat. 1848; Pub. L. 93–282, title II, § 203(a), May 14, 1974, 88 Stat. 135; Pub. L. 96–180, § 3, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97–35, title IX, § 966(a), Aug. 13, 1981, 95 Stat. 595, which established the National Institute on Alcohol Abuse and Alcoholism, was redesignated section 502 of the Public Health Service Act by Pub. L. 98–24, § 2(b)(3), Apr. 26, 1983, 97 Stat. 177, and is classified to section 290aa–1 of this title.

§§ 4552, 4553. Repealed. Pub. L. 98–24, § 2(c)(1), Apr. 26, 1983, 97 Stat. 182

Section 4552, Pub. L. 91–616, title I, § 102, Dec. 31, 1970, 84 Stat. 1848; Pub. L. 93–282, title II, § 203(b)(1), (2)(A), May 14, 1974, 88 Stat. 136; Pub. L. 96–180, § 4, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97–35, title IX, § 966(b), Aug. 13, 1981, 95 Stat. 595, required reports and recommendations by the Secretary to the Congress and to the President on programs of alcohol abuse and alcoholism. See section 290aa–4 of this title.

Section 4553, Pub. L. 91–616, title I, § 103, as added Pub. L. 93–282, title I, § 131, May 14, 1974, 88 Stat. 133; amended Pub. L. 96–180, § 5, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97–35, title IX, § 966(c), Aug. 13, 1981, 95 Stat. 595, established the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism.

SUBCHAPTER II—ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION PROGRAMS FOR GOVERNMENT AND OTHER EMPLOYEES

§ 4561. Transferred

CODIFICATION

Section, Pub. L. 91–616, title II, § 201, Dec. 31, 1970, 84 Stat. 1849; Pub. L. 96–180, § 6(a), (b)(1), Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97–35, title IX, §§ 961, 966(d), (e), Aug. 13, 1981, 95 Stat. 592, 595, which provided for programs of alcohol abuse and alcoholism prevention for government and other employees, was redesignated section 521 of the Public Health Service Act by Pub. L. 98–24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd–1 of this title.

SUBCHAPTER III—TECHNICAL ASSISTANCE AND FEDERAL GRANTS AND CONTRACTS

PART A—TECHNICAL ASSISTANCE

§ 4571. Transferred

CODIFICATION

Section, Pub. L. 91–616, title III, § 301, Dec. 31, 1970, 84 Stat. 1849; Pub. L. 92–554, Oct. 25, 1972, 86 Stat. 1167; Pub. L. 93–282, title I, § 105(a), May 14, 1974, 88 Stat. 127; Pub. L. 94–371, § 3(a), July 26, 1976, 90 Stat. 1035; Pub. L. 96–180, § 7, Jan. 2, 1980, 93 Stat. 1303; Pub. L. 97–35, title IX, § 962(a), Aug. 13, 1981, 95 Stat. 592, which provided for a program of technical assistance to States, was redesignated section 520 of the Public Health Service Act by Pub. L. 98–24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd of this title.

§§ 4572, 4573. Repealed. Pub. L. 97–35, title IX, § 962(b), Aug. 13, 1981, 95 Stat. 593

Section 4572, Pub. L. 91–616, title III, § 302, Dec. 31, 1970, 84 Stat. 1849; Pub. L. 93–282, title I, § 106(a), May 14, 1974, 88 Stat. 127; Pub. L. 94–371, § 3(b), July 26, 1976, 90 Stat. 1035; Pub. L. 95–83, title III, § 311(b), Aug. 1, 1977, 91 Stat. 397; Pub. L. 96–180, § 8, Jan. 2, 1980, 93 Stat. 1303, related to amounts, criteria, etc., for State allotments.

Section 4573, Pub. L. 91–616, title III, § 303, Dec. 31, 1970, 84 Stat. 1850; Pub. L. 93–282, title I, § 106(b), May 14, 1974, 88 Stat. 127; Pub. L. 94–371, § 5(a), (b)(1), (c), July 26, 1976, 90 Stat. 1036; Pub. L. 95–83, title III, § 311(a)(1), (2), Aug. 1, 1977, 91 Stat. 397; Pub. L. 95–622, title II, § 268(b), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96–79, title I, § 115(j)(1), Oct. 4, 1979, 93 Stat. 610; Pub. L. 96–180, § 9, Jan. 2, 1980, 93 Stat. 1303, related to submission, contents, etc., for State plans.

§ 4574. Transferred

CODIFICATION

Section, Pub. L. 91–616, title III, § 304, as added Pub. L. 93–282, title I, § 107, May 14, 1974, 88 Stat. 127, which related to special grants for implementation of the Uniform Alcoholism and Intoxication Treatment Act, was transferred to section 4576 of this title and subsequently repealed.

PART B—IMPLEMENTATION AND PROJECT GRANTS AND CONTRACTS

§ 4576. Repealed. Pub. L. 97–35, title IX, § 962(b), Aug. 13, 1981, 95 Stat. 593

Section, Pub. L. 91–616, title III, § 310, formerly § 304, as added Pub. L. 93–282, title I, § 107, May 14, 1974, 88 Stat. 127; amended Pub. L. 94–273, § 2(26), Apr. 21, 1976, 90 Stat. 376; renumbered and amended Pub. L. 94–371, § 4(a), (b), (c)(1), (2), (d), July 26, 1976, 90 Stat. 1035, 1036; Pub. L. 96–180, § 10, Jan. 2, 1980, 93 Stat. 1304, related to special grants for implementation of Uniform Alcoholism and Intoxication Treatment Act.

§ 4577. Grants and contracts for demonstration of new and more effective drug and alcohol abuse prevention, treatment, and rehabilitation programs

(a) Projects and programs

The Secretary, acting through the Institute, may make grants to public and nonprofit private entities and may enter into contracts with public and private entities and with individuals—

(1) to conduct demonstration and evaluation projects, with a high priority on prevention and early intervention projects in occupational and educational settings and on modified community living and work-care arrangements such as halfway houses, recovery homes, and supervised home care, and with particular emphasis on developing new and more effective alcohol abuse and alcoholism prevention, treatment, and rehabilitation programs,

(2) to support projects of a demonstrable value in developing methods for the effective coordination of all alcoholism treatment, training, prevention, and research resources available within a health service area established under section 300*l*[1] of this title, and

(3) to provide education and training, which may include additional training to enable treatment personnel to meet certification requirements of public or private accreditation or licensure, or requirements of third-party payors,

[1] See References in Text note below.

for the prevention and treatment of alcohol abuse and alcoholism and for the rehabilitation of alcohol abusers and alcoholics.

(b) Community participation

Projects and programs for which grants and contracts are made under this section shall (1) be responsive to special requirements of handicapped individuals in receiving such services; (2) whenever possible, be community based, seek (in the case of prevention and treatment services) to insure care of good quality in general community care facilities and under health insurance plans, and be integrated with, and provide for the active participation of, a wide range of public and nongovernmental agencies, organizations, institutions, and individuals; (3) where a substantial number of the individuals in the population served by the project or program are of limited English-speaking ability, utilize the services of outreach workers fluent in the language spoken by a predominant number of such individuals and develop a plan and make arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and identify an individual employed by the project or program, or who is available to the project or program on a full-time basis, who is fluent both in that language and English and whose responsibilities shall include providing guidance to the individuals of limited English speaking ability and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences; and (4) where appropriate utilize existing community resources (including community mental health centers).

(c) Application, coordination of applications in State, evaluation of projects and programs; review and recommendation by Council; criteria for approval; special consideration for underserved populations; authorization from chief executive officer required; maximum amount and duration of grants; applicant to provide proposed performance standards; drug abuse programs included

(1) In administering this section, the Secretary shall require coordination of all applications for projects and programs in a State.

(2)(A) Each applicant from within a State, upon filing its application with the Secretary for a grant or contract under this section, shall submit a copy of its application for review by the State agency responsible for the administration of alcohol abuse and alcoholism prevention, treatment, and rehabilitation activities. Such State agency shall be given not more than thirty days from the date of receipt of the application to submit to the Secretary, in writing, an evaluation of the project or program set forth in the application. Such evaluation shall include comments on the relationship of the project to other projects and programs pending and approved and to any State comprehensive plan for treatment and prevention of alcohol abuse and alcoholism. The State shall furnish the applicant a copy of any such evaluation.

(B)(i) Except as provided in clause (ii), each application for a grant under this section shall be submitted by the Secretary to the National Advisory Council on Alcohol Abuse and Alcoholism for its review. The Secretary may approve an application for a grant under this section only if it is recommended for approval by such Council.

(ii) Clause (i) shall not apply to an application for a grant under this section for a project or program for any period of 12 consecutive months for which period payments under such grant will be less than $250,000, if an application for a grant under this section for such project or program and for a period of time which includes such 12-month period has been submitted to, and approved by, the Secretary.

(3) Approval of any application for a grant or contract by the Secretary, including the earmarking of financial assistance for a program or project, may be granted only if the application substantially meets a set of criteria established by the Secretary that—

(A) provides that the projects and programs for which assistance under this section is sought will be substantially administered by or under the supervision of the applicant;

(B) provides for such methods of administration as are necessary for the proper and efficient operation of such programs and projects; and

(C) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant.

(4) The Secretary shall encourage the submission of and give special consideration to applications under this section for programs and projects aimed at underserved populations such as racial and ethnic minorities, Native Americans (including Native Hawaiians and Native American Pacific Islanders), youth, the elderly, women, handicapped individuals, public inebriates, and families of alcoholics.

(5)(A) No grant may be made under this section to a State or to any entity within the government of a State unless the grant application has been duly authorized by the chief executive officer of such State.

(B) No grant or contract may be made under this section for a period in excess of five years.

(C)(i) The amount of any grant or contract under this section may not exceed 100 per centum of the cost of carrying out the grant or contract in the first fiscal year for which the grant or contract is made under this section, 80 per centum of such cost in the second fiscal year for which the grant or contract is made under this section, 70 per centum of such cost in the third fiscal year for which the grant or contract is made under this section, and 60 per centum of such cost in each of the fourth and fifth fiscal years for which the grant or contract is made under this section.

(ii) For purposes of this subparagraph, no grant or contract shall be considered to have been made under this section for a fiscal year ending before September 30, 1981.

(6) Each applicant, upon filing its application with the Secretary for a grant or contract to provide prevention or treatment services, shall provide a proposed performance standard or standards to measure, or research protocol to determine, the effectiveness of such services.

(7) Nothing shall prevent the use of funds provided under this section for programs and projects aimed at the prevention, treatment, or rehabilitation of drug abuse as well as alcohol abuse and alcoholism.

(Pub. L. 91–616, title III, § 311, as added Pub. L. 93–282, title I, § 111, May 14, 1974, 88 Stat. 129; amended Pub. L. 94–371, §§ 4(c)(1), 6, 12(a), July 26, 1976, 90 Stat. 1035, 1037, 1041; Pub. L. 94–573, § 19(a), Oct. 21, 1976, 90 Stat. 2720; Pub. L. 95–83, title III, § 311(c), Aug. 1, 1977, 91 Stat. 398; Pub. L. 96–180, § 11, Jan. 2, 1980, 93 Stat. 1304; Pub. L. 97–35, title IX, § 963(b), (c), Aug. 13, 1981, 95 Stat. 593; Pub. L. 97–414, § 9(d), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 98–24, § 5(a)(1), Apr. 26, 1983, 97 Stat. 183.)

REFERENCES IN TEXT

Section 300*l* of this title, referred to in subsec. (a)(2), was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

PRIOR PROVISIONS

A prior section 311 of Pub. L. 91–616, title III, Dec. 31, 1970, 84 Stat. 1851, amended former section 2688j–2 of this title, which was repealed by Pub. L. 93–282, § 302, and is incorporated in this section.

Provisions similar to those comprising this section were contained in Pub. L. 88–164, title II, § 247, formerly § 246, as added Pub. L. 90–574, title III, § 301, Oct. 15, 1968, 82 Stat. 1009; renumbered § 247, Pub. L. 91–211, title III, § 304, Mar. 13, 1970, 84 Stat. 59; amended Pub. L. 91–616, title III, § 311, Dec. 31, 1970, 84 Stat. 1851; Pub. L. 93–45, title II, § 204(b), June 18, 1973, 87 Stat. 94, which was classified to section 2688j–2 of this title prior to repeal by Pub. L. 93–282, § 302.

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–414, § 9(d)(1), amended directory language of Pub. L. 97–35, § 963(b)(4), to correct a typographical error, and did not involve any change in text. See 1981 Amendment note below.

Subsec. (a)(3). Pub. L. 97–414, § 9(d)(2), substituted a comma for the period at end.

Subsec. (c)(4). Pub. L. 98–24 inserted parenthetical reference to Native Hawaiians and Native American Pacific Islanders.

1981—Subsec. (a). Pub. L. 97–35, § 963(b), as amended by Pub. L. 97–414, § 9(d)(1), restructured and revised provisions and in par. (1) inserted provisions respecting program emphasis, struck out pars. (3) and (5), relating to services for underserved populations and programs and services for law enforcement personnel, etc., respectively, and redesignated former par. (4) as (3).

Subsec. (c). Pub. L. 97–35, § 963(c), revised and restructured provisions and, among changes, in pars. (2), (3), and (4) made changes in phraseology, added pars. (5) and (7), and redesignated former par. (5) as (6).

1980—Subsec. (a). Pub. L. 96–180, § 11(a), added par. (1), redesignated as pars. (2) to (5) former pars. (1) to (4), and substituted in par. (2) ''support projects of a demonstrable value in developing'' for ''conduct demonstration and evaluation projects, including projects designed to develop'' and in par. (3) ''the elderly, women, the handicapped, families of alcoholics, and victims of alcohol-related domestic violence'' for ''female alcoholics, and individuals in geographic areas where such services are not otherwise adequately available''.

Subsec. (b). Pub. L. 96–180, § 11(b), added cl. (1), redesignated as cls. (2) to (4) former cls. (1) to (3), and in cl. (2) inserted ''(in the case of prevention and treatment services)'' after ''seek''.

Subsec. (c)(4). Pub. L. 96–180, § 11(c), required Secretary to encourage submission of applications, incorporated existing provisions in cls. (A) and (C), and inserted cl. (B).

1977—Subsec. (c)(2)(B)(i). Pub. L. 95–83 substituted ''its'' for ''his''.

1976—Subsec. (a). Pub. L. 94–371, § 6(a), inserted provisions which authorized development of effective coordination of all alcoholism treatment resources available, emphasis in treatment projects of those of the population currently underserved, and, training of personnel to enable them to meet certification requirements of public and private accreditation.

Subsec. (b). Pub. L. 94–371, § 6(b), added cl. (2). Former cl. (2) redesignated (3).

Subsec. (c)(2). Pub. L. 94–573 inserted provision that requirements for submission of applications to the Council for review and approval not apply to a grant application for a project or program for any period of 12 consecutive months for which period payments under such grant will be less than $250,000, if a grant application for a project or program and for a period of time which includes such 12 month period has been submitted to, and approved by, the Secretary.

Pub. L. 94–371, § 12(a), inserted provision that each grant application be submitted by the Secretary to the Council for review and could not be approved by the Secretary unless recommended for approval by the Council.

Subsec. (c)(4), (5). Pub. L. 94–371, § 6(c), added pars. (4) and (5).

Subsec. (d). Pub. L. 94–371, § 4(c)(1), struck out subsec. (d) which related to authorization of appropriations for fiscal year ending June 30, 1975 and fiscal year ending June 30, 1976. Provisions are now covered by section 4578 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 4(c) of Pub. L. 94–371 provided that the amendment made by section 4(c)(1) of Pub. L. 94–371 is effective July 1, 1976.

Section 12(b) of Pub. L. 94–371 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to applications for grants under section 311 of the Act [this section] after June 30, 1976.''

Section 19(b) of Pub. L. 94–573 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to applications for grants under section 311 of such Act [this section] after June 30, 1976.''

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 4578. Authorizations of appropriations

For purposes of section 4577 of this title, there are authorized to be appropriated $85,000,000 for the fiscal year ending September 30, 1977, $91,000,000 for the fiscal year ending September 30, 1978, $102,500,000 for the fiscal year ending September 30, 1979, $102,500,000 for the fiscal year ending September 30, 1980, $115,000,000 for the fiscal year ending September 30, 1981, and $15,000,000 for the fiscal year ending September 30, 1982. Of the funds appropriated under this section for the fiscal year ending September 30, 1980, at least 8 percent of the funds shall be obligated for grants for projects, programs, and services to prevent (through outreach, intervention, and education) the occurrence of alcoholism and alcohol abuse; of the funds appropriated under this section for the next fiscal year at least 10 percent of the funds shall be obligated for such grants; and of the funds appropriated

under this section for the fiscal year ending September 30, 1982, at least 25 per centum of the funds shall be obligated for such grants.

(Pub. L. 91–616, title III, § 312, as added Pub. L. 94–371, § 4(c)(3), July 26, 1976, 90 Stat. 1036; amended Pub. L. 96–180, § 12, Jan. 2, 1980, 93 Stat. 1304; Pub. L. 97–35, title IX, § 964, Aug. 13, 1981, 95 Stat. 594.)

AMENDMENTS

1981—Pub. L. 97–35 inserted provisions respecting authorization and obligation of funds for fiscal year ending Sept. 30, 1982, and struck out reference to section 4576 of this title.

1980—Pub. L. 96–180 authorized appropriation of $102,500,000 and $115,000,000 and prescribed minimum of 8 and 10 percent of the funds for preventative projects, programs, and services for fiscal years ending Sept. 30, 1980, and 1981.

EFFECTIVE DATE

Section 4(c) of Pub. L. 94–371 provided in part that this section is effective July 1, 1976.

PART C—ADMISSION TO HOSPITALS AND OUTPATIENT FACILITIES; CONFIDENTIALITY OF RECORDS

CODIFICATION

Part consists of part C and portions of part D of title III of Pub. L. 91–616. Part B of such title enacted section 2688j–2 of this title. Part D, in addition to enacting section 4582 of this title, amended sections 246 and 2688h of this title.

§§ 4581, 4582. Transferred

CODIFICATION

Section 4581, Pub. L. 91–616, title III, § 321, Dec. 31, 1970, 84 Stat. 1852; Pub. L. 93–282, title I, § 121(a), May 14, 1974, 88 Stat. 130; Pub. L. 94–371, § 11(a), (b), July 26, 1976, 90 Stat. 1041; Pub. L. 94–581, title I, § 111(c)(1), Oct. 21, 1976, 90 Stat. 2852, which provided for the admission of alcohol abusers and alcoholics to general hospitals and outpatient facilities, was redesignated section 522 of the Public Health Service Act by Pub. L. 98–24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd–2 of this title.

Section 4582, Pub. L. 91–616, title III, § 333, Dec. 31, 1970, 84 Stat. 1853; Pub. L. 93–282, title I, § 122(a), May 14, 1974, 88 Stat. 131; Pub. L. 94–581, title I, § 111(c)(4), Oct. 21, 1976, 90 Stat. 2852, which provided for confidentiality of patient records, was redesignated section 523 of the Public Health Service Act by Pub. L. 98–24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd–3 of this title.

SUBCHAPTER IV—RESEARCH

§ 4585. Transferred

CODIFICATION

Section, Pub. L. 91–616, title V, § 501, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038; amended Pub. L. 95–622, title II, § 268(c), (d), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96–180, § 14, Jan. 2, 1980, 93 Stat. 1305, which directed Secretary to take certain steps to encourage research, was redesignated section 510 of the Public Health Service Act by Pub. L. 98–24, § 2(b)(9), Apr. 26, 1983, 97 Stat. 179, and is classified to section 290bb of this title.

A prior section 501 of Pub. L. 91–616, title V, Dec. 31, 1970, 84 Stat. 1854, was renumbered 601 by section 7 of Pub. L. 94–371, and is classified to section 4591 of this title.

§ 4586. Repealed. Pub. L. 98–24, § 2(c)(1), Apr. 26, 1983, 97 Stat. 182

Section, Pub. L. 91–616, title V, § 502, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1039, provided for scientific peer review of grants and contracts. See section 290aa–5 of this title.

A prior section 502 of Pub. L. 91–616, title V, Dec. 31, 1970, 84 Stat. 1854, was renumbered 602 by section 7 of Pub. L. 94–371, and is classified to section 4592 of this title.

§§ 4587, 4588. Transferred

CODIFICATION

Section 4587, Pub. L. 91–616, title V, § 503, formerly § 504, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 95–622, title I, § 110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96–180, § 16, Jan. 2, 1980, 93 Stat. 1305; renumbered and amended Pub. L. 97–35, title IX, § 965(b), (c), Aug. 13, 1981, 95 Stat. 594, which provided for designation of National Alcohol Research Centers, was redesignated section 511 of the Public Health Service Act by Pub. L. 98–24, § 2(b)(9), Apr. 26, 1983, 97 Stat. 179, and is classified to section 290bb–1 of this title.

A prior section 4587, Pub. L. 91–616, title V, § 503, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 96–180, § 15, Jan. 2, 1980, 93 Stat. 1305, which related to authorization of appropriations, was renumbered section 504 of Pub. L. 91–616 and classified to section 4588 of this title.

A prior section 503 of Pub. L. 91–616, title V, Dec. 31, 1970, 84 Stat. 1855, was renumbered 603 by section 7 of Pub. L. 94–371, and is classified to section 4593 of this title.

Section 4588, Pub. L. 91–616, title V, § 504, formerly § 503, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 96–180, § 15, Jan. 2, 1980, 93 Stat. 1305; renumbered and amended Pub. L. 97–35, title IX, § 965(a), (c), Aug. 13, 1981, 95 Stat. 594; Pub. L. 97–414, § 9(e), Jan. 4, 1983, 96 Stat. 2064, which authorized appropriations for carrying out research on alcohol abuse and alcoholism, was redesignated section 512 of the Public Health Service Act by Pub. L. 98–24, § 2(b)(9), Apr. 26, 1983, 97 Stat. 179, and is classified to section 290bb–2 of this title.

A prior section 4588, Pub. L. 91–616, title V, § 504, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 95–622, title I, § 110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96–180, § 16, Jan. 2, 1980, 93 Stat. 1305, relating to National Alcohol Research Centers, was renumbered section 503 of Pub. L. 91–616 and classified to section 4587 of this title.

SUBCHAPTER V—GENERAL PROVISIONS

§ 4591. Separability

If any section, provision, or term of this chapter is adjudged invalid for any reason, such judgment shall not affect, impair, or invalidate any other section, provision, or term of this chapter, and the remaining sections, provisions, and terms shall be and remain in full force and effect.

(Pub. L. 91–616, title VI, § 601, formerly title V, § 501, Dec. 31, 1970, 84 Stat. 1854, renumbered Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 91–616, Dec. 31, 1970, 84 Stat. 1848, as amended, known as the ''Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970'', which enacted this chapter and section 2688j–2 of this title and amended sections 218, 246, 2688h, and 2688t of this title. For com-

plete classification of this Act to the Code, see Short Title note set out under section 4541 of this title and Tables.

CODIFICATION

Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038, redesignated title V of Pub. L. 91–616, which was classified to subchapter IV of this chapter, as title VI without renumbering the sections therein. Section 501 of Pub. L. 91–616 was renumbered 601, as the probable intent of Congress.

§ 4592. Recordkeeping for audit

(a) Each recipient of assistance under this chapter pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant or contract, the total cost of the project or undertaking in connection with which such grant or contract is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients that are pertinent to the grants or contracts entered into under the provisions of this chapter under other than competitive bidding procedures.

(Pub. L. 91–616, title VI, § 602, formerly title V, § 502, Dec. 31, 1970, 84 Stat. 1854, renumbered Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038.)

CODIFICATION

Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038, redesignated title V of Pub. L. 91–616, which was classified to subchapter IV of this chapter, as title VI without renumbering the sections therein. Section 502 of Pub. L. 91–616 was renumbered 602, as the probable intent of Congress.

§ 4593. Payments

Payments under this chapter may be made in advance or by way of reimbursement and in such installments as the Secretary may determine.

(Pub. L. 91–616, title VI, § 603, formerly title V, § 503, Dec. 31, 1970, 84 Stat. 1855, renumbered Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038.)

CODIFICATION

Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038, redesignated title V of Pub. L. 91–616, which was classified to subchapter IV of this chapter, as title VI without renumbering the sections therein. Section 503 of Pub. L. 91–616 was renumbered 603, as the probable intent of Congress.

§ 4594. Contract authority in appropriation Acts

The authority of the Secretary to enter into contracts under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 91–616, title VI, § 604, as added Pub. L. 96–180, § 17, Jan. 2, 1980, 93 Stat. 1306.)

CHAPTER 61—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

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SUBCHAPTER I—GENERAL PROVISIONS

§ 4601. Definitions

As used in this chapter—

(1) The term ''Federal agency'' means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(2) The term ''State'' means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term ''State agency'' means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of 2 or more States or of 2 or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(4) The term ''Federal financial assistance'' means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the District of Columbia.

(5) The term ''person'' means any individual, partnership, corporation, or association.

(6)(A) The term ''displaced person'' means, except as provided in subparagraph (B)—

(i) any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business defined in paragraph (7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and

(ii) solely for the purposes of sections 4622(a) and (b) and 4625 of this title, any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

(B) The term ''displaced person'' does not include—

(i) a person who has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this chapter;

(ii) in any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(7) The term ''business'' means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 4622 of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term ''farm operation'' means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term ''mortgage'' means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(10) The term ''comparable replacement dwelling'' means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally equivalent; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(11) The term ''displacing agency'' means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(12) The term ''lead agency'' means the Department of Transportation.

(13) The term ''appraisal'' means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(Pub. L. 91–646, title I, § 101, Jan. 2, 1971, 84 Stat. 1894; Pub. L. 100–17, title IV, § 402, Apr. 2, 1987, 101 Stat. 246.)

REFERENCES IN TEXT

This chapter, referred to in introductory provision and par. (6)(B)(i), was in the original ''this Act'', meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1987—Par. (1). Pub. L. 100–17, § 402(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'Federal agency' means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.''

Par. (3). Pub. L. 100–17, § 402(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'State agency' means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.''

Par. (4). Pub. L. 100–17, § 402(c), inserted '', any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual,'' after ''insurance''.

Par. (6). Pub. L. 100–17, § 402(d), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.''

Par. (7)(D). Pub. L. 100–17, § 402(f), substituted ''section 4622'' for ''section 4622(a)''.

Pars. (10) to (13). Pub. L. 100–17, § 402(e), added pars. (10) to (13).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 418 of title IV of Pub. L. 100–17 provided that: ''The amendment made by section 412 of this title [amending section 4633 of this title] (to the extent such amendment prescribes authority to develop, publish, and issue regulations) shall take effect on the date of the enactment of this title [Apr. 2, 1987]. This title and the amendments made by this title [enacting section 4604 of this title, amending this section and sections 4621 to 4626, 4630, 4631, 4633, 4636, 4638, 4651, and 4655 of this title, repealing sections 4634 and 4637 of this title, and enacting provisions set out as a note under this section] (other than the amendment made by section 412 to such extent) shall take effect on the effective date provided in such regulations but not later than 2 years after such date of enactment.''

EFFECTIVE DATE

Section 221 of Pub. L. 91–646 provided that:

''(a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act [see Short Title note below] shall take effect on the date of its enactment [Jan. 2, 1971].

''(b) Until July 1, 1972, sections 210 and 305 [sections 4630 and 4655 of this title] shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections [sections 4630 and 4655 of this title] shall be completely applicable to all States.

''(c) The repeals made by paragraphs (4) [repealing section 1606(b) of former Title 49, Transportation], (5) [repealing section 1465 of this title], (6) [repealing section 1415(7)(b)(iii) and (8) second sentence of this title], (8) [repealing section 3074 of this title], (9) [repealing section 3307(b), (c) of this title], (10) [repealing chapter 5 (sections 501–511) of Title 23, Highways], (11) [repealing provisions set out as notes under sections 501 and 510 of Title 23], and (12) of section 220(a) of this title and section 306 of title III [repealing sections 3071 to 3073 of this title, section 141 of Title 23, and section 596 of Title 33, Navigation and Navigable Waters] shall not apply to any State so long as sections 210 and 305 [sections 4630 and 4655 of this title] are not applicable in such State.''

SHORT TITLE OF 1987 AMENDMENT

Section 401 of title IV of Pub. L. 100–17 provided that: ''This title [enacting section 4604 of this title, amending this section and sections 4621 to 4626, 4630, 4631, 4633, 4636, 4638, 4651, and 4655 of this title, repealing sections 4634 and 4637 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Uniform Relocation Act Amendments of 1987'.''

SHORT TITLE

Section 1 of Pub. L. 91–646 provided: ''That this Act [enacting this chapter, amending sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealing sections 1465 and 3071 to 3074 of this title, section 2680 of Title 10, Armed Forces, sections 141 and 501 to 512 of Title 23, Highways, section 596 of Title 33, Navigation and Navigable Waters, sections 1231 to 1234 of Title 43, Public Lands, and enacting provisions set out as notes under this section and sections 4621 and 4651 of this title, and repealing provisions set out as notes under sections 501 and 510 of Title 23] may be cited as the 'Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970'.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TREATMENT OF REAL PROPERTY BUYOUT PROGRAMS

Pub. L. 103–181, § 4, Dec. 3, 1993, 107 Stat. 2055, provided that:

''(a) INAPPLICABILITY OF URA.—The purchase of any real property under a qualified buyout program shall not constitute the making of Federal financial assistance available to pay all or part of the cost of a program or project resulting in the acquisition of real property or in any owner of real property being a displaced person (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.]).

''(b) DEFINITION OF 'QUALIFIED BUYOUT PROGRAM'.—For purposes of this section, the term 'qualified buyout program' means any program that—

''(1) provides for the purchase of only property damaged by the major, widespread flooding in the Midwest during 1993;

''(2) provides for such purchase solely as a result of such flooding;

''(3) provides for such acquisition without the use of the power of eminent domain and notification to the seller that acquisition is without the use of such power;

''(4) is carried out by or through a State or unit of general local government; and

''(5) is being assisted with amounts made available for—

''(A) disaster relief by the Federal Emergency Management Agency; or

''(B) other Federal financial assistance programs.''

[For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.]

[For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

§ 4602. Effect upon property acquisition

(a) The provisions of section 4651 of this title create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971.

(Pub. L. 91–646, title I, § 102, Jan. 2, 1971, 84 Stat. 1895.)

§ 4603. Additional appropriations for moving costs, relocation benefits and other expenses incurred in acquisition of lands for National Park System; waiver of benefits

(a) In all instances where authorizations of appropriations for the acquisition of lands for the National Park System enacted prior to January 9, 1971, do not include provisions therefor, there are authorized to be appropriated such additional sums as may be necessary to provide for moving costs, relocation benefits, and other expenses incurred pursuant to the applicable provisions of this chapter. There are also authorized to be appropriated not to exceed $8,400,000 in addition to those authorized in Public Law 92–272 (86 Stat. 120) to provide for such moving costs, relocation benefits, and other related expenses in connection with the acquisition of lands authorized by Public Law 92–272.

(b) Whenever an owner of property elects to retain a right of use and occupancy pursuant to any statute authorizing the acquisition of property for purposes of a unit of the National Park System, such owner shall be deemed to have waived any benefits under sections 4623, 4624, 4625, and 4626 of this title, and for the purposes of those sections such owner shall not be considered a displaced person as defined in section 4601(6) of this title.

(Pub. L. 93–477, title IV, § 405, Oct. 26, 1974, 88 Stat. 1448.)

REFERENCES IN TEXT

Public Law 92–272, referred to in subsec. (a), is Pub. L. 92–272, Apr. 11, 1972, 86 Stat. 120, which to the extent classified to the Code, amended sections 284b, 428m, 459f–10, 460m–1, 460m–7 and 460t–4 of Title 16, Conservation, and amended a provision set out as a note under section 450*ll* of Title 16. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which comprises this chapter.

§ 4604. Certification

(a) Acceptance of State agency certification

Notwithstanding sections 4630 and 4655 of this title, the head of a Federal agency may discharge any of his responsibilities under this chapter by accepting a certification by a State agency that it will carry out such responsibility, if the head of the lead agency determines that such responsibility will be carried out in accordance with State laws which will accomplish the purpose and effect of this chapter.

(b) Promulgation of regulations; notice and comment; consultation with local governments

(1) The head of the lead agency shall issue regulations to carry out this section.

(2) Repealed. Pub. L. 104–66, title I, § 1121(f), Dec. 21, 1995, 109 Stat. 724.

(3) Before making a determination regarding any State law under subsection (a) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within the State on the effects of such State law on the ability of local governments to carry out their responsibilities under this chapter.

(c) Effect of noncompliance with certification or with applicable law

(1) The head of a Federal agency may withhold his approval of any Federal financial assistance to or contract or cooperative agreement with any displacing agency found by the Federal agency to have failed to comply with the laws described in subsection (a) of this section.

(2) After consultation with the head of the lead agency, the head of a Federal agency may rescind his acceptance of any certification under this section, in whole or in part, if the State agency fails to comply with such certification or with State law.

(Pub. L. 91–646, title I, § 103, as added Pub. L. 100–17, title IV, § 403, Apr. 2, 1987, 101 Stat. 248; amended Pub. L. 104–66, title I, § 1121(f), Dec. 21, 1995, 109 Stat. 724.)

AMENDMENTS

1995—Subsec. (b)(2). Pub. L. 104–66 struck out par. (2) which read as follows: ''The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of this section. A State agency shall make available any information required for such purpose.''

EFFECTIVE DATE

Section effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as an Effective Date of 1987 Amendment note under section 4601 of this title.

§ 4605. Displaced persons not eligible for assistance

(a) In general

Except as provided in subsection (c) of this section, a displaced person shall not be eligible to receive relocation payments or any other assistance under this chapter if the displaced person is an alien not lawfully present in the United States.

(b) Determinations of eligibility

(1) Promulgation of regulations

Not later than 1 year after November 21, 1997, after providing notice and an opportunity for public comment, the head of the lead agency shall promulgate regulations to carry out subsection (a) of this section.

(2) Contents of regulations

Regulations promulgated under paragraph (1) shall—

(A) prescribe the processes, procedures, and information that a displacing agency must use in determining whether a displaced person is an alien not lawfully present in the United States;

(B) prohibit a displacing agency from discriminating against any displaced person;

(C) ensure that each eligibility determination is fair and based on reliable information; and

(D) prescribe standards for a displacing agency to apply in making determinations relating to exceptional and extremely unusual hardship under subsection (c) of this section.

(c) Exceptional and extremely unusual hardship

If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person under subsection (a) of this section would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, parent, or child and who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, the displacing agency shall provide relocation payments and other assistance to the displaced person under this chapter if the displaced person would be eligible for the assistance but for subsection (a) of this section.

(d) Limitation on statutory construction

Nothing in this section affects any right available to a displaced person under any other provision of Federal or State law.

(Pub. L. 91–646, title I, § 104, as added Pub. L. 105–117, § 1, Nov. 21, 1997, 111 Stat. 2384.)

SUBCHAPTER II—UNIFORM RELOCATION ASSISTANCE

§ 4621. Declaration of findings and policy

(a) Findings

The Congress finds and declares that—

(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

(2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;

(3) the displacement of businesses often results in their closure;

(4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities; and

(5) implementation of this chapter has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which will be improved by establishing a lead agency and allowing for State certification and implementation.

(b) Policy

This subchapter establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this subchapter is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

(c) Congressional intent

It is the intent of Congress that—

(1) Federal agencies shall carry out this subchapter in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs borne by States and State agencies in providing relocation assistance;

(2) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this chapter;

(3) the improvement of housing conditions of economically disadvantaged persons under this subchapter shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals; and

(4) the policies and procedures of this chapter will be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII of the Act of April 11, 1968 (Public Law 90–284), commonly known as the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], and title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(Pub. L. 91–646, title II, § 201, Jan. 2, 1971, 84 Stat. 1895; Pub. L. 100–17, title IV, § 404, Apr. 2, 1987, 101 Stat. 248.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(5) and (c)(2), (4), was in the original ''this Act'', meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which enacted this chapter, amend-

ed sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3071 to 3074 of this title, section 2680 of Title 10, Armed Forces, sections 141 and 501 to 512 of Title 23, Highways, section 596 of Title 33, Navigation and Navigable Waters, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601, 4621, and 4651 of this title and under section 501 of Title 23. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

This subchapter, referred to in subsecs. (b) and (c)(1), (3), was in the original ''this title'', meaning title II of Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1895, which enacted this subchapter, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, sections 501 to 512 of Title 23, sections 1231 to 1234 of Title 43, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Tables.

Title VIII of the Act of April 11, 1968 (Public Law 90–284), commonly known as the Civil Rights Act of 1968, referred to in subsec. (c)(4), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, known as the Fair Housing Act, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(4), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1987—Pub. L. 100–17 substituted ''Declaration of findings and policy'' for ''Declaration of policy'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

SAVINGS PROVISION

Section 220(b) of Pub. L. 91–646 provided that: ''Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section [repealing sections 1415(7)(b)(iii), (8) second sentence, 1465, 2473(b)(14), 3074, and 3307(b), (c) of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and section 1606(b) of former Title 49, Transportation, and provisions set out as notes under sections 501 and 511 of Title 23].''

§ 4622. Moving and related expenses

(a) General provision

Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;

(3) actual reasonable expenses in searching for a replacement business or farm; and

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $10,000.

(b) Displacement from dwelling; election of payments: expense and dislocation allowance

Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.

(c) Displacement from business or farm operation; election of payments; minimum and maximum amounts; eligibility

Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than $1,000 nor more than $20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

(d) Certain utility relocation expenses

(1) Except as otherwise provided by Federal law—

(A) if a program or project (i) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;

(B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

(C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation;

the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed the amount of

such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).

(2) For purposes of this subsection, the term—

(A) ''extraordinary cost in connection with a relocation'' means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue—

(i) to be a non-routine relocation expense;

(ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and

(iii) to meet such other requirements as the lead agency may prescribe in such regulations; and

(B) ''utility facility'' means—

(i) any electric, gas, water, steam power, or materials transmission or distribution system;

(ii) any transportation system;

(iii) any communications system (including cable television); and

(iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system;

located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned.

(Pub. L. 91–646, title II, § 202, Jan. 2, 1971, 84 Stat. 1895; Pub. L. 100–17, title IV, § 405, Apr. 2, 1987, 101 Stat. 249.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–17, § 405(a)(1), inserted introductory provisions and struck out former introductory provisions which read as follows: ''Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—''.

Subsec. (a)(4). Pub. L. 100–17, § 405(a)(2)–(4), added par. (4).

Subsec. (b). Pub. L. 100–17, § 405(b), substituted ''an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency'' for ''a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200''.

Subsec. (c). Pub. L. 100–17, § 405(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term 'average annual net earnings' means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.''

Subsec. (d). Pub. L. 100–17, § 405(d), added subsec. (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§ 4623. Replacement housing for homeowner; mortgage insurance

(a)(1) In addition to payments otherwise authorized by this subchapter, the head of the displacing agency shall make an additional payment not in excess of $22,500 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 4625(c)(3) of this title is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mort-

gage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

(Pub. L. 91–646, title II, § 203, Jan. 2, 1971, 84 Stat. 1896; Pub. L. 100–17, title IV, § 406, Apr. 2, 1987, 101 Stat. 251.)

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–17, § 406(1)–(3), substituted ''displacing agency'' for ''Federal agency'' and ''$22,500'' for ''$15,000'' in introductory provisions, and in subpar. (A) ''acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling'' for ''acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment''.

Subsec. (a)(1)(B). Pub. L. 100–17, § 406(4), added subpar. (B) and struck out former subpar. (B) which read as follows: ''The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.''

Subsec. (a)(2). Pub. L. 100–17, § 406(5), added par. (2) and struck out former par. (2) which read as follows: ''The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§ 4624. Replacement housing for tenants and certain others

(a) In addition to amounts otherwise authorized by this subchapter, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4623 of this title which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed $5,250. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a) of this section, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 4623(a) of this title had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.

(Pub. L. 91–646, title II, § 204, Jan. 2, 1971, 84 Stat. 1897; Pub. L. 100–17, title IV, § 407, Apr. 2, 1987, 101 Stat. 251.)

AMENDMENTS

1987—Pub. L. 100–17 amended section generally, revising and restating as subsecs. (a) and (b) provisions formerly contained in introductory provisions and in pars. (1) and (2).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§ 4625. Relocation planning, assistance coordination, and advisory services

(a) Planning of programs or projects undertaken by Federal agencies or with Federal financial assistance

Programs or projects undertaken by a Federal agency or with Federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement

of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(b) Availability of advisory services

The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

(c) Measures, facilities, or services; description

Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(2) provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of—

(A) a major disaster as defined in section 5122(2) of this title;

(B) a national emergency declared by the President; or

(C) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person;

(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply (A) information concerning other Federal and State programs which may be of assistance to displaced persons, and (B) technical assistance to such persons in applying for assistance under such programs; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) Coordination of relocation activities with other Federal, State, or local governmental actions

The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(e) Selection of implementation procedures

Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may agree that the procedures of one of such agencies shall be utilized to implement this subchapter with respect to such activities. If such agreement cannot be reached, then the head of the lead agency shall designate one of such agencies as the agency whose procedures shall be utilized to implement this subchapter with respect to such activities. Such related activities shall constitute a single program or project for purposes of this chapter.

(f) Tenants occupying property acquired for programs or projects; eligibility for advisory services

Notwithstanding section 4601(1) of this title, in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency.

(Pub. L. 91–646, title II, § 205, Jan. 2, 1971, 84 Stat. 1897; Pub. L. 100–17, title IV, § 408, Apr. 2, 1987, 101 Stat. 252.)

AMENDMENTS

1987—Pub. L. 100–17, substituted ''Relocation planning, assistance coordination, and advisory services'' for ''Relocation assistance advisory services'' in catchline and amended text generally, revising and restating as subsecs. (a) to (f) provisions formerly contained in subsecs. (a) to (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§ 4626. Housing replacement by Federal agency as last resort

(a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under sections 4623 and 4624 of this title on a case-by-case basis for good cause as determined in accordance with such regulations as the head of the lead agency shall issue.

(b) No person shall be required to move from his dwelling on account of any program or project undertaken by a Federal agency or with Federal financial assistance, unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person.

(Pub. L. 91–646, title II, § 206, Jan. 2, 1971, 84 Stat. 1898; Pub. L. 100–17, title IV, § 409, Apr. 2, 1987, 101 Stat. 253.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–17 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.''

Subsec. (b). Pub. L. 100–17 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 4625(c)(3) of this title, is available to such person.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§ 4627. State required to furnish real property incident to Federal assistance (local cooperation)

Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 4630 and 4655 of this title. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance.

(Pub. L. 91–646, title II, § 207, Jan. 2, 1971, 84 Stat. 1898.)

§ 4628. State acting as agent for Federal program

Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this chapter, be deemed an acquisition by the Federal agency having authority over such program or project.

(Pub. L. 91–646, title II, § 208, Jan. 2, 1971, 84 Stat. 1899.)

§ 4629. Public works programs and projects of District of Columbia government and Washington Metropolitan Area Transit Authority

Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 4630 and 4631 of this title, and such acquisition will result in the displacement of any person on or after January 2, 1971, the Mayor of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this chapter. Whenever real property is acquired for such a program or project on or after such effective date, such Mayor or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by subchapter III of this chapter.

(Pub. L. 91–646, title II, § 209, Jan. 2, 1971, 84 Stat. 1899; Pub. L. 93–198, title IV, § 421, Dec. 24, 1973, 87 Stat. 789.)

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in text, was in the original ''title III of this Act'', meaning title III of Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1904, which enacted subchapter III of this chapter, repealed sections 3071 to 3073 of this title, section 141 of Title 23, Highways, and section 596 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as a note under section 4651 of this title. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section is also set out in D.C. Code, § 5–834(a).

TRANSFER OF FUNCTIONS

''Mayor'' substituted for ''Commissioner'' pursuant to section 421 of Pub. L. 93–198. Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by Office of Mayor of District of Columbia by section 421 of Pub. L. 93–198.

§ 4630. Requirements for relocation payments and assistance of federally assisted program; assurances of availability of housing

Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a displacing agency (other than a Federal agency), under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, unless he receives satisfactory assurances from such displacing agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 4622, 4623, and 4624 of this title;

(2) relocation assistance programs offering the services described in section 4625 of this title shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with section 4625(c)(3) of this title.

(Pub. L. 91–646, title II, § 210, Jan. 2, 1971, 84 Stat. 1899; Pub. L. 100–17, title IV, § 410, Apr. 2, 1987, 101 Stat. 254.)

AMENDMENTS

1987—Pub. L. 100–17 in introductory provisions substituted ''displacing agency (other than a Federal agen-

cy)'' for ''State agency'' and ''assurances from such displacing agency'' for ''assurances from such State agency'', and in par. (3) substituted ''comparable replacement dwellings'' for ''decent, safe, and sanitary replacement dwellings''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

EFFECTIVE DATE

Section as completely applicable to all States after July 1, 1972, but until such date applicable to a State to extent the State is able under its laws to comply with this section, see section 221(b) of Pub. L. 91–646, set out as a note under section 4601 of this title.

§ 4631. Federal share of costs

(a) Cost to displacing agency; eligibility

The cost to a displacing agency of providing payments and assistance under this subchapter and subchapter III of this chapter shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

(b) Comparable payments under other laws

No payment or assistance under this subchapter or subchapter III of this chapter shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by Federal, State, or local law which is determined by the head of the Federal agency to have substantially the same purpose and effect as such payment under this section.

(c) Agreements prior to January 2, 1971; advancements

Any grant to, or contract or agreement with, a State agency executed before January 2, 1971, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, shall be amended to include the cost of providing payments and services under sections 4630 and 4655 of this title. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 4626, 4630, 4635, and 4655 of this title.

(Pub. L. 91–646, title II, § 211, Jan. 2, 1971, 84 Stat. 1900; Pub. L. 100–17, title IV, § 411, Apr. 2, 1987, 101 Stat. 254.)

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in subsecs. (a) and (b), was in the original ''title III of this Act'', meaning title III of Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1904, which enacted subchapter III of this chapter, repealed sections 3071 to 3073 of this title, section 141 of Title 23, Highways, and section 596 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as a note under section 4651 of this title. For complete classification of title III to the Code, see Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–17, § 411(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The cost to a State agency of providing payments and assistance pursuant to sections 4626, 4630, 4635, and 4655 of this title, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 4626, 4630, 4635, and 4655 of this title, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first $25,000 of such cost.''

Subsec. (b). Pub. L. 100–17, § 411(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''No payment or assistance under section 4630 or 4655 of this title shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§ 4632. Administration; relocation assistance in programs receiving Federal financial assistance

In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 4626, 4630, and 4635 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this subchapter through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 4626 of this title, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

(Pub. L. 91–646, title II, § 212, Jan. 2, 1971, 84 Stat. 1900.)

§ 4633. Duties of lead agency

(a) General provisions

The head of the lead agency shall—

(1) develop, publish, and issue, with the active participation of the Secretary of Housing and Urban Development and the heads of other Federal agencies responsible for funding relocation and acquisition actions, and in coordination with State and local governments, such regulations as may be necessary to carry out this chapter;

(2) provide, in consultation with the Attorney General (acting through the Commissioner of the Immigration and Naturalization Service), through training and technical assistance activities for displacing agencies, information developed with the Attorney General (acting through the Commissioner) on proper implementation of section 4605 of this title;

(3) ensure that displacing agencies implement section 4605 of this title fairly and without discrimination in accordance with section 4605(b)(2)(B) of this title;

(4) ensure that relocation assistance activities under this chapter are coordinated with low-income housing assistance programs or projects by a Federal agency or a State or State agency with Federal financial assistance;

(5) monitor, in coordination with other Federal agencies, the implementation and enforcement of this chapter and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this chapter; and

(6) perform such other duties as may be necessary to carry out this chapter.

(b) Regulations and procedures

The head of the lead agency is authorized to issue such regulations and establish such procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this subchapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any aggrieved person may have his application reviewed by the head of the Federal agency having authority over the applicable program or project or, in the case of a program or project receiving Federal financial assistance, by the State agency having authority over such program or project or the Federal agency having authority over such program or project if there is no such State agency.

(c) Applicability to Tennessee Valley Authority and Rural Electrification Administration

The regulations and procedures issued pursuant to this section shall apply to the Tennessee Valley Authority and the Rural Electrification Administration only with respect to relocation assistance under this subchapter and subchapter I of this chapter.

(Pub. L. 91–646, title II, § 213, Jan. 2, 1971, 84 Stat. 1900; Pub. L. 100–17, title IV, § 412, Apr. 2, 1987, 101 Stat. 254; Pub. L. 102–240, title I, § 1055, Dec. 18, 1991, 105 Stat. 2002; Pub. L. 105–117, § 2, Nov. 21, 1997, 111 Stat. 2385.)

AMENDMENTS

1997—Subsec. (a)(2) to (6). Pub. L. 105–117 added pars. (2) and (3) and redesignated former pars. (2) to (4) as (4) to (6), respectively.

1991—Subsec. (c). Pub. L. 102–240 inserted ''and the Rural Electrification Administration'' after ''Tennessee Valley Authority''.

1987—Pub. L. 100–17 in amending section generally, substituted ''Duties of lead agency'' for ''Regulations and procedures'' in section catchline.

Subsec. (a). Pub. L. 100–17 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs.''

Subsec. (b). Pub. L. 100–17 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

''(1) that the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

''(2) that a displaced person who makes proper application for a payment authorized for such person by this subchapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

''(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.''

Subsec. (c). Pub. L. 100–17 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this chapter, as he deems necessary or appropriate to carry out this chapter.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of Title 23, Highways.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective Apr. 2, 1987, to the extent such amendment prescribes authority to develop, publish, and issue regulations, and otherwise to take effect on effective date provided in such regulations but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

IMPROVEMENT OF ADMINISTRATION AND IMPLEMENTATION OF THIS CHAPTER

Memorandum of the President dated February 27, 1985, 50 F.R. 8953, provided:

The purpose of this Memorandum is to improve administration and implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.].

Specifically, I hereby direct the following actions:

1. The Presidential Memorandum of September 6, 1973 on this subject is superseded.
2. As with other Administration management improvement initiatives, a lead agency, the Department of Transportation (DOT), is designated to coordinate and monitor implementation of the Act, and consult periodically with State and local governments and other organizations and interest groups affected by administration of the Act.
3. DOT, jointly with the Department of Housing and Urban Development, shall interact with the principal executive departments and agencies affected by the Act in developing Administration policy.
4. Within 90 days of the date of this Memorandum, all affected executive departments and agencies shall propose common regulations under the Act. Within one year of the date of this Memorandum, such departments and agencies shall issue common regulations under the Act. Such regulations shall be consistent with the model policy promulgated by DOT, in consultation and coordination with other affected agencies, and published in final form in the Federal Register simultaneously with this Memorandum.
5. DOT shall report annually to the President's Council on Management Improvement, through the Office of Management and Budget, on implementation of the Act.

§ 4634. Repealed. Pub. L. 100–17, title IV, § 415, Apr. 2, 1987, 100 Stat. 255

Section, Pub. L. 91–646, title II, § 214, Jan. 2, 1971, 84 Stat. 1901, required head of each Federal agency to submit an annual report to the President respecting programs and policies established or authorized by this chapter, and the President to submit such reports to Congress.

EFFECTIVE DATE OF REPEAL

Repeal effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as an Effective Date of 1987 Amendment note under section 4601 of this title.

§ 4635. Planning and other preliminary expenses for additional housing

In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts.

(Pub. L. 91–646, title II, § 215, Jan. 2, 1971, 84 Stat. 1901.)

§ 4636. Payments not to be considered as income for revenue purposes or for eligibility for assistance under Social Security Act or other Federal law

No payment received under this subchapter shall be considered as income for the purposes of title 26; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act [42 U.S.C. 301 et seq.] or any other Federal law (except for any Federal law providing low-income housing assistance).

(Pub. L. 91–646, title II, § 216, Jan. 2, 1971, 84 Stat. 1902; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–17, title IV, § 413, Apr. 2, 1987, 101 Stat. 255.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1987—Pub. L. 100–17 inserted "(except for any Federal law providing low-income housing assistance)" before period at end.

1986—Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§ 4637. Repealed. Pub. L. 100–17, title IV, § 415, Apr. 2, 1987, 101 Stat. 255

Section, Pub. L. 91–646, title II, § 217, Jan. 2, 1971, 84 Stat. 1902, related to displacement by code enforcement, rehabilitation, and demolition programs receiving Federal assistance.

EFFECTIVE DATE OF REPEAL

Repeal effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as an Effective Date of 1987 Amendment note under section 4601 of this title.

§ 4638. Transfers of surplus property

The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this subchapter, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended.[1] Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all net amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

(Pub. L. 91–646, title II, § 218, Jan. 2, 1971, 84 Stat. 1902; Pub. L. 100–17, title IV, § 414, Apr. 2, 1987, 101 Stat. 255.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1987—Pub. L. 100–17 inserted ''net'' after ''all''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

SUBCHAPTER III—UNIFORM REAL PROPERTY ACQUISITION POLICY

§ 4651. Uniform policy on real property acquisition practices

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 3114(a) to (d) of title 40, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by subchapter II of this chapter will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the

[1] See References in Text note below.

owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this chapter, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the Federal agency concerned has determined has little or no value or utility to the owner.

(10) A person whose real property is being acquired in accordance with this subchapter may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid therefor to a Federal agency, as such person shall determine.

(Pub. L. 91–646, title III, § 301, Jan. 2, 1971, 84 Stat. 1904; Pub. L. 100–17, title IV, § 416, Apr. 2, 1987, 101 Stat. 255.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in par. (5), was in the original ''title II of this Act'', meaning title II of Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1895, which enacted subchapter II of this chapter, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Short Title note set out under section 4601 of this title and Tables.

This chapter, referred to in par. (9), was in the original ''this Act'', meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which enacted this chapter, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, repealed sections 1465 and 3071 to 3074 of this title, section 2680 of Title 10, sections 141 and 501 to 512 of Title 23, section 596 of Title 33, Navigation and Navigable Waters, sections 1231 to 1234 of Title 43, and enacted provisions set out as notes under sections 4601, 4621, and 4651 of this title and under section 501 of Title 23. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

This subchapter, referred to in par. (10), was in the original ''this title'', meaning title III of Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1904, which enacted this subchapter, repealed sections 3071 to 3073 of this title, section 141 of Title 23, and section 596 of Title 33, and enacted provisions set out as a note under section 4651 of this title. For complete classification of title III to the Code, see Tables.

CODIFICATION

In par. (4), ''section 3114(a) to (d) of title 40'' substituted for ''section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1987—Par. (2). Pub. L. 100–17, § 416(a), inserted provision respecting the waiver of appraisal in cases involving the acquisition of property with a low fair market value.

Par. (9). Pub. L. 100–17, § 416(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.''

Par. (10). Pub. L. 100–17, § 416(c), added par. (10).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

SAVINGS PROVISION

Section 306 of Pub. L. 91–646 provided in part that: ''Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section [repealing sections 3071 to 3073 of this title, section 141 of Title 23, Highways, and section 596 of Title 33, Navigation and Navigable Waters].''

§ 4652. Buildings, structures, and improvements

(a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the

tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

(Pub. L. 91–646, title III, § 302, Jan. 2, 1971, 84 Stat. 1905.)

§ 4653. Expenses incidental to transfer of title to United States

The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

(Pub. L. 91–646, title III, § 303, Jan. 2, 1971, 84 Stat. 1906.)

§ 4654. Litigation expenses

(a) Judgment for owner or abandonment of proceedings

The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Payment

Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) Claims against United States

The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(Pub. L. 91–646, title III, § 304, Jan. 2, 1971, 84 Stat. 1906.)

§ 4655. Requirements for uniform land acquisition policies; payments of expenses incidental to transfer of real property to State; payment of litigation expenses in certain cases

(a) Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after January 2, 1971, unless he receives satisfactory assurances from such acquiring agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 4651 of this title and the provisions of section 4652 of this title, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 4653 and 4654 of this title.

(b) For purposes of this section, the term ''acquiring agency'' means—

(1) a State agency (as defined in section 4601(3) of this title) which has the authority to acquire property by eminent domain under State law, and

(2) a State agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation.

(Pub. L. 91–646, title III, § 305, Jan. 2, 1971, 84 Stat. 1906; Pub. L. 100–17, title IV, § 417, Apr. 2, 1987, 101 Stat. 256.)

AMENDMENTS

1987—Pub. L. 100–17 designated existing provisions as subsec. (a), substituted ''an acquiring agency'' for ''a State agency'' and ''such acquiring agency'' for ''such State agency'', and added subsec. (b).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

CHAPTER 62—INTERGOVERNMENTAL PERSONNEL PROGRAM

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4702. Administration of authorities.

SUBCHAPTER I—DEVELOPMENT OF POLICIES AND STANDARDS

4711 to 4713. Omitted.

SUBCHAPTER II—STRENGTHENING STATE AND LOCAL PERSONNEL ADMINISTRATION

4721. Declaration of purpose.
4722. State government and statewide programs and grants.

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4723. Local government programs and grants.
4724. Intergovernmental cooperation in recruiting and examining activities; potential employees, certification; payments for costs; credits to appropriation or fund for payment of expenses.
4725. Technical assistance; waiver of payments for costs; credits to appropriation or fund for payment of expenses.
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SUBCHAPTER IV—GENERAL PROVISIONS

4761. Declaration of purpose.
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4771. Method of payment; installments; advances or reimbursement; adjustments.
4772. Effective date of grant provisions.

§ 4701. Congressional findings and declaration of policy

The Congress hereby finds and declares—

That effective State and local governmental institutions are essential in the maintenance and development of the Federal system in an increasingly complex and interdependent society.

That, since numerous governmental activities administered by the State and local governments are related to national purpose and are financed in part by Federal funds, a national interest exists in a high caliber of public service in State and local governments.

That the quality of public service at all levels of government can be improved by the development of systems of personnel administration consistent with such merit principles as—

(1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;

(2) providing equitable and adequate compensation;

(3) training employees, as needed, to assure high-quality performance;

(4) retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;

(5) assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, or religious creed and with proper regard for their privacy and constitutional rights as citizens; and

(6) assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

That Federal financial and technical assistance to State and local governments for strengthening their personnel administration in a manner consistent with these principles is in the national interest.

(Pub. L. 91–648, § 2, Jan. 5, 1971, 84 Stat. 1909.)

SHORT TITLE

Section 1 of Pub. L. 91–648 provided: ''That this Act [enacting this chapter and sections 3371 to 3376 of Title 5, Government Organization and Employees, amending section 246(f) of this title, section 1304 of Title 5, repealing sections 1881 to 1888 of Title 7, Agriculture, and section 869b of Title 20, Education, and enacting provisions set out as notes under section 3371 of Title 5] may be cited as the 'Intergovernmental Personnel Act of 1970'.''

§ 4702. Administration of authorities

The authorities provided by this chapter shall be administered in such manner as (1) to recognize fully the rights, powers, and responsibilities of State and local governments, and (2) to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own systems of personnel administration.

(Pub. L. 91–648, § 3, Jan. 5, 1971, 84 Stat. 1909.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 91–648, Jan. 5, 1971, 84 Stat. 1909, as amended, known as the Intergovernmental Personnel Act of 1970, which enacted this chapter and sections 3371 to 3376 of Title 5, Government Organization and Employees, amended section 246(f) of this title, section 1304 of Title 5, repealed sections 1881 to 1888 of Title 7, Agriculture, and section 869b of Title 20, Education, and enacted provisions set out as notes under section 3371 of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of this title and Tables.

SUBCHAPTER I—DEVELOPMENT OF POLICIES AND STANDARDS

§§ 4711 to 4713. Omitted

CODIFICATION

Section 4711, Pub. L. 91–648, title I, § 101, Jan. 5, 1971, 84 Stat. 1910, declared the purpose of this subchapter to provide intergovernmental cooperation in the development of policies and standards for the administration of programs authorized by this Act.

Section 4712, Pub. L. 91–648, title I, § 102, Jan. 5, 1971, 84 Stat. 1910, which provided for the establishment of an Advisory Council on Intergovernmental Personnel Policy by the President, membership, duties, compensation and travel expenses of the council and termination of the council by the President at any time after the expiration of three years following its establishment, was omitted in view of the revocation of Ex. Ord. No. 11607, July 20, 1971, 36 F.R. 13317, which established the Council, by Ex. Ord. No. 11792, June 25, 1974, 39 F.R. 23191.

Section 4713, Pub. L. 91–648, title I, § 103, Jan. 5, 1971, 84 Stat. 1910, which provided that the Council report to the President and Congress, from time to time, its recommendations and findings, was omitted in view of the abolishment of the Council.

SUBCHAPTER II—STRENGTHENING STATE AND LOCAL PERSONNEL ADMINISTRATION

§ 4721. Declaration of purpose

The purpose of this subchapter is to assist State and local governments to strengthen their staffs by improving their personnel administration.

(Pub. L. 91–648, title II, § 201, Jan. 5, 1971, 84 Stat. 1911.)

§ 4722. State government and statewide programs and grants

(a) Amount of grants; executive certification; systems of personnel administration: innovation and diversity in design, execution, and management

The Office of Personnel Management (hereinafter referred to as the ''Office'') is authorized to make grants to a State for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this chapter, for up to 50 per centum) of the costs of developing and carrying out programs or projects, on the certification of the Governor of that State that the programs or projects contained within the State's application are consistent with the applicable principles set forth in clauses (1)–(6) of the third paragraph of section 4701 of this title, to strengthen personnel administration in that State government or in local governments of that State. The authority provided by this section shall be employed in such a manner as to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own systems of personnel administration.

(b) Application; time of making; information; terms and conditions; personnel administration improvement

An application for a grant shall be made at such time or times, and contain such information, as the Office may prescribe. The Office may make a grant under subsection (a) of this section only if the application therefor—

(1) provides for designation, by the Governor or chief executive authority, of the State office that will have primary authority and responsibility for the development and administration of the approved program or project at the State level;

(2) provides for the establishment of merit personnel administration where appropriate and the further improvement of existing systems based on merit principles;

(3) provides for specific personnel administration improvement needs of the State government and, to the extent appropriate, of the local governments in that State, including State personnel administration services for local governments;

(4) provides assurance that the making of a Federal Government grant will not result in a reduction in relevant State or local government expenditures or the substitution of Federal funds for State or local funds previously made available for these purposes; and

(5) sets forth clear and practicable actions for the improvement of particular aspects of personnel administration such as—

(A) establishment of statewide personnel systems of general or special functional coverage to meet the needs of urban, suburban, or rural governmental jurisdictions that are not able to provide sound career services, opportunities for advancement, adequate retirement and leave systems, and other career inducements to well-qualified professional, administrative, and technical personnel;

(B) making State grants to local governments to strengthen their staffs by improving their personnel administration;

(C) assessment of State and local government needs for professional, administrative, and technical manpower, and the initiation of timely and appropriate action to meet such needs;

(D) strengthening one or more major areas of personnel administration, such as recruitment and selection, training and development, and pay administration;

(E) undertaking research and demonstration projects to develop and apply better personnel administration techniques, including both projects conducted by State and local government staffs and projects conducted by colleges or universities or other appropriate nonprofit organizations under grants or contracts;

(F) strengthening the recruitment, selection, assignment, and development of handicapped persons, women, and members of disadvantaged groups whose capacities are not being utilized fully;

(G) training programs related directly to upgrading within the agency for nonprofessional employees who show promise of developing a capacity for assuming professional responsibility;

(H) achieving the most effective use of scarce professional, administrative, and technical manpower; and

(I) increasing intergovernmental cooperation in personnel administration, with respect to such matters as recruiting, examining, pay studies, training, education, personnel interchange, manpower utilization, and fringe benefits.

(Pub. L. 91–648, title II, § 202, Jan. 5, 1971, 84 Stat. 1911; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

For effective date of the grant provisions of this chapter, referred to in subsec. (a), as being 180 days after Jan. 5, 1971, see section 4772 of this title.

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 91–648, Jan. 5, 1971, 84 Stat. 1909, as amended, known as the Intergovernmental Personnel Act of 1970, which enacted this chapter and sections 3371 to 3376 of Title 5, Government Organization and Employees, amended section 246(f) of this title, section 1304 of Title 5, repealed sections 1881 to 1888 of Title 7, Agriculture, and section 869b of Title

20, Education, and enacted provisions set out as notes under section 3371 of Title 5. For complete classification of this Act to the Code, see Short Title note set out section 4701 of this title and Tables.

TRANSFER OF FUNCTIONS

''Office of Personnel Management'' and ''Office'' substituted in text for ''United States Civil Service Commission'' and ''Commission'', respectively, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4723. Local government programs and grants

(a) Population served; amount of grants; executive certification; State grant, conditions

The Office is authorized to make grants to a general local government, or a combination of general local governments, that serve a population of fifty thousand or more, for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this chapter, for up to 50 per centum) of the costs of developing and carrying out programs or projects, on the certification of the mayor(s), or chief executive officer(s), of the general local government or combination of local governments that the programs or projects are consistent with the applicable principles set forth in clauses (1)–(6) of the third paragraph of section 4701 of this title, to strengthen the personnel administration of such governments. Such a grant may not be made—

(1) if, at the time of submission of an application, the State concerned has an approved plan which, with the agreement of the particular local government concerned, provides for strengthening one or more aspects of personnel administration in that local government, unless the local government concerned has problems which are not met by the previously approved plan and for which, with the agreement of the State government concerned with respect to those aspects of personnel administration covered in the approved plan, it is submitting an application; or

(2) after the State concerned has a statewide plan which has been developed by an appropriate State agency designated or established pursuant to State law which provides such agency with adequate authority, administrative organization, and staffing to develop and administer such a statewide plan, and to provide technical assistance and other appropriate support in carrying out the local components of the plan, and which provides procedures insuring adequate involvement of officials of affected local governments in the development and administration of such a statewide plan, unless the local government concerned has special, unique, or urgent problems which are not met by the approved statewide plan and for which it submits an application for funds to be distributed under section 4766(a) of this title.

Upon the request of a Governor or chief executive authority, a grant to a general local government or combination of such governments in that State may not be made during a period not to exceed ninety days commencing with the date provided in section 4772 of this title, or the date on which official regulations for this chapter are promulgated, whichever date is later: *Provided*, That the request of the Governor or chief executive authority indicates that he is developing a plan under (1) above, or during a period not to exceed one hundred and eighty days commencing with the date provided in section 4772 of this title, or the date on which official regulations for this chapter are promulgated, whichever date is later, provided the request of the Governor or chief executive authority indicates that he is developing a statewide plan under (2) above.

(b) Application; time of making; information; terms and conditions; waiver; development costs; population served

An application for a grant from a general local government or a combination of general local governments shall be made at such time or times and shall contain such information as the Office may prescribe. The Office may make a grant under subsection (a) of this section only if the application therefor meets requirements similar to those established in section 4722(b) of this title for a State application for a grant, unless any such requirement is specifically waived by the Office, and the requirements of subsection (c) of this section. Such a grant may cover the costs of developing the program or project covered by the application. The Office may make grants to general local governments, or combinations of such governments, that serve a population of less than fifty thousand, if it finds that such grants will help meet essential needs in programs or projects of national interest and will assist general local governments experiencing special problems in personnel administration related to such programs or projects.

(c) Gubernatorial review of application; disapproval explanation

An application to be submitted to the Office under subsection (b) of this section shall first be submitted by the general local government or combination of such governments to the Governor for review, comments, and recommendations. The Governor may refer the application to the State office designated under section 4722(b)(1) of this title for review. Comments and recommendations (if any) made as a result of the review, and a statement by the general local government or combination of such governments that it has considered the comments and recommendations of the Governor shall accompany the application to the Office. The application need not be accompanied by the comments and recommendations of the Governor if the general local government or combination of such governments certifies to the Office that the application has been before the Governor for review and comment for a period of sixty days without comment by the Governor. An explanation in writing shall be sent to the Governor of a State by the Office whenever the Office does not concur with recommendations of the Gov-

ernor in approving any local government applications.

(Pub. L. 91–648, title II, § 203, Jan. 5, 1971, 84 Stat. 1912; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

For effective date of the grant provisions of this chapter, referred to in subsec. (a), as being 180 days after Jan. 5, 1971, see section 4772 of this title.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted in text for ''Commission'', meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4724. Intergovernmental cooperation in recruiting and examining activities; potential employees, certification; payments for costs; credits to appropriation or fund for payment of expenses

(a) The Office may join, on a shared-costs basis, with State and local governments in cooperative recruiting and examining activities under such procedures and regulations as may jointly be agreed upon.

(b) The Office also may, on the written request of a State or local government and under such procedures as may be jointly agreed upon, certify to such governments from appropriate Federal registers the names of potential employees. The State or local government making the request shall pay the Office for the costs, as determined by the Office, of performing the service, and such payments shall be credited to the appropriation or fund from which the expenses were or are to be paid.

(Pub. L. 91–648, title II, § 204, Jan. 5, 1971, 84 Stat. 1914; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted in text for ''Commission'', meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4725. Technical assistance; waiver of payments for costs; credits to appropriation or fund for payment of expenses

The Office may furnish technical advice and assistance, on request, to State and general local governments seeking to improve their systems of personnel administration. The Office may waive, in whole or in part, payments from such governments for the costs of furnishing such assistance. All such payments shall be credited to the appropriation or fund from which the expenses were or are to be paid.

(Pub. L. 91–648, title II, § 205, Jan. 5, 1971, 84 Stat. 1914; 1978 Reorg. Plan. No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted in text for ''Commission'', meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4726. Coordination of Federal programs

The Office, after consultation with other agencies concerned, shall—

(1) coordinate the personnel administration support and technical assistance given to State and local governments and the support given State programs or projects to strengthen local government personnel administration, including the furnishing of needed personnel administration services and technical assistance, under authority of this chapter with any such support given under other Federal programs; and

(2) make such arrangements, including the collection, maintenance, and dissemination of data on grants for strengthening State and local government personnel administration and on grants to States for furnishing needed personnel administration services and technical assistance to local governments, as needed to avoid duplication and insure consistent administration of related Federal activities.

(Pub. L. 91–648, title II, § 206, Jan. 5, 1971, 84 Stat. 1914; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted in text for ''Commission'', meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4727. Interstate compacts

The consent of the Congress is hereby given to any two or more States to enter into compacts or other agreements, not in conflict with any law of the United States, for cooperative efforts and mutual assistance (including the establishment of appropriate agencies) in connection with the development and administration of personnel and training programs for employees and officials of State and local governments.

(Pub. L. 91–648, title II, § 207, Jan. 5, 1971, 84 Stat. 1915.)

§ 4728. Transfer of functions

(a) Prescription of personnel standards on a merit basis

There are hereby transferred to the Office all functions, powers, and duties of—

(1) the Secretary of Agriculture under section 2019(e)(2) of title 7;

(2) the Secretary of Labor under—

(A) the Act of June 6, 1933, as amended (29 U.S.C. 49 et seq.); and

(B) section 503(a)(1) of this title;

(3) the Secretary of Health and Human Services under—

(A) sections 2674(a)(6) and 2684(a)(6) of this title;

(B) section 3023(a)(6) of this title;

(C) sections 246(a)(2)(F) and (d)(2)(F) and 291d(a)(8) of this title; and

(D) sections 302(a)(5)(A), 602(a)(5)(A), 705(a)(3)(A), 1202(a)(5)(A), 1352(a)(5)(A), 1382(a)(5)(A), and 1396a(a)(4)(A) of this title; and

(4) any other department, agency, office, or officer (other than the President) under any other provision of law or regulation applicable to a program of grant-in-aid that specifically requires the establishment and maintenance of personnel standards on a merit basis with respect to the program;

insofar as the functions, powers, and duties relate to the prescription of personnel standards on a merit basis.

(b) Standards for systems of personnel administration

In accordance with regulations of the Office of Personnel Management, Federal agencies may require as a condition of participation in assistance programs, systems of personnel administration consistent with personnel standards prescribed by the Office for positions engaged in carrying out such programs. The standards shall—

(1) include the merit principles in section 4701 of this title;

(2) be prescribed in such a manner as to minimize Federal intervention in State and local personnel administration.

(c) Powers and duties of Office

The Office shall—

(1) provide consultation and technical advice and assistance to State and local governments to aid them in complying with standards prescribed by the Office under subsection (a) of this section; and

(2) advise Federal agencies administering programs of grants or financial assistance as to the application of required personnel administration standards, and recommend and coordinate the taking of such actions by the Federal agencies as the Office considers will most effectively carry out the purpose of this subchapter.

(d) Transfer of personnel, property, records, and funds; time of transfer

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of any Federal agency employed, used, held, available, or to be made available in connection with the functions, powers, and duties vested in the Office by this section as the Director of the Management and Budget shall determine shall be transferred to the Office at such time or times as the Director shall direct.

(e) Modification or supersedure of personnel standards

Personnel standards prescribed by Federal agencies under laws and regulations referred to in subsection (a) of this section shall continue in effect until modified or superseded by standards prescribed by the Office under subsection (a) of this section.

(f) Systems of personnel administration; innovation and diversity in design, execution, and management

Any standards or regulations established pursuant to the provisions of this section shall be such as to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own individual systems of personnel administration.

(g) Interpretation of certain provisions; limitation

Nothing in this section or in section 4722 or 4723 of this title shall be construed to—

(1) authorize any agency or official of the Federal Government to exercise any authority, direction, or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee;

(2) authorize the application of personnel standards on a merit basis to the teaching personnel of educational institutions or school systems;

(3) prevent participation by employees or employee organizations in the formulation of policies and procedures affecting the conditions of their employment, subject to the laws and ordinances of the State or local government concerned;

(4) require or request any State or local government employee to disclose his race, religion, or national origin, or the race, religion, or national origin, of any of his forebears;

(5) require or request any State or local government employee, or any person applying for employment as a State or local government employee, to submit to any interrogation or examination or to take any psychological test or any polygraph test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters; or

(6) require or request any State or local government employee to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(h) Grants-in-aid; abolition of certain requirements

Effective one year after October 13, 1978, all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments are hereby abolished, except—

(1) requirements prescribed under laws and regulations referred to in subsection (a) of this section;

(2) requirements that generally prohibit discrimination in employment or require equal employment opportunity;

(3) sections 3141–3144, 3146, and 3147 of title 40; and

(4) chapter 15 of title 5, relating to political activities of certain State and local employees.

(Pub. L. 91–648, title II, § 208, Jan. 5, 1971, 84 Stat. 1915; Pub. L. 95–454, § 602(a)(2), (3), Oct. 13, 1978, 92 Stat. 1188, 1189; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Section 2019(e)(2) of title 7, referred to in subsec. (a)(1), is a reference to section 2019 of title 7 prior to the general amendment of that section by Pub. L. 95–113, § 1301, Sept. 29, 1977, 91 Stat. 969. Provisions formerly contained in section 2019(e)(2) of title 7 are covered by section 2020(e)(6) of title 7.

Act of June 6, 1933, as amended, referred to in subsec. (a)(2)(A), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, known as the ''Wagner-Peyser Act'', which is classified generally to chapter 4B (§ 49 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 49 of Title 29 and Tables.

Sections 2674(a)(6) and 2684(a)(6) of this title, referred to in subsec. (a)(3)(A), was in the original a reference to sections 134(a)(6) and 204(a)(6) of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963. Section 134 of the Act was renumbered ''133'' and amended by Pub. L. 94–103, and is classified to section 6063 of this title. Provisions relating to personnel standards on a merit basis appeared in section 6063(b)(7) of this title, and were subsequently deleted in a general amendment of subsec. (b). Title II of the Act was amended generally by Pub. L. 94–63, and provisions relating to personnel standards on a merit basis appeared in section 237(a)(1)(D) of the Act, which was classified to section 2689t(a)(1)(D) of this title. Section 2689t was repealed by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560.

Section 3023(a)(6) of this title, referred to in subsec. (a)(3)(B), was in the original a reference to section 303(a)(6) of the Older Americans Act of 1965. Section 301 of Pub. L. 93–29 amended the Older Americans Act of 1965 by striking out title III and inserting in lieu thereof a new title III. Provisions relating to personnel standards on a merit basis appeared in section 305(a)(2) of the Act, which was classified to section 3025(a)(2) of this title prior to the general revision and reorganization of title III by Pub. L. 95–478, § 103(b). Provisions similar to those comprising section 3025 of this title are contained in section 3027 of this title.

Section 246(d) of this title, referred to in subsec. (a)(3)(C), was repealed by Pub. L. 97–35, title IX, § 902(b), Aug. 13, 1981, 95 Stat. 559.

Section 602 of this title, referred to in subsec. (a)(3)(D), was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (a)(5)(A).

Section 705 of this title, referred to in subsec. (a)(3)(D), was amended by Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 822, and, as so amended, did not contain a subsec. (a). Section 705 was subsequently amended by Pub. L. 101–239, title VI, § 6503(b)(2), (4), Dec. 19, 1989, 103 Stat. 2276, which inserted a subsec. ''(a)'' designation at the beginning of the section and added a par. (3) to subsec. (a).

Section 1382(a)(5)(A) of this title, referred to in subsec. (a)(3)(D), was in the original a reference to section 1602(a)(5)(A) of the Social Security Act. Title XVI of the Social Security Act (section 1381 et seq. of this title) was amended generally by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, and the provisions formerly contained in section 1382 of this title appeared in section 602 of the Act, which was classified to section 802 of this title, and was repealed by Pub. L. 93–647, § 3(b), Jan. 4, 1975, 88 Stat. 2349.

CODIFICATION

In subsec. (h)(3), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act (40 U.S.C. 276 et seq.)'', meaning 40 U.S.C. 276a et seq., on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1978—Subsecs. (b) to (h). Pub. L. 95–454 added subsec. (b), redesignated former subsecs. (b) to (g) as (c) to (h), respectively, and in subsec. (h), as so redesignated, substituted provisions respecting abolition of certain requirements respecting grants-in-aid, for provisions setting forth effective date of this section as 60 days after Jan. 5, 1971.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(3) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted for ''Commission'', meaning Civil Service Commission, in subsecs. (a) and (c) to (e) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SUBCHAPTER III—TRAINING AND DEVELOPING STATE AND LOCAL EMPLOYEES

§ 4741. Declaration of purpose

The purpose of this subchapter is to strengthen the training and development of State and local government employees and officials, particularly in professional, administrative, and technical fields.

(Pub. L. 91–648, title III, § 301, Jan. 5, 1971, 84 Stat. 1916.)

§ 4742. Admission to Federal employee training programs

(a) State and local government officers and employees

In accordance with such conditions as may be prescribed by the head of the Federal agency concerned, a Federal agency may admit State and local government employees and officials to agency training programs established for Federal professional, administrative, or technical personnel.

(b) Waiver of payments for training costs

Federal agencies may waive, in whole or in part, payments from, or on behalf of, State and local governments for the costs of training provided under this section. Payments received by the Federal agency concerned for training under this section shall be credited to the appropriation or fund used for paying the training costs.

(c) Initial costs; reimbursement of other Federal agencies

The Office may use appropriations authorized by this chapter to pay the initial additional developmental or overhead costs that are incurred by reason of admittance of State and local government employees to Federal training courses and to reimburse other Federal agencies for such costs.

(Pub. L. 91–648, title III, § 302, Jan. 5, 1971, 84 Stat. 1916; 1978 Reorg. Plan No. 2, 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this Act'', meaning Pub. L. 91–648, Jan. 5, 1971, 84 Stat. 1909, as amended, known as the Intergovernmental Personnel Act of 1970, which enacted this chapter and sections 3371 to 3376 of Title 5, Government Organization and Employees, amended section 246(f) of this title, section 1304 of Title 5, repealed sections 1881 to 1888 of Title 7, Agriculture, and section 869b of Title 20, Education, and enacted provisions set out as notes under section 3371 of Title 5. For complete classification of this Act to the Code, see Short Title note set out section 4701 of this title and Tables.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted for ''Commission'', meaning Civil Service Commission, in subsec. (c) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4743. Grants to State and local governments for training

(a) Amount of grants; executive certification; use restrictions; uses for non-Federal share; personnel training and education programs: innovation and diversity in development and execution

If in its judgment training is not adequately provided for under grant-in-aid or other statutes, the Office is authorized to make grants to State and general local governments for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this chapter, for up to 50 per centum) of the costs of developing and carrying out programs, on the certification of the Governor of that State, or the mayor or chief executive officer of the general local government, that the programs are consistent with the applicable principles set forth in clauses (1)–(6) of the third paragraph of section 4701 of this title, to train and educate their professional, administrative, and technical employees and officials. Such grants may not be used to cover costs of full-time graduate-level study, provided for in section 4745 of this title, or the costs of the construction or acquisition of training facilities. The State and local government share of the cost of developing and carrying out training and education plans and programs may include, but shall not consist solely of, the reasonable value of facilities and of supervisory and other personal services made available by such governments. The authority provided by this section shall be employed in such a manner as to encourage innovation and allow for diversity on the part of State and local governments in developing and carrying out training and education programs for their personnel.

(b) Application; time of making; information; terms and conditions; waiver; development costs

An application for a grant from a State or general local government shall be made at such time or times, and shall contain such information, as the Office may prescribe. The Office may make a grant under subsection (a) of this section, only if the application therefor meets requirements established by this subsection unless any requirement is specifically waived by the Office. Such grant to a State, or to a general local government under subsection (c) of this section, may cover the costs of developing the program covered by the application. The program covered by the application shall—

(1) provide for designation, by the Governor or chief executive authority, of the State office that will have primary authority and responsibility for the development and administration of the program at the State level;

(2) provide, to the extent feasible, for coordination with relevant training available under or supported by other Federal Government programs or grants;

(3) provide for training needs of the State government and of local governments in that State;

(4) provide, to the extent feasible, for intergovernmental cooperation in employee training matters, especially within metropolitan or regional areas; and

(5) provide assurance that the making of a Federal Government grant will not result in a reduction in relevant State or local government expenditures or the substitution of Federal funds for State or local funds previously made available for these purposes.

(c) Population served; amount of grants; executive certification; State grant, conditions; terms and conditions; waiver

A grant authorized by subsection (a) of this section may be made to a general local government, or a combination of such governments, that serve a population of fifty thousand or more, for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this chapter, for up to 50 per centum) of the costs of developing and carrying out programs or projects, on the certification of the mayor(s), or chief executive officer(s), of the general local government or combination of local governments that the programs or projects are consistent with the applicable principles set forth in clauses (1)–(6) of the third paragraph of section 4701 of this title to train and educate their professional, administrative, and technical employees and officials. Such a grant may not be made—

(1) if, at the time of submission of an application, the State concerned has an approved plan which, with the agreement of the particular local government concerned, provides for strengthening one or more aspects of training in that local government, unless the local government concerned has problems which are not met by the previously approved plan and for which, with the agreement of the State government concerned with respect to those aspects of training covered in the approved plan, it is submitting an application; or

(2) after the State concerned has a statewide plan which has been developed by an appropriate State agency designated or established pursuant to State law which provides such agency with adequate authority, administrative organization, and staffing to develop and administer such a statewide plan, and to provide technical assistance and other appropriate support in carrying out the local components of the plan, and which provides procedures insuring adequate involvement of officials of affected local governments in the development and administration of such a statewide plan, unless the local government concerned has special, unique, or urgent problems which are not met by the approved statewide plan and for which it submits an application for funds to be distributed under section 4766(a) of this title.

Upon the request of a Governor or chief executive authority, a grant to a general local government or combination of such governments in that State may not be made during a period not to exceed ninety days commencing with the date provided in section 4772 of this title, or the date on which official regulations for this chapter are promulgated, whichever date is later: *Provided*, That the request of the Governor or chief executive authority indicates that he is developing a plan under (1) above, or during a period not to exceed one hundred and eighty days commencing with the date provided in section 4772 of this title, or the date on which official regulations for this chapter are promulgated, whichever date is later, provided the request of the Governor or chief executive authority indicates that he is developing a statewide plan under (2) above. To be approved, an application for a grant under this subsection must meet requirements similar to those established in subsection (b) of this section for State applications, unless any such requirement is specifically waived by the Office, and the requirements of subsection (d) of this section. The Office may make grants to general local governments, or combinations of such governments that serve a population of less than fifty thousand if it finds that such grants will help meet essential needs in programs or projects of national interest and will assist general local governments experiencing special needs for personnel training and education related to such programs or projects.

(d) Gubernatorial review of application; disapproval explanation

An application to be submitted to the Office under subsection (c) of this section shall first be submitted by the general local government or combination of such governments to the Governor for review, comments, and recommendations. The Governor may refer the application to the State office designated under subsection (b)(1) of this section for review. Comments and recommendations (if any) made as a result of the review and a statement by the general local government or combination of such governments that it has considered the comments and recommendations of the Governor shall accompany the application to the Office. The application need not be accompanied by the comments and recommendations of the Governor if the general local government or combination of such governments certifies to the Office that the application has been before the Governor for review and comment for a period of sixty days without comment by the Governor. An explanation in writing shall be sent to the Governor of a State by the Office whenever the Office does not concur with recommendations of the Governor in approving any local government applications.

(Pub. L. 91–648, title III, § 303, Jan. 5, 1971, 84 Stat. 1917; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

For effective date of the grant provisions of this chapter, referred to in subsecs. (a) and (c), as being 180 days after Jan. 5, 1971, see section 4772 of this title.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted in text for ''Commission'', meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4744. Grants to other organizations

(a) Amount of grants; conditions

The Office is authorized to make grants to other organizations to pay up to 75 per centum (or, with respect to fiscal years commencing

after the expiration of three years following the effective date of the grant provisions of this chapter, up to 50 per centum) of the costs of providing training to professional, administrative, or technical employees and officials of State or local governments if the Office—

(1) finds that State or local governments have requested the proposed program;

(2) determines that the capability to provide such training does not exist, or is not readily available, within the Federal or the State or local governments requesting such program or within associations of State or local governments, or if such capability does exist that such government or association is not disposed to provide such training; and

(3) approves the program as meeting such requirements as may be prescribed by the Office in its regulations pursuant to this chapter.

(b) "Other organization" defined

For the purpose of this section ''other organization'' means—

(1) a national, regional, statewide, areawide, or metropolitan organization, representing member State or local governments;

(2) an association of State or local public officials; or

(3) a nonprofit organization one of whose principal functions is to offer professional advisory, research, development, educational or related services to governments.

(Pub. L. 91–648, title III, § 304, Jan. 5, 1971, 84 Stat. 1919; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

For effective date of the grant provisions of this chapter, referred to in subsec. (a), as being 180 days after Jan. 5, 1971, see section 4772 of this title.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted for ''Commission'', meaning Civil Service Commission, in subsec. (a) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4745. Government Service Fellowships

(a) Diverse payments

The Office is authorized to make grants to State and general local governments to support programs approved by the Office for providing Government Service Fellowships for State and local government personnel. The grants may cover—

(1) the necessary costs of the fellowship recipient's books, travel, and transportation, and such related expenses as may be authorized by the Office;

(2) reimbursement to the State or local government for not to exceed one-fourth of the salary of each fellow during the period of the fellowship; and

(3) payment to the educational institutions involved of such amounts as the Office determines to be consistent with prevailing practices under comparable federally supported programs for each fellow, less any amount charged the fellow for tuition and nonrefundable fees and deposits.

(b) Period of fellowships; eligibility criteria

Fellowships awarded under this section may not exceed two years of full-time graduate-level study for professional, administrative, and technical employees. The regulations of the Office shall include eligibility criteria for the selection of fellowship recipients by State and local governments.

(c) Selection of fellows; continuation of salary and employment benefits; public service plans upon completion of study: outline of plans in application for grant

The State or local government concerned shall—

(1) select the individual recipients of the fellowships;

(2) during the period of the fellowship, continue the full salary of the recipient and normal employment benefits such as credit for seniority, leave accrual, retirement, and insurance; and

(3) make appropriate plans for the utilization and continuation in public service of employees completing fellowships and outline such plans in the application for the grant.

(Pub. L. 91–648, title III, § 305, Jan. 5, 1971, 84 Stat. 1919; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted for ''Commission'', meaning Civil Service Commission, in subsecs. (a) and (b) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4746. Coordination of Federal programs

The Office, after consultation with other agencies concerned, shall—

(1) prescribe regulations concerning administration of training for employees and officials of State and local governments provided for in this subchapter, including requirements for coordination of and reasonable consistency in such training programs;

(2) coordinate the training support given to State and local governments under authority of this chapter with training support given such governments under other Federal programs; and

(3) make such arrangements, including the collection and maintenance of data on training grants and programs, as may be necessary to avoid duplication of programs providing for training and to insure consistent administration of related Federal training activities, with particular regard to title IX of the Higher Education Act of 1965.

(Pub. L. 91–648, title III, § 306, Jan. 5, 1971, 84 Stat. 1920; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in par. (3), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IX of the Act was classified generally to subchapter IX (§ 1134 et seq.) of chapter 28 of Title 20, Education, prior to repeal by Pub. L. 105–244, title VII, § 702, Oct. 7, 1998, 112 Stat. 1803. Title IX as originally added by Pub. L. 89–329 related to education for the public service. Pub. L. 92–318 struck out title IX and inserted in lieu thereof a new title IX relating to graduate programs. Subsequently Pub. L. 99–498 extensively revised title IX relating to graduate programs. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted in text for ''Commission'', meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 4761. Declaration of purpose

The purpose of this subchapter is to provide for the general administration of subchapters I, II, III, and IV of this chapter (hereinafter referred to as ''this chapter''), and to provide for the establishment of certain advisory committees.

(Pub. L. 91–648, title V, § 501, Jan. 5, 1971, 84 Stat. 1925.)

§ 4762. Definitions

For the purpose of this chapter—

(1) ''Office'' means the Office of Personnel Management;

(2) ''Federal agency'' means an executive department, military department, independent establishment, or agency in the executive branch of the Government of the United States, including Government owned or controlled corporations;

(3) ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States, and includes interstate and Federal-interstate agencies but does not include the governments of the political subdivisions of a State;

(4) ''local government'' means a city, town, county, or other subdivision or district of a State, including agencies, instrumentalities, and authorities of any of the foregoing and any combination of such units or combination of such units and a State. A ''general local government'' means a city, town, county, or comparable general-purpose political subdivision of a State; and

(5) Notwithstanding the population requirements of sections 4723(a) and 4743(c) of this title, a ''local government'' and a ''general local government'' also mean the recognized governing body of an Indian tribe, band, pueblo, or other organized group or community, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which performs substantial governmental functions. The requirements of sections 4723(c) and 4743(d) of this title, relating to reviews by the Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this chapter is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments.

(Pub. L. 91–648, title V, § 502, Jan. 5, 1971, 84 Stat. 1925; Pub. L. 93–638, title I, § 104(d), formerly § 105(d), Jan. 4, 1975, 88 Stat. 2208, renumbered § 104(d), Pub. L. 100–472, title II, § 203(a), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 95–454, title VI, § 602(d), Oct. 13, 1978, 92 Stat. 1189; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

The Alaska Native Claims Settlement Act, referred to in par. (5), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1978—Par. (3). Pub. L. 95–454 inserted reference to Trust Territory of the Pacific Islands.

1975—Par. (5). Pub. L. 93–638 added par. (5).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

''Office'' and ''Office of Personnel Management'' substituted for ''Commission'' and ''Civil Service Commission'', respectively, in par. (1), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 4763. General administrative provisions

(a) Administration by Office

Unless otherwise specifically provided, the Office shall administer this chapter.

(b) Advice and assistance

The Office shall furnish such advice and assistance to State and local governments as may be necessary to carry out the purposes of this chapter.

(c) Regulations and standards; contracts: modification, covenants, conditions, and provisions; utilization of other agencies

In the performance of, and with respect to, the functions, powers, and duties vested in it by this chapter, the Office may—

(1) issue such standards and regulations as may be necessary to carry out the purposes of this chapter;

(2) consent to the modification of any contract entered into pursuant to this chapter, such consent being subject to any specific limitations of this chapter;

(3) include in any contract made pursuant to this chapter such covenants, conditions, or provisions as it deems necessary to assure that the purposes of this chapter will be achieved; and

(4) utilize the services and facilities of any Federal agency, any State or local government, and any other public or nonprofit agency or institution, on a reimbursable basis or otherwise, in accordance with agreements between the Office and the head thereof.

(d) Information: collection and availability; research and evaluation; administration report; coordination of Federal programs

In the performance of, and with respect to the functions, powers, and duties vested in it by this chapter, the Office—

(1) may collect information from time to time with respect to State and local government training programs and personnel administration improvement programs and projects under this chapter, and make such information available to interested groups, organizations, or agencies, public or private;

(2) may conduct such research and make such evaluation as needed for the efficient administration of this chapter;

(3) shall include in its annual report a report of the administration of this chapter; and

(4) shall make such arrangements as may be necessary to avoid duplication of programs providing for training and to insure consistent administration of the related Federal training activities, with particular regard to title I of the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.].

(e) Additional authority

The provisions of this chapter are not a limitation on existing authorities under other statutes but are in addition to any such authorities, unless otherwise specifically provided in this chapter.

(Pub. L. 91–648, title V, § 503, Jan. 5, 1971, 84 Stat. 1926; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

The Higher Education Act of 1965, referred to in subsec. (d)(4), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title I of the Higher Education Act of 1965 is classified generally to subchapter I (§ 1001 et seq.) of chapter 28 of Title 20, Education. Title I as originally enacted by Pub. L. 89–329 related to community service and continuing education programs. Title I was amended generally by Pub. L. 96–374, Pub. L. 99–498, Pub. L. 102–325, and Pub. L. 105–244, and now contains general provisions. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted for ''Commission'', meaning Civil Service Commission, in subsecs. (a) to (d) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4764. Reporting and recordkeeping requirements for State or local governments and other organizations

(a) A State or local government office designated to administer a program or project under this chapter shall make reports and evaluations in such form, at such times, and containing such information concerning the status and application of Federal funds and the operation of the approved program or project as the Office may require, and shall keep and make available such records as may be required by the Office for the verification of such reports and evaluations.

(b) An organization which receives a training grant under section 4744 of this title shall make reports and evaluations in such form, at such times, and containing such information concerning the status and application of Federal grant funds and the operation of the training program as the Office may require, and shall keep and make available such records as may be required by the Office for the verification of such reports and evaluations.

(Pub. L. 91–648, title V, § 504, Jan. 5, 1971, 84 Stat. 1926; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted in text for ''Commission'', meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4765. Review and audit

The Office, the head of the Federal agency concerned, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of a grant recipient that are pertinent to the grant received.

(Pub. L. 91–648, title V, § 505, Jan. 5, 1971, 84 Stat. 1927; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted in text for ''Commission'', meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4766. Distribution of grants

(a) State and local government allocations; equitable distribution

The Office shall allocate 20 per centum of the total amount available for grants under this chapter in such manner as will most nearly provide an equitable distribution of the grants among States and between State and local governments, taking into consideration such factors as the size of the population, number of employees affected, the urgency of the programs or projects, the need for funds to carry out the purposes of this chapter, and the potential of the governmental jurisdictions concerned to use the funds most effectively.

(b) Weighted formula; minimum allocation; reallocation; "State" defined

(1) The Office shall allocate 80 per centum of the total amount available for grants under this chapter among the States on a weighted formula taking into consideration such factors as the size of population and the number of State and local government employees affected.

(2) The amount allocated for each State under paragraph (1) of this subsection shall be further allocated by the Office to meet the needs of both the State government and the local governments within the State on a weighted formula taking into consideration such factors as the number of State and local government employees and the amount of State and local government expenditures. The Office shall determine the categories of employees and expenditures to be included or excluded, as the case may be, in the number of employees and amount of expenditures. The minimum allocation for meeting needs of local governments in each State (other than the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands) shall be 50 per centum of the amount allocated for the State under paragraph (1) of this subsection.

(3) The amount of any allocation under paragraph (2) of this subsection which the Office determines, on the basis of information available to it, will not be used to meet needs for which allocated shall be available for use to meet the needs of the State government or local governments in that State, as the case may be, on such date or dates as the Office may fix.

(4) The amount allocated for any State under paragraph (1) of this subsection which the Office determines, on the basis of information available to it, will not be used shall be available for reallocation by the Office from time to time, on such date or dates as it may fix, among other States with respect to which such a determination has not been made, in accordance with the formula set forth in paragraph (1) of this subsection, but with such amount for any of such other States being reduced to the extent it exceeds the sum the Office estimates said State needs and will be able to use; and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced.

(5) For the purposes of this subsection, ''State'' means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(c) Payment limitation

Notwithstanding the other provisions of this section, the total of the payments from the appropriations for any fiscal year under this chapter made with respect to programs or projects in any one State may not exceed an amount equal to 12½ per centum of such appropriation.

(Pub. L. 91–648, title V, § 506, Jan. 5, 1971, 84 Stat. 1927; Pub. L. 95–454, title VI, § 602(e), Oct. 13, 1978, 92 Stat. 1189; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(1), and (c), means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

AMENDMENTS

1978—Subsec. (b)(2), (5). Pub. L. 95–454 inserted references to Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted for ''Commission'', meaning Civil Service Commission, in subsecs. (a) and (b), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4767. Termination of grants

Whenever the Office, after giving reasonable notice and opportunity for hearing to the State or general local government concerned, finds—

(1) that a program or project has been so changed that it no longer complies with the provisions of this chapter; or

(2) that in the operation of the program or project there is a failure to comply substantially with any such provision;

the Office shall notify the State or general local government of its findings and no further payments may be made to such government by the

Office until it is satisfied that such noncompliance has been, or will promptly be, corrected. However, the Office may authorize the continuance of payments to those projects approved under this chapter which are not involved in the noncompliance.

(Pub. L. 91–648, title V, § 507, Jan. 5, 1971, 84 Stat. 1928; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted in text for ''Commission'', meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4768. Advisory committees; appointment; compensation and travel expenses

(a) The Office may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, such advisory committee or committees as it may determine to be necessary to facilitate the administration of this chapter.

(b) Members of advisory committees who are not regular full-time employees of the United States, while serving on the business of the committees including traveltime may receive compensation at rates not exceeding the daily rate for GS–18; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government service employed intermittently.

(Pub. L. 91–648, title V, § 508, Jan. 5, 1971, 84 Stat. 1928; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

This chapter, referred to in subsec. (a), means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted for ''Commission'', meaning Civil Service Commission, in subsec. (a) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 4769. Authorization of appropriations

There are authorized to be appropriated, without fiscal year limitation, such sums as may be necessary to carry out the programs authorized by this chapter.

(Pub. L. 91–648, title V, § 509, Jan. 5, 1971, 84 Stat. 1928.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

§ 4770. Limitations on availability of funds for cost sharing

Federal funds made available to State or local governments under other programs may not be used by the State or local government for cost-sharing purposes under grant provisions of this chapter, except that Federal funds of a program financed wholly by Federal funds may be used to pay a pro-rata share of such cost sharing. State or local government funds used for cost sharing on other federally assisted programs may not be used for cost sharing under grant provisions of this chapter.

(Pub. L. 91–648, title V, § 511, Jan. 5, 1971, 84 Stat. 1928.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

§ 4771. Method of payment; installments; advances or reimbursement; adjustments

Payments under this chapter may be made in installments, and in advance or by way of reimbursement, as the Office may determine, with necessary adjustments on account of overpayments or underpayments.

(Pub. L. 91–648, title V, § 512, Jan. 5, 1971, 84 Stat. 1929; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

TRANSFER OF FUNCTIONS

''Office'', meaning Office of Personnel Management, substituted in text for ''Commission'', meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4772. Effective date of grant provisions

Grant provisions of this chapter shall become effective one hundred and eighty days following January 5, 1971.

(Pub. L. 91–648, title V, § 513, Jan. 5, 1971, 84 Stat. 1929.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

CHAPTER 63—LEAD-BASED PAINT POISONING PREVENTION

SUBCHAPTER I—GRANTS FOR DETECTION AND TREATMENT OF LEAD-BASED PAINT POISONING

Sec.
4801. Repealed.

SUBCHAPTER II—GRANTS FOR ELIMINATION OF LEAD-BASED PAINT POISONING

4811. Repealed.

SUBCHAPTER III—FEDERAL DEMONSTRATION AND RESEARCH PROGRAM: FEDERAL HOUSING ADMINISTRATION REQUIREMENTS

4821. Development of program; consultation; nature of program; safe level of lead; report to Congress.
4822. Requirements for housing receiving Federal assistance.

SUBCHAPTER IV—PROHIBITION AGAINST FUTURE USE OF LEAD-BASED PAINT

4831. Use of lead-based paint.

SUBCHAPTER V—GENERAL PROVISIONS

4841. Definitions.
4842. Consultation by Secretary with other departments and agencies.
4843. Authorization of appropriations.
4844, 4845. Repealed.
4846. State laws superseded, and null and void.

SUBCHAPTER I—GRANTS FOR DETECTION AND TREATMENT OF LEAD-BASED PAINT POISONING

§ 4801. Repealed. Pub. L. 95–626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588

Section, Pub. L. 91–695, title I, § 101, Jan. 13, 1971, 84 Stat. 2078; Pub. L. 93–151, § 1, Nov. 9, 1973, 87 Stat. 565; Pub. L. 94–317, title II, 204(a), June 23, 1976, 90 Stat. 705, related to the development of local programs with respect to detection and treatment of lead-based paint poisoning.

EFFECTIVE DATE OF REPEAL

Section 208(b) of Pub. L. 95–626 provided that the repeal of this section is effective Oct. 1, 1979.

SHORT TITLE

Section 1 of Pub. L. 91–695 provided: ''That this Act [enacting this chapter] may be cited as the 'Lead-Based Paint Poisoning Prevention Act'.''

SUBCHAPTER II—GRANTS FOR ELIMINATION OF LEAD-BASED PAINT POISONING

§ 4811. Repealed. Pub. L. 95–626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588

Section, Pub. L. 91–695, title II, § 201, Jan. 13, 1971, 84 Stat. 2078; Pub. L. 93–151, § 2, Nov. 9, 1973, 87 Stat. 565, related to the development of local programs for the elimination of lead-based paint poisoning.

EFFECTIVE DATE OF REPEAL

Section 208(b) of Pub. L. 95–626 provided that the repeal of this section is effective Oct. 1, 1979.

SUBCHAPTER III—FEDERAL DEMONSTRATION AND RESEARCH PROGRAM: FEDERAL HOUSING ADMINISTRATION REQUIREMENTS

§ 4821. Development of program; consultation; nature of program; safe level of lead; report to Congress

(a) The Secretary of Housing and Urban Development, in consultation with the Secretary of Health and Human Services, shall develop and carry out a demonstration and research program to determine the nature and extent of the problem of lead based paint poisoning in the United States, particularly in urban areas, including the methods by which the lead based paint hazard can most effectively be removed from interior surfaces, porches, and exterior surfaces of residential housing to which children may be exposed.

(b) The Chairman of the Consumer Product Safety Commission shall conduct appropriate research on multiple layers of dried paint film, containing the various lead compounds commonly used, in order to ascertain the safe level of lead in residential paint products. No later than December 31, 1974, the Chairman shall submit to Congress a full and complete report of his findings and recommendations as developed pursuant to such programs, together with a statement of any legislation which should be enacted or any changes in existing law which should be made in order to carry out such recommendations.

(Pub. L. 91–695, title III, § 301, Jan. 13, 1971, 84 Stat. 2079; Pub. L. 93–151, § 3, Nov. 9, 1973, 87 Stat. 566; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–151 incorporated existing first sentence in provisions designated as subsec. (a).

Subsec. (b). Pub. L. 93–151 required the Chairman of the Consumer Product Safety Commission to conduct research to ascertain the safe level of lead in provisions designated as subsec. (b), incorporated existing second sentence as the second sentence of the subsection, substituting requirement of submission of report by the

Chairman no later than Dec. 31, 1974, for former similar requirement for submission of a report by the Secretary within one year after Jan. 13, 1971.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 4822. Requirements for housing receiving Federal assistance

(a) General requirements

(1) Elimination of hazards

The Secretary of Housing and Urban Development (hereafter in this section referred to as the ''Secretary'') shall establish procedures to eliminate as far as practicable the hazards of lead based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise receives more than $5,000 in project-based assistance under a Federal housing program. Beginning on January 1, 1995, such procedures shall apply to all such housing that constitutes target housing, as defined in section 4851b of this title, and shall provide for appropriate measures to conduct risk assessments, inspections, interim controls, and abatement of lead-based paint hazards. At a minimum, such procedures shall require—

(A) the provision of lead hazard information pamphlets, developed pursuant to section 2686 of title 15, to purchasers and tenants;

(B) periodic risk assessments and interim controls in accordance with a schedule determined by the Secretary, the initial risk assessment of each unit constructed prior to 1960 to be conducted not later than January 1, 1996, and, for units constructed between 1960 and 1978—

(i) not less than 25 percent shall be performed by January 1, 1998;

(ii) not less than 50 percent shall be performed by January 1, 2000; and

(iii) the remainder shall be performed by January 1, 2002;

(C) inspection for the presence of lead-based paint prior to federally-funded renovation or rehabilitation that is likely to disturb painted surfaces;

(D) reduction of lead-based paint hazards in the course of rehabilitation projects receiving less than $25,000 per unit in Federal funds;

(E) abatement of lead-based paint hazards in the course of substantial rehabilitation projects receiving more than $25,000 per unit in Federal funds;

(F) where risk assessment, inspection, or reduction activities have been undertaken, the provision of notice to occupants describing the nature and scope of such activities and the actual risk assessment or inspection reports (including available information on the location of any remaining lead-based paint on a surface-by-surface basis); and

(G) such other measures as the Secretary deems appropriate.

(2) Additional measures

The Secretary may establish such other procedures as may be appropriate to carry out the purposes of this section.

(3) Disposition of federally owned housing

(A) Pre-1960 target housing

Beginning on January 1, 1995, procedures established under paragraphs (1) and (2) shall require the inspection and abatement of lead-based paint hazards in all federally owned target housing constructed prior to 1960.

(B) Target housing constructed between 1960 and 1978

Beginning on January 1, 1995, procedures established under paragraphs (1) and (2) shall require an inspection for lead-based paint and lead-based paint hazards in all federally owned target housing constructed between 1960 and 1978. The results of such inspections shall be made available to prospective purchasers, identifying the presence of lead-based paint and lead-based paint hazards on a surface-by-surface basis. The Secretary shall have the discretion to waive the requirement of this subparagraph for housing in which a federally funded risk assessment, performed by a certified contractor, has determined no lead-based paint hazards are present.

(C) Budget authority

To the extent that subparagraphs (A) and (B) increase the cost to the Government of outstanding direct loan obligations or loan guarantee commitments, such activities shall be treated as modifications under section 661c(e) of title 2 and shall be subject to the availability of appropriations. To the extent that paragraphs (A) and (B) impose additional costs to the Resolution Trust Corporation and the Federal Deposit Insurance Corporation, its requirements shall be carried out only if appropriations are provided in advance in an appropriations Act. In the absence of appropriations sufficient to cover the costs of subparagraphs (A) and (B), these requirements shall not apply to the affected agency or agencies.

(D) Definitions

For the purposes of this subsection, the terms ''inspection'', ''abatement'', ''lead-based paint hazard'', ''federally owned housing'', ''target housing'', ''risk assessment'', and ''certified contractor'' have the same meaning given such terms in section 4851b of this title.

(4) Definitions

For purposes of this subsection, the terms ''risk assessment'', ''inspection'', ''interim control'', ''abatement'', ''reduction'', and ''lead-based paint hazard'' have the same meaning given such terms in section 4851b of this title.

(b) Measurement criteria

The procedures established by the Secretary under this section for the risk assessment, interim control, inspection, and abatement of lead-based paint hazards in housing covered by this section shall be based upon guidelines developed pursuant to section 4852c of this title.

(c) Inspection requirements

The Secretary shall require the inspection of all intact and nonintact interior and exterior painted surfaces of housing subject to this section for lead-based paint using an approved x-ray fluorescence analyzer, atomic absorption spectroscopy, or comparable approved sampling or testing technique. A certified inspector or laboratory shall certify in writing the precise results of the inspection. If the results equal or exceed a level of 1.0 milligrams per centimeter squared or 0.5 percent by weight, the results shall be provided to any potential purchaser or tenant of the housing. The Secretary shall periodically review and reduce the level below 1.0 milligram per centimeter squared or 0.5 percent by weight to the extent that reliable technology makes feasible the detection of a lower level and medical evidence supports the imposition of a lower level. The requirements of this subsection shall apply as provided in subsection (d) of this section.

(d) Abatement required

(1) Transitional testing and abatement in public housing receiving modernization assistance

In the case of public housing assisted with capital assistance provided under section 1437g of this title, the Secretary shall require the inspection described in subsection (c) of this section for—

(A) a random sample of dwellings and common areas in all public housing projects assisted under such section; and

(B) each dwelling in any public housing project in which there is a dwelling determined under subparagraph (A) to have lead-based paint hazards, except that the Secretary shall not require the inspection of each dwelling if the Secretary requires the abatement of the lead-based paint hazards for the surfaces of each dwelling in the public housing project that correspond to the surfaces in the sample determined to have such hazards under subparagraph (A).

The Secretary shall require the inspection of all housing subject to this paragraph in accordance with the modernization schedule. A public housing agency may elect to test for lead-based paint using atomic absorption spectroscopy and may elect to abate lead-based paint and dust containing lead under standards more stringent than that in subsection (c) of this section, including the abatement of lead-based paint and dust which exceeds the standard of lead permitted in paints by the Consumer Product Safety Commission under this chapter, and such abatement shall qualify for capital assistance provided under section 1437g of this title. The Secretary shall require abatement of lead-based paint and lead-based paint hazards in housing in which the test results equal or exceed the standard established by or under subsection (c) of this section. Final inspection and certification after abatement shall be made by a qualified inspector, industrial hygienist, or local public health official.

(2) Abatement demonstration program

(A) Abatement demonstration program

In carrying out the requirements of this subsection with respect to single-family and multifamily properties owned by the Department of Housing and Urban Development and public housing, the Secretary shall utilize a sufficient variety of abatement methods in a sufficient number of areas and circumstances to demonstrate their relative cost-effectiveness and their applicability to various types of housing. For purposes of the demonstration, a public housing agency may elect to test for lead-based paint using atomic absorption spectroscopy and may elect to abate lead-based paint and dust containing lead under standards more stringent than that in subsection (c) of this section, including the abatement of lead-based paint and dust which exceeds the standard of lead permitted in paints by the Consumer Product Safety Commission under this chapter, and such abatement shall qualify for assistance under section 1437*l*[1] of this title.

(B) Report

Not later than 18 months after the effective date of the regulations issued to carry out this subsection, the Secretary shall transmit to the Congress the findings and recommendations of the Secretary as a result of the demonstration program, including any recommendations of the Secretary for legislation to revise the requirements of this subsection. Based on the demonstration, the Secretary shall prepare and include in the report a comprehensive and workable plan for the cost-effective inspection and abatement of public housing in accordance with paragraph (3), including an estimate of the total cost of abatement in accordance with paragraph (3)(B). In preparing such report, the Secretary shall examine—

(i) the most reliable technology available for detecting lead-based paint, including X-ray fluorescence and atomic absorption spectroscopy;

(ii) the most efficient and cost-effective methods for abatement, including removal, containment, or encapsulation of the contaminated components, procedures which minimize the generation of dust (including the high efficiency vacuum removal of leaded dust), and procedures that provide for offsite disposal of the removed components, in compliance with all applicable regulatory standards and procedures;

(iii) safety considerations in testing, abatement, and worker protection;

(iv) the overall accuracy and reliability of laboratory testing of physical samples, x-ray fluorescence machines, and other available testing procedures;

[1] See References in Text note below.

(v) availability of qualified samplers and testers;

(vi) an estimate of the amount, characteristics, and regional distribution of housing in the United States that contains lead-based paint hazards at differing levels of contamination; and

(vii) the merits of an interim containment protocol for public housing dwellings that are determined to have lead-based paint hazards but for which comprehensive improvement assistance under section 1437*l*[1] of this title is not available.

(3) Testing and abatement of other public housing

(A) Required inspection

The Secretary shall require the inspection described in subsection (c) of this section for—

(i) a random sample of dwellings and common areas in all public housing that is not subject to paragraph (1); and

(ii) each dwelling in any public housing project in which there is a dwelling determined under clause (i) to have lead-based paint hazards, except that the Secretary shall not require the inspection of each dwelling if the Secretary requires the abatement of the lead-based paint hazards for the surfaces of each dwelling in the public housing project that correspond to the surfaces in the sample determined to have such hazards under clause (i).

(B) Schedule

The Secretary shall require the inspection of all housing subject to this paragraph prior to the expiration of 5 years after the report is required to be transmitted under paragraph (2)(B). The Secretary may prioritize, within such 5-year period, inspections on the basis of vacancy, age of housing, or projected modernization or rehabilitation. The Secretary shall require abatement and final inspection and certification of such housing in accordance with the last two sentences of paragraph (1).

(4) Report required

Not later than 9 months after completion of the demonstration required by paragraph (2), the Secretary shall, based on the demonstration, prepare and transmit to the Congress, a comprehensive and workable plan, including any recommendations for changes in legislation, for the prompt and cost effective inspection and abatement of privately owned single family and multifamily housing, including housing assisted under section 1437f of this title. After the expiration of the 9-month period referred to in the preceding sentence, the Secretary may not obligate or expend any funds or otherwise carry out activities related to any other policy development and research project until the report is transmitted.

(e) Exceptions

The provisions of this section shall not apply to—

(1) housing for the elderly or handicapped, except for any dwelling in such housing in which any child who is less than 7 years of age resides or is expected to reside;

(2) any project for which an application for insurance is submitted under section 1715v, 1715w, 1715z–6, or 1715z–7 of title 12; or

(3) any 0-bedroom dwelling.

(f) Funding

The Secretary shall carry out the provisions of this section utilizing available Federal funding sources. The Secretary shall use funds available under the Capital Fund under section 1437g of this title to carry out this section in public housing. The Secretary shall submit annually to the Congress an estimate of the funds required to carry out the provisions of this section with the reports required by paragraphs (2)(B) and (4).

(g) Interpretation of section

This section may not be construed to affect the responsibilities of the Environmental Protection Agency with respect to the protection of the public health from hazards posed by lead-based paint.

(Pub. L. 91–695, title III, § 302, as added Pub. L. 93–151, § 4(a)(1), Nov. 9, 1973, 87 Stat. 566; amended Pub. L. 100–242, title V, § 566(a), Feb. 5, 1988, 101 Stat. 1945; Pub. L. 100–628, title X, § 1088(a)–(f), (h), Nov. 7, 1988, 102 Stat. 3280–3282; Pub. L. 102–550, title X, §§ 1012(a)–(d), 1013, Oct. 28, 1992, 106 Stat. 3904, 3905, 3907; Pub. L. 105–276, title V, § 522(b)(4), Oct. 21, 1998, 112 Stat. 2564.)

REFERENCES IN TEXT

Section 1437*l* of this title, referred to in subsec. (d)(2)(A), (B)(vii), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

For effective date of the regulations issued to carry out this subsection, referred to in subsec. (d)(2)(B), see section 566(b) of Pub. L. 100–242, set out as a note below.

AMENDMENTS

1998—Subsec. (d)(1). Pub. L. 105–276, § 522(b)(4)(A), in introductory provisions, substituted ''assisted with capital assistance provided under section 1437*g* of this title'' for ''assisted under section 1437*l* of this title'' and, in concluding provisions, substituted ''capital assistance provided under section 1437*g* of this title'' for ''assistance under section 1437*l* of this title''.

Subsec. (f). Pub. L. 105–276, § 522(b)(4)(B), substituted ''under the Capital Fund under section 1437*g* of this title'' for ''for comprehensive improvement assistance under section 1437*l* of this title''.

1992—Pub. L. 102–550, § 1012(a)(1), amended section catchline generally.

Subsec. (a). Pub. L. 102–550, § 1012(a)(2)–(4), designated first sentence of subsec. (a) as par. (1), inserted heading, inserted before period at end of first sentence ''or otherwise receives more than $5,000 in project-based assistance under a Federal housing program'', substituted ''Beginning on January 1, 1995, such procedures shall apply to all such housing that constitutes target housing, as defined in section 4851b of this title, and shall provide for appropriate measures to conduct risk assessments, inspections, interim controls, and abatement of lead-based paint hazards. At a minimum, such procedures shall require—'' and subpars. (A) to (G) for former second sentence of subsec. (a) which read as follows: ''Such procedures shall apply to all such housing constructed or substantially rehabilitated prior to 1978 and shall as a minimum provide for (1) appropriate measures to eliminate as far as practicable immediate hazards due to the presence of accessible intact, intact, and nonintact interior and exterior painted surfaces that may contain lead in any such housing in which any child who is less than 7 years of age resides or is

expected to reside, and (2) assured notification (using a brochure developed after consultation with the National Institute of Building Sciences) to purchasers and tenants of such housing of the hazards of lead based paint, of the symptoms and treatment of lead based paint poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards.'', and designated former third sentence of subsec. (a) as par. (2) and inserted heading.

Pub. L. 102–550, § 1013, added pars. (3) and (4) and struck out former fourth sentence of subsec. (a) which read as follows: ''Further, the Secretary shall establish and implement procedures to eliminate the hazards of lead based paint poisoning in all federally owned properties prior to the sale of such properties when their use is intended for residential habitation.''

Subsec. (b). Pub. L. 102–550, § 1012(b), substituted ''for the risk assessment, interim control, inspection, and abatement of lead-based paint hazards in housing covered by this section shall be based upon guidelines developed pursuant to section 4852c of this title.'' for ''for the detection and abatement of lead-based paint poisoning hazards in any housing, including housing assisted under section 1437f of this title—

''(1) shall be based upon criteria that measure the condition of the housing; and

''(2) shall not be based upon criteria that measure the health of the residents of the housing.''

Subsec. (c). Pub. L. 102–550, § 1012(c), substituted ''certified inspector'' for ''qualified inspector'' and substituted ''centimeter squared or 0.5 percent by weight'' for ''centimeter squared'' in two places.

Subsec. (d)(1). Pub. L. 102–550, § 1012(d), in heading, substituted ''modernization'' for ''CIAP'' and in fourth sentence, substituted ''of lead-based paint and lead-based paint hazards'' for ''to eliminate the lead-based paint poisoning hazards''.

1988—Pub. L. 100–242 designated existing provisions as subsec. (a) ''General requirements'', substituted ''housing constructed or substantially rehabilitated prior to 1978'' for ''housing constructed prior to 1950'', in cl. (1), substituted ''accessible intact, intact, and nonintact interior and exterior painted surfaces that may contain lead in any such housing in which any child who is less than 7 years of age resides or is expected to reside'' for ''paint which may contain lead and to which children may be exposed'', in cl. (2), inserted ''(using a brochure developed after consultation with the National Institute of Building Sciences)'' after ''notification'', and struck out after second sentence ''Such procedures may apply to housing constructed during or after 1950 if the Secretary determines, in his discretion, that such housing presents hazards of lead based paint.'', and added subsecs. (b) to (f).

Subsec. (c). Pub. L. 100–628, § 1088(f), inserted '', atomic absorption spectroscopy,'' after ''fluorescence analyzer'' in first sentence, and ''or laboratory'' after ''inspector'' in second sentence.

Subsec. (d)(1). Pub. L. 100–628, § 1088(a), substituted ''Transitional testing and abatement in public housing receiving CIAP assistance'' for ''Public housing'' in heading, substituted ''section 1437*l* of this title'' for ''section 1437g of this title'' in first sentence, added subpars. (A) and (B) and second and third sentences, inserted '', industrial hygienist, or local public health official'' before period at end of last sentence, and struck out former subpars. (A) to (C) and second and third sentences which read as follows:

''(A) each vacant dwelling prior to rerenting;

''(B) a random sample of all occupied dwellings; and

''(C) each dwelling in any housing in which there is a dwelling determined under subparagraph (A) or (B) to have lead-based paint hazards.

The Secretary shall require the inspection of all housing subject to this paragraph prior to the expiration of 5 years from the date of the publication of final regulations pursuant to this subsection. The Secretary shall prioritize, within such 5-year period, inspections on the basis of vacancy, age of housing, or projected modernization or rehabilitation.''

Subsec. (d)(2). Pub. L. 100–628, § 1088(b)(1), substituted ''Abatement demonstration program'' for ''HUD-owned properties'' in heading.

Subsec. (d)(2)(A). Pub. L. 100–628, § 1088(b)(2), inserted ''and public housing'' after ''Urban Development'', and inserted at end ''For purposes of the demonstration, a public housing agency may elect to test for lead-based paint using atomic absorption spectroscopy and may elect to abate lead-based paint and dust containing lead under standards more stringent than that in subsection (c) of this section, including the abatement of lead-based paint and dust which exceeds the standard of lead permitted in paints by the Consumer Product Safety Commission under this chapter, and such abatement shall qualify for assistance under section 1437*l* of this title.''

Subsec. (d)(2)(B). Pub. L. 100–628, § 1088(b)(3), in introductory provisions, inserted after first sentence ''Based on the demonstration, the Secretary shall prepare and include in the report a comprehensive and workable plan for the cost-effective inspection and abatement of public housing in accordance with paragraph (3), including an estimate of the total cost of abatement in accordance with paragraph (3)(B).''

Subsec. (d)(2)(B)(i). Pub. L. 100–628, § 1088(c)(1), inserted '', including X-ray fluorescence and atomic absorption spectroscopy'' after ''lead-based paint''.

Subsec. (d)(2)(B)(ii). Pub. L. 100–628, § 1088(c)(2), inserted '', including removal, containment, or encapsulation of the contaminated components, procedures which minimize the generation of dust (including the high efficiency vacuum removal of leaded dust), and procedures that provide for offsite disposal of the removed components, in compliance with all applicable regulatory standards and procedures'' after ''methods for abatement''.

Subsec. (d)(2)(B)(iii). Pub. L. 100–628, § 1088(c)(3), inserted '', abatement, and worker protection'' after ''in testing''.

Subsec. (d)(2)(B)(vii). Pub. L. 100–628, § 1088(c)(4)–(6), added cl. (vii).

Subsec. (d)(3), (4). Pub. L. 100–628, § 1088(d), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f). Pub. L. 100–628, § 1088(e), inserted at end ''The Secretary shall submit annually to the Congress an estimate of the funds required to carry out the provisions of this section with the reports required by paragraphs (2)(B) and (4).''

Subsec. (g). Pub. L. 100–628, § 1088(h), added subsec. (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE

Section 4(b) of Pub. L. 93–151 provided that: ''The amendments made by subsection (a) of this section [enacting this section] become effective upon the expiration of ninety days following the date of enactment of this Act [Nov. 9, 1973].''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f) of this section relating to annual submittal to Congress of estimate of funds, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 22 on page 97 of House Document No. 103–7.

LEAD-BASED PAINT ABATEMENT TRAINING AND CERTIFICATION REQUIREMENTS AND TRAINING GRANTS

Pub. L. 102–139, title III, Oct. 28, 1991, 105 Stat. 765, 766, which provided for regulations governing lead-

based paint abatement activities to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, that contractors are certified, and that laboratories engaged in testing for substances are certified, and which also provided for grants for training and education of workers who are or may be directly engaged in lead-based paint abatement activities, was omitted as superseded by section 2682(a)(1) of Title 15, Commerce and Trade, which provided in part that on Oct. 28, 1992, the provisions of law formerly set out in this note would cease to have any force and effect.

LEAD-BASED PAINT TECHNICAL GUIDELINES; DRAFT GUIDELINES

Pub. L. 101–144, title II, Nov. 9, 1989, 103 Stat. 853, provided that: ''If the Secretary of the Department of Housing and Urban Development has not issued the lead-based paint technical guidelines on reliable testing protocols, safe and effective abatement techniques, cleanup methods and acceptable post-abatement lead dust levels by April 1, 1990, the Department's September 29, 1989, draft guidelines shall take effect and remain in force until revised by the Secretary.''

PREREQUISITES TO IMPLEMENTATION OF REGULATIONS REGARDING TESTING AND ABATEMENT OF LEAD-BASED PAINT IN PUBLIC HOUSING

Pub. L. 100–404, title I, Aug. 19, 1988, 102 Stat. 1021, provided that: ''None of the funds provided in this Act [see Tables for classification] or heretofore provided may be used to implement or enforce the regulations promulgated by the Department of Housing and Urban Development on June 6, 1988, with respect to the testing and abatement of lead-based paint in public housing until the Secretary develops comprehensive technical guidelines on reliable testing protocols, safe and effective abatement techniques, cleanup methods, and acceptable post-abatement lead dust levels.''

REGULATIONS AND CONSULTATION

Section 566(b) of Pub. L. 100–242, as amended by Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 100–628, title X, § 1088(g), Nov. 7, 1988, 102 Stat. 3282, provided that:

''(1) PROPOSED REGULATIONS.—Not later than the expiration of the 60-day period following the date of the enactment of this Act [Feb. 5, 1988], the Secretary of Housing and Urban Development shall publish proposed regulations to carry out the amendments made by this section [amending this section].

''(2) FINAL REGULATIONS.—The Secretary shall publish final regulations to carry out the amendments made by this section, which shall become effective not later than the expiration of the 120-day period following the date of the enactment of this Act.

''(3) REQUIRED CONSULTATIONS.—Before issuing proposed regulations and in preparing reports under this section, the Secretary shall consult with—

''(A) the National Institute of Building Sciences, the Environmental Protection Agency, the National Institute of Environmental Health Sciences, the Centers for Disease Control [now Centers for Disease Control and Prevention], the Consumer Product Safety Commission, major public housing organizations, other major housing organizations, and the National Institute of Standards and Technology with respect to the most cost-effective methods of detecting and abating lead-based paint poisoning hazards; and

''(B) public housing agencies to develop a cost-efficient plan for detecting and abating lead-based paint poisoning hazards in dwelling assisted under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] and dwellings in public housing assisted under such Act [42 U.S.C. 1437 et seq.].''

SUBCHAPTER IV—PROHIBITION AGAINST FUTURE USE OF LEAD-BASED PAINT

§ 4831. Use of lead-based paint

(a) Prohibition by Secretary of Health and Human Services in application to cooking, drinking, or eating utensils

The Secretary of Health and Human Services shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the application of lead-based paint to any cooking utensil, drinking utensil, or eating utensil manufactured and distributed after January 13, 1971.

(b) Prohibition by Secretary of Housing and Urban Development of use in residential structures constructed or rehabilitated by Federal Government or with Federal assistance

The Secretary of Housing and Urban Development shall take steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government, or with Federal assistance in any form after January 13, 1971.

(c) Prohibition by Consumer Product Safety Commission in application to toys or furniture articles

The Consumer Product Safety Commission shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the application of lead-based paint to any toy or furniture article.

(Pub. L. 91–695, title IV, § 401, Jan. 13, 1971, 84 Stat. 2079; Pub. L. 93–151, § 5, Nov. 9, 1973, 87 Stat. 566; Pub. L. 94–317, title II, § 204(b), June 23, 1976, 90 Stat. 705; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

January 13, 1971, referred to in subsecs. (a) and (b), was in the original ''the date of enactment of this Act''.

AMENDMENTS

1976—Pub. L. 94–317 amended section generally, designating existing provisions as subsec. (a), striking out requirement of consultation with Secretary of Housing and Urban Development and provisions relating to prohibition of use of lead based paint in residential structures constructed or rehabilitated by Federal Government or with Federal assistance, and adding subsecs. (b) and (c).

1973—Pub. L. 93–151 amended section generally, providing for consultation of the Secretaries, incorporating existing provisions as cl. (1), and adding cl. (2).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

SUBCHAPTER V—GENERAL PROVISIONS

§ 4841. Definitions

As used in this chapter—

(1) The term ''State'' means the several States, the District of Columbia, the Common-

wealth of Puerto Rico, and the territories and possessions of the United States.

(2) The term ''units of general local government'' means (A) any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, (B) any combination of units of general local government in one or more States, (C) an Indian tribe, or (D) with respect to lead-based paint poisoning elimination activities in their urban areas, the territories and possessions of the United States.

(3)(A) Except as provided in subparagraph (B), the term ''lead-based paint'' means any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(B)(i) The Consumer Product Safety Commission shall, during the six-month period beginning on the date of the enactment of the National Health Promotion and Disease Prevention Act of 1976, determine, on the basis of available data and information and after providing opportunity for an oral hearing and considering recommendations of the Secretary of Health and Human Services (including those of the Centers for Disease Control and Prevention) and of the National Academy of Sciences, whether or not a level of lead in paint which is greater than six one-hundredths of 1 per centum but not in excess of five-tenths of 1 per centum is safe. If the Commission determines, in accordance with the preceding sentence, that another level of lead is safe, the term ''lead-based paint'' means, with respect to paint which is manufactured after the expiration of the six-month period beginning on the date of the Commission's determination, paint containing by weight (calculated as lead metal) in the total nonvolatile content of the paint more than the level of lead determined by the Commission to be safe or the equivalent measure of lead in the dried film of paint already applied, or both.

(ii) Unless the definition of the term ''lead-based paint'' has been established by a determination of the Consumer Product Safety Commission pursuant to clause (i) of this subparagraph, the term ''lead-based paint'' means, with respect to paint which is manufactured after the expiration of the twelve-month period beginning on such date of enactment, paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(Pub. L. 91–695, title V, § 501, Jan. 13, 1971, 84 Stat. 2080; Pub. L. 93–151, § 6, Nov. 9, 1973, 87 Stat. 567; Pub. L. 94–317, title II, § 204(c), June 23, 1976, 90 Stat. 706; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 102–531, title III, § 312(g), Oct. 27, 1992, 106 Stat. 3506.)

REFERENCES IN TEXT

The National Health Promotion and Disease Prevention Act of 1976, referred to in par. (3)(B)(i), probably means Pub. L. 94–317, June 23, 1976, 90 Stat. 695, as amended, which enacted sections 300u to 300u–5 of this title, amended sections 201, 243, 247b, 247c, 264, 300f, 4801, 4831, and 4841 to 4843 of this title, and enacted provisions set out as notes under sections 201, 247b, and 247c of this title. For complete classification of this Act to the Code, see Tables.

Such date of enactment, referred to in par. (3)(B)(ii), probably means the date of approval of Pub. L. 94–317, which was June 23, 1976.

AMENDMENTS

1992—Par. (3)(B)(i). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Center for Disease Control''.

1976—Par. (3). Pub. L. 94–317 substituted provisions redefining standards for lead in paint and procedures used to determine such standards, for provisions defining standards of lead-based paint to be paint containing more than five-tenths of 1 per centum of lead by weight prior to Dec. 31, 1974, and after such date, paint containing more than six one-hundredths of 1 per centum of lead by weight, except where the Chairman of the Consumer Product Safety Commission determined that the pre-1974 level was safe, then such level to become effective.

1973—Par. (3). Pub. L. 93–151 amended par. (3). Prior to amendment, par. (3) defined ''lead-based paint'' to mean any paint containing more than 1 per centum lead by weight (calculated as lead metal) in the total non-volatile content of liquid paints or in the dried film of paint already applied.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in par. (3)(B)(i) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 4842. Consultation by Secretary with other departments and agencies

In carrying out their respective authorities under this chapter, the Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall each cooperate with and seek the advice of the heads of any other departments or agencies regarding any programs under their respective responsibilities which are related to, or would be affected by, such authority.

(Pub. L. 91–695, title V, § 502, Jan. 13, 1971, 84 Stat. 2080; Pub. L. 94–317, title II, § 204(d), June 23, 1976, 90 Stat. 706; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1976—Pub. L. 94–317 substituted ''In carrying out their respective authorities under this chapter, the Secretary of Housing and Urban Development and the Secretary of Health, Education, and Welfare shall each'' for ''In carrying out the authority under this chapter, the Secretary of Health, Education, and Welfare shall''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in text pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 4843. Authorization of appropriations

(a) There are authorized to be appropriated to carry out this chapter $10,000,000 for the fiscal year 1976, $12,000,000 for the fiscal year 1977, and $14,000,000 for the fiscal year 1978.

(b) Any amounts appropriated under this section shall remain available until expended when so provided in appropriation Acts; and any amounts authorized for one fiscal year but not appropriated may be appropriated for the succeeding fiscal year.

(Pub. L. 91–695, title V, § 503, Jan. 13, 1971, 84 Stat. 2080; Pub. L. 93–151, § 7(a)–(d), Nov. 9, 1973, 87 Stat. 567; Pub. L. 94–317, title II, § 204(e), June 23, 1976, 90 Stat. 706.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–317, § 204(e)(1), substituted provisions authorizing appropriations for this chapter of $10,000,000 for fiscal year 1976, $12,000,000 for fiscal year 1977, and $14,000,000 for fiscal year 1978 for provisions authorizing appropriations for subchapter I of this chapter not to exceed $3,330,000 for fiscal year 1971, $6,660,000 for fiscal year 1972, and $25,000,000 for each of fiscal years 1974 and 1975.

Subsec. (b). Pub. L. 94–317, § 204(e)(1), (2), redesignated subsec. (d) as (b). Former subsec. (b), which provided authorization of appropriations for subchapter II of this chapter not to exceed $5,000,000 for fiscal year 1971, $10,000,000 for fiscal year 1972, and $35,000,000 for each of fiscal years 1974 and 1975, was struck out.

Subsec. (c). Pub. L. 94–317, § 204(e)(1), struck out subsec. (c) which provided for authorization of appropriations for subchapter III of this chapter not to exceed $1,670,000 for fiscal year 1971, $3,340,000 for fiscal year 1972, and $3,000,000 for each of fiscal years 1974 and 1975.

Subsec. (d). Pub. L. 94–317, § 204(e)(2), redesignated subsec. (d) as (b).

1973—Subsec. (a). Pub. L. 93–151, § 7(a), provided for appropriations authorization of $25,000,000 for fiscal years 1974 and 1975 for carrying out subchapter I provisions.

Subsec. (b). Pub. L. 93–151, § 7(b), provided for appropriations authorization of $35,000,000 for fiscal years 1974 and 1975 for carrying out subchapter II provisions.

Subsec. (c). Pub. L. 93–151, § 7(c), provided for appropriations authorization of $3,000,000 for fiscal years 1974 and 1975 for carrying out subchapter III provisions.

Subsec. (d). Pub. L. 93–151, § 7(d), substituted ''amounts authorized for one fiscal year but not appropriated may be appropriated for the succeeding fiscal year'' for ''amounts authorized for the fiscal year 1971 but not appropriated may be appropriated for the fiscal year 1972''.

§§ 4844, 4845. Repealed. Pub. L. 95–626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588

Section 4844, Pub. L. 91–695, title V, § 504, as added Pub. L. 93–151, § 7(e), Nov. 9, 1973, 87 Stat. 567, related to the eligibility of certain State agencies with respect to grants made under former sections 4801 and 4811 of this title.

Section 4845, Pub. L. 91–695, title V, § 505, as added Pub. L. 93–151, § 7(e), Nov. 9, 1973, 87 Stat. 568, provided for the establishment of a National Childhood Lead Based Paint Poisoning Advisory Board.

EFFECTIVE DATE OF REPEAL

Section 208(b) of Pub. L. 95–626 provided that the repeal is effective Oct. 1, 1979.

§ 4846. State laws superseded, and null and void

It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and units of local government insofar as they may now or hereafter provide for a requirement, prohibition, or standard relating to the lead content in paints or other similar surface-coating materials which differs from the provisions of this chapter or regulations issued pursuant to this chapter. Any law, regulation, or ordinance purporting to establish such different requirement, prohibition, or standard shall be null and void.

(Pub. L. 91–695, title V, § 504, formerly § 506, as added Pub. L. 93–151, § 7(e), Nov. 9, 1973, 87 Stat. 568; renumbered § 504, Pub. L. 95–626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588.)

PRIOR PROVISIONS

A prior section 504 of Pub. L. 91–695 was classified to section 4844 of this title prior to repeal by Pub. L. 95–626.

CHAPTER 63A—RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION

Sec.
4851. Findings.
4851a. Purposes.
4851b. Definitions.

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SUBCHAPTER II—WORKER PROTECTION

4853. Worker protection.
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SUBCHAPTER IV—REPORTS

4856. Reports of Secretary of Housing and Urban Development.

§ 4851. Findings

The Congress finds that—

(1) low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under age 6, with minority and low-income communities disproportionately affected;

(2) at low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems;

(3) pre-1980 American housing stock contains more than 3,000,000 tons of lead in the form of lead-based paint, with the vast majority of homes built before 1950 containing substantial amounts of lead-based paint;

(4) the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children;

(5) the health and development of children living in as many as 3,800,000 American homes is endangered by chipping or peeling lead paint, or excessive amounts of lead-contaminated dust in their homes;

(6) the danger posed by lead-based paint hazards can be reduced by abating lead-based paint or by taking interim measures to prevent paint deterioration and limit children's exposure to lead dust and chips;

(7) despite the enactment of laws in the early 1970's requiring the Federal Government to eliminate as far as practicable lead-based paint hazards in federally owned, assisted, and insured housing, the Federal response to this national crisis remains severely limited; and

(8) the Federal Government must take a leadership role in building the infrastructure—including an informed public, State and local delivery systems, certified inspectors, contractors, and laboratories, trained workers, and available financing and insurance—necessary to ensure that the national goal of eliminating lead-based paint hazards in housing can be achieved as expeditiously as possible.

(Pub. L. 102–550, title X, § 1002, Oct. 28, 1992, 106 Stat. 3897.)

SHORT TITLE

Section 1001 of title X of Pub. L. 102–550 provided that: ''This title [enacting this chapter and sections 2681 to 2692 of Title 15, Commerce and Trade, amending sections 1437f, 1437aaa–1, 1437aaa–2, 1471, 4822, 5305, 12705, 12742, 12872, 12873, 12892, and 12893 of this title, sections 1703, 1709, and 1715*l* of Title 12, Banks and Banking, sections 2606, 2610, 2612, 2615, 2616, 2618, and 2619 of Title 15, and section 671 of Title 29, Labor, and enacting provisions set out as a note under section 2601 of Title 15] may be cited as the 'Residential Lead-Based Paint Hazard Reduction Act of 1992'.''

§ 4851a. Purposes

The purposes of this chapter are—

(1) to develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible;

(2) to reorient the national approach to the presence of lead-based paint in housing to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock;

(3) to encourage effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction and by ending the current confusion over reasonable standards of care;

(4) to ensure that the existence of lead-based paint hazards is taken into account in the development of Government housing policies and in the sale, rental, and renovation of homes and apartments;

(5) to mobilize national resources expeditiously, through a partnership among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing lead-based paint hazards;

(6) to reduce the threat of childhood lead poisoning in housing owned, assisted, or transferred by the Federal Government; and

(7) to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

(Pub. L. 102–550, title X, § 1003, Oct. 28, 1992, 106 Stat. 3897.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning title X of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3897, known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 4851 of this title and Tables.

§ 4851b. Definitions

For the purposes of this chapter, the following definitions shall apply:

(1) Abatement

The term ''abatement'' means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such term includes—

(A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

(B) all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) Accessible surface

The term ''accessible surface'' means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(3) Certified contractor

The term ''certified contractor'' means—

(A) a contractor, inspector, or supervisor who has completed a training program certified by the appropriate Federal agency and has met any other requirements for certification or licensure established by such agency or who has been certified by any State through a program which has been found by such Federal agency to be at least as rigorous as the Federal certification program; and

(B) workers or designers who have fully met training requirements established by the appropriate Federal agency.

(4) Contract for the purchase and sale of residential real property

The term ''contract for the purchase and sale of residential real property'' means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(5) Deteriorated paint

The term ''deteriorated paint'' means any interior or exterior paint that is peeling, chipping, chalking or cracking or any paint lo-

cated on an interior or exterior surface or fixture that is damaged or deteriorated.

(6) Evaluation

The term ''evaluation'' means risk assessment, inspection, or risk assessment and inspection.

(7) Federally assisted housing

The term ''federally assisted housing'' means residential dwellings receiving project-based assistance under programs including—

(A) section 1715*l*(d)(3) or 1715z–1 of title 12;

(B) section 1 of the Housing and Urban Development Act of 1965;

(C) section 1437f of this title; or

(D) sections 1472(a), 1474, 1484, 1485, 1486 and 1490m of this title.

(8) Federally owned housing

The term ''federally owned housing'' means residential dwellings owned or managed by a Federal agency, or for which a Federal agency is a trustee or conservator. For the purpose of this paragraph, the term ''Federal agency'' includes the Department of Housing and Urban Development, the Farmers Home Administration, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the General Services Administration, the Department of Defense, the Department of Veterans Affairs, the Department of the Interior, the Department of Transportation, and any other Federal agency.

(9) Federally supported work

The term ''federally supported work'' means any lead hazard evaluation or reduction activities conducted in federally owned or assisted housing or funded in whole or in part through any financial assistance program of the Department of Housing and Urban Development, the Farmers Home Administration, or the Department of Veterans Affairs.

(10) Friction surface

The term ''friction surface'' means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(11) Impact surface

The term ''impact surface'' means an interior or exterior surface that is subject to damage by repeated impacts, for example, certain parts of door frames.

(12) Inspection

The term ''inspection'' means a surface-by-surface investigation to determine the presence of lead-based paint as provided in section 4822(c) of this title and the provision of a report explaining the results of the investigation.

(13) Interim controls

The term ''interim controls'' means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(14) Lead-based paint

The term ''lead-based paint'' means paint or other surface coatings that contain lead in excess of limits established under section 4822(c) of this title.

(15) Lead-based paint hazard

The term ''lead-based paint hazard'' means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

(16) Lead-contaminated dust

The term ''lead-contaminated dust'' means surface dust in residential dwellings that contains an area or mass concentration of lead in excess of levels determined by the appropriate Federal agency to pose a threat of adverse health effects in pregnant women or young children.

(17) Lead-contaminated soil

The term ''lead-contaminated soil'' means bare soil on residential real property that contains lead at or in excess of the levels determined to be hazardous to human health by the appropriate Federal agency.

(18) Mortgage loan

The term ''mortgage loan'' includes any loan (other than temporary financing such as a construction loan) that—

(A) is secured by a first lien on any interest in residential real property; and

(B) either—

(i) is insured, guaranteed, made, or assisted by the Department of Housing and Urban Development, the Department of Veterans Affairs, or the Farmers Home Administration, or by any other agency of the Federal Government; or

(ii) is intended to be sold by each originating mortgage institution to any federally chartered secondary mortgage market institution.

(19) Originating mortgage institution

The term ''originating mortgage institution'' means a lender that provides mortgage loans.

(20) Priority housing

The term ''priority housing'' means target housing that qualifies as affordable housing under section 12745 of this title, including housing that receives assistance under subsection (b) or (*o*) of section 1437f of this title.

(21) Public housing

The term ''public housing'' has the same meaning given the term in section 1437a(b) of this title.

(22) Reduction

The term ''reduction'' means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

(23) Residential dwelling

The term ''residential dwelling'' means—

(A) a single-family dwelling, including attached structures such as porches and stoops; or

(B) a single-family dwelling unit in a structure that contains more than 1 separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(24) Residential real property

The term ''residential real property'' means real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(25) Risk assessment

The term ''risk assessment'' means an on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings, including—

(A) information gathering regarding the age and history of the housing and occupancy by children under age 6;

(B) visual inspection;

(C) limited wipe sampling or other environmental sampling techniques;

(D) other activity as may be appropriate; and

(E) provision of a report explaining the results of the investigation.

(26) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(27) Target housing

The term ''target housing'' means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary, at the Secretary's discretion, may designate an earlier date.

(Pub. L. 102–550, title X, § 1004, Oct. 28, 1992, 106 Stat. 3898.)

REFERENCES IN TEXT

Section 1 of the Housing and Urban Development Act of 1965, referred to in par. (7)(B), is section 1 of Pub. L. 89–117, which is set out as a Short Title of 1965 Amendment note under section 1701 of Title 12, Banks and Banking.

SUBCHAPTER I—LEAD-BASED PAINT HAZARD REDUCTION

§ 4852. Grants for lead-based paint hazard reduction in target housing

(a) General authority

The Secretary is authorized to provide grants to eligible applicants to evaluate and reduce lead-based paint hazards in housing that is not federally assisted housing, federally owned housing, or public housing, in accordance with the provisions of this section. Grants shall only be made under this section to provide assistance for housing which meets the following criteria—

(1) for grants made to assist rental housing, at least 50 percent of the units must be occupied by or made available to families with incomes at or below 50 percent of the area median income level and the remaining units shall be occupied or made available to families with incomes at or below 80 percent of the area median income level, and in all cases the landlord shall give priority in renting units assisted under this section, for not less than 3 years following the completion of lead abatement activities, to families with a child under the age of six years, except that buildings with five or more units may have 20 percent of the units occupied by families with incomes above 80 percent of area median income level;

(2) for grants made to assist housing owned by owner-occupants, all units assisted with grants under this section shall be the principal residence of families with income at or below 80 percent of the area median income level, and not less than 90 percent of the units assisted with grants under this section shall be occupied by a child under the age of six years or shall be units where a child under the age of six years spends a significant amount of time visiting; and

(3) notwithstanding paragraphs (1) and (2), Round II grantees who receive assistance under this section may use such assistance for priority housing.

(b) Eligible applicants

A State or unit of local government that has an approved comprehensive housing affordability strategy under section 12705 of this title is eligible to apply for a grant under this section.

(c) Form of applications

To receive a grant under this section, a State or unit of local government shall submit an application in such form and in such manner as the Secretary shall prescribe. An application shall contain—

(1) a copy of that portion of an applicant's comprehensive housing affordability strategy required by section 12705(b)(16)[1] of this title;

(2) a description of the amount of assistance the applicant seeks under this section;

(3) a description of the planned activities to be undertaken with grants under this section, including an estimate of the amount to be allocated to each activity;

(4) a description of the forms of financial assistance to owners and occupants of housing that will be provided through grants under this section; and

(5) such assurances as the Secretary may require regarding the applicant's capacity to carry out the activities.

(d) Selection criteria

The Secretary shall award grants under this section on the basis of the merit of the activi-

[1] See References in Text note below.

ties proposed to be carried out and on the basis of selection criteria, which shall include—

(1) the extent to which the proposed activities will reduce the risk of lead-based paint poisoning to children under the age of 6 who reside in housing;

(2) the degree of severity and extent of lead-based paint hazards in the jurisdiction to be served;

(3) the ability of the applicant to leverage State, local, and private funds to supplement the grant under this section;

(4) the ability of the applicant to carry out the proposed activities; and

(5) such other factors as the Secretary determines appropriate to ensure that grants made available under this section are used effectively and to promote the purposes of this chapter.

(e) Eligible activities

A grant under this section may be used to—

(1) perform risk assessments and inspections in housing;

(2) provide for the interim control of lead-based paint hazards in housing;

(3) provide for the abatement of lead-based paint hazards in housing;

(4) provide for the additional cost of reducing lead-based paint hazards in units undergoing renovation funded by other sources;

(5) ensure that risk assessments, inspections, and abatements are carried out by certified contractors in accordance with section 2682 of title 15;

(6) monitor the blood-lead levels of workers involved in lead hazard reduction activities funded under this section;

(7) assist in the temporary relocation of families forced to vacate housing while lead hazard reduction measures are being conducted;

(8) educate the public on the nature and causes of lead poisoning and measures to reduce exposure to lead, including exposure due to residential lead-based paint hazards;

(9) test soil, interior surface dust, and the blood-lead levels of children under the age of 6 residing in housing after lead-based paint hazard reduction activity has been conducted, to assure that such activity does not cause excessive exposures to lead; and

(10) carry out such other activities that the Secretary determines appropriate to promote the purposes of this chapter.

(f) Forms of assistance

The applicant may provide the services described in this section through a variety of programs, including grants, loans, equity investments, revolving loan funds, loan funds, loan guarantees, interest write-downs, and other forms of assistance approved by the Secretary.

(g) Technical assistance and capacity building

(1) In general

The Secretary shall develop the capacity of eligible applicants to carry out the requirements of section 12705(b)(16)[1] of this title and to carry out activities under this section. In fiscal years 1993 and 1994, the Secretary may make grants of up to $200,000 for the purpose of establishing State training, certification or accreditation programs that meet the requirements of section 2682 of title 15.

(2) Set-aside

Of the total amount approved in appropriation Acts under subsection (*o*) of this section, there shall be set aside to carry out this subsection $3,000,000 for fiscal year 1993 and $3,000,000 for fiscal year 1994.

(h) Matching requirement

Each recipient of a grant under this section shall make contributions toward the cost of activities that receive assistance under this section in an amount not less than 10 percent of the total grant amount under this section.

(i) Prohibition of substitution of funds

Grants under this subchapter may not be used to replace other amounts made available or designated by State or local governments for use for the purposes under this subchapter.

(j) Limitation on use

An applicant shall ensure that not more than 10 percent of the grant will be used for administrative expenses associated with the activities funded.

(k) Financial records

An applicant shall maintain and provide the Secretary with financial records sufficient, in the determination of the Secretary, to ensure proper accounting and disbursing of amounts received from a grant under this section.

(*l*) Report

An applicant under this section shall submit to the Secretary, for any fiscal year in which the applicant expends grant funds under this section, a report that—

(1) describes the use of the amounts received;

(2) states the number of risk assessments and the number of inspections conducted in residential dwellings;

(3) states the number of residential dwellings in which lead-based paint hazards have been reduced through interim controls;

(4) states the number of residential dwellings in which lead-based paint hazards have been abated; and

(5) provides any other information that the Secretary determines to be appropriate.

(m) Notice of Funding Availability

The Secretary shall publish a Notice of Funding Availability pursuant to this section not later than 120 days after funds are appropriated for this section.

(n) Relationship to other law

Effective 2 years after the date of promulgation of regulations under section 2682 of title 15, no grants for lead-based paint hazard evaluation or reduction may be awarded to a State under this section unless such State has an authorized program under section 2684 of title 15.

(*o*) Environmental review

(1) In general

For purposes of environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969 [42

U.S.C. 4321 et seq.] and other provisions of law that further the purposes of such Act, a grant under this section shall be treated as assistance under the HOME Investment Partnership[2] Act, established under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], and shall be subject to the regulations promulgated by the Secretary to implement section 288 of such Act [42 U.S.C. 12838].

(2) Applicability

This subsection shall apply to—

(A) grants awarded under this section; and

(B) grants awarded to States and units of general local government for the abatement of significant lead-based paint and lead dust hazards in low- and moderate-income owner-occupied units and low-income privately owned rental units pursuant to title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102–139, 105 Stat. 736).

(p) Authorization of appropriations

For the purposes of carrying out this chapter, there are authorized to be appropriated $125,000,000 for fiscal year 1993 and $250,000,000 for fiscal year 1994.

(Pub. L. 102–550, title X, § 1011, Oct. 28, 1992, 106 Stat. 3901; Pub. L. 103–233, title III, § 305(a), Apr. 11, 1994, 108 Stat. 370; Pub. L. 104–134, title I, § 101(e) [title II, § 217], Apr. 26, 1996, 110 Stat. 1321–257, 1321–290; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

REFERENCES IN TEXT

Section 12705(b)(16) of this title, referred to in subsecs. (c)(1) and (g)(1), probably means section 12705(b)(16) relating to housing units that contain lead-based paint hazards which was redesignated section 12705(b)(17) by Pub. L. 105–276, title V, § 583(5)(B), Oct. 21, 1998, 112 Stat. 2644.

This chapter, referred to in subsecs. (d)(5), (e)(10), and (p), was in the original ''this Act'', meaning title X of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3897, known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 4851 of this title and Tables.

This subchapter, referred to in subsec. (i), was in the original ''this subtitle'', meaning subtitle A of title X of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3901, which enacted this subchapter and amended sections 1437f, 1437aaa–1, 1437aaa–2, 1471, 4822, 5305, 12705, 12742, 12872, 12873, 12892, and 12893 of this title and sections 1703, 1709, and 1715*l* of Title 12, Banks and Banking.

The National Environmental Policy Act of 1969, referred to in subsec. (*o*)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (*o*)(1), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, as amended. Title II of the Act, known as the HOME Investment Partnerships Act, is classified generally to subchapter II (§ 12721 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, referred to in subsec. (*o*)(2)(B), is Pub. L. 102–139, Oct. 28, 1991, 105 Stat. 736. Title II of the Act relates to appropriations for the Department of Housing and Urban Development. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–134, § 101(e) [title II, § 217], substituted ''hazards in housing'' for ''hazards in priority housing'' and inserted at end ''Grants shall only be made under this section to provide assistance for housing which meets the following criteria—'' and pars. (1) to (3).

Subsecs. (c)(4), (d)(1), (e)(1) to (3), (7), (9). Pub. L. 104–134, § 101(e) [title II, § 217(a)], substituted ''housing'' for ''priority housing''.

1994—Subsecs. (*o*), (p). Pub. L. 103–233 added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

§ 4852a. Task force on lead-based paint hazard reduction and financing

(a) In general

The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall establish a task force to make recommendations on expanding resources and efforts to evaluate and reduce lead-based paint hazards in private housing.

(b) Membership

The task force shall include individuals representing the Department of Housing and Urban Development, the Farmers Home Administration, the Department of Veterans Affairs, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Environmental Protection Agency, employee organizations in the building and construction trades industry, landlords, tenants, primary lending institutions, private mortgage insurers, single-family and multifamily real estate interests, nonprofit housing developers, property liability insurers, public housing agencies, low-income housing advocacy organizations, national, State and local lead-poisoning prevention advocates and experts, and community-based organizations located in areas with substantial rental housing.

(c) Responsibilities

The task force shall make recommendations to the Secretary and the Administrator of the Environmental Protection Agency concerning—

(1) incorporating the need to finance lead-based paint hazard reduction into underwriting standards;

(2) developing new loan products and procedures for financing lead-based paint hazard evaluation and reduction activities;

(3) adjusting appraisal guidelines to address lead safety;

(4) incorporating risk assessments or inspections for lead-based paint as a routine procedure in the origination of new residential mortgages;

(5) revising guidelines, regulations, and educational pamphlets issued by the Department of Housing and Urban Development and other Federal agencies relating to lead-based paint poisoning prevention;

(6) reducing the current uncertainties of liability related to lead-based paint in rental housing by clarifying standards of care for

[2] So in original. Probably should be ''Partnerships''.

landlords and lenders, and by exploring the ''safe harbor'' concept;

(7) increasing the availability of liability insurance for owners of rental housing and certified contractors and establishing alternative systems to compensate victims of lead-based paint poisoning; and

(8) evaluating the utility and appropriateness of requiring risk assessments or inspections and notification to prospective lessees of rental housing.

(d) Compensation

The members of the task force shall not receive Federal compensation for their participation.

(Pub. L. 102–550, title X, § 1015, Oct. 28, 1992, 106 Stat. 3908.)

§ 4852b. National consultation on lead-based paint hazard reduction

In carrying out this chapter, the Secretary shall consult on an ongoing basis with the Administrator of the Environmental Protection Agency, the Director of the Centers for Disease Control, other Federal agencies concerned with lead poisoning prevention, and the task force established pursuant to section 4852a of this title.

(Pub. L. 102–550, title X, § 1016, Oct. 28, 1992, 106 Stat. 3909.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 4852c. Guidelines for lead-based paint hazard evaluation and reduction activities

Not later than 12 months after October 28, 1992, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Labor, and the Secretary of Health and Human Services (acting through the Director of the Centers for Disease Control), shall issue guidelines for the conduct of federally supported work involving risk assessments, inspections, interim controls, and abatement of lead-based paint hazards. Such guidelines shall be based upon criteria that measure the condition of the housing (and the presence of children under age 6 for the purposes of risk assessments) and shall not be based upon criteria that measure the health of the residents of the housing.

(Pub. L. 102–550, title X, § 1017, Oct. 28, 1992, 106 Stat. 3909.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 4852d. Disclosure of information concerning lead upon transfer of residential property

(a) Lead disclosure in purchase and sale or lease of target housing

(1) Lead-based paint hazards

Not later than 2 years after October 28, 1992, the Secretary and the Administrator of the Environmental Protection Agency shall promulgate regulations under this section for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease. The regulations shall require that, before the purchaser or lessee is obligated under any contract to purchase or lease the housing, the seller or lessor shall—

(A) provide the purchaser or lessee with a lead hazard information pamphlet, as prescribed by the Administrator of the Environmental Protection Agency under section 406 of the Toxic Substances Control Act [15 U.S.C. 2686];

(B) disclose to the purchaser or lessee the presence of any known lead-based paint, or any known lead-based paint hazards, in such housing and provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor; and

(C) permit the purchaser a 10-day period (unless the parties mutually agree upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(2) Contract for purchase and sale

Regulations promulgated under this section shall provide that every contract for the purchase and sale of any interest in target housing shall contain a Lead Warning Statement and a statement signed by the purchaser that the purchaser has—

(A) read the Lead Warning Statement and understands its contents;

(B) received a lead hazard information pamphlet; and

(C) had a 10-day opportunity (unless the parties mutually agreed upon a different period of time) before becoming obligated under the contract to purchase the housing to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(3) Contents of lead warning statement

The Lead Warning Statement shall contain the following text printed in large type on a separate sheet of paper attached to the contract:

''Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.''.

(4) Compliance assurance

Whenever a seller or lessor has entered into a contract with an agent for the purpose of

selling or leasing a unit of target housing, the regulations promulgated under this section shall require the agent, on behalf of the seller or lessor, to ensure compliance with the requirements of this section.

(5) Promulgation

A suit may be brought against the Secretary of Housing and Urban Development and the Administrator of the Environmental Protection Agency under section 20 of the Toxic Substances Control Act [15 U.S.C. 2619] to compel promulgation of the regulations required under this section and the Federal district court shall have jurisdiction to order such promulgation.

(b) Penalties for violations

(1) Monetary penalty

Any person who knowingly violates any provision of this section shall be subject to civil money penalties in accordance with the provisions of section 3545 of this title.

(2) Action by Secretary

The Secretary is authorized to take such lawful action as may be necessary to enjoin any violation of this section.

(3) Civil liability

Any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(4) Costs

In any civil action brought for damages pursuant to paragraph (3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(5) Prohibited act

It shall be a prohibited act under section 409 of the Toxic Substances Control Act [15 U.S.C. 2689] for any person to fail or refuse to comply with a provision of this section or with any rule or order issued under this section. For purposes of enforcing this section under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the penalty for each violation applicable under section 16 of that Act [15 U.S.C. 2615] shall not be more than $10,000.

(c) Validity of contracts and liens

Nothing in this section shall affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a mortgage loan, nor shall anything in this section create a defect in title.

(d) Effective date

The regulations under this section shall take effect 3 years after October 28, 1992.

(Pub. L. 102–550, title X, § 1018, Oct. 28, 1992, 106 Stat. 3910.)

REFERENCES IN TEXT

The Toxic Substances Control Act, referred to in subsec. (b)(5), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

SUBCHAPTER II—WORKER PROTECTION

§ 4853. Worker protection

Not later than 180 days after October 28, 1992, the Secretary of Labor shall issue an interim final regulation regulating occupational exposure to lead in the construction industry. Such interim final regulation shall provide employment and places of employment to employees which are as safe and healthful as those which would prevail under the Department of Housing and Urban Development guidelines published at Federal Register 55, page 38973 (September 28, 1990) (Revised Chapter 8). Such interim final regulations shall take effect upon issuance (except that such regulations may include a reasonable delay in the effective date), shall have the legal effect of an Occupational Safety and Health Standard, and shall apply until a final standard becomes effective under section 655 of title 29.

(Pub. L. 102–550, title X, § 1031, Oct. 28, 1992, 106 Stat. 3924.)

§ 4853a. Coordination between Environmental Protection Agency and Department of Labor

The Secretary of Labor, in promulgating regulations under section 4853 of this title, shall consult and coordinate with the Administrator of the Environmental Protection Agency for the purpose of achieving the maximum enforcement of title IV of the Toxic Substances Control Act [15 U.S.C. 2681 et seq.] and the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] while imposing the least burdens of duplicative requirements on those subject to such title and Act and for other purposes.

(Pub. L. 102–550, title X, § 1032, Oct. 28, 1992, 106 Stat. 3924.)

REFERENCES IN TEXT

The Toxic Substances Control Act, referred to in text, is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended. Title IV of the Act is classified generally to subchapter IV (§ 2681 et seq.) of chapter 53 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Occupational Safety and Health Act of 1970, referred to in text, is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

SUBCHAPTER III—RESEARCH AND DEVELOPMENT

PART 1—HUD RESEARCH

§ 4854. Research on lead exposure from other sources

The Secretary, in cooperation with other Federal agencies, shall conduct research on strategies to reduce the risk of lead exposure from other sources, including exterior soil and interior lead dust in carpets, furniture, and forced air ducts.

(Pub. L. 102–550, title X, § 1051, Oct. 28, 1992, 106 Stat. 3925.)

§ 4854a. Testing technologies

The Secretary, in cooperation with other Federal agencies, shall conduct research to—

(1) develop improved methods for evaluating lead-based paint hazards in housing;

(2) develop improved methods for reducing lead-based paint hazards in housing;

(3) develop improved methods for measuring lead in paint films, dust, and soil samples;

(4) establish performance standards for various detection methods, including spot test kits;

(5) establish performance standards for lead-based paint hazard reduction methods, including the use of encapsulants;

(6) establish appropriate cleanup standards;

(7) evaluate the efficacy of interim controls in various hazard situations;

(8) evaluate the relative performance of various abatement techniques;

(9) evaluate the long-term cost-effectiveness of interim control and abatement strategies; and

(10) assess the effectiveness of hazard evaluation and reduction activities funded by this chapter.

(Pub. L. 102–550, title X, § 1052, Oct. 28, 1992, 106 Stat. 3925.)

REFERENCES IN TEXT

This chapter, referred to in par. (10), was in the original ''this Act'', meaning title X of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3897, known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 4851 of this title and Tables.

§ 4854b. Authorization

Of the total amount approved in appropriation Acts under section 4852(*o*)[1] of this title, there shall be set aside to carry out this part $5,000,000 for fiscal year 1993, and $5,000,000 for fiscal year 1994.

(Pub. L. 102–550, title X, § 1053, Oct. 28, 1992, 106 Stat. 3926.)

REFERENCES IN TEXT

Section 4852(*o*) of this title, referred to in text, was redesignated section 4852(p) of this title by Pub. L. 103–233, title III, § 305(a)(1), Apr. 11, 1994, 108 Stat. 370.

PART 2—GAO REPORT

§ 4855. Federal implementation and insurance study

(a) Federal implementation study

The Comptroller General of the United States shall assess the effectiveness of Federal enforcement and compliance with lead safety laws and regulations, including any changes needed in annual inspection procedures to identify lead-based paint hazards in units receiving assistance under subsections (b) and (*o*) of section 1437f of this title.

[1] See References in Text note below.

(b) Insurance study

The Comptroller General of the United States shall assess the availability of liability insurance for owners of residential housing that contains lead-based paint and persons engaged in lead-based paint hazard evaluation and reduction activities. In carrying out the assessment, the Comptroller General shall—

(1) analyze any precedents in the insurance industry for the containment and abatement of environmental hazards, such as asbestos, in federally assisted housing;

(2) provide an assessment of the recent insurance experience in the public housing lead hazard identification and reduction program; and

(3) recommend measures for increasing the availability of liability insurance to owners and contractors engaged in federally supported work.

(Pub. L. 102–550, title X, § 1056, Oct. 28, 1992, 106 Stat. 3926.)

SUBCHAPTER IV—REPORTS

§ 4856. Reports of Secretary of Housing and Urban Development

(a) Annual report

The Secretary shall transmit to the Congress an annual report that—

(1) sets forth the Secretary's assessment of the progress made in implementing the various programs authorized by this chapter;

(2) summarizes the most current health and environmental studies on childhood lead poisoning, including studies that analyze the relationship between interim control and abatement activities and the incidence of lead poisoning in resident children;

(3) recommends legislative and administrative initiatives that may improve the performance by the Department of Housing and Urban Development in combating lead hazards through the expansion of lead hazard evaluation and reduction activities;

(4) describes the results of research carried out in accordance with subchapter III of this chapter; and

(5) estimates the amount of Federal assistance annually expended on lead hazard evaluation and reduction activities.

(b) Biennial report

(1) In general

24 months after October 28, 1992, and at the end of every 24-month period thereafter, the Secretary shall report to the Congress on the progress of the Department of Housing and Urban Development in implementing expanded lead-based paint hazard evaluation and reduction activities.

(2) Contents

The report shall—

(A) assess the effectiveness of section 4852d of this title in making the public aware of lead-based paint hazards;

(B) estimate the extent to which lead-based paint hazard evaluation and reduction activities are being conducted in the various categories of housing;

(C) monitor and report expenditures for lead-based paint hazard evaluation and reduction for programs within the jurisdiction of the Department of Housing and Urban Development;

(D) identify the infrastructure needed to eliminate lead-based paint hazards in all housing as expeditiously as possible, including cost-effective technology, standards and regulations, trained and certified contractors, certified laboratories, liability insurance, private financing techniques, and appropriate Government subsidies;

(E) assess the extent to which the infrastructure described in subparagraph (D) exists, make recommendations to correct shortcomings, and provide estimates of the costs of measures needed to build an adequate infrastructure; and

(F) include any additional information that the Secretary deems appropriate.

(Pub. L. 102–550, title X, § 1061, Oct. 28, 1992, 106 Stat. 3926.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original ''this title'', meaning title X of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3897, known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. For complete classification of this title to the Code, see Short Title note set out under section 4851 of this title and Tables.

CHAPTER 64—PUBLIC SERVICE EMPLOYMENT PROGRAMS

§§ 4871 to 4883. Omitted

CODIFICATION

The public service employment programs covered by this chapter and authorized pursuant to the Emergency Employment Act of 1971, Pub. L. 92–54, July 12, 1971, 85 Stat. 146, which enacted this chapter, are omitted because appropriations were not authorized after June 30, 1973. Similar public service employment programs were included in the Comprehensive Employment and Training Act of 1973, Pub. L. 93–203, title II, §§ 201–211, Dec. 28, 1973, 87 Stat. 850–857, which was classified to section 841 et seq. of Title 29, Labor, and was repealed by section 184(a)(1) of the Job Training Partnership Act, Pub. L. 97–300, title I, Oct. 13, 1982, 96 Stat. 1357. The Job Training Partnership Act was classified principally to chapter 19 (§ 1501 et seq.) of Title 29 and was repealed by Pub. L. 105–220, title I, § 199(b)(2), 112 Stat. 1059, effective July 1, 2000.

Section 4871, Pub. L. 92–54, § 2, July 12, 1971, 85 Stat. 146, set forth Congressional statement of findings and purpose.

Section 4872, Pub. L. 92–54, § 3, July 12, 1971, 85 Stat. 147, related to financial assistance.

Section 4873, Pub. L. 92–54, § 4, July 12, 1971, 85 Stat. 147, related to eligibility of applicants.

Section 4874, Pub. L. 92–54, § 5, July 12, 1971, 85 Stat. 148, related to authorization of appropriations and the national unemployment rate.

Section 4875, Pub. L. 92–54, § 6, July 12, 1971, 85 Stat. 148, related to special employment assistance.

Section 4876, Pub. L. 92–54, § 7, July 12, 1971, 85 Stat. 149, related to applications for financial assistance.

Section 4877, Pub. L. 92–54, § 8, July 12, 1971, 85 Stat. 151, related to approval of applications and non-Federal contributions.

Section 4878, Pub. L. 92–54, § 9, July 12, 1971, 85 Stat. 151, related to interstate and intrastate allocation of funds.

Section 4879, Pub. L. 92–54, § 10, July 12, 1971, 85 Stat. 152, related to training and manpower services.

Section 4880, Pub. L. 92–54, § 11, July 12, 1971, 85 Stat. 152, related to periodic review and evaluation by the Secretary.

Section 4881, Pub. L. 92–54, § 12, July 12, 1971, 85 Stat. 153, set forth special provisions relating to programs.

Section 4882, Pub. L. 92–54, § 13, July 12, 1971, 85 Stat. 155, related to a special report to Congress.

Section 4883, Pub. L. 92–54, § 14, July 12, 1971, 85 Stat. 155, set forth definitions.

CHAPTER 65—NOISE CONTROL

Sec.
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4902. Definitions.
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4904. Identification of major noise sources.
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4914. Development of low-noise-emission products.
4915. Judicial review.
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4918. Authorization of appropriations.

§ 4901. Congressional findings and statement of policy

(a) The Congress finds—

(1) that inadequately controlled noise presents a growing danger to the health and welfare of the Nation's population, particularly in urban areas;

(2) that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and

(3) that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment.

(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare. To that end, it is the purpose of this chapter to establish a means for effective coordination of Federal research and activities in noise control, to authorize the establishment of Federal noise emission standards for products distributed in commerce, and to provide information to the public respecting the noise emission and noise reduction characteristics of such products.

(Pub. L. 92–574, § 2, Oct. 27, 1972, 86 Stat. 1234.)

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–609, § 1, Nov. 8, 1978, 92 Stat. 3079, provided: ''That this Act [amending sections 4905, 4910, 4913, 4918, 6901, 6903, 6907, 6913, 6922, 6923, 6925, to 6928, 6947, 6961, 6962, 6964, 6972, 6973, 6977, and 6981 to 6984 of this title and section 1431 of former Title 49, Transportation, and enacting provision set out as a note under section 1431 of former Title 49] may be cited as the 'Quiet Communities Act of 1978'.''

SHORT TITLE

Section 1 of Pub. L. 92–574 provided that: ''This Act [enacting this chapter, amending section 1431 of former Title 49, Transportation, and enacting provisions set out as notes under this section and section 1431 of former Title 49] may be cited as the 'Noise Control Act of 1972'.''

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

§ 4902. Definitions

For purposes of this chapter:

(1) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) The term ''person'' means an individual, corporation, partnership, or association, and (except as provided in sections 4910(e) and 4911(a) of this title) includes any officer, employee, department, agency, or instrumentality of the United States, a State, or any political subdivision of a State.

(3) The term ''product'' means any manufactured article or goods or component thereof; except that such term does not include—

(A) any aircraft, aircraft engine, propeller, or appliance, as such terms are defined in section 40102(a) of title 49; or

(B)(i) any military weapons or equipment which are designed for combat use; (ii) any rockets or equipment which are designed for research, experimental, or developmental work to be performed by the National Aeronautics and Space Administration; or (iii) to the extent provided by regulations of the Administrator, any other machinery or equipment designed for use in experimental work done by or for the Federal Government.

(4) The term ''ultimate purchaser'' means the first person who in good faith purchases a product for purposes other than resale.

(5) The term ''new product'' means (A) a product the equitable or legal title of which has never been transferred to an ultimate purchaser, or (B) a product which is imported or offered for importation into the United States and which is manufactured after the effective date of a regulation under section 4905 or 4907 of this title which would have been applicable to such product had it been manufactured in the United States.

(6) The term ''manufacturer'' means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for, and is controlled by, any such person in connection with the distribution of such products.

(7) The term ''commerce'' means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(8) The term ''distribute in commerce'' means sell in, offer for sale in, or introduce or deliver for introduction into, commerce.

(9) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(10) The term ''Federal agency'' means an executive agency (as defined in section 105 of title 5) and includes the United States Postal Service.

(11) The term ''environmental noise'' means the intensity, duration, and the character of sounds from all sources.

(Pub. L. 92–574, § 3, Oct. 27, 1972, 86 Stat. 1234.)

CODIFICATION

In par. (3)(A), ''section 40102(a) of title 49'' substituted for ''section 101 of the Federal Aviation Act of 1958'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 4903. Federal programs

(a) Furtherance of Congressional policy

The Congress authorizes and directs that Federal agencies shall, to the fullest extent consistent with their authority under Federal laws administered by them, carry out the programs within their control in such a manner as to further the policy declared in section 4901(b) of this title.

(b) Presidential authority to exempt activities or facilities from compliance requirements

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(1) having jurisdiction over any property or facility, or

(2) engaged in any activity resulting, or which may result, in the emission of noise,

shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements. The President may exempt any single activity or facility, including noise emission sources or classes thereof, of any department, agency, or instrumentality in the executive branch from compliance with any such requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption, other than for those products referred to in section 4902(3)(B) of this title, may be granted from the requirements of sections 4905, 4916, and 4917 of this title. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to ex-

ceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption.

(c) Coordination of programs of Federal agencies; standards and regulations; status reports

(1) The Administrator shall coordinate the programs of all Federal agencies relating to noise research and noise control. Each Federal agency shall, upon request, furnish to the Administrator such information as he may reasonably require to determine the nature, scope, and results of the noise-research and noise-control programs of the agency.

(2) Each Federal agency shall consult with the Administrator in prescribing standards or regulations respecting noise. If at any time the Administrator has reason to believe that a standard or regulation, or any proposed standard or regulation, of any Federal agency respecting noise does not protect the public health and welfare to the extent he believes to be required and feasible, he may request such agency to review and report to him on the advisability of revising such standard or regulation to provide such protection. Any such request may be published in the Federal Register and shall be accompanied by a detailed statement of the information on which it is based. Such agency shall complete the requested review and report to the Administrator within such time as the Administrator specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The report shall be published in the Federal Register and shall be accompanied by a detailed statement of the findings and conclusions of the agency respecting the revision of its standard or regulation. With respect to the Federal Aviation Administration, section 44715 of title 49 shall apply in lieu of this paragraph.

(3) On the basis of regular consultation with appropriate Federal agencies, the Administrator shall compile and publish, from time to time, a report on the status and progress of Federal activities relating to noise research and noise control. This report shall describe the noise-control programs of each Federal agency and assess the contributions of those programs to the Federal Government's overall efforts to control noise.

(Pub. L. 92–574, § 4, Oct. 27, 1972, 86 Stat. 1235.)

CODIFICATION

In subsec. (c)(2), ''section 44715 of title 49'' substituted for ''section 611 of the Federal Aviation Act of 1958 (as amended by section 7 of this Act)'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 7 on page 20 of House Document No. 103–7.

§ 4904. Identification of major noise sources

(a) Development and publication of criteria

(1) The Administrator shall, after consultation with appropriate Federal agencies and within nine months of October 27, 1972, develop and publish criteria with respect to noise. Such criteria shall reflect the scientific knowledge most useful in indicating the kind and extent of all identifiable effects on the public health or welfare which may be expected from differing quantities and qualities of noise.

(2) The Administrator shall, after consultation with appropriate Federal agencies and within twelve months of October 27, 1972, publish information on the levels of environmental noise the attainment and maintenance of which in defined areas under various conditions are requisite to protect the public health and welfare with an adequate margin of safety.

(b) Compilation and publication of reports on noise sources and control technology

The Administrator shall, after consultation with appropriate Federal agencies, compile and publish a report or series of reports (1) identifying products (or classes of products) which in his judgment are major sources of noise, and (2) giving information on techniques for control of noise from such products, including available data on the technology, costs, and alternative methods of noise control. The first such report shall be published not later than eighteen months after October 27, 1972.

(c) Supplemental criteria and reports

The Administrator shall from time to time review and, as appropriate, revise or supplement any criteria or reports published under this section.

(d) Publication in Federal Register

Any report (or revision thereof) under subsection (b)(1) of this section identifying major noise sources shall be published in the Federal Register. The publication or revision under this section of any criteria or information on control techniques shall be announced in the Federal Register, and copies shall be made available to the general public.

(Pub. L. 92–574, § 5, Oct. 27, 1972, 86 Stat. 1236.)

§ 4905. Noise emission standards for products distributed in commerce

(a) Proposed regulations

(1) The Administrator shall publish proposed regulations, meeting the requirements of subsection (c) of this section, for each product—

(A) which is identified (or is part of a class identified) in any report published under section 4904(b)(1) of this title as a major source of noise,

(B) for which, in his judgment, noise emission standards are feasible, and

(C) which falls in one of the following categories:

(i) Construction equipment.

(ii) Transportation equipment (including recreational vehicles and related equipment).

(iii) Any motor or engine (including any equipment of which an engine or motor is an integral part).

(iv) Electrical or electronic equipment.

(2)(A) Initial proposed regulations under paragraph (1) shall be published not later than eighteen months after October 27, 1972, and shall apply to any product described in paragraph (1) which is identified (or is a part of a class identified) as a major source of noise in any report published under section 4904(b)(1) of this title on or before the date of publication of such initial proposed regulations.

(B) In the case of any product described in paragraph (1) which is identified (or is part of a class identified) as a major source of noise in a report published under section 4904(b)(1) of this title after publication of the initial proposed regulations under subparagraph (A) of this paragraph, regulations under paragraph (1) for such product shall be proposed and published by the Administrator not later than eighteen months after such report is published.

(3) After proposed regulations respecting a product have been published under paragraph (2), the Administrator shall, unless in his judgment noise emission standards are not feasible for such product, prescribe regulations, meeting the requirements of subsection (c) of this section, for such product—

(A) not earlier than six months after publication of such proposed regulations, and

(B) not later than—

(i) twenty-four months after October 27, 1972, in the case of a product subject to proposed regulations published under paragraph (2)(A), or

(ii) in the case of any other product, twenty-four months after the publication of the report under section 4904(b)(1) of this title identifying it (or a class of products of which it is a part) as a major source of noise.

(b) Authority to publish regulations not otherwise required

The Administrator may publish proposed regulations, meeting the requirements of subsection (c) of this section, for any product for which he is not required by subsection (a) of this section to prescribe regulations but for which, in his judgment, noise emission standards are feasible and are requisite to protect the public health and welfare. Not earlier than six months after the date of publication of such proposed regulations respecting such product, he may prescribe regulations, meeting the requirements of subsection (c) of this section, for such product.

(c) Contents of regulations; appropriate consideration of other standards; participation by interested persons; revision

(1) Any regulation prescribed under subsection (a) or (b) of this section (and any revision thereof) respecting a product shall include a noise emission standard which shall set limits on noise emissions from such product and shall be a standard which in the Administrator's judgment, based on criteria published under section 4904 of this title, is requisite to protect the public health and welfare, taking into account the magnitude and conditions of use of such product (alone or in combination with other noise sources), the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance. In establishing such a standard for any product, the Administrator shall give appropriate consideration to standards under other laws designed to safeguard the health and welfare of persons, including any standards under chapter 301 of title 49, the Clean Air Act [42 U.S.C. 7401 et seq.], and the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.]. Any such noise emission standards shall be a performance standard. In addition, any regulation under subsection (a) or (b) of this section (and any revision thereof) may contain testing procedures necessary to assure compliance with the emission standard in such regulation, and may contain provisions respecting instructions of the manufacturer for the maintenance, use, or repair of the product.

(2) After publication of any proposed regulations under this section, the Administrator shall allow interested persons an opportunity to participate in rulemaking in accordance with the first sentence of section 553(c) of title 5.

(3) The Administrator may revise any regulation prescribed by him under this section by (A) publication of proposed revised regulations, and (B) the promulgation, not earlier than six months after the date of such publication, of regulations making the revision; except that a revision which makes only technical or clerical corrections in a regulation under this section may be promulgated earlier than six months after such date if the Administrator finds that such earlier promulgation is in the public interest.

(d) Warranty by manufacturer of conformity of product with regulations; transfer of cost obligation from manufacturer to dealer prohibited

(1) On and after the effective date of any regulation prescribed under subsection (a) or (b) of this section, the manufacturer of each new product to which such regulation applies shall warrant to the ultimate purchaser and each subsequent purchaser that such product is designed, built, and equipped so as to conform at the time of sale with such regulation.

(2) Any cost obligation of any dealer incurred as a result of any requirement imposed by paragraph (1) of this subsection shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(3) If a manufacturer includes in any advertisement a statement respecting the cost or value of noise emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Clean Air Act [42 U.S.C. 7611].

(e) State and local regulations

(1) No State or political subdivision thereof may adopt or enforce—

(A) with respect to any new product for which a regulation has been prescribed by the

Administrator under this section, any law or regulation which sets a limit on noise emissions from such new product and which is not identical to such regulation of the Administrator; or

(B) with respect to any component incorporated into such new product by the manufacturer of such product, any law or regulation setting a limit on noise emissions from such component when so incorporated.

(2) Subject to sections 4916 and 4917 of this title, nothing in this section precludes or denies the right of any State or political subdivision thereof to establish and enforce controls on environmental noise (or one or more sources thereof) through the licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products.

(f) Publication of notice of receipt of revision petitions and proposed revised regulations

At any time after the promulgation of regulations respecting a product under this section, a State or political subdivision thereof may petition the Administrator to revise such standard on the grounds that a more stringent standard under subsection (c) of this section is necessary to protect the public health and welfare. The Administration shall publish notice of receipt of such petition in the Federal Register and shall within ninety days of receipt of such petition respond by (1) publication of proposed revised regulations in accordance with subsection (c)(3) of this section, or (2) publication in the Federal Register of a decision not to publish such proposed revised regulations at that time, together with a detailed explanation for such decision.

(Pub. L. 92–574, § 6, Oct. 27, 1972, 86 Stat. 1237; Pub. L. 95–609, § 5, Nov. 8, 1978, 92 Stat. 3081.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (c)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

CODIFICATION

In subsec. (c)(1), ''chapter 301 of title 49'' substituted for ''the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.]'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1978—Subsec. (f). Pub. L. 95–609 added subsec. (f).

§ 4906. Omitted

CODIFICATION

Section, Pub. L. 92–574, § 7(a), Oct. 27, 1972, 86 Stat. 1239, related to a study by the Administrator of the adequacy of noise controls, noise emission standards, and measures available to control such noise, the results of such study to be reported to the appropriate committees of Congress within nine months after Oct. 27, 1972.

§ 4907. Labeling

(a) Regulations

The Administrator shall by regulation designate any product (or class thereof)—

(1) which emits noise capable of adversely affecting the public health or welfare; or

(2) which is sold wholly or in part on the basis of its effectiveness in reducing noise.

(b) Manner of notice; form; methods and units of measurement

For each product (or class thereof) designated under subsection (a) of this section the Administrator shall by regulation require that notice be given to the prospective user of the level of the noise the product emits, or of its effectiveness in reducing noise, as the case may be. Such regulations shall specify (1) whether such notice shall be affixed to the product or to the outside of its container, or to both, at the time of its sale to the ultimate purchaser or whether such notice shall be given to the prospective user in some other manner, (2) the form of the notice, and (3) the methods and units of measurement to be used. Section 4905(c)(2) of this title shall apply to the prescribing of any regulation under this section.

(c) State regulation of product labeling

This section does not prevent any State or political subdivision thereof from regulating product labeling or information respecting products in any way not in conflict with regulations prescribed by the Administrator under this section.

(Pub. L. 92–574, § 8, Oct. 27, 1972, 86 Stat. 1241.)

§ 4908. Imports

The Secretary of the Treasury shall, in consultation with the Administrator, issue regulations to carry out the provisions of this chapter with respect to new products imported or offered for importation.

(Pub. L. 92–574, § 9, Oct. 27, 1972, 86 Stat. 1242.)

§ 4909. Prohibited acts

(a) Except as otherwise provided in subsection (b) of this section, the following acts or the causing thereof are prohibited:

(1) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 4905 of this title which is applicable to such product, except in conformity with such regulation.

(2)(A) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any product in compliance with regulations under section 4905 of this title, prior to its sale or delivery to the ultimate purchaser or while it is in use, or (B) the use of a product after such device or element of design has been removed or rendered inoperative by any person.

(3) In the case of a manufacturer, to distribute in commerce any new product manufac-

tured after the effective date of a regulation prescribed under section 4907(b) of this title (requiring information respecting noise) which is applicable to such product, except in conformity with such regulation.

(4) The removal by any person of any notice affixed to a product or container pursuant to regulations prescribed under section 4907(b) of this title, prior to sale of the product to the ultimate purchaser.

(5) The importation into the United States by any person of any new product in violation of a regulation prescribed under section 4908 of this title which is applicable to such product.

(6) The failure or refusal by any person to comply with any requirement of section 4910(d) or 4912(a) of this title or regulations prescribed under section 4912(a), 4916, or 4917 of this title.

(b)(1) For the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security, the Administrator may exempt for a specified period of time any product, or class thereof, from paragraphs (1), (2), (3), and (5) of subsection (a) of this section, upon such terms and conditions as he may find necessary to protect the public health or welfare.

(2) Paragraphs (1), (2), (3), and (4) of subsection (a) of this section shall not apply with respect to any product which is manufactured solely for use outside any State and which (and the container of which) is labeled or otherwise marked to show that it is manufactured solely for use outside any State; except that such paragraphs shall apply to such product if it is in fact distributed in commerce for use in any State.

(Pub. L. 92–574, § 10, Oct. 27, 1972, 86 Stat. 1242.)

§ 4910. Enforcement

(a) Criminal penalties

(1) Any person who willfully or knowingly violates paragraph (1), (3), (5), or (6) of subsection (a) of section 4909 of this title shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who violates paragraph (1), (3), (5), or (6) of subsection (a) of section 4909 of this title shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

(b) Separate violations

For the purpose of this section, each day of violation of any paragraph of section 4909(a) of this title shall constitute a separate violation of that section.

(c) Actions to restrain violations

The district courts of the United States shall have jurisdiction of actions brought by and in the name of the United States to restrain any violations of section 4909(a) of this title.

(d) Orders issued to protect public health and welfare; notice; opportunity for hearing

(1) Whenever any person is in violation of section 4909(a) of this title, the Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare.

(2) Any order under this subsection shall be issued only after notice and opportunity for a hearing in accordance with section 554 of title 5.

(e) "Person" defined

The term ''person,'' as used in this section, does not include a department, agency, or instrumentality of the United States.

(Pub. L. 92–574, § 11, Oct. 27, 1972, 86 Stat. 1242; Pub. L. 95–609, § 4, Nov. 8, 1978, 92 Stat. 3081.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–609 redesignated existing provisions as par. (1) and added par. (2).

§ 4911. Citizen suits

(a) Authority to commence suits

Except as provided in subsection (b) of this section, any person (other than the United States) may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any noise control requirement (as defined in subsection (e)[1] of this section), or

(2) against—

(A) the Administrator of the Environmental Protection Agency where there is alleged a failure of such Administrator to perform any act or duty under this chapter which is not discretionary with such Administrator, or

(B) the Administrator of the Federal Aviation Administration where there is alleged a failure of such Administrator to perform any act or duty under section 44715 of title 49 which is not discretionary with such Administrator.

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy, to restrain such person from violating such noise control requirement or to order such Administrator to perform such act or duty, as the case may be.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator of the Environmental Protection Agency (and to the Federal Aviation Administrator in the case of a violation of a noise control requirement under such section 44715 of title 49) and (ii) to any alleged violator of such requirement, or

(B) if an Administrator has commenced and is diligently prosecuting a civil action to require compliance with the noise control requirement, but in any such action in a court of the United States any person may intervene as a matter of right, or

[1] So in original. Probably should be subsection ''(f)''.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice to the defendant that he will commence such action.

Notice under this subsection shall be given in such manner as the Administrator of the Environmental Protection Agency shall prescribe by regulation.

(c) Intervention

In an action under this section, the Administrator of the Environmental Protection Agency, if not a party, may intervene as a matter of right. In an action under this section respecting a noise control requirement under section 44715 of title 49, the Administrator of the Federal Aviation Administration, if not a party, may also intervene as a matter of right.

(d) Litigation costs

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

(e) Other common law or statutory rights of action

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any noise control requirement or to seek any other relief (including relief against an Administrator).

(f) "Noise control requirement" defined

For purposes of this section, the term ''noise control requirement'' means paragraph (1), (2), (3), (4), or (5) of section 4909(a) of this title, or a standard, rule, or regulation issued under section 4916 or 4917 of this title or under section 44715 of title 49.

(Pub. L. 92–574, § 12, Oct. 27, 1972, 86 Stat. 1243.)

CODIFICATION

In subsecs. (a)(2)(B), (b)(1)(A), (c), and (f), ''section 44715 of title 49'' substituted for ''section 611 of the Federal Aviation Act of 1958'' and ''such section 611'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

§ 4912. Records, reports, and information

(a) Duties of manufacturers of products

Each manufacturer of a product to which regulations under section 4905 or 4907 of this title apply shall—

(1) establish and maintain such records, make such reports, provide such information, and make such tests, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this chapter,

(2) upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to such information and the results of such tests and to copy such records, and

(3) to the extent required by regulations of the Administrator, make products coming off the assembly line or otherwise in the hands of the manufacturer available for testing by the Administrator.

(b) Confidential information; disclosure

(1) All information obtained by the Administrator or his representatives pursuant to subsection (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other Federal officers or employees, in whose possession it shall remain confidential, or when relevant to the matter in controversy in any proceeding under this chapter.

(2) Nothing in this subsection shall authorize the withholding of information by the Administrator, or by any officers or employees under his control, from the duly authorized committees of the Congress.

(c) Violations and penalties

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(Pub. L. 92–574, § 13, Oct. 27, 1972, 86 Stat. 1244.)

§ 4913. Quiet communities, research, and public information

To promote the development of effective State and local noise control programs, to provide an adequate Federal noise control research program designed to meet the objectives of this chapter, and to otherwise carry out the policy of this chapter, the Administrator shall, in cooperation with other Federal agencies and through the use of grants, contracts, and direct Federal actions—

(a) develop and disseminate information and educational materials to all segments of the public on the public health and other effects of noise and the most effective means for noise control, through the use of materials for school curricula, volunteer organizations, radio and television programs, publication, and other means;

(b) conduct or finance research directly or with any public or private organization or any person on the effects, measurement, and control of noise, including but not limited to—

(1) investigation of the psychological and physiological effects of noise on humans and the effects of noise on domestic animals, wildlife, and property, and the determination of dose/response relationships suitable for use in decisionmaking, with special emphasis on the nonauditory effects of noise;

(2) investigation, development, and demonstration of noise control technology for products subject to possible regulation under sections 4905 and 4907 of this title and section 44715 of title 49;

(3) investigation, development, and demonstration of monitoring equipment and other technology especially suited for use by State and local noise control programs;

(4) investigation of the economic impact of noise on property and human activities; and

(5) investigation and demonstration of the use of economic incentives (including emission charges) in the control of noise;

(c) administer a nationwide Quiet Communities Program which shall include, but not be limited to—

(1) grants to States, local governments, and authorized regional planning agencies for the purpose of—

(A) identifying and determining the nature and extent of the noise problem within the subject jurisdiction;

(B) planning, developing, and establishing a noise control capacity in such jurisdiction, including purchasing initial equipment;

(C) developing abatement plans for areas around major transportation facilities (including airports, highways, and rail yards) and other major stationary sources of noise, and, where appropriate, for the facility or source itself; and,

(D) evaluating techniques for controlling noise (including institutional arrangements) and demonstrating the best available techniques in such jurisdiction;

(2) purchase of monitoring and other equipment for loan to State and local noise control programs to meet special needs or assist in the beginning implementation of a noise control program or project;

(3) development and implementation of a quality assurance program for equipment and monitoring procedures of State and local noise control programs to help communities assure that their data collection activities are accurate;

(4) conduct of studies and demonstrations to determine the resource and personnel needs of States and local governments required for the establishment and implementation of effective noise abatement and control programs; and

(5) development of education and training materials and programs, including national and regional workshops, to support State and local noise abatement and control programs;

except that no actions, plans or programs hereunder shall be inconsistent with existing Federal authority under this chapter to regulate sources of noise in interstate commerce;

(d) develop and implement a national noise environmental assessment program to identify trends in noise exposure and response, ambient levels, and compliance data and to determine otherwise the effectiveness of noise abatement actions through the collection of physical, social, and human response data;

(e) establish regional technical assistance centers which use the capabilities of university and private organizations to assist State and local noise control programs;

(f) provide technical assistance to State and local governments to facilitate their development and enforcement of noise control, including direct onsite assistance of agency or other personnel with technical expertise, and preparation of model State or local legislation for noise control; and

(g) provide for the maximum use in programs assisted under this section of senior citizens and persons eligible for participation in programs under the Older Americans Act [42 U.S.C. 3001 et seq.].

(Pub. L. 92–574, § 14, Oct. 27, 1972, 86 Stat. 1244; Pub. L. 95–609, § 2, Nov. 8, 1978, 92 Stat. 3079.)

REFERENCES IN TEXT

The Older Americans Act, referred to in subsec. (g), probably means the Older Americans Act of 1965, Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

CODIFICATION

In subsec. (b)(2), ''section 44715 of title 49'' substituted for reference to section 7 of this Act, meaning section 7 of Pub. L. 92–574, which generally amended section 611 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1431), on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1978—Pub. L. 95–609 completely revised and restructured existing provisions, inserting provisions relating to authorized use of grants and direct action, investigation of economic impact of noise, administration of Quiet Communities Program, development of noise assessment program, establishment of regional centers, technical assistance to State and local governments, and use by senior citizens of these programs.

§ 4914. Development of low-noise-emission products

(a) Definitions

For the purpose of this section:

(1) The term ''Committee'' means the Low-Noise-Emission Product Advisory Committee.

(2) The term ''Federal Government'' includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) The term ''low-noise-emission product'' means any product which emits noise in amounts significantly below the levels specified in noise emission standards under regulations applicable under section 4905 of this title at the time of procurement to that type of product.

(4) The term ''retail price'' means (A) the maximum statutory price applicable to any type of product; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any type of product.

(b) Certification of products; Low-Noise-Emission Product Advisory Committee

(1) The Administrator shall determine which products qualify as low-noise-emission products in accordance with the provisions of this section.

(2) The Administrator shall certify any product—

(A) for which a certification application has been filed in accordance with paragraph (5)(A) of this subsection;

(B) which is a low-noise-emission product as determined by the Administrator; and

(C) which he determines is suitable for use as a substitute for a type of product at that time in use by agencies of the Federal Government.

(3) The Administrator may establish a Low-Noise-Emission Product Advisory Committee to assist him in determining which products qualify as low-noise-emission products for purposes of this section. The Committee shall include the Administrator or his designee, a representative of the National Institute of Standards and Technology, and representatives of such other Federal agencies and private individuals as the Administrator may deem necessary from time to time. Any member of the Committee not employed on a full-time basis by the United States may receive the daily equivalent of the annual rate of basic pay in effect for Grade GS–18 of the General Schedule for each day such member is engaged upon work of the Committee. Each member of the Committee shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(4) Certification under this section shall be effective for a period of one year from the date of issuance.

(5)(A) Any person seeking to have a class or model of product certified under this section shall file a certification application in accordance with regulations prescribed by the Administrator.

(B) The Administrator shall publish in the Federal Register a notice of each application received.

(C) The Administrator shall make determinations for the purpose of this section in accordance with procedures prescribed by him by regulation.

(D) The Administrator shall conduct whatever investigation is necessary, including actual inspection of the product at a place designated in regulations prescribed under subparagraph (A).

(E) The Administrator shall receive and evaluate written comments and documents from interested persons in support of, or in opposition to, certification of the class or model of product under consideration.

(F) Within ninety days after the receipt of a properly filed certification application the Administrator shall determine whether such product is a low-noise-emission product for purposes of this section. If the Administrator determines that such product is a low-noise-emission product, then within one hundred and eighty days of such determination the Administrator shall reach a decision as to whether such product is a suitable substitute for any class or classes of products presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator shall publish in the Federal Register notice of such determination or decision, including reasons therefor.

(c) Federal procurement of low-noise-emission products

(1) Certified low-noise-emission products shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other products if the Administrator of General Services determines that such certified products have procurement costs which are no more than 125 per centum of the retail price of the least expensive type of product for which they are certified substitutes.

(2) Data relied upon by the Administrator in determining that a product is a certified low-noise-emission product shall be incorporated in any contract for the procurement of such product.

(d) Product selection

The procuring agency shall be required to purchase available certified low-noise-emission products which are eligible for purchase to the extent they are available before purchasing any other products for which any low-noise-emission product is a certified substitute. In making purchasing selections between competing eligible certified low-noise-emission products, the procuring agency shall give priority to any class or model which does not require extensive periodic maintenance to retain its low-noise-emission qualities or which does not involve operating costs significantly in excess of those products for which it is a certified substitute.

(e) Waiver of statutory price limitations

For the purpose of procuring certified low-noise-emission products any statutory price limitations shall be waived.

(f) Tests of noise emissions from products purchased by Federal Government

The Administrator shall, from time to time as he deems appropriate, test the emissions of noise from certified low-noise-emission products purchased by the Federal Government. If at any time he finds that the noise-emission levels exceed the levels on which certification under this section was based, the Administrator shall give the supplier of such product written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Administrator, he may order the supplier to show cause why the product involved should be eligible for recertification.

(g) Authorization of appropriations

There are authorized to be appropriated for paying additional amounts for products pursuant to, and for carrying out the provisions of, this section, $1,000,000 for the fiscal year ending June 30, 1973, and $2,000,000 for each of the two succeeding fiscal years, $2,200,000 for the fiscal year ending June 30, 1976, $550,000 for the transition period of July 1, 1976, through September 30, 1976, and $2,420,000 for the fiscal year ending September 30, 1977.

(h) Promulgation of procedures

The Administrator shall promulgate the procedures required to implement this section with-

in one hundred and eighty days after October 27, 1972.

(Pub. L. 92–574, § 15, Oct. 27, 1972, 86 Stat. 1245; Pub. L. 94–301, § 1, May 31, 1976, 90 Stat. 590; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (b)(3). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

1976—Subsec. (g). Pub. L. 94–301 inserted authorization of appropriations for fiscal year ending June 30, 1976, the transition period, and fiscal year ending September 30, 1977.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. A committee established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of its establishment unless in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the end of such period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 4915. Judicial review

(a) Petition for review

A petition for review of action of the Administrator of the Environmental Protection Agency in promulgating any standard or regulation under sections 4905, 4916, or 4917 of this title or any labeling regulation under section 4907 of this title may be filed only in the United States Court of Appeals for the District of Columbia Circuit, and a petition for review of action of the Administrator of the Federal Aviation Administration in promulgating any standard or regulation under section 44715 of title 49 may be filed only in such court. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of either Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(b) Additional evidence

If a party seeking review under this chapter applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and was not available at the time of the proceeding before the Administrator of such Agency or Administration (as the case may be), the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before such Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. Such Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(c) Stay of agency action

With respect to relief pending review of an action by either Administrator, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay is (1) likely to prevail on the merits in the review proceeding and (2) will suffer irreparable harm pending such proceeding.

(d) Subpenas

For the purpose of obtaining information to carry out this chapter, the Administrator of the Environmental Protection Agency may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 92–574, § 16, Oct. 27, 1972, 86 Stat. 1247.)

CODIFICATION

In subsec. (a), ''section 44715 of title 49'' substituted for ''section 611 of the Federal Aviation Act of 1958'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

§ 4916. Railroad noise emission standards

(a) Regulations; standards; consultation with Secretary of Transportation

(1) Within nine months after October 27, 1972, the Administrator shall publish proposed noise emission regulations for surface carriers engaged in interstate commerce by railroad. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of the equipment and facilities of surface carriers engaged in interstate commerce by railroad which reflect

the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 4905 of this title.

(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 4915 of this title, the Administrator shall promulgate final regulations. Such regulations may be revised, from time to time, in accordance with this subsection.

(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) Regulations to insure compliance with noise emission standards

The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Safety Appliance Acts [45 U.S.C. 1 et seq.], subtitle IV of title 49, and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 4909, 4910, 4911, and 4915 of this title.

(c) State and local standards and controls

(1) Subject to paragraph (2) but notwithstanding any other provision of this chapter, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad, no State or political subdivision thereof may adopt or enforce any standard applicable to noise emissions resulting from the operation of the same equipment or facility of such carrier unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

(d) "Carrier" and "railroad" defined

The terms ''carrier'' and ''railroad'' as used in this section shall have the same meaning as the term ''railroad carrier'' has in section 20102 of title 49.

(Pub. L. 92–574, § 17, Oct. 27, 1972, 86 Stat. 1248; Pub. L. 104–287, § 6(i), Oct. 11, 1996, 110 Stat. 3399.)

REFERENCES IN TEXT

The Safety Appliance Acts, referred to in subsec. (b), are acts Mar. 2, 1893, ch. 196, 27 Stat. 531; Mar. 2, 1903, ch. 976, 32 Stat. 943; and Apr. 14, 1910, ch. 160, 36 Stat. 298, which were classified to sections 1 to 16 of Title 45, Railroads, and were repealed and reenacted in sections 20102, 20301 to 20304, 21302, and 21304 of Title 49, Transportation, by Pub. L. 103–272, §§ 1(e), 7(b), July 5, 1994, 108 Stat. 863, 881, 892, 893, 1379, the first section of which enacted subtitles II, III, and V to X of Title 49. Section 6 of act Apr. 14, 1910, which was classified to section 15 of Title 45, was repealed and reenacted as section 501(b) of Title 49 by Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2413.

The Department of Transportation Act, referred to in subsec. (b), is Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, as amended, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103–272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104–287, § 7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

CODIFICATION

In subsec. (b), ''subtitle IV of title 49'' substituted for ''the Interstate Commerce Act [49 U.S.C. 1 et seq.]'', on authority of Pub. L. 95–473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–287 substituted ''the term 'railroad carrier' has in section 20102 of title 49'' for ''such terms have under the first section of the Act of February 17, 1911 (45 U.S.C. 22)''.

§ 4917. Motor carrier noise emission standards

(a) Regulations; standards; consultation with Secretary of Transportation

(1) Within nine months after October 27, 1972, the Administrator shall publish proposed noise emission regulations for motor carriers engaged in interstate commerce. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of motor carriers engaged in interstate commerce which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 4905 of this title.

(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 4915 of this title, the Administrator shall promulgate final regulations. Such regulations may be revised from time to time, in accordance with this subsection.

(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the

Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) Regulations to insure compliance with noise emission standards

The Secretary of Transportation, after consultation with the Administrator shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by subtitle IV of title 49 and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 4909, 4910, 4911, and 4915 of this title.

(c) State and local standards and controls

(1) Subject to paragraph (2) of this subsection but notwithstanding any other provision of this chapter, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any motor carrier engaged in interstate commerce, no State or political subdivision thereof may adopt or enforce any standard applicable to the same operation of such motor carrier, unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

(d) "Motor carrier" defined

For purposes of this section, the term ''motor carrier'' includes a motor carrier and motor private carrier as those terms are defined in section 13102 of title 49.

(Pub. L. 92–574, § 18, Oct. 27, 1972, 86 Stat. 1249.; Pub. L. 104–88, title III, § 339, Dec. 29, 1995, 109 Stat. 955.)

REFERENCES IN TEXT

The Department of Transportation Act, referred to in subsec. (b), is Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, as amended, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103–272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104–287, § 7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

CODIFICATION

In subsec. (b), ''subtitle IV of title 49'' substituted for ''the Interstate Commerce Act [49 U.S.C. 1 et seq.]'' on authority of Pub. L. 95–473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–88 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''For purposes of this section, the term 'motor carrier' includes a common carrier by motor vehicle, a contract carrier by motor vehicle, and a private carrier of property by motor vehicle as those terms are defined by section 10102 of title 49.''

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

§ 4918. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter (other than for research and development) $15,000,000 for the fiscal year ending September 30, 1979.

(Pub. L. 92–574, § 19, Oct. 27, 1972, 86 Stat. 1250; Pub. L. 94–301, § 2, May 31, 1976, 90 Stat. 590; Pub. L. 95–609, § 6, Nov. 8, 1978, 92 Stat. 3081.)

AMENDMENTS

1978—Pub. L. 95–609 substituted provisions authorizing appropriations of $15,000,000 for 1979 for provisions authorizing appropriations for fiscal years 1973 to 1977 and struck out restriction on expenditures for research and development.

1976—Pub. L. 94–301 inserted authorization of appropriations for fiscal year ending June 30, 1976, the transition period, and fiscal year ending September 30, 1977, and provisions excepting appropriations for research and development use.

CHAPTER 66—DOMESTIC VOLUNTEER SERVICES

Sec.
4950. Volunteerism policy.

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5031, 5032. Repealed.

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5041, 5042. Repealed.
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5045. Repealed.
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5048. Joint funding; single non-Federal share requirement; grant or contract requirement waiver.
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5050. Coordination with other programs.
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5052. Suspension and termination of financial assistance; procedures; notice and hearing; emergency situations; refunding applications.
5053. Repealed.
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SUBCHAPTER V—AUTHORIZATION OF APPROPRIATIONS

5081. National Volunteer Antipoverty Programs.
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SUBCHAPTER VI—YOUTHBUILD PROJECTS

5091 to 5091n. Repealed.

§ 4950. Volunteerism policy

(a) Because of the long-standing importance of volunteerism throughout American history, it is the policy of the Congress to foster the tradition of volunteerism through greater involvement on the part of both young and older citizens.

(b) The purpose of this chapter is to foster and expand voluntary citizen service in communities throughout the Nation in activities designed to help the poor, the disadvantaged, the vulnerable, and the elderly. In carrying out this purpose, the Corporation for National and Community Service shall utilize to the fullest extent the programs authorized under this chapter, coordinate with other Federal, State, and local agencies and utilize the energy, innovative spirit, experience, and skills of all Americans.

(Pub. L. 93–113, § 2, as added Pub. L. 99–551, § 2(a), Oct. 27, 1986, 100 Stat. 3071; amended Pub. L. 103–82, title IV, § 405(a)(1), Sept. 21, 1993, 107 Stat. 920.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 396, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–82 substituted ''of this chapter'' for ''of ACTION, the Federal domestic volunteer agency,'' and ''the Corporation for National and Community Service shall''for ''ACTION shall''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 11 of Pub. L. 99–551 provided that: ''Except as otherwise provided, the amendments made by this Act [enacting this section and section 4959 of this title, amending sections 4953, 4955, 4971, 4972, 4974, 4992, 5011, 5013, 5024, 5041 to 5044, 5047, 5052, 5055, 5056, 5059, 5061, 5081, 5082, and 5084 of this title, and amending provisions set out as a note under section 5041 of this title] shall take effect October 1, 1986.''

SHORT TITLE OF 1993 AMENDMENT

Section 311(a) of title III of Pub. L. 103–82, provided that: ''This subtitle [subtitle B (§§ 311, 392) of title III of Pub. L. 103–82, enacting sections 5028, 5028a, and 5065 of this title, amending sections 4951 to 4955, 4957, 4959, 4960, 4971 to 4973, 4992, 4993, 5000, 5001, 5011, 5013, 5021, 5024 to 5026, 5041 to 5044, 5055, 5057, 5062, 5081, 5082, and 5084 of this title and sections 8143, 8332, 8334, 8411, and 8422 of Title 5, Government Organization and Employ-

ees, repealing sections 4974, 4994, 5012, 5047, 5060, and 5091 to 5091n of this title, enacting provisions set out as notes under sections 4951 and 4952 of this title, and section 8332 of Title 5, and amending provisions set out as notes under this section and section 5001 of this title] may be cited as the 'Domestic Volunteer Service Act Amendments of 1993'.''

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–204, § 1(a), Dec. 7, 1989, 103 Stat. 1806, provided that: ''This Act [enacting sections 4960, 5000, 5025, 5026, and 5027 of this title, amending sections 4952 to 4955, 4958, 4959, 4971, 4974, 4992 to 4994, 5001, 5011 to 5013, 5021, 5024, 5041, 5047, 5056, 5061, 5081, 5082, 5084, 5671, 5715, 5751, 5773, 5775, 5777, 9910b, 11803, 11825, 11842, and 11851 of this title, enacting provisions set out as a note under section 4954 of this title, and amending provisions set out as a note under section 5601 of this title] may be cited as the 'Domestic Volunteer Service Act Amendments of 1989'.''

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–551 provided that: ''This Act [enacting this section and section 4959 of this title, amending sections 4953, 4955, 4971, 4972, 4974, 4992, 5011, 5013, 5024, 5041 to 5044, 5047, 5052, 5055, 5056, 5059, 5061, 5081, 5082, and 5084 of this title, enacting provisions set out as notes under this section and section 5011 of this title, and amending provisions set out as a note under section 5041 of this title] may be cited as the 'Domestic Volunteer Service Act Amendments of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98–288 provided: ''That this Act [enacting section 5024 of this title, amending sections 4951 to 4956, 4958, 4971, 4972, 4974, 4991 to 4993, 5001, 5011, 5013, 5041 to 5044, 5047, 5052, 5056 to 5060, 5081, 5082, 5084, 9902, and 9912 of this title, repealing section 5045 of this title, and enacting provisions set out as notes under sections 5042 and 5045 of this title] may be cited as the 'Domestic Volunteer Service Act Amendments of 1984'.''

SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96–143, § 1, Dec. 13, 1979, 93 Stat. 1074, provided: ''That this Act [enacting sections 5063 and 5064 of this title, amending sections 4953, 4955, 4958, 4973, 4974, 4992, 5021, 5043, 5044, 5050, 5055, 5057, 5058, 5060, 5081, and 5084 of this title, enacting provisions set out as notes under sections 4992 and 5084 of this title, and amending provisions set out as a note under section 4955 of this title] may be cited as the 'Domestic Volunteer Service Act Amendments of 1979'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–293, § 1, May 27, 1976, 90 Stat. 525, provided: ''That this Act [enacting sections 4958 and 4993 of this title, amending sections 4974, 4992, 5011, 5042, 5045, 5081, 5083, and 5084 of this title, repealing section 5053 of this title, and enacting provision set out as a note under section 4958 of this title] may be cited as the 'Domestic Volunteer Service Act Amendments of 1976'.''

SHORT TITLE

Section 1(a), formerly section 1, of Pub. L. 93–113, as renumbered § 1 and amended by Pub. L. 103–82, title III, § 391, Sept. 21, 1993, 107 Stat. 915, provided that: ''This Act [enacting this chapter, amending section 3067 of this title and section 8332(b)(7) of Title 5, Government Organization and Employees, and repealing sections 2991, 2992 to 2992b, 2993 to 2993b, 2994 to 2994d, and 3044 to 3044e of this title, and enacting provisions set out as notes under this section and section 5041 of this title] may be cited as the 'Domestic Volunteer Service Act of 1973'.''

SUBCHAPTER I—NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

PART A—VOLUNTEERS IN SERVICE TO AMERICA

§ 4951. Congressional statement of purpose

This part provides for the Volunteers in Service to America (VISTA) program of full-time volunteer service, together with appropriate powers and responsibilities designed to assist in the development and coordination of such program. The purpose of this part is to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition, the objectives of this part are to generate the commitment of private sector resources, to encourage volunteer service at the local level, and to strengthen local agencies and organizations to carry out the purpose of this part.

(Pub. L. 93–113, title I, § 101, Oct. 1, 1973, 87 Stat. 396; Pub. L. 98–288, § 2, May 21, 1984, 98 Stat. 189; Pub. L. 103–82, title III, § 321, Sept. 21, 1993, 107 Stat. 899.)

AMENDMENTS

1993—Pub. L. 103–82 amended last sentence generally. Prior to amendment last sentence read as follows: ''In addition the objective of this part is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes set forth in this section.''

1984—Pub. L. 98–288, in second sentence, inserted ''and alleviate'' after ''eliminate'', struck out ''human, social, and environmental'' after ''poverty-related'', inserted '', all geographical areas,'' after ''all walks of life'' and ''low-income individuals,'' before ''elderly'', and inserted at end ''In addition the objective of this part is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes set forth in this section.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 392 of title III of Pub. L. 103–82 provided that: ''This subtitle [subtitle B (§§ 311–392) of title III of Pub. L. 103–82, enacting sections 5028, 5028a, and 5065 of this title, amending this section, sections 4952 to 4955, 4957, 4959, 4960, 4971 to 4973, 4992, 4993, 5000, 5001, 5011, 5013, 5021, 5024 to 5026, 5041 to 5044, 5055, 5057, 5062, 5081, 5082, and 5084 of this title, and sections 8143, 8332, 8334, 8411, and 8422 of Title 5, Government Organization and Employees, repealing sections 4974, 4994, 5012, 5047, 5060, and 5091 to 5091n of this title, enacting provisions set out as notes under sections 4950 and 4952 of this title and section 8332 of Title 5, and amending provisions set out as notes under sections 4950 and 5001 of this title] shall become effective on October 1, 1993.''

§ 4952. Authority to operate VISTA program

This part shall be administered by one of the Assistant Directors appointed pursuant to section 12651e(d)(1)(A) of this title. Such Director

may recruit, select, and train persons to serve in full-time volunteer programs consistent with the provisions and to carry out the purpose of this part.

(Pub. L. 93–113, title I, § 102, Oct. 1, 1973, 87 Stat. 396; Pub. L. 98–288, § 3, May 21, 1984, 98 Stat. 189; Pub. L. 101–204, title I, § 101(d)(1), Dec. 7, 1989, 103 Stat. 1811; Pub. L. 103–82, title III, § 322(a), Sept. 21, 1993, 107 Stat. 899.)

AMENDMENTS

1993—Pub. L. 103–82 substituted ''This part shall be administered by one of the Assistant Directors appointed pursuant to section 12651e(d)(1)(A) of this title. Such Director'' for ''The Director''.

1989—Pub. L. 101–204 struck out subsec. (a) designation before ''The Director may'', struck out subsec. (b) which related to replacement of applicants who become unavailable for service, and struck out subsec. (c) which related to age quotas.

1984—Subsec. (a). Pub. L. 98–288 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 322(b) of Pub. L. 103–82 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the effective date of section 203(b).'' [Section 203(b) of Pub. L. 103–82 is effective 18 months after Sept. 21, 1993, or on such earlier date as the President shall determine to be appropriate and announce by proclamation in the Federal Register, see section 203(d) of Pub. L. 103–82, set out as a note under section 12651 of this title.]

§ 4953. Selection and assignment of volunteers

(a) Covered projects and programs

The Director, on the receipt of applications by public or nonprofit private organizations to receive volunteers under this part, may assign volunteers selected under subsection (b) of this section to work in appropriate projects and programs sponsored by such organizations, including work—

(1) in meeting the health, education, welfare, or related needs of Indians living on reservations or Federal trust lands, of migratory and seasonal farmworkers and their families, and of residents of the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) in the care and rehabilitation of mentally ill, developmentally disabled, and other handicapped individuals, especially those with severe handicaps;

(3) in addressing the problems of the homeless, the jobless, the hungry, and low-income youths;

(4) in addressing the special needs connected with alcohol and drug abuse prevention, education, and related activities, consistent with the purpose of this part;

(5) in addressing significant health care problems, including chronic and life-threatening illnesses and health care for homeless individuals (especially homeless children) through prevention, treatment, and community-based care activities;

(6) in connection with programs or activities authorized, supported, or of a character eligible for assistance under this chapter or the Community Service Block Grant Act [42 U.S.C. 9901 et seq.], titles VIII and X of the Economic Opportunity Act of 1964 [42 U.S.C. 2991 et seq., 2996 et seq.], the Headstart Act [42 U.S.C. 9831 et seq.], the Community Economic Development Act of 1981 [42 U.S.C. 9801 et seq.], or other similar Acts, in furtherance of the purpose of this subchapter; and

(7) in strengthening, supplementing, and expanding efforts to address the problem of illiteracy throughout the United States.

(b) Recruitment and placement procedures for local and national placement of volunteers; establishment, requirements, etc.

(1) The Director shall establish recruitment and placement procedures that offer opportunities for both local and national placement of volunteers for service under this part.

(2)(A) The Director shall establish and maintain within the national headquarters of the Corporation (or any successor entity of such agency) a volunteer placement office which shall be responsible for all functions related to the recruitment and placement of volunteers under this part. Such functions and activities shall be carried out in coordination or in conjunction with recruitment and placement activities carried out under the National and Community Service Trust Act of 1993. Upon the transfer of the functions of the ACTION Agency to the Corporation for National and Community Service, the office established under this subparagraph shall be merged with the recruitment office of such Corporation. At no time after such transfer of functions shall more than one office responsible primarily for recruitment exist within the Corporation.

(B) Such volunteer placement office shall develop, operate, and maintain a current and comprehensive central information system that shall, on request, promptly provide information—

(i) to individuals, with respect to specific opportunities for service as a volunteer with approved projects or programs to which no volunteer has been assigned; and

(ii) to approved projects or programs, with respect to the availability of individuals whose applications for service as a volunteer have been approved and who are awaiting an assignment with a specific project or program.

(C) The Director shall assign or hire as necessary, such additional national, regional, and State personnel to carry out the functions described in this subsection and subsection (c) of this section as may be necessary to ensure that such functions are carried out in a timely and effective manner. The Director shall give priority in the hiring of such additional personnel to individuals who have formerly served as volunteers under this part and to individuals who have specialized experience in the recruitment of volunteers.

(3) Volunteers shall be selected from among qualified individuals submitting an application for such service at such time, in such form, and containing such information as may be necessary to evaluate the suitability of each individual for such service and to determine, in accordance with paragraph (7),[1] the most appro-

[1] So in original. Probably should be paragraph ''(5)''.

priate assignment for each such volunteer. The Director shall approve the application of each individual who applies in conformance with this subsection and who, on the basis of the information provided in the application, is determined by the Director to be qualified to serve as a volunteer under this part.

(4) The Director shall ensure that applications for service as a volunteer under this part are available to the public on request to the Corporation (including any State or regional offices of the Agency)[2] and that an individual making such request is informed of the manner in which such application is required to be submitted. A completed application may be submitted by any interested individual to, and shall be accepted by, any office of the Corporation.

(5)(A) The Director shall provide for the assignment of each applicant approved as a volunteer under this part to a project or program that is, to the maximum extent practicable, consistent with the abilities, experiences, and preferences of such applicant that are set forth in the application described in paragraph (4) and the needs and preferences of projects or programs approved for the assignment of such volunteers.

(B) In carrying out subparagraph (A), the Director shall utilize the information system established under paragraph (2)(B).

(C) A sponsoring organization of VISTA may recruit volunteers for service under this part. The Director shall give a locally recruited volunteer priority for placement in the sponsoring organization of VISTA that recruited such volunteer.

(D) A volunteer under this part shall not be assigned to any project or program without the express approval and consent of such project or program.

(E) If an applicant under this part who is recruited locally becomes unavailable for service prior to the commencement of service, the recipient of the project grant or contract that was designated to receive the services of such applicant may replace such applicant with another qualified applicant approved by the Director.

(F) If feasible and appropriate, low-income community volunteers shall be given the option of serving in the home communities of such volunteers in teams with nationally recruited specialist volunteers. The Director shall attempt to assign such volunteers to serve in the home or nearby communities of such volunteers and shall make national efforts to attract other individuals to serve in the VISTA program. The Director shall also, in the assignment of volunteers under this subparagraph, recognize that community-identified needs that cannot be met in the local area and the individual desires of VISTA volunteers in regard to the service in various geographical areas of the United States should be taken into consideration.

(c) Public awareness and recruit activities; dissemination of information; reimbursement of costs; coordination; obligation of funds

(1) The Director, in conjunction with the personnel described in subsection (b)(2)(C) of this section, shall engage in public awareness and recruitment activities. Such activities may include—

(A) public service announcements through radio, television, and the print media;

(B) advertising through the print media, direct mail, and other means;

(C) disseminating information about opportunities for service as a volunteer under this part to relevant entities including institutions of higher education and other educational institutions (including libraries), professional associations, community-based agencies, youth service and volunteer organizations, business organizations, labor unions, senior citizens organizations, and other institutions and organizations from or through which potential volunteers may be recruited;

(D) disseminating such information through presentations made personally by employees of the Corporation or other designees of the Director, to students and faculty at institutions of higher education and to other entities described in subparagraph (C), including presentations made at the facilities, conventions, or other meetings of such entities;

(E) publicizing the student loan deferment and forgiveness opportunities available to VISTA volunteers under parts B and E of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq., 1087aa et seq.] and including such information in all applications and recruitment materials;

(F) publicizing national service educational awards available under the National and Community Service Trust Act of 1993;

(G) providing, on request, technical assistance with the recruitment of volunteers under this part to programs and projects receiving assistance under this part; and

(H) maintaining and publicizing a national toll-free telephone number through which individuals may obtain information about opportunities for service as a volunteer under this part and request and receive an application for such service.

(2) In designing and implementing the activities authorized under this section, the Director shall seek to involve individuals who have formerly served as volunteers under this part to assist in the dissemination of information concerning the program established under this part. The Director may reimburse the costs incurred by such former volunteers for such participation, including expenses incurred for travel.

(3) The Director shall consult with the Director of the Peace Corps to coordinate the recruitment and public awareness activities carried out under this subsection with those of the Peace Corps and to develop joint procedures and activities for the recruitment of volunteers to serve under this part.

(4) Beginning in fiscal year 1991 and for each fiscal year thereafter, for the purpose of carrying out this subsection, the Director shall obligate not less than 1.5 percent of the amounts appropriated for each fiscal year under section 5081(a) of this title.

[2] So in original. Probably should be ''the Corporation)''.

(d) Provision of plans to volunteers for job advancement; coordination with private industry councils or local workforce investment boards

The Director shall provide each low-income community volunteer with an individual plan for job advancement or for transition to a situation leading to gainful employment. Whenever feasible, such efforts shall be coordinated with an appropriate local workforce investment board established under section 2832 of title 29.[3]

(e) Educational and vocational counseling for volunteers; Director to provide

The Director may provide or arrange for educational and vocational counseling of volunteers and recent former volunteers under this part to (1) encourage them to use, in the national interest, the skills and experience which they have derived from their training and service, particularly working in combating poverty as members of the helping professions, and (2) promote the development of appropriate opportunities for the use of such skills and experience, and the placement therein of such volunteers.

(f) Terms and conditions; restrictions on political activities; place of service

Except as provided in subsection (e) of this section, the assignment of volunteers under this section shall be on such terms and conditions (including restrictions on political activities that appropriately recognize the special status of volunteers living among the persons or groups served by programs to which they have been assigned) as the Director may determine, including work assignments in their own or nearby communities.

(g) Program or project submittal to Governor; commencement and termination of service

Volunteers under this part shall not be assigned to work in a program or project in any community unless the application for such program or project contains evidence of local support and has been submitted to the Governor or other chief executive officer of the State concerned, and such Governor or other chief executive officer has not, within 45 days of the date of such submission, notified the Director in writing, supported by a statement of reasons, that such Governor or other chief executive officer disapproves such program or project. In the event of a timely request in writing, supported by a statement of reasons, by the Governor or other chief executive officer of the State concerned, the Director shall terminate a program or project or the assignment of a volunteer to a program or project not later than 30 days after the date such request is received by the Director, or at such later date as is agreed upon by the Director and such Governor or other chief executive officer.

(h) Interagency agreements

The Director is encouraged to enter into agreements with other Federal agencies to use VISTA volunteers in furtherance of program objectives that are consistent with the purposes described in section 4951 of this title.

[3] See 1998 Amendment note below.

(Pub. L. 93–113, title I, § 103, Oct. 1, 1973, 87 Stat. 396; Pub. L. 96–143, § 2, Dec. 13, 1979, 93 Stat. 1074; Pub. L. 98–288, § 4(a)–(c)(1), (d), May 21, 1984, 98 Stat. 189, 190; Pub. L. 99–551, § 3(a), Oct. 27, 1986, 100 Stat. 3071; Pub. L. 101–204, title I, § 101(a), (b), (d)(2), title VII, § 701, Dec. 7, 1989, 103 Stat. 1807, 1809, 1811, 1820; Pub. L. 103–82, title III, § 323, title IV, § 405(a)(2)–(4), Sept. 21, 1993, 107 Stat. 899, 920; Pub. L. 103–304, § 3(b)(7), (8), Aug. 23, 1994, 108 Stat. 1568; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(36)(A), (f)(28)(A)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–427, 2681–434.)

REFERENCES IN TEXT

The Community Service Block Grant Act, referred to in subsec. (a)(6), probably means the Community Services Block Grant Act, which is subtitle B (§ 671 et seq.) of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§ 9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (a)(6), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Titles VIII and X of the Act are classified generally to subchapters VIII (§ 2991 et seq.) and X (§ 2996 et seq.), respectively, of chapter 34 of this title. For complete classification of this Act to the Code, see Tables.

The Headstart Act, referred to in subsec. (a)(6), probably means the Head Start Act, subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Community Economic Development Act of 1981, referred to in subsec. (a)(6), is subchapter A (§§ 611–633) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 489, as amended, which is classified generally to subchapter I (§ 9801 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The National and Community Service Trust Act of 1993, referred to in subsecs. (b)(2)(A) and (c)(1)(F), is Pub. L. 103–82, Sept. 21, 1993, 107 Stat. 785. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (c)(1)(E), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B and E of title IV of the Higher Education Act of 1965 are classified to parts B (§ 1071 et seq.) and D (§ 1087aa et seq.), respectively, of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(28)(A)], which directed the amendment of the second sentence of subsec. (d) to read as follows: ''private industry council established under the Job Training Partnership Act or'', was executed by amending the second sentence by striking ''private industry council established under the Job Training Partnership Act or'' after ''coordinated with an appropriate'' to reflect the probable intent of Congress.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(36)(A)], substituted ''Whenever feasible, such efforts shall be coordinated with an appropriate private industry council established under the Job Training Partnership Act or local workforce investment board established under section 2832 of title 29.'' for ''Whenever feasible, such efforts shall be coordinated with an appropriate private industry council under the Job Training Partnership Act.''

1994—Subsec. (b)(5), (6). Pub. L. 103–304, § 3(b)(7), redesignated par. (6) as (5).

Subsec. (c)(1)(F). Pub. L. 103–304, § 3(b)(8), realigned margin.

1993—Subsec. (a). Pub. L. 103–82, § 323(a)(1), substituted ''public'' for ''a public'' in introductory provisions.

Subsec. (a)(2). Pub. L. 103–82, § 323(a)(2), directed amendment of par. (2) by striking ''and'' at end. See 1984 Amendment note below.

Subsec. (a)(3). Pub. L. 103–82, § 323(a)(3), struck out ''illiterate or functionally illiterate youth and other individuals,'' after ''the hungry,''.

Subsec. (a)(5). Pub. L. 103–82, § 323(a)(4), struck out ''and'' at end.

Subsec. (a)(6). Pub. L. 103–82, § 323(a)(5), struck out ''or'' before ''the Community Economic'', inserted ''or other similar Acts,'' before ''in furtherance of'', and substituted ''; and'' for period at end.

Subsec. (a)(7). Pub. L. 103–82, § 323(a)(6), added par. (7).

Subsec. (b)(2)(A). Pub. L. 103–82, § 405(a)(2), substituted ''the Corporation (or any'' for ''the ACTION Agency (or any''.

Pub. L. 103–82, § 323(b)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The Director shall establish and maintain within the national headquarters of the ACTION Agency a volunteer placement office. The office shall be headed by an individual designated by the Director to be the national Administrator of Recruitment and Placement, who shall be responsible for carrying out the functions described in this subsection and subsection (c) of this section and all other functions delegated by the Director relating to the recruitment and placement of volunteers under this part.''

Subsec. (b)(2)(C), (D). Pub. L. 103–82, § 323(b)(1)(B), (C), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: ''The Director shall, at a minimum, designate one employee of the ACTION Agency in each region of the United States whose primary duties and responsibilities shall be to assist the Administrator in carrying out the functions described in this subsection and subsection (c) of this section.''

Subsec. (b)(4). Pub. L. 103–82, § 405(a)(3), substituted ''the Corporation'' for ''the ACTION Agency'' in two places.

Pub. L. 103–82, § 323(b)(2), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''Each application for service as a volunteer under this part shall—

''(A) indicate the period of time during which the applicant is available to serve as a volunteer under this part;

''(B) describe the previous education, training, military and work experience, and any other relevant skills or interests of the applicant;

''(C) specify the State or geographic region in which the applicant prefers to be assigned; and

''(D) specify—

''(i) the type of project or program to which the applicant prefers to be assigned; or

''(ii) the particular project or program to which the applicant prefers to be assigned.''

Subsec. (b)(5) to (7). Pub. L. 103–82, § 323(b)(2), (3), redesignated pars. (5) and (7) as (4) and (6), respectively, and struck out former par. (6) which read as follows: ''Completed applications received by the ACTION Agency shall be forwarded to the regional ACTION office representing the State in which such applicant resides. The regional or State employees designated in subparagraphs (C) and (D) of paragraph (2) shall assist in evaluating such applications and, to the extent feasible and appropriate, interviewing applicants.''

Subsec. (c)(1). Pub. L. 103–82, § 323(c)(1)(A), (B), in introductory provisions, substituted ''personnel described in subsection (b)(2)(C)'' for ''regional or State employees designated in subparagraphs (C) and (D) of subsection (b)(2)'' and ''Such activities may include'' for ''Such activities shall include''.

Subsec. (c)(1)(D). Pub. L. 103–82, § 405(a)(4), substituted ''the Corporation'' for ''the ACTION Agency''.

Subsec. (c)(1)(F) to (H). Pub. L. 103–82, § 323(c)(1)(C), (D), added subpar. (F) and redesignated former subpars. (F) and (G) as (G) and (H), respectively.

Subsec. (c)(4) to (6). Pub. L. 103–82, § 323(c)(2), (3), redesignated par. (6) as (4) and struck out former par. (4) which required Director to develop annual plan for recruitment of volunteers under this part and former par. (5) which required that at least 20 percent of volunteers under this part be between ages 18 and 27 and that at least 20 percent be 55 or older.

Subsec. (h). Pub. L. 103–82, § 323(d), added subsec. (h).

1989—Pub. L. 101–204, § 101(d)(2)(A), substituted ''Selection and assignment'' for ''Assignment'' in section catchline.

Subsec. (a). Pub. L. 101–204, § 101(d)(2)(B), inserted introductory provisions and struck out former introductory provisions which read as follows: ''The Director, upon request of Federal, State, or local agencies, or private nonprofit organizations, may assign such volunteers to work in the several States in the local communities in which the volunteers were recruited in appropriate projects and programs, including work—''.

Subsec. (a)(5), (6). Pub. L. 101–204, § 701, added par. (5) and redesignated former par. (5) as (6).

Subsec. (b). Pub. L. 101–204, § 101(a), amended subsec. (b) generally. Prior to amendment subsec. (b) read as follows: ''The Director shall establish, at a cost not to exceed $250,000, procedures to recruit and place individuals from all walks of life, age groups, economic levels, and geographic areas to serve as VISTA volunteers. The procedures shall include an information system to ensure that potential applicants are made aware of the broad range of VISTA volunteer opportunities and a system to identify and place qualified volunteers where their skills are most needed. The Director shall also establish procedures for national and local recruitment, media and public awareness efforts, and specialized campaigns designed to recruit recent college graduates, special skilled volunteers, and individuals 55 years of age and older. The Director, wherever feasible and appropriate, shall assign low-income community volunteers to serve in their home communities in teams with nationally recruited specialist volunteers. The Director shall make efforts to assign volunteers to serve in their home or nearby communities and shall make national efforts to attract other volunteers to serve in the VISTA program. The Director shall also, in the assignment of volunteers, recognize that the community identified needs which cannot be met in the local area, and the individual desires of VISTA volunteers in regard to placement in various geographic areas of the Nation, should be taken into consideration.''

Subsecs. (c) to (e). Pub. L. 101–204, § 101(b), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (f). Pub. L. 101–204, § 101(b)(1), (d)(2)(C), redesignated subsec. (e) as (f) and substituted reference to subsec. (e) of this section for reference to subsec. (d) of this section. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 101–204, § 101(b)(1), redesignated former subsec. (f) as (g).

1986—Subsec. (b). Pub. L. 99–551 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Director, wherever feasible and appropriate, shall assign low-income community volunteers to serve in their home communities in teams with nationally recruited specialist volunteers. The Director shall make efforts to assign volunteers to serve in their home communities or in nearby communities and shall make national efforts to attract other volunteers to serve in the VISTA program.''

1984—Subsec. (a). Pub. L. 98–288, § 4(a)(1), inserted ''in the local communities in which the volunteers were recruited'' and inserted '', including work'' in provisions before par. (1).

Subsec. (a)(2). Pub. L. 98–288, § 4(a)(2), which directed substitution of a semicolon for '', under the supervision of nonprofit institutions or facilities, and'', was executed by making the substitution for '', under the supervision of nonprofit institutions or facilities; and'' to reflect the probable intent of Congress.

Subsec. (a)(3), (4). Pub. L. 98–288, § 4(a)(4), added pars. (3) and (4). Former par. (3) redesignated (5).

Subsec. (a)(5). Pub. L. 98–288, § 4(a)(3), (4), redesignated par. (3) as (5), and substituted ''the Community Service Block Grant Act, titles VIII and X of the Economic Opportunity Act of 1964, the Headstart Act, or the Community Economic Development Act of 1981,'' for ''the Economic Opportunity Act of 1964, as amended''.

Subsec. (b). Pub. L. 98–288, § 4(b), substituted ''The Director shall make efforts to assign volunteers to serve in their home communities or in nearby communities and shall make national efforts to attract other volunteers to serve in the VISTA program'' for ''Not later than 30 days after the assignment of any such community volunteer, the Director shall insure that each such volunteer is provided an individual plan designed to provide an opportunity for job advancement or for transition to a situation leading to gainful employment. One hundred and twenty days prior to the completion of such community volunteer's term of service, the Director shall insure that such plan is updated and reviewed with the volunteer. The Director shall offer to provide each volunteer enrolled for a period of full-time service of not less than one year under this subchapter, and, upon the request of such volunteer, provide such volunteer with an individual and updated plan as described in the preceding two sentences''.

Subsecs. (c), (d). Pub. L. 98–288, § 4(c)(1)(B), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated subsecs. (e) and (f), respectively.

Subsec. (e). Pub. L. 98–288, § 4(c)(1)(A), redesignated subsec. (c) as (e).

Subsec. (f). Pub. L. 98–288, § 4(c)(1)(A), (d), redesignated subsec. (d) as (f), and substituted ''work in a program or project in any community unless the application for such program or project contains evidence of local support and'' for ''duties or work in a program or project in any State unless such program or project''.

1979—Subsec. (b). Pub. L. 96–143, § 2(a), substituted ''Not later than 30 days after'' for ''Prior to'' and inserted provisions that the Director offer to provide each volunteer enrolled for a period of full-time service of not less than one year under this subchapter, and, upon the request of such volunteer, provide such volunteer with an individual and updated plan as described in the preceding two sentences.

Subsec. (d). Pub. L. 96–143, § 2(b), inserted ''in a program or project'' after ''work'' and ''or project'' after ''program'' and inserted provisions requiring notification by a Governor or other chief executive officer to the Director that such Governor or other chief executive officer has disapproved a program or project under this section and requiring the Director to terminate a program or project under this section in the event of a timely request by the Governor or other chief executive officer not later than 30 days after the date such request is received or at such date agreed upon by the Director and such Governor or other chief executive officer.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(36)(A)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(28)(A)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 3(b)(10) of Pub. L. 103–304 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 5024, 12591, 12602, 12615, 12619, 12622, 12651d, 12653, and 12655n of this title] shall take effect on the date of the enactment of this Act [Aug. 23, 1994].

''(B) RETROACTIVE EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) [amending sections 12651d and 12655n of this title] shall take effect as of October 1, 1993.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 323 of Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

Amendment by section 405(a)(2) to (4) of Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

§ 4954. Terms and periods of service

(a) Personal commitment; scope of commitment

Volunteers serving under this part shall be required to make a full-time personal commitment to combating poverty and poverty-related problems. To the maximum extent practicable, the requirement for full-time commitment shall include a commitment to live among and at the economic level of the people served, and to remain available for service without regard to regular working hours, at all times during their periods of service, except for authorized periods of leave.

(b) Minimum period of service; critical scarce-skill needs exception; reenrollment; limitation

(1) Volunteers serving under this part may be enrolled initially for periods of service of not less than 1 year, nor more than 2 years, except as provided in paragraph (2) or subsection (e) of this section.

(2) Volunteers serving under this part may be enrolled for periods of service of less than 1 year if the Director determines, on an individual basis, that a period of service of less than 1 year is necessary to meet a critical scarce skill need.

(3) Volunteers serving under this part may be reenrolled for periods of service in a manner to be determined by the Director. No volunteer shall serve for more than a total of 5 years under this part.

(c) Oath or affirmation

Volunteers under this part shall, upon enrollment, take the oath of office as prescribed for persons appointed to any office of honor or profit by section 3331 of title 5, and shall swear (or affirm) that the volunteer does not advocate the overthrow of the constitutional form of government of the United States and that the volunteer is not a member of an organization that advocates the overthrow of the constitutional form of government of the United States, knowing that such organization so advocates, except that persons legally residing within a State but who are not citizens or nationals of the United States, may serve under this part without taking or subscribing to such oath, if the Director determines that the service of such persons will further the interests of the United States. Such persons shall take such alternative oath or affirmation as the Director shall deem appropriate.

(d) Grievance and personal view presentation procedure; notice and hearing; information

The Director shall establish a procedure, including notice and opportunity to be heard, for volunteers under this part to present and obtain resolution of grievances and to present their views in connection with the terms and conditions of their service. The Director shall promptly provide to each volunteer in service on October 1, 1973, and to each such volunteer beginning service thereafter, information regarding such procedure and the terms and conditions of their service.

(e) Summer associates

(1) Notwithstanding any other provision of this part, the Director may enroll full-time VISTA summer associates in a program for the summer months only, under such terms and conditions as the Director shall determine to be appropriate. Such individuals shall be assigned to projects that meet the criteria set forth in section 4953(a) of this title.

(2) In preparing reports relating to programs under this chapter, the Director shall report on participants, costs, and accomplishments under the summer program separately.

(3) The limitation on funds appropriated for grants and contracts, as contained in section 4958 of this title, shall not apply to the summer program.

(Pub. L. 93–113, title I, § 104, Oct. 1, 1973, 87 Stat. 397; Pub. L. 98–288, § 5, May 21, 1984, 98 Stat. 190; Pub. L. 101–204, title VII, § 702, Dec. 7, 1989, 103 Stat. 1821; Pub. L. 103–82, title III, § 324, Sept. 21, 1993, 107 Stat. 900.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–82, § 324(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Volunteers serving under this part may be enrolled for periods of service not exceeding two years, but for not less than one-year periods of service, except that volunteers serving under this part may be enrolled for periods of service of less than one year when the Director determines, on an individual basis, that a period of service of less than one year is necessary to meet a critical scarce-skill need. Volunteers serving under this part may be reenrolled for periods of service totaling not more than two years. No volunteer shall serve for more than a total of five years under this part.''

Subsec. (e). Pub. L. 103–82, § 324(b), added subsec. (e).

1989—Subsec. (c). Pub. L. 101–204 substituted ''for persons appointed to any office of honor or profit by section 3331 of title 5, and shall swear (or affirm) that the volunteer does not advocate the overthrow of the constitutional form of government of the United States and that the volunteer is not a member of an organization that advocates the overthrow of the constitutional form of government of the United States, knowing that such organization so advocates, except'' for ''in section 2504(j) of title 22, except''.

1984—Subsec. (a). Pub. L. 98–288 struck out ''human, social, and environmental'' in first sentence after ''poverty-related'', and substituted ''the requirement for full-time commitment'' for ''this'' in second sentence.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

TEMPORARY AUTHORITY FOR EXTENSIONS OF PERIOD OF SERVICE

Section 101(c) of Pub. L. 101–204, as amended by Pub. L. 103–82, title IV, § 405(h), Sept. 21, 1993, 107 Stat. 921, provided that:

''(1) IN GENERAL.—Notwithstanding the limitations established in section 104(b) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4954(b)) for the maximum period of service as a volunteer under part A of title I of such Act (42 U.S.C. 4951 et seq.), the Chief Executive Officer of the Corporation for National and Community Service may, subject to paragraphs (2) and (3), extend beyond such maximum the period of service for such volunteer in any case in which—

''(A) such extension is requested by the project or program to which such volunteer involved is assigned; and

''(B) such Director determines that such extension is appropriate with respect to meeting the goals of such project or program.

''(2) LIMITATIONS ON EXTENSIONS.—With respect to extensions under paragraph (1) for volunteers described in such paragraph—

''(A) such an extension shall not exceed a 1-year period;

''(B) not more than two of such extensions may be made for any one volunteer; and

''(C) not more than 1 percent of the total number of such volunteers serving for the fiscal year involved may receive such extensions.

''(2) [(3)] DURATION OF AUTHORITY.—The authority established in paragraph (1) shall be effective only for fiscal years 1990 through 1993.''

§ 4955. Support services

(a) Stipend; limitation; volunteer leaders; payment upon completion of term; advancement of accrued stipend; beneficiary of deceased volunteer

(1)(A) The Director may provide a stipend to volunteers, while they are in training and during their assignments, enrolled for periods of service of not less than one year under this part, except that the Director may, on an individual basis, make an exception to provide a stipend to a volunteer enrolled under this part for an extended period of service not totaling one year.

(B) Such stipend shall not exceed $95 per month in fiscal year 1994, but shall be set at a minimum of $100 per month, and a maximum of $125 per month assuming the availability of funds to accomplish such maximum, during the service of the volunteer after October 1, 1994. The Director may provide a stipend of a maximum of $200 per month in the case of persons who have served as volunteers under this part for at least 1 year and who, in accordance with standards established in such regulations as the Director shall prescribe, have been designated volunteer leaders on the basis of experience and special skills and a demonstrated leadership among volunteers.

(C) The Director shall not provide a stipend under this subsection to an individual who elects to receive a national service educational award under subtitle D of title I of the National and Community Service Act of 1990 [42 U.S.C. 12601 et seq.].

(2) Stipends shall be payable only upon completion of a period of service, except that under such circumstances as the Director shall determine, in accordance with regulations which the Director shall prescribe, the accrued stipend, or any part of the accrued stipend, may be paid to

the volunteer, or, on behalf of the volunteer, to members of the volunteer's family or others during the period of the volunteer's service. In the event of the death of a volunteer during service, the amount of any unpaid stipend shall be paid in accordance with the provisions of section 5582 of title 5.

(b) Description of allowances and support services; determination of allowance; adjustments; methodology

(1) The Director shall also provide volunteers such living, travel (including travel to and from places of training and to and from locations to which volunteers are assigned during periods of service) and leave allowances, and such housing, supplies, equipment, subsistence, clothing, health and dental care, transportation, supervision, pre-service training and where appropriate in-service training, technical assistance, and such other support as the Director deems necessary and appropriate to carry out the purpose and provisions of this part, and shall insure that each such volunteer has available such allowances and support as will enable the volunteer to carry out the purpose and provisions of this part and to effectively perform the work to which such volunteer is assigned.

(2) The Director shall set the subsistence allowance for volunteers under paragraph (1) for each fiscal year so that—

(A) the minimum allowance is not less than an amount equal to 95 percent of such poverty line (as defined in section 9902(2) of this title) for a single individual as expected for each fiscal year; and

(B) the average subsistence allowance, excluding allowances for Hawaii, Guam, American Samoa, and Alaska, is no less than 105 percent of such poverty line.

(3) The Director shall adjust the subsistence allowances for volunteers serving in areas that have a higher cost of living than the national average to reflect such higher cost. The Director shall review such adjustments on an annual basis to ensure that the adjustments are current.

(c) Child care

(1) The Director shall—

(A) make child care available for children of each volunteer enrolled under this part who need such child care in order to participate as volunteers; or

(B) provide a child care allowance to each such volunteer who needs such assistance in order to participate as volunteers.

(2) The Corporation shall establish guidelines regarding the circumstances under which child care shall be made available under this subsection and the value of any child care allowance to be provided.

(Pub. L. 93–113, title I, § 105, Oct. 1, 1973, 87 Stat. 398; Pub. L. 94–130, § 5(a), Nov. 14, 1975, 89 Stat. 684; Pub. L. 96–143, § 3, Dec. 13, 1979, 93 Stat. 1074; Pub. L. 98–288, § 6, May 21, 1984, 98 Stat. 191; Pub. L. 99–551, § 10(i)(1), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 101–204, title I, § 102, Dec. 7, 1989, 103 Stat. 1811; Pub. L. 103–82, title III, § 325, Sept. 21, 1993, 107 Stat. 901.)

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsec. (a)(1)(C), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended. Subtitle D of title I of the Act is classified generally to division D (§ 12601 et seq.) of subchapter I of chapter 129 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–82, § 325(a), designated first sentence as subpar. (A), added subpars. (B) and (C), and struck out former second sentence which read as follows: ''Such stipend shall not exceed $75 per month in fiscal year 1990, $90 per month in fiscal year 1991, and $95 per month in subsequent fiscal years during the volunteer's service, except that the Director may provide a stipend not to exceed $75 per month in fiscal year 1990, $90 per month in fiscal year 1991, and $95 per month in subsequent fiscal years in the case of persons who have served for at least one year and who, in accordance with standards established in regulations which the Director shall prescribe, have been designated volunteer leaders on the basis of experience and special skills and a demonstrated leadership among volunteers.''

Subsec. (b)(3). Pub. L. 103–82, § 325(b)(1), struck out subpar. (A), struck out subpar. (B) designation before ''The Director shall adjust'', and inserted at end: ''The Director shall review such adjustments on an annual basis to ensure that the adjustments are current.''. Prior to amendment, subpar. (A) read as follows: ''The Director shall consult with regional and State offices of the ACTION Agency to make a determination of the cost of living within each State and whether there are significant local price differentials within the State.''

Subsec. (b)(4). Pub. L. 103–82, § 325(b)(2), struck out par. (4) which read as follows: ''The Director, in coordination with regional and State offices of the ACTION Agency and taking into account paragraphs (2) and (3), shall establish a method for setting subsistence allowances. The Director shall submit a report on such methods to the appropriate authorizing committees of Congress not later than 90 days after the date of enactment of the fiscal year 1990 appropriation.''

Subsec. (c). Pub. L. 103–82, § 325(c), added subsec. (c).

1989—Subsec. (a)(1). Pub. L. 101–204, § 102(1), substituted ''$75 per month in fiscal year 1990, $90 per month in fiscal year 1991, and $95 per month in subsequent fiscal years'' for ''$75 per month'' in two places.

Subsec. (b). Pub. L. 101–204, § 102(2), designated existing provisions as par. (1), substituted ''places of training and to and from locations to which volunteers are assigned during periods of service)'' for ''places of training),'', and added pars. (2) to (4).

1986—Subsec. (b). Pub. L. 99–551 substituted ''the Director'' for ''he'' before ''deems''.

1984—Subsec. (b). Pub. L. 98–288 inserted ''pre-service training and where appropriate in-service training,''.

1979—Subsec. (a)(2). Pub. L. 96–143 substituted ''under such circumstances as the Director shall determine, in accordance with regulations which the director shall prescribe, the accrued stipend, or any part of the accrued stipend, may be paid to the volunteer, or, on behalf of the volunteer, to members of the volunteer's family or others during the period of the volunteer's service'' for ''in extraordinary circumstances the Director may from time to time advance all or a portion of the accrued stipend to or on behalf of a volunteer''.

1975—Subsec. (a)(1). Pub. L. 94–130 substituted ''shall not exceed $75'' for ''shall not exceed $50''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L.

99–551, set out as an Effective Date note under section 4950 of this title.

ADDITIONAL APPROPRIATIONS AUTHORIZATION

Section 5(b) of Pub. L. 94–130, as amended by Pub. L. 96–143, § 17, Dec. 13, 1979, 93 Stat. 1082, provided that: ''There are authorized to be appropriated, in addition to the sums authorized to be appropriated pursuant to section 501 of such Act [section 5081 of this title], such additional sums as may be necessary to carry out the amendments made by subsection (a) of this section [amending this section].''

§ 4956. Participation of program beneficiaries

To the maximum extent practicable, the people of the communities to be served by volunteers under this subchapter shall participate in planning, developing, and implementing programs thereunder, and the Director, after consultation with sponsoring agencies (including volunteers assigned to them) and the people served by such agencies, shall establish in regulations, a continuing mechanism for the meaningful participation of such program beneficiaries.

(Pub. L. 93–113, title I, § 106, Oct. 1, 1973, 87 Stat. 398; Pub. L. 98–288, § 7, May 21, 1984, 98 Stat. 191.)

AMENDMENTS

1984—Pub. L. 98–288 substituted ''establish in regulations'' for ''take all necessary steps to establish, in regulations he shall prescribe''.

§ 4957. Participation of younger and older persons

In carrying out this part and part C of this subchapter, the Director shall take necessary steps, including the development of special projects, where appropriate, to encourage the fullest participation of individuals 18 through 27 years of age, and individuals 55 years of age and older, in the various programs and activities authorized under such parts.

(Pub. L. 93–113, title I, § 107, Oct. 1, 1973, 87 Stat. 399; Pub. L. 103–82, title III, § 326, Sept. 21, 1993, 107 Stat. 901.)

AMENDMENTS

1993—Pub. L. 103–82 amended section generally. Prior to amendment, section read as follows: ''In carrying out this part and part C of this subchapter, the Director shall take necessary steps, including the development of special projects, where appropriate, to encourage the fullest participation of older persons and older persons membership groups as volunteers and participant agencies in the various programs and activities authorized under such parts and, because of the high proportion of older persons within the poverty group, shall encourage the development of a variety of volunteer services to older persons, including special projects, to assure that such persons are served in proportion to their need.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

§ 4958. Limitation on funds appropriated for grants and contracts for direct cost of supporting volunteers in programs or projects

(a) Of funds appropriated for the purpose of this part under section 5081 of this title, not more than 30 percent for the fiscal year ending September 30, 1984, and for each fiscal year thereafter, may be obligated for the direct cost of supporting volunteers in programs or projects carried out pursuant to grants and contracts made under section 5042(12)[1] of this title.

(b) No funds shall be obligated under this part pursuant to grants or contracts made after December 13, 1979, for new projects for the direct cost of supporting volunteers unless the recipient of each such grant or contract has been selected through a competitive process which includes—

(1) public announcements of the availability of funds for such grants or contracts, general criteria for the selection of new recipients, and a description of the application process and the application review process; and

(2) a requirement that each applicant for any such grant or contract identify, with sufficient particularity to assure that the assignments of volunteers under such grants and contracts will carry out the purpose of this part, the particular poverty or poverty-related problems on which the grant or contract will focus, and any such grant or contract shall specifically so identify such problems.

(Pub. L. 93–113, title I, § 108, as added Pub. L. 94–293, § 4(a)(1), May 27, 1976, 90 Stat. 525; amended Pub. L. 96–143, § 4, Dec. 13, 1979, 93 Stat. 1075; Pub. L. 98–288, § 8, May 21, 1984, 98 Stat. 191; Pub. L. 101–204, title VII, § 703, Dec. 7, 1989, 103 Stat. 1821.)

REFERENCES IN TEXT

Section 5042 of this title, referred to in subsec. (a), was repealed by Pub. L. 103–82, title II, § 203(b), Sept. 21, 1993, 107 Stat. 892.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–204 substituted ''30 percent'' for ''16 per centum''.

1984—Subsec. (a). Pub. L. 98–288, § 8(1), (2), substituted ''1984'' for ''1977'', and struck out ''During the fiscal year ending September 30, 1980—(1) in no event may in excess of $5,800,000 be used pursuant to grants and contracts under this part for the direct cost of supporting such volunteers; and (2) funds obligated pursuant to such grants and contracts for such cost may be used to support no greater number of years of volunteer service than the number of such years supported during the fiscal year ending September 30, 1979, pursuant to grants and contracts for such cost.''

Subsec. (b)(2). Pub. L. 98–288, § 8(3), struck out ''human, social, or environmental'' after ''poverty-related''.

1979—Subsec. (a). Pub. L. 96–143, § 4, designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, substituted ''16'' for ''20'', inserted ''During the fiscal year ending September 30, 1980'', and added pars. (1) and (2).

Subsec. (b). Pub. L. 96–143, § 4(b), added subsec. (b).

EFFECTIVE DATE

Section 4(c) of Pub. L. 94–293 provided that: ''The amendments made by subsection (a) and subsection (b) of this section [enacting this section and amending section 5042 of this title] shall be effective on October 1, 1976, and shall not apply to any agreement for the assignment of volunteers entered into before such date during the period of any such agreement.''

[1] See References in Text note below.

§ 4959. VISTA Literacy Corps

(a) Establishment

As part of the Volunteers in Service to America program established under this part, the Director shall establish a VISTA Literacy Corps for the purpose of developing, strengthening, supplementing, and expanding efforts of both public and nonprofit organizations at the local, State, and Federal level to mobilize local, State, Federal, and private sector financial and volunteer resources to address the problem of illiteracy throughout the United States.

(b) Assignment of volunteers to projects and programs meeting antipoverty criteria and providing assistance to illiterates who are underserved by education programs

The Director shall assign volunteers to projects and programs that meet the antipoverty criteria of this part that provide assistance to functionally illiterate and illiterate individuals who are unserved or underserved by literacy education programs, with special emphasis upon disadvantaged individuals having the highest risk of illiteracy, and individuals with the lowest reading and educational level of competence.

(c) Assignment of volunteers to projects and programs utilizing volunteers to address needs of illiterate individuals; administration of programs by public or private nonprofit organizations; considerations governing assignment of volunteers

(1) The Director shall assign volunteers under this subsection to projects and programs that utilize volunteers to address the needs of illiterate individuals.

(2) Programs and projects under this subsection may be administered by public or private nonprofit agencies and organizations including local, State, and national literacy councils and organizations; community-based nonprofit organizations; local and State education agencies; local and State agencies administering adult basic education programs; educational institutions; libraries; antipoverty organizations; local, municipal, and State governmental entities, and eligible providers of employment and training activities under subtitle B of title I of the Workforce Investment Act of 1998 [29 U.S.C. 2811 et seq.].

(3) In the assignment of volunteers under this subsection the Director shall give priority consideration to—

(A) programs and projects that assist illiterate individuals in greatest need of assistance residing in unserved or underserved areas with the highest concentrations of illiteracy and of low income individuals and families;

(B) projects and programs serving individuals reading at the zero to fourth grade levels;

(C) projects and programs focusing on providing literacy services to high risk populations;

(D) projects and programs operating in areas with the highest concentration of individuals and families living at or below the poverty level;

(E) projects and programs providing literacy services to parents of disadvantaged children between the ages of two and eight, who may be educationally at risk; and

(F) Statewide programs and projects that encourage the creation of new literacy efforts, encourage the coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

(d) Assignment of volunteers to projects and programs utilizing volunteers to tutor illiterate individuals; administration of programs by local public or private nonprofit organizations; considerations in assignment of volunteers

(1) The Director shall assign volunteers under this subsection to projects and programs that primarily utilize volunteers to tutor illiterate individuals.

(2) Programs and projects under this subsection may be administered by local public or private nonprofit agencies and organizations including local literacy councils and organizations, community-based nonprofit organizations, local educational agencies, local agencies administering adult basic education programs, local educational institutions, libraries, antipoverty organizations, local and municipal governmental entities, and eligible providers of employment and training activities under subtitle B of title I of the Workforce Investment Act of 1998 [29 U.S.C. 2811 et seq.].

(3) In the assignment of volunteers under this subsection the Director shall give priority consideration to local programs and projects that assist illiterate individuals in greatest need of assistance residing in unserved or underserved areas with the highest concentrations of illiteracy and of low income individuals and families.

(e) Equitable distribution of volunteers

The Director shall ensure an equitable distribution of volunteers under this section in accordance with the equitable distribution requirement of section 5054 of this title.

(f) Membership of VISTA Literacy Corps

The VISTA Literacy Corps shall consist of all volunteers serving under this part working on literacy projects and programs.

(g) Proportionate reduction of services

In any fiscal year in which the services provided under this part are reduced, the services provided under this section shall be proportionately reduced.

(h) Assignment of individual to service in general program regarding literacy; priority

(1) Subject to paragraph (2), with respect to any individual providing volunteer services in the program under this section regarding literacy, the Director may, with the written consent of the individual, assign the individual to serve in the general program under this part regarding literacy.

(2) To the extent practicable and without undue delay, the Director shall ensure that a volunteer under this section is assigned to the vacancy created within the relevant literacy project or program established under this section.

(Pub. L. 93–113, title I, § 109, as added Pub. L. 99–551, § 4(a), Oct. 27, 1986, 100 Stat. 3072; amended

Pub. L. 101–204, title VI, § 601, Dec. 7, 1989, 103 Stat. 1819; Pub. L. 103–82, title III, § 327, Sept. 21, 1993, 107 Stat. 902; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(36)(B), (f)(28)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–427, 2681–434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsecs. (c)(2) and (d)(2), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Subtitle B of title I of the Act is classified generally to subchapter II (§ 2811 et seq.) of chapter 30 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1998—Subsecs. (c)(2), (d)(2). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(28)(B)], struck out ''administrative entities designated to administer job training plans under the Job Training Partnership Act and'' before ''eligible providers of employment and training''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(36)(B)], substituted ''administrative entities designated to administer job training plans under the Job Training Partnership Act and eligible providers of employment and training activities under subtitle B of title I of the Workforce Investment Act of 1998'' for ''administrative entities designated to administer job training plans under the Job Training Partnership Act''.

1993—Subsec. (g). Pub. L. 103–82, § 327(1), struck out par. (1) and struck out par. (2) designation before ''In any fiscal''. Prior to amendment, par. (1) read as follows: ''Funds made available under section 5081(a) of this title for the purposes of this section shall be used to supplement and not supplant the level of services provided under this part in fiscal year 1986 to address the problem of illiteracy. The Director shall ensure that records are maintained to indicate the degree of compliance with this requirement.''

Subsec. (h)(1), (3). Pub. L. 103–82, § 327(2), substituted ''paragraph (2)'' for ''paragraphs (2) and (3)'' in par. (1) and struck out par. (3) which read as follows: ''Nothing in this subsection shall diminish or otherwise affect the requirement in subsection (g)(1) of this section that funds made available for this section shall be used to supplement and not to supplant the 1986 level of literacy services provided under this part.''

1989—Subsec. (g)(1). Pub. L. 101–204, § 601(1), inserted at end ''The Director shall ensure that records are maintained to indicate the degree of compliance with this requirement.''

Subsec. (h). Pub. L. 101–204, § 601(2), added subsec. (h).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(36)(B)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(28)(B)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as a note under section 4950 of this title.

§ 4960. Applications for assistance

In reviewing an application for assistance under this part, the Director shall not deny such assistance to any project or program, or any public or private nonprofit organization, solely on the basis of the duration of the assistance such project, program, or organization has received under this part prior to the date of submission of the application. The Director shall grant assistance under this part on the basis of merit and to accomplish the goals of the VISTA program, and shall consider the needs and requirements of projects in existence on such date as well as potential new projects.

(Pub. L. 93–113, title I, § 110, as added Pub. L. 101–204, title I, § 103, Dec. 7, 1989, 103 Stat. 1812; amended Pub. L. 103–82, title III, § 328, Sept. 21, 1993, 107 Stat. 902.)

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), duration; in subsec. (b), consideration of application; in subsec. (c), new project or program; in subsec. (d), renewal of assistance; in subsec. (e), eligibility; and in subsec. (f), notice.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

PART B—UNIVERSITY YEAR FOR VISTA

§ 4971. Congressional statement of purpose

(a) The purpose of this part is to assist students, through service-learning and community service programs, to undertake volunteer service in such a way as to enhance the educational value of the service experience, through participation in activities that strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems. Its purpose further is to provide technical assistance and training to encourage other students and faculty to engage in volunteer service on a part-time, self-supporting basis, to meet the needs of the poor in the surrounding community through expansion of service-learning and community service programs and otherwise.

(b) This part provides for the University Year for VISTA (UYV) program of full-time volunteer service by students enrolled in institutions of higher education. The purpose of the UYV program is to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems by enabling students at cooperating institutions to perform meaningful and constructive volunteer service in connection with the satisfaction of coursework while attending such institutions. Volunteer service under this part is conducted in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by individuals experiencing such problems.

(Pub. L. 93–113, title I, § 111, Oct. 1, 1973, 87 Stat. 399; Pub. L. 98–288, § 9, May 21, 1984, 98 Stat. 191; Pub. L. 99–551, § 5, Oct. 27, 1986, 100 Stat. 3073; Pub. L. 101–204, title II, § 201(2), Dec. 7, 1989, 103 Stat. 1813; Pub. L. 103–82, title III, § 330(a)(2), (3), Sept. 21, 1993, 107 Stat. 902.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–82 substituted ''University Year for VISTA (UYV)'' for ''University Year for ACTION (UYA)'' and ''purpose of the UYV'' for ''purpose of the UYA''.

1989—Subsec. (a). Pub. L. 101–204, which directed the amendment of the first sentence of subsec. (a) by inserting ''and community service'' after ''service-learning'' both places it appears, was executed by making the insertion once in each of the first and second sentences of subsec. (a), as the probable intent of Congress.

1986—Subsec. (a). Pub. L. 99–551, § 5(1), (2), designated existing provisions as subsec. (a) and struck out ''This part provides for the University Year for ACTION (UYA) program of full-time volunteer service by students enrolled in institutions of higher education, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. The purpose of this part is to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems by enabling students at such cooperating institutions to perform meaningful and constructive volunteer service in connection with the satisfaction of such students' course work during their periods of service while attending such institutions, in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems.''

Subsec. (b). Pub. L. 99–551, § 5(3), added subsec. (b).

1984—Pub. L. 98–288 inserted after first sentence ''The purpose of this part is to assist students, through service-learning programs, to undertake volunteer service in such a way as to enhance the educational value of the service experience, through participation in activities that strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems.'' and substituted ''provide technical assistance and training to encourage other students and faculty to engage in volunteer service on a part-time, self-supporting basis, to meet the needs of the poor in the surrounding community through expansion of service-learning programs and otherwise'' for ''encourage other students and faculty members to engage, on a part-time, self-supporting basis, in such volunteer service and work along with volunteers serving under this part; and to promote participation by such institutions in meeting the needs of the poor in the surrounding community through expansion of service-learning programs and otherwise. Its purpose further is to provide for a program of part-time or short-term service—learning by secondary and post-secondary school students to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

§ 4972. Authority to operate University Year for VISTA program

Except as otherwise provided in this part, the Director is authorized to conduct or make grants and contracts for, or both, programs to carry out the purposes of this part in accordance with the authorities and subject to the restrictions in the provisions of part A of this subchapter, except for the provisions of sections 4953(f)[1] and 4954(d) of this title, and except that the Director may, in accordance with regulations the Director shall prescribe, determine to reduce or eliminate the stipend for volunteers serving under this part on the basis of the value of benefits provided such volunteers by the institution in question (including the reduction or waiver of tuition).

(Pub. L. 93–113, title I, § 112, Oct. 1, 1973, 87 Stat. 399; Pub. L. 98–288, § 30(b)(1), May 21, 1984, 98 Stat. 197; Pub. L. 99–551, § 10(i)(2), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 103–82, title III, § 330(a)(4), Sept. 21, 1993, 107 Stat. 902.)

REFERENCES IN TEXT

Section 4953(f) of this title, referred to in text, was redesignated section 4953(g) of this title by Pub. L. 101–204, title I, § 101(b)(1), Dec. 7, 1989, 103 Stat. 1809.

AMENDMENTS

1993—Pub. L. 103–82 amended section catchline generally.

1986—Pub. L. 99–551 substituted ''the Director'' for ''he'' before ''shall prescribe''.

1984—Pub. L. 98–288 substituted ''4953(f)'' for ''4953(d)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

§ 4973. Special conditions

(a) Academic credit

Volunteers serving under this part shall be enrolled for periods of service as provided for in subsection (b) of section 4954 of this title, except that volunteers serving in the University Year for VISTA program may be enrolled for periods of service of not less than the duration of an academic semester or its equivalent, but volunteers enrolled for less than 12 months shall not receive stipends under section 4955(a)(1) of this title. Volunteers serving under this part may receive academic credit for such service in accordance with the regulations of the sponsoring institution of higher education. Volunteers may receive a living allowance and such other support or allowances as the Director determines to be appropriate.

(b) Participation of student volunteers and educational institutions

Grants to and contracts with institutions to administer programs under this part shall provide that prospective student volunteers shall participate substantially in the planning of such programs and that such institutions shall make available to the poor in the surrounding community all available facilities, including human resources, of such institutions in order to assist in meeting the needs of such poor persons.

[1] See References in Text note below.

(c) Financial assistance limitation; commitment stipulations; monitoring of compliance with commitment; compliance information to Secretary

(1) In making grants or contracts for the administration of UYV programs under this part, the Director shall insure that financial assistance under this chapter to programs carried out pursuant to section 4972 of this title shall not exceed 90 per centum of the total cost (including planning costs) of such program during the first year and such amounts less than 90 per centum as the Director, in consultation with the institution, may determine for not more than four additional years, including years in which support was received under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991–2994d). Each such grant or contract shall stipulate that the institution will make every effort to (A) assume an increasing proportion of the cost of continuing a program carrying out the purpose of this part while the institution receives support under this part; (B) waive or otherwise reduce tuition for participants in such program, where such waiver is not prohibited by law; (C) utilize students and faculty at such institution to carry out, on a self-supporting basis, appropriate planning for such programs; and (D) maintain similar service-learning programs after such institution no longer receives support under this part.

(2) The Director shall take necessary steps to monitor the extent of compliance by such institutions with commitments entered into under paragraph (1) of this subsection and shall advise the Secretary of Health and Human Services of the extent of each such institution's compliance.

(Pub. L. 93–113, title I, § 113, Oct. 1, 1973, 87 Stat. 399; Pub. L. 96–143, § 5, Dec. 13, 1979, 93 Stat. 1075; Pub. L. 97–35, title VI, § 608(f)(1), Aug. 13, 1981, 95 Stat. 488; Pub. L. 103–82, title III, § 330(a)(2), (3), (b), Sept. 21, 1993, 107 Stat. 902.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, as amended, referred to in subsec. (c)(1), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Title VIII of such Act probably means title VIII of Pub. L. 88–452 as added by Pub. L. 89–794, title VIII, § 801, Nov. 8, 1966, 80 Stat. 1472, and generally revised and amended by Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to subchapter VIII (§ 2991 et seq.) of chapter 34 of this title. Title VIII of the Economic Opportunity Act of 1964 as so added and amended was repealed by Pub. L. 93–113, title VI, § 603, and its provisions are covered by this chapter. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 330(a)(2), (b), substituted "VISTA program" for "ACTION program" and "semester or its equivalent" for "year" after "duration of an academic" and inserted at end "Volunteers may receive a living allowance and such other support or allowances as the Director determines to be appropriate."

Subsec. (c)(1). Pub. L. 103–82, § 330(a)(3), substituted "UYV programs" for "UYA programs".

1981—Subsec. (c)(2). Pub. L. 97–35 substituted reference to Secretary of Health and Human Services, for reference to Secretary of Health, Education, and Welfare.

1979—Subsec. (a). Pub. L. 96–143 substituted "except that volunteers serving in the University Year for ACTION program may be enrolled for periods of service of not less than the duration of an academic year, but volunteers enrolled for less than 12 months shall not receive stipends under section 4955(a)(1) of this title. Volunteers serving under this part" for "and".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

§ 4974. Repealed. Pub. L. 103–82, title III, § 329, Sept. 21, 1993, 107 Stat. 902

Section, Pub. L. 93–113, title I, § 114, Oct. 1, 1973, 87 Stat. 400; Pub. L. 94–293, § 2, May 27, 1976, 90 Stat. 525; Pub. L. 96–143, § 6, Dec. 13, 1979, 93 Stat. 1075; Pub. L. 97–35, title VI, § 608(a), Aug. 13, 1981, 95 Stat. 487; Pub. L. 98–288, § 10, May 21, 1984, 98 Stat. 191; Pub. L. 99–551, § 10(i)(3), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 101–204, title II, § 201(3), Dec. 7, 1989, 103 Stat. 1813, related to student community service programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

PART C—SPECIAL VOLUNTEER PROGRAMS

§ 4991. Congressional statement of purpose

This part provides for special emphasis and demonstration volunteer programs, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. The purpose of this part is to strengthen and supplement efforts to meet a broad range of needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs. It is the further purpose of this part to provide technical and financial assistance to encourage voluntary organizations and volunteer efforts at the national, State, and local level.

(Pub. L. 93–113, title I, § 121, Oct. 1, 1973, 87 Stat. 400; Pub. L. 98–288, § 11, May 21, 1984, 98 Stat. 191.)

AMENDMENTS

1984—Pub. L. 98–288 struck out "human, social, and environmental" after "broad range of", and inserted at end "It is the further purpose of this part to provide technical and financial assistance to encourage voluntary organizations and volunteer efforts at the national, State, and local level."

§ 4992. Authority to establish and operate special volunteer and demonstration programs

(a) In general

The Director is authorized to conduct special volunteer programs for demonstration programs, or award grants to or enter into contracts with public or nonprofit organizations to carry out such programs. Such programs shall encourage wider volunteer participation on a full-time, part-time, or short-term basis to further the purpose of this part, and identify particular segments of the poverty community that

could benefit from volunteer and other antipoverty efforts.

(b) Assignment and support of volunteers

The assignment of volunteers under this section, and the provision of support for such volunteers, including any subsistence allowances and stipends, shall be on such terms and conditions as the Director shall determine to be appropriate, but shall not exceed the level of support provided under section 4955 of this title. Projects using volunteers who do not receive stipends may also be supported under this section.

(c) Criteria and priorities

In carrying out this section and section 4993 of this title, the Director shall establish criteria and priorities for awarding grants and entering into contracts under this part in each fiscal year. No grant or contract exceeding $100,000 shall be made under this part unless the recipient of the grant or contractor has been selected by a competitive process that includes public announcement of the availability of funds for such grant or contract, general criteria for the selection of recipients or contractors, and a description of the application process and application review process.

(Pub. L. 93–113, title I, § 122, Oct. 1, 1973, 87 Stat. 401; Pub. L. 94–293, § 3(a), May 27, 1976, 90 Stat. 525; Pub. L. 96–143, § 7(a)–(c), Dec. 13, 1979, 93 Stat. 1075, 1076; Pub. L. 98–288, §§ 12, 30(b)(2), May 21, 1984, 98 Stat. 192, 197; Pub. L. 99–551, §§ 6(a), 10(d), (i)(4), Oct. 27, 1986, 100 Stat. 3074, 3077, 3078; Pub. L. 101–204, title III, § 301, Dec. 7, 1989, 103 Stat. 1813; Pub. L. 103–82, title III, § 331, Sept. 21, 1993, 107 Stat. 903.)

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), youthful offender incarceration alternatives, veterans educational opportunities, drug abusers counseling, assistance to victims of domestic violence, periods of service, and identification of segments of poverty community which could benefit from volunteer and other antipoverty efforts; in subsec. (b), assignment of volunteers, and terms and conditions; in subsec. (c), allowances, supports, services, and stipends for part-time and full-time volunteers; in subsec. (d), establishment of criteria for grants and contracts, competitive process, maximum amount, and multiple grants or contracts; and in subsec. (e), prohibition on use of funds for certain State offices.

1989—Subsec. (d)(3), (4). Pub. L. 101–204, § 301(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e). Pub. L. 101–204, § 301(b), added subsec. (e).

1986—Subsec. (a)(1). Pub. L. 99–551, §§ 6(a), 10(d), inserted ''(including Indian reservations)'' and substituted ''offenders, a program'' and ''veterans, a program'' for ''offenders; a program'' and ''veterans; a program'', respectively.

Subsec. (b). Pub. L. 99–551, § 10(i)(4), substituted ''the Director'' for ''he'' before ''shall prescribe''.

1984—Subsec. (c)(2)(B). Pub. L. 98–288, § 30(b)(2), substituted ''4953(f)'' for ''4953(d)''.

Subsec. (d). Pub. L. 98–288, § 12, added subsec. (d).

1979—Subsec. (a). Pub. L. 96–143, § 7(a), (b), designated existing provisions as par. (1), inserted ''in urban and rural areas'' after ''volunteer programs'' and '', a program of assistance to victims of domestic violence, a program to provide technical and management assistance to distressed communities, a program designed to provide personal and group financial counseling to low-income and fixed-income individuals (utilizing volunteers with specialized or technical expertise), and a Helping Hand program'' after ''drug abusers'', inserted provisions authorizing the Director to provide for the recruitment, selection, and training of volunteers in carrying out programs authorized by this part, and added par. (2).

Subsec. (c). Pub. L. 96–143, § 7(c), inserted provisions permitting support payments to part-time volunteers enrolled for at least 20 hours of service per week for at least 26 consecutive weeks and provisions applying sections 4953(b), (d), 4954(d), and 4955(a) of this title to full-time full-year volunteers whose service is similar in character to that of VISTA volunteers.

1976—Subsec. (c). Pub. L. 94–293 inserted provision authorizing the Director to undertake and support volunteer service programs, and recruit, etc., volunteers to carry out this part.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

REPORT ON PROGRAMS, ACTIVITIES, GRANTS, AND CONTRACTS RESULTING FROM AMENDMENT BY SECTION 7 OF PUB. L. 96–143

Section 7(d) of Pub. L. 96–143 directed Director of ACTION Agency, not later than 18 months after funds were first made available to carry out activities under the amendments to this part made by section 7 of Pub. L. 96–143, to submit to appropriate committees of Congress a report on programs, activities, grants, and contracts so carried out.

EXECUTIVE ORDER NO. 12034

Ex. Ord. No. 12034, Jan. 10, 1978, 43 F.R. 1917, which provided for appointment of ACTION Community Volunteers to the Civilian Career Service, was revoked by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617.

§ 4993. Technical and financial assistance

The Director may provide technical and financial assistance to Federal agencies, State and local governments and agencies, private nonprofit organizations, employers, and other private organizations that utilize or desire to utilize volunteers in carrying out the purpose of this part.

(Pub. L. 93–113, title I, § 123, as added Pub. L. 94–293, § 3(b)(1), May 27, 1976, 90 Stat. 525; amended Pub. L. 98–288, § 13, May 21, 1984, 98 Stat. 192; Pub. L. 101–204, title VI, § 602, Dec. 7, 1989, 103 Stat. 1820; Pub. L. 103–82, title III, § 332, Sept. 21, 1993, 107 Stat. 903.)

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, substituting single sentence authorizing technical and financial assistance for former subsecs. (a) and (b) which contained similar general authority and provisions detailing use of the general authority.

1989—Pub. L. 101–204 designated existing provisions as subsec. (a) and added subsec. (b).

1984—Pub. L. 98–288 substituted ''(2) technical assistance and training programs, including the creation or expansion of private capabilities where possible and the development of voluntary organizations, with particular emphasis on low-income, minority, and community-based groups, or (3)'' for ''or (2)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

§ 4994. Repealed. Pub. L. 103–82, title III, § 333(1), Sept. 21, 1993, 107 Stat. 903

Section, Pub. L. 93–113, title I, § 124, as added Pub. L. 99–570, title IV, § 4301(1), Oct. 27, 1986, 100 Stat. 3207–152; amended Pub. L. 100–690, title III, § 3401(a)(1), Nov. 18, 1988, 102 Stat. 4252; Pub. L. 101–204, title III, § 302, title VI, § 603, Dec. 7, 1989, 103 Stat. 1813, 1820, related to drug abuse education and prevention services and activities.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

§ 4995. Literacy challenge grants

(a) Authorization of grants

The Director is authorized to award challenge grants to eligible public agencies and private organizations to pay the Federal share of the costs of establishing, operating or expanding community or employee literacy programs or projects that include the use of full-time or part-time volunteers as one method of addressing illiteracy.

(b) Application

Each eligible organization desiring a grant under this section shall submit to the Corporation an application in such form and accompanied by such information as the Director may reasonably require. Each such application shall—

(1) describe the activities for which assistance is sought,

(2) contain assurances that the eligible organization will provide from non-Federal sources the non-Federal share of the cost of the program or project,

(3) provide assurances, satisfactory to the Director, that the literacy project will be operated in cooperation with other public and private agencies and organizations interested in, and qualified to, combat illiteracy in the community where the project is to be conducted, and

(4) contain such other information and assurances as the Director may reasonably require.

(c) Federal share

(1)(A) The Federal share of the cost of a program or project authorized by this section administered by a public agency, a nonprofit organization other than an organization described in paragraph (2), or a private, for-profit organization shall not exceed—

(i) 80 percent in the first fiscal year;

(ii) 70 percent in the second fiscal year; and

(iii) 60 percent in the third fiscal year.

(B) The non-Federal share paid by a private, for-profit organization shall be in cash.

(2) The Federal share of the cost of a program or project administered by a nonprofit or community-based organization shall not exceed—

(A) 90 percent in the first fiscal year;

(B) 80 percent in the second fiscal year; and

(C) 70 percent in the third fiscal year.

(3) The non-Federal share provided by a public agency or a nonprofit or community-based organization may be provided in cash, or in kind, fairly evaluated, and may include the use of plant, equipment, and services.

(Pub. L. 93–113, title I, § 124, formerly § 125, as added Pub. L. 102–73, title VII, § 701(a)(1), July 25, 1991, 105 Stat. 358; renumbered § 124 and amended Pub. L. 103–82, title III, § 333(2), title IV, § 405(a)(5), Sept. 21, 1993, 107 Stat. 903, 920.)

PRIOR PROVISIONS

A prior section 124 of Pub. L. 93–113 was classified to section 4994 of this title prior to repeal by Pub. L. 103–82.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–82, § 405(a)(5), substituted ''the Corporation'' for ''the ACTION Agency'' in introductory provisions.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 405(a)(5) of Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

SUBCHAPTER II—NATIONAL SENIOR VOLUNTEER CORPS

§ 5000. Statement of purposes

It is the purpose of—

(1) this subchapter to provide for National Senior Volunteer Corps, comprised of the Retired and Senior Volunteer Program, the foster grandparent program, and the senior companion program, that empower older individuals to contribute to their communities through volunteer service, enhance the lives of the volunteers and those whom they serve, and provide communities with valuable services;

(2) part A of this subchapter, the Retired and Senior Volunteer Program, to utilize the vast talents of older individuals willing to share their experiences, abilities, and skills in responding to a wide variety of community needs;

(3) part B of this subchapter, the foster grandparent program, to afford low-income older individuals an opportunity to provide supportive, individualized services to children with exceptional or special needs; and

(4) part C of this subchapter, the senior companion program, to afford low-income older individuals the opportunity to provide personal assistance and companionship to other older individuals through volunteer service.

(Pub. L. 93–113, title II, § 200, as added Pub. L. 101–204, title V, § 501, Dec. 7, 1989, 103 Stat. 1815; amended Pub. L. 103–82, title III, §§ 341(b)(1), 342(b), Sept. 21, 1993, 107 Stat. 904.)

AMENDMENTS

1993—Par. (1). Pub. L. 103–82, §§ 341(b)(1), 342(b), substituted ''National Senior Volunteer Corps'' for ''Older American Volunteer Programs'' and ''Retired and Senior Volunteer Program'' for ''retired senior volunteer program''.

Par. (2). Pub. L. 103–82, § 342(b), substituted ''Retired and Senior Volunteer Program'' for ''retired senior volunteer program''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

PART A—RETIRED AND SENIOR VOLUNTEER PROGRAM

§ 5001. Grants and contracts for volunteer service projects

(a) Approval of projects; rules and regulations

In order to help retired individuals and working older individuals to avail themselves of opportunities for volunteer service in their community, the Director is authorized to make grants to State agencies (established or designated pursuant to section 3025(a)(1) of this title) or grants to or contracts with other public and nonprofit private agencies and organizations to pay part or all of the costs for the development or operation, or both, of volunteer service projects under this section, if the Director determines, in accordance with regulations the Director shall prescribe, that—

(1) volunteers will not be reimbursed for other than transportation, meals, and other out-of-pocket expenses incident to the provision of services under this part;

(2) only individuals 55 years of age or older will be enrolled, and individuals 60 years of age or older will be given priority for enrollment, as volunteers to provide services under this part (except for administrative purposes), and such services will be performed in the community where such individuals reside or in nearby communities either (A) on publicly owned and operated facilities or projects, or (B) on local projects sponsored by private nonprofit organizations (other than political parties), other than projects involving the construction, operation, or maintenance of so much of any facility used or to be used for sectarian instruction or as a place for religious worship;

(3) the project includes such short-term training as may be necessary to make the most effective use of the skills and talents of participating volunteers and individuals, and provide for the payment of the reasonable expenses of such volunteers while undergoing such training; and

(4) the project is being established and will be carried out with the advice of persons competent in the field of service involved, and of persons with interest in and knowledge of the needs of older persons.

(b) Proportion of required local contribution; exceptions

In no event shall the required proportion of the local contribution (including in-kind contributions) for a grant or contract made under this section be more than 10 per centum in the first year of assistance under this section, 20 per centum in the second such year, and 30 per centum in any subsequent such years: *Provided, however*, That the Director may make exceptions in cases of demonstrated need, determined (in accordance with regulations which the Director shall prescribe) on the basis of the financial capability of a particular recipient of assistance under this section, to permit a lesser local contribution proportion than any required contribution proportion established by the Director in generally applicable regulations.

(c) Conditions upon award of grant or contract

The Director shall not award any grant or contract under this part for a project in any State to any agency or organization unless, if such State has a State agency established or designated pursuant to section 3025(a)(1) of this title, such agency itself is the recipient of the award or such agency has been afforded at least forty-five days in which to review the project application and make recommendations thereon.

(d) Volunteer service as employment

Notwithstanding any other provision of law, volunteer service under this part shall not be deemed employment for any purpose which the Director finds is not fully consistent with the provisions and in furtherance of the purpose of this part.

(Pub. L. 93–113, title II, § 201, Oct. 1, 1973, 87 Stat. 401; Pub. L. 93–351, § 4, July 12, 1974, 88 Stat. 357; Pub. L. 95–478, title IV, § 402(a), Oct. 18, 1978, 92 Stat. 1556; Pub. L. 98–288, § 14(a), (b), May 21, 1984, 98 Stat. 192; Pub. L. 101–204, title IX, § 902(2), Dec. 7, 1989, 103 Stat. 1826; Pub. L. 103–82, title III, § 343, Sept. 21, 1993, 107 Stat. 904.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 343(1), substituted ''retired individuals and working older individuals'' for ''retired persons'' in introductory provisions.

Subsec. (a)(2). Pub. L. 103–82, § 343(2), substituted ''55 years of age or older'' for ''aged sixty or over'' and inserted '', and individuals 60 years of age or older will be given priority for enrollment,'' after ''will be enrolled''.

1989—Subsec. (a). Pub. L. 101–204, § 902(2)(A), substituted ''projects'' for ''programs'' in introductory provisions.

Subsec. (a)(3), (4). Pub. L. 101–204, § 902(2)(B), substituted ''project'' for ''program''.

1984—Subsec. (a). Pub. L. 98–288, § 14(a), substituted ''the Director'' for ''he'' in two places in provisions before par. (1).

Subsec. (b). Pub. L. 98–288, § 14(b), substituted ''and 30 per centum in any subsequent such years'' for ''30 per centum in the third such year, 40 per centum in the fourth such year, and 50 per centum in any subsequent such years''.

1978—Subsec. (a). Pub. L. 95–478, § 402(a)(1), substituted reference to section ''3025(a)(1)'' for ''3024(a)(1)'' of this title.

Subsec. (c). Pub. L. 95–478, § 402(a)(1), (2), substituted reference to section ''3025(a)(1)'' for ''3024(a)(1)'' of this title and decreased period for review to ''forty-five'' from ''sixty'' days.

Subsec. (d). Pub. L. 95–478, § 402(a)(3), added subsec. (d).

1974—Subsecs. (b), (c). Pub. L. 93–351 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

AGING RESOURCE SPECIALISTS FOR COORDINATION OF NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS WITH STATE AND COMMUNITY PROGRAMS ON AGING AND NUTRITION PROGRAMS FOR ELDERLY; DESIGNATION; DUTIES; DEFINITIONS

Pub. L. 94–135, title II, § 205(c), Nov. 28, 1975, 89 Stat. 727, as amended by Pub. L. 103–82, title III, § 341(b)(4), title IV, § 405(i), Sept. 21, 1993, 107 Stat. 904, 921, provided that:

''(1) In order to provide maximum coordination between programs carried out under title III and title VII of the Older Americans Act of 1965 (42 U.S.C. 3021 et seq.; 42 U.S.C. 3045 et seq.) and National Senior Volunteer Corps programs carried out under title II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5001 et seq.) [42 U.S.C. 5000 et seq.], in order to enhance the effectiveness of the support provided to such National Senior Volunteer Corps programs by the Corporation for National and Community Service, the Chief Executive Officer of the Corporation shall designate an aging resource specialist with respect to programs carried out in each State under title II of the Domestic Volunteer Service Act of 1973 [this subchapter].

''(2)(A) Each aging resource specialist designated under paragraph (1) shall be qualified to serve in such capacity by appropriate experience and training, and shall be stationed in a State office of the Corporation.

''(B) The primary responsibility of each aging resource specialist shall be—

''(i) to support programs carried out under title II of the Domestic Volunteer Service Act of 1973 [this subchapter] in any State or other jurisdiction served by the State office involved; and

''(ii) to seek to coordinate such programs with programs carried out under title III and title VII of the Older Americans Act of 1965 [sections 3021 et seq. and 3045 et seq. of this title] in any such State or other jurisdiction.

''(3) For purposes of this subsection—

''(A) the term 'Corporation' means the Corporation for National and Community Service established by section 191 of the National and Community Service Act of 1990 [42 U.S.C. 12651].[;]

''(B) the term 'primary responsibility' means the devotion of more than one-half of regular working hours to the performance of duties described in paragraph (2)(B); and

''(C) the term 'State' means the several States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands.''

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

PART B—FOSTER GRANDPARENT PROGRAM

§ 5011. Grants and contracts for individual service projects

(a) Foster Grandparent projects; amount

The Director is authorized to make grants to or contracts with public and nonprofit private agencies and organizations to pay part or all of the cost of development and operation of projects (including direct payments to individuals serving under this part) designed for the purpose of providing opportunities for low-income persons aged sixty or over to provide supportive person-to-person services in health, education, welfare, and related settings to children having exceptional needs. Such services may include services by individuals serving as foster grandparents to children who are individuals with disabilities, who have chronic health conditions, who are receiving care in hospitals, who are residing in homes for dependent and neglected children, or who are receiving services provided by day care centers, schools, early intervention programs under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), Head Start agencies under the Head Start Act [42 U.S.C. 9831 et seq.], or any of a variety of other programs, establishments, and institutions providing services for children with special or exceptional needs. Individual foster grandparents may provide person-to-person services to one or more children, depending on the needs of the project and local site. The Director may approve assistance in excess of 90 per centum of the costs of the development and operation of such projects only if the Director determines, in accordance with regulations the Director shall prescribe establishing objective criteria, that such action is required in furtherance of the purpose of this section. Provision for such assistance shall be effective as of September 19, 1972. In the case of any project with respect to which, prior to such date, a grant or contract has been made under section 3044b(a)[1] of this title or with respect to any project under the Foster Grandparent program in effect prior to September 17, 1969, contributions in cash or in kind from the Bureau of Indian Affairs, Department of the Interior, toward the cost of the project may be counted as part of the cost thereof which is met from non-Federal sources.

(b) Person-to-person services to children in an individual service project by public or private nonprofit agency; authority and criteria for determinations; mutual agreements between parties

(1) Any public or private nonprofit agency or organization responsible for providing person-to-person services to a child in a project carried out under subsection (a) of this section shall have the exclusive authority to determine, pursuant to the provisions of paragraph (2) of this subsection—

(A) which children may receive supportive person-to-person services under such project; and

(B) the period of time during which such services shall be continued in the case of each individual child.

(2) In the event that such an agency or organization determines that it is in the best interests of a mentally retarded child receiving, and of a particular foster grandparent providing, services in such a project, such relationship may be continued after the child reaches the chronological age of 21: *Provided*, That such child was receiving such services prior to attaining the chronological age of 21. If the particular foster grandparent subject to the determination under this paragraph becomes unavailable to serve after such determination is made, the agency or organization may select another foster grandparent.

(3) Any determination made by a public or nonprofit private agency or organization under

[1] See References in Text note below.

paragraphs (1) and (2) of this subsection shall be made through mutual agreement by all parties involved with respect to the provision of services to the child involved.

(c) "Child" and "children" defined

For the purposes of this section, the terms ''child'' and ''children'' mean any individual or individuals who are less than 21 years of age.

(d) Domestic Volunteer Service; allowances, stipends, and other support

The Director, in accordance with regulations the Director shall prescribe, may provide to low-income persons serving as volunteers under this part, such allowances, stipends, and other support as the Director determines are necessary to carry out the purpose of this part. Any stipend or allowance provided under this section shall not be less than $2.45 per hour on and after October 1, 1993, and shall be adjusted once prior to December 31, 1997, to account for inflation, as determined by the Director and rounded to the nearest five cents, except that (1) such stipend or allowance shall not be increased as a result of an amendment made to this sentence unless the funds appropriated for carrying out this part are sufficient to maintain for the fiscal year in question a number of participants to serve under this part at least equal to the number of such participants serving during the preceding fiscal year, and (2) in the event that sufficient appropriations for any fiscal year are not available to increase any such stipend or allowance provided to the minimum hourly rate specified in this sentence, the Director shall increase the stipend or allowance to such amount as appropriations for such year permit consistent with clause (1) of this exception. In establishing the amount of, and the effective date for, such adjustment, the Director, in consultation with the State Commissions on National and Community Service (as established under section 12638 of this title) and the heads of the State offices established under section 12651f of this title, shall consider the effect such adjustment will have on the ability of non-federally funded volunteer programs similar to the programs under this subchapter to maintain their current level of volunteer hours.

(e) "Low-income person" and "person of low income" defined

For purposes of this part, the terms ''low-income person'' and ''person of low income'' mean—

(1) any person whose income is not more than 125 per centum of the poverty line defined in section 9902(2) of this title and adjusted by the Director in the manner described in such section; and

(2) any person whose income is not more than 100 per centum of such poverty line, as so adjusted and determined by the Director after taking into consideration existing poverty guidelines as appropriate to local situations.

Persons described in paragraph (2) shall be given special consideration for participation in projects under this part.

(f) Persons entitled to serve as volunteers; application of regulations to volunteers; equal treatment to all volunteers by recipients of grants; conditions of grants; use of funds; payment of costs

(1)(A) Except as provided in subparagraphs (B) and (C), individuals who are not low-income persons may serve as volunteers under this part, in accordance with such regulations as the Director shall issue, if such individuals serve without receiving any allowance, stipend, or other financial support under this part except reimbursement for transportation, meals, and out-of-pocket expenses incident to serving under this part.

(B) The regulations issued by the Director to carry out this part (other than any regulations relating to allowances, stipends, and other financial support authorized by subsection (d) of this section to be paid under this part to low-income persons) shall apply to all volunteers under this part, without regard to whether such volunteers are eligible to receive a stipend under subsection (d) of this section.

(C) Individuals who are not low-income persons may not serve as volunteers under this part in any community in which there are volunteers serving under part A of this subchapter unless such individuals have been referred previously for possible placement as volunteers under part A of this subchapter and such placement did not occur.

(2)(A) Except as provided in subparagraph (B), each recipient of a grant or contract to carry out a project under this part shall give equal treatment to all volunteers who participate in such project, without regard to whether such volunteers are eligible to receive a stipend under subsection (d) of this section.

(B) An individual who is not a low-income person may not become a volunteer under this part if allowing such individual to become a volunteer under this part would prevent a low-income individual from becoming a volunteer under this part or would displace a low-income person from being such a volunteer.

(3) The Director may not take into consideration or require as a condition of receiving a grant or contract to carry out a project under this part, any applicant for such grant or contract—

(A) to accept or recruit individuals who are not low-income persons to serve as volunteers under this part; or

(B) to solicit locally generated contributions, in cash or in kind, to support such individuals.

The Director may not coerce any applicant for, or recipient of, such grant or contract to engage in conduct described in subparagraph (A) or (B).

(4) Funds appropriated to carry out this part may not be used to pay any cost, including any administrative cost, incurred in connection with volunteers under this part who do not receive a stipend under subsection (d) of this section. Such cost incurred with respect to a volunteer may be paid with—

(A) funds received by the Director as unrestricted gifts;

(B) funds received by the Director as gifts to pay such cost;

(C) funds contributed by such volunteer; or

(D) locally generated contributions in excess of the amount required to be contributed under subsection (a) of this section, in the discretion of the recipient of a grant or contract under such subsection.

(Pub. L. 93–113, title II, § 211, Oct. 1, 1973, 87 Stat. 402; Pub. L. 94–135, title II, § 205(b)(1), (2), Nov. 28, 1975, 89 Stat. 727; Pub. L. 94–293, § 7, May 27, 1976, 90 Stat. 526; Pub. L. 95–478, title IV, § 402(b), Oct. 18, 1978, 92 Stat. 1557; Pub. L. 97–35, title VI, § 608(b), Aug. 13, 1981, 95 Stat. 487; Pub. L. 98–288, § 14(c), May 21, 1984, 98 Stat. 192; Pub. L. 99–551, § 7(a)(1), Oct. 27, 1986, 100 Stat. 3074; Pub. L. 101–204, title V, §§ 503, 504, Dec. 7, 1989, 103 Stat. 1817; Pub. L. 103–82, title III, §§ 344, 345, Sept. 21, 1993, 107 Stat. 904, 905; Pub. L. 108–446, title III, § 305(k), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (a), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Head Start Act, referred to in subsec. (a), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

Section 3044b of this title, referred to in subsec. (a), related to grants and contracts for Foster Grandparent projects and for services as senior health aides and senior companions, amount of award, method of payment, and exclusion as income of compensation to individual volunteers, was repealed by section 604(a) of Pub. L. 93–113, and is covered by this section and sections 5022 and 5058 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–446 substituted ''part C'' for ''part H'' and ''1431 et seq.'' for ''1471 et seq.''.

1993—Subsec. (a). Pub. L. 103–82, § 344, struck out '', including services by individuals serving as 'foster grandparents' to children receiving care in hospitals, homes for dependent and neglected children, or other establishments providing care for children with special needs'' after ''having exceptional needs'' in first sentence and inserted after first sentence ''Such services may include services by individuals serving as foster grandparents to children who are individuals with disabilities, who have chronic health conditions, who are receiving care in hospitals, who are residing in homes for dependent and neglected children, or who are receiving services provided by day care centers, schools, early intervention programs under part H of the Individuals with Disabilities Education Act (20 U.S.C. 1471 et seq.), Head Start agencies under the Head Start Act, or any of a variety of other programs, establishments, and institutions providing services for children with special or exceptional needs. Individual foster grandparents may provide person-to-person services to one or more children, depending on the needs of the project and local site.''

Subsec. (d). Pub. L. 103–82, § 345, in second sentence substituted ''Any stipend or allowance provided under this section shall not be less than $2.45 per hour on and after October 1, 1993, and shall be adjusted once prior to December 31, 1997, to account for inflation, as determined by the Director and rounded to the nearest five cents,'' for ''Any stipend or allowance provided under this subsection shall not be less than $2.20 per hour until October 1, 1990, $2.35 per hour during fiscal year 1991, and $2.50 per hour on and after October 1, 1992,'' and inserted sentence at end relating to consideration of effect of adjustment on non-federally funded volunteer programs.

1989—Subsec. (d). Pub. L. 101–204, § 503, inserted ''until October 1, 1990, $2.35 per hour during fiscal year 1991, and $2.50 per hour on and after October 1, 1992'' after ''$2.20 per hour'' in introductory provisions, substituted ''such stipend or allowance shall not be increased as a result of an amendment made'' for ''no increase in the stipend of allowance shall be made pursuant'' in cl. (1), and substituted ''the minimum hourly rate specified in this sentence'' for ''$2.20 per hour'' in cl. (2).

Subsec. (f)(1)(C). Pub. L. 101–204, § 504(1), inserted before period at end ''unless such individuals have been referred previously for possible placement as volunteers under part A of this subchapter and such placement did not occur''.

Subsec. (f)(3). Pub. L. 101–204, § 504(2), inserted ''take into consideration or'' after ''may not'', inserted ''or recruit'' after ''accept'' in subpar. (A), and inserted at end ''The Director may not coerce any applicant for, or recipient of, such grant or contract to engage in conduct described in subparagraph (A) or (B).''

1986—Subsec. (d). Pub. L. 99–551, § 7(a)(1)(A), inserted ''low-income'' after ''may provide to''.

Subsec. (f). Pub. L. 99–551, § 7(a)(1)(B), added subsec. (f).

1984—Subsec. (a). Pub. L. 98–288, § 14(c)(1), substituted ''the Director'' for ''he'' in two places.

Subsec. (b)(2). Pub. L. 98–288, § 14(c)(2), inserted at end ''If the particular foster grandparent subject to the determination under this paragraph becomes unavailable to serve after such determination is made, the agency or organization may select another foster grandparent.''

Subsec. (d). Pub. L. 98–288, § 14(c)(3), substituted ''the Director'' for ''he'' in two places and ''$2.20'' for ''$2'' in two places.

Subsec. (e). Pub. L. 98–288, § 14(c)(4), in amending subsec. (e) generally, substituted ''poverty line defined in section 9902(2) of this title and adjusted by the Director in the manner described in such section'' for ''poverty line set forth in section 2971d of this title'' and ''any person whose income is not more than 100 per centum of such poverty line, as so adjusted and determined by the Director after taking into consideration existing poverty guidelines as appropriate to local situations'' for ''any person considered a poor or low-income person under section 5061(4) of this title''.

1981—Subsecs. (b) to (f). Pub. L. 97–35, § 608(b), struck out subsec. (b) which related to service as senior health aides and senior companions, and redesignated subsecs. (c) to (f) as (b) to (e), respectively.

1978—Subsecs. (e), (f). Pub. L. 95–478 added subsecs. (e) and (f).

1976—Subsecs. (c), (d). Pub. L. 94–293 added subsecs. (c) and (d).

1975—Subsec. (a). Pub. L. 94–135, § 205(b)(1), substituted ''individuals'' for ''volunteers'' where appearing first and third places and struck out ''serve as volunteers to'' before ''provide supportive person-to-person services''.

Subsec. (b). Pub. L. 94–135, § 205(b)(2), substituted ''individuals'' for ''volunteers''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

Section 7(a)(2) of Pub. L. 99–551 provided that: ''Section 211(f)(3) of the Domestic Volunteer Service Act of 1973 [subsec. (f)(3) of this section], as added by para-

graph (1), shall apply with respect to grants and contracts made under section 211(a) of such Act before the date of the enactment of this Act [Oct. 27, 1986].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

§ 5012. Repealed. Pub. L. 103–82, title III, § 346, Sept. 21, 1993, 107 Stat. 905

Section, Pub. L. 93–113, title II, § 212, Oct. 1, 1973, 87 Stat. 402; Pub. L. 94–135, title II, § 205(b)(3), Nov. 28, 1975, 89 Stat. 727; Pub. L. 95–478, title IV, § 402(c), Oct. 18, 1978, 92 Stat. 1557; Pub. L. 101–204, title IX, § 902(4), Dec. 7, 1989, 103 Stat. 1826, set forth conditions of grants and contracts and defined ''community action agency''.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

PART C—SENIOR COMPANION PROGRAM

§ 5013. Grants and contracts for volunteer service projects

(a) Costs of project development and operation

The Director is authorized to make grants to or contracts with public and nonprofit private agencies and organizations to pay part or all of the cost of development and operation of projects (including direct payments to individuals serving under this part in the same manner as provided in section 5011(a) of this title) designed for the purpose of providing opportunities for low-income persons aged 60 or over to serve as ''senior companions'' to persons with exceptional needs. Senior companions may provide services designed to help older persons requiring long-term care, including services to persons receiving home health care, nursing care, home-delivered meals or other nutrition services; services designed to help persons deinstitutionalized from mental hospitals, nursing homes, and other institutions; and services designed to assist persons having developmental disabilities and other special needs for companionship.

(b) Application of other laws

Subsections (d), (e), and (f) of section 5011 of this title, and such other provisions of part B as the Director determines to be necessary, shall apply to this part, except that for purposes of this part any reference in such subsections and such provisions to part B shall be deemed to be a reference to this part.

(c) Senior companion projects to assist homebound elderly

(1) The Director is authorized to make grants or contracts after[1] subsection (a) of this section for senior companion projects to assist homebound elderly individuals to remain in their own homes and to enable institutionalized elderly individuals to return to home care settings.

(2)(A) The Director is authorized to recruit, subject to subparagraph (B), senior companion volunteer trainers who on the basis of experience (such as, doctors, nurses, home economists, social workers) will be used to train senior companion volunteers to participate in and monitor initial and continuing needs assessments and appropriate in-home services for senior companion volunteer recipients. The needs assessments and in-home services shall be coordinated with and supplement existing community based home health and long-term care systems. The Director may also use senior companion volunteer leaders, who on the basis of experience as volunteers, special skills, and demonstrated leadership abilities may spend time in the program (in addition to their regular assignment) to assist newer senior companion volunteers in performing their assignments and in coordinating activities of such volunteers.

(B) Senior companion volunteer trainers recruited under subparagraph (A) of this paragraph shall not be paid stipends.

(Pub. L. 93–113, title II, § 213, as added Pub. L. 97–35, title VI, § 608(c)(2), Aug. 13, 1981, 95 Stat. 487; amended Pub. L. 98–288, § 15, May 21, 1984, 98 Stat. 193; Pub. L. 99–551, §§ 7(b), 10(c)(1), Oct. 27, 1986, 100 Stat. 3075, 3077; Pub. L. 101–204, title IX, § 902(5), Dec. 7, 1989, 103 Stat. 1826; Pub. L. 103–82, title III, § 347, Sept. 21, 1993, 107 Stat. 905.)

AMENDMENTS

1993—Subsec. (c)(3). Pub. L. 103–82 struck out par. (3) which required an evaluation of, and report on, impact of senior companion projects to assist homebound elderly.

1989—Subsec. (c)(1). Pub. L. 101–204 inserted ''after subsection (a) of this section'' after ''grants or contracts'', and ''individuals'' after ''elderly'' in two places.

1986—Pub. L. 99–551 inserted ''for volunteer service projects'' in section catchline and amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The provisions of section 5011(d) of this title and section 5011(e) of this title and such other provisions of part B as the Director determines to be necessary shall apply to the provisions of this part.''

1984—Subsec. (c). Pub. L. 98–288 added subsec. (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

PART D—GENERAL PROVISIONS

§ 5021. Promotion of National Senior Volunteer Corps

(a)(1) In carrying out this subchapter, the Director shall consult with the Departments of Labor and Health and Human Services, and any other Federal agencies administering relevant programs with a view to achieving optimal coordination with such other programs, and shall promote the coordination of projects under this subchapter with other public or private programs or projects carried out at State and local levels. Such Federal agencies shall cooperate with the Director in disseminating information about the availability of assistance under this subchapter and in promoting the identification

[1] So in original. Probably should be ''under''.

and interest of low-income and other older persons whose services may be utilized in projects under this subchapter.

(2) To the maximum extent practicable, the Director shall enter into agreements with—

(A) the Department of Health and Human Services to—

(i) involve retired and senior volunteers, and foster grandparents, in Head Start programs;

(ii) involve retired and senior volunteers, and senior companions, in providing services authorized by title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.]; and

(iii) promote the recognition of such volunteers who are qualified to provide in-home services for reimbursement under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for providing such services;

(B) the Department of Education to promote intergenerational tutoring and mentoring for at-risk children; and

(C) the Environmental Protection Agency to support conservation efforts.

(b)(1) In carrying out this subchapter, the Director shall encourage and facilitate the efforts of private organizations to promote the programs established in parts A, B, and C of this subchapter and the involvement of older individuals as volunteers in such programs.

(2) The Director shall take appropriate actions to ensure that special efforts are made to publicize the programs established in parts A, B, and C of this subchapter, in order to facilitate recruitment efforts, to encourage greater participation of volunteers, and to emphasize the value of volunteering to the health and well-being of volunteers and the communities of such volunteers. Such actions shall include informing recipients of grants and contracts under this subchapter of all informational materials available from the Director.

(3) From funds appropriated under section 5082 of this title, the Director shall expend not less than $375,000 in each fiscal year to carry out paragraph (2).

(Pub. L. 93–113, title II, § 221, Oct. 1, 1973, 87 Stat. 403; Pub. L. 96–143, § 18(b), Dec. 13, 1979, 93 Stat. 1083; Pub. L. 97–35, title VI, § 608(f)(2), Aug. 13, 1981, 95 Stat. 488; Pub. L. 101–204, title V, § 505, Dec. 7, 1989, 103 Stat. 1817; Pub. L. 103–82, title III, §§ 341(b)(2), 348, Sept. 21, 1993, 107 Stat. 904, 905.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (a)(2)(A)(ii), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Title III of the Act is classified generally to subchapter III (§ 3021 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Social Security Act, referred to in subsec. (a)(2)(A)(iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1993—Pub. L. 103–82, § 341(b)(2), substituted ''National Senior Volunteer Corps'' for ''older American volunteer programs'' in section catchline.

Subsec. (a). Pub. L. 103–82, § 348(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(3). Pub. L. 103–82, § 348(b), substituted ''$375,000'' for ''$250,000''.

1989—Pub. L. 101–204 substituted ''Promotion of older American volunteer'' for ''Coordination with other Federal'' in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

1981—Pub. L. 97–35 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' and struck out reference to Community Services Administration.

1979—Pub. L. 96–143 substituted ''Community Services Administration'' for ''Office of Economic Opportunity''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

§ 5022. Payments; adjustments; advances or reimbursement; installments; conditions

Payments under this subchapter pursuant to a grant or contract may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions, as the Director may determine.

(Pub. L. 93–113, title II, § 222, Oct. 1, 1973, 87 Stat. 403.)

§ 5023. Minority group participation

The Director shall take appropriate steps to insure that special efforts are made to recruit, select, and assign qualified individuals sixty years and older from minority groups to serve as volunteers under this subchapter.

(Pub. L. 93–113, title II, § 223, Oct. 1, 1973, 87 Stat. 404.)

§ 5024. Use of locally generated contributions in National Senior Volunteer Corps

Whenever locally generated contributions made to National Senior Volunteer Corps projects under this subchapter are in excess of the amount required by the Director, the Director may not restrict the manner in which such contributions are expended if expenditures from locally generated contributions are not inconsistent with the provisions of this chapter.

(Pub. L. 93–113, title II, § 224, as added Pub. L. 98–288, § 16(a), May 21, 1984, 98 Stat. 194; amended Pub. L. 99–551, § 10(b)(1), Oct. 27, 1986, 100 Stat. 3077; Pub. L. 101–204, title IX, § 902(6), Dec. 7, 1989, 103 Stat. 1826; Pub. L. 103–82, title III, § 341(b)(3), Sept. 21, 1993, 107 Stat. 904; Pub. L. 103–304, § 3(b)(9), Aug. 23, 1994, 108 Stat. 1568.)

AMENDMENTS

1994—Pub. L. 103–304 substituted ''National Senior Volunteer Corps projects'' for ''volunteer projects for older Americans''.

1993—Pub. L. 103–82 amended section catchline and in text directed substitution of ''National Senior Volunteer Corps projects'' for ''volunteer projects for Older Americans'', which could not be executed because the phrase ''volunteer projects for Older Americans'' did not appear in text.

1989—Pub. L. 101–204 substituted ''projects'' for ''programs''.

1986—Pub. L. 99–551 amended directory language of Pub. L. 98–288 to correct an error, and did not involve any change in text.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

§ 5025. Programs of national significance

(a) Program grants for national problems of local concern; minimum amounts available; scope; implementation

(1) With not less than one-third of the funds made available under subsection (d) of this section in each fiscal year, the Director shall make grants under the programs authorized in parts A, B, and C of this subchapter to support programs that address national problems of local concern.

(2) Except as provided in paragraph (3), the Director may make such grants—

(A) under the program authorized in part A of this subchapter, to support programs that address the national problems specified in subsection (b) of this section;

(B) under the program authorized in part B of this subchapter, to support programs that address the national problems specified in subsection (b) of this section, other than paragraphs (10), (12), (15), and (16) of such subsection; and

(C) under the program authorized in part C of this subchapter, to support programs that address the national problems referred to in paragraphs (1), (2), (5), (6), and (10) of subsection (b) of this section.

(3) Each program for which a grant is received under this subsection shall be carried out in accordance with the requirements applicable to the program under part A, B, or C of this subchapter under which the program supported by such grant is to be carried out.

(b) Program grants for problems concerning Nation

The Director shall make grants under subsection (a) of this section to support one or more of the following programs to address problems that concern the Nation:

(1) Programs that assist individuals with chronic and debilitating illnesses, such as acquired immune deficiency syndrome.

(2) Programs designed to decrease drug and alcohol abuse.

(3) Programs that work with teenage parents.

(4) Programs that match volunteer mentors with youth who need guidance.

(5) Programs that provide adult and school-based literacy assistance.

(6) Programs that provide respite care, including care for frail elderly individuals and for disabled or chronically ill children living at home.

(7) Programs that provide before- and after-school activities that are sponsored by organizations, such as libraries, that serve children of working parents.

(8) Programs that work with boarder babies.

(9) Programs that serve children who are enrolled in child care programs, giving priority to such programs that serve children with special needs.

(10) Programs that provide care to developmentally disabled adults who reside at home and in community-based settings, including programs that, when appropriate, involve older developmentally disabled individuals as volunteers under this subchapter.

(11) Programs that provide volunteer tutors to assist educationally disadvantaged children, on a one-to-one basis, to improve the basic skills of such children.

(12) Programs that address environmental needs.

(13) Programs that reach out to organizations (such as labor unions and profitmaking organizations) not previously involved in addressing national problems of local concern.

(14) Programs that provide for outreach to increase participation of members of ethnic groups who have limited English proficiency.

(15) Programs that support criminal justice activities and juvenile justice activities.

(16) Programs that involve older volunteers working with young people in apprenticeship programs.

(17) Programs that support the community integration of individuals with disabilities.

(18) Programs that provide health, education, and welfare services that augment the activities of State and local agencies, to be carried out in a fiscal year for which the aggregate amount of funds available to such agencies is not less than the annual average aggregate amount of funds available to such agencies for the period of 3 fiscal years preceding such fiscal year.

(c) Eligibility of applicant; supplemental nature of funds available

(1) In order for an applicant to be eligible to receive a grant under subsection (a) of this section, such applicant shall demonstrate to the Director that such grant will be used to increase the total number of volunteers supported by such applicant.

(2) Funds made available under subsection (d) of this section shall be used to supplement and not supplant the number of volunteers engaged in activities under parts A, B, and C of this subchapter (without regard to this section) addressing the problem for which such funds are awarded unless such sums are an extension of funds previously provided under this section.

(d) Amount of funds available for grants

(1) Except as provided in paragraph (2), from the amounts appropriated under subsection (a), (b), (c), or (d) of section 5082 of this title, for each fiscal year there shall be available to the Director such sums as may be necessary to make grants under subsection (a) of this section.

(2) No funds shall be available to the Director to make grants under subsection (a) of this section for a fiscal year unless the amounts appropriated under subsections (a), (b), and (c) of section 5082 of this title and available for such fiscal year to carry out parts A, B, and C of this subchapter (without regard to this section) are

sufficient to maintain the number of projects and volunteers funded under parts A, B, and C of this subchapter, respectively, in the preceding fiscal year.

(e) Dissemination of information respecting grants

The Director shall disseminate information on grants that may be made under subsection (a) of this section to field personnel of the Corporation and to community volunteer organizations that request such information.

(Pub. L. 93–113, title II, § 225, as added Pub. L. 101–204, title V, § 502(a), Dec. 7, 1989, 103 Stat. 1815; amended Pub. L. 103–82, title III, § 349, title IV, § 405(a)(6), Sept. 21, 1993, 107 Stat. 906, 920.)

AMENDMENTS

1993—Subsec. (a)(2)(B). Pub. L. 103–82, § 349(1), substituted ''paragraphs (10), (12), (15), and (16)'' for ''paragraph (10)''.

Subsec. (b)(12) to (18). Pub. L. 103–82, § 349(2), added pars. (12) to (18).

Subsec. (c)(1). Pub. L. 103–82, § 349(3), struck out ''under this subchapter'' after ''supported by such applicant''.

Subsec. (d)(1). Pub. L. 103–82, § 349(4), added par. (1) and struck out former par. (1) which read as follows: ''Except as provided in paragraph (2), in each fiscal year there shall be available to the Director to make grants under subsection (a) of this section not more than—

''(A) $6,000,000 from funds appropriated under section 5082(a) of this title;

''(B) $9,000,000 from funds appropriated under section 5082(b) of this title; and

''(C) $9,000,000 from funds appropriated under section 5082(c) of this title.''

Subsec. (e). Pub. L. 103–82, § 405(a)(6), substituted ''the Corporation'' for ''the ACTION Agency''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 349 of Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

Amendment by section 405(a)(6) of Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

§ 5026. Adjustments to Federal financial assistance

(a)(1) In determining the amount of Federal financial assistance to be provided under this subchapter to applicants, the Director shall consider the impact of changes in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor on the administrative costs of operating the projects for which such assistance will be provided.

(2) The Director shall, to the fullest extent practicable, make appropriate adjustments in the amount referred to in paragraph (1) to ensure the effective administration of such projects.

(b) The Director shall take reasonable actions to inform applicants for such assistance that such adjustments may be available.

(Pub. L. 93–113, title II, § 226, as added Pub. L. 101–204, title V, § 506, Dec. 7, 1989, 103 Stat. 1818; amended Pub. L. 103–82, title III, § 350, Sept. 21, 1993, 107 Stat. 906; Pub. L. 104–66, title II, § 2011, Dec. 21, 1995, 109 Stat. 726.)

AMENDMENTS

1995—Pub. L. 104–66 in subsec. (a), redesignated par. (1)(A) as (1), redesignated par. (1)(B) as (2) and substituted ''paragraph (1)'' for ''subparagraph (A)'' after ''referred to in'', redesignated former par. (2) as subsec. (b), and struck out former subsec. (b) which read as follows: ''The Director shall submit, once every 2 years, to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report on the extent to which adjustments are made under subsection (a) of this section.''

1993—Subsec. (b). Pub. L. 103–82 struck out par. (1) designation before ''The Director shall'', substituted '', once every 2 years'' for ''annually'', and struck out par. (2) which read as follows: ''With respect to each of parts A, B, and C of this subchapter, the Director shall include in such report—

''(A) a summary of the number of, and purposes for which, such adjustments are requested by the recipients of grants and contracts under parts A, B, and C of this subchapter, respectively;

''(B) a description of the extent that such requests are accommodated; and

''(C) a statement explaining the decisions made by the Director with respect to the requested adjustments.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

§ 5027. Multiyear grants or contracts

(a) Maximum period; compliance requirements where period exceeds 1 year; pro rata reductions where funding below prior fiscal year amounts

(1) Subject to paragraph (2) and the availability of funds, the Director may make a grant or enter into a contract under part A, B, or C of this subchapter for a period not to exceed 3 years. Each applicant who receives a grant, or enters into a contract, under such part for a period exceeding 1 year shall comply with such regulations as the Director may issue to require such applicant—

(A) to demonstrate that such applicant is in compliance with such part and with the terms and conditions of such grant or contract; and

(B) to provide information to update the application submitted to obtain such grant or contract.

(2) If the amount appropriated for any fiscal year to carry out part A, B, or C of this subchapter in a period during which multiyear grants or contracts are in effect under such part is less than the amount appropriated to carry out such part in the first fiscal year in such period, then the amounts payable under all such grants and contracts in effect in such period under such part shall be reduced pro rata.

(b) Documentation, etc., by applicant of meaningful administrative savings from multiyear grant or contract

The Director shall require each applicant for a multiyear grant or contract under this section, to document or describe in the application any meaningful administrative savings that will result from such multiyear grant or contract.

(c) Single-year grant or contract

If an applicant does not receive a multiyear grant or contract under this section, the Direc-

tor shall consider such applicant for a single-year grant or contract.

(d) Projects for multiyear periods to be treated as single-year projects for specified purposes

If the Director approves an application for a contract or grant to carry out a project for a multiyear period as referred to in subsection (a) of this section, the Director shall ensure that such project shall be treated in the same manner as a single-year contract or grant with respect to—

(1) the overall level of funding for such project;

(2) any adjustments to Federal financial assistance that may be available under section 5026 of this title; and

(3) the renewal of funding on the expiration of the term of such contract or grant.

(Pub. L. 93–113, title II, § 227, as added Pub. L. 101–204, title V, § 507, Dec. 7, 1989, 103 Stat. 1818.)

PART E—DEMONSTRATION PROGRAMS

§ 5028. Authority of Director

(a) In general

The Director is authorized to make grants to or enter into contracts with public or nonprofit organizations, including organizations funded under part A, B, or C of this subchapter, for the purposes of demonstrating innovative activities involving older Americans as volunteers. The Director may support under this part both volunteers receiving stipends and volunteers not receiving stipends.

(b) Activities

An organization that receives a grant or enters into a contract under subsection (a) of this section may use funds made available through the grant or contract for activities such as—

(1) linking youth groups and older American organizations in volunteer activities;

(2) involving older volunteers in programs and activities different from programs and activities supported in the community; and

(3) testing whether older American volunteer programs may contribute to new objectives or certain national priorities.

(Pub. L. 93–113, title II, § 231, as added Pub. L. 103–82, title III, § 351, Sept. 21, 1993, 107 Stat. 906.)

EFFECTIVE DATE

Part effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

§ 5028a. Prohibition

The Director may not reduce the activities, projects, or volunteers funded under the other parts of this subchapter in order to support projects under this part.

(Pub. L. 93–113, title II, § 232, as added Pub. L. 103–82, title III, § 351, Sept. 21, 1993, 107 Stat. 907.)

SUBCHAPTER III—NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTEER SERVICE BY PERSONS WITH BUSINESS EXPERIENCE

§§ 5031, 5032. Repealed. Pub. L. 95–510, § 102(a), Oct. 24, 1978, 92 Stat. 1781

Section 5031, Pub. L. 93–113, title III, § 301, Oct. 1, 1973, 87 Stat. 404, set out Congressional statement of purpose in enacting this subchapter.

Section 5032, Pub. L. 93–113, title III, § 302, Oct. 1, 1973, 87 Stat. 404, authorized Director to establish, coordinate, and operate national volunteer programs. See section 637 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF REPEAL

Repeal of sections 5031 and 5032 effective Oct. 1, 1979, see section 105 of Pub. L. 95–510, set out as an Effective Date of 1978 Amendment note under section 634 of Title 15, Commerce and Trade.

SUBCHAPTER IV—ADMINISTRATION AND COORDINATION

§§ 5041, 5042. Repealed. Pub. L. 103–82, title II, § 203(b), Sept. 21, 1993, 107 Stat. 892

Section 5041, Pub. L. 93–113, title IV, § 401, Oct. 1, 1973, 87 Stat. 405; Pub. L. 96–533, title VI, § 602(a), Dec. 16, 1980, 94 Stat. 3155; Pub. L. 98–288, § 17, May 21, 1984, 98 Stat. 194; Pub. L. 99–551, § 10(e), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 101–204, title VII, § 704, Dec. 7, 1989, 103 Stat. 1821; Pub. L. 103–82, title II, § 202(b), title III, § 361, Sept. 21, 1993, 107 Stat. 887, 907, related to establishment of ACTION Agency and appointment, compensation, and functions of Director and other officials. See section 12651 of this title and notes thereunder.

Section 5042, Pub. L. 93–113, title IV, § 402, Oct. 1, 1973, 87 Stat. 406; Pub. L. 94–293, § 4(b), May 27, 1976, 90 Stat. 526; Pub. L. 97–214, § 10(b)(2), July 12, 1982, 96 Stat. 175; Pub. L. 98–288, §§ 4(c)(2), 18(a), May 21, 1984, 98 Stat. 190, 194; Pub. L. 99–551, § 10(f), (i)(5), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 103–82, title III, § 362, Sept. 21, 1993, 107 Stat. 907, related to authority of Director of ACTION Agency. See section 12651 of this title and notes thereunder.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 103–82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 12651 of this title.

§ 5043. Political activities

(a) Funds use prohibition; "election" and "Federal office" defined

No part of any funds appropriated to carry out this chapter, or any program administered by the Corporation under this chapter, shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or the outcome of any election to any State or local public office, or any voter registration activity, or to pay the salary of any officer or employee of the Corporation, who, in an official capacity as such an officer or employee, engages in any such activity. As used in this section, the term ''election'' (when referring to an election for Federal office) has the same meaning given such term by section 431(1) of title 2, and the term ''Federal office'' has the same meaning given such term by section 431(3) of title 2.

(b) Prohibition on program identification

(1) Programs assisted under this chapter shall not be carried on in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with—

(A) any partisan or nonpartisan political activity associated with a candidate, or a contending faction or group, in an election for public or party office;

(B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(C) any voter registration activity;

except that programs assisted under this chapter may make voter registration applications and nonpartisan voter registration information available to the public on the premises of such programs.

(2) In carrying out any voter registration activity permitted under paragraph (1), an individual who is affiliated with, or employed to carry out, a program assisted under this chapter shall not—

(A) indicate a preference with respect to any candidate, political party, or election issue; or

(B) seek to influence the political or party affiliation, or voting decision, of any individual.

(c) Prohibition on influencing passage or defeat of legislation

No funds appropriated to carry out this chapter shall be used by any program assisted under this chapter in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except—

(1) in any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of, such a program to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) in connection with an authorization or appropriations measure directly affecting the operation of the program.

(d) Enforcement; rules and regulations

The Director, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance for no more than thirty days until notice and an opportunity to be heard can be provided or other action necessary to permit enforcement on an emergency basis.

(Pub. L. 93–113, title IV, § 403, Oct. 1, 1973, 87 Stat. 408; Pub. L. 96–143, §§ 8, 18(c)(1), Dec. 13, 1979, 93 Stat. 1077, 1083; Pub. L. 96–187, title I, § 112(e)(1), Jan. 8, 1980, 93 Stat. 1366; Pub. L. 99–551, § 10(i)(6), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 103–82, title III, § 363, title IV, § 405(a)(7), Sept. 21, 1993, 107 Stat. 907, 920.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 405(a)(7), substituted ''administered by the Corporation under this chapter'' for ''administered by the ACTION Agency'' and ''of the Corporation'' for ''of the ACTION Agency''.

Subsec. (b)(1). Pub. L. 103–82, § 363(3), added par. (1) and struck out former par. (1) which read as follows: ''Programs assisted under this chapter shall not be carried on in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (A) any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (C) any voter registration activity.''

Subsec. (b)(2). Pub. L. 103–82, § 363(3), added par. (2). Former par. (2) redesignated subsec. (c).

Subsec. (c). Pub. L. 103–82, § 363(1), (2), redesignated subsec. (b)(2) as subsec. (c) and subpars. (A) and (B) as pars. (1) and (2), respectively. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103–82, § 363(1), redesignated subsec. (c) as (d).

1986—Subsec. (a). Pub. L. 99–551 substituted ''an official capacity'' for ''his official capacity''.

1980—Subsec. (a). Pub. L. 96–187 substituted ''section 431(1) of title 2'' and ''section 431(3) of title 2'' for ''section 431(a) of title 2'' and ''section 431(c) of title 2'', respectively.

1979—Pub. L. 96–143, § 8(a), inserted ''or the outcome of any election to any State or local public office,'' after ''Federal office,'' and ''(when referring to an election for Federal office)'' before ''has the same meaning''.

Subsec. (b). Pub. L. 96–143, § 8(b), designated existing provisions as par. (1), cls. (1) to (3) thereof as cls. (A) to (C), and last sentence thereof as subsec. (c), and added par. (2).

Subsec. (c). Pub. L. 96–143, §§ 8(b)(3), 18(c)(1), designated as subsec. (c) provisions formerly contained in last sentence of subsec. (b) and, as so designated, substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 363 of Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

Amendment by section 405(a)(7) of Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as a note under section 431 of Title 2, The Congress.

§ 5044. Special limitations

(a) Volunteer activities; limitation

The Director shall prescribe regulations and shall carry out the provisions of this chapter so as to assure that the service of volunteers assigned, referred, or serving pursuant to grants, contracts, or agreements made under this chapter is limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(b) Support costs

All support, including transportation provided to volunteers under this chapter, shall be furnished at the lowest possible costs consistent with the effective operation of volunteer programs.

(c) Compensation of supervising agencies or organizations

No agency or organization to which volunteers are assigned hereunder, or which operates or supervises any volunteer program hereunder, shall request or receive any compensation from such volunteers or from beneficiaries for services of volunteers supervised by such agency or organization.

(d) Labor or antilabor organization activities; funds use prohibition

No funds authorized to be appropriated herein shall be directly or indirectly utilized to finance labor or antilabor organization or related activity.

(e) Selection procedure

Persons serving as volunteers under this chapter shall provide such information concerning their qualifications, including their ability to perform their assigned tasks, and their integrity, as the Director shall prescribe and shall be subject to such procedures for selection and approval as the Director determines are necessary to carry out the purposes of this chapter. The Director may establish such special procedures for the recruitment, selection, training, and assignment of low-income residents of the area to be served by a program under this chapter who wish to become volunteers as the Director determines will further the purposes of this chapter.

(f) Government assistance; eligibility; special limitations

(1) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this chapter shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such volunteers may be receiving under any governmental program, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater.

(2) Notwithstanding any other provision of law, a person enrolled for full-time service as a volunteer under subchapter I of this chapter who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service.

(Pub. L. 93–113, title IV, § 404, Oct. 1, 1973, 87 Stat. 408; Pub. L. 96–143, § 9, Dec. 13, 1979, 93 Stat. 1077; Pub. L. 98–288, § 19, May 21, 1984, 98 Stat. 195; Pub. L. 99–551, § 10(i)(7), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 103–82, title III, § 364, Sept. 21, 1993, 107 Stat. 908.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (f)(1), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–82, § 364(1), inserted ''from such volunteers or from beneficiaries'' after ''compensation''.

Subsecs. (f), (g). Pub. L. 103–82, § 364(2), (3), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''Notwithstanding any other provision of law, the Director shall assign or delegate any substantial responsibility for carrying out programs under this chapter only to persons appointed or employed pursuant to clauses (1) and (2) of section 5042 of this title, and persons assigned or delegated such substantial responsibilities on October 1, 1973, and who are receiving compensation in accordance with provisions of law other than the applicable provisions of title 5 on such date shall, by operation of law on such date, be assigned a grade level pursuant to such latter provisions so as to fix the compensation of such persons under such authority at no less than their compensation rate on the day preceding such date.''

1986—Subsec. (e). Pub. L. 99–551 substituted ''the Director'' for ''he'' before ''determines will''.

1984—Subsec. (f). Pub. L. 98–288 struck out ''and except as provided in the second sentence of this subsection'' after ''Notwithstanding any other provision of law'' and struck out ''The Director may personally make exceptions to the requirements set forth in the first sentence of this subsection for persons he finds will be assigned to carrying out functions under the Peace Corps Act (22 U.S.C. 2501 et seq.) within six months after October 1, 1973.''

1979—Subsec. (g). Pub. L. 96–143 designated existing provisions as par. (1), inserted '', except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater'' after ''governmental program'', and added par. (2).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

§ 5045. Repealed. Pub. L. 98–288, § 20(a), May 21, 1984, 98 Stat. 195

Section, Pub. L. 93–113, title IV, § 405, Oct. 1, 1973, 87 Stat. 409; Pub. L. 94–293, § 5(a), May 27, 1976, 90 Stat. 526; Pub. L. 96–470, title I, § 113, Oct. 19, 1980, 94 Stat. 2240; Pub. L. 96–533, title VI, § 602(b), Dec. 16, 1980, 94 Stat. 3156, provided for a National Voluntary Service Advisory Council.

EFFECTIVE DATE OF REPEAL

Section 20(a) of Pub. L. 98–288 provided that the repeal of this section is effective Jan. 1, 1986.

§ 5046. Labor standards for federally assisted projects, buildings, and works

All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating of projects, buildings and works which are federally assisted under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and in section 3145 of title 40.

(Pub. L. 93–113, title IV, § 406, Oct. 1, 1973, 87 Stat. 410.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, ch. 492, as amended; 40 U.S.C. 276c)'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 5047. Repealed. Pub. L. 103–82, title III, § 365, Sept. 21, 1993, 107 Stat. 908

Section, Pub. L. 93–113, title IV, § 407, Oct. 1, 1973, 87 Stat. 410; Pub. L. 98–288, § 21, May 21, 1984, 98 Stat. 195; Pub. L. 99–551, § 3(b), Oct. 27, 1986, 100 Stat. 3072; Pub. L. 101–204, title IV, § 401, Dec. 7, 1989, 103 Stat. 1814, required annual report on activities under section 4953 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

§ 5048. Joint funding; single non-Federal share requirement; grant or contract requirement waiver

Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this chapter, where funds are provided for a single project by more than one Federal agency to an agency or organization assisted under this chapter, the Federal agency principally involved may be designated to act for all in administering the funds provided, and, notwithstanding any other provision of law, in such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each agency. When the principal agency involved is the Corporation, it may waive any grant or contract requirement (as defined by such regulations) under or pursuant to any law other than this chapter, which requirement is inconsistent with the similar requirements under or pursuant to this chapter.

(Pub. L. 93–113, title IV, § 408, Oct. 1, 1973, 87 Stat. 410; Pub. L. 103–82, title IV, § 405(a)(8), Sept. 21, 1993, 107 Stat. 920.)

AMENDMENTS

1993—Pub. L. 103–82 substituted ''the Corporation'' for ''the ACTION Agency''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

DELEGATION OF FUNCTIONS

Authority of President under this section delegated to Director of Office of Management and Budget, see section 1 of Ex. Ord. No. 11893, eff. Dec. 31, 1975, 41 F.R. 1040, set out as a note under section 7103 of Title 31, Money and Finance.

§ 5049. Prohibition of Federal control of educational institution or school system

Nothing contained in this chapter shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any education institution or school system.

(Pub. L. 93–113, title IV, § 409, Oct. 1, 1973, 87 Stat. 410.)

§ 5050. Coordination with other programs

The Director shall take necessary steps to coordinate volunteer programs authorized under this chapter with one another, with community action programs, and with other related Federal, State, and local programs. The Director shall also consult with the heads of other Federal, State, and local agencies responsible for programs related to the purposes of this chapter with a view to encouraging greater use of volunteer services in those programs and establishing in connection with them systematic procedures for the recruitment, referral, or necessary preservice orientation or training of volunteers serving pursuant to this chapter. The Director, in consultation with the Director of the Office of Personnel Management and the Secretaries of Labor, Commerce, and the Treasury and officials of other appropriate departments and agencies, shall take all appropriate steps to encourage State and local governments, charitable and service organizations, and private employers (1) to take into account experience in volunteer work in the consideration of applicants for employment; and (2) to make provisions for the listing and description of volunteer work on all employment application forms.

(Pub. L. 93–113, title IV, § 410, Oct. 1, 1973, 87 Stat. 410; Pub. L. 96–143, § 10, Dec. 13, 1979, 93 Stat. 1078.)

AMENDMENTS

1979—Pub. L. 96–143 inserted provisions requiring the Director in consultation with the Director of the Office of Personnel Management and the Secretaries of Labor, Commerce, and the Treasury and officials of other appropriate departments and agencies to take steps to encourage employers to review the consideration they give volunteer service in the information requested on their standard application forms.

§ 5051. Performance of functions by existing departments or offices rather than new departments or offices

In order to assure that existing Federal agencies are used to the fullest extent possible in carrying out the purposes of this chapter, no funds appropriated to carry out this chapter shall be used to establish any new department or office when the intended function is being performed by an existing department or office.

(Pub. L. 93–113, title IV, § 411, Oct. 1, 1973, 87 Stat. 411.)

§ 5052. Suspension and termination of financial assistance; procedures; notice and hearing; emergency situations; refunding applications

(a) The Director is authorized, in accordance with the provisions of this section, to suspend further payments or to terminate payments under any contract or grant providing assistance under this chapter, whenever the Director determines there is a material failure to comply with the applicable terms and conditions of any such grant or contract. The Director shall prescribe procedures to insure that—

(1) assistance under this chapter shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) an application for refunding under this chapter may not be denied unless the recipient has been given (A) notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial, and (B) opportunity to show cause why such action should not be taken;

(3) in any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant or contract award, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and the Agency; and

(4) assistance under this chapter shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) In order to assure equal access to all recipients, such hearings or other meetings as may be necessary to fulfill the requirements of this section shall be held at locations convenient to the recipient agency.

(Pub. L. 93–113, title IV, § 412, Oct. 1, 1973, 87 Stat. 411; Pub. L. 98–288, § 22, May 21, 1984, 98 Stat. 195; Pub. L. 99–551, § 10(i)(8), Oct. 27, 1986, 100 Stat. 3078.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–551 substituted ''the Director'' for ''he'' before ''determines'' in first sentence.

1984—Subsec. (a). Pub. L. 98–288 designated existing provisions as subsec. (a), substituted a semicolon for ''nor shall an application for refunding under this chapter be denied, unless the recipient has been given reasonable notice and opportunity to show why such action should not be taken; and'' in par. (1), added pars. (2) and (3), redesignated former par. (2) as (4), and added subsec. (b).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

§ 5053. Repealed. Pub. L. 94–293, § 5(b)(1), May 27, 1976, 90 Stat. 526

Section, Pub. L. 93–113, title IV, § 413, Oct. 1, 1973, 87 Stat. 411, authorized Director to carry out programs of this chapter during fiscal year ending June 30, 1974, and three succeeding fiscal years, and authorizing Congress to appropriate such sums as necessary for each fiscal year.

§ 5054. Distribution of benefits between rural and urban areas

The Director shall adopt appropriate administrative measures to assure that the benefits of and services under this chapter will be distributed equitably between residents of rural and urban areas.

(Pub. L. 93–113, title IV, § 414, Oct. 1, 1973, 87 Stat. 411.)

RURAL PROGRAM REPORT

Section 16 of Pub. L. 96–143 provided that not later than Feb. 1, 1980, the Director of the ACTION Agency was to submit to appropriate committees of Congress a report specifying special needs and circumstances to be addressed in designing programs under Domestic Volunteer Service Act of 1973 [this chapter] for implementation in rural areas, such report to include a detailed statement of manner in which Director intended to address such needs and circumstances, together with a timetable for designing and implementing such programs.

§ 5055. Application of Federal law

(a) General rule

Except as provided in subsections (b), (c), (d), and (e) of this section, volunteers under this chapter shall not be deemed Federal employees and shall not be subject to the provisions of laws relating to Federal officers and employees and Federal employment.

(b) Specific Federal legislation

Individuals enrolled as volunteers for periods of full-time service, or, as the Director deems appropriate in accordance with regulations, for periods of part-time service of not less than 20 hours per week for not less than 26 consecutive weeks, under subchapter I of this chapter shall, with respect to such service or training, (1) for the purposes of subchapter III of chapter 73 of title 5, be deemed persons employed in the executive branch of the Federal Government, (2) for the purposes of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.), be deemed employees of the United States, and any service performed by an individual as a volunteer (including training) shall be deemed to be performed in the employ of the United States, (3) for the purposes of the Federal Tort Claims provisions of title 28, be deemed employees of the United States, (4) for the purposes of subchapter I of chapter 81 of title 5 (relative to compensation to Federal employees for work injuries), shall be deemed civil employees of the United

States within the meaning of the term ''employee'' as defined in section 8101 of title 5, and the provisions of that subchapter shall apply except as follows: (A) in computing compensation benefits for disability or death, the annual rate of pay of a volunteer enrolled for a period of full-time service under such subchapter I of this chapter shall be deemed to be that received under the entrance salary for an employee at grade GS–5 of the General Schedule under section 5332 of title 5, and the annual rate of pay of a volunteer enrolled for a period of part-time service under such subchapter I of this chapter shall be deemed to be such entry salary or an appropriate portion thereof as determined by the Director, and subsections (a) and (b) of section 8113 of title 5 shall apply, and (B) compensation for disability shall not begin to accrue until the day following the date on which the injured volunteer is terminated, and (5) be deemed employees of the United States for the purposes of section 5584 of title 5 (and stipends and allowances paid under this chapter shall be considered as pay for such purposes).

(c) Subsequent Government employment

Any period of service of a volunteer enrolled in a program for a period of service of at least one year under part A of subchapter I of this chapter, and any period of full-time service of a volunteer enrolled in a program for a period of service of at least one year under part B or C of subchapter I of this chapter, shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(1) for the purposes of any Act establishing a retirement system for civilian employees of any United States Government agency; and

(2) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Office of Personnel Management, the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.], and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided*, That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

(d) Competitive service

Volunteers serving in programs for periods of service of at least one year under part A of subchapter I of this chapter, and volunteers serving for such periods under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991–2994d), including those whose service was completed under such Act, who the Director determines, in accordance with regulations the Director shall prescribe, have successfully completed their periods of service, shall be eligible for appointment in the competitive service in the same manner as Peace Corps volunteers as prescribed in Executive Order Number 11103 (April 10, 1963).

(e) References in other laws to service under provisions relating to Volunteers in Service to America deemed references to service under subchapter I of this chapter

Notwithstanding any other provision of law, all references in any other law to persons serving as volunteers under title VIII of the Economic Opportunity Act of 1964, as amended [42 U.S.C. 2991 et seq.], shall be deemed to be references to persons serving as full-time volunteers in a program of at least one year's duration under part A, B, or C of subchapter I of this chapter.

(f) Civil actions

(1) The remedy—

(A) against the United States provided by sections 1346(b) and 2672 of title 28 or

(B) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under section 1346(b) or 2672 of such title 28,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, podiatrist, optometrist, nurse, physician assistant, expanded-function dental auxiliary, pharmacist, or paramedical (for example, medical and dental technicians, nursing assistants, and therapists) or other supporting personnel in furnishing medical care or treatment while in the exercise of such person's duties as a volunteer enrolled under subchapter I of this chapter shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such person (or such person's estate) whose action or omission gave rise to such claim.

(2) The Attorney General of the United States shall defend any civil action or proceeding brought in any court against any person referred to in paragraph (1) of this subsection (or such person's estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate supervisor or to whomever is designated by the Director to receive such papers, and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought and to the Attorney General.

(3) Upon a certification by the Attorney General that the defendant was acting in the scope of such person's volunteer assignment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. After removal the United States shall have available all defenses to which it would have been entitled if the action had originally

been commenced against the United States. Should a district court of the United States determine on a hearing on a motion to remand held before a trial on the merits that the volunteer whose act or omission gave rise to the suit was not acting within the scope of such person's volunteer assignment, the case shall be remanded to the State court.

(4) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 and with the same effect.

(Pub. L. 93–113, title IV, § 415, Oct. 1, 1973, 87 Stat. 411; Pub. L. 96–143, §§ 11, 18(c)(2), Dec. 13, 1979, 93 Stat. 1078, 1083; Pub. L. 96–465, title II, § 2206(h), Oct. 17, 1980, 94 Stat. 2163; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–551, § 10(i)(9), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 103–82, title III, § 366, Sept. 21, 1993, 107 Stat. 908.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Foreign Service Act of 1980, referred to in subsec. (c)(2), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended, which is classified principally to chapter 52 (§ 3901 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The Economic Opportunity Act of 1964, as amended, referred to in subsecs. (d) and (e), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Title VIII of such Act, probably means title VIII of Pub. L. 88–452 as added by Pub. L. 89–794, title VIII, § 801, Nov. 8, 1966, 80 Stat. 1472, and generally revised and amended by Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to subchapter VIII (§ 2991 et seq.) of chapter 34 of this title. Title VIII of the Economic Opportunity Act of 1964 as so added and amended was repealed by Pub. L. 93–113, title VI, 603, and its provisions are covered by this chapter. For complete classification of this Act to the Code, see Tables.

Executive Order Number 11103 (April 10, 1963), referred to in subsec. (d), is set out under section 2504 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1993—Subsec. (b)(4)(A). Pub. L. 103–82 substituted ''an employee at grade GS–5 of the General Schedule under section 5332 of title 5'' for ''a grade GS–7 employee''.

1986—Subsec. (b)(2). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (d). Pub. L. 99–551 substituted ''the Director'' for ''he'' before ''shall prescribe''.

1980—Subsec. (c)(1). Pub. L. 96–465, § 2206(h)(1), substituted ''any'' for ''section 1092(a)(1) of title 22 and every other''.

Subsec. (c)(2). Pub. L. 96–465, § 2206(h)(2), substituted ''Foreign Service Act of 1980'' for ''Foreign Service Act of 1946''.

1979—Subsec. (b). Pub. L. 96–143, § 11(a), substituted in provisions preceding cl. (1) ''as volunteers for periods of full-time service, or, as the Director deems appropriate in accordance with regulations, for periods of part-time service of not less than 20 hours per week for not less than 26 consecutive weeks, under subchapter I of this chapter'' for ''in programs under subchapter I of this chapter for periods of service of at least one year'' and in cl. (4)(A) ''the annual rate of pay of a volunteer enrolled for a period of full-time service under such subchapter I of this chapter shall be deemed to be that received under the entrance salary for a grade GS–7 employee, and the annual rate of pay of a volunteer enrolled for a period of part-time service under such subchapter I of this chapter shall be deemed to be such entry salary or an appropriate portion thereof as determined by the Director'' for ''the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS–7 employee'' and added cl. (5).

Subsec. (c)(2). Pub. L. 96–143, § 18(c)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (f). Pub. L. 96–143, § 11(b), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EX. ORD. NO. 11561. DELEGATION OF AUTHORITY

Ex. Ord. No. 11561, Sept. 25, 1970, 35 F.R. 14981, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, the authority conferred upon the President by that portion of section 833(c)(2) of the Economic Opportunity Act of 1964 (42 U.S.C. 2994b(c)(2)) [former section 2994b(c)(2) of this title, now subsec. (c)(2) of this section] which reads ''except as otherwise determined by the President'' is hereby delegated as follows: (1) To the Office of Personnel Management to the extent that such authority is with respect to the laws administered by the Commission, and (2) to the Secretary of State to the extent that such authority is with respect to the Foreign Service Act of 1980, as amended [22 U.S.C. 3901 et seq.].

§ 5056. Evaluation of programs and projects

(a) General objectives; persons conducting the evaluation

The Director shall measure and evaluate the impact of all programs authorized by this chapter (including the VISTA Literacy Corps which shall be evaluated as a separate program at least once every 3 years), their effectiveness in achieving stated goals, in general, and in relation to their cost, their impact on related programs, and their structure and mechanism for delivery of services. Each program shall be evaluated at least once every three years. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated. Such evaluation shall also measure and evaluate compliance with the equitable distribution requirement of section 5054 of this title.

(b) General standards; publication; reports of ensuing actions

The Director shall develop and publish general standards for evaluation of program and project

effectiveness in achieving the objectives of this chapter. Reports submitted pursuant to section 5047[1] of this title shall describe the actions taken as a result of evaluations carried out under this section.

(c) Opinions of participants

In carrying out evaluations under this subchapter, the Director shall, whenever possible, arrange to obtain the opinions of program and project participants about the strengths and weaknesses of such programs and projects.

(d) Summaries of results; publication

The Director shall publish summaries of the results of evaluations of program and project impact and effectiveness no later than sixty days after the completion thereof.

(e) Federal property

The Director shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds shall become the property of the United States.

(f) Evaluation of programs that relate to services that assist families caring for frail and disabled adult family members; evaluation of impact by volunteers on such programs; report to committees of Congress

Not later than December 31, 1988, the Director shall—

(1) evaluate the impact of Corporation programs carried out under subchapter II of this chapter that relate to services that assist families caring for frail and disabled adult family members and shall include in such evaluation information on—

(A) the range and extent of service needs of, and the services provided to, family caregivers assisted by volunteers;

(B) the characteristics of volunteers and the skills, training, and supervision necessary to provide various types of volunteer assistance to family caregivers;

(C) administrative costs, including recruitment, training, and supervision costs, associated with volunteer assistance to family caregivers; and

(D) such other issues as may be relevant to provide services to assist family caregivers;

(2) evaluate the impact that volunteers who participate in programs under parts B and C of subchapter II of this chapter without receiving a stipend have on such programs and shall include in such evaluation—

(A) information on adminstrative[2] costs associated with such volunteers;

(B) a comparison of the quality of services provided by such volunteers and the quality of services provided by volunteers who receive a stipend under such parts, including the rate of absenteeism and turnover; and

(C) a review of the effect that participation by volunteers who do not receive such stipend have on the administration of such programs; and

(3) submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report summarizing in detail the results of the evaluations made under paragraphs (1) and (2).

(g) Funds limitation; reduction of allotments

The Director is authorized to use such sums as are required, but not to exceed 1 per centum of the funds appropriated under this chapter, to conduct program and project evaluations (directly, or by grants or contracts) as required by this chapter. In the case of allotments from such an appropriation, the amount available for such allotments (and the amount deemed appropriate therefor) shall be reduced accordingly.

(Pub. L. 93–113, title IV, § 416, Oct. 1, 1973, 87 Stat. 412; Pub. L. 98–288, § 23, May 21, 1984, 98 Stat. 195; Pub. L. 99–551, § 8, Oct. 27, 1986, 100 Stat. 3075; Pub. L. 101–204, title IV, § 402, Dec. 7, 1989, 103 Stat. 1815; Pub. L. 103–82, title IV, § 405(a)(9), Sept. 21, 1993, 107 Stat. 920.)

REFERENCES IN TEXT

Section 5047 of this title, referred to in subsec. (b), was repealed by Pub. L. 103–82, title III, § 365, Sept. 21, 1993, 107 Stat. 908.

AMENDMENTS

1993—Subsec. (f)(1). Pub. L. 103–82 substituted ''Corporation'' for ''ACTION Agency'' in introductory provisions.

1989—Subsec. (a). Pub. L. 101–204 inserted ''(including the VISTA Literacy Corps which shall be evaluated as a separate program at least once every 3 years)'' after ''this chapter'' in first sentence.

1986—Subsec. (a). Pub. L. 99–551, § 8(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Director shall biennially measure and evaluate the impact of all programs authorized by this chapter, their effectiveness in achieving stated goals in general, and in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services. Evaluations shall be conducted by persons not immediately involved in the administration of the program or any project of such program being evaluated. Such evaluation shall also measure and evaluate compliance with the equitable distribution requirement of section 5054 of this title.''

Subsecs. (f), (g). Pub. L. 99–551, § 8(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1984—Subsec. (a). Pub. L. 98–288 substituted ''biennially'' for ''periodically'' in first sentence, and substituted ''or any project of such program being evaluated. Such evaluation shall also measure and evaluate compliance with the equitable distribution requirement of section 5054 of this title'' for ''or project evaluated''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note

[1] See References in Text note below.

[2] So in original. Probably should be ''administrative''.

under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

§ 5057. Nondiscrimination provisions

(a) In general

(1) Basis

An individual with responsibility for the operation of a program that receives assistance under this chapter shall not discriminate against a participant in, or member of the staff of, such program on the basis of race, color, national origin, sex, age, or political affiliation of such participant or member, or on the basis of disability, if the participant or member is a qualified individual with a disability.

(2) Definition

As used in paragraph (1), the term ''qualified individual with a disability'' has the meaning given the term in section 12111(8) of this title.

(b) Federal financial assistance

Any assistance provided under this chapter shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

(c) Religious discrimination

(1) In general

Except as provided in paragraph (2), an individual with responsibility for the operation of a program that receives assistance under this chapter shall not discriminate on the basis of religion against a participant in such program or a member of the staff of such program who is paid with funds received under this chapter.

(2) Exception

Paragraph (1) shall not apply to the employment, with assistance provided under this chapter, of any member of the staff, of a program that receives assistance under this chapter, who was employed with the organization operating the program on the date the grant under this chapter was awarded.

(d) Rules and regulations

The Director shall promulgate rules and regulations to provide for the enforcement of this section that shall include provisions for summary suspension of assistance for not more than 30 days, on an emergency basis, until notice and an opportunity to be heard can be provided.

(Pub. L. 93–113, title IV, § 417, Oct. 1, 1973, 87 Stat. 413; Pub. L. 96–143, § 12, Dec. 13, 1979, 93 Stat. 1079; Pub. L. 97–35, title VI, § 608(f)(3), Aug. 13, 1981, 95 Stat. 488; Pub. L. 98–288, § 30(a), May 21, 1984, 98 Stat. 197; Pub. L. 103–82, title III, § 367, Sept. 21, 1993, 107 Stat. 908.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (b), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (b), is title III of Pub. L. 94–135, Nov. 28, 1975, 78 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, substituting present provisions for former provisions relating to nondiscrimination, which set forth: in subsec. (a), general rule; in subsec. (b), special rule against sex discrimination; and in subsec. (c), applicability of nondiscrimination authorities of certain statutes and requirement for regulations.

1984—Subsec. (c)(1). Pub. L. 98–288 struck out ''and the Peace Corps Act (22 U.S.C. 2501 et seq.)'' after ''under this chapter''.

1981—Subsec. (c)(2). Pub. L. 97–35 substituted reference to the Secretary of Health and Human Services for references to the Secretary of Health and Human Resources and the Secretary of Health, Education, and Welfare.

1979—Subsec. (a). Pub. L. 96–143, § 12(a), inserted ''handicap,'' after ''age,'' and inserted provisions requiring that for purposes of this subsection, and for purposes of title VI of the Civil Rights Act of 1964, section 794 of title 29, and the Age Discrimination Act of 1975, any program, project, or activity to which volunteers are assigned under this chapter be deemed to be receiving Federal financial assistance.

Subsec. (c). Pub. L. 96–143, § 12(b), added subsec. (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

§ 5058. Eligibility for other benefits

Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to subchapter II of this chapter shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, temporary disability, retirement, public assistance, workers' compensation, or similar benefit payments, or minimum wage laws. This section shall become effective with respect to all payments made after October 1, 1973.

(Pub. L. 93–113, title IV, § 418, Oct. 1, 1973, 87 Stat. 413; Pub. L. 96–143, § 18(a)(2), Dec. 13, 1979, 93 Stat. 1083; Pub. L. 98–288, § 24, May 21, 1984, 98 Stat. 196.)

AMENDMENTS

1984—Pub. L. 98–288 inserted ''workers' compensation,'' after ''public assistance,''.

1979—Pub. L. 96–143 substituted ''subchapter II of this chapter'' for ''subchapters II and III of this chapter''.

§ 5059. Legal expenses

Notwithstanding any other provision of law and pursuant to regulations which the Director

shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings to which full-time volunteers (or part-time volunteers when such proceeding arises directly out of the performance of activities pursuant to this chapter) serving under this chapter have been made parties.

(Pub. L. 93–113, title IV, § 419, Oct. 1, 1973, 87 Stat. 413; Pub. L. 98–288, § 25, May 21, 1984, 98 Stat. 196; Pub. L. 99–551, § 10(g), Oct. 27, 1986, 100 Stat. 3078.)

AMENDMENTS

1986—Pub. L. 99–551 substituted ''to this chapter)'' for ''to this chapter''.

1984—Pub. L. 98–288 struck out ''or section 637(b)(1) of title 15'' after ''pursuant to this chapter''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

§ 5060. Repealed. Pub. L. 103–82, title III, § 368, Sept. 21, 1993, 107 Stat. 909

Section, Pub. L. 93–113, title IV, § 420, Oct. 1, 1973, 87 Stat. 414; Pub. L. 96–143, § 13(a), Dec. 13, 1979, 93 Stat. 1080; Pub. L. 98–288, § 26, May 21, 1984, 98 Stat. 196, set out requirements for prescribing regulations.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

§ 5061. Definitions

For the purposes of this chapter—

(1) the term ''Director'' means the Chief Executive Officer of the Corporation for National and Community Service appointed under section 12651c of this title;

(2) the terms ''United States'' and ''States'' mean the several States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, and American Samoa and, for the purposes of subchapter II of this chapter, the Trust Territory of the Pacific Islands;

(3) the term ''nonprofit'' as applied to any agency, institution, or organization means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(4) the term ''poor'' or ''low-income'' persons, individuals, or volunteers means such individuals whose incomes fall at or below the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Public Law 92–424 (42 U.S.C. 2971d):[1] *Provided*, That in determining who is ''poor'' or ''low-income'', the Director shall take into consideration existing poverty guidelines as appropriate to local situations;

(5) the terms ''public agencies or organizations'' and ''Federal, State, or local agencies'' shall include any Indian tribe, band, nation, or other organized group or community (including any Alaskan native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]) which is recognized by the United States or the State in which it resides as eligible for special programs and services provided to Indians because of their status as Indians;

(6) the term ''poverty line for a single individual'' means such poverty line as established by the Director of the Office of Management and Budget in accordance with section 9902(2) of this title;

(7) the term ''boarder baby'' means an infant who is abandoned, as defined in section 5117aa–21 of this title;

(8) the term ''Corporation'' means the Corporation for National and Community Service established under section 12651 of this title;

(9) the term ''foster grandparent'' means a volunteer in the Foster Grandparent Program;

(10) the term ''Foster Grandparent Program'' means the program established under part B of subchapter II of this chapter;

(11) except as provided in section 5057 of this title, the term ''individual with a disability'' has the meaning given the term in section 705(20)(B) of title 29;

(12) the term ''Inspector General'' means the Inspector General of the Corporation;

(13) the term ''national senior volunteer'' means a volunteer in the National Senior Volunteer Corps;

(14) the term ''National Senior Volunteer Corps'' means the programs established under parts A, B, C, and E of subchapter II of this chapter;

(15) the term ''Retired and Senior Volunteer Program'' means the program established under part A of subchapter II of this chapter;

(16) the term ''retired or senior volunteer'' means a volunteer in the Retired and Senior Volunteer Program;

(17) the term ''senior companion'' means a volunteer in the Senior Companion Program;

(18) the term ''Senior Companion Program'' means the program established under part C of subchapter II of this chapter;

(19) the terms ''VISTA'' and ''Volunteers in Service to America'' mean the program established under part A of subchapter I of this chapter; and

(20) the term ''VISTA volunteer'' means a volunteer in VISTA.

(Pub. L. 93–113, title IV, § 421, Oct. 1, 1973, 87 Stat. 414; Pub. L. 99–551, §§ 6(b), 10(h), Oct. 27, 1986, 100 Stat. 3074, 3078; Pub. L. 101–204, title IV, § 403, title V, § 502(b), Dec. 7, 1989, 103 Stat. 1815, 1817; Pub. L. 103–82, title IV, §§ 401, 404, 405(a)(10), Sept. 21, 1993, 107 Stat. 917, 920, 921; Pub. L. 105–220, title IV, § 414(e), Aug. 7, 1998, 112 Stat. 1242; Pub. L. 108–36, title III, § 306, June 25, 2003, 117 Stat. 825.)

REFERENCES IN TEXT

Section 625 of the Economic Opportunity Act of 1964, as amended by Public Law 92–424 (42 U.S.C. 2971d), referred to in par. (4), was repealed by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Section 9924 of

[1] See References in Text note below.

this title provides that any reference in any provision of law to the poverty line set forth in section 625 of the Economic Opportunity Act of 1964 is to be construed to be a reference to the poverty line defined in section 9902 of this title.

The Alaska Native Claims Settlement Act, referred to in par. (5), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

2003—Par. (7). Pub. L. 108–36 substituted ''infant who is abandoned, as defined in section 301'' for ''infant described in section 103''.

1998—Par. (11). Pub. L. 105–220 substituted ''section 705(20)(B) of title 29'' for ''section 706(8)(B) of title 29''.

1993—Par. (1). Pub. L. 103–82, § 404, added par. (1) and struck out former par. (1) which read as follows: ''the term 'Director' means the Director of the ACTION Agency;''.

Pars. (8) to (11). Pub. L. 103–82, § 401, added pars. (8) to (11).

Par. (12). Pub. L. 103–82, § 405(a)(10), substituted ''the Corporation'' for ''ACTION''.

Pub. L. 103–82, § 401, added par. (12).

Pars. (13) to (20). Pub. L. 103–82, § 401, added pars. (13) to (20).

1989—Par. (6). Pub. L. 101–204, § 403, added par. (6).

Par. (7). Pub. L. 101–204, § 502(b), added par. (7).

1986—Par. (1). Pub. L. 99–551, § 10(h), substituted ''Agency'' for ''agency''.

Par. (5). Pub. L. 99–551, § 6(b), added par. (5).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by sections 404 and 405(a)(10) of Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

Section 406(a) of Pub. L. 103–82 provided that: ''The amendments made by sections 401 through 402 [amending this section, sections 12612, 12617, 12619, 12622 to 12626, 12632, 12636, 12637, 12639, and 12662 of this title, and provisions set out as notes under section 12612 of this title] will take effect on October 1, 1993.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 5062. Audit

(a) Recordkeeping

Each recipient of Federal grants, subgrants, contracts, subcontracts, or loans entered into under this chapter other than by formal advertising, and which are otherwise authorized by this chapter, shall keep such records as the Director or the Inspector General shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Access to books, documents, papers, and records; limitations

The Director, the Inspector General, and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Director, the Inspector General, or the Comptroller General may be related or pertinent to the grants, contracts, subcontracts, subgrants, or loans referred to in subsection (a) of this section.

(Pub. L. 93–113, title IV, § 422, Oct. 1, 1973, 87 Stat. 414; Pub. L. 103–82, title III, § 369, Sept. 21, 1993, 107 Stat. 909.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 369(1), inserted ''or the Inspector General'' after ''Director''.

Subsec. (b). Pub. L. 103–82, § 369(2), inserted '', the Inspector General,'' after ''Director'' in two places.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

§ 5063. Reduction of paperwork

In order to reduce unnecessary, duplicative, or disruptive demands for information, the Director, in consultation with other appropriate agencies and organizations, shall continually review and evaluate all requests for information made under this chapter and take such action as may be necessary to reduce the paperwork required under this chapter. The Director shall request only such information as the Director deems essential to carry out the purposes and provisions of this chapter.

(Pub. L. 93–113, title IV, § 423, as added Pub. L. 96–143, § 14(a), Dec. 13, 1979, 93 Stat. 1081.)

§ 5064. Review of project renewals

If the executive authority of any State or local government submits to the Director, not later than 30 days before the expiration of any contract or grant to carry out any project under this chapter, a statement which objects to the renewal of such contract or grant, then the Director shall (1) review such statement and take it into account in determining whether to renew such contract or grant; and (2) submit to such executive authority a written statement of reasons regarding the Director's determination with respect to such renewal and specifically with respect to any objection so submitted.

(Pub. L. 93–113, title IV, § 424, as added Pub. L. 96–143, § 14(a), Dec. 13, 1979, 93 Stat. 1081.)

§ 5065. Protection against improper use

Whoever falsely—

(1) advertises or represents; or

(2) publishes or displays any sign, symbol, or advertisement, reasonably calculated to convey the impression,

that an entity is affiliated with, funded by, or operating under the authority of the Corporation, VISTA, or any of the programs of the National Senior Volunteer Corps may be enjoined under an action filed by the Attorney General, on a complaint by the Director.

(Pub. L. 93–113, title IV, § 425, as added and amended Pub. L. 103–82, title III, § 370, title IV, § 405(a)(11), Sept. 21, 1993, 107 Stat. 909, 921.)

AMENDMENTS

1993—Pub. L. 103–82, § 405(a)(11), substituted ''the Corporation'' for ''ACTION'' in concluding provisions.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 405(a)(11) of Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

SUBCHAPTER V—AUTHORIZATION OF APPROPRIATIONS

§ 5081. National Volunteer Antipoverty Programs

(a) Authorizations

(1) Volunteers in Service to America

There are authorized to be appropriated to carry out parts A and B of subchapter I of this chapter, excluding section 4959 of this title, $56,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(2) Literacy activities

There are authorized to be appropriated to carry out section 4959 of this title, $5,600,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(3) Special volunteer programs

There are authorized to be appropriated to carry out part C of subchapter I of this chapter, excluding section 4995[1] of this title, such sums as may be necessary for each of the fiscal years 1994 through 1996.

(4) Literacy challenge grants

There are authorized to be appropriated to carry out section 4995[1] of this title, such sums as may be necessary for each of the fiscal years 1994 through 1996.

(5) Specification of budget function

The authorizations of appropriations contained in this subsection shall be considered to be a component of budget function 500 as used by the Office of Management and Budget to cover education, training, employment, and social services, and, as such, shall be considered to be related to the programs of the Departments of Labor, Health and Human Services, and Education for budgetary purposes.

(b) Subsistence

The minimum level of an allowance for subsistence required under section 4955(b)(2) of this title, to be provided to each volunteer under subchapter I of this chapter, may not be reduced or limited in order to provide for an increase in the number of volunteer service years under part A of subchapter I of this chapter.

(c) Limitation

No part of the funds appropriated to carry out part A of subchapter I of this chapter may be used to provide volunteers or assistance to any program or project authorized under part B or C of subchapter I of this chapter, or under subchapter II of this chapter, unless the program or project meets the antipoverty criteria of part A of subchapter I of this chapter.

(d) Availability

Amounts appropriated for part A of subchapter I of this chapter shall remain available for obligation until the end of the fiscal year following the fiscal year for which the amounts were appropriated.

(e) Volunteer service requirement

(1) Volunteer service years

Of the amounts appropriated under this section for parts A, B, and C of subchapter I of this chapter, including section 4995 of this title, there shall first be available for part A of subchapter I of this chapter, including sections 4954(e) and 4959 of this title, an amount not less than the amount necessary to provide 3,700 volunteer service years in fiscal year 1994, 4,000 volunteer service years in fiscal year 1995, and 4,500 volunteer service years in fiscal year 1996.

(2) Plan

If the Director determines that funds appropriated to carry out part A, B, or C of subchapter I of this chapter are insufficient to provide for the years of volunteer service required by paragraph (1), the Director shall submit a plan to the relevant authorizing and appropriations committees of Congress that will detail what is necessary to fully meet this requirement.

(Pub. L. 93–113, title V, § 501, Oct. 1, 1973, 87 Stat. 415; Pub. L. 94–293, § 6(a), May 27, 1976, 90 Stat. 526; Pub. L. 96–143, § 15(a), (b), Dec. 13, 1979, 93 Stat. 1082; Pub. L. 97–35, title VI, § 607(a), Aug. 13, 1981, 95 Stat. 486; Pub. L. 98–288, § 27(a), May 21, 1984, 98 Stat. 196; Pub. L. 99–551, § 9(a), Oct. 27, 1986, 100 Stat. 3076; Pub. L. 99–570, title IV, § 4301(2), Oct. 27, 1986, 100 Stat. 3207–153; Pub. L. 100–690, title III, § 3402, Nov. 18, 1988, 102 Stat. 4253; Pub. L. 101–204, title VIII, §§ 801, 802, Dec. 7, 1989, 103 Stat. 1823, 1824; Pub. L. 102–73, title VII, § 701(b), July 25, 1991, 105 Stat. 359; Pub. L. 103–82, title III, § 381, Sept. 21, 1993, 107 Stat. 913.)

REFERENCES IN TEXT

Section 4995 of this title, referred to in subsec. (a)(3), (4), was in the original a reference to section 125, meaning section 125 of Pub. L. 93–113, which has been translated as reading section 124 of Pub. L. 93–113 to reflect the probable intent of Congress and the renumbering of section 125 of Pub. L. 93–113 as section 124 by Pub. L. 103–82, title III, § 333(2), Sept. 21, 1993, 107 Stat. 903. Pub. L. 93–113 does not contain a section 125.

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, substituting provisions authorizing appropriations for

[1] See References in Text note below.

parts A, B, and C of subchapter I of this chapter for fiscal years 1994 through 1996 for provisions authorizing appropriations for such parts for fiscal years 1987 through 1993.

1991—Subsec. (c). Pub. L. 102–73 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added pars. (2) and (3).

1989—Subsec. (a)(1). Pub. L. 101–204, § 801(a), inserted provision authorizing appropriations for fiscal years 1990 through 1993.

Subsec. (a)(2). Pub. L. 101–204, § 801(b)(1), inserted provision authorizing appropriations for fiscal years 1990 through 1993.

Subsec. (a)(3). Pub. L. 101–204, § 801(b)(2), substituted ''1987 through 1993'' for ''1987, 1988, and 1989''.

Subsec. (b). Pub. L. 101–204, § 801(c), inserted provision authorizing appropriations for fiscal years 1990 through 1993.

Subsec. (c). Pub. L. 101–204, § 801(d)(1), inserted provision authorizing appropriations for fiscal years 1990 through 1993 to carry out part C of subchapter I of this chapter.

Pub. L. 101–204, § 801(d)(2), inserted provision authorizing appropriations for fiscal years 1992 and 1993 for support of drug abuse prevention.

Subsec. (d)(1)(D) to (G). Pub. L. 101–204, § 801(e), added subpars. (D) to (G).

Subsec. (d)(4). Pub. L. 101–204, § 802, added par. (4).

1988—Subsec. (c). Pub. L. 100–690, § 3402(1), inserted ''(other than section 4994(b) of this title)'' after ''of this chapter'' and inserted provisions at end relating to additional authorization of appropriations for support of drug abuse prevention in fiscal years 1989 through 1991.

Subsec. (d)(1). Pub. L. 100–690, § 3402(2), substituted ''subchapter I of this chapter (other than section 4994(b) of this title)'' for ''subchapter I of this chapter''.

1986—Subsecs. (a), (b). Pub. L. 99–551 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

''(a) There is authorized to be appropriated to carry out part A of subchapter I of this chapter $17,000,000 for fiscal year 1984, $20,000,000 for fiscal year 1985, and $25,000,000 for fiscal year 1986.

''(b) There is authorized to be appropriated to carry out part B of subchapter I of this chapter $1,800,000 for the fiscal year 1984 and for each of the fiscal years 1985 and 1986.''

Subsec. (c). Pub. L. 99–570 inserted at end ''In addition to the amounts authorized to be appropriated by the preceding sentence, there is authorized to be appropriated the aggregate sum of $5,500,000 for fiscal years 1987 and 1988 to be made available for drug abuse prevention.''

Pub. L. 99–551 added subsec. (c) and struck out former subsec. (c) which read as follows: ''There is authorized to be appropriated to carry out part C of subchapter I of this chapter $1,984,000 for the fiscal year 1984 and for each of the fiscal years 1985 and 1986.''

Subsec. (d)(1). Pub. L. 99–551 added par. (1) and struck out former par. (1) which read as follows: ''Of the amounts appropriated under this section for parts A, B, and C of subchapter I of this chapter, there shall first be available for part A of subchapter I of this chapter an amount not less than the amount necessary to provide—

''(A) 2,000 years of volunteer service in fiscal year 1984;

''(B) 2,200 years of volunteer service in fiscal year 1985; and

''(C) 2,400 years of volunteer service in fiscal year 1986.''

1984—Pub. L. 98–288 designated existing provisions as subsec. (a), substituted ''There is authorized to be appropriated to carry out part A of subchapter I of this chapter $17,000,000 for fiscal year 1984, $20,000,000 for fiscal year 1985, and $25,000,000 for fiscal year 1986'' for ''There is authorized to be appropriated to carry out subchapter I of this chapter $25,763,000 for fiscal year 1982 and $15,391,000 for fiscal year 1983. Of the amounts appropriated under this section, not less than $16,000,000 shall first be available for carrying out part A of subchapter I of this chapter for fiscal year 1982, and not less than $8,000,000 shall first be available for carrying out part A of subchapter I of this chapter for fiscal year 1983'', and added subsecs. (b) to (e).

1981—Pub. L. 97–35 substituted provisions relating to authorization and availability of funds for fiscal years 1982 and 1983, for provisions relating to authorization and availability of funds for fiscal year ending June 30, 1974, through fiscal year ending Sept. 30, 1981.

1979—Subsec. (a). Pub. L. 96–143, § 15(a), inserted ''September 30, 1979, September 30, 1980, and September 30, 1981,'' after ''September 30, 1978,'' and substituted ''this section for the purpose of carrying out subchapter I of this chapter'' for ''this subchapter''.

Subsec. (c). Pub. L. 96–143, § 15(b), added subsec. (c).

1976—Subsec. (a). Pub. L. 94–293 inserted ''September 30, 1977, and September 30, 1978,'' after ''June 30, 1976''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

ADDITIONAL APPROPRIATIONS AUTHORIZATION

Additional appropriations authorization for meeting increase in stipend to volunteers under section 4955(a)(1) of this title, see section 5(b) of Pub. L. 94–130, set out as a note under section 4955 of this title.

§ 5082. National Senior Volunteer Corps

(a) Retired and Senior Volunteer Program

There are authorized to be appropriated to carry out part A of subchapter II of this chapter, $45,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(b) Foster Grandparent Program

There are authorized to be appropriated to carry out part B of subchapter II of this chapter, $85,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(c) Senior Companion Program

There are authorized to be appropriated to carry out part C of subchapter II of this chapter, $40,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(d) Demonstration programs

There are authorized to be appropriated to carry out part E of subchapter II of this chapter, such sums as may be necessary for each of the fiscal years 1994 through 1996.

(Pub. L. 93–113, title V, § 502, Oct. 1, 1973, 87 Stat. 415; Pub. L. 94–135, title II, § 205(a), Nov. 28, 1975, 89 Stat. 727; Pub. L. 95–478, title IV, § 402(d), Oct. 18, 1978, 92 Stat. 1558; Pub. L. 97–35, title VI, § 607(b), Aug. 13, 1981, 95 Stat. 486; Pub. L. 98–288, § 28, May 21, 1984, 98 Stat. 197; Pub. L. 99–551, § 9(b)–(d), Oct. 27, 1986, 100 Stat. 3077; Pub. L. 101–204, title VIII, § 804, title IX, § 902(7), Dec. 7, 1989, 103 Stat. 1824, 1826; Pub. L. 103–82, title III, § 382, Sept. 21, 1993, 107 Stat. 914.)

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, substituting subsecs. (a) to (d) authorizing appropriations for parts A, B, C, and E of subchapter II of this chapter for fiscal years 1994 through 1996 for former subsecs. (a) to (c) authorizing appropriations for parts A, B, and C of such subchapter for fiscal years 1989 through 1993.

1989—Pub. L. 101–204, § 902(7), struck out ''National'' before ''Older Americans'' in section catchline.

Subsec. (a). Pub. L. 101–204, § 804(a), inserted ''not less than the amount appropriated in the previous fiscal year and not more than'' after ''to be appropriated'', struck out provisions authorizing appropriations for fiscal years 1986 through 1988, and inserted provisions authorizing appropriations for fiscal years 1990 through 1993.

Subsec. (b). Pub. L. 101–204, § 804(b), inserted ''not less than the amount appropriated in the previous fiscal year and not more than'' after ''to be appropriated'', struck out provisions authorizing appropriations for fiscal years 1986 through 1988, and inserted provisions authorizing appropriations for fiscal years 1990 through 1993.

Subsec. (c). Pub. L. 101–204, § 804(c), inserted ''not less than the amount appropriated in the previous fiscal year and not more than'' after ''to be appropriated'', struck out provisions authorizing appropriations for fiscal years 1986 through 1988, and inserted provisions authorizing appropriations for fiscal years 1990 through 1993.

1986—Subsec. (a). Pub. L. 99–551, § 9(b), inserted '', $32,000,000 for fiscal year 1987, $33,280,000 for fiscal year 1988, and $34,610,000 for fiscal year 1989'' and struck out ''$30,412,000 for fiscal year 1983, $29,700,000 for fiscal year 1984, $30,400,000 for fiscal year 1985, and'' after ''to be appropriated''.

Subsec. (b). Pub. L. 99–551, § 9(c), inserted '', $60,000,000 for fiscal year 1987, $62,400,000 for fiscal year 1988, and $64,900,000 for fiscal year 1989'' and struck out ''$52,650,000 for fiscal year 1983, $54,300,000 for fiscal year 1984, $56,700,000 for fiscal year 1985, and'' after ''to be appropriated''.

Subsec. (c). Pub. L. 99–551, § 9(d), inserted '', $29,740,000 for fiscal year 1987, $30,930,000 for fiscal year 1988, and $32,170,000 for fiscal year 1989'' and struck out ''$17,607,000 for fiscal year 1983, $27,800,000 for fiscal year 1984, $28,200,000 for fiscal year 1985, and'' after ''to be appropriated''.

1984—Subsec. (a). Pub. L. 98–288, § 28(a), struck out ''$28,691,000 for fiscal year 1982 and'' after ''to be appropriated'', and inserted ''$29,700,000 for fiscal year 1984, $30,400,000 for fiscal year 1985, and $31,100,000 for fiscal year 1986''.

Subsec. (b). Pub. L. 98–288, § 28(b), struck out ''$49,670,000 for fiscal year 1982 and'' after ''to be appropriated'', and inserted ''$54,300,000 for fiscal year 1984, $56,700,000 for fiscal year 1985, and $58,700,000 for fiscal year 1986''.

Subsec. (c). Pub. L. 98–288, § 28(c), struck out ''$16,610,000 for fiscal year 1982 and'' after ''to be appropriated'', and inserted ''$27,800,000 for fiscal year 1984, $28,200,000 for fiscal year 1985, and $28,600,000 for fiscal year 1986''.

1981—Subsec. (a). Pub. L. 97–35, § 607(b)(1), substituted provisions authorizing appropriations for fiscal years 1982 and 1983, for provisions authorizing appropriations for fiscal year ending June 30, 1974, through fiscal year ending Sept. 30, 1981.

Subsec. (b). Pub. L. 97–35, § 607(b)(2), substituted provisions authorizing appropriations for fiscal years 1982 and 1983, for provisions relating to authorization, availability, and allocation of appropriations from fiscal year ending June 30, 1974, through fiscal year ending Sept. 30, 1981.

Subsec. (c). Pub. L. 97–35, § 607(b)(3), added subsec. (c).

1978—Subsec. (a). Pub. L. 95–478, § 402(d)(1), authorized appropriations of $25,000,000; $30,000,000; and $35,000,000 for fiscal years ending Sept. 30, 1979, through 1981.

Subsec. (b)(2). Pub. L. 95–478, § 402(d)(2), authorized appropriations of $55,000,000; $62,500,000; and $70,000,000 for fiscal years ending Sept. 30, 1979, through 1981, for carrying out part B programs of the subchapter.

1975—Subsec. (a). Pub. L. 94–135, § 205(a)(1), authorized appropriations of $6,000,000 for period beginning July 1, 1976, and ending Sept. 30, 1976, and $22,000,000 for fiscal years ending Sept. 30, 1977, and 1978.

Subsec. (b). Pub. L. 94–135, § 205(a)(2), authorized appropriations of $10,750,000 for period beginning July 1, 1976, and ending Sept. 30, 1976, and $43,000,000 for fiscal years ending Sept. 30, 1977, and 1978, in introductory text; $8,750,000 for period beginning July 1, 1976, and ending Sept. 30, 1976, and $35,000,000 for fiscal years ending Sept. 30, 1977, and 1978, in cl. (A); and $2,000,000 for period beginning July 1, 1976, and ending Sept. 30, 1976, and $8,000,000 for fiscal years ending Sept. 30, 1977, and 1978, in cl. (B).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

§ 5083. Repealed. Pub. L. 95–510, § 102(b), Oct. 24, 1978, 92 Stat. 1781

Section, Pub. L. 93–113, title V, § 503, Oct. 1, 1973, 87 Stat. 415; Pub. L. 94–293, § 6(b), May 27, 1976, 90 Stat. 526, authorized appropriations for national volunteer programs to assist small businesses and promote volunteer service by persons with business experience.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 105 of Pub. L. 95–510, set out as an Effective Date of 1978 Amendment note under section 634 of Title 15, Commerce and Trade.

§ 5084. Administration and coordination

(a) In general

For each of the fiscal years 1994 through 1996, there are authorized to be appropriated for the administration of this chapter as provided for in subchapter IV of this chapter, 18 percent of the total amount appropriated under sections 5081 and 5082 of this title with respect to such year.

(b) Evaluation

For each of the fiscal years 1994 through 1996, the Director is authorized to expend not less than 2½ percent, and not more than 5 percent, of the amount appropriated under subsection (a) of this section, for the purposes prescribed in section 5056 of this title.

(Pub. L. 93–113, title V, § 504, Oct. 1, 1973, 87 Stat. 416; Pub. L. 94–293, § 6(c), May 27, 1976, 90 Stat. 526; Pub. L. 96–143, § 15(c), Dec. 13, 1979, 93 Stat. 1082; Pub. L. 97–35, title VI, § 607(c), Aug. 13, 1981, 95 Stat. 487; Pub. L. 98–288, § 29, May 21, 1984, 98 Stat. 197; Pub. L. 99–551, § 9(e), Oct. 27, 1986, 100 Stat. 3077; Pub. L. 99–570, title IV, § 4301(3), Oct. 27, 1986, 100 Stat. 3207–153; Pub. L. 101–204, title VIII, § 803, Dec. 7, 1989, 103 Stat. 1824; Pub. L. 103–82, title III, § 383, Sept. 21, 1993, 107 Stat. 915.)

AMENDMENTS

1993—Pub. L. 103–82 amended section generally. Prior to amendment, section read as follows:

''(a) There is authorized to be appropriated for the administration of this chapter, as authorized in subchapter IV of this chapter, $25,312,000 for each of the fiscal years 1987, 1988, and 1989. In addition to the amounts authorized to be appropriated for the administration of this chapter by the preceding sentence, there is authorized to be appropriated the aggregate sum of $500,000 for fiscal years 1987 and 1988 to be available for support of drug abuse prevention.

''(b) For each of the fiscal years 1990 through 1993, there is authorized to be appropriated for the administration of this chapter, as authorized in subchapter IV of this chapter, 20 percent of the total amount appropriated under sections 5081 and 5082 of this title.''

1989—Pub. L. 101–204 designated existing provisions as subsec. (a) and added subsec. (b).

1986—Pub. L. 99–570 inserted at end ''In addition to the amounts authorized to be appropriated for the administration of this chapter by the preceding sentence, there is authorized to be appropriated the aggregate sum of $500,000 for fiscal years 1987 and 1988 to be available for support of drug abuse prevention.''

Pub. L. 99–551 substituted ''$25,312,000 for each of the fiscal years 1987, 1988, and 1989'' for ''$25,800,000 for fiscal year 1984, $27,000,000 for fiscal year 1985, and $28,000,000 for fiscal year 1986''.

1984—Pub. L. 98–288 substituted ''$25,800,000 for fiscal year 1984, $27,000,000 for fiscal year 1985, and $28,000,000 for fiscal year 1986'' for ''$30,091,000 for fiscal year 1982 and $29,348,000 for fiscal year 1983''.

1981—Pub. L. 97–35 substituted provisions authorizing appropriations for fiscal years 1982 and 1983, for provisions authorizing appropriations for fiscal year ending June 30, 1974, through fiscal year ending Sept. 30, 1981.

1979—Pub. L. 96–143 inserted ''September 30, 1979, September 30, 1980, and September 30, 1981,'' after ''September 30, 1978,''.

1976—Pub. L. 94–293 inserted ''September 30, 1977, and September 30, 1978,'' after ''June 30, 1976,''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99–551, set out as an Effective Date note under section 4950 of this title.

§ 5085. Availability of appropriations

Notwithstanding any other provision of law, unless enacted in express and specific limitation of the provisions of this section, funds appropriated for any fiscal year to carry out any program under this chapter or any predecessor authority shall remain available, in accordance with the provisions of this chapter, for obligation and expenditure until expended.

(Pub. L. 93–113, title V, § 505, Oct. 1, 1973, 87 Stat. 416.)

SUBCHAPTER VI—YOUTHBUILD PROJECTS

§§ 5091 to 5091n. Repealed. Pub. L. 103–82, title III, § 385, Sept. 21, 1993, 107 Stat. 915

Section 5091, Pub. L. 93–113, title VII, § 701, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3172, set forth purpose of this subchapter.

Section 5091a, Pub. L. 93–113, title VII, § 702, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3173, authorized Federal grants for Youthbuild projects.

Section 5091b, Pub. L. 93–113, title VII, § 703, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3173, related to service in construction and rehabilitation projects.

Section 5091c, Pub. L. 93–113, title VII, § 704, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3174, related to education and job training services.

Section 5091d, Pub. L. 93–113, title VII, § 705, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3174, set forth permitted uses of funds provided under this subchapter.

Section 5091e, Pub. L. 93–113, title VII, § 706, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3175, set forth eligibility requirements for participants.

Section 5091f, Pub. L. 93–113, title VII, § 707, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3175, provided living allowance for full-time program participants.

Section 5091g, Pub. L. 93–113, title VII, § 708, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3176, directed that services and activities be carried out through arrangements or under contracts with certain entities.

Section 5091h, Pub. L. 93–113, title VII, § 709, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3176, directed prescribing of standards for evaluating performance of projects.

Section 5091i, Pub. L. 93–113, title VII, § 710, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3176, related to applications for grants.

Section 5091j, Pub. L. 93–113, title VII, § 711, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3177, set forth criteria for selection of projects.

Section 5091k, Pub. L. 93–113, title VII, § 712, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3177, authorized management and technical assistance for projects.

Section 5091*l*, Pub. L. 93–113, title VII, § 713, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3178, defined terms for purposes of this subchapter.

Section 5091m, Pub. L. 93–113, title VII, § 715, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3179; amended Pub. L. 102–10, § 10, Mar. 12, 1991, 105 Stat. 32, directed issuance of necessary regulations.

Section 5091n, Pub. L. 93–113, title VII, § 716, as added Pub. L. 101–610, title II, § 211, Nov. 16, 1990, 104 Stat. 3179, authorized appropriations to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Subchapter repealed effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

CHAPTER 67—CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION REFORM

SUBCHAPTER I—GENERAL PROGRAM

Sec.
5101. Office on Child Abuse and Neglect.
5102. Advisory board on child abuse and neglect.
5103. Repealed.
5104. National clearinghouse for information relating to child abuse.
5105. Research and assistance activities.
5106. Grants to States and public or private agencies and organizations.
5106a. Grants to States for child abuse and neglect prevention and treatment programs.
5106a–1, 5106b. Repealed.
5106c. Grants to States for programs relating to investigation and prosecution of child abuse and neglect cases.
5106d. Miscellaneous requirements relating to assistance.
5106e. Coordination of child abuse and neglect programs.
5106f. Reports.
5106f–1. Report concerning voluntary reporting system.
5106g. Definitions.
5106h. Authorization of appropriations.
5106i. Rule of construction.
5107. Discretionary programs; authorization of appropriations.

Sec.

SUBCHAPTER II—ADOPTION OPPORTUNITIES

5111. Congressional findings and declaration of purpose.
5112. Repealed.
5113. Information and services.
5114. Study and report of unlicensed or unregulated adoption placements.
5115. Authorization of appropriations.
5115a. Repealed.

SUBCHAPTER III—COMMUNITY–BASED GRANTS FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT

5116. Purpose and authority.
5116a. Eligibility.
5116b. Amount of grant.
5116c. Repealed.
5116d. Application.
5116e. Local program requirements.
5116f. Performance measures.
5116g. National network for community-based family resource programs.
5116h. Definitions.
5116i. Authorization of appropriations.

SUBCHAPTER IV—TEMPORARY CHILD CARE FOR CHILDREN WITH DISABILITIES AND CRISIS NURSERIES

5117 to 5117d. Repealed.

SUBCHAPTER IV–A—ABANDONED INFANTS ASSISTANCE

5117aa. Findings.

PART A—PROJECTS REGARDING ABANDONMENT OF INFANTS AND YOUNG CHILDREN IN HOSPITALS

5117aa–11. Establishment of local projects.
5117aa–12. Evaluations, study, and reports by Secretary.

PART B—GENERAL PROVISIONS

5117aa–21. Definitions.
5117aa–22. Authorization of appropriations.

SUBCHAPTER V—CERTAIN PREVENTIVE SERVICES REGARDING CHILDREN OF HOMELESS FAMILIES OR FAMILIES AT RISK OF HOMELESSNESS

5118 to 5118e. Repealed.

SUBCHAPTER VI—CHILD ABUSE CRIME INFORMATION AND BACKGROUND CHECKS

5119. Reporting child abuse crime information.
5119a. Background checks.
5119b. Funding for improvement of child abuse crime information.
5119c. Definitions.

SUBCHAPTER I—GENERAL PROGRAM

CODIFICATION

This subchapter is comprised of title I of the Child Abuse Prevention and Treatment Act, Pub. L. 93–247. Title II of that Act is classified to subchapter III (§ 5116 et seq.) of this chapter.

§ 5101. Office on Child Abuse and Neglect

(a) Establishment

The Secretary of Health and Human Services may establish an office to be known as the Office on Child Abuse and Neglect.

(b) Purpose

The purpose of the Office established under subsection (a) of this section shall be to execute and coordinate the functions and activities of this subchapter and subchapter III of this chapter. In the event that such functions and activities are performed by another entity or entities within the Department of Health and Human Services, the Secretary shall ensure that such functions and activities are executed with the necessary expertise and in a fully coordinated manner involving regular intradepartmental and interdepartmental consultation with all agencies involved in child abuse and neglect activities.

(Pub. L. 93–247, title I, § 101, formerly § 2, Jan. 31, 1974, 88 Stat. 5; Pub. L. 93–644, § 8(d)(1), Jan. 4, 1975, 88 Stat. 2310; Pub. L. 95–266, title I, § 101, Apr. 24, 1978, 92 Stat. 205; Pub. L. 98–457, title I, § 101, Oct. 9, 1984, 98 Stat. 1749; Pub. L. 99–401, title I, § 103(a), Aug. 27, 1986, 100 Stat. 906; Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 103; renumbered title I, § 101, Pub. L. 101–126, § 3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764; Pub. L. 104–235, title I, § 101, Oct. 3, 1996, 110 Stat. 3064.)

AMENDMENTS

1996—Pub. L. 104–235 amended section generally, substituting provisions relating to Office on Child Abuse and Neglect for provisions relating to National Center on Child Abuse and Neglect.

1988—Pub. L. 100–294 amended section generally, substituting provisions relating to establishment, appointment of Director, and other staff and resources of National Center on Child Abuse and Neglect for provisions relating to establishment, functions, grant and contract authority, staff and resource availability, and use of funds of National Center on Child Abuse and Neglect. See sections 5105 to 5106d of this title.

1986—Subsec. (b)(2). Pub. L. 99–401, § 103(a)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3), (4). Pub. L. 99–401, § 103(a)(1), redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (6).

Subsec. (b)(5). Pub. L. 99–401, § 103(a)(3), added par. (5). Former par. (5) redesignated (7).

Subsec. (b)(6). Pub. L. 99–401, § 103(a)(1), redesignated former par. (4) as (6). Former par. (6) redesignated (8).

Subsec. (b)(7). Pub. L. 99–401, § 103(a)(1), (4), redesignated former par. (5) as (7) and amended it generally, substituting ''conduct research on the causes, prevention, identification, and treatment of child abuse and neglect, and on appropriate and effective investigative, administrative, and judicial procedures in cases of child abuse'' for ''conduct research into the causes of child abuse and neglect, and into the prevention, identification, and treatment thereof''. Former par. (7) redesignated (9).

Subsec. (b)(8), (9). Pub. L. 99–401, § 103(a)(1), redesignated former pars. (6) and (7) as (8) and (9), respectively.

Subsec. (b)(10). Pub. L. 99–401, § 103(a)(5), added par. (10).

1984—Subsec. (a). Pub. L. 98–457, § 101(a), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (b)(6). Pub. L. 98–457, § 101(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''make a complete and full study and investigation of the national incidence of child abuse and neglect, including a determination of the extent to which incidents of child abuse and neglect are increasing in number or severity; and''.

Subsec. (b)(7). Pub. L. 98–457, § 101(b), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''in consultation with Federal agencies serving on the Advisory Board on Child Abuse and Neglect (established by section 5105 of this title), prepare a comprehensive plan for seeking to bring about maximum coordination of the goals, objectives, and activities of all agencies and organizations which have responsibilities for programs and activities related to child abuse and neglect, and submit such plan to such Advisory Board not later than twelve months after April 24, 1978.''

Subsec. (c). Pub. L. 98–457, §101(c), substituted ''The functions of the Secretary under subsection (b) of this section may be carried out'' for ''The Secretary may carry out his functions under subsection (b) of this section''.

Subsec. (e). Pub. L. 98–457, §101(d), added subsec. (e).

1978—Subsec. (b). Pub. L. 95–266, §101(1), in pars. (1) and (3) inserted requirement of dissemination of annual summary and training materials, respectively, and added par. (7).

Subsec. (c). Pub. L. 95–266, §101(2), inserted provisions relating to duration and review of grants under subsec. (b)(5) of this section.

Subsec. (d). Pub. L. 95–266, §101(3), added subsec. (d).

1975—Subsec. (c). Pub. L. 93–644 added subsec. (c).

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–36, §1(a), June 25, 2003, 117 Stat. 800, provided that: ''This Act [see Tables for classification] may be cited as the 'Keeping Children and Families Safe Act of 2003'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–251, title II, §221, Oct. 9, 1998, 112 Stat. 1885, provided that: ''This subtitle [subtitle B (§§221, 222) of title II of Pub. L. 105–251, amending sections 5119a and 5119b of this title] may be cited as the 'Volunteers for Children Act'.''

SHORT TITLE OF 1996 AMENDMENT

Section 1(a) of Pub. L. 104–235 provided that: ''This Act [enacting sections 5106i and 5116 to 5116i of this title, amending this section and sections 5102, 5104 to 5106, 5106a, 5106c to 5106f, 5106g to 5106i, 5111, 5113, 5115, 5777, 10402, 10403, 10409, 10603a, and 13004 of this title, repealing sections 5103, 5106b, 5117 to 5117d, 5118 to 5118e, 5778, and 11481 to 11489 of this title, amending provisions set out as notes under this section and section 670 of this title, and repealing provisions set out as notes under section 5117 of this title] may be cited as the 'Child Abuse Prevention and Treatment Act Amendments of 1996'.''

SHORT TITLE OF 1994 AMENDMENT

For short title of subpart 1 of part E of title V of Pub. L. 103–381, which enacted section 5115a of this title, as the ''Howard M. Metzenbaum Multiethnic Placement Act of 1994'', see section 551 of Pub. L. 103–382, set out as a note under section 1305 of this title.

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–295, §1(a), May 28, 1992, 106 Stat. 187, provided that: ''This Act [enacting sections 5106f–1, 10414, and 10415 of this title, amending sections 5102, 5105, 5106, 5106a, 5106a–1, 5106c, 5106h, 5111, 5113, 5115, 5116, 5116b to 5116d, 5117c, 5117d, 5118e, 10401 to 10405, 10407 to 10410, 10412, and 10413 of this title, repealing section 5112 of this title, and enacting provisions set out as notes under this section and sections 5106a, 5106h, 5117, 10401, and 10402 of this title] may be cited as the 'Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–236, §1, Dec. 12, 1991, 105 Stat. 1812, provided that: ''This Act [amending sections 5117aa to 5117aa–12 and 5117aa–22 of this title and provisions set out as a note under section 623 of Title 29, Labor] may be cited as the 'Abandoned Infants Assistance Act Amendments of 1991'.''

SHORT TITLE OF 1989 AMENDMENT

Section 1 of Pub. L. 101–126 provided that: ''This Act [amending this section and sections 5102 to 5106h and 5116 to 5116g of this title and enacting provisions set out as notes under section 5102 and 5116b of this title] may be cited as the 'Child Abuse Prevention Challenge Grants Reauthorization Act of 1989'.''

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100–294 provided that: ''This Act [enacting sections 5106a to 5106h and 10413 of this title, amending this section and sections 5102 to 5106, 5113, 5115, 10402, 10409, and 10410 of this title, repealing section 10411 of this title, and enacting provisions set out as notes under this section and section 5105 of this title] may be referred to as the 'Child Abuse Prevention, Adoption, and Family Services Act of 1988'.''

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–401 provided that: ''This Act [enacting subchapter IV of this chapter and section 10603a of this title, amending this section and sections 290dd–3, 290ee–3, 5103, 5105, 10601, and 10603 of this title, and enacting provisions set out as notes under this section and section 5117 of this title] may be cited as the 'Children's Justice and Assistance Act of 1986'.''

Section 101 of title I of Pub. L. 99–401 provided that: ''This title [enacting section 10603a of this title, amending this section and sections 290dd–3, 290ee–3, 5103, 5105, 10601, and 10603 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Children's Justice Act'.''

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98–457 provided: ''That this Act [enacting chapter 110 of this title, amending this section and sections 5102 to 5106, 5111 to 5113, and 5115 of this title, and enacting provisions set out as notes under this section and sections 5102, 5103, and 10401 of this title] may be cited as the 'Child Abuse Amendments of 1984'.''

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95–266 provided: ''That this Act [enacting subchapter II of this chapter and amending this section and sections 5102 to 5105 of this title] may be cited as the 'Child Abuse Prevention and Treatment and Adoption Reform Act of 1978'.''

SHORT TITLE

Pub. L. 93–247, §1(a), formerly §1, Jan. 31, 1974, 88 Stat. 4, as renumbered §1(a) and amended by Pub. L. 100–294, title I, §101, Apr. 25, 1988, 102 Stat. 102, provided that: ''This Act [enacting this subchapter and subchapters III and V of this chapter] may be cited as the 'Child Abuse Prevention and Treatment Act'.''

For short title of title II of Pub. L. 99–401, which enacted subchapter IV of this chapter, as the ''Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986'', see section 201 of Pub. L. 99–401, formerly set out as a note under section 5117 of this title.

Pub. L. 100–505, §1, Oct. 18, 1988, 102 Stat. 2533, provided that: ''This Act [enacting subchapter IV–A of this chapter and provisions formerly set out as a note under section 670 of this title] may be cited as the 'Abandoned Infants Assistance Act of 1988'.''

Pub. L. 103–209, §1, Dec. 20, 1993, 107 Stat. 2490, provided that: ''This Act [enacting subchapter VI of this chapter and amending section 3759 of this title] may be cited as the 'National Child Protection Act of 1993'.''

REGULATIONS

Section 401(a) of Pub. L. 100–294 provided that: ''For any rule or regulation needed to implement this Act [see Short Title of 1988 Amendment note above], the Secretary of Health and Human Services shall—

''(1) publish proposed regulations for purposes of implementing the amendments made by this Act before the expiration of the 90-day period beginning on the date of the enactment of this Act [Apr. 25, 1988];

''(2) allow not less than 45 days for public comment on such proposed regulations; and

''(3) publish final regulations for purposes of implementing the amendments made by this Act before the end of the 195-day period beginning on the date of the enactment of this Act.''

CONSTRUCTION OF CHILD ABUSE AMENDMENTS OF 1984 WITH OTHER LAWS; SEPARABILITY

Section 127 of Pub. L. 98–457 provided that:

''(a) No provision of this Act or any amendment made by this Act [See Short Title of 1984 Amendment note above] is intended to affect any right or protection under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794].

''(b) No provision of this Act or any amendment made by this Act may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws.

''(c) If the provisions of any part of this Act or any amendment made by this Act or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.''

PRESIDENTIAL COMMISSION ON CHILD AND YOUTH DEATHS

Section 106 of Pub. L. 100–294 established a National Commission on Child and Youth Deaths to study and evaluate comprehensively Federal, State, and local public and private resources which affect child and youth deaths and to prepare and transmit to President and appropriate committees of Congress a report within 12 months after appointment of the Commission, and provided that the Commission terminates 90 days after transmitting the report.

ACQUISITION OF STATISTICAL DATA

Section 105 of Pub. L. 99–401 provided that:

''(a) DATA ACQUISITION FOR 1987 AND 1988.—The Attorney General shall acquire from criminal justice agencies statistical data, for the calendar years 1987 and 1988, about the incidence of child abuse, including child sexual abuse, and shall publish annually a summary of such data.

''(b) MODIFICATION OF UNIFORM CRIME REPORTING PROGRAM.—(1) As soon as practicable, but in no case later than January 1, 1989, the Attorney General shall modify the uniform crime reporting program in the Federal Bureau of Investigation to include data on the age of the victim of the offense and the relationship, if any, of the victim to the offender, for types of offenses that may involve child abuse, including child sexual abuse.

''(2) The modification, once made, shall remain in effect until the later of—

''(A) 10 years after the date it is made; or

''(B) such ending date as may be set by the Attorney General.''

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 93–247, as added by Pub. L. 102–295, title I, §102(a), May 28, 1992, 106 Stat. 188, and amended by Pub. L. 104–235, title I, §100, Oct. 3, 1996, 110 Stat. 3064; Pub. L. 108–36, title I, §101, June 25, 2003, 117 Stat. 801, provided that: ''Congress finds that—

''(1) each year, approximately 900,000 American children are victims of abuse and neglect;

''(2)(A) more children suffer neglect than any other form of maltreatment; and

''(B) investigations have determined that approximately 60 percent of children who were victims of maltreatment in 2001 suffered neglect, 19 percent suffered physical abuse, 10 percent suffered sexual abuse, and 7 percent suffered emotional maltreatment;

''(3)(A) child abuse can result in the death of a child;

''(B) in 2001, an estimated 1,300 children were counted by child protection services to have died as a result of abuse or neglect; and

''(C) children younger than 1 year old comprised 41 percent of child abuse fatalities and 85 percent of child abuse fatalities were younger than 6 years of age;

''(4)(A) many of these children and their families fail to receive adequate protection and treatment; and

''(B) slightly less than half of these children (42 percent in 2001) and their families fail to receive adequate protection or treatment;

''(5) the problem of child abuse and neglect requires a comprehensive approach that—

''(A) integrates the work of social service, legal, health, mental health, education, and substance abuse agencies and community-based organizations;

''(B) strengthens coordination among all levels of government, and with private agencies, civic, religious, and professional organizations, and individual volunteers;

''(C) emphasizes the need for abuse and neglect prevention, assessment, investigation, and treatment at the neighborhood level;

''(D) recognizes the need for properly trained staff with the qualifications needed, to carry out their child protection duties; and

''(E) is sensitive to ethnic and cultural diversity, which may impact child rearing patterns, while at the same time, not allowing those differences to enable abuse;

''(6) the failure to coordinate and comprehensively prevent and treat child abuse and neglect threatens the futures of thousands of children and results in a cost to the Nation of billions of dollars in tangible expenditures, as well as significant intangible costs;

''(7) all elements of American society have a shared responsibility in responding to child abuse and neglect;

''(8) substantial reductions in the prevalence and incidence of child abuse and neglect and the alleviation of its consequences are matters of the highest national priority;

''(9) national policy should strengthen families to prevent child abuse and neglect, provide support for needed services to prevent the unnecessary removal of children from families, and promote the reunification of families where appropriate;

''(10) the child protection system should be comprehensive, child-centered, family-focused, and community-based, should incorporate all appropriate measures to prevent the occurrence or recurrence of child abuse and neglect, and should promote physical and psychological recovery and social re-integration in an environment that fosters the health, safety, self-respect, and dignity of the child;

''(11) because of the limited resources available in low-income communities, Federal aid for the child protection system should be distributed with due regard to the relative financial need of the communities;

''(12) the Federal government should assist States and communities with the fiscal, human, and technical resources necessary to develop and implement a successful and comprehensive child and family protection strategy;

''(13) the Federal government should provide leadership and assist communities in their child and family protection efforts by—

''(A) promoting coordinated planning among all levels of government;

''(B) generating and sharing knowledge relevant to child and family protection, including the development of models for service delivery;

''(C) strengthening the capacity of States to assist communities;

''(D) allocating financial resources to assist States in implementing community plans;

''(E) helping communities to carry out their child and family protection plans by promoting the competence of professional, paraprofessional, and volunteer resources; and

''(F) providing leadership to end the abuse and neglect of the nation's children and youth.''

§ 5102. Advisory board on child abuse and neglect

(a) Appointment

The Secretary may appoint an advisory board to make recommendations to the Secretary and to the appropriate committees of Congress concerning specific issues relating to child abuse and neglect.

(b) Solicitation of nominations

The Secretary shall publish a notice in the Federal Register soliciting nominations for the appointment of members of the advisory board under subsection (a) of this section.

(c) Composition

In establishing the board under subsection (a) of this section, the Secretary shall appoint members from the general public who are individuals knowledgeable in child abuse and neglect prevention, intervention, treatment, or research, and with due consideration to representation of ethnic or racial minorities and diverse geographic areas, and who represent—

(1) law (including the judiciary);

(2) psychology (including child development);

(3) social services (including child protective services);

(4) medicine (including pediatrics);

(5) State and local government;

(6) organizations providing services to disabled persons;

(7) organizations providing services to adolescents;

(8) teachers;

(9) parent self-help organizations;

(10) parents' groups;

(11) voluntary groups;

(12) family rights groups; and

(13) children's rights advocates.

(d) Vacancies

Any vacancy in the membership of the board shall be filled in the same manner in which the original appointment was made.

(e) Election of officers

The board shall elect a chairperson and vice-chairperson at its first meeting from among the members of the board.

(f) Duties

Not later than 1 year after the establishment of the board under subsection (a) of this section, the board shall submit to the Secretary and the appropriate committees of Congress a report, or interim report, containing—

(1) recommendations on coordinating Federal, State, and local child abuse and neglect activities with similar activities at the Federal, State, and local level pertaining to family violence prevention;

(2) specific modifications needed in Federal and State laws and programs to reduce the number of unfounded or unsubstantiated reports of child abuse or neglect while enhancing the ability to identify and substantiate legitimate cases of abuse or neglect which place a child in danger; and

(3) recommendations for modifications needed to facilitate coordinated national data collection with respect to child protection and child welfare.

(Pub. L. 93–247, title I, § 102, formerly § 3, Jan. 31, 1974, 88 Stat. 5; Pub. L. 95–266, title I, § 102, Apr. 24, 1978, 92 Stat. 206; Pub. L. 98–457, title I, §§ 102, 121, Oct. 9, 1984, 98 Stat. 1750, 1752; Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 103; renumbered title I, § 102, and amended Pub. L. 101–126, § 3(a)(1), (2), (b)(1), Oct. 25, 1989, 103 Stat. 764; Pub. L. 102–295, title I, § 111, May 28, 1992, 106 Stat. 190; Pub. L. 104–235, title I, § 102, Oct. 3, 1996, 110 Stat. 3065.)

AMENDMENTS

1996—Pub. L. 104–235 amended section generally, substituting present provisions for provisions which related to appointment of Advisory Board on Child Abuse and Neglect in subsec. (a); solicitation of nominations in subsec. (b); composition of Advisory Board in subsec. (c); election of officers in subsec. (d); meetings in subsec. (e); duties in subsec. (f); compensation in subsec. (g); and authorization of appropriations in subsec. (h).

1992—Subsec. (f)(4). Pub. L. 102–295, § 111(a), added par. (4).

Subsec. (h). Pub. L. 102–295, § 111(b), added subsec. (h).

1989—Subsecs. (c)(1)(A), (e), (f)(2)(E). Pub. L. 101–126, § 3(b)(1), made technical amendments to references to sections 5103, 5105, and 5106 of this title to reflect renumbering of corresponding sections of original act.

1988—Pub. L. 100–294 amended section generally, substituting provisions relating to Advisory Board on Child Abuse and Neglect for provisions relating to definitions. See section 5106g of this title.

1984—Cl. (1). Pub. L. 98–457, § 121(1), designated provisions after opening phrase as cl. (1).

Pub. L. 98–457, § 102(1), inserted "(including any employee of a residential facility or any staff person providing out-of-home care)".

Cl. (2). Pub. L. 98–457, § 102(2), (3), added cl. (2).

Cl. (3). Pub. L. 98–457, § 121(2), (3), added cl. (3).

1978—Pub. L. 95–266 inserted "or exploitation" after "sexual abuse" and ", or the age specified by the child protection law of the State in question," after "eighteen".

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8 of Pub. L. 101–126 provided that: "This Act and the amendments made by this Act [see Short Title of 1989 Amendment note set out under section 5101 of this title] shall take effect October 1, 1989, or upon the date of the enactment of this Act [Oct. 25, 1989], whichever occurs later."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 128 of Pub. L. 98–457 provided that:

"(a) Except as provided in subsection (b), the provisions of this part or any amendment made by this part [part B (§§ 121–128) of title I of Pub. L. 98–457, amending this section and section 5103 of this title and enacting provisions set out as notes under sections 5101 and 5103 of this title] shall be effective on the date of the enactment of this Act [Oct. 9, 1984].

"(b)(1) Except as provided in paragraph (2), the amendments made by sections 122 and 123(b) of this Act [amending section 5103 of this title] shall become effective one year after the date of such enactment [Oct. 9, 1984].

"(2) In the event that, prior to such effective date, funds have not been appropriated pursuant to section 5 of the Act (as amended by section 104 of this Act) [section 5104 of this title] for the purpose of grants under section 4(c)(1) of the Act (as added by section 123(a) of this Act) [section 5103(c)(1) of this title], any State which has not met any requirement of section 4(b)(2)(K) of the Act (as added by section 122(3) of this Act) may be granted a waiver of such requirements for a period of not more than one year, if the Secretary finds that

such State is making a good-faith effort to comply with such requirements.''

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of its establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the end of such period, or in the case of a board established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

LIMITATIONS ON USE OF APPROPRIATED FUNDS

Pub. L. 105–277, div. A, § 101(f) [title II, § 206], Oct. 21, 1998, 112 Stat. 2681–337, 2681–359, provided that: ''None of the funds appropriated in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, may be obligated or expended for the Federal Council on Aging under the Older Americans Act [of 1965, 42 U.S.C. 3001 et seq.] or the Advisory Board on Child Abuse and Neglect under the Child Abuse Prevention and Treatment Act [42 U.S.C. 5101 et seq.].''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105–78, title II, § 206, Nov. 13, 1997, 111 Stat. 1489.

Pub. L. 104–208, div. A, § 101(e) [title II, § 208], Sept. 30, 1996, 110 Stat. 3009–233, 3009–254.

Pub. L. 104–134, title I, § 101(d) [title II, § 209], Apr. 26, 1996, 110 Stat. 1321–211, 1321–228; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

§ 5103. Repealed. Pub. L. 104–235, title I, § 103, Oct. 3, 1996, 110 Stat. 3066

Section, Pub. L. 93–247, title I, § 103, formerly § 4, Jan. 31, 1974, 88 Stat. 5; Pub. L. 93–644, § 8(d)(2), Jan. 4, 1975, 88 Stat. 2310; Pub. L. 95–266, title I, § 103, Apr. 24, 1978, 92 Stat. 206; Pub. L. 98–457, title I, §§ 103, 122, 123, Oct. 9, 1984, 98 Stat. 1750, 1752, 1753; Pub. L. 99–401, title I, § 102(a), Aug. 27, 1986, 100 Stat. 903; Pub. L. 100–117, § 1, Sept. 28, 1987, 101 Stat. 751; Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 105; renumbered title I, § 103, Pub. L. 101–126, § 3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764, related to the Inter-Agency Task Force on Child Abuse and Neglect.

§ 5104. National clearinghouse for information relating to child abuse

(a) Establishment

The Secretary shall through the Department, or by one or more contracts of not less than 3 years duration let through a competition, establish a national clearinghouse for information relating to child abuse.

(b) Functions

The Secretary shall, through the clearinghouse established by subsection (a) of this section—

(1) maintain, coordinate, and disseminate information on all effective programs, including private and community-based programs, that show promise of success with respect to the prevention, assessment, identification, and treatment of child abuse and neglect and hold the potential for broad scale implementation and replication;

(2) maintain information about the best practices used for achieving improvements in child protective systems;

(3) maintain and disseminate information relating to—

(A) the incidence of cases of child abuse and neglect in the United States;

(B) the incidence of such cases in populations determined by the Secretary under section 105(a)(1) of the Child Abuse Prevention, Adoption, and Family Services Act of 1988; and

(C) the incidence of any such cases related to alcohol or drug abuse;

(4) provide technical assistance upon request that may include an evaluation or identification of—

(A) various methods and procedures for the investigation, assessment, and prosecution of child physical and sexual abuse cases;

(B) ways to mitigate psychological trauma to the child victim; and

(C) effective programs carried out by the States under this subchapter and subchapter III of this chapter; and

(5) collect and disseminate information relating to various training resources available at the State and local level to—

(A) individuals who are engaged, or who intend to engage, in the prevention, identification, and treatment of child abuse and neglect; and

(B) appropriate State and local officials to assist in training law enforcement, legal, judicial, medical, mental health, education, and child welfare personnel.

(c) Coordination with available resources

(1) In general

In establishing a national clearinghouse as required by subsection (a) of this section, the Secretary shall—

(A) consult with other Federal agencies that operate similar clearinghouses;

(B) consult with the head of each agency involved with child abuse and neglect and mechanisms for the sharing of such information among other Federal agencies and clearinghouses on the development of the components for information collection and management of such clearinghouse;

(C) develop a Federal data system involving the elements under subsection (b) of this section which, to the extent practicable, coordinates existing Federal, State, regional, and local child welfare data systems which shall include—

(i) standardized data on false, unfounded, unsubstantiated, and substantiated reports; and

(ii) information on the number of deaths due to child abuse and neglect;

(D) through a national data collection and analysis program and in consultation with appropriate State and local agencies and experts in the field, collect, compile, and make available State child abuse and neglect reporting information which, to the extent practical, shall be universal and case specific and integrated with other case-based foster care and adoption data collected by the Secretary;

(E) compile, analyze, and publish a summary of the research conducted under section 5105(a) of this title;

(F) collect and disseminate information that describes best practices being used throughout the Nation for making appropriate referrals related to, and addressing, the physical, developmental, and mental health needs of abused and neglected children; and

(G) solicit public comment on the components of such clearinghouse.

(2) Confidentiality requirement

In carrying out paragraph (1)(D), the Secretary shall ensure that methods are established and implemented to preserve the confidentiality of records relating to case specific data.

(Pub. L. 93–247, title I, §103, formerly §5, Jan. 31, 1974, 88 Stat. 7; Pub. L. 95–266, title I, §104, Apr. 24, 1978, 92 Stat. 206; Pub. L. 98–457, title I, §104, Oct. 9, 1984, 98 Stat. 1751; Pub. L. 100–294, title I, §101, Apr. 25, 1988, 102 Stat. 105; renumbered title I, §104, and amended Pub. L. 101–126, §§3(a)(1), (2), (b)(2), 6, Oct. 25, 1989, 103 Stat. 764, 765, 768; renumbered §103 and amended Pub. L. 104–235, title I, §§104, 113(a)(1)(A), Oct. 3, 1996, 110 Stat. 3066, 3079; Pub. L. 108–36, title I, §111, June 25, 2003, 117 Stat. 802.)

REFERENCES IN TEXT

Section 105(a)(1) of the Child Abuse Prevention, Adoption, and Family Services Act of 1988, referred to in subsec. (b)(3)(B), is section 105(a)(1) of Pub. L. 100–294, which is set out as a note under section 5105 of this title.

PRIOR PROVISIONS

A prior section 103 of Pub. L. 93–247 was classified to section 5103 of this title prior to repeal by Pub. L. 104–235.

AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108–36, §111(a)(1), substituted ''all effective programs, including private and community-based programs, that show promise of success with respect to the prevention, assessment, identification, and treatment of child abuse and neglect and hold the potential for broad scale implementation and replication;'' for ''all programs, including private programs, that show promise of success with respect to the prevention, assessment, identification, and treatment of child abuse and neglect; and''.

Subsec. (b)(2), (3). Pub. L. 108–36, §111(a)(2)–(4), added par. (2) and redesignated former par. (2) as (3) and substituted a semicolon for period at end.

Subsec. (b)(4), (5). Pub. L. 108–36, §111(a)(5), added pars. (4) and (5).

Subsec. (c)(1)(E). Pub. L. 108–36, §111(b)(1), made technical amendment to reference to section 5105(a) of this title to reflect renumbering of corresponding section of original act and struck out ''and'' at end.

Subsec. (c)(1)(F), (G). Pub. L. 108–36, §111(b)(2), (3), added subpar. (F) and redesignated former subpar. (F) as (G).

1996—Subsec. (a). Pub. L. 104–235, §104(1), amended heading and text generally. Prior to amendment, text read as follows: ''Before the end of the 2-year period beginning on April 25, 1988, the Secretary shall through the Center, or by contract of no less than 3 years duration let through a competition, establish a national clearinghouse for information relating to child abuse.''

Subsec. (b). Pub. L. 104–235, §104(2)(A), substituted ''Secretary'' for ''Director'' in introductory provisions.

Subsec. (b)(1). Pub. L. 104–235, §104(2)(B)(ii), which directed striking out '', including'' and all that followed and inserting ''; and'', was executed to reflect the probable intent of Congress by substituting ''; and'' for '', including the information provided by the National Center for Child Abuse and Neglect under section 5105(b) of this title;'' which was all that followed '', including'' the second place it appeared.

Pub. L. 104–235, §104(2)(B)(ii), inserted ''assessment,'' after ''prevention,''.

Subsec. (b)(2). Pub. L. 104–235, §104(2)(C), substituted ''United States'' for ''general population'' in subpar. (A) and struck out subpar. (D) which read as follows: ''State and local recordkeeping with respect to such cases; and''.

Subsec. (b)(3). Pub. L. 104–235, §104(2)(D), struck out par. (3) which read as follows: ''directly or through contract, identify effective programs carried out by the States pursuant to subchapter III of this chapter and provide technical assistance to the States in the implementation of such programs.''

Subsec. (c)(1). Pub. L. 104–235, §104(3)(A), designated existing provisions as par. (1), inserted heading, and substituted ''Secretary'' for ''Director'' in introductory provisions. Former par. (1) redesignated (1)(A).

Subsec. (c)(1)(A). Pub. L. 104–235, §104(3)(B), redesignated par. (1) as (1)(A) and realigned margin.

Subsec. (c)(1)(B). Pub. L. 104–235, §104(3)(B), (C), redesignated par. (2) as (1)(B), realigned margin, and substituted ''involved with child abuse and neglect and mechanisms for the sharing of such information among other Federal agencies and clearinghouses'' for ''that is represented on the task force''.

Subsec. (c)(1)(C). Pub. L. 104–235, §104(3)(B), (C), redesignated par. (3) as (1)(C), realigned margin, and substituted ''Federal, State, regional, and local child welfare data systems which shall include—

''(i) standardized data on false, unfounded, unsubstantiated, and substantiated reports; and

''(ii) information on the number of deaths due to child abuse and neglect;''

for ''State, regional, and local data systems; and''.

Subsec. (c)(1)(D). Pub. L. 104–235, §104(3)(F), added subpar. (D). Former subpar. (D) redesignated (F).

Pub. L. 104–235, §104(3)(B), redesignated par. (4) as (1)(D) and realigned margin.

Subsec. (c)(1)(E). Pub. L. 104–235, §104(3)(F), added subpar. (E).

Subsec. (c)(1)(F). Pub. L. 104–235, §104(3)(E), redesignated subpar. (D) as (F).

Subsec. (c)(2). Pub. L. 104–235, §104(3)(G), added par. (2). Former par. (2) redesignated (1)(B).

Subsec. (c)(3), (4). Pub. L. 104–235, §104(3)(B), redesignated pars. (3) and (4) as (1)(C) and (1)(D), respectively.

1989—Subsec. (b)(1). Pub. L. 101–126, §3(b)(2)(A), made technical amendment to reference to section 5105(b) of this title to reflect renumbering of corresponding section of original act.

Subsec. (b)(2)(B). Pub. L. 101–126, §3(b)(2)(B), inserted ''of the Child Abuse Prevention, Adoption, and Family Services Act of 1988'' after ''section 105(a)(1)''.

Subsec. (b)(3). Pub. L. 101–126, §6, added par. (3).

1988—Pub. L. 100–294 amended section generally, substituting provisions relating to national clearinghouse for information relating to child abuse for provisions relating to authorization of appropriations and funding requirements for child abuse and neglect and sexual abuse programs and projects. See section 5106h of this title.

1984—Pub. L. 98–457, §104(a), struck out designation ''(a)'' before ''There are hereby authorized'', inserted provisions authorizing appropriations of $33,500,000 for fiscal year 1984, $40,000,000 for fiscal year 1985, $41,500,000 for fiscal year 1986, and $43,100,000 for fiscal year 1987, and substituted ''this section except as provided in the succeeding sentence, (A) not less than $9,000,000 shall be available in each fiscal year to carry out section 5103(b) of this title (relating to State grants), (B) not less than $11,000,000 shall be available in each fiscal year to carry out sections 5103(a) (relating to demonstration or service projects), 5101(b)(1) and 5101(b)(3) (relating to information dissemination), 5101(b)(5) (relating to research), and 5103(c)(2) (relating to training, technical assistance, and information dissemination) of this title, giv-

ing special consideration to continued funding of child abuse and neglect programs or projects (previously funded by the Department of Health and Human Services) of national or regional scope and demonstated [sic] effectiveness, (C) $5,000,000 shall be available in each such year for grants and contracts under section 5103(a) of this title for identification, treatment, and prevention of sexual abuse, and (D) $5,000,000 shall be available in each such year for the purpose of making additional grants to the States to carry out the provisions of section 5103(c)(1) of this title. With respect to any fiscal year in which the total amount appropriated under this section is less than $30,000,000, funds shall first be available as provided in clauses (A) and (B) in the preceding sentence and of the remainder one-half shall be available as provided for in clause (C) and one-half as provided for in clause (D) in the preceding sentence'' for ''this section, not less than 50 per centum shall be used for making grants or contracts under sections 5101(b)(5) of this title (relating to research) and 5103(a) of this title (relating to demonstration or service projects), giving special consideration to continued Federal funding of child abuse and neglect programs or projects (previously funded by the Department of Health, Education, and Welfare) of national or regional scope and demonstrated effectiveness, of not less than 25 per centum shall be used for making grants or contracts under section 5103(b)(1) of this title (relating to grants to States) for the fiscal years ending September 30, 1978, and September 30, 1979, respectively, and not less than 30 per centum shall be used for making grants or contracts under section 5103(b)(1) of this title (relating to grants to States) for each of the fiscal years ending September 30, 1980, and September 30, 1981, respectively''.

Pub. L. 98–457, § 104(b), struck out subsec. (b) which authorized appropriations for fiscal years ending Sept. 30, 1978, Sept. 30, 1979, Sept. 30, 1980, and Sept. 30, 1981, respectively, for purpose of making grants and entering into contracts for programs and projects designed to prevent, identify, and treat sexual abuse of children.

1978—Pub. L. 95–266 designated existing provisions as subsec. (a), inserted provisions authorizing appropriations for fiscal year ending Sept. 30, 1978, through fiscal year ending Sept. 30, 1981, and provisions setting forth funding requirements for child abuse and neglect programs and projects, and added subsec. (b).

§ 5105. Research and assistance activities

(a) Research

(1) Topics

The Secretary shall, in consultation with other Federal agencies and recognized experts in the field, carry out a continuing interdisciplinary program of research, including longitudinal research, that is designed to provide information needed to better protect children from abuse or neglect and to improve the well-being of abused or neglected children, with at least a portion of such research being field initiated. Such research program may focus on—

(A) the nature and scope of child abuse and neglect;

(B) causes, prevention, assessment, identification, treatment, cultural and socio-economic distinctions, and the consequences of child abuse and neglect, including the effects of abuse and neglect on a child's development and the identification of successful early intervention services or other services that are needed;

(C) appropriate, effective and culturally sensitive investigative, administrative, and judicial systems, including multidisciplinary, coordinated decisionmaking procedures with respect to cases of child abuse;

(D) the evaluation and dissemination of best practices consistent with the goals of achieving improvements in the child protective services systems of the States in accordance with paragraphs (1) through (12) of section 5106a(a) of this title;

(E) effective approaches to interagency collaboration between the child protection system and the juvenile justice system that improve the delivery of services and treatment, including methods for continuity of treatment plan and services as children transition between systems;

(F) an evaluation of the redundancies and gaps in the services in the field of child abuse and neglect prevention in order to make better use of resources;

(G) the nature, scope, and practice of voluntary relinquishment for foster care or State guardianship of low income children who need health services, including mental health services;

(H) the information on the national incidence of child abuse and neglect specified in clauses (i) through (xi) of subparagraph (H);[1] and

(I) the national incidence of child abuse and neglect, including—

(i) the extent to which incidents of child abuse are increasing or decreasing in number and severity;

(ii) the incidence of substantiated and unsubstantiated reported child abuse cases;

(iii) the number of substantiated cases that result in a judicial finding of child abuse or neglect or related criminal court convictions;

(iv) the extent to which the number of unsubstantiated, unfounded and false reported cases of child abuse or neglect have contributed to the inability of a State to respond effectively to serious cases of child abuse or neglect;

(v) the extent to which the lack of adequate resources and the lack of adequate training of individuals required by law to report suspected cases of child abuse have contributed to the inability of a State to respond effectively to serious cases of child abuse and neglect;

(vi) the number of unsubstantiated, false, or unfounded reports that have resulted in a child being placed in substitute care, and the duration of such placement;

(vii) the extent to which unsubstantiated reports return as more serious cases of child abuse or neglect;

(viii) the incidence and prevalence of physical, sexual, and emotional abuse and physical and emotional neglect in substitute care;

(ix) the incidence and prevalence of child maltreatment by a wide array of demographic characteristics such as age, sex, race, family structure, household relation-

[1] So in original. Probably should refer to clauses (i) through (x) of subparagraph (I).

ship (including the living arrangement of the resident parent and family size), school enrollment and education attainment, disability, grandparents as caregivers, labor force status, work status in previous year, and income in previous year; and

(x) the incidence and outcomes of abuse allegations reported within the context of divorce, custody, or other family court proceedings, and the interaction between this venue and the child protective services system.

(2) Research

The Secretary shall conduct research on the national incidence of child abuse and neglect, including the information on the national incidence on child abuse and neglect specified in subparagraphs (i) through (ix) of paragraph (1)(I).

(3) Report

Not later than 4 years after June 25, 2003, the Secretary shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate a report that contains the results of the research conducted under paragraph (2).

(4) Priorities

(A) The Secretary shall establish research priorities for making grants or contracts for purposes of carrying out paragraph (1).

(B) Not later than 2 years after June 25, 2003, and every 2 years thereafter, the Secretary shall provide an opportunity for public comment concerning the priorities proposed under subparagraph (A) and maintain an official record of such public comment.

(b) Provision of technical assistance

(1) In general

The Secretary shall provide technical assistance to State and local public and private agencies and community-based organizations, including disability organizations and persons who work with children with disabilities, to assist such agencies and organizations in planning, improving, developing, and carrying out programs and activities, including replicating successful program models, relating to the prevention, assessment, identification, and treatment of child abuse and neglect.

(2) Evaluation

Such technical assistance may include an evaluation or identification of—

(A) various methods and procedures for the investigation, assessment, and prosecution of child physical and sexual abuse cases;

(B) ways to mitigate psychological trauma to the child victim;

(C) effective programs carried out by the States under this subchapter and subchapter III of this chapter; and

(D) effective approaches being utilized to link child protective service agencies with health care, mental health care, and developmental services to improve forensic diagnosis and health evaluations, and barriers and shortages to such linkages.

(3) Dissemination

The Secretary may provide for and disseminate information relating to various training resources available at the State and local level to—

(A) individuals who are engaged, or who intend to engage, in the prevention, identification, and treatment of child abuse and neglect; and

(B) appropriate State and local officials to assist in training law enforcement, legal, judicial, medical, mental health, education, and child welfare personnel in appropriate methods of interacting during investigative, administrative, and judicial proceedings with children who have been subjected to abuse.

(c) Authority to make grants or enter into contracts

(1) In general

The functions of the Secretary under this section may be carried out either directly or through grant or contract.

(2) Duration

Grants under this section shall be made for periods of not more than 5 years.

(3) Preference for long-term studies

In making grants for purposes of conducting research under subsection (a) of this section, the Secretary shall give special consideration to applications for long-term projects.

(d) Peer review for grants

(1) Establishment of peer review process

(A) The Secretary shall, in consultation with experts in the field and other federal[2] agencies, establish a formal, rigorous, and meritorious peer review process for purposes of evaluating and reviewing applications for grants under this section and determining the relative merits of the projects for which such assistance is requested. The purpose of this process is to enhance the quality and usefulness of research in the field of child abuse and neglect.

(B) In establishing the process required by subparagraph (A), the Secretary shall appoint to the peer review panels only members who are experts in the field of child abuse and neglect or related disciplines, with appropriate expertise in the application to be reviewed, and who are not individuals who are officers or employees of the Administration on Children and Families. The panels shall meet as often as is necessary to facilitate the expeditious review of applications for grants and contracts under this section, but may not meet less than once a year. The Secretary shall ensure that the peer review panel utilizes scientifically valid review criteria and scoring guidelines for review committees.

(2) Review of applications for assistance

Each peer review panel established under paragraph (1)(A) that reviews any application for a grant shall—

[2] So in original. Probably should be capitalized.

(A) determine and evaluate the merit of each project described in such application;

(B) rank such application with respect to all other applications it reviews in the same priority area for the fiscal year involved, according to the relative merit of all of the projects that are described in such application and for which financial assistance is requested; and

(C) make recommendations to the Secretary concerning whether the application for the project shall be approved.

The Secretary shall award grants under this section on the basis of competitive review.

(3) Notice of approval

(A) The Secretary shall provide grants and contracts under this section from among the projects which the peer review panels established under paragraph (1)(A) have determined to have merit.

(B) In the instance in which the Secretary approves an application for a program without having approved all applications ranked above such application (as determined under paragraph (2)(B)), the Secretary shall append to the approved application a detailed explanation of the reasons relied on for approving the application and for failing to approve each pending application that is superior in merit, as indicated on the list under paragraph (2)(B).

(e) Demonstration programs and projects

The Secretary may award grants to, and enter into contracts with, States or public or private agencies or organizations (or combinations of such agencies or organizations) for time-limited, demonstration projects for the following:

(1) Promotion of safe, family-friendly physical environments for visitation and exchange

The Secretary may award grants under this subsection to entities to assist such entities in establishing and operating safe, family-friendly physical environments—

(A) for court-ordered, supervised visitation between children and abusing parents; and

(B) to safely facilitate the exchange of children for visits with noncustodial parents in cases of domestic violence.

(2) Education identification, prevention, and treatment

The Secretary may award grants under this subsection to entities for projects that provide educational identification, prevention, and treatment services in cooperation with preschool and elementary and secondary schools.

(3) Risk and safety assessment tools

The Secretary may award grants under this subsection to entities for projects that provide for the development of research-based strategies for risk and safety assessments relating to child abuse and neglect.

(4) Training

The Secretary may award grants under this subsection to entities for projects that involve research-based strategies for innovative training for mandated child abuse and neglect reporters.

(Pub. L. 93–247, title I, § 104, formerly § 6, Jan. 31, 1974, 88 Stat. 7; Pub. L. 95–266, title I, § 105, Apr. 24, 1978, 92 Stat. 207; Pub. L. 98–457, title I, § 105, Oct. 9, 1984, 98 Stat. 1751; Pub. L. 99–401, title I, § 104, Aug. 27, 1986, 100 Stat. 906; Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 106; renumbered title I, § 105, and amended Pub. L. 101–126, § 3(a)(1), (2), (b)(3), Oct. 25, 1989, 103 Stat. 764, 765; Pub. L. 102–295, title I, §§ 112, 141(5), May 28, 1992, 106 Stat. 190, 200; renumbered § 104 and amended Pub. L. 104–235, title I, §§ 105, 113(a)(1)(A), Oct. 3, 1996, 110 Stat. 3067, 3079; Pub. L. 108–36, title I, § 112, June 25, 2003, 117 Stat. 803.)

PRIOR PROVISIONS

A prior section 104 of Pub. L. 93–247 was renumbered section 103 and is classified to section 5104 of this title.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–36, § 112(a)(1)(A), inserted ", including longitudinal research," after "interdisciplinary program of research" in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 108–36, § 112(a)(1)(B), inserted before semicolon ", including the effects of abuse and neglect on a child's development and the identification of successful early intervention services or other services that are needed".

Subsec. (a)(1)(C). Pub. L. 108–36, § 112(a)(1)(C), substituted "judicial systems, including multidisciplinary, coordinated decisionmaking procedures" for "judicial procedures" and struck out "and" at end.

Subsec. (a)(1)(D). Pub. L. 108–36, § 112(a)(1)(F), added subpar. (D). Former subpar. (D) redesignated (I).

Subsec. (a)(1)(D)(ix), (x). Pub. L. 108–36, § 112(a)(1)(D), added cl. (ix) and redesignated former cl. (ix) as (x).

Subsec. (a)(1)(E) to (H). Pub. L. 108–36, § 112(a)(1)(F), added subpars. (E) to (H).

Subsec. (a)(1)(I). Pub. L. 108–36, § 112(a)(1)(E), redesignated subpar. (D) as (I).

Subsec. (a)(2). Pub. L. 108–36, § 112(a)(4), added par. (2). Former par. (2) redesignated (4).

Subsec. (a)(2)(B). Pub. L. 108–36, § 112(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "In establishing research priorities as required by subparagraph (A), the Secretary shall—

"(i) publish proposed priorities in the Federal Register for public comment; and

"(ii) allow not less than 60 days for public comment on such proposed priorities."

Subsec. (a)(3). Pub. L. 108–36, § 112(a)(4), added par. (3).

Subsec. (a)(4). Pub. L. 108–36, § 112(a)(3), redesignated par. (2) as (4).

Subsec. (b)(1). Pub. L. 108–36, § 112(b)(1), substituted "private agencies and community-based" for "nonprofit private agencies and" and inserted ", including replicating successful program models," after "programs and activities".

Subsec. (b)(2)(D). Pub. L. 108–36, § 112(b)(2), added subpar. (D).

Subsec. (e). Pub. L. 108–36, § 112(c), added subsec. (e).

1996—Pub. L. 104–235, § 105(f), struck out "of the National Center on Child Abuse and Neglect" after "activities" in section catchline.

Subsec. (a)(1). Pub. L. 104–235, § 105(a)(1)(A), in introductory provisions, substituted ", in consultation with other Federal agencies and recognized experts in the field, carry out a continuing interdisciplinary program of research that is designed to provide information needed to better protect children from abuse or neglect and to improve the well-being of abused or neglected children, with at least a portion of such research being field initiated. Such research program may focus on" for ", through the Center, conduct research on".

Subsec. (a)(1)(A). Pub. L. 104–235, § 105(a)(1)(C), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (a)(1)(B). Pub. L. 104–235, § 105(a)(1)(B), (D), redesignated subpar. (A) as (B) and amended it generally. Prior to amendment, subpar. (B) read as follows: "the causes, prevention, identification,, treatment and cul-

tural distinctions of child abuse and neglect;''. Former subpar. (B) redesignated (C).

Subsec. (a)(1)(C). Pub. L. 104–235, § 105(a)(1)(B), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (a)(1)(D). Pub. L. 104–235, § 105(a)(1)(B), (E), redesignated subpar. (C) as (D), struck out cl. (ii), redesignated cl. (iii) as (ii) and amended it generally, and added cls. (iii) to (ix). Prior to amendment, cls. (ii) and (iii) read as follows:

''(ii) the relationship of child abuse and neglect to nonpayment of child support, cultural diversity, disabilities, and various other factors; and

''(iii) the incidence of substantiated reported child abuse cases that result in civil child protection proceedings or criminal proceedings, including the number of such cases with respect to which the court makes a finding that abuse or neglect exists and the disposition of such cases.''

Subsec. (a)(2). Pub. L. 104–235, § 105(a)(2), struck out ''and demonstration'' after ''research'', substituted ''paragraph (1)'' for ''paragraph (1)(A) and activities under section 5106 of this title'' in subpar. (A) and struck out ''and demonstration'' after ''research'' in introductory provisions of subpar. (B).

Subsec. (b). Pub. L. 104–235, § 105(b), (c), redesignated subsec. (c) as (b)(1), inserted par. heading, struck out '', through the Center,'' after ''Secretary shall'', inserted ''State and local'' before ''public and nonprofit'' and ''assessment,'' before ''identification'', added pars. (2) and (3), and struck out heading and text of former subsec. (b) consisting of pars. (1) to (5) which related to publication and dissemination of information.

Subsec. (c). Pub. L. 104–235, § 105(d), redesignated subsec. (d) as (c) and in par. (2) struck out at end ''The Secretary shall review each such grant at least annually, utilizing peer review mechanisms to assure the quality and progress of research conducted under such grant.'' Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 104–235, § 105(e), redesignated subsec. (e) as (d), in par. (1)(A) substituted '', in consultation with experts in the field and other federal agencies, establish a formal, rigorous, and meritorious'' for ''establish a formal'', struck out ''and contracts'' after ''for grants'', and inserted at end ''The purpose of this process is to enhance the quality and usefulness of research in the field of child abuse and neglect.'', in par. (1)(B) substituted ''Administration on Children and Families'' for ''Office of Human Development'' and inserted at end ''The Secretary shall ensure that the peer review panel utilizes scientifically valid review criteria and scoring guidelines for review committees.'', in par. (2) struck out '', contract, or other financial assistance'' after ''grant'' in introductory provisions and inserted ''The Secretary shall award grants under this section on the basis of competitive review.'' as concluding provisions, and in par. (3)(B) substituted ''paragraph (2)(B)'' for ''subsection (e)(2)(B) of this section'' in two places. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 104–235, § 105(e)(1), redesignated subsec. (e) as (d).

1992—Subsec. (a)(1)(A). Pub. L. 102–295, § 112(a)(1), substituted '', treatment and cultural distinctions of'' for ''and treatment of''.

Subsec. (a)(1)(B). Pub. L. 102–295, § 112(a)(2), substituted ''appropriate, effective and culturally sensitive'' for ''appropriate and effective''.

Subsec. (a)(1)(C)(ii). Pub. L. 102–295, §§ 112(a)(3), 141(5), substituted ''child support, cultural diversity, disabilities'' for ''child support, handicaps''.

Subsec. (b)(1). Pub. L. 102–295, § 112(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''as a part of research activities establish a national data collection and analysis program, which, to the extent practical, coordinates existing State child abuse and neglect reports and which shall include—

''(A) standardized data on false, unfounded, or unsubstantiated reports; and

''(B) information on the number of deaths due to child abuse and neglect;''.

Subsec. (c). Pub. L. 102–295, § 141(5), substituted ''disabilities'' for ''handicaps''.

Subsec. (e)(1)(A). Pub. L. 102–295, § 112(c)(1)(A), inserted ''and reviewing'' after ''evaluating''.

Subsec. (e)(1)(B). Pub. L. 102–295, § 112(c)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Members of peer review panels shall be appointed by the Secretary from among individuals who are not officers or employees of the Office of Human Development Services. In making appointments to such panels, the Secretary shall include only experts in the field of child abuse and neglect.''

Subsec. (e)(2)(A). Pub. L. 102–295, § 112(c)(2)(A), inserted ''and evaluate'' after ''determine''.

Subsec. (e)(2)(C). Pub. L. 102–295, § 112(c)(2)(B), added subpar. (C).

Subsec. (e)(3)(A). Pub. L. 102–295, § 112(c)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''At the end of each application process, the Secretary shall make available upon request, no later than 14 days after the request, to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate the list which identifies all applications reviewed by such panel and arranges such applications according to rank determined under paragraph (2) and a list of all applications funded.''

1989—Subsecs. (a)(2)(A), (b)(3). Pub. L. 101–126, § 3(b)(3), made technical amendments to references to sections 5104, 5106, and 5106c of this title to reflect renumbering of corresponding sections of original act.

1988—Pub. L. 100–294 amended section generally, substituting provisions relating to research and assistance activities of the National Center on Child Abuse and Neglect for provisions relating to Advisory Board on Child Abuse and Neglect. See section 5102 of this title.

1986—Subsec. (a). Pub. L. 99–401, § 104(1), inserted after first sentence ''The Advisory Board shall meet at least every six months.''

Pub. L. 99–401, § 104(2), which directed that subsec. (a) be amended by inserting ''in order to prevent unnecessary duplication of such programs, to ensure efficient allocation of resources, and to assure that programs effectively address all aspects of the child abuse problem'' after ''Board'' in second sentence, was executed by inserting provision after ''Advisory Board'' the first time that term appeared in what constituted the second sentence before a new second sentence was added by section 104(1) of Pub. L. 99–401.

1984—Subsec. (a). Pub. L. 98–457, § 105(a), (b), struck out '', including the Office of Child Development, the Department of Education, the National Institute of Education, the National Institute of Mental Health, the National Institute of Child Health and Human Development, the Social and Rehabilitation Service, and the Health Services Administration,'' before ''and not less than three members'', and inserted provision that the Advisory Board may be available, at the Secretary's request, to assist the Secretary in coordinating adoption-related activities of the Federal Government.

Subsecs. (b), (c). Pub. L. 98–457, § 105(c), redesignated subsec. (c) as (b) and struck out former subsec. (b) which required the Board to review the comprehensive plan submitted to it by the Center pursuant to section 5101(b)(7) of this title, make such changes as it deemed appropriate, and submit to the President and the Congress a final such plan not later than eighteen months after April 24, 1978.

1978—Subsec. (a). Pub. L. 95–266, § 105(1), (2), inserted requirement for representation from the general public, and ''planned,'' before ''administered'' in two places.

Subsec. (b). Pub. L. 95–266, § 105(3), substituted provisions relating to review of the plan by the Advisory Board and submission to the President and Congress of a final plan, for provisions relating to a report by the Advisory Board on assisted programs, etc., and submission to the President and Congress.

Subsec. (c). Pub. L. 95–266, § 105(3), substituted provisions setting forth compensation and travel expense allowance authorizations for members of the Board, for

provisions authorizing use of appropriated funds for required report.

CHILD ABUSE AND DISABILITY

Section 102 of Pub. L. 100–294 directed Director of National Center on Child Abuse and Neglect to conduct a study of incidence of child abuse among children with handicaps, including children in out-of-home placements, the relationship between child abuse and children's handicapping conditions, and incidence of children who have developed handicapping conditions as a result of child abuse or neglect, and not later than 2 years after Apr. 25, 1988, to report to appropriate committees of Congress with respect to the study, such report to include information and data gathered, an analysis of such information and data, and recommendations on how to prevent abuse of disabled children.

CHILD ABUSE AND ALCOHOLIC FAMILIES

Section 103 of Pub. L. 100–294 directed Director of National Center on Child Abuse and Neglect to conduct a study of incidence of child abuse in alcoholic families and relationship between child abuse and familial alcoholism, and not later than 2 years after Apr. 25, 1988, to report to appropriate committees of Congress with respect to the study, such report to include information and data gathered, an analysis of such information and data, and recommendations on how to prevent child abuse in alcoholic families.

STUDY OF GUARDIAN-AD-LITEM

Section 104 of Pub. L. 100–294 directed Director of National Center on Child Abuse and Neglect to conduct a study of how individual legal representation of children in cases of child abuse or neglect has been provided in each State, and effectiveness of legal representation of children in cases of abuse or neglect through use of guardian-ad-litem and court appointed special advocates, and not later than 2 years after Apr. 25, 1988, to report to appropriate committees of Congress with respect to the study, such report to include information and data gathered, an analysis of such information and data, and recommendations on how to improve legal representation of children in cases of abuse or neglect.

HIGH RISK STUDY

Section 105 of Pub. L. 100–294 directed the Director of National Center on Child Abuse and Neglect to conduct a study to identify groups which have been historically underserved or unserved by programs relating to child abuse and neglect, and to report incidence of child abuse and neglect among children who are members of such groups, and not later than 2 years after Apr. 25, 1988, to report to appropriate committees of Congress with respect to the study, such report to include information and data gathered, an analysis of such information and data, and recommendations on how to better meet needs of underserved or unserved groups.

§ 5106. Grants to States and public or private agencies and organizations

(a) Grants for programs and projects

The Secretary may make grants to, and enter into contracts with, States, public agencies or private agencies or organizations (or combinations of such agencies or organizations) for programs and projects for the following purposes:

(1) Training programs

The Secretary may award grants to public or private organizations under this section—

(A) for the training of professional and paraprofessional personnel in the fields of medicine, law enforcement, judiciary, social work and child protection, education, and other relevant fields, or individuals such as court appointed special advocates (CASAs) and guardian ad litem, who are engaged in, or intend to work in, the field of prevention, identification, and treatment of child abuse and neglect, including the links between domestic violence and child abuse;

(B) to improve the recruitment, selection, and training of volunteers serving in public and private children, youth and family service organizations in order to prevent child abuse and neglect;

(C) for the establishment of resource centers for the purpose of providing information and training to professionals working in the field of child abuse and neglect;

(D) for training to support the enhancement of linkages between child protective service agencies and health care agencies, including physical and mental health services, to improve forensic diagnosis and health evaluations and for innovative partnerships between child protective service agencies and health care agencies that offer creative approaches to using existing Federal, State, local, and private funding to meet the health evaluation needs of children who have been subjects of substantiated cases of child abuse or neglect;

(E) for the training of personnel in best practices to promote collaboration with the families from the initial time of contact during the investigation through treatment;

(F) for the training of personnel regarding the legal duties of such personnel and their responsibilities to protect the legal rights of children and families;

(G) for improving the training of supervisory and nonsupervisory child welfare workers;

(H) for enabling State child welfare agencies to coordinate the provision of services with State and local health care agencies, alcohol and drug abuse prevention and treatment agencies, mental health agencies, and other public and private welfare agencies to promote child safety, permanence, and family stability;

(I) for cross training for child protective service workers in research-based strategies for recognizing situations of substance abuse, domestic violence, and neglect; and

(J) for developing, implementing, or operating information and education programs or training programs designed to improve the provision of services to disabled infants with life-threatening conditions for—

(i) professionals and paraprofessional personnel concerned with the welfare of disabled infants with life-threatening conditions, including personnel employed in child protective services programs and health care facilities; and

(ii) the parents of such infants.

(2) Triage procedures

The Secretary may award grants under this subsection to public and private agencies that demonstrate innovation in responding to reports of child abuse and neglect, including programs of collaborative partnerships between

the State child protective services agency, community social service agencies and family support programs, law enforcement agencies, developmental disability agencies, substance abuse treatment entities, health care entities, domestic violence prevention entities, mental health service entities, schools, churches and synagogues, and other community agencies, to allow for the establishment of a triage system that—

(A) accepts, screens, and assesses reports received to determine which such reports require an intensive intervention and which require voluntary referral to another agency, program, or project;

(B) provides, either directly or through referral, a variety of community-linked services to assist families in preventing child abuse and neglect; and

(C) provides further investigation and intensive intervention where the child's safety is in jeopardy.

(3) Mutual support programs

The Secretary may award grants to private organizations to establish or maintain a national network of mutual support and self-help programs as a means of strengthening families in partnership with their communities.

(4) Kinship care

(A)[1] In general

The Secretary may award grants to public and private entities in not more than 10 States to assist such entities in developing or implementing procedures using adult relatives as the preferred placement for children removed from their home, where such relatives are determined to be capable of providing a safe nurturing environment for the child and where such relatives comply with the State child protection standards.

(5) Linkages between child protective service agencies and public health, mental health, and developmental disabilities agencies

The Secretary may award grants to entities that provide linkages between State or local child protective service agencies and public health, mental health, and developmental disabilities agencies, for the purpose of establishing linkages that are designed to help assure that a greater number of substantiated victims of child maltreatment have their physical health, mental health, and developmental needs appropriately diagnosed and treated, in accordance with all applicable Federal and State privacy laws.

(b) Discretionary grants

In addition to grants or contracts made under subsection (a) of this section, grants or contracts under this section may be used for the following:

(1) Respite and crisis nursery programs provided by community-based organizations under the direction and supervision of hospitals.

(2) Respite and crisis nursery programs provided by community-based organizations.

(3) Programs based within children's hospitals or other pediatric and adolescent care facilities, that provide model approaches for improving medical diagnosis of child abuse and neglect and for health evaluations of children for whom a report of maltreatment has been substantiated.

(4)(A) Providing hospital-based information and referral services to—

(i) parents of children with disabilities; and

(ii) children who have been neglected or abused and their parents.

(B) Except as provided in subparagraph (C)(iii), services provided under a grant received under this paragraph shall be provided at the hospital involved—

(i) upon the birth or admission of a child with disabilities; and

(ii) upon the treatment of a child for abuse or neglect.

(C) Services, as determined as appropriate by the grantee, provided under a grant received under this paragraph shall be hospital-based and shall consist of—

(i) the provision of notice to parents that information relating to community services is available;

(ii) the provision of appropriate information to parents of a child with disabilities regarding resources in the community, particularly parent training resources, that will assist such parents in caring for their child;

(iii) the provision of appropriate information to parents of a child who has been neglected or abused regarding resources in the community, particularly parent training resources, that will assist such parents in caring for their child and reduce the possibility of abuse or neglect;

(iv) the provision of appropriate follow-up services to parents of a child described in subparagraph (B) after the child has left the hospital; and

(v) where necessary, assistance in coordination of community services available to parents of children described in subparagraph (B).

The grantee shall assure that parental involvement described in this subparagraph is voluntary.

(D) For purposes of this paragraph, a qualified grantee is a[2] acute care hospital that—

(i) is in a combination with—

(I) a health-care provider organization;

(II) a child welfare organization;

(III) a disability organization; and

(IV) a State child protection agency;

(ii) submits an application for a grant under this paragraph that is approved by the Secretary;

(iii) maintains an office in the hospital involved for purposes of providing services under such grant;

(iv) provides assurances to the Secretary that in the conduct of the project the confidentiality of medical, social, and personal

[1] So in original. There is no subpar. (B).

[2] So in original. Probably should be ''an''.

information concerning any person described in subparagraph (A) or (B) shall be maintained, and shall be disclosed only to qualified persons providing required services described in subparagraph (C) for purposes relating to conduct of the project; and

(v) assumes legal responsibility for carrying out the terms and conditions of the grant.

(E) In awarding grants under this paragraph, the Secretary shall—

(i) give priority under this section for two grants under this paragraph, provided that one grant shall be made to provide services in an urban setting and one grant shall be made to provide services in rural setting; and

(ii) encourage qualified grantees to combine the amounts received under the grant with other funds available to such grantees.

(5) Such other innovative programs and projects that show promise of preventing and treating cases of child abuse and neglect as the Secretary may approve.

(c) Evaluation

In making grants for projects under this section, the Secretary shall require all such projects to be evaluated for their effectiveness. Funding for such evaluations shall be provided either as a stated percentage of a demonstration grant or as a separate grant or contract entered into by the Secretary for the purpose of evaluating a particular demonstration project or group of projects. In the case of an evaluation performed by the recipient of a grant, the Secretary shall make available technical assistance for the evaluation, where needed, including the use of a rigorous application of scientific evaluation techniques.

(Pub. L. 93–247, title I, § 105, formerly § 7, Jan. 31, 1974, 88 Stat. 8; Pub. L. 98–457, title I, § 106, Oct. 9, 1984, 98 Stat. 1751; Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 108; renumbered title I, § 106, Pub. L. 101–126, § 3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764; Pub. L. 102–295, title I, §§ 113, 141(1), (2), (5), May 28, 1992, 106 Stat. 191, 199, 200; renumbered § 105 and amended Pub. L. 104–235, title I, §§ 106, 113(a)(1)(A), Oct. 3, 1996, 110 Stat. 3069, 3079; Pub. L. 108–36, title I, § 113, June 25, 2003, 117 Stat. 805.)

PRIOR PROVISIONS

A prior section 105 of Pub. L. 93–247 was renumbered section 104 and is classified to section 5105 of this title.

AMENDMENTS

2003—Pub. L. 108–36, § 113(d), substituted ''Grants to States and public or private agencies and organizations'' for ''Grants to public agencies and nonprofit private organizations for demonstration programs and projects'' as section catchline.

Subsec. (a). Pub. L. 108–36, § 113(a)(2), in introductory provisions, inserted ''States,'' after ''contracts with,'' and struck out ''nonprofit'' after ''private'' and ''time limited, demonstration'' after ''organizations) for''.

Pub. L. 108–36, § 113(a)(1), substituted ''Grants for'' for ''Demonstration'' in heading.

Subsec. (a)(1). Pub. L. 108–36, § 113(a)(3)(A), struck out ''nonprofit'' after ''public or private'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 108–36, § 113(a)(3)(B), substituted ''law enforcement, judiciary, social work and child protection, education, and other relevant fields, or individuals such as court appointed special advocates (CASAs) and guardian ad litem,'' for ''law, education, social work, and other relevant fields''.

Subsec. (a)(1)(B). Pub. L. 108–36, § 113(a)(3)(C), substituted ''children, youth and family service organizations in order to prevent child abuse and neglect;'' for ''nonprofit children, youth and family service organizations in order to prevent child abuse and neglect through collaborative analysis of current recruitment, selection, and training programs and development of model programs for dissemination and replication nationally; and''.

Subsec. (a)(1)(D) to (J). Pub. L. 108–36, § 113(a)(3)(D), (E), added subpars. (D) to (J).

Subsec. (a)(2). Pub. L. 108–36, § 113(a)(5), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 108–36, § 113(a)(6), substituted ''organizations'' for ''nonprofit organizations (such as Parents Anonymous)''.

Pub. L. 108–36, § 113(a)(4), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 108–36, § 113(a)(7), added par. heading and struck out former heading ''Other innovative programs and projects'', redesignated subpar. (B) as (A), substituted ''In general'' for ''Kinship care'' in subpar. heading, and struck out ''nonprofit'' before ''entities'' and former subpars. (A) and (C), which related, respectively, to general issues of awarding grants and grants to promote safe, family-friendly physical environments for visitation and exchange.

Pub. L. 108–36, § 113(a)(4), redesignated par. (3) as (4).

Subsec. (a)(5). Pub. L. 108–36, § 113(a)(8), added par. (5).

Subsec. (b). Pub. L. 108–36, § 113(b)(1), substituted ''subsection (a)'' for ''subsection (b)'' in introductory provisions.

Subsec. (b)(1) to (3). Pub. L. 108–36, § 113(b)(2)–(4), added par. (3), redesignated former pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: ''Projects which provide educational identification, prevention, and treatment services in cooperation with preschool and elementary and secondary schools.''

Subsec. (b)(4)(D). Pub. L. 108–36, § 113(b)(5), struck out ''nonprofit'' before ''acute care hospital'' in introductory provisions.

Subsec. (c). Pub. L. 108–36, § 113(c), struck out ''demonstration'' before ''projects'' in first sentence, inserted ''or contract'' after ''or as a separate grant'' in second sentence, and inserted at end ''In the case of an evaluation performed by the recipient of a grant, the Secretary shall make available technical assistance for the evaluation, where needed, including the use of a rigorous application of scientific evaluation techniques.''

1996—Pub. L. 104–235, § 106(1), struck out ''or service'' after ''demonstration'' in section catchline.

Subsec. (a). Pub. L. 104–235, § 106(2), amended heading and text of subsec. (a) generally. Prior to amendment, text consisted of pars. (1) and (2) which related to general authority of Secretary to make grants and enter into contracts for demonstration or service programs and projects and to evaluate the effectiveness of those demonstration projects.

Subsec. (b). Pub. L. 104–235, § 106(3), (4), redesignated subsec. (c) as (b) and pars. (3) to (7) thereof as (1) to (5), respectively, struck out former pars. (1) and (2) which related to training programs and other innovative programs, respectively, and struck out heading and text of former subsec. (b). Text read as follows: ''The Secretary shall, directly or through grants or contracts with public or private nonprofit organizations under this section, provide for the establishment of resource centers—

''(1) serving defined geographic areas;

''(2) staffed by multidisciplinary teams of personnel trained in the prevention, identification, and treatment of child abuse and neglect; and

''(3) providing advice and consultation to individuals, agencies, and organizations which request such services.''

Subsec. (c). Pub. L. 104–235, §106(6), added subsec. (c). Former subsec. (c) redesignated (b).

1992—Subsec. (a). Pub. L. 102–295, §113(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (c)(1)(B). Pub. L. 102–295, §141(5), substituted ''disabilities'' for ''handicaps''.

Pub. L. 102–295, §113(b)(1), inserted ''culturally specific'' before ''instruction''.

Subsec. (c)(1)(C). Pub. L. 102–295, §113(b)(2), added subpar. (C).

Subsec. (c)(6)(A)(i). Pub. L. 102–295, §141(5), substituted ''children with disabilities'' for ''children with handicaps''.

Subsec. (c)(6)(B)(i). Pub. L. 102–295, §141(1), substituted ''child with disabilities'' for ''handicapped child''.

Subsec. (c)(6)(C)(ii). Pub. L. 102–295, §141(2), substituted ''child with disabilities'' for ''child with handicaps''.

1988—Pub. L. 100–294 amended section generally, substituting provision authorizing grants to public agencies and nonprofit private organizations for demonstration or service programs and projects for provision directing the Secretary to ensure coordination among Federal programs related to child abuse and neglect. See section 5106e of this title.

1984—Pub. L. 98–457 substituted ''among programs'' for ''between programs''.

§5106a. Grants to States for child abuse and neglect prevention and treatment programs

(a) Development and operation grants

The Secretary shall make grants to the States, based on the population of children under the age of 18 in each State that applies for a grant under this section, for purposes of assisting the States in improving the child protective services system of each such State in—

(1) the intake, assessment, screening, and investigation of reports of abuse and neglect;

(2)(A) creating and improving the use of multidisciplinary teams and interagency protocols to enhance investigations; and

(B) improving legal preparation and representation, including—

(i) procedures for appealing and responding to appeals of substantiated reports of abuse and neglect; and

(ii) provisions for the appointment of an individual appointed to represent a child in judicial proceedings;

(3) case management, including ongoing case monitoring, and delivery of services and treatment provided to children and their families;

(4) enhancing the general child protective system by developing, improving, and implementing risk and safety assessment tools and protocols;

(5) developing and updating systems of technology that support the program and track reports of child abuse and neglect from intake through final disposition and allow interstate and intrastate information exchange;

(6) developing, strengthening, and facilitating training including—

(A) training regarding research-based strategies to promote collaboration with the families;

(B) training regarding the legal duties of such individuals; and

(C) personal safety training for case workers;;[1]

(7) improving the skills, qualifications, and availability of individuals providing services to children and families, and the supervisors of such individuals, through the child protection system, including improvements in the recruitment and retention of caseworkers;

(8) developing and facilitating training protocols for individuals mandated to report child abuse or neglect;

(9) developing and facilitating research-based strategies for training for individuals mandated to report child abuse or neglect;

(10) developing, implementing, or operating programs to assist in obtaining or coordinating necessary services for families of disabled infants with life-threatening conditions, including—

(A) existing social and health services;

(B) financial assistance; and

(C) services necessary to facilitate adoptive placement of any such infants who have been relinquished for adoption;

(11) developing and delivering information to improve public education relating to the role and responsibilities of the child protection system and the nature and basis for reporting suspected incidents of child abuse and neglect;

(12) developing and enhancing the capacity of community-based programs to integrate shared leadership strategies between parents and professionals to prevent and treat child abuse and neglect at the neighborhood level;

(13) supporting and enhancing interagency collaboration between the child protection system and the juvenile justice system for improved delivery of services and treatment, including methods for continuity of treatment plan and services as children transition between systems; or

(14) supporting and enhancing collaboration among public health agencies, the child protection system, and private community-based programs to provide child abuse and neglect prevention and treatment services (including linkages with education systems) and to address the health needs, including mental health needs, of children identified as abused or neglected, including supporting prompt, comprehensive health and developmental evaluations for children who are the subject of substantiated child maltreatment reports.

(b) Eligibility requirements

(1) State plan

(A) In general

To be eligible to receive a grant under this section, a State shall, at the time of the initial grant application and every 5 years thereafter, prepare and submit to the Secretary a State plan that specifies the areas of the child protective services system described in subsection (a) of this section that the State intends to address with amounts received under the grant.

(B) Additional requirement

After the submission of the initial grant application under subparagraph (A), the State shall provide notice to the Secretary—

(i) of any substantive changes; and to any State law relating to the prevention of

[1] So in original.

child abuse and neglect that may affect the eligibility of the State under this section; and

(ii) any significant changes to how funds provided under this section are used to support the activities which may differ from the activities as described in the current State application.

(2) Coordination

A State plan submitted under paragraph (1) shall, to the maximum extent practicable, be coordinated with the State plan under part B of title IV of the Social Security Act [42 U.S.C. 620 et seq.] relating to child welfare services and family preservation and family support services, and shall contain an outline of the activities that the State intends to carry out using amounts received under the grant to achieve the purposes of this subchapter, including—

(A) an assurance in the form of a certification by the chief executive officer of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a Statewide program, relating to child abuse and neglect that includes—

(i) provisions or procedures for the reporting of known and suspected instances of child abuse and neglect;

(ii) policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, including a requirement that health care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of such condition in such infants, except that such notification shall not be construed to—

(I) establish a definition under Federal law of what constitutes child abuse; or

(II) require prosecution for any illegal action;

(iii) the development of a plan of safe care for the infant born and identified as being affected by illegal substance abuse or withdrawal symptoms;

(iv) procedures for the immediate screening, risk and safety assessment, and prompt investigation of such reports;

(v) triage procedures for the appropriate referral of a child not at risk of imminent harm to a community organization or voluntary preventive service;

(vi) procedures for immediate steps to be taken to ensure and protect the safety of the abused or neglected child and of any other child under the same care who may also be in danger of abuse or neglect and ensuring their placement in a safe environment;

(vii) provisions for immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect;

(viii) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including requirements ensuring that reports and records made and maintained pursuant to the purposes of this subchapter and subchapter III of this chapter shall only be made available to—

(I) individuals who are the subject of the report;

(II) Federal, State, or local government entities, or any agent of such entities, as described in clause (ix);

(III) child abuse citizen review panels;

(IV) child fatality review panels;

(V) a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and

(VI) other entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose;

(ix) provisions to require a State to disclose confidential information to any Federal, State, or local government entity, or any agent of such entity, that has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(x) provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality;

(xi) the cooperation of State law enforcement officials, court of competent jurisdiction, and appropriate State agencies providing human services in the investigation, assessment, prosecution, and treatment of child abuse or neglect;

(xii) provisions requiring, and procedures in place that facilitate the prompt expungement of any records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false, except that nothing in this section shall prevent State child protective services agencies from keeping information on unsubstantiated reports in their casework files to assist in future risk and safety assessment;

(xiii) provisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—

(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and

(II) to make recommendations to the court concerning the best interests of the child;

(xiv) the establishment of citizen review panels in accordance with subsection (c) of this section;

(xv) provisions, procedures, and mechanisms—

(I) for the expedited termination of parental rights in the case of any infant determined to be abandoned under State law; and

(II) by which individuals who disagree with an official finding of abuse or neglect can appeal such finding;

(xvi) provisions, procedures, and mechanisms that assure that the State does not require reunification of a surviving child with a parent who has been found by a court of competent jurisdiction—

(I) to have committed murder (which would have been an offense under section 1111(a) of title 18 if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(II) to have committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18 if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(III) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; or

(IV) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent;

(xvii) an assurance that, upon the implementation by the State of the provisions, procedures, and mechanisms under clause (xvi), conviction of any one of the felonies listed in clause (xvi) constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (although case-by-case determinations of whether or not to seek termination of parental rights shall be within the sole discretion of the State);

(xviii) provisions and procedures to require that a representative of the child protective services agency shall, at the initial time of contact with the individual subject to a child abuse and neglect investigation, advise the individual of the complaints or allegations made against the individual, in a manner that is consistent with laws protecting the rights of the informant;

(xix) provisions addressing the training of representatives of the child protective services system regarding the legal duties of the representatives, which may consist of various methods of informing such representatives of such duties, in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment;

(xx) provisions and procedures for improving the training, retention, and supervision of caseworkers;

(xxi) provisions and procedures for referral of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect to early intervention services funded under part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.]; and

(xxii) not later than 2 years after June 25, 2003, provisions and procedures for requiring criminal background record checks for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household;

(B) an assurance that the State has in place procedures for responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for—

(i) coordination and consultation with individuals designated by and within appropriate health-care facilities;

(ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

(iii) authority, under State law, for the State child protective services system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life threatening[2] conditions;

(C) a description of—

(i) the services to be provided under the grant to individuals, families, or communities, either directly or through referrals aimed at preventing the occurrence of child abuse and neglect;

(ii) the training to be provided under the grant to support direct line and supervisory personnel in report taking, screening, assessment, decision making, and referral for investigating suspected instances of child abuse and neglect; and

(iii) the training to be provided under the grant for individuals who are required to report suspected cases of child abuse and neglect; and

(D) an assurance or certification that the programs or projects relating to child abuse and neglect carried out under part B of title IV of the Social Security Act [42 U.S.C. 620 et seq.] comply with the requirements set forth in paragraph (1) and this paragraph.

Nothing in subparagraph (A) shall be construed to limit the State's flexibility to determine State policies relating to public access to court proceedings to determine child abuse and neglect, except that such policies shall, at

[2] So in original. Probably should be ''life-threatening''.

a minimum, ensure the safety and well-being of the child, parents, and families.

(3) Limitation

With regard to clauses (vi) and (vii) of paragraph (2)(A), nothing in this section shall be construed as restricting the ability of a State to refuse to disclose identifying information concerning the individual initiating a report or complaint alleging suspected instances of child abuse or neglect, except that the State may not refuse such a disclosure where a court orders such disclosure after such court has reviewed, in camera, the record of the State related to the report or complaint and has found it has reason to believe that the reporter knowingly made a false report.

(4) Definitions

For purposes of this subsection—

(A) the term ''near fatality'' means an act that, as certified by a physician, places the child in serious or critical condition; and

(B) the term ''serious bodily injury'' means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(c) Citizen review panels

(1) Establishment

(A) In general

Except as provided in subparagraph (B), each State to which a grant is made under this section shall establish not less than 3 citizen review panels.

(B) Exceptions

(i) Establishment of panels by States receiving minimum allotment

A State that receives the minimum allotment of $175,000 under section 5116b(b)(1)(A) of this title for a fiscal year shall establish not less than 1 citizen review panel.

(ii) Designation of existing entities

A State may designate as panels for purposes of this subsection one or more existing entities established under State or Federal law, such as child fatality panels or foster care review panels, if such entities have the capacity to satisfy the requirements of paragraph (4) and the State ensures that such entities will satisfy such requirements.

(2) Membership

Each panel established pursuant to paragraph (1) shall be composed of volunteer members who are broadly representative of the community in which such panel is established, including members who have expertise in the prevention and treatment of child abuse and neglect.

(3) Meetings

Each panel established pursuant to paragraph (1) shall meet not less than once every 3 months.

(4) Functions

(A) In general

Each panel established pursuant to paragraph (1) shall, by examining the policies, procedures, and practices of State and local agencies and where appropriate, specific cases, evaluate the extent to which State and local child protection system agencies are effectively discharging their child protection responsibilities in accordance with—

(i) the State plan under subsection (b) of this section;

(ii) the child protection standards set forth in subsection (b) of this section; and

(iii) any other criteria that the panel considers important to ensure the protection of children, including—

(I) a review of the extent to which the State and local child protective services system is coordinated with the foster care and adoption programs established under part E of title IV of the Social Security Act [42 U.S.C. 670 et seq.]; and

(II) a review of child fatalities and near fatalities (as defined in subsection (b)(4) of this section).

(B) Confidentiality

(i) In general

The members and staff of a panel established under paragraph (1)—

(I) shall not disclose to any person or government official any identifying information about any specific child protection case with respect to which the panel is provided information; and

(II) shall not make public other information unless authorized by State statute.

(ii) Civil sanctions

Each State that establishes a panel pursuant to paragraph (1) shall establish civil sanctions for a violation of clause (i).

(C) Public outreach

Each panel shall provide for public outreach and comment in order to assess the impact of current procedures and practices upon children and families in the community and in order to meet its obligations under subparagraph (A).

(5) State assistance

Each State that establishes a panel pursuant to paragraph (1)—

(A) shall provide the panel access to information on cases that the panel desires to review if such information is necessary for the panel to carry out its functions under paragraph (4); and

(B) shall provide the panel, upon its request, staff assistance for the performance of the duties of the panel.

(6) Reports

Each panel established under paragraph (1) shall prepare and make available to the State and the public, on an annual basis, a report containing a summary of the activities of the panel and recommendations to improve the child protection services system at the State

and local levels. Not later than 6 months after the date on which a report is submitted by the panel to the State, the appropriate State agency shall submit a written response to State and local child protection systems and the citizen review panel that describes whether or how the State will incorporate the recommendations of such panel (where appropriate) to make measurable progress in improving the State and local child protective system.

(d) Annual State data reports

Each State to which a grant is made under this section shall annually work with the Secretary to provide, to the maximum extent practicable, a report that includes the following:

(1) The number of children who were reported to the State during the year as abused or neglected.

(2) Of the number of children described in paragraph (1), the number with respect to whom such reports were—

(A) substantiated;

(B) unsubstantiated; or

(C) determined to be false.

(3) Of the number of children described in paragraph (2)—

(A) the number that did not receive services during the year under the State program funded under this section or an equivalent State program;

(B) the number that received services during the year under the State program funded under this section or an equivalent State program; and

(C) the number that were removed from their families during the year by disposition of the case.

(4) The number of families that received preventive services from the State during the year.

(5) The number of deaths in the State during the year resulting from child abuse or neglect.

(6) Of the number of children described in paragraph (5), the number of such children who were in foster care.

(7) The number of child protective services workers responsible for the intake and screening of reports filed in the previous year.

(8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

(9) The response time with respect to the provision of services to families and children where an allegation of abuse or neglect has been made.

(10) The number of child protective services workers responsible for intake, assessment, and investigation of child abuse and neglect reports relative to the number of reports investigated in the previous year.

(11) The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse and neglect, including the death of the child.

(12) The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out of court contacts between such individuals and children.

(13) The annual report containing the summary of the activities of the citizen review panels of the State required by subsection (c)(6) of this section.

(14) The number of children under the care of the State child protection system who are transferred into the custody of the State juvenile justice system.

(e) Annual report by Secretary

Within 6 months after receiving the State reports under subsection (d) of this section, the Secretary shall prepare a report based on information provided by the States for the fiscal year under such subsection and shall make the report and such information available to the Congress and the national clearinghouse for information relating to child abuse.

(Pub. L. 93–247, title I, §106, formerly §8, as added Pub. L. 100–294, title I, §101, Apr. 25, 1988, 102 Stat. 110; renumbered title I, §107, Pub. L. 101–126, §3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764; amended Pub. L. 102–295, title I, §114(a)–(c), May 28, 1992, 106 Stat. 192, 195; Pub. L. 102–586, §9(b), Nov. 4, 1992, 106 Stat. 5037; renumbered §106 and amended Pub. L. 104–235, title I, §§107, 113(a)(1)(A), Oct. 3, 1996, 110 Stat. 3071, 3079; Pub. L. 108–36, title I, §114(a)–(d), June 25, 2003, 117 Stat. 808–812.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(2) and (c)(4)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts B and E of title IV of the Act are classified generally to part B (§620 et seq.) and part E (§670 et seq.), respectively, of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (b)(2)(A)(xxi), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 106 of Pub. L. 93–247 was renumbered section 105 and is classified to section 5106 of this title.

AMENDMENTS

2003—Subsec. (a)(3). Pub. L. 108–36, §114(a)(1), inserted ", including ongoing case monitoring," after "case management" and "and treatment" after "and delivery of services".

Subsec. (a)(4). Pub. L. 108–36, §114(a)(2), substituted "developing, improving, and implementing risk and safety assessment tools and protocols" for "improving risk and safety assessment tools and protocols, automation systems that support the program and track reports of child abuse and neglect from intake through final disposition and information referral systems".

Subsec. (a)(5). Pub. L. 108–36, §114(a)(5), added par. (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 108–36, §114(a)(6), substituted "including—" and subpars. (A) to (C) for "opportunities and requirements for individuals overseeing and providing services to children and their families through the child protection system".

Pub. L. 108–36, §114(a)(4), redesignated par. (5) as (6). Former par. (6) redesignated (8).

Subsec. (a)(7). Pub. L. 108–36, §114(a)(3), (7), added par. (7) and struck out former par. (7) which read as follows:

''developing, strengthening, and supporting child abuse and neglect prevention, treatment, and research programs in the public and private sectors;''.

Subsec. (a)(8). Pub. L. 108–36, § 114(a)(4), redesignated par. (6) as (8). Former par. (8) redesignated (9).

Subsec. (a)(9). Pub. L. 108–36, § 114(a)(8), added par. (9) and struck out former par. (9) which related to programs to improve the provision of services for disabled infants with life-threatening conditions.

Pub. L. 108–36, § 114(a)(4), redesignated par. (8) as (9). Former par. (9) redesignated (12).

Subsec. (a)(10), (11). Pub. L. 108–36, § 114(a)(8), added pars. (10) and (11).

Subsec. (a)(12). Pub. L. 108–36, § 114(a)(4), (9), redesignated par. (9) as (12) and substituted a semicolon for period at end.

Subsec. (a)(13), (14). Pub. L. 108–36, § 114(a)(10), added pars. (13) and (14).

Subsec. (b)(1)(B). Pub. L. 108–36, § 114(b)(1)(A), substituted ''Secretary—'' for ''Secretary'', ''(i) of any substantive changes; and'' for ''of any substantive changes'', and ''under this section; and'' for ''under this section.'' and added cl. (ii).

Subsec. (b)(2). Pub. L. 108–36, § 114(b)(1)(C), inserted concluding provisions.

Subsec. (b)(2)(A)(ii), (iii). Pub. L. 108–36, § 114(b)(1)(B)(ii), added cls. (ii) and (iii). Former cls. (ii) and (iii) redesignated (iv) and (vi), respectively.

Subsec. (b)(2)(A)(iv). Pub. L. 108–36, § 114(b)(1)(B)(iii), inserted ''risk and'' before ''safety assessment''.

Pub. L. 108–36, § 114(b)(1)(B)(i), redesignated cl. (ii) as (iv). Former cl. (iv) redesignated (vii).

Subsec. (b)(2)(A)(v). Pub. L. 108–36, § 114(b)(1)(B)(iv), added cl. (v). Former cl. (v) redesignated (viii).

Subsec. (b)(2)(A)(vi), (vii). Pub. L. 108–36, § 114(b)(1)(B)(i), redesignated cls. (iii) and (iv) as (vi) and (vii), respectively. Former cls. (vi) and (vii) redesignated (x) and (xi), respectively.

Subsec. (b)(2)(A)(viii). Pub. L. 108–36, § 114(b)(1)(B)(i), redesignated cl. (v) as (viii). Former cl. (viii) redesignated (xii).

Subsec. (b)(2)(A)(viii)(II). Pub. L. 108–36, § 114(b)(1)(B)(v), substituted '', as described in clause (ix)'' for '', having a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect''.

Subsec. (b)(2)(A)(ix). Pub. L. 108–36, § 114(b)(1)(B)(vi), added cl. (ix). Former cl. (ix) redesignated (xiii).

Subsec. (b)(2)(A)(x) to (xii). Pub. L. 108–36, § 114(b)(1)(B)(i), redesignated cls. (vi) to (viii) as (x) to (xii), respectively. Former cls. (x) to (xii) redesignated (xiv) to (xvi), respectively.

Subsec. (b)(2)(A)(xiii). Pub. L. 108–36, § 114(b)(1)(B)(vii), inserted ''who has received training appropriate to the role, and'' after ''guardian ad litem,'' and ''who has received training appropriate to that role'' after ''advocate''.

Pub. L. 108–36, § 114(b)(1)(B)(i), redesignated cl. (ix) as (xiii). Former cl. (xiii) redesignated (xvii).

Subsec. (b)(2)(A)(xiv). Pub. L. 108–36, § 114(b)(1)(B)(i), redesignated cl. (x) as (xiv).

Subsec. (b)(2)(A)(xv). Pub. L. 108–36, § 114(b)(1)(B)(viii), struck out ''to be effective not later than 2 years after October 3, 1996'' before dash at end of introductory provisions.

Pub. L. 108–36, § 114(b)(1)(B)(i), redesignated cl. (xi) as (xv).

Subsec. (b)(2)(A)(xvi). Pub. L. 108–36, § 114(b)(1)(B)(ix)(I), struck out ''to be effective not later than 2 years after October 3, 1996,'' after ''mechanisms'' in introductory provisions.

Pub. L. 108–36, § 114(b)(1)(B)(i), redesignated cl. (xii) as (xvi).

Subsec. (b)(2)(A)(xvi)(IV). Pub. L. 108–36, § 114(b)(1)(B)(ix)(II), struck out ''and'' at end.

Subsec. (b)(2)(A)(xvii). Pub. L. 108–36, § 114(b)(1)(B)(x), substituted ''clause (xvi)'' for ''clause (xii)'' in two places.

Pub. L. 108–36, § 114(b)(1)(B)(i), redesignated cl. (xiii) as (xvii).

Subsec. (b)(2)(A)(xviii) to (xxii). Pub. L. 108–36, § 114(b)(1)(B)(xi), added cls. (xviii) to (xxii).

Subsec. (b)(3). Pub. L. 108–36, § 114(b)(2), substituted ''With regard to clauses (vi) and (vii) of paragraph (2)(A)'' for ''With regard to clauses (v) and (vi) of paragraph (2)(A)''.

Subsec. (c)(4)(A). Pub. L. 108–36, § 114(c)(1)(A)(i), in introductory provisions, substituted '', procedures, and practices'' for ''and procedures'' and ''State and local child protection system agencies'' for ''the agencies''.

Subsec. (c)(4)(A)(iii)(I). Pub. L. 108–36, § 114(c)(1)(A)(ii), substituted ''State and local'' for ''State''.

Subsec. (c)(4)(C). Pub. L. 108–36, § 114(c)(1)(B), added subpar. (C).

Subsec. (c)(6). Pub. L. 108–36, § 114(c)(2), substituted ''State and the public'' for ''public'' and inserted before period at end ''and recommendations to improve the child protection services system at the State and local levels. Not later than 6 months after the date on which a report is submitted by the panel to the State, the appropriate State agency shall submit a written response to State and local child protection systems and the citizen review panel that describes whether or how the State will incorporate the recommendations of such panel (where appropriate) to make measurable progress in improving the State and local child protective system''.

Subsec. (d)(13), (14). Pub. L. 108–36, § 114(d), added pars. (13) and (14).

1996—Pub. L. 104–235 reenacted section catchline without change and amended text generally, revising and restating subsecs. (a) and (b), substituting provisions relating to citizen review panels for provisions relating to State program plan in subsec. (c), provisions relating to annual State data reports for provisions relating to waivers in subsec. (d), provisions relating to annual report by Secretary for provisions relating to reduction of funds in case of failure to obligate in subsec. (e), and striking out subsecs. (f) and (g) which related to child welfare services and compliance and education grants, respectively.

1992—Subsec. (a). Pub. L. 102–295, § 114(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary, through the Center, is authorized to make grants to the States for purposes of assisting the States in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.''

Subsec. (b)(4). Pub. L. 102–586 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''provide for methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians;''.

Subsec. (c). Pub. L. 102–295, § 114(b), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–295, § 114(b)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 102–295, § 114(c), which directed the amendment of subsec. (d) by substituting ''subsection (a) of this section'' for ''this subsection'' in provisions preceding subparagraph (A), was executed by making the substitution the second place that phrase appeared in introductory provisions of par. (1) of subsec. (d) to reflect the probable intent of Congress.

Subsecs. (e) to (g). Pub. L. 102–295, § 114(b)(1), redesignated subsecs. (d) to (f) as (e) to (g), respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 114(d) of Pub. L. 102–295, as amended by Pub. L. 103–171, § 9(a), Dec. 2, 1993, 107 Stat. 1994, provided that: ''The amendments described in subsections (a) and (b) [amending this section] are made upon the date of the enactment of this Act [May 28, 1992]. Such amendments take effect on October 1 of the first fiscal year for which $40,000,000 or more is made available under subsection (a)(2)(B)(ii) of section 114 of the Child Abuse Prevention and Treatment Act [section 5106h(a)(2)(B)(ii) of this title] (as amended by section 117 of this Act). Prior to such amendments taking effect, section 107(a) of the Child Abuse Prevention and

Treatment Act [subsec. (a) of this section], as in effect on the day before the date of the enactment of this Act, continues to be in effect.''

[Pub. L. 103–171, § 9(b), Dec. 2, 1993, 107 Stat. 1994, provided that: ''The amendments made by subsection (a) [amending section 114(d) of Pub. L. 102–295, set out above] take effect on September 30, 1993.'']

REPORT

Pub. L. 108–36, title I, § 114(e), June 25, 2003, 117 Stat. 812, required the Secretary of Health and Human Services to prepare and submit to Congress, not later than 2 years after June 25, 2003, a report describing the extent of State implementation of the policies and procedures required under section 5106a(b)(2)(B)(ii) of this title.

CONGRESSIONAL FINDINGS

Section 9(a) of Pub. L. 102–586 provided that: ''The Congress finds that—

''(1) circumstances surrounding the death of a young boy named Adam Mann in New York City prompted a shocking documentary focusing on the inability of child protection services to protect suffering children;

''(2) the documentary described in paragraph (1) showed the serious need for systemic changes in our child welfare protection system;

''(3) thorough, coordinated, and comprehensive investigation will, it is hoped, lead to the prevention of abuse, neglect, or death in the future;

''(4) an undue burden is placed on investigation due to strict Federal and State laws and regulations regarding confidentiality;

''(5) while the Congress recognizes the importance of maintaining the confidentiality of records pertaining to child abuse, neglect, and death, often the purpose of confidentiality laws and regulations are [sic] defeated when they have the effect of protecting those responsible;

''(6) comprehensive and coordinated interagency communication needs to be established, with adequate provisions to protect against the public disclosure of any detrimental information need to be established [sic];

''(7) certain States, including Georgia, North Carolina, California, Missouri, Arizona, Minnesota, Oklahoma, and Oregon, have taken steps to establish by statute interagency, multidisciplinary fatality review teams to fully investigate incidents of death believed to be caused by child abuse or neglect;

''(8) teams such as those described in paragraph (7) should be established in every State, and their scope of review should be expanded to include egregious incidents of child abuse and neglect before the child in question dies; and

''(9) teams such as those described in paragraph (7) will increase the accountability of child protection services.''

§ 5106a–1. Repealed. Pub. L. 103–252, title IV, § 401(b)(2), May 18, 1994, 108 Stat. 672

Section, Pub. L. 93–247, title I, § 107A, as added Pub. L. 101–226, § 21, Dec. 12, 1989, 103 Stat. 1937; amended Pub. L. 102–295, title I, § 115(a), May 28, 1992, 106 Stat. 195, related to emergency child abuse prevention services grants.

§ 5106b. Repealed. Pub. L. 104–235, title I, § 108, Oct. 3, 1996, 110 Stat. 3078

Section, Pub. L. 93–247, title I, § 108, formerly § 9, as added Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 113; renumbered title I, § 108, and amended Pub. L. 101–126, § 3(a)(1), (2), (b)(4), Oct. 25, 1989, 103 Stat. 764, 765, related to technical assistance to States for child abuse prevention and treatment programs.

§ 5106c. Grants to States for programs relating to investigation and prosecution of child abuse and neglect cases

(a) Grants to States

The Secretary, in consultation with the Attorney General, is authorized to make grants to the States for the purpose of assisting States in developing, establishing, and operating programs designed to improve—

(1) the handling of child abuse and neglect cases, particularly cases of child sexual abuse and exploitation, in a manner which limits additional trauma to the child victim;

(2) the handling of cases of suspected child abuse or neglect related fatalities;

(3) the investigation and prosecution of cases of child abuse and neglect, particularly child sexual abuse and exploitation; and

(4) the handling of cases involving children with disabilities or serious health-related problems who are victims of abuse or neglect.

(b) Eligibility requirements

In order for a State to qualify for assistance under this section, such State shall—

(1) fulfill the requirements of section 5106a(b)[1] of this title;

(2) establish a task force as provided in subsection (c) of this section;

(3) fulfill the requirements of subsection (d) of this section;

(4) submit annually an application to the Secretary at such time and containing such information and assurances as the Secretary considers necessary, including an assurance that the State will—

(A) make such reports to the Secretary as may reasonably be required; and

(B) maintain and provide access to records relating to activities under subsections (a) and (b) of this section; and

(5) submit annually to the Secretary a report on the manner in which assistance received under this program was expended throughout the State, with particular attention focused on the areas described in paragraphs (1) through (3) of subsection (a) of this section.

(c) State task forces

(1) General rule

Except as provided in paragraph (2), a State requesting assistance under this section shall establish or designate, and maintain, a State multidisciplinary task force on children's justice (hereinafter referred to as ''State task force'') composed of professionals with knowledge and experience relating to the criminal justice system and issues of child physical abuse, child neglect, child sexual abuse and exploitation, and child maltreatment related fatalities. The State task force shall include—

(A) individuals representing the law enforcement community;

(B) judges and attorneys involved in both civil and criminal court proceedings related to child abuse and neglect (including individuals involved with the defense as well as the prosecution of such cases);

[1] See References in Text note below.

(C) child advocates, including both attorneys for children and, where such programs are in operation, court appointed special advocates;

(D) health and mental health professionals;

(E) individuals representing child protective service agencies;

(F) individuals experienced in working with children with disabilities;

(G) parents; and

(H) representatives of parents' groups.

(2) Existing task force

As determined by the Secretary, a State commission or task force established after January 1, 1983, with substantially comparable membership and functions, may be considered the State task force for purposes of this subsection.

(d) State task force study

Before a State receives assistance under this section, and at three year intervals thereafter, the State task force shall comprehensively—

(1) review and evaluate State investigative, administrative and both civil and criminal judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, as well as cases involving suspected child maltreatment related fatalities and cases involving a potential combination of jurisdictions, such as interstate, Federal-State, and State-Tribal; and

(2) make policy and training recommendations in each of the categories described in subsection (e) of this section.

The task force may make such other comments and recommendations as are considered relevant and useful.

(e) Adoption of State task force recommendations

(1) General rule

Subject to the provisions of paragraph (2), before a State receives assistance under this section, a State shall adopt recommendations of the State task force in each of the following categories—

(A) investigative, administrative, and judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, as well as cases involving suspected child maltreatment related fatalities and cases involving a potential combination of jurisdictions, such as interstate, Federal-State, and State-Tribal, in a manner which reduces the additional trauma to the child victim and the victim's family and which also ensures procedural fairness to the accused;

(B) experimental, model and demonstration programs for testing innovative approaches and techniques which may improve the prompt and successful resolution of civil and criminal court proceedings or enhance the effectiveness of judicial and administrative action in child abuse and neglect cases, particularly child sexual abuse and exploitation cases, including the enhancement of performance of court-appointed attorneys and guardians ad litem for children, and which also ensure procedural fairness to the accused; and

(C) reform of State laws, ordinances, regulations, protocols and procedures to provide comprehensive protection for children from abuse, particularly child sexual abuse and exploitation, while ensuring fairness to all affected persons.

(2) Exemption

As determined by the Secretary, a State shall be considered to be in fulfillment of the requirements of this subsection if—

(A) the State adopts an alternative to the recommendations of the State task force, which carries out the purpose of this section, in each of the categories under paragraph (1) for which the State task force's recommendations are not adopted; or

(B) the State is making substantial progress toward adopting recommendations of the State task force or a comparable alternative to such recommendations.

(f) Funds available

For grants under this section, the Secretary shall use the amount authorized by section 10603a of this title.

(Pub. L. 93–247, title I, § 107, formerly § 10, as added Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 113; renumbered title I, § 109, and amended Pub. L. 101–126, § 3(a)(1), (2), (b)(5), Oct. 25, 1989, 103 Stat. 764, 765; Pub. L. 102–295, title I, § 116(a), May 28, 1992, 106 Stat. 195; renumbered § 107 and amended Pub. L. 104–235, title I, § 113(a)(1)(B), (2), Oct. 3, 1996, 110 Stat. 3079; Pub. L. 108–36, title I, § 115, June 25, 2003, 117 Stat. 812.)

REFERENCES IN TEXT

Section 5106a(b) of this title, referred to in subsec. (b)(1), was in the original a reference to section 107(b), meaning section 107(b) of Pub. L. 93–247. Section 107 of Pub. L. 93–247 was renumbered section 106 by Pub. L. 104–235, title I, § 113(a)(1)(A), Oct. 3, 1996, 110 Stat. 3079. Section 109 of Pub. L. 93–247 was renumbered section 107 and is classified to this section.

PRIOR PROVISIONS

A prior section 107 of Pub. L. 93–247 was renumbered section 106 and is classified to section 5106a of this title.

AMENDMENTS

2003—Subsec. (a)(4). Pub. L. 108–36 added par. (4).

1996—Subsec. (a). Pub. L. 104–235, § 113(a)(2)(A), substituted "The Secretary, in consultation" for "The Secretary, acting through the Center and in consultation" in introductory provisions.

Subsec. (b)(1). Pub. L. 104–235, § 113(a)(2)(B), substituted "section" for "sections".

Subsec. (c)(1). Pub. L. 104–235, § 113(a)(2)(C), inserted comma after "maintain" in introductory provisions and semicolon at end of subpar. (F).

Subsec. (d)(1). Pub. L. 104–235, § 113(a)(2)(D), inserted "and" at end.

1992—Pub. L. 102–295, § 116(a)(1), in section catchline inserted "and neglect" after "child abuse".

Subsec. (a). Pub. L. 102–295, § 116(a)(2), added pars. (1) to (3) and struck out former pars. (1) and (2) which read as follows:

"(1) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

''(2) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.''

Subsec. (b)(1). Pub. L. 102–295, § 116(a)(3)(A), substituted ''sections 5106a(b) of this title'' for ''sections 5106a(b) and 5106a(e) of this title or receive a waiver under section 5106a(c) of this title''.

Subsec. (b)(4). Pub. L. 102–295, § 116(a)(3)(C), inserted ''annually'' after ''submit''.

Subsec. (b)(5). Pub. L. 102–295, § 116(a)(3)(B), (D), added par. (5).

Subsec. (c)(1). Pub. L. 102–295, § 116(a)(4), in introductory provisions inserted '', and maintain'' after ''designate'' and substituted ''child physical abuse, child neglect, child sexual abuse and exploitation, and child maltreatment related fatalities'' for ''child abuse'', in subpar. (B) substituted ''judges and attorneys involved in both civil and criminal court proceedings related to child abuse and neglect'' for ''judicial and legal officers'', in subpar. (C) inserted '', including both attorneys for children and, where such programs are in operation, court appointed special advocates'', and in subpar. (F) substituted ''disabilities'' for ''handicaps;''.

Subsec. (d). Pub. L. 102–295, § 116(a)(5), in introductory provisions substituted ''and at three year intervals thereafter, the State task force shall comprehensively'' for ''the State task force shall'', in par. (1) substituted ''both civil and criminal judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, as well as cases involving suspected child maltreatment related fatalities and cases involving a potential combination of jurisdictions, such as interstate, Federal-State, and State-Tribal;'' for ''judicial handling of cases of child abuse, particularly child sexual abuse; and'' and in par. (2) inserted ''policy and training'' before ''recommendations''.

Subsec. (e)(1)(A). Pub. L. 102–295, § 116(a)(6)(A), substituted ''child abuse and neglect, particularly child sexual abuse and exploitation, as well as cases involving suspected child maltreatment related fatalities and cases involving a potential combination of jurisdictions, such as interstate, Federal-State, and State-Tribal, in a manner which reduces the additional trauma to the child victim and the victim's family'' for ''child abuse, particularly child sexual abuse cases, in a manner which reduces the additional trauma to the child victim''.

Subsec. (e)(1)(B). Pub. L. 102–295, § 116(a)(6)(B), which directed substitution of ''improve the prompt and successful resolution of civil and criminal court proceedings or enhance the effectiveness of judicial and administrative action in child abuse and neglect cases, particularly child sexual abuse and exploitation cases, including the enhancement of performance of court-appointed attorneys and guardians ad litem for children'' for ''improve the rate'' and all that followed through ''abuse cases'', was executed by making the substitution for ''improve the rate of successful prosecution or enhance the effectiveness of judicial and administrative action in child abuse cases, particularly child sexual abuse cases'' to reflect the probable intent of Congress and the fact that ''abuse cases'' appeared twice.

Subsec. (e)(1)(C). Pub. L. 102–295, § 116(a)(6)(C), inserted '', protocols'' after ''regulations'' and ''and exploitation'' after ''sexual abuse''.

1989—Subsec. (b)(1). Pub. L. 101–126, § 3(b)(5), made technical amendments to references to section 5106a of this title to reflect renumbering of corresponding section of original act.

§ 5106d. Miscellaneous requirements relating to assistance

(a) Construction of facilities

(1) Restriction on use of funds

Assistance provided under this subchapter and subchapter III of this chapter may not be used for construction of facilities.

(2) Lease, rental, or repair

The Secretary may authorize the use of funds received under this subchapter and subchapter III of this chapter—

(A) where adequate facilities are not otherwise available, for the lease or rental of facilities; or

(B) for the repair or minor remodeling or alteration of existing facilities.

(b) Geographical distribution

The Secretary shall establish criteria designed to achieve equitable distribution of assistance under this subchapter and subchapter III of this chapter among the States, among geographic areas of the Nation, and among rural and urban areas of the Nation. To the extent possible, the Secretary shall ensure that the citizens of each State receive assistance from at least one project under this subchapter and subchapter III of this chapter.

(c) Limitation

No funds appropriated for any grant or contract pursuant to authorizations made in this subchapter and subchapter III of this chapter may be used for any purpose other than that for which such funds were authorized to be appropriated.

(d) Sense of Congress

It is the sense of Congress that the Secretary should encourage all States and public and private agencies or organizations that receive assistance under this subchapter to ensure that children and families with limited English proficiency who participate in programs under this subchapter are provided materials and services under such programs in an appropriate language other than English.

(e) Annual report

A State that receives funds under section 5106a(a) of this title shall annually prepare and submit to the Secretary a report describing the manner in which funds provided under this subchapter and subchapter III of this chapter, alone or in combination with other Federal funds, were used to address the purposes and achieve the objectives of section 5106a of this title.

(Pub. L. 93–247, title I, § 108, formerly § 11, as added Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 115; renumbered title I, § 110, Pub. L. 101–126, § 3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764; renumbered § 108 and amended Pub. L. 104–235, title I, §§ 109, 113(a)(1)(B), Oct. 3, 1996, 110 Stat. 3078, 3079; Pub. L. 108–36, title I, § 116, June 25, 2003, 117 Stat. 812.)

PRIOR PROVISIONS

A prior section 108 of Pub. L. 93–247 was classified to section 5106b of this title prior to repeal by Pub. L. 104–235.

AMENDMENTS

2003—Subsecs. (d), (e). Pub. L. 108–36 added subsecs. (d) and (e).

1996—Subsecs. (c), (d). Pub. L. 104–235 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: ''The Secretary, in consultation with the task force and the board, shall ensure that a majority share of assistance under this subchapter and subchapters III and V of this

chapter is available for discretionary research and demonstration grants.''

§ 5106e. Coordination of child abuse and neglect programs

The Secretary shall prescribe regulations and make such arrangements as may be necessary or appropriate to ensure that there is effective coordination among programs related to child abuse and neglect under this subchapter and subchapter III of this chapter and other such programs which are assisted by Federal funds.

(Pub. L. 93–247, title I, § 109, formerly § 12, as added Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 116; renumbered title I, § 111, Pub. L. 101–126, § 3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764; renumbered § 109, Pub. L. 104–235, title I, § 113(a)(1)(B), Oct. 3, 1996, 110 Stat. 3079.)

PRIOR PROVISIONS

A prior section 109 of Pub. L. 93–247 was renumbered section 107 and is classified to section 5106c of this title.

§ 5106f. Reports

(a) Omitted

(b) Effectiveness of State programs

Not later than two years after the first fiscal year for which funds are obligated under section 10603a of this title, the Secretary shall submit to the appropriate committees of Congress a report evaluating the effectiveness of assisted programs in achieving the objectives of section 5106c of this title.

(c) Study and report relating to citizen review panels

(1) Study

The Secretary shall conduct a study by random sample of the effectiveness of the citizen review panels established under section 5106a(c) of this title.

(2) Report

Not later than 3 years after June 25, 2003, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report that contains the results of the study conducted under paragraph (1).

(Pub. L. 93–247, title I, § 110, formerly § 13, as added Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 116; renumbered title I, § 112, and amended Pub. L. 101–126, § 3(a)(1), (2), (b)(6), Oct. 25, 1989, 103 Stat. 764, 765; renumbered § 110 and amended Pub. L. 104–235, title I, § 113(a)(1)(B), (3), Oct. 3, 1996, 110 Stat. 3079; Pub. L. 108–36, title I, § 118, June 25, 2003, 117 Stat. 813.)

CODIFICATION

Subsec. (a) of this section, which required the Secretary to submit to the appropriate committees of Congress a biennial report on efforts to coordinate the objectives and activities of agencies and organizations which are responsible for programs and activities related to child abuse and neglect, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 9 on page 100 of House Document No. 103–7.

PRIOR PROVISIONS

A prior section 110 of Pub. L. 93–247 was renumbered section 108 and is classified to section 5106d of this title.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–36 added subsec. (c).

1996—Subsec. (b). Pub. L. 104–235 substituted ''effectiveness of assisted programs in achieving the objectives of section 5106c of this title'' for ''effectiveness of—

''(1) assisted programs in achieving the objectives of section 5106c of this title; and

''(2) the technical assistance provided under section 5106b of this title''.

1989—Subsec. (b). Pub. L. 101–126, § 3(b)(6), made technical amendments to references to sections 5106b and 5106c of this title to reflect renumbering of corresponding sections of original act.

§ 5106f–1. Report concerning voluntary reporting system

Not later than April 30, 1993, and annually thereafter, the Secretary of Health and Human Services, acting through the Director of the National Center on Child Abuse and Neglect, shall prepare and submit to the appropriate committees of Congress a report concerning the measures being taken to assist States in implementing a voluntary reporting system for child abuse and neglect. Such reports shall contain information concerning the extent to which the child abuse and neglect reporting systems developed by the States are coordinated with the automated foster care and adoption reporting system required under section 679 of this title.

(Pub. L. 102–295, title I, § 142, May 28, 1992, 106 Stat. 200.)

CODIFICATION

Section was enacted as part of the Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992, and not as part of title I of the Child Abuse Prevention and Treatment Act which comprises this subchapter.

§ 5106g. Definitions

For purposes of this subchapter—

(1) the term ''child'' means a person who has not attained the lesser of—

(A) the age of 18; or

(B) except in the case of sexual abuse, the age specified by the child protection law of the State in which the child resides;

(2) the term ''child abuse and neglect'' means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm;

(3) the term ''Secretary'' means the Secretary of Health and Human Services;

(4) the term ''sexual abuse'' includes—

(A) the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or

(B) the rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(5) the term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the term ''withholding of medically indicated treatment'' means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment—

(A) the infant is chronically and irreversibly comatose;

(B) the provision of such treatment would—

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(C) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

(Pub. L. 93–247, title I, § 111, formerly § 14, as added Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 116; renumbered title I, § 113, and amended Pub. L. 101–126, § 3(a)(1), (2), (b)(7), Oct. 25, 1989, 103 Stat. 764, 765; renumbered § 111 and amended Pub. L. 104–235, title I, §§ 110, 113(a)(1)(B), Oct. 3, 1996, 110 Stat. 3078, 3079.)

PRIOR PROVISIONS

A prior section 111 of Pub. L. 93–247 was renumbered section 109 and is classified to section 5106e of this title.

AMENDMENTS

1996—Par. (1). Pub. L. 104–235, § 110(1), (2)(A), redesignated par. (3) as (1) and struck out former par. (1) which read as follows: ''the term 'board' means the Advisory Board on Child Abuse and Neglect established under section 5102 of this title;''.

Par. (2). Pub. L. 104–235, § 110(2)(A), (3), redesignated par. (4) as (2) and amended it generally. Prior to amendment, par. (2) read as follows: ''the term 'child abuse and neglect' means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by a person who is responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary;''.

Pub. L. 104–235, § 110(1) struck out par. (2) which read as follows: ''the term 'Center' means the National Center on Child Abuse and Neglect established under section 5101 of this title;''.

Par. (3). Pub. L. 104–235, § 110(2)(A), redesignated par. (6) as (3). Former par. (3) redesignated (1).

Par. (4). Pub. L. 104–235, § 110(2)(A), (4), redesignated par. (7) as (4) and in subpar. (B) inserted '', and in cases of caretaker or inter-familial relationships, statutory rape'' after ''rape''. Former par. (4) redesignated (2).

Par. (5). Pub. L. 104–235, § 110(1), (2)(A), redesignated par. (8) as (5) and struck out former par. (5) which read as follows: ''the term 'person who is responsible for the child's welfare' includes—

''(A) any employee of a residential facility; and

''(B) any staff person providing out-of-home care;''.

Par. (6). Pub. L. 104–235, § 110(2)(B), redesignated par. (10) as (6). Former par. (6) redesignated (3).

Pars. (7), (8). Pub. L. 104–235, § 110(2)(A), redesignated pars. (7) and (8) as (4) and (5), respectively.

Par. (9). Pub. L. 104–235, § 110(1), struck out par. (9) which read as follows: ''the term 'task force' means the Inter-Agency Task Force on Child Abuse and Neglect established under section 5103 of this title; and''.

Par. (10). Pub. L. 104–235, § 110(2)(B), redesignated par. (10) as (6).

1989—Pub. L. 101–126, § 3(b)(7)(A), made technical amendment to reference to this subchapter to reflect the insertion of title designations in the original act.

Pars. (1), (2), (9). Pub. L. 101–126, § 3(b)(7)(B)–(D), made technical amendments to references to sections 5101, 5102, and 5103 of this title to reflect renumbering of corresponding sections of original act.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 5106h. Authorization of appropriations

(a) In general

(1) General authorization

There are authorized to be appropriated to carry out this subchapter $120,000,000 for fiscal year 2004 and such sums as may be necessary for each of the fiscal years 2005 through 2008.

(2) Discretionary activities

(A) In general

Of the amounts appropriated for a fiscal year under paragraph (1), the Secretary shall make available 30 percent of such amounts to fund discretionary activities under this subchapter.

(B) Demonstration projects

Of the amounts made available for a fiscal year under subparagraph (A), the Secretary shall make available not more than 40 percent of such amounts to carry out section 5105 of this title.

(b) Availability of funds without fiscal year limitation

The Secretary shall ensure that funds appropriated pursuant to authorizations in this subchapter shall remain available until expended for the purposes for which they were appropriated.

(Pub. L. 93–247, title I, § 112, formerly § 15, as added Pub. L. 100–294, title I, § 101, Apr. 25, 1988, 102 Stat. 117; renumbered title I, § 114, and amended Pub. L. 101–126, § 3(a)(1), (2), (b)(8), Oct. 25, 1989, 103 Stat. 764, 765; Pub. L. 102–295, title I, § 117(a), May 28, 1992, 106 Stat. 197; renumbered § 112 and amended Pub. L. 104–235, title I, §§ 111, 113(a)(1)(B), Oct. 3, 1996, 110 Stat. 3078, 3079; Pub. L. 108–36, title I, § 117, June 25, 2003, 117 Stat. 812.)

PRIOR PROVISIONS

A prior section 112 of Pub. L. 93–247 was renumbered section 110 and is classified to section 5106f of this title.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–36, § 117(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out this subchapter, $100,000,000 for fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2001.''

Subsec. (a)(2)(B). Pub. L. 108–36, § 117(b), substituted ''Secretary shall make'' for ''Secretary make'' and ''section 5105'' for ''section 5106a''.

1996—Subsec. (a). Pub. L. 104–235 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows:

''(1) AUTHORIZATION.—There are authorized to be appropriated to carry out this subchapter, except for section 5106a–1 of this title, $100,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995.

''(2) ALLOCATIONS.—

''(A) Of the amounts appropriated under paragraph (1) for a fiscal year, $5,000,000 shall be available for the purpose of making additional grants to the States to carry out the provisions of section 5106a(g) of this title.

''(B) Of the amounts appropriated under paragraph (1) for a fiscal year and available after compliance with subparagraph (A)—

''(i) 33⅓ percent shall be available for activities under sections 5104, 5105, and 5106 of this title; and

''(ii) 66⅔ percent of such amounts shall be made available in each such fiscal year for activities under sections 5106a and 5106b of this title.''

1992—Subsec. (a). Pub. L. 102–295 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There are authorized to be appropriated for purposes of carrying out this subchapter $48,000,000 for fiscal year 1988, and such sums as may be necessary for fiscal years 1989, 1990, and 1991. Of the funds appropriated for any fiscal year under this section, except as provided in the succeeding sentence (1)(A) $11,000,000 shall be available for activities under sections 5104, 5105, and 5106 of this title, and (B), $9,000,000 shall be available in each fiscal year for activities under sections 5106a(a) and 5106b of this title, giving special consideration to continued funding of child abuse and neglect programs or projects (previously funded by the Department of Health and Human Services) of national or regional scope and demonstrated effectiveness, (2) $5,000,000 shall be available in each such year for grants and contracts under section 5106(a) of this title, for identification, treatment, and prevention of sexual abuse, and (3) $5,000,000 shall be available in each such year for the purpose of making additional grants to the States to carry out the provisions of section 5106a(f) of this title. With respect to any fiscal year in which the total amount appropriated under this section is less than $30,000,000, no less than $20,000,000 of the funds appropriated in such fiscal year shall be available as provided in clause (1) in the preceding sentence and of the remainder, one-half shall be available as provided for in clause (2) and one-half as provided for in clause (3) in the preceding sentence.''

1989—Pub. L. 101–126, § 3(b)(8), made technical amendments to references to this subchapter and to sections 5104, 5105, 5106, 5106a, and 5106b of this title to reflect the insertion of title designations and renumbering of corresponding sections in original act.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 117(b) of Pub. L. 102–295 provided that: ''Paragraph (2) of section 114(a) [42 U.S.C. 5106h(a)(2)], as amended by subsection (a), shall become effective on October 1 of the first fiscal year for which $30,000,000 or more would be available under subsection (a)(2)(B)(ii) of such section 114 (if such subsection were in effect), and until such fiscal year, the second and third sentences of section 114(a) [see 1992 Amendment note above] (as in effect prior to the amendment made by such subsection (a)) shall continue in effect.''

§ 5106i. Rule of construction

(a) In general

Nothing in this subchapter and subchapter III of this chapter shall be construed—

(1) as establishing a Federal requirement that a parent or legal guardian provide a child any medical service or treatment against the religious beliefs of the parent or legal guardian; and

(2) to require that a State find, or to prohibit a State from finding, abuse or neglect in cases in which a parent or legal guardian relies solely or partially upon spiritual means rather than medical treatment, in accordance with the religious beliefs of the parent or legal guardian.

(b) State requirement

Notwithstanding subsection (a) of this section, a State shall, at a minimum, have in place authority under State law to permit the child protective services system of the State to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatment from children with life threatening conditions. Except with respect to the withholding of medically indicated treatments from disabled infants with life threatening conditions, case by case determinations concerning the exercise of the authority of this subsection shall be within the sole discretion of the State.

(Pub. L. 93–247, title I, § 113, formerly § 115, as added and renumbered § 113, Pub. L. 104–235, title I, §§ 112, 113(a)(1)(C), Oct. 3, 1996, 110 Stat. 3078, 3079.)

§ 5107. Discretionary programs; authorization of appropriations

(a)(1) The Secretary of Health and Human Services, either directly, through grants to States and public and private, nonprofit organizations and agencies, or through jointly financed cooperative arrangements with States, public agencies, and other agencies and organizations, is authorized to provide for activities of national significance related to child abuse prevention and treatment and adoption reform, including operation of a national center to collect and disseminate information regarding child abuse and neglect, and operation of a national adoption information exchange system to facilitate the adoptive placement of children.

(2) The Secretary, in carrying out the provisions of this subsection, shall provide for the continued operation of the National Center on Child Abuse and Neglect in accordance with section 5101(a) of this title for each of the fiscal years 1982 and 1983.

(3) If the Secretary determines, in fiscal year 1982 or 1983, to carry out any of the activities de-

scribed in section 5101(b) of this title, the Secretary shall carry out such activities through the National Center on Child Abuse and Neglect.

(b) There is authorized to be appropriated to carry out this section $12,000,000 for each of the fiscal years 1982 and 1983. Of the amounts appropriated under this subsection for any fiscal year, not less than $2,000,000 shall be available to carry out title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 [42 U.S.C. 5111 et seq.].

(Pub. L. 97–35, title VI, §610, Aug. 13, 1981, 95 Stat. 488.)

REFERENCES IN TEXT

The Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, referred to in subsec. (b), is Pub. L. 95–266, Apr. 24, 1978, 92 Stat. 205, as amended. Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 is classified generally to subchapter II (§5111 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 5101 of this title and Tables.

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1981, and not as part of title I of the Child Abuse Prevention and Treatment Act which comprises this subchapter.

SUBCHAPTER II—ADOPTION OPPORTUNITIES

§5111. Congressional findings and declaration of purpose

(a) Findings

Congress finds that—

(1) the number of children in substitute care has increased by nearly 24 percent since 1994, as our Nation's foster care population included more than 565,000 as of September of 2001;

(2) children entering foster care have complex problems that require intensive services, with many such children having special needs because they are born to mothers who did not receive prenatal care, are born with life threatening conditions or disabilities, are born addicted to alcohol or other drugs, or have been exposed to infection with the etiologic agent for the human immunodeficiency virus;

(3) each year, thousands of children are in need of placement in permanent, adoptive homes;

(4) many thousands of children remain in institutions or foster homes solely because of legal and other barriers to their placement in permanent, adoptive homes;

(5)(A) currently, there are 131,000 children waiting for adoption;

(B) such children are typically school aged, in sibling groups, have experienced neglect or abuse, or have a physical, mental, or emotional disability; and

(C) while the children are of all races, children of color and older children (over the age of 10) are over represented in such group;

(6) adoption may be the best alternative for assuring the healthy development of such children;

(7) there are qualified persons seeking to adopt such children who are unable to do so because of barriers to their placement; and

(8) in order both to enhance the stability and love of the child's home environment and to avoid wasteful expenditures of public funds, such children should not have medically indicated treatment withheld from them nor be maintained in foster care or institutions when adoption is appropriate and families can be found for such children.

(b) Purpose

It is the purpose of this subchapter to facilitate the elimination of barriers, including geographic barriers, to adoption and to provide permanent and loving home environments for children who would benefit from adoption, particularly children with special needs, including disabled infants with life-threatening conditions, by providing a mechanism to—

(1) promote quality standards for adoption services, pre-placement, post-placement, and post-legal adoption counseling, and standards to protect the rights of children in need of adoption;

(2) maintain an Internet-based national adoption information exchange system to bring together children who would benefit from adoption and qualified prospective adoptive parents who are seeking such children, and conduct national recruitment efforts in order to reach prospective parents for children awaiting adoption; and

(3) demonstrate expeditious ways to free children for adoption for whom it has been determined that adoption is the appropriate plan.

(Pub. L. 95–266, title II, §201, Apr. 24, 1978, 92 Stat. 208; Pub. L. 98–457, title II, §201, Oct. 9, 1984, 98 Stat. 1755; Pub. L. 102–295, title IV, §401, May 28, 1992, 106 Stat. 211; Pub. L. 104–235, title II, §211, Oct. 3, 1996, 110 Stat. 3090; Pub. L. 108–36, title II, §201, June 25, 2003, 117 Stat. 818.)

AMENDMENTS

2003—Subsec. (a)(1) to (3). Pub. L. 108–36, §201(1)(A), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

"(1) the number of children in substitute care increased by nearly 61 percent between 1986 and 1994, as our Nation's foster care population included more than 452,000 as of June 1994;

"(2) increasingly children entering foster care have complex problems which require intensive services;

"(3) an increasing number of infants are born to mothers who did not receive prenatal care, are born addicted to alcohol and other drugs, and exposed to infection with the etiologic agent for the human immunodeficiency virus, are medically fragile, and technology dependent;".

Subsec. (a)(4). Pub. L. 108–36, §201(1)(A), (D), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "the welfare of thousands of children in institutions and foster homes and disabled infants with life-threatening conditions may be in serious jeopardy and some such children are in need of placement in permanent, adoptive homes;".

Subsec. (a)(5). Pub. L. 108–36, §201(1)(D), redesignated par. (7) as (5). Former par. (5) redesignated (4).

Subsec. (a)(6). Pub. L. 108–36, §201(1)(B), (D), redesignated par. (8) as (6) and struck out former par. (6) which read as follows: "the majority of such children are of school age, members of sibling groups or disabled;".

Subsec. (a)(7). Pub. L. 108–36, §201(1)(D), redesignated par. (9) as (7). Former par. (7) redesignated (5).

Subsec. (a)(7)(A). Pub. L. 108–36, §201(1)(C), added subpar. (A) and struck out former subpar. (A) which read

as follows: ''currently, 40,000 children are free for adoption and awaiting placement;''.

Subsec. (a)(8) to (10). Pub. L. 108–36, § 201(1)(D), redesignated pars. (8) to (10) as (6) to (8), respectively.

Subsec. (b). Pub. L. 108–36, § 201(2)(A), inserted '', including geographic barriers,'' after ''barriers'' in introductory provisions.

Subsec. (b)(2). Pub. L. 108–36, § 201(2)(B), substituted ''an Internet-based national'' for ''a national''.

1996—Subsec. (a)(1). Pub. L. 104–235, § 211(1)(A), substituted ''61 percent between 1986 and 1994'' for ''50 percent between 1985 and 1990'' and ''452,000 as of June 1994'' for ''400,000 children at the end of June, 1990''.

Subsec. (a)(5). Pub. L. 104–235, § 211(1)(B), substituted ''legal'' for ''local''.

Subsec. (a)(7). Pub. L. 104–235, § 211(1)(C), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''currently one-half of children free for adoption and awaiting placement are minorities;''.

Subsec. (b). Pub. L. 104–235, § 211(2), substituted ''conditions, by providing a mechanism to—'' for ''conditions, by—

''(1) promoting model adoption legislation and procedures in the States and territories of the United States in order to eliminate jurisdictional and legal obstacles to adoption; and

''(2) providing a mechanism for the Department of Health and Human Services to—'',

redesignated subpars. (A) to (C) of former par. (2) as pars. (1) to (3), respectively, and realigned margins.

1992—Pub. L. 102–295 amended section generally, designating existing provisions as subsecs. (a) and (b), inserting findings relating to the number of children in substitute care, foster care children with complex problems which require intensive services, infants born without prenatal care, addicted to alcohol or other drugs, or exposed to infection with the etiologic agent for human immunodeficiency virus, and percentage of children awaiting adoption who are minorities, inserting as purposes of this subchapter to provide a mechanism to recruit prospective parents for children awaiting adoption and to demonstrate expeditious ways to free children for adoption, and striking out as a purpose to provide a mechanism to coordinate with Federal departments and agencies to provide national adoption and foster care information data-gathering and analysis system.

1984—Pub. L. 98–457, § 201(a), (b)(1), in provisions before par. (1), inserted ''the welfare of thousands of children in institutions and foster homes and disabled infants with life-threatening conditions may be in serious jeopardy and that some such children are in need of placement in permanent, adoptive homes, that'' and substituted ''should not have medically indicated treatment withheld from them, nor be maintained in foster care'' for ''should not be maintained in foster care'' and ''children with special needs, including disabled infants with life-threatening conditions, by'' for ''children with special needs by''.

Par. (2). Pub. L. 98–457, § 201(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''providing a mechanism for the Department of Health and Human Services to (A) promote quality standards for adoption services (including pre-placement, post-placement, and post-adoption counseling and standards to protect the rights of children in need of adoption), and (B) provide for a national adoption and foster care information data gathering and analysis system and a national adoption information exchange system to bring together children who would benefit by adoption and qualified prospective adoptive parents who are seeking such children.''

STUDY OF INTERJURISDICTIONAL ADOPTION ISSUES

Pub. L. 105–89, title II, § 202(c), Nov. 19, 1997, 111 Stat. 2126, provided that:

''(1) IN GENERAL.—The Comptroller General of the United States shall—

''(A) study and consider how to improve procedures and policies to facilitate the timely and permanent adoptions of children across State and county jurisdictions; and

''(B) examine, at a minimum, interjurisdictional adoption issues—

''(i) concerning the recruitment of prospective adoptive families from other States and counties;

''(ii) concerning the procedures to grant reciprocity to prospective adoptive family home studies from other States and counties;

''(iii) arising from a review of the comity and full faith and credit provided to adoption decrees and termination of parental rights orders from other States; and

''(iv) concerning the procedures related to the administration and implementation of the Interstate Compact on the Placement of Children.

''(2) REPORT TO THE CONGRESS.—Not later than 1 year after the date of the enactment of this Act [Nov. 19, 1997], the Comptroller General shall submit to the appropriate committees of the Congress a report that includes—

''(A) the results of the study conducted under paragraph (1); and

''(B) recommendations on how to improve procedures to facilitate the interjurisdictional adoption of children, including interstate and intercounty adoptions, so that children will be assured timely and permanent placements.''

§ 5112. Repealed. Pub. L. 102–295, title IV, § 402, May 28, 1992, 106 Stat. 213

Section, Pub. L. 95–266, title II, § 202, Apr. 24, 1978, 92 Stat. 208; Pub. L. 98–457, title II, § 202, Oct. 9, 1984, 98 Stat. 1756, related to model adoption legislation and procedures.

§ 5113. Information and services

(a) In general

The Secretary shall establish in the Department of Health and Human Services an appropriate administrative arrangement to provide a centralized focus for planning and coordinating of all departmental activities affecting adoption and foster care and for carrying out the provisions of this subchapter. The Secretary shall make available such consultant services, on-site technical assistance and personnel, together with appropriate administrative expenses, including salaries and travel costs, as are necessary for carrying out such purposes, including services to facilitate the adoption of children with special needs and particularly of disabled infants with life-threatening conditions and services to couples considering adoption of children with special needs.

(b) Required activities

In connection with carrying out the provisions of this subchapter, the Secretary shall—

(1) conduct (directly or by grant to or contract with public or private agencies or organizations) an education and training program on adoption, and prepare, publish, and disseminate (directly or by grant to or contract with public or private agencies and organizations) to all interested parties, public and private agencies and organizations (including, but not limited to, hospitals, health care and family planning clinics, and social services agencies), and governmental bodies, information and education and training materials regarding adoption and adoption assistance programs;

(2) conduct, directly or by grant or contract with public or private organizations, ongoing,

extensive recruitment efforts on a national level, develop national public awareness efforts to unite children in need of adoption with appropriate adoptive parents, and establish a coordinated referral system of recruited families with appropriate State or regional adoption resources to ensure that families are served in a timely fashion;

(3) notwithstanding any other provision of law, provide (directly or by grant to or contract with public or private agencies or organizations) for (A) the operation of a national adoption information exchange system (including only such information as is necessary to facilitate the adoptive placement of children, utilizing computers and data processing methods to assist in the location of children who would benefit by adoption and in the placement in adoptive homes of children awaiting adoption); and (B) the coordination of such system with similar State and regional systems;

(4) provide (directly or by grant to or contract with public or private agencies or organizations, including adoptive family groups and minority groups) for the provision of technical assistance in the planning, improving, developing, and carrying out of programs and activities relating to adoption, and to promote professional leadership training of minorities in the adoption field;

(5) encourage involvement of corporations and small businesses in supporting adoption as a positive family-strengthening option, including the establishment of adoption benefit programs for employees who adopt children;

(6) support the placement of children in kinship care arrangements, pre-adoptive, or adoptive homes;

(7) study the efficacy of States contracting with public or private agencies (including community-based and other organizations), or sectarian institutions for the recruitment of potential adoptive and foster families and to provide assistance in the placement of children for adoption;

(8) consult with other appropriate Federal departments and agencies in order to promote maximum coordination of the services and benefits provided under programs carried out by such departments and agencies with those carried out by the Secretary, and provide for the coordination of such aspects of all programs within the Department of Health and Human Services relating to adoption;

(9) maintain (directly or by grant to or contract with public or private agencies or organizations) a National Resource Center for Special Needs Adoption to—

(A) promote professional leadership development of minorities in the adoption field;

(B) provide training and technical assistance to service providers and State agencies to improve professional competency in the field of adoption and the adoption of children with special needs; and

(C) facilitate the development of interdisciplinary approaches to meet the needs of children who are waiting for adoption and the needs of adoptive families;

(10) provide (directly or by grant to or contract with States, local government entities, public or private licensed child welfare or adoption agencies or adoptive family groups and community-based organizations with experience in working with minority populations) for the provision of programs aimed at increasing the number of minority children (who are in foster care and have the goal of adoption) placed in adoptive families, with a special emphasis on recruitment of minority families—

(A) which may include such activities as—

(i) outreach, public education, or media campaigns to inform the public of the needs and numbers of such children;

(ii) recruitment of prospective adoptive families for such children;

(iii) expediting, where appropriate, the legal availability of such children;

(iv) expediting, where appropriate, the agency assessment of prospective adoptive families identified for such children;

(v) formation of prospective adoptive family support groups;

(vi) training of personnel of—

(I) public agencies;

(II) private child welfare and adoption agencies that are licensed by the State; and

(III) adoptive parents organizations and community-based organizations with experience in working with minority populations;

(vii) use of volunteers and adoptive parent groups; and

(viii) any other activities determined by the Secretary to further the purposes of this subchapter; and

(B) shall be subject to the condition that such grants or contracts may be renewed if documentation is provided to the Secretary demonstrating that appropriate and sufficient placements of such children have occurred during the previous funding period; and

(11) provide (directly or by grant to or contract with States, local government entities, or public or private licensed child welfare or adoption agencies) for the implementation of programs that are intended to increase the number of older children (who are in foster care and with the goal of adoption) placed in adoptive families, with a special emphasis on child-specific recruitment strategies, including—

(A) outreach, public education, or media campaigns to inform the public of the needs and numbers of older youth available for adoption;

(B) training of personnel in the special needs of older youth and the successful strategies of child-focused, child-specific recruitment efforts; and

(C) recruitment of prospective families for such children.

(c) Services for families adopting special needs children

(1) In general

The Secretary shall provide (directly or by grant to or contract with States, local govern-

ment entities, public or private licensed child welfare or adoption agencies or adoptive family groups) for the provision of post legal adoption services for families who have adopted special needs children.

(2) Services

Services provided under grants made under this subsection shall supplement, not supplant, services from any other funds available for the same general purposes, including—

(A) individual counseling;

(B) group counseling;

(C) family counseling;

(D) case management;

(E) training public agency adoption personnel, personnel of private, child welfare and adoption agencies licensed by the State to provide adoption services, mental health services professionals, and other support personnel to provide services under this subsection;

(F) assistance to adoptive parent organizations;

(G) assistance to support groups for adoptive parents, adopted children, and siblings of adopted children;

(H) day treatment; and

(I) respite care.

(d) Improving placement rate of children in foster care

(1) In general

The Secretary shall make grants for improving State efforts to increase the placement of foster care children legally free for adoption, according to a pre-established plan and goals for improvement. Grants funded by this section must include a strong evaluation component which outlines the innovations used to improve the placement of special needs children who are legally free for adoption, and the successes and failures of the initiative. The evaluations will be submitted to the Secretary who will compile the results of projects funded by this section and submit a report to the appropriate committees of Congress. The emphasis of this program must focus on the improvement of the placement rate—not the aggregate number of special needs children placed in permanent homes. The Secretary, when reviewing grant applications[1] shall give priority to grantees who propose improvements designed to continue in the absence of Federal funds.

(2) Applications; technical and other assistance

(A) Applications

Each State entering into an agreement under this subsection shall submit an application to the Secretary that describes the manner in which the State will use funds during the 3 fiscal years subsequent to the date of the application to accomplish the purposes of this section. Such application shall be in a form and manner determined to be appropriate by the Secretary. Each application shall include verification of the placements described in paragraph (1).

(B) Technical and other assistance

The Secretary shall provide, directly or by grant to or contract with public or private agencies or organizations—

(i) technical assistance and resource and referral information to assist State or local governments with termination of parental rights issues, in recruiting and retaining adoptive families, in the successful placement of children with special needs, and in the provision of pre- and post-placement services, including post-legal adoption services; and

(ii) other assistance to help State and local governments replicate successful adoption-related projects from other areas in the United States.

(3) Payments

(A) In general

Payments under this subsection shall begin during fiscal year 1989. Payments under this section during any fiscal year shall not exceed $1,000,000. No payment may be made under this subsection unless an amount in excess of $5,000,000 is appropriated for such fiscal year under section 5115(a) of this title.

(B) Reversion of unused funds

Any payment made to a State under this subsection which is not used by such State for the purpose provided in paragraph (1) during the fiscal year payment is made shall revert to the Secretary on October 1st of the next fiscal year and shall be used to carry out the purposes of this subchapter.

(e) Elimination of barriers to adoptions across jurisdictional boundaries

(1) In general

The Secretary shall award grants to, or enter into contracts with, States, local government entities, public or private child welfare or adoption agencies, adoption exchanges, or adoption family groups to carry out initiatives to improve efforts to eliminate barriers to placing children for adoption across jurisdictional boundaries.

(2) Services to supplement not supplant

Services provided under grants made under this subsection shall supplement, not supplant, services provided using any other funds made available for the same general purposes including—

(A) developing a uniform homestudy standard and protocol for acceptance of homestudies between States and jurisdictions;

(B) developing models of financing cross-jurisdictional placements;

(C) expanding the capacity of all adoption exchanges to serve increasing numbers of children;

(D) developing training materials and training social workers on preparing and moving children across State lines; and

(E) developing and supporting initiative models for networking among agencies, adoption exchanges, and parent support groups across jurisdictional boundaries.

[1] So in original. Probably should be followed by a comma.

(Pub. L. 95–266, title II, § 203, Apr. 24, 1978, 92 Stat. 209; Pub. L. 98–457, title II, § 203, Oct. 9, 1984, 98 Stat. 1756; Pub. L. 100–294, title II, § 202, Apr. 25, 1988, 102 Stat. 122; Pub. L. 102–295, title IV, § 403, May 28, 1992, 106 Stat. 213; Pub. L. 104–235, title II, § 212, Oct. 3, 1996, 110 Stat. 3090; Pub. L. 108–36, title II, § 202, June 25, 2003, 117 Stat. 819.)

AMENDMENTS

2003—Pub. L. 108–36, § 202(1), added section catchline and struck out former catchline.

Subsec. (a). Pub. L. 108–36, § 202(2), inserted heading.

Subsec. (b). Pub. L. 108–36, § 202(3)(A), inserted heading.

Subsec. (b)(1). Pub. L. 108–36, § 202(3)(B), struck out ''nonprofit'' before ''agencies or'' in two places.

Subsec. (b)(2). Pub. L. 108–36, § 202(3)(C), struck out ''nonprofit'' before ''organizations,''.

Subsec. (b)(3). Pub. L. 108–36, § 202(3)(D), struck out ''nonprofit'' before ''agencies or organizations)''.

Subsec. (b)(4). Pub. L. 108–36, § 202(3)(E), struck out ''nonprofit'' before ''agencies or organizations,''.

Subsec. (b)(6). Pub. L. 108–36, § 202(3)(F), substituted ''support'' for ''study the nature, scope, and effects of''.

Subsec. (b)(7). Pub. L. 108–36, § 202(3)(G), struck out ''nonprofit'' before ''agencies (including''.

Subsec. (b)(9). Pub. L. 108–36, § 202(3)(H), struck out ''nonprofit'' before ''agencies or organizations)'' in introductory provisions and ''and'' at end.

Subsec. (b)(10). Pub. L. 108–36, § 202(3)(I), struck out ''nonprofit'' before ''licensed child'' in introductory provisions and before ''child welfare and adoption'' in subpar. (A)(vi)(II), and substituted ''; and'' for period at end.

Subsec. (b)(11). Pub. L. 108–36, § 202(3)(J), added par. (11).

Subsec. (c). Pub. L. 108–36, § 202(4)(A), inserted heading.

Subsec. (c)(1). Pub. L. 108–36, § 202(4)(A), (D), inserted heading and struck out ''nonprofit'' before ''licensed child'' in text.

Subsec. (c)(2). Pub. L. 108–36, § 202(4)(B)–(D), inserted heading, realigned margins, struck out ''nonprofit'' before ''child welfare'' in subpar. (E), and added subpars. (H) and (I).

Subsec. (d). Pub. L. 108–36, § 202(5), inserted subsec., par., and subpar. headings and, in par. (2)(B), struck out ''nonprofit'' before ''agencies'' and realigned cl. margins.

Subsec. (e). Pub. L. 108–36, § 202(6), added subsec. (e).

1996—Subsec. (a). Pub. L. 104–235, § 212(1), struck out at end ''The Secretary shall, not later than 12 months after May 28, 1992, prepare and submit to the committees of Congress having jurisdiction over such services reports, as appropriate, containing appropriate data concerning the manner in which activities were carried out under this subchapter, and such reports shall be made available to the public.''

Subsec. (b)(6). Pub. L. 104–235, § 212(2)(A), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''continue to study the nature, scope, and effects of the placement of children in adoptive homes (not including the homes of stepparents or relatives of the child in question) by persons or agencies which are not licensed by or subject to regulation by any governmental entity;''.

Subsec. (b)(7) to (10). Pub. L. 104–235, § 212(2)(B), (C), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

Subsec. (d)(2). Pub. L. 104–235, § 212(3), designated existing provisions as subpar. (A), substituted ''that describes the manner in which the State will use funds during the 3 fiscal years subsequent to the date of the application to accomplish the purposes of this section. Such application shall be'' for ''for each fiscal year'', and added subpar. (B).

1992—Subsec. (a). Pub. L. 102–295, § 403(1), inserted '', on-site technical assistance'' after ''consultant services'' and ''including salaries and travel costs,'' after ''administrative expenses,'' and inserted at end ''The Secretary shall, not later than 12 months after May 28, 1992, prepare and submit to the committees of Congress having jurisdiction over such services reports, as appropriate, containing appropriate data concerning the manner in which activities were carried out under this subchapter, and such reports shall be made available to the public.''

Subsec. (b)(1), (2). Pub. L. 102–295, § 403(2)(A), (B), added par. (2), redesignated former par. (2) as (1), and struck out former par. (1) which read as follows: ''provide (after consultation with other appropriate Federal departments and agencies, including the Bureau of the Census and appropriate State and local agencies) for the establishment and operation of a Federal adoption and foster care data-gathering and analysis system;''.

Subsec. (b)(4). Pub. L. 102–295, § 403(2)(C), inserted '', and to promote professional leadership training of minorities in the adoption field''.

Subsec. (b)(8), (9). Pub. L. 102–295, § 403(2)(D), added par. (8) and redesignated former par. (8) as (9).

1988—Subsec. (b)(8). Pub. L. 100–294, § 202(a), added par. (8).

Subsecs. (c), (d). Pub. L. 100–294, § 202(b), (c), added subsecs. (c) and (d).

1984—Subsec. (a). Pub. L. 98–457, § 203(a), (b)(1), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' and inserted provision requiring the Secretary to make available services to facilitate the adoption of children with special needs and particularly of disabled infants with life-threatening conditions and services to couples considering adoption of children with special needs.

Subsec. (b). Pub. L. 98–457, § 203(c)(1), substituted ''this subchapter'' for ''subsection (a) of this section'' in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98–457, § 203(c)(2), substituted ''provide (after consultation with other appropriate Federal departments and agencies, including the Bureau of the Census and appropriate State and local agencies) for the establishment and operation of a Federal adoption and foster care data-gathering and analysis system'' for ''provide (directly or by grant to or contract with public or private nonprofit agencies and organizations) for the establishment and operation of a national adoption and foster care data gathering and analysis system utilizing data collected by States pursuant to requirements of law''.

Subsec. (b)(4). Pub. L. 98–457, § 203(c)(3)(A), substituted ''adoptive family groups and minority groups'' for ''parent groups''.

Subsec. (b)(5), (6). Pub. L. 98–457, § 203(c)(3)(B), (C), added pars. (5) and (6). Former par. (5) redesignated (7).

Subsec. (b)(7). Pub. L. 98–457, § 203(c)(3)(C), (D), redesignated former par. (5) as (7) and substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

KINSHIP CARE

Pub. L. 105–89, title III, § 303, Nov. 19, 1997, 111 Stat. 2129, provided that:

''(a) REPORT.—

''(1) IN GENERAL.—The Secretary of Health and Human Services shall—

''(A) not later than June 1, 1998, convene the advisory panel provided for in subsection (b)(1) and prepare and submit to the advisory panel an initial report on the extent to which children in foster care are placed in the care of a relative (in this section referred to as 'kinship care'); and

''(B) not later than June 1, 1999, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a final report on the matter described in subparagraph (A), which shall—

''(i) be based on the comments submitted by the advisory panel pursuant to subsection (b)(2) and other information and considerations; and

''(ii) include the policy recommendations of the Secretary with respect to the matter.

''(2) REQUIRED CONTENTS.—Each report required by paragraph (1) shall—

''(A) include, to the extent available for each State, information on—

''(i) the policy of the State regarding kinship care;

''(ii) the characteristics of the kinship care providers (including age, income, ethnicity, and race, and the relationship of the kinship care providers to the children);

''(iii) the characteristics of the household of such providers (such as number of other persons in the household and family composition);

''(iv) how much access to the child is afforded to the parent from whom the child has been removed;

''(v) the cost of, and source of funds for, kinship care (including any subsidies such as medicaid and cash assistance);

''(vi) the permanency plan for the child and the actions being taken by the State to achieve the plan;

''(vii) the services being provided to the parent from whom the child has been removed; and

''(viii) the services being provided to the kinship care provider; and

''(B) specifically note the circumstances or conditions under which children enter kinship care.

''(b) ADVISORY PANEL.—

''(1) ESTABLISHMENT.—The Secretary of Health and Human Services, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate, shall convene an advisory panel which shall include parents, foster parents, relative caregivers, former foster children, State and local public officials responsible for administering child welfare programs, private persons involved in the delivery of child welfare services, representatives of tribal governments and tribal courts, judges, and academic experts.

''(2) DUTIES.—The advisory panel convened pursuant to paragraph (1) shall review the report prepared pursuant to subsection (a), and, not later than October 1, 1998, submit to the Secretary comments on the report.''

§ 5114. Study and report of unlicensed or unregulated adoption placements

(a) In general

The Secretary shall provide for a study (the results of which shall be reported to the appropriate committees of the Congress not later than eighteen months after June 25, 2003) designed to determine—

(1) the nature, scope, and effects of the interstate (and, to the extent feasible, intrastate) placement of children in adoptive homes (not including the homes of stepparents or relatives of the child in question) by persons or agencies.[1]

(2) how interstate placements are being financed across State lines;

(3) recommendations on best practice models for both interstate and intrastate adoptions; and

(4) how State policies in defining special needs children differentiate or group similar categories of children.

(b) Dynamics of successful adoption

The Secretary shall conduct research (directly or by grant to, or contract with, public or private nonprofit research agencies or organizations) about adoption outcomes and the factors affecting those outcomes. The Secretary shall submit a report containing the results of such research to the appropriate committees of the Congress not later than the date that is 36 months after June 25, 2003.

(c) Interjurisdictional adoption

Not later than 1 year after June 25, 2003, the Secretary shall submit to the appropriate committees of the Congress a report that contains recommendations for an action plan to facilitate the interjurisdictional adoption of foster children.

(Pub. L. 95–266, title II, § 204, Apr. 24, 1978, 92 Stat. 210; Pub. L. 108–36, title II, §§ 203, 204, June 25, 2003, 117 Stat. 821.)

AMENDMENTS

2003—Pub. L. 108–36 designated existing provisions as subsec. (a), inserted subsec. heading and par. (1) designation, substituted ''June 25, 2003'' for ''April 24, 1978'' and ''to determine—'' for ''to determine'', struck out ''which are not licensed by or subject to regulation by any governmental entity'' after ''by persons or agencies'', and added pars. (2) to (4) and subsecs. (b) and (c).

§ 5115. Authorization of appropriations

(a) There are authorized to be appropriated $40,000,000 for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2008 to carry out programs and activities authorized under this subchapter.

(b) The Secretary shall ensure that funds appropriated pursuant to authorizations in this subchapter shall remain available until expended for the purposes for which they were appropriated.

(Pub. L. 95–266, title II, § 205, Apr. 24, 1978, 92 Stat. 211; Pub. L. 98–457, title II, § 204, Oct. 9, 1984, 98 Stat. 1757; Pub. L. 100–294, title II, § 201, Apr. 25, 1988, 102 Stat. 122; Pub. L. 102–295, title IV, § 404, May 28, 1992, 106 Stat. 214; Pub. L. 104–235, title II, § 213, Oct. 3, 1996, 110 Stat. 3091; Pub. L. 108–36, title II, § 205, June 25, 2003, 117 Stat. 822.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original ''this subtitle'', and was translated as reading ''this title'', meaning title II of Pub. L. 95–266, to reflect the probable intent of Congress, because Pub. L. 95–266 does not contain subtitles.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–36 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There are authorized to be appropriated, $20,000,000 for fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2001 to carry out programs and activities authorized.''

1996—Subsec. (a). Pub. L. 104–235, § 213(1), substituted ''$20,000,000 for fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2001 to carry out programs and activities authorized'' for ''$10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995, to carry out programs and activities under this subchapter except for programs and activities authorized under sections 5113(b)(9) and 5113(c)(1) of this title''.

Subsecs. (b), (c). Pub. L. 104–235, § 213(2), (3), redesignated subsec. (c) as (b) and struck out former subsec.

[1] So in original. The period probably should be a semicolon.

(b) which read as follows: ''For any fiscal year in which appropriations under subsection (a) of this section exceeds $5,000,000, there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995, to carry out section 5113(b)(9) of this title, and there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995, to carry out section 5113(c)(1) of this title.''

1992—Subsec. (a). Pub. L. 102–295, § 404(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''There are hereby authorized to be appropriated $6,000,000 for the fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991 to carry out programs and activities under this subchapter except for programs and activities authorized under sections 5113(b)(8) and 5113(c)(1) of this title.''

Subsec. (b). Pub. L. 102–295, § 404(2), substituted ''$10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995, to carry out section 5113(b)(9) of this title, and there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995, to carry out section 5113(c)(1) of this title'' for ''$3,000,000 for fiscal year 1988, and such sums as may be necessary for fiscal years 1989, 1990, and 1991 for the purpose of carrying out section 5113(b)(8) of this title, and there are authorized to be appropriated $3,000,000 for fiscal year 1988, and such sums as may be necessary for fiscal years 1989, 1990, and 1991 for the purpose of carrying out section 5113(c)(1) of this title''.

1988—Pub. L. 100–294 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1978, such sums as may be necessary for the succeeding three fiscal years, and $5,000,000 for each of the fiscal years 1984, 1985, 1986, and 1987, to carry out this subchapter.''

1984—Pub. L. 98–457 inserted provisions authorizing appropriations of $5,000,000 for each of fiscal years 1984, 1985, 1986, and 1987.

§ 5115a. Repealed. Pub. L. 104–188, title I, § 1808(d), Aug. 20, 1996, 110 Stat. 1904

Section, Pub. L. 103–382, title V, § 553, Oct. 20, 1994, 108 Stat. 4056, related to multiethnic placements.

SUBCHAPTER III—COMMUNITY–BASED GRANTS FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT

CODIFICATION

Subchapter is comprised of title II of the Child Abuse Prevention and Treatment Act, Pub. L. 93–247. Title I of that Act is classified to subchapter I (§ 5101 et seq.) of this chapter.

AMENDMENTS

2003—Pub. L. 108–36, title I, § 121(c), June 25, 2003, 117 Stat. 814, substituted ''COMMUNITY–BASED GRANTS FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT'' for ''COMMUNITY-BASED FAMILY RESOURCE AND SUPPORT GRANTS'' in subchapter heading.

§ 5116. Purpose and authority

(a) Purpose

It is the purpose of this subchapter—

(1) to support community-based efforts to develop, operate, expand, enhance, and, where appropriate to network, initiatives aimed at the prevention of child abuse and neglect, and to support networks of coordinated resources and activities to better strengthen and support families to reduce the likelihood of child abuse and neglect; and

(2) to foster an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect.

(b) Authority

The Secretary shall make grants under this subchapter on a formula basis to the entity designated by the State as the lead entity (hereafter referred to in this subchapter as the ''lead entity'') under section 5116a(1) of this title for the purpose of—

(1) developing, operating, expanding and enhancing community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate) that are accessible, effective, culturally appropriate, and build upon existing strengths that—

(A) offer assistance to families;

(B) provide early, comprehensive support for parents;

(C) promote the development of parenting skills, especially in young parents and parents with very young children;

(D) increase family stability;

(E) improve family access to other formal and informal resources and opportunities for assistance available within communities;

(F) support the additional needs of families with children with disabilities through respite care and other services;

(G) demonstrate a commitment to meaningful parent leadership, including among parents of children with disabilities, parents with disabilities, racial and ethnic minorities, and members of other underrepresented or underserved groups; and

(H) provide referrals to early health and developmental services;

(2) fostering the development of a continuum of preventive services for children and families through State and community-based collaborations and partnerships both public and private;

(3) financing the start-up, maintenance, expansion, or redesign of specific family resource and support program services (such as respite care services, child abuse and neglect prevention activities, disability services, mental health services, housing services, transportation, adult education, home visiting and other similar services) identified by the inventory and description of current services required under section 5116d(3)[1] of this title as an unmet need, and integrated with the network of community-based family resource and support program to the extent practicable given funding levels and community priorities;

(4) maximizing funding through leveraging of funds for the financing, planning, community mobilization, collaboration, assessment, information and referral, startup, training and technical assistance, information management, reporting and evaluation costs for es-

[1] See References in Text note below.

tablishing, operating, or expanding community-based and prevention-focused, programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate); and

(5) financing public information activities that focus on the healthy and positive development of parents and children and the promotion of child abuse and neglect prevention activities.

(Pub. L. 93–247, title II, § 201, as added Pub. L. 104–235, title I, § 121, Oct. 3, 1996, 110 Stat. 3080; amended Pub. L. 108–36, title I, § 121(a), (b), June 25, 2003, 117 Stat. 813.)

REFERENCES IN TEXT

Section 5116d(3) of this title, referred to in subsec. (b)(3), was in the original ''section 205(a)(3)'' and was translated as reading ''section 205(3)'', meaning section 205(3) of Pub. L. 93–247, to reflect the probable intent of Congress, because section 205 does not contain subsections.

PRIOR PROVISIONS

A prior section 5116, Pub. L. 93–247, title II, § 201, as added Pub. L. 103–252, title IV, § 401(a), May 18, 1994, 108 Stat. 666, related to community-based family resource programs, prior to the general amendment of this subchapter by Pub. L. 104–235, § 121.

Another prior section 5116, Pub. L. 93–247, title II, § 201, formerly Pub. L. 98–473, title IV, § 402, Oct. 12, 1984, 98 Stat. 2197; renumbered § 201 of Pub. L. 93–247, and amended Pub. L. 101–126, §§ 2(a), 3(a)(3), (c)(1), 4(a), Oct. 25, 1989, 103 Stat. 764, 766; Pub. L. 102–295, title I, § 121(b), May 28, 1992, 106 Stat. 198, set forth purpose of subchapter to assist States in supporting child abuse and neglect prevention activities through community based grants, prior to the general amendment of this subchapter by Pub. L. 103–252, § 401(a).

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–36, § 121(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''to support State efforts to develop, operate, expand and enhance a network of community-based, prevention-focused, family resource and support programs that coordinate resources among existing education, vocational rehabilitation, disability, respite care, health, mental health, job readiness, self-sufficiency, child and family development, community action, Head Start, child care, child abuse and neglect prevention, juvenile justice, domestic violence prevention and intervention, housing, and other human service organizations within the State; and''.

Subsec. (b)(1). Pub. L. 108–36, § 121(b)(1)(A), in introductory provisions, substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate) that are accessible, effective, culturally appropriate, and build upon existing strengths that'' for ''Statewide networks of community-based, prevention-focused, family resource and support programs that''.

Subsec. (b)(1)(G), (H). Pub. L. 108–36, § 121(b)(1)(B), (C), added subpars. (G) and (H) and struck out former subpar. (G) which read as follows: ''decrease the risk of homelessness;''.

Subsec. (b)(4). Pub. L. 108–36, § 121(b)(2), inserted ''through leveraging of funds'' after ''maximizing funding'' and substituted ''community-based and prevention-focused'' for ''a Statewide network of community-based, prevention-focused'' and ''programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'' for ''family resource and support program''.

§ 5116a. Eligibility

A State shall be eligible for a grant under this subchapter for a fiscal year if—

(1)(A) the chief executive officer of the State has designated a lead entity to administer funds under this subchapter for the purposes identified under the authority of this subchapter, including to develop, implement, operate, enhance or expand community-based and prevention-focused, programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate);

(B) such lead entity is an existing public, quasi-public, or nonprofit private entity (which may be an entity that has not been established pursuant to State legislation, executive order, or any other written authority of the State) that exists to strengthen and support families to prevent child abuse and neglect with a demonstrated ability to work with other State and community-based agencies to provide training and technical assistance, and that has the capacity and commitment to ensure the meaningful involvement of parents who are consumers and who can provide leadership in the planning, implementation, and evaluation of programs and policy decisions of the applicant agency in accomplishing the desired outcomes for such efforts;

(C) in determining which entity to designate under subparagraph (A), the chief executive officer should give priority consideration equally to a trust fund advisory board of the State or to an existing entity that leverages Federal, State, and private funds for a broad range of child abuse and neglect prevention activities and family resource programs, and that is directed by an interdisciplinary, public-private structure, including participants from communities; and

(D) in the case of a State that has designated a State trust fund advisory board for purposes of administering funds under this subchapter (as such subchapter was in effect on October 3, 1996) and in which one or more entities that leverage Federal, State, and private funds (as described in subparagraph (C)) exist, the chief executive officer shall designate the lead entity only after full consideration of the capacity and expertise of all entities desiring to be designated under subparagraph (A);

(2) the chief executive officer of the State provides assurances that the lead entity will provide or will be responsible for providing—

(A) community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate) composed of local, collaborative, public-private partnerships directed by interdisciplinary structures with balanced representation from private and public sector members, parents, and public and private nonprofit service providers and individuals and organizations experienced in working in partnership with families with children with disabilities;

(B) direction through an interdisciplinary, collaborative, public-private structure with

balanced representation from private and public sector members, parents, and public sector and private nonprofit sector service providers, and parents with disabilities; and

(C) direction and oversight through identified goals and objectives, clear lines of communication and accountability, the provision of leveraged or combined funding from Federal, State and private sources, centralized assessment and planning activities, the provision of training and technical assistance, and reporting and evaluation functions; and

(3) the chief executive officer of the State provides assurances that the lead entity—

(A) has a demonstrated commitment to parental participation in the development, operation, and oversight of the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate);

(B) has a demonstrated ability to work with State and community-based public and private nonprofit organizations to develop a continuum of preventive, family centered, comprehensive services for children and families through the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate);

(C) has the capacity to provide operational support (both financial and programmatic)[1] training, technical assistance, and evaluation assistance, to community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate), through innovative, interagency funding and interdisciplinary service delivery mechanisms; and

(D) will integrate its efforts with individuals and organizations experienced in working in partnership with families with children with disabilities, parents with disabilities, and with the child abuse and neglect prevention activities of the State, and demonstrate a financial commitment to those activities.

(Pub. L. 93–247, title II, § 202, as added Pub. L. 104–235, title I, § 121, Oct. 3, 1996, 110 Stat. 3081; amended Pub. L. 108–36, title I, § 122, June 25, 2003, 117 Stat. 814.)

PRIOR PROVISIONS

A prior section 5116a, Pub. L. 93–247, title II, § 202, formerly Pub. L. 98–473, title IV, § 403, Oct. 12, 1984, 98 Stat. 2197; renumbered § 202 of Pub. L. 93–247, and amended Pub. L. 101–126, §§ 2(a), 3(a)(3), (c)(1), 4(b), Oct. 25, 1989, 103 Stat. 764, 766, defined ''Secretary'' and ''State'' as used in this subchapter, prior to the general amendment of this subchapter by Pub. L. 103–252, § 401(a).

AMENDMENTS

2003—Par. (1)(A). Pub. L. 108–36, § 122(1)(A), substituted ''community-based and prevention-focused'' for ''a Statewide network of community-based, prevention-focused'' and ''programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'' for ''family resource and support programs, child abuse and neglect prevention activities and access to respite care services integrated with the Statewide network''.

Par. (1)(B). Pub. L. 108–36, § 122(1)(B), inserted ''that exists to strengthen and support families to prevent child abuse and neglect'' after ''written authority of the State)''.

Par. (2)(A). Pub. L. 108–36, § 122(2)(A), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'' for ''a network of community-based family resource and support programs''.

Par. (2)(B). Pub. L. 108–36, § 122(2)(B), struck out ''to the network'' after ''direction'' and inserted '', and parents with disabilities'' before semicolon.

Par. (2)(C). Pub. L. 108–36, § 122(2)(C), struck out ''to the network'' after ''direction and oversight''.

Par. (3)(A). Pub. L. 108–36, § 122(3)(A), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'' for ''Statewide network of community-based, prevention-focused, family resource and support programs''.

Par. (3)(B). Pub. L. 108–36, § 122(3)(B), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'' for ''Statewide network of community-based, prevention-focused, family resource and support programs''.

Par. (3)(C). Pub. L. 108–36, § 122(3)(C), substituted ''training, technical assistance, and evaluation assistance, to community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'' for ''and training and technical assistance, to the Statewide network of community-based, prevention-focused, family resource and support programs''.

Par. (3)(D). Pub. L. 108–36, § 122(3)(D), inserted '', parents with disabilities,'' after ''children with disabilities''.

§ 5116b. Amount of grant

(a) Reservation

The Secretary shall reserve 1 percent of the amount appropriated under section 5116i of this title for a fiscal year to make allotments to Indian tribes and tribal organizations and migrant programs.

(b) Remaining amounts

(1) In general

The Secretary shall allot the amount appropriated under section 5116i of this title for a fiscal year and remaining after the reservation under subsection (a) of this section among the States as follows:

(A) 70 percent of such amount appropriated shall be allotted among the States by allotting to each State an amount that bears the same proportion to such amount appropriated as the number of children under the age of 18 residing in the State bears to the total number of children under the age of 18 residing in all States (except that no State shall receive less than $175,000 under this subparagraph).

(B) 30 percent of such amount appropriated shall be allotted among the States by allotting to each State an amount that bears the

[1] So in original. Probably should be followed by a comma.

same proportion to such amount appropriated as the amount of private, State or other non-Federal funds leveraged and directed through the currently designated State lead entity in the preceding fiscal year bears to the aggregate of the amounts leveraged by all States from private, State, or other non-Federal sources and directed through the current lead entity of such States in the preceding fiscal year.

(2) Additional requirement

The Secretary shall provide allotments under paragraph (1) to the State lead entity.

(c) Allocation

Funds allotted to a State under this section—

(1) shall be for a 3-year period; and

(2) shall be provided by the Secretary to the State on an annual basis, as described in subsection (b) of this section.

(Pub. L. 93–247, title II, § 203, as added Pub. L. 104–235, title I, § 121, Oct. 3, 1996, 110 Stat. 3082; amended Pub. L. 108–36, title I, § 123, June 25, 2003, 117 Stat. 815.)

PRIOR PROVISIONS

A prior section 5116b, Pub. L. 93–247, title II, § 203, formerly Pub. L. 98–473, title IV, § 404, Oct. 12, 1984, 98 Stat. 2197; renumbered § 203 of Pub. L. 93–247, and amended Pub. L. 101–126, §§ 2(a), 3(a)(3), (c)(1), 4(c), 5, Oct. 25, 1989, 103 Stat. 764, 766–768; Pub. L. 102–295, title I, § 122, May 28, 1992, 106 Stat. 198, authorized Secretary to make grants and authorized appropriations to carry out this subchapter, prior to the general amendment of this subchapter by Pub. L. 103–252, § 401(a).

AMENDMENTS

2003—Subsec. (b)(1)(B). Pub. L. 108–36, § 123(1), substituted ''as the amount of private, State or other non-Federal funds leveraged and directed through the currently designated'' for ''as the amount leveraged by the State from private, State, or other non-Federal sources and directed through the'', ''State lead entity'' for ''State lead agency'', and ''the current lead entity'' for ''the lead agency''.

Subsec. (c)(2). Pub. L. 108–36, § 123(2), substituted ''subsection (b)'' for ''subsection (a)''.

§ 5116c. Repealed. Pub. L. 108–36, title I, § 124, June 25, 2003, 117 Stat. 815

Section, Pub. L. 93–247, title II, § 204, as added Pub. L. 104–235, title I, § 121, Oct. 3, 1996, 110 Stat. 3083; amended Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, related to continuation of grants and agreements in effect on October 3, 1996.

A prior section 5116c, Pub. L. 93–247, title II, § 204, formerly Pub. L. 98–473, title IV, § 405, Oct. 12, 1984, 98 Stat. 2198; renumbered § 204 of Pub. L. 93–247, and amended Pub. L. 101–126, §§ 2(a), 3(a)(3), (c)(1), 4(d), Oct. 25, 1989, 103 Stat. 764, 766, 767; Pub. L. 102–295, title I, § 123, May 28, 1992, 106 Stat. 198, established requirement for State grant eligibility, prior to the general amendment of this subchapter by Pub. L. 103–252, § 401(a).

§ 5116d. Application

A grant may not be made to a State under this subchapter unless an application therefor is submitted by the State to the Secretary and such application contains the types of information specified by the Secretary as essential to carrying out the provisions of section 5116a of this title, including—

(1) a description of the lead entity that will be responsible for the administration of funds provided under this subchapter and the oversight of programs funded through the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate) which meets the requirements of section 5116a of this title;

(2) a description of how the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate) will operate and how family resource and support services provided by public and private, nonprofit organizations will be integrated into a developing continuum of family centered, holistic, preventive services for children and families;

(3) a description of the inventory of current unmet needs and current community-based and prevention-focused programs and activities to prevent child abuse and neglect, and other family resource services operating in the State;

(4) a budget for the development, operation and expansion of the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect that verifies that the State will expend in non-Federal funds an amount equal to not less than 20 percent of the amount received under this subchapter (in cash, not in-kind) for activities under this subchapter;

(5) an assurance that funds received under this subchapter will supplement, not supplant, other State and local public funds designated for the start up, maintenance, expansion, and redesign of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect;

(6) an assurance that the State has the capacity to ensure the meaningful involvement of parents who are consumers and who can provide leadership in the planning, implementation, and evaluation of the programs and policy decisions of the applicant agency in accomplishing the desired outcomes for such efforts;

(7) a description of the criteria that the entity will use to develop, or select and fund, community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect as part of network development, expansion or enhancement;

(8) a description of outreach activities that the entity and the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect will undertake to maximize the participation of racial and ethnic minorities, children and adults with disabilities, homeless families and those at risk of homelessness, and members of other underserved or underrepresented groups;

(9) a plan for providing operational support, training and technical assistance to community-based and prevention-focused programs

and activities designed to strengthen and support families to prevent child abuse and neglect for development, operation, expansion and enhancement activities;

(10) a description of how the applicant entity's activities and those of the network and its members (where appropriate) will be evaluated;

(11) a description of the actions that the applicant entity will take to advocate systemic changes in State policies, practices, procedures and regulations to improve the delivery of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect services to children and families; and

(12) an assurance that the applicant entity will provide the Secretary with reports at such time and containing such information as the Secretary may require.

(Pub. L. 93–247, title II, § 205, as added Pub. L. 104–235, title I, § 121, Oct. 3, 1996, 110 Stat. 3083; amended Pub. L. 108–36, title I, § 125, June 25, 2003, 117 Stat. 815.)

PRIOR PROVISIONS

A prior section 5116d, Pub. L. 93–247, title II, § 205, formerly Pub. L. 98–473, title IV, § 406, Oct. 12, 1984, 98 Stat. 2198; renumbered § 205 of Pub. L. 93–247, and amended Pub. L. 101–126, §§ 2(a), 3(a)(3), (c)(1), (2), 4(e), Oct. 25, 1989, 103 Stat. 764, 766, 767; Pub. L. 102–295, title I, § 124, May 28, 1992, 106 Stat. 198, related to grant allotments, required use of grants, and grant application requirements, prior to the general amendment of this subchapter by Pub. L. 103–252, § 401(a).

AMENDMENTS

2003—Par. (1). Pub. L. 108–36, § 125(1), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'' for ''Statewide network of community-based, prevention-focused, family resource and support programs''.

Par. (2). Pub. L. 108–36, § 125(2), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'' for ''network of community-based, prevention-focused, family resource and support programs'' and struck out '', including those funded by programs consolidated under this subchapter and subchapter I of this chapter,'' before ''will be integrated''.

Par. (3). Pub. L. 108–36, § 125(3), added par. (3) and struck out former par. (3) which read as follows: ''an assurance that an inventory of current family resource programs, respite care, child abuse and neglect prevention activities, and other family resource services operating in the State, and a description of current unmet needs, will be provided;''.

Par. (4). Pub. L. 108–36, § 125(4), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for ''State's network of community-based, prevention-focused, family resource and support programs''.

Par. (5). Pub. L. 108–36, § 125(5), substituted ''start up, maintenance, expansion, and redesign of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for ''Statewide network of community-based, prevention-focused, family resource and support programs''.

Par. (7). Pub. L. 108–36, § 125(6), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for ''individual community-based, prevention-focused, family resource and support programs''.

Par. (8). Pub. L. 108–36, § 125(7), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for ''community-based, prevention-focused, family resource and support programs''.

Par. (9). Pub. L. 108–36, § 125(8), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for ''community-based, prevention-focused, family resource and support programs''.

Par. (10). Pub. L. 108–36, § 125(9), inserted ''(where appropriate)'' after ''members''.

Par. (11). Pub. L. 108–36, § 125(10), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for ''prevention-focused, family resource and support program''.

Pars. (12), (13). Pub. L. 108–36, § 125(11), redesignated par. (13) as (12).

§ 5116e. Local program requirements

(a) In general

Grants made under this subchapter shall be used to develop, implement, operate, expand and enhance community-based, and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect that—

(1) assess community assets and needs through a planning process that involves parents and local public agencies, local nonprofit organizations, and private sector representatives;

(2) develop a strategy to provide, over time, a continuum of preventive, family centered services to children and families, especially to young parents and parents with young children, through public-private partnerships;

(3) provide—

(A) core family resource and support services such as—

(i) parent education, mutual support and self help, and leadership services;

(ii) outreach services;

(iii) community and social service referrals; and

(iv) follow-up services;

(B) other core services, which must be provided or arranged for through contracts or agreements with other local agencies, including voluntary home visiting and all forms of respite care services to the extent practicable; and

(C) access to optional services, including—

(i) referral to and counseling for adoption services for individuals interested in adopting a child or relinquishing their child for adoption;

(ii) child care, early childhood development and intervention services;

(iii) referral to services and supports to meet the additional needs of families with children with disabilities;

(iv) referral to job readiness services;

(v) referral to educational services, such as scholastic tutoring, literacy training, and General Educational Degree services;

(vi) self-sufficiency and life management skills training;

(vii) community referral services, including early developmental screening of children; and

(viii) peer counseling;

(4) develop leadership roles for the meaningful involvement of parents in the development, operation, evaluation, and oversight of the programs and services;

(5) provide leadership in mobilizing local public and private resources to support the provision of needed family resource and support program services; and

(6) participate with other community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect in the development, operation and expansion of networks where appropriate.

(b) Priority

In awarding local grants under this subchapter, a lead entity shall give priority to effective community-based programs serving low income communities and those serving young parents or parents with young children, including community-based family resource and support programs.

(Pub. L. 93–247, title II, § 206, as added Pub. L. 104–235, title I, § 121, Oct. 3, 1996, 110 Stat. 3085; amended Pub. L. 108–36, title I, § 126, June 25, 2003, 117 Stat. 816.)

PRIOR PROVISIONS

A prior section 5116e, Pub. L. 93–247, title II, § 206, formerly Pub. L. 98–473, title IV, § 407, Oct. 12, 1984, 98 Stat. 2199; renumbered § 206 of Pub. L. 93–247, and amended Pub. L. 101–126, §§ 2(a), 3(a)(3), (c)(1), 4(f), Oct. 25, 1989, 103 Stat. 764, 766, 768, related to withholding of grant payments upon failure to comply with provisions of this subchapter, prior to the general amendment of this subchapter by Pub. L. 103–252, § 401(a).

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–36, § 126(1), substituted ''and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for ''prevention-focused, family resource and support programs'' in introductory provisions.

Subsec. (a)(3)(B). Pub. L. 108–36, § 126(2), inserted ''voluntary home visiting and'' after ''including''.

Subsec. (a)(6). Pub. L. 108–36, § 126(3), added par. (6) and struck out former par. (6) which read as follows: ''participate with other community-based, prevention-focused, family resource and support program grantees in the development, operation and expansion of the Statewide network.''

§ 5116f. Performance measures

A State receiving a grant under this subchapter, through reports provided to the Secretary—

(1) shall demonstrate the effective development, operation and expansion of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect that meets the requirements of this subchapter;

(2) shall supply an inventory and description of the services provided to families by local programs that meet identified community needs, including core and optional services as described in section 5116a of this title;

(3) shall demonstrate that they will have addressed unmet needs identified by the inventory and description of current services required under section 5116d(3) of this title;

(4) shall describe the number of families served, including families with children with disabilities, and parents with disabilities, and the involvement of a diverse representation of families in the design, operation, and evaluation of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect, and in the design, operation and evaluation of the networks of such community-based and prevention-focused programs;

(5) shall demonstrate a high level of satisfaction among families who have used the services of the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect;

(6) shall demonstrate the establishment or maintenance of innovative funding mechanisms, at the State or community level, that blend Federal, State, local and private funds, and innovative, interdisciplinary service delivery mechanisms, for the development, operation, expansion and enhancement of the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect;

(7) shall describe the results of a peer review process conducted under the State program; and

(8) shall demonstrate an implementation plan to ensure the continued leadership of parents in the on-going planning, implementation, and evaluation of such community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect.

(Pub. L. 93–247, title II, § 207, as added Pub. L. 104–235, title I, § 121, Oct. 3, 1996, 110 Stat. 3086; amended Pub. L. 108–36, title I, § 127, June 25, 2003, 117 Stat. 817.)

PRIOR PROVISIONS

A prior section 5116f, Pub. L. 93–247, title II, § 207, formerly Pub. L. 98–473, title IV, § 408, Oct. 12, 1984, 98 Stat. 2199; renumbered § 207 of Pub. L. 93–247, and amended Pub. L. 101–126, §§ 2(a), 3(a)(3), (c)(1), 4(g), Oct. 25, 1989, 103 Stat. 764, 766, 768, related to audits of grant recipients, prior to the general amendment of this subchapter by Pub. L. 103–252, § 401(a).

AMENDMENTS

2003—Par. (1). Pub. L. 108–36, § 127(1), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for ''a Statewide network of community-based, prevention-focused, family resource and support programs''.

Par. (3). Pub. L. 108–36, § 127(2), added par. (3) and struck out former par. (3) which read as follows: ''shall demonstrate the establishment of new respite care and other specific new family resources services, and the expansion of existing services, to address unmet needs identified by the inventory and description of current services required under section 5116d(3) of this title;''.

Par. (4). Pub. L. 108–36, § 127(3), inserted ''and parents with disabilities,'' after ''children with disabilities,'' and substituted ''evaluation of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect, and in the design, operation and evaluation of the networks of such community-based and prevention-focused programs'' for ''evaluation of the Statewide network of community-based, prevention-focused, family resource and support programs, and in the design, operation and evaluation of the individual community-based family resource and support programs that are part of the Statewide network funded under this subchapter''.

Par. (5). Pub. L. 108–36, § 127(4), substituted ''and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for '', prevention-focused, family resource and support programs''.

Par. (6). Pub. L. 108–36, § 127(5), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for ''Statewide network of community-based, prevention-focused, family resource and support programs''.

Par. (8). Pub. L. 108–36, § 127(6), substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for ''community based, prevention-focused, family resource and support programs''.

§ 5116g. National network for community-based family resource programs

The Secretary may allocate such sums as may be necessary from the amount provided under the State allotment to support the activities of the lead entity in the State—

(1) to create, operate and maintain a peer review process;

(2) to create, operate and maintain an information clearinghouse;

(3) to fund a yearly symposium on State system change efforts that result from the operation of the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect;

(4) to create, operate and maintain a computerized communication system between lead entities; and

(5) to fund State-to-State technical assistance through bi-annual conferences.

(Pub. L. 93–247, title II, § 208, as added Pub. L. 104–235, title I, § 121, Oct. 3, 1996, 110 Stat. 3086; amended Pub. L. 108–36, title I, § 128, June 25, 2003, 117 Stat. 817.)

PRIOR PROVISIONS

A prior section 5116g, Pub. L. 93–247, title II, § 208, formerly Pub. L. 98–473, title IV, § 409, Oct. 12, 1984, 98 Stat. 2199; renumbered § 208 of Pub. L. 93–247, and amended Pub. L. 101–126, §§ 2(a), 3(a)(3), (c)(3), 4(h), Oct. 25, 1989, 103 Stat. 764, 766, 768, related to reports to Congress, prior to the general amendment of this subchapter by Pub. L. 103–252, § 401(a).

AMENDMENTS

2003—Par. (3). Pub. L. 108–36 substituted ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' for ''Statewide networks of community-based, prevention-focused, family resource and support programs''.

§ 5116h. Definitions

For purposes of this subchapter:

(1) Children with disabilities

The term ''children with disabilities'' has the same meaning given the term ''child with a disability'' in section 1401(3) or ''infant or toddler with a disability'' in section 1432(5) of title 20.

(2) Community referral services

The term ''community referral services'' means services provided under contract or through interagency agreements to assist families in obtaining needed information, mutual support and community resources, including respite care services, health and mental health services, employability development and job training, and other social services, including early developmental screening of children, through help lines or other methods.

(3) Community-based and prevention-focused programs and activities to prevent child abuse and neglect

The term ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'' includes organizations such as family resource programs, family support programs, voluntary home visiting programs, respite care programs, parenting education, mutual support programs, and other community programs or networks of such programs that provide activities that are designed to prevent or respond to child abuse and neglect.

(4) Repealed. Pub. L. 108–36, title I, § 129(b), June 25, 2003, 117 Stat. 817

(5) Respite care services

The term ''respite care services'' means short term care services provided in the temporary absence of the regular caregiver (parent, other relative, foster parent, adoptive parent, or guardian) to children who—

(A) are in danger of abuse or neglect;

(B) have experienced abuse or neglect; or

(C) have disabilities, chronic, or terminal illnesses.

Such services shall be provided within or outside the home of the child, be short-term care (ranging from a few hours to a few weeks of time, per year), and be intended to enable the family to stay together and to keep the child living in the home and community of the child.

(Pub. L. 93–247, title II, § 209, as added Pub. L. 104–235, title I, § 121, Oct. 3, 1996, 110 Stat. 3087; amended Pub. L. 108–36, title I, § 129, June 25, 2003, 117 Stat. 817.)

AMENDMENTS

2003—Par. (1). Pub. L. 108–36, § 129(a), substituted ''given the term 'child with a disability' in section 1401(3) or 'infant or toddler with a disability' in section 1432(5) of title 20'' for ''given such term in section 1401(a)(2) of title 20''.

Pars. (3), (4). Pub. L. 108–36, § 129(b), added par. (3) and struck out former pars. (3) and (4), which related, respectively, to family resource and support programs and outreach services.

§ 5116i. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $80,000,000 for fiscal

year 2004 and such sums as may be necessary for each of the fiscal years 2005 through 2008.

(Pub. L. 93–247, title II, § 210, as added Pub. L. 104–235, title I, § 121, Oct. 3, 1996, 110 Stat. 3088; amended Pub. L. 108–36, title I, § 130, June 25, 2003, 117 Stat. 818.)

AMENDMENTS

2003—Pub. L. 108–36 amended section catchline and text generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out this subchapter, $66,000,000 for fiscal year 1997 and such sums as may be necessary for each of the fiscal years 1998 through 2001.''

SUBCHAPTER IV—TEMPORARY CHILD CARE FOR CHILDREN WITH DISABILITIES AND CRISIS NURSERIES

§§ 5117 to 5117d. Repealed. Pub. L. 104–235, title I, § 142(a), Oct. 3, 1996, 110 Stat. 3089

Section 5117, Pub. L. 99–401, title II, § 202, Aug. 27, 1986, 100 Stat. 907, related to congressional findings for this subchapter.

Section 5117a, Pub. L. 99–401, title II, § 203, Aug. 27, 1986, 100 Stat. 907; Pub. L. 101–127, § 2(1), Oct. 25, 1989, 103 Stat. 770, related to temporary child care for children with disabilities and chronically ill children.

Section 5117b, Pub. L. 99–401, title II, § 204, Aug. 27, 1986, 100 Stat. 907, related to crisis nurseries for children who are abused and neglected, at high risk of abuse and neglect, or who are in families receiving child protective services.

Section 5117c, Pub. L. 99–401, title II, § 205, Aug. 27, 1986, 100 Stat. 908; Pub. L. 101–127, §§ 2(2), 3, 4, Oct. 25, 1989, 103 Stat. 770, 771; Pub. L. 101–476, title IX, § 901(a)(3), (g), Oct. 30, 1990, 104 Stat. 1142, 1151; Pub. L. 102–295, title II, § 202, May 28, 1992, 106 Stat. 200, related to administrative provisions.

Section 5117d, Pub. L. 99–401, title II, § 206, Aug. 27, 1986, 100 Stat. 909; Pub. L. 100–403, § 1, Aug. 19, 1988, 102 Stat. 1013; Pub. L. 101–127, § 5, Oct. 25, 1989, 103 Stat. 771; Pub. L. 102–295, title II, § 203, May 28, 1992, 106 Stat. 200, related to authorization of appropriations for carrying out this subchapter.

EFFECTIVE DATE

Section 207 of title II of Pub. L. 99–401 which provided that title II of Pub. L. 99–401 was effective Oct. 1, 1986, was repealed by Pub. L. 104–235, title I, § 142(a), Oct. 3, 1996, 110 Stat. 3089.

SHORT TITLE

Section 201 of title II of Pub. L. 99–401, as amended by Pub. L. 101–127, § 6, Oct. 25, 1989, 103 Stat. 772, which provided that title II of Pub. L. 99–401 be cited as the ''Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986'', was repealed by Pub. L. 104–235, title I, § 142(a), Oct. 3, 1996, 110 Stat. 3089.

SUBCHAPTER IV–A—ABANDONED INFANTS ASSISTANCE

CODIFICATION

This subchapter is comprised generally of Pub. L. 100–505, Oct. 18, 1988, 102 Stat. 2533, as amended. Pub. L. 100–505 was formerly set out as a note under section 670 of this title. Section 105 of Pub. L. 100–505, which provided for termination of the grant program described in this subchapter on Sept. 30, 1991, was repealed by Pub. L. 102–236, § 8, Dec. 12, 1991, 105 Stat. 1816.

§ 5117aa. Findings

The Congress finds that—

(1) studies indicate that a number of factors contribute to the inability of some parents to provide adequate care for their infants and young children and a lack of suitable shelter homes for such infants and young children have led to the abandonment of such infants and young children in hospitals for extended periods;

(2) an unacceptable number of these infants and young children will be medically cleared for discharge, yet remain in hospitals as boarder babies;

(3) hospital-based child care for these infants and young children is extremely costly and deprives them of an adequate nurturing environment;

(4) appropriate training is needed for personnel working with infants and young children with life-threatening conditions and other special needs, including those who are infected with the human immunodeficiency virus (commonly known as ''HIV''), those who have acquired immune deficiency syndrome (commonly known as ''AIDS''), and those who have been exposed to dangerous drugs;

(5) infants and young children who are abandoned in hospitals are particularly difficult to place in foster homes, and are being abandoned in hospitals in increasing numbers by mothers dying of acquired immune deficiency syndrome, by parents abusing drugs, or by parents incapable of providing adequate care;

(6) there is a need for comprehensive support services for such infants and young children and their families and services to prevent the abandonment of such infants and young children, including foster care services, case management services, family support services, respite and crisis intervention services, counseling services, and group residential home services;

(7) there is a need to support the families of such infants and young children through the provision of services that will prevent the abandonment of the infants and children; and

(8) private, Federal, State, and local resources should be coordinated to establish and maintain services described in paragraph (7) and to ensure the optimal use of all such resources.

(Pub. L. 100–505, § 2, Oct. 18, 1988, 102 Stat. 2533; Pub. L. 102–236, § 2, Dec. 12, 1991, 105 Stat. 1812; Pub. L. 108–36, title III, § 301, June 25, 2003, 117 Stat. 822.)

AMENDMENTS

2003—Par. (1). Pub. L. 108–36, § 301(1), (8), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: ''throughout the Nation, the number of infants and young children who have been exposed to drugs taken by their mothers during pregnancy has increased dramatically;''.

Par. (2). Pub. L. 108–36, § 301(8), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Pub. L. 108–36, § 301(2), substituted ''studies indicate that a number of factors contribute to the inability of some parents to provide adequate care for their infants'' for ''the inability of parents who abuse drugs to provide adequate care for such infants''.

Pars. (3), (4). Pub. L. 108–36, § 301(8), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) redesignated (2).

Par. (5). Pub. L. 108–36, § 301(8), redesignated par. (8) as (5). Former par. (5) redesignated (4).

Pub. L. 108–36, § 301(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''training

is inadequate for foster care personnel working with medically fragile infants and young children and infants and young children exposed to drugs;''.

Pars. (6), (7). Pub. L. 108–36, § 301(4), (8), redesignated pars. (9) and (10) as (6) and (7), respectively, and struck out former pars. (6) and (7) which read as follows:

''(6) a particularly devastating development is the increase in the number of infants and young children who are infected with the human immunodeficiency virus (which is believed to cause acquired immune deficiency syndrome and which is commonly known as HIV) or who have been perinatally exposed to the virus or to a dangerous drug;

''(7) many such infants and young children have at least one parent who is an intravenous drug abuser;''.

Par. (8). Pub. L. 108–36, § 301(9), added par. (8). Former par. (8) redesignated (5).

Pub. L. 108–36, § 301(5), substituted ''infants and young children who are abandoned in hospitals'' for ''such infants and young children'' and inserted ''by parents abusing drugs,'' after ''deficiency syndrome,''.

Par. (9). Pub. L. 108–36, § 301(8), redesignated par. (9) as (6).

Pub. L. 108–36, § 301(6), substituted ''comprehensive support services for such infants and young children and their families and services to prevent the abandonment of such infants and young children, including foster care services, case management services, family support services, respite and crisis intervention services, counseling services, and group residential home services;'' for ''comprehensive services for such infants and young children, including foster family care services, case management services, family support services, respite and crisis intervention services, counseling services, and group residential home services;''.

Par. (10). Pub. L. 108–36, § 301(8), redesignated par. (10) as (7).

Par. (11). Pub. L. 108–36, § 301(7), struck out par. (11) which read as follows: ''there is a need for the development of funding strategies that coordinate and make the optimal use of all private resources, and Federal, State, and local resources, to establish and maintain such services.''

1991—Par. (3). Pub. L. 102–236, § 2(1), substituted ''an unacceptable number'' for ''the vast majority''.

Par. (6). Pub. L. 102–236, § 2(2), substituted ''the number of infants and young children who are infected with the human immunodeficiency virus (which is believed to cause acquired immune deficiency syndrome and which is commonly known as HIV) or who have been perinatally exposed to the virus or to a dangerous drug;'' for ''the number of cases of acquired immune deficiency syndrome in infants and young children, and the number of such cases has doubled within the last 13 months;''.

Par. (7). Pub. L. 102–236, § 2(3), substituted ''many such'' for ''more than 80 percent of'' and struck out ''with acquired immune deficiency syndrome'' after ''young children''.

Par. (8). Pub. L. 102–236, § 2(4), substituted ''such infants and young children'' for ''infants and young children with acquired immune deficiency syndrome''.

Pars. (10), (11). Pub. L. 102–236, § 2(5), added par. (10) and redesignated former par. (10) as (11).

SHORT TITLE

For short title of this subchapter as the ''Abandoned Infants Assistance Act of 1988'', see section 1 of Pub. L. 100–505, set out as a note under section 5101 of this title.

PART A—PROJECTS REGARDING ABANDONMENT OF INFANTS AND YOUNG CHILDREN IN HOSPITALS

AMENDMENTS

1991—Pub. L. 102–236, § 7, Dec. 12, 1991, 105 Stat. 1816, substituted ''Projects Regarding Abandonment of Infants and Young Children in Hospitals'' for ''Foster Care and Residential Care of Infants and Young Children Abandoned in Hospitals'' in part heading.

§ 5117aa–11. Establishment of local projects

(a) In general

The Secretary of Health and Human Services may make grants to public and nonprofit private entities for the purpose of developing, implementing, and operating projects to demonstrate methods—

(1) to prevent the abandonment of infants and young children, including the provision of services to members of the natural family for any condition that increases the probability of abandonment of an infant or young child;

(2) to identify and address the needs of abandoned infants and young children;

(3) to assist abandoned infants and young children to reside with their natural families or in foster care, as appropriate;

(4) to recruit, train, and retain foster families for abandoned infants and young children;

(5) to carry out residential care programs for abandoned infants and young children who are unable to reside with their families or to be placed in foster care;

(6) to carry out programs of respite care for families and foster families of infants and young children described in subsection (b);

(7) to recruit and train health and social services personnel to work with families, foster care families, and residential care programs for abandoned infants and young children; and

(8) to prevent the abandonment of infants and young children, and to care for the infants and young children who have been abandoned, through model programs providing health, educational, and social services at a single site in a geographic area in which a significant number of infants and young children described in subsection (b) reside (with special consideration given to applications from entities that will provide the services of the project through community-based organizations).

(b) Priority in provision of services

The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees to give priority to abandoned infants and young children who—

(1) are infected with, or have been perinatally exposed to, the human immunodeficiency virus, or have a life-threatening illness or other special medical need; or

(2) have been perinatally exposed to a dangerous drug.

(c) Case plan with respect to foster care

The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, if the applicant expends the grant to carry out any program of providing care to infants and young children in foster homes or in other nonmedical residential settings away from their parents, the applicant will ensure that—

(1) a case plan of the type described in paragraph (1) of section 675 of this title is developed for each such infant and young child (to the extent that such infant and young child is not otherwise covered by such a plan); and

(2) the program includes a case review system of the type described in paragraph (5) of

such section (covering each such infant and young child who is not otherwise subject to such a system).

(d) Administration of grant

(1) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees—

(A) to use the funds provided under this section only for the purposes specified in the application submitted to, and approved by, the Secretary pursuant to subsection (e);

(B) to establish such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement and accounting of Federal funds paid to the applicant under this section;

(C) to report to the Secretary annually on the utilization, cost, and outcome of activities conducted, and services furnished, under this section; and

(D) that if, during the majority of the 180-day period preceding October 18, 1988, the applicant has carried out any program with respect to the care of abandoned infants and young children, the applicant will expend the grant only for the purpose of significantly expanding, in accordance with subsection (a), activities under such program above the level provided under such program during the majority of such period.

(2) Subject to the availability of amounts made available in appropriations Acts for the fiscal year involved, the duration of a grant under subsection (a) shall be for a period of 3 years, except that the Secretary—

(A) may terminate the grant if the Secretary determines that the entity involved has substantially failed to comply with the agreements required as a condition of the provision of the grant; and

(B) shall continue the grant for one additional year if the Secretary determines that the entity has satisfactorily complied with such agreements.

(e) Requirement of application

The Secretary may not make a grant under subsection (a) unless—

(1) an application for the grant is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(f) Technical assistance to grantees

The Secretary may, without charge to any grantee under subsection (a), provide technical assistance (including training) with respect to the planning, development, and operation of projects described in such subsection. The Secretary may provide such technical assistance directly, through contracts, or through grants.

(g) Technical assistance with respect to process of applying for grant

The Secretary may provide technical assistance (including training) to public and nonprofit private entities with respect to the process of applying to the Secretary for a grant under subsection (a). The Secretary may provide such technical assistance directly, through contracts, or through grants.

(h) Priority requirement

In making grants under subsection (a), the Secretary shall give priority to applicants located in States that have developed and implemented procedures for expedited termination of parental rights and placement for adoption of infants determined to be abandoned under State law.

(Pub. L. 100–505, title I, § 101, Oct. 18, 1988, 102 Stat. 2534; Pub. L. 102–236, § 3, Dec. 12, 1991, 105 Stat. 1812; Pub. L. 104–235, title II, § 221, Oct. 3, 1996, 110 Stat. 3091; Pub. L. 108–36, title III, § 302, June 25, 2003, 117 Stat. 823.)

AMENDMENTS

2003—Pub. L. 108–36, § 302(1), substituted ''Establishment of local projects'' for ''Establishment of program of demonstration projects'' in section catchline.

Subsec. (b). Pub. L. 108–36, § 302(2), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: ''The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in carrying out the purpose described in subsection (a) (other than with respect to paragraph (6) of such subsection), the applicant will give priority to abandoned infants and young children—

''(1) who are infected with the human immunodeficiency virus or who have been perinatally exposed to the virus; or

''(2) who have been perinatally exposed to a dangerous drug.''

1996—Subsec. (h). Pub. L. 104–235 added subsec. (h).

1991—Subsec. (a)(1). Pub. L. 102–236, § 3(c)(1), inserted before semicolon at end '', including the provision of services to members of the natural family for any condition that increases the probability of abandonment of an infant or young child''.

Subsec. (a)(2). Pub. L. 102–236, § 3(a)(2)(A)(ii), struck out '', particularly those with acquired immune deficiency syndrome'' after ''young children''.

Subsec. (a)(3). Pub. L. 102–236, § 3(a)(2)(A)(iii), struck out '', particularly those with acquired immune deficiency syndrome,'' after ''young children''.

Subsec. (a)(4). Pub. L. 102–236, § 3(a)(2)(A)(ii), struck out '', particularly those with acquired immune deficiency syndrome'' after ''young children''.

Subsec. (a)(5). Pub. L. 102–236, § 3(a)(2)(A)(ii), (c)(2), substituted ''who are unable to reside with their families or to be placed in foster care'' for '', particularly those with acquired immune deficiency syndrome''.

Subsec. (a)(6). Pub. L. 102–236, § 3(a)(2)(A)(i), substituted ''described in subsection (b)'' for ''with acquired immune deficiency syndrome''.

Subsec. (a)(7). Pub. L. 102–236, § 3(a)(2)(A)(ii), struck out '', particularly those with acquired immune deficiency syndrome'' after ''young children''.

Subsec. (a)(8). Pub. L. 102–236, § 3(b), added par. (8).

Subsecs. (b), (c). Pub. L. 102–236, § 3(a)(1), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–236, § 3(d), designated existing provisions as par. (1), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, realigned margins, and added par. (2).

Pub. L. 102–236, § (3)(a)(1)(A), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 102–236, § 3(a)(2)(B), substituted ''subsection (e)'' for ''subsection (d)''.

Subsecs. (e) to (g). Pub. L. 102–236, § 3(a)(1)(A), redesignated subsecs. (d) to (f) as (e) to (g), respectively.

§ 5117aa–12. Evaluations, study, and reports by Secretary

(a) Evaluations of local programs

The Secretary shall, directly or through contracts with public and nonprofit private entities, provide for evaluations of projects carried out under section 5117aa–11 of this title and for the dissemination of information developed as a result of such projects.

(b) Study and report on number of abandoned infants and young children

(1) In general

The Secretary shall conduct a study for the purpose of determining—

(A) an estimate of the annual number of infants and young children relinquished, abandoned, or found deceased in the United States and the number of such infants and young children who are infants and young children described in section 5117aa–11(b) of this title;

(B) an estimate of the annual number of infants and young children who are victims of homicide;

(C) characteristics and demographics of parents who have abandoned an infant within 1 year of the infant's birth; and

(D) an estimate of the annual costs incurred by the Federal Government and by State and local governments in providing housing and care for abandoned infants and young children.

(2) Deadline

Not later than 36 months after June 25, 2003, the Secretary shall complete the study required under paragraph (1) and submit to Congress a report describing the findings made as a result of the study.

(c) Evaluation

The Secretary shall evaluate and report on effective methods of intervening before the abandonment of an infant or young child so as to prevent such abandonments, and effective methods for responding to the needs of abandoned infants and young children.

(Pub. L. 100–505, title I, § 102, Oct. 18, 1988, 102 Stat. 2535; Pub. L. 102–236, § 4, Dec. 12, 1991, 105 Stat. 1814; Pub. L. 108–36, title III, § 303, June 25, 2003, 117 Stat. 823.)

AMENDMENTS

2003—Pub. L. 108–36 amended section generally. Prior to amendment, text consisted of subsecs. (a) to (d) relating to evaluations of demonstration projects, dissemination of information on assistance programs to individuals with special needs, a study and report on the estimated number of abandoned children to be completed by Apr. 1, 1992, and a study and report on effective care methods to be completed by Apr. 1, 1991.

1991—Subsec. (b). Pub. L. 102–236, § 4(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 102–236, § 4(a)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1)(A). Pub. L. 102–236, § 4(b)(1), substituted ''infants and young children who are infants and young children described in section 5117aa–11(b) of this title'' for ''infants who have acquired immune deficiency syndrome''.

Subsec. (c)(2). Pub. L. 102–236, § 4(b)(2), which directed striking out '''The Secretary and all that follows through 'Act,''' and inserting ''Not later than April 1, 1992, the Secretary shall'', was executed by making the substitution for ''The Secretary shall, not later than 12 months after the date of the enactment of this Act,'' to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 102–236, § 4(a)(1), redesignated subsec. (c) as (d).

PART B—GENERAL PROVISIONS

§ 5117aa–21. Definitions

In this subchapter:

(1) Abandoned; abandonment

The terms ''abandoned'' and ''abandonment'', used with respect to infants and young children, mean that the infants and young children are medically cleared for discharge from acute-care hospital settings, but remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives.

(2) Acquired immune deficiency syndrome

The term ''acquired immune deficiency syndrome'' includes infection with the etiologic agent for such syndrome, any condition indicating that an individual is infected with such etiologic agent, and any condition arising from such etiologic agent.

(3) Dangerous drug

The term ''dangerous drug'' means a controlled substance, as defined in section 802 of title 21.

(4) Natural family

The term ''natural family'' shall be broadly interpreted to include natural parents, grandparents, family members, guardians, children residing in the household, and individuals residing in the household on a continuing basis who are in a care-giving situation, with respect to infants and young children covered under this subchapter.

(5) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(Pub. L. 100–505, title III, § 301, Oct. 18, 1988, 102 Stat. 2537; Pub. L. 108–36, title III, § 305(a), June 25, 2003, 117 Stat. 824.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 100–505, Oct. 18, 1988, 102 Stat. 2533, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

AMENDMENTS

2003—Pub. L. 108–36 amended section generally. Prior to amendment, section defined ''acquired immune deficiency syndrome'' and ''Secretary''.

§ 5117aa–22. Authorization of appropriations

(a) In general

(1) Authorization

For the purpose of carrying out this subchapter, there are authorized to be appropriated $45,000,000 for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2008.

(2) Limitation

Not more than 5 percent of the amounts appropriated under paragraph (1) for any fiscal year may be obligated for carrying out section 5117aa–12(a) of this title.

(b) Administrative expenses

(1) Authorization

For the purpose of the administration of this subchapter by the Secretary, there is authorized to be appropriated for each fiscal year specified in subsection (a)(1) an amount equal to 5 percent of the amount authorized in such subsection to be appropriated for the fiscal year. With respect to the amounts appropriated under such subsection, the preceding sentence may not be construed to prohibit the expenditure of the amounts for the purpose described in such sentence.

(2) Limitation

The Secretary may not obligate any of the amounts appropriated under paragraph (1) for a fiscal year unless, from the amounts appropriated under subsection (a)(1) for the fiscal year, the Secretary has obligated for the purpose described in such paragraph an amount equal to the amounts obligated by the Secretary for such purpose in fiscal year 2003.

(c) Availability of funds

Amounts appropriated under this section shall remain available until expended.

(Pub. L. 100–505, title III, § 302, formerly title I, § 104, Oct. 18, 1988, 102 Stat. 2536; Pub. L. 102–236, § 6, Dec. 12, 1991, 105 Stat. 1815; Pub. L. 104–235, title II, § 222, Oct. 3, 1996, 110 Stat. 3092; renumbered title III, § 302, and amended Pub. L. 108–36, title III, § 304, June 25, 2003, 117 Stat. 824.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 100–505, Oct. 18, 1988, 102 Stat. 2533, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–36, § 304(a)(1), added subsec. (a) and struck out former subsec. (a) which authorized appropriations, with certain limitations, for fiscal years 1997 to 2001.

Subsec. (b). Pub. L. 108–36, § 304(a)(2), (4), redesignated subsec. (c) as (b) and struck out former subsec. (b). Prior to amendment, text read as follows: ''For the purpose of carrying out section 5117aa–12(b) of this title, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1992 through 1995.''

Subsec. (c). Pub. L. 108–36, § 304(a)(4), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Pub. L. 108–36, § 304(a)(3), inserted par. headings and substituted ''this subchapter'' for ''this part'' in par. (1) and ''fiscal year 2003.'' for ''fiscal year 1991.'' in par. (2).

Subsec. (d). Pub. L. 108–36, § 304(a)(4), redesignated subsec. (d) as (c).

1996—Subsec. (a)(1). Pub. L. 104–235 substituted ''$35,000,000 for fiscal year 1997 and such sums as may be necessary for each of the fiscal years 1998 through 2001.'' for ''$20,000,000 for fiscal year 1992, $25,000,000 for fiscal year 1993, $30,000,000 for fiscal year 1994, and $35,000,000 for fiscal year 1995.''

1991—Pub. L. 102–236 substituted provisions relating to appropriations to carry out this part for fiscal years 1992 to 1995, with certain limitations, for provisions relating to appropriations to make grants under section 5117aa–11 of this title for fiscal years 1989 to 1991.

SUBCHAPTER V—CERTAIN PREVENTIVE SERVICES REGARDING CHILDREN OF HOMELESS FAMILIES OR FAMILIES AT RISK OF HOMELESSNESS

§§ 5118 to 5118e. Repealed. Pub. L. 104–235, title I, § 131, Oct. 3, 1996, 110 Stat. 3088

Section 5118, Pub. L. 93–247, title III, § 301, as added Pub. L. 101–645, title VI, § 661(b), Nov. 29, 1990, 104 Stat. 4755, related to demonstration grants for prevention of inappropriate separation from family and for prevention of child abuse and neglect.

Section 5118a, Pub. L. 93–247, title III, § 302, as added Pub. L. 101–645, title VI, § 661(b), Nov. 29, 1990, 104 Stat. 4757, related to joint training of appropriate service personnel with respect to certain subjects and additional authorized activities for which a grantee may expend grant funds.

Section 5118b, Pub. L. 93–247, title III, § 303, as added Pub. L. 101–645, title VI, § 661(b), Nov. 29, 1990, 104 Stat. 4757, related to additional agreements required of agencies, evaluations of effectiveness of demonstration programs, report to Congress, and restriction on use of grant to purchase or improve real property.

Section 5118c, Pub. L. 93–247, title III, § 304, as added Pub. L. 101–645, title VI, § 661(b), Nov. 29, 1990, 104 Stat. 4759, related to required submission of description of intended uses of grant.

Section 5118d, Pub. L. 93–247, title III, § 305, as added Pub. L. 101–645, title VI, § 661(b), Nov. 29, 1990, 104 Stat. 4759, related to requirement of submission of application for grant.

Section 5118e, Pub. L. 93–247, title III, § 306, as added Pub. L. 101–645, title VI, § 661(b), Nov. 29, 1990, 104 Stat. 4760; amended Pub. L. 102–295, title I, § 131, May 28, 1992, 106 Stat. 199, related to authorization of appropriations for carrying out this subchapter.

SUBCHAPTER VI—CHILD ABUSE CRIME INFORMATION AND BACKGROUND CHECKS

§ 5119. Reporting child abuse crime information

(a) In general

In each State, an authorized criminal justice agency of the State shall report child abuse crime information to, or index child abuse crime information in, the national criminal history background check system. A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions.

(b) Provision of State child abuse crime records through national criminal history background check system

(1) Not later than 180 days after December 20, 1993, the Attorney General shall, subject to availability of appropriations—

(A) investigate the criminal history records system of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line basis through the national criminal history background check system;

(B) in consultation with State officials, establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of criminal history records and other procedures for carrying out this subchapter; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of each State timetable that the State—

(A) by not later than the date that is 5 years after December 20, 1993, have in a computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

(B) continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve 100 percent disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) Liaison

An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of technical assistance in cases of child abuse.

(d) Annual summary

(1) The Attorney General shall publish an annual statistical summary of child abuse crimes.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim or alleged violator.

(e) Annual report

The Attorney General shall, subject to the availability of appropriations, publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal history background check system.

(f) Study of child abuse offenders

(1) Not later than 180 days after December 20, 1993, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State; and

(C) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 2 years after December 20, 1993, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

(Pub. L. 103–209, § 2, Dec. 20, 1993, 107 Stat. 2490; Pub. L. 103–322, title XXXII, § 320928(b), (h), (i), Sept. 13, 1994, 108 Stat. 2132, 2133.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(1)(B), was in the original "this Act", meaning Pub. L. 103–209, Dec. 20, 1993, 107 Stat. 2490, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 5101 of this title and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322, § 320928(b), inserted at end "A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions."

Subsec. (b)(2)(A). Pub. L. 103–322, § 320928(i), substituted "5 years after" for "3 years after".

Subsec. (f)(2). Pub. L. 103–322, § 320928(h), substituted "2 years" for "1 year".

SHORT TITLE

For short title of this subchapter as the "National Child Protection Act of 1993", see section 1 of Pub. L. 103–209, set out as a note under section 5101 of this title.

GUIDELINES FOR ADOPTION OF SAFEGUARDS BY CARE PROVIDERS AND STATES FOR PROTECTING CHILDREN, THE ELDERLY, OR INDIVIDUALS WITH DISABILITIES FROM ABUSE

Section 320928(g) of Pub. L. 103–322 provided that:

"(1) IN GENERAL.—The Attorney General, in consultation with Federal, State, and local officials, including officials responsible for criminal history record systems, and representatives of public and private care organizations and health, legal, and social welfare organizations, shall develop guidelines for the adoption of appropriate safeguards by care providers and by States for protecting children, the elderly, or individuals with disabilities from abuse.

"(2) MATTERS TO BE ADDRESSED.—In developing guidelines under paragraph (1), the Attorney General shall address the availability, cost, timeliness, and effectiveness of criminal history background checks and recommend measures to ensure that fees for background checks do not discourage volunteers from participating in care programs.

"(3) DISSEMINATION.—The Attorney General shall, subject to the availability of appropriations, disseminate the guidelines to State and local officials and to public and private care providers."

§ 5119a. Background checks

(a) In general

(1) A State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

(2) The authorized agency shall access and review State and Federal criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to the inquiry within 15 business days.

(3) In the absence of State procedures referred to in paragraph (1), a qualified entity designated under paragraph (1) may contact an authorized

agency of the State to request national criminal fingerprint background checks. Qualified entities requesting background checks under this paragraph shall comply with the guidelines set forth in subsection (b) of this section and with procedures for requesting national criminal fingerprint background checks, if any, established by the State.

(b) Guidelines

The procedures established under subsection (a) of this section shall require—

(1) that no qualified entity may request a background check of a provider under subsection (a) of this section unless the provider first provides a set of fingerprints and completes and signs a statement that—

(A) contains the name, address, and date of birth appearing on a valid identification document (as defined in section 1028 of title 18) of the provider;

(B) the provider has not been convicted of a crime and, if the provider has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) notifies the provider that the entity may request a background check under subsection (a) of this section;

(D) notifies the provider of the provider's rights under paragraph (2); and

(E) notifies the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to a person to whom the qualified entity provides care;

(2) that each provider who is the subject of a background check is entitled—

(A) to obtain a copy of any background check report; and

(B) to challenge the accuracy and completeness of any information contained in any such report and obtain a prompt determination as to the validity of such challenge before a final determination is made by the authorized agency;

(3) that an authorized agency, upon receipt of a background check report lacking disposition data, shall conduct research in whatever State and local recordkeeping systems are available in order to obtain complete data;

(4) that the authorized agency shall make a determination whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity; and

(5) that any background check under subsection (a) of this section and the results thereof shall be handled in accordance with the requirements of Public Law 92–544, except that this paragraph does not apply to any request by a qualified entity for a national criminal fingerprint background check pursuant to subsection (a)(3) of this section.

(c) Regulations

(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this subchapter, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

(d) Liability

A qualified entity shall not be liable in an action for damages solely for failure to conduct a criminal background check on a provider, nor shall a State or political subdivision thereof nor any agency, officer or employee thereof, be liable in an action for damages for the failure of a qualified entity (other than itself) to take action adverse to a provider who was the subject of a background check.

(e) Fees

In the case of a background check pursuant to a State requirement adopted after December 20, 1993, conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed eighteen dollars, respectively, or the actual cost, whichever is less, of the background check conducted with fingerprints. The States shall establish fee systems that insure that fees to nonprofit entities for background checks do not discourage volunteers from participating in child care programs.

(Pub. L. 103–209, § 3, Dec. 20, 1993, 107 Stat. 2491; Pub. L. 103–322, title XXXII, § 320928(a)(1), (2), (c), (e), Sept. 13, 1994, 108 Stat. 2131, 2132; Pub. L. 105–251, title II, § 222(a), (b), Oct. 9, 1998, 112 Stat. 1885.)

REFERENCES IN TEXT

Public Law 92–544, referred to in subsec. (b)(5), is Pub. L. 92–544, Oct. 25, 1972, 86 Stat. 1109. Provisions relating to use of funds for the exchange of identification records are contained in section 201 of Pub. L. 92–544, which is set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–251, § 222(a), added par. (3).

Subsec. (b)(5). Pub. L. 105–251, § 222(b), inserted before period at end ", except that this paragraph does not apply to any request by a qualified entity for a national criminal fingerprint background check pursuant to subsection (a)(3) of this section".

1994—Subsec. (a)(1). Pub. L. 103–322, § 320928(a)(1), substituted "the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities" for "an individual's fitness to have responsibility for the safety and well-being of children".

Subsec. (b)(1)(E). Pub. L. 103–322, § 320928(a)(2)(A), substituted "to a person to whom the qualified entity provides care" for "to a child to whom the qualified entity provides child care".

Subsec. (b)(4). Pub. L. 103–322, § 320928(a)(2)(B), substituted "the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities" for "an individual's fitness to have responsibility for the safety and well-being of children".

Subsec. (d). Pub. L. 103–322, § 320928(c), inserted "(other than itself)" after "failure of a qualified entity".

Subsec. (e). Pub. L. 103–322, §320928(e), substituted ''eighteen dollars, respectively, or the actual cost, whichever is less,'' for ''the actual cost''.

PILOT PROGRAM FOR NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS AND FEASIBILITY STUDY

Pub. L. 108–21, title I, §108, Apr. 30, 2003, 117 Stat. 655, as amended by Pub. L. 108–68, §1, Aug. 1, 2003, 117 Stat. 883; Pub. L. 108–458, title VI, §6401, Dec. 17, 2004, 118 Stat. 3755; Pub. L. 109–162, title XI, §1197, Jan. 5, 2006, 119 Stat. 3131, provided that:

''(a) ESTABLISHMENT OF PILOT PROGRAM.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Apr. 30, 2003], the Attorney General shall establish a pilot program for volunteer groups to obtain national and State criminal history background checks through a 10-fingerprint check to be conducted utilizing State criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

''(2) STATE PILOT PROGRAM.—

''(A) IN GENERAL.—The Attorney General shall designate 3 States as participants in a 30-month State pilot program.

''(B) VOLUNTEER ORGANIZATION REQUESTS.—A volunteer organization in one of the 3 States participating in the State pilot program under this paragraph that is part of the Boys and Girls Clubs of America, the National Mentoring Partnerships, or the National Council of Youth Sports may submit a request for a 10-fingerprint check from the participating State.

''(C) STATE CHECK.—The participating State under this paragraph after receiving a request under subparagraph (B) shall conduct a State background check and submit a request that a Federal check be performed through the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation, to the Attorney General, in a manner to be determined by the Attorney General.

''(D) INFORMATION PROVIDED.—Under procedures established by the Attorney General, any criminal history record information resulting from the State and Federal check under subparagraph (C) shall be provided to the State or National Center for Missing and Exploited Children consistent with the National Child Protection Act [of 1993, 42 U.S.C. 5119 et seq.].

''(E) COSTS.—A State may collect a fee to perform a criminal background check under this paragraph which may not exceed the actual costs to the State to perform such a check.

''(F) TIMING.—For any background check performed under this paragraph, the State shall provide the State criminal record information to the Attorney General within 7 days after receiving the request from the organization, unless the Attorney General determines during the feasibility study that such a check cannot reasonably be performed within that time period. The Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 7 business days after receiving the request from the State.

''(3) CHILD SAFETY PILOT PROGRAM.—

''(A) IN GENERAL.—The Attorney General shall establish a 60-month Child Safety Pilot Program that shall provide for the processing of 200,000 10-fingerprint check requests from organizations described in subparagraph (B) conducted through the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

''(B) PARTICIPATING ORGANIZATIONS.—

''(i) ELIGIBLE ORGANIZATIONS.—Eligible organizations include—

''(I) the Boys and Girls Clubs of America;

''(II) the MENTOR/National Mentoring Partnership;

''(III) the National Council of Youth Sports; and

''(IV) any nonprofit organization that provides care, as that term is defined in section 5 of the National Child Protection Act of 1993 (42 U.S.C. 5119c), for children.

''(ii) PILOT PROGRAM.—The eligibility of an organization described in clause (i)(IV) to participate in the pilot program established under this section shall be determined by the National Center for Missing and Exploited Children, with the rejection or concurrence within 30 days of the Attorney General, according to criteria established by such Center, including the potential number of applicants and suitability of the organization to the intent of this section. If the Attorney General fails to reject or concur within 30 days, the determination of the National Center for Missing and Exploited Children shall be conclusive.

''(C) APPLICANTS FROM PARTICIPATING ORGANIZATIONS.—Participating organizations may request background checks on applicants for positions as volunteers and employees who will be working with children or supervising volunteers.

''(D) PROCEDURES.—The Attorney General shall notify participating organizations of a process by which the organizations may provide fingerprint cards to the Attorney General.

''(E) VOLUNTEER INFORMATION REQUIRED.—An organization authorized to request a background check under this paragraph shall—

''(i) forward to the Attorney General the volunteer's fingerprints; and

''(ii) obtain a statement completed and signed by the volunteer that—

''(I) sets out the provider or volunteer's name, address, date of birth appearing on a valid identification document as defined in section 1028 of title 18, United States Code, and a photocopy of the valid identifying document;

''(II) states whether the volunteer has a criminal record, and, if so, sets out the particulars of such record;

''(III) notifies the volunteer that the Attorney General may perform a criminal history background check and that the volunteer's signature to the statement constitutes an acknowledgment that such a check may be conducted;

''(IV) notifies the volunteer that prior to and after the completion of the background check, the organization may choose to deny the provider access to children; and

''(V) notifies the volunteer of his right to correct an erroneous record held by the Attorney General.

''(F) TIMING.—For any background checks performed under this paragraph, the Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 10 business days after receiving the request from the organization.

''(G) DETERMINATIONS OF FITNESS.—

''(i) IN GENERAL.—Consistent with the privacy protections delineated in the National Child Protection Act [of 1993] (42 U.S.C. 5119 [et seq.]), the National Center for Missing and Exploited Children may make a determination whether the criminal history record information received in response to the criminal history background checks conducted under this paragraph indicates that the provider or volunteer has a criminal history record that renders the provider or volunteer unfit to provide care to children based upon criteria established jointly by, the National Center for Missing and Exploited Children, the Boys and Girls Clubs of America, the National Mentoring Partnership, and the National Council of Youth Sports.

''(ii) CHILD SAFETY PILOT PROGRAM.—The National Center for Missing and Exploited Children shall convey that determination to the organizations making requests under this paragraph.

''(4) FEES COLLECTED BY ATTORNEY GENERAL.—The Attorney General may collect a fee which may not exceed $18 to cover the cost to the Federal Bureau of Investigation to conduct the background check under paragraph (2) or (3).

''(b) RIGHTS OF VOLUNTEERS.—Each volunteer who is the subject of a criminal history background check under this section is entitled to contact the Attorney General to initiate procedures to—

''(1) obtain a copy of their criminal history record report; and

''(2) challenge the accuracy and completeness of the criminal history record information in the report.

''(c) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated such sums as may be necessary to the National Center for Missing and Exploited Children for fiscal years 2004 through 2008 to carry out the requirements of this section.

''(2) STATE PROGRAM.—There is authorized to be appropriated such sums as may be necessary to the Attorney General for the States designated in subsection (a)(1) for fiscal years 2004 and 2005 to establish and enhance fingerprint technology infrastructure of the participating State.

''(d) FEASIBILITY STUDY FOR A SYSTEM OF BACKGROUND CHECKS FOR EMPLOYEES AND VOLUNTEERS.—

''(1) STUDY REQUIRED.—The Attorney General shall conduct a feasibility study within 180 days after the date of the enactment of this Act [Apr. 30, 2003]. The study shall examine, to the extent discernible, the following:

''(A) The current state of fingerprint capture and processing at the State and local level, including the current available infrastructure, State system capacities, and the time for each State to process a civil or volunteer print from the time of capture to submission to the Federal Bureau of Investigation (FBI).

''(B) The intent of the States concerning participation in a nationwide system of criminal background checks to provide information to qualified entities.

''(C) The number of volunteers, employees, and other individuals that would require a fingerprint-based criminal background check.

''(D) The impact on the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation in terms of capacity and impact on other users of the system, including the effect on Federal Bureau of Investigation work practices and staffing levels.

''(E) The current fees charged by the Federal Bureau of Investigation, States and local agencies, and private companies to process fingerprints and conduct background checks.

''(F) The existence of 'model' or best practice programs which could easily be expanded and duplicated in other States.

''(G) The extent to which private companies are currently performing background checks and the possibility of using private companies in the future to perform any of the background check process, including, but not limited to, the capture and transmission of fingerprints and fitness determinations.

''(H) The cost of development and operation of the technology and the infrastructure necessary to establish a nationwide fingerprint-based and other criminal background check system.

''(I) The extent of State participation in the procedures for background checks authorized in the National Child Protection Act [of 1993] (Public Law 103–209), as amended by the Volunteers for Children Act (sections 221 and 222 of Public Law 105–251).

''(J) The extent to which States currently provide access to nationwide criminal history background checks to organizations that serve children.

''(K) The extent to which States currently permit volunteers to appeal adverse fitness determinations, and whether similar procedures are required at the Federal level.

''(L) The implementation of the 2 pilot programs created in subsection (a).

''(M) Any privacy concerns that may arise from nationwide criminal background checks.

''(N) Any other information deemed relevant by the Department of Justice.

''(O) The extent of participation by eligible organizations in the state pilot program.

''(2) INTERIM REPORT.—Based on the findings of the feasibility study under paragraph (1), the Attorney General shall, not later than 180 days after the date of the enactment of this Act [Apr. 30, 2003], submit to Congress an interim report, which may include recommendations for a pilot project to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly, or the disabled.

''(3) FINAL REPORT.—Based on the findings of the pilot project, the Attorney General shall, not later than 60 days after completion of the pilot project under this section, submit to Congress a final report, including recommendations, which may include a proposal for grants to the States to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly, or the disabled, and which may include recommendations for amendments to the National Child Protection Act [of 1993] and the Volunteers for Children Act [see Short Title of 1998 Amendment note set out under section 5101 of this title] so that qualified entities can promptly and affordably conduct nationwide criminal history background checks on their employees and volunteers.

''(e) LIMITATION ON LIABILITY.—In connection with the Pilot Programs established under this section, in reliance upon the fitness criteria established under section 108(a)(3)(G)(i), and except upon proof of actual malice or intentional misconduct, the National Center for Missing and Exploited Children, or a director, officer, employee, or agent of the Center shall not be liable in any civil action for damages—

''(1) arising from any act or communication by the Center, the director, officer, employee, or agent that results in or contributes to a decision that an individual is unfit to serve as a volunteer for any volunteer organization;

''(2) alleging harm arising from a decision based on the information in an individual's criminal history record that an individual is fit to serve as a volunteer for any volunteer organization unless the Center, the director, officer, employee, or agent is furnished with an individual's criminal history records which they know to be inaccurate or incomplete, or which they know reflect a lesser crime than that for which the individual was arrested; and

''(3) alleging harm arising from a decision that, based on the absence of criminal history information, an individual is fit to serve as a volunteer for any volunteer organization unless the Center, the director, officer, employee, or agent knows that criminal history records exist and have not been furnished as required under this section.''

§ 5119b. Funding for improvement of child abuse crime information

(a) Omitted

(b) Additional funding grants for improvement of child abuse crime information

(1) The Attorney General shall, subject to appropriations and with preference to States that, as of December 20, 1993, have in computerized criminal history files the lowest percentages of charges and dispositions of identifiable child abuse cases, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this subchapter;

(B) for the improvement of existing computerized criminal history files for the purposes of this subchapter;

(C) to improve accessibility to the national criminal history background check system for the purposes of this subchapter;

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal history background check system for the purposes of this subchapter; and

(E) to assist the State in paying all or part of the cost to the State of conducting background checks on persons who are employed by or volunteer with a public, not-for-profit, or voluntary qualified entity to reduce the amount of fees charged for such background checks.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of $20,000,000 for fiscal years 1999, 2000, 2001, and 2002.

(c) Withholding State funds

Effective 1 year after December 20, 1993, the Attorney General may reduce, by up to 10 percent, the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3701 et seq.] that is not in compliance with the requirements of this subchapter.

(Pub. L. 103–209, § 4, Dec. 20, 1993, 107 Stat. 2493; Pub. L. 103–322, title XXXII, § 320928(d), Sept. 13, 1994, 108 Stat. 2132; Pub. L. 105–251, title II, § 222(c), Oct. 9, 1998, 112 Stat. 1885.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. Title I of the Act is classified principally to chapter 46 (§ 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

CODIFICATION

Section is comprised of section 4 of Pub. L. 103–209. Subsec. (a) of section 4 of Pub. L. 103–209 amended former section 3759(b) of this title.

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 105–251 substituted ''1999, 2000, 2001, and 2002'' for ''1994, 1995, 1996, and 1997''.

1994—Subsec. (b)(1)(E). Pub. L. 103–322, which directed the amendment of subsec. (b) by adding subpar. (E) at the end, was executed by adding subpar. (E) at the end of par. (1) of subsec. (b) to reflect the probable intent of Congress.

AVAILABILITY OF VIOLENT CRIME REDUCTION TRUST FUND TO FUND ACTIVITIES AUTHORIZED BY THE BRADY HANDGUN VIOLENCE PREVENTION ACT AND THE NATIONAL CHILD PROTECTION ACT OF 1993

For appropriations for amounts authorized in subsec. (b) of this section from the Violent Crime Reduction Trust Fund established by section 14211 of this title, see section 210603(a) of Pub. L. 103–322, set out as a note under section 922 of Title 18, Crimes and Criminal Procedure.

§ 5119c. Definitions

For the purposes of this subchapter—

(1) the term ''authorized agency'' means a division or office of a State designated by a State to report, receive, or disseminate information under this subchapter;

(2) the term ''child'' means a person who is a child for purposes of the criminal child abuse law of a State;

(3) the term ''child abuse crime'' means a crime committed under any law of a State that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person;

(4) the term ''child abuse crime information'' means the following facts concerning a person who has been arrested for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the child abuse crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, or convicted of, a child abuse crime;

(5) the term ''care'' means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities;

(6) the term ''identifiable child abuse crime case'' means a case that can be identified by the authorized criminal justice agency of the State as involving a child abuse crime by reference to the statutory citation or descriptive label of the crime as it appears in the criminal history record;

(7) the term ''individuals with disabilities'' means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks;

(8) the term ''national criminal history background check system'' means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

(9) the term ''provider'' means—

(A) a person who—

(i) is employed by or volunteers with a qualified entity (including an individual who is employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel);

(ii) who owns or operates a qualified entity; or

(iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and

(B) a person who—

(i) seeks to be employed by or volunteer with a qualified entity (including an individual who seeks to be employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel);

(ii) seeks to own or operate a qualified entity; or

(iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care;

(10) the term ''qualified entity'' means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services; and

(11) the term ''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

(Pub. L. 103–209, § 5, Dec. 20, 1993, 107 Stat. 2493; Pub. L. 103–322, title XXXII, § 320928(a)(3), (j), Sept. 13, 1994, 108 Stat. 2132, 2133; Pub. L. 107–110, title X, § 1075, Jan. 8, 2002, 115 Stat. 2090.)

AMENDMENTS

2002—Par. (9)(A)(i). Pub. L. 107–110, § 1075(1), inserted before semicolon at end ''(including an individual who is employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel)''.

Par. (9)(B)(i). Pub. L. 107–110, § 1075(2), inserted before semicolon at end ''(including an individual who seeks to be employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel)''.

1994—Par. (5). Pub. L. 103–322, § 320928(a)(3)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''the term 'child care' means the provision of care, treatment, education, training, instruction, supervision, or recreation to children by persons having unsupervised access to a child;''.

Pars. (6), (7). Pub. L. 103–322, § 320928(j)(2), added pars. (6) and (7). Former pars. (6) and (7) redesignated (8) and (9), respectively.

Par. (8). Pub. L. 103–322, § 320928(j)(1), redesignated par. (6) as (8). Former par. (8) redesignated (10).

Pub. L. 103–322, § 320928(a)(3)(B), substituted ''care'' for ''child care'' wherever appearing.

Pars. (9) to (11). Pub. L. 103–322, § 320928(j)(1), redesignated pars. (7) to (9) as (9) to (11), respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CHAPTER 68—DISASTER RELIEF

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SUBCHAPTER I—FINDINGS, DECLARATIONS, AND DEFINITIONS

§ 5121. Congressional findings and declarations

(a) The Congress hereby finds and declares that—

(1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and

(2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity;

special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this chapter, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by—

(1) revising and broadening the scope of existing disaster relief programs;

(2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;

(3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;

(5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and

(6) providing Federal assistance programs for both public and private losses sustained in disasters[1]

(Pub. L. 93–288, title I, § 101, May 22, 1974, 88 Stat. 143; Pub. L. 100–707, title I, § 103(a), Nov. 23, 1988, 102 Stat. 4689.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1988—Subsec. (b)(7). Pub. L. 100–707 struck out par. (7) expressing Congressional intent to provide disaster assistance through a long-range economic recovery program for major disaster areas.

EFFECTIVE DATE

Section 605 of Pub. L. 93–288 provided that Pub. L. 93–288 was effective Apr. 1, 1974, with the exception of section 5178 of this title, prior to repeal by Pub. L. 100–707, title I, § 108(b), Nov. 23, 1988, 102 Stat. 4708.

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–308, § 1, Oct. 6, 2006, 120 Stat. 1725, provided that: ''This Act [amending sections 5170b, 5196, and 5196b of this title] may be cited as the 'Pets Evacuation and Transportation Standards Act of 2006'.''

Pub. L. 109–218, § 1, Apr. 20, 2006, 120 Stat. 333, provided that: ''This Act [amending section 5150 of this title] may be cited as the 'Local Community Recovery Act of 2006'.''

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–139, § 1, Dec. 22, 2005, 119 Stat. 2649, provided that: ''This Act [amending section 5133 of this title and provisions set out as a note under this section] may be cited as the 'Predisaster Mitigation Program Reauthorization Act of 2005'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–390, § 1(a), Oct. 30, 2000, 114 Stat. 1552, provided that: ''This Act [enacting sections 5133, 5134, 5165 to 5165c, 5205, and 5206 of this title, amending sections 3796b, 5122, 5154, 5170c, 5172, 5174, 5184, 5187, and 5192 of this title, repealing sections 5176 and 5178 of this title, and enacting provisions set out as notes under this section and sections 3796b, 5133, 5165b, 5172, 5174, and 5187 of this title] may be cited as the 'Disaster Mitigation Act of 2000'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–181, § 1, Dec. 3, 1993, 107 Stat. 2054, provided that: ''This Act [amending section 5170c of this title and enacting provisions set out as notes under sections 4601 and 5170c of this title] may be cited as the 'Hazard Mitigation and Relocation Assistance Act of 1993'.''

SHORT TITLE OF 1988 AMENDMENT

Section 101(a) of title I of Pub. L. 100–707 provided that: ''This title [enacting sections 5141, 5153 to 5157,

[1] So in original. Probably should be followed by a period.

5159 to 5164, 5170 to 5170c, 5172, 5174, 5178, 5189 to 5189b, and 5191 to 5193 of this title, amending this section, sections 1382a, 3030, 3231, 3232, 3539, 4003, 4013, 5122, 5131, 5143, 5144, 5147 to 5152, 5158, 5171, 5173, 5176, 5177, 5179 to 5188, 5201, 7704, and 9601 of this title, sections 1421, 1427, 1427a, 1961, 1964, and 2014 of Title 7, Agriculture, sections 1706c, 1709, and 1715*l* of Title 12, Banks and Banking, section 636 of Title 15, Commerce and Trade, sections 1536 and 3505 of Title 16, Conservation, sections 241–1 and 646 of Title 20, Education, section 125 of Title 23, Highways, sections 165, 5064, and 5708 of Title 26, Internal Revenue Code, section 701n of Title 33, Navigation and Navigable Waters, and section 1820 [now 3720] of Title 38, Veterans' Benefits, repealing sections 5142, 5145, 5146, 5175, and 5202 of this title and former sections 5141, 5153 to 5157, 5172, 5174, 5178, and 5189 of this title, enacting provisions set out as notes under this section and sections 3231, 5122, and 5201 of this title, amending provisions set out as a note under this section and section 1681 of Title 48, Territories and Insular Possessions, and repealing provisions set out as notes under this section and former section 5178 of this title] may be cited as 'The Disaster Relief and Emergency Assistance Amendments of 1988'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–568, § 1, Dec. 23, 1980, 94 Stat. 3334, provided: ''That this Act [amending section 5202 of this title] may be cited as the 'Disaster Relief Act Amendments of 1980'.''

SHORT TITLE

Section 1 of Pub. L. 93–288, as amended by Pub. L. 100–707, title I, § 102(a), Nov. 23, 1988, 102 Stat. 4689; Pub. L. 106–390, title III, § 301, Oct. 30, 2000, 114 Stat. 1572, provided: ''That this Act [enacting this section, sections 3231 to 3236, 5122, 5131, 5132, 5141 to 5158, 5171 to 5189, 5201, and 5202 of this title, and section 1264 of former Title 31, Money and Finance, amending sections 1706c, 1709, 1715*l* of Title 12, Banks and Banking, sections 241–1, 646, 758 of Title 20, Education, sections 165, 5064, 5708 of Title 26, Internal Revenue Code, section 1820 [now 3720] of Title 38, Veterans' Benefits, section 461 of former Title 40, Public Buildings, Property, and Works, repealing sections 4401, 4402, 4411 to 4413, 4414 to 4420, 4431 to 4436, 4457 to 4462, 4481 to 4485 of this title, enacting provisions set out as notes under this section, sections 4401 and 5178 of this title, and section 1264 of former Title 31, and amending provisions set out as a note under section 1681 of Title 48, Territories and Insular Possessions] may be cited as the ''Robert T. Stafford Disaster Relief and Emergency Assistance Act'.''

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF FUNCTIONS

Functions of the President under the Disaster Relief Acts of 1970 and 1974, with certain exceptions, were delegated to the Secretary of Homeland Security, see sections 4–201 and 4–203 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended, set out as a note under section 5195 of this title.

REFERENCES TO DISASTER RELIEF ACT OF 1974

Section 102(b) of title I of Pub. L. 100–707 provided that: ''Whenever any reference is made in any law (other than this Act [see Tables for classification]), regulation, document, rule, record, or other paper of the United States to a section or provision of the Disaster Relief Act of 1974 [former short title of Pub. L. 93–288], such reference shall be deemed to be a reference to such section or provision of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [Pub. L. 93–288, see Short Title note above].''

REFERENCES TO DISASTER RELIEF ACT OF 1970

Section 702(m), formerly section 602(m), of Pub. L. 93–288, as renumbered by Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100, provided that: ''Whenever reference is made in any provision of law (other than this Act [see Short Title note set out above]), regulation, rule, record, or documents of the United States to provisions of the Disaster Relief Act of 1970 (84 Stat. 1744), repealed by this Act such reference shall be deemed to be a reference to the appropriate provision of this Act.''

REPORT ON STATE MANAGEMENT OF SMALL DISASTERS INITIATIVE

Pub. L. 106–390, title II, § 208, Oct. 30, 2000, 114 Stat. 1571, provided that: ''Not later than 3 years after the date of the enactment of this Act [Oct. 30, 2000], the President shall submit to Congress a report describing the results of the State Management of Small Disasters Initiative, including—

''(1) identification of any administrative or financial benefits of the initiative; and

''(2) recommendations concerning the conditions, if any, under which States should be allowed the option to administer parts of the assistance program under section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172).''

STUDY REGARDING COST REDUCTION

Pub. L. 106–390, title II, § 209, Oct. 30, 2000, 114 Stat. 1571, as amended by Pub. L. 109–139, § 3, Dec. 22, 2005, 119 Stat. 2649, provided that: ''Not later than September 30, 2007, the Director of the Congressional Budget Office shall complete a study estimating the reduction in Federal disaster assistance that has resulted and is likely to result from the enactment of this Act [see Short Title of 2000 Amendment note above].''

STUDY OF PARTICIPATION BY INDIAN TRIBES IN EMERGENCY MANAGEMENT

Pub. L. 106–390, title III, § 308, Oct. 30, 2000, 114 Stat. 1575, required the Director of the Federal Emergency Management Agency to conduct a study of participation by Indian tribes in emergency management and submit a report no later than 1 year after Oct. 30, 2000.

NATIONAL DROUGHT POLICY

Pub. L. 105–199, July 16, 1998, 112 Stat. 641, as amended by Pub. L. 106–78, title VII, § 753, Oct. 22, 1999, 113 Stat. 1170, known as the ''National Drought Policy Act of 1998'', established the National Drought Policy Commission to study and submit a report on national drought policy and terminated the Commission 90 days after the submission of the report.

RECOMMENDATIONS CONCERNING IMPROVEMENT OF RELATIONSHIPS AMONG DISASTER MANAGEMENT OFFICIALS

Pub. L. 100–707, title I, § 110, Nov. 23, 1988, 102 Stat. 4710, provided that not later than 1 year after Nov. 23, 1988, the President was to recommend to the Congress proposals to improve the operational and fiscal relationships that exist among Federal, State, and local major disaster and emergency management officials, including provisions which would decrease the amount of time for processing requests for major disaster and emergency declarations and providing Federal assist-

ance for major disasters and emergencies, provide for more effective utilization of State and local resources in relief efforts, and improve the timeliness of reimbursement.

DECLARED DISASTERS AND EMERGENCIES NOT AFFECTED

Pub. L. 100–707, title I, § 112, Nov. 23, 1988, 102 Stat. 4711, provided that: ''This title [see Short Title of 1988 Amendment note above] shall not affect the administration of any assistance for a major disaster or emergency declared by the President before the date of the enactment of this Act [Nov. 23, 1988].''

EXECUTIVE ORDER NO. 11749

Ex. Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177, which related to consolidation of functions assigned to Secretary of Housing and Urban Development, was revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 5195 of this title.

EX. ORD. NO. 11795. DELEGATION OF PRESIDENTIAL FUNCTIONS

Ex. Ord. No. 11795, July 11, 1974, 39 F.R. 25939, as amended by Ex. Ord. No. 11910, Apr. 13, 1976, 41 F.R. 15681; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571, provided:

By virtue of the authority vested in me by the Disaster Relief Act of 1974 (Public Law 93–288; 88 Stat. 143) [see References to Disaster Relief Act of 1974 note above], section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

[SECTIONS 1 and 2. Revoked by Ex. Ord. No. 12148, § 5–111, July 20, 1979, 44 F.R. 43239.]

SEC. 3. The Secretary of Agriculture is designated and empowered to exercise, without the approval, ratification, or other action of the President, all of the authority vested in the President by section 412 of the act [section 5179 of this title] concerning food coupons and distribution.

[SEC. 4. Revoked by Ex. Ord. No. 12148, § 5–111, July 20, 1979, 44 F.R. 43239.]

SEISMIC SAFETY OF FEDERAL AND FEDERALLY ASSISTED OR REGULATED NEW BUILDING CONSTRUCTION

For provisions relating to seismic safety requirements for new construction or total replacement of a building under this chapter after a presidentially declared major disaster or emergency, see Ex. Ord. No. 12699, Jan. 5, 1990, 55 F.R. 835, set out as a note under section 7704 of this title.

§ 5122. Definitions

As used in this chapter—

(1) EMERGENCY.—''Emergency'' means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(2) MAJOR DISASTER.—''Major disaster'' means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) ''United States'' means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) ''State'' means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(5) ''Governor'' means the chief executive of any State.

(6) INDIVIDUAL WITH A DISABILITY.—The term ''individual with a disability'' means an individual with a disability as defined in section 12102(2) of this title.

(7) LOCAL GOVERNMENT.—The term ''local government'' means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

(C) a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

(8) ''Federal agency'' means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(9) PUBLIC FACILITY.—''Public facility'' means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

(C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

(D) Any park.

(10) PRIVATE NONPROFIT FACILITY.—

(A) IN GENERAL.—The term ''private nonprofit facility'' means private nonprofit educational, utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled) and facilities on Indian reservations, as defined by the President.

(B) ADDITIONAL FACILITIES.—In addition to the facilities described in subparagraph (A), the term ''private nonprofit facility'' includes any private nonprofit facility that provides essential services of a governmental nature to the general public (including museums, zoos, performing arts facilities, community arts centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shel-

ter workshops, and facilities that provide health and safety services of a governmental nature), as defined by the President.

(Pub. L. 93–288, title I, § 102, May 22, 1974, 88 Stat. 144; Pub. L. 100–707, title I, § 103(b)–(d), (f), Nov. 23, 1988, 102 Stat. 4689, 4690; Pub. L. 102–247, title II, § 205, Feb. 24, 1992, 106 Stat. 38; Pub. L. 106–390, title III, § 302, Oct. 30, 2000, 114 Stat. 1572; Pub. L. 109–295, title VI, § 688, Oct. 4, 2006, 120 Stat. 1448.)

AMENDMENTS

2006—Pars. (6) to (8). Pub. L. 109–295, § 688(2), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively. Former par. (8) redesignated (9).

Par. (9). Pub. L. 109–295, § 688(2), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Pub. L. 109–295, § 688(1), amended par. (9) generally. Prior to amendment, text read as follows: ''‘Private nonprofit facility’ means private nonprofit educational, utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled), other private nonprofit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President.''

Par. (10). Pub. L. 109–295, § 688(2), redesignated par. (9) as (10).

2000—Par. (3). Pub. L. 106–390, § 302(1), substituted ''and the Commonwealth of the Northern Mariana Islands'' for ''the Northern Mariana Islands, and the Trust Territory of the Pacific Islands''.

Par. (4). Pub. L. 106–390, § 302(1), substituted ''and the Commonwealth of the Northern Mariana Islands'' for ''the Northern Mariana Islands, or the Trust Territory of the Pacific Islands''.

Par. (6). Pub. L. 106–390, § 302(2), added par. (6) and struck out former par. (6) which read as follows: ''‘Local government’ means (A) any county, city, village, town, district, or other political subdivision of any State, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.''

Par. (9). Pub. L. 106–390, § 302(3), inserted ''irrigation,'' after ''utility,''.

1992—Pars. (3), (4). Pub. L. 102–247 inserted ''the Northern Mariana Islands,'' after ''American Samoa,''.

1988—Par. (1). Pub. L. 100–707, § 103(b), inserted heading and amended text generally. Prior to amendment, text read as follows: ''‘Emergency’ means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster.''

Par. (2). Pub. L. 100–707, § 103(c), inserted heading and amended text generally. Prior to amendment, text read as follows: ''‘Major disaster’ means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.''

Pars. (3), (4). Pub. L. 100–707, § 103(d), struck out ''the Canal Zone,'' after ''American Samoa,''.

Pars. (8), (9). Pub. L. 100–707, § 103(f), added pars. (8) and (9).

LOCAL GOVERNMENT

Pub. L. 100–707, title I, § 103(e), Nov. 23, 1988, 102 Stat. 4690, provided that:

''(1) IN GENERAL.—The term ‘local government’ is deemed to have the same meaning in the Disaster Relief and Emergency Assistance Act [Pub. L. 93–288, see Short Title note set out under section 5121 of this title], as amended by this Act [see Short Title of 1988 Amendment note set out under section 5121 of this title], as that term had on October 1, 1988, under section 102(6) of the Disaster Relief Act of 1974 [par. (6) of this section] and regulations implementing the Disaster Relief Act of 1974.

''(2) TERMINATION OF EFFECTIVENESS.—Paragraph (1) shall not be effective on and after the 90th day after the President transmits to the Committee on Public Works and Transportation of the House of Representatives and to the Committee on Environment and Public Works of the Senate a report which includes an interpretation of the term ‘local government’ for purposes of the Disaster Relief and Emergency Assistance Act, as amended by this Act.''

[Functions of President under section 103(e)(2) of Pub. L. 100–707 delegated to Administrator of Federal Emergency Management Agency by section 3 of Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571, set out as a note under section 5195 of this title.]

SUBCHAPTER II—DISASTER PREPAREDNESS AND MITIGATION ASSISTANCE

§ 5131. Federal and State disaster preparedness programs

(a) Utilization of services of other agencies

The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes—

(1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;

(2) training and exercises;

(3) postdisaster critiques and evaluations;

(4) annual review of programs;

(5) coordination of Federal, State, and local preparedness programs;

(6) application of science and technology;

(7) research.

(b) Technical assistance for the development of plans and programs

The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals, businesses, and State and local governments following such disasters; and for recovery of damaged or destroyed public and private facilities.

(c) Grants to States for development of plans and programs

Upon application by a State, the President is authorized to make grants, not to exceed in the aggregate to such State $250,000, for the development of plans, programs, and capabilities for disaster preparedness and prevention. Such grants shall be applied for within one year from May 22, 1974. Any State desiring financial assistance under this section shall designate or create an agency to plan and administer such a disaster

preparedness program, and shall, through such agency, submit a State plan to the President, which shall—

(1) set forth a comprehensive and detailed State program for preparation against and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments; and

(2) include provisions for appointment and training of appropriate staffs, formulation of necessary regulations and procedures and conduct of required exercises.

(d) Grants for improvement, maintenance, and updating of State plans

The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining and updating State disaster assistance plans, including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards; except that no such grant shall exceed $50,000 per annum to any State.

(Pub. L. 93–288, title II, § 201, May 22, 1974, 88 Stat. 145; Pub. L. 100–707, title I, § 104, Nov. 23, 1988, 102 Stat. 4690.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–707, § 104(b)(1), struck out ''(including the Defense Civil Preparedness Agency)'' after ''agencies''.

Subsec. (d). Pub. L. 100–707, § 104(a), (b)(2), inserted ''including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards;'' after ''plans,'' and substituted ''$50,000'' for ''$25,000''.

§ 5132. Disaster warnings

(a) Readiness of Federal agencies to issue warnings to State and local officials

The President shall insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials.

(b) Technical assistance to State and local governments for effective warnings

The President shall direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided.

(c) Warnings to governmental authorities and public endangered by disaster

The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the civil defense communications system established and maintained pursuant to section 5196(c) of this title or any other Federal communications system for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters.

(d) Agreements with commercial communications systems for use of facilities

The President is authorized to enter into agreements with the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable or nonreimbursable basis for the purpose of providing warning to governmental authorities and the civilian population endangered by disasters.

(Pub. L. 93–288, title II, § 202, May 22, 1974, 88 Stat. 145; Pub. L. 103–337, div. C, title XXXIV, § 3412(b)(1), Oct. 5, 1994, 108 Stat. 3111.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–337 substituted ''section 5196(c) of this title'' for ''section 2281(c) of title 50, Appendix,''.

§ 5133. Predisaster hazard mitigation

(a) Definition of small impoverished community

In this section, the term ''small impoverished community'' means a community of 3,000 or fewer individuals that is economically disadvantaged, as determined by the State in which the community is located and based on criteria established by the President.

(b) Establishment of program

The President may establish a program to provide technical and financial assistance to States and local governments to assist in the implementation of predisaster hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property, including damage to critical services and facilities under the jurisdiction of the States or local governments.

(c) Approval by President

If the President determines that a State or local government has identified natural disaster hazards in areas under its jurisdiction and has demonstrated the ability to form effective public-private natural disaster hazard mitigation partnerships, the President, using amounts in the National Predisaster Mitigation Fund established under subsection (i) of this section (referred to in this section as the ''Fund''), may provide technical and financial assistance to the State or local government to be used in accordance with subsection (e) of this section.

(d) State recommendations

(1) In general

(A) Recommendations

The Governor of each State may recommend to the President not fewer than five local governments to receive assistance under this section.

(B) Deadline for submission

The recommendations under subparagraph (A) shall be submitted to the President not later than October 1, 2001, and each October 1st thereafter or such later date in the year as the President may establish.

(C) Criteria

In making recommendations under subparagraph (A), a Governor shall consider the criteria specified in subsection (g) of this section.

(2) Use

(A) In general

Except as provided in subparagraph (B), in providing assistance to local governments under this section, the President shall select

from local governments recommended by the Governors under this subsection.

(B) Extraordinary circumstances

In providing assistance to local governments under this section, the President may select a local government that has not been recommended by a Governor under this subsection if the President determines that extraordinary circumstances justify the selection and that making the selection will further the purpose of this section.

(3) Effect of failure to nominate

If a Governor of a State fails to submit recommendations under this subsection in a timely manner, the President may select, subject to the criteria specified in subsection (g) of this section, any local governments of the State to receive assistance under this section.

(e) Uses of technical and financial assistance

(1) In general

Technical and financial assistance provided under this section—

(A) shall be used by States and local governments principally to implement predisaster hazard mitigation measures that are cost-effective and are described in proposals approved by the President under this section; and

(B) may be used—

(i) to support effective public-private natural disaster hazard mitigation partnerships;

(ii) to improve the assessment of a community's vulnerability to natural hazards; or

(iii) to establish hazard mitigation priorities, and an appropriate hazard mitigation plan, for a community.

(2) Dissemination

A State or local government may use not more than 10 percent of the financial assistance received by the State or local government under this section for a fiscal year to fund activities to disseminate information regarding cost-effective mitigation technologies.

(f) Allocation of funds

The amount of financial assistance made available to a State (including amounts made available to local governments of the State) under this section for a fiscal year—

(1) shall be not less than the lesser of—

(A) $500,000; or

(B) the amount that is equal to 1.0 percent of the total funds appropriated to carry out this section for the fiscal year;

(2) shall not exceed 15 percent of the total funds described in paragraph (1)(B); and

(3) shall be subject to the criteria specified in subsection (g) of this section.

(g) Criteria for assistance awards

In determining whether to provide technical and financial assistance to a State or local government under this section, the President shall take into account—

(1) the extent and nature of the hazards to be mitigated;

(2) the degree of commitment of the State or local government to reduce damages from future natural disasters;

(3) the degree of commitment by the State or local government to support ongoing non-Federal support for the hazard mitigation measures to be carried out using the technical and financial assistance;

(4) the extent to which the hazard mitigation measures to be carried out using the technical and financial assistance contribute to the mitigation goals and priorities established by the State;

(5) the extent to which the technical and financial assistance is consistent with other assistance provided under this chapter;

(6) the extent to which prioritized, cost-effective mitigation activities that produce meaningful and definable outcomes are clearly identified;

(7) if the State or local government has submitted a mitigation plan under section 5165 of this title, the extent to which the activities identified under paragraph (6) are consistent with the mitigation plan;

(8) the opportunity to fund activities that maximize net benefits to society;

(9) the extent to which assistance will fund mitigation activities in small impoverished communities; and

(10) such other criteria as the President establishes in consultation with State and local governments.

(h) Federal share

(1) In general

Financial assistance provided under this section may contribute up to 75 percent of the total cost of mitigation activities approved by the President.

(2) Small impoverished communities

Notwithstanding paragraph (1), the President may contribute up to 90 percent of the total cost of a mitigation activity carried out in a small impoverished community.

(i) National Predisaster Mitigation Fund

(1) Establishment

The President may establish in the Treasury of the United States a fund to be known as the ''National Predisaster Mitigation Fund'', to be used in carrying out this section.

(2) Transfers to Fund

There shall be deposited in the Fund—

(A) amounts appropriated to carry out this section, which shall remain available until expended; and

(B) sums available from gifts, bequests, or donations of services or property received by the President for the purpose of predisaster hazard mitigation.

(3) Expenditures from Fund

Upon request by the President, the Secretary of the Treasury shall transfer from the Fund to the President such amounts as the President determines are necessary to provide technical and financial assistance under this section.

(4) Investment of amounts

(A) In general

The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

(B) Acquisition of obligations

For the purpose of investments under subparagraph (A), obligations may be acquired—

(i) on original issue at the issue price; or

(ii) by purchase of outstanding obligations at the market price.

(C) Sale of obligations

Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(D) Credits to Fund

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(E) Transfers of amounts

(i) In general

The amounts required to be transferred to the Fund under this subsection shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(ii) Adjustments

Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(j) Limitation on total amount of financial assistance

The President shall not provide financial assistance under this section in an amount greater than the amount available in the Fund.

(k) Multihazard advisory maps

(1) Definition of multihazard advisory map

In this subsection, the term ''multihazard advisory map'' means a map on which hazard data concerning each type of natural disaster is identified simultaneously for the purpose of showing areas of hazard overlap.

(2) Development of maps

In consultation with States, local governments, and appropriate Federal agencies, the President shall develop multihazard advisory maps for areas, in not fewer than five States, that are subject to commonly recurring natural hazards (including flooding, hurricanes and severe winds, and seismic events).

(3) Use of technology

In developing multihazard advisory maps under this subsection, the President shall use, to the maximum extent practicable, the most cost-effective and efficient technology available.

(4) Use of maps

(A) Advisory nature

The multihazard advisory maps shall be considered to be advisory and shall not require the development of any new policy by, or impose any new policy on, any government or private entity.

(B) Availability of maps

The multihazard advisory maps shall be made available to the appropriate State and local governments for the purposes of—

(i) informing the general public about the risks of natural hazards in the areas described in paragraph (2);

(ii) supporting the activities described in subsection (e) of this section; and

(iii) other public uses.

(*l*) Report on Federal and State administration

Not later than 18 months after October 30, 2000, the President, in consultation with State and local governments, shall submit to Congress a report evaluating efforts to implement this section and recommending a process for transferring greater authority and responsibility for administering the assistance program established under this section to capable States.

(m) Termination of authority

The authority provided by this section terminates September 30, 2008.

(Pub. L. 93–288, title II, § 203, as added Pub. L. 106–390, title I, § 102(a), Oct. 30, 2000, 114 Stat. 1553; amended Pub. L. 108–199, div. H, § 135, Jan. 23, 2004, 118 Stat. 441; Pub. L. 108–447, div. J, title I, § 105, Dec. 8, 2004, 118 Stat. 3343; Pub. L. 109–139, § 2, Dec. 22, 2005, 119 Stat. 2649.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (g)(5), was in the original ''this Act'', meaning Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

2005—Subsec. (m). Pub. L. 109–139 substituted ''September 30, 2008'' for ''December 31, 2005''.

2004—Subsec. (m). Pub. L. 108–447 substituted ''2005'' for ''2004''.

Pub. L. 108–199 substituted ''2004'' for ''2003''.

FINDINGS AND PURPOSE

Pub. L. 106–390, title I, § 101, Oct. 30, 2000, 114 Stat. 1552, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) natural disasters, including earthquakes, tsunamis, tornadoes, hurricanes, flooding, and wildfires, pose great danger to human life and to property throughout the United States;

''(2) greater emphasis needs to be placed on—

''(A) identifying and assessing the risks to States and local governments (including Indian tribes) from natural disasters;

''(B) implementing adequate measures to reduce losses from natural disasters; and

''(C) ensuring that the critical services and facilities of communities will continue to function after a natural disaster;

''(3) expenditures for postdisaster assistance are increasing without commensurate reductions in the likelihood of future losses from natural disasters;

''(4) in the expenditure of Federal funds under the Robert T. Stafford Disaster Relief and Emergency As-

sistance Act (42 U.S.C. 5121 et seq.), high priority should be given to mitigation of hazards at the local level; and

''(5) with a unified effort of economic incentives, awareness and education, technical assistance, and demonstrated Federal support, States and local governments (including Indian tribes) will be able to—

''(A) form effective community-based partnerships for hazard mitigation purposes;

''(B) implement effective hazard mitigation measures that reduce the potential damage from natural disasters;

''(C) ensure continued functionality of critical services;

''(D) leverage additional non-Federal resources in meeting natural disaster resistance goals; and

''(E) make commitments to long-term hazard mitigation efforts to be applied to new and existing structures.

''(b) PURPOSE.—The purpose of this title [enacting this section and sections 5134, 5165 and 5165a of this title, amending section 5170c of this title, and repealing section 5176 of this title] is to establish a national disaster hazard mitigation program—

''(1) to reduce the loss of life and property, human suffering, economic disruption, and disaster assistance costs resulting from natural disasters; and

''(2) to provide a source of predisaster hazard mitigation funding that will assist States and local governments (including Indian tribes) in implementing effective hazard mitigation measures that are designed to ensure the continued functionality of critical services and facilities after a natural disaster.''

§ 5134. Interagency task force

(a) In general

The President shall establish a Federal interagency task force for the purpose of coordinating the implementation of predisaster hazard mitigation programs administered by the Federal Government.

(b) Chairperson

The Administrator of the Federal Emergency Management Agency shall serve as the chairperson of the task force.

(c) Membership

The membership of the task force shall include representatives of—

(1) relevant Federal agencies;

(2) State and local government organizations (including Indian tribes); and

(3) the American Red Cross.

(Pub. L. 93–288, title II, § 204, as added Pub. L. 106–390, title I, § 103, Oct. 30, 2000, 114 Stat. 1557; amended Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (b) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER III—MAJOR DISASTER AND EMERGENCY ASSISTANCE ADMINISTRATION

§ 5141. Waiver of administrative conditions

Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

(Pub. L. 93–288, title III, § 301, as added Pub. L. 100–707, title I, § 105(a)(2), Nov. 23, 1988, 102 Stat. 4691.)

PRIOR PROVISIONS

A prior section 5141, Pub. L. 93–288, title III, § 301, May 22, 1974, 88 Stat. 146, set out procedure for determination of existence of emergency or major disaster, prior to repeal by Pub. L. 100–707, § 105(a)(2).

§ 5142. Repealed. Pub. L. 100–707, title I, § 105(a)(2), Nov. 23, 1988, 102 Stat. 4691

Section, Pub. L. 93–288, title III, § 302, May 22, 1974, 88 Stat. 146, related to Federal assistance and its coordination with State and local disaster assistance.

§ 5143. Coordinating officers

(a) Appointment of Federal coordinating officer

Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.

(b) Functions of Federal coordinating officer

In order to effectuate the purposes of this chapter, the Federal coordinating officer, within the affected area, shall—

(1) make an initial appraisal of the types of relief most urgently needed;

(2) establish such field offices as he deems necessary and as are authorized by the President;

(3) coordinate the administration of relief, including activities of the State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, which agree to operate under his advice or direction, except that nothing contained in this chapter shall limit or in any way affect the responsibilities of the American National Red Cross under chapter 3001 of title 36; and

(4) take such other action, consistent with authority delegated to him by the President, and consistent with the provisions of this chapter, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

(c) State coordinating officer

When the President determines assistance under this chapter is necessary, he shall request that the Governor of the affected State designate a State coordinating officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government.

(d) Single Federal coordinating officer for multistate area

Where the area affected by a major disaster or emergency includes parts of more than 1 State, the President, at the discretion of the President, may appoint a single Federal coordinating officer for the entire affected area, and may appoint such deputy Federal coordinating officers to assist the Federal coordinating officer as the President determines appropriate.

(Pub. L. 93–288, title III, § 302, formerly § 303, May 22, 1974, 88 Stat. 147; renumbered § 302 and amended Pub. L. 100–707, title I, § 105(b), Nov. 23, 1988, 102 Stat. 4691; Pub. L. 109–295, title VI, § 687, Oct. 4, 2006, 120 Stat. 1448.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original ''this Act'', meaning Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

CODIFICATION

In subsec. (b)(3), ''chapter 3001 of title 36'' substituted for ''the Act of January 5, 1905, as amended (33 Stat. 599)'' on authority of Pub. L. 105–225, § 5(b), Aug. 12, 1998, 112 Stat. 1499, the first section of which enacted Title 36, Patriotic and National Observances, Ceremonies, and Organizations.

PRIOR PROVISIONS

A prior section 302 of Pub. L. 93–288 was classified to section 5142 of this title prior to repeal by Pub. L. 100–707.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–295 added subsec. (d).

1988—Subsec. (a). Pub. L. 100–707 inserted ''or emergency'' after ''major disaster''.

§ 5144. Emergency support and response teams

(a) Emergency support teams

The President shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to this chapter. Upon request of the President, the head of any Federal agency is directed to detail to temporary duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the President, such personnel within the administrative jurisdiction of the head of the Federal agency as the President may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status.

(b) Emergency response teams

(1) Establishment

In carrying out subsection (a), the President, acting through the Administrator of the Federal Emergency Management Agency, shall establish—

(A) at a minimum 3 national response teams; and

(B) sufficient regional response teams, including Regional Office strike teams under section 317 of title 6; and

(C) other response teams as may be necessary to meet the incident management responsibilities of the Federal Government.

(2) Target capability level

The Administrator shall ensure that specific target capability levels, as defined pursuant to the guidelines established under section 746(a) of title 6, are established for Federal emergency response teams.

(3) Personnel

The President, acting through the Administrator, shall ensure that the Federal emergency response teams consist of adequate numbers of properly planned, organized, equipped, trained, and exercised personnel to achieve the established target capability levels. Each emergency response team shall work in coordination with State and local officials and onsite personnel associated with a particular incident.

(4) Readiness reporting

The Administrator shall evaluate team readiness on a regular basis and report team readiness levels in the report required under section 752(a) of title 6.

(Pub. L. 93–288, title III, § 303, formerly § 304, May 22, 1974, 88 Stat. 148; renumbered § 303, Pub. L. 100–707, title I, § 105(c), Nov. 23, 1988, 102 Stat. 4691; amended Pub. L. 109–295, title VI, §§ 612(c), 633, Oct. 4, 2006, 120 Stat. 1410, 1421.)

PRIOR PROVISIONS

A prior section 303 of Pub. L. 93–288 was renumbered section 302 by Pub. L. 100–707 and is classified to section 5143 of this title.

AMENDMENTS

2006—Pub. L. 109–295 substituted ''Emergency support and response teams'' for ''Emergency support teams'' in section catchline, designated existing provisions as subsec. (a), inserted subsec. heading, and added subsec. (b).

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' and ''Administrator'' substituted for ''Director of the Federal Emergency Management Agency'' and ''Director'', respectively, in subsec. (b) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to

refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

§§ 5145, 5146. Repealed. Pub. L. 100–707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691

Section 5145, Pub. L. 93–288, title III, § 305, May 22, 1974, 88 Stat. 148, related to authority of President to provide assistance in an emergency.

Section 5146, Pub. L. 93–288, title III, § 306, May 22, 1974, 88 Stat. 148, related to cooperation of Federal agencies in rendering disaster assistance.

§ 5147. Reimbursement of Federal agencies

Federal agencies may be reimbursed for expenditures under this chapter from funds appropriated for the purposes of this chapter. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this chapter shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies.

(Pub. L. 93–288, title III, § 304, formerly § 307, May 22, 1974, 88 Stat. 149; renumbered § 304, Pub. L. 100–707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691.)

PRIOR PROVISIONS

A prior section 304 of Pub. L. 93–288 was renumbered section 303 by Pub. L. 100–707 and is classified to section 5144 of this title.

§ 5148. Nonliability of Federal Government

The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this chapter.

(Pub. L. 93–288, title III, § 305, formerly § 308, May 22, 1974, 88 Stat. 149; renumbered § 305, Pub. L. 100–707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691.)

PRIOR PROVISIONS

A prior section 305 of Pub. L. 93–288 was classified to section 5145 of this title prior to repeal by Pub. L. 100–707.

§ 5149. Performance of services

(a) Utilization of services or facilities of State and local governments

In carrying out the purposes of this chapter, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

(b) Appointment of temporary personnel, experts, and consultants; acquisition, rental, or hire of equipment, services, materials and supplies

In performing any services under this chapter, any Federal agency is authorized—

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5 governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.

(Pub. L. 93–288, title III, § 306, formerly § 309, May 22, 1974, 88 Stat. 149; renumbered § 306, Pub. L. 100–707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b)(1), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 306 of Pub. L. 93–288 was classified to section 5146 of this title prior to repeal by Pub. L. 100–707.

§ 5150. Use of local firms and individuals

(a) Contracts or agreements with private entities

(1) In general

In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency.

(2) Construction

This subsection shall not be considered to restrict the use of Department of Defense resources under this chapter in the provision of assistance in a major disaster.

(3) Specific geographic area

In carrying out this section, a contract or agreement may be set aside for award based on a specific geographic area.

(b) Implementation

(1) Contracts not to entities in area

Any expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, not awarded to an organization, firm, or individual residing or doing business primarily in the area affected

by such major disaster shall be justified in writing in the contract file.

(2) Transition

Following the declaration of an emergency or major disaster, an agency performing response, relief, and reconstruction activities shall transition work performed under contracts in effect on the date on which the President declares the emergency or major disaster to organizations, firms, and individuals residing or doing business primarily in any area affected by the major disaster or emergency, unless the head of such agency determines that it is not feasible or practicable to do so.

(3) Formulation of requirements

The head of a Federal agency, as feasible and practicable, shall formulate appropriate requirements to facilitate compliance with this section.

(c) Prior contracts

Nothing in this section shall be construed to require any Federal agency to breach or renegotiate any contract in effect before the occurrence of a major disaster or emergency.

(Pub. L. 93–288, title III, § 307, as added Pub. L. 109–295, title VI, § 694, Oct. 4, 2006, 120 Stat. 1459; amended Pub. L. 109–347, title VI, § 611, Oct. 13, 2006, 120 Stat. 1943.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original ''this Act'', meaning Pub. L. 93–288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

PRIOR PROVISIONS

A prior section 5150, Pub. L. 93–288, title III, § 307, formerly § 310, May 22, 1974, 88 Stat. 150; renumbered § 307 and amended Pub. L. 100–707, title I, § 105(e), Nov. 23, 1988, 102 Stat. 4691; Pub. L. 109–218, § 2, Apr. 20, 2006, 120 Stat. 333, provided for the use of local firms and individuals for major disaster or emergency assistance activities, prior to repeal by Pub. L. 109–295, title VI, § 694, Oct. 4, 2006, 120 Stat. 1459.

A prior section 307 of Pub. L. 93–288 was renumbered section 304 by Pub. L. 100–707 and is classified to section 5147 of this title.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–347 added par. (3).

§ 5151. Nondiscrimination in disaster assistance

(a) Regulations for equitable and impartial relief operations

The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.

(b) Compliance with regulations as prerequisite to participation by other bodies in relief operations

As a condition of participation in the distribution of assistance or supplies under this chapter or of receiving assistance under this chapter, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts.

(Pub. L. 93–288, title III, § 308, formerly § 311, May 22, 1974, 88 Stat. 150; renumbered § 308 and amended Pub. L. 100–707, title I, § 105(f), Nov. 23, 1988, 102 Stat. 4691; Pub. L. 109–295, title VI, § 689a, Oct. 4, 2006, 120 Stat. 1449.)

PRIOR PROVISIONS

A prior section 308 of Pub. L. 93–288 was renumbered section 305 by Pub. L. 100–707 and is classified to section 5148 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–295 inserted ''disability, English proficiency,'' after ''age,''.

1988—Subsec. (b). Pub. L. 100–707 substituted ''this chapter'' for ''section 5172 or 5174 of this title'' after ''assistance under''.

§ 5152. Use and coordination of relief organizations

(a) In providing relief and assistance under this chapter, the President may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services housing and essential facilities, whenever the President finds that such utilization is necessary.

(b) The President is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in providing relief during and after a major disaster or emergency. Any such agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination promulgated by the President under this chapter, and such other regulation as the President may require.

(Pub. L. 93–288, title III, § 309, formerly § 312, May 22, 1974, 88 Stat. 150; renumbered § 309, Pub. L. 100–707, title I, § 105(f), Nov. 23, 1988, 102 Stat. 4691.)

PRIOR PROVISIONS

A prior section 309 of Pub. L. 93–288 was renumbered section 306 by Pub. L. 100–707 and is classified to section 5149 of this title.

§ 5153. Priority to certain applications for public facility and public housing assistance

(a) Priority

In the processing of applications for assistance, priority and immediate consideration

shall be given by the head of the appropriate Federal agency, during such period as the President shall prescribe, to applications from public bodies situated in areas affected by major disasters under the following Acts:

(1) The United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] for the provision of low-income housing.

(2) Sections 3502 to 3505 of title 40 for assistance in public works planning.

(3) The Community Development Block Grant Program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(4) Section 1926 of title 7.

(5) The Public Works and Economic Development Act of 1965 [42 U.S.C. 3121 et seq.].

(6) Subtitle IV of title 40.

(7) The Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

(b) Obligation of certain discretionary funds

In the obligation of discretionary funds or funds which are not allocated among the States or political subdivisions of a State, the Secretary of Housing and Urban Development and the Secretary of Commerce shall give priority to applications for projects for major disaster areas.

(Pub. L. 93–288, title III, § 310, as added Pub. L. 100–707, title I, § 105(g), Nov. 23, 1988, 102 Stat. 4691.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (a)(3), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Public Works and Economic Development Act of 1965, as amended, referred to in subsec. (a)(5), is Pub. L. 89–136, Aug. 26, 1965, 79 Stat. 552, as amended, which is classified principally to chapter 38 (§ 3121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a)(7), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

CODIFICATION

"Sections 3502 to 3505 of title 40" substituted for "Section 702 of the Housing Act of 1954" in subsec. (a)(2) and "Subtitle IV of title 40" substituted for "The Appalachian Regional Development Act of 1965" in subsec. (a)(6) on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 5153, Pub. L. 93–288, title III, § 313, May 22, 1974, 88 Stat. 150, related to same subject matter as present section but with references to different acts and provisions, prior to repeal by Pub. L. 100–707, § 105(g).

A prior section 310 of Pub. L. 93–288 was renumbered section 307 by Pub. L. 100–707 and was classified to section 5150 of this title, prior to repeal by Pub. L. 109–295.

§ 5154. Insurance

(a) Applicants for replacement of damaged facilities

(1) Compliance with certain regulations

An applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure) or section 3149(c)(2) of this title shall comply with regulations prescribed by the President to assure that, with respect to any property to be replaced, restored, repaired, or constructed with such assistance, such types and extent of insurance will be obtained and maintained as may be reasonably available, adequate, and necessary, to protect against future loss to such property.

(2) Determination

In making a determination with respect to availability, adequacy, and necessity under paragraph (1), the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance.

(b) Maintenance of insurance

No applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure), or section 3149(c)(2) of this title may receive such assistance for any property or part thereof for which the applicant has previously received assistance under this chapter unless all insurance required pursuant to this section has been obtained and maintained with respect to such property. The requirements of this subsection may not be waived under section 5141 of this title.

(c) State acting as self-insurer

A State may elect to act as a self-insurer with respect to any or all of the facilities owned by the State. Such an election, if declared in writing at the time of acceptance of assistance under section 5172 or 5189 of this title or section 3149(c)(2) of this title or subsequently and accompanied by a plan for self-insurance which is satisfactory to the President, shall be deemed compliance with subsection (a) of this section. No such self-insurer may receive assistance under section 5172 or 5189 of this title for any property or part thereof for which it has previously received assistance under this chapter, to the extent that insurance for such property or part thereof would have been reasonably available.

(Pub. L. 93–288, title III, § 311, as added Pub. L. 100–707, title I, § 105(h), Nov. 23, 1988, 102 Stat. 4692; amended Pub. L. 103–325, title V, § 521, Sept. 23, 1994, 108 Stat. 2257; Pub. L. 106–390, title II, § 201, Oct. 30, 2000, 114 Stat. 1559.)

PRIOR PROVISIONS

A prior section 5154, Pub. L. 93–288, title III, § 314, May 22, 1974, 88 Stat. 151, consisted of similar provisions, prior to repeal by Pub. L. 100–707, § 105(h).

A prior section 311 of Pub. L. 93–288 was renumbered section 308 by Pub. L. 100–707 and is classified to section 5151 of this title.

AMENDMENTS

2000—Subsecs. (a)(1), (b), (c). Pub. L. 106–390 substituted ''section 3149(c)(2) of this title'' for ''section 3233 of this title''.

1994—Subsec. (b). Pub. L. 103–325 inserted at end ''The requirements of this subsection may not be waived under section 5141 of this title.''

§ 5154a. Prohibited flood disaster assistance

(a) General prohibition

Notwithstanding any other provision of law, no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

(b) Transfer of property

(1) Duty to notify

In the event of the transfer of any property described in paragraph (3), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to—

(A) obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(B) maintain flood insurance in accordance with applicable Federal law with respect to such property.

Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(2) Failure to notify

If a transferor described in paragraph (1) fails to make a notification in accordance with such paragraph and, subsequent to the transfer of the property—

(A) the transferee fails to obtain or maintain flood insurance in accordance with applicable Federal law with respect to the property,

(B) the property is damaged by a flood disaster, and

(C) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage,

the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

(3) Property described

For purposes of paragraph (1), a property is described in this paragraph if it is personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

(c) Omitted

(d) "Flood disaster area" defined

For purposes of this section, the term ''flood disaster area'' means an area with respect to which—

(1) the Secretary of Agriculture finds, or has found, to have been substantially affected by a natural disaster in the United States pursuant to section 1961(a) of title 7; or

(2) the President declares, or has declared, the existence of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), as a result of flood conditions existing in or affecting that area.

(e) Effective date

This section and the amendments made by this section shall apply to disasters declared after September 23, 1994.

(Pub. L. 103–325, title V, § 582, Sept. 23, 1994, 108 Stat. 2286.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (d)(2), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

The amendments made by this section, referred to in subsec. (e), means the amendments made by section 582(c) of Pub. L. 103–325, which amended section 4012a of this title. See Codification note below.

CODIFICATION

Section is comprised of section 582 of Pub. L. 103–325. Subsec. (c) of section 582 of Pub. L. 103–325 amended section 4012a of this title.

Section was enacted as part of the National Flood Insurance Reform Act of 1994 and as part of the Riegle Community Development and Regulatory Improvement Act of 1994, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

§ 5155. Duplication of benefits

(a) General prohibition

The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

(b) Special rules

(1) Limitation

This section shall not prohibit the provision of Federal assistance to a person who is or

may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.

(2) Procedures

The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits.

(3) Effect of partial benefits

Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided.

(c) Recovery of duplicative benefits

A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source. The agency which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with chapter 37 of title 31, relating to debt collection, when the head of such agency considers it to be in the best interest of the Federal Government.

(d) Assistance not income

Federal major disaster and emergency assistance provided to individuals and families under this chapter, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

(Pub. L. 93–288, title III, § 312, as added Pub. L. 100–707, title I, § 105(i), Nov. 23, 1988, 102 Stat. 4693.)

PRIOR PROVISIONS

A prior section 5155, Pub. L. 93–288, title III, § 315, May 22, 1974, 88 Stat. 152, consisted of similar provisions, prior to repeal by Pub. L. 100–707, § 105(i).

A prior section 312 of Pub. L. 93–288 was renumbered section 309 by Pub. L. 100–707 and is classified to section 5152 of this title.

§ 5156. Standards and reviews

The President shall establish comprehensive standards which shall be used to assess the efficiency and effectiveness of Federal major disaster and emergency assistance programs administered under this chapter. The President shall conduct annual reviews of the activities of Federal agencies and State and local governments in major disaster and emergency preparedness and in providing major disaster and emergency assistance in order to assure maximum coordination and effectiveness of such programs and consistency in policies for reimbursement of States under this chapter.

(Pub. L. 93–288, title III, § 313, as added Pub. L. 100–707, title I, § 105(j), Nov. 23, 1988, 102 Stat. 4694.)

PRIOR PROVISIONS

A prior section 5156, Pub. L. 93–288, title III, § 316, May 22, 1974, 88 Stat. 152, related to reviews and reports by President, prior to repeal by Pub. L. 100–707, § 105(j).

A prior section 313 of Pub. L. 93–288 was classified to section 5153 of this title prior to repeal by Pub. L. 100–707.

§ 5157. Penalties

(a) Misuse of funds

Any person who knowingly misapplies the proceeds of a loan or other cash benefit obtained under this chapter shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.

(b) Civil enforcement

Whenever it appears that any person has violated or is about to violate any provision of this chapter, including any civil penalty imposed under this chapter, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.

(c) Referral to Attorney General

The President shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under this chapter that may warrant consideration for criminal prosecution.

(d) Civil penalty

Any individual who knowingly violates any order or regulation issued under this chapter shall be subject to a civil penalty of not more than $5,000 for each violation.

(Pub. L. 93–288, title III, § 314, as added Pub. L. 100–707, title I, § 105(k), Nov. 23, 1988, 102 Stat. 4694.)

PRIOR PROVISIONS

A prior section 5157, Pub. L. 93–288, title III, § 317, May 22, 1974, 88 Stat. 152, related to criminal and civil penalties, prior to repeal by Pub. L. 100–707, § 105(k).

A prior section 314 of Pub. L. 93–288 was classified to section 5154 of this title prior to repeal by Pub. L. 100–707.

§ 5158. Availability of materials

The President is authorized, at the request of the Governor of an affected State, to provide for a survey of construction materials needed in the area affected by a major disaster on an emergency basis for housing repairs, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and to take appropriate action to assure the availability and fair distribution of needed materials, including, where possible, the allocation of such materials for a period of not more than one hundred and eighty days after such major disaster. Any allocation program shall be implemented by the President to the extent possible, by working with and through those companies which traditionally supply construction materials in the affected area. For the purposes of this section ''construction materials'' shall include building materials and materials required for repairing housing, replacement housing, public facilities repairs and replacement, and for normal farm and business operations.

(Pub. L. 93–288, title III, § 315, formerly § 318, May 22, 1974, 88 Stat. 152; renumbered § 315, Pub. L. 100–707, title I, § 105(*l*), Nov. 23, 1988, 102 Stat. 4694.)

PRIOR PROVISIONS

A prior section 315 of Pub. L. 93–288 was classified to section 5155 of this title prior to repeal by Pub. L. 100–707.

§ 5159. Protection of environment

An action which is taken or assistance which is provided pursuant to section 5170a, 5170b, 5172, 5173, or 5192 of this title, including such assistance provided pursuant to the procedures provided for in section 5189 of this title, which has the effect of restoring a facility substantially to its condition prior to the disaster or emergency, shall not be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) [42 U.S.C. 4321 et seq.]. Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 to other Federal actions taken under this chapter or under any other provisions of law.

(Pub. L. 93–288, title III, § 316, as added Pub. L. 100–707, title I, § 105(m)(1), Nov. 23, 1988, 102 Stat. 4694.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in text, is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

PRIOR PROVISIONS

A prior section 316 of Pub. L. 93–288 was classified to section 5156 of this title prior to repeal by Pub. L. 100–707.

§ 5160. Recovery of assistance

(a) Party liable

Any person who intentionally causes a condition for which Federal assistance is provided under this chapter or under any other Federal law as a result of a declaration of a major disaster or emergency under this chapter shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action for reasonable costs shall be brought in an appropriate United States district court.

(b) Rendering of care

A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency.

(Pub. L. 93–288, title III, § 317, as added Pub. L. 100–707, title I, § 105(m)(1), Nov. 23, 1988, 102 Stat. 4695.)

PRIOR PROVISIONS

A prior section 317 of Pub. L. 93–288 was classified to section 5157 of this title prior to repeal by Pub. L. 100–707.

§ 5161. Audits and investigations

(a) In general

Subject to the provisions of chapter 75 of title 31, relating to requirements for single audits, the President shall conduct audits and investigations as necessary to assure compliance with this chapter, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

(b) Access to records

For purposes of audits and investigations under this section, the President and Comptroller General may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under this chapter.

(c) State and local audits

The President may require audits by State and local governments in connection with assistance under this chapter when necessary to assure compliance with this chapter or related regulations.

(Pub. L. 93–288, title III, § 318, as added Pub. L. 100–707, title I, § 105(m)(1), Nov. 23, 1988, 102 Stat. 4695.)

PRIOR PROVISIONS

A prior section 318 of Pub. L. 93–288 was renumbered section 315 by Pub. L. 100–707 and is classified to section 5158 of this title.

§ 5162. Advance of non-Federal share

(a) In general

The President may lend or advance to an eligible applicant or a State the portion of assistance for which the State is responsible under the cost-sharing provisions of this chapter in any case in which—

(1) the State is unable to assume its financial responsibility under such cost-sharing provisions—

(A) with respect to concurrent, multiple major disasters in a jurisdiction, or

(B) after incurring extraordinary costs as a result of a particular disaster; and

(2) the damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the applicant or the State to assume immediately their financial responsibility under this chapter.

(b) Terms of loans and advances

(1) In general

Any loan or advance under this section shall be repaid to the United States.

(2) Interest

Loans and advances under this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity

comparable to the reimbursement period of the loan or advance.

(c) Regulations

The President shall issue regulations describing the terms and conditions under which any loan or advance authorized by this section may be made.

(Pub. L. 93–288, title III, § 319, as added Pub. L. 100–707, title I, § 105(m)(1), Nov. 23, 1988, 102 Stat. 4695.)

§ 5163. Limitation on use of sliding scales

No geographic area shall be precluded from receiving assistance under this chapter solely by virtue of an arithmetic formula or sliding scale based on income or population.

(Pub. L. 93–288, title III, § 320, as added Pub. L. 100–707, title I, § 105(m)(1), Nov. 23, 1988, 102 Stat. 4696.)

§ 5164. Rules and regulations

The President may prescribe such rules and regulations as may be necessary and proper to carry out the provisions of this chapter, and may exercise, either directly or through such Federal agency as the President may designate, any power or authority conferred to the President by this chapter.

(Pub. L. 93–288, title III, § 321, as added Pub. L. 100–707, title I, § 105(m)(1), Nov. 23, 1988, 102 Stat. 4696.)

§ 5165. Mitigation planning

(a) Requirement of mitigation plan

As a condition of receipt of an increased Federal share for hazard mitigation measures under subsection (e) of this section, a State, local, or tribal government shall develop and submit for approval to the President a mitigation plan that outlines processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government.

(b) Local and tribal plans

Each mitigation plan developed by a local or tribal government shall—

(1) describe actions to mitigate hazards, risks, and vulnerabilities identified under the plan; and

(2) establish a strategy to implement those actions.

(c) State plans

The State process of development of a mitigation plan under this section shall—

(1) identify the natural hazards, risks, and vulnerabilities of areas in the State;

(2) support development of local mitigation plans;

(3) provide for technical assistance to local and tribal governments for mitigation planning; and

(4) identify and prioritize mitigation actions that the State will support, as resources become available.

(d) Funding

(1) In general

Federal contributions under section 5170c of this title may be used to fund the development and updating of mitigation plans under this section.

(2) Maximum Federal contribution

With respect to any mitigation plan, a State, local, or tribal government may use an amount of Federal contributions under section 5170c of this title not to exceed 7 percent of the amount of such contributions available to the government as of a date determined by the government.

(e) Increased Federal share for hazard mitigation measures

(1) In general

If, at the time of the declaration of a major disaster, a State has in effect an approved mitigation plan under this section, the President may increase to 20 percent, with respect to the major disaster, the maximum percentage specified in the last sentence of section 5170c(a) of this title.

(2) Factors for consideration

In determining whether to increase the maximum percentage under paragraph (1), the President shall consider whether the State has established—

(A) eligibility criteria for property acquisition and other types of mitigation measures;

(B) requirements for cost effectiveness that are related to the eligibility criteria;

(C) a system of priorities that is related to the eligibility criteria; and

(D) a process by which an assessment of the effectiveness of a mitigation action may be carried out after the mitigation action is complete.

(Pub. L. 93–288, title III, § 322, as added Pub. L. 106–390, title I, § 104(a), Oct. 30, 2000, 114 Stat. 1558.)

§ 5165a. Minimum standards for public and private structures

(a) In general

As a condition of receipt of a disaster loan or grant under this chapter—

(1) the recipient shall carry out any repair or construction to be financed with the loan or grant in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards; and

(2) the President may require safe land use and construction practices, after adequate consultation with appropriate State and local government officials.

(b) Evidence of compliance

A recipient of a disaster loan or grant under this chapter shall provide such evidence of compliance with this section as the President may require by regulation.

(Pub. L. 93–288, title III, § 323, as added Pub. L. 106–390, title I, § 104(a), Oct. 30, 2000, 114 Stat. 1559.)

§ 5165b. Management costs

(a) Definition of management cost

In this section, the term ''management cost'' includes any indirect cost, any administrative

expense, and any other expense not directly chargeable to a specific project under a major disaster, emergency, or disaster preparedness or mitigation activity or measure.

(b) Establishment of management cost rates

Notwithstanding any other provision of law (including any administrative rule or guidance), the President shall by regulation establish management cost rates, for grantees and subgrantees, that shall be used to determine contributions under this chapter for management costs.

(c) Review

The President shall review the management cost rates established under subsection (b) of this section not later than 3 years after the date of establishment of the rates and periodically thereafter.

(Pub. L. 93–288, title III, § 324, as added Pub. L. 106–390, title II, § 202(a), Oct. 30, 2000, 114 Stat. 1560.)

EFFECTIVE DATE

Pub. L. 106–390, title II, § 202(b), Oct. 30, 2000, 114 Stat. 1560, provided that:

''(1) IN GENERAL.—Subject to paragraph (2), subsections (a) and (b) of section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5165b(a), (b)] (as added by subsection (a)) shall apply to major disasters declared under that Act [42 U.S.C. 5121 et seq.] on or after the date of the enactment of this Act [Oct. 30, 2000].

''(2) INTERIM AUTHORITY.—Until the date on which the President establishes the management cost rates under section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as added by subsection (a)), section 406(f) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172(f)) (as in effect on the day before the date of the enactment of this Act) shall be used to establish management cost rates.''

§ 5165c. Public notice, comment, and consultation requirements

(a) Public notice and comment concerning new or modified policies

(1) In general

The President shall provide for public notice and opportunity for comment before adopting any new or modified policy that—

(A) governs implementation of the public assistance program administered by the Federal Emergency Management Agency under this chapter; and

(B) could result in a significant reduction of assistance under the program.

(2) Application

Any policy adopted under paragraph (1) shall apply only to a major disaster or emergency declared on or after the date on which the policy is adopted.

(b) Consultation concerning interim policies

(1) In general

Before adopting any interim policy under the public assistance program to address specific conditions that relate to a major disaster or emergency that has been declared under this chapter, the President, to the maximum extent practicable, shall solicit the views and recommendations of grantees and subgrantees with respect to the major disaster or emergency concerning the potential interim policy, if the interim policy is likely—

(A) to result in a significant reduction of assistance to applicants for the assistance with respect to the major disaster or emergency; or

(B) to change the terms of a written agreement to which the Federal Government is a party concerning the declaration of the major disaster or emergency.

(2) No legal right of action

Nothing in this subsection confers a legal right of action on any party.

(c) Public access

The President shall promote public access to policies governing the implementation of the public assistance program.

(Pub. L. 93–288, title III, § 325, as added Pub. L. 106–390, title II, § 203, Oct. 30, 2000, 114 Stat. 1560.)

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5165d. Designation of Small State and Rural Advocate

(a) In general

The President shall designate in the Federal Emergency Management Agency a Small State and Rural Advocate.

(b) Responsibilities

The Small State and Rural Advocate shall be an advocate for the fair treatment of small States and rural communities in the provision of assistance under this chapter.

(c) Duties

The Small State and Rural Advocate shall—

(1) participate in the disaster declaration process under section 5170 of this title and the emergency declaration process under section 5191 of this title, to ensure that the needs of rural communities are being addressed;

(2) assist small population States in the preparation of requests for major disaster or emergency declarations; and

(3) conduct such other activities as the Administrator of the Federal Emergency Management Agency considers appropriate.

(Pub. L. 93–288, title III, § 326, as added and amended Pub. L. 109–295, title VI, §§ 612(c), 689g(a), Oct. 4, 2006, 120 Stat. 1410, 1453.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 93–288, May 22,

1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (c)(3) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

CONSTRUCTION

Pub. L. 109–295, title VI, § 689g(c), Oct. 4, 2006, 120 Stat. 1453, provided that: ''Nothing in this section [enacting this section] or the amendments made by this section shall be construed to authorize major disaster or emergency assistance that is not authorized as of the date of enactment of this Act [Oct. 4, 2006].''

SUBCHAPTER IV—MAJOR DISASTER ASSISTANCE PROGRAMS

§ 5170. Procedure for declaration

All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this chapter, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this chapter. Based on the request of a Governor under this section, the President may declare under this chapter that a major disaster or emergency exists.

(Pub. L. 93–288, title IV, § 401, as added Pub. L. 100–707, title I, § 106(a)(3), Nov. 23, 1988, 102 Stat. 4696.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

PRIOR PROVISIONS

A prior section 401 of Pub. L. 93–288 was renumbered section 405 by Pub. L. 100–707 and is classified to section 5171 of this title.

§ 5170a. General Federal assistance

In any major disaster, the President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance response or recovery efforts, including precautionary evacuations;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments, including precautionary evacuations and recovery;

(3) provide technical and advisory assistance to affected State and local governments for—

(A) the performance of essential community services;

(B) issuance of warnings of risks and hazards;

(C) public health and safety information, including dissemination of such information;

(D) provision of health and safety measures;

(E) management, control, and reduction of immediate threats to public health and safety; and

(F) recovery activities, including disaster impact assessments and planning;

(4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance; and

(5) provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President—

(A) shall, to the fullest extent practicable, promptly notify and coordinate with officials in a State in which such assistance or support is provided; and

(B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of a major disaster.

(Pub. L. 93–288, title IV, § 402, as added Pub. L. 100–707, title I, § 106(a)(3), Nov. 23, 1988, 102 Stat. 4696; amended Pub. L. 109–295, title VI, § 681(a), Oct. 4, 2006, 120 Stat. 1444.)

PRIOR PROVISIONS

A prior section 402 of Pub. L. 93–288 was classified to section 5172 of this title prior to repeal by Pub. L. 100–707.

AMENDMENTS

2006—Par. (1). Pub. L. 109–295, § 681(a)(1), substituted ''response or recovery efforts, including precautionary evacuations'' for ''efforts''.

Par. (2). Pub. L. 109–295, § 681(a)(2), substituted '', including precautionary evacuations and recovery;'' for semicolon at end.

Par. (3)(F). Pub. L. 109–295, § 681(a)(3), added subpar. (F).

Par. (5). Pub. L. 109–295, § 681(a)(4), (5), added par. (5).

§ 5170b. Essential assistance

(a) In general

Federal agencies may on the direction of the President, provide assistance essential to meet-

ing immediate threats to life and property resulting from a major disaster, as follows:

(1) Federal resources, generally

Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this chapter.

(2) Medicine, food, and other consumables

Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine durable medical equipment,,[1] food, and other consumable supplies, and other services and assistance to disaster victims.

(3) Work and services to save lives and protect property

Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including—

(A) debris removal;

(B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine durable medical equipment,,[1] and other essential needs, including movement of supplies or persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

(G) dissemination of public information and assistance regarding health and safety measures;

(H) provision of technical advice to State and local governments on disaster management and control;

(I) reduction of immediate threats to life, property, and public health and safety; and

(J) provision of rescue, care, shelter, and essential needs—

(i) to individuals with household pets and service animals; and

(ii) to such pets and animals.

(4) Contributions

Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.

(b) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.

(c) Utilization of DOD resources

(1) General rule

During the immediate aftermath of an incident which may ultimately qualify for assistance under this subchapter or subchapter IV-A of this chapter, the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.

(2) Rules applicable to debris removal

Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title, relating to unconditional authorization and indemnification for debris removal.

(3) Expenditures out of disaster relief funds

The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this chapter.

(4) Federal share

The Federal share of assistance under this subsection shall be not less than 75 percent.

(5) Guidelines

Not later than 180 days after November 23, 1988, the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this chapter.

(6) Definitions

For purposes of this section—

(A) Department of Defense

The term ''Department of Defense'' has the meaning the term ''department'' has under section 101 of title 10.

(B) Emergency work

The term ''emergency work'' includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.

(Pub. L. 93–288, title IV, § 403, as added Pub. L. 100–707, title I, § 106(a)(3), Nov. 23, 1988, 102 Stat. 4697; amended Pub. L. 109–295, title VI, § 689(b), Oct. 4, 2006, 120 Stat. 1449; Pub. L. 109–308, § 4, Oct. 6, 2006, 120 Stat. 1726.)

PRIOR PROVISIONS

A prior section 403 of Pub. L. 93–288 was renumbered section 407 by Pub. L. 100–707 and is classified to section 5173 of this title.

AMENDMENTS

2006—Subsec. (a)(2), (3)(B). Pub. L. 109–295, § 689(b)(1), (2)(A), inserted ''durable medical equipment,'' after ''medicine''.

Subsec. (a)(3)(J). Pub. L. 109–295, § 689(b)(2)(B)–(D), and Pub. L. 109–308 amended par. (3) identically, adding subpar. (J).

[1] So in original. The extra comma probably should follow ''medicine''.

§ 5170c. Hazard mitigation

(a) In general

The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. Such measures shall be identified following the evaluation of natural hazards under section 5165 of this title and shall be subject to approval by the President. Subject to section 5165 of this title, the total of contributions under this section for a major disaster shall not exceed 15 percent for amounts not more than $2,000,000,000, 10 percent for amounts of more than $2,000,000,000 and not more than $10,000,000,000, and 7.5 percent on amounts of more than $10,000,000,000 and not more than $35,333,000,000 of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this chapter with respect to the major disaster.

(b) Property acquisition and relocation assistance

(1) General authority

In providing hazard mitigation assistance under this section in connection with flooding, the Administrator of the Federal Emergency Management Agency may provide property acquisition and relocation assistance for projects that meet the requirements of paragraph (2).

(2) Terms and conditions

An acquisition or relocation project shall be eligible to receive assistance pursuant to paragraph (1) only if—

(A) the applicant for the assistance is otherwise eligible to receive assistance under the hazard mitigation grant program established under subsection (a) of this section; and

(B) on or after December 3, 1993, the applicant for the assistance enters into an agreement with the Administrator that provides assurances that—

(i) any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(ii) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than—

(I) a public facility that is open on all sides and functionally related to a designated open space;

(II) a rest room; or

(III) a structure that the Administrator approves in writing before the commencement of the construction of the structure; and

(iii) after receipt of the assistance, with respect to any property acquired, accepted or from which a structure was removed under the acquisition or relocation program—

(I) no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity; and

(II) no assistance referred to in subclause (I) will be provided to the applicant by any Federal source.

(3) Statutory construction

Nothing in this subsection is intended to alter or otherwise affect an agreement for an acquisition or relocation project carried out pursuant to this section that was in effect on the day before December 3, 1993.

(c) Program administration by States

(1) In general

A State desiring to administer the hazard mitigation grant program established by this section with respect to hazard mitigation assistance in the State may submit to the President an application for the delegation of the authority to administer the program.

(2) Criteria

The President, in consultation and coordination with States and local governments, shall establish criteria for the approval of applications submitted under paragraph (1). The criteria shall include, at a minimum—

(A) the demonstrated ability of the State to manage the grant program under this section;

(B) there being in effect an approved mitigation plan under section 5165 of this title; and

(C) a demonstrated commitment to mitigation activities.

(3) Approval

The President shall approve an application submitted under paragraph (1) that meets the criteria established under paragraph (2).

(4) Withdrawal of approval

If, after approving an application of a State submitted under paragraph (1), the President determines that the State is not administering the hazard mitigation grant program established by this section in a manner satisfactory to the President, the President shall withdraw the approval.

(5) Audits

The President shall provide for periodic audits of the hazard mitigation grant programs administered by States under this subsection.

(Pub. L. 93–288, title IV, § 404, as added Pub. L. 100–707, title I, § 106(a)(3), Nov. 23, 1988, 102 Stat. 4698; amended Pub. L. 103–181, §§ 2(a), 3, Dec. 3, 1993, 107 Stat. 2054; Pub. L. 106–390, title I, § 104(c)(1), title II, § 204, Oct. 30, 2000, 114 Stat. 1559, 1561; Pub. L. 108–7, div. K, title IV, § 417, Feb. 20, 2003, 117 Stat. 525; Pub. L. 109–295, title VI, §§ 612(c), 684, Oct. 4, 2006, 120 Stat. 1410, 1447.)

PRIOR PROVISIONS

A prior section 404 of Pub. L. 93–288 was classified to section 5174 of this title prior to repeal by Pub. L. 100–707.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–295, § 684, in last sentence substituted ''15 percent for amounts not more

than $2,000,000,000, 10 percent for amounts of more than $2,000,000,000 and not more than $10,000,000,000, and 7.5 percent on amounts of more than $10,000,000,000 and not more than $35,333,000,000'' for ''7.5 percent''.

2003—Subsec. (a). Pub. L. 108–7 substituted ''7.5 percent'' for ''15 percent''.

2000—Subsec. (a). Pub. L. 106–390, § 104(c)(1), substituted ''section 5165'' for ''section 5176'' in second sentence and ''Subject to section 5165 of this title, the total'' for ''The total'' in third sentence.

Subsec. (c). Pub. L. 106–390, § 204, added subsec. (c).

1993—Pub. L. 103–181 designated existing provisions as subsec. (a), inserted heading, substituted ''75 percent'' for ''50 percent'' in first sentence, substituted ''15 percent of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this chapter with respect to the major disaster'' for ''10 percent of the estimated aggregate amounts of grants to be made under section 5172 of this title with respect to such major disaster'' in last sentence, and added subsec. (b).

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' and ''Administrator'' substituted for ''Director of the Federal Emergency Management Agency'' and ''Director'', respectively, in subsec. (b)(1), (2) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 2(b) of Pub. L. 103–181 provided that: ''The amendments made by this section [amending this section] shall apply to any major disaster declared by the President pursuant to The [the] Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) on or after June 10, 1993.''

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5171. Federal facilities

(a) Repair, reconstruction, restoration, or replacement of United States facilities

The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.

(b) Availability of funds appropriated to agency for repair, reconstruction, restoration, or replacement of agency facilities

In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.

(c) Steps for mitigation of hazards

In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President.

(Pub. L. 93–288, title IV, § 405, formerly § 401, May 22, 1974, 88 Stat. 153; renumbered § 405, Pub. L. 100–707, title I, § 106(a)(2), Nov. 23, 1988, 102 Stat. 4696.)

PRIOR PROVISIONS

A prior section 405 of Pub. L. 93–288 was classified to section 5175 of this title prior to repeal by Pub. L. 100–707.

§ 5172. Repair, restoration, and replacement of damaged facilities

(a) Contributions

(1) In general

The President may make contributions—

(A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster and for associated expenses incurred by the government; and

(B) subject to paragraph (3), to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses incurred by the person.

(2) Associated expenses

For the purposes of this section, associated expenses shall include—

(A) the costs of mobilizing and employing the National Guard for performance of eligible work;

(B) the costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging; and

(C) base and overtime wages for the employees and extra hires of a State, local government, or person described in paragraph (1) that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster.

(3) Conditions for assistance to private nonprofit facilities

(A) In general

The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if—

(i) the facility provides critical services (as defined by the President) in the event of a major disaster; or

(ii) the owner or operator of the facility—

(I) has applied for a disaster loan under section 636(b) of title 15; and

(II)(aa) has been determined to be ineligible for such a loan; or

(bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.

(B) Definition of critical services

In this paragraph, the term ''critical services'' includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications, education, and emergency medical care.

(4) Notification to Congress

Before making any contribution under this section in an amount greater than $20,000,000, the President shall notify—

(A) the Committee on Environment and Public Works of the Senate;

(B) the Committee on Transportation and Infrastructure of the House of Representatives;

(C) the Committee on Appropriations of the Senate; and

(D) the Committee on Appropriations of the House of Representatives.

(b) Federal share

(1) Minimum Federal share

Except as provided in paragraph (2), the Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of repair, restoration, reconstruction, or replacement carried out under this section.

(2) Reduced Federal share

The President shall promulgate regulations to reduce the Federal share of assistance under this section to not less than 25 percent in the case of the repair, restoration, reconstruction, or replacement of any eligible public facility or private nonprofit facility following an event associated with a major disaster—

(A) that has been damaged, on more than one occasion within the preceding 10-year period, by the same type of event; and

(B) the owner of which has failed to implement appropriate mitigation measures to address the hazard that caused the damage to the facility.

(c) Large in-lieu contributions

(1) For public facilities

(A) In general

In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A) of this section, a contribution in an amount equal to 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(B) Use of funds

Funds contributed to a State or local government under this paragraph may be used—

(i) to repair, restore, or expand other selected public facilities;

(ii) to construct new facilities; or

(iii) to fund hazard mitigation measures that the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.

(C) Limitations

Funds made available to a State or local government under this paragraph may not be used for—

(i) any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or

(ii) any uninsured public facility located in a special flood hazard area identified by the Administrator of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(2) For private nonprofit facilities

(A) In general

In any case in which a person that owns or operates a private nonprofit facility determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the facility, the person may elect to receive, in lieu of a contribution under subsection (a)(1)(B) of this section, a contribution in an amount equal to 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(B) Use of funds

Funds contributed to a person under this paragraph may be used—

(i) to repair, restore, or expand other selected private nonprofit facilities owned or operated by the person;

(ii) to construct new private nonprofit facilities to be owned or operated by the person; or

(iii) to fund hazard mitigation measures that the person determines to be necessary to meet a need for the person's services and functions in the area affected by the major disaster.

(C) Limitations

Funds made available to a person under this paragraph may not be used for—

(i) any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or

(ii) any uninsured private nonprofit facility located in a special flood hazard area identified by the Administrator of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(d) Flood insurance

(1) Reduction of Federal assistance

If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Administrator pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is damaged or destroyed, after the 180th day following November 23, 1988, by flooding in a major disaster and such facility is not covered on the date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph (2).

(2) Amount of reduction

The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lesser of—

(A) the value of such facility on the date of the flood damage or destruction, or

(B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 on such date.

(3) Exception

Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local government's failure to participate in the flood insurance program established by the National Flood Insurance Act.

(4) Dissemination of information

The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be affected by such a reduction.

(e) Eligible cost

(1) Determination

(A) In general

For the purposes of this section, the President shall estimate the eligible cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility—

(i) on the basis of the design of the facility as the facility existed immediately before the major disaster; and

(ii) in conformity with codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or under the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) applicable at the time at which the disaster occurred.

(B) Cost estimation procedures

(i) In general

Subject to paragraph (2), the President shall use the cost estimation procedures established under paragraph (3) to determine the eligible cost under this subsection.

(ii) Applicability

The procedures specified in this paragraph and paragraph (2) shall apply only to projects the eligible cost of which is equal to or greater than the amount specified in section 5189 of this title.

(2) Modification of eligible cost

(A) Actual cost greater than ceiling percentage of estimated cost

In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is greater than the ceiling percentage established under paragraph (3) of the cost estimated under paragraph (1), the President may determine that the eligible cost includes a portion of the actual cost of the repair, restoration, reconstruction, or replacement that exceeds the cost estimated under paragraph (1).

(B) Actual cost less than estimated cost

(i) Greater than or equal to floor percentage of estimated cost

In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than 100 percent of the cost estimated under paragraph (1), but is greater than or equal to the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving funds under this section shall use the excess funds to carry out cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster.

(ii) Less than floor percentage of estimated cost

In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving assistance under this section shall reimburse the President in the amount of the difference.

(C) No effect on appeals process

Nothing in this paragraph affects any right of appeal under section 5189a of this title.

(3) Expert panel

(A) Establishment

Not later than 18 months after October 30, 2000, the President, acting through the Ad-

ministrator of the Federal Emergency Management Agency, shall establish an expert panel, which shall include representatives from the construction industry and State and local government.

(B) Duties

The expert panel shall develop recommendations concerning—

(i) procedures for estimating the cost of repairing, restoring, reconstructing, or replacing a facility consistent with industry practices; and

(ii) the ceiling and floor percentages referred to in paragraph (2).

(C) Regulations

Taking into account the recommendations of the expert panel under subparagraph (B), the President shall promulgate regulations that establish—

(i) cost estimation procedures described in subparagraph (B)(i); and

(ii) the ceiling and floor percentages referred to in paragraph (2).

(D) Review by President

Not later than 2 years after the date of promulgation of regulations under subparagraph (C) and periodically thereafter, the President shall review the cost estimation procedures and the ceiling and floor percentages established under this paragraph.

(E) Report to Congress

Not later than 1 year after the date of promulgation of regulations under subparagraph (C), 3 years after that date, and at the end of each 2-year period thereafter, the expert panel shall submit to Congress a report on the appropriateness of the cost estimation procedures.

(4) Special rule

In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing the facility shall include, for the purposes of this section, only those costs that, under the contract for the construction, are the owner's responsibility and not the contractor's responsibility.

(Pub. L. 93–288, title IV, § 406, as added Pub. L. 100–707, title I, § 106(b), Nov. 23, 1988, 102 Stat. 4699; amended Pub. L. 106–390, title II, § 205(a)–(d)(1), (e), Oct. 30, 2000, 114 Stat. 1562–1564, 1566; Pub. L. 109–295, title VI, §§ 612(c), 689h, Oct. 4, 2006, 120 Stat. 1410, 1453; Pub. L. 109–347, title VI, § 609, Oct. 13, 2006, 120 Stat. 1942.)

REFERENCES IN TEXT

The National Flood Insurance Act of 1968, referred to in subsecs. (c)(1)(C)(ii), (2)(C)(ii) and (d)(1), (2)(B), is title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to chapter 50 (§ 4001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

The National Flood Insurance Act, referred to in subsec. (d)(3), probably means the National Flood Insurance Act of 1968. See above.

The Coastal Barrier Resources Act, referred to in subsec. (e)(1)(A)(ii), is Pub. L. 97–348, Oct. 18, 1982, 96 Stat. 1653, as amended, which is classified principally to chapter 55 (§ 3501 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 3501 of Title 16 and Tables.

PRIOR PROVISIONS

A prior section 5172, Pub. L. 93–288, title IV, § 402, May 22, 1974, 88 Stat. 153, related to repair and restoration of damaged facilities, prior to repeal by Pub. L. 100–707, § 106(b).

A prior section 406 of Pub. L. 93–288 was renumbered section 409 by Pub. L. 100–707 and is classified to section 5176 of this title.

AMENDMENTS

2006—Subsec. (a)(3)(B). Pub. L. 109–295, § 689h, inserted ''education,'' after ''communications,''.

Subsec. (c)(1)(A). Pub. L. 109–347, § 609(1), substituted ''90'' for ''75''.

Subsec. (c)(1)(B) to (D). Pub. L. 109–347, § 609(2), (3), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B). Prior to amendment, text of subpar. (B) read as follows: ''In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government because soil instability in the disaster area makes repair, restoration, reconstruction, or replacement infeasible, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A) of this section, a contribution in an amount equal to 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.''

2000—Subsec. (a). Pub. L. 106–390, § 205(a), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''The President may make contributions—

''(1) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility which is damaged or destroyed by a major disaster and for associated expenses incurred by such government; and

''(2) to a person who owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of such facility and for associated expenses incurred by such person.''

Subsec. (b). Pub. L. 106–390, § 205(b), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: ''The Federal share of assistance under this section shall be not less than—

''(1) 75 percent of the net eligible cost of repair, restoration, reconstruction, or replacement carried out under this section;

''(2) 100 percent of associated expenses described in subsections (f)(1) and (f)(2) of this section; and

''(3) 75 percent of associated expenses described in subsections (f)(3), (f)(4), and (f)(5) of this section.''

Subsec. (c). Pub. L. 106–390, § 205(c), added subsec. (c) and struck out heading and text of former subsec. (c) which provided that, upon a determination that the public welfare would not be best served by repairing, restoring, reconstructing, or replacing either a public facility or a private nonprofit facility, an election could be made to receive, in lieu of a contribution under subsec. (a), a contribution of not to exceed 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of associated expenses, with the restriction that such funds not be used for any State or local government cost-sharing contribution required under this chapter.

Subsec. (e). Pub. L. 106–390, § 205(d)(1), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows:

''(1) GENERAL RULE.—For purposes of this section, the cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) shall, at a minimum, be treated as the net eligible cost of such repair, restoration, reconstruction, or replacement.

''(2) SPECIAL RULE.—In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing such facility shall include, for purposes of this section, only those costs which, under the contract for such construction, are the owner's responsibility and not the contractor's responsibility.''

Subsec. (f). Pub. L. 106–390, § 205(e), struck out subsec. (f) which set out various associated expenses, including necessary and extraordinary costs, and costs of using the National Guard and prison labor.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–390, title II, § 205(d)(2), Oct. 30, 2000, 114 Stat. 1566, provided that: ''The amendment made by paragraph (1) [amending this section] takes effect on the date of the enactment of this Act [Oct. 30, 2000] and applies to funds appropriated after the date of the enactment of this Act, except that paragraph (1) of section 406(e) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [subsec. (e)(1) of this section] (as amended by paragraph (1)) takes effect on the date on which the cost estimation procedures established under paragraph (3) of that section take effect.''

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' and ''Administrator'' substituted for ''Director of the Federal Emergency Management Agency'' and ''Director'', respectively, in subsecs. (c)(1)(C)(ii), (2)(C)(ii), (d)(1), and (e)(3)(A) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5173. Debris removal

(a) Presidential authority

The President, whenever he determines it to be in the public interest, is authorized—

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and

(2) to make grants to any State or local government or owner or operator of a private nonprofit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) Authorization by State or local government; indemnification agreement

No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

(c) Rules relating to large lots

The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.

(d) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.

(e) Expedited payments

(1) Grant assistance

In making a grant under subsection (a)(2), the President shall provide not less than 50 percent of the President's initial estimate of the Federal share of assistance as an initial payment in accordance with paragraph (2).

(2) Date of payment

Not later than 60 days after the date of the estimate described in paragraph (1) and not later than 90 days after the date on which the State or local government or owner or operator of a private nonprofit facility applies for assistance under this section, an initial payment described in paragraph (1) shall be paid.

(Pub. L. 93–288, title IV, § 407, formerly § 403, May 22, 1974, 88 Stat. 154; renumbered § 407 and amended Pub. L. 100–707, title I, § 106(c), Nov. 23, 1988, 102 Stat. 4701; Pub. L. 109–347, title VI, § 610, Oct. 13, 2006, 120 Stat. 1942.)

PRIOR PROVISIONS

A prior section 407 of Pub. L. 93–288 was renumbered section 410 by Pub. L. 100–707 and is classified to section 5177 of this title.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–347 added subsec. (e).

1988—Subsec. (a)(2). Pub. L. 100–707, § 106(c)(2), inserted ''or owner or operator of a private nonprofit facility'' after ''local government''.

Subsecs. (c), (d). Pub. L. 100–707, § 106(c)(3), added subsecs. (c) and (d).

§ 5174. Federal assistance to individuals and households

(a) In general

(1) Provision of assistance

In accordance with this section, the President, in consultation with the Governor of a State, may provide financial assistance, and, if necessary, direct services, to individuals and households in the State who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.

(2) Relationship to other assistance

Under paragraph (1), an individual or household shall not be denied assistance under paragraph (1), (3), or (4) of subsection (c) of this section solely on the basis that the individual or household has not applied for or received any loan or other financial assistance from the Small Business Administration or any other Federal agency.

(b) Housing assistance

(1) Eligibility

The President may provide financial or other assistance under this section to individuals and households to respond to the disaster-related housing needs of individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable, or with respect to individuals with disabilities, rendered inaccessible or uninhabitable, as a result of damage caused by a major disaster.

(2) Determination of appropriate types of assistance

(A) In general

The President shall determine appropriate types of housing assistance to be provided under this section to individuals and households described in subsection (a)(1) of this section based on considerations of cost effectiveness, convenience to the individuals and households, and such other factors as the President may consider appropriate.

(B) Multiple types of assistance

One or more types of housing assistance may be made available under this section, based on the suitability and availability of the types of assistance, to meet the needs of individuals and households in the particular disaster situation.

(c) Types of housing assistance

(1) Temporary housing

(A) Financial assistance

(i) In general

The President may provide financial assistance to individuals or households to rent alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings. Such assistance may include the payment of the cost of utilities, excluding telephone service.

(ii) Amount

The amount of assistance under clause (i) shall be based on the fair market rent for the accommodation provided plus the cost of any transportation, utility hookups, security deposits, or unit installation not provided directly by the President.

(B) Direct assistance

(i) In general

The President may provide temporary housing units, acquired by purchase or lease, directly to individuals or households who, because of a lack of available housing resources, would be unable to make use of the assistance provided under subparagraph (A).

(ii) Period of assistance

The President may not provide direct assistance under clause (i) with respect to a major disaster after the end of the 18-month period beginning on the date of the declaration of the major disaster by the President, except that the President may extend that period if the President determines that due to extraordinary circumstances an extension would be in the public interest.

(iii) Collection of rental charges

After the end of the 18-month period referred to in clause (ii), the President may charge fair market rent for each temporary housing unit provided.

(2) Repairs

(A) In general

The President may provide financial assistance for—

(i) the repair of owner-occupied private residences, utilities, and residential infrastructure (such as a private access route) damaged by a major disaster to a safe and sanitary living or functioning condition; and

(ii) eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure.

(B) Relationship to other assistance

A recipient of assistance provided under this paragraph shall not be required to show that the assistance can be met through other means, except insurance proceeds.

(3) Replacement

(A) In general

The President may provide financial assistance for the replacement of owner-occupied private residences damaged by a major disaster.

(B) Applicability of flood insurance requirement

With respect to assistance provided under this paragraph, the President may not waive any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of Federal disaster assistance.

(4) Permanent housing construction

The President may provide financial assistance or direct assistance to individuals or

households to construct permanent or semi-permanent housing in insular areas outside the continental United States and in other locations in cases in which—

(A) no alternative housing resources are available; and

(B) the types of temporary housing assistance described in paragraph (1) are unavailable, infeasible, or not cost-effective.

(d) Terms and conditions relating to housing assistance

(1) Sites

(A) In general

Any readily fabricated dwelling provided under this section shall, whenever practicable, be located on a site that—

(i) is complete with utilities;

(ii) meets the physical accessibility requirements for individuals with disabilities; and

(iii) is provided by the State or local government, by the owner of the site, or by the occupant who was displaced by the major disaster.

(B) Sites provided by the President

A readily fabricated dwelling may be located on a site provided by the President if the President determines that such a site would be more economical or accessible.

(2) Disposal of units

(A) Sale to occupants

(i) In general

Notwithstanding any other provision of law, a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims may be sold directly to the individual or household who is occupying the unit if the individual or household lacks permanent housing.

(ii) Sale price

A sale of a temporary housing unit under clause (i) shall be at a price that is fair and equitable.

(iii) Deposit of proceeds

Notwithstanding any other provision of law, the proceeds of a sale under clause (i) shall be deposited in the appropriate Disaster Relief Fund account.

(iv) Hazard and flood insurance

A sale of a temporary housing unit under clause (i) shall be made on the condition that the individual or household purchasing the housing unit agrees to obtain and maintain hazard and flood insurance on the housing unit.

(v) Use of GSA services

The President may use the services of the General Services Administration to accomplish a sale under clause (i).

(B) Other methods of disposal

If not disposed of under subparagraph (A), a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims—

(i) may be sold to any person; or

(ii) may be sold, transferred, donated, or otherwise made available directly to a State or other governmental entity or to a voluntary organization for the sole purpose of providing temporary housing to disaster victims in major disasters and emergencies if, as a condition of the sale, transfer, or donation, the State, other governmental agency, or voluntary organization agrees—

(I) to comply with the nondiscrimination provisions of section 5151 of this title; and

(II) to obtain and maintain hazard and flood insurance on the housing unit.

(e) Financial assistance to address other needs

(1) Medical, dental, and funeral expenses

The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household in the State who is adversely affected by a major disaster to meet disaster-related medical, dental, and funeral expenses.

(2) Personal property, transportation, and other expenses

The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household described in paragraph (1) to address personal property, transportation, and other necessary expenses or serious needs resulting from the major disaster.

(f) State role

(1) Financial assistance to address other needs

(A) Grant to State

Subject to subsection (g) of this section, a Governor may request a grant from the President to provide financial assistance to individuals and households in the State under subsection (e) of this section.

(B) Administrative costs

A State that receives a grant under subparagraph (A) may expend not more than 5 percent of the amount of the grant for the administrative costs of providing financial assistance to individuals and households in the State under subsection (e) of this section.

(2) Access to records

In providing assistance to individuals and households under this section, the President shall provide for the substantial and ongoing involvement of the States in which the individuals and households are located, including by providing to the States access to the electronic records of individuals and households receiving assistance under this section in order for the States to make available any additional State and local assistance to the individuals and households.

(g) Cost sharing

(1) Federal share

Except as provided in paragraph (2), the Federal share of the costs eligible to be paid using assistance provided under this section shall be 100 percent.

(2) Financial assistance to address other needs

In the case of financial assistance provided under subsection (e) of this section—

(A) the Federal share shall be 75 percent; and

(B) the non-Federal share shall be paid from funds made available by the State.

(h) Maximum amount of assistance

(1) In general

No individual or household shall receive financial assistance greater than $25,000 under this section with respect to a single major disaster.

(2) Adjustment of limit

The limit established under paragraph (1) shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(i) Verification measures

In carrying out this section, the President shall develop a system, including an electronic database, that shall allow the President, or the designee of the President, to—

(1) verify the identity and address of recipients of assistance under this section to provide reasonable assurance that payments are made only to an individual or household that is eligible for such assistance;

(2) minimize the risk of making duplicative payments or payments for fraudulent claims under this section;

(3) collect any duplicate payment on a claim under this section, or reduce the amount of subsequent payments to offset the amount of any such duplicate payment;

(4) provide instructions to recipients of assistance under this section regarding the proper use of any such assistance, regardless of how such assistance is distributed; and

(5) conduct an expedited and simplified review and appeal process for an individual or household whose application for assistance under this section is denied.

(j) Rules and regulations

The President shall prescribe rules and regulations to carry out this section, including criteria, standards, and procedures for determining eligibility for assistance.

(Pub. L. 93–288, title IV, § 408, as added Pub. L. 100–707, title I, § 106(d), Nov. 23, 1988, 102 Stat. 4702; amended Pub. L. 106–390, title II, § 206(a), Oct. 30, 2000, 114 Stat. 1566; Pub. L. 109–295, title VI, §§ 685, 686, 689(c), 689d, 696(c), Oct. 4, 2006, 120 Stat. 1447–1449, 1452, 1461.)

PRIOR PROVISIONS

A prior section 5174, Pub. L. 93–288, title IV, § 404, May 22, 1974, 88 Stat. 154, related to temporary housing assistance, prior to repeal by Pub. L. 100–707, § 106(d).

A prior section 408 of Pub. L. 93–288 was classified to section 5178 of this title and to a note set out under section 5178 of this title prior to repeal by Pub. L. 100–707.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–295, § 689(c)(1), inserted ", or with respect to individuals with disabilities, rendered inaccessible or uninhabitable," after "uninhabitable".

Subsec. (c)(1)(A)(i). Pub. L. 109–295, § 689d(1), inserted at end "Such assistance may include the payment of the cost of utilities, excluding telephone service."

Subsec. (c)(1)(A)(ii). Pub. L. 109–295, § 689d(2), inserted "security deposits," after "hookups,".

Subsec. (c)(2)(C). Pub. L. 109–295, § 686(1), struck out subpar. (C) which read as follows: "The amount of assistance provided to a household under this paragraph shall not exceed $5,000, as adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor."

Subsec. (c)(3)(B), (C). Pub. L. 109–295, § 686(2), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "The amount of assistance provided to a household under this paragraph shall not exceed $10,000, as adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor."

Subsec. (c)(4). Pub. L. 109–295, § 685, in introductory provisions, inserted "or semi-permanent" after "permanent" and struck out "remote" before "locations".

Subsec. (d)(1)(A)(ii), (iii). Pub. L. 109–295, § 689(c)(2), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsecs. (i), (j). Pub. L. 109–295, § 696(c), added subsec. (i) and redesignated former subsec. (i) as (j).

2000—Pub. L. 106–390 amended section catchline and text generally. Prior to amendment, text provided for temporary housing assistance through provision of temporary housing, temporary mortgage and rental payment assistance, expenditures to repair or restore owner-occupied private residential structures made uninhabitable by a major disaster which are capable of being restored quickly, and transfer of temporary housing to occupants or to States, local governments, and voluntary organizations, required notification to applicants for assistance, and set out location factors to be given consideration in the provision of assistance.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–390, title II, § 206(d), Oct. 30, 2000, 114 Stat. 1571, provided that: "The amendments made by this section [amending this section and section 5192 of this title and repealing section 5178 of this title] take effect 18 months after the date of the enactment of this Act [Oct. 30, 2000]."

§ 5175. Repealed. Pub. L. 100–707, title I, § 105(m)(2), Nov. 23, 1988, 102 Stat. 4696

Section, Pub. L. 93–288, title IV, § 405, May 22, 1974, 88 Stat. 155, related to protection of environment.

§ 5176. Repealed. Pub. L. 106–390, title I, § 104(c)(2), Oct. 30, 2000, 114 Stat. 1559

Section, Pub. L. 93–288, title IV, § 409, formerly § 406, May 22, 1974, 88 Stat. 155; renumbered § 409, Pub. L. 100–707, title I, § 106(e), Nov. 23, 1988, 102 Stat. 4703, related to minimum standards for public and private structures.

A prior section 409 of Pub. L. 93–288 was renumbered section 412 by Pub. L. 100–707 and is classified to section 5179 of this title.

§ 5177. Unemployment assistance

(a) Benefit assistance

The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26) or waiting period credit. Such assistance as the President shall provide shall be available to an individual as long as the individual's unemploy-

ment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than 26 weeks after the major disaster is declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred. The President is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.

(b) Reemployment assistance

(1) State assistance

A State shall provide, without reimbursement from any funds provided under this chapter, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section.

(2) Federal assistance

The President may provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services.

(Pub. L. 93–288, title IV, § 410, formerly § 407, May 22, 1974, 88 Stat. 156; renumbered § 410 and amended Pub. L. 100–707, title I, § 106(e), (f), Nov. 23, 1988, 102 Stat. 4703, 4704.)

PRIOR PROVISIONS

A prior section 410 of Pub. L. 93–288 was renumbered section 413 by Pub. L. 100–707 and is classified to section 5180 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–707, § 106(f)(1)–(3), inserted ''for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26) or waiting period credit'' for ''is unemployed'' before period at end of first sentence, substituted ''26 weeks'' for ''one year'' in second sentence, and substituted ''occurred'' for ''occurred, and the amount of assistance under this section to any such individual for a week of unemployment shall be reduced by any amount of unemployment compensation or of private income protection insurance compensation available to such individual for such week of unemployment'' in third sentence.

Subsec. (b). Pub. L. 100–707, § 106(f)(4), inserted heading and amended text generally. Prior to amendment, text read as follows: ''The President is further authorized for the purposes of this chapter to provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster.''

§ 5177a. Emergency grants to assist low-income migrant and seasonal farmworkers

(a) In general

The Secretary of Agriculture may make grants to public agencies or private organizations with tax exempt status under section 501(c)(3) of title 26, that have experience in providing emergency services to low-income migrant and seasonal farmworkers where the Secretary determines that a local, State or national emergency or disaster has caused low-income migrant or seasonal farmworkers to lose income, to be unable to work, or to stay home or return home in anticipation of work shortages. Emergency services to be provided with assistance received under this section may include such types of assistance as the Secretary of Agriculture determines to be necessary and appropriate.

(b) "Low-income migrant or seasonal farmworker" defined

For the purposes of this section, the term ''low-income migrant or seasonal farmworker'' means an individual—

(1) who has, during any consecutive 12 month period within the preceding 24 month period, performed farm work for wages;

(2) who has received not less than one-half of such individual's total income, or been employed at least one-half of total work time in farm work; and

(3) whose annual family income within the 12 month period referred to in paragraph (1) does not exceed the higher of the poverty level or 70 percent of the lower living standard income level.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 101–624, title XXII, § 2281, Nov. 28, 1990, 104 Stat. 3978; Pub. L. 107–171, title X, § 10102, May 13, 2002, 116 Stat. 488.)

CODIFICATION

Section was enacted as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–171 struck out '', not to exceed $20,000,000 annually,'' after ''Secretary of Agriculture may make grants''.

§ 5178. Repealed. Pub. L. 106–390, title II, § 206(c), Oct. 30, 2000, 114 Stat. 1571

Section, Pub. L. 93–288, title IV, § 411, as added Pub. L. 100–707, title I, § 106(g), Nov. 23, 1988, 102 Stat. 4704, related to individual and family grant programs.

EFFECTIVE DATE OF REPEAL

Repeal effective 18 months after Oct. 30, 2000, see section 206(d) of Pub. L. 106–390, set out as an Effective Date of 2000 Amendment note under section 5174 of this title.

PRIOR PROVISIONS

A prior section 5178, Pub. L. 93–288, title IV, § 408, May 22, 1974, 88 Stat. 156, related to individual and family grant programs, prior to repeal by Pub. L. 100–707, § 106(g).

A prior section 411 of Pub. L. 93–288 was renumbered section 414 by Pub. L. 100–707 and is classified to section 5181 of this title.

§ 5179. Food coupons and distribution

(a) Persons eligible; terms and conditions

Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to

distribute through the Secretary of Agriculture or other appropriate agencies coupon allotments to such households pursuant to the provisions of the Food Stamp Act of 1964 (P.L. 91–671; 84 Stat. 2048) [7 U.S.C. 2011 et seq.] and to make surplus commodities available pursuant to the provisions of this chapter.

(b) Duration of assistance; factors considered

The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.

(c) Food Stamp Act provisions unaffected

Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act of 1964 [7 U.S.C. 2011 et seq.] except as they relate to the availability of food stamps in an area affected by a major disaster.

(Pub. L. 93–288, title IV, § 412, formerly § 409, May 22, 1974, 88 Stat. 157; renumbered § 412, Pub. L. 100–707, title I, § 106(h), Nov. 23, 1988, 102 Stat. 4705.)

REFERENCES IN TEXT

The Food Stamp Act of 1964, referred to in subsecs. (a) and (c), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, known as the Food Stamp Act of 1977, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 412 of Pub. L. 93–288 was renumbered section 415 by Pub. L. 100–707 and is classified to section 5182 of this title.

DELEGATION OF FUNCTIONS

Secretary of Agriculture designated and empowered to exercise, without approval, ratification, or other action of President, all authority vested in President by this section concerning food coupons and distribution, see section 3 of Ex. Ord. No. 11795, as amended, set out as a note under section 5121 of this title.

§ 5180. Food commodities

(a) Emergency mass feeding

The President is authorized and directed to assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) Funds for purchase of food commodities

The Secretary of Agriculture shall utilize funds appropriated under section 612c of title 7, to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

(Pub. L. 93–288, title IV, § 413, formerly § 410, May 22, 1974, 88 Stat. 157; renumbered § 413, Pub. L. 100–707, title I, § 106(h), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 413 of Pub. L. 93–288 was renumbered section 416 by Pub. L. 100–707 and is classified to section 5183 of this title.

§ 5181. Relocation assistance

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) [42 U.S.C. 4601 et seq.] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

(Pub. L. 93–288, title IV, § 414, formerly § 411, May 22, 1974, 88 Stat. 157; renumbered § 414, Pub. L. 100–707, title I, § 106(h), Nov. 23, 1988, 102 Stat. 4705.)

REFERENCES IN TEXT

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in text, is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (§ 4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

PRIOR PROVISIONS

A prior section 414(a), (b) of Pub. L. 93–288 was renumbered section 417(a), (b) by Pub. L. 100–707 and is classified to section 5184 of this title.

§ 5182. Legal services

Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this chapter, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

(Pub. L. 93–288, title IV, § 415, formerly § 412, May 22, 1974, 88 Stat. 157; renumbered § 415, Pub. L. 100–707, title I, § 106(h), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 415 of Pub. L. 93–288 was renumbered section 418 by Pub. L. 100–707 and is classified to section 5185 of this title.

§ 5183. Crisis counseling assistance and training

The President is authorized to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath.

(Pub. L. 93–288, title IV, § 416, formerly § 413, May 22, 1974, 88 Stat. 157; renumbered § 416 and amended Pub. L. 100–707, title I, § 106(i), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 416 of Pub. L. 93–288 was renumbered section 419 by Pub. L. 100–707 and is classified to section 5186 of this title.

AMENDMENTS

1988—Pub. L. 100–707 struck out ''(through the National Institute of Mental Health)'' after ''authorized''.

§ 5184. Community disaster loans

(a) In general

The President is authorized to make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions.

(b) Amount

The amount of any such loan shall be based on need, shall not exceed—

(1) 25 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and shall not exceed $5,000,000; or

(2) if the loss of tax and other revenues of the local government as a result of the major disaster is at least 75 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, 50 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and shall not exceed $5,000,000.

(c) Repayment

(1) Cancellation

Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.

(2) Condition on continuing eligibility

A local government shall not be eligible for further assistance under this section during any period in which the local government is in arrears with respect to a required repayment of a loan under this section.

(d) Effect on other assistance

Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this chapter.

(Pub. L. 93–288, title IV, § 417, formerly § 414(a), (b), May 22, 1974, 88 Stat. 158; renumbered § 417, Pub. L. 100–707, title I, § 106(j), Nov. 23, 1988, 102 Stat. 4705; Pub. L. 106–390, title II, § 207, Oct. 30, 2000, 114 Stat. 1571; Pub. L. 109–347, title VI, § 608, Oct. 13, 2006, 120 Stat. 1942.)

CODIFICATION

Prior to renumbering as section 417, section 414 of Pub. L. 93–288 contained a subsec. (c) which was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1082.

PRIOR PROVISIONS

A prior section 417 of Pub. L. 93–288 was renumbered section 420 by Pub. L. 100–707 and is classified to section 5187 of this title.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–347 substituted ''exceed—

''(1) 25 percent''

for ''exceed 25 per centum'' and ''; or'' for period at end and added par. (2).

2000—Pub. L. 106–390, § 207(1)–(3), designated first sentence of subsec. (a) as subsec. (a) and inserted subsec. heading, designated second sentence of subsec. (a) as subsec. (b) and inserted subsec. heading, and designated third sentence of subsec. (a) as subsec. (c)(1) and inserted subsec. and par. headings. Former subsec. (b) redesignated (d).

Subsec. (b). Pub. L. 106–390, § 207(5), substituted ''shall not exceed'' for ''and shall not exceed'' and inserted before period at end '', and shall not exceed $5,000,000''.

Subsec. (c)(2). Pub. L. 106–390, § 207(6), added par. (2).

Subsec. (d). Pub. L. 106–390, § 207(4), redesignated subsec. (b) as (d) and inserted subsec. heading.

COMMUNITY EMERGENCY DROUGHT RELIEF

Pub. L. 95–31, title I, May 23, 1977, 91 Stat. 169, provided: ''That this Act be cited as the 'Community Emergency Drought Relief Act of 1977'.

''SEC. 101. (a) Upon the application of any State, political subdivision of a State, Indian tribe, or public or private nonprofit organization, the Secretary of Commerce is authorized to make grants and loans to applicants in drought impacted areas for projects that implement short-term actions to augment community water supplies where there are severe problems due to water shortages. Such assistance may be for the improvement, expansion, or construction of water supplies, and purchase and transportation of water, which in the opinion of the Secretary of Commerce will make a substantial contribution to the relief of an existing or threatened drought condition in a designated area.

''(b) The Secretary of Commerce may designate any area in the United States as an emergency drought impact area if he or she finds that a major and continuing adverse drought condition exists and is expected to continue, and such condition is causing significant hardships on the affected areas.

''(c) Eligible applicants shall be those States or political subdivisions of States with a population of ten thousand or more, Indian tribes, or public or private nonprofit organizations within areas designated pursuant to subsection (b) of this section.

''(d) Projects assisted under this Act shall be only those with respect to which assurances can be given to the satisfaction of the Secretary of Commerce that the work can be completed by April 30, 1978, or within such extended time as the Secretary may approve in exceptional circumstances.

''SEC. 102. Grants hereunder shall be in an amount not to exceed 50 per centum of allowable project costs. Loans shall be for a term not to exceed 40 years at a per annum interest rate of 5 per centum and shall be on such terms and conditions as the Secretary of Commerce shall determine. In determining the amount of a grant assistance for any project, the Secretary of Commerce may take into consideration such factors as are established by regulation and are consistent with the purposes of this Act.

''SEC. 103. In extending assistance under this Act the Secretary shall take into consideration the relative needs of applicant areas for the projects for which assistance is requested, and the appropriateness of the project for relieving the conditions intended to be alleviated by this Act.

''SEC. 104. The Secretary of Commerce shall have such powers and authorities under this Act as are vested in the Secretary by sections 701 and 708 of the Public Works and Economic Development Act of 1965, as amended [sections 3211 and 3218 of this title], with respect to that Act [section 3121 et seq. of this title].

''SEC. 105. The National Environmental Protection Act of 1969, as amended [section 4321 et seq. of this title], shall be implemented to the fullest extent con-

sistent with but subject to the time constraints imposed by this Act, and the Secretary of Commerce when making the final determination regarding an application for assistance hereunder shall give consideration to the environmental consequences determined within that period.

''SEC. 106. (a) There is hereby authorized to be appropriated for the fiscal year ending September 30, 1977, $225,000,000 of which sum $150,000,000 is to be for the loan program herein, including administration thereof, and $75,000,000 of which is to be used for the grant program herein, including administration thereof, and such additional amounts for the fiscal year ending September 30, 1978, as may be reasonably needed for administrative expenses in monitoring and closing out the program authorized by the Act. Funds authorized by this Act shall be obligated by December 31, 1977.

''(b) Funds available to the Secretary for this Act shall be available for expenditure for drought impact projects conducted heretofore by eligible applicants during fiscal year 1977 if such projects are found to be compatible with the broad purposes of this Act.''

§ 5185. Emergency communications

The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate.

(Pub. L. 93–288, title IV, § 418, formerly § 415, May 22, 1974, 88 Stat. 158; renumbered § 418, Pub. L. 100–707, title I, § 106(j), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 418 of Pub. L. 93–288 was renumbered section 421 by Pub. L. 100–707 and is classified to section 5188 of this title.

§ 5186. Emergency public transportation

The President is authorized to provide temporary public transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible.

(Pub. L. 93–288, title IV, § 419, formerly § 416, May 22, 1974, 88 Stat. 158; renumbered § 419, Pub. L. 100–707, title I, § 106(j), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 419 of Pub. L. 93–288 was classified to section 5189 of this title prior to repeal by Pub. L. 100–707.

§ 5187. Fire management assistance

(a) In general

The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State or local government for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.

(b) Coordination with State and tribal departments of forestry

In providing assistance under this section, the President shall coordinate with State and tribal departments of forestry.

(c) Essential assistance

In providing assistance under this section, the President may use the authority provided under section 5170b of this title.

(d) Rules and regulations

The President shall prescribe such rules and regulations as are necessary to carry out this section.

(Pub. L. 93–288, title IV, § 420, formerly § 417, May 22, 1974, 88 Stat. 158; renumbered § 420, Pub. L. 100–707, title I, § 106(j), Nov. 23, 1988, 102 Stat. 4705; Pub. L. 106–390, title III, § 303(a), Oct. 30, 2000, 114 Stat. 1572.)

AMENDMENTS

2000—Pub. L. 106–390 amended section catchline and text generally. Prior to amendment, text read as follows: ''The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland which threatens such destruction as would constitute a major disaster.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–390, title III, § 303(b), Oct. 30, 2000, 114 Stat. 1573, provided that: ''The amendment made by subsection (a) [amending this section] takes effect 1 year after the date of the enactment of this Act [Oct. 30, 2000].''

§ 5188. Timber sale contracts

(a) Cost-sharing arrangement

Where an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary, (1) of more than $1,000 for sales under one million board feet, (2) of more than $1 per thousand board feet for sales of one to three million board feet, or (3) of more than $3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.

(b) Cancellation of authority

If the appropriate Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, he may allow cancellation of a contract entered into by his Department notwithstanding contrary provisions therein.

(c) Public notice of sale

The Secretary of Agriculture is authorized to reduce to seven days the minimum period of advance public notice required by section 476[1] of title 16, in connection with the sale of timber from national forests, whenever the Secretary

[1] See References in Text note below.

determines that (1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster, (2) the sale of such timber will assist in sustaining the economy of such area, or (3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

(d) State grants for removal of damaged timber; reimbursement of expenses limited to salvage value of removed timber

The President, when he determines it to be in the public interest, is authorized to make grants to any State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster, and such State or local government is authorized upon application, to make payments out of such grants to any person for reimbursement of expenses actually incurred by such person in the removal of damaged timber, not to exceed the amount that such expenses exceed the salvage value of such timber.

(Pub. L. 93–288, title IV, § 421, formerly § 418, May 22, 1974, 88 Stat. 158; renumbered § 421, Pub. L. 100–707, title I, § 106(j), Nov. 23, 1988, 102 Stat. 4705.)

REFERENCES IN TEXT

Section 476 of title 16, referred to in subsec. (c), was repealed by Pub. L. 94–588, § 13, Oct. 22, 1976, 90 Stat. 2958.

§ 5189. Simplified procedure

If the Federal estimate of the cost of—

(1) repairing, restoring, reconstructing, or replacing under section 5172 of this title any damaged or destroyed public facility or private nonprofit facility,

(2) emergency assistance under section 5170b or 5192 of this title, or

(3) debris removed under section 5173 of this title,

is less than $35,000, the President (on application of the State or local government or the owner or operator of the private nonprofit facility) may make the contribution to such State or local government or owner or operator under section 5170b, 5172, 5173, or 5192 of this title, as the case may be, on the basis of such Federal estimate. Such $35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(Pub. L. 93–288, title IV, § 422, as added Pub. L. 100–707, title I, § 106(k), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 5189, Pub. L. 93–288, title IV, § 419, May 22, 1974, 88 Stat. 159, related to alternate contributions, prior to repeal by Pub. L. 100–707, § 106(k).

§ 5189a. Appeals of assistance decisions

(a) Right of appeal

Any decision regarding eligibility for, from, or amount of assistance under this subchapter may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.

(b) Period for decision

A decision regarding an appeal under subsection (a) of this section shall be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of such appeal.

(c) Rules

The President shall issue rules which provide for the fair and impartial consideration of appeals under this section.

(Pub. L. 93–288, title IV, § 423, as added Pub. L. 100–707, title I, § 106(*l*), Nov. 23, 1988, 102 Stat. 4705.)

§ 5189b. Date of eligibility; expenses incurred before date of disaster

Eligibility for Federal assistance under this subchapter shall begin on the date of the occurrence of the event which results in a declaration by the President that a major disaster exists; except that reasonable expenses which are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

(Pub. L. 93–288, title IV, § 424, as added Pub. L. 100–707, title I, § 106(*l*), Nov. 23, 1988, 102 Stat. 4706.)

§ 5189c. Transportation assistance to individuals and households

The President may provide transportation assistance to relocate individuals displaced from their predisaster primary residences as a result of an incident declared under this chapter or otherwise transported from their predisaster primary residences under section 5170b(a)(3) or 5192 of this title, to and from alternative locations for short or long-term accommodation or to return an individual or household to their predisaster primary residence or alternative location, as determined necessary by the President.

(Pub. L. 93–288, title IV, § 425, as added Pub. L. 109–295, title VI, § 689f, Oct. 4, 2006, 120 Stat. 1452.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

CODIFICATION

Another section 425 of Pub. L. 93–288 is classified to section 5189e of this title.

§ 5189d. Case management services

The President may provide case management services, including financial assistance, to State or local government agencies or qualified private organizations to provide such services, to victims of major disasters to identify and address unmet needs.

(Pub. L. 93–288, title IV, § 426, as added Pub. L. 109–295, title VI, § 689f, Oct. 4, 2006, 120 Stat. 1453.)

§ 5189e. Essential service providers

(a) Definition

In this section, the term ''essential service provider'' means an entity that—

(1) provides—

(A) telecommunications service;

(B) electrical power;

(C) natural gas;

(D) water and sewer services; or

(E) any other essential service, as determined by the President;

(2) is—

(A) a municipal entity;

(B) a nonprofit entity; or

(C) a private, for profit entity; and

(3) is contributing to efforts to respond to an emergency or major disaster.

(b) Authorization for accessibility

Unless exceptional circumstances apply, in an emergency or major disaster, the head of a Federal agency, to the greatest extent practicable, shall not—

(1) deny or impede access to the disaster site to an essential service provider whose access is necessary to restore and repair an essential service; or

(2) impede the restoration or repair of the services described in subsection (a)(1).

(c) Implementation

In implementing this section, the head of a Federal agency shall follow all applicable Federal laws, regulations, and policies.

(Pub. L. 93–288, title IV, § 425, as added Pub. L. 109–347, title VI, § 607, Oct. 13, 2006, 120 Stat. 1941.)

CODIFICATION

Another section 425 of Pub. L. 93–288 is classified to section 5189c of this title.

SUBCHAPTER IV–A—EMERGENCY ASSISTANCE PROGRAMS

§ 5191. Procedure for declaration

(a) Request and declaration

All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of such request, and as a prerequisite to emergency assistance under this chapter, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.

(b) Certain emergencies involving Federal primary responsibility

The President may exercise any authority vested in him by section 5192 of this title or section 5193 of this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a) of this section.

(Pub. L. 93–288, title V, § 501, as added Pub. L. 100–707, title I, § 107(a), Nov. 23, 1988, 102 Stat. 4706.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

PRIOR PROVISIONS

A prior section 501 of Pub. L. 93–288 enacted subchapter VIII (§ 3231 et seq.) of chapter 38 of this title.

§ 5192. Federal emergency assistance

(a) Specified

In any emergency, the President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(3) provide technical and advisory assistance to affected State and local governments for—

(A) the performance of essential community services;

(B) issuance of warnings of risks or hazards;

(C) public health and safety information, including dissemination of such information;

(D) provision of health and safety measures; and

(E) management, control, and reduction of immediate threats to public health and safety;

(4) provide emergency assistance through Federal agencies;

(5) remove debris in accordance with the terms and conditions of section 5173 of this title;

(6) provide assistance in accordance with section 5174 of this title;

(7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance; and

(8) provide accelerated Federal assistance and Federal support where necessary to save

lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President—

(A) shall, to the fullest extent practicable, promptly notify and coordinate with a State in which such assistance or support is provided; and

(B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of an emergency.

(b) General

Whenever the Federal assistance provided under subsection (a) of this section with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations.

(c) Guidelines

The President shall promulgate and maintain guidelines to assist Governors in requesting the declaration of an emergency in advance of a natural or man-made disaster (including for the purpose of seeking assistance with special needs and other evacuation efforts) under this section by defining the types of assistance available to affected States and the circumstances under which such requests are likely to be approved.

(Pub. L. 93–288, title V, § 502, as added Pub. L. 100–707, title I, § 107(a), Nov. 23, 1988, 102 Stat. 4706; amended Pub. L. 106–390, title II, § 206(b), Oct. 30, 2000, 114 Stat. 1570; Pub. L. 109–295, title VI, § 681(b), Oct. 4, 2006, 120 Stat. 1444.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–295, § 681(b)(1)(A), inserted ‘‘, including precautionary evacuations’’ before semicolon at end.

Subsec. (a)(8). Pub. L. 109–295, § 681(b)(1)(B)–(D), added par. (8).

Subsec. (b). Pub. L. 109–295, § 681(b)(2), inserted ‘‘, including precautionary evacuations’’ before period at end.

Subsec. (c). Pub. L. 109–295, § 681(b)(3), added subsec. (c).

2000—Subsec. (a)(6). Pub. L. 106–390 struck out ‘‘temporary housing’’ after ‘‘provide’’.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–390 effective 18 months after Oct. 30, 2000, see section 206(d) of Pub. L. 106–390, set out as a note under section 5174 of this title.

§ 5193. Amount of assistance

(a) Federal share

The Federal share for assistance provided under this subchapter shall be equal to not less than 75 percent of the eligible costs.

(b) Limit on amount of assistance

(1) In general

Except as provided in paragraph (2), total assistance provided under this subchapter for a single emergency shall not exceed $5,000,000.

(2) Additional assistance

The limitation described in paragraph (1) may be exceeded when the President determines that—

(A) continued emergency assistance is immediately required;

(B) there is a continuing and immediate risk to lives, property, public health or safety; and

(C) necessary assistance will not otherwise be provided on a timely basis.

(3) Report

Whenever the limitation described in paragraph (1) is exceeded, the President shall report to the Congress on the nature and extent of emergency assistance requirements and shall propose additional legislation if necessary.

(Pub. L. 93–288, title V, § 503, as added Pub. L. 100–707, title I, § 107(a), Nov. 23, 1988, 102 Stat. 4707.)

SUBCHAPTER IV–B—EMERGENCY PREPAREDNESS

§ 5195. Declaration of policy

The purpose of this subchapter is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. The Congress recognizes that the organizational structure established jointly by the Federal Government and the States and their political subdivisions for emergency preparedness purposes can be effectively utilized to provide relief and assistance to people in areas of the United States struck by a hazard. The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide necessary assistance, as authorized in this subchapter so that a comprehensive emergency preparedness system exists for all hazards.

(Pub. L. 93–288, title VI, § 601, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3100.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2251 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

MULTIHAZARD PREPAREDNESS AND MITIGATION

Pub. L. 106–74, title III, Oct. 20, 1999, 113 Stat. 1086, as amended by Pub. L. 109–295, title VI, § 612(c), Oct. 4,

2006, 120 Stat. 1410, provided in part: ''That beginning in fiscal year 2000 and each fiscal year thereafter, and notwithstanding any other provision of law, the Administrator of FEMA is authorized to provide assistance from funds appropriated under this heading [EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE], subject to terms and conditions as the Administrator of FEMA shall establish, to any State for multi-hazard preparedness and mitigation through consolidated emergency management performance grants''.

MULTIHAZARD RESEARCH, PLANNING, AND MITIGATION; FUNCTIONS, ETC., OF FEDERAL EMERGENCY MANAGEMENT AGENCY

Pub. L. 96–472, title III, §§301, 302, Oct. 19, 1980, 94 Stat. 2260, as amended by Pub. L. 97–80, title III, §301, Nov. 20, 1981, 95 Stat. 1083; Pub. L. 97–464, title II, §201, Jan. 12, 1983, 96 Stat. 2533; Pub. L. 109–295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410, provided that:

''SEC. 301. It is recognized that natural and manmade hazards may not be independent of one another in any given disaster, and it is also recognized that emergency personnel are often called upon to meet emergencies outside of their primary field of service. Furthermore, planning for and responding to different hazards have certain common elements. To make maximum use of these commonalities, the Administrator of the Federal Emergency Management Agency (hereinafter referred to as the 'Director') is authorized and directed to:

''(1) initiate, within one year after the date of enactment of this Act [Oct. 19, 1980], studies with the objective of defining and developing a multihazard research, planning, and implementation process within the Agency;

''(2) develop, within one year after the date of enactment of this Act [Oct. 19, 1980], in cooperation with State and local governments, prototypical multihazard mitigation projects which can be used to evaluate several approaches to the varying hazard mitigation needs of State and local governments and to assess the applicability of these prototypes to other jurisdictions with similar needs;

''(3) investigate and evaluate, within one year after the date of enactment of this Act [Oct. 19, 1980], the effectiveness of a range of incentives for hazard reductions that can be applied at the State and local government levels;

''(4) prepare recommendations as to the need for legislation that will limit the legal liability of those third party persons or groups which are called upon to provide technical assistance and advice to public employees, including policemen, firemen, and transportation employees, who are generally the first to respond to a hazardous incident; which recommendations shall be provided to the appropriate committees of Congress within one hundred and eighty days after the date of enactment of this Act [Oct. 19, 1980];

''(5) prepare, within one hundred and eighty days after the date of enactment of this Act [Oct. 19, 1980], a report on the status of the Agency's emergency information and communications systems which will provide recommendations on—

''(A) the advisability of developing a single, unified emergency information and communication system for use by the Agency in carrying out its emergency management activities;

''(B) the potential for using communication and remote sensing satellites as part of the Agency's emergency information and communication system; and

''(C) the type of system to be developed, if needed, including the relationship of the proposed system and its needs to the existing and emerging information and communication systems in other Federal agencies;

''(6) conduct a program of multihazard research, planning, and mitigation in coordination with those studies and evaluations authorized in paragraphs (1) through (5), as well as other hazard research, planning, and mitigation deemed necessary by the Director;

''(7) conduct emergency first response programs so as to better train and prepare emergency personnel to meet emergencies outside of their primary field of service; and

''(8) conduct a program of planning, preparedness, and mitigation related to the multiple direct and indirect hazards resulting from the occurrence of large earthquakes.

''SEC. 302. (a) For the fiscal year ending September 30, 1981, there are authorized to be appropriated to the Director $1,000,000 to carry out paragraphs (1) through (5) of section 301 and such sums as may be necessary to carry out paragraph (6) of such section.

''(b) For the fiscal year ending September 30, 1982, there are authorized to be appropriated to the Director—

''(1) $4,939,000 to carry out section 301, which amount shall include—

''(A) not less than $700,000 to carry out the purposes of paragraphs (1) through (6) of such section;

''(B) such sums as may be necessary, but in any case not less than $939,000, for use by the United States Fire Administration in carrying out paragraph (7) of such section; and

''(C) not less than $3,300,000 to carry out paragraph (8) of such section with respect to those large California earthquakes which were identified by the National Security Council's Ad Hoc Committee on Assessment of Consequences and Preparations for a Major California Earthquake; and

''(2) such further sums as may be necessary for adjustments required by law in salaries, pay, retirement, and employee benefits incurred in the conduct of activities for which funds are authorized by paragraph (1) of this subsection.

''(c) For the fiscal year ending September 30, 1983, there are authorized to be appropriated to the Director—

''(1) $2,774,000 to carry out section 301, which amount shall include—

''(A) not less than $300,000 to carry out the purposes of paragraphs (1) through (6) of such section;

''(B) such sums as may be necessary, but in any case not less than $939,000, for use by the United States Fire Administration in carrying out paragraph (7) of such section; and

''(C) not less than $1,535,000 to carry out paragraph (8) of such section with respect to those large California earthquakes which were identified by the National Security Council's Ad Hoc Committee on Assessment of Consequences and Preparations for a Major California Earthquake and with respect to other high seismic risk areas in the United States; and

''(2) such further sums as may be necessary for adjustments required by law in salaries, pay, retirement, and employee benefits incurred in the conduct of activities for which funds are authorized by paragraph (1) of this subsection.''

REORGANIZATION PLAN NO. 1 OF 1958

Eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799, as amended Pub. L. 85–763, Aug. 26, 1958, 72 Stat. 861; Pub. L. 87–296, §1, Sept. 22, 1961, 75 Stat. 630; Pub. L. 87–367, title I, §103(10), Oct. 4, 1961, 75 Stat. 788; Pub. L. 88–426, title III, §305(11), Aug. 14, 1964, 78 Stat. 423; Pub. L. 90–608, ch. IV, §402, Oct. 21, 1968, 82 Stat. 1194; Reorg. Plan No. 1 of 1973, §3(a), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 24, 1958, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see 5 U.S.C. 901 et seq.].

CIVILIAN MOBILIZATION

SECTION 1. TRANSFER OF FUNCTIONS TO THE PRESIDENT

(a) There are hereby transferred to the President of the United States all functions vested by law (including

reorganization plan) in the following: The Office of Defense Mobilization, the Director of the Office of Defense Mobilization, the Federal Civil Defense Administration, and the Federal Civil Defense Administrator.

(b) The President may from time to time delegate any of the functions transferred to him by subsection (a) of this section to any officer, agency, or employee of the executive branch of the Government, and may authorized such officer, agency, or employee to redelegate any of such functions delegated to him.

SEC. 2. OFFICE OF EMERGENCY PREPAREDNESS

[The Office of Emergency Preparedness including the offices of Director and Deputy Director, and all offices of Assistant Director, were abolished by Reorg. Plan No. 1 of 1973, §3(a)(1), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out below.]

SEC. 3. REGIONAL DIRECTORS

[All offices of Regional Director of the Office of Emergency Preparedness were abolished by Reorg. Plan No. 1 of 1973, §3(a)(1), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out below.]

SEC. 4. MEMBERSHIP ON NATIONAL SECURITY COUNCIL

[The functions of the Director of the Office of Emergency Preparedness as a member of the National Security Council were abolished by Reorg. Plan No. 1 of 1973, §3(a)(2), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out below.]

SEC. 5. CIVIL DEFENSE ADVISORY COUNCIL

[The Civil Defense Advisory Council, together with its functions, was abolished by Reorg. Plan No. 1 of 1973, §3(a)(3), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out below.]

SEC. 6. ABOLITIONS

The offices of Federal Civil Defense Administrator and Deputy Administrator provided for in section 101 of the Federal Civil Defense Act (50 U.S.C. App. 2271) and the offices of the Director of the Office of Defense Mobilization and Deputy Director of the Office of Defense Mobilization provided for in section 1 of Reorganization Plan Numbered 3 of 1953 (67 Stat. 634) are hereby abolished. The Director of the Office of Emergency Preparedness shall make such provisions as may be necessary in order to wind up any outstanding affairs of the offices abolished by this section which are not otherwise provided for in this reorganization plan. [As amended Pub. L. 90–608, ch. IV, §402, Oct. 21, 1968, 82 Stat. 1194.]

SEC. 7. RECORDS, PROPERTY, PERSONNEL, AND FUNDS

(a) The records, property, personnel, and unexpended balances, available or to be made available, of appropriations, allocations, and other funds of the Office of Defense Mobilization and of the Federal Civil Defense Administration shall, upon the taking effect of the provisions of this reorganization plan, become records, property, personnel, and unexpended balances of the Office of Emergency Preparedness.

(b) Records, property, personnel, and unexpended balances, available or to be made available, of appropriations, allocations, and other funds of any agency (including the Office of Emergency Preparedness), relating to functions vested in or delegated or assigned to the Office of Defense Mobilization or the Federal Civil Defense Administration immediately prior to the taking effect of the provisions of this reorganization plan, may be transferred from time to time to any other agency of the Government by the Director of the Bureau of the Budget under authority of this subsection for use, subject to the provisions of the Reorganization Act of 1949, as amended, in connection with any of the said functions authorized at time of transfer under this subsection to be performed by the transferee agency.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall determine to be necessary in connection with the provisions of subsections (a) and (b) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate. [As amended Pub. L. 90–608, ch. IV, §402, Oct. 21, 1968, 82 Stat. 1194.]

SEC. 8. INTERIM PROVISIONS

The President may authorize any person who immediately prior to the effective date of this reorganization plan holds an office abolished by section 6 hereof to hold any office established by section 2 of this reorganization plan until the latter office is filled pursuant to the said section 2 or by recess appointment, as the case may be, but in no event for any period extending more than 120 days after the said effective date.

SEC. 9. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect at the time determined under the provisions of section 6(a) of the Reorganization Act of 1949, as amended, or on July 1, 1958, whichever is later.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1958, prepared in accordance with the Reorganization Act of 1949, as amended. The reorganization plan provides new arrangements for the conduct of Federal defense mobilization and civil defense functions.

In formulating Reorganization Plan No. 1, I have had the benefit of several studies made by the executive branch as well as those conducted by the Congress. The reorganization plan will overcome the major difficulties revealed by those studies and mentioned in my 1959 budget message where I made the following statement:

The structure of Federal organization for the planning, coordination, and conduct of our nonmilitary defense programs has been reviewed, and I have concluded that the existing statues assigning responsibilities for the central coordination and direction of these programs are out of date. The rapid technical advances of military science have led to a serious overlap among agencies carrying on these leadership and planning functions. Because the situation will continue to change and because these functions transcend the responsibility of any single department or agency, I have concluded that they should be vested in no one short of the President. I will make recommendations to the Congress on this subject.

The principal effects of the organization plan are—

First, it transfers to the President the functions vested by law in the Federal Civil Defense Administration and those so vested in the Office of Defense Mobilization. The result is to establish a single pattern with respect to the vesting of defense mobilization and civil defense functions. At the present time disparity exists in that civil defense functions are vested in the President only to a limited degree while a major part of the functions administered by the Office of Defense Mobilization are vested by law in the President and delegated by him to that Office. Under the plan, the broad program responsibilities for coordinating and conducting the interrelated defense mobilization and civil defense functions will be vested in the President for appropriate delegation as the rapidly changing character of the nonmilitary preparedness program warrants.

Second, the reorganization plan consolidates the Office of Defense Mobilization and the Federal Civil Defense Administration to form a new Office of Defense and Civilian Mobilization in the Executive Office of the President. I have concluded that, in many instances, the interests and activities of the Office of Defense Mobilization and the Federal Civil Defense Administration overlap to such a degree that it is not possible to work out a satisfactory division of those activities and interests between the two agencies. I have also concluded that a single civilian mobilization agency of appropriate stature and authority is needed and that such an agency will ensue from the consolidation and from the

granting of suitable authority to that agency for directing and coordinating the preparedness activities of the Federal departments and agencies and for providing unified guidance and assistance to the State and local governments.

Third, the reorganization plan transfers the membership of the Director of the Office of Defense Mobilization on the National Security Council to the Director of the Office of Defense and Civilian Mobilization and also transfers the Civil Defense Advisory Council to the Office of Defense and Civilian Mobilization.

Initially, the Office of Defense and Civilian Mobilization will perform the civil defense and defense mobilization functions now performed by the Office of Defense Mobilization and the Federal Civil Defense Administration. One of its first tasks will be to advise me with respect to the actions to be taken to clarify and expand the roles of the Federal departments and agencies in carrying out nonmilitary defense preparedness functions. After such actions are taken, the direction and coordination of the civil defense and defense mobilization activities assigned to the departments and agencies will comprise a principal remaining responsibility of the Office of Defense and Civilian Mobilization.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 1 of 1958 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I have also found and hereby declare that it is necessary to include in the accompanying reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of new officers specified in sections 2 and 3 of the plan. The rates of compensation fixed for these officers are, respectively those which I have found to prevail in respect of comparable officers in the executive branch of the Government.

The taking effect of the reorganizations included in Reorganization Plan No. 1 of 1958 will immediately reduce the number of Federal agencies by one and, by providing sounder organizational arrangements for the administration of the affected functions, should promote the increased economy and effectiveness of the Federal expenditures concerned. It is, however, impracticable to itemize at this time the reduction of expenditures which it is probable will be brought about by such taking effect.

I urge that the Congress allow the reorganization plan to become effective.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, April 24, 1958.

REORGANIZATION PLAN NO. 1 OF 1973

Eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, as amended May 11, 1976, Pub. L. 94–282, title V, § 502, 90 Stat. 472

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, January 26, 1973, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

EXECUTIVE OFFICE OF THE PRESIDENT

SECTION 1. TRANSFER OF FUNCTIONS TO THE PRESIDENT

Except as provided in section 3(a)(2) of this reorganization plan, there are hereby transferred to the President of the United States all functions vested by law in the Office of Emergency Preparedness or the Director of the Office of Emergency Preparedness after the effective date of Reorganization Plan No. 1 of 1958.

SEC. 2. [Repealed. Pub. L. 94–282, title V, § 502, May 11, 1976, 90 Stat. 472. Section transferred to the Director of the National Science Foundation all functions vested by law in the Office of Science and Technology or the Director or Deputy Director of the Office of Science and Technology.]

SEC. 3. ABOLITIONS

(a) The following are hereby abolished:

(1) The Office of Emergency Preparedness including the offices of Director, Deputy Director, and all offices of Assistant Director, and Regional Director of the Office of Emergency Preparedness provided for by sections 2 and 3 of Reorganization Plan No. 1 of 1958 (5 U.S.C., App.).

(2) The functions of the Director of the Office of Emergency Preparedness with respect to being a member of the National Security Council.

(3) The Civil Defense Advisory Council, created by section 102(a) of the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2272(a)), together with its functions.

(4) The National Aeronautics and Space Council, created by section 201 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2471), including the office of Executive Secretary of the Council, together with its functions.

(5) The Office of Science and Technology, including the offices of Director and Deputy Director, provided for by sections 1 and 2 of Reorganization Plan No. 2 of 1962 (5 U.S.C., App.).

(b) The Director of the Office of Management and Budget shall make such provisions as he shall deem necessary respecting the winding up of any outstanding affairs of the agencies abolished by the provisions of this section.

SEC. 4. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred by sections 1 and 2 of this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred at such time or times as he shall direct for use in connection with the functions transferred.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 5. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect as provided by section 906(a) of title 5 of the United States Code, or on July 1, 1973, whichever is later.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

On January 5 I announced a three-part program to streamline the executive branch of the Federal Government. By concentrating less responsibility in the President's immediate staff and more in the hands of the departments and agencies, this program should significantly improve the services of the Government. I believe these reforms have become so urgently necessary that I intend, with the cooperation of the Congress, to pursue them with all of the resources of my office during the coming year.

The first part of this program is a renewed drive to achieve passage of my legislative proposals to overhaul the Cabinet departments. Secondly, I have appointed three Cabinet Secretaries as Counsellors to the President with coordinating responsibilities in the broad areas of human resources, natural resources, and community development, and five Assistants to the President with special responsibilities in the areas of domestic affairs, economic affairs, foreign affairs, executive management, and operations of the White House.

The third part of this program is a sharp reduction in the overall size of the Executive Office of the President and a reorientation of that office back to its original mission as a staff for top-level policy formation and monitoring of policy execution in broad functional areas. The Executive Office of the President should no longer be encumbered with the task of managing or ad-

ministering programs which can be run more effectively by the departments and agencies. I have therefore concluded that a number of specialized operational and program functions should be shifted out of the Executive Office into the line departments and agencies of the Government. Reorganization Plan No. 1 of 1973, transmitted herewith, would effect such changes with respect to emergency preparedness functions and scientific and technological affairs.

STREAMLINING THE FEDERAL SCIENCE ESTABLISHMENT

When the National Science Foundation was established by an act of the Congress in 1950, its statutory responsibilities included evaluation of the Government's scientific research programs and development of basic science policy. In the late 1950's, however, with the effectiveness of the U.S. science effort under serious scrutiny as a result of sputnik, the post of Science Advisor to the President was established. The White House became increasingly involved in the evaluation and coordination of research and development programs and in science policy matters, and that involvement was institutionalized in 1962 when a reorganization plan established the Office of Science and Technology within the Executive Office of the President, through transfer of authorities formerly vested in the National Science Foundation.

With advice and assistance from OST during the past decade; the scientific and technological capability of the Government has been markedly strengthened. This administration is firmly committed to a sustained, broadbased national effort in science and technology, as I made plain last year in the first special message on the subject ever sent by a President to the Congress. The research and development capability of the various executive departments and agencies, civilian as well as defense, has been upgraded. The National Science Foundation has broadened from its earlier concentration on basic research support to take on a significant role in applied research as well. It has matured in its ability to play a coordinating and evaluative role within the Government and between the public and private sectors.

I have therefore concluded that it is timely and appropriate to transfer to the Director of the National Science Foundation all functions presently vested in the Office of Science and Technology, and to abolish that office. Reorganization Plan No. 1 would effect these changes.

The multi-disciplinary staff resources of the Foundation will provide analytic capabilities for performance of the transferred functions. In addition, the Director of the Foundation will be able to draw on expertise from all of the Federal agencies, as well as from outside the Government, for assistance in carrying out his new responsibilities.

It is also my intention, after the transfer of responsibilities is effected, to ask Dr. H. Guyford Stever, the current Director of the Foundation, to take on the additional post of Science Adviser. In this capacity, he would advise and assist the White House, Office of Management and Budget, Domestic Council, and other entities within the Executive Office of the President on matters where scientific and technological expertise is called for, and would act as the President's representative in selected cooperative programs in international scientific affairs, including chairing such joint bodies as the U.S.—U.S.S.R. Joint Commission on Scientific and Technical Cooperation.

In the case of national security, the Department of Defense has strong capabilities for assessing weapons needs and for undertaking new weapons development, and the President will continue to draw primarily on this source for advice regarding military technology. The President in special situations also may seek independent studies or assessments concerning military technology from within or outside the Federal establishment, using the machinery of the National Security Council for this purpose, as well as the Science Adviser when appropriate.

In one special area of technology—space and aeronautics—a coordinating council has existed within the Executive Office of the President since 1958. This body, the National Aeronautics and Space Council, met a major need during the evolution of our nation's space program. Vice President Agnew has served with distinction as its chairman for the past four years. At my request, beginning in 1969, the Vice President also chaired a special Space Task Group charged with developing strategy alternatives for a balanced U.S. space program in the coming years.

As a result of this work, basic policy issues in the United States space effort have been resolved, and the necessary interagency relationships have been established. I have therefore concluded, with the Vice President's concurrence, that the Council can be discontinued. Needed policy coordination can now be achieved through the resources of the executive departments and agencies, such as the National Aeronautics and Space Administration, augmented by some of the former Council staff. Accordingly, my reorganization plan proposes the abolition of the National Aeronautics and Space Council.

A NEW APPROACH TO EMERGENCY PREPAREDNESS

The organization within the Executive Office of the President which has been known in recent years as the Office of Emergency Preparedness dates back, through its numerous predecessor agencies, more than 20 years. It has performed valuable functions in developing plans for emergency preparedness, in administering Federal disaster relief, and in overseeing and assisting the agencies in this area.

OEP's work as a coordinating and supervisory authority in this field has in fact been so effective—particularly under the leadership of General George A. Lincoln, its director for the past four years, who retired earlier this month after an exceptional military and public service career—that the line departments and agencies which in the past have shared in the performance of the various preparedness functions now possess the capability to assume full responsibility for those functions. In the interest of efficiency and economy, we can now further streamline the Executive Office of the President by formally relocating those responsibilities and closing the Office of Emergency Preparedness.

I propose to accomplish this reform in two steps. First, Reorganization Plan No. 1 would transfer to the President all functions previously vested by law in the Office or its Director, except the Director's role as a member of the National Security Council, which would be abolished; and it would abolish the Office of Emergency Preparedness.

The functions to be transferred to the President from OEP are largely incidental to emergency authorities already vested in him. They include functions under the Disaster Relief Act of 1970 [42 U.S.C. 4401 et seq.]; the function of determining whether a major disaster has occurred within the meaning of (1) Section 7 of the Act of September 30, 1950, as amended, 20 U.S.C. 241–1, or (2) Section 762(a) of the Higher Education Act of 1965, as added by Section 161(a) of the Education Amendments of 1972, Public Law 92–318, 86 Stat. 288 at 299 (relating to the furnishing by the Commissioner of Education of disaster relief assistance for educational purposes) [20 U.S.C. 1132d–1]; and functions under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), with respect to the conduct of investigations to determine the effects on national security of the importation of certain articles.

The Civil Defense Advisory Council within OEP would also be abolished by this plan, as changes in domestic and international conditions since its establishment in 1950 have now obviated the need for a standing council of this type. Should advice of the kind the Council has provided be required again in the future, State and local officials and experts in the field can be consulted on an ad hoc basis.

Second, as soon as the plan became effective, I would delegate OEP's former functions as follows:

All OEP responsibilities having to do with preparedness for and relief of civil emergencies and disasters would be transferred to the Department of Housing and Urban Development. This would provide greater field capabilities for coordination of Federal disaster assistance with that provided by States and local communities, and would be in keeping with the objective of creating a broad, new Department of Community Development.

OEP's responsibilities for measures to ensure the continuity of civil government operations in the event of major military attack would be reassigned to the General Services Administration, as would responsibility for resource mobilization including the management of national security stockpiles, with policy guidance in both cases to be provided by the National Security Council, and with economic considerations relating to changes in stockpile levels to be coordinated by the Council on Economic Policy.

Investigations of imports which might threaten the national security—assigned to OEP by Section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862]—would be reassigned to the Treasury Department, whose other trade studies give it a readymade capability in this field; the National Security Council would maintain its supervisory role over strategic imports.

Those disaster relief authorities which have been reserved to the President in the past, such as the authority to declare major disasters, will continue to be exercised by him under these new arrangements. In emergency situations calling for rapid interagency coordination, the Federal response will be coordinated by the Executive Office of the President under the general supervision of the Assistant to the President in charge of executive management.

The Oil Policy Committee will continue to function as in the past, unaffected by this reorganization, except that I will designate the Deputy Secretary of the Treasury as chairman in place of the Director of OEP. The committee will operate under the general supervision of the Assistant to the President in charge of economic affairs.

DECLARATIONS

After investigation, I have found that each action included in the accompanying plan is necessary to accomplish one or more of the purposes set forth in Section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to the intention of the Congress as expressed in Section 901(a)(1), ''to promote better execution of the laws, more effective management of the executive branch and of its agencies and functions, and expeditious administration of the public business;'' and in Section 901(a)(3), ''to increase the efficiency of the operations of the Government to the fullest extent practicable;'' and in Section 901(a)(5), ''to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions as may not be necessary for the efficient conduct of the Government.''

While it is not practicable to specify all of the expenditure reductions and other economies which will result from the actions proposed, personnel and budget savings from abolition of the National Aeronautics and Space Council and the Office of Science and Technology alone will exceed $2 million annually, and additional savings should result from a reduction of Executive Pay Schedule positions now associated with other transferred and delegated functions.

The plan has as its one logically consistent subject matter the streamlining of the Executive Office of the President and the disposition of major responsibilities currently conducted in the Executive Office of the President, which can better be performed elsewhere or abolished.

The functions which would be abolished by this plan, and the statutory authorities for each, are:

(1) the functions of the Director of the Office of Emergency Preparedness with respect to being a member of the National Security Council (Sec. 101, National Security Act of 1947, as amended, 50 U.S.C. 402; and Sec. 4, Reorganization Plan No. 1 of 1958);

(2) the functions of the Civil Defense Advisory Council (Sec. 102(a) Federal Civil Defense Act of 1950; 50 U.S.C. App. 2272(a)); and

(3) the functions of the National Aeronautics and Space Council (Sec. 201, National Aeronautics and Space Act of 1958; 42 U.S.C. 2471).

The proposed reorganization is a necessary part of the restructuring of the Executive Office of the President. It would provide through the Director of the National Science Foundation a strong focus for Federal efforts to encourage the development and application of science and technology to meet national needs. It would mean better preparedness for and swifter response to civil emergencies, and more reliable precautions against threats to the national security. The leaner and less diffuse Presidential staff structure which would result would enhance the President's ability to do his job and would advance the interests of the Congress as well.

I am confident that this reorganization plan would significantly increase the overall efficiency and effectiveness of the Federal Government. I urge the Congress to allow it to become effective.

RICHARD NIXON.

THE WHITE HOUSE, January 26, 1973.

EXECUTIVE ORDER NO. 10186

Ex. Ord. No. 10186, Dec. 1, 1950, 15 F.R. 8557, established the Federal Civil Defense Administration in the Office for Emergency Management of the Executive Office of the President, provided for the appointment of an Administrator and a Deputy Administrator, and delineated the purposes, functions, and authority of the Administration and the Administrator.

EXECUTIVE ORDER NO. 10222

Ex. Ord. No. 10222, Mar. 8, 1951, 16 F.R. 2247, which transferred to Federal Civil Defense Administration functions of Health Resources Office of National Security Resources Board, was revoked by section 904(a)(2) of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29533, set out as a note under section 2153 of Title 50, Appendix, War and National Defense.

EXECUTIVE ORDER NO. 10346

Ex. Ord. No. 10346, Apr. 17, 1952, 17 F.R. 3477, as amended by Ex. Ord. No. 10438, Mar. 13, 1953, 18 F.R. 1491; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, which related to the preparation by Federal agencies of civil defense emergency plans, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 10529

Ex. Ord. No. 10529, Apr. 22, 1954, 19 F.R. 2397, as amended by Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, which related to Federal employee participation in State and local civil defense programs, was revoked by section 5–104 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out below.

EXECUTIVE ORDER NO. 10611

Ex. Ord. No. 10611, May 11, 1955, 20 F.R. 3245, which related to establishment of the Civil Defense Coordinating Board, was revoked by section 7(7) of Ex. Ord. No. 10773.

EXECUTIVE ORDER NO. 10773

Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061, as amended by Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971, which related to the delegation and transfer of func-

tions to the Office of Civil and Defense Mobilization, was superseded by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, see below.

EXECUTIVE ORDER NO. 10902

Ex. Ord. No. 10902, Jan. 9, 1961, 26 F.R. 217, which related to the issuance of emergency preparedness orders, was superseded by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, see below.

EXECUTIVE ORDER NO. 10952

Ex. Ord. No. 10952, July 20, 1961, 26 F.R. 6577, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, which related to the assignment of civil defense responsibilities, was revoked by section 5–108 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out below.

EXECUTIVE ORDER NO. 10958

Ex. Ord. No. 10958, Aug. 14, 1961, 26 F.R. 7571, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, which provided for the delegation of functions respecting stockpiles of medical supplies and equipment and food, was revoked by Ex. Ord. No. 11794, July 11, 1974, 39 F.R. 25937.

EXECUTIVE ORDER NO. 10997

Ex. Ord. No. 10997, Feb. 16, 1962, 27 F.R. 1522, which related to assignment of emergency preparedness functions to Secretary of the Interior, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 10998

Ex. Ord. No. 10998, Feb. 16, 1962, 27 F.R. 1524, which related to assignment of emergency preparedness functions to Secretary of Agriculture, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 10999

Ex. Ord. No. 10999, Feb. 16, 1962, 27 F.R. 1527, which related to assignment of emergency preparedness functions to Secretary of Commerce, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11000

Ex. Ord. No. 11000, Feb. 16, 1962, 27 F.R. 1532, which related to assignment of emergency preparedness functions to Secretary of Labor, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11001

Ex. Ord. No. 11001, Feb. 16, 1962, 27 F.R. 1534, which related to assignment of emergency preparedness functions to Secretary of Health, Education, and Welfare, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11002

Ex. Ord. No. 11002, Feb. 16, 1962, 27 F.R. 1539, which related to assignment of emergency preparedness functions to Postmaster General, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11003

Ex. Ord. No. 11003, Feb. 16, 1962, 27 F.R. 1540, which related to assignment of emergency preparedness functions to Administrator of Federal Aviation Agency, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11004

Ex. Ord. No. 11004, Feb. 16, 1962, 27 F.R. 1542, which related to assignment of emergency preparedness functions to Housing and Home Finance Administrator, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11005

Ex. Ord. No. 11005, Feb. 16, 1962, 27 F.R. 1544, which related to assignment of emergency preparedness functions to Interstate Commerce Commission, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11051

Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, as amended by Ex. Ord. No. 11075, Jan. 15, 1963, 28 F.R. 473; Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193; Ex. Ord. No. 11725, June 27, 1973, 38 F.R. 17175; Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, which related to responsibility of the Office of Emergency Preparedness, was revoked by section 5–109 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out below.

EXECUTIVE ORDER NO. 11087

Ex. Ord. No. 11087, Feb. 26, 1963, 28 F.R. 1835, which related to assignment of emergency preparedness functions to Secretary of State, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11088

Ex. Ord. No. 11088, Feb. 26, 1963, 28 F.R. 1837, which related to assignment of emergency preparedness functions to Secretary of the Treasury, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11089

Ex. Ord. No. 11089, Feb. 26, 1963, 28 F.R. 1839, which related to assignment of emergency preparedness functions to Atomic Energy Commission, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11090

Ex. Ord. No. 11090, Feb. 26, 1963, 28 F.R. 1841, which related to assignment of emergency preparedness functions to Civil Aeronautics Board, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11091

Ex. Ord. No. 11091, Feb. 26, 1963, 28 F.R. 1843, which related to assignment of emergency preparedness functions to Civil Service Commission, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11092

Ex. Ord. No. 11092, Feb. 26, 1963, 28 F.R. 1847, which related to assignment of emergency preparedness functions to Federal Communications Commission, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11093

Ex. Ord. No. 11093, Feb. 26, 1963, 28 F.R. 1851, which related to assignment of emergency preparedness functions to Administrator of General Services, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11094

Ex. Ord. No. 11094, Feb. 26, 1963, 28 F.R. 1855, which related to assignment of emergency preparedness functions to Board of Governors of Federal Reserve System, Federal Home Loan Bank Board, Farm Credit Administration, Export-Import Bank of Washington, Board of Directors of Federal Deposit Insurance Corporation, Securities and Exchange Commission, Administrator of Small Business Administration, and Administrator of Veterans Affairs, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11095

Ex. Ord. No. 11095, Feb. 26, 1963, 28 F.R. 1859, which related to assignment of emergency preparedness functions to Board of Directors of Tennessee Valley Authority, Railroad Retirement Board, Administrator of National Aeronautics and Space Administration, Federal Power Commission, and Director of National Science

Foundation, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11426

Ex. Ord. No. 11426, Aug. 31, 1968, 33 F.R. 12615, which provided for Federal-State liaison and cooperation, was superseded by Ex. Ord. No. 11455, Feb. 14, 1969, 34 F.R. 2299.

EXECUTIVE ORDER NO. 11490

Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, as amended by Ex. Ord. No. 11522, Apr. 6, 1970, 35 F.R. 5659; Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193; Ex. Ord. No. 11746, Nov. 7, 1973, 38 F.R. 30991; Ex. Ord. No. 11921, June 11, 1976, 41 F.R. 24294; Ex. Ord. No. 11953, Jan. 7, 1977, 42 F.R. 2492; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, which related to assignment of emergency preparedness functions to Federal agencies and departments, was revoked by section 2901 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out below.

EXECUTIVE ORDER NO. 11522

Ex. Ord. No. 11522, Apr. 6, 1970, 35 F.R. 5659, which related to the assignment of emergency preparedness functions to the United States Information Agency, was superseded by Ex. Ord. No. 11921, June 11, 1976, 41 F.R. 24294.

EXECUTIVE ORDER NO. 11725

Ex. Ord. No. 11725, June 27, 1973, 38 F.R. 17175, as amended by Ex. Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177; Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, which related to transfer of certain functions of the Office of Emergency Preparedness, was revoked by section 5–112 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out below.

EXECUTIVE ORDER NO. 11746

Ex. Ord. No. 11746, Nov. 7, 1973, 38 F.R. 30991, which related to the assignment of emergency preparedness functions to the Department of the Treasury, was superseded by Ex. Ord. No. 11921, June 11, 1976, 41 F.R. 24294.

EX. ORD. NO. 12148. FEDERAL EMERGENCY MANAGEMENT

Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended by Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071; Ex. Ord. No. 12156, Sept. 10, 1979, 44 F.R. 53073; Ex. Ord. No. 12381, Sept. 8, 1982, 47 F.R. 39795; Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571; Ex. Ord. No. 12919, § 904(a)(8), June 3, 1994, 59 F.R. 29533; Ex. Ord. No. 13286, § 52, Feb. 28, 2003, 68 F.R. 10628, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note), the Disaster Relief Act of 1974 (88 Stat. 143; 42 U.S.C. 5121 et seq.), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), Section 4 of Public Law 92–385 (86 Stat. 556), Section 43 of the Act of August 10, 1956, as amended (50 U.S.C. App. 2285), the National Security Act of 1947, as amended [see Short Title note set out under 50 U.S.C. 401], the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), Reorganization Plan No. 1 of 1958 [set out above], Reorganization Plan No. 1 of 1973 [set out above], the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98 et seq.), Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], and Section 301 of Title 3 of the United States Code, and in order to transfer emergency functions to the Department of Homeland Security, it is hereby ordered as follows:

SECTION 1. TRANSFERS OR REASSIGNMENTS

1–1. *Transfer or Reassignment of Existing Functions.*

1–101. All functions vested in the President that have been delegated or assigned to the Defense Civil Preparedness Agency, Department of Defense, are transferred or reassigned to the Secretary of Homeland Security.

1–102. All functions vested in the President that have been delegated or assigned to the Federal Disaster Assistance Administration, Department of Housing and Urban Development, are transferred or reassigned to the Secretary of Homeland Security, including any of those functions redelegated or reassigned to the Department of Commerce with respect to assistance to communities in the development of readiness plans for severe weather-related emergencies.

1–103. All functions vested in the President that have been delegated or assigned to the Federal Preparedness Agency, General Services Administration, are transferred or reassigned to the Secretary of Homeland Security.

1–104. All functions vested in the President by the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), including those functions performed by the Office of Science and Technology Policy, are delegated, transferred, or reassigned to the Secretary of Homeland Security.

1–2. *Transfer or Reassignment of Resources.*

1–201. The records, property, personnel and positions, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, reassigned, or redelegated by this Order are hereby transferred to the Secretary of Homeland Security.

1–202. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

SEC. 2. MANAGEMENT OF EMERGENCY PLANNING AND ASSISTANCE

2–1. *General.*

2–101. The Secretary of Homeland Security shall establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies.

2–102. The Secretary of Homeland Security shall periodically review and evaluate the civil defense and civil emergency functions of the Executive agencies. In order to improve the efficiency and effectiveness of those functions, the Secretary of Homeland Security shall recommend to the President alternative methods of providing Federal planning, management, mitigation, and assistance.

2–103. The Secretary of Homeland Security shall be responsible for the coordination of efforts to promote dam safety, for the coordination of natural and nuclear disaster warning systems, and for the coordination of preparedness and planning to reduce the consequences of major terrorist incidents.

2–104. The Secretary of Homeland Security shall represent the President in working with State and local governments and private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs.

2–105. The Secretary of Homeland Security shall provide an annual report to the President for subsequent transmittal to the Congress on the functions of the Department of Homeland Security. The report shall assess the current overall state of effectiveness of Federal civil defense and civil emergency functions, organizations, resources, and systems and recommend measures to be taken to improve planning, management, assistance, and relief by all levels of government, the private sector, and volunteer organizations.

2–2. *Implementation.*

2–201. In executing the functions under this Order, the Secretary of Homeland Security shall develop policies

which provide that all civil defense and civil emergency functions, resources, and systems of Executive agencies are:

(a) founded on the use of existing organizations, resources, and systems to the maximum extent practicable;

(b) integrated effectively with organizations, resources, and programs of State and local governments, the private sector and volunteer organizations; and

(c) developed, tested and utilized to prepare for, mitigate, respond to and recover from the effects on the population of all forms of emergencies.

2–202. Assignments of civil emergency functions shall, whenever possible, be based on extensions (under emergency conditions) of the regular missions of the Executive agencies.

2–203. For purposes of this Order, ''civil emergency'' means any accidental, natural, man-caused, or wartime emergency or threat thereof, which causes or may cause substantial injury or harm to the population or substantial damage to or loss of property.

2–204. In order that civil defense planning continues to be fully compatible with the Nation's overall strategic policy, and in order to maintain an effective link between strategic nuclear planning and nuclear attack preparedness planning, the development of civil defense policies and programs by the Secretary of Homeland Security shall be subject to oversight by the Secretary of Defense and the National Security Council.

2–205. To the extent authorized by law and within available resources, the Secretary of Defense shall provide the Secretary of Homeland Security with support for civil defense programs in the areas of program development and administration, technical support, research, communications, transportation, intelligence, and emergency operations.

2–206. All Executive agencies shall cooperate with and assist the Secretary of Homeland Security in the performance of his functions.

2–3. *Transition Provisions.*

2–301. The functions which have been transferred, reassigned, or redelegated by Section 1 of this Order are recodified and revised as set forth in this Order at Section 4, and as provided by the amendments made at Section 5 to the provisions of other Orders.

2–302. Notwithstanding the revocations, revisions, codifications, and amendments made by this Order, the Secretary of Homeland Security may continue to perform the functions transferred to him by Section 1 of this Order, except where they may otherwise be inconsistent with the provisions of this Order.

SEC. 3. FEDERAL EMERGENCY MANAGEMENT COUNCIL

[Revoked by Ex. Ord. No. 12919, §904(a)(8), June 3, 1994, 59 F.R. 29533.]

SEC. 4. DELEGATIONS

4–1. *Delegation of Functions Transferred to the President.*

4–101. [Revoked by Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071.]

4–102. The functions vested in the Director of the Office of Defense Mobilization by Sections 103 and 303 of the National Security Act of 1947, as amended by Sections 8 and 50 of the Act of September 3, 1954 (Public Law 779; 68 Stat. 1228 and 1244) (50 U.S.C. 404 and 405), were transferred to the President by Section 1(a) of Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 2271 note) [now set out above], and they are hereby delegated to the Secretary of Homeland Security.

4–103. (a) The functions vested in the Federal Civil Defense Administration or its Administrator by the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), were transferred to the President by Reorganization Plan No. 1 of 1958, and they are hereby delegated to the Secretary of Homeland Security.

(b) Excluded from the delegation in subsection (a) is the function under Section 205(a)(4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2286(a)(4)), relating to the establishment and maintenance of personnel standards on the merit basis that was delegated to the Director of the Office of Personnel Management by Section 1(b) of Executive Order No. 11589, as amended (Section 2–101(b) of Executive Order No. 12107) [5 U.S.C. 3376 note].

4–104. The Secretary of Homeland Security is authorized to redelegate, in accord with the provisions of Section 1(b) of Reorganization Plan No. 1 of 1958 (50 U.S.C. App. 2271 note) [now set out above], any of the functions delegated by Sections 4–101, 4–102, and 4–103 of this Order.

4–105. The functions vested in the Administrator of the Federal Civil Defense Administration by Section 43 of the Act of August 10, 1956 (70A Stat. 636) [50 U.S.C. App. 2285], were transferred to the President by Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 2271 note) [now set out above], were subsequently revested in the Director of the Office of Civil and Defense Mobilization by Section 512 of Public Law 86–500 (50 U.S.C. App. 2285) [the office was changed to Office of Emergency Planning by Public Law 87–296 (75 Stat. 630) and then to the Office of Emergency Preparedness by Section 402 of Public Law 90–608 (82 Stat. 1194)], were again transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [now set out above], and they are hereby delegated to the Secretary of Homeland Security.

4–106. The functions vested in the Director of the Office of Emergency Preparedness by Section 16 of the Act of September 23, 1950, as amended (20 U.S.C. 646), and by Section 7 of the Act of September 30, 1950, as amended (20 U.S.C. 241–1), were transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [now set out above], and they are hereby delegated to the Secretary of Homeland Security.

4–107. That function vested in the Director of the Office of Emergency Preparedness by Section 762(a) of the Higher Education Act of 1965, as added by Section 161(a) of the Education Amendments of 1972, and as further amended (20 U.S.C. 1132d–1(a)), to the extent transferred to the President by Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [now set out above], is hereby delegated to the Secretary of Homeland Security.

4–2. *Delegation of Functions Vested in the President.*

4–201. The functions vested in the President by the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note), are hereby delegated to the Secretary of Homeland Security.

4–202. The functions (related to grants for damages resulting from hurricane and tropical storm Agnes) vested in the President by Section 4 of Public Law 92–335 (86 Stat. 556) are hereby delegated to the Secretary of Homeland Security.

Section [sic] 4–203. The functions vested in the President by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*), except those functions vested in the President by Section 401 (relating to the declaration of major disasters and emergencies) [42 U.S.C. 5170], Section 501 (relating to the declaration of emergencies) [42 U.S.C. 5191], Section 405 (relating to the repair, reconstruction, restoration, or replacement of Federal facilities) [42 U.S.C. 5171], and Section 412 (relating to food coupons and distribution) [42 U.S.C. 5179], are hereby delegated to the Secretary of Homeland Security.

4–204. The functions vested in the President by the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 et seq.) are delegated to the Secretary of Homeland Security.

4–205. Effective July 30, 1979, the functions vested in the President by Section 4(h) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b(h)), are hereby delegated to the Secretary of Homeland Security.

4–206. Effective July 30, 1979, the functions vested in the President by Section 204(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f)) [now 40 U.S.C. 574(d)], are hereby delegated to the Secretary of Homeland Security.

4–207. The functions vested in the President by Section 502 of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2302), are delegated to the Secretary of Homeland Security.

SEC. 5. OTHER EXECUTIVE ORDERS

5–1. *Revocations.*

5–101. Executive Order No. 10242, as amended, entitled ''Prescribing Regulations Governing the Exercise by the Federal Civil Defense Administrator of Certain Administrative Authority Granted by the Federal Civil Defense Act of 1950'', is revoked.

5–102. Sections 1 and 2 of Executive Order No. 10296, as amended, entitled ''Providing for the Performance of Certain Defense Housing and Community Facilities and Service Functions'', are revoked.

5–103. Executive Order No. 10494, as amended, relating to the disposition of remaining functions, is revoked.

5–104. Executive Order No. 10529, as amended, relating to federal employee participation in State and local civil defense programs, is revoked.

5–105. Section 3 of Executive Order No. 10601, as amended, which concerns the Commodity Set Aside, is revoked.

5–106. Executive Order No. 10634, as amended, relating to loans for facilities destroyed or damaged by a major disaster, is revoked.

5–107. Section 4(d)(2) of Executive Order No. 10900, as amended, which concerns foreign currencies made available to make purchases for the supplemental stockpile, is revoked.

5–108. Executive Order No. 10952, as amended, entitled ''Assigning Civil Defense Responsibilities to the Secretary of Defense and Others'', is revoked.

5–109. Executive Order No. 11051, as amended, relating to responsibilities of the Office of Emergency Preparedness, is revoked.

5–110. Executive Order No. 11415, as amended, relating to the Health Resources Advisory Committee, is revoked.

5–111. Executive Order No. 11795, as amended, entitled ''Delegating Disaster Relief Functions Pursuant to the Disaster Relief Act of 1974'', is revoked, except for Section 3 thereof.

5–112. Executive Order No. 11725, as amended, entitled ''Transfer of Certain Functions of the Office of Emergency Preparedness'', is revoked.

5–113. Executive Order No. 11749, as amended, entitled ''Consolidating Disaster Relief Functions Assigned to the Secretary of Housing and Urban Development'' is revoked.

5–2. *Amendments.*

5–201. Executive Order No. 10421, as amended, relating to physical security of defense facilities [formerly set out as a note under 50 U.S.C. 404] is further amended by (a) substituting the ''Director of the Federal Emergency Management Agency'' for ''Director of the Office of Emergency Planning'' in Sections 1(a), 1(c), and 6(b); and, (b) substituting ''Federal Emergency Management Agency'' for ''Office of Emergency Planning'' in Sections 6(b) and 7(b).

5–202. Executive Order No. 10480, as amended [50 U.S.C. App. 2153 note], is further amended by (a) substituting ''Director of the Federal Emergency Management Agency'' for ''Director of the Office of Emergency Planning'' in Sections 101(a), 101(b), 201(a), 201(b), 301, 304, 307, 308, 310(b), 311(b), 312, 313, 401(b), 401(e), and 605; and, (b) substituting ''Director of the Federal Emergency Management Agency'' for ''Administrator of General Services'' in Sections 305, 501, and 610.

5–203. Section 3(d) of Executive Order No. 10582, as amended, which relates to determinations under the Buy American Act [41 U.S.C. 10d note] is amended by deleting ''Director of the Office of Emergency Planning'' and substituting therefor ''Director of the Federal Emergency Management Agency''.

5–204. Paragraph 21 of Executive Order No. 10789, as amended [50 U.S.C. 1431 note], is further amended by adding ''The Federal Emergency Management Agency'' after ''Government Printing Office''.

5–205. Executive Order No. 11179, as amended, concerning the National Defense Executive Reserve [50 U.S.C. App. 2153 note], is further amended by deleting ''Director of the Office of Emergency Planning'' in Section 2 and substituting therefor ''Director of the Federal Emergency Management Agency''.

5–206. Section 7 of Executive Order No. 11912, as amended, concerning energy policy and conservation [42 U.S.C. 6201 note], is further amended by deleting ''Administrator of General Services'' and substituting therefor ''Director of the Federal Emergency Management Agency''.

5–207. Section 2(d) of Executive Order No. 11988 entitled ''Floodplain Management'' [42 U.S.C. 4321 note] is amended by deleting ''Federal Insurance Administration'' and substituting therefor ''Director of the Federal Emergency Management Agency''.

5–208. Section 5–3 of Executive Order No. 12046 of March 29, 1978 [47 U.S.C. 305 note], is amended by deleting ''General Services Administration'' and substituting therefor ''Federal Emergency Management Agency'' and by deleting ''Administrator of General Services'' and substituting therefor ''Director of the Federal Emergency Management Agency''.

5–209. Section 1–201 of Executive Order No. 12065 [50 U.S.C. 435 note] is amended by adding ''The Director of the Federal Emergency Management Agency'' after ''The Administrator, National Aeronautics and Space Administration'' and by deleting ''Director, Federal Preparedness Agency and to the'' from the parentheses after ''The Administrator of General Services''.

5–210. Section 1–102 of Executive Order No. 12075 of August 16, 1978 [42 U.S.C. 1450 note], is amended by adding in alphabetical order ''(p) Federal Emergency Management Agency''.

5–211. Section 1–102 of Executive Order No. 12083 of September 27, 1978 [42 U.S.C. 7101 note] is amended by adding in alphabetical order ''(z) the Director of the Federal Emergency Management Agency''.

5–212. Section 9.11(b) of Civil Service Rule IX (5 CFR Part 9) [former 5 U.S.C. 3301 note] is amended by deleting ''the Defense Civil Preparedness Agency and''.

5–213. [Revoked by Ex. Ord. No. 12381, Sept. 8, 1982, 47 F.R. 39795.]

5–214. Executive Order No. 11490, as amended [see note above] is further amended as follows:

(a) Delete the last sentence of Section 102(a) and substitute therefor the following: ''The activities undertaken by the departments and agencies pursuant to this Order, except as provided in Section 3003, shall be in accordance with guidance provided by, and subject to, evaluation by the Director of the Federal Emergency Management Agency.''.

(b) Delete Section 103 entitled ''Presidential Assistance'' and substitute the following new Section 103: ''*Sec. 103 General Coordination*. The Director of the Federal Emergency Management Agency (FEMA) shall determine national preparedness goals and policies for the performance of functions under this Order and coordinate the performance of such functions with the total national preparedness programs.''.

(c) Delete the portion of the first sentence of Section 401 prior to the colon and insert the following: ''The Secretary of Defense shall perform the following emergency preparedness functions''.

(d) Delete ''Director of the Federal Preparedness Agency (GSA)'' or ''the Federal Preparedness Agency (GSA)'' and substitute therefor ''Director, FEMA'', in Sections 401(3), 401(4), 401(5), 401(9), 401(10), 401(14), 401(15), 401(16), 401(19), 401(21), 401(22), 501(8), 601(2), 904(2), 1102(2), 1204(2), 1401(a), 1701, 1702, 2003, 2004, 2801(5), 3001, 3002(2), 3004, 3005, 3006, 3008, 3010, and 3013.

(e) The number assigned to this Order shall be substituted for ''11051 of September 27, 1962'' in Section 3001, and for ''11051'' in Sections 1802, 2002(3), 3002 and 3008(1).

(f) The number assigned to this Order shall be substituted for ''10952'' in Sections 1103, 1104, 1205, and 3002.

(g) Delete ''Department of Defense'' in Sections 502, 601(1), 804, 905, 1103, 1104, 1106(4), 1205, 2002(8), the first

sentence of Section 3002, and Sections 3008(1) and 3010 and substitute therefor ''Director of the Federal Emergency Management Agency.''.

SEC. 6.

This Order is effective July 15, 1979.

[Section 1–106 of Ex. Ord. No. 12155, which enacted sections 4–205 and 4–206 of Ex. Ord. No. 12148, was revoked by Pub. L. 100–180, div. C, title II, § 3203(b), Dec. 4, 1987, 101 Stat. 1247.]

[Ex. Ord. No. 13286, § 52, which directed amendment of Ex. Ord. No. 12148, set out above, by substituting ''the Secretary of Homeland Security'' for ''the Director of the Federal Emergency Management Agency'' wherever appearing, was executed by substituting ''Secretary of Homeland Security'' for ''Director of the Federal Emergency Management Agency'' wherever appearing, including after ''The'' in section 2–101, and for ''Director'' in sections 2–102 to 2–105, 2–201, 2–206, and 2–302.]

EX. ORD. NO. 12472. ASSIGNMENT OF NATIONAL SECURITY AND EMERGENCY PREPAREDNESS TELECOMMUNICATIONS FUNCTIONS

Ex. Ord. No. 12472, Apr. 3, 1984, 49 F.R. 13471, as amended by Ex. Ord. No. 13286, § 46, Feb. 28, 2003, 68 F.R. 10627; Ex. Ord. No. 13407, § 5(a), June 26, 2006, 71 F.R. 36976, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Communications Act of 1934, as amended (47 U.S.C. 151), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061), the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251), the Disaster Relief Act of 1974 (42 U.S.C. 5121), Section 5 of Reorganization Plan No. 1 of 1977 (3 C.F.R. 197, 1978 Comp.) [5 U.S.C. App.], and Section 203 of Reorganization Plan No. 3 of 1978 (3 C.F.R. 389, 1978 Comp.) [5 U.S.C. App.], and in order to provide for the consolidation of assignment and responsibility for improved execution of national security and emergency preparedness telecommunications functions, it is hereby ordered as follows:

SECTION 1. *The National Communications System.* (a) There is hereby established the National Communications System (NCS). The NCS shall consist of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals and the Manager. The NCS Committee of Principals shall consist of representatives from those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security or emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security or emergency preparedness telecommunications capabilities.

(b) The mission of the NCS shall be to assist the President, the National Security Council, the Homeland Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget in:

(1) the exercise of the telecommunications functions and responsibilities set forth in Section 2 of this Order; and

(2) the coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack, recovery and reconstitution.

(c) The NCS shall seek to ensure that a national telecommunications infrastructure is developed which:

(1) Is responsive to the national security and emergency preparedness needs of the President and the Federal departments, agencies and other entities, including telecommunications in support of national security leadership and continuity of government;

(2) Is capable of satisfying priority telecommunications requirements under all circumstances through use of commercial, government and privately owned telecommunications resources;

(3) Incorporates the necessary combination of hardness, redundancy, mobility, connectivity, interoperability, restorability and security to obtain, to the maximum extent practicable, the survivability of national security and emergency preparedness telecommunications in all circumstances, including conditions of crisis or emergency; and

(4) Is consistent, to the maximum extent practicable, with other national telecommunications policies.

(d) To assist in accomplishing its mission, the NCS shall:

(1) serve as a focal point for joint industry-government national security and emergency preparedness telecommunications planning; and

(2) establish a joint industry-government National Coordinating Center which is capable of assisting in the initiation, coordination, restoration and reconstitution of national security or emergency preparedness telecommunications services or facilities under all conditions of crisis or emergency.

(e) The Secretary of Homeland Security is designated as the Executive Agent for the NCS. The Executive Agent shall:

(1) Designate the Manager of the NCS;

(2) Ensure that the NCS conducts unified planning and operations, in order to coordinate the development and maintenance of an effective and responsive capability for meeting the domestic and international national security and emergency preparedness telecommunications needs of the Federal government;

(3) Ensure that the activities of the NCS are conducted in conjunction with the emergency management activities of the Department of Homeland Security;

(4) Recommend, in consultation with the NCS Committee of Principals, to the National Security Council, the Homeland Security Council, the Director of the Office of Science and Technology Policy, or the Director of the Office of Management and Budget, as appropriate:

a. The assignment of implementation or other responsibilities to NCS member entities;

b. New initiatives to assist in the exercise of the functions specified in Section 2; and

c. Changes in the composition or structure of the NCS;

(5) Oversee the activities of and provide personnel and administrative support to the Manager of the NCS;

(6) Provide staff support and technical assistance to the National Security Telecommunications Advisory Committee established by Executive Order No. 12382, as amended [47 U.S.C. 901 note]; and

(7) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(f) The NCS Committee of Principals shall:

(1) Serve as the forum in which each member of the Committee may review, evaluate, and present views, information and recommendations concerning ongoing or prospective national security or emergency preparedness telecommunications programs or activities of the NCS and the entities represented on the Committee;

(2) Serve as the forum in which each member of the Committee shall report on and explain ongoing or prospective telecommunications plans and programs developed or designed to achieve national security or emergency preparedness telecommunications objectives;

(3) Provide comments or recommendations, as appropriate, to the National Security Council, the Homeland Security Council, the Director of the Office of Science and Technology Policy, the Director of the Office of Management and Budget, the Executive Agent, or the Manager of the NCS, regarding ongoing or prospective activities of the NCS; and

(4) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(g) The Manager of the NCS shall:

(1) Develop for consideration by the NCS Committee of Principals and the Executive Agent:

a. A recommended evolutionary telecommunications architecture designed to meet current and future Federal government national security and emergency preparedness telecommunications requirements;

b. Plans and procedures for the management, allocation and use, including the establishment of priorities or preferences, of Federally owned or leased telecommunications assets under all conditions of crisis or emergency;

c. Plans, procedures and standards for minimizing or removing technical impediments to the interoperability of government-owned and/or commercially-provided telecommunications systems;

d. Test and exercise programs and procedures for the evaluation of the capability of the Nation's telecommunications resources to meet national security or emergency preparedness telecommunications requirements; and

e. Alternative mechanisms for funding, through the budget review process, national security or emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities. Those mechanisms recommended by the NCS Committee of Principals and the Executive Agent shall be submitted to the Director of the Office of Management and Budget.

(2) Implement and administer any approved plans or programs as assigned, including any system of priorities and preferences for the provision of communications service, in consultation with the NCS Committee of Principals and the Federal Communications Commission, to the extent practicable or otherwise required by law or regulation;

(3) Chair the NCS Committee of Principals and provide staff support and technical assistance thereto;

(4) Serve as a focal point for joint industry-government planning, including the dissemination of technical information, concerning the national security or emergency preparedness telecommunications requirements of the Federal government;

(5) Conduct technical studies or analyses, and examine research and development programs, for the purpose of identifying, for consideration by the NCS Committee of Principals and the Executive Agent, improved approaches which may assist Federal entities in fulfilling national security or emergency preparedness telecommunications objectives;

(6) Pursuant to the Federal Standardization Program of the General Services Administration, and in consultation with other appropriate entities of the Federal government including the NCS Committee of Principals, manage the Federal Telecommunications Standards Program, ensuring wherever feasible that existing or evolving industry, national, and international standards are used as the basis for Federal telecommunications standards; and

(7) Provide such reports and perform such other duties as are from time to time assigned by the President or his authorized designee, the Executive Agent, or the NCS Committee of Principals. Any such assignments of responsibility to, or reports made by, the Manager shall be transmitted through the Executive Agent.

SEC. 2. *Executive Office Responsibilities*. (a) *Wartime Emergency Functions*. (1) The National Security Council shall provide policy direction for the exercise of the war power functions of the President under Section 606 of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(2) The Director of the Office of Science and Technology Policy shall direct the exercise of the war power functions of the President under Section 606(a), (c)–(e), of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(b) *Non-Wartime Emergency Functions*. (1) The National Security Council, in consultation with the Homeland Security Council, shall:

a. Advise and assist the President in coordinating the development of policy, plans, programs and standards within the Federal government for the identification, allocation, and use of the Nation's telecommunications resources by the Federal government, and by State and local governments, private industry and volunteer organizations upon request, to the extent practicable and otherwise consistent with law, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law; and

b. Provide policy direction for the exercise of the President's non-wartime emergency telecommunications functions, should the President so instruct.

(2) The Director of the Office of Science and Technology Policy shall provide information, advice, guidance and assistance, as appropriate, to the President and to those Federal departments and agencies with responsibilities for the provision, management, or allocation of telecommunications resources, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law;

(3) The Director of the Office of Science and Technology Policy shall establish a Joint Telecommunications Resources Board (JTRB) to assist him in the exercise of the functions specified in this subsection. The Director of the Office of Science and Technology Policy shall serve as chairman of the JTRB; select those Federal departments, agencies, or entities which shall be members of the JTRB; and specify the functions it shall perform.

(c) *Planning and Oversight Responsibilities*. (1) The National Security Council shall advise and assist the President in:

a. Coordinating the development of policy, plans, programs and standards for the mobilization and use of the Nation's commercial, government, and privately owned telecommunications resources, in order to meet national security or emergency preparedness requirements;

b. Providing policy oversight and direction of the activities of the NCS; and

c. Providing policy oversight and guidance for the execution of the responsibilities assigned to the Federal departments and agencies by this Order.

(2) The Director of the Office of Science and Technology Policy shall make recommendations to the President with respect to the test, exercise and evaluation of the capability of existing and planned communications systems, networks or facilities to meet national security or emergency preparedness requirements and report the results of any such tests or evaluations and any recommended remedial actions to the President and to the National Security Council;

(3) The Director of the Office of Science and Technology Policy or his designee shall advise and assist the President in the administration of a system of radio spectrum priorities for those spectrum dependent telecommunications resources of the Federal government which support national security or emergency preparedness functions. The Director also shall certify or approve priorities for radio spectrum use by the Federal government, including the resolution of any conflicts in or among priorities, under all conditions of crisis or emergency; and

(4) The National Security Council, the Homeland Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget shall, in consultation with the Executive Agent for the NCS and the NCS Committee of Principals, determine what constitutes national security and emergency preparedness telecommunications requirements.

(d) *Consultation with Federal Departments and Agencies*. In performing the functions assigned under this Order, the National Security Council, the Homeland Security

Council, and the Director of the Office of Science and Technology Policy, in consultation with each other, shall:

(1) Consult, as appropriate, with the Director of the Office of Management and Budget; the Secretary of Homeland Security with respect to the emergency management responsibilities assigned pursuant to Executive Order No. 12148, as amended [set out above]; the Secretary of Commerce, with respect to responsibilities assigned pursuant to Executive Order No. 12046 [47 U.S.C. 305 note]; the Secretary of Defense, with respect to communications security responsibilities assigned pursuant to Executive Order No. 12333 [50 U.S.C. 401 note]; and the Chairman of the Federal Communications Commission or his authorized designee; and

(2) Establish arrangements for consultation among all interested Federal departments, agencies or entities to ensure that the national security and emergency preparedness communications needs of all Federal government entities are identified; that mechanisms to address such needs are incorporated into pertinent plans and procedures; and that such needs are met in a manner consistent, to the maximum extent practicable, with other national telecommunications policies.

(e) *Budgetary Guidelines*. The Director of the Office of Management and Budget, in consultation with the National Security Council, the Homeland Security Council, and the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies. These guidelines and procedures may provide for mechanisms for funding, through the budget review process, national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities.

SEC. 3. *Assignment of Responsibilities to Other Departments and Agencies*. In order to support and enhance the capability to satisfy the national security and emergency preparedness telecommunications needs of the Federal government, State and local governments, private industry and volunteer organizations, under all circumstances including those of crisis or emergency, the Federal departments and agencies shall perform the following functions:

(a) *Department of Commerce*. The Secretary of Commerce shall, for all conditions of crisis or emergency: (1) Develop plans and procedures concerning radio spectrum assignments, priorities and allocations for use by Federal departments, agencies and entities; and

(2) Develop, maintain and publish policy, plans, and procedures for the control and allocation of frequency assignments, including the authority to amend, modify or revoke such assignments, in those parts of the electromagnetic spectrum assigned to the Federal government.

(b) *Department of Homeland Security*. The Secretary of Homeland Security shall:

(1) Plan for and provide, operate and maintain telecommunications services and facilities, as part of its National Emergency Management System, adequate to support its assigned emergency management responsibilities;

(2) Advise and assist State and local governments and volunteer organizations, upon request and to the extent consistent with law, in developing plans and procedures for identifying and satisfying their national security or emergency preparedness telecommunications requirements;

(3) Ensure, to the maximum extent practicable, that national security and emergency preparedness telecommunications planning by State and local governments and volunteer organizations is mutually supportive and consistent with the planning of the Federal government; and

(4) Develop, upon request and to the extent consistent with law and in consonance with regulations promulgated by and agreements with the Federal Communications Commission, plans and capabilities for, and provide policy and management oversight of, the Emergency Alert System, and advise and assist private radio licensees of the Commission in developing emergency communications plans, procedures and capabilities.

(c) *Department of State*. The Secretary of State, in accordance with assigned responsibilities within the Diplomatic Telecommunications System, shall plan for and provide, operate and maintain rapid, reliable and secure telecommunications services to those Federal entities represented at United States diplomatic missions and consular offices overseas. This responsibility shall include the provision and operation of domestic telecommunications in support of assigned national security or emergency preparedness responsibilities.

(d) *Department of Defense*. In addition to the other responsibilities assigned by this Order, the Secretary of Defense shall:

(1) Plan for and provide, operate and maintain telecommunications services and facilities adequate to support the National Command Authorities and to execute the responsibilities assigned by Executive Order No. 12333 [50 U.S.C. 401 note]; and

(2) Ensure that the Director of the National Security Agency provides the technical support necessary to develop and maintain plans adequate to provide for the security and protection of national security and emergency preparedness telecommunications.

(3) Nothing in this order shall be construed to impair or otherwise affect the authority of the Secretary of Defense with respect to the Department of Defense, including the chain of command for the armed forces of the United States under section 162(b) of title 10, United States Code, and the authority of the Secretary of Defense with respect to the Department of Defense under section 113(b) of that title.

(e) *Department of Justice*. The Attorney General shall, as necessary, review for legal sufficiency, including consistency with the antitrust laws, all policies, plans or procedures developed pursuant to responsibilities assigned by this Order.

(f) *Central Intelligence Agency*. The Director of Central Intelligence shall plan for and provide, operate, and maintain telecommunications services adequate to support its assigned responsibilities, including the dissemination of intelligence within the Federal government.

(g) *General Services Administration*. Except as otherwise assigned by this Order, the Administrator of General Services, consistent with policy guidance provided by the Director of the Office of Management and Budget, shall ensure that Federally owned or managed domestic communications facilities and services meet the national security and emergency preparedness requirements of the Federal civilian departments, agencies and entities.

(h) *Federal Communications Commission*. The Federal Communications Commission shall, consistent with Section 4(c) of this Order:

(1) Review the policies, plans and procedures of all entities licensed or regulated by the Commission that are developed to provide national security or emergency preparedness communications services, in order to ensure that such policies, plans and procedures are consistent with the public interest, convenience and necessity;

(2) Perform such functions as required by law with respect to all entities licensed or regulated by the Commission, including (but not limited to) the extension, discontinuance or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices and classifications; the construction, authorization, activation, deactivation or closing of radio stations, services and facilities; the assignment of radio frequencies to Commission licensees; the investigation of violations of pertinent law and regulation; and the initiation of appropriate enforcement actions;

(3) Develop policy, plans and procedures adequate to execute the responsibilities assigned in this Order under all conditions or crisis or emergency; and

(4) Consult as appropriate with the Executive Agent for the NCS and the NCS Committee of Principals to

ensure continued coordination of their respective national security and emergency preparedness activities.

(i) All Federal departments and agencies, to the extent consistent with law (including those authorities and responsibilities set forth in Section 4(c) of this Order), shall:

(1) Determine their national security and emergency preparedness telecommunications requirements, and provide information regarding such requirements to the Manager of the NCS;

(2) Prepare policies, plans and procedures concerning telecommunications facilities, services or equipment under their management or operational control to maximize their capability of responding to the national security or emergency preparedness needs of the Federal government;

(3) Provide, after consultation with the Director of the Office of Management and Budget, resources to support their respective requirements for national security and emergency preparedness telecommunications; and provide personnel and staff support to the Manager of the NCS as required by the President;

(4) Make information available to, and consult with, the Manager of the NCS regarding agency telecommunications activities in support of national security or emergency preparedness;

(5) Consult, consistent with the provisions of Executive Order No. 12046, as amended [47 U.S.C. 305 note], and in conjunction with the Manager of the NCS, with the Federal Communications Commission regarding execution of responsibilities assigned by this Order;

(6) Submit reports annually, or as otherwise requested, to the Manager of the NCS, regarding agency national security or emergency preparedness telecommunications activities; and

(7) Cooperate with and assist the Executive Agent for the NCS, the NCS Committee of Principals, the Manager of the NCS, and other departments and agencies in the execution of the functions set forth in this Order, furnishing them such information, support and assistance as may be required.

(j) Each Federal department or agency shall execute the responsibilities assigned by this Order in conjunction with the emergency management activities of the Department of Homeland Security, and in regular consultation with the Executive Agent for the NCS and the NCS Committee of Principals to ensure continued coordination of NCS and individual agency telecommunications activities.

SEC. 4. *General Provisions*. (a) All Executive departments and agencies may issue such rules and regulations as may be necessary to carry out the functions assigned under this Order.

(b) In order to reflect the assignments of responsibility provided by this Order,

(1) Sections 2–414, 4–102, 4–103, 4–202, 4–302, 5–3, and 6–101 of Executive Order No. 12046, as amended [47 U.S.C. 305], are revoked;

(2) The Presidential Memorandum of August 21, 1963, as amended, entitled ''Establishment of the National Communications System'', is hereby superseded; and

(3) Section 2–411 of Executive Order No. 12046, as amended [47 U.S.C. 305], is further amended by deleting the period and inserting '', except as otherwise provided by Executive Order No.'' and inserting the number assigned to this Order.

(c) Nothing in this Order shall be deemed to affect the authorities or responsibilities of the Director of the Office of Management and Budget, or any Office or official thereof; or reassign any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended; or under any other law; or any function vested by law in the Federal Communications Commission.

SEC. 5. This Order shall be effective upon publication in the Federal Register.

EX. ORD. NO. 12656. ASSIGNMENT OF EMERGENCY PREPAREDNESS RESPONSIBILITIES

Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, as amended by Ex. Ord. No. 13074, Feb. 9, 1998, 63 F.R. 7277; Ex. Ord. No. 13228, § 9, Oct. 8, 2001, 66 F.R. 51816; Ex. Ord. No. 13286, § 42, Feb. 28, 2003, 68 F.R. 10626, provided:

WHEREAS our national security is dependent upon our ability to assure continuity of government, at every level, in any national security emergency situation that might confront the Nation; and

WHEREAS effective national preparedness planning to meet such an emergency, including a massive nuclear attack, is essential to our national survival; and

WHEREAS effective national preparedness planning requires the identification of functions that would have to be performed during such an emergency, the assignment of responsibility for developing plans for performing these functions, and the assignment of responsibility for developing the capability to implement those plans; and

WHEREAS the Congress has directed the development of such national security emergency preparedness plans and has provided funds for the accomplishment thereof;

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to Reorganization Plan No. 1 of 1958 (72 Stat. 1799) [set out above], the National Security Act of 1947, as amended [50 U.S.C. 401 et seq.], the Defense Production Act of 1950, as amended [see 50 U.S.C. App. 2061], and the Federal Civil Defense Act, as amended, it is hereby ordered that the responsibilities of the Federal departments and agencies in national security emergencies shall be as follows:

PART 1—PREAMBLE

SECTION 101. *National Security Emergency Preparedness Policy*.

(a) The policy of the United States is to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. A national security emergency is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States. Policy for national security emergency preparedness shall be established by the President. Pursuant to the President's direction, the National Security Council shall be responsible for developing and administering such policy, except that the Homeland Security Council shall be responsible for administering such policy with respect to terrorist threats and attacks within the United States. All national security emergency preparedness activities shall be consistent with the Constitution and laws of the United States and with preservation of the constitutional government of the United States.

(b) Effective national security emergency preparedness planning requires: identification of functions that would have to be performed during such an emergency; development of plans for performing these functions; and development of the capability to execute those plans.

SEC. 102. *Purpose*.

(a) The purpose of this Order is to assign national security emergency preparedness responsibilities to Federal departments and agencies. These assignments are based, whenever possible, on extensions of the regular missions of the departments and agencies.

(b) This Order does not constitute authority to implement the plans prepared pursuant to this Order. Plans so developed may be executed only in the event that authority for such execution is authorized by law.

SEC. 103. *Scope*.

(a) This Order addresses national security emergency preparedness functions and activities. As used in this Order, preparedness functions and activities include, as appropriate, policies, plans, procedures, and readiness measures that enhance the ability of the United States Government to mobilize for, respond to, and recover from a national security emergency.

(b) This Order does not apply to those natural disasters, technological emergencies, or other emergencies, the alleviation of which is normally the responsibility

of individuals, the private sector, volunteer organizations, State and local governments, and Federal departments and agencies unless such situations also constitute a national security emergency.

(c) This Order does not require the provision of information concerning, or evaluation of, military policies, plans, programs, or states of military readiness.

(d) This Order does not apply to national security emergency preparedness telecommunications functions and responsibilities that are otherwise assigned by Executive Order 12472 [set out above].

SEC. 104. *Management of National Security Emergency Preparedness.*

(a) The National Security Council is the principal forum for consideration of national security emergency preparedness policy, except that the Homeland Security Council is the principal forum for consideration of policy relating to terrorist threats and attacks within the United States.

(b) The National Security Council and the Homeland Security Council shall arrange for Executive branch liaison with, and assistance to, the Congress and the Federal judiciary on national security-emergency preparedness matters.

(c) The Secretary of Homeland Security shall serve as an advisor to the National Security Council and the Homeland Security Council on issues of national security emergency preparedness, including mobilization preparedness, civil defense, continuity of government, technological disasters, and other issues, as appropriate. Pursuant to such procedures for the organization and management of the National Security Council and Homeland Security Council processes as the President may establish, the Secretary of Homeland Security also shall assist in the implementation of and management of those processes as the President may establish. The Secretary of Homeland Security also shall assist in the implementation of national security emergency preparedness policy by coordinating with the other Federal departments and agencies and with State and local governments, and by providing periodic reports to the National Security Council and the Homeland Security Council on implementation of national security emergency preparedness policy.

(d) National security emergency preparedness functions that are shared by more than one agency shall be coordinated by the head of the Federal department or agency having primary responsibility and shall be supported by the heads of other departments and agencies having related responsibilities.

(e) There shall be a national security emergency exercise program that shall be supported by the heads of all appropriate Federal departments and agencies.

(f) Plans and procedures will be designed and developed to provide maximum flexibility to the President for his implementation of emergency actions.

SEC. 105. *Interagency Coordination.*

(a) All appropriate Cabinet members and agency heads shall be consulted regarding national security emergency preparedness programs and policy issues. Each department and agency shall support interagency coordination to improve preparedness and response to a national security emergency and shall develop and maintain decentralized capabilities wherever feasible and appropriate.

(b) Each Federal department and agency shall work within the framework established by, and cooperate with those organizations assigned responsibility in, Executive Order No. 12472 [set out above], to ensure adequate national security emergency preparedness telecommunications in support of the functions and activities addressed by this Order.

PART 2—GENERAL PROVISIONS

SEC. 201. *General.* The head of each Federal department and agency, as appropriate, shall:

(1) Be prepared to respond adequately to all national security emergencies, including those that are international in scope, and those that may occur within any region of the Nation;

(2) Consider national security emergency preparedness factors in the conduct of his or her regular functions, particularly those functions essential in time of emergency. Emergency plans and programs, and an appropriate state of readiness, including organizational infrastructure, shall be developed as an integral part of the continuing activities of each Federal department and agency;

(3) Appoint a senior policy official as Emergency Coordinator, responsible for developing and maintaining a multi-year, national security emergency preparedness plan for the department or agency to include objectives, programs, and budgetary requirements;

(4) Design preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

(a) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies;

(b) Identification of actions that could be taken in the early stages of a national security emergency or pending national security emergency to mitigate the impact of or reduce significantly the lead times associated with full emergency action implementation;

(5) Base national security emergency preparedness measures on the use of existing authorities, organizations, resources, and systems to the maximum extent practicable;

(6) Identify areas where additional legal authorities may be needed to assist management and, consistent with applicable Executive orders, take appropriate measures toward acquiring those authorities;

(7) Make policy recommendations to the National Security Council and the Homeland Security Council regarding national security emergency preparedness activities and functions of the Federal Government;

(8) Coordinate with State and local government agencies and other organizations, including private sector organizations, when appropriate. Federal plans should include appropriate involvement of and reliance upon private sector organizations in the response to national security emergencies;

(9) Assist State, local, and private sector entities in developing plans for mitigating the effects of national security emergencies and for providing services that are essential to a national response;

(10) Cooperate, to the extent appropriate, in compiling, evaluating, and exchanging relevant data related to all aspects of national security emergency preparedness;

(11) Develop programs regarding congressional relations and public information that could be used during national security emergencies;

(12) Ensure a capability to provide, during a national security emergency, information concerning Acts of Congress, presidential proclamations, Executive orders, regulations, and notices of other actions to the Archivist of the United States, for publication in the Federal Register, or to each agency designated to maintain the Federal Register in an emergency;

(13) Develop and conduct training and education programs that incorporate emergency preparedness and civil defense information necessary to ensure an effective national response;

(14) Ensure that plans consider the consequences for essential services provided by State and local governments, and by the private sector, if the flow of Federal funds is disrupted;

(15) Consult and coordinate with the Secretary of Homeland Security to ensure that those activities and plans are consistent with current Presidential guidelines and policies.

SEC. 202. *Continuity of Government.* The head of each Federal department and agency shall ensure the continuity of essential functions in any national security emergency by providing for: succession to office and emergency delegation of authority in accordance with

applicable law; safekeeping of essential resources, facilities, and records; and establishment of emergency operating capabilities.

SEC. 203. *Resource Management*. The head of each Federal department and agency, as appropriate within assigned areas of responsibility, shall:

(1) Develop plans and programs to mobilize personnel (including reservist programs), equipment, facilities, and other resources;

(2) Assess essential emergency requirements and plan for the possible use of alternative resources to meet essential demands during and following national security emergencies;

(3) Prepare plans and procedures to share between and among the responsible agencies resources such as energy, equipment, food, land, materials, minerals, services, supplies, transportation, water, and workforce needed to carry out assigned responsibilities and other essential functions, and cooperate with other agencies in developing programs to ensure availability of such resources in a national security emergency;

(4) Develop plans to set priorities and allocate resources among civilian and military claimants;

(5) identify occupations and skills for which there may be a critical need in the event of a national security emergency.

SEC. 204. *Protection of Essential Resources and Facilities*. The head of each Federal department and agency, within assigned areas of responsibility, shall:

(1) Identify facilities and resources, both government and private, essential to the national defense and national welfare, and assess their vulnerabilities and develop strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions of essential services during any national security emergency;

(2) Participate in interagency activities to assess the relative importance of various facilities and resources to essential military and civilian needs and to integrate preparedness and response strategies and procedures;

(3) Maintain a capability to assess promptly the effect of attack and other disruptions during national security emergencies.

SEC. 205. *Federal Benefit, Insurance, and Loan Programs*. The head of each Federal department and agency that administers a loan, insurance, or benefit program that relies upon the Federal Government payment system shall coordinate with the Secretary of the Treasury in developing plans for the continuation or restoration, to the extent feasible, of such programs in national security emergencies.

SEC. 206. *Research*. The Director of the Office of Science and Technology Policy and the heads of Federal departments and agencies having significant research and development programs shall advise the National Security Council and the Homeland Security Council of scientific and technological developments that should be considered in national security emergency preparedness planning.

SEC. 207. *Redelegation*. The head of each Federal department and agency is hereby authorized, to the extent otherwise permitted by law, to redelegate the functions assigned by this Order, and to authorize successive redelegations to organizations, officers, or employees within that department or agency.

SEC. 208. *Transfer of Functions*. Recommendations for interagency transfer of any emergency preparedness function assigned under this Order or for assignment of any new emergency preparedness function shall be coordinated with all affected Federal departments and agencies before submission to the National Security Council or the Homeland Security Council.

SEC. 209. *Retention of Existing Authority*. Nothing in this Order shall be deemed to derogate from assignments of functions to any Federal department or agency or officer thereof made by law.

PART 3—DEPARTMENT OF AGRICULTURE

SEC. 301. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Agriculture shall:

(1) Develop plans to provide for the continuation of agriculture production, food processing, storage, and distribution through the wholesale level in national security emergencies, and to provide for the domestic distribution of seed, feed, fertilizer, and farm equipment to agricultural producers;

(2) Develop plans to provide food and agricultural products to meet international responsibilities in national security emergencies;

(3) Develop plans and procedures for administration and use of Commodity Credit Corporation inventories of food and fiber resources in national security emergencies;

(4) Develop plans for the use of resources under the jurisdiction of the Secretary of Agriculture and, in cooperation with the Secretaries of Commerce, Defense, and the Interior, the Board of Directors of the Tennessee Valley Authority, and the heads of other government entities, plan for the national security emergency management, production, and processing of forest products;

(5) Develop, in coordination with the Secretary of Defense, plans and programs for water to be used in agricultural production and food processing in national security emergencies;

(6) In cooperation with Federal, State, and local agencies, develop plans for a national program relating to the prevention and control of fires in rural areas of the United States caused by the effects of enemy attack or other national security emergencies;

(7) Develop plans to help provide the Nation's farmers with production resources, including national security emergency financing capabilities;

(8) Develop plans, in consonance with those of the Department of Health and Human Services, the Department of the Interior, and the Environmental Protection Agency, for national security emergency agricultural health services and forestry, including:

(a) Diagnosis and control or eradication of diseases, pests, or hazardous agents (biological, chemical, or radiological) against animals, crops, timber, or products thereof;

(b) Protection, treatment, and handling of livestock and poultry, or products thereof, that have been exposed to or affected by hazardous agents;

(c) Use and handling of crops, agricultural commodities, timber, and agricultural lands that have been exposed to or affected by hazardous agents; and

(d) Assuring the safety and wholesomeness, and minimizing losses from hazards, of animals and animal products and agricultural commodities and products subject to continuous inspection by the Department of Agriculture or owned by the Commodity Credit Corporation or by the Department of Agriculture;

(9) In consultation with the Secretary of State and the Secretary of Homeland Security, represent the United States in agriculture-related international civil emergency preparedness planning and related activities.

SEC. 302. *Support Responsibility*. The Secretary of Agriculture shall assist the Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical agricultural materials.

PART 4—DEPARTMENT OF COMMERCE

SEC. 401. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Commerce shall:

(1) Develop control systems for priorities, allocation, production, and distribution of materials and other resources that will be available to support both national defense and essential civilian programs in a national security emergency;

(2) In cooperation with the Secretary of Defense and other departments and agencies, identify those industrial products and facilities that are essential to mobilization readiness, national defense, or post-attack survival and recovery;

(3) In cooperation with the Secretary of Defense and other Federal departments and agencies, analyze po-

tential effects of national security emergencies on actual production capability, taking into account the entire production complex, including shortages of resources, and develop preparedness measures to strengthen capabilities for production increases in national security emergencies;

(4) In cooperation with the Secretary of Defense, perform industry analyses to assess capabilities of the commercial industrial base to support the national defense, and develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs;

(5) In cooperation with the Secretary of the Treasury, develop plans for providing emergency assistance to the private sector through direct or participation loans for the financing of production facilities and equipment;

(6) In cooperation with the Secretaries of State, Defense, Transportation, and the Treasury, prepare plans to regulate and control exports and imports in national security emergencies;

(7) Provide for the collection and reporting of census information on human and economic resources, and maintain a capability to conduct emergency surveys to provide information on the status of these resources as required for national security purposes;

(8) Develop overall plans and programs to ensure that the fishing industry continues to produce and process essential protein in national security emergencies;

(9) Develop plans to provide meteorological, hydrologic, marine weather, geodetic, hydrographic, climatic, seismic, and oceanographic data and services to Federal, State, and local agencies, as appropriate;

(10) In coordination with the Secretary of State and the Secretary of Homeland Security, represent the United States in industry-related international (NATO and allied) civil emergency preparedness planning and related activities.

SEC. 402. *Support Responsibilities*. The Secretary of Commerce shall:

(1) Assist the Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical materials;

(2) Support the Secretary of Agriculture in planning for the national security management, production, and processing of forest and fishery products;

(3) Assist, in consultation with the Secretaries of State and Defense, the Secretary of the Treasury in the formulation and execution of economic measures affecting other nations.

PART 5—DEPARTMENT OF DEFENSE

SEC. 501. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Defense shall:

(1) Ensure military preparedness and readiness to respond to national security emergencies;

(2) In coordination with the Secretary of Commerce, develop, with industry, government, and the private sector, reliable capabilities for the rapid increase of defense production to include industrial resources required for that production;

(3) Develop and maintain, in cooperation with the heads of other departments and agencies, national security emergency plans, programs, and mechanisms to ensure effective mutual support between and among the military, civil government, and the private sector;

(4) Develop and maintain damage assessment capabilities and assist the Secretary of Homeland Security and the heads of other departments and agencies in developing and maintaining capabilities to assess attack damage and to estimate the effects of potential attack on the Nation;

(5) Arrange, through agreements with the heads of other Federal departments and agencies, for the transfer of certain Federal resources to the jurisdiction and/or operational control of the Department of Defense in national security emergencies;

(6) Acting through the Secretary of the Army, develop, with the concurrence of the heads of all affected departments and agencies, overall plans for the management, control, and allocation of all usable waters from all sources within the jurisdiction of the United States. This includes:

(a) Coordination of national security emergency water resource planning at the national, regional, State, and local levels;

(b) Development of plans to assure emergency provision of water from public works projects under the jurisdiction of the Secretary of the Army to public water supply utilities and critical defense production facilities during national security emergencies;

(c) Development of plans to assure emergency operation of waterways and harbors; and

(d) Development of plans to assure the provision of potable water;

(7) In consultation with the Secretaries of State and Energy, the Secretary of Homeland Security, and others, as required, develop plans and capabilities for identifying, analyzing, mitigating, and responding to hazards related to nuclear weapons, materials, and devices; and maintain liaison, as appropriate, with the Secretary of Energy and the Members of the Nuclear Regulatory Commission to ensure the continuity of nuclear weapons production and the appropriate allocation of scarce resources, including the recapture of special nuclear materials from Nuclear Regulatory Commission licensees when appropriate;

(8) Coordinate with the Administrator of the National Aeronautics and Space Adminstration [sic] and the Secretary of Energy, as appropriate, to prepare for the use, maintenance, and development of technologically advanced aerospace and aeronautical-related systems, equipment, and methodologies applicable to national security emergencies;

(9) Develop, in coordination with the Secretaries of Labor and Homeland Security, the Directors of the Selective Service System, the Office of Personnel Management, and the Federal Emergency Management Agency, plans and systems to ensure that the Nation's human resources are available to meet essential military and civilian needs in national security emergencies;

(10) Develop national security emergency operational procedures, and coordinate with the Secretary of Housing and Urban Development with respect to residential property, for the control, acquisition, leasing, assignment and priority of occupancy of real property within the jurisdiction of the Department of Defense;

(11) Review the priorities and allocations systems developed by other departments and agencies to ensure that they meet Department of Defense needs in a national security emergency; and develop and maintain the Department of Defense programs necessary for effective utilization of all priorities and allocations systems;

(12) Develop, in coordination with the Attorney General of the United States, specific procedures by which military assistance to civilian law enforcement authorities may be requested, considered, and provided;

(13) In cooperation with the Secretary of Commerce and other departments and agencies, identify those industrial products and facilities that are essential to mobilization readiness, national defense, or post-attack survival and recovery;

(14) In cooperation with the Secretary of Commerce and other Federal departments and agencies, analyze potential effects of national security emergencies on actual production capability, taking into account the entire production complex, including shortages of resources, and develop preparedness measures to strengthen capabilities for production increases in national security emergencies;

(15) With the assistance of the heads of other Federal departments and agencies, provide management direction for the stockpiling of strategic and critical materials, conduct storage, maintenance, and quality assurance operations for the stockpile of strategic and critical materials, and formulate plans, programs, and reports relating to the stockpiling of strategic and critical materials.[;]

(16) Subject to the direction of the President, and pursuant to procedures to be developed jointly by the Secretary of Defense and the Secretary of State, be responsible for the deployment and use of military forces for the protection of United States citizens and nationals and, in connection therewith, designated other persons or categories of persons, in support of their evacuation from threatened areas overseas.

SEC. 502. *Support Responsibilities*. The Secretary of Defense shall:

(1) Advise and assist the heads of other Federal departments and agencies in the development of plans and programs to support national mobilization. This includes providing, as appropriate:

(a) Military requirements, prioritized and time-phased to the extent possible, for selected end-items and supporting services, materials, and components;

(b) Recommendations for use of financial incentives and other methods to improve defense production as provided by law; and

(c) Recommendations for export and import policies;

(2) Advise and assist the Secretary of State and the heads of other Federal departments and agencies, as appropriate, in planning for the protection, evacuation, and repatriation of United States citizens in threatened areas overseas;

(3) Support the Secretary of Housing and Urban Development and the heads of other agencies, as appropriate, in the development of plans to restore community facilities;

(4) Support the Secretary of Energy in international liaison activities pertaining to nuclear materials facilities;

(5) In consultation with the Secretaries of State and Commerce, assist the Secretary of the Treasury in the formulation and execution of economic measures that affect other nations;

(6) Support the Secretary of State and the heads of other Federal departments and agencies as appropriate in the formulation and implementation of foreign policy, and the negotiation of contingency and post-emergency plans, intergovernmental agreements, and arrangements with allies and friendly nations, which affect national security;

(7) Coordinate with the Secretary of Homeland Security the development of plans for mutual civil-military support during national security emergencies;

(8) Develop plans to support the Secretary of Labor in providing education and training to overcome shortages of critical skills.

PART 6—DEPARTMENT OF EDUCATION

SEC. 601. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Education shall:

(1) Assist school systems in developing their plans to provide for the earliest possible resumption of activities following national security emergencies;

(2) Develop plans to provide assistance, including efforts to meet shortages of critical educational personnel, to local educational agencies;

(3) Develop plans, in coordination with the Secretary of Homeland Security, for dissemination of emergency preparedness instructional material through educational institutions and the media during national security emergencies.

SEC. 602. *Support Responsibilities*. The Secretary of Education shall:

(1) Develop plans to support the Secretary of Labor in providing education and training to overcome shortages of critical skills;

(2) Support the Secretary of Health and Human Services in the development of human services educational and training materials, including self-help program materials for use by human service organizations and professional schools.

PART 7—DEPARTMENT OF ENERGY

SEC. 701. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Energy shall:

(1) Conduct national security emergency preparedness planning, including capabilities development, and administer operational programs for all energy resources, including:

(a) Providing information, in cooperation with Federal, State, and energy industry officials, on energy supply and demand conditions and on the requirements for and the availability of materials and services critical to energy supply systems;

(b) In coordination with appropriate departments and agencies and in consultations with the energy industry, develop implementation plans and operational systems for priorities and allocation of all energy resource requirements for national defense and essential civilian needs to assure national security emergency preparedness;

(c) Developing, in consultation with the Board of Directors of the Tennessee Valley Authority, plans necessary for the integration of its power system into the national supply system;

(2) Identify energy facilities essential to the mobilization, deployment, and sustainment of resources to support the national security and national welfare, and develop energy supply and demand strategies to ensure continued provision of minimum essential services in national security emergencies;

(3) In coordination with the Secretary of Defense, ensure continuity of nuclear weapons production consistent with national security requirements;

(4) Assure the security of nuclear materials, nuclear weapons, or devices in the custody of the Department of Energy, as well as the security of all other Department of Energy programs and facilities;

(5) In consultation with the Secretaries of State and Defense and the Secretary of Homeland Security, conduct appropriate international liaison activities pertaining to matters within the jurisdiction of the Department of Energy;

(6) In consultation with the Secretaries of State, Defense, and Homeland Security, the Members of the Nuclear Regulatory Commission, and others, as required, develop plans and capabilities for identification, analysis, damage assessment, and mitigation of hazards from nuclear weapons, materials, and devices;

(7) Coordinate with the Secretary of Transportation in the planning and management of transportation resources involved in the bulk movement of energy;

(8) At the request of or with the concurrence of the Nuclear Regulatory Commission and in consultation with the Secretary of Defense, recapture special nuclear materials from Nuclear Regulatory Commission licensees where necessary to assure the use, preservation, or safeguarding of such material for the common defense and security;

(9) Develop national security emergency operational procedures for the control, utilization, acquisition, leasing, assignment, and priority of occupancy of real property within the jurisdiction of the Department of Energy;

(10) Manage all emergency planning and response activities pertaining to Department of Energy nuclear facilities.

SEC. 702. *Support Responsibilities*. The Secretary of Energy shall:

(1) Provide advice and assistance, in coordination with appropriate agencies, to Federal, State, and local officials and private sector organizations to assess the radiological impact associated with national security emergencies;

(2) Coordinate with the Secretaries of Defense and the Interior regarding the operation of hydroelectric projects to assure maximum energy output;

(3) Support the Secretary of Housing and Urban Development and the heads of other agencies, as appropriate, in the development of plans to restore community facilities;

(4) Coordinate with the Secretary of Agriculture regarding the emergency preparedness of the rural electric supply systems throughout the Nation and the assignment of emergency preparedness responsibilities to the Rural Electrification Administration.

PART 8—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SEC. 801. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Health and Human Services shall:

(1) Develop national plans and programs to mobilize the health industry and health resources for the provision of health, mental health, and medical services in national security emergencies;

(2) Promote the development of State and local plans and programs for provision of health, mental health, and medical services in national security emergencies;

(3) Develop national plans to set priorities and allocate health, mental health, and medical services' resources among civilian and military claimants;

(4) Develop health and medical survival information programs and a nationwide program to train health and mental health professionals and paraprofessionals in special knowledge and skills that would be useful in national security emergencies;

(5) Develop programs to reduce or eliminate adverse health and mental health effects produced by hazardous agents (biological, chemical, or radiological), and, in coordination with appropriate Federal agencies, develop programs to minimize property and environmental damage associated with national security emergencies;

(6) Develop guidelines that will assure reasonable and prudent standards of purity and/or safety in the manufacture and distribution of food, drugs, biological products, medical devices, food additives, and radiological products in national security emergencies;

(7) Develop national plans for assisting State and local governments in rehabilitation of persons injured or disabled during national security emergencies;

(8) Develop plans and procedures to assist State and local governments in the provision of emergency human services, including lodging, feeding, clothing, registration and inquiry, social services, family reunification and mortuary services and interment;

(9) Develop, in coordination with the Secretary of Education, human services educational and training materials for use by human service organizations and professional schools; and develop and distribute, in coordination with the Secretary of Homeland Security, civil defense information relative to emergency human services;

(10) Develop plans and procedures, in coordination with the heads of Federal departments and agencies, for assistance to United States citizens or others evacuated from overseas areas.

SEC. 802. *Support Responsibility*. The Secretary of Health and Human Services shall support the Secretary of Agriculture in the development of plans related to national security emergency agricultural health services.

PART 9—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 901. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Housing and Urban Development shall:

(1) Develop plans for provision and management of housing in national security emergencies, including:

(a) Providing temporary housing using Federal financing and other arrangements;

(b) Providing for radiation protection by encouraging voluntary construction of shelters and voluntary use of cost-efficient design and construction techniques to maximize population protection;

(2) Develop plans, in cooperation with the heads of other Federal departments and agencies and State and local governments, to restore community facilities, including electrical power, potable water, and sewage disposal facilities, damaged in national security emergencies.

PART 10—DEPARTMENT OF THE INTERIOR

SEC. 1001. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of the Interior shall:

(1) Develop programs and encourage the exploration, development, and mining of strategic and critical and other nonfuel minerals for national security emergency purposes;

(2) Provide guidance to mining industries in the development of plans and programs to ensure continuity of production during national security emergencies;

(3) Develop and implement plans for the management, control, allocation, and use of public land under the jurisdiction of the Department of the Interior in national security emergencies and coordinate land emergency planning at the Federal, State, and local levels.

SEC. 1002. *Support Responsibilities*. The Secretary of the Interior shall:

(1) Assist the Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical minerals;

(2) Cooperate with the Secretary of Commerce in the identification and evaluation of facilities essential for national security emergencies;

(3) Support the Secretary of Agriculture in planning for the national security management, production, and processing of forest products.

PART 11—DEPARTMENT OF JUSTICE

SEC. 1101. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Attorney General of the United States shall:

(1) Provide legal advice to the President and the heads of Federal departments and agencies and their successors regarding national security emergency powers, plans, and authorities;

(2) Coordinate Federal Government domestic law enforcement activities related to national security emergency preparedness, including Federal law enforcement liaison with, and assistance to, State and local governments;

(3) Coordinate contingency planning for national security emergency law enforcement activities that are beyond the capabilities of State and local agencies;

(4) Develop national security emergency plans for regulation of immigration, regulation of nationals of enemy countries, and plans to implement laws for the control of persons entering or leaving the United States;

(5) Develop plans and procedures for the custody and protection of prisoners and the use of Federal penal and correctional institutions and resources during national security emergencies;

(6) Provide information and assistance to the Federal Judicial branch and the Federal Legislative branch concerning law enforcement, continuity of government, and the exercise of legal authority during national security emergencies;

(7) Develop intergovernmental and interagency law enforcement plans and counterterrorism programs to interdict and respond to terrorism incidents in the United States that may result in a national security emergency or that occur during such an emergency;

(8) Develop intergovernmental and interagency law enforcement plans to respond to civil disturbances that may result in a national security emergency or that occur during such an emergency.

SEC. 1102. *Support Responsibilities*. The Attorney General of the United States shall:

(1) Assist the heads of Federal departments and agencies, State and local governments, and the private sector in the development of plans to physically protect essential resources and facilities;

(2) Support the Secretaries of State and the Treasury in plans for the protection of international organizations and foreign diplomatic, consular, and other official personnel, property, and other assets within the jurisdiction of the United States;

(3) Support the Secretary of the Treasury in developing plans to control the movement of property entering and leaving the United States;

(4) Support the heads of other Federal departments and agencies and State and local governments in devel-

oping programs and plans for identifying fatalities and reuniting families in national security emergencies;

(5) Support the intelligence community in the planning of its counterintelligence and counterterrorism programs.

PART 12—DEPARTMENT OF LABOR

SEC. 1201. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Labor shall:

(1) Develop plans and issue guidance to ensure effective use of civilian workforce resources during national security emergencies. Such plans shall include, but not necessarily be limited to:

(a) Priorities and allocations, recruitment, referral, training, employment stabilization including appeals procedures, use assessment, and determination of critical skill categories; and

(b) Programs for increasing the availability of critical workforce skills and occupations;

(2) In consultation with the Secretary of the Treasury, develop plans and procedures for wage, salary, and benefit costs stabilization during national security emergencies;

(3) Develop plans and procedures for protecting and providing incentives for the civilian labor force during national security emergencies;

(4) In consultation with other appropriate government agencies and private entities, develop plans and procedures for effective labor-management relations during national security emergencies.

SEC. 1202. *Support Responsibilities*. The Secretary of Labor shall:

(1) Support planning by the Secretary of Defense and the private sector for the provision of human resources to critical defense industries during national security emergencies;

(2) Support planning by the Secretary of Defense and the Director of Selective Service for the institution of conscription in national security emergencies.

PART 13—DEPARTMENT OF STATE

SEC. 1301. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of State shall:

(1) Provide overall foreign policy coordination in the formulation and execution of continuity of government and other national security emergency preparedness activities that affect foreign relations;

(2) Prepare to carry out Department of State responsibilities in the conduct of the foreign relations of the United States during national security emergencies, under the direction of the President and in consultation with the heads of other appropriate Federal departments and agencies, including, but not limited to:

(a) Formulation and implementation of foreign policy and negotiation regarding contingency and post-emergency plans, intergovernmental agreements, and arrangements with United States' allies;

(b) Formulation, negotiation, and execution of policy affecting the relationships of the United States with neutral states;

(c) Formulation and execution of political strategy toward hostile or enemy states;

(d) Conduct of mutual assistance activities;

(e) Provision of foreign assistance, including continuous supervision and general direction of authorized economic and military assistance programs;

(f) Protection or evacuation of United States citizens and nationals abroad and safeguarding their property abroad, in consultation with the Secretaries of Defense and Health and Human Services;

(g) Protection of international organizations and foreign diplomatic, consular, and other official personnel and property, or other assets, in the United States, in coordination with the Attorney General and the Secretary of the Treasury;

(h) Formulation of policies and provisions for assistance to displaced persons and refugees abroad;

(i) Maintenance of diplomatic and consular representation abroad; and

(j) Reporting of and advising on conditions overseas that bear upon national security emergencies.

SEC. 1302. *Support Responsibilities*. The Secretary of State shall:

(1) Assist appropriate agencies in developing planning assumptions concerning accessibility of foreign sources of supply;

(2) Support the Secretary of the Treasury, in consultation, as appropriate, with the Secretaries of Commerce and Defense, in the formulation and execution of economic measures with respect to other nations;

(3) Support the Secretary of Energy in international liaison activities pertaining to nuclear materials facilities;

(4) Support the Secretary of Homeland Security in the coordination and integration of United States policy regarding the formulation and implementation of civil emergency resources and preparedness planning;

(5) Assist the Attorney General of the United States in the formulation of national security emergency plans for the control of persons entering or leaving the United States.

PART 14—DEPARTMENT OF TRANSPORTATION

SEC. 1401. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Transportation shall:

(1) Develop plans to promulgate and manage overall national policies, programs, procedures, and systems to meet essential civil and military transportation needs in national security emergencies;

(2) Be prepared to provide direction to all modes of civil transportation in national security emergencies, including air, surface, water, pipelines, and public storage and warehousing, to the extent such responsibility is vested in the Secretary of Transportation. This direction may include:

(a) Implementation of priorities for all transportation resource requirements for service, equipment, facilities, and systems;

(b) Allocation of transportation resource capacity; and

(c) Emergency management and control of civil transportation resources and systems, including privately owned automobiles, urban mass transit, intermodal transportation systems, the National Railroad Passenger Corporation and the St. Lawrence Seaway Development Corporation;

(3) Develop plans to provide for the smooth transition of the Coast Guard as a service to the Department of the Navy during national security emergencies. These plans shall be compatible with the Department of Defense planning systems, especially in the areas of port security and military readiness;

(4) In coordination with the Secretary of State and the Secretary of Homeland Security, represent the United States in transportation-related international (including NATO and allied) civil emergency preparedness planning and related activities;

(5) Coordinate with State and local highway agencies in the management of all Federal, State, city, local, and other highways, roads, streets, bridges, tunnels, and publicly owned highway maintenance equipment to assure efficient and safe use of road space during national security emergencies;

(6) Develop plans and procedures in consultation with appropriate agency officials for maritime and port safety, law enforcement, and security over, upon, and under the high seas and waters subject to the jurisdiction of the United States to assure operational readiness for national security emergency functions;

(7) Develop plans for the emergency operation of U.S. ports and facilities, use of shipping resources (U.S. and others), provision of government war risks insurance, and emergency construction of merchant ships for military and civil use;

(8) Develop plans for emergency management and control of the National Airspace System, including pro-

vision of war risk insurance and for transfer of the Federal Aviation Administration, in the event of war, to the Department of Defense;

(9) Coordinate the Interstate Commerce Commission's development of plans and preparedness programs for the reduction of vulnerability, maintenance, restoration, and operation of privately owned railroads, motor carriers, inland waterway transportation systems, and public storage facilities and services in national security emergencies.

SEC. 1402. *Support Responsibility*. The Secretary of Transportation shall coordinate with the Secretary of Energy in the planning and management of transportation resources involved in the bulk movement of energy materials.

PART 15—DEPARTMENT OF THE TREASURY

SEC. 1501. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of the Treasury shall:

(1) Develop plans to maintain stable economic conditions and a market economy during national security emergencies; emphasize measures to minimize inflation and disruptions; and, minimize reliance on direct controls of the monetary, credit, and financial systems. These plans will include provisions for:

(a) Increasing capabilities to minimize economic dislocations by carrying out appropriate fiscal, monetary, and regulatory policies and reducing susceptibility to manipulated economic pressures;

(b) Providing the Federal Government with efficient and equitable financing sources and payment mechanisms;

(c) Providing fiscal authorities with adequate legal authority to meet resource requirements;

(d) Developing, in consultation with the Board of Governors of the Federal Reserve System, and in cooperation with the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration Board, the Farm Credit Administration Board and other financial institutions, plans for the continued or resumed operation and liquidity of banks, savings and loans, credit unions, and farm credit institutions, measures for the reestablishment of evidence of assets or liabilities, and provisions for currency withdrawals and deposit insurance;

(2) Provide for the protection of United States financial resources including currency and coin production and redemption facilities, Federal check disbursement facilities, and precious monetary metals;

(3) Provide for the preservation of, and facilitate emergency operations of, public and private financial institution systems, and provide for their restoration during or after national security emergencies;

(4) Provide, in coordination with the Secretary of State, for participation in bilateral and multilateral financial arrangements with foreign governments;

(5) Maintain the Federal Government accounting and financial reporting system in national security emergencies;

(6) Develop plans to protect the President, the Vice President, other officers in the order of presidential succession, and other persons designated by the President;

(7) Develop plans for restoration of the economy following an attack; for the development of emergency monetary, credit, and Federal benefit payment programs of those Federal departments and agencies that have responsibilities dependent on the policies or capabilities of the Department of the Treasury; and for the implementation of national policy on sharing war losses;

(8) Develop plans for initiating tax changes, waiving regulations, and, in conjunction with the Secretary of Commerce or other guaranteeing agency, granting or guaranteeing loans for the expansion of industrial capacity, the development of technological processes, or the production or acquisition of essential materials;

(9) Develop plans, in coordination with the heads of other appropriate Federal departments and agencies, to acquire emergency imports, make foreign barter arrangements, or otherwise provide for essential material from foreign sources using, as appropriate, the resources of the Export-Import Bank or resources available to the Bank;

(10) Develop plans for encouraging capital inflow and discouraging the flight of capital from the United States and, in coordination with the Secretary of State, for the seizure and administration of assets of enemy aliens during national security emergencies;

(11) Develop plans, in consultation with the heads of approporiate Federal departments and agencies, to regulate financial and commercial transactions with other countries;

(12) Develop plans, in coordination with the Secretary of Commerce and the Attorney General of the United States, to control the movement of property entering or leaving the United States;

(13) Cooperate and consult with the Chairman of the Securities and Exchange Commission, the Chairman of the Federal Reserve Board, the Chairman of the Commodities Futures Trading Commission in the development of emergency financial control plans and regulations for trading of stocks and commodities, and in the development of plans for the maintenance and restoration of stable and orderly markets;

(14) Develop plans, in coordination with the Secretary of State, for the formulation and execution of economic measures with respect to other nations in national security emergencies.

SEC. 1502. *Support Responsibilities*. The Secretary of the Treasury shall:

(1) Cooperate with the Attorney General of the United States on law enforcement activities, including the control of people entering and leaving the United States;

(2) Support the Secretary of Labor in developing plans and procedures for wage, salary, and benefit costs stabilization;

(3) Support the Secretary of State in plans for the protection of international organizations and foreign diplomatic, consular, and other official personnel and property or other assets in the United States.

PART 16—ENVIRONMENTAL PROTECTION AGENCY

SEC. 1601. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Administrator of the Environmental Protection Agency shall:

(1) Develop Federal plans and foster development of State and local plans designed to prevent or minimize the ecological impact of hazardous agents (biological, chemical, or radiological) introduced into the environment in national security emergencies;

(2) Develop, for national security emergencies, guidance on acceptable emergency levels of nuclear radiation, assist in determining acceptable emergency levels of biological agents, and help to provide detection and identification of chemical agents;

(3) Develop, in coordination with the Secretary of Defense, plans to assure the provision of potable water supplies to meet community needs under national security emergency conditions, including claimancy for materials and equipment for public water systems.

SEC. 1602. *Support Responsibilities*. The Administrator of the Environmental Protection Agency shall:

(1) Assist the heads of other Federal agencies that are responsible for developing plans for the detection, reporting, assessment, protection against, and reduction of effects of hazardous agents introduced into the environment;

(2) Advise the heads of Federal departments and agencies regarding procedures for assuring compliance with environmental restrictions and for expeditious review of requests for essential waivers.

PART 17—DEPARTMENT OF HOMELAND SECURITY

SEC. 1701. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Homeland Security shall:

(1) Coordinate and support the initiation, development, and implementation of national security emergency preparedness programs and plans among Federal departments and agencies;

(2) Coordinate the development and implementation of plans for the operation and continuity of essential domestic emergency functions of the Federal Government during national security emergencies;

(3) Coordinate the development of plans, in cooperation with the Secretary of Defense, for mutual civil-military support during national security emergencies;

(4) Guide and assist State and local governments and private sector organizations in achieving preparedness for national security emergencies, including development of plans and procedures for assuring continuity of government, and support planning for prompt and coordinated Federal assistance to States and localities in responding to national security emergencies;

(5) Provide the President a periodic assessment of Federal, State, and local capabilities to respond to national security emergencies;

(6) Coordinate the implementation of policies and programs for efficient mobilization of Federal, State, local, and private sector resources in response to national security emergencies;

(7) Develop and coordinate with all appropriate agencies civil defense programs to enhance Federal, State, local, and private sector capabilities for national security emergency crisis management, population protection, and recovery in the event of an attack on the United States;

(8) Develop and support public information, education and training programs to assist Federal, State, and local government and private sector entities in planning for and implementing national security emergency preparedness programs;

(9) Coordinate among the heads of Federal, State, and local agencies the planning, conduct, and evaluation of national security emergency exercises;

(10) With the assistance of the heads of other appropriate Federal departments and agencies, develop and maintain capabilities to assess actual attack damage and residual recovery capabilities as well as capabilities to estimate the effects of potential attacks on the Nation;

(11) Provide guidance to the heads of Federal departments and agencies on the appropriate use of defense production authorities, including resource claimancy, in order to improve the capability of industry and infrastructure systems to meet national security emergency needs;

(12) Assist the Secretary of State in coordinating the formulation and implementation of United States policy for NATO and other allied civil emergency planning, including the provision of:

(a) advice and assistance to the departments and agencies in alliance civil emergency planning matters;

(b) support to the United States Mission to NATO in the conduct of day-to-day civil emergency planning activities; and

(c) support facilities for NATO Civil Wartime Agencies in cooperation with the Departments of Agriculture, Commerce, Energy, State, and Transportation.

SEC. 1702. *Support Responsibilities*. The Secretary of Homeland Security shall:

(1) Support the heads of other Federal departments and agencies in preparing plans and programs to discharge their national security emergency preparedness responsibilities, including, but not limited to, such programs as mobilization preparedness, continuity of government planning, and continuance of industry and infrastructure functions essential to national security;

(2) Support the Secretary of Energy, the Secretary of Defense, and the Members of the Nuclear Regulatory Commission in developing plans and capabilities for identifying, analyzing, mitigating, and responding to emergencies related to nuclear weapons, materials, and devices, including mobile and fixed nuclear facilities, by providing, inter alia, off-site coordination;

(3) Support the Administrator of General Services in efforts to promote a government-wide program with respect to Federal buildings and installations to minimize the effects of attack and establish shelter management organizations.

PART 18—GENERAL SERVICES ADMINISTRATION

SEC. 1801. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Administrator of General Services shall:

(1) Develop national security emergency plans and procedures for the operation, maintenance, and protection of federally owned and occupied buildings managed by the General Services Administration, and for the construction, alteration, and repair of such buildings;

(2) Develop national security emergency operating procedures for the control, acquisition, leasing, assignment, and priority of occupancy of real property by the Federal Government, and by State and local governments acting as agents of the Federal Government, except for the military facilities and facilities with special nuclear materials within the jurisdiction of the Departments of Defense and Energy;

(3) Develop national security emergency operational plans and procedures for the use of public utility services (other than telecommunications services) by Federal departments and agencies, except for Department of Energy-operated facilities;

(4) Develop plans and operating procedures of government-wide supply programs to meet the requirements of Federal departments and agencies during national security emergencies;

(5) Develop plans and operating procedures for the use, in national security emergencies, of excess and surplus real and personal property by Federal, State, and local governmental entities;

(6) Develop plans, in coordination with the Secretary of Homeland Security, with respect to Federal buildings and installations, to minimize the effects of attack and establish shelter management organizations;

SEC. 1802. *Support Responsibility*. The Administrator of General Services shall develop plans to assist Federal departments and agencies in operation and maintenance of essential automated information processing facilities during national security emergencies:[.]

PART 19—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SEC. 1901. *Lead Responsibility*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Administrator of the National Aeronautics and Space Administration shall coordinate with the Secretary of Defense to prepare for the use, maintenance, and development of technologically advanced aerospace and aeronautical-related systems, equipment, and methodologies applicable to national security emergencies.

PART 20—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

SEC. 2001. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Archivist of the United States shall:

(1) Develop procedures for publication during national security emergencies of the Federal Register for as broad public dissemination as is practicable of presidential proclamations and Executive orders, Federal administrative regulations, Federal emergency notices and actions, and Acts of Congress;

(2) Develop emergency procedures for providing instructions and advice on the handling and preservation of records critical to the operation of the Federal Government in national security emergencies.

PART 21—NUCLEAR REGULATORY COMMISSION

SEC. 2101. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Members of the Nuclear Regulatory Commission shall:

(1) Promote the development and maintenance of national security emergency preparedness programs through security and safeguards programs by licensed facilities and activities;

(2) Develop plans to suspend any licenses granted by the Commission; to order the operations of any facility licensed under Section 103 or 104; Atomic Energy Act of 1954, as amended (42 U.S.C. 2133 or 2134); to order the entry into any plant or facility in order to recapture special nuclear material as determined under Subsection (3) below; and operate such facilities;

(3) Recapture or authorize recapture of special nuclear materials from licensees where necessary to assure the use, preservation, or safeguarding of such materials for the common defense and security, as determined by the Commission or as requested by the Secretary of Energy.

SEC. 2102. *Support Responsibilities*. The Members of the Nuclear Regulatory Commission shall:

(1) Assist the Secretary of Energy in assessing damage to Commission-licensed facilities, identifying useable facilities, and estimating the time and actions necessary to restart inoperative facilities;

(2) Provide advice and technical assistance to Federal, State, and local officials and private sector organizations regarding radiation hazards and protective actions in national security emergencies.

PART 22—OFFICE OF PERSONNEL MANAGEMENT

SEC. 2201. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the Office of Personnel Management shall:

(1) Prepare plans to administer the Federal civilian personnel system in national security emergencies, including plans and procedures for the rapid mobilization and reduction of an emergency Federal workforce;

(2) Develop national security emergency work force policies for Federal civilian personnel;

(3) Develop plans to accommodate the surge of Federal personnel security background and pre-employment investigations during national security emergencies.

SEC. 2202. *Support Responsibilities*. The Director of the Office of Personnel Management shall:

(1) Assist the heads of other Federal departments and agencies with personnel management and staffing in national security emergencies, including facilitating transfers between agencies of employees with critical skills;

(2) In consultation with the Secretary of Defense and the Director of Selective Service, develop plans and procedures for a system to control any conscription of Federal civilian employees during national security emergencies.

PART 23—SELECTIVE SERVICE SYSTEM

SEC. 2301. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of Selective Service shall:

(1) Develop plans to provide by induction, as authorized by law, personnel that would be required by the armed forces during national security emergencies;

(2) Develop plans for implementing an alternative service program.

PART 24—TENNESSEE VALLEY AUTHORITY

SEC. 2401. *Lead Responsibility*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Board of Directors of the Tennessee Valley Authority shall develop plans and maintain river control operations for the prevention or control of floods affecting the Tennessee River System during national security emergencies.

SEC. 2402. *Support Responsibilities*. The Board of Directors of the Tennessee Valley Authority shall:

(1) Assist the Secretary of Energy in the development of plans for the integration of the Tennessee Valley Authority power system into nationwide national security emergency programs;

(2) Assist the Secretaries of Defense, Interior, and Transportation and the Chairman of the Interstate Commerce Commission in the development of plans for operation and maintenance of inland waterway transportation in the Tennessee River System during national security emergencies.

PART 25—UNITED STATES INFORMATION AGENCY

SEC. 2501. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the United States Information Agency shall:

(1) Plan for the implementation of information programs to promote an understanding abroad of the status of national security emergencies within the United States;

(2) In coordination with the Secretary of State's exercise of telecommunications functions affecting United States diplomatic missions and consular offices overseas, maintain the capability to provide television and simultaneous direct radio broadcasting in major languages to all areas of the world, and the capability to provide wireless file to all United States embassies during national security emergencies.

SEC. 2502. *Support Responsibility*. The Director of the United States Information Agency shall assist the heads of other Federal departments and agencies in planning for the use of media resources and foreign public information programs during national security emergencies.

PART 26—UNITED STATES POSTAL SERVICE

SEC. 2601. *Lead Responsibility*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Postmaster General shall prepare plans and programs to provide essential postal services during national security emergencies.

SEC. 2602. *Support Responsibilities*. The Postmaster General shall:

(1) Develop plans to assist the Attorney General of the United States in the registration of nationals of enemy countries residing in the United States;

(2) Develop plans to assist the Secretary of Health and Human Services in registering displaced persons and families;

(3) Develop plans to assist the heads of other Federal departments and agencies in locating and leasing privately owned property for Federal use during national security emergencies.

PART 27—VETERANS' ADMINISTRATION

SEC. 2701. *Lead Responsibilities*. In addition to the applicable responsibilities covered in Parts 1 and 2, the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] shall:

(1) Develop plans for provision of emergency health care services to veteran beneficiaries in Veterans' Administration [now Department of Veterans Affairs] medical facilities, to active duty military personnel and, as resources permit, to civilians in communities affected by national security emergencies;

(2) Develop plans for mortuary services for eligible veterans, and advise on methods for interment of the dead during national security emergencies.

SEC. 2702. *Support Responsibilities*. The Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] shall:

(1) Assist the Secretary of Health and Human Services in promoting the development of State and local plans for the provision of medical services in national security emergencies, and develop appropriate plans to support such State and local plans;

(2) Assist the Secretary of Health and Human Services in developing national plans to mobilize the health care industry and medical resources during national security emergencies;

(3) Assist the Secretary of Health and Human Services in developing national plans to set priorities and allocate medical resources among civilian and military claimants.

PART 28—OFFICE OF MANAGEMENT AND BUDGET

SEC. 2801. In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the Office

of Management and Budget shall prepare plans and programs to maintain its functions during national security emergencies. In connection with these functions, the Director of the Office of Management and Budget shall:

(1) Develop plans to ensure the preparation, clearance, and coordination of proposed Executive orders and proclamations;

(2) Prepare plans to ensure the preparation, supervision, and control of the budget and the formulation of the fiscal program of the Government;

(3) Develop plans to coordinate and communicate Executive branch views to the Congress regarding legislation and testimony by Executive branch officials;

(4) Develop plans for keeping the President informed of the activities of government agencies, continuing the Office of Management and Budget's management functions, and maintaining presidential supervision and direction with respect to legislation and regulations in national security emergencies.

PART 29—GENERAL

SEC. 2901. Executive Order Nos. 10421 and 11490, as amended, are hereby revoked. This Order shall be effective immediately.

[Responsibilities assigned to specific Federal officials pursuant to Ex. Ord. No. 12656, set out above, that are substantially the same as any responsibility assigned to, or function transferred to, the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002, 6 U.S.C. 101 et seq., or intended or required to be carried out by an agency or an agency component transferred to the Department of Homeland Security pursuant to such Act, reassigned to the Secretary of Homeland Security by section 42 of Ex. Ord. No. 13286, Feb. 28, 2003, 68 F.R. 10626, set out as a note under section 111 of Title 6, Domestic Security.]

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

[Ex. Ord. No. 13286, § 42, which directed amendment of Ex. Ord. No. 12656, set out above, by substituting ''the Secretary of Homeland Security'' for ''the Director of the Federal Emergency Management Agency'' in section ''1801(b)'', was executed by making the substitution in section 1801(6).]

EX. ORD. NO. 12657. DEPARTMENT OF HOMELAND SECURITY ASSISTANCE IN EMERGENCY PREPAREDNESS PLANNING AT COMMERCIAL NUCLEAR POWER PLANTS

Ex. Ord. No. 12657, Nov. 18, 1988, 53 F.R. 47513, as amended by Ex. Ord. No. 13286, § 41, Feb. 28, 2003, 68 F.R. 10626, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*), the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*), the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*), Reorganization Plan No. 1 of 1958 [set out above], Reorganization Plan No. 1 of 1973 [set out above], and Section 301 of Title 3 of the United States Code, and in order to ensure that plans and procedures are in place to respond to radiological emergencies at commercial nuclear power plants in operation or under construction, it is hereby ordered as follows:

SECTION 1. *Scope.* (a) This Order applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant radiological emergency preparedness plans that are sufficient to satisfy Nuclear Regulatory Commission (''NRC'') licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans.

(b) In order to request the assistance of the Department of Homeland Security (''DHS'') provided for in this Order, an affected nuclear power plant applicant or licensee (''licensee'') shall certify in writing to DHS that the situation described in Subsection (a) exists.

SEC. 2. *Generally Applicable Principles and Directives.* (a) Subject to the principles articulated in this Section, the Secretary of Homeland Security is hereby authorized and directed to take the actions specified in Sections 3 through 6 of this Order.

(b) In carrying out any of its responsibilities under this Order, DHS:

(1) shall work actively with the licensee, and, before relying upon its resources or those of any other Department or agency within the Executive branch, shall make maximum feasible use of the licensee's resources;

(2) shall take care not to supplant State and local resources. DHS shall substitute its own resources for those of the State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;

(3) is authorized, to the extent permitted by law, to enter into interagency Memoranda of Understanding providing for utilization of the resources of other Executive branch Departments and agencies and for delegation to other Executive branch Departments and agencies of any of the functions and duties assigned to DHS under this Order; however, any such Memorandum of Understanding shall be subject to approval by the Director of the Office of Management and Budget (''OMB'') and published in final form in the Federal Register; and

(4) shall assume for purposes of Sections 3 and 4 of this Order that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public from harm and would act generally in conformity with the licensee's radiological emergency preparedness plan.

(c) The Director of OMB shall resolve any issue concerning the obligation of Federal funds arising from the implementation of this Order. In resolving issues under this Subsection, the Director of OMB shall ensure:

(1) that DHS has utilized to the maximum extent possible the resources of the licensee and State and local governments before it relies upon its appropriated and lawfully available resources or those of any Department or agency in the Executive branch;

(2) that DHS shall use its existing resources to coordinate and manage, rather than duplicate, other available resources;

(3) that implementation of this Order is accomplished with an economy of resources; and

(4) that full reimbursement to the Federal Government is provided, to the extent permitted by law.

SEC. 3. *DHS Participation in Emergency Preparedness Planning.* (a) DHS assistance in emergency preparedness planning shall include advice, technical assistance, and arrangements for facilities and resources as needed to satisfy the emergency planning requirements under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and any other Federal legislation or regulations pertaining to issuance or retention of a construction permit or an operating license for a nuclear power plant.

(b) DHS shall make all necessary plans and arrangements to ensure that the Federal Government is prepared to assume any and all functions and undertakings necessary to provide adequate protection to the public in cases within the scope of this Order. In making such plans and arrangements,

(1) DHS shall focus planning of Federal response activities to ensure that:

(A) adequate resources and arrangements will exist, as of the time when an initial response is needed, given the absence or inadequacy of advance State and local commitments; and

(B) attention has been given to coordinating (including turning over) response functions when State and local governments do exercise their authority, with specific attention to the areas where prior State and local participation has been insufficient or absent;

(2) FEMA's [DHS's] planning for Federal participation in responding to a radiological emergency within the scope of this Order shall include, but not be limited to, arrangements for using existing Federal resources to provide prompt notification of the emergency to the general public; to assist in any necessary evacuation; to provide reception centers or shelters and related facilities and services for evacuees; to provide emergency medical services at Federal hospitals, including those operated by the military services and by the Veterans' Administration [now Department of Veterans Affairs]; and to ensure the creation and maintenance of channels of communication from commercial nuclear power plant licensees or applicants to State and local governments and to surrounding members of the public.

SEC. 4. *Evaluation of Plans*. (a) DHS shall consider and evaluate all plans developed under the authority of this Order as though drafted and submitted by a State or local government.

(b) DHS shall take all actions necessary to carry out the evaluation referred to in the preceding Subsection and to permit the NRC to conduct its evaluation of radiological emergency preparedness plans including, but not limited to, planning, participating in, and evaluating exercises, drills, and tests, on a timely basis, as necessary to satisfy NRC requirements for demonstrations of off-site radiological emergency preparedness.

SEC. 5. *Response to a Radiological Emergency*. (a) In the event of an actual radiological emergency or disaster, DHS shall take all steps necessary to ensure the implementation of the plans developed under this Order and shall coordinate the actions of other Federal agencies to achieve the maximum effectiveness of Federal efforts in responding to the emergency.

(b) DHS shall coordinate Federal response activities to ensure that adequate resources are directed, when an initial response is needed, to activities hindered by the absence or inadequacy of advance State and local commitments. DHS shall also coordinate with State and local governmental authorities and turn over response functions as appropriate when State and local governments do exercise their authority.

(c) DHS shall assume any necessary command-and-control function, or delegate such function to another Federal agency, in the event that no competent State and local authority is available to perform such function.

(d) In any instance in which Federal personnel may be called upon to fill a command-and-control function during a radiological emergency, in addition to any other powers it may have, DHS or its designee is authorized to accept volunteer assistance from utility employees and other nongovernmental personnel for any purpose necessary to implement the emergency response plan and facilitate off-site emergency response.

SEC. 6. *Implementation of Order*. (a) DHS shall issue interim and final directives and procedures implementing this Order as expeditiously as is feasible and in any event shall issue interim directives and procedures not more than 90 days following the effective date of this Order and shall issue final directives and procedures not more than 180 days following the effective date of this Order.

(b) Immediately upon the effective date of this Order, DHS shall review, and initiate necessary revisions of, all DHS regulations, directives, and guidance to conform them to the terms and policies of this Order.

(c) Immediately upon the effective date of this Order, DHS shall review, and initiate necessary renegotiations of, all interagency agreements to which DHS is a party, so as to conform them to the terms and policies of this Order. This directive shall include, but not be limited to, the Federal Radiological Emergency Response Plan (50 *Fed. Reg*. 46542 (November 8, 1985)).

(d) To the extent permitted by law, DHS is directed to obtain full reimbursement, either jointly or severally, for services performed by DHS or other Federal agencies pursuant to this Order from any affected licensee and from any affected nonparticipating or inadequately participating State or local government.

SEC. 7. *Amendments*. This Executive Order amends Executive Order Nos. 11490 (34 *Fed. Reg*. 17567 (October 28, 1969)) [see note above], 12148 (44 *Fed. Reg*. 43239 (July 20, 1979)) [set out above], and 12241 (45 *Fed. Reg*. 64879 (September 29, 1980)), and the same are hereby superseded to the extent that they are inconsistent with this Order.

SEC. 8. *Judicial Review*. This Order is intended only to improve the internal management of the Executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SEC. 9. *Effective Date*. This Order shall be effective November 18, 1988.

EX. ORD. NO. 12673. DELEGATION OF DISASTER RELIEF AND EMERGENCY ASSISTANCE FUNCTIONS

Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq*.), and in order to conform delegations of authority to recent legislation, it is hereby ordered as follows:

SECTION 1. Section 4–203 of Executive Order No. 12148 [set out above] is amended to read:

Section 4–203. The functions vested in the President by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq*.), except those functions vested in the President by Section 401 (relating to the declaration of major disasters and emergencies), Section 501 (relating to the declaration of emergencies), Section 405 (relating to the repair, reconstruction, restoration, or replacement of Federal facilities), and Section 412 (relating to food coupons and distribution), are hereby delegated to the Director of the Federal Emergency Management Agency.

SEC. 2. Section 3 of Executive Order No. 11795 [42 U.S.C. 5121 note] is amended by removing the words ''Section 409'' and inserting ''Section 412'' in place thereof.

SEC. 3. The functions vested in the President by Section 103(e)(2) of the Disaster Relief and Emergency Assistance Amendments of 1988, Public Law 100–707 [42 U.S.C. 5122 note] (relating to the transmission of a report to the Committee on Public Works and Transportation of the House of Representatives and to the Committee on Environment and Public Works of the Senate), are hereby delegated to the Director of the Federal Emergency Management Agency.

SEC. 4. The functions vested in the President by Section 110 of the Disaster Relief and Emergency Assistance Amendments of 1988, Public Law 100–707 [42 U.S.C. 5121 note], are hereby delegated to the Director of the Federal Emergency Management Agency.

SEC. 5. The functions vested in the President by Section 113 of the Disaster Relief and Emergency Assistance Amendments of 1988, Public Law 100–707 [42 U.S.C. 5201 note], are hereby delegated to the Director of the Federal Emergency Management Agency.

SEC. 6. The amendments to Executive Order No. 12148 that are made by Section 1 of this Executive Order shall not affect the administration of any assistance for major disasters or emergencies declared by the President before the effective date of ''The Disaster Relief and Emergency Assistance Amendments of 1988 [probably means date of enactment of Pub. L. 100–707, which was approved Nov. 23, 1988].''

GEORGE BUSH.

EX. ORD. NO. 13010. CRITICAL INFRASTRUCTURE PROTECTION

Ex. Ord. No. 13010, July 15, 1996, 61 F.R. 37347, as amended by Ex. Ord. No. 13025, Nov. 13, 1996, 61 F.R.

58623; Ex. Ord. No. 13041, Apr. 3, 1997, 62 F.R. 17039; Ex. Ord. No. 13064, Oct. 11, 1997, 62 F.R. 53711; Ex. Ord. No. 13077, Mar. 10, 1998, 63 F.R. 12381; Ex. Ord. No. 13138, § 3(c), Sept. 30, 1999, 64 F.R. 53880, provided:

Certain national infrastructures are so vital that their incapacity or destruction would have a debilitating impact on the defense or economic security of the United States. These critical infrastructures include telecommunications, electrical power systems, gas and oil storage and transportation, banking and finance, transportation, water supply systems, emergency services (including medical, police, fire, and rescue), and continuity of government. Threats to these critical infrastructures fall into two categories: physical threats to tangible property (''physical threats''), and threats of electronic, radio-frequency, or computer-based attacks on the information or communications components that control critical infrastructures (''cyber threats''). Because many of these critical infrastructures are owned and operated by the private sector, it is essential that the government and private sector work together to develop a strategy for protecting them and assuring their continued operation.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Establishment*. There is hereby established the President's Commission on Critical Infrastructure Protection (''Commission'').

(a) *Chair*. A qualified individual from outside the Federal Government shall be designated by the President from among the members to serve as Chair of the Commission. The Commission Chair shall be employed on a full-time basis.

(b) *Members*. The head of each of the following executive branch departments and agencies shall nominate not more than two full-time members of the Commission:

(i) Department of the Treasury;
(ii) Department of Justice;
(iii) Department of Defense;
(iv) Department of Commerce;
(v) Department of Transportation;
(vi) Department of Energy;
(vii) Central Intelligence Agency;
(viii) Federal Emergency Management Agency;
(ix) Federal Bureau of Investigation;
(x) National Security Agency.

One of the nominees of each agency may be an individual from outside the Federal Government who shall be employed by the agency on a full-time basis. Each nominee must be approved by the Steering Committee.

SEC. 2. *The Principals Committee*. The Commission shall report to the President through a Principals Committee (''Principals Committee''), which shall review any reports or recommendations before submission to the President. The Principals Committee shall comprise the:

(i) Secretary of the Treasury;
(ii) Secretary of Defense;
(iii) Attorney General;
(iv) Secretary of Commerce;
(v) Secretary of Transportation;
(vi) Secretary of Energy;
(vii) Director of Central Intelligence;
(viii) Director of the Office of Management and Budget;
(ix) Director of the Federal Emergency Management Agency;
(x) Assistant to the President for National Security Affairs;
(xi) Assistant to the Vice President for National Security Affairs.[;]
(xii) Assistant to the President for Economic Policy and Director of the National Economic Council; and
(xiii) Assistant to the President and Director of the Office of Science and Technology Policy.

SEC. 3. *The Steering Committee of the President's Commission on Critical Infrastructure Protection*. A Steering Committee (''Steering Committee'') shall oversee the work of the Commission on behalf of the Principals Committee. The Steering Committee shall comprise [sic] five members. Four of the members shall be appointed by the President, and the fifth member shall be the Chair of the Commission. Two of the members of the Committee shall be employees of the Executive Office of the President. The Steering Committee will receive regular reports on the progress of the Commission's work and approve the submission of reports to the Principals Committee.

SEC. 4. *Mission*. The Commission shall: (a) within 30 days of this order, produce a statement of its mission objectives, which will elaborate the general objectives set forth in this order, and a detailed schedule for addressing each mission objective, for approval by the Steering Committee;

(b) identify and consult with: (i) elements of the public and private sectors that conduct, support, or contribute to infrastructure assurance; (ii) owners and operators of the critical infrastructures; and (iii) other elements of the public and private sectors, including the Congress, that have an interest in critical infrastructure assurance issues and that may have differing perspectives on these issues;

(c) assess the scope and nature of the vulnerabilities of, and threats to, critical infrastructures;

(d) determine what legal and policy issues are raised by efforts to protect critical infrastructures and assess how these issues should be addressed;

(e) recommend a comprehensive national policy and implementation strategy for protecting critical infrastructures from physical and cyber threats and assuring their continued operation;

(f) propose any statutory or regulatory changes necessary to effect its recommendations; and

(g) produce reports and recommendations to the Steering Committee as they become available; it shall not limit itself to producing one final report.

SEC. 5. [Revoked by Ex. Ord. No. 13138, § 3(c), Sept. 30, 1999, 64 F.R. 53880.]

SEC. 6. *Administration*. (a) All executive departments and agencies shall cooperate with the Commission and provide such assistance, information, and advice to the Commission as it may request, to the extent permitted by law.

(b) The Commission and the Advisory Committee may hold open and closed hearings, conduct inquiries, and establish subcommittees, as necessary.

(c) Members of the Advisory Committee shall serve without compensation for their work on the Advisory Committee. While engaged in the work of the Advisory Committee, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service.

(d) To the extent permitted by law, and subject to the availability of appropriations, the Department of Defense shall provide the Commission and the Advisory Committee with administrative services, staff, other support services, and such funds as may be necessary for the performance of its functions and shall reimburse the executive branch components that provide representatives to the Commission for the compensation of those representatives.

(e) In order to augment the expertise of the Commission, the Department of Defense may, at the Commission's request, contract for the services of nongovernmental consultants who may prepare analyses, reports, background papers, and other materials for consideration by the Commission. In addition, at the Commission's request, executive departments and agencies shall request that existing Federal advisory committees consider and provide advice on issues of critical infrastructure protection, to the extent permitted by law.

(f) The Commission shall terminate 1 year and 90 days from the date of this order, unless extended by the President prior to that date. The Principals Committee, the Steering Committee, and the Advisory Com-

mittee shall terminate no later than September 30, 1998, and, upon submission of the Commission's report, shall review the report and prepare appropriate recommendations to the President.

(g) The person who served as Chair of the Commission may continue to be a member of the Steering Committee after termination of the Commission.

SEC. 7. *Review of Commission's Report*. (a) Upon the termination of the Commission as set out in section 6(f) of this order, certain of the Commission's staff may be retained no later than September 30, 1998, solely to assist the Principals, Steering, and Advisory Committees in reviewing the Commission's report and preparing recommendations to the President. They shall act under the direction of the Steering Committee or its designated agent. The Department of Defense shall continue to provide funding and administrative support for the retained Commission staff.

(b) Pursuant to Executive Order 12958 [50 U.S.C. 435 note], I hereby designate the Executive Secretary of the National Security Council to exercise the authority to classify information originally as ''Top Secret'' with respect to the work of the Commission staff, the Principals Committee, the Steering Committee, the Advisory Committee, and the Infrastructure Protection Task Force.

SEC. 8. *Interim Coordinating Mission*. (a) While the Commission is conducting its analysis and until the President has an opportunity to consider and act on its recommendations, there is a need to increase coordination of existing infrastructure protection efforts in order to better address, and prevent, crises that would have a debilitating regional or national impact. There is hereby established an Infrastructure Protection Task Force (''IPTF'') within the Department of Justice, chaired by the Federal Bureau of Investigation, to undertake this interim coordinating mission.

(b) The IPTF will not supplant any existing programs or organizations.

(c) The Steering Committee shall oversee the work of the IPTF.

(d) The IPTF shall include at least one full-time member each from the Federal Bureau of Investigation, the Department of Defense, and the National Security Agency. It shall also receive part-time assistance from other executive branch departments and agencies. Members shall be designated by their departments or agencies on the basis of their expertise in the protection of critical infrastructures. IPTF members' compensation shall be paid by their parent agency or department.

(e) The IPTF's function is to identify and coordinate existing expertise, inside and outside of the Federal Government, to:

(i) provide, or facilitate and coordinate the provision of, expert guidance to critical infrastructures to detect, prevent, halt, or confine an attack and to recover and restore service;

(ii) issue threat and warning notices in the event advance information is obtained about a threat;

(iii) provide training and education on methods of reducing vulnerabilities and responding to attacks on critical infrastructures;

(iv) conduct after-action analysis to determine possible future threats, targets, or methods of attack; and

(v) coordinate with the pertinent law enforcement authorities during or after an attack to facilitate any resulting criminal investigation.

(f) All executive departments and agencies shall cooperate with the IPTF and provide such assistance, information, and advice as the IPTF may request, to the extent permitted by law.

(g) All executive departments and agencies shall share with the IPTF information about threats and warning of attacks, and about actual attacks on critical infrastructures, to the extent permitted by law.

(h) The IPTF shall terminate no later than 180 days after the termination of the Commission, unless extended by the President prior to that date.

SEC. 9. *General*. (a) This order is not intended to change any existing statutes or Executive orders.

(b) This order is not intended to create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON.

[Ex. Ord. No. 13138, §3(c), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees, revoked ''Section 5 and that part of section 6(f) of Executive Order 13010, as amended by section 3 of Executive Order 13025, Executive Order 13041, sections 1, 2, and that part of section 3 of Executive Order 13064, and Executive Order 13077, establishing the Advisory Committee to the President's Commission on Critical Infrastructure Protection''.]

EXECUTIVE ORDER NO. 13130

Ex. Ord. No. 13130, July 14, 1999, 64 F.R. 38535, which established the National Infrastructure Assurance Council, was revoked by Ex. Ord. No. 13231, §10(e)(iii), Oct. 16, 2001, 66 F.R. 53070, set out as a note under section 121 of Title 6, Domestic Security.

EX. ORD. NO. 13151. GLOBAL DISASTER INFORMATION NETWORK

Ex. Ord. No. 13151, Apr. 27, 2000, 65 F.R. 25619, as amended by Ex. Ord. No. 13284, §5, Jan. 23, 2003, 68 F.R. 4075, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish a Global Disaster Information Network to use information technology more effectively to reduce loss of life and property from natural and man-made disasters, it is hereby ordered as follows:

SECTION 1. *Policy*. (a) It is the policy of this Administration to use information technology more effectively to coordinate the Federal Government's collection and dissemination of information to appropriate response agencies and State governments to prepare for and respond to natural and man-made disasters (disasters). As a result of changing population demographics in our coastal, rural, and urban areas over the past decades, the loss of life and property (losses) from disasters has nearly doubled. One of the ways the Federal Government can reduce these losses is to use technology more effectively to coordinate its collection and dissemination (hereafter referred to collectively as ''provision'') of information which can be used in both planning for and recovering from disasters. While many agencies provide disaster-related information, they may not always provide it in a coordinated manner. To improve the provision of disaster-related information, the agencies shall, as set out in this order, use information technology to coordinate the Federal Government's provision of information to prepare for, respond to, and recover from domestic disasters.

(b) It is also the policy of this Administration to use information technology and existing channels of disaster assistance to improve the Federal Government's provision of information that could be helpful to foreign governments preparing for or responding to foreign disasters. Currently, the United States Government provides disaster-related information to foreign governments and relief organizations on humanitarian grounds at the request of foreign governments and where appropriate. This information is supplied by Federal agencies on an ad hoc basis. To increase the effectiveness of our response to foreign disasters, agencies shall, where appropriate, use information technology to coordinate the Federal Government's provision of disaster-related information to foreign governments.

(c) To carry out the policies in this order, there is established the Global Disaster Information Network (Network). The Network is defined as the coordinated effort by Federal agencies to develop a strategy and to use existing technical infrastructure, to the extent per-

mitted by law and subject to the availability of appropriations and under the guidance of the Interagency Coordinating Committee and the Committee Support Office, to make more effective use of information technology to assist our Government, and foreign governments where appropriate, by providing disaster-related information to prepare for and respond to disasters.

SEC. 2. *Establishment*. (a) There is established an Interagency Coordinating Committee (Committee) to provide leadership and oversight for the development of the Network. The Office of the Vice President, the Department of Commerce through the National Oceanic and Atmospheric Administration, and the Department of State, respectively, shall designate a representative to serve as Co-chairpersons of the Committee. The Committee membership shall comprise representatives from the following departments and agencies:

(1) Department of State;
(2) Department of Defense;
(3) Department of the Interior;
(4) Department of Agriculture;
(5) Department of Commerce;
(6) Department of Transportation;
(7) Department of Energy;
(8) Department of Homeland Security;
(9) Office of Management and Budget;
(10) Environmental Protection Agency;
(11) National Aeronautics and Space Administration;
(12) United States Agency for International Development;
(13) Federal Emergency Management Agency; and
(14) Central Intelligence Agency.

At the discretion of the Co-chairpersons of the Committee, other agencies may be added to the Committee membership. The Committee shall include an Executive Secretary to effect coordination between the Co-chairpersons of the Committee and the Committee Support Office.

(b) There is established a Committee Support Office (Support Office) to assist the Committee by developing plans and projects that would further the creation of the Network. The Support Office shall, at the request of the Co-chairpersons of the Committee, carry out tasks taken on by the Committee.

(c) The National Oceanic and Atmospheric Administration shall provide funding and administrative support for the Committee and the Support Office. To the extent permitted by law, agencies may provide support to the Committee and the Support Office to assist them in their work.

SEC. 3. *Responsibilities*. (a) The Committee shall:

(1) serve as the United States Government's single entity for all matters, both national and international, pertaining to the development and establishment of the Network;
(2) provide leadership and high-level coordination of Network activities;
(3) provide guidance for the development of Network strategies, goals, objectives, policies, and legislation;
(4) represent and advocate Network goals, objectives, and processes to their respective agencies and departments;
(5) provide manpower and material support for Network development activities;
(6) develop, delegate, and monitor interagency opportunities and ideas supporting the development of the Network; and
(7) provide reports, through the Co-chairpersons of the Committee, to the President as requested or at least annually.

(b) The Support Office shall:

(1) provide management and administrative support for the Committee;
(2) develop Network strategies, goals, objectives, policies, plans, and legislation in accordance with guidance provided by the Committee;
(3) consult with agencies, States, nongovernment organizations, and international counterparts in developing Network development tasks;
(4) develop and make recommendations concerning Network activities to the agencies as approved by the Committee; and
(5) participate in projects that promote the goals and objectives of the Network.

SEC. 4. *Implementation*. (a) The Committee, with the assistance of the Support Office, shall address national and international issues associated with the development of the Network within the context of:

(1) promoting the United States as an example and leader in the development and dissemination of disaster information, both domestically and abroad, and, to this end, seeking cooperation with foreign governments and international organizations;
(2) striving to include all appropriate stakeholders in the development of the Network; and
(3) facilitating the creation of a framework that involves public and private stakeholders in a partnership for sustained operations of the Network.

(b) Intelligence activities, as determined by the Director of the Central Intelligence Agency, as well as national security-related activities of the Department of Defense and of the Department of Energy, are exempt from compliance with this order.

SEC. 5. *Tribal Governments*. This order does not impose any requirements on tribal governments.

SEC. 6. *Judicial Review*. This order does not create any right or benefit, substantive or procedural, enforceable by law, by a party against the United States, its officers, its employees, or any other person.

EX. ORD. NO. 13407. PUBLIC ALERT AND WARNING SYSTEM

Ex. Ord. No. 13407, June 26, 2006, 71 F.R. 36975, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*), and the Homeland Security Act of 2002, as amended (6 U.S.C. 101 *et seq.*), it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the United States to have an effective, reliable, integrated, flexible, and comprehensive system to alert and warn the American people in situations of war, terrorist attack, natural disaster, or other hazards to public safety and well-being (public alert and warning system), taking appropriate account of the functions, capabilities, and needs of the private sector and of all levels of government in our Federal system, and to ensure that under all conditions the President can communicate with the American people.

SEC. 2. *Functions of the Secretary of Homeland Security*. (a) To implement the policy set forth in section 1 of this order, the Secretary of Homeland Security shall:

(i) inventory, evaluate, and assess the capabilities and integration with the public alert and warning system of Federal, State, territorial, tribal, and local public alert and warning resources;

(ii) establish or adopt, as appropriate, common alerting and warning protocols, standards, terminology, and operating procedures for the public alert and warning system to enable interoperability and the secure delivery of coordinated messages to the American people through as many communication pathways as practicable, taking account of Federal Communications Commission rules as provided by law;

(iii) ensure the capability to adapt the distribution and content of communications on the basis of geographic location, risks, or personal user preferences, as appropriate;

(iv) include in the public alert and warning system the capability to alert and warn all Americans, including those with disabilities and those without an understanding of the English language;

(v) through cooperation with the owners and operators of communication facilities, maintain, protect, and, if necessary, restore communications facilities and capabilities necessary for the public alert and warning system;

(vi) ensure the conduct of training, tests, and exercises for the public alert and warning system;

(vii) ensure the conduct of public education efforts so that State, territorial, tribal, and local governments, the private sector, and the American people understand the functions of the public alert and warning system and how to access, use, and respond to information from the public alert and warning system;

(viii) consult, coordinate, and cooperate with the private sector, including communications media organizations, and Federal, State, territorial, tribal, and local governmental authorities, including emergency response providers, as appropriate;

(ix) administer the Emergency Alert System (EAS) as a critical component of the public alert and warning system; and

(x) ensure that under all conditions the President of the United States can alert and warn the American people.

(b) In performing the functions set forth in subsection (a) of this section, the Secretary of Homeland Security shall coordinate with the Secretary of Commerce, the heads of other departments and agencies of the executive branch (agencies), and other officers of the United States, as appropriate, and the Federal Communications Commission.

(c) The Secretary of Homeland Security may issue guidance to implement this order.

SEC. 3. *Duties of Heads of Departments and Agencies.*

(a) The heads of agencies shall provide such assistance and information as the Secretary of Homeland Security may request to implement this order.

(b) In addition to performing the duties specified under subsection (a) of this section:

(i) the Secretary of Commerce shall make available to the Secretary of Homeland Security, to assist in implementing this order, the capabilities and expertise of the Department of Commerce relating to standards, technology, telecommunications, dissemination systems, and weather;

(ii) the Secretary of Defense shall provide to the Secretary of Homeland Security requirements for the public alert and warning system necessary to ensure proper coordination of the functions of the Department of Defense with the use of such system;

(iii) the Federal Communications Commission shall, as provided by law, adopt rules to ensure that communications systems have the capacity to transmit alerts and warnings to the public as part of the public alert and warning system; and

(iv) the heads of agencies with capabilities for public alert and warning shall comply with guidance issued by the Secretary of Homeland Security under subsection 2(c) of this order, and shall develop and maintain such capabilities in a manner consistent and interoperable with the public alert and warning system.

SEC. 4. *Reports on Implementation.* Not later than 90 days after the date of this order, the Secretary of Homeland Security shall submit to the President, through the Assistant to the President for Homeland Security and Counterterrorism, a plan for the implementation of this order, and shall thereafter submit reports from time to time, and not less often than once each year, on such implementation, together with any recommendations the Secretary finds appropriate.

SEC. 5. *Amendment, Revocation, and Transition.*

(a) [Amended Ex. Ord. No. 12472, set out as a note above.]

(b) Not later than 120 days after the date of this order, the Secretary of Homeland Security, after consultation with the Assistant to the President for Homeland Security and Counterterrorism, shall issue guidance under section 2(c) of this order that shall address the subject matter of the presidential memorandum of September 15, 1995, for the Director, Federal Emergency Management Agency, on Presidential Communications with the General Public During Periods of National Emergency, and upon issuance of such guidance such memorandum is revoked.

(c) The Secretary of Homeland Security shall ensure an orderly and effective transition, without loss of capability, from alert and warning systems available as of the date of this order to the public alert and warning system for which this order provides.

SEC. 6. *General Provisions.* (a) This order shall be implemented in a manner consistent with:

(i) applicable law and presidential guidance, including Executive Order 12472 of April 3, 1984, as amended, and subject to the availability of appropriations; and

(ii) the authorities of agencies, or heads of agencies, vested by law.

(b) This order shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(c) This order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

§ 5195a. Definitions

(a) Definitions

For purposes of this subchapter only:

(1) Hazard

The term ''hazard'' means an emergency or disaster resulting from—

(A) a natural disaster; or

(B) an accidental or man-caused event.

(2) Natural disaster

The term ''natural disaster'' means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons.

(3) Emergency preparedness

The term ''emergency preparedness'' means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:

(A) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of the civilian population).

(B) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(C) Measures to be undertaken following a hazard (including activities for fire fighting,

rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

(4) Organizational equipment

The term ''organizational equipment'' means equipment determined by the Director to be necessary to an emergency preparedness organization, as distinguished from personal equipment, and of such a type or nature as to require it to be financed in whole or in part by the Federal Government. Such term does not include those items which the local community normally uses in combating local disasters, except when required in unusual quantities dictated by the requirements of the emergency preparedness plans.

(5) Materials

The term ''materials'' includes raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for emergency preparedness.

(6) Facilities

The term ''facilities'', except as otherwise provided in this subchapter, includes buildings, shelters, utilities, and land.

(7) Director

The term ''Director'' means the Administrator of the Federal Emergency Management Agency.

(8) Neighboring countries

The term ''neighboring countries'' includes Canada and Mexico.

(9) United States and States

The terms ''United States'' and ''States'' includes[1] the several States, the District of Columbia, and territories and possessions of the United States.

(10) State

The term ''State'' includes interstate emergency preparedness authorities established under section 5196(h) of this title.

(b) Cross reference

The terms ''national defense'' and ''defense'', as used in the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.), includes[1] emergency preparedness activities conducted pursuant to this subchapter.

(Pub. L. 93–288, title VI, § 602, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3101; amended Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

The Defense Production Act of 1950, referred to in subsec. (b), is act Sept. 8, 1950, ch. 932, 64 Stat. 798, as amended, which is classified to section 2061 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 2061 of Title 50, Appendix, and Tables.

[1] So in original. Probably should be ''include''.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 2252 and 2282 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (a)(7) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5195b. Administration of subchapter

This subchapter shall be carried out by the Administrator of the Federal Emergency Management Agency.

(Pub. L. 93–288, title VI, § 603, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3102; amended Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and

sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5195c. Critical infrastructures protection

(a) Short title

This section may be cited as the ''Critical Infrastructures Protection Act of 2001''.

(b) Findings

Congress makes the following findings:

(1) The information revolution has transformed the conduct of business and the operations of government as well as the infrastructure relied upon for the defense and national security of the United States.

(2) Private business, government, and the national security apparatus increasingly depend on an interdependent network of critical physical and information infrastructures, including telecommunications, energy, financial services, water, and transportation sectors.

(3) A continuous national effort is required to ensure the reliable provision of cyber and physical infrastructure services critical to maintaining the national defense, continuity of government, economic prosperity, and quality of life in the United States.

(4) This national effort requires extensive modeling and analytic capabilities for purposes of evaluating appropriate mechanisms to ensure the stability of these complex and interdependent systems, and to underpin policy recommendations, so as to achieve the continuous viability and adequate protection of the critical infrastructure of the Nation.

(c) Policy of the United States

It is the policy of the United States—

(1) that any physical or virtual disruption of the operation of the critical infrastructures of the United States be rare, brief, geographically limited in effect, manageable, and minimally detrimental to the economy, human and government services, and national security of the United States;

(2) that actions necessary to achieve the policy stated in paragraph (1) be carried out in a public-private partnership involving corporate and non-governmental organizations; and

(3) to have in place a comprehensive and effective program to ensure the continuity of essential Federal Government functions under all circumstances.

(d) Establishment of national competence for critical infrastructure protection

(1) Support of critical infrastructure protection and continuity by National Infrastructure Simulation and Analysis Center

There shall be established the National Infrastructure Simulation and Analysis Center (NISAC) to serve as a source of national competence to address critical infrastructure protection and continuity through support for activities related to counterterrorism, threat assessment, and risk mitigation.

(2) Particular support

The support provided under paragraph (1) shall include the following:

(A) Modeling, simulation, and analysis of the systems comprising critical infrastructures, including cyber infrastructure, telecommunications infrastructure, and physical infrastructure, in order to enhance understanding of the large-scale complexity of such systems and to facilitate modification of such systems to mitigate the threats to such systems and to critical infrastructures generally.

(B) Acquisition from State and local governments and the private sector of data necessary to create and maintain models of such systems and of critical infrastructures generally.

(C) Utilization of modeling, simulation, and analysis under subparagraph (A) to provide education and training to policymakers on matters relating to—

(i) the analysis conducted under that subparagraph;

(ii) the implications of unintended or unintentional disturbances to critical infrastructures; and

(iii) responses to incidents or crises involving critical infrastructures, including the continuity of government and private sector activities through and after such incidents or crises.

(D) Utilization of modeling, simulation, and analysis under subparagraph (A) to provide recommendations to policymakers, and to departments and agencies of the Federal Government and private sector persons and entities upon request, regarding means of enhancing the stability of, and preserving, critical infrastructures.

(3) Recipient of certain support

Modeling, simulation, and analysis provided under this subsection shall be provided, in particular, to relevant Federal, State, and local entities responsible for critical infrastructure protection and policy.

(e) Critical infrastructure defined

In this section, the term ''critical infrastructure'' means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(f) Authorization of appropriations

There is hereby authorized for the Department of Defense for fiscal year 2002, $20,000,000 for the Defense Threat Reduction Agency for activities of the National Infrastructure Simulation and Analysis Center under this section in that fiscal year.

(Pub. L. 107–56, title X, § 1016, Oct. 26, 2001, 115 Stat. 400.)

CODIFICATION

Section was enacted as the Critical Infrastructures Protection Act of 2001 and also as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or USA PATRIOT Act, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the National Infrastructure Simulation and Analysis Center of the Department of Energy, including the functions of the Secretary of Energy relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 121(g)(4), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PART A—POWERS AND DUTIES

§ 5196. Detailed functions of administration

(a) In general

In order to carry out the policy described in section 5195 of this title, the Director shall have the authorities provided in this section.

(b) Federal emergency response plans and programs

The Director may prepare Federal response plans and programs for the emergency preparedness of the United States and sponsor and direct such plans and programs. To prepare such plans and programs and coordinate such plans and programs with State efforts, the Director may request such reports on State plans and operations for emergency preparedness as may be necessary to keep the President, Congress, and the States advised of the status of emergency preparedness in the United States.

(c) Delegation of emergency preparedness responsibilities

With the approval of the President, the Director may delegate to other departments and agencies of the Federal Government appropriate emergency preparedness responsibilities and review and coordinate the emergency preparedness activities of the departments and agencies with each other and with the activities of the States and neighboring countries.

(d) Communications and warnings

The Director may make appropriate provision for necessary emergency preparedness communications and for dissemination of warnings to the civilian population of a hazard.

(e) Emergency preparedness measures

The Director may study and develop emergency preparedness measures designed to afford adequate protection of life and property, including—

(1) research and studies as to the best methods of treating the effects of hazards;

(2) developing shelter designs and materials for protective covering or construction;

(3) developing equipment or facilities and effecting the standardization thereof to meet emergency preparedness requirements; and

(4) plans that take into account the needs of individuals with pets and service animals prior to, during, and following a major disaster or emergency.

(f) Training programs

(1) The Director may—

(A) conduct or arrange, by contract or otherwise, for training programs for the instruction of emergency preparedness officials and other persons in the organization, operation, and techniques of emergency preparedness;

(B) conduct or operate schools or including the payment of travel expenses, in accordance with subchapter I of chapter 57 of title 5 and the Standardized Government Travel Regulations, and per diem allowances, in lieu of subsistence for trainees in attendance or the furnishing of subsistence and quarters for trainees and instructors on terms prescribed by the Director; and

(C) provide instructors and training aids as necessary.

(2) The terms prescribed by the Director for the payment of travel expenses and per diem allowances authorized by this subsection shall include a provision that such payment shall not exceed one-half of the total cost of such expenses.

(3) The Director may lease real property required for the purpose of carrying out this subsection, but may not acquire fee title to property unless specifically authorized by law.

(g) Public dissemination of emergency preparedness information

The Director may publicly disseminate appropriate emergency preparedness information by all appropriate means.

(h) Emergency preparedness compacts

(1) The Director shall establish a program supporting the development of emergency preparedness compacts for acts of terrorism, disasters, and emergencies throughout the Nation, by—

(A) identifying and cataloging existing emergency preparedness compacts for acts of terrorism, disasters, and emergencies at the State and local levels of government;

(B) disseminating to State and local governments examples of best practices in the development of emergency preparedness compacts and models of existing emergency preparedness compacts, including agreements involving interstate jurisdictions; and

(C) completing an inventory of Federal response capabilities for acts of terrorism, disasters, and emergencies, making such inventory available to appropriate Federal, State, and local government officials, and ensuring that such inventory is as current and accurate as practicable.

(2) The Director may—

(A) assist and encourage the States to negotiate and enter into interstate emergency preparedness compacts;

(B) review the terms and conditions of such proposed compacts in order to assist, to the extent feasible, in obtaining uniformity between such compacts and consistency with Federal emergency response plans and programs;

(C) assist and coordinate the activities under such compacts; and

(D) aid and assist in encouraging reciprocal emergency preparedness legislation by the States which will permit the furnishing of mutual aid for emergency preparedness purposes in the event of a hazard which cannot be adequately met or controlled by a State or political subdivision thereof threatened with or experiencing a hazard.

(3) A copy of each interstate emergency preparedness compact shall be transmitted promptly to the Senate and the House of Representatives. The consent of Congress is deemed to be granted to each such compact upon the expiration of the 60-day period beginning on the date on which the compact is transmitted to Congress.

(4) Nothing in this subsection shall be construed as preventing Congress from disapproving, or withdrawing at any time its consent to, any interstate emergency preparedness compact.

(i) Materials and facilities

(1) The Director may procure by condemnation or otherwise, construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency preparedness, with the right to take immediate possession thereof.

(2) Facilities acquired by purchase, donation, or other means of transfer may be occupied, used, and improved for the purposes of this subchapter before the approval of title by the Attorney General as required by sections 3111 and 3112 of title 40.

(3) The Director may lease real property required for the purpose of carrying out the provisions of this subsection, but shall not acquire fee title to property unless specifically authorized by law.

(4) The Director may procure and maintain under this subsection radiological, chemical, bacteriological, and biological agent monitoring and decontamination devices and distribute such devices by loan or grant to the States for emergency preparedness purposes, under such terms and conditions as the Director shall prescribe.

(j) Financial contributions

(1) The Director may make financial contributions, on the basis of programs or projects approved by the Director, to the States for emergency preparedness purposes, including the procurement, construction, leasing, or renovating of materials and facilities. Such contributions shall be made on such terms or conditions as the Director shall prescribe, including the method of purchase, the quantity, quality, or specifications of the materials or facilities, and such other factors or care or treatment to assure the uniformity, availability, and good condition of such materials or facilities.

(2) The Director may make financial contributions, on the basis of programs or projects approved by the Director, to the States and local authorities for animal emergency preparedness purposes, including the procurement, construction, leasing, or renovating of emergency shelter facilities and materials that will accommodate people with pets and service animals.

(3) No contribution may be made under this subsection for the procurement of land or for the purchase of personal equipment for State or local emergency preparedness workers.

(4) The amounts authorized to be contributed by the Director to each State for organizational equipment shall be equally matched by such State from any source it determines is consistent with its laws.

(5) Financial contributions to the States for shelters and other protective facilities shall be determined by taking the amount of funds appropriated or available to the Director for such facilities in each fiscal year and apportioning such funds among the States in the ratio which the urban population of the critical target areas (as determined by the Director) in each State, at the time of the determination, bears to the total urban population of the critical target areas of all of the States.

(6) The amounts authorized to be contributed by the Director to each State for such shelters and protective facilities shall be equally matched by such State from any source it determines is consistent with its laws and, if not matched within a reasonable time, the Director may reallocate such amounts to other States under the formula described in paragraph (4).[1] The value of any land contributed by any State or political subdivision thereof shall be excluded from the computation of the State share under this subsection.

(7) The amounts paid to any State under this subsection shall be expended solely in carrying out the purposes set forth herein and in accordance with State emergency preparedness programs or projects approved by the Director. The Director shall make no contribution toward the cost of any program or project for the procurement, construction, or leasing of any facility which (A) is intended for use, in whole or in part, for any purpose other than emergency preparedness, and (B) is of such kind that upon completion it will, in the judgment of the Director, be capable of producing sufficient revenue to provide reasonable assurance of the retirement or repayment of such cost; except that (subject to the preceding provisions of this subsection) the Director may make a contribution to any State toward that portion of the cost of the construction, reconstruction, or enlargement of any facility which the Director determines to be directly attributable to the incorporation in such facility of any feature of construction or design not necessary for the principal intended purpose thereof but which is, in the judgment of the Director necessary for the use of such facility for emergency preparedness purposes.

(8) The Director shall submit to Congress a report, at least annually, regarding all contributions made pursuant to this subsection.

(9) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Director under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40, and every such employee shall receive compensation at a rate not less than one and ½ times the basic rate of pay of the employee for all hours worked in any workweek in excess of eight hours in any workday or 40 hours in the workweek, as the case may be. The Director shall make no contribution of Federal funds without first obtaining adequate assurance that these labor standards will be maintained upon

[1] See References in Text note below.

the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40.

(k) Sale or disposal of certain materials and facilities

The Director may arrange for the sale or disposal of materials and facilities found by the Director to be unnecessary or unsuitable for emergency preparedness purposes in the same manner as provided for excess property under the Federal Property and Administrative Services Act of 1949.[1] Any funds received as proceeds from the sale or other disposition of such materials and facilities shall be deposited into the Treasury as miscellaneous receipts.

(Pub. L. 93–288, title VI, § 611, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3102; amended Pub. L. 104–66, title II, § 2071, Dec. 21, 1995, 109 Stat. 729; Pub. L. 108–458, title VII, § 7406, Dec. 17, 2004, 118 Stat. 3851; Pub. L. 109–308, § 3, Oct. 6, 2006, 120 Stat. 1725.)

REFERENCES IN TEXT

Paragraph (4), referred to in subsec. (j)(6), was redesignated paragraph (5) by Pub. L. 109–308, § 3(2), Oct. 6, 2006, 120 Stat. 1725.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (j)(9), is Reorg. Plan No. 14 of 1950, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (k), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

CODIFICATION

In subsec. (i)(2), ''sections 3111 and 3112 of title 40'' substituted for ''section 355 of the Revised Statutes (40 U.S.C. 255)'' and, in subsec. (j)(9), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931 (commonly known as the Davis-Bacon Act (40 U.S.C. 276a–276a–5))'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (40 U.S.C. 276(c))'', meaning 276c, on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2281 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

AMENDMENTS

2006—Subsec. (e)(4). Pub. L. 109–308, § 3(1), added par. (4).

Subsec. (j)(2) to (9). Pub. L. 109–308, § 3(2), added par. (2) and redesignated former pars. (2) to (8) as (3) to (9), respectively.

2004—Subsec. (h). Pub. L. 108–458 substituted ''Emergency preparedness compacts'' for ''Interstate emergency preparedness compacts'' in subsec. heading, added par. (1), redesignated former pars. (1) to (3) as (2) to (4), respectively, and realigned margins of par. (2), as redesignated.

1995—Subsec. (i)(3) to (5). Pub. L. 104–66 redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ''The Director shall submit to Congress a report, at least quarterly, describing all property acquisitions made pursuant to this subsection.''

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

NATIONAL CAPITAL REGION MUTUAL AID

Pub. L. 108–458, title VII, § 7302, Dec. 17, 2004, 118 Stat. 3840, provided that:

''(a) DEFINITIONS.—In this section:

''(1) AUTHORIZED REPRESENTATIVE OF THE FEDERAL GOVERNMENT.—The term 'authorized representative of the Federal Government' means any individual or individuals designated by the President with respect to the executive branch, the Chief Justice with respect to the Federal judiciary, or the President of the Senate and Speaker of the House of Representatives with respect to Congress, or their designees, to request assistance under a mutual aid agreement for an emergency or public service event.

''(2) CHIEF OPERATING OFFICER.—The term 'chief operating officer' means the official designated by law to declare an emergency in and for the locality of that chief operating officer.

''(3) EMERGENCY.—The term 'emergency' means a major disaster or emergency declared by the President, or a state of emergency declared by the mayor of the District of Columbia, the Governor of the State of Maryland or the Commonwealth of Virginia, or the declaration of a local emergency by the chief operating officer of a locality, or their designees, that triggers mutual aid under the terms of a mutual aid agreement.

''(4) EMPLOYEE.—The term 'employee' means the employees of the party, including its agents or authorized volunteers, who are committed in a mutual aid agreement to prepare for or who respond to an emergency or public service event.

''(5) LOCALITY.—The term 'locality' means a county, city, or town within the State of Maryland or the Commonwealth of Virginia and within the National Capital Region.

''(6) MUTUAL AID AGREEMENT.—The term 'mutual aid agreement' means an agreement, authorized under subsection (b), for the provision of police, fire, rescue and other public safety and health or medical services to any party to the agreement during a public service event, an emergency, or pre-planned training event.

''(7) NATIONAL CAPITAL REGION OR REGION.—The term 'National Capital Region' or 'Region' means the area defined under section 2674(f)(2) of title 10, United States Code, and those counties with a border abutting that area and any municipalities therein.

''(8) PARTY.—The term 'party' means the State of Maryland, the Commonwealth of Virginia, the District of Columbia, and any of the localities duly executing a Mutual Aid Agreement under this section.

''(9) PUBLIC SERVICE EVENT.—The term 'public service event'—

''(A) means any undeclared emergency, incident or situation in preparation for or response to which the mayor of the District of Columbia, an authorized representative of the Federal Government, the Governor of the State of Maryland, the Governor of the Commonwealth of Virginia, or the chief operating officer of a locality in the National Capital Region, or their designees, requests or provides assistance under a Mutual Aid Agreement within the National Capital Region; and

''(B) includes Presidential inaugurations, public gatherings, demonstrations and protests, and law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and other support that require human resources, equipment, facilities or services supplemental to or greater than the requesting jurisdiction can provide.

''(10) STATE.—The term 'State' means the State of Maryland, the Commonwealth of Virginia, and the District of Columbia.

''(11) TRAINING.—The term 'training' means emergency and public service event-related exercises, testing, or other activities using equipment and personnel to simulate performance of any aspect of the giving or receiving of aid by National Capital Region jurisdictions during emergencies or public service events, such actions occurring outside actual emergency or public service event periods.

''(b) MUTUAL AID AUTHORIZED.—

''(1) IN GENERAL.—The mayor of the District of Columbia, any authorized representative of the Federal Government, the Governor of the State of Maryland, the Governor of the Commonwealth of Virginia, or the chief operating officer of a locality, or their designees, acting within his or her jurisdictional purview, may, in accordance with State law, enter into, request or provide assistance under mutual aid agreements with localities, the Washington Metropolitan Area Transit Authority, the Metropolitan Washington Airports Authority, and any other governmental agency or authority for—

''(A) law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and resource support in an emergency or public service event;

''(B) preparing for, mitigating, managing, responding to or recovering from any emergency or public service event; and

''(C) training for any of the activities described under subparagraphs (A) and (B).

''(2) FACILITATING LOCALITIES.—The State of Maryland and the Commonwealth of Virginia are encouraged to facilitate the ability of localities to enter into interstate mutual aid agreements in the National Capital Region under this section.

''(3) APPLICATION AND EFFECT.—This section—

''(A) does not apply to law enforcement security operations at special events of national significance under section 3056(e) of title 18, United States Code, or other law enforcement functions of the United States Secret Service;

''(B) does not diminish any authorities, express or implied, of Federal agencies to enter into mutual aid agreements in furtherance of their Federal missions; and

''(C) does not—

''(i) preclude any party from entering into supplementary Mutual Aid Agreements with fewer than all the parties, or with another party; or

''(ii) affect any other agreement in effect before the date of enactment of this Act [Dec. 17, 2004] among the States and localities, including the Emergency Management Assistance Compact.

''(4) RIGHTS DESCRIBED.—Other than as described in this section, the rights and responsibilities of the parties to a mutual aid agreement entered into under this section shall be as described in the mutual aid agreement.

''(c) DISTRICT OF COLUMBIA.—

''(1) IN GENERAL.—The District of Columbia may purchase liability and indemnification insurance or become self insured against claims arising under a mutual aid agreement authorized under this section.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out paragraph (1).

''(d) LIABILITY AND ACTIONS AT LAW.—

''(1) IN GENERAL.—Any responding party or its officers or employees rendering aid or failing to render aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a mutual aid agreement authorized under this section, and any party or its officers or employees engaged in training activities with another party under such a mutual aid agreement, shall be liable on account of any act or omission of its officers or employees while so engaged or on account of the maintenance or use of any related equipment, facilities, or supplies, but only to the extent permitted under the laws and procedures of the State of the party rendering aid.

''(2) ACTIONS.—Any action brought against a party or its officers or employees on account of an act or omission in the rendering of aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, or failure to render such aid or on account of the maintenance or use of any related equipment, facilities, or supplies may be brought only under the laws and procedures of the State of the party rendering aid and only in the Federal or State courts located therein. Actions against the United States under this section may be brought only in Federal courts.

''(3) IMMUNITIES.—This section shall not abrogate any other immunities from liability that any party has under any other Federal or State law.

''(e) WORKERS COMPENSATION.—

''(1) COMPENSATION.—Each party shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that party and representatives of deceased members of such forces if such members sustain injuries or are killed while rendering aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a mutual aid agreement, or engaged in training activities under a mutual aid agreement, in the same manner and on the same terms as if the injury or death were sustained within their own jurisdiction.

''(2) OTHER STATE LAW.—No party shall be liable under the law of any State other than its own for providing for the payment of compensation and death benefits to injured members of the emergency forces of that party and representatives of deceased members of such forces if such members sustain injuries or are killed while rendering aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a mutual aid agreement or engaged in training activities under a mutual aid agreement.

''(f) LICENSES AND PERMITS.—If any person holds a license, certificate, or other permit issued by any responding party evidencing the meeting of qualifications for professional, mechanical, or other skills and assistance is requested by a receiving jurisdiction, such person will be deemed licensed, certified, or permitted by the receiving jurisdiction to render aid involving such skill to meet a public service event, emergency or training for any such events.''

PILOT PROGRAM TO STUDY DESIGN AND CONSTRUCTION OF BUILDINGS TO MINIMIZE EFFECTS OF NUCLEAR EXPLOSIONS

Pub. L. 96–342, title VII, § 704, Sept. 8, 1980, 94 Stat. 1090, required the Director of the Federal Emergency Management Agency to establish a pilot program of de-

signing and constructing buildings able to withstand nuclear explosions and to submit a report to Congress on the establishment of the pilot program no later than Apr. 1, 1981.

§ 5196a. Mutual aid pacts between States and neighboring countries

The Director shall give all practicable assistance to States in arranging, through the Department of State, mutual emergency preparedness aid between the States and neighboring countries.

(Pub. L. 93–288, title VI, § 612, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3105.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2283 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5196b. Contributions for personnel and administrative expenses

(a) General authority

To further assist in carrying out the purposes of this subchapter, the Director may make financial contributions to the States (including interstate emergency preparedness authorities established pursuant to section 5196(h) of this title) for necessary and essential State and local emergency preparedness personnel and administrative expenses, on the basis of approved plans (which shall be consistent with the Federal emergency response plans for emergency preparedness) for the emergency preparedness of the States. The financial contributions to the States under this section may not exceed one-half of the total cost of such necessary and essential State and local emergency preparedness personnel and administrative expenses.

(b) Plan requirements

A plan submitted under this section shall—

(1) provide, pursuant to State law, that the plan shall be in effect in all political subdivisions of the State and be mandatory on them and be administered or supervised by a single State agency;

(2) provide that the State shall share the financial assistance with that provided by the Federal Government under this section from any source determined by it to be consistent with State law;

(3) provide for the development of State and local emergency preparedness operational plans, including a catastrophic incident annex, pursuant to standards approved by the Director;

(4) provide for the employment of a full-time emergency preparedness director, or deputy director, by the State;

(5) provide that the State shall make such reports in such form and content as the Director may require;

(6) make available to duly authorized representatives of the Director and the Comptroller General, books, records, and papers necessary to conduct audits for the purposes of this section; and

(7) include a plan for providing information to the public in a coordinated manner.

(c) Catastrophic incident annex

(1) Consistency

A catastrophic incident annex submitted under subsection (b)(3) shall be—

(A) modeled after the catastrophic incident annex of the National Response Plan; and

(B) consistent with the national preparedness goal established under section 743 of title 6, the National Incident Management System, the National Response Plan, and other related plans and strategies.

(2) Consultation

In developing a catastrophic incident annex submitted under subsection (b)(3), a State shall consult with and seek appropriate comments from local governments, emergency response providers, locally governed multijurisdictional councils of government, and regional planning commissions.

(d) Terms and conditions

The Director shall establish such other terms and conditions as the Director considers necessary and proper to carry out this section.

(e) Application of other provisions

In carrying out this section, the provisions of section[1] 5196(h) and 5197(h) of this title shall apply.

(f) Allocation of funds

For each fiscal year concerned, the Director shall allocate to each State, in accordance with regulations and the total sum appropriated under this subchapter, amounts to be made available to the States for the purposes of this section. Regulations governing allocations to the States under this subsection shall give due regard to (1) the criticality of the areas which may be affected by hazards with respect to the development of the total emergency preparedness readiness of the United States, (2) the relative state of development of emergency preparedness readiness of the State, (3) population, and (4) such other factors as the Director shall prescribe. The Director may reallocate the excess of any allocation not used by a State in a plan submitted under this section. Amounts paid to any State or political subdivision under this

[1] So in original. Probably should be ''sections''.

section shall be expended solely for the purposes set forth in this section.

(g) Standards for State and local emergency preparedness operational plans

In approving standards for State and local emergency preparedness operational plans pursuant to subsection (b)(3), the Director shall ensure that such plans take into account the needs of individuals with household pets and service animals prior to, during, and following a major disaster or emergency.

(h)[2] Submission of plan

If a State fails to submit a plan for approval as required by this section within 60 days after the Director notifies the States of the allocations under this section, the Director may reallocate such funds, or portions thereof, among the other States in such amounts as, in the judgment of the Director, will best assure the adequate development of the emergency preparedness capability of the United States.

(h)[2] Annual reports

The Director shall report annually to the Congress all contributions made pursuant to this section.

(Pub. L. 93–288, title VI, § 613, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3106; amended Pub. L. 107–188, title I, § 151, June 12, 2002, 116 Stat. 630; Pub. L. 109–295, title VI, § 631, Oct. 4, 2006, 120 Stat. 1420; Pub. L. 109–308, § 2, Oct. 6, 2006, 120 Stat. 1725.)

CODIFICATION

Section 631(2) of Pub. L. 109–295, which directed amendment of this section "by redesignating subsections (c) through (g) and subsections (d) through (h), respectively", was executed by redesignating subsecs. (c) to (g) as (d) to (h), respectively, to reflect the probable intent of Congress.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2286 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–295, § 631(1), inserted "including a catastrophic incident annex," after "plans,".

Subsecs. (c) to (f). Pub. L. 109–295, § 631(2), (3), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively. Former subsec. (f) redesignated (g). See Codification note above.

Subsec. (g). Pub. L. 109–308, § 2(2), added subsec. (g). Former subsec. (g) relating to submission of plan redesignated (h).

Pub. L. 109–295, § 631(2), redesignated subsec. (f) as (g). Former subsec. (g) relating to annual reports redesignated (h). See Codification note above.

Subsec. (h). Pub. L. 109–308, § 2(1), redesignated subsec. (g) relating to submission of plan as (h).

Pub. L. 109–295, § 631(2), redesignated subsec. (g) relating to annual reports as (h). See Codification note above.

2002—Subsec. (b)(7). Pub. L. 107–188 added par. (7).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[2] So in original. Two subsecs. (h) have been enacted.

§ 5196c. Requirement for State matching funds for construction of emergency operating centers

Notwithstanding any other provision of this subchapter, funds appropriated to carry out this subchapter may not be used for the purpose of constructing emergency operating centers (or similar facilities) in any State unless such State matches in an equal amount the amount made available to such State under this subchapter for such purpose.

(Pub. L. 93–288, title VI, § 614, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3107.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2288 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

NON-FEDERAL COST SHARE

Pub. L. 108–7, div. K, title IV, § 419, Feb. 20, 2003, 117 Stat. 526, provided that: "Notwithstanding 42 U.S.C. 5196c, amounts provided in Public Law 107–117 [see Tables for classification] and subsequent appropriations Acts for the construction of emergency operations centers (or similar facilities) shall only require a 25 percent non-Federal cost share."

§ 5196d. Use of funds to prepare for and respond to hazards

Funds made available to the States under this subchapter may be used by the States for the purposes of preparing for hazards and providing emergency assistance in response to hazards. Regulations prescribed to carry out this section shall authorize the use of emergency preparedness personnel, materials, and facilities supported in whole or in part through contributions under this subchapter for emergency preparedness activities and measures related to hazards.

(Pub. L. 93–288, title VI, § 615, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3107.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2289 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

§ 5196e. Radiological Emergency Preparedness Fund

There is hereby established in the Treasury a Radiological Emergency Preparedness Fund,

which shall be available under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], as amended, and Executive Order 12657, for offsite radiological emergency planning, preparedness, and response. Beginning in fiscal year 1999 and thereafter, the Administrator of the Federal Emergency Management Agency (FEMA) shall promulgate through rulemaking fees to be assessed and collected, applicable to persons subject to FEMA's radiological emergency preparedness regulations. The aggregate charges assessed pursuant to this section during fiscal year 1999 shall not be less than 100 percent of the amounts anticipated by FEMA necessary for its radiological emergency preparedness program for such fiscal year. The methodology for assessment and collection of fees shall be fair and equitable; and shall reflect costs of providing such services, including administrative costs of collecting such fees. Fees received pursuant to this section shall be deposited in the Fund as offsetting collections and will become available for authorized purposes on October 1, 1999, and remain available until expended.

(Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2502; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Executive Order 12657, referred to in text, is Ex. Ord. No. 12657, Nov. 18, 1988, 53 F.R. 47513, which is set out as a note under section 5195 of this title.

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5196f. Disaster related information services

(a) In general

Consistent with section 5151(a) of this title, the Administrator of Federal[1] Emergency Management Agency shall—

(1) identify, in coordination with State and local governments, population groups with limited English proficiency and take into account such groups in planning for an emergency or major disaster;

(2) ensure that information made available to individuals affected by a major disaster or emergency is made available in formats that can be understood by—

(A) population groups identified under paragraph (1); and

(B) individuals with disabilities or other special needs; and

(3) develop and maintain an informational clearinghouse of model language assistance programs and best practices for State and local governments in providing services related to a major disaster or emergency.

(b) Group size

For purposes of subsection (a), the Administrator of Federal[1] Emergency Management Agency shall define the size of a population group.

(Pub. L. 93–288, title VI, § 616, as added and amended Pub. L. 109–295, title VI, §§ 612(c), 689e, Oct. 4, 2006, 120 Stat. 1410, 1452.)

CHANGE OF NAME

''Administrator of Federal Emergency Management Agency'' substituted for ''Director of Federal Emergency Management Agency'' in subsecs. (a) and (b) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

PART B—GENERAL PROVISIONS

§ 5197. Administrative authority

(a) In general

For the purpose of carrying out the powers and duties assigned to the Director under this subchapter, the Director may exercise the administrative authorities provided under this section.

(b) Advisory personnel

(1) The Director may employ not more than 100 part-time or temporary advisory personnel (including not to exceed 25 subjects of the United Kingdom or citizens of Canada) as the Director considers to be necessary in carrying out the provisions of this subchapter.

[1] So in original. The word ''the'' probably should appear before ''Federal''.

(2) Persons holding other offices or positions under the United States for which they receive compensation, while serving as advisory personnel, shall receive no additional compensation for such service. Other part-time or temporary advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed $180 for each day of service, plus authorized subsistence and travel, as determined by the Director.

(c) Services of other agency personnel and volunteers

The Director may—

(1) use the services of Federal agencies and, with the consent of any State or local government, accept and use the services of State and local agencies;

(2) establish and use such regional and other offices as may be necessary; and

(3) use such voluntary and uncompensated services by individuals or organizations as may from time to time be needed.

(d) Gifts

Notwithstanding any other provision of law, the Director may accept gifts of supplies, equipment, and facilities and may use or distribute such gifts for emergency preparedness purposes in accordance with the provisions of this subchapter.

(e) Reimbursement

The Director may reimburse any Federal agency for any of its expenditures or for compensation of its personnel and use or consumption of its materials and facilities under this subchapter to the extent funds are available.

(f) Printing

The Director may purchase such printing, binding, and blank-book work from public, commercial, or private printing establishments or binderies as the Director considers necessary upon orders placed by the Public Printer or upon waivers issued in accordance with section 504 of title 44.

(g) Rules and regulations

The Director may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this subchapter and perform any of the powers and duties provided by this subchapter. The Director may perform any of the powers and duties provided by this subchapter through or with the aid of such officials of the Federal Emergency Management Agency as the Director may designate.

(h) Failure to expend contributions correctly

(1) When, after reasonable notice and opportunity for hearing to the State or other person involved, the Director finds that there is a failure to expend funds in accordance with the regulations, terms, and conditions established under this subchapter for approved emergency preparedness plans, programs, or projects, the Director may notify such State or person that further payments will not be made to the State or person from appropriations under this subchapter (or from funds otherwise available for the purposes of this subchapter for any approved plan, program, or project with respect to which there is such failure to comply) until the Director is satisfied that there will no longer be any such failure.

(2) Until so satisfied, the Director shall either withhold the payment of any financial contribution to such State or person or limit payments to those programs or projects with respect to which there is substantial compliance with the regulations, terms, and conditions governing plans, programs, or projects hereunder.

(3) As used in this subsection, the term ''person'' means the political subdivision of any State or combination or group thereof or any person, corporation, association, or other entity of any nature whatsoever, including instrumentalities of States and political subdivisions.

(Pub. L. 93–288, title VI, § 621, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3107.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2253 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5197a. Security regulations

(a) Establishment

The Director shall establish such security requirements and safeguards, including restrictions with respect to access to information and property as the Director considers necessary.

(b) Limitations on employee access to information

No employee of the Federal Emergency Management Agency shall be permitted to have access to information or property with respect to which access restrictions have been established under this section, until it shall have been determined that no information is contained in the files of the Federal Bureau of Investigation or any other investigative agency of the Government indicating that such employee is of questionable loyalty or reliability for security purposes, or if any such information is so disclosed, until the Federal Bureau of Investigation shall have conducted a full field investigation concerning such person and a report thereon shall have been evaluated in writing by the Director.

(c) National security positions

No employee of the Federal Emergency Management Agency shall occupy any position de-

termined by the Director to be of critical importance from the standpoint of national security until a full field investigation concerning such employee shall have been conducted by the Director of the Office of Personnel Management and a report thereon shall have been evaluated in writing by the Administrator of the Federal Emergency Management Agency. In the event such full field investigation by the Director of the Office of Personnel Management develops any data reflecting that such applicant for a position of critical importance is of questionable loyalty or reliability for security purposes, or if the Administrator of the Federal Emergency Management Agency for any other reason considers it to be advisable, such investigation shall be discontinued and a report thereon shall be referred to the Administrator of the Federal Emergency Management Agency for evaluation in writing. Thereafter, the Administrator of the Federal Emergency Management Agency may refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation by such Bureau. The result of such latter investigation by such Bureau shall be furnished to the Administrator of the Federal Emergency Management Agency for action.

(d) Employee oaths

Each Federal employee of the Federal Emergency Management Agency acting under the authority of this subchapter, except the subjects of the United Kingdom and citizens of Canada specified in section 5197(b) of this title, shall execute the loyalty oath or appointment affidavits prescribed by the Director of the Office of Personnel Management. Each person other than a Federal employee who is appointed to serve in a State or local organization for emergency preparedness shall before entering upon duties, take an oath in writing before a person authorized to administer oaths, which oath shall be substantially as follows:

> ''I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.
>
> ''And I do further swear (or affirm) that I do not advocate, nor am I a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence; and that during such time as I am a member of _____ (name of emergency preparedness organization), I will not advocate nor become a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence.''

After appointment and qualification for office, the director of emergency preparedness of any State, and any subordinate emergency preparedness officer within such State designated by the director in writing, shall be qualified to administer any such oath within such State under such regulations as the director shall prescribe. Any person who shall be found guilty of having falsely taken such oath shall be punished as provided in section 1621 of title 18.

(Pub. L. 93–288, title VI, § 622, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3108; amended Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2255 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (b) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5197b. Use of existing facilities

In performing duties under this subchapter, the Director—

(1) shall cooperate with the various departments and agencies of the Federal Government;

(2) shall use, to the maximum extent, the existing facilities and resources of the Federal Government and, with their consent, the facilities and resources of the States and political subdivisions thereof, and of other organizations and agencies; and

(3) shall refrain from engaging in any form of activity which would duplicate or parallel activity of any other Federal department or agency unless the Director, with the written approval of the President, shall determine that such duplication is necessary to accomplish the purposes of this subchapter.

(Pub. L. 93–288, title VI, § 623, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2257 of Title 50, Appendix, War and

National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5197c. Annual report to Congress

The Director shall annually submit a written report to the President and Congress covering expenditures, contributions, work, and accomplishments of the Federal Emergency Management Agency pursuant to this subchapter, accompanied by such recommendations as the Director considers appropriate.

(Pub. L. 93–288, title VI, § 624, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2258 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5197d. Applicability of subchapter

The provisions of this subchapter shall be applicable to the United States, its States, Territories and possessions, and the District of Columbia, and their political subdivisions.

(Pub. L. 93–288, title VI, § 625, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2259 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

§ 5197e. Authorization of appropriations and transfers of funds

(a) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter.

(b) Transfer authority

Funds made available for the purposes of this subchapter may be allocated or transferred for any of the purposes of this subchapter, with the approval of the Director of the Office of Management and Budget, to any agency or government corporation designated to assist in carrying out this subchapter. Each such allocation or transfer shall be reported in full detail to the Congress within 30 days after such allocation or transfer.

(Pub. L. 93–288, title VI, § 626, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2260 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

§ 5197f. Relation to Atomic Energy Act of 1954

Nothing in this subchapter shall be construed to alter or modify the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(Pub. L. 93–288, title VI, § 627, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2262 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

§ 5197g. Federal Bureau of Investigation

Nothing in this subchapter shall be construed to authorize investigations of espionage, sabotage, or subversive acts by any persons other than personnel of the Federal Bureau of Investigation.

(Pub. L. 93–288, title VI, § 628, as added Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2263 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103–337, § 3412(a).

§ 5197h. Minority emergency preparedness demonstration program

(a) In general

The Director shall establish a minority emergency preparedness demonstration program to

research and promote the capacity of minority communities to provide data, information, and awareness education by providing grants to or executing contracts or cooperative agreements with eligible nonprofit organizations to establish and conduct such programs.

(b) Activities supported

An eligible nonprofit organization may use a grant, contract, or cooperative agreement awarded under this section—

(1) to conduct research into the status of emergency preparedness and disaster response awareness in African American and Hispanic households located in urban, suburban, and rural communities, particularly in those States and regions most impacted by natural and manmade disasters and emergencies; and

(2) to develop and promote awareness of emergency preparedness education programs within minority communities, including development and preparation of culturally competent educational and awareness materials that can be used to disseminate information to minority organizations and institutions.

(c) Eligible organizations

A nonprofit organization is eligible to be awarded a grant, contract, or cooperative agreement under this section with respect to a program if the organization is a nonprofit organization that is described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title, whose primary mission is to provide services to communities predominately populated by minority citizens, and that can demonstrate a partnership with a minority-owned business enterprise or minority business located in a HUBZone (as defined in section 632(p) of title 15) with respect to the program.

(d) Use of funds

A recipient of a grant, contract, or cooperative agreement awarded under this section may only use the proceeds of the grant, contract, or agreement to—

(1) acquire expert professional services necessary to conduct research in communities predominately populated by minority citizens, with a primary emphasis on African American and Hispanic communities;

(2) develop and prepare informational materials to promote awareness among minority communities about emergency preparedness and how to protect their households and communities in advance of disasters;

(3) establish consortia with minority national organizations, minority institutions of higher education, and faith-based institutions to disseminate information about emergency preparedness to minority communities; and

(4) implement a joint project with a minority serving institution, including a part B institution (as defined in section 1061(2) of title 20), an institution described in subparagraph (A), (B), or (C) of section 1063b(e)(1)[1] of title 20, and a Hispanic-serving institution (as defined in section 1101a(a)(5) of title 20).

(e) Application and review procedure

To be eligible to receive a grant, contract, or cooperative agreement under this section, an organization must submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may reasonably require. The Director shall establish a procedure by which to accept such applications.

(f) Authorization of appropriation

There is authorized to be appropriated to carry out this section $1,500,000 for fiscal year 2002 and such funds as may be necessary for fiscal years 2003 through 2007. Such sums shall remain available until expended.

(Pub. L. 93–288, title VI, § 629, as added Pub. L. 107–73, title IV, § 431, Nov. 26, 2001, 115 Stat. 697.)

REFERENCES IN TEXT

Subparagraph (A), (B), or (C) of section 1063b(e)(1) of title 20, referred to in subsec. (d)(4), was in the original ''subparagraph (A), (B), or (C) of section 326 of that Act (20 U.S.C. 1063b(e)(1)(A), (B), or (C))'', which was translated as reading ''subparagraph (A), (B), or (C) of section 326(e)(1) of that Act (20 U.S.C. 1063b(e)(1)(A), (B), or (C))'' to reflect the probable intent of Congress.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER V—MISCELLANEOUS

§ 5201. Rules and regulations

(a)(1) The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this chapter, and he may exercise any power or authority conferred on him by any section of this chapter either directly or through such Federal agency or agencies as he may designate.

(2) DEADLINE FOR PAYMENT OF ASSISTANCE.—Rules and regulations authorized by paragraph (1) shall provide that payment of any assistance under this chapter to a State shall be completed within 60 days after the date of approval of such assistance.

(b) In furtherance of the purposes of this chapter, the President or his delegate may accept and use bequests, gifts, or donations of service, money, or property, real, personal, or mixed, tangible, or intangible. All sums received under this subsection shall be deposited in a separate fund on the books of the Treasury and shall be available for expenditure upon the certification of the President or his delegate. At the request of the President or his delegate, the Secretary of the Treasury may invest and reinvest excess monies in the fund. Such investments shall be in public debt securities with maturities suitable

[1] See References in Text note below.

for the needs of the fund and shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to, and form a part of, the fund.

(Pub. L. 93–288, title VII, § 701, formerly title VI, § 601, May 22, 1974, 88 Stat. 163; Pub. L. 96–446, Oct. 13, 1980, 94 Stat. 1893; Pub. L. 100–707, title I, § 108(a), Nov. 23, 1988, 102 Stat. 4707; renumbered title VII, § 701, Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–707 designated existing provision as par. (1) and added par. (2).

1980—Pub. L. 96–446 designated existing provisions as subsec. (a) and added subsec. (b).

DEADLINE FOR ISSUANCE OF REGULATIONS

Pub. L. 100–707, title I, § 113, Nov. 23, 1988, 102 Stat. 4711, provided that: ''Regulations necessary to carry out this title and the amendments made by this title [see Short Title of 1988 Amendment note set out under section 5121 of this title] shall be issued no later than the 180th day following the date of the enactment of this Act [Nov. 23, 1988].''

[Functions of President under section 113 of Pub. L. 100–707 delegated to Director of Federal Emergency Management Agency by section 5 of Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571, set out as a note under section 5195 of this title.]

§ 5202. Repealed. Pub. L. 100–707, title I, § 108(c), Nov. 23, 1988, 102 Stat. 4708

Section, Pub. L. 93–288, title VI, § 606, May 22, 1974, 88 Stat. 164; Pub. L. 95–51, § 1, June 20, 1977, 91 Stat. 233; Pub. L. 96–568, § 2, Dec. 22, 1980, 94 Stat. 3334, authorized appropriations of such sums as necessary to carry out this chapter through the close of Sept. 30, 1981.

§ 5203. Excess disaster assistance payments as budgetary emergency requirements

Beginning in fiscal year 1993, and in each year thereafter, notwithstanding any other provision of law, all amounts appropriated for disaster assistance payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) that are in excess of either the historical annual average obligation of $320,000,000, or the amount submitted in the President's initial budget request, whichever is lower, shall be considered as ''emergency requirements'' pursuant to section 901(b)(2)(D)[1] of title 2, and such amounts shall on and after December 12, 1991, be so designated.

(Pub. L. 102–229, title I, Dec. 12, 1991, 105 Stat. 1711.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

Section 901 of title 2, referred to in text, was amended by Pub. L. 105–33, title X, § 10203(a)(4), Aug. 5, 1997, 111 Stat. 699, by striking out subsec. (b) and adding a new subsec. (b). As so amended, section 901(b)(2)(D) of title 2 no longer refers to ''emergency requirements''. However, ''emergency requirements'' are referred to elsewhere in section 901.

CODIFICATION

Section was enacted as part of the Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of ''Operation Desert Shield/Desert Storm'' Act of 1992, and not as a part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

§ 5204. Insular areas disaster survival and recovery; definitions

As used in sections 5204 to 5204c of this title—

(1) the term ''insular area'' means any of the following: American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands;

(2) the term ''disaster'' means a declaration of a major disaster by the President after September 1, 1989, pursuant to section 5170 of this title; and

(3) the term ''Secretary'' means the Secretary of the Interior.

(Pub. L. 102–247, title II, § 201, Feb. 24, 1992, 106 Stat. 37.)

REFERENCES IN TEXT

Sections 5204 to 5204c of this title, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 102–247, Feb. 24, 1992, 106 Stat. 37, which enacted sections 5204 to 5204c of this title and amended section 5122 of this title.

CODIFICATION

Section was enacted as part of the Omnibus Insular Areas Act of 1992, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 5204a. Authorization of appropriations for insular areas

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to—

(1) reconstruct essential public facilities damaged by disasters in the insular areas that occurred prior to February 24, 1992; and

(2) enhance the survivability of essential public facilities in the event of disasters in the insular areas,

except that with respect to the disaster declared by the President in the case of Hurricane Hugo, September 1989, amounts for any fiscal year shall not exceed 25 percent of the estimated ag-

[1] See References in Text note below.

gregate amount of grants to be made under sections 5170b and 5172 of this title for such disaster. Such sums shall remain available until expended.

(Pub. L. 102–247, title II, § 202, Feb. 24, 1992, 106 Stat. 37.)

CODIFICATION

Section was enacted as part of the Omnibus Insular Areas Act of 1992, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

§ 5204b. Technical assistance for insular areas

(a) Upon the declaration by the President of a disaster in an insular area, the President, acting through the Administrator of the Federal Emergency Management Agency, shall assess, in cooperation with the Secretary and chief executive of such insular area, the capability of the insular government to respond to the disaster, including the capability to assess damage; coordinate activities with Federal agencies, particularly the Federal Emergency Management Agency; develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular government lacks any of these or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area which the President deems necessary for the recovery effort.

(b) One year following the declaration by the President of a disaster in an insular area, the Secretary, in consultation with the Administrator of the Federal Emergency Management Agency, shall submit to the Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources a report on the status of the recovery effort, including an audit of Federal funds expended in the recovery effort and recommendations on how to improve public health and safety, survivability of infrastructure, recovery efforts, and effective use of funds in the event of future disasters.

(Pub. L. 102–247, title II, § 203, Feb. 24, 1992, 106 Stat. 37; Pub. L. 103–437, § 15(p), Nov. 2, 1994, 108 Stat. 4594; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

CODIFICATION

Section was enacted as part of the Omnibus Insular Areas Act of 1992, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–437 substituted ''House Committee on Natural Resources'' for ''House Committee on Interior and Insular Affairs''.

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsecs. (a) and (b) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5204c. Hazard mitigation for insular areas

The total of contributions under the last sentence of section 5170c of this title for the insular areas shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under sections 5170b, 5172, 5173, 5174, and 5178[1] of this title for any disaster: *Provided*, That the President shall require a 50 percent local match for assistance in excess of 10 percent of the estimated aggregate amount of grants to be made under section 5172 of this title for any disaster.

(Pub. L. 102–247, title II, § 204, Feb. 24, 1992, 106 Stat. 38.)

REFERENCES IN TEXT

Section 5178 of this title, referred to in text, was repealed by Pub. L. 106–390, title II, § 206(c), Oct. 30, 2000, 114 Stat. 1571, effective 18 months after Oct. 30, 2000.

CODIFICATION

Section was enacted as part of the Omnibus Insular Areas Act of 1992, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

§ 5205. Disaster grant closeout procedures

(a) Statute of limitations

(1) In general

Except as provided in paragraph (2), no administrative action to recover any payment made to a State or local government for disaster or emergency assistance under this chapter shall be initiated in any forum after the date that is 3 years after the date of transmission of the final expenditure report for the disaster or emergency.

(2) Fraud exception

The limitation under paragraph (1) shall apply unless there is evidence of civil or criminal fraud.

[1] See References in Text note below.

(b) Rebuttal of presumption of record maintenance

(1) In general

In any dispute arising under this section after the date that is 3 years after the date of transmission of the final expenditure report for the disaster or emergency, there shall be a presumption that accounting records were maintained that adequately identify the source and application of funds provided for financially assisted activities.

(2) Affirmative evidence

The presumption described in paragraph (1) may be rebutted only on production of affirmative evidence that the State or local government did not maintain documentation described in that paragraph.

(3) Inability to produce documentation

The inability of the Federal, State, or local government to produce source documentation supporting expenditure reports later than 3 years after the date of transmission of the final expenditure report shall not constitute evidence to rebut the presumption described in paragraph (1).

(4) Right of access

The period during which the Federal, State, or local government has the right to access source documentation shall not be limited to the required 3-year retention period referred to in paragraph (3), but shall last as long as the records are maintained.

(c) Binding nature of grant requirements

A State or local government shall not be liable for reimbursement or any other penalty for any payment made under this chapter if—

(1) the payment was authorized by an approved agreement specifying the costs;

(2) the costs were reasonable; and

(3) the purpose of the grant was accomplished.

(Pub. L. 93–288, title VII, § 705, as added Pub. L. 106–390, title III, § 304, Oct. 30, 2000, 114 Stat. 1573.)

§ 5206. Buy American

(a) Compliance with Buy American Act

No funds authorized to be appropriated under this Act or any amendment made by this Act may be expended by an entity unless the entity, in expending the funds, complies with the Buy American Act (41 U.S.C. 10a et seq.).

(b) Debarment of persons convicted of fraudulent use of "Made in America" labels

(1) In general

If the Administrator of the Federal Emergency Management Agency determines that a person has been convicted of intentionally affixing a label bearing a ''Made in America'' inscription to any product sold in or shipped to the United States that is not made in America, the Administrator shall determine, not later than 90 days after determining that the person has been so convicted, whether the person should be debarred from contracting under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Definition of debar

In this subsection, the term ''debar'' has the meaning given the term in section 2393(c) of title 10.

(Pub. L. 106–390, title III, § 306, Oct. 30, 2000, 114 Stat. 1574; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 106–390, Oct. 30, 2000, 114 Stat. 1552, known as the Disaster Mitigation Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 5121 of this title and Tables.

The Buy American Act, referred to in subsec. (a), is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which is classified generally to sections 10a, 10b, and 10c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 10a of Title 41 and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (b)(1), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

CODIFICATION

Section was enacted as part of the Disaster Mitigation Act of 2000, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' and ''Administrator'' substituted for ''Director of the Federal Emergency Management Agency'' and ''Director'', respectively, in subsec. (b)(1) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5207. Firearms policies

(a) Prohibition on confiscation of firearms

No officer or employee of the United States (including any member of the uniformed services), or person operating pursuant to or under

color of Federal law, or receiving Federal funds, or under control of any Federal official, or providing services to such an officer, employee, or other person, while acting in support of relief from a major disaster or emergency, may—

(1) temporarily or permanently seize, or authorize seizure of, any firearm the possession of which is not prohibited under Federal, State, or local law, other than for forfeiture in compliance with Federal law or as evidence in a criminal investigation;

(2) require registration of any firearm for which registration is not required by Federal, State, or local law;

(3) prohibit possession of any firearm, or promulgate any rule, regulation, or order prohibiting possession of any firearm, in any place or by any person where such possession is not otherwise prohibited by Federal, State, or local law; or

(4) prohibit the carrying of firearms by any person otherwise authorized to carry firearms under Federal, State, or local law, solely because such person is operating under the direction, control, or supervision of a Federal agency in support of relief from the major disaster or emergency.

(b) Limitation

Nothing in this section shall be construed to prohibit any person in subsection (a) from requiring the temporary surrender of a firearm as a condition for entry into any mode of transportation used for rescue or evacuation during a major disaster or emergency, provided that such temporarily surrendered firearm is returned at the completion of such rescue or evacuation.

(c) Private rights of action

(1) In general

Any individual aggrieved by a violation of this section may seek relief in an action at law, suit in equity, or other proper proceeding for redress against any person who subjects such individual, or causes such individual to be subjected, to the deprivation of any of the rights, privileges, or immunities secured by this section.

(2) Remedies

In addition to any existing remedy in law or equity, under any law, an individual aggrieved by the seizure or confiscation of a firearm in violation of this section may bring an action for return of such firearm in the United States district court in the district in which that individual resides or in which such firearm may be found.

(3) Attorney fees

In any action or proceeding to enforce this section, the court shall award the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(Pub. L. 93–288, title VII, § 706, as added Pub. L. 109–295, title V, § 557, Oct. 4, 2006, 120 Stat. 1391.)

CHAPTER 69—COMMUNITY DEVELOPMENT

Sec.
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§ 5301. Congressional findings and declaration of purpose

(a) Critical social, economic, and environmental problems facing Nation's urban communities

The Congress finds and declares that the Nation's cities, towns, and smaller urban communities face critical social, economic, and environmental problems arising in significant measure from—

(1) the growth of population in metropolitan and other urban areas, and the concentration of persons of lower income in central cities;

(2) inadequate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment; and

(3) increasing energy costs which have seriously undermined the quality and overall effectiveness of local community and housing development activities.

(b) Establishment and maintenance of viable urban communities; systematic and sustained action by Federal, State, and local governments; expansion of and continuity in Federal assistance; increased private investment; streamlining programs and improvement of functioning of agencies; action to address consequences of scarce fuel supplies

The Congress further finds and declares that the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable urban communities as social, economic, and political entities, and require—

(1) systematic and sustained action by Federal, State, and local governments to elimi-

nate blight, to conserve and renew older urban areas, to improve the living environment of low- and moderate-income families, and to develop new centers of population growth and economic activity;

(2) substantial expansion of and greater continuity in the scope and level of Federal assistance, together with increased private investment in support of community development activities;

(3) continuing effort at all levels of government to streamline programs and improve the functioning of agencies responsible for planning, implementing, and evaluating community development efforts; and

(4) concerted action by Federal, State, and local governments to address the economic and social hardships borne by communities as a consequence of scarce fuel supplies.

(c) Decent housing, suitable living environment, and economic opportunities for persons of low and moderate income; community development activities which may be supported by Federal assistance

The primary objective of this chapter and of the community development program of each grantee under this chapter is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 70 percent of the aggregate of the Federal assistance provided to States and units of general local government under section 5306 of this title and, if applicable, the funds received as a result of a guarantee or a grant under section 5308 of this title, shall be used for the support of activities that benefit persons of low and moderate income, and the Federal assistance provided in this chapter is for the support of community development activities which are directed toward the following specific objectives—

(1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;

(2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;

(3) the conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;

(4) the expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;

(5) a more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods;

(7) the restoration and preservation of properties of special value for historic, architectural, or esthetic reasons;

(8) the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population outmigration or a stagnating or declining tax base; and

(9) the conservation of the Nation's scarce energy resources, improvement of energy efficiency, and the provision of alternative and renewable energy sources of supply.

It is the intent of Congress that the Federal assistance made available under this chapter not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

(d) Consolidation of complex and overlapping Federal assistance programs into consistent system of Federal aid

It is also the purpose of this chapter to further the development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid which—

(1) provides assistance on an annual basis, with maximum certainty and minimum delay, upon which communities can rely in their planning;

(2) encourages community development activities which are consistent with comprehensive local and areawide development planning;

(3) furthers achievement of the national housing goal of a decent home and a suitable living environment for every American family; and

(4) fosters the undertaking of housing and community development activities in a coordinated and mutually supportive manner by Federal agencies and programs, as well as by communities.

(Pub. L. 93–383, title I, § 101, Aug. 22, 1974, 88 Stat. 633; Pub. L. 95–128, title I, § 101, Oct. 12, 1977, 91 Stat. 1111; Pub. L. 96–399, title I, § 104(a), Oct. 8, 1980, 94 Stat. 1616; Pub. L. 98–181, title I, § 101(a), Nov. 30, 1983, 97 Stat. 1159; Pub. L. 100–242, title V, § 502(a), (b), Feb. 5, 1988, 101 Stat. 1923; Pub. L. 101–625, title IX, §§ 902(a), 913(a), Nov. 28, 1990, 104 Stat. 4385, 4392; Pub. L. 103–233, title II, § 232(a)(2)(A), Apr. 11, 1994, 108 Stat. 367.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c) and (d), was in the original "this title", meaning title I of Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended, which enacted this chapter and amended sections 1452b, 1453, and 3311 of this title, section 1701u of Title 12, Banks and Banking, and section 711 of former Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–233 inserted ''or a grant'' after ''guarantee'' in second sentence.

1990—Subsec. (c). Pub. L. 101–625, § 913(a), inserted ''to States and units of general local government'' after first reference to ''Federal assistance provided'' in second sentence.

Pub. L. 101–625, § 902(a), substituted ''70 percent'' for ''60 percent'' in second sentence.

1988—Subsec. (c). Pub. L. 100–242, § 502(a), substituted ''60'' for ''51''.

Subsec. (c)(6). Pub. L. 100–242, § 502(b), struck out ''to attract persons of higher income'' before semicolon at end.

1983—Subsec. (c). Pub. L. 98–181, § 101(a)(1), inserted ''and of the community development program of each grantee under this chapter'' in provisions preceding par. (1).

Pub. L. 98–181, § 101(a)(2), inserted ''not less than 51 percent of the aggregate of the Federal assistance provided under section 5306 of this title and, if applicable, the funds received as a result of a guarantee under section 5308 of this title, shall be used for the support of activities that benefit persons of low and moderate income, and'' in provisions preceding par. (1).

1980—Subsec. (a)(3). Pub. L. 96–399, § 104(a)(1)–(3), added par. (3).

Subsec. (b)(4). Pub. L. 96–399, § 104(a)(4)–(6), added par. (4).

Subsec. (c)(9). Pub. L. 96–399, § 104(a)(7)–(9), added par. (9).

1977—Subsec. (c)(8). Pub. L. 95–128, § 101(a), added par. (8).

Subsec. (d)(4). Pub. L. 95–128, § 101(b), provided that the development activities be undertaken by Federal agencies and programs as well as by communities.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 209 of title II of Pub. L. 103–233 provided that: ''The amendments made by this title [enacting sections 5321 and 12840 of this title and amending this section and sections 5304, 5305, 5308, 5318, 12704, 12744, 12745, 12750, 12833, 12838, and 12893 of this title] shall apply with respect to any amounts made available to carry out title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.] after the date of the enactment of this Act [Apr. 11, 1994] and any amounts made available to carry out such title before such date of enactment that remain uncommitted on such date. The Secretary shall issue any regulations necessary to carry out the amendments made by this title not later than the expiration of the 45-day period beginning on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–550, § 2, Oct. 28, 1992, 106 Stat. 3681, provided that: ''The provisions of this Act [see Tables for classification] and the amendments made by this Act shall take effect and shall apply upon the date of the enactment of this Act [Oct. 28, 1992], unless such provisions or amendments specifically provide for effectiveness or applicability upon another date certain.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 913(a) of Pub. L. 101–625 applicable to amounts approved in any appropriation Act under section 5303 of this title for fiscal year 1990 and each fiscal year thereafter, see section 913(f) of Pub. L. 101–625, set out as a note under section 5306 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98–181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 114 of title I of Pub. L. 95–128 provided that: ''The amendments made by this title [enacting section 5318 of this title, amending this section, sections 1452b, 5302 to 5308, and 5313 of this title, and section 461 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as a note under section 5313 of this title] shall become effective October 1, 1977.''

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–146, § 1, Dec. 3, 2003, 117 Stat. 1883, provided that: ''This Act [amending section 5305 of this title] may be cited as the 'Tornado Shelters Act'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–550, § 1(a), Oct. 28, 1992, 106 Stat. 3672, provided that: ''This Act [see Tables for classification] may be cited as the 'Housing and Community Development Act of 1992'.''

SHORT TITLE OF 1988 AMENDMENT

Section 1(a) of Pub. L. 100–242 provided that: ''This Act [see Tables for classification] may be cited as the 'Housing and Community Development Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–272, title III, § 3001(a), Apr. 7, 1986, 100 Stat. 101, provided that: ''This title [amending sections 1437b, 1437g, 1452b, 1483, 1485, 1487, 1490, 1490c, 4026, 4056, 4101, 5302, and 5308 of this title, and sections 1703, 1715h, 1715*l*, 1715z, 1715z–9, 1715z–10, 1715z–14, 1748h–1, 1748h–2, 1749bb, 1749aaa, 1749bbb, and 2811 of Title 12, Banks and Banking, enacting provisions set out as notes under section 5308 of this title, and amending provisions set out as a note under section 1701q of Title 12] may be cited as the 'Housing and Community Development Reconciliation Amendments of 1985'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–479, § 1, Oct. 17, 1984, 98 Stat. 2218, provided: ''That this Act [amending sections 1437a, 1437b, 1437d, 1437f, 1437h, 1437*l*, 1437*o*, 1438 to 1440, 1452, 1455, 1456, 1471, 1472, 1480, 1481, 1483, 1485, 1487, 1490, 1490a to 1490c, 1493, 2414, 3337, 3535, 3541, 3936, 3938, 4016, 4017, 4101, 4105, 4124, 4502, 5302, 5304 to 5306, 5308, 5312, 5317, 5318, 5403, 6863, 8004, 8010, and 8107 of this title, sections 1425a, 1457, 1701c, 1701h, 1701q, 1701s, 1701x, 1701z–2, 1701z–13, 1702, 1705, 1706e, 1709, 1713, 1715d, 1715h, 1715*l*, 1715n, 1715y, 1715z, 1715z–1, 1715z–1a, 1715z–5 to 1715z–9, 1717, 1719, 1721, 1723a, 1723g, 1723h, 1732, 1735f–5, 1735f–9, 1749, 1749a, 1749c, 1749aaa, 1749aaa–3, 1749bbb–8, 1749bbb–13, 1749bbb–17, 1750c, 1757, 2706, 2709, 3612, and 3618 of Title 12, Banks and Banking, and sections 1635 and 1715 of Title 15, Commerce and Trade, enacting provisions set out as notes under sections 1472 and 5305 of this title and sections 1715b, 1732 and 3618 of Title 12, and amending provisions set out as notes under sections 602, 5316, and 5318 of this title and section 1701z–6 of Title 12] may be cited as the 'Housing and Community Development Technical Amendments Act of 1984'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title III, § 300, Aug. 13, 1981, 95 Stat. 384, provided that: ''This subtitle [subtitle A (§§ 300–371) of title III of Pub. L. 97–35, enacting sections 1437j–1, 1437n, and 4028 of this title and sections 1701z–14, 1735f–9, 1735f–10, 2294a, and 3701 to 3717 of Title 12, Banks and Banking, amending sections 1436a, 1437 to 1437d, 1437f, 1437g, 1437i, 1437j, 1437*l*, 1439, 1452b, 1483, 1485, 1487, 1490a, 1490c, 4017, 4026, 4056, 4081, 4127, 4518, 5302 to 5313, 5316, 5318, 5320, and 8107 of this title and sections 1701s, 1701j–2, 1701q, 1701x, 1701z–1, 1701z–14, 1703, 1706e, 1709–1, 1713, 1715e, 1715h, 1715k, 1715*l*, 1715n, 1715v, 1715y, 1715z, 1715z–1, 1715z–1a, 1715z–1b, 1715z–7, 1715z–9, 1715z–10, 1720, 1721, 1735c, 1748h–1, 1748h–2, 1749bb, 1749aaa, 1749bbb, and 1749bbb–3 of Title 12, repealing sections 8121 to 8124 of this title and section 461 of former Title 40, Public Buildings, Property, and Works, enacting provisions set out as notes under 1436a, 1437a, 1437f, 4028, 5304, 5305, 5306, 5318 of this title and sections 1703, 1720, and 3701 of

Title 12, and repealing provisions set out as notes under section 8121 of this title and section 1701s of Title 12] may be cited as the 'Housing and Community Development Amendments of 1981'.''

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96–399 provided: ''That this Act [enacting sections 1436a, 1436b, 1437*l*, 1437m, 1490j and 5320 of this title, sections 1735f–8 and 2809 to 2811 of Title 12, Banks and Banking, and sections 3601 to 3616 of Title 15, Commerce and Trade, amending this section, sections 1437c, 1437d, 1437f, 1437g, 1437k, 1439, 1441c, 1452b, 1471, 1472, 1480, 1483 to 1487, 1490a, 1490c to 1490e, 3535, 4127, 5302 to 5308, 5316 to 5318, 5401 to 5404, 5406 to 5416, 5419, 5421 to 5423, 5425, 6833, 6835, 8004, 8102, 8105, 8107, and 8124 of this title, sections 86a, 1425a, 1454, 1701q, 1701s, 1701u, 1701z–1, 1701z–11, 1703, 1706e, 1707, 1709, 1709–1, 1713, 1715d, 1715e, 1715h, 1715k, 1715*l* to 1715n, 1715u to 1715w, 1715y to 1715z–1, 1715z–1a, 1715z–5 to 1715z–7, 1715z–9, 1715z–10, 1717, 1720, 1721, 1723e, 1735c, 1735f–7a, 1748h–1, 1748h–2, 1749bb, 1749aaa and 2803 of Title 12 and sections 461 and 484b of former Title 40, Public Buildings, Property and Works, repealing section 2809 of Title 12, enacting provisions set out as notes under sections 1472, 3535, 5302, 5313, 5401, 5424 and 8106 of this title, sections 86a, 1701z–6, 1703, 1715d, 1715z, 1717, 1723a, 1723e and 3305 of Title 12, section 3601 of Title 15, and section 461 of former Title 40, and amending provisions set out as notes under section 5401 of this title and sections 86a, 1701z–6, 1723e, and 1735f–4 of Title 12] may be cited as the 'Housing and Community Development Act of 1980'.''

SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96–153, § 1, Dec. 21, 1979, 93 Stat. 1101, provided: ''That this Act [enacting section 1735f–7 of Title 12, Banks and Banking, section 1719a of Title 15, Commerce and Trade, and section 1437k of this title, amending section 5315 of Title 5, Government Organization and Employees, sections 90, 1426, 1431, 1451, 1452, 1455, 1464, 1701q, 1701s, 1701z–1, 1701z–11, 1703, 1706e, 1709, 1709–1, 1713, 1715e, 1715h, 1715k, 1715*l*, 1715m, 1715v, 1715y, 1715z, 1715z–1, 1715z–1a, 1715z–6, 1715z–7, 1715z–9, 1715z–10, 1717, 1728, 1735c, 1748h–1, 1748h–2, 1749bb, 1749aaa, 1749bbb, 1757, 1787, and 1821 of Title 12, sections 1701, 1702, 1703, 1708, 1709, 1711, 1715, and 1717 of Title 15, section 461 of former Title 40, Public Buildings, Property, and Works, and sections 1437a, 1437c, 1437d, 1437f, 1437g, 1439, 1452b, 1471, 1472, 1474, 1479, 1480, 1483, 1484, 1485, 1486, 1487, 1490a, 1490c, 3533a, 3541, 4026, 4056, 4127, 5302, 5303, 5304, 5306, 5318, 5419, 8107, 8123, 8124, and 8146 of this title, and enacting provisions set out as notes under sections 1701, 1701q, 1701s, 1703, 1709, 1723e, and 1728 of Title 12, section 1701 of Title 15, and sections 1437a, 1437f, and 5304 of this title] may be cited as the 'Housing and Community Development Amendments of 1979'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–557, § 1, Oct. 31, 1978, 92 Stat. 2080, provided that: ''This Act [enacting sections 3541, 5319, 8001 to 8010, 8101 to 8107, 8121 to 8124, and 8141 to 8146 of this title and sections 1701z–9 to 1701z–13, 1715z–1a, 1715z–1b, 1735f–6, of Title 12, Banks and Banking, amending sections 1437a, 1437c, 1437e, 1437f, 1437g, 1441c, 1452b, 1476, 1480, 1483 to 1487, 1490a, 1490c, 1490e, 3371, 3535, 4026, 4056, 4127, 4521, 5304, 5305, 5307, 5318 and 5425, of this title, sections 1454, 1701j–2, 1701q, 1701z–1, 1703, 1706e, 1709, 1709–1, 1713, 1715h, 1715*l*, 1715n, 1715y, 1715z, 1715z–1, 1715z–5, 1715z–6, 1715z–9, 1715z–10, 1715z–11, 1715w, 1717, 1720, 1735c, 1748h–1, 1748h–2, 1749bb, 1749aaa, 1749bbb, and 1749bbb–3 of Title 12, section 1702 of Title 15, Commerce and Trade, and sections 461 and 484b of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as notes under sections 1437c, 1437f, 1441, 1476, 1480, 5313, 8001, 8101, 8121, and 8141 of this title and sections 1454, 1701z–6, 1701z–9, 1709, 1715z–1, and 1723e of Title 12] may be cited as the 'Housing and Community Development Amendments of 1978'.''

SHORT TITLE OF 1977 AMENDMENT

Section 1 of Pub. L. 95–128 provided that: ''This Act [enacting sections 3540 and 5318 of this title and sections 2901 to 2905 of Title 12, Banks and Banking, amending this section, sections 1437c, 1437f, 1437g, 1439, 1452b, 1471, 1472, 1476, 1479, 1483 to 1485, 1487, 1490a, 1490c, 1490h, 3533, 4003, 4013, 4026, 4056, 4103 to 4106, 4127, 4501 to 4503, 4521, 5302 to 5308, 5313, 5403, and 5409 of this title, sections 355, 1430, 1454, 1464, 1701q, 1701x, 1701z–1, 1703, 1706e, 1709, 1709–1, 1715h, 1715k to 1715m, 1715w, 1715y, 1715z, 1715z–1, 1715z–3, 1715z–7, 1715z–9, 1715z–10, 1717, 1723a, 1723e, 1748h–1, 1748h–2, 1749bb, and 1749aaa of Title 12, and section 461 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as notes under this section, sections 1421b, 1437d, 1490h, 4501, and 5313 of this title, and sections 1715z–1, 1723e of Title 12] may be cited as the 'Housing and Community Development Act of 1977'.''

SHORT TITLE

Section 1 of Pub. L. 93–383 provided: ''That this Act [enacting this chapter, sections 1701j–2, 1701*l*–1, 1701z–5, 1701z–6, 1706e, 1715z–9 to 1715z–11, and 1735f–3 to 1735f–5 of Title 12, Banks and Banking, section 803a of Title 20, Education, and sections 1437 to 1437j, 1438 to 1440, 1490e to 1490g, 4104a, and 5401 to 5426 of this title, amending sections 5315 and 5316 of Title 5, Government Organization and Employees, sections 24, 371, 1431, 1436, 1454, 1464, 1701q, 1701u, 1701x, 1701z–3, 1703, 1709, 1709–1, 1713, 1715e, 1715h, 1715k to 1715n, 1715v, 1715w, 1715y, 1715z, 1715z–1, 1715z–3, 1715z–6, 1715z–7, 1717, 1718, 1719, 1723a, 1735b, 1748h–1, 1748h–2, 1749bb, 1749aaa, 1749aaa–4, 1749aaa–5, 1757, 1759, 1761b, 1761d, 1763, 1772, 1782, 1786, and 1788 of Title 12, sections 1701 to 1703 of Title 15, Commerce and Trade, sections 801, 802, and 806 of Title 20, section 711 of former Title 31, Money and Finance, sections 460 and 461 of former Title 40, Public Buildings, Property, and Works, sections 1441a, 1441c, 1452b, 1453, 1471, 1472, 1474, 1476 to 1478, 1483, 1485, 1487, 1490, 1490a, 1490c, 1490d, 1586, 3311, 3533, 3604 to 3606, 3631, 4014, 4512, 4514 to 4516, 4519, and 4532 of this title, and sections 1602 and 1602a of former Title 49, Transportation, repealing sections 1411d and 1455a of this title, and enacting provisions set out as notes under this section, sections 1464, 1701q, 1715*l*, 1715z–1, 1716b, and 1723a of Title 12, section 1703 of Title 15, sections 1410, 1421b, 1437, 1437a, 1437f, 3532, and 5401 of this title, and section 1602a of former Title 49] may be cited as the 'Housing and Community Development Act of 1974'.''

INCOME ELIGIBILITY FOR HOME AND CDBG PROGRAMS

Pub. L. 105–276, title V, § 590, Oct. 21, 1998, 112 Stat. 2651, provided that:

''(a) IN GENERAL.—The Secretary of Housing and Urban Development shall, for not less than 10 jurisdictions that are metropolitan cities or urban counties for purposes of title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.], grant exceptions not later than 90 days after the date of the enactment of this Act [Oct. 21, 1998] for such jurisdictions that provide that—

''(1) for purposes of the HOME investment partnerships program under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], the limitation based on percentage of median income that is applicable under section 104(10), 214(1)(A), or 215(a)(1)(A) [42 U.S.C. 12704(10), 12744(1)(A), 12745(a)(1)(A)] for any area of the jurisdiction shall be the numerical percentage that is specified in such section; and

''(2) for purposes of the community development block grant program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.], the limitation based on percentage of median income that is applicable pursuant to section 102(a)(20) [42 U.S.C. 5302(a)(20)] for any area within the State or unit of general local government shall be the numerical percentage that is specified in subparagraph (A) of such section.

''(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

FINDINGS AND PURPOSE

Section 2 of Pub. L. 100–242 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) for the past 50 years, the Federal Government has taken the leading role in enabling the people of the Nation to be the best housed in the world, and recent reductions in Federal assistance have contributed to a deepening housing crisis for low- and moderate-income families;

''(2) the efforts of the Federal Government have included a system of specialized lending institutions, favorable tax policies, construction assistance, mortgage insurance, loan guarantees, secondary markets, and interest and rental subsidies, that have enabled people to rent or buy affordable, decent, safe, and sanitary housing; and

''(3) the tragedy of homelessness in urban and suburban communities across the Nation, involving a record number of people, dramatically demonstrates the lack of affordable residential shelter, and people living on the economic margins of our society (lower income families, the elderly, the working poor, and the deinstitutionalized) have few available alternatives for shelter.

''(b) PURPOSE.—The purpose of this Act [see Short Title of 1988 Amendment note above], therefore, is—

''(1) to reaffirm the principle that decent and affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require the addition of new housing units to remedy a serious shortage of housing units for all Americans, particularly for persons of low and moderate income;

''(2) to make the distribution of direct and indirect housing assistance more equitable by providing Federal assistance for the less affluent people of the Nation;

''(3) to provide needed housing assistance for homeless people and for persons of low and moderate income who lack affordable, decent, safe, and sanitary housing; and

''(4) to reform existing programs to ensure that such assistance is delivered in the most efficient manner possible.''

BUDGET COMPLIANCE

Section 3 of Pub. L. 100–242 provided that:

''(a) IN GENERAL.—This Act and the amendments made by this Act [see Short Title of 1988 Amendment note above] may not be construed to provide for new budget authority, budget outlays, or new entitlement authority, for fiscal year 1988 in excess of the appropriate aggregate levels established by the concurrent resolution on the budget for such fiscal year for the programs authorized by this Act and the amendments made by this Act.

''(b) DEFINITIONS.—For purposes of this section, the terms 'budget authority', 'budget outlays', 'concurrent resolution on the budget', and 'entitlement authority' have the meanings given such terms in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622).''

CREDIT LIMITATION

Section 4 of Pub. L. 100–242 provided that: ''Any new credit authority (as defined in section 3 of the Congressional Budget Act of 1974 [2 U.S.C. 622]) which is provided by this Act [see Short Title of 1988 Amendment note above], or by an amendment made by this Act, shall be effective only to such extent or in such amounts as are provided in appropriation Acts.''

LIMITATION ON SPENDING AUTHORITY

Section 5 of Pub. L. 100–242 provided that: ''Any new spending authority (as defined in section 401(c) of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)]) which is provided by this Act, or by an amendment made by this Act [see Short Title of 1988 Amendment note above], shall be effective only to such extent or in such amounts as are provided in appropriation Acts.''

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

Section 817 of Pub. L. 93–383, as amended by Pub. L. 98–181, title III, § 302(c), Nov. 30, 1983, 97 Stat. 1206, provided that: ''Assistance provided for in this Act [see Short Title note above] the National Housing Act, [12 U.S.C. 1701 et seq.], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the Housing Act of 1949 [42 U.S.C. 1441 et seq.], the Demonstration Cities and Metropolitan Development Act of 1966 [see Short Title note set out under section 3331 of this title], the Housing and Urban Development Acts of 1965, 1968, 1969, and 1970 [see Short Title notes set out under section 1701 of Title 12, Banks and Banking], and section 17 of the United States Housing Act of 1937 [42 U.S.C. 1437*o*] shall not be withheld or made subject to conditions or preference by reason of the tax-exempt status of bonds or other obligations issued or to be issued to provide financing for use in connection with such assistance, except where otherwise expressly provided or authorized by law.''

§ 5302. General provisions

(a) Definitions

As used in this chapter—

(1) The term ''unit of general local government'' means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions that, except as provided in section 5306(d)(4) of this title, is recognized by the Secretary; and the District of Columbia. Such term also includes a State or a local public body or agency (as defined in section 4512[1] of this title), community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 4513[1] of this title or title IV of the Housing and Urban Development Act of 1968 [42 U.S.C. 3901 et seq.].

(2) The term ''State'' means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(3) The term ''metropolitan area'' means a standard metropolitan statistical area as established by the Office of Management and Budget.

(4) The term ''metropolitan city'' means (A) a city within a metropolitan area which is the central city of such area, as defined and used by the Office of Management and Budget, or (B) any other city, within a metropolitan area, which has a population of fifty thousand or more. Any city that was classified as a metropolitan city for at least 2 years pursuant to the first sentence of this paragraph shall remain classified as a metropolitan city. Any unit of general local government that becomes eligible to be classified as a metropolitan city, and was not classified as a metropolitan city in the immediately preceding fiscal year, may, upon submission of written notification to the

[1] See References in Text note below.

Secretary, defer its classification as a metropolitan city for all purposes under this chapter, if it elects to have its population included in an urban county under subsection (d) of this section. Notwithstanding the second sentence of this paragraph, a city may elect not to retain its classification as a metropolitan city. Any city classified as a metropolitan city pursuant to this paragraph, and that no longer qualifies as a metropolitan city in a fiscal year beginning after fiscal year 1989, shall retain its classification as a metropolitan city for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year (A) the amount of the grant to such city shall be 50 percent of the amount calculated under section 5306(b) of this title; and (B) the remaining 50 percent shall be added to the amount allocated under section 5306(d) of this title to the State in which the city is located and the city shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 5306(d) of this title as increased by this sentence. Any unit of general local government that was classified as a metropolitan city in any fiscal year, may, upon submission of written notification to the Secretary, relinquish such classification for all purposes under this chapter if it elects to have its population included with the population of a county for purposes of qualifying for assistance (for such following fiscal year) under section 5306 of this title as an urban county under paragraph (6)(D). Any metropolitan city that elects to relinquish its classification under the preceding sentence and whose port authority shipped at least 35,000,000 tons of cargo in 1988, of which iron ore made up at least half, shall not receive, in any fiscal year, a total amount of assistance under section 5306 of this title from the urban county recipient that is less than the city would have received if it had not relinquished the classification under the preceding sentence.

(5) The term ''city'' means (A) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (B) any other unit of general local government which is a town or township and which, in the determination of the Secretary, (i) possesses powers and performs functions comparable to these associated with municipalities, (ii) is closely settled, and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census which have not entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.

(6)(A) The term ''urban county'' means any county within a metropolitan area which—

(i) is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government; and

(ii) either—

(I) has a population of 200,000 or more (excluding the population of metropolitan cities therein) and has a combined population of 100,000 or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (and in the case of counties having a combined population of less than 200,000, the areas and units of general local government must include the areas and units of general local government which in the aggregate have the preponderance of the persons of low and moderate income who reside in the county) (a) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded, or (b) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities; or

(II) has a population in excess of 100,000, a population density of at least 5,000 persons per square mile, and contains within its boundaries no incorporated places as defined by the United States Bureau of the Census.

(B) Any county that was classified as an urban county for at least 2 years pursuant to subparagraph (A), (C), or (D) shall remain classified as an urban county, unless it fails to qualify as an urban county pursuant to subparagraph (A) by reason of the election of any unit of general local government included in such county to have its population excluded under clause (ii)(I)(a) of subparagraph (A) or not to renew a cooperation agreement under clause (ii)(I)(b) of such subparagraph.

(C) Notwithstanding the combined population amount set forth in clause (ii) of subparagraph (A), a county shall also qualify as an urban county for purposes of assistance under section 5306 of this title if such county—

(i) complies with all other requirements set forth in the first sentence;

(ii) has, according to the most recent available decennial census data, a combined population between 190,000 and 199,999, inclusive (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county;

(iii) had a population growth rate of not less than 15 percent during the most recent 10-year period measured by applicable censuses; and

(iv) has submitted data satisfactory to the Secretary that it has a combined population of not less than 200,000 (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county.

(D) Such term also includes a county that—

(i) has a combined population in excess of 175,000, has more than 50 percent of the housing units of the area unsewered, and has an

aquifer that was designated before March 1, 1987, a sole source aquifer by the Environmental Protection Agency;

(ii) has taken steps, which include at least one public referendum, to consolidate substantial public services with an adjoining metropolitan city, and in the opinion of the Secretary, has consolidated these services with the city in an effort that is expected to result in the unification of the two governments within 6 years of February 5, 1988;

(iii) had a population between 180,000 and 200,000 on October 1, 1987, was eligible for assistance under section 5318 of this title in fiscal year 1986, and does not contain any metropolitan cities;

(iv) has entered into a local cooperation agreement with a metropolitan city that received assistance under section 5306 of this title because of such classification, and has elected under paragraph (4) to have its population included with the population of the county for purposes of qualifying as an urban county; except that to qualify as an urban county under this clause (I) the county must have a combined population of not less than 195,000, (II) more than 15 percent of the residents of the county shall be 60 years of age or older (according to the most recent decennial census data), (III) not less than 20 percent of the total personal income in the county shall be from pensions, social security, disability, and other transfer programs, and (IV) not less than 40 percent of the land within the county shall be publicly owned and not subject to property tax levies;

(v)(I) has a population of 175,000 or more (including the population of metropolitan cities therein), (II) before January 1, 1975, was designated by the Secretary of Defense pursuant to section 608 of the Military Construction Authorization Act, 1975 (Public Law 93–552; 88 Stat. 1763), as a Trident Defense Impact Area, and (III) has located therein not less than 1 unit of general local government that was classified as a metropolitan city and (a) for which county each such unit of general local government therein has relinquished its classification as a metropolitan city under the 6th sentence of paragraph (4), or (b) that has entered into cooperative agreements with each metropolitan city therein to undertake or to assist in the undertaking of essential community development and housing assistance activities;

(vi) has entered into a local cooperation agreement with a metropolitan city that received assistance under section 5306 of this title because of such classification, and has elected under paragraph (4) to have its population included with the population of the county for the purposes of qualifying as an urban county, except that to qualify as an urban county under this clause, the county must—

(I) have a combined population of not less than 210,000, excluding any metropolitan city located in the county that is not relinquishing its metropolitan city classification, according to the 1990 decennial census of the Bureau of the Census of the Department of Commerce;

(II) including any metropolitan cities located in the county, have had a decrease in population of 10,061 from 1992 to 1994, according to the estimates of the Bureau of the Census of the Department of Commerce; and

(III) have had a Federal naval installation that was more than 100 years old closed by action of the Base Closure and Realignment Commission appointed for 1993 under the Base Closure and Realignment Act of 1990, directly resulting in a loss of employment by more than 7,000 Federal Government civilian employees and more than 15,000 active duty military personnel, which naval installation was located within one mile of an enterprise community designated by the Secretary pursuant to section 1391 of title 26, which enterprise community has a population of not less than 20,000, according to the 1990 decennial census of the Bureau of the Census of the Department of Commerce[2]

(vii)(I) has consolidated its government with one or more municipal governments, such that within the county boundaries there are no unincorporated areas; (II) has a population of not less than 650,000; (III) for more than 10 years, has been classified as a metropolitan city for purposes of allocating and distributing funds under section 5306 of this title; and (IV) as of October 27, 2000, has over 90 percent of the county's population within the jurisdiction of the consolidated government; or

(viii) notwithstanding any other provision of this section, any county that was classified as an urban county pursuant to subparagraph (A) for fiscal year 1999, at the option of the county, may hereafter remain classified as an urban county for purposes of this Act.

(E) Any county classified as an urban county pursuant to subparagraph (A), (B), or (C) of this paragraph, and that no longer qualifies as an urban county under such subparagraph in a fiscal year beginning after fiscal year 1989, shall retain its classification as an urban county for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year (i) the amount of the grant to such an urban county shall be 50 percent of the amount calculated under section 5306(b) of this title; and (ii) the remaining 50 percent shall be added to the amount allocated under section 5306(d) of this title to the State in which the urban county is located and the urban county shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 5306(d) of this title as increased by this sentence.

(7) The term ''nonentitlement area'' means an area which is not a metropolitan city or part of an urban county and does not include Indian tribes.

(8) The term ''population'' means total resident population based on data compiled by the

[2] So in original. Probably should be followed by a semicolon.

United States Bureau of the Census and referable to the same point or period in time.

(9) The term ''extent of poverty'' means the number of persons whose incomes are below the poverty level. Poverty levels shall be determined by the Secretary pursuant to criteria provided by the Office of Management and Budget, taking into account and making adjustments, if feasible and appropriate and in the sole discretion of the Secretary, for regional or area variations in income and cost of living, and shall be based on data referable to the same point or period in time.

(10) The term ''extent of housing overcrowding'' means the number of housing units with 1.01 or more persons per room based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(11) The term ''age of housing'' means the number of existing housing units constructed in 1939 or earlier based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(12) The term ''extent of growth lag'' means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of such metropolitan city or urban county, if such metropolitan city or urban county had had a population growth rate between 1960 and the date of the most recent population count referable to the same point or period in time equal to the population growth rate for such period of all metropolitan cities. Where the boundaries for a metropolitan city or urban county used for the 1980 census have changed as a result of annexation, the current population used to compute extent of growth lag shall be adjusted by multiplying the current population by the ratio of the population based on the 1980 census within the boundaries used for the 1980 census to the population based on the 1980 census within the current boundaries.

(13) The term ''housing stock'' means the number of existing housing units based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(14) The term ''adjustment factor'' means the ratio between the age of housing in the metropolitan city or urban county and the predicted age of housing in such city or county.

(15) The term ''predicted age of housing'' means the arithmetic product of the housing stock in the metropolitan city or urban county multiplied times the ratio between the age of housing in all metropolitan areas and the housing stock in all metropolitan areas.

(16) The term ''adjusted age of housing'' means the arithmetic product of the age of housing in the metropolitan city or urban county multiplied times the adjustment factor.

(17) The term ''Indian tribe'' means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) [25 U.S.C. 450 et seq.] or was considered an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter.

(18) The term ''Federal grant-in-aid program'' means a program of Federal financial assistance other than loans and other than the assistance provided by this chapter.

(19) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(20)(A) The terms ''persons of low and moderate income'' and ''low- and moderate-income persons'' mean families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. The term ''persons of low income'' means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. The term ''persons of moderate income'' means families and individuals whose incomes exceed 50 percent, but do not exceed 80 percent, of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. For purposes of such terms, the area involved shall be determined in the same manner as such area is determined for purposes of assistance under section 1437f of this title.

(B) The Secretary may establish percentages of median income for any area that are higher or lower than the percentages set forth in subparagraph (A), if the Secretary finds such variations to be necessary because of unusually high or low family incomes in such area.

(21) The term ''buildings for the general conduct of government'' means city halls, county administrative buildings, State capitol or office buildings, or other facilities in which the legislative or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low- and moderate-income areas that house various nonlegislative functions or services provided by government at decentralized locations.

(22) The term ''microenterprise'' means a commercial enterprise that has 5 or fewer employees, 1 or more of whom owns the enterprise.

(23) The term ''small business'' means a business that meets the criteria set forth in section 632(a) of title 15.

(24) The term ''insular area'' means each of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(b) Basis and modification of definitions

Where appropriate, the definitions in subsection (a) of this section shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available ninety days prior to the beginning of such fiscal year. The Secretary may by regulation change or otherwise modify the meaning of the terms

defined in subsection (a) of this section in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

(c) Designation of public agencies

One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of general local government to undertake activities assisted under this chapter.

(d) Local governments, inclusion in urban county population

With respect to program years beginning with the program year for which grants are made available from amounts appropriated for fiscal year 1982 under section 5303 of this title, the population of any unit of general local government which is included in that of an urban county as provided in subparagraph (A)(ii) or (D) of subsection (a)(6) of this section shall be included in the population of such urban county for three program years beginning with the program year in which its population was first so included and shall not otherwise be eligible for a grant under section 5306 of this title as a separate entity, unless the urban county does not receive a grant for any year during such three-year period.

(e) Exclusion of local governments from urban county population; notification of election

Any county seeking qualification as an urban county, including any urban county seeking to continue such qualification, shall notify, as provided in this subsection, each unit of general local government, which is included therein and is eligible to elect to have its population excluded from that of an urban county under subsection (a)(6)(A)(ii)(I)(a) of this section, of its opportunity to make such an election. Such notification shall, at a time and in a manner prescribed by the Secretary, be provided so as to provide a reasonable period for response prior to the period for which such qualification is sought. The population of any unit of general local government which is provided such notification and which does not inform, at a time and in a manner prescribed by the Secretary, the county of its election to exclude its population from that of the county shall, if the county qualifies as an urban county, be included in the population of such urban county as provided in subsection (d) of this section.

(Pub. L. 93–383, title I, § 102, Aug. 22, 1974, 88 Stat. 635; Pub. L. 95–128, title I, § 102, Oct. 12, 1977, 91 Stat. 1111; Pub. L. 96–153, title I, § 103(f), Dec. 21, 1979, 93 Stat. 1102; Pub. L. 96–399, title I, §§ 101(a), (b)(1), (c), 111(a), Oct. 8, 1980, 94 Stat. 1614, 1620; Pub. L. 97–35, title III, §§ 309(a)–(c), 310, Aug. 13, 1981, 95 Stat. 396, 397; Pub. L. 97–289, § 5, Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98–181, title I, § 102, Nov. 30, 1983, 97 Stat. 1159; Pub. L. 98–479, title I, § 101(a)(1)–(4), title II, § 203(*l*)(1), Oct. 17, 1984, 98 Stat. 2218, 2219, 2231; Pub. L. 99–120, § 5(a), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99–156, § 5(a), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 5(a), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 5(a), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3011(a), title XIV, § 14001(b)(3), Apr. 7, 1986, 100 Stat. 106, 328; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–77, title IV, § 442, July 22, 1987, 101 Stat. 509; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–202, § 101(f) [title I, § 101], Dec. 22, 1987, 101 Stat. 1329–187, 1329–193; Pub. L. 100–242, title V, § 503, Feb. 5, 1988, 101 Stat. 1923; Pub. L. 100–628, title X, §§ 1081, 1082(a), Nov. 7, 1988, 102 Stat. 3276, 3277; Pub. L. 101–235, title VII, § 702(a), Dec. 15, 1989, 103 Stat. 2056; Pub. L. 101–507, title II, Nov. 5, 1990, 104 Stat. 1370; Pub. L. 101–625, title IX, §§ 903(a)–(c)(2), 904(a), Nov. 28, 1990, 104 Stat. 4385–4387; Pub. L. 102–550, title VIII, §§ 802(a), 803, 807(c)(2), Oct. 28, 1992, 106 Stat. 3845, 3849; Pub. L. 104–204, title II, § 216, Sept. 26, 1996, 110 Stat. 2904; Pub. L. 106–377, § 1(a)(1) [title II, § 217], Oct. 27, 2000, 114 Stat. 1441, 1441A–28; Pub. L. 108–186, title V, § 501(a), (b), Dec. 16, 2003, 117 Stat. 2696.)

REFERENCES IN TEXT

Sections 4512 and 4513 of this title, referred to in subsec. (a)(1), were repealed by Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239.

The Housing and Urban Development Act of 1968, referred to in subsec. (a)(1), is Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IV of the Housing and Urban Development Act of 1968, which was classified principally to chapter 48 (§ 3901 et seq.) of this title, was repealed, with certain exceptions which were omitted from the Code, by Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1701 of Title 12, Banks and Banking, and Tables.

Section 608 of the Military Construction Authorization Act, 1975, referred to in subsec. (a)(6)(D)(v)(II), is not classified to the Code.

The Base Closure and Realignment Act of 1990, referred to in subsec. (a)(6)(D)(vi)(III), probably means the Defense Base Closure and Realignment Act of 1990, which is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, as amended, and which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

This Act, referred to in subsec. (a)(6)(D)(viii), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended, known as the Housing and Community Development Act of 1974. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a)(17), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

Chapter 67 of title 31, referred to in subsec. (a)(17), was repealed by Pub. L. 99–272, title XIV, § 14001(a)(1), Apr. 7, 1986, 100 Stat. 327.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–186, § 501(b), in first sentence, inserted ''and'' after ''Secretary;'' and struck out ''; and the Trust Territory of the Pacific Islands'' after ''the District of Columbia''.

Subsec. (a)(24). Pub. L. 108–186, § 501(a), added par. (24).

2000—Subsec. (a)(6)(D)(vii), (viii). Pub. L. 106–377 added cls. (vii) and (viii).

1996—Subsec. (a)(6)(D)(vi). Pub. L. 104–204 added cl. (vi).

1992—Subsec. (a)(1). Pub. L. 102–550, § 802(a), substituted ''that, except as provided in section 5306(d)(4)

of this title, is recognized by the Secretary'' for ''recognized by the Secretary''.

Subsec. (a)(6)(D)(v). Pub. L. 102–550, § 803, added cl. (v).

Subsec. (a)(22), (23). Pub. L. 102–550, § 807(c)(2), added pars. (22) and (23).

1990—Subsec. (a)(4). Pub. L. 101–625, § 903(c)(1), inserted at end ''Any unit of general local government that was classified as a metropolitan city in any fiscal year, may, upon submission of written notification to the Secretary, relinquish such classification for all purposes under this chapter if it elects to have its population included with the population of a county for purposes of qualifying for assistance (for such following fiscal year) under section 5306 of this title as an urban county under paragraph (6)(D). Any metropolitan city that elects to relinquish its classification under the preceding sentence and whose port authority shipped at least 35,000,000 tons of cargo in 1988, of which iron ore made up at least half, shall not receive, in any fiscal year, a total amount of assistance under section 5306 of this title from the urban county recipient that is less than the city would have received if it had not relinquished the classification under the preceding sentence.''

Pub. L. 101–625, § 903(a), substituted ''Any city that was classified as a metropolitan city for at least 2 years pursuant to the first sentence of this paragraph shall remain classified as a metropolitan city.'' for ''In order to permit an orderly transition of each city losing its classification as a metropolitan city by reason of a decrease in population or revisions in the designation of metropolitan areas or central cities, any city classified as or deemed by law to be a metropolitan city for purposes of assistance under any section of this chapter for fiscal year 1983 or any subsequent fiscal year shall retain such qualification for purposes of receiving such assistance through September 30, 1989.'', struck out ''for fiscal year 1988 or 1989'' before period at end of fourth sentence, and in last sentence struck out ''the first or second sentence of'' before ''this paragraph'' and ''under such first or second sentence'' after ''qualifies as a metropolitan city''.

Subsec. (a)(6)(B). Pub. L. 101–625, § 903(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''In order to permit an orderly transition of each county losing its classification as an urban county by reason of a decrease in population, any county classified as or deemed to be an urban county under this paragraph for purposes of receiving assistance under any section of this chapter for fiscal year 1983 or subsequent years shall retain such qualification for purposes of receiving such assistance through September 30, 1989, or for such longer period covered by a cooperation agreement entered into during fiscal year 1984, except that the provisions of this subparagraph shall not apply with respect to any county losing its classification as an urban county by reason of the election of any unit of general local government included in such county to have its population excluded under clause (ii)(I)(a) of subparagraph (A) or to not renew a cooperation agreement under clause (ii)(I)(b) of such subparagraph.''

Subsec. (a)(6)(D)(iv). Pub. L. 101–625, § 903(c)(2), added cl. (iv).

Subsec. (a)(12). Pub. L. 101–507 and Pub. L. 101–625, § 904(a), amended par. (12) identically, inserting at end ''Where the boundaries for a metropolitan city or urban county used for the 1980 census have changed as a result of annexation, the current population used to compute extent of growth lag shall be adjusted by multiplying the current population by the ratio of the population based on the 1980 census within the boundaries used for the 1980 census to the population based on the 1980 census within the current boundaries.''

1989—Subsec. (a)(7). Pub. L. 101–235 inserted before period at end ''and does not include Indian tribes''.

1988—Subsec. (a)(4). Pub. L. 100–628, § 1081(a)(1), substituted ''a decrease in population'' for ''the population data of the 1980 decennial census'' and inserted ''or any subsequent fiscal year'' after ''1983'' in second sentence.

Pub. L. 100–628, § 1081(a)(2), directed that subsec. (a)(4) of this section as similarly amended first by Pub. L. 100–202 [see 1987 Amendment note below] and later by section 503(a)(2) of Pub. L. 100–242 [see below] is amended to read as if the amendment by Pub. L. 100–242 had not been enacted.

Pub. L. 100–242, § 503(a)(1), substituted ''September 30, 1989'' for ''March 15, 1988''.

Pub. L. 100–242, § 503(a)(2), made amendment identical to amendment by Pub. L. 100–202. See 1987 Amendment note below.

Pub. L. 100–242, § 503(a)(3), inserted at end ''Any city classified as a metropolitan city pursuant to the first or second sentence of this paragraph, and that no longer qualifies as a metropolitan city under such first or second sentence in a fiscal year beginning after fiscal year 1989, shall retain its classification as a metropolitan city for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year (A) the amount of the grant to such city shall be 50 percent of the amount calculated under section 5306(b) of this title; and (B) the remaining 50 percent shall be added to the amount allocated under section 5306(d) of this title to the State in which the city is located and the city shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 5306(d) of this title as increased by this sentence.''

Subsec. (a)(6). Pub. L. 100–628, § 1081(b), substituted a semicolon for last comma in cls. (i) and (ii)(I) of subpar. (A).

Pub. L. 100–242, § 503(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The term 'urban county' means any county within a metropolitan area which (A) is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government, and either (B) has a combined population of two hundred thousand or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (i) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded or (ii) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities or (C) has a population in excess of one hundred thousand, a population density of at least five thousand persons per square mile, and contains within its boundaries no incorporated places as defined by the United States Bureau of Census. In order to permit an orderly transition of each county losing its classification as an urban county by reason of a decrease in population, any county classified as or deemed to be an urban county under this paragraph for purposes of receiving assistance under any section of this chapter for fiscal year 1983 or 1984 shall retain such qualification for purposes of receiving such assistance through March 15, 1988, or for such longer period covered by a cooperation agreement entered into during fiscal year 1984, except that the provisions of this sentence shall not apply with respect to any county losing its classification as an urban county by reason of the election of any unit of general local government included in such county to have its population excluded under clause (B)(i) of the first sentence or to not renew a cooperation agreement under clause (B)(ii) of such sentence. Notwithstanding the combined population amount set forth in clause (B) of the first sentence, a county shall also qualify as an urban county for purposes of assistance under section 5306 of this title if such county (A) complies with all other requirements set forth in the first sentence; (B) has, according to the most recent available decennial census data, a combined population between 190,000 and 199,999, inclusive, (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local govern-

ment located within such county; (C) had a population growth rate of not less than 15 percent during the most recent 10-year period measured by applicable censuses; and (D) has submitted data satisfactory to the Secretary that it has a combined population of not less than 200,000 (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county.''

Subsec. (d). Pub. L. 100–628, § 1082(a)(1), substituted ''subparagraph (A)(ii) or (D) of subsection (a)(6)'' for ''subsection (a)(6)(B)''.

Pub. L. 100–242, § 503(c), struck out at end ''During any such three-year period, the population of any unit of general local government which is not included in that of the urban county for the first year shall not be eligible for such inclusion in the second or third year, except where the unit of general local government loses the designation of metropolitan city.''

Subsec. (e). Pub. L. 100–628, § 1082(a)(2), substituted ''subsection (a)(6)(A)(ii)(I)(a)'' for ''subsection (a)(6)(B)(i)''.

1987—Subsec. (a)(4). Pub. L. 100–202 inserted third sentence and struck out former third sentence which read as follows: ''Any unit of general local government that becomes eligible to be classified as a metropolitan city for fiscal year 1984 or 1985 may, upon submission of written notification to the Secretary, defer its classification as a metropolitan city for all purposes under this chapter for fiscal years 1984, 1985, and 1986 if such unit of general local government elects to have its population included in an urban county under subsection (d) of this section.''

Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

Subsec. (a)(6). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

Pub. L. 100–77 inserted ''or 1984''.

1986—Subsec. (a)(4), (6). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272, § 3011(a), directed amendment of pars. (4) and (6) identical to Pub. L. 99–216 substituting ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

Subsec. (a)(17). Pub. L. 99–272, § 14001(b)(3), substituted ''or was considered an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter'' for ''or under chapter 67 of title 31''.

1985—Subsec. (a)(4). Pub. L. 99–219, § 5(a)(1), substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156, § 5(a)(1), substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120, § 5(a)(1), substituted ''through November 14, 1985'' for ''for fiscal years 1984 and 1985''.

Subsec. (a)(6). Pub. L. 99–219, § 5(a)(2), substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156, § 5(a)(2), substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120, § 5(a)(2), substituted ''through November 14, 1985'' for ''for fiscal years 1984 and 1985''.

1984—Subsec. (a)(4). Pub. L. 98–479, § 101(a)(1), in last sentence, struck out ''while its population is included in an urban county for such fiscal year'' after ''fiscal year 1984 or 1985'', and substituted ''elects'' for ''continues'' and ''an'' for ''such'' before ''urban county''.

Subsec. (a)(6). Pub. L. 98–479, § 101(a)(2), inserted '', except that the provisions of this sentence shall not apply with respect to any county losing its classification as an urban county by reason of the election of any unit of general local government included in such county to have its population excluded under clause (B)(i) of the first sentence or to not renew a cooperation agreement under clause (B)(ii) of such sentence'' at end of second sentence, '', (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county'' at end of cl. (B) in last sentence, and ''(excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county'' at end of cl. (D) in last sentence.

Subsec. (a)(17). Pub. L. 98–479, § 203(*l*)(1), substituted ''chapter 67 of title 31'' for ''the State and Local Fiscal Assistance Act of 1972 (Public Law 92–512)''.

Subsec. (a)(20). Pub. L. 98–479, § 101(a)(3), in amending par. (20) generally, designated existing provisions as subpar. (A) and substituted ''mean families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families'' for ''have the meaning given the term 'lower income families' in section 1437a(b)(2) of this title'', substituted ''whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families'' for ''has the meaning given the term 'very low-income families' in such section'', inserted ''The term 'persons of moderate income' means families and individuals whose incomes exceed 50 percent, but do not exceed 80 percent, of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families'', and added subpar. (B).

Subsec. (a)(21). Pub. L. 98–479, § 101(a)(4), substituted ''capitol'' for ''capital'', and added a comma after ''or office buildings''.

1983—Subsec. (a)(3). Pub. L. 98–181, § 102(d), substituted ''Office of Management and Budget'' for ''Department of Commerce''.

Subsec. (a)(4). Pub. L. 98–181, § 102(d), substituted ''Office of Management and Budget'' for ''Department of Commerce''.

Pub. L. 98–181, § 102(a), substituted provision authorizing retention of classification as metropolitan cities through fiscal year 1985 of any cities classified as deemed to be such for purposes of assistance for fiscal year 1983 for provision that any city which had been classified as a metropolitan city under this paragraph because the population of such city exceeded fifty thousand would be so classified until the decennial census indicated that the population of such city was less than fifty thousand or until September 30, 1983, whichever was later, and inserted provision permitting any units of general local government which become eligible to be classified as metropolitan cities for fiscal years 1984 and 1985 while their population is included in an urban county for such fiscal year to defer such classification through fiscal year 1986 if such unit of general local government continues to have its population included in such urban county under subsec. (d) of this section.

Subsec. (a)(6). Pub. L. 98–181, § 102(b), substituted provision permitting retention of classification as urban counties through fiscal year 1985 of any counties classified or deemed to be such for purposes of assistance under this chapter for fiscal year 1983, and allowing a county to qualify as an urban county upon meeting cer-

tain conditions despite failing to meet the requirements of cl. (B) of the first sentence for provision that any urban county qualifying as such in fiscal year 1981 which did not meet the population requirements of cl. (B) of the first sentence would be considered to meet such requirements through Sept. 30, 1983, and would not be subject to subsec. (d) of this section through such date.

Subsec. (a)(9). Pub. L. 98–181, § 102(d), substituted ''Office of Management and Budget'' for ''Department of Commerce''.

Subsec. (a)(20), (21). Pub. L. 98–181, § 102(c), added pars. (20) and (21).

Subsec. (b). Pub. L. 98–181, § 102(d), substituted ''Office of Management and Budget'' for ''Department of Commerce'' in two places.

Pub. L. 98–181, § 102(e), struck out provisions that no data from the 1980 Decennial Census, except those relating to population and poverty, would be taken into account for purposes of sections 5306 and 5318 of this title and that no revision to the criteria for establishing a metropolitan area or defining a central city of such an area published after January 1, 1983, would be taken into account for purposes of this chapter, except that any area or city which would newly qualify as a metropolitan area or central city of such an area by reason of such revision would be so qualified.

Subsec. (d). Pub. L. 98–181, § 102(f), inserted exception where the unit of general local government loses the designation of metropolitan city.

1982—Subsec. (a)(4). Pub. L. 97–289, § 5(1), (2), substituted ''under this paragraph because the population of such city exceeded fifty thousand shall'' for ''under clause (B) of this paragraph shall continue to'', and substituted ''1983'' for ''1982''.

Subsec. (a)(6). Pub. L. 97–289, § 5(3)(A)–(C), substituted ''before October 1, 1983,'' for ''for fiscal year 1982'' after ''population of which'', ''through September 30, 1983,'' for ''for fiscal year 1982'' after ''requirements of such clause'', and ''through such date'' for ''that fiscal year''.

1981—Subsec. (a). Pub. L. 97–35, §§ 309(a), 310, in par. (4) inserted applicability of Sept. 30, 1982, date to provisions, in par. (6) inserted provisions relating to urban county qualifying in fiscal year 1981, added par. (7), struck out pars. (18) and (19), which defined ''program period'' and ''Community Development Program'', respectively, and redesignated former pars. (7) to (17) and (20) as (8) to (18) and (19), respectively.

Subsec. (c). Pub. L. 97–35, § 309(b), substituted ''activities assisted under this chapter'' for ''a Community Development Program in whole or in part''.

Subsec. (d). Pub. L. 97–35, § 309(c), substituted provisions relating to nonreceipt of a grant, for provisions relating to disapproval or withdrawal of an application, and struck out ''(a)(1)'' after ''5303''.

1980—Subsec. (a)(3), (4), (8). Pub. L. 96–399, § 111(a), substituted ''Department of Commerce'' for ''Office of Management and Budget'' wherever appearing.

Subsec. (b). Pub. L. 96–399, §§ 101(a), 111(a), inserted provisions relating to prohibition of use, in fiscal years 1981 to 1983, of data from the 1980 Decennial Census, except those relating to population and poverty, for purposes of section 5318 and 5306, and prohibition on revision to criteria for establishment of a metropolitan area or definition of a central city, except for those newly qualifying, and substituted ''Department of Commerce'' for ''Office of Management and Budget'', wherever appearing.

Subsec. (d). Pub. L. 96–399, § 101(b)(1), substituted provisions relating to inclusion of the population of any unit of general local government in the population of such urban county for three program years, such unit to be ineligible for a grant under section 5306 as a separate entity, and prohibiting eligibility for second and third years if not included for the first year, for provisions relating to notification of units of general local government of their opportunity to exclude their populations from such urban county, and inclusion in such urban county unless exclusion is elected by notification.

Subsec. (e). Pub. L. 96–399, § 101(c), added subsec. (e).

1979—Subsec. (a)(1). Pub. L. 96–153, inserted reference to Northern Mariana Islands in definition of unit of general local government.

1977—Subsec. (a)(1). Pub. L. 95–128, § 102(a)(1), excluded from term ''unit of general local government'' Indian tribes, bands, groups, and nations, including Alaska Indians, Aleuts, and Eskimos of the United States.

Subsec. (a)(4). Pub. L. 95–128, § 102(a)(2), clarified term ''metropolitan city'' to continue the classification of any city classified as a metropolitan city under cl. (B) as such city until the decennial census indicates the population of such city is less than fifty thousand.

Subsec. (a)(5). Pub. L. 95–128, § 102(a)(3), limited the meaning of ''city'' to a town or township without any incorporated places within its boundaries which have entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.

Subsec. (a)(6). Pub. L. 95–128, § 102(a)(4), inserted ''either'' before ''(B)'' and added cl. (C).

Subsec. (a)(10) to (20). Pub. L. 95–128, § 102(a)(5), (6), added pars. (10) to (16) and redesignated former pars. (10) to (13) as (17) to (20).

Subsec. (d). Pub. L. 95–128, § 102(b), added subsec. (d).

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 903(c)(3) of Pub. L. 101–625 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to assistance under title I of the Housing and Community Development Act of 1974 [this chapter] for fiscal year 1991 and any fiscal year thereafter.''

Section 904(b) of Pub. L. 101–625 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the first allocation of assistance under section 106 [section 5306 of this title] that is made after the date of the enactment of this Act [Nov. 28, 1990] and to each allocation thereafter.''

Title II of Pub. L. 101–507, 104 Stat. 1370, provided in part that: ''The amendment made by this paragraph [amending this section] shall apply to the first allocation of assistance under section 106 [section 5306 of this title] that is made after the date of the enactment of this Act [Nov. 5, 1990] and to each allocation thereafter.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–235 applicable to amounts approved in any appropriation Act under section 5303 of this title for fiscal year 1990 and each fiscal year thereafter, see section 702(e) of Pub. L. 101–235, as amended, set out as a note under section 5306 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 14001(b)(3) of Pub. L. 99–272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99–272.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98–181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 101(b)(2) of Pub. L. 96–399 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1981.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–128 effective Oct. 1, 1977, see section 114 of Pub. L. 95–128, set out as a note under section 5301 of this title.

REGULATIONS

Pub. L. 108–186, title V, § 501(g), Dec. 16, 2003, 117 Stat. 2698, provided that: ''The Secretary of Housing and Urban Development shall issue regulations to carry out the amendments made by this section [amending this section and sections 5304, 5306, and 5307 of this title], which shall take effect not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Dec. 16, 2003].''

§ 5303. Grants to States, units of general local government and Indian tribes; authorizations

The Secretary is authorized to make grants to States, units of general local government, and Indian tribes to carry out activities in accordance with the provisions of this chapter. For purposes of assistance under section 5306 of this title, there are authorized to be appropriated $4,000,000,000 for fiscal year 1993 and $4,168,000,000 for fiscal year 1994. Sums authorized pursuant to this section shall remain available until expended.

(Pub. L. 93–383, title I, § 103, Aug. 22, 1974, 88 Stat. 637; Pub. L. 94–375, § 15(a), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 95–128, title I, § 103, Oct. 12, 1977, 91 Stat. 1113; Pub. L. 96–153, title I, § 103(a), (b), Dec. 21, 1979, 93 Stat. 1101, 1102; Pub. L. 96–399, title I, §§ 106, 111(b), Oct. 8, 1980, 94 Stat. 1618, 1621; Pub. L. 97–35, title III, § 301, Aug. 13, 1981, 95 Stat. 384; Pub. L. 98–181, title I, § 103, Nov. 30, 1983, 97 Stat. 1161; Pub. L. 100–242, title V, § 501(a), Feb. 5, 1988, 101 Stat. 1922; Pub. L. 101–625, title IX, § 901(a), Nov. 28, 1990, 104 Stat. 4384; Pub. L. 102–550, title VIII, § 801(a), Oct. 28, 1992, 106 Stat. 3843.)

AMENDMENTS

1992—Pub. L. 102–550 substituted provisions authorizing appropriations of $4,000,000,000 for fiscal year 1993 and $4,168,000,000 for fiscal year 1994 for provisions authorizing appropriations of $3,137,000,000 for fiscal year 1991 and $3,272,000,000 for fiscal year 1992, and struck out provisions requiring Secretary to make available, to extent approved in appropriation Acts (1) not less than $3,000,000 in each of fiscal years 1991 and 1992 for assistance to economically disadvantaged and minority students participating in community development work study programs and enrolled in full-time programs in community and economic development, community planning, or community management, (2) not less than $6,500,000 for each of fiscal years 1991 and 1992 for historically black colleges, (3) not less than $7,000,000 for each of fiscal years 1991 and 1992 for Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, and (4) not less than $500,000 in fiscal year 1991 to demonstrate feasibility of database system and computer mapping tool for compliance, programming, and evaluation of community development block grants.

1990—Pub. L. 101–625 substituted provisions authorizing appropriations for purposes of assistance under section 5306 of this title of $3,137,000,000 for fiscal year 1991 and $3,272,000,000 for fiscal year 1992, along with provisions mandating certain minimum allotments of such appropriations as specified in pars. (1) to (4) for provisions authorizing appropriations for the purposes of assistance under sections 5306 and 5307 of this title of $3,000,000,000 for fiscal year 1988, and $3,000,000,000 for fiscal year 1989.

1988—Pub. L. 100–242 amended second sentence generally, substituting ''$3,000,000,000 for fiscal year 1988, and $3,000,000,000 for fiscal year 1989'' for ''not to exceed $3,468,000,000 for each of the fiscal years 1984, 1985, and 1986''.

1983—Pub. L. 98–181 substituted provisions authorizing appropriations for purposes of assistance under sections 5306 and 5307 of this title of not to exceed $3,468,000,000 for each of fiscal years 1984, 1985, and 1986 for provision which had authorized appropriations of not to exceed $4,166,000,000 for each of fiscal years 1982 and 1983.

1981—Pub. L. 97–35 completely restructured and revised provisions and substituted provisions relating to authorization of appropriations for fiscal years 1982 and 1983 to carry out activities under this chapter, for provisions relating to authorization of appropriations for fiscal years 1981 and 1982 to finance Community Development Programs, additional authorizations, supplemental assistance, and availability of funds.

1980—Subsec. (a)(1). Pub. L. 96–399, § 106(a), substituted provisions authorizing appropriations not to exceed $3,810,000,000, $3,960,000,000, and $4,110,000,000 for fiscal years 1981, 1982 and 1983, respectively, for provisions authorizing appropriations not to exceed $3,500,000,000, $3,650,000,000, and $3,800,000,000 for fiscal years 1978, 1979, and 1980, respectively.

Subsec. (a)(2). Pub. L. 96–399, § 106(b), substituted ''$275,000,000 for the fiscal year 1981 shall be added to the amount available for allocation under section 5306(c) of this title'' for ''$50,000,000 for each of the fiscal years 1975 and 1976, $200,000,000 for the fiscal year 1977 (not more than 50 per centum of which amount may be used under section 5306(d)(1) of this title), $350,000,000 for the fiscal year 1978 (of which not more than $175,000,000 may be used under such section), $265,000,000 for the fiscal year 1979 (of which not more than $25,000,000 may be used under such section), and $275,000,000 for the fiscal year 1980 (none of which may be used under such section) shall be added to the amount available for allocation under section 5306(d) of this title''.

Subsec. (c). Pub. L. 96–399, § 106(c), substituted ''amounts aggregating not to exceed $1,475,000,000 for fiscal years prior to the fiscal year 1981, and an additional amount not to exceed $675,000,000 for each of the fiscal years 1981, 1982, and 1983.'' for ''a sum not to exceed $400,000,000 for each of the fiscal years 1978 and 1979, and not to exceed $675,000,000 for the fiscal year 1980, except that no funds shall be made available for such purpose (1) for fiscal year 1978 unless the amount appropriated under subsections (a) and (b) of this section for fiscal year 1978 is at least $3,600,000,000; (2) for fiscal year 1979 unless the amount appropriated under subsections (a) and (b) of this section for fiscal year 1979 is at least $3,750,000,000; or (3) for fiscal year 1980 unless the amount appropriated under subsections (a) and (b) of this section for fiscal year 1980 is at least $3,900,000,000''.

Subsec. (e). Pub. L. 96–399, § 111(b), struck out subsec. (e) which related to submission to Congress of timely requests for additional appropriations for fiscal years 1978 through 1980.

1979—Subsec. (a)(2). Pub. L. 96–153, § 103(b), increased authorization of appropriation from $250,000,000 to $275,000,000 for fiscal year 1980.

Subsec. (c). Pub. L. 96–153, § 103(a), increased authorization of appropriation for fiscal year 1980 from $400,000,000 to $675,000,000.

1977—Subsec. (a)(1). Pub. L. 95–128, § 103(a), (b), authorized: grants to Indian tribes, appropriation authorizations for fiscal years 1978 through 1980, and unappropriated funds to be appropriated for any succeeding fiscal year; and deleted provisions which: prescribed $8,400,000,000 as the limitation on amount of obligations incurred, authorized appropriation of $2,500,000,000 for fiscal year 1975, increased to $5,450,000,000 and $8,400,000,000 for fiscal years 1976 and 1977 for liquidation of obligations, and made available for liquidation of contracts entered into hereunder appropriations for grants under title VII of the Housing Act of 1961 and sections 3102 and 3103 of this title, and supplemental grants under title I of the Demonstration Cities and Metropolitan Development Act of 1966, not otherwise obligated prior to Jan. 1, 1975.

Subsec. (a)(2). Pub. L. 95–128, § 103(c), inserted use of additional money authorization provisions for fiscal years 1978 through 1980.

Subsec. (b). Pub. L. 95–128, § 103(d), authorized appropriations for fiscal years 1978 through 1980, substituted ''for the financial settlement and, to the extent feasible, the completion of projects and programs assisted under the categorical programs terminated in section 5316(a) of this title, primarily urban renewal projects assisted under the Housing Act of 1949, to units of general local government which require supplemental assistance which cannot be provided'' for ''to units of general local government having urgent community development needs which cannot be met'' and inserted provision respecting requirement of prior appropriation of a minimum amount.

Subsecs. (c) to (e). Pub. L. 95–128, § 103(e), added subsec. (c) and redesignated existing subsecs. (c) and (d) as (d) and (e), respectively.

1976—Subsec. (a)(2). Pub. L. 94–375 inserted '', and $200,000,000 for the fiscal year 1977, not more than 50 per centum of which amount may be used under section 5306(d)(1) of this title,'' after ''1976''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98–181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–128 effective Oct. 1, 1977, see section 114 of Pub. L. 95–128, set out as a note under section 5301 of this title.

§ 5304. Statement of activities and review

(a) Statement of objectives and projected use of funds by grantee prerequisite to receipt of grant; publication of proposals by grantees; notice and comment; citizen participation plan

(1) Prior to the receipt in any fiscal year of a grant under section 5306(b) of this title by any metropolitan city or urban county, under section 5306(d) of this title by any State, under section 5306(d)(2)(B) of this title by any unit of general local government, or under section 5306(a)(3) of this title by any insular area, the grantee shall have prepared a final statement of community development objectives and projected use of funds and shall have provided the Secretary with the certifications required in subsection (b) of this section and, where appropriate, subsection (c) of this section. In the case of metropolitan cities and urban counties receiving grants pursuant to section 5306(b) of this title, units of general local government receiving grants pursuant to section 5306(d)(2)(B) of this title, and insular areas receiving grants pursuant to section 5306(a)(3) of this title, the statement of projected use of funds shall consist of proposed community development activities. In the case of States receiving grants pursuant to section 5306(d) of this title, the statement of projected use of funds shall consist of the method by which the States will distribute funds to units of general local government.

(2) In order to permit public examination and appraisal of such statements, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the grantee shall in a timely manner—

(A) furnish citizens or, as appropriate, units of general local government information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the grantee for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities;

(B) publish a proposed statement in such manner to afford affected citizens or, as appropriate, units of general local government an opportunity to examine its content and to submit comments on the proposed statement and on the community development performance of the grantee;

(C) hold one or more public hearings to obtain the views of citizens on community development and housing needs;

(D) provide citizens or, as appropriate, units of general local government with reasonable access to records regarding the past use of funds received under section 5306 of this title by the grantee; and

(E) provide citizens or, as appropriate, units of general local government with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds received under section 5306 of this title from one eligible activity to another or in the method of distribution of such funds.

In preparing the final statement, the grantee shall consider any such comments and views and may, if deemed appropriate by the grantee, modify the proposed statement. The final statement shall be made available to the public, and a copy shall be furnished to the Secretary together with the certifications required under subsection (b) of this section and, where appropriate, subsection (c) of this section. Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same procedures required in this paragraph for the preparation and submission of such statement.

(3) A grant under section 5306 of this title may be made only if the grantee certifies that it is following a detailed citizen participation plan which—

(A) provides for and encourages citizen participation, with particular emphasis on participation by persons of low and moderate income who are residents of slum and blight areas and of areas in which section 106 [42 U.S.C. 5306] funds are proposed to be used, and in the case of a grantee described in section 5306(a) of this title, provides for participation of residents in low and moderate income neighborhoods as defined by the local jurisdiction;

(B) provides citizens with reasonable and timely access to local meetings, information, and records relating to the grantee's proposed

use of funds, as required by regulations of the Secretary, and relating to the actual use of funds under this chapter;

(C) provides for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee;

(D) provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance, which hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for the handicapped;

(E) provides for a timely written answer to written complaints and grievances, within 15 working days where practicable; and

(F) identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

This paragraph may not be construed to restrict the responsibility or authority of the grantee for the development and execution of its community development program.

(b) Certification of enumerated criteria by grantee to Secretary

Any grant under section 5306 of this title shall be made only if the grantee certifies to the satisfaction of the Secretary that—

(1) the grantee is in full compliance with the requirements of subsection (a)(2)(A), (B), and (C) of this section and has made the final statement available to the public;

(2) the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] and the Fair Housing Act [42 U.S.C. 3601 et seq.], and the grantee will affirmatively further fair housing;

(3) the projected use of funds has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight, and the projected use of funds may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs, except that (A) the aggregate use of funds received under section 5306 of this title and, if applicable, as a result of a guarantee or a grant under section 5308 of this title, during a period specified by the grantee of not more than 3 years, shall principally benefit persons of low and moderate income in a manner that ensures that not less than 70 percent of such funds are used for activities that benefit such persons during such period; and (B) a grantee that borders on the Great Lakes and that experiences significant adverse financial and physical effects due to lakefront erosion or flooding may include in the projected use of funds activities that are clearly designed to alleviate the threat posed, and rectify the damage caused, by such erosion or flooding if such activities will principally benefit persons of low and moderate income and the grantee certifies that such activities are necessary to meet other needs having a particular urgency;

(4) it has developed a community development plan pursuant to subsection (m) of this section, for the period specified by the grantee under paragraph (3), that identifies community development needs and specifies both short- and long-term community development objectives that have been developed in accordance with the primary objective and requirements of this chapter;

(5) the grantee will not attempt to recover any capital costs of public improvements assisted in whole or part under section 5306 of this title or with amounts resulting from a guarantee under section 5308 of this title by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (A) funds received under section 5306 of this title are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this chapter; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient funds received under section 5306 of this title to comply with the requirements of subparagraph (A); and

(6) the grantee will comply with the other provisions of this chapter and with other applicable laws.

(c) Special certifications required for certain grants

A grant may be made under section 5306(b) of this title only if the unit of general local government certifies that it is following—

(1) a current housing affordability strategy which has been approved by the Secretary in accordance with section 12705 of this title, or

(2) a housing assistance plan which was approved by the Secretary during the 180-day period beginning on November 28, 1990, or during such longer period as may be prescribed by the Secretary in any case for good cause.

(d) Residential antidisplacement and relocation assistance plan; certification of adherence; contents

(1) A grant under section 5306 or 5318 of this title may be made only if the grantee certifies that it is following a residential antidisplacement and relocation assistance plan. A grantee receiving a grant under section 5306(a) of this title or section 5318 of this title shall so certify to the Secretary. A unit of general local government receiving amounts from a State under section 5306(d) of this title shall so certify to the State, and a unit of general local govern-

ment receiving amounts from the Secretary under section 5306(d) of this title shall so certify to the Secretary.

(2) The residential antidisplacement and relocation assistance plan shall in connection with a development project assisted under section 5306 or 5318 of this title—

(A) in the event of such displacement, provide that—

(i) governmental agencies or private developers shall provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low and moderate income dwelling units demolished or converted to a use other than for housing for low and moderate income persons, and provide that such replacement housing may include existing housing assisted with project based assistance provided under section 1437f of this title;

(ii) such comparable replacement dwellings shall be designed to remain affordable to persons of low and moderate income for 10 years from the time of initial occupancy;

(iii) relocation benefits shall be provided for all low or moderate income persons who occupied housing demolished or converted to a use other than for low or moderate income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks, and other moving-related expenses, including any interim living costs; and in the case of displaced persons of low and moderate income, provide either—

(I) compensation sufficient to ensure that, for a 5-year period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent; or

(II) if elected by a family, a lump-sum payment equal to the capitalized value of the benefits available under subclause (I) to permit the household to secure participation in a housing cooperative or mutual housing association; and

(iv) persons displaced shall be relocated into comparable replacement housing that is—

(I) decent, safe, and sanitary;

(II) adequate in size to accommodate the occupants;

(III) functionally equivalent; and

(IV) in an area not subject to unreasonably adverse environmental conditions;

(B) provide that persons displaced shall have the right to elect, as an alternative to the benefits under this subsection, to receive benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) if such persons determine that it is in their best interest to do so; and

(C) provide that where a claim for assistance under subparagraph (A)(iv) is denied by a grantee, the claimant may appeal to the Secretary in the case of a grant under section 5306 or 5318 of this title or to the appropriate State official in the case of a grant under section 5306(d) of this title, and that the decision of the Secretary or the State official shall be final unless a court determines the decision was arbitrary and capricious.

(3) Paragraphs (2)(A)(i) and (2)(A)(ii) shall not apply in any case in which the Secretary finds, on the basis of objective data, that there is available in the area an adequate supply of habitable affordable housing for low and moderate income persons. A determination under this paragraph is final and nonreviewable.

(e) Submission of performance and evaluation report by grantee to Secretary; contents; availability for citizen comment; annual review and audit by Secretary of program implementation; adjustments in amount of annual grants

Each grantee shall submit to the Secretary, at a time determined by the Secretary, a performance and evaluation report concerning the use of funds made available under section 5306 of this title, together with an assessment by the grantee of the relationship of such use to the objectives identified in the grantee's statement under subsection (a) of this section and to the requirements of subsection (b)(3) of this section. Such report shall also be made available to the citizens in each grantee's jurisdiction in sufficient time to permit such citizens to comment on such report prior to its submission, and in such manner and at such times as the grantee may determine. The grantee's report shall indicate its programmatic accomplishments, the nature of and reasons for changes in the grantee's program objectives, indications of how the grantee would change its programs as a result of its experiences, and an evaluation of the extent to which its funds were used for activities that benefited low- and moderate-income persons. The report shall include a summary of any comments received by the grantee from citizens in its jurisdiction respecting its program. The Secretary shall encourage and assist national associations of grantees eligible under section 5306(d)(2)(B) of this title, national associations of States, and national associations of units of general local government in nonentitlement areas to develop and recommend to the Secretary, within one year after November 30, 1983, uniform recordkeeping, performance reporting, and evaluation reporting, and auditing requirements for such grantees, States, and units of general local government, respectively. Based on the Secretary's approval of these recommendations, the Secretary shall establish such requirements for use by such grantees, States, and units of general local government. The Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine—

(1) in the case of grants made under subsection (a)(3), (b), or (d)(2)(B) of section 5306 of this title, whether the grantee has carried out its activities and, where applicable, its housing assistance plan in a timely manner, whether the grantee has carried out those activities and its certifications in accordance with the requirements and the primary objectives of this chapter and with other applicable laws, and whether the grantee has a continuing capacity to carry out those activities in a timely manner; and

(2) in the case of grants to States made under section 5306(d) of this title, whether the State has distributed funds to units of general local government in a timely manner and in conformance to the method of distribution described in its statement, whether the State has carried out its certifications in compliance with the requirements of this chapter and other applicable laws, and whether the State has made such reviews and audits of the units of general local government as may be necessary or appropriate to determine whether they have satisfied the applicable performance criteria described in paragraph (1) of this subsection.

The Secretary may make appropriate adjustments in the amount of the annual grants in accordance with the Secretary's findings under this subsection. With respect to assistance made available to units of general local government under section 5306(d) of this title, the Secretary may adjust, reduce, or withdraw such assistance, or take other action as appropriate in accordance with the Secretary's reviews and audits under this subsection, except that funds already expended on eligible activities under this chapter shall not be recaptured or deducted from future assistance to such units of general local government.

(f) Audit of grantees by Government Accountability Office; access to books, accounts, records, etc., by representatives of Government Accountability Office

Insofar as they relate to funds provided under this chapter, the financial transactions of recipients of such funds may be audited by the Government Accountability Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the Government Accountability Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(g) Environmental protection measures applicable for release of funds to applicants for projects; issuance of regulations by Secretary subsequent to consultation with Council on Environmental Quality; request and certification to Secretary for approval of release of funds; form, contents and effect of certification

(1) In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this chapter, and to assure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may under regulations provide for the release of funds for particular projects to recipients of assistance under this chapter who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were he to undertake such projects as Federal projects. The Secretary shall issue regulations to carry out this subsection only after consultation with the Council on Environmental Quality.

(2) The Secretary shall approve the release of funds for projects subject to the procedures authorized by this subsection only if, at least fifteen days prior to such approval and prior to any commitment of funds to such projects other than for purposes authorized by section 5305(a)(12) of this title or for environmental studies, the recipient of assistance under this chapter has submitted to the Secretary a request for such release accompanied by a certification which meets the requirements of paragraph (3). The Secretary's approval of any such certification shall be deemed to satisfy his responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto which are covered by such certification.

(3) A certification under the procedures authorized by this subsection shall—

(A) be in a form acceptable to the Secretary,

(B) be executed by the chief executive officer or other officer of the recipient of assistance under this chapter qualified under regulations of the Secretary,

(C) specify that the recipient of assistance under this chapter has fully carried out its responsibilities as described under paragraph (1) of this subsection, and

(D) specify that the certifying officer (i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to paragraph (1) of this subsection, and (ii) is authorized and consents on behalf of the recipient of assistance under this chapter and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(4) In the case of grants made to States pursuant to section 5306(d) of this title, the State shall perform those actions of the Secretary described in paragraph (2) and the performance of such actions shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of such paragraph.

(h) Payments; revolving loan fund: establishment in private financial institution for rehabilitation activities; standards for payments: criteria

(1) Units of general local government receiving assistance under this chapter may receive funds, in one payment, in an amount not to exceed the total amount designated in the grant (or, in the case of a unit of general local government receiving a distribution from a State pursuant to

section 5306(d) of this title, not to exceed the total amount of such distribution) for use in establishing a revolving loan fund which is to be established in a private financial institution and which is to be used to finance rehabilitation activities assisted under this chapter. Rehabilitation activities authorized under this section shall begin within 45 days after receipt of such payment and substantial disbursements from such fund must begin within 180 days after receipt of such payment.

(2) The Secretary shall establish standards for such cash payments which will insure that the deposits result in appropriate benefits in support of the recipient's rehabilitation program. These standards shall be designed to assure that the benefits to be derived from the local program include, at a minimum, one or more of the following elements, or such other criteria as determined by the Secretary—

(A) leverage of community development block grant funds so that participating financial institutions commit private funds for loans in the rehabilitation program in amounts substantially in excess of deposit of community development funds;

(B) commitment of private funds for rehabilitation loans at below-market interest rates or with repayment periods lengthened or at higher risk than would normally be taken;

(C) provision of administrative services in support of the rehabilitation program by the participating lending institutions; and

(D) interest earned on such cash deposits shall be used in a manner which supports the community rehabilitation program.

(i) Metropolitan city as part of urban county

In any case in which a metropolitan city is located, in whole or in part, within an urban county, the Secretary may, upon the joint request of such city and county, approve the inclusion of the metropolitan city as part of the urban county for purposes of submitting a statement under subsection (a) of this section and carrying out activities under this chapter.

(j) Retention of program income; condition of distribution

Notwithstanding any other provision of law, any unit of general local government may retain any program income that is realized from any grant made by the Secretary, or any amount distributed by a State, under section 5306 of this title if (1) such income was realized after the initial disbursement of the funds received by such unit of general local government under such section; and (2) such unit of general local government has agreed that it will utilize the program income for eligible community development activities in accordance with the provisions of this chapter; except that the Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with this subsection creates an unreasonable administrative burden on the unit of general local government. A State may require as a condition of any amount distributed by such State under section 5306(d) of this title that a unit of general local government shall pay to such State any such income to be used by such State to fund additional eligible community development activities, except that such State shall waive such condition to the extent such income is applied to continue the activity from which such income was derived.

(k) Provision of benefits to displaced persons

Each grantee shall provide for reasonable benefits to any person involuntarily and permanently displaced as a result of the use of assistance received under this chapter to acquire or substantially rehabilitate property.

***(l)* Protection of individuals engaging in nonviolent civil rights demonstrations**

No funds authorized to be appropriated under section 5303 of this title may be obligated or expended to any unit of general local government that—

(1) fails to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; or

(2) fails to adopt and enforce a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction.

(m) Community development plans

(1) In general

Prior to the receipt in any fiscal year of a grant from the Secretary under subsection (a)(2),(b), (d)(1), or (d)(2)(B) of section 5306 of this title, each recipient shall have prepared and submitted in accordance with this subsection and in such standardized form as the Secretary shall, by regulation, prescribe a description of its priority nonhousing community development needs eligible for assistance under this chapter.

(2) Local governments

In the case of a recipient that is a unit of general local government other than an insular area—

(A) prior to the submission required by paragraph (1), the recipient shall, to the extent practicable, notify adjacent units of general local government and solicit the views of citizens on priority nonhousing community development needs; and

(B) the description required under paragraph (1) shall be submitted to the Secretary, the State, and any other unit of general local government within which the recipient is located, in such standardized form as the Secretary shall, by regulation, prescribe.

(3) States

In the case of a recipient that is a State, the description required by paragraph (1)—

(A) shall include only the needs within the State that affect more than one unit of general local government and involve activities typically funded by such States under this chapter; and

(B) shall be submitted to the Secretary in such standard form as the Secretary, by regulation, shall prescribe.

(4) Effect of submission

A submission under this subsection shall not be binding with respect to the use or distribution of amounts received under section 5306 of this title.

(Pub. L. 93–383, title I, § 104, Aug. 22, 1974, 88 Stat. 638; Pub. L. 95–128, title I, §§ 104, 110(a), Oct. 12, 1977, 91 Stat. 1114, 1125; Pub. L. 95–557, title I, § 103(a)–(d), Oct. 31, 1978, 92 Stat. 2083; Pub. L. 96–153, title I, §§ 103(c), (g), 109(a), Dec. 21, 1979, 93 Stat. 1102, 1105; Pub. L. 96–399, title I, §§ 101(d), 104(b), 105(a), 109, 111(c), Oct. 8, 1980, 94 Stat. 1615, 1616, 1618, 1619, 1621; Pub. L. 97–35, title III, §§ 302(b), (c)(1), (d)–(f), 309(d), Aug. 13, 1981, 95 Stat. 384, 386, 387, 396; Pub. L. 98–181, title I, §§ 101(b), 104, Nov. 30, 1983, 97 Stat. 1159, 1161; Pub. L. 98–479, title I, § 101(a)(5)–(7), Oct. 17, 1984, 98 Stat. 2219; Pub. L. 100–242, title V, §§ 502(c), 505–509(a), Feb. 5, 1988, 101 Stat. 1923, 1926, 1927; Pub. L. 100–628, title X, § 1083, Nov. 7, 1988, 102 Stat. 3277; Pub. L. 101–625, title IX, §§ 902(b), 905, 906, 922, Nov. 28, 1990, 104 Stat. 4385, 4387, 4402; Pub. L. 102–550, title VIII, §§ 804, 808, 812, Oct. 28, 1992, 106 Stat. 3845, 3850; Pub. L. 103–233, title II, § 232(a)(2)(B), Apr. 11, 1994, 108 Stat. 367; Pub. L. 108–186, title V, § 501(c), Dec. 16, 2003, 117 Stat. 2697; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (b)(2), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (d)(2)(B), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (§ 4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (g)(1), (2), (3)(D), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in two places.

2003—Subsec. (a)(1). Pub. L. 108–186, § 501(c)(1), in first sentence, struck out ''or'' after ''State,'' and inserted ''or under section 5306(a)(3) of this title by any insular area,'' after ''government,'', and, in second sentence, substituted a comma for ''and in the case of'' before ''units'' and inserted ''and insular areas receiving grants pursuant to section 5306(a)(3) of this title,'' after ''section 5306(d)(2)(B) of this title,''.

Subsec. (e)(1). Pub. L. 108–186, § 501(c)(2), substituted ''subsection (a)(3), (b), or (d)(2)(B) of section 5306 of this title'' for ''section 5306(b) or section 5306(d)(2)(B) of this title''.

Subsec. (m)(1). Pub. L. 108–186, § 501(c)(3)(A), inserted ''(a)(2),'' after ''under subsection''.

Subsec. (m)(2). Pub. L. 108–186, § 501(c)(3)(B), substituted ''government other than an insular area'' for ''government'' in introductory provisions.

1994—Subsec. (b)(3)(A). Pub. L. 103–233 inserted ''or a grant'' after ''guarantee''.

1992—Subsec. (b)(2). Pub. L. 102–550, § 808, substituted ''the Civil Rights Act of 1964 and the Fair Housing Act'' for ''Public Law 88–352 and Public Law 90–284''.

Subsec. (b)(4). Pub. L. 102–550, § 812(b), inserted ''pursuant to subsection (m) of this section'' after ''plan'' and struck out ''and housing'' before ''needs and''.

Subsec. (j). Pub. L. 102–550, § 804, in first sentence, struck out ''while the unit of general local government is participating in a community development program under this chapter'' after ''has agreed that'' and inserted before period at end ''; except that the Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with this subsection creates an unreasonable administrative burden on the unit of general local government''.

Subsecs. (*l*), (m). Pub. L. 102–550, § 812(a), redesignated subsec. (*l*), relating to community development plans, as (m) and amended it generally, substituting present provisions for provisions requiring recipients to have submitted a description of its nonhousing community development needs and strategies for meeting those needs, providing for special requirements for such plans where the recipient was a State or a unit of general local government, and providing that a submission of a plan would not be binding with respect to the use or distribution of amounts received under section 5306 of this title.

1990—Subsec. (b)(3). Pub. L. 101–625, § 902(b), substituted ''70 percent'' for ''60 percent''.

Subsec. (c). Pub. L. 101–625, § 905, amended subsec. (c) generally, substituting present provisions for provisions authorizing grants under section 5306(b) of this title only if the unit of local government certified that it followed a current housing assistance plan approved by the Secretary which (1) accurately surveyed the condition of the housing stock in the community, (2) specified a realistic annual goal for the number of dwelling units or persons of low and moderate income to be assisted, (3) indicated the general locations of proposed low and moderate income housing, and (4) specified activities that would be undertaken annually to minimize displacement and preserve or expand the availability of low and moderate income housing, and which required the establishment of dates and manner for the submission of housing assistance plans.

Subsec. (*l*). Pub. L. 101–625, § 922, added subsec. (*l*) relating to community development plans.

Pub. L. 101–625, § 906, added subsec. (*l*) relating to protection of individuals engaging in nonviolent civil rights demonstrations.

1988—Subsec. (a)(1). Pub. L. 100–242, § 505, struck out at end ''In all cases, beginning in fiscal year 1984, the statement required in this subsection shall include a description of the use of funds made available under section 5306 of this title in fiscal year 1982 and thereafter (or, beginning in fiscal year 1985, such use since preparation of the last statement prepared pursuant to this subsection) together with an assessment of the relationship of such use to the community development objectives identified in the statement prepared pursuant to this subsection for such previous fiscal years and to the requirements of subsection (b)(3) of this section.''

Subsec. (a)(3). Pub. L. 100–242, § 508, added par. (3).

Subsec. (b)(3). Pub. L. 100–242, § 506, designated provision after ''except that'' as cl. (A) and added cl. (B).

Pub. L. 100–242, § 502(c), substituted ''60'' for ''51''.

Subsec. (c)(1)(A), (B). Pub. L. 100–242, § 507(b)(1), substituted ''persons of low and moderate income'' for ''lower income persons'' wherever appearing.

Subsec. (c)(1)(C). Pub. L. 100–242, § 507(b), substituted ''persons of low and moderate income'' for ''lower income persons'' and ''low-income persons''.

Subsec. (c)(1)(D). Pub. L. 100–242, § 507(a), added subpar. (D).

Subsec. (d). Pub. L. 100–242, § 509(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 100–628, § 1083(a), amended third sentence generally. Prior to amendment, third sentence read as follows: ''A grantee receiving a grant under section 5306(d) of this title shall so certify to the State''.

Subsec. (d)(2)(A)(iii)(II). Pub. L. 100–628, § 1083(b), inserted ''and'' after ''mutual housing association;''.

Subsecs. (e) to (k). Pub. L. 100–242, § 509(a)(1), redesignated subsecs. (d) to (j) as (e) to (k), respectively.

1984—Subsec. (a)(2)(E). Pub. L. 98–479, § 101(a)(5), inserted ''or in the method of distribution of such funds''.

Subsec. (b)(5)(B). Pub. L. 98–479, § 101(a)(6), substituted ''moderate'' for ''low and moderate income who are not persons of very low'' before ''income, the grantee certifies''.

Subsec. (d). Pub. L. 98–479, § 101(a)(7), struck out the comma between ''which'' and ''its funds'' in third sentence, and inserted ''general'' before ''local'' after ''and units of'' in fifth sentence, and before ''local'' in sixth sentence.

1983—Subsec. (a)(1). Pub. L. 98–181, § 104(a), inserted sentence at end that the statement must include a description of the use of funds made available under section 5306 of this title in fiscal year 1982 and thereafter (or, beginning with fiscal year 1985, such use since preparation of the last statement under this subsection) together with an assessment of the relationship of such use to the community development objectives identified in the statement prepared pursuant to this subsection for previous fiscal years and to the requirements of subsec. (b)(3) of this section.

Subsec. (a)(2). Pub. L. 98–181, § 104(b)(1), in provisions preceding subpar. (A) substituted ''shall in a timely manner'' for ''shall''.

Pub. L. 98–181, § 104(b)(6), inserted at end ''Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same procedures required in this paragraph for the preparation and submission of such statement.''

Subsec. (a)(2)(A). Pub. L. 98–181, § 104(b)(2), substituted ''citizens or, as appropriate, units of general local government'' for ''citizens'', and inserted '', including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the grantee for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities''.

Subsec. (a)(2)(D), (E). Pub. L. 98–181, § 104(b)(3)–(5), added subpars. (D) and (E).

Subsec. (b)(2). Pub. L. 98–181, § 104(c)(1), inserted requirement that the grantee affirmatively further fair housing.

Subsec. (b)(3). Pub. L. 98–181, § 101(b), inserted provision that the aggregate use of funds received under section 5306 of this title and, if applicable, as a result of a guarantee under section 5308 of this title, during a period specified by the grantee of not more than 3 years, shall principally benefit persons of low and moderate income in a manner that ensures that not less than 51 percent of such funds are used for activities that benefit such persons during such period.

Subsec. (b)(4) to (6). Pub. L. 98–181, § 104(c)(2)–(4), added pars. (4) and (5) and redesignated former par. (4) as (6).

Subsec. (c)(1)(A). Pub. L. 98–181, § 104(d), inserted ''(including the number of vacant and abandoned dwelling units)''.

Subsec. (d). Pub. L. 98–181, § 104(e), in provisions preceding par. (1), substituted ''performance and evaluation report'' for ''performance report''; substituted ''subsection (a) of this section and to the requirements of subsection (b)(3) of this section'' for ''subsection (a) of this section''; and inserted provision requiring that the report be made available for citizen comment prior to submission, that the report summarize such comments and indicate programmatic accomplishments, changes in programs and objectives, and an evaluation of the extent to which funds were used to benefit low- and moderate-income persons, and requiring the Secretary to establish uniform recordkeeping, performance and evaluation reporting, and requirements for grantees, States, and local governments, based on the Secretary's approval of recommendations made by such grantees and State and local governments.

Subsec. (g)(1). Pub. L. 98–181, § 104(f), inserted ''and substantial disbursements from such fund must begin within 180 days after receipt of such payment''.

Subsecs. (i), (j). Pub. L. 98–181, § 104(g), added subsecs. (i) and (j).

1981—Subsec. (a). Pub. L. 97–35, § 302(b), substituted provisions relating to statement of objectives and projected use of funds by grantee, publication of proposals by grantees, and procedures applicable for provisions relating to contents and statements required in application.

Subsec. (b). Pub. L. 97–35, § 302(b), substituted provisions relating to certifications of enumerated criteria by grantee to Secretary for provisions relating to additional requirements for application, certifications to Secretary, and waiver of required program contents.

Subsec. (c). Pub. L. 97–35, § 302(b), substituted provisions relating to certifications by the unit of general local government respecting enumerated grants for provisions relating to approval of applications.

Subsec. (d). Pub. L. 97–35, § 302(c)(1), substituted provisions relating to performance and assessment reports by grantee to the Secretary concerning use of funds under section 5306 of this title, and reviews, audits and adjustments by the Secretary, for provisions relating to performance and assessment reports by grantee to the Secretary concerning activities carried out under this chapter, and reviews, audits, and adjustments by Secretary.

Subsec. (e). Pub. L. 97–35, § 302(d), redesignated subsec. (g) as (e). Former subsec. (e), which related to review and comment on application by areawide agency under procedures established by President, was struck out.

Subsec. (f). Pub. L. 97–35, § 302(d), (e), redesignated subsec. (h) as (f), in par. (1) substituted ''recipients of assistance under this chapter'' for ''applicants'', in par. (2) ''recipient of assistance under this chapter'' for ''applicant'' and ''the releases of funds'' for ''the applications and releases of funds'' and in par. (3)(B) to (D) ''recipient of assistance under this chapter'' for ''applicant'', and added par. (4). Former subsec. (f), which related to approval date of application and adjustment of grant subsequent to approval of application, was struck out.

Subsec. (g). Pub. L. 97–35, § 302(d), (f), redesignated subsec. (i) as (g), in par. (1) substituted provision relating to units of general local government as recipients for provision relating to recipients of funds and in par. (2) struck out provision relating to review and approval of agreements. Former subsec. (g) redesignated (e).

Subsec. (h). Pub. L. 97–35, §§ 302(d), 309(d), redesignated subsec. (j) as (h) and substituted provisions relating to submission of a statement and carrying out activities for provisions relating to program planning, meeting application requirements, and program implementation. Former subsec. (h) redesignated (f).

Subsecs. (i), (j). Pub. L. 97–35, § 302(d), redesignated subsecs. (i) and (j) as (g) and (h), respectively.

1980—Subsec. (a). Pub. L. 96–399, § 104(b), inserted provision following par. (6) relating to discretionary inclusion in program summary comparable information with respect to applicant's energy conservation and renewable energy resource needs and objectives.

Subsec. (a)(2). Pub. L. 96–399, § 105(a), in cl. (B) substituted ''activities, and objectives, including activities'' for ''including activities'', struck out ''and objectives'' after ''moderate-income persons'', and in cl. (C) inserted provisions respecting activities on the involuntary displacement of low- and moderate-income persons.

Subsec. (c). Pub. L. 96–399, § 111(c)(1), substituted ''5306(b)'' for ''5306(a)''.

Subsec. (d). Pub. L. 96–399, §§109, 111(c)(2), substituted ''Each'' for ''Prior to the beginning of fiscal year 1977 and each fiscal year thereafter, each'', inserted provision relating to the annual submission of the performance report, prior to the beginning of each fiscal year, and less frequently for a grantee receiving a grant not funding a comprehensive development program, inserted provisions respecting determinations by the Secretary in the case of a grant for which a report is submitted less frequently than annually in accordance with the second sentence of this paragraph, and substituted ''5306(c)'' for ''5306(d)(2)'' and ''5306(e)'' for ''5306(f)(1)(B)''.

Subsec. (e). Pub. L. 96–399, §111(c)(2), substituted ''5306(c)'' for ''5306(d)(2)'' and ''5306(e)'' for ''5306(f)(1)(B)''.

Subsec. (j). Pub. L. 96–399, §101(d), added subsec. (j).

1979—Subsec. (a)(4)(A). Pub. L. 96–153, §109(a), inserted reference to impact of conversion of rental housing to condominium or cooperative ownership on housing needs.

Subsec. (b)(3). Pub. L. 96–153, §103(c), struck out cl. (A) and redesignated cls. (B) and (C) as (A) and (B), respectively.

Subsec. (h)(1). Pub. L. 96–153, §103(g)(1), substituted ''Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most'' for ''Act of 1969 are most'', and ''such Act, and such other provisions of law as the regulations of the Secretary specify that would apply'' for ''such Act that would apply''.

Subsec. (h)(2). Pub. L. 96–153, §103(g)(2), substituted ''National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify'' for ''National Environmental Policy Act''.

Subsec. (h)(3)(D). Pub. L. 96–153, §103(g)(3), substituted ''Act of 1969 and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other provision of law'' for ''Act of 1969 insofar as the provisions of such Act'' in cl. (i).

1978—Subsec. (a)(3)(C). Pub. L. 95–557, §103(c), inserted ''as a result of existing or projected employment opportunities in the community (and those elderly persons residing in or expected to reside in the community), or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary'' after ''expected to reside in the community''.

Subsec. (a)(4)(A). Pub. L. 95–557, §103(a), (c), inserted ''owners of homes requiring rehabilitation assistance'' after ''large families'' and inserted ''as a result of existing or projected employment opportunities in the community (and those elderly persons residing in or expected to reside in the community), or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary'' after ''expected to reside in the community''.

Subsec. (a)(4)(B)(i). Pub. L. 95–557, §103(b), inserted ''including existing rental and owner occupied dwelling units to be upgraded and thereby preserved'' after ''existing dwelling units''.

Subsec. (c). Pub. L. 95–557, §103(d), inserted provisions relating to approval or disapproval of any application on the basis that such application addresses any one of the primary purposes described in par. (3) to a greater or lesser extent than any other, unless such purpose is plainly inappropriate, in which case the application may be disapproved.

1977—Subsec. (a). Pub. L. 95–128, §110(a), inserted reference to section 5318 of this title.

Subsec. (a)(1). Pub. L. 95–128, §104(a)(1), inserted ''and housing'' before ''needs''.

Subsec. (a)(2)(B). Pub. L. 95–128, §104(a)(2), included provision activities designed to revitalize neighborhoods for benefit of low- and moderate-income persons.

Subsec. (a)(3). Pub. L. 95–128, §104(a)(3), inserted subpar. (B) requirement for a program designed to insure fully opportunity for participation by, and benefits to, the handicapped and added subpar. (C).

Subsec. (a)(4). Pub. L. 95–128, §104(a)(4), inserted subpar. (A) provision for identification of housing stock in a deteriorated condition; inserted in subpar. (B) ''lower-income'' before ''persons'' and added cl. (iii); and inserted subpar. (C)(i) provision respecting reclamation of housing stock where feasible through use of a broad range of techniques for housing restoration by local government, the private sector, or community organizations, including provision of a reasonable opportunity for tenants displaced as a result of such activities to relocate in their immediate neighborhood.

Subsec. (a)(6). Pub. L. 95–128, §104(a)(5), added cl. (A), redesignated former cls. (A) and (B) as (B) and (C), and redesignated former cl. (C) as (D) and substituted ''with an opportunity to submit comments concerning the community development performance of the applicant; but nothing in this paragraph'' for ''an adequate opportunity to participate in the development of the application; but no part of this paragraph''.

Subsec. (b)(2). Pub. L. 95–128, §104(b), substituted in first sentence ''low- and moderate-income'' for ''low- or moderate-income'' and in second sentence after ''urgency'' the clause ''because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available'' for ''as specifically described in the application''.

Subsec. (b)(3). Pub. L. 95–128, §104(c), added cl. (B), struck out former cl. ''(B) the application relates to the first community development activity to be carried out by such locality with assistance under this chapter'', redesignated cl. (D) as (C) and struck out former cl. ''(C) the assistance requested is for a single development activity under this chapter of a type eligible for assistance under title VII of the Housing Act of 1961 or title VII of the Housing and Urban Development Act of 1965''.

Subsec. (c)(3). Pub. L. 95–128, §104(d), inserted '', with specific regard to the primary purposes of principally benefiting persons of low- and moderate-income or aiding in the prevention or elimination of slums or blight or meeting other community development needs having a particular urgency,'' before ''or other applicable law''.

Subsec. (d). Pub. L. 95–128, §104(e), inserted requirement for inclusion of citizen comments in the performance reports and Secretary's consideration of the comments and inserted provision for adjustment of grants under section 5306(d)(2) and (f)(1)(B) of this title without recapture of expended funds or deduction from future grants.

Subsec. (e). Pub. L. 95–128, §104(f), inserted provisions respecting State participation in selection process for funding the grants.

Subsec. (i). Pub. L. 95–128, §104(g), added subsec. (i).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out subchapter II (§12721 et seq.) of chapter 130 of this title after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 509(b) of Pub. L. 100–242 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98–181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 302(b), (d)–(f) and 309(d) of Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

Section 302(c)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1982.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–557 effective Oct. 1, 1978, see section 104 of Pub. L. 95–557, set out as a note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–128 effective Oct. 1, 1977, see section 114 of Pub. L. 95–128, set out as a note under section 5301 of this title.

COMPUTERIZED DATABASE OF COMMUNITY DEVELOPMENT NEEDS

Section 852 of Pub. L. 102–550 provided that:

''(a) ESTABLISHMENT OF DEMONSTRATION PROGRAM.—Not later than the expiration of the 1-year period beginning on the date appropriations for the purposes of this section are made available, the Secretary of Housing and Urban Development (hereafter in this section referred to as the 'Secretary') shall establish and implement a demonstration program to determine the feasibility of assisting States and units of general local government to develop methods, utilizing contemporary computer technology, to—

''(1) monitor, inventory, and maintain current listings of the community development needs of the States and units of general local government; and

''(2) coordinate strategies within States (especially among various units of general local government) for meeting such needs.

''(b) INTEGRATED DATABASE SYSTEM AND COMPUTER MAPPING TOOL.—

''(1) DEVELOPMENT AND PURPOSES.—In carrying out the program under this section, the Secretary shall provide for the development of an integrated database system and computer mapping tool designed to efficiently (A) collect, store, process, and retrieve information relating to priority nonhousing community development needs within States, and (B) coordinate strategies for meeting such needs. The integrated database system and computer mapping tool shall be designed in a manner to coordinate and facilitate the preparation of community development plans under section 104(m)(1) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(m)(1)] and to process any information necessary for such plans.

''(2) AVAILABILITY TO STATES.—The Secretary shall make the integrated database system and computer mapping tool developed pursuant to this subsection available to States without charge.

''(3) COORDINATION WITH EXISTING TECHNOLOGY.—The Secretary shall, to the extent practicable, utilize existing technologies and coordinate such activities with existing data systems to prevent duplication.

''(c) TECHNICAL ASSISTANCE.—Under the program under this section, the Secretary shall provide consultation and advice to States and units of general local government regarding the capabilities and advantages of the integrated database system and computer mapping tool developed pursuant to subsection (b) and assistance in installing and using the database system and mapping tool.

''(d) GRANTS.—

''(1) AUTHORITY AND PURPOSE.—The Secretary shall, to the extent amounts are made available under appropriation Acts pursuant to subsection (g), make grants to States for capital costs relating to installation and use of the integrated database system and computer mapping tool developed pursuant to subsection (b).

''(2) LIMITATIONS.—The Secretary may not make more than one grant under this subsection to any single State. The Secretary may not make a grant under this subsection to any single State in an amount exceeding $1,000,000.

''(3) APPLICATION AND SELECTION.—The Secretary shall provide for the form and manner of applications for grants under this subsection. The Secretary shall establish criteria for the selection of States which have submitted applications to receive grants under this section and shall select recipients according to such criteria, which shall give priority to States having, on a long-term basis (as determined by the Secretary), levels of unemployment above the national average level.

''(e) STATE COORDINATION OF LOCAL NEEDS.—Each State that receives a grant under subsection (d) shall annually submit to the Secretary a report containing a summary of the priority nonhousing community development needs within the State.

''(f) REPORTS BY SECRETARY.—The Secretary shall annually submit to the Committees on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives and Banking, Housing, and Urban Affairs of the Senate, a report containing a summary of the information submitted for the year by States pursuant to subsection (e), which shall describe the priority nonhousing community development needs within such States.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of the fiscal years 1993 and 1994, $10,000,000 to carry out the program established under this section.''

AUTHORITY TO PROVIDE LUMP-SUM PAYMENTS TO REVOLVING LOAN FUNDS

Section 909 of Pub. L. 101–625 provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, units of general local government receiving assistance under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] may receive funds in one payment for use in establishing or supplementing revolving loan funds in the manner provided under section 104(h) of such Act (42 U.S.C. 5304(h)).

''(b) APPLICABILITY.—This section shall apply to funds approved in appropriations Acts for use under title I of the Housing and Community Development Act of 1974 for fiscal year 1992 and any fiscal year thereafter.''

REVOLVING LOAN FUNDS

Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 752, provided: ''That after September 30, 1991, notwithstanding section 909 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101–625) [set out above], no funds provided or heretofore provided in this or any other appropriations Act shall be used to establish or supplement a revolving fund under section 104(h) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(h)], as amended.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 101–507, title II, Nov. 5, 1990, 104 Stat. 1365.

Pub. L. 101–144, title II, Nov. 9, 1989, 103 Stat. 850.

REPORT TO CONGRESS CONCERNING CONVERSION OF RENTAL HOUSING TO CONDOMINIUM OR COOPERATIVE OWNERSHIP

Section 109(b) of Pub. L. 96–153 directed Secretary of Housing and Urban Development, not later than six months after Dec. 12, 1979, to submit a report to Congress concerning conversion of rental housing to condominium or cooperative ownership, which report was to include an estimate of number of such conversions which have occurred since 1970, a projection of number of such conversions estimated to occur during period 1980 through 1985, an assessment of impact that such conversions have had or are likely to have on availability of housing to lower income persons, an assessment

of extent to which such conversions are concentrated in certain areas or types of areas of country, and an assessment of factors contributing to increase in such conversions, and which report was also to include recommendations concerning alternative means to minimize the adverse impact that such conversions may have on lower income persons.

FLOODPLAIN MANAGEMENT

For provisions relating to reduction of risk of flood loss, minimization of impact of floods on human safety, health and welfare, and management of floodplains, see Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, set out as a note under section 4321 of this title.

PROTECTION OF WETLANDS

For provisions relating to protection of wetlands, see Ex. Ord. No. 11990, May 24, 1977, 42 F.R. 26961, set out as a note under section 4321 of this title.

§ 5305. Activities eligible for assistance

(a) Enumeration of eligible activities

Activities assisted under this chapter may include only—

(1) the acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this chapter; or (E) to be used for other public purposes;

(2) the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements;

(3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned properties, and including the renovation of closed school buildings);

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this chapter;

(7) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this chapter or its retention for public purposes;

(8) provision of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this chapter, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 per centum of the amount of any assistance to a unit of general local government (or in the case of nonentitled communities not more than 15 per centum statewide) under this chapter including program income may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this chapter for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98–8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount, except that of any amount of assistance under this chapter (including program income) in each of fiscal years 1993 through 2003 to the City of Los Angeles and County of Los Angeles, each such unit of general government may use not more than 25 percent in each such fiscal year for activities under this paragraph, and except that of any amount of assistance under this chapter (including program income) in each of fiscal years 1999, 2000, and 2001, to the City of Miami, such city may use not more than 25 percent in each fiscal year for activities under this paragraph;

(9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this chapter;

(10) payment of the cost of completing a project funded under title I of the Housing Act of 1949 [42 U.S.C. 1450 et seq.];

(11) relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

(12) activities necessary (A) to develop a comprehensive community development plan, and (B) to develop a policy-planning-management capacity so that the recipient of assistance under this chapter may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and objectives, (iv) evaluate the

progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and payment of reasonable administrative costs and carrying charges related to (A) administering the HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.]; and (B) the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954[1] on August 12, 1981;

(14) provision of assistance including loans (both interim and long-term) and grants for activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property; (B) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (C) planning;

(15) assistance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of the communities in nonentitlement areas, or entities organized under section 681(d)[1] of title 15 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 5301(c) of this title, and assistance to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in section 1437a(b)(3) of this title) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

(16) activities necessary to the development of energy use strategies related to a recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as—

(A) an analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements budgeting, waste management, district heating and cooling, land use planning and zoning, and traffic control, parking, and public transportation functions; and

(B) a statement of the actions the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities;

(17) provision of assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project (that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods) that—

(A) creates or retains jobs for low- and moderate-income persons;

(B) prevents or eliminates slums and blight;

(C) meets urgent needs;

(D) creates or retains businesses owned by community residents;

(E) assists businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or

(F) provides technical assistance to promote any of the activities under subparagraphs (A) through (E);

(18) the rehabilitation or development of housing assisted under section 1437*o*[2] of this title;

(19) provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities, which assistance shall not be considered a planning cost as defined in paragraph (12) or administrative cost as defined in paragraph (13);

(20) housing services, such as housing counseling in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act;

(21) provision of assistance by recipients under this chapter to institutions of higher education having a demonstrated capacity to carry out eligible activities under this subsection for carrying out such activities;

(22) provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit enti-

[1] See References in Text note below.

[2] See References in Text note below.

ties) to enable such entities to facilitate economic development by—

(A) providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises;

(B) providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and

(C) providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises;

(23) activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low- and moderate-income neighborhoods;

(24)[3] the construction or improvement of tornado-safe shelters for residents of manufactured housing, and the provision of assistance (including loans and grants) to nonprofit and for-profit entities (including owners of manufactured housing parks) for such construction or improvement, except that—

(A) a shelter assisted with amounts provided pursuant to this paragraph may be located only in a neighborhood (including a manufactured housing park) that—

(i) contains not less than 20 manufactured housing units that are within such proximity to the shelter that the shelter is available to the residents of such units in the event of a tornado;

(ii) consists predominantly of persons of low and moderate income; and

(iii) is located within a State in which a tornado has occurred during the fiscal year for which the amounts to be used under this paragraph were made available or any of the 3 preceding fiscal years, as determined by the Secretary after consultation with the Administrator of the Federal Emergency Management Agency;

(B) such a shelter shall comply with standards for construction and safety as the Secretary, after consultation with the Administrator of the Federal Emergency Management Agency, shall provide to ensure protection from tornadoes;

(C) such a shelter shall be of a size sufficient to accommodate, at a single time, all occupants of manufactured housing units located within the neighborhood in which the shelter is located; and

(D) amounts may not be used for a shelter as provided under this paragraph unless there is located, within the neighborhood in which the shelter is located (or, in the case of a shelter located in a manufactured housing park, within 1,500 feet of such park), a warning siren that is operated in accordance with such local, regional, or national disaster warning programs or systems as the Secretary, after consultation with the Administrator of the Federal Emergency Management Agency, considers appropriate to ensure adequate notice of occupants of manufactured housing located in such neighborhood or park of a tornado; and

(24)[3] provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income (except that such assistance shall not be considered a public service for purposes of paragraph (8)) by using such assistance to—

(A) subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;

(B) finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;

(C) acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that amounts received under this chapter may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this chapter may not directly provide such guarantees);

(D) provide up to 50 percent of any downpayment required from low- or moderate-income homebuyer; or

(E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low- or moderate-income homebuyer; and

(25) lead-based paint hazard evaluation and reduction, as defined in section 4851b of this title.

(b) Reimbursement of Secretary for administrative services connected with rehabilitation of properties

Upon the request of the recipient of assistance under this chapter, the Secretary may agree to perform administrative services on a reimbursable basis on behalf of such recipient in connection with loans or grants for the rehabilitation of properties as authorized under subsection (a)(4) of this section.

(c) Activities benefiting persons of low and moderate income

(1) In any case in which an assisted activity described in paragraph (14) or (17) of subsection (a) of this section is identified as principally benefiting persons of low and moderate income, such activity shall—

(A) be carried out in a neighborhood consisting predominately of persons of low and moderate income and provide services for such persons; or

(B) involve facilities designed for use predominately by persons of low and moderate income; or

(C) involve employment of persons, a majority of whom are persons of low and moderate income.

(2)(A) In any case in which an assisted activity described in subsection (a) of this section is de-

[3] So in original. Two pars. (24) have been enacted.

signed to serve an area generally and is clearly designed to meet identified needs of persons of low and moderate income in such area, such activity shall be considered to principally benefit persons of low and moderate income if (i) not less than 51 percent of the residents of such area are persons of low and moderate income; (ii) in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income; or (iii) the assistance for such activity is limited to paying assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement.

(B) The requirements of subparagraph (A) do not prevent the use of assistance under this chapter for the development, establishment, and operation for not to exceed 2 years after its establishment of a uniform emergency telephone number system if the Secretary determines that—

(i) such system will contribute substantially to the safety of the residents of the area served by such system;

(ii) not less than 51 percent of the use of the system will be by persons of low and moderate income; and

(iii) other Federal funds received by the grantee are not available for the development, establishment, and operation of such system due to the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the grantee.

The percentage of the cost of the development, establishment, and operation of such a system that may be paid from assistance under this chapter and that is considered to benefit low and moderate income persons is the percentage of the population to be served that is made up of persons of low and moderate income.

(3) Any assisted activity under this chapter that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such persons.

(4) For the purposes of subsection (c)(1)(C) of this section—

(A) if an employee resides in, or the assisted activity through which he or she is employed, is located in a census tract that meets the Federal enterprise zone eligibility criteria, the employee shall be presumed to be a person of low- or moderate-income; or

(B) if an employee resides in a census tract where not less than 70 percent of the residents have incomes at or below 80 percent of the area median, the employee shall be presumed to be a person of low or moderate income.

(d) Training program

The Secretary shall implement, using funds recaptured pursuant to section 5318(*o*) of this title, an on-going education and training program for officers and employees of the Department, especially officers and employees of area and other field offices of the Department, who are responsible for monitoring and administering activities pursuant to paragraphs (14), (15), and (17) of subsection (a) of this section for the purpose of ensuring that (A) such personnel possess a thorough understanding of such activities; and (B) regulations and guidelines are implemented in a consistent fashion.

(e) Guidelines for evaluating and selecting economic development projects

(1) Establishment

The Secretary shall establish, by regulation, guidelines to assist grant recipients under this chapter to evaluate and select activities described in subsection (a)(14), (15), and (17) of this section for assistance with grant amounts. The Secretary shall not base a determination of eligibility of the use of funds under this chapter for such assistance solely on the basis that the recipient fails to achieve one or more of the guidelines' objectives as stated in paragraph (2).

(2) Project costs and financial requirements

The guidelines established under this subsection shall include the following objectives:

(A) The project costs of such activities are reasonable.

(B) To the extent practicable, reasonable financial support has been committed for such activities from non-Federal sources prior to disbursement of Federal funds.

(C) To the extent practicable, any grant amounts to be provided for such activities do not substantially reduce the amount of non-Federal financial support for the activity.

(D) Such activities are financially feasible.

(E) To the extent practicable, such activities provide not more than a reasonable return on investment to the owner.

(F) To the extent practicable, grant amounts used for the costs of such activities are disbursed on a pro rata basis with amounts from other sources.

(3) Public benefit

The guidelines established under this subsection shall provide that the public benefit provided by the activity is appropriate relative to the amount of assistance provided with grant amounts under this chapter.

(f) Assistance to for-profit entities

In any case in which an activity described in paragraph (17) of subsection (a) of this section is provided assistance such assistance shall not be limited to activities for which no other forms of assistance are available or could not be accomplished but for that assistance.

(g) Microenterprise and small business program requirements

In developing program requirements and providing assistance pursuant to paragraph (17) of subsection (a) of this section to a microenterprise or small business, the Secretary shall—

(1) take into account the special needs and limitations arising from the size of the entity; and

(2) not consider training, technical assistance, or other support services costs provided

to small businesses or microenterprises or to grantees and subgrantees to develop the capacity to provide such assistance, as a planning cost pursuant to subsection (a)(12) of this section or an administrative cost pursuant to subsection (a)(13) of this section.

(h) Prohibition on use of assistance for employment relocation activities

Notwithstanding any other provision of law, no amount from a grant under section 5306 of this title made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

(Pub. L. 93–383, title I, § 105, Aug. 22, 1974, 88 Stat. 641; Pub. L. 94–375, § 15(b), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 95–128, title I, § 105, Oct. 12, 1977, 91 Stat. 1116; Pub. L. 95–557, title I, § 103(e), Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96–399, title I, § 104(c)–(e), Oct. 8, 1980, 94 Stat. 1616–1618; Pub. L. 97–35, title III, §§ 303(a), 309(e)–(g), Aug. 13, 1981, 95 Stat. 387, 396; Pub. L. 98–181, title I, § 105(a), (b)(1), (c)–(e), title III, § 302(a), Nov. 30, 1983, 97 Stat. 1163, 1164, 1206; Pub. L. 98–479, title I, § 101(a)(8), (9)(A), Oct. 17, 1984, 98 Stat. 2219; Pub. L. 100–242, title V, §§ 504, 510, 511, Feb. 5, 1988, 101 Stat. 1925, 1929; Pub. L. 100–404, title I, Aug. 19, 1988, 102 Stat. 1019; Pub. L. 101–625, title IX, §§ 907, 908, Nov. 28, 1990, 104 Stat. 4387, 4389; Pub. L. 102–550, title VIII, §§ 805, 806(a), (b), (c), 807(a), (b)(3), (c)(1), (d)–(f), 809, title X, § 1012(f), Oct. 28, 1992, 106 Stat. 3846, 3847, 3849, 3850, 3905; Pub. L. 103–195, § 2(a), Dec. 14, 1993, 107 Stat. 2297; Pub. L. 103–233, title II, § 207, Apr. 11, 1994, 108 Stat. 365; Pub. L. 104–134, title I, § 101(e) [title II, § 225], Apr. 26, 1996, 110 Stat. 1321–257, 1321–291; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–204, title II, § 220, Sept. 26, 1996, 110 Stat. 2906; Pub. L. 105–276, title II, §§ 218, 232, title V, §§ 588, 596(a), Oct. 21, 1998, 112 Stat. 2487, 2492, 2651, 2659; Pub. L. 106–377, § 1(a)(1) [title II, § 224], Oct. 27, 2000, 114 Stat. 1441, 1441A–30; Pub. L. 107–116, title VI, § 631, Jan. 10, 2002, 115 Stat. 2227; Pub. L. 108–146, § 2, Dec. 3, 2003, 117 Stat. 1883; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

Public Law 98–8, referred to in subsec. (a)(8), is Pub. L. 98–8, Mar. 24, 1983, 97 Stat. 13. Provisions of that Act relating to assistance under this chapter are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Housing Act of 1949, referred to in subsec. (a)(10), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949 was classified generally to subchapter II (§ 1450 et seq.) of chapter 8A of this title, and was omitted from the Code pursuant to section 5316 of this title which terminated authority to make grants and loans under such title I after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (a)(13)(A), (20), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

Section 701(e) of the Housing Act of 1954, referred to in subsec. (a)(13)(B), is section 701(e) of act Aug. 2, 1954, ch. 649, 68 Stat. 640, as amended, which was classified to section 461(e) of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97–35, title III, § 313(b), Aug. 13, 1981, 95 Stat. 398.

Section 681(d) of title 15, referred to in subsec. (a)(15), was repealed by Pub. L. 104–208, div. D, title II, § 208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

Section 1437*o* of this title, referred to in subsec. (a)(18), was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

CODIFICATION

In subsec. (a)(13), ''August 12, 1981'' substituted for ''the date prior to the date of enactment of the Housing and Community Development Amendments of 1981''.

AMENDMENTS

2003—Subsec. (a)(22). Pub. L. 108–146, § 2(1), which directed amendment of par. (22) by striking out ''and'' at end, could not be executed because that word had been previously stricken.

Subsec. (a)(23). Pub. L. 108–146, § 2(2), which directed amendment of par. (23) by substituting a semicolon for period at end, could not be executed because par. (23) did not have a period at end.

Subsec. (a)(24). Pub. L. 108–146, § 2(2), added par. (24) relating to tornado-safe shelters.

2002—Subsec. (a)(8). Pub. L. 107–116 substituted ''through 2003'' for ''through 2001''.

2000—Subsec. (a)(8). Pub. L. 106–377 substituted ''1993 through 2001 to the City of Los Angeles'' for ''1993 through 2000 to the City of Los Angeles''.

1998—Subsec. (a)(8). Pub. L. 105–276, § 596(a), which directed the substitution of ''2000'' for ''1998'', was executed by substituting ''2000'' for ''1999'', to reflect the probable intent of Congress and the amendment by Pub. L. 105–276, § 218, see below.

Pub. L. 105–276, § 232, substituted ''each of fiscal years 1999, 2000, and 2001, to the City of Miami, such city may use not more than 25 percent in each fiscal year for activities under this paragraph;'' for ''fiscal year 1994 to the City of Pittsburgh, Pennsylvania, such city may use not more than 20 percent in each such fiscal year for activities under this paragraph;''.

Pub. L. 105–276, § 218, substituted ''1999'' for ''1998''.

Subsec. (h). Pub. L. 105–276, § 588, added subsec. (h).

1996—Subsec. (a)(4). Pub. L. 104–134, § 101[(e)] [title II, § 225(1)], inserted ''reconstruction,'' after ''removal,'' and substituted ''acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation'' for ''acquisition for rehabilitation, and rehabilitation''.

Subsec. (a)(8). Pub. L. 104–204 substituted ''through 1998'' for ''through 1997''.

Subsec. (a)(13). Pub. L. 104–134, § 101(e) [title II, § 225(2)], struck out ''and'' at end.

Subsec. (a)(19). Pub. L. 104–134, § 101(e) [title II, § 225(3), (6)], redesignated par. (20) as (19) and struck out former par. (19) which read as follows: ''provision of assistance to facilitate substantial reconstruction of housing owned and occupied by low and moderate income persons (A) where the need for the reconstruction was not determinable until after rehabilitation under this section had already commenced, or (B) where the reconstruction is part of a neighborhood rehabilitation effort and the grantee (i) determines the housing is not suitable for rehabilitation, and (ii) demonstrates to the satisfaction of the Secretary that the cost of substantial reconstruction is significantly less than the cost of new construction and less than the fair market value of the property after substantial reconstruction;''.

Subsec. (a)(20). Pub. L. 104–134, § 101(e) [title II, § 225(6)], redesignated par. (21) relating to housing services as (20). Former par. (20) redesignated (19).

Subsec. (a)(21). Pub. L. 104–134, § 101(e) [title II, § 225(6)], redesignated par. (22) as (21). Former par. (21),

relating to housing services, redesignated (20). Another former par. (21), relating to lead-based paint hazard evaluation and reduction, redesignated (25).

Subsec. (a)(22). Pub. L. 104–134, § 101(e) [title II, § 225(6)], redesignated par. (23) as (22). Former par. (22) redesignated (21).

Subsec. (a)(23). Pub. L. 104–134, § 101(e) [title II, § 225(4), (6)], redesignated par. (24) as (23) and struck out ''and'' at end. Former par. (23) redesignated (22).

Subsec. (a)(24). Pub. L. 104–134, § 101(e) [title II, § 225(5), (6)], redesignated par. (25) as (24) and substituted ''; and'' for period at end. Former par. (24) redesignated (23).

Subsec. (a)(25). Pub. L. 104–134, § 101(e) [title II, § 225(7)], redesignated par. (21) relating to lead-based paint hazard evaluation and reduction as (25). Former par. (25) redesignated (24).

1994—Subsec. (a)(13). Pub. L. 103–233, § 207(a), inserted cl. (A) and designated provisions after cl. (A) as cl. (B).

Subsec. (a)(21). Pub. L. 103–233, § 207(b), inserted ''in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act'' after ''housing counseling'' and substituted ''assisted under title II of the Cranston-Gonzalez National Affordable Housing Act'' for ''authorized under this section, or under title II of the Cranston-Gonzalez National Affordable Housing Act, except that activities under this paragraph shall be subject to any limitation on administrative expenses imposed by any law''.

1993—Subsec. (a)(8). Pub. L. 103–195 struck out ''and'' after ''higher amount,'' and inserted before semicolon at end '', and except that of any amount of assistance under this chapter (including program income) in fiscal year 1994 to the City of Pittsburgh, Pennsylvania, such city may use not more than 20 percent in each such fiscal year for activities under this paragraph''.

1992—Subsec. (a)(3). Pub. L. 102–550, § 807(e), substituted ''public or private improvements or'' for ''public improvements and''.

Subsec. (a)(8). Pub. L. 102–550, § 807(a)(1), inserted before semicolon at end '', and except that of any amount of assistance under this chapter (including program income) in each of fiscal years 1993 through 1997 to the City of Los Angeles and County of Los Angeles, each such unit of general government may use not more than 25 percent in each such fiscal year for activities under this paragraph''.

Subsec. (a)(13). Pub. L. 102–550, § 809, inserted ''payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and'' after ''(13)''.

Subsec. (a)(14). Pub. L. 102–550, § 807(d), inserted ''provision of assistance including loans (both interim and long-term) and grants for'' before ''activities''.

Subsec. (a)(15). Pub. L. 102–550, § 807(f), inserted ''nonprofit organizations serving the development needs of the communities in nonentitlement areas,'' after ''corporations,''.

Subsec. (a)(20). Pub. L. 102–550, § 807(a)(2)–(4), added par. (20) and redesignated former par. (20) as (25).

Subsec. (a)(21). Pub. L. 102–550, § 1012(f), added par. (21) relating to lead-based paint hazard evaluation and reduction.

Pub. L. 102–550, § 807(a)(2)–(4), added par. (21) relating to housing services.

Subsec. (a)(22). Pub. L. 102–550, § 807(a)(2)–(4), added par. (22).

Subsec. (a)(23) to (25). Pub. L. 102–550, § 807(b)(3), amended directory language of Pub. L. 101–625, § 907(b)(2). See 1990 Amendment note below.

Pub. L. 102–550, § 807(a)(2)–(4), added pars. (23) and (24) and redesignated former par. (20) as (25).

Subsec. (c)(4). Pub. L. 102–550, § 806(e), added par. (4).

Subsec. (d). Pub. L. 102–550, § 805, added subsec. (d).

Subsec. (e). Pub. L. 102–550, § 806(a), added subsec. (e).

Subsec. (f). Pub. L. 102–550, § 806(b), added subsec. (f).

Subsec. (g). Pub. L. 102–550, § 807(c)(1), added subsec. (g).

1990—Subsec. (a)(8). Pub. L. 101–625, § 908, inserted ''(or in the case of nonentitled communities not more than 15 per centum statewide)'' after ''assistance to a unit of general local government'' and ''including program income'' before ''may be used for activities''.

Subsec. (a)(17). Pub. L. 101–625, § 907(a), amended par. (17) generally. Prior to amendment, par. (17) read as follows: ''provision of assistance to private, for-profit entities, when the assistance is necessary or appropriate to carry out an economic development project;''.

Subsec. (a)(20). Pub. L. 101–625, § 907(b)(1), added par. (20).

Subsec. (a)(23) to (25). Pub. L. 101–625, § 907(b)(2), as amended by Pub. L. 102–550, § 807(b)(3), directed the amendment of subsec. (a) by inserting ''and'' at end of par. (23), substituting a period for ''; and'' at end of par. (24), and striking out par. (25). This amendment was not executed pursuant to Pub. L. 104–204 which provided that subsec. (a)(25) shall continue to be effective and the termination and conforming provisions of section 907(b)(2) of Pub. L. 101–625 shall not be effective. See Effective Date of 1990 Amendments note below.

1988—Subsec. (a)(15). Pub. L. 100–242, § 504(a), substituted ''assistance'' for ''grants'' in two places.

Subsec. (a)(16). Pub. L. 100–242, § 504(b), amended par. (16) generally, revising and restating as subpars. (A) and (B) provisions of former subpars. (A) to (I).

Subsec. (a)(19). Pub. L. 100–242, § 510, added par. (19).

Subsec. (c)(2). Pub. L. 100–242, § 511, designated existing provision as subpar. (A), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (c)(2)(A)(iii). Pub. L. 100–404 added cl. (iii).

1984—Subsec. (a)(8). Pub. L. 98–479, § 101(a)(8)(A), inserted ''fiscal year 1982 or''.

Subsec. (a)(15). Pub. L. 98–479, § 101(a)(8)(B), substituted ''and'' for ''including'' before ''grants to neighborhood-based nonprofit organizations''.

Subsec. (c)(2)(B). Pub. L. 98–479, § 101(a)(9)(A), substituted ''in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income'' for ''in any jurisdiction having no areas meeting the requirements of subparagraph (A), the area served by such activity has a larger proportion of persons of low and moderate income than not less than 75 percent of the other areas in the jurisdiction of the recipient''.

1983—Subsec. (a)(2). Pub. L. 98–181, § 105(a), amended par. (2) generally, inserting exception for buildings for the general conduct of government, and striking out provisions which enumerated types of public works, facilities, and site or other improvements, including neighborhood facilities, centers for the handicapped, senior centers, historic properties, etc.

Subsec. (a)(8). Pub. L. 98–181, § 105(b)(1), substituted ''not more than 15 per centum'' for ''not more than 10 per centum'' and inserted at the end thereof ''unless such unit of general local government used more than 15 percent of the assistance received under this chapter for fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98–8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount''.

Subsec. (a)(14). Pub. L. 98–181, § 105(c), substituted ''public facilities (except for buildings for the general conduct of government)'' for ''public facilities''.

Subsec. (a)(15). Pub. L. 98–181, § 105(d), inserted provision for assistance for shared housing facilities for elderly families, as defined in section 1437a(b)(3) of this title.

Subsec. (a)(18). Pub. L. 98–181, § 302(a), added par. (18).

Subsec. (c). Pub. L. 98–181, § 105(e), added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35, § 309(f)(1), in provisions preceding par. (1) substituted provisions relating to activities eligible for assistance for provisions relating to activities of a Community Development Program eligible for assistance.

Subsec. (a)(6). Pub. L. 97–35, § 309(f)(2), struck out ''program'' after ''displaced by''.

Subsec. (a)(8). Pub. L. 97–35, § 303(a)(1), added new par. (8) which generally revised and restructured provisions relating to provision of public services if such services have not been provided by the relevant unit of local government or State in which such unit is located, and limited amount of assistance under this paragraph to not more than 10 per centum of the amount of any assistance to a unit of general local government under this chapter.

Subsec. (a)(9). Pub. L. 97–35, § 309(f)(3), substituted ''activities assisted under this chapter'' for ''Community Development Program''.

Subsec. (a)(11). Pub. L. 97–35, § 309(f)(4), struck out ''to the community development program'' after ''appropriate''.

Subsec. (a)(13). Pub. L. 97–35, § 303(a)(2), inserted reference to the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on Aug. 12, 1981.

Subsec. (a)(14). Pub. L. 97–35, § 309(f)(5), substituted ''which are carried out by public or private non-profit entities'' for ''(as specifically described in the application submitted pursuant to section 5304 of this title) which are carried out by public or private non-profit entities when such activities are necessary or appropriate to meeting the needs and objectives of the community development plan described in section 5304(a)(1) of this title''.

Subsec. (a)(15). Pub. L. 97–35, § 309(f)(6), struck out ''(as specifically described in the application submitted pursuant to section 5304 of this title)'' after ''conservation project''.

Subsec. (a)(17). Pub. L. 97–35, § 303(a)(5), added par. (17).

Subsec. (b). Pub. L. 97–35, § 309(g), substituted ''assistance'' for ''a grant''.

1980—Subsec. (a)(2). Pub. L. 96–399, § 104(c)(1), inserted provisions respecting design features and improvements, power generation and distribution facilities, park, etc., facilities, and recycling and conversion facilities.

Subsec. (a)(4). Pub. L. 96–399, § 104(c)(2), (d), inserted provisions respecting rehabilitation which promotes energy efficiency and the renovation of closed school buildings.

Subsec. (a)(8). Pub. L. 96–399, § 104(c)(3), inserted reference to energy conservation.

Subsec. (a)(14). Pub. L. 96–399, § 104(c)(5), (e)(1), inserted provision respecting the application pursuant to section 5304 of this title.

Subsec. (a)(15). Pub. L. 96–399, § 104(c)(4), (5), (e)(2), inserted provisions respecting energy conservation, and the application submitted pursuant to section 5304 of this title.

Subsec. (a)(16). Pub. L. 96–399, § 104(c)(5), added par. (16).

1978—Subsec. (a)(11). Pub. L. 95–557 inserted ''displaced'' after ''payments and assistance for'' and substituted ''when determined by the grantee to be appropriate to the community development program'' for ''displaced by activities assisted under this chapter''.

1977—Subsec. (a). Pub. L. 95–128, § 105(a), inserted in introductory text description of activities covered including the words ''These activities''.

Subsec. (a)(4). Pub. L. 95–128, § 105(b), substituted ''(including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation, of privately owned properties)'' for ''(including interim assistance and financing rehabilitation of privately owned properties when incidental to other activities)''.

Subsec. (a)(8). Pub. L. 95–128, § 105(c), struck out from cl. (A) ''economic development,'' before ''crime prevention'' and authorized the program to provide public services only if such services have not been provided by the unit of general local government during any part of the twelve-month period preceding the date of application submission for funds to be made available under this chapter, and to be utilized for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the applicant.

Subsec. (a)(14), (15). Pub. L. 95–128, § 105(d), added pars. (14) and (15).

1976—Subsec. (a)(2). Pub. L. 94–375 inserted ''centers for the handicapped,'' after ''neighborhood facilities,''.

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (a)(24)(A)(iii), (B), (D) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–116 effective Sept. 30, 2001, see section 603 of Pub. L. 107–116, set out as a note under section 1715n of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Pub. L. 105–276, title V, § 596(b), Oct. 21, 1998, 112 Stat. 2659, provided that: ''The amendment made by this section [amending this section] is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out subchapter II (§ 12721 et seq.) of chapter 130 of this title after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Title II of Pub. L. 104–204, Sept. 26, 1996, 110 Stat. 2882, 2887, provided in part: ''That for fiscal year 1997 and thereafter, section 105(a)(25) of such Act [section 105(a)(25) [now (24)] of Pub. L. 93–383, classified to subsec. (a)(24) of this section], shall continue to be effective and the termination and conforming provisions of section 907(b)(2) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, set out below] shall not be effective''.

Section 101(e) [title II] of Pub. L. 104–134, Apr. 26, 1996, 110 Stat. 1321–257, 1321–265, 1321–272, provided in part: ''That section 105(a)(25) of such Act [section 105(a)(25) [now (24)] of Pub. L. 93–383, classified to subsec. (a)(24) of this section], as added by section 907(b)(1) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625], shall continue to be effective after September 30, 1995, notwithstanding section 907(b)(2) of such Act [set out below]''.

Pub. L. 104–120, § 3(a), Mar. 28, 1996, 110 Stat. 835, provided that: ''Notwithstanding the amendments made by section 907(b)(2) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, set out below], section 105(a)(25) of the Housing and Community Development Act of 1974 [subsec. (a)(25) [now (24)] of this section], as in existence on September 30, 1995, shall apply

to the use of assistance made available under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] during fiscal year 1996.''

Amendment by section 907(b)(2) of Pub. L. 101–625, as amended by Pub. L. 102–550, title VIII, § 807(b)(1), (2), Oct. 28, 1992, 106 Stat. 3849, effective ''October 1, 1994 (or October 1, 1995, if the Secretary determines that such later date is necessary to continue to provide homeownership assistance until homeownership assistance is available under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.])''. [Date extended by Secretary to Oct. 1, 1995, see 59 F.R. 49954, Sept. 30, 1994.]

EFFECTIVE DATE OF 1984 AMENDMENT

Section 101(a)(9)(B) of Pub. L. 98–479 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect upon the enactment of this Act [Oct. 17, 1984] and shall be implemented through an interim instruction issued by the Secretary of Housing and Urban Development. Not later than June 1, 1985, the Secretary of Housing and Urban Development shall issue a final regulation regarding the provisions of such amendment.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98–181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–557 effective Oct. 1, 1978, see section 104 of Pub. L. 95–557, set out as a note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–128 effective Oct. 1, 1977, see section 114 of Pub. L. 95–128, set out as a note under section 5301 of this title.

NON-FEDERAL COST SHARING OF ARMY CORPS OF ENGINEERS PROJECTS

Pub. L. 105–276, title II, Oct. 21, 1998, 112 Stat. 2478, provided in part that: ''For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than $250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers.''

BROWNFIELDS PROJECTS AS ELIGIBLE CDBG ACTIVITY

Pub. L. 105–276, title II, § 205, Oct. 21, 1998, 112 Stat. 2484, provided that: ''For fiscal years 1998, 1999, and all fiscal years thereafter, States and entitlement communities may use funds allocated under the community development block grants program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] for environmental cleanup and economic development activities related to Brownfields projects in conjunction with the appropriate environmental regulatory agencies, as if such activities were eligible under section 105(a) of such Act [42 U.S.C. 5305(a)].''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 105–65, title II, § 209, Oct. 27, 1997, 111 Stat. 1366.

GAO STUDY OF USE OF GRANTS FOR ECONOMIC DEVELOPMENT PROJECTS

Section 806(c) of Pub. L. 102–550 directed Comptroller General to conduct a study of use of grant amounts under this chapter for activities described in paragraphs (14), (15), and (17) of subsec. (a) of this section, including an evaluation of whether the activities for which such amounts are being used under such paragraphs further the goals and objectives of such program, as established in section 5301 of this title, and directed Comptroller General to submit a report to Congress regarding the findings of the study and recommendations not later than the expiration of the 18-month period beginning on Oct. 28, 1992.

ENHANCING JOB QUALITY; REPORT TO CONGRESS

Section 806(d) of Pub. L. 102–550 directed Comptroller General, not later than 1 year after Oct. 28, 1992, to submit to Congress a report on types and quality of jobs created or retained through assistance provided pursuant to this chapter and the extent to which projects and activities assisted under this chapter enhance the upward mobility and future earning capacity of low- and moderate-income persons who are benefited by such projects and activities.

REPORT TO CONGRESS ON EFFECTIVENESS OF ASSISTANCE IN PROMOTING DEVELOPMENT OF MICROENTERPRISES

Section 807(c)(4) of Pub. L. 102–550 directed Secretary, not later than 18 months after Oct. 28, 1992, to submit to Congress a report on effectiveness of assistance provided through this chapter in promoting development of microenterprises, including a review of any statutory or regulatory provision that impedes development of microenterprises.

COMMUNITY INVESTMENT CORPORATION DEMONSTRATION

Section 853 of Pub. L. 102–550 provided for establishment of a demonstration program to develop ways to improve access to capital for initiatives which would benefit specific targeted geographic areas and to test new models for bringing credit and investment capital to low-income persons in targeted geographic areas, using depository institution holding companies and eligible local nonprofit organizations selected by Secretary of Housing and Urban Development to provide capital assistance, grants, and training under direction of an advisory board. Funds for the program were authorized for fiscal years 1993 and 1994 to remain available until expended.

WAIVER OF LIMITATION ON AMOUNT OF FUNDS WHICH MAY BE USED IN FISCAL YEARS 1982, 1983, AND 1984 FOR PUBLIC SERVICE ACTIVITIES

Section 303(b) of Pub. L. 97–35, as amended Pub. L. 98–181, title I, § 105(b)(2), Nov. 30, 1983, 97 Stat. 1164, authorized Secretary, in fiscal years 1982 and 1983, to waive the limitation on amount of funds which could be used for public services activities under subsec. (a)(8) of this section, in the case of a unit of general local government which, during fiscal year 1981, allocated more than 10 per centum of funds received under this chapter for such activities.

§ 5306. Allocation and distribution of funds

(a) Amounts allocated to Indian tribes, discretionary fund, and metropolitan cities and urban counties; limitations on amount of annual grants

(1) For each fiscal year, of the amount approved in appropriation Acts under section 5303 of this title for grants for such fiscal year (excluding the amounts provided for use in accordance with section 5307 of this title), the Secretary shall reserve for grants to Indian tribes 1 percent of the amount appropriated under such section. The Secretary shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition con-

ducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment. Notwithstanding any other provision of this Act, such grants to Indian tribes shall not be subject to the requirements of section 5304 of this title, except subsections (f), (g), and (k) of such section.

(2) For each fiscal year, of the amount approved in appropriation Acts under section 5303 of this title for grants for such fiscal year (excluding the amounts provided for use in accordance with section 5307 of this title), the Secretary shall reserve for grants to insular areas $7,000,000. The Secretary shall provide for distribution of amounts under this paragraph to insular areas on the basis of the ratio of the population of each insular area to the population of all insular areas. In determining the distribution of amounts to insular areas, the Secretary may also include other statistical criteria as data become available from the Bureau of the Census, but only if such criteria are contained in a regulation promulgated by the Secretary after notice and public comment.

(3) After reserving such amounts for Indian tribes under paragraph (1) and after reserving such amounts for insular areas under paragraph (2), the Secretary shall allocate amounts provided for use under section 5307 of this title.

(4) Of the amount remaining after allocations pursuant to paragraphs (1), (2), and (3), 70 percent shall be allocated by the Secretary to metropolitan cities and urban counties. Except as otherwise specifically authorized, each metropolitan city and urban county shall be entitled to an annual grant from such allocation in an amount not exceeding its basic amount computed pursuant to paragraph (1) or (2) of subsection (b) of this section.

(b) Computation of amount allocated to metropolitan cities and urban counties

(1) The Secretary shall determine the amount to be allocated to each metropolitan city which shall be the greater of an amount that bears the same ratio to the allocation for all metropolitan areas as either—

(A) the average of the ratios between—

(i) the population of that city and the population of all metropolitan areas;

(ii) the extent of poverty in that city and the extent of poverty in all metropolitan areas; and

(iii) the extent of housing overcrowding in that city and the extent of housing overcrowding in all metropolitan areas; or

(B) the average of the ratios between—

(i) the extent of growth lag in that city and the extent of growth lag in all metropolitan cities;

(ii) the extent of poverty in that city and the extent of poverty in all metropolitan areas; and

(iii) the age of housing in that city and the age of housing in all metropolitan areas.

(2) The Secretary shall determine the amount to be allocated to each urban county, which shall be the greater of an amount that bears the same ratio to the allocation for all metropolitan areas as either—

(A) the average of the ratios between—

(i) the population of that urban county and the population of all metropolitan areas;

(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan areas; and

(iii) the extent of housing overcrowding in that urban county and the extent of housing overcrowding in all metropolitan areas; or

(B) the average of the ratios between—

(i) the extent of growth lag in that urban county and the extent of growth lag in all metropolitan cities and urban counties;

(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan areas; and

(iii) the age of housing in that urban county and the age of housing in all metropolitan areas.

(3) In determining the average of ratios under paragraphs (1)(A) and (2)(A), the ratio involving the extent of poverty shall be counted twice, and each of the other ratios shall be counted once; and in determining the average of ratios under paragraphs (1)(B) and (2)(B), the ratio involving the extent of growth lag shall be counted once, the ratio involving the extent of poverty shall be counted one and one-half times, and the ratio involving the age of housing shall be counted two and one-half times.

(4) In computing amounts or exclusions under this section with respect to any urban county, there shall be excluded units of general local government located in the county the populations of which are not counted in determining the eligibility of the urban county to receive a grant under this subsection, except that there shall be included any independent city (as defined by the Bureau of the Census) which—

(A) is not part of any county;

(B) is not eligible for a grant pursuant to subsection (b)(1) of this section;

(C) is contiguous to the urban county;

(D) has entered into cooperation agreements with the urban county which provide that the urban county is to undertake or to assist in the undertaking of essential community development and housing assistance activities with respect to such independent city; and

(E) is not included as a part of any other unit of general local government for purposes of this section.

Any independent city which is included in any fiscal year for purposes of computing amounts pursuant to the preceding sentence shall not be eligible to receive assistance under subsection (d) of this section with respect to such fiscal year.

(5) In computing amounts under this section with respect to any urban county, there shall be included all of the area of any unit of local government which is part of, but is not located entirely within the boundaries of, such urban county if the part of such unit of local government which is within the boundaries of such urban county would otherwise be included in computing the amount for such urban county under this section, and if the part of such unit

of local government which is not within the boundaries of such urban county is not included as a part of any other unit of local government for the purpose of this section. Any amount received by such urban county under this section may be used with respect to the part of such unit of local government which is outside the boundaries of such urban county.

(6)(A) Where data are available, the amount determined under paragraph (1) for a metropolitan city that has been formed by the consolidation of one or more metropolitan cities with an urban county shall be equal to the sum of the amounts that would have been determined under paragraph (1) for the metropolitan city or cities and the balance of the consolidated government, if such consolidation had not occurred. This paragraph shall apply only to any consolidation that—

(i) included all metropolitan cities that received grants under this section for the fiscal year preceding such consolidation and that were located within the urban county;

(ii) included the entire urban county that received a grant under this section for the fiscal year preceding such consolidation; and

(iii) took place on or after January 1, 1983.

(B) The population growth rate of all metropolitan cities referred to in section 5302(a)(12) of this title shall be based on the population of (i) metropolitan cities other than consolidated governments the grant for which is determined under this paragraph; and (ii) cities that were metropolitan cities before their incorporation into consolidated governments. For purposes of calculating the entitlement share for the balance of the consolidated government under this paragraph, the entire balance shall be considered to have been an urban county.

(c) Reallocation of undistributed funds within same metropolitan area as original allocation; amount and calculation of reallocation grant; disaster relief

(1) Except as provided in paragraphs (2) and (4), any amounts allocated to a metropolitan city or an urban county pursuant to the preceding provisions of this section which are not received by the city or county for a fiscal year because of failure to meet the requirements of subsection (a), (b), (c), or (d) of section 5304 of this title, or which become available as a result of actions under section 5304(e) or 5311 of this title, shall be reallocated in the succeeding fiscal year to the other metropolitan cities and urban counties in the same metropolitan area which certify to the satisfaction of the Secretary that they would be adversely affected by the loss of such amounts from the metropolitan area. The amount of the share of funds reallocated under this paragraph for any metropolitan city or urban county shall bear the same ratio to the total of such reallocated funds in the metropolitan area as the amount of funds awarded to the city or county for the fiscal year in which the reallocated funds become available bears to the total amount of funds awarded to all metropolitan cities and urban counties in the same metropolitan area for that fiscal year, except that—

(A) in determining the amounts awarded to cities or counties for purposes of calculating shares pursuant to this sentence, there shall be excluded from the award of any city or county any amounts which become available as a result of actions against such city or county under section 5311 of this title;

(B) in reallocating amounts resulting from an action under section 5304(e) of this title or section 5311 of this title, a city or county against whom any such action was taken in a fiscal year shall be excluded from a calculation of share for purposes of reallocating, in the succeeding year, the amounts becoming available as a result of such action; and

(C) in no event may the share of reallocated funds for any metropolitan city or urban county exceed 25 per centum of the amount awarded to the city or county under subsection (b) of this section for the fiscal year in which the reallocated funds under this paragraph become available.

Any amounts allocated under subsection (b) of this section which become available for reallocation and for which no metropolitan city or urban county qualifies under this paragraph shall be added to amounts available for allocation under such subsection (b) of this section in the succeeding fiscal year.

(2) Notwithstanding any other provision of this chapter, the Secretary shall make grants from amounts authorized for use under subsection (b) of this section by the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1981, in accordance with the provisions of this chapter which governed grants with respect to such amounts, as such provisions existed prior to October 1, 1981, except that any such amounts which are not obligated before January 1, 1982, shall be reallocated in accordance with paragraph (1).

(3) Notwithstanding the provisions of paragraph (1), the Secretary may upon request transfer responsibility to any metropolitan city for the administration of any amounts received, but not obligated, by the urban county in which such city is located if (A) such city was an included unit of general local government in such county prior to the qualification of such city as a metropolitan city; (B) such amounts were designated and received by such county for use in such city prior to the qualification of such city as a metropolitan city; and (C) such city and county agree to such transfer of responsibility for the administration of such amounts.

(4)(A) Notwithstanding paragraph (1), in the event of a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], the Secretary shall make available, to metropolitan cities and urban counties located or partially located in the areas affected by the disaster, any amounts that become available as a result of actions under section 5304(e) or 5311 of this title.

(B) In using any amounts that become available as a result of actions under section 5304(e) or 5311 of this title, the Secretary shall give priority to providing emergency assistance under this paragraph.

(C) The Secretary may provide assistance to any metropolitan city or urban county under this paragraph only to the extent necessary to

meet emergency community development needs, as the Secretary shall determine (subject to subparagraph (D)), of the city or county resulting from the disaster that are not met with amounts otherwise provided under this chapter, the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], and other sources of assistance.

(D) Amounts provided to metropolitan cities and urban counties under this paragraph may be used only for eligible activities under section 5305 of this title, and in implementing this section, the Secretary shall evaluate the natural hazards to which any permanent replacement housing is exposed and shall take appropriate action to mitigate such hazards.

(E) The Secretary shall provide for applications (or amended applications and statements under section 5304 of this title) for assistance under this paragraph.

(F) A metropolitan city or urban county eligible for assistance under this paragraph may receive such assistance only in each of the fiscal years ending during the 3-year period beginning on the date of the declaration of the disaster by the President.

(G) This paragraph may not be construed to require the Secretary to reserve any amounts that become available as a result of actions under section 5304(e) or 5311 of this title for assistance under this paragraph if, when such amounts are to be reallocated under paragraph (1), no metropolitan city or urban county qualifies for assistance under this paragraph.

(d) Allocation among States for nonentitlement areas; amount and calculation of grants; distributions by State or Secretary; certain distributions made pursuant to prior provisions; certifications required by Governor enumerated; responsibility for administration and administrative expenses; reallocation; certifications required of units of general local government in nonentitlement areas; applicability of this chapter and other law

(1) Of the amount approved in an appropriation Act under section 5303 of this title that remains after allocations pursuant to paragraphs (1), (2), and (3) of subsection (a) of this section, 30 per centum shall be allocated among the States for use in nonentitlement areas. The allocation for each State shall be the greater of an amount that bears the same ratio to the allocation for such areas of all States available under this subparagraph as either—

(A) the average of the ratios between—

(i) the population of the nonentitlement areas in that State and the population of the nonentitlement areas of all States;

(ii) the extent of poverty in the nonentitlement areas in that State and the extent of poverty in the nonentitlement areas of all States; and

(iii) the extent of housing overcrowding in the nonentitlement areas in that State and the extent of housing overcrowding in the nonentitlement areas of all States; or

(B) the average of the ratios between—

(i) the age of housing in the nonentitlement areas in that State and the age of housing in the nonentitlement areas of all States;

(ii) the extent of poverty in the nonentitlement areas in that States and the extent of poverty in the nonentitlement areas of all States; and

(iii) the population of the nonentitlement areas in that State and the population of the nonentitlement areas of all States.

In determining the average of the ratios under subparagraph (A) the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once; and in determining the average of the ratios under subparagraph (B), the ratio involving the age of housing shall be counted two and one-half times, the ratio involving the extent of poverty shall be counted one and one-half times, and the ratio involving population shall be counted once. The Secretary shall, in order to compensate for the discrepancy between the total of the amounts to be allocated under this paragraph and the total of the amounts available under such paragraph, make a pro rata reduction of each amount allocated to the nonentitlement areas in each State under such paragraph so that the nonentitlement areas in each State will receive an amount which represents the same percentage of the total amount available under such paragraph as the percentage which the nonentitlement areas of the same State would have received under such paragraph if the total amount available under such paragraph had equaled the total amount which was allocated under such paragraph.

(2)(A) Amounts allocated under paragraph (1) shall be distributed to units of general local government located in nonentitlement areas of the State to carry out activities in accordance with the provisions of this chapter—

(i) by a State that has elected, in such manner and at such time as the Secretary shall prescribe, to distribute such amounts, consistent with the statement submitted under section 5304(a) of this title; or

(ii) by the Secretary, in any case described in subparagraph (B), for use by units of general local government in accordance with paragraph (3)(B).

Any election to distribute funds made after the close of fiscal year 1984 is permanent and final. Notwithstanding any provision of this chapter, the Secretary shall make grants from amounts authorized for use in nonentitlement areas by the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1981, in accordance with the provisions of this chapter which governed grants with respect to such amounts, as such provisions existed prior to October 1, 1981. Any amounts under the preceding sentence (except amounts for which preapplications have been approved by the Secretary prior to October 1, 1981, and which have been obligated by January 1, 1982) which are or become available for obligation after fiscal year 1981 shall be available for distribution in the State in which the grants from such amounts were made, by the State or by the Secretary, whichever is distributing the State allocation in the fiscal year in which such amounts are or become available.

(B) The Secretary shall distribute amounts allocated under paragraph (1) if the State has not elected to distribute such amounts.

(C) To receive and distribute amounts allocated under paragraph (1), the State must certify that it, with respect to units of general local government in nonentitlement areas—

(i) engages or will engage in planning for community development activities;

(ii) provides or will provide technical assistance to units of general local government in connection with community development programs;

(iii) will not refuse to distribute such amounts to any unit of general local government on the basis of the particular eligible activity selected by such unit of general local government to meet its community development needs, except that this clause may not be considered to prevent a State from establishing priorities in distributing such amounts on the basis of the activities selected; and

(iv) has consulted with local elected officials from among units of general local government located in nonentitlement areas of that State in determining the method of distribution of funds required by subparagraph (A).

(D) To receive and distribute amounts allocated under paragraph (1), the State shall certify that each unit of general local government to be distributed funds will be required to identify its community development and housing needs, including the needs of low and moderate income persons, and the activities to be undertaken to meet such needs.

(3)(A) If the State receives and distributes such amounts, it shall be responsible for the administration of funds so distributed. The State shall pay from its own resources all administrative expenses incurred by the State in carrying out its responsibilities under this chapter or section 1437*o*(e)(1)[1] of this title, except that from the amounts received for distribution in nonentitlement areas, the State may deduct an amount to cover such expenses and its administrative expenses under section 1706e[1] of title 12 not to exceed the sum of $100,000 plus 50 percent of any such expenses under this chapter in excess of $100,000. Amounts deducted in excess of $100,000 shall not, subject to paragraph (6), exceed 3 percent of the amount so received.

(B) If the Secretary distributes such amounts, the distribution shall be made in accordance with determinations of the Secretary pursuant to statements submitted and the other requirements of section 5304 of this title (other than subsection (c)) and in accordance with regulations and procedures prescribed by the Secretary.

(C) Any amounts allocated for use in a State under paragraph (1) that are not received by the State for any fiscal year because of failure to meet the requirements of subsection (a), (b), or (d) of section 5304 of this title or to make the certifications required in subparagraphs (C) and (D) of paragraph (2), or that become available as a result of actions against the State under section 5304(e) or 5311 of this title, shall be added to amounts allocated to all States under paragraph (1) for the succeeding fiscal year.

(D) Any amounts allocated for use in a State under paragraph (1) that become available as a result of actions under section 5304(e) or 5311 of this title against units of general local government in nonentitlement areas of the State or as a result of the closeout of a grant made by the Secretary under this section in nonentitlement areas of the State shall be added to amounts allocated to the State under paragraph (1) for the fiscal year in which the amounts become so available.

(4) Any combination of units of general local governments may not be required to obtain recognition by the Secretary pursuant to section 5302(a)(1) of this title to be treated as a single unit of general local government for purposes of this subsection.

(5) From the amounts received under paragraph (1) for distribution in nonentitlement areas, the State may deduct an amount, subject to paragraph (6), not to exceed 3 percent of the amount so received, to provide technical assistance to local governments and nonprofit program recipients.

(6) Of the amounts received under paragraph (1), the State may deduct not more than an aggregate total of 3 percent of such amounts for—

(A) administrative expenses under paragraph (3)(A); and

(B) technical assistance under paragraph (5).

(7) No amount may be distributed by any State or the Secretary under this subsection to any unit of general local government located in a nonentitlement area unless such unit of general local government certifies that—

(A) it will minimize displacement of persons as a result of activities assisted with such amounts;

(B) its program will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] and the Fair Housing Act [42 U.S.C. 3601 et seq.], and that it will affirmatively further fair housing;

(C) it will provide for opportunities for citizen participation, hearings, and access to information with respect to its community development program that are comparable to those required of grantees under section 5304(a)(2) of this title; and

(D) it will not attempt to recover any capital costs of public improvements assisted in whole or part under this section or with amounts resulting from a guarantee under section 5308 of this title by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (i) funds received under this section are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this chapter; or (ii) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary or such State, as the case may be, that it lacks sufficient funds received under this section to comply with the requirements of clause (i).

[1] See References in Text note below.

(8) Any activities conducted with amounts received by a unit of general local government under this subsection shall be subject to the applicable provisions of this chapter and other Federal law in the same manner and to the same extent as activities conducted with amounts received by a unit of general local government under subsection (a) of this section.

(e) Qualification or submission dates, and finality and conclusiveness of computations and determinations

The Secretary may fix such qualification or submission dates as he determines are necessary to permit the computations and determinations required by this section to be made in a timely manner, and all such computations and determinations shall be final and conclusive.

(f) Pro rata adjustment of entitlement amounts

If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section is insufficient to provide the amounts to which metropolitan cities and urban counties would be entitled under subsection (b) of this section, and funds are not otherwise appropriated to meet the deficiency, the Secretary shall meet the deficiency through a pro rata reduction of all amounts determined under subsection (b) of this section. If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section exceeds the amounts to which metropolitan cities and urban counties would be entitled under subsection (b) of this section, the Secretary shall distribute the excess through a pro rata increase of all amounts determined under subsection (b) of this section.

(Pub. L. 93–383, title I, § 106, Aug. 22, 1974, 88 Stat. 642; Pub. L. 95–128, title I, § 106, Oct. 12, 1977, 91 Stat. 1117; Pub. L. 96–153, title I, § 103(d), (e), Dec. 21, 1979, 93 Stat. 1102; Pub. L. 96–399, title I, §§ 102, 103, 111(d)–(g), 112, Oct. 8, 1980, 94 Stat. 1615, 1621, 1622; Pub. L. 97–35, title III, §§ 304, 309(h), Aug. 13, 1981, 95 Stat. 388, 396; Pub. L. 98–181, title I, § 106, Nov. 30, 1983, 97 Stat. 1164; Pub. L. 98–479, title I, § 101(a)(10)–(12), Oct. 17, 1984, 98 Stat. 2219, 2220; Pub. L. 100–242, title V, §§ 512, 513, 517(b)(1), Feb. 5, 1988, 101 Stat. 1930, 1936; Pub. L. 100–628, title X, § 1082(b), (c), Nov. 7, 1988, 102 Stat. 3277; Pub. L. 101–235, title VII, § 702(b), Dec. 15, 1989, 103 Stat. 2056; Pub. L. 101–625, title IX, §§ 913(b), 933, Nov. 28, 1990, 104 Stat. 4392, 4403; Pub. L. 102–550, title VIII, §§ 802(b), 808, 811, title XII, § 1204(i), Oct. 28, 1992, 106 Stat. 3845, 3850, 3940; Pub. L. 108–186, title V, § 501(d), (e), Dec. 16, 2003, 117 Stat. 2697; Pub. L. 108–199, div. G, title IV, § 423, Jan. 23, 2004, 118 Stat. 416.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended, known as the Housing and Community Development Act of 1974. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Department of Housing and Urban Development—Related Agencies Appropriation Act, 1981, referred to in subsecs. (c)(2) and (d)(2)(A), is Pub. L. 96–526, Dec. 15, 1980, 94 Stat. 3044. For complete classification of this Act to the Code, see Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (c)(4)(A), (C), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

This subparagraph, referred to in subsec. (d)(1), probably should be a reference to this paragraph, meaning par. (1) of subsec. (d) of this section.

Section 1437*o* of this title and section 1706e of title 12, referred to in subsec. (d)(3)(A), was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

The Civil Rights Act of 1964, referred to in subsec. (d)(7)(B), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (d)(7)(B), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

CODIFICATION

In subsecs. (c)(2) and (d)(2)(A), ''October 1, 1981'' substituted for ''the effective date of the Housing and Community Development Amendments of 1981'' meaning the effective date of subtitle A of title III of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 384, which was generally effective Oct. 1, 1981. See Effective Date of 1981 Amendment note below.

AMENDMENTS

2004—Subsec. (d)(3)(A). Pub. L. 108–199, § 423(1), substituted ''shall not, subject to paragraph (6), exceed 3 percent'' for ''shall not exceed 2 percent''.

Subsec. (d)(5). Pub. L. 108–199, § 423(3), redesignated par. (5), relating to prohibition of distributions to units of general local government without certifications, as (7).

Pub. L. 108–199, § 423(2), substituted ''subject to paragraph (6), not to exceed 3 percent'' for ''not to exceed 1 percent'' in par. (5), relating to State deductions for technical assistance.

Subsec. (d)(6). Pub. L. 108–199, § 423(4), added par. (6). Former par. (6) redesignated (8).

Subsec. (d)(7), (8). Pub. L. 108–199, § 423(3), redesignated pars. (5), relating to prohibition of distributions to units of general local government without certifications, and (6) as pars. (7) and (8), respectively.

2003—Subsec. (a)(1). Pub. L. 108–186, § 501(d)(1), in first sentence, substituted ''appropriation Acts'' for ''an appropriation Act'' and ''for such fiscal year'' for ''in any year''.

Subsec. (a)(2). Pub. L. 108–186, § 501(d)(5), added par. (2). Former par. (2) redesignated (3).

Pub. L. 108–186, § 501(d)(2), inserted ''under paragraph (1) and after reserving such amounts for insular areas under paragraph (2)'' after ''tribes''.

Subsec. (a)(3). Pub. L. 108–186, § 501(d)(4), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Pub. L. 108–186, § 501(d)(3), substituted ''paragraphs (1), (2), and (3)'' for ''paragraphs (1) and (2)''.

Subsec. (a)(4). Pub. L. 108–186, § 501(d)(4), redesignated par. (3) as (4).

Subsec. (d)(1). Pub. L. 108–186, § 501(e), substituted ''paragraphs (1), (2), and (3)'' for ''paragraphs (1) and (2)'' in first sentence.

1992—Subsec. (d)(1). Pub. L. 102–550, § 1204(i), in first sentence, substituted ''that remains after allocations pursuant to paragraphs (1) and (2) of subsection (a) of this section'' for ''for grants in any year (excluding the amounts provided for use in accordance with subsection (a)(1) and (2) of this section)''.

Subsec. (d)(4). Pub. L. 102–550, § 802(b), added par. (4).

Subsec. (d)(5). Pub. L. 102–550, § 811, added par. (5) relating to State deductions for technical assistance.

Subsec. (d)(5)(B). Pub. L. 102–550, § 808, substituted ''the Civil Rights Act of 1964 and the Fair Housing Act'' for ''Public Law 88–352 and Public Law 90–284''.

1990—Subsec. (a). Pub. L. 101–625, § 913(b)(1)(B), added subsec. (a) and struck out former subsec. (a) which read as follows: ''Of the amount approved in an appropriation Act under section 5303 of this title for grants in any year (excluding the amounts provided for use in accordance with section 5307 of this title and section 5318 of this title), 70 per centum shall be allocated by the Secretary to metropolitan cities and urban counties and Indian tribes. Except as otherwise specifically authorized, each metropolitan city and urban county shall be entitled to an annual grant from such allocation in an amount not exceeding its basic amount computed pursuant to paragraph (1) or (2) of subsection (b) of this section Indian tribes shall receive grants from such allocation pursuant to subsection (b)(7) of this section.''

Subsec. (b)(1), (2). Pub. L. 101–625, § 913(b)(2), substituted ''The'' for ''After taking into account the set-aside for Indian tribes under paragraph (7), the'' in introductory provisions of pars. (1) and (2).

Subsec. (b)(7). Pub. L. 101–625, § 913(b)(1)(A), struck out par. (7), which read as follows:

''(A) For each fiscal year, the Secretary shall reserve for grants to Indian tribes, from amounts approved in appropriation Acts under section 5303 of this title for grants for the year under subsection (a) of this section, not more than 1 percent of the amounts appropriated under such section.

''(B) The Secretary shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.''

Subsec. (c)(1). Pub. L. 101–625, § 933(1), substituted ''paragraphs (2) and (4)'' for ''paragraph (2)'' in introductory provisions.

Subsec. (c)(4). Pub. L. 101–625, § 933(2), added par. (4).

Subsec. (d)(1). Pub. L. 101–625, § 913(b)(3), substituted ''subsection (a)(1) and (2) of this section'' for ''section 5307 of this title and section 5318 of this title'' in introductory provisions.

1989—Subsec. (a). Pub. L. 101–235, § 702(b)(1), inserted ''and Indian tribes'' after ''urban counties'' in first sentence and inserted ''Indian tribes shall receive grants from such allocation pursuant to subsection (b)(7) of this section'' before period at end of second sentence.

Subsec. (b)(1). Pub. L. 101–235, § 702(b)(2), substituted ''After taking into account the set-aside for Indian tribes under paragraph (7), the'' for ''The''.

Subsec. (b)(2). Pub. L. 101–235, § 702(b)(3), substituted ''After taking into account the set-aside for Indian tribes under paragraph (7), the'' for ''The''.

Subsec. (b)(7). Pub. L. 101–235, § 702(b)(4), added par. (7).

Subsec. (d)(4). Pub. L. 101–235, § 702(b)(5), struck out par. (4) which excluded Indian tribes in computing amounts under par. (1).

1988—Subsec. (c)(1). Pub. L. 100–628, § 1082(b), substituted ''subsection (a), (b), (c), or (d) of section 5304'' for ''section 5304(a), (b), or (c)'' in introductory provisions and substituted ''section 5304(e)'' for ''section 5304(d)'' in introductory provisions and in subpar. (B).

Subsec. (d)(2)(C). Pub. L. 100–242, § 512(1), substituted ''the State must certify that it'' for ''the Governor must certify that the State''.

Subsec. (d)(2)(D). Pub. L. 100–242, § 512(2), substituted ''the State'' for ''the Governor of each State''.

Subsec. (d)(3)(A). Pub. L. 100–242, § 517(b)(1), inserted ''its administrative expenses under section 1706e of title 12'' after first reference to ''such expenses'', and ''under this chapter'' after second reference to ''such expenses''.

Pub. L. 100–242, § 513, substituted ''$100,000'' for ''$102,000'' after ''the sum of''.

Subsec. (d)(3)(C). Pub. L. 100–628, § 1082(c), substituted ''subsection (a), (b), or (d) of section 5304'' for ''subsection (a) or (b) of section 5304'' and ''section 5304(e)'' for ''section 5304(d)''.

Subsec. (d)(3)(D). Pub. L. 100–628, § 1082(c)(2), substituted ''section 5304(e)'' for ''section 5304(d)''.

1984—Subsec. (d)(2)(A). Pub. L. 98–479, § 101(a)(10)(A), substituted ''the State'' for ''a State that has elected, in such manner and at such time as the Secretary shall prescribe'' in provisions preceding cl. (i).

Subsec. (d)(2)(A)(i). Pub. L. 98–479, § 101(a)(10)(B), substituted ''a State that has elected, in such manner and at such time as the Secretary shall prescribe, to distribute such amounts'' for ''the State''.

Subsec. (d)(3)(A). Pub. L. 98–479, § 101(a)(11)(A), inserted ''or section 1437*o*(e)(1) of this title''.

Subsec. (d)(3)(C). Pub. L. 98–479, § 101(a)(11)(B), inserted ''or to make the certifications required in subparagraphs (C) and (D) of paragraph (2)''.

Subsec. (d)(5)(D)(ii). Pub. L. 98–479, § 101(a)(12), substituted ''moderate'' for ''low and moderate income who are not persons of very low'' before ''income, the grantee certifies''.

1983—Subsec. (b)(6). Pub. L. 98–181, § 106(a), added par. (6).

Subsec. (c)(1)(B). Pub. L. 98–181, § 106(b), substituted ''a city or county against whom any such action was taken in a fiscal year shall be excluded from a calculation of share for purposes of reallocating in the succeeding year,'' for ''the city or county against whom any such action was taken shall be excluded from the calculation of shares for purposes of reallocating''.

Subsec. (c)(3). Pub. L. 98–181, § 106(c), added par. (3).

Subsec. (d)(2)(A). Pub. L. 98–181, § 106(d)(1), substituted ''a State that has elected, in such manner and at such time as the Secretary shall prescribe'' for ''the State'' in provisions preceding cl. (i), and inserted, following cl. (ii), ''Any election to distribute funds made after the close of fiscal year 1984 is permanent and final.''

Subsec. (d)(2)(B). Pub. L. 98–181, § 106(d)(2), substituted provisions requiring the Secretary to distribute amounts allocated under par. (1) if the State has not elected to distribute such amounts, for provisions which required the Secretary to distribute such amounts where the State had elected, in such manner and before such time as prescribed by the Secretary, not to distribute such amounts, or the State had failed to submit the certifications described in subpar. (C).

Subsec. (d)(2)(C)(iii). Pub. L. 98–181, § 106(e), amended cl. (iii) generally, substituting provisions requiring certification by the Governor that the State will not refuse to distribute funds to any local government unit on the basis of the particular activity selected to meet its community development needs, except that a State may establish priorities in distributing such amounts, for provisions requiring the Governor to certify that the State would provide funds for community development activities in an amount of at least 10 per centum of the amounts allocated for use in the State pursuant to par. (1).

Subsec. (d)(2)(D). Pub. L. 98–181, § 106(f), added subpar. (D).

Subsec. (d)(3)(A). Pub. L. 98–181, § 106(g), substituted provisions that the State may deduct an amount to cover such expenses not to exceed the sum of $102,000 plus 50 percent of any such expenses in excess of $100,000, and that the amounts deducted in excess of $100,000 shall not exceed 2 percent of the amount so received, for provisions that the State could deduct an amount not to exceed 50 per centum of the costs incurred by the State in carrying out such responsibilities, and that amounts so deducted could not exceed 2 per centum of the amount so received.

Subsec. (d)(3)(C), (D). Pub. L. 98–181, § 106(h), amended subpar. (C) generally, substituting provisions requiring that amounts which are to be reallocated because of failure to meet requirements of section 5304(a), (b) of

this title or because of action under section 5304(d) or 5311 of this title be added to amounts allocated to all States for the succeeding fiscal year for provisions that amounts reallocated because of action under section 5304(d) or section 5311 of this title were to be added to amounts available for distribution in the State in the same fiscal year, in the case of actions against units of general local government, or to amounts available for distribution in the succeeding fiscal year, in the case of action against the State, and struck out provision for distribution of such funds by either the State or the Secretary and adding subpar. (D).

Subsec. (d)(5), (6). Pub. L. 98–181, § 106(i), added pars. (5) and (6).

Subsec. (f). Pub. L. 98–181, § 106(j), amended subsec. (f) generally, substituting provisions for pro rata reduction of all amounts determined under subsec. (b) in the event of a deficiency for provisions for reduction of all basic grant entitlement funds provided pursuant to this section in the event of a deficiency, and inserted provision for distribution of excess amounts.

1981—Subsec. (a). Pub. L. 97–35, § 304(a), substituted provisions relating to amounts allocated to metropolitan areas and urban counties and limitations on amount of annual grants for provisions relating to amounts allocated to metropolitan areas, annual grants for metropolitan cities and urban counties, and limitations.

Subsec. (b)(4). Pub. L. 97–35, § 309(h), substituted provision respecting assistance under subsec. (d) of this section for provision respecting grants under subsec. (c) or (e) of this section.

Subsec. (c). Pub. L. 97–35, § 304(b), (c), redesignated subsec. (d) as (c) and substituted provisions relating to reallocation of undistributed funds within same metropolitan area as original allocation, for provisions relating to reallocation of amounts allocated to metropolitan cities, urban counties, and metropolitan areas for use by States, metropolitan cities, etc. Former subsec. (c), which related to additional allocations of amount allocated to metropolitan areas and added amounts for grants for metropolitan cities, urban counties, specified units of general local government, and States, was struck out.

Subsec. (d). Pub. L. 97–35, § 304(b), (d), (e), redesignated subsec. (e) as (d) and substituted provisions relating to allocation among nonentitlement areas, amount and calculation of grants, distributions, certifications, etc., for provisions relating to amounts allocated to units of general local government of metropolitan areas and States, calculations, multiyear commitments, annual grants, reallocation of amounts to nonmetropolitan areas of other States, and review by Secretary. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 97–35, § 304(b), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Pub. L. 97–35, § 304(b), (f), redesignated subsec. (g) as (f) and substituted ''all basic grant entitlement amounts'' for ''(1) all basic grant entitlement amounts, and (2) funds available under subsection (c) of this section (including amounts provided for use under section 5303(a)(2) of this title) and subsection (e) of this section''. Former subsec. (f) redesignated (e).

1980—Subsec. (a). Pub. L. 96–399, § 111(e), substituted ''subsection (d) of this section'' for ''subsections (c) and (e) of this section'', struck out ''aggregate'' after ''allocation in an'', ''the greater of'' after ''not exceeding'', and ''or its hold-harmless amount computed pursuant to subsection (g) of this section'' after ''subsection (b) of this section''.

Subsec. (b)(4). Pub. L. 96–399, § 103, substituted ''the populations of which are not counted in determining the eligibility of the urban county to receive a grant under this subsection, except that there shall be included any independent city (as defined by the Bureau of the Census) which—'' for ''(A) which are entitled to hold-harmless grants pursuant to subsection (h) of this section, or (B) the populations of which are not counted in determining the eligibility of the urban county to receive a grant under this subsection'', and added subpars. (A) to (E) and provision following subpar. (E).

Subsec. (c). Pub. L. 96–399, § 111(d), (f), redesignated former subsec. (d) as (c) and struck out in par. (1) ''allocated by the Secretary, first, for grants to metropolitan cities, urban counties, and other units of general local government within metropolitan areas to meet their hold-harmless needs as determined under subsections (g) and (h), and second, in accordance with the provisions of paragraph (2)'' after ''section 5303(a)(2) of this title'', struck out ''(2) Any portion of such amounts which remains after applying the provision of paragraph (1) shall be'' before ''utilized by the Secretary'', redesignated former par. (3) as (2) and in par. (2) as so redesignated, substituted ''paragraph (1)'' for ''paragraph (2)'' wherever appearing, struck out ''In determining whether to make such a commitment to a unit of general local government, the Secretary shall give special consideration to those communities presently carrying out comprehensive community development programs which are subject to the provisions of subsection (h)(2), before making new commitments.'' after ''availability of appropriations.'', and substituted ''and Indian tribes'' for ''Indian tribes, and units of general local government which are entitled to hold-harmless grants pursuant to subsection (h) of this section''. Former subsec. (c), relating to adjustment of amounts for metropolitan cities and urban counties, was struck out.

Subsec. (d). Pub. L. 96–399, §§ 111(d), 112, redesignated former subsec. (e) as (d) and inserted provisions relating to preferences for units of general local government in the same metropolitan area. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 96–399, § 111(d), (g), redesignated former subsec. (f) as (e) and in par. (1) struck out ''allocated by the Secretary—(A) first, for grants to units of general local government outside of metropolitan areas to meet their hold-harmless needs as determined under subsection (h) of this section; and (B) second, any portion of such amount which remains after applying the provisions of subparagraph (A) shall be'' after ''20 per centum shall be'', redesignated former cls. (1)(B)(i) and (ii) as (1)(A) and (B), respectively, redesignated former subcls. (1)(B)(i)(I) to (III) and (1)(B)(ii)(I) to (III) as (1)(A)(i) to (iii) and (1)(B)(i) to (iii), respectively, substituted ''subparagraph (A)'' for ''clause (i) of subparagraph (B)'' and ''subparagraph (B)'' for ''clause (ii) of subparagraph (B)'', substituted ''allocated under this paragraph'' for ''allocated under subparagraph (B)'', substituted ''such paragraph'' for ''such subparagraph'' wherever appearing, in par. (2) struck out ''In determining whether to make such a commitment to a unit of general local government, the Secretary shall give special consideration to those communities presently carrying out comprehensive community development programs, which are subject to the provisions of subsection (h)(2) of this section, before making new commitments.'' after ''availability of appropriations.'', substituted ''paragraph (1)'' for ''paragraph (1)(B)'' wherever appearing, struck out ''units of general local government which are entitled to hold-harmless grants pursuant to subsection (h) of this section and'' after ''shall be excluded'', and in par. (3) substituted ''paragraph (1)'' for ''paragraph (1)(B)''. Former subsec. (e) was redesignated as (d).

Subsec. (f). Pub. L. 96–399, § 111(d), redesignated subsec. (k) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 96–399, §§ 102, 111(d), redesignated subsec. (m) as (g) and substituted ''any fiscal year'' for ''fiscal year 1978, fiscal year 1979, or fiscal year 1980'', struck out ''and hold-harmless'' after ''all basic grant'' in two places, and substituted ''subsection (c)'' for ''subsection (d)(2)'' and ''subsection (e)'' for ''subsection (f)(1)(B)''. Former subsec. (g), relating to hold-harmless amounts for metropolitan cities and urban counties, was struck out.

Subsec. (h). Pub. L. 96–399, § 111(d), struck out subsec. (h) which related to hold-harmless grants to units of general local government not metropolitan cities or urban counties.

Subsec. (i). Pub. L. 96–399, § 111(d), struck out subsec. (i) which related to percentages excluded from data in

computation of hold-harmless grants for units of general local government.

Subsec. (j). Pub. L. 96–399, § 111(d), struck out subsec. (j) which related to waiver of eligibility by units of general local government for hold-harmless grants.

Subsec. (k). Pub. L. 96–399, § 111(d), redesignated subsec. (k) as (f).

Subsec. (*l*). Pub. L. 96–399, § 111(d), struck out subsec. (*l*) which related to reports to Congress with respect to adequacy and effectiveness of formula for allocation of funds.

Subsec. (m). Pub. L. 96–399, § 111(d), redesignated subsec. (m) as (g).

1979—Subsec. (b)(5). Pub. L. 96–153, § 103(e), added par. (5).

Subsec. (m). Pub. L. 96–153, § 103(d), inserted reference to fiscal year 1980.

1977—Subsec. (a). Pub. L. 95–128, § 106(a), substituted in second sentence reference to pars. ''(1) or (2)'' for pars. ''(2) or (3)'' of subsec. (b) of this section.

Subsec. (b)(1). Pub. L. 95–128, § 106(b), added par. (1), and struck out former par. (1) provisions stating that ''The Secretary shall determine the amount to be allocated to all metropolitan cities which shall be an amount that bears the same ratio to the allocation for all metropolitan areas as the average of the ratios between—

''(A) the population of all metropolitan cities and the population of all metropolitan areas;

''(B) the extent of poverty in all metropolitan cities and the extent of poverty in all metropolitan areas; and

''(C) the extent of housing overcrowding in all metropolitan cities and the extent of housing overcrowding in all metropolitan areas.'', now incorporated in this paragraph.

Subsec. (b)(2). Pub. L. 95–128, § 106(b), added par. (2) and struck out former par. (2) provisions declaring that ''From the amount allocated to all metropolitan cities the Secretary shall determine for each metropolitan city a basic grant amount which shall equal an amount that bears the same ratio to the allocation for all metropolitan cities as the average of the ratios between—

''(A) the population of that city and the population of all metropolitan cities;

''(B) the extent of poverty in that city and the extent of poverty in all metropolitan cities; and

''(C) the extent of housing overcrowding in that city and the extent of housing overcrowding in all metropolitan cities.'', now incorporated in subsec. (b)(1) of this section.

Subsec. (b)(3). Pub. L. 95–128, § 106(b), added par. (3) and struck out former par. (3) provisions for determination of basic grant amount of each urban county, now covered in subsec. (b)(2) of this section and formerly providing that ''The Secretary shall determine the basic grant amount of each urban county by—

''(A) calculating the total amount that would have been allocated to metropolitan cities and urban counties together under paragraph (1) of this subsection if data pertaining to the population, extent of poverty, and extent of housing overcrowding in all urban counties were included in the numerator of each of the fractions described in such paragraph; and

''(B) determining for each county the amount which bears the same ratio to the total amount calculated under subparagraph (A) of this paragraph as the average of the ratios between—

''(i) the population of that urban county and the population of all metropolitan cities and urban counties;

''(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan cities and urban counties; and

''(iii) the extent of housing overcrowding in that urban county and the extent of housing overcrowding in all metropolitan cities and urban counties.''

Subsec. (b)(4), (5). Pub. L. 95–128, § 106(b), (c), struck out par. ''(4) In determining the average of ratios under paragraphs (1), (2), and (3), the ratio involving the extent of poverty shall be counted twice.'', now incorporated in par. (3), redesignated par. (5) as (4), and substituted ''are entitled to'' for ''receive''.

Subsec. (c). Pub. L. 95–128, § 106(d), in first sentence, substituted ''With respect to funds approved for distribution to a metropolitan city or urban county under this section during fiscal years 1975, 1976, and 1977'' for ''During the first three years for which funds are approved for distribution to a metropolitan city or urban county under this section'' and inserted ''only for such funds approved for distribution in fiscal years 1975, 1976, and 1977'' after ''adjusted''.

Subsec. (d). Pub. L. 95–128, § 106(e), incorporated existing introductory text and provisions of former par. (1) in provisions now designated par. (1); added par. (2), incorporating provisions of former par. (2) respecting additional allocations by the Secretary ''for grants to units of general local government (other than metropolitan cities and urban counties) and States for use in metropolitan areas, allocating for each such metropolitan area an amount which bears the same ratio to the allocation for all metropolitan areas available under this paragraph as the average of the ratios between—

''(A) the population of that metropolitan area and the population of all metropolitan areas,

''(B) the extent of poverty in that metropolitan area and the extent of poverty in all metropolitan areas, and

''(C) the extent of housing overcrowding in that metropolitan area and the extent of housing overcrowding in all metropolitan areas.'' and declaring that ''In determining the average of ratios under paragraph (2), the ratio involving the extent of poverty shall be counted twice''; struck out end clause providing that ''in computing amounts under such paragraph there shall be excluded any metropolitan cities, urban counties, and units of general local government which receive hold–harmless grants pursuant to subsection (h) of this section'', now constituting last sentence of par. (3); and added par. (3) provisions.

Subsec. (e). Pub. L. 95–128, § 106(f), in first sentence, substituted ''within a reasonable time'' for ''during such program period'' and struck out ''during the same period'' after ''shall be reallocated''.

Subsec. (f)(1). Pub. L. 95–128, § 106(g)(1), inserted in subpar. (B) ''any portion of such amount which remains after applying the provisions of subparagraph (A) shall be utilized by the Secretary'' after ''second,'' and ''the greater of'' before ''an amount''; reenacted existing provisions in cl. (i); added cl. (ii); inserted provision respecting determination of average of ratios under cl. (ii) of subpar. (B) and provision for pro rata reduction, to compensate for the discrepancy between the total of the amounts to be allocated under subpar. (B) and the total of the amounts available under such subparagraph, of each amount allocated to the nonmetropolitan areas in each State under such subparagraph; and struck out end clause providing that in computing amounts under such subpar. (B) there shall be excluded units of general local government which receive hold–harmless grants pursuant to subsec. (h) of this section, now constituting end sentence of subsec. (f)(2) of this section.

Subsec. (f)(2). Pub. L. 95–128, § 106(g)(1), (2), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(3). Pub. L. 95–128, § 106(g)(2)–(4), redesignated former par. (2) as (3), substituted ''within a reasonable time'' for ''during such period'', and struck out ''during the same period'' after ''as soon as practicable''.

Subsec. (g)(2). Pub. L. 95–128, § 106(h), substituted reference to ''subsection (b)(1)(A) or (B), or (2)(A) or (B) of this section'' for ''subsection (b)(2) or (3) of this section'' and inserted in cls. (i) and (ii) '', as computed under subsection (b)(1)(A) or (B), or (2)(A) or (B) of this section,'' before ''shall''.

Subsec. (i). Pub. L. 95–128, § 106(i), struck out ''population, poverty, and housing overcrowding'' before ''data'' and substituted ''are entitled to'' for ''receive'' and reference to subsec. (b)(4) for (b)(5) of this section.

Subsec. (j). Pub. L. 95–128, § 106(j), substituted ''by such date as the Secretary shall determine'' for ''not later than thirty days prior to the beginning of any program period'' and reference to subsec. (b)(4) for (b)(5) of this section and inserted ''for a hold–harmless grant for a single year'' after ''eligibility''.

Subsec. (*l*). Pub. L. 95–128, § 106(k), substituted provisions for submission of a report to Congress not later than Sept. 30, 1978, respecting adequacy of funds allocation formula and defining ''impaction'' for prior requirement of a report to Congress not later than Mar. 31, 1977, setting forth recommendations to further purposes and policies of this chapter, for modifying or expanding the provisions of this section relating to the method of funding and the allocation of funds and the determination of basic grant entitlement, and for application of the provisions in the further distribution of funds under this chapter and the conduct of a study by the Secretary respecting manner of distributing funds under this chapter in accordance with community development needs, objectives, and capacities, measured to the maximum extent feasible by objective standards.

Subsec. (m). Pub. L. 95–128, § 106(*l*), added subsec. (m).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 913(f) of Pub. L. 101–625 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 5301 and 5307 of this title] shall apply to amounts approved in any appropriation Act under section 103 of the Housing and Community Development Act of 1974 [section 5303 of this title] for fiscal year 1990 and each fiscal year thereafter.

''(2) GRANTS IN FISCAL YEAR 1990.—The Secretary of Housing and Urban Development may make grants to Indian tribes pursuant to the amendments made by this section with any amounts approved in any appropriation Act under section 103 for fiscal year 1990 for grants to Indian tribes, and the first sentence of section 106(a)(1) of the Housing and Community Development Act of 1974 [subsec. (a)(1) of this section] (as amended by this Act) shall not apply to such grants.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 702(e) of Pub. L. 101–235, as amended by Pub. L. 101–625, title IX, § 913(e), Nov. 28, 1990, 104 Stat. 4393, provided that: ''The amendments made by this section [amending this section and section 5302 of this title] shall apply to amounts approved in any appropriation Act under section 103 of the Housing and Community Development Act of 1974 [section 5303 of this title] for fiscal year 1990 and each fiscal year thereafter.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98–181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–128 effective Oct. 1, 1977, see section 114 of Pub. L. 95–128, set out as a note under section 5301 of this title.

REGULATIONS

Section 702(d) of Pub. L. 101–235 provided that: ''The Secretary shall issue any regulations necessary to carry out this section and the amendments made by this section [amending this section and section 5302 of this title and enacting provisions set out as notes above] in a manner and by such time to provide for the effectiveness of such regulations with respect to amounts appropriated for fiscal year 1991 under section 103 of the Housing and Community Development Act of 1974 [section 5303 of this title].''

TRANSITIONAL PROVISIONS

Section 307 of Pub. L. 97–35 provided that:

''(a) Any amounts appropriated for any fiscal year before fiscal year 1982 in a Department of Housing and Urban Development—Independent Agencies Appropriation Act or a Supplemental Appropriation Act under the head 'COMMUNITY DEVELOPMENT GRANTS' which are or become available for obligation on or after October 1, 1981, shall remain available as provided by law, and shall be used in accordance with the following:

''(1) funds authorized for use under section 106(b) [subsec. (b) of this section] of the Housing and Community Development Act of 1974 ('such Act') before October 1, 1981, shall be available for use as provided by section 106(c) of such Act as amended by this Act [subsec. (c) of this section];

''(2) funds authorized for use under section 107 of such Act [section 5307 of this title] before October 1, 1981, shall be available for use as provided by section 107(a) of such Act as amended by this Act [section 5307(a) of this title]; and

''(3) funds authorized for use under section 106(c) or (e) of such Act [subsec. (c) or (e) of this section] before October 1, 1981, shall be available for use as provided by section 106(d)(2)(A) of such Act as amended by this Act [subsec. (d)(2)(A) of this section].

''(b) Any grant or loan which, prior to the effective date of any provision of this part [see Effective Date note set out under section 3701 of Title 12, Banks and Banking], was obligated and governed by any authority amended by any provision of this part [Pub. L. 97–35, title III, §§ 301–315, Aug. 13, 1981, 95 Stat. 384–398] shall continue to be governed by the provisions of such authority as they existed immediately before such effective date.''

CDBG ASSISTANCE FOR UNITED STATES-MEXICO BORDER REGION

Pub. L. 104–134, title I, § 101(e) [title II], Apr. 26, 1996, 110 Stat. 1321–257, 1321–272; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, provided in part: ''That section 916 of the Cranston-Gonzalez National Affordable Housing Act [set out below] shall apply with respect to fiscal year 1996, notwithstanding section 916(f) of that Act.''

Section 916 of Pub. L. 101–625, as amended by Pub. L. 102–550, title VIII, § 810, Oct. 28, 1992, 106 Stat. 3850; Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2887, provided that:

''(a) SET-ASIDE FOR COLONIAS.—The States of Arizona, California, New Mexico, and Texas shall each make available, for activities designed to meet the needs of the residents of colonias in the State relating to water, sewage, and housing, the following percentage of the amount allocated for the State under section 106(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)):

''(1) FIRST FISCAL YEAR.—For the first fiscal year to which this section applies, 10 percent.

''(2) SUCCEEDING FISCAL YEARS.—For each of the succeeding fiscal years to which this section applies, a percentage (not to exceed 10 percent) that is determined by the Secretary of Housing and Urban Development to be appropriate after consultation with representatives of the interests of the residents of colonias.

''(b) ELIGIBLE ACTIVITIES.—Assistance distributed pursuant to this section may be used only to carry out the following activities:

''(1) PLANNING.—Payment of the cost of planning community development (including water and sewage facilities) and housing activities, including the cost of—

''(A) the provision of information and technical assistance to residents of the area in which the activities are to be concentrated and to appropriate

nonprofit organizations and public agencies acting on behalf of the residents; and

''(B) preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans.

''(2) ASSESSMENTS FOR PUBLIC IMPROVEMENTS.—The payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement.

''(3) OTHER IMPROVEMENTS.—Other activities eligible under section 105 of the Housing and Community Development Act of 1974 [42 U.S.C. 5305] designed to meet the needs of residents of colonias.

''(c) DISTRIBUTION OF ASSISTANCE.—Assistance shall be made available pursuant to this section in accordance with a distribution plan that gives priority to colonias having the greatest need for such assistance.

''(d) APPLICABLE LAW.—Except to the extent inconsistent with this section, assistance provided pursuant to this section shall be subject to the provisions of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

''(e) DEFINITIONS.—For purposes of this section:

''(1) COLONIA.—The term 'colonia' means any identifiable community that—

''(A) is in the State of Arizona, California, New Mexico, or Texas;

''(B) is in the United States-Mexico border region;

''(C) is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and

''(D) was in existence as a colonia before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990].

''(2) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means an organization described in section 501(c) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)] and exempt from taxation under section 501(a) of such Code.

''(3) PERSONS OF LOW AND MODERATE INCOME.—The term 'persons of low and moderate income' has the meaning given the term in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)).

''(4) UNITED STATES-MEXICO BORDER REGION.—The term 'United States-Mexico border region' means the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1,000,000.''

OFFICE OF INDIAN AND ALASKA NATIVE PROGRAMS

Section 702(c) of Pub. L. 101–235, which required Secretary of Housing and Urban Development to administer grants to Indian tribes under this chapter through the Office of Indian and Alaska Native Programs of the Department of Housing and Urban Development, was repealed by Pub. L. 101–625, title IX, § 913(d), Nov. 28, 1990, 104 Stat. 4393.

§ 5307. Special purpose grants

(a) Set-aside

(1) In general

For each fiscal year (except as otherwise provided in this paragraph), of the total amount provided in appropriation Acts under section 5303 of this title for the fiscal year, $60,000,000 shall be set aside for grants under subsection (b) of this section for such year for the following purposes:

(A) $6,500,000 shall be available for grants under subsection (b)(3)[1] of this section;

(B) $6,000,000 shall be available for grants under subsection (b)(5)[1] of this section;

(C) $6,000,000 shall be available in fiscal year 1993 for grants under subsection (b)(7)[1] of this section;

(D) $3,000,000 shall be available for grants under subsection (c) of this section;

(E) such sums as may be necessary shall be available for grants under paragraphs (2), (4), and (6)[1] of subsection (b) of this section;

(F) $2,000,000 shall be available in fiscal year 1993 for a grant to the City of Bridgeport, Connecticut, subject to the approval of sufficient amounts in an appropriation Act and to binding commitments made by the City of Bridgeport and the State of Connecticut that the city and State, respectively, will supplement such amount with $2,000,000 of additional funds; and

(G) $7,500,000 shall be available to carry out the Community Outreach Partnership Act of 1992.

(2) Treatment of grants

Any grants made under this section shall be in addition to any other grants that may be made under this chapter to the same entities for the same purposes.

(b) Permissible uses of funds

From amounts set aside under subsection (a) of this section, the Secretary is authorized to make grants—

(1) to States and units of general local government for the purpose of allocating amounts to any such State or unit of general local government that is determined by the Secretary to have received insufficient amounts under section 5306 of this title as a result of a miscalculation of its share of funds under such section;

(2) to historically Black colleges;

(3) to States, units of general local government, Indian tribes, or areawide planning organizations for the purpose of providing technical assistance in planning, developing, and administering assistance under this chapter and section 1706e[1] of title 12; to groups designated by such governmental units to assist them in carrying out assistance under this chapter; to qualified groups for the purpose of assisting more than one such governmental unit to carry out assistance under this chapter; the Secretary may also provide technical assistance, directly or through contracts, to such governmental units and groups; for purposes of this paragraph the term ''technical assistance'' means the facilitating of skills and knowledge in planning, developing, and administering activities under this chapter in entities that may need but do not possess such skills and knowledge, and includes assessing programs and activities under this chapter; except that any recipient of a grant under this paragraph that provides technical assistance pursuant to this paragraph shall provide for the notification of the availability of such assistance and shall have specific criteria for se-

[1] See References in Text note below.

lection of recipients of such assistance that are published and publicly available;

(4) to States and units of general local government and institutions of higher education having a demonstrated capacity to carry out eligible activities under this chapter, except that the Secretary may make a grant under this paragraph only to a State or unit of general local government that jointly, with an institution of higher education, has prepared and submitted to the Secretary an application for such grant, as the Secretary shall by regulation require;

(5) to units of general local government in nonentitlement areas for planning community adjustments and economic diversification activities, which may include any eligible activities under section 5305 of this title, required—

(A) by the proposed or actual establishment, realignment, or closure of a military installation,

(B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, or

(C) by a publicly announced planned major reduction in Department of Defense spending that would directly and adversely affect a unit of general local government and will result in the loss of 1,000 or more full-time Department of Defense and contractor employee positions over a 5-year period in the unit of general local government and the surrounding area, or

if the Secretary (in consultation with the Secretary of Defense) determines that an action described in subparagraph (A), (B), or (C) is likely to have a direct and significant adverse consequence on the unit of general local government; and

(6) for the purposes of rebuilding and revitalizing distressed areas of the Los Angeles metropolitan area.

(c) Assistance to economically disadvantaged and minority students participating in community development work study programs

Of the amount set aside for use under subsection (b) of this section in any fiscal year, the Secretary shall,[2] make grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, or community management.

(d) Continued availability of unused funds

Amounts set aside for use under subsection (b) of this section in any fiscal year but not used in that year shall remain available for use in subsequent fiscal years in accordance with the provisions of that subsection.

(e) Satisfactory assurances required, special assurances required of Indian tribes

(1) Except as provided in paragraph (2), no grant may be made under this section or section 5318 of this title and no assistance may be made available under section 1437*o*[3] of this title unless the grantee provides satisfactory assurances that its program will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] and the Fair Housing Act [42 U.S.C. 3601 et seq.].

(2) No grant may be made to an Indian tribe under this section, section 5306(a)(1) of this title, or section 5318 of this title unless the applicant provides satisfactory assurances that its program will be conducted and administered in conformity with title II of Public Law 90–284 [25 U.S.C. 1301 et seq.]. The Secretary may waive, in connection with grants to Indian tribes, the provisions of section 5309 of this title and section 5310 of this title.

(3) The Secretary may accept a certification from the grantee or applicant that it has complied with the requirements of paragraph (1) or (2), as appropriate.

(f) Criteria for selection of recipients

Any grant made under this section shall be made pursuant to criteria for selection of recipients of such grants that the Secretary shall by regulation establish and which the Secretary shall publish together with any notification of availability of amounts under this section.

(Pub. L. 93–383, title I, § 107, Aug. 22, 1974, 88 Stat. 647; Pub. L. 94–375, § 15(c), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 95–128, title I, § 107, Oct. 12, 1977, 91 Stat. 1123; Pub. L. 95–557, title I, § 103(f), Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96–399, title I, §§ 107, 117(b), Oct. 8, 1980, 94 Stat. 1618, 1624; Pub. L. 97–35, title III, § 305, Aug. 13, 1981, 95 Stat. 391; Pub. L. 98–181, title I, § 107, title III, § 302(b), Nov. 30, 1983, 97 Stat. 1167, 1206; Pub. L. 100–242, title V, §§ 501(b), 517(b)(2), 522(b), Feb. 5, 1988, 101 Stat. 1922, 1936, 1939; Pub. L. 101–235, title I, § 105(a)–(c), (e), Dec. 15, 1989, 103 Stat. 1998, 1999; Pub. L. 101–625, title IX, §§ 901(c), 913(c), Nov. 28, 1990, 104 Stat. 4385, 4393; Pub. L. 102–550, title VIII, §§ 801(c)(1), (2), (4), 808, Oct. 28, 1992, 106 Stat. 3843–3845, 3850; Pub. L. 106–569, title I, § 102(f), Dec. 27, 2000, 114 Stat. 2947; Pub. L. 108–186, title V, § 501(f), Dec. 16, 2003, 117 Stat. 2697.)

REFERENCES IN TEXT

Paragraphs (2), (3), (4), (6), and (7) of subsection (b) of this section, referred to in subsec. (a)(1)(A) to (C) and (E), were redesignated as paragraphs (1), (2), (3), (5), and (6), respectively, of subsection (b) by Pub. L. 108–186, title V, § 501(f)(2)(B), Dec. 16, 2003, 117 Stat. 2697.

The Community Outreach Partnership Act of 1992, referred to in subsec. (a)(1)(G), is section 851 of Pub. L. 102–550, which is set out below.

Section 1706e of title 12, referred to in subsec. (b)(3), was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

Section 1437*o* of this title, referred to in subsec. (e)(1), was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

The Civil Rights Act of 1964, referred to in subsec. (e)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (e)(1), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as

[2] So in original. The comma probably should not appear.

[3] See References in Text note below.

amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

Public Law 90–284, referred to in subsec. (e)(2), is Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, as amended, known as the Civil Rights Act of 1968. Title II of Pub. L. 90–284 is classified generally to subchapter I (§ 1301 et seq.) of chapter 15 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–186, § 501(f)(1), redesignated subpars. (B) to (H) as (A) to (G), respectively, and struck out former subpar. (A) which read as follows: ''$7,000,000 shall be available for grants under subsection (b)(1) of this section;''.

Subsec. (b). Pub. L. 108–186, § 501(f)(2), redesignated pars. (2) to (7) as (1) to (6), respectively, and struck out former par. (1) which read as follows: ''in Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;''.

2000—Subsec. (a)(1)(G). Pub. L. 106–569, § 102(f)(1), inserted ''and'' after semicolon at end.

Subsec. (a)(1)(H), (I). Pub. L. 106–569, § 102(f)(2), (3), redesignated subpar. (I) as (H) and struck out former subpar. (H) which read as follows: ''$15,000,000 shall be available for grants under the Removal of Regulatory Barriers to Affordable Housing Act of 1992; and''.

1992—Subsec. (a). Pub. L. 102–550, § 801(c)(1), added heading and subsec. (a) and struck out former subsec. (a) which read as follows: ''Of the total amount provided in appropriation Acts under section 5303 of this title for fiscal years 1988 and 1989, $60,000,000 may be set aside in each year for grants under subsection (b) of this section. Grants under this section are in addition to any other grants which may be made under this chapter to the same entities for the same purposes.''

Subsec. (b)(5) to (7). Pub. L. 102–550, § 801(c)(2), added pars. (5) to (7).

Subsec. (c). Pub. L. 102–550, § 801(c)(4), substituted ''make'' for ''to the extent approved in appropriation Acts, make available not less than $3,000,000 in the form of''.

Subsec. (e)(1). Pub. L. 102–550, § 808, substituted ''the Civil Rights Act of 1964 and the Fair Housing Act'' for ''Public Law 88–352 and Public Law 90–284''.

1990—Subsec. (a). Pub. L. 101–625, § 901(c), directed the amendment of subsec. (a), which did not contain designated pars., by adding par. (3) and redesignating former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (e)(2). Pub. L. 101–625, § 913(c), inserted '', section 5306(a)(1) of this title,'' after ''this section''.

1989—Pub. L. 101–235, § 105(e), substituted ''Special purpose grants'' for ''Discretionary fund'' in section catchline.

Subsec. (a). Pub. L. 101–235, § 105(a), struck out ''in a special discretionary fund'' after ''in each year'' and struck out at end ''Of the amount set aside for grants under subsection (b) of this section for fiscal year 1988, $5,000,000 shall be made available by the Secretary for purposes of grants under subsection (b)(1) of this section for the Park Central New Community Project.''

Subsec. (b)(1). Pub. L. 101–235, § 105(b)(1), (3), redesignated former par. (2) as (1) and struck out former par. (1) which read as follows: ''in behalf of new communities assisted under title VII of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968 or in behalf of new community projects assisted under title X of the National Housing Act which meet the eligibility standards set forth in title VII of the Housing and Urban Development Act of 1970 and which were the subject of an application or preapplication under such title prior to January 14, 1975;''.

Subsec. (b)(2). Pub. L. 101–235, § 105(b)(3), redesignated par. (5) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 101–235, § 105(b)(1), (4), added par. (3) and struck out former par. (3) which related to grants to Indian tribes.

Subsec. (b)(4). Pub. L. 101–235, § 105(b)(5), struck out ''and to States and units of general local government for implementing special projects otherwise authorized under this chapter; and'' after ''to carry out assistance under this chapter;'', and substituted ''for purposes of this paragraph the term 'technical assistance' means the facilitating of skills and knowledge in planning, developing, and administering activities under this chapter in entities that may need but do not possess such skills and knowledge, and includes assessing programs and activities under this chapter; except that any recipient of a grant under this paragraph that provides technical assistance pursuant to this paragraph shall provide for the notification of the availability of such assistance and shall have specific criteria for selection of recipients of such assistance that are published and publicly available.'' for ''and'' after ''such governmental units and groups;''.

Subsec. (b)(5). Pub. L. 101–235, § 105(b)(3), redesignated par. (5) as (2).

Subsec. (f). Pub. L. 101–235, § 105(c), added subsec. (f).

1988—Subsec. (a). Pub. L. 100–242, § 522(b), inserted sentence at end making $5,000,000 of grant moneys available for the Park Central New Community Project.

Pub. L. 100–242, § 501(b)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''Of the total amount approved in appropriation Acts under section 5303 of this title for each of the fiscal years 1984, 1985, and 1986, not more than $68,200,000 for each such fiscal year may be set aside in a special discretionary fund for grants under subsection (b) of this section.''

Subsec. (b)(4). Pub. L. 100–242, § 517(b)(2), inserted ''and section 1706e of title 12'' before first semicolon.

Subsecs. (c) to (e). Pub. L. 100–242, § 501(b)(2), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1983—Subsec. (a). Pub. L. 98–181, § 107(a), substituted provisions permitting not more than $68,200,000 for each of fiscal years 1984, 1985, and 1986 to be set aside in a special discretionary fund for grants under subsection (b) of this section, for provisions permitting not more than $60,000,000 to be set aside for each of fiscal years 1982 and 1983 in such a fund.

Subsec. (b)(4). Pub. L. 98–181, § 107(b), amended par. (4) generally, inserting provisions authorizing the Secretary to provide assistance to groups designated by certain enumerated governmental units to assist in carrying out this chapter, to qualified groups for the purpose of assisting more than one such governmental unit and to provide technical assistance, directly or through contracts, to such governmental units and groups.

Subsec. (b)(5). Pub. L. 98–181, § 107(c), added par. (5).

Subsec. (d)(1). Pub. L. 98–181, § 302(b)(1), inserted provisions relating to section 1437*o* of this title, and substituted ''grantee'' for ''applicant''.

Subsec. (d)(3). Pub. L. 98–181, § 302(b)(2), inserted ''grantee or'' before ''applicant''.

1981—Subsec. (a). Pub. L. 97–35 substituted provisions relating to authorization of appropriations under section 5303 of this title for fiscal years 1982 and 1983, and supplemental nature of grants, for provisions relating to authorization of appropriations under section 5303(a)(1) of this title for fiscal years 1981 to 1983, and purposes for expenditures from fund.

Subsec. (b). Pub. L. 97–35 substituted provisions relating to permissible uses of funds for provisions relating to limitations on amounts reserved for emergency disaster needs.

Subsec. (c). Pub. L. 97–35 substituted provisions relating to amounts set aside for use under subsec. (b) of this section for provisions relating to amounts set aside and reserved in the special fund under subsec. (b) of this section.

Subsec. (d). Pub. L. 97–35 substituted provisions relating to assurances required for provisions relating to Indian tribal eligibility for grant as dependent upon conformity of program with prescribed constitutional rights and habeas corpus.

1980—Subsec. (a). Pub. L. 96–399, § 107, substituted ''approved in appropriation Acts under section 5303(a)(1) of this title for each of the fiscal years 1981, 1982, and 1983, not more than $104,000,000 for fiscal year 1981, not more than $104,000,000 for fiscal year 1982, and not more than $107,000,000 for fiscal year 1983 may'' for ''of authority to enter into contracts approved in appropriation Acts under section 5303(a)(1) of this title for each of the fiscal years 1975, 1976, 1977, 1978, 1979, and 1980, an amount equal to 3 per centum thereof shall''.

Subsec. (d). Pub. L. 96–399, § 117(b), inserted ''under this chapter'' after ''Indian tribe''.

1978—Subsec. (a)(8). Pub. L. 95–557 substituted ''The Secretary may also provide, directly or through contracts, technical assistance under this paragraph to such governmental units, or to a group designated by such a governmental unit for the purpose of assisting that governmental unit to carry out its Community Development Program'' for ''The Secretary may also provide such technical assistance under this paragraph directly or through contracts''.

1977—Subsec. (a). Pub. L. 95–128, § 107(1), (2), extended provisions to fiscal years 1978 through 1980 and increased rate to 3 from 2 per centum.

Subsec. (a)(5). Pub. L. 95–128, § 107(3), provided for grants to Indian tribes.

Subsec. (a)(7), (8). Pub. L. 95–128, § 107(4), added pars. (7) and (8).

Subsec. (b). Pub. L. 95–128, § 107(5), substituted ''15 per centum'' for ''one-fourth''.

Subsec. (d). Pub. L. 95–128, § 107(6), added subsec. (d).

1976—Subsec. (a)(1). Pub. L. 94–375 included new community projects assisted under title X of the National Housing Act as within the authority of the Secretary to make grants from the special discretionary fund.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 913(c) of Pub. L. 101–625 applicable to amounts approved in any appropriation Act under section 5303 of this title for fiscal year 1990 and each fiscal year thereafter, see section 913(f) of Pub. L. 101–625, set out as a note under section 5306 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 105(d) of Pub. L. 101–235 provided that:

''(1) IN GENERAL.—Except as provided in this paragraph and paragraph (2), the amendments made by this section [amending this section] shall apply with respect to any grants made under section 107 of the Housing and Community Development Act of 1974 [this section] on or after the date of the enactment of this Act [Dec. 15, 1989], except a grant made under the third sentence of section 107(a) of [the] Housing and Community Development Act of 1974, as such sentence existed immediately before such date, and grants for specific activities (referred to in House Report Number 101–297) pursuant to the amount appropriated for use under section 107 by the enactment of the bill, H.R. 2916, of the One Hundred First Congress [Pub. L. 101–144, Nov. 9, 1989, 103 Stat. 850].

''(2) PRIOR GRANTS.—Any grant made under section 107 of the Housing and Community Development Act of 1974 [this section] before the date of the enactment of this Act [Dec. 15, 1989] or pursuant to a grant award notification made before such date shall be governed by the provisions of such section as it existed immediately before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98–181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–557 effective Oct. 1, 1978, see section 104 of Pub. L. 95–557, set out as a note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–128 effective Oct. 1, 1977, see section 114 of Pub. L. 95–128, set out as a note under section 5301 of this title.

REGULATIONS

Pub. L. 102–550, title VIII, § 801(c)(3), Oct. 28, 1992, 106 Stat. 3844, provided that, not later than the expiration of the 60-day period beginning on Oct. 28, 1992, the Secretary of Housing and Urban Development was to issue proposed regulations to carry out subsec. (b)(6) of this section and to issue final regulations to carry out subsec. (b)(6) not later than the expiration of the 120-day period beginning on Oct. 28, 1992.

COMMUNITY OUTREACH PARTNERSHIP

Section 851 of Pub. L. 102–550 directed Secretary to carry out a 5-year demonstration program to determine feasibility of facilitating partnerships between institutions of higher education and communities to solve urban problems through research, outreach, and exchange of information, established program of grants to public and private nonprofit institutions of higher education to assist in establishing or carrying out such activities and to establish and operate Community Outreach Partnership Centers which were to focus on problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, community organizing, and other areas deemed appropriate by the Secretary, further provided for establishment of national advisory council to assist Secretary in these areas and a national clearinghouse to disseminate information resulting from these activities, and further provided for appropriations for the demonstration program as well as for an annual report to Congress by the Secretary.

§ 5308. Guarantee and commitment to guarantee loans for acquisition of property

(a) Authority of Secretary; issuance of obligations by eligible public entities or designated public agencies; form, denomination, maturity, and conditions of notes or other obligations; percentage allocation requirements

The Secretary is authorized, upon such terms and conditions as the Secretary may prescribe, to guarantee and make commitments to guarantee, only to such extent or in such amounts as provided in appropriation Acts, the notes or other obligations issued by eligible public entities, or by public agencies designated by such eligible public entities, for the purposes of financing (1) acquisition of real property or the rehabilitation of real property owned by the eligible public entity (including such related expenses as the Secretary may permit by regulation); (2) housing rehabilitation; (3) economic development activities permitted under paragraphs (14), (15), and (17) of section 5305(a) of this title; (4) construction of housing by nonprofit organizations for homeownership under section 1437*o*(d)[1] of this title or title VI of the Housing and Community Development Act of 1987; (5) the acquisition, construction, reconstruction, or installation of public facilities (except for buildings for the general conduct of government); or (6) in the

[1] See References in Text note below.

case of colonias (as such term is defined in section 916 of the Cranston-Gonzalez National Affordable Housing Act), public works and site or other improvements. A guarantee under this section may be used to assist a grantee in obtaining financing only if the grantee has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee. Notes or other obligations guaranteed pursuant to this section shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary. The Secretary may not deny a guarantee under this section on the basis of the proposed repayment period for the note or other obligation, unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk. Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this section, to the extent approved or provided in appropriation Acts, the Secretary shall enter into commitments to guarantee notes and obligations under this section with an aggregate principal amount of $2,000,000,000 for fiscal year 1993 and $2,000,000,000 for fiscal year 1994. Of the amount approved in any appropriation Act for guarantees under this section in any fiscal year, the Secretary shall allocate 70 percent for guarantees for metropolitan cities, urban counties, and Indian tribes and 30 percent for guarantees for units of general local government in nonentitlement areas. The Secretary may waive the percentage requirements of the preceding sentence in any fiscal year only to the extent that there is an absence of qualified applicants or proposed activities from metropolitan cities, urban counties, and Indian tribes or units of general local government in nonentitlement areas.

(b) Prerequisites

No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the issuer's total outstanding notes or obligations guaranteed under this section (excluding any amount defeased under the contract entered into under subsection (d)(1)(A) of this section) would thereby exceed an amount equal to 5 times the amount of the grant approval for the issuer pursuant to section 5306 or 5307 of this title.

(c) Payment of principal, interest and costs

Notwithstanding any other provision of this chapter, grants allocated to an issuer pursuant to this chapter (including program income derived therefrom) are authorized for use in the payment of principal and interest due (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) on the notes or other obligations guaranteed pursuant to this section.

(d) Repayment contract; security; pledge by State

(1) To assure the repayment of notes or other obligations and charges incurred under this section and as a condition for receiving such guarantees, the Secretary shall require the issuer to—

(A) enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed hereunder;

(B) pledge any grant for which the issuer may become eligible under this chapter; and

(C) furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this chapter or dispositions proceeds from the sale of land or rehabilitated property.

(2) To assist in assuring the repayment of notes or other obligations and charges incurred under this section, a State shall pledge any grant for which the State may become eligible under this chapter as security for notes or other obligations and charges issued under this section by any unit of general local government in a nonentitlement area in the State.

(e) Pledged grants for repayments

The Secretary is authorized, notwithstanding any other provision of this chapter, to apply grants pledged pursuant to paragraphs (1)(B) and (2) of subsection (d) of this section to any repayments due the United States as a result of such guarantees.

(f) Full faith and credit of United States pledged for payment; conclusiveness and validity of guarantee

The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

(g) Issuance of obligations by Secretary to Secretary of the Treasury to satisfy authorized guarantee obligations; establishment of maturities and rates of interest and purchase of obligations by Secretary of the Treasury

The Secretary may issue obligations to the Secretary of the Treasury in an amount outstanding at any one time sufficient to enable the Secretary to carry out his obligations under guarantees authorized by this section. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Secretary issued under this section, and for such purposes is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which such securities may be issued under such chapter are extended to include the purchases of the Secretary's obligations hereunder.

(h) Federal taxation of guaranteed obligations; grants to borrowing entity or agency of taxable obligations for net interest costs, etc.; limitation on amount of grant; assistance to issuer in hardship cases

Obligations guaranteed under this section shall be subject to Federal taxation as provided in subsection (j) of this section. The Secretary is authorized to make, and to contract to make, grants, in such amounts as may be approved in appropriations Acts, to or on behalf of the issuing eligible public entity or public agency to cover not to exceed 30 per centum of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing entity or agency of such obligations. The Secretary may also, to the extent approved in appropriation Acts, assist the issuer of a note or other obligation guaranteed under this section in the payment of all or a portion of the principal and interest amount due under the note or other obligation, if the Secretary determines that the issuer is unable to pay the amount because of circumstances of extreme hardship beyond the control of the issuer.

(i) Omitted

(j) Inclusion within gross income for purpose of chapter 1 of title 26 of interest paid on taxable obligations

With respect to any obligation issued by a[2] eligible public entity or designated agency which is guaranteed pursuant to this section, the interest paid on such obligation shall be included in gross income for the purpose of chapter 1 of title 26.

(k) Outstanding obligations; limitation; monitoring use of guarantees under this section

(1) The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to subsection (a) of this section shall not at any time exceed $4,500,000,000 or such higher amount as may be authorized to be appropriated for sections 5306 and 5307 of this title for any fiscal year.

(2) The Secretary shall monitor the use of guarantees under this section by eligible public entities. If the Secretary finds that 50 percent of the aggregate guarantee authority has been committed, the Secretary may—

(A) impose limitations on the amount of guarantees any one entity may receive in any fiscal year of $35,000,000 for units of general local government receiving grants under section 5306(b) of this title and $7,000,000 for units of general local government receiving grants under section 5306(d) of this title; or

(B) request the enactment of legislation increasing the aggregate limitation on guarantees under this section.

(*l*) Purchase of guaranteed obligations by Federal Financing Bank

Notes or other obligations guaranteed under this section may not be purchased by the Federal Financing Bank.

(m) Limitation on imposition of fee or charge

No fee or charge may be imposed by the Secretary or any other Federal agency on or with respect to a guarantee made by the Secretary under this section after February 5, 1988.

(n) State assistance in submission of applications

Any State that has elected under section 5306(d)(2)(A) of this title to distribute funds to units of general local government in nonentitlement areas may assist such units in the submission of applications for guarantees under this section.

(*o*) "Eligible public entity" defined

For purposes of this section, the term ''eligible public entity'' means any unit of general local government, including units of general local government in nonentitlement areas.

(p) Training and information activities relating to home guarantee program

(1) The Secretary, in cooperation with eligible public entities, shall carry out training and information activities with respect to the guarantee program under this section. Such activities shall commence not later than 1 year after November 28, 1990.[3]

(2) The Secretary may use amounts set aside under section 5307 of this title to carry out this subsection.

(q) Economic development grants

(1) Authorization

The Secretary may make grants in connection with notes or other obligations guaranteed under this section to eligible public entities for the purpose of enhancing the security of loans guaranteed under this section or improving the viability of projects financed with loans guaranteed under this section.

(2) Eligible activities

Assistance under this subsection may be used only for the purposes of and in conjunction with projects and activities assisted under subsection (a) of this section.

(3) Applications

Applications for assistance under this subsection may be submitted only by eligible public entities, and shall be in the form and in accordance with the procedures established by the Secretary. Eligible public entities may apply for grants only in conjunction with requests for guarantees under subsection (a) of this section.

(4) Selection criteria

The Secretary shall establish criteria for awarding assistance under this subsection. Such criteria shall include—

(A) the extent of need for such assistance;

(B) the level of distress in the community to be served and in the jurisdiction applying for assistance;

(C) the quality of the plan proposed and the capacity or potential capacity of the applicant to successfully carry out the plan; and

(D) such other factors as the Secretary determines to be appropriate.

[2] So in original. Probably should be ''an''.

[3] See Codification note below.

(r) Guarantee of obligations backed by loans

(1) Authority

The Secretary may, upon such terms and conditions as the Secretary considers appropriate, guarantee the timely payment of the principal of and interest on such trust certificates or other obligations as may—

(A) be offered by the Secretary or by any other offeror approved for purposes of this subsection by the Secretary; and

(B) be based on and backed by a trust or pool composed of notes or other obligations guaranteed or eligible for guarantee by the Secretary under this section.

(2) Full faith and credit

To the same extent as provided in subsection (f) of this section, the full faith and credit of the United States is pledged to the payment of all amounts that may be required to be paid under any guarantee made by the Secretary under this subsection.

(3) Subrogation

If the Secretary pays a claim under a guarantee made under this section, the Secretary shall be subrogated for all the rights of the holder of the guaranteed certificate or obligation with respect to such certificate or obligation.

(4) Effect of laws

No State or local law, and no Federal law, shall preclude or limit the exercise by the Secretary of—

(A) the power to contract with respect to public offerings and other sales of notes, trust certificates, and other obligations guaranteed under this section upon such terms and conditions as the Secretary deems appropriate;

(B) the right to enforce any such contract by any means deemed appropriate by the Secretary; and

(C) any ownership rights of the Secretary, as applicable, in notes, certificates, or other obligations guaranteed under this section, or constituting the trust or pool against which trust certificates, or other obligations guaranteed under this section, are offered.

(Pub. L. 93–383, title I, § 108, Aug. 22, 1974, 88 Stat. 647; Pub. L. 95–128, title I, § 108, Oct. 12, 1977, 91 Stat. 1123; Pub. L. 96–399, title I, § 108, Oct. 8, 1980, 94 Stat. 1619; Pub. L. 97–35, title III, § 309(i), Aug. 13, 1981, 95 Stat. 397; Pub. L. 98–181, title I, § 108, Nov. 30, 1983, 97 Stat. 1168; Pub. L. 98–479, title II, §§ 203(*l*)(2), 204(k)(1), Oct. 17, 1984, 98 Stat. 2231, 2233; Pub. L. 99–272, title III, § 3002(a), Apr. 7, 1986, 100 Stat. 102; Pub. L. 100–242, title V, § 514, Feb. 5, 1988, 101 Stat. 1930; Pub. L. 101–625, title IX, §§ 901(b), 910(b)–(g), Nov. 28, 1990, 104 Stat. 4385, 4389–4391; Pub. L. 102–550, title VIII, § 801(b), Oct. 28, 1992, 106 Stat. 3843; Pub. L. 103–233, title II, §§ 231, 232(a)(1), 233, Apr. 11, 1994, 108 Stat. 366, 368; Pub. L. 104–120, § 3(b), Mar. 28, 1996, 110 Stat. 835.)

REFERENCES IN TEXT

Section 1437*o* of this title, referred to in subsec. (a)(4), was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

Title VI of the Housing Community Development Act of 1987, referred to in subsec. (a)(4), is title VI of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1951, which was set out as a note under section 1715*l* of Title 12, Banks and Banking, and was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

Section 916 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (a)(6), is section 916 of Pub. L. 101–625, as amended, which is set out as a note under section 5306 of this title.

CODIFICATION

Subsec. (i) of this section amended section 711(22) of former Title 31, Money and Finance. Subsec. (i) was originally enacted as subsec. (f) of this section, and was redesignated as subsec. (i) by Pub. L. 95–128, § 108(2).

November 28, 1990, referred to in subsec. (p)(1), was in the original ''the date of the enactment of the Housing and Community Development Act of 1990'', and was translated as meaning the date of enactment of the Cranston-Gonzalez National Affordable Housing Act, Pub. L. 101–625, which enacted subsec. (p) of this section, to reflect the probable intent of Congress and because no ''Housing and Community Development Act of 1990'' has been enacted.

AMENDMENTS

1996—Subsec. (k)(1). Pub. L. 104–120 substituted ''$4,500,000,000'' for ''$3,500,000,000''.

1994—Subsec. (a). Pub. L. 103–233, § 231, added cls. (5) and (6).

Subsec. (q). Pub. L. 103–233, § 232(a)(1), added subsec. (q).

Subsec. (r). Pub. L. 103–233, § 233, added subsec. (r).

1992—Subsec. (a). Pub. L. 102–550 amended fifth sentence generally. Prior to amendment, fifth sentence read as follows: ''Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this section, to the extent approved or provided in appropriation Acts, the Secretary shall enter into commitments to guarantee notes and obligations under this section with an aggregate principal amount of $300,000,000 during fiscal year 1991 and $300,000,000 during fiscal year 1992.''

1990—Subsec. (a). Pub. L. 101–625, § 910(e)(1), inserted at end ''Of the amount approved in any appropriation Act for guarantees under this section in any fiscal year, the Secretary shall allocate 70 percent for guarantees for metropolitan cities, urban counties, and Indian tribes and 30 percent for guarantees for units of general local government in nonentitlement areas. The Secretary may waive the percentage requirements of the preceding sentence in any fiscal year only to the extent that there is an absence of qualified applicants or proposed activities from metropolitan cities, urban counties, and Indian tribes or units of general local government in nonentitlement areas.''

Pub. L. 101–625, § 910(c), inserted ''The Secretary may not deny a guarantee under this section on the basis of the proposed repayment period for the note or other obligation, unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk.''

Pub. L. 101–625, § 910(b)(2), substituted a semicolon for ''; or'' before ''(3)'' and added cl. (4).

Pub. L. 101–625, § 910(b)(1)(A), substituted ''eligible public entity'' and ''eligible public entities'' for ''unit of general local government'' and ''units of general local government'', respectively, wherever appearing.

Pub. L. 101–625, § 901(b), amended last sentence generally. Prior to amendment, last sentence read as follows: ''Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities, to the authority provided in this section, and to any funding limitation approved in appropriation Acts, the Secretary shall enter into commitments to guarantee notes and obligations under this section with an aggregate principal amount of

$150,000,000 during fiscal year 1988, and $153,000,000 during fiscal year 1989.''

Subsec. (b). Pub. L. 101–625, § 910(d), inserted ''(excluding any amount defeased under the contract entered into under subsection (d)(1)(A) of this section)'' after ''this section'', substituted ''5'' for ''three'', and inserted reference to section 5307 of this title.

Subsec. (d). Pub. L. 101–625, § 910(b)(4)(A), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2).

Subsec. (e). Pub. L. 101–625, § 910(b)(4)(B), substituted ''paragraphs (1)(B) and (2) of subsection (d)'' for ''subsection (d)(2)''.

Subsec. (h). Pub. L. 101–625, § 910(f), inserted at end ''The Secretary may also, to the extent approved in appropriation Acts, assist the issuer of a note or other obligation guaranteed under this section in the payment of all or a portion of the principal and interest amount due under the note or other obligation, if the Secretary determines that the issuer is unable to pay the amount because of circumstances of extreme hardship beyond the control of the issuer.''

Pub. L. 101–625, § 910(b)(1), substituted ''entity or agency'' for ''unit or agency'' and ''eligible public entity'' for ''unit of general local government''.

Subsec. (j). Pub. L. 101–625, § 910(b)(1)(A), substituted ''eligible public entity'' for ''unit of general local government''.

Subsec. (k). Pub. L. 101–625, § 910(e)(2), designated existing provisions as par. (1) and added par. (2).

Subsec. (n). Pub. L. 101–625, § 910(b)(3), added subsec. (n).

Subsec. (*o*). Pub. L. 101–625, § 910(b)(5), added subsec. (*o*).

Subsec. (p). Pub. L. 101–625, § 910(g), added subsec. (p).

1988—Subsec. (a). Pub. L. 100–242, § 514(c), in first sentence inserted cl. (1) designation and added cls. (2) and (3).

Pub. L. 100–242, § 514(a), in last sentence struck out ''during fiscal year 1984'' after ''commitment'' and substituted ''$150,000,000 during fiscal year 1988, and $153,000,000 during fiscal year 1989'' for ''$225,000,000''.

Subsec. (m). Pub. L. 100–242, § 514(b), added subsec. (m).

1986—Subsec. (*l*). Pub. L. 99–272 added subsec. (*l*).

1984—Subsec. (g). Pub. L. 98–479, § 203(*l*)(2), substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as now or hereafter in force'' and ''such chapter'' for ''such Act''.

Subsec. (h). Pub. L. 98–479, § 204(k)(1), substituted ''subsection (j)'' for ''subsection (g)''.

1983—Subsec. (a). Pub. L. 98–181 inserted provision that a guarantee under this section may be used to assist a grantee in obtaining financing only if the grantee has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee, and substituted provisions requiring the Secretary to enter into commitments during fiscal year 1984 to guarantee notes and obligations under this section with an aggregate principal amount of $225,000,000, notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities, for provisions prohibiting the Secretary from entering into commitments during fiscal year 1981 to guarantee under this section notes and other obligations with an aggregate principal amount in excess of $300,000,000.

1981—Subsec. (d)(2). Pub. L. 97–35 struck out ''approved or'' after ''grant''.

1980—Subsec. (a). Pub. L. 96–399, § 108(1), (2), inserted provision respecting amounts as provided in appropriation Acts, and provision relating to limitation of $300,000,000 the amount the Secretary is authorized to guarantee during fiscal year 1981.

Subsec. (j). Pub. L. 96–399, § 108(3), struck out ''Notwithstanding any other provision of this section'' before ''The total amount''.

1977—Subsec. (a). Pub. L. 95–128, § 108(1), (3), reenacted substantially existing provisions and struck out ''or assembly'' after ''acquisition of'', included rehabilitation of real property owned by the unit of general local government, inserted provision respecting form, denominations, maturities, and conditions of notes or other obligations to be guaranteed, and struck out after parenthetical text ''to serve or be used in carrying out activities which are eligible for assistance under section 5305 of this title and are identified in the application under section 5304 of this title, and with respect to which grants have been or are to be made under section 5303 of this title, but no such guarantee shall be issued in behalf of any agency designed to benefit, in or by the flotation of any issue, a private individual or corporation''.

Subsec. (b). Pub. L. 95–128, § 108(1), (3), added subsec. (b) and struck out prior provisions respecting: reservation and withholding of prescribed amount for purpose of paying guaranteed obligations, subject to being increased because of any unanticipated, major reduction in estimated disposition proceeds; pledge of full faith and credit of unit of general local government to the Secretary for repayment of any amount required to be paid by the United States pursuant to any guarantee; and pledge of repayment of proceeds of grants in event of failure of repayment as hereinbefore provided.

Subsecs. (c) to (e). Pub. L. 95–128, § 108(3), added subsecs. (c) to (e). Former subsecs. (c) to (e) redesignated (f) to (h).

Subsecs. (f), (g). Pub. L. 95–128, § 108(2), redesignated former subsecs. (c) and (d) as (f) and (g).

Subsec. (h). Pub. L. 95–128, § 108(2), (4), (5), redesignated former subsec. (e) as (h) and substituted in first sentence ''subsection (j)'' for ''subsection (g)''; substituted in first sentence ''shall'' for ''may, at the option of the issuing unit of general local government or designated agency,''; and in second sentence ''The Secretary is authorized to make, and to contract to make, grants, in such amounts as may be approved in appropriations Acts,'' for ''In the event that taxable obligations are issued and guaranteed, the Secretary is authorized to make, and to contract to make, grants''.

Subsec. (j). Pub. L. 95–128, § 108(2), (6), redesignated former subsec. (g) as (j) and substituted ''is guaranteed pursuant to'' for ''such unit or agency has elected to issue as a taxable obligation pursuant to subsection (e) of''.

Subsec. (k). Pub. L. 95–128, § 108(7), added subsec. (k).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as an Effective and Termination Dates of 1996 Amendments note under section 1437d of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out subchapter II (§ 12721 et seq.) of chapter 130 of this title after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 3002(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1986.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98–181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–128 effective Oct. 1, 1977, see section 114 of Pub. L. 95–128, set out as a note under section 5301 of this title.

REGULATIONS

Section 910(i) of Pub. L. 101–625 provided that: ''To carry out the amendments made by this section [amending this section and section 5313 of this title], the Secretary of Housing and Urban Development shall—

''(1) issue proposed regulations not later than 90 days after the date of the enactment of this Act [Nov. 28, 1990]; and

''(2) issue final regulations not later than 180 days after the date of the enactment of this Act.''

COMMUNITY DEVELOPMENT LOAN GUARANTEES

Section 910(a) of Pub. L. 101–625 provided that:

''(1) PURPOSES.—The purposes of the amendments made by this section [amending this section and section 5313 of this title] are—

''(A) to reaffirm the commitment of the Federal Government to assist local governments in their efforts in stimulating economic and community development activities needed to combat severe economic distress and to help in promoting economic development activities needed to aid in economic recovery; and

''(B) to promote revitalization and development projects undertaken by local governments that principally benefit persons of low and moderate income, the elimination of slums and blight, and to meet urgent community needs, with special priority for projects located in areas designated as enterprise zones by the Federal Government or by any State.

''(2) OBJECTIVES.—In order to further the purpose described in paragraph (1), activities undertaken pursuant to the amendments made by this section shall be directed toward meeting the objectives set forth in sections 101(c) and 104(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301(c) and 5304(b)(3)) and the additional objectives of—

''(A) encouraging local governments to establish public-private partnerships;

''(B) preserving housing affordable for persons of low and moderate income; and

''(C) creating permanent employment opportunities, primarily for persons of low and moderate income.''

ADMINISTRATIVE ACTIONS FOR PROVISION OF PRIVATE SECTOR FINANCING OF GUARANTEED LOANS

Section 3002(c) of Pub. L. 99–272 provided that: ''The Secretary of Housing and Urban Development shall take such administrative actions as are necessary to provide by the effective date of subsection (a) [July 1, 1986] private sector financing of loans guaranteed under section 108 of the Housing and Community Development Act of 1974 [this section].''

§ 5309. Nondiscrimination in programs and activities

(a) Prohibited conduct

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 shall also apply to any such program or activity.

(b) Compliance procedures available to Secretary

Whenever the Secretary determines that a State or unit of general local government which is a recipient of assistance under this chapter has failed to comply with subsection (a) or (e) of this section or an applicable regulation, he shall notify the Governor of such State or the chief executive officer of such unit of local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the Governor or the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); (3) exercise the powers and functions provided for in section 5311(a) of this title; or (4) take such other action as may be provided by law.

(c) Civil action by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b) of this section, or whenever he has reason to believe that a State government or unit of general local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(d) Waiver of race discrimination prohibitions regarding assistance to Hawaiian Home Lands

The provisions of this section and section 5304(b)(2) of this title which relate to discrimination on the basis of race shall not apply to the provision of assistance by grantees under this chapter to the Hawaiian Home Lands.

(e) Equal access

(1) Definition

In this subsection, the term ''youth organization'' means an organization described under part B of subtitle II of title 36 that is intended to serve individuals under the age of 21 years.

(2) In general

No State or unit of general local government that has a designated open forum, limited public forum, or nonpublic forum and that is a recipient of assistance under this chapter shall deny equal access or a fair opportunity to meet to, or discriminate against, any youth organization, including the Boy Scouts of America or any group officially affiliated with the Boy Scouts of America, that wishes to conduct a meeting or otherwise participate in that designated open forum, limited public forum, or nonpublic forum.

(Pub. L. 93–383, title I, § 109, Aug. 22, 1974, 88 Stat. 649; Pub. L. 97–35, title III, § 306, Aug. 13, 1981, 95 Stat. 392; Pub. L. 101–625, title IX, §§ 911, 912(a), Nov. 28, 1990, 104 Stat. 4392; Pub. L. 109–148, div. A, title VIII, § 8126(d), Dec. 30, 2005, 119 Stat. 2730; Pub. L. 109–163, div. A, title X, § 1058(d), Jan. 6, 2006, 119 Stat. 3443.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsec. (a), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–163, § 1058(d)(1), inserted ''or (e)'' after ''subsection (a)'' in first sentence.

Subsec. (e). Pub. L. 109–163, § 1058(d)(2), added subsec. (e).

2005—Subsec. (b). Pub. L. 109–148, § 8126(d)(1), which directed amendment identical to amendment by Pub. L. 109–163, § 1058(d)(1), was not executed. See 2006 Amendment note above and Reconciliation of Duplicate Enactments note below.

Subsec. (e). Pub. L. 109–148, § 8126(d)(2), which directed addition of subsec. (e) substantially identical to subsec. (e) added by Pub. L. 109–163, § 1058(d)(2), was not executed. See 2006 Amendment note above and Reconciliation of Duplicate Enactments note below.

1990—Subsec. (a). Pub. L. 101–625, § 912(a), inserted ''religion,'' after ''national origin,''.

Subsec. (d). Pub. L. 101–625, § 911, added subsec. (d).

1981—Subsec. (a). Pub. L. 97–35 inserted provisions respecting age discrimination.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 912(b) of Pub. L. 101–625 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to conduct relating to discrimination occurring after the date of the enactment of this Act [Nov. 28, 1990].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

RECONCILIATION OF DUPLICATE ENACTMENTS

Pub. L. 109–364, div. A, title X, § 1071(f)(2), Oct. 17, 2006, 120 Stat. 2402, provided that: ''In executing to section 109 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309] the identical amendments made by section 8126(d) of Public Law 109–148 (119 Stat. 2730) and section 1058(d) of Public Law 109–163 (119 Stat. 3443), such amendments shall be executed so as to appear only once in the law as amended.''

§ 5310. Labor standards; rate of wages; exceptions; enforcement powers

(a) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40: *Provided*, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(b) Subsection (a) of this section shall not apply to any individual that—

(1) performs services for which the individual volunteered;

(2)(A) does not receive compensation for such services; or

(B) is paid expenses, reasonable benefits, or a nominal fee for such services; and

(3) is not otherwise employed at any time in the construction work.

(Pub. L. 93–383, title I, § 110, Aug. 22, 1974, 88 Stat. 649; Pub. L. 97–35, title III, § 309(j), Aug. 13, 1981, 95 Stat. 397; Pub. L. 100–242, title V, § 523, Feb. 5, 1988, 101 Stat. 1939; Pub. L. 101–625, title IX, § 955(a), Nov. 28, 1990, 104 Stat. 4420.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (a), is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (a), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c))'', meaning 276c, on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1990—Pub. L. 101–625 designated existing provisions as subsec. (a) and added subsec. (b).

1988—Pub. L. 100–242, which directed the substitution of ''contains not less than 8 units'' for ''is designed for residential use of eight or more families'', was executed by making the substitution for ''is designed for residential use for eight or more families'' as the probable intent of Congress.

1981—Pub. L. 97–35 substituted ''assistance'' for ''grants''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–625 applicable to any volunteer services provided before, on, or after Nov. 28, 1990, except that such amendment may not be construed to require repayment of any wages paid before Nov. 28, 1990, for services provided before such date, see section 955(d) of Pub. L. 101–625, set out as a note under section 1437j of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 5311. Remedies for noncompliance with community development requirements

(a) Notice and hearing; termination, reduction, or limitation of payments by Secretary

If the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this chapter has failed to com-

ply substantially with any provision of this chapter, the Secretary, until he is satisfied that there is no longer any such failure to comply, shall—

(1) terminate payments to the recipient under this chapter, or

(2) reduce payments to the recipient under this chapter by an amount equal to the amount of such payments which were not expended in accordance with this chapter, or

(3) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply.

(b) Referral of matters to Attorney General; institution of civil action by Attorney General

(1) In lieu of, or in addition to, any action authorized by subsection (a) of this section, the Secretary may, if he has reason to believe that a recipient has failed to comply substantially with any provision of this chapter, refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Upon such a referral the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this chapter which was not expended in accordance with it, or for mandatory or injunctive relief.

(c) Petition for review of action of Secretary in Court of Appeals; filing of record of proceedings in court by Secretary; affirmance, etc., of findings of Secretary; exclusiveness of jurisdiction of court; review by Supreme Court on writ of certiorari or certification

(1) Any recipient which receives notice under subsection (a) of this section of the termination, reduction, or limitation of payments under this chapter may, within sixty days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) The Secretary shall file in the court record of the proceeding on which he based his action, as provided in section 2112 of title 28. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(3) The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record. The Secretary may modify his findings of fact, or make new findings, by reason of the new evidence so taken and filed with the court, and he shall also file such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole, and shall also file his recommendation, if any, for the modification or setting aside of his original action.

(4) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 93–383, title I, § 111, Aug. 22, 1974, 88 Stat. 650.)

§ 5312. Use of grants for settlement of outstanding urban renewal loans of units of general local government

(a) Limitation on amounts; prerequisites

The Secretary is authorized, notwithstanding any other provision of this chapter, to apply a portion of the grants, not to exceed 20 per centum thereof without the request of the recipient, made or to be made under section 5303 of this title in any fiscal year pursuant to an allocation under section 5306 of this title to any unit of general local government toward payment of the principal of, and accrued interest on, any temporary loan made in connection with urban renewal projects under title I of the Housing Act of 1949 [42 U.S.C. 1450 et seq.] being carried out within the jurisdiction of such unit of general local government if—

(1) the Secretary determines, after consultation with the local public agency carrying out the project and the chief executive of such unit of general local government, that the project cannot be completed without additional capital grants, or

(2) the local public agency carrying out the project submits to the Secretary an appropriate request which is concurred in by the governing body of such unit of general local government.

In determining the amounts to be applied to the payment of temporary loans, the Secretary shall make an accounting for each project taking into consideration the costs incurred or to be incurred, the estimated proceeds upon any sale or disposition of property, and the capital grants approved for the project.

(b) Approval by Secretary of financial settlement of urban renewal project

Upon application by any local public agency carrying out an urban renewal project under title I of the Housing Act of 1949 [42 U.S.C. 1450 et seq.], which application is approved by the governing body of the unit of general local government in which the project is located, the Secretary may approve a financial settlement of such project if he finds that a surplus of capital grant funds after full repayment of temporary loan indebtedness will result and may authorize the unit of general local government to use such surplus funds, without deduction or offset, in accordance with the provisions of this chapter.

(Pub. L. 93–383, title I, § 112, Aug. 22, 1974, 88 Stat. 650; Pub. L. 97–35, title III, § 309(k), Aug. 13, 1981, 95 Stat. 397; Pub. L. 98–181, title I, § 109, Nov. 30, 1983, 97 Stat. 1168; Pub. L. 98–479, title I, § 101(a)(13)(A), Oct. 17, 1984, 98 Stat. 2220.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsecs. (a) and (b), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949 was classified generally to subchapter II (§ 1450 et seq.) of chapter 8A of this title, and was omitted from the Code pursuant to section 5316 of this title which terminated authority to make grants or loans under such title I after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–479 struck out subsec. (c) which related to retention of program income and prerequisites.

1983—Subsec. (c). Pub. L. 98–181 added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35 substituted ''5303'' for ''5303(a)''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98–181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 5313. Reporting requirements

(a) Not later than 180 days after the close of each fiscal year in which assistance under this chapter is furnished, the Secretary shall submit to the Congress a report which shall contain—

(1) a description of the progress made in accomplishing the objectives of this chapter;

(2) a summary of the use of such funds during the preceding fiscal year;

(3) with respect to the action grants authorized under section 5318 of this title, a listing of each unit of general local government receiving funds and the amount of such grants, as well as a brief summary of the projects funded for each such unit, the extent of financial participation by other public or private entities, and the impact on employment and economic activity of such projects during the previous fiscal year; and

(4) a description of the activities carried out under section 5308 of this title.

(b) The Secretary is authorized to require recipients of assistance under this chapter to submit to him such reports and other information as may be necessary in order for the Secretary to make the report required by subsection (a) of this section.

(Pub. L. 93–383, title I, § 113, Aug. 22, 1974, 88 Stat. 651; Pub. L. 95–128, title I, § 109, Oct. 12, 1977, 91 Stat. 1124; Pub. L. 97–35, title III, § 309(*l*), Aug. 13, 1981, 95 Stat. 397; Pub. L. 101–625, title IX, § 910(h), Nov. 28, 1990, 104 Stat. 4392.)

AMENDMENTS

1990—Subsec. (a)(4). Pub. L. 101–625 added par. (4).

1981—Subsec. (a)(2). Pub. L. 97–35 struck out requirement respecting approval by the Secretary.

1977—Subsec. (a)(3). Pub. L. 95–128 added par. (3).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–128 effective Oct. 1, 1977, see section 114 of Pub. L. 95–128, set out as a note under section 5301 of this title.

STUDY REGARDING AVAILABILITY OF HOUSING PROXIMATE TO PLACES OF EMPLOYMENT

Section 919 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to conduct a study regarding availability of housing within reasonable proximity of places of employment and to submit a report not later than expiration of 1-year period beginning on Nov. 28, 1990, to appropriate committees of Congress containing results and conclusions of such study, as well as proposed strategies to increase availability of housing for low- and moderate-income families within reasonable proximity of places of employment for working members of such families to and prevent geographical divergence of such housing and places of employment.

STUDY ON INVOLUNTARY HOUSING DISPLACEMENT; REPORT TO CONGRESS

Pub. L. 96–399, title I, § 105(b), Oct. 8, 1980, 94 Stat. 1618, directed Secretary of Housing and Urban Development to continue study on involuntary displacement conducted under Pub. L. 95–557, title IX, § 902, Oct. 31, 1978, 92 Stat. 2125, set out below, and transmit, not later than Mar. 30, 1981, a report to Congress containing data collected since initial report submitted under such section 902, and further recommendations on minimizing involuntary displacement and alleviating problems caused by such displacement.

ADEQUACY, EFFECTIVENESS, AND EQUITY OF FORMULA FOR ALLOCATION OF FUNDS; REPORT TO CONGRESS

Pub. L. 96–399, title I, § 113, Oct. 8, 1980, 94 Stat. 1622, directed Secretary of Housing and Urban Development, not later than Jan. 1, 1983, to report to Congress with respect to adequacy, effectiveness, and equity of formula used for allocation of funds under title I of the Housing and Community Development Act of 1974 (this chapter), with specific analysis and recommendations concerning manner in which such formula is or could be affected by data derived from 1980 decennial census.

STATEMENT OF POLICY AND STUDY ON HOUSING DISPLACEMENT

Pub. L. 95–557, title IX, § 902, Oct. 31, 1978, 92 Stat. 2125, declared it to be the policy of Congress that in administration of Federal housing and development programs, involuntary displacement of persons from homes and neighborhoods should be minimized and in keeping with such stated policy, authorized Secretary of Housing and Urban Development to conduct a study on nature and extent of such displacement and, not later than Jan. 31, 1979, report to Congress on recommendations for formulation of a national policy to minimize such displacement.

STUDY ON SMALL CITIES; REPORT TO PRESIDENT AND CONGRESS; ALTERNATIVE FORMULAE

Pub. L. 95–128, title I, § 113, Oct. 12, 1977, 91 Stat. 1111, directed Secretary of Housing and Urban Development to conduct a study and, not later than one year after Oct. 12, 1977, report to President and Congress recommendations on formation of a national policy on developmental needs of small cities and, among other things, include in such report alternative verifiable formulae to be used in distribution of discretionary balance funds available for allocation to such small cities under this chapter.

§ 5314. Consultation by Secretary with other Federal departments, etc.

In carrying out the provisions of this chapter including the issuance of regulations, the Sec-

retary shall consult with other Federal departments and agencies administering Federal grant-in-aid programs.

(Pub. L. 93–383, title I, § 114, Aug. 22, 1974, 88 Stat. 651.)

§ 5315. Interstate agreements or compacts; purposes

The consent of the Congress is hereby given to any two or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative effort and mutual assistance in support of community development planning and programs carried out under this chapter as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

(Pub. L. 93–383, title I, § 115, Aug. 22, 1974, 88 Stat. 651.)

§ 5316. Transition provisions

(a) Prohibition on new grants or loans after January 1, 1975; exceptions

Except with respect to projects and programs for which funds have been previously committed, no new grants or loans shall be made after January 1, 1975, under (1) title I of the Demonstration Cities and Metropolitan Development Act of 1966 [42 U.S.C. 3301 et seq.], (2) title I of the Housing Act of 1949 [42 U.S.C. 1450 et seq.] (3) section 702 or section 703 of the Housing and Urban Development Act of 1965 [42 U.S.C. 3102 or 3103], (4) title II of the Housing Amendments of 1955 [42 U.S.C. 1491 et seq.], or (5) title VII of the Housing Act of 1961 [42 U.S.C. 1500 et seq.].

(b) Final date in fiscal year for submission of application for grant; establishment by Secretary

In the case of funds available for any fiscal year, the Secretary shall not consider any statement under section 5304(a) of this title, unless such statement is submitted on or prior to such date as the Secretary shall establish as the final date for submission of statements for that year.

(Pub. L. 93–383, title I, § 116, Aug. 22, 1974, 88 Stat. 652; Pub. L. 94–375, § 15(d), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 96–399, title I, § 111(h), Oct. 8, 1980, 94 Stat. 1622; Pub. L. 97–35, title III, § 309(m), Aug. 13, 1981, 95 Stat. 397; Pub. L. 98–181, title I, § 110(a), Nov. 30, 1983, 97 Stat. 1168.)

REFERENCES IN TEXT

The Demonstration Cities and Metropolitan Development Act of 1966, referred to in subsec. (a), is Pub. L. 89–754, Nov. 3, 1966, 80 Stat. 1255, as amended. Title I of the Act was classified principally to subchapter I (§ 3301 et seq.) of chapter 41 of this title, and was omitted from the Code pursuant to this section which terminated authority to make grants or loans under such title I after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 3331 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (a), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949 was classified generally to subchapter II (§ 1450 et seq.) of chapter 8A of this title, and was omitted from the Code pursuant to this section which terminated authority to make grants or loans under such title I after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

Sections 702 and 703 of the Housing and Urban Development Act of 1965 [42 U.S.C. 3102, 3103], referred to in subsec. (a), were omitted from the Code pursuant to this section which terminated the authority to make grants or loans under those sections after Jan. 1, 1975.

The Housing Amendments of 1955, referred to in subsec. (a), is act Aug. 11, 1955, ch. 783, 69 Stat. 645, as amended. Title II of the Housing Amendments of 1955 was classified generally to chapter 8B (§ 1491 et seq.) of this title, and was omitted from the Code pursuant to this section which terminated authority to make grants or loans under such title II after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 12, Banks and Banking, and Tables.

The Housing Act of 1961, referred to in subsec. (a), is Pub. L. 87–70, June 30, 1961, 87 Stat. 149, as amended. Title VII of the Housing Act of 1961 was classified generally to chapter 8C (§ 1500 et seq.) of this title, and was omitted from the Code pursuant to this section which terminated authority to make grants or loans under such title VII after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 12, Banks and Banking, and Tables.

CODIFICATION

Subsecs. (c), (d), and (e) of section 116 of Pub. L. 93–383 were omitted from this section. Subsec. (c) amended section 1453(b) of this title, subsec. (d) amended section 3311(b) and (c) of this title, and subsec. (e) amended section 1452b(a) and (h) of this title.

AMENDMENTS

1983—Subsec. (b). Pub. L. 98–181 substituted ''prior to such date'' for ''prior to such date (in that fiscal year)'', and ''for that year'' for ''in that year''.

1981—Subsec. (b). Pub. L. 97–35 substituted provisions relating to submission of required statement for provisions relating to submission of required application.

1980—Subsec. (b). Pub. L. 96–399, § 111(h), redesignated subsec. (g) as (b) and struck out ''or from a unit of general local government for a grant pursuant to section 5306(h) of this title'' after ''section 5306(a) of this title''. Former subsec. (b), relating to deductions from grants for fiscal year 1975, was struck out.

Subsec. (f). Pub. L. 96–399, § 111(h)(1), struck out subsec. (f) relating to advances for program period beginning Jan. 1, 1975.

Subsec. (g). Pub. L. 96–399, § 111(h)(1), redesignated subsec. (g) as (b).

Subsec. (h). Pub. L. 96–399, § 111(h)(1), struck out subsec. (h) relating to sources of funds to meet deficiency in fiscal year 1977.

1976—Subsec. (h). Pub. L. 94–375 added subsec. (h).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 110(b) of Pub. L. 98–181, as amended by Pub. L. 98–479, title I, § 101(b)(1), Oct. 17, 1984, 98 Stat. 2220, provided that: ''The amendments made by this part [part A (§§ 101–110) of title I of Pub. L. 98–181, amending this section, sections 5301 to 5308 and 5312 of this title, and provisions set out as a note under section 5305 of this title] shall apply only to funds available for fiscal year 1984 and thereafter.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 5317. Liquidation of superseded or inactive programs

The Secretary is authorized to transfer the assets and liabilities of any program which is su-

perseded or inactive by reason of this chapter to the revolving fund for liquidating programs established pursuant to title II of the Independent Offices Appropriation Act, 1955 (Public Law 83–428; 68 Stat. 272, 295) [12 U.S.C. 1701g–5].

(Pub. L. 93–383, title I, § 117(b), Aug. 22, 1974, 88 Stat. 653; Pub. L. 98–479, title II, § 204(k)(2), Oct. 17, 1984, 98 Stat. 2233.)

AMENDMENTS

1984—Pub. L. 98–479 substituted ''title II of the Independent Offices Appropriation Act, 1955 (Public Law 83–428; 68 Stat. 272, 295)'' for ''title II of the Independent Offices Appropriation Act of 1965 (Public Law 81–428; 68 Stat. 272, 295)''.

§ 5318. Urban development action grants

(a) Authorization; purpose; amount

The Secretary is authorized to make urban development action grants to cities and urban counties which are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery. There are authorized to be appropriated to carry out this section $225,000,000 for fiscal year 1988, and $225,000,000 for fiscal year 1989. Any amount appropriated under this subsection shall remain available until expended.

(b) Eligibility of cities and urban counties; criteria and standards; regulations

(1) Urban development action grants shall be made only to cities and urban counties which have, in the determination of the Secretary, demonstrated results in providing housing for low- and moderate-income persons and in providing equal opportunity in housing and employment for low- and moderate-income persons and members of minority groups. The Secretary shall issue regulations establishing criteria in accordance with the preceding sentence and setting forth minimum standards for determining the level of economic distress of cities and urban counties for eligibility for such grants. These standards shall take into account factors such as the age of housing; the extent of poverty; the extent of population lag; growth of per capita income; and the extent of unemployment, job lag, or surplus labor. Any city that has a population of less than 50,000 persons and is not the central city of a metropolitan area, and that was eligible for fiscal year 1983 under this paragraph for assistance under this section, shall continue to be eligible for such assistance until the Secretary revises the standards for eligibility for such cities under this paragraph and includes the extent of unemployment, job lag, or labor surplus as a standard of distress for such cities. The Secretary shall make such revision as soon as practicable following November 30, 1983.

(2) A city or urban county which fails to meet the minimum standards established pursuant to paragraph (1) shall be eligible for assistance under this section if it meets the requirements of the first sentence of such paragraph and—

(A) in the case of a city with a population of fifty thousand persons or more or an urban county, contains an area (i) composed of one or more contiguous census tracts, enumeration districts, neighborhood statistics areas, or block groups, as defined by the United States Bureau of the Census, having at least a population of ten thousand persons or 10 per centum of the population of the city or urban county; (ii) in which at least 70 per centum of the residents have incomes below 80 per centum of the median income of the city or urban county; and (iii) in which at least 30 per centum of the residents have incomes below the national poverty level; or

(B) in the case of a city with a population of less than fifty thousand persons, contains an area (i) composed of one or more contiguous census tracts, enumeration districts, neighborhood statistics areas, or block groups or other areas defined by the United States Bureau of the Census or for which data certified by the United States Bureau of the Census are available having at least a population of two thousand five hundred persons or 10 per centum of the population of the city, whichever is greater; (ii) in which at least 70 per centum of the residents have incomes below 80 per centum of the median income of the city; and (iii) in which at least 30 per centum of the residents have incomes below the national poverty level.

The Secretary shall use up to, but not more than, 20 per centum of the funds appropriated for use in any fiscal year under this section for the purpose of making grants to cities and urban counties eligible under this paragraph.

(c) Applications; documentation of eligibility; proposed plan; assurance of notice and comment; assurance of consideration on historical landmarks

Applications for assistance under this section shall—

(1) in the case of an application for a grant under subsection (b)(2) of this section, include documentation of grant eligibility in accordance with the standards described in that subsection;

(2) set forth the activities for which assistance is sought, including (A) an estimate of the costs and general location of the activities; (B) a summary of the public and private resources which are expected to be made available in connection with the activities, including how the activities will take advantage of unique opportunities to attract private investment; and (C) an analysis of the economic benefits which the activities are expected to produce;

(3) contain a certification satisfactory to the Secretary that the applicant, prior to submission of its application, (A) has held public hearings to obtain the views of citizens, particularly residents of the area in which the proposed activities are to be carried out; (B) has analyzed the impact of these proposed activities on the residents, particularly those of low and moderate income, of the residential neighborhood, and on the neighborhood in which they are to be carried out; and (C) has made available the analysis described in clause (B) to any interested person or organization residing or located in the neighborhood in which the proposed activities are to be carried out; and

(4) contain a certification satisfactory to the Secretary that the applicant, prior to submission of its application, (A) has identified all properties, if any, which are included on the National Register of Historic Places and which, as determined by the applicant, will be affected by the project for which the application is made; (B) has identified all other properties, if any, which will be affected by such project and which, as determined by the applicant, may meet the criteria established by the Secretary of the Interior for inclusion on such Register, together with documentation relating to the inclusion of such properties on the Register; (C) has determined the effect, as determined by the applicant, of the project on the properties identified pursuant to clauses (A) and (B); and (D) will comply with the requirements of section 5320 of this title.

(d) Mandatory selection criteria; award of points; distribution of funds; number of competitions per year; use of distress conditions data by urban counties

(1) Except in the case of a city or urban county eligible under subsection (b)(2) of this section, the Secretary shall establish selection criteria for a national competition for grants under this section which must include—

(A) the comparative degree of economic distress among applicants, as measured (in the case of a metropolitan city or urban county) by the differences in the extent of growth lag, the extent of poverty, and the adjusted age of housing in the metropolitan city or urban county;

(B) other factors determined to be relevant by the Secretary in assessing the comparative degree of economic deterioration in cities and urban counties;

(C) the following other criteria:

(i) the extent to which the grant will stimulate economic recovery by leveraging private investment;

(ii) the number of permanent jobs to be created and their relation to the amount of grant funds requested;

(iii) the proportion of permanent jobs accessible to lower income persons and minorities, including persons who are unemployed;

(iv) the extent to which the project will retain jobs that will be lost without the provision of a grant under this section;

(v) the extent to which the project will relieve the most pressing employment or residential needs of the applicant by—

(I) reemploying workers in a skill that has recently suffered a sharp increase in unemployment locally;

(II) retraining recently unemployed residents in new skills;

(III) providing training to increase the local pool of skilled labor; or

(IV) producing decent housing for low- and moderate-income persons in cases where such housing is in severe shortage in the area of the applicant, except that an application shall be considered to produce housing for low- and moderate-income persons under this clause only if such application proposes that (a) not less than 51 percent of all funds available for the project shall be used for dwelling units and related facilities; and (b) not less than 30 percent of all funds used for dwelling units and related facilities shall be used for dwelling units to be occupied by persons of low and moderate income, or not less than 20 percent of all dwelling units made available to occupancy using such funds shall be occupied by persons of low and moderate income, whichever results in the occupancy of more dwelling units by persons of low and moderate income;

(vi) the impact of the proposed activities on the fiscal base of the city or urban county and its relation to the amount of grant funds requested;

(vii) the extent to which State or local Government[1] funding or special economic incentives have been committed; and

(viii) the extent to which the project will have a substantial impact on physical and economic development of the city or urban county, the proposed activities are likely to be accomplished in a timely fashion with the grant amount available, and the city or urban county has demonstrated performance in housing and community development programs; and

(D) additional consideration for projects with the following characteristics:

(i) projects to be located within a city or urban county which did not receive a preliminary grant approval under this section during the 12-month period preceding the date on which applications are required to be submitted for the grant competition involved; and

(ii) twice the amount of the additional consideration provided under clause (i) for projects to be located in cities or urban counties which did not receive a preliminary grant approval during the 24-month period preceding the date on which applications under this section are required to be submitted for the grant competition involved.

If a city or urban county has submitted and has pending more than one application, the additional consideration provided by subparagraph (D) of the preceding sentence shall be available only to the project in such city or urban county which received the highest number of points under subparagraph (C) of such sentence.

(2) For the purpose of making grants with respect to areas described in subsection (b)(2) of this section, the Secretary shall establish selection criteria, which must include (A) factors determined to be relevant by the Secretary in assessing the comparative degree of economic deterioration among eligible areas, and (B) such other criteria as the Secretary may determine, including at a minimum the criteria listed in paragraph (1)(C) of this subsection.

(3) The Secretary shall award points to each application as follows:

(A) not more than 35 points on the basis of the criteria referred to in paragraph (1)(A);

[1] So in original. Probably should not be capitalized.

(B) not more than 35 points on the basis of the criteria referred to in paragraph (1)(B);

(C) not more than 33 points on the basis of the criteria referred to in paragraph (1)(C); and

(D)(i) 1 additional point on the basis of the criterion referred to in paragraph (1)(D)(i); or

(ii) 2 additional points on the basis of the criterion referred to in paragraph (1)(D)(ii).

(4) The Secretary shall distribute grant funds under this section so that to the extent practicable during each funding cycle—

(A) 65 percent of the funds is first made available utilizing all of the criteria set forth in paragraph (1); and

(B) 35 percent of the funds is then made available solely on the basis of the factors referred to in subparagraphs (C) and (D) of paragraph (1).

(5)(A) Within 30 days of the start of each fiscal year, the Secretary shall announce the number of competitions for grants to be held in that fiscal year. The number of competitions shall be not less than two nor more than three.

(B) Each competition for grants described in any clause of subparagraph (A) shall be for an amount equal to the sum of—

(i) approximately the amount of the funds available for such grants for the fiscal year divided by the number of competitions for those funds;

(ii) any funds available for such grants in any previous competition that are not awarded; and

(iii) any funds available for such grants in any previous competition that are recaptured.

(C) Notwithstanding any other provision of this section, in each competition for grants under this section, no city or urban county may be awarded a grant or grants in an amount in excess of $10,000,000 until all cities and urban counties which submitted fundable applications have been awarded a grant. If funds are available for additional grants after each city and urban county submitting a fundable application is awarded one or more grants under the preceding sentence, then additional grants shall be made so that each city or urban county that has submitted multiple applications is awarded one additional grant in order of ranking, with no single city or urban county receiving more than one grant approval in any subsequent series of grant determinations within the same competition.

(D) All grants under this section, including grants to cities and urban counties described in subsection (b)(2) of this section, shall be awarded in accordance with subparagraph (C) so that all grants under this section are made in order of ranking.

(e) Limitations on power of Secretary to approve grants; waiver

The Secretary may not approve any grant to a city or urban county eligible under subsection (b)(2) of this section unless—

(1) the grant will be used in connection with a project located in an area described in subsection (b)(2) of this section, except that the Secretary may waive this requirement where the Secretary determines (A) that there is no suitable site for the project within that area, (B) the project will be located directly adjacent to that area, and (C) the project will contribute substantially to the economic development of that area;

(2) the city or urban county has demonstrated to the satisfaction of the Secretary that basic services supplied by the city or urban county to the area described in subsection (b)(2) of this section are at least equivalent, as measured by per capita expenditures, to those supplied to other areas within the city or urban county which are similar in population size and physical characteristics and which have median incomes above the median income for the city or urban county;

(3) the grant will be used in connection with a project which will directly benefit the low- and moderate-income families and individuals residing in the area described in subsection (b)(2) of this section; and

(4) the city or urban county makes available, from its own funds or from funds received from the State or under any Federal program which permits the use of financial assistance to meet the non-Federal share requirements of Federal grant-in-aid programs, an amount equal to 20 per centum of the grant to be available under this section to be used in carrying out the activities described in the application.

(f) Permissibility of consistent but unenumerated activities; report on use of repaid grant funds for economic development activities

Activities assisted under this section may include such activities, in addition to those authorized under section 5305(a) of this title, as the Secretary determines to be consistent with the purposes of this section. In any case in which the project proposes the repayment to the applicant of the grant funds, such funds shall be made available by the applicant for economic development activities that are eligible activities under this section or section 5305 of this title. The applicant shall annually provide the Secretary with a statement of the projected receipt and use of repaid grant funds during the next year together with a report acceptable to the Secretary on the use of such funds during the most recent preceding full fiscal year of the applicant.

(g) Annual review and audit; adjustments, withdrawals and reduction permitted

The Secretary shall, at least on an annual basis, make reviews and audits of recipients of grants under this section as necessary to determine the progress made in carrying out activities substantially in accordance with approved plans and timetables. The Secretary may adjust, reduce, or withdraw grant funds, or take other action as appropriate in accordance with the findings of these reviews and audits, except that funds already expended on eligible activities under this chapter shall not be recaptured or deducted from future grants made to the recipient.

(h) Limitations on grants for industrial or commercial relocations or expansions; appeal of denial or cancellation of assistance; grants to adversely affected individuals

(1) Speculative projects

No assistance may be provided under this section for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary finds that the relocation does not significantly and adversely affect the unemployment or economic base of the area from which the industrial or commercial plant or facility is to be relocated. The provisions of this paragraph shall apply only to projects that do not have identified intended occupants.

(2) Projects with identified intended occupants

No assistance may be provided or utilized under this section for any project with identified intended occupants that is likely to facilitate—

(A) a relocation of any operation of an industrial or commercial plant or facility or other business establishment—

(i) from any city, urban county, or identifiable community described in subsection (p) of this section, that is eligible for assistance under this section; and

(ii) to the city, urban county, or identifiable community described in subsection (p) of this section, in which the project is located; or

(B) an expansion of any such operation that results in a reduction of any such operation in any city, county, or community described in subparagraph (A)(i).

(3) Significant and adverse effect

The restrictions established in paragraph (2) shall not apply if the Secretary determines that the relocation or expansion does not significantly and adversely affect the employment or economic base of the city, county, or community from which the relocation or expansion occurs.

(4) Appeal of adverse determination

Following notice of intent to withhold, deny, or cancel assistance under paragraph (1) or (2), the Secretary shall provide a period of not less than 90 days in which the applicant can appeal to the Secretary the withholding, denial, or cancellation of assistance. Notwithstanding any other provision of this section, nothing in this section or in any legislative history related to the enactment of this section may be construed to permit an inference or conclusion that the policy of the Congress in the urban development action grant program is to facilitate the relocation of businesses from one area to another.

(5) Assistance for individuals adversely affected by prohibited relocations

(A) Any amount withdrawn by, recaptured by, or paid to the Secretary due to a violation (or a settlement of an alleged violation) of this subsection (or of any regulation issued or contractual provision entered into to carry out this subsection) by a project with identified intended occupants shall be made available by the Secretary as a grant to the city, county, or community described in subsection (p) of this section, from which the operation of an industrial or commercial plant or facility or other business establishment relocated or in which the operation was reduced.

(B)(i) Any amount made available under this paragraph shall be used by the grantee to assist individuals who were employed by the operation involved prior to the relocation or reduction and whose employment or terms of employment were adversely affected by the relocation or reduction. The assistance shall include job training, job retraining, and job placement.

(ii) If any amount made available to a grantee under this paragraph is more than is required to provide assistance under clause (i), the grantee shall use the excess amount to carry out community development activities eligible under section 5305(a) of this title.

(C)(i) The provisions of this paragraph shall be applicable to any amount withdrawn by, recaptured by, or paid to the Secretary under this section, including any amount withdrawn, recaptured, or paid before the effective date of this paragraph.

(ii) Grants may be made under this paragraph only to the extent of amounts provided in appropriation Acts.

(6) Definition

For purposes of this subsection, the term ''operation'' includes any plant, equipment, facility, position, employment opportunity, production capacity, or product line.

(7) Regulations

Not later than 60 days after February 5, 1988, the Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection. Such regulations shall include specific criteria to be used by the Secretary in determining whether there is a significant and adverse effect under paragraph (3).

(i) Minimum percentage of funds to be allocated to certain noncentral cities; application by consortia of cities of less than 50,000 population

Not less than 25 per centum of the funds made available for grants under this section shall be used for cities with populations of less than fifty thousand persons which are not central cities of a metropolitan statistical area. The Secretary shall encourage cooperation by geographically proximate cities of less than 50,000 population by permitting consortia of such cities, which may also include county governments that are not urban counties, to apply for grants on behalf of a city that is otherwise eligible for assistance under this section. Any grants awarded to such consortia shall be administered in compliance with eligibility requirements applicable to individual cities.

(j) Grant contingent on factors related to non-Federal funds

A grant may be made under this section only where the Secretary determines that there is a

strong probability that (1) the non-Federal investment in the project would not be made without the grant, and (2) the grant would not substitute for non-Federal funds which are otherwise available to the project.

(k) Duty of Secretary to minimize amount

In making grants under this section, the Secretary shall take such steps as the Secretary deems appropriate to assure that the amount of the grant provided is the least necessary to make the project feasible.

(*l*) Power of Secretary to waive requirement that town or township be closely settled

For purposes of this section, the Secretary may reduce or waive the requirement in section 5302(a)(5)(B)(ii) of this title that a town or township be closely settled.

(m) Notice to State historic preservation officer and Secretary of the Interior required with regard to affected landmark property; opportunity for comment

In the case of any application which identifies any property in accordance with subsection (c)(4)(B) of this section, the Secretary may not commit funds with respect to an approved application unless the applicant has certified to the Secretary that the appropriate State historic preservation officer and the Secretary of the Interior have been provided an opportunity to take action in accordance with the provisions of section 5320(b) of this title.

(n) Territories, tribes, and certain Hawaiian counties included in term "city"

(1) For the purposes of this section, the term ''city'' includes Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and Indian tribes. Such term also includes the counties of Kauai, Maui and Hawaii in the State of Hawaii.

(2) The Secretary may not approve a grant to an Indian tribe under this section unless the tribe (A) is located on a reservation, or on former Indian reservations in Oklahoma as determined by the Secretary of the Interior, or in an Alaskan Native Village, and (B) was an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter.

(*o*) Special provisions for years after 1983

If no amounts are set aside under, or amounts are precluded from being appropriated for this section for fiscal years after fiscal year 1983, any amount which is or becomes available for use under this section after fiscal year 1983 shall be added to amounts appropriated under section 5303 of this title, except that amounts available to the Secretary for use under this subsection as of October 1, 1993, and amounts released to the Secretary pursuant to subsection (t) of this section may be used to provide grants under section 5308(q) of this title..[2]

(p) Unincorporated portions of urban counties

An unincorporated portion of an urban county that is approved by the Secretary as an identifiable community for purposes of this section is eligible for a grant under subsection (b)(2) of this section if such portion meets the eligibility requirements contained in the first sentence of subsection (b)(1) of this section and the requirements of subsection (b)(2)(B) of this section (applied to the population of the portion of the urban county) and if it otherwise complies with the provisions of this section.

(q) Technical assistance grants

Of the amounts appropriated for purposes of this section for any fiscal year, not more than $2,500,000 may be used by the Secretary to make technical assistance grants to States or their agencies, municipal technical advisory services operated by universities, or State associations of counties or municipalities, to enable such entities to assist units of general local government described in subsection (i) of this section in developing, applying for assistance for, and implementing programs eligible for assistance under this section.

(r) Nondiscrimination by Secretary against type of activity or applicant

In utilizing the discretion of the Secretary when providing assistance and applying selection criteria under this section, the Secretary may not discriminate against applications on the basis of (1) the type of activity involved, whether such activity is primarily housing, industrial, or commercial; or (2) the type of applicant, whether such applicant is a city or urban county.

(s) Maximum grant amount for fiscal years 1988 and 1989

For fiscal years 1988 and 1989, the maximum grant amount for any project under this section is $10,000,000.

(t) UDAG retention program

If a grant or a portion of a grant under this section remains unexpended upon the issuance of a notice implementing this subsection, the grantee may enter into an agreement, as provided under this subsection, with the Secretary to receive a percentage of the grant amount and relinquish all claims to the balance of the grant within 90 days of the issuance of notice implementing this subsection (or such later date as the Secretary may approve). The Secretary shall not recapture any funds obligated pursuant to this section during a period beginning on April 11, 1994, until 90 days after the issuance of a notice implementing this subsection. A grantee may receive as a grant under this subsection—

(1) 33 percent of such unexpended amounts if—

(A) the grantee agrees to expend not less than one-half of the amount received for activities authorized pursuant to section 5308(q) of this title and to expend such funds in conjunction with a loan guarantee made under section 5308 of this title at least equal to twice the amount of the funds received; and

(B)(i) the remainder of the amount received is used for economic development activities eligible under this chapter; and

(ii) except when waived by the Secretary in the case of a severely distressed jurisdiction, not more than one-half of the costs of

[2] So in original.

activities under subparagraph (B) are derived from such unexpended amounts; or

(2) 25 percent of such unexpended amounts if—

(A) the grantee agrees to expend such funds for economic development activities eligible under this chapter; and

(B) except when waived by the Secretary in the case of a severely distressed jurisdiction, not more than one-half of the costs of such activities are derived from such unexpended amount.

(Pub. L. 93–383, title I, § 119, as added Pub. L. 95–128, title I, § 110(b), Oct. 12, 1977, 91 Stat. 1125; amended Pub. L. 95–557, title I, § 103(g), (h), Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96–153, title I, §§ 104, 105, Dec. 21, 1979, 93 Stat. 1102, 1104; Pub. L. 96–399, title I, §§ 110(a), (b), 117(a), Oct. 8, 1980, 94 Stat. 1619, 1623; Pub. L. 97–35, title III, § 308(a), Aug. 13, 1981, 95 Stat. 392; Pub. L. 98–181, title I, § 121, Nov. 30, 1983, 97 Stat. 1168; Pub. L. 98–454, title VI, § 601(c), Oct. 5, 1984, 98 Stat. 1736; Pub. L. 98–479, title II, § 203(*l*)(3), Oct. 17, 1984, 98 Stat. 2231; Pub. L. 99–272, title XIV, § 14001(b)(6), Apr. 7, 1986, 100 Stat. 329; Pub. L. 99–500, § 101(g), Oct. 18, 1986, 100 Stat. 1783–242, and Pub. L. 99–591, § 101(g), Oct. 30, 1986, 100 Stat. 3341–242; Pub. L. 100–202, §§ 101(f) [title I, § 101], 106, Dec. 22, 1987, 101 Stat. 1329–187, 1329–193, 1329–433; Pub. L. 100–242, title V, §§ 501(c), 515(a)–(d), (g)(2)–(i), 516(a), Feb. 5, 1988, 101 Stat. 1923, 1930–1934; Pub. L. 100–404, title I, Aug. 19, 1988, 102 Stat. 1020; Pub. L. 100–628, title X, § 1084, Nov. 7, 1988, 102 Stat. 3277; Pub. L. 103–233, title II, § 232(b), (c)(1), Apr. 11, 1994, 108 Stat. 367.)

REFERENCES IN TEXT

For effective date of this paragraph, referred to in subsec. (h)(5)(C)(i), see section 516(b) of Pub. L. 100–242, set out as an Effective Date of 1988 Amendment note below.

Chapter 67 of title 31, referred to in subsec. (n)(2)(B), was repealed by Pub. L. 99–272, title XIV, § 14001(a)(1), Apr. 7, 1986, 100 Stat. 327.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendment of subsec. (n)(1) by Pub. L. 99–500 and 99–591 is based on provisions under the headings ''Management and Administration'' and ''Administrative Provision'' in title I of H.R. 5313 [Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1987], as incorporated by reference by section 101(g) of Pub. L. 99–500 and 99–591, and enacted into law by section 106 of Pub. L. 100–202.

AMENDMENTS

1994—Subsec. (*o*). Pub. L. 103–233, § 232(b), inserted before period at end '', except that amounts available to the Secretary for use under this subsection as of October 1, 1993, and amounts released to the Secretary pursuant to subsection (t) of this section may be used to provide grants under section 5308(q) of this title.''

Subsec. (t). Pub. L. 103–233, § 232(c)(1), added subsec. (t).

1988—Subsec. (a). Pub. L. 100–242, § 501(c), substituted ''There are authorized to be appropriated to carry out this section $225,000,000 for fiscal year 1988, and $225,000,000 for fiscal year 1989. Any amount appropriated under this subsection shall remain available until expended.'' for ''Of the total amount approved in appropriation Acts under section 5303 of this title for each of the fiscal years 1982 and 1983, not more than $500,000,000 shall be available for each of the fiscal years 1982 and 1983 for grants under this section. There are authorized to be appropriated to carry out the provisions of this section not to exceed $440,000,000 for each of the fiscal years 1984, 1985, and 1986, and any amount appropriated under this sentence shall remain available until expended.''

Subsec. (d)(1). Pub. L. 100–242, § 515(a), inserted dash before ''(A)'', indented subpars. (A) and (B), struck out ''as the primary criterion,'' in subpar. (A) and ''and'' at end of subpar. (B), added subpars. (C) and (D), and struck out former subpar. (C) which read as follows: ''at least the following other criteria: demonstrated performance of the city or urban county in housing and community development programs; the extent to which the grant will stimulate economic recovery by leveraging private investment; the number of permanent jobs to be created and their relation to the amount of grant funds requested; the proportion of permanent jobs accessible to lower income persons and minorities, including persons who are unemployed; the impact of the proposed activities on the fiscal base of the city or urban county and its relation to the amount of grant funds requested; the extent to which State or local government funding or special economic incentives have been committed; and the feasibility of accomplishing the proposed activities in a timely fashion within the grant amount available.''

Subsec. (d)(3) to (5). Pub. L. 100–242, § 515(b), added pars. (3) to (5).

Subsec. (d)(5)(C), (D). Pub. L. 100–404 added subpars. (C) and (D).

Subsec. (d)(6). Pub. L. 100–242, § 515(b), (g)(2), temporarily added par. (6), see Effective Date of 1988 Amendment note below.

Subsec. (f). Pub. L. 100–628, § 1084(a), substituted ''5305'' for ''5304'' after ''activities under this section or section''.

Pub. L. 100–242, § 515(c), inserted at end ''In any case in which the project proposes the repayment to the applicant of the grant funds, such funds shall be made available by the applicant for economic development activities that are eligible activities under this section or section 5304 of this title. The applicant shall annually provide the Secretary with a statement of the projected receipt and use of repaid grant funds during the next year together with a report acceptable to the Secretary on the use of such funds during the most recent preceding full fiscal year of the applicant.''

Subsec. (h)(1). Pub. L. 100–242, § 516(a)(1), (2), designated existing provision as par. ''(1) Speculative projects'' and inserted at end ''The provisions of this paragraph shall apply only to projects that do not have identified intended occupants.''

Subsec. (h)(2) to (7). Pub. L. 100–242, § 516(a)(3), added pars. (2) to (7).

Subsec. (n)(1). Pub. L. 100–628, § 1084(b), directed that subsec. (n)(1) of this section as similarly amended first by provisions made effective by section 101(g) of Pub. L. 99–500 and Pub. L. 99–591 [see 1986 Amendment note below and Codification note above] and later by section 515(i) of Pub. L. 100–242 [see below] is amended to read as if the amendment by Pub. L. 100–242 had not been enacted.

Pub. L. 100–242, § 515(i), made amendment identical to Pub. L. 99–500 and 99–591. See 1986 Amendment note below.

Subsec. (r). Pub. L. 100–242, § 515(d), amended subsec. (r) generally. Prior to amendment, subsec. (r) read as follows: ''In providing assistance under this section, the Secretary may not discriminate among programs on the basis of the particular type of activity involved, whether such activity is primarily a neighborhood, industrial, or commercial activity.''

Subsec. (s). Pub. L. 100–242, § 515(h), added subsec. (s).

1987—Subsec. (n)(1). For amendment by § 106 of Pub. L. 100–202, see 1986 Amendment note below.

Subsec. (n)(2)(A). Pub. L. 100–202, § 101(f) [title I, § 101], inserted '', or on former Indian reservations in Oklahoma as determined by the Secretary of the Interior,'' after ''reservation''.

1986—Subsec. (n)(1). Pub. L. 99–500 and 99–591, § 101(g), as enacted by Pub. L. 100–202, inserted at end ''Such term also includes the counties of Kauai, Maui and Hawaii in the State of Hawaii.'' See Codification note above.

Subsec. (n)(2)(B). Pub. L. 99–272 substituted ''was an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter'' for ''is an eligible recipient under chapter 67 of title 31''.

1984—Subsec. (n)(1). Pub. L. 98–454 inserted reference to American Samoa and the Northern Mariana Islands.

Subsec. (n)(2). Pub. L. 98–479 substituted ''chapter 67 of title 31'' for ''the State and Local Fiscal Assistance Act of 1972''.

1983—Subsec. (a). Pub. L. 98–181, § 121(a), inserted authorizations for appropriations not to exceed $440,000,000 for each of the fiscal years 1984, 1985, and 1986.

Subsec. (b)(1). Pub. L. 98–181, § 121(b), substituted ''the extent of unemployment, job lag, or surplus labor'' for ''where data are available, the extent of unemployment and job lag'', and inserted provisions for continued eligibility for assistance of any city with a population of less than 50,000 persons, other than a central city of a metropolitan area, which until the Secretary revises the standards for eligibility for such cities and includes the extent of unemployment, job lag, or labor surplus as a standard of distress for such cities, and provisions requiring the Secretary to make such revision as soon as possible following Nov. 30, 1983.

Subsec. (b)(2)(A)(i), (B)(i). Pub. L. 98–181, § 121(c), inserted ''neighborhood statistics areas,'' after ''enumeration districts,''.

Subsec. (c)(3)(C). Pub. L. 98–181, § 121(d), added cl. (C).

Subsec. (d)(1). Pub. L. 98–181, § 121(e), substituted ''criteria for a national competition'' for ''criteria'' in provisions preceding cl. (A).

Subsec. (i). Pub. L. 98–181, § 121(f), inserted provisions relating to applications by consortia of cities less than 50,000 population.

Subsecs. (p) to (r). Pub. L. 98–181, § 121(g), added subsecs. (p) to (r).

1981—Pub. L. 97–35 substantially restructured and reorganized provisions, made changes in nomenclature and phraseology, and revised purposes, selection criteria and standards, application procedures, approval powers of Secretary, covered activities, limitations, allocation computations, funding prerequisites, amounts for grants, waivers, notice requirements, applicable definitions, and special provisions for years after 1983.

1980—Subsec. (c)(7). Pub. L. 96–399, § 110(a)(1)–(3), added par. (7).

Subsec. (n). Pub. L. 96–399, § 110(b), added subsec. (n).

Subsec. (*o*). Pub. L. 96–399, § 117(a), added subsec. (*o*).

1979—Subsec. (b). Pub. L. 96–153, § 104, designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 96–153, § 104(b), designated existing provisions as par. (1) and substituted ''(1) Except in the case of a city or urban county eligible under subsection (b)(2) of this section, in establishing criteria'' for ''In establishing criteria'' in opening sentence, redesignated existing cls. (1) to (3) as (A) to (C), and added pars. (2) and (3).

Subsecs. (*l*), (m). Pub. L. 96–153, § 105, added subsecs. (*l*) and (m).

1978—Subsec. (c)(6). Pub. L. 95–557, § 103(g), added par. (6).

Subsec. (e). Pub. L. 95–557, § 103(h), inserted ''impact of the proposed urban development action program on the residents, particularly those of low and moderate income, of the residential neighborhood, and on the neighborhood, in which the program is to be located'' after ''objectives of this chapter''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out subchapter II (§ 12721 et seq.) of chapter 130 of this title after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 515(f), (g) of Pub. L. 100–242 provided that:

''(f) REGULATIONS.—The Secretary of Housing and Urban Development shall issue such regulations as may be necessary to carry out the amendments made by this section [amending this section]. Such regulations shall be published for comment in the Federal Register not later than 60 days after the date of enactment of this Act [Feb. 5, 1988]. The provisions of section 119(d)(1)(D), section 119(d)(3), and section 119(d)(4) of the Housing and Community Development Act of 1974 [subsec. (d)(1)(D), (3), (4) of this section], shall take effect on the date of enactment of this Act.

''(g) APPLICABILITY.—

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall be applicable to the making of urban development action grants that have not received the preliminary approval of the Secretary of Housing and Urban Development before the date on which final regulations issued by the Secretary under subsection (f) become effective. For the fiscal year in which the amendments made by this section become applicable, such amendments shall only apply with respect to the aggregate amount awarded for such grants on or after such effective date.

''(2) SUNSET OF URBAN COUNTY COMPETITION RULE.—Effective October 1, 1989, section 119(d)(6) of the Housing and Community Development Act of 1974 [subsec. (d)(6) of this section] is repealed.''

Section 516(b) of Pub. L. 100–242 provided that: ''Except as otherwise provided in section 119(h)(5) of the Housing and Community Development Act of 1974 [subsec. (h)(5) of this section] (as added by subsection (a)), the amendments made by this section [amending this section] shall be applicable to urban development action grants that have not received the preliminary approval of the Secretary of Housing and Urban Development before the date of the enactment of this Act [Feb. 5, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 106 of Pub. L. 100–202 provided that the amendment made by Pub. L. 99–500 and 99–591 is effective on date of enactment [Oct. 18, 1986] of the ''pertinent joint resolution'' making continuing appropriations for fiscal year 1987 [Pub. L. 99–500 and 99–591].

Amendment by Pub. L. 99–272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99–272.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 308(c) of Pub. L. 97–35 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 5320 of this title] shall become effective on the effective date of regulations implementing such subsections. As soon as practicable, but not later than January 1, 1982, the Secretary shall issue such final rules and regulations as the Secretary determines are necessary to carry out such subsections.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–557 effective Oct. 1, 1978, see section 104 of Pub. L. 95–557, set out as a note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 114 of Pub. L. 95–128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

IMPLEMENTATION OF URBAN DEVELOPMENT ACTION GRANT RETENTION PROGRAM

Section 232(c)(2) of Pub. L. 103–233 provided that: ''Not later than 10 days after the date of enactment of

this Act [Apr. 11, 1994], the Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by this subsection [amending this section].''

NEW TOWNS DEMONSTRATION PROGRAM FOR EMERGENCY RELIEF OF LOS ANGELES

Pub. L. 102–550, title XI, Oct. 28, 1992, 106 Stat. 3927, as amended by Pub. L. 105–362, title VII, § 701(g), Nov. 10, 1998, 112 Stat. 3287, provided that:

''SEC. 1101. AUTHORITY.

''To provide for the revitalization and renewal of inner city neighborhoods in the areas of Los Angeles, California, that were damaged by the civil disturbances during April and May of 1992, and to demonstrate the effectiveness of new town developments in revitalizing and restoring depressed and underprivileged inner city neighborhoods, the Secretary of Housing and Urban Development shall, to the extent or in such amounts as are provided in appropriation Acts, make any assistance authorized under this title available under this title to units of general local government, governing boards, and eligible mortgagors in accordance with the provisions of this title.

''SEC. 1102. NEW TOWN PLAN.

''(a) REQUIREMENT.—The Secretary may make assistance available under this title only in connection with, and according to the provisions of a new town plan developed and established by a governing board under section 1107 and approved under subsection (d) of this section. In developing such plans, the governing board shall consult with representatives of the units of general local government within whose boundaries are located any portion of the new town demonstration area for the demonstration program to be carried out under such plan.

''(b) ELIGIBLE NEW TOWN DEMONSTRATION AREAS.—A new town plan under this section shall provide for carrying out a new town development demonstration providing assistance available under this title within a new town demonstration area, which shall be a geographic area defined in the new town plan—

''(1) that is one of pervasive poverty, unemployment, and general distress;

''(2) that has an unemployment rate of not less than 1.5 times the national unemployment rate for the 2 years preceding approval of the new town plan;

''(3) that has a poverty rate of not less than 20 percent during such 2-year period;

''(4) for which not less than 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the unit of general local government in which they are located;

''(5) that has a shortage of adequate jobs for residents; and

''(6) that is located—

''(A) in or near the City or County of Los Angeles, in the State of California; and

''(B) within an area for which the President, pursuant to title IV or V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170 et seq., 5191 et seq.], declared that a major disaster or emergency existed for purposes of such Act [42 U.S.C. 5121 et seq.], as a result of the civil disturbances involving acts of violence occurring on or after April 29, 1992, and before May 6, 1992.

''(c) CONTENTS.—Each new town plan shall include the following information:

''(1) GOVERNING BOARD.—A description of the members and purposes of the governing board that developed the plan, the manner in which members of the governing board were selected, and the businesses, agencies, interests, and community ties of each member of the governing board.

''(2) NEW TOWN DEMONSTRATION AREA.—A definition and description of the new town demonstration area for the new town development demonstration to be assisted under this title.

''(3) TARGET COMMUNITY.—A description of the economic, social, racial, and ethnic characteristics of the population of the neighborhood or area in which the new town demonstration area is located.

''(4) AGREEMENTS.—Agreements that the governing board will carry out the new town demonstration program in accordance with the requirements of this title.

''(5) HOUSING UNITS.—A description of the number, size, location, cost, style, and characteristics of rental and homeownership housing units to be developed under the new town demonstration program, any financing for developing such housing, and the amount of assistance necessary under section 1105 for developing the housing under the program.

''(6) JOBS.—A description of the number, types, and duration of any new jobs that will be created in the new town demonstration area and surrounding areas as a result of the demonstration program, and of any job training activities and apprenticeship programs to be made available in connection with the program.

''(7) SOCIAL SERVICES.—A description of the social and supportive services to be made available under the demonstration program to residents of housing assisted under the demonstration program pursuant to section 1103(d) and to residents of the new town demonstration area.

''(8) SUPPLEMENTAL RESOURCES.—A description of any funds, assistance, in-kind contributions, and other resources to be made available in connection with the demonstration program, including the sources and amounts of any private capital resources and non-Federal funds required under section 1103(h).

''(9) CONTRACTORS AND DEVELOPERS.—A listing of the contractors and developers who potentially will carry out any construction and rehabilitation work for development of housing under the demonstration program and the expected costs involved in hiring such contractors and developers.

''(10) FINANCING FOR HOMEBUYERS.—A description of any mortgage lenders who have indicated that they will make financing available to families purchasing housing developed under the demonstration program through mortgages eligible for insurance under section 1104 and proposed terms of such mortgages.

''(11) COMMITMENTS.—Evidence of any commitments entered into for making any of the resources described in paragraphs (6) through (8) available in connection with the demonstration program.

''(12) PRESALE REQUIREMENTS.—A description of commitments made to purchase not less than 50 percent of the housing to be developed under the demonstration program for purchase by the occupant and to rent not less than 50 percent of the rental dwelling units to be developed under the demonstration program.

''(13) COMMUNITY DEVELOPMENT ACTIVITIES.—A description of the community development activities to be carried out with assistance under section 1106, the amount of assistance necessary under such section for such activities, and of the projected uses of such assistance.

''(d) REVIEW AND APPROVAL.—

''(1) SUBMISSION.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act [Oct. 28, 1992], a governing board shall submit a new town plan under this section to the chief executive officers of each unit of general local government within whose boundaries is located any portion of the new town demonstration area described under the plan of the board.

''(2) APPROVAL.—For a plan to be eligible for assistance available under this title, the chief executive officer of all units of general local government to whom the new town plan is submitted shall approve the plan at a public meeting after the plan has been made publicly available for a period of not less than 30 days. A governing board may resubmit for approval

any plan returned by any such chief executive officer to the governing board, and such chief executive officer may, upon returning the plan indicate any modifications necessary for approval. A new town plan may not be approved unless such chief executive officers determine that the membership of the governing board submitting the plan is constituted in accordance with section 1107 and the governing board is capable of carrying out the plan.

''(3) AMENDMENT.—An approved new town plan for the demonstration program developed by the governing board may be amended by the board by obtaining approval of the amendment in the manner provided under this subsection for approval of plans. If the chief executive officer of the unit of general local government does not approve or return the amended plan within 30 days of submission, the amended plan shall be considered to be approved for purposes of this subsection.

''SEC. 1103. NEW TOWN DEVELOPMENT DEMONSTRATION PROGRAM REQUIREMENTS.

''(a) IN GENERAL.—Each of the 2 new town development demonstration programs selected for assistance under this title under section 1102 shall be carried out, by the governing board submitting the new town plan for the demonstration program, in accordance with such plan (and any approved amendments of such plans) and shall be subject to the requirements under this section.

''(b) LOCAL PARTICIPATION.—With respect to any activities carried out under the demonstration program, the program shall give preference in awarding contracts, purchasing materials, acquiring services, and obtaining assistance or training, to contractors, businesses, developers, professionals, and other establishments located or having offices within the new town demonstration area.

''(c) HOUSING.—

''(1) NUMBER OF UNITS.—The demonstration program shall construct or renovate not less than 1,500 dwelling units in the new town demonstration area, of which not less than 60 percent shall be units available for purchase by the occupant.

''(2) AFFORDABILITY.—Units of varying sizes and costs shall be designed and developed under the demonstration program so that the program provides housing affordable to families of varying incomes not exceeding 115 percent of the median income for the area in which the new town demonstration area is located, including very low- and low-income families (as such terms are defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]).

''(3) HOMEOWNERSHIP UNITS.—Dwelling units developed under the demonstration program for purchase by the occupant shall initially be sold at prices affordable to families eligible to purchase such units. Such units shall be available for purchase only by families having incomes not exceeding the amount specified in paragraph (2). The demonstration shall develop 2-, 3-, and 4-bedroom units for purchase.

''(4) RENTAL UNITS.—Dwelling units developed under the demonstration program that are to be available for rental shall include family-type units and single bedroom and efficiency units designed for elderly occupants. Such units shall be available for occupancy only by families who (upon initial occupancy) have incomes of (A) less than 60 percent of the median income for the area, or (B) less than $20,000. Occupant families shall pay not more than 30 percent of the family income for rent.

''(d) SOCIAL SERVICES.—The demonstration program shall provide for appropriate social and supportive services to be made available to residents of housing assisted under the demonstration program and to other residents of the new town demonstration area, which may include rental and homeownership counseling, child care, job placement, educational programs, recreational and health care facilities and programs, and other appropriate services.

''(e) JOB CREATION AND TRAINING.—The demonstration program shall provide, to the extent practicable, that activities in connection with the demonstration program, including development of housing under subsection (c) and community development activities assisted under section 1106, shall employ and provide job training opportunities for residents of the housing assisted under the demonstration program and other residents of the new town demonstration area.

''(f) FINANCING.—The demonstration program shall provide for coordination with banks, credit unions, and other mortgage lenders to make financing available to purchasers of units developed under the demonstration program through mortgages eligible for insurance under section 1104, and shall give preference to such mortgage lenders who have offices located within or near the new town demonstration area.

''(g) SUPPORT FACILITIES.—The demonstration program shall encourage, facilitate, and provide for development of appropriate support facilities to serve residents in the housing developed under the program, including infrastructure and commercial facilities.

''(h) NON-FEDERAL FUNDS.—The governing board carrying out the demonstration program shall ensure that not less than 25 percent of the total amounts used to carry out the demonstration program is provided from non-Federal sources, including State or local government funds, any salary paid to staff to carry out the demonstration program, the value of any time, services, and materials donated to carry out the program, the value of any donated building, and the value of any lease on a building.

''SEC. 1104. FEDERAL MORTGAGE INSURANCE.

''(a) IN GENERAL.—Pursuant to title II and section 251 of the National Housing Act [12 U.S.C. 1707 et seq., 1715z–16], the Secretary shall (to the extent authority is available pursuant to subsection (d)) insure mortgages under this section involving properties upon which are located dwelling units described in section 1103(c)(3) of this Act that are developed under the new town demonstration programs carried out pursuant to this title.

''(b) MORTGAGE TERMS.—Mortgages insured under this section shall—

''(1) provide for periodic adjustments in the effective rate of interest charged, which—

''(A) for the first 5 years of the mortgage, shall be an annual rate of not more than 7 percent; and

''(B) after the expiration of such 5-year period, may increase on an annual basis, but—

''(i) shall be limited, with respect to any single interest rate increase, to not more than a 10-percent increase in the annual percentage rate; and

''(ii) may not be increased at any time to a rate greater than the rate necessary at such time to fully amortize the outstanding loan balance over the term of the mortgage; and

''(2) have a maturity of 35 years from the date of the beginning of the amortization of the mortgage.

''(c) BOARD APPROVAL.—The Secretary may provide insurance under this section for a mortgage only if the governing board for the demonstration program for the new town demonstration area in which the property subject to the mortgage is located has indicated to the Secretary approval of the mortgage in connection with the demonstration program.

''(d) INSURANCE AUTHORITY.—To the extent provided in appropriation Acts, the Secretary shall use any authority provided pursuant to section 531(b) of the National Housing Act [12 U.S.C. 1735f–9(b)] to enter into commitments to insure loans and mortgages under this section in fiscal years 1993 and 1994 with an aggregate principal amount not exceeding such sums as may be necessary to carry out the demonstration under this title. Mortgages insured under this section shall not be considered for purposes of the aggregate limitation on the number of mortgages insured under section 251 of the National Housing Act [12 U.S.C. 1715z–16] specified in subsection (c) of such section.

''SEC. 1105. SECONDARY SOFT MORTGAGE FINANCING FOR HOUSING.

''(a) IN GENERAL.—The Secretary shall, to the extent amounts are provided in appropriation Acts under subsection (e), provide assistance under this section through the governing boards carrying out the new town demonstration programs under this section to assist in the development of housing under the program.

''(b) USE.—Any assistance provided under this section shall be used only for costs in planning, developing, constructing, and rehabilitating housing under the demonstration program available for rental or purchase by the occupant. The governing board shall determine, according to the new town plan for the demonstration program, the allocation of amounts of assistance provided under this section.

''(c) AMOUNT.—The Secretary may not provide assistance under this section for the development of housing under a demonstration program in an amount exceeding $50,000 per dwelling unit assisted.

''(d) SECOND MORTGAGE.—

''(1) IN GENERAL.—Assistance under this section shall be repaid in accordance with this subsection. Repayment of the amount of any assistance provided with respect to—

''(A) any building containing rental units, or

''(B) any dwelling unit available for purchase by the occupant that is developed under a demonstration program,

shall be secured by a second mortgage held by the Secretary on the property involved.

''(2) TERMS.—During the period ending upon repayment of the assistance as provided in this subsection, any building containing rental units that is provided assistance under this section shall be used as rental housing subject to the requirements of section 1103(c)(4). During the period ending upon repayment of the assistance as provided in this subsection, any dwelling unit made available for purchase by the occupant that is provided assistance under this section may be sold only to a family having an income not exceeding the amount specified in section 1103(c)(2).

''(3) INTEREST.—Any assistance provided under this section for a building or dwelling unit shall bear interest at a rate equivalent to the rate for the most recently marketable obligations issued by the United States Treasury have terms of 10 years. The interest on such assistance shall be required to be repaid only upon sale of the building.

''(4) DISCOUNTED REPAYMENT.—The assistance provided under this section for any building containing rental units or any dwelling unit available for purchase by the occupant shall be considered to have been repaid for purposes of this subsection if the original purchaser of the building or the dwelling unit pays to the Secretary an amount equal to 50 percent of the amount of the assistance provided under this section.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal years 1993 and 1994 such sums as may be necessary for providing assistance under this section.

''SEC. 1106. COMMUNITY DEVELOPMENT ASSISTANCE.

''(a) IN GENERAL.—The Secretary shall provide assistance under this section, to the extent amounts are provided in appropriation Acts under subsection (h), to units of general local government to address vital unmet needs and to promote the creation of jobs and economic development in connection with the new town demonstration programs carried out under this title.

''(b) ELIGIBLE UNITS OF GENERAL LOCAL GOVERNMENT.—Assistance may be provided under this section only to units of general local government—

''(1) within whose boundaries are located any portion of the new town demonstration areas described under the new town demonstration plans for the demonstration programs carried out under this title;

''(2) that make the certifications to the Secretary required under subsection (c); and

''(3) that will comply with a residential antidisplacement and relocation assistance plan described in subsection (d).

''(c) REQUIRED CERTIFICATIONS.—The certifications referred to in subsection (b)(2) shall be certifications that—

''(1) the assistance will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] and the Civil Rights Act of 1968 [see Short Title note set out under section 3601 of this title], and the unit of general local government will affirmatively further fair housing;

''(2) the projected use of funds has been developed in a manner that gives maximum feasible priority to activities which are designed to meet community development needs that have been delayed because of the lack of fiscal resources of the unit of general local government or which are designed to address conditions that pose a serious and immediate threat to the health or welfare of the community;

''(3) any projected use of funds for public services will benefit primarily low- and moderate-income families;

''(4) the unit of general local government will not attempt to recover any capital costs of public improvements assisted in whole or part under this section by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless—

''(A) funds received under this section are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this section; or

''(B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient funds received under this section to comply with the requirements of subparagraph (A); and

''(5) the unit of general local government will comply with the other provisions of this title and with other applicable laws.

''(d) ANTIDISPLACEMENT AND RELOCATION PLAN.—

''(1) CONTENTS.—The residential antidisplacement and relocation assistance plan referred to in subsection (b)(3) shall, in connection with activities assisted under this section—

''(A) provide that, in the event of such displacement—

''(i) governmental agencies or private developers shall provide, within the same community, comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low- and moderate-income dwelling units demolished or converted to a use other than for housing for low- and moderate-income persons, and provide that such replacement housing may include existing housing assisted with project based assistance provided under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

''(ii) such comparable replacement dwellings shall be designed to remain affordable to persons of low- and moderate-income for 10 years from the time of initial occupancy;

''(iii) relocation benefits shall be provided for all low- or moderate-income persons who occupied housing demolished or converted to a use other than for low- or moderate-income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks, and other moving-related expenses, including any interim living costs; and in the case of displaced persons of low- and moderate-income, provide either—

''(I) compensation sufficient to ensure that, for a 5-year period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent; or

''(II) if elected by a family, a lump-sum payment equal to the capitalized value of the benefits available under subclause (I) to permit the household to secure participation in a housing cooperative or mutual housing association; and

''(iv) persons displaced shall be relocated into comparable replacement housing that is—

''(I) decent, safe, and sanitary;

''(II) adequate in size to accommodate the occupants;

''(III) functionally equivalent; and

''(IV) in an area not subject to unreasonably adverse environmental conditions; and

''(B) provide that persons displaced shall have the right to elect, as an alternative to the benefits under this subsection, to receive benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.] if such persons determine that it is in their best interest to do so; and

''(C) provide that where a claim for assistance under subparagraph (A)(iv) is denied by the unit of general local government, the claimant may appeal to the Secretary, and that the decision of the Secretary shall be final unless a court determines the decision was arbitrary and capricious.

''(2) EXCEPTION.—Paragraphs (1)(A)(i) and (1)(A)(ii) shall not apply in any case in which the Secretary finds, on the basis of objective data, that there is available in the area an adequate supply of habitable affordable housing for low- and moderate-income persons. A determination under this paragraph shall be final and nonreviewable.

''(e) ELIGIBLE ACTIVITIES.—Activities assisted with amounts provided under this section may include only the following activities:

''(1) ACQUISITION OF REAL PROPERTY.—The acquisition of real property (including air rights, water rights, and other interests therein) that is located within the new town demonstration area and is—

''(A) blighted, deteriorated, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;

''(B) appropriate for rehabilitation activities;

''(C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

''(D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this section;

''(E) to be used as a facility for coordinating and providing activities and services for high risk youth (as such term is defined in section 509A [now 517] of the Public Health Service Act [42 U.S.C. 290bb–23]); or

''(F) to be used for other public purposes.

''(2) CONSTRUCTION OF PUBLIC WORKS AND FACILITIES.—The acquisition, construction, rehabilitation, or installation of public works or public facilities within the new town demonstration area, including buildings for the general conduct of government and facilities for coordinating and providing activities and services for high risk youth (as such term is defined in section 509A [now 517] of the Public Health Service Act).

''(3) CLEARANCE AND REHABILITATION OF BUILDINGS.—The clearance, removal, and rehabilitation of buildings and improvements located within the new town demonstration area, including interim assistance, assistance for facilities for coordinating and providing activities and services for high risk youth (as such term is defined in section 509A [now 517] of the Public Health Service Act), and assistance to privately owned buildings and improvements.

''(4) PROVISION OF PUBLIC SERVICES AND HOUSING.—

''(A) PUBLIC SERVICES.—The provision of public services within the new town demonstration area that are concerned with job training and retraining, health care and education, crime prevention, drug abuse treatment and rehabilitation, child care, education, and recreation, which may include the provision of public health and public safety vehicles.

''(B) HOUSING ACTIVITIES.—The acquisition and rehabilitation of housing for low- and moderate-income families within the new town demonstration area, except that any grantee that uses amounts received under this section for housing activities under this subparagraph shall make not less than 15 percent of the amount used for such housing activities available only for community housing development organizations and nonprofit organizations (as such terms are defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12704]) for such activities;

''(C) LIMITATION.—Not more than 25 percent of the amount of any assistance provided under this section (including program income) to any unit of general local government may be used for activities under this paragraph.

''(5) RELOCATION ASSISTANCE.—Relocation payments and assistance for individuals, families, business, and organizations that are displaced as a result of activities assisted under this title.

''(6) PAYMENT OF ADMINISTRATIVE EXPENSES.—Payment of reasonable administrative costs associated with activities assisted under this section and any expenses of developing the new town plan under section 1102.

''(f) ALLOCATION OF ASSISTANCE.—The Secretary may not provide more than 50 percent of any amounts appropriated under this section in connection with any one of the 2 new town demonstration programs carried out under this title.

''(g) OTHER REQUIREMENTS.—The provisions of subsections (f), (g), and (h) of section 104, subsections (c) and (d) of section 105, section 107, 108, 109, and 110 of the bill, H.R. 4073, 102d Congress (as reported on March 14, 1992 [May 14, 1992, H. Rept. No. 102–524], by the Committee on Banking, Finance and Urban Affairs of the House of Representatives), shall apply to grantees receiving assistance under this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal years 1993 and 1994 such sums as may be necessary for assistance under this section.

''SEC. 1107. GOVERNING BOARDS.

''(a) PURPOSE.—For purposes of this title, a governing board shall be a board organized for the purpose of developing a new town plan under this title and carrying out a new town development demonstration under this title.

''(b) MEMBERSHIP.—Each governing board shall consist of not less than 10 members, who shall include—

''(1) residents of the area in which the new town demonstration area under the plan developed by the board is located;

''(2) owners of business in such area;

''(3) leaders or participants in community groups in such area; and

''(4) representatives of financial institutions located or having offices in such area.

''(c) ORGANIZATION.—A governing board may organize itself and conduct business in the manner that the board determines is appropriate to carry out the new town development demonstration under this title.

''SEC. 1108. REPORTS.

''Each governing board carrying out a new town development demonstration under this title shall submit to the Congress a copy of the new town plan of the governing board, upon the approval of that plan under section 1102(d).

''SEC. 1109. DEFINITIONS.

''For purposes of this title:

''(1) DEMONSTRATION PROGRAM.—The terms 'demonstration program' and 'program' mean a new town development demonstration program receiving assistance under this title, which is carried out within a new town demonstration area by a governing board.

''(2) GOVERNING BOARD.—The term 'governing board' means a board established under section 1107.

''(3) NEW TOWN DEMONSTRATION AREA.—The term 'new town demonstration area' means the area defined in a new town plan in which the new town development demonstration under the plan is to be carried out.

''(4) NEW TOWN PLAN.—The terms 'new town plan' and 'plan' mean a plan under section 1102 developed by a governing board.

''(5) UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'unit of general local government' means any city, county, town, township, parish, village, or other general purpose political subdivision of the State of California.''

REPORTS OF COMPTROLLER GENERAL

Pub. L. 100–242, title V, § 515(e), Feb. 5, 1988, 101 Stat. 1933, which required the Comptroller General of the United States to triennially prepare and submit to Congress a comprehensive report evaluating the eligibility standards and selection criteria applicable under this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 14 on page 9 of House Document No. 103–7.

NEIGHBORHOOD DEVELOPMENT DEMONSTRATION

Section 123 of Pub. L. 98–181, as amended, which provided for a demonstration program to determine the feasibility of supporting eligible neighborhood development activities by providing Federal matching funds to eligible neighborhood development organizations, was transferred to section 5318a of this title.

§ 5318a. John Heinz Neighborhood Development Program

(a) Definitions

For the purposes of this section:

(1) The term ''eligible neighborhood development activity'' means—

(A) creating permanent jobs in the neighborhood;

(B) establishing or expanding businesses within the neighborhood;

(C) developing, rehabilitating, or managing neighborhood housing stock;

(D) developing delivery mechanisms for essential services that have lasting benefit to the neighborhood; or

(E) planning, promoting, or financing voluntary neighborhood improvement efforts.

(2) The term ''eligible neighborhood development organization'' means—

(A)(i) an entity organized as a private, voluntary, nonprofit corporation under the laws of the State in which it operates;

(ii) an organization that is responsible to residents of its neighborhood through a governing body, not less than 51 per centum of the members of which are residents of the area served;

(iii) an organization that has conducted business for at least one year prior to the date of application for participation;

(iv) an organization that operates within an area that—

(I) meets the requirements for Federal assistance under section 5318 of this title;

(II) is designated as an enterprise zone under Federal law;

(III) is designated as an enterprise zone under State law and recognized by the Secretary for purposes of this section as a State enterprise zone; or

(IV) is a qualified distressed community within the meaning of section 1834a(b)(1) of title 12; and

(v) an organization that conducts one or more eligible neighborhood development activities that have as their primary beneficiaries low- and moderate-income persons, as defined in section 5302(a)(20) of this title; or

(B) any facility that provides small entrepreneurial business with affordable shared support services and business development services and meets the requirements of subparagraph (A).

(3) The term ''neighborhood development funding organization'' means—

(A) a depository institution the accounts of which are insured pursuant to the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] or the Federal Credit Union Act [12 U.S.C. 1751 et seq.], and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act [12 U.S.C. 1813(w)]) thereof;

(B) a depository institution holding company and any subsidiary thereof (as such term is defined in section 3(w) of the Federal Deposit Insurance Act [12 U.S.C. 1813(w)]); or

(C) a company at least 75 percent of the common stock of which is owned by one or more insured depository institutions or depository institution holding companies.

(4) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(b) Duties of Secretary

(1) The Secretary shall carry out, in accordance with this section, a program to support eligible neighborhood development activities by providing Federal matching funds to eligible neighborhood development organizations on the basis of the monetary support such organizations have received from individuals, businesses, and nonprofit or other organizations in their neighborhoods, and from neighborhood development funding organizations, prior to receiving assistance under this section.

(2) The Secretary shall accept applications from eligible neighborhood development organizations for participation in the program. Eligible organizations may participate in more than one year of the program, but shall be required to submit a new application and to compete in the selection process for each program year. For fiscal year 1993 and thereafter, not more than 50 percent of the grants may be for multiyear awards.

(3) From the pool of eligible neighborhood development organizations submitting applications for participation in a given program year, the Secretary shall select participating organizations in an appropriate number through a competitive selection process. To be selected, an applicant shall—

(A) have demonstrated measurable achievements in one or more of the activities specified in subsection (a)(1) of this section;

(B) specify a business plan for accomplishing one or more of the activities specified in subsection (a)(1) of this section;

(C) specify a strategy for achieving greater long term private sector support, especially in cooperation with a neighborhood development funding organization, except that an eligible neighborhood development organization shall be deemed to have the full benefit of the cooperation of a neighborhood development funding organization if the eligible neighborhood development organization—

(i) is located in an area described in subsection (a)(2)(A)(iv) of this section that does not contain a neighborhood development funding organization; or

(ii) demonstrates to the satisfaction of the Secretary that it has been unable to obtain the cooperation of any neighborhood development funding organization in such area despite having made a good faith effort to obtain such cooperation; and

(D) specify a strategy for increasing the capacity of the organization.

(c) Criteria for awarding grants

The Secretary shall award grants under this section among the eligible neighborhood development organizations submitting applications for such grants on the basis of—

(1) the degree of economic distress of the neighborhood involved;

(2) the extent to which the proposed activities will benefit persons of low and moderate income;

(3) the extent of neighborhood participation in the proposed activities, as indicated by the proportion of the households and businesses in the neighborhood involved that are members of the eligible neighborhood development organization involved and by the extent of participation in the proposed activities by a neighborhood development funding organization that has a branch or office in the neighborhood, except that an eligible neighborhood development organization shall be deemed to have the full benefit of the participation of a neighborhood development funding organization if the eligible neighborhood development organization—

(A) is located in an[1] neighborhood that does not contain a branch or office of a neighborhood development funding organization; or

(B) demonstrates to the satisfaction of the Secretary that it has been unable to obtain the participation of any neighborhood development funding organization that has a branch or office in the neighborhood despite having made a good faith effort to obtain such participation; and

(4) the extent of voluntary contributions available for the purpose of subsection (e)(4) of this section, except that the Secretary shall waive the requirement of this subparagraph in the case of an application submitted by a small eligible neighborhood development organization, an application involving activities in a very low-income neighborhood, or an application that is especially meritorious.

(d) Consultation with informal working group

The Secretary shall consult with an informal working group representative of eligible neighborhood organizations with respect to the implementation and evaluation of the program established in this section.

(e) Matching funds for participating organizations

(1) The Secretary shall assign each participating organization a defined program year, during which time voluntary contributions from individuals, businesses, and nonprofit or other organizations in the neighborhood, and from neighborhood development funding organizations, shall be eligible for matching.

(2) Subject to paragraph (3), at the end of each three-month period occurring during the program year, the Secretary shall pay to each participating neighborhood development organization the product of—

(A) the aggregate amount of voluntary contributions that such organization certifies to the satisfaction of the Secretary it received during such three-month period; and

(B) the matching ratio established for such test neighborhoods under paragraph (4).

(3) The Secretary shall pay not more than $50,000 under this section to any participating neighborhood development organization during a single program year, except that, if appropriations for this section exceed $3,000,000, the Secretary may pay not more than $75,000 to any participating neighborhood development organization.

(4) For purposes of paragraph (2), the Secretary shall, for each participating organization, determine an appropriate ratio by which monetary contributions made to participating neighborhood development organizations will be matched by Federal funds. The highest such ratios shall be established for neighborhoods having the smallest number of households or the greatest degree of economic distress.

(5) The Secretary shall insure that—

(A) grants and other forms of assistance may be made available under this section only if the application contains a certification by the unit of general local government within which the neighborhood to be assisted is located that such assistance is not inconsistent with the comprehensive housing affordability strategy of such unit approved under section 12705 of this title or the statement of community development activities and community development plans of the unit submitted under section 5304(m) of this title, except that the failure of a unit of general local government to respond to a request for a certification within thirty days after the request is made shall be deemed to be a certification; and

(B) eligible neighborhood development activities comply with all applicable provisions of the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.].

[1] So in original. Probably should be ''a''.

(6) To carry out this section, the Secretary—

(A) may issue regulations as necessary;

(B) shall utilize, to the fullest extent practicable, relevant research previously conducted by Federal agencies, State and local governments, and private organizations and persons;

(C) shall disseminate information about the kinds of activities, forms of organizations, and fund-raising mechanisms associated with successful programs; and

(D) may use not more than 5 per centum of the funds appropriated for administrative or other expenses in connection with the program.

(f) Authorization

Of the amounts made available for assistance under section 5303 of this title, $1,000,000 for fiscal year 1993 (in addition to other amounts provided for such fiscal year) and $3,000,000 for fiscal year 1994 shall be available to carry out this section.

(g) Short title

This section may be cited as the ''John Heinz Neighborhood Development Act''.

(Pub. L. 98–181, title I, §123, Nov. 30, 1983, 97 Stat. 1172; Pub. L. 98–479, title I, §101(b)(2), (3), Oct. 17, 1984, 98 Stat. 2220; Pub. L. 100–242, title V, §§521, 525, Feb. 5, 1988, 101 Stat. 1938, 1939; Pub. L. 101–625, title IX, §915, Nov. 28, 1990, 104 Stat. 4395; Pub. L. 102–550, title VIII, §832, Oct. 28, 1992, 106 Stat. 3852; Pub. L. 105–362, title VII, §701(d), Nov. 10, 1998, 112 Stat. 3287.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (a)(3)(A), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

The Federal Credit Union Act, referred to in subsec. (a)(3)(A), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Civil Rights Act of 1964, referred to in subsec. (e)(5)(B), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as the John Heinz Neighborhood Development Act and also as part of the Housing and Urban-Rural Recovery Act of 1983, the Domestic Housing and International Recovery and Financial Stability Act, and the Supplemental Appropriations Act, 1984, and not as part of the Housing and Community Development Act of 1974 which comprises this chapter.

Section was formerly set out as a note under section 5318 of this title.

AMENDMENTS

1998—Subsecs. (f) to (h). Pub. L. 105–362 redesignated subsecs. (g) and (h) as (f) and (g), respectively, and struck out former subsec. (f) which read as follows: ''The Secretary shall submit a report to the Congress, not later than 3 months after the end of each fiscal year in which payments are made under this section, regarding the program under this section. The report shall contain a summary of the activities carried out under this section during such fiscal year and any findings, conclusions, and recommendations for legislation regarding the program.''

1992—Pub. L. 102–550, §832(b)(1), substituted ''John Heinz Neighborhood Development Program'' for ''Neighborhood Development Demonstration'' as section catchline.

Subsec. (a)(2). Pub. L. 102–550, §832(d)(1)–(3), (4), redesignated subpars. (A) to (E) of par. (2) as cls. (i) to (v), respectively, of subpar. (A) of par. (2) and added subpar. (B).

Subsec. (a)(2)(A)(iii). Pub. L. 102–550, §832(g)(1), substituted ''one year'' for ''three years''.

Subsec. (a)(2)(A)(iv). Pub. L. 102–550, §832(e)(1), added cl. (iv) and struck out former cl. (iv) which read as follows: ''an organization that operates within an area that meets the requirements for Federal assistance under section 5318 of this title; and''.

Subsec. (a)(3), (4). Pub. L. 102–550, §832(e)(2), (3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(1). Pub. L. 102–550, §832(f)(1), inserted '', and from neighborhood development funding organizations,'' after ''neighborhoods''.

Pub. L. 102–550, §832(b)(2), (3), struck out ''demonstration'' before ''program'' and substituted ''to support eligible'' for ''to determine the feasibility of supporting eligible''.

Subsec. (b)(2). Pub. L. 102–550, §832(b)(2), (g)(2), struck out ''demonstration'' before ''program.'' and substituted ''For fiscal year 1993 and thereafter, not more than 50 percent'' for ''Not more than 30 per centum''.

Subsec. (b)(3)(B). Pub. L. 102–550, §832(f)(2)(A), struck out ''and'' at end.

Subsec. (b)(3)(C). Pub. L. 102–550, §832(f)(2)(B), substituted '', especially in cooperation with a neighborhood development funding organization, except that an eligible neighborhood development organization shall be deemed to have the full benefit of the cooperation of a neighborhood development funding organization if the eligible neighborhood development organization—'' and cls. (i) and (ii) for period at end.

Subsec. (b)(3)(D). Pub. L. 102–550, §832(f)(2)(C), added subpar. (D).

Subsec. (c)(3). Pub. L. 102–550, §832(f)(3), inserted before semicolon ''and by the extent of participation in the proposed activities by a neighborhood development funding organization that has a branch or office in the neighborhood, except that an eligible neighborhood development organization shall be deemed to have the full benefit of the participation of a neighborhood development funding organization if the eligible neighborhood development organization—'' and subpars. (A) and (B).

Subsec. (e)(1). Pub. L. 102–550, §832(f)(4), inserted '', and from neighborhood development funding organizations,'' after ''neighborhood''.

Subsec. (e)(3). Pub. L. 102–550, §832(b)(4), inserted before period '', except that, if appropriations for this section exceed $3,000,000, the Secretary may pay not more than $75,000 to any participating neighborhood development organization''.

Subsec. (e)(5)(A). Pub. L. 102–550, §832(c), substituted ''comprehensive housing affordability strategy of such unit approved under section 12705 of this title or the statement of community development activities and community development plans of the unit submitted under section 5304(m) of this title'' for ''housing and community development plans of such unit''.

Subsec. (e)(6)(C). Pub. L. 102–550, §832(b)(5)(A), inserted ''and'' after ''programs;''.

Subsec. (e)(6)(D), (E). Pub. L. 102–550, §832(b)(5)(B)–(D), redesignated subpar. (E) as (D), substituted ''program'' for ''demonstration'', and struck out former subpar. (D) which read as follows: ''shall undertake any other activity the Secretary deems necessary to carry out this section, which shall include an evaluation and report to Congress on the demonstra-

tion and may include the performance of research, planning, and administration, either directly, or when in the Secretary's judgment such activity will be carried out more effectively, more rapidly, or at less cost, by contract or grant; and''.

Subsec. (f). Pub. L. 102–550, § 832(b)(6), added subsec. (f) and struck out former subsec. (f) which read as follows: ''The Secretary shall submit to the Congress—

''(1) not later than three months after the end of each fiscal year in which payments are made under this section, an interim report containing a summary of the activities carried out under this section during such fiscal year and any preliminary findings or conclusions drawn from the demonstration program; and

''(2) not later than March 15 of the year after the end of the last fiscal year in which such payments are made, a final report containing a summary of all activities carried out under this section, the evaluation required in subsection (e)(6)(D) of this section and any findings, conclusions, or recommendations for legislation drawn from the demonstration program.''

Subsec. (g). Pub. L. 102–550, § 832(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''To the extent provided in appropriations Acts, of the amounts made available for assistance under section 5303 of this title, $2,000,000 for fiscal year 1991 and $2,000,000 for fiscal year 1992 shall be available to carry out this section.''

Subsec. (h). Pub. L. 102–550, § 832(b)(7), added subsec. (h).

1990—Subsec. (g). Pub. L. 101–625 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''There are authorized to be appropriated to carry out this section $2,000,000 for fiscal year 1988, and $2,000,000 for fiscal year 1989.''

1988—Subsec. (e)(3). Pub. L. 100–242, § 525, substituted ''under this section'' for ''under this Act''.

Subsec. (g). Pub. L. 100–242, § 521, amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''For purposes of carrying out this section, there are authorized to be appropriated not to exceed $2,000,000 for each of the fiscal years 1984 and 1985.''

1984—Subsec. (b)(3)(A), (B). Pub. L. 98–479, § 101(b)(2), substituted ''subsection (a)(1)'' for ''subsection (a)(4)'' wherever appearing.

Subsec. (c). Pub. L. 98–479, § 101(b)(3), struck out ''(1)'' before ''The Secretary shall award'' and redesignated subpars. (A) to (D) as pars. (1) to (4), respectively.

§ 5319. Community participation in programs

No community shall be barred from participating in any program authorized under this chapter solely on the basis of population, except as expressly authorized by statute.

(Pub. L. 93–383, title I, § 120, as added Pub. L. 95–557, title I, § 103(i), Oct. 31, 1978, 92 Stat. 2084.)

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 104 of Pub. L. 95–557, set out as an Effective Date of 1978 Amendment note under section 1709 of Title 12, Banks and Banking.

§ 5320. Historic preservation requirements

(a) Regulations

With respect to applications for assistance under section 5318 of this title, the Secretary of the Interior, after consulting with the Secretary, shall prescribe and implement regulations concerning projects funded under section 5318 of this title and their relationship with—

(1) ''An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes'', approved October 14, 1966, as amended [16 U.S.C. 470 et seq.]; and

(2) ''An Act to provide for the preservation of historical and archaeological data (including relics and specimens) which might otherwise be lost as a result of the construction of a dam'', approved June 27, 1960, as amended [16 U.S.C. 469 to 469c–1].

(b) Actions by State historic preservation officer and Secretary of the Interior

In prescribing and implementing such regulations with respect to applications submitted under section 5318 of this title which identify any property pursuant to subsection (c)(4)(B) of such section, the Secretary of the Interior shall provide at least that—

(1) the appropriate State historic preservation officer (as determined in accordance with regulations prescribed by the Secretary of the Interior) shall, not later than 45 days after receiving information from the applicant relating to the identification of properties which will be affected by the project for which the application is made and which may meet the criteria established by the Secretary of the Interior for inclusion on the National Register of Historic Places (together with documentation relating to such inclusion), submit his or her comments, together with such other information considered necessary by the officer, to the applicant concerning such properties; and

(2) the Secretary of the Interior shall, not later than 45 days after receiving from the applicant the information described in paragraph (1) and the comments submitted to the applicant in accordance with paragraph (1), make a determination as to whether any of the properties affected by the project for which the application is made is eligible for inclusion on the National Register of Historic Places.

(c) Regulations by Advisory Council on Historic Preservation providing for expeditious action

The Advisory Council on Historic Preservation shall prescribe regulations providing for expeditious action by the Council in making its comments under section 106 of the Act [16 U.S.C. 470f] referred to in subsection (a)(1) in the case of properties which are included on, or eligible for inclusion on, the National Register of Historic Places and which are affected by a project for which an application is made under section 5318 of this title.

(Pub. L. 93–383, title I, § 121, as added Pub. L. 96–399, title I, § 110(c), Oct. 8, 1980, 94 Stat. 1620; amended Pub. L. 97–35, title III, § 308(b), Aug. 13, 1981, 95 Stat. 396.)

REFERENCES IN TEXT

''An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes'', approved October 14, 1966, as amended, referred to in subsec. (a)(1), probably means Pub. L. 89–665, Oct. 15, 1966, 80 Stat. 915, as amended, known as the National Historic Preservation Act, which is classified generally to subchapter II (§ 470 et seq.) of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code see section 470(a) of Title 16 and Tables.

''An Act to provide for the preservation of historical and archaeological data (including relics and specimens) which might otherwise be lost as a result of the construction of a dam'', approved June 27, 1960, as

amended, referred to in subsec. (a)(2), is Pub. L. 86–523, June 27, 1960, 74 Stat. 220, as amended, which enacted sections 469 to 469c–1 of Title 16. For complete classification of this Act, see Tables.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–35 substituted ''subsection (c)(4)(B)'' for ''subsection (c)(7)(B)''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective on effective date of regulations implementing such amendments, see section 308(c) of Pub. L. 97–35, set out as a note under section 5318 of this title.

§ 5321. Suspension of requirements for disaster areas

For funds designated under this chapter by a recipient to address the damage in an area for which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170 et seq.], the Secretary may suspend all requirements for purposes of assistance under section 5306 of this title for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and requirements that activities benefit persons of low- and moderate-income.

(Pub. L. 93–383, title I, § 122, as added Pub. L. 103–233, title II, § 234, Apr. 11, 1994, 108 Stat. 369.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended. Title IV of the Act is classified generally to subchapter IV (§ 5170 et seq.) of chapter 68 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

EFFECTIVE DATE

Section applicable with respect to any amounts made available to carry out subchapter II (§ 12721 et seq.) of chapter 130 of this title after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out this section not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as an Effective Date of 1994 Amendment note under section 5301 of this title.

CHAPTER 70—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

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§ 5401. Findings and purposes

(a) Findings

Congress finds that—

(1) manufactured housing plays a vital role in meeting the housing needs of the Nation; and

(2) manufactured homes provide a significant resource for affordable homeownership and rental housing accessible to all Americans.

(b) Purposes

The purposes of this chapter are—

(1) to protect the quality, durability, safety, and affordability of manufactured homes;

(2) to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans;

(3) to provide for the establishment of practical, uniform, and, to the extent possible, performance-based Federal construction standards for manufactured homes;

(4) to encourage innovative and cost-effective construction techniques for manufactured homes;

(5) to protect residents of manufactured homes with respect to personal injuries and the amount of insurance costs and property damages in manufactured housing, consistent with the other purposes of this section;

(6) to establish a balanced consensus process for the development, revision, and interpretation of Federal construction and safety standards for manufactured homes and related regulations for the enforcement of such standards;

(7) to ensure uniform and effective enforcement of Federal construction and safety standards for manufactured homes; and

(8) to ensure that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to the Federal standards and their enforcement.

(Pub. L. 93–383, title VI, § 602, Aug. 22, 1974, 88 Stat. 700; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97–35, title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106–569, title VI, § 602, Dec. 27, 2000, 114 Stat. 2997.)

AMENDMENTS

2000—Pub. L. 106–569 amended section catchline and text generally. Prior to amendment, text read as follows: ''The Congress declares that the purposes of this chapter are to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents and to improve the quality and durability of manufactured homes. Therefore, the Congress determines that it is necessary to establish Federal construction and safety standards for manufactured homes and to authorize manufactured home safety research and development.''

1980—Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home'' wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–569, title VI, § 612, Dec. 27, 2000, 114 Stat. 3012, provided that: ''The amendments made by this title [see Short Title of 2000 Amendment note below] shall take effect on the date of the enactment of this Act [Dec. 27, 2000], except that the amendments shall have no effect on any order or interpretative bulletin that is issued under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.) and published as a proposed rule pursuant to section 553 of title 5, United States Code, on or before that date of the enactment.''

EFFECTIVE DATE

Pub. L. 93–383, title VI, § 627, formerly § 628, Aug. 22, 1974, 88 Stat. 714, renumbered § 627, Pub. L. 106–569, title VI, § 611(2), Dec. 27, 2000, 114 Stat. 3012, provided that: ''The provisions of this title [enacting this chapter and provisions set out as a note under this section] shall take effect upon the expiration of 180 days following the date of enactment of this title [Aug. 22, 1974].''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–569, title VI, § 601(a), Dec. 27, 2000, 114 Stat. 2997, provided that: ''This title [amending this section and sections 5402 to 5404, 5406, 5407, 5409, 5412 to 5415, 5419, 5422, and 5426 of this title, repealing section 5425 of this title, and enacting and amending provisions set out as notes under this section] may be cited as the 'Manufactured Housing Improvement Act of 2000'.''

SHORT TITLE

Section 601 of title VI of Pub. L. 93–383, as amended by Pub. L. 96–399, title III, § 308(c)(5), Oct. 8, 1980, 94 Stat. 1641, provided that: ''This title [enacting this chapter and provisions set out as a note under this section] may be cited as the 'National Manufactured Housing Construction and Safety Standards Act of 1974'.''

SAVINGS PROVISIONS

Pub. L. 106–569, title VI, § 613, Dec. 27, 2000, 114 Stat. 3012, provided that:

''(a) STANDARDS AND REGULATIONS.—The Federal manufactured home construction and safety standards (as such term is defined in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 [42 U.S.C. 5402]) and all regulations pertaining thereto in effect on the day before the date of the enactment of this Act [Dec. 27, 2000] shall apply until the effective date of a standard or regulation modifying or superseding the existing standard or regulation that is promulgated under subsection (a) or (b) of section 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by this title [42 U.S.C. 5403(a), (b)].

''(b) CONTRACTS.—Any contract awarded pursuant to a Request for Proposal issued before the date of the enactment of this Act [Dec. 27, 2000] shall remain in effect until the earlier of—

''(1) the expiration of the 2-year period beginning on the date of the enactment of this Act; or

''(2) the expiration of the contract term.''

§ 5402. Definitions

As used in this chapter, the term—

(1) ''manufactured home construction'' means all activities relating to the assembly and manufacture of a manufactured home including but not limited to those relating to durability, quality, and safety;

(2) ''retailer'' means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale;

(3) ''defect'' includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended;

(4) ''distributor'' means any person engaged in the sale and distribution of manufactured homes for resale;

(5) ''manufacturer'' means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale;

(6) ''manufactured home'' means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle;

(7) ''Federal manufactured home construction and safety standard'' means a reasonable standard for the construction, design, and performance of a manufactured home which meets the needs of the public including the need for quality, durability, and safety;

(8) ''manufactured home safety'' means the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such manufactured home, or any unreasonable risk of death or injury to the user or to the public if such accidents do occur;

(9) ''imminent safety hazard'' means an imminent and unreasonable risk of death or severe personal injury;

(10) ''purchaser'' means the first person purchasing a manufactured home in good faith for purposes other than resale;

(11) ''Secretary'' means the Secretary of Housing and Urban Development;

(12) ''State'' includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa;

(13) ''United States district courts'' means the Federal district courts of the United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa;

(14) ''administering organization'' means the recognized, voluntary, private sector, consensus standards body with specific experience in developing model residential building codes and standards involving all disciplines regarding construction and safety that administers the consensus standards through a development process;

(15) ''consensus committee'' means the committee established under section 5403(a)(3) of this title;

(16) ''consensus standards development process'' means the process by which additions, revisions, and interpretations to the Federal manufactured home construction and safety standards and enforcement regulations shall be developed and recommended to the Secretary by the consensus committee;

(17) ''primary inspection agency'' means a State agency or private organization that has been approved by the Secretary to act as a design approval primary inspection agency or a production inspection primary inspection agency, or both;

(18) ''design approval primary inspection agency'' means a State agency or private organization that has been approved by the Secretary to evaluate and either approve or disapprove manufactured home designs and quality control procedures;

(19) ''installation standards'' means reasonable specifications for the installation of a manufactured home, at the place of occupancy, to ensure proper siting, the joining of all sections of the home, and the installation of stabilization, support, or anchoring systems;

(20) ''monitoring'' means the process of periodic review of the primary inspection agencies, by the Secretary or by a State agency under an approved State plan pursuant to section 5422 of this title, in accordance with regulations promulgated under this chapter, giving due consideration to the recommendations of the consensus committee under section 5403(b) of this title, which process shall be for the purpose of ensuring that the primary inspection agencies are discharging their duties under this chapter; and

(21) ''production inspection primary inspection agency'' means a State agency or private organization that has been approved by the Secretary to evaluate the ability of manufactured home manufacturing plants to comply with approved quality control procedures and with the Federal manufactured home construction and safety standards promulgated hereunder, including the inspection of homes in the plant.

(Pub. L. 93–383, title VI, § 603, Aug. 22, 1974, 88 Stat. 700; Pub. L. 96–399, title III, § 308(c)(4), (d), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97–35, title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 105–276, title V, § 599A(a), Oct. 21, 1998, 112 Stat. 2660; Pub. L. 106–569, title VI, § 603(a), Dec. 27, 2000, 114 Stat. 2998.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in pars. (12) and (13), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

References to ''mobile homes'', wherever appearing in text, changed to ''manufactured homes'' in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96–399 requiring the substitution of ''manufactured home'' for ''mobile home'' wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97–35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms ''mobile home'' and ''manufactured home'' shall be deemed to include the terms ''mobile homes'' and ''manufactured homes'', respectively.

AMENDMENTS

2000—Par. (2). Pub. L. 106–569, § 603(a)(1), substituted ''retailer'' for ''dealer''.

Pars. (14) to (21). Pub. L. 106–569, § 603(a)(2)–(4), added pars. (14) to (21).

1998—Par. (6). Pub. L. 105–276 inserted before semicolon at end ''; and except that such term shall not include any self-propelled recreational vehicle''.

1980—Pars. (1), (2), (3). Pub. L. 96–399, § 308(c)(4), substituted ''manufactured home'' for ''mobile home'' wherever appearing.

Par. (6). Pub. L. 96–399, § 308(c)(4), (d), substituted ''manufactured home'' for ''mobile home'', substituted ''in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet'' for ''is eight body feet or more in width and is thirty-two body feet or more in length'', and inserted exception relating to inclusion of any structure meeting all requirements of this paragraph except size and with respect to which a certification is voluntarily filed and standards complied with.

Pars. (7), (8), (10). Pub. L. 96–399, § 308(c)(4), substituted ''manufactured home'' for ''mobile home'' wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 599A(b), Oct. 21, 1998, 112 Stat. 2660, provided that: ''The amendment made by this section [amending this section] is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

§ 5403. Construction and safety standards

(a) Establishment

(1) Authority

The Secretary shall establish, by order, appropriate Federal manufactured home construction and safety standards, each of which—

(A) shall—

(i) be reasonable and practical;

(ii) meet high standards of protection consistent with the purposes of this chapter; and

(iii) be performance-based and objectively stated, unless clearly inappropriate; and

(B) except as provided in subsection (b) of this section, shall be established in accordance with the consensus standards development process.

(2) Consensus standards and regulatory development process

(A) Initial agreement

Not later than 180 days after December 27, 2000, the Secretary shall enter into a contract with an administering organization. The contractual agreement shall—

(i) terminate on the date on which a contract is entered into under subparagraph (B); and

(ii) require the administering organization to—

(I) recommend the initial members of the consensus committee under paragraph (3);

(II) administer the consensus standards development process until the termination of that agreement; and

(III) administer the consensus development and interpretation process for procedural and enforcement regulations and regulations specifying the permissible scope and conduct of monitoring until the termination of that agreement.

(B) Competitively procured contract

Upon the expiration of the 4-year period beginning on the date on which all members of the consensus committee are appointed under paragraph (3), the Secretary shall, using competitive procedures (as such term is defined in section 403 of title 41), enter into a competitively awarded contract with an administering organization. The administering organization shall administer the consensus process for the development and interpretation of the Federal standards, the procedural and enforcement regulations, and regulations specifying the permissible scope and conduct of monitoring, in accordance with this chapter.

(C) Performance review

The Secretary—

(i) shall periodically review the performance of the administering organization; and

(ii) may replace the administering organization with another qualified technical or building code organization, pursuant to competitive procedures, if the Secretary determines in writing that the administering organization is not fulfilling the terms of the agreement or contract to which the administering organization is subject or upon the expiration of the agreement or contract.

(3) Consensus committee

(A) Purpose

There is established a committee to be known as the ''consensus committee'', which shall, in accordance with this chapter—

(i) provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;

(ii) provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b) of this section;

(iii) be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation; and

(iv) be deemed to be an advisory committee not composed of Federal employees.

(B) Membership

The consensus committee shall be composed of—

(i) twenty-one voting members appointed by the Secretary, after consideration of the recommendations of the administering organization, from among individuals who are qualified by background and experience to participate in the work of the consensus committee; and

(ii) one nonvoting member appointed by the Secretary to represent the Secretary on the consensus committee.

(C) Disapproval

The Secretary shall state, in writing, the reasons for failing to appoint any individual recommended under paragraph (2)(A)(ii)(I).

(D) Selection procedures and requirements

Each member of the consensus committee shall be appointed in accordance with selection procedures, which shall be based on the procedures for consensus committees promulgated by the American National Standards Institute (or successor organization), except that the American National Standards Institute interest categories shall be modified for purposes of this paragraph to ensure equal representation on the consensus committee of the following interest categories:

(i) Producers

Seven producers or retailers of manufactured housing.

(ii) Users

Seven persons representing consumer interests, such as consumer organizations, recognized consumer leaders, and owners who are residents of manufactured homes.

(iii) General interest and public officials

Seven general interest and public official members.

(E) Balancing of interests

(i) In general

In order to achieve a proper balance of interests on the consensus committee, the Secretary, in appointing the members of the consensus committee—

(I) shall ensure that all directly and materially affected interests have the opportunity for fair and equitable participation without dominance by any single interest; and

(II) may reject the appointment of any one or more individuals in order to ensure that there is not dominance by any single interest.

(ii) Dominance defined

In this subparagraph, the term ''dominance'' means a position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength, or representation.

(F) Additional qualifications

(i) Financial independence

No individual appointed under subparagraph (D)(ii) shall have, and three of the individuals appointed under subparagraph (D)(iii) shall not have—

(I) a significant financial interest in any segment of the manufactured housing industry; or

(II) a significant relationship to any person engaged in the manufactured housing industry.

(ii) Post-employment ban

Each individual described in clause (i) shall be subject to a ban disallowing compensation from the manufactured housing industry during the period of, and during the 1-year following, the membership of the individual on the consensus committee.

(G) Meetings

(i) Notice; open to public

The consensus committee shall provide advance notice of each meeting of the consensus committee to the Secretary and cause to be published in the Federal Register advance notice of each such meeting. All meetings of the consensus committee shall be open to the public.

(ii) Reimbursement

Members of the consensus committee in attendance at meetings of the consensus committee shall be reimbursed for their actual expenses as authorized by section 5703 of title 5 for persons employed intermittently in Government service.

(H) Administration

The consensus committee and the administering organization shall—

(i) operate in conformance with the procedures established by the American National Standards Institute for the development and coordination of American National Standards; and

(ii) apply to the American National Standards Institute and take such other actions as may be necessary to obtain accreditation from the American National Standards Institute.

(I) Staff and technical support

The administering organization shall, upon the request of the consensus committee—

(i) provide reasonable staff resources to the consensus committee; and

(ii) furnish technical support in a timely manner to any of the interest categories described in subparagraph (D) represented on the consensus committee, if—

(I) the support is necessary to ensure the informed participation of the consensus committee members; and

(II) the costs of providing the support are reasonable.

(J) Date of initial appointments

The initial appointments of all the members of the consensus committee shall be completed not later than 90 days after the date on which a contractual agreement under paragraph (2)(A) is entered into with the administering organization.

(4) Revisions of standards

(A) In general

Beginning on the date on which all members of the consensus committee are appointed under paragraph (3), the consensus committee shall, not less than once during each 2-year period—

(i) consider revisions to the Federal manufactured home construction and safety standards; and

(ii) submit proposed revised standards, if approved in a vote of the consensus committee by two-thirds of the members, to the Secretary in the form of a proposed rule, including an economic analysis.

(B) Publication of proposed revised standards

(i) Publication by the Secretary

The consensus committee shall provide a proposed revised standard under subparagraph (A)(ii) to the Secretary who shall, not later than 30 days after receipt, cause such proposed revised standard to be published in the Federal Register for notice and comment in accordance with section 553 of title 5. Unless clause (ii) applies, the Secretary shall provide an opportunity for public comment on such proposed revised standard in accordance with such section 553 and any such comments shall be submitted directly to the consensus committee, without delay.

(ii) Publication of rejected proposed revised standards

If the Secretary rejects the proposed revised standard, the Secretary shall cause to be published in the Federal Register the rejected proposed revised standard, the reasons for rejection, and any recommended modifications set forth.

(C) Presentation of public comments; publication of recommended revisions

(i) Presentation

Any public comments, views, and objections to a proposed revised standard published under subparagraph (B) shall be presented by the Secretary to the consensus committee upon their receipt and in the manner received, in accordance with procedures established by the American National Standards Institute.

(ii) Publication by the Secretary

The consensus committee shall provide to the Secretary any revision proposed by the consensus committee, which the Secretary shall, not later than 30 calendar days after receipt, cause to be published in the Federal Register a notice of the recommended revisions of the consensus committee to the standards, a notice of the submission of the recommended revisions to the Secretary, and a description of the circumstances under which the proposed revised standards could become effective.

(iii) Publication of rejected proposed revised standards

If the Secretary rejects the proposed revised standard, the Secretary shall cause to be published in the Federal Register the rejected proposed revised standard, the reasons for rejection, and any recommended modifications set forth.

(5) Review by the Secretary

(A) In general

The Secretary shall either adopt, modify, or reject a standard, as submitted by the consensus committee under paragraph (4)(A).

(B) Timing

Not later than 12 months after the date on which a standard is submitted to the Secretary by the consensus committee, the Secretary shall take action regarding such standard under subparagraph (C).

(C) Procedures

If the Secretary—

(i) adopts a standard recommended by the consensus committee, the Secretary shall—

(I) issue a final order without further rulemaking; and

(II) cause the final order to be published in the Federal Register;

(ii) determines that any standard should be rejected, the Secretary shall—

(I) reject the standard; and

(II) cause to be published in the Federal Register a notice to that effect, together with the reason or reasons for rejecting the proposed standard; or

(iii) determines that a standard recommended by the consensus committee should be modified, the Secretary shall—

(I) cause to be published in the Federal Register the proposed modified standard, together with an explanation of the reason or reasons for the determination of the Secretary; and

(II) provide an opportunity for public comment in accordance with section 553 of title 5.

(D) Final order

Any final standard under this paragraph shall become effective pursuant to subsection (c) of this section.

(6) Failure to act

If the Secretary fails to take final action under paragraph (5) and to cause notice of the action to be published in the Federal Register before the expiration of the 12-month period beginning on the date on which the proposed revised standard is submitted to the Secretary under paragraph (4)(A)—

(A) the Secretary shall appear in person before the appropriate housing and appropriations subcommittees and committees of the House of Representatives and the Senate (referred to in this paragraph as the ''committees'') on a date or dates to be specified by the committees, but in no event later than 30 days after the expiration of that 12-month period, and shall state before the committees the reasons for failing to take final action as required under paragraph (5); and

(B) if the Secretary does not appear in person as required under subparagraph (A), the Secretary shall thereafter, and until such time as the Secretary does appear as required under subparagraph (A), be prohibited from expending any funds collected under authority of this title in an amount greater than that collected and expended in the fiscal year immediately preceding December 27, 2000, indexed for inflation as determined by the Congressional Budget Office.

(b) Other orders

(1) Regulations

The Secretary may issue procedural and enforcement regulations and revisions to existing regulations as necessary to implement the provisions of this chapter. The consensus committee may submit to the Secretary proposed procedural and enforcement regulations and recommendations for the revision of such regulations.

(2) Interpretative bulletins

The Secretary may issue interpretative bulletins to clarify the meaning of any Federal manufactured home construction and safety standard or procedural and enforcement regulation. The consensus committee may submit to the Secretary proposed interpretative bulletins to clarify the meaning of any Federal manufactured home construction and safety standard or procedural and enforcement regulation.

(3) Review by consensus committee

Before issuing a procedural or enforcement regulation or an interpretative bulletin—

(A) the Secretary shall—

(i) submit the proposed procedural or enforcement regulation or interpretative bulletin to the consensus committee; and

(ii) provide the consensus committee with a period of 120 days to submit written comments to the Secretary on the proposed procedural or enforcement regulation or the interpretative bulletin; and

(B) if the Secretary rejects any significant comment provided by the consensus committee under subparagraph (A), the Secretary shall provide a written explanation of the reasons for the rejection to the consensus committee; and

(C) following compliance with subparagraphs (A) and (B), the Secretary shall—

(i) cause the proposed regulation or interpretative bulletin and the consensus committee's written comments, along with the Secretary's response thereto, to be published in the Federal Register; and

(ii) provide an opportunity for public comment in accordance with section 553 of title 5.

(4) Required action

Not later than 120 days after the date on which the Secretary receives a proposed regulation or interpretative bulletin submitted by the consensus committee, the Secretary shall—

(A) approve the proposal and cause the proposed regulation or interpretative bulletin to be published for public comment in accordance with section 553 of title 5; or

(B) reject the proposed regulation or interpretative bulletin and—

(i) provide to the consensus committee a written explanation of the reasons for rejection; and

(ii) cause to be published in the Federal Register the rejected proposed regulation or interpretive bulletin, the reasons for rejection, and any recommended modifications set forth.

(5) Authority to act and emergency

If the Secretary determines, in writing, that such action is necessary to address an issue on which the Secretary determines that the consensus committee has not made a timely recommendation following a request by the Secretary, or in order to respond to an emergency that jeopardizes the public health or safety, the Secretary may issue an order that is not developed under the procedures set forth in subsection (a) of this section or in this subsection, if the Secretary—

(A) provides to the consensus committee a written description and sets forth the reasons why action is necessary and all supporting documentation; and

(B) issues the order after notice and an opportunity for public comment in accordance with section 553 of title 5, and causes the order to be published in the Federal Register.

(6) Changes

Any statement of policies, practices, or procedures relating to construction and safety standards, regulations, inspections, monitoring, or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary is subject to subsection (a) of this section or this subsection. Any change adopted in violation of subsection (a) of this section or this subsection is void.

(7) Transition

Until the date on which the consensus committee is appointed pursuant to subsection (a)(3) of this section, the Secretary may issue proposed orders, pursuant to notice and comment in accordance with section 553 of title 5 that are not developed under the procedures set forth in this section for new and revised standards.

(c) Effective date of orders establishing standards

Each order establishing a Federal manufactured home construction and safety standard shall specify the date such standard is to take effect, which shall not be sooner than one hundred and eighty days or later than one year after the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(d) Supremacy of Federal standards

Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding the construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard. Federal preemption under this subsection shall be broadly and liberally construed to ensure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the Federal superintendence of the manufactured housing industry as established by this chapter. Subject to section 5404 of this title, there is reserved to each State the right to establish standards for the stabilizing and support systems of manufactured homes sited within that State, and for the foundations on which manufactured homes sited within that State are installed, and the right to enforce compliance with such standards, except that such standards shall be consistent with the purposes of this chapter and shall be consistent with the design of the manufacturer.

(e) Considerations in establishing and interpreting standards and regulations

The consensus committee, in recommending standards, regulations, and interpretations, and the Secretary, in establishing standards or regulations or issuing interpretations under this section, shall—

(1) consider relevant available manufactured home construction and safety data, including the results of the research, development, testing, and evaluation activities conducted pursuant to this chapter, and those activities conducted by private organizations and other gov-

ernmental agencies to determine how to best protect the public;

(2) consult with such State or interstate agencies (including legislative committees) as he deems appropriate;

(3) consider whether any such proposed standard is reasonable for the particular type of manufactured home or for the geographic region for which it is prescribed;

(4) consider the probable effect of such standard on the cost of the manufactured home to the public; and

(5) consider the extent to which any such standard will contribute to carrying out the purposes of this chapter.

(f) Coverage; exclusion

The Secretary shall exclude from the coverage of this chapter any structure which the manufacturer certifies, in a form prescribed by the Secretary, to be:

(1) designed only for erection or installation on a site-built permanent foundation;

(2) not designed to be moved once so erected or installed;

(3) designed and manufactured to comply with a nationally recognized model building code or an equivalent local code, or with a State or local modular building code recognized as generally equivalent to building codes for site-built housing, or with minimum property standards adopted by the Secretary pursuant to title II of the National Housing Act [12 U.S.C. 1707 et seq.]; and

(4) to the manufacturer's knowledge is not intended to be used other than on a site-built permanent foundation.

(g) Manufactured housing construction and safety standards

(1) The Federal manufactured home construction and safety standards established by the Secretary under this section shall include preemptive energy conservation standards in accordance with this subsection.

(2) The energy conservation standards established under this subsection shall be cost-effective energy conservation performance standards designed to ensure the lowest total of construction and operating costs.

(3) The energy conservation standards established under this subsection shall take into consideration the design and factory construction techniques of manufactured homes and shall provide for alternative practices that result in net estimated energy consumption equal to or less than the specified standards.

(h) New performance standards for hardboard siding

The Secretary shall develop a new standard for hardboard panel siding on manufactured housing taking into account durability, longevity, consumer's costs for maintenance and any other relevant information pursuant to subsection (e) of this section. The Secretary shall consult with the National Manufactured Home Advisory Council and the National Commission on Manufactured Housing in establishing the new standard. The new performance standard developed shall ensure the durability of hardboard sidings for at least a normal life of a mortgage with minimum maintenance required. Not later than 180 days from October 28, 1992, the Secretary shall update the standards for hardboard siding.

(Pub. L. 93–383, title VI, § 604, Aug. 22, 1974, 88 Stat. 701; Pub. L. 95–128, title IX, § 902(a), Oct. 12, 1977, 91 Stat. 1149; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 98–479, title II, § 204(*l*), Oct. 17, 1984, 98 Stat. 2233; Pub. L. 100–242, title V, § 568, Feb. 5, 1988, 101 Stat. 1948; Pub. L. 102–550, title IX, § 907, Oct. 28, 1992, 106 Stat. 3873; Pub. L. 106–569, title VI, § 604, Dec. 27, 2000, 114 Stat. 2999.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (f)(3), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the National Housing Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–569, § 604(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''The Secretary, after consultation with the Consumer Product Safety Commission, shall establish by order appropriate Federal manufactured home construction and safety standards. Each such Federal manufactured home standard shall be reasonable and shall meet the highest standards of protection, taking into account existing State and local laws relating to manufactured home safety and construction.''

Subsec. (b). Pub. L. 106–569, § 604(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''All orders issued under this section shall be issued after notice and an opportunity for interested persons to participate are provided in accordance with the provisions of section 553 of title 5.''

Subsec. (d). Pub. L. 106–569, § 604(2), inserted at end ''Federal preemption under this subsection shall be broadly and liberally construed to ensure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the Federal superintendence of the manufactured housing industry as established by this chapter. Subject to section 5404 of this title, there is reserved to each State the right to establish standards for the stabilizing and support systems of manufactured homes sited within that State, and for the foundations on which manufactured homes sited within that State are installed, and the right to enforce compliance with such standards, except that such standards shall be consistent with the purposes of this chapter and shall be consistent with the design of the manufacturer.''

Subsec. (e). Pub. L. 106–569, § 604(3), (4), redesignated subsec. (f) as (e), inserted heading, substituted ''The consensus committee, in recommending standards, regulations, and interpretations, and the Secretary, in establishing standards or regulations or issuing interpretations under this section, shall—'' for ''In establishing standards under this section, the Secretary shall—'' in introductory provisions, and struck out former subsec. (e) which read as follows: ''The Secretary may by order amend or revoke any Federal manufactured home construction or safety standard established under this section. Such order shall specify the date on which such amendment or revocation is to take effect, which shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later date is in the public interest, and publishes his reasons for such finding.''

Subsec. (f). Pub. L. 106–569, § 604(7), redesignated subsec. (h) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 106–569, § 604(5), (7), redesignated subsec. (i) as (g) and struck out former subsec. (g) which read as follows: ''The Secretary shall issue an order establishing initial Federal manufactured home construction and safety standards not later than one year after August 22, 1974.''

Subsec. (h). Pub. L. 106–569, § 604(7), redesignated subsec. (j) as (h). Former subsec. (h) redesignated (f).

Subsec. (i). Pub. L. 106–569, § 604(7), redesignated subsec. (i) as (g).

Subsec. (j). Pub. L. 106–569, § 604(6), (7), substituted ''subsection (e) of this section'' for ''subsection (f) of this section'' and redesignated subsec. (j) as (h).

1992—Subsec. (j). Pub. L. 102–550 added subsec. (j).

1988—Subsec. (i). Pub. L. 100–242 added subsec. (i).

1984—Subsec. (e). Pub. L. 98–479 substituted ''that'' for ''than'' before ''an earlier or later date''.

1980—Subsecs. (a), (c) to (g). Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home'' wherever appearing.

1977—Subsec. (h). Pub. L. 95–128 added subsec. (h).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

EXCEPTION TO FEDERAL PREEMPTION FOR THERMAL INSULATION AND ENERGY EFFICIENCY STANDARDS

Pub. L. 102–486, title I, § 104(c), Oct. 24, 1992, 106 Stat. 2792, provided that: ''If the Secretary of Housing and Urban Development has not issued, within 1 year after the date of the enactment of this Act [Oct. 24, 1992], final regulations pursuant to section 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5403) that establish thermal insulation and energy efficiency standards for manufactured housing that take effect before January 1, 1995, then States may establish thermal insulation and energy efficiency standards for manufactured housing if such standards are at least as stringent as thermal performance standards for manufactured housing contained in the Second Public Review Draft of BSR/ASHRAE 90.2P entitled 'Energy Efficient Design of Low-Rise Residential Buildings' and all public reviews of Independent Substantive Changes to such document that have been approved on or before the date of the enactment of this Act.''

§ 5404. Manufactured home installation

(a) Provision of installation design and instructions

A manufacturer shall provide with each manufactured home, design and instructions for the installation of the manufactured home that have been approved by a design approval primary inspection agency. After establishment of model standards under subsection (b)(2) of this section, a design approval primary inspection agency may not give such approval unless a design and instruction provides equal or greater protection than the protection provided under such model standards.

(b) Model manufactured home installation standards

(1) Proposed model standards

Not later than 18 months after the date on which the initial appointments of all the members of the consensus committee are completed, the consensus committee shall develop and submit to the Secretary proposed model manufactured home installation standards, which shall, to the maximum extent practicable, taking into account the factors described in section 5403(e) of this title, be consistent with—

(A) the manufactured home designs that have been approved by a design approval primary inspection agency; and

(B) the designs and instructions for the installation of manufactured homes provided by manufacturers under subsection (a) of this section.

(2) Establishment of model standards

Not later than 12 months after receiving the proposed model standards submitted under paragraph (1), the Secretary shall develop and establish model manufactured home installation standards, which shall, to the maximum extent practicable, taking into account the factors described in section 5403(e) of this title, be consistent with—

(A) the manufactured home designs that have been approved by a design approval primary inspection agency; and

(B) the designs and instructions for the installation of manufactured homes provided by manufacturers under subsection (a) of this section.

(3) Factors for consideration

(A) Consensus committee

In developing the proposed model standards under paragraph (1), the consensus committee shall consider the factors described in section 5403(e) of this title.

(B) Secretary

In developing and establishing the model standards under paragraph (2), the Secretary shall consider the factors described in section 5403(e) of this title.

(4) Issuance

The model manufactured home installation standards shall be issued after notice and an opportunity for public comment in accordance with section 553 of title 5.

(c) Manufactured home installation programs

(1) Protection of manufactured housing residents during initial period

During the 5-year period beginning on December 27, 2000, no State or manufacturer may establish or implement any installation standards that, in the determination of the Secretary, provide less protection to the residents of manufactured homes than the protection provided by the installation standards in effect with respect to the State or manufacturer, as applicable, on December 27, 2000.

(2) Installation standards

(A) Establishment of installation program

Not later than the expiration of the 5-year period described in paragraph (1), the Secretary shall establish an installation program that meets the requirements of paragraph (3) for the enforcement of installation standards in each State described in subparagraph (B) of this paragraph.

(B) Implementation of installation program

Beginning on the expiration of the 5-year period described in paragraph (1), the Sec-

retary shall implement the installation program established under subparagraph (A) in each State that does not have an installation program established by State law that meets the requirements of paragraph (3).

(C) Contracting out of implementation

In carrying out subparagraph (B), the Secretary may contract with an appropriate agent to implement the installation program established under that subparagraph, except that such agent shall not be a person or entity other than a government, nor an affiliate or subsidiary of such a person or entity, that has entered into a contract with the Secretary to implement any other regulatory program under this chapter.

(3) Requirements

An installation program meets the requirements of this paragraph if it is a program regulating the installation of manufactured homes that includes—

(A) installation standards that, in the determination of the Secretary, provide protection to the residents of manufactured homes that equals or exceeds the protection provided to those residents by—

(i) the model manufactured home installation standards established by the Secretary under subsection (b)(2) of this section; or

(ii) the designs and instructions provided by manufacturers under subsection (a) of this section, if the Secretary determines that such designs and instructions provide protection to the residents of manufactured homes that equals or exceeds the protection provided by the model manufactured home installation standards established by the Secretary under subsection (b)(2) of this section;

(B) the training and licensing of manufactured home installers; and

(C) inspection of the installation of manufactured homes.

(Pub. L. 93–383, title VI, § 605, Aug. 22, 1974, 88 Stat. 702; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 106–569, title VI, § 605(a), Dec. 27, 2000, 114 Stat. 3006.)

AMENDMENTS

2000—Pub. L. 106–569 amended section catchline and text generally, substituting provisions relating to manufactured home installation for provisions relating to National Manufactured Home Advisory Council.

1980—Subsecs. (a) to (c). Pub. L. 96–399 substituted ''Manufactured Home'' for ''Mobile Home'' and ''manufactured home'' for ''mobile home'' wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

§ 5405. Judicial review of orders establishing standards; petition; additional evidence before Secretary; certified copy of transcript

(a)(1) In a case of actual controversy as to the validity of any order under section 5403 of this title, any person who may be adversely affected by such order when it is effective may at any time prior to the sixtieth day after such order is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the order in accordance with the provisions of sections 701 through 706 of title 5, and to grant appropriate relief.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(b) A certified copy of the transcript of the record and proceedings under this section shall be furnished by the Secretary to any interested party at his request and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this chapter, irrespective of whether proceedings with respect to the order have previously been initiated or become final under subsection (a) of this section.

(Pub. L. 93–383, title VI, § 606, Aug. 22, 1974, 88 Stat. 702.)

§ 5406. Submission of cost or other information by manufacturer

(a) Purpose of submission; detail of information

Whenever any manufacturer is opposed to any action of the Secretary under section 5403 of this title or under any other provision of this chap-

ter on the grounds of increased cost or for other reasons, the manufacturer shall submit to the Secretary such cost and other information (in such detail as the Secretary may by rule or order prescribe) as may be necessary in order to properly evaluate the manufacturer's statement. The Secretary shall submit such cost and other information to the consensus committee for evaluation.

(b) Conditions upon availability to public of submitted information

Such information shall be available to the public unless the manufacturer establishes that it contains a trade secret or that disclosure of any portion of such information would put the manufacturer at a substantial competitive disadvantage. Notice of the availability of such information shall be published promptly in the Federal Register. If the Secretary determines that any portion of such information contains a trade secret or that the disclosure of any portion of such information would put the manufacturer at a substantial competitive disadvantage, such portion may be disclosed to the public only in such manner as to preserve the confidentiality of such trade secret or in such combined or summary form so as not to disclose the identity of any individual manufacturer, except that any such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this subsection shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

(c) "Cost information" defined

For purposes of this section, ''cost information'' means information with respect to alleged cost increases resulting from action by the Secretary, in such a form as to permit the public, the consensus committee, and the Secretary to make an informed judgment on the validity of the manufacturer's statements. Such term includes both the manufacturer's cost and the cost to retail purchasers.

(d) Power of Secretary to obtain or require submission of information under other provisions unaffected

Nothing in this section shall be construed to restrict the authority of the Secretary to obtain or require submission of information under any other provision of this chapter.

(Pub. L. 93–383, title VI, § 607, Aug. 22, 1974, 88 Stat. 703; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 106–569, title VI, § 606, Dec. 27, 2000, 114 Stat. 3009.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–569, § 606(1), inserted ''to the Secretary'' after ''manufacturer shall submit'' and inserted at end ''The Secretary shall submit such cost and other information to the consensus committee for evaluation.''

Subsec. (c). Pub. L. 106–569, § 606(3), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''If the Secretary proposes to establish, amend, or revoke a Federal manufactured home construction and safety standard under section 5403 of this title on the basis of information submitted pursuant to subsection (a) of this section, he shall publish a notice of such proposed action, together with the reasons therefor, in the Federal Register at least thirty days in advance of making a final determination, in order to allow interested parties an opportunity to comment.''

Subsec. (d). Pub. L. 106–569, § 606(3), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Pub. L. 106–569, § 606(2), inserted '', the consensus committee,'' after ''permit the public''.

Subsec. (e). Pub. L. 106–569, § 606(3), redesignated subsec. (e) as (d).

1980—Subsec. (c). Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

§ 5407. Research, testing, development, and training by Secretary

(a) Scope

The Secretary shall conduct research, testing, development, and training necessary to carry out the purposes of this chapter, including, but not limited to—

(1) collecting data from any source for the purpose of determining the relationship between manufactured home performance characteristics and (A) accidents involving manufactured homes, and (B) the occurrence of death, personal injury, or damage resulting from such accidents;

(2) procuring (by negotiation or otherwise) experimental and other manufactured homes for research and testing purposes;

(3) selling or otherwise disposing of test manufactured homes and reimbursing the proceeds of such sale or disposal into the current appropriation available for the purpose of carrying out this chapter;

(4) encouraging the government-sponsored housing entities to actively develop and implement secondary market securitization programs for the FHA manufactured home loans and those of other loan programs, as appropriate, thereby promoting the availability of affordable manufactured homes to increase homeownership for all people in the United States; and

(5) reviewing the programs for FHA manufactured home loans and developing any changes to such programs to promote the affordability of manufactured homes, including changes in loan terms, amortization periods, regulations, and procedures.

(b) Contracts and grants with States, interstate agencies, and independent institutions

The Secretary is authorized to conduct research, testing, development, and training as authorized to be carried out by subsection (a) of this section by contracting for or making grants for the conduct of such research, testing, development, and training to States, interstate agencies, and independent institutions.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) Government-sponsored housing entities

The term ''government-sponsored housing entities'' means the Government National Mortgage Association of the Department of Housing and Urban Development, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(2) FHA manufactured home loan

The term ''FHA manufactured home loan'' means a loan that—

(A) is insured under title I of the National Housing Act [12 U.S.C. 1702 et seq.] and is made for the purpose of financing alterations, repairs, or improvements on or in connection with an existing manufactured home, the purchase of a manufactured home, the purchase of a manufactured home and a lot on which to place the home, or the purchase only of a lot on which to place a manufactured home; or

(B) is otherwise insured under the National Housing Act [12 U.S.C. 1701 et seq.] and made for or in connection with a manufactured home.

(Pub. L. 93–383, title VI, § 608, Aug. 22, 1974, 88 Stat. 704; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97–35, title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106–569, title VI, § 607, Dec. 27, 2000, 114 Stat. 3009.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (c)(2), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. Title I of the Act is classified generally to subchapter I (§ 1702 et seq.) of chapter 13 of Title 12. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

CODIFICATION

References to ''mobile homes'', wherever appearing in subsec. (a)(1) to (3), changed to ''manufactured homes'' in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96–399 requiring the substitution of ''manufactured home'' for ''mobile home'' wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97–35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms ''mobile home'' and ''manufactured home'' shall be deemed to include the terms ''mobile homes'' and ''manufactured homes'', respectively.

AMENDMENTS

2000—Subsec. (a)(4), (5). Pub. L. 106–569, § 607(a), added pars. (4) and (5).

Subsec. (c). Pub. L. 106–569, § 607(b), added subsec. (c).

1980—Subsec. (a)(1). Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

§ 5408. Cooperation by Secretary with public and private agencies

The Secretary is authorized to advise, assist, and cooperate with other Federal agencies and with State and other interested public and private agencies, in the planning and development of—

(1) manufactured home construction and safety standards; and

(2) methods for inspecting and testing to determine compliance with manufactured home standards.

(Pub. L. 93–383, title VI, § 609, Aug. 22, 1974, 88 Stat. 704; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641.)

AMENDMENTS

1980—Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home'' in two places.

§ 5409. Prohibited acts; exemptions

(a) No person shall—

(1) make use of any means of transportation or communication affecting interstate or foreign commerce or the mails to manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any manufactured home which is manufactured on or after the effective date of any applicable Federal manufactured home construction and safety standard under this chapter and which does not comply with such standard, except as provided in subsection (b) of this section, where such manufacture, lease, sale, offer for sale or lease, introduction, delivery, or importation affects commerce;

(2) fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under section 5413 of this title;

(3) fail to furnish notification of any defect as required by section 5414 of this title;

(4) fail to issue a certification required by section 5415 of this title, or issue a certification to the effect that a manufactured home conforms to all applicable Federal manufactured home construction and safety standards, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect;

(5) fail to comply with a final order issued by the Secretary under this chapter;

(6) issue a certification pursuant to subsection (h) of section 5403 of this title, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect; or

(7) after the expiration of the period specified in section 5404(c)(2)(B) of this title, fail to comply with the requirements for the installation program required by section 5404 of this title in any State that has not adopted and implemented a State installation program.

(b)(1) Paragraph (1) of subsection (a) of this section shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any manufactured home after the first purchase of it in good faith for purposes other than resale.

(2) For purposes of section 5410 of this title, paragraph (1) of subsection (a) of this section shall not apply to any person who establishes that he did not have reason to know in the exer-

cise of due care that such manufactured home is not in conformity with applicable Federal manufactured home construction and safety standards, or to any person who, prior to such first purchase, holds a certificate issued by the manufacturer or importer of such manufactured home to the effect that such manufactured home conforms to all applicable Federal manufactured home construction and safety standards, unless such person knows that such manufactured home does not so conform.

(3) A manufactured home offered for importation in violation of paragraph (1) of subsection (a) of this section shall be refused admission into the United States under joint regulations issued by the Secretary of the Treasury and the Secretary, except that the Secretary of the Treasury and the Secretary may, by such regulations, provide for authorizing the importation of such manufactured home into the United States upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such manufactured home will be brought into conformity with any applicable Federal manufactured home construction or safety standard prescribed under this chapter, or will be exported from, or forfeited to, the United States.

(4) The Secretary of the Treasury and the Secretary may, by joint regulations, permit the importation of any manufactured home after the first purchase of it in good faith for purposes other than resale.

(5) Paragraph (1) of subsection (a) of this section shall not apply in the case of a manufactured home intended solely for export, and so labeled or tagged on the manufactured home itself and on the outside of the container, if any, in which it is to be exported.

(c) Compliance with any Federal manufactured home construction or safety standard issued under this chapter does not exempt any person from any liability under common law.

(Pub. L. 93–383, title VI, § 610, Aug. 22, 1974, 88 Stat. 704; Pub. L. 95–128, title IX, § 902(b), Oct. 12, 1977, 91 Stat. 1149; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 106–569, title VI, § 608, Dec. 27, 2000, 114 Stat. 3009.)

AMENDMENTS

2000—Subsec. (a)(7). Pub. L. 106–569 added par. (7).

1980—Subsecs. (a)(1), (4), (b)(1) to (5), (c). Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home'' wherever appearing.

1977—Subsec. (a)(6). Pub. L. 95–128 added par. (6).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

§ 5410. Civil and criminal penalties

(a) Whoever violates any provision of section 5409 of this title, or any regulation or final order issued thereunder, shall be liable to the United States for a civil penalty of not to exceed $1,000 for each such violation. Each violation of a provision of section 5409 of this title, or any regulation or order issued thereunder shall constitute, a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed $1,000,000 for any related series of violations occurring within one year from the date of the first violation.

(b) An individual or a director, officer, or agent of a corporation who knowingly and willfully violates section 5409 of this title in a manner which threatens the health or safety of any purchaser shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Pub. L. 93–383, title VI, § 611, Aug. 22, 1974, 88 Stat. 705; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home''.

§ 5411. Injunctive relief

(a) Jurisdiction; petition of United States attorney or Attorney General; notice by Secretary to affected persons to present views

The United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this chapter, or to restrain the sale, offer for sale, or the importation into the United States, of any manufactured home which is determined, prior to the first purchase of such manufactured home in good faith for purposes other than resale, not to conform to applicable Federal manufactured home construction and safety standards prescribed pursuant to this chapter or to contain a defect which constitutes an imminent safety hazard, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views and the failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(b) Criminal contempt proceedings; conduct of trial

In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this chapter, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Venue

Actions under subsection (a) of this section and section 5410 of this title may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in

such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

(d) Subpenas

In any action brought by the United States under subsection (a) of this section or section 5410 of this title, subpenas by the United States for witnesses who are required to attend at United States district court may run into any other district.

(e) Designation by manufacturer of agent for service of administrative and judicial processes, etc.; filing and amendment of designation; failure to make designation

It shall be the duty of every manufacturer offering a manufactured home for importation into the United States to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made for and on behalf of such manufacturer, and to file such designation with the Secretary, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made upon such manufacturer by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon such manufacturer, and in default of such designation of such agent, service of process or any notice, order, requirement, or decision in any proceeding before the Secretary or in any judicial proceeding pursuant to this chapter may be made by mailing such process, notice, order, requirement, or decision to the Secretary by registered or certified mail.

(Pub. L. 93–383, title VI, § 612, Aug. 22, 1974, 88 Stat. 705; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641.)

REFERENCES IN TEXT

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (a), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 42 of the Federal Rules of Criminal Procedure, referred to in subsec. (b), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1980—Subsecs. (a), (e). Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home'' wherever appearing.

§ 5412. Noncompliance with standards or defective nature of manufactured home; administrative or judicial determination; repurchase by manufacturer or repair by distributor or retailer; reimbursement of expenses, etc., by manufacturer; injunctive relief against manufacturer for failure to comply; jurisdiction and venue; damages; period of limitation

(a) If the Secretary or a court of appropriate jurisdiction determines that any manufactured home does not conform to applicable Federal manufactured home construction and safety standards, or that it contains a defect which constitutes an imminent safety hazard, after the sale of such manufactured home by a manufacturer to a distributor or a retailer and prior to the sale of such manufactured home by such distributor or retailer to a purchaser—

(1) the manufacturer shall immediately repurchase such manufactured home from such distributor or retailer at the price paid by such distributor or retailer, plus all transportation charges involved and a reasonable reimbursement of not less than 1 per centum per month of such price paid prorated from the date of receipt by certified mail of notice of such nonconformance to the date of repurchase by the manufacturer; or

(2) the manufacturer, at his own expense, shall immediately furnish the purchasing distributor or retailer the required conforming part or parts or equipment for installation by the distributor or retailer on or in such manufactured home, and for the installation involved the manufacturer shall reimburse such distributor or retailer for the reasonable value of such installation plus a reasonable reimbursement of not less than 1 per centum per month of the manufacturer's or distributor's selling price prorated from the date of receipt by certified mail of notice of such nonconformance to the date such vehicle is brought into conformance with applicable Federal standards, so long as the distributor or retailer proceeds with reasonable diligence with the installation after the required part or equipment is received.

The value of such reasonable reimbursements as specified in paragraphs (1) and (2) of this subsection shall be fixed by mutual agreement of the parties, or, failing such agreement, by the court pursuant to the provisions of subsection (b) of this section.

(b) If any manufacturer fails to comply with the requirements of subsection (a) of this section, then the distributor or retailer, as the case may be, to whom such manufactured home has been sold may bring an action seeking a court injunction compelling compliance with such requirements on the part of such manufacturer. Such action may be brought in any district court in the United States in the district in which such manufacturer resides, or is found, or has an agent, without regard to the amount in controversy, and the person bringing the action shall also be entitled to recover any damage sustained by him, as well as all court costs plus reasonable attorneys' fees. Any action brought pursuant to this section shall be forever barred unless commenced within three years after the cause of action shall have accrued.

(Pub. L. 93–383, title VI, § 613, Aug. 22, 1974, 88 Stat. 706; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 106–569, title VI, § 603(b)(1), Dec. 27, 2000, 114 Stat. 2999.)

AMENDMENTS

2000—Subsecs. (a), (b). Pub. L. 106–569 substituted ''retailer'' for ''dealer'' wherever appearing.

1980—Subsecs. (a), (b). Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home'' wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and

published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

§ 5413. Inspections and investigations for promulgation or enforcement of standards or execution of other duties

(a) Authority of Secretary; results furnished to Attorney General and Secretary of the Treasury for appropriate action

The Secretary is authorized to conduct such inspections and investigations as may be necessary to promulgate or enforce Federal manufactured home construction and safety standards established under this chapter or otherwise to carry out his duties under this chapter. He shall furnish the Attorney General and, when appropriate, the Secretary of the Treasury any information obtained indicating noncompliance with such standards for appropriate action.

(b) Designation by Secretary of persons to enter and inspect factories, etc.; presentation of credentials; reasonableness and scope of inspection

(1) For purposes of enforcement of this chapter, persons duly designated by the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized—

(A) to enter, at reasonable times and without advance notice, any factory, warehouse, or establishment in which manufactured homes are manufactured, stored, or held, for sale; and

(B) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, any such factory, warehouse, or establishment, and to inspect such books, papers, records, and documents as are set forth in subsection (c) of this section. Each such inspection shall be commenced and completed with reasonable promptness.

(2) The Secretary is authorized to contract with State and local governments and private inspection organizations to carry out his functions under this subsection.

(c) Powers of Secretary

For the purpose of carrying out the provisions of this chapter, the Secretary is authorized—

(1) to hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records, as the Secretary or such officer or employee deems advisable. Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States;

(2) to examine and copy any documentary evidence of any person having materials or information relevant to any function of the Secretary under this chapter;

(3) to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this chapter. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe;

(4) to request from any Federal agency any information he deems necessary to carry out his functions under this chapter, and each such agency is authorized and directed to cooperate with the Secretary and to furnish such information upon request made by the Secretary, and the head of any Federal agency is authorized to detail, on a reimbursable basis, any personnel of such agency to assist in carrying out the duties of the Secretary under this chapter; and

(5) to make available to the public any information which may indicate the existence of a defect which relates to manufactured home construction or safety or of the failure of a manufactured home to comply with applicable manufactured home construction and safety standards. The Secretary shall disclose so much of other information obtained under this subsection to the public as he determines will assist in carrying out this chapter; but he shall not (under the authority of this sentence) make available or disclosure to the public any information which contains or relates to a trade secret or any information the disclosure of which would put the person furnishing such information at a substantial competitive disadvantage, unless he determines that it is necessary to carry out the purpose of this chapter.

(d) Refusal to obey subpena or order of Secretary; order of compliance by district court; failure to obey order of compliance punishable as contempt

Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary issued under paragraph (1) or paragraph (3) of subsection (c) of this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Submission by manufacturer of building plans for manufactured homes; certification by manufacturer of conformity of building plans to standards

Each manufacturer of manufactured homes shall submit the building plans for every model of such manufactured homes to the Secretary or his designee for the purpose of inspection under this section. The manufacturer must certify that each such building plan meets the Federal construction and safety standards in force at that time before the model involved is produced.

(f) Records, reports and information from manufacturers, distributors and retailers of manufactured homes; inspection and examination of relevant books, papers, records and documents by designated person

Each manufacturer, distributor, and retailer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine

whether such manufacturer, distributor, or retailer has acted or is acting in compliance with this chapter and Federal manufactured home construction and safety standards prescribed pursuant to this chapter and shall, upon request of a person duly designated by the Secretary, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, distributor, or retailer has acted or is acting in compliance with this chapter and manufactured home construction and safety standards prescribed pursuant to this chapter.

(g) Performance and technical data from manufacturer; persons required to receive notification of data

Each manufacturer of manufactured homes shall provide to the Secretary such performance data and other technical data related to performance and safety as may be required to carry out the purposes of this chapter. These shall include records of tests and test results which the Secretary may require to be performed. The Secretary is authorized to require the manufacturer to give notification of such performance and technical data to—

(1) each prospective purchaser of a manufactured home before its first sale for purposes other than resale, at each location where any such manufacturer's manufactured homes are offered for sale by a person with whom such manufacturer has a contractual, proprietary, or other legal relationship and in a manner determined by the Secretary to be appropriate, which may include, but is not limited to, printed matter (A) available for retention by such prospective purchaser, and (B) sent by mail to such prospective purchaser upon his request; and

(2) the first person who purchases a manufactured home for purposes other than resale, at the time of such purchase or in printed matter placed in the manufactured home.

(h) Disclosure of confidential information and trade secrets

All information reported to or otherwise obtained by the Secretary or his representative pursuant to subsection (b), (c), (f), or (g) of this section which contains or relates to a trade secret, or which, if disclosed, would put the person furnishing such information at a substantial competitive disadvantage, shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

(Pub. L. 93–383, title VI, § 614, Aug. 22, 1974, 88 Stat. 707; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97–35, title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106–569, title VI, § 603(b)(2), Dec. 27, 2000, 114 Stat. 2999.)

CODIFICATION

References to ''mobile homes'', wherever appearing in text, changed to ''manufactured homes'' in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96–399 requiring the substitution of ''manufactured home'' for ''mobile home'' wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97–35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms ''mobile home'' and ''manufactured home'' shall be deemed to include the terms ''mobile homes'' and ''manufactured homes'', respectively.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106–569 substituted ''retailer'' for ''dealer'' wherever appearing.

1980—Subsecs. (a), (c)(5), (f), (g). Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home'' wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

§ 5414. Notification and correction of defects by manufacturer

(a) Notice to purchaser within reasonable time after discovery of defect

Every manufacturer of manufactured homes shall furnish notification of any defect in any manufactured home produced by such manufacturer which he determines, in good faith, relates to a Federal manufactured home construction or safety standard or contains a defect which constitutes an imminent safety hazard to the purchaser of such manufactured home, within a reasonable time after such manufacturer has discovered such defect.

(b) Notification by mail

The notification required by subsection (a) of this section shall be accomplished—

(1) by mail to the first purchaser (not including any retailer or distributor of such manufacturer) of the manufactured home containing the defect, and to any subsequent purchaser to whom any warranty on such manufactured home has been transferred;

(2) by mail to any other person who is a registered owner of such manufactured home and whose name and address has been ascertained pursuant to procedures established under subsection (f) of this section; and

(3) by mail or other more expeditious means to the retailer or retailers of such manufacturer to whom such manufactured home was delivered.

(c) Form and requisites of notification

The notification required by subsection (a) of this section shall contain a clear description of such defect or failure to comply, an evaluation of the risk to manufactured home occupants' safety reasonably related to such defect, and a statement of the measures needed to repair the defect. The notification shall also inform the owner whether the defect is a construction or safety defect which the manufacturer will have corrected at no cost to the owner of the manufactured home under subsection (g) of this sec-

tion or otherwise, or is a defect which must be corrected at the expense of the owner.

(d) Copy to Secretary of all notices, bulletins, and communications sent by manufacturer to retailers and purchasers concerning defects; disclosure to public by Secretary

Every manufacturer of manufactured homes shall furnish to the Secretary a true or representative copy of all notices, bulletins, and other communications to the retailers of such manufacturer or purchasers of manufactured homes of such manufacturer regarding any defect in any such manufactured home produced by such manufacturer. The Secretary shall disclose to the public so much of the information contained in such notices or other information obtained under section 5413 of this title as he deems will assist in carrying out the purposes of this chapter, but he shall not disclose any information which contains or relates to a trade secret, or which, if disclosed, would put such manufacturer at a substantial competitive disadvantage, unless he determines that it is necessary to carry out the purposes of this chapter.

(e) Notice by Secretary to manufacturers of noncompliance with standards or defective nature of manufactured home; contents of notice; presentation by manufacturer of views; notice to purchasers of defects

If the Secretary determines that any manufactured home—

(1) does not comply with an applicable Federal manufactured home construction and safety standard prescribed pursuant to section 5403 of this title; or

(2) contains a defect which constitutes an imminent safety hazard,

then he shall immediately notify the manufacturer of such manufactured home of such defect or failure to comply. The notice shall contain the findings of the Secretary and shall include all information upon which the findings are based. The Secretary shall afford such manufacturer an opportunity to present his views and evidence in support thereof, to establish that there is no failure of compliance. If after such presentation by the manufacturer the Secretary determines that such manufactured home does not comply with applicable Federal manufactured home construction or safety standards, or contains a defect which constitutes an imminent safety hazard, the Secretary shall direct the manufacturer to furnish the notification specified in subsections (a) and (b) of this section.

(f) Maintenance by manufacturers of record of names and addresses of first purchasers of manufactured homes; procedures for ascertaining names and addresses of subsequent purchasers; establishment and reasonableness of procedures for maintaining records

Every manufacturer of manufactured homes shall maintain a record of the name and address of the first purchaser of each manufactured home (for purposes other than resale), and, to the maximum extent feasible, shall maintain procedures for ascertaining the name and address of any subsequent purchaser thereof and shall maintain a record of names and addresses so ascertained. Such records shall be kept for each home produced by a manufacturer. The Secretary may establish by order procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and retailers to assist manufacturers to secure the information required by this subsection. Such procedures shall be reasonable for the particular type of manufactured home for which they are prescribed.

(g) Correction of defects by manufacturer; conditions; procedures; contract or legal rights of purchasers or other persons unaffected

A manufacturer required to furnish notification of a defect under subsection (a) or (e) of this section shall also bring the manufactured home into compliance with applicable standards and correct the defect or have the defect corrected within a reasonable period of time at no expense to the owner, but only if—

(1) the defect presents an unreasonable risk of injury or death to occupants of the affected manufactured home or homes;

(2) the defect can be related to an error in design or assembly of the manufactured home by the manufacturer.

The Secretary may direct the manufacturer to make such corrections after providing an opportunity for oral and written presentation of views by interested persons. Nothing in this section shall limit the rights of the purchaser or any other person under any contract or applicable law.

(h) Submission to Secretary by manufacturer of plan for notifying owners of defects and repair of defects; approval of manufacturer's remedy plan; effectuation and implementation of remedy plan

The manufacturer shall submit his plan for notifying owners of the defect and for repairing such defect (if required under subsection (g) of this section) to the Secretary for his approval before implementing such plan. Whenever a manufacturer is required under subsection (g) of this section to correct a defect, the Secretary shall approve with or without modification, after consultation with the manufacturer of the manufactured home involved, such manufacturer's remedy plan including the date when, and the method by which, the notification and remedy required pursuant to this section shall be effectuated. Such date shall be the earliest practicable one but shall not be more than sixty days after the date of discovery or determination of the defect or failure to comply, unless the Secretary grants an extension of such period for good cause shown and publishes a notice of such extension in the Federal Register. Such manufacturer is bound to implement such remedy plan as approved by the Secretary.

(i) Defective or inadequately repaired manufactured homes; replacement with new or equivalent home or refund of purchase price

Where a defect or failure to comply in a manufactured home cannot be adequately repaired within sixty days from the date of discovery or determination of the defect, the Secretary may require that the manufactured home be replaced

with a new or equivalent home without charge, or that the purchase price be refunded in full, less a reasonable allowance for depreciation based on actual use if the home has been in the possession of the owner for more than one year.

(Pub. L. 93–383, title VI, § 615, Aug. 22, 1974, 88 Stat. 709; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97–35, title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106–569, title VI, § 603(b)(3), Dec. 27, 2000, 114 Stat. 2999.)

CODIFICATION

References to ''mobile homes'', wherever appearing in text, changed to ''manufactured homes'' in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96–399 requiring the substitution of ''manufactured home'' for ''mobile home'' wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97–35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms ''mobile home'' and ''manufactured home'' shall be deemed to include the terms ''mobile homes'' and ''manufactured homes'', respectively.

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106–569, § 603(b)(3)(A), substituted ''retailer'' for ''dealer''.

Subsec. (b)(3). Pub. L. 106–569, § 603(b)(3)(B), substituted ''retailer or retailers'' for ''dealer or dealers''.

Subsecs. (d), (f). Pub. L. 106–569, § 603(b)(3)(C), substituted ''retailers'' for ''dealers ''.

1980—Subsecs. (a) to (i). Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home'' wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

§ 5415. Certification by manufacturer of conformity of manufactured home with standards; form and placement of certification

Every manufacturer of manufactured homes shall furnish to the distributor or retailer at the time of delivery of each such manufactured home produced by such manufacturer certification that such manufactured home conforms to all applicable Federal construction and safety standards. Such certification shall be in the form of a label or tag permanently affixed to each such manufactured home.

(Pub. L. 93–383, title VI, § 616, Aug. 22, 1974, 88 Stat. 711; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97–35, title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106–569, title VI, § 603(b)(4), Dec. 27, 2000, 114 Stat. 2999.)

CODIFICATION

References to ''mobile homes'', wherever appearing in text, changed to ''manufactured homes'' in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96–399 requiring the substitution of ''manufactured home'' for ''mobile home'' wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97–35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms ''mobile home'' and ''manufactured home'' shall be deemed to include the terms ''mobile homes'' and ''manufactured homes'', respectively.

AMENDMENTS

2000—Pub. L. 106–569 substituted ''retailer'' for ''dealer''.

1980—Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home'' wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

§ 5416. Consumer's manual; contents

The Secretary shall develop guidelines for a consumer's manual to be provided to manufactured home purchasers by the manufacturer. These manuals should identify and explain the purchasers' responsibilities for operation, maintenance, and repair of their manufactured homes.

(Pub. L. 93–383, title VI, § 617, Aug. 22, 1974, 88 Stat. 711; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97–35, title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417.)

CODIFICATION

References to ''mobile homes'', wherever appearing in text, changed to ''manufactured homes'' in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96–399 requiring the substitution of ''manufactured home'' for ''mobile home'' wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97–35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms ''mobile home'' and ''manufactured home'' shall be deemed to include the terms ''mobile homes'' and ''manufactured homes'', respectively.

AMENDMENTS

1980—Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home''.

§ 5417. Effect upon antitrust laws

Nothing contained in this chapter shall be deemed to exempt from the antitrust laws of the United States any conduct that would otherwise be unlawful under such laws, or to prohibit under the antitrust laws of the United States any conduct that would be lawful under such laws. As used in this section, the term ''antitrust laws'' includes, but is not limited to, the Act of July 2, 1890, as amended; the Act of October 14, 1914, as amended; the Federal Trade Commission Act (15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894, as amended.

(Pub. L. 93–383, title VI, § 618, Aug. 22, 1974, 88 Stat. 711.)

REFERENCES IN TEXT

Act of July 2, 1890, as amended, referred to in text, is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classi-

fication of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 14, 1914, as amended, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, referred to in text, are classified to sections 8 and 9 of Title 15.

§ 5418. Use of services, research and testing facilities of public agencies and independent laboratories

The Secretary, in exercising the authority under this chapter, shall utilize the services, research and testing facilities of public agencies and independent testing laboratories to the maximum extent practicable in order to avoid duplication.

(Pub. L. 93–383, title VI, § 619, Aug. 22, 1974, 88 Stat. 711.)

§ 5419. Authority to collect fee

(a) In general

In carrying out inspections under this chapter, in developing standards and regulations pursuant to section 5403 of this title, and in facilitating the acceptance of the affordability and availability of manufactured housing within the Department, the Secretary may—

(1) establish and collect from manufactured home manufacturers a reasonable fee, as may be necessary to offset the expenses incurred by the Secretary in connection with carrying out the responsibilities of the Secretary under this chapter, including—

(A) conducting inspections and monitoring;

(B) providing funding to States for the administration and implementation of approved State plans under section 5422 of this title, including reasonable funding for cooperative educational and training programs designed to facilitate uniform enforcement under this chapter, which funds may be paid directly to the States or may be paid or provided to any person or entity designated to receive and disburse such funds by cooperative agreements among participating States, provided that such person or entity is not otherwise an agent of the Secretary under this chapter;

(C) providing the funding for a noncareer administrator within the Department to administer the manufactured housing program;

(D) providing the funding for salaries and expenses of employees of the Department to carry out the manufactured housing program;

(E) administering the consensus committee as set forth in section 5403 of this title;

(F) facilitating the acceptance of the quality, durability, safety, and affordability of manufactured housing within the Department; and

(G) the administration and enforcement of the installation standards authorized by section 5404 of this title in States in which the Secretary is required to implement an installation program after the expiration of the 5-year period set forth in section 5404(c)(2)(B) of this title, and the administration and enforcement of a dispute resolution program described in section 5422(c)(12) of this title in States in which the Secretary is required to implement such a program after the expiration of the 5-year period set forth in section 5422(g)(2) of this title; and

(2) subject to subsection (e) of this section, use amounts from any fee collected under paragraph (1) of this subsection to pay expenses referred to in that paragraph, which shall be exempt and separate from any limitations on the Department regarding full-time equivalent positions and travel.

(b) Contractors

In using amounts from any fee collected under this section, the Secretary shall ensure that separate and independent contractors are retained to carry out monitoring and inspection work and any other work that may be delegated to a contractor under this chapter.

(c) Prohibited use

No amount from any fee collected under this section may be used for any purpose or activity not specifically authorized by this chapter, unless such activity was already engaged in by the Secretary prior to December 27, 2000.

(d) Modification

Beginning on December 27, 2000, the amount of any fee collected under this section may only be modified—

(1) as specifically authorized in advance in an annual appropriations Act; and

(2) pursuant to rulemaking in accordance with section 553 of title 5.

(e) Appropriation and deposit of fees

(1) In general

There is established in the Treasury of the United States a fund to be known as the ''Manufactured Housing Fees Trust Fund'' for deposit of amounts from any fee collected under this section. Such amounts shall be held in trust for use only as provided in this chapter.

(2) Appropriation

Amounts from any fee collected under this section shall be available for expenditure only to the extent approved in advance in an annual appropriations Act. Any change in the expenditure of such amounts shall be specifically authorized in advance in an annual appropriations Act.

(3) Payments to States

On and after the effective date of the Manufactured Housing Improvement Act of 2000, the Secretary shall continue to fund the States

having approved State plans in the amounts which are not less than the allocated amounts, based on the fee distribution system in effect on the day before such effective date.

(Pub. L. 93–383, title VI, § 620, Aug. 22, 1974, 88 Stat. 712; Pub. L. 96–153, title III, § 320, Dec. 21, 1979, 93 Stat. 1119; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 106–569, title VI, § 609, Dec. 27, 2000, 114 Stat. 3010.)

REFERENCES IN TEXT

For the effective date of the Manufactured Housing Improvement Act of 2000, referred to in subsec. (e)(3), see section 612 of Pub. L. 106–569, set out as an Effective Date of 2000 Amendment note under section 5401 of this title.

AMENDMENTS

2000—Pub. L. 106–569 amended section catchline and text generally. Prior to amendment, text read as follows: ''In carrying out the inspections required under this chapter, the Secretary may establish and impose on manufactured home manufacturers, distributors, and dealers such reasonable fees as may be necessary to offset the expenses incurred by him in conducting such inspections, and the Secretary may use any fees so collected to pay expenses incurred in connection with such inspections, except that this section shall not apply in any State which has in effect a State plan under section 5422 of this title.''

1980—Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home''.

1979—Pub. L. 96–153 substituted ''conducting such inspections, and the Secretary may use any fees so collected to pay expenses incurred in connection with such inspections, except'' for ''conducting such inspections, except''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

MANUFACTURED HOUSING

Pub. L. 107–18, § 1, July 5, 2001, 115 Stat. 152, provided that:

''(a) AVAILABILITY OF FEES.—Notwithstanding section 620(e)(2) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5419(e)(2)), any fees collected under that Act, including any fees collected before the date of enactment of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701 note) [Dec. 27, 2000] and remaining unobligated on the date of enactment of this Act [July 5, 2001], shall be available for expenditure to offset the expenses incurred by the Secretary under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.), otherwise in accordance with section 620 of that Act.

''(b) DURATION.—The authority for the use of fees provided for in subsection (a) shall remain in effect during the period beginning in fiscal year 2001 and ending on the effective date of the first appropriations Act referred to in section 620(e)(2) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5419(e)(2)) that is enacted with respect to a fiscal year after fiscal year 2001.''

§ 5420. Failure to report violations; penalties

Any person, other than an officer or employee of the United States, or a person exercising inspection functions under a State plan pursuant to section 5422 of this title, who knowingly and willfully fails to report a violation of any construction or safety standard established under section 5403 of this title may be fined up to $1,000 or imprisoned for up to one year, or both.

(Pub. L. 93–383, title VI, § 621, Aug. 22, 1974, 88 Stat. 712.)

§ 5421. Prohibition on waiver of rights

The rights afforded manufactured home purchasers under this chapter may not be waived, and any provision of a contract or agreement entered into after August 22, 1974, to the contrary shall be void.

(Pub. L. 93–383, title VI, § 622, Aug. 22, 1974, 88 Stat. 712; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641.)

AMENDMENTS

1980—Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home''.

§ 5422. State enforcement

(a) Jurisdiction of State agency or court under State law

Nothing in this chapter shall prevent any State agency or court from asserting jurisdiction under State law over any manufactured home construction or safety issue with respect to which no Federal manufactured home construction and safety standard has been established pursuant to the provisions of section 5403 of this title.

(b) Assumption of responsibility for enforcement of Federal standards; submission of enforcement plan to Secretary

Any State which, at any time, desires to assume responsibility for enforcement of manufactured home safety and construction standards relating to any issue with respect to which a Federal standard has been established under section 5403 of this title, shall submit to the Secretary a State plan for enforcement of such standards.

(c) Criteria for approval of State plan by Secretary

The Secretary shall approve the plan submitted by a State under subsection (b) of this section, or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State;

(2) provides for the enforcement of manufactured home safety and construction standards promulgated under section 5403 of this title;

(3) provides for a right of entry and inspection of all factories, warehouses, or establishments in such State in which manufactured homes are manufactured and for the review of plans, in a manner which is identical to that provided in section 5413 of this title;

(4) provides for the imposition of the civil and criminal penalties under section 5410 of this title;

(5) provides for the notification and correction procedures under section 5414 of this title;

(6) provides for the payment of inspection fees by manufacturers in amounts adequate to cover the costs of inspections;

(7) contains satisfactory assurances that the State agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards;

(8) give satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards;

(9) requires manufacturers, distributors, and retailers in such State to make reports to the Secretary in the same manner and to the same extent as if the State plan were not in effect;

(10) provides that the State agency or agencies will make such reports to the Secretary in such form and containing such information as the Secretary shall from time to time require;

(11) with respect to any State plan submitted on or after the expiration of the 5-year period beginning on December 27, 2000, provides for an installation program established by State law that meets the requirements of section 5404(c)(3) of this title;

(12) with respect to any State plan submitted on or after the expiration of the 5-year period beginning on December 27, 2000, provides for a dispute resolution program for the timely resolution of disputes between manufacturers, retailers, and installers of manufactured homes regarding responsibility, and for the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the 1-year period beginning on the date of installation; and

(13) complies with such other requirements as the Secretary may by regulation prescribe for the enforcement of this chapter.

(d) Notice and hearing prior to rejection by Secretary of State plan

If the Secretary rejects a plan submitted under subsection (b) of this section, he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) Discretionary enforcement by Secretary of standards in State having approved plan

After the Secretary approves a State plan submitted under subsection (b) of this section, he may, but shall not be required to, exercise his authority under this chapter with respect to enforcement of manufactured home construction and safety standards in the State involved.

(f) Annual evaluation by Secretary of execution of State plan; basis of evaluation; submission of evaluation and data to Congress; determination by Secretary of improper administration, etc., of State plan; procedure; effect of determination

The Secretary shall, on the basis of reports submitted by the designated State agency and his own inspections, make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Such evaluation shall be made by the Secretary at least annually for each State, and the results of such evaluation and the inspection reports on which it is based shall be promptly submitted to the appropriate committees of the Congress. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan or that the State plan has become inadequate, he shall notify the State agency or agencies of his withdrawal of approval of such plan. Upon receipt of such notice by such State agency or agencies such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce manufactured home standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(g) Enforcement of dispute resolution standards

(1) Establishment of dispute resolution program

Not later than the expiration of the 5-year period beginning on December 27, 2000, the Secretary shall establish a dispute resolution program that meets the requirements of subsection (c)(12) of this section for dispute resolution in each State described in paragraph (2) of this subsection. The order establishing the dispute resolution program shall be issued after notice and opportunity for public comment in accordance with section 553 of title 5.

(2) Implementation of dispute resolution program

Beginning on the expiration of the 5-year period described in paragraph (1), the Secretary shall implement the dispute resolution program established under paragraph (1) in each State that has not established a dispute resolution program that meets the requirements of subsection (c)(12) of this section.

(3) Contracting out of implementation

In carrying out paragraph (2), the Secretary may contract with an appropriate agent to implement the dispute resolution program established under paragraph (2), except that such agent shall not be a person or entity other than a government, nor an affiliate or subsidiary of such a person or entity, that has entered into a contract with the Secretary to implement any other regulatory program under this chapter.

(Pub. L. 93–383, title VI, § 623, Aug. 22, 1974, 88 Stat. 712; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97–35, title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106–569, title VI, §§ 603(b)(5), 605(b), 610, Dec. 27, 2000, 114 Stat. 2999, 3008, 3011.)

CODIFICATION

Reference to ''mobile homes'', appearing in subsec. (c)(3), changed to ''manufactured homes'' in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96–399 requiring the substitution of ''manufactured home'' for ''mobile home'' wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97–35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms ''mobile home'' and ''manufactured home'' shall be deemed to include the terms ''mobile homes'' and ''manufactured homes'', respectively.

AMENDMENTS

2000—Subsec. (c)(9). Pub. L. 106–569, § 603(b)(5), substituted ''retailers'' for ''dealers''.

Subsec. (c)(11). Pub. L. 106–569, § 605(b)(1), (3), added par. (11). Former par. (11) redesignated (13).

Subsec. (c)(12). Pub. L. 106–569, § 610(1), added par. (12).

Subsec. (c)(13). Pub. L. 106–569, § 605(b)(2), redesignated par. (11) as (13).

Subsec. (g). Pub. L. 106–569, § 610(2), added subsec. (g).

1980—Subsecs. (a), (b), (c)(2), (e), (f). Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home'' wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as a note under section 5401 of this title.

§ 5423. Grants to States

(a) Purposes

The Secretary is authorized to make grants to the States which have designated a State agency under section 5422 of this title to assist them—

(1) in identifying their needs and responsibilities in the area of manufactured home construction and safety standards; or

(2) in developing State plans under section 5422 of this title.

(b) Designation by Governor of State agency for receipt of grant

The Governor of each State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(c) Submission of application by State agency to Secretary; review by Secretary

Any State agency designated by the Governor of a State desiring a grant under this section shall submit an application therefor to the Secretary. The Secretary shall review and either accept or reject such application.

(d) Amount of Federal share; equality of distribution of funds

The Federal share for each State grant under subsection (a) of this section may not exceed 90 per centum of the total cost to the State in identifying its needs and developing its plan. In the event the Federal share for all States under such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(Pub. L. 93–383, title VI, § 624, Aug. 22, 1974, 88 Stat. 713; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641.)

AMENDMENTS

1980—Subsec. (a)(1). Pub. L. 96–399 substituted ''manufactured home'' for ''mobile home''.

§ 5424. Rules and regulations

The Secretary is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out this chapter.

(Pub. L. 93–383, title VI, § 625, Aug. 22, 1974, 88 Stat. 713.)

REGULATIONS AND PROCEDURES WITH REGARD TO MANUFACTURED HOMES

Pub. L. 96–399, title III, § 308(c)(7), Oct. 8, 1980, 94 Stat. 1641, provided that: ''In adopting regulations and procedures in accordance with this subsection [see Tables for classification] the Secretary of Housing and Urban Development shall have discretion to take actions in a manner which he deems necessary to insure that the public is fully aware of the distinctions between the various types of factory-built housing.''

§ 5425. Repealed. Pub. L. 106–569, title VI, § 611(1), Dec. 27, 2000, 114 Stat. 3012

Section, Pub. L. 93–383, title VI, § 626, Aug. 22, 1974, 88 Stat. 714; Pub. L. 95–557, title IX, § 901, Oct. 31, 1978, 92 Stat. 2124; Pub. L. 96–399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97–35, title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417, related to reports to Congress.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 27, 2000, except that repeal has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106–569, set out as an Effective Date of 2000 Amendment note under section 5401 of this title.

§ 5426. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(Pub. L. 93–383, title VI, § 626, formerly § 627, Aug. 22, 1974, 88 Stat. 714; renumbered § 626, Pub. L. 106–569, title VI, § 611(2), Dec. 27, 2000, 114 Stat. 3012.)

PRIOR PROVISIONS

A prior section 626 of Pub. L. 93–383 was classified to section 5425 of this title, prior to repeal by Pub. L. 106–569.

CHAPTER 71—SOLAR ENERGY

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SUBCHAPTER I—HEATING AND COOLING

§ 5501. Congressional findings and declaration of policy

(a) The Congress hereby finds that—

(1) the current imbalance between supply and demand for fuels and energy is likely to persist for some time;

(2) the early demonstration of the feasibility of using solar energy for the heating and cooling of buildings could help to relieve the demand upon present fuel and energy supplies;

(3) the technologies for solar heating are close to the point of commercial application in the United States;

(4) the technologies for combined solar heating and cooling still require research, development, testing and demonstration, but no insoluble technical problem is now foreseen in achieving commercial use of such technologies;

(5) the early development and export of viable solar heating equipment and combined solar heating and cooling equipment, consistent with the established preeminence of the United States in the field of high technology products, can make a valuable contribution to our balance of trade;

(6) the widespread use of solar energy in place of conventional methods for the heating and cooling of buildings would have a significantly beneficial effect upon the environment;

(7) the mass production and use of solar heating and cooling equipment will help to eliminate the dependence of the United States upon foreign energy sources and promote the national defense;

(8) the widespread introduction of low-cost solar energy will be beneficial to consumers in a period of rapidly rising fuel cost;

(9) innovation and creativity in the development of solar heating and combined solar heating and cooling components and systems can be fostered through encouraging direct contact between the manufacturers of such systems and the architects, engineers, developers, contractors, and other persons interested in installing such systems in buildings;

(10) evaluation of the performance and reliability of solar heating and combined solar heating and cooling technologies can be expedited by testing under carefully controlled conditions; and

(11) commercial application of solar heating and combined solar heating and cooling technologies can be expedited by early commercial demonstration under practical conditions.

(b) It is therefore declared to be the policy of the United States and the purpose of this subchapter to provide for the demonstration within a three-year period of the practical use of solar heating technology, and to provide for the development and demonstration within a five-year period of the practical use of combined heating and cooling technology.

(Pub. L. 93–409, § 2, Sept. 3, 1974, 88 Stat. 1069.)

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–590, § 1, Nov. 4, 1978, 92 Stat. 2513, provided: ''That this Act [enacting subchapter III of this chapter]

may be cited as the 'Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978'.''

SHORT TITLE

Section 1 of Pub. L. 93–409 provided: ''That this Act [enacting this subchapter and amending section 2473 of this title] may be cited as the 'Solar Heating and Cooling Demonstration Act of 1974'.''

Pub. L. 93–473, § 1, Oct. 26, 1974, 88 Stat. 1431, provided: ''That this Act [enacting subchapter II of this chapter] may be cited as the 'Solar Energy Research, Development, and Demonstration Act of 1974'.''

§ 5502. Definitions

For purposes of this subchapter—

(1) the term ''solar heating'', with respect to any building, means the use of solar energy to meet such portion of the total heating needs of such building (including hot water), or such portion of the needs of such building for hot water (where its remaining heating needs are met by other methods), as may be required under performance criteria prescribed by the Secretary of Housing and Urban Development utilizing the services of the Director of the National Institute of Standards and Technology, and in consultation with the Secretary of Energy, and the Administrator of the National Aeronautics and Space Administration;

(2) the terms ''solar heating and cooling'' and ''combined solar heating and cooling'', with respect to any building, mean the use of solar energy to provide both such portion of the total heating needs of such building (including hot water) and such portion of the total cooling needs of such building, or such portion of the needs of such building for hot water (where its remaining heating needs are met by other methods) and such portion of the total cooling needs of a building, as may be required under performance criteria prescribed by the Secretary of Housing and Urban Development utilizing the services of the Director of the National Institute of Standards and Technology, and in consultation with the Secretary of Energy, and the Administrator of the National Aeronautics and Space Administration, and such term includes cooling by means of nocturnal heat radiation, by evaporation, or by other methods of meeting peakload energy requirements at nonpeakload times;

(3) the term ''residential dwellings'' includes previously occupied and new single family and multifamily dwellings, mobile homes, and publicly assisted housing owned by a private sponsor or a State or local housing authority not covered by section 5515 of this title;

(4) the term ''Administrator'' means the Administrator of the National Aeronautics and Space Administration;

(5) the term ''Secretary'' means the Secretary of Housing and Urban Development; and

(6) Omitted.

(Pub. L. 93–409, § 3, Sept. 3, 1974, 88 Stat. 1070; Pub. L. 93–438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

CODIFICATION

Par. (6) of this section, which defined the term ''Director'' as meaning the Director of the National Science Foundation, was omitted because of the transfer of functions from the National Science Foundation to the Secretary of Energy and the substitution of ''Secretary of Energy'' for ''Director'' wherever appearing in this subchapter. See Transfer of Functions note set out below.

AMENDMENTS

1988—Pars. (1), (2). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted for ''Director of the National Science Foundation'' in pars. (1) and (2) pursuant to sections 104(f) and 301(h) of Pub. L. 93–438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5503. Development and demonstration of solar heating systems for use in residential dwellings

(a) Functions of Administrator and Secretary

The Administrator and the Secretary shall promptly initiate and carry out a program, as provided in this section, for the development and demonstration of solar heating systems (including collectors, controls, and thermal storage) for use in residential dwellings.

(b) Time for determination, prescription and publishing of interim performance criteria; selection of designs for suitable dwellings

(1) Within 120 days after September 3, 1974, the Secretary, utilizing the services of the Director of the National Institute of Standards and Technology and in consultation with the Administrator and the Secretary of Energy, shall determine, prescribe, and publish—

(A) interim performance criteria for solar heating components and systems to be used in residential dwellings, and

(B) interim performance criteria (relating to suitability for solar heating) for such dwellings themselves,

taking into account in each instance climatic variations existing between different geographic areas.

(2) As soon as possible after the publication of the performance criteria prescribed under paragraph (1), the Secretary, in consultation with the Director of the National Institute of Standards and Technology and the Administrator, will select on the basis of open competition a number of designs for various types of residential dwellings suitable for and adapted to the installation of solar heating systems meeting the performance criteria prescribed under paragraph (1)(A).

(c) Contracts and grants for development of heating systems for commercial production and residential use; contracts for procurement of heating systems and components

The Administrator, in accordance with the applicable provisions of title II of the National Aeronautics and Space Act of 1958 [42 U.S.C. 2471 et seq.] and under program guidelines established jointly by the Administrator and the Secretary, shall, after consultation with the Secretary—

(1) enter into such contracts and grants as may be necessary or appropriate for the development (for commercial production and residential use) of solar heating systems meeting the performance criteria prescribed under subsection (b)(1)(A) of this section (including any further planning and design which may be required to conform with the specifications set forth in such criteria); and

(2) enter into contracts with a number of persons or firms for the procurement of solar heating components and systems meeting such performance criteria (including adequate numbers of spare and replacement parts for such systems).

(d) Installation of heating systems; operation during demonstration period; title and ownership of dwellings and systems; agreement of owner to observe and monitor system for five years; reports by owner

The Secretary shall (1) arrange for the installation of solar heating systems procured by the Administrator under subsection (c)(2) of this section in a substantial number of residential dwellings and (2) provide for the satisfactory operation of such installations during the demonstration period. Title to and ownership of any dwellings constructed hereunder and of solar heating systems installed hereunder may be conveyed to purchasers or owners of such dwellings under terms and conditions prescribed by the Secretary, including an express agreement that any such purchaser or owner shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary to observe and monitor) the performance and operation of such system for a period of five years, and that such purchaser or owner (including any subsequent owner and occupant of the property who also makes such an agreement) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(e) Installation of heating systems by Secretary of Defense in dwellings located on Federal or federally administered property

The Secretary of Defense shall arrange for the installation of solar heating systems procured by the Administrator under subsection (c)(2) of this section in a substantial number of residential dwellings which are located on Federal or federally administered property where the performance and operation of such systems can be regularly and effectively observed and monitored by designated Federal personnel.

(f) Coordination of activities to assure a realistic and effective demonstration

The Secretary and the Secretary of Defense, and officials responsible for administering Federal or federally administered property, shall coordinate their activities under this section to assure that solar heating systems are installed in a substantial number of residential dwellings and in a sufficient number of different geographic areas under varying climatic conditions to constitute a realistic and effective demonstration in support of the objectives of this subchapter.

(Pub. L. 93–409, § 5, Sept. 3, 1974, 88 Stat. 1070; Pub. L. 93–438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

REFERENCES IN TEXT

The National Aeronautics and Space Act of 1958, referred to in subsec. (c), is Pub. L. 85–568, July 29, 1958, 72 Stat. 426, as amended. Title II of the National Aeronautics and Space Act of 1958 is classified generally to subchapter II (§ 2471 et seq.) of chapter 26 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

AMENDMENTS

1988—Subsec. (b)(1), (2). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted for ''Director'', meaning Director of National Science Foundation, in subsec. (b)(1) pursuant to sections 104(f) and 301(h) of Pub. L. 93–438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5504. Development and demonstration of combined solar heating and cooling systems for use in residential dwellings

(a) Functions of Administrator and Secretary

The Administrator and the Secretary shall promptly initiate and carry out a program, as provided in this section, for the development and demonstration of combined solar heating and cooling systems (including collectors, controls, and thermal storage) for use in residential dwellings.

(b) Time for determination, prescription and publishing of interim performance criteria; selection of designs for suitable dwellings

(1) As soon as possible after September 3, 1974, the Secretary, utilizing the services of the Director of the National Institute of Standards and Technology and in consultation with the Administrator and the Secretary of Energy, shall determine, prescribe, and publish—

(A) interim performance criteria for combined solar heating and cooling components and systems to be used in residential dwellings, and

(B) interim performance criteria (relating to suitability for solar heating and cooling) for such dwellings themselves,

taking into account in each instance climatic variations existing between different geographic areas.

(2) As soon as possible after the publication of the performance criteria prescribed under paragraph (1) (and if possible before the completion of the research and development provided for in subsection (c) of this section), the Secretary, in consultation with the Director of the National Institute of Standards and Technology and the Administrator, will select on the basis of open competition a number of designs for various types of residential dwellings suitable for and adapted to the installation of combined solar heating and cooling systems meeting the performance criteria prescribed under paragraph (1)(A).

(c) Program of research, development and testing to provide additional technological resources for development and commercial application of combined systems

During the period immediately following the publication of performance criteria under subsection (b)(1) of this section, the Administrator, in coordination with the Secretary of Energy, shall undertake and conduct with respect to solar heating and cooling a program of research, development, and testing designed to provide the additional technological resources necessary for the development and commercial application of combined solar heating and cooling systems as contemplated by the program under this section.

(d) Contracts and grants for development of combined systems for commercial production and residential use; contracts for procurement of combined systems

The Administrator, in accordance with the applicable provisions of title II of the National Aeronautics and Space Act of 1958 [42 U.S.C. 2471 et seq.] and under program guidelines established jointly by the Administrator and the Secretary, and at the earliest possible time during or immediately after the period specified in subsection (c) of this section, shall, after consultation with the Secretary—

(1) enter into such contracts and grants as may be necessary or appropriate for the development (for commercial production and residential use) of combined solar heating and cooling systems meeting the performance criteria prescribed under subsection (b)(1)(A) of this section (including any further planning and design which may be required to conform with the specifications set forth in such criteria or to reflect the results of the activities conducted under subsection (c) of this section); and

(2) enter into contracts with a number of persons or firms for the procurement of combined solar heating and cooling systems meeting such performance criteria (including adequate numbers of spare and replacement parts for such systems).

(e) Installation of combined systems; operation during demonstration period; title and ownership of dwellings and systems; agreement of owner to observe and monitor system; reports by owner

The Secretary shall (1) arrange for the installation of combined solar heating and cooling systems procured by the Administrator under subsection (d)(2) of this section in a substantial number of residential dwellings and (2) provide for the satisfactory operation of such installations during the demonstration period. Title to and ownership of any dwellings constructed hereunder and of combined solar heating and cooling systems installed hereunder may be conveyed to purchasers or owners of such dwellings under terms and conditions prescribed by the Secretary, including an express agreement that any such purchaser or owner shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary to observe and monitor) the performance and operation of such system for a period of five years, and that such purchaser or owner (including any subsequent owner and occupant of the property who also makes such an agreement) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(f) Installation of combined systems by Secretary of Defense in dwellings located on Federal or federally administered property

The Secretary of Defense shall arrange for the installation of combined solar heating and cooling systems procured by the Administrator under subsection (d)(2) of this section in a substantial number of residential dwellings which are located on Federal or federally administered property where the performance and operation of such systems can be regularly and effectively observed and monitored by designated Federal personnel.

(g) Coordination of activities to assure a realistic and effective demonstration

The Secretary and the Secretary of Defense, and officials responsible for administering Federal or federally administered property, shall coordinate their activities under this section to assure that combined solar heating and cooling systems are installed in a substantial number of residential dwellings and in a sufficient number of geographic areas under varying climatic conditions to constitute a realistic and effective demonstration in support of the objectives of this subchapter.

(Pub. L. 93–409, § 6, Sept. 3, 1974, 88 Stat. 1072; Pub. L. 93–438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

REFERENCES IN TEXT

The National Aeronautics and Space Act of 1958, referred to in subsec. (d), is Pub. L. 85–568, July 29, 1958, 72 Stat. 426, as amended. Title II of the National Aeronautics and Space Act of 1958 is classified generally to subchapter II (§ 2471 et seq.) of chapter 26 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

AMENDMENTS

1988—Subsec. (b)(1), (2). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted for ''Director'', meaning Director of National Science Foundation, in subsecs. (b)(1) and (c) pursuant to sections 104(f) and 301(h) of Pub. L. 93–438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5504a. Repealed. Pub. L. 96–125, title VIII, § 804(b), Nov. 26, 1979, 93 Stat. 948

Section, Pub. L. 95–356, title VIII, § 804, Sept. 8, 1978, 92 Stat. 585, related to use of solar energy systems in military construction projects.

§ 5505. Omitted

CODIFICATION

Section, Pub. L. 93–409, § 7, Sept. 3, 1974, 88 Stat. 1073, authorized and directed Administrator and Secretary to prepare a comprehensive plan for conduct of development and demonstration activities under section 5503 and 5504, such plan to be transmitted to President and Congress within 120 days after Sept. 3, 1974.

§ 5506. Test procedures and definitive performance criteria for solar heating and combined solar heating and cooling components and systems and suitable dwellings; determination, consultation and publication in Federal Register

As soon as feasible, and utilizing data available from the demonstration programs under sections 5503 and 5504 of this title, the Secretary, utilizing the services of the Director of the National Institute of Standards and Technology and in consultation with the Administrator and the Secretary of Energy shall determine, prescribe, and publish in the Federal Register in accordance with the applicable provisions regarding rulemaking prescribed by section 553 of title 5,

(1) definitive performance criteria for solar heating and combined solar heating and cooling components and systems to be used in residential dwellings, taking into account climatic variations existing between different geographic areas;

(2) definitive performance criteria (relating to suitability for solar heating and for combined solar heating and cooling) for such dwellings, taking into account climatic variations existing between different geographic areas; and

(3) procedures whereby manufacturers of solar heating and combined solar heating and cooling components and systems shall have their products tested in order to provide certification that such products conform to the performance criteria established under paragraph (1).

(Pub. L. 93–409, § 8, Sept. 3, 1974, 88 Stat. 1073; Pub. L. 93–438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted in text for ''Director'', meaning Director of National Science Foundation, pursuant to sections 104(f) and 301(h) of Pub. L. 93–438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5507. Arrangements with Federal agencies for development and demonstration of solar heating and combined heating and cooling systems for commercial buildings

The Administrator, in consultation with the Secretary, the Secretary of Energy, the Administrator of General Services, and the Director of the National Institute of Standards and Technology and concurrently with the conduct of the programs under sections 5503 and 5504 of this title, shall enter into arrangements with appropriate Federal agencies to carry out such projects and activities (including demonstration projects) with respect to apartment buildings, office buildings, factories, crop-drying facilities and other agricultural structures, public buildings (including schools and colleges), and other non-residential, commercial, or industrial buildings, taking into account the special needs of and individual differences in such buildings based upon size, function, and other relevant factors, as may be appropriate for the early development and demonstration of solar heating and combined solar heating and cooling systems suitable and effective for use in such buildings.

(Pub. L. 93–409, § 9, Sept. 3, 1974, 88 Stat. 1074; Pub. L. 93–438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted in text for ''Director'', meaning Director of National Science Foundation, pursuant to sections 104(f) and 301(h) of Pub. L. 93–438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in

connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5508. Program of applied research by Secretary of Energy for improvement and development of heating systems for commercial application; transmission of results to Secretary and Administrator

(a) The Secretary of Energy shall conduct a program of applied research relevant to (1) the improvement of solar heating components and systems and (2) the development and commercial application of combined solar heating and cooling components and systems as contemplated by the programs under this subchapter.

(b) The Secretary of Energy shall apprise the Secretary and the Administrator on a continuing basis of the results of the programs being conducted in accordance with subsection (a) of this section, and the Secretary and the Administrator shall insure that such results, where appropriate, are incorporated into the development and demonstration programs established by this subchapter.

(Pub. L. 93–409, § 10, Sept. 3, 1974, 88 Stat. 1074; Pub. L. 93–438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted in text for "Director", meaning Director of National Science Foundation, pursuant to sections 104(f) and 301(h) of Pub. L. 93–438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5509. Supervision of systems and programs by Secretary

(a) Monitoring of performance; collection and evaluation of data; studies and investigation; reports to Congress

The Secretary, utilizing the services of the Director of the National Institute of Standards and Technology and in coordination with such other Government agencies as may be appropriate, shall—

(1) monitor the performance and operation of solar heating and combined solar heating and cooling systems installed in residential dwellings under this subchapter;

(2) collect and evaluate data and information on the performance and operation of solar heating and combined solar heating and cooling systems installed in residential dwellings under this subchapter; and

(3) from time to time, carrying out such studies and investigations and take such other actions, including the submission of special reports to the Congress when appropriate, as may be necessary to assure that the programs for which the Secretary is responsible under this subchapter effectively carry out the policy of this subchapter.

(b) Cooperation with scientific, technical, and professional societies and industry representatives in development of performance criteria and test procedures

In the development of the performance criteria and test procedures required under sections 5503, 5504, and 5506 of this title, the Secretary shall work closely with the appropriate scientific, technical, and professional societies and industry representatives to insure the best possible use of available expertise in this area.

(c) Continued liaison with building and related industries and scientific and technical communities

The Secretary shall also maintain continuing liaison with the building industry and related industries and interests, and with the scientific and technical community during and after the period of the programs carried out under this subchapter, in order to assure that the projected benefits of such programs are and will continue to be realized.

(Pub. L. 93–409, § 11, Sept. 3, 1974, 88 Stat. 1074; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

§ 5510. Dissemination of information to promote practical use of solar heating and cooling technologies

(a) Coordination by Secretary with other Federal agencies in dissemination to Federal, State, and local authorities, etc.

The Secretary shall take all possible steps to assure that full and complete information with respect to the demonstrations and other activities conducted under this subchapter is made available to Federal, State, and local authorities, the building industry and related segments of the economy, the scientific and technical community, and the public at large, both during and after the close of the programs under this subchapter, with the objective of promoting and facilitating to the maximum extent feasible the early and widespread practical use of solar energy for the heating and cooling of buildings throughout the United States. In accordance with regulations prescribed under section 5514 of this title such information shall be disseminated on a coordinated basis by the Secretary, the Administrator, the Director of the National Institute of Standards and Technology, the Secretary of Energy, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office,

and other appropriate Federal offices and agencies.

(b) Studies, investigations and modifications of building codes, zoning ordinances, etc., to promote use of solar energy in buildings

In addition, the Secretary shall—

(1) study and investigate the effect of building codes, zoning ordinances, tax regulations, and other laws, codes, ordinances, and practices upon the practical use of solar energy for the heating and cooling of buildings;

(2) determine the extent to which such laws, codes, ordinances, and practices should be changed to permit or facilitate such use, and the methods by which any such changes may best be brought about; and

(3) study the necessity of a program of incentives to accelerate the commercial application of solar heating and cooling technology.

(c) Establishment and operation of Solar Heating and Cooling Information Data Bank; retrieval and dissemination services; compilation of information for use by governmental agencies, nonprofit organizations and private persons; utilization of existing information

(1) In carrying out his functions under subsections (a) and (b) of this section the Secretary, utilizing the capabilities of the National Aeronautics and Space Administration, the Department of Commerce, and the Secretary of Energy to the maximum extent possible, shall establish and operate a Solar Heating and Cooling Information Data Bank (hereinafter in this subsection referred to as the ''bank'') for the purpose of collecting, reviewing, processing, and disseminating solar heating and cooling information and data in a timely and accurate manner in support of the objectives of this subchapter.

(2) Information and data compiled in the bank shall include—

(A) technical information (including reports, journal articles, dissertions,[1] monographs, and project descriptions) on solar energy research, development, and applications;

(B) technical information on the design, construction, and maintenance of buildings compatible with solar heating and cooling concepts;

(C) physical and chemical properties of the materials required for solar heating and cooling;

(D) climatic conditions in appropriate areas of the United States, including those areas where the demonstrations are to be located; and

(E) engineering performance of devices utilized in solar heating and cooling or to be employed in the demonstrations.

(3) In accordance with regulations prescribed under section 5514 of this title, the Secretary shall provide retrieval and dissemination services to cover the solar heating and cooling information described under paragraph (2) for—

(A) Federal, State, and local government organizations that are active in the area of energy resources (and their contractors);

(B) universities, colleges, and other nonprofit organizations; and

(C) private persons, upon request, in appropriate cases.

(4) In carrying out his functions under this subsection, the Secretary shall utilize, when feasible, the existing data base of scientific and technical information in Federal agencies, adding to such data base any information described in paragraph (2) which does not already reside in such base.

(d) Annual reports to President and Congress by officers and agencies; contents; special annual report by Secretary

Each Federal officer and agency having functions under this subchapter shall include in his or its annual report to the President and the Congress a full and complete description of his or its activities (current and projected) under this subchapter, along with his or its recommendations for legislative, administrative, or other action to improve the programs under this subchapter or to achieve the objectives of this subchapter more promptly and effectively. In addition, the Secretary shall submit annually to the President and the Congress a special report summarizing in appropriate detail all of the activities (current and projected) of the various Federal officers and agencies having functions under this subchapter, with the objective of presenting a comprehensive overall view of such programs.

(Pub. L. 93–409, § 12, Sept. 3, 1974, 88 Stat. 1075; Pub. L. 93–438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(b)(21)], Nov. 29, 1999, 113 Stat. 1536, 1501A–585.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–113 substituted ''Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office'' for ''Commissioner of the Patent Office''.

1988—Subsec. (a). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (d) of this section is listed in item 12 on page 102), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted for ''Director'', meaning Director of National Science Foundation, in subsec. (a) and for ''National Science Foundation'' in subsec. (c) pursuant to sections 104(f) and 301(h) of Pub. L. 93–438, which are classified to sections 5814(f) and

[1] So in original. Probably should be ''dissertations,''.

5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5511. Federally assisted or federally constructed housing

(a) Maximum dollar amount of federally assisted mortgage loan or maximum per unit or other cost or floor area limitation of federally constructed housing

(1) In determining the maximum dollar amount of any federally assisted mortgage loan (as defined in subsection (b) of this section) or the maximum per unit or other cost or floor area limitation of any federally constructed housing (as defined in subsection (c) of this section), where the law establishing the program under which the loan is made or the housing is constructed specifies such maximum per unit or other cost on floor area limitation and the structure involved is furnished with solar heating or combined solar heating and cooling equipment under the demonstration program established by section 5503, 5504, or 5507 of this title, the maximum amount or cost or floor area limitation so specified which is applicable to such structure shall be deemed to be increased by the amount by which (as determined by the Secretary or the Secretary of Defense, as appropriate) the price or cost or floor area limitation of the structure including such solar heating or combined solar heating and cooling equipment exceeds the price or cost or floor area limitation of the structure with such equipment replaced by conventional heating equipment or conventional heating and cooling equipment (as the case may be).

(2) In addition, in the case of a federally assisted mortgage loan, the cost excess specified in subsection (a) of this section shall be fully taken into account in determining the value or cost of the structure involved for purposes of applying any statutory provision specifying the maximum loan-to-value or -cost ratio; except that, if the law specifies different rates of downpayment for successive increments of such value or cost, the lowest such rate shall apply to the additional cost attributable to the solar heating or combined solar heating and cooling equipment, and such equipment shall otherwise be excluded in determining the total value or cost of the structure.

(b) "Mortgage loan" and "federally assisted mortgage loan" defined

As used in subsection (a) of this section, the term ''mortgage loan'' means a loan which is made to finance the purchase or construction of a residence or any other building or structure; and the term ''federally assisted mortgage loan'' means a mortgage loan which—

(1) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is itself regulated by any agency of the Federal Government; or

(2) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing, urban development, or related program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(3) is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or from any financial institution from which it could be purchased by the Federal Home Loan Mortgage Corporation; or

(4) is made in whole or in part by any ''creditor,'' as defined in section 1602(f) of title 15, who makes or invests in residential real estate loans aggregating more than $1,000,000 per year.

(c) "Federally constructed housing" defined

As used in subsection (a) of this section, the term ''federally constructed housing'' means (1) residential or multifamily housing which is constructed by agencies of the Federal Government to provide dwelling accommodations for particular types or classes of persons under programs administered by such Federal agencies (including all housing constructed by the Department of Defense to provide dwelling accommodations for personnel of the armed services or for such personnel and their families), and (2) residential or multifamily housing which is constructed by agencies of State or local government, with financial assistance in any form from the Federal Government, to provide dwelling accommodations for particular types or classes of persons under programs administered by such State or local agencies.

(Pub. L. 93–409, § 13, Sept. 3, 1974, 88 Stat. 1076.)

§ 5511a. Solar Assistance Financing Entity

(a) Establishment

The Secretary of Housing and Urban Development shall establish within the Department of Housing and Urban Development the Solar Assistance Financing Entity (in this section referred to as the ''Entity'').

(b) Purpose

The purpose of the Entity shall be to assist in financing solar and renewable energy capital investments and projects for eligible buildings under subsection (c) of this section.

(c) Eligible buildings

The Entity may provide assistance under this section only for the following buildings:

(1) Single family housing

Any building consisting of 1 to 4 dwelling units that has a system for heating or cooling, or both.

(2) Multifamily housing

Any building consisting of more than 4 dwelling units that has a system for heating or cooling, or both.

(3) Commercial buildings

Any building used primarily to carry on a business (including any nonprofit business) that is not used primarily for the manufacture or production of raw materials, products, or agricultural commodities.

(4) Schools, hospitals, and agricultural buildings

Any school, any hospital, and any building used exclusively in connection with the harvesting, storage, or drying of agricultural commodities.

(5) Other buildings

Any other building of a type that the Entity considers appropriate.

(d) Financing options

Assistance provided under this section by the Entity may be provided only for programs for financing solar and renewable energy capital investments and projects, which may include programs for making loans, making grants, reducing the principal obligations of loans, prepayment of interest on loans, purchase and sale of loans and advances of credit, providing loan guarantees, providing loan downpayment assistance, and providing rebates and other incentives for the purchase and installation of solar and renewable energy measures.

(e) Authority to leverage other funds

The Entity may encourage or require programs receiving assistance under this section to supplement the assistance received under this section with amounts from other public and private sources, and, in making assistance under this section available, may give preference to programs that leverage amounts from such other sources.

(f) Provision of assistance

The Entity shall provide assistance under this section through State agencies responsible for developing State energy conservation plans pursuant to section 6322 of this title, or any other entity or agency authorized to specifically carry out the purposes of this section.

(g) Regulations

Not later than the expiration of the 12-month period beginning on October 28, 1992, the Secretary of Housing and Urban Development, in consultation with the Secretary of Energy, shall issue any regulations necessary to carry out this section, which shall ensure maximum flexibility in utilizing amounts made available under this section.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 1993 and $10,420,000 for fiscal year 1994. Such sums are to be available until expended.

(Pub. L. 102–550, title IX, § 912, Oct. 28, 1992, 106 Stat. 3875.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of the Solar Heating and Cooling Demonstration Act of 1974 which comprises this subchapter.

Section is comprised of section 912 of Pub. L. 102–550. Subsec. (i) of section 912 of Pub. L. 102–550 repealed sections 1723g and 1723h and chapter 37 (§ 3601 et seq.) of Title 12, Banks and Banking.

§ 5512. Small business concerns' opportunities to participate in programs

In carrying out their functions under this subchapter, all Federal officers and agencies shall take steps to assure that small business concerns will have realistic and adequate opportunities to participate in the programs under this subchapter to the maximum extent possible.

(Pub. L. 93–409, § 14, Sept. 3, 1974, 88 Stat. 1077.)

§ 5513. Priorities and criteria of demonstration programs

The Secretary shall set priorities as far as possible consistent with the intent and operation of this subchapter in accordance with the following criteria:

(a) The residential dwellings and other buildings which will be part of the demonstration programs referred to in sections 5503, 5504, and 5507 of this title shall be located in a sufficient number of different geographic areas in the United States to assure a realistic and effective demonstration of the solar heating systems and combined solar heating and cooling systems involved, and of the dwellings and other buildings themselves, in both rural and urban locations and under climatic conditions which vary as much as possible.

(b) Consideration shall be given to projected costs of commercial production and maintenance of the solar heating systems and combined solar heating and cooling systems utilized in the demonstration programs.

(c) Encouragement should be given in the conduct of programs under this subchapter to those projects in which funds, appropriated by any State or political subdivision thereof for the purpose of sharing costs with the Federal Government for the purchase and installation of solar heating or combined solar heating and cooling components and systems, are committed before or after September 3, 1974.

(Pub. L. 93–409, § 15, Sept. 3, 1974, 88 Stat. 1077.)

§ 5514. Regulations

The Administrator and the Secretary in consultation with the Director of the National Institute of Standards and Technology, the Secretary of Energy, the Administrator of the General Services Administration, the Secretary of Defense, and other appropriate officers and agencies, shall prescribe such regulations as may be necessary or appropriate to carry out this subchapter promptly and efficiently. Each such officer or agency, in consultation with the Administrator and the Secretary, may prescribe such regulations as may be necessary or appropriate to carry out his or its particular functions under this subchapter promptly and efficiently.

(Pub. L. 93–409, § 16, Sept. 3, 1974, 88 Stat. 1078; Pub. L. 93–438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977,

91 Stat. 577, 606, 607; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted in text for ''Director'', meaning Director of the National Science Foundation, pursuant to sections 104(f) and 301(h) of Pub. L. 93–438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5515. Use of publicly assisted housing by Secretary in demonstrations

The Secretary shall make appropriate use of publicly assisted housing and particularly low-rent housing assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] in demonstrating solar heating systems and combined solar heating and cooling systems under this subchapter.

(Pub. L. 93–409, § 17, Sept. 3, 1974, 88 Stat. 1078.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

§ 5516. Transfer of functions

Within sixty days after the effective date of the law creating the Energy Research and Development Administration or any other law creating a permanent Federal organization or agency having jurisdiction over the energy research and development functions of the United States (or within sixty days after September 3, 1974, if the effective date of such law occurs prior to the enactment of this subchapter), the energy research and development functions vested in the National Aeronautics and Space Administration and the National Science Foundation under this subchapter and any funds which may have been appropriated pursuant to section 5517 of this title, to the extent necessary or appropriate, may, in accordance with regulations prescribed by the Office of Management and Budget, be transferred to and vested in the Energy Research and Development Administration or such other organization or agency.

(Pub. L. 93–409, § 18, Sept. 3, 1974, 88 Stat. 1078.)

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development transferred to Administrator of Energy Research and Development Administration by section 5814(f) of this title.

§ 5517. Authorization of appropriations

(a) Appropriations to National Aeronautics and Space Administration

There is hereby authorized to be appropriated to the National Aeronautics and Space Administration for the fiscal year ending June 30, 1975, $5,000,000, to remain available until expended, to carry out the functions vested in the Administrator by this subchapter.

(b) Appropriations to Department of Housing and Urban Development

There is hereby authorized to be appropriated to the Department of Housing and Urban Development for the fiscal year ending June 30, 1975, $5,000,000, to remain available until expended. Any sums so appropriated shall be available (1) to carry out the functions vested in the Secretary of Housing and Urban Development by this subchapter, and (2) for transfer to the Department of Defense, the National Institute of Standards and Technology, and the General Services Administration to enable them to carry out their respective functions under this subchapter.

(c) Appropriations for programs under this subchapter

There is hereby authorized to be appropriated for the fiscal years ending June 30, 1976, 1977, 1978, and 1979, $50,000,000 in the aggregate to carry out the programs established by this subchapter.

(Pub. L. 93–409, § 19, Sept. 3, 1974, 88 Stat. 1078; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

SUBCHAPTER II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

§ 5551. Congressional declaration of findings and policy

(a) The Congress hereby finds that—

(1) the needs of a viable society depend on an ample supply of energy;

(2) the current imbalance between domestic supply and demand for fuels and energy is likely to persist for some time;

(3) dependence on nonrenewable energy resources cannot be continued indefinitely, particularly at current rates of consumption;

(4) it is in the Nation's interest to expedite the long-term development of renewable and nonpolluting energy resources, such as solar energy;

(5) the various solar energy technologies are today at widely differing stages of development, with some already near the stage of commercial application and others still requiring basic research;

(6) the early development and export of viable equipment utilizing solar energy, consistent with the established preeminence of the United States in the field of high technology products, can make a valuable contribution to our balance of trade;

(7) the mass production and use of equipment utilizing solar energy will help to eliminate the dependence of the United States upon foreign energy sources and promote the national defense;

(8) to date, the national effort in research, development, and demonstration activities relating to the utilization of solar energy has been extremely limited; therefore

(9) the urgency of the Nation's critical energy shortages and the need to make clean and renewable energy alternatives commercially viable require that the Nation undertake an intensive research, development, and demonstration program with an estimated Federal investment which may reach or exceed $1,000,000,000.

(b) The Congress declares that it is the policy of the Federal Government to—

(1) pursue a vigorous and viable program of research and resource assessment of solar energy as a major source of energy for our national needs; and

(2) provide for the development and demonstration of practicable means to employ solar energy on a commercial scale.

(Pub. L. 93–473, § 2, Oct. 26, 1974, 88 Stat. 1431.)

SHORT TITLE

For short title of Pub. L. 93–473, which enacted this subchapter, as the ''Solar Energy Research, Development, and Demonstration Act of 1974'', see section 1 of Pub. L. 93–473, set out as a note under section 5501 of this title.

§ 5552. Definitions

For the purposes of this subchapter—

(1) the term ''solar energy'' means energy which has recently originated in the Sun, including direct and indirect solar radiation and intermediate solar energy forms such as wind, sea thermal gradients, products of photosynthetic processes, organic wastes, and others;

(2) the term ''byproducts'' includes, with respect to any solar energy technology or process, any solar energy products (including energy forms) other than those associated with or constituting the primary product of such technology or process;

(3) the term ''insolation'' means the rate at which solar energy is received at the surface of the Earth;

(4) the term ''Project'' means the Solar Energy Coordination and Management Project; and

(5) the term ''Chairman'' means the Chairman of the Project.

(Pub. L. 93–473, § 3, Oct. 26, 1974, 88 Stat. 1431.)

§ 5553. Solar Energy Coordination and Management Project

(a) Establishment

There is hereby established the Solar Energy Coordination and Management Project.

(b) Membership; chairman; compensation

(1) The Project shall be composed of six members as follows:

(A) an Assistant Director of the National Science Foundation;

(B) an Assistant Secretary of Housing and Urban Development;

(C) a member of the Federal Power Commission;

(D) an Associate Administrator of the National Aeronautics and Space Administration;

(E) the General Manager of the Atomic Energy Commission; and

(F) a member to be designated by the President.

(2) The President shall designate one member of the Project to serve as Chairman of the Project.

(3) If the individual designated under paragraph (1)(F) is an officer or employee of the Federal Government, he shall receive no additional pay on account of his service as a member of the Project. If such individual is not an officer or employee of the Federal Government, he shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for level IV of the Executive Schedule (5 U.S.C. 5315) for each day (including traveltime) during which he is engaged in the actual performance of duties vested in the Project.

(c) Responsibilities

The Project shall have overall responsibility for the provision of effective management and coordination with respect to a national solar energy research, development, and demonstration program, including—

(1) the determination and evaluation of the resource base, including its temporal and geographic characteristics;

(2) research and development on solar energy technologies; and

(3) the demonstration of appropriate solar energy technologies.

(d) Cooperation with other Federal agencies; assignment of other Federal agency personnel to Project

(1) The Project shall carry out its responsibilities under this section in cooperation with the following Federal agencies:

(A) the National Science Foundation, the responsibilities of which shall include research;

(B) the National Aeronautics and Space Administration, the responsibilities of which shall include the provision of management capability and the development of technologies;

(C) the Atomic Energy Commission, the responsibilities of which shall include the development of technologies;

(D) the Department of Housing and Urban Development, the responsibilities of which shall include fostering the utilization of solar energy for the heating and cooling of buildings, pursuant to subchapter I of this chapter; and

(E) the Federal Power Commission, the responsibilities of which shall include fostering the utilization of solar energy for the generation of electricity and for the production of synthetic fuels.

(2) Upon request of the Chairman, the head of any such agency is authorized to detail or assign, on a reimbursable basis or otherwise, any of the personnel of such agency to the Project to assist it in carrying out its responsibilities under this subchapter.

(e) Establishment or approval of program or project; operation and administration of program or project

The Project shall have exclusive authority with respect to the establishment or approval of programs or projects initiated under this subchapter, but the agency involved in any particular program or project shall be responsible for the operation and administration of such program or project.

(f) Authorization of National Aeronautics and Space Administration to undertake and carry out assigned programs

The National Aeronautics and Space Administration is authorized to undertake and carry out those programs assigned to it by the Project.

(Pub. L. 93–473, § 4, Oct. 26, 1974, 88 Stat. 1432.)

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and its functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions which were transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

For transfer of functions of Federal Power Commission, with certain reservations, to chairman of such Commission, see Reorg. Plan No. 9 of 1950, §§ 1,2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

Functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development transferred to Administrator of Energy Research and Development Administration by section 5814(f) of this title. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 this title.

§ 5554. Solar energy resource determination and assessment program; objectives; implementation

(a) The Chairman shall initiate a solar energy resource determination and assessment program with the objective of making a regional and national appraisal of all solar energy resources, including data on insolation, wind, sea thermal gradients, and potentials for photosynthetic conversion. The program shall emphasize identification of promising areas for commercial exploitation and development. The specific goals shall include—

(1) the development of better methods for predicting the availability of all solar energy resources, over long time periods and by geographic location;

(2) the development of advanced meteorological, oceanographic, and other instruments, methodology, and procedures necessary to measure the quality and quantity of all solar resources on periodic bases;

(3) the development of activities, arrangements, and procedures for the collection, evaluation, and dissemination of information and data relating to solar energy resource assessment.

(b) The Chairman, acting through the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and other appropriate agencies, shall—

(1) develop and carry out a general plan for inventorying all forms of solar energy resources associated with Federal lands and (where consistent with property rights) non-Federal lands;

(2) conduct regional surveys based upon such general plan, using innovative meteorological, oceanographic, and space-related techniques, in sufficient numbers to lead to a national inventory of solar energy resources in the United States;

(3) publish and make available maps, reports, and other documents developed from such surveys to encourage and facilitate the commercial development of solar energy resources; and

(4) make such recommendations for legislation as may appear to be necessary to establish policies for solar resources involving Federal lands and waters, consistent with known inventories of various resource types, with the state of technologies for solar energy development, and with evaluation of the environmental impacts of such development.

(Pub. L. 93–473, § 5, Oct. 26, 1974, 88 Stat. 1433.)

§ 5555. Research and development program

(a) Purpose

The Chairman shall initiate a research and development program for the purpose of resolving the major technical problems inhibiting commercial utilization of solar energy in the United States.

(b) Implementation

In connection with or as a part of such program, the Chairman shall—

(1) conduct, encourage, and promote scientific research and studies to develop effective and economical processes and equipment for the purpose of utilizing solar energy in an acceptable manner for beneficial uses;

(2) carry out systems, economic, social, and environmental studies to provide a basis for research, development and demonstration planning and phasing; and

(3) perform or cause to be performed technology assessments relevant to the utilization of solar energy.

(c) Scope

The specific solar energy technologies to be addressed or dealt with in the program shall include—

(1) direct solar heat as a source for industrial processes, including the utilization of low-level heat for process and other industrial purposes;

(2) thermal energy conversion, and other methods, for the generation of electricity and the production of chemical fuels;

(3) the conversion of cellulose and other organic materials (including wastes) to useful energy or fuels;

(4) photovoltaic and other direct conversion processes;

(5) sea thermal gradient conversion;

(6) windpower conversion;

(7) solar heating and cooling of housing and of commercial and public buildings; and

(8) energy storage.

(Pub. L. 93–473, § 6, Oct. 26, 1974, 88 Stat. 1433.)

§ 5556. Solar energy demonstration facilities program

(a) Authorization for design and construction of facilities; objectives

The Chairman is authorized to initiate a program to design and construct, in specific solar energy technologies (including, but not limited to, those listed in section 5555(c) of this title,[1] facilities or powerplants of sufficient size to demonstrate the technical and economic feasibility of utilizing the various forms of solar energy. The specific goals of such programs shall include—

(1) production of electricity from a number of powerplants, on the order of one to ten megawatts each;

(2) production of synthetic fuels in commercial quantities;

(3) large-scale utilization of solar energy in the form of direct heat;

(4) utilization of thermal and all other byproducts of the solar facilities;

(5) design and development of hybrid systems involving the concomitant utilization of solar and other energy sources; and

(6) the continuous operation of such plants and facilities for a period of time.

(b) Criteria for determination to proceed from development program to demonstration

For each of the technologies for which a successful and appropriate development program is completed, the Chairman shall make a determination to proceed to demonstration based on criteria including, but not necessarily limited to, the following:

(1) the technological feasibility of the project;

(2) the costs and benefits of the project, as determined by an economic assessment;

(3) the immediate and the potential uses of the solar energy utilized in the project;

(4) long-term national need for the technology;

(5) environmental impact;

(6) potential for technology transfer to other applications; and

(7) the nature and extent of Federal participation, if any, in the project.

(c) Establishment of one or more projects utilizing each form of solar energy

In carrying out his responsibilities under this section, the Chairman, acting through the appropriate Federal agencies, may provide for the establishment of one or more demonstration projects utilizing each form of solar energy, which shall include, as appropriate, the specific research, development, pilot plant construction and operation, demonstration plant construction and operation, and other facilities and activities which may be necessary to show commercial viability of the specific solar technology.

(d) Investigation and agreements for cooperative development of demonstration facilities

The Chairman, acting through the appropriate Federal agencies, is authorized to investigate and enter into agreements for the cooperative development of facilities to demonstrate solar technologies. The responsible Federal agency may consider—

(1) cooperative agreements with non-Federal entities for construction of facilities and equipment to demonstrate solar energy technologies; and

(2) cooperative agreements with other Federal agencies for the construction of facilities and equipment and operation of facilities to produce energy for direct Federal utilization.

(e) Construction and operation of demonstration projects without cooperative agreements

The Chairman, acting through appropriate Federal agencies is authorized to construct and operate demonstration projects without entering into cooperative agreements with respect to such projects, if the Chairman finds that—

(1) the nature of the resource, the geographical location, the scale and engineering design of the facilities, the techniques of production, or any other significant factor of the specific demonstration project offers opportunities to make important contributions to the general knowledge of solar resources, the techniques of its development, or public confidence in the technology; and

(2) there is no opportunity for cooperative agreements with any non-Federal entity willing and able to cooperate in the demonstration project under subsection (d)(1) of this section, and there is no opportunity for cooperative agreements with other Federal agencies under subsection (d)(2) of this section.

(f) Additional appropriations for projects exceeding maximum amount

If the estimate of the Federal investment with respect to construction and operation costs of any demonstration project proposed to be established under this section exceeds $20,000,000, no amount may be appropriated for such project except as specifically authorized by legislation hereafter enacted by the Congress.

(g) Disposition of Federal property interests, electricity, synthetic fuels, and other byproducts upon completion of project

(1) At the conclusion of any demonstration project established under this section, or as soon thereafter as may be practicable, the responsible Federal agencies shall, by sale, lease, or otherwise, dispose of all Federal property interests which they have acquired pursuant to this section in accordance with existing law and the terms of the cooperative agreements involved.

(2) The agency involved shall, under appropriate agreements or other arrangements, pro-

[1] So in original. Probably should be preceded by a closing parenthesis.

vide for the disposition of electricity, synthetic fuels, and other byproducts of the project administered by such agency.

(Pub. L. 93–473, § 7, Oct. 26, 1974, 88 Stat. 1434.)

§ 5556a. Solar photovoltaic energy systems studies and acquisitions by Secretary of Energy; scope, contents, and submission dates for reports; acquisition authority and requirements; authorization of appropriations

(a) The Secretary of Energy shall—

(1) initiate and conduct an ''application and system design study'', cooperatively with appropriate Federal agencies, to determine the potential for the use of solar photovoltaic systems at specific Federal installations; and this study shall—

(A) include an analysis of those sites that are currently cost-effective for solar photovoltaic energy systems, using life-cycle costing techniques, as well as those which would be cost-effective at expected future market prices;

(B) identify potential sites and uses of solar photovoltaic energy systems at the following agencies as well as any others which the Secretary of Energy deems necessary:

(i) the Department of Defense;

(ii) the Department of Transportation (including the United States Coast Guard, the Federal Aviation Administration, and the Federal Highway Administration);

(iii) the Department of Commerce;

(iv) the Department of Agriculture; and

(v) the Department of the Interior;

(C) provide a preliminary report to Congress within nine months following February 25, 1978;

(D) include the presentation of a detailed plan for the implementation of solar photovoltaic energy systems for power generation at specific sites in Federal Government agencies to Congress within twelve months following February 25, 1978;

(2) initiate and conduct a study of the options available to the Federal Government to provide for the adequate growth of the solar photovoltaic industry and to include such possible incentives as government funding, loan guarantees, tax incentives, the operation of pilot plants or production lines and other incentives deemed worthy of consideration by the Secretary of Energy. A preliminary report shall be submitted to Congress within six months following February 25, 1978;

(3) initiate and conduct a study involving the prospects for applications of solar photovoltaic energy systems for power generation in foreign countries, particularly lesser developed countries, and the potential for the exportation of these energy systems. This study shall involve the cooperation of the Department of State and the Department of Commerce, as well as other Federal agencies which the Secretary of Energy deems appropriate. A final report shall be submitted to the Congress, as well as a preliminary report within twelve months of February 25, 1978; and

(4) be authorized to acquire up to an additional 4.0 megawatts (peak) of solar photovoltaic energy systems. The sum of $13,000,000 is hereby authorized to be appropriated (in addition to any other amounts authorized by this Act to be appropriated) for the fiscal year ending September 30, 1978, and for delivery in the following twelve months. Such sums shall remain available until expended. The solar photovoltaic energy systems acquired shall be available for use for power generation by Federal agencies, provided that no procurement takes place until their application on Federal sites is determined to be life cycle cost effective.

(b) For technology development, particularly for engineering design and development of the manufacturing process of solar photovoltaic energy systems (primarily for the implementation of automated processes and other cost reducing production technologies), the sum of $6,000,000 is hereby authorized by this Act to be appropriated for the fiscal year ending September 30, 1978.

(Pub. L. 95–238, title II, § 208, Feb. 25, 1978, 92 Stat. 75.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(4), means Pub. L. 95–238, Feb. 25, 1978, 92 Stat. 47, as amended, known as the Department of Energy Act of 1978—Civilian Applications. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Solar Energy Research, Development, and Demonstration Act of 1974 which comprises this subchapter.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95–238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95–238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95–238, set out as a note under section 5821 of this title.

§ 5557. Solar Energy Information Data Bank

(a) Establishment; utilization of other Federal agencies; information and data to be compiled; retrieval and dissemination services; utilization of existing scientific and technical information

(1) In carrying out his functions under this subchapter the Chairman, utilizing the capabilities of the National Science Foundation, the National Aeronautics and Space Administration, the Department of Commerce, the Atomic Energy Commission, and other appropriate Federal agencies to the maximum extent possible, shall establish and operate a Solar Energy Informa-

tion Data Bank (hereinafter in this subsection referred to as the ''bank'') for the purpose of collecting, reviewing, processing, and disseminating information and data in all of the solar energy technologies referred to in section 5556(c) of this title in a timely and accurate manner in support of the objectives of this subchapter.

(2) Information and data compiled in the bank shall include—

(A) technical information (including reports, journal articles, dissertations, monographs, and project descriptions) on solar energy research, development, and applications;

(B) similar technical information on the design, construction, and maintenance of equipment utilizing solar energy;

(C) general information on solar energy applications to be disseminated for popular consumption;

(D) physical and chemical properties of materials required for solar energy activities and equipment; and

(E) engineering performance data on equipment and devices utilizing solar energy.

(3) In accordance with regulations prescribed under section 5561 of this title, the Chairman shall provide retrieval and dissemination services with respect to the information described under paragraph (2) for—

(A) Federal, State, and local government organizations that are active in the area of energy resources (and their contractors);

(B) universities and colleges in their related research and consulting activities; and

(C) the private sector upon request in appropriate cases.

(4) In carrying out his functions under this subsection, the Chairman shall utilize, when feasible, the existing data base of scientific and technical information in Federal agencies, adding to such data base any information described in paragraph (2) which does not already reside in such base. He shall coordinate or merge this data bank with other Federal energy information data banks as necessary to assure efficient and effective operation.

(b) Studies and research to promote consumer acceptance and utilization of solar energy technologies

In carrying out his functions under this subchapter the Chairman shall perform or cause to be performed studies and research on incentives to promote broader utilization and consumer acceptance of solar energy technologies.

(c) Coordination of solar energy technology utilization programs

The Chairman shall enter into such arrangements and take such other steps as may be necessary or appropriate to provide for the effective coordination of solar energy technology utilization with all other technology utilization programs within the Federal Government.

(Pub. L. 93–473, § 8, Oct. 26, 1974, 88 Stat. 1435.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

Functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development transferred to Administrator of Energy Research and Development Administration by section 5814(f) of this title. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5558. Scientific and technical education programs

The Chairman, acting through the National Science Foundation, is authorized and directed to support programs of education in the sciences and engineering to provide the necessary trained personnel to perform the solar energy research, development, and demonstration activities required under this subchapter. Such support may include fellowships, traineeships, technical training programs, technologist training programs, and summer institute programs.

(Pub. L. 93–473, § 9, Oct. 26, 1974, 88 Stat. 1436.)

TRANSFER OF FUNCTIONS

Functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development transferred to Administrator of Energy Research and Development Administration by section 5814(f) of this title. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5559. Solar Energy Research Institute; establishment; functions; location

(a) There is established a Solar Energy Research Institute, which shall perform such research, development, and related functions as the Chairman may determine to be necessary or appropriate in connection with the Project's activities under this subchapter or to be otherwise in furtherance of the purpose and objectives of this subchapter.

(b) The Institute may be located (as designated by the Chairman) at a new or existing Federal laboratory (including a non-Federal laboratory performing functions under a contract entered into with the Project or with any of the agencies represented in the Project as well as a laboratory whose personnel are Federal employees).

(Pub. L. 93–473, § 10, Oct. 26, 1974, 88 Stat. 1436.)

§ 5560. International cooperation in solar energy research and programs of education

(a) The Chairman, in furtherance of the objectives of this subchapter, is authorized to cooperate and participate jointly with other nations, especially those with agreements for scientific cooperation with the United States, in the following activities:

(1) interinstitutional, bilateral, or multilateral research projects in the field of solar energy; and

(2) agreements and programs which will facilitate the exchange of information and data relating to solar energy resource assessment and solar energy technologies.

(b) The National Science Foundation is authorized to encourage, to the maximum extent

practicable and consistent with the other objectives of this subchapter, international participation and cooperation in the development and maintenance of programs of education to carry out the policy set forth in section 5558 of this title.

(Pub. L. 93–473, § 11, Oct. 26, 1974, 88 Stat. 1437.)

TRANSFER OF FUNCTIONS

Functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development transferred to Administrator of Energy Research and Development Administration by section 5814(f) of this title. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5561. Regulations

The Chairman, in consultation with heads of the Federal agencies having functions under this subchapter and with other appropriate officers and agencies, shall prescribe such regulations as may be necessary or appropriate to carry out this subchapter promptly and efficiently. Each such officer or agency, in consultation with the Chairman, may prescribe such regulations as may be necessary or appropriate to carry out his or its particular functions under this subchapter promptly and efficiently.

(Pub. L. 93–473, § 12, Oct. 26, 1974, 88 Stat. 1437.)

§ 5562. Summary in annual report

A summary of all actions taken under the provisions of this subchapter and action planned for the ensuing year shall be included in the annual report required by section 7267 of this title.

(Pub. L. 93–473, § 13, Oct. 26, 1974, 88 Stat. 1437; Pub. L. 96–470, title II, § 203(c), Oct. 19, 1980, 94 Stat. 2243.)

AMENDMENTS

1980—Pub. L. 96–470 substituted provision requiring a summary of all action taken and action planned be included in the annual report required by section 7267 of this title for provision requiring the Chairman to report annually to the President and Congress on all action taken, action planned, and a projection, to the extent practical, of activities and funding requirements for the ensuing five years.

§ 5563. Project information to Congressional committees

Notwithstanding any other provision of law, the Chairman (or the head of any agency which assumes the functions of the Project pursuant to section 5565 of this title) shall keep the appropriate committees of the House of Representatives and the Senate fully and currently informed with respect to all activities under this subchapter.

(Pub. L. 93–473, § 14, Oct. 26, 1974, 88 Stat. 1437.)

§ 5564. Comprehensive program definition; preparation; utilization of and consultation with other agencies; transmittal to the President and Congress; time of transmittal

(a) The Chairman is authorized and directed to prepare a comprehensive program definition of an integrated effort and commitment for effectively developing solar energy resources. The Chairman, in preparing such program definition, shall utilize and consult with the appropriate Federal agencies, State and local government agencies, and private organizations.

(b) The Chairman shall transmit such comprehensive program definition to the President and to each House of the Congress. An interim report shall be transmitted not later than March 1, 1975. The comprehensive program definition shall be transmitted as soon as possible thereafter, but in any case not later than June 30, 1975.

(Pub. L. 93–473, § 15, Oct. 26, 1974, 88 Stat. 1437.)

§ 5565. Transfer of functions

Within sixty days after the effective date of the law creating a permanent Federal organization or agency having jurisdiction over the energy research and development functions of the United States (or within sixty days after October 26, 1974, if the effective date of such law occurs prior to October 26, 1974), all of the authorities of the Project and all of the research and development functions (and other functions except those related to scientific and technical education) vested in Federal agencies under this subchapter along with related records, documents, personnel, obligations, and other items, to the extent necessary or appropriate, shall, in accordance with regulations prescribed by the Office of Management and Budget, be transferred to and vested in such organization or agency.

(Pub. L. 93–473, § 16, Oct. 26, 1974, 88 Stat. 1438.)

§ 5566. Authorization of appropriations

To carry out the provisions of this subchapter, there are authorized to be appropriated—

(1) for the fiscal year ending June 30, 1976, $75,000,000;

(2) for subsequent fiscal years, only such sums as the Congress hereafter may authorize by law;

(3) such amounts as may be authorized for the construction of demonstrations pursuant to section 5556(f) of this title; and

(4) to the National Science Foundation for the fiscal year ending June 30, 1975, not to exceed $2,000,000 to be made available for use in the preparation of the comprehensive program definition under section 5564 of this title.

(Pub. L. 93–473, § 17, Oct. 26, 1974, 88 Stat. 1438.)

SUBCHAPTER III—SOLAR PHOTOVOLTAIC ENERGY RESEARCH, DEVELOPMENT AND DEMONSTRATION

§ 5581. Congressional findings and declaration of policy

(a) The Congress hereby finds that—

(1) the United States of America is faced with a finite and diminishing resource base of native fossil fuels, and as a consequence must develop as quickly as possible a diversified, pluralistic national energy capability and posture;

(2) the current imbalance between supply and demand for fuels and energy in the United States is likely to grow for many years;

(3) the early demonstration of the feasibility of using solar photovoltaic energy systems for the generation of electricity could help to relieve the demand on existing fuel and energy supplies;

(4) the national security and economic well-being of the United States is endangered by its dependence on imported energy supplies which are subject to resource limitations, artificial pricing mechanisms which do not accurately reflect supply and demand relationships, and supply interruptions;

(5) the early development and widespread utilization of photovoltaic energy systems could significantly expand the domestic energy resource base of the United States, thereby lessening its dependence on foreign supplies;

(6) the establishment of sizable markets for photovoltaic energy systems will justify private investment in plant and equipment necessary to realize the economies of scale, and will result in significant reductions in the unit costs of these systems;

(7) the use of solar photovoltaic energy systems for certain limited applications has already proved feasible;

(8) there appear to be no insoluble technical obstacles to the widespread commercial use of solar photovoltaic energy technologies;

(9) an aggressive research and development program should solve existing technical problems of solar photovoltaic systems; and, supported by an assured and growing market for photovoltaic systems during the next decade, should maximize the future contribution of solar photovoltaic energy to this Nation's future energy production;

(10) it is the proper and appropriate role of the Federal Government to undertake research, development, and demonstration programs in solar photovoltaic energy technologies and to supplement and assist private industry and other entities and thereby the general public, so as to hasten the general commercial use of such technologies;

(11) the high cost of imported energy sources impairs the economic growth of many nations which lack sizable domestic energy supplies or are unable to develop these resources;

(12) photovoltaic energy systems are economically competitive with conventional energy resources for a wide variety of applications in many foreign nations at the present time, and will find additional applications with continued cost reductions;

(13) the early development and export of solar photovoltaic energy systems, consistent with the established preeminence of the United States in the field of high technology products, can make a valuable contribution to the well-being of the people of other nations and to this Nation's balance of trade;

(14) the widespread use of solar photovoltaic energy systems to supplement and replace conventional methods for the generation of electricity would have a beneficial effect upon the environment;

(15) to increase the potential application of solar photovoltaic energy systems in remote locations, and to minimize the need for backup systems depending on fossil fuel, programs leading to the development of inexpensive and reliable systems for the storage of electricity should be pursued as part of any solar photovoltaic energy research, development, and demonstration program;

(16) evaluation of the performance and reliability of solar photovoltaic energy technologies can be expedited by testing of prototypes under carefully controlled conditions;

(17) commercial application of solar photovoltaic energy technologies can be expedited by early commercial demonstration under practical conditions;

(18) photovoltaic energy systems are currently adaptable on a life cycle, cost-justified basis for certain of the energy needs of the Federal Government, and will find additional applications as continued refinements improve performance and reduce unit costs;

(19) the Federal Government can stimulate innovation and economic efficiency in the production of photovoltaic energy systems through the development and implementation of policies to promote diversity and maximum competition between firms engaged in the research, manufacture, installation, and/or maintenance of these systems;

(20) innovation and creativity in the development of solar photovoltaic energy components and systems can be fostered through encouraging direct contact between the manufacturers of such systems and the architects, engineers, developers, contractors, and other persons interested in utilizing such systems; and

(21) it is contemplated that the ten-year program established by this subchapter will require the expenditure of $1,500,000,000 by the Federal Government.

(b) It is therefore declared to be the policy of the United States and the purpose of this subchapter to establish during the next decade an aggressive research, development, and demonstration program involving solar photovoltaic energy systems and in the long term, to have as an objective the production of electricity from photovoltaic systems cost competitive with utility-generated electricity from conventional sources. Further, it is declared to be the policy of the United States and the purpose of this subchapter that the objectives of this research, development, and demonstration program are—

(1) to double the production of solar photovoltaic energy systems each year during the decade starting with fiscal year 1979, measured by the peak generating capacity of the systems produced, so as to reach a total annual United States production of solar photovoltaic energy systems of approximately two million peak kilowatts, and a total cumulative production of such systems of approximately four million peak kilowatts by fiscal year 1988;

(2) to reduce the average cost of installed solar photovoltaic energy systems to $1 per peak watt by fiscal year 1988; and

(3) to stimulate the purchase by private buyers of at least 90 per centum of all solar photovoltaic energy systems produced in the United States during fiscal year 1988.

(Pub. L. 95–590, § 2, Nov. 4, 1978, 92 Stat. 2513.)

SHORT TITLE

For short title of this subchapter as the ''Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978'', see section 1 of Pub. L. 95–590, set out as a note under section 5501 of this title.

§ 5582. Definitions

For purposes of this subchapter—

(1) a ''solar photovoltaic energy system'' is a system of components which generates electricity from incident sunlight by means of the photovoltaic effect, and which shall include all components, including energy storage devices where appropriate, necessary to provide electricity for individual, industrial, agricultural, or governmental use;

(2) the term ''solar photovoltaic energy system'' may be used interchangeably with the term ''photovoltaic system'';

(3) a ''hybrid solar photovoltaic energy system'' is a system of components that generates electricity from incident sunlight by means of the photovoltaic effect and, in conjunction with electronic and, if appropriate, optical, thermal and storage devices, provides electricity, as well as heat and/or light for individual, commercial, industrial, agricultural, or governmental use;

(4) ''photovoltaic effect'' refers to the physical phenomenon exhibited under certain circumstances by some materials in which a portion of the light energy striking the material is directly converted to electrical energy;

(5) ''facility'' means any building, agricultural, commercial or industrial complex or other device constructively employing photovoltaic systems; and

(6) ''Secretary'' means the Secretary of Energy.

(Pub. L. 95–590, § 3, Nov. 4, 1978, 92 Stat. 2515.)

§ 5583. Establishment and promotion of research, development, and demonstration programs

The Secretary is directed to establish immediately and carry forth such research, development, and demonstration programs as may be necessary to meet the objectives of this subchapter as set forth in section 5581(b) of this title, and as a part of any such program shall—

(a) conduct, and promote the coordination and acceleration of, research, development, and demonstrations relating to solar photovoltaic energy systems and components thereof, and

(b) conduct, and promote the coordination and acceleration of, research, development, and demonstrations for systems and components to be used in applications that are dependent for their energy on solar photovoltaic energy systems.

(Pub. L. 95–590, § 4, Nov. 4, 1978, 92 Stat. 2515.)

§ 5584. Federal assistance application procedures; selection of applicants; agreements; financial assistance; observation and monitoring of photovoltaic systems; reports; projects and activities

(a) In carrying out the provisions of section 5583 of this title, the Secretary is authorized—

(1) to establish procedures whereby any public or private entity wishing to install solar photovoltaic components and systems in any new or existing facility may apply for Federal assistance in purchasing and installing, in such facility, photovoltaic components or systems;

(2) to select, as soon as he deems it feasible, a number of the applicants under paragraph (1) and enter into agreements with them for the design, purchase, fabrication, testing, installation, and demonstration of photovoltaic components and systems. Such selection shall be based on the need to obtain scientific, technological, and economic information from a variety of such systems under a variety of circumstances and conditions; and

(3) to arrange, as part of any agreement entered into under paragraph (2), to provide up to 75 per centum of the purchase and installation costs of photovoltaic components or systems, taking into account relevant considerations involving the relative stage of consumer and industry interest and development at the time of the financial assistance action. Such arrangements shall be contingent upon terms and conditions prescribed by the Secretary, including an express agreement that the entity with whom the agreement is entered into shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary or his agents to observe and monitor) the performance and operation of such system for a period of five years, and that such entity (including any subsequent owner of the property) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(b) The Secretary shall, as he deems appropriate, undertake any projects or activities (including demonstration projects) to further the attainment of the objectives of this section.

(Pub. L. 95–590, § 5, Nov. 4, 1978, 92 Stat. 2516.)

CODIFICATION

Section 5583 of this title, referred to in subsec. (a), was in the original ''section (4)'' and was translated section 5583 of this title as the probable intent of Congress.

§ 5585. Contracts, grants and arrangements

(a) Selection of photovoltaic components and systems, design concepts, and designs

The Secretary is authorized to select on the basis of open competitions—

(1) a number of readily available photovoltaic components and systems;

(2) a number of design concepts for various types of applications which demonstrate adaptability to the utilization of photovoltaic components and systems; and

(3) a number of designs for applications selected under paragraph (2), so that each design includes specific provisions for the utilization of solar photovoltaic components and systems selected under paragraph (1).

(b) Commercial production and utilization of photovoltaic components and systems; selection of components and systems compatible with chosen design concepts; procurement of components and systems

The Secretary, in accordance with the applicable provisions of sections 5906, 5907, and 5908 of this title and with such program guidelines as the Secretary may establish, shall—

(1) enter into such contracts and grants as may be necessary or appropriate for the development for commercial production and utilization of photovoltaic components and systems, including any further planning and design which may be required to conform with the specifications set forth in any applicable criteria;

(2) select, as being compatible with the design concepts chosen under subsection (a)(2) of this section, a reasonable number of photovoltaic components and systems; and

(3) enter into contracts with a number of persons or firms for the procurement of photovoltaic components and systems, including adequate numbers of spare and replacement parts for such systems.

(c) Design integration; demonstration of prototype photovoltaic systems; utilization of systems in existing facilities; terms and conditions upon transfer of facilities and systems

The Secretary is authorized to award contracts for the design integration between the application concepts and the photovoltaic systems procured by the Secretary under subsection (b)(3) of this section, and for the demonstration of prototype solar photovoltaic systems, and, when appropriate, for the utilization of such systems in existing facilities. Title to and ownership of the facilities so constructed and of photovoltaic systems installed hereunder may be conveyed to purchasers of such facilities under terms and conditions prescribed by the Secretary, including an express agreement that any such purchaser shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary to observe and monitor) the performance and operation of such systems for a period of five years, and that such purchaser (including any subsequent owner) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(d) Arrangements with Federal agencies for demonstration of systems in Federal buildings and facilities

The Secretary, in consultation with the Administrator of General Services or the Secretary of Defense or both (as may be appropriate) shall enter into arrangements with appropriate Federal agencies concurrently with the conduct of the programs under this section and section 5586 of this title, to carry out such projects and activities (including demonstration projects), with respect to Federal buildings and facilities, as may be appropriate for the demonstration of photovoltaic systems suitable and effective for use in such applications.

(e) Projects and activities

The Secretary shall, as he deems appropriate, undertake any projects or activities (including demonstration projects) to further the attainment of the objectives of this section.

(Pub. L. 95–590, § 6, Nov. 4, 1978, 92 Stat. 2516.)

§ 5586. Test procedures and performance criteria

(a) Testing program

The Secretary shall conduct a testing program for photovoltaic systems to assist in the development and demonstration of prototype photovoltaic systems, including collectors, controls, power conditioning, and energy storage systems.

(b) Establishment and use of performance criteria

Data obtained from the testing program under subsection (a) of this section shall be evaluated and used in establishing performance criteria. These performance criteria shall be used in the demonstration program described in sections 5583, 5584, and 5585 of this title.

(c) Determination and publication in Federal Register

The Secretary shall determine, prescribe, and publish in the Federal Register, at a time which he determines to be feasible and justified—

(1) performance criteria for photovoltaic components and systems to be used in appropriate applications, and procedures whereby manufacturers of photovoltaic components and systems shall have their products tested in order to provide certification that such products conform to the performance criteria established under this paragraph; and

(2) revised performance criteria for photovoltaic components and systems to be used in appropriate applications, and procedures whereby manufacturers of photovoltaic components and systems shall have their products tested in order to provide certification that such products conform to the performance criteria established under this paragraph. Such criteria may be annually revised by the Secretary, as he deems appropriate.

(d) Performance criteria applicable to photovoltaic component or system procured or installed by Federal Government or with Federal assistance

Any photovoltaic component or system procured or installed by the Federal Government or procured or installed with Federal assistance under section 5584 or section 5585 of this title shall meet appropriate performance criteria prescribed under this section, if such performance criteria have been prescribed.

(Pub. L. 95–590, § 7, Nov. 4, 1978, 92 Stat. 2517.)

CODIFICATION

Section 5584 or section 5585 of this title, referred to in subsec. (d), was in the original ''section (5) or section (6)'' and was translated section 5584 or 5585 of this title as the probable intent of Congress.

§ 5587. Supervision of research, development, and demonstration programs

(a) Monitoring of photovoltaic systems; collection and evaluation of data; studies, investigations, and reports

The Secretary, in coordination with such Government agencies as may be appropriate, shall—

(1) monitor the performance and operation of photovoltaic systems installed under this subchapter;

(2) collect and evaluate data and information on the performance and operation of photovoltaic systems installed under this subchapter; and

(3) from time to time carry out such studies and investigations and take such other actions, including the submission of special reports to the Congress when appropriate, as may be necessary to assure that the programs for which the Secretary is responsible under this subchapter effectively carry out the policy of this subchapter.

(b) Assistance from scientific, technical, and professional societies and industry representatives

In the development of the performance criteria and test procedures required under section 5586 of this title, the Secretary shall work closely with the appropriate scientific, technical, and professional societies and industry representatives in order to assure the best possible use of available expertise in this area.

(c) Liaison with industries, interests, and scientific and technical community

The Secretary shall also maintain continuing liaison with related industries and interests, and with the scientific and technical community, during and after the period of the programs carried out under this subchapter, in order to assure that the projected benefits of such programs are and will continue to be realized.

(Pub. L. 95–590, § 8, Nov. 4, 1978, 92 Stat. 2518.)

§ 5588. Solar Photovoltaic Energy Advisory Committee

(a) Establishment; duties

There is hereby established a Solar Photovoltaic Energy Advisory Committee, which shall study and advise the Secretary on—

(1) the scope and pace of research and development with respect to solar photovoltaic energy systems;

(2) the need for and timing of solar photovoltaic energy systems demonstration projects;

(3) the need for change in any research, development, or demonstration program established under this subchapter; and

(4) the economic, technological, and environmental consequences of the use of solar photovoltaic energy systems.

(b) Membership; chairman

The Committee shall be composed of thirteen members, including eleven members appointed by the Secretary from industrial organizations, academic institutions, professional societies or institutions, and other sources as he sees fit, and two members of the public appointed by the President. The Chairman of the Committee shall be elected from among the members thereof.

(c) Cooperation from executive departments, agencies, and instrumentalities

The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Committee in carrying out the requirements of this section, and shall furnish to the Committee such information as the Committee deems necessary to carry out this section.

(d) Application of section 7234 of this title

Section 7234 of this title shall be applicable to the Committee, except as inconsistent with this section.

(Pub. L. 95–590, § 9, Nov. 4, 1978, 92 Stat. 2518.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 5589. Promotion and facilitation of practical use of photovoltaic energy

(a) Dissemination of information; trade secret exemption

The Secretary shall take all possible steps to assure that full and complete information with respect to the demonstrations and other activities conducted under this subchapter is made available to Federal, State, and local authorities, relevant segments of the economy, the scientific and technical community, and the public at large, both during and after the close of the programs under this subchapter, with the objective of promoting and facilitating to the maximum extent feasible the early and widespread practical use of photovoltaic energy throughout the United States. Any trade secret or other proprietary information shall be exempted from such mandatory disclosure, as otherwise specified in law applicable to research, development and demonstration programs of the Department of Energy, including, but not limited to, section 5916 of this title.

(b) Studies and investigations

The Secretary shall—

(1) study the effect of the widespread utilization of photovoltaic systems on the existing electric utility system at varying levels of photovoltaic contribution to the system;

(2) study and investigate the effect of utility rate structures, building codes, zoning ordinances, and other laws, codes, ordinances, and practices upon the practical use of photovoltaic systems;

(3) determine the extent to which such laws, codes, ordinances, and practices should be changed to permit or facilitate such use and the methods by which any such changes may best be accomplished; and

(4) determine the necessity of a program of incentives to accelerate the commercial application of photovoltaic technologies.

(c) Policy recommendations to President and Congress

The Secretary is authorized and directed, within one year of November 4, 1978, to make

recommendations to the President and to the Congress for Federal policies relating to barriers to the early and widespread utilization of photovoltaic systems in order to realize the goals set forth in section 5581 of this title. These recommendations shall include but not be limited to—

(1) the potential for integration of electricity derived from photovoltaic energy systems into the existing national grid system, including the potential of photovoltaic-generated electricity to meet the peak-load energy needs of electric utilities, load management and reliability implications of the utilization of photovoltaic electricity by utilities, the implications of utility ownership of photovoltaic components leased to others primarily for decentralized applications, the impacts of utility use of electricity derived from photovoltaic energy systems on utility rate structures, and the potential for reducing or obviating the need for energy storage components for photovoltaic energy systems through utility interface;

(2) the extent of competition between firms currently engaged in the fabrication and installation of photovoltaics components and systems as it affects the character and growth potential of the American photovoltaics industry, and the likelihood that small photovoltaic firms will have reasonable opportunities to compete and participate in the various programs authorized by this subchapter;

(3) the need to identify legal alternatives to ensure access to direct sunlight for photovoltaic energy systems, the appropriate methods of encouraging the adoption of such alternatives, and the implications of widespread utilization of photovoltaic energy systems for land use and urban development;

(4) the availability of private capital at reasonable interest rates for individuals, businesses and others desiring to establish commercial enterprises to manufacture, market, install, and/or, maintain photovoltaic components and systems, or purchase and install such systems for private, industrial, agricultural, commercial or other uses;

(5) the need for industry-wide warranty and reliability standards for photovoltaic energy components and systems for private sector applications, and, if appropriate, the mechanisms for establishing such standards; and

(6) the attainability of the goals specified in section 5581(b) of this title, and any modification of such goals which the Secretary proposes for consideration by Congress, with supporting analyses.

(d) Consultation with government agencies, industry representatives, and scientific and technical community; coordination and merger of studies and reports

In carrying out his functions under this section, the Secretary shall consult with the appropriate government agencies, industry representatives, and members of the scientific and technical community having expertise and interest in this area. The Secretary also shall ensure that any study or report prepared pursuant to this section is fully coordinated with and reflective of any analyses or reports prepared pursuant to the requirements in section 5556a of this title, and in the President's Solar Energy Domestic Policy Review. The Secretary, as appropriate, may merge any continuing or on-going studies under section 5556a of this title or the Domestic Policy Review with those required by this section or avoid any unnecessary duplication of effort or funding. The separate report requirements of section 5556a of this title and this section, however, shall remain in force.

(Pub. L. 95–590, § 10, Nov. 4, 1978, 92 Stat. 2519.)

§ 5590. Submittal to Congressional committees of plan for demonstrating applications of photovoltaic systems and facilitating use in other nations; encouragement of international participation and cooperation; coordination and consistency of plan and international activities with similar activities and programs

(a) Within one year after November 4, 1978, the Secretary, in consultation with the Secretary of State, the Administrator of the Agency for International Development, the Director of the Export/Import Bank and other appropriate Federal officials, shall submit to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources a plan for demonstrating applications of solar photovoltaic energy systems and facilitating their widespread use in other nations, especially those with agreements for scientific cooperation with the United States.

(b) The Secretary is authorized to encourage, to the maximum extent practicable, international participation and cooperation in the development and maintenance of programs established under this plan. The Secretary, in consultation and cooperation with the Federal officials specified in subsection (a) of this section, shall insure to the maximum extent possible that the plan submitted under subsection (a) of this section and any other international activities under this section are consistent with and reflective of any similar activities or requirements under any other Federal statute, specifically including any of the several programs under other agencies and Departments involving United States international cooperation and assistance in nonnuclear energy technology, and will not duplicate activities under such programs. The plan required in subsection (a) of this section shall specifically identify all such programs and statutes and describe how the activities under this section will be consistent with such programs, will be coordinated with them, and will avoid duplication of activities under such programs.

(Pub. L. 95–590, § 11, Nov. 4, 1978, 92 Stat. 2520; Pub. L. 103–82, title IV, § 405(j), Sept. 21, 1993, 107 Stat. 922.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82 struck out ''the Director of ACTION,'' after ''International Development,''.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science,

Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

§ 5591. Participation of small business concerns

In carrying out his functions under this subchapter, the Secretary shall take steps to assure that small-business concerns will have realistic and adequate opportunities to participate in the programs under this subchapter to the maximum extent practicable, and the Secretary is directed to set aside at least 10 per centum of the funds authorized and appropriated for the participation of small business concerns.

(Pub. L. 95–590, § 12, Nov. 4, 1978, 92 Stat. 2521.)

§ 5592. Priorities

The Secretary shall set priorities, as far as possible consistent with the intent and operation of this subchapter, in accordance with the following criteria:

(1) The applications utilizing photovoltaic systems which will be part of the research, development, and demonstration program and testing and demonstration programs referred to in sections 5583, 5584, 5585, and 5586 of this title shall be located in a sufficient number of different geographic areas in the United States to assure a realistic and effective demonstration of the use of photovoltaic systems and of the applications themselves, in both rural and urban locations and under climatic conditions which vary as much as possible.

(2) The projected costs of commercial production and maintenance of the photovoltaic systems utilized in the testing and demonstration programs established under this subchapter should be taken into account.

(3) Encouragement should be given in the conduct of programs under this subchapter to those projects in which funds are appropriated by any State or political subdivision thereof for the purpose of sharing costs with the Federal Government for the purchase and installation of photovoltaic components and systems.

(Pub. L. 95–590, § 13, Nov. 4, 1978, 92 Stat. 2521.)

§ 5593. Construction with National Energy Conservation Policy Act

Nothing in this subchapter shall be construed to negate, duplicate, or otherwise affect the provisions of part C subchapter III of chapter 91 of this title, and such part C shall be exempted fully from the provisions of this subchapter and any regulations, guidelines, or criteria pursuant thereto.

(Pub. L. 95–590, § 14, Nov. 4, 1978, 92 Stat. 2521.)

REFERENCES IN TEXT

Part C (§ 8271 et seq.) of subchapter III of chapter 91 of this title, referred to in text, was in the original ''title V (Federal Initiatives), part 4 (Federal Photovoltaic Utilization), National Energy Conservation Policy Act, H.R. 5037, 95th Congress, if and when that Act becomes enacted by the Ninety-fifth Congress''. H.R. 5037 was enacted as Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, and is classified principally to chapter 91 (§ 8201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

§ 5594. Authorization of appropriations

There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1979, $125,000,000, inclusive of any funds otherwise authorized for photovoltaic programs, (1) to carry out the functions vested in the Secretary by this subchapter, (2) to carry out the functions in fiscal year 1979, vested in the Secretary by part C of subchapter III of chapter 91 of this title, and (3) for transfer to such other agencies of the Federal Government as may be required to enable them to carry out their respective functions under this subchapter. Funds appropriated pursuant to this section shall remain available until expended: *Provided*, That any contract or agreement entered into pursuant to this subchapter shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Authorizations of appropriations for fiscal years after fiscal year 1979 shall be contained in the annual authorization for the Department of Energy, except for those funds authorized for fiscal years 1980 and 1981 contained in part C of subchapter III of chapter 91 of this title.

(Pub. L. 95–590, § 15, Nov. 4, 1978, 92 Stat. 2522.)

REFERENCES IN TEXT

Part C (§ 8271 et seq.) of subchapter III of chapter 91 of this title, referred to in text, was in the original ''part 4 of title V of H.R. 5037, 95th Congress, if enacted by the 95th Congress''. H.R. 5037 was enacted as Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, and is classified principally to chapter 91 (§ 8201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

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§ 5601. Findings

(a) The Congress finds the following:

(1) Although the juvenile violent crime arrest rate in 1999 was the lowest in the decade, there remains a consensus that the number of crimes and the rate of offending by juveniles nationwide is still too high.

(2) According to the Office of Juvenile Justice and Delinquency Prevention, allowing 1 youth to leave school for a life of crime and of drug abuse costs society $1,700,000 to $2,300,000 annually.

(3) One in every 6 individuals (16.2 percent) arrested for committing violent crime in 1999 was less than 18 years of age. In 1999, juveniles accounted for 9 percent of murder arrests, 17 percent of forcible rape arrests, 25 percent of robbery arrest, 14 percent of aggravated assault arrests, and 24 percent of weapons arrests.

(4) More than ½ of juvenile murder victims are killed with firearms. Of the nearly 1,800

murder victims less than 18 years of age, 17 percent of the victims less than 13 years of age were murdered with a firearm, and 81 percent of the victims 13 years of age or older were killed with a firearm.

(5) Juveniles accounted for 13 percent of all drug abuse violation arrests in 1999. Between 1990 and 1999, juvenile arrests for drug abuse violations rose 132 percent.

(6) Over the last 3 decades, youth gang problems have increased nationwide. In the 1970's, 19 States reported youth gang problems. By the late 1990's, all 50 States and the District of Columbia reported gang problems. For the same period, the number of cities reporting youth gang problems grew 843 percent, and the number of counties reporting gang problems increased more than 1,000 percent.

(7) According to a national crime survey of individuals 12 years of age or older during 1999, those 12 to 19 years old are victims of violent crime at higher rates than individuals in all other age groups. Only 30.8 percent of these violent victimizations were reported by youth to police in 1999.

(8) One-fifth of juveniles 16 years of age who had been arrested were first arrested before attaining 12 years of age. Juveniles who are known to the juvenile justice system before attaining 13 years of age are responsible for a disproportionate share of serious crimes and violence.

(9) The increase in the arrest rates for girls and young juvenile offenders has changed the composition of violent offenders entering the juvenile justice system.

(10) These problems should be addressed through a 2-track common sense approach that addresses the needs of individual juveniles and society at large by promoting—

(A) quality prevention programs that—

(i) work with juveniles, their families, local public agencies, and community-based organizations, and take into consideration such factors as whether or not juveniles have been the victims of family violence (including child abuse and neglect); and

(ii) are designed to reduce risks and develop competencies in at-risk juveniles that will prevent, and reduce the rate of, violent delinquent behavior; and

(B) programs that assist in holding juveniles accountable for their actions and in developing the competencies necessary to become responsible and productive members of their communities, including a system of graduated sanctions to respond to each delinquent act, requiring juveniles to make restitution, or perform community service, for the damage caused by their delinquent acts, and methods for increasing victim satisfaction with respect to the penalties imposed on juveniles for their acts.

(11) Coordinated juvenile justice and delinquency prevention projects that meet the needs of juveniles through the collaboration of the many local service systems juveniles encounter can help prevent juveniles from becoming delinquent and help delinquent youth return to a productive life.

(b) Congress must act now to reform this program by focusing on juvenile delinquency prevention programs, as well as programs that hold juveniles accountable for their acts and which provide opportunities for competency development. Without true reform, the juvenile justice system will not be able to overcome the challenges it will face in the coming years when the number of juveniles is expected to increase by 18 percent between 2000 and 2030.

(Pub. L. 93–415, title I, § 101, Sept. 7, 1974, 88 Stat. 1109; Pub. L. 96–509, § 3, Dec. 8, 1980, 94 Stat. 2750; Pub. L. 98–473, title II, § 611, Oct. 12, 1984, 98 Stat. 2107; Pub. L. 102–586, § 1(a), Nov. 4, 1992, 106 Stat. 4982; Pub. L. 107–273, div. C, title II, § 12202, Nov. 2, 2002, 116 Stat. 1869.)

AMENDMENTS

2002—Pub. L. 107–273 amended heading and text generally. Prior to amendment, text read as follows:

''(a) The Congress hereby finds that—

''(1) juveniles accounted for almost half the arrests for serious crimes in the United States in 1974 and for less than one-third of such arrests in 1983;

''(2) recent trends show an upsurge in arrests of adolescents for murder, assault, and weapon use;

''(3) the small number of youth who commit the most serious and violent offenses are becoming more violent;

''(4) understaffed, overcrowded juvenile courts, prosecutorial and public defender offices, probation services, and correctional facilities and inadequately trained staff in such courts, services, and facilities are not able to provide individualized justice or effective help;

''(5) present juvenile courts, foster and protective care programs, and shelter facilities are inadequate to meet the needs of children, who, because of this failure to provide effective services, may become delinquents;

''(6) existing programs have not adequately responded to the particular problems of the increasing numbers of young people who are addicted to or who abuse alcohol and other drugs, particularly nonopiate or polydrug abusers;

''(7) juvenile delinquency can be reduced through programs designed to keep students in elementary and secondary schools through the prevention of unwarranted and arbitrary suspensions and expulsions;

''(8) States and local communities which experience directly the devastating failures of the juvenile justice system do not presently have sufficient technical expertise or adequate resources to deal comprehensively with the problems of juvenile delinquency;

''(9) existing Federal programs have not provided the direction, coordination, resources, and leadership required to meet the crisis of delinquency;

''(10) the juvenile justice system should give additional attention to the problem of juveniles who commit serious crimes, with particular attention given to the areas of sentencing, providing resources necessary for informed dispositions, and rehabilitation;

''(11) emphasis should be placed on preventing youth from entering the juvenile justice system to begin with; and

''(12) the incidence of juvenile delinquency can be reduced through public recreation programs and activities designed to provide youth with social skills, enhance self esteem, and encourage the constructive use of discretionary time.

''(b) Congress finds further that the high incidence of delinquency in the United States today results in enormous annual cost and immeasurable loss of human life, personal security, and wasted human resources and that juvenile delinquency constitutes a growing threat to the national welfare requiring immediate and comprehensive action by the Federal Government to reduce and prevent delinquency.''

1992—Subsec. (a)(2), (3). Pub. L. 102–586, § 1(a)(2), added pars. (2) and (3). Former pars. (2) and (3) redesignated (4) and (5), respectively.

Subsec. (a)(4). Pub. L. 102–586, § 1(a)(1), (3), redesignated par. (2) as (4) and inserted ''prosecutorial and public defender offices,''. Former par. (4) redesignated (6).

Subsec. (a)(5) to (10). Pub. L. 102–586, § 1(a)(1), redesignated pars. (3) to (8) as (5) to (10), respectively.

Subsec. (a)(11), (12). Pub. L. 102–586, § 1(a)(4)–(6), added pars. (11) and (12).

1984—Subsec. (a)(1). Pub. L. 98–473, § 611(1), substituted ''accounted'' for ''account'' and ''in 1974 and for less than one-third of such arrests in 1983'' for ''today''.

Subsec. (a)(2). Pub. L. 98–473, § 611(2), inserted ''and inadequately trained staff in such courts, services, and facilities''.

Subsec. (a)(3). Pub. L. 98–473, § 611(3), struck out ''the countless, abandoned, and dependent'' before ''children, who''.

Subsec. (a)(5). Pub. L. 98–473, § 611(4), substituted ''reduced'' for ''prevented''.

1980—Subsec. (a)(4). Pub. L. 96–509, § 3(1), inserted reference to alcohol abuse.

Subsec. (a)(8). Pub. L. 96–509, § 3(2)–(4), added par. (8).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. C, title II, § 12223, Nov. 2, 2002, 116 Stat. 1896, as amended by Pub. L. 108–7, div. B, title I, § 110(2), (3), Feb. 20, 2003, 117 Stat. 67, provided that:

''(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle [subtitle B (§§ 12201–12223) of title II of div. C of Pub. L. 107–273, see Short Title of 2002 Amendment note below] and the amendments made by this subtitle shall take effect on the effective date provided in section 12102(b) [set out as a note under section 3796ee of this title].

''(b) APPLICATION OF AMENDMENTS.—The amendments made by this subtitle shall apply only with respect to fiscal years beginning on or after the effective date provided in subsection (a).''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–690, title VII, § 7296, Nov. 18, 1988, 102 Stat. 4463, as amended by Pub. L. 101–204, title X, § 1001(d), Dec. 7, 1989, 103 Stat. 1827, provided that:

''(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle [subtitle F (§§ 7250–7296) of title VII of Pub. L. 100–690, see Short Title of 1988 Amendment note below] and the amendments made by this Act [probably should be subtitle] shall take effect on October 1, 1988.

''(b) APPLICATION OF AMENDMENTS.—(1) The amendments made by section 7258(a) [amending section 5633 of this title] shall not apply to a State with respect to a fiscal year beginning before the date of the enactment of this Act [Nov. 18, 1988] if the State plan is approved before such date by the Administrator for such fiscal year.

''(2) The amendments made by section 7253(b)(1) [amending section 5614 of this title] and section 7278 [enacting section 5732 of this title] shall not apply with respect to fiscal year 1989.

''(3) Notwithstanding the 180-day period provided in—

''(A) section 207 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) [42 U.S.C. 5617], as added by section 7255;

''(B) section 361 of the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.) [42 U.S.C. 5715], as redesignated by section 7273(e)(2) and amended by section 7274; and

''(C) section 404(a)(5) of the Missing Children's Assistance Act (42 U.S.C. 5773(a)(5)), as amended by section 7285(a)(3);

the reports required by such sections to be submitted with respect to fiscal year 1988 shall be submitted not later than August 1, 1989.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 670 of division II (§§ 610–670) of chapter VI of title II of Pub. L. 98–473 provided that:

''(a) Except as provided in subsection (b), this division and the amendments made by this division [see Short Title of 1984 Amendment note below] shall take effect on the date of the enactment of this joint resolution [Oct. 12, 1984] or October 1, 1984, whichever occurs later.

''(b) Paragraph (2) of section 331(c) of the Runaway and Homeless Youth Act, as added by section 657(d) of this division [section 5751(c)(2) of this title], shall not apply with respect to any grant or payment made before the effective date of this joint resolution [Oct. 12, 1984].''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, § 6(d)(2), Oct. 3, 1977, 91 Stat. 1058, which provided that except as otherwise provided by the Juvenile Justice Amendments of 1977 (see Short Title of 1977 Amendments note below), the amendments made by the Juvenile Justice Amendments of 1977 were to take effect on Oct. 1, 1977, was repealed by Pub. L. 100–690, title VII, § 7266(2), Nov. 18, 1988, 102 Stat. 4449.

EFFECTIVE DATE

Section 263(a), (b) of Pub. L. 93–415, as amended by Pub. L. 94–273, § 32(a), Apr. 21, 1976, 90 Stat. 380; Pub. L. 95–115, § 6(d)(1), Oct. 3, 1977, 91 Stat. 1058, which provided that (a) except as provided by subsections (b) and (c) (set out as an Effective Date of 1977 Amendment note above), the foregoing provisions of such Act (enacting subchapters I and II of this chapter and amending section 5108 of Title 5, Government Organization and Employees) were to take effect on Sept. 7, 1974, and that (b) section 5614(b)(5) and 5614(b)(6) of this title was to become effective at the close of the thirty-first day of the twelfth calendar month of 1974 and section 5614(*l*) of this title was to become effective at the close of the thirtieth day of the eleventh month of 1976, was repealed by Pub. L. 100–690, title VII, § 7266(2), Nov. 18, 1988, 102 Stat. 4449.

SHORT TITLE OF 2003 AMENDMENTS

Pub. L. 108–96, § 1, Oct. 10, 2003, 117 Stat. 1167, provided that: ''This Act [enacting section 5752 of this title, amending sections 5701, 5711, 5712, 5714–2, 5714–21, 5714–23, 5714–24, 5732a, 5751, 5771, 5773, and 5777 of this title, repealing section 5714–25 of this title, and enacting provisions set out as notes under sections 5701 and 5714–1 of this title] may be cited as the 'Runaway, Homeless, and Missing Children Protection Act'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–273, div. C, title II, § 12201, Nov. 2, 2002, 116 Stat. 1869, provided that: ''This subtitle [subtitle B (§§ 12201–12223) of title II of div. C of Pub. L. 107–273, enacting subchapter V of this chapter, parts C to E of subchapter II of this chapter, and sections 5677 to 5681 of this title, redesignating part J of subchapter II of this chapter as part F of subchapter II of this chapter, amending this section and sections 5602, 5603, 5612, 5614, 5616, 5617, 5631 to 5633, 5671, 5672, 5674, 5675, 5773, 13002, 13003, 13013, and 13023 of this title, repealing parts C to I of subchapter II of this chapter, and enacting provisions set out as notes under this section] may be cited as the 'Juvenile Justice and Delinquency Prevention Act of 2002'.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–71, § 1, Oct. 12, 1999, 113 Stat. 1032, provided that: ''This Act [enacting sections 5714–25, 5714–41, 5731a, and 5732a of this title, amending sections 5701, 5711, 5712, 5713, 5714–1 to 5714–21, 5714–23, 5714–24, 5714a to 5731, 5732, 5751 to 5773, 5775, and 5777 of this title, and enacting provisions set out as a note under section 7101 of Title 20, Education] may be cited as the 'Missing, Exploited, and Runaway Children Protection Act'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–322, title XVII, § 170301, Sept. 13, 1994, 108 Stat. 2043, provided that subtitle C (§§ 170301–170303) of

title XVII of Pub. L. 103–322, which enacted section 5776a of this title, amended sections 5777 and 5778 of this title, and enacted provisions set out as a note under section 5776a of this title, could be cited as the ''Morgan P. Hardiman Task Force on Missing and Exploited Children Act'', prior to repeal by Pub. L. 105–314, title VII, § 703(g), Oct. 30, 1998, 112 Stat. 2989.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–690, title VII, § 7250(a), Nov. 18, 1988, 102 Stat. 4434, provided that: ''This subtitle [subtitle F (§§ 7250–7296) of title VII of Pub. L. 100–690, enacting sections 5617, 5662, 5665, 5665a, 5667, 5673 to 5676, 5712a to 5712c, 5714–1, 5714–2, 5732, 5733, and 5778 of this title, amending sections 5603, 5611, 5614, 5616, 5631 to 5633, 5651 to 5654, 5659 to 5661, 5671, 5672, 5711 to 5714, 5714a, 5714b, 5715, 5716, 5731, 5751, 5773, 5775, 5776, and 5777 of this title and sections 5315 and 5316 of Title 5, Government Organization and Employees, repealing sections 5634 to 5639, 5656, 5657, and 5774 of this title, enacting provisions set out as notes under this section and section 5617 of this title, and repealing provisions set out as a note under this section] may be cited as the 'Juvenile Justice and Delinquency Prevention Amendments of 1988'.''

SHORT TITLE OF 1984 AMENDMENT

Section 610 of Pub. L. 98–473 provided that: ''This Division [division II (§§ 610–670) of chapter VI of title II of Pub. L. 98–473, enacting sections 5714a, 5714b, and 5771 to 5777 of this title, amending this section and sections 5602, 5603, 5611, 5612, 5614, 5616, 5632 to 5635, 5637, 5638, 5651, 5653, 5654, 5657, 5659, 5661, 5671, 5672, 5702, 5711 to 5714, and 5751 of this title, repealing sections 5617, 5655, and 5741 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984'.''

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96–509 provided that: ''This Act [enacting section 5617 of this title, amending this section and sections 5602, 5603, 5611, 5612, 5614 to 5616, 5632 to 5634, 5637, 5638, 5651, 5654 to 5656, 5659 to 5661, 5671, 5672, 5711 to 5713, 5715, and 5751 of this title, repealing former section 5617 and sections 5618 and 5619 of this title, and enacting provisions set out as notes under this section and section 5633 of this title] may be cited as the 'Juvenile Justice Amendments of 1980'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–115, § 1, Oct. 3, 1977, 91 Stat. 1048, provided that: ''This Act [enacting section 5741 of this title, amending section 5316 of Title 5, Government Organization and Employees, sections 4351 and 5038 of Title 18, Crimes and Criminal Procedure, and sections 3723, 3767, 3811 to 3814, 3821, 3882, 3883, 3888, 3889, 5603, 5611, 5612, 5614 to 5618, 5631 to 5635, 5637 to 5639, 5651, 5653 to 5657, 5659 to 5661, 5671, 5672, 5711 to 5713, 5731, and 5751 of this title, repealing sections 3821, 5658, and 5732 of this title, enacting provisions set out as notes under this section and sections 5632, 5633, and 5638 of this title, and amending provisions set out as a note under this section] may be cited as the 'Juvenile Justice Amendments of 1977'.''

SHORT TITLE

Section 1 of Pub. L. 93–415 provided: ''That this Act [enacting this chapter, sections 3772 to 3774, and 3821 of this title, and sections 4351 to 4353, 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amending sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, 3883 and 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealing section 3889 of this title] may be cited as the 'Juvenile Justice and Delinquency Prevention Act of 1974'.''

Section 301 of title III of Pub. L. 93–415, as amended by Pub. L. 96–509, § 18(b), Dec. 8, 1980, 94 Stat. 2762, provided that: ''This title [enacting subchapter III of this chapter] may be cited as the 'Runaway and Homeless Youth Act'.''

Section 401 of title IV of Pub. L. 93–415, as added by Pub. L. 98–473, title II, § 660, Oct. 12, 1984, 98 Stat. 2125, as amended by Pub. L. 101–204, title X, § 1004(1), Dec. 7, 1990, 103 Stat. 1828, provided that: ''This title [enacting subchapter IV of this chapter] may be cited as the 'Missing Children's Assistance Act'.''

Section 501 of title V of Pub. L. 93–415, as added by Pub. L. 107–273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1894, provided that: ''This title [enacting subchapter V of this chapter] may be cited as the 'Incentive Grants for Local Delinquency Prevention Programs Act of 2002'.''

A prior section 501 of title V of Pub. L. 93–415, as added by Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, provided that title V (enacting subchapter V of this chapter) could be cited as the ''Incentive Grants for Local Delinquency Prevention Programs Act'', prior to the general amendment of title V of Pub. L. 93–415 by Pub. L. 107–273, § 12222(a).

Another section 501 of Pub. L. 93–415, title V, Sept. 7, 1974, 88 Stat. 1133, amended section 5031 of Title 18, Crimes and Criminal Procedure.

Pub. L. 108–21, title III, § 361, Apr. 30, 2003, 117 Stat. 665, provided that: ''This subtitle [subtitle D (§§ 361–363) of title III of Pub. L. 108–21, enacting part B of subchapter VI of this chapter] may be cited as the 'Code Adam Act of 2003'.''

§ 5602. Purposes

The purposes of this subchapter and subchapter II of this chapter are—

(1) to support State and local programs that prevent juvenile involvement in delinquent behavior;

(2) to assist State and local governments in promoting public safety by encouraging accountability for acts of juvenile delinquency; and

(3) to assist State and local governments in addressing juvenile crime through the provision of technical assistance, research, training, evaluation, and the dissemination of information on effective programs for combating juvenile delinquency.

(Pub. L. 93–415, title I, § 102, Sept. 7, 1974, 88 Stat. 1110; Pub. L. 96–509, § 4, Dec. 8, 1980, 94 Stat. 2750; Pub. L. 98–473, title II, § 612, Oct. 12, 1984, 98 Stat. 2108; Pub. L. 102–586, § 1(b), Nov. 4, 1992, 106 Stat. 4982; Pub. L. 107–273, div. C, title II, § 12203, Nov. 2, 2002, 116 Stat. 1871.)

AMENDMENTS

2002—Pub. L. 107–273 amended heading and text generally. Prior to text, section read as follows:

''(a) It is the purpose of this chapter—

''(1) to provide for the thorough and ongoing evaluation of all federally assisted juvenile justice and delinquency prevention programs;

''(2) to provide technical assistance to public and private nonprofit juvenile justice and delinquency prevention programs;

''(3) to establish training programs for persons, including professionals, paraprofessionals, and volunteers, who work with delinquents or potential delinquents or whose work or activities relate to juvenile delinquency programs;

''(4) to establish a centralized research effort on the problems of juvenile delinquency, including the dissemination of the findings of such research and all data related to juvenile delinquency;

''(5) to develop and encourage the implementation of national standards for the administration of juvenile justice, including recommendations for administrative, budgetary, and legislative action at the Federal, State, and local level to facilitate the adoption of such standards;

''(6) to assist States and local communities with resources to develop and implement programs to keep students in elementary and secondary schools and to prevent unwarranted and arbitrary suspensions and expulsions;

''(7) to establish a Federal assistance program to deal with the problems of runaway and homeless youth;

''(8) to strengthen families in which juvenile delinquency has been a problem;

''(9) to assist State and local governments in removing juveniles from jails and lockups for adults;

''(10) to assist State and local governments in improving the administration of justice and services for juveniles who enter the system; and

''(11) to assist States and local communities to prevent youth from entering the justice system to begin with.

''(b) It is therefore the further declared policy of Congress to provide the necessary resources, leadership, and coordination (1) to develop and implement effective methods of preventing and reducing juvenile delinquency, including methods with a special focus on preserving and strengthening families so that juveniles may be retained in their homes; (2) to develop and conduct effective programs to prevent delinquency, to divert juveniles from the traditional juvenile justice system and to provide critically needed alternatives to institutionalization; (3) to improve the quality of juvenile justice in the United States; (4) to increase the capacity of State and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention and rehabilitation programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention; (5) to encourage parental involvement in treatment and alternative disposition programs; and (6) to provide for coordination of services between State, local, and community-based agencies and to promote interagency cooperation in providing such services.''

1992—Subsec. (a)(1). Pub. L. 102–586, §1(b)(1)(A), substituted ''justice and delinquency prevention'' for ''delinquency''.

Subsec. (a)(2). Pub. L. 102–586, §1(b)(1)(B), substituted ''nonprofit juvenile justice and delinquency prevention programs'' for ''agencies, institutions, and individuals in developing and implementing juvenile delinquency programs''.

Subsec. (a)(8), (9). Pub. L. 102–586, §1(b)(1)(C)–(E), added par. (8) and redesignated former par. (8) as (9).

Subsec. (a)(10), (11). Pub. L. 102–586, §1(b)(1)(F), (G), added pars. (10) and (11).

Subsec. (b)(1). Pub. L. 102–586, §1(b)(2)(A), substituted ''preserving and strengthening families'' for ''maintaining and strengthening the family unit''.

Subsec. (b)(5), (6). Pub. L. 102–586, §1(b)(2)(B), (C), added cls. (5) and (6).

1984—Subsec. (a)(1). Pub. L. 98–473, §612(1), substituted ''ongoing'' for ''prompt''.

Subsec. (a)(4). Pub. L. 98–473, §612(2), substituted ''the dissemination of'' for ''an information clearinghouse to disseminate''.

Subsec. (a)(7). Pub. L. 98–473, §612(3), inserted ''and homeless''.

1980—Subsec. (a)(8). Pub. L. 96–509, §4(a), added par. (8).

Subsec. (b)(1). Pub. L. 96–509, §4(b), inserted reference to methods with a special focus on maintaining and strengthening the family unit so that juveniles may be retained in their homes.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

§ 5603. Definitions

For purposes of this chapter—

(1) the term ''community based'' facility, program, or service means a small, open group home or other suitable place located near the juvenile's home or family and programs of community supervision and service which maintain community and consumer participation in the planning operation, and evaluation of their programs which may include, but are not limited to, medical, educational, vocational, social, and psychological guidance, training, special education, counseling, alcoholism treatment, drug treatment, and other rehabilitative services;

(2) the term ''Federal juvenile delinquency program'' means any juvenile delinquency program which is conducted, directly, or indirectly, or is assisted by any Federal department or agency, including any program funded under this chapter;

(3) the term ''juvenile delinquency program'' means any program or activity related to juvenile delinquency prevention, control, diversion, treatment, rehabilitation, planning, education, training, and research, including drug and alcohol abuse programs; the improvement of the juvenile justice system; and any program or activity designed to reduce known risk factors for juvenile delinquent behavior, provides[1] activities that build on protective factors for, and develop competencies in, juveniles to prevent, and reduce the rate of, delinquent juvenile behavior;

(4)(A) the term ''Bureau of Justice Assistance'' means the bureau established by section 3741 of this title;

(B) the term ''Office of Justice Programs'' means the office established by section 3711 of this title;

(C) the term ''National Institute of Justice'' means the institute established by section 3722(a) of this title; and

(D) the term ''Bureau of Justice Statistics'' means the bureau established by section 3732(a) of this title;

(5) the term ''Administrator'' means the agency head designated by section 5611(b) of this title;

(6) the term ''law enforcement and criminal justice'' means any activity pertaining to crime prevention, control, or reduction or the enforcement of the criminal law, including, but not limited to police efforts to prevent, control, or reduce crime or to apprehend criminals, activities of courts having criminal jurisdiction and related agencies (including prosecutorial and defender services), activities of corrections, probation, or parole authorities, and programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction;

(7) the term ''State'' means any State of the United States, the District of Columbia, the

[1] So in original. Probably should be ''provide''.

Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(8) the term ''unit of local government'' means—

(A) any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State;

(B) any law enforcement district or judicial enforcement district that—

(i) is established under applicable State law; and

(ii) has the authority to, in a manner independent of other State entities, establish a budget and raise revenues;

(C) an Indian Tribe that performs law enforcement functions, as determined by the Secretary of the Interior; or

(D) for the purposes of assistance eligibility, any agency of the government of the District of Columbia or the Federal Government that performs law enforcement functions in and for—

(i) the District of Columbia; or

(ii) any Trust Territory of the United States;

(9) the term ''combination'' as applied to States or units of local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a juvenile justice and delinquency prevention plan;

(10) the term ''construction'' means acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees but not the cost of acquisition of land for buildings);

(11) the term ''public agency'' means any State, unit of local government, combination of such States or units, or any department, agency, or instrumentality of any of the foregoing;

(12) the term ''secure detention facility'' means any public or private residential facility which—

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the temporary placement of any juvenile who is accused of having committed an offense or of any other individual accused of having committed a criminal offense;

(13) the term ''secure correctional facility'' means any public or private residential facility which—

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense or any other individual convicted of a criminal offense;

(14) the term ''serious crime'' means criminal homicide, forcible rape or other sex offenses punishable as a felony, mayhem, kidnapping, aggravated assault, drug trafficking, robbery, larceny or theft punishable as a felony, motor vehicle theft, burglary or breaking and entering, extortion accompanied by threats of violence, and arson punishable as a felony;

(15) the term ''treatment'' includes but is not limited to medical, educational, special education, social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public, including services designed to benefit addicts and other users by eliminating their dependence on alcohol or other addictive or nonaddictive drugs or by controlling their dependence and susceptibility to addiction or use;

(16) the term ''valid court order'' means a court order given by a juvenile court judge to a juvenile—

(A) who was brought before the court and made subject to such order; and

(B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States;

(17) the term ''Council'' means the Coordinating Council on Juvenile Justice and Delinquency Prevention established in section 5616(a)(1) of this title;

(18) the term ''Indian tribe'' means—

(A) a federally recognized Indian tribe; or

(B) an Alaskan Native organization;

(19) the term ''comprehensive and coordinated system of services'' means a system that—

(A) ensures that services and funding for the prevention and treatment of juvenile delinquency are consistent with policy goals of preserving families and providing appropriate services in the least restrictive environment so as to simultaneously protect juveniles and maintain public safety;

(B) identifies, and intervenes early for the benefit of, young children who are at risk of developing emotional or behavioral problems because of physical or mental stress or abuse, and for the benefit of their families;

(C) increases interagency collaboration and family involvement in the prevention and treatment of juvenile delinquency; and

(D) encourages private and public partnerships in the delivery of services for the prevention and treatment of juvenile delinquency;

(20) the term ''gender-specific services'' means services designed to address needs unique to the gender of the individual to whom such services are provided;

(21) the term ''home-based alternative services'' means services provided to a juvenile in the home of the juvenile as an alternative to incarcerating the juvenile, and includes home detention;

(22) the term ''jail or lockup for adults'' means a locked facility that is used by a State, unit of local government, or any law enforcement authority to detain or confine adults—

(A) pending the filing of a charge of violating a criminal law;

(B) awaiting trial on a criminal charge; or

(C) convicted of violating a criminal law;

(23) the term ''nonprofit organization'' means an organization described in section 501(c)(3) of title 26 that is exempt from taxation under section 501(a) of title 26;

(24) the term ''graduated sanctions'' means an accountability-based, graduated series of sanctions (including incentives, treatment, and services) applicable to juveniles within the juvenile justice system to hold such juveniles accountable for their actions and to protect communities from the effects of juvenile delinquency by providing appropriate sanctions for every act for which a juvenile is adjudicated delinquent, by inducing their law-abiding behavior, and by preventing their subsequent involvement with the juvenile justice system;

(25) the term ''contact'' means the degree of interaction allowed between juvenile offenders in a secure custody status and incarcerated adults under section 31.303(d)(1)(i) of title 28, Code of Federal Regulations, as in effect on December 10, 1996;

(26) the term ''adult inmate'' means an individual who—

(A) has reached the age of full criminal responsibility under applicable State law; and

(B) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense;

(27) the term ''violent crime'' means—

(A) murder or nonnegligent manslaughter, forcible rape, or robbery, or

(B) aggravated assault committed with the use of a firearm;

(28) the term ''collocated facilities'' means facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds; and

(29) the term ''related complex of buildings'' means 2 or more buildings that share—

(A) physical features, such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or

(B) the specialized services that are allowable under section 31.303(e)(3)(i)(C)(3) of title 28 of the Code of Federal Regulations, as in effect on December 10, 1996.

(Pub. L. 93–415, title I, § 103, Sept. 7, 1974, 88 Stat. 1111; Pub. L. 95–115, § 2, Oct. 3, 1977, 91 Stat. 1048; Pub. L. 96–509, §§ 5, 19(a), Dec. 8, 1980, 94 Stat. 2751, 2762; Pub. L. 98–473, title II, § 613, Oct. 12, 1984, 98 Stat. 2108; Pub. L. 100–690, title VII, §§ 7251(a), 7252(b)(1), Nov. 18, 1988, 102 Stat. 4435, 4436; Pub. L. 102–586, § 1(c), Nov. 4, 1992, 106 Stat. 4983; Pub. L. 105–277, div. A, § 101(b) [title I, § 129(a)(1)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–75; Pub. L. 107–273, div. C, title II, § 12204, Nov. 2, 2002, 116 Stat. 1871.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

AMENDMENTS

2002—Par. (3). Pub. L. 107–273, § 12204(1), substituted ''designed to reduce known risk factors for juvenile delinquent behavior, provides activities that build on protective factors for, and develop competencies in, juveniles to prevent, and reduce the rate of, delinquent juvenile behavior'' for ''to help prevent juvenile delinquency''.

Par. (4). Pub. L. 107–273, § 12204(2), made technical amendment to references in original act which appear in text as references to sections 3741, 3711, 3722 and 3732 of this title.

Par. (7). Pub. L. 107–273, § 12204(3), struck out ''the Trust Territory of the Pacific Islands,'' after ''Puerto Rico,''.

Par. (12)(B). Pub. L. 107–273, § 12204(4), struck out '', of any nonoffender,'' after ''committed an offense''.

Par. (13)(B). Pub. L. 107–273, § 12204(5), struck out '', any nonoffender,'' after ''committed an offense''.

Par. (14). Pub. L. 107–273, § 12204(6), inserted ''drug trafficking,'' after ''aggravated assault,''.

Par. (16)(C). Pub. L. 107–273, § 12204(7), struck out subpar. (C) which read as follows: ''with respect to whom an appropriate public agency (other than a court or law enforcement agency), before the issuance of such order—

''(i) reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

''(ii) determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order;

''(iii) determined that all dispositions (including treatment), other than placement in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate; and

''(iv) submitted to the court a written report stating the results of the review conducted under clause (i) and the determinations made under clauses (ii) and (iii);''.

Par. (22). Pub. L. 107–273, § 12204(8)(A), redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively.

Pars. (24) to (29). Pub. L. 107–273, § 12204(8)(B)–(10), added pars. (24) to (29).

1998—Par. (8). Pub. L. 105–277, § 101(b) [title I, § 129(a)(1)(A)], added par. (8) and struck out former par. (8) which read as follows: ''the term 'unit of general local government' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government performing law enforcement functions in and for the District of Columbia and funds appropriated by the Congress for the activities of such agency may be used to provide the non-Federal share of the cost of programs or projects funded under this subchapter;''.

Par. (9). Pub. L. 105–277, § 101(b) [title I, § 129(a)(1)(B)], substituted ''units of local government'' for ''units of general local government''.

1992—Par. (16). Pub. L. 102–586, § 1(c)(1), amended par. (16) generally. Prior to amendment, par. (16) read as follows: ''the term 'valid court order' means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word 'valid' permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States;''.

Pars. (19) to (23). Pub. L. 102–586, § 1(c)(2)–(4), added pars. (19) to (23).

1988—Par. (5). Pub. L. 100–690, § 7252(b)(1), substituted ''section 5611(b)'' for ''section 5611(c)''.

Pars. (17), (18). Pub. L. 100–690, § 7251(a), added pars. (17) and (18).

1984—Par. (3). Pub. L. 98–473, § 613(1), struck out ''for neglected, abandoned, or dependent youth and other youth'' before ''to help'' and inserted ''juvenile'' after ''prevent''.

Par. (4)(A). Pub. L. 98–473, § 613(2), substituted '' 'Bureau of Justice Assistance' means the bureau established by section 3741 of this title'' for '' 'Office of Justice Assistance, Research, and Statistics' means the office established by section 3781(a) of this title''.

Par. (4)(B). Pub. L. 98–473, § 613(2), substituted '' 'Office of Justice Programs' means the office established by section 3711 of this title'' for '' 'Law Enforcement Assistance Administration' means the administration established by section 3711 of this title''.

Par. (6). Pub. L. 98–473, § 613(3), substituted ''services),'' for ''services,'' before ''activities of''.

Par. (14). Pub. L. 98–473, § 613(4)(A), inserted ''or other sex offenses punishable as a felony''.

Par. (16). Pub. L. 98–473, § 613(4)(B)–(6), added par. (16).

1980—Par. (1). Pub. L. 96–509, § 5(a), inserted reference to special education.

Par. (4). Pub. L. 96–509, § 5(b), designated existing provisions as subpar. (B) and added subpars. (A), (C), and (D).

Par. (5). Pub. L. 96–509, § 19(a), substituted ''section 5611(c) of this title'' for ''section 3711(c) of this title''.

Par. (7). Pub. L. 96–509, § 5(c), substituted ''the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands'' for ''and any territory or possession of the United States''.

Par. (9). Pub. L. 96–509, § 5(d), substituted ''juvenile justice and delinquency prevention'' for ''law enforcement''.

Par. (12). Pub. L. 96–509, § 5(e), substituted definition of ''secure detention facility'' for definition of ''correctional institution or facility''.

Pars. (13), (14). Pub. L. 96–509, § 5(f), added pars. (13) and (14). Former par. (13) redesignated (15).

Par. (15). Pub. L. 96–509, § 5(f), (g), redesignated former par. (13) as (15), inserted reference to special education, and substituted ''protect the public, including services designed to benefit addicts and other users by eliminating their dependence on alcohol or other addictive or nonaddictive drugs or by controlling their dependence and susceptibility to addiction or use'' for ''protect the public and benefit the addict or other user by eliminating his dependence on addicting or other drugs or by controlling his dependence, and his susceptibility to addiction or use''.

1977—Par. (3). Pub. L. 95–115 substituted ''to help prevent delinquency'' for ''who are in danger of becoming delinquent''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER II—PROGRAMS AND OFFICES

PART A—JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

§ 5611. Establishment

(a) Placement within Department of Justice under general authority of Attorney General

There is hereby established an Office of Juvenile Justice and Delinquency Prevention (hereinafter in this division[1] referred to as the ''Office'') within the Department of Justice under the general authority of the Attorney General.

(b) Administrator; head, appointment, authorities, etc.

The Office shall be headed by an Administrator (hereinafter in this subchapter referred to as the ''Administrator'') appointed by the President, by and with the advice and consent of the Senate, from among individuals who have had experience in juvenile justice programs. The Administrator is authorized to prescribe regulations consistent with this chapter to award, administer, modify, extend, terminate, monitor, evaluate, reject, or deny all grants and contracts from, and applications for, funds made available under this subchapter. The Administrator shall have the same reporting relationship with the Attorney General as the directors of other offices and bureaus within the Office of Justice Programs have.

(c) Deputy Administrator; appointment, functions, etc.

There shall be in the Office a Deputy Administrator who shall be appointed by the Attorney General. The Deputy Administrator shall perform such functions as the Administrator may from time to time assign or delegate and shall act as the Administrator during the absence or disability of the Administrator.

(Pub. L. 93–415, title II, § 201(a)–(f), Sept. 7, 1974, 88 Stat. 1112, 1113; Pub. L. 95–115, § 3(a)(1)–(3)(A), (4), (5), Oct. 3, 1977, 91 Stat. 1048, 1049; Pub. L. 96–509, §§ 6, 19(b), Dec. 8, 1980, 94 Stat. 2752, 2762; Pub. L. 98–473, title II, § 620, Oct. 12, 1984, 98 Stat. 2108; Pub. L. 100–690, title VII, § 7252(a), Nov. 18, 1988, 102 Stat. 4436; Pub. L. 102–586, § 2(a), Nov. 4, 1992, 106 Stat. 4984.)

REFERENCES IN TEXT

This division, referred to in subsec. (a), probably means division II (§§ 610–670) of chapter VI of title II of Pub. L. 98–473, Oct. 12, 1984, 98 Stat. 2107, which made numerous amendments to this chapter. For complete classification of this division to the Code, see Short Title of 1984 Amendment note set out under section 5601 of this title and Tables.

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and

[1] See References in Text note below.

Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–586 amended third sentence generally, substituting ''The Administrator shall have the same reporting relationship with the Attorney General as the directors of other offices and bureaus within the Office of Justice Programs have'' for ''The Administrator shall report to the Attorney General through the Assistant Attorney General who heads the Office of Justice Programs under part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968''.

1988—Subsec. (c). Pub. L. 100–690 struck out ''and whose function shall be to supervise and direct the National Institute for Juvenile Justice and Delinquency Prevention established by section 5651 of this title'' after ''Attorney General'' in first sentence and ''also'' after ''The Deputy Administrator shall'' in second sentence.

1984—Subsec. (a). Pub. L. 98–473, in amending subsec. (a) generally, substituted provisions relating to establishment of the Office of Juvenile Justice and Delinquency Prevention for former provisions which also provided for the establishment of the Office and its administration by an Administrator.

Subsec. (b). Pub. L. 98–473, in amending subsec. (b) generally, substituted provisions relating to functions and duties of the Administrator for former provisions which related to administration of the program.

Subsec. (c). Pub. L. 98–473, in amending subsec. (c) generally, substituted provisions relating to Deputy Administrator for former provisions which related to nomination of the Administrator by the President.

Subsec. (d). Pub. L. 98–473, in amending section generally, struck out subsec. (d) which related to powers of the Administrator. See subsec. (b) of this section.

Subsec. (e). Pub. L. 98–473, in amending section generally, struck out subsec. (e) which related to Deputy Administrator. See subsec. (c) of this section.

Subsec. (f). Pub. L. 98–473, in amending section generally, struck out subsec. (f) which related to supervision of the National Institute for Juvenile Justice and Delinquency Prevention.

1980—Subsec. (a). Pub. L. 96–509, § 6(a), substituted ''under the general authority of the Attorney General'' for ''Law Enforcement Assistance Administration''.

Subsec. (c). Pub. L. 96–509, § 19(b)(1), substituted ''Administrator'' for ''Associate Administrator'' as the name of the official heading the Office of Juvenile Justice and Delinquency Prevention and struck out provisions that had governed the meaning to be placed upon the use of the title ''Associate Administrator''.

Subsec. (d). Pub. L. 96–509, §§ 6(b), 19(b)(2), substituted ''Administrator'' for ''Associate Administrator'' wherever appearing, struck out provisions that had required the former Associate Administrator to report directly to the Administrator, and provided that the Administrator exercise all necessary powers under the general authority of the Attorney General rather than the Administrator of the Law Enforcement Assistance Administration, clarified that the Administrator of the Office of Juvenile Justice and Delinquency Prevention is authorized to prescribe regulations for all grants and contracts available under part B and part C of this subchapter, and provided that the Administrator of the Law Enforcement Assistance Administration and the Director of the National Institute of Justice may delegate authority to the Administrator for all juvenile justice and delinquency prevention grants and contracts for funds made available under the Omnibus Crime Control and Safe Streets Act of 1968.

Subsec. (e). Pub. L. 96–509, §§ 6(c), 19(b)(3), substituted ''Deputy Administrator'' for ''Deputy Associate Administrator'', ''Administrator'' for ''Associate Administrator'', ''Attorney General'' for ''Administrator of the Law Enforcement Assistance Administration'', and ''office'' for ''Office''.

Subsec. (f). Pub. L. 96–509, §§ 6(d), 19(b)(4), substituted ''Deputy Administrator'' for ''Deputy Associate Administrator'' and ''Attorney General'' for ''Administrator''.

1977—Subsec. (a). Pub. L. 95–115, § 3(a)(1), inserted provisions relating to administration of provisions of this chapter.

Subsec. (c). Pub. L. 95–115, § 3(a)(2), (3)(A), inserted provisions relating to statutory references to the Associate Administrator and substituted ''an Associate'' for ''an Assistant''.

Subsec. (d). Pub. L. 95–115, § 3(a)(3)(A), (4), inserted provisions relating to powers of the Associate Administrator over grants and contracts and provisions relating to reporting requirement and substituted ''The Associate Administrator shall exercise'' for ''The Assistant Administrator shall exercise''.

Subsec. (e). Pub. L. 95–115, § 3(a)(3)(A), (5), substituted references to Deputy Associate Administrator and Associate Administrator for references to Deputy Assistant Administrator and Assistant Administrator, respectively, wherever appearing.

Subsec. (f). Pub. L. 95–115, § 3(a)(5), substituted ''Associate'' for ''Assistant''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

MENTORING MATCHES FOR YOUTH

Pub. L. 109–248, title VI, subtitle A, July 27, 2006, 120 Stat. 631, 632, provided that:

''SEC. 601. SHORT TITLE.

''This subtitle may be cited as the 'Mentoring Matches for Youth Act of 2006'.

''SEC. 602. FINDINGS.

''Congress finds the following:

''(1) Big Brothers Big Sisters of America, which was founded in 1904 and chartered by Congress in 1958, is the oldest and largest mentoring organization in the United States.

''(2) There are over 450 Big Brothers Big Sisters of America local agencies providing mentoring programs for at-risk children in over 5,000 communities throughout every State, Guam, and Puerto Rico.

''(3) Over the last decade, Big Brothers Big Sisters of America has raised a minimum of 75 percent of its annual operating budget from private sources and is continually working to grow private sources of funding to maintain this ratio of private to Federal funds.

''(4) In 2005, Big Brothers Big Sisters of America provided mentors for over 235,000 children.

''(5) Big Brothers Big Sisters of America has a goal to provide mentors for 1,000,000 children per year.

''SEC. 603. GRANT PROGRAM FOR EXPANDING BIG BROTHERS BIG SISTERS MENTORING PROGRAM.

''In each of fiscal years 2007 through 2012, the Administrator of the Office of Juvenile Justice and Delinquency Prevention (hereafter in this Act [probably should be ''subtitle''] referred to as the 'Administrator') may make grants to Big Brothers Big Sisters of America to use for expanding the capacity of and carrying out the Big Brothers Big Sisters mentoring programs for at-risk youth.

''SEC. 604. BIANNUAL REPORT.

''(a) IN GENERAL.—Big Brothers Big Sisters of America shall submit 2 reports to the Administrator in each of fiscal years 2007 through 2013. Big Brothers Big Sisters of America shall submit the first report in a fiscal year not later than April 1 of that fiscal year and the second report in a fiscal year not later than September 30 of that fiscal year.

''(b) REQUIRED CONTENT.—Each such report shall include the following:

''(1) A detailed statement of the progress made by Big Brothers Big Sisters of America in expanding the capacity of and carrying out mentoring programs for at-risk youth.

''(2) A detailed statement of how the amounts received under this Act have been used.

''(3) A detailed assessment of the effectiveness of the mentoring programs.

''(4) Recommendations for continued grants and the appropriate amounts for such grants.

''SEC. 605. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this Act [probably should be ''subtitle'']—

''(1) $9,000,000 for fiscal year 2007;

''(2) $10,000,000 for fiscal year 2008;

''(3) $11,500,000 for fiscal year 2009;

''(4) $13,000,000 for fiscal year 2010; and

''(5) $15,000,000 for fiscal year 2011.''

§ 5612. Personnel

(a) Selection; employment; compensation

The Administrator is authorized to select, employ, and fix the compensation of such officers and employees, including attorneys, as are necessary to perform the functions vested in the Administrator and to prescribe their functions.

(b) Special personnel

The Administrator is authorized to select, appoint, and employ not to exceed three officers and to fix their compensation at rates not to exceed the rate now or hereafter payable under section 5376 of title 5.

(c) Personnel from other agencies

Upon the request of the Administrator, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of its personnel to the Administrator to assist the Administrator in carrying out the functions of the Administrator under this subchapter.

(d) Experts and consultants

The Administrator may obtain services as authorized by section 3109 of title 5, at rates not to exceed the rate now or hereafter payable under section 5376 of title 5.

(Pub. L. 93–415, title II, § 202, Sept. 7, 1974, 88 Stat. 1113; Pub. L. 95–115, § 3(a)(3)(A), Oct. 3, 1977, 91 Stat. 1048; Pub. L. 96–509, § 19(c), Dec. 8, 1980, 94 Stat. 2763; Pub. L. 98–473, title II, § 621, Oct. 12, 1984, 98 Stat. 2109; Pub. L. 102–586, § 2(b), Nov. 4, 1992, 106 Stat. 4984; Pub. L. 107–273, div. C, title II, § 12221(a)(1), Nov. 2, 2002, 116 Stat. 1894.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–273 substituted ''payable under section 5376'' for ''prescribed for GS–18 of the General Schedule by section 5332''.

1992—Subsec. (b). Pub. L. 102–586, § 2(b)(1), which directed the substitution of ''payable under section 5376'' for ''prescribes for GS–18 of the General Schedule by section 5332'', could not be executed because the phrase ''prescribes for GS–18 of the General Schedule by section 5332'' did not appear in text.

Subsec. (c). Pub. L. 102–586, § 2(b)(2), substituted ''subchapter'' for ''chapter''.

Subsec. (d). Pub. L. 102–586, § 2(b)(3), substituted ''payable under section 5376'' for ''prescribed for GS–18 of the General Schedule by section 5332''.

1984—Subsec. (a). Pub. L. 98–473, § 621(a), substituted ''the Administrator'' for ''him'' before ''and to prescribe''.

Subsec. (c). Pub. L. 98–473, § 621(b), substituted ''the Administrator'' for ''him'' before ''in carrying out'' and ''the functions of the Administrator'' for ''his functions''.

1980—Subsec. (c). Pub. L. 96–509, § 19(c)(1), substituted ''Administrator'' for ''Associate Administrator''.

Subsec. (d). Pub. L. 96–509, § 19(c)(2), substituted ''title 5'' for ''title I'' after ''section 5332 of''.

1977—Subsec. (c). Pub. L. 95–115 substituted ''Associate'' for ''Assistant''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

§ 5613. Voluntary and uncompensated services

The Administrator is authorized to accept and employ, in carrying out the provisions of this chapter, voluntary and uncompensated services notwithstanding the provisions of section 1342 of title 31.

(Pub. L. 93–415, title II, § 203, Sept. 7, 1974, 88 Stat. 1113.)

CODIFICATION

''Section 1342 of title 31'' substituted in text for ''section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 5614. Concentration of Federal efforts

(a) Implementation of policy by Administrator; consultation with Council and Advisory Committee

(1) The Administrator shall develop objectives, priorities, and a long-term plan, and implement overall policy and a strategy to carry out such plan, for all Federal juvenile delinquency programs and activities relating to prevention, diversion, training, treatment, rehabilitation, evaluation, research, and improvement of the juvenile justice system in the United States. In carrying out the functions of the Administrator, the Administrator shall consult with the Council.

(2)(A) The plan described in paragraph (1) shall—

(i) contain specific goals and criteria for making grants and contracts, for conducting research, and for carrying out other activities under this subchapter; and

(ii) provide for coordinating the administration programs and activities under this subchapter with the administration of all other Federal juvenile delinquency programs and activities, including proposals for joint funding to be coordinated by the Administrator.

(B) The Administrator shall review the plan described in paragraph (1) annually, revise the plan as the Administrator considers appropriate, and publish the plan in the Federal Register—

(i) not later than 240 days after November 4, 1992, in the case of the initial plan required by paragraph (1); and

(ii) except as provided in clause (i), in the 30-day period ending on October 1 of each year.

(b) Duties of Administrator

In carrying out the purposes of this chapter, the Administrator shall—

(1) advise the President through the Attorney General as to all matters relating to federally assisted juvenile delinquency programs and Federal policies regarding juvenile delinquency;

(2) assist operating agencies which have direct responsibilities for the prevention and treatment of juvenile delinquency in the development and promulgation of regulations, guidelines, requirements, criteria, standards, procedures, and budget requests in accordance with the policies, priorities, and objectives the Administrator establishes;

(3) conduct and support evaluations and studies of the performance and results achieved by Federal juvenile delinquency programs and activities;

(4) implement Federal juvenile delinquency programs and activities among Federal departments and agencies and between Federal juvenile delinquency programs and activities and other Federal programs and activities which the Administrator determines may have an important bearing on the success of the entire Federal juvenile delinquency effort;

(5)(A) develop for each fiscal year, and publish annually in the Federal Register for public comment, a proposed comprehensive plan describing the particular activities which the Administrator intends to carry out under parts D and E of this subchapter in such fiscal year, specifying in detail those activities designed to satisfy the requirements of parts D and E of this subchapter; and

(B) taking into consideration comments received during the 45-day period beginning on the date the proposed plan is published, develop and publish a final plan, before December 31 of such fiscal year, describing the particular activities which the Administrator intends to carry out under parts D and E of this subchapter in such fiscal year, specifying in detail those activities designed to satisfy the requirements of parts D and E of this subchapter;

(6) provide for the auditing of monitoring systems required under section 5633(a)(15)[1] of this title to review the adequacy of such systems; and

(7) not later than 1 year after November 2, 2002, issue model standards for providing mental health care to incarcerated juveniles.

(c) Information, reports, studies, and surveys from other agencies

The Administrator may require, through appropriate authority, Federal departments and agencies engaged in any activity involving any Federal juvenile delinquency program to provide the Administrator with such information as may be appropriate to prevent the duplication of efforts, and to coordinate activities, related to the prevention of juvenile delinquency.

(d) Delegation of functions

The Administrator shall have the sole authority to delegate any of the functions of the Administrator under this chapter.

(e) Utilization of services and facilities of other agencies; reimbursement

The Administrator is authorized to utilize the services and facilities of any agency of the Federal Government and of any other public agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement as may be agreed upon.

(f) Coordination of functions of Administrator and Secretary of Health and Human Services

All functions of the Administrator under this subchapter shall be coordinated as appropriate with the functions of the Secretary of Health and Human Services under subchapter III of this chapter.

(Pub. L. 93–415, title II, § 204, Sept. 7, 1974, 88 Stat. 1113; Pub. L. 94–273, §§ 8(3), 12(3), Apr. 21, 1976, 90 Stat. 378; Pub. L. 95–115, § 3(a)(3)(A), (b), Oct. 3, 1977, 91 Stat. 1048, 1049; Pub. L. 96–509, §§ 7, 19(d), Dec. 8, 1980, 94 Stat. 2752, 2763; Pub. L. 98–473, title II, § 622, Oct. 12, 1984, 98 Stat. 2109; Pub. L. 100–690, title VII, § 7253, Nov. 18, 1988, 102 Stat. 4436; Pub. L. 102–586, § 2(c), Nov. 4, 1992, 106 Stat. 4984; Pub. L. 107–273, div. C, title II, § 12205, Nov. 2, 2002, 116 Stat. 1872.)

REFERENCES IN TEXT

Section 5633(a)(15) of this title, referred to in subsec. (b)(6), was redesignated section 5633(a)(14) of this title by Pub. L. 107–273, div. C, title II, § 12209(1)(S), Nov. 2, 2002, 116 Stat. 1879.

CODIFICATION

November 2, 2002, referred to in subsec. (b)(7), was in the original ''the date of the enactment of this paragraph'' which was translated as meaning the date of enactment of Pub. L. 107–273, which amended par. (7) generally, to reflect the probable intent of Congress.

AMENDMENTS

2002—Subsec. (b)(3). Pub. L. 107–273, § 12205(1)(A), struck out ''and of the prospective performance and results that might be achieved by alternative programs and activities supplementary to or in lieu of those currently being administered'' before semicolon at end.

Subsec. (b)(5). Pub. L. 107–273, § 12205(1)(B), substituted ''parts D and E'' for ''parts C and D'' wherever appearing.

Subsec. (b)(7). Pub. L. 107–273, § 12205(1)(C), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''not later than 1 year after November 4, 1992, issue model standards for providing health care to incarcerated juveniles.''

[1] See References in Text note below.

Subsec. (c). Pub. L. 107–273, § 12205(2), substituted ''as may be appropriate to prevent the duplication of efforts, and to coordinate activities, related to the prevention of juvenile delinquency'' for ''and reports, and to conduct such studies and surveys, as the Administrator may deem to be necessary to carry out the purposes of this part''.

Subsec. (d). Pub. L. 107–273, § 12205(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The Administrator may delegate any of the functions of the Administrator under this subchapter, to any officer or employee of the Office.''

Subsecs. (f), (h). Pub. L. 107–273, § 12205(5), redesignated subsec. (h) as (f).

Subsec. (i). Pub. L. 107–273, § 12205(4), struck out subsec. (i) which read as follows:

''(1) The Administrator shall require through appropriate authority each Federal agency which administers a Federal juvenile delinquency program to submit annually to the Council a juvenile delinquency development statement. Such statement shall be in addition to any information, report, study, or survey which the Administrator may require under subsection (c) of this section.

''(2) Each juvenile delinquency development statement submitted to the Administrator under paragraph (1) shall contain such information, data, and analyses as the Administrator may require. Such analyses shall include an analysis of the extent to which the juvenile delinquency program of the Federal agency submitting such development statement conforms with and furthers Federal juvenile delinquency prevention and treatment goals and policies.

''(3) The Administrator shall review and comment upon each juvenile delinquency development statement transmitted to the Administrator under paragraph (1). Such development statement, together with the comments of the Administrator, shall be included by the Federal agency involved in every recommendation or request made by such agency for Federal legislation which significantly affects juvenile delinquency prevention and treatment.''

1992—Subsec. (a). Pub. L. 102–586, § 2(c)(1), designated existing provisions as par. (1), substituted ''develop objectives, priorities, and a long-term plan, and implement overall policy and a strategy to carry out such plan,'' for ''implement overall policy and develop objectives and priorities'', and added par. (2).

Subsec. (b)(7). Pub. L. 102–586, § 2(c)(2), (3), added par. (7).

Subsec. (f). Pub. L. 102–586, § 2(c)(4), struck out subsec. (f) which read as follows: ''The Administrator is authorized to transfer funds appropriated under this section to any agency of the Federal Government to develop or demonstrate new methods in juvenile delinquency prevention and rehabilitation and to supplement existing delinquency prevention and rehabilitation programs which the Administrator finds to be exceptionally effective or for which the Administrator finds there exists exceptional need.''

Subsec. (g). Pub. L. 102–586, § 2(c)(4), struck out subsec. (g) which read as follows: ''The Administrator is authorized to make grants to, or enter into contracts with, any public or private agency, organization, institution, or individual to carry out the purposes of this subchapter.''

1988—Subsec. (a). Pub. L. 100–690, § 7253(a), struck out ''and the National Advisory Committee for Juvenile Justice and Delinquency Prevention'' before period at end.

Subsec. (b)(5). Pub. L. 100–690, § 7253(b)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''develop annually with the assistance of the Advisory Committee and the Coordinating Council and submit to the President and the Congress, after the first year following October 3, 1977, prior to December 31, an analysis and evaluation of Federal juvenile delinquency programs conducted and assisted by Federal departments and agencies, the expenditures made, the results achieved, the plans developed, and problems in the operations and coordination of such programs and a brief but precise comprehensive plan for Federal juvenile delinquency programs, with particular emphasis on the prevention of juvenile delinquency and the development of programs and services which will encourage increased diversion of juveniles from the traditional juvenile justice system, which analysis and evaluation shall include recommendations for modifications in organization, management, personnel, standards, budget requests, and implementation plans necessary to increase the effectiveness of these programs;''.

Subsec. (b)(6), (7). Pub. L. 100–690, § 7253(b)(2), (3), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''provide technical assistance and training assistance to Federal, State, and local governments, courts, public and private agencies, institutions, and individuals, in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs; and''.

Subsec. (c). Pub. L. 100–690, § 7253(c)(1), (3), redesignated subsec. (f) as (c) and struck out former subsec. (c) which read as follows: ''The President shall, no later than ninety days after receiving each annual report under subsection (b)(5) of this section, submit a report to the Congress and to the Council containing a detailed statement of any action taken or anticipated with respect to recommendations made by each annual report.''

Subsec. (d). Pub. L. 100–690, § 7253(c)(1), (3), redesignated subsec. (g) as (d) and struck out former subsec. (d) which read as follows:

''(1) The first annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) of this section shall contain, in addition to information required by subsection (b)(5) of this section, a detailed statement of criteria developed by the Administrator for identifying the characteristics of juvenile delinquency, juvenile delinquency prevention, diversion of youths from the juvenile justice system, and the training, treatment, and rehabilitation of juvenile delinquents.

''(2) The second such annual report shall contain, in addition to information required by subsection (b)(5) of this section, an identification of Federal programs which are related to juvenile delinquency prevention or treatment, together with a statement of the moneys expended for each such program during the most recent complete fiscal year. Such identification shall be made by the Administrator through the use of criteria developed under paragraph (1).''

Subsec. (e). Pub. L. 100–690, § 7253(c)(1), (3), redesignated subsec. (h) as (e) and struck out former subsec. (e) which read as follows: ''The third such annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) of this section shall contain, in addition to the comprehensive plan required by subsection (b)(5) of this section, a detailed statement of procedures to be used with respect to the submission of juvenile delinquency development statements to the Administrator by Federal agencies under subsection (*l*) of this section. Such statement submitted by the Administrator shall include a description of information, data, and analyses which shall be contained in each such development statement.''

Subsecs. (f) to (h). Pub. L. 100–690, § 7253(c)(3), redesignated subsecs. (i) to (k) as (f) to (h), respectively. Former subsecs. (f) to (h) redesignated (c) to (e), respectively.

Subsec. (i). Pub. L. 100–690, § 7253(c)(2), (3), redesignated subsec. (*l*) as (i), struck out ''which meets any criterion developed by the Administrator under subsection (d)(1) of this section'' after ''juvenile delinquency program'' and substituted ''subsection (c)'' for ''subsection (f)'' in par. (1), and struck out ''shall be submitted in accordance with procedure established by the Administrator under subsection (e) of this section and'' after ''under paragraph (1)'' and ''under subsection (e) of this section'' after ''Administrator may require'' in par. (2). Former subsec. (i) redesignated (f).

Subsecs. (j) to (*l*). Pub. L. 100–690, § 7253(c)(3), redesignated subsecs. (j) to (*l*) as (g) to (i), respectively.

Subsec. (m). Pub. L. 100–690, § 7253(c)(4), struck out subsec. (m) which read as follows: ''To carry out the purposes of this section, there is authorized to be appropriated for each fiscal year an amount which does not exceed 7.5 percent of the total amount appropriated to carry out this subchapter.''

1984—Subsec. (a). Pub. L. 98–473, § 622(a), substituted ''the functions of the Administrator'' for ''his functions''.

Subsec. (b)(2), (4). Pub. L. 98–473, § 622(b)(1), (2), substituted ''the Administrator'' for ''he''.

Subsec. (b)(7). Pub. L. 98–473, § 622(b)(3)–(5), added par. (7).

Subsec. (e). Pub. L. 98–473, § 622(c), substituted ''subsection (*l*)'' for ''subsection (''*l*'')''.

Subsec. (f). Pub. L. 98–473, § 622(d), substituted ''the Administrator'' for ''him'' before ''with such information'' and for ''he'' before ''may deem to be''.

Subsec. (g). Pub. L. 98–473, § 622(e), substituted ''the functions of the Administrator'' for ''his functions''.

Subsec. (i). Pub. L. 98–473, § 622(f), substituted ''section'' for ''subchapter'' and ''the Administrator'' for ''he'' before ''finds there exists''.

Subsec. (*l*)(1). Pub. L. 98–473, § 622(g)(1), substituted ''subsection (d)(1) of this section'' for ''section 5614(d)(1) of this title'' and ''subsection (f) of this section'' for ''section 5614(f) of this title''.

Subsec. (*l*)(2). Pub. L. 98–473, § 622(g)(2), substituted ''paragraph (1)'' for ''subsection (''*l*'')'' and ''subsection (e) of this section'' for ''section 5614(e) of this title'' in two places.

Subsec. (*l*)(3). Pub. L. 98–473, § 622(g)(3), substituted ''the Administrator'' for ''him'' after ''transmitted to'' and ''paragraph (1)'' for ''subsection (''*l*'')''.

1980—Subsec. (b). Pub. L. 96–509, § 7(a), struck out reference to the Associate Administrator in provisions preceding par. (1) and in par. (6) inserted reference to training assistance.

Subsec. (d)(1). Pub. L. 96–509, § 19(d)(1), substituted ''Administrator for identifying'' for ''Associate Administrator for identifying''.

Subsec. (g). Pub. L. 96–509, § 19(d)(2), substituted ''Office'' for ''Administration''.

Subsec. (i). Pub. L. 96–509, § 19(d)(3), substituted ''Administrator finds'' for ''Associate Administrator finds''.

Subsec. (k). Pub. L. 96–509, § 19(d)(4), substituted ''Health and Human Services'' for ''the Department of Health, Education, and Welfare''.

Subsec. (*l*)(1). Pub. L. 96–509, § 19(d)(5), substituted ''developed by the Administrator'' for ''developed by the Associate Administrator''.

Subsec. (m). Pub. L. 96–509, § 7(b), added subsec. (m).

1977—Subsec. (b). Pub. L. 95–115, § 3(b)(1), in introductory text inserted requirement for assistance of the Associate Administrator, added par. (5), and redesignated par. (7) as (6). Former par. (5), relating to an analysis and evaluation of Federal juvenile delinquency programs, and former par. (6), relating to a comprehensive plan for Federal juvenile delinquency programs, were struck out.

Subsec. (d)(1). Pub. L. 95–115, § 3(b)(2), inserted ''Associate'' before ''Administrator for''.

Subsec. (e). Pub. L. 95–115, § 3(b)(3), substituted ''(5)'' for ''(6)'' in two places.

Subsec. (f). Pub. L. 95–115, § 3(b)(4), inserted ''Federal'' after ''appropriate authority,''.

Subsec. (g). Pub. L. 95–115, § 3(b)(5), substituted ''subchapter'' for ''part, except the making of regulations''.

Subsec. (i). Pub. L. 95–115, § 3(a)(3)(A), substituted ''Associate'' for ''Assistant''.

Subsec. (j). Pub. L. 95–115, § 3(b)(6), inserted ''organization,'' after ''agency,'' and substituted ''subchapter'' for ''part''.

Subsec. (k). Pub. L. 95–115, § 3(b)(7), substituted ''subchapter'' for ''part'' and ''subchapter III of this chapter'' for ''the Juvenile Delinquency Prevention Act''.

Subsec. (*l*)(1). Pub. L. 95–115, § 3(b)(8), inserted ''Associate'' before ''Administrator under''.

1976—Subsec. (b)(5). Pub. L. 94–273, § 8(3), substituted ''December 31'' for ''September 30''.

Subsec. (b)(6). Pub. L. 94–273, § 12(3), substituted ''June'' for ''March''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, but amendment by section 7253(b)(1) of Pub. L. 100–690 not applicable with respect to fiscal year 1989, see section 7296(a), (b)(2) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Sept. 7, 1974, except that subsec. (b)(5), (6) effective at close of thirty-first day of twelfth calendar month of 1974, and subsec. (*l*) effective at close of thirtieth day of eleventh calendar month of 1976, see section 263(a), (b) of Pub. L. 93–415, set out as a note under section 5601 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment unless in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the end of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 5615. Joint funding; non-Federal share requirements

Notwithstanding any other provision of law, where funds are made available by more than one Federal agency to be used by any agency, organization, institution, or individual to carry out a Federal juvenile delinquency program or activity, any one of the Federal agencies providing funds may be requested by the Administrator to act for all in administering the funds advanced whenever the Administrator finds the program or activity to be exceptionally effective or for which the Administrator finds exceptional need. In such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each Federal agency, and the Administrator may order any such agency to waive any technical grant or contract requirement (as defined in such regulations) which is inconsistent with the similar requirement of the administering agency or which the administering agency does not impose.

(Pub. L. 93–415, title II, § 205, Sept. 7, 1974, 88 Stat. 1116; Pub. L. 95–115, § 3(c), Oct. 3, 1977, 91

Stat. 1049; Pub. L. 96–509, § 19(e), Dec. 8, 1980, 94 Stat. 2763.)

AMENDMENTS

1980—Pub. L. 96–509 struck out ''Associate'' before ''Administrator finds'' in two places.

1977—Pub. L. 95–115 inserted provisions relating to functions of the Associate Administrator with respect to joint funding.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

§ 5616. Coordinating Council on Juvenile Justice and Delinquency Prevention

(a) Establishment; membership

(1) There is hereby established, as an independent organization in the executive branch of the Federal Government a Coordinating Council on Juvenile Justice and Delinquency Prevention composed of the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, the Commissioner of Immigration and Naturalization, such other officers of Federal agencies who hold significant decisionmaking authority as the President may designate, and individuals appointed under paragraph (2).

(2)(A) Nine members shall be appointed, without regard to political affiliation, to the Council in accordance with this paragraph from among individuals who are practitioners in the field of juvenile justice and who are not officers or employees of the United States.

(B)(i) Three members shall be appointed by the Speaker of the House of Representatives, after consultation with the minority leader of the House of Representatives.

(ii) Three members shall be appointed by the majority leader of the Senate, after consultation with the minority leader of the Senate.

(iii) Three members shall be appointed by the President.

(C)(i) Of the members appointed under each of clauses (i), (ii), and (iii)—

(I) 1 shall be appointed for a term of 1 year;

(II) 1 shall be appointed for a term of 2 years; and

(III) 1 shall be appointed for a term of 3 years;

as designated at the time of appointment.

(ii) Except as provided in clause (iii), a vacancy arising during the term for which an appointment is made may be filled only for the remainder of such term.

(iii) After the expiration of the term for which a member is appointed, such member may continue to serve until a successor is appointed.

(b) Chairman and Vice Chairman

The Attorney General shall serve as Chairman of the Council. The Administrator of the Office of Juvenile Justice and Delinquency Prevention shall serve as Vice Chairman of the Council. The Vice Chairman shall act as Chairman in the absence of the Chairman.

(c) Functions

(1) The function of the Council shall be to coordinate all Federal juvenile delinquency programs (in cooperation with State and local juvenile justice programs) all Federal programs and activities that detain or care for unaccompanied juveniles, and all Federal programs relating to missing and exploited children. The Council shall examine how the separate programs can be coordinated among Federal, State, and local governments to better serve at-risk children and juveniles and shall make recommendations to the President, and to the Congress, at least annually with respect to the coordination of overall policy and development of objectives and priorities for all Federal juvenile delinquency programs and activities and all Federal programs and activities that detain or care for unaccompanied juveniles. The Council shall review the programs and practices of Federal agencies and report on the degree to which Federal agency funds are used for purposes which are consistent or inconsistent with the mandates of paragraphs (12)(A), (13), and (14) of section 5633(a) of this title. The Council shall review, and make recommendations with respect to, any joint funding proposal undertaken by the Office of Juvenile Justice and Delinquency Prevention and any agency represented on the Council. The Council shall review the reasons why Federal agencies take juveniles into custody and shall make recommendations regarding how to improve Federal practices and facilities for holding juveniles in custody.

(2) In addition to performing their functions as members of the Council, the members appointed under subsection (a)(2) of this section shall collectively—

(A) make recommendations regarding the development of the objectives, priorities, and the long-term plan, and the implementation of overall policy and the strategy to carry out such plan, referred to in section 5614(a)(1) of this title; and

(B) not later than 180 days after November 4, 1992, submit such recommendations to the Administrator, the Chairman of the Committee on Education and the Workforce of the House of Representatives, and the Chairman of the Committee on the Judiciary of the Senate.

(d) Meetings

The Council shall meet at least quarterly.

(e) Appointment of personnel or staff support by Administrator

The Administrator shall, with the approval of the Council, appoint such personnel or staff support as the Administrator considers necessary to carry out the purposes of this subchapter.

(f) Expenses of Council members; reimbursement

Members appointed under subsection (a)(2) of this section shall serve without compensation. Members of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Council.

(g) Authorization of appropriations

Of sums available to carry out this part, not more than $200,000 shall be available to carry out this section.

(Pub. L. 93–415, title II, § 206, Sept. 7, 1974, 88 Stat. 1116; Pub. L. 94–237, § 4(c)(5)(D), Mar. 19, 1976, 90 Stat. 244; Pub. L. 95–115, § 3(a)(3)(A), (5), (d), Oct. 3, 1977, 91 Stat. 1048–1050; Pub. L. 96–509, §§ 8, 19(f), Dec. 8, 1980, 94 Stat. 2753, 2763; Pub. L. 98–473, title II, § 623, Oct. 12, 1984, 98 Stat. 2110; Pub. L. 100–690, title VII, §§ 7251(b), 7252(b)(2), 7254, Nov. 18, 1988, 102 Stat. 4435–4437; Pub. L. 102–586, § 2(d), Nov. 4, 1992, 106 Stat. 4985; Pub. L. 103–82, title IV, § 405(k), Sept. 21, 1993, 107 Stat. 922; Pub. L. 107–273, div. C, title II, § 12206, Nov. 2, 2002, 116 Stat. 1872.)

AMENDMENTS

2002—Subsec. (c)(2)(B). Pub. L. 107–273 substituted ''Education and the Workforce'' for ''Education and Labor''.

1993—Subsec. (a)(1). Pub. L. 103–82 substituted ''the Chief Executive Officer of the Corporation for National and Community Service'' for ''the Director of the ACTION Agency''.

1992—Subsec. (a)(1). Pub. L. 102–586, § 2(d)(1)(A), substituted ''the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the Office of National Drug Control Policy, the Director of the ACTION Agency, the Commissioner of Immigration and Naturalization, such other officers of Federal agencies who hold significant decisionmaking authority as the President may designate, and individuals appointed under paragraph (2)'' for ''the Director of the Office of Community Services, the Director of the Office of Drug Abuse Policy, the Director of the ACTION Agency, the Director of the Bureau of Prisons, the Commissioner of the Bureau of Indian Affairs, the Director for the Office of Special Education and Rehabilitation Services, the Commissioner for the Administration for Children, Youth, and Families, and the Director of the Youth Development Bureau, or their respective designees, the Assistant Attorney General who heads the Office of Justice Programs, the Director of the Bureau of Justice Assistance, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the National Institute of Justice, and representatives of such other agencies as the President shall designate''.

Subsec. (a)(2). Pub. L. 102–586, § 2(d)(1)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Any individual designated under this section shall be selected from individuals who exercise significant decisionmaking authority in the Federal agency involved.''

Subsec. (c). Pub. L. 102–586, § 2(d)(2), designated existing provisions as par. (1), inserted ''(in cooperation with State and local juvenile justice programs) all Federal programs and activities that detain or care for unaccompanied juveniles,'', ''shall examine how the separate programs can be coordinated among Federal, State, and local governments to better serve at-risk children and juveniles and'' and ''and all Federal programs and activities that detain or care for unaccompanied juveniles'', and added par. (2).

Subsec. (f). Pub. L. 102–586, § 2(d)(3), inserted ''Members appointed under subsection (a)(2) of this section shall serve without compensation.'' before ''Members of the Council'' and struck out ''who are employed by the Federal Government full time'' before ''shall be''.

1988—Subsec. (a)(1). Pub. L. 100–690, §§ 7251(b), 7252(b)(2), struck out ''(hereinafter referred to as the 'Council')'' after ''Coordinating Council on Juvenile Justice and Delinquency Prevention'' and ''the Deputy Administrator of the Institute for Juvenile Justice and Delinquency Prevention,'' after ''Administrator of the Office of Juvenile Justice and Delinquency Prevention,''.

Subsec. (c). Pub. L. 100–690, § 7254(a)(1)–(3), struck out '', in consultation with the Advisory Board on Missing Children,'' after ''programs and'' in first sentence, substituted ''shall'' for ''is authorized to'' and ''paragraphs (12)(A), (13), and (14) of section 5633(a) of this title'' for ''section 5633(a)(12)(A) and (13) of this title'' in third sentence, and inserted at end ''The Council shall review the reasons why Federal agencies take juveniles into custody and shall make recommendations regarding how to improve Federal practices and facilities for holding juveniles in custody.''

Subsec. (d). Pub. L. 100–690, § 7254(b), struck out provision that annual report required by section 5614(b)(5) of this title include a description of the activities of the Council.

Subsec. (g). Pub. L. 100–690, § 7254(c), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''To carry out the purposes of this section there is authorized to be appropriated such sums as may be necessary, not to exceed $200,000 for each fiscal year.''

1984—Subsec. (a)(1). Pub. L. 98–473, § 623(a), substituted ''Office of Community Services'' for ''Community Services Administration'', ''Assistant Attorney General who heads the Office of Justice Programs'' for ''Director of the Office of Justice Assistance, Research, and Statistics'', and ''Director of the Bureau of Justice Assistance'' for ''Administrator of the Law Enforcement Assistance Administration''.

Subsec. (c). Pub. L. 98–473, § 623(b), substituted ''delinquency programs and, in consultation with the Advisory Board on Missing Children, all Federal programs relating to missing and exploited children'' for ''delinquency programs''.

Subsec. (e). Pub. L. 98–473, § 623(c), substituted ''the Administrator'' for ''he'' before ''considers necessary''.

Subsec. (g). Pub. L. 98–473, § 623(d), substituted ''$200,000'' for ''$500,000''.

1980—Subsec. (a)(1). Pub. L. 96–509, §§ 8(a), 19(f)(1), substituted ''the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Community Services Administration, the Director of the Office of Drug Abuse Policy, the Director of the ACTION Agency, the Director of the Bureau of Prisons, the Commissioner of the Bureau of Indian Affairs, the Director of the Office of Special Education and Rehabilitation Services, the Commissioner for the Administration for Children, Youth, and Families, and the Director of the Youth Development Bureau, or their respective designees, the Director of the Office of Justice Assistance, Research and Statistics, the Administrator of the Law Enforcement Assistance Administration, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Deputy Administrator of the Institute for Juvenile Justice and Delinquency Prevention, the Director of the National Institute of Justice, and representatives'' for ''the Secretary of Health, Education, and Welfare, the Secretary of Labor, the Director of the Office of Drug Abuse Policy, the Commissioner of the Office of Education, the Director of the ACTION Agency, the Secretary of Housing and Urban Development, or their respective designees, the Associate Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Deputy Associate Administrator of the Institute for Juvenile Justice and Delinquency Prevention, and representatives''.

Subsec. (b). Pub. L. 96–509, § 19(f)(2), struck out ''Associate'' before ''Administrator''.

Subsec. (c). Pub. L. 96–509, § 8(b), provided that the Coordinating Council make its annual recommendations to the Congress as well as the President and that the Coordinating Council review and make recommendations with respect to any joint funding proposal undertaken by the Office of Juvenile Justice and Delinquency Prevention and any agency represented on the Council and struck out ''the Attorney General and''.

Subsec. (d). Pub. L. 96–509, § 8(c), substituted ''at least quarterly'' for ''a minimum of four times per year''.

Subsec. (e). Pub. L. 96–509, §§8(d), 19(f)(3), substituted ''The Administrator shall'' for ''The Associate Administrator may''.

Subsec. (g). Pub. L. 96–509, §8(e), placed a limit of $500,000 for each fiscal year on the amount authorized to be appropriated to carry out the purposes of this section.

1977—Subsec. (a)(1). Pub. L. 95–115, §3(a)(3)(A), (5), (d)(1), inserted references to the Commissioner of the Office of Education and the Director of the ACTION Agency, and substituted ''Associate'' for ''Assistant'' wherever appearing.

Subsec. (b). Pub. L. 95–115, §3(a)(3)(A), substituted ''Associate'' for ''Assistant''.

Subsec. (c). Pub. L. 95–115, §3(d)(2), inserted provisions relating to review functions of the Council.

Subsec. (d). Pub. L. 95–115, §3(d)(3), substituted ''four'' for ''six''.

Subsec. (e). Pub. L. 95–115, §3(d)(4), redesignated former par. (3) as entire subsec. (e) and, as so redesignated, inserted ''or staff support'' after ''personnel'' and substituted ''Associate Administrator'' for ''Executive Secretary''. Former pars. (1) and (2), which related to appointment and responsibilities of the Executive Secretary, respectively, were struck out.

1976—Subsec. (a)(1). Pub. L. 94–237 substituted ''Office of Drug Abuse Policy'' for ''Special Action Office for Drug Abuse Prevention''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(1) of this section relating to the Council making recommendations to Congress at least annually, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 1 on page 159 of House Document No. 103–7.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 5617. Annual report

Not later than 180 days after the end of a fiscal year, the Administrator shall submit to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate a report that contains the following with respect to such fiscal year:

(1) A detailed summary and analysis of the most recent data available regarding the number of juveniles taken into custody, the rate at which juveniles are taken into custody, and the trends demonstrated by the data required by subparagraphs (A), (B), and (C). Such summary and analysis shall set out the information required by subparagraphs (A), (B), (C), and (D) separately for juvenile nonoffenders, juvenile status offenders, and other juvenile offenders. Such summary and analysis shall separately address with respect to each category of juveniles specified in the preceding sentence—

(A) the types of offenses with which the juveniles are charged;

(B) the race and gender of the juveniles;

(C) the ages of the juveniles;

(D) the types of facilities used to hold the juveniles (including juveniles treated as adults for purposes of prosecution) in custody, including secure detention facilities, secure correctional facilities, jails, and lockups;

(E) the number of juveniles who died while in custody and the circumstances under which they died; and

(F) the educational status of juveniles, including information relating to learning disabilities, failing performance, grade retention, and dropping out of school.

(2) A description of the activities for which funds are expended under this part, including the objectives, priorities, accomplishments, and recommendations of the Council.

(3) A description, based on the most recent data available, of the extent to which each State complies with section 5633 of this title and with the plan submitted under such section by the State for such fiscal year.

(4) An evaluation of the programs funded under this subchapter and their effectiveness in reducing the incidence of juvenile delinquency, particularly violent crime, committed by juveniles.

(Pub. L. 93–415, title II, §207, as added Pub. L. 100–690, title VII, §7255, Nov. 18, 1988, 102 Stat. 4437; amended Pub. L. 102–586, §2(e), Nov. 4, 1992, 106 Stat. 4986; Pub. L. 107–273, div. C, title II, §12207, Nov. 2, 2002, 116 Stat. 1872.)

PRIOR PROVISIONS

A prior section 5617, Pub. L. 93–415, title II, §207, as added Pub. L. 96–509, §9, Dec. 8, 1980, 94 Stat. 2753, related to establishment and functions of National Advisory Committee for Juvenile Justice and Delinquency Prevention, prior to repeal eff. Oct. 12, 1984, by Pub. L. 98–473, title II, §624, Oct. 12, 1984, 98 Stat. 2111.

Another prior section 5617, Pub. L. 93–415, title II, §207, Sept. 7, 1974, 88 Stat. 1117; Pub. L. 95–115, §3(e), Oct. 3, 1977, 91 Stat. 1050, related to National Advisory Committee for Juvenile Justice and Delinquency Prevention, its membership, terms of office, etc., prior to repeal by Pub. L. 96–509, §9, Dec. 8, 1980, 94 Stat. 2753.

AMENDMENTS

2002—Pars. (4), (5). Pub. L. 107–273 added par. (4) and struck out former pars. (4) and (5) which read as follows:

''(4) A summary of each program or activity for which assistance is provided under part C or D of this subchapter, an evaluation of the results of such program or activity, and a determination of the feasibility and advisability of replicating such program or activity in other locations.

''(5) A description of selected exemplary delinquency prevention programs for which assistance is provided under this subchapter, with particular attention to community-based juvenile delinquency prevention programs that involve and assist families of juveniles.''

1992—Par. (1)(D). Pub. L. 102–586, § 2(e)(1)(A), inserted ''(including juveniles treated as adults for purposes of prosecution)''.

Par. (1)(F). Pub. L. 102–586, § 2(e)(1)(B), (2), (3), added subpar. (F).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1988, with the report required by this section with respect to fiscal year 1988 to be submitted not later than Aug. 1, 1989, notwithstanding the 180-day period provided in this section, see section 7296(a), (b)(3) of Pub. L. 100–690, as amended, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to submittal to the Speaker of the House of Representatives and the President pro tempore of the Senate of an annual report, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 10 on page 177 of House Document No. 103–7.

USE OF COURT ORDERS TO PLACE JUVENILES IN SECURE FACILITIES, JAILS AND LOCKUPS FOR ADULTS; INVESTIGATION AND REPORT

Section 7295 of Pub. L. 100–690 directed Comptroller General of the United States, not later than 180 days after Nov. 18, 1988, to conduct an investigation of extent to which valid court orders and court orders other than valid court orders, used in the 5-year period ending on Dec. 31, 1988, to place juveniles in secure detention facilities, in secure correctional facilities, and in jails and lockups for adults, and submit, not later than 3 years after Nov. 18, 1988, a report to certain congressional committees of results of investigation.

§§ 5618, 5619. Repealed. Pub. L. 96–509, § 9, Dec. 8, 1980, 94 Stat. 2753

Section 5618, Pub. L. 93–415, title II, § 208, Sept. 7, 1974, 88 Stat. 1117, Pub. L. 95–115, § 3(a)(3)(B), (f), Oct. 3, 1977, 91 Stat. 1048, 1050, set out the duties and provided for the staffing of the National Advisory Committee and numerous subcommittees.

Section 5619, Pub. L. 93–415, title II, § 209, Sept. 7, 1974, 88 Stat. 1118, set out provisions for compensation and reimbursement for travel and other expenses of full and part time Federal employees serving on the Advisory Committee.

PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

AMENDMENTS

1988—Pub. L. 100–690, title VII, § 7263(a)(1)(A), Nov. 18, 1988, 102 Stat. 4443, struck out subpart I heading ''Formula Grants''.

§ 5631. Authority to make grants and contracts

(a) The Administrator is authorized to make grants to States and units of local government or combinations thereof to assist them in planning, establishing, operating, coordinating, and evaluating projects directly or through grants and contracts with public and private agencies for the development of more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system.

(b)(1) With not to exceed 2 percent of the funds available in a fiscal year to carry out this part, the Administrator shall make grants to and enter into contracts with public and private agencies, organizations, and individuals to provide technical assistance to States, units of general local governments[1] (and combinations thereof), and local private agencies to facilitate compliance with section 5633 of this title and implementation of the State plan approved under section 5633(c) of this title.

(2) Grants and contracts may be made under paragraph (1) only to public and private agencies, organizations, and individuals that have experience in providing such technical assistance.

(Pub. L. 93–415, title II, § 221, Sept. 7, 1974, 88 Stat. 1118; Pub. L. 95–115, § 4(a), Oct. 3, 1977, 91 Stat. 1050; Pub. L. 98–473, title II, § 625(a), Oct. 12, 1984, 98 Stat. 2111; Pub. L. 100–690, title VII, § 7256, Nov. 18, 1988, 102 Stat. 4438; Pub. L. 102–586, § 2(f)(1), Nov. 4, 1992, 106 Stat. 4987; Pub. L. 105–277, div. A, § 101(b) [title I, § 129(a)(2)(A)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–75; Pub. L. 107–273, div. C, title II, § 12221(a)(2), Nov. 2, 2002, 116 Stat. 1894.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–273 struck out at end ''In providing such technical assistance, the recipient of a grant or contract under this subsection shall coordinate its activities with the State agency described in section 5671(c)(1) of this title.''

1998—Subsec. (a). Pub. L. 105–277 substituted ''units of local government'' for ''units of general local government''.

1992—Subsec. (b)(2). Pub. L. 102–586, § 2(f)(1)(A), which directed the substitution of ''experience'' for ''existence'', could not be executed because ''existence'' did not appear in text.

Pub. L. 102–586, § 2(f)(1)(B), made technical amendment to reference to section 5671 of this title to reflect renumbering of corresponding section of original act.

1988—Pub. L. 100–690 inserted ''and contracts'' after ''grants'' in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

1984—Pub. L. 98–473 amended section catchline.

1977—Pub. L. 95–115 inserted ''grants and'' before ''contracts'' and substituted ''units of general local government or combinations thereof'' for ''local governments''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub.

[1] So in original. Probably should be ''units of local governments''.

L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

§ 5632. Allocation of funds

(a) Time; basis; amounts

(1) Subject to paragraph (2) and in accordance with regulations promulgated under this part, funds shall be allocated annually among the States on the basis of relative population of people under age eighteen.

(2)(A) Subject to paragraph (3), if the aggregate amount appropriated for a fiscal year to carry out this subchapter is less than $75,000,000, then the amount allocated to each State for such fiscal year shall be not less than $325,000, or such greater amount up to $400,000 as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 2000, except that the amount allocated to the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be not less than $75,000, or such greater amount up to $100,000 as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 2000, each.

(B) Subject to paragraph (3), if the aggregate amount appropriated for a fiscal year to carry out this subchapter equals or exceeds $75,000,000, then the amount allocated to each State for such fiscal year shall be not less than $600,000, except that the amount allocated to the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be not less than $100,000, or such greater amount up to $100,000 as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 2000, each.

(3) If, as a result of paragraph (2), the amount allocated to a State for a fiscal year would be less than the amount allocated to such State for fiscal year 2000, then the amounts allocated to satisfy the requirements of such paragraph shall be reduced pro rata to the extent necessary to allocate to such State for the fiscal year the amount allocated to such State for fiscal year 2000.

(b) Reallocation of unobligated funds

If any amount so allocated remains unobligated at the end of the fiscal year, such funds shall be reallocated in a manner equitable and consistent with the purpose of this part. Any amount so reallocated shall be in addition to the amounts already allocated and available to the State, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands for the same period.

(c) Use of allocated funds for development, etc., of State plans; limitations; matching requirements

In accordance with regulations promulgated under this part, a portion of any allocation to any State under this part shall be available to develop a State plan or for other pre-award activities associated with such State plan, and to pay that portion of the expenditures which are necessary for efficient administration, including monitoring, evaluation, and one full-time staff position. Not more than 10 percent of the total annual allocation of such State shall be available for such purposes except that any amount expended or obligated by such State, or by units of local government or any combination thereof, from amounts made available under this subsection shall be matched (in an amount equal to any such amount so expended or obligated) by such State, or by such units or combinations, from State or local funds, as the case may be. The State shall make available needed funds for planning and administration to units of local government or combinations thereof within the State on an equitable basis.

(d) Minimum annual allocation for assistance of advisory group

In accordance with regulations promulgated under this part, 5 per centum of the minimum annual allocation to any State under this part shall be available to assist the advisory group established under section 5633(a)(3) of this title.

(Pub. L. 93–415, title II, § 222, Sept. 7, 1974, 88 Stat. 1118; Pub. L. 95–115, § 4(b)(1), (2)(A)–(C), (3), (4), Oct. 3, 1977, 91 Stat. 1051; Pub. L. 96–509, § 10, Dec. 8, 1980, 94 Stat. 2755; Pub. L. 98–473, title II, § 625(b), Oct. 12, 1984, 98 Stat. 2111; Pub. L. 100–690, title VII, § 7257, Nov. 18, 1988, 102 Stat. 4438; Pub. L. 102–586, § 2(f)(2), Nov. 4, 1992, 106 Stat. 4987; Pub. L. 105–277, div. A, § 101(b) [title I, § 129(a)(2)(B)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–75; Pub. L. 107–273, div. C, title II, § 12208, Nov. 2, 2002, 116 Stat. 1873.)

AMENDMENTS

2002—Subsec. (a)(2)(A). Pub. L. 107–273, § 12208(1)(A)(i), struck out ''(other than parts D and E)'' after ''carry out this subchapter'', substituted ''amount up to $400,000'' for ''amount, up to $400,000,'', ''fiscal year 2000, except'' for ''fiscal year 1992 except'', ''amount up to $100,000'' for ''amount, up to $100,000,'', and ''fiscal year 2000, each'' for ''fiscal year 1992, each'', and struck out ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,''.

Subsec. (a)(2)(B). Pub. L. 107–273, § 12208(1)(A)(ii), struck out ''(other than part D)'' after ''carry out this subchapter'', substituted ''less than $600,000'' for ''less than $400,000'', ''amount up to $100,000'' for ''amount, up to $100,000,'', and ''fiscal year 2000,'' for ''fiscal year 1992'', and struck out ''or such greater amount, up to $600,000, as is available to be allocated if appropriations have been enacted and made available to carry out parts D and E of this subchapter in the full amounts authorized by section 5671(a)(1) and (3) of this title'' before ''except that'' and ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,''.

Subsec. (a)(3). Pub. L. 107–273, § 12208(1)(B), substituted ''fiscal year 2000'' for ''fiscal year 1992'' in two places and ''allocate'' for ''allot''.

Subsec. (b). Pub. L. 107–273, § 12208(2), struck out ''the Trust Territory of the Pacific Islands,'' after ''Guam,''.

1998—Subsec. (c). Pub. L. 105–277 substituted ''units of local government'' for ''units of general local government'' in two places.

1992—Subsec. (a)(2)(A). Pub. L. 102–586, § 2(f)(2)(A), (B)(i), substituted ''parts D and E'' for ''part D'', substituted ''allocated'' for ''allotted'' in two places, and inserted ''or such greater amount, up to $400,000, as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 1992'' and '', or such greater amount, up to $100,000, as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 1992,''.

Subsec. (a)(2)(B). Pub. L. 102–586, § 2(f)(2)(A), (B)(ii), substituted ''allocated'' for ''allotted'' in two places and inserted ''or such greater amount, up to $600,000, as is available to be allocated if appropriations have been enacted and made available to carry out parts D and E of this subchapter in the full amounts authorized by section 5671(a)(1) and (3) of this title'' and '', or such greater amount, up to $100,000, as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 1992''.

Subsec. (a)(3). Pub. L. 102–586, § 2(f)(2)(A), (B)(iii), substituted ''allocated'' for ''allotted'' wherever appearing and ''1992'' for ''1988'' in two places.

Subsec. (b). Pub. L. 102–586, § 2(f)(2)(A), substituted ''allocated'' for ''allotted'' in two places.

Subsec. (c). Pub. L. 102–586, § 2(f)(2)(A), (C), substituted ''allocation'' for ''allotment'' in two places, '', evaluation, and one full-time staff position'' for ''and evaluation'', and ''10 percent'' for ''7½ per centum''.

Subsec. (d). Pub. L. 102–586, § 2(f)(2)(A), substituted ''allocation'' for ''allotment''.

1988—Subsec. (a)(1). Pub. L. 100–690, § 7257(a)(1), (2), designated existing provisions as par. (1), substituted ''Subject to paragraph (2) and in'' for ''In'', and struck out at end ''No such allotment to any State shall be less than $225,000, except that for the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands no allotment shall be less than $56,250.''

Subsec. (a)(2), (3). Pub. L. 100–690, § 7257(a)(3), added pars. (2) and (3).

Subsec. (b). Pub. L. 100–690, § 7257(b), substituted ''If'' for ''Except for funds appropriated for fiscal year 1975, if'' and struck out after first sentence ''Funds appropriated for fiscal year 1975 may be obligated in accordance with subsection (a) of this section until June 30, 1976, after which time they may be reallocated.''

1984—Subsec. (b). Pub. L. 98–473 substituted ''the Trust Territory'' for ''and the Trust Territory'' and inserted '', and the Commonwealth of the Northern Mariana Islands'' after ''Pacific Islands''.

1980—Subsec. (a). Pub. L. 96–509 inserted reference to the Commonwealth of the Northern Mariana Islands.

1977—Subsec. (a). Pub. L. 95–115, § 4(b)(1), substituted ''$225,000'' for ''$200,000'' and ''$56,250'' for ''$50,000''.

Subsec. (c). Pub. L. 95–115, § 4(b)(2)(A), (B), (3), inserted provisions relating to pre-award activities, monitoring and evaluation payments, and matching requirements for expended or obligated amounts, and substituted ''7½'' for ''15'' and ''units of general local government or combinations thereof'' for ''local governments''.

Subsec. (d). Pub. L. 95–115, § 4(b)(2)(C), (4)(B), redesignated subsec. (e) as (d). Former subsec. (d), relating to limitations on financial assistance under this section, was struck out.

Subsec. (e). Pub. L. 95–115, § 4(b)(4)(A), (B), added subsec. (e) and redesignated former subsec. (e) as (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 4(b)(1), (3) of Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

Section 4(b)(2)(D) of Pub. L. 95–115 provided that: ''The amendments made by this paragraph [amending this section] shall take effect on October 1, 1978.''

Section 4(b)(4)(B) of Pub. L. 95–115 provided that the amendment made by such section 4(b)(4)(B) is effective Oct. 1, 1978.

§ 5633. State plans

(a) Requirements

In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, projects, and activities. The State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

(1) designate the State agency described in section 5671(c)(1) of this title as the sole agency for supervising the preparation and administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) has or will have authority, by legislation if necessary, to implement such plan in conformity with this part;

(3) provide for an advisory group that—

(A) shall consist of not less than 15 and not more than 33 members appointed by the chief executive officer of the State—

(i) which members have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency, the administration of juvenile justice, or the reduction of juvenile delinquency;

(ii) which members include—

(I) at least 1 locally elected official representing general purpose local government;

(II) representatives of law enforcement and juvenile justice agencies, including juvenile and family court judges, prosecutors, counsel for children and youth, and probation workers;

(III) representatives of public agencies concerned with delinquency prevention or treatment, such as welfare, social services, mental health, education, special education, recreation, and youth services;

(IV) representatives of private nonprofit organizations, including persons

with a special focus on preserving and strengthening families, parent groups and parent self-help groups, youth development, delinquency prevention and treatment, neglected or dependent children, the quality of juvenile justice, education, and social services for children;

(V) volunteers who work with delinquents or potential delinquents;

(VI) youth workers involved with programs that are alternatives to incarceration, including programs providing organized recreation activities;

(VII) persons with special experience and competence in addressing problems related to school violence and vandalism and alternatives to suspension and expulsion; and

(VIII) persons with special experience and competence in addressing problems related to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence;

(iii) a majority of which members (including the chairperson) shall not be full-time employees of the Federal, State, or local government;

(iv) at least one-fifth of which members shall be under the age of 24 at the time of appointment; and

(v) at least 3 members who have been or are currently under the jurisdiction of the juvenile justice system;

(B) shall participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action;

(C) shall be afforded the opportunity to review and comment, not later than 30 days after their submission to the advisory group, on all juvenile justice and delinquency prevention grant applications submitted to the State agency designated under paragraph (1);

(D) shall, consistent with this subchapter—

(i) advise the State agency designated under paragraph (1) and its supervisory board; and

(ii) submit to the chief executive officer and the legislature of the State at least annually recommendations regarding State compliance with the requirements of paragraphs (11), (12), and (13); and

(iii) contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system; and

(E) may, consistent with this subchapter—

(i) advise on State supervisory board and local criminal justice advisory board composition;[1]

(ii) review progress and accomplishments of projects funded under the State plan.

(4) provide for the active consultation with and participation of units of local government or combinations thereof in the development of a State plan which adequately takes into account the needs and requests of units of local government, except that nothing in the plan requirements, or any regulations promulgated to carry out such requirements, shall be construed to prohibit or impede the State from making grants to, or entering into contracts with, local private agencies or the advisory group;

(5) unless the provisions of this paragraph are waived at the discretion of the Administrator for any State in which the services for delinquent or other youth are organized primarily on a statewide basis, provide that at least 66⅔ per centum of funds received by the State under section 5632 of this title reduced by the percentage (if any) specified by the State under the authority of paragraph (25) and excluding funds made available to the State advisory group under section 5632(d) of this title, shall be expended—

(A) through programs of units of local government or combinations thereof, to the extent such programs are consistent with the State plan;

(B) through programs of local private agencies, to the extent such programs are consistent with the State plan, except that direct funding of any local private agency by a State shall be permitted only if such agency requests such funding after it has applied for and been denied funding by any unit of local government or combination thereof; and

(C) to provide funds for programs of Indian tribes that perform law enforcement functions (as determined by the Secretary of the Interior) and that agree to attempt to comply with the requirements specified in paragraphs (11), (12), and (13), applicable to the detention and confinement of juveniles, an amount that bears the same ratio to the aggregate amount to be expended through programs referred to in subparagraphs (A) and (B) as the population under 18 years of age in the geographical areas in which such tribes perform such functions bears to the State population under 18 years of age,[2]

(6) provide for an equitable distribution of the assistance received under section 5632 of this title within the State, including in rural areas;

(7)(A) provide for an analysis of juvenile delinquency problems in, and the juvenile delinquency control and delinquency prevention needs (including educational needs) of, the State (including any geographical area in which an Indian tribe performs law enforcement functions), a description of the services to be provided, and a description of performance goals and priorities, including a specific statement of the manner in which programs are expected to meet the identified juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs (including educational needs) of the State; and

(B) contain—

(i) an analysis of gender-specific services for the prevention and treatment of juvenile

[1] So in original. Probably should be followed by ''and''.

[2] So in original. The comma probably should be a semicolon.

delinquency, including the types of such services available and the need for such services;

(ii) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;

(iii) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas; and

(iv) a plan for providing needed mental health services to juveniles in the juvenile justice system, including information on how such plan is being implemented and how such services will be targeted to those juveniles in such system who are in greatest need of such services;

(8) provide for the coordination and maximum utilization of existing juvenile delinquency programs, programs operated by public and private agencies and organizations, and other related programs (such as education, special education, recreation, health, and welfare programs) in the State;

(9) provide that not less than 75 percent of the funds available to the State under section 5632 of this title, other than funds made available to the State advisory group under section 5632(d) of this title, whether expended directly by the State, by the unit of local government, or by a combination thereof, or through grants and contracts with public or private nonprofit agencies, shall be used for—

(A) community-based alternatives (including home-based alternatives) to incarceration and institutionalization including—

(i) for youth who need temporary placement: crisis intervention, shelter, and after-care; and

(ii) for youth who need residential placement: a continuum of foster care or group home alternatives that provide access to a comprehensive array of services;

(B) community-based programs and services to work with—

(i) parents and other family members to strengthen families, including parent self-help groups, so that juveniles may be retained in their homes;

(ii) juveniles during their incarceration, and with their families, to ensure the safe return of such juveniles to their homes and to strengthen the families; and

(iii) parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited-English speaking ability;

(C) comprehensive juvenile justice and delinquency prevention programs that meet the needs of youth through the collaboration of the many local systems before which a youth may appear, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies, and private nonprofit agencies offering youth services;

(D) programs that provide treatment to juvenile offenders who are victims of child abuse or neglect, and to their families, in order to reduce the likelihood that such juvenile offenders will commit subsequent violations of law;

(E) educational programs or supportive services for delinquent or other juveniles—

(i) to encourage juveniles to remain in elementary and secondary schools or in alternative learning situations;

(ii) to provide services to assist juveniles in making the transition to the world of work and self-sufficiency; and

(iii) enhance[3] coordination with the local schools that such juveniles would otherwise attend, to ensure that—

(I) the instruction that juveniles receive outside school is closely aligned with the instruction provided in school; and

(II) information regarding any learning problems identified in such alternative learning situations are communicated to the schools;

(F) expanding the use of probation officers—

(i) particularly for the purpose of permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization; and

(ii) to ensure that juveniles follow the terms of their probation;

(G) counseling, training, and mentoring programs, which may be in support of academic tutoring, vocational and technical training, and drug and violence prevention counseling, that are designed to link at-risk juveniles, juvenile offenders, or juveniles who have a parent or legal guardian who is or was incarcerated in a Federal, State, or local correctional facility or who is otherwise under the jurisdiction of a Federal, State, or local criminal justice system, particularly juveniles residing in low-income and high-crime areas and juveniles experiencing educational failure, with responsible individuals (such as law enforcement officials, Department of Defense personnel, individuals working with local businesses, and individuals working with community-based and faith-based organizations and agencies) who are properly screened and trained;

(H) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist community services, law enforcement, and juvenile justice personnel to more effectively recognize and provide for learning disabled and other juveniles with disabilities;

(I) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of youth;

(J) programs and projects designed to provide for the treatment of youths' dependence on or abuse of alcohol or other addictive or nonaddictive drugs;

(K) programs for positive youth development that assist delinquent and other at-risk youth in obtaining—

[3] So in original. Probably should be ''to enhance''.

(i) a sense of safety and structure;

(ii) a sense of belonging and membership;

(iii) a sense of self-worth and social contribution;

(iv) a sense of independence and control over one's life; and

(v) a sense of closeness in interpersonal relationships;

(L) programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

(i) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

(ii) assist in the provision by the provision[4] by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior;

(M) community-based programs and services to work with juveniles, their parents, and other family members during and after incarceration in order to strengthen families so that such juveniles may be retained in their homes;

(N) programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and other barriers that may prevent the complete treatment of such juveniles and the preservation of their families;

(O) programs designed to prevent and to reduce hate crimes committed by juveniles;

(P) after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities;

(Q) community-based programs that provide follow-up post-placement services to adjudicated juveniles, to promote successful reintegration into the community;

(R) projects designed to develop and implement programs to protect the rights of juveniles affected by the juvenile justice system; and

(S) programs designed to provide mental health services for incarcerated juveniles suspected to be in need of such services, including assessment, development of individualized treatment plans, and discharge plans.

(10) provide for the development of an adequate research, training, and evaluation capacity within the State;

(11) shall, in accordance with rules issued by the Administrator, provide that—

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding—

(i) juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18 or of a similar State law;

(ii) juveniles who are charged with or who have committed a violation of a valid court order; and

(iii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State;

shall not be placed in secure detention facilities or secure correctional facilities; and

(B) juveniles—

(i) who are not charged with any offense; and

(ii) who are—

(I) aliens; or

(II) alleged to be dependent, neglected, or abused;

shall not be placed in secure detention facilities or secure correctional facilities;

(12) provide that—

(A) juveniles alleged to be or found to be delinquent or juveniles within the purview of paragraph (11) will not be detained or confined in any institution in which they have contact with adult inmates; and

(B) there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, have been trained and certified to work with juveniles;

(13) provide that no juvenile will be detained or confined in any jail or lockup for adults except—

(A) juveniles who are accused of nonstatus offenses and who are detained in such jail or lockup for a period not to exceed 6 hours—

(i) for processing or release;

(ii) while awaiting transfer to a juvenile facility; or

(iii) in which period such juveniles make a court appearance;

and only if such juveniles do not have contact with adult inmates and only if there is in effect in the State a policy that requires individuals who work with both such juveniles and adult inmates in collocated facilities have been trained and certified to work with juveniles;

(B) juveniles who are accused of nonstatus offenses, who are awaiting an initial court appearance that will occur within 48 hours after being taken into custody (excluding Saturdays, Sundays, and legal holidays), and who are detained in a jail or lockup—

[4] So in original. The words "by the provision" probably should not appear.

(i) in which—

(I) such juveniles do not have contact with adult inmates; and

(II) there is in effect in the State a policy that requires individuals who work with both such juveniles and adults inmates in collocated facilities have been trained and certified to work with juveniles; and

(ii) that—

(I) is located outside a metropolitan statistical area (as defined by the Office of Management and Budget) and has no existing acceptable alternative placement available;

(II) is located where conditions of distance to be traveled or the lack of highway, road, or transportation do not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed an additional 48 hours) delay is excusable; or

(III) is located where conditions of safety exist (such as severe adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonable safe travel;

(14) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraphs (11), (12), and (13) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph, which is in compliance with the requirements in paragraphs (11) and (12), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively;

(15) provide assurance that youth in the juvenile justice system are treated equitably on the basis of gender, race, family income, and disability;

(16) provide assurance that consideration will be given to and that assistance will be available for approaches designed to strengthen the families of delinquent and other youth to prevent juvenile delinquency (which approaches should include the involvement of grandparents or other extended family members when possible and appropriate and the provision of family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible);

(17) provide for procedures to be established for protecting the rights of recipients of services and for assuring appropriate privacy with regard to records relating to such services provided to any individual under the State plan;

(18) provide assurances that—

(A) any assistance provided under this chapter will not cause the displacement (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) of any currently employed employee;

(B) activities assisted under this chapter will not impair an existing collective bargaining relationship, contract for services, or collective bargaining agreement; and

(C) no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization involved;

(19) provide for such fiscal control and fund accounting procedures necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter;

(20) provide reasonable assurance that Federal funds made available under this part for any period will be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs described in this part, and will in no event replace such State, local, and other non-Federal funds;

(21) provide that the State agency designated under paragraph (1) will—

(A) to the extent practicable give priority in funding to programs and activities that are based on rigorous, systematic, and objective research that is scientifically based;

(B) from time to time, but not less than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, that it considers necessary; and

(C) not expend funds to carry out a program if the recipient of funds who carried out such program during the preceding 2-year period fails to demonstrate, before the expiration of such 2-year period, that such program achieved substantial success in achieving the goals specified in the application submitted by such recipient to the State agency;

(22) address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system;

(23) provide that if a juvenile is taken into custody for violating a valid court order issued for committing a status offense—

(A) an appropriate public agency shall be promptly notified that such juvenile is held in custody for violating such order;

(B) not later than 24 hours during which such juvenile is so held, an authorized representative of such agency shall interview, in person, such juvenile; and

(C) not later than 48 hours during which such juvenile is so held—

(i) such representative shall submit an assessment to the court that issued such order, regarding the immediate needs of such juvenile; and

(ii) such court shall conduct a hearing to determine—

(I) whether there is reasonable cause to believe that such juvenile violated such order; and

(II) the appropriate placement of such juvenile pending disposition of the violation alleged;

(24) provide an assurance that if the State receives under section 5632 of this title for any fiscal year an amount that exceeds 105 percent of the amount the State received under such section for fiscal year 2000, all of such excess shall be expended through or for programs that are part of a comprehensive and coordinated community system of services;

(25) specify a percentage (if any), not to exceed 5 percent, of funds received by the State under section 5632 of this title (other than funds made available to the State advisory group under section 5632(d) of this title) that the State will reserve for expenditure by the State to provide incentive grants to units of general local government that reduce the caseload of probation officers within such units;

(26) provide that the State, to the maximum extent practicable, will implement a system to ensure that if a juvenile is before a court in the juvenile justice system, public child welfare records (including child protective services records) relating to such juvenile that are on file in the geographical area under the jurisdiction of such court will be made known to such court;

(27) establish policies and systems to incorporate relevant child protective services records into juvenile justice records for purposes of establishing and implementing treatment plans for juvenile offenders; and

(28) provide assurances that juvenile offenders whose placement is funded through section 672 of this title receive the protections specified in section 671 of this title, including a case plan and case plan review as defined in section 675 of this title.

(b) Approval by State agency

The State agency designated under subsection (a)(1) of this section, after receiving and considering the advice and recommendations of the advisory group referred to in subsection (a) of this section, shall approve the State plan and any modification thereof prior to submission to the Administrator.

(c) Compliance with statutory requirements

If a State fails to comply with any of the applicable requirements of paragraphs (11), (12), (13), and (22) of subsection (a) of this section in any fiscal year beginning after September 30, 2001, then—

(1) subject to paragraph (2), the amount allocated to such State under section 5632 of this title for the subsequent fiscal year shall be reduced by not less than 20 percent for each such paragraph with respect to which the failure occurs, and

(2) the State shall be ineligible to receive any allocation under such section for such fiscal year unless—

(A) the State agrees to expend 50 percent of the amount allocated to the State for such fiscal year to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

(B) the Administrator determines that the State—

(i) has achieved substantial compliance with such applicable requirements with respect to which the State was not in compliance; and

(ii) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance with such applicable requirements within a reasonable time.

(d) Nonsubmission or nonqualification of plan; expenditure of allotted funds; availability of reallocated funds

In the event that any State chooses not to submit a plan, fails to submit a plan, or submits a plan or any modification thereof, which the Administrator, after reasonable notice and opportunity for hearing, in accordance with sections 3783, 3784, and 3785[5] of this title, determines does not meet the requirements of this section, the Administrator shall endeavor to make that State's allocation under the provisions of section 5632(a) of this title, excluding funds the Administrator shall make available to satisfy the requirement specified in section 5632(d) of this title, available to local public and private nonprofit agencies within such State for use in carrying out activities of the kinds described in paragraphs (11), (12), (13), and (22) of subsection (a) of this section. The Administrator shall make funds which remain available after disbursements are made by the Administrator under the preceding sentence, and any other unobligated funds, available on an equitable basis and to those States that have achieved full compliance with the requirements under paragraphs (11), (12), (13), and (22) of subsection (a) of this section.

(e) Administrative and supervisory board membership requirements

Notwithstanding any other provision of law, the Administrator shall establish appropriate administrative and supervisory board membership requirements for a State agency designated under subsection (a)(1) of this section and permit the State advisory group appointed under subsection (a)(3) of this section to operate as the supervisory board for such agency, at the discretion of the chief executive officer of the State.

(f) Technical assistance

(1) In general

The Administrator shall provide technical and financial assistance to an eligible organization composed of member representatives of the State advisory groups appointed under subsection (a)(3) of this section to assist such organization to carry out the functions specified in paragraph (2).

[5] See References in Text note below.

(2) Assistance

To be eligible to receive such assistance, such organization shall agree to carry out activities that include—

(A) conducting an annual conference of such member representatives for purposes relating to the activities of such State advisory groups;

(B) disseminating information, data, standards, advanced techniques, and program models;

(C) reviewing Federal policies regarding juvenile justice and delinquency prevention;

(D) advising the Administrator with respect to particular functions or aspects of the work of the Office; and

(E) advising the President and Congress with regard to State perspectives on the operation of the Office and Federal legislation pertaining to juvenile justice and delinquency prevention.

(Pub. L. 93–415, title II, § 223, Sept. 7, 1974, 88 Stat. 1119; Pub. L. 94–503, title I, § 130(b), Oct. 15, 1976, 90 Stat. 2425; Pub. L. 95–115, §§ 3(a)(3)(B), 4(c)(1)–(15), Oct. 3, 1977, 91 Stat. 1048, 1051–1054; Pub. L. 96–509, §§ 11, 19(g), Dec. 8, 1980, 94 Stat. 2755, 2764; Pub. L. 98–473, title II, § 626, Oct. 12, 1984, 98 Stat. 2111; Pub. L. 100–690, title VII, §§ 7258, 7263(b)(1), Nov. 18, 1988, 102 Stat. 4439, 4447; Pub. L. 102–586, § 2(f)(3)(A), Nov. 4, 1992, 106 Stat. 4987; Pub. L. 103–322, title XI, § 110201(d), Sept. 13, 1994, 108 Stat. 2012; Pub. L. 104–294, title VI, § 604(b)(28), Oct. 11, 1996, 110 Stat. 3508; Pub. L. 105–277, div. A, § 101(b) [title I, § 129(a)(2)(C)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–76; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 142], Dec. 21, 2000, 114 Stat. 2763, 2763A–235; Pub. L. 107–273, div. C, title II, § 12209, Nov. 2, 2002, 116 Stat. 1873; Pub. L. 109–162, title III, § 305, Jan. 5, 2006, 119 Stat. 3016.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(18), was in the original ''this Act'', meaning Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

Section 3785 of this title, referred to in subsec. (d), was repealed by Pub. L. 109–162, title XI, § 1155(3), Jan. 5, 2006, 119 Stat. 3114.

AMENDMENTS

2006—Subsec. (a)(7)(B)(i) to (iv). Pub. L. 109–162 added cl. (i) and redesignated former cls. (i) to (iii) as (ii) to (iv), respectively.

2002—Subsec. (a). Pub. L. 107–273, § 12209(1)(A), substituted ''projects, and activities'' for ''and challenge activities subsequent to State participation in part E of this subchapter'' in second sentence of introductory provisions.

Subsec. (a)(3). Pub. L. 107–273, § 12209(1)(B)(i), substituted ''that—'' for ''which—'' in introductory provisions.

Subsec. (a)(3)(A)(i). Pub. L. 107–273, § 12209(1)(B)(ii), substituted ''the administration of juvenile justice, or the reduction of juvenile delinquency'' for ''or the administration of juvenile justice''.

Subsec. (a)(3)(D)(i). Pub. L. 107–273, § 12209(1)(B)(iii)(I), inserted ''and'' at end.

Subsec. (a)(3)(D)(ii). Pub. L. 107–273, § 12209(1)(B)(iii)(II), substituted ''paragraphs (11), (12), and (13)'' for ''paragraphs (12), (13), and (14) and with progress relating to challenge activities carried out pursuant to part E of this subchapter''.

Subsec. (a)(5). Pub. L. 107–273, § 12209(1)(C)(i), substituted ''reduced by the percentage (if any) specified by the State under the authority of paragraph (25) and excluding'' for '', other than'' in introductory provisions.

Subsec. (a)(5)(C). Pub. L. 107–273, § 12209(1)(C)(ii), substituted ''paragraphs (11), (12), and (13)'' for ''paragraphs (12)(A), (13), and (14)''.

Subsec. (a)(6). Pub. L. 107–273, § 12209(1)(D), (S), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''provide that the chief executive officer of the unit of local government shall assign responsibility for the preparation and administration of the local government's part of a State plan, or for the supervision of the preparation and administration of the local government's part of the State plan, to that agency within the local government's structure or to a regional planning agency (hereinafter in this part referred to as the 'local agency') which can most effectively carry out the purposes of this part and shall provide for supervision of the programs funded under this part by that local agency;''.

Subsec. (a)(7). Pub. L. 107–273, § 12209(1)(S), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Pub. L. 107–273, § 12209(1)(E), inserted '', including in rural areas'' before semicolon at end.

Subsec. (a)(8). Pub. L. 107–273, § 12209(1)(S), redesignated par. (9) as (8). Former par. (8) redesignated (7).

Subsec. (a)(8)(A). Pub. L. 107–273, § 12209(1)(F)(i), substituted ''for an analysis of juvenile delinquency problems in, and the juvenile delinquency control and delinquency prevention needs (including educational needs) of, the State'' for ''for (i) an analysis of juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs (including educational needs) within the relevant jurisdiction'' and ''of the State; and'' for ''of the jurisdiction; (ii) an indication of the manner in which the programs relate to other similar State or local programs which are intended to address the same or similar problems; and (iii) a plan for the concentration of State efforts which shall coordinate all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities, including provision for regular meetings of State officials with responsibility in the area of juvenile justice and delinquency prevention;''.

Subsec. (a)(8)(B). Pub. L. 107–273, § 12209(1)(F)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''contain—

''(i) an analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of such services available and the need for such services for females; and

''(ii) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;''.

Subsec. (a)(8)(C), (D). Pub. L. 107–273, § 12209(1)(F)(iii), struck out subpars. (C) and (D) which read as follows:

''(C) contain—

''(i) an analysis of services for the prevention and treatment of juvenile delinquency in rural areas, including the need for such services, the types of such services available in rural areas, and geographically unique barriers to providing such services; and

''(ii) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas; and

''(D) contain—

''(i) an analysis of mental health services available to juveniles in the juvenile justice system (including an assessment of the appropriateness of the particu-

lar placements of juveniles in order to receive such services) and of barriers to access to such services; and

''(ii) a plan for providing needed mental health services to juveniles in the juvenile justice system;''.

Subsec. (a)(9). Pub. L. 107–273, § 12209(1)(S), redesignated par. (10) as (9). Former par. (9) redesignated (8).

Pub. L. 107–273, § 12209(1)(G), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''provide for the active consultation with and participation of private agencies in the development and execution of the State plan; and provide for coordination and maximum utilization of existing juvenile delinquency programs and other related programs, such as education, special education, recreation, health, and welfare within the State;''.

Subsec. (a)(10). Pub. L. 107–273, § 12209(1)(S), redesignated par. (11) as (10). Former par. (10) redesignated (9).

Subsec. (a)(10)(A). Pub. L. 107–273, § 12209(1)(H)(i), substituted ''including'' for '', specifically'' in introductory provisions, redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: ''for youth who can remain at home with assistance: home probation and programs providing professional supervised group activities or individualized mentoring relationships with adults that involve the family and provide counseling and other supportive services;''.

Subsec. (a)(10)(D). Pub. L. 107–273, § 12209(1)(H)(ii), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth affected by the juvenile justice system;''.

Subsec. (a)(10)(E). Pub. L. 107–273, § 12209(1)(H)(iii), substituted ''juveniles—'' for ''juveniles, provided equitably regardless of sex, race, or family income, designed to—'' in introductory provisions, added cls. (i) and (ii), redesignated former cl. (ii) as (iii), and struck out former cl. (i) which read as follows: ''encourage juveniles to remain in elementary and secondary schools or in alternative learning situations, including—

''(I) education in settings that promote experiential, individualized learning and exploration of academic and career options;

''(II) assistance in making the transition to the world of work and self-sufficiency;

''(III) alternatives to suspension and expulsion; and

''(IV) programs to counsel delinquent juveniles and other juveniles regarding the opportunities that education provides; and''.

Subsec. (a)(10)(F). Pub. L. 107–273, § 12209(1)(H)(iv), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''expanded use of home probation and recruitment and training of home probation officers, other professional and paraprofessional personnel, and volunteers to work effectively to allow youth to remain at home with their families as an alternative to incarceration or institutionalization;''.

Subsec. (a)(10)(G). Pub. L. 107–273, § 12209(1)(H)(v), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''youth-initiated outreach programs designed to assist youth (including youth with limited proficiency in English) who otherwise would not be reached by traditional youth assistance programs;''.

Subsec. (a)(10)(H). Pub. L. 107–273, § 12209(1)(H)(vii), substituted ''juveniles with disabilities'' for ''handicapped youth''.

Subsec. (a)(10)(K). Pub. L. 107–273, § 12209(1)(H)(viii), (xiii), redesignated subpar. (L) as (K) and struck out former subpar. (K) which read as follows: ''law-related education programs (and projects) for delinquent and at-risk youth designed to prevent juvenile delinquency;''.

Subsec. (a)(10)(L). Pub. L. 107–273, § 12209(1)(H)(xiii), redesignated subpar. (M) as (L). Former subpar. (L) redesignated (K).

Subsec. (a)(10)(L)(vi). Pub. L. 107–273, § 12209(1)(H)(ix), struck out cl. (vi) which read as follows: ''a sense of competence and mastery including health and physical competence, personal and social competence, cognitive and creative competence, vocational competence, and citizenship competence, including ethics and participation;''.

Subsec. (a)(10)(M). Pub. L. 107–273, § 12209(1)(H)(xiii), redesignated subpar. (N) as (M). Former subpar. (M) redesignated (L).

Subsec. (a)(10)(M)(i). Pub. L. 107–273, § 12209(1)(H)(x), struck out ''boot camps'' after ''electronic monitoring,''.

Subsec. (a)(10)(N). Pub. L. 107–273, § 12209(1)(H)(xiii), redesignated subpar. (O) as (N). Former subpar. (N) redesignated (M).

Pub. L. 107–273, § 12209(1)(H)(xi), amended subpar. (N) generally. Prior to amendment, subpar. (N) read as follows: ''programs designed to prevent and reduce hate crimes committed by juveniles, including educational programs and sentencing programs designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration; and''.

Subsec. (a)(10)(O). Pub. L. 107–273, § 12209(1)(H)(xiv), added subpar. (O). Former subpar. (O) redesignated (N).

Pub. L. 107–273, § 12209(1)(H)(xii), substituted ''other barriers'' for ''cultural barriers'' and semicolon for period at end.

Subsec. (a)(10)(P) to (S). Pub. L. 107–273, § 12209(1)(H)(xiv), added subpars. (P) to (S).

Subsec. (a)(11). Pub. L. 107–273, § 12209(1)(S), redesignated par. (12) as (11). Former par. (11) redesignated (10).

Subsec. (a)(12). Pub. L. 107–273, § 12209(1)(S), redesignated par. (13) as (12). Former par. (12) redesignated (11).

Pub. L. 107–273, § 12209(1)(I), amended par. (12) generally. Prior to amendment, par. (12) read as follows:

''(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses (other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of title 18 or a similar State law), or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities; and

''(B) provide that the State shall submit annual reports to the Administrator containing a review of the progress made by the State to achieve the deinstitutionalization of juveniles described in subparagraph (A) and a review of the progress made by the State to provide that such juveniles, if placed in facilities, are placed in facilities which (i) are the least restrictive alternatives appropriate to the needs of the child and the community; (ii) are in reasonable proximity to the family and the home communities of such juveniles; and (iii) provide the services described in section 5603(1) of this title;''.

Subsec. (a)(13). Pub. L. 107–273, § 12209(1)(S), redesignated par. (14) as (13). Former par. (13) redesignated (12).

Pub. L. 107–273, § 12209(1)(J), amended par. (13) generally. Prior to amendment, par. (13) read as follows: ''provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults;''.

Subsec. (a)(14). Pub. L. 107–273, § 12209(1)(S), redesignated par. (15) as (14). Former par. (14) redesignated (13).

Pub. L. 107–273, § 12209(1)(K), amended par. (14) generally. Prior to amendment, par. (14) read as follows: ''provide that no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1997, promulgate regulations

which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours (except in the case of Alaska where such time limit may be forty-eight hours in fiscal years 2000 through 2002) after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas that are in compliance with paragraph (13) and—

''(A)(i) are outside a Standard Metropolitan Statistical Area; and

''(ii) have no existing acceptable alternative placement available;

''(B) are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

''(C) are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel;''.

Subsec. (a)(15). Pub. L. 107–273, § 12209(1)(S), redesignated par. (16) as (15). Former par. (15) redesignated (14).

Pub. L. 107–273, § 12209(1)(L), substituted ''paragraphs (11), (12), and (13)'' for ''paragraph (12)(A), paragraph (13), and paragraph (14)'' and ''paragraphs (11) and (12)'' for ''paragraph (12)(A) and paragraph (13)''.

Subsec. (a)(16). Pub. L. 107–273, § 12209(1)(S), redesignated par. (17) as (16). Former par. (16) redesignated (15).

Pub. L. 107–273, § 12209(1)(M), substituted ''disability'' for ''mentally, emotionally, or physically handicapping conditions''.

Subsec. (a)(17), (18). Pub. L. 107–273, § 12209(1)(S), redesignated pars. (18) and (19) as (17) and (18), respectively. Former par. (17) redesignated (16).

Subsec. (a)(19). Pub. L. 107–273, § 12209(1)(S), redesignated par. (20) as (19). Former par. (19) redesignated (18).

Pub. L. 107–273, § 12209(1)(N), amended par. (19) generally. Prior to amendment, par. (19) read as follows: ''provide that fair and equitable arrangements shall be made to protect the interests of employees affected by assistance under this chapter and shall provide for the terms and conditions of such protective arrangements established pursuant to this section, and such protective arrangements shall, to the maximum extent feasible, include, without being limited to, such provisions as may be necessary for—

''(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements or otherwise;

''(B) the continuation of collective-bargaining rights;

''(C) the protection of individual employees against a worsening of their positions with respect to their employment;

''(D) assurances of employment to employees of any State or political subdivision thereof who will be affected by any program funded in whole or in part under provisions of this chapter; and

''(E) training or retraining programs;''.

Subsec. (a)(20), (21). Pub. L. 107–273, § 12209(1)(S), redesignated pars. (21) and (22) as (20) and (21), respectively. Former par. (20) redesignated (19).

Subsec. (a)(22). Pub. L. 107–273, § 12209(1)(S), redesignated par. (23) as (22). Former par. (22) redesignated (21).

Pub. L. 107–273, § 12209(1)(O), amended par. (22) generally. Prior to amendment, par. (22) read as follows: ''provide that the State agency designated under paragraph (1) will from time to time, but not less often than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, which it considers necessary;''.

Subsec. (a)(23). Pub. L. 107–273, § 12209(1)(S), redesignated par. (24) as (23). Former par. (23) redesignated (22).

Pub. L. 107–273, § 12209(1)(P), amended par. (23) generally. Prior to amendment, par. (23) read as follows: ''address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population;''.

Subsec. (a)(24). Pub. L. 107–273, § 12209(1)(S), redesignated par. (25) as (24). Former par. (24) redesignated (23).

Pub. L. 107–273, § 12209(1)(Q), amended par. (24) generally. Prior to amendment, par. (24) read as follows: ''contain such other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of the programs assisted under this subchapter; and''.

Subsec. (a)(25). Pub. L. 107–273, § 12209(1)(T), added par. (25).

Pub. L. 107–273, § 12209(1)(S), redesignated par. (25) as (24).

Pub. L. 107–273, § 12209(1)(R), substituted ''fiscal year 2000'' for ''fiscal year 1992'' and a semicolon for period at end.

Subsec. (a)(26) to (28). Pub. L. 107–273, § 12209(1)(T), added pars. (26) to (28).

Subsec. (c). Pub. L. 107–273, § 12209(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) Subject to paragraph (2), the Administrator shall approve any State plan and any modification thereof that meets the requirements of this section.

''(2) Failure to achieve compliance with the subsection (a)(12)(A) requirement within the 3-year time limitation shall terminate any State's eligibility for funding under this part for a fiscal year beginning before January 1, 1993, unless the Administrator determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 percent of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding 2 additional years.

''(3) If a State fails to comply with the requirements of subsection (a), (12)(A), (13), (14), or (23) of this section in any fiscal year beginning after January 1, 1993—

''(A) subject to subparagraph (B), the amount allotted under section 5632 of this title to the State for that fiscal year shall be reduced by 25 percent for each such paragraph with respect to which noncompliance occurs; and

''(B) the State shall be ineligible to receive any allotment under that section for such fiscal year unless—

''(i) the State agrees to expend all the remaining funds the State receives under this part (excluding funds required to be expended to comply with section 5632(c) and (d) of this title and with subsection (a)(5)(C) of this section) for that fiscal year only to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

''(ii) the Administrator determines, in the discretion of the Administrator, that the State—

''(I) has achieved substantial compliance with each such paragraph with respect to which the State was not in compliance; and

''(II) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time.''

Subsec. (d). Pub. L. 107–273, § 12209(3), substituted ''allocation'' for ''allotment'' and substituted ''paragraphs (11), (12), (13), and (22) of subsection (a)'' for ''subsection (a)(12)(A), (13), (14) and (23)'' in two places.

Subsecs. (e), (f). Pub. L. 107–273, § 12209(4), added subsecs. (e) and (f).

2000—Subsec. (a)(14). Pub. L. 106–554 inserted ''(except in the case of Alaska where such time limit may be forty-eight hours in fiscal years 2000 through 2002)'' after ''twenty-four hours'' in introductory provisions.

1998—Subsec. (a)(4). Pub. L. 105–277, § 101(b) [title I, § 129(a)(2)(C)(i)], substituted ''units of local government'' for ''units of general local government'' after ''participation of'' and ''units of local government'' for ''local governments'' after ''requests of''.

Subsec. (a)(5). Pub. L. 105–277, § 101(b) [title I, § 129(a)(2)(C)(ii)], substituted ''units of local government'' for ''units of general local government'' in subpar. (A) and ''unit of local government'' for ''unit of general local government'' in subpar. (B).

Subsec. (a)(6). Pub. L. 105–277, § 101(b) [title I, § 129(a)(2)(C)(iii)], substituted ''unit of local government'' for ''unit of general local government''.

Subsec. (a)(10). Pub. L. 105–277, § 101(b) [title I, § 129(a)(2)(C)(iv)], substituted ''unit of local government'' for ''unit of general local government'' in introductory provisions.

1996—Subsec. (a)(12)(A). Pub. L. 104–294 substituted ''similar State law)'' for ''similar State law).''

1994—Subsec. (a)(12)(A). Pub. L. 103–322 substituted ''(other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of title 18 or a similar State law).'' for ''which do not constitute violations of valid court orders''.

1992—Subsec. (a). Pub. L. 102–586, § 2(f)(3)(A)(i)(I), substituted ''programs and challenge activities subsequent to State participation in part E of this subchapter. The State'' for ''programs, and the State'' in introductory provisions.

Subsec. (a)(1). Pub. L. 102–586, § 2(f)(3)(A)(i)(II), made technical amendment to reference to section 5671 of this title to reflect renumbering of corresponding section of original act.

Subsec. (a)(3). Pub. L. 102–586, § 2(f)(3)(A)(i)(III), amended par. (3) generally, revising and restating as subpars. (A) to (E) provisions formerly appearing in text containing unindented subpars. (A) to (F).

Subsec. (a)(8). Pub. L. 102–586, § 2(f)(3)(A)(i)(IV), designated existing provisions as subpar. (A), redesignated former cls. (A) to (C) as (i) to (iii), respectively, inserted ''(including educational needs)'' after ''delinquency prevention needs'' in two places in cl. (i), and added subpars. (B) to (D).

Subsec. (a)(9). Pub. L. 102–586, § 2(f)(3)(A)(i)(V), inserted ''recreation,'' after ''special education,''.

Subsec. (a)(10). Pub. L. 102–586, § 2(f)(3)(A)(i)(VI), amended par. (10) generally, revising and restating as introductory provisions and subpars. (A) to (O) provisions of former introductory provisions and subpars. (A) to (L).

Subsec. (a)(12)(A). Pub. L. 102–586, § 2(f)(3)(A)(i)(VII), inserted ''or alien juveniles in custody,'' after ''court orders,''.

Subsec. (a)(13). Pub. L. 102–586, § 2(f)(3)(A)(i)(VIII), struck out ''regular'' before ''contact with'' and inserted ''or with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults''.

Subsec. (a)(14). Pub. L. 102–586, § 2(f)(3)(A)(i)(IX)(bb), (cc), in introductory provisions substituted ''1997'' for ''1993'' and ''areas that are in compliance with paragraph (13) and'' for ''areas which'', added subpars. (A) to (C), and struck out former subpars. (A) to (C) which read as follows:

''(A) are outside a Standard Metropolitan Statistical Area,

''(B) have no existing acceptable alternative placement available, and

''(C) are in compliance with the provisions of paragraph (13);''.

Pub. L. 102–586, § 2(f)(3)(A)(i)(IX)(aa), which directed the amendment of par. (14) by striking out ''; beginning after the five-year period following December 8, 1980,'' was executed by striking out '', beginning after the five-year period following December 8, 1980,'' after ''provide that'' to reflect the probable intent of Congress.

Subsec. (a)(16). Pub. L. 102–586, § 2(f)(3)(A)(i)(X), amended par. (16) generally. Prior to amendment, par. (16) read as follows: ''provide assurance that assistance will be available on an equitable basis to deal with disadvantaged youth including, but not limited to, females, minority youth, and mentally retarded and emotionally or physically handicapped youth;''.

Subsec. (a)(17). Pub. L. 102–586, § 2(f)(3)(A)(i)(XI), substituted ''the families'' for ''and maintain the family units'' and ''delinquency (which'' for ''delinquency. Such'' and inserted before semicolon ''and the provision of family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible)''.

Subsec. (a)(25). Pub. L. 102–586, § 2(f)(3)(A)(i)(XII)–(XIV), added par. (25).

Subsec. (c). Pub. L. 102–586, § 2(f)(3)(A)(ii), amended subsec. (c) generally, revising and restating as pars. (1) to (3) provisions of former pars. (1) to (4).

Subsec. (d). Pub. L. 102–586, § 2(f)(3)(A)(iii), inserted '', excluding funds the Administrator shall make available to satisfy the requirement specified in section 5632(d) of this title,'' and substituted ''activities of the kinds described in subsection (a)(12)(A), (13), (14) and (23) of this section'' for ''the purposes of subsection (a)(12)(A) of this section, subsection (a)(13) of this section, or subsection (a)(14) of this section'' and ''subsection (a)(12)(A), (13), (14) and (23) of this section'' for ''subsection (a)(12)(A) of this section and subsection (a)(13) of this section''.

1988—Subsec. (a)(1). Pub. L. 100–690, § 6263(b)(1), made technical amendment to reference to section 5671 of this title to reflect renumbering of corresponding section of original act.

Subsec. (a)(5). Pub. L. 100–690, § 7258(a)(1), substituted in introductory provisions ''shall be expended'' for ''shall be expended through'', in subpar. (A) substituted ''through programs'' for ''programs'' and struck out ''and'' at end, in subpar. (B) substituted ''through programs'' for ''programs'' and inserted ''and'' after semicolon, and added subpar. (C).

Subsec. (a)(8)(A). Pub. L. 100–690, § 7258(a)(2), substituted ''relevant jurisdiction (including any geographical area in which an Indian tribe performs law enforcement functions)'' for ''relevant jurisdiction'' and ''juvenile crime problems (including the joining of gangs that commit crimes)'' for ''juvenile crime problems'' in two places.

Subsec. (a)(14). Pub. L. 100–690, § 7258(b), substituted ''1993'' for ''1989'', substituted a semicolon for the period at end of subpar. (iii), and redesignated subpars. (i) to (iii) as subpars. (A) to (C), respectively.

Subsec. (a)(23), (24). Pub. L. 100–690, § 7258(c), added par. (23) and redesignated former par. (23) as (24).

Subsec. (c)(1). Pub. L. 100–690, § 7258(d)(1)–(3), designated existing provisions as par. (1), substituted ''part'' for ''subpart'', and struck out last sentence which read as follows: ''Failure to achieve compliance with the requirements of subsection (a)(14) of this section, within the 5-year time limitation shall terminate any State's eligibility for funding under this subpart, unless the Administrator determines that (1) the State is in substantial compliance with such requirements through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed 3 additional years.''

Subsec. (c)(2) to (4). Pub. L. 100–690, § 7258(d)(4), added pars. (2) to (4).

1984—Subsec. (a). Pub. L. 98–473, § 626(a)(9), (10), struck out provision after numbered paragraphs which read as

follows: ''such plan may at the discretion of the Associate Administrator be incorporated into the plan specified in section 3743 of this title. Such plan shall be modified by the State, as soon as practicable after December 8, 1980, in order to comply with the requirements of paragraph (14).''

Subsec. (a)(1). Pub. L. 98–473, § 626(a)(1), substituted ''agency described in section 5671(c)(1) of this title'' for ''criminal justice council established by the State under section 3742(b)(1) of this title''.

Subsec. (a)(2). Pub. L. 98–473, § 626(a)(2), struck out ''(hereafter referred to in this part as the 'State criminal justice council')'' before ''has or will have authority''.

Subsec. (a)(3)(C). Pub. L. 98–473, § 626(a)(3)(A), in amending subpar. (C) generally, designated provisions following ''representatives of private organizations'' as cl. (i) and inserted '', including those with a special focus on maintaining and strengthening the family unit'', designated provisions following ''which utilize'' as cl. (ii) and inserted ''representatives of organizations which'', added cl. (iii), designated provisions following ''business groups'' as cl. (iv), designated the remainder of subpar. (C) as cl. (v) and substituted ''family, school violence and vandalism, and learning disabilities,'' for ''school violence and vandalism and the problem of learning disabilities; and organizations which represent employees affected by this chapter,''.

Subsec. (a)(3)(F). Pub. L. 98–473, § 626(a)(3)(B)(i), substituted ''agency designated under paragraph (1)'' for ''criminal justice council'' in three places.

Subsec. (a)(3)(F)(ii). Pub. L. 98–473, § 626(a)(3)(B)(ii), substituted ''paragraphs (12), (13), and (14)'' for ''paragraph (12)(A) and paragraph (13)''.

Subsec. (a)(3)(F)(iv). Pub. L. 98–473, § 626(a)(3)(B)(iii), substituted ''paragraphs (12), (13), and (14)'' for ''paragraph (12)(A) and paragraph (13)'' and struck out ''in advising on the State's maintenance of effort under section 3793a of this title,'' before ''and in review''.

Subsec. (a)(9). Pub. L. 98–473, § 626(a)(4), inserted ''special education,''.

Subsec. (a)(10). Pub. L. 98–473, § 626(a)(5)(A), in provisions preceding subpar. (A), substituted ''programs for juveniles, including those processed in the criminal justice system,'' for ''programs for juveniles'' and ''provide for effective rehabilitation, and facilitate the coordination of services between the juvenile justice and criminal justice systems'' for ''and provide for effective rehabilitation''.

Subsec. (a)(10)(E). Pub. L. 98–473, § 626(a)(5)(B), inserted '', including programs to counsel delinquent youth and other youth regarding the opportunities which education provides''.

Subsec. (a)(10)(F). Pub. L. 98–473, § 626(a)(5)(C), inserted ''and their families''.

Subsec. (a)(10)(H)(iii). Pub. L. 98–473, § 626(a)(5)(D)(i), substituted ''National Advisory Committee for Juvenile Justice and Delinquency Prevention made before October 12, 1984, standards for the improvement of juvenile justice within the State;'' for ''Advisory Committee, standards for the improvement of juvenile justice within the State; or''.

Subsec. (a)(10)(H)(v). Pub. L. 98–473, § 626(a)(5)(D)(ii), (iii), added cl. (v).

Subsec. (a)(10)(I). Pub. L. 98–473, § 626(a)(5)(E), struck out ''and'' at end.

Subsec. (a)(10)(J). Pub. L. 98–473, § 626(a)(5)(F), struck out ''juvenile gangs and their members'' and inserted ''gangs whose membership is substantially composed of juveniles''.

Subsec. (a)(10)(K), (L). Pub. L. 98–473, § 626(a)(5)(G), added subpars. (K) and (L).

Subsec. (a)(14). Pub. L. 98–473, § 626(a)(6), in amending par. (14) generally, inserted '', through 1989,'' after ''shall'' and substituted provisions relating to exceptions for former provisions which related to the special needs of areas characterized by low population density with respect to the detention of juveniles and exceptions for temporary detention in adult facilities of juveniles accused of serious crimes against persons.

Subsec. (a)(17), (18). Pub. L. 98–473, § 626(a)(11), (12), added par. (17) and redesignated former par. (17) as (18). Former par. (18) redesignated (19).

Subsec. (a)(19). Pub. L. 98–473, § 626(a)(11), redesignated par. (18) as (19). Former par. (19) redesignated (20).

Pub. L. 98–473, § 626(a)(7), in provisions preceding (A), substituted ''shall be'' for ''are'' after ''arrangements'' and substituted ''chapter and shall provide for the terms and conditions of such protective arrangements established pursuant to this section, and such'' for ''chapter. Such'', inserted ''and'' at end of subpar. (D), substituted a semicolon for the period at end of subpar. (E), and struck out last sentence, which read as follows: ''The State plan shall provide for the terms and conditions of the protection arrangements established pursuant to this section;''.

Subsec. (a)(20), (21). Pub. L. 98–473, § 626(a)(11), redesignated pars. (19) and (20) as (20) and (21), respectively. Former par. (21) redesignated (22).

Subsec. (a)(22). Pub. L. 98–473, § 626(a)(11), redesignated par. (21) as (22). Former par. (22) redesignated (23).

Pub. L. 98–473, § 626(a)(8), substituted ''agency designated under paragraph (1)'' for ''criminal justice council''.

Subsec. (a)(23). Pub. L. 98–473, § 626(a)(11), redesignated par. (22) as (23).

Subsec. (b). Pub. L. 98–473, § 626(b), substituted ''agency designated under subsection (a)(1) of this section'' for ''criminal justice council designated pursuant to section 5633(a) of this title'' and ''subsection (a) of this section'' for ''section 5633(a) of this title''.

Subsec. (c). Pub. L. 98–473, § 626(c), substituted ''3'' for ''2'' before ''additional years''.

Subsec. (d). Pub. L. 98–473, § 626(d), made a conforming amendment to the reference to sections 3783, 3784, and 3785 of this title to reflect the renumbering of the corresponding sections of the original act.

1980—Subsec. (a). Pub. L. 96–509, § 11(a)(1), in provisions preceding par. (1), provided for 3-year, rather than annual, plans and annually submitted performance reports which describe the progress in implementing programs contained in the original plan and the status of compliance with State plan requirements.

Pub. L. 96–509, §§ 11(a)(15)(B), 19(g)(11), in provisions following par. (22), substituted reference to section 3743 of this title for reference to section 3733(a) of this title and inserted provision that plans be modified by States as soon as possible after Dec. 8, 1980, in order to comply with the requirements of par. (14).

Subsec. (a)(1). Pub. L. 96–509, § 19(g)(1), substituted ''State criminal justice council established by the State under section 3742(b)(1) of this title'' for ''State planning agency established by the State under section 3723 of this title''.

Subsec. (a)(2). Pub. L. 96–509, § 19(g)(2), substituted ''criminal justice council'' for ''planning agency''.

Subsec. (a)(3)(A). Pub. L. 96–509, §§ 11(a)(2), 19(g)(3), provided that State advisory groups shall consist of between 15 and 33 members rather than between 21 and 33 members and substituted ''juvenile delinquency'' for ''a juvenile delinquency''.

Subsec. (a)(3)(B). Pub. L. 96–509, § 11(a)(3), provided that locally elected officials be included on State advisory groups and made clear that special education departments be included along with other public agencies for representation on State advisory groups.

Subsec. (a)(3)(E). Pub. L. 96–509, § 11(a)(4), provided that one-fifth of the members of State advisory groups be under 24 years of age at the time of their appointment, rather than one-third under 26 years of age.

Subsec. (a)(3)(F). Pub. L. 96–509, §§ 11(a)(5), (6), 19(g)(4), substituted in cl. (i) ''criminal justice council'' for ''planning agency'', in cl. (ii) provision that the State advisory groups submit recommendations to the Governor and the legislature at least annually regarding matters related to its functions for provision that the State advisory groups advise the Governor and the legislature on matters related to its functions as re-

quested, in cl. (iii) ''criminal justice council'' for ''planning agency other than those subject to review by the State's judicial planning committee established pursuant to section 3723(c) of this title'', in cl. (iv) ''criminal justice council and local criminal justice advisory'' for ''planning agency and regional planning unit supervisory'' and ''section 3793a of this title'' for ''sections 3768(b) and 5671(b) of this title'', and added cl. (v).

Subsec. (a)(8). Pub. L. 96–509, §11(a)(7), provided that State juvenile justice plan requirements conform to State criminal justice application requirements and required a State concentration of effort to coordinate State juvenile delinquency programs and policy.

Subsec. (a)(10). Pub. L. 96–509, §11(a)(8)(A)–(C), in provisions preceding subpar. (A), clarified that the advanced techniques described in this paragraph are to be used to provide community-based alternatives to ''secure'' juvenile detention and correctional facilities and that advanced techniques can be used for the purpose of providing programs for juveniles who have committed serious crimes, particularly programs designed to improve sentencing procedures, provide resources necessary for informed dispositions, and provide for effective rehabilitation.

Subsec. (a)(10)(A). Pub. L. 96–509, §11(a)(9), inserted provisions for inclusion of education and special education programs among community-based programs and services.

Subsec. (a)(10)(E). Pub. L. 96–509, §11(a)(10), clarified that educational programs included as advanced techniques should be designed to encourage delinquent and other youth to remain in school.

Subsec. (a)(10)(H). Pub. L. 96–509, §11(a)(11), provided that statewide programs through the use of subsidies or other financial incentives to units of local government be designed to (1) remove juveniles from jails and lockups for adults, (2) replicate juvenile programs designed as exemplary by the National Institute of Justice, (3) establish and adopt standards for the improvement of juvenile justice within the State, or, (4) increase the use of nonsecure, community-based facilities and discourage the use of secure incarceration and detention.

Subsec. (a)(10)(I). Pub. L. 96–509, §11(a)(12), revised subpar. (I) to provide that advanced technique programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities include on-the-job training programs to assist law enforcement and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles.

Subsec. (a)(10)(J). Pub. L. 96–509, §11(a)(8)(D), added subpar. (J).

Subsec. (a)(11). Pub. L. 96–509, §19(g)(5), substituted ''provide'' for ''provides''.

Subsec. (a)(12)(A). Pub. L. 96–509, §11(a)(13), clarified that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult shall not be placed in secure detention facilities or secure correctional facilities rather than simply, as formerly, juvenile detention or correctional facilities.

Subsec. (a)(12)(B). Pub. L. 96–509, §19(g)(6), substituted ''Administrator'' for ''Associate Administrator''.

Subsec. (a)(14). Pub. L. 96–509, §11(a)(15)(A), added par. (14). Former par. (14) redesignated (15).

Subsec. (a)(15). Pub. L. 96–509, §§11(a)(14), (15)(A), 19(g)(7), redesignated former par. (14) as (15) and in par. (15) as so redesignated, provided that the annual reporting requirements of the results of the monitoring required by this section can be waived for States which have complied with the requirements of par. (12)(A), par. (13), and par. (14), and which have enacted legislation, conforming to those requirements, which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively and substituted ''to the Administrator'' for ''to the Associate Administrator''. Former par. (15) redesignated (16).

Subsec. (a)(16), (17). Pub. L. 96–509, §11(a)(15)(A), redesignated former pars. (15) and (16) as (16) and (17), respectively. Former par. (17) redesignated (18).

Subsec. (a)(18). Pub. L. 96–509, §§11(a)(15)(A), 19(g)(8), redesignated former par. (17) as (18) and, in subpar. (A) of par. (18) as so redesignated, substituted ''preservation of rights'' for ''preservation or rights''. Former par. (18) redesignated (19).

Subsec. (a)(19), (20). Pub. L. 96–509, §11(a)(15)(A), redesignated former pars. (18) and (19) as (19) and (20), respectively.

Subsec. (a)(21). Pub. L. 96–509, §§11(a)(15)(A), 19(g)(9), redesignated former par. (20) as (21) and substituted ''State criminal justice council will from time to time, but not less often than annually, review its plan and submit to the Administrator'' for ''State planning agency will from time to time, but not less often than annually, review its plan and submit to the Associate Administrator''. Former par. (21) redesignated (22).

Subsec. (a)(22). Pub. L. 96–509, §§11(a)(15)(A), 19(g)(10), redesignated former par. (21) as (22) and substituted ''Administrator'' for ''Associate Administrator''.

Subsec. (b). Pub. L. 96–509, §19(g)(12), substituted ''criminal justice council'' for ''planning agency''.

Subsec. (c). Pub. L. 96–509, §11(b), made conforming amendment, redefined ''substantial compliance'' with regard to subsection (a)(12)(A) of this section to include either 75 percent deinstitutionalization of juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, or such nonoffenders as dependent or neglected children or the removal of 100 percent of such juveniles from secure correctional facilities, and inserted provision at end defining substantial compliance with regard to subsec. (a)(14) of this section.

Subsec. (d). Pub. L. 96–509, §§11(c), 19(g)(13), substituted reference to sections 3783, 3784, and 3785 of this title for reference to sections 3757, 3758, and 3759 of this title and provided that redistributed allotments be used for the purposes of subsections (a)(12)(A), (a)(13) or (a)(14) of this section, and further provided that the Administrator shall make such reallocated funds available on an equitable basis to States that have achieved full compliance with the requirements under subsecs. (a)(12)(A) and (a)(13) of this section.

1977—Subsec. (a)(3). Pub. L. 95–115, §4(c)(1), in introductory text substituted provisions relating to functions under subpar. (F) and participation in the development and review of the plan, for provisions relating to advisement of the State planning agency and its supervisory board, in subpar. (C) inserted provision relating to representatives from business groups and businesses, and in subpar. (E) inserted requirement for at least three of the members to be or have been under the jurisdiction of the juvenile justice system, and added subpar. (F).

Subsec. (a)(4). Pub. L. 95–115. §4(c)(2), inserted provisions relating to grants or contracts with local private agencies or the advisory group, and substituted ''units of general local government or combinations thereof in'' for ''local governments in''.

Subsec. (a)(5). Pub. L. 95–115, §4(c)(3), substituted provisions relating to requirements respecting expenditure of funds through programs of units of general local government or combinations thereof and programs of local private agencies, for provisions relating to requirements respecting expenditure of funds through programs of local government.

Subsec. (a)(6). Pub. L. 95–115, §4(c)(4), inserted provision relating to regional planning agency and ''unit of general'' before ''local government''.

Subsec. (a)(8). Pub. L. 95–115, §4(c)(5), inserted provisions relating to programs and projects developed under the study.

Subsec. (a)(10). Pub. L. 95–115, §4(c)(6)(A)(i), (B), inserted provisions relating to availability of funds to the State advisory group and provisions expanding authorized use of funds to include encouragement of diversity of alternatives within the juvenile justice system and adoption of juvenile justice standards, and substituted reference to unit of general local government or combination of such unit with the State, for reference to local government.

Subsec. (a)(10)(A). Pub. L. 95–115, § 4(c)(6)(A)(ii), inserted ''twenty-four hour intake screening, volunteer and crisis home programs, day treatment, and home probation,'' after ''health services,''.

Subsec. (a)(10)(C). Pub. L. 95–115, § 4(c)(6)(A)(iii), substituted ''other youth to help prevent delinquency'' for ''youth in danger of becoming delinquent''.

Subsec. (a)(10)(D). Pub. L. 95–115, § 4(c)(6)(A)(iv), substituted provisions relating to programs stressing advocacy activities, for provisions relating to programs of drug and alcohol abuse education and prevention and programs for treatment and rehabilitation of drug addicted youth and drug dependent youth as defined in section 201(q) of this title.

Subsec. (a)(10)(G). Pub. L. 95–115, § 4(c)(6)(A)(v), inserted ''traditional youth'' after ''reached by''.

Subsec. (a)(10)(H). Pub. L. 95–115, § 4(c)(6)(A)(vi), substituted ''are'' for ''that may include but are not limited to programs''.

Subsec. (a)(10)(I). Pub. L. 95–115, § 4(c)(6)(A)(vii), added subpar. (I).

Subsec. (a)(12). Pub. L. 95–115, § 4(c)(7), redesignated existing provisions as subpar. (A), substituted provisions relating to detention requirements respecting programs within three years after submission of the initial plan, for provisions relating to detention requirements respecting programs within two years after submission of the plan, and added subpar. (B).

Subsec. (a)(13). Pub. L. 95–115, § 4(c)(8), inserted ''and youths within the purview of paragraph (12)'' after ''delinquent''.

Subsec. (a)(14). Pub. L. 95–115, §§ 3(a)(3)(B), 4(c)(9), inserted ''(A)'' after ''(12)'' and ''Associate'' before ''Administrator'' and substituted ''facilities, correctional facilities, and non-secure facilities'' for ''facilities, and correctional facilities''.

Subsec. (a)(15). Pub. L. 95–115, § 4(c)(10), struck out ''all'' before ''disadvantaged''.

Subsec. (a)(19). Pub. L. 95–115, § 4(c)(11), struck out '', to the extent feasible and practical'' before ''the level''.

Subsec. (a)(20), (21). Pub. L. 95–115, § 3(a)(3)(B), inserted ''Associate'' before ''Administrator'' wherever appearing.

Subsec. (b). Pub. L. 95–115, § 4(c)(12), substituted provisions relating to advice and recommendations for provisions relating to consultations.

Subsec. (c). Pub. L. 95–115, § 4(c)(13), inserted provisions relating to failure to achieve compliance with the requirements of subsec. (a)(12)(A) within the three-year time limitation.

Subsec. (d). Pub. L. 95–115, § 4(c)(14), inserted provision relating to the State choosing not to submit a plan and provision relating to reallocation of funds by the Administrator.

Subsec. (e). Pub. L. 95–115, § 4(c)(15), struck out subsec. (e) which related to reallotment of funds in a State where the State plan fails to meet the requirements of this section as a result of oversight or neglect.

1976—Subsec. (a). Pub. L. 94–503 substituted ''(15), and (17)'' for ''and (15)'' in provisions preceding par. (1).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, but amendment by section 7258(a) of Pub. L. 100–690 not applicable to a State with respect to a fiscal year beginning before Nov. 18, 1988, if the State plan is approved before such date by the Administrator for such fiscal year, see section 7296(a), (b)(1) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

Section 4(c)(3)(B) of Pub. L. 95–115 provided in part that the amendment of subsec. (a)(5) of this section, which substituted ''5632(d)'' for ''5632(e)'', by section 4(c)(3)(B) of Pub. L. 95–115 is effective Oct. 1, 1978.

Section 4(c)(6)(B) of Pub. L. 95–115 provided in part that the amendment of subsec. (a)(10) of this section, which substituted ''5632(d)'' for ''5632(e)'', by section 4(c)(6)(B) of Pub. L. 95–115 is effective Oct. 1, 1978.

SAVINGS PROVISION

Section 2(f)(3)(B) of Pub. L. 102–586 provided that: ''Notwithstanding the amendment made by subparagraph (A)(ii) [amending this section], section 223(c)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(c)(3)), as in effect on the day prior to the date of enactment of this Act [Nov. 4, 1992], shall remain in effect to the extent that it provides the Administrator authority to grant a waiver with respect to a fiscal year prior to a fiscal year beginning before January 1, 1993.'' On the day prior to Nov. 4, 1992, subsec. (c)(3) of this section read as follows: ''Except as provided in paragraph (2), failure to achieve compliance with the requirements of subsection (a)(14) of this section after December 8, 1985, shall terminate any State's eligibility for funding under this part unless the Administrator waives the termination of the State's eligibility on the condition that the State agrees to expend all of the funds to be received under this part by the State (excluding funds required to be expended to comply with subsections (c) and (d) of section 5632 of this title and with subsection (a)(5)(C) of this section), only to achieve compliance with subsection (a)(14) of this section.''

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

COSTS AND IMPLICATIONS OF REMOVAL OF JUVENILES FROM ADULTS IN JAILS; REPORT TO CONGRESS

Section 17 of Pub. L. 96–509 provided that the Administrator of the Office of Juvenile Justice and Delinquency Prevention, not later than 18 months after Dec. 8, 1980, submit a report to the Congress relating to the cost and implications of any requirement added to the Juvenile Justice and Delinquency Prevention Act of 1974 which would mandate the removal of juveniles from adults in all jails and lockups, such report to include an estimate of the costs likely to be incurred by the States, an analysis of the experience of States which required the removal of juveniles from adults in all jails and lockups, an analysis of possible adverse ramifications which might result from such requirement of removal, and recommendations for such legis-

lative or administrative action as the Administrator considers appropriate.

§§ 5634 to 5639. Repealed. Pub. L. 100–690, title VII, § 7263(a)(1)(B), Nov. 18, 1988, 102 Stat. 4443

Section 5634, Pub. L. 93–415, title II, § 224, Sept. 7, 1974, 88 Stat. 1122; Pub. L. 95–115, § 4(d), Oct. 3, 1977, 91 Stat. 1054; Pub. L. 96–509, §§ 12, 19(h), Dec. 8, 1980, 94 Stat. 2759, 2765; Pub. L. 98–473, title II, § 627, Oct. 12, 1984, 98 Stat. 2114, related to funding of special emphasis prevention and treatment programs through grants and contracts.

Section 5635, Pub. L. 93–415, title II, § 225, Sept. 7, 1974, 88 Stat. 1123; Pub. L. 94–503, title I, § 130(c), Oct. 15, 1976, 90 Stat. 2425; Pub. L. 95–115, § 4(e), Oct. 3, 1977, 91 Stat. 1055; Pub. L. 98–473, title II, § 628, Oct. 12, 1984, 98 Stat. 2116, related to applications for grants and contracts under section 5634 of this title.

Section 5636, Pub. L. 93–415, title II, § 226, Sept. 7, 1974, 88 Stat. 1124, provided for proceedings by Administrator in the case of noncompliance of program or activity with this subchapter.

Section 5637, Pub. L. 93–415, title II, § 227, Sept. 7, 1974, 88 Stat. 1124; Pub. L. 95–115, § 4(f), Oct. 3, 1977, 91 Stat. 1055; Pub. L. 96–509, § 13(a), Dec. 8, 1980, 94 Stat. 2759; Pub. L. 98–473, title II, § 629, Oct. 12, 1984, 98 Stat. 2117, related to use of funds paid pursuant to this subchapter.

Section 5638, Pub. L. 93–415, title II, § 228, Sept. 7, 1974, 88 Stat. 1124; Pub. L. 95–115, § 4(g)(1), (2), (3)(A), Oct. 3, 1977, 91 Stat. 1055, 1056; Pub. L. 96–509, §§ 14, 19(i), Dec. 8, 1980, 94 Stat. 2760, 2765; Pub. L. 98–473, title II, § 630, Oct. 12, 1984, 98 Stat. 2117, related to continuing financial assistance for programs.

Section 5639, Pub. L. 93–415, title II, § 229, as added Pub. L. 95–115, § 4(h), Oct. 3, 1977, 91 Stat. 1056, provided for confidentiality of program records.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

PART C—JUVENILE DELINQUENCY PREVENTION BLOCK GRANT PROGRAM

PRIOR PROVISIONS

A prior part C, consisting of sections 5651 to 5665a, related to national programs, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

§ 5651. Authority to make grants

(a) Grants to eligible States

The Administrator may make grants to eligible States, from funds allocated under section 5652 of this title, for the purpose of providing financial assistance to eligible entities to carry out projects designed to prevent juvenile delinquency, including—

(1) projects that provide treatment (including treatment for mental health problems) to juvenile offenders, and juveniles who are at risk of becoming juvenile offenders, who are victims of child abuse or neglect or who have experienced violence in their homes, at school, or in the community, and to their families, in order to reduce the likelihood that such juveniles will commit violations of law;

(2) educational projects or supportive services for delinquent or other juveniles—

(A) to encourage juveniles to remain in elementary and secondary schools or in alternative learning situations in educational settings;

(B) to provide services to assist juveniles in making the transition to the world of work and self-sufficiency;

(C) to assist in identifying learning difficulties (including learning disabilities);

(D) to prevent unwarranted and arbitrary suspensions and expulsions;

(E) to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

(F) which assist law enforcement personnel and juvenile justice personnel to more effectively recognize and provide for learning-disabled and other juveniles with disabilities;

(G) which develop locally coordinated policies and programs among education, juvenile justice, and social service agencies; or

(H) to provide services to juveniles with serious mental and emotional disturbances (SED) in need of mental health services;

(3) projects which expand the use of probation officers—

(A) particularly for the purpose of permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization; and

(B) to ensure that juveniles follow the terms of their probation;

(4) counseling, training, and mentoring programs, which may be in support of academic tutoring, vocational and technical training, and drug and violence prevention counseling, that are designed to link at-risk juveniles, juvenile offenders, or juveniles who have a parent or legal guardian who is or was incarcerated in a Federal, State, or local correctional facility or who is otherwise under the jurisdiction of a Federal, State, or local criminal justice system, particularly juveniles residing in low-income and high-crime areas and juveniles experiencing educational failure, with responsible individuals (such as law enforcement officers, Department of Defense personnel, individuals working with local businesses, and individuals working with community-based and faith-based organizations and agencies) who are properly screened and trained;

(5) community-based projects and services (including literacy and social service programs) which work with juvenile offenders and juveniles who are at risk of becoming juvenile offenders, including those from families with limited English-speaking proficiency, their parents, their siblings, and other family members during and after incarceration of the juvenile offenders, in order to strengthen families, to allow juvenile offenders to be retained in their homes, and to prevent the involvement of other juvenile family members in delinquent activities;

(6) projects designed to provide for the treatment (including mental health services) of juveniles for dependence on or abuse of alcohol, drugs, or other harmful substances;

(7) projects which leverage funds to provide scholarships for postsecondary education and training for low-income juveniles who reside in neighborhoods with high rates of poverty, violence, and drug-related crimes;

(8) projects which provide for an initial intake screening of each juvenile taken into custody—

(A) to determine the likelihood that such juvenile will commit a subsequent offense; and

(B) to provide appropriate interventions (including mental health services) to prevent such juvenile from committing subsequent offenses;

(9) projects (including school- or community-based projects) that are designed to prevent, and reduce the rate of, the participation of juveniles in gangs that commit crimes (particularly violent crimes), that unlawfully use firearms and other weapons, or that unlawfully traffic in drugs and that involve, to the extent practicable, families and other community members (including law enforcement personnel and members of the business community) in the activities conducted under such projects;

(10) comprehensive juvenile justice and delinquency prevention projects that meet the needs of juveniles through the collaboration of the many local service systems juveniles encounter, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies (including collaboration on appropriate prenatal care for pregnant juvenile offenders), private nonprofit agencies, and public recreation agencies offering services to juveniles;

(11) to develop, implement, and support, in conjunction with public and private agencies, organizations, and businesses, projects for the employment of juveniles and referral to job training programs (including referral to Federal job training programs);

(12) delinquency prevention activities which involve youth clubs, sports, recreation and parks, peer counseling and teaching, the arts, leadership development, community service, volunteer service, before- and after-school programs, violence prevention activities, mediation skills training, camping, environmental education, ethnic or cultural enrichment, tutoring, and academic enrichment;

(13) to establish policies and systems to incorporate relevant child protective services records into juvenile justice records for purposes of establishing treatment plans for juvenile offenders;

(14) programs that encourage social competencies, problem-solving skills, and communication skills, youth leadership, and civic involvement;

(15) programs that focus on the needs of young girls at-risk of delinquency or status offenses;

(16) projects which provide for—

(A) an assessment by a qualified mental health professional of incarcerated juveniles who are suspected to be in need of mental health services;

(B) the development of an individualized treatment plan for those incarcerated juveniles determined to be in need of such services;

(C) the inclusion of a discharge plan for incarcerated juveniles receiving mental health services that addresses aftercare services; and

(D) all juveniles receiving psychotropic medications to be under the care of a licensed mental health professional;

(17) after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities;

(18) programs related to the establishment and maintenance of a school violence hotline, based on a public-private partnership, that students and parents can use to report suspicious, violent, or threatening behavior to local school and law enforcement authorities;

(19) programs (excluding programs to purchase guns from juveniles) designed to reduce the unlawful acquisition and illegal use of guns by juveniles, including partnerships between law enforcement agencies, health professionals, school officials, firearms manufacturers, consumer groups, faith-based groups and community organizations;

(20) programs designed to prevent animal cruelty by juveniles and to counsel juveniles who commit animal cruelty offenses, including partnerships among law enforcement agencies, animal control officers, social services agencies, and school officials;

(21) programs that provide suicide prevention services for incarcerated juveniles and for juveniles leaving the incarceration system;

(22) programs to establish partnerships between State educational agencies and local educational agencies for the design and implementation of character education and training programs that reflect the values of parents, teachers, and local communities, and incorporate elements of good character, including honesty, citizenship, courage, justice, respect, personal responsibility, and trustworthiness;

(23) programs that foster strong character development in at-risk juveniles and juveniles in the juvenile justice system;

(24) local programs that provide for immediate psychological evaluation and follow-up treatment (including evaluation and treatment during a mandatory holding period for not less than 24 hours) for juveniles who bring a gun on school grounds without permission from appropriate school authorities; and

(25) other activities that are likely to prevent juvenile delinquency.

(b) Grants to eligible Indian tribes

The Administrator may make grants to eligible Indian tribes from funds allocated under section 5652(b) of this title, to carry out projects of the kinds described in subsection (a) of this section.

(Pub. L. 93–415, title II, § 241, as added Pub. L. 107–273, div. C, title II, § 12210(4), Nov. 2, 2002, 116 Stat. 1880.)

PRIOR PROVISIONS

A prior section 5651, Pub. L. 93–415, title II, § 241, Sept. 7, 1974, 88 Stat. 1125; Pub. L. 95–115, §§ 3(a)(3)(A), (5), 5(a), (f), Oct. 3, 1977, 91 Stat. 1048, 1049, 1056, 1057; Pub. L. 96–509, § 19(j), Dec. 8, 1980, 94 Stat. 2765; Pub. L. 98–473, title II, § 631, Oct. 12, 1984, 98 Stat. 2118; Pub. L. 100–690,

title VII, § 7259, Nov. 18, 1988, 102 Stat. 4441; Pub. L. 102–586, § 2(g)(1), Nov. 4, 1992, 106 Stat. 4994, related to the National Institute for Juvenile Justice and Delinquency Prevention, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

EFFECTIVE DATE

Part effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5652. Allocation

(a) Allocation among eligible States

Subject to subsection (b) of this section, funds appropriated to carry out this part shall be allocated among eligible States proportionately based on the population that is less than 18 years of age in the eligible States.

(b) Allocation among Indian tribes collectively

Before allocating funds under subsection (a) of this section among eligible States, the Administrator shall allocate among eligible Indian tribes as determined under section 5656(a) of this title, an aggregate amount equal to the amount such tribes would be allocated under subsection (a) of this section, and without regard to this subsection, if such tribes were treated collectively as an eligible State.

(Pub. L. 93–415, title II, § 242, as added Pub. L. 107–273, div. C, title II, § 12210(4), Nov. 2, 2002, 116 Stat. 1884.)

PRIOR PROVISIONS

A prior section 5652, Pub. L. 93–415, title II, § 242, Sept. 7, 1974, 88 Stat. 1126; Pub. L. 100–690, title VII, § 7260, Nov. 18, 1988, 102 Stat. 4441; Pub. L. 102–586, § 2(g)(2), Nov. 4, 1992, 106 Stat. 4995, related to the information function of the Institute, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

§ 5653. Eligibility of States

(a) Application

To be eligible to receive a grant under section 5651 of this title, a State shall submit to the Administrator an application that contains the following:

(1) An assurance that the State will use—

(A) not more than 5 percent of such grant, in the aggregate, for—

(i) the costs incurred by the State to carry out this part; and

(ii) to evaluate, and provide technical assistance relating to, projects and activities carried out with funds provided under this part; and

(B) the remainder of such grant to make grants under section 5654 of this title.

(2) An assurance that, and a detailed description of how, such grant will supplement, and not supplant State and local efforts to prevent juvenile delinquency.

(3) An assurance that such application was prepared after consultation with and participation by the State advisory group, community-based organizations, and organizations in the local juvenile justice system, that carry out programs, projects, or activities to prevent juvenile delinquency.

(4) An assurance that the State advisory group will be afforded the opportunity to review and comment on all grant applications submitted to the State agency.

(5) An assurance that each eligible entity described in section 5654 of this title that receives an initial grant under section 5654 of this title to carry out a project or activity shall also receive an assurance from the State that such entity will receive from the State, for the subsequent fiscal year to carry out such project or activity, a grant under such section in an amount that is proportional, based on such initial grant and on the amount of the grant received under section 5651 of this title by the State for such subsequent fiscal year, but that does not exceed the amount specified for such subsequent fiscal year in such application as approved by the State.

(6) Such other information and assurances as the Administrator may reasonably require by rule.

(b) Approval of applications

(1) Approval required

Subject to paragraph (2), the Administrator shall approve an application, and amendments to such application submitted in subsequent fiscal years, that satisfy the requirements of subsection (a) of this section.

(2) Limitation

The Administrator may not approve such application (including amendments to such application) for a fiscal year unless—

(A)(i) the State submitted a plan under section 5633 of this title for such fiscal year; and

(ii) such plan is approved by the Administrator for such fiscal year; or

(B) the Administrator waives the application of subparagraph (A) to such State for such fiscal year, after finding good cause for such a waiver.

(Pub. L. 93–415, title II, § 243, as added Pub. L. 107–273, div. C, title II, § 12210(4), Nov. 2, 2002, 116 Stat. 1884.)

PRIOR PROVISIONS

A prior section 5653, Pub. L. 93–415, title II, § 243, Sept. 7, 1974, 88 Stat. 1126; Pub. L. 95–115, §§ 3(a)(3)(B), 5(b), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub. L. 98–473, title II, § 632, Oct. 12, 1984, 98 Stat. 2118; Pub. L. 100–690, title VII, § 7261, Nov. 18, 1988, 102 Stat. 4442; Pub. L. 102–586, § 2(g)(3), Nov. 4, 1992, 106 Stat. 4995, related to research, demonstration, and evaluation, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

§ 5654. Grants for local projects

(a) Grants by States

Using a grant received under section 5651 of this title, a State may make grants to eligible entities whose applications are received by the State, and reviewed by the State advisory group, to carry out projects and activities described in section 5651 of this title.

(b) Special consideration

For purposes of making grants under subsection (a) of this section, the State shall give special consideration to eligible entities that—

(1) propose to carry out such projects in geographical areas in which there is—

(A) a disproportionately high level of serious crime committed by juveniles; or

(B) a recent rapid increase in the number of nonstatus offenses committed by juveniles;

(2)(A) agreed to carry out such projects or activities that are multidisciplinary and involve more than 2 private nonprofit agencies, organizations, and institutions that have experience dealing with juveniles; or

(B) represent communities that have a comprehensive plan designed to identify at-risk juveniles and to prevent or reduce the rate of juvenile delinquency, and that involve other entities operated by individuals who have a demonstrated history of involvement in activities designed to prevent juvenile delinquency; and

(3) the amount of resources (in cash or in kind) such entities will provide to carry out such projects and activities.

(Pub. L. 93–415, title II, § 244, as added Pub. L. 107–273, div. C, title II, § 12210(4), Nov. 2, 2002, 116 Stat. 1885.)

PRIOR PROVISIONS

A prior section 5654, Pub. L. 93–415, title II, § 244, Sept. 7, 1974, 88 Stat. 1127; Pub. L. 95–115, § 5(f), Oct. 3, 1977, 91 Stat. 1057; Pub. L. 96–509, § 19(k), Dec. 8, 1980, 94 Stat. 2765; Pub. L. 98–473, title II, § 633, Oct. 12, 1984, 98 Stat. 2119; Pub. L. 100–690, title VII, § 7262, Nov. 18, 1988, 102 Stat. 4442; Pub. L. 102–586, § 2(g)(3), Nov. 4, 1992, 106 Stat. 4996; Pub. L. 105–277, div. A, § 101(b) [title I, § 129(a)(2)(D)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–76, related to technical assistance and training functions, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

§ 5655. Eligibility of entities

(a) Eligibility

Except as provided in subsection (b) of this section, to be eligible to receive a grant under section 5654 of this title, a unit of general purpose local government, acting jointly with not fewer than 2 private nonprofit agencies, organizations, and institutions that have experience dealing with juveniles, shall submit to the State an application that contains the following:

(1) An assurance that such applicant will use such grant, and each such grant received for the subsequent fiscal year, to carry out throughout a 2-year period a project or activity described in reasonable detail, and of a kind described in one or more of paragraphs (1) through (25) of section 5651(a) of this title as specified in, such application.

(2) A statement of the particular goals such project or activity is designed to achieve, and the methods such entity will use to achieve, and assess the achievement of, each of such goals.

(3) A statement identifying the research (if any) such entity relied on in preparing such application.

(b) Limitation

If an eligible entity that receives a grant under section 5654 of this title to carry out a project or activity for a 2-year period, and receives technical assistance from the State or the Administrator after requesting such technical assistance (if any), fails to demonstrate, before the expiration of such 2-year period, that such project or such activity has achieved substantial success in achieving the goals specified in the application submitted by such entity to receive such grants, then such entity shall not be eligible to receive any subsequent grant under such section to continue to carry out such project or activity.

(Pub. L. 93–415, title II, § 245, as added Pub. L. 107–273, div. C, title II, § 12210(4), Nov. 2, 2002, 116 Stat. 1885.)

PRIOR PROVISIONS

A prior section 5655, Pub. L. 93–415, title II, § 245, Sept. 7, 1974, 88 Stat. 1127; Pub. L. 95–115, § 5(c), Oct. 3, 1977, 91 Stat. 1057; Pub. L. 96–509, § 19(*l*), Dec. 8, 1980, 94 Stat. 2765, provided for the functions of the Advisory Committee, prior to repeal by Pub. L. 98–473, title II, §§ 634, 670(a), Oct. 12, 1984, 98 Stat. 2119, 2129, effective Oct. 12, 1984.

A prior section 245 of Pub. L. 93–415 was classified to section 5659 of this title prior to repeal by Pub. L. 107–273.

Another prior section 245 of Pub. L. 93–415 was classified to section 5656 of this title prior to repeal by Pub. L. 100–690.

§ 5656. Grants to Indian tribes

(a) Eligibility

(1) Application

To be eligible to receive a grant under section 5651(b) of this title, an Indian tribe shall submit to the Administrator an application in accordance with this section, in such form and containing such information as the Administrator may require by rule.

(2) Plans

Such application shall include a plan for conducting programs, projects, and activities described in section 5651(a) of this title, which plan shall—

(A) provide evidence that the applicant Indian tribe performs law enforcement functions (as determined by the Secretary of the Interior);

(B) identify the juvenile justice and delinquency problems and juvenile delinquency prevention needs to be addressed by activities conducted with funds provided by the grant for which such application is submitted, by the Indian tribe in the geographical area under the jurisdiction of the Indian tribe;

(C) provide for fiscal control and accounting procedures that—

(i) are necessary to ensure the prudent use, proper disbursement, and accounting of grants received by applicants under this section; and

(ii) are consistent with the requirement specified in subparagraph (B); and

(D) comply with the requirements specified in section 5633(a) of this title (excluding any requirement relating to consultation with a State advisory group) and with the requirements specified in section 5632(c) of this title; and

(E) contain such other information, and be subject to such additional requirements, as the Administrator may reasonably require by rule to ensure the effectiveness of the projects for which grants are made under section 5651(b) of this title.

(b) Factors for consideration

For the purpose of selecting eligible applicants to receive grants under section 5651(b) of this title, the Administrator shall consider—

(1) the resources that are available to each applicant Indian tribe that will assist, and be coordinated with, the overall juvenile justice system of the Indian tribe; and

(2) with respect to each such applicant—

(A) the juvenile population; and

(B) the population and the entities that will be served by projects proposed to be carried out with the grant for which the application is submitted.

(c) Grant process

(1) Selection of grant recipients

(A) Selection requirements

Except as provided in paragraph (2), the Administrator shall—

(i) make grants under this section on a competitive basis; and

(ii) specify in writing to each applicant selected to receive a grant under this section, the terms and conditions on which such grant is made to such applicant.

(B) Period of grant

A grant made under this section shall be available for expenditure during a 2–year period.

(2) Exception

If—

(A) in the 2-year period for which a grant made under this section shall be expended, the recipient of such grant applies to receive a subsequent grant under this section; and

(B) the Administrator determines that such recipient performed during the year preceding the 2–year period for which such recipient applies to receive such subsequent grant satisfactorily and in accordance with the terms and conditions applicable to the grant received;

then the Administrator may waive the application of the competition-based requirement specified in paragraph (1)(A)(i) and may allow the applicant to incorporate by reference in the current application the text of the plan contained in the recipient's most recent application previously approved under this section.

(3) Authority to modify application process for subsequent grants

The Administrator may modify by rule the operation of subsection (a) of this section with respect to the submission and contents of applications for subsequent grants described in paragraph (2).

(d) Reporting requirement

Each Indian tribe that receives a grant under this section shall be subject to the fiscal accountability provisions of section 450c(f)(1) of title 25, relating to the submission of a single-agency audit report required by chapter 75 of title 31.

(e) Matching requirement

(1) Funds appropriated for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of any program or project with a matching requirement funded under this section.

(2) Paragraph (1) shall not apply with respect to funds appropriated before November 2, 2002.

(3) If the Administrator determines that an Indian tribe does not have sufficient funds available to meet the non-Federal share of the cost of any program or activity to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent the Administrator deems necessary.

(Pub. L. 93–415, title II, § 246, as added Pub. L. 107–273, div. C, title II, § 12210(4), Nov. 2, 2002, 116 Stat. 1886.)

PRIOR PROVISIONS

A prior section 5656, Pub. L. 93–415, title II, § 245, formerly § 246, Sept. 7, 1974, 88 Stat. 1127; Pub. L. 94–273, § 2(27), Apr. 21, 1976, 90 Stat. 376; Pub. L. 95–115, § 3(a)(3), (5), Oct. 3, 1977, 91 Stat. 1048, 1049; Pub. L. 96–509, § 19(m), Dec. 8, 1980, 94 Stat. 2765; renumbered § 245, Pub. L. 98–473, title II, § 635, Oct. 12, 1984, 98 Stat. 2120, related to annual report by Deputy Administrator on programs funded under this subchapter, prior to repeal by Pub. L. 100–690, title VII, §§ 7263(a)(2)(C), 7296(a), Nov. 18, 1988, 102 Stat. 4443, 4463, effective Oct. 1, 1988.

A prior section 5657, Pub. L. 93–415, title II, § 246, formerly § 247, Sept. 7, 1974, 88 Stat. 1127; Pub. L. 95–115, § 5(d), Oct. 3, 1977, 91 Stat. 1057; renumbered § 246 and amended Pub. L. 98–473, title II, § 636, Oct. 12, 1984, 98 Stat. 2120, set forth additional functions of the Institute for Juvenile Justice and Delinquency Prevention, prior to repeal by Pub. L. 100–690, title VII, §§ 7263(a)(2)(C), 7296(a), Nov. 18, 1988, 102 Stat. 4443, 4463, effective Oct. 1, 1988.

A prior section 5658, Pub. L. 93–415, title II, § 248, Sept. 7, 1974, 88 Stat. 1128, set forth provisions relating to restrictions on disclosure and transfer of juvenile records, prior to repeal by Pub. L. 95–115, § 5(e)(1), Oct. 3, 1977, 91 Stat. 1057, effective Oct. 1, 1977.

A prior section 5659, Pub. L. 93–415, title II, § 245, formerly § 249, Sept. 7, 1974, 88 Stat. 1128; renumbered § 248 and amended Pub. L. 95–115, §§ 3(a)(3)(B), 5(e)(1), (f), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub. L. 96–509, § 19(n), Dec. 8, 1980, 94 Stat. 2765; renumbered § 247 and amended Pub. L. 98–473, title II, § 637, Oct. 12, 1984, 98 Stat. 2120; renumbered § 245, Pub. L. 100–690, title VII, § 7263(a)(2)(E), Nov. 18, 1988, 102 Stat. 4443; Pub. L. 102–586, § 2(g)(4), Nov. 4, 1992, 106 Stat. 4996, established a training program of methods and techniques for the prevention and treatment of juvenile delinquency, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

A prior section 5660, Pub. L. 93–415, title II, § 246, formerly § 250, Sept. 7, 1974, 88 Stat. 1128; renumbered § 249 and amended Pub. L. 95–115, §§ 3(a)(3)(B), 5(e)(1), (2)(A), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub. L. 96–509, § 19(*o*), Dec. 8, 1980, 94 Stat. 2765; renumbered § 248 Pub. L. 98–473, title II, § 638, Oct. 12, 1984, 98 Stat. 2120; renumbered § 246 and amended Pub. L. 100–690, title VII, § 7263(a)(2)(E), (b)(2), Nov. 18, 1988, 102 Stat. 4443, 4447; Pub. L. 102–586, § 2(g)(5), Nov. 4, 1992, 106 Stat. 4996, related to the curriculum for training program, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

PART D—RESEARCH; EVALUATION; TECHNICAL ASSISTANCE; TRAINING

PRIOR PROVISIONS

A prior part D, consisting of sections 5667 to 5667b, related to gang-free schools and communities and gang intervention, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

§ 5661. Research and evaluation; statistical analyses; information dissemination

(a) Research and evaluation

(1) The Administrator may—

(A) plan and identify the purposes and goals of all agreements carried out with funds provided under this subsection; and

(B) conduct research or evaluation in juvenile justice matters, for the purpose of providing research and evaluation relating to—

(i) the prevention, reduction, and control of juvenile delinquency and serious crime committed by juveniles;

(ii) the link between juvenile delinquency and the incarceration of members of the families of juveniles;

(iii) successful efforts to prevent first-time minor offenders from committing subsequent involvement in serious crime;

(iv) successful efforts to prevent recidivism;

(v) the juvenile justice system;

(vi) juvenile violence;

(vii) appropriate mental health services for juveniles and youth at risk of participating in delinquent activities;

(viii) reducing the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups;

(ix) evaluating services, treatment, and aftercare placement of juveniles who were under the care of the State child protection system before their placement in the juvenile justice system;

(x) determining—

(I) the frequency, seriousness, and incidence of drug use by youth in schools and communities in the States using, if appropriate, data submitted by the States pursuant to this subparagraph and subsection (b) of this section; and

(II) the frequency, degree of harm, and morbidity of violent incidents, particularly firearm-related injuries and fatalities, by youth in schools and communities in the States, including information with respect to—

(aa) the relationship between victims and perpetrators;

(bb) demographic characteristics of victims and perpetrators; and

(cc) the type of weapons used in incidents, as classified in the Uniform Crime Reports of the Federal Bureau of Investigation; and

(xi) other purposes consistent with the purposes of this subchapter and subchapter I of this chapter.

(2) The Administrator shall ensure that an equitable amount of funds available to carry out paragraph (1)(B) is used for research and evaluation relating to the prevention of juvenile delinquency.

(3) Nothing in this subsection shall be construed to permit the development of a national database of personally identifiable information on individuals involved in studies, or in data-collection efforts, carried out under paragraph (1)(B)(x).

(4) Not later than 1 year after November 2, 2002, the Administrator shall conduct a study with respect to juveniles who, prior to placement in the juvenile justice system, were under the care or custody of the State child welfare system, and to juveniles who are unable to return to their family after completing their disposition in the juvenile justice system and who remain wards of the State. Such study shall include—

(A) the number of juveniles in each category;

(B) the extent to which State juvenile justice systems and child welfare systems are coordinating services and treatment for such juveniles;

(C) the Federal and local sources of funds used for placements and post-placement services;

(D) barriers faced by State in providing services to these juveniles;

(E) the types of post-placement services used;

(F) the frequency of case plans and case plan reviews; and

(G) the extent to which case plans identify and address permanency and placement barriers and treatment plans.

(b) Statistical analyses

The Administrator may—

(1) plan and identify the purposes and goals of all agreements carried out with funds provided under this subsection; and

(2) undertake statistical work in juvenile justice matters, for the purpose of providing for the collection, analysis, and dissemination of statistical data and information relating to juvenile delinquency and serious crimes committed by juveniles, to the juvenile justice system, to juvenile violence, and to other purposes consistent with the purposes of this subchapter and subchapter I of this chapter.

(c) Grant authority and competitive selection process

The Administrator may make grants and enter into contracts with public or private agencies, organizations, or individuals and shall use a competitive process, established by rule by the Administrator, to carry out subsections (a) and (b) of this section.

(d) Implementation of agreements

A Federal agency that makes an agreement under subsections (a)(1)(B) and (b)(2) of this section with the Administrator may carry out such agreement directly or by making grants to or contracts with public and private agencies, institutions, and organizations.

(e) Information dissemination

The Administrator may—

(1) review reports and data relating to the juvenile justice system in the United States and in foreign nations (as appropriate), collect data and information from studies and research into all aspects of juvenile delinquency (including the causes, prevention, and treatment of juvenile delinquency) and serious crimes committed by juveniles;

(2) establish and operate, directly or by contract, a clearinghouse and information center for the preparation, publication, and dissemination of information relating to juvenile delinquency, including State and local prevention and treatment programs, plans, resources, and training and technical assistance programs; and

(3) make grants and contracts with public and private agencies, institutions, and organizations, for the purpose of disseminating information to representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, the courts, corrections, schools, and related services, in the establishment, implementation, and operation of projects and activities for which financial assistance is provided under this subchapter.

(Pub. L. 93–415, title II, § 251, as added Pub. L. 107–273, div. C, title II, § 12211, Nov. 2, 2002, 116 Stat. 1888.)

PRIOR PROVISIONS

A prior section 5661, Pub. L. 93–415, title II, § 247, formerly § 251, Sept. 7, 1974, 88 Stat. 1128; renumbered § 250 and amended Pub. L. 95–115, §§ 3(a)(3)(B), 5(e)(1), (2)(B), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub. L. 96–509, § 19(p), Dec. 8, 1980, 94 Stat. 2765; renumbered § 249 and amended Pub. L. 98–473, title II, § 639, Oct. 12, 1984, 98 Stat. 2120; renumbered § 247 and amended Pub. L. 100–690, title VII, § 7263(a)(2)(D), (E), Nov. 18, 1988, 102 Stat. 4443, related to participation in training program and State advisory group conferences, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

EFFECTIVE DATE

Part effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5662. Training and technical assistance

(a) Training

The Administrator may—

(1) develop and carry out projects for the purpose of training representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, to carry out the purposes specified in section 5602 of this title; and

(2) make grants to and contracts with public and private agencies, institutions, and organizations for the purpose of training representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, to carry out the purposes specified in section 5602 of this title.

(b) Technical assistance

The Administrator may—

(1) develop and implement projects for the purpose of providing technical assistance to representatives and personnel of public and private agencies and organizations, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, in the establishment, implementation, and operation of programs, projects, and activities for which financial assistance is provided under this subchapter; and

(2) make grants to and contracts with public and private agencies, institutions, and organizations, for the purpose of providing technical assistance to representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, in the establishment, implementation, and operation of programs, projects, and activities for which financial assistance is provided under this subchapter.

(c) Training and technical assistance to mental health professionals and law enforcement personnel

The Administrator shall provide training and technical assistance to mental health professionals and law enforcement personnel (including public defenders, police officers, probation officers, judges, parole officials, and correctional officers) to address or to promote the development, testing, or demonstration of promising or innovative models (including model juvenile and family courts), programs, or delivery systems that address the needs of juveniles who are alleged or adjudicated delinquent and who, as a result of such status, are placed in secure detention or confinement or in nonsecure residential placements.

(Pub. L. 93–415, title II, § 252, as added Pub. L. 107–273, div. C, title II, § 12211, Nov. 2, 2002, 116 Stat. 1890.)

PRIOR PROVISIONS

A prior section 5662, Pub. L. 93–415, title II, § 248, as added Pub. L. 100–690, title VII, § 7264, Nov. 18, 1988, 102 Stat. 4447; amended Pub. L. 102–586, § 2(g)(6), Nov. 4, 1992, 106 Stat. 4997, related to special studies and reports, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

PART E—DEVELOPING, TESTING, AND DEMONSTRATING PROMISING NEW INITIATIVES AND PROGRAMS

PRIOR PROVISIONS

A prior part E, consisting of section 5667c, related to State challenge activities, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

§ 5665. Grants and projects

(a) Authority to make grants

The Administrator may make grants to and contracts with States, units of general local government, Indian tribal governments, public and private agencies, organizations, and individ-

uals, or combinations thereof, to carry out projects for the development, testing, and demonstration of promising initiatives and programs for the prevention, control, or reduction of juvenile delinquency. The Administrator shall ensure that, to the extent reasonable and practicable, such grants are made to achieve an equitable geographical distribution of such projects throughout the United States.

(b) Use of grants

A grant made under subsection (a) of this section may be used to pay all or part of the cost of the project for which such grant is made.

(Pub. L. 93–415, title II, § 261, as added Pub. L. 107–273, div. C, title II, § 12212, Nov. 2, 2002, 116 Stat. 1891.)

PRIOR PROVISIONS

A prior section 5665, Pub. L. 93–415, title II, § 261, as added Pub. L. 100–690, title VII, § 7263(a)(2)(F), Nov. 18, 1988, 102 Stat. 4443; amended Pub. L. 102–586, § 2(g)(7), Nov. 4, 1992, 106 Stat. 5000, related to authority to make grants and contracts, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

A prior section 261 of Pub. L. 93–415 was renumbered section 299 and is classified to section 5671 of this title.

A prior section 5665a, Pub. L. 93–415, title II, § 262, as added Pub. L. 100–690, title VII, § 7263(a)(2)(F), Nov. 18, 1988, 102 Stat. 4445; amended Pub. L. 102–586, § 2(h), Nov. 4, 1992, 106 Stat. 5001, related to considerations for approval of applications, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

EFFECTIVE DATE

Part effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5666. Grants for technical assistance

The Administrator may make grants to and contracts with public and private agencies, organizations, and individuals to provide technical assistance to States, units of general local government, Indian tribal governments, local private entities or agencies, or any combination thereof, to carry out the projects for which grants are made under section 5665 of this title.

(Pub. L. 93–415, title II, § 262, as added Pub. L. 107–273, div. C, title II, § 12212, Nov. 2, 2002, 116 Stat. 1891.)

PRIOR PROVISIONS

A prior section 262 of Pub. L. 93–415 was classified to section 5665a of this title, prior to repeal by Pub. L. 107–273.

Another prior section 262 of Pub. L. 93–415 was renumbered section 299A and is classified to section 5672 of this title.

§ 5667. Eligibility

To be eligible to receive a grant made under this part, a public or private agency, Indian tribal government, organization, institution, individual, or combination thereof shall submit an application to the Administrator at such time, in such form, and containing such information as the Administrator may reasonably require by rule.

(Pub. L. 93–415, title II, § 263, as added Pub. L. 107–273, div. C, title II, § 12212, Nov. 2, 2002, 116 Stat. 1891.)

PRIOR PROVISIONS

A prior section 5667, Pub. L. 93–415, title II, § 281, as added Pub. L. 102–586, § 2(i), Nov. 4, 1992, 106 Stat. 5001, related to authority to make grants and contracts, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

Another prior section 5667, Pub. L. 93–415, title II, § 281, as added Pub. L. 100–690, title VII, § 7267, Nov. 18, 1988, 102 Stat. 4451, authorized Administrator to make grants and contracts for prevention and treatment programs relating to juvenile gangs, drug abuse, and drug trafficking, prior to the general amendment of part D by Pub. L. 102–586.

Prior sections 5667–1 to 5667f–3 were repealed by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

Section 5667–1, Pub. L. 93–415, title II, § 281A, as added Pub. L. 102–586, § 2(i), Nov. 4, 1992, 106 Stat. 5003, related to approval of applications.

Section 5667a, Pub. L. 93–415, title II, § 282, as added Pub. L. 102–586, § 2(i), Nov. 4, 1992, 106 Stat. 5004, related to authority to make grants and contracts.

Another prior section 5667a, Pub. L. 93–415, title II, § 282, as added Pub. L. 100–690, title VII, § 7267, Nov. 18, 1988, 102 Stat. 4451, related to approval of applications for grants and contracts, prior to the general amendment of part D by Pub. L. 102–586.

Section 5667a–1, Pub. L. 93–415, title II, § 282A, as added Pub. L. 102–586, § 2(i), Nov. 4, 1992, 106 Stat. 5005, related to application approval.

Section 5667b, Pub. L. 93–415, title II, § 283, as added Pub. L. 102–586, § 2(i), Nov. 4, 1992, 106 Stat. 5006, defined ''juvenile''.

Section 5667c, Pub. L. 93–415, title II, § 285, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5006, related to establishment of program of State challenge activities.

Section 5667d, Pub. L. 93–415, title II, § 287, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5008, defined ''juvenile''.

Section 5667d–1, Pub. L. 93–415, title II, § 287A, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5008, related to grant authority.

Section 5667d–2, Pub. L. 93–415, title II, § 287B, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009, related to administrative requirements.

Section 5667d–3, Pub. L. 93–415, title II, § 287C, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009, established priority for grants.

Section 5667e, Pub. L. 93–415, title II, § 288, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009, related to purposes of mentoring programs.

Section 5667e–1, Pub. L. 93–415, title II, § 288A, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009, defined ''at-risk youth'' and ''mentor''.

Section 5667e–2, Pub. L. 93–415, title II, § 288B, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5010, related to grants for local educational agencies for mentoring programs.

Section 5667e–3, Pub. L. 93–415, title II, § 288C, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5010; amended Pub. L. 103–322, title XV, § 150006, Sept. 13, 1994, 108 Stat. 2035, related to regulations and guidelines.

Section 5667e–4, Pub. L. 93–415, title II, § 288D, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5010, related to permitted and prohibited uses of grants.

Section 5667e–5, Pub. L. 93–415, title II, § 288E, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5011; amended Pub. L. 103–382, title III, § 391(t), Oct. 20, 1994, 108 Stat. 4025, related to priority for awarding grants.

Section 5667e–6, Pub. L. 93–415, title II, § 288F, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5011, related to information and assurances required on application.

Section 5667e–7, Pub. L. 93–415, title II, § 288G, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012, provided that grants would be made for 3-year periods.

Section 5667e–8, Pub. L. 93–415, title II, § 288H, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012, related to reports.

Section 5667f, Pub. L. 93–415, title II, § 289, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012, related to grants for establishment of boot camps.

Section 5667f–1, Pub. L. 93–415, title II, § 289A, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012, limited size of boot camps.

Section 5667f–2, Pub. L. 93–415, title II, § 289B, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5013, related to eligibility and placement.

Section 5667f–3, Pub. L. 93–415, title II, § 289C, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5013, related to post-release supervision.

Prior sections 5667g to 5667g–5 were repealed by Pub. L. 107–273, div. C, title II, § 12210(2), Nov. 2, 2002, 116 Stat. 1880.

Section 5667g, Pub. L. 93–415, title II, § 291, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5013, authorized the President to call and conduct a National White House Conference on Juvenile Justice.

Section 5667g–1, Pub. L. 93–415, title II, § 291A, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5014, related to Conference participants.

Section 5667g–2, Pub. L. 93–415, title II, § 291B, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015, related to appointment and compensation of directors and detailees.

Section 5667g–3, Pub. L. 93–415, title II, § 291C, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015, related to planning and administration of Conference.

Section 5667g–4, Pub. L. 93–415, title II, § 291D, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015, related to reports.

Section 5667g–5, Pub. L. 93–415, title II, § 291E, as added Pub. L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015, related to congressional oversight.

§ 5668. Reports

Recipients of grants made under this part shall submit to the Administrator such reports as may be reasonably requested by the Administrator to describe progress achieved in carrying out the projects for which such grants are made.

(Pub. L. 93–415, title II, § 264, as added Pub. L. 107–273, div. C, title II, § 12212, Nov. 2, 2002, 116 Stat. 1891.)

PART F—GENERAL AND ADMINISTRATIVE PROVISIONS

PRIOR PROVISIONS

A prior part F, consisting of sections 5667d to 5667d–3, related to treatment for juvenile offenders who are victims of child abuse or neglect, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

A prior part G, consisting of sections 5667e to 5667e–8, related to mentoring, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

A prior part H, consisting of sections 5667f to 5667f–3, related to boot camps, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

A prior part I, consisting of sections 5667g to 5667g–5, authorized the president to call a National White House Conference on Juvenile Justice, prior to repeal by Pub. L. 107–273, div. C, title II, § 12210(2), Nov. 2, 2002, 116 Stat. 1880.

Part J, consisting of sections 5671 to 5676, was redesignated part F by Pub. L. 107–273, div. C, title II, § 12210(3), Nov. 2, 2002, 116 Stat. 1880.

AMENDMENTS

2002—Pub. L. 107–273, div. C, title II, § 12210(3), Nov. 2, 2002, 116 Stat. 1880, redesignated part I, which had been redesignated as J for purposes of codification, as F.

1992—Pub. L. 102–586, § 2(i)(1)(A), Nov. 4, 1992, 106 Stat. 5006, redesignated part E as I, which was redesignated as J for purposes of codification.

1988—Pub. L. 100–690, title VII, § 7266(1), Nov. 18, 1988, 102 Stat. 4449, redesignated part D as E and substituted ''GENERAL AND ADMINISTRATIVE PROVISIONS'' for ''ADMINISTRATIVE PROVISIONS''.

§ 5671. Authorization of appropriations

(a) Authorization of appropriations for this subchapter (excluding parts C and E)

(1) There are authorized to be appropriated to carry out this subchapter such sums as may be appropriate for fiscal years 2003, 2004, 2005, 2006, and 2007.

(2) Of such sums as are appropriated for a fiscal year to carry out this subchapter (other than parts C and E)—

(A) not more than 5 percent shall be available to carry out part A of this subchapter;

(B) not less than 80 percent shall be available to carry out part B of this subchapter; and

(C) not more than 15 percent shall be available to carry out part D of this subchapter.

(b) Authorization of appropriations for part C

There are authorized to be appropriated to carry out part C of this subchapter such sums as may be necessary for fiscal years 2003, 2004, 2005, 2006, and 2007.

(c) Authorization of appropriations for part E

There are authorized to be appropriated to carry out part E of this subchapter, and authorized to remain available until expended, such sums as may be necessary for fiscal years 2003, 2004, 2005, 2006, and 2007.

(d) Experimentation on individuals; prohibition; "behavior control" defined

No funds appropriated to carry out the purposes of this subchapter may be used for any bio-medical or behavior control experimentation on individuals or any research involving such experimentation. For the purpose of this subsection, the term ''behavior control'' refers to experimentation or research employing methods which involve a substantial risk of physical or psychological harm to the individual subject and which are intended to modify or alter criminal and other anti-social behavior, including aversive conditioning therapy, drug therapy or chemotherapy (except as part of routine clinical care), physical therapy of mental disorders, electroconvulsive therapy, or physical punishment. The term does not apply to a limited class of programs generally recognized as involving no such risk, including methadone maintenance and certain alcohol treatment programs, psychological counseling, parent training, behavior contracting, survival skills training, restitution, or community service, if safeguards are established for the informed consent of subjects (including parents or guardians of minors).

(Pub. L. 93–415, title II, § 299, formerly § 261, Sept. 7, 1974, 88 Stat. 1129; Pub. L. 94–273, § 32(b), Apr. 21, 1976, 90 Stat. 380; Pub. L. 94–503, title I,

§ 130(a), Oct. 15, 1976, 90 Stat. 2425; Pub. L. 95–115, § 6(b), Oct. 3, 1977, 91 Stat. 1058; Pub. L. 96–509, §§ 2(a), 15, Dec. 8, 1980, 94 Stat. 2750, 2760; Pub. L. 98–473, title II, § 640, Oct. 12, 1984, 98 Stat. 2121; renumbered § 291 and amended Pub. L. 100–690, title VII, §§ 7265, 7266(3), Nov. 18, 1988, 102 Stat. 4448, 4449; Pub. L. 101–204, title X, §§ 1001(e)(1), 1002, Dec. 7, 1989, 103 Stat. 1827; renumbered § 299 and amended Pub. L. 102–586, § 2(i)(1)(B), (j), Nov. 4, 1992, 106 Stat. 5006, 5016; Pub. L. 107–273, div. C, title II, § 12213, Nov. 2, 2002, 116 Stat. 1891.)

AMENDMENTS

2002—Subsecs. (a) to (c). Pub. L. 107–273, § 12213(2), added subsecs. (a) to (c) and struck out former subsecs. (a) to (c) which related, respectively, to amounts and availability of appropriations for fiscal years 1993 to 1996, percentages available for specific programs, and administrative and supervisory board membership requirements for State agencies.

Subsec. (e). Pub. L. 107–273, § 12213(1), struck out subsec. (e) which read as follows: ''Of such sums as are appropriated to carry out section 5665(a)(6) of this title, not less than 20 percent shall be reserved by the Administrator for each of fiscal years 1993, 1994, 1995, and 1996, for not less than 2 programs that have not received funds under subpart II of part C of this subchapter prior to October 1, 1992, which shall be selected through the application and approval process set forth in section 5665a of this title.''

1992—Subsec. (a). Pub. L. 102–586, § 2(j)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(1) To carry out the purposes of this subchapter (other than part D) there are authorized to be appropriated such sums as may be necessary for fiscal years 1989, 1990, 1991, and 1992. Funds appropriated for any fiscal year may remain available for obligation until expended.

''(2)(A) Subject to subparagraph (B), to carry out part D of this subchapter, there are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992.

''(B) No funds may be appropriated to carry out part D of this subchapter for a fiscal year unless the aggregate amount appropriated to carry out this subchapter (other than part D) for such fiscal year is not less than the aggregate amount appropriated to carry out this subchapter (other than part D) for the preceding fiscal year.''

Subsec. (e). Pub. L. 102–586, § 2(j)(2), added subsec. (e).

1989—Subsec. (a). Pub. L. 101–204, § 1001(e)(1), amended directory language of Pub. L. 100–690, § 7265(a)(4), see 1988 Amendment note below.

Subsec. (a)(1). Pub. L. 101–204, § 1002, substituted ''are authorized'' for ''is authorized''.

1988—Subsec. (a). Pub. L. 100–690, § 7265(a), as amended by Pub. L. 101–204, § 1001(e)(1), designated existing provisions as par. (1), inserted ''(other than part D)'' after ''this subchapter'', struck out ''1985, 1986, 1987, and 1988'' after ''fiscal years'', inserted ''1989, 1990, 1991, and 1992'', and added par. (2).

Subsec. (b). Pub. L. 100–690, § 7265(b), inserted ''(other than part D)'' after ''this subchapter'' in introductory provisions and substituted ''5 percent'' for ''7.5 percent'' in par. (1), ''70 percent'' for ''81.5 percent'' in par. (2), and ''25 percent'' for ''11 percent'' in par. (3).

1984—Subsec. (a). Pub. L. 98–473, amended subsec. (a) generally, substituting provisions relating to authorization of appropriations for fiscal years 1985 to 1988 for former provisions which authorized appropriations for fiscal years 1981 to 1984.

Subsec. (b). Pub. L. 98–473, amended subsec. (b) generally, substituting provisions which set forth specific percentages of appropriations for parts A, B and C for former provisions which also set forth appropriation percentages for juvenile delinquency programs.

Subsec. (c). Pub. L. 98–473, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Notwithstanding any other provision of law, if the Administrator determines, in his discretion, that sufficient funds have not been appropriated for any fiscal year for the activities authorized in part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3741 et seq.], then the Administrator is authorized to—

''(1) approve any appropriate State agency designated by the Governor of the State involved as the sole agency responsible for supervising the preparation and administration of the State plan submitted under section 5633 of this title; and

''(2) establish appropriate administrative and supervisory board membership requirements for any agency designated in accordance with paragraph (1), and permit the State advisory group appointed under section 5633(a)(2) of this title to operate as the supervisory board for such agency, at the discretion of the Governor.''

Subsec. (d). Pub. L. 98–473, in amending section generally, added subsec. (d).

1980—Subsec. (a). Pub. L. 96–509, § 2(a), substituted provisions authorizing appropriations of $200,000,000 for each of fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, for provisions that had authorized appropriations of $150,000,000 for fiscal year ending Sept. 30, 1978, $175,000,000 for fiscal year ending Sept. 30, 1979, and $200,000,000 for fiscal year ending Sept. 30, 1980.

Subsec. (c). Pub. L. 96–509, § 15, added subsec. (c).

1977—Subsec. (a). Pub. L. 95–115 substituted provisions setting forth authorization of appropriations for fiscal year ending Sept. 30, 1978, through fiscal year ending Sept. 30, 1980, and authorization of availability of funds until expended, for provisions setting forth authorization of appropriations for fiscal year ending June 30, 1975, through fiscal year ending Sept. 30, 1977.

1976—Subsec. (a). Pub. L. 94–273 substituted ''September 30, 1977'' for ''June 30, 1977''.

Subsec. (b). Pub. L. 94–503 substituted ''subsection (a) of this section'' for ''this section'' and ''the appropriation for the Law Enforcement Assistance Administration, each fiscal year, at least 19.15 percent of the total appropriations for the Administration, for juvenile delinquency programs'' for ''other Law Enforcement Assistance Administration appropriations other than the appropriations for administration, at least the same level of financial assistance for juvenile delinquency programs assisted by the Law Enforcement Assistance Administration during fiscal year 1972''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

§ 5672. Administrative authority

(a) Authority of Administrator

The Office shall be administered by the Administrator under the general authority of the Attorney General.

(b) Certain crime control provisions applicable

Sections 3789d(c), 3789f(a), 3789f(b), 3789f(c), 3789g(a), 3789g(b), and 3789g(d) of this title, shall apply with respect to the administration of and compliance with this chapter, except that for purposes of this chapter—

(1) any reference to the Office of Justice Programs in such sections shall be deemed to be a reference to the Assistant Attorney General who heads the Office of Justice Programs; and

(2) the term ''this chapter'' as it appears in such sections shall be deemed to be a reference to this chapter.

(c) Certain other crime control provisions applicable

Sections 3782(a), 3782(c), and 3787 of this title shall apply with respect to the administration of and compliance with this chapter, except that for purposes of this chapter—

(1) any reference to the Attorney General, the Assistant Attorney General who heads the Office of Justice Programs, the Director of the National Institute of Justice, the Director of the Bureau of Justice Statistics, or the Director of the Bureau of Justice Assistance shall be deemed to be a reference to the Administrator;

(2) any reference to the Office of Justice Programs, the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics shall be deemed to be a reference to the Office of Juvenile Justice and Delinquency Prevention; and

(3) the term ''this chapter'' as it appears in such sections shall be deemed to be a reference to this chapter.

(d) Rules, regulations, and procedures

The Administrator is authorized, after appropriate consultation with representatives of States and units of local government, to establish such rules, regulations, and procedures as are necessary for the exercise of the functions of the Office and only to the extent necessary to ensure that there is compliance with the specific requirements of this subchapter or to respond to requests for clarification and guidance relating to such compliance.

(e) Presumption of State compliance

If a State requires by law compliance with the requirements described in paragraphs (11), (12), and (13) of section 5633(a) of this title, then for the period such law is in effect in such State such State shall be rebuttably presumed to satisfy such requirements.

(Pub. L. 93–415, title II, § 299A, formerly § 262, Sept. 7, 1974, 88 Stat. 1129; Pub. L. 95–115, § 6(c), Oct. 3, 1977, 91 Stat. 1058; Pub. L. 96–509, § 16, Dec. 8, 1980, 94 Stat. 2761; Pub. L. 98–473, title II, § 641, Oct. 12, 1984, 98 Stat. 2122; renumbered § 292, Pub. L. 100–690, title VII, § 7266(3), Nov. 18, 1988, 102 Stat. 4449; renumbered § 299A, Pub. L. 102–586, § 2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006; Pub. L. 107–273, div. C, title II, § 12214, Nov. 2, 2002, 116 Stat. 1892.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original ''this Act'', meaning Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–273, § 12214(1), substituted ''only to the extent necessary to ensure that there is compliance with the specific requirements of this subchapter or to respond to requests for clarification and guidance relating to such compliance'' for ''as are consistent with the purpose of this chapter''.

Subsec. (e). Pub. L. 107–273, § 12214(2), added subsec. (e).

1984—Subsec. (a). Pub. L. 98–473, in amending subsec. (a) generally, substituted provisions setting forth the administrative authority of the Office for former provisions which incorporated other administrative provisions into this chapter as well as construing certain references as authorizing the Administrator of the Office of Juvenile Justice and Delinquency Prevention to perform the same actions as other officials.

Subsec. (b). Pub. L. 98–473, in amending subsec. (b) generally, substituted provisions relating to the applicability of other provisions to this chapter as well as defining certain references therein for former provisions which directed the Office of Justice Assistance, Research and Statistics to provide staff support and coordinate the activities of the Office of Juvenile Justice and Delinquency Prevention.

Subsecs. (c), (d). Pub. L. 98–473, in amending section generally, added subsecs. (c) and (d).

1980—Pub. L. 96–509 brought relevant applicable administrative provisions of the Omnibus Crime Control and Safe Streets Act of 1968 into conformance subsequent to the Justice System Improvement Amendments of 1979 and provided that the Office of Justice Assistance, Research, and Statistics provide staff support to, and coordinate the activities of the Office in the same manner as it does for the Law Enforcement Assistance Administration, National Institute of Justice, and Bureau of Justice Statistics pursuant to 3781(b) of this title.

1977—Pub. L. 95–115 substituted provisions setting forth applicability of specified statutory requirements, for provisions setting forth prohibitions against discrimination and required terms in grants, contracts, and agreements and enforcement procedures thereof.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by section

6(d)(2) of Pub. L. 95–115, set out as a note under section 5601 of this title.

§ 5673. Withholding

Whenever the Administrator, after giving reasonable notice and opportunity for hearing to a recipient of financial assistance under this subchapter, finds that—

(1) the program or activity for which the grant or contract involved was made has been so changed that it no longer complies with this subchapter; or

(2) in the operation of such program or activity there is failure to comply substantially with any provision of this subchapter;

the Administrator shall initiate such proceedings as are appropriate.

(Pub. L. 93–415, title II, § 299B, formerly § 293, as added Pub. L. 100–690, title VII, § 7266(4), Nov. 18, 1988, 102 Stat. 4449; renumbered § 299B, Pub. L. 102–586, § 2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.)

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

§ 5674. Use of funds

(a) In general

Funds paid pursuant to this subchapter to any public or private agency, organization, or institution, or to any individual (either directly or through a State planning agency) may be used for—

(1) planning, developing, or operating the program designed to carry out this subchapter; and

(2) not more than 50 per centum of the cost of the construction of any innovative community-based facility for fewer than 20 persons which, in the judgment of the Administrator, is necessary to carry out this subchapter.

(b) Prohibition against use of funds in construction

Except as provided in subsection (a) of this section, no funds paid to any public or private agency, or institution or to any individual under this subchapter (either directly or through a State agency or local agency) may be used for construction.

(c) Funds paid to residential programs

No funds may be paid under this subchapter to a residential program (excluding a program in a private residence) unless—

(1) there is in effect in the State in which such placement or care is provided, a requirement that the provider of such placement or such care may be licensed only after satisfying, at a minimum, explicit standards of discipline that prohibit neglect, and physical and mental abuse, as defined by State law;

(2) such provider is licensed as described in paragraph (1) by the State in which such placement or care is provided; and

(3) in a case involving a provider located in a State that is different from the State where the order for placement originates, the chief administrative officer of the public agency or the officer of the court placing the juvenile certifies that such provider—

(A) satisfies the originating State's explicit licensing standards of discipline that prohibit neglect, physical and mental abuse, and standards for education and health care as defined by that State's law; and

(B) otherwise complies with the Interstate Compact on the Placement of Children as entered into by such other State.

(Pub. L. 93–415, title II, § 299C, formerly § 294, as added Pub. L. 100–690, title VII, § 7266(4), Nov. 18, 1988, 102 Stat. 4449; renumbered § 299C, Pub. L. 102–586, § 2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006; Pub. L. 107–273, div. C, title II, § 12215, Nov. 2, 2002, 116 Stat. 1892.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–273 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) Funds paid pursuant to section 5633(a)(10)(D) of this title and section 5665(a)(3) of this title to any public or private agency, organization, or institution or to any individual shall not be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device intended or designed to influence a Member of Congress or any other Federal, State, or local elected official to favor or oppose any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body, except that this paragraph shall not preclude such funds from being used in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved.

''(2) The Administrator shall take such action as may be necessary to ensure that no funds paid under section 5633(a)(10)(D) of this title or section 5665(a)(3) of this title are used either directly or indirectly in any manner prohibited in this paragraph.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

§ 5675. Payments

(a) In general

Payments under this subchapter, pursuant to a grant or contract, may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions as the Administrator may determine.

(b) Percentage of approved costs

Except as provided in the second sentence of section 5632(c) of this title, financial assistance extended under this subchapter shall be 100 per

centum of the approved costs of the program or activity involved.

(c) Increase of grants to Indian tribes; waiver of liability

(1) In the case of a grant under this subchapter to an Indian tribe, if the Administrator determines that the tribe does not have sufficient funds available to meet the local share of the cost of any program or activity to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent the Administrator deems necessary.

(2) If a State does not have an adequate forum to enforce grant provisions imposing any liability on Indian tribes, the Administrator may waive State liability attributable to the liability of such tribes and may pursue such legal remedies as are necessary.

(Pub. L. 93–415, title II, § 299D, formerly § 295, as added Pub. L. 100–690, title VII, § 7266(4), Nov. 18, 1988, 102 Stat. 4450; renumbered § 299D, Pub. L. 102–586, § 2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006; amended Pub. L. 107–273, div. C, title II, § 12221(a)(3), Nov. 2, 2002, 116 Stat. 1894.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–273 struck out subsec. (d) which read as follows: ''If the Administrator determines, on the basis of information available to the Administrator during any fiscal year, that a portion of the funds granted to an applicant under part C of this subchapter for such fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 3783 of this title, as amended from time to time, that portion shall be available for reallocation in an equitable manner to States which comply with the requirements in paragraphs (12)(A) and (13) of section 5633(a) of this title, under section 5665(b)(6) of this title.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

§ 5676. Confidentiality of program records

Except as authorized by law, program records containing the identity of individual juveniles gathered for purposes pursuant to this subchapter may not be disclosed without the consent of the service recipient or legally authorized representative, or as may be necessary to carry out this subchapter. Under no circumstances may program reports or findings available for public dissemination contain the actual names of individual service recipients.

(Pub. L. 93–415, title II, § 299E, formerly § 296, as added Pub. L. 100–690, title VII, § 7266(4), Nov. 18, 1988, 102 Stat. 4450; renumbered § 299E, Pub. L. 102–586, § 2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.)

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

§ 5677. Limitations on use of funds

None of the funds made available to carry out this subchapter may be used to advocate for, or support, the unsecured release of juveniles who are charged with a violent crime.

(Pub. L. 93–415, title II, § 299F, as added Pub. L. 107–273, div. C, title II, § 12216, Nov. 2, 2002, 116 Stat. 1893.)

EFFECTIVE DATE

Section effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5678. Rules of construction

Nothing in this subchapter or subchapter I of this chapter shall be construed—

(1) to prevent financial assistance from being awarded through grants under this subchapter to any otherwise eligible organization; or

(2) to modify or affect any Federal or State law relating to collective bargaining rights of employees.

(Pub. L. 93–415, title II, § 299G, as added Pub. L. 107–273, div. C, title II, § 12217, Nov. 2, 2002, 116 Stat. 1893.)

EFFECTIVE DATE

Section effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5679. Leasing surplus Federal property

The Administrator may receive surplus Federal property (including facilities) and may lease such property to States and units of general local government for use in or as facilities for juvenile offenders, or for use in or as facilities for delinquency prevention and treatment activities.

(Pub. L. 93–415, title II, § 299H, as added Pub. L. 107–273, div. C, title II, § 12218, Nov. 2, 2002, 116 Stat. 1893.)

EFFECTIVE DATE

Section effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5680. Issuance of rules

The Administrator shall issue rules to carry out this subchapter, including rules that establish procedures and methods for making grants and contracts, and distributing funds available, to carry out this subchapter.

(Pub. L. 93–415, title II, § 299I, as added Pub. L. 107–273, div. C, title II, § 12219, Nov. 2, 2002, 116 Stat. 1893.)

EFFECTIVE DATE

Section effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5681. Content of materials

Materials produced, procured, or distributed both using funds appropriated to carry out this chapter and for the purpose of preventing hate crimes that result in acts of physical violence, shall not recommend or require any action that abridges or infringes upon the constitutionally protected rights of free speech, religion, or equal protection of juveniles or of their parents or legal guardians.

(Pub. L. 93–415, title II, § 299J, as added Pub. L. 107–273, div. C, title II, § 12220, Nov. 2, 2002, 116 Stat. 1893.)

EFFECTIVE DATE

Section effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

SUBCHAPTER III—RUNAWAY AND HOMELESS YOUTH

§ 5701. Findings

The Congress finds that—

(1) youth who have become homeless or who leave and remain away from home without parental permission, are at risk of developing, and have a disproportionate share of, serious health, behavioral, and emotional problems because they lack sufficient resources to obtain care and may live on the street for extended periods thereby endangering themselves and creating a substantial law enforcement problem for communities in which they congregate;

(2) many such young people, because of their age and situation, are urgently in need of temporary shelter and services, including services that are linguistically appropriate and acknowledge the environment of youth seeking these services;

(3) in view of the interstate nature of the problem, it is the responsibility of the Federal Government to develop an accurate national reporting system to report the problem, and to assist in the development of an effective system of care (including preventive and aftercare services, emergency shelter services, extended residential shelter, and street outreach services) outside the welfare system and the law enforcement system;

(4) to make a successful transition to adulthood, runaway youth, homeless youth, and other street youth need opportunities to complete high school or earn a general equivalency degree, learn job skills, and obtain employment; and

(5) improved coordination and collaboration between the Federal programs that serve runaway and homeless youth are necessary for the development of a long-term strategy for responding to the needs of this population.

(Pub. L. 93–415, title III, § 302, Sept. 7, 1974, 88 Stat. 1129; Pub. L. 102–586, § 3(a), Nov. 4, 1992, 106 Stat. 5017; Pub. L. 106–71, § 3(a), Oct. 12, 1999, 113 Stat. 1035; Pub. L. 108–96, title I, § 101, Oct. 10, 2003, 117 Stat. 1167.)

AMENDMENTS

2003—Pub. L. 108–96 amended section generally. Prior to amendment, section contained congressional statement of findings.

1999—Par. (5). Pub. L. 106–71, § 3(a)(1), substituted ''an accurate national reporting system to report the problem, and to assist in the development of'' for ''accurate reporting of the problem nationally and to develop''.

Par. (8). Pub. L. 106–71, § 3(a)(2), added par. (8) and struck out former par. (8) which read as follows: ''in view of the interstate nature of the problem, it is the responsibility of the Federal Government to develop an accurate national reporting system and to develop an effective system of care including prevention, emergency shelter services, and longer residential care outside the public welfare and law enforcement structures;''.

1992—Par. (1). Pub. L. 102–586, § 3(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the number of juveniles who leave and remain away from home without parental permission has increased to alarming proportions, creating a substantial law enforcement problem for the communities inundated, and significantly endangering the young people who are without resources and live on the street;''.

Par. (5). Pub. L. 102–586, § 3(a)(3), substituted ''care (including preventive services, emergency shelter services, and extended residential shelter) outside the welfare system and the law enforcement system;'' for ''temporary care outside the law enforcement structure.''

Pars. (6) to (10). Pub. L. 102–586, § 3(a)(2), (4), added pars. (6) to (10).

SHORT TITLE

For short title of title III of Pub. L. 93–415, which enacted this subchapter, as the ''Runaway and Homeless Youth Act'', see section 301 of Pub. L. 93–415, as amended, set out as a note under section 5601 of this title.

REPORT ON PROMISING STRATEGIES TO END YOUTH HOMELESSNESS

Pub. L. 108–96, title I, § 118, Oct. 10, 2003, 117 Stat. 1170, provided that: ''Not later than 2 years after the date of the enactment of this Act [Oct. 10, 2003], the Secretary of Health and Human Services, in consultation with the United States Interagency Council on Homelessness, shall submit to the Congress a report on promising strategies to end youth homelessness.''

§ 5702. Promulgation of rules

The Secretary of Health and Human Services (hereinafter in this subchapter referred to as the ''Secretary'') may issue such rules as the Secretary considers necessary or appropriate to carry out the purposes of this subchapter.

(Pub. L. 93–415, title III, § 303, Sept. 7, 1974, 88 Stat. 1130; Pub. L. 98–473, title II, § 650, Oct. 12, 1984, 98 Stat. 2122.)

AMENDMENTS

1984—Pub. L. 98–473 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' and ''issue such rules as the Secretary'' for ''prescribe such rules as he''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

PART A—BASIC CENTER GRANT PROGRAM

AMENDMENTS

2003—Pub. L. 108–96, title I, § 102, Oct. 10, 2003, 117 Stat. 1168, substituted in part A heading ''BASIC CENTER'' for ''RUNAWAY AND HOMELESS YOUTH''.

1988—Pub. L. 100–690, title VII, § 7272(1), Nov. 18, 1988, 102 Stat. 4454, substituted in part A heading ''RUNAWAY AND HOMELESS YOUTH GRANT PROGRAM'' for ''GRANTS PROGRAM''.

§ 5711. Authority to make grants

(a) Grants for centers and services

(1) In general

The Secretary shall make grants to public and nonprofit private entities (and combinations of such entities) to establish and operate (including renovation) local centers to provide services for runaway and homeless youth and for the families of such youth.

(2) Services provided

Services provided under paragraph (1)—

(A) shall be provided as an alternative to involving runaway and homeless youth in the law enforcement, child welfare, mental health, and juvenile justice systems;

(B) shall include—

(i) safe and appropriate shelter; and

(ii) individual, family, and group counseling, as appropriate; and

(C) may include—

(i) street-based services;

(ii) home-based services for families with youth at risk of separation from the family;

(iii) drug abuse education and prevention services; and

(iv) at the request of runaway and homeless youth, testing for sexually transmitted diseases.

(b) Allotment of funds for grants; priority given to certain private entities

(1) Subject to paragraph (2) and in accordance with regulations promulgated under this subchapter, funds for grants under subsection (a) of this section shall be allotted annually with respect to the States on the basis of their relative population of individuals who are less than 18 years of age.

(2) The amount allotted under paragraph (1) with respect to each State for a fiscal year shall be not less than $100,000, except that the amount allotted to the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be not less than $45,000 each.

(3) In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to private entities that have experience in providing the services described in such subsection.

(Pub. L. 93–415, title III, § 311, Sept. 7, 1974, 88 Stat. 1130; Pub. L. 95–115, § 7(a)(1), Oct. 3, 1977, 91 Stat. 1058; Pub. L. 96–509, § 18(c), Dec. 8, 1980, 94 Stat. 2762; Pub. L. 98–473, title II, § 651, Oct. 12, 1984, 98 Stat. 2123; Pub. L. 100–690, title VII, § 7271(a), (b), Nov. 18, 1988, 102 Stat. 4452; Pub. L. 102–586, § 3(b), Nov. 4, 1992, 106 Stat. 5018; Pub. L. 106–71, § 3(b), Oct. 12, 1999, 113 Stat. 1035; Pub. L. 108–96, title I, §§ 103, 104, Oct. 10, 2003, 117 Stat. 1168.)

AMENDMENTS

2003—Subsec. (a)(2)(C)(iv). Pub. L. 108–96, § 103, added cl. (iv).

Subsec. (b)(2). Pub. L. 108–96, § 104(1), substituted ''The'' for ''Subject to paragraph (3), the''.

Subsec. (b)(3), (4). Pub. L. 108–96, § 104(2), (3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''If, as a result of paragraph (2), the amount allotted under paragraph (1) with respect to a State for a fiscal year would be less than the aggregate amount of grants made under this part to recipients in such State for fiscal year 1992, then the amounts allotted to satisfy the requirements of such paragraph shall be reduced pro rata to the extent necessary to allot under paragraph (1) with respect to such State for the fiscal year an amount equal to the aggregate amount of grants made under this part to recipients in such State for fiscal year 1992.''

1999—Subsec. (a). Pub. L. 106–71, § 3(b)(1), added heading and text of subsec. (a) and struck out former subsec. (a) which read as follows: ''The Secretary shall make grants to public and private entities (and combinations of such entities) to establish and operate (including renovation) local runaway and homeless youth centers to provide services to deal primarily with the immediate needs of runaway or otherwise homeless youth, and their families, in a manner which is outside the law enforcement system, the child welfare system, the mental health system, and the juvenile justice system.''

Subsec. (b)(2). Pub. L. 106–71, § 3(b)(2), struck out ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,''.

Subsecs. (c), (d). Pub. L. 106–71, § 3(b)(3), struck out subsecs. (c) and (d) which related to street-based services and home-based services, respectively.

1992—Subsec. (a). Pub. L. 102–586, § 3(b)(1), substituted ''system, the child welfare system, the mental health system, and'' for ''structure and''.

Subsec. (b)(2). Pub. L. 102–586, § 3(b)(2)(A), substituted ''$100,000'' for ''$75,000'' and ''$45,000'' for ''$30,000''.

Subsec. (b)(3). Pub. L. 102–586, § 3(b)(2)(B), substituted ''1992'' for ''1988'' in two places.

Subsecs. (c), (d). Pub. L. 102–586, § 3(b)(3), added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: ''The Secretary is authorized to provide on-the-job training to local runaway and homeless youth center personnel and coordinated networks of local law enforcement, social service, and welfare personnel to assist such personnel in recognizing and providing for learning disabled and other handicapped juveniles.''

1988—Pub. L. 100–690, § 7271(a), substituted ''Authority to make grants'' for ''Grants and technical assistance'' in section catchline.

Subsec. (a). Pub. L. 100–690, § 7271(b), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary is authorized to make grants and to provide technical assistance and short-term training to States, localities and private entities and coordinated networks of such entities in accordance with the provisions of this part and assistance to their families. Grants under this part shall be made equitably among the States based upon their respective populations of youth under 18 years of age for the purpose of developing local facilities to deal primarily with the immediate needs of runaway youth or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and juvenile justice system. The size of such grant shall be determined by the number of such youth in the commu-

nity and the existing availability of services. Grants also may be made for the provision of a national communications system for the purpose of assisting runaway and homeless youth in communicating with their families and with service providers. Among applicants priority shall be given to private organizations or institutions which have had past experience in dealing with such youth.''

Subsec. (b). Pub. L. 100–690, § 7271(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Secretary is authorized to provide supplemental grants to runaway centers which are developing, in cooperation with local juvenile court and social service agency personnel, model programs designed to provide assistance to juveniles who have repeatedly left and remained away from their homes or from any facilities in which they have been placed as the result of an adjudication and to the families of such juveniles.''

1984—Subsec. (a). Pub. L. 98–473, § 651(a), in first sentence, substituted ''private entities and coordinated networks of such entities'' for ''nonprofit private agencies and coordinated networks of such agencies'' and inserted ''and assistance to their families''.

Subsec. (b). Pub. L. 98–473, § 651(b), inserted ''and to the families of such juveniles''.

1980—Subsec. (a). Pub. L. 96–509, § 18(c)(1)–(4), designated existing provision as subsec. (a), inserted ''equitably among the States based upon their respective populations of youth under 18 years of age'' after ''shall be made'', '', and their families,'' after ''homeless youth'', and provision that grants also be made for the provision of a national communications system to assist runaway and homeless youth in communicating with their families and with service providers.

Subsecs. (b), (c). Pub. L. 96–509, § 18(c)(5), added subsecs. (b) and (c).

1977—Pub. L. 95–115 substituted ''technical assistance and short-term training to States, localities and nonprofit private agencies and coordinated networks of such agencies in'' for ''technical assistance to localities and nonprofit private agencies in'', ''needs of runaway youth or otherwise homeless youth in'' for ''needs of runaway youth in'', and ''such youth'' for ''runaway youth'' in two places.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

§ 5712. Eligibility; plan requirements

(a) Runaway and homeless youth center; project providing temporary shelter; counseling services

To be eligible for assistance under section 5711(a) of this title, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway and homeless youth center, a locally controlled project (including a host family home) that provides temporary shelter, and counseling services to youth who have left home without permission of their parents or guardians or to other homeless youth.

(b) Provisions of plan

In order to qualify for assistance under section 5711(a) of this title, an applicant shall submit a plan to the Secretary including assurances that the applicant—

(1) shall operate a runaway and homeless youth center located in an area which is demonstrably frequented by or easily reachable by runaway and homeless youth;

(2) shall use such assistance to establish, to strengthen, or to fund a runaway and homeless youth center, or a locally controlled facility providing temporary shelter, that has—

(A) a maximum capacity of not more than 20 youth, except where the applicant assures that the State where the center or locally controlled facility is located has a State or local law or regulation that requires a higher maximum to comply with licensure requirements for child and youth serving facilities; and

(B) a ratio of staff to youth that is sufficient to ensure adequate supervision and treatment;

(3) shall develop adequate plans for contacting the parents or other relatives of the youth and ensuring the safe return of the youth according to the best interests of the youth, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway and homeless youth center and for providing for other appropriate alternative living arrangements;

(4) shall develop an adequate plan for ensuring—

(A) proper relations with law enforcement personnel, health and mental health care personnel, social service personnel, school system personnel, and welfare personnel;

(B) coordination with McKinney-Vento school district liaisons, designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii)), to assure that runaway and homeless youth are provided information about the educational services available to such youth under subtitle B of title VII of that Act [42 U.S.C. 11431 et seq.]; and

(C) the return of runaway and homeless youth from correctional institutions;

(5) shall develop an adequate plan for providing counseling and aftercare services to such youth, for encouraging the involvement of their parents or legal guardians in counseling, and for ensuring, as possible, that aftercare services will be provided to those youth who are returned beyond the State in which the runaway and homeless youth center is located;

(6) shall develop an adequate plan for establishing or coordinating with outreach programs designed to attract persons (including, where applicable, persons who are members of a cultural minority and persons with limited ability to speak English) who are eligible to receive services for which a grant under subsection (a) of this section may be expended;

(7) shall keep adequate statistical records profiling the youth and family members whom it serves (including youth who are not referred to out-of-home shelter services), except that records maintained on individual runaway and homeless youth shall not be disclosed without the consent of the individual youth and parent

or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway and homeless youth, and reports or other documents based on such statistical records shall not disclose the identity of individual runaway and homeless youth;

(8) shall submit annual reports to the Secretary detailing how the center has been able to meet the goals of its plans and reporting the statistical summaries required by paragraph (7);

(9) shall demonstrate its ability to operate under accounting procedures and fiscal control devices as required by the Secretary;

(10) shall submit a budget estimate with respect to the plan submitted by such center under this subsection;

(11) shall supply such other information as the Secretary reasonably deems necessary; and

(12) shall submit to the Secretary an annual report that includes, with respect to the year for which the report is submitted—

(A) information regarding the activities carried out under this part;

(B) the achievements of the project under this part carried out by the applicant; and

(C) statistical summaries describing—

(i) the number and the characteristics of the runaway and homeless youth, and youth at risk of family separation, who participate in the project; and

(ii) the services provided to such youth by the project.

(c) Applicants providing street-based services

To be eligible to use assistance under section 5711(a)(2)(C)(i) of this title to provide street-based services, the applicant shall include in the plan required by subsection (b) of this section assurances that in providing such services the applicant will—

(1) provide qualified supervision of staff, including on-street supervision by appropriately trained staff;

(2) provide backup personnel for on-street staff;

(3) provide initial and periodic training of staff who provide such services; and

(4) conduct outreach activities for runaway and homeless youth, and street youth.

(d) Applicants providing home-based services

To be eligible to use assistance under section 5711(a) of this title to provide home-based services described in section 5711(a)(2)(C)(ii) of this title, an applicant shall include in the plan required by subsection (b) of this section assurances that in providing such services the applicant will—

(1) provide counseling and information to youth and the families (including unrelated individuals in the family households) of such youth, including services relating to basic life skills, interpersonal skill building, educational advancement, job attainment skills, mental and physical health care, parenting skills, financial planning, and referral to sources of other needed services;

(2) provide directly, or through an arrangement made by the applicant, 24-hour service to respond to family crises (including immediate access to temporary shelter for runaway and homeless youth, and youth at risk of separation from the family);

(3) establish, in partnership with the families of runaway and homeless youth, and youth at risk of separation from the family, objectives and measures of success to be achieved as a result of receiving home-based services;

(4) provide initial and periodic training of staff who provide home-based services; and

(5) ensure that—

(A) caseloads will remain sufficiently low to allow for intensive (5 to 20 hours per week) involvement with each family receiving such services; and

(B) staff providing such services will receive qualified supervision.

(e) Applicants providing drug abuse education and prevention services

To be eligible to use assistance under section 5711(a)(2)(C)(iii) of this title to provide drug abuse education and prevention services, an applicant shall include in the plan required by subsection (b) of this section—

(1) a description of—

(A) the types of such services that the applicant proposes to provide;

(B) the objectives of such services; and

(C) the types of information and training to be provided to individuals providing such services to runaway and homeless youth; and

(2) an assurance that in providing such services the applicant shall conduct outreach activities for runaway and homeless youth.

(Pub. L. 93–415, title III, § 312, Sept. 7, 1974, 88 Stat. 1130; Pub. L. 95–115, § 7(a)(2), (3), Oct. 3, 1977, 91 Stat. 1058; Pub. L. 96–509, § 18(d), Dec. 8, 1980, 94 Stat. 2762; Pub. L. 98–473, title II, § 652, Oct. 12, 1984, 98 Stat. 2123; Pub. L. 100–690, title VII, § 7271(c)(1)–(3), Nov. 18, 1988, 102 Stat. 4453; Pub. L. 102–586, § 3(c), Nov. 4, 1992, 106 Stat. 5019; Pub. L. 106–71, § 3(c), Oct. 12, 1999, 113 Stat. 1036; Pub. L. 108–96, title I, §§ 105, 106, 109, Oct. 10, 2003, 117 Stat. 1168, 1169.)

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (b)(4)(B), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended. Subtitle B of title VII of the Act is classified generally to part B (§ 11431 et seq.) of subchapter VI of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–96, § 105, substituted ''services to youth'' for ''services to juveniles'' and ''homeless youth'' for ''homeless juveniles''.

Subsec. (b)(2)(A). Pub. L. 108–96, § 106, inserted '', except where the applicant assures that the State where the center or locally controlled facility is located has a State or local law or regulation that requires a higher maximum to comply with licensure requirements for child and youth serving facilities'' after ''youth''.

Subsec. (b)(4)(B). Pub. L. 108–96, § 109, substituted ''McKinney-Vento school district liaisons, designated under section 722(g)(1)(J)(ii) of the McKinney-Vento

Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii)), to assure that runaway and homeless youth are provided information about the educational services available to such youth under subtitle B of title VII of that Act;'' for ''personnel of the schools to which runaway and homeless youth will return, to assist such youth to stay current with the curricula of those schools;''.

1999—Subsec. (b)(8). Pub. L. 106–71, § 3(c)(1)(A), substituted ''paragraph (7)'' for ''paragraph (6)''.

Subsec. (b)(12). Pub. L. 106–71, § 3(c)(1)(B)–(D), added par. (12).

Subsecs. (c) to (e). Pub. L. 106–71, § 3(c)(2), added heading and text of subsecs. (c) to (e) and struck out former subsecs. (c) and (d) which related to street-based service projects and home-based service projects, respectively, but which specified more detailed lists of services applicants were to provide in order to qualify for assistance.

1992—Subsec. (a). Pub. L. 102–586, § 3(c)(1), substituted ''project (including a host family home) that provides'' for ''facility providing''.

Subsec. (b)(2). Pub. L. 102–586, § 3(c)(2)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''shall have a maximum capacity of no more than twenty children, with a ratio of staff to children of sufficient proportion to assure adequate supervision and treatment;''.

Subsec. (b)(3). Pub. L. 102–586, § 3(c)(2)(B), substituted ''parents or other relatives of the youth and ensuring'' for ''child's parents or relatives and assuring'' and ''youth'' for ''child'' after ''the'' in two places.

Subsec. (b)(4). Pub. L. 102–586, § 3(c)(2)(C), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''shall develop an adequate plan for assuring proper relations with law enforcement personnel, social service personnel, school system personnel, and welfare personnel, and the return of runaway and homeless youth from correctional institutions;''.

Subsec. (b)(5). Pub. L. 102–586, § 3(c)(2)(D), substituted ''providing counseling and aftercare services to such youth, for encouraging the involvement of their parents or legal guardians in counseling, and for ensuring'' for ''aftercare counseling involving runaway and homeless youth and their families within the State in which the runaway and homeless youth center is located and for assuring'' and ''youth'' for ''children'' after ''those''.

Subsec. (b)(6). Pub. L. 102–586, § 3(c)(2)(G), added par. (6). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 102–586, § 2(c)(2)(E), (F), redesignated par. (6) as (7) and substituted ''youth and family members whom it serves (including youth who are not referred to out-of-home shelter services)'' for ''children and family members which it serves''.

Subsec. (b)(8) to (11). Pub. L. 102–586, § 3(c)(2)(F), redesignated pars. (7) to (10) as (8) to (11), respectively.

Subsecs. (c), (d). Pub. L. 102–586, § 3(c)(2)(H), added subsecs. (c) and (d).

1988—Subsec. (a). Pub. L. 100–690, § 7271(c)(1), (2), substituted ''section 5711(a) of this title'' for ''this part'' and ''runaway and homeless youth center'' for ''runaway center''.

Subsec. (b). Pub. L. 100–690, § 7271(c)(1), (3)(A), substituted ''section 5711(a) of this title'' for ''this part'' and ''including assurances that the applicant'' for ''meeting the following requirements and including the following information. Each center'' in introductory provisions.

Subsec. (b)(1). Pub. L. 100–690, § 7271(c)(3)(B), substituted ''shall operate a runaway and homeless youth center'' for ''shall be'' and ''runaway and homeless youth'' for ''runaway youth''.

Subsec. (b)(3). Pub. L. 100–690, § 7271(c)(3)(C), substituted ''runaway and homeless youth center'' for ''runaway center''.

Subsec. (b)(4). Pub. L. 100–690, § 7271(c)(3)(D), substituted ''runaway and homeless youth'' for ''runaway youths''.

Subsec. (b)(5). Pub. L. 100–690, § 7271(c)(3)(C), (E), substituted ''runaway and homeless youth'' for ''runaway youth'' and substituted ''runaway and homeless youth center'' for ''runaway center'' in two places.

Subsec. (b)(6). Pub. L. 100–690, § 7271(c)(3)(D), (E), substituted ''individual runaway and homeless youth'' for ''individual runaway youths'' in two places and ''against an individual runaway and homeless youth'' for ''against an individual runaway youth''.

1984—Subsec. (b)(2). Pub. L. 98–473, § 652(1), substituted ''proportion'' for ''portion''.

Subsec. (b)(3). Pub. L. 98–473, § 652(2), struck out ''(if such action is required by State law)'' before ''and assuring''.

Subsec. (b)(4). Pub. L. 98–473, § 652(3), inserted ''school system personnel''.

Subsec. (b)(5). Pub. L. 98–473, § 652(4), substituted ''families'' for ''parents''.

Subsec. (b)(6). Pub. L. 98–473, § 652(5), substituted ''family members'' for ''parents''.

1980—Subsec. (a). Pub. L. 96–509, § 18(d)(1), substituted ''center'' for ''house'' and inserted ''or to other homeless juveniles'' after ''parents or guardians''.

Subsec. (b). Pub. L. 96–509, § 18(d)(2), substituted ''center'' for ''house'' wherever appearing, and in par. (4) inserted reference to social service personnel and welfare personnel.

1977—Subsec. (b)(5), (6). Pub. L. 95–115 substituted ''aftercare services'' for ''aftercase services'' in par. (5), and ''the consent of the individual youth and parent or legal guardian'' for ''parental consent'' in par. (6).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

§§ 5712a to 5712c. Repealed. Pub. L. 102–586, § 3(g)(2)(A)–(C), Nov. 4, 1992, 106 Stat. 5025

Section 5712a, Pub. L. 93–415, title III, § 313, as added Pub. L. 100–690, title VII, § 7275(b), Nov. 18, 1988, 102 Stat. 4457, related to grants for a national communication system to assist runaway and homeless youth. See section 5714–11 of this title.

Section 5712b, Pub. L. 93–415, title III, § 314, as added Pub. L. 100–690, title VII, § 7276, Nov. 18, 1988, 102 Stat. 4457, related to grants for technical assistance and training to public and private entities for establishment and operation of runaway and homeless youth centers.

Section 5712c, Pub. L. 93–415, title III, § 315, as added Pub. L. 100–690, title VII, § 7277, Nov. 18, 1988, 102 Stat. 4457, related to authority of the Secretary to make grants for research, demonstration, and service projects.

§ 5712d. Repealed. Pub. L. 109–162, title XI, § 1172(b), Jan. 5, 2006, 119 Stat. 3123

Section, Pub. L. 93–415, title III, § 316, as added Pub. L. 103–322, title IV, § 40155, Sept. 13, 1994, 108 Stat. 1922, related to grants for prevention of sexual abuse and exploitation.

A prior section 316 of Pub. L. 93–415 was renumbered section 313 of Pub. L. 93–415 and is classified to section 5713 of this title.

Another prior section 316 of Pub. L. 93–415 was renumbered section 372 of Pub. L. 93–415 and is classified to section 5714b of this title.

Another prior section 316 of Pub. L. 93–415 was renumbered section 382 of Pub. L. 93–415 and is classified to section 5716 of this title.

§ 5713. Approval of applications

(a) In general

An application by a public or private entity for a grant under section 5711(a) of this title may be approved by the Secretary after taking into consideration, with respect to the State in which such entity proposes to provide services under this part—

(1) the geographical distribution in such State of the proposed services under this part for which all grant applicants request approval; and

(2) which areas of such State have the greatest need for such services.

(b) Priority

In selecting applications for grants under section 5711(a) of this title, the Secretary shall give priority to—

(1) eligible applicants who have demonstrated experience in providing services to runaway and homeless youth; and

(2) eligible applicants that request grants of less than $200,000.

(Pub. L. 93–415, title III, § 313, Sept. 7, 1974, 88 Stat. 1131; Pub. L. 95–115, § 7(a)(4), Oct. 3, 1977, 91 Stat. 1058; Pub. L. 96–509, § 18(e), Dec. 8, 1980, 94 Stat. 2762; Pub. L. 98–473, title II, § 653, Oct. 12, 1984, 98 Stat. 2123; renumbered § 316 and amended Pub. L. 100–690, title VII, §§ 7271(c)(1), 7275(a), Nov. 18, 1988, 102 Stat. 4453, 4457; renumbered § 313 and amended Pub. L. 102–586, § 3(d), (g)(2)(D), Nov. 4, 1992, 106 Stat. 5022, 5025; Pub. L. 106–71, § 3(d), Oct. 12, 1999, 113 Stat. 1037.)

PRIOR PROVISIONS

A prior section 313 of Pub. L. 93–415 was classified to section 5712a of this title prior to repeal by Pub. L. 102–586.

AMENDMENTS

1999—Pub. L. 106–71 inserted section catchline and amended text generally. Prior to amendment, text read as follows: ''An application by a State, locality, or private entity for a grant under section 5711(a), (c), or (d) of this title may be approved by the Secretary only if it is consistent with the applicable provisions of section 5711(a), (c), or (d) of this title and meets the requirements set forth in section 5712 of this title. Priority shall be given to grants smaller than $200,000. In considering grant applications under section 5711(a) of this title, priority shall be given to organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families.''

1992—Pub. L. 102–586, § 3(d), substituted ''section 5711(a), (c), or (d) of this title'' for ''section 5711(a) of this title'' in two places in first sentence and substituted ''$200,000'' for ''$150,000'' in second sentence.

1988—Pub. L. 100–690, § 7271(c)(1), substituted ''section 5711(a) of this title'' for ''this part'' in three places.

1984—Pub. L. 98–473 substituted ''private entity'' for ''nonprofit private agency''.

1980—Pub. L. 96–509 substituted ''$150,000'' for ''$100,000'' and ''organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families'' for ''any applicant whose program budget is smaller than $150,000''.

1977—Pub. L. 95–115 substituted ''$100,000'' and ''$150,000'' for ''$75,000'' and ''$100,000'', respectively.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

§ 5714. Grants to private entities; staffing

Nothing in this subchapter shall be construed to deny grants to private entities which are fully controlled by private boards or persons but which in other respects meet the requirements of this subchapter and agree to be legally responsible for the operation of the runaway and homeless youth center and the programs, projects, and activities they carry out under this subchapter. Nothing in this subchapter shall give the Federal Government control over the staffing and personnel decisions of facilities receiving Federal funds under this subchapter.

(Pub. L. 93–415, title III, § 314, Sept. 7, 1974, 88 Stat. 1131; Pub. L. 98–473, title II, § 654, Oct. 12, 1984, 98 Stat. 2123; renumbered § 317 and amended Pub. L. 100–690, title VII, §§ 7271(c)(4), 7275(a), Nov. 18, 1988, 102 Stat. 4453, 4457; renumbered § 314 and amended Pub. L. 102–586, § 3(e), (g)(2)(D), Nov. 4, 1992, 106 Stat. 5022, 5025.)

PRIOR PROVISIONS

A prior section 314 of Pub. L. 93–415 was classified to section 5712b of this title prior to repeal by Pub. L. 102–586.

AMENDMENTS

1992—Pub. L. 102–586, § 3(e), substituted ''subchapter'' for ''part'' wherever appearing and inserted ''and the programs, projects, and activities they carry out under this subchapter'' after ''center'' and ''under this subchapter'' before period at end.

1988—Pub. L. 100–690, § 7271(c)(4), substituted ''runaway and homeless youth center'' for ''runaway center''.

1984—Pub. L. 98–473 amended section catchline and substituted ''private entities'' for ''nonprofit private agencies'' and ''center'' for ''house'' in text.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

PART B—TRANSITIONAL LIVING GRANT PROGRAM

AMENDMENTS

1988—Pub. L. 100–690, title VII, §§ 7272(2), 7273(f), Nov. 18, 1988, 102 Stat. 4454, 4455, added part B heading, set out above, and struck out ''PART B—RECORDS'' heading, formerly set out preceding section 5731 of this title.

§ 5714–1. Authority for program

The Secretary is authorized to make grants and to provide technical assistance to public and nonprofit private entities to establish and operate transitional living youth projects for homeless youth.

(Pub. L. 93–415, title III, § 321, as added Pub. L. 100–690, title VII, § 7273(f), Nov. 18, 1988, 102 Stat. 4455; amended Pub. L. 106–71, § 3(e), Oct. 12, 1999, 113 Stat. 1038.)

PRIOR PROVISIONS

A prior section 321 of Pub. L. 93–415 was renumbered section 363 and is classified to section 5731 of this title.

AMENDMENTS

1999—Pub. L. 106–71 struck out ''Purpose and'' before ''Authority'' in section catchline and struck out subsec. (a) designation before ''The Secretary'' and subsec. (b) which defined ''homeless youth'' and ''transitional living youth project''.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

STUDY OF HOUSING SERVICES AND STRATEGIES

Pub. L. 108–96, title I, § 119, Oct. 10, 2003, 117 Stat. 1170, provided that: ''The Secretary of Health and Human Services shall conduct a study of programs funded under part B of the Runaway and Homeless Youth Act (42 U.S.C. 5714–1 et seq.) to report on long-term housing outcomes for youth after exiting the program. The study of any such program should provide information on housing services available to youth upon exiting the program, including assistance in locating and retaining permanent housing and referrals to other residential programs. In addition, the study should identify housing models and placement strategies that prevent future episodes of homelessness.''

§ 5714–2. Eligibility

(a) In general

To be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund a transitional living youth project for homeless youth and shall submit to the Secretary a plan in which such applicant agrees, as part of such project—

(1) to provide, directly or indirectly, shelter (such as group homes, including maternity group homes, host family homes, and supervised apartments) and services (including information and counseling services in basic life skills which shall include money management, budgeting, consumer education, and use of credit, parenting skills (as appropriate), interpersonal skill building, educational advancement, job attainment skills, and mental and physical health care) to homeless youth;

(2) to provide such shelter and such services to individual homeless youth throughout a continuous period not to exceed 540 days, except that a youth in a program under this part who is under the age of 18 years on the last day of the 540-day period may, if otherwise qualified for the program, remain in the program until the earlier of the youth's 18th birthday or the 180th day after the end of the 540-day period;

(3) to provide, directly or indirectly, on-site supervision at each shelter facility that is not a family home;

(4) that such shelter facility used to carry out such project shall have the capacity to accommodate not more than 20 individuals (excluding staff);

(5) to provide a number of staff sufficient to ensure that all homeless youth participating in such project receive adequate supervision and services;

(6) to provide a written transitional living plan to each youth based on an assessment of such youth's needs, designed to help the transition from supervised participation in such project to independent living or another appropriate living arrangement;

(7) to develop an adequate plan to ensure proper referral of homeless youth to social service, law enforcement, educational (including post-secondary education), vocational, training (including services and programs for youth available under the Workforce Investment Act of 1998), welfare (including programs under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), legal service, and health care programs and to help integrate and coordinate such services for youths;

(8) to provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the project;

(9) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds under this part, the achievements of the project under this part carried out by the applicant and statistical summaries describing the number and the characteristics of the homeless youth who participate in such project, and the services provided to such youth by such project, in the year for which the report is submitted;

(10) to implement such accounting procedures and fiscal control devices as the Secretary may require;

(11) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under this part;

(12) to keep adequate statistical records profiling homeless youth which it serves and not to disclose the identity of individual homeless youth in reports or other documents based on such statistical records;

(13) not to disclose records maintained on individual homeless youth without the informed consent of the individual youth to anyone other than an agency compiling statistical records;

(14) to provide to the Secretary such other information as the Secretary may reasonably require; and

(15) to coordinate services with McKinney-Vento school district liaisons, designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii)), to assure that runaway and homeless youth are provided information about the educational services available to such youth under subtitle B of title VII of that Act [42 U.S.C. 11431 et seq.].

(b) Priority

In selecting eligible applicants to receive grants under this part, the Secretary shall give priority to entities that have experience in providing to homeless youth shelter and services of the types described in subsection (a)(1) of this section.

(c) Definition

In this part, the term ''maternity group home'' means a community-based, adult-supervised transitional living arrangement that provides pregnant or parenting youth and their children with a supportive and supervised living arrangement in which such pregnant or parenting youth are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence in order to ensure the well-being of their children.

(Pub. L. 93–415, title III, § 322, as added Pub. L. 100–690, title VII, § 7273(f), Nov. 18, 1988, 102 Stat. 4456; amended Pub. L. 102–586, § 3(f), Nov. 4, 1992, 106 Stat. 5022; Pub. L. 106–71, § 3(f), Oct. 12, 1999, 113 Stat. 1038; Pub. L. 108–96, title I, §§ 107, 108, 110, 111, Oct. 10, 2003, 117 Stat. 1168, 1169.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(7), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(7), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105, as amended. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 1305 of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(15), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended. Subtitle B of title VII of the Act is classified generally to part B (§ 11431 et seq.) of subchapter VI of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–96, § 107(a), inserted ''including maternity group homes,'' after ''group homes,'' and ''parenting skills (as appropriate),'' after ''use of credit,''.

Subsec. (a)(2). Pub. L. 108–96, § 108, inserted '', except that a youth in a program under this part who is under the age of 18 years on the last day of the 540-day period may, if otherwise qualified for the program, remain in the program until the earlier of the youth's 18th birthday or the 180th day after the end of the 540-day period'' after ''days''.

Subsec. (a)(7). Pub. L. 108–96, § 111, amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''to develop an adequate plan to ensure proper referral of homeless youth to social service, law enforcement, educational, vocational, training, welfare, legal service, and health care programs and to help integrate and coordinate such services for youths;''.

Subsec. (a)(15). Pub. L. 108–96, § 110, added par. (15).

Subsec. (c). Pub. L. 108–96, § 107(b), added subsec. (c).

1999—Subsec. (a)(9). Pub. L. 106–71 inserted '', and the services provided to such youth by such project,'' after ''participate in such project''.

1992—Subsec. (a)(1). Pub. L. 102–586, § 3(f)(1), inserted ''which shall include money management, budgeting, consumer education, and use of credit'' after ''basic life skills''.

Subsec. (a)(13). Pub. L. 102–586, § 3(f)(2), substituted ''informed consent of the individual youth'' for ''consent of the individual youth and parent or legal guardian'' and struck out ''or a government agency involved in the disposition of criminal charges against youth'' after ''statistical records''.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

PART C—NATIONAL COMMUNICATIONS SYSTEM

§ 5714–11. Authority to make grants

The Secretary shall make grants for a national communication system to assist runaway and homeless youth in communicating with their families and with service providers. The Secretary shall give priority to grant applicants that have experience in providing telephone services to runaway and homeless youth.

(Pub. L. 93–415, title III, § 331, as added Pub. L. 102–586, § 3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5022; amended Pub. L. 106–71, § 3(r)(1), Oct. 12, 1999, 113 Stat. 1043.)

AMENDMENTS

1999—Pub. L. 106–71 substituted ''The Secretary'' for ''With funds reserved under section 5751(a)(3) of this title, the Secretary'' in first sentence.

PART D—COORDINATING, TRAINING, RESEARCH, AND OTHER ACTIVITIES

§ 5714–21. Coordination

With respect to matters relating to the health, education, employment, and housing of runaway and homeless youth, the Secretary—

(1) in conjunction with the Attorney General, shall coordinate the activities of agencies of the Department of Health and Human Services with activities under any other Federal juvenile crime control, prevention, and juvenile offender accountability program and with the activities of other Federal entities;

(2) shall coordinate the activities of agencies of the Department of Health and Human Services with the activities of other Federal entities and with the activities of entities that are eligible to receive grants under this subchapter; and

(3) shall consult, as appropriate, the Secretary of Housing and Urban Development to ensure coordination of programs and services for homeless youth.

(Pub. L. 93–415, title III, § 341, as added Pub. L. 102–586, § 3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5023; amended Pub. L. 106–71, § 3(g), Oct. 12, 1999, 113 Stat. 1038; Pub. L. 108–96, title I, § 112, Oct. 10, 2003, 117 Stat. 1169.)

PRIOR PROVISIONS

A prior section 341 of Pub. L. 93–415 was renumbered section 380 and is classified to section 5714a of this title.

AMENDMENTS

2003—Par. (3). Pub. L. 108–96 added par. (3).

1999—Pub. L. 106–71 amended section catchline and text generally. Prior to amendment, text read as follows: ''With respect to matters relating to the health, education, employment, and housing of runaway and homeless youth, the Secretary shall coordinate the activities of agencies of the Department of Health and Human Services with the activities of other Federal entities and with the activities of entities that are eligible to receive grants under this subchapter''.

§ 5714–22. Grants for technical assistance and training

The Secretary may make grants to statewide and regional nonprofit organizations (and combinations of such organizations) to provide technical assistance and training to public and private entities (and combinations of such entities) that are eligible to receive grants under this subchapter, for the purpose of carrying out the programs, projects, or activities for which such grants are made.

(Pub. L. 93–415, title III, § 342, as added Pub. L. 102–586, § 3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5023.)

PRIOR PROVISIONS

A prior section 342 of Pub. L. 93–415 was renumbered section 381 and is classified to section 5714b of this title.

§ 5714–23. Authority to make grants for research, evaluation, demonstration, and service projects

(a) Authorization; purposes

The Secretary may make grants to States, localities, and private entities (and combinations of such entities) to carry out research, evaluation, demonstration, and service projects regarding activities under this subchapter designed to increase knowledge concerning, and to improve services for, runaway youth and homeless youth.

(b) Selection factors; special consideration

In selecting among applications for grants under subsection (a) of this section, the Secretary shall give special consideration to proposed projects relating to—

(1) youth who repeatedly leave and remain away from their homes;

(2) transportation of runaway youth and homeless youth in connection with services authorized to be provided under this subchapter;

(3) the special needs of runaway youth and homeless youth programs in rural areas;

(4) the special needs of programs that place runaway youth and homeless youth in host family homes;

(5) staff training in—

(A) the behavioral and emotional effects of sexual abuse and assault;

(B) responding to youth who are showing effects of sexual abuse and assault; and

(C) agency-wide strategies for working with runaway and homeless youth who have been sexually victimized;

(6) innovative methods of developing resources that enhance the establishment or operation of runaway and homeless youth centers;

(7) training for runaway youth and homeless youth, and staff training, related to preventing and obtaining treatment for infection by the human immunodeficiency virus (HIV);

(8) increasing access to health care (including mental health care) for runaway youth and homeless youth; and

(9) increasing access to education for runaway youth and homeless youth.

(c) Priority

In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to applicants who have experience working with runaway youth or homeless youth.

(Pub. L. 93–415, title III, § 343, as added Pub. L. 102–586, § 3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5023; amended Pub. L. 106–71, § 3(h), Oct. 12, 1999, 113 Stat. 1038; Pub. L. 108–96, title I, § 113, Oct. 10, 2003, 117 Stat. 1170.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–96 inserted ''regarding activities under this subchapter'' after ''service projects''.

1999—Pub. L. 106–71, § 3(h)(1), inserted ''evaluation,'' after ''research,'' in section catchline.

Subsec. (a). Pub. L. 106–71, § 3(h)(2), inserted ''evaluation,'' after ''research,''.

Subsec. (b)(2) to (10). Pub. L. 106–71, § 3(h)(3), redesignated pars. (3) to (10) as (2) to (9), respectively, and struck out former par. (2) which read as follows: ''home-based and street-based services for, and outreach to, runaway youth and homeless youth;''.

§ 5714–24. Demonstration projects to provide services to youth in rural areas

(a)(1) The Secretary may make grants on a competitive basis to States, localities, and private entities (and combinations of such entities) to provide services (including transportation) authorized to be provided under part A of this subchapter, to runaway and homeless youth in rural areas.

(2)(A) Each grant made under paragraph (1) may not exceed $100,000.

(B) In each fiscal year for which funds are appropriated to carry out this section, grants shall be made under paragraph (1) to eligible applicants to carry out projects in not fewer than 10 States.

(C) Not more than 2 grants may be made under paragraph (1) in each fiscal year to carry out projects in a particular State.

(3) Each eligible applicant that receives a grant for a fiscal year to carry out a project under this section shall have priority to receive a grant for the subsequent fiscal year to carry out a project under this section.

(b) To be eligible to receive a grant under subsection (a) of this section, an applicant shall—

(1) submit to the Secretary an application in such form and containing such information and assurances as the Secretary may require by rule; and

(2) propose to carry out such project in a geographical area that—

(A) has a population under 20,000;

(B) is located outside a Standard Metropolitan Statistical Area; and

(C) agree to provide to the Secretary an annual report identifying—

(i) the number of runaway and homeless youth who receive services under the project carried out by the applicant;

(ii) the types of services authorized under part A of this subchapter that were needed by, but not provided to, such youth in the geographical area served by the project;

(iii) the reasons the services identified under clause (ii) were not provided by the project; and

(iv) such other information as the Secretary may require.

(Pub. L. 93–415, title III, § 344, as added Pub. L. 102–586, § 3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5024; amended Pub. L. 106–71, § 3(r)(2), Oct. 12, 1999, 113 Stat. 1043; Pub. L. 108–96, title I, § 114, Oct. 10, 2003, 117 Stat. 1170.)

AMENDMENTS

2003—Pub. L. 108–96 substituted ''Demonstration'' for ''Temporary demonstration'' in section catchline.

1999—Subsec. (a)(1). Pub. L. 106–71 substituted ''The Secretary'' for ''With funds appropriated under section 5751(c) of this title, the Secretary''.

§ 5714–25. Repealed. Pub. L. 108–96, title I, § 115, Oct. 10, 2003, 117 Stat. 1170

Section, Pub. L. 93–415, title III, § 345, as added Pub. L. 106–71, § 3(i), Oct. 12, 1999, 113 Stat. 1038, related to study of runaways to determine the percent who have been sexually abused.

PART E—SEXUAL ABUSE PREVENTION PROGRAM

PRIOR PROVISIONS

A prior part E, consisting of sections 5714a and 5714b, was redesignated part F by Pub. L. 106–71, § 3(n)(1)(B), Oct. 12, 1999, 113 Stat. 1040.

AMENDMENTS

1999—Pub. L. 106–71, § 3(n)(1)(C), Oct. 12, 1999, 113 Stat. 1040, added part heading. Former part E redesignated F.

§ 5714–41. Authority to make grants

(a) In general

The Secretary may make grants to nonprofit private agencies for the purpose of providing street-based services to runaway and homeless, and street youth, who have been subjected to, or are at risk of being subjected to, sexual abuse, prostitution, or sexual exploitation.

(b) Priority

In selecting applicants to receive grants under subsection (a) of this section, the Secretary shall give priority to nonprofit private agencies that have experience in providing services to runaway and homeless, and street youth.

(Pub. L. 93–415, title III, § 351, as added Pub. L. 106–71, § 3(n)(1)(C), Oct. 12, 1999, 113 Stat. 1040.)

PART F—GENERAL PROVISIONS

AMENDMENTS

1999—Pub. L. 106–71, § 3(n)(1)(A), (B), Oct. 12, 1999, 113 Stat. 1040, redesignated part E as F and struck out part F heading ''Administrative Provisions'', formerly set out preceding section 5715 of this title.

1992—Pub. L. 102–586, § 3(g)(1)(B)(i), Nov. 4, 1992, 106 Stat. 5022, redesignated part C as E.

Pub. L. 102–586, § 3(g)(1)(A)(i), Nov. 4, 1992, 106 Stat. 5022, redesignated part D as F.

1988—Pub. L. 100–690, title VII, § 7272(3), Nov. 18, 1988, 102 Stat. 4454, added part D heading ''Administrative Provisions''.

Pub. L. 100–690, title VII, §§ 7272(2), 7273(e)(1), Nov. 18, 1988, 102 Stat. 4454, 4455, added part C heading, set out above, and struck out part C heading ''Authorization of Appropriations'', formerly set out preceding section 5741 of this title.

§ 5714a. Assistance to potential grantees

The Secretary shall provide informational assistance to potential grantees interested in establishing runaway and homeless youth centers and transitional living youth projects.

(Pub. L. 93–415, title III, § 380, formerly § 315, as added Pub. L. 98–473, title II, § 655(2), Oct. 12, 1984, 98 Stat. 2124; renumbered § 341 and amended Pub. L. 100–690, title VII, § 7273(a), (e)(2), Nov. 18, 1988, 102 Stat. 4454, 4455; renumbered § 371, Pub. L. 102–586, § 3(g)(1)(B)(ii), Nov. 4, 1992, 106 Stat. 5022; renumbered § 380 and amended Pub. L. 106–71, § 3(j), (q), Oct. 12, 1999, 113 Stat. 1038, 1042.)

AMENDMENTS

1999—Pub. L. 106–71, § 3(j), struck out at end: ''Such assistance shall consist of information on—

''(1) steps necessary to establish a runaway and homeless youth center or transitional living youth project, including information on securing space for such center or such project, obtaining insurance, staffing, and establishing operating procedures;

''(2) securing local private or public financial support for the operation of such center or such project, including information on procedures utilized by grantees under this subchapter; and

''(3) the need for the establishment of additional runaway and homeless youth centers in the geographical area identified by the potential grantee involved.''

1988—Pub. L. 100–690, § 7273(a)(1), inserted ''and transitional living youth projects'' after ''homeless youth centers'' in introductory provisions.

Par. (1). Pub. L. 100–690, § 7273(a)(2), (3), inserted ''or transitional living youth project'' after ''homeless youth center'' and ''or such project'' after ''such center''.

Par. (2). Pub. L. 100–690, § 7273(a)(3), inserted ''such project'' after ''such center''.

Par. (3). Pub. L. 100–690, § 7273(a)(4), inserted ''and homeless'' after ''runaway''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

§ 5714b. Lease of surplus Federal facilities for use as runaway and homeless youth centers or as transitional living youth shelter facilities

(a) Conditions of lease arrangements

The Secretary may enter into cooperative lease arrangements with States, localities, and nonprofit private agencies to provide for the use of appropriate surplus Federal facilities transferred by the General Services Administration to the Department of Health and Human Services for use as runaway and homeless youth centers or as transitional living youth shelter facilities if the Secretary determines that—

(1) the applicant involved has suitable financial support necessary to operate a runaway and homeless youth center or transitional living youth project, as the case may be, under this subchapter;

(2) the applicant is able to demonstrate the program expertise required to operate such

center in compliance with this subchapter, whether or not the applicant is receiving a grant under this part; and

(3) the applicant has consulted with and obtained the approval of the chief executive officer of the unit of local government in which the facility is located.

(b) Period of availability; rent-free use; structural changes: Federal ownership and consent

(1) Each facility made available under this section shall be made available for a period of not less than 2 years, and no rent or fee shall be charged to the applicant in connection with use of such facility.

(2) Any structural modifications or additions to facilities made available under this section shall become the property of the United States. All such modifications or additions may be made only after receiving the prior written consent of the Secretary or other appropriate officer of the Department of Health and Human Services.

(Pub. L. 93–415, title III, § 381, formerly § 316, as added Pub. L. 98–473, title II, § 655(2), Oct. 12, 1984, 98 Stat. 2124; renumbered § 342 and amended Pub. L. 100–690, title VII, § 7273(b), (e)(2), Nov. 18, 1988, 102 Stat. 4454, 4455; renumbered § 372, Pub. L. 102–586, § 3(g)(1)(B)(ii), Nov. 4, 1992, 106 Stat. 5022; Pub. L. 105–277, div. A, § 101(b) [title I, § 129(a)(2)(E)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–76; renumbered § 381, Pub. L. 106–71, § 3(q), Oct. 12, 1999, 113 Stat. 1042.)

PRIOR PROVISIONS

A prior section 381 of Pub. L. 93–415 was renumbered section 382 and is classified to section 5715 of this title.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–277 substituted ''unit of local government'' for ''unit of general local government''.

1988—Pub. L. 100–690, § 7273(b)(1), inserted ''or as transitional living youth shelter facilities'' at end of section catchline.

Subsec. (a). Pub. L. 100–690, § 7273(b)(2), inserted ''or as transitional living youth shelter facilities'' after ''runaway and homeless youth centers'' in introductory provisions and ''or transitional living youth project, as the case may be, under this subchapter'' after ''homeless youth center'' in par. (1).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

§ 5715. Reports

(a) In general

Not later than April 1, 2000, and biennially thereafter, the Secretary shall submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on the Judiciary of the Senate, a report on the status, activities, and accomplishments of entities that receive grants under parts A, B, C, D, and E of this subchapter, with particular attention to—

(1) in the case of centers funded under part A of this subchapter, the ability or effectiveness of such centers in—

(A) alleviating the problems of runaway and homeless youth;

(B) if applicable or appropriate, reuniting such youth with their families and encouraging the resolution of intrafamily problems through counseling and other services;

(C) strengthening family relationships and encouraging stable living conditions for such youth; and

(D) assisting such youth to decide upon a future course of action; and

(2) in the case of projects funded under part B of this subchapter—

(A) the number and characteristics of homeless youth served by such projects;

(B) the types of activities carried out by such projects;

(C) the effectiveness of such projects in alleviating the problems of homeless youth;

(D) the effectiveness of such projects in preparing homeless youth for self-sufficiency;

(E) the effectiveness of such projects in assisting homeless youth to decide upon future education, employment, and independent living;

(F) the ability of such projects to encourage the resolution of intrafamily problems through counseling and development of self-sufficient living skills; and

(G) activities and programs planned by such projects for the following fiscal year.

(b) Contents of reports

The Secretary shall include in each report submitted under subsection (a) of this section, summaries of—

(1) the evaluations performed by the Secretary under section 5732 of this title; and

(2) descriptions of the qualifications of, and training provided to, individuals involved in carrying out such evaluations.

(Pub. L. 93–415, title III, § 382, formerly § 315, Sept. 7, 1974, 88 Stat. 1131; Pub. L. 96–509, § 18(f), Dec. 8, 1980, 94 Stat. 2762; renumbered § 317, Pub. L. 98–473, title II, § 655(1), Oct. 12, 1984, 98 Stat. 2124; renumbered § 361 and amended Pub. L. 100–690, title VII, §§ 7271(c)(5), 7273(c), (e)(2), 7274, Nov. 18, 1988, 102 Stat. 4453–4455, 4457; Pub. L. 101–204, title X, § 1003(1), (2), Dec. 7, 1989, 103 Stat. 1827; renumbered § 381 and amended Pub. L. 102–586, § 3(g)(1)(A)(ii), (h), Nov. 4, 1992, 106 Stat. 5022, 5025; renumbered § 382 and amended Pub. L. 106–71, § 3(k), (q), Oct. 12, 1999, 113 Stat. 1039, 1042.)

PRIOR PROVISIONS

A prior section 382 of Pub. L. 93–415 was renumbered section 383 and is classified to section 5716 of this title.

AMENDMENTS

1999—Pub. L. 106–71 amended section generally, making reporting requirements biennial rather than annual and adding subsec. headings.

1992—Pub. L. 102–586, § 3(h), which directed the amendment of section ''361 of the Juvenile Justice and Delin-

quency Act of 1974 (42 U.S.C. 5715)'' by amending it generally and adding subsec. (b), was executed to this section, which is section 381 of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415), to reflect the probable intent of Congress and the intervening renumbering of section 361 of Pub. L. 93–415 as section 381 by section 3(g)(1)(A)(ii) of Pub. L. 102–586. Prior to amendment, this section consisted of subsecs. (a) and (b) which required annual reports to Congress on the status and accomplishments of the runaway and homeless youth centers funded under part A of this subchapter and of the transitional living youth projects funded under part B of this subchapter.

1989—Subsec. (a). Pub. L. 101–204, § 1003(1), substituted ''submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate'' for ''report to the Congress''.

Subsec. (b). Pub. L. 101–204, § 1003(2), substituted ''Not later than 180 days after the end of each fiscal year, the Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate'' for ''The Secretary shall annually report to the Congress''.

1988—Subsec. (a). Pub. L. 100–690, §§ 7271(c)(5), 7273(c)(1), (2), 7274, designated existing provisions as subsec. (a), in introductory provisions substituted ''Not later than 180 days after the end of each fiscal year, the Secretary shall'' for ''The Secretary shall annually'', ''runaway and homeless youth centers'' for ''runaway centers'', and ''part A of this subchapter'' for ''this part'', and in par. (1) substituted ''runaway and homeless youth'' for ''runaway youth''.

Subsec. (b). Pub. L. 100–690, § 7273(c)(3), added subsec. (b).

1980—Pub. L. 96–509 substituted ''centers'' for ''houses''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, with the report required by this section with respect to fiscal year 1988 to be submitted not later than Aug. 1, 1989, notwithstanding the 180-day period provided in this section, see section 7296(a), (b)(3) of Pub. L. 100–690, as amended, set out as a note under section 5601 of this title.

§ 5716. Federal and non-Federal share; methods of payment

(a) The Federal share for the renovation of existing structures, the provision of counseling services, staff training, and the general costs of operations of such facility's budget for any fiscal year shall be 90 per centum. The non-Federal share may be in cash or in kind, fairly evaluated by the Secretary, including plant, equipment, or services.

(b) Payments under this section may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

(Pub. L. 93–415, title III, § 383, formerly § 316, Sept. 7, 1974, 88 Stat. 1132; renumbered § 318, Pub. L. 98–473, title II, § 655(1), Oct. 12, 1984, 98 Stat. 2124; renumbered § 362 and amended Pub. L. 100–690, title VII, §§ 7271(c)(6), 7273(e)(2), Nov. 18, 1988, 102 Stat. 4454, 4455; renumbered § 382, Pub. L. 102–586, § 3(g)(1)(A)(ii), Nov. 4, 1992, 106 Stat. 5022; renumbered § 383, Pub. L. 106–71, § 3(q), Oct. 12, 1999, 113 Stat. 1042.)

PRIOR PROVISIONS

A prior section 383 of Pub. L. 93–415 was renumbered section 384 and is classified to section 5731 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690, § 7271(c)(6), struck out ''acquisition and'' before ''renovation''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

§ 5731. Restrictions on disclosure and transfer

Records containing the identity of individual youths pursuant to this chapter may under no circumstances be disclosed or transferred to any individual or to any public or private agency.

(Pub. L. 93–415, title III, § 384, formerly § 321, Sept. 7, 1974, 88 Stat. 1132; Pub. L. 95–115, § 7(b), Oct. 3, 1977, 91 Stat. 1058; renumbered § 363, Pub. L. 100–690, title VII, § 7273(e)(2), Nov. 18, 1988, 102 Stat. 4455; renumbered § 383, Pub. L. 102–586, § 3(g)(1)(A)(ii), Nov. 4, 1992, 106 Stat. 5022; renumbered § 384, Pub. L. 106–71, § 3(q), Oct. 12, 1999, 113 Stat. 1042.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

PRIOR PROVISIONS

A prior section 384 of Pub. L. 93–415 was renumbered section 386 and is classified to section 5732 of this title.

AMENDMENTS

1977—Pub. L. 95–115 substituted provisions relating to restrictions on disclosure and transfer of records, for provisions relating to scope, etc., of statistical report to Congress.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

§ 5731a. Consolidated review of applications

With respect to funds available to carry out parts A, B, C, D, and E of this subchapter, nothing in this subchapter shall be construed to prohibit the Secretary from—

(1) announcing, in a single announcement, the availability of funds for grants under 2 or more of such parts; and

(2) reviewing applications for grants under 2 or more of such parts in a single, consolidated application review process.

(Pub. L. 93–415, title III, § 385, as added Pub. L. 106–71, § 3(*o*), Oct. 12, 1999, 113 Stat. 1041.)

PRIOR PROVISIONS

A prior section 385 of Pub. L. 93–415 was renumbered section 388 and is classified to section 5751 of this title.

§ 5732. Evaluation and information

(a) In general

If a grantee receives grants for 3 consecutive fiscal years under part A, B, C, D, or E of this subchapter (in the alternative), then the Sec-

retary shall evaluate such grantee on-site, not less frequently than once in the period of such 3 consecutive fiscal years, for purposes of—

(1) determining whether such grants are being used for the purposes for which such grants are made by the Secretary;

(2) collecting additional information for the report required by section 5731 of this title; and

(3) providing such information and assistance to such grantee as will enable such grantee to improve the operation of the centers, projects, and activities for which such grants are made.

(b) Cooperation

Recipients of grants under this subchapter shall cooperate with the Secretary's efforts to carry out evaluations, and to collect information, under this subchapter.

(Pub. L. 93–415, title III, § 386, formerly § 364, as added Pub. L. 100–690, title VII, § 7278, Nov. 18, 1988, 102 Stat. 4458; renumbered § 384, Pub. L. 102–586, § 3(g)(1)(A)(ii), Nov. 4, 1992, 106 Stat. 5022; renumbered § 386 and amended Pub. L. 106–71, § 3(*l*), Oct. 12, 1999, 113 Stat. 1039.)

PRIOR PROVISIONS

A prior section 5732, Pub. L. 93–415, title III, § 322, Sept. 7, 1974, 88 Stat. 1132, set forth restrictions on disclosure and transfer of records, prior to repeal by Pub. L. 95–115, § 7(b), Oct. 3, 1977, 91 Stat. 1058, eff. Oct. 1, 1977.

AMENDMENTS

1999—Pub. L. 106–71 amended section catchline and text generally. Prior to amendment, text read as follows:

''(a) The Secretary shall develop for each fiscal year, and publish annually in the Federal Register for public comment a proposed plan specifying the subject priorities the Secretary will follow in making grants under this subchapter for such fiscal year.

''(b) Taking into consideration comments received in the 45-day period beginning on the date the proposed plan is published, the Secretary shall develop and publish, before December 31 of such fiscal year, a final plan specifying the priorities referred to in subsection (a) of this section.''

EFFECTIVE DATE

Section effective Oct. 1, 1988, but not applicable with respect to fiscal year 1989, see section 7296(a), (b)(2) of Pub. L. 100–690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

§ 5732a. Definitions

In this subchapter:

(1) Drug abuse education and prevention services

The term ''drug abuse education and prevention services''—

(A) means services to runaway and homeless youth to prevent or reduce the illicit use of drugs by such youth; and

(B) may include—

(i) individual, family, group, and peer counseling;

(ii) drop-in services;

(iii) assistance to runaway and homeless youth in rural areas (including the development of community support groups);

(iv) information and training relating to the illicit use of drugs by runaway and homeless youth, to individuals involved in providing services to such youth; and

(v) activities to improve the availability of local drug abuse prevention services to runaway and homeless youth.

(2) Home-based services

The term ''home-based services''—

(A) means services provided to youth and their families for the purpose of—

(i) preventing such youth from running away, or otherwise becoming separated, from their families; and

(ii) assisting runaway youth to return to their families; and

(B) includes services that are provided in the residences of families (to the extent practicable), including—

(i) intensive individual and family counseling; and

(ii) training relating to life skills and parenting.

(3) Homeless youth

The term ''homeless youth'' means an individual—

(A) who is—

(i) not more than 21 years of age, or, in the case of a youth seeking shelter in a center under part A of this subchapter, not more than 18 years of age; and

(ii) for the purposes of part B of this subchapter, not less than 16 years of age;

(B) for whom it is not possible to live in a safe environment with a relative; and

(C) who has no other safe alternative living arrangement.

(4) Street-based services

The term ''street-based services''—

(A) means services provided to runaway and homeless youth, and street youth, in areas where they congregate, designed to assist such youth in making healthy personal choices regarding where they live and how they behave; and

(B) may include—

(i) identification of and outreach to runaway and homeless youth, and street youth;

(ii) crisis intervention and counseling;

(iii) information and referral for housing;

(iv) information and referral for transitional living and health care services;

(v) advocacy, education, and prevention services related to—

(I) alcohol and drug abuse;

(II) sexual exploitation;

(III) sexually transmitted diseases, including human immunodeficiency virus (HIV); and

(IV) physical and sexual assault.

(5) Street youth

The term ''street youth'' means an individual who—

(A) is—

(i) a runaway youth; or

(ii) indefinitely or intermittently a homeless youth; and

(B) spends a significant amount of time on the street or in other areas that increase the risk to such youth for sexual abuse, sexual exploitation, prostitution, or drug abuse.

(6) Transitional living youth project

The term ''transitional living youth project'' means a project that provides shelter and services designed to promote a transition to self-sufficient living and to prevent long-term dependency on social services.

(7) Youth at risk of separation from the family

The term ''youth at risk of separation from the family'' means an individual—

(A) who is less than 18 years of age; and

(B)(i) who has a history of running away from the family of such individual;

(ii) whose parent, guardian, or custodian is not willing to provide for the basic needs of such individual; or

(iii) who is at risk of entering the child welfare system or juvenile justice system as a result of the lack of services available to the family to meet such needs.

(Pub. L. 93–415, title III, § 387, as added Pub. L. 106–71, § 3(p), Oct. 12, 1999, 113 Stat. 1041; amended Pub. L. 108–96, title I, § 116, Oct. 10, 2003, 117 Stat. 1170.)

AMENDMENTS

2003—Subsec. (3)(A)(i). Pub. L. 108–96 inserted '', or, in the case of a youth seeking shelter in a center under part A of this subchapter, not more than 18 years of age'' after ''of age''.

§ 5733. Repealed. Pub. L. 102–586, § 3(g)(2)(E), Nov. 4, 1992, 106 Stat. 5025

Section, Pub. L. 93–415, title III, § 365, as added Pub. L. 100–690, title VII, § 7279, Nov. 18, 1988, 102 Stat. 4458, related to Secretary's obligation to coordinate activities of health agencies with activities of entities eligible to receive grants.

§ 5741. Repealed. Pub. L. 98–473, title II, § 656, Oct. 12, 1984, 98 Stat. 2124

Section, Pub. L. 93–415, title III, § 331, as added Pub. L. 95–115, § 7(c), Oct. 3, 1977, 91 Stat. 1059; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, authorized President to submit to Congress after April 30, 1978, a reorganization plan for establishment of an Office of Youth Assistance, subject to Congressional resolution of disapproval.

Prior to repeal by Pub. L. 98–473, section 5741 of this title comprised part C of this subchapter. Section 657(e) of Pub. L. 98–473 redesignated former part D, consisting of section 5751 of this title, as part C. Previously, part C was redesignated part D by Pub. L. 95–115, § 7(c), Oct. 3, 1977, 91 Stat. 1059.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

§ 5751. Authorization of appropriations

(a) In general

(1) Authorization

There is authorized to be appropriated to carry out this subchapter (other than part E of this subchapter) $105,000,000 for fiscal year 2004, and such sums as may be necessary for fiscal years 2005, 2006, 2007, and 2008.

(2) Allocation

(A) Parts A and B of this subchapter

From the amount appropriated under paragraph (1) for a fiscal year, the Secretary shall reserve not less than 90 percent to carry out parts A and B of this subchapter.

(B) Part B of this subchapter

Of the amount reserved under subparagraph (A), 45 percent and, in those fiscal years in which continuation grant obligations and the quality and number of applicants for parts A and B of this subchapter warrant not more than 55 percent, shall be reserved to carry out part B of this subchapter.

(3) Parts C and D of this subchapter

In each fiscal year, after reserving the amounts required by paragraph (2), the Secretary shall use the remaining amount (if any) to carry out parts C and D of this subchapter.

(4) Part E of this subchapter

There is authorized to be appropriated to carry out part E of this subchapter such sums as may be necessary for fiscal years 2004, 2005, 2006, 2007, and 2008.

(b) Separate identification required

No funds appropriated to carry out this subchapter may be combined with funds appropriated under any other Act if the purpose of combining such funds is to make a single discretionary grant, or a single discretionary payment, unless such funds are separately identified in all grants and contracts and are used for the purposes specified in this subchapter.

(Pub. L. 93–415, title III, § 388, formerly § 331, Sept. 7, 1974, 88 Stat. 1132; Pub. L. 94–273, § 32(c), Apr. 21, 1976, 90 Stat. 380; renumbered § 341 and amended Pub. L. 95–115, § 7(c), (d), Oct. 3, 1977, 91 Stat. 1059, 1060; Pub. L. 96–509, § 2(b), Dec. 8, 1980, 94 Stat. 2750; renumbered § 331 and amended Pub. L. 98–473, title II, § 657(a)–(d), (f), Oct. 12, 1984, 98 Stat. 2124, 2125; renumbered § 366 and amended Pub. L. 100–690, title VII, §§ 7273(d), (e)(2), 7280, Nov. 18, 1988, 102 Stat. 4455, 4459; Pub. L. 101–204, title X, §§ 1001(e)(2), 1003(3), Dec. 7, 1989, 103 Stat. 1827; renumbered § 385 and amended Pub. L. 102–586, § 3(g)(1)(A)(ii), (i), Nov. 4, 1992, 106 Stat. 5022, 5026; renumbered § 388 and amended Pub. L. 106–71, § 3(m), (n)(2), Oct. 12, 1999, 113 Stat. 1040, 1041; Pub. L. 108–96, title I, § 117, Oct. 10, 2003, 117 Stat. 1170.)

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–96, § 117(a), substituted ''$105,000,000 for fiscal year 2004, and such sums as may be necessary for fiscal years 2005, 2006, 2007, and 2008'' for ''such sums as may be necessary for fiscal years 2000, 2001, 2002, and 2003''.

Subsec. (a)(2)(B). Pub. L. 108–96, § 117(c), substituted ''45 percent and, in those fiscal years in which continuation grant obligations and the quality and number of applicants for parts A and B of this subchapter warrant not more than 55 percent'' for ''not less than 20 percent, and not more than 30 percent''.

Subsec. (a)(4). Pub. L. 108–96, § 117(b), substituted ''2004, 2005, 2006, 2007, and 2008'' for ''2000, 2001, 2002, and 2003''.

1999—Pub. L. 106–71, § 3(m), amended section catchline and text generally, substituting provisions relating to appropriations for fiscal years 2000 to 2003 for provisions relating to appropriations for fiscal years 1993 to 1996.

Subsec. (a)(4). Pub. L. 106–71, § 3(n)(2), added par. (4).

1992—Pub. L. 102–586, § 3(i), which directed the amendment of section ''366 of the Juvenile Justice and Delinquency Act of 1974 (42 U.S.C. 5751)'', was executed to this section, which is section 385 of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415), to reflect the probable intent of Congress and the intervening renumbering of section 366 of Pub. L. 93–415 as section 385 by section 3(g)(1)(A)(ii) of Pub. L. 102–586. See notes below.

Subsec. (a)(1). Pub. L. 102–586, § 3(i)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''To carry out the purposes of part A of this subchapter there are authorized to be appropriated such sums as may be necessary for fiscal years 1989, 1990, 1991, and 1992.''

Subsec. (a)(3) to (5). Pub. L. 102–586, § 3(i)(1)(B), added pars. (3) to (5).

Subsec. (b)(1). Pub. L. 102–586, § 3(i)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subject to paragraph (2), to carry out the purposes of part B of this subchapter, there are authorized to be appropriated $5,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992.''

Subsecs. (c) to (e). Pub. L. 102–586, § 3(i)(3), (4), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1989—Subsec. (a). Pub. L. 101–204, § 1001(e)(2), amended directory language of Pub. L. 100–690, § 7280(2), see 1988 Amendment note below.

Subsec. (a)(1). Pub. L. 101–204, § 1003(3), substituted ''are authorized'' for ''is authorized''.

1988—Subsec. (a). Pub. L. 100–690, § 7280, as amended by Pub. L. 101–204, § 1001(e)(2), designated existing provisions as par. (1), struck out ''1985, 1986, 1987, and 1988'' after ''fiscal years'', inserted ''1989, 1990, 1991, and 1992'', and added par. (2).

Subsecs. (b) to (d). Pub. L. 100–690, § 7273(d), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1984—Pub. L. 98–473, § 657(a), amended section catchline.

Subsec. (a). Pub. L. 98–473, § 657(b), substituted ''such sums as may be necessary for fiscal years 1985, 1986, 1987, and 1988'' for ''for each of the fiscal years ending September 30, 1981, September 30, 1982, September 30, 1983, and September 30, 1984 the sum of $25,000,000''.

Subsec. (b). Pub. L. 98–473, § 657(c), struck out ''Associate'' before ''Administrator''.

Subsec. (c). Pub. L. 98–473, § 657(d), added subsec. (c).

1980—Subsec. (a). Pub. L. 96–509 substituted provisions authorizing appropriations of $25,000,000 for each of fiscal years ending Sept. 30, 1981, 1982, 1983, and 1984, for provisions that had authorized appropriations of $10,000,000 for each of fiscal years ending Sept. 30, 1975, 1976, and 1977, and $25,000,000 for each of fiscal years ending Sept. 30, 1978, 1979, and 1980.

1977—Subsec. (a). Pub. L. 95–115, § 7(d)(1), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1978, 1979, and 1980.

Subsec. (b). Pub. L. 95–115, § 7(d)(2), substituted provisions relating to consultative and coordinating requirements for funded programs and activities, for provisions relating to authorization for funding surveys under part B of this subchapter.

1976—Pub. L. 94–273 substituted ''June 30, 1975, and 1976, and September 30, 1977'' for ''June 30, 1975, 1976, and 1977''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, except that subsec. (c)(2), as enacted by section 657(d) of Pub. L. 98–473, not applicable with respect to any grant or payment made before Oct. 12, 1984, see section 670 of Pub. L. 98–473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of this title.

§ 5752. Restriction on use of funds

(a) In general

None of the funds contained in this subchapter may be used for any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

(b) Separate accounting

Any individual or entity who receives any funds contained in this subchapter and who carries out any program described in subsection (a) of this section shall account for all funds used for such program separately from any funds contained in this subchapter.

(Pub. L. 93–415, title III, § 389, as added Pub. L. 108–96, title I, § 120, Oct. 10, 2003, 117 Stat. 1171.)

SUBCHAPTER IV—MISSING CHILDREN

§ 5771. Findings

The Congress finds that—

(1) each year thousands of children are abducted or removed from the control of a parent having legal custody without such parent's consent, under circumstances which immediately place the child in grave danger;

(2) many missing children are at great risk of both physical harm and sexual exploitation;

(3) in many cases, parents and local law enforcement officials have neither the resources nor the expertise to mount expanded search efforts;

(4) abducted children are frequently moved from one locality to another, requiring the cooperation and coordination of local, State, and Federal law enforcement efforts;

(5) the National Center for Missing and Exploited Children—

(A) serves as the national resource center and clearinghouse;

(B) works in partnership with the Department of Justice, the Federal Bureau of Investigation, the Department of the Treasury, the Department of State, and many other agencies in the effort to find missing children and prevent child victimization; and

(C) operates a national and increasingly worldwide network, linking the Center online with each of the missing children clearinghouses operated by the 50 States, the District of Columbia, and Puerto Rico, as well as with Scotland Yard in the United Kingdom, the Royal Canadian Mounted Police, INTERPOL headquarters in Lyon, France, and others, which enable the Center to transmit images and information regarding missing children to law enforcement across

the United States and around the world instantly.

(Pub. L. 93–415, title IV, § 402, as added Pub. L. 98–473, title II, § 660, Oct. 12, 1984, 98 Stat. 2125; amended Pub. L. 106–71, § 2(a), Oct. 12, 1999, 113 Stat. 1032; Pub. L. 108–96, title II, § 201, Oct. 10, 2003, 117 Stat. 1171.)

PRIOR PROVISIONS

A prior section 402 of Pub. L. 93–415 amended section 3888 of this title and repealed section 3889 of this title, and was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

AMENDMENTS

2003—Pub. L. 108–96 amended section generally. Prior to amendment, section consisted of pars. (1) to (21) stating findings of Congress.

1999—Pars. (9) to (21). Pub. L. 106–71 added pars. (9) to (21).

EFFECTIVE DATE

Subchapter effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

SHORT TITLE

For short title of title IV of Pub. L. 93–415, which enacted this subchapter, as the ''Missing Children's Assistance Act'', see section 401 of Pub. L. 93–415, as added by Pub. L. 98–473, set out as a note under section 5601 of this title.

§ 5772. Definitions

For the purpose of this subchapter—

(1) the term ''missing child'' means any individual less than 18 years of age whose whereabouts are unknown to such individual's legal custodian;

(2) the term ''Administrator'' means the Administrator of the Office of Juvenile Justice and Delinquency Prevention; and

(3) the term ''Center'' means the National Center for Missing and Exploited Children.

(Pub. L. 93–415, title IV, § 403, as added Pub. L. 98–473, title II, § 660, Oct. 12, 1984, 98 Stat. 2126; amended Pub. L. 106–71, § 2(b), Oct. 12, 1999, 113 Stat. 1034; Pub. L. 109–248, title I, § 154(b), July 27, 2006, 120 Stat. 611; Pub. L. 109–295, title VI, § 689b(c), Oct. 4, 2006, 120 Stat. 1450.)

PRIOR PROVISIONS

A prior section 403 of Pub. L. 93–415 amended section 3883 of this title, and was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

AMENDMENTS

2006—Par. (1). Pub. L. 109–295, which directed amendment of par. (1) by striking out ''or'' at the end of subpar. (A), inserting ''or'' after the semicolon in subpar. (B), and adding after subpar. (B) subpar. (C) ''the individual is an individual under 21 years of age who is displaced from the habitual residence of that individual as a result of an emergency or major disaster (as those terms are defined in section 5122 of this title).'', could not be executed because of the prior amendment by Pub. L. 109–248, see below.

Pub. L. 109–248, which directed amendment of ''Section 403(1) of the Comprehensive Crime Control Act of 1984 (42 U.S.C. 5772)'' by substituting a semicolon at end for ''if—'' through subpar. (B), was executed by substituting a semicolon for ''if—''and subpars. (A) and (B) of par. (1) of this section, which is section 403 of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, as added by section 660 of the Comprehensive Crime Control Act of 1984, to reflect the probable intent of Congress. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) the circumstances surrounding such individual's disappearance indicate that such individual may possibly have been removed by another from the control of such individual's legal custodian without such custodian's consent; or

''(B) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited;''.

1999—Par. (3). Pub. L. 106–71 added par. (3).

§ 5773. Duties and functions of the Administrator

(a) Description of activities

The Administrator shall—

(1) issue such rules as the Administrator considers necessary or appropriate to carry out this subchapter;

(2) make such arrangements as may be necessary and appropriate to facilitate effective coordination among all federally funded programs relating to missing children (including the preparation of an annual comprehensive plan for facilitating such coordination);

(3) provide for the furnishing of information derived from the national toll-free telephone line, established under subsection (b)(1) of this section, to appropriate entities;

(4) provide adequate staff and agency resources which are necessary to properly carry out the responsibilities pursuant to this subchapter; and

(5) not later than 180 days after the end of each fiscal year, submit a report to the President, Speaker of the House of Representatives, and the President pro tempore of the Senate—

(A) containing a comprehensive plan for facilitating cooperation and coordination in the succeeding fiscal year among all agencies and organizations with responsibilities related to missing children;

(B) identifying and summarizing effective models of Federal, State, and local coordination and cooperation in locating and recovering missing children;

(C) identifying and summarizing effective program models that provide treatment, counseling, or other aid to parents of missing children or to children who have been the victims of abduction;

(D) describing how the Administrator satisfied the requirements of paragraph (4) in the preceding fiscal year;

(E) describing in detail the number and types of telephone calls received in the preceding fiscal year over the national toll-free telephone line established under subsection (b)(1)(A) of this section and the number and types of communications referred to the national communications system established under section 5714–11 of this title;

(F) describing in detail the activities in the preceding fiscal year of the national resource center and clearinghouse established under subsection (b)(2) of this section;

(G) describing all the programs for which assistance was provided under section 5775 of this title in the preceding fiscal year;

(H) summarizing the results of all research completed in the preceding year for which assistance was provided at any time under this subchapter; and

(I)(i) identifying each clearinghouse with respect to which assistance is provided under section 5775(a)(9) of this title in the preceding fiscal year;

(ii) describing the activities carried out by such clearinghouse in such fiscal year;

(iii) specifying the types and amounts of assistance (other than assistance under section 5775(a)(9) of this title) received by such clearinghouse in such fiscal year; and

(iv) specifying the number and types of missing children cases handled (and the number of such cases resolved) by such clearinghouse in such fiscal year and summarizing the circumstances of each such cases.[1]

(b) Annual grant to National Center for Missing and Exploited Children

(1) In general

The Administrator shall annually make a grant to the Center, which shall be used to—

(A)(i) operate a national 24-hour toll-free telephone line by which individuals may report information regarding the location of any missing child, or other child 13 years of age or younger whose whereabouts are unknown to such child's legal custodian, and request information pertaining to procedures necessary to reunite such child with such child's legal custodian; and

(ii) coordinate the operation of such telephone line with the operation of the national communications system referred to in part C of subchapter III of this chapter;

(B) operate the official national resource center and information clearinghouse for missing and exploited children;

(C) provide to State and local governments, public and private nonprofit agencies, and individuals, information regarding—

(i) free or low-cost legal, restaurant, lodging, and transportation services that are available for the benefit of missing and exploited children and their families; and

(ii) the existence and nature of programs being carried out by Federal agencies to assist missing and exploited children and their families;

(D) coordinate public and private programs that locate, recover, or reunite missing children with their families;

(E) disseminate, on a national basis, information relating to innovative and model programs, services, and legislation that benefit missing and exploited children;

(F) provide technical assistance and training to law enforcement agencies, State and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of cases involving missing and exploited children;

(G) provide assistance to families and law enforcement agencies in locating and recovering missing and exploited children, both nationally and internationally; and

(H) coordinate the operation of a cyber tipline to provide online users an effective means of reporting Internet-related child sexual exploitation in the areas of—

(i) distribution of child pornography;

(ii) online enticement of children for sexual acts; and

(iii) child prostitution.

(2) Authorization of appropriations

There is authorized to be appropriated to the Administrator to carry out this subsection, $20,000,000 for each of the fiscal years 2004 through 2008.

(c) National incidence studies

The Administrator, either by making grants to or entering into contracts with public agencies or nonprofit private agencies, shall—

(1) periodically conduct national incidence studies to determine for a given year the actual number of children reported missing each year, the number of children who are victims of abduction by strangers, the number of children who are the victims of parental kidnapings, and the number of children who are recovered each year; and

(2) provide to State and local governments, public and private nonprofit agencies, and individuals information to facilitate the lawful use of school records and birth certificates to identify and locate missing children.

(d) Independent status of other Federal agencies

Nothing contained in this subchapter shall be construed to grant to the Administrator any law enforcement responsibility or supervisory authority over any other Federal agency.

(Pub. L. 93–415, title IV, § 404, as added Pub. L. 98–473, title II, § 660, Oct. 12, 1984, 98 Stat. 2126; amended Pub. L. 100–690, title VII, § 7285, Nov. 18, 1988, 102 Stat. 4459; Pub. L. 101–204, title X, § 1004(2), Dec. 7, 1989, 103 Stat. 1828; Pub. L. 106–71, § 2(c), Oct. 12, 1999, 113 Stat. 1034; Pub. L. 107–273, div. C, title II, § 12221(b)(2), Nov. 2, 2002, 116 Stat. 1894; Pub. L. 108–21, title III, §§ 321(b), 323, Apr. 30, 2003, 117 Stat. 664, 665; Pub. L. 108–96, title II, § 202(a), Oct. 10, 2003, 117 Stat. 1172.)

PRIOR PROVISIONS

A prior section 404 of Pub. L. 93–415 amended section 3882 of this title, and was repealed by Pub. L. 95–115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107–273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

AMENDMENTS

2003—Subsec. (b)(1)(H). Pub. L. 108–21, § 323, added subpar. (H).

Subsec. (b)(2). Pub. L. 108–96 substituted ''2008'' for ''2005''.

Pub. L. 108–21, § 321(b), substituted ''$20,000,000 for each of the fiscal years 2004 through 2005'' for ''$10,000,000 for each of fiscal years 2000, 2001, 2002, and 2003''.

2002—Subsec. (a)(5)(E). Pub. L. 107–273 substituted ''section 5714–11'' for ''section 5712a''.

1999—Subsecs. (b) to (d). Pub. L. 106–71 added subsecs. (b) and (c), redesignated former subsec. (c) as (d), and struck out former subsec. (b) which related to the es-

[1] So in original. Probably should be ''case.''

tablishment of toll-free telephone line and national resource center and clearinghouse, conduct of national incidence studies, and use of school records and birth certificates.

1989—Subsec. (a)(5)(C). Pub. L. 101–204, § 1004(2)(A), substituted semicolon for comma at end.

Subsec. (b)(2)(A). Pub. L. 101–204, § 1004(2)(B), inserted ''to'' before ''provide to State''.

1988—Subsec. (a)(3). Pub. L. 100–690, § 7285(a)(1), struck out ''law enforcement'' before ''entities''.

Subsec. (a)(4). Pub. L. 100–690, § 7285(a)(2), inserted ''and'' at end.

Subsec. (a)(5). Pub. L. 100–690, § 7285(a)(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''analyze, compile, publish, and disseminate an annual summary of recently completed research, research being conducted, and Federal, State, and local demonstration projects relating to missing children with particular emphasis on—

''(A) effective models of local, State, and Federal coordination and cooperation in locating missing children;

''(B) effective programs designed to promote community awareness of the problem of missing children;

''(C) effective programs to prevent the abduction and sexual exploitation of children (including parent, child, and community education); and

''(D) effective program models which provide treatment, counseling, or other aid to parents of missing children or to children who have been the victims of abduction or sexual exploitation; and''.

Subsec. (a)(6). Pub. L. 100–690, § 7285(a)(4), struck out par. (6), which read as follows: ''prepare, in conjunction with and with the final approval of the Advisory Board on Missing Children, an annual comprehensive plan for facilitating cooperation and coordination among all agencies and organizations with responsibilities related to missing children.''

Subsec. (b)(1). Pub. L. 100–690, § 7285(b)(1), designated existing provisions as subpar. (A), inserted ''24-hour'' after ''national'' and ''and'' at end, and added subpar. (B).

Subsec. (b)(2)(A). Pub. L. 100–690, § 7285(b)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''to provide technical assistance to local and State governments, public and private nonprofit agencies, and individuals in locating and recovering missing children;''.

Subsec. (b)(2)(D). Pub. L. 100–690, § 7285(b)(2)(B), inserted ''and training'' after ''assistance'' and ''and in locating and recovering missing children'' before semicolon.

Subsec. (b)(4). Pub. L. 100–690, § 7285(b)(3), (4), added par. (4).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, with the report required by subsec. (a)(5) of this section with respect to fiscal year 1988 to be submitted not later than Aug. 1, 1989, notwithstanding the 180-day period provided in subsec. (a)(5) of this section, see section 7296(a), (b)(3) of Pub. L. 100–690, as amended, set out as a note under section 5601 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a)(5) of this section relating to submittal of annual report to the Speaker of the House of Representatives and the President pro tempore of the Senate, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 2nd item on page 122 of House Document No. 103–7.

§ 5774. Repealed. Pub. L. 100–690, title VII, § 7286, Nov. 18, 1988, 102 Stat. 4460

Section, Pub. L. 93–415, title IV, § 405, as added Pub. L. 98–473, title II, § 660, Oct. 12, 1984, 98 Stat. 2127, provided for an Advisory Board on Missing Children.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

§ 5775. Grants

(a) Authority of Administrator; description of research, demonstration projects, and service programs

The Administrator is authorized to make grants to and enter into contracts with the Center and with public agencies or nonprofit private organizations, or combinations thereof, for research, demonstration projects, or service programs designed—

(1) to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

(2) to provide information to assist in the locating and return of missing children;

(3) to aid communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children;

(4) to increase knowledge of and develop effective treatment pertaining to the psychological consequences, on both parents and children, of—

(A) the abduction of a child, both during the period of disappearance and after the child is recovered; and

(B) the sexual exploitation of a missing child;

(5) to collect detailed data from selected States or localities on the actual investigative practices utilized by law enforcement agencies in missing children's cases;

(6) to address the particular needs of missing children by minimizing the negative impact of judicial and law enforcement procedures on children who are victims of abuse or sexual exploitation and by promoting the active participation of children and their families in cases involving abuse or sexual exploitation of children;

(7) to address the needs of missing children (as defined in section 5772(1)(A) of this title) and their families following the recovery of such children;

(8) to reduce the likelihood that individuals under 18 years of age will be removed from the control of such individuals' legal custodians without such custodians' consent; and

(9) to establish or operate statewide clearinghouses to assist in locating and recovering missing children.

(b) Priorities of grant applicants

In considering grant applications under this subchapter, the Administrator shall give priority to applicants who—

(1) have demonstrated or demonstrate ability in—

(A) locating missing children or locating and reuniting missing children with their legal custodians;

(B) providing other services to missing children or their families; or

(C) conducting research relating to missing children; and

(2) with respect to subparagraphs (A) and (B) of paragraph (1), substantially utilize volunteer assistance.

The Administrator shall give first priority to applicants qualifying under subparagraphs (A) and (B) of paragraph (1).

(c) Non-Federal fund expenditures requisite for receipt of Federal assistance

In order to receive assistance under this subchapter for a fiscal year, applicants shall give assurance that they will expend, to the greatest extent practicable, for such fiscal year an amount of funds (without regard to any funds received under any Federal law) that is not less than the amount of funds they received in the preceding fiscal year from State, local, and private sources.

(Pub. L. 93–415, title IV, § 405, formerly § 406, as added Pub. L. 98–473, title II, § 660, Oct. 12, 1984, 98 Stat. 2128; renumbered § 405 and amended Pub. L. 100–690, title VII, §§ 7287, 7290(a), Nov. 18, 1988, 102 Stat. 4460, 4461; Pub. L. 101–204, title X, § 1004(3), Dec. 7, 1989, 103 Stat. 1828; Pub. L. 106–71, § 2(d), Oct. 12, 1999, 113 Stat. 1035.)

PRIOR PROVISIONS

A prior section 405 of Pub. L. 93–415 was classified to section 5774 of this title prior to repeal by Pub. L. 100–690, title VII, § 7286, Nov. 18, 1988, 102 Stat. 4460.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–71 inserted ''the Center and with'' before ''public agencies'' in introductory provisions.

1989—Subsec. (a)(9). Pub. L. 101–204 substituted ''clearinghouses'' for ''clearinghouse''.

1988—Subsec. (a)(7) to (9). Pub. L. 100–690, § 7287, added pars. (7) to (9).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

§ 5776. Criteria for grants

(a) Establishment of priorities and criteria; publication in Federal Register

In carrying out the programs authorized by this subchapter, the Administrator shall establish—

(1) annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 5775 of this title; and

(2) criteria based on merit for making such grants and contracts.

Not less than 60 days before establishing such priorities and criteria, the Administrator shall publish in the Federal Register for public comment a statement of such proposed priorities and criteria.

(b) Competitive selection process for grant or contract exceeding $50,000

No grant or contract exceeding $50,000 shall be made under this subchapter unless the grantee or contractor has been selected by a competitive process which includes public announcement of the availability of funds for such grant or contract, general criteria for the selection of recipients or contractors, and a description of the application process and application review process.

(c) Multiple grants or contracts to same grantee or contractor

Multiple grants or contracts to the same grantee or contractor within any 1 year to support activities having the same general purpose shall be deemed to be a single grant for the purpose of this subsection, but multiple grants or contracts to the same grantee or contractor to support clearly distinct activities shall be considered separate grants or contractors.[1]

(Pub. L. 93–415, title IV, § 406, formerly § 407, as added Pub. L. 98–473, title II, § 660, Oct. 12, 1984, 98 Stat. 2129; renumbered § 406 and amended Pub. L. 100–690, title VII, §§ 7288, 7290, Nov. 18, 1988, 102 Stat. 4461.)

PRIOR PROVISIONS

A prior section 406 of Pub. L. 93–415 was renumbered section 405 and is classified to section 5775 of this title.

AMENDMENTS

1988—Pub. L. 100–690, § 7290(b), which purported to make technical amendment to reference to section 5775 of this title to reflect renumbering of corresponding section of original act, could not be executed to text because of general amendment of section by Pub. L. 100–690, § 7288, see below.

Pub. L. 100–690, § 7288, amended section generally. Prior to amendment, section read as follows: ''The Administrator, in consultation with the Advisory Board, shall establish annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 5775 of this title and, not less than 60 days before establishing such priorities, shall publish in the Federal Register for public comment a statement of such proposed priorities.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

§ 5776a. Missing and Exploited Children's Task Force

(a) Establishment

There is established a Missing and Exploited Children's Task Force (referred to as the ''Task Force'').

(b) Membership

(1) In general

The Task Force shall include at least 2 members from each of—

(A) the Federal Bureau of Investigation;

(B) the Secret Service;

(C) the Bureau of Alcohol, Tobacco and Firearms;

(D) the United States Customs Service;

(E) the Postal Inspection Service;

[1] So in original. Probably should be ''contracts.''

(F) the United States Marshals Service; and

(G) the Drug Enforcement Administration.

(2) Chief

A representative of the Federal Bureau of Investigation (in addition to the members of the Task Force selected under paragraph (1)(A)) shall act as chief of the Task Force.

(3) Selection

(A) The Director of the Federal Bureau of Investigation shall select the chief of the Task Force.

(B) The heads of the agencies described in paragraph (1) shall submit to the chief of the Task Force a list of at least 5 prospective Task Force members, and the chief shall select 2, or such greater number as may be agreeable to an agency head, as Task Force members.

(4) Professional qualifications

The members of the Task Force shall be law enforcement personnel selected for their expertise that would enable them to assist in the investigation of cases of missing and exploited children.

(5) Status

A member of the Task Force shall remain an employee of his or her respective agency for all purposes (including the purpose of performance review), and his or her service on the Task Force shall be without interruption or loss of civil service privilege or status and shall be on a nonreimbursable basis.

(6) Period of service

(A) Subject to subparagraph (B), 1 member from each agency shall initially serve a 1-year term, and the other member from the same agency shall serve a 1-year term, and may be selected to a renewal of service for 1 additional year; thereafter, each new member to serve on the Task Force shall serve for a 2-year period with the member's term of service beginning and ending in alternate years with the other member from the same agency; the period of service for the chief of the Task Force shall be 3 years.

(B) The chief of the Task Force may at any time request the head of an agency described in paragraph (1) to submit a list of 5 prospective Task Force members to replace a member of the Task Force, for the purpose of maintaining a Task Force membership that will be able to meet the demands of its caseload.

(c) Support

(1) In general

The Administrator of the General Services Administration, in coordination with the heads of the agencies described in subsection (b)(1) of this section, shall provide the Task Force office space and administrative and support services, such office space to be in close proximity to the office of the Center, so as to enable the Task Force to coordinate its activities with that of the Center on a day-to-day basis.

(2) Legal guidance

The Attorney General shall assign an attorney to provide legal guidance, as needed, to members of the Task Force.

(d) Purpose

(1) In general

The purpose of the Task Force shall be to make available the combined resources and expertise of the agencies described in paragraph (1)[1] to assist State and local governments in the most difficult missing and exploited child cases nationwide, as identified by the chief of the Task Force from time to time, in consultation with the Center, and as many additional cases as resources permit, including the provision of assistance to State and local investigators on location in the field.

(2) Technical assistance

The role of the Task Force in any investigation shall be to provide advice and technical assistance and to make available the resources of the agencies described in subsection (b)(1) of this section; the Task Force shall not take a leadership role in any such investigation.

(e) Cross-designation of Task Force members

The Attorney General may cross-designate the members of the Task Force with jurisdiction to enforce Federal law related to child abduction to the extent necessary to accomplish the purposes of this section.

(Pub. L. 93–415, title IV, § 407, as added Pub. L. 103–322, title XVII, § 170303(2), Sept. 13, 1994, 108 Stat. 2043.)

REFERENCES IN TEXT

The Center, referred to in subsecs. (c)(1) and (d)(1), was identified as the National Center for Missing and Exploited Children in section 170302 of Pub. L. 103–322, formerly set out as a Purpose note below.

PRIOR PROVISIONS

A prior section 407 of Pub. L. 93–415 was renumbered section 408 and is classified to section 5777 of this title.

Another prior section 407 of Pub. L. 93–415 was renumbered section 406 and is classified to section 5776 of this title.

REPEALS

Pub. L. 103–322, title XVII, § 170303(2), Sept. 13, 1994, 108 Stat. 2043, cited as a credit to this section, which enacted this section, was repealed by Pub. L. 105–314, title VII, § 703(g), Oct. 30, 1998, 112 Stat. 2989.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, including the related functions of the Secretary of the Treasury, to the Department of Justice, see section 531(c) of Title 6, Domestic Security, and section 599A(c)(1) of Title 28, Judiciary and Judicial Procedure.

[1] So in original. Probably should be "subsection (b)(1) of this section".

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PURPOSE

Pub. L. 103–322, title XVII, § 170302, Sept. 13, 1994, 108 Stat. 2043, provided that the purpose of subtitle C (§§ 170301–170303) of title XVII of Pub. L. 103–322, which enacted this section, amended sections 5777 and 5778 of this title, and enacted provisions set out as a note under section 5601 of this title, was to establish a task force comprised of law enforcement officers from pertinent Federal agencies to work with the National Center for Missing and Exploited Children and coordinate the provision of Federal law enforcement resources to assist State and local authorities in investigating the most difficult cases of missing and exploited children, prior to repeal by Pub. L. 105–314, title VII, § 703(g), Oct. 30, 1998, 112 Stat. 2989.

§ 5777. Authorization of appropriations

(a) In general

To carry out the provisions of this subchapter, there are authorized to be appropriated such sums as may be necessary for fiscal years 2004 through 2008.

(b) Evaluation

The Administrator may use not more than 5 percent of the amount appropriated for a fiscal year under subsection (a) of this section to conduct an evaluation of the effectiveness of the programs and activities established and operated under this subchapter.

(Pub. L. 93–415, title IV, § 408, as added Pub. L. 98–473, title II, § 660, Oct. 12, 1984, 98 Stat. 2129; renumbered § 407 and amended Pub. L. 100–690, title VII, §§ 7289, 7290(a), Nov. 18, 1988, 102 Stat. 4461; Pub. L. 101–204, title X, § 1001(e)(3), Dec. 7, 1989, 103 Stat. 1827; Pub. L. 102–586, § 4, Nov. 4, 1992, 106 Stat. 5027; renumbered § 408, Pub. L. 103–322, title XVII, § 170303(1), Sept. 13, 1994, 108 Stat. 2043; Pub. L. 104–235, title II, § 231(a), Oct. 3, 1996, 110 Stat. 3092; Pub. L. 106–71, § 2(e), Oct. 12, 1999, 113 Stat. 1035; Pub. L. 108–21, title III, § 321(a), Apr. 30, 2003, 117 Stat. 664; Pub. L. 108–96, title II, § 202(b), Oct. 10, 2003, 117 Stat. 1172.)

PRIOR PROVISIONS

A prior section 408 of Pub. L. 93–415 was renumbered section 409 and was classified to section 5778 of this title prior to repeal by Pub. L. 104–235.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–96 substituted ''2008'' for ''2005.''

Pub. L. 108–21 substituted ''fiscal years 2004 through 2005.'' for ''fiscal years 2000 through 2003''.

1999—Subsec. (a). Pub. L. 106–71 substituted ''2000 through 2003'' for ''1997 through 2001''.

1996—Pub. L. 104–235 designated existing provisions as subsec. (a), inserted heading, substituted ''1997 through 2001'' for ''1993, 1994, 1995, and 1996'', and added subsec. (b).

1992—Pub. L. 102–586 substituted ''fiscal years 1993, 1994, 1995, and 1996'' for ''fiscal years 1989, 1990, 1991, and 1992''.

1989—Pub. L. 101–204 amended directory language of Pub. L. 100–690, § 7289(3), see 1988 Amendment note below.

1988—Pub. L. 100–690, § 7289, as amended by Pub. L. 101–204, struck out ''$10,000,000 for fiscal year 1985, and'' after ''appropriated'' and ''1986, 1987, and 1988'' after ''fiscal years'' and inserted ''1989, 1990, 1991, and 1992''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of this title.

REPEALS

Pub. L. 103–322, title XVII, § 170303(1), Sept. 13, 1994, 108 Stat. 2043, cited as a credit to this section, which renumbered this section as section 408 of Pub. L. 93–415, was repealed by Pub. L. 105–314, title VII, § 703(g), Oct. 30, 1998, 112 Stat. 2989.

§ 5778. Repealed. Pub. L. 104–235, title II, § 231(b), Oct. 3, 1996, 110 Stat. 3092

Section, Pub. L. 93–415, title IV, § 409, formerly § 408, as added Pub. L. 100–690, title VII, § 7291, Nov. 18, 1988, 102 Stat. 4461; renumbered § 409, Pub. L. 103–322, title XVII, § 170303(1), Sept. 13, 1994, 108 Stat. 2043, related to special study and report to determine obstacles that prevent or impede individuals who have legal custody of children from recovering children from parents who have removed children from such individuals in violation of law.

§ 5779. Reporting requirement

(a) In general

Each Federal, State, and local law enforcement agency shall report each case of a missing child under the age of 21 reported to such agency to the National Crime Information Center of the Department of Justice.

(b) Guidelines

The Attorney General may establish guidelines for the collection of such reports including procedures for carrying out the purposes of this section and section 5780 of this title.[1]

(c) Annual summary

The Attorney General shall publish an annual statistical summary of the reports received under this section and section 5780 of this title.

(Pub. L. 101–647, title XXXVII, § 3701, Nov. 29, 1990, 104 Stat. 4966; Pub. L. 108–21, title II, § 204, Apr. 30, 2003, 117 Stat. 660.)

REFERENCES IN TEXT

This section and section 5780 of this title, referred to in subsec. (b), was in the original ''this Act'', and was translated as reading ''this title'', meaning title XXXVII of Pub. L. 101–647, which enacted this section and section 5780 of this title, to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the Crime Control Act of 1990, and not as part of the Missing Children's Assistance Act which comprises this subchapter, nor as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–21 substituted ''age of 21'' for ''age of 18''.

§ 5780. State requirements

Each State reporting under the provisions of this section and section 5779 of this title shall—

[1] See References in Text note below.

(1) ensure that no law enforcement agency within the State establishes or maintains any policy that requires the observance of any waiting period before accepting a missing child or unidentified person report;

(2) ensure that no law enforcement agency within the State establishes or maintains any policy that requires the removal of a missing person entry from its State law enforcement system or the National Crime Information Center computer database based solely on the age of the person; and[1]

(3) provide that each such report and all necessary and available information, which, with respect to each missing child report, shall include—

(A) the name, date of birth, sex, race, height, weight, and eye and hair color of the child;

(B) the date and location of the last known contact with the child; and

(C) the category under which the child is reported missing;

is entered within 2 hours of receipt into the State law enforcement system and the National Crime Information Center computer networks and made available to the Missing Children Information Clearinghouse within the State or other agency designated within the State to receive such reports; and

(4) provide that after receiving reports as provided in paragraph (2), the law enforcement agency that entered the report into the National Crime Information Center shall—

(A) no later than 60 days after the original entry of the record into the State law enforcement system and National Crime Information Center computer networks, verify and update such record with any additional information, including, where available, medical and dental records;

(B) institute or assist with appropriate search and investigative procedures; and

(C) maintain close liaison with the National Center for Missing and Exploited Children for the exchange of information and technical assistance in the missing children cases.

(Pub. L. 101–647, title XXXVII, § 3702, Nov. 29, 1990, 104 Stat. 4967; Pub. L. 109–248, title I, § 154(a), July 27, 2006, 120 Stat. 611.)

CODIFICATION

Section was enacted as part of the Crime Control Act of 1990, and not as part of the Missing Children's Assistance Act which comprises this subchapter, nor as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

AMENDMENTS

2006—Pub. L. 109–248 added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and substituted ''within 2 hours of receipt'' for ''immediately'' in concluding provisions of par. (3).

SUBCHAPTER V—INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS

CODIFICATION

Title V of the Juvenile Justice and Delinquency Prevention Act of 1974, comprising this subchapter, was originally added to Pub. L. 93–415 by Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, and amended by Pub. L. 105–277, Oct. 21, 1998, 112 Stat. 2681. Title V is shown herein, however, as having been added by Pub. L. 107–273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1894, without reference to the intervening amendments because of the extensive revision of the title's provisions by Pub. L. 107–273.

Another title V of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, title V, Sept. 7, 1974, 88 Stat. 1133, enacted chapter 319 and sections 5038 to 5042 of Title 18, Crimes and Criminal Procedure, and sections 3772 to 3774 of this title, and amended sections 5031 to 5038 of Title 18 and sections 3701, 3723, 3733, 3768 of this title. For complete classification of that title V to the Code, see Tables.

§ 5781. Definition

In this subchapter, the term ''State advisory group'' means the advisory group appointed by the chief executive officer of a State under a plan described in section 5633(a) of this title.

(Pub. L. 93–415, title V, § 502, as added Pub. L. 107–273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1894.)

CODIFICATION

Another section 502 of Pub. L. 93–415, title V, Sept. 7, 1974, 88 Stat. 1134, amended section 5032 of Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

A prior section 5781, Pub. L. 93–415, title V, § 502, as added Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, related to findings, prior to the general amendment of this subchapter by Pub. L. 107–273.

EFFECTIVE DATE

Pub. L. 107–273, div. C, title II, § 12222(b), Nov. 2, 2002, 116 Stat. 1896, as amended by Pub. L. 108–7, div. B, title I, § 110(1), Feb. 20, 2003, 117 Stat. 67, provided that: ''The amendment made by subsection (a) [enacting sections 5781 to 5784 of this title and provisions set out as a note under section 5601 of this title] shall take effect on the effective date provided in section 12102(b) [set out as a note under section 3796ee of this title], and shall not apply with respect to grants made before such date.''

SHORT TITLE

For short title of title V of Pub. L. 93–415, which enacted this subchapter, as the ''Incentive Grants for Local Delinquency Prevention Programs Act of 2002'', see section 501 of Pub. L. 93–415, as added by Pub. L. 107–273, set out as a note under section 5601 of this title.

GAO STUDIES AND REPORTS

Pub. L. 102–586, § 5(b), Nov. 4, 1992, 106 Stat. 5029, as amended by Pub. L. 104–316, title I, § 122(n), Oct. 19, 1996, 110 Stat. 3838; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814, provided that: ''Under such conditions as the Comptroller General of the United States determines appropriate, the Government Accountability Office may conduct studies and report to Congress on the effects of the program established by subsection (a) [enacting former subchapter V of this chapter] in encouraging States and units of general local government to comply with the requirements of part B of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5631–5633).''

§ 5782. Duties and functions of the Administrator

The Administrator shall—

(1) issue such rules as are necessary or appropriate to carry out this subchapter;

(2) make such arrangements as are necessary and appropriate to facilitate coordination and

[1] So in original. The word ''and'' probably should not appear.

policy development among all activities funded through the Department of Justice relating to delinquency prevention (including the preparation of an annual comprehensive plan for facilitating such coordination and policy development);

(3) provide adequate staff and resources necessary to properly carry out this subchapter; and

(4) not later than 180 days after the end of each fiscal year, submit a report to the chairman of the Committee on Education and the Workforce of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate—

(A) describing activities and accomplishments of grant activities funded under this subchapter;

(B) describing procedures followed to disseminate grant activity products and research findings;

(C) describing activities conducted to develop policy and to coordinate Federal agency and interagency efforts related to delinquency prevention; and

(D) identifying successful approaches and making recommendations for future activities to be conducted under this subchapter.

(Pub. L. 93–415, title V, § 503, as added Pub. L. 107–273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1894.)

CODIFICATION

Another section 503 of Pub. L. 93–415, title V, Sept. 7, 1974, 88 Stat. 1135, amended section 5033 of Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

A prior section 5782, Pub. L. 93–415, title V, § 503, as added Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, defined ''State advisory group'', prior to the general amendment of this subchapter by Pub. L. 107–273.

§ 5783. Grants for delinquency prevention programs

(a) Purposes

The Administrator may make grants to a State, to be transmitted through the State advisory group to units of local government that meet the requirements of subsection (b) of this section, for delinquency prevention programs and activities for juveniles who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, including the provision to juveniles and their families of—

(1) alcohol and substance abuse prevention services;

(2) tutoring and remedial education, especially in reading and mathematics;

(3) child and adolescent health and mental health services;

(4) recreation services;

(5) leadership and youth development activities;

(6) the teaching that people are and should be held accountable for their actions;

(7) assistance in the development of job training skills; and

(8) other data-driven evidence based prevention programs.

(b) Eligibility

The requirements of this subsection are met with respect to a unit of general local government if—

(1) the unit is in compliance with the requirements of part B of subchapter II of this chapter;

(2) the unit has submitted to the State advisory group a minimum 3-year comprehensive plan outlining the unit's local front end plans for investment for delinquency prevention and early intervention activities;

(3) the unit has included in its application to the Administrator for formula grant funds a summary of the minimum 3-year comprehensive plan described in paragraph (2);

(4) pursuant to its minimum 3-year comprehensive plan, the unit has appointed a local policy board of not fewer than 15 and not more than 21 members, with balanced representation of public agencies and private nonprofit organizations serving juveniles, their families, and business and industry;

(5) the unit has, in order to aid in the prevention of delinquency, included in its application a plan for the coordination of services to at-risk juveniles and their families, including such programs as nutrition, energy assistance, and housing;

(6) the local policy board is empowered to make all recommendations for distribution of funds and evaluation of activities funded under this subchapter; and

(7) the unit or State has agreed to provide a 50 percent match of the amount of the grant, including the value of in-kind contributions, to fund the activity.

(c) Priority

In considering grant applications under this section, the Administrator shall give priority to applicants that demonstrate ability in—

(1) plans for service and agency coordination and collaboration including the colocation of services;

(2) innovative ways to involve the private nonprofit and business sector in delinquency prevention activities;

(3) developing or enhancing a statewide subsidy program to local governments that is dedicated to early intervention and delinquency prevention;

(4) coordinating and collaborating with programs established in local communities for delinquency prevention under part C of subchapter II of this chapter;[1] and

(5) developing data-driven prevention plans, employing evidence-based prevention strategies, and conducting program evaluations to determine impact and effectiveness.

(Pub. L. 93–415, title V, § 504, as added Pub. L. 107–273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1895.)

REFERENCES IN TEXT

Part C of subchapter II of this chapter, referred to in subsec. (c)(4), was in the original ''part C of this subtitle'', and was translated as reading ''part C of title II'', meaning part C of title II of Pub. L. 93–415, to re-

[1] See References in Text note below.

flect the probable intent of Congress. Title V of Pub. L. 93–415 does not contain parts or subtitles.

CODIFICATION

Another section 504 of Pub. L. 93–415, title V, Sept. 7, 1974, 88 Stat. 1135, amended section 5034 of Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

A prior section 5783, Pub. L. 93–415, title V, § 504, as added Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, set out the duties and functions of the Administrator, prior to the general amendment of this subchapter by Pub. L. 107–273.

§ 5784. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for fiscal years 2004, 2005, 2006, 2007, and 2008.

(Pub. L. 93–415, title V, § 505, as added Pub. L. 107–273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1896.)

CODIFICATION

Another section 505 of Pub. L. 93–415, title V, Sept. 7, 1974, 88 Stat. 1135, amended section 5035 of Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

A prior section 5784, Pub. L. 93–415, title V, § 505, as added Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5028; amended Pub. L. 105–277, div. A, § 101(b) [title I, § 129(a)(2)(F)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–76, related to grants for prevention programs, prior to the general amendment of this subchapter by Pub. L. 107–273.

A prior section 5785, Pub. L. 93–415, title V, § 506, as added Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5029, authorized appropriations, prior to the general amendment of this subchapter by Pub. L. 107–273.

SUBCHAPTER VI—PUBLIC OUTREACH

CODIFICATION

Subchapter was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

PART A—AMBER ALERT

§ 5791. National coordination of AMBER Alert communications network

(a) Coordination within Department of Justice

The Attorney General shall assign an officer of the Department of Justice to act as the national coordinator of the AMBER Alert communications network regarding abducted children. The officer so designated shall be known as the AMBER Alert Coordinator of the Department of Justice.

(b) Duties

In acting as the national coordinator of the AMBER Alert communications network, the Coordinator shall—

(1) seek to eliminate gaps in the network, including gaps in areas of interstate travel;

(2) work with States to encourage the development of additional elements (known as local AMBER plans) in the network;

(3) work with States to ensure appropriate regional coordination of various elements of the network; and

(4) act as the nationwide point of contact for—

(A) the development of the network; and

(B) regional coordination of alerts on abducted children through the network.

(c) Consultation with Federal Bureau of Investigation

In carrying out duties under subsection (b) of this section, the Coordinator shall notify and consult with the Director of the Federal Bureau of Investigation concerning each child abduction for which an alert is issued through the AMBER Alert communications network.

(d) Cooperation

The Coordinator shall cooperate with the Secretary of Transportation and the Federal Communications Commission in carrying out activities under this section.

(e) Report

Not later than March 1, 2005, the Coordinator shall submit to Congress a report on the activities of the Coordinator and the effectiveness and status of the AMBER plans of each State that has implemented such a plan. The Coordinator shall prepare the report in consultation with the Secretary of Transportation.

(Pub. L. 108–21, title III, § 301, Apr. 30, 2003, 117 Stat. 660.)

CODIFICATION

Section was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

§ 5791a. Minimum standards for issuance and dissemination of alerts through AMBER Alert communications network

(a) Establishment of minimum standards

Subject to subsection (b) of this section, the AMBER Alert Coordinator of the Department of Justice shall establish minimum standards for—

(1) the issuance of alerts through the AMBER Alert communications network; and

(2) the extent of the dissemination of alerts issued through the network.

(b) Limitations

(1) The minimum standards established under subsection (a) of this section shall be adoptable on a voluntary basis only.

(2) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State and local law enforcement agencies), provide that appropriate information relating to the special needs of an abducted child (including health care needs) are disseminated to the appropriate law enforcement, public health, and other public officials.

(3) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State and local law enforcement agencies), provide that

the dissemination of an alert through the AMBER Alert communications network be limited to the geographic areas most likely to facilitate the recovery of the abducted child concerned.

(4) In carrying out activities under subsection (a) of this section, the Coordinator may not interfere with the current system of voluntary coordination between local broadcasters and State and local law enforcement agencies for purposes of the AMBER Alert communications network.

(c) Cooperation

(1) The Coordinator shall cooperate with the Secretary of Transportation and the Federal Communications Commission in carrying out activities under this section.

(2) The Coordinator shall also cooperate with local broadcasters and State and local law enforcement agencies in establishing minimum standards under this section.

(Pub. L. 108–21, title III, § 302, Apr. 30, 2003, 117 Stat. 661.)

CODIFICATION

Section was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

§ 5791b. Grant program for notification and communications systems along highways for recovery of abducted children

(a) Program required

The Secretary of Transportation shall carry out a program to provide grants to States for the development or enhancement of notification or communications systems along highways for alerts and other information for the recovery of abducted children.

(b) Development grants

(1) In general

The Secretary may make a grant to a State under this subsection for the development of a State program for the use of changeable message signs or other motorist information systems to notify motorists about abductions of children. The State program shall provide for the planning, coordination, and design of systems, protocols, and message sets that support the coordination and communication necessary to notify motorists about abductions of children.

(2) Eligible activities

A grant under this subsection may be used by a State for the following purposes:

(A) To develop general policies and procedures to guide the use of changeable message signs or other motorist information systems to notify motorists about abductions of children.

(B) To develop guidance or policies on the content and format of alert messages to be conveyed on changeable message signs or other traveler information systems.

(C) To coordinate State, regional, and local plans for the use of changeable message signs or other transportation related issues.

(D) To plan secure and reliable communications systems and protocols among public safety and transportation agencies or modify existing communications systems to support the notification of motorists about abductions of children.

(E) To plan and design improved systems for communicating with motorists, including the capability for issuing wide area alerts to motorists.

(F) To plan systems and protocols to facilitate the efficient issuance of child abduction notification and other key information to motorists during off-hours.

(G) To provide training and guidance to transportation authorities to facilitate appropriate use of changeable message signs and other traveler information systems for the notification of motorists about abductions of children.

(c) Implementation grants

(1) In general

The Secretary may make a grant to a State under this subsection for the implementation of a program for the use of changeable message signs or other motorist information systems to notify motorists about abductions of children. A State shall be eligible for a grant under this subsection if the Secretary determines that the State has developed a State program in accordance with subsection (b) of this section.

(2) Eligible activities

A grant under this subsection may be used by a State to support the implementation of systems that use changeable message signs or other motorist information systems to notify motorists about abductions of children. Such support may include the purchase and installation of changeable message signs or other motorist information systems to notify motorists about abductions of children.

(d) Federal share

The Federal share of the cost of any activities funded by a grant under this section may not exceed 80 percent.

(e) Distribution of grant amounts

The Secretary shall, to the maximum extent practicable, distribute grants under this section equally among the States that apply for a grant under this section within the time period prescribed by the Secretary.

(f) Administration

The Secretary shall prescribe requirements, including application requirements, for the receipt of grants under this section.

(g) Definition

In this section, the term ''State'' means any of the 50 States, the District of Columbia, or Puerto Rico.

(h) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this section $20,000,000 for fiscal year 2004. Such amounts shall remain available until expended.

(i) Study of State programs

(1) Study

The Secretary shall conduct a study to examine State barriers to the adoption and implementation of State programs for the use of communications systems along highways for alerts and other information for the recovery of abducted children.

(2) Report

Not later than 1 year after April 30, 2003, the Secretary shall transmit to Congress a report on the results of the study, together with any recommendations the Secretary determines appropriate.

(Pub. L. 108–21, title III, § 303, Apr. 30, 2003, 117 Stat. 662.)

CODIFICATION

Section was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

§ 5791c. Grant program for support of AMBER Alert communications plans

(a) Program required

The Attorney General shall carry out a program to provide grants to States for the development or enhancement of programs and activities for the support of AMBER Alert communications plans.

(b) Activities

Activities funded by grants under the program under subsection (a) of this section may include—

(1) the development and implementation of education and training programs, and associated materials, relating to AMBER Alert communications plans;

(2) the development and implementation of law enforcement programs, and associated equipment, relating to AMBER Alert communications plans;

(3) the development and implementation of new technologies to improve AMBER Alert communications; and

(4) such other activities as the Attorney General considers appropriate for supporting the AMBER Alert communications program.

(c) Federal share

The Federal share of the cost of any activities funded by a grant under the program under subsection (a) of this section may not exceed 50 percent.

(d) Distribution of grant amounts on geographic basis

The Attorney General shall, to the maximum extent practicable, ensure the distribution of grants under the program under subsection (a) of this section on an equitable basis throughout the various regions of the United States.

(e) Administration

The Attorney General shall prescribe requirements, including application requirements, for grants under the program under subsection (a) of this section.

(f) Authorization of appropriations

(1) There is authorized to be appropriated for the Department of Justice $5,000,000 for fiscal year 2004 to carry out this section and, in addition, $5,000,000 for fiscal year 2004 to carry out subsection (b)(3) of this section.

(2) Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended.

(Pub. L. 108–21, title III, § 304, Apr. 30, 2003, 117 Stat. 663.)

CODIFICATION

Section was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

§ 5791d. Limitation on liability

(a) Except as provided in subsection (b) of this section, the National Center for Missing and Exploited Children, including any of its officers, employees, or agents, shall not be liable for damages in any civil action for defamation, libel, slander, or harm to reputation arising out of any action or communication by the National Center for Missing and Exploited Children, its officers, employees, or agents, in connection with any clearinghouse, hotline or complaint intake or forwarding program or in connection with activity that is wholly or partially funded by the United States and undertaken in cooperation with, or at the direction of a Federal law enforcement agency.

(b) The limitation in subsection (a) of this section does not apply in any action in which the plaintiff proves that the National Center for Missing and Exploited Children, its officers, employees, or agents acted with actual malice, or provided information or took action for a purpose unrelated to an activity mandated by Federal law. For purposes of this subsection, the prevention, or detection of crime, and the safety, recovery, or protection of missing or exploited children shall be deemed, per se, to be an activity mandated by Federal law.

(Pub. L. 108–21, title III, § 305, Apr. 30, 2003, 117 Stat. 664.)

CODIFICATION

Section was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

PART B—MISSING CHILDREN PROCEDURES IN PUBLIC BUILDINGS

CODIFICATION

Part was enacted as part of the Code Adam Act of 2003 and also as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also know as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

§ 5792. Definitions

In this part, the following definitions apply:

(1) Child

The term ''child'' means an individual who is 17 years of age or younger.

(2) Code Adam alert

The term ''Code Adam alert'' means a set of procedures used in public buildings to alert employees and other users of the building that a child is missing.

(3) Designated authority

The term ''designated authority'' means—

(A) with respect to a public building owned or leased for use by an Executive agency—

(i) except as otherwise provided in this paragraph, the Administrator of General Services;

(ii) in the case of the John F. Kennedy Center for the Performing Arts, the Board of Trustees of the John F. Kennedy Center for the Performing Arts;

(iii) in the case of buildings under the jurisdiction, custody, and control of the Smithsonian Institution, the Board of Regents of the Smithsonian Institution; or

(iv) in the case of another public building for which an Executive agency has, by specific or general statutory authority, jurisdiction, custody, and control over the building, the head of that agency;

(B) with respect to the Supreme Court Building, the Marshal of the Supreme Court; with respect to the Thurgood Marshall Federal Judiciary Building, the Director of the Administrative Office of United States Courts; and with respect to all other public buildings owned or leased for use by an establishment in the judicial branch of government, the General Services Administration in consultation with the United States Marshals Service; and

(C) with respect to a public building owned or leased for use by an establishment in the legislative branch of government, the Capitol Police Board.

(4) Executive agency

The term ''Executive agency'' has the same meaning such term has under section 105 of title 5.

(5) Federal agency

The term ''Federal agency'' means any Executive agency or any establishment in the legislative or judicial branches of the Government.

(6) Public building

The term ''public building'' means any building (or portion thereof) owned or leased for use by a Federal agency.

(Pub. L. 108–21, title III, § 362, Apr. 30, 2003, 117 Stat. 665.)

CODIFICATION

Section was enacted as part of the Code Adam Act of 2003 and also as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

SHORT TITLE

For short title of subtitle D of title III of Pub. L. 108–21, which enacted this part, as the ''Code Adam Act of 2003'', see section 361 of Pub. L. 108–21, set out as a note under section 5601 of this title.

§ 5792a. Procedures in public buildings regarding a missing or lost child

(a) In general

Not later than 180 days after April 30, 2003, the designated authority for a public building shall establish procedures for locating a child that is missing in the building.

(b) Notification and search procedures

Procedures established under this section shall provide, at a minimum, for the following:

(1) Notifying security personnel that a child is missing.

(2) Obtaining a detailed description of the child, including name, age, eye and hair color, height, weight, clothing, and shoes.

(3) Issuing a Code Adam alert and providing a description of the child, using a fast and effective means of communication.

(4) Establishing a central point of contact.

(5) Monitoring all points of egress from the building while a Code Adam alert is in effect.

(6) Conducting a thorough search of the building.

(7) Contacting local law enforcement.

(8) Documenting the incident.

(Pub. L. 108–21, title III, § 363, Apr. 30, 2003, 117 Stat. 666.)

CODIFICATION

Section was enacted as part of the Code Adam Act of 2003 and also as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

CHAPTER 73—DEVELOPMENT OF ENERGY SOURCES

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§ 5801. Congressional declaration of policy and purpose

(a) Development and utilization of energy sources

The Congress hereby declares that the general welfare and the common defense and security require effective action to develop, and increase the efficiency and reliability of use of, all energy sources to meet the needs of present and future generations, to increase the productivity of the national economy and strengthen its position in regard to international trade, to make the Nation self-sufficient in energy, to advance the goals of restoring, protecting, and enhancing environmental quality, and to assure public health and safety.

(b) Necessity of establishing Energy Research and Development Administration

The Congress finds that, to best achieve these objectives, improve Government operations, and assure the coordinated and effective development of all energy sources, it is necessary to establish an Energy Research and Development Administration to bring together and direct Federal activities relating to research and development on the various sources of energy, to increase the efficiency and reliability in the use of energy, and to carry out the performance of other functions, including but not limited to the Atomic Energy Commission's military and production activities and its general basic research activities. In establishing an Energy Research and Development Administration to achieve these objectives, the Congress intends that all possible sources of energy be developed consistent with warranted priorities.

(c) Separation of licensing and regulatory functions of Atomic Energy Commission

The Congress finds that it is in the public interest that the licensing and related regulatory functions of the Atomic Energy Commission be separated from the performance of the other functions of the Commission, and that this separation be effected in an orderly manner, pursuant to this chapter, assuring adequacy of technical and other resources necessary for the performance of each.

(d) Small business participation

The Congress declares that it is in the public interest and the policy of Congress that small business concerns be given a reasonable opportunity to participate, insofar as is possible, fairly and equitably in grants, contracts, purchases, and other Federal activities relating to research, development, and demonstration of sources of energy efficiency, and utilization and conservation of energy. In carrying out this policy, to the extent practicable, the Administrator shall consult with the Administrator of the Small Business Administration.

(e) Priorities

Determination of priorities which are warranted should be based on such considerations as power-related values of an energy source, preservation of material resources, reduction of pollutants, export market potential (including reduction of imports), among others. On such a basis, energy sources warranting priority might include, but not be limited to, the various methods of utilizing solar energy.

(Pub. L. 93–438, § 2, Oct. 11, 1974, 88 Stat. 1233.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which enacted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes below. For complete classification of this Act to the Code, see Short Title note below and Tables.

EFFECTIVE DATE; INTERIM APPOINTMENTS

Section 312 of Pub. L. 93–438 provided that:

"(a) This Act [see Short Title note below] shall take effect one hundred and twenty days after the date of its enactment [Oct. 11, 1974], or on such earlier date as the President may prescribe and publish in the Federal Register [prescribed as Jan. 19, 1975, by Ex. Ord. No. 11834, formerly set out below] except that any of the officers provided for in title I of this Act [subchapter I of this chapter] may be nominated and appointed, as provided by this Act, at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), any functions of which are transferred to the Administrator and the Commission by this Act, may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

"(b) In the event that any officer required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this Act, to act in such office until the office is filled as provided in this Act. While so acting, such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act."

SHORT TITLE

Section 1 of Pub. L. 93–438 provided that: "This Act [enacting this chapter, repealing sections 2031 and 2032

of this title, amending sections 5313 to 5316 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under this section] may be cited as the 'Energy Reorganization Act of 1974'.''

SEPARABILITY

Section 311 of Pub. L. 93–438 provided that: ''If any provision of this Act [See Short Title note above], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.''

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

EXECUTIVE ORDER NO. 11834

Ex. Ord. No. 11834, eff. Jan. 15, 1975, 40 F.R. 2971, which prescribed Jan. 19, 1975, as the effective date of this chapter, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

SUBCHAPTER I—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

§ 5811. Establishment of Energy Research and Development Administration

There is hereby established an independent executive agency to be known as the Energy Research and Development Administration (hereinafter in this chapter referred to as the ''Administration'').

(Pub. L. 93–438, title I, § 101, Oct. 11, 1974, 88 Stat. 1234.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which enacted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes under section 5801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5812. Officers of Administration

(a) Administrator; appointment

There shall be at the head of the Administration an Administrator of Energy Research and Development (hereinafter in this chapter referred to as the ''Administrator''), who shall be appointed from civilian life by the President by and with the advice and consent of the Senate. A person may not be appointed as Administrator within two years after release from active duty as a commissioned officer of a regular component of an Armed Force. The Administration shall be administered under the supervision and direction of the Administrator, who shall be responsible for the efficient and coordinated management of the Administration.

(b) Deputy Administrator

There shall be in the Administration a Deputy Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) Qualifications of Administrator and Deputy Administrator

The President shall appoint the Administrator and Deputy Administrator from among individuals who, by reason of their general background and experience are specially qualified to manage a full range of energy research and development programs.

(d) Assistant Administrators; number; appointment; qualifications

There shall be in the Administration six Assistant Administrators, one of whom shall be responsible for fossil energy, another for nuclear energy, another for environment and safety, another for conservation, another for solar, geothermal, and advanced energy systems, and another for national security. The Assistant Administrators shall be appointed by the President, by and with the advice and consent of the Senate. The President shall appoint each Assistant Administrator from among individuals who, by reason of general background and experience, are specially qualified to manage the energy technology area assigned to such Assistant Administrator.

(e) General Counsel

There shall be in the Administration a General Counsel who shall be appointed by the Administrator and who shall serve at the pleasure of and be removable by the Administrator.

(f) Additional officers

There shall be in the Administration not more than eight additional officers appointed by the Administrator. The positions of such officers shall be considered career positions and be subject to section 2201(d) of this title.

(g) Director of Military Application; functions; qualifications; compensation

The Division of Military Application transferred to and established in the Administration by section 5814(d) of this title shall be under the direction of a Director of Military Application, who shall be appointed by the Administrator and who shall serve at the pleasure of and be removable by the Administrator and shall be an active commissioned officer of the Armed Forces serving in general or flag officer rank or grade. The functions, qualifications, and compensation of the Director of Military Application shall be the same as those provided under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], for the Assistant General Manager for Military Application.

(h) Allocation of functions; responsibility for international cooperation

Officers appointed pursuant to this section shall perform such functions as the Administrator shall specify from time to time. The Administrator shall delegate to one such officer the special responsibility for international cooperation in all energy and related environmental research and development.

(i) Order of succession

The Deputy Administrator (or in the absence or disability of the Deputy Administrator, or in the event of a vacancy in the office of the Deputy Administrator, an Assistant Administrator, the General Counsel or such other official, determined according to such order as the Administrator shall prescribe) shall act for and perform the functions of the Administrator during any absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

(Pub. L. 93–438, title I, § 102, Oct. 11, 1974, 88 Stat. 1234.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in subsec. (g), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Division of Military Application transferred to Department of Energy by former section 7158(b) of this title with that organizational unit to be deemed an organizational unit established by chapter 84 (§ 7101 et seq.) of this title.

§ 5813. Responsibilities of Administrator

The responsibilities of the Administrator shall include, but not be limited to—

(1) exercising central responsibility for policy planning, coordination, support, and management of research and development programs respecting all energy sources, including assessing the requirements for research and development in regard to various energy sources in relation to near-term and long-range needs, policy planning in regard to meeting those requirements, undertaking programs for the optimal development of the various forms of energy sources, managing such programs, and disseminating information resulting therefrom;

(2) encouraging and conducting research and development, including demonstration of commercial feasibility and practical applications of the extraction, conversion, storage, transmission, and utilization phases related to the development and use of energy from fossil, nuclear, solar, geothermal, and other energy sources;

(3) engaging in and supporting environmental, biomedical, physical, and safety research related to the development of energy sources and utilization technologies;

(4) taking into account the existence, progress, and results of other public and private research and development activities, including those activities of the Federal Energy Administration relating to the development of energy resources using currently available technology in promoting increased utilization of energy resources, relevant to the Administration's mission in formulating its own research and development programs;

(5) participating in and supporting cooperative research and development projects which may involve contributions by public or private persons or agencies, of financial or other resources to the performance of the work;

(6) developing, collecting, distributing, and making available for distribution, scientific and technical information concerning the manufacture or development of energy and its efficient extraction, conversion, transmission, and utilization;

(7) creating and encouraging the development of general information to the public on all energy conservation technologies and energy sources as they become available for general use, and the Administrator, in conjunction with the Administrator of the Federal Energy Administration shall, to the extent practicable, disseminate such information through the use of mass communications;

(8) encouraging and conducting research and development in energy conservation, which shall be directed toward the goals of reducing total energy consumption to the maximum extent practicable, and toward maximum possible improvement in the efficiency of energy use. Development of new and improved conservation measures shall be conducted with the goal of the most expeditious possible application of these measures;

(9) encouraging and participating in international cooperation in energy and related environmental research and development;

(10) helping to assure an adequate supply of manpower for the accomplishment of energy research and development programs, by sponsoring and assisting in education and training activities in institutions of higher education, vocational schools, and other institutions, and by assuring the collection, analysis, and dissemination of necessary manpower supply and demand data;

(11) encouraging and conducting research and development in clean and renewable energy sources.

(Pub. L. 93–438, title I, § 103, Oct. 11, 1974, 88 Stat. 1235; Pub. L. 95–39, title V, § 510(a), June 3, 1977, 91 Stat. 200; Pub. L. 102–486, title I, § 143(b), Oct. 24, 1992, 106 Stat. 2843.)

AMENDMENTS

1992—Pars. (7) to (12). Pub. L. 102–486 redesignated pars. (8) to (12) as (7) to (11), respectively, and struck out former par. (7) which read as follows: ''establishing, in accordance with the National Energy Extension Service Act, an Energy Extension Service to provide technical assistance, instruction, and practical demonstrations on energy conservation measures and alternative energy systems to individuals, businesses, and State and local government officials;''.

1977—Pars. (7) to (12). Pub. L. 95–39 added par. (7) and redesignated former pars. (7) to (11) as (8) to (12), respectively.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration and Federal Energy Administration terminated and functions vested by law in their respective Administrators transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5814. Abolition and transfers

(a) Abolition of Atomic Energy Commission

The Atomic Energy Commission is hereby abolished. Sections 2031 and 2032 of this title are repealed.

(b) Transfer or lapse of functions of Atomic Energy Commission

All other functions of the Commission, the Chairman and members of the Commission, and the officers and components of the Commission are hereby transferred or allowed to lapse pursuant to the provisions of this chapter.

(c) Functions of Atomic Energy Commission transferred to Administrator

There are hereby transferred to and vested in the Administrator all functions of the Atomic Energy Commission, the Chairman and members of the Commission, and the officers and components of the Commission, except as otherwise provided in this chapter.

(d) Transfer of General Advisory Committee, Patent Compensation Board, and Divisions of Military Application and Naval Reactors to Administration

The General Advisory Committee established pursuant to section 2036[1] of this title, the Patent Compensation Board established pursuant to section 2187 of this title, and the Divisions of Military Application and Naval Reactors established pursuant to section 2035 of this title, are transferred to the Energy Research and Development Administration and the functions of the Commission with respect thereto, and with respect to relations with the Military Liaison Committee established by section 2037[1] of this title, are transferred to the Administrator.

(e) Transfer to Administrator of certain functions of Secretary of the Interior and Department of the Interior; study of potential energy application of helium; report to President and Congress

There are hereby transferred to and vested in the Administrator such functions of the Secretary of the Interior, the Department of the Interior, and officers and components of such department—

(1) as relate to or are utilized by the Office of Coal Research established pursuant to the Act of July 1, 1960 (74 Stat. 336; 30 U.S.C. 661–669);

(2) as relate to or are utilized in connection with fossil fuel energy research and development programs and related activities conducted by the United States Bureau of Mines ''energy centers'' and synthane plant to provide greater efficiency in the extraction, processing, and utilization of energy resources for the purpose of conserving those resources, developing alternative energy resources, such as oil and gas secondary and tertiary recovery, oil shale and synthetic fuels, improving methods of managing energy-related wastes and pollutants, and providing technical guidance needed to establish and administer national energy policies; and

(3) as relate to or are utilized for underground electric power transmission research.

The Administrator shall conduct a study of the potential energy applications of helium and, within six months from October 11, 1974, report to the President and Congress his recommendations concerning the management of the Federal helium programs, as they relate to energy.

(f) Transfer to Administrator of certain functions of National Science Foundation

There are hereby transferred to and vested in the Administrator such functions of the National Science Foundation as relate to or are utilized in connection with—

(1) solar heating and cooling development; and

(2) geothermal power development.

(g) Transfer to Administrator of certain functions of Environmental Protection Agency

There are hereby transferred to and vested in the Administrator such functions of the Environmental Protection Agency and the officers and components thereof as relate to or are utilized in connection with research, development, and demonstration, but not assessment or monitoring for regulatory purposes, of alternative automotive power systems.

(h) Exercise of authority necessary or appropriate to perform transferred functions and carry out transferred programs

To the extent necessary or appropriate to perform functions and carry out programs transferred by this chapter, the Administrator and Commission may exercise, in relation to the functions so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such functions were transferred.

(i) Utilization of technical and management capabilities of other executive agencies; assignment of specific programs or projects in energy research and development

In the exercise of his responsibilities under section 5813 of this title, the Administrator shall utilize, with their consent, to the fullest extent he determines advisable the technical and management capabilities of other executive agencies having facilities, personnel, or other resources which can assist or advantageously be expanded to assist in carrying out such responsibilities. The Administrator shall consult with the head of each agency with respect to such facilities, personnel, or other resources, and may assign, with their consent, specific programs or projects in energy research and development as appropriate. In making such assignments under this subsection, the head of each such agency shall insure that—

(1) such assignments shall be in addition to and not detract from the basic mission responsibilities of the agency, and

(2) such assignments shall be carried out under such guidance as the Administrator deems appropriate.

(Pub. L. 93–438, title I, § 104, Oct. 11, 1974, 88 Stat. 1237; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

[1] See References in Text note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b), (c), and (h), was in the original ''this Act'', meaning Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which enacted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes under section 5801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

Section 2036 of this title, referred to in subsec. (d), was repealed by Pub. L. 95–91, title VII, § 709(c)(1), Aug. 4, 1977, 91 Stat. 608.

Section 2037 of this title, referred to in subsec. (d), was repealed by Pub. L. 99–661, div. C, title I, § 3137(c), Nov. 14, 1986, 100 Stat. 4066.

Act of July 1, 1960 (74 Stat. 336; 661–668), referred to in subsec. (e)(1), probably means Pub. L. 86–599, July 7, 1960, 74 Stat. 336, which is classified principally to chapter 18 (§ 661 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (e)(2) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of Title 30, Mineral Lands and Mining.

TRANSFER OF FUNCTIONS

GENERALLY

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Division of Naval Reactors and Division of Military Applications, both established under section 2035 of this title, and functions of Energy Research and Development Administration with respect to Military Liaison Committee, established by section 2037 of this title, referred to in subsec. (d), transferred to Department of Energy by section 7158 of this title, with such organizational units to be deemed organizational units established by chapter 84 (§ 7101 et seq.) of this title.

Functions vested in, or delegated to, Secretary of Energy and Department of Energy under or with respect to authorities formerly exercised by Bureau of Mines, but limited to research and development relating to increased efficiency of production technology of solid fuel minerals, transferred to, and vested in, Secretary of the Interior, by section 100 of Pub. L. 97–257, 96 Stat. 841, set out as a note under section 7152 of this title.

Functions of Secretary of the Interior, Department of the Interior, and officers and components of Department of the Interior exercised by Bureau of Mines relating to fuel supply and demand analysis and data gathering, research and development relating to increased efficiency of production technology of solid fuel minerals other than research relating to mine health and safety and research relating to environmental and leasing consequences of solid fuel mining, and coal preparation and analysis, referred to in subsec. (e), transferred to Secretary of Energy by section 7152(d) of this title.

DISTRIBUTION OF AUTHORITIES UNDER ATOMIC ENERGY ACT OF 1954

The legislative history of Pub. L. 93–438 (which is classified principally to this chapter) was comprised in part by Senate Report No. 93–980 and House Report No. 93–707. Senate Report No. 93–980 (similar provisions appear in House Report No. 93–707) contained the following analysis showing the distribution by Pub. L. 93–438 of separately and jointly applicable authorities under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.):

I. The following provisions of the Atomic Energy Act of 1954, as heretofore amended, apply only to ERDA [Energy Research and Development Administration]

Subsection 31b. [42 U.S.C. 2051(b)] (certain grants and contributions).

Section 33 [42 U.S.C. 2053] (''Research for Others''); provided that the NSLC retains authority to contract out for research as it deems necessary to exercise its licensing and related regulatory functions.

Chapter 5 [(sections 41–44) 42 U.S.C. 2061–2064] (''Production of Special Nuclear Material'').

Subsection 53c; 53d; and 53f. [42 U.S.C. 2073(c), (d), (f)] (distributing special nuclear material).

Section 54 [42 U.S.C. 2074] (''Foreign Distribution of Special Nuclear Material'').

Section 56 [42 U.S.C. 2076] (''Guaranteed Purchase Prices'').

Section 58 [42 U.S.C. 2078] (''Review'').

Subsection 63c. [42 U.S.C. 2093(c)] (charges for distributing source material).

Section 64 [42 U.S.C. 2094] (''Foreign Distribution of Source Material'').

Section 67 [42 U.S.C. 2097] (''Operations on Lands Belonging to the United States'').

Section 91 [42 U.S.C. 2121] (''Authority'').

Section 142 [42 U.S.C. 2162] (''Classification and Declassification of Restricted Data'').

Section 143 [42 U.S.C. 2163] (''Department of Defense Participation'').

Subsections 144a; 144b; and 144c. [42 U.S.C. 2164(a)–(c)] (international cooperation).

Subsection 151c; 151d; 151e. [42 U.S.C. 2181(c)–(e)] (certain patent aspects).

Section 153 [42 U.S.C. 2183] (''Nonmilitary Utilization'').

Section 154 [42 U.S.C. 2184] (''Injunctions'').

Section 157 [42 U.S.C. 2187] (''Commission Patent Licenses'').

Subsections 161e; 161m; 161r; 161t; 161u; and 161v. [42 U.S.C. 2201(e), (m), (r), (t)–(v)] (general provisions).

Section 164 [42 U.S.C. 2204] (''Electric Utility Contracts'').

Section 167 [42 U.S.C. 2207] (''Claims Settlements'').

II. The following provisions of the Atomic Energy Act of 1954, as heretofore amended, apply only to NSLC [Nuclear Regulatory Commission as enacted]

Subsection 53b. [42 U.S.C. 2073(b)] (minimum criteria for licenses).

Subsection 53e. [42 U.S.C. 2073(e)] (licensing conditions).

Section 62 [42 U.S.C. 2092] (''License for Transfers Required'').

Subsection 63b. [42 U.S.C. 2093(b)] (minimum criteria for licenses).

Section 69 [42 U.S.C. 2099] (''Prohibition'').

Section 101 [42 U.S.C. 2131] (''License Required'').

Section 102 [42 U.S.C. 2132] (''Utilization and Production Facilities for Industrial or Commercial Purposes'').

Section 103 [42 U.S.C. 2133] (''Commercial Licenses'').

Section 104 [42 U.S.C. 2134] (''Medical Therapy and Research and Development'').

Subsection 105c [42 U.S.C. 2135(c)] (licensing antitrust review).

Section 106 [42 U.S.C. 2136] (''Classes of Facilities'').

Section 107 [42 U.S.C. 2137] (''Operators' Licenses'').

Section 109 [42 U.S.C. 2139] (''Component Parts of Facilities'').

Subsection 161h. [42 U.S.C. 2201(h)] (licensing activities).

Subsection 161w. [42 U.S.C. 2201(w)] (licensing charges).

Section 182 [42 U.S.C. 2232] (''License Applications'').

Section 183 [42 U.S.C. 2233] (''Terms of License'').

Section 184 [42 U.S.C. 2234] (''Inalienability of Licenses'').

Section 185 [42 U.S.C. 2235] (''Construction Permits'').

Subsections 186a. and 186b. [42 U.S.C. 2236(a), (b)] (license revocation).

Section 187 [42 U.S.C. 2237] (''Modification of License'').

Section 190 [42 U.S.C. 2240] (''Licensee Incident Reports'').

Section 191 [42 U.S.C. 2241] (''Atomic Safety and Licensing Board'').

Section 192 [42 U.S.C. 2242] (''Temporary Operating License'').

Section 272 [42 U.S.C. 2019] (''Applicability of Federal Power Act'').

Section 273 [42 U.S.C. 2020] (''Licensing of Government Agencies'').

Section 274 [42 U.S.C. 2021] (''Cooperation with States'').

III. The following provisions of the Atomic Energy Act of 1954, as heretofore amended, generally apply, respectively, to the functions of the Administrator [Energy Research and Development Administration] and to NSLC [Nuclear Regulatory Commission as enacted]

Chapter 1 [(sections 1–3) 42 U.S.C. 2011–2013] (''Declaration, Findings and Purpose''); provided that all references to encouraging, promoting, utilizing, developing and participating in atomic energy or the atomic industry shall not be applicable to the NSLC.

Chapter 2 [(section 11) 42 U.S.C. 2014] (''Definitions''); provided that (i) the determinations and criteria in j. [42 U.S.C. 2014(j)] (extraordinary nuclear occurrences) shall be the responsibility of the Administrator only in regard to activities and matters not covered by the licensing and related regulatory facets of Section 170 of the Atomic Energy Act, as amended, [42 U.S.C. 2210] and (ii) the determinations in v. (production facility), z. (source material), aa. (special nuclear material), and cc. (utilization facility) [42 U.S.C. 2014(v), (z), (aa), (cc)] shall be the responsibility of the Administrator only in regard to facilities and materials not subject to licensing and related regulatory control by NSLC.

Chapter 3 [(sections 21–29) 42 U.S.C. 2031–2039] (''Organization''); except (i) as provided for in this bill, (ii) the Inspection Division established by subsection 25c. [42 U.S.C. 2035(c)] will be transferred to NSLC and the ERDA Administrator also will provide for the discharge of the inspection function under subsection 25c. in ERDA, (iii) in regard to section 29 [42 U.S.C. 2039] (''Advisory Committee on Reactor Safeguards''), it is intended that the ACRS be transferred to NSLC but that the ACRS also be made available to ERDA as the Administrator may request to perform such of the activities contemplated by section 29 as relate to functions transferred to the Administrator.

Subsections 31a; 31c; and 31d. [42 U.S.C. 2051(a), (c), (d)] (research assistance), and Section 32 [42 U.S.C. 2052] (''Research By the Commission'').

Section 51 [42 U.S.C. 2071]; provided, that the respective determinations shall be made as indicated in Chapter 2 above.

Subsection 53a [42 U.S.C. 2073(a)]; provided, that subdivisions (ii) and (iii) of said subsection (distributing and making available special nuclear material) shall apply only to ERDA, and subsection (i) (licenses) shall apply only to NSLC.

Section 55 [42 U.S.C. 2075] (''Acquisition'').

Section 57 [42 U.S.C. 2077] (''Prohibition'').

Section 61 [42 U.S.C. 2091] (''Source Material''); provided, that the respective determinations shall be made as indicated in Chapter 2 above).

Subsection 63a. (source material) [42 U.S.C. 2093(a)]; provided, that the authority to distribute shall apply only to ERDA and the authority to license shall apply only to NSLC.

Section 65 [42 U.S.C. 2095] (''Reporting'').

Section 66 [42 U.S.C. 2096] (''Acquisition'').

Section 68 [42 U.S.C. 2098] (''Public and Acquired Lands'').

Section 81 [42 U.S.C. 2111] (''Domestic Distribution''), and Section 82 [42 U.S.C. 2112] (''Foreign Distribution of Byproduct Material''); provided, that the authority to distribute shall apply only to ERDA and the authority to license shall apply only to NSLC.

Section 92 [42 U.S.C. 2122] (''Prohibition'').

Subsections 105a. and 105b. [42 U.S.C. 2135(a), (b)] (Antitrust provisions and reporting).

Section 108 [42 U.S.C. 2138] (''War or National Emergency'').

Section 110 [42 U.S.C. 2140] (''Exclusions''); it should be noted that subsection 110a. is amended by section 202 of the bill [42 U.S.C. 5842].

Chapter 11 [(sections 121–125) 42 U.S.C. 2151–2154, 2153 note] (''International Activities''); provided, that, except for licensing and regulatory aspects, the implementation of these provisions shall be the responsibility of ERDA.

Section 141 [42 U.S.C. 2161] (''policy''); provided, that the implementation of subsection 141a. shall be the responsibility of ERDA.

Subsection 144d. [42 U.S.C. 2164(d)] (Presidential authorization).

Section 145 [42 U.S.C. 2165] (''Restrictions''); except that only the Administrator shall establish the basic standards and procedures for the safeguarding of the national defense and security.

Section 146 [42 U.S.C. 2166] (''General Provisions'').

Subsection 151a and 151b. [42 U.S.C. 2181(a), (b)] (certain inventions and discoveries).

Section 152 [42 U.S.C. 2182] (''Inventions Made or Conceived During Commission Contracts'').

Section 155 [42 U.S.C. 2185] (''Prior Art'').

Section 156 [42 U.S.C. 2186] (''Commission Patent Licenses'').

Section 158 [42 U.S.C. 2188] (''Monopolistic Use of Patents'').

Section 159 [42 U.S.C. 2189] (''Federally Financed Research'').

Section 160 [42 U.S.C. 2190] (''Saving Clause'').

Subsections 161a., 161b., 161c., 161d., 161f., and 161g. [42 U.S.C. 2201(a)–(d), (f), (g)] (general authority).

Subsection 161i. and 161j. [42 U.S.C. 2201(i), (j)] (certain regulations or orders and dispositions); provided, that the Administrator shall establish the basic standards and procedures respecting the national security.

Subsections 161k. [42 U.S.C. 2201(k)] (firearms); 161n. [42 U.S.C. 2201(n)] (delegations), provided that no functions delegated to officers of NSLC shall include functions relating to the development of atomic energy or the atomic industry; 161*o*. (reports and records), 161p. (rules and regulations), 161q. (rights-of-way), and 161s. (succession of authority) [42 U.S.C. 2201(*o*)–(q), (s)].

Section 162 [42 U.S.C. 2202] (''Contracts'').

Section 163 [42 U.S.C. 2203] (''Advisory Committees'').

Section 165 [42 U.S.C. 2205] (''Contract Practices'').

Section 166 [42 U.S.C. 2206] (''Comptroller General Audit''); it should be noted that section 305 of the bill [(section 306 as passed) 42 U.S.C. 5876] also makes this section applicable to ERDA's contracts for non nuclear activities.

Section 168 [42 U.S.C. 2208] (''Payments in Lieu of Taxes'').

Section 169 [42 U.S.C. 2209] (''No Subsidy'').

Section 170 [42 U.S.C. 2210] (''Indemnification and Limitation of Liability'').

Chapter 15 [(sections 171–174) 42 U.S.C. 2221–2224] (''Compensation for Private Property Acquired'').

Section 181 [42 U.S.C. 2231] (''General'').

Subsection 186c. [42 U.S.C. 2236(c)] (Retaking and Recapture); provided that the Administrator shall establish the basic standards and procedures in regard to safeguarding the national defense and security.

Section 188 [42 U.S.C. 2238] (''Continued Operation of Facilities''); provided, that findings and judgments respecting the production program shall be the responsibility of the Administrator.

Section 189 [42 U.S.C. 2239] (''Hearings and Judicial Review'').

Chapter 17 [(sections 201–207) 42 U.S.C. 2251–2257] (''Joint Committee on Atomic Energy'').

Chapter 18 [(sections 221–234) 42 U.S.C. 2271–2282] (''Enforcement''); except for Section 234 [42 U.S.C. 2282] (''Civil Monetary Penalties for Violation of Licensing Requirements'') which is applicable only to NSLC.

Section 241 [42 U.S.C. 2015] (''Transfer of Property'').
Section 251 [42 U.S.C. 2016] (''Report to the Congress'').
Section 261 [42 U.S.C. 2017] (''Appropriations'').
Section 271 [42 U.S.C. 2018] (''Agency Jurisdiction'').
Section 281 [42 U.S.C. 2011 note] (''Separability'') and Section 291 [42 U.S.C. 2011 note] (''Short Title'').

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 5815. Administrative provisions

(a) Rules and regulations

The Administrator is authorized to prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.

(b) Policy planning and evaluation

The Administrator shall engage in such policy planning, and perform such program evaluation analyses and other studies, as may be necessary to promote the efficient and coordinated administration of the Administration and properly assess progress toward the achievement of its missions.

(c) Delegation of functions

Except as otherwise expressly provided by law, the Administrator may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate.

(d) Organization

Except as provided in sections 5812 and 5814(d) of this title, the Administrator may organize the Administration as he may deem to be necessary or appropriate.

(e) Field offices

The Administrator is authorized to establish, maintain, alter, or discontinue such State, regional, district, local, or other field offices as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.

(f) Seal

The Administrator shall cause a seal of office to be made for the Administration of such device as he shall approve, and judicial notice shall be taken of such seal.

(g) Working capital fund

The Administrator is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency. There shall be transferred to the fund the stocks of supplies, equipment, assets other than real property, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized. The working capital fund shall recover, from the appropriations and funds for which services are performed, either in advance or by way of reimbursement, amounts which will approximate the costs incurred, including the accrual or annual leave and the depreciation of equipment. The fund shall also be credited with receipts from the sale or exchange of its property, and receipts in payment for loss or damage to property owned by the fund.

(h) Information from other agencies

Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Administrator, upon his request, any information or other data which the Administrator deems necessary to carry out his duties under this subchapter.

(Pub. L. 93–438, title I, § 105, Oct. 11, 1974, 88 Stat. 1238.)

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5816. Personnel and services

(a) Appointment and compensation of officers and employees

The Administrator is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including attorneys, pursuant to section 2201(d) of this title as are necessary to perform the functions now or hereafter vested in him and to prescribe their functions.

(b) Employment of experts and consultants

The Administrator is authorized to obtain services as provided by section 3109 of title 5.

(c) Participation of military personnel

The Administrator is authorized to provide for participation of military personnel in the performance of his functions. Members of the Army, the Navy, the Air Force, or the Marine Corps may be detailed for service in the Administration by the appropriate military Secretary, pursuant to cooperative agreements with the Secretary, for service in the Administration in positions other than a position the occupant of which must be approved by and with the advice and consent of the Senate.

(d) Status of military personnel unaffected

Appointment, detail, or assignment to, acceptance of, and service in, any appointive or other position in the Administration under this section shall in no way affect the status, office,

rank, or grade which such officers or enlisted men may occupy or hold, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. A member so appointed, detailed, or assigned shall not be subject to direction or control by his Armed Force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which appointed, detailed, or assigned.

(e) Transportation and per diem expenses

The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5 for travel between places of recruitment and duty, and while at places of duty, of persons appointed for emergency, temporary, or seasonal services in the field service of the Administration.

(f) Personnel of other agencies

The Administrator is authorized to utilize, on a reimbursable basis, the services of any personnel made available by any department, agency, or instrumentality, including any independent agency of the Government.

(g) Advisory boards

The Administrator is authorized to establish advisory boards, in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92–463), to advise with and make recommendations to the Administrator on legislation, policies, administration, research, and other matters.

(h) Employment of noncitizens

The Administrator is authorized to employ persons who are not citizens of the United States in expert, scientific, technical, or professional capacities whenever he deems it in the public interest.

(Pub. L. 93–438, title I, § 106, Oct. 11, 1974, 88 Stat. 1239.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (g), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 5816a. Repealed. Pub. L. 104–106, div. D, title XLIII, § 4304(b)(7), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 95–39, title III, § 308, June 3, 1977, 91 Stat. 189; Pub. L. 96–470, title II, § 203(d), Oct. 19, 1980, 94 Stat. 2243, related to financial statements of Department of Energy officers and employees.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

§ 5817. Powers of Administrator

(a) Research and development

The Administrator is authorized to exercise his powers in such manner as to insure the continued conduct of research and development and related activities in areas or fields deemed by the Administrator to be pertinent to the acquisition of an expanded fund of scientific, technical, and practical knowledge in energy matters. To this end, the Administrator is authorized to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities with private or public institutions or persons, including participation in joint or cooperative projects of a research, developmental, or experimental nature; to make payments (in lump sum or installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments); and generally to take such steps as he may deem necessary or appropriate to perform functions now or hereafter vested in him. Such functions of the Administrator under this chapter as are applicable to the nuclear activities transferred pursuant to this subchapter shall be subject to the provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and to other authority applicable to such nuclear activities. The nonnuclear responsibilities and functions of the Administrator referred to in sections 5813 and 5814 of this title shall be carried out pursuant to the provisions of this chapter, applicable authority existing immediately before the effective date of this chapter, or in accordance with the provisions of chapter 4 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2051–2053).

(b) Facilities and real property

Except for public buildings as defined in chapter 33 of title 40, and with respect to leased space subject to the provisions of Reorganization Plan Numbered 18 of 1950, the Administrator is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain facilities and real property as the Administrator deems to be necessary in and outside of the District of Columbia. Such authority shall apply only to facilities required for the maintenance and operation of laboratories, research and testing sites and facilities, quarters, and related accommodations for employees and dependents of employees of the Administration, and such other special-purpose real property as the Administrator deems to be necessary in and outside the District of Columbia. Title to any property or interest therein, real, personal, or mixed, acquired pur-

suant to this section, shall be in the United States.

(c) Services for employees at remote locations

(1) The Administrator is authorized to provide, construct, or maintain, as necessary and when not otherwise available, the following for employees and their dependents stationed at remote locations:

(A) Emergency medical services and supplies.

(B) Food and other subsistence supplies.

(C) Messing facilities.

(D) Audiovisual equipment, accessories, and supplies for recreation and training.

(E) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons.

(F) Living and working quarters and facilities.

(G) Transportation for school-age dependents of employees to the nearest appropriate educational facilities.

(2) The furnishing of medical treatment under subparagraph (A) of paragraph (1) and the furnishing of services and supplies under paragraphs (B) and (C) of paragraph (1) shall be at prices reflecting reasonable value as determined by the Administrator.

(3) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Administrator to pay directly the cost of such work or services, to repay or make advances to appropriations or funds which do or will bear all or a part of such cost, or to refund excess sums when necessary; except that such payments may be credited to a service or working capital fund otherwise established by law, and used under the law governing such funds, if the fund is available for use by the Administrator for performing the work or services for which payment is received.

(d) Acquisition of copyrights and patents

The Administrator is authorized to acquire any of the following described rights if the property acquired thereby is for use in, or is useful to, the performance of functions vested in him:

(1) Copyrights, patents, and applications for patents, designs, processes, specifications, and data.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Releases, before suit is brought, for past infringement of patents or copyrights.

(e) Dissemination of information

Subject to the provisions of chapter 12 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2161–2166), and other applicable law, the Administrator shall disseminate scientific, technical, and practical information acquired pursuant to this subchapter through information programs and other appropriate means, and shall encourage the dissemination of scientific, technical, and practical information relating to energy so as to enlarge the fund of such information and to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding.

(f) Gifts and bequests

The Administrator is authorized to accept, hold, administer, and utilize gifts, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Administration. Gifts and bequests of money and proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Administrator. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift or bequest to the United States.

(Pub. L. 93–438, title I, § 107, Oct. 11, 1974, 88 Stat. 1240.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in subsecs. (a) and (e), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. Chapters 4 and 12 of the Atomic Energy Act of 1954, as amended, are classified generally to subchapters III (§ 2051 et seq.) and XI (§ 2161 et seq.), respectively, of division A of chapter 23 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The effective date of this chapter, referred to in subsec. (a), refers to the effective date of Pub. L. 93–438. See section 312 of Pub. L. 93–438, set out as an Effective Date; Interim Appointments note under section 5801 of this title.

Reorganization Plan Numbered 18 of 1950, referred to in subsec. (b), is Reorg. Plan No. 18 of 1950, eff. July 1, 1950, 15 F.R. 3177, 64 Stat. 1270, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (b), ''chapter 33 of title 40'' substituted for ''the Public Buildings Act of 1959, as amended'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

AIR TRANSPORTATION OF PLUTONIUM; EXEMPT SHIPMENT OF PLUTONIUM

Pub. L. 94–187, title V, Dec. 31, 1975, 89 Stat. 1077, provided that:

''SEC. 501. The Energy Research and Development Administration shall not ship plutonium in any form by aircraft whether exports, imports, or domestic shipment: *Provided*, That any exempt shipments of plutonium, as defined by section 502, are not subject to this restriction. This restriction shall be in force until the Energy Research and Development Administration has certified to the Joint Committee on Atomic Energy of the Congress that a safe container has been developed and tested which will not rupture under crash and blast testing equivalent to the crash and explosion of a high-flying aircraft.

''SEC. 502. For the purposes of this title, the term 'exempt shipments of plutonium' shall include the following:

''(1) Plutonium shipments in any form designed for medical application.

''(2) Plutonium shipments which pursuant to rules promulgated by the Administrator of the Energy Re-

search and Development Administration are determined to be made for purposes of national security, public health and safety, or emergency maintenance operations.

''(3) Shipments of small amounts of plutonium deemed by the Administrator of the Energy Research and Development Administration to require rapid shipment by air in order to preserve the chemical, physical, or isotopic properties of the transported item or material.''

§ 5817a. Employee-suggested research projects; approval; funding; reports

(a) Any Government-owned contractor operated laboratory, energy research center, or other laboratory performing functions under contract to the Administration may, with the approval of the Administrator, use a reasonable amount of its operating budget for the funding of employee-suggested research projects up to the pilot stage of development. It shall be a condition of any such approval that the director of the laboratory or center involved form an internal review mechanism for determining which employee-suggested projects merit funding in a given fiscal year; and any such project may be funded in one or more succeeding years if the review process indicates that it merits such funding.

(b) Each director of a laboratory or center specified in subsection (a) of this section shall submit an annual report to the Administrator on projects being funded under this section; and on completion of each such project shall submit a report to the Technical Information Center of the Administration for inclusion in its data base.

(Pub. L. 95–39, title III, § 303, June 3, 1977, 91 Stat. 189.)

CODIFICATION

Section was not enacted as part of the Energy Reorganization Act of 1974 which comprises this chapter.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5818. Repealed. Pub. L. 95–91, title VII, § 709(b), Aug. 4, 1977, 91 Stat. 608

Section, Pub. L. 93–438, title I, § 108, Oct. 11, 1974, 88 Stat. 1241; Pub. L. 94–385, title I, §§ 162, 163, Aug. 14, 1976, 90 Stat. 1140, 1142; Pub. L. 95–39, title V, § 510(b), (c), June 3, 1977, 91 Stat. 200, related to establishment of an Energy Resources Council.

EXECUTIVE ORDER NO. 11814

Ex. Ord. No. 11814, Oct. 11, 1974, 39 F.R. 36955, as amended by Ex. Ord. No. 11819, Nov. 16, 1974, 39 F.R. 40743; Ex. Ord. No. 11855, May 1, 1975, 40 F.R. 19423, which related to the activation of the Energy Resources Council, was revoked by Ex. Ord. No. 12083, Sept. 27, 1978, 43 F.R. 44813, set out as a note under section 7101 of this title.

§ 5819. Report to Congress on future reorganization

(a) The President shall transmit to the Congress as promptly as possible, but not later than June 30, 1975, such additional recommendations as he deems advisable for organization of energy and related functions in the Federal Government, including, but not limited to, whether or not there shall be established (1) a Department of Energy and Natural Resources, (2) an Energy Policy Council, and (3) a consolidation in whole or in part of regulatory functions concerning energy.

(b) This report shall replace and serve the purposes of the report required by section 774(a)(4) of title 15.

(Pub. L. 93–438, title I, § 109, Oct. 11, 1974, 88 Stat. 1242.)

§ 5820. Coordination with environmental efforts

The Administrator is authorized to establish programs to utilize research and development performed by other Federal agencies to minimize the adverse environmental effects of energy projects. The Administrator of the Environmental Protection Agency, as well as other affected agencies and departments, shall cooperate fully with the Administrator in establishing and maintaining such programs, and in establishing appropriate interagency agreements to develop cooperative programs and to avoid unnecessary duplication.

(Pub. L. 93–438, title I, § 110, Oct. 11, 1974, 88 Stat. 1242.)

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

RESEARCH APPLIED TO NATIONAL NEEDS; COORDINATION OF ENERGY RESEARCH AND DEVELOPMENT ACTIVITIES

Pub. L. 94–471, § 2(e)(3), Oct. 11, 1976, 90 Stat. 2053, provided that: ''In the conduct of the energy research and development activities under the 'Research Applied to National Needs' category, the National Science Foundation shall coordinate all new energy research project awards with the Administrator of the Energy Research and Development Administration or his designee.''

Similar provisions were contained in Pub. L. 94–86, § 5, Aug. 9, 1975, 89 Stat. 430.

§ 5821. Annual authorization Acts

(a) General requirements; applicability to appropriations

All appropriations made to the Energy Research and Development Administration or the Administrator shall, except as otherwise provided by law, be subject to annual authorization in accordance with section 2017 of this title, section 5915 of this title, and section 5875 of this title. The provisions of this section shall apply with respect to appropriations made pursuant to the Act providing such authorization (hereinafter in this section referred to as ''annual authorization Acts'').

(b) Requirements and limitations respecting funds appropriated for operating expenses

(1) Funds appropriated pursuant to an annual authorization Act for ''Operating expenses'' may be used for—

(A) the construction or acquisition of any facilities, or major items of equipment, which

may be required at locations other than installations of the Administration, for the performance of research, development, and demonstration activities, and

(B) grants to any organization for purchase or construction of research facilities.

No such funds shall be used under this subsection for the acquisition of land. Fee title to all such facilities and items of equipment shall be vested in the United States, unless the Administrator or his designee determines in writing that the research, development, and demonstration authorized by such Act would best be implemented by permitting fee title or any other property interest to be vested in an entity other than the United States; but before approving the vesting of such title or interest in such entity, the Administrator shall (i) transmit such determination, together with all pertinent data, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and (ii) wait a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) No funds shall be used under paragraph (1) for any facility or major item of equipment, including collateral equipment, if the estimated cost to the Federal Government exceeds $5,000,000 in the case of such a facility or $2,000,000 in the case of such an item of equipment, unless such facility or item has been previously authorized by the appropriate committees of the House of Representatives and the Senate, or the Administrator—

(A) transmit to the appropriate committees of the House of Representatives and the Senate a report on such facility or item showing its nature, purpose, and estimated cost, and

(B) waits a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(c) Additional requirements and limitations respecting funds appropriated for operating expenses

(1) Not to exceed 1 per centum of all funds appropriated pursuant to any annual authorization Act for ''Operating expenses'' may be used by the Administrator to construct, expand, or modify laboratories and other facilities, including the acquisition of land, at any location under the control of the Administrator, if the Administrator determines that (A) such action would be necessary because of changes in the national programs authorized to be funded by such Act or because of new scientific or engineering developments, and (B) deferral of such action until the enactment of the next authorization Act would be inconsistent with the policies established by Congress for the Administration.

(2) No funds may be obligated for expenditure or expended under paragraph (1) for activities described in such paragraph unless—

(A) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the Administrator has transmitted to the appropriate committees of the House of Representatives and the Senate a written report containing a full and complete statement concerning (i) the nature of the construction, expansion, or modification involved, (ii) the cost thereof, including the cost of any real estate action pertaining thereto, and (iii) the reason why such construction, expansion, or modification is necessary and in the national interest, or

(B) each such committee before the expiration of such period has transmitted to the Administrator a written notice to the effect that such committee has no objection to the proposed action;

except that this paragraph shall not apply to any project the estimated total cost of which does not exceed $50,000.

(d) Requirements respecting amounts appropriated in annual appropriation Act for use in programs in excess of amount actually authorized for use in program not presented to, or requested of Congress; reduction in aggregate amount available for categories of coal, etc., from sums appropriated

(1) Except as otherwise provided in the authorization Act involved—

(A) no amount appropriated pursuant to any annual authorization Act may be used for any program in excess of the amount actually authorized for that particular program by such Act, and

(B) no amount appropriated pursuant to any annual authorization Act may be used for any program which has not been presented to, or requested of the Congress,

unless (i) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the receipt by the appropriate committees of the House of Representatives and the Senate of notice given by the Administrator containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or (ii) each such committee before the expiration of such period has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) Notwithstanding any other provision of this section or the authorization Act involved, the aggregate amount available for use within the categories of coal, petroleum and natural gas, oil shale, solar, geothermal, nuclear energy (non-weapons), environment and safety, and conservation from sums appropriated pursuant to an annual authorization Act may not, as a re-

sult of reprograming, be decreased by more than 10 per centum of the total of the sums appropriated pursuant to such Act for those categories.

(e) Requirements and limitations respecting merger of amounts appropriated for operating expenses or for plant and capital equipment

Subject to the applicable requirements and limitations of this section and the authorization Act involved, when so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for ''Operating expenses'' or for ''Plant and capital equipment'' may be merged with any other amounts appropriated for like purposes pursuant to any other Act authorizing appropriations for the Administration: *Provided*, That no such amounts appropriated for ''Plant and capital equipment'' may be merged with amounts appropriated for ''Operating expenses''.

(f) Availability until expended of amounts appropriated for operating expenses or for plant and capital equipment

When so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for ''Operating expenses'' or for ''Plant and capital equipment'' may remain available until expended.

(g) Performance of construction design services by Administrator

The Administrator is authorized to perform construction design services for any administration construction project whenever (1) such construction project has been included in a proposed authorization bill transmitted to the Congress by the Administration, and (2) the Administration determines that the project is of such urgency in order to meet the needs of national defense or protection of life and property or health and safety that construction of the project should be initiated promptly upon enactment of legislation appropriating funds for its construction.

(h) Retention and use for operating expenses, and availability until expended, of moneys received by Administration; exceptions

When so specified in appropriation Acts, any moneys received by the Administration may be retained and used for operating expenses, and may remain available until expended, notwithstanding the provisions of section 3302(b) of title 31; except that—

(1) this subsection shall not apply with respect to sums received from disposal of property under the Atomic Energy Community Act of 1955 [42 U.S.C. 2301 et seq.] or the Strategic and Critical Materials Stockpiling Act, as amended [50 U.S.C. 98 et seq.], or with respect to fees received for tests or investigations under the Act of May 16, 1910, as amended (30 U.S.C. 7); and

(2) revenues received by the Administration from the enrichment of uranium shall (when so specified) be retained and used for the specific purpose of offsetting costs incurred by the Administration in providing uranium enrichment service activities.

(i) Requirements respecting transfers of sums appropriated for operating expenses to other Government agencies; merger of transferred sums

When so specified in an appropriation Act, transfers of sums from the ''Operating expenses'' appropriation made pursuant to an annual authorization Act may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriations to which they are transferred.

(Pub. L. 93–438, title I, § 111, as added Pub. L. 95–238, title II, § 201, Feb. 25, 1978, 92 Stat. 56; amended Pub. L. 103–437, § 15(c)(7), Nov. 2, 1994, 108 Stat. 4592.)

REFERENCES IN TEXT

The Atomic Energy Community Act of 1955, referred to in subsec. (h)(1), is act Aug. 4, 1955, ch. 543, 69 Stat. 472, as amended, which is classified principally to chapter 24 (§ 2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

The Strategic and Critical Materials Stockpiling Act, as amended, referred to in subsec. (h)(1), is act June 7, 1939, ch. 190, as revised generally by Pub. L. 96–41, § 2, July 30, 1979, 93 Stat. 319, which is classified generally to subchapter III (§ 98 et seq.) of chapter 5 of Title 50, War and National Defense. For complete classification of this Act to the Code, see section 98 of Title 50 and Tables.

Act of May 16, 1910, as amended, referred to in subsec. (h)(1), is act May 16, 1910, ch. 240, 36 Stat. 369, as amended, which enacted sections 1, 3, and 5 to 7 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (h), ''section 3302(b) of title 31'' substituted for ''section 3617 of the Revised Statutes (31 U.S.C. 484)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

Provisions similar to those in subsec. (g) of this section were contained in the following appropriation authorization acts, formerly classified to section 2017a–1 of this title.

Pub. L. 95–39, title III, § 304, June 3, 1977, 91 Stat. 189.
Pub. L. 94–187, title III, § 301, Dec. 31, 1975, 89 Stat. 1073.
Pub. L. 93–276, title I, § 103, May 10, 1974, 88 Stat. 118.
Pub. L. 93–60, § 103, July 6, 1973, 87 Stat. 144.
Pub. L. 92–314, title I, § 103, June 16, 1972, 86 Stat. 225.
Pub. L. 92–84, title I, § 103, Aug. 11, 1971, 85 Stat. 306.
Pub. L. 91–273, § 103, June 2, 1970, 84 Stat. 300.
Pub. L. 91–44, § 103, July 11, 1969, 83 Stat. 47.
Pub. L. 90–289, § 103, Apr. 19, 1968, 82 Stat. 97.
Pub. L. 90–56, § 103, July 26, 1967, 81 Stat. 125.
Pub. L. 89–428, § 103, May 21, 1966, 80 Stat. 163.
Pub. L. 89–32, § 103, June 2, 1965, 79 Stat. 122.
Pub. L. 88–332, § 104, June 30, 1964, 78 Stat. 229.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–437 substituted ''Committee on Science, Space, and Technology'' for ''Committee on Science and Technology''.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by sec-

tion 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95–238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Section 209 of title II of Pub. L. 95–238 provided that:

''(a) Nothing in this title [enacting this section and sections 5556a and 5919 of this title, amending sections 2391, 2394, 5905, 5906, and 5914 of this title, and enacting provisions set out as notes under section 7256 of this title and section 2429 of Title 22, Foreign Relations and Intercourse] shall apply with respect to any authorization or appropriation for any military application of nuclear energy, for research and development in support of the Armed Forces, or for the common defense and security of the United States.

''(b)(1) The term 'military application' means any activity authorized or permitted by chapter 9 of the Atomic Energy Act of 1954, as amended (Public Law 83–703, as amended; 42 U.S.C. 2121, 2122).

''(2) The term 'research and development' as used in this section, is defined by section 11 x., of the Atomic Energy Act of 1954, as amended (Public Law 83–703, as amended; 42 U.S.C. 2014).

''(3) The term 'common defense and security' means the common defense and security of the United States as used in the Atomic Energy Act of 1954, as amended (Public Law 83–703, as amended) [section 2011 et seq. of this title].''

SUBCHAPTER II—NUCLEAR REGULATORY COMMISSION; NUCLEAR WHISTLEBLOWER PROTECTION

§ 5841. Establishment and transfers

(a) Composition; Chairman; Acting Chairman; quorum; official spokesman; seal; functions of Chairman and Commission

(1) There is established an independent regulatory commission to be known as the Nuclear Regulatory Commission which shall be composed of five members, each of whom shall be a citizen of the United States. The President shall designate one member of the Commission as Chairman thereof to serve as such during the pleasure of the President. The Chairman may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman in the absence of the Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, persons, or the public, and, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct. The Commission shall have an official seal which shall be judicially noticed.

(2) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (a) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman, and except as otherwise provided in this chapter), (b) the distribution of business among such personnel and among administrative units of the Commission, and (c) the use and expenditure of funds.

(3) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(4) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(5) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

(b) Appointment of members

(1) Members of the Commission shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Appointments of members pursuant to this subsection shall be made in such a manner that not more than three members of the Commission shall be members of the same political party.

(c) Term of office

Each member shall serve for a term of five years, each such term to commence on July 1, except that of the five members first appointed to the Commission, one shall serve for one year, one for two years, one for three years, one for four years, and one for five years, to be designated by the President at the time of appointment; and except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. For the purpose of determining the expiration date of the terms of office of the five members first appointed to the Nuclear Regulatory Commission, each such term shall be deemed to have begun July 1, 1975.

(d) Submission of appointments to Senate

Such initial appointments shall be submitted to the Senate within sixty days of October 11, 1974. Any individual who is serving as a member of the Atomic Energy Commission on October 11, 1974, and who may be appointed by the President to the Commission, shall be appointed for a term designated by the President, but which term shall terminate not later than the end of his present term as a member of the Atomic Energy Commission, without regard to the requirements of subsection (b)(2) of this section. Any subsequent appointment of such individuals shall be subject to the provisions of this section.

(e) Removal of members; prohibition against engagement in business or other employment

Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No member of the Commission shall engage in any business, vocation, or employment other than that of serving as a member of the Commission.

(f) Transfer of licensing and regulatory functions of Atomic Energy Commission

There are hereby transferred to the Commission all the licensing and related regulatory functions of the Atomic Energy Commission, the Chairman and members of the Commission, the General Counsel, and other officers and components of the Commission—which functions officers, components, and personnel are excepted from the transfer to the Administrator by section 5814(c) of this title.

(g) Additional transfers

In addition to other functions and personnel transferred to the Commission, there are also transferred to the Commission—

(1) the functions of the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Board;

(2) such personnel as the Director of the Office of Management and Budget determines are necessary for exercising responsibilities under section 5845 of this title, relating to, research, for the purpose of confirmatory assessment relating to licensing and other regulation under the provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and of this chapter.

(Pub. L. 93–438, title II, § 201, Oct. 11, 1974, 88 Stat. 1242; Pub. L. 94–79, title II, §§ 201–203, Aug. 9, 1975, 89 Stat. 413, 414; Pub. L. 95–209, § 2, Dec. 13, 1977, 91 Stat. 1482; Pub. L. 99–386, title I, § 109, Aug. 22, 1986, 100 Stat. 822.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2) and (g)(2), was in the original ''the Energy Reorganization Act of 1974'', and ''this Act'', respectively, meaning Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which enacted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes under section 5801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (g), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1986—Subsec. (h). Pub. L. 99–386 struck out subsec. (h) which related to quarterly reports on compliance with equal employment requirements for grades GS–11 or above.

1977—Subsec. (h). Pub. L. 95–209 added subsec. (h).

1975—Subsec. (a). Pub. L. 94–79, § 201, designated existing provisions as par. (1) and added pars. (2) to (5).

Subsec. (c). Pub. L. 94–79, §§ 202, 203, provided for appointment for remainder of term where vacancy occurs prior to expiration of term of predecessor appointee and designated July 1, 1975, as commencement date of initial appointees for purpose of determining expiration date of terms of office.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out below.

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

TRANSPORTATION OF PLUTONIUM BY AIRCRAFT THROUGH UNITED STATES AIR SPACE

Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121, and Pub. L. 100–203, title V, § 5062, Dec. 22, 1987, 101 Stat. 1330–251, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, no form of plutonium may be transported by aircraft through the air space of the United States from a foreign nation to a foreign nation unless the Nuclear Regulatory Commission has certified to Congress that the container in which such plutonium is transported is safe, as determined in accordance with subsection (b), the second undesignated paragraph under section 201 of Public Law 94–79 (89 Stat. 413; 42 U.S.C. 5841 note), and all other applicable laws.

''(b) RESPONSIBILITIES OF THE NUCLEAR REGULATORY COMMISSION.—

''(1) DETERMINATION OF SAFETY.—The Nuclear Regulatory Commission shall determine whether the container referred to in subsection (a) is safe for use in the transportation of plutonium by aircraft and transmit to Congress a certification for the purposes of such subsection in the case of each container determined to be safe.

''(2) TESTING.—In order to make a determination with respect to a container under paragraph (1), the Nuclear Regulatory Commission shall—

''(A) require an actual drop test from maximum cruising altitude of a full-scale sample of such container loaded with test materials; and

''(B) require an actual crash test of a cargo aircraft fully loaded with full-scale samples of such container loaded with test material unless the Commission determines, after consultation with an independent scientific review panel, that the stresses on the container produced by other tests used in developing the container exceed the stresses which would occur during a worst case plutonium air shipment accident.

''(3) LIMITATION.—The Nuclear Regulatory Commission may not certify under this section that a container is safe for use in the transportation of plutonium by aircraft if the container ruptured or released its contents during testing conducted in accordance with paragraph (2).

''(4) EVALUATION.—The Nuclear Regulatory Commission shall evaluate the container certification required by title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.) and subsection (a) in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 et seq.) and all other applicable law.

''(c) CONTENT OF CERTIFICATION.—A certification referred to in subsection (a) with respect to a container shall include—

''(1) the determination of the Nuclear Regulatory Commission as to the safety of such container;

''(2) a statement that the requirements of subsection (b)(2) were satisfied in the testing of such container; and

''(3) a statement that the container did not rupture or release its contents into the environment during testing.

''(d) DESIGN OF TESTING PROCEDURES.—The tests required by subsection (b) shall be designed by the Nu-

clear Regulatory Commission to replicate actual worst case transportation conditions to the maximum extent practicable. In designing such tests, the Commission shall provide for public notice of the proposed test procedures, provide a reasonable opportunity for public comment on such procedures, and consider such comments, if any.

''(e) TESTING RESULTS: REPORTS AND PUBLIC DISCLOSURE.—The Nuclear Regulatory Commission shall transmit to Congress a report on the results of each test conducted under this section and shall make such results available to the public.

''(f) ALTERNATIVE ROUTES AND MEANS OF TRANSPORTATION.—With respect to any shipments of plutonium from a foreign nation to a foreign nation which are subject to United States consent rights contained in an Agreement for Peaceful Nuclear Cooperation, the President is authorized to make every effort to pursue and conclude arrangements for alternative routes and means of transportation, including sea shipment. All such arrangements shall be subject to stringent physical security conditions, and other conditions designed to protect the public health and safety, and provisions of this section, and all other applicable laws.

''(g) INAPPLICABILITY TO MEDICAL DEVICES.—Subsections (a) through (e) shall not apply with respect to plutonium in any form contained in a medical device designed for individual human application.

''(h) INAPPLICABILITY TO MILITARY USES.—Subsections (a) through (e) shall not apply to plutonium in the form of nuclear weapons nor to other shipments of plutonium determined by the Department of Energy to be directly connected with the United States national security or defense programs.

''(i) INAPPLICABILITY TO PREVIOUSLY CERTIFIED CONTAINERS.—This section shall not apply to any containers for the shipment of plutonium previously certified as safe by the Nuclear Regulatory Commission under Public Law 94–79 (89 Stat. 413; 42 U.S.C. 5841 note).

''(j) PAYMENT OF COSTS.—All costs incurred by the Nuclear Regulatory Commission associated with the testing program required by this section, and administrative costs related thereto, shall be reimbursed to the Nuclear Regulatory Commission by any foreign country receiving plutonium shipped through United States airspace in containers specified by the Commission.''

RESIDENT INSPECTOR PROGRAM; IMPLEMENTATION AND ACCELERATION OF ASSIGNMENT OF PERSONNEL; STUDY OF EXISTING AND ALTERNATE PROGRAMS FOR IMPROVING QUALITY ASSURANCE AND CONTROL; PILOT PROGRAMS TO REVIEW AND EVALUATE ALTERNATIVE PROGRAMS; SCOPE OF PILOT PROGRAM; REPORT TO CONGRESS; CONTENTS

Pub. L. 97–415, § 13, Jan. 4, 1983, 96 Stat. 2074, provided that:

''(a) The Nuclear Regulatory Commission is authorized and directed to implement and accelerate the resident inspector program so as to assure the assignment of at least one resident inspector by the end of fiscal year 1982 at each site at which a commercial nuclear powerplant is under construction and construction is more than 15 percent complete. At each such site at which construction is not more than 15 percent complete, the Commission shall provide that such inspection personnel as the Commission deems appropriate shall be physically present at the site at such times following issuance of the construction permit as may be necessary in the judgment of the Commission.

''(b) The Commission shall conduct a study of existing and alternative programs for improving quality assurance and quality control in the construction of commercial nuclear powerplants. In conducting the study, the Commission shall obtain the comments of the public, licensees of nuclear powerplants, the Advisory Committee on Reactor Safeguards, and organizations comprised of professionals having expertise in appropriate fields. The study shall include an analysis of the following:

''(1) providing a basis for quality assurance and quality control, inspection, and enforcement actions through the adoption of an approach which is more prescriptive than that currently in practice for defining principal architectural and engineering criteria for the construction of commercial nuclear powerplants;

''(2) conditioning the issuance of construction permits for commercial nuclear powerplants on a demonstration by the licensee that the licensee is capable of independently managing the effective performance of all quality assurance and quality control responsibilities for the powerplant;

''(3) evaluations, inspections, or audits of commercial nuclear powerplant construction by organizations comprised of professionals having expertise in appropriate fields which evaluations, inspections, or audits are more effective than those under current practice;

''(4) improvement of the Commission's organization, methods, and programs for quality assurance development, review, and inspection; and

''(5) conditioning the issuance of construction permits for commercial nuclear powerplants on the permittee entering into contracts or other arrangements with an independent inspector to audit the quality assurance program to verify quality assurance performance.

For purposes of paragraph (5), the term 'independent inspector' means a person or other entity having no responsibility for the design or construction of the plant involved. The study shall also include an analysis of quality assurance and quality control programs at representative sites at which such programs are operating satisfactorily and an assessment of the reasons therefor.

''(c) For purposes of—

''(1) determining the best means of assuring that commercial nuclear powerplants are constructed in accordance with the applicable safety requirements in effect pursuant to the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; and

''(2) assessing the feasibility and benefits of the various means listed in subsection (b);

the Commission shall undertake a pilot program to review and evaluate programs that include one or more of the alternative concepts identified in subsection (b) for the purposes of assessing the feasibility and benefits of their implementation. The pilot program shall include programs that use independent inspectors for auditing quality assurance responsibilities of the licensee for the construction of commercial nuclear powerplants, as described in paragraph (5) of subsection (b). The pilot program shall include at least three sites at which commercial nuclear powerplants are under construction. The Commission shall select at least one site at which quality assurance and quality control programs have operated satisfactorily, and at least two sites with remedial programs underway at which major construction, quality assurance, or quality control deficiencies (or any combination thereof) have been identified in the past. The Commission may require any changes in existing quality assurance and quality control organizations and relationships that may be necessary at the selected sites to implement the pilot program.

''(d) Not later than fifteen months after the date of the enactment of this Act [Jan. 4, 1983], the Commission shall complete the study required under subsection (b) and submit to the United States Senate and House of Representatives a report setting forth the results of the study. The report shall include a brief summary of the information received from the public and from other persons referred to in subsection (b) and a statement of the Commission's response to the significant comments received. The report shall also set forth an analysis of the results of the pilot program required under subsection (c). The report shall be accompanied by the recommendations of the Commission, including any legislative recommendations, and a description of any administrative actions that the Commission has undertaken or intends to undertake, for improving quality assurance and quality control programs that

are applicable during the construction of nuclear powerplants.''

TRANSPORTATION OF NUCLEAR WASTE WITH POTENTIAL FOR SIGNIFICANT PUBLIC HEALTH AND SAFETY HAZARDS; REGULATIONS FOR NOTICE TO GOVERNOR

Pub. L. 96–295, title III, § 301, June 30, 1980, 94 Stat. 789, directed Nuclear Regulatory Commission, within 90 days of June 30, 1980, to promulgate regulations providing for timely notification to the Governor of any State prior to the transport of nuclear waste, including spent nuclear fuel, to, through, or across the boundaries of such State, and provided that such notification requirement would not apply to nuclear waste in such quantities and of such types as the Commission specifically determined did not pose a potentially significant hazard to the health and safety of the public.

REVIEW OF SELECTION AND TRAINING OF MEMBERS OF ATOMIC SAFETY AND LICENSING BOARDS; REPORT TO CONGRESS

Pub. L. 95–601, § 7, Nov. 6, 1978, 92 Stat. 2950, directed Commission to undertake a comprehensive review of the existing process for selection and training of members of the Atomic Safety and Licensing Boards, report to Congress on findings of such review by Jan. 1, 1979, and revise such selection and training process as appropriate, based on such findings.

PLUTONIUM SHIPMENTS RESTRICTIONS

Section 201 of Pub. L. 94–79 provided in part that: ''The Nuclear Regulatory Commission shall not license any shipments by air transport of plutonium in any form, whether exports, imports or domestic shipments: *Provided, however*, That any plutonium in any form contained in a medical device designed for individual human application is not subject to this restriction. This restriction shall be in force until the Nuclear Regulatory Commission has certified to the Joint Committee on Atomic Energy of the Congress that a safe container has been developed and tested which will not rupture under crash and blast-testing equivalent to the crash and explosion of a high-flying aircraft.''

REORGANIZATION PLAN NO. 1 OF 1980

45 F.R. 40561, 94 Stat. 3585

Prepared by the President and submitted to the Senate and the House of Representatives in Congress assembled March 27, 1980,[1] pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

NUCLEAR REGULATORY COMMISSION

SECTION 1. (a) Those functions of the Nuclear Regulatory Commission, hereinafter referred to as the ''Commission'', concerned with:

(1) policy formulation;

(2) rulemaking, as defined in section 553 of Title 5 of the United States Code, except that those matters set forth in 553(a)(2) and (b) which do not pertain to policy formulation orders or adjudications shall be reserved to the Chairman of the Commission;

(3) orders and adjudications, as defined in section 551 (6) and (7) of Title 5 of the United States Code;

shall remain vested in the Commission. The Commission may determine by majority vote, in an area of doubt, whether any matter, action, question or area of inquiry pertains to one of these functions. The performance of any portion of these functions may be delegated by the Commission to a member of the Commission, including the Chairman of the Nuclear Regulatory Commission, hereinafter referred to as the ''Chairman'', and to the staff through the Chairman.

(b)(1) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman shall initiate the appointment, subject to the approval of the Commission; and the Chairman or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

(i) Executive Director for Operations,

(ii) General Counsel,

(iii) Secretary of the Commission,

(iv) Director of the Office of Policy Evaluation,

(v) Director of the Office of Inspector and Auditor,

(vi) Chairman, Vice Chairman, Executive Secretary, and Members of the Atomic Safety and Licensing Board Panel,

(vii) Chairman, Vice Chairman and Members of the Atomic Safety and Licensing Appeal Panel.

(2) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman, after consultation with the Executive Director for Operations, shall initiate the appointment, subject to the approval of the Commission, and the Chairman, or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

(i) Director of Nuclear Reactor Regulation,

(ii) Director of Nuclear Material Safety and Safeguards,

(iii) Director of Nuclear Regulatory Research,

(iv) Director of Inspection and Enforcement,

(v) Director of Standards Development.

(3) The Chairman or a member of the Commission shall initiate the appointment of the Members of the Advisory Committee on Reactor Safeguards, subject to the approval of the Commission. The provisions for appointment of the Chairman of the Advisory Committee on Reactor Safeguards and the term of the members shall not be affected by the provisions of this Reorganization Plan.

(4) The Commission shall delegate the function of appointing, removing and supervising the staff of the following offices or successor offices to the respective heads of such offices: General Counsel, Secretary of the Commission, Office of Policy Evaluation, Office of Inspector and Auditor. The Commission shall delegate the functions of appointing, removing and supervising the staff of the following panels and committee to the respective Chairmen thereof: Atomic Safety and Licensing Board Panel, Atomic Safety and Licensing Appeal Panel and Advisory Committee on Reactor Safeguards.

(c) Each member of the Commission shall continue to appoint, remove and supervise the personnel employed in his or her immediate office.

(d) The Commission shall act as provided by subsection 201(a)(1) of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5841(a)(1)) in the performance of its functions as described in subsections (a) and (b) of this section.

SEC. 2. (a) All other functions of the Commission, not specified by Section 1 of this Reorganization Plan, are hereby transferred to the Chairman. The Chairman shall be the official spokesman for the Commission, and shall appoint, supervise, and remove, without further action by the Commission, the Directors and staff of the Office of Public Affairs and the Office of Congressional Relations. The Chairman may consult with the Commission as he deems appropriate in exercising this appointment function.

(b) The Chairman shall also be the principal executive officer of the Commission, and shall be responsible to the Commission for developing policy planning and guidance for consideration by the Commission; shall be responsible to the Commission for assuring that the Executive Director for Operations and the staff of the Commission (other than the officers and staff referred to in sections (1)(b)(4), (1)(c) and (2)(a) of this Reorganization Plan) are responsive to the requirements of the Commission in the performance of its functions; shall determine the use and expenditure of funds of the Commission, in accordance with the distribution of appropriated funds according to major programs and purposes approved by the Commission; shall present to the Commission for its consideration the proposals and es-

[1] As amended May 5, 1980.

timates set forth in subsection (3) of this paragraph; and shall be responsible for the following functions, which he shall delegate, subject to his direction and supervision, to the Executive Director for Operations unless otherwise provided by this Reorganization Plan:

(1) administrative functions of the Commission;

(2) distribution of business among such personnel and among administrative units and offices of the Commission;

(3) preparation of

(i) proposals for the reorganization of the major offices within the Commission;

(ii) the budget estimate for the Commission; and

(iii) the proposed distribution of appropriated funds according to major programs and purposes.

(4) appointing and removing without any further action by the Commission, all officers and employees under the Commission other than those whose appointment and removal are specifically provided for by subsections 1 (b), (c) and 2(a) of this Reorganization Plan.

(c) The Chairman as principal executive officer and the Executive Director for Operations shall be governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations, including those for reorganization proposals, budget revisions and distribution of appropriated funds, as the Commission may by law, including this Plan, be authorized to make. The Chairman and the Executive Director for Operations, through the Chairman, shall be responsible for insuring that the Commission is fully and currently informed about matters within its functions.

SEC. 3. (a) Notwithstanding sections 1 and 2 of this Reorganization Plan, there are hereby transferred to the Chairman all the functions vested in the Commission pertaining to an emergency concerning a particular facility or materials licensed or regulated by the Commission, including the functions of declaring, responding, issuing orders, determining specific policies, advising the civil authorities and the public, directing, and coordinating actions relative to such emergency incident.

(b) The Chairman may delegate the authority to perform such emergency functions, in whole or in part, to any of the other members of the Commission. Such authority may also be delegated or redelegated, in whole or in part, to the staff of the Commission.

(c) In acting under this section, the Chairman, or other member of the Commission delegated authority under subsection (b), shall conform to the policy guidelines of the Commission. To the maximum extent possible under the emergency conditions, the Chairman or other member of the Commission delegated authority under subsection (b), shall inform the Commission of actions taken relative to the emergency.

(d) Following the conclusion of the emergency, the Chairman, or the member of the Commission delegated the emergency functions under subsection (b), shall render a complete and timely report to the Commission on the actions taken during the emergency.

SEC. 4. (a) The Chairman may make such delegations and provide for such reporting as the Chairman deems necessary, subject to provisions of law and this Reorganization Plan. Any officer or employee under the Commission may communicate directly to the Commission, or to any member of the Commission, whenever in the view of such officer or employee a critical problem or public health and safety or common defense and security is not being properly addressed.

(b) The Executive Director for Operations shall report for all matters to the Chairman.

(c) The function of the Directors of Nuclear Reactor Regulations, Nuclear Material Safety and Safeguards, and Nuclear Regulatory Research of reporting directly to the Commission is hereby transferred so that such officers report to the Executive Director for Operations. The function of receiving such reports is hereby transferred from the Commission to the Executive Director for Operations.

(d) The heads of the Commission level offices or successor offices, of General Counsel, Secretary to the Commission, Office of Policy Evaluation, Office of Inspector and Auditor, the Atomic Safety and Licensing Board Panel and Appeal Panel, and Advisory Committee on Reactor Safeguards shall continue to report directly to the Commission and the Commission shall continue to receive such reports.

SEC. 5. The provisions of this Reorganization Plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify, but no sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I am submitting herewith to the Congress Reorganization Plan No. 1 of 1980, under authority vested in me by the Reorganization Act of 1977 (Chapter 9 of Title 5 of the United States Code). The Plan is designed to strengthen management of the Nuclear Regulatory Commission in order to foster safety in all of the agency's activities.

The need for more effective management of the Nuclear Regulatory Commission has been amply demonstrated over the past year. The accident at Three Mile Island one year ago revealed serious shortcomings in the agency's ability to respond effectively during a crisis. The lessons learned from that accident go beyond crisis management, however. They provide the impetus for improving the effectiveness of all aspects of the government regulation of nuclear energy.

In my statement of December 7, 1979, I responded to the recommendations of my Commission on the Accident at Three Mile Island and set forth steps now being taken to address those recommendations. I stated that I would send to Congress a Reorganization Plan to strengthen the Nuclear Regulatory Commission's ability to regulate nuclear safety. I am submitting that Plan today.

The Plan clarifies the duties of the Chairman as principal executive officer. In addition to directing the day-to-day operations of the agency, the Chairman would take charge of the Commission's response to nuclear emergencies and, as principal executive officer, would be guided by Commission policy and subject to Commission oversight.

MANAGEMENT PROBLEMS

Intensive investigations undertaken since the Three Mile Island accident have revealed management problems at the Nuclear Regulatory Commission. These problems must be rectified if the Commission is to be a strong and effective safety regulator.

—My Commission, called the Kemeny Commission after its Chairman, Dr. John Kemeny, concluded that the underlying problem at Three Mile Island stemmed not from deficient equipment but rather from compounded human failures. This included the inability of the Nuclear Regulatory Commission to pursue its safety mission effectively in view of its existing management policies and practices. The Kemeny Commission reported a lack of ''closure'' in the system to ensure that safety issues are raised, analyzed and resolved. Kemeny Commission members also concluded that the Nuclear Regulatory Commission relies too heavily on licensing, and pays insufficient attention to ensuring the safety of plants once they are in operation.

—During the course of its investigation, the Kemeny Commission found serious managerial problems at the top of the Nuclear Regulatory Commission. It noted that the Commissioners and the Chairman are unclear as to their respective roles. Uncertain, diffuse leadership of this kind leads to highly compartmentalized offices that operate with little or no effective guidance and little coordination.

—A recently completed independent study authorized and funded by the Nuclear Regulatory Commission

itself also found serious fault with the Commission's management and called for a major organizational overhaul. The report states that there is no authoritative manager but, instead, five equally responsible Commissioners who deal individually with office directors who, in turn, head their own ''independent fiefdoms.''

—Likewise, a recent report of the General Accounting Office notes the failure of the Nuclear Regulatory Commission to define either the authority of the Chairman or that of the Executive Director for Operations. The staff lacks policy guidance and top management leadership to set priorities and resolve safety issues. There are unreasonable delays in developing policies to guide the licensing and enforcement activities of the agency.

The central theme in all three of these studies is the failure of the Nuclear Regulatory Commission to provide unified leadership and consistent direction of the agency's activities. The present statutes contain conflicting and ambiguous provisions for managing the agency. Important corrective actions cannot or will not be taken by the Commission until the laws are changed. Failure to do so constitutes a continuing nuclear safety hazard.

The present Reorganization Plan would improve the effectiveness of the Nuclear Regulatory Commission by giving the Chairman the powers he needs to ensure efficient and coherent management in a manner that preserves, in fact enhances, the commission form of organization.

COMMISSION

Under the proposed Plan, the Commission would continue to be responsible for policy formulation, rulemaking and adjudication as functions which should have collegial deliberation. In addition, the Commission would review and approve proposals by the Chairman concerning key management actions such as personnel decisions affecting top positions which directly support Commission functions, the annual budget, and major staff reorganizations. In carrying out its role, the Commission would have the direct assistance of several Commission-level offices as well as the licensing board, the appeal panel, and the Advisory Committee on Reactor Safeguards. The Plan would not alter the present arrangement whereby the Commission, acting on majority vote, represents the ultimate authority of the Nuclear Regulatory Commission and sets the framework within which the Chairman is to operate.

CHAIRMAN

Under the Plan, the Chairman would act as the principal executive officer and spokesman for the Commission. To accomplish this, those functions of the Nuclear Regulatory Commission not retained by the Commission would be vested in the Chairman, who is currently coequal with the Commissioners in all decisions and actions. The Chairman would be authorized to make appointments, on his own authority, to all positions not specified for Commission approval and would be responsible to the Commission for assuring staff support by the operating offices in meeting the needs of the Commission. The Executive Director for Operations would report directly to and receive his authority from the Chairman. Heads of operating offices would also report to the Chairman or, by delegation, to the Executive Director for Operations. Office heads would also be authorized to communicate directly with members of the Commission whenever an office head believed critical safety issues were not being addressed.

EMERGENCY MANAGEMENT

The Nuclear Regulatory Commission's ability to respond decisively and responsibly to any nuclear emergency must be fully ensured in advance. Experience has shown that the Commission as a whole cannot deal expeditiously with emergencies or communicate in a clear, unified voice to civil authorities or to the public. But present law prevents the Commission from delegating its emergency authority to one of its members. The Plan would correct this situation by specifically authorizing the Chairman to act for the Commission in an emergency. In order to ensure flexibility, the Chairman would be permitted to delegate his authority to deal with a particular emergency to any other Commissioner. Plans for dealing with various contingencies would be approved by the Commission in advance. The Commission would also receive a report from the Chairman or his designee describing the management of the emergency once it was over.

ACTIONS NOT INCLUDED IN THIS PLAN

Not included in this Plan are two actions that I support in principle but that need not or cannot be accomplished by means of a Reorganization Plan. First the Commission, as part of its implementation of this reorganization, can and should establish an internal entity to help oversee the performance of the agency as it operates under the Chairman's direction. This action does not require a Reorganization Plan. Second, I have consistently favored funding assistance to intervenors in regulatory proceedings. This is particularly important in the case of nuclear safety regulation. I therefore encourage the Commission to include consideration of intervenor funding as part of its review and upgrading of the licensing process, as called for by the Kemeny Commission. I have also requested Congress to appropriate funds for this purpose. This activity cannot be authorized by a Reorganization Plan.

NO ADDED COSTS

This proposed realignment and clarification of responsibilities would not result in an increase or decrease of expenditures. But placing management responsibilities in the Chairman would result in greater attention to developing and implementing nuclear safety policies and to strict enforcement of the terms of licenses granted by the Commission.

Each of the provisions of this proposed reorganization would also accomplish one or more of the purposes set forth in 5 U.S.C. 901(a). No statutory functions would be abolished by the Plan; rather they would be consolidated or reassigned in order to improve management, delivery of services, execution of the law, and overall operational efficiency and effectiveness of the Commission.

By Executive Order No. 12202, dated March 18, 1980 [42 U.S.C. 5848 note], I established a Nuclear Safety Oversight Committee to advise me of progress being made by the Nuclear Regulatory Commission, the nuclear industry, and others in improving nuclear safety. I am confident that the present Reorganization Plan, together with the other steps that have been or are being taken by this Administration and by others, will greatly advance the goal of nuclear safety. It would permit the Commission and the American people to hold one individual—the Chairman—accountable for implementation of the Commission's policies through effective management of the Commission staff. Freed of management and administrative details, the Commission could then concentrate on the purpose for which that collegial body was created—to deliberate on the formulation of policy and rules to govern nuclear safety and to decide or oversee disposition of individual cases.

JIMMY CARTER.

THE WHITE HOUSE, March 27, 1980.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I herewith transmit the following amendments to Reorganization Plan No. 1 of 1980, which I sent to the Congress on March 27, 1980.

The amendments to Reorganization Plan No. 1 are consistent with my original intent of strengthening the management of the Nuclear Regulatory Commission in order to improve safety in all of the agency's activities, while preserving the advantages of the Commission

form. The amendments reinforce the purpose of the Plan in two respects. First, the amended Plan gives the Commission a greater role in selection of key program officers of the agency by adding four positions to the list of appointments initiated by the Chairman for the Commission's advice and consent. These are the Executive Director for Operations, the Director of Inspection and Enforcement, the Director of Nuclear Regulatory Research, and the Director of Standards Development. Each of these positions contributes to nuclear safety regulation, and each performs functions that help determine the policy and performance of the agency.

The Advisory Committee on Reactor Safeguards advises the Commission as a whole. Since its members serve renewable 4-year terms, another amendment provides that a Commission member, as well as the Chairman, can initiate an appointment to the Advisory Committee on Reactor Safeguards for approval by the Commission.

As a means to ensure that the flow of information to the Commission will not be restricted, the Plan has been amended to make explicit that the Chairman, and the Executive Director of Operations through the Chairman, shall keep the Commission fully and currently informed.

The second general purpose of the amendments is to provide for more effective management of the agency by making more explicit the responsibilities of the Chairman and the Executive Director for Operations acting under his direction. As amended, the Plan charges the Chairman with planning for the development of policy for consideration and approval by the Commission. In the past, this responsibility has not been clearly fixed and has consequently been neglected. The amended Plan continues to make clear that the Executive Director for Operations reports to the Chairman. An amendment, however, requires the Chairman to delegate to the Executive Director for Operations the authority to appoint the staff and the day-to-day administration of the agency. Under this arrangement, the Chairman retains responsibility for the delegated functions but will be better able to handle his other leadership tasks.

In summary, the amendments I am transmitting to Reorganization Plan No. 1 of 1980, based on review and hearings conducted by the Congress and on continued consultations, will help establish a more accountable central management structure for the Nuclear Regulatory Commission as it pursues its statutory objective of ensuring safety in the use of nuclear power.

JIMMY CARTER.

THE WHITE HOUSE, May 5, 1980.

EXECUTIVE ORDER NO. 11902

Ex. Ord. No. 11902, Feb. 2, 1976, 41 F.R. 4877, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, which set out procedures for the export licensing policy as to nuclear materials and equipment, was revoked by Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 5842. Licensing and related regulatory functions respecting selected Administration facilities

Notwithstanding the exclusions provided for in section 110a. [42 U.S.C. 2140(a)] or any other provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], the Nuclear Regulatory Commission shall, except as otherwise specifically provided by section 110b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2140(b)), or other law, have licensing and related regulatory authority pursuant to chapters 6, 7, 8, and 10 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2071 et seq., 2091 et seq., 2111 et seq., 2131 et seq.], as to the following facilities of the Administration:

(1) Demonstration Liquid Metal Fast Breeder reactors when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.

(2) Other demonstration nuclear reactors—except those in existence on the effective date of this chapter—when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.

(3) Facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such Act.

(4) Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive waste generated by the Administration, which are not used for, or are part of, research and development activities.

(5) Any facility under a contract with and for the account of the Department of Energy that is utilized for the express purpose of fabricating mixed plutonium-uranium oxide nuclear reactor fuel for use in a commercial nuclear reactor licensed under such Act, other than any such facility that is utilized for research, development, demonstration, testing, or analysis purposes.

(Pub. L. 93–438, title II, § 202, Oct. 11, 1974, 88 Stat. 1244; Pub. L. 105–261, div. C, title XXXI, § 3134(a), Oct. 17, 1998, 112 Stat. 2247.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. Chapters 6, 7, 8, and 10 of the Atomic Energy Act of 1954, as amended, are classified generally to subchapters V (§ 2071 et seq.), VI (§ 2091 et seq.), VII (§ 2111 et seq.), and IX (§ 2131 et seq.) of division A of chapter 23 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The effective date of this chapter, referred to in par. (2), refers to the effective date of Pub. L. 93–438. See section 312 of Pub. L. 93–438, set out as an Effective Date; Interim Appointments note under section 5801 of this title.

AMENDMENTS

1998—Par. (5). Pub. L. 105–261 added par. (5).

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

AVAILABILITY OF FUNDS FOR LICENSING BY NRC

Pub. L. 105–261, div. C, title XXXI, § 3134(b), Oct. 17, 1998, 112 Stat. 2247, provided that: "Section 210 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (42 U.S.C. 7272 [now 50 U.S.C. 2513]) shall not apply to any licensing activities required pursuant to section 202(5) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842), as added by subsection (a)."

APPLICABILITY OF OCCUPATIONAL SAFETY AND HEALTH REQUIREMENTS TO ACTIVITIES UNDER LICENSE

Pub. L. 105–261, div. C, title XXXI, § 3134(c), Oct. 17, 1998, 112 Stat. 2247, provided that: ''Any activities carried out under a license required pursuant to section 202(5) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842), as added by subsection (a), shall be subject to regulation under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).''

VERBAL COMMUNICATIONS BETWEEN COMMISSION HEADQUARTERS AND REGIONAL OFFICES AND LICENSED UTILIZATION FACILITIES

Pub. L. 96–295, title III, § 305(a), June 30, 1980, 94 Stat. 790, provided that: ''As expeditiously as practicable, the Nuclear Regulatory Commission shall establish a mechanism for instantaneous and uninterrupted verbal communication between each utilization facility licensed to operate under section 103 or section 104 b. of the Atomic Energy Act of 1954 [section 2133 or 2134(b) of this title] on the date of enactment of this Act [June 30, 1980], or thereafter, and

''(1) Commission headquarters, and

''(2) the appropriate Commission regional office.''

STUDY OF EXTENSION OF LICENSING AND REGULATORY AUTHORITY OF COMMISSION; REPORT TO CONGRESS

Pub. L. 95–601, § 12, Nov. 6, 1978, 92 Stat. 2953, directed Commission, in cooperation with Department of Energy, to conduct a study of extending the Commission's licensing or regulatory authority to include categories of existing and future Federal radioactive waste storage and disposal activities not presently subject to such authority, and on or before Mar. 1, 1979, to submit a report to Congress containing results of study, which report was to include a complete listing and inventory of all radioactive waste storage and disposal activities being conducted or planned by Federal agencies.

§ 5843. Office of Nuclear Reactor Regulation

(a) Establishment; appointment of Director

There is hereby established in the Commission an Office of Nuclear Reactor Regulation under the direction of a Director of Nuclear Reactor Regulation, who shall be appointed by the Commission, who may report directly to the Commission, as provided in section 5849 of this title, and who shall serve at the pleasure of and be removable by the Commission.

(b) Functions of Director

Subject to the provisions of this chapter, the Director of Nuclear Reactor Regulation shall perform such functions as the Commission shall delegate including:

(1) Principal licensing and regulation involving all facilities, and materials licensed under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], associated with the construction and operation of nuclear reactors licensed under the Atomic Energy Act of 1954, as amended;

(2) Review the safety and safeguards of all such facilities, materials, and activities, and such review functions shall include, but not be limited to—

(A) monitoring, testing and recommending upgrading of systems designed to prevent substantial health or safety hazards; and

(B) evaluating methods of transporting special nuclear and other nuclear materials and of transporting and storing high-level radioactive wastes to prevent radiation hazards to employees and the general public.

(3) Recommend research necessary for the discharge of the functions of the Commission.

(c) Responsibility for safe operation of facilities

Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safe operation of all facilities resulting from all activities within the jurisdiction of the Administration pursuant to this chapter.

(Pub. L. 93–438, title II, § 203, Oct. 11, 1974, 88 Stat. 1244.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in subsec. (b)(1), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5844. Office of Nuclear Safety and Safeguards

(a) Establishment; appointment of Director

There is hereby established in the Commission an Office of Nuclear Material Safety and Safeguards under the direction of a Director of Nuclear Material Safety and Safeguards, who shall be appointed by the Commission, who may report directly to the Commission as provided in section 5849 of this title, and who shall serve at the pleasure of and be removable by the Commission.

(b) Functions of Director

Subject to the provisions of this chapter, the Director of Nuclear Material Safety and Safeguards shall perform such functions as the Commission shall delegate including:

(1) Principal licensing and regulation involving all facilities and materials, licensed under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], associated with the processing, transport, and handling of nuclear materials, including the provision and maintenance of safeguards against threats, thefts, and sabotage of such licensed facilities, and materials.

(2) Review safety and safeguards of all such facilities and materials licensed under the Atomic Energy Act of 1954, as amended, and such review shall include, but not be limited to—

(A) monitoring, testing, and recommending upgrading of internal accounting systems for special nuclear and other nuclear materials licensed under the Atomic Energy Act of 1954, as amended;

(B) developing, in consultation and coordination with the Administration, contingency plans for dealing with threats, thefts, and sabotage relating to special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities licensed under the Atomic Energy Act of 1954, as amended;

(C) assessing the need for, and the feasibility of, establishing a security agency within the office for the performance of the safeguards functions, and a report with recommendations on this matter shall be prepared within one year of the effective date of this chapter and promptly transmitted to the Congress by the Commission.

(3) Recommending research to enable the Commission to more effectively perform its functions.

(c) Responsibility for safeguarding special nuclear materials; high-level radioactive wastes and nuclear facilities

Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safeguarding of special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities within the jurisdiction of the Administration pursuant to this chapter.

(Pub. L. 93–438, title II, § 204, Oct. 11, 1974, 88 Stat. 1245.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in subsec. (b)(1), (2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The effective date of this chapter, referred to in subsec. (b)(2)(C), refers to the effective date of Pub. L. 93–438. See section 312 of Pub. L. 93–438, set out as an Effective Date; Interim Provisions note under section 5801 of this title.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5845. Office of Nuclear Regulatory Research

(a) Establishment; appointment of Director

There is hereby established in the Commission an Office of Nuclear Regulatory Research under the direction of a Director of Nuclear Regulatory Research, who shall be appointed by the Commission, who may report directly to the Commission as provided in section 5849 of this title, and who shall serve at the pleasure of and be removable by the Commission.

(b) Functions of Director

Subject to the provisions of this chapter, the Director of Nuclear Regulatory Research shall perform such functions as the Commission shall delegate including:

(1) Developing recommendations for research deemed necessary for performance by the Commission of its licensing and related regulatory functions.

(2) Engaging in or contracting for research which the Commission deems necessary for the performance of its licensing and related regulatory functions.

(c) Cooperation of Federal agencies

The Administrator of the Administration and the head of every other Federal agency shall—

(1) cooperate with respect to the establishment of priorities for the furnishing of such research services as requested by the Commission for the conduct of its functions;

(2) furnish to the Commission, on a reimbursable basis, through their own facilities or by contract or other arrangement, such research services as the Commission deems necessary and requests for the performance of its functions; and

(3) consult and cooperate with the Commission on research and development matters of mutual interest and provide such information and physical access to its facilities as will assist the Commission in acquiring the expertise necessary to perform its licensing and related regulatory functions.

(d) Responsibility for safety of activities

Nothing in subsections (a) and (b) of this section or section 5841 of this title shall be construed to limit in any way the functions of the Administration relating to the safety of activities within the jurisdiction of the Administration.

(e) Information and research services

Each Federal agency, subject to the provisions of existing law, shall cooperate with the Commission and provide such information and research services, on a reimbursable basis, as it may have or be reasonably able to acquire.

(f) Improved safety systems research

The Commission shall develop a long-term plan for projects for the development of new or improved safety systems for nuclear powerplants.

(Pub. L. 93–438, title II, § 205, Oct. 11, 1974, 88 Stat. 1246; Pub. L. 95–209, § 4(a), Dec. 13, 1977, 91 Stat. 1482.)

AMENDMENTS

1977—Subsec. (f). Pub. L. 95–209 added subsec. (f).

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5846. Compliance with safety regulations

(a) Notification to Commission of noncompliance

Any individual director, or responsible officer of a firm constructing, owning, operating, or supplying the components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended [42 U.S.C. 2011 et seq.], or pursuant to this chapter, who obtains information reasonably indicating that such facility or activity or basic components supplied to such facility or activity—

(1) fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to substantial safety hazards, or

(2) contains a defect which could create a substantial safety hazard, as defined by regulations which the Commission shall promulgate,

shall immediately notify the Commission of such failure to comply, or of such defect, unless such person has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

(b) Penalty for failure to notify

Any person who knowingly and consciously fails to provide the notice required by subsection (a) of this section shall be subject to a civil penalty in an amount equal to the amount provided by section 234 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2282].

(c) Posting of requirements

The requirements of this section shall be prominently posted on the premises of any facility licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].

(d) Inspection and enforcement

The Commission is authorized to conduct such reasonable inspections and other enforcement activities as needed to insure compliance with the provisions of this section.

(Pub. L. 93–438, title II, § 206, Oct. 11, 1974, 88 Stat. 1246.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in subsecs. (a) and (c), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5847. Nuclear energy center site survey

(a)(1)[1] The Commission is authorized and directed to make or cause to be made under its direction, a national survey, which shall include consideration of each of the existing or future electric reliability regions, or other appropriate regional areas, to locate and identify possible nuclear energy center sites. This survey shall be conducted in cooperation with other interested Federal, State, and local agencies, and the views of interested persons, including electric utilities, citizens' groups, and others, shall be solicited and considered.

(2) For purposes of this section, the term ''nuclear energy center site'' means any site, including a site not restricted to land, large enough to support utility operations or other elements of the total nuclear fuel cycle, or both including, if appropriate, nuclear fuel reprocessing facilities, nuclear fuel fabrication plants, retrievable nuclear waste storage facilities, and unranium[2] enrichment facilities.

(3) The survey shall include—

(a) a regional evaluation of natural resources, including land, air, and water resources, available for use in connection with nuclear energy center sites; estimates of future electric power requirements that can be served by each nuclear energy center site; an assessment of the economic impact of each nuclear energy site; and consideration of any other relevant factors, including but not limited to population distribution, proximity to electric load centers and to other elements of the fuel cycle, transmission line rights-of-way, and the availability of other fuel resources;

(b) an evaluation of the environmental impact likely to result from construction and operation of such nuclear energy centers, including an evaluation whether such nuclear energy centers will result in greater or lesser environmental impact than separate siting of the reactors and/or fuel cycle facilities; and

(c) consideration of the use of federally owned property and other property designated for public use, but excluding national parks, national forests, national wilderness areas, and national historic monuments.

(4) A report of the results of the survey shall be published and transmitted to the Congress and the Council on Environmental Quality not later than one year from October 11, 1974, and shall be made available to the public, and shall be updated from time to time thereafter as the Commission, in its discretion, deems advisable. The report shall include the Commission's evaluation of the results of the survey and any conclusions and recommendations, including recommendations for legislation, which the Commission may have concerning the feasibility and practicality of locating nuclear power reactors and/or other elements of the nuclear fuel cycle on nuclear energy center sites. The Commission is authorized to adopt policies which will encourage the location of nuclear power reactors and related fuel cycle facilities on nuclear energy center sites insofar as practicable.

(Pub. L. 93–438, title II, § 207, Oct. 11, 1974, 88 Stat. 1247.)

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5848. Abnormal occurrence reports

The Commission shall submit to the Congress an annual report listing for the previous fiscal year any abnormal occurrences at or associated with any facility which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended [42 U.S.C. 2011 et seq.], or pursuant to this chapter. For the purposes of this section an abnormal occurrence is an unscheduled incident or event which the Commission determines is significant from the standpoint of public health or safety. Nothing in the preceding sentence shall limit the authority of a court to review the determination of the Commission. Each such report shall contain—

(1) the date and place of each occurrence;

(2) the nature and probable consequence of each occurrence;

(3) the cause or causes of each; and

[1] So in original. No subsec. (b) has been enacted.

[2] So in original. Probably should be ''uranium''.

(4) any action taken to prevent reoccurrence;

the Commission shall also provide as wide dissemination to the public of the information specified in clauses (1) and (2) of this section as reasonably possible within fifteen days of its receiving information of each abnormal occurrence and shall provide as wide dissemination to the public as reasonably possible of the information specified in clauses (3) and (4) as soon as such information becomes available to it.

(Pub. L. 93–438, title II, § 208, Oct. 11, 1974, 88 Stat. 1248; Pub. L. 104–66, title II, § 2171, Dec. 21, 1995, 109 Stat. 731.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1995—Pub. L. 104–66 substituted ''an annual report listing for the previous fiscal year'' for ''each quarter a report listing for that period'' in first sentence.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 9th item on page 186 identifies a reporting provision which, as subsequently amended, is contained in this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

PRESIDENT'S COMMISSION ON THE ACCIDENT AT THREE MILE ISLAND; SUBPENA POWER

Pub. L. 96–12, May 23, 1979, 93 Stat. 26, which authorized the President's Commission on the Accident at Three Mile Island, as established by Ex. Ord. No. 12130, Apr. 11, 1979, 44 F.R. 22027, formerly set out below, to issue subpenas requiring the attendance and testimony of witnesses and the produce of any evidence from the Nuclear Regulatory Commission or any person which related to the accident at Three Mile Island, and to issue orders for the inspection of the Three Mile Island nuclear power plant, with refusal to obey a subpena or inspection order punishable by contempt of court.

EXECUTIVE ORDER NO. 12130

Ex. Ord. No. 12130, Apr. 11, 1979, 44 F.R. 22027, which established the President's Commission on the Accident at Three Mile Island and provided for its functions, administration, final report, and termination, was revoked by section 1–103(h) of Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1252, set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12202

Ex. Ord. No. 12202, Mar. 18, 1980, 45 F.R. 17939, as amended by Ex. Ord. No. 12240, Sept. 26, 1980, 45 F.R. 64545, which established the Nuclear Safety Oversight Committee and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, § 22, Aug. 17, 1982, 47 F.R. 36100 and Ex. Ord. No. 12399, § 4(c), Dec. 31, 1982, 48 F.R. 380, set out as notes under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 5849. Other officers

(a) Executive Director

The Commission shall appoint an Executive Director for Operations, who shall serve at the pleasure of and be removable by the Commission.

(b) Functions of Executive Director

The Executive Director shall perform such functions as the Commission may direct, except that the Executive Director shall not limit the authority of the director of any component organization provided in this chapter to communicate with or report directly to the Commission when such director of a component organization deems it necessary to carry out his responsibilities. Notwithstanding the preceding sentence, each such director shall keep the Executive Director fully and currently informed concerning the content of all such direct communications with the Commission.

(c) Equal employment opportunity report

The Executive Director shall report to the Commission at semi-annual public meetings on the problems, progress, and status of the Commission's equal employment opportunity efforts.

(d) Annual status report

The Executive Director shall prepare and forward to the Commission an annual report (for the fiscal year 1978 and each succeeding fiscal year) on the status of the Commission's programs concerning domestic safeguards matters including an assessment of the effectiveness and adequacy of safeguards at facilities and activities licensed by the Commission. The Commission shall forward to the Congress a report under this section prior to February 1, 1979, as a separate document, and prior to February 1 of each succeeding year as a separate chapter of the Commission's annual report (required under section 5877(c) of this title) following the fiscal year to which such report applies.

(e) Additional officers

There shall be in the Commission not more than five additional officers appointed by the Commission. The positions of such officers shall be considered career positions and be subject to section 2201(d) of this title.

(Pub. L. 93–438, title II, § 209, Oct. 11, 1974, 88 Stat. 1248; Pub. L. 95–601, §§ 4, 6, Nov. 6, 1978, 92 Stat. 2949.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–601, § 4(a), inserted provision requiring component organization directors to keep the Executive Director informed as to communications with the Commission.

Subsec. (c). Pub. L. 95–601, § 4(b), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 95–601, § 6, added subsec. (d).

Subsec. (e). Pub. L. 95–601, § 4(b), redesignated former subsec. (c) as (e).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d) of this section relating to forwarding of

annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 186 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5850. Unresolved safety issues plan

The Commission shall develop a plan providing for the specification and analysis of unresolved safety issues relating to nuclear reactors and shall take such action as may be necessary to implement corrective measures with respect to such issues. Such plan shall be submitted to the Congress on or before January 1, 1978 and progress reports shall be included in the annual report of the Commission thereafter.

(Pub. L. 93–438, title II, § 210, as added Pub. L. 95–209, § 3, Dec. 13, 1977, 91 Stat. 1482.)

PRIOR PROVISIONS

Another section 210 of Pub. L. 93–438 was renumbered section 211 and is classified to section 5851 of this title.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5851. Employee protection

(a) Discrimination against employee

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;

(C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

(E) testified or is about to testify in any such proceeding or;

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended.

(2) For purposes of this section, the term ''employer'' includes—

(A) a licensee of the Commission or of an agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);

(B) an applicant for a license from the Commission or such an agreement State;

(C) a contractor or subcontractor of such a licensee or applicant;

(D) a contractor or subcontractor of the Department of Energy that is indemnified by the Department under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order No. 12344;

(E) a contractor or subcontractor of the Commission;

(F) the Commission; and

(G) the Department of Energy.

(b) Complaint, filing and notification

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 180 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (in this section referred to as the ''Secretary'') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint, the Commission, and the Department of Energy.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B), but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person

to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1), and shall not conduct the investigation required under paragraph (2), unless the complainant has made a prima facie showing that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A), no investigation required under paragraph (2) shall be conducted if the employer demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection (a) of this section has occurred only if the complainant has demonstrated that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

(D) Relief may not be ordered under paragraph (2) if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(4) If the Secretary has not issued a final decision within 1 year after the filing of a complaint under paragraph (1), and there is no showing that such delay is due to the bad faith of the person seeking relief under this paragraph, such person may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(c) Review

(1) Any person adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Jurisdiction

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Commencement of action

(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) of this section may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Enforcement

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(g) Deliberate violations

Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter or of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].

(h) Nonpreemption

This section may not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee.

(i) Posting requirement

The provisions of this section shall be prominently posted in any place of employment to which this section applies.

(j) Investigation of allegations

(1) The Commission or the Department of Energy shall not delay taking appropriate action with respect to an allegation of a substantial safety hazard on the basis of—

(A) the filing of a complaint under subsection (b)(1) of this section arising from such allegation; or

(B) any investigation by the Secretary, or other action, under this section in response to such complaint.

(2) A determination by the Secretary under this section that a violation of subsection (a) of this section has not occurred shall not be considered by the Commission or the Department of Energy in its determination of whether a substantial safety hazard exists.

(Pub. L. 93–438, title II, § 211, formerly § 210, as added Pub. L. 95–601, § 10, Nov. 6, 1978, 92 Stat. 2951; renumbered § 211 and amended Pub. L.

102–486, title XXIX, § 2902(a)–(g), (h)(2), (3), Oct. 24, 1992, 106 Stat. 3123, 3124; Pub. L. 109–58, title VI, § 629, Aug. 8, 2005, 119 Stat. 785.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsecs. (a)(1) and (g), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification on this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

Executive Order No. 12344, referred to in subsec. (a)(2)(D), is Ex. Ord. No. 12344, Feb. 1, 1982, 47 F.R. 4979, which is set out as a note under section 2511 of Title 50, War and National Defense.

AMENDMENTS

2005—Subsec. (a)(2)(E) to (G). Pub. L. 109–58, § 629(a), added subpars. (E) to (G).

Subsec. (b)(4). Pub. L. 109–58, § 629(b), added par. (4).

1992—Subsec. (a). Pub. L. 102–486, § 2902(a), designated existing provisions as par. (1) and struck out ", including a Commission licensee, an applicant for a Commission license, or a contractor or a subcontractor of a Commission licensee or applicant," after "No employer", added subpars. (A) to (C), redesignated former pars. (1) to (3) as subpars. (D) to (F), respectively, and added par. (2).

Subsec. (b)(1). Pub. L. 102–486, § 2902(b), (h)(2), substituted "180" for "thirty", "(in this section referred to as the 'Secretary')" for "(hereinafter in this subsection referred to as the 'Secretary')", and ", the Commission, and the Department of Energy" for "and the Commission".

Subsec. (b)(2)(A). Pub. L. 102–486, § 2902(c), inserted before last sentence "Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B), but may not order compensatory damages pending a final order."

Subsec. (b)(3). Pub. L. 102–486, § 2902(d), added par. (3).

Subsecs. (h) to (j). Pub. L. 102–486, § 2902(e)–(g), added subsecs. (h) to (j).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2902(i) of Pub. L. 102–486 provided that: "The amendments made by this section [amending this section] shall apply to claims filed under section 211(b)(1) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(b)(1)) on or after the date of the enactment of this Act [Oct. 24, 1992]."

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5852. Availability of funds

(a) Appropriations for salaries and expenses; additional purposes

Funds appropriated for "Nuclear Regulatory Commission—Salaries and Expenses" shall be available to the Commission for the following additional purposes:

(1) Employment of aliens.

(2) Services authorized by section 3109 of title 5.

(3) Publication and dissemination of atomic information.

(4) Purchase, repair, and cleaning of uniforms.

(5) Reimbursements to the General Services Administration for security guard services.

(6) Hire of passenger motor vehicles and aircraft.

(7) Transfers of funds to other agencies of the Federal Government for the performance of the work for which such funds are appropriated, and such transferred funds may be merged with the appropriations to which they are transferred.

(8) Transfers to the Office of Inspector General of the Commission, not to exceed an additional amount equal to 5 percent of the amount otherwise appropriated to the Office for the fiscal year. Notice of such transfers shall be submitted to the Committees on Appropriations.

(b) Appropriations for Office of Inspector General; additional purposes

Funds appropriated for "Nuclear Regulatory Commission—Office of Inspector General" shall be available to the Office for the additional purposes described in paragraphs (2) and (7) of subsection (a) of this section.

(c) Use of program funds for salaries and expenses

Moneys received by the Commission for the cooperative nuclear research program, services rendered to State governments, foreign governments, and international organizations, and the material and information access authorization programs, including criminal history checks under section 2169 of this title[1] may be retained and used for salaries and expenses associated with those activities, notwithstanding section 3302 of title 31, and shall remain available until expended.

(d) Use of funds to provide voluntary separation incentive payments

Notwithstanding section 663(c)(2)(D) of Public Law 104–208, and to facilitate targeted workforce downsizing and restructuring, the Chairman of the Nuclear Regulatory Commission may use funds appropriated in this Act to exercise the authority provided by section 663 of that Act with respect to employees who voluntarily separate from October 7, 1998, through December 31, 2000. All of the requirements in section 663 of Public Law 104–208, except for section 663(c)(2)(D), apply to the exercise of authority under this section.

(e) Fiscal year applicability

Subsections (a), (b), and (c) of this section shall apply to fiscal year 1999 and each succeeding fiscal year.

(Pub. L. 105–245, title V, § 506, Oct. 7, 1998, 112 Stat. 1856.)

REFERENCES IN TEXT

Section 663 of Public Law 104–208, referred to in subsec. (d), is section 663 of Pub. L. 104–208, div. A, title I, § 101(f) [title VI], Sept. 30, 1996, 110 Stat. 3009–314, 3009–383, which is set out as a note under section 5597 of Title 5, Government Organization and Employees.

This Act, referred to in subsec. (d), is Pub. L. 105–245, Oct. 7, 1998, 112 Stat. 1838, known as the Energy and Water Development Appropriations Act, 1999. For complete classification of this Act to the Code, see Tables.

[1] So in original. Probably should be followed by a comma.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1999, and not as part of the Energy Reorganization Act of 1974 which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105–62, title IV, Oct. 13, 1997, 111 Stat. 1336.
Pub. L. 104–206, title IV, Sept. 30, 1996, 110 Stat. 3000.
Pub. L. 104–46, title IV, Nov. 13, 1995, 109 Stat. 417.
Pub. L. 103–316, title IV, Aug. 26, 1994, 108 Stat. 1721.
Pub. L. 103–126, title IV, Oct. 28, 1993, 107 Stat. 1332.
Pub. L. 102–377, title IV, Oct. 2, 1992, 106 Stat. 1340.
Pub. L. 102–104, title IV, Aug. 17, 1991, 105 Stat. 534.
Pub. L. 101–514, title IV, Nov. 5, 1990, 104 Stat. 2096.
Pub. L. 101–101, title IV, Sept. 29, 1989, 103 Stat. 664.
Pub. L. 100–371, title IV, July 19, 1988, 102 Stat. 872.
Pub. L. 100–202, § 101(d) [title IV], Dec. 22, 1987, 101 Stat. 1329–104, 1329–128.
Pub. L. 99–500, § 101(e) [title IV], Oct. 18, 1986, 100 Stat. 1783–194, 1783–211, and Pub. L. 99–591, § 101(e) [title IV], Oct. 30, 1986, 100 Stat. 3341–194, 3341–211.
Pub. L. 99–141, title IV, Nov. 1, 1985, 99 Stat. 577.
Pub. L. 98–360, title IV, July 16, 1984, 98 Stat. 419.
Pub. L. 98–50, title IV, July 14, 1983, 97 Stat. 260.
Pub. L. 97–88, title IV, Dec. 4, 1981, 95 Stat. 1147.
Pub. L. 96–367, title IV, Oct. 1, 1980, 94 Stat. 1344.
Pub. L. 96–69, title IV, Sept. 25, 1979, 93 Stat. 449.

§ 5853. Limitation on legal fee reimbursement

The Department of Energy shall not, except as required under a contract entered into before August 8, 2005, reimburse any contractor or subcontractor of the Department for any legal fees or expenses incurred with respect to a complaint subsequent to—

(1) an adverse determination on the merits with respect to such complaint against the contractor or subcontractor by the Director of the Department of Energy's Office of Hearings and Appeals pursuant to part 708 of title 10, Code of Federal Regulations, or by a Department of Labor Administrative Law Judge pursuant to section 5851 of this title; or

(2) an adverse final judgment by any State or Federal court with respect to such complaint against the contractor or subcontractor for wrongful termination or retaliation due to the making of disclosures protected under chapter 12 of title 5, section 5851 of this title, or any comparable State law,

unless the adverse determination or final judgment is reversed upon further administrative or judicial review.

(Pub. L. 93–438, title II, § 212, as added Pub. L. 109–58, title VI, § 627, Aug. 8, 2005, 119 Stat. 784.)

SUBCHAPTER III—MISCELLANEOUS AND TRANSITIONAL PROVISIONS

§ 5871. Transitional provisions

(a) Lapse of agency or other body from which functions or programs have been transferred and positions or offices therein

Except as otherwise provided in this chapter, whenever all of the functions or programs of an agency, or other body, or any component thereof, affected by this chapter, have been transferred from that agency, or other body, or any component thereof by this chapter, the agency, or other body, or component thereof shall lapse. If an agency, or other body, or any component thereof, lapses pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall lapse.

(b) Continuation of orders, determinations, rules, etc.

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter, and

(2) which are in effect at the time this chapter takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, the Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(c) Effect of chapter on proceedings pending before Atomic Energy Commission or other department or agency

The provisions of this chapter shall not affect any proceeding pending, at the time this section takes effect, before the Atomic Energy Commission or any department or agency (or component thereof) functions of which are transferred by this chapter; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued if this chapter had not been enacted.

(d) Effect of chapter on suits commenced prior to effective date

Except as provided in subsection (f) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to the date this chapter takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this chapter had not been enacted.

(e) Abatement of suits, actions, or other proceedings by or against officer, department, or agency

No suit, action, or other proceeding commenced by or against any officer in his official

capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

(f) Continuation of suits; substitution of parties

If, before the date on which this chapter takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Administrator or Commission, or any other official, then such suit shall be continued as if this chapter had not been enacted, with the Administrator or Commission, or other official, as the case may be, substituted.

(g) Judicial review of orders and actions in performance of transferred functions; statutory requirements relating to notices, hearings, action upon record, or administrative review

Final orders and actions of any official or component in the performance of functions transferred by this chapter shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the officer, department, agency, or instrumentality in the performance of such functions immediately preceding the effective date of this chapter. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function transferred by this chapter shall apply to the performance of those functions by the Administrator or Commission, or any officer or component.

(h) References in other laws to department, agency, officer, or office whose functions have been transferred deemed reference to Administration, Administrator, or Commission

With respect to any functions transferred by this chapter and performed after the effective date of this chapter, reference in any other law to any department or agency, or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, the Administrator or Commission, or other office or official in which this chapter vests such functions.

(i) Limitation, curtailment, etc., of presidential functions or authority

Nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this chapter; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

(j) References in chapter to provision of law deemed to include references thereto as amended or supplemented

Any reference in this chapter to any provision of law shall be deemed to include, as appropriate, references thereto as now or hereafter amended or supplemented.

(k) Functions conferred by chapter deemed in addition to and not substitution for functions existing before effective date

Except as may be otherwise expressly provided in this chapter, all functions expressly conferred by this chapter shall be in addition to and not in substitution for functions existing immediately before the effective date of this chapter and transferred by this chapter.

(Pub. L. 93–438, title III, § 301, Oct. 11, 1974, 88 Stat. 1248.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which enacted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes under section 5801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

References to ''at the time this chapter takes effect'' in subsec. (b)(2), ''the date this chapter takes effect'' in subsec. (d)(1), ''date on which this chapter takes effect'' in subsec. (f), and ''the effective date of this chapter'' in subsecs. (g), (h), (i), and (k), refer to the effective date of Pub. L. 93–438. See section 312 of Pub. L. 93–438, set out as an Effective Date; Interim Appointments note under section 5801 of this title.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5872. Transfer of personnel

(a) Provisions of law applicable

Except as provided in the next sentence, the personnel employed in connection with, and the personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and programs transferred by this chapter, are, subject to section 1531 of title 31, correspondingly transferred for appropriate allocation. Personnel positions expressly created by law, personnel occupying those positions on the effective date of this chapter, and personnel authorized to receive compensation at the rate prescribed for offices and positions at levels II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316) on

the effective date of this chapter shall be subject to the provisions of subsection (c) of this section and section 5871 of this title.

(b) Prohibition against separation or reduction in grade or compensation for one year after transfer

Except as provided in subsection (c) of this section, transfer of nontemporary personnel pursuant to this chapter shall not cause any such employee to be separated or reduced in grade or compensation for one year after such transfer.

(c) Compensation in new position at not less than rate provided for previous position

Any person who, on the effective date of this chapter, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position.

(Pub. L. 93–438, title III, § 302, Oct. 11, 1974, 88 Stat. 1250.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a) and (c), refers to the effective date of Pub. L. 93–438. See section 312 of Pub. L. 93–438, set out as an Effective Date; Interim Appointments note under section 5801 of this title.

CODIFICATION

In subsec. (a), ''section 1531 of title 31'' substituted for ''section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5873. Director of Office of Management and Budget; power to make dispositions

The Director of the Office of Management and Budget is authorized to make such additional incidental dispositions of personnel, personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with functions transferred by this chapter, as he may deem necessary or appropriate to accomplish the intent and purpose of this chapter.

(Pub. L. 93–438, title III, § 303, Oct. 11, 1974, 88 Stat. 1250.)

§ 5874. Definitions

As used in this chapter—

(1) any reference to ''function'' or ''functions'' shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and

(2) any reference to ''perform'' or ''performance'', when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

(Pub. L. 93–438, title III, § 304, Oct. 11, 1974, 88 Stat. 1251.)

§ 5875. Authorization of appropriations

(a) Except as otherwise provided by law, appropriations made under this chapter shall be subject to annual authorization.

(b) Authorization of appropriations to the Commission shall reflect the need for effective licensing and other regulation of the nuclear power industry in relation to the growth of such industry.

(Pub. L. 93–438, title III, § 305, Oct. 11, 1974, 88 Stat. 1251.)

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5876. Comptroller General audit

(a) Section 166 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2206], shall be deemed to be applicable, respectively, to the nuclear and nonnuclear activities under subchapter I of this chapter and to the activities under subchapter II of this chapter.

(b) The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of subchapter II of this chapter by the Nuclear Safety and Licensing Commission not later than sixty months after the effective date of this chapter, the Comptroller General shall prepare and submit to the Congress a report on his audit, which shall contain, but not be limited to—

(1) an evaluation of the effectiveness of the licensing and related regulatory activities of the Commission and the operations of the Office of Nuclear Safety Research and the Bureau of Nuclear Materials Security;

(2) an evaluation of the effect of such Commission activities on the efficiency, effectiveness, and safety with which the activities licensed under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], are carried out;

(3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of subchapter II of this chapter.

(Pub. L. 93–438, title III, § 306, Oct. 11, 1974, 88 Stat. 1251.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b), is the effective date of Pub. L. 93–438. See section 312 of Pub. L. 93–438, set out as an Effective Date; Interim Appointments note under section 5801 of this title.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (b)(2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5877. Reports to President for submission to Congress

(a) Report by Administrator on activities of Administration

The Administrator shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Administration during the preceding fiscal year. Such report shall include a statement of the short-range and long-range goals, priorities, and plans of the Administration together with an assessment of the progress made toward the attainment of those objectives and toward the more effective and efficient management of the Administration and the coordination of its functions.

(b) Review of desirability and feasibility of transferring functions of Administrator respecting military application and restricted data to Department of Defense or other Federal agencies; report by Administrator

During the first year of operation of the Administration, the Administrator, in collaboration with the Secretary of Defense, shall conduct a thorough review of the desirability and feasibility of transferring to the Department of Defense or other Federal agencies the functions of the Administrator respecting military application and restricted data, and within one year after the Administrator first takes office the Administrator shall make a report to the President, for submission to the Congress, setting forth his comprehensive analysis, the principal alternatives, and the specific recommendations of the Administrator and the Secretary of Defense.

(c) Report by Commission on activities of Commission

The Commission shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Commission during the preceding fiscal year. Such report shall include a clear statement of the short-range and long-range goals, priorities, and plans of the Commission as they relate to the benefits, costs, and risks of commercial nuclear power. Such report shall also include a clear description of the Commission's activities and findings in the following areas—

(1) insuring the safe design of nuclear powerplants and other licensed facilities;

(2) investigating abnormal occurrences and defects in nuclear powerplants and other licensed facilities;

(3) safeguarding special nuclear materials at all stages of the nuclear fuel cycle;

(4) investigating suspected, attempted, or actual thefts of special nuclear materials in the licensed sector and developing contingency plans for dealing with such incidents;

(5) insuring the safe, permanent disposal of high-level radioactive wastes through the licensing of nuclear activities and facilities;

(6) protecting the public against the hazards of low-level radioactive emissions from licensed nuclear activities and facilities.

(Pub. L. 93–438, title III, § 307, Oct. 11, 1974, 88 Stat. 1251.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to submission of annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 186 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

DESCRIPTION IN REPORT RESPECTING DECONTAMINATION, ETC., COLLABORATIVE EFFORTS AT THREE MILE ISLAND UNIT 2

Pub. L. 97–415, § 10(c), Jan. 4, 1983, 96 Stat. 2071, provided that: "The Nuclear Regulatory Commission shall include in its annual report to the Congress under section 307(c) of the Energy Reorganization Act of 1974 (42 U.S.C. 5877(c)) as a separate chapter a description of the collaborative efforts undertaken, or proposed to be undertaken, by the Commission and the Department of Energy with respect to the decontamination, cleanup, repair, or rehabilitation of facilities at Three Mile Island Unit 2."

§ 5878. Information to Congressional committees

The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Administration's activities.

(Pub. L. 93–438, title III, § 308, Oct. 11, 1974, 88 Stat. 1252.)

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5878a. Funding and encouragement of small business; information for inclusion in report

The Secretary of Energy shall,[1] include, in the report required by section 204(b) of the Department of Energy Act of 1978—Civilian Applications (42 U.S.C. 7256, note; 92 Stat. 60), information detailing the extent to which small business and nonprofit organizations are being funded by the nonnuclear research, development, and demonstration programs of the Secretary of Energy, and the extent to which small business involvement pursuant to section 5801(d) of this title is being encouraged by the Secretary of Energy.

(Pub. L. 94–187, title III, § 308, Dec. 31, 1975, 89 Stat. 1074; Pub. L. 96–470, title II, § 203(e), Oct. 19, 1980, 94 Stat. 2243.)

[1] So in original. The comma probably should not appear.

REFERENCES IN TEXT

Section 204(b) of the Department of Energy Act 1978—Civilian Applications (42 U.S.C. 7256, note; 92 Stat. 60), referred to in text, is section 204(b) of Pub. L. 95–238, title II, Feb. 25, 1978, 92 Stat. 59, as amended, which is set out as a note under section 7256 of this title.

CODIFICATION

Section was not enacted as a part of the Energy Reorganization Act of 1974 which comprises this chapter.

AMENDMENTS

1980—Pub. L. 96–470 substituted ''include, in the report required by section 204(b) of the Department of Energy Act of 1978—Civilian Applications, information'' for ''by June 30, 1976, and by the end of each fiscal year thereafter, submit a report to the Committee on Science and Technology of the House of Representatives and the Committee on Interior and Insular Affairs of the Senate'' and ''Secretary of Energy'' for ''Administrator'' wherever appearing.

§ 5879. Transfer of funds

The Administrator, when authorized in an appropriation Act, may, in any fiscal year, transfer funds from one appropriation to another within the Administration; except, that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

(Pub. L. 93–438, title III, § 309, Oct. 11, 1974, 88 Stat. 1252.)

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SUBCHAPTER IV—SEX DISCRIMINATION

§ 5891. Sex discrimination prohibited

No person shall on the ground of sex be excluded from participation in, be denied a license under, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under any subchapter of this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

(Pub. L. 93–438, title IV, § 401, Oct. 11, 1974, 88 Stat. 1254.)

REFERENCES IN TEXT

Any subchapter of this chapter, referred to in text, was in the original ''any title of this Act'', meaning Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which enacted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes under section 5801 of this title.

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CHAPTER 74—NONNUCLEAR ENERGY RESEARCH AND DEVELOPMENT

Sec.
5901. Congressional statement of findings.
5902. Congressional declaration of policy and purpose; implementation and administration of program by Secretary of Energy.
5903. Duties and authorities of the Secretary.
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5913. Evaluation by National Institute of Standards and Technology of energy-related inventions prior to awarding of grants by Secretary; promulgation of regulations.
5914. Omitted.
5915. Authorization of appropriations.
5915a. Expiration of initial authorization to construct fossil energy demonstration plants.
5916. Central source of nonnuclear energy information.
5917 to 5920. Repealed.

§ 5901. Congressional statement of findings

The Congress hereby finds that—

(a) The Nation is suffering from a shortage of environmentally acceptable forms of energy.

(b) Compounding this energy shortage is our past and present failure to formulate a comprehensive and aggressive research and development program designed to make available to American consumers our large domestic energy reserves including fossil fuels, nuclear fuels, geothermal resources, solar energy, and other forms of energy. This failure is partially because the unconventional energy technologies have not been judged to be economically competitive with traditional energy technologies.

(c) The urgency of the Nation's energy challenge will require commitments similar to those undertaken in the Manhattan and Apollo projects; it will require that the Nation undertake a research, development, and demonstration program in nonnuclear energy technologies with a total Federal investment which may reach or exceed $20,000,000,000 over the next decade.

(d) In undertaking such program, full advantage must be taken of the existing technical and managerial expertise in the various energy fields within Federal agencies and particularly in the private sector.

(e) The Nation's future energy needs can be met if a national commitment is made now to dedicate the necessary financial resources, to enlist our scientific and technological capabilities, and to accord the proper priority to developing new nonnuclear energy options to serve national needs, conserve vital resources, and protect the environment.

(Pub. L. 93–577, § 2, Dec. 31, 1974, 88 Stat. 1879.)

SHORT TITLE

Pub. L. 93–577, § 1(a), as added Pub. L. 109–58, title X, § 1009(b)(1), Aug. 8, 2005, 119 Stat. 934, provided that: ''This Act [enacting this chapter] may be cited as the 'Federal Nonnuclear Energy Research and Development Act of 1974'.''

DEFINITIONS

Pub. L. 93–577, § 1(b), as added Pub. L. 109–58, title X, § 1009(b)(1), Aug. 8, 2005, 119 Stat. 934, provided that: ''In this Act [enacting this chapter]:

''(1) The term 'Department' means the Department of Energy.

''(2) The term 'Secretary' means the Secretary of Energy.''

§ 5902. Congressional declaration of policy and purpose; implementation and administration of program by Secretary of Energy

(a) It is the policy of the Congress to develop on an urgent basis the technological capabilities to support the broadest range of energy policy options through conservation and use of domestic resources by socially and environmentally acceptable means.

(b)(1) The Congress declares the purpose of this chapter to be to establish and vigorously conduct a comprehensive, national program of basic and applied research and development, including but not limited to demonstrations of practical applications, of all potentially beneficial energy sources and utilization technologies, within the Department.

(2) In carrying out this program, the Secretary shall be governed by the terms of this chapter and other applicable provisions of law with respect to all nonnuclear aspects of the research, development, and demonstration program; and the policies and provisions of the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], and other provisions of law shall continue to apply to the nuclear research, development, and demonstration program.

(3) In implementing and conducting the research, development, and demonstration programs pursuant to this chapter, the Secretary shall incorporate programs in specific nonnuclear technologies previously enacted into law, including those established by the Solar Heating and Cooling Demonstration Act of 1974 (Public Law 93–409) [42 U.S.C. 5501 et seq.], the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Public Law 93–410) [30 U.S.C. 1101 et seq.], and the Solar Energy Research, Development, and Demonstration Act of 1974 (Public Law 93–473) [42 U.S.C. 5551 et seq.].

(Pub. L. 93–577, § 3, Dec. 31, 1974, 88 Stat. 1879; Pub. L. 109–58, title X, § 1009(b)(2), Aug. 8, 2005, 119 Stat. 934.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Solar Heating and Cooling Demonstration Act of 1974, referred to in subsec. (b)(3), is Pub. L. 93–409, Sept. 3, 1974, 88 Stat. 1069, as amended, which is classified generally to subchapter I (§ 5501 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Geothermal Energy Research, Development, and Demonstration Act of 1974, referred to in subsec. (b)(3), is Pub. L. 93–410, Sept. 3, 1974, 88 Stat. 1079, as amended, which is classified generally to chapter 24 (§ 1101 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 30 and Tables.

The Solar Energy Research, Development, and Demonstration Act of 1974, referred to in subsec. (b)(3), is Pub. L. 93–473, Oct. 26, 1974, 88 Stat. 1431, as amended, which is classified generally to subchapter II (§ 5551 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–58, § 1009(b)(2)(A), substituted ''Department'' for ''Energy Research and Development Administration''.

Subsec. (b)(2). Pub. L. 109–58, § 1009(b)(2)(B), substituted ''Secretary'' for ''Administrator of the Energy Research and Development Administration (hereinafter in this chapter referred to as the 'Administrator')''.

Subsec. (b)(3). Pub. L. 109–58, § 1009(b)(2)(C), substituted ''Secretary'' for ''Administrator'' and inserted ''Demonstration'' after ''Cooling''.

§ 5903. Duties and authorities of the Secretary

The Secretary shall—

(a) review the current status of nonnuclear energy resources and current nonnuclear energy research and development activities, including research and development being conducted by Federal and non-Federal entities;

(b) formulate and carry out a comprehensive Federal nonnuclear energy research, development, and demonstration program which will expeditiously advance the policies established by this chapter and other relevant legislation establishing programs in specific energy technologies;

(c) utilize the funds authorized pursuant to this chapter to advance energy research and development by initiating and maintaining, through fund transfers, grants, or contracts, energy research, development and demonstration programs or activities utilizing the facilities, capabilities, expertise, and experience of Federal agencies, national laboratories, universities, nonprofit organizations, industrial entities, and other non-Federal entities which are appropriate to each type of research, development, and demonstration activity;

(d) establish procedures for periodic consultation with representatives of science, industry, environmental organizations, consumers, and other groups who have special expertise in the areas of energy research, development, and technology; and

(e) initiate programs to design, construct, and operate energy facilities of sufficient size to demonstrate the technical and economic feasibility of utilizing various forms of nonnuclear energy.

(Pub. L. 93–577, § 4, Dec. 31, 1974, 88 Stat. 1880; Pub. L. 109–58, title X, § 1009(b)(3), Aug. 8, 2005, 119 Stat. 934.)

AMENDMENTS

2005—Pub. L. 109–58 added section catchline, struck out former catchline, and substituted ''Secretary'' for ''Administrator'' in introductory provisions.

CLASSIFICATION OF RECIPIENTS OF AWARDS, CONTRACTS, OR OTHER FINANCIAL ARRANGEMENTS; REPORTING REQUIREMENT

Pub. L. 95–39, title I, § 111, June 3, 1977, 91 Stat. 186, provided that:

''(a) The Administrator [now Secretary of Energy] shall classify each recipient of any award, contract, or other financial arrangement in any nonnuclear research, development, or demonstration category as—

''(1) a Federal agency,

''(2) a non-Federal governmental entity,

''(3) a profitmaking enterprise (indicating whether or not it is a small business concern),

''(4) a nonprofit enterprise other than an educational institution, or

''(5) a nonprofit educational institution.

''(b) The information required by subsection (a), along with the dollar amount of each award, contract, or other financial arrangement made, shall be included as an appendix to the annual report required by section 15(a) of the Federal Nonnuclear Energy Research and Development Act of 1974 ([former] 42 U.S.C. 5914): *Provided*, That small purchases or contracts of less than $10,000, which are excepted from the requirements of advertising by section 252(c)(3) of title 41, United States Code, shall be exempt from the reporting requirements of this section.''

§ 5903a. Nonduplication of programs, projects, and research facilities

The Secretary shall coordinate nonnuclear programs of the Department of Energy with the heads of relevant Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

(Pub. L. 94–187, title III, § 309, Dec. 31, 1975, 89 Stat. 1074; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

CODIFICATION

Section was not enacted as a part of the Federal Nonnuclear Energy Research and Development Act of 1974 which comprises this chapter.

TRANSFER OF FUNCTIONS

''Secretary'', meaning Secretary of Energy, substituted in text for ''Administrator'', meaning Administrator of Energy Research and Development Administration, and ''Department of Energy'' substituted in text for ''Administration'' pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5903b. Environmental and safety research, development, and demonstration program

The Secretary shall conduct an environmental and safety research, development, and demonstration program related to fossil fuels.

(Pub. L. 94–187, title III, § 316, Dec. 31, 1975, 89 Stat. 1077; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

CODIFICATION

Section was not enacted as a part of the Federal Nonnuclear Energy Research and Development Act of 1974 which comprises this chapter.

TRANSFER OF FUNCTIONS

''Secretary'', meaning Secretary of Energy, substituted in text for ''Administrator'', meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5903c. Moneys received by Secretary from fossil energy activity; payment into Treasury; reports to House and Senate Committees

All moneys received by the Secretary from any fossil energy activity shall be paid into the Treasury to the credit of miscellaneous receipts, except that on December 1 of each year the Secretary shall provide to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of all such receipts for the preceding fiscal year, including, but not limited to, the amount and source of such revenues and the program and subprogram activity generating such revenues.

(Pub. L. 95–39, title I, § 106, June 3, 1977, 91 Stat. 184; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 103–437, § 15(c)(8), Nov. 2, 1994, 108 Stat. 4592.)

CODIFICATION

Section was not enacted as part of the Federal Nonnuclear Energy Research and Development Act of 1974 which comprises this chapter.

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Committee on Science, Space, and Technology'' for ''Committee on Science and Technology''.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

''Secretary'', meaning Secretary of Energy, substituted in text for ''Administrator'', meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5903d. Clean coal technology projects; proposals, implementation, funding, etc.

Within 60 days following December 19, 1985, the Secretary of Energy shall, pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901, et seq.), issue a general request for proposals for clean coal tech-

nology projects for which the Secretary of Energy upon review may provide financial assistance awards. Proposals for clean coal technology projects under this section shall be submitted to the Department of Energy within 60 days after issuance of the general request for proposals. The Secretary of Energy shall make any project selections no later than August 1, 1986: *Provided*, That the Secretary may vest fee title or other property interests acquired under cost-shared clean coal technology agreements in any entity, including the United States: *Provided further*, That the Secretary shall not finance more than 50 per centum of the total costs of a project as estimated by the Secretary as of the date of award of financial assistance: *Provided further*, That cost-sharing by project sponsors is required in each of the design, construction, and operating phases proposed to be included in a project: *Provided further*, That financial assistance for costs in excess of those estimated as of the date of award of original financial assistance may not be provided in excess of the proportion of costs borne by the Government in the original agreement and only up to 25 per centum of the original financial assistance: *Provided further*, That revenues or royalties from prospective operation of projects beyond the time considered in the award of financial assistance, or proceeds from prospective sale of the assets of the project, or revenues or royalties from replication of technology in future projects or plants are not cost-sharing for the purposes of this appropriation: *Provided further*, That other appropriated Federal funds are not cost-sharing for the purposes of this appropriation: *Provided further*, That existing facilities, equipment, and supplies, or previously expended research or development funds are not cost-sharing for the purposes of this appropriation, except as amortized, depreciated, or expensed in normal business practice.

(Pub. L. 99–190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1251.)

REFERENCES IN TEXT

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in text, is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to this chapter (§ 5901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Federal Nonnuclear Energy Research and Development Act of 1974 which comprises this chapter.

PROVISIONS RELATING TO PROJECTS USING CLEAN COAL TECHNOLOGIES

Provisions relating to projects using clean coal technologies were contained in the following appropriations acts:

Pub. L. 102–154, title II, Nov. 13, 1991, 105 Stat. 1019; Pub. L. 103–211, title II, Feb. 12, 1994, 108 Stat. 18.

Pub. L. 101–512, title II, Nov. 5, 1990, 104 Stat. 1944; Pub. L. 103–211, title II, Feb. 12, 1994, 108 Stat. 18.

Pub. L. 101–121, title II, Oct. 23, 1989, 103 Stat. 728.

Pub. L. 100–446, title II, Sept. 27, 1988, 102 Stat. 1811.

Pub. L. 100–202, § 101(g) [title II], Dec. 22, 1987, 101 Stat. 1329–213, 1329–240.

Pub. L. 99–500, § 101(h) [title II], Oct. 18, 1986, 100 Stat. 1783–242, 1783–272, and Pub. L. 99–591, § 101(h) [title II], Oct. 30, 1986, 100 Stat. 3341–242, 3341–272.

§ 5904. Research, development, and demonstration program governing principles

(a) The Congress authorizes and directs that the comprehensive program in research, development, and demonstration required by this chapter shall be designed and executed according to the following principles:

(1) Energy conservation shall be a primary consideration in the design and implementation of the Federal nonnuclear energy program. For the purposes of this chapter, energy conservation means both improvement in efficiency of energy production and use, and reduction in energy waste.

(2) The environmental and social consequences of a proposed program shall be analyzed and considered in evaluating its potential.

(3) Any program for the development of a technology which may require significant consumptive use of water after the technology has reached the stage of commercial application shall include thorough consideration of the impacts of such technology and use on water resources pursuant to the provisions of section 5912 of this title.

(4) Heavy emphasis shall be given to those technologies which utilize renewable or essentially inexhaustible energy sources.

(5) The potential for production of net energy by the proposed technology at the stage of commercial application shall be analyzed and considered in evaluating proposals.

(b) The Congress further directs that the execution of the comprehensive research, development, and demonstration program shall conform to the following principles:

(1) Research and development of nonnuclear energy sources shall be pursued in such a way as to facilitate the commercial availability of adequate supplies of energy to all regions of the United States.

(2) In determining the appropriateness of Federal involvement in any particular research and development undertaking, the Secretary shall give consideration to the extent to which the proposed undertaking satisfies criteria including, but not limited to, the following:

(A) The urgency of public need for the potential results of the research, development, or demonstration effort is high, and it is unlikely that similar results would be achieved in a timely manner in the absence of Federal assistance.

(B) The potential opportunities for non-Federal interests to recapture the investment in the undertaking through the normal commercial utilization of proprietary knowledge appear inadequate to encourage timely results.

(C) The extent of the problems treated and the objectives sought by the undertaking are national or widespread in their significance.

(D) There are limited opportunities to induce non-Federal support of the undertaking through regulatory actions, end use controls, tax and price incentives, public education, or other alternatives to direct Federal financial assistance.

(E) The degree of risk of loss of investment inherent in the research is high, and the availability or risk capital to the non-Federal entities which might otherwise engage in the field of the research is inadequate for the timely development of the technology.

(F) The magnitude of the investment appears to exceed the financial capabilities of potential non-Federal participants in the research to support effective efforts.

(Pub. L. 93–577, § 5, Dec. 31, 1974, 88 Stat. 1880; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

TRANSFER OF FUNCTIONS

''Secretary'', meaning Secretary of Energy, substituted in text for ''Administrator'', meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

NATIONAL ALCOHOL FUELS COMMISSION

Pub. L. 95–599, title I, § 170, Nov. 6, 1978, 92 Stat. 2724, as amended by Pub. L. 96–106, § 20, Nov. 9, 1979, 93 Stat. 799, established the National Alcohol Fuels Commission, directed the Commission to make a full and complete investigation and study of the long- and short-term potential for alcohol fuels, from biomass (including but not limited to, animal, crop and wood waste, municipal and industrial waste, sewage sludge, and ocean and terrestrial crops) and coal, to contribute to meeting the Nation's energy needs, and provided that, not later than eighteen months after being established, the Commission submit to the President and the Congress its final report including its recommendations and findings, with the Commission to cease to exist six months after submission of such report.

§ 5905. Comprehensive planning and programming

(a) Pursuant to the authority and directions of this chapter and the Energy Reorganization Act of 1974 (Public Law 93–438) [42 U.S.C. 5801 et seq.], the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), and titles XX through XXIII of the Energy Policy Act of 1992 [42 U.S.C. 13401 et seq., 13451 et seq., 13501 et seq., 13521 et seq.], the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992 [42 U.S.C. 13522], shall transmit to the Congress, on or before June 30, 1975, a comprehensive plan for energy research, development, and demonstration. This plan shall be appropriately revised annually as provided in section 5914(a)[1] of this title. Such plan shall be designed to achieve—

(1) solutions to immediate and short-term (the period up to 5 years after submission of the plan or its annual revision) energy supply system and associated environmental problems;

(2) solutions to middle-term (the period from 5 years to 10 years after submission of the plan or its annual revision) energy supply system and associated environmental problems; and

(3) solutions to long-term (the period beyond 10 years after submission of the plan or its annual revision) energy supply system and associated environmental problems.

(b)(1) Based on the comprehensive energy research, development, and demonstration plan developed under subsection (a) of this section, the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992 [42 U.S.C. 13522], shall develop and transmit to the Congress, on or before June 30, 1975, a comprehensive nonnuclear energy research, development, and demonstration program to implement the nonnuclear research, development, and demonstration aspects of the comprehensive plan. Such program shall be updated and transmitted to the Congress annually as part of the report required under section 5914[1] of this title.

(2) This program shall be designed to achieve solutions to the energy supply and associated environmental problems in the immediate and short-term, middle-term, and long-term time intervals described in subsection (a)(1) through (3) of this section. In formulating the nonnuclear aspects of this program, the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992 [42 U.S.C. 13522], shall evaluate the economic, environmental, and technological merits of each aspect of the program.

(3) The Secretary shall assign program elements and activities in specific nonnuclear energy technologies, to the short-term, middle-term, and long-term time intervals, and shall present full and complete justification for these assignments and the degree of emphasis for each. These program elements and activities shall include, but not be limited to, research, development, and demonstrations designed—

(A) to advance energy conservation technologies, including but not limited to—

(i) productive use of waste, including garbage, sewage, agricultural wastes, and industrial waste heat;

(ii) reuse and recycling of materials and consumer products;

(iii) improvements in automobile design for increased efficiency and lowered emissions, including investigation of the full range of alternatives to the internal combustion engine and systems of efficient public transportation; and

(iv) advanced urban and architectural design to promote efficient energy use in the residential and commercial sectors, improvements in home design and insulation technologies, small thermal storage units and increased efficiency in electrical appliances and lighting fixtures;

(B) to accelerate the commercial demonstration of technologies for producing low-sulfur fuels suitable for boiler use;

(C) to demonstrate improved methods for the generation, storage, and transmission of electrical energy through (i) advances in gas turbine technologies, combined power cycles, the use of low British thermal unit gas and, if practicable, magnetohydrodynamics; (ii) storage systems to allow more efficient load following, including the use of inertial energy storage systems; and (iii) improvement in cryogenic transmission methods;

[1] See References in Text note below.

(D) to accelerate the commercial demonstration of technologies for producing substitutes for natural gas, including coal gasification: *Provided*, That the Secretary shall invite and consider proposals from potential participants based upon Federal assistance and participation in the form of a joint Federal-industry corporation, and recommendations pursuant to this clause shall be accompanied by a report on the viability of using this form of Federal assistance or participation;

(E) to accelerate the commercial demonstration of technologies for producing syncrude and liquid petroleum products from coal: *Provided*, That the Secretary shall invite and consider proposals from potential participants based upon Federal assistance and participation through guaranteed prices or purchase of the products, and recommendations pursuant to this clause shall be accompanied by a report on the viability of using this form of Federal assistance or participation;

(F) in accordance with the program authorized by the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Public Law 93–410) [30 U.S.C. 1101 et seq.], to accelerate the commercial demonstration of geothermal energy technologies;

(G) to demonstrate the production of syncrude from oil shale by all promising technologies including in situ technologies;

(H) to demonstrate new and improved methods for the extraction of petroleum resources, including secondary and tertiary recovery of crude oil;

(I) to demonstrate the economics and commercial viability of solar energy for residential and commercial energy supply applications in accordance with the program authorized by the Solar Heating and Cooling Demonstration Act of 1974 (Public Law 93–409) [42 U.S.C. 5501 et seq.];

(J) to accelerate the commercial demonstration of environmental control systems for energy technologies developed pursuant to this chapter;

(K) to investigate the technical and economic feasibility of tidal power for supplying electrical energy;

(L) to commercially demonstrate advanced solar energy technologies in accordance with the Solar Energy Research, Development, and Demonstration Act of 1974 (Public Law 93–473) [42 U.S.C. 5551 et seq.];

(M) to determine the economics and commercial viability of the production of synthetic fuels such as hydrogen and methanol;

(N) to commercially demonstrate the use of fuel cells for central station electric power generation;

(O) to determine the economics and commercial viability of in situ coal gasification;

(P) to improve techniques for the management of existing energy systems by means of quality control; application of systems analysis, communications, and computer techniques; and public information with the objective of improving the reliability and efficiency of energy supplies and encourage the conservation of energy resources;

(Q) to improve methods for the prevention and cleanup of marine oil spills;

(R) to implement the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (42 U.S.C. 12001 et seq.); and

(S) to implement titles XX through XXIII of the Energy Policy Act of 1992 [42 U.S.C. 13401 et seq., 13451 et seq., 13501 et seq., 13521 et seq.].

(c) Based upon the comprehensive plan developed under subsection (a) of this section, the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992 [42 U.S.C. 13522], shall develop and transmit to the Congress, on or before September 1, 1978, a comprehensive environment and safety program to insure the full consideration and evaluation of all environmental, health, and safety impacts of each element, program, or initiative contained in the nuclear and nonnuclear energy research, development, and demonstration plans. Such program shall be updated and transmitted to the Congress annually as part of the report required under section 5914[1] of this title.

(Pub. L. 93–577, § 6, Dec. 31, 1974, 88 Stat. 1881; Pub. L. 95–238, title II, § 206(a), Feb. 25, 1978, 92 Stat. 61; Pub. L. 102–486, title XXIII, § 2303(a), Oct. 24, 1992, 106 Stat. 3092; Pub. L. 109–58, title X, § 1009(b)(4), Aug. 8, 2005, 119 Stat. 935.)

REFERENCES IN TEXT

The Energy Reorganization Act of 1974, referred to in subsec. (a), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

The Department of Energy Organization Act, referred to in subsec. (a), is Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, which is classified principally to chapter 84 (§ 7101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

The Energy Policy Act of 1992, referred to in subsecs. (a) and (b)(3)(S), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776. Titles XX through XXIII of the Act are classified generally to subchapters VIII (§ 13401 et seq.), IX (§ 13451 et seq.), X (§ 13501 et seq.), and XI (§ 13521 et seq.), respectively, of chapter 134 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

Section 5914 of this title, referred to in subsecs. (a), (b)(1), and (c), was omitted from the Code.

The Geothermal Energy Research, Development, and Demonstration Act of 1974, referred to in subsec. (b)(3)(F), is Pub. L. 93–410, Sept. 3, 1974, 88 Stat. 1079, as amended, which is classified generally to chapter 24 (§ 1101 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 30 and Tables.

The Solar Heating and Cooling Demonstration Act of 1974, referred to in subsec. (b)(3)(I), is Pub. L. 93–409, Sept. 3, 1974, 88 Stat. 1069, as amended, which is classified generally to subchapter I (§ 5501 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Solar Energy Research, Development, and Demonstration Act of 1974, referred to in subsec. (b)(3)(L), is Pub. L. 93–473, Oct. 26, 1974, 88 Stat. 1431, as amended, which is classified generally to subchapter II (§ 5551 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5551 of this title and Tables.

The Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989, referred to in sub-

sec. (b)(3)(R), is Pub. L. 101–218, Dec. 11, 1989, 103 Stat. 1859, which is classified principally to chapter 125 (§ 12001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12001 of this title and Tables.

AMENDMENTS

2005—Subsec. (b)(3). Pub. L. 109–58 substituted ''Secretary'' for ''Administrator'' in introductory provisions and subpars. (D) and (E) and inserted ''Demonstration'' after ''Cooling'' in subpar. (I) and ''Energy'' after ''Solar'' in subpar. (L).

1992—Subsec. (a). Pub. L. 102–486, § 2303(a)(1)(A), substituted ''the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), and titles XX through XXIII of the Energy Policy Act of 1992, the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992,'' for ''the Administrator''.

Subsec. (a)(1). Pub. L. 102–486, § 2303(a)(1)(B), substituted ''(the period up to 5 years after submission of the plan or its annual revision)'' for ''(to the early 1980's)''.

Subsec. (a)(2). Pub. L. 102–486, § 2303(a)(1)(C), substituted ''(the period from 5 years to 10 years after submission of the plan or its annual revision)'' for ''(the early 1980's to 2000)''.

Subsec. (a)(3). Pub. L. 102–486, § 2303(a)(1)(D), substituted ''(the period beyond 10 years after submission of the plan or its annual revision)'' for ''(beyond 2000)''.

Subsec. (b)(1). Pub. L. 102–486, § 2303(a)(2)(B), inserted at end ''Such program shall be updated and transmitted to the Congress annually as part of the report required under section 5914 of this title.''

Pub. L. 102–486, § 2303(a)(2)(A), substituted ''Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992,'' for ''Administrator''.

Subsec. (b)(2). Pub. L. 102–486, § 2303(a)(2)(C), substituted '', middle-term, and long-term time intervals described in subsection (a)(1) through (3) of this section'' for ''(to the early 1980's), middle-term (the early 1980's to 2000), and long-term (beyond 2000) time intervals''.

Pub. L. 102–486, § 2303(a)(2)(A), substituted ''Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992,'' for ''Administrator''.

Subsec. (b)(3). Pub. L. 102–486, § 2303(a)(2)(D)–(F), added subpars. (R) and (S).

Subsec. (c). Pub. L. 102–486, § 2303(a)(3)(B), inserted at end ''Such program shall be updated and transmitted to the Congress annually as part of the report required under section 5914 of this title.''

Pub. L. 102–486, § 2303(a)(3)(A), substituted ''Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992,'' for ''Administrator''.

1978—Subsec. (c). Pub. L. 95–238 added subsec. (c).

NONAPPLICABILITY OF TITLE II OF PUB. L. 95–238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95–238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95–238, set out as a note under section 5821 of this title.

§ 5906. Federal assistance and participation in programs

(a) Forms of activities authorized

In carrying out the objectives of this chapter, the Secretary may utilize various forms of Federal assistance and participation which may include but are not limited to—

(1) joint Federal-industry experimental, demonstration, or commercial corporations consistent with the provisions of subsection (b) of this section;

(2) contractual arrangements with non-Federal participants including corporations, consortia, universities, governmental entities and nonprofit institutions;

(3) contracts for the construction and operation of federally owned facilities;

(4) Federal purchases or guaranteed price of the products of demonstration plants or activities consistent with the provisions of subsection (c) of this section;

(5) Federal loans to non-Federal entities conducting demonstrations of new technologies;

(6) incentives, including financial awards, to individual inventors, such incentives to be designed to encourage the participation of a large number of such inventors; and

(7) Federal loan guarantees and commitments thereof as provided in section 5919[1] of this title.

(b) Proposed joint Federal-industry corporations; operational guidelines; powers, duties, and functions; composition; scope of Federal assistance and participation; specific authorization

Joint Federal-industry corporations proposed for congressional authorization pursuant to this chapter shall be subject to the provisions of section 5908 of this title and shall conform to the following guidelines except as otherwise authorized by Congress:

(1) Each such corporation may design, construct, operate, and maintain one or more experimental, demonstration, or commercial-size facilities, or other operations which will ascertain the technical, environmental, and economic feasibility of a particular energy technology. In carrying out this function, the corporation shall be empowered, either directly or by contract, to utilize commercially available technologies, perform tests, or design, construct, and operate pilot plants, as may be necessary for the design of the full-scale facility.

(2) Each corporation shall have—

(A) a Board of nine directors consisting of individuals who are citizens of the United States, of whom one shall be elected annually by the Board to serve as Chairman. The Board shall be empowered to adopt and amend bylaws. Five members of the Board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and four members of the Board shall be appointed by the President on the basis of recommendations received by him from any non-Federal entity or entities entering into contractual arrangements to participate in the corporation;

(B) a President and such other officers and employees as may be named and appointed by the Board (with the rates of compensation of all officers and employees being fixed by the Board); and

(C) the usual powers conferred upon corporations by the laws of the District of Columbia.

[1] See Codification note below.

(3) An appropriate time interval, not to exceed 12 years, shall be established for the term of Federal participation in the corporation, at the expiration of which the Board of Directors shall take such action as may be necessary to dissolve the corporation or otherwise terminate Federal participation and financial interests. In carrying out such dissolution, the Board of Directors shall dispose of all physical facilities of the corporation in such manner and subject to such terms and conditions as the Board determines are in the public interest and consistent with existing law; and a share of the appraised value of the corporate assets proportional to the Federal participation in the corporation, including the proceeds from the disposition of such facilities, on the date of its dissolution, after satisfaction of all its legal obligations, shall be made available to the United States and deposited in the Treasury of the United States as miscellaneous receipts. All patent rights of the corporation shall, on such date of dissolution, be vested in the Secretary: *Provided*, That Federal participation may be terminated prior to the time established in the authorizing Act upon recommendation of the Board of Directors.

(4) Any commercially valuable product produced by demonstration facilities shall be disposed of in such manner and under such terms and conditions as the corporation shall prescribe. All revenues received by the corporation from the sale of such products shall be available to the corporation for use by it in defraying expenses incurred in connection with carrying out its functions to which this chapter applies.

(5) The estimated Federal share of the construction, operation, and maintenance cost over the life of each corporation shall be determined in order to facilitate a single congressional authorization of the full amount at the time of establishment of the corporation.

(6) The Federal share of the cost of each such corporation shall reflect (A) the technical and economic risk of the venture, (B) the probability of any financial return to the non-Federal participants arising from the venture, (C) the financial capability of the potential non-Federal participants, and (D) such other factors as the Secretary may set forth in proposing the corporation: *Provided*, That in no instance shall the Federal share exceed 90 per centum of the cost.

(7) No such corporation shall be established unless previously authorized by specific legislation enacted by the Congress.

(c) Proposed competitive systems of price supports for demonstration facilities; guidelines

Competitive systems of price supports proposed for congressional authorization pursuant to this chapter shall conform to the following guidelines:

(1) The Secretary shall determine the types and capacities of the desired full-scale, commercial-size facility or other operation which would demonstrate the technical, environmental, and economic feasibility of a particular nonnuclear energy technology.

(2) The Secretary may award planning grants for the purpose of financing a study of the full cycle economic and environmental costs associated with the demonstration facility selected pursuant to paragraph (1) of this subsection. Such planning grants may be awarded to Federal and non-Federal entities including, but not limited to, industrial entities, universities, and nonprofit organizations. Such planning grants may also be used by the grantee to prepare a detailed and comprehensive bid to construct the demonstration facility.

(3) Following the completion of the studies pursuant to the planning grants awarded under paragraph (2) of this subsection regarding each such potential price supported demonstration facility for which the Secretary intends to request congressional authorization, he shall invite bids from all interested parties to determine the minimum amount of Federal price support needed to construct the demonstration facility. The Secretary may designate one or more competing entities, each to construct one commercial demonstration facility. Such designation shall be made on the basis of those entities, (A) commitment to construct the demonstration facility at the minimum level of Federal price supports, (B) detailed plan of environmental protection, and (C) proposed design and operation of the demonstration facility.

(4) The construction plans and actual construction of the demonstration facility, together with all related facilities, shall be monitored by the Environmental Protection Agency. If additional environmental requirements are imposed by the Secretary after the designation of the successful bidders and if such additional environmental requirements result in additional costs, the Secretary is authorized to renegotiate the support price to cover such additional costs.

(5) The estimated amount of the Federal price support for a demonstration facility's product over the life of such facility shall be determined by the Secretary to facilitate a single congressional authorization of the full amount of such support at the time of the designation of the successful bidders.

(6) No price support program shall be implemented unless previously authorized by specific legislation enacted by the Congress.

(d) Support for joint university-industry research efforts

Nothing in this section shall preclude Federal participation in, and support for, joint university-industry nonnuclear energy research efforts.

(Pub. L. 93–577, § 7, Dec. 31, 1974, 88 Stat. 1883; Pub. L. 95–238, title II, § 207(a), Feb. 25, 1978, 92 Stat. 61; Pub. L. 99–386, title I, § 104(a), Aug. 22, 1986, 100 Stat. 821; Pub. L. 109–58, title X, § 1009(b)(5), Aug. 8, 2005, 119 Stat. 935.)

CODIFICATION

Section 5919 of this title, referred to in subsec. (a)(7), was in the original "section 19" and has been editorially translated as section 5919 of this title which related to loan guarantees prior to repeal by Pub. L. 109–58, title X, § 1009(b)(12), Aug. 8, 2005, 119 Stat. 936, to reflect the probable intent of Congress, notwithstanding enactment of another section 19 which was classi-

fied to section 5918 of this title and related to organizational conflicts prior to repeal by Pub. L. 104–106, div. D, title XLIII, § 4304(b)(5), Feb. 10, 1996, 110 Stat. 664.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, § 1009(b)(5)(A), substituted ''Secretary'' for ''Administrator'' in introductory provisions.

Subsec. (a)(4). Pub. L. 109–58, § 1009(b)(5)(B), substituted ''of this section'' for ''of the section''.

Subsecs. (b), (c). Pub. L. 109–58, § 1009(b)(5)(A), substituted ''Secretary'' for ''Administrator'' wherever appearing.

1986—Subsec. (b)(7). Pub. L. 99–386 struck out subpar. (A) which related to submission of a report by Secretary to House and Senate, prior to establishment of any joint Federal-industry corporation pursuant to this chapter, setting forth in detail consistency of establishment of corporation with this section and section 5904 of this title, and proposed purpose and activities of corporation, and struck out subpar. (B) designation.

1978—Subsec. (a)(7). Pub. L. 95–238 added par. (7).

NONAPPLICABILITY OF TITLE II OF PUB. L. 95–238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95–238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95–238, set out as a note under section 5821 of this title.

PRICE-SUPPORT PROGRAM TO DEMONSTRATE MUNICIPAL SOLID WASTE REPROCESSING FOR PRODUCTION OF FUELS AND ENERGY INTENSIVE PRODUCTS

Pub. L. 95–39, title I, § 107, June 3, 1977, 91 Stat. 185, authorized Administrator, subject to the appropriation of funds pursuant to section 101(7)(I) of Pub. L. 95–39, to establish and implement, under subsection (a)(4) of this section and in accordance with subsection (c) of this section, a price-support program to demonstrate municipal solid waste reprocessing for production of fuels and energy intensive products, with Administrator, prior to entering into any contract for such demonstration, to submit to Congress a full and complete report on the proposed commercial demonstration facility and the necessary project demonstration guarantees, and provided that such contract could not be finalized prior to the expiration of ninety calendar days (not including any day on which either House of Congress was not in session because of an adjournment of more than three calendar days to a day certain) from the date on which such report was received.

§ 5907. Demonstration projects

(a) Scope of authority of Secretary

The Secretary is authorized to—

(1) identify opportunities to accelerate the commercial applications of new energy technologies, and provide Federal assistance for or participation in demonstration projects (including pilot plants demonstrating technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources); and

(2) enter into cooperative agreements with non-Federal entities to demonstrate the technical feasibility and economic potential of energy technologies on a prototype or full-scale basis.

(b) Criteria applicable in reviewing potential projects

In reviewing potential projects, the Secretary shall consider criteria including but not limited to—

(1) the anticipated, research, development, and application objectives to be achieved by the activities or facilities proposed;

(2) the economic, environmental, and societal significance which a successful demonstration may have for the national fuels and energy system;

(3) the relationship of the proposal to the criteria of priority set forth in section 5904(b)(2) of this title;

(4) the availability of non-Federal participants to construct and operate the facilities or perform the activities associated with the proposal and to contribute to the financing of the proposal;

(5) the total estimated cost including the Federal investment and the probable time schedule;

(6) the proposed participants and the proposed financial contributions of the Federal Government and of the non-Federal participants; and

(7) the proposed cooperative arrangement, agreements among the participants, and form of management of the activities.

(c) Federal and non-Federal share of costs

(1) A financial award under this section may be made only to the extent of the Federal share of the estimated total design and construction costs, plus operation and maintenance costs.

(2) For the purposes of this chapter the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Secretary.

(d) Regulations

(1) The Administrator of the Energy Research and Development Administration shall, within six months of December 31, 1974, promulgate regulations establishing procedures for submission of proposals to the Energy Research and Development Administration for the purposes of this chapter. Such regulations shall establish a procedure for selection of proposals which—

(A) provides that projects will be carried out under such conditions and varying circumstances as will assist in solving energy extraction, transportation, conversion, conservation, and end-use problems of various areas and regions, under representative geological, geographic, and environmental conditions; and

(B) provides time schedules for submission of, and action on, proposal requests for the purposes of implementing the goals and objectives of this chapter.

(2) Such regulations also shall specify the types and form of the information, data, and support documentation that are to be contained in proposals for each form of Federal assistance or participation set forth in section 5906(a) of this title: *Provided*, That such proposals to the extent possible shall include, but not be limited to—

(A) specification of the technology;

(B) description of prior pilot plant operating experience with the technology;

(C) preliminary design of the demonstration plant;

(D) time tables containing proposed construction and operation plans;

(E) budget-type estimates of construction and operating costs;

(F) description and proof of title to land for proposed site, natural resources, electricity and water supply and logistical information related to access to raw materials to construct and operate the plant and to dispose of salable products produced from the plant;

(G) analysis of the environmental impact of the proposed plant and plans for disposal of wastes resulting from the operation of the plant;

(H) plans for commercial use of the technology if the demonstration is successful;

(I) plans for continued use of the plant if the demonstration is successful; and

(J) plans for dismantling of the plant if the demonstration is unsuccessful or otherwise abandoned.

(3) The Secretary shall from time to time review and, as appropriate, modify and repromulgate regulations issued pursuant to this section.

(e) Amount of estimate of Federal investment requiring Congressional authorization for appropriation

If the estimate of the Federal investment with respect to construction costs of any demonstration project proposed to be established under this section exceeds $50,000,000, no amount may be appropriated for such project except as specifically authorized by legislation hereafter enacted by the Congress.

(f) Amount of estimated Federal contribution; necessity for report

If the total estimated amount of the Federal contribution to the construction cost of a demonstration project does not exceed $50,000,000, the Secretary is authorized to proceed with the negotiation of agreements and implementation of the proposal subject to the availability of funds under the authorization of appropriations pursuant to section 5915 of this title: *Provided*, That if such Federal contribution to the construction cost is estimated to exceed $25,000,000 the Secretary shall provide a full and comprehensive report on the proposed demonstration project to the appropriate committees of the Congress and no funds may be expended for any agreement under the authority granted by this section prior to the expiration of sixty calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which the Secretary's report on the proposed project is received by the Congress. Such reports shall contain an analysis of the extent to which the proposed demonstration satisfies the criteria specified in subsection (b) of this section.

(Pub. L. 93–577, § 8, Dec. 31, 1974, 88 Stat. 1886; Pub. L. 109–58, title X, § 1009(b)(6), Aug. 8, 2005, 119 Stat. 935.)

AMENDMENTS

2005—Subsecs. (a), (b), (c)(2). Pub. L. 109–58, § 1009(b)(6)(A), substituted ''Secretary'' for ''Administrator'' in introductory provisions of subsecs. (a) and (b) and in par. (2) of subsec. (c).

Subsec. (d)(1). Pub. L. 109–58, § 1009(b)(6)(B)(i), substituted ''Administrator of the Energy Research and Development Administration'' for ''Administrator'' in introductory provisions.

Subsec. (d)(3). Pub. L. 109–58, § 1009(b)(6)(B)(ii), substituted ''Secretary'' for ''Administrator''.

Subsec. (f). Pub. L. 109–58, § 1009(b)(6)(C), substituted ''Secretary'' for ''Administrator'' in two places and ''Secretary's'' for ''Administrator's''.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration, referred to in subsec. (d)(1), was terminated and all of its functions and the functions of its Administrator were transferred (with certain exceptions) to the Secretary of Energy. See sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title.

REPORT TO CONGRESS ON ENVIRONMENTAL, MONITORING, ASSESSMENT, AND CONTROL EFFORTS REQUIRED FOR DEMONSTRATION PROJECTS; SUBMISSION TO CONGRESS BY DECEMBER 3, 1977

Pub. L. 95–39, title I, § 113, June 3, 1977, 91 Stat. 187, directed Administrator of Energy Research and Development Administration, in consultation with Administrator of Environmental Protection Agency, to submit a report to Congress six months after June 3, 1977, on the environmental monitoring, assessment, and control efforts, relating to environment, safety, and health, which are required to successfully demonstrate any project which is subject to subsecs. (e) and (f) of this section and is authorized by this Act or any prior Act.

§ 5907a. Small grant program

(a) Establishment

There shall be established within the Department of Energy a program for appropriate technology under the direction of the Secretary. The Secretary shall develop and implement a program of small grants for the purpose of encouraging development and demonstration projects described in subsection (c) of this section.

(b) Limitation

The aggregate amount of financial support made available to any participant in such program, including affiliates, under this section shall not exceed $50,000 during any two-year period.

(c) Systems and technologies to be developed and demonstrated

Funds made available under this section shall be used to provide for a coordinated and expanded effort for the development and demonstration of, and the dissemination of information with respect to, energy-related systems and supporting technologies appropriate to—

(1) the needs of local communities and the enhancement of community self-reliance through the use of available resources;

(2) the use of renewable resources and the conservation of nonrenewable resources;

(3) the use of existing technologies applied to novel situations and uses;

(4) applications which are energy-conserving, environmentally sound, small scale, durable and low cost; and

(5) applications which demonstrate simplicity of installation, operation and maintenance.

(d) Eligible participants; simplified application procedures; report to Secretary; allocation criteria; guidelines

(1) Grants, agreements or contracts under this section may be made to individuals, local nonprofit organizations and institutions, State and local agencies, Indian tribes and small businesses. The Secretary shall develop simplified procedures with respect to application for support under this section.

(2) Each grant, agreement or contract under this section shall be governed by the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5908] and shall contain effective provisions under which the Secretary shall receive a full written report of activities supported in whole or in part by funds made available by the Secretary; and

(3) In determining the allocation of funds among applicants for support under this section the Secretary may take into consideration:

(A) the potential for energy savings or energy production;

(B) the type of fuel saved or produced;

(C) the potential impact on local or regional energy or environmental problems; and

(D) such other criteria as the Secretary finds necessary to achieve the purposes of this Act or the purposes of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5901 et seq.].

Guidelines implementing this section shall be promulgated with full opportunity for public comment.

(e) Reports to Congress

The Secretary shall—

(1) prepare and submit no later than October 1, 1977, a detailed report on plans for implementation, including the timing of implementation, of the provisions of this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Science and Technology of the House of Representatives and shall keep such committees fully and currently informed concerning the development of such plans; and

(2) include as a part of the annual report required by section 15(a)(1)[1] of the Federal Nonnuclear Energy Research and Development Act of 1974 beginning in 1977, a full and complete report on the program under this section.

(Pub. L. 95–39, title I, § 112, June 3, 1977, 91 Stat. 186; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(3)(D), means Pub. L. 95–39, June 3, 1977, 91 Stat. 180, which to the extent classified to the Code enacted sections 5816a, 5817a, 5903c, 5907a, 5915a, 5918, and 7001 to 7011 of this title, amended sections 5813, 5818, and 5912 of this title, and enacted provisions set out as notes under sections 5906, 5907, 5914, and 7001 of this title. For complete classification of this Act to the Code, see Tables.

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (d)(3)(D), is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to this chapter (§ 5901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

Section 15 of the Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (e)(2), was classified to section 5914 of this title and was omitted from the Code.

CODIFICATION

Section was not enacted as part of the Federal Nonnuclear Energy Research and Development Act of 1974 which comprises this chapter.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

''Secretary'', meaning Secretary of Energy, substituted for ''Administrator'', ''Administration'', and ''Assistant Administrator for Conservation and Development'', meaning Energy Research and Development Administration and Administrator thereof, in subsecs. (a), (d), and (e) and ''Department of Energy'' substituted for ''Administration'' in subsec. (a) pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5908. Patents and inventions

(a) Vesting of title to invention and issuance of patents to United States; prerequisites

Whenever any invention is made or conceived in the course of or under any contract of the Department, other than nuclear energy research, development, and demonstration pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Secretary determines that—

(1) the person who made the invention was employed or assigned to perform research, development, or demonstration work and the invention is related to the work he was employed or assigned to perform, or that it was within the scope of his employment duties, whether or not it was made during working hours, or with a contribution by the Government of the use of Government facilities, equipment, materials, allocated funds, information proprietary to the Government, or services of Government employees during working hours; or

(2) the person who made the invention was not employed or assigned to perform research, development, or demonstration work, but the invention is nevertheless related to the contract or to the work or duties he was employed or assigned to perform, and was made during working hours, or with a contribution from the Government of the sort referred to in clause (1).[1]

[1] See References in Text note below.

[1] So in original. Probably should be a comma.

title to such invention shall vest in the United States, and if patents on such invention are issued they shall be issued to the United States, unless in particular circumstances the Secretary waives all or any part of the rights of the United States to such invention in conformity with the provisions of this section.

(b) Contract as requiring report to Department of invention, etc., made in course of contract

Each contract entered into by the Department with any person shall contain effective provisions under which such person shall furnish promptly to the Department a written report containing full and complete technical information concerning any invention, discovery, improvement, or innovation which may be made in the course of or under such contract.

(c) Waiver by Secretary of rights of United States; regulations prescribing procedures; record of waiver determinations; objectives

Under such regulations in conformity with the provisions of this section as the Secretary shall prescribe, the Secretary may waive all or any part of the rights of the United States under this section with respect to any invention or class of inventions made or which may be made by any person or class of persons in the course of or under any contract of the Department if he determines that the interests of the United States and the general public will be best served by such waiver. The Department shall maintain a publicly available, periodically updated record of waiver determinations. In making such determinations, the Secretary shall have the following objectives:

(1) Making the benefits of the energy research, development, and demonstration program widely available to the public in the shortest practicable time.

(2) Promoting the commercial utilization of such inventions.

(3) Encouraging participation by private persons in the Department's energy research, development, and demonstration program.

(4) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

(d) Considerations applicable at time of contracting for waiver determination by Secretary

In determining whether a waiver to the contractor at the time of contracting will best serve the interests of the United States and the general public, the Secretary shall specifically include as considerations—

(1) the extent to which the participation of the contractor will expedite the attainment of the purposes of the program;

(2) the extent to which a waiver of all or any part of such rights in any or all fields of technology is needed to secure the participation of the particular contractor;

(3) the extent to which the contractor's commercial position may expedite utilization of the research, development, and demonstration program results;

(4) the extent to which the Government has contributed to the field of technology to be funded under the contract;

(5) the purpose and nature of the contract, including the intended use of the results developed thereunder;

(6) the extent to which the contractor has made or will make substantial investment of financial resources or technology developed at the contractor's private expense which will directly benefit the work to be performed under the contract;

(7) the extent to which the field of technology to be funded under the contract has been developed at the contractor's private expense;

(8) the extent to which the Government intends to further develop to the point of commercial utilization the results of the contract effort;

(9) the extent to which the contract objectives are concerned with the public health, public safety, or public welfare;

(10) the likely effect of the waiver on competition and market concentration; and

(11) in the case of a nonprofit educational institution, the extent to which such institution has a technology transfer capability and program, approved by the Secretary as being consistent with the applicable policies of this section.

(e) Considerations applicable to identified invention for waiver determination by Secretary

In determining whether a waiver to the contractor or inventor or rights to an identified invention will best serve the interests of the United States and the general public, the Secretary shall specifically include as considerations paragraphs (4) through (11) of subsection (d) of this section as applied to the invention and—

(1) the extent to which such waiver is a reasonable and necessary incentive to call forth private risk capital for the development and commercialization of the invention; and

(2) the extent to which the plans, intentions, and ability of the contractor or inventor will obtain expeditious commercialization of such invention.

(f) Rights subject to reservation where title to invention vested in United States

Whenever title to an invention is vested in the United States, there may be reserved to the contractor or inventor—

(1) a revocable or irrevocable nonexclusive, paid-up license for the practice of the invention throughout the world; and

(2) the rights to such invention in any foreign country where the United States has elected not to secure patent rights and the contractor elects to do so, subject to the rights set forth in paragraphs (2), (3), (6), and (7) of subsection (h) of this section: *Provided*, That when specifically requested by the Department and three years after issuance of such a patent, the contractor shall submit the report specified in subsection (h)(1) of this section.

(g) to (i) Repealed. Pub. L. 96–517, § 7(c), Dec. 12, 1980, 94 Stat. 3027

(j) Small business status of applicant for waiver or licenses

The Secretary shall, in granting waivers or licenses, consider the small business status of the applicant.

(k) Protection of invention, etc., rights by Secretary

The Secretary is authorized to take all suitable and necessary steps to protect any invention or discovery to which the United States holds title, and to require that contractors or persons who acquire rights to inventions under this section protect such inventions.

(*l*) Department as defense agency of United States for purpose of maintaining secrecy of inventions

The Department shall be considered a defense agency of the United States for the purpose of chapter 17 of title 35.

(m) Definitions

As used in this section—

(1) the term ''person'' means any individual, partnership, corporation, association, institution, or other entity;

(2) the term ''contract'' means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder;

(3) the term ''made'', when used in relation to any invention, means the conception or first actual reduction to practice of such invention;

(4) the term ''invention'' means inventions or discoveries, whether patented or unpatented; and

(5) the term ''contractor'' means any person having a contract with or on behalf of the Department.

(n) Report concerning applicability of existing patent policies to energy programs; time for submission to President and appropriate congressional committees

Within twelve months after December 31, 1974, the Secretary with the participation of the Attorney General, the Secretary of Commerce, and other officials as the President may designate, shall submit to the President and the appropriate congressional committees a report concerning the applicability of existing patent policies affecting the programs under this chapter, along with his recommendations for amendments or additions to the statutory patent policy, including his recommendations on mandatory licensing, which he deems advisable for carrying out the purposes of this chapter.

(Pub. L. 93–577, § 9, Dec. 31, 1974, 88 Stat. 1887; Pub. L. 96–517, § 7(c), Dec. 12, 1980, 94 Stat. 3027; Pub. L. 109–58, title X, § 1009(b)(7), Aug. 8, 2005, 119 Stat. 935.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, § 1009(b)(7)(B), substituted ''Secretary'' for ''Administrator'' in introductory and concluding provisions.

Pub. L. 109–58, § 1009(b)(7)(A), substituted ''Department'' for ''Administration'' in introductory provisions.

Subsec. (b). Pub. L. 109–58, § 1009(b)(7)(A), substituted ''Department'' for ''Administration'' in two places.

Subsec. (c). Pub. L. 109–58, § 1009(b)(7)(B), substituted ''Secretary'' for ''Administrator'' wherever appearing in introductory provisions.

Pub. L. 109–58, § 1009(b)(7)(A), substituted ''Department'' for ''Administration'' in two places in introductory provisions.

Subsec. (c)(3). Pub. L. 109–58, § 1009(b)(7)(C), substituted ''Department's'' for ''Administration's''.

Subsec. (d). Pub. L. 109–58, § 1009(b)(7)(B), substituted ''Secretary'' for ''Administrator'' in introductory provisions and par. (11).

Subsec. (e). Pub. L. 109–58, § 1009(b)(7)(B), substituted ''Secretary'' for ''Administrator'' in introductory provisions.

Subsec. (f)(2). Pub. L. 109–58, § 1009(b)(7)(A), substituted ''Department'' for ''Administration''.

Subsecs. (j), (k). Pub. L. 109–58, § 1009(b)(7)(B), substituted ''Secretary'' for ''Administrator''.

Subsec. (*l*). Pub. L. 109–58, § 1009(b)(7)(A), substituted ''Department'' for ''Administration''.

Subsec. (m)(5). Pub. L. 109–58, § 1009(b)(7)(A), substituted ''Department'' for ''Administration''.

Subsec. (n). Pub. L. 109–58, § 1009(b)(7)(B), substituted ''Secretary with'' for ''Administrator with''.

1980—Subsec. (g). Pub. L. 96–517 struck out subsec. (g) which related to licenses for inventions, promulgation of regulations specifying terms and conditions, criteria and procedures for grant of exclusive or partially exclusive licenses, and record of determinations.

Subsec. (h). Pub. L. 96–517 struck out subsec. (h) which related to required terms and conditions in waiver of rights or grant of exclusive or partially exclusive license.

Subsec. (i). Pub. L. 96–517 struck out subsec. (i) which related to publication in the Federal Register by the Administrator of waiver or license termination hearing requirements and availability of records.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–517 effective July 1, 1981, but implementing regulations authorized to be issued earlier, see section 8(f) of Pub. L. 96–517, set out as a note under section 41 of Title 35, Patents.

§ 5909. Relationship to antitrust laws

(a) Nothing in this chapter shall be deemed to convey to any individual, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(b) As used in this section, the term ''antitrust law'' means—

(1) the Act entitled ''An Act to protect trade and commerce against unlawful restraints and monopolies'', approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) the Act entitled ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'', approved October 15, 1914 (15 U.S.C. 12 et seq.) as amended;

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(4) sections 73 and 74 of the Act entitled ''An Act to reduce taxation, to provide revenue for the Government, and for other purposes'', approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(Pub. L. 93–577, § 10, Dec. 31, 1974, 88 Stat. 1891.)

REFERENCES IN TEXT

Act of July 2, 1890, referred to in subsec. (b)(1), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914, referred to in subsec. (b)(2), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended, referred to in subsec. (b)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Act of June 19, 1936, chapter 592, referred to in subsec. (b)(5), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

§ 5910. Repealed. Pub. L. 104–66, title II, § 2021(i), Dec. 21, 1995, 109 Stat. 727

Section, Pub. L. 93–577, § 11, Dec. 31, 1974, 88 Stat. 1892; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; 1977 Reorg. Plan No. 1, § 5E, 42 F.R. 56101, 91 Stat. 1634, related to environmental evaluations by Administrator of Environmental Protection Agency.

§ 5911. Acquisition of essential materials

(a) The President may, by rule or order, require the allocation of, or the performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment if he finds that—

(1) such supplies are scarce, critical, and essential to carry out the purposes of this chapter; and

(2) such supplies cannot reasonably be obtained without exercising the authority granted by this section.

(b) A rule or order under subsection (a) of this section shall be considered to be a major rule subject to chapter 8 of title 5.

(Pub. L. 93–577, § 12, Dec. 31, 1974, 88 Stat. 1892; Pub. L. 109–58, title X, § 1009(b)(8), Aug. 8, 2005, 119 Stat. 935.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The President shall transmit any rule or order proposed under subsection (a) of this section (bearing an identification number) to each House of Congress on the date on which it is proposed. If such proposed rule or order is transmitted to the Congress such proposed rule or order shall take effect at the end of the first period of thirty calendar days of continuous session of Congress after the date on which such proposed rule or order is transmitted to it unless, between the date of transmittal and the end of the thirty day period, either House passes a resolution stating in substance that such House does not favor such a proposed rule or order.''

§ 5912. Water resource assessments

(a) Assessments by Water Resources Council of water resource requirements and water supply availability for nonnuclear energy technologies; preparation requirements

The Water Resources Council shall undertake assessments of water resource requirements and water supply availability for any nonnuclear energy technology and any probable combinations of technologies which are the subject of Federal research and development efforts authorized by this chapter, and the commercial development of which could have significant impacts on water resources. In the preparation of its assessment, the Council shall—

(1) utilize to the maximum extent practicable data on water supply and demand available in the files of member agencies of the Council;

(2) collect and compile any additional data it deems necessary for complete and accurate assessments;

(3) give full consideration to the constraints upon availability imposed by treaty, compact, court decree, State water laws, and water rights granted pursuant to State and Federal law;

(4) assess the effects of development of such technology on water quality;

(5) include estimates of cost associated with production and management of the required water supply, and the cost of disposal of waste water generated by the proposed facility or process;

(6) assess the environmental, social, and economic impact of any change in use of currently utilized water resource that may be required by the proposed facility or process; and

(7) consult with the Council on Environmental Quality.

(b) Request by Secretary that Water Resources Council prepare assessment of availability of adequate water resources for proposed demonstration projects; report; publication

For any proposed demonstration project which may involve a significant impact on water resources, the Secretary shall, as a precondition of Federal assistance to that project, request the Water Resources Council to prepare an assessment of water requirements and availability for such project. A report on the assessment shall be published in the Federal Register for public review thirty days prior to the expenditure of Federal funds on the demonstration.

(c) Assessment by Water Resources Council of availability of adequate water resources as precondition for Federal assistance for commercial application of nonnuclear energy technologies

For any proposed Federal assistance for commercial application of energy technologies pursuant to this chapter, the Water Resource[1] Council shall, as a precondition of such Federal assistance, provide to the Secretary an assessment of the availability of adequate water resources for such commercial application and an evaluation of the environmental, social, and economic impacts of the dedication of water to such uses.

(d) Publication of reports of assessments and evaluations by Water Resources Council in Federal Register; public review and comments

Reports of assessments and evaluations prepared by the Council pursuant to subsections (a) and (c) of this section shall be published in the Federal Register and at least ninety days shall be provided for public review and comment. Comments received shall accompany the reports when they are submitted to the Secretary and shall be available to the public.

(e) Inclusion of survey and analysis of regional and national water resource availability in biennial assessment by Water Resources Council

The Council shall include a broad survey and analysis of regional and national water resource availability for energy development in the biennial assessment required by section 1962a–1(a) of this title.

(f) Secretary as member of Water Resources Council

The Secretary shall, upon enactment of this subsection, be a member of the Council.

(Pub. L. 93–577, § 13, Dec. 31, 1974, 88 Stat. 1893; Pub. L. 95–39, title I, § 110, June 3, 1977, 91 Stat. 186; Pub. L. 109–58, title X, § 1009(b)(9), Aug. 8, 2005, 119 Stat. 935.)

AMENDMENTS

2005—Subsecs. (b) to (d), (f). Pub. L. 109–58 substituted ''Secretary'' for ''Administrator''.

1977—Subsec. (a). Pub. L. 95–39, § 110(1), substituted ''The Water Resources Council'' for ''At the request of the Administrator, the Water Resources Council''.

Subsec. (b). Pub. L. 95–39, § 110(2), substituted ''the Administrator shall, as a precondition of Federal assistance to that project, request the Water Resources Council to prepare an assessment of water requirements and availability for such project'' for ''the Administrator shall, as a precondition of Federal assistance to that project, prepare or have prepared an assessment of the availability of adequate water resources''.

Subsec. (f). Pub. L. 95–39, § 110(3), added subsec. (f).

TRANSFER OF FUNCTIONS

Functions of Council on Environmental Quality and Office of Environmental Quality relating to evaluation provided for by section 5910 of this title transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 1 of 1977, § 5E, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective Feb. 26, 1978, pursuant to Ex. Ord. No. 12040, Feb. 24, 1978, 43 F.R. 8097, formerly set out under section 5910 of this title.

[1] So in original. Probably should be ''Resources''.

§ 5913. Evaluation by National Institute of Standards and Technology of energy-related inventions prior to awarding of grants by Secretary; promulgation of regulations

The National Institute of Standards and Technology shall give particular attention to the evaluation of all promising energy-related inventions, particularly those submitted by individual inventors and small companies for the purpose of obtaining direct grants from the Secretary. The National Institute of Standards and Technology is authorized to promulgate regulations in the furtherance of this section.

(Pub. L. 93–577, § 14, Dec. 31, 1974, 88 Stat. 1894; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards'' in two places.

TRANSFER OF FUNCTIONS

''Secretary'', meaning Secretary of Energy, substituted in text for ''Administrator'', meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5914. Omitted

CODIFICATION

Section, Pub. L. 93–577, § 15, Dec. 31, 1974, 88 Stat. 1894; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–238, title II, § 206(b), Feb. 25, 1978, 92 Stat. 61, which required the Secretary to submit annually to Congress a report detailing the activities carried out pursuant to this chapter during the preceding fiscal year, a detailed description of the comprehensive plan for nuclear and nonnuclear energy research, development, and demonstration then in effect under section 5905(a) of this title, a detailed description of the comprehensive nonnuclear research, development, and demonstration program then in effect under section 5905(b) of this title, and a detailed description of the environmental and safety research, development, and demonstration activities carried out and in progress and which provided that those reports would satisfy the reporting requirements of section 5877(a) of this title insofar as is concerned activities, goals, priorities, and plans of the Secretary pertaining to nonnuclear energy, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 20th item on page 86 of House Document No. 103–7.

§ 5915. Authorization of appropriations

There may be appropriated to the Secretary to carry out the purposes of this chapter such sums as may be authorized in annual authorization Acts.

(Pub. L. 93–577, § 16, Dec. 31, 1974, 88 Stat. 1894; Pub. L. 109–58, title X, § 1009(b)(10), Aug. 8, 2005, 119 Stat. 935.)

AMENDMENTS

2005—Pub. L. 109–58, in section catchline, substituted ''Authorization of appropriations'' for ''Appropriation authorization'', and in text, substituted ''There may be appropriated to the Secretary'' for ''(a) There may be appropriated to the Administrator'' and struck out subsecs. (b) and (c), which related to amounts to be made available to the Council on Environmental Quality and the Water Resources Council and amounts which might be appropriated for demonstration projects.

ALTERNATIVE FUELS PRODUCTION; ENERGY SECURITY RESERVE FUND

Pub. L. 96–126, title II, § 201, Nov. 27, 1979, 93 Stat. 970, as amended by Pub. L. 99–190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1255, provided that:

''In order to expedite the domestic development and production of alternative fuels and to reduce dependence on foreign supplies of energy resources by establishing such domestic production at maximum levels at the earliest time practicable, there is hereby established in the Treasury of the United States a special fund to be designated the 'Energy Security Reserve', to which is appropriated $19,000,000,000, to remain available until expended: *Provided*, That these funds shall be available for obligation only to stimulate domestic commercial production of alternative fuels and only to the extent provided in advance in appropriations Acts: *Provided further*, That of these funds $1,500,000,000 shall be available immediately to the Secretary of Energy to carry out the provisions of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended (42 U.S.C. 5901, et seq.), to remain available until expended, for the purchase or production by way of purchase commitments or price guarantees of alternative fuels: *Provided further*, That the Secretary shall immediately begin the contract process for purchases of, or commitments to purchase, or to resell alternative fuels to the extent of appropriations provided herein: *Provided further*, That of these funds an additional $708,000,000 shall be available immediately to the Secretary of Energy, to remain available until expended, to support preliminary alternative fuels commercialization activities under the Federal Nonnuclear Energy Research and Development Act of 1974, as amended, of which (1) not to exceed $100,000,000 shall be available for project development feasibility studies, such individual awards not to exceed $4,000,000: *Provided*, That the Secretary may require repayment of such funds where studies determine that such project proposals have economic or technical feasibility; (2) not to exceed $100,000,000 shall be available for cooperative agreements with non-Federal entities, such individual agreements not to exceed $25,000,000 to support commercial scale development of alternative fuel facilities; (3) not to exceed $500,000,000 shall be available for a reserve to cover any defaults from loan guarantees issued to finance the construction of alternative fuels production facilities as authorized by the Federal Nonnuclear Energy Research and Development Act of 1974, as amended: *Provided*, That the indebtedness guaranteed or committed to be guaranteed under this appropriation shall not exceed the aggregate of $1,500,000,000; and (4) not to exceed $8,000,000 shall be available for program management.

''This Act [Pub. L. 96–126] shall be deemed to satisfy the requirements for congressional action pursuant to sections 7(c) and 19 of said Act [section 5906(c) and former section 5919 of this title] with respect to any purchase commitment, price guarantee, or loan guarantee for which funds appropriated hereby are utilized or obligated.

''For the purposes of this appropriation the term 'alternative fuels', means gaseous, liquid, or solid fuels and chemical feedstocks derived from coal, shale, tar sands, lignite, peat, biomass, solid waste, unconventional natural gas, and other minerals or organic materials other than crude oil or any derivative thereof.

''Within ninety days following enactment of this Act [Nov. 27, 1979], the Secretary of Energy in his sole discretion shall issue a solicitation for applications which shall include criteria for project development feasibility studies described in this account.

''Loan guarantees for oil shale facilities issued under this appropriation may be used to finance construction of full-sized commercial facilities without regard to the proviso in section 19(b)(1) of said Act [former section 5919(b)(1) of this title] requiring the prior demonstration of a modular facility.

''In any case in which the Government, under the provisions of this appropriation, accepts delivery of and does not resell any alternative fuels, such fuels shall be used by an appropriate Federal agency. Such Federal agency shall pay into the reserve the market price, as determined by the Secretary, for such fuels from sums appropriated to such Federal agency for the purchase of fuels. The Secretary shall pay the contractor, from sums appropriated herein, the contract price for such fuels.

''All amounts received by the Secretary under this appropriation, including fees, any other monies, property, or assets derived by the Secretary from operations under this appropriation shall be deposited in the reserve.

''All payments for obligations and appropriate expenses (including reimbursements to other Government accounts), pursuant to operations of the Secretary under this appropriation shall be paid from the reserve subject to appropriations.

''For the establishment in the Treasury of the United States of a special fund to be designated the 'Solar and Conservation Reserve', $1,000,000,000 to remain available until expended: *Provided*, That these funds shall be available for obligation only to stimulate solar energy and conservation: *Provided further*, That the withdrawal of said funds shall be subject to the passage of authorizing legislation and only to the extent provided in advance in appropriations Acts.''

Additional provisions relating to appropriations for the Energy Security Reserve Fund, purposes for which the Fund is available, and administrative provisions for the Fund and alternative fuels production were contained in the following appropriation Acts:

Pub. L. 98–369, div. B, title I, § 2103, July 18, 1984, 98 Stat. 1058.

Pub. L. 97–100, title II, Dec. 23, 1981, 95 Stat. 1407.

Pub. L. 97–12, title I, June 5, 1981, 95 Stat. 48.

Pub. L. 96–369, § 121, Oct. 1, 1980, 94 Stat. 1357.

Pub. L. 96–304, title I, July 8, 1980, 94 Stat. 880–882, as amended Pub. L. 96–514, title II, Dec. 12, 1980, 94 Stat. 2974.

§ 5915a. Expiration of initial authorization to construct fossil energy demonstration plants

Notwithstanding any other applicable provision of law, the initial authorization in this Act or any other Act heretofore or hereafter enacted to construct, pursuant to section 5907 of this title, any fossil energy demonstration plant shall expire at the end of the three full fiscal years following the date of enactment of such authorization, unless (1) funds to construct each such plant are appropriated or otherwise provided pursuant to applicable law prior thereto, or (2) such authorization period is extended by specific Act of Congress hereafter enacted.

(Pub. L. 95–39, title I, § 105, June 3, 1977, 91 Stat. 184.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 95–39, June 3, 1977, 91 Stat. 180. The provisions of this Act relating to

an initial authorization for construction pursuant to section 5907 of this title are not classified to the Code.

CODIFICATION

Section was not enacted as part of the Federal Nonnuclear Energy Research and Development Act of 1974 which comprises this chapter.

§ 5916. Central source of nonnuclear energy information

The Secretary shall promptly establish, develop, acquire, and maintain a central source of information on all energy resources and technology in furtherance of the research, development, and demonstration mission carried out directly or indirectly under this chapter. When the Secretary determines that such information is needed to carry out the purposes of this chapter, the Secretary may acquire proprietary and other information (a) by purchase through negotiation or by donation from any person, or (b) from another Federal agency. The information maintained by the Secretary shall be made available to the public, subject to the provisions of section 552 of title 5 and section 1905 of title 18, and to other Government agencies in a manner that will facilitate its dissemination: *Provided*, That upon a showing satisfactory to the Secretary by any person that any information, or portion thereof, obtained under this section by the Secretary directly or indirectly from such person, would, if made public, divulge (1) trade secrets or (2) other proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18: *Provided further*, That the Secretary shall, upon request, provide such information to (A) any delegate of the Secretary for the purpose of carrying out this chapter, and (B) the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, the Federal Trade Commission, the Environmental Protection Agency, the Federal Energy Regulatory Commission[1] the Government Accountability Office, other Federal agencies, when necessary to carry out their duties and responsibilities under this chapter and other statutes, but such agencies and agency heads shall not release such information to the public. This section is not authority to withhold information from Congress or any committee of Congress upon request of the chairman or ranking minority member.

(Pub. L. 93–577, § 17, as added Pub. L. 94–187, title III, § 312, Dec. 31, 1975, 89 Stat. 1075; amended Pub. L. 109–58, title X, § 1009(b)(11), Aug. 8, 2005, 119 Stat. 936.)

AMENDMENTS

2005—Pub. L. 109–58, § 1009(b)(11)(A)–(C), (D)(ii), (E), substituted ''Secretary shall'' for ''Administrator shall'' wherever appearing, ''research, development, and demonstration'' for ''Administrator's research, development, and demonstration'', ''Secretary determines'' for ''Administrator determines'', ''the Secretary may acquire'' for ''he may acquire'', ''Secretary by'' for ''Administrator by'', ''Secretary directly'' for ''Administrator directly'', ''Secretary for'' for ''Administrator for'', ''the Federal Energy Regulatory Commission'' for ''the Federal Power Commission,'', and ''Government Accountability Office'' for ''General Accounting Office'', struck out ''the Federal Energy Administration,'' after ''the Federal Trade Commission,'', and inserted ''or ranking minority member'' before period at end.

Pub. L. 109–58, § 1009(b)(11)(D)(i), which directed the substitution of ''section 1905 of title 18'' for ''section 1905 or title 18'', could not be executed because ''section 1905 or title 18'' does not appear in text.

[1] So in original. Probably should be followed by a comma.

§ 5917. Repealed. Pub. L. 109–58, title X, § 1009(b)(12), Aug. 8, 2005, 119 Stat. 936

Section, Pub. L. 93–577, § 18, as added Pub. L. 94–187, title III, § 313, Dec. 31, 1975, 89 Stat. 1075; amended Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607, related to energy information.

§ 5918. Repealed. Pub. L. 104–106, div. D, title XLIII, § 4304(b)(5), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 93–577, § 19, as added Pub. L. 95–39, title IV, § 401, June 3, 1977, 91 Stat. 190; amended Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607, related to organizational conflicts.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

§§ 5919, 5920. Repealed. Pub. L. 109–58, title X, § 1009(b)(12), Aug. 8, 2005, 119 Stat. 936

Section 5919, Pub. L. 93–577, § 19, as added Pub. L. 95–238, title II, § 207(b), Feb. 25, 1978, 92 Stat. 61; amended Pub. L. 96–470, title I, § 109, Oct. 19, 1980, 94 Stat. 2239; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–437, § 15(c)(9), Nov. 2, 1994, 108 Stat. 4592; Pub. L. 104–316, title I, § 122(*o*), Oct. 19, 1996, 110 Stat. 3838; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814, related to loan guarantees and commitments for alternative fuel demonstration facilities.

Section 5920, Pub. L. 93–577, § 20, as added Pub. L. 95–238, title IV, § 401, Feb. 25, 1978, 92 Stat. 84; amended Pub. L. 103–437, § 15(c)(9), Nov. 2, 1994, 108 Stat. 4592, related to financial support program for municipal waste reprocessing demonstration facilities.

CHAPTER 75—PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

CODIFICATION

The Developmental Disabilities Assistance and Bill of Rights Act, formerly comprising this chapter, was title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, which was originally enacted by Pub. L. 88–164, Oct. 31, 1963, 77 Stat. 282, at which time title I was known as the Mental Retardation Facilities Construction Act, and parts B and C of such title I were classified to subchapters I (§ 2661 et seq.) and II (§ 2670 et seq.), respectively, of chapter 33 of this title. Because of the extensive amendments, reorganization of the subject matter, and expansion of the Act by the acts summarized below, the Act was set out here as having been added by Pub. L. 98–527, without reference to intervening amendments.

Part D of the Act was added by Pub. L. 90–170, § 4, Dec. 4, 1967, 81 Stat. 528, and was classified to subchapter IIA (§ 2678 et seq.) of chapter 33 of this title. Part C of the Act was amended generally and the Act was reorganized and renamed the Developmental Disabilities Services and Facilities Construction Act, by Pub. L. 91–517, Oct. 30, 1970, 84 Stat. 1316.

Parts A, B, and D of the Act were amended generally and the Act was otherwise extensively amended and re-

organized by Pub. L. 94–103, Oct. 4, 1975, 89 Stat. 486, and was reclassified to this chapter.

The Act was renamed the Developmental Disabilities Assistance and Bill of Rights Act and was amended and reorganized by Pub. L. 95–602, title V, Nov. 6, 1978, 92 Stat. 3003, and was subsequently amended generally and completely reorganized by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662.

For provisions similar to former chapter 75 of this title, relating to programs for individuals with developmental disabilities, see subchapter I (§ 15001 et seq.) of chapter 144 of this title.

SUBCHAPTER I—GENERAL PROVISIONS

§§ 6000, 6001. Repealed. Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6000, Pub. L. 88–164, title I, § 101, as added Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662; amended Pub. L. 100–146, title I, § 101, Oct. 29, 1987, 101 Stat. 840; Pub. L. 101–496, § 3, Oct. 31, 1990, 104 Stat. 1191; Pub. L. 103–230, title I, § 102, Apr. 6, 1994, 108 Stat. 285, set out congressional findings, purpose and policy concerning individuals with developmental disabilities.

A prior section 6000, Pub. L. 88–164, title I, § 101, as added Pub. L. 95–602, title V, § 502, Nov. 6, 1978, 92 Stat. 3004, set out congressional statement of findings and purpose, prior to the general amendment of this chapter by Pub. L. 98–527.

Section 6001, Pub. L. 88–164, title I, § 102, as added Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2663; amended Pub. L. 100–146, title I, § 102, Oct. 29, 1987, 101 Stat. 841; Pub. L. 101–496, § 4, Oct. 31, 1990, 104 Stat. 1192; Pub. L. 103–230, title I, § 103, Apr. 6, 1994, 108 Stat. 288, defined terms for purposes of chapter.

A prior section 6001, Pub. L. 88–164, title I, § 102, as added Pub. L. 94–103, title I, § 125, Oct. 4, 1975, 89 Stat. 496; amended Pub. L. 95–602, title V, § 503(a), (b)(1), (c)–(f), Nov. 6, 1978, 92 Stat. 3004–3006; Pub. L. 98–221, title III, § 301, Feb. 22, 1984, 98 Stat. 34, defined terms for purposes of this chapter, prior to the general amendment of this chapter by Pub. L. 98–527.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–183, § 1, Aug. 6, 1996, 110 Stat. 1694, provided that: ''This Act [amending sections 6030, 6043, 6066, and 6083 of this title] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1996'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–230, § 1(a), Apr. 6, 1994, 108 Stat. 284, provided that: ''This Act [enacting sections 6025a, 6065, and 6066 of this title, amending this section and sections 6001, 6003, 6005 to 6009, 6021, 6022, 6024, 6025, 6026, 6027, 6029, 6030, 6041 to 6043, 6061 to 6064, and 6081 to 6083 of this title, repealing sections 6002, 6004, 6023, and 6028 of this title, enacting provisions set out as a note under section 6025 of this title, and amending provisions set out as a note under this section] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–496, § 1, Oct. 31, 1990, 104 Stat. 1191, provided that: ''This Act [amending this section and sections 6001, 6002, 6006 to 6009, 6021, 6022, 6024, 6025, 6030, 6042, 6043, 6062 to 6064, and 6081 to 6083 of this title] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act of 1990'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–146, § 1, Oct. 29, 1987, 101 Stat. 840, provided that: ''This Act [amending this section and sections 6001, 6006, 6021 to 6025, 6027, 6030, 6042, 6043, 6061 to 6064, and 6081 to 6083 of this title, and enacting provisions set out as a note above] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–527, § 1, Oct. 19, 1984, 98 Stat. 2662, provided: ''That this Act [enacting this chapter] may be cited as the 'Developmental Disabilities Act of 1984'.''

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94–103, § 1, Oct. 4, 1975, 89 Stat. 486, provided that: ''This Act [see Codification note set out above] may be cited as the 'Developmentally Disabled Assistance and Bill of Rights Act'.''

SHORT TITLE

Pub. L. 88–164, § 1, Oct. 31, 1963, 77 Stat. 282, as amended, provided that: ''This Act [enacting this chapter and subchapter III (§ 2689 et seq.) of chapter 33 of this title, and enacting provisions set out as notes under this section and section 2689 of this title] may be cited as the 'Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963'.''

Pub. L. 88–164, title I, § 101, as added by Pub. L. 94–103, title I, § 125, Oct. 4, 1975, 89 Stat. 496, which provided that title I of Pub. L. 88–164, as added by Pub. L. 94–103 (enacting this chapter) could be cited as the ''Developmental Disabilities Services and Facilities Construction Act'', was repealed by Pub. L. 95–602, title V, § 502, Nov. 6, 1978, 92 Stat. 3003.

Pub. L. 88–164, title I, § 100, as added by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, and amended by Pub. L. 103–230, title I, § 101(c), Apr. 6, 1994, 108 Stat. 285, which provided that title I of Pub. L. 88–164, as added by Pub. L. 98–527 (enacting this chapter) could be cited as the ''Developmental Disabilities Assistance and Bill of Rights Act'', was repealed by Pub. L. 106–402, title IV, § 401(a), Oct 30, 2000, 114 Stat. 1737.

§ 6002. Repealed. Pub. L. 103–230, title I, § 104, Apr. 6, 1994, 108 Stat. 293

Section, Pub. L. 88–164, title I, § 103, as added Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2667; amended Pub. L. 101–496, § 5, Oct. 31, 1990, 104 Stat. 1194, related to Federal share of costs of projects under subchapters II and IV of this chapter.

A prior section 6002, Pub. L. 88–164, title I, § 103, as added Pub. L. 94–103, title I, § 125, Oct. 4, 1975, 89 Stat. 498, set out provisions relating to Federal share, prior to the general amendment of this chapter by Pub. L. 98–527.

§ 6003. Repealed. Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6003, Pub. L. 88–164, title I, § 104, as added Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2667; amended Pub. L. 103–230, title I, § 105, Apr. 6, 1994, 108 Stat. 293, related to records and audits.

A prior section 6003, Pub. L. 88–164, title I, § 104, as added Pub. L. 94–103, title I, § 125, Oct. 4, 1975, 89 Stat. 498, set forth provisions relating to State control of operations, prior to the general amendment of this chapter by Pub. L. 98–527.

§ 6004. Repealed. Pub. L. 103–230, title I, § 106, Apr. 6, 1994, 108 Stat. 293

Section, Pub. L. 88–164, title I, § 105, as added Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2667, related to recovery of Federal share of costs of facilities constructed under subchapters II and IV of this chapter under certain conditions.

A prior section 6004, Pub. L. 88–164, title I, § 105, as added Pub. L. 94–103, title I, § 125, Oct. 4, 1975, 89 Stat. 498, related to records and audits, prior to the general amendment of this chapter by Pub. L. 98–527.

§§ 6005 to 6009. Repealed. Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6005, Pub. L. 88–164, title I, § 106, as added Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2668; amended

Pub. L. 103–230, title I, §107, Apr. 6, 1994, 108 Stat. 293, provided for state control of operations.

A prior section 6005, Pub. L. 88–164, title I, §106, as added Pub. L. 94–103, title I, §125, Oct. 4, 1975, 89 Stat. 498, related to employment of handicapped individuals, prior to the general amendment of this chapter by Pub. L. 98–527.

Section 6006, Pub. L. 88–164, title I, §107, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2668; amended Pub. L. 100–146, title I, §103, Oct. 29, 1987, 101 Stat. 844; Pub. L. 101–496, §6, Oct. 31, 1990, 104 Stat. 1194; Pub. L. 103–230, title I, §108, Apr. 6, 1994, 108 Stat. 294, provided for various reports.

A prior section 6006, Pub. L. 88–164, title I, §107, as added Pub. L. 94–103, title I, §125, Oct. 4, 1975, 89 Stat. 499, related to recovery of expenditures under certain conditions and liens, prior to the general amendment of this chapter by Pub. L. 98–527.

Section 6007, Pub. L. 88–164, title I, §108, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2669; amended Pub. L. 101–496, §7, Oct. 31, 1990, 104 Stat. 1195; Pub. L. 103–230, title I, §109, Apr. 6, 1994, 108 Stat. 296, related to responsibilities of the Secretary.

A prior section 6007, Pub. L. 88–164, title I, §108, formerly §133, as added Pub. L. 91–517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1318, and renumbered and amended Pub. L. 94–103, title I, §126(a), Oct. 4, 1975, 89 Stat. 499, established National Advisory Council on Services and Facilities for Developmentally Disabled and provided for membership, terms of office, compensation and traveling expenses, and duties and functions, prior to repeal by Pub. L. 95–602, title V, §504(a), Nov. 6, 1978, 92 Stat. 3006.

Section 6008, Pub. L. 88–164, title I, §109, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2669; amended Pub. L. 101–496, §8, Oct. 31, 1990, 104 Stat. 1195; Pub. L. 103–230, title I, §110, Apr. 6, 1994, 108 Stat. 296, required recipients to employ qualified individuals with disabilities on the same terms and conditions required by the Rehabilitation Act of 1973.

A prior section 6008, Pub. L. 88–164, title I, §109, formerly §139, as added Pub. L. 91–517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1323; renumbered §109 and amended Pub. L. 94–103, title I, §127, Oct. 4, 1975, 89 Stat. 500; Pub. L. 95–602, title V, §505, Nov. 6, 1978, 92 Stat. 3007, related to promulgation of regulations, prior to the general amendment of this chapter by Pub. L. 98–527.

Section 6009, Pub. L. 88–164, title I, §110, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2669; amended Pub. L. 101–496, §9, Oct. 31, 1990, 104 Stat. 1195; Pub. L. 103–230, title I, §111, Apr. 6, 1994, 108 Stat. 296, related to rights of individuals with developmental disabilities.

A prior section 6009, Pub. L. 88–164, title I, §110, as added Pub. L. 94–103, title I, §128, Oct. 4, 1975, 89 Stat. 501; amended Pub. L. 95–602, title V, §§504(b)(1), 506, Nov. 6, 1978, 92 Stat. 3006, 3007; Pub. L. 96–32, §3(b), July 10, 1979, 93 Stat. 82, set forth provisions respecting development, etc., of evaluation system, prior to repeal by Pub. L. 97–35, title IX, §912(a), Aug. 13, 1981, 95 Stat. 563.

Prior sections 6010 to 6012 were omitted in the general amendment of this chapter by Pub. L. 98–527.

Section 6010, Pub. L. 88–164, title I, §111, as added Pub. L. 94–103, title II, §201, Oct. 4, 1975, 89 Stat. 502; amended Pub. L. 95–602, title V, §507, Nov. 6, 1978, 92 Stat. 3007, set forth Congressional findings respecting rights of the developmentally disabled.

Section 6011, Pub. L. 88–164, title I, §112, as added Pub. L. 94–103, title II, §202, Oct. 4, 1975, 89 Stat. 503; amended Pub. L. 95–602, title V, §514(a), Nov. 6, 1978, 92 Stat. 3016, related to habilitation plans.

Section 6012, Pub. L. 88–164, title I, §113, as added Pub. L. 94–103, title II, §203, Oct. 4, 1975, 89 Stat. 504; amended Pub. L. 95–602, title V, §508, Nov. 6, 1978, 92 Stat. 3007; Pub. L. 97–35, title IX, §911(a), Aug. 13, 1981, 95 Stat. 563; Pub. L. 98–221, title III, §302, Feb. 22, 1984, 98 Stat. 35, related to protection and advocacy of rights of persons with developmental disabilities.

SUBCHAPTER II—FEDERAL ASSISTANCE TO STATE DEVELOPMENTAL DISABILITIES COUNCILS

§§ 6021, 6022. Repealed. Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6021, Pub. L. 88–164, title I, §121, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2670; amended Pub. L. 100–146, title II, §201(a), Oct. 29, 1987, 101 Stat. 845; Pub. L. 101–496, §10, Oct. 31, 1990, 104 Stat. 1195; Pub. L. 103–230, title II, §202, Apr. 6, 1994, 108 Stat. 297, set forth the purpose of this subchapter.

A prior section 121 of Pub. L. 88–164, title I, as added Pub. L. 94–103, title I, §105, Oct. 4, 1975, 89 Stat. 486; amended Pub. L. 95–602, title V, §509, Nov. 6, 1978, 92 Stat. 3008, related generally to demonstration and training grants and was classified to section 6031 of this title, prior to the general amendment of this chapter by Pub. L. 98–527.

Section 6022, Pub. L. 88–164, title I, §122, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2670; amended Pub. L. 99–91, §6(b), Aug. 15, 1985, 99 Stat. 391; Pub. L. 100–146, title II, §202, Oct. 29, 1987, 101 Stat. 845; Pub. L. 101–496, §11, Oct. 31, 1990, 104 Stat. 1195; Pub. L. 102–119, §26(b), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103–230, title II, §203, Apr. 6, 1994, 108 Stat. 297; Pub. L. 105–12, §9(*l*)(1), Apr. 30, 1997, 111 Stat. 28, related to submission and approval of State plans.

§ 6023. Repealed. Pub. L. 103–230, title II, § 204, Apr. 6, 1994, 108 Stat. 302

Section, Pub. L. 88–164, title I, §123, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2674; amended Pub. L. 100–146, title II, §203, Oct. 29, 1987, 101 Stat. 849, required habilitation plan as condition to State's receipt of allotment under this subchapter.

§§ 6024 to 6027. Repealed. Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6024, Pub. L. 88–164, title I, §124, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2675; amended Pub. L. 100–146, title II, §204, Oct. 29, 1987, 101 Stat. 849; Pub. L. 101–496, §12, Oct. 31, 1990, 104 Stat. 1197; Pub. L. 102–119, §26(b), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103–230, title II, §205, Apr. 6, 1994, 108 Stat. 302, required each State receiving assistance to establish and maintain a State Developmental Disabilities Council.

Section 6025, Pub. L. 88–164, title I, §125, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2676; amended Pub. L. 100–146, title II, §205, Oct. 29, 1987, 101 Stat. 850; Pub. L. 101–496, §13, Oct. 31, 1990, 104 Stat. 1197; Pub. L. 103–230, title II, §206, Apr. 6, 1994, 108 Stat. 310, related to State allotments.

Section 6025a, Pub. L. 88–164, title I, §125A, as added Pub. L. 103–230, title II, §207, Apr. 6, 1994, 108 Stat. 312, established Federal and non-Federal shares.

Section 6026, Pub. L. 88–164, title I, §126, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2677; amended Pub. L. 103–230, title II, §208, Apr. 6, 1994, 108 Stat. 313, provided for payments to States for planning, administration, and services.

Section 6027, Pub. L. 88–164, title I, §127, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2678; amended Pub. L. 100–146, title II, §207, Oct. 29, 1987, 101 Stat. 851; Pub. L. 103–230, title II, §209, Apr. 6, 1994, 108 Stat. 313, related to withholding of payments to States.

§ 6028. Repealed. Pub. L. 103–230, title II, § 210, Apr. 6, 1994, 108 Stat. 313

Section, Pub. L. 88–164, title I, §128, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2678, related to nonduplication in determining amount of Federal share of expenditures under State plan approved under section 6022 of this title.

§§ 6029, 6030. Repealed. Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6029, Pub. L. 88–164, title I, §129, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2678; amended Pub. L. 103–230, title II, §211, Apr. 6, 1994, 108 Stat. 313, related to appeals by States.

Section 6030, Pub. L. 88–164, title I, §130, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2679; amended Pub. L. 100–146, title II, §208, Oct. 29, 1987, 101 Stat. 851; Pub. L. 101–496, §14, Oct. 31, 1990, 104 Stat. 1198; Pub. L. 103–230, title II, §212, Apr. 6, 1994, 108 Stat. 313; Pub. L. 104–183, §2, Aug. 6, 1996, 110 Stat. 1694, authorized appropriations.

Prior sections 6031 to 6033 were omitted in the general amendment of this chapter by Pub. L. 98–527.

Section 6031, Pub. L. 88–164, title I, §121, as added Pub. L. 94–103, title I, §105, Oct. 4, 1975, 89 Stat. 486; amended Pub. L. 95–602, title V, §509, Nov. 6, 1978, 92 Stat. 3008, related to grants for university affiliated facilities.

Section 6032, Pub. L. 88–164, title I, §122, as added Pub. L. 94–103, title I, §105, Oct. 4, 1975, 89 Stat. 487; amended Pub. L. 95–602, title V, §509, Nov. 6, 1978, 92 Stat. 3009, set forth administrative provisions relating to demonstration and training grants for university affiliated facilities.

Section 6033, Pub. L. 88–164, title I, §123, as added Pub. L. 94–103, title I, §105, Oct. 4, 1975, 89 Stat. 487; amended Pub. L. 95–602, title V, §509, Nov. 6, 1978, 92 Stat. 3010; Pub. L. 97–35, title IX, §911(b), Aug. 13, 1981, 95 Stat. 563; Pub. L. 98–221, title III, §303, Feb. 22, 1984, 98 Stat. 35, authorized appropriations for demonstration and training grants for university affiliated facilities.

SUBCHAPTER III—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

§§ 6041 to 6043. Repealed. Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6041, Pub. L. 88–164, title I, §141, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2679; amended Pub. L. 103–230, title III, §302, Apr. 6, 1994, 108 Stat. 314, stated the purpose of this subchapter.

A prior section 6041, Pub. L. 88–164, title I, §125, as added Pub. L. 94–103, title I, §105, Oct. 4, 1975, 89 Stat. 488, authorized construction, renovation, or modernization of buildings to be used by university-affiliated facilities, prior to the general amendment of former subchapter II of this chapter by Pub. L. 95–602, title V, §509, Nov. 6, 1978, 92 Stat. 3008.

Section 6042, Pub. L. 88–164, title I, §142, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2679; amended Pub. L. 100–146, title III, §301, Oct. 29, 1987, 101 Stat. 851; Pub. L. 101–496, §15, Oct. 31, 1990, 104 Stat. 1198; Pub. L. 103–230, title III, §303, Apr. 6, 1994, 108 Stat. 314; Pub. L. 105–12, §9(*l*)(2), Apr. 30, 1997, 111 Stat. 28, related to State systems to protect and advocate the rights of individuals with developmental disabilities.

A prior section 6042, Pub. L. 88–164, title I, §126, as added Pub. L. 94–103, title I, §105, Oct. 4, 1975, 89 Stat. 488, related to grants for projects and to application requirements, prior to the general amendment of former subchapter II of this chapter by Pub. L. 95–602, title V, §509, Nov. 6, 1978, 92 Stat. 3008.

Section 6043, Pub. L. 88–164, title I, §143, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2680; amended Pub. L. 100–146, title III, §302, Oct. 29, 1987, 101 Stat. 853; Pub. L. 101–496, §16, Oct. 31, 1990, 104 Stat. 1200; Pub. L. 103–230, title III, §304, Apr. 6, 1994, 108 Stat. 319; Pub. L. 104–183, §3, Aug. 6, 1996, 110 Stat. 1694, authorized appropriations.

A prior section 6043, Pub. L. 88–164, title I, §127, as added Pub. L. 94–103, title I, §105, Oct. 4, 1975, 89 Stat. 488, authorized appropriations for making payments for construction, renovation, or modernization of buildings, prior to the general amendment of former subchapter II of this chapter by Pub. L. 95–602, title V, §509, Nov. 6, 1978, 92 Stat. 3008.

SUBCHAPTER IV—UNIVERSITY AFFILIATED PROGRAMS

§§ 6061 to 6066. Repealed. Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6061, Pub. L. 88–164, title I, §151, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2681; amended Pub. L. 100–146, title IV, §401(a), Oct. 29, 1987, 101 Stat. 853; Pub. L. 103–230, title IV, §402, Apr. 6, 1994, 108 Stat. 319, provided for the purpose and scope of activities under this subchapter.

A prior section 6061, Pub. L. 88–164, title I, §131, as added Pub. L. 91–517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1317; amended Pub. L. 93–45, title III, §301(b), June 18, 1973, 87 Stat. 95; Pub. L. 94–103, title I, §§101(a), 110(a), Oct. 4, 1975, 89 Stat. 486, 489; Pub. L. 95–602, title V, §510(a), Nov. 6, 1978, 92 Stat. 3010; Pub. L. 97–35, title IX, §911(c), Aug. 13, 1981, 95 Stat. 563; Pub. L. 98–221, title III, §304, Feb. 22, 1984, 98 Stat. 35, authorized appropriations for State allotments, prior to the general amendment of this chapter by Pub. L. 98–527.

Section 6062, Pub. L. 88–164, title I, §152, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2681; amended Pub. L. 100–146, title IV, §402, Oct. 29, 1987, 101 Stat. 853; Pub. L. 101–496, §17, Oct. 31, 1990, 104 Stat. 1200; Pub. L. 103–230, title IV, §403, Apr. 6, 1994, 108 Stat. 320; Pub. L. 105–12, §9(*l*)(3), Apr. 30, 1997, 111 Stat. 28, provided for administration and operation grants.

A prior section 6062, Pub. L. 88–164, title I, §132, as added Pub. L. 91–517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1317; amended Pub. L. 94–103, title I, §110(b)–(e)(1), title III, §302(b)(1), Oct. 4, 1975, 89 Stat. 489, 490, 506; Pub. L. 94–278, title XI, §1107(a) Apr. 22, 1976, 90 Stat. 416; Pub. L. 95–602, title V, §510(b), Nov. 6, 1978, 92 Stat. 3010, related to allotments to States, prior to the general amendment of this chapter by Pub. L. 98–527.

Section 6063, Pub. L. 88–164, title I, §153, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2682; amended Pub. L. 100–146, title IV, §403, Oct. 29, 1987, 101 Stat. 855; Pub. L. 101–496, §18, Oct. 31, 1990, 104 Stat. 1203; Pub. L. 103–230, title IV, §404, Apr. 6, 1994, 108 Stat. 324, related to applications.

A prior section 6063, Pub. L. 88–164, title I, §133, formerly §134, as added Pub. L. 91–517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1319; renumbered §133 and amended Pub. L. 94–103, title I, §§110(e)(2), 111, title III, §302(a), (b)(2), Oct. 4, 1975, 89 Stat. 490, 506; Pub. L. 95–602, title V, §511, Nov. 6, 1978, 92 Stat. 3011, related to State plans, prior to the general amendment of this chapter by Pub. L. 98–527.

Section 6064, Pub. L. 88–164, title I, §154, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100–146, title IV, §404, Oct. 29, 1987, 101 Stat. 857; Pub. L. 101–496, §19, Oct. 31, 1990, 104 Stat. 1203; Pub. L. 103–230, title IV, §405, Apr. 6, 1994, 108 Stat. 326, established the order of priorities for grant awards.

A prior section 6064, Pub. L. 88–164, title I, §134, formerly §137, as added Pub. L. 91–517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1323; amended Pub. L. 93–45, title III, §301(c), June 18, 1973, 87 Stat. 95; renumbered §134 and amended Pub. L. 94–103, title I, §§101(b), 113, title III, §302(a), Oct. 4, 1975, 89 Stat. 486, 492, 506; Pub. L. 94–278, title XI, §1107(b), (c), Apr. 22, 1976, 90 Stat. 416; Pub. L. 95–602, title V, §514(b), Nov. 6, 1978, 92 Stat. 3017, related to payments to the States for planning, administration, and services, prior to the general amendment of this chapter by Pub. L. 98–527.

Section 6065, Pub. L. 88–164, title I, §155, as added Pub. L. 103–230, title IV, §406, Apr. 6, 1994, 108 Stat. 327, defined ''State''.

A prior section 6065, Pub. L. 88–164, title I, §135, formerly §138, as added Pub. L. 91–517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1323; renumbered §135 and amended Pub. L. 94–103, title I, §§110(e)(3), 114, title III, §302(a), (b)(3), Oct. 4, 1975, 89 Stat. 490, 493, 506; Pub. L. 95–602, title V, §514(c), Nov. 6, 1978, 92 Stat. 3017, related to withholding of payments to States for planning, administration, and services, prior to the general amendment of this chapter by Pub. L. 98–527.

Section 6066, Pub. L. 88–164, title I, §156, as added Pub. L. 103–230, title IV, §406, Apr. 6, 1994, 108 Stat. 327; amended Pub. L. 104–183, §4, Aug. 6, 1996, 110 Stat. 1694, authorized appropriations.

Prior sections 6066 to 6068 were omitted in the general amendment of this chapter by Pub. L. 98–527.

Section 6066, Pub. L. 88–164, title I, §136, formerly §140, as added Pub. L. 91–517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1324; renumbered §136 and amended Pub. L. 94–103, title I, §115, title III, §302(a), (b)(4), Oct. 4, 1975, 89 Stat. 493, 506, related to nonduplication of payments.

Section 6067, Pub. L. 88–164, title I, §137, formerly §141, as added and renumbered §137, Pub. L. 94–103, title I, §116, title III, §302(a), Oct. 4, 1975, 89 Stat. 493, 506; amended Pub. L. 95–602, title V, §512, Nov. 6, 1978, 92 Stat. 3015, related to State Planning Councils.

Section 6068, Pub. L. 88–164, title I, §138, formerly §142, as added, renumbered §138, and amended Pub. L. 94–103, title I, §117, title III, §302(a), (b)(5), Oct. 4, 1975, 89 Stat. 494, 506, related to appeals, petitions, record, jurisdiction of courts of appeals, conclusiveness of findings, review by the Supreme Court, and stay of administrative action.

SUBCHAPTER V—PROJECTS OF NATIONAL SIGNIFICANCE

§§ 6081 to 6083. Repealed. Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6081, Pub. L. 88–164, title I, §161, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100–146, title V, §501(a), Oct. 29, 1987, 101 Stat. 857; Pub. L. 101–496, §20, Oct. 31, 1990, 104 Stat. 1203; Pub. L. 103–230, title V, §502, Apr. 6, 1994, 108 Stat. 328, stated the purpose of this subchapter.

A prior section 6081, Pub. L. 88–164, title I, §145, as added Pub. L. 94–103, title I, §105, Oct. 4, 1975, 89 Stat. 495; amended Pub. L. 95–602, title V, §§504(b)(2), (3), 513, Nov. 6, 1978, 92 Stat. 3006, 3016; Pub. L. 96–32, §3(a), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, §913, Aug. 13, 1981, 95 Stat. 563; Pub. L. 98–221, title III, §305, Feb. 22, 1984, 98 Stat. 35, set forth grant authority for special projects grants, prior to the general amendment of this chapter by Pub. L. 98–527.

Section 6082, Pub. L. 88–164, title I, §162, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100–146, title V, §502, Oct. 29, 1987, 101 Stat. 857; Pub. L. 101–496, §21, Oct. 31, 1990, 104 Stat. 1204; Pub. L. 103–230, title V, §503, Apr. 6, 1994, 108 Stat. 328; Pub. L. 105–12, §9(*l*)(4), Apr. 30, 1997, 111 Stat. 28, related to the Secretary's grant authority.

Section 6083, Pub. L. 88–164, title I, §163, as added Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2684; amended Pub. L. 100–146, title V, §503, Oct. 29, 1987, 101 Stat. 858; Pub. L. 101–496, §22, Oct. 31, 1990, 104 Stat. 1204; Pub. L. 103–230, title V, §504, Apr. 6, 1994, 108 Stat. 331; Pub. L. 104–183, §5, Aug. 6, 1996, 110 Stat. 1695, authorized appropriations.

CHAPTER 76—AGE DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Sec.
6101. Statement of purpose.
6102. Prohibition of discrimination.
6103. Regulations.
6104. Enforcement.
6105. Judicial review.
6106. Study of discrimination based on age.
6106a. Reports to the Secretary and Congress.
6107. Definitions.

§ 6101. Statement of purpose

It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

(Pub. L. 94–135, title III, §302, Nov. 28, 1975, 89 Stat. 728; Pub. L. 95–478, title IV, §401(a), Oct. 18, 1978, 92 Stat. 1555; Pub. L. 99–272, title XIV, §14001(b)(4), Apr. 7, 1986, 100 Stat. 329.)

AMENDMENTS

1986—Pub. L. 99–272 struck out ", including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et seq.)" after "Federal financial assistance".

1978—Pub. L. 95–478 struck out "unreasonable" before "discrimination".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99–272.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

SHORT TITLE

Pub. L. 94–135, title III, §301, Nov. 28, 1975, 89 Stat. 728, provided that: "The provisions of this title [enacting this chapter] may be cited as the 'Age Discrimination Act of 1975'."

§ 6102. Prohibition of discrimination

Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6103(b) and section 6103(c) of this title, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(Pub. L. 94–135, title III, §303, Nov. 28, 1975, 89 Stat. 728.)

§ 6103. Regulations

(a) Publication in Federal Register of proposed general regulations, final general regulations, and anti-discrimination regulations; effective date

(1) Not later than one year after the transmission of the report required by section 6106(b) of this title, or two and one-half years after November 28, 1975, whichever occurs first, the Secretary of Health and Human Services shall publish in the Federal Register proposed general regulations to carry out the provisions of section 6102 of this title.

(2)(A) The Secretary shall not publish such proposed general regulations until the expiration of a period comprised of—

(i) the forty-five day period specified in section 6106(e) of this title; and

(ii) an additional forty-five day period, immediately following the period described in clause (i), during which any committee of the Congress having jurisdiction over the subject matter involved may conduct hearings with respect to the report which the Commission is required to transmit under section 6106(d) of this title, and with respect to the comments and recommendations submitted by Federal departments and agencies under section 6106(e) of this title.

(B) The forty-five day period specified in subparagraph (A)(ii) shall include only days during

which both Houses of the Congress are in session.

(3) Not later than ninety days after the Secretary publishes proposed regulations under paragraph (1), the Secretary shall publish in the Federal Register final general regulations to carry out the provisions of section 6102 of this title, after taking into consideration any comments received by the Secretary with respect to the regulations proposed under paragraph (1).

(4) Not later than ninety days after the Secretary publishes final general regulations under paragraph (a)(3), the head of each Federal department or agency which extends Federal financial assistance to any program or activity by way of grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to the Secretary and publish in the Federal Register proposed regulations to carry out the provisions of section 6102 of this title and to provide appropriate investigative, conciliation, and enforcement procedures. Such regulations shall be consistent with the final general regulations issued by the Secretary, and shall not become effective until approved by the Secretary.

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section shall be effective before July 1, 1979.

(b) Nonviolative actions; program or activity exemption

(1) It shall not be a violation of any provision of this chapter, or of any regulation issued under this chapter, for any person to take any action otherwise prohibited by the provisions of section 6102 of this title if, in the program or activity involved—

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this chapter shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.

(c) Employment practices and labor-management joint apprenticeship training program exemptions; Age Discrimination in Employment Act unaffected

(1) Nothing in this chapter shall be construed to authorize action under this chapter by any Federal department or agency with respect to any employment practice of any employer, employment agency, or labor organization, or with respect to any labor-management joint apprenticeship training program.

(2) Nothing in this chapter shall be construed to amend or modify the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621–634), as amended, or to affect the rights or responsibilities of any person or party pursuant to such Act.

(Pub. L. 94–135, title III, § 304, Nov. 28, 1975, 89 Stat. 729; Pub. L. 95–478, title IV, § 401(b), Oct. 18, 1978, 92 Stat. 1555; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–300, title I, § 183, Oct. 13, 1982, 96 Stat. 1357; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(37)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–427.)

REFERENCES IN TEXT

The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621–634), as amended, referred to in subsec. (c)(2), is Pub. L. 90–202, Dec. 15, 1967, 81 Stat. 602, as amended, which is classified generally to chapter 14 (§ 621 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 29 and Tables.

CODIFICATION

In subsec. (c)(1), ''Job Training Partnership Act [29 U.S.C. 1501 et seq.]'' substituted for ''Comprehensive Employment and Training Act of 1974 (29 U.S.C. 801 et seq.), as amended'' pursuant to section 183 of the Job Training Partnership Act, Pub. L. 97–300, title I, Oct. 13, 1982, 96 Stat. 1357, which is classified to section 1592 of Title 29, Labor, and which provided in part that references in any other statute to the Comprehensive Employment and Training Act shall be deemed to refer to the Job Training Partnership Act.

AMENDMENTS

1998—Subsec. (c)(1). Pub. L. 105–277 substituted ''Nothing'' for ''Except with respect to any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act, nothing''.

1978—Subsec. (a)(4). Pub. L. 95–478, § 401(b)(1), provided that the regulations shall not become effective until approved by the Secretary.

Subsec. (a)(5). Pub. L. 95–478, § 401(b)(2), substituted ''July 1, 1979'' for ''January 1, 1979''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(1) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

§ 6104. Enforcement

(a) Methods of achieving compliance with regulations

The head of any Federal department or agency who prescribes regulations under section 6103 of this title may seek to achieve compliance with any such regulation—

(1) by terminating, or refusing to grant or to continue, assistance under the program or activity involved to any recipient with respect to whom there has been an express finding on the record, after reasonable notice and opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

(b) Limitations on termination of, or on refusal to grant or to continue, assistance; disbursement of withheld funds to achiever agencies

Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) of this section shall be limited to the particular

political entity or other recipient with respect to which a finding has been made under subsection (a)(1) of this section. Any such termination or refusal shall be limited in its effect to the particular program or activity, or part of such program or activity, with respect to which such finding has been made. No such termination or refusal shall be based in whole or in part on any finding with respect to any program or activity which does not receive Federal financial assistance. Whenever the head of any Federal department or agency who prescribes regulations under section 6103 of this title withholds funds pursuant to subsection (a) of this section, he may, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency, or State or political subdivision thereof, which demonstrates the ability to achieve the goals of the Federal statute authorizing the program or activity while complying with regulations issued under section 6103 of this title.

(c) Advice as to failure to comply with regulation; determination that compliance cannot be secured by voluntary means

No action may be taken under subsection (a) of this section until the head of the Federal department or agency involved has advised the appropriate person of the failure to comply with the regulation involved and has determined that compliance cannot be secured by voluntary means.

(d) Report to Congressional committees

In the case of any action taken under subsection (a) of this section, the head of the Federal department or agency involved shall transmit a written report of the circumstances and grounds of such action to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved. No such action shall take effect until thirty days after the transmission of any such report.

(e) Injunctions; notice of violations; costs; conditions for actions

(1) When any interested person brings an action in any United States district court for the district in which the defendant is found or transacts business to enjoin a violation of this Act by any program or activity receiving Federal financial assistance, such interested person shall give notice by registered mail not less than 30 days prior to the commencement of that action to the Secretary of Health and Human Services, the Attorney General of the United States, and the person against whom the action is directed. Such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing plaintiff.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be requested, the court in which the action will be brought, and whether or not attorney's fees are being demanded in the event that the plaintiff prevails. No action described in paragraph (1) shall be brought (A) if at the time the action is brought the same alleged violation by the same defendant is the subject of a pending action in any court of the United States; or (B) if administrative remedies have not been exhausted.

(f) Exhaustion of administrative remedies

With respect to actions brought for relief based on an alleged violation of the provisions of this chapter, administrative remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first.

(Pub. L. 94–135, title III, § 305, Nov. 28, 1975, 89 Stat. 730; Pub. L. 95–478, title IV, § 401(c), (d), Oct. 18, 1978, 92 Stat. 1555, 1556; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e)(1), probably means Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 713, as amended, known as the Older Americans Amendments of 1975. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 3001 of this title and Tables.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–478, § 401(d), authorized disbursement of withheld funds directly to organization or agency demonstrating ability to achieve the goals of the Federal statute authorizing the program or activity while complying with the regulations.

Subsec. (e). Pub. L. 95–478, § 401(c), substituted provisions relating to injunctions, notice of violations, and costs for provision making this section the exclusive remedy for the enforcement of the provisions of this chapter.

Subsec. (f). Pub. L. 95–478, § 401(c), added subsec. (f).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (e)(1) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as a note under section 3001 of this title.

§ 6105. Judicial review

(a) Provisions of other laws

Any action by any Federal department or agency under section 6104 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by any such department or agency on other grounds.

(b) Provisions of chapter 7 of title 5; reviewable agency discretion

In the case of any action by any Federal department or agency under section 6104 of this title which is not otherwise subject to judicial review, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of

such action in accordance with the provisions of chapter 7 of title 5. For purposes of this subsection, any such action shall not be considered committed to unreviewable agency discretion within the meaning of section 701(a)(2) of such title.

(Pub. L. 94–135, title III, § 306, Nov. 28, 1975, 89 Stat. 730.)

§ 6106. Study of discrimination based on age

(a) Study by Commission on Civil Rights

The Commission on Civil Rights shall (1) undertake a study of unreasonable discrimination based on age in programs and activities receiving Federal financial assistance; and (2) identify with particularity any such federally assisted program or activity in which there is found evidence of persons who are otherwise qualified being, on the basis of age, excluded from participation in, denied the benefits of, or subjected to discrimination under such program or activity.

(b) Public hearings

As part of the study required by this section, the Commission shall conduct public hearings to elicit the views of interested parties, including Federal departments and agencies, on issues relating to age discrimination in programs and activities receiving Federal financial assistance, and particularly with respect to the reasonableness of distinguishing, on the basis of age, among potential participants in, or beneficiaries of, specific federally assisted programs.

(c) Publication of results of analyses, research and studies by independent experts; services of voluntary or uncompensated personnel

The Commission is authorized to obtain, through grant or contract, analyses, research and studies by independent experts of issues relating to age discrimination and to publish the results thereof. For purposes of the study required by this section, the Commission may accept and utilize the services of voluntary or uncompensated personnel, without regard to the provisions of section 105(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(b)).

(d) Report to President and Congress; copies to affected Federal departments and agencies; information and technical assistance

Not later than two years after November 28, 1975, the Commission shall transmit a report of its findings and its recommendations for statutory changes (if any) and administrative action, including suggested general regulations, to the Congress and to the President and shall provide a copy of its report to the head of each Federal department and agency with respect to which the Commission makes findings or recommendations. The Commission is authorized to provide, upon request, information and technical assistance regarding its findings and recommendations to Congress, to the President, and to the heads of Federal departments and agencies for a ninety-day period following the transmittal of its report.

(e) Comments and recommendations of Federal departments and agencies; submission to President and Congressional committees

Not later than forty-five working days after receiving a copy of the report required by subsection (d) of this section, each Federal department or agency with respect to which the Commission makes findings or recommendations shall submit its comments and recommendations regarding such report to the President and to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.

(f) Cooperation of Federal departments and agencies with Commission

The head of each Federal department or agency shall cooperate in all respects with the Commission with respect to the study required by subsection (a) of this section, and shall provide to the Commission such data, reports, and documents in connection with the subject matter of such study as the Commission may request.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 94–135, title III, § 307, Nov. 28, 1975, 89 Stat. 731; S. Res. 4, Feb. 4, 1977; Pub. L. 95–65, § 1, July 11, 1977, 91 Stat. 269; S. Res. 30, Mar. 7, 1979.)

REFERENCES IN TEXT

Section 105(b) of the Civil Rights Act of 1957, referred to in subsec. (c), is section 105(b) of Pub. L. 85–315, pt. I, Sept. 9, 1957, 71 Stat. 636, which was classified to section 1975d(b) of this title and was omitted from the Code. For further details, see Codification note set out preceding section 1975 of this title. Similar provisions are contained in section 4(c) of the Civil Rights Commission Act of 1983, Pub. L. 98–183, Nov. 30, 1983, 97 Stat. 1304, as amended, which is classified to section 1975b(c) of this title.

AMENDMENTS

1977—Subsec. (d). Pub. L. 95–65 substituted ''two years'' for ''eighteen months'' and authorized the Commission to provide information and technical assistance regarding its findings and recommendations to Congress, the President, and heads of Federal departments and agencies for a ninety-day period following the transmittal of its report.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999. Previously, Committee on Human Resources of Senate changed to Committee on Labor and Human Resources of Senate effective Mar. 7, 1979, by Senate Resolution No. 30, 96th Congress. See Rule XXV of Standing Rules of Senate adopted Nov. 14, 1979.

Committee on Labor and Public Welfare of Senate abolished and replaced by Committee on Human Resources of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977.

§ 6106a. Reports to the Secretary and Congress

(a) Not later than December 31 of each year (beginning in 1979), the head of each Federal department or agency shall submit to the Secretary of Health and Human Services a report (1) describing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 6102 of this title; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 6102 of this title.

(b) Not later than March 31 of each year (beginning in 1980), the Secretary of Health and Human Services shall compile the reports made pursuant to subsection (a) of this section and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of section 6102 of this title.

(Pub. L. 94–135, title III, § 308, as added Pub. L. 95–478, title IV, § 401(e), Oct. 18, 1978, 92 Stat. 1556; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

PRIOR PROVISIONS

A prior section 308 of Pub. L. 94–135 was renumbered section 309 and is classified to section 6107 of this title.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE

Section effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 6107. Definitions

For purposes of this chapter—

(1) the term ''Commission'' means the Commission on Civil Rights;

(2) the term ''Secretary'' means the Secretary of Health and Human Services;

(3) the term ''Federal department or agency'' means any agency as defined in section 551 of title 5 and includes the United States Postal Service and the Postal Regulatory Commission; and

(4) the term ''program or activity'' means all of the operations of—

(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(B)(i) a college, university, or other postsecondary institution, or a public system of higher education; or

(ii) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(C)(i) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(I) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(II) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(D) any other entity which is established by two or more of the entities described in subparagraph (A), (B), or (C);

any part of which is extended Federal financial assistance.

(Pub. L. 94–135, title III, § 309, formerly § 308, Nov. 28, 1975, 89 Stat. 731; renumbered § 309, Pub. L. 95–478, title IV, § 401(e), Oct. 18, 1978, 92 Stat. 1556; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–259, § 5, Mar. 22, 1988, 102 Stat. 30; Pub. L. 103–382, title III, § 391(u), Oct. 20, 1994, 108 Stat. 4025; Pub. L. 107–110, title X, § 1076(z), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242.)

AMENDMENTS

2006—Par. (3). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

2002—Par. (4)(B)(ii). Pub. L. 107–110 substituted ''7801'' for ''8801''.

1994—Par. (4)(B)(ii). Pub. L. 103–382 substituted ''section 8801 of title 20'' for ''section 198(a)(10), of the Elementary and Secondary Education Act of 1965''.

1988—Par. (4). Pub. L. 100–259 added par. (4).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in par. (2), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EXCLUSION FROM COVERAGE

Amendment by Pub. L. 100–259 not to be construed to extend application of Age Discrimination Act of 1975 (this chapter) to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100–259, set out as a Construction note under section 1687 of Title 20, Education.

ABORTION NEUTRALITY

Amendment by Pub. L. 100–259 not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100–259, set out as a note under section 1688 of Title 20, Education.

CHAPTER 77—ENERGY CONSERVATION

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§ 6201. Congressional statement of purpose

The purposes of this chapter are—

(1) to grant specific authority to the President to fulfill obligations of the United States under the international energy program;

(2) to provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions;

(3) Repealed. Pub. L. 106–469, title I, § 102(2), Nov. 9, 2000, 114 Stat. 2029;

(4) to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses;

(5) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products;

(6) Repealed. Pub. L. 106–469, title I, § 102(2), Nov. 9, 2000, 114 Stat. 2029;

(7) to provide a means for verification of energy data to assure the reliability of energy data; and

(8) to conserve water by improving the water efficiency of certain plumbing products and appliances.

(Pub. L. 94–163, § 2, Dec. 22, 1975, 89 Stat. 874; Pub. L. 102–486, title I, § 123(a), Oct. 24, 1992, 106 Stat. 2817; Pub. L. 106–469, title I, § 102, Nov. 9, 2000, 114 Stat. 2029.)

REFERENCES IN TEXT

This chapter, referred to in introductory clause, was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

2000—Par. (1). Pub. L. 106–469, § 102(1), struck out ''standby'' after ''grant specific'' and '', subject to congressional review, to impose rationing, to reduce demand for energy through the implementation of energy conservation plans, and'' after ''the President''.

Par. (3). Pub. L. 106–469, § 102(2), struck out par. (3) which read as follows: ''to increase the supply of fossil fuels in the United States, through price incentives and production requirements;''.

Par. (6). Pub. L. 106–469, § 102(2), struck out par. (6) which read as follows: ''to reduce the demand for petroleum products and natural gas through programs designed to provide greater availability and use of this Nation's abundant coal resources;''.

1992—Par. (8). Pub. L. 102–486 added par. (8).

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–469, § 1, Nov. 9, 2000, 114 Stat. 2029, provided that: ''This Act [see Tables for classification] may be cited as the 'Energy Act of 2000'.''

Pub. L. 106–469, title I, § 101, Nov. 9, 2000, 114 Stat. 2029, provided that: ''This title [amending this section and sections 6231, 6232, 6234, 6239 to 6241, 6245 to 6247, 6249, 6249a, 6251, 6276 and 6285 of this title, repealing sections 6211, 6214, 6233, 6235 to 6238, 6244, 6249b, 6261 to 6264, 6281 and 6282 of this title, and repealing provisions set out as notes under section 2071 of Title 50, Appendix, War and National Defense] may be cited as the 'Energy Policy and Conservation Act Amendments of 2000'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–388, § 1, Nov. 13, 1998, 112 Stat. 3477, provided that: ''This Act [enacting section 13220 of this title, amending sections 2296a, 2296a–2, 2297g–1, 6241, 6291, 6292, 6294, 6295, 6306, 6316, 6322, 6325, 6371, 6371c, 6371f, 6371i, 6372c, 6372h, 6374, 6383, 6422, 6802, 6872, 8217, 8231, 8235e, 8259, 8287, 8287c, and 13218 of this title and section 3503 of Title 25, Indians, enacting provisions set out as notes under section 6241 of this title, and amending and repealing provisions set out as notes under section 2071 of Title 50, Appendix, War and National Defense] may be cited as the 'Energy Conservation Reauthorization Act of 1998'.''

SHORT TITLE OF 1994 AMENDMENTS

Pub. L. 103–406, § 1, Oct. 22, 1994, 108 Stat. 4209, provided: ''That this Act [amending sections 6251 and 6285 of this title and enacting provisions set out as a note below] may be cited as the 'Energy Policy and Conservation Act Amendments Act of 1994'.''

Pub. L. 103–406, title I, § 101, Oct. 22, 1994, 108 Stat. 4209, provided that: ''This title [amending sections 6251 and 6285 of this title] may be cited as the 'Energy Policy and Conservation Act Amendments of 1994'.''

SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101–440, § 1, Oct. 18, 1990, 104 Stat. 1006, provided that: ''This Act [amending sections 6322, 6323, 6324 to 6326, 6371, 6371e, 6371f, 6861 to 6865, 6871, and 6872 of this title and repealing section 6327 of this title] may be cited as the 'State Energy Efficiency Programs Improvement Act of 1990'.''

Pub. L. 101–383, § 1, Sept. 15, 1990, 104 Stat. 727, provided that: ''This Act [enacting sections 6249 to 6249c of this title, amending sections 6202, 6232, 6239 to 6241, 6247, 6251, and 6285 of this title, and amending provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be referred to as the 'Energy Policy and Conservation Act Amendments of 1990'.''

Pub. L. 101–360, § 1, Aug. 10, 1990, 104 Stat. 421, provided: ''That this Act [amending sections 6251 and 6285 of this title and provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be referred to as the 'Energy Policy and Conservation Act Short-Term Extension Amendment of 1990'.''

Pub. L. 101–262, § 1, Mar. 31, 1990, 104 Stat. 124, provided: ''That this Act [amending sections 6251 and 6285 of this title and provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be referred to as the 'Energy Policy and Conservation Act Extension Amendment of 1990'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–494, § 1, Oct. 14, 1988, 102 Stat. 2441, provided that: ''This Act [enacting sections 6374 to 6374d of this title and section 2013 of Title 15, Commerce and Trade, amending sections 2001, 2002, and 2006 of Title 15, and enacting provisions set out as notes under section 6374 of this title and sections 2006, 2013, and 2512 of Title 15] may be cited as the 'Alternative Motor Fuels Act of 1988'.''

Pub. L. 100–357, § 1, June 28, 1988, 102 Stat. 671, provided that: ''This Act [amending sections 6291 to 6295 and 6297 of this title] may be referred to as the 'National Appliance Energy Conservation Amendments of 1988'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–12, § 1, Mar. 17, 1987, 101 Stat. 103, provided that: ''This Act [amending sections 6291 to 6297, 6299, 6302, 6303, 6305, 6306, 6308, and 6309 of this title] may be referred to as the 'National Appliance Energy Conservation Act of 1987'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–58, § 1, July 2, 1985, 99 Stat. 102, provided that: ''This Act [enacting sections 6251, 6264, 6285, and 7277 of this title, amending sections 6239, 6240, 6241, 6247, and 6272 of this title, repealing section 6401 of this title, enacting provisions set out as notes under section 7277 of this title, and amending provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be cited as the 'Energy and Conservation Amendments Act of 1985'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–370, § 1, July 18, 1984, 98 Stat. 1211, provided: ''That this Act [enacting section 6276 of this title and a provision set out as a note under section 627] may be cited as the 'Renewable Energy Industry Development Act of 1983'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–229, § 1, Aug. 3, 1982, 96 Stat. 248, provided that: ''This Act [enacting sections 6281, 6282, and 6385 of this title, amending sections 6239, 6240, 6247, 6271, and 6272 of this title, and enacting provisions set out as notes under sections 6234, 6240, and 6245 of this title] may be cited as the 'Energy Emergency Preparedness Act of 1982'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title X, § 1031, Aug. 13, 1981, 95 Stat. 618, provided that: ''This subtitle [subtitle C (§§ 1031–1038) of title X of Pub. L. 97–35, enacting section 6247 of this title, amending sections 6240, 6245, and 6246 of this title, and enacting provisions set out as notes under sections 6231, 6240, and 6247 of this title] may be cited as the 'Strategic Petroleum Reserve Amendments Act of 1981'.''

SHORT TITLE

Section 1 of Pub. L. 94–163 provided in part: ''That this Act [enacting this chapter and sections 757 to 760h and 2001 to 2012 of Title 15, Commerce and Trade, amending sections 753, 754, 755, 792, 796, and 1901 of Title 15 and section 2071 of the Appendix to Title 50, War and National Defense, enacting provisions set out as notes under this section, sections 753 and 796 of Title 15, and section 2071 of Title 50 App., and repealing provisions formerly set out as a note under section 1904 of Title 12, Banks and Banking] may be cited as the 'Energy Policy and Conservation Act'.''

NATIONAL OIL HEAT RESEARCH ALLIANCE

Pub. L. 106–469, title VII, Nov. 9, 2000, 114 Stat. 2043, as amended by Pub. L. 109–58, title III, § 302, Aug. 8, 2005, 119 Stat. 685, provided that:

''SEC. 701. SHORT TITLE.

''This title may be cited as the 'National Oilheat Research Alliance Act of 2000'.

''SEC. 702. FINDINGS.

''Congress finds that—

''(1) oilheat is an important commodity relied on by approximately 30,000,000 Americans as an efficient and economical energy source for commercial and residential space and hot water heating;

''(2) oilheat equipment operates at efficiencies among the highest of any space heating energy source, reducing fuel costs and making oilheat an economical means of space heating;

''(3) the production, distribution, and marketing of oilheat and oilheat equipment plays a significant role in the economy of the United States, accounting for approximately $12,900,000,000 in expenditures annually and employing millions of Americans in all aspects of the oilheat industry;

''(4) only very limited Federal resources have been made available for oilheat research, development, safety, training, and education efforts, to the detriment of both the oilheat industry and its 30,000,000 consumers; and

''(5) the cooperative development, self-financing, and implementation of a coordinated national oilheat industry program of research and development, training, and consumer education is necessary and important for the welfare of the oilheat industry, the general economy of the United States, and the millions of Americans that rely on oilheat for commercial and residential space and hot water heating.

''SEC. 703. DEFINITIONS.

''In this title:

''(1) ALLIANCE.—The term 'Alliance' means a national oilheat research alliance established under section 704.

''(2) CONSUMER EDUCATION.—The term 'consumer education' means the provision of information to assist consumers and other persons in making evaluations and decisions regarding oilheat and other non-industrial commercial or residential space or hot water heating fuels.

''(3) EXCHANGE.—The term 'exchange' means an agreement that—

''(A) entitles each party or its customers to receive oilheat from the other party; and

''(B) requires only an insubstantial portion of the volumes involved in the exchange to be settled in cash or property other than the oilheat.

''(4) INDUSTRY TRADE ASSOCIATION.—The term 'industry trade association' means an organization described in paragraph (3) or (6) of section 501(c) of the

Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3), (6)] that is exempt from taxation under section 501(a) of that Code and is organized for the purpose of representing the oilheat industry.

''(5) NO. 1 DISTILLATE.—The term 'No. 1 distillate' means fuel oil classified as No. 1 distillate by the American Society for Testing and Materials.

''(6) NO. 2 DYED DISTILLATE.—The term 'No. 2 dyed distillate' means fuel oil classified as No. 2 distillate by the American Society for Testing and Materials that is indelibly dyed in accordance with regulations prescribed by the Secretary of the Treasury under section 4082(a)(2) of the Internal Revenue Code of 1986 [26 U.S.C. 4082(a)(2)].

''(7) OILHEAT.—The term 'oilheat' means—

''(A) No. 1 distillate; and

''(B) No. 2 dyed distillate,

that is used as a fuel for nonindustrial commercial or residential space or hot water heating.

''(8) OILHEAT INDUSTRY.—

''(A) IN GENERAL.—The term 'oilheat industry' means—

''(i) persons in the production, transportation, or sale of oilheat; and

''(ii) persons engaged in the manufacture or distribution of oilheat utilization equipment.

''(B) EXCLUSION.—The term 'oilheat industry' does not include ultimate consumers of oilheat.

''(9) PUBLIC MEMBER.—The term 'public member' means a member of the Alliance described in section 705(c)(1)(F).

''(10) QUALIFIED INDUSTRY ORGANIZATION.—The term 'qualified industry organization' means the National Association for Oilheat Research and Education or a successor organization.

''(11) QUALIFIED STATE ASSOCIATION.—The term 'qualified State association' means the industry trade association or other organization that the qualified industry organization or the Alliance determines best represents retail marketers in a State.

''(12) RETAIL MARKETER.—The term 'retail marketer' means a person engaged primarily in the sale of oilheat to ultimate consumers.

''(13) SECRETARY.—The term 'Secretary' means the Secretary of Energy.

''(14) WHOLESALE DISTRIBUTOR.—The term 'wholesale distributor' means a person that—

''(A)(i) produces No. 1 distillate or No. 2 dyed distillate;

''(ii) imports No. 1 distillate or No. 2 dyed distillate; or

''(iii) transports No. 1 distillate or No. 2 dyed distillate across State boundaries or among local marketing areas; and

''(B) sells the distillate to another person that does not produce, import, or transport No. 1 distillate or No. 2 dyed distillate across State boundaries or among local marketing areas.

''(15) STATE.—The term 'State' means the several States, except the State of Alaska.

''SEC. 704. REFERENDA.

''(a) CREATION OF PROGRAM.—

''(1) IN GENERAL.—The oilheat industry, through the qualified industry organization, may conduct, at its own expense, a referendum among retail marketers and wholesale distributors for the establishment of a national oilheat research alliance.

''(2) REIMBURSEMENT OF COST.—The Alliance, if established, shall reimburse the qualified industry organization for the cost of accounting and documentation for the referendum.

''(3) CONDUCT.—A referendum under paragraph (1) shall be conducted by an independent auditing firm.

''(4) VOTING RIGHTS.—

''(A) RETAIL MARKETERS.—Voting rights of retail marketers in a referendum under paragraph (1) shall be based on the volume of oilheat sold in a State by each retail marketer in the calendar year previous to the year in which the referendum is conducted or in another representative period.

''(B) WHOLESALE DISTRIBUTORS.—Voting rights of wholesale distributors in a referendum under paragraph (1) shall be based on the volume of No. 1 distillate and No. 2 dyed distillate sold in a State by each wholesale distributor in the calendar year previous to the year in which the referendum is conducted or in another representative period, weighted by the ratio of the total volume of No. 1 distillate and No. 2 dyed distillate sold for nonindustrial commercial and residential space and hot water heating in the State to the total volume of No. 1 distillate and No. 2 dyed distillate sold in that State.

''(5) ESTABLISHMENT BY APPROVAL OF TWO-THIRDS.—

''(A) IN GENERAL.—Subject to subparagraph (B), on approval of persons representing two-thirds of the total volume of oilheat voted in the retail marketer class and two-thirds of the total weighted volume of No. 1 distillate and No. 2 dyed distillate voted in the wholesale distributor class, the Alliance shall be established and shall be authorized to levy assessments under section 707.

''(B) REQUIREMENT OF MAJORITY OF RETAIL MARKETERS.—Except as provided in subsection (b), the oilheat industry in a State shall not participate in the Alliance if less than 50 percent of the retail marketer vote in the State approves establishment of the Alliance.

''(6) CERTIFICATION OF VOLUMES.—Each person voting in the referendum shall certify to the independent auditing firm the volume of oilheat, No. 1 distillate, or No. 2 dyed distillate represented by the vote of the person.

''(7) NOTIFICATION.—Not later than 90 days after the date of the enactment of this title [Nov. 9, 2000], a qualified State association may notify the qualified industry organization in writing that a referendum under paragraph (1) will not be conducted in the State.

''(b) SUBSEQUENT STATE PARTICIPATION.—The oilheat industry in a State that has not participated initially in the Alliance may subsequently elect to participate by conducting a referendum under subsection (a).

''(c) TERMINATION OR SUSPENSION.—

''(1) IN GENERAL.—On the initiative of the Alliance or on petition to the Alliance by retail marketers and wholesale distributors representing 25 percent of the volume of oilheat or weighted No. 1 distillate and No. 2 dyed distillate in each class, the Alliance shall, at its own expense, hold a referendum, to be conducted by an independent auditing firm selected by the Alliance, to determine whether the oilheat industry favors termination or suspension of the Alliance.

''(2) VOLUME PERCENTAGES REQUIRED TO TERMINATE OR SUSPEND.—Termination or suspension shall not take effect unless termination or suspension is approved by persons representing more than one-half of the total volume of oilheat voted in the retail marketer class or more than one-half of the total volume of weighted No. 1 distillate and No. 2 dyed distillate voted in the wholesale distributor class.

''(3) TERMINATION BY A STATE.—A State may elect to terminate participation by notifying the Alliance that 50 percent of the oilheat volume in the State has voted in a referendum to withdraw.

''(d) CALCULATION OF OILHEAT SALES.—For the purposes of this section and section 705, the volume of oilheat sold annually in a State shall be determined on the basis of information provided by the Energy Information Administration with respect to a calendar year or other representative period.

''SEC. 705. MEMBERSHIP.

''(a) SELECTION.—

''(1) IN GENERAL.—Except as provided in subsection (c)(1)(C), the qualified industry organization shall select members of the Alliance representing the oilheat industry in a State from a list of nominees submitted by the qualified State association in the State.

''(2) VACANCIES.—A vacancy in the Alliance shall be filled in the same manner as the original selection.

''(b) REPRESENTATION.—In selecting members of the Alliance, the qualified industry organization shall make best efforts to select members that are representative of the oilheat industry, including representation of—

''(1) interstate and intrastate operators among retail marketers;

''(2) wholesale distributors of No. 1 distillate and No. 2 dyed distillate;

''(3) large and small companies among wholesale distributors and retail marketers; and

''(4) diverse geographic regions of the country.

''(c) NUMBER OF MEMBERS.—

''(1) IN GENERAL.—The membership of the Alliance shall be as follows:

''(A) One member representing each State with oilheat sales in excess of 32,000,000 gallons per year.

''(B) If fewer than 24 States are represented under subparagraph (A), one member representing each of the States with the highest volume of annual oilheat sales, as necessary to cause the total number of States represented under subparagraph (A) and this subparagraph to equal 24.

''(C) Five representatives of retail marketers, one each to be selected by the qualified State associations of the five States with the highest volume of annual oilheat sales.

''(D) Five additional representatives of retail marketers.

''(E) Twenty-one representatives of wholesale distributors.

''(F) Six public members, who shall be representatives of significant users of oilheat, the oilheat research community, State energy officials, or other groups knowledgeable about oilheat.

''(2) FULL-TIME OWNERS OR EMPLOYEES.—Other than the public members, Alliance members shall be full-time owners or employees of members of the oilheat industry, except that members described in subparagraphs (C), (D), and (E) of paragraph (1) may be employees of the qualified industry organization or an industry trade association.

''(d) COMPENSATION.—Alliance members shall receive no compensation for their service, nor shall Alliance members be reimbursed for expenses relating to their service, except that public members, on request, may be reimbursed for reasonable expenses directly related to participation in meetings of the Alliance.

''(e) TERMS.—

''(1) IN GENERAL.—Subject to paragraph (4), a member of the Alliance shall serve a term of 3 years, except that a member filling an unexpired term may serve a total of 7 consecutive years.

''(2) TERM LIMIT.—A member may serve not more than two full consecutive terms.

''(3) FORMER MEMBERS.—A former member of the Alliance may be returned to the Alliance if the member has not been a member for a period of 2 years.

''(4) INITIAL APPOINTMENTS.—Initial appointments to the Alliance shall be for terms of 1, 2, and 3 years, as determined by the qualified industry organization, staggered to provide for the subsequent selection of one-third of the members each year.

''SEC. 706. FUNCTIONS.

''(a) IN GENERAL.—

''(1) PROGRAMS, PROJECTS; CONTRACTS AND OTHER AGREEMENTS.—The Alliance—

''(A) shall develop programs and projects and enter into contracts or other agreements with other persons and entities for implementing this title, including programs—

''(i) to enhance consumer and employee safety and training;

''(ii) to provide for research, development, and demonstration of clean and efficient oilheat utilization equipment; and

''(iii) for consumer education; and

''(B) may provide for the payment of the costs of carrying out subparagraph (A) with assessments collected under section 707.

''(2) COORDINATION.—The Alliance shall coordinate its activities with industry trade associations and other persons as appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities.

''(3) ACTIVITIES.—

''(A) EXCLUSIONS.—Activities under clause (i) or (ii) of paragraph (1)(A) shall not include advertising, promotions, or consumer surveys in support of advertising or promotions.

''(B) RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACTIVITIES.—

''(i) IN GENERAL.—Research, development, and demonstration activities under paragraph (1)(A)(ii) shall include—

''(I) all activities incidental to research, development, and demonstration of clean and efficient oilheat utilization equipment; and

''(II) the obtaining of patents, including payment of attorney's fees for making and perfecting a patent application.

''(ii) EXCLUDED ACTIVITIES.—Research, development, and demonstration activities under paragraph (1)(A)(ii) shall not include research, development, and demonstration of oilheat utilization equipment with respect to which technically feasible and commercially feasible operations have been verified, except that funds may be provided for improvements to existing equipment until the technical feasibility and commercial feasibility of the operation of those improvements have been verified.

''(b) PRIORITIES.—In the development of programs and projects, the Alliance shall give priority to issues relating to—

''(1) research, development, and demonstration;

''(2) safety;

''(3) consumer education; and

''(4) training.

''(c) ADMINISTRATION.—

''(1) OFFICERS; COMMITTEES; BYLAWS.—The Alliance—

''(A) shall select from among its members a chairperson and other officers as necessary;

''(B) may establish and authorize committees and subcommittees of the Alliance to take specific actions that the Alliance is authorized to take; and

''(C) shall adopt bylaws for the conduct of business and the implementation of this title.

''(2) SOLICITATION OF OILHEAT INDUSTRY COMMENT AND RECOMMENDATIONS.—The Alliance shall establish procedures for the solicitation of oilheat industry comment and recommendations on any significant contracts and other agreements, programs, and projects to be funded by the Alliance.

''(3) ADVISORY COMMITTEES.—The Alliance may establish advisory committees consisting of persons other than Alliance members.

''(4) VOTING.—Each member of the Alliance shall have one vote in matters before the Alliance.

''(d) ADMINISTRATIVE EXPENSES.—

''(1) IN GENERAL.—The administrative expenses of operating the Alliance (not including costs incurred in the collection of assessments under section 707) plus amounts paid under paragraph (2) shall not exceed 7 percent of the amount of assessments collected in any calendar year, except that during the first year of operation of the Alliance such expenses and amounts shall not exceed 10 percent of the amount of assessments.

''(2) REIMBURSEMENT OF THE SECRETARY.—

''(A) IN GENERAL.—The Alliance shall annually reimburse the Secretary for costs incurred by the Federal Government relating to the Alliance.

''(B) LIMITATION.—Reimbursement under subparagraph (A) for any calendar year shall not exceed the amount that the Secretary determines is twice the average annual salary of one employee of the Department of Energy.

''(e) BUDGET.—

''(1) PUBLICATION OF PROPOSED BUDGET.—Before August 1 of each year, the Alliance shall publish for public review and comment a proposed budget for the next calendar year, including the probable costs of all programs, projects, and contracts and other agreements.

''(2) SUBMISSION TO THE SECRETARY AND CONGRESS.—After review and comment under paragraph (1), the Alliance shall submit the proposed budget to the Secretary and Congress.

''(3) RECOMMENDATIONS BY THE SECRETARY.—The Secretary may recommend for inclusion in the budget programs and activities that the Secretary considers appropriate.

''(4) IMPLEMENTATION.—The Alliance shall not implement a proposed budget until the expiration of 60 days after submitting the proposed budget to the Secretary.

''(f) RECORDS; AUDITS.—

''(1) RECORDS.—The Alliance shall—

''(A) keep records that clearly reflect all of the acts and transactions of the Alliance; and

''(B) make the records available to the public.

''(2) AUDITS.—

''(A) IN GENERAL.—The records of the Alliance (including fee assessment reports and applications for refunds under section 707(b)(4)) shall be audited by a certified public accountant at least once each year and at such other times as the Alliance may designate.

''(B) AVAILABILITY OF AUDIT REPORTS.—Copies of each audit report shall be provided to the Secretary, the members of the Alliance, and the qualified industry organization, and, on request, to other members of the oilheat industry.

''(C) POLICIES AND PROCEDURES.—

''(i) IN GENERAL.—The Alliance shall establish policies and procedures for auditing compliance with this title.

''(ii) CONFORMITY WITH GAAP.—The policies and procedures established under clause (i) shall conform with generally accepted accounting principles.

''(g) PUBLIC ACCESS TO ALLIANCE PROCEEDINGS.—

''(1) PUBLIC NOTICE.—The Alliance shall give at least 30 days' public notice of each meeting of the Alliance.

''(2) MEETINGS OPEN TO THE PUBLIC.—Each meeting of the Alliance shall be open to the public.

''(3) MINUTES.—The minutes of each meeting of the Alliance shall be made available to and readily accessible by the public.

''(h) ANNUAL REPORT.—Each year the Alliance shall prepare and make publicly available a report that—

''(1) includes a description of all programs, projects, and contracts and other agreements undertaken by the Alliance during the previous year and those planned for the current year; and

''(2) details the allocation of Alliance resources for each such program and project.

''SEC. 707. ASSESSMENTS.

''(a) RATE.—The assessment rate shall be equal to two-tenths-cent per gallon of No. 1 distillate and No. 2 dyed distillate.

''(b) COLLECTION RULES.—

''(1) COLLECTION AT POINT OF SALE.—The assessment shall be collected at the point of sale of No. 1 distillate and No. 2 dyed distillate by a wholesale distributor to a person other than a wholesale distributor, including a sale made pursuant to an exchange.

''(2) RESPONSIBILITY FOR PAYMENT.—A wholesale distributor—

''(A) shall be responsible for payment of an assessment to the Alliance on a quarterly basis; and

''(B) shall provide to the Alliance certification of the volume of fuel sold.

''(3) NO OWNERSHIP INTEREST.—A person that has no ownership interest in No. 1 distillate or No. 2 dyed distillate shall not be responsible for payment of an assessment under this section.

''(4) FAILURE TO RECEIVE PAYMENT.—

''(A) REFUND.—A wholesale distributor that does not receive payments from a purchaser for No. 1 distillate or No. 2 dyed distillate within 1 year of the date of sale may apply for a refund from the Alliance of the assessment paid.

''(B) AMOUNT.—The amount of a refund shall not exceed the amount of the assessment levied on the No. 1 distillate or No. 2 dyed distillate for which payment was not received.

''(5) IMPORTATION AFTER POINT OF SALE.—The owner of No. 1 distillate or No. 2 dyed distillate imported after the point of sale—

''(A) shall be responsible for payment of the assessment to the Alliance at the point at which the product enters the United States; and

''(B) shall provide to the Alliance certification of the volume of fuel imported.

''(6) LATE PAYMENT CHARGE.—The Alliance may establish a late payment charge and rate of interest to be imposed on any person who fails to remit or pay to the Alliance any amount due under this title.

''(7) ALTERNATIVE COLLECTION RULES.—The Alliance may establish, or approve a request of the oilheat industry in a State for, an alternative means of collecting the assessment if another means is determined to be more efficient or more effective.

''(c) SALE FOR USE OTHER THAN AS OILHEAT.—No. 1 distillate and No. 2 dyed distillate sold for uses other than as oilheat are excluded from the assessment.

''(d) INVESTMENT OF FUNDS.—Pending disbursement under a program, project or contract or other agreement the Alliance may invest funds collected through assessments, and any other funds received by the Alliance, only—

''(1) in obligations of the United States or any agency of the United States;

''(2) in general obligations of any State or any political subdivision of a State;

''(3) in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

''(4) in obligations fully guaranteed as to principal and interest by the United States.

''(e) STATE, LOCAL, AND REGIONAL PROGRAMS.—

''(1) COORDINATION.—The Alliance shall establish a program coordinating the operation of the Alliance with the operator of any similar State, local, or regional program created under State law (including a regulation), or similar entity.

''(2) FUNDS MADE AVAILABLE TO QUALIFIED STATE ASSOCIATIONS.—

''(A) IN GENERAL.—

''(i) BASE AMOUNT.—The Alliance shall make available to the qualified State association of each State an amount equal to 15 percent of the amount of assessments collected in the State.

''(ii) ADDITIONAL AMOUNT.—

''(I) IN GENERAL.—A qualified State association may request that the Alliance provide to the association any portion of the remaining 85 percent of the amount of assessments collected in the State.

''(II) REQUEST REQUIREMENTS.—A request under this clause shall—

''(aa) specify the amount of funds requested;

''(bb) describe in detail the specific uses for which the requested funds are sought;

''(cc) include a commitment to comply with this title in using the requested funds; and

''(dd) be made publicly available.

''(III) DIRECT BENEFIT.—The Alliance shall not provide any funds in response to a request under this clause unless the Alliance determines that the funds will be used to directly benefit the oilheat industry.

''(IV) MONITORING; TERMS, CONDITIONS, AND REPORTING REQUIREMENTS.—The Alliance shall—

''(aa) monitor the use of funds provided under this clause; and

''(bb) impose whatever terms, conditions, and reporting requirements that the Alliance considers necessary to ensure compliance with this title.

''SEC. 708. MARKET SURVEY AND CONSUMER PROTECTION.

''(a) PRICE ANALYSIS.—Beginning 2 years after establishment of the Alliance and annually thereafter, the Secretary of Commerce, using only data provided by the Energy Information Administration and other public sources, shall prepare and make available to the Congress, the Alliance, the Secretary of Energy, and the public, an analysis of changes in the price of oilheat relative to other energy sources. The oilheat price analysis shall compare indexed changes in the price of consumer grade oilheat to a composite of indexed changes in the price of residential electricity, residential natural gas, and propane on an annual national average basis. For purposes of indexing changes in oilheat, residential electricity, residential natural gas, and propane prices, the Secretary of Commerce shall use a 5-year rolling average price beginning with the year 4 years prior to the establishment of the Alliance.

''(b) AUTHORITY TO RESTRICT ACTIVITIES.—If in any year the 5-year average price composite index of consumer grade oilheat exceeds the 5-year rolling average price composite index of residential electricity, residential natural gas, and propane in an amount greater than 10.1 percent, the activities of the Alliance shall be restricted to research and development, training, and safety matters. The Alliance shall inform the Secretary of Energy and the Congress of any restriction of activities under this subsection. Upon expiration of 180 days after the beginning of any such restriction of activities, the Secretary of Commerce shall again conduct the oilheat price analysis described in subsection (a). Activities of the Alliance shall continue to be restricted under this subsection until the price index excess is 10.1 percent or less.

''SEC. 709. COMPLIANCE.

''(a) IN GENERAL.—The Alliance may bring a civil action in United States district court to compel payment of an assessment under section 707.

''(b) COSTS.—A successful action for compliance under this section may also require payment by the defendant of the costs incurred by the Alliance in bringing the action.

''SEC. 710. LOBBYING RESTRICTIONS.

''No funds derived from assessments under section 707 collected by the Alliance shall be used to influence legislation or elections, except that the Alliance may use such funds to formulate and submit to the Secretary recommendations for amendments to this title or other laws that would further the purposes of this title.

''SEC. 711. DISCLOSURE.

''Any consumer education activity undertaken with funds provided by the Alliance shall include a statement that the activities were supported, in whole or in part, by the Alliance.

''SEC. 712. VIOLATIONS.

''(a) PROHIBITION.—It shall be unlawful for any person to conduct a consumer education activity, undertaken with funds derived from assessments collected by the Alliance under section 707, that includes—

''(1) a reference to a private brand name;

''(2) a false or unwarranted claim on behalf of oilheat or related products; or

''(3) a reference with respect to the attributes or use of any competing product.

''(b) COMPLAINTS.—

''(1) IN GENERAL.—A public utility that is aggrieved by a violation described in subsection (a) may file a complaint with the Alliance.

''(2) TRANSMITTAL TO QUALIFIED STATE ASSOCIATION.—A complaint shall be transmitted concurrently to any qualified State association undertaking the consumer education activity with respect to which the complaint is made.

''(3) CESSATION OF ACTIVITIES.—On receipt of a complaint under this subsection, the Alliance, and any qualified State association undertaking the consumer education activity with respect to which the complaint is made, shall cease that consumer education activity until—

''(A) the complaint is withdrawn; or

''(B) a court determines that the conduct of the activity complained of does not constitute a violation of subsection (a).

''(c) RESOLUTION BY PARTIES.—

''(1) IN GENERAL.—Not later than 10 days after a complaint is filed and transmitted under subsection (b), the complaining party, the Alliance, and any qualified State association undertaking the consumer education activity with respect to which the complaint is made shall meet to attempt to resolve the complaint.

''(2) WITHDRAWAL OF COMPLAINT.—If the issues in dispute are resolved in those discussions, the complaining party shall withdraw its complaint.

''(d) JUDICIAL REVIEW.—

''(1) IN GENERAL.—A public utility filing a complaint under this section, the Alliance, a qualified State association undertaking the consumer education activity with respect to which a complaint under this section is made, or any person aggrieved by a violation of subsection (a) may seek appropriate relief in United States district court.

''(2) RELIEF.—A public utility filing a complaint under this section shall be entitled to temporary and injunctive relief enjoining the consumer education activity with respect to which a complaint under this section is made until—

''(A) the complaint is withdrawn; or

''(B) the court has determined that the consumer education activity complained of does not constitute a violation of subsection (a).

''(e) ATTORNEY'S FEES.—

''(1) MERITORIOUS CASE.—In a case in Federal court in which the court grants a public utility injunctive relief under subsection (d), the public utility shall be entitled to recover an attorney's fee from the Alliance and any qualified State association undertaking the consumer education activity with respect to which a complaint under this section is made.

''(2) NONMERITORIOUS CASE.—In any case under subsection (d) in which the court determines a complaint under subsection (b) to be frivolous and without merit, the prevailing party shall be entitled to recover an attorney's fee.

''(f) SAVINGS CLAUSE.—Nothing in this section shall limit causes of action brought under any other law.

''SEC. 713. SUNSET.

''This title shall cease to be effective as of the date that is 9 years after the date on which the Alliance is established.''

EX. ORD. NO. 11912. DELEGATION OF AUTHORITIES

Ex. Ord. No. 11912, April 13, 1976, 41 F.R. 15825, as amended by Ex. Ord. No. 12003, July 20, 1977, 42 F.R. 37523; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 4323 Ex. Ord. No. 12375, Aug. 4, 1982, 47 F.R. 34105; Ex. Ord. No. 12919, § 904(a)(7), June 3, 1994, 59 F.R. 29533, provided:

By virtue of the authority vested in me by the Constitution and the statutes of the United States of America, including the Energy Policy and Conservation Act (Public Law 94–163, 89 Stat. 8, 42 U.S.C. 6201 et seq.), the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. (a) The Administrator of General Services is designated and empowered to perform without ap-

proval, ratification, or other action by the President, the functions vested in the President by Section 510 of the Motor Vehicle Information and Cost Savings Act, as amended (89 Stat. 915, 15 U.S.C. 2010). The Administrator shall exercise that authority to ensure that passenger automobiles acquired by all Executive agencies in each fiscal year achieve a fleet average fuel economy standard that is not less than the average fuel economy standard for automobiles manufactured for the model year which includes January 1 of each fiscal year.

(b) The Administrator of General Services shall also promulgate rules which will ensure that each class of nonpassenger automobiles acquired by all Executive agencies in each fiscal year achieves a fleet average fuel economy that is not less than the average fuel economy standard for uch class, established pursuant to Section 502(b) of the Motor Vehicle Information and Cost Savings Act, as amended (89 Stat. 903, 15 U.S.C. 2002(b)), for the model year which includes January 1 of such fiscal year. Such rules shall not apply to nonpassenger automobiles intended for use in combat-related missions for the Armed Forces or intended for use in law enforcement work or emergency rescue work. The Administrator may provide for granting exceptions for individual nonpassenger automobiles or categories of nonpassenger automobiles as he determines to be appropriate in terms of energy conservation, economy, efficiency, or service.

(c) In performing these functions, the Administrator of General Services shall consult with the Secretary of Transportation and the Secretary of Energy.

SEC. 2. The Secretary of Commerce is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by section 103 of the Energy Policy and Conservation Act (89 Stat. 877, 42 U.S.C. 6212). In performing each of these functions, the Secretary of Commerce shall consult with appropriate Executive agencies, as set forth in the provisions of section 5(a) of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2404(a)).

SEC. 3. The Administrator of the Office of Federal Procurement Policy, in the exercise of his statutory responsibility to provide overall direction of procurement policy (41 U.S.C. 405), shall, after consultation with the heads of appropriate agencies, including those responsible for developing energy conservation and efficiency standards, and to the extent he considers appropriate and with due regard to the program activities of the Executive agencies, provide policy guidance governing the application of energy conservation and efficiency standards in the Federal procurement process in accord with section 381(a)(1) of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6361(a)(1)).

SEC. 4. (a) The Secretary of Energy, in consultation with the heads of appropriate agencies, is hereby authorized and directed to develop for the President's consideration, in accord with section 201 of the Energy Policy and Conservation Act (89 Stat. 890, 42 U.S.C. 6261), the energy conservation and rationing contingency plans prescribed under sections 202 and 203 of the Energy Policy and Conservation Act (89 Stat. 892, 42 U.S.C. 6262 and 6263).

(b) The Secretary of Energy shall prepare, with the assistance of the heads of appropriate agencies, for the President's consideration, the annual reports provided by section 381(c) of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6361(c)).

SEC. 5. The Secretary of State is hereby delegated the authority vested in the President by Section 252(c)(1)(A)(iii) of the Energy Policy and Conservation Act (89 Stat. 895, 42 U.S.C. 6272(c)(1)(A)(iii)).

SEC. 6. The Secretary of Energy is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by:

(a) Section 251 of the Energy Policy and Conservation Act (89 Stat. 894, 42 U.S.C. 6271), except the making of the findings provided by subparagraph (b)(1)(B) thereof; however, in performing these functions, the Secretary shall consult with the Secretary of Commerce with respect to the international allocation of petroleum products which are within the territorial jurisdiction of the United States; and *provided that* the Secretary of Commerce shall promulgate rules, pursuant to the procedures established by the Export Administration Act of 1969, as amended [50 U.S.C. App. former 2401 et seq.], to authorize the export of petroleum and petroleum products, as may be necessary for implementation of the obligations of the United States under the International Energy Program, and in accordance with the rules promulgated under Section 251 of the Energy Policy and Conservation Act by the Secretary pursuant to this subsection.

(b) Section 253(c) of the Energy Policy and Conservation Act (89 Stat. 898, 42 U.S.C. 6273);

(c) Section 254(a) of the Energy Policy and Conservation Act (89 Stat. 899, 42 U.S.C. 6274(a)), including the receipt of petitions under section 254(a)(3)(B); *provided that*, the authority under section 254(a) may be exercised only after consultation with the Secretary of State;

(d) Section 254(b) of the Energy Policy and Conservation Act (89 Stat. 900, 42 U.S.C. 6274(b)); *provided that*, in determining whether the transmittal of data would prejudice competition or violate the antitrust laws, the Secretary shall consult with the Attorney General, and in determining whether the transmittal of data would be inconsistent with national security interests, he shall consult with the Secretaries of State and Defense, and the heads of such other agencies as he deems appropriate;

(e) Section 523(a)(2)(A) of the Energy Policy and Conservation Act (89 Stat. 962, 42 U.S.C. 6393(a)(2)(A)), but only to the extent applicable to other functions delegated or assigned by this Order to the Secretary of Energy.

[SECS. 7 and 8. Revoked by Ex. Ord. No. 12919, § 904(a)(7), June 3, 1994, 59 F.R. 29533.]

SEC. 9. All orders, regulations, circulars or other directives issued and all other action taken prior to the date of this order that would be valid under the authority delegated by this Order, are hereby confirmed and ratified and shall be deemed to have been issued under this order.

SEC. 10. (a)(1) The Secretary of Energy, hereinafter referred to as the Secretary, shall develop, with the concurrence of the Director of the Office of Management and Budget, and in consultation with the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of Veterans' Affairs, the Administrator of General Services, and the heads of such other Executive agencies as he deems appropriate, the ten-year plan for energy conservation with respect to Government buildings, as provided by section 381(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6361(a)(2)).

(2) The goals established in subsection (b) shall apply to the following categories of Federally-owned buildings: (i) office buildings, (ii) hospitals, (iii) schools, (iv) prison facilities, (v) multi-family dwellings, (vi) storage facilities, and (vii) such other categories of buildings for which the Administrator determines the establishment of energy-efficiency performance goals is feasible.

(b) The Secretary shall establish requirements and procedures, which shall be observed by each agency unless a waiver is granted by the Secretary, designed to ensure that each agency to the maximum extent practicable aims to achieve the following goals:

(1) For the total of all Federally-owned existing buildings the goal shall be a reduction of 20 percent in the average annual energy use per gross square foot of floor area in 1985 from the average energy use per gross square foot of floor area in 1975. This goal shall apply to all buildings for which construction was or design specifications were completed prior to the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(2) For the total of all Federally-owned new buildings the goal shall be a reduction of 45 percent in the aver-

age annual energy requirement per gross square foot of floor area in 1985 from the average annual energy use per gross square foot of floor area in 1975. This goal shall apply to all new buildings for which design specifications are completed after the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(c) The Secretary with the concurrence of the Director of the Office of Management and Budget, in consultation with the heads of the Executive agencies specified in subsection (a) and the Director of the National Bureau of Standards, shall establish, for purposes of developing the ten-year plan, a practical and effective method for estimating and comparing life cycle capital and operating costs for Federal buildings, including residential, commercial, and industrial type categories. Such method shall be consistent with the Office of Management and Budget Circular No. A–94, and shall be adopted and used by all agencies in developing their plans pursuant to subsection (e), annual reports pursuant to subsection (g), and budget estimates pursuant to subsection (h). For purposes of this paragraph, the term ''life cycle cost'' means the total costs of owning, operating, and maintaining a building over its economic life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems. [References to National Bureau of Standards deemed to refer to National Institute of Standards and Technology pursuant to section 5115(c) of Pub. L. 100–418, set out as a Change of Name note under 15 U.S.C. 271.]

(d) Not later than November 1, 1977, the Secretary, with the concurrence of the Director of the Office of Management and Budget, and after consultation with the Administrator of General Services and the heads of the Executive agencies specified in subsection (a) shall issue guidelines for the plans to be submitted pursuant to subsection (e).

(e)(1) The head of each Executive agency that maintains any existing building or will maintain any new building shall submit no later than six months after the issuance of guidelines pursuant to subsection (d), to the Secretary a ten-year plan designed to the maximum extent practicable to meet the goals in subsection (b) for the total of existing or new Federal buildings. Such ten-year plans shall only consider improvements that are cost-effective consistent with the criteria established by the Director of the Office of Management and Budget (OMB Circular A–94) and the method established pursuant to subsection (c) of this Section. The plan submitted shall specify appropriate energy-saving initiatives and shall estimate the expected improvements by fiscal year in terms of specific accomplishments—energy savings and cost savings—together with the estimated costs of achieving the savings.

(2) The plans submitted shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with over 30,000 gross square feet of space owned and maintained by Executive agencies. Further, the second annual report submitted under subsection (g)(2) of this Section shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with more than 5,000 but not more than 30,000 gross square feet of space. The purpose of such preliminary energy audits shall be to identify the type, size, energy use level and major energy using systems of existing Federal buildings.

(3) The Secretary shall evaluate agency plans relative to the guidelines established pursuant to subsection (d) for such plans and relative to the cost estimating method established pursuant to subsection (c). Plans determined to be deficient by the Secretary will be returned to the submitting agency head for revision and resubmission within 60 days.

(4) The head of any Executive agency submitting a plan, should he disagree with the Secretary's determination with respect to that plan, may appeal to the Director of the Office of Management and Budget for resolution of the disagreement.

(f) The head of each agency submitting a plan or revised plan determined not deficient by the Secretary or, on appeal, by the Director of the Office of Management and Budget, shall implement the plan in accord with approved budget estimates.

(g)(1) Each Executive agency shall submit to the Secretary an overall plan for conserving fuel and energy in all operations of the agency. This overall plan shall be in addition to and include any ten-year plan for energy conservation in Government buildings submitted in accord with Subsection (e).

(2) By July 1 of each year, each Executive agency shall submit a report to the Secretary on progress made toward achieving the goals established in the overall plan required by paragraph (1) of this subsection. The annual report shall include quantitative measures and accomplishment with respect to energy saving actions taken, the cost of these actions, the energy saved, the costs saved, and other benefits realized.

(3) The Secretary shall prepare a consolidated annual report on Federal government progress toward achieving the goals, including aggregate quantitative measures of accomplishment as well as suggested revisions to the ten-year plan, and submit the report to the President by August 15 of each year.

(h) Each agency required to submit a plan shall submit to the Director of the Office of Management and Budget with the agency's annual budget submission, and in accordance with procedures and requirements that the Director shall establish, estimates for implementation of the agency's plan. The Director of the Office of Management and Budget shall consult with the Secretary about the agency budget estimates.

(i) Each agency shall program its proposed energy conservation improvements of buildings so as to give the highest priority to the most cost-effective projects.

(j) No agency of the Federal government may enter into a lease or a commitment to lease a building the construction of which has not commenced by the effective date of this Order unless the building will likely meet or exceed the general goal set forth in subsection (b)(2).

(k) The provisions of this Section do not apply to housing units repossessed by the Federal Government.

EXECUTIVE ORDER NO. 12759

Ex. Ord. No. 12759, Apr. 17, 1991, 56 F.R. 16257, as amended by Ex. Ord. No. 12902, § 701, Mar. 8, 1994, 59 F.R. 11471, which provided for minimization of petroleum use in Federal facilities, vehicle fuel efficiency outreach programs, and Federal vehicle fuel efficiency, was revoked by Ex. Ord. No. 13123, § 604, June 3, 1999, 64 F.R. 30859, set out as a note under section 8251 of this title.

EXECUTIVE ORDER NO. 12902

Ex. Ord. No. 12902, Mar. 8, 1994, 59 F.R. 11463, which directed executive agencies to implement programs to reduce energy consumption, increase energy efficiency, and conserve water, was revoked by Ex. Ord. No. 13123, § 604, June 3, 1999, 64 F.R. 30859, set out as a note under section 8251 of this title.

§ 6202. Definitions

As used in this chapter:

(1) The term ''Secretary'' means the Secretary of Energy.

(2) The term ''person'' includes (A) any individual, (B) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, and (C) the government and any agency of the United States or any State or political subdivision thereof.

(3) The term ''petroleum product'' means crude oil, residual fuel oil, or any refined petroleum product (including any natural liquid and any natural gas liquid product).

(4) The term ''State'' means a State, the District of Columbia, Puerto Rico, the Trust Territory of the Pacific Islands, or any territory or possession of the United States.

(5) The term ''United States'' when used in the geographical sense means all of the States and the Outer Continental Shelf.

(6) The term ''Outer Continental Shelf'' has the same meaning as such term has under section 1331 of title 43.

(7) The term ''international energy program'' means the Agreement on an International Energy Program, signed by the United States on November 18, 1974, including (A) the annex entitled ''Emergency Reserves'', (B) any amendment to such Agreement which includes another nation as a party to such Agreement, and (C) any technical or clerical amendment to such Agreement.

(8) The term ''severe energy supply interruption'' means a national energy supply shortage which the President determines—

(A) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(B) may cause major adverse impact on national safety or the national economy; and

(C) results, or is likely to result, from (i) an interruption in the supply of imported petroleum products, (ii) an interruption in the supply of domestic petroleum products, or (iii) sabotage or an act of God.

(9) The term ''antitrust laws'' includes—

(A) the Act entitled ''An Act to protect trade and commerce against unlawful restraints and monopolies'', approved July 2, 1890 (15 U.S.C. 1, et seq.);

(B) the Act entitled ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'', approved October 15, 1914 (15 U.S.C. 12, et seq.);

(C) the Federal Trade Commission Act (15 U.S.C. 41, et seq.);

(D) sections 73 and 74 of the Act entitled ''An Act to reduce taxation, to provide revenue for the Government, and for other purpose'', approved August 27, 1894 (15 U.S.C. 8 and 9); and

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21A).

(10) The term ''Federal land'' means all lands owned or controlled by the United States, including the Outer Continental Shelf, and any land in which the United States has reserved mineral interests, except lands—

(A) held in trust for Indians or Alaska Natives,

(B) owned by Indians or Alaska Natives with Federal restrictions on the title,

(C) within any area of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National System of Trails, or the Wild and Scenic Rivers System, or

(D) within military reservations.

(Pub. L. 94–163, § 3, Dec. 22, 1975, 89 Stat. 874; Pub. L. 95–619, title VI, § 691(a), Nov. 9, 1978, 92 Stat. 3287; Pub. L. 98–454, title VI, § 601(f), Oct. 5, 1984, 98 Stat. 1736; Pub. L. 101–383, § 3(a), Sept. 15, 1990, 104 Stat. 727.)

REFERENCES IN TEXT

This chapter, referred to in introductory clause, was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Act approved July 2, 1890, referred to in par. (9)(A), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act approved October 15, 1914, referred to in par. (9)(B), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in par. (9)(C), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Act of June 19, 1936, chapter 592, referred to in par. (9)(E), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

AMENDMENTS

1990—Par. (8)(C). Pub. L. 101–383 inserted ''(i)'' before ''an interruption'' and substituted ''(ii) an interruption in the supply of domestic petroleum products, or (iii)'' for ''or from''.

1984—Par. (4). Pub. L. 98–454 inserted reference to Trust Territory of the Pacific Islands.

1978—Par. (1). Pub. L. 95–619 substituted definition of ''Secretary'', meaning the Secretary of Energy, for definition of ''Administrator'', meaning Administrator of the Federal Energy Administration.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER I—DOMESTIC SUPPLY AVAILABILITY

PART A—DOMESTIC SUPPLY

§ 6211. Repealed. Pub. L. 106–469, title I, § 103(1), Nov. 9, 2000, 114 Stat. 2029

Section, Pub. L. 94–163, title I, § 102, Dec. 22, 1975, 89 Stat. 876; Pub. L. 94–385, title I, § 164, Aug. 14, 1976, 90 Stat. 1142; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 95–620, title VIII, § 802, Nov. 9, 1978, 92 Stat. 3347, provided for incentives to develop underground coal mines.

§ 6212. Domestic use of energy supplies and related materials and equipment

(a) Export restrictions

The President may, by rule, under such terms and conditions as he determines to be appropriate and necessary to carry out the purposes of this chapter, restrict exports of—

(1) coal, petroleum products, natural gas, or petrochemical feedstocks, and

(2) supplies of materials or equipment which he determines to be necessary (A) to maintain or further exploration, production, refining, or transportation of energy supplies, or (B) for the construction or maintenance of energy facilities within the United States.

(b) Exemptions

(1) The President shall exercise the authority provided for in subsection (a) of this section to promulgate a rule prohibiting the export of crude oil and natural gas produced in the United States, except that the President may, pursuant to paragraph (2), exempt from such prohibition such crude oil or natural gas exports which he determines to be consistent with the national interest and the purposes of this chapter.

(2) Exemptions from any rule prohibiting crude oil or natural gas exports shall be included in such rule or provided for in an amendment thereto and may be based on the purpose for export, class of seller or purchaser, country of destination, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest and the purposes of this chapter.

(c) Implementing restrictions

In order to implement any rule promulgated under subsection (a) of this section, the President may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1979 [50 U.S.C. App. 2401 et seq.] (but without regard to the phrase ''and to reduce the serious inflationary impact of foreign demand'' in section 3(2)(C) of such Act [50 U.S.C. App. 2402(2)(C)]), impose such restrictions as specified in any rule under subsection (a) of this section on exports of coal, petroleum products, natural gas, or petrochemical feedstocks, and such supplies of materials and equipment.

(d) Restrictions and national interest

Any finding by the President pursuant to subsection (a) or (b) of this section and any action taken by the Secretary of Commerce pursuant thereto shall take into account the national interest as related to the need to leave uninterrupted or unimpaired—

(1) exchanges in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state,

(2) temporary exports for convenience or increased efficiency of transportation across parts of an adjacent foreign state which exports reenter the United States, and

(3) the historical trading relations of the United States with Canada and Mexico.

(e) Waiver of notice and comment period

(1) The provisions of subchapter II of chapter 5 of title 5 shall apply with respect to the promulgation of any rule pursuant to this section, except that the President may waive the requirement pertaining to the notice of proposed rulemaking or period for comment only if he finds that compliance with such requirements may seriously impair his ability to impose effective and timely prohibitions on exports.

(2) In the event such notice and comment period are waived with respect to a rule promulgated under this section, the President shall afford interested persons an opportunity to comment on any such rule at the earliest practicable date thereafter.

(3) If the President determines to request the Secretary of Commerce to impose specified restrictions as provided for in subsection (c) of this section, the enforcement and penalty provisions of the Export Administration Act of 1969 shall apply, in lieu of this chapter, to any violation of such restrictions.

(Pub. L. 94–163, title I, § 103, Dec. 22, 1975, 89 Stat. 877; Pub. L. 96–72, § 22(b)(1), Sept. 29, 1979, 93 Stat. 535.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (e)(3), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

The Export Administration Act of 1979, referred to in subsec. (c), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

The Export Administration Act of 1969, referred to in subsec. (e)(3), is Pub. L. 91–184, Dec. 30, 1969, 83 Stat. 841, as amended, which was formerly classified to sections 2401 to 2413 of Title 50, Appendix, and was terminated on Sept. 30, 1979, pursuant to the terms of that Act.

CODIFICATION

Subsec. (f) of this section, which required the President to submit quarterly reports to Congress concerning the administration of this section and any findings made pursuant to subsec. (a) or (b) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 5th item on page 19 of House Document No. 103–7.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–72 substituted ''1979'' for ''1969'' and ''(C)'' for ''(A)''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–72 effective upon expiration of Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which Congress by concurrent resolution or President by proclamation designated, see section 2418 of the Appendix to Title 50, War and National Defense.

§ 6213. Certain lease bidding arrangements prohibited

(a) Promulgation of rule by Secretary of the Interior

The Secretary of the Interior shall, not later than 30 days after December 22, 1975, prescribe and make effective a rule which prohibits the bidding for any right to develop crude oil, natural gas, and natural gas liquids on any lands located on the Outer Continental Shelf by any person if more than one major oil company, more than one affiliate of a major oil company, or a major oil company and any affiliate of a major oil company, has or have a significant ownership interest in such person. Such rule

shall define affiliate relationships and significant ownership interests.

(b) Definitions

As used in this section:

(1) The term ''major oil company'' means any person who, individually or together with any other person with respect to which such person has an affiliate relationship or significant ownership interest, produced during a prior 6–month period specified by the Secretary, an average daily volume of 1,600,000 barrels of crude oil, natural gas liquids equivalents, and natural gas equivalents.

(2) One barrel of natural gas equivalent equals 5,626 cubic feet of natural gas measured at 14.73 pounds per square inch (MSL) and 60 degrees Fahrenheit.

(3) One barrel of natural gas liquids equivalent equals 1.454 barrels of natural gas liquids at 60 degrees Fahrenheit.

(c) Exemptions

The Secretary may, in his discretion, consider a request from any person described in subsection (a) of this section for an exemption from the prohibition of this section. In considering any such request, the Secretary may exempt bidding for leases for lands in any area only if the Secretary finds, on the record after opportunity for an agency hearing, that—

(1) such lands have extremely high cost exploration or development problems; and

(2) exploration and development will not occur on such lands unless such exemption is granted.

Findings of the Secretary under this subsection shall be final, and shall not be invalidated unless found to be arbitrary or capricious.

(d) Unitization of producing fields

This section shall not be construed to prohibit the unitization of producing fields to increase production or maximize ultimate recovery of oil or natural gas, or both.

(e) Report to Congress covering extension of restrictions on joint bidding

The Secretary shall study and report to the Congress, not later than 6 months after December 22, 1975, with respect to the feasibility and desirability of extending the prohibition on joint bidding to—

(1) bidding for any right to develop crude oil, natural gas, and natural gas liquids on Federal lands other than those located on the Outer Continental Shelf; and

(2) bidding for any right to develop coal and oil shale on such lands.

(Pub. L. 94–163, title I, § 105, Dec. 22, 1975, 89 Stat. 879; Pub. L. 95–372, title II, § 205(c), Sept. 18, 1978, 92 Stat. 646.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95–372 substituted ''in his discretion, consider a request from any person described in subsection (a) of this section for an exemption from the prohibition of this section'' for ''by amendment to the rule, exempt bidding for leases for lands located in frontier or other areas determined by the Secretary to be extremely high risk lands or to present unusually high cost exploration, or development, problems'' in existing provisions and inserted provisions setting out the requisite finding of the Secretary and making arbitrariness and capriciousness of the Secretary's findings the only bases for invalidation of those findings.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior to promulgate regulations under this chapter relating to fostering of competition for Federal leases and to implementation of alternative bidding systems authorized for award of Federal leases transferred to Secretary of Energy by section 7152(b) of this title. Section 7152(b) of this title repealed by Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97–315, pp. 25, 26, Nov. 5, 1981.

§ 6214. Repealed. Pub. L. 106–469, title I, § 103(3), Nov. 9, 2000, 114 Stat. 2029

Section, Pub. L. 94–163, title I, § 106, Dec. 22, 1975, 89 Stat. 880, related to production of oil or gas at the maximum efficient rate and temporary emergency production rate.

§ 6215. Major fuel burning stationary source

(a) Restrictions on issuance of orders or rules by Governor pursuant to section 7425 of this title

No Governor of a State may issue any order or rule pursuant to section 7425 of this title to any major fuel burning stationary source (or class or category thereof)—

(1) prohibiting such source from using fuels other than locally or regionally available coal or coal derivatives, or

(2) requiring such source to enter into a contract (or contracts) for supplies of locally or regionally available coal or coal derivatives.

(b) Petition to President

(1) The Governor of any State may petition the President to exercise the President's authorities pursuant to section 7425 of this title with respect to any major fuel burning stationary source located in such State.

(2) Any petition under paragraph (1) shall include documentation which could support a finding that significant local or regional economic disruption or unemployment would result from use by such source of—

(A) coal or coal derivatives other than locally or regionally available coal,

(B) petroleum products,

(C) natural gas, or

(D) any combination of fuels referred to in subparagraphs (A) through (C), to comply with the requirements of a State implementation plan pursuant to section 7410 of this title.

(c) Action to be taken by President

Within 90 days after the submission of a Governor's petition under subsection (b) of this section, the President shall either issue an order or rule pursuant to section 7425 of this title or deny such petition, stating in writing his reasons for such denial. In making his determination to issue such an order or rule pursuant to this subsection, the President must find that such order or rule would—

(1) be consistent with section 7425 of this title;

(2) result in no significant increase in the consumption of energy;

(3) not subject the ultimate consumer to significantly higher energy costs; and

(4) not violate any contractual relationship between such source and any supplier or transporter of fuel to such source.

(d) Effect on authority of President to allocate coal or coal derivatives

Nothing in subsection (a) or (b) of this section shall affect the authority of the President or the Secretary of the Department of Energy to allocate coal or coal derivatives under any provision of law.

(e) Definitions

The terms ''major fuel burning stationary source (or class or category thereof)'' and ''locally or regionally available coal or coal derivatives'' shall have the meanings assigned to them for the purposes of section 7425 of this title.

(Pub. L. 94–163, title I, § 107, as added Pub. L. 95–619, title VI, § 661, Nov. 9, 1978, 92 Stat. 3285; amended Pub. L. 106–469, title VI, § 605(b)(2), Nov. 9, 2000, 114 Stat. 2043.)

AMENDMENTS

2000—Pub. L. 106–469 inserted section catchline.

§ 6216. Annual Home Heating Readiness Reports

(a) In general

On or before September 1 of each year, the Secretary, acting through the Administrator of the Energy Information Agency, shall submit to Congress a Home Heating Readiness Report on the readiness of the natural gas, heating oil and propane industries to supply fuel under various weather conditions, including rapid decreases in temperature.

(b) Contents

The Home Heating Readiness Report shall include—

(1) estimates of the consumption, expenditures, and average price per gallon of heating oil and propane and thousand cubic feet of natural gas for the upcoming period of October through March for various weather conditions, with special attention to extreme weather, and various regions of the country;

(2) an evaluation of—

(A) global and regional crude oil and refined product supplies;

(B) the adequacy and utilization of refinery capacity;

(C) the adequacy, utilization, and distribution of regional refined product storage capacity;

(D) weather conditions;

(E) the refined product transportation system;

(F) market inefficiencies; and

(G) any other factor affecting the functional capability of the heating oil industry and propane industry that has the potential to affect national or regional supplies and prices;

(3) recommendations on steps that the Federal, State, and local governments can take to prevent or alleviate the impact of sharp and sustained increases in the price of natural gas, heating oil, and propane; and

(4) recommendations on steps that companies engaged in the production, refining, storage, transportation of heating oil or propane, or any other activity related to the heating oil industry or propane industry, can take to prevent or alleviate the impact of sharp and sustained increases in the price of heating oil and propane.

(c) Information requests

The Secretary may request information necessary to prepare the Home Heating Readiness Report from companies described in subsection (b)(4) of this section.

(Pub. L. 94–163, title I, § 108, as added Pub. L. 106–469, title VI, § 605(a), Nov. 9, 2000, 114 Stat. 2042.)

§ 6217. Scientific inventory of oil and gas reserves

(a) In general

The Secretary of the Interior, in consultation with the Secretaries of Agriculture and Energy, shall conduct an inventory of all onshore Federal lands. The inventory shall identify—

(1) the United States Geological Survey estimates of the oil and gas resources underlying these lands;

(2) the extent and nature of any restrictions or impediments to the development of the resources, including—

(A) impediments to the timely granting of leases;

(B) post-lease restrictions, impediments, or delays on development for conditions of approval, applications for permits to drill, or processing of environmental permits; and

(C) permits or restrictions associated with transporting the resources for entry into commerce; and

(3) the quantity of resources not produced or introduced into commerce because of the restrictions.

(b) Regular update

Once completed, the USGS resource estimates and the surface availability data as provided in subsection (a)(2) of this section shall be regularly updated and made publicly available.

(c) Inventory

The inventory shall be provided to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate within 2 years after November 9, 2000.

(d) Assessments

Using the inventory, the Secretary of Energy shall make periodic assessments of economically recoverable resources accounting for a range of parameters such as current costs, commodity prices, technology, and regulations.

(Pub. L. 106–469, title VI, § 604, Nov. 9, 2000, 114 Stat. 2041; Pub. L. 109–58, title III, § 364(a), Aug. 8, 2005, 119 Stat. 723.)

CODIFICATION

Section was enacted as part of the Energy Act of 2000, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109–58, § 364(a)(1)(A), struck out ''reserve'' before ''estimates'' and ''and'' after the semicolon.

Subsec. (a)(2), (3). Pub. L. 109–58, § 364(a)(1)(B), added pars. (2) and (3) and struck out former par. (2) which read as follows: ''the extent and nature of any restrictions or impediments to the development of such resources.''

Subsec. (b). Pub. L. 109–58, § 364(a)(2), substituted ''resource'' for ''reserve'' and ''publicly'' for ''publically''.

Subsec. (d). Pub. L. 109–58, § 364(a)(3), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''There are authorized to be appropriated such sums as may be necessary to implement this section.''

PART B—STRATEGIC PETROLEUM RESERVE

§ 6231. Congressional finding and declaration of policy

(a) The Congress finds that the storage of substantial quantities of petroleum products will diminish the vulnerability of the United States to the effects of a severe energy supply interruption, and provide limited protection from the short-term consequences of interruptions in supplies of petroleum products.

(b) It is the policy of the United States to provide for the creation of a Strategic Petroleum Reserve for the storage of up to 1 billion barrels of petroleum products to reduce the impact of disruptions in supplies of petroleum products, to carry out obligations of the United States under the international energy program, and for other purposes as provided for in this chapter.

(Pub. L. 94–163, title I, § 151, Dec. 22, 1975, 89 Stat. 881; Pub. L. 106–469, title I, § 103(4), Nov. 9, 2000, 114 Stat. 2029.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–469 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''It is hereby declared to be the policy of the United States to provide for the creation of a Strategic Petroleum Reserve for the storage of up to 1 billion barrels of petroleum products, but not less than 150 million barrels of petroleum products by the end of the 3-year period which begins on December 22, 1975, for the purpose of reducing the impact of disruptions in supplies of petroleum products or to carry out obligations of the United States under the international energy program. It is further declared to be the policy of the United States to provide for the creation of an Early Storage Reserve, as part of the Reserve, for the purpose of providing limited protection from the impact of near-term disruptions in supplies of petroleum products or to carry out obligations of the United States under the international energy program.''

STUDY OF A STRATEGIC ETHANOL RESERVE

Pub. L. 99–198, title XVII, § 1778, Dec. 23, 1985, 99 Stat. 1659, provided that:

''(a) The Secretary of Agriculture shall conduct a study of the cost effectiveness, the economic benefits, and the feasibility of establishing, maintaining, and utilizing a Strategic Ethanol Reserve relative to the existing Strategic Petroleum Reserve.

''(b) The study shall be completed within one year after the enactment of this section [Dec. 23, 1985] and shall include, among other considerations—

''(1) the benefits and losses related to the U.S. economy, farm income, employment, government commodity programs, and the trade deficit of utilizing a Strategic Ethanol Reserve, as opposed to the Strategic Petroleum Reserve; and

''(2) the savings from storing ethanol as opposed to storing the amount of CCC-held grain necessary to produce the ethanol.

''(c) If the study shows that the Strategic Ethanol Reserve is cost effective, beneficial to the U.S. economy, and feasible in comparison with the Strategic Petroleum Reserve, the Secretary of Agriculture may establish, maintain, and utilize a Strategic Ethanol Reserve.''

ADDITIONAL CONGRESSIONAL FINDINGS

Pub. L. 97–35, title X, § 1032, Aug. 13, 1981, 95 Stat. 618, provided that: ''The Congress finds that—

''(1) the Strategic Petroleum Reserve should be considered a national security asset; and

''(2) enlarging the capacity and filling of the Strategic Petroleum Reserve should be accelerated (to the extent technically and economically practicable) to take advantage of any increased availability of crude oil in the world market from time to time.''

§ 6232. Definitions

As used in this part and part C of this subchapter:

(1) Repealed. Pub. L. 106–469, title I, § 103(5)(A), Nov. 9, 2000, 114 Stat. 2029.

(2) The term ''importer'' means any person who owns, at the first place of storage, any petroleum product imported into the United States.

(3) Repealed. Pub. L. 106–469, title I, § 103(5)(A), Nov. 9, 2000, 114 Stat. 2029.

(4) The term ''interest in land'' means any ownership or possessory right with respect to real property, including ownership in fee, an easement, a leasehold, and any subsurface or mineral rights.

(5) The term ''readily available inventories'' means stocks and supplies of petroleum products which can be distributed or used without affecting the ability of the importer or refiner to operate at normal capacity; such term does not include minimum working inventories or other unavailable stocks.

(6) The term ''refiner'' means any person who owns, operates, or controls the operation of any refinery.

(7) Repealed. Pub. L. 106–469, title I, § 103(5)(A), Nov. 9, 2000, 114 Stat. 2029.

(8) The term ''related facility'' means any necessary appurtenance to a storage facility, including pipelines, roadways, reservoirs, and salt brine lines.

(9) The term ''Reserve'' means the Strategic Petroleum Reserve.

(10) The term ''storage facility'' means any facility or geological formation which is capable of storing significant quantities of petroleum products.

(11) The term ''Strategic Petroleum Reserve'' means petroleum products stored in storage facilities pursuant to this part.

(Pub. L. 94–163, title I, § 152, Dec. 22, 1975, 89 Stat. 882; Pub. L. 101–383, § 6(a)(1), Sept. 15, 1990, 104 Stat. 729; Pub. L. 106–469, title I, § 103(5), Nov. 9, 2000, 114 Stat. 2029.)

AMENDMENTS

2000—Par. (1). Pub. L. 106–469, § 103(5)(A), struck out par. (1) which read as follows: ''The term 'Early Storage Reserve' means that portion of the Strategic Petroleum Reserve which consists of petroleum products stored pursuant to section 6235 of this title.''

Par. (3). Pub. L. 106–469, § 103(5)(A), struck out par. (3) which read as follows: ''The term 'Industrial Petroleum Reserve' means that portion of the Strategic Petroleum Reserve which consists of petroleum products owned by importers or refiners and acquired, stored, or maintained pursuant to section 6236 of this title.''

Par. (7). Pub. L. 106–469, § 103(5)(A), struck out par. (7) which read as follows: ''The term 'Regional Petroleum Reserve' means that portion of the Strategic Petroleum Reserve which consists of petroleum products stored pursuant to section 6237 of this title.''

Par. (11). Pub. L. 106–469, § 103(5)(B), struck out ''; such term includes the Industrial Petroleum Reserve, the Early Storage Reserve, and the Regional Petroleum Reserve'' before period at end.

1990—Pub. L. 101–383 inserted ''and part C of this subchapter'' after ''this part''.

§ 6233. Repealed. Pub. L. 106–469, title I, § 103(6), Nov. 9, 2000, 114 Stat. 2030

Section, Pub. L. 94–163, title I, § 153, Dec. 22, 1975, 89 Stat. 882; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to the Strategic Petroleum Reserve Office.

§ 6234. Strategic Petroleum Reserve

(a) Establishment

A Strategic Petroleum Reserve for the storage of up to 1 billion barrels of petroleum products shall be created pursuant to this part.

(b) Authority of Secretary

The Secretary, in accordance with this part, shall exercise authority over the development, operation, and maintenance of the Reserve.

(c) to (e) Repealed. Pub. L. 106–469, title I, § 103(7)(C), Nov. 9, 2000, 114 Stat. 2030

(f) Purpose of drawdown and distribution; requests for funds for storage

(1) The drawdown and distribution of petroleum products from the Strategic Petroleum Reserve is authorized only under section 6241 of this title, and drawdown and distribution of petroleum products for purposes other than those described in section 6241 of this title shall be prohibited.

(2) In the Secretary's annual budget submission, the Secretary shall request funds for acquisition, transportation, and injection of petroleum products for storage in the Reserve. If no requests for funds are made, the Secretary shall provide a written explanation of the reason therefore.

(Pub. L. 94–163, title I, § 154, Dec. 22, 1975, 89 Stat. 882; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 102–486, title XIV, § 1402, Oct. 24, 1992, 106 Stat. 2994; Pub. L. 105–177, § 1(6), June 1, 1998, 112 Stat. 106; Pub. L. 106–469, title I, § 103(7), Nov. 9, 2000, 114 Stat. 2030.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–469, § 103(7)(A), amended subsec. (a) generally. Prior to amendment, subsec. (a) provided for the creation of a Strategic Petroleum Reserve of up to 1 billion barrels of petroleum products and required that the Reserve contain not less than 150 million barrels of petroleum products by the end of the 3-year period beginning on Dec. 22, 1975, and that the President take actions to enlarge the Reserve to 1,000,000,000 barrels as rapidly as possible beginning Oct. 24, 1992.

Subsec. (b). Pub. L. 106–469, § 103(7)(B), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Secretary, not later than December 15, 1976, shall prepare and transmit to the Congress, in accordance with section 6421 of this title, a Strategic Petroleum Reserve Plan. Such Plan shall comply with the provisions of this section and shall detail the Secretary's proposals for designing, constructing, and filling the storage and related facilities of the Reserve.''

Subsecs. (c) to (e). Pub. L. 106–469, § 103(7)(C), struck out subsecs. (c) to (e) which related to the levels of crude oil to be stored, plan objectives, and plan provisions.

1998—Subsec. (f). Pub. L. 105–177 added subsec. (f).

1992—Subsec. (a). Pub. L. 102–486 designated existing provisions as par. (1) and added par. (2).

1978—Subsecs. (b), (d). Pub. L. 95–619 substituted ''Secretary'' and ''Secretary's'' for ''Administrator'' and ''Administrator's'', respectively, meaning Administrator of the Federal Energy Administration, wherever appearing.

STRATEGIC PETROLEUM RESERVE DRAWDOWN PLAN

Pub. L. 97–229, § 4(c), Aug. 3, 1982, 96 Stat. 252, provided that: ''On or before December 1, 1982, the President shall transmit to the Congress a drawdown plan for the Strategic Petroleum Reserve consistent with the requirements of section 154 of the Energy Policy and Conservation Act [this section]. Such plan shall be transmitted to the Congress as an amendment to the Strategic Petroleum Reserve Plan. Such amendment shall take effect on the date it is transmitted to the Congress and shall not be subject to section 159(e) of such Act [section 6239(e) of this title] relating to Congressional review. Subsequent amendments to such plan shall be in accordance with subsections (d) and (e) of such section 159.''

§§ 6235 to 6238. Repealed. Pub. L. 106–469, title I, § 103(8)–(11), Nov. 9, 2000, 114 Stat. 2030

Section 6235, Pub. L. 94–163, title I, § 155, Dec. 22, 1975, 89 Stat. 884; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to the Early Storage Reserve.

Section 6236, Pub. L. 94–163, title I, § 156, Dec. 22, 1975, 89 Stat. 885; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to the Industrial Petroleum Reserve.

Section 6237, Pub. L. 94–163, title I, § 157, Dec. 22, 1975, 89 Stat. 885; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 102–486, title XIV, § 1405, Oct. 24, 1992, 106 Stat. 2995, related to the Regional Petroleum Reserve.

Section 6238, Pub. L. 94–163, title I, § 158, Dec. 22, 1975, 89 Stat. 886; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to a report on the establishment of Utility Reserves, Coal Reserves, Remote Crude Oil and Natural Gas Reserves.

§ 6239. Development, operation, and maintenance of the Reserve

(a) to (e) Repealed. Pub. L. 106–469, title I, § 103(13)(A), Nov. 9, 2000, 114 Stat. 2030

(f) Powers of Secretary to develop and operate the Strategic Petroleum Reserve

In order to develop, operate, or maintain the Strategic Petroleum Reserve, the Secretary may—

(1) issue rules, regulations, or orders;

(2) acquire by purchase, condemnation, or otherwise, land or interests in land for the location of storage and related facilities;

(3) construct, purchase, lease, or otherwise acquire storage and related facilities;

(4) use, lease, maintain, sell or otherwise dispose of land or interests in land, or of storage and related facilities acquired under this part, under such terms and conditions as the Secretary considers necessary or appropriate;

(5) acquire, subject to the provisions of section 6240 of this title, by purchase, exchange, or otherwise, petroleum products for storage in the Strategic Petroleum Reserve;

(6) store petroleum products in storage facilities owned and controlled by the United States or in storage facilities owned by others if those facilities are subject to audit by the United States;

(7) execute any contracts necessary to develop, operate, or maintain the Strategic Petroleum Reserve;

(8) bring an action, when the Secretary considers it necessary, in any court having jurisdiction over the proceedings, to acquire by condemnation any real or personal property, including facilities, temporary use of facilities, or other interests in land, together with any personal property located on or used with the land.

(g) Acquisition of property by negotiation as prerequisite to condemnation

Before any condemnation proceedings are instituted, an effort shall be made to acquire the property involved by negotiation, unless, the effort to acquire such property by negotiation would, in the judgement of the Secretary be futile or so time-consuming as to unreasonably delay the development of the Strategic Petroleum Reserve, because of (1) reasonable doubt as to the identity of the owners, (2) the large number of persons with whom it would be necessary to negotiate, or (3) other reasons.

(h), (i) Repealed. Pub. L. 106–469, title I, § 103(13)(D), Nov. 9, 2000, 114 Stat. 2031

(j) Expansion beyond 700,000,000 barrels

If the Secretary determines expansion beyond 700,000,000 barrels of petroleum product inventory is appropriate, the Secretary shall submit a plan for expansion to the Congress.

(k) Exemption from subtitle IV of title 49

A storage or related facility of the Strategic Petroleum Reserve owned by or leased to the United States is not subject to the Interstate Commerce Act.

(*l*) Rulemaking during drawdown and sale

During a drawdown and sale of Strategic Petroleum Reserve petroleum products, the Secretary may issue implementing rules, regulations, or orders in accordance with section 553 of title 5, without regard to rulemaking requirements in section 6393 of this title, and section 7191 of this title.

(Pub. L. 94–163, title I, § 159, Dec. 22, 1975, 89 Stat. 886; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 97–229, § 4(b)(1), (2)(B), Aug. 3, 1982, 96 Stat. 251, 252; Pub. L. 99–58, title I, § 102(a), July 2, 1985, 99 Stat. 102; Pub. L. 101–383, §§ 4(a), 9, 11, Sept. 15, 1990, 104 Stat. 728, 735; Pub. L. 106–469, title I, § 103(12), (13), Nov. 9, 2000, 114 Stat. 2030.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsec. (k), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was classified generally to chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of former Title 49, Transportation. The Act was repealed (subject to an exception) by Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. Section 4(c) of Pub. L. 95–473 excepted from repeal those provisions of the Interstate Commerce Act that vested functions in the Interstate Commerce Commission, or the chairman or members of the Commission, related to transportation of oil by pipeline and that were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission by sections 7155 and 7172(b) of this title.

AMENDMENTS

2000—Pub. L. 106–469, § 103(12), amended section catchline generally.

Subsecs. (a) to (e). Pub. L. 106–469, § 103(13)(A), struck out subsecs. (a) to (e) which related to congressional review and effective date of the Strategic Petroleum Reserve Plan, preparation and transmittal to Congress of proposals for designing, constructing, and filling facilities and of Plan amendments, and 60-day waiting period for effectiveness of amendments.

Subsec. (f). Pub. L. 106–469, § 103(13)(B), amended subsec. (f) generally. Prior to amendment, subsec. (f) set out powers of the Secretary to implement the Strategic Petroleum Reserve Plan, the Early Storage Reserve Plan, proposals for designing, constructing, and filling facilities, amendments to the Plans, and the storage of petroleum products in interim storage facilities.

Subsec. (g). Pub. L. 106–469, § 103(13)(C), substituted ''development'' for ''implementation'' and struck out ''Plan'' after ''Strategic Petroleum Reserve''.

Subsecs. (h), (i). Pub. L. 106–469, § 103(13)(D), struck out subsecs. (h) and (i) which related to use of interim storage facilities and environmental considerations for existing facilities, and report to Congress on results of negotiations for enlargement of Strategic Petroleum Reserve to one billion barrels.

Subsec. (j). Pub. L. 106–469, § 103(13)(E), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''No later than 24 months after September 15, 1990, the Secretary shall amend the Strategic Petroleum Reserve Plan to prescribe plans for completion of storage of one billion barrels of petroleum product in the Reserve. Such amendment shall comply with the provisions of this section and shall detail the Secretary's plans for the design, construction, leasing or other acquisition, and fill of storage and related facilities of the Reserve to achieve such one billion barrels of storage. Such amendment shall not be subject to the congressional review procedures contained in section 6421 of this title. In assessing alternatives in the development of such plans, the Secretary shall consider leasing privately owned storage facilities.''

Subsec. (*l*). Pub. L. 106–469, § 103(13)(F), amended subsec. (*l*) generally. Prior to amendment, subsec. (*l*) read as follows: ''Notwithstanding subsection (d) of this section, during any period in which the Distribution Plan is being implemented, the Secretary may amend the plan and promulgate rules, regulations, or orders to implement such amendments in accordance with section 6393 of this title, without regard to the requirements of section 553 of title 5 and section 7191 of this title. Such amendments shall be transmitted to the Congress together with a statement explaining the need for such amendments.''

1990—Subsecs. (i), (j). Pub. L. 101–383, § 4(a), added subsecs. (i) and (j).

Subsec. (k). Pub. L. 101–383, § 9, added subsec. (k).

Subsec. (*l*). Pub. L. 101–383, § 11, added subsec. (*l*).

1985—Subsec. (e). Pub. L. 99–58 amended subsec. (e) generally, substituting provisions directing that amendments transmitted pursuant to subsec. (d) of this

section not become effective until 60 days after transmittal except in the case of enumerated presidential determinations for provisions which had formerly empowered Congress to disapprove of transmitted proposals and amendments in accordance with the procedures specified in section 6421 of this title.

1982—Subsec. (f)(5). Pub. L. 97–229, § 4(b)(1), added par. (5).

Subsec. (h). Pub. L. 97–229, § 4(b)(2)(B), added subsec. (h).

1978—Subsecs. (a)(1), (c), (d), (e)(1), (f), (f)(I), (g). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

§ 6240. Petroleum products for storage, transport, or exchange

(a) Eligibility of petroleum products

The Secretary may acquire, place in storage, transport, or exchange—

(1) crude oil produced from Federal lands[1]

(2) crude oil which the United States is entitled to receive in kind as royalties from production on Federal lands; and

(3) petroleum products acquired by purchase, exchange, or otherwise.

(b) Objectives in determining manner of acquisition

The Secretary shall, to the greatest extent practicable, acquire petroleum products for the Reserve in a manner consonant with the following objectives:

(1) minimization of the cost of the Reserve;

(2) Repealed. Pub. L. 106–469, title I, § 103(14)(C), Nov. 9, 2000, 114 Stat. 2031;

(3) minimization of the Nation's vulnerability to a severe energy supply interruption;

(4) minimization of the impact of such acquisition upon supply levels and market forces; and

(5) encouragement of competition in the petroleum industry.

(c) Procedures

The Secretary shall develop, with public notice and opportunity for comment, procedures consistent with the objectives of this section to acquire petroleum for the Reserve. Such procedures shall take into account the need to—

(1) maximize overall domestic supply of crude oil (including quantities stored in private sector inventories);

(2) avoid incurring excessive cost or appreciably affecting the price of petroleum products to consumers;

(3) minimize the costs to the Department of the Interior and the Department of Energy in acquiring such petroleum products (including foregone revenues to the Treasury when petroleum products for the Reserve are obtained through the royalty-in-kind program);

(4) protect national security;

(5) avoid adversely affecting current and futures prices, supplies, and inventories of oil; and

(6) address other factors that the Secretary determines to be appropriate.

[1] So in original. Probably should be followed by a semicolon.

(d), (e) Repealed. Pub. L. 106–469, title I, § 103(14)(D), Nov. 9, 2000, 114 Stat. 2031

(f) Predrawdown diversion

If the Secretary finds that a severe energy supply interruption may be imminent, the Secretary may suspend the acquisition of petroleum product for, and the injection of petroleum product into, the Reserve and may sell any petroleum product acquired for and in transit to, but not injected into, the Reserve.

(g) Repealed. Pub. L. 106–469, title I, § 103(14)(D), Nov. 9, 2000, 114 Stat. 2031

(h) Purchase from stripper well properties

(1) If the President finds that declines in the production of oil from domestic resources pose a threat to national energy security, the President may direct the Secretary to acquire oil from domestic production of stripper well properties for storage in the Strategic Petroleum Reserve. Except as provided in paragraph (2), the Secretary may set such terms and conditions as he deems necessary for such acquisition.

(2) Crude oil purchased by the Secretary pursuant to this subsection shall be by competitive bid. The price paid by the Secretary—

(A) shall take into account the cost of production including costs of reservoir and well maintenance; and

(B) shall not exceed the price that would have been paid if the Secretary had acquired petroleum products of a similar quality on the open market under competitive bid procedures without regard to the source of the petroleum products.

(Pub. L. 94–163, title I, § 160, Dec. 22, 1975, 89 Stat. 888; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 96–294, title VIII, §§ 801(a), 802(a), 803, June 30, 1980, 94 Stat. 775, 776; Pub. L. 97–35, title X, § 1033, Aug. 13, 1981, 95 Stat. 618; Pub. L. 97–229, § 4(a)(1), (b)(2)(C), Aug. 3, 1982, 96 Stat. 250, 252; Pub. L. 99–58, title I, §§ 102(b), 103(b)(1), July 2, 1985, 99 Stat. 103, 104; Pub. L. 99–88, title I, § 100, Aug. 15, 1985, 99 Stat. 342; Pub. L. 99–272, title VII, § 7102, Apr. 7, 1986, 100 Stat. 141; Pub. L. 99–509, title III, § 3202, Oct. 21, 1986, 100 Stat. 1889; Pub. L. 101–383, §§ 4(b), (c), 5(a), (b)(3), 7, Sept. 15, 1990, 104 Stat. 728, 729, 734; Pub. L. 101–548, § 1, Nov. 14, 1990, 104 Stat. 2398; Pub. L. 102–486, title XIV, § 1404(a), (b)(2), Oct. 24, 1992, 106 Stat. 2994, 2995; Pub. L. 104–66, title I, § 1051(f), Dec. 21, 1995, 109 Stat. 716; Pub. L. 106–469, title I, § 103(14), Nov. 9, 2000, 114 Stat. 2031; Pub. L. 109–58, title III, § 301(e)(2)(A), Aug. 8, 2005, 119 Stat. 684.)

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–58 added subsec. (c).

2000—Subsec. (a). Pub. L. 106–469, § 103(14)(A), in introductory provisions, substituted ''The Secretary may acquire, place in storage, transport, or exchange'' for ''The Secretary is authorized, for purposes of implementing the Strategic Petroleum Reserve Plan or the Early Storage Reserve Plan, to place in storage, transport, or exchange''.

Subsec. (a)(1). Pub. L. 106–469, § 103(14)(B), struck out '', including crude oil produced from the Naval Petroleum Reserves to the extent that such production is authorized by law;'' after ''Federal lands''.

Subsec. (b). Pub. L. 106–469, § 103(14)(C), struck out '', including the Early Storage Reserve and the Re-

gional Petroleum Reserve'' before ''in a manner consonant'' in introductory provisions.

Subsec. (b)(2). Pub. L. 106–469, § 103(14)(C), struck out par. (2) which read as follows: ''orderly development of the Naval Petroleum Reserves to the extent authorized by law;''.

Subsecs. (c) to (e). Pub. L. 106–469, § 103(14)(D), struck out subsecs. (c) to (e) which related to fill operations by the President, disposition of crude oil from Naval Petroleum Reserve Numbered 1, and suspensions of fill operations during emergency situations.

Subsec. (g). Pub. L. 106–469, § 103(14)(D), struck out subsec. (g) which required the Secretary to conduct a test program of storage of refined petroleum products within the Reserve.

1995—Subsec. (g)(7). Pub. L. 104–66 struck out par. (7) which read as follows: ''No later than January 31, 1994, the Secretary shall transmit to the Congress a report on the test program. The report shall evaluate the mechanisms demonstrated under the test program, other potential mechanisms, and the purchase of facilities. The report shall include an assessment of the costs and benefits of the various mechanisms. The report shall also make recommendations with regard to future storage of refined petroleum products and contain drafts of any legislative provisions which the Secretary wishes to recommend.''

1992—Subsec. (d)(2). Pub. L. 102–486, § 1405, redesignated cls. (i) to (iii) as pars. (A) to (C), respectively, and struck out former par. (A) designation after ''(2)''.

Subsec. (h). Pub. L. 102–486, § 1404(a), added subsec. (h).

1990—Subsec. (c)(3). Pub. L. 101–383, § 4(b)(1), substituted ''fiscal year 1994'' for ''fiscal years 1988 and 1989'' and ''1,000,000,000'' for ''at least 750,000,000''.

Subsec. (d)(1)(A). Pub. L. 101–383, § 4(c), inserted ''Government owned facilities of'' after ''within''.

Subsec. (d)(1)(B). Pub. L. 101–383, § 4(b)(2), inserted before period at end ''and the Secretary has amended the Strategic Petroleum Reserve Plan as required by section 6239(j) of this title''.

Subsec. (d)(4). Pub. L. 101–383, § 5(b)(3), added par. (4).

Subsec. (f). Pub. L. 101–383, § 5(a), added subsec. (f).

Subsec. (g). Pub. L. 101–548 inserted ''with regard to future storage of refined petroleum products and'' after ''recommendations'' in par. (7).

Pub. L. 101–383, § 7, added subsec. (g).

1986—Subsec. (c)(3). Pub. L. 99–509, § 3202(a), substituted ''fiscal year 1987 and continuing through fiscal years 1988 and 1989'' for ''fiscal year 1986 and continuing through fiscal years 1987 and 1988'', ''750,000,000 barrels'' for ''527,000,000 barrels'', and ''at the highest practicable fill rate achievable, subject to the availability of appropriated funds'' for ''at a level sufficient to assure a minimum average annual fill-rate of at least 35,000 barrels per day in addition to any petroleum products acquired for the Reserve to replace petroleum products withdrawn from the Reserve as a result of a test drawdown and distribution''.

Pub. L. 99–272, § 7102(a), added par. (3).

Subsec. (d)(1)(A). Pub. L. 99–509, § 3202(b)(1), substituted ''750,000,000 barrels'' for ''527,000,000 barrels''.

Pub. L. 99–272, § 7102(b)(1), substituted ''527,000,000 barrels'' for ''500,000,000 barrels''.

Subsec. (d)(1)(B). Pub. L. 99–509, § 3202(b)(2), substituted ''75,000 barrels'' for ''100,000 barrels'', and substituted a period for ''; or''.

Subsec. (d)(1)(C). Pub. L. 99–509, § 3202(b)(3), struck out subpar. (C) which read as follows: ''acquisition, transportation, and injection activities for the Reserve are being undertaken, beginning in fiscal year 1986 and continuing through fiscal years 1987 and 1988 until the quantity of crude oil in storage within the Reserve is at least 527,000,000 barrels, at a level sufficient to assure that petroleum products in storage in the Reserve will be increased at a minimum annual average rate of at least 35,000 barrels per day in addition to any petroleum products acquired for the Reserve to replace petroleum products withdrawn from the Reserve as a result of a test drawdown and distribution''.

Pub. L. 99–272, § 7102(b)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''the fill rate is sufficient to attain a level of 500,000,000 barrels by the end of the fiscal year during which the fill rate falls below the rate established in (B).''

1985—Subsec. (d)(1)(C). Pub. L. 99–88 added subpar. (C).

Subsec. (d)(3). Pub. L. 99–58, § 103(b)(1), added par. (3).

Subsec. (e)(1)(B). Pub. L. 99–58, § 102(b)(1), (2), inserted ''and'' at end of cl. (i), inserted a period following ''to the Congress'', and struck out ''in accordance with section 6422 of this title, together with a request for a suspension of such provisions; and'' in cl. (ii), and struck out cl. (iii) which directed that provisions of subsecs. (c) and (d) of this section would not apply if a Presidential request for the suspension of such provisions was approved by a resolution of each House of Congress within 60 days of continuous session after the date of its transmittal in accordance with provisions of section 6422 of this title applicable to energy conservation contingency plans.

Subsec. (e)(2). Pub. L. 99–58, § 102(b)(3), substituted ''may become effective on the day the finding is transmitted to the Congress and shall terminate nine months thereafter or on such earlier date as is specified in such finding'' for ''shall take effect on the date on which a resolution approving that request is adopted by the second House to have so approved that request and shall terminate 9 months thereafter, or such earlier date as is specified in the request transmitted under paragraph (1)(B)(ii)''.

Subsec. (e)(3), (4). Pub. L. 99–58, § 102(b)(3), (4), redesignated par. (4) as (3). Former par. (3), which related to application of section 6422 of this title for purposes of par. (1)(B), was struck out.

1982—Subsec. (c). Pub. L. 97–229, § 4(a)(1), substituted provisions directing the President to fill the Strategic Petroleum Reserve with petroleum products at a level sufficient to assure an increase at an annual rate of at least the minimum required fill rate, 300,000 barrels per day, until the quantity of petroleum products stored is at least 500,000,000 barrels, allowing for a lower minimum required fill rate of 220,000 barrels per day if the President finds that compliance with the 300,000 barrels per day rate would not be in the national interest, specifying the effective period of such a Presidential finding, authorizing a higher minimum required rate than the 220,000 barrels per day if funds are available in any fiscal year after fiscal year 1982, making the Impoundment Control Act of 1974 applicable to funds available under section 6247(b) and (e) of this title, and providing that, after the Strategic Petroleum Reserve reaches 500,000,000 barrels, the President shall seek to fill the Reserve at an annual rate of at least 300,000 barrels per day of petroleum products until the Reserve reaches 750,000,000 barrels for provisions directing the President to seek to fill the Strategic Petroleum Reserve with crude oil at a level sufficient to assure that crude oil in storage will be increased at an average annual rate of at least 300,000 barrels per day until the Reserve is at least 750,000,000 barrels.

Subsec. (e)(4). Pub. L. 97–229, § 4(b)(2)(C), substituted ''petroleum product'' for ''crude oil''.

1981—Subsec. (c). Pub. L. 97–35 substituted provisions respecting fill operation at a rate of 300,000 barrels per day for provisions respecting fill operation at a rate of 100,000 barrels per day.

1980—Subsec. (c). Pub. L. 96–294, § 801(a), added subsec. (c).

Subsec. (d). Pub. L. 96–294, § 802(a), added subsec. (d).

Subsec. (e). Pub. L. 96–294, § 803, added subsec. (e).

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 4(a)(2) of Pub. L. 97–229 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect July 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1038 of title X of Pub. L. 97–35 provided that: ''The provisions of this title [enacting sections 6247,

8341, and 8484 of this title, amending this section and sections 6245, 6246, 6831 to 6833, 6835, 6837 to 6839, 8372, 8421, 8422, and 8803 of this title, repealing sections 6834, 6836 and 8341 of this title, and enacting provisions set out as notes under sections 6201, 6231, 6247, 7270, and 8341 of this title, section 3620 of Title 12, Banks and Banking, and section 719e of Title 15, Commerce and Trade] shall take effect on the date of enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 801(b) of Pub. L. 96–294 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [June 30, 1980], and shall apply with respect to the entirety of fiscal year 1981 (and each fiscal year thereafter).''

Section 802(b) of Pub. L. 96–294 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect October 1, 1980.''

FILLING STRATEGIC PETROLEUM RESERVE TO CAPACITY

Pub. L. 109–58, title III, § 301(e)(1), Aug. 8, 2005, 119 Stat. 684, provided that: ''The Secretary [of Energy] shall, as expeditiously as practicable, without incurring excessive cost or appreciably affecting the price of petroleum products to consumers, acquire petroleum in quantities sufficient to fill the Strategic Petroleum Reserve to the 1,000,000,000-barrel capacity authorized under section 154(a) of the Energy Policy and Conservation Act (42 U.S.C. 6234(a)), in accordance with the sections 159 and 160 of that Act (42 U.S.C. 6239, 6240).''

PROCEDURES FOR ACQUISITION OF PETROLEUM FOR RESERVE

Pub. L. 109–58, title III, § 301(e)(2)(B), (C), Aug. 8, 2005, 119 Stat. 684, 685, provided that:

''(B) REVIEW OF REQUESTS FOR DEFERRALS OF SCHEDULED DELIVERIES.—The procedures developed under section 160(c) of the Energy Policy and Conservation Act [42 U.S.C. 6240(c)], as added by subparagraph (A), shall include procedures and criteria for the review of requests for the deferrals of scheduled deliveries.

''(C) DEADLINES.—The Secretary [of Energy] shall—

''(i) propose the procedures required under the amendment made by subparagraph (A) [amending this section] not later than 120 days after the date of enactment of this Act [Aug. 8, 2005];

''(ii) promulgate the procedures not later than 180 days after the date of enactment of this Act; and

''(iii) comply with the procedures in acquiring petroleum for the Reserve effective beginning on the date that is 180 days after the date of enactment of this Act.''

SUSPENSION OF TEST PROGRAM REQUIREMENTS DURING FISCAL YEAR 1994

Pub. L. 103–138, title II, Nov. 11, 1993, 107 Stat. 1406, provided in part that requirements of subsec. (g) of this section would not apply in fiscal year 1994.

STUDY AND REPORT ON OIL LEASING AND OTHER ARRANGEMENTS TO FILL SPR TO ONE BILLION BARRELS

Pub. L. 101–46, § 2, June 30, 1989, 103 Stat. 132, directed Secretary of Energy to conduct a study on potential financial arrangements, including long-term leasing of crude oil and storage facilities, that could be used to provide additional, alternative means of financing the filling of the Strategic Petroleum Reserve to one billion barrels and directed Secretary to transmit an interim report to Committee on Energy and Natural Resources of Senate and Committee on Energy and Commerce of House of Representatives no later than Oct. 15, 1989, and no later than Feb. 1, 1990, to transmit to such committees a copy of the preliminary written solicitations for proposed alternative financial arrangements to assist in filling the Strategic Petroleum Reserve to one billion barrels and a final report containing findings and conclusions together with a draft of legislative changes necessary to authorize the most significant alternative financial arrangements.

EXCHANGE OF AGRICULTURAL PRODUCTS FOR CRUDE OIL TO BE DELIVERED TO STRATEGIC PETROLEUM RESERVE

Pub. L. 99–190, § 101(d) [title II], Dec. 19, 1985, 99 Stat. 1224, 1254, provided that: ''Notwithstanding any other provision of law, the Secretary of Agriculture, at the request of the Secretary of Energy, may exchange agricultural products owned by the Commodity Credit Corporation for crude oil to be delivered to the Strategic Petroleum Reserve: *Provided*, That the Secretary of Energy shall approve the quantity, quality, delivery method, scheduling, market value and other aspects of the exchange of such agricultural products: *Provided further*, That if the volume of agricultural products to be exchanged has a value in excess of the market value of the crude oil acquired by such exchange, then the Secretary of Agriculture shall require as part of the terms and conditions of the exchange that the party or entity providing such crude oil shall agree to purchase, within six months following the exchange, current crop commodities or value-added food products from United States producers or processors in an amount equal to at least one-half the difference between the value of the commodities received in exchange and the market value of the crude oil acquired for the Strategic Petroleum Reserve.''

ALLOCATION TO STRATEGIC PETROLEUM RESERVE OF LOWER TIER CRUDE OIL AND FEDERAL ROYALTY OIL; PROCEDURES APPLICABLE, AUTHORITIES, ETC.

Section 805 of Pub. L. 96–294 provided that:

''(a)(1) In order to carry out the requirement of the amendment made by section 801 of this Act [amending this section and enacting provision set out as a note above] and to carry out the policies and objectives established in sections 151 and 160(b)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6231 and 6240(b)(1)) the President shall, within 60 days after the date of the enactment of this Act [June 30, 1980], promulgate and make effective an amendment to the provisions of the regulation under section 4(a) of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 753(a)] relating to entitlements, which has the same effect as allocating lower tier crude oil to the Government for storage in the Strategic Petroleum Reserve. Such amendment shall not apply with respect to crude oil purchased after September 30, 1981, for storage in such reserve.

''(2) The authority provided by this subsection shall be in addition to, and shall not be deemed to limit, any other authority available to the President under the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or any other law.

''(3) The President or his delegate may promulgate and make effective rules or orders to implement this subsection without regard to the requirements of section 501 of the Department of Energy Organization Act [42 U.S.C. 7191] or any other law or regulation specifying procedural requirements.

''(b) In addition to the requirement under subsection (a), the President may direct that—

''(1) all or any portion of Federal royalty oil be placed in storage in the Reserve,

''(2) all or any portion of Federal royalty oil be exchanged, directly or indirectly, for other crude oil for storage in the Reserve, or

''(3) all or any portion of the proceeds from the sales of Federal royalty oil be transferred to the account established under subsection (c) for use for the purchase of crude oil for the Reserve, as provided in subsection (c).

''(c)(1) Any proceeds—

''(A) from the sale of entitlements received by the Government under the amendment to the regulation made under subsection (a), and

''(B) to the extent provided in subsection (b), from the sale of Federal royalty oil,

shall be deposited in a special account which the Secretary of the Treasury shall establish on the books of the Treasury of the United States.

''(2)(A) Subject to the provisions of any Act enacted pursuant to section 660 of the Department of Energy Organization Act [42 U.S.C. 7270], such account shall be available (except as provided in subparagraph (B)) for use by the Secretary of Energy, without fiscal year limitation, for the purchase of crude oil for the Strategic Petroleum Reserve, to the extent provided in advance in appropriation Acts.

''(B) Amounts in such account attributable to the proceeds from the sale of entitlements under the amendment to the regulation under subsection (a) are hereby appropriated for fiscal year 1981 for acquisition of crude oil for the Strategic Petroleum Reserve pursuant to subsection (a).

''(d) For purposes of this section—

''(1) the terms 'entitlements', 'crude oil', and 'allocation' shall have the same meaning as those terms have as used in the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] (and the regulation thereunder);

''(2) the term 'lower tier crude oil' means crude oil which is subject to the price ceiling established under section 212.73 of title 10, Code of Federal Regulations;

''(3) the term 'Federal royalty oil' means crude oil which the United States is entitled to receive in kind as royalties from production on Federal land (as such term is defined in section 3(10) of the Energy Policy and Conservation Act (42 U.S.C. 6202(10)); and

''(4) the term 'proceeds from the sale of Federal royalty oil' means that portion of the amounts deposited into the Treasury of the United States from the sale of Federal royalty oil which is not otherwise required to be disposed of (other than as miscellaneous receipts) pursuant to (A) the provisions of section 35 of the Act of February 25, 1920, as amended (41 Stat. 450; 30 U.S.C. 191), commonly known as the Mineral Lands Leasing Act, or (B) the provisions of any other law.''

RATE OF FILL OF STRATEGIC PETROLEUM RESERVE

Pub. L. 96–514, title II, Dec. 12, 1980, 94 Stat. 2976, provided in part: ''That the President shall immediately seek to undertake, and thereafter continue, crude oil acquisition, transportation, and injection activities at a level sufficient to assure that crude oil storage in the Strategic Petroleum Reserve will be increased to an average annual rate of at least 300,000 barrels per day or a sustained average annual daily rate of fill which would fully utilize appropriated funds: *Provided*, That the requirements of the preceding provision shall be in addition to the provisions of title VIII of the Energy Security Act [title VIII of Pub. L. 96–294, which amended this section and section 7430 of Title 10, Armed Forces, and enacted provisions set out as a note above] and shall not affect such provisions of the Energy Security Act in any way.''

EX. ORD. NO. 12231. STRATEGIC PETROLEUM RESERVE

Ex. Ord. No. 12231, Aug. 4, 1980, 45 F.R. 52139, provided: By the authority vested in me as President of the United States of America by Title VIII of the Energy Security Act (Public Law 96–294) [title VIII of Pub. L. 96–294, which amended this section and section 7430 of Title 10, Armed Forces, and enacted provisions set out as a note above] and by Section 301 of Title 3 of the United States Code, and in order to meet the goals and requirements for the strategic petroleum reserve, it is hereby ordered as follows:

1–101. The functions vested in the President by Section 160(c) of the Energy Policy and Conservation Act, as amended, are delegated to the Secretary of Energy (42 U.S.C. 6240(c); see Section 801 of the Energy Security Act).

1–102. The functions vested in the President by Section 7430(k) of Title 10 of the United States Code are delegated to the Secretary of Energy (see Section 804(b) of the Energy Security Act).

1–103. The functions vested in the President by Section 805(a) of the Energy Security Act [section 805(a) of Pub. L. 96–294, set out as a note above] are, consistent with Section 2 of Executive Order No. 11790, as amended [set out as a note under section 761 of Title 15, Commerce and Trade], delegated to the Secretary of Energy.

JIMMY CARTER.

§ 6241. Drawdown and sale of petroleum products

(a) Power of Secretary

The Secretary may drawdown and sell petroleum products in the Reserve only in accordance with the provisions of this section.

(b), (c) Repealed. Pub. L. 106–469, title I, § 103(15)(C), Nov. 9, 2000, 114 Stat. 2031

(d) Presidential finding prerequisite to drawdown and sale

(1) Drawdown and sale of petroleum products from the Strategic Petroleum Reserve may not be made unless the President has found drawdown and sale are required by a severe energy supply interruption or by obligations of the United States under the international energy program.

(2) For purposes of this section, in addition to the circumstances set forth in section 6202(8) of this title, a severe energy supply interruption shall be deemed to exist if the President determines that—

(A) an emergency situation exists and there is a significant reduction in supply which is of significant scope and duration;

(B) a severe increase in the price of petroleum products has resulted from such emergency situation; and

(C) such price increase is likely to cause a major adverse impact on the national economy.

(e) Sales procedures

(1) The Secretary shall sell petroleum products withdrawn from the Strategic Petroleum Reserve at public sale to the highest qualified bidder in the amounts, for the period, and after a notice of sale considered appropriate by the Secretary, and without regard to Federal, State, or local regulations controlling sales of petroleum products.

(2) The Secretary may cancel in whole or in part any offer to sell petroleum products as part of any drawdown and sale under this section.

(f) Repealed. Pub. L. 106–469, title I, § 103(15)(C), Nov. 9, 2000, 114 Stat. 2031

(g) Directive to carry out test drawdown and sale

(1) The Secretary shall conduct a continuing evaluation of the drawdown and sales procedures. In the conduct of an evaluation, the Secretary is authorized to carry out a test drawdown and sale or exchange of petroleum products from the Reserve. Such a test drawdown and sale or exchange may not exceed 5,000,000 barrels of petroleum products.

(2) Repealed. Pub. L. 106–469, title I, § 103(15)(F)(ii), Nov. 9, 2000, 114 Stat. 2031.

(3) At least part of the crude oil that is sold or exchanged under this subsection shall be sold or

exchanged to or with entities that are not part of the Federal Government.

(4) The Secretary may not sell any crude oil under this subsection at a price less than that which the Secretary determines appropriate and, in no event, at a price less than 95 percent of the sales price, as estimated by the Secretary, of comparable crude oil being sold in the same area at the time the Secretary is offering crude oil for sale in such area under this subsection.

(5) The Secretary may cancel any offer to sell or exchange crude oil as part of any test under this subsection if the Secretary determines that there are insufficient acceptable offers to obtain such crude oil.

(6) In the case of a sale of any petroleum products under this subsection, the Secretary shall, to the extent funds are available in the SPR Petroleum Account as a result of such sale, acquire petroleum products for the Reserve within the 12-month period beginning after completion of the sale.

(7) Rules, regulations, or orders issued in order to carry out this subsection which have the applicability and effect of a rule as defined in section 551(4) of title 5 shall not be subject to the requirements of subchapter II of chapter 5 of such title or to section 6393 of this title.

(8) The Secretary shall transmit to both Houses of the Congress a detailed explanation of the test carried out under this subsection. Such explanation may be a part of any report made to the President and the Congress under section 6245 of this title.

(h) Prevention or reduction of adverse impact of severe domestic energy supply interruptions

(1) If the President finds that—

(A) a circumstance, other than those described in subsection (d) of this section, exists that constitutes, or is likely to become, a domestic or international energy supply shortage of significant scope or duration;

(B) action taken under this subsection would assist directly and significantly in preventing or reducing the adverse impact of such shortage; and

(C) the Secretary of Defense has found that action taken under this subsection will not impair national security,

then the Secretary may, subject to the limitations of paragraph (2), draw down and sell petroleum products from the Strategic Petroleum Reserve.

(2) Petroleum products from the Reserve may not be drawn down under this subsection—

(A) in excess of an aggregate of 30,000,000 barrels with respect to each such shortage;

(B) for more than 60 days with respect to each such shortage;

(C) if there are fewer than 500,000,000 barrels of petroleum product stored in the Reserve; or

(D) below the level of an aggregate of 500,000,000 barrels of petroleum product stored in the Reserve.

(3) During any period in which there is a drawdown and sale of the Reserve in effect under this subsection, the Secretary shall transmit a monthly report to the Congress containing an account of the drawdown and sale of petroleum products under this subsection and an assessment of its effect.

(4) In no case may the drawdown under this subsection be extended beyond 60 days with respect to any domestic energy supply shortage.

(i) Exchange of withdrawn products

Notwithstanding any other law, the President may permit any petroleum products withdrawn from the Strategic Petroleum Reserve in accordance with this section to be sold and delivered for refining or exchange outside of the United States, in connection with an arrangement for the delivery of refined petroleum products to the United States.

(j) Purchases from Strategic Petroleum Reserve by entities in insular areas of United States and Freely Associated States

(1) Definitions

In this subsection:

(A) Binding offer

The term ''binding offer'' means a bid submitted by the State of Hawaii for an assured award of a specific quantity of petroleum product, with a price to be calculated pursuant to paragraph (2) of this subsection, that obligates the offeror to take title to the petroleum product without further negotiation or recourse to withdraw the offer.

(B) Category of petroleum product

The term ''category of petroleum product'' means a master line item within a notice of sale.

(C) Eligible entity

The term ''eligible entity'' means an entity that owns or controls a refinery that is located within the State of Hawaii.

(D) Full tanker load

The term ''full tanker load'' means a tanker of approximately 700,000 barrels of capacity, or such lesser tanker capacity as may be designated by the State of Hawaii.

(E) Insular area

The term ''insular area'' means the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Freely Associated States of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(F) Offering

The term ''offering'' means a solicitation for bids for a quantity or quantities of petroleum product from the Strategic Petroleum Reserve as specified in the notice of sale.

(G) Notice of sale

The term ''notice of sale'' means the document that announces—

(i) the sale of Strategic Petroleum Reserve products;

(ii) the quantity, characteristics, and location of the petroleum product being sold;

(iii) the delivery period for the sale; and

(iv) the procedures for submitting offers.

(2) In general

In the case of an offering of a quantity of petroleum product during a drawdown of the Strategic Petroleum Reserve—

(A) the State of Hawaii, in addition to having the opportunity to submit a competitive bid, may—

(i) submit a binding offer, and shall on submission of the offer, be entitled to purchase a category of a petroleum product specified in a notice of sale at a price equal to the volumetrically weighted average of the successful bids made for the remaining quantity of the petroleum product within the category that is the subject of the offering; and

(ii) submit one or more alternative offers, for other categories of the petroleum product, that will be binding if no price competitive contract is awarded for the category of petroleum product on which a binding offer is submitted under clause (i); and

(B) at the request of the Governor of the State of Hawaii, a petroleum product purchased by the State of Hawaii at a competitive sale or through a binding offer shall have first preference in scheduling for lifting.

(3) Limitation on quantity

(A) In general

In administering this subsection, in the case of each offering, the Secretary may impose the limitation described in subparagraph (B) or (C) that results in the purchase of the lesser quantity of petroleum product.

(B) Portion of quantity of previous imports

The Secretary may limit the quantity of a petroleum product that the State of Hawaii may purchase through a binding offer at any offering to 1/12 of the total quantity of imports of the petroleum product brought into the State during the previous year (or other period determined by the Secretary to be representative).

(C) Percentage of offering

The Secretary may limit the quantity that may be purchased through binding offers at any offering to 3 percent of the offering.

(4) Adjustments

(A) In general

Notwithstanding any limitation imposed under paragraph (3), in administering this subsection, in the case of each offering, the Secretary shall, at the request of the Governor of the State of Hawaii, or an eligible entity certified under paragraph (7), adjust the quantity to be sold to the State of Hawaii in accordance with this paragraph.

(B) Upward adjustment

The Secretary shall adjust upward to the next whole number increment of a full tanker load if the quantity to be sold is—

(i) less than 1 full tanker load; or

(ii) greater than or equal to 50 percent of a full tanker load more than a whole number increment of a full tanker load.

(C) Downward adjustment

The Secretary shall adjust downward to the next whole number increment of a full tanker load if the quantity to be sold is less than 50 percent of a full tanker load more than a whole number increment of a full tanker load.

(5) Delivery to other locations

The State of Hawaii may enter into an exchange or a processing agreement that requires delivery to other locations, if a petroleum product of similar value or quantity is delivered to the State of Hawaii.

(6) Standard sales provisions

Except as otherwise provided in this chapter, the Secretary may require the State of Hawaii to comply with the standard sales provisions applicable to purchasers of petroleum products at competitive sales.

(7) Eligible entities

(A) In general

Subject to subparagraphs (B) and (C) and notwithstanding any other provision of this paragraph, if the Governor of the State of Hawaii certifies to the Secretary that the State has entered into an agreement with an eligible entity to carry out this chapter, the eligible entity may act on behalf of the State of Hawaii to carry out this subsection.

(B) Limitation

The Governor of the State of Hawaii shall not certify more than one eligible entity under this paragraph for each notice of sale.

(C) Barred company

If the Secretary has notified the Governor of the State of Hawaii that a company has been barred from bidding (either prior to, or at the time that a notice of sale is issued), the Governor shall not certify the company under this paragraph.

(8) Supplies of petroleum products

At the request of the Governor of an insular area, the Secretary shall, for a period not to exceed 180 days following a drawdown of the Strategic Petroleum Reserve, assist the insular area or the President of a Freely Associated State in its efforts to maintain adequate supplies of petroleum products from traditional and nontraditional suppliers.

(Pub. L. 94–163, title I, § 161, Dec. 22, 1975, 89 Stat. 888; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 99–58, title I, § 103(a), (b)(2), July 2, 1985, 99 Stat. 103, 104; Pub. L. 101–383, §§ 3(b), 8, 10, Sept. 15, 1990, 104 Stat. 727, 735; Pub. L. 102–486, title XIV, § 1401, Oct. 24, 1992, 106 Stat. 2993; Pub. L. 105–388, § 9(a), Nov. 13, 1998, 112 Stat. 3482; Pub. L. 106–469, title I, § 103(15), Nov. 9, 2000, 114 Stat. 2031.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (j)(6), (7)(A), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106–469, §103(15)(A), substituted ''sale of petroleum products'' for ''distribution of the Reserve'' in section catchline.

Subsec. (a). Pub. L. 106–469, §103(15)(B), substituted ''drawdown and sell petroleum products in'' for ''drawdown and distribute''.

Subsec. (b). Pub. L. 106–469, §103(15)(C), struck out subsec. (b) which read as follows: ''Except as provided in subsections (c), (f), and (g) of this section, no drawdown and distribution of the Reserve may be made except in accordance with the provisions of the Distribution Plan contained in the Strategic Petroleum Reserve Plan which has taken effect pursuant to section 6239(a) of this title.''

Subsec. (c). Pub. L. 106–469, §103(15)(C), struck out subsec. (c) which read as follows: ''Drawdown and distribution of the Early Storage Reserve may be made in accordance with the provisions of the Distribution Plan contained in the Early Storage Reserve Plan until the Strategic Petroleum Reserve Plan has taken effect pursuant to section 6239(a) of this title.''

Subsec. (d)(1). Pub. L. 106–469, §103(15)(D), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Neither the Distribution Plan contained in the Strategic Petroleum Reserve Plan nor the Distribution Plan contained in the Early Storage Reserve Plan may be implemented, and no drawdown and distribution of the Reserve or the Early Storage Reserve may be made, unless the President has found that implementation of either such Distribution Plan is required by a severe energy supply interruption or by obligations of the United States under the international energy program.''

Subsec. (e). Pub. L. 106–469, §103(15)(E), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Secretary may, by rule, provide for the allocation of any petroleum product withdrawn from the Strategic Petroleum Reserve in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such rules. Such price levels and allocation procedures shall be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of title 15.''

Subsec. (f). Pub. L. 106–469, §103(15)(C), struck out subsec. (f) which read as follows: ''The Secretary may permit any importer or refiner who owns any petroleum products stored in the Industrial Petroleum Reserve pursuant to section 6236 of this title to remove or otherwise dispose of such products upon such terms and conditions as the Secretary may prescribe.''

Subsec. (g)(1). Pub. L. 106–469, §103(15)(F)(i), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary shall conduct a continuing evaluation of the Distribution Plan. In the conduct of such evaluation, the Secretary is authorized to carry out test drawdown and distribution of crude oil from the Reserve. If any such test drawdown includes the sale or exchange of crude oil, then the aggregate quantity of crude oil withdrawn from the Reserve may not exceed 5,000,000 barrels during any such test drawdown or distribution.''

Subsec. (g)(2). Pub. L. 106–469, §103(15)(F)(ii), struck out par. (2) which read as follows: ''The Secretary shall carry out such drawdown and distribution in accordance with the Distribution Plan and implementing regulations and contract provisions, modified as the Secretary considers appropriate taking into consideration the artificialities of a test and the absence of a severe energy supply interruption. To meet the requirements of subsections (d) and (e) of section 6239 of this title, the Secretary shall transmit any such modification of the Plan, along with explanatory and supporting material, to both Houses of the Congress no later than 15 calendar days prior to the offering of any crude oil for sale under this subsection.''

Subsec. (g)(4). Pub. L. 106–469, §103(15)(F)(iii), substituted ''95 percent'' for ''90 percent''.

Subsec. (g)(5). Pub. L. 106–469, §103(15)(F)(iv), substituted ''test'' for ''drawdown and distribution''.

Subsec. (g)(6). Pub. L. 106–469, §103(15)(F)(v), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

''(6)(A) The minimum required fill rate in effect for any fiscal year shall be reduced by the amount of any crude oil drawdown from the Reserve under this subsection during such fiscal year.

''(B) In the case of a sale of any crude oil under this subsection, the Secretary shall, to the extent funds are available in the SPR Petroleum Account as a result of such sale, acquire crude oil for the Reserve within the 12-month period beginning after the completion of the sale. Such acquisition shall be in addition to any acquisition of crude oil for the Reserve required as part of a fill rate established by any other provision of law.''

Subsec. (g)(8). Pub. L. 106–469, §103(15)(F)(vi), substituted ''test'' for ''drawdown and distribution''.

Subsec. (h)(1). Pub. L. 106–469, §103(15)(G)(i), substituted ''sell petroleum products from'' for ''distribute'' in concluding provisions.

Subsec. (h)(1)(C). Pub. L. 106–469, §103(15)(G)(ii), added subpar. (C).

Subsec. (h)(2). Pub. L. 106–469, §103(15)(G)(iii), substituted ''Petroleum products from the Reserve may not'' for ''In no case may the Reserve'' in introductory provisions.

Subsec. (h)(3). Pub. L. 106–469, §103(15)(G)(iv), substituted ''sale'' for ''distribution'' in two places.

1998—Subsec. (j). Pub. L. 105–388 added subsec. (j).

1992—Subsec. (d). Pub. L. 102–486, §1401(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (h)(1)(A). Pub. L. 102–486, §1401(2), inserted ''or international'' after ''domestic''.

1990—Subsec. (g)(1). Pub. L. 101–383, §8, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In order to evaluate the implementation of the Distribution Plan, the Secretary shall, commencing within 180 days after July 2, 1985, carry out a test drawdown and distribution under this subsection through the sale or exchange of approximately 1,100,000 barrels of crude oil from the Reserve. The requirement of this paragraph shall not apply if the President determines, within the 180-day period described in the preceding sentence, that implementation of the Distribution Plan is required by a severe energy supply interruption or by obligations of the United States under the international energy program.''

Subsec. (h). Pub. L. 101–383, §3(b), added subsec. (h).

Subsec. (i). Pub. L. 101–383, §10, added subsec. (i).

1985—Subsec. (b). Pub. L. 99–58, §103(b)(2), inserted reference to subsec. (g) of this section.

Subsec. (g). Pub. L. 99–58, §103(a), added subsec. (g).

1978—Subsecs. (a), (e), (f). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–388, §9(c), Nov. 13, 1998, 112 Stat. 3484, provided that: ''The amendment made by subsection (a) [amending this section] takes effect on the earlier of—

''(1) the date that is 180 days after the date of enactment of this Act [Nov. 13, 1998]; or

''(2) the date that final regulations are issued under subsection (b) [set out as a note below].''

REGULATIONS

Pub. L. 105–388, §9(b), Nov. 13, 1998, 112 Stat. 3484, provided that:

''(1) IN GENERAL.—The Secretary of Energy shall issue such regulations as are necessary to carry out the amendment made by subsection (a) [amending this section].

''(2) ADMINISTRATIVE PROCEDURE.—Regulations issued to carry out the amendment made by subsection (a) shall not be subject to—

''(A) section 523 of the Energy Policy and Conservation Act (42 U.S.C. 6393); or

''(B) section 501 of the Department of Energy Organization Act (42 U.S.C. 7191).''

§ 6242. Coordination with import quota system

No quantitative restriction on the importation of any petroleum product into the United States imposed by law shall apply to volumes of any such petroleum product imported into the United States for storage in the Reserve.

(Pub. L. 94–163, title I, § 162, Dec. 22, 1975, 89 Stat. 889.)

§ 6243. Records and accounts

(a) Preparation and maintenance

The Secretary may require any person to prepare and maintain such records or accounts as the Secretary, by rule, determines necessary to carry out the purposes of this part.

(b) Audit of operations of storage facility

The Secretary may audit the operations of any storage facility in which any petroleum product is stored or required to be stored pursuant to the provisions of this part.

(c) Access to and inspection of records or accounts and storage facilities

The Secretary may require access to, and the right to inspect and examine, at reasonable times, (1) any records or accounts required to be prepared or maintained pursuant to subsection (a) of this section and (2) any storage facilities subject to audit by the United States under the authority of this part.

(Pub. L. 94–163, title I, § 163, Dec. 22, 1975, 89 Stat. 889; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

§ 6244. Repealed. Pub. L. 106–469, title I, § 103(16), Nov. 9, 2000, 114 Stat. 2032

Section, Pub. L. 94–163, title I, § 164, Dec. 22, 1975, 89 Stat. 889; Pub. L. 94–258, title I, § 105(a), Apr. 5, 1976, 90 Stat. 305; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, required a report on development of Naval Petroleum Reserve Number 4.

§ 6245. Annual report

The Secretary shall report annually to the President and the Congress on actions taken to implement this part. This report shall include—

(1) the status of the physical capacity of the Reserve and the type and quantity of petroleum products in the Reserve;

(2) an estimate of the schedule and cost to complete planned equipment upgrade or capital investment in the Reserve, including upgrades and investments carried out as part of operational maintenance or extension of life activities;

(3) an identification of any life-limiting conditions or operational problems at any Reserve facility, and proposed remedial actions including an estimate of the schedule and cost of implementing those remedial actions;

(4) a description of current withdrawal and distribution rates and capabilities, and an identification of any operational or other limitations on those rates and capabilities;

(5) a listing of petroleum product acquisitions made in the preceding year and planned in the following year, including quantity, price, and type of petroleum;

(6) a summary of the actions taken to develop, operate, and maintain the Reserve;

(7) a summary of the financial status and financial transactions of the Strategic Petroleum Reserve and Strategic Petroleum Reserve Petroleum Accounts for the year;

(8) a summary of expenses for the year, and the number of Federal and contractor employees;

(9) the status of contracts for development, operation, maintenance, distribution, and other activities related to the implementation of this part;

(10) a summary of foreign oil storage agreements and their implementation status;

(11) any recommendations for supplemental legislation or policy or operational changes the Secretary considers necessary or appropriate to implement this part.

(Pub. L. 94–163, title I, § 165, Dec. 22, 1975, 89 Stat. 889; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 97–35, title X, § 1035(a), Aug. 13, 1981, 95 Stat. 620; Pub. L. 99–509, title III, § 3203, Oct. 21, 1986, 100 Stat. 1890; Pub. L. 104–66, title I, § 1051(j), Dec. 21, 1995, 109 Stat. 717; Pub. L. 106–469, title I, § 103(17), Nov. 9, 2000, 114 Stat. 2032.)

AMENDMENTS

2000—Pub. L. 106–469 amended section generally. Prior to amendment, section required the Secretary to report to the President and to Congress, not later than one year after the transmittal of the Strategic Petroleum Reserve Plan to the Congress and each year thereafter, on all actions taken to implement this part.

1995—Pub. L. 104–66 struck out subsec. (a) designation before ''The Secretary shall'', and struck out subsec. (b) which directed Secretary to report to Congress on activities undertaken with respect to Strategic Petroleum Reserve under the amendments made by Strategic Petroleum Reserve Amendments Act of 1981.

1986—Subsec. (a)(1). Pub. L. 99–509 amended par. (1) generally, inserting '', including'' in introductory text and adding subpars. (A) to (G).

1981—Pub. L. 97–35 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as a note under section 6240 of this title.

REPORTS TO CONGRESS ON PETROLEUM SUPPLY INTERRUPTIONS

Pub. L. 97–229, § 6, Aug. 3, 1982, 96 Stat. 253, provided that:

''(a) IMPACT ANALYSIS.—(1) The Secretary of Energy shall analyze the impact on the domestic economy and on consumers in the United States of reliance on market allocation and pricing during any substantial reduction in the amount of petroleum products available to the United States. In making such analysis, the Secretary of Energy may consult with the Secretary of the Treasury, the Secretary of Agriculture, the Director of the Office of Management and Budget, and the heads of

other appropriate Federal agencies. Such analysis shall—

''(A) examine the equity and efficiency of such reliance,

''(B) distinguish between the impacts of such reliance on various categories of business (including small business and agriculture) and on households of different income levels,

''(C) specify the nature and administration of monetary and fiscal policies that would be followed including emergency tax cuts, emergency block grants, and emergency supplements to income maintenance programs, and

''(D) describe the likely impact on the distribution of petroleum products of State and local laws and regulations (including emergency authorities) affecting the distribution of petroleum products.

Such analysis shall include projections of the effect of the petroleum supply reduction on the price of motor gasoline, home heating oil, and diesel fuel, and on Federal tax revenues, Federal royalty receipts, and State and local tax revenues.

''(2) Within one year after the date of the enactment of this Act [Aug. 3, 1982], the Secretary of Energy shall submit a report to the Congress and the President containing the analysis required by this subsection, including a detailed step-by-step description of the procedures by which the policies specified in paragraph (1)(C) would be accomplished in an emergency, along with such recommendations as the Secretary of Energy deems appropriate.

''(b) STRATEGIC PETROLEUM RESERVE DRAWDOWN AND DISTRIBUTION REPORT.—The President shall prepare and transmit to the Congress, at the time he transmits the drawdown plan pursuant to section 4(c) [section 4(c) of Pub. L. 97–229, set out as a note under 42 U.S.C. 6234], a report containing—

''(1) a description of the foreseeable situations (including selective and general embargoes, sabotage, war, act of God, or accident) which could result in a severe energy supply interruption or obligations of the United States arising under the international energy program necessitating distributions from the Strategic Petroleum Reserve, and

''(2) a description of the strategy or alternative strategies of distribution which could reasonably be used to respond to each situation described under paragraph (1), together with the theory and justification underlying each such strategy.

The description of each strategy under paragraph (2) shall include an explanation of the methods which would likely be used to determine the price and distribution of petroleum products from the Reserve in any such distribution, and an explanation of the disposition of revenues arising from sales of any such petroleum products under the strategy.

''(c) REGIONAL RESERVE REPORT.—The President or his delegate shall submit to the Congress no later than December 31, 1982, a report regarding the actions taken to comply with the provisions of section 157 of the Energy Policy and Conservation Act (42 U.S.C. 6237). Such report shall include an analysis of the economic benefits and costs of establishing Regional Petroleum Reserves, including—

''(1) an assessment of the ability to transport petroleum products to refiners, distributors, and end users within the regions specified in section 157(a) of such Act;

''(2) the comparative costs of creating and operating Regional Petroleum Reserves for such regions as compared to the costs of continuing current plans for the Strategic Petroleum Reserve; and

''(3) a list of potential sites for Regional Petroleum Reserves.

''(d) STRATEGIC ALCOHOL FUEL RESERVE REPORT.—The Secretary of Energy shall, in consultation with the Secretary of Agriculture, prepare and transmit to the Congress no later than December 31, 1982, a study of the potential for establishing a Strategic Alcohol Fuel Reserve.

''(e) MEANING OF TERMS.—As used in this section, the terms 'international energy program', 'petroleum product', 'Reserve', 'severe energy supply interruption', and 'Strategic Petroleum Reserve' have the meanings given such terms in sections 3 and 152 of the Energy Policy and Conservation Act (42 U.S.C. 6202 and 6232).''

§ 6246. Authorization of appropriations

There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this part and part D of this subchapter, to remain available until expended.

(Pub. L. 94–163, title I, § 166, as added Pub. L. 109–58, title III, § 301(a)(1), Aug. 8, 2005, 119 Stat. 683.)

PRIOR PROVISIONS

A prior section 6246, Pub. L. 94–163, title I, § 166, Dec. 22, 1975, 89 Stat. 890; Pub. L. 95–70, § 4, July 21, 1977, 91 Stat. 277; Pub. L. 97–35, title X, § 1034(b), Aug. 13, 1981, 95 Stat. 619; Pub. L. 104–306, § 1(1), Oct. 14, 1996, 110 Stat. 3810; Pub. L. 105–177, § 1(1), June 1, 1998, 112 Stat. 105; Pub. L. 106–64, § 1(1), Oct. 5, 1999, 113 Stat. 511; Pub. L. 106–469, title I, § 103(18), Nov. 9, 2000, 114 Stat. 2033; Pub. L. 108–7, div. F, title III, § 339(a)(1), Feb. 20, 2003, 117 Stat. 278, authorized appropriations for this part, prior to repeal by Pub. L. 109–58, title III, § 301(a)(1), Aug. 8, 2005, 119 Stat. 683.

§ 6247. SPR Petroleum Account

(a) Establishment

The Secretary of the Treasury shall establish in the Treasury of the United States an account to be known as the ''SPR Petroleum Account'' (hereinafter in this section referred to as the ''Account'').

(b) Obligation of funds for acquisition, transportation, and injection of petroleum products into SPR

Amounts in the Account may be obligated by the Secretary of Energy for the acquisition, transportation, and injection of petroleum products into the Strategic Petroleum Reserve, for test sales of petroleum products from the Reserve, and for the drawdown, sale, and delivery of petroleum products from the Reserve—

(1) Repealed. Pub. L. 106–469, title I, § 103(19)(A)(ii), Nov. 9, 2000, 114 Stat. 2033;

(2) in the case of any fiscal year, subject to section 7270 of this title, in such aggregate amounts as may be appropriated in advance in appropriation Acts; and

(3) in the case of any fiscal year, notwithstanding section 7270 of this title, in an aggregate amount equal to the aggregate amount of the receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under section 6241 of this title, including a drawdown and distribution carried out under subsection (g) of such section, or from the sale of petroleum products under section 6240(f) of this title.

Funds available to the Secretary of Energy for obligation under this subsection may remain available without fiscal year limitation.

(c) Provision and deposit of funds

The Secretary of the Treasury shall provide and deposit into the Account such sums as may be necessary to meet obligations of the Sec-

retary of Energy under subsection (b) of this section.

(d) Off-budgeting procedures

The Account, the deposits and withdrawals from the Account, and the transactions, receipts, obligations, outlays associated with such deposits and withdrawals (including petroleum product purchases and related transactions), and receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under section 6241 of this title, including a drawdown and distribution carried out under subsection (g) of such section, and from the sale of petroleum products under section 6240(f) of this title—

(1) shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitation imposed by statute on expenditures and net lending (budget outlays) of the United States; and

(2) shall not be deemed to be budget authority, spending authority, budget outlays, or Federal revenues for purposes of title III of Public Law 93–344, as amended [2 U.S.C. 631 et seq.].

(Pub. L. 94–163, title I, § 167, as added Pub. L. 97–35, title X, § 1034(a)(1), Aug. 13, 1981, 95 Stat. 619; amended Pub. L. 97–229, § 4(b)(2)(A), Aug. 3, 1982, 96 Stat. 251; Pub. L. 99–58, title I, § 103(b)(3), (4), July 2, 1985, 99 Stat. 104; Pub. L. 101–383, § 5(b)(1), (2), Sept. 15, 1990, 104 Stat. 729; Pub. L. 102–486, title XIV, § 1404(b)(1), Oct. 24, 1992, 106 Stat. 2995; Pub. L. 106–469, title I, § 103(19), Nov. 9, 2000, 114 Stat. 2033.)

REFERENCES IN TEXT

Public Law 93–344, as amended, referred to in subsec. (d)(2), is Pub. L. 93–344, July 12, 1974, 88 Stat. 297, as amended, known as the Congressional Budget and Impoundment Control Act of 1974. Title III of that Act is classified generally to subchapter I (§ 631 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–469, § 103(19)(A)(i), substituted ''for test sales of petroleum products from the Reserve, and for the drawdown, sale,'' for ''and the drawdown'' in introductory provisions.

Subsec. (b)(1). Pub. L. 106–469, § 103(19)(A)(ii), struck out par. (1) which read as follows: ''in the case of fiscal year 1982, in an aggregate amount, not to exceed $3,900,000,000, as may be provided in advance in appropriation Acts;''.

Subsec. (b)(2). Pub. L. 106–469, § 103(19)(A)(iii), struck out ''after fiscal year 1982'' after ''any fiscal year''.

Subsec. (e). Pub. L. 106–469, § 103(19)(B), struck out subsec. (e) which read as follows:

''(1) Except as provided in paragraph (2), nothing in this part shall be construed to limit the Account from being used to meet expenses relating to interim storage facilities for the storage of petroleum products for the Strategic Petroleum Reserve.

''(2) In any fiscal year, amounts in the Account may not be obligated for expenses relating to interim storage facilities in excess of 10 percent of the total amounts in the Account obligated in such fiscal year. If the amount obligated in any fiscal year for interim storage expenses is less than the amount of the 10-percent limit under the preceding sentence for that fiscal year, then the amount of the 10-percent limit applicable in the following fiscal year shall be increased by the amount by which the limit exceeded the amount obligated for such expenses.''

1992—Subsec. (d). Pub. L. 102–486 substituted ''under subsection (g)'' for ''subsection (g)''.

1990—Subsec. (b)(3). Pub. L. 101–383, § 5(b)(1), inserted before period at end '', or from the sale of petroleum products under section 6240(f) of this title''.

Subsec. (d). Pub. L. 101–383, § 5(b)(2), inserted '', and from the sale of petroleum products under section 6240(f) of this title'' after ''subsection (g) of such section''.

1985—Subsec. (b)(3). Pub. L. 99–58, § 103(b)(3), inserted '', including a drawdown and distribution carried out under subsection (g) of such section'' after ''section 6241 of this title''.

Subsec. (d). Pub. L. 99–58, § 103(b)(4), inserted '', including a drawdown and distribution carried out subsection (g) of such section'' after ''section 6241 of this title'' in provisions preceding par. (1).

1982—Subsec. (e). Pub. L. 97–229 added subsec. (e).

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 6240 of this title.

TRANSFER OF FUNDS TO SPR PETROLEUM ACCOUNT FOR DRAWDOWN AND SALE OPERATIONS

Pub. L. 106–113, div. B, § 1000(a)(3) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A–180, provided in part: ''That the Secretary of Energy hereafter may transfer to the SPR Petroleum Account such funds as may be necessary to carry out drawdown and sale operations of the Strategic Petroleum Reserve initiated under section 161 of the Energy Policy and Conservation Act (42 U.S.C. 6241) from any funds available to the Department of Energy under this or any other Act: *Provided further*, That all funds transferred pursuant to this authority must be replenished as promptly as possible from oil sale receipts pursuant to the drawdown and sale.''

ACQUISITION, TRANSPORTATION, AND INJECTION OF PETROLEUM PRODUCTS FOR SPR; APPLICABILITY OF SUBSEC. (d)

Section 1034(c) of Pub. L. 97–35 provided that: ''The provisions of section 167(d) of such Act, as added by subsection (a) of this section [subsec. (d) of this section], shall apply with respect to the outlays associated with unexpended balances of appropriations made available and obligated as of the end of fiscal year 1981 for the acquisition, transportation, and injection of petroleum products for the Strategic Petroleum Reserve to the same extent and manner as such provisions apply with respect to withdrawals from the SPR Petroleum Account.''

§ 6247a. Use of underutilized facilities

(a) Authority

Notwithstanding any other provision of this subchapter, the Secretary, by lease or otherwise, for any term and under such other conditions as the Secretary considers necessary or appropriate, may store in underutilized Strategic Petroleum Reserve facilities petroleum product[1] owned by a foreign government or its representative. Petroleum products stored under this section are not part of the Strategic Petroleum Reserve and may be exported without license from the United States.

(b) Protection of facilities

All agreements entered into pursuant to subsection (a) of this section shall contain provi-

[1] So in original. Probably should be ''products''.

sions providing for fees to fully compensate the United States for all related costs of storage and removals of petroleum products (including the proportionate cost of replacement facilities necessitated as a result of any withdrawals) incurred by the United States on behalf of the foreign government or its representative.

(c) Access to stored oil

The Secretary shall ensure that agreements to store petroleum products for foreign governments or their representatives do not impair the ability of the United States to withdraw, distribute, or sell petroleum products from the Strategic Petroleum Reserve in response to an energy emergency or to the obligations of the United States under the Agreement on an International Energy Program.

(d) Availability of funds

Funds collected through the leasing of Strategic Petroleum Reserve facilities authorized by subsection (a) of this section after September 30, 2007, shall be used by the Secretary of Energy without further appropriation for the purchase of petroleum products for the Strategic Petroleum Reserve.

(Pub. L. 94–163, title I, § 168, as added Pub. L. 105–33, title IX, § 9303(a), Aug. 5, 1997, 111 Stat. 676.)

§ 6247b. Purchase of oil from marginal wells

(a) In general

From amounts authorized under section 6246 of this title, in any case in which the price of oil decreases to an amount less than $15.00 per barrel (an amount equal to the annual average well head price per barrel for all domestic crude oil), adjusted for inflation, the Secretary may purchase oil from a marginal well at $15.00 per barrel, adjusted for inflation.

(b) Definition of marginal well

The term ''marginal well'' has the same meaning as the definition of ''stripper well property'' in section 613A(c)(6)(E) of title 26.

(Pub. L. 94–163, title I, § 169, as added Pub. L. 106–469, title III, § 301(a), Nov. 9, 2000, 114 Stat. 2037.)

PART C—AUTHORITY TO CONTRACT FOR PETROLEUM PRODUCT NOT OWNED BY UNITED STATES

PRIOR PROVISIONS

A prior part C, consisting of section 6251 of this title, was redesignated part E of this subchapter, prior to repeal by Pub. L. 109–58.

§ 6249. Contracting for petroleum product and facilities

(a) In general

Subject to the other provisions of this part, the Secretary may contract—

(1) for storage, in otherwise unused Strategic Petroleum Reserve facilities, of petroleum product not owned by the United States; and

(2) for storage, in storage facilities other than those of the Reserve, of petroleum product either owned or not owned by the United States.

(b) Conditions

(1) Petroleum product stored pursuant to such a contract shall, until the expiration, termination, or other conclusion of the contract, be a part of the Reserve and subject to the Secretary's authority under part B of this subchapter.

(2) The Secretary may enter into a contract for storage of petroleum product under subsection (a) of this section only if—

(A) the Secretary determines (i) that entering into one or more contracts under such subsection would achieve benefits comparable to the acquisition of an equivalent amount of petroleum product, or an equivalent volume of storage capacity, for the Reserve under part B of this subchapter, and (ii) that, because of budgetary constraints, the acquisition of an equivalent amount of petroleum product or volume of storage space for the Reserve cannot be accomplished under part B of this subchapter; and

(B) the Secretary notifies each House of the Congress of the determination and identifies in the notification the location, type, and ownership of storage and related facilities proposed to be included, or the volume, type, and ownership of petroleum products proposed to be stored, in the Reserve, and an estimate of the proposed benefits.

(3) A contract entered into under subsection (a) of this section shall not limit the discretion of the President or the Secretary to conduct a drawdown and sale of petroleum products from the Reserve.

(4) A contract entered into under subsection (a) of this section shall include a provision that the obligation of the United States to make payments under the contract in any fiscal year is subject to the availability of appropriations.

(c) Charge for storage

The Secretary may store petroleum product pursuant to a contract entered into under subsection (a)(1) of this section with or without charge or may pay a fee for its storage.

(d) Duration

Contracts entered into under subsection (a) of this section may be of such duration as the Secretary considers necessary or appropriate.

(e) Binding arbitration

The Secretary may agree to binding arbitration of disputes under any contract entered into under subsection (a) of this section.

(f) Availability of funds

The Secretary may utilize such funds as are available in the SPR Petroleum Account to carry out the activities described in subsection (a) of this section, and may obligate and expend such funds to carry out such activities, in advance of the receipt of petroleum products.

(Pub. L. 94–163, title I, § 171, as added Pub. L. 101–383, § 6(a)(4), Sept. 15, 1990, 104 Stat. 729; amended Pub. L. 102–486, title XIV, § 1403, Oct. 24, 1992, 106 Stat. 2994; Pub. L. 106–469, title I, § 103(20), Nov. 9, 2000, 114 Stat. 2033.)

PRIOR PROVISIONS

A prior section 171 of Pub. L. 94–163 was renumbered section 191 and was classified to section 6251 of this title, prior to repeal by Pub. L. 109–58.

AMENDMENTS

2000—Subsec. (b)(2)(B). Pub. L. 106–469, § 103(20)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the Secretary notifies each House of the Congress of such determination and includes in such notification the same information required under section 6234(e) of this title with regard to storage and related facilities proposed to be included, or petroleum product proposed to be stored, in the Reserve.''

Subsec. (b)(3). Pub. L. 106–469, § 103(20)(B), substituted ''sale of petroleum products from'' for ''distribution of''.

1992—Subsec. (f). Pub. L. 102–486 added subsec. (f).

§ 6249a. Implementation

(a), (b) Repealed. Pub. L. 106–469, title I, § 103(21), Nov. 9, 2000, 114 Stat. 2033

(c) Legal status regarding other law

Petroleum product and facilities contracted for under this part have the same status as petroleum product and facilities owned by the United States for all purposes associated with the exercise of the laws of any State or political subdivision thereof.

(d) Return of product

At such time as the petroleum product contracted for under this part is withdrawn from the Reserve upon the expiration, termination, or other conclusion of the contract, such petroleum product (or the equivalent quantity of petroleum product withdrawn from the Reserve pursuant to the contract) shall be deemed, for purposes of determining the extent to which such product is thereafter subject to any Federal, State, or local law or regulation, not to have left the place where such petroleum product was located at the time it was originally committed to a contract under this part.

(Pub. L. 94–163, title I, § 172, as added Pub. L. 101–383, § 6(a)(4), Sept. 15, 1990, 104 Stat. 730; amended Pub. L. 106–469, title I, § 103(21), Nov. 9, 2000, 114 Stat. 2033.)

AMENDMENTS

2000—Subsecs. (a), (b). Pub. L. 106–469 struck out subsecs. (a) and (b) which read as follows:

''(a) AMENDMENT TO PLAN NOT REQUIRED.—An amendment of the Strategic Petroleum Reserve Plan is not required for any action taken under this part.

''(b) FILL RATE REQUIREMENT.—For purposes of section 6240(d)(1) of this title, any petroleum product stored in the Reserve under this part that is removed from the Reserve at the expiration, termination, or other conclusion of the agreement shall be considered to be part of the Reserve until the beginning of the fiscal year following the fiscal year in which the petroleum product was removed.''

§ 6249b. Repealed. Pub. L. 106–469, title I, § 103(22), Nov. 9, 2000, 114 Stat. 2033

Section, Pub. L. 94–163, title I, § 173, as added Pub. L. 101–383, § 6(a)(4), Sept. 15, 1990, 104 Stat. 731, related to contracts not requiring implementing legislation.

§ 6249c. Contracts for which implementing legislation is needed

(a) In general

(1) In the case of contracts entered into under this part, and amendments to such contracts, for which implementing legislation will be needed, the Secretary may transmit an implementing bill to both Houses of the Congress.

(2) In the Senate, any such bill shall be considered in accordance with the provisions of this section.

(3) For purposes of this section—

(A) the term ''implementing bill'' means a bill introduced in either House of Congress with respect to one or more contracts or amendments to contracts submitted to the House of Representatives and the Senate under this section and which contains—

(i) a provision approving such contracts or amendments, or both; and

(ii) legislative provisions that are necessary or appropriate for the implementation of such contracts or amendments, or both; and

(B) the term ''implementing revenue bill'' means an implementing bill which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(b) Consultation

The Secretary shall consult, at the earliest possible time and on a continuing basis, with each committee of the House and the Senate that has jurisdiction over all matters expected to be affected by legislation needed to implement any such contract.

(c) Effective date

Each contract and each amendment to a contract for which an implementing bill is necessary may become effective only if—

(1) the Secretary, not less than 30 days before the day on which such contract is entered into, notifies the House of Representatives and the Senate of the intention to enter into such a contract and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the contract, the Secretary transmits a report to the House of Representatives and to the Senate containing a copy of the final text of such contract together with—

(A) the implementing bill, and an explanation of how the implementing bill changes or affects existing law; and

(B) a statement of the reasons why the contract serves the interests of the United States and why the implementing bill is required or appropriate to implement the contract; and

(3) the implementing bill is enacted into law.

(d) Rules of Senate

Subsections (e) through (h) of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate but applicable only with respect to the procedure to be followed in the Senate in the case of implementing bills and implementing revenue bills described in subsection (a) of this section, and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(e) Introduction and referral in Senate

(1) On the day on which an implementing bill is transmitted to the Senate under this section, the implementing bill shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.

(2) If the Senate is not in session on the day on which such an agreement is submitted, the implementing bill shall be introduced in the Senate, as provided in the[1] paragraph (1), on the first day thereafter on which the Senate is in session.

(3) Such bills shall be referred by the presiding officer of the Senate to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(f) Consideration of amendments to implementing bill prohibited in Senate

(1) No amendments to an implementing bill shall be in order in the Senate, and it shall not be in order in the Senate to consider an implementing bill that originated in the House if such bill passed the House containing any amendment to the introduced bill.

(2) No motion to suspend the application of this subsection shall be in order in the Senate; nor shall it be in order in the Senate for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(g) Discharge in Senate

(1) Except as provided in paragraph (3), if the committee or committees of the Senate to which an implementing bill has been referred have not reported it at the close of the 30th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill, and it shall be placed on the appropriate calendar.

(2) A vote on final passage of the bill shall be taken in the Senate on or before the close of the 15th day after the bill is reported by the committee or committees to which it was referred or after such committee or committees have been discharged from further consideration of the bill.

(3) The provisions of paragraphs (1) and (2) shall not apply in the Senate to an implementing revenue bill. An implementing revenue bill received from the House shall be, subject to subsection (f)(1) of this section, referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill at the close of the 15th day after its receipt by the Senate, such committee or committees shall be automatically discharged from further consideration of such bill and it shall be placed on the calendar. A vote on final passage of such bill shall be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill.

(4) For purposes of this subsection, in computing a number of days in the Senate, there shall be excluded any day on which the Senate is not in session.

(h) Floor consideration in Senate

(1) A motion in the Senate to proceed to the consideration of an implementing bill shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on an implementing bill, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill shall be limited to not more than one hour to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an implementing bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill is not in order.

(Pub. L. 94–163, title I, § 174, as added Pub. L. 101–383, § 6(a)(4), Sept. 15, 1990, 104 Stat. 731.)

PART D—NORTHEAST HOME HEATING OIL RESERVE

PRIOR PROVISIONS

A prior part D, consisting of section 6251 of this title, was redesignated part E of this subchapter, prior to repeal by Pub. L. 109–58.

§ 6250. Establishment

(a) Notwithstanding any other provision of this chapter, the Secretary may establish, maintain, and operate in the Northeast a Northeast Home Heating Oil Reserve. A Reserve established under this part is not a component of the Strategic Petroleum Reserve established under part B of this subchapter. A Reserve established under this part shall contain no more than 2 million barrels of petroleum distillate.

(b) For the purposes of this part—

(1) the term ''Northeast'' means the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, and New Jersey;

[1] So in original. The word ''the'' probably should not appear.

(2) the term ''petroleum distillate'' includes heating oil and diesel fuel; and

(3) the term ''Reserve'' means the Northeast Home Heating Oil Reserve established under this part.

(Pub. L. 94–163, title I, § 181, as added Pub. L. 106–469, title II, § 201(a)(3), Nov. 9, 2000, 114 Stat. 2034.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

PRIOR PROVISIONS

A prior section 181 of Pub. L. 94–163 was renumbered section 191 and was classified to section 6251 of this title, prior to repeal by Pub. L. 109–58.

§ 6250a. Authority

To the extent necessary or appropriate to carry out this part, the Secretary may—

(1) purchase, contract for, lease, or otherwise acquire, in whole or in part, storage and related facilities, and storage services;

(2) use, lease, maintain, sell, or otherwise dispose of storage and related facilities acquired under this part;

(3) acquire by purchase, exchange (including exchange of petroleum products from the Strategic Petroleum Reserve or received as royalty from Federal lands), lease, or otherwise, petroleum distillate for storage in the Northeast Home Heating Oil Reserve;

(4) store petroleum distillate in facilities not owned by the United States; and

(5) sell, exchange, or otherwise dispose of petroleum distillate from the Reserve established under this part, including to maintain the quality or quantity of the petroleum distillate in the Reserve or to maintain the operational capability of the Reserve.

(Pub. L. 94–163, title I, § 182, as added Pub. L. 106–469, title II, § 201(a)(3), Nov. 9, 2000, 114 Stat. 2034.)

§ 6250b. Conditions for release; plan

(a) Finding

The Secretary may sell products from the Reserve only upon a finding by the President that there is a severe energy supply interruption. Such a finding may be made only if he determines that—

(1) a dislocation in the heating oil market has resulted from such interruption; or

(2) a circumstance, other than that described in paragraph (1), exists that constitutes a regional supply shortage of significant scope and duration and that action taken under this section would assist directly and significantly in reducing the adverse impact of such shortage.

(b) Definition

For purposes of this section a ''dislocation in the heating oil market'' shall be deemed to occur only when—

(1) The price differential between crude oil, as reflected in an industry daily publication such as ''Platt's Oilgram Price Report'' or ''Oil Daily'' and No. 2 heating oil, as reported in the Energy Information Administration's retail price data for the Northeast, increases by more than 60 percent over its 5-year rolling average for the months of mid-October through March (considered as a heating season average), and continues for 7 consecutive days; and

(2) The price differential continues to increase during the most recent week for which price information is available.

(c) Continuing evaluation

The Secretary shall conduct a continuing evaluation of the residential price data supplied by the Energy Information Administration for the Northeast and data on crude oil prices from published sources.

(d) Release of petroleum distillate

After consultation with the heating oil industry, the Secretary shall determine procedures governing the release of petroleum distillate from the Reserve. The procedures shall provide that—

(1) the Secretary may—

(A) sell petroleum distillate from the Reserve through a competitive process, or

(B) enter into exchange agreements for the petroleum distillate that results[1] in the Secretary receiving a greater volume of petroleum distillate as repayment than the volume provided to the acquirer;

(2) in all such sales or exchanges, the Secretary shall receive revenue or its equivalent in petroleum distillate that provides the Department with fair market value. At no time may the oil be sold or exchanged resulting in a loss of revenue or value to the United States; and

(3) the Secretary shall only sell or dispose of the oil in the Reserve to entities customarily engaged in the sale and distribution of petroleum distillate.

(e) Plan

Within 45 days of November 9, 2000, the Secretary shall transmit to the President and, if the President approves, to the Congress a plan describing—

(1) the acquisition of storage and related facilities or storage services for the Reserve, including the potential use of storage facilities not currently in use;

(2) the acquisition of petroleum distillate for storage in the Reserve;

(3) the anticipated methods of disposition of petroleum distillate from the Reserve;

(4) the estimated costs of establishment, maintenance, and operation of the Reserve;

(5) efforts the Department will take to minimize any potential need for future drawdowns and ensure that distributors and importers are not discouraged from maintaining and increasing supplies to the Northeast; and

(6) actions to ensure quality of the petroleum distillate in the Reserve.

(Pub. L. 94–163, title I, § 183, as added Pub. L. 106–469, title II, § 201(a)(3), Nov. 9, 2000, 114 Stat.

[1] So in original. Probably should be ''result''.

2035; amended Pub. L. 109–58, title III, § 301(d), Aug. 8, 2005, 119 Stat. 684.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–58 substituted ''by more than 60 percent over its 5-year rolling average for the months of mid-October through March (considered as a heating season average)'' for ''by more tan 60 percent over its 5 year rolling average for the months of mid-October through March''.

§ 6250c. Northeast Home Heating Oil Reserve Account

(a) Establishment

Upon a decision of the Secretary of Energy to establish a Reserve under this part, the Secretary of the Treasury shall establish in the Treasury of the United States an account known as the ''Northeast Home Heating Oil Reserve Account'' (referred to in this section as the ''Account'').

(b) Deposits

the[1] Secretary of the Treasury shall deposit in the Account any amounts appropriated to the Account and any receipts from the sale, exchange, or other disposition of petroleum distillate from the Reserve.

(c) Obligation of amounts

The Secretary of Energy may obligate amounts in the Account to carry out activities under this part without the need for further appropriation, and amounts available to the Secretary of Energy for obligation under this section shall remain available without fiscal year limitation.

(Pub. L. 94–163, title I, § 184, as added Pub. L. 106–469, title II, § 201(a)(3), Nov. 9, 2000, 114 Stat. 2036.)

§ 6250d. Exemptions

An action taken under this part is not subject to the rulemaking requirements of section 6393 of this title, section 7191 of this title, or section 553 of title 5.

(Pub. L. 94–163, title I, § 185, as added Pub. L. 106–469, title II, § 201(a)(3), Nov. 9, 2000, 114 Stat. 2036.)

§ 6250e. Repealed. Pub. L. 109–58, title III, § 301(a)(2), Aug. 8, 2005, 119 Stat. 683

Section, Pub. L. 94–163, title I, § 186, as added Pub. L. 106–469, title II, § 201(a)(3), Nov. 9, 2000, 114 Stat. 2036; amended Pub. L. 108–7, div. F, title III, § 339(a)(2), Feb. 20, 2003, 117 Stat. 278, authorized appropriations for this part.

PART E—EXPIRATION

§ 6251. Repealed. Pub. L. 109–58, title III, § 301(a)(3), Aug. 8, 2005, 119 Stat. 683

Section, Pub. L. 94–163, title I, § 191, formerly § 171, as added Pub. L. 99–58, title I, § 101(a), July 2, 1985, 99 Stat. 102; amended Pub. L. 101–46, § 1(1), June 30, 1989, 103 Stat. 132; Pub. L. 101–262, § 2(b), Mar. 31, 1990, 104 Stat. 124; Pub. L. 101–360, § 2(b), Aug. 10, 1990, 104 Stat. 421; renumbered § 181 and amended Pub. L. 101–383, §§ 2(2), 6(a)(3), Sept. 15, 1990, 104 Stat. 727, 729; Pub. L. 103–406, title I, § 102, Oct. 22, 1994, 108 Stat. 4209; Pub. L. 104–306, § 1(2), Oct. 14, 1996, 110 Stat. 3810; Pub. L. 105–177, § 1(2), June 1, 1998, 112 Stat. 105; Pub. L. 106–64, § 1(2), Oct. 5, 1999, 113 Stat. 511; renumbered § 191 and amended Pub. L. 106–469, title I, § 103(23), title II, § 201(a)(2), Nov. 9, 2000, 114 Stat. 2033, 2034; Pub. L. 108–7, div. F, title III, § 339(a)(3), Feb. 20, 2003, 117 Stat. 278, provided for the expiration of all authority under this subchapter at midnight Sept. 30, 2008.

SUBCHAPTER II—STANDBY ENERGY AUTHORITIES

PART A—GENERAL EMERGENCY AUTHORITIES

§§ 6261 to 6264. Repealed. Pub. L. 106–469, title I, § 104(1), Nov. 9, 2000, 114 Stat. 2033

Section 6261, Pub. L. 94–163, title II, § 201, Dec. 22, 1975, 89 Stat. 890; Pub. L. 96–102, title I, §§ 103(b)(1), (c)(1), 105(a)(1)–(3), (5), Nov. 5, 1979, 93 Stat. 751, 755, 756; H. Res. 549, Mar. 25, 1980, required the President to transmit to Congress energy conservation contingency plans and rationing contingency plans and provided requirements for plans to become effective and for amendment, approval, and implementation of plans.

Section 6262, Pub. L. 94–163, title II, § 202, Dec. 22, 1975, 89 Stat. 892; Pub. L. 96–102, title II, § 231, Nov. 5, 1979, 93 Stat. 767, provided requirements for energy conservation contingency plans.

Section 6263, Pub. L. 94–163, title II, § 203, Dec. 22, 1975, 89 Stat. 892; Pub. L. 96–102, title I, §§ 103(a), (c)(2), 104, 105(b)(1)–(5), Nov. 5, 1979, 93 Stat. 751, 755, 756, provided requirements for rationing contingency plan, and in subsec. (f) provided that all authority to carry out a plan would expire on same date as authority to issue and enforce rules and orders under the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 et seq.

Section 6264, Pub. L. 94–163, title II, § 204, as added Pub. L. 99–58, title I, § 104(b), July 2, 1985, 99 Stat. 104, provided that except as provided in section 6263(f) of this title, authority to carry out the provisions of sections 6261 to 6264 of this title and any rule, regulation, or order issued pursuant to such sections expired at midnight, June 30, 1985.

PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

§ 6271. International oil allocations

(a) Authority of President to prescribe rules for implementation of obligations of United States relating to international allocation of petroleum products; amounts of allocation and prices; petroleum products subject to rule; term of rule

The President may, by rule, require that persons engaged in producing, transporting, refining, distributing, or storing petroleum products, take such action as he determines to be necessary for implementation of the obligations of the United States under chapters III and IV of the international energy program insofar as such obligations relate to the international allocation of petroleum products. Allocation under such rule shall be in such amounts and at such prices as are specified in (or determined in a manner prescribed by) such rule. Such rule may apply to any petroleum product owned or controlled by any person described in the first sentence of this subsection who is subject to the jurisdiction of the United States, including any petroleum product destined, directly or indirectly, for import into the United States or any foreign country, or produced in the United States. Subject to subsection (b)(2) of this sec-

[1] So in original. Probably should be capitalized.

tion, such a rule shall remain in effect until amended or rescinded by the President.

(b) Prerequisites to rule taking effect; time rule may be put into effect or remain in effect

(1) No rule under subsection (a) of this section may take effect unless the President—

(A) has transmitted such rule to the Congress;

(B) has found that putting such rule into effect is required in order to fulfill obligations of the United States under the international energy program; and

(C) has transmitted such finding to the Congress, together with a statement of the effective date and manner for exercise of such rule.

(2) No rule under subsection (b) of this section may be put into effect or remain in effect after the expiration of 12 months after the date such rule was transmitted to Congress under paragraph (1)(A).

(c) Consistency of rule with attainment of objectives specified in section 753(b)(1)[1] of title 15; limitation on authority of officers or agencies of United States

(1) Any rule under this section shall be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1)[1] of title 15.

(2) No officer or agency of the United States shall have any authority, other than authority under this section, to require that petroleum products be allocated to other countries for the purpose of implementation of the obligations of the United States under the international energy program.

(d) Nonapplicability of export restrictions under other laws

Neither section 6212 of this title nor section 185(u) of title 30 shall preclude the allocation and export, to other countries in accordance with this section, of petroleum products produced in the United States.

(e) Prerequisites for effectiveness of rule

No rule under this section may be put into effect unless—

(1) an international energy supply emergency, as defined in the first sentence of section 6272(k)(1) of this title, is in effect; and

(2) the allocation of available oil referred to in chapter III of the international energy program has been activated pursuant to chapter IV of such program.

(Pub. L. 94–163, title II, § 251, Dec. 22, 1975, 89 Stat. 894; Pub. L. 97–229, § 2(b)(1), Aug. 3, 1982, 96 Stat. 248; Pub. L. 105–177, § 1(3), June 1, 1998, 112 Stat. 105.)

REFERENCES IN TEXT

Section 753 of title 15, referred to in subsec. (c), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

AMENDMENTS

1998—Subsec. (e)(1). Pub. L. 105–177 substituted reference to section 6272(k)(1) for reference to section 6272(*l*)(1).

1982—Subsec. (e). Pub. L. 97–229 added subsec. (e).

[1] See References in Text note below.

§ 6272. International voluntary agreements

(a) Exclusiveness of section's requirements

Effective 90 days after December 22, 1975, the requirements of this section shall be the sole procedures applicable to—

(1) the development or carrying out of voluntary agreements and plans of action to implement the international emergency response provisions, and

(2) the availability of immunity from the antitrust laws with respect to the development or carrying out of such voluntary agreements and plans of action.

(b) Prescription by Secretary of standards and procedures for developing and carrying out voluntary agreements and plans of action

The Secretary, with the approval of the Attorney General, after each of them has consulted with the Federal Trade Commission and the Secretary of State, shall prescribe, by rule, standards and procedures by which persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products may develop and carry out voluntary agreements, and plans of action, which are required to implement the international emergency response provisions.

(c) Requirements for standards and procedures

The standards and procedures prescribed under subsection (b) of this section shall include the following requirements:

(1)(A)(i) Except as provided in clause (ii) or (iii) of this subparagraph, meetings held to develop or carry out a voluntary agreement or plan of action under this subsection shall permit attendance by representatives of committees of Congress and interested persons, including all interested segments of the petroleum industry, consumers, and the public; shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency with respect to meetings to carry out a voluntary agreement or to develop or carry out a plan of action) the public; and shall be initiated and chaired by a regular full-time Federal employee.

(ii) Meetings of bodies created by the International Energy Agency established by the international energy program need not be open to interested persons and need not be initiated and chaired by a regular full-time Federal employee.

(iii) The President, in consultation with the Secretary, the Secretary of State, and the Attorney General, may determine that a meeting held to carry out a voluntary agreement or to develop or carry out a plan of action shall not be open to interested persons or that attendance by interested persons may be limited, if the President finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

(B) No meetings may be held to develop or carry out a voluntary agreement or plan of ac-

tion under this section unless a regular full-time Federal employee is present.

(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present, in writing and orally, data, views, and arguments at such meetings, subject to any reasonable limitations with respect to the manner of presentation of data, views, and arguments as the Secretary may impose.

(3) A full and complete record, and where practicable a verbatim transcript, shall be kept of any meeting held, and a full and complete record shall be kept of any communication (other than in a meeting) made, between or among participants or potential participants, to develop, or carry out a voluntary agreement or a plan of action under this section. Such record or transcript shall be deposited, together with any agreement resulting therefrom, with the Secretary, and shall be available to the Attorney General and the Federal Trade Commission. Such records or transcripts shall be available for public inspection and copying in accordance with section 552 of title 5; except that (A) matter may not be withheld from disclosure under section 552(b) of such title on grounds other than the grounds specified in section 552(b)(1), (b)(3), or so much of (b)(4) as relates to trade secrets; and (B) in the exercise of authority under section 552(b)(1), the President shall consult with the Secretary of State, the Secretary, and the Attorney General with respect to questions relating to the foreign policy interests of the United States.

(4) No provision of this section may be exercised so as to prevent representatives of committees of Congress from attending meetings to which this section applies, or from having access to any transcripts, records, and agreements kept or made under this section. Such access to any transcript that is required to be kept for any meeting shall be provided as soon as practicable (but not later than 14 days) after that meeting.

(d) Participation of Attorney General and Federal Trade Commission in development and carrying out of voluntary agreements and plans of action

(1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, and when practicable, in the carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this part. A voluntary agreement or plan of action under this section may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement or plan of action should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Secretary, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively any immunity which may be conferred by subsection (f) or (j) of this section.

(2) Any voluntary agreement or plan of action entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being implemented; except that during an international energy supply emergency, the Secretary, subject to approval of the Attorney General, may reduce such 20-day period. Any such agreement or plan of action shall be available for public inspection and copying, except that a plan of action shall be so available only to the extent to which records or transcripts are so available as provided in the last sentence of subsection (c)(3) of this section. Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under paragraphs (3) and (4) of subsection (e) of this section.

(3) A plan of action may not be approved by the Attorney General under this subsection unless such plan (A) describes the types of substantive actions which may be taken under the plan, and (B) is as specific in its description of proposed substantive actions as is reasonable in light of circumstances known at the time of approval.

(e) Monitoring of development and carrying out of voluntary agreements and plans of action by Attorney General and Federal Trade Commission

(1) The Attorney General and the Federal Trade Commission shall monitor the development and carrying out of voluntary agreements and plans of action authorized under this section in order to promote competition and to prevent anticompetitive practices and effects, while achieving substantially the purposes of this part.

(2) In addition to any requirement specified under subsections (b) and (c) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Secretary, may promulgate rules concerning the maintenance of necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action authorized pursuant to this section.

(3) Persons developing or carrying out voluntary agreements and plans of action authorized pursuant to this section shall maintain such records as are required by rules promulgated under paragraph (2). The Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and upon reasonable notice.

(4) The Attorney General and the Federal Trade Commission may each prescribe such rules as may be necessary or appropriate to

carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by the antitrust laws or the Antitrust Civil Process Act [15 U.S.C. 1311 et seq.]; and wherever any such law refers to ''the purposes of this Act'' or like terms, the reference shall be understood to include this section.

(f) Defense to civil or criminal antitrust actions

(1) There shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect to actions taken to develop or carry out a voluntary agreement or plan of action by persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products (provided that such actions were not taken for the purpose of injuring competition) that—

(A) such actions were taken—

(i) in the course of developing a voluntary agreement or plan of action pursuant to this section, or

(ii) to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section, and

(B) such persons complied with the requirements of this section and the rules promulgated hereunder.

(2) Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense provided in this subsection shall be available only if the person asserting the defense demonstrates that the actions were specified in, or within the reasonable contemplation of, an approved voluntary agreement or plan of action.

(3) Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(g) Acts or practices occurring prior to date of enactment of chapter or subsequent to its expiration or repeal

No provision of this section shall be construed as granting immunity for, or as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any act or practice which occurred prior to the date of enactment of this chapter or subsequent to its expiration or repeal.

(h) Applicability of Defense Production Act of 1950

Section 2158 of title 50, Appendix, shall not apply to any agreement or action undertaken for the purpose of developing or carrying out—

(1) the international energy program; or

(2) any allocation, price control, or similar program with respect to petroleum products under this chapter.

(i) Reports by Attorney General and Federal Trade Commission to Congress and President

The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at such intervals as are appropriate based on significant developments and issues, reports on the impact on competition and on small business of actions authorized by this section.

(j) Defense in breach of contract actions

In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an international energy supply emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section.

(k) Definitions

As used in this section and section 6274 of this title:

(1) The term ''international energy supply emergency'' means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international energy program is required by chapters III and IV of such program, and (B) ending on a date on which he determines that such allocation is no longer required. Such a period may not exceed 90 days, but the President may establish one or more additional 90-day periods by making anew the determination under subparagraph (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

(2) The term ''international emergency response provisions'' means—

(A) the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in the program; and

(B) the emergency response measures adopted by the Governing Board of the International Energy Agency (including the July 11, 1984, decision by the Governing Board on ''Stocks and Supply Disruptions'') for—

(i) the coordinated drawdown of stocks of petroleum products held or controlled by governments; and

(ii) complementary actions taken by governments during an existing or impending international oil supply disruption.

(*l*) Applicability of antitrust defense

The antitrust defense under subsection (f) of this section shall not extend to the international allocation of petroleum products unless allocation is required by chapters III and IV of the international energy program during an international energy supply emergency.

(m) Limitation on new plans of action

(1) With respect to any plan of action approved by the Attorney General after July 2, 1985—

(A) the defenses under subsection (f) and (j) of this section shall be applicable to Type 1 activities (as that term is defined in the International Energy Agency Emergency Management Manual, dated December 1982) only if—

(i) the Secretary has transmitted such plan of action to the Congress; and

(ii)(I) 90 calendar days of continuous session have elapsed since receipt by the Congress of such transmittal; or

(II) within 90 calendar days of continuous session after receipt of such transmittal, either House of the Congress has disapproved a joint resolution of disapproval pursuant to subsection (n) of this section; and

(B) such defenses shall not be applicable to Type 1 activities if there has been enacted, in accordance with subsection (n) of this section, a joint resolution of disapproval.

(2) The Secretary may withdraw the plan of action at any time prior to adoption of a joint resolution described in subsection (n)(3) of this section by either House of Congress.

(3) For the purpose of this subsection—

(A) continuity of session is broken only by an adjournment of the Congress sine die at the end of the second session of Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the calendar-day period involved.

(n) Joint resolution of disapproval

(1)(A) The application of defenses under subsections (f) and (j) of this section for Type 1 activities with respect to any plan of action transmitted to Congress as described in subsection (m)(1)(A)(i) of this section shall be disapproved if a joint resolution of disapproval has been enacted into law during the 90-day period of continuous session after which such transmission was received by the Congress. For the purpose of this subsection, the term ''joint resolution'' means only a joint resolution of either House of the Congress as described in paragraph (3).

(B) After receipt by the Congress of such plan of action, a joint resolution of disapproval may be introduced in either House of the Congress. Upon introduction in the Senate, the joint resolution shall be referred in the Senate immediately to the Committee on Energy and Natural Resources of the Senate.

(2) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by paragraph (3); it supersedes other rules only to the extent that is inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(3) The joint resolution disapproving the transmission under subsection (m) of this section shall read as follows after the resolving clause: ''That the Congress of the United States disapproves the availability of the defenses pursuant to section 252 (f) and (j) of the Energy Policy and Conservation Act with respect to Type 1 activities under the plan of action submitted to the Congress by the Secretary of Energy on .'', the blank space therein being filled with the date and year of receipt by the Congress of the plan of action transmitted as described in subsection (m) of this section.

(4)(A) If the Committee on Energy and Natural Resources of the Senate has not reported a joint resolution referred to it under this subsection at the end of 20 calendar days of continuous session after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other joint resolution which has been referred to the committee with respect to such plan of action.

(B) A motion to discharge shall be highly privileged (except that it may not be made after the Committee on Energy and Natural Resources has reported a joint resolution with respect to the plan of action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the joint resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other joint resolution with respect to the same transmission.

(5)(A) When the Committee on Energy and Natural Resources of the Senate has reported or has been discharged from further consideration of a joint resolution, it shall be in order at any time thereafter within the 90-day period following receipt by the Congress of the plan of action (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such joint resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider a vote by which the motion was agreed to or disagreed to.

(B) Debate on the joint resolution shall be limited to not more than 10 hours and final action on the joint resolution shall occur immediately following conclusion of such debate. A motion further to limit debate shall not be debatable. A motion to recommit such a joint resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such a joint resolution was agreed to or disagreed to.

(6)(A) Motions to postpone made with respect to the discharge from committee or consideration of a joint resolution, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of rules of the Senate to the procedures relating to a joint resolution shall be decided without debate.

(Pub. L. 94–163, title II, § 252, Dec. 22, 1975, 89 Stat. 894; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 96–30, June 30, 1979, 93 Stat. 80; Pub. L. 96–94, Oct. 31, 1979, 93 Stat. 720; Pub. L. 96–133, §§ 1, 2, Nov. 30, 1979, 93 Stat. 1053; Pub. L. 97–5, Mar. 13, 1981, 95 Stat. 7; Pub. L. 97–50, Sept. 30, 1981, 95 Stat. 957; Pub. L.

97–163, Apr. 1, 1982, 96 Stat. 24; Pub. L. 97–190, June 1, 1982, 96 Stat. 106; Pub. L. 97–217, July 19, 1982, 96 Stat. 196; Pub. L. 97–229, §2(a), (b)(2), Aug. 3, 1982, 96 Stat. 248; Pub. L. 98–239, Mar. 20, 1984, 98 Stat. 93; Pub. L. 99–58, title I, §§104(c)(2), (4), 105, July 2, 1985, 99 Stat. 105; Pub. L. 104–66, title I, §1091(g), Dec. 21, 1995, 109 Stat. 722; Pub. L. 105–177, §1(4), June 1, 1998, 112 Stat. 105.)

REFERENCES IN TEXT

The Antitrust Civil Process Act, referred to in subsec. (e)(4), is Pub. L. 87–664, Sept. 19, 1962, 76 Stat. 548, as amended, which is classified generally to chapter 34 (§1311 et seq.) of Title 15. For complete classification of that Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables.

The date of enactment of this chapter, referred to in subsec. (g), means the date of enactment of Pub. L. 94–163, which was approved Dec. 22, 1975.

This chapter, referred to in subsec. (h)(2), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Section 252(f) and (j) of the Energy Policy and Conservation Act, referred to in subsection (n)(3), is classified to subsecs. (f) and (j) of this section.

AMENDMENTS

1998—Subsecs. (a)(1), (b). Pub. L. 105–177, §1(4)(A), substituted ''international emergency response provisions'' for ''allocation and information provisions of the international energy program''.

Subsec. (d)(3). Pub. L. 105–177, §1(4)(B), substituted ''circumstances known at the time of approval'' for ''known circumstances''.

Subsec. (e)(2). Pub. L. 105–177, §1(4)(C), substituted ''may'' for ''shall''.

Subsec. (f)(2). Pub. L. 105–177, §1(4)(D), inserted ''voluntary agreement or'' after ''approved''.

Subsec. (h). Pub. L. 105–177, §1(4)(E), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''Upon the expiration of the 90-day period which begins on December 22, 1975, the provisions of sections 708 and 708A (other than 708A(*o*)) of the Defense Production Act of 1950 shall not apply to any agreement or action undertaken for the purpose of developing or carrying out (1) the international energy program, or (2) any allocation, price control, or similar program with respect to petroleum products under this chapter or under the Emergency Petroleum Allocation Act of 1973. For purposes of section 708(A)(*o*) of the Defense Production Act of 1950, the effective date of the provisions of this chapter which relate to international voluntary agreements to carry out the International Energy Program shall be deemed to be 90 days after December 22, 1975.''

Subsec. (k)(2). Pub. L. 105–177, §1(4)(F), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'allocation and information provisions of the international energy program' means the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in such program.''

Subsec. (*l*). Pub. L. 105–177, §1(4)(G), amended subsec. (*l*) generally. Prior to amendment, subsec. (*l*) read as follows: ''The authority granted by this section shall apply only to the development or carrying out of voluntary agreements and plans of action to implement chapters III, IV, and V of the international energy program.''

1995—Subsec. (i). Pub. L. 104–66 substituted '', at such intervals as are appropriate based on significant developments and issues, reports'' for '', at least once every 6 months, a report''.

1985—Subsec. (d)(1). Pub. L. 99–58, §104(c)(4), substituted ''subsection (f) or (j)'' for ''subsection (f) or (k)''.

Subsecs. (j) to (*l*). Pub. L. 99–58, §104(c)(2), redesignated subsecs. (k) to (m) as (j) to (*l*). Former subsec. (j), which provided that the authority granted by this section would terminate at midnight, June 30, 1985, was struck out.

Subsecs. (m), (n). Pub. L. 99–58, §105, added subsecs. (m) and (n). Former subsec. (m) redesignated (*l*).

1984—Subsec. (j). Pub. L. 98–239 substituted ''June 30, 1985'' for ''December 31, 1983''.

1982—Subsec. (j). Pub. L. 97–229, §2(a), substituted ''at midnight December 31, 1983'' for ''August 1, 1982''.

Pub. L. 97–217 substituted ''August 1, 1982'' for ''July 1, 1982''.

Pub. L. 97–190 substituted ''July 1, 1982'' for ''June 1, 1982''.

Pub. L. 97–163 substituted ''June 1, 1982'' for ''April 1, 1982''.

Subsec. (m). Pub. L. 97–229, §2(b)(2), added subsec. (m).

1981—Subsec. (j). Pub. L. 97–50 substituted ''April 1, 1982'' for ''September 30, 1981''.

Pub. L. 97–5 substituted ''September 30, 1981'' for ''March 15, 1981''.

1979—Subsec. (c)(4). Pub. L. 96–133, §2, inserted provisions respecting access to transcripts.

Subsec. (j). Pub. L. 96–133, §1, substituted ''March 15, 1981'' for ''November 30, 1979''.

Pub. L. 96–94 substituted ''November 30'' for ''October 31''.

Pub. L. 96–30 substituted ''October 31, 1979'' for ''June 30, 1979''.

1978—Subsecs. (b), (c)(1)(A)(iii), (2), (3), (d)(1), (2), (e)(2). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

STUDY AND REPORT ON ENERGY POLICY COOPERATION BETWEEN UNITED STATES AND OTHER WESTERN HEMISPHERE COUNTRIES

Pub. L. 100–373, §2, July 19, 1988, 102 Stat. 878, directed Secretary of Energy, in consultation with Secretary of State and Secretary of Commerce, to conduct a study to determine how best to enhance cooperation between United States and other countries of Western Hemisphere with respect to energy policy including stable supplies of, and stable prices for, energy, with Secretary of Energy to report results of such study to Congress, propose a comprehensive international energy policy for United States designed to enhance cooperation between United States and other countries of the Western Hemisphere, and recommend such action as Secretary deemed necessary to establish and implement such policy.

REPORT OF IMPLEMENTATION ACTIVITIES UNDER INTERNATIONAL VOLUNTARY AGREEMENTS

Section 3 of Pub. L. 96–133, directed Secretary of Energy, in consultation with Secretary of State, Attorney General, and Chairman of Federal Trade Commission, to prepare and submit to appropriate committees of Congress, a report concerning actions taken by them to carry out provisions of this section, which report was to examine and discuss extent to which all, or part, of any meeting held in accordance with subsec. (c) of this section to carry out a voluntary agreement or to develop or carry out a plan of action should be open to interested persons in furtherance of provisions of subsec. (c)(1)(A) of this section, policies and procedures followed by appropriate Federal agencies in reviewing and making public or withholding from the public all, or part, of any transcript of any meeting held to develop or carry out a voluntary agreement or plan of action under this section and in permitting persons, other than citizens of United States, to review such transcripts prior to any public disclosure thereof, extent to which classification of all, or part, of such transcripts should be carried out by one agency, adequacy of actions by responsible Federal agencies in insuring that standards and procedures required by this section are

fully implemented and enforced, including monitoring of program concerning any anticompetitive effects, and number of personnel, and amount of funds, assigned by each such agency to carry out such standards and procedures, actions taken, or to be taken, to improve reporting of energy supply data under international energy program and to reconcile such reporting with similar reporting that is conducted by Department of Energy, actions taken, or planned, to improve reporting required by subsec. (i) of this section, and other actions under subsec. (i) of this section and to transmit such report to such committees within 120 days after Nov. 30, 1979, and to make such report available to the public.

CLASSIFICATION OF CERTAIN INFORMATION AND MATERIAL

For provisions relating to the classification of certain information and material obtained from advisory bodies created to implement the International Energy Program, see Ex. Ord. No. 11932, eff. Aug. 4, 1976, 41 F.R. 32691, set out as a note under section 435 of Title 50, War and National Defense.

§ 6273. Advisory committees

(a) Authority of Secretary to establish; applicability of section 17 of Federal Energy Administration Act of 1974; chairman; inclusion of representatives of public; public meetings; notice of meeting to Attorney General and Federal Trade Commission; attendance and participation of their representatives

To achieve the purposes of the international energy program with respect to international allocation of petroleum products and the information system provided in such program, the Secretary may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of section 17 of the Federal Energy Administration Act of 1974 [15 U.S.C. 776] (whether or not such Act [15 U.S.C. 761 et seq.] or any of its provisions expire or terminate before June 30, 1985); shall be chaired by a regular full-time Federal employee; and shall include representatives of the public. The meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(b) Transcript of meetings

A verbatim transcript shall be kept of such advisory committee meetings, and shall be deposited with the Attorney General and the Federal Trade Commission. Such transcript shall be made available for public inspection and copying in accordance with section 552 of title 5, except that matter may not be withheld from disclosure under section 552(b) of such title on grounds other than the grounds specified in section 552(b)(1), (b)(3), and so much of (b)(4) as relates to trade secrets, or pursuant to a determination under subsection (c) of this section.

(c) Suspension of application of certain requirements by President

The President, after consultation with the Secretary of State, the Federal Trade Commission, the Attorney General, and the Secretary, may suspend the application of—

(1) sections 10 and 11 of the Federal Advisory Committee Act,

(2) subsections (b) and (c) of section 17[1] of the Federal Energy Administration Act of 1974,

(3) the requirement under subsection (a) of this section that meetings be open to the public, and

(4) the second sentence of subsection (b) of this section;

if the President determines with respect to a particular meeting, (A) that such suspension is essential to the developing or carrying out of the international energy program, (B) that such suspension relates solely to the purpose of international allocation of petroleum products and the information system provided in such program, and (C) that the meeting deals with matters described in section 552(b)(1) of title 5. Such determination by the President shall be in writing, shall set forth a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

(Pub. L. 94–163, title II, § 253, Dec. 22, 1975, 89 Stat. 898; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

REFERENCES IN TEXT

The Federal Energy Administration Act of 1974, referred to in subsec. (a), is Pub. L. 93–275, May 7, 1974, 88 Stat. 96, as amended, which is classified generally to chapter 16B (§ 761 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

Sections 10 and 11 of the Federal Advisory Committee Act, referred to in subsec. (c)(1), are sections 10 and 11 of Pub. L. 92–463, which are set out in the Appendix to Title 5, Government Organization and Employees.

Section 17 of the Federal Energy Administration Act of 1974, referred to in subsec. (c)(2), was classified to section 776 of Title 15, Commerce and Trade, prior to repeal by Pub. L. 105–28, § 2(b)(2), July 18, 1997, 111 Stat. 245.

AMENDMENTS

1978—Subsecs. (a), (c). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

CLASSIFICATION OF CERTAIN INFORMATION AND MATERIAL

For provisions relating to the classification of certain information and material obtained from advisory bodies created to implement the International Energy Program, see Ex. Ord. No. 11932, eff. Aug. 4, 1976, 41 F.R. 32691, set out as a note under section 435 of Title 50, War and National Defense.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment unless in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the end of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

[1] See References in Text note below.

§ 6274. Exchange of information with International Energy Agency

(a) Submission of information by Secretary to Secretary of State; transmittal to Agency; aggregation and reporting of geological or geophysical information, trade secrets, or commercial or financial information; availability of such information during international energy supply emergency; certification by President that Agency has adopted security measures; review of compliance of other nations with program; petition to President for changes in procedure

(1) Except as provided in subsections (b) and (c) of this section, the Secretary, after consultation with the Attorney General, may provide to the Secretary of State, and the Secretary of State may transmit to the International Energy Agency established by the international energy program, the information and data related to the energy industry certified by the Secretary of State as required to be submitted under the international energy program.

(2)(A) Except as provided in subparagraph (B) of this paragraph, any such information or data which is geological or geophysical information or a trade secret or commercial or financial information to which section 552(b)(9) or (b)(4) of title 5 applies shall, prior to such transmittal, be aggregated, accumulated, or otherwise reported in such manner as to avoid, to the fullest extent feasible, identification of any person from whom the United States obtained such information or data, and in the case of geological or geophysical information, a competitive disadvantage to such person.

(B)(i) Notwithstanding subparagraph (A) of this paragraph, during an international energy supply emergency, any such information or data with respect to the international allocation of petroleum products may be made available to the International Energy Agency is otherwise authorized to be made available to such Agency by paragraph (1) of this subsection.

(ii) Subparagraph (A) shall not apply to information described in subparagraph (A) (other than geological or geophysical information) if the President certifies, after opportunity for presentation of views by interested persons, that the International Energy Agency has adopted and is implementing security measures which assure that such information will not be disclosed by such Agency or its employees to any person or foreign country without having been aggregated, accumulated, or otherwise reported in such manner as to avoid identification of any person from whom the United States obtained such information or data.

(3)(A) Within 90 days after December 22, 1975, and periodically thereafter, the President shall review the operation of this section and shall determine whether other signatory nations to the international energy program are transmitting information and data to the International Energy Agency in substantial compliance with such program. If the President determines that other nations are not so complying, paragraph (2)(B)(ii) shall not apply until he determines other nations are so complying.

(B) Any person who believes he has been or will be damaged by the transmittal of information or data pursuant to this section shall have the right to petition the President and to request changes in procedures which will protect such person from any competitive damage.

(b) Halting transmittal of information that would prejudice competition, violate antitrust laws, or be inconsistent with security interests

If the President determines that the transmittal of data or information pursuant to the authority of this section would prejudice competition, violate the antitrust laws, or be inconsistent with United States national security interests, he may require that such data or information not be transmitted.

(c) Information protected by statute

Information and data the confidentiality of which is protected by statute shall not be provided by the Secretary to the Secretary of State under subsection (a) of this section for transmittal to the International Energy Agency, unless the Secretary has obtained the specific concurrence of the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data. In making a determination to concur in providing such information and data, the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data shall consider the purposes for which such information and data were collected, gathered, and obtained, the confidentiality provisions of such statutory authority, and the international obligations of the United States under the international energy program with respect to the transmittal of such information and data to an international organization or foreign country.

(d) Continuation of authority to collect data under Energy Supply and Environmental Coordination Act and Federal Energy Administration Act of 1974

For the purposes of carrying out the obligations of the United States under the international energy program, the authority to collect data granted by sections 11 and 13 of the Energy Supply and Environmental Coordination Act [15 U.S.C. 796] and the Federal Energy Administration Act of 1974 [15 U.S.C. 772], respectively, shall continue in full force and effect without regard to the provisions of such Acts relating to their expiration.

(e) Limitation on disclosure contained in other laws

The authority under this section to transmit information shall be subject to any limitations on disclosure contained in other laws, except that such authority may be exercised without regard to—

(1) section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 796(d)];

(2) section 14(b) of the Federal Energy Administration Act of 1974 [15 U.S.C. 773(b)];

(3) section 12 of the Export Administration Act of 1979 [50 U.S.C. App. 2411];

(4) section 9 of title 13;

(5) section 176a of title 15; and

(6) section 1905 of title 18.

(Pub. L. 94–163, title II, § 254, Dec. 22, 1975, 89 Stat. 899; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 96–72, § 22(b)(2), Sept. 29, 1979, 93 Stat. 535.)

REFERENCES IN TEXT

The provisions of such Acts relating to their expiration, referred to in subsec. (d), means section 11(g) of Pub. L. 93–319, June 22, 1974, 88 Stat. 246, the Energy Supply and Environmental Coordination Act, which enacted section 796(g) of Title 15, and section 30 of Pub. L. 93–275, May 7, 1974, 88 Stat. 97, the Federal Energy Administration Act of 1974, which is set out as a note under section 761 of Title 15.

AMENDMENTS

1979—Subsec. (e)(3). Pub. L. 96–72 substituted ''12'' for ''7'' and ''1979'' for ''1969''.

1978—Subsecs. (a)(1), (c). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the President by proclamation designated, see section 2418 of Appendix to Title 50, War and National Defense.

§ 6275. Relationship between standby emergency authorities and international energy program

The purpose of the Congress in enacting this subchapter is to provide standby energy emergency authority to deal with energy shortage conditions and to minimize economic dislocations and adverse impacts on employment. While the authorities contained in this subchapter may, to the extent authorized by this subchapter, be used to carry out obligations incurred by the United States in connection with the International Energy Program, this subchapter shall not be construed in any way as advice and consent, ratification, endorsement, or other form of congressional approval of the specific terms of such program.

(Pub. L. 94–163, title II, § 255, Dec. 22, 1975, 89 Stat. 900.)

§ 6276. Domestic renewable energy industry and related service industries

(a) Purpose

It is the purpose of this section to implement the responsibilities of the United States under chapter VII of the international energy program with respect to development of alternative energy by facilitating the overall abilities of the domestic renewable energy industry and related service industries to create new markets.

(b) Evaluation; report to Congress

(1) Before the later of—

(A) 6 months after July 18, 1984, and

(B) May 31, 1985,

the Secretary of Commerce shall conduct an evaluation regarding the domestic renewable energy industry and related service industries and submit a report of his findings to the Congress.

(2) Such evaluation shall include—

(A) an assessment of the technical and commercial status of the domestic renewable energy industry and related service industries in domestic and foreign markets;

(B) an assessment of the Federal Government's activities affecting commerce in the domestic renewable energy industry and related service industries and in consolidating and coordinating such activities within the Federal Government; and

(C) an assessment of the aspects of the domestic renewable energy industry and related service industries in which improvements must be made to increase the international commercialization of such industry.

(c) Program for enhancing commerce in renewable energy technologies; funding

(1) On the basis of the evaluation under subsection (b) of this section, the Secretary of Commerce shall, consistent with existing law, establish a program for enhancing commerce in renewable energy technologies and consolidating or coordinating existing activities for such purpose.

(2) Such program shall provide for—

(A) the broadening of the participation by the domestic renewable energy industry and related service industries in such activities;

(B) the promotion of the domestic renewable energy industry and related service industries on a worldwide basis;

(C) the participation by the Federal Government and the domestic renewable energy industry and related service industries in international standard-setting activities; and

(D) the establishment of an information program under which—

(i) technical information about the domestic renewable energy industry and related service industries shall be provided to appropriate public and private officials engaged in commerce, and to potential end users, including other industry sectors in foreign countries such as health care, rural development, communications, and refrigeration, and others, and

(ii) marketing information about export and export financing opportunities shall be available to the domestic renewable energy industry and related service industries.

(3) Necessary funds required for carrying out such program shall be requested in connection with fiscal years beginning after September 30, 1984.

(d) Interagency working group

(1) Establishment

(A) There shall be established an interagency working group that, in consultation with the representative industry groups and relevant agency heads, shall make recommendations to coordinate the actions and programs of the Federal Government affecting exports of renewable energy and energy efficiency products and services. The interagency working group shall establish a program to inform foreign countries of the benefits of policies that would increase energy efficiency or would allow facilities that use renewable en-

ergy to compete effectively with producers of energy from nonrenewable sources.

(B) There shall be established an Interagency Working Subgroup on Renewable Energy and an Interagency Working Subgroup on Energy Efficiency that shall, in consultation with representative industry groups, nonprofit organizations, and relevant Federal agencies, make recommendations to coordinate the actions and programs of the Federal Government to promote the export of domestic renewable energy and energy efficiency products and services, respectively.

(C) The Secretary of Energy, or the Secretary's designee, shall chair the interagency working group and each subgroup established under this paragraph. The Administrator of the Agency for International Development and the Secretary of Commerce, or their designees, shall be members of both subgroups established under this paragraph. The Secretary shall provide staff for carrying out the functions of the interagency working group and each subgroup established under this paragraph. The heads of appropriate agencies may detail such personnel and may furnish such services to such group and subgroups, with or without reimbursement, as may be necessary to carry out their functions.

(2) Duties of the interagency working subgroups

(A) The interagency working subgroups established under paragraph (1)(B), through the member agencies of the interagency working group, shall promote the development and application in foreign countries of renewable energy and energy efficiency products and services, respectively, that—

(i) reduce dependence on unreliable sources of energy by encouraging the use of sustainable biomass, wind, small-scale hydroelectric, solar, geothermal, and other renewable energy and energy efficiency products and services; and

(ii) use hybrid fossil-renewable energy systems.

(B) In addition, the interagency working subgroups shall explore mechanisms for assisting domestic firms, particularly small businesses, with the export of their renewable energy and energy efficiency products and services and with the identification of potential projects.

(3) Training and assistance

The interagency working subgroups shall encourage the member agencies of the interagency working group to—

(A) provide technical training and education for international development personnel and local users in their own country;

(B) provide financial and technical assistance to nonprofit institutions that support the marketing and export efforts of domestic companies that provide renewable energy and energy efficiency products and services;

(C) develop environmentally sustainable renewable energy and energy efficiency projects in foreign countries;

(D) provide technical assistance and training materials to loan officers of the World Bank, international lending institutions, commercial and energy attaches at embassies of the United States and other appropriate personnel in order to provide information about renewable energy and energy efficiency products and services to foreign governments or other potential project sponsors;

(E) support, through financial incentives, private sector efforts to commercialize and export renewable energy and energy efficiency products and services; and

(F) augment budgets for trade and development programs in order to support pre-feasibility or feasibility studies for projects that utilize renewable energy and energy efficiency products and services.

(4) Study of export promotion practices

The interagency working group shall conduct a study of subsidies, incentives, and policies that foreign countries use to promote exports of their own renewable energy and energy efficiency technologies and products. Such study shall also identify foreign trade barriers to the import of renewable energy and energy efficiency technologies and products produced in the United States. The interagency working group shall report to the appropriate committees of the House of Representatives and the Senate the results of such study within 18 months after October 24, 1992.

(e) Omitted

(f) Functions of interagency working group; plan to increase United States exports of renewable energy and energy efficiency technologies

(1) The interagency working group shall—

(A) establish, in consultation with representatives of affected industries, a plan to increase United States exports of renewable energy and energy efficiency technologies, and include in such plan recommended guidelines for agencies that are represented on the working group with respect to the financing of, or other actions they can take within their programs to promote, exports of such renewable energy and energy efficiency technologies;

(B) develop, in consultation with representatives of affected industries, recommended administrative guidelines for Federal export loan programs to simplify application by firms seeking export assistance for renewable energy and energy efficiency technologies from agencies implementing such programs; and

(C) recommend specific renewable energy and energy efficiency technology markets for primary emphasis by Federal export loan programs, development programs, and private sector assistance programs.

(2) The interagency working group shall include a description of the plan established under paragraph (1)(A) in no later than the second report submitted under subsection (e)[1] of this section, and shall include in subsequent reports a

[1] See References in Text note below.

description of any modifications to such plan and of the progress in implementing the plan.

(g) Repealed. Pub. L. 102–486, title XII, § 1207(c), Oct. 24, 1992, 106 Stat. 2963

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to implement this part, to remain available until expended.

(Pub. L. 94–163, title II, § 256, as added Pub. L. 98–370, § 2, July 18, 1984, 98 Stat. 1211; amended Pub. L. 101–218, § 7, Dec. 11, 1989, 103 Stat. 1867; Pub. L. 102–486, title XII, §§ 1207, 1208, Oct. 24, 1992, 106 Stat. 2962, 2964; Pub. L. 104–306, § 1(3), Oct. 14, 1996, 110 Stat. 3810; Pub. L. 106–469, title I, § 104(2), Nov. 9, 2000, 114 Stat. 2033; Pub. L. 108–7, div. F, title III, § 339(b)(1), Feb. 20, 2003, 117 Stat. 278.)

REFERENCES IN TEXT

Subsection (e) of this section, referred to in subsec. (f)(2), was omitted from the Code.

CODIFICATION

Subsec. (e) of this section, which required the interagency working group established under subsec. (d) of this section to annually report to Congress, describing the actions of each agency represented by a member of the working group taken during the previous fiscal year to achieve the purposes of such working group and of this section and describing the exports of renewable energy technology that have occurred as a result of such agency actions, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 6th item on page 175 of House Document No. 103–7.

AMENDMENTS

2003—Subsec. (h). Pub. L. 108–7 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''There are authorized to be appropriated to the Secretary for purposes of carrying out the programs under subsections (d) and (e) of this section $10,000,000, to be divided equitably between the interagency working subgroups based on program requirements, for each of the fiscal years 1993 and 1994, and such sums as may be necessary for fiscal year 1995 to carry out the purposes of this subtitle. There are authorized to be appropriated for fiscal year 1997 such sums as may be necessary to carry out this part. There are authorized to be appropriated for fiscal years 2000 through 2003, such sums as may be necessary.''

2000—Subsec. (h). Pub. L. 106–469 inserted at end ''There are authorized to be appropriated for fiscal years 2000 through 2003, such sums as may be necessary.''

1996—Subsec. (h). Pub. L. 104–306 inserted at end ''There are authorized to be appropriated for fiscal year 1997 such sums as may be necessary to carry out this part.''

1992—Subsec. (d). Pub. L. 102–486, § 1207(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) There shall be established an interagency working group which, in consultation with the representative industry groups and relevant agency heads, shall make recommendations to coordinate the actions and programs of the Federal Government affecting commerce in renewable energy products and related services. The Secretary of Energy shall be the chairman of such group. The heads of appropriate agencies may detail such personnel and may furnish such services to such working group, with or without reimbursement, as may be necessary to carry out its functions.

''(2) The interagency group shall establish a program to inform other countries of the benefits of policies that would allow small facilities which produce renewable energy to compete effectively with producers of energy from nonrenewable sources.''

Subsec. (d)(4). Pub. L. 102–486, § 1208, added par. (4).

Subsec. (f)(1). Pub. L. 102–486, § 1207(b), inserted ''and energy efficiency'' after ''renewable energy'' wherever appearing.

Subsec. (g). Pub. L. 102–486, § 1207(c), struck out subsec. (g) which read as follows: ''For purposes of this section, the term 'renewable energy' includes energy efficiency to the extent it is a part of a renewable energy system or technology.''

Subsec. (h). Pub. L. 102–486, § 1207(d), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''There are authorized to be appropriated to the Secretary for activities of the interagency working group established under subsection (d) of this section not to exceed—

''(1) $3,000,000 for fiscal year 1991;

''(2) $3,300,000 for fiscal year 1992; and

''(3) $3,600,000 for fiscal year 1993.''

1989—Subsec. (c)(2)(D)(i). Pub. L. 101–218, § 7(a)(1), inserted ''and to potential end users, including other industry sectors in foreign countries such as health care, rural development, communications, and refrigeration, and others,'' after ''commerce,''.

Subsec. (c)(2)(D)(ii). Pub. L. 101–218, § 7(a)(2), substituted ''export and export financing opportunities'' for ''export opportunities''.

Subsec. (d). Pub. L. 101–218, § 7(b), designated existing provisions as par. (1) and added par. (2).

Subsecs. (e) to (h). Pub. L. 101–218, § 7(c), added subsecs. (e) to (h).

EFFECTIVE DATE

Section 3 of Pub. L. 98–370 provided that: ''The amendments made by this Act [enacting this section and a provision set out as a note under section 6201 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984].''

PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

AMENDMENTS

2005—Pub. L. 109–58, title III, § 301(b)(1), Aug. 8, 2005, 119 Stat. 683, added part heading.

PRIOR PROVISIONS

A prior part C, consisting of sections 6281 and 6282, was repealed by Pub. L. 106–469, title I, § 104(3), Nov. 9, 2000, 114 Stat. 2033.

Section 6281, Pub. L. 94–163, title II, § 271, as added Pub. L. 97–229, § 3(a), Aug. 3, 1982, 96 Stat. 248, related to congressional findings, policy, and purpose.

Section 6282, Pub. L. 94–163, title II, § 272, as added Pub. L. 97–229, § 3(a), Aug. 3, 1982, 96 Stat. 249, related to preparation for petroleum supply interruptions.

§ 6283. Summer fill and fuel budgeting programs

(a) Definitions

In this section:

(1) Budget contract

The term ''budget contract'' means a contract between a retailer and a consumer under which the heating expenses of the consumer are spread evenly over a period of months.

(2) Fixed-price contract

The term ''fixed-price contract'' means a contract between a retailer and a consumer under which the retailer charges the consumer a set price for propane, kerosene, or heating oil without regard to market price fluctuations.

(3) Price cap contract

The term ''price cap contract'' means a contract between a retailer and a consumer under

which the retailer charges the consumer the market price for propane, kerosene, or heating oil, but the cost of the propane, kerosene, or heating oil may exceed a maximum amount stated in the contract.

(b) Assistance

At the request of the chief executive officer of a State, the Secretary shall provide information, technical assistance, and funding—

(1) to develop education and outreach programs to encourage consumers to fill their storage facilities for propane, kerosene, and heating oil during the summer months; and

(2) to promote the use of budget contracts, price cap contracts, fixed-price contracts, and other advantageous financial arrangements,

to avoid severe seasonal price increases for and supply shortages of those products.

(c) Preference

In implementing this section, the Secretary shall give preference to States that contribute public funds or leverage private funds to develop State summer fill and fuel budgeting programs.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) $25,000,000 for fiscal year 2001; and

(2) such sums as are necessary for each fiscal year thereafter.

(Pub. L. 94–163, title II, § 273, as added Pub. L. 106–469, title VI, § 602(a), Nov. 9, 2000, 114 Stat. 2040; amended Pub. L. 109–58, title III, § 301(b)(2), Aug. 8, 2005, 119 Stat. 683.)

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–58 struck out heading and text of subsec. (e). Text read as follows: ''Section 6285 of this title does not apply to this section.''

PART D—EXPIRATION

§ 6285. Repealed. Pub. L. 109–58, title III, § 301(b)(3), Aug. 8, 2005, 119 Stat. 683

Section, Pub. L. 94–163, title II, § 281, as added Pub. L. 99–58, title I, § 104(a), July 2, 1985, 99 Stat. 104; amended Pub. L. 100–373, § 1, July 19, 1988, 102 Stat. 878; Pub. L. 101–262, § 2(c), Mar. 31, 1990, 104 Stat. 124; Pub. L. 101–360, § 2(c), Aug. 10, 1990, 104 Stat. 421; Pub. L. 101–383, § 2(3), Sept. 15, 1990, 104 Stat. 727; Pub. L. 103–406, title I, § 103, Oct. 22, 1994, 108 Stat. 4209; Pub. L. 104–306, § 1(4), Oct. 14, 1996, 110 Stat. 3810; Pub. L. 105–177, § 1(5), June 1, 1998, 112 Stat. 106; Pub. L. 106–64, § 1(3), Oct. 5, 1999, 113 Stat. 511; Pub. L. 106–469, title I, § 104(4), Nov. 9, 2000, 114 Stat. 2033; Pub. L. 108–7, div. F, title III, § 339(b)(2), Feb. 20, 2003, 117 Stat. 279, provided for the expiration of all authority under this subchapter at midnight Sept. 30, 2008.

SUBCHAPTER III—IMPROVING ENERGY EFFICIENCY

PART A—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES

CODIFICATION

This part was, in the original, designated part B and has been redesignated as part A for purposes of codification.

§ 6291. Definitions

For purposes of this part:

(1) The term ''consumer product'' means any article (other than an automobile, as defined in section 32901(a)(3) of title 49) of a type—

(A) which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and

(B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals;

without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

(2) The term ''covered product'' means a consumer product of a type specified in section 6292 of this title.

(3) The term ''energy'' means electricity, or fossil fuels. The Secretary may, by rule, include other fuels within the meaning of the term ''energy'' if he determines that such inclusion is necessary or appropriate to carry out the purposes of this chapter.

(4) The term ''energy use'' means the quantity of energy directly consumed by a consumer product at point of use, determined in accordance with test procedures under section 6293 of this title.

(5) The term ''energy efficiency'' means the ratio of the useful output of services from a consumer product to the energy use of such product, determined in accordance with test procedures under section 6293 of this title.

(6) The term ''energy conservation standard'' means—

(A) a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product, determined in accordance with test procedures prescribed under section 6293 of this title; or

(B) a design requirement for the products specified in paragraphs (6), (7), (8), (10), (15), (16), (17), and (19) of section 6292(a) of this title; and

includes any other requirements which the Secretary may prescribe under section 6295(r) of this title.

(7) The term ''estimated annual operating cost'' means the aggregate retail cost of the energy which is likely to be consumed annually, and in the case of showerheads, faucets, water closets, and urinals, the aggregate retail cost of water and wastewater treatment services likely to be incurred annually, in representative use of a consumer product, determined in accordance with section 6293 of this title.

(8) The term ''measure of energy consumption'' means energy use, energy efficiency, estimated annual operating cost, or other measure of energy consumption.

(9) The term ''class of covered products'' means a group of covered products, the func-

tions or intended uses of which are similar (as determined by the Secretary).

(10) The term ''manufacture'' means to manufacture, produce, assemble or import.

(11) The terms ''import'' and ''importation'' mean to import into the customs territory of the United States.

(12) The term ''manufacturer'' means any person who manufactures a consumer product.

(13) The term ''retailer'' means a person to whom a consumer product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale.

(14) The term ''distributor'' means a person (other than a manufacturer or retailer) to whom a consumer product is delivered or sold for purposes of distribution in commerce.

(15)(A) The term ''private labeler'' means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product, (ii) the person with whose brand or trademark such product (or container) is labeled has authorized or caused such product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

(16) The terms ''to distribute in commerce'' and ''distribution in commerce'' mean to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(17) The term ''commerce'' means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(18) The term ''Commission'' means the Federal Trade Commission.

(19) The term ''AV'' is the adjusted volume for refrigerators, refrigerator-freezers, and freezers, as defined in the applicable test procedure prescribed under section 6293 of this title.

(20) The term ''annual fuel utilization efficiency'' means the efficiency descriptor for furnaces and boilers, determined using test procedures prescribed under section 6293 of this title and based on the assumption that all—

(A) weatherized warm air furnaces or boilers are located out-of-doors;

(B) warm air furnaces which are not weatherized are located indoors and all combustion and ventilation air is admitted through grills or ducts from the outdoors and does not communicate with air in the conditioned space; and

(C) boilers which are not weatherized are located within the heated space.

(21) The term ''central air conditioner'' means a product, other than a packaged terminal air conditioner, which—

(A) is powered by single phase electric current;

(B) is air-cooled;

(C) is rated below 65,000 Btu per hour;

(D) is not contained within the same cabinet as a furnace the rated capacity of which is above 225,000 Btu per hour; and

(E) is a heat pump or a cooling only unit.

(22) The term ''efficiency descriptor'' means the ratio of the useful output to the total energy input, determined using the test procedures prescribed under section 6293 of this title and expressed for the following products in the following terms:

(A) For furnaces and direct heating equipment, annual fuel utilization efficiency.

(B) For room air conditioners, energy efficiency ratio.

(C) For central air conditioning and central air conditioning heat pumps, seasonal energy efficiency ratio.

(D) For water heaters, energy factor.

(E) For pool heaters, thermal efficiency.

(23) The term ''furnace'' means a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(A) is designed to be the principal heating source for the living space of a residence;

(B) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(C) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(D) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

(24) The terms ''heat pump'' or ''reverse cycle'' mean a product, other than a packaged terminal heat pump, which—

(A) consists of one or more assemblies;

(B) is powered by single phase electric current;

(C) is rated below 65,000 Btu per hour;

(D) utilizes an indoor conditioning coil, compressors, and refrigerant-to-outdoor-air heat exchanger to provide air heating; and

(E) may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning.

(25) The term ''pool heater'' means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

(26) The term ''thermal efficiency of pool heaters'' means a measure of the heat in the water delivered at the heater outlet divided by the heat input of the pool heater as measured under test conditions specified in section 2.8.1 of the American National Standard for Gas Fired Pool Heaters, Z21.56–1986, or as may be prescribed by the Secretary.

(27) The term ''water heater'' means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(A) storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(B) instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(C) heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

(28) The term ''weatherized warm air furnace or boiler'' means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

(29)(A) The term ''fluorescent lamp ballast'' means a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.

(B) The term ''ANSI standard'' means a standard developed by a committee accredited by the American National Standards Institute.

(C) The term ''ballast efficacy factor'' means the relative light output divided by the power input of a fluorescent lamp ballast, as measured under test conditions specified in ANSI standard C82.2–1984, or as may be prescribed by the Secretary.

(D)(i) The term ''F40T12 lamp'' means a nominal 40 watt tubular fluorescent lamp which is 48 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–1010–1).

(ii) The term ''F96T12 lamp'' means a nominal 75 watt tubular fluorescent lamp which is 96 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–3007–1).

(iii) The term ''F96T12HO lamp'' means a nominal 110 watt tubular fluorescent lamp which is 96 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–1019–1).

(E) The term ''input current'' means the root-mean-square (RMS) current in amperes delivered to a fluorescent lamp ballast.

(F) The term ''luminaire'' means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(G) The term ''ballast input voltage'' means the rated input voltage of a fluorescent lamp ballast.

(H) The term ''nominal lamp watts'' means the wattage at which a fluorescent lamp is designed to operate.

(I) The term ''power factor'' means the power input divided by the product of ballast input voltage and input current of a fluorescent lamp ballast, as measured under test conditions specified in ANSI standard C82.2–1984, or as may be prescribed by the Secretary.

(J) The term ''power input'' means the power consumption in watts of a ballast and fluorescent lamp or lamps, as determined in accordance with the test procedures specified in ANSI standard C82.2–1984, or as may be prescribed by the Secretary.

(K) The term ''relative light output'' means the light output delivered through the use of a ballast divided by the light output delivered through the use of a reference ballast, expressed as a percent, as determined in accordance with the test procedures specified in ANSI standard C82.2–1984, or as may be prescribed by the Secretary.

(L) The term ''residential building'' means a structure or portion of a structure which provides facilities or shelter for human residency, except that such term does not include any multifamily residential structure of more than three stories above grade.

(M) The term ''F34T12 lamp'' (also known as a ''F40T12/ES lamp'') means a nominal 34 watt tubular fluorescent lamp that is 48 inches in length and 1½ inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–1006–1).

(N) The term ''F96T12/ES lamp'' means a nominal 60 watt tubular fluorescent lamp that is 96 inches in length and 1½ inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–3006–1).

(O) The term ''F96T12HO/ES lamp'' means a nominal 95 watt tubular fluorescent lamp that is 96 inches in length and 1½ inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–1017–1).

(P) The term ''replacement ballast'' means a ballast that—

(i) is designed for use to replace an existing ballast in a previously installed luminaire;

(ii) is marked ''FOR REPLACEMENT USE ONLY'';

(iii) is shipped by the manufacturer in packages containing not more than 10 ballasts; and

(iv) has output leads that when fully extended are a total length that is less than the length of the lamp with which the ballast is intended to be operated.

(30)(A) Except as provided in subparagraph (E), the term ''fluorescent lamp'' means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the

mercury discharge into light, including only the following:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more.

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more.

(iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1–1978 and related supplements.

(iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3–1978 (R1984) and related supplement ANSI C78.3a–1985.

(B) The term ''general service fluorescent lamp'' means fluorescent lamps which can be used to satisfy the majority of fluorescent applications, but does not include any lamp designed and marketed for the following nongeneral lighting applications:

(i) Fluorescent lamps designed to promote plant growth.

(ii) Fluorescent lamps specifically designed for cold temperature installations.

(iii) Colored fluorescent lamps.

(iv) Impact-resistant fluorescent lamps.

(v) Reflectorized or aperture lamps.

(vi) Fluorescent lamps designed for use in reprographic equipment.

(vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum.

(viii) Lamps with a color rendering index of 82 or greater.

(C) Except as provided in subparagraph (E), the term ''incandescent lamp'' means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp.

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(I) a low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(II) a high(er) wattage reflector lamp which has a rated wattage above 205 watts.

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp).

(D) The term ''general service incandescent lamp'' means any incandescent lamp (other than a miniature or photographic lamp) that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications, but does not include any lamps specifically designed for—

(i) traffic signal, or street lighting service;

(ii) airway, airport, aircraft, or other aviation service;

(iii) marine or marine signal service;

(iv) photo, projection, sound reproduction, or film viewer service;

(v) stage, studio, or television service;

(vi) mill, saw mill, or other industrial process service;

(vii) mine service;

(viii) headlight, locomotive, street railway, or other transportation service;

(ix) heating service;

(x) code beacon, marine signal, lighthouse, reprographic, or other communication service;

(xi) medical or dental service;

(xii) microscope, map, microfilm, or other specialized equipment service;

(xiii) swimming pool or other underwater service;

(xiv) decorative or showcase service;

(xv) producing colored light;

(xvi) shatter resistance which has an external protective coating; or

(xvii) appliance service.

(E) The terms ''fluorescent lamp'' and ''incandescent lamp'' do not include any lamp excluded by the Secretary, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.

(F) The term ''incandescent reflector lamp'' means a lamp described in subparagraph (C)(ii).

(G) The term ''average lamp efficacy'' means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(H) The term ''base'' means the portion of the lamp which connects with the socket as described in ANSI C81.61–1990.

(I) The term ''bulb shape'' means the shape of lamp, especially the glass bulb with designations for bulb shapes found in ANSI C79.1–1980 (R1984).

(J) The term ''color rendering index'' or ''CRI'' means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(K) The term ''correlated color temperature'' means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.

(L) The term ''IES'' means the Illuminating Engineering Society of North America.

(M) The term ''lamp efficacy'' means the lumen output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(N) The term ''lamp type'' means all lamps designated as having the same electrical and lighting characteristics and made by one manufacturer.

(O) The term ''lamp wattage'' means the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in the appropriate IES standard test procedure and including, for fluorescent, arc watts plus cathode watts.

(P) The terms ''life'' and ''lifetime'' mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group in accordance with test procedures described in the IES Lighting Handbook-Reference Volume.

(Q) The term ''lumen output'' means total luminous flux (power) of a lamp in lumens, as measured in accordance with applicable IES standards as determined by the Secretary.

(R) The term ''tungsten-halogen lamp'' means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(S)(i) The term ''medium base compact fluorescent lamp'' means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp.

(ii) The term ''medium base compact fluorescent lamp'' does not include—

(I) any lamp that is—

(aa) specifically designed to be used for special purpose applications; and

(bb) unlikely to be used in general purpose applications, such as the applications described in subparagraph (D); or

(II) any lamp not described in subparagraph (D) that is excluded by the Secretary, by rule, because the lamp is—

(aa) designed for special applications; and

(bb) unlikely to be used in general purpose applications.

(31)(A) The term ''water use'' means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under section 6293 of this title.

(B) The term ''ASME'' means the American Society of Mechanical Engineers.

(C) The term ''ANSI'' means the American National Standards Institute.

(D) The term ''showerhead'' means any showerhead (including a handheld showerhead), except a safety shower showerhead.

(E) The term ''faucet'' means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

(F) The term ''water closet'' has the meaning given such term in ASME A112.19.2M–1990, except such term does not include fixtures designed for installation in prisons.

(G) The term ''urinal'' has the meaning given such term in ASME A112.19.2M–1990, except such term does not include fixtures designed for installation in prisons.

(H) The terms ''blowout'', ''flushometer tank'', ''low consumption'', and ''flushometer valve'' have the meaning given such terms in ASME A112.19.2M–1990.

(32) The term ''battery charger'' means a device that charges batteries for consumer products, including battery chargers embedded in other consumer products.

(33)(A) The term ''commercial prerinse spray valve'' means a handheld device designed and marketed for use with commercial dishwashing and ware washing equipment that sprays water on dishes, flatware, and other food service items for the purpose of removing food residue before cleaning the items.

(B) The Secretary may modify the definition of ''commercial prerinse spray valve'' by rule—

(i) to include products—

(I) that are extensively used in conjunction with commercial dishwashing and ware washing equipment;

(II) the application of standards to which would result in significant energy savings; and

(III) the application of standards to which would meet the criteria specified in section 6295(*o*)(4) of this title; and

(ii) to exclude products—

(I) that are used for special food service applications;

(II) that are unlikely to be widely used in conjunction with commercial dishwashing and ware washing equipment; and

(III) the application of standards to which would not result in significant energy savings.

(34) The term ''dehumidifier'' means a self-contained, electrically operated, and mechanically encased assembly consisting of—

(A) a refrigerated surface (evaporator) that condenses moisture from the atmosphere;

(B) a refrigerating system, including an electric motor;

(C) an air-circulating fan; and

(D) means for collecting or disposing of the condensate.

(35)(A) The term ''distribution transformer'' means a transformer that—

(i) has an input voltage of 34.5 kilovolts or less;

(ii) has an output voltage of 600 volts or less; and

(iii) is rated for operation at a frequency of 60 Hertz.

(B) The term ''distribution transformer'' does not include—

(i) a transformer with multiple voltage taps, the highest of which equals at least 20 percent more than the lowest;

(ii) a transformer that is designed to be used in a special purpose application and is

unlikely to be used in general purpose applications, such as a drive transformer, rectifier transformer, auto-transformer, Uninterruptible Power System transformer, impedance transformer, regulating transformer, sealed and nonventilating transformer, machine tool transformer, welding transformer, grounding transformer, or testing transformer; or

(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because—

(I) the transformer is designed for a special application;

(II) the transformer is unlikely to be used in general purpose applications; and

(III) the application of standards to the transformer would not result in significant energy savings.

(36) The term ''external power supply'' means an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product.

(37) The term ''illuminated exit sign'' means a sign that—

(A) is designed to be permanently fixed in place to identify an exit; and

(B) consists of an electrically powered integral light source that—

(i) illuminates the legend ''EXIT'' and any directional indicators; and

(ii) provides contrast between the legend, any directional indicators, and the background.

(38) The term ''low-voltage dry-type distribution transformer'' means a distribution transformer that—

(A) has an input voltage of 600 volts or less;

(B) is air-cooled; and

(C) does not use oil as a coolant.

(39) The term ''pedestrian module'' means a light signal used to convey movement information to pedestrians.

(40) The term ''refrigerated bottled or canned beverage vending machine'' means a commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment.

(41) The term ''standby mode'' means the lowest power consumption mode, as established on an individual product basis by the Secretary, that—

(A) cannot be switched off or influenced by the user; and

(B) may persist for an indefinite time when an appliance is—

(i) connected to the main electricity supply; and

(ii) used in accordance with the instructions of the manufacturer.

(42) The term ''torchiere'' means a portable electric lamp with a reflector bowl that directs light upward to give indirect illumination.

(43) The term ''traffic signal module'' means a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication that—

(A) consists of a light source, a lens, and all other parts necessary for operation; and

(B) communicates movement messages to drivers through red, amber, and green colors.

(44) The term ''transformer'' means a device consisting of 2 or more coils of insulated wire that transfers alternating current by electromagnetic induction from 1 coil to another to change the original voltage or current value.

(45)(A) The term ''unit heater'' means a self-contained fan-type heater designed to be installed within the heated space.

(B) The term ''unit heater'' does not include a warm air furnace.

(46)(A) The term ''high intensity discharge lamp'' means an electric-discharge lamp in which—

(i) the light-producing arc is stabilized by bulb wall temperature; and

(ii) the arc tube has a bulb wall loading in excess of 3 Watts/cm^2.

(B) The term ''high intensity discharge lamp'' includes mercury vapor, metal halide, and high-pressure sodium lamps described in subparagraph (A).

(47)(A) The term ''mercury vapor lamp'' means a high intensity discharge lamp in which the major portion of the light is produced by radiation from mercury operating at a partial pressure in excess of 100,000 Pa (approximately 1 atm).

(B) The term ''mercury vapor lamp'' includes clear, phosphor-coated, and self-ballasted lamps described in subparagraph (A).

(48) The term ''mercury vapor lamp ballast'' means a device that is designed and marketed to start and operate mercury vapor lamps by providing the necessary voltage and current.

(49) The term ''ceiling fan'' means a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades.

(50) The term ''ceiling fan light kit'' means equipment designed to provide light from a ceiling fan that can be—

(A) integral, such that the equipment is attached to the ceiling fan prior to the time of retail sale; or

(B) attachable, such that at the time of retail sale the equipment is not physically attached to the ceiling fan, but may be included inside the ceiling fan at the time of sale or sold separately for subsequent attachment to the fan.

(51) The term ''medium screw base'' means an Edison screw base identified with the prefix E–26 in the ''American National Standard for Electric Lamp Bases'', ANSI/IEC C81.61–2003, published by the American National Standards Institute.

(Pub. L. 94–163, title III, § 321, Dec. 22, 1975, 89 Stat. 917; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 100–12, § 2, Mar. 17, 1987, 101 Stat. 103; Pub. L. 100–357, § 2(a), June 28, 1988, 102 Stat. 671; Pub. L. 102–486, title I, § 123(b), Oct. 24, 1992, 106 Stat. 2817; Pub. L. 105–388, § 5(a)(2), Nov. 13, 1998, 112 Stat. 3478; Pub. L. 109–58, title I, § 135(a), Aug. 8, 2005, 119 Stat. 624.)

REFERENCES IN TEXT

This chapter, referred to in par. (3), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89

Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

2005—Par. (29)(D)(i). Pub. L. 109–58, §135(a)(1)(A)(i), substituted ''C78.81–2003 (Data Sheet 7881–ANSI–1010–1)'' for ''C78.1–1978(R1984)''.

Par. (29)(D)(ii). Pub. L. 109–58, §135(a)(1)(A)(ii), which directed amendment of cl. (ii) by substituting ''C78.81–2003 (Data Sheet 7881–ANSI–3007–1)'' for ''C78.1–1978(R1984)'', was executed by making the substitution for ''C78.3–1978(R1984)'' to reflect the probable intent of Congress.

Par. (29)(D)(iii). Pub. L. 109–58, §135(a)(1)(A)(iii), substituted ''C78.81–2003 (Data Sheet 7881–ANSI–1019–1)'' for ''C78.1–1978(R1984)''.

Par. (29)(M) to (P). Pub. L. 109–58, §135(a)(1)(B), added subpars. (M) to (P).

Par. (30)(S). Pub. L. 109–58, §135(a)(2), designated existing provisions as cl. (i) and added cl. (ii).

Pars. (32) to (51). Pub. L. 109–58, §135(a)(3), added pars. (32) to (51).

1998—Par. (1). Pub. L. 105–388 substituted ''section 32901(a)(3) of title 49'' for ''section 501(1) of the Motor Vehicle Information and Cost Savings Act'' and struck out second period at end.

1992—Pub. L. 102–486, §123(b)(1), in introductory provisions, struck out ''(a)'' before ''For purposes''.

Par. (1). Pub. L. 102–486, §123(b)(2)(B), which directed amendment of par. (1)(B) by substituting ''ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals'' for ''ballasts'', was executed by making amendment in closing provisions of par. (1), to reflect the probable intent of Congress.

Par. (1)(A). Pub. L. 102–486, §123(b)(2)(A), inserted ''or, with respect to showerheads, faucets, water closets, and urinals, water'' after ''energy''.

Par. (6). Pub. L. 102–486, §123(b)(3)(B)(ii), which directed amendment of par. (6)(B) by substituting ''6295(r)'' for ''6295(*o*)'', was executed by making amendment in closing provisions of par. (6), to reflect the probable intent of Congress.

Par. (6)(A). Pub. L. 102–486, §123(b)(3)(A), inserted '', or, in the case of showerheads, faucets, water closets, and urinals, water use,'' after ''energy use''.

Par. (6)(B). Pub. L. 102–486, §123(b)(3)(B)(i), substituted ''(15), (16), (17), and (19)'' for ''and (14)''.

Par. (7). Pub. L. 102–486, §123(b)(4), inserted '', and in the case of showerheads, faucets, water closets, and urinals, the aggregate retail cost of water and wastewater treatment services likely to be incurred annually,'' after ''to be consumed annually''.

Pars. (30), (31). Pub. L. 102–486, §123(b)(5), added pars. (30) and (31).

1988—Subsec. (a)(1). Pub. L. 100–357, §2(a)(2), inserted before period at end '', except that such term includes fluorescent lamp ballasts distributed in commerce for personal or commercial use or consumption.''

Subsec. (a)(6)(B). Pub. L. 100–357, §2(a)(3), substituted ''(14)'' for ''(13)''.

Subsec. (a)(29). Pub. L. 100–357, §2(a)(1), added par. (29).

1987—Subsec. (a)(6). Pub. L. 100–12, §2(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The term 'energy efficiency standard' means a performance standard—

''(A) which prescribes a minimum level of energy efficiency for a covered product, determined in accordance with test procedures prescribed under section 6293 of this title, and

''(B) which includes any other requirements which the Secretary may prescribe under section 6295(c) of this title.''

Subsec. (a)(19) to (28). Pub. L. 100–12, §2(b), added pars. (19) to (28).

1978—Subsec. (a)(3), (6)(B), (9). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

§ 6292. Coverage

(a) In general

The following consumer products, excluding those consumer products designed solely for use in recreational vehicles and other mobile equipment, are covered products:

(1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—

(A) any type designed to be used without doors; and

(B) any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

(2) Room air conditioners.

(3) Central air conditioners and central air conditioning heat pumps.

(4) Water heaters.

(5) Furnaces.

(6) Dishwashers.

(7) Clothes washers.

(8) Clothes dryers.

(9) Direct heating equipment.

(10) Kitchen ranges and ovens.

(11) Pool heaters.

(12) Television sets.

(13) Fluorescent lamp ballasts.

(14) General service fluorescent lamps and incandescent reflector lamps.

(15) Showerheads, except safety shower showerheads.

(16) Faucets.

(17) Water closets.

(18) Urinals.

(19) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b) of this section.

(b) Special classification of consumer product

(1) The Secretary may classify a type of consumer product as a covered product if he determines that—

(A) classifying products of such type as covered products is necessary or appropriate to carry out the purposes of this chapter, and

(B) average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (or its Btu equivalent) per year.

(2) For purposes of this subsection:

(A) The term ''average annual per-household energy use with respect to a type of product'' means the estimated aggregate annual energy use (in kilowatt-hours or the Btu equivalent) of consumer products of such type which are used by households in the United States, divided by the number of such households which use products of such type.

(B) The Btu equivalent of one kilowatt-hour is 3,412 British thermal units.

(C) The term ''household'' shall be defined under rules of the Secretary.

(Pub. L. 94–163, title III, §322, Dec. 22, 1975, 89 Stat. 918; Pub. L. 95–619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 100–12, §§3, 11(b)(1), Mar. 17, 1987, 101 Stat. 105, 125; Pub. L. 100–357, §2(b), June 28, 1988, 102 Stat. 672; Pub. L. 102–486,

title I, § 123(c), Oct. 24, 1992, 106 Stat. 2821; Pub. L. 105–388, § 5(a)(3), Nov. 13, 1998, 112 Stat. 3478.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1)(A), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(2)(A). Pub. L. 105–388 inserted closing quotation marks after ''type of product''.

1992—Subsec. (a)(14) to (19). Pub. L. 102–486 added pars. (14) to (18) and redesignated former par. (14) as (19).

1988—Subsec. (a)(13), (14). Pub. L. 100–357 added par. (13) and redesignated former par. (13) as (14).

1987—Subsec. (a). Pub. L. 100–12, § 3, inserted heading and amended text generally. Prior to amendment, text read as follows: ''A consumer product is a covered product if it is one of the following types (or is designed to perform a function which is the principal function of any of the following types):

''(1) Refrigerators and refrigerator-freezers.

''(2) Freezers.

''(3) Dishwashers.

''(4) Clothes dryers.

''(5) Water heaters.

''(6) Room air conditioners.

''(7) Home heating equipment, not including furnaces.

''(8) Television sets.

''(9) Kitchen ranges and ovens.

''(10) Clothes washers.

''(11) Humidifiers and dehumidifiers.

''(12) Central aid conditioners.

''(13) Furnaces.

''(14) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b) of this section.''

Subsec. (b). Pub. L. 100–12, § 11(b)(1), inserted heading.

1978—Subsecs. (a)(14), (b)(1), (2)(C). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

ENERGY EFFICIENCY LABELING FOR WINDOWS AND WINDOW SYSTEMS

Section 121 of Pub. L. 102–486 provided that:

''(a) IN GENERAL.—(1) The Secretary shall, after consulting with the National Fenestration Rating Council, industry representatives, and other appropriate organizations, provide financial assistance to support a voluntary national window rating program that will develop energy ratings and labels for windows and window systems.

''(2) Such rating program shall include—

''(A) specifications for testing procedures and labels that will enable window buyers to make more informed purchasing decisions about the energy efficiency of windows and window systems; and

''(B) information (which may be disseminated through catalogs, trade publications, labels, or other mechanisms) that will allow window buyers to assess the energy consumption and potential cost savings of alternative window products.

''(3) Such rating program shall be developed by the National Fenestration Rating Council according to commonly accepted procedures for the development of national testing procedures and labeling programs.

''(b) MONITORING.—The Secretary shall monitor and evaluate the efforts of the National Fenestration Rating Council and, not later than one year after the date of the enactment of this Act [Oct. 24, 1992], make a determination as to whether the program developed by the Council is consistent with the objectives of subsection (a).

''(c) ALTERNATIVE SYSTEM.—(1) If the Secretary makes a determination under subsection (b) that a voluntary national window rating program consistent with the objectives of subsection (a) has not been developed, the Secretary shall, after consultation with the National Institute of Standards and Technology, develop, not later than two years after such determination, test procedures under section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) for windows and window systems.

''(2) Not later than one year after the Secretary develops test procedures under paragraph (1), the Federal Trade Commission (hereafter in this section referred to as the 'Commission') shall prescribe labeling rules under section 324 of such Act (42 U.S.C. 6294) for those windows and window systems for which the Secretary has prescribed test procedures under paragraph (1) except that, with respect to any type of window or window system (or class thereof), the Secretary may determine that such labeling is not technologically feasible or economically justified or is not likely to assist consumers in making purchasing decisions.

''(3) For purposes of sections 323, 324, and 327 of such Act [42 U.S.C. 6293, 6294, 6297], each product for which the Secretary has established test procedures or labeling rules pursuant to this subsection shall be considered a new covered product under section 322 of such Act (42 U.S.C. 6292) to the extent necessary to carry out this subsection.

''(4) For purposes of section 327(a) of such Act, the term 'this part' includes this subsection to the extent necessary to carry out this subsection.''

ENERGY EFFICIENCY INFORMATION FOR COMMERCIAL OFFICE EQUIPMENT

Section 125 of Pub. L. 102–486 provided that:

''(a) IN GENERAL.—(1) The Secretary shall, after consulting with the Computer and Business Equipment Manufacturers Association and other interested organizations, provide financial and technical assistance to support a voluntary national testing and information program for those types of commercial office equipment that are widely used and for which there is a potential for significant energy savings as a result of such program.

''(2) Such program shall—

''(A) consistent with the objectives of paragraph (1), determine the commercial office equipment to be covered under such program;

''(B) include specifications for testing procedures that will enable purchasers of such commercial office equipment to make more informed decisions about the energy efficiency and costs of alternative products; and

''(C) include information, which may be disseminated through catalogs, trade publications, labels, or other mechanisms, that will allow consumers to assess the energy consumption and potential cost savings of alternative products.

''(3) Such program shall be developed by an appropriate organization (composed of interested parties) according to commonly accepted procedures for the development of national testing procedure and labeling programs.

''(b) MONITORING.—The Secretary shall monitor and evaluate the efforts to develop the program described in subsection (a) and, not later than three years after the date of the enactment of this Act [Oct. 24, 1992], shall make a determination as to whether such program is consistent with the objectives of subsection (a).

''(c) ALTERNATIVE SYSTEM.—(1) If the Secretary makes a determination under subsection (b) that a voluntary national testing and information program for commercial office equipment consistent with the objectives of subsection (a) has not been developed, the Secretary shall, after consultation with the National Institute of Standards and Technology, develop, not later than two years after such determination, test procedures under section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) for such commercial office equipment.

''(2) Not later than one year after the Secretary develops test procedures under paragraph (1), the Federal Trade Commission (hereafter in this section referred to as the 'Commission') shall prescribe labeling rules under section 324 of such Act (42 U.S.C. 6294) for commercial office equipment for which the Secretary has prescribed test procedures under paragraph (1) except that, with respect to any type of commercial office equipment (or class thereof), the Secretary may determine that such labeling is not technologically feasible or economically justified or is not likely to assist consumers in making purchasing decisions.

''(3) For purposes of sections 323, 324, and 327 of such Act [42 U.S.C. 6293, 6294, 6297], each product for which the Secretary has established test procedures or labeling rules pursuant to this subsection shall be considered a new covered product under section 322 of such Act (42 U.S.C. 6292) to the extent necessary to carry out this subsection.

''(4) For purposes of section 327(a) of such Act, the term 'this part' includes this subsection to the extent necessary to carry out this subsection.''

ENERGY EFFICIENCY INFORMATION FOR LUMINAIRES

Section 126 of Pub. L. 102–486 provided that:

''(a) IN GENERAL.—(1) The Secretary shall, after consulting with the National Electric Manufacturers Association, the American Lighting Association, and other interested organizations, provide financial and technical assistance to support a voluntary national testing and information program for those types of luminaires that are widely used and for which there is a potential for significant energy savings as a result of such program.

''(2) Such program shall—

''(A) consistent with the objectives of paragraph (1), determine the luminaires to be covered under such program;

''(B) include specifications for testing procedures that will enable purchasers of such luminaires to make more informed decisions about the energy efficiency and costs of alternative products; and

''(C) include information, which may be disseminated through catalogs, trade publications, labels, or other mechanisms, that will allow consumers to assess the energy consumption and potential cost savings of alternative products.

''(3) Such program shall be developed by an appropriate organization (composed of interested parties) according to commonly accepted procedures for the development of national testing procedures and labeling programs.

''(b) MONITORING.—The Secretary shall monitor and evaluate the efforts to develop the program described in subsection (a) and, not later than three years after the date of the enactment of this Act [Oct. 24, 1992], shall make a determination as to whether the program developed is consistent with the objectives of subsection (a).

''(c) ALTERNATIVE SYSTEM.—(1) If the Secretary makes a determination under subsection (b) that a voluntary national testing and information program for luminaires consistent with the objectives of subsection (a) has not been developed, the Secretary shall, after consultation with the National Institute of Standards and Technology, develop, not later than two years after such determination, test procedures under section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) for such luminaires.

''(2) Not later than one year after the Secretary develops test procedures under paragraph (1), the Federal Trade Commission (hereafter in this section referred to as the 'Commission') shall prescribe labeling rules under section 324 of such Act (42 U.S.C. 6294) for those luminaires for which the Secretary has prescribed test procedures under paragraph (1) except that, with respect to any type of luminaire (or class thereof), the Secretary may determine that such labeling is not technologically feasible or economically justified or is not likely to assist consumers in making purchasing decisions.

''(3) For purposes of sections 323, 324, and 327 of such Act [42 U.S.C. 6293, 6294, 6297], each product for which the Secretary has established test procedures or labeling rules pursuant to this subsection shall be considered a new covered product under section 322 of such Act (42 U.S.C. 6292) to the extent necessary to carry out this subsection.

''(4) For purposes of section 327(a) of such Act, the term 'this part' includes this subsection to the extent necessary to carry out this subsection.''

REPORT ON POTENTIAL OF COOPERATIVE ADVANCED APPLIANCE DEVELOPMENT

Section 127 of Pub. L. 102–486 provided that:

''(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Secretary shall, in consultation with the Administrator of the Environmental Protection Agency, utilities, and appliance manufacturers, prepare and submit to the Congress, a report on the potential for the development and commercialization of appliances which are substantially more efficient than required by Federal or State law.

''(b) IDENTIFICATION OF HIGH-EFFICIENCY APPLIANCES.—The report submitted under subsection (a) shall identify candidate high-efficiency appliances which meet the following criteria:

''(1) The potential exists for substantial improvement in the appliance's energy efficiency, beyond the minimum established in Federal and State law.

''(2) There is the potential for significant energy savings at the national or regional level.

''(3) Such appliances are likely to be cost-effective for consumers.

''(4) Electric, water, or gas utilities are prepared to support and promote the commercialization of such appliances.

''(5) Manufacturers are unlikely to undertake development and commercialization of such appliances on their own, or development and production would be substantially accelerated by support to manufacturers.

''(c) RECOMMENDATIONS AND PROPOSALS.—The report submitted under subsection (a) shall also—

''(1) describe the general actions the Secretary or the Administrator of the Environmental Protection Agency could take to coordinate and assist utilities and appliance manufacturers in developing and commercializing highly efficient appliances;

''(2) describe specific proposals for Department of Energy or Environmental Protection Agency assistance to utilities and appliance manufacturers to promote the development and commercialization of highly efficient appliances;

''(3) identify methods by which Federal purchase of highly efficient appliances could assist in the development and commercialization of such appliances; and

''(4) identify the funding levels needed to develop and implement a Federal program to assist in the development and commercialization of highly efficient appliances.''

EVALUATION OF UTILITY EARLY REPLACEMENT PROGRAMS FOR APPLIANCES

Section 128 of Pub. L. 102–486 provided that: ''Within 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Secretary, in consultation with the Administrator of the Environmental Protection Agency, utilities, and appliance manufacturers, shall evaluate and report to the Congress on the energy savings and environmental benefits of programs which are directed to the early replacement of older, less efficient appliances presently in use by consumers with existing products which are more efficient than required by Federal law. For the purposes of this section, the term 'appliance' means those consumer products specified in section 322(a) [42 U.S.C. 6292(a)].''

§ 6293. Test procedures

(a) General rule

All test procedures and related determinations prescribed or made by the Secretary with respect to any covered product (or class thereof) which are in effect on March 17, 1987, shall remain in effect until the Secretary amends such test procedures and related determinations under subsection (b) of this section.

(b) Amended and new procedures

(1)(A) The Secretary may amend test procedures with respect to any covered product if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of paragraph (3).

(B) The Secretary may, in accordance with the requirements of this subsection, prescribe test procedures for any consumer product classified as a covered product under section 6292(b) of this title.

(C) The Secretary shall direct the National Institute of Standards and Technology to assist in developing new or amended test procedures.

(2) If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the Federal Register proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period shall not be less than 60 days and may be extended for good cause shown to not more than 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved.

(3) Any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct.

(4) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use or, in the case of showerheads, faucets, water closets, or urinals, water use in a representative average use cycle or period of use, as determined by the Secretary, and from representative average unit costs of the energy needed to operate such product during such cycle, or in the case of showerheads, faucets, water closets, or urinals, representative average unit costs of water and wastewater treatment service resulting from the operation of such products during such cycle. The Secretary shall provide information to manufacturers with respect to representative average unit costs of energy, water, and wastewater treatment.

(5) With respect to fluorescent lamp ballasts manufactured on or after January 1, 1990, and to which standards are applicable under section 6295 of this title, the Secretary shall prescribe test procedures that are in accord with ANSI standard C82.2–1984 or other test procedures determined appropriate by the Secretary.

(6) With respect to fluorescent lamps and incandescent reflector lamps to which standards are applicable under subsection (i) of section 6295 of this title, the Secretary shall prescribe test procedures, to be carried out by accredited test laboratories, that take into consideration the applicable IES or ANSI standard.

(7)(A) Test procedures for showerheads and faucets to which standards are applicable under subsection (j) of section 6295 of this title shall be the test procedures specified in ASME A112.18.1M–1989 for such products.

(B) If the test procedure requirements of ASME A112.18.1M–1989 are revised at any time and approved by ANSI, the Secretary shall amend the test procedures established by subparagraph (A) to conform to such revised ASME/ANSI requirements unless the Secretary determines, by rule, that to do so would not meet the requirements of paragraph (3).

(8)(A) Test procedures for water closets and urinals to which standards are applicable under subsection (k) of section 6295 of this title shall be the test procedures specified in ASME A112.19.6–1990 for such products.

(B) If the test procedure requirements of ASME A112.19.6–1990 are revised at any time and approved by ANSI, the Secretary shall amend the test procedures established by subparagraph (A) to conform to such revised ASME/ANSI requirements unless the Secretary determines, by rule, that to do so would not meet the requirements of paragraph (3).

(9) Test procedures for illuminated exit signs shall be based on the test method used under version 2.0 of the Energy Star program of the Environmental Protection Agency for illuminated exit signs.

(10)(A) Test procedures for distribution transformers and low voltage dry-type distribution transformers shall be based on the ''Standard Test Method for Measuring the Energy Consumption of Distribution Transformers'' prescribed by the National Electrical Manufacturers Association (NEMA TP 2–1998).

(B) The Secretary may review and revise the test procedures established under subparagraph (A).

(C) For purposes of section 6317(a) of this title, the test procedures established under subparagraph (A) shall be considered to be the testing requirements prescribed by the Secretary under section 6317(a)(1) of this title for distribution transformers for which the Secretary makes a determination that energy conservation standards would—

(i) be technologically feasible and economically justified; and

(ii) result in significant energy savings.

(11) Test procedures for traffic signal modules and pedestrian modules shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for traffic signal modules, as in effect on August 8, 2005.

(12)(A) Test procedures for medium base compact fluorescent lamps shall be based on the test methods for compact fluorescent lamps used under the August 9, 2001, version of the Energy Star program of the Environmental Protection Agency and the Department of Energy.

(B) Except as provided in subparagraph (C), medium base compact fluorescent lamps shall meet all test requirements for regulated parameters of section 6295(cc) of this title.

(C) Notwithstanding subparagraph (B), if manufacturers document engineering predictions and analysis that support expected attainment of lumen maintenance at 40 percent rated life and lamp lifetime, medium base compact fluorescent lamps may be marketed before completion of the testing of lamp life and lumen maintenance at 40 percent of rated life.

(13) Test procedures for dehumidifiers shall be based on the test criteria used under the Energy Star Program Requirements for Dehumidifiers developed by the Environmental Protection Agency, as in effect on August 8, 2005, unless revised by the Secretary pursuant to this section.

(14) The test procedure for measuring flow rate for commercial prerinse spray valves shall be based on American Society for Testing and Materials Standard F2324, entitled ''Standard Test Method for Pre-Rinse Spray Valves''.

(15) The test procedure for refrigerated bottled or canned beverage vending machines shall be based on American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 32.1–2004, entitled ''Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages''.

(16)(A)(i) Test procedures for ceiling fans shall be based on the ''Energy Star Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans, Version 1.1'' published by the Environmental Protection Agency.

(ii) Test procedures for ceiling fan light kits shall be based on the test procedures referenced in the Energy Star specifications for Residential Light Fixtures and Compact Fluorescent Light Bulbs, as in effect on August 8, 2005.

(B) The Secretary may review and revise the test procedures established under subparagraph (A).

(c) Restriction on certain representations

(1) No manufacturer, distributor, retailer, or private labeler may make any representation—

(A) in writing (including a representation on a label); or

(B) in any broadcast advertisement,

with respect to the energy use or efficiency or, in the case of showerheads, faucets, water closets, and urinals, water use of a covered product to which a test procedure is applicable under subsection (a) of this section or the cost of energy consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

(2) Effective 180 days after an amended or new test procedure applicable to a covered product is prescribed or established under subsection (b) of this section, no manufacturer, distributor, retailer, or private labeler may make any representation—

(A) in writing (including a representation on a label); or

(B) in any broadcast advertisement,

with respect to energy use or efficiency or, in the case of showerheads, faucets, water closets, and urinals, water use of such product or cost of energy consumed by such product, unless such product has been tested in accordance with such amended or new test procedures and such representation fairly discloses the results of such testing.

(3) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (2) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if the Secretary determines that the requirements of paragraph (2) would impose an undue hardship on such petitioner.

(d) Case in which test procedure is not required

(1) The Secretary is not required to publish and prescribe test procedures for a covered product (or class thereof) if the Secretary determines, by rule, that test procedures cannot be developed which meet the requirements of subsection (b)(3) of this section and publishes such determination in the Federal Register, together with the reasons therefor.

(2) For purposes of section 6297 of this title, a determination under paragraph (1) with respect to any covered product or class shall have the same effect as would a standard prescribed for a covered product (or class).

(e) Amendment of standard

(1) In the case of any amended test procedure which is prescribed pursuant to this section, the Secretary shall determine, in the rulemaking carried out with respect to prescribing such procedure, to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of any covered product as determined under the existing test procedure.

(2) If the Secretary determines that the amended test procedure will alter the measured efficiency or measured use, the Secretary shall amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure. In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency, energy use, or water use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products.

(3) Models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date

and have the same energy efficiency, energy use, or water use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard.

(4) The Secretary's authority to amend energy conservation standards under this subsection shall not affect the Secretary's obligation to issue final rules as described in section 6295 of this title.

(f) Additional consumer and commercial products

(1) Not later than 2 years after August 8, 2005, the Secretary shall prescribe testing requirements for refrigerated bottled or canned beverage vending machines.

(2) To the maximum extent practicable, the testing requirements prescribed under paragraph (1) shall be based on existing test procedures used in industry.

(Pub. L. 94–163, title III, § 323, Dec. 22, 1975, 89 Stat. 919; Pub. L. 95–619, title IV, §§ 421, 425(a), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3257, 3265, 3288; Pub. L. 100–12, § 4, Mar. 17, 1987, 101 Stat. 105; Pub. L. 100–357, § 2(c), June 28, 1988, 102 Stat. 672; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–486, title I, § 123(d), Oct. 24, 1992, 106 Stat. 2821; Pub. L. 109–58, title I, § 135(b), Aug. 8, 2005, 119 Stat. 627.)

AMENDMENTS

2005—Subsec. (b)(9) to (16). Pub. L. 109–58, § 135(b)(1), added pars. (9) to (16).

Subsec. (f). Pub. L. 109–58, § 135(b)(2), added subsec. (f).

1992—Subsec. (b)(3). Pub. L. 102–486, § 123(d)(1)(A), inserted ''water use (in the case of showerheads, faucets, water closets and urinals),'' after ''energy use,''.

Subsec. (b)(4). Pub. L. 102–486, § 123(d)(1)(B), in first sentence inserted ''or, in the case of showerheads, faucets, water closets, or urinals, water use'' after ''energy use'' and '', or in the case of showerheads, faucets, water closets, or urinals, representative average unit costs of water and wastewater treatment service resulting from the operation of such products during such cycle'' after ''such cycle'', and in second sentence inserted '', water, and wastewater treatment'' before period at end.

Subsec. (b)(6) to (8). Pub. L. 102–486, § 123(d)(1)(C), added pars. (6) to (8).

Subsec. (c)(1). Pub. L. 102–486, § 123(d)(2), in closing provisions inserted ''or, in the case of showerheads, faucets, water closets, and urinals, water use'' after ''efficiency''.

Subsec. (c)(2). Pub. L. 102–486, § 123(d)(3), in introductory provisions substituted ''prescribed or established'' for ''prescribed''.

Pub. L. 102–486, § 123(d)(2), in closing provisions inserted ''or, in the case of showerheads, faucets, water closets, and urinals, water use'' after ''efficiency''.

Subsec. (e)(1) to (3). Pub. L. 102–486, § 123(d)(4), substituted '', measured energy use, or measured water use'' for ''or measured energy use'' in par. (1) and ''energy efficiency, energy use, or water use'' for ''energy efficiency or energy use'' in two places in par. (2) and once in par. (3).

1988—Subsec. (b)(1)(C). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

Subsec. (b)(5). Pub. L. 100–357 added par. (5).

1987—Pub. L. 100–12 amended section generally, revising and restating as subsecs. (a) to (e) provisions formerly contained in subsecs. (a) to (c).

1978—Subsec. (a)(1), (2). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

Subsec. (a)(3). Pub. L. 95–619, §§ 425(a), 691(b)(2), struck out ''Except as provided in paragraph (6),'' before ''The Secretary'', struck out provision requiring proposed test procedures to be published not later than June 30, 1976, with certain excepted cases not required to be published before Sept. 30, 1976 and June 30, 1977, and substituted ''Secretary'' for ''Administrator''.

Subsec. (a)(4). Pub. L. 95–619, §§ 421(a), 691(b)(2), redesignated provisions formerly classified to subpar. (A), as par. (4) and in par. (4), as so redesignated, struck out ''Except as provided in paragraph (6),'' before ''The Secretary shall'', substituted ''Secretary'' for ''Administrator'' in two places, inserted provision requiring the prescription of test procedures not later than Jan. 31, 1978, and struck out subpar. (B) requiring the prescription of test procedures not later than Sept. 30, 1976, with certain excepted cases required to be prescribed not later than Dec. 31, 1976 and Sept. 30 1977.

Subsec. (a)(5). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'' wherever appearing.

Subsec. (a)(6). Pub. L. 95–619, § 421(b), redesignated existing provisions as subpar. (A) and, in subpar. (A) as so redesignated, substituted ''Secretary'' for ''Administrator'', struck out provisions relating to the authority to delay publication of proposed test procedures, inserted requirement that a determination of a necessary prescription delay be submitted in a report to Congress, inserted specific ninety day time limitation for delayed prescriptions, and added subpar. (B).

Subsec. (a)(7). Pub. L. 95–619, § 421(c), added par. (7).

Subsec. (b). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'' wherever appearing.

Subsec. (c). Pub. L. 95–619, § 421(d), redesignated existing provisions as par. (1), substituted ''180 days'' for ''90 days'' and redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

§ 6294. Labeling

(a) In general

(1) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (1), (2), (4), (6), and (8) through (12) of section 6292(a) of this title, except to the extent that, with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) of this section that labeling in accordance with this section is not technologically or economically feasible.

(2)(A) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (3), (5), and (7) of section 6292(a) of this title, except to the extent that with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) of this section that labeling in accordance with this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions.

(B) The Commission shall prescribe labeling rules under this section applicable to the covered product specified in paragraph (13) of section 6292(a) of this title and to which standards are applicable under section 6295 of this title. Such rules shall provide that the labeling of any fluorescent lamp ballast manufactured on or after January 1, 1990, will indicate conspicuously, in a manner prescribed by the Commission under subsection (b) of this section by July 1, 1989, a capital letter ''E'' printed within a circle on the ballast and on the packaging of the

ballast or of the luminaire into which the ballast has been incorporated.

(C)(i) Not later than 18 months after October 24, 1992, the Commission shall prescribe labeling rules under this section applicable to general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps. Except as provided in clause (ii), such rules shall provide that the labeling of any general service fluorescent lamp, medium base compact fluorescent lamp, and general service incandescent lamp manufactured after the 12-month period beginning on the date of the publication of such rule shall indicate conspicuously on the packaging of the lamp, in a manner prescribed by the Commission under subsection (b) of this section, such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements. Labeling information for incandescent lamps shall be based on performance when operated at 120 volts input, regardless of the rated lamp voltage.

(ii) If the Secretary determines that compliance with the standards specified in section 6295(i) of this title for any lamp will result in the discontinuance of the manufacture of such lamp, the Commission may exempt such lamp from the labeling rules prescribed under clause (i).

(D)(i) Not later than one year after October 24, 1992, the Commission shall prescribe labeling rules under this section for showerheads and faucets to which standards are applicable under subsection (j) of section 6295 of this title. Such rules shall provide that the labeling of any showerhead or faucet manufactured after the 12-month period beginning on the date of the publication of such rule shall be consistent with the marking and labeling requirements of ASME A112.18.1M–1989, except that each showerhead and flow restricting or controlling spout-end device shall bear a permanent legible marking indicating the flow rate, expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 6295 of this title.

(ii) If the marking and labeling requirements of ASME A112.18.1M–1989 are revised at any time and approved by ANSI, the Commission shall amend the labeling rules established pursuant to clause (i) to be consistent with such revised ASME/ANSI requirements unless such requirements are inconsistent with the purposes of this chapter or the requirement specified in clause (i) requiring each showerhead and flow restricting or controlling spout-end device to bear a permanent legible marking indicating the flow rate of such product.

(E)(i) Not later than one year after October 24, 1992, the Commission shall prescribe labeling rules under this section for water closets and urinals to which standards are applicable under subsection (k) of section 6295 of this title. Such rules shall provide that the labeling of any water closet or urinal manufactured after the 12-month period beginning on the date of the publication of such rule shall be consistent with the marking and labeling requirements of ASME A112.19.2M–1990, except that each fixture (and flushometer valve associated with such fixture) shall bear a permanent legible marking indicating the water use, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 6295 of this title.

(ii) If the marking and labeling requirements of ASME A112.19.2M–1990 are revised at any time and approved by ANSI, the Commission shall amend the labeling rules established pursuant to clause (i) to be consistent with such revised ASME/ANSI requirements unless such requirements are inconsistent with the purposes of this chapter or the requirement specified in clause (i) requiring each fixture and flushometer valve to bear a permanent legible marking indicating the water use of such fixture or flushometer valve.

(iii) Any labeling rules prescribed under this subparagraph before January 1, 1997, shall provide that, with respect to any gravity tank-type white 2-piece toilet which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point of sale material, catalog material, and print advertising) shall include, in a conspicuous manner, the words ''For Commercial Use Only''.

(F)(i) Not later than 90 days after August 8, 2005, the Commission shall initiate a rulemaking to consider—

(I) the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency; and

(II) changes to the labeling rules (including categorical labeling) that would improve the effectiveness of consumer product labels.

(ii) Not later than 2 years after August 8, 2005, the Commission shall complete the rulemaking initiated under clause (i).

(G)(i) Not later than 18 months after August 8, 2005, the Commission shall issue by rule, in accordance with this section, labeling requirements for the electricity used by ceiling fans to circulate air in a room.

(ii) The rule issued under clause (i) shall apply to products manufactured after the later of—

(I) January 1, 2009; or

(II) the date that is 60 days after the final rule is issued.

(3) The Commission may prescribe a labeling rule under this section applicable to covered products of a type specified in paragraph (19) of section 6292(a) of this title (or a class thereof) if—

(A) the Commission or the Secretary has made a determination with respect to such type (or class thereof) that labeling in accordance with this section will assist purchasers in making purchasing decisions,

(B) the Secretary has prescribed test procedures under section 6293(b)(1)(B) of this title for such type (or class thereof), and

(C) the Commission determines with respect to such type (or class thereof) that application of labeling rules under this section to such type (or class thereof) is economically and technologically feasible.

(4) Any determination under this subsection shall be published in the Federal Register.

(5)(A) For covered products described in subsections (u) through (ff) of section 6295 of this title, after a test procedure has been prescribed under section 6293 of this title, the Secretary or the Commission, as appropriate, may prescribe, by rule, under this section labeling requirements for the products.

(B) In the case of products to which TP–1 standards under section 6295(y) of this title apply, labeling requirements shall be based on the ''Standard for the Labeling of Distribution Transformer Efficiency'' prescribed by the National Electrical Manufacturers Association (NEMA TP–3) as in effect on August 8, 2005.

(C) In the case of dehumidifiers covered under section 6295(dd) of this title, the Commission shall not require an ''Energy Guide'' label.

(b) Rules in effect; new rules

(1)(A) Any labeling rule in effect on March 17, 1987, shall remain in effect until amended, by rule, by the Commission.

(B) After March 17, 1987, and not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through (13), and paragraphs (15) through (19) of section 6292(a) of this title (or class thereof) is prescribed under section 6293(b) of this title, the Commission shall publish a proposed labeling rule applicable to such type (or class thereof).

(2) The Commission shall afford interested persons an opportunity to present written or oral data, views, and comments with respect to the proposed labeling rules published under paragraph (1). The period for such presentations shall not be less than 45 days.

(3) Not earlier than 45 days nor later than 60 days after the date on which test procedures are prescribed under section 6293(b) of this title with respect to covered products of any type (or class thereof) specified in paragraphs (1) through (12) of section 6292(a) of this title, the Commission shall prescribe labeling rules with respect to covered products of such type (or class thereof). Not earlier than 45 days after the date on which test procedures are prescribed under section 6293(b) of this title with respect to covered products of a type specified in paragraph (19) of section 6292(a) of this title, the Commission may prescribe labeling rules with respect to covered products of such type (or class thereof).

(4) A labeling rule prescribed under paragraph (3) shall take effect not later than 3 months after the date of prescription of such rule, except that such rules may take effect not later than 6 months after such date of prescription if the Commission determines that such extension is necessary to allow persons subject to such rules adequate time to come into compliance with such rules.

(5) The Commission may delay the publication of a proposed labeling rule, or the prescription of a labeling rule, beyond the dates specified in paragraph (1) or (3), if it determines that it cannot publish proposed labeling rules or prescribe labeling rules which meet the requirements of this section on or prior to the date specified in the applicable paragraph and publishes such determination in the Federal Register, together with the reasons therefor. In any such case, it shall publish proposed labeling rules or prescribe labeling rules for covered products of such type (or class thereof) as soon as practicable unless it determines (A) that labeling in accordance with this section is not economically or technically feasible, or (B) in the case of a type specified in paragraphs (3), (5), and (7) of section 6292(a) of this title, that labeling in accordance with this section is not likely to assist consumers in purchasing decisions. Any such determination shall be published in the Federal Register, together with the reasons therefor. This paragraph shall not apply to the prescription of a labeling rule with respect to covered products of a type specified in paragraph (19) of section 6292(a) of this title.

(c) Content of label

(1) Subject to paragraph (6), a rule prescribed under this section shall require that each covered product in the type or class of covered products to which the rule applies bear a label which discloses—

(A) the estimated annual operating cost of such product (determined in accordance with test procedures prescribed under section 6293 of this title), except that if—

(i) the Secretary determines that disclosure of estimated annual operating cost is not technologically feasible, or

(ii) the Commission determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible,

the Commission shall require disclosure of a different useful measure of energy consumption (determined in accordance with test procedures prescribed under section 6293 of this title); and

(B) information respecting the range of estimated annual operating costs for covered products to which the rule applies; except that if the Commission requires disclosure under subparagraph (A) of a measure of energy consumption different from estimated annual operating cost, then the label shall disclose the range of such measure of energy consumption of covered products to which such rule applies.

(2) A rule under this section shall include the following:

(A) A description of the type or class of covered products to which such rule applies.

(B) Subject to paragraph (6), information respecting the range of estimated annual operating costs or other useful measure of energy consumption (determined in such manner as the rule may prescribe) for such type or class of covered products.

(C) A description of the test procedures under section 6293 of this title used in determining the estimated annual operating costs or other measure of energy consumption of the type or class of covered products.

(D) A prototype label and directions for displaying such label.

(3) A rule under this section shall require that the label be displayed in a manner that the Commission determines is likely to assist con-

sumers in making purchasing decisions and is appropriate to carry out this part. The Commission may permit a tag to be used in lieu of a label in any case in which the Commission finds that a tag will carry out the purposes for which the label was intended.

(4) A rule under this section applicable to a covered product may require disclosure, in any printed matter displayed or distributed at the point of sale of such product, of any information which may be required under this section to be disclosed on the label of such product. Requirements under this paragraph shall not apply to any broadcast advertisement or any advertisement in any newspaper, magazine, or other periodical.

(5) The Commission may require that a manufacturer of a covered product to which a rule under this section applies—

(A) include on the label,

(B) separately attach to the product, or

(C) ship with the product,

additional information relating to energy consumption, including instructions for the maintenance, use, or repair of the covered product, if the Commission determines that such additional information would assist consumers in making purchasing decisions or in using such product, and that such requirement would not be unduly burdensome to manufacturers.

(6) The Commission may delay the effective date of the requirement specified in paragraph (1)(B) of this subsection applicable to a type or class of covered product, insofar as it requires the disclosure on the label of information respecting range of a measure of energy consumption, for not more than 12 months after the date on which the rule under this section is first applicable to such type or class, if the Commission determines that such information will not be available within an adequate period of time before such date.

(7) Paragraphs (1), (2), (3), (5), and (6) of this subsection shall not apply to the covered product specified in paragraphs (13), (14), (15), (16), (17), and (18) of section 6292(a) of this title.

(8) If a manufacturer of a covered product specified in paragraph (15) or (17) of section 6292(a) of this title elects to provide a label for such covered product conveying the estimated annual operating cost of such product or the range of estimated annual operating costs for the type or class of such product—

(A) such estimated cost or range of costs shall be determined in accordance with test procedures prescribed under section 6293 of this title;

(B) the format of such label shall be in accordance with a format prescribed by the Commission; and

(C) such label shall be displayed in a manner, prescribed by the Commission, to be likely to assist consumers in making purchasing decisions and appropriate to carry out the purposes of this chapter.

(d) Effective date

A rule under this section (or an amendment thereto) shall not apply to any covered product the manufacture of which was completed prior to the effective date of such rule or amendment, as the case may be.

(e) Study of certain products

The Secretary, in consultation with the Commission, shall study consumer products for which labeling rules under this section have not been proposed, in order to determine (1) the aggregate energy consumption of such products, and (2) whether the imposition of labeling requirements under this section would be feasible and useful to consumers in making purchasing decisions. The Secretary shall include the results of such study in the annual report under section 6308 of this title.

(f) Consultation

The Secretary and the Commission shall consult with each other on a continuing basis as may be necessary or appropriate to carry out their respective responsibilities under this part. Before the Commission makes any determination under subsection (a)(1) of this section, it shall obtain the views of the Secretary and shall take such views into account in making such determination.

(g) Other authority of the Commission

Until such time as labeling rules under this section take effect with respect to a type or class of covered product, this section shall not affect any authority of the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] to require labeling with respect to energy consumption of such type or class of covered product.

(Pub. L. 94–163, title III, § 324, Dec. 22, 1975, 89 Stat. 920; Pub. L. 95–619, title IV, § 425(b), (c), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3265, 3288; Pub. L. 100–12, § 11(a)(1), (b)(2), Mar. 17, 1987, 101 Stat. 124, 125; Pub. L. 100–357, § 2(d), June 28, 1988, 102 Stat. 672; Pub. L. 102–486, title I, § 123(e), Oct. 24, 1992, 106 Stat. 2822; Pub. L. 105–388, § 5(a)(4), Nov. 13, 1998, 112 Stat. 3478; Pub. L. 109–58, title I, § 137, Aug. 8, 2005, 119 Stat. 645.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2)(D)(ii), (E)(ii) and (c)(8)(C), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (g), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

AMENDMENTS

2005—Subsec. (a)(2)(F), (G). Pub. L. 109–58, § 137(a), added subpars. (F) and (G).

Subsec. (a)(5). Pub. L. 109–58, § 137(b), added par. (5).

1998—Subsec. (a)(2)(C)(ii). Pub. L. 105–388 substituted ''section 6295(i)'' for ''section 6295(j)''.

1992—Subsec. (a)(2)(C) to (E). Pub. L. 102–486, § 123(e)(1), added subpars. (C) to (E).

Subsec. (a)(3). Pub. L. 102–486, § 123(e)(2), substituted ''(19)'' for ''(14)''.

Subsec. (b)(1)(B). Pub. L. 102–486, § 123(e)(3), substituted ''(13), and paragraphs (15) through (19)'' for ''(14)''.

Subsec. (b)(3), (5). Pub. L. 102–486, § 123(e)(4), substituted ''(19)'' for ''(14)''.

Subsec. (c)(7). Pub. L. 102–486, § 123(e)(5)(A), substituted ''paragraphs (13), (14), (15), (16), (17), and (18) of section 6292(a)'' for ''paragraph (13) of section 6292''.

Subsec. (c)(8). Pub. L. 102–486, § 123(e)(5)(B), added par. (8).

1988—Subsec. (a)(2). Pub. L. 100–357, § 2(d)(1), designated existing provision as subpar. (A) and added subpar. (B).

Subsecs. (a)(3), (b)(1)(B), (3), (5). Pub. L. 100–357, § 2(d)(2), substituted ''(14)'' for ''(13)''.

Subsec. (c)(7). Pub. L. 100–357, § 2(d)(3), added par. (7).

1987—Subsec. (a). Pub. L. 100–12, § 11(b)(2)(A), inserted heading.

Subsec. (a)(1). Pub. L. 100–12, § 11(a)(1)(A), substituted ''paragraphs (1), (2), (4), (6), and (8) through (12)'' for ''paragraphs (1) through (9)''.

Subsec. (a)(2). Pub. L. 100–12, § 11(a)(1)(B), substituted ''paragraphs (3), (5), and (7)'' for ''paragraphs (10) through (13)''.

Subsec. (a)(3). Pub. L. 100–12, § 11(a)(1)(C)(i), substituted ''paragraph (13)'' for ''paragraph (14)''.

Subsec. (a)(3)(A). Pub. L. 100–12, § 11(a)(1)(C)(ii), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the Commission or the Secretary has made a determination with respect to such type (or class thereof) under section 6293(a)(5)(B) of this title,''.

Subsec. (a)(3)(B). Pub. L. 100–12, § 11(a)(1)(C)(iii), substituted ''section 6293(b)(1)(B)'' for ''section 6293(a)(5)''.

Subsec. (b). Pub. L. 100–12, § 11(a)(1)(D), inserted heading.

Subsec. (b)(1). Pub. L. 100–12, § 11(a)(1)(D), added par. (1) and struck out former par. (1) which read as follows: ''Not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through (14) of section 6292(a) of this title (or class thereof) is published under section 6293(a) of this title, the Commission shall publish a proposed labeling rule applicable to such type (or class thereof).''

Subsec. (b)(3). Pub. L. 100–12, § 11(a)(1)(E), substituted ''section 6293(b)'' for ''section 6293'' in two places, ''(12)'' for ''(13)'', and ''(13)'' for ''(14)''.

Subsec. (b)(5). Pub. L. 100–12, § 11(a)(1)(F), substituted ''(3), (5), and (7)'' for ''(10) through (13)'' and ''(13)'' for ''(14)''.

Subsec. (c). Pub. L. 100–12, § 11(b)(2)(B), inserted heading.

Subsec. (d). Pub. L. 100–12, § 11(b)(2)(C), inserted heading.

Subsec. (e). Pub. L. 100–12, § 11(b)(2)(D), inserted heading.

Subsec. (f). Pub. L. 100–12, § 11(b)(2)(E), inserted heading.

Pub. L. 100–12, § 11(a)(1)(G), struck out ''or (2)'' after ''subsection (a)(1)''.

Subsec. (g). Pub. L. 100–12, § 11(b)(2)(F), inserted heading.

1978—Subsec. (a)(1), (2). Pub. L. 95–619, § 425(b), struck out labeling rule exception where Administrator had determined under section 6293(a)(6) of this title that test procedures could not be developed pursuant to section 6293(b) of this title.

Subsec. (a)(3). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, in cls. (A) and (B).

Subsec. (c)(1)(A)(i). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator''.

Subsec. (c)(5). Pub. L. 95–619, § 425(c), inserted ''including instructions for the maintenance, use, or repair of the covered product,'' after ''energy consumption''.

Subsecs. (e), (f). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'' wherever appearing.

§ 6294a. Energy Star program

(a) In general

There is established within the Department of Energy and the Environmental Protection Agency a voluntary program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of, or other forms of communication about, products and buildings that meet the highest energy conservation standards.

(b) Division of responsibilities

Responsibilities under the program shall be divided between the Department of Energy and the Environmental Protection Agency in accordance with the terms of applicable agreements between those agencies.

(c) Duties

The Administrator and the Secretary shall—

(1) promote Energy Star compliant technologies as the preferred technologies in the marketplace for—

(A) achieving energy efficiency; and

(B) reducing pollution;

(2) work to enhance public awareness of the Energy Star label, including by providing special outreach to small businesses;

(3) preserve the integrity of the Energy Star label;

(4) regularly update Energy Star product criteria for product categories;

(5) solicit comments from interested parties prior to establishing or revising an Energy Star product category, specification, or criterion (or prior to effective dates for any such product category, specification, or criterion);

(6) on adoption of a new or revised product category, specification, or criterion, provide reasonable notice to interested parties of any changes (including effective dates) in product categories, specifications, or criteria, along with—

(A) an explanation of the changes; and

(B) as appropriate, responses to comments submitted by interested parties; and

(7) provide appropriate lead time (which shall be 270 days, unless the Agency or Department specifies otherwise) prior to the applicable effective date for a new or a significant revision to a product category, specification, or criterion, taking into account the timing requirements of the manufacturing, product marketing, and distribution process for the specific product addressed.

(d) Deadlines

The Secretary shall establish new qualifying levels—

(1) not later than January 1, 2006, for clothes washers and dishwashers, effective beginning January 1, 2007; and

(2) not later than January 1, 2008, for clothes washers, effective beginning January 1, 2010.

(Pub. L. 94–163, title III, § 324A, as added Pub. L. 109–58, title I, § 131(a), Aug. 8, 2005, 119 Stat. 620.)

§ 6295. Energy conservation standards

(a) Purposes

The purposes of this section are to—

(1) provide Federal energy conservation standards applicable to covered products; and

(2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.

(b) Standards for refrigerators, refrigerator-freezers, and freezers

(1) The following is the maximum energy use allowed in kilowatt hours per year for the following products (other than those described in paragraph (2)) manufactured on or after January 1, 1990:

	Energy Standards Equations
Refrigerators and Refrigerator-Freezers with manual defrost	16.3 AV+316
Refrigerator-Freezers—partial automatic defrost	21.8 AV+429
Refrigerator-Freezers—automatic defrost with:	
Top mounted freezer without ice	23.5 AV+471
Side mounted freezer without ice	27.7 AV+488
Bottom mounted freezer without ice	27.7 AV+488
Top mounted freezer with through the door ice service	26.4 AV+535
Side mounted freezer with through the door ice	30.9 AV+547
Upright Freezers with:	
Manual defrost	10.9 AV+422
Automatic defrost	16.0 AV+623
Chest Freezers and all other freezers	14.8 AV+223

(2) The standards described in paragraph (1) do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

(3)(A)(i) The Secretary shall publish a proposed rule, no later than July 1, 1988, to determine if the standards established by paragraph (1) should be amended. The Secretary shall publish a final rule no later than July 1, 1989, which shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1993. If such a final rule is not published before January 1, 1990, any amendment of such standards shall apply to products manufactured on or after January 1, 1995. Nothing in this subsection provides any justification or defense for a failure by the Secretary to comply with the nondiscretionary duty to publish final rules by the dates stated in this paragraph.

(ii)(I) If the Secretary does not publish a final rule before January 1, 1990, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, the regulations which established standards for such products and were promulgated by the California Energy Commission on December 14, 1984, to be effective January 1, 1992 (or any amendments to such standards that are not more stringent than the standards in the original regulations), shall apply in California to such products, effective beginning January 1, 1993, and shall not be preempted after such effective date by any energy conservation standard established in this section or prescribed, on or after January 1, 1990, under this section.

(II) If the Secretary does not publish a final rule before January 1, 1992, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, State regulations which apply to such products manufactured on or after January 1, 1995, shall apply to such products until the effective date of a rule issued under this section with respect to such products.

(B) After the publication of a final rule under subparagraph (A), the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for the products described in paragraph (1).

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which the previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(c) Standards for room air conditioners

(1) The energy efficiency ratio of room air conditioners shall be not less than the following for products manufactured on or after January 1, 1990:

Product Class:	Ratio
Without Reverse Cycle and With Louvered Sides:	
Less than 6,000 Btu	8.0
6,000 to 7,999 Btu	8.5
8,000 to 13,999 Btu	9.0
14,000 to 19,999 Btu	8.8
20,000 and more Btu	8.2
Without Reverse Cycle and Without Louvered Sides:	
Less than 6,000 Btu	8.0
6,000 to 7,999 Btu	8.5
8,000 to 13,999 Btu	8.5
14,000 to 19,999 Btu	8.5
20,000 and more Btu	8.2
With Reverse Cycle and With Louvered Sides	8.5
With Reverse Cycle, Without Louvered Sides	8.0

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for room air conditioners.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(d) Standards for central air conditioners and heat pumps

(1) The seasonal energy efficiency ratio of central air conditioners and central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 10.0 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 9.7 for products manufactured on or after January 1, 1993.

(2) The heating seasonal performance factor of central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 6.8 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 6.6 for products manufactured on or after January 1, 1993.

(3)(A) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1999. The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (2) shall be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 2002.

(B) The Secretary shall publish a final rule after January 1, 1994, and no later than January 1, 2001, to determine whether the standards in effect for central air conditioners and central air conditioning heat pumps should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2006.

(e) Standards for water heaters; pool heaters; direct heating equipment

(1) The energy factor of water heaters shall be not less than the following for products manufactured on or after January 1, 1990:

(A) Gas Water Heater:	.62 − (.0019 x Rated Storage Volume in gallons)
(B) Oil Water Heater:	.59 − (.0019 x Rated Storage Volume in gallons)
(C) Electric Water Heater:	.95 − (.00132 x Rated Storage Volume in gallons)

(2) The thermal efficiency of pool heaters manufactured on or after January 1, 1990, shall not be less than 78 percent.

(3) The efficiencies of gas direct heating equipment manufactured on or after January 1, 1990, shall be not less than the following:

Wall	
Fan type	
Up to 42,000 Btu/hour	73% AFUE
Over 42,000 Btu/hour	74% AFUE
Gravity type	
Up to 10,000 Btu/hour	59% AFUE
Over 10,000 Btu/hour up to 12,000 Btu/hour	60% AFUE
Over 12,000 Btu/hour up to 15,000 Btu/hour	61% AFUE
Over 15,000 Btu/hour up to 19,000 Btu/hour	62% AFUE
Over 19,000 Btu/hour up to 27,000 Btu/hour	63% AFUE
Over 27,000 Btu/hour up to 46,000 Btu/hour	64% AFUE
Over 46,000 Btu/hour	65% AFUE
Floor	
Up to 37,000 Btu/hour	56% AFUE
Over 37,000 Btu/hour	57% AFUE
Room	
Up to 18,000 Btu/hour	57% AFUE
Over 18,000 Btu/hour up to 20,000 Btu/hour	58% AFUE
Over 20,000 Btu/hour up to 27,000 Btu/hour	63% AFUE
Over 27,000 Btu/hour up to 46,000 Btu/hour	64% AFUE
Over 46,000 Btu/hour	65% AFUE

(4)(A) The Secretary shall publish final rules no later than January 1, 1992, to determine whether the standards established by paragraph (1), (2), or (3) for water heaters, pool heaters, and direct heating equipment should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 2000, to determine whether standards in effect for such products should be amended. Such rule shall provide that any such amendment shall apply to products manufactured on or after January 1, 2005.

(f) Standards for furnaces

(1) Furnaces (other than furnaces designed solely for installation in mobile homes) manufactured on or after January 1, 1992, shall have an annual fuel utilization efficiency of not less than 78 percent, except that—

(A) boilers (other than gas steam boilers) shall have an annual fuel utilization efficiency of not less than 80 percent and gas steam boilers shall have an annual fuel utilization efficiency of not less than 75 percent; and

(B) the Secretary shall prescribe a final rule not later than January 1, 1989, establishing an energy conservation standard—

(i) which is for furnaces (other than furnaces designed solely for installation in mobile homes) having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992;

(ii) which provides that the annual fuel utilization efficiency of such furnaces shall be a specific percent which is not less than 71 percent and not more than 78 percent; and

(iii) which the Secretary determines is not likely to result in a significant shift from gas heating to electric resistance heating with respect to either residential construction or furnace replacement.

(2) Furnaces which are designed solely for installation in mobile homes and which are manufactured on or after September 1, 1990, shall have an annual fuel utilization efficiency of not less than 75 percent.

(3)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine whether the standards established by paragraph (2) for mobile home furnaces should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1994.

(B) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether

the standards established by this subsection for furnaces (including mobile home furnaces) should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2002.

(C) After January 1, 1997, and before January 1, 2007, the Secretary shall publish a final rule to determine whether standards in effect for such products should be amended. Such rule shall contain such amendment, if any, and provide that any amendment shall apply to products manufactured on or after January 1, 2012.

(D) Notwithstanding any other provision of this chapter, if the requirements of subsection (*o*) of this section are met, the Secretary may consider and prescribe energy conservation standards or energy use standards for electricity used for purposes of circulating air through duct work.

(g) Standards for dishwashers; clothes washers; clothes dryers; fluorescent lamp ballasts

(1) Dishwashers manufactured on or after January 1, 1988, shall be equipped with an option to dry without heat.

(2) All rinse cycles of clothes washers shall include an unheated water option, but may have a heated water rinse option, for products manufactured on or after January 1, 1988.

(3) Gas clothes dryers shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1988.

(4)(A) The Secretary shall publish final rules no later than January 1, 1990, to determine if the standards established under this subsection for products described in paragraphs (1), (2), and (3) should be amended. Such rules shall provide that any amendment shall apply to products the manufacture of which is completed on or after January 1, 1993.

(B) After January 1, 1990, the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for such products.

(C) Any such amendment shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standard, the earliest date by which a previous amendment could have been in effect;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such standard.

(5) Except as provided in paragraph (6), each fluorescent lamp ballast—

(A)(i) manufactured on or after January 1, 1990;

(ii) sold by the manufacturer on or after April 1, 1990; or

(iii) incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991; and

(B) designed—

(i) to operate at nominal input voltages of 120 or 277 volts;

(ii) to operate with an input current frequency of 60 Hertz; and

(iii) for use in connection with an F40T12, F96T12, or F96T12HO lamps;

shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Application for Operation of	Ballast Input Voltage	Total Nominal Lamp Watts	Ballast Efficacy Factor
one F40T12 lamp	120	40	1.805
	277	40	1.805
two F40T12 lamps	120	80	1.060
	277	80	1.050
two F96T12 lamps	120	150	0.570
	277	150	0.570
two F96T12HO lamps	120	220	0.390
	277	220	0.390

(6) The standards described in paragraph (5) do not apply to (A) a ballast which is designed for dimming or for use in ambient temperatures of 0° F or less, or (B) a ballast which has a power factor of less than 0.90 and is designed and labeled for use only in residential building applications.

(7)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (5) should be amended, including whether such standards should be amended so that they would be applicable to ballasts described in paragraph (6) and other fluorescent lamp ballasts. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for fluorescent lamp ballasts, including whether such standards should be amended so that they would be applicable to additional fluorescent lamp ballasts.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(8)(A) Each fluorescent lamp ballast (other than replacement ballasts or ballasts described in subparagraph (C))—

(i)(I) manufactured on or after July 1, 2009;

(II) sold by the manufacturer on or after October 1, 2009; or

(III) incorporated into a luminaire by a luminaire manufacturer on or after July 1, 2010; and

(ii) designed—

(I) to operate at nominal input voltages of 120 or 277 volts;

(II) to operate with an input current frequency of 60 Hertz; and

(III) for use in connection with F34T12 lamps, F96T12/ES lamps, or F96T12HO/ES lamps;

shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor of not less than the following:

Application for operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F34T12 lamp	120/277	34	2.61
Two F34T12 lamps	120/277	68	1.35
Two F96T12/ES lamps	120/277	120	0.77
Two F96T12HO/ES lamps	120/277	190	0.42.

(B) The standards described in subparagraph (A) shall apply to all ballasts covered by subparagraph (A)(ii) that are manufactured on or after July 1, 2010, or sold by the manufacturer on or after October 1, 2010.

(C) The standards described in subparagraph (A) do not apply to—

(i) a ballast that is designed for dimming to 50 percent or less of the maximum output of the ballast;

(ii) a ballast that is designed for use with 2 F96T12HO lamps at ambient temperatures of 20°F or less and for use in an outdoor sign; or

(iii) a ballast that has a power factor of less than 0.90 and is designed and labeled for use only in residential applications.

(h) Standards for kitchen ranges and ovens

(1) Gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1990.

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established for kitchen ranges and ovens in this subsection should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 1997, to determine whether standards in effect for such products should be amended. Such rule shall apply to products manufactured on or after January 1, 2000.

(i) General service fluorescent lamps and incandescent reflector lamps

(1)(A) Each of the following general service fluorescent lamps and incandescent reflector lamps manufactured after the effective date specified in the tables listed in this paragraph shall meet or exceed the following lamp efficacy and CRI standards:

FLUORESCENT LAMPS

Lamp Type	Nominal Lamp Wattage	Minimum CRI	Minimum Average Lamp Efficacy (LPW)	Effective Date (Months)
4-foot medium bi-pin	>35 W	69	75.0	36
	≤35 W	45	75.0	36
2-foot U-shaped	>35 W	69	68.0	36
	≤35 W	45	64.0	36
8-foot slimline	65 W	69	80.0	18
	≤65 W	45	80.0	18
8-foot high output	>100 W	69	80.0	18
	≤100 W	45	80.0	18

INCANDESCENT REFLECTOR LAMPS

Nominal Lamp Wattage	Minimum Average Lamp Efficacy (LPW)	Effective Date (Months)
40–50	10.5	36
51–66	11.0	36
67–85	12.5	36
86–115	14.0	36
116–155	14.5	36
156–205	15.0	36

(B) For the purposes of the tables set forth in subparagraph (A), the term ''effective date'' means the last day of the month set forth in the table which follows October 24, 1992.

(2) Notwithstanding section 6302(a)(5) of this title and section 6302(b) of this title, it shall not be unlawful for a manufacturer to sell a lamp which is in compliance with the law at the time such lamp was manufactured.

(3) Not less than 36 months after October 24, 1992, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than the end of the 54-month period beginning on October 24, 1992, to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(4) Not less than eight years after October 24, 1992, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than nine years and six months after October 24, 1992, to determine if the standards in effect for fluorescent lamps and incandescent lamps should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(5) Not later than the end of the 24-month period beginning on the date labeling requirements under section 6294(a)(2)(C) of this title become effective, the Secretary shall initiate a rulemaking procedure to determine if the stand-

ards in effect for fluorescent lamps and incandescent lamps should be amended so that they would be applicable to additional general service fluorescent and general service incandescent lamps and shall publish, not later than 18 months after initiating such rulemaking, a final rule including such amended standards, if any. Such rule shall provide that the amendment shall apply to products manufactured after a date which is 36 months after the date such rule is published.

(6)(A) With respect to any lamp to which standards are applicable under this subsection or any lamp specified in section 6317 of this title, the Secretary shall inform any Federal entity proposing actions which would adversely impact the energy consumption or energy efficiency of such lamp of the energy conservation consequences of such action. It shall be the responsibility of such Federal entity to carefully consider the Secretary's comments.

(B) Notwithstanding subsection (n)(1) of this section, the Secretary shall not be prohibited from amending any standard, by rule, to permit increased energy use or to decrease the minimum required energy efficiency of any lamp to which standards are applicable under this subsection if such action is warranted as a result of other Federal action (including restrictions on materials or processes) which would have the effect of either increasing the energy use or decreasing the energy efficiency of such product.

(7) Not later than the date on which standards established pursuant to this subsection become effective, or, with respect to high-intensity discharge lamps covered under section 6317 of this title, the effective date of standards established pursuant to such section, each manufacturer of a product to which such standards are applicable shall file with the Secretary a laboratory report certifying compliance with the applicable standard for each lamp type. Such report shall include the lumen output and wattage consumption for each lamp type as an average of measurements taken over the preceding 12-month period. With respect to lamp types which are not manufactured during the 12-month period preceding the date such standards become effective, such report shall be filed with the Secretary not later than the date which is 12 months after the date manufacturing is commenced and shall include the lumen output and wattage consumption for each such lamp type as an average of measurements taken during such 12-month period.

(j) Standards for showerheads and faucets

(1) The maximum water use allowed for any showerhead manufactured after January 1, 1994, is 2.5 gallons per minute when measured at a flowing water pressure of 80 pounds per square inch. Any such showerhead shall also meet the requirements of ASME/ANSI A112.18.1M–1989, 7.4.3(a).

(2) The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 80 pounds per square inch, is as follows:

Lavatory faucets	2.5 gallons per minute
Lavatory replacement aerators	2.5 gallons per minute
Kitchen faucets	2.5 gallons per minute
Kitchen replacement aerators	2.5 gallons per minute
Metering faucets	0.25 gallons per cycle

(3)(A) If the maximum flow rate requirements or the design requirements of ASME/ANSI Standard A112.18.1M–1989 are amended to improve the efficiency of water use of any type or class of showerhead or faucet and are approved by ANSI, the Secretary shall, not later than 12 months after the date of such amendment, publish a final rule establishing an amended uniform national standard for that product at the level specified in the amended ASME/ANSI Standard A112.18.1M and providing that such standard shall apply to products manufactured after a date which is 12 months after the publication of such rule, unless the Secretary determines, by rule published in the Federal Register, that adoption of a uniform national standard at the level specified in such amended ASME/ANSI Standard A112.18.1M—

(i) is not technologically feasible and economically justified under subsection (*o*) of this section;

(ii) is not consistent with the maintenance of public health and safety; or

(iii) is not consistent with the purposes of this chapter.

(B)(i) As part of the rulemaking conducted under subparagraph (A), the Secretary shall also determine if adoption of a uniform national standard for any type or class of showerhead or faucet more stringent than such amended ASME/ANSI Standard A112.18.1M—

(I) would result in additional conservation of energy or water;

(II) would be technologically feasible and economically justified under subsection (*o*) of this section; and

(III) would be consistent with the maintenance of public health and safety.

(ii) If the Secretary makes an affirmative determination under clause (i), the final rule published under subparagraph (A) shall waive the provisions of section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead or faucet if such State regulation—

(I) is more stringent than amended ASME/ANSI Standard A112.18.1M for such type or class of showerhead or faucet and the standard in effect for such product on the day before the date on which a final rule is published under subparagraph (A); and

(II) is applicable to any sale or installation of all products in such type or class of showerhead or faucet.

(C) If, after any period of five consecutive years, the maximum flow rate requirements of the ASME/ANSI standard for showerheads are not amended to improve the efficiency of water use of such products, or after any such period such requirements for faucets are not amended to improve the efficiency of water use of such products, the Secretary shall, not later than six months after the end of such five-year period, publish a final rule waiving the provisions of

section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead or faucet if such State regulation—

(i) is more stringent than the standards in effect for such type of class of showerhead or faucet; and

(ii) is applicable to any sale or installation of all products in such type or class of showerhead or faucet.

(k) Standards for water closets and urinals

(1)(A) Except as provided in subparagraph (B), the maximum water use allowed in gallons per flush for any of the following water closets manufactured after January 1, 1994, is the following:

Gravity tank-type toilets	1.6 gpf.
Flushometer tank toilets	1.6 gpf.
Electromechanical hydraulic toilets	1.6 gpf.
Blowout toilets	3.5 gpf.

(B) The maximum water use allowed for any gravity tank-type white 2-piece toilet which bears an adhesive label conspicuous upon installation consisting of the words ''Commercial Use Only'' manufactured after January 1, 1994, and before January 1, 1997, is 3.5 gallons per flush.

(C) The maximum water use allowed for flushometer valve toilets, other than blowout toilets, manufactured after January 1, 1997, is 1.6 gallons per flush.

(2) The maximum water use allowed for any urinal manufactured after January 1, 1994, is 1.0 gallon per flush.

(3)(A) If the maximum flush volume requirements of ASME Standard A112.19.6–1990 are amended to improve the efficiency of water use of any low consumption water closet or low consumption urinal and are approved by ANSI, the Secretary shall, not later than 12 months after the date of such amendment, publish a final rule establishing an amended uniform national standard for that product at the level specified in amended ASME/ANSI Standard A112.19.6 and providing that such standard shall apply to products manufactured after a date which is one year after the publication of such rule, unless the Secretary determines, by rule published in the Federal Register, that adoption of a uniform national standard at the level specified in such amended ASME/ANSI Standard A112.19.6—

(i) is not technologically feasible and economically justified under subsection (*o*) of this section;

(ii) is not consistent with the maintenance of public health and safety; or

(iii) is not consistent with the purposes of this chapter.

(B)(i) As part of the rulemaking conducted under subparagraph (A), the Secretary shall also determine if adoption of a uniform national standard for any type or class of low consumption water closet or low consumption urinal more stringent than such amended ASME/ANSI Standard A112.19.6 for such product—

(I) would result in additional conservation of energy or water;

(II) would be technologically feasible and economically justified under subsection (*o*) of this section; and

(III) would be consistent with the maintenance of public health and safety.

(ii) If the Secretary makes an affirmative determination under clause (i), the final rule published under subparagraph (A) shall waive the provisions of section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of low consumption water closet or low consumption urinal if such State regulation—

(I) is more stringent than amended ASME/ANSI Standard A112.19.6 for such type or class of low consumption water closet or low consumption urinal and the standard in effect for such product on the day before the date on which a final rule is published under subparagraph (A); and

(II) is applicable to any sale or installation of all products in such type or class of low consumption water closet or low consumption urinal.

(C) If, after any period of five consecutive years, the maximum flush volume requirements of the ASME/ANSI standard for low consumption water closets are not amended to improve the efficiency of water use of such products, or after any such period such requirements for low consumption urinals are not amended to improve the efficiency of water use of such products, the Secretary shall, not later than six months after the end of such five-year period, publish a final rule waiving the provisions of section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of water closet or urinal if such State regulation—

(i) is more stringent than the standards in effect for such type or class of water closet or urinal; and

(ii) is applicable to any sale or installation of all products in such type or class of water closet or urinal.

(*l*) Standards for other covered products

(1) The Secretary may prescribe an energy conservation standard for any type (or class) of covered products of a type specified in paragraph (19) of section 6292(a) of this title if the requirements of subsections (*o*) and (p) of this section are met and the Secretary determines that—

(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-month period ending before such determination;

(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-month period;

(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(D) the application of a labeling rule under section 6294 of this title to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified.

(2) Any new or amended standard for covered products of a type specified in paragraph (19) of

section 6292(a) of this title shall not apply to products manufactured within five years after the publication of a final rule establishing such standard.

(3) The Secretary may, in accordance with subsections (*o*) and (p) of this section, prescribe an energy conservation standard for television sets. Any such standard may not become effective with respect to products manufactured before January 1, 1992.

(m) Further rulemaking

After issuance of the last final rules required under subsections (b) through (i) of this section, the Secretary may publish final rules to determine whether standards for a covered product should be amended. An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—

(A) the effective date of the previous amendment made pursuant to this part; or

(B) if the previous final rule published under this part did not amend the standard, the earliest date by which a previous amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment and furnaces) after publication of the final rule establishing a standard.

(n) Petition for amended standard

(1) With respect to each covered product described in paragraphs (1) through (11), and in paragraphs (13) and (14) of section 6292(a) of this title, any person may petition the Secretary to conduct a rulemaking to determine for a covered product if the standards contained either in the last final rule required under subsections (b) through (i) of this section or in a final rule published under this section should be amended.

(2) The Secretary shall grant a petition if he finds that it contains evidence which, assuming no other evidence were considered, provides an adequate basis for amending the standards under the following criteria—

(A) amended standards will result in significant conservation of energy;

(B) amended standards are technologically feasible; and

(C) amended standards are cost effective as described in subsection (*o*)(2)(B)(i)(II) of this section.

The grant of a petition by the Secretary under this subsection creates no presumption with respect to the Secretary's determination of any of the criteria in a rulemaking under this section.

(3) An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—

(A) the effective date of the previous amendment pursuant to this part; or

(B) if the previous final rule published under this part did not amend the standard, the earliest date by which a previous amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment and furnaces) after publication of the final rule establishing a standard.

(*o*) Criteria for prescribing new or amended standards

(1) The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product.

(2)(A) Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency, or, in the case of showerheads, faucets, water closets, or urinals, water efficiency, which the Secretary determines is technologically feasible and economically justified.

(B)(i) In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(III) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

(IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy and water conservation; and

(VII) other factors the Secretary considers relevant.

(ii) For purposes of clause (i)(V), the Attorney General shall make a determination of the impact, if any, of any lessening of competition likely to result from such standard and shall transmit such determination, not later than 60 days after the publication of a proposed rule prescribing or amending an energy conservation standard, in writing to the Secretary, together with an analysis of the nature and extent of

such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

(iii) If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy, and as applicable, water, savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

(3) The Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product if—

(A) for products other than dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens, a test procedure has not been prescribed pursuant to section 6293 of this title with respect to that type (or class) of product; or

(B) the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or, in the case of showerheads, faucets, water closets, or urinals, water, or that the establishment of such standard is not technologically feasible or economically justified.

For purposes of section 6297 of this title, a determination under subparagraph (B) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class).

(4) The Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes).

(5) The Secretary may set more than 1 energy conservation standard for products that serve more than 1 major function by setting 1 energy conservation standard for each major function.

(p) Procedure for prescribing new or amended standards

Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure:

(1) The Secretary—

(A) shall publish an advance notice of proposed rulemaking which specifies the type (or class) of covered products to which the rule may apply;

(B) shall invite interested persons to submit, within 60 days after the date of publication of such advance notice, written presentations of data, views, and arguments in response to such notice; and

(C) may identify proposed or amended standards that may be prescribed.

(2) A proposed rule which prescribes an amended or new energy conservation standard or prescribes no amendment or no new standard for a type (or class) of covered products shall be published in the Federal Register. In prescribing any such proposed rule with respect to a standard, the Secretary shall determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.

(3) After the publication of such proposed rulemaking, the Secretary shall, in accordance with section 6306 of this title, afford interested persons an opportunity, during a period of not less than 60 days, to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule, including—

(A) whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (*o*)(2) of this section) or will result in the effects described in subsection (*o*)(4) of this section;

(B) whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible;

(C) if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate; and

(D) whether such rule should prescribe a level of energy use or efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) that will be subject to such standard.

(4) A final rule prescribing an amended or new energy conservation standard or prescribing no amended or new standard for a type (or class) of covered products shall be published as soon as is practicable, but not less than 90 days, after publication of the proposed rule in the Federal Register.

(q) Special rule for certain types or classes of products

(1) A rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—

(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or

(B) have a capacity or other performance-related feature which other products within such

type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).

In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

(2) Any rule prescribing a higher or lower level of energy use or efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

(r) Inclusion in standards of test procedures and other requirements

Any new or amended energy conservation standard prescribed under this section shall include, where applicable, test procedures prescribed in accordance with section 6293 of this title and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency or maximum quantity of energy use specified in such standard.

(s) Determination of compliance with standards

Compliance with, and performance under, the energy conservation standards (except for design standards authorized by this part) established in, or prescribed under, this section shall be determined using the test procedures and corresponding compliance criteria prescribed under section 6293 of this title.

(t) Small manufacturer exemption

(1) Subject to paragraph (2), the Secretary may, on application of any manufacturer, exempt such manufacturer from all or part of the requirements of any energy conservation standard established in or prescribed under this section for any period not longer than the 24-month period beginning on the date such rule becomes effective, if the Secretary finds that the annual gross revenues of such manufacturer from all its operations (including the manufacture and sale of covered products) does not exceed $8,000,000 for the 12-month period preceding the date of the application. In making such finding with respect to any manufacturer, the Secretary shall take into account the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer.

(2) The Secretary may not exercise the authority granted under paragraph (1) with respect to any type (or class) of covered product subject to an energy conservation standard under this section unless the Secretary makes a finding, after obtaining the written views of the Attorney General, that a failure to allow an exemption under paragraph (1) would likely result in a lessening of competition.

(u) Battery charger and external power supply electric energy consumption

(1)(A) Not later than 18 months after August 8, 2005, the Secretary shall, after providing notice and an opportunity for comment, prescribe, by rule, definitions and test procedures for the power use of battery chargers and external power supplies.

(B) In establishing the test procedures under subparagraph (A), the Secretary shall—

(i) consider existing definitions and test procedures used for measuring energy consumption in standby mode and other modes; and

(ii) assess the current and projected future market for battery chargers and external power supplies.

(C) The assessment under subparagraph (B)(ii) shall include—

(i) estimates of the significance of potential energy savings from technical improvements to battery chargers and external power supplies; and

(ii) suggested product classes for energy conservation standards.

(D) Not later than 18 months after August 8, 2005, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for energy use for battery chargers and external power supplies.

(E)(i) Not later than 3 years after August 8, 2005, the Secretary shall issue a final rule that determines whether energy conservation standards shall be issued for battery chargers and external power supplies or classes of battery chargers and external power supplies.

(ii) For each product class, any energy conservation standards issued under clause (i) shall be set at the lowest level of energy use that—

(I) meets the criteria and procedures of subsections (*o*), (p), (q), (r), (s), and (t) of this section; and

(II) would result in significant overall annual energy savings, considering standby mode and other operating modes.

(2) In determining under section 6293 of this title whether test procedures and energy conservation standards under this section should be revised with respect to covered products that are major sources of standby mode energy consumption, the Secretary shall consider whether to incorporate standby mode into the test procedures and energy conservation standards, taking into account standby mode power consumption compared to overall product energy consumption.

(3) The Secretary shall not propose an energy conservation standard under this section, unless the Secretary has issued applicable test procedures for each product under section 6293 of this title.

(4) Any energy conservation standard issued under this subsection shall be applicable to products manufactured or imported beginning on the date that is 3 years after the date of issuance.

(5) The Secretary and the Administrator shall collaborate and develop programs (including programs under section 6294a of this title and other voluntary industry agreements or codes of conduct) that are designed to reduce standby mode energy use.

(v) Ceiling fans and refrigerated beverage vending machines

(1) Not later than 1 year after August 8, 2005, the Secretary shall prescribe, by rule, test procedures and energy conservation standards for ceiling fans and ceiling fan light kits. If the Secretary sets such standards, the Secretary shall consider exempting or setting different standards for certain product classes for which the primary standards are not technically feasible or economically justified, and establishing separate or exempted product classes for highly decorative fans for which air movement performance is a secondary design feature.

(2) Not later than 4 years after August 8, 2005, the Secretary shall prescribe, by rule, energy conservation standards for refrigerated bottle or canned beverage vending machines.

(3) In establishing energy conservation standards under this subsection, the Secretary shall use the criteria and procedures prescribed under subsections (*o*) and (p) of this section.

(4) Any energy conservation standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing the energy conservation standard.

(w) Illuminated exit signs

An illuminated exit sign manufactured on or after January 1, 2006, shall meet the version 2.0 Energy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency.

(x) Torchieres

A torchiere manufactured on or after January 1, 2006—

(1) shall consume not more than 190 watts of power; and

(2) shall not be capable of operating with lamps that total more than 190 watts.

(y) Low voltage dry-type distribution transformers

The efficiency of a low voltage dry-type distribution transformer manufactured on or after January 1, 2007, shall be the Class I Efficiency Levels for distribution transformers specified in table 4–2 of the ''Guide for Determining Energy Efficiency for Distribution Transformers'' published by the National Electrical Manufacturers Association (NEMA TP–1–2002).

(z) Traffic signal modules and pedestrian modules

Any traffic signal module or pedestrian module manufactured on or after January 1, 2006, shall—

(1) meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on August 8, 2005; and

(2) be installed with compatible, electrically connected signal control interface devices and conflict monitoring systems.

(aa) Unit heaters

A unit heater manufactured on or after the date that is 3 years after August 8, 2005, shall—

(1) be equipped with an intermittent ignition device; and

(2) have power venting or an automatic flue damper.

(bb) Medium base compact fluorescent lamps

(1) A bare lamp and covered lamp (no reflector) medium base compact fluorescent lamp manufactured on or after January 1, 2006, shall meet the following requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps, Energy Star Eligibility Criteria, Energy-Efficiency Specification issued by the Environmental Protection Agency and Department of Energy:

(A) Minimum initial efficacy.

(B) Lumen maintenance at 1000 hours.

(C) Lumen maintenance at 40 percent of rated life.

(D) Rapid cycle stress test.

(E) Lamp life.

(2) The Secretary may, by rule, establish requirements for color quality (CRI), power factor, operating frequency, and maximum allowable start time based on the requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps.

(3) The Secretary may, by rule—

(A) revise the requirements established under paragraph (2); or

(B) establish other requirements, after considering energy savings, cost effectiveness, and consumer satisfaction.

(cc) Dehumidifiers

(1) Dehumidifiers manufactured on or after October 1, 2007, shall have an Energy Factor that meets or exceeds the following values:

Product Capacity (pints/day):	Minimum Energy Factor (Liters/kWh)
25.00 or less	1.00
25.01 – 35.00	1.20
35.01 – 54.00	1.30
54.01 – 74.99	1.50
75.00 or more	2.25.

(2)(A) Not later than October 1, 2009, the Secretary shall publish a final rule in accordance with subsections (*o*) and (p) of this section, to determine whether the energy conservation standards established under paragraph (1) should be amended.

(B) The final rule published under subparagraph (A) shall—

(i) contain any amendment by the Secretary; and

(ii) provide that the amendment applies to products manufactured on or after October 1, 2012.

(C) If the Secretary does not publish an amendment that takes effect by October 1, 2012, dehumidifiers manufactured on or after October 1, 2012, shall have an Energy Factor that meets or exceeds the following values:

Product Capacity (pints/day):	Minimum Energy Factor (Liters/kWh)
25.00 or less	1.20

25.01 – 35.00	1.30
35.01 – 45.00	1.40
45.01 – 54.00	1.50
54.01 – 74.99	1.60
75.00 or more	2.5.

(dd) Commercial prerinse spray valves

Commercial prerinse spray valves manufactured on or after January 1, 2006, shall have a flow rate of not more than 1.6 gallons per minute.

(ee) Mercury vapor lamp ballasts

Mercury vapor lamp ballasts shall not be manufactured or imported after January 1, 2008.

(ff) Ceiling fans and ceiling fan light kits

(1)(A) All ceiling fans manufactured on or after January 1, 2007, shall have the following features:

(i) Fan speed controls separate from any lighting controls.

(ii) Adjustable speed controls (either more than 1 speed or variable speed).

(iii) Adjustable speed controls (either more than 1 speed or variable speed).

(iv) The capability of reversible fan action, except for—

(I) fans sold for industrial applications;

(II) outdoor applications; and

(III) cases in which safety standards would be violated by the use of the reversible mode.

(B) The Secretary may define the exceptions described in clause (iv) in greater detail, but shall not substantively expand the exceptions.

(2)(A) Ceiling fan light kits with medium screw base sockets manufactured on or after January 1, 2007, shall be packaged with screw-based lamps to fill all screw base sockets.

(B) The screw-based lamps required under subparagraph (A) shall—

(i) meet the Energy Star Program Requirements for Compact Fluorescent Lamps, version 3.0, issued by the Department of Energy; or

(ii) use light sources other than compact fluorescent lamps that have lumens per watt performance at least equivalent to comparably configured compact fluorescent lamps meeting the Energy Star Program Requirements described in clause (i).

(3) Ceiling fan light kits with pin-based sockets for fluorescent lamps manufactured on or after January 1, 2007 shall—

(A) meet the Energy Star Program Requirements for Residential Light Fixtures version 4.0 issued by the Environmental Protection Agency; and

(B) be packaged with lamps to fill all sockets.

(4)(A) By January 1, 2007, the Secretary shall consider and issue requirements for any ceiling fan lighting kits other than those covered in paragraphs (2) and (3), including candelabra screw base sockets.

(B) The requirements issued under subparagraph (A) shall be effective for products manufactured 2 years after the date of the final rule.

(C) If the Secretary fails to issue a final rule by the date specified in subparagraph (B), any type of ceiling fan lighting kit described in subparagraph (A) that is manufactured after January 1, 2009—

(i) shall not be capable of operating with lamps that total more than 190 watts; and

(ii) shall include the lamps described in clause (i) in the ceiling fan lighting kits.

(5)(A) After January 1, 2010, the Secretary may consider, and issue, if the requirements of subsections (*o*) and (p) of this section are met, amended energy efficiency standards for ceiling fan light kits.

(B) Any amended standards issued under subparagraph (A) shall apply to products manufactured not earlier than 2 years after the date of publication of the final rule establishing the amended standard.

(6)(A) Notwithstanding any other provision of this chapter, the Secretary may consider, and issue, if the requirements of subsections (*o*) and (p) of this section are met, energy efficiency or energy use standards for electricity used by ceiling fans to circulate air in a room.

(B) In issuing the standards under subparagraph (A), the Secretary shall consider—

(C)[1] exempting, or setting different standards for, certain product classes for which the primary standards are not technically feasible or economically justified; and

(D)[2] establishing separate exempted product classes for highly decorative fans for which air movement performance is a secondary design feature.

(7) Section 6297 of this title shall apply to the products covered in paragraphs (1) through (4) beginning on August 8, 2005, except that any State or local labeling requirement for ceiling fans prescribed or enacted before August 8, 2005, shall not be preempted until the labeling requirements applicable to ceiling fans established under section 6297 of this title take effect.

(gg) Application date

Section 6297 of this title applies—

(1) to products for which energy conservation standards are to be established under subsection (*l*), (u), or (v) of this section beginning on the date on which a final rule is issued by the Secretary, except that any State or local standard prescribed or enacted for the product before the date on which the final rule is issued shall not be preempted until the energy conservation standard established under subsection (*l*), (u), or (v) of this section for the product takes effect; and

(2) to products for which energy conservation standards are established under subsections (w) through (ff) of this section on August 8, 2005, except that any State or local standard prescribed or enacted before August 8, 2005, shall not be preempted until the energy conservation standards established under subsections (w) through (ff) of this section take effect.

(Pub. L. 94–163, title III, § 325, Dec. 22, 1975, 89 Stat. 923; Pub. L. 94–385, title I, § 161, Aug. 14, 1976, 90 Stat. 1140; Pub. L. 95–619, title IV, § 422,

[1] So in original. Probably should be (i).

[2] So in original. Probably should be (ii).

Nov. 9, 1978, 92 Stat. 3259; Pub. L. 100–12, § 5, Mar. 17, 1987, 101 Stat. 107; Pub. L. 100–357, § 2(e), June 28, 1988, 102 Stat. 673; Pub. L. 102–486, title I, § 123(f), Oct. 24, 1992, 106 Stat. 2824; Pub. L. 105–388, § 5(a)(5), Nov. 13, 1998, 112 Stat. 3478; Pub. L. 109–58, title I, § 135(c), Aug. 8, 2005, 119 Stat. 628.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (f)(3)(D), (j)(3)(A)(iii), (k)(3)(A)(iii), and (ff)(6)(A), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

2005—Subsec. (f)(3)(D). Pub. L. 109–58, § 135(c)(1), added subpar. (D).

Subsec. (g)(6)(B). Pub. L. 109–58, § 135(c)(2)(A), inserted ''and labeled'' after ''designed''.

Subsec. (g)(8). Pub. L. 109–58, § 135(c)(2)(B), added par. (8).

Subsec. (*o*)(5). Pub. L. 109–58, § 135(c)(3), added par. (5).

Subsecs. (u) to (gg). Pub. L. 109–58, § 135(c)(4), added subsecs. (u) to (gg).

1998—Subsec. (e)(4)(A). Pub. L. 105–388, § 5(a)(5)(A), substituted ''paragraph'' for ''paragraphs''.

Subsec. (g). Pub. L. 105–388, § 5(a)(5)(B), substituted ''ballasts'' for ''ballasts;'' in heading.

1992—Subsecs. (i) to (k). Pub. L. 102–486, § 123(f)(2), added subsecs. (i) to (k). Former subsecs. (i) to (k) redesignated (*l*) to (n), respectively.

Subsec. (*l*). Pub. L. 102–486, § 123(f)(1), redesignated subsec. (i) as (*l*). Former subsec. (*l*) redesignated (*o*).

Subsec. (*l*)(1). Pub. L. 102–486, § 123(f)(3), substituted ''paragraph (19)'' for ''paragraph (14)'' and ''subsections (*o*) and (p)'' for ''subsections (*l*) and (m)''.

Subsec. (*l*)(2). Pub. L. 102–486, § 123(f)(3)(A), substituted ''(19)'' for ''(14)''.

Subsec. (*l*)(3). Pub. L. 102–486, § 123(f)(3)(B), substituted ''(*o*) and (p)'' for ''(*l*) and (m)''.

Subsec. (m). Pub. L. 102–486, § 123(f)(1), (4), redesignated subsec. (j) as (m) and substituted ''(i)'' for ''(h)'' in introductory provisions. Former subsec. (m) redesignated (p).

Subsec. (n). Pub. L. 102–486, § 123(f)(1), redesignated subsec. (k) as (n). Former subsec. (n) redesignated (q).

Subsec. (n)(1). Pub. L. 102–486, § 123(f)(5)(A), substituted '', and in paragraphs (13) and (14)'' for ''and in paragraph (13)'' and ''subsections (b) through (i)'' for ''subsections (b) through (h)''.

Subsec. (n)(2)(C). Pub. L. 102–486, § 123(f)(5)(B), substituted ''subsection (*o*)(2)(B)(i)(II)'' for ''subsection (*l*)(2)(B)(i)(II)''.

Subsec. (n)(3)(B). Pub. L. 102–486, § 123(f)(5)(C), inserted ''general service fluorescent lamps, incandescent reflector lamps,'' after ''fluorescent lamp ballasts,''.

Subsec. (*o*). Pub. L. 102–486, § 123(f)(1), redesignated subsec. (*l*) as (*o*). Former subsec. (*o*) redesignated (r).

Subsec. (*o*)(1). Pub. L. 102–486, § 123(f)(6)(A), inserted ''or, in the case of showerheads, faucets, water closets, or urinals, water use,'' after ''energy use,''.

Subsec. (*o*)(2)(A). Pub. L. 102–486, § 123(f)(6)(B), inserted '', or, in the case of showerheads, faucets, water closets, or urinals, water efficiency,'' after ''energy efficiency''.

Subsec. (*o*)(2)(B)(i)(III). Pub. L. 102–486, § 123(f)(6)(C), inserted '', or as applicable, water,'' after ''energy''.

Subsec. (*o*)(2)(B)(i)(VI). Pub. L. 102–486, § 123(f)(6)(D), inserted ''and water'' after ''energy''.

Subsec. (*o*)(2)(B)(iii). Pub. L. 102–486, § 123(f)(6)(E), substituted ''energy, and as applicable, water, savings'' for ''energy savings''.

Subsec. (*o*)(3)(B). Pub. L. 102–486, § 123(f)(6)(F), inserted '', in the case of showerheads, faucets, water closets, or urinals, water, or'' after ''energy or''.

Subsec. (p). Pub. L. 102–486, § 123(f)(1), redesignated subsec. (m) as (p). Former subsec. (p) redesignated (s).

Subsec. (p)(3)(A). Pub. L. 102–486, § 123(f)(7), substituted ''subsection (*o*)(2)'' for ''subsection (*l*)(2)'' and ''subsection (*o*)(4)'' for ''subsection (*l*)(4)''.

Subsecs. (q) to (t). Pub. L. 102–486, § 123(f)(1), redesignated subsecs. (n) to (q) as (q) to (t), respectively.

1988—Subsec. (e)(1)(C). Pub. L. 100–357, § 2(e)(3), inserted ''Volume'' after ''Rated Storage''.

Subsec. (g). Pub. L. 100–357, § 2(e)(1)(A), inserted ''; fluorescent lamp ballasts;'' in heading.

Subsec. (g)(5) to (7). Pub. L. 100–357, § 2(e)(1)(B), added pars. (5) to (7).

Subsec. (i)(1), (2). Pub. L. 100–357, § 2(e)(2), substituted ''(14)'' for ''(13)''.

Subsec. (j)(B). Pub. L. 100–357, § 2(e)(4)(A), inserted ''fluorescent lamp ballasts,'' after ''clothes dryers,'' and substituted ''heating'' for ''hearing''.

Subsec. (k)(1). Pub. L. 100–357, § 2(e)(4)(B)(i), inserted ''and in paragraph (13)'' after ''(11)''.

Subsec. (k)(3)(B). Pub. L. 100–357, § 2(e)(4)(B)(ii), inserted ''fluorescent lamp ballasts,'' after ''clothes dryers,''.

1987—Pub. L. 100–12 amended section generally, revising and restating as subsecs. (a) to (q) provisions formerly contained in subsecs. (a) to (j).

1978—Subsec. (a). Pub. L. 95–619 substituted provisions authorizing Secretary to prescribe an energy efficiency standard for each type of covered product specified in section 6292(a)(1) to (13) of this title, authorizing such prescription for any type of covered product specified in section 6292(a)(14) of this title where certain conditions are found to exist, and requiring publication of a list of those types of covered products considered subject to prescribed standards in the Federal Register not later than two years after Nov. 9, 1978, for provisions requiring the Administrator, meaning the Administrator of the Federal Energy Administration, to direct the National Bureau of Standards to develop an energy efficiency improvement target for each type of covered product listed in section 6292(a)(1) to (10) of this title, requiring prescription of such a target by the Administrator not later than ninety days after Aug. 14, 1976, requiring such targets be designed to exceed by 1980 by at least twenty percent the aggregate energy efficiency of the covered products as manufactured in 1972, requiring similar energy efficiency targets be prescribed for covered products specified in section 6292(a)(11) to (13) of this title not later than one year after Aug. 14, 1976, authorizing the Administrator to modify periodically any established targets, requiring the manufacturers of any covered products to submit reports as requested by the Administrator to help in establishing and reaching such targets, authorizing the Administrator to commence proceedings in certain situations to prescribe initial or revised targets, specifying when improvements of energy efficiency are economically justified, and authorizing the Attorney General to determine any negative effects on competition so as to make certain improvements economically unjustified.

Subsec. (b). Pub. L. 95–619 substituted provisions specifying preconditions for prescription of a standard for a type or class of covered products for provisions specifying the procedure to be followed in prescribing energy efficiency standards.

Subsec. (c). Pub. L. 95–619 substituted provisions requiring energy efficiency standards for each type of covered products be designed to achieve the maximum improvement in energy efficiency which the Secretary determines feasible and justified and requiring such standards be phased in over a period not to exceed five years for provisions relating to the prescription of test procedures and the requirements necessary to meet minimum energy efficiency levels.

Subsec. (d). Pub. L. 95–619 substituted provisions relating to a determination by the Secretary of the economic justification of any particular energy efficiency standard and a determination by the Attorney General of the impact on competition of any proposed standard for provisions relating to labeling rules.

Subsecs. (e) to (j). Pub. L. 95–619 added subsecs. (e) to (j).

1976—Subsec. (a)(1)(A). Pub. L. 94–385, § 161(a), transferred authority to determine energy targets from the Administrator to the National Bureau of Standards and substituted 90 days after August 14, 1976, for 180 days after December 22, 1975, for the promulgation of rules by the Administrator.

Subsec. (a)(2). Pub. L. 94–385, § 161(b), transferred authority to determine energy targets from the Administrator to the National Bureau of Standards and substituted one year after August 14, 1976, for one year after December 22, 1975, for the promulgation of rules by the Administrator.

§ 6296. Requirements of manufacturers

(a) In general

Each manufacturer of a covered product to which a rule under section 6294 of this title applies shall provide a label which meets, and is displayed in accordance with, the requirements of such rule. If such manufacturer or any distributor, retailer, or private labeler of such product advertises such product in a catalog from which it may be purchased, such catalog shall contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission. The preceding sentence shall not require that a catalog contain information respecting a covered product if the distribution of such catalog commenced before the effective date of the labeling rule under section 6294 of this title applicable to such product.

(b) Notification

(1) Each manufacturer of a covered product to which a rule under section 6294 of this title applies shall notify the Secretary or the Commission—

(A) not later than 60 days after the date such rule takes effect, of the models in current production (and starting serial numbers of those models) to which such rule applies; and

(B) prior to commencement of production, of all models subsequently produced (and starting serial numbers of those models) to which such rule applies.

(2) If requested by the Secretary or Commission, the manufacturer of a covered product to which a rule under section 6294 of this title applies shall provide, within 30 days of the date of the request, the data from which the information included on the label and required by the rule was derived. Data shall be kept on file by the manufacturer for a period specified in the rule.

(3) When requested—

(A) by the Secretary for purposes of ascertaining whether a product subject to a standard established in or prescribed under section 6295 of this title is in compliance with that standard, or

(B) by the Commission for purposes of ascertaining whether the information set out on a label of a product, as required under section 6294 of this title, is accurate,

each manufacturer of such a product shall supply at his expense a reasonable number of such covered products to any laboratory designated by the Secretary or the Commission, as the case may be. Any reasonable charge levied by the laboratory for such testing shall be borne by the United States, if and to the extent provided in appropriation Acts.

(4) Each manufacturer of a covered product to which a rule under section 6294 of this title applies shall annually, at a time specified by the Commission, supply to the Commission relevant data respecting energy consumption or water use developed in accordance with the test procedures applicable to such product under section 6293 of this title.

(5) A rule under section 6293, 6294, or 6295 of this title may require the manufacturer or his agent to permit a representative designated by the Commission or the Secretary to observe any testing required by this part and inspect the results of such testing.

(c) Deadline

Each manufacturer shall use labels reflecting the range data required to be disclosed under section 6294(c)(1)(B) of this title after the expiration of 60 days following the date of publication of any revised table of ranges unless the rule under section 6294 of this title provides for a later date. The Commission may not require labels be changed to reflect revised tables of ranges more often than annually.

(d) Information requirements

(1) For purposes of carrying out this part, the Secretary may require, under this part or other provision of law administered by the Secretary, each manufacturer of a covered product to submit information or reports to the Secretary with respect to energy efficiency, energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use of such covered product and the economic impact of any proposed energy conservation standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy conservation standards for such product and to insure compliance with the requirements of this part. In making any determination under this paragraph, the Secretary shall consider existing public sources of information, including nationally recognized certification programs of trade associations.

(2) The Secretary shall exercise authority under this section in a manner designed to minimize unnecessary burdens on manufacturers of covered products.

(3) The provisions of section 796(d) of title 15 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as they apply with respect to energy information obtained under section 796 of title 15.

(Pub. L. 94–163, title III, § 326, Dec. 22, 1975, 89 Stat. 926; Pub. L. 95–619, title IV, § 425(d), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3265, 3288; Pub. L. 100–12, §§ 6, 11(a)(2), (b)(3), Mar. 17, 1987, 101 Stat. 117, 125; Pub. L. 102–486, title I, § 123(g), Oct. 24, 1992, 106 Stat. 2829.)

AMENDMENTS

1992—Subsec. (b)(4). Pub. L. 102–486, § 123(g)(1), inserted ''or water use'' after ''consumption''.

Subsec. (d)(1). Pub. L. 102–486, § 123(g)(2), substituted '', energy use, or, in the case of showerheads, faucets,

water closets, and urinals, water use'' for ''or energy use''.

1987—Subsec. (a). Pub. L. 100–12, § 11(b)(3)(A), inserted heading.

Subsec. (b). Pub. L. 100–12, § 11(b)(3)(B), inserted heading.

Subsec. (b)(3)(A). Pub. L. 100–12, § 11(a)(2), inserted ''established in or'' before ''prescribed under''.

Subsec. (c). Pub. L. 100–12, § 11(b)(3)(C), inserted heading.

Subsec. (d). Pub. L. 100–12, § 6, inserted ''Information requirements'' as heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of carrying out this part, the Secretary may require, under authority otherwise available to him under this part or other provisions of law administered by him, each manufacturer of covered products to submit such information or reports of any kind or nature directly to the Secretary with respect to energy efficiency of such covered products, and with respect to the economic impact of any proposed energy efficiency standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy efficiency standards for such products and to insure compliance with the requirements of this part. The provisions of section 796(d) of title 15 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as it applies with respect to energy information obtained under section 796 of title 15.''

1978—Subsec. (b)(1). Pub. L. 95–619, § 425(d)(2), inserted requirement that manufacturers of covered products give notice to the Secretary of models affected by rules promulgated under section 6294 of this title and expanded the notice requirement itself to include models manufactured more than sixty days after the date a particular rule takes effect.

Subsec. (b)(2). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

Subsec. (b)(3). Pub. L. 95–619, § 425(d)(3), authorized Secretary to request submission of covered products for purposes of ascertaining whether a particular product complies with standards under section 6295 of this title and also authorized Secretary to designate testing laboratories for the submitted products.

Subsec. (b)(5). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator''.

Subsec. (d). Pub. L. 95–619, § 425(d)(1), added subsec. (d).

§ 6297. Effect on other law

(a) Preemption of testing and labeling requirements

(1) Effective on March 17, 1987, this part supersedes any State regulation insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption or water use of any covered product if—

(A) such State regulation requires testing or the use of any measure of energy consumption, water use, or energy descriptor in any manner other than that provided under section 6293 of this title; or

(B) such State regulation requires disclosure of information with respect to the energy use, energy efficiency, or water use of any covered product other than information required under section 6294 of this title.

(2) For purposes of this section, the following definitions apply:

(A) The term ''State regulation'' means a law, regulation, or other requirement of a State or its political subdivisions. With respect to showerheads, faucets, water closets, and urinals, such term shall also mean a law, regulation, or other requirement of a river basin commission that has jurisdiction within a State.

(B) The term ''river basin commission'' means—

(i) a commission established by interstate compact to apportion, store, regulate, or otherwise manage or coordinate the management of the waters of a river basin; and

(ii) a commission established under section 1962b(a) of this title.

(b) General rule of preemption for energy conservation standards before Federal standard becomes effective for product

Effective on March 17, 1987, and ending on the effective date of an energy conservation standard established under section 6295 of this title for any covered product, no State regulation, or revision thereof, concerning the energy efficiency, energy use, or water use of the covered product shall be effective with respect to such covered product, unless the State regulation or revision—

(1) was prescribed or enacted before January 8, 1987, and is applicable to products before January 3, 1988, or in the case of any portion of any regulation which establishes requirements for fluorescent lamp ballasts, was prescribed or enacted before June 28, 1988, or in the case of any portion of any regulation which establishes requirements for fluorescent or incandescent lamps, flow rate requirements for showerheads or faucets, or water use requirements for water closets or urinals, was prescribed or enacted before October 24, 1992;

(2) is a State procurement regulation described in subsection (e) of this section;

(3) is a regulation described in subsection (f)(1) of this section or is prescribed or enacted in a building code for new construction described in subsection (f)(2) of this section;

(4) is a regulation prohibiting the use in pool heaters of a constant burning pilot, or is a regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable, or is a regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those to which section 6295(i) of this title is applicable, or is a regulation (or portion thereof) regulating showerheads or faucets other than those to which section 6295(j) of this title is applicable or regulating lavatory faucets (other than metering faucets) for installation in public places, or is a regulation (or portion thereof) regulating water closets or urinals other than those to which section 6295(k) of this title is applicable;

(5) is a regulation described in subsection (d)(5)(B) of this section for which a waiver has been granted under subsection (d) of this section;

(6) is a regulation effective on or after January 1, 1992, concerning the energy efficiency or energy use of television sets; or

(7) is a regulation (or portion thereof) concerning the water efficiency or water use of low consumption flushometer valve water closets.

(c) General rule of preemption for energy conservation standards when Federal standard becomes effective for product

Except as provided in section 6295(b)(3)(A)(ii) of this title, subparagraphs (B) and (C) of section 6295(j)(3) of this title, and subparagraphs (B) and (C) of section 6295(k)(3) of this title and effective on the effective date of an energy conservation standard established in or prescribed under section 6295 of this title for any covered product, no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product unless the regulation—

(1) is a regulation described in paragraph (2) or (4) of subsection (b) of this section, except that a State regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary under paragraph (7) of such section and is applicable to such ballasts, except that a State regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those for which section 6295(i) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary and is applicable to such lamps;

(2) is a regulation which has been granted a waiver under subsection (d) of this section;

(3) is in a building code for new construction described in subsection (f)(3) of this section;

(4) is a regulation concerning the water use of lavatory faucets adopted by the State of New York or the State of Georgia before October 24, 1992;

(5) is a regulation concerning the water use of lavatory or kitchen faucets adopted by the State of Rhode Island prior to October 24, 1992;

(6) is a regulation (or portion thereof) concerning the water efficiency or water use of gravity tank-type low consumption water closets for installation in public places, except that such a regulation shall be effective only until January 1, 1997; or

(7)(A) is a regulation concerning standards for commercial prerinse spray valves adopted by the California Energy Commission before January 1, 2005; or

(B) is an amendment to a regulation described in subparagraph (A) that was developed to align California regulations with changes in American Society for Testing and Materials Standard F2324;

(8)(A) is a regulation concerning standards for pedestrian modules adopted by the California Energy Commission before January 1, 2005; or

(B) is an amendment to a regulation described in subparagraph (A) that was developed to align California regulations to changes in the Institute for Transportation Engineers standards, entitled ''Performance Specification: Pedestrian Traffic Control Signal Indications''.

(d) Waiver of Federal preemption

(1)(A) Any State or river basin commission with a State regulation which provides for any energy conservation standard or other requirement with respect to energy use, energy efficiency, or water use for any type (or class) of covered product for which there is a Federal energy conservation standard under section 6295 of this title may file a petition with the Secretary requesting a rule that such State regulation become effective with respect to such covered product.

(B) Subject to paragraphs (2) through (5), the Secretary shall, within the period described in paragraph (2) and after consideration of the petition and the comments of interested persons, prescribe such rule if the Secretary finds (and publishes such finding) that the State or river basin commission has established by a preponderance of the evidence that such State regulation is needed to meet unusual and compelling State or local energy or water interests.

(C) For purposes of this subsection, the term ''unusual and compelling State or local energy or water interests'' means interests which—

(i) are substantially different in nature or magnitude than those prevailing in the United States generally; and

(ii) are such that the costs, benefits, burdens, and reliability of energy or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation.

The factors described in clause (ii) shall be evaluated within the context of the State's energy plan and forecast, and, with respect to a State regulation for which a petition has been submitted to the Secretary which provides for any energy conservation standard or requirement with respect to water use of a covered product, within the context of the water supply and groundwater management plan, water quality program, and comprehensive plan (if any) of the State or river basin commission for improving, developing, or conserving a waterway affected by water supply development.

(2) The Secretary shall give notice of any petition filed under paragraph (1)(A) and afford interested persons a reasonable opportunity to make written comments, including rebuttal comments, thereon. The Secretary shall, within the 6-month period beginning on the date on which any such petition is filed, deny such petition or prescribe the requested rule, except that the Secretary may publish a notice in the Federal Register extending such period to a date certain but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for delay. In the case of any denial of a petition under this subsection, the Secretary shall publish in the Federal Register notice of, and the reasons for, such denial.

(3) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that such State regulation will significantly burden manufacturing, marketing, dis-

tribution, sale, or servicing of the covered product on a national basis. In determining whether to make such finding, the Secretary shall evaluate all relevant factors, including—

(A) the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others;

(B) the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State;

(C) the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction—

(i) in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the United States; or

(ii) in the current or projected sales volume of the covered product type (or class) in the State and the United States; and

(D) the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have.

(4) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that the State regulation is likely to result in the unavailability in the State of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding, except that the failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(5) No final rule prescribed by the Secretary under this subsection may—

(A) permit any State regulation to become effective with respect to any covered product manufactured within three years after such rule is published in the Federal Register or within five years if the Secretary finds that such additional time is necessary due to the substantial burdens of retooling, redesign, or distribution needed to comply with the State regulation; or

(B) become effective with respect to a covered product manufactured before the earliest possible effective date specified in section 6295 of this title for the initial amendment of the energy conservation standard established in such section for the covered product; except that such rule may become effective before such date if the Secretary finds (and publishes such finding) that, in addition to the other requirements of this subsection the State has established, by a preponderance of the evidence, that—

(i) there exists within the State an energy emergency condition or, if the State regulation provides for an energy conservation standard or other requirement with respect to the water use of a covered product for which there is a Federal energy conservation standard under subsection (j) or (k) of section 6295 of this title, a water emergency condition, which—

(I) imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy or, in the case of a water emergency condition, water or wastewater treatment, to its residents at less than prohibitive costs; and

(II) cannot be substantially alleviated by the importation of energy or, in the case of a water emergency condition, by the importation of water, or by the use of interconnection agreements; and

(ii) the State regulation is necessary to alleviate substantially such condition.

(6) In any case in which a State is issued a rule under paragraph (1) with respect to a covered product and subsequently a Federal energy conservation standard concerning such product is amended pursuant to section 6295 of this title, any person subject to such State regulation may file a petition with the Secretary requesting the Secretary to withdraw the rule issued under paragraph (1) with respect to such product in such State. The Secretary shall consider such petition in accordance with the requirements of paragraphs (1), (3), and (4), except that the burden shall be on the petitioner to show by a preponderance of the evidence that the rule received by the State under paragraph (1) should be withdrawn as a result of the amendment to the Federal standard. If the Secretary determines that the petitioner has shown that the rule issued by the State should be so withdrawn, the Secretary shall withdraw it.

(e) Exception for certain State procurement standards

Any State regulation which sets forth procurement standards for a State (or political subdivision thereof) shall not be superseded by the provisions of this part if such standards are more stringent than the corresponding Federal energy conservation standards.

(f) Exception for certain building code requirements

(1) A regulation or other requirement enacted or prescribed before January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 6295 of this title for such covered product.

(2) A regulation or other requirement, or revision thereof, enacted or prescribed on or after January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under

section 6295 of this title for such covered product if the code does not require that the energy efficiency of such covered product exceed—

(A) the applicable minimum efficiency requirement in a national voluntary consensus standard; or

(B) the minimum energy efficiency level in a regulation or other requirement of the State meeting the requirements of subsection (b)(1) or (b)(5) of this section,

whichever is higher.

(3) Effective on the effective date of an energy conservation standard for a covered product established in or prescribed under section 6295 of this title, a regulation or other requirement contained in a State or local building code for new construction concerning the energy efficiency or energy use of such covered product is not superseded by this part if the code complies with all of the following requirements:

(A) The code permits a builder to meet an energy consumption or conservation objective for a building by selecting items whose combined energy efficiencies meet the objective.

(B) The code does not require that the covered product have an energy efficiency exceeding the applicable energy conservation standard established in or prescribed under section 6295 of this title, except that the required efficiency may exceed such standard up to the level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d) of this section.

(C) The credit to the energy consumption or conservation objective allowed by the code for installing covered products having energy efficiencies exceeding such energy conservation standard established in or prescribed under section 6295 of this title or the efficiency level required in a State regulation referred to in subparagraph (B) is on a one-for-one equivalent energy use or equivalent cost basis.

(D) If the code uses one or more baseline building designs against which all submitted building designs are to be evaluated and such baseline building designs contain a covered product subject to an energy conservation standard established in or prescribed under section 6295 of this title, the baseline building designs are based on the efficiency level for such covered product which meets but does not exceed such standard or the efficiency level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d) of this section.

(E) If the code sets forth one or more optional combinations of items which meet the energy consumption or conservation objective, for every combination which includes a covered product the efficiency of which exceeds either standard or level referred to in subparagraph (D), there also shall be at least one combination which includes such covered product the efficiency of which does not exceed such standard or level by more than 5 percent, except that at least one combination shall include such covered product the efficiency of which meets but does not exceed such standard.

(F) The energy consumption or conservation objective is specified in terms of an estimated total consumption of energy (which may be calculated from energy loss- or gain-based codes) utilizing an equivalent amount of energy (which may be specified in units of energy or its equivalent cost).

(G) The estimated energy use of any covered product permitted or required in the code, or used in calculating the objective, is determined using the applicable test procedures prescribed under section 6293 of this title, except that the State may permit the estimated energy use calculation to be adjusted to reflect the conditions of the areas where the code is being applied if such adjustment is based on the use of the applicable test procedures prescribed under section 6293 of this title or other technically accurate documented procedure.

(4)(A) Subject to subparagraph (B), a State or local government is not required to submit a petition to the Secretary in order to enforce or apply its building code or to establish that the code meets the conditions set forth in this subsection.

(B) If a building code requires the installation of covered products with efficiencies exceeding both the applicable Federal standard established in or prescribed under section 6295 of this title and the applicable standard of such State, if any, that has been granted a waiver under subsection (d) of this section, such requirement of the building code shall not be applicable unless the Secretary has granted a waiver for such requirement under subsection (d) of this section.

(g) No warranty

Any disclosure with respect to energy use, energy efficiency, or estimated annual operating cost which is required to be made under the provisions of this part shall not create an express or implied warranty under State or Federal law that such energy efficiency will be achieved or that such energy use or estimated annual operating cost will not be exceeded under conditions of actual use.

(Pub. L. 94–163, title III, § 327, Dec. 22, 1975, 89 Stat. 926; Pub. L. 95–619, title IV, § 424, Nov. 9, 1978, 92 Stat. 3263; Pub. L. 100–12, § 7, Mar. 17, 1987, 101 Stat. 117; Pub. L. 100–357, § 2(f), June 28, 1988, 102 Stat. 674; Pub. L. 102–486, title I, § 123(h), Oct. 24, 1992, 106 Stat. 2829; Pub. L. 109–58, title I, § 135(d), Aug. 8, 2005, 119 Stat. 634.)

AMENDMENTS

2005—Subsec. (c)(7), (8). Pub. L. 109–58 added pars. (7) and (8).

1992—Subsec. (a)(1). Pub. L. 102–486, § 123(h)(1)(A)–(C), in introductory provisions inserted ''or water use'' after ''energy consumption'', in par. (A) inserted '', water use,'' after ''energy consumption'', and in par. (B) substituted '', energy efficiency, or water use'' for ''or energy efficiency''.

Subsec. (a)(2). Pub. L. 102–486, § 123(h)(1)(D), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of this section, the term 'State regulation' means a law, regulation, or other requirement of a State or its political subdivisions.''

Subsec. (b). Pub. L. 102–486, § 123(h)(2)(A), substituted '', energy use, or water use of the covered product'' for ''or energy use of the covered product''.

Subsec. (b)(1). Pub. L. 102–486, § 123(h)(2)(B), inserted before semicolon at end '', or in the case of any portion

of any regulation which establishes requirements for fluorescent or incandescent lamps, flow rate requirements for showerheads or faucets, or water use requirements for water closets or urinals, was prescribed or enacted before October 24, 1992''.

Subsec. (b)(4). Pub. L. 102–486, § 123(h)(2)(C), inserted before semicolon at end '', or is a regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those to which section 6295(i) of this title is applicable, or is a regulation (or portion thereof) regulating showerheads or faucets other than those to which section 6295(j) of this title is applicable or regulating lavatory faucets (other than metering faucets) for installation in public places, or is a regulation (or portion thereof) regulating water closets or urinals other than those to which section 6295(k) of this title is applicable''.

Subsec. (b)(7). Pub. L. 102–486, § 123(h)(2)(D)–(F), added par. (7).

Subsec. (c). Pub. L. 102–486, § 123(h)(3)(A), inserted '', subparagraphs (B) and (C) of section 6295(j)(3) of this title, and subparagraphs (B) and (C) of section 6295(k)(3) of this title'' after ''section 6295(b)(3)(A)(ii) of this title'' and substituted '', energy use, or water use'' for ''or energy use'' of this title.

Subsec. (c)(1). Pub. L. 102–486, § 123(h)(3)(B) inserted before semicolon at end '', except that a State regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those for which section 6295(i) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary and is applicable to such lamps''.

Subsec. (c)(4) to (6). Pub. L. 102–486, § 123(h)(3)(C)–(E), added pars. (4) to (6).

Subsec. (d)(1)(A). Pub. L. 102–486, § 123(h)(4)(A), inserted ''or river basin commission'' after ''Any State'' and substituted '', energy efficiency, or water use'' for ''or energy efficiency''.

Subsec. (d)(1)(B). Pub. L. 102–486, § 123(h)(4)(B), substituted ''State or river basin commission has'' for ''State has'' and inserted ''or water'' after ''energy''.

Subsec. (d)(1)(C). Pub. L. 102–486, § 123(h)(4)(C), in introductory provisions and cl. (ii) inserted ''or water'' after ''energy'' wherever appearing and in closing provisions inserted before period at end '', and, with respect to a State regulation for which a petition has been submitted to the Secretary which provides for any energy conservation standard or requirement with respect to water use of a covered product, within the context of the water supply and groundwater management plan, water quality program, and comprehensive plan (if any) of the State or river basin commission for improving, developing, or conserving a waterway affected by water supply development''.

Subsec. (d)(5)(B)(i). Pub. L. 102–486, § 123(h)(5), added cl. (i) and struck out former cl. (i) which read as follows: ''an energy emergency condition exists within the State which—

''(I) imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy to its residents at less than prohibitive costs; and

''(II) cannot be substantially alleviated by the importation of energy or the use of interconnection agreements; and''.

1988—Subsec. (b)(1). Pub. L. 100–357, § 2(f)(1), inserted before semicolon '', or in the case of any portion of any regulation which establishes requirements for fluorescent lamp ballasts, was prescribed or enacted before June 28, 1988''.

Subsec. (b)(4). Pub. L. 100–357, § 2(f)(2), inserted before semicolon '', or is a regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable''.

Subsec. (c)(1). Pub. L. 100–357, § 2(f)(3), inserted before semicolon '', except that a State regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary under paragraph (7) of such section and is applicable to such ballasts''.

1987—Pub. L. 100–12 amended section generally, revising and restating as subsecs. (a) to (g) provisions formerly contained in subsecs. (a) to (e).

1978—Subsec. (a)(2). Pub. L. 95–619, § 424(b), substituted ''other requirement'' for ''similar requirement''.

Subsec. (b). Pub. L. 95–619, § 424(a), in par. (1) substituted provisions vesting power to prescribe rules superseding State energy efficiency regulations in the Secretary for provisions vesting such power in the Administrator of the Federal Energy Administration and provided that persons subject to such State regulations were to petition the Secretary for relief therefrom rather than the Administrator, in par. (2) inserted provisions authorizing the supersedure of any State regulation prescribed after Jan. 1, 1978 respecting energy use of any type of covered product and authorizing the filing of a petition by the State for exemption from any such supersedure, and struck out provision that a State regulation containing a more stringent energy efficiency standard than the corresponding Federal standard would not be superseded, and added pars. (3) to (5).

§ 6298. Rules

The Commission and the Secretary may each issue such rules as each deems necessary to carry out the provisions of this part.

(Pub. L. 94–163, title III, § 328, Dec. 22, 1975, 89 Stat. 928; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

§ 6299. Authority to obtain information

(a) In general

For purposes of carrying out this part, the Commission and the Secretary may each sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and may each administer oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpena served, upon any persons subject to this part, the Commission and the Secretary may each seek an order from the district court of the United States for any district in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey any such order is punishable by such court as a contempt thereof.

(b) Confidentiality

Any information submitted by any person to the Secretary or the Commission under this part shall not be considered energy information as defined by section 796(e)(1) of title 15 for purposes of any verification examination authorized to be conducted by the Comptroller General under section 6381 of this title.

(Pub. L. 94–163, title III, § 329, Dec. 22, 1975, 89 Stat. 928; Pub. L. 95–619, title VI, § 691(b)(2), Nov.

9, 1978, 92 Stat. 3288; Pub. L. 100–12, § 11(b)(4), Mar. 17, 1987, 101 Stat. 125.)

AMENDMENTS

1987—Pub. L. 100–12 inserted headings for subsecs. (a) and (b).

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

§ 6300. Exports

This part shall not apply to any covered product if (1) such covered product is manufactured, sold, or held for sale for export from the United States (or such product was imported for export), unless such product is in fact distributed in commerce for use in the United States, and (2) such covered product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered product is intended for export.

(Pub. L. 94–163, title III, § 330, Dec. 22, 1975, 89 Stat. 928.)

§ 6301. Imports

Any covered product offered for importation in violation of section 6302 of this title shall be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such covered product upon such terms and conditions (including the furnishing of a bond) as may appear to him appropriate to ensure that such covered product will not violate section 6302 of this title, or will be exported or abandoned to the United States. The Secretary of the Treasury shall prescribe rules under this section not later than 180 days after December 22, 1975.

(Pub. L. 94–163, title III, § 331, Dec. 22, 1975, 89 Stat. 928.)

§ 6302. Prohibited acts

(a) In general

It shall be unlawful—

(1) for any manufacturer or private labeler to distribute in commerce any new covered product to which a rule under section 6294 of this title applies, unless such covered product is labeled in accordance with such rule;

(2) for any manufacturer, distributor, retailer, or private labeler to remove from any new covered product or render illegible any label required to be provided with such product under a rule under section 6294 of this title;

(3) for any manufacturer to fail to permit access to, or copying of, records required to be supplied under this part, or fail to make reports or provide other information required to be supplied under this part;

(4) for any person to fail to comply with an applicable requirement of section 6296(a), (b)(2), (b)(3), or (b)(5) of this title; or

(5) for any manufacturer or private labeler to distribute in commerce any new covered product which is not in conformity with an applicable energy conservation standard established in or prescribed under this part.

(b) "New covered product" defined

For purposes of this section, the term ''new covered product'' means a covered product the title of which has not passed to a purchaser who buys such product for purposes other than (1) reselling such product, or (2) leasing such product for a period in excess of one year.

(Pub. L. 94–163, title III, § 332, Dec. 22, 1975, 89 Stat. 928; Pub. L. 100–12, § 11(a)(3), (b)(5), Mar. 17, 1987, 101 Stat. 125.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–12, § 11(b)(5)(A), inserted heading.

Subsec. (a)(5). Pub. L. 100–12, § 11(a)(3), substituted ''energy conservation standard established in or prescribed under'' for ''energy efficiency standard prescribed under''.

Subsec. (b). Pub. L. 100–12, § 11(b)(5)(B), inserted heading.

§ 6303. Enforcement

(a) In general

Except as provided in subsection (c) of this section, any person who knowingly violates any provision of section 6302 of this title shall be subject to a civil penalty of not more than $100 for each violation. Such penalties shall be assessed by the Commission, except that penalties for violations of section 6302(a)(3) of this title which relate to requirements prescribed by the Secretary, violations of section 6302(a)(4) of this title which relate to requests of the Secretary under section 6296(b)(2) of this title, or violations of section 6302(a)(5) of this title shall be assessed by the Secretary. Civil penalties assessed under this part may be compromised by the agency or officer authorized to assess the penalty, taking into account the nature and degree of the violation and the impact of the penalty upon a particular respondent. Each violation of paragraph (1), (2), or (5) of section 6302(a) of this title shall constitute a separate violation with respect to each covered product, and each day of violation of section 6302(a)(3) or (4) of this title shall constitute a separate violation.

(b) "Knowingly" defined

As used in subsection (a) of this section, the term ''knowingly'' means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

(c) Special rule

It shall be an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 45(a)(1) of title 15) for any person to violate section 6293(c) of this title, except to the extent that such violation is prohibited under the provisions of section 6302(a)(1) of this title, in which case such provisions shall apply.

(d) Procedure for assessing penalty

(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person no-

tice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28 or section 7192(c) of this title, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 7192(c) of this title, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this subsection.

(6) For purposes of applying the preceding provisions of this subsection in the case of the assessment of a penalty by the Commission for a violation of paragraphs (1) and (2) of section 6302 of this title, references in such provisions to ''Secretary'' and ''Department of Energy'' shall be considered to be references to the ''Commission''.

(Pub. L. 94–163, title III, § 333, Dec. 22, 1975, 89 Stat. 929; Pub. L. 95–619, title IV, §§ 423, 425(e), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3262, 3266, 3288; Pub. L. 100–12, § 11(b)(6), Mar. 17, 1987, 101 Stat. 125.)

AMENDMENTS

1987—Pub. L. 100–12 inserted headings for subsecs. (a) to (d).

1978—Subsec. (a). Pub. L. 95–619, §§ 425(e)(1), 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing, and ''subsection (c) of this section'' for ''subsection (b) of this section''.

Subsec. (c). Pub. L. 95–619, § 425(e)(2), substituted ''section 6293(c) of this title'' for ''section 6293(d)(2) of this title'' and inserted provision making an exception from the unfair or deceptive act or practice rule.

Subsec. (d). Pub. L. 95–619, § 423, added subsec. (d).

§ 6304. Injunctive enforcement

The United States district courts shall have jurisdiction to restrain (1) any violation of section 6302 of this title and (2) any person from distributing in commerce any covered product which does not comply with an applicable rule under section 6294 or 6295 of this title. Any such action shall be brought by the Commission, except that any such action to restrain any violation of section 6302(a)(3) of this title which relates to requirements prescribed by the Secretary, any violation of section 6302(a)(4) of this title which relates to requests of the Secretary under section 6296(b)(2) of this title, or any violation of section 6302(a)(5) of this title shall be brought by the Secretary. Any such action may be brought in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.

(Pub. L. 94–163, title III, § 334, Dec. 22, 1975, 89 Stat. 929; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

§ 6305. Citizen suits

(a) Civil actions; jurisdiction

Except as otherwise provided in subsection (b) of this section, any person may commence a civil action against—

(1) any manufacturer or private labeler who is alleged to be in violation of any provision of this part or any rule under this part;

(2) any Federal agency which has a responsibility under this part where there is an alleged failure of such agency to perform any act or duty under this part which is not discretionary; or

(3) the Secretary in any case in which there is an alleged failure of the Secretary to comply with a nondiscretionary duty to issue a proposed or final rule according to the schedules set forth in section 6295 of this title.

The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such provision or rule, or order such Federal agency to perform such act or duty, as the case may be. The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 6295 of this title, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary's compliance with future deadlines for the same covered product.

(b) Limitation

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the date on which the plaintiff has given notice of the violation (i) to the Secretary, (ii) to the Commission, and (iii) to any alleged violator of such provision or rule, or

(B) if the Commission has commenced and is diligently prosecuting a civil action to require compliance with such provision or rule, but, in any such action, any person may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to 60 days after the date on which the plaintiff has given notice of such action to the Secretary and Commission.

Notice under this subsection shall be given in such manner as the Commission shall prescribe by rule.

(c) Right to intervene

In such action under this section, the Secretary or the Commission (or both), if not a party, may intervene as a matter of right.

(d) Award of costs of litigation

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) Preservation of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this part or any rule thereunder, or to seek any other relief (including relief against the Secretary or the Commission).

(f) Compliance in good faith

For purposes of this section, if a manufacturer or private labeler complied in good faith with a rule under this part, then he shall not be deemed to have violated any provision of this part by reason of the alleged invalidity of such rule.

(Pub. L. 94–163, title III, § 335, Dec. 22, 1975, 89 Stat. 930; Pub. L. 95–619, title IV, § 425(f), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3288; Pub. L. 100–12, §§ 8, 11(b)(7), Mar. 17, 1987, 101 Stat. 122, 126.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–12, § 8, added par. (3) and inserted at end ''The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 6295 of this title, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary's compliance with future deadlines for the same covered product.''

Subsecs. (b) to (f). Pub. L. 100–12, § 11(b)(7), inserted headings for subsecs. (b) to (f).

1978—Subsec. (a). Pub. L. 95–619, § 425(f), struck out provision in par. (1) which excluded sections 6295 and 6302(a)(5) of this title and rules thereunder, struck out provision in par. (2) which excluded any act or duty under section 6295 or 6302(a)(5) of this title, and inserted provision giving district courts jurisdiction to order Federal agencies to perform particular acts or duties under this part.

Subsecs. (b), (c), (e). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

§ 6306. Administrative procedure and judicial review

(a) Procedure for prescription of rules

(1) In addition to the requirements of section 553 of title 5, rules prescribed under section 6293, 6294, 6295, 6297, or 6298 of this title shall afford interested persons an opportunity to present written and oral data, views, and arguments with respect to any proposed rule.

(2) In the case of a rule prescribed under section 6295 of this title, the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

(A) other interested persons who have made oral presentations; and

(B) employees of the United States who have made written or oral presentations with respect to disputed issues of material fact.

Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

(3) A transcript shall be kept of any oral presentations made under this subsection.

(b) Petition by persons adversely affected by rules; effect on other laws

(1) Any person who will be adversely affected by a rule prescribed under section 6293, 6294, or 6295 of this title may, at any time within 60 days after the date on which such rule is prescribed, file a petition with the United States court of appeals for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be transmitted by the clerk of the court to the agency which prescribed the rule. Such agency shall file in the court the written submissions to, and transcript of, the proceedings on which the rule was based, as provided in section 2112 of title 28.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. No rule under section 6293, 6294, or 6295 of this title may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.

(5) The procedures applicable under this part shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein); or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms by referring to this part and declaring that such provision supersedes, in whole or in part, the procedures of this part.

(c) Jurisdiction

Jurisdiction is vested in the Federal district courts of the United States over actions brought by—

(1) any adversely affected person to determine whether a State or local government is complying with the requirements of this part; and

(2) any person who files a petition under section 6295(n) of this title which is denied by the Secretary.

(Pub. L. 94–163, title III, § 336, Dec. 22, 1975, 89 Stat. 930; Pub. L. 95–619, title IV, §§ 425(g), 427, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3267, 3288; Pub. L. 100–12, § 9, Mar. 17, 1987, 101 Stat. 123; Pub. L. 105–388, § 5(a)(6), Nov. 13, 1998, 112 Stat. 3478.)

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105–388 substituted ''section 6295(n)'' for ''section 6295(k)''.

1987—Subsec. (a). Pub. L. 100–12 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Rules under sections 6293, 6294, 6295(a), 6297(b), or 6298 of this title shall be prescribed in accordance with section 553 of title 5, except that—

''(1) interested persons shall be afforded an opportunity to present written and oral data, views, and arguments with respect to any proposed rule, and

''(2) in the case of a rule under section 6295(a) of this title, the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

''(A) other interested persons who have made oral presentations under paragraph (1), and

''(B) employees of the United States who have made written or oral presentations,

with respect to disputed issues of material fact. Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

A transcript shall be kept of any oral presentations made under this subsection.''

Subsec. (b). Pub. L. 100–12 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) Any person who will be adversely affected by a rule prescribed under section 6293, 6294, or 6295 of this title when it is effective may, at any time prior to the sixtieth day after the date such rule is prescribed, file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the agency which prescribed the rule. Such agency thereupon shall file in the court the written submissions to, and transcript of, the proceedings on which the rule was based as provided in section 2112 of title 28.

''(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. No rule under section 6293, 6294, or 6295 of this title may be affirmed unless supported by substantial evidence.

''(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

''(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.''

Subsec. (c). Pub. L. 100–12 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) Titles IV and V of the Department of Energy Organization Act shall not apply with respect to the procedures under this part.

''(2) The procedures applicable under this part shall not—

''(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein), or

''(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this part, and declaring that such provision supersedes, in whole or in part, the procedures of this part.''

1978—Subsec. (a). Pub. L. 95–619, §§ 425(g)(1)–(3), 691(b)(2), struck out par. designation ''(1)'' before ''Rules'' and substituted reference to section ''6295(a)'' for ''6295(a)(1), (2), or (3)'' in first sentence; redesignated subpars. (A) and (B) and cls. (i) and (ii) of subpar. (B) as pars. (1) and (2) and subpars. (A) and (B) of par. (2), respectively; struck out ''paragraph (1), (2), or (3) of'' before ''section 6295(a)'' in par. (2) as so redesignated; directed the substitution of ''paragraph (1)'' for ''subparagraph (A)'' in par. (2)(B) as so redesignated, which was executed to par. (2)(A) as so redesignated to reflect the probable intent of Congress; substituted ''subsection'' for ''paragraph'' in last sentence; and substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

Par. (2), which provided that subsecs. (c) and (d) of section 57a of title 15 shall apply to rules under section 6295 of this title (other than subsecs. (a)(1), (2), and (3)) to the same extent that such subsecs. apply to rules under section 57a(a)(1)(B) of title 15, was struck out to reflect the probable intent of Congress in view of the amendment by Pub. L. 95–619, § 425(g)(1), which struck out designation ''(1)'' after subsection (a) designation, and in view of the amendment by Pub. L. 95–619, § 422, to section 6295(a) of this title, which struck out pars. (3) to (5) therefrom.

Subsec. (b). Pub. L. 95–619, § 425(g)(4), (5), substituted ''section 6293, 6294, or 6295'' for ''section 6293 or 6294'' in pars. (1) and (2) and struck out former par. (5) which related to the application of section 57a(e) of title 15 to rules under section 6295 of this title.

Subsec. (c). Pub. L. 95–619, § 427, added subsec. (c).

§ 6307. Consumer education

(a) In general

The Secretary shall, in close cooperation and coordination with the Commission and appropriate industry trade associations and industry members, including retailers, and interested consumer and environmental organizations, carry out a program to educate consumers and other persons with respect to—

(1) the significance of estimated annual operating costs;

(2) the way in which comparative shopping, including comparisons of estimated annual operating costs, can save energy for the Nation and money for consumers; and

(3) such other matters as the Secretary determines may encourage the conservation of energy in the use of consumer products.

Such steps to educate consumers may include publications, audiovisual presentations, demonstrations, and the sponsorship of national and regional conferences involving manufacturers, distributors, retailers, and consumers, and State, local, and Federal Government representatives. Nothing in this section may be construed to require the compilation of lists which compare the estimated annual operating costs of consumer products by model or manufacturer's name.

(b) State and local incentive programs

(1) The Secretary shall, not later than one year after October 24, 1992, issue recommendations to the States for establishing State and local incentive programs designed to encourage the acceleration of voluntary replacement, by consumers, of existing showerheads, faucets, water closets, and urinals with those products that meet the standards established for such products pursuant to subsections (j) and (k) of section 6295 of this title.

(2) In developing such recommendations, the Secretary shall consult with the heads of other federal[1] agencies, including the Administrator of the Environmental Protection Agency; State officials; manufacturers, suppliers, and installers of plumbing products; and other interested parties.

(c) HVAC maintenance

(1) To ensure that installed air conditioning and heating systems operate at maximum rated efficiency levels, the Secretary shall, not later than 180 days after August 8, 2005, carry out a program to educate homeowners and small business owners concerning the energy savings from properly conducted maintenance of air conditioning, heating, and ventilating systems.

(2) The Secretary shall carry out the program under paragraph (1), on a cost-shared basis, in cooperation with the Administrator of the Environmental Protection Agency and any other entities that the Secretary determines to be appropriate, including industry trade associations, industry members, and energy efficiency organizations.

(d) Small business education and assistance

(1) The Administrator of the Small Business Administration, in consultation with the Secretary and the Administrator of the Environmental Protection Agency, shall develop and coordinate a Government-wide program, building on the Energy Star for Small Business Program, to assist small businesses in—

(A) becoming more energy efficient;

(B) understanding the cost savings from improved energy efficiency;

(C) understanding and accessing Federal procurement opportunities with regard to Energy Star technologies and products; and

(D) identifying financing options for energy efficiency upgrades.

(2) The Secretary, the Administrator of the Environmental Protection Agency, and the Administrator of the Small Business Administration shall—

(A) make program information available to small business concerns directly through the district offices and resource partners of the Small Business Administration, including small business development centers, women's business centers, and the Service Corps of Retired Executives (SCORE), and through other Federal agencies, including the Federal Emergency Management Agency and the Department of Agriculture; and

(B) coordinate assistance with the Secretary of Commerce for manufacturing-related efforts, including the Manufacturing Extension Partnership Program.

(3) The Secretary, on a cost shared basis in cooperation with the Administrator of the Environmental Protection Agency, shall provide to the Small Business Administration all advertising, marketing, and other written materials necessary for the dissemination of information under paragraph (2).

(4) The Secretary, the Administrator of the Environmental Protection Agency, and the Administrator of the Small Business Administration, as part of the outreach to small business concerns under the Energy Star Program for Small Business Program, may enter into cooperative agreements with qualified resources partners (including the National Center for Appropriate Technology) to establish, maintain, and promote a Small Business Energy Clearinghouse (in this subsection referred to as the ''Clearinghouse'').

(5) The Secretary, the Administrator of the Environmental Protection Agency, and the Ad-

[1] So in original. Probably should be capitalized.

ministrator of the Small Business Administration shall ensure that the Clearinghouse provides a centralized resource where small business concerns may access, telephonically and electronically, technical information and advice to help increase energy efficiency and reduce energy costs.

(6) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

(Pub. L. 94–163, title III, § 337, Dec. 22, 1975, 89 Stat. 931; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 102–486, title I, § 123(i), Oct. 24, 1992, 106 Stat. 2831; Pub. L. 109–58, title I, § 132, Aug. 8, 2005, 119 Stat. 621.)

AMENDMENTS

2005—Subsecs. (c), (d). Pub. L. 109–58 added subsecs. (c) and (d).

1992—Pub. L. 102–486 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

§ 6308. Annual report

The Secretary shall report to the Congress and the President either (1) as part of his annual report, or (2) in a separate report submitted annually, on the progress of the program undertaken pursuant to this part and on the energy savings impact of this part. Each such report shall specify the actions undertaken by the Secretary in carrying out this part during the period covered by such report, and those actions which the Secretary was required to take under this part during such period but which were not taken, together with the reasons therefor. Nothing in this section provides a defense or justification for a failure by the Secretary to comply with a nondiscretionary duty as provided for in this part.

(Pub. L. 94–163, title III, § 338, Dec. 22, 1975, 89 Stat. 932; Pub. L. 95–619, title IV, § 425(h), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3288; Pub. L. 100–12, § 10, Mar. 17, 1987, 101 Stat. 124.)

AMENDMENTS

1987—Pub. L. 100–12 inserted at end ''Nothing in this section provides a defense or justification for a failure by the Secretary to comply with a nondiscretionary duty as provided for in this part.''

1978—Pub. L. 95–619 inserted requirement that each report under this section should account for actions taken by the Secretary, as well as actions not taken, during the covered period in carrying out this part and substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

§ 6309. Authorization of appropriations

(a) Authorizations for Secretary

There are authorized to be appropriated to the Secretary not more than the following amounts to carry out his responsibilities under this part—

(1) $1,700,000 for fiscal year 1976;
(2) $1,500,000 for fiscal year 1977;
(3) $3,300,000 for fiscal year 1978; and
(4) $10,000,000 for fiscal year 1979.

Amounts authorized for such purposes under paragraph (3) shall be in addition to amounts otherwise authorized and appropriated for such purposes.

(b) Authorizations for Commission

There are authorized to be appropriated to the Commission not more than the following amounts to carry out its responsibilities under this part—

(1) $650,000 for fiscal year 1976;
(2) $700,000 for fiscal year 1977;
(3) $700,000 for fiscal year 1978; and
(3)[1] $2,000,000 for fiscal year 1979.

(c) Other authorizations

There are authorized to be appropriated to the Secretary to be allocated not more than the following amounts—

(1) $1,100,000 for fiscal year 1976;
(2) $2,500,000 for fiscal year 1977; and
(3) $1,800,000 for fiscal year 1978.

Such amounts shall, and any amounts authorized to be appropriated under subsection (a) of this section, may be allocated by the Secretary to the National Institute of Standards and Technology.

(Pub. L. 94–163, title III, § 339, Dec. 22, 1975, 89 Stat. 932; Pub. L. 95–70, § 3, July 21, 1977, 91 Stat. 276; Pub. L. 95–619, title IV, § 426, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3267, 3288; Pub. L. 100–12, § 11(b)(8), Mar. 17, 1987, 101 Stat. 126; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards'' in closing provisions.

1987—Pub. L. 100–12 inserted headings for subsecs. (a) to (c).

1978—Subsec. (a). Pub. L. 95–619, §§ 426(a), 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, in text preceding par. (1), ''$3,300,000'' for ''$1,500,000'' in par. (3), added par. (4), and provided that amounts authorized under par. (3) would be in addition to amounts otherwise authorized and appropriated.

Subsec. (b)(3). Pub. L. 95–619, § 426(b), added second par. (3) relating to fiscal year 1979.

Subsec. (c). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator''.

1977—Subsec. (c)(2). Pub. L. 95–70, § 3(a), substituted ''$2,500,000'' for ''$700,000''.

Subsec. (c)(3). Pub. L. 95–70, § 3(b), substituted ''$1,800,000'' for ''$700,000''.

PART A–1—CERTAIN INDUSTRIAL EQUIPMENT

CODIFICATION

This part was, in the original, designated part C and has been changed to part A–1 for purposes of codification.

§ 6311. Definitions

For purposes of this part—

(1) The term ''covered equipment'' means one of the following types of industrial equipment:

[1] So in original. Probably should be designated ''(4)''.

(A) Electric motors and pumps.

(B) Small commercial package air conditioning and heating equipment.

(C) Large commercial package air conditioning and heating equipment.

(D) Very large commercial package air conditioning and heating equipment.

(E) Commercial refrigerators, freezers, and refrigerator-freezers.

(F) Automatic commercial ice makers.

(G) Commercial clothes washers.

(H) Packaged terminal air-conditioners and packaged terminal heat pumps.

(I) Warm air furnaces and packaged boilers.

(J) Storage water heaters, instantaneous water heaters, and unfired hot water storage tanks.

(K) Any other type of industrial equipment which the Secretary classifies as covered equipment under section 6312(b) of this title.

(2)(A) The term ''industrial equipment'' means any article of equipment referred to in subparagraph (B) of a type—

(i) which in operation consumes, or is designed to consume, energy;

(ii) which, to any significant extent, is distributed in commerce for industrial or commercial use; and

(iii) which is not a ''covered product'' as defined in section 6291(a)(2) of this title, other than a component of a covered product with respect to which there is in effect a determination under section 6312(c) of this title;

without regard to whether such article is in fact distributed in commerce for industrial or commercial use.

(B) The types of equipment referred to in this subparagraph (in addition to electric motors and pumps, commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezers, automatic commercial ice makers, commercial clothes washers, packaged terminal air-conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks) are as follows:

(i) compressors;

(ii) fans;

(iii) blowers;

(iv) refrigeration equipment;

(v) electric lights;

(vi) electrolytic equipment;

(vii) electric arc equipment;

(viii) steam boilers;

(ix) ovens;

(x) kilns;

(xi) evaporators; and

(xii) dryers.

(3) The term ''energy efficiency'' means the ratio of the useful output of services from an article of industrial equipment to the energy use by such article, determined in accordance with test procedures under section 6314 of this title.

(4) The term ''energy use'' means the quantity of energy directly consumed by an article of industrial equipment at the point of use, determined in accordance with test procedures established under section 6314 of this title.

(5) The term ''manufacturer'' means any person who manufactures industrial equipment.

(6) The term ''label'' may include any printed matter determined appropriate by the Secretary.

(7) The terms ''energy'', ''manufacture'', ''import'', ''importation'', ''consumer product'', ''distribute in commerce'', ''distribution in commerce'', and ''commerce'' have the same meaning as is given such terms in section 6291 of this title.

(8)(A) The term ''commercial package air conditioning and heating equipment'' means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application.

(B) The term ''small commercial package air conditioning and heating equipment'' means commercial package air conditioning and heating equipment that is rated below 135,000 Btu per hour (cooling capacity).

(C) The term ''large commercial package air conditioning and heating equipment'' means commercial package air conditioning and heating equipment that is rated—

(i) at or above 135,000 Btu per hour; and

(ii) below 240,000 Btu per hour (cooling capacity).

(D) The term ''very large commercial package air conditioning and heating equipment'' means commercial package air conditioning and heating equipment that is rated—

(i) at or above 240,000 Btu per hour; and

(ii) below 760,000 Btu per hour (cooling capacity).

(9)(A) The term ''commercial refrigerator, freezer, and refrigerator-freezer'' means refrigeration equipment that—

(i) is not a consumer product (as defined in section 6291 of this title);

(ii) is not designed and marketed exclusively for medical, scientific, or research purposes;

(iii) operates at a chilled, frozen, combination chilled and frozen, or variable temperature;

(iv) displays or stores merchandise and other perishable materials horizontally, semivertically, or vertically;

(v) has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors;

(vi) is designed for pull-down temperature applications or holding temperature applications; and

(vii) is connected to a self-contained condensing unit or to a remote condensing unit.

(B) The term ''holding temperature application'' means a use of commercial refrigeration equipment other than a pull-down temperature application, except a blast chiller or freezer.

(C) The term ''integrated average temperature'' means the average temperature of all

test package measurements taken during the test.

(D) The term ''pull-down temperature application'' means a commercial refrigerator with doors that, when fully loaded with 12 ounce beverage cans at 90 degrees F, can cool those beverages to an average stable temperature of 38 degrees F in 12 hours or less.

(E) The term ''remote condensing unit'' means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is remotely located from the refrigerated equipment and consists of one or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.

(F) The term ''self-contained condensing unit'' means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is an integral part of the refrigerated equipment and consists of one or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.

(10)(A) The term ''packaged terminal air conditioner'' means a wall sleeve and a separate unencased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity.

(B) The term ''packaged terminal heat pump'' means a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source and should have supplementary heat source available to builders with the choice of hot water, steam, or electric resistant heat.

(11)(A) The term ''warm air furnace'' means a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units but does not include unit heaters and duct furnaces.

(B) The term ''packaged boiler'' means a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections.

(12)(A) The term ''storage water heater'' means a water heater that heats and stores water within the appliance at a thermostatically controlled temperature for delivery on demand. Such term does not include units with an input rating of 4000 Btu per hour or more per gallon of stored water.

(B) The term ''instantaneous water heater'' means a water heater that has an input rating of at least 4000 Btu per hour per gallon of stored water.

(C) The term ''unfired hot water storage tank'' means a tank used to store water that is heated externally.

(13)(A) The term ''electric motor'' means any motor which is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987.

(B) The term ''definite purpose motor'' means any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual or for use on a particular type of application and which cannot be used in most general purpose applications.

(C) The term ''special purpose motor'' means any motor, other than a general purpose motor or definite purpose motor, which has special operating characteristics or special mechanical construction, or both, designed for a particular application.

(D) The term ''open motor'' means a motor having ventilating openings which permit passage of external cooling air over and around the windings of the machine.

(E) The term ''enclosed motor'' means a motor so enclosed as to prevent the free exchange of air between the inside and outside of the case but not sufficiently enclosed to be termed airtight.

(F) The term ''small electric motor'' means a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987.

(G) The term ''efficiency'' when used with respect to an electric motor means the ratio of an electric motor's useful power output to its total power input, expressed in percentage.

(H) The term ''nominal full load efficiency'' means the average efficiency of a population of motors of duplicate design as determined in accordance with NEMA Standards Publication MG1–1987.

(14) The term ''ASHRAE'' means the American Society of Heating, Refrigerating, and Air Conditioning Engineers.

(15) The term ''IES'' means the Illuminating Engineering Society of North America.

(16) The term ''NEMA'' means the National Electrical Manufacturers Association.

(17) The term ''IEEE'' means the Institute of Electrical and Electronics Engineers.

(18) The term ''energy conservation standard'' means—

(A) a performance standard that prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a product; or

(B) a design requirement for a product.

(19) The term ''automatic commercial ice maker'' means a factory-made assembly (not necessarily shipped in one package) that—

(A) consists of a condensing unit and ice-making section operating as an integrated unit, with means for making and harvesting ice; and

(B) may include means for storing ice, dispensing ice, or storing and dispensing ice.

(20) The term ''commercial clothes washer'' means a soft-mount front-loading or soft-mount top-loading clothes washer that—

(A) has a clothes container compartment that—

(i) for horizontal-axis clothes washers, is not more than 3.5 cubic feet; and

(ii) for vertical-axis clothes washers, is not more than 4.0 cubic feet; and

(B) is designed for use in—

(i) applications in which the occupants of more than one household will be using the clothes washer, such as multi-family housing common areas and coin laundries; or

(ii) other commercial applications.

(21) The term ''harvest rate'' means the amount of ice (at 32 degrees F) in pounds produced per 24 hours.

(Pub. L. 94–163, title III, § 340, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267; amended Pub. L. 102–486, title I, § 122(a), (f)(1), Oct. 24, 1992, 106 Stat. 2806, 2817; Pub. L. 109–58, title I, § 136(a), Aug. 8, 2005, 119 Stat. 634.)

AMENDMENTS

2005—Par. (1)(D) to (K). Pub. L. 109–58, § 136(a)(1), added subpars. (D) to (G) and redesignated former subpars. (D) to (G) as (H) to (K), respectively.

Par. (2)(B). Pub. L. 109–58, § 136(a)(2), substituted ''commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezers, automatic commercial ice makers, commercial clothes washers'' for ''small and large commercial package air conditioning and heating equipment'' in introductory provisions.

Pars. (8), (9). Pub. L. 109–58, § 136(a)(3), added pars. (8) and (9) and struck out former pars. (8) and (9) which read as follows:

''(8) The term 'small commercial package air conditioning and heating equipment' means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated below 135,000 Btu per hour (cooling capacity).

''(9) The term 'large commercial package air conditioning and heating equipment' means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated at or above 135,000 Btu per hour and below 240,000 Btu per hour (cooling capacity).''

Pars. (19) to (21). Pub. L. 109–58, § 136(a)(4), added pars. (19) to (21).

1992—Par. (1)(B) to (G). Pub. L. 102–486, § 122(a)(1), added subpars. (B) to (F) and redesignated former subpar. (B) as (G).

Par. (2)(B). Pub. L. 102–486, § 122(a)(2), in introductory provisions, substituted ''pumps, small and large commercial package air conditioning and heating equipment, packaged terminal air-conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks)'' for ''pumps)'', redesignated cls. (vi) to (x) and (xii) to (xiv) as cls. (v) to (ix) and (x) to (xii), respectively, and struck out former cls. (v) and (xi) which read ''air conditioning equipment;'' and ''furnaces;'', respectively.

Par. (3). Pub. L. 102–486, § 122(f)(1), substituted ''(3) The'' for ''(3) the''.

Pars. (8) to (18). Pub. L. 102–486, § 122(a)(3), added pars. (8) to (18).

§ 6312. Purposes and coverage

(a) Congressional statement of purpose

It is the purpose of this part to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation.

(b) Inclusion of industrial equipment as covered equipment

The Secretary may, by rule, include a type of industrial equipment as covered equipment if he determines that to do so is necessary to carry out the purposes of this part.

(c) Inclusion of component parts of consumer products as industrial equipment

The Secretary may, by rule, include as industrial equipment articles which are component parts of consumer products, if he determines that—

(1) such articles are, to a significant extent, distributed in commerce other than as component parts for consumer products; and

(2) such articles meet the requirements of section 6311(2)(A) of this title (other than clauses (ii) and (iii)).

(Pub. L. 94–163, title III, § 341, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3268.)

§ 6313. Standards

(a) Small, large, and very large commercial package air conditioning and heating equipment, packaged terminal air conditioners and heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks

(1) Each small commercial package air conditioning and heating equipment manufactured on or after January 1, 1994, but before January 1, 2010, shall meet the following standard levels:

(A) The minimum seasonal energy efficiency ratio of air-cooled three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 10.0.

(B) The minimum seasonal energy efficiency ratio of air-cooled three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 9.7.

(C) The minimum energy efficiency ratio of air-cooled central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 8.9 (at a standard rating of 95 degrees F db).

(D) The minimum heating seasonal performance factor of air-cooled three-phase electric central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 6.8.

(E) The minimum heating seasonal performance factor of air-cooled three-phase electric central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 6.6.

(F) The minimum coefficient of performance in the heating mode of air-cooled central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 3.0 (at a high temperature rating of 47 degrees F db).

(G) The minimum energy efficiency ratio of water-cooled, evaporatively-cooled and water-

source central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity) shall be 9.3 (at a standard rating of 95 degrees F db, outdoor temperature for evaporatively cooled equipment, and 85 degrees Fahrenheit entering water temperature for water-source and water-cooled equipment).

(H) The minimum energy efficiency ratio of water-cooled, evaporatively-cooled and water-source central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 10.5 (at a standard rating of 95 degrees F db, outdoor temperature for evaporatively cooled equipment, and 85 degrees Fahrenheit entering water temperature for water source and water-cooled equipment).

(I) The minimum coefficient of performance in the heating mode of water-source heat pumps less than 135,000 Btu per hour (cooling capacity) shall be 3.8 (at a standard rating of 70 degrees Fahrenheit entering water).

(2) Each large commercial package air conditioning and heating equipment manufactured on or after January 1, 1995, but before January 1, 2010, shall meet the following standard levels:

(A) The minimum energy efficiency ratio of air-cooled central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 8.5 (at a standard rating of 95 degrees F db).

(B) The minimum coefficient of performance in the heating mode of air-cooled central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 2.9.

(C) The minimum energy efficiency ratio of water- and evaporatively-cooled central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 9.6 (according to ARI Standard 360–86).

(3) Each packaged terminal air conditioner and packaged terminal heat pump manufactured on or after January 1, 1994, shall meet the following standard levels:

(A) The minimum energy efficiency ratio (EER) of packaged terminal air conditioners and packaged terminal heat pumps in the cooling mode shall be 10.0 — (0.16 x Capacity [in thousands of Btu per hour at a standard rating of 95 degrees F db, outdoor temperature]). If a unit has a capacity of less than 7,000 Btu per hour, then 7,000 Btu per hour shall be used in the calculation. If a unit has a capacity of greater than 15,000 Btu per hour, then 15,000 Btu per hour shall be used in the calculation.

(B) The minimum coefficient of performance (COP) of packaged terminal heat pumps in the heating mode shall be 1.3 + (0.16 x the minimum cooling EER as specified in subparagraph (A)) (at a standard rating of 47 degrees F db).

(4) Each warm air furnace and packaged boiler manufactured on or after January 1, 1994, shall meet the following standard levels:

(A) The minimum thermal efficiency at the maximum rated capacity of gas-fired warm-air furnaces with capacity of 225,000 Btu per hour or more shall be 80 percent.

(B) The minimum thermal efficiency at the maximum rated capacity of oil-fired warm-air furnaces with capacity of 225,000 Btu per hour or more shall be 81 percent.

(C) The minimum combustion efficiency at the maximum rated capacity of gas-fired packaged boilers with capacity of 300,000 Btu per hour or more shall be 80 percent.

(D) The minimum combustion efficiency at the maximum rated capacity of oil-fired packaged boilers with capacity of 300,000 Btu per hour or more shall be 83 percent.

(5) Each storage water heater, instantaneous water heater, and unfired water storage tank manufactured on or after January 1, 1994, shall meet the following standard levels:

(A) Except as provided in subparagraph (G), the maximum standby loss, in percent per hour, of electric storage water heaters shall be 0.30 + (27/Measured Storage Volume [in gallons]).

(B) Except as provided in subparagraph (G), the maximum standby loss, in percent per hour, of gas- and oil-fired storage water heaters with input ratings of 155,000 Btu per hour or less shall be 1.30 + (114/Measured Storage Volume [in gallons]). The minimum thermal efficiency of such units shall be 78 percent.

(C) Except as provided in subparagraph (G), the maximum standby loss, in percent per hour, of gas- and oil-fired storage water heaters with input ratings of more than 155,000 Btu per hour shall be 1.30 + (95/Measured Storage Volume [in gallons]). The minimum thermal efficiency of such units shall be 78 percent.

(D) The minimum thermal efficiency of instantaneous water heaters with a storage volume of less than 10 gallons shall be 80 percent.

(E) Except as provided in subparagraph (G), the minimum thermal efficiency of instantaneous water heaters with a storage volume of 10 gallons or more shall be 77 percent. The maximum standby loss, in percent/hour, of such units shall be 2.30 + (67/Measured Storage Volume [in gallons]).

(F) Except as provided in subparagraph (G), the maximum heat loss of unfired hot water storage tanks shall be 6.5 Btu per hour per square foot of tank surface area.

(G) Storage water heaters and hot water storage tanks having more than 140 gallons of storage capacity need not meet the standby loss or heat loss requirements specified in subparagraphs (A) through (C) and subparagraphs (E) and (F) if the tank surface area is thermally insulated to R–12.5 and if a standing pilot light is not used.

(6)(A)(i) If ASHRAE/IES Standard 90.1, as in effect on January 1, 2010, is amended with respect to any small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and very large commercial package air conditioning and heating equipment, or if ASHRAE/IES Standard 90.1, as in effect on October 24, 1992, is amended with respect to any

packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks, the Secretary shall establish an amended uniform national standard for that product at the minimum level for each effective date specified in the amended ASHRAE/IES Standard 90.1, unless the Secretary determines, by rule published in the Federal Register and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than such amended ASHRAE/IES Standard 90.1 for such product would result in significant additional conservation of energy and is technologically feasible and economically justified.

(ii) If ASHRAE/IES Standard 90.1 is not amended with respect to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and very large commercial package air conditioning and heating equipment during the 5-year period beginning on the effective date of a standard, the Secretary may initiate a rulemaking to determine whether a more stringent standard—

(I) would result in significant additional conservation of energy; and

(II) is technologically feasible and economically justified.

(B)(i) If the Secretary issues a rule containing such a determination, the rule shall establish such amended standard. In determining whether a standard is economically justified for the purposes of subparagraph (A), the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) the savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the products which are likely to result from the imposition of the standard;

(III) the total projected amount of energy savings likely to result directly from the imposition of the standard;

(IV) any lessening of the utility or the performance of the products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy conservation; and

(VII) other factors the Secretary considers relevant.

(ii) The Secretary may not prescribe any amended standard under this paragraph which increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. The Secretary may not prescribe an amended standard under this subparagraph if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that a standard is likely to result in the unavailability in the United States in any product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types or classes.

(C) A standard amended by the Secretary under this paragraph shall become effective for products manufactured—

(i) with respect to small commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, on or after a date which is two years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE/IES standard referred to in subparagraph (A); and

(ii) with respect to large commercial package air conditioning and heating equipment and very large commercial package air conditioning and heating equipment, on or after a date which is three years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE/IES standard referred to in subparagraph (A);

except that an energy conservation standard amended by the Secretary pursuant to a rule under subparagraph (B) shall become effective for products manufactured on or after a date which is four years after the date such rule is published in the Federal Register.

(7) Small commercial package air conditioning and heating equipment manufactured on or after January 1, 2010, shall meet the following standards:

(A) The minimum energy efficiency ratio of air-cooled central air conditioners at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be—

(i) 11.2 for equipment with no heating or electric resistance heating; and

(ii) 11.0 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).

(B) The minimum energy efficiency ratio of air-cooled central air conditioner heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be—

(i) 11.0 for equipment with no heating or electric resistance heating; and

(ii) 10.8 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).

(C) The minimum coefficient of performance in the heating mode of air-cooled central air

conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 3.3 (at a high temperature rating of 47 degrees F db).

(8) Large commercial package air conditioning and heating equipment manufactured on or after January 1, 2010, shall meet the following standards:

(A) The minimum energy efficiency ratio of air-cooled central air conditioners at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be—

(i) 11.0 for equipment with no heating or electric resistance heating; and

(ii) 10.8 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).

(B) The minimum energy efficiency ratio of air-cooled central air conditioner heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be—

(i) 10.6 for equipment with no heating or electric resistance heating; and

(ii) 10.4 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).

(C) The minimum coefficient of performance in the heating mode of air-cooled central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 3.2 (at a high temperature rating of 47 degrees F db).

(9) Very large commercial package air conditioning and heating equipment manufactured on or after January 1, 2010, shall meet the following standards:

(A) The minimum energy efficiency ratio of air-cooled central air conditioners at or above 240,000 Btu per hour (cooling capacity) and less than 760,000 Btu per hour (cooling capacity) shall be—

(i) 10.0 for equipment with no heating or electric resistance heating; and

(ii) 9.8 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).

(B) The minimum energy efficiency ratio of air-cooled central air conditioner heat pumps at or above 240,000 Btu per hour (cooling capacity) and less than 760,000 Btu per hour (cooling capacity) shall be—

(i) 9.5 for equipment with no heating or electric resistance heating; and

(ii) 9.3 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).

(C) The minimum coefficient of performance in the heating mode of air-cooled central air conditioning heat pumps at or above 240,000 Btu per hour (cooling capacity) and less than 760,000 Btu per hour (cooling capacity) shall be 3.2 (at a high temperature rating of 47 degrees F db).

(b) Electric motors

(1) Except for definite purpose motors, special purpose motors, and those motors exempted by the Secretary under paragraph (2), each electric motor manufactured (alone or as a component of another piece of equipment) after the 60-month period beginning on October 24, 1992, or in the case of an electric motor which requires listing or certification by a nationally recognized safety testing laboratory, after the 84-month period beginning on October 24, 1992, shall have a nominal full load efficiency of not less than the following:

Number of poles	Nominal Full-Load Efficiency					
	Open Motors			Closed Motors		
	6	4	2	6	4	2
Motor Horsepower						
1	80.0	82.5	.....	80.0	82.5	75.5
1.5	84.0	84.0	82.5	85.5	84.0	82.5
2	85.5	84.0	84.0	86.5	84.0	84.0
3	86.5	86.5	84.0	87.5	87.5	85.5
5	87.5	87.5	85.5	87.5	87.5	87.5
7.5	88.5	88.5	87.5	89.5	89.5	88.5
10	90.2	89.5	88.5	89.5	89.5	89.5
15	90.2	91.0	89.5	90.2	91.0	90.2
20	91.0	91.0	90.2	90.2	91.0	90.2
25	91.7	91.7	91.0	91.7	92.4	91.0
30	92.4	92.4	91.0	91.7	92.4	91.0
40	93.0	93.0	91.7	93.0	93.0	91.7
50	93.0	93.0	92.4	93.0	93.0	92.4
60	93.6	93.6	93.0	93.6	93.6	93.0
75	93.6	94.1	93.0	93.6	94.1	93.0
100	94.1	94.1	93.0	94.1	94.5	93.6
125	94.1	94.5	93.6	94.1	94.5	94.5
150	94.5	95.0	93.6	95.0	95.0	94.5
200	94.5	95.0	94.5	95.0	95.0	95.0

(2)(A) The Secretary may, by rule, provide that the standards specified in paragraph (1) shall not apply to certain types or classes of electric motors if—

(i) compliance with such standards would not result in significant energy savings because such motors cannot be used in most general purpose applications or are very unlikely to be used in most general purpose applications; and

(ii) standards for such motors would not be technologically feasible or economically justified.

(B) Not later than one year after October 24, 1992, a manufacturer seeking an exemption under this paragraph with respect to a type or class of electric motor developed on or before October 24, 1992, shall submit a petition to the Secretary requesting such exemption. Such petition shall include evidence that the type or class of motor meets the criteria for exemption specified in subparagraph (A).

(C) Not later than two years after October 24, 1992, the Secretary shall rule on each petition for exemption submitted pursuant to subparagraph (B). In making such ruling, the Secretary shall afford an opportunity for public comment.

(D) Manufacturers of types or classes of motors developed after October 24, 1992, to which

standards under paragraph (1) would be applicable may petition the Secretary for exemptions from compliance with such standards based on the criteria specified in subparagraph (A).

(3)(A) The Secretary shall publish a final rule no later than the end of the 24-month period beginning on the effective date of the standards established under paragraph (1) to determine if such standards should be amended. Such rule shall provide that any amendment shall apply to electric motors manufactured on or after a date which is five years after the effective date of the standards established under paragraph (1).

(B) The Secretary shall publish a final rule no later than 24 months after the effective date of the previous final rule to determine whether to amend the standards in effect for such product. Any such amendment shall apply to electric motors manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective.

(c) Commercial refrigerators, freezers, and refrigerator-freezers

(1) In this subsection:

(A) The term ''AV'' means the adjusted volume (ft^3) (defined as 1.63 x frozen temperature compartment volume (ft^3) + chilled temperature compartment volume (ft^3)) with compartment volumes measured in accordance with the Association of Home Appliance Manufacturers Standard HRF1–1979.

(B) The term ''V'' means the chilled or frozen compartment volume (ft^3) (as defined in the Association of Home Appliance Manufacturers Standard HRF1–1979).

(C) Other terms have such meanings as may be established by the Secretary, based on industry-accepted definitions and practice.

(2) Each commercial refrigerator, freezer, and refrigerator-freezer with a self-contained condensing unit designed for holding temperature applications manufactured on or after January 1, 2010, shall have a daily energy consumption (in kilowatt hours per day) that does not exceed the following:

Refrigerators with solid doors	0.10 V + 2.04
Refrigerators with transparent doors	0.12 V + 3.34
Freezers with solid doors	0.40 V + 1.38
Freezers with transparent doors	0.75 V + 4.10
Refrigerators/freezers with solid doors the greater of.	0.27 AV – 0.71 or 0.70.

(3) Each commercial refrigerator with a self-contained condensing unit designed for pull-down temperature applications and transparent doors manufactured on or after January 1, 2010, shall have a daily energy consumption (in kilowatt hours per day) of not more than 0.126 V + 3.51.

(4)(A) Not later than January 1, 2009, the Secretary shall issue, by rule, standard levels for ice-cream freezers, self-contained commercial refrigerators, freezers, and refrigerator-freezers without doors, and remote condensing commercial refrigerators, freezers, and refrigerator-freezers, with the standard levels effective for equipment manufactured on or after January 1, 2012.

(B) The Secretary may issue, by rule, standard levels for other types of commercial refrigerators, freezers, and refrigerator-freezers not covered by paragraph (2)(A) with the standard levels effective for equipment manufactured 3 or more years after the date on which the final rule is published.

(5)(A) Not later than January 1, 2013, the Secretary shall issue a final rule to determine whether the standards established under this subsection should be amended.

(B) Not later than 3 years after the effective date of any amended standards under subparagraph (A) or the publication of a final rule determining that the standards should not be amended, the Secretary shall issue a final rule to determine whether the standards established under this subsection or the amended standards, as applicable, should be amended.

(C) If the Secretary issues a final rule under subparagraph (A) or (B) establishing amended standards, the final rule shall provide that the amended standards apply to products manufactured on or after the date that is—

(i) 3 years after the date on which the final amended standard is published; or

(ii) if the Secretary determines, by rule, that 3 years is inadequate, not later than 5 years after the date on which the final rule is published.

(d) Automatic commercial ice makers

(1) Each automatic commercial ice maker that produces cube type ice with capacities between 50 and 2500 pounds per 24-hour period when tested according to the test standard established in section 6314(a)(7) of this title and is manufactured on or after January 1, 2010, shall meet the following standard levels:

Equipment Type	Type of Cooling	Harvest Rate (lbs ice/24 hours)	Maximum Energy Use (kWh/100 lbs Ice)	Maximum Condenser Water Use (gal/100 lbs Ice)
Ice Making Head	Water	<500	7.80–0.0055H	200–0.022H
		– 500 and <1436	5.58–0.0011H	200–0.022H
		– 1436	4.0	200–0.022H
Ice Making Head	Air	<450	10.26–0.0086H	Not Applicable
		– 450	6.89–0.0011H	Not Applicable

Equipment Type	Type of Cooling	Harvest Rate (lbs ice/24 hours)	Maximum Energy Use (kWh/100 lbs Ice)	Maximum Condenser Water Use (gal/100 lbs Ice)
Remote Condensing (but not remote compressor)	Air	<1000	8.85–0.0038H	Not Applicable
		−1000	5.10	Not Applicable
Remote Condensing and Remote Compressor	Air	<934	8.85–0.0038H	Not Applicable
		−934	5.3	Not Applicable
Self Contained	Water	<200	11.40–0.019H	191–0.0315H
		−200	7.60	191–0.0315H
Self Contained	Air	<175	18.0–0.0469H	Not Applicable
		−175	9.80	Not Applicable

H = Harvest rate in pounds per 24 hours.
Water use is for the condenser only and does not include potable water used to make ice.

(2)(A) The Secretary may issue, by rule, standard levels for types of automatic commercial ice makers that are not covered by paragraph (1).

(B) The standards established under subparagraph (A) shall apply to products manufactured on or after the date that is—

(i) 3 years after the date on which the rule is published under subparagraph (A); or

(ii) if the Secretary determines, by rule, that 3 years is inadequate, not later than 5 years after the date on which the final rule is published.

(3)(A) Not later than January 1, 2015, with respect to the standards established under paragraph (1), and, with respect to the standards established under paragraph (2), not later than 5 years after the date on which the standards take effect, the Secretary shall issue a final rule to determine whether amending the applicable standards is technologically feasible and economically justified.

(B) Not later than 5 years after the effective date of any amended standards under subparagraph (A) or the publication of a final rule determining that amending the standards is not technologically feasible or economically justified, the Secretary shall issue a final rule to determine whether amending the standards established under paragraph (1) or the amended standards, as applicable, is technologically feasible or economically justified.

(C) If the Secretary issues a final rule under subparagraph (A) or (B) establishing amended standards, the final rule shall provide that the amended standards apply to products manufactured on or after the date that is—

(i) 3 years after the date on which the final amended standard is published; or

(ii) if the Secretary determines, by rule, that 3 years is inadequate, not later than 5 years after the date on which the final amended standard is published.

(4) A final rule issued under paragraph (2) or (3) shall establish standards at the maximum level that is technically feasible and economically justified, as provided in subsections (*o*) and (p) of section 6295 of this title.

(e) Commercial clothes washers

(1) Each commercial clothes washer manufactured on or after January 1, 2007, shall have—

(A) a Modified Energy Factor of at least 1.26; and

(B) a Water Factor of not more than 9.5.

(2)(A)(i) Not later than January 1, 2010, the Secretary shall publish a final rule to determine whether the standards established under paragraph (1) should be amended.

(ii) The rule published under clause (i) shall provide that any amended standard shall apply to products manufactured 3 years after the date on which the final amended standard is published.

(B)(i) Not later than January 1, 2015, the Secretary shall publish a final rule to determine whether the standards established under paragraph (1) should be amended.

(ii) The rule published under clause (i) shall provide that any amended standard shall apply to products manufactured 3 years after the date on which the final amended standard is published.

(Pub. L. 94–163, title III, § 342, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3269; amended Pub. L. 102–486, title I, § 122(d), Oct. 24, 1992, 106 Stat. 2810; Pub. L. 109–58, title I, § 136(b)–(e), Aug. 8, 2005, 119 Stat. 636–641.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, § 136(b)(1), substituted ''Small, large, and very large'' for ''Small and large'' in heading.

Subsec. (a)(1). Pub. L. 109–58, § 136(b)(2), inserted ''but before January 1, 2010,'' after ''January 1, 1994,'' in introductory provisions.

Subsec. (a)(2). Pub. L. 109–58, § 136(b)(3), inserted ''but before January 1, 2010,'' after ''January 1, 1995,'' in introductory provisions.

Subsec. (a)(6)(A). Pub. L. 109–58, § 136(b)(4)(A), designated existing provisions as cl. (i), substituted ''January 1, 2010'' for ''October 24, 1992'', inserted ''and very large commercial package air conditioning and heating equipment, or if ASHRAE/IES Standard 90.1, as in effect on October 24, 1992, is amended with respect to any'' after ''large commercial package air conditioning and heating equipment,'', and added cl. (ii).

Subsec. (a)(6)(C)(ii). Pub. L. 109–58, § 136(b)(4)(B), inserted ''and very large commercial package air condi-

tioning and heating equipment'' after ''large commercial package air conditioning and heating equipment''.

Subsec. (a)(7) to (9). Pub. L. 109–58, §136(b)(5), added pars. (7) to (9).

Subsecs. (c) to (e). Pub. L. 109–58, §136(c)–(e), added subsecs. (c) to (e).

1992—Pub. L. 102–486 amended section generally, substituting present provisions for former provisions requiring Secretary to conduct evaluations of electric motors and pumps and other industrial equipment for purposes of determining standards.

§ 6314. Test procedures

(a) Prescription by Secretary; requirements

(1) The Secretary may conduct an evaluation of a class of covered equipment and may prescribe test procedures for such class in accordance with the provisions of this section.

(2) Test procedures prescribed in accordance with this section shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct.

(3) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average-use cycle (as determined by the Secretary), and from representative average unit costs of the energy needed to operate such equipment during such cycle. The Secretary shall provide information to manufacturers of covered equipment respecting representative average unit costs of energy.

(4)(A) With respect to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, very large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks to which standards are applicable under section 6313 of this title, the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.

(B) If such an industry test procedure or rating procedure for small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, very large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks is amended, the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by rule, published in the Federal Register and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in paragraphs (2) and (3) of this subsection.

(C) If the Secretary prescribes a rule containing such a determination, the rule may establish an amended test procedure for such product that meets the requirements of paragraphs (2) and (3) of this subsection. In establishing any amended test procedure under this subparagraph or subparagraph (B), the Secretary shall follow the procedures and meet the requirements specified in section 6293(e) of this title.

(5)(A) With respect to electric motors to which standards are applicable under section 6313 of this title, the test procedures shall be the test procedures specified in NEMA Standards Publication MG1–1987 and IEEE Standard 112 Test Method B for motor efficiency, as in effect on October 24, 1992.

(B) If the test procedure requirements of NEMA Standards Publication MG–1987 and IEEE Standard 112 Test Method B for motor efficiency are amended, the Secretary shall amend the test procedures established by subparagraph (A) to conform to such amended test procedure requirements unless the Secretary determines, by rule, published in the Federal Register and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in paragraphs (2) and (3) of this subsection.

(C) If the Secretary prescribes a rule containing such a determination, the rule may establish amended test procedures for such electric motors that meets the requirements of paragraphs (2) and (3) of this subsection. In establishing any amended test procedure under this subparagraph or subparagraph (B), the Secretary shall follow the procedures and meet the requirements specified in section 6293(e) of this title.

(6)(A)(i) In the case of commercial refrigerators, freezers, and refrigerator-freezers, the test procedures shall be—

(I) the test procedures determined by the Secretary to be generally accepted industry testing procedures; or

(II) rating procedures developed or recognized by the ASHRAE or by the American National Standards Institute.

(ii) In the case of self-contained refrigerators, freezers, and refrigerator-freezers to which standards are applicable under paragraphs (2) and (3) of section 6313(c) of this title, the initial test procedures shall be the ASHRAE 117 test procedure that is in effect on January 1, 2005.

(B)(i)[1] In the case of commercial refrigerators, freezers, and refrigerator-freezers with doors covered by the standards adopted in February 2002, by the California Energy Commission, the rating temperatures shall be the integrated average temperature of 38 degrees F (± 2 degrees F) for refrigerator compartments and 0 degrees F (± 2 degrees F) for freezer compartments.

(C) The Secretary shall issue a rule in accordance with paragraphs (2) and (3) to establish the appropriate rating temperatures for the other products for which standards will be established under section 6313(c)(4) of this title.

(D) In establishing the appropriate test temperatures under this subparagraph, the Sec-

[1] So in original. No cl. (ii) has been enacted.

retary shall follow the procedures and meet the requirements under section 6293(e) of this title.

(E)(i) Not later than 180 days after the publication of the new ASHRAE 117 test procedure, if the ASHRAE 117 test procedure for commercial refrigerators, freezers, and refrigerator-freezers is amended, the Secretary shall, by rule, amend the test procedure for the product as necessary to ensure that the test procedure is consistent with the amended ASHRAE 117 test procedure, unless the Secretary makes a determination, by rule, and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures under paragraphs (2) and (3).

(ii) If the Secretary determines that 180 days is an insufficient period during which to review and adopt the amended test procedure or rating procedure under clause (i), the Secretary shall publish a notice in the Federal Register stating the intent of the Secretary to wait not longer than 1 additional year before putting into effect an amended test procedure or rating procedure.

(F)(i) If a test procedure other than the ASHRAE 117 test procedure is approved by the American National Standards Institute, the Secretary shall, by rule—

(I) review the relative strengths and weaknesses of the new test procedure relative to the ASHRAE 117 test procedure; and

(II) based on that review, adopt one new test procedure for use in the standards program.

(ii) If a new test procedure is adopted under clause (i)—

(I) section 6293(e) of this title shall apply; and

(II) subparagraph (B) shall apply to the adopted test procedure.

(7)(A) In the case of automatic commercial ice makers, the test procedures shall be the test procedures specified in Air-Conditioning and Refrigeration Institute Standard 810–2003, as in effect on January 1, 2005.

(B)(i) If Air-Conditioning and Refrigeration Institute Standard 810–2003 is amended, the Secretary shall amend the test procedures established in subparagraph (A) as necessary to be consistent with the amended Air-Conditioning and Refrigeration Institute Standard, unless the Secretary determines, by rule, published in the Federal Register and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures under paragraphs (2) and (3).

(ii) If the Secretary issues a rule under clause (i) containing a determination described in clause (ii), the rule may establish an amended test procedure for the product that meets the requirements of paragraphs (2) and (3).

(C) The Secretary shall comply with section 6293(e) of this title in establishing any amended test procedure under this paragraph.

(8) With respect to commercial clothes washers, the test procedures shall be the same as the test procedures established by the Secretary for residential clothes washers under section 6295(g) of this title.

(b) Publication in Federal Register; presentment of oral and written data, views, and arguments by interested persons

Before prescribing any final test procedures under this section, the Secretary shall—

(1) publish proposed test procedures in the Federal Register; and

(2) afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures.

(c) Reevaluations

(1) The Secretary shall, not later than 3 years after the date of prescribing a test procedure under this section (and from time to time thereafter), conduct a reevaluation of such procedure and, on the basis of such reevaluation, shall determine if such test procedure should be amended. In conducting such reevaluation, the Secretary shall take into account such information as he deems relevant, including technological developments relating to the energy efficiency of the type (or class) of covered equipment involved.

(2) If the Secretary determines under paragraph (1) that a test procedure should be amended, he shall promptly publish in the Federal Register proposed test procedures incorporating such amendments and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days' duration.

(d) Prohibited representations

(1) Effective 180 days (or, in the case of small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, very large commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezers, automatic commercial ice makers, commercial clothes washers, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, 360 days) after a test procedure rule applicable to any covered equipment is prescribed under this section, no manufacturer, distributor, retailer, or private labeler may make any representation—

(A) in writing (including any representation on a label), or

(B) in any broadcast advertisement,

respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

(2) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (1) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if he finds that the requirements of paragraph (1) would impose on such petitioner an undue hardship (as determined by the Secretary).

(e) Assistance by National Institute of Standards and Technology

The Secretary may direct the National Institute of Standards and Technology to provide such assistance as the Secretary deems necessary to carry out his responsibilities under this part, including the development of test procedures.

(Pub. L. 94–163, title III, § 343, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3270; amended Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–486, title I, § 122(b), (f)(2), Oct. 24, 1992, 106 Stat. 2808, 2817; Pub. L. 109–58, title I, § 136(f), Aug. 8, 2005, 119 Stat. 641.)

AMENDMENTS

2005—Subsec. (a)(4)(A), (B). Pub. L. 109–58, § 136(f)(1)(A), inserted ''very large commercial package air conditioning and heating equipment,'' after ''large commercial package air conditioning and heating equipment,''.

Subsec. (a)(6) to (8). Pub. L. 109–58, § 136(f)(1)(B), added pars. (6) to (8).

Subsec. (d)(1). Pub. L. 109–58, § 136(f)(2), inserted ''very large commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezers, automatic commercial ice makers, commercial clothes washers,'' after ''large commercial package air conditioning and heating equipment,'' in introductory provisions.

1992—Subsec. (a)(1). Pub. L. 102–486, § 122(b)(1)(A), added par. (1) and struck out former par. (1) which read as follows: ''If the Secretary has conducted an evaluation of a class of covered equipment under section 6313 of this title, he may prescribe test procedures for such class in accordance with the following provisions of this section.''

Subsec. (a)(4), (5). Pub. L. 102–486, § 122(b)(1)(B), added pars. (4) and (5).

Subsecs. (c), (d). Pub. L. 102–486, § 122(f)(2), redesignated subsec. (d), relating to reevaluations, as (c).

Subsec. (d)(1). Pub. L. 102–486, § 122(b)(2), inserted ''(or, in the case of small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, 360 days)'' after ''180 days''.

1988—Subsec. (e). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

§ 6315. Labeling

(a) Prescription by Secretary

If the Secretary has prescribed test procedures under section 6314 of this title for any class of covered equipment, he shall prescribe a labeling rule applicable to such class of covered equipment in accordance with the following provisions of this section.

(b) Disclosure of energy efficiency of articles of covered equipment

A labeling rule prescribed in accordance with this section shall require that each article of covered equipment which is in the type (or class) of industrial equipment to which such rule applies, discloses by label, the energy efficiency of such article, determined in accordance with test procedures under section 6314 of this title. Such rule may also require that such disclosure include the estimated operating costs and energy use, determined in accordance with test procedures under section 6314 of this title.

(c) Inclusion of requirements

A rule prescribed in accordance with this section shall include such requirements as the Secretary determines are likely to assist purchasers in making purchasing decisions, including—

(1) requirements and directions for display of any label,

(2) requirements for including on any label, or separately attaching to, or shipping with, the covered equipment, such additional information relating to energy efficiency, energy use, and other measures of energy consumption, including instructions for the maintenance, use, or repair of the covered equipment, as the Secretary determines necessary to provide adequate information to purchasers, and

(3) requirements that printed matter which is displayed or distributed at the point of sale of such equipment shall disclose such information as may be required under this section to be disclosed on the label of such equipment.

(d) Labeling rules applicable to electric motors

Subject to subsection (h) of this section, not later than 12 months after the Secretary establishes test procedures for electric motors under section 6314 of this title, the Secretary shall prescribe labeling rules under this section applicable to electric motors taking into consideration NEMA Standards Publication MG1–1987. Such rules shall provide that the labeling of any electric motor manufactured after the 12-month period beginning on the date the Secretary prescribes such labeling rules, shall—

(1) indicate the energy efficiency of the motor on the permanent nameplate attached to such motor;

(2) prominently display the energy efficiency of the motor in equipment catalogs and other material used to market the equipment; and

(3) include such other markings as the Secretary determines necessary solely to facilitate enforcement of the standards established for electric motors under section 6313 of this title.

(e) Labeling rules for air conditioning and heating equipment

Subject to subsection (h) of this section, not later than 12 months after the Secretary establishes test procedures for small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, very large commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezers, automatic commercial ice makers, commercial clothes washers, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks under section 6314 of this title, the Secretary shall prescribe labeling rules under this section for such equipment. Such rules shall provide that the labeling of any small commercial package air conditioning and heating equipment, large commercial package air condi-

tioning and heating equipment, very large commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezers, automatic commercial ice makers, commercial clothes washers, packaged terminal air conditioner, packaged terminal heat pump, warm-air furnace, packaged boiler, storage water heater, instantaneous water heater, and unfired hot water storage tank manufactured after the 12-month period beginning on the date the Secretary prescribes such rules shall—

(1) indicate the energy efficiency of the equipment on the permanent nameplate attached to such equipment or other nearby permanent marking;

(2) prominently display the energy efficiency of the equipment in new equipment catalogs used by the manufacturer to advertise the equipment; and

(3) include such other markings as the Secretary determines necessary solely to facilitate enforcement of the standards established for such equipment under section 6313 of this title.

(f) Consultation with Federal Trade Commission

Before prescribing any labeling rules for a type (or class) of covered equipment, the Secretary shall consult with, and obtain the written views of, the Federal Trade Commission with respect to such rules. The Federal Trade Commission shall promptly provide such written views upon the request of the Secretary.

(g) Publication in Federal Register; presentment of oral and written data, views, and arguments of interested persons

(1) Before prescribing any labeling rules under this section, the Secretary shall—

(A) publish proposed labeling rules in the Federal Register, and

(B) afford interested persons an opportunity (of not less than 45 days' duration) to pre- sent oral and written data, views, and arguments on the proposed rules.

(2) A labeling rule prescribed under this section shall take effect not later than 3 months after the date of prescription of such rule, except that such rules may take effect not later than 6 months after such date of prescription if the Secretary determines that such extension is necessary to allow persons subject to such rules adequate time to come into compliance with such rules.

(h) Restrictions on Secretary's authority to promulgate rules

The Secretary shall not promulgate labeling rules for any class of industrial equipment unless he has determined that—

(1) labeling in accordance with this section is technologically and economically feasible with respect to such class;

(2) significant energy savings will likely result from such labeling; and

(3) labeling in accordance with this section is likely to assist consumers in making purchasing decisions.

(i) Tests for accuracy of information contained on labels

When requested by the Secretary, any manufacturer of industrial equipment to which a rule under this section applies shall supply at the manufacturer's expense a reasonable number of articles of such covered equipment to any laboratory or testing facility designated by the Secretary, or permit representatives of such laboratory or facility to test such equipment at the site where it is located, for purposes of ascertaining whether the information set out on the label, or otherwise required to be disclosed, as required under this section, is accurate. Any reasonable charge levied by the laboratory or facility for such testing shall be borne by the United States, if and to the extent provided in appropriations Acts.

(j) Products completed prior to effective date of rules

A labeling rule under this section shall not apply to any article of covered equipment the manufacture of which was completed before the effective date of such rule.

(k) Labeling authority under Federal Trade Commission Act

Until such time as labeling rules under this section take effect with respect to a type (or class) of covered equipment, this section shall not affect any authority of the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] to require labeling with respect to energy consumption of such type (or class) of covered equipment.

(Pub. L. 94–163, title III, § 344, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3271; amended Pub. L. 102–486, title I, § 122(c), Oct. 24, 1992, 106 Stat. 2809; Pub. L. 109–58, title I, § 136(g), Aug. 8, 2005, 119 Stat. 643.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (k), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–58 inserted "very large commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezers, automatic commercial ice makers, commercial clothes washers," after "large commercial package air conditioning and heating equipment," in two places in introductory provisions.

1992—Subsec. (a). Pub. L. 102–486, § 122(c)(1), substituted "shall prescribe" for "may prescribe".

Subsec. (c). Pub. L. 102–486, § 122(c)(2), substituted "shall include" for "may include".

Subsecs. (d) to (k). Pub. L. 102–486, § 122(c)(3), (4), added subsecs. (d) and (e) and redesignated former subsecs. (d) to (i) as (f) to (k), respectively.

§ 6316. Administration, penalties, enforcement, and preemption

(a) The provisions of section 6296(a), (b), and (d) of this title, the provisions of subsections (*l*) through (s) of section 6295 of this title, and section[1] 6297 through 6306 of this title shall apply with respect to this part (other than the equipment specified in subparagraphs (B), (C), (D), (E), and (F) of section 6311(1) of this title) to the

[1] So in original. Probably should be "sections".

same extent and in the same manner as they apply in part A of this subchapter. In applying such provisions for the purposes of this part—

(1) references to sections 6293, 6294, and 6295 of this title shall be considered as references to sections 6314, 6315, and 6313 of this title, respectively;

(2) references to ''this part'' shall be treated as referring to part A–1 of this subchapter;

(3) the term ''equipment'' shall be substituted for the term ''product'';

(4) the term ''Secretary'' shall be substituted for ''Commission'' each place it appears (other than in section 6303(c) of title);

(5) section 6297(a) of this title shall be applied, in the case of electric motors, as if the National Appliance Energy Conservation Act of 1987 was the Energy Policy Act of 1992;

(6) section 6297(b)(1) of this title shall be applied as if electric motors were fluorescent lamp ballasts and as if the National Appliance Energy Conservation Amendments of 1988 were the Energy Policy Act of 1992;

(7) section 6297(b)(4) of this title shall be applied as if electric motors were fluorescent lamp ballasts and as if paragraph (5) of section 6295(g) of this title were section 6313 of this title;

(8) notwithstanding any other provision of law, a regulation or other requirement adopted by a State or subdivision of a State contained in a State or local building code for new construction concerning the energy efficiency or energy use of an electric motor covered under this part is not superseded by the standards for such electric motor established or prescribed under section 6313(b) of this title if such regulation or requirement is identical to the standards established or prescribed under such section; and

(9) in the case of commercial clothes washers, section 6297(b)(1) of this title shall be applied as if the National Appliance Energy Conservation Act of 1987 was the Energy Policy Act of 2005.

(b)(1) The provisions of section 6296(a), (b), and (d) of this title, section 6297(a) of this title, and sections 6298 through 6306 of this title shall apply with respect to the equipment specified in subparagraphs (B), (C), (D), (E), and (F) of section 6311(1) of this title to the same extent and in the same manner as they apply in part A of this subchapter. In applying such provisions for the purposes of such equipment, paragraphs (1), (2), (3), and (4) of subsection (a) of this section shall apply.

(2)(A) A standard prescribed or established under section 6313(a) of this title shall, beginning on the effective date of such standard, supersede any State or local regulation concerning the energy efficiency or energy use of a product for which a standard is prescribed or established pursuant to such section.

(B) Notwithstanding subparagraph (A), a standard prescribed or established under section 6313(a) of this title shall not supersede a standard for such a product contained in a State or local building code for new construction if—

(i) the standard in the building code does not require that the energy efficiency of such product exceed the applicable minimum energy efficiency requirement in amended ASHRAE/IES Standard 90.1; and

(ii) the standard in the building code does not take effect prior to the effective date of the applicable minimum energy efficiency requirement in amended ASHRAE/IES Standard 90.1.

(C) Notwithstanding subparagraph (A), a standard prescribed or established under section 6313(a) of this title shall not supersede the standards established by the State of California set forth in Table C–6, California Code of Regulations, Title 24, Part 2, Chapter 2–53, for water-source heat pumps below 135,000 Btu per hour (cooling capacity) that become effective on January 1, 1993.

(D) Notwithstanding subparagraph (A), a standard prescribed or established under section 6313(a) of this title shall not supersede a State regulation which has been granted a waiver by the Secretary. The Secretary may grant a waiver pursuant to the terms, conditions, criteria, procedures, and other requirements specified in section 6297(d) of this title.

(c) With respect to any electric motor to which standards are applicable under section 6313(b) of this title, the Secretary shall require manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable standard.

(d)(1) Except as provided in paragraphs (2) and (3), section 6297 of this title shall apply with respect to very large commercial package air conditioning and heating equipment to the same extent and in the same manner as section 6297 of this title applies under part A of this subchapter on August 8, 2005.

(2) Any State or local standard issued before August 8, 2005, shall not be preempted until the standards established under section 6313(a)(9) of this title take effect on January 1, 2010.

(e)(1)(A) Subsections (a), (b), and (d) of section 6296 of this title, subsections (m) through (s) of section 6295 of this title, and sections 6298 through 6306 of this title shall apply with respect to commercial refrigerators, freezers, and refrigerator-freezers to the same extent and in the same manner as those provisions apply under part A of this subchapter.

(B) In applying those provisions to commercial refrigerators, freezers, and refrigerator-freezers, paragraphs (1), (2), (3), and (4) of subsection (a) of this section shall apply.

(2)(A) Section 6297 of this title shall apply to commercial refrigerators, freezers, and refrigerator-freezers for which standards are established under paragraphs (2) and (3) of section 6313(c) of this title to the same extent and in the same manner as those provisions apply under part A of this subchapter on August 8, 2005, except that any State or local standard issued before August 8, 2005, shall not be preempted until the standards established under paragraphs (2) and (3) of section 6313(c) of this title take effect.

(B) In applying section 6297 of this title in accordance with subparagraph (A), paragraphs (1), (2), and (3) of subsection (a) of this section shall apply.

(3)(A) Section 6297 of this title shall apply to commercial refrigerators, freezers, and refrig-

erator-freezers for which standards are established under section 6313(c)(4) of this title to the same extent and in the same manner as the provisions apply under part A of this subchapter on the date of publication of the final rule by the Secretary, except that any State or local standard issued before the date of publication of the final rule by the Secretary shall not be preempted until the standards take effect.

(B) In applying section 6297 of this title in accordance with subparagraph (A), paragraphs (1), (2), and (3) of subsection (a) of this section shall apply.

(4)(A) If the Secretary does not issue a final rule for a specific type of commercial refrigerator, freezer, or refrigerator-freezer within the time frame specified in section 6313(c)(5) of this title, subsections (b) and (c) of section 6297 of this title shall not apply to that specific type of refrigerator, freezer, or refrigerator-freezer for the period beginning on the date that is 2 years after the scheduled date for a final rule and ending on the date on which the Secretary publishes a final rule covering the specific type of refrigerator, freezer, or refrigerator-freezer.

(B) Any State or local standard issued before the date of publication of the final rule shall not be preempted until the final rule takes effect.

(5)(A) In the case of any commercial refrigerator, freezer, or refrigerator-freezer to which standards are applicable under paragraphs (2) and (3) of section 6313(c) of this title, the Secretary shall require manufacturers to certify, through an independent, nationally recognized testing or certification program, that the commercial refrigerator, freezer, or refrigerator-freezer meets the applicable standard.

(B) The Secretary shall, to the maximum extent practicable, encourage the establishment of at least 2 independent testing and certification programs.

(C) As part of certification, information on equipment energy use and interior volume shall be made available to the Secretary.

(f)(1)(A)(i) Except as provided in clause (ii), section 6297 of this title shall apply to automatic commercial ice makers for which standards have been established under section 6313(d)(1) of this title to the same extent and in the same manner as the section applies under part A of this subchapter on August 8, 2005.

(ii) Any State standard issued before August 8, 2005, shall not be preempted until the standards established under section 6313(d)(1) of this title take effect.

(B) In applying section 6297 of this title to the equipment under subparagraph (A), paragraphs (1), (2), and (3) of subsection (a) of this section shall apply.

(2)(A)(i) Except as provided in clause (ii), section 6297 of this title shall apply to automatic commercial ice makers for which standards have been established under section 6313(d)(2) of this title to the same extent and in the same manner as the section applies under part A of this subchapter on the date of publication of the final rule by the Secretary.

(ii) Any State standard issued before the date of publication of the final rule by the Secretary shall not be preempted until the standards established under section 6313(d)(2) of this title take effect.

(B) In applying section 6297 of this title in accordance with subparagraph (A), paragraphs (1), (2), and (3) of subsection (a) of this section shall apply.

(3)(A) If the Secretary does not issue a final rule for a specific type of automatic commercial ice maker within the time frame specified in section 6313(d) of this title, subsections (b) and (c) of section 6297 of this title shall no longer apply to the specific type of automatic commercial ice maker for the period beginning on the day after the scheduled date for a final rule and ending on the date on which the Secretary publishes a final rule covering the specific type of automatic commercial ice maker.

(B) Any State standard issued before the publication of the final rule shall not be preempted until the standards established in the final rule take effect.

(4)(A) The Secretary shall monitor whether manufacturers are reducing harvest rates below tested values for the purpose of bringing noncomplying equipment into compliance.

(B) If the Secretary finds that there has been a substantial amount of manipulation with respect to harvest rates under subparagraph (A), the Secretary shall take steps to minimize the manipulation, such as requiring harvest rates to be within 5 percent of tested values.

(g)(1)(A) If the Secretary does not issue a final rule for commercial clothes washers within the timeframe specified in section 6313(e)(2) of this title, subsections (b) and (c) of section 6297 of this title shall not apply to commercial clothes washers for the period beginning on the day after the scheduled date for a final rule and ending on the date on which the Secretary publishes a final rule covering commercial clothes washers.

(B) Any State or local standard issued before the date on which the Secretary publishes a final rule shall not be preempted until the standards established under section 6313(e)(2) of this title take effect.

(2) The Secretary shall undertake an educational program to inform owners of laundromats, multifamily housing, and other sites where commercial clothes washers are located about the new standard, including impacts on washer purchase costs and options for recovering those costs through coin collection.

(Pub. L. 94–163, title III, § 345, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3272; amended Pub. L. 102–486, title I, § 122(e), Oct. 24, 1992, 106 Stat. 2815; Pub. L. 105–388, § 5(a)(7), Nov. 13, 1998, 112 Stat. 3478; Pub. L. 109–58, title I, § 136(h), Aug. 8, 2005, 119 Stat. 643.)

REFERENCES IN TEXT

The National Appliance Energy Conservation Act of 1987, referred to in subsec. (a)(5), (9), is Pub. L. 100–12, Mar. 17, 1987, 101 Stat. 103. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 6201 of this title and Tables.

The Energy Policy Act of 1992, referred to in subsec. (a)(5), (6), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The Energy Policy Act of 2005, referred to in subsec. (a)(9), is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594. For

complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

The National Appliance Energy Conservation Amendments of 1988, referred to in subsec. (a)(6), is Pub. L. 100–357, June 28, 1988, 102 Stat. 671. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 6201 of this title and Tables.

AMENDMENTS

2005—Subsec. (a)(9). Pub. L. 109–58, § 136(h)(1), added par. (9).

Subsec. (b)(1). Pub. L. 109–58, § 136(h)(2), substituted ''part A'' for ''part B''.

Subsecs. (d) to (g). Pub. L. 109–58, § 136(h)(3), added subsecs. (d) to (g).

1998—Subsec. (c). Pub. L. 105–388 inserted ''standard'' after ''meets the applicable''.

1992—Pub. L. 102–486, § 122(e)(3), substituted ''enforcement, and preemption'' for ''and enforcement'' in section catchline.

Subsec. (a). Pub. L. 102–486, § 122(e)(1)(A), inserted ''(other than the equipment specified in subparagraphs (B), (C), (D), (E), and (F) of section 6311(*l*) of this title)'' after ''to this part'' and substituted '', the provisions of subsections (*l*) through (s) of section 6295 of this title, and section 6297'' for ''and sections 6298''.

Subsec. (a)(1). Pub. L. 102–486, § 122(e)(1)(B), substituted '', 6294, and 6295 of this title'' for ''and 6294 of this title'' and ''6314, 6315, and 6313 of this title, respectively'' for ''6314 and 6315 of this title, respectively''.

Subsec. (a)(5) to (8). Pub. L. 102–486, § 122(e)(1)(C)–(E), added pars. (5) to (8).

Subsecs. (b), (c). Pub. L. 102–486, § 122(e)(2), added subsecs. (b) and (c).

§ 6317. Energy conservation standards for high-intensity discharge lamps, distribution transformers, and small electric motors

(a) High-intensity discharge lamps and distribution transformers

(1) The Secretary shall, within 30 months after October 24, 1992, prescribe testing requirements for those high-intensity discharge lamps and distribution transformers for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

(2) The Secretary shall, within 18 months after the date on which testing requirements are prescribed by the Secretary pursuant to paragraph (1), prescribe, by rule, energy conservation standards for those high-intensity discharge lamps and distribution transformers for which the Secretary prescribed testing requirements under paragraph (1).

(3) Any standard prescribed under paragraph (2) with respect to high-intensity discharge lamps shall apply to such lamps manufactured 36 months after the date such rule is published.

(b) Small electric motors

(1) The Secretary shall, within 30 months after October 24, 1992, prescribe testing requirements for those small electric motors for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

(2) The Secretary shall, within 18 months after the date on which testing requirements are prescribed by the Secretary pursuant to paragraph (1), prescribe, by rule, energy conservation standards for those small electric motors for which the Secretary prescribed testing requirements under paragraph (1).

(3) Any standard prescribed under paragraph (2) shall apply to small electric motors manufactured 60 months after the date such rule is published or, in the case of small electric motors which require listing or certification by a nationally recognized testing laboratory, 84 months after such date. Such standards shall not apply to any small electric motor which is a component of a covered product under section 6292(a) of this title or a covered equipment under section 6311 of this title.

(c) Consideration of criteria under other law

In establishing any standard under this section, the Secretary shall take into consideration the criteria contained in section 6295(n) of this title.

(d) Prescription of labeling requirements by Secretary

The Secretary shall, within six months after the date on which energy conservation standards are prescribed by the Secretary for high-intensity discharge lamps and distribution transformers pursuant to subsection (a)(2) of this section and small electric motors pursuant to subsection (b)(2) of this section, prescribe labeling requirements for such lamps, transformers, and small electric motors.

(e) Compliance by manufacturers with labeling requirements

Beginning on the date which occurs six months after the date on which a labeling rule is prescribed for a product under subsection (d) of this section, each manufacturer of a product to which such a rule applies shall provide a label which meets, and is displayed in accordance with, the requirements of such rule.

(f) New covered products; distribution of nonconforming products prohibited; construction with other law

(1) After the date on which a manufacturer must provide a label for a product pursuant to subsection (e) of this section—

(A) each such product shall be considered, for purposes of paragraphs (1) and (2) of section 6302(a) of this title, a new covered product to which a rule under section 6294 of this title applies; and

(B) it shall be unlawful for any manufacturer or private labeler to distribute in commerce any new product for which an energy conservation standard is prescribed under subsection (a)(2) or (b)(2) of this section which is not in conformity with the applicable energy conservation standard.

(2) For purposes of section 6303(a) of this title, paragraph (1) of this subsection shall be considered to be a part of section 6302 of this title.

(Pub. L. 94–163, title III, § 346, as added Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3272; amended Pub. L. 102–486, title I, § 124(a), Oct. 24, 1992, 106 Stat. 2832.)

AMENDMENTS

1992—Pub. L. 102–486 amended section generally, substituting provisions requiring energy conservation

standards for high-intensity discharge lamps, distribution transformers, and small electric motors, for provisions authorizing appropriations for fiscal years 1978 and 1979.

STUDY OF UTILITY DISTRIBUTION TRANSFORMERS; REPORT TO CONGRESS

Section 124(c) of Pub. L. 102–486 provided that: ''The Secretary shall evaluate the practicability, cost-effectiveness, and potential energy savings of replacing, or upgrading components of, existing utility distribution transformers during routine maintenance and, not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], report the findings of such evaluation to the Congress with recommendations on how such energy savings, if any, could be achieved.''

PART B—STATE ENERGY CONSERVATION PLANS

CODIFICATION

This part, originally designated part C and subsequently redesignated part D by Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to part B for purposes of codification.

§ 6321. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the development and implementation by States of laws, policies, programs, and procedures to conserve and to improve efficiency in the use of energy will have an immediate and substantial effect in reducing the rate of growth of energy demand and in minimizing the adverse social, economic, political, and environmental impacts of increasing energy consumption;

(2) the development and implementation of energy conservation programs by States will most efficiently and effectively minimize any adverse economic or employment impacts of changing patterns of energy use and meet local economic, climatic, geographic, and other unique conditions and requirements of each State; and

(3) the Federal Government has a responsibility to foster and promote comprehensive energy conservation programs and practices by establishing guidelines for such programs and providing overall coordination, technical assistance, and financial support for specific State initiatives in energy conservation.

(b) It is the purpose of this part to promote the conservation of energy and reduce the rate of growth of energy demand by authorizing the Secretary to establish procedures and guidelines for the development and implementation of specific State energy conservation programs and to provide Federal financial and technical assistance to States in support of such programs.

(Pub. L. 94–163, title III, § 361, Dec. 22, 1975, 89 Stat. 932; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

REPORT ON COORDINATION OF ENERGY CONSERVATION PROGRAMS

Section 623 of Pub. L. 95–619 provided that not later than 6 months after Nov. 9, 1978, the Secretary of Energy submit a report on the coordination of Federal energy conservation programs involving State and local government.

§ 6322. State energy conservation plans

(a) Feasibility reports

The Secretary shall, by rule, within 60 days after December 22, 1975, prescribe guidelines for the preparation of a State energy conservation feasibility report. The Secretary shall invite the Governor of each State to submit, within 3 months after the effective date of such guidelines, such a report. Such report shall include—

(1) an assessment of the feasibility of establishing a State energy conservation goal, which goal shall consist of a reduction, as a result of the implementation of the State energy conservation plan described in this section, of 5 percent or more in the total amount of energy consumed in such State in the year 1980 from the projected energy consumption for such State in the year 1980, and

(2) a proposal by such State for the development of a State energy conservation plan to achieve such goal.

(b) Guidelines

The Secretary shall, by rule, within 6 months after December 22, 1975, prescribe guidelines with respect to measures required to be included in, and guidelines for the development, modification, and funding of, State energy conservation plans. The Secretary shall invite the Governor of each State to submit, within 5 months after the effective date of such guidelines, a report. Such report shall include—

(1) a proposed State energy conservation plan designed to result in scheduled progress toward, and achievement of, the State energy conservation goal of such State; and

(2) a detailed description of the requirements, including the estimated cost of implementation and the estimated energy savings, associated with each functional category of energy conservation included in the State energy conservation plan.

(c) Mandatory features of plans

Each proposed State energy conservation plan to be eligible for Federal assistance under this part shall include—

(1) mandatory lighting efficiency standards for public buildings (except public buildings owned or leased by the United States);

(2) programs to promote the availability and use of carpools, vanpools, and public transportation (except that no Federal funds provided under this part shall be used for subsidizing fares for public transportation);

(3) mandatory standards and policies relating to energy efficiency to govern the procurement practices of such State and its political subdivisions;

(4) mandatory thermal efficiency standards and insulation requirements for new and renovated buildings (except buildings owned or leased by the United States);

(5) a traffic law or regulation which, to the maximum extent practicable consistent with safety, permits the operator of a motor vehicle to turn such vehicle right at a red stop light

after stopping and to turn such vehicle left from a one-way street onto a one-way street at a red light after stopping; and

(6) procedures for ensuring effective coordination among various local, State, and Federal energy conservation programs within the State, including any program administered within the Office of Technical and Financial Assistance of the Department of Energy and the Low Income Home Energy Assistance Program administered by the Department of Health and Human Services.

(d) Optional features of plans

Each proposed State energy conservation plan may include—

(1) restrictions governing the hours and conditions of operation of public buildings (except buildings owned or leased by the United States);

(2) restrictions on the use of decorative or nonessential lighting;

(3) programs to increase transportation energy efficiency, including programs to accelerate the use of alternative transportation fuels for State government vehicles, fleet vehicles, taxies, mass transit, and privately owned vehicles;

(4) programs of public education to promote energy conservation;

(5) programs for financing energy efficiency and renewable energy capital investments, projects, and programs—

(A) which may include loan programs and performance contracting programs for leveraging of additional public and private sector funds, and programs which allow rebates, grants, or other incentives for the purchase and installation of energy efficiency and renewable energy measures; or

(B) in addition to or in lieu of programs described in subparagraph (A), which may be used in connection with public or nonprofit buildings owned and operated by a State, a political subdivision of a State or an agency or instrumentality of a State, or an organization exempt from taxation under section 501(c)(3) of title 26;

(6) programs for encouraging and for carrying out energy audits with respect to buildings and industrial facilities (including industrial processes) within the State;

(7) programs to promote the adoption of integrated energy plans which provide for—

(A) periodic evaluation of a State's energy needs, available energy resources (including greater energy efficiency), and energy costs; and

(B) utilization of adequate and reliable energy supplies, including greater energy efficiency, that meet applicable safety, environmental, and policy requirements at the lowest cost;

(8) programs to promote energy efficiency in residential housing, such as—

(A) programs for development and promotion of energy efficiency rating systems for newly constructed housing and existing housing so that consumers can compare the energy efficiency of different housing; and

(B) programs for the adoption of incentives for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing;

(9) programs to identify unfair or deceptive acts or practices which relate to the implementation of energy efficiency measures and renewable resource energy measures and to educate consumers concerning such acts or practices;

(10) programs to modify patterns of energy consumption so as to reduce peak demands for energy and improve the efficiency of energy supply systems, including electricity supply systems;

(11) programs to promote energy efficiency as an integral component of economic development planning conducted by State, local, or other governmental entities or by energy utilities;

(12) in accordance with subsection (f)(2) of this section, programs to implement the Energy Technology Commercialization Services Program;

(13) programs (enlisting appropriate trade and professional organizations in the development and financing of such programs) to provide training and education (including, if appropriate, training workshops, practice manuals, and testing for each area of energy efficiency technology) to building designers and contractors involved in building design and construction or in the sale, installation, and maintenance of energy systems and equipment to promote building energy efficiency improvements;

(14) programs for the development of building retrofit standards and regulations, including retrofit ordinances enforced at the time of the sale of a building;

(15) support for prefeasibility and feasibility studies for projects that utilize renewable energy and energy efficiency resource technologies in order to facilitate access to capital and credit for such projects;

(16) programs to facilitate and encourage the voluntary use of renewable energy technologies for eligible participants in Federal agency programs, including the Rural Electrification Administration and the Farmers Home Administration; and

(17) any other appropriate method or programs to conserve and to promote efficiency in the use of energy.

(e) Standby plans

The Governor of any State may submit to the Secretary a State energy conservation plan which is a standby energy conservation plan to significantly reduce energy demand by regulating the public and private consumption of energy during a severe energy supply interruption, which plan may be separately eligible for Federal assistance under this part without regard to subsections (c) and (d) of this section.

(f) Energy Technology Commercialization Services Program

(1) The purposes of this subsection are to—

(A) strengthen State outreach programs to aid small and start-up businesses;

(B) foster a broader application of engineering principles and techniques to energy technology products, manufacturing, and commercial production by small and start-up businesses; and

(C) foster greater assistance to small and start-up businesses in dealing with the Federal Government on energy technology related matters.

(2) The programs to implement the functions of the Energy Technology Commercialization Services Program, as provided for by subsection (d)(12) of this section, shall—

(A) aid small and start-up businesses in discovering useful and practical information relating to manufacturing and commercial production techniques and costs associated with new energy technologies;

(B) encourage the application of such information in order to solve energy technology product development and manufacturing problems;

(C) establish an Energy Technology Commercialization Services Program affiliated with an existing entity in each State;

(D) coordinate engineers and manufacturers to aid small and start-up businesses in solving specific technical problems and improving the cost effectiveness of methods for manufacturing new energy technologies;

(E) assist small and start-up businesses in preparing the technical portions of proposals seeking financial assistance for new energy technology commercialization; and

(F) facilitate contract research between university faculty and students and small start-up businesses, in order to improve energy technology product development and independent quality control testing.

(3) Each State energy technology commercialization services program shall develop and maintain a data base of engineering and scientific experts in energy technologies and product commercialization interested in participating in the service. Such data base shall, at a minimum, include faculty of institutions of higher education, retired manufacturing experts, and national laboratory personnel.

(4) The services provided by the energy technology commercialization services programs established under this subsection shall be available to any small or start-up business. Such service programs shall charge fees which are affordable to a party eligible for assistance, which shall be determined by examining factors, including the following: (A) the costs of the services received; (B) the need of the recipient for the services; and (C) the ability of the recipient to pay for the services.

(5) For the purposes of this subsection, the term—

(A) ''institution of higher education'' has the same meaning as such term is defined in section 1001 of title 20;

(B) ''small business'' means a private firm that does not exceed the numerical size standard promulgated by the Small Business Administration under section 632(a) of title 15 for the Standard Industrial Classification (SIC) codes designated by the Secretary of Energy; and

(C) ''start-up business'' means a small business which has been in existence for 5 years or less.

(g) Review of plans

The Secretary shall, at least once every 3 years, invite the Governor of each State to review and, if necessary, revise the energy conservation plan of such State submitted under subsection (b) or (e) of this section. Such reviews should consider the energy conservation plans of other States within the region, and identify opportunities and actions carried out in pursuit of common energy conservation goals.

(Pub. L. 94–163, title III, § 362, Dec. 22, 1975, 89 Stat. 933; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101–440, §§ 3(a), 4(a), (b), Oct. 18, 1990, 104 Stat. 1006–1008; Pub. L. 102–486, title I, § 141(b), (c)(1), Oct. 24, 1992, 106 Stat. 2841; Pub. L. 105–244, title I, § 102(a)(13)(E), Oct. 7, 1998, 112 Stat. 1620; Pub. L. 105–388, § 5(a)(8), Nov. 13, 1998, 112 Stat. 3478; Pub. L. 109–58, title I, § 123(a), Aug. 8, 2005, 119 Stat. 616.)

AMENDMENTS

2005—Subsec. (g). Pub. L. 109–58 added subsec. (g).

1998—Subsec. (a)(1). Pub. L. 105–388, § 5(a)(8)(A), inserted ''of'' after ''of the implementation''.

Subsec. (d)(12). Pub. L. 105–388, § 5(a)(8)(B), substituted ''subsection (f)(2)'' for ''subsection (g)''.

Subsec. (f)(5)(A). Pub. L. 105–244 substituted ''section 1001'' for ''section 1141(a)''.

1992—Subsec. (c)(5). Pub. L. 102–486, § 141(c)(1), substituted ''and to turn such vehicle left from a one-way street onto a one-way street at a red light after stopping; and'' for ''; and''.

Subsec. (d)(13) to (17). Pub. L. 102–486, § 141(b), added pars. (13) to (16) and redesignated former par. (13) as (17).

1990—Subsec. (c)(6). Pub. L. 101–440, § 3(a), added par. (6).

Subsec. (d)(3). Pub. L. 101–440, § 4(a)(1), added par. (3) and struck out former par. (3) which read as follows: ''transportation controls;''.

Subsec. (d)(5) to (13). Pub. L. 101–440, § 4(a)(3), added pars. (5) to (13) and struck out former par. (5) which read as follows: ''any other appropriate method or programs to conserve and to improve efficiency in the use of energy.''

Subsec. (f). Pub. L. 101–440, § 4(b), added subsec. (f).

1978—Subsecs. (a), (b), (e). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 141(c)(2) of Pub. L. 102–486 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect January 1, 1995.''

STUDY REGARDING IMPACT OF PERMITTING RIGHT AND LEFT TURNS ON RED LIGHTS

Section 141(d) of Pub. L. 102–486 provided that:

''(1) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration, in consultation with State agencies with jurisdiction over traffic safety issues, shall conduct a study on the safety impact of the requirement specified in section 362(c)(5) of the Energy Policy and Conservation Act (42 U.S.C. 6322(c)(5)), particularly with respect to the impact on pedestrian safety.

''(2) REPORT.—The Administrator shall report the findings of the study conducted under paragraph (1) to the Congress and the Secretary not later than 2 years after the date of the enactment of this Act [Oct. 24, 1992].''

§ 6323. Federal assistance to States

(a) Information, technical assistance, and assistance in preparation of reports and development, implementation, or modification of energy conservation plan

Upon request of the Governor of any State, the Secretary shall provide, subject to the availability of personnel and funds, information and technical assistance, including model State laws and proposed regulations relating to energy conservation, and other assistance in—

(1) the preparation of the reports described in section 6322 of this title, and

(2) the development, implementation, or modification of an energy conservation plan of such State submitted under section 6322(b) or (e) of this title.

(b) Financial assistance to assist State in development, implementation, or modification of energy conservation plan; submission of plan to and approval of Secretary; considerations governing approval; amount of assistance

(1) The Secretary may grant Federal financial assistance pursuant to this section for the purpose of assisting such State in the development of any such energy conservation plan or in the implementation or modification of a State energy conservation plan or part thereof which has been submitted to and approved by the Secretary pursuant to this part.

(2) In determining whether to approve a State energy conservation plan submitted under section 6322(b) or (e) of this title, the Secretary—

(A) shall take into account the impact of local economic, climatic, geographic, and other unique conditions and requirements of such State on the opportunity to conserve and to improve efficiency in the use of energy in such State; and

(B) may extend the period of time during which a State energy conservation feasibility report or State energy conservation plan may be submitted if the Secretary determines that participation by the State submitting such report or plan is likely to result in significant progress toward achieving the purposes of this chapter.

No such plan shall be disapproved without notice and an opportunity to present views.

(3) In determining the amount of Federal financial assistance to be provided to any State under this subsection, the Secretary shall consider—

(A) the contribution to energy conservation which can reasonably be expected,

(B) the number of people affected by such plan, and

(C) the consistency of such plan with the purposes of this chapter, and such other factors as the Secretary deems appropriate.

(c) Records

Each recipient of Federal financial assistance under subsection (b) of this section shall keep such records as the Secretary shall require, including records which fully disclose the amount and disposition by each recipient of the proceeds of such assistance, the total cost of the plan, program, projects, measures, or systems for which such assistance was given or used, the source and amount of funds for such plan, program, projects, measures, or systems not supplied by the Secretary, and such other records as the Secretary determines necessary to facilitate an effective audit and performance evaluation. The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination, at reasonable times and under reasonable conditions, to any pertinent books, documents, papers, and records of any recipient of Federal assistance under this part.

(d) Assistance as supplementing and not supplanting State and local funds

Each State receiving Federal financial assistance pursuant to this section shall provide reasonable assurance to the Secretary that it has established policies and procedures designed to assure that Federal financial assistance under this part and under part E of this subchapter will be used to supplement, and not to supplant, State and local funds, and to the extent practicable, to increase the amount of such funds that otherwise would be available, in the absence of such Federal financial assistance, for those programs set forth in the State energy conservation plan approved pursuant to subsection (b) of this section.

(e) Energy emergency planning program as prerequisite to assistance

(1) Effective October 1, 1991, to be eligible for Federal financial assistance pursuant to this section, a State shall submit to the Secretary, as a supplement to its energy conservation plan, an energy emergency planning program for an energy supply disruption, as designed by the State consistent with applicable Federal and State law. The contingency plan provided for by the program shall include an implementation strategy or strategies (including regional coordination) for dealing with energy emergencies. The submission of such plan shall be for informational purposes only and without any requirement of approval by the Secretary.

(2) Federal financial assistance made available under this part to a State may be used to develop and conduct the energy emergency planning program requirement referred to in paragraph (1).

(f) State buildings energy efficiency improvements incentive fund

If the Secretary determines that a State has demonstrated a commitment to improving the energy efficiency of buildings within such State, the Secretary may, beginning in fiscal year 1994, provide up to $1,000,000 to such State for deposit into a revolving fund established by such State for the purpose of financing energy efficiency improvements in State and local government buildings. In making such determination the Secretary shall consider whether—

(1) such State, or a majority of the units of local government with jurisdiction over build-

ing energy codes within such State, has adopted codes for energy efficiency in new buildings that are at least as stringent as American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1–1989 (with respect to commercial buildings) and Council of American Building Officials Model Energy Code, 1992 (with respect to residential buildings);

(2) such State has established a program, including a revolving fund, to finance energy efficiency improvement projects in State and local government facilities and buildings; and

(3) such State has obtained funding from non-Federal sources, including but not limited to, oil overcharge funds, State or local government appropriations, or utility contributions (including rebates) equal to or greater than three times the amount provided by the Secretary under this subsection for deposit into such revolving fund.

(Pub. L. 94–163, title III, § 363, Dec. 22, 1975, 89 Stat. 934; Pub. L. 94–385, title IV, § 432(b), (c), Aug. 14, 1976, 90 Stat. 1162; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101–440, § 3(b), Oct. 18, 1990, 104 Stat. 1007; Pub. L. 102–486, title I, § 141(a)(1), Oct. 24, 1992, 106 Stat. 2840.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(2)(B), (3)(C), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–486 added subsec. (f).

1990—Subsecs. (d), (e). Pub. L. 101–440 added subsecs. (d) and (e).

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

1976—Subsec. (b)(2). Pub. L. 94–385, § 432(b), inserted provision requiring notice and opportunity to present views prior to disapproval of plans.

Subsec. (c). Pub. L. 94–385, § 432(c), inserted references to plan, measures, or systems wherever appearing and required that examinations be at reasonable times and under reasonable conditions.

§ 6323a. Matching State contributions

For the base State Energy Conservation Program (part D of the Energy Policy and Conservation Act, sections 361 through 366 [42 U.S.C. 6321–6326]), each State will hereafter match in cash or in kind not less than 20 percent of the Federal contribution.

(Pub. L. 98–473, title I, § 101(c) [title II], Oct. 12, 1984, 98 Stat. 1837, 1861.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended. Part D of title III of the Energy Policy and Conservation Act, as amended, is classified generally to this part (§ 6321 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1985, as enacted by Pub. L. 98–473, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation act:

Pub. L. 98–146, title II, Nov. 4, 1983, 97 Stat. 942.

§ 6324. State energy efficiency goals

Each State energy conservation plan with respect to which assistance is made available under this part on or after August 8, 2005, shall contain a goal, consisting of an improvement of 25 percent or more in the efficiency of use of energy in the State concerned in calendar year 2012 as compared to calendar year 1990, and may contain interim goals.

(Pub. L. 94–163, title III, § 364, Dec. 22, 1975, 89 Stat. 935; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101–440, § 2(a)(1), Oct. 18, 1990, 104 Stat. 1006; Pub. L. 109–58, title I, § 123(b), Aug. 8, 2005, 119 Stat. 616.)

AMENDMENTS

2005—Pub. L. 109–58 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''Each State energy conservation plan with respect to which assistance is made available under this part on or after October 1, 1991, shall contain a goal, consisting of an improvement of 10 percent or more in the efficiency of use of energy in the State concerned in the calendar year 2000 as compared to the calendar year 1990, and may contain interim goals.''

1990—Pub. L. 101–440 amended section generally. Prior to amendment, section read as follows: ''Upon the basis of the reports submitted pursuant to this part and such other information as is available, the Secretary shall, at the earliest practicable date, set an energy conservation goal for each State for 1980 and may set interim goals. Such goal or goals shall consist of the maximum reduction in the consumption of energy during any year as a result of the implementation of the State energy conservation plan described in section 6322(b) of this title which is consistent with technological feasibility, financial resources, and economic objectives, by comparison with the projected energy consumption for such State in such year. The Secretary shall specify the assumptions used in the determination of the projected energy consumption in each State, taking into account population trends, economic growth, and the effects of national energy conservation programs.''

1978—Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

§ 6325. General provisions

(a) Rules

The Secretary may prescribe such rules as may be necessary or appropriate to carry out his authority under this part.

(b) Departmental consultation

In carrying out the provisions of sections 6322 and 6324 of this title and subsection (a) of section 6323 of this title, the Secretary shall consult with appropriate departments and Federal agencies.

(c) Annual report

The Secretary shall, as part of the report required under section 7267 of this title, report to the President and the Congress, and shall fur-

nish copies of such report to the Governor of each State, on the operation of the program under this part. Such report shall include an estimate of the energy conservation achieved, the degree of State participation and achievement, a description of innovative conservation programs undertaken by individual States, and the recommendations of the Secretary, if any, for additional legislation.

(d) Duty of Federal Trade Commission to prevent unfair or deceptive practices or acts relating to implementation of energy measures

The Federal Trade Commission shall (1) cooperate with and assist State agencies which have primary responsibilities for the protection of consumers in activities aimed at preventing unfair and deceptive acts or practices affecting commerce which relate to the implementation of measures likely to conserve, or improve efficiency in the use of, energy, including energy conservation measures and renewable-resource energy measures, and (2) undertake its own program, pursuant to the Federal Trade Commission Act [15 U.S.C. 41 et seq.], to prevent unfair or deceptive acts or practices affecting commerce which relate to the implementation of any such measures.

(e) List of energy measures eligible for financial assistance; designation of types and requirements of energy audits

Within 90 days after August 14, 1976, the Secretary shall—

(1) develop, by rule after consultation with the Secretary of Housing and Urban Development, and publish a list of energy conservation measures and renewable-resource energy measures which are eligible (on a national or regional basis) for financial assistance pursuant to section 1701z–8 of title 12 or section 6881 of this title;

(2) designate, by rule, the types of, and requirements for, energy audits.

(f) Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $100,000,000 for each of the fiscal years 2006 and 2007 and $125,000,000 for fiscal year 2008.

(g) State Energy Advisory Board

(1)(A) There is hereby established within the Department of Energy a State Energy Advisory Board (hereafter in this subsection referred to as the ''Board'') which shall consist of at least 18 and not more than 21 members appointed by the Secretary as soon as practicable but no later than September 30, 1991. At least eight of the members of the Board shall be persons who serve as directors of the State agency, or a division of such agency, responsible for developing State energy conservation plans pursuant to section 6322 of this title. At least four members shall be directors of State or local low income weatherization assistance programs. Other members shall be appointed from persons who have experience in energy efficiency or renewable energy programs from the private sector, consumer interest groups, utilities, public utility commissions, educational institutions, financial institutions, local government energy programs, or research institutions. A majority of the members of the Board shall be State employees.

(B)(i) Except as provided in clause (ii), the members of the Board shall serve a term of three years.

(ii) Of the members first appointed to the Board, one-third shall serve a term of one year, one-third shall serve a term of two years, and the remainder shall serve a term of three years, as specified by the Secretary.

(2) The Board shall—

(A) make recommendations to the Assistant Secretary for Conservation and Renewable Energy within the Department of Energy with respect to—

(i) the energy efficiency goals and objectives of the programs carried out under this part, part E of this subchapter, and under part A of title IV of the Energy Conservation and Production Act [42 U.S.C. 6861 et seq.]; and

(ii) programmatic and administrative policies designed to strengthen and improve the programs referred to in clause (i), including actions that should be considered to encourage non-Federal resources (including private resources) to supplement Federal financial assistance;

(B) serve as a liaison between the States and such Department on energy efficiency and renewable energy resource programs; and

(C) encourage transfer of the results of research and development activities carried out by the Federal Government with respect to energy efficiency and renewable energy resource technologies.

(3) The Secretary shall designate one of the members of the Board to serve as its chairman and one to serve as its vice-chairman. The chairman and vice-chairman shall serve in those offices no longer than two years.

(4) The Secretary shall provide the Board with such reasonable services and facilities as may be necessary for the performance of its functions.

(5) The Board shall be nonpartisan.

(6) The Board may adopt administrative rules and procedures and may elect one of its members secretary of the Board.

(7) Consistent with Federal regulations, the Secretary shall reimburse members of the Board for expenses (including travel expenses) necessarily incurred by them in the performance of their duties.

(8) The Board shall meet at least twice a year and shall submit an annual report to the Secretary and the Congress on the activities carried out by the Board in the previous fiscal year, including an accounting of the expenses reimbursed under paragraph (7) with respect to the year for which the report is made and any recommendations it may have for administrative or legislative changes concerning the matters referred to in subparagraphs (A), (B), and (C) of paragraph (2).

(9) The Board shall continue until terminated by law.

(Pub. L. 94–163, title III, § 365, Dec. 22, 1975, 89 Stat. 935; Pub. L. 94–385, title IV, § 432(d), Aug. 14, 1976, 90 Stat. 1162; Pub. L. 95–619, title VI, §§ 621, 691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288;

Pub. L. 101–440, §§ 5, 8(a), Oct. 18, 1990, 104 Stat. 1009, 1015; Pub. L. 102–486, title I, § 141(a)(2), Oct. 24, 1992, 106 Stat. 2841; Pub. L. 104–66, title I, § 1052(f), Dec. 21, 1995, 109 Stat. 718; Pub. L. 105–388, § 2(a), Nov. 13, 1998, 112 Stat. 3477; Pub. L. 109–58, title I, § 123(c), Aug. 8, 2005, 119 Stat. 617.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (d), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Energy Conservation and Production Act, referred to in subsec. (g)(2)(A)(i), is Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1125, as amended. Part A of title IV of the Act is classified generally to part A (§ 6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

AMENDMENTS

2005—Subsec. (f). Pub. L. 109–58 substituted "$100,000,000 for each of the fiscal years 2006 and 2007 and $125,000,000 for fiscal year 2008" for "for fiscal years 1999 through 2003 such sums as may be necessary".

1998—Subsec. (f). Pub. L. 105–388 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

"(f)(1) Except as provided in paragraph (2), for the purpose of carrying out this part, there are authorized to be appropriated not to exceed $25,000,000 for fiscal year 1991, $35,000,000 for fiscal year 1992, and $45,000,000 for fiscal year 1993.

"(2) For the purposes of carrying out section 6323(f) of this title, there is authorized to be appropriated for fiscal year 1994 and each fiscal year thereafter such sums as may be necessary, to remain available until expended."

1995—Subsec. (c). Pub. L. 104–66 substituted ", as part of the report required under section 7267 of this title, report" for "report annually" in first sentence.

1992—Subsec. (f). Pub. L. 102–486 designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), for the purpose" for "For the purpose", and added par. (2).

1990—Subsec. (f). Pub. L. 101–440, § 8(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "There are authorized to be appropriated for carrying out the provisions of this part (other than section 6327 of this title) $50,000,000 for fiscal year 1976, $50,000,000 for fiscal year 1977, $50,000,000 for fiscal year 1978, and $50,000,000 for fiscal year 1979."

Subsec. (g). Pub. L. 101–440, § 5, added subsec. (g).

1978—Subsecs. (a) to (c), (e). Pub. L. 95–619, § 691(b)(2), substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, wherever appearing.

Subsec. (f). Pub. L. 95–619, § 621, authorized to be appropriated $50,000,000 for fiscal year 1979.

1976—Subsec. (d). Pub. L. 94–385, § 432(d)(1), (2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 94–385, § 432(d)(2), added subsec. (e).

Subsec. (f). Pub. L. 94–385, § 432(d)(1), (3), redesignated former subsec. (d) as (f) and inserted "(other than section 6327 of this title)" after "part".

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 16th item on page 87 identifies a reporting provision which, as subsequently amended, is contained in subsec. (c) of this section and in which the 14th item on page 91 identifies a reporting provision in subsec. (g)(8) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 6326. Definitions

As used in this part—

(1) The term "appliance" means any article, such as a room air-conditioner, refrigerator-freezer, or dishwasher, which the Secretary classifies as an appliance for purposes of this part.

(2) The term "building" means any structure which includes provision for a heating or cooling system, or both, or for a hot water system.

(3) The term "energy audit" means any process which identifies and specifies the energy and cost savings which are likely to be realized through the purchase and installation of particular energy conservation measures or renewable-resource energy measures and which—

(A) is carried out in accordance with rules of the Secretary; and

(B) imposes—

(i) no direct costs, with respect to individuals who are occupants of dwelling units in any State having a supplemental State energy conservation plan approved under section 6327[1] of this title, and

(ii) only reasonable costs, as determined by the Secretary, with respect to any person not described in clause (i).

Rules referred to in subparagraph (A) may include minimum qualifications for, and provisions with respect to conflicts of interest of, persons carrying out such energy audits.

(4) The term "energy conservation measure" means a measure which modifies any building, building system, energy consuming device associated with the building, or industrial plant, the construction of which has been completed prior to May 1, 1989, if such measure has been determined by means of an energy audit or by the Secretary, by rule under section 6325(e)(1) of this title, to be likely to maintain or improve the efficiency of energy use and to reduce energy costs (as calculated on the basis of energy costs reasonably projected over time, as determined by the Secretary) in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure (without regard to any tax benefit or Federal financial assistance applicable thereto) within the period of—

(A) the useful life of the modification involved, as determined by the Secretary, or

(B) 15 years after the purchase and installation of such measure,

whichever is less. Such term does not include (i) the purchase or installation of any appliance, (ii) any conversion from one fuel or source of energy to another which is of a type which the Secretary, by rule, determines is ineligible on the basis that such type of conversion is inconsistent with national policy with respect to energy conservation or reduction of imports of fuels, or (iii) any measure, or type of measure, which the Secretary determines

[1] See References in Text note below.

does not have as its primary purpose an improvement in efficiency of energy use.

(5) The term ''industrial plant'' means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.

(6) The term ''renewable-resource energy measure'' means a measure which modifies any building or industrial plant, the construction of which has been completed prior to August 14, 1976, if such measure has been determined by means of an energy audit or by the Secretary, by rule under section 6325(e)(1) of this title, to—

(A) involve changing, in whole or in part, the fuel or source of the energy used to meet the requirements of such building or plant from a depletable source of energy to a nondepletable source of energy; and

(B) be likely to reduce energy costs (as calculated on the basis of energy costs reasonably projected over time, as determined by the Secretary) in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure (without regard to any tax benefit or Federal financial assistance applicable thereto) within the period of—

(i) the useful life of the modification involved, as determined by the Secretary, or

(ii) 25 years after the purchase and installation of such measure,

whichever is less.

Such term does not include the purchase or installation of any appliance.

(7) The term ''public building'' means any building which is open to the public during normal business hours.

(8) The term ''transportation controls'' means any plan, procedure, method, or arrangement, or any system of incentives, disincentives, restrictions, and requirements, which is designed to reduce the amount of energy consumed in transportation, except that the term does not include rationing of gasoline or diesel fuel.

(Pub. L. 94–163, title III, § 366, Dec. 22, 1975, 89 Stat. 935; Pub. L. 94–385, title IV, § 431, Aug. 14, 1976, 90 Stat. 1158; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101–440, § 2(b), Oct. 18, 1990, 104 Stat. 1006.)

REFERENCES IN TEXT

Section 6327 of this title, referred to in par. (3)(B)(i), was repealed by Pub. L. 101–440, § 4(c)(1), Oct. 18, 1990, 104 Stat. 1009.

AMENDMENTS

1990—Par. (4). Pub. L. 101–440 substituted ''building, building system, energy consuming device associated with the building, or industrial'' for ''building or industrial'', ''May 1, 1989'' for ''August 14, 1976'', and ''maintain or improve the efficiency'' for ''improve the efficiency''.

1978—Pars. (1), (3)(A), (B)(ii), (4), (A), (6), (B), (B)(i). Pub. L. 95–619 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

1976—Pub. L. 94–385 redesignated former pars. (1) and (2) as (7) and (8), respectively, and added pars. (1) to (6).

§ 6327. Repealed. Pub. L. 101–440, § 4(c)(1), Oct. 18, 1990, 104 Stat. 1009

Section, Pub. L. 94–163, title III, § 367, as added Pub. L. 94–385, title IV, § 432(a), Aug. 14, 1976, 90 Stat. 1160; amended Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–619, title VI, §§ 622, 691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288, related to supplemental State energy conservation plans.

PART C—INDUSTRIAL ENERGY CONSERVATION

CODIFICATION

This part, originally designated part D and subsequently redesignated part E by Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to part C for purposes of codification.

§§ 6341 to 6346. Repealed. Pub. L. 99–509, title III, § 3101(b), Oct. 21, 1986, 100 Stat. 1888

Section 6341, Pub. L. 94–163, title III, § 371, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95–619, title VI, §§ 601(c), 691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288, defined terms used in this part.

Section 6342, Pub. L. 94–163, title III, § 372, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, directed Secretary to establish and maintain an energy efficient program.

Section 6343, Pub. L. 94–163, title III, § 373, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95–619, title VI, §§ 601(a), 691(b)(2), Nov. 9, 1978, 92 Stat. 3282, 3288, directed Secretary to identify major energy-consuming industries and corporations in the United States.

Section 6344, Pub. L. 94–163, title III, § 374, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, directed Secretary to establish individual energy improvement targets for each of 10 most energy-consumptive industries.

Section 6344a, Pub. L. 94–163, title III, § 374A, as added Pub. L. 95–619, title IV, § 461(c), Nov. 9, 1978, 92 Stat. 3273, directed Secretary to set targets for increased utilization of energy-saving recovered materials for specified industries.

Section 6345, Pub. L. 94–163, title III, § 375, Dec. 22, 1975, 89 Stat. 937; Pub. L. 95–619, title VI, § 601(b), Nov. 9, 1978, 92 Stat. 3282, required reports from corporations to Secretary on progress made in improving energy efficiency and an annual report from Secretary to Congress and President on progress toward achieving energy efficiency program improvement targets.

Section 6346, Pub. L. 94–163, title III, § 376, Dec. 22, 1975, 89 Stat. 938; Pub. L. 95–619, title IV, § 461(d)(1), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3275, 3288, contained general provisions relating to reporting and use of information under this part and to development of and compliance with energy efficiency improvement targets.

§ 6347. Omitted

CODIFICATION

Section, Pub. L. 96–294, title V, § 591, June 30, 1980, 94 Stat. 761, authorized appropriations to Secretary of Energy of $40,000,000 for each of fiscal years ending Sept. 30, 1981 and 1982, for industrial energy conservation demonstration projects designed to substantially increase productivity in industry.

Section was enacted as part of the Energy Security Act, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

§ 6348. Energy efficiency in industrial facilities

(a) Grant program

(1) In general

The Secretary shall make grants to industry associations to support programs to improve

energy efficiency in industry. In order to be eligible for a grant under this subsection, an industry association shall establish a voluntary energy efficiency improvement target program.

(2) Awarding of grants

The Secretary shall request project proposals and provide annual grants on a competitive basis. In evaluating grant proposals under this subsection, the Secretary shall consider—

(A) potential energy savings;

(B) potential environmental benefits;

(C) the degree of cost sharing;

(D) the degree to which new and innovative technologies will be encouraged;

(E) the level of industry involvement;

(F) estimated project cost-effectiveness; and

(G) the degree to which progress toward the energy improvement targets can be monitored.

(3) Eligible projects

Projects eligible for grants under this subsection may include the following:

(A) Workshops.

(B) Training seminars.

(C) Handbooks.

(D) Newsletters.

(E) Data bases.

(F) Other activities approved by the Secretary.

(4) Limitation on cost sharing

Grants provided under this subsection shall not exceed $250,000 and each grant shall not exceed 75 percent of the total cost of the project for which the grant is made.

(5) Authorization

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(b) Award program

The Secretary shall establish an annual award program to recognize those industry associations or individual industrial companies that have significantly improved their energy efficiency.

(c) Report on industrial reporting and voluntary targets

Not later than one year after October 24, 1992, the Secretary shall, in consultation with affected industries, evaluate and report to the Congress regarding the establishment of Federally mandated energy efficiency reporting requirements and voluntary energy efficiency improvement targets for energy intensive industries. Such report shall include an evaluation of the costs and benefits of such reporting requirements and voluntary energy efficiency improvement targets, and recommendations regarding the role of such activities in improving energy efficiency in energy intensive industries.

(Pub. L. 102–486, title I, §131, Oct. 24, 1992, 106 Stat. 2836.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

§ 6349. Process-oriented industrial energy efficiency

(a) Definitions

For the purposes of this section—

(1) the term ''covered industry'' means the food and food products industry, lumber and wood products industry, petroleum and coal products industry, and all other manufacturing industries specified in Standard Industrial Classification Codes 20 through 39 (or successor classification codes);

(2) the term ''process-oriented industrial assessment'' means—

(A) the identification of opportunities in the production process (from the introduction of materials to final packaging of the product for shipping) for—

(i) improving energy efficiency;

(ii) reducing environmental impact; and

(iii) designing technological improvements to increase competitiveness and achieve cost-effective product quality enhancement;

(B) the identification of opportunities for improving the energy efficiency of lighting, heating, ventilation, air conditioning, and the associated building envelope; and

(C) the identification of cost-effective opportunities for using renewable energy technology in the production process and in the systems described in subparagraph (B); and

(3) the term ''utility'' means any person, State agency (including any municipality), or Federal agency, which sells electric or gas energy to retail customers.

(b) Grant program

(1) Use of funds

The Secretary shall, to the extent funds are made available for such purpose, make grants to States which, consistent with State law, shall be used for the following purposes:

(A) To promote, through appropriate institutions such as universities, nonprofit organizations, State and local government entities, technical centers, utilities, and trade organizations, the use of energy-efficient technologies in covered industries.

(B) To establish programs to train individuals (on an industry-by-industry basis) in conducting process-oriented industrial assessments and to encourage the use of such trained assessors.

(C) To assist utilities in developing, testing, and evaluating energy efficiency programs and technologies for industrial customers in covered industries.

(2) Consultation

States receiving grants under this subsection shall consult with utilities and representatives of affected industries, as appropriate, in determining the most effective use of such funds consistent with the requirements of paragraph (1).

(3) Eligibility criteria

Not later than 1 year after October 24, 1992, the Secretary shall establish eligibility criteria for grants made pursuant to this sub-

section. Such criteria shall require a State applying for a grant to demonstrate that such State—

(A) pursuant to section 2621(a) of title 16, has considered and made a determination regarding the implementation of the standards specified in paragraphs (7) and (8) of section 2621(d) of title 16 (with respect to integrated resources planning and investments in conservation and demand management); and

(B) by legislation or regulation—

(i) allows utilities to recover the costs prudently incurred in providing process-oriented industrial assessments; and

(ii) encourages utilities to provide to covered industries—

(I) process-oriented industrial assessments; and

(II) financial incentives for implementing energy efficiency improvements.

(4) Allocation of funds

Grants made pursuant to this subsection shall be allocated each fiscal year among States meeting the criteria specified in paragraph (3) who have submitted applications 60 days before the first day of such fiscal year. Such allocation shall be made in accordance with a formula to be prescribed by the Secretary based on each State's share of value added in industry (as determined by the Census of Manufacturers) as a percentage of the value added by all such States.

(5) Renewal of grants

A grant under this subsection may continue to be renewed after 2 consecutive fiscal years during which a State receives a grant under this subsection, subject to the availability of funds, if—

(A) the Secretary determines that the funds made available to the State during the previous 2 years were used in a manner required under paragraph (1); and

(B) such State demonstrates, in a manner prescribed by the Secretary, utility participation in programs established pursuant to this subsection.

(6) Coordination with other Federal programs

In carrying out the functions described in paragraph (1), States shall, to the extent practicable, coordinate such functions with activities and programs conducted by the Energy Analysis and Diagnostic Centers of the Department of Energy and the Manufacturing Technology Centers of the National Institute of Standards and Technology.

(c) Other Federal assistance

(1) Assessment criteria

Not later than 2 years after October 24, 1992, the Secretary shall, by contract with nonprofit organizations with expertise in process-oriented industrial energy efficiency technologies, establish and, as appropriate, update criteria for conducting process-oriented industrial assessments on an industry-by-industry basis. Such criteria shall be made available to State and local government, public utility commissions, utilities, representatives of affected process-oriented industries, and other interested parties.

(2) Directory

The Secretary shall establish a nationwide directory of organizations offering industrial energy efficiency assessments, technologies, and services consistent with the purposes of this section. Such directory shall be made available to State governments, public utility commissions, utilities, industry representatives, and other interested parties.

(3) Award program

The Secretary shall establish an annual award program to recognize utilities operating outstanding or innovative industrial energy efficiency technology assistance programs.

(4) Meetings

In order to further the purposes of this section, the Secretary shall convene annual meetings of parties interested in process-oriented industrial assessments, including representatives of State government, public utility commissions, utilities, and affected process-oriented industries.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(Pub. L. 102–486, title I, § 132, Oct. 24, 1992, 106 Stat. 2837; Pub. L. 104–66, title I, § 1052(a)(1), Dec. 21, 1995, 109 Stat. 717; Pub. L. 105–362, title IV, § 401(d), Nov. 10, 1998, 112 Stat. 3282.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

AMENDMENTS

1998—Subsecs. (d), (e). Pub. L. 105–362 redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d) which related to reports to Congress.

1995—Subsec. (d). Pub. L. 104–66 substituted ''Not later than October 24, 1995, and biennially thereafter'' for ''Not later than 2 years after October 24, 1992, and annually thereafter'' in introductory provisions and added par. (6).

§ 6350. Industrial insulation and audit guidelines

(a) Voluntary guidelines for energy efficiency auditing and insulating

Not later than 18 months after October 24, 1992, the Secretary, after consultation with utilities, major industrial energy consumers, and representatives of the insulation industry, shall establish voluntary guidelines for—

(1) the conduct of energy efficiency audits of industrial facilities to identify cost-effective opportunities to increase energy efficiency; and

(2) the installation of insulation to achieve cost-effective increases in energy efficiency in industrial facilities.

(b) Educational and technical assistance

The Secretary shall conduct a program of educational and technical assistance to promote the use of the voluntary guidelines established under subsection (a) of this section.

(Pub. L. 102–486, title I, § 133, Oct. 24, 1992, 106 Stat. 2840; Pub. L. 104–66, title I, § 1052(a)(2), Dec.

21, 1995, 109 Stat. 717; Pub. L. 105–362, title IV, § 401(e), Nov. 10, 1998, 112 Stat. 3282.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–362 struck out heading and text of subsec. (c). Text read as follows: ''Not later than 2 years after October 24, 1995, and biennially thereafter, as part of the report required under section 6349(d) of this title, the Secretary shall report to the Congress on activities conducted pursuant to this section, including—

''(1) a review of the status of industrial energy auditing procedures; and

''(2) an evaluation of the effectiveness of the guidelines established under subsection (a) of this section and the responsiveness of the industrial sector to such guidelines.''

1995—Subsec. (c). Pub. L. 104–66 in introductory provisions substituted ''1995'' for ''1992'', and inserted ''as part of the report required under section 6349(d) of this title,'' after ''and biennially thereafter,''.

PART D—OTHER FEDERAL ENERGY CONSERVATION MEASURES

CODIFICATION

This part, originally designated part E and subsequently redesignated part F by Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to part D for purposes of codification.

§ 6361. Federal energy conservation programs

(a) Establishment and coordination of Federal agency actions

(1) The President shall, to the extent of his authority under other law, establish or coordinate Federal agency actions to develop mandatory standards with respect to energy conservation and energy efficiency to govern the procurement policies and decisions of the Federal Government and all Federal agencies, and shall take such steps as are necessary to cause such standards to be implemented.

(2) The President shall develop and, to the extent of his authority under other law, implement a 10-year plan for energy conservation with respect to buildings owned or leased by an agency of the United States. Such plan shall include mandatory lighting efficiency standards, mandatory thermal efficiency standards and insulation requirements, restrictions on hours of operation, thermostat controls, and other conditions of operation, and plans for replacing or retrofitting to meet such standards.

(b) Public education programs

(1) The Secretary shall establish and carry out a responsible public education program—

(A) to encourage energy conservation and energy efficiency; or

(B) to promote van pooling and carpooling arrangements.

(2) For purposes of this subsection:

(A) The term ''van'' means any automobile which the Secretary determines is manufactured primarily for use in the transportation of not less than 8 individuals and not more than 15 individuals.

(B) The term ''van pooling arrangement'' means an arrangement for the transportation of employees between their residences or other designated locations and their place of employment on a nonprofit basis in which the operating costs of such arrangement are paid for by the employees utilizing such arrangement.

(c) Omitted

(d) Applicability of plan to Executive agencies

The plan developed by the President pursuant to subsection (a)(2) of this section shall be applicable to Executive agencies as defined in section 105 of title 5 and to the United States Postal Service.

(e) Authorization of appropriations

In addition to funds authorized in any other law, there is authorized to be appropriated to the President for fiscal year 1978 not to exceed $25,000,000, and for fiscal year 1979 not to exceed $50,000,000, to carry out the purposes of subsection (a)(2) of this section.

(Pub. L. 94–163, title III, § 381, Dec. 22, 1975, 89 Stat. 939; Pub. L. 95–619, title V, § 501, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3275, 3288; Pub. L. 100–615, § 2(b), Nov. 5, 1988, 102 Stat. 3189.)

CODIFICATION

Subsec. (c) of this section, which required the Secretary to include in the report required under section 8258(b) of this title the steps taken under subsecs. (a) and (b) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 13th item on page 19 and the 3rd item on page 138 of House Document No. 103–7.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–615 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The President shall submit to the Congress an annual report concerning all steps taken under subsections (a) and (b) of this section.''

1978—Subsec. (b). Pub. L. 95–619, § 691(b)(2), substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration, wherever appearing.

Subsecs. (d), (e). Pub. L. 95–619, § 501, added subsecs. (d) and (e).

TRANSFER OF FUNCTIONS

Functions vested in Secretary [formerly Administrator of Federal Energy Administration] under subsec. (b)(1)(B) of this section transferred to Secretary of Transportation by section 7159 of this title.

EX. ORD. NO. 12191. FEDERAL FACILITY RIDESHARING PROGRAM

Ex. Ord. No. 12191, Feb. 1, 1980, 45 F.R. 7997, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to increase ridesharing as a means to conserve petroleum, reduce congestion, improve air quality, and provide an economical way for Federal employees to commute to work, it is hereby ordered as follows:

1–1. RESPONSIBILITIES OF EXECUTIVE AGENCIES

1–101. Executive agencies shall promote the use of ridesharing (carpools, vanpools, privately leased buses, public transportation, and other multi-occupancy modes of travel) by personnel working at Federal facilities. Agency actions pursuant to this Order shall be

consistent with Circular A–118 issued by the Office of Management and Budget.

1–102. Agencies shall establish an annual ridesharing goal tailored to each facility, and expressed as a percentage of fulltime personnel working at that facility who use ridesharing in the commute between home and work. Agencies that share facilities or that are within easy walking distance of one another should coordinate their efforts to develop and implement ridesharing opportunities.

1–103. Agencies shall designate, in accordance with OMB Circular A–118, an employee transportation coordinator. Agencies that share facilities may designate a single transportation coordinator. The coordinator shall assist employees in forming carpools or vanpools (employee-owned or leased) and facilitate employee participation in ridesharing matching programs. The coordinator shall publicize within the facility the availability of public transportation. The coordinator shall also communicate employee needs for new or improved transportation service to the appropriate local public transit authorities or other organizations furnishing multi-passenger modes of travel.

1–104. Agencies shall report to the Administrator of General Services, hereinafter referred to as the Administrator, the goals established, the means developed to achieve those goals, and the progress achieved. These reports shall be in such form and frequency as the Administrator may require.

1–2. RESPONSIBILITIES OF THE ADMINISTRATOR OF GENERAL SERVICES

1–201. The Administrator shall issue such regulations as are necessary to implement this Order.

1–202. The Administrator may exempt small, remotely located Federal facilities from the requirements of Sections 1–102, 1–103, and 1–104 on his own initiative or upon request of the agency. An exemption shall be granted in whole or in part when, in the judgment of the Administrator, the requirements of those Sections would not yield significant ridesharing benefits.

1–203. The Administrator shall, in consultation with the Secretary of Transportation, periodically provide agencies with guidelines, instructions, and other practical aids for establishing, implementing, and improving their ridesharing programs.

1–204. The Administrator shall assist in coordinating the ridesharing activities of the agencies with the efforts of the Department of Energy, under the Federal Energy Management Program and in the development of an emergency energy conservation plan for the Federal government.

1–205. The Administrator shall take into consideration the advice of the Environmental Protection Agency under the Clean Air Act, as amended [42 U.S.C. 7401 et seq.] in performing his responsibilities under this Order.

1–206. The Administrator shall, in consultation with the Secretary of Transportation, report annually to the President on the performance of the agencies in implementing the policies and actions contained in this Order. The report shall include (a) an assessment of each agency's performance, including the reasonableness of its goals and the adequacy of its effort, (b) a comparison of private sector and State and local government ridesharing efforts with those of the Federal government, and (c) recommendations for additional actions necessary to remove barriers or to provide additional incentives to encourage more ridesharing by personnel at Federal facilities.

JIMMY CARTER.

§ 6362. Energy conservation policies and practices

(a) "Agency" defined

In this section, ''agency'' means—

(1) the Department of Transportation with respect to part A of subtitle VII of title 49, United States Code;

(2) the Interstate Commerce Commission;

(3) the Federal Maritime Commission; and

(4) the Federal Power Commission.

(b) Statement of probable impact of major regulatory action on energy efficiency

Except as provided in subsection (c) of this section, each of the agencies specified in subsection (a) of this section shall, where practicable and consistent with the exercise of their authority under other law, include in any major regulatory action (as defined by rule by each such agency) taken by each such agency, a statement of the probable impact of such major regulatory action on energy efficiency and energy conservation.

(c) Application of provisions to authority exercised to protect public health and safety

Subsection (b) of this section shall not apply to any authority exercised under any provision of law designed to protect the public health or safety.

(Pub. L. 94–163, title III, § 382, Dec. 22, 1975, 89 Stat. 939; Pub. L. 103–272, § 4(h), July 5, 1994, 108 Stat. 1364.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–272, § 4(h)(1), added subsec. (a) and struck out former subsec. (a) which related to reports to Congress by Federal agencies, feasibility of additional savings in energy consumption, and administration of laws permitting inefficient use of energy.

Subsec. (b). Pub. L. 103–272, § 4(h)(2), substituted ''subsection (a)'' for ''subsection (a)(1)''.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 6363. Federal actions with respect to recycled oil

(a) Purpose

The purposes of this section are—

(1) to encourage the recycling of used oil;

(2) to promote the use of recycled oil;

(3) to reduce consumption of new oil by promoting increased utilization of recycled oil; and

(4) to reduce environmental hazards and wasteful practices associated with the disposal of used oil.

(b) Definitions

As used in this section:

(1) the term ''used oil'' means any oil which has been refined from crude oil, has been used, and as a result of such use has been contaminated by physical or chemical impurities.

(2) The term ''recycled oil'' means—

(A) used oil from which physical and chemical contaminants acquired through use

have been removed by re-refining or other processing, or

(B) any blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives,

with respect to which the manufacturer has determined, pursuant to the rule prescribed under subsection (d)(1)(A)(i) of this section, is substantially equivalent to new oil for a particular end use.

(3) The term ''new oil'' means any oil which has been refined from crude oil and has not been used, and which may or may not contain additives. Such term does not include used oil or recycled oil.

(4) The term ''manufacturer'' means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(5) The term ''Commission'' means the Federal Trade Commission.

(c) Test procedures for determining substantial equivalency of recycled oil and new oil

As soon as practicable after December 22, 1975, the National Institute of Standards and Technology shall develop test procedures for the determination of substantial equivalency of re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives, with new oil for a particular end use. As soon as practicable after development of such test procedures, the National Institute of Standards and Technology shall report such procedures to the Commission.

(d) Promulgation of rules prescribing test procedures and labeling standards

(1)(A) Within 90 days after the date on which the Commission receives the report under subsection (c) of this section, the Commission shall, by rule, prescribe—

(i) test procedures for the determination of substantial equivalency of re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives, with new oil distributed for a particular end use; and

(ii) labeling standards applicable to containers of recycled oil in order to carry out the purposes of this section.

(B) Such labeling standards shall permit any container of recycled oil to bear a label indicating any particular end use for which a determination of substantial equivalency has been made pursuant to subparagraph (A)(i).

(2) Not later than the expiration of such 90-day period, the Administrator of the Environmental Protection Agency shall, by rule, prescribe labeling standards applicable to containers of new oil, used oil, and recycled oil relating to the proper disposal of such oils after use. Such standards shall be designed to reduce, to the maximum extent practicable, environmental hazards and wasteful practices associated with the disposal of such oils after use.

(e) Labeling standards

Beginning on the effective date of the standards prescribed pursuant to subsection (d)(1)(A) of this section—

(1) no rule or order of the Commission, other than the rules required to be prescribed pursuant to subsection (d)(1)(A) of this section, and no law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, rule, or order requires any container of recycled oil, which container bears a label in accordance with the terms of the rules prescribed under subsection (d)(1)(A) of this section, to bear any label with respect to the comparative characteristics of such recycled oil with new oil which is not identical to that permitted by the rule respecting labeling standards prescribed under subsection (d)(1)(A)(ii) of this section; and

(2) no rule or order of the Commission may require any container of recycled oil to also bear a label containing any term, phrase, or description which connotes less than substantial equivalency of such recycled oil with new oil.

(f) Conformity of acts of Federal officials to Commission rules

After the effective date of the rules required to be prescribed under subsection (d)(1)(A) of this section, all Federal officials shall act within their authority to carry out the purposes of this section, including—

(1) revising procurement policies to encourage procurement of recycled oil for military and nonmilitary Federal uses whenever such recycled oil is available at prices competitive with new oil procured for the same end use; and

(2) educating persons employed by Federal and State governments and private sectors of the economy of the merits of recycled oil, the need for its use in order to reduce the drain on the Nation's oil reserves, and proper disposal of used oil to avoid waste of such oil and to minimize environmental hazards associated with improper disposal.

(Pub. L. 94–163, title III, § 383, Dec. 22, 1975, 89 Stat. 940; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards'' in two places.

APPLICABILITY OF LABELING STANDARDS

Pub. L. 96–463, § 4(c), Oct. 15, 1980, 94 Stat. 2056, provided: ''Before the effective date of the labeling standards required to be prescribed under section 383(d)(1)(A) of the Energy Policy and Conservation Act [subsec. (d)(1)(A) of this section], no requirement of any rule or order of the Federal Trade Commission may apply, or remain applicable, to any container of recycled oil (as defined in section 383(b) of such Act [subsec. (b) of this section]) if such requirement provides that the container must bear any label referring to the fact that it has been derived from previously used oil. Nothing in this subsection [this note] shall be construed to affect any labeling requirement applicable to recycled oil under any authority of law to the extent such require-

ment relates to fitness for intended use or any other performance characteristic of such oil or to any characteristic of such oil other than that referred to in the preceding sentence.''

PART E—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

CODIFICATION

This part was, in the original, designated part G and has been changed to part E for purposes of codification.

§ 6371. Definitions

For the purposes of this part—

(1) The term ''building'' means any structure the construction of which was completed on or before May 1, 1989, which includes a heating or cooling system, or both.

(2) The term ''energy conservation measure'' means an installation or modification of an installation in a building which is primarily intended to maintain or reduce energy consumption and reduce energy costs or allow the use of an alternative energy source, including, but not limited to—

(A) insulation of the building structure and systems within the building;

(B) storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door system modifications;

(C) automatic energy control systems and load management systems;

(D) equipment required to operate variable steam, hydraulic, and ventilating systems adjusted by automatic energy control systems;

(E) solar space heating or cooling systems, solar electric generating systems, or any combination thereof;

(F) solar water heating systems;

(G) furnace or utility plant and distribution system modifications including—

(i) replacement burners, furnaces, boilers, or any combination thereof, which substantially increases the energy efficiency of the heating system,

(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system,

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights, and

(iv) utility plant system conversion measures including conversion of existing oil- and gas-fired boiler installations to alternative energy sources, including coal;

(H) caulking and weatherstripping;

(I) replacement or modification of lighting fixtures which replacement or modification increases the energy efficiency of the lighting system without increasing the overall illumination of a facility (unless such increase in illumination is necessary to conform to any applicable State or local building code or, if no such code applies, the increase is considered appropriate by the Secretary);

(J) energy recovery systems;

(K) cogeneration systems which produce steam or forms of energy such as heat, as well as electricity for use primarily within a building or a complex of buildings owned by a school or hospital and which meet such fuel efficiency requirements as the Secretary may by rule prescribe;

(L) such other measures as the Secretary identifies by rule for purposes of this part; and

(M) such other measures as a grant applicant shows will save a substantial amount of energy and as are identified in an energy audit prescribed pursuant to section 6325(e)(2) of this title.

(3) The term ''hospital'' means a public or nonprofit institution which is—

(A) a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and

(B) duly authorized to provide hospital services under the laws of the State in which it is situated.

(4) The term ''hospital facilities'' means buildings housing a hospital and related facilities, including laboratories, outpatient departments, nurses' home and training facilities and central service facilities operated in connection with a hospital, and also includes buildings housing education or training facilities for health professions personnel operated as an integral part of a hospital.

(5) The term ''public or nonprofit institution'' means an institution owned and operated by—

(A) a State, a political subdivision of a State or an agency or instrumentality of either, or

(B) an organization exempt from income tax under section 501(c)(3) of title 26.

(6) The term ''school'' means a public or nonprofit institution which—

(A) provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

(B)(i) provides, and is legally authorized to provide a program of education beyond secondary education, on a day or residential basis;

(ii) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(iii) is accredited by a nationally recognized accrediting agency or association; and

(iv) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the requirements of clauses (i), (ii), and (iii) and which provides such a program;

(C) provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (i), (ii), and (iii) of subparagraph (B); or

(D) is a local educational agency.

(7) The term ''local education agency'' means a public board of education or other public authority or a nonprofit institution legally constituted within, or otherwise recognized by, a State for either administrative control or direc-

tion of, or to perform administrative services for, a group of schools within a State.

(8) The term ''school facilities'' means buildings housing classrooms, laboratories, dormitories, administrative facilities, athletic facilities, or related facilities operated in connection with a school.

(9) The term ''State'' means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(10) The term ''State energy agency'' means the State agency responsible for developing State energy conservation plans pursuant to section 6322 of this title, or, if no such agency exists, a State agency designated by the Governor of such State to prepare and submit a State plan under section 6371c of this title.

(11) The term ''State school facilities agency'' means an existing agency which is broadly representative of public institutions of higher education, nonprofit institutions of higher education, public elementary and secondary schools, nonprofit elementary and secondary schools, public vocational education institutions, nonprofit vocational education institutions, and the interests of handicapped persons, in a State or, if no such agency exists, an agency which is designated by the Governor of such State which conforms to the requirements of this paragraph.

(12) The term ''State hospital facilities agency'' means an existing agency which is broadly representative of the public hospitals and the nonprofit hospitals, or, if no such agency exists, an agency designated by the Governor of such State which conforms to the requirements of this paragraph.

(13) The term ''energy audit'' means a determination of the energy consumption characteristics of a building which—

(A) identifies the type, size, and rate of energy consumption of such building and the major energy using systems of such building;

(B) determines appropriate energy conservation maintenance and operating procedures; and

(C) indicates the need, if any, for the acquisition and installation of energy conservation measures.

(14) The term ''preliminary energy audit'' means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption and major energy-using systems of such building.

(15) The term ''energy conservation project'' means—

(A) an undertaking to acquire and to install one or more energy conservation measures in school or hospital facilities and

(B) technical assistance in connection with any such undertaking and technical assistance as described in paragraph (17)(A).

(16) The term ''energy conservation project costs'' includes only costs incurred in the design, acquisition, construction, and installation of energy conservation measures and technical assistance costs.

(17) The term ''technical assistance'' means assistance, under rules promulgated by the Secretary, to States, schools, and hospitals—

(A) to conduct specialized studies identifying and specifying energy savings or energy cost savings that are likely to be realized as a result of (i) modification of maintenance and operating procedures in a building, or (ii) the acquisition and installation of one or more specified energy conservation measures in such building, or (iii) both, and

(B) the planning or administration of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation measures in such building.

(18) The term ''technical assistance costs'' means costs incurred for the use of existing personnel or the temporary employment of other qualified personnel (or both such types of personnel) necessary for providing technical assistance.

(19) The term ''energy conservation maintenance and operating procedure'' means modification or modifications in the maintenance and operations of a building, and any installations therein, which are designed to reduce energy consumption in such building and which require no significant expenditure of funds.

(20) The term ''Secretary'' means the Secretary of Energy or his designee.

(21) The term ''Governor'' means the chief executive officer of a State or his designee.

(Pub. L. 94–163, title III, § 391, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3239; amended Pub. L. 98–454, title VI, § 601(e), Oct. 5, 1984, 98 Stat. 1736; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101–440, § 6(b), Oct. 18, 1990, 104 Stat. 1011; Pub. L. 105–388, § 5(a)(9), Nov. 13, 1998, 112 Stat. 3478.)

AMENDMENTS

1998—Par. (2)(B). Pub. L. 105–388 substituted a semicolon for period at end.

1990—Par. (1). Pub. L. 101–440, § 6(b)(1), substituted ''May 1, 1989'' for ''April 20, 1977''.

Par. (2). Pub. L. 101–440, § 6(b)(2), (3), in introductory provision substituted ''maintain or reduce energy consumption and reduce energy costs'' for ''reduce energy consumption'' and in subpar. (C) inserted ''and load management systems'' after ''systems''.

Par. (8). Pub. L. 101–440, § 6(b)(4), inserted ''administrative facilities,'' after ''dormitories,''.

Par. (17)(A). Pub. L. 101–440, § 6(b)(5), substituted ''or energy cost savings'' for ''and related cost savings''.

1986—Par. (5)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1984—Par. (9). Pub. L. 98–454 which directed the amendment of subsec. (a) by inserting reference to the Northern Mariana Islands was executed to par. (9) of this section to reflect the probable intent of Congress, because this section does not contain a subsec. (a).

SEPARABILITY

Section 302(c) of title III of Pub. L. 95–619 provided that: ''If any provision of this title [enacting sections 6371 to 6371j and section 6372 to 6372i of this title, amending sections 300k–2 and 300n–1 of this title, and enacting provisions set out as notes under this section and section 6372 of this title] or the application thereof to any person or circumstances be held invalid, the provisions of other sections of this title and their application to other persons or circumstances shall not be affected thereby.''

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Section 301 of part 1 of title III of Pub. L. 95–619 provided:

''(a) FINDINGS.—The Congress finds that—

''(1) the Nation's nonrenewable energy resources are being rapidly depleted;

''(2) schools and hospitals are major consumers of energy, and have been especially burdened by rising energy prices and fuel shortages;

''(3) substantial energy conservation can be achieved in schools and hospitals through the implementation of energy conservation maintenance and operating procedures and the installation of energy conservation measures; and

''(4) public and nonprofit schools and hospitals in many instances need financial assistance in order to make the necessary improvements to achieve energy conservation.

''(b) PURPOSE.—It is the purpose of this part [enacting sections 6371 to 6371i of this title, amending sections 300k–2 and 300n–1 of this title, and enacting provisions set out as notes under this section] to authorize grants to States and to public and nonprofit schools and hospitals to assist them in identifying and implementing energy conservation maintenance and operating procedures and in evaluating, acquiring, and installing energy conservation measures to reduce the energy use and anticipated energy costs of schools and hospitals.''

§ 6371a. Guidelines

(a) Energy audits

The Secretary shall, by rule, not later than 60 days after November 9, 1978—

(1) prescribe guidelines for the conduct of preliminary energy audits, including a description of the type, number, and distribution of preliminary energy audits of school and hospital facilities that will provide a reasonably accurate evaluation of the energy conservation needs of all such facilities in each State, and

(2) prescribe guidelines for the conduct of energy audits.

(b) State plans for implementation of energy conservation projects in schools and hospitals

The Secretary shall, by rule, not later than 90 days after November 9, 1978, prescribe guidelines for State plans for the implementation of energy conservation projects in schools and hospitals. The guidelines shall include—

(1) a description of the factors which the State energy agency may consider in determining which energy conservation projects will be given priority in making grants pursuant to this part, including such factors as cost, energy consumption, energy savings, and energy conservation goals,

(2) a description of the suggested criteria to be used in establishing a State program to identify persons qualified to implement energy conservation projects, and

(3) a description of the types of energy conservation measures deemed appropriate for each region of the Nation.

(c) Revisions

Guidelines prescribed under this section may be revised from time to time after notice and opportunity for comment.

(d) Determination of severe hardship class for schools and hospitals

The Secretary shall, by rule prescribe criteria for determining schools and hospitals which are in a class of severe hardship. Such criteria shall take into account climate, fuel costs, fuel availability, ability to provide the non-Federal share of the costs, and such other factors that he deems appropriate.

(Pub. L. 94–163, title III, § 392, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3242.)

§ 6371b. Preliminary energy audits and energy audits

(a) Application by Governor

The Governor of any State may apply to the Secretary at such time as the Secretary may specify after promulgation of guidelines under section 6371a(a) of this title for grants to conduct preliminary energy audits and energy audits of school facilities and hospital facilities in such State under this part.

(b) Grants for conduct of preliminary energy audits

Upon application under subsection (a) of this section the Secretary may make grants to States for purposes of conducting preliminary energy audits of school facilities and hospital facilities under this part in accordance with the guidelines prescribed under section 6371a(a)(1) of this title. If a State does not conduct preliminary energy audits within two years after November 9, 1978, the Secretary may conduct such audits within such State.

(c) Grants for conduct of energy audits

Upon application under subsection (a) of this section the Secretary may make grants to States for purposes of conducting energy audits of school facilities and hospital facilities under this part in accordance with the guidelines prescribed under section 6371a(a)(2) of this title.

(d) Audits conducted prior to grant of financial assistance

If a State without the use of financial assistance under this section, conducts preliminary energy audits or energy audits which comply with the guidelines prescribed by the Secretary or which are approved by the Secretary the funds allocated for purposes of this section shall be added to the funds available for energy conservation projects for such State and shall be in addition to amounts otherwise available for such purposes.

(e) Restriction on use of funds; grant covering total cost of energy audits

(1) Except as provided in paragraph (2), amounts made available under this section (together with any other amounts made available from other Federal sources) may not be used to pay more than 50 percent of the costs of any preliminary energy audit or any energy audit.

(2) Upon the request of the Governor, the Secretary may make grants to a State for up to 100 percent of the costs of any preliminary energy audits and energy audits, subject to the requirements of section 6371g(a)(3) of this title.

(Pub. L. 94–163, title III, § 393, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3242.)

§ 6371c. State plans

(a) Invitation to State energy agency to submit plan; contents

The Secretary shall invite the State energy agency of each State to submit, within 90 days after the effective date of the guidelines prescribed pursuant to section 6371a of this title, or such longer period as the Secretary may, for good cause, allow, a State plan under this section for such State. Such plan shall include—

(1) the results of preliminary energy audits conducted in accordance with the guidelines prescribed under section 6371a(a)(1) of this title, and an estimate of the energy savings that may result from the modification of maintenance and operating procedures and installation of energy conservation measures in the schools and hospitals in such State;

(2) a recommendation as to the types of energy conservation projects considered appropriate for schools and hospitals in such State, together with an estimate of the costs of carrying out such projects in each year for which funds are appropriated;

(3) a program for identifying persons qualified to carry out energy conservation projects;

(4) procedures to insure that funds will be allocated among eligible applicants for energy conservation projects within such State, including procedures—

(A) to insure that funds will be allocated on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, and

(B) to insure that equitable consideration is given to all eligible public or nonprofit institutions regardless of size and type of ownership;

(5) a statement of the extent to which, and by which methods, such State will encourage utilization of solar space heating, cooling, and electric systems and solar water heating systems where appropriate;

(6) procedures to assure that all assistance under this part in such State will be expended in compliance with the requirements of an approved State plan for such State, and in compliance with the requirements of this part;

(7) procedures to insure implementation of energy conserving maintenance and operating procedures in those facilities for which projects are proposed; and

(8) policies and procedures designed to assure that financial assistance provided under this part in such State will be used to supplement, and not to supplant, State, local, or other funds.

(b) Approval of plans

The Secretary shall review and approve or disapprove each State plan not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section, the Secretary shall approve the plan. If a State plan submitted within the 90-day period specified in subsection (a) of this section has not been disapproved within the 60-day period following its receipt by the Secretary, such plan shall be treated as approved by the Secretary. A State energy agency may submit a new or amended plan at any time after the submission of the original plan if the agency obtains the consent of the Secretary.

(c) Development and implementation of approved plans; submission of proposed State plan

(1) If a State plan has not been approved under this section within 2 years and 90 days after November 9, 1978, or within 90 days after the completion of the preliminary audits under section 6371b(a) of this title, whichever is later, the Secretary may take such action as necessary to develop and implement such a State plan and to carry out the functions which would otherwise be carried out under this part by the State energy agency, State school facilities agency, and State hospital facilities agency, in order that the energy conservation program for schools and hospitals may be implemented in such State.

(2) Notwithstanding any other provision contained in this section, a State may, at any time, submit a proposed State plan for such State under this section. The Secretary shall approve or disapprove such plan not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section and is not inconsistent with any plan developed and implemented by the Secretary under paragraph (1), the Secretary shall approve the plan and withdraw any such plan developed and implemented by the Secretary.

(Pub. L. 94–163, title III, § 394, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3243; amended Pub. L. 105–388, § 5(a)(10), Nov. 13, 1998, 112 Stat. 3478.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–388, § 5(a)(10)(A), substituted semicolon for comma at end.

Subsec. (a)(2). Pub. L. 105–388, § 5(a)(10)(B), substituted semicolon for period at end.

Subsec. (a)(3), (5). Pub. L. 105–388, § 5(a)(10)(A), substituted semicolon for comma at end.

Subsec. (a)(6). Pub. L. 105–388, § 5(a)(10)(C), substituted semicolon for colon at end.

§ 6371d. Applications for financial assistance

(a) Limitation on number of applications by States, schools, and hospitals; submittal to State energy agency

Applications of States, schools, and hospitals for financial assistance under this part for energy conservation projects shall be made not more than once for any fiscal year. Schools and hospitals applying for such financial assistance shall submit their applications to the State energy agency and the State energy agency shall make a single submittal to the Secretary, containing all applications which comply with the State plan.

(b) Required information

Applications for financial assistance under this part for energy conservation projects shall contain, or shall be accompanied by, such information as the Secretary may reasonably require, including the results of energy audits which comply with guidelines under this part. The annual submittal to the Secretary by the State energy agency under subsection (a) of this

section shall include a listing and description of energy conservation projects proposed to be funded within the State during the fiscal year for which such application is made, and such information concerning expected expenditures as the Secretary may, by rule, require.

(c) Conditions for financial assistance; applications consistent with related State programs and health plans

(1) The Secretary may not provide financial assistance to States, schools, or hospitals for energy conservation projects unless the application for a grant for such project is submitted through, or approved by the appropriate State hospital facilities agency or State school facilities agency, respectively, and determined by the State energy agency to comply with the State plan.

(2) Applications of States, schools, and hospitals and State plans pursuant to this part shall be consistent with—

(A) related State programs for educational facilities in such State, and

(B) State health plans under section 300m–3(c)(2)[1] and 300*o*–2[1] of this title, and shall be coordinated through the review mechanisms required under section 300m–2[1] of this title and section 1320a–1 of this title.

(d) Compliance required for approval; reasons for disapproval; resubmittal; amendment

The Secretary shall approve such applications submitted by a State energy agency as he determines to be in compliance with this section and with the requirements of the applicable State plan approved under section 6371c of this title. The Secretary shall state the reasons for his disapproval in the case of any application which he disapproves. Any application not approved by the Secretary may be resubmitted by the applicant at any time in the same manner as the original application and the Secretary shall approve such resubmitted application as he determines to be in compliance with this section and the requirements of the State plan. Amendments of an application shall, except as the Secretary may otherwise provide, be subject to approval in the same manner as the original application. All or any portion of an application under this section may be disapproved to the extent that funds are not available under this part to carry out such application or portion.

(e) Suspension of further assistance for failure to comply

Whenever the Secretary, after reasonable notice and opportunity for hearing to any State, school, or hospital receiving assistance under this part, finds that there has been a failure to comply substantially with the provisions set forth in the application approved under this section, the Secretary shall notify the State, school, or hospital that further assistance will not be made available to such State, school or hospital under this part until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied no further assistance shall be made to such State, school, or hospital under this part.

[1] See References in Text note below.

(Pub. L. 94–163, title III, § 395, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3244.)

REFERENCES IN TEXT

Sections 300m–2 and 300m–3 of this title, referred to in subsec. (c)(2)(B), were repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 300*o*–2 of this title, referred to in subsec. (c)(2)(B), was repealed by Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632.

§ 6371e. Grants for project costs and technical assistance

(a) Authorization of Secretary; project costs

The Secretary may make grants to schools and hospitals for carrying out energy conservation projects the applications for which have been approved under section 6371d of this title.

(b) Restrictions on use of funds

(1) Except as provided in paragraph (2), amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may not be used to pay more than 50 percent of the costs of any energy conservation project. The non-Federal share of the costs of any such energy conservation project may be provided by using programs of innovative financing for energy conservation projects (including, but not limited to, loan programs and performance contracting), even if, pursuant to such financing, clear title to the equipment does not pass to the school or hospital until after the grant is completed.

(2) Amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may be used to pay not to exceed 90 percent of the costs of an energy conservation project if the Secretary determines that a project meets the hardship criteria of section 6371a(d) of this title. Grants made under this paragraph shall be from the funds provided under section 6371g(a)(2) of this title.

(c) Allocation requirements

Grants made under this section in any State in any year shall be made in accordance with the requirements contained in section 6371g of this title.

(d) Technical assistance costs

(1) The Secretary may make grants to States for paying technical assistance costs. Schools in any State shall not be allocated less than 30 percent of the funds for energy conservation projects within such State and hospitals in any State shall not be allocated less than 30 percent of such funds.

(2) A State may utilize up to 100 percent of the funds provided by the Secretary under this part for any fiscal year for program and technical assistance and up to 50 percent of such funds for marketing and other costs associated with leveraging of non-Federal funds for carrying out this part and may administer a continuous and consecutive application and award procedure for providing program and technical assistance under this part in accordance with regulations that the Secretary shall establish, if the State—

(A) has adopted a State plan in accordance with section 6371c of this title, the administration of which is in accordance with applicable regulations; and

(B) certifies to the Secretary that not more than 15 percent of the aggregate amount of Federal and non-Federal funds used by the State to provide program and technical assistance, implement energy conservation measures, and otherwise carry out a program pursuant to this part for the fiscal year concerned will be expended for program and technical assistance and for marketing and other costs associated with leveraging of non-Federal funds for such program.

(Pub. L. 94–163, title III, § 396, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3245; amended Pub. L. 101–440, § 6(a), (c), (d), Oct. 18, 1990, 104 Stat. 1011.)

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101–440, § 6(a), inserted at end "The non-Federal share of the costs of any such energy conservation project may be provided by using programs of innovative financing for energy conservation projects (including, but not limited to, loan programs and performance contracting), even if, pursuant to such financing, clear title to the equipment does not pass to the school or hospital until after the grant is completed."

Subsec. (d). Pub. L. 101–440, § 6(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 101–440, § 6(c), struck out subsec. (e) which prohibited funds for buildings used principally for administration.

§ 6371f. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated for fiscal years 1999 through 2003 such sums as may be necessary.

(Pub. L. 94–163, title III, § 397, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3246; amended Pub. L. 101–440, § 8(b), Oct. 18, 1990, 104 Stat. 1015; Pub. L. 105–388, § 2(b), Nov. 13, 1998, 112 Stat. 3477.)

AMENDMENTS

1998—Pub. L. 105–388 amended section generally, substituting provisions authorizing appropriations for fiscal years 1999 through 2003 for provisions authorizing appropriations for fiscal years 1991 through 1993.

1990—Pub. L. 101–440 amended section generally, substituting provisions authorizing appropriations for fiscal years 1991 through 1993 for provisions authorizing appropriations for fiscal years ending Sept. 30, 1978, Sept. 30, 1979, and Sept. 30, 1980.

§ 6371g. Allocation of grants

(a) Section 6371e grants

(1) Except as otherwise provided in subsection (b) of this section, the Secretary shall allocate 90 percent of the amounts made available under section 6371f(b)[1] of this title in any year for purposes of making energy conservation project grants pursuant to section 6371e of this title as follows:

(A) Eighty percent of amounts made available under section 6371f(b)[1] of this title shall be allocated among the States in accordance with a formula to be prescribed, by rule, by the Secretary, taking into account population and climate of each State, and such other factors as the Secretary may deem appropriate.

(B) Ten percent of amounts made available under section 6371f(b)[1] of this title shall be allocated among the States in such manner as the Secretary determines by rule after taking into account the availability and cost of fuel or other energy used in, and the amount of fuel or other energy consumed by, schools and hospitals in the States, and such other factors as he deems appropriate.

(2) The Secretary shall allocate 10 percent of the amounts made available under section 6371f(b)[1] of this title in any year for purposes of making grants as provided under section 6371e(b)(2) of this title in excess of the 50 percent limitation contained in section 6371e(b)(1) of this title.

(3) In the case of any State which received for any fiscal year an amount which exceeded 50 percent of the cost of any energy audit as provided in section 6371b(e)(2) of this title, the aggregate amount allocated to such State under this subsection for such fiscal year (determined after applying paragraphs (1) and (2)) shall be reduced by an amount equal to such excess. The amount of such reduction shall be reallocated to the States for such fiscal year as provided in this subsection except that for purposes of such reallocation, the State which received such excess shall not be eligible for any portion of such reallocation.

(b) Restrictions on allocations to States

The total amount allocated to any State under subsection (a) of this section in any year shall not exceed 10 percent of the total amount allocated to all the States in such year under such subsection (a) of this section. Except for the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, not less than 0.5 percent of such total allocation to all States for that year shall be allocated in such year for the total of grants to States and to schools and hospitals in each State which has an approved State plan under this part.

(c) Prescription of rules governing allocations among States with regard to energy audits

Not later than 60 days after November 9, 1978, the Secretary shall prescribe rules governing the allocation among the States of funds for grants for preliminary energy audits and energy audits. Such rules shall take into account the population and climate of such States and such other factors as he may deem appropriate.

(d) Prescription of rules limiting allocations to States for administrative expenses

The Secretary shall prescribe rules limiting the amount of funds allocated to a State which may be expended for administrative expenses by such State.

(e) Reallocations

Funds allocated for projects in any States for a fiscal year under this section but not obligated in such fiscal year shall be available for reallocation under subsection (a) of this section in the subsequent fiscal year.

[1] See References in Text note below.

(Pub. L. 94–163, title III, § 398, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3246; amended Pub. L. 98–454, title VI, § 601(e), Oct. 5, 1984, 98 Stat. 1736.)

REFERENCES IN TEXT

Section 6371f of this title, referred to in subsec. (a)(1), (2), was amended by Pub. L. 101–440, § 8(b), Oct. 18, 1990, 104 Stat. 1015, and, as so amended, no longer contains a subsec. (b).

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–454 inserted reference to Northern Mariana Islands.

§ 6371h. Administration; detailed description in annual report

(a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

(b) The Secretary shall include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the types of conservation measures implemented, with funds allocated, and an estimate of the energy savings achieved.

(Pub. L. 94–163, title III, § 399, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3247; amended Pub. L. 96–470, title II, § 203(b), Oct. 19, 1980, 94 Stat. 2242.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–470 substituted ''include in his annual report a detailed description'' for '', within one year after November 9, 1978, and annually thereafter while funds are available under this part, submit to Congress a detailed report'' and ''Such description'' for ''Such report''.

§ 6371i. Records

Each recipient of assistance under this part shall keep such records, provide such reports, and furnish such access to books and records as the Secretary may by rule prescribe.

(Pub. L. 94–163, title III, § 400, as added Pub. L. 95–619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3247; amended Pub. L. 105–388, § 5(a)(11), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Pub. L. 105–388 struck out ''(a)'' before ''Each recipient''.

§ 6371j. Application of sections 3141–3144, 3146, and 3147 of title 40

No grant for a project (other than so much of a grant as is used for a preliminary energy audit, energy audit, or technical assistance or a grant the total project cost of which is $5,000 or less, excluding costs for a preliminary energy audit, energy audit, or technical assistance) shall be made under this part or part 1 unless the Secretary finds that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction utilizing such grants will be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 3145 of title 40.

(Pub. L. 95–619, title III, § 312, Nov. 9, 1978, 92 Stat. 3254.)

REFERENCES IN TEXT

This part, referred to in text, means part 2 (§§ 310–312) of title III of Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3248, as amended, which enacted sections 6371j and 6372 to 6372i of this title and enacted provisions set out as a note under section 6372 of this title. For complete classification of this part to the Code, see Tables.

Part 1, referred to in text, means part 1 (§§ 301–304) of title III of Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3238, as amended, which enacted sections 6371 to 6371i of this title, amended sections 300k–2 and 300n–1 of this title, and enacted provisions set out as notes under sections 6371 of this title. For complete classification of this part to the Code, see Tables.

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 31, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Section was enacted as a part of the National Energy Conservation Policy Act, and not as a part of the Energy Policy and Conservation Act which comprises this chapter, and consequently is not a part of part E of this subchapter.

PART F—ENERGY CONSERVATION PROGRAM FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

CODIFICATION

This part was, in the original, designated part H and has been changed to part F for purposes of codification.

§ 6372. Definitions

For purposes of this part—

(1) The terms ''hospital'', ''State'', ''school'', ''Governor'', ''State energy agency'', ''energy conservation measure'', ''energy conservation maintenance and operating procedure'', ''preliminary energy audit'', ''technical assistance costs'', ''energy audit'' and ''Secretary'' have the meanings provided in section 6371 of this title.

(2) The term ''unit of local government'' means the government of a county, municipality, or township, which is a unit of general purpose government below the State (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes) and the District of Columbia. Such term also means the recognized governing body of an Indian tribe (as defined in section 6862 of this title) which governing body performs substantial governmental functions.

(3) The term ''building'' has the meaning provided in section 6371 of this title except that for purposes of this part such term includes only buildings which are owned and primarily occupied by offices or agencies of a unit of local government or by a public care institution and does not include any building intended for seasonal use or any building utilized primarily by a school or hospital.

(4) The term ''public care institution'' means a public or nonprofit institution which owns—

(A) a facility for long term care, a rehabilitation facility, or a public health center, as described in section 300s–3 of this title, or

(B) a residential child care center.

(5) The term ''public or nonprofit institution'' means an institution owned and operated by—

(A) a State, a political subdivision of a State or an agency or instrumentality of either, or

(B) an organization exempt from income tax under section 501(c)(3) or 501(c)(4) of title 26.

(6) The term ''technical assistance program costs'' means the costs of carrying out a technical assistance program.

(7) The term ''technical assistance'' means assistance under rules, promulgated by the Secretary, to States, units of local government and public care institutions—

(A) to conduct specialized studies identifying and specifying energy savings and related cost savings that are likely to be realized as a result of (i) modification or maintenance and operating procedures in a building, (ii) the acquisition and installation of one or more specified energy conservation measures in such building or (iii) both, or

(B) the planning or administration of such specialized studies.

(Pub. L. 94–163, title III, § 400A, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3248; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Par. (5)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

SEPARABILITY

For separability of provisions of title III of Pub. L. 95–619, see section 302(c) of Pub. L. 95–619, set out as a note under section 6371 of this title.

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Section 310 of part 2 of title III of Pub. L. 95–619 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the Nation's nonrenewable energy resources are being rapidly depleted;

''(2) buildings owned by units of local government and public care institutions are major consumers of energy, and such units and institutions have been especially burdened by rising energy prices and fuel shortages;

''(3) substantial energy conservation can be achieved in buildings owned by units of local government and public care institutions through the implementation of energy conservation maintenance and operating procedures; and

''(4) units of local government and public care institutions in many instances need financial assistance in order to conduct energy audits and to identify energy conservation maintenance and operating procedures and to evaluate the potential benefits of acquiring and installing energy conservation measures.

''(b) PURPOSE.—It is the purpose of this part [enacting sections 6371j and 6372 to 6372i of this title] to authorize grants to States and units of local government and public care institutions to assist them in conducting preliminary energy audits and energy audits in identifying and implementing energy conservation maintenance and operating procedures and in evaluating energy conservation measures to reduce the energy use and anticipated energy costs of buildings owned by units of local government and public care institutions.''

APPLICATION OF DAVIS-BACON ACT

For application of the Davis-Bacon Act to grants made by the Secretary under this part, see section 6371j of this title.

§ 6372a. Guidelines

(a) Energy audits

The Secretary shall, by rule, not later than sixty days after November 9, 1978—

(1) prescribe guidelines for the conduct of the preliminary energy audits for buildings owned by units of local government and public care institutions, including a description of the type, number and distribution of preliminary energy audits of such buildings that will provide a reasonably accurate evaluation of the energy conservation needs of all such buildings in each State, and

(2) prescribe guidelines for the conduct of energy audits.

(b) Implementation of technical assistance programs

The Secretary shall, by rule, not later than 90 days after November 9, 1978, prescribe guidelines for State plans for the implementation of technical assistance programs for buildings owned by units of local government and public care institutions. The guidelines shall include—

(1) a description of the factors to be considered in determining which technical assistance programs will be given priority in making grants pursuant to this part, including such factors as cost, energy consumption, energy savings, and energy conservation goals;

(2) a description of the suggested criteria to be used in establishing a State program to identify persons qualified to undertake technical assistance work; and

(3) a description of the types of energy conservation measures deemed appropriate for each region of the Nation.

(c) Revisions

Guidelines prescribed under this part may be revised from time to time after notice and opportunity for comment.

(Pub. L. 94–163, title III, § 400B, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3249.)

§ 6372b. Preliminary energy audits and energy audits

(a) Application by Governor

The Governor of any State may apply to the Secretary at such time as the Secretary may specify after promulgation of the guidelines under section 6372a(a) of this title for grants to conduct preliminary energy audits of buildings owned by units of local government and public care institutions in such State under this part.

(b) Grants for conduct of preliminary energy audits

Upon application under subsection (a) of this section, the Secretary may make grants to States to assist in conducting preliminary energy audits under this part for buildings owned by units of local government and public care institutions. Such audits shall be conducted in accordance with the guidelines prescribed under section 6372a(a)(1) of this title.

(c) Application by Governor, unit of local government or public care institution

The Governor of any State, unit of local government or public care institution may apply to the Secretary at such time as the Secretary may specify after promulgation of the guidelines under section 6372a(a) of this title for grants to conduct energy audits of buildings owned by units of local government and public care institutions in such State under this part.

(d) Grants for conduct of energy audits

Upon application under subsection (c) of this section the Secretary may make grants to States, units of local government, and public care institutions for purposes of conducting energy audits of facilities under this part in accordance with the guidelines prescribed under section 6372a(a)(2) of this title.

(e) Audits conducted prior to grant of financial assistance

If a State, unit of local government, or public care institution, without the use of financial assistance under this section, conducts preliminary energy audits or energy audits which comply with the guidelines prescribed by the Secretary or which are approved by the Secretary, the funds allocated for purposes of this section shall be added to the funds available for technical assistance programs for such State, and shall be in addition to amounts otherwise available for such purpose.

(f) Restriction on use of funds

Amounts made available under this section (together with any other amounts made available from other Federal sources) may not be used to pay more than 50 percent of the costs of any preliminary energy audit or energy audit.

(Pub. L. 94–163, title III, § 400C, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3250.)

§ 6372c. State plans

(a) The Secretary shall invite the State energy agency of each State to submit, within 90 days after the effective date of the guidelines prescribed pursuant to section 6372a of this title, or such longer period as the Secretary may, for good cause, allow, a proposed State plan under this section for such State. Such plan shall include—

(1) the results of preliminary energy audits conducted in accordance with the guidelines prescribed pursuant to section 6372a(a)(1) of this title, and an estimate of the energy savings that may result from the modification of maintenance and operating procedures in buildings owned by units of local government and public care institutions;

(2) a recommendation as to the types of technical assistance programs considered appropriate for buildings owned by units of local government and public care institutions in such State, together with an estimate of the costs of carrying out such programs;

(3) a program for identifying persons qualified to carry out technical assistance programs;

(4) procedures for the coordination among technical assistance programs within any State and for coordination of programs authorized under this part with other State energy conservation programs,[1]

(5) a description of the policies and procedures to be followed in the allocation of funds among eligible applicants for technical assistance within such State, including procedures to insure that funds will be allocated among eligible applicants on the basis of relative need and including recommendations as to how priorities should be established between buildings owned by units of local government and public care institutions, and among competing proposals taking into account such factors as cost, energy consumption, and energy savings;

(6) procedures to assure that all grants for technical assistance provided under this part are expended in compliance with the requirements of an approved State plan for such State and in compliance with the requirements of this part (including requirements contained in rules promulgated under this part); and

(7) policies and procedures designed to assure that financial assistance provided under this part in such State will be used to supplement, and not to supplant State, local, or other funds.

(b) Each State plan submitted under this section shall be reviewed and approved or disapproved by the Secretary not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section, the Secretary shall approve the plan. If a State plan submitted within the 90 day period specified in subsection (a) of this section has not been disapproved within the 60-day period following its receipt by the Secretary, such plan shall be treated as approved by the Secretary. A State energy agency may submit a new or amended plan at any time after the submission of the original plan if the agency obtains the consent of the Secretary.

(Pub. L. 94–163, title III, § 400D, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3251;

[1] So in original. The comma probably should be a semicolon.

amended Pub. L. 105–388, § 5(a)(12), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–388 substituted semicolon for comma at end.

Subsec. (a)(2). Pub. L. 105–388, which directed substitution of semicolon for comma at end, could not be executed because comma does not appear at end.

Subsec. (a)(3). Pub. L. 105–388 substituted semicolon for comma at end.

§ 6372d. Applications for grants for technical assistance

(a) Limitation on number of applications by units of local government and public care institutions; submittal to State energy agency

Applications of units of local government and public care institutions for grants for technical assistance under this part shall be made not more than once for any fiscal year. Such applications shall be submitted to the State energy agency and the State energy agency shall make a single submittal to the Secretary containing all applications which comply with the State plan.

(b) Required information

Applications for grants for technical assistance under this part shall contain or be accompanied by, such information as the Secretary may reasonably require, including the results of energy audits which comply with guidelines under this part. The annual submittal to the Secretary by the State energy agency under subsection (a) of this section shall include a listing and description of technical assistance proposed to be funded under this part within the State during the fiscal year for which such application is made, and such information concerning expenditures as the Secretary may, by rule, require.

(c) Compliance required for approval; reasons for disapproval; resubmittal; amendment

The Secretary shall approve such applications submitted by a State energy agency as he determines to be in compliance with this section and the requirements of the applicable State plan approved under section 6372c of this title. The Secretary shall state the reasons for his disapproval in the case of any application which he disapproves. Any application not approved by the Secretary may be resubmitted by the applicant at any time in the same manner as the original application and the Secretary shall approve such resubmitted application as he determines to be in compliance with this section and the requirements of the State plan. Amendments of an application shall, except as the Secretary may otherwise provide be subject to approval in the same manner as the original application. All or any portions of an application under this section may be disapproved to the extent that funds are not available under this part.

(d) Suspension of further assistance for failure to comply

Whenever the Secretary after reasonable notice and opportunity for hearing to any unit of local government or public care institution receiving assistance under this part, finds that there has been a failure to comply substantially with the provisions set forth in the application approved under this section, the Secretary shall notify the unit of local government or public care institution that further assistance will not be made available to such unit of local government or public care institution under this part until he is satisfied that there is no longer any failure to comply. Until he is so satisfied, no further assistance shall be made to such unit of local government or public care institution under this part.

(Pub. L. 94–163, title III, § 400E, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3252.)

§ 6372e. Grants for technical assistance

(a) Authorization of Secretary

The Secretary may make grants to States and to units of local government and public care institutions in payment of technical assistance program costs for buildings owned by units of local government and public care institutions the applications for which have been approved under section 6372d of this title.

(b) Restriction on use of funds

Amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may not be used to pay more than 50 percent of technical assistance program costs.

(c) Allocation requirements

Grants made under this section in any State in any year shall be made in accordance with the requirements contained in section 6372g of this title.

(d) Prescription of rules limiting allocations to States for administrative expenses

The Secretary shall prescribe rules limiting the amount of funds allocated to a State which may be expended for administrative expenses by such State.

(Pub. L. 94–163, title III, § 400F, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3252.)

§ 6372f. Authorization of appropriations

(a) For the purpose of making grants to States to conduct preliminary energy audits and energy audits under this part there is authorized to be appropriated not to exceed $7,500,000 for the fiscal year ending September 30, 1978, and $7,500,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

(b) For the purpose of making technical assistance grants under this part to States and to units of local government and public care institutions, there is hereby authorized to be appropriated not to exceed $17,500,000 for the fiscal year ending September 30, 1978, and $32,500,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

(c) For the expenses of the Secretary in administering the provisions of this part, there are hereby authorized to be appropriated such sums

as may be necessary for each fiscal year in the two consecutive fiscal year periods ending September 30, 1979, such funds to remain available until expended.

(Pub. L. 94–163, title III, § 400G, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253.)

§ 6372g. Allocation of grants

(a) Grants made under this part shall be allocated among the States in accordance with a formula to be prescribed, by rule, by the Secretary, taking into account population and climate of each State, and such other factors as the Secretary may deem appropriate.

(b) The total amount allocated to any State under subsection (a) of this section in any year shall not exceed 10 percent of the total amount allocated to all the States in such year under such subsection (a) of this section. Except for the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands, not less than 0.5 percent of such total allocation to all States for that year shall be allocated in such year for the total of grants in each State which has an approved State plan under this part.

(Pub. L. 94–163, title III, § 400H, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253.)

§ 6372h. Administration; detailed description in annual report

(a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

(b) The Secretary shall include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the technical assistance carried out with funds allocated, and an estimate of the energy savings, if any, achieved.

(Pub. L. 94–163, title III, § 400I, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253; amended Pub. L. 96–470, title II, § 203(a), Oct. 19, 1980, 94 Stat. 2242; Pub. L. 105–388, § 5(a)(13), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–388 struck out comma after ''Secretary shall''.

1980—Subsec. (b). Pub. L. 96–470 substituted ''include in his annual report a detailed description'' for ''within one year after November 9, 1978, and annually thereafter while funds are available under this part, submit to the Congress a detailed report'' and ''Such description'' for ''Such report''.

§ 6372i. Records

Each recipient of assistance under this part shall keep such records, provide such reports, and furnish such access to books and records as the Secretary may by rule prescribe.

(Pub. L. 94–163, title III, § 400J, as added Pub. L. 95–619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253.)

PART G—OFF-HIGHWAY MOTOR VEHICLES

CODIFICATION

This part was, in the original, designated part I and has been changed to part G for purposes of codification.

§ 6373. Off-highway motor vehicles

Not later than 1 year after November 9, 1978, the Secretary of Transportation shall complete a study of the energy conservation potential of recreational motor vehicles, including, but not limited to, aircraft and motor boats which are designed for recreational use, and shall submit a report to the President and to the Congress containing the results of such study.

(Pub. L. 94–163, title III, § 385, as added Pub. L. 95–619, title VI, § 681(a), Nov. 9, 1978, 92 Stat. 3286.)

PART H—ENCOURAGING USE OF ALTERNATIVE FUELS

CODIFICATION

This part was, in the original, designated part J and has been changed to part H for purposes of codification.

§ 6374. Alternative fuel use by light duty Federal vehicles

(a) Department of Energy program

(1) Beginning in the fiscal year ending September 30, 1990, the Secretary shall ensure, with the cooperation of other appropriate agencies and consistent with other Federal law, that the maximum number practicable of the vehicles acquired annually for use by the Federal Government shall be alternative fueled vehicles. In no event shall the number of such vehicles acquired be less than the number required under section 13212 of this title.

(2) In any determination of whether the acquisition of a vehicle is practicable under paragraph (1), the initial cost of such vehicle to the United States shall not be considered as a factor unless the initial cost of such vehicle exceeds the initial cost of a comparable gasoline or diesel fueled vehicle by at least 5 percent.

(3)(A) To the extent practicable, the Secretary shall acquire both dedicated and dual fueled vehicles, and shall ensure that each type of alternative fueled vehicle is used by the Federal Government.

(B) Vehicles acquired under this section shall be acquired from original equipment manufacturers. If such vehicles are not available from original equipment manufacturers, vehicles converted to use alternative fuels may be acquired if, after conversion, the original equipment manufacturer's warranty continues to apply to such vehicles, pursuant to an agreement between the original equipment manufacturer and the person performing the conversion. This subparagraph shall not apply to vehicles acquired by the United States Postal Service pursuant to a contract entered into by the United States Postal Service before October 24, 1992, and which terminates on or before December 31, 1997.

(C) Alternative fueled vehicles, other than those described in subparagraph (B), may be acquired solely for the purposes of studies under subsection (b) of this section, whether or not

original equipment manufacturer warranties still apply.

(D) In deciding which types of alternative fueled vehicles to acquire in implementing this part, the Secretary shall consider as a factor—

(i) which types of vehicles yield the greatest reduction in pollutants emitted per dollar spent; and

(ii) the source of the fuel to supply the vehicles, giving preference to vehicles that operate on alternative fuels derived from domestic sources.

(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency qualifies for a waiver of such requirement for vehicles operated by the agency in a particular geographic area in which—

(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or

(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified to the Secretary by the head of the agency.

(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved from the use of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.

(F) At least 50 percent of the alternative fuels used in vehicles acquired pursuant to this section shall be derived from domestic feedstocks, except to the extent inconsistent with the multilateral trade agreements (as defined in section 3501(4) of title 19). The Secretary shall issue regulations to implement this requirement. For purposes of this subparagraph, the term ''domestic'' has the meaning given such term in section 13211(7) of this title.

(G) Except to the extent inconsistent with the multilateral trade agreements (as defined in section 3501(4) of title 19), vehicles acquired under this section shall be motor vehicles manufactured in the United States or Canada.

(4) Acquisitions of vehicles under this section shall, to the extent practicable, be coordinated with acquisitions of alternative fueled vehicles by State and local governments.

(b) Studies

(1)(A) The Secretary, in cooperation with the Environmental Protection Agency and the National Highway Traffic Safety Administration, shall conduct a study of a representative sample of alternative fueled vehicles in Federal fleets, which shall at a minimum address—

(i) the performance of such vehicles, including performance in cold weather and at high altitude;

(ii) the fuel economy, safety, and emissions of such vehicles; and

(iii) a comparison of the operation and maintenance costs of such vehicles to the operation and maintenance costs of other passenger automobiles and light duty trucks.

(B) The Secretary shall provide a report on the results of the study conducted under subparagraph (A) to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, within one year after the first such vehicles are acquired.

(2)(A) The Secretary and the Administrator of the General Services Administration shall conduct a study of the advisability, feasibility, and timing of the disposal of vehicles acquired under subsection (a) of this section and any problems of such disposal. Such study shall take into account existing laws governing the sale of Government vehicles and shall specifically focus on when to sell such vehicles and what price to charge, without compromising studies of the use of such vehicles authorized under this part.

(B) The Secretary and the Administrator of the General Services Administration shall report the results of the study conducted under subparagraph (A) to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, within 12 months after funds are appropriated for carrying out this section.

(3) Studies undertaken under this subsection shall be coordinated with relevant testing activities of the Environmental Protection Agency and the Department of Transportation.

(c) Availability to public

To the extent practicable, at locations where vehicles acquired under subsection (a) of this section are supplied with alternative fuels, such fuels shall be offered for sale to the public. The head of the Federal agency responsible for such a location shall consider whether such sale is practicable, taking into account, among other factors—

(1) whether alternative fuel is commercially available for vehicles in the vicinity of such location;

(2) security and safety considerations;

(3) whether such sale is in accordance with applicable local, State, and Federal law;

(4) the ease with which the public can access such location; and

(5) the cost to the United States of such sale.

(d) Federal agency use of demonstration vehicles

(1) Upon the request of the head of any agency of the Federal Government, the Secretary shall ensure that such Federal agency be provided with vehicles acquired under subsection (a) of this section to the maximum extent practicable.

(2)(A) Funds appropriated under this section for the acquisition of vehicles under subsection (a) of this section shall be applicable only to the portion of the cost of vehicles acquired under subsection (a) of this section which exceeds the cost of comparable gasoline or diesel fueled vehicles.

(B) To the extent that appropriations are available for such purposes, the Secretary shall ensure that the cost to any Federal agency receiving a vehicle under paragraph (1) shall not

exceed the cost to such agency of a comparable gasoline or diesel fueled vehicle.

(3) Only one-half of the vehicles acquired under this section by an agency of the Federal Government shall be counted against any limitation under law, Executive order, or executive or agency policy on the number of vehicles which may be acquired by such agency.

(4) Any Federal agency receiving a vehicle under paragraph (1) shall cooperate with studies undertaken by the Secretary under subsection (b) of this section.

(e) Detail of personnel

Upon the request of the Secretary, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Department of Energy to assist the Secretary in carrying out the Secretary's duties under this section.

(f) Exemptions

(1) Vehicles acquired under this section shall not be counted in any calculation of the average fuel economy of the fleet of passenger automobiles acquired in a fiscal year by the United States.

(2) The incremental cost of vehicles acquired under this section over the cost of comparable gasoline or diesel fueled vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles which may be acquired by the United States.

(g) Definitions

For purposes of this part—

(1) the term ''acquired'' means leased for a period of sixty continuous days or more, or purchased;

(2) the term ''alternative fuel'' means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits;

(3) the term ''alternative fueled vehicle'' means a dedicated vehicle or a dual fueled vehicle;

(4) the term ''dedicated vehicle'' means—

(A) a dedicated automobile, as such term is defined in section 32901(a)(7) of title 49; or

(B) a motor vehicle, other than an automobile, that operates solely on alternative fuel;

(5) the term ''dual fueled vehicle'' means—

(A) dual fueled automobile, as such term is defined in section 32901(a)(8) of title 49; or

(B) a motor vehicle, other than an automobile, that is capable of operating on alternative fuel and is capable of operating on gasoline or diesel fuel; and

(6) the term ''heavy duty vehicle'' means a vehicle of greater than 8,500 pounds gross vehicle weight rating.

(h) Funding

(1) For the purposes of this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 1998, to remain available until expended.

(2) The authority of the Secretary to obligate amounts to be expended under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 94–163, title III, § 400AA, as added Pub. L. 100–494, § 4(a), Oct. 14, 1988, 102 Stat. 2442; amended Pub. L. 102–486, title III, §§ 302(a), 309, Oct. 24, 1992, 106 Stat. 2868, 2874; Pub. L. 104–66, title I, §§ 1051(a), 1052(e), Dec. 21, 1995, 109 Stat. 716, 718; Pub. L. 105–388, § 5(a)(14), Nov. 13, 1998, 112 Stat. 3479; Pub. L. 106–36, title I, § 1002(h), June 25, 1999, 113 Stat. 134; Pub. L. 109–58, title VII, § 701, Aug. 8, 2005, 119 Stat. 814.)

CODIFICATION

In subsec. (g)(4)(A), (5)(A), ''section 32901(a)(7) of title 49'' substituted for ''section 513(h)(1)(C) of the Motor Vehicle Information Cost Savings Act'' and ''section 32901(a)(8) of title 49'' substituted for ''section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act'', respectively, on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

2005—Subsec. (a)(3)(E). Pub. L. 109–58 amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that operation on such alternative fuels is not feasible.''

1999—Subsec. (a)(3)(F), (G). Pub. L. 106–36 substituted ''multilateral trade agreements (as defined in section 3501(4) of title 19)'' for ''General Agreement on Tariffs and Trade''.

1998—Subsecs. (h), (i). Pub. L. 105–388 redesignated subsec. (i) as (h).

1995—Subsec. (b)(1)(B). Pub. L. 104–66, § 1052(e), struck out before period at end '', and annually thereafter''.

Subsec. (b)(3) to (5). Pub. L. 104–66, § 1051(a), redesignated par. (5) as (3) and struck out former par. (3) which directed Secretary to conduct study of heavy duty vehicles acquired under Department of Energy program and report results to Congress and par. (4) which directed Secretary to conduct study of advisability of heavy duty vehicle disposal and report results to Congress.

1992—Subsec. (a)(1). Pub. L. 102–486, § 302(a)(1), substituted ''vehicles'' for ''passenger automobiles and light duty trucks'' before ''acquired annually for use'' and ''alternative fueled vehicles. In no event shall the number of such vehicles acquired be less than the number required under section 13212 of this title.'' for ''alcohol powered vehicles, dual energy vehicles, natural gas powered vehicles, or natural gas dual energy vehicles.''

Subsec. (a)(3). Pub. L. 102–486, § 302(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary shall, to the extent practicable and consistent with this part, ensure that the number of dual energy vehicles acquired under this subsection is at least as great as the number of alcohol powered vehicles acquired under this subsection, and that the number of natural gas dual energy vehicles acquired

under this subsection is at least as great as the number of natural gas powered vehicles acquired under this subsection. To the extent practicable, both vehicles capable of operating on alcohol and vehicles capable of operating on natural gas shall be acquired in carrying out this subsection, and such vehicles shall be supplied by original equipment manufacturers.''

Subsec. (a)(4). Pub. L. 102–486, § 302(a)(3), added par. (4).

Subsec. (b)(1)(A). Pub. L. 102–486, § 309, substituted ''a representative sample of alternative fueled vehicles in Federal fleets'' for ''the vehicles acquired under subsection (a) of this section''.

Subsec. (b)(3) to (5). Pub. L. 102–486, § 302(a)(4), added pars. (3) to (5).

Subsec. (c). Pub. L. 102–486, § 302(a)(5), in introductory provisions substituted ''alternative fuels, such fuels'' for ''alcohol or natural gas, alcohol or natural gas'' and in par. (1) substituted ''alternative fuel'' for ''alcohol or natural gas''.

Subsec. (d)(2)(B). Pub. L. 102–486, § 302(a)(6), substituted ''To the extent that appropriations are available for such purposes, the Secretary'' for ''The Secretary''.

Subsec. (g)(2) to (6). Pub. L. 102–486, § 302(a)(7), added pars. (2) to (6) and struck out former pars. (2) to (6) which read as follows:

''(2) the term 'alcohol' means a mixture containing 85 percent or more by volume methanol, ethanol, or other alcohols, in any combination;

''(3) the term 'alcohol powered vehicle' means a vehicle designed to operate exclusively on alcohol;

''(4) the term 'dual energy vehicle' means a vehicle which is capable of operating on alcohol and on gasoline or diesel fuel;

''(5) the term 'natural gas dual energy vehicle' means a vehicle which is capable of operating on natural gas and on gasoline or diesel fuel; and

''(6) the term 'natural gas powered vehicle' means a vehicle designed to operate exclusively on natural gas.''

Subsec. (i)(1). Pub. L. 102–486, § 302(a)(8), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of this section, there are authorized to be appropriated for the fiscal year ending September 30, 1990, $5,000,000, for the fiscal year ending September 30, 1991, $3,000,000, for the fiscal year ending September 30, 1992, $2,000,000, and for the fiscal year ending September 30, 1993, $2,000,000.''

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION DATE

Section 4(b) of Pub. L. 100–494, which provided that this section and the amendments made by this section (enacting this part) were to cease to be effective after Sept. 30, 1997, was repealed by Pub. L. 102–486, title III, § 302(b), Oct. 24, 1992, 106 Stat. 2871.

FINDINGS

Section 2 of Pub. L. 100–494 provided that: ''The Congress finds and declares that—

''(1) the achievement of long-term energy security for the United States is essential to the health of the national economy, the well-being of our citizens, and the maintenance of national security;

''(2) the displacement of energy derived from imported oil with alternative fuels will help to achieve energy security and improve air quality;

''(3) transportation uses account for more than 60 percent of the oil consumption of the Nation;

''(4) the Nation's security, economic, and environmental interests require that the Federal Government should assist clean-burning, nonpetroleum transportation fuels to reach a threshold level of commercial application and consumer acceptability at which they can successfully compete with petroleum-based fuels;

''(5) methanol, ethanol, and natural gas are proven transportation fuels that burn more cleanly and efficiently than gasoline and diesel fuel;

''(6) the production and use as transportation fuels of ethanol, methanol made from natural gas or biomass, and compressed natural gas have been estimated in some studies to release less carbon dioxide than comparable quantities of petroleum-based fuel;

''(7) the amount of carbon dioxide released with methanol from a coal-to-methanol industry using currently available technologies has been estimated in some studies to be significantly greater than the amount released with a comparable quantity of petroleum-based fuel;

''(8) there exists evidence that manmade pollution—the release of carbon dioxide, chlorofluorocarbons, methane, and other trace gases into the atmosphere—may be producing a long term and substantial increase in the average temperature on Earth, a phenomenon known as global warming through the greenhouse effect; and

''(9) ongoing pollution and deforestation may be contributing now to an irreversible process producing unacceptable global climate changes; necessary actions must be identified and implemented in time to protect the climate, including the development of technologies to control increased carbon dioxide emissions that result with methanol from a coal-to-methanol industry.''

PURPOSE

Section 3 of Pub. L. 100–494 provided that: ''The purpose of this Act [see Short Title of 1988 Amendment note set out under section 6201 of this title] is to encourage—

''(1) the development and widespread use of methanol, ethanol, and natural gas as transportation fuels by consumers; and

''(2) the production of methanol, ethanol, and natural gas powered motor vehicles.''

USE OF NONSTANDARD FUELS

Section 5 of Pub. L. 100–494 provided that: ''No guaranty or warranty with respect to any passenger automobile or light-duty truck acquired by the United States after October 1, 1989, shall be voided or reduced in effect by reason of the operation of such vehicle with any fuel for which a currently effective waiver, which includes a limitation regarding Reid vapor pressure with respect to such fuel, has been issued by the Administrator of the Environmental Protection Agency under section 211(f) of the Clean Air Act (42 U.S.C. 7545(f)).''

§ 6374a. Alternative fuels truck commercial application program

(a) Establishment

The Secretary, in cooperation with manufacturers of heavy duty engines and with other Federal agencies, shall establish a commercial application program to study the use of alternative fuels in heavy duty trucks and, if appropriate, other heavy duty applications.

(b) Funding

(1) There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary for fiscal years 1993 through 1995, to remain available until expended.

(2) The authority of the Secretary to obligate amounts to be expended under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 94–163, title III, § 400BB, as added Pub. L. 100–494, § 4(a), Oct. 14, 1988, 102 Stat. 2444; amended Pub. L. 102–486, title IV, § 401, Oct. 24, 1992, 106 Stat. 2875.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486, § 401(a), substituted ''alternative fuels'' for ''alcohol and natural gas''.

Subsec. (b)(1). Pub. L. 102–486, § 401(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''There are authorized to be appropriated for the period encompassing the fiscal years ending September 30, 1990, September 30, 1991, and September 30, 1992, a total of $2,000,000 for alcohol powered vehicles and dual energy vehicles, and a total of $2,000,000 for natural gas powered vehicles and natural gas dual energy vehicles, to carry out the purposes of this section.''

§ 6374b. Alternative fuels bus program

(a) Testing

The Secretary, in cooperation with the Administrator of the Environmental Protection Agency and the Administrator of the National Highway Traffic Safety Administration, shall, beginning in the fiscal year ending September 30, 1990, assist State and local government agencies in the testing in urban settings of buses capable of operating on alternative fuels for the emissions levels, durability, safety, and fuel economy of such buses, comparing the different types with each other and with diesel powered buses, as such buses will be required to operate under Federal safety and environmental standards applicable to such buses for the model year 1991. To the extent practicable, testing assisted under this section shall apply to each of the various types of alternative fuel buses.

(b) Funding

There are authorized to be appropriated for the period encompassing the fiscal years ending September 30, 1990, September 30, 1991, and September 30, 1992, a total of $2,000,000 to carry out the purposes of this section.

(c) "Bus" defined

For purposes of this section, the term ''bus'' means a vehicle which is designed to transport 30 individuals or more.

(Pub. L. 94–163, title III, § 400CC, as added Pub. L. 100–494, § 4(a), Oct. 14, 1988, 102 Stat. 2445; amended Pub. L. 102–486, title IV, § 402(1), Oct. 24, 1992, 106 Stat. 2875.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486 substituted ''alternative fuels'' for ''alcohol and buses capable of operating on natural gas'' and ''each of the various types of alternative fuel buses'' for ''both buses capable of operating on alcohol and buses capable of operating on natural gas''.

§ 6374c. Omitted

CODIFICATION

Section, Pub. L. 94–163, title III, § 400DD, as added Pub. L. 100–494, § 4(a), Oct. 14, 1988, 102 Stat. 2445; amended Pub. L. 102–486, title IV, § 402(2), (3), Oct. 24, 1992, 106 Stat. 2876, provided for establishment of the Interagency Commission on Alternative Motor Fuels and the United States Alternative Fuels Council, required the Commission to submit interim reports and a final report by Sept. 30, 1992, to Congress, and terminated the Commission and Council upon submission of the final report.

§ 6374d. Studies and reports

(a) Methanol study

(1) The Secretary shall study methanol plants, including the costs and practicability of such plants, that are—

(A) capable of utilizing current domestic supplies of unutilized natural gas;

(B) relocatable; or

(C) suitable for natural gas to methanol conversion by natural gas distribution companies.

(2) For purposes of this subsection, the term ''unutilized natural gas'' means gas that is available in small remote fields and cannot be economically transported to natural gas pipelines, or gas the quality of which is so poor that extensive and uneconomic pretreatment is required prior to its introduction into the natural gas distribution system.

(3) The Secretary shall submit a report under this subsection to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, no later than September 30, 1990.

(b) Omitted

(c) Public participation

Adequate opportunity shall be provided for public comment on the reports required by this section before they are submitted to the Congress, and a summary of such comments shall be attached to such reports.

(Pub. L. 94–163, title III, § 400EE, as added Pub. L. 100–494, § 4(a), Oct. 14, 1988, 102 Stat. 2447.)

REFERENCES IN TEXT

This part, referred to in subsec. (b)(1)(A), was in the original ''the Alternative Motor Fuels Act of 1988'', Pub. L. 100–494, Oct. 14, 1988, 102 Stat. 2441, which is classified principally to this part. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 6201 of this title and Tables.

CODIFICATION

Subsec. (b) of this section, which required the Administrator of the Environmental Protection Agency to submit biennially to Congress a report which includes a comprehensive analysis of the environmental impacts associated with the production and use of alternative motor vehicle fuels under this part and an extended forecast of the environmental effects of such production and use, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 25th item on page 163 of House Document No. 103–7.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

SUBCHAPTER IV—GENERAL PROVISIONS

PART A—ENERGY DATA BASE AND ENERGY INFORMATION

§ 6381. Verification examinations

(a) Authority of Comptroller General

The Comptroller General may conduct verification examinations with respect to the books, records, papers, or other documents of—

(1) any person who is required to submit energy information to the Secretary, the Department of the Interior, or the Federal Energy Regulatory Commission pursuant to any rule, regulation, order, or other legal process of such Secretary, Department or Commission;

(2) any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (at other than the retail level) of energy resources—

(A) if such person has furnished, directly or indirectly, energy information (without regard to whether such information was furnished pursuant to legal requirements) to any Federal agency (other than the Internal Revenue Service), and

(B) if the Comptroller General of the United States determines that such information has been or is being used or taken into consideration, in whole or in part, by a Federal agency in carrying out responsibilities committed to such agency; or

(3) any vertically integrated petroleum company with respect to financial information of such company related to energy resource exploration, development, and production and the transportation, refining and marketing of energy resources and energy products.

(b) Request for examination

The Comptroller General shall conduct verification examinations of any person or company described in subsection (a) of this section, if requested to do so by any duly established committee of the Congress having legislative or oversight responsibilities under the rules of the House of Representatives or of the Senate, with respect to energy matters or any of the laws administered by the Department of the Interior (or the Secretary thereof), the Federal Energy Regulatory Commission, or the Secretary.

(c) Definitions

For the purposes of this subchapter—

(1) The term ''verification examination'' means an examination of such books, records, papers, or other documents of a person or company as the Comptroller General determines necessary and appropriate to assess the accuracy, reliability, and adequacy of the energy information, or financial information, referred to in subsection (a) of this section.

(2) The term ''energy information'' has the same meaning as such term has in section 796(e)(1) of title 15.

(3) The term ''person'' has the same meaning as such term has in section 796(e)(2) of title 15.

(4) The term ''vertically integrated petroleum company'' means any person which itself, or through a person which is controlled by, controls, or is under common control with such person, is engaged in the production, refining, and marketing of petroleum products.

(Pub. L. 94–163, title V, § 501, Dec. 22, 1975, 89 Stat. 956; Pub. L. 95–91, title III, § 301, title IV, § 402, title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 583, 606, 607; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–619 purported to substitute ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration. See Transfer of Functions note below.

TRANSFER OF FUNCTIONS

''Secretary, the Department of the Interior, or the Federal Energy Regulatory Commission'' and ''Secretary'' substituted for ''Federal Energy Administration, the Department of the Interior, or the Federal Power Commission'' and ''Administration'', respectively, in subsec. (a)(1), and ''Federal Energy Regulatory Commission, or the Secretary'' substituted for ''Federal Power Commission, or the Federal Energy Administration (or the Administrator)'' in subsec. (b) pursuant to sections 301, 402, 703, and 707 of Pub. L. 95–91, which are classified to sections 7151, 7172, 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy and terminated Federal Power Commission and transferred its functions to Federal Energy Regulatory Commission and Secretary of Energy.

§ 6382. Powers and duties of Comptroller General

(a) Subpenas; discovery and inspection; oaths; search

For the purpose of carrying out his authority under section 6381 of this title—

(1) the Comptroller General may—

(A) sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(B) require any person, by general or special order, to submit answers in writing to interrogatories, to submit books, records, papers, or other documents, or to submit any other information or reports, and such answers or other submissions shall be made within such reasonable period, and under oath or otherwise, as the Comptroller General may determine; and

(C) administer oaths.

(2) the Comptroller General, or any officer or employee duly designated by the Comptroller

General, upon presenting appropriate credentials and a written notice from the Comptroller General to the owner, operator, or agent in charge, may—

(A) enter, at reasonable times, any business premise or facility; and

(B) inspect, at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, relating to any energy information, or any financial information in the case of a vertically integrated petroleum company.

(b) Information in possession of Federal agencies

The Comptroller General shall have access to any energy information within the possession of any Federal agency (other than the Internal Revenue Service) as is necessary to carry out his authority under this section.

(c) Transmission of examination results to Federal agencies

(1) Except as provided in subsections (d) and (e) of this section, the Comptroller General shall transmit a copy of the results of any verification examination conducted under section 6381 of this title to the Federal agency to which energy information which was subject to such examination was furnished.

(2) Any report made pursuant to paragraph (1) shall include the Comptroller General's findings with respect to the accuracy, reliability, and adequacy of the energy information which was the subject of such examination.

(d) Report to Congressional committees

If the verification examination was conducted at the request of any committee of the Congress, the Comptroller General shall report his findings as to the accuracy, reliability, or adequacy of the energy information which was the subject of such examination, or financial information in the case of a vertically integrated petroleum company, directly to such committee of the Congress and any such information obtained and such report shall be deemed the property of such committee and may not be disclosed except in accordance with the rules of the committee and the rules of the House of Representatives or the Senate and as permitted by law.

(e) Disclosure of geological or geophysical information

(1) Any information obtained by the Comptroller General or any officer or employee of the Government Accountability Office pursuant to the exercise of responsibilities or authorities under this section which relates to geological or geophysical information, or any estimate or interpretation thereof, the disclosure of which would result in significant competitive disadvantage or significant loss to the owner thereof shall not be disclosed except to a committee of Congress. Any such information so furnished to a committee of the Congress shall be deemed the property of such committee and may not be disclosed except in accordance with the rules of the committee and the rules of the House of Representatives or the Senate and as permitted by law.

(2) Any person who knowingly discloses information in violation of paragraph (1) shall be subject to the penalties specified in section 754(a)(3)(B) and (4)[1] of title 15.

(Pub. L. 94–163, title V, § 502, Dec. 22, 1975, 89 Stat. 957; Pub. L. 104–316, title I, § 122(p), Oct. 19, 1996, 110 Stat. 3838; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

Section 754 of title 15, referred to in subsec. (e)(2), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

AMENDMENTS

2004—Subsec. (e)(1). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Subsec. (f). Pub. L. 104–316 struck out subsec. (f) which read as follows: ''The Comptroller General shall prepare and submit to the Congress an annual report with respect to the exercise of its authorities under this part, which report shall specifically identify any deficiencies in energy information or financial information reviewed by the Comptroller General and include a discussion of action taken by the person or company so examined, if any, to correct any such deficiencies.''

§ 6383. Accounting practices

(a) Development by Securities and Exchange Commission; time of taking effect

For purposes of developing a reliable energy data base related to the production of crude oil and natural gas, the Securities and Exchange Commission shall take such steps as may be necessary to assure the development and observance of accounting practices to be followed in the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States. Such practices shall be developed not later than 24 months after December 22, 1975, and shall take effect with respect to the fiscal year of each such person which begins 3 months after the date on which such practices are prescribed or made effective under the authority of subsection (b)(2) of this section.

(b) Consultation with Secretary, Government Accountability Office and Federal Energy Regulatory Commission; rules; reliance on practices developed by Financial Accounting Standards Board; opportunity to submit written comment

In carrying out its responsibilities under subsection (a) of this section, the Securities and Exchange Commission shall—

(1) consult with the Secretary, the Government Accountability Office, and the Federal Energy Regulatory Commission with respect to accounting practices to be developed under subsection (a) of this section, and

(2) have authority to prescribe rules applicable to persons engaged in the production of crude oil or natural gas, or make effective by recognition, or by other appropriate means indicating a determination to rely on, account-

[1] See References in Text note below.

ing practices developed by the Financial Accounting Standards Board, if the Securities and Exchange Commission is assured that such practice will be observed by persons engaged in the production of crude oil or natural gas to the same extent as would result if the Securities and Exchange Commission had prescribed such practices by rule.

The Securities and Exchange Commission shall afford interested persons an opportunity to submit written comments with respect to whether it should exercise its discretion to recognize or otherwise rely on such accounting practice in lieu of prescribing such practices by rule and may extend the 24-month period referred to in subsection (a) of this section as it determines may be necessary to allow for a meaningful comment period with respect to such determination.

(c) Requirements for accounting practices

The Securities and Exchange Commission shall assure that accounting practices developed pursuant to this section, to the greatest extent practicable, permit the compilation, treating domestic and foreign operations as separate categories, of an energy data base consisting of:

(1) The separate calculation of capital, revenue, and operating cost information pertaining to—

(A) prospecting,
(B) acquisition,
(C) exploration,
(D) development, and
(E) production,

including geological and geophysical costs, carrying costs, unsuccessful exploratory drilling costs, intangible drilling and development costs on productive wells, the cost of unsuccessful development wells, and the cost of acquiring oil and gas reserves by means other than development. Any such calculation shall take into account disposition of capitalized costs, contractual arrangements involving special conveyance of rights and joint operations, differences between book and tax income, and prices used in the transfer of products or other assets from one person to any other person, including a person controlled by, controlling, or under common control with such person.

(2) The full presentation of the financial information of persons engaged in the production of crude oil or natural gas, including—

(A) disclosure of reserves and operating activities, both domestic and foreign, to facilitate evaluation of financial effort and result; and

(B) classification of financial information by function to facilitate correlation with reserve and operating statistics, both domestic and foreign.

(3) Such other information, projections, and relationships of collected data as shall be necessary to facilitate the compilation of such data base.

(Pub. L. 94–163, title V, § 503, Dec. 22, 1975, 89 Stat. 958; Pub. L. 95–91, title III, § 301, title IV, § 402, title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 583, 606, 607; Pub. L. 105–388, § 5(a)(15), Nov. 13, 1998, 112 Stat. 3479; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1998—Subsec. (b). Pub. L. 105–388, § 5(a)(15)(A), substituted ''with respect to'' for ''with repect to'' in concluding provisions.

Subsec. (c)(1). Pub. L. 105–388, § 5(a)(15)(B), substituted '', controlling,'' for ''controlling'' in concluding provisions.

TRANSFER OF FUNCTIONS

''Secretary'' and ''Federal Energy Regulatory Commission'' substituted for ''Federal Energy Administration'' and ''Federal Power Commission'', respectively, in subsec. (b)(1) pursuant to sections 301, 402, 703, and 707 of Pub. L. 95–91, which are classified to sections 7151, 7172, 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions (with certain exceptions) to Secretary of Energy and terminated Federal Power Commission and transferred its functions to Federal Energy Regulatory Commission and Secretary of Energy.

§ 6384. Enforcement

(a) Civil penalties

Any person who violates any general or special order of the Comptroller General issued under section 6382(a)(1)(B) of this title may be assessed a civil penalty not to exceed $10,000 for each violation. Each day of failure to comply with such an order shall be deemed a separate violation. Such penalty shall be assessed by the Comptroller General and collected in a civil action brought by the Comptroller General through any attorney employed by the Government Accountability Office or any other attorney designated by the Comptroller General, or, upon request of the Comptroller General, the Attorney General. A person shall not be liable with respect to any period during which the effectiveness of the order with respect to such person was stayed.

(b) Jurisdiction; process

Any action to enjoin or set aside an order issued under section 6382(a)(1)(B) of this title may be brought only before the United States Court of Appeals for the District of Columbia. Any action to collect a civil penalty for violation of any general or special order may be brought only in the United States District Court for the District of Columbia. In any action brought under subsection (a) of this section to collect a civil penalty, process may be served in any judicial district of the United States.

(c) Securing compliance with subpena

Upon petition by the Comptroller General through any attorney employed by the Government Accountability Office or designated by the Comptroller General, or, upon request of the Comptroller General, the Attorney General, any United States district court within the jurisdiction of which any inquiry under this part is carried on may, in the case of refusal to obey a subpena of the Comptroller General issued under this part, issue an order requiring compliance therewith; and any failure to obey the order of the court may be treated by the court as a contempt thereof.

(Pub. L. 94–163, title V, § 504, Dec. 22, 1975, 89 Stat. 959; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsecs. (a), (c). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

§ 6385. Petroleum product information

The President or his delegate shall, pursuant to authority otherwise available to the President or his delegate under any other provision of law, collect information on the pricing, supply, and distribution of petroleum products by product category at the wholesale and retail levels, on a State-by-State basis, which was collected as of September 1, 1981, by the Energy Information Administration.

(Pub. L. 94–163, title V, § 507, as added Pub. L. 97–229, § 5(a), Aug. 3, 1982, 96 Stat. 252.)

PART B—GENERAL PROVISIONS

§ 6391. Prohibited actions

(a) Unreasonable classifications and differentiations

Action taken under the authorities to which this section applies, resulting in the allocation of petroleum products or electrical energy among classes of users or resulting in restrictions on use of petroleum products and electrical energy shall not be based upon unreasonable classifications of, or unreasonable differentiations between, classes of users. In making any such allocation the President, or any agency of the United States to which such authority is delegated, shall give consideration to the need to foster reciprocal and nondiscriminatory treatment by foreign countries of United States citizens engaged in commerce in those countries.

(b) Unreasonably disproportionate share of burdens between segments of business community

To the maximum extent practicable, any restriction under authorities to which this section applies on the use of energy shall be designed to be carried out in such manner so as to be fair and to create a reasonable distribution of the burden of such restriction on all sectors of the economy, without imposing an unreasonably disproportionate share of such burden on any specific class of industry, business, or commercial enterprise, or on any individual segment thereof. In prescribing any such restriction, due consideration shall be given to the needs of commercial, retail, and service establishments whose normal function is to supply goods or services of an essential convenience nature during times of day other than conventional daytime working hours.

(c) Authorities to which section applies

This section applies to actions under any of the following authorities:

(1) subchapters I and II of this chapter.

(2) this subchapter.

(3) the Emergency Petroleum Allocation Act of 1973[1] [15 U.S.C. 751 et seq.].

[1] See References in Text note below.

(Pub. L. 94–163, title V, § 521, Dec. 22, 1975, 89 Stat. 960.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (c)(3), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

§ 6392. Repealed. Pub. L. 104–106, div. D, title XLIII, § 4304(b)(8), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 94–163, title V, § 522, Dec. 22, 1975, 89 Stat. 961; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to conflicts of interest.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

§ 6393. Administrative procedure and judicial review

(a)(1) Subject to paragraphs (2), (3), and (4) of this subsection, the provisions of subchapter II of chapter 5 of title 5 shall apply to any rule, regulation, or order having the applicability and effect of a rule as defined in section 551(4) of title 5 issued under subchapter I of this chapter (other than section 6212 of this title) and subchapter II of this chapter, or this subchapter.

(2)(A) Notice of any proposed rule, regulation, or order described in paragraph (1) which is substantive and of general applicability shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of 30 days following the date of such publication and prior to the effective date of the rule shall be provided for opportunity to comment; except that the 30-day period for opportunity to comment prior to the effective date of the rule may be—

(i) reduced to no less than 10 days if the President finds that strict compliance would seriously impair the operation of the program to which such rule, regulation, or order relates and such findings are set out in such rule, regulation, or order, or

(ii) waived entirely, if the President finds that such waiver is necessary to act expeditiously during an emergency affecting the national security of the United States.

(B) Public notice of any rule, regulation, or order which is substantive and of general applicability which is promulgated by officers of a State or political subdivision thereof or to State or local boards which have been delegated authority pursuant to subchapter I or II of this chapter or this subchapter shall, to the maximum extent practicable, be achieved by publication of such rules, regulations, or orders in a sufficient number of newspapers of general circulation calculated to receive widest practicable notice.

(3) In addition to the requirements of paragraph (2) and to the maximum extent prac-

ticable, an opportunity for oral presentation of data, views, and arguments shall be afforded and such opportunity shall be afforded prior to the effective date of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than 45 days, and no later than 10 days (in the case of a waiver of the entire comment period under paragraph (2) (ii)), after such date. A transcript shall be made of any oral presentation.

(4) Any officer or agency authorized to issue rules, regulations, or orders described in paragraph (1) shall provide for the making of such adjustments, consistent with the other purposes of this chapter as may be necessary to prevent special hardship, inequity, or an unfair distribution of burdens and shall in rules prescribed by it establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, or an exception to or exemption from, such rules, regulations and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the officer or agency and may obtain judicial review in accordance with subsection (b) of this section or other applicable law when such denial becomes final. The officer or agency shall, by rule, establish appropriate procedures, including a hearing where deemed advisable, for considering such requests for action under this paragraph.

(b) The procedures for judicial review established by section 211 of the Economic Stabilization Act of 1970 shall apply to proceedings to which subsection (a) of this section applies, as if such proceedings took place under such Act. Such procedures for judicial review shall apply notwithstanding the expiration of the Economic Stabilization Act of 1970.

(c) Any agency authorized to issue any rule, regulation, or order described in subsection (a)(1) of this section shall, upon written request of any person, which request is filed after any grant or denial of a request for exception or exemption from any such rule, regulation, or order, furnish such person, within 30 days after the date on which such request is filed, with a written opinion setting forth applicable facts and the legal basis in support of such grant or denial.

(Pub. L. 94–163, title V, § 523, Dec. 22, 1975, 89 Stat. 962.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(4), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

The Economic Stabilization Act of 1970, referred to in subsec. (b), is title II of Pub. L. 91–379, Aug. 15, 1970, 84 Stat. 799, as amended, formerly set out as an Economic Stabilization Provisions note under section 1904 of Title 12, Banks and Banking.

CODIFICATION

Words ''(other than any provision of such titles which amends another law)'', appearing in the original at the end of subsec. (a), have been omitted as unnecessary. Such titles meant titles I, II, and V of Pub. L. 94–163, which titles are classified to subchapters I, II, and V of this chapter. The provisions of such titles that amended other laws were not classified to subchapters I, II, and V of this chapter.

§ 6394. Prohibited acts

It shall be unlawful for any person—

(1) to violate any provision of subchapter I or subchapter II of this chapter or this subchapter,

(2) to violate any rule, regulation, or order issued pursuant to any such provision or any provision of section 6363 of this title; or

(3) to fail to comply with any provision prescribed in, or pursuant to, an energy conservation contingency plan which is in effect.

(Pub. L. 94–163, title V, § 524, Dec. 22, 1975, 89 Stat. 963.)

CODIFICATION

Words ''(other than any provision of such titles which amends another law)'', appearing in the original at the end of par. (1), have been omitted as unnecessary. Such titles meant titles I, II, and V of Pub. L. 94–163, which titles are classified to subchapters I, II, and V of this chapter. The provisions of such titles that amended other laws were not classified to subchapters I, II, and V of this chapter.

§ 6395. Enforcement

(a) Civil penalty

Whoever violates section 6394 of this title shall be subject to a civil penalty of not more than $5,000 for each violation.

(b) Penalty for willful violation

Whoever willfully violates section 6394 of this title shall be fined not more than $10,000 for each violation.

(c) Penalty for violation after having been subjected to civil penalty for prior violation

Any person who knowingly and willfully violates section 6394 of this title with respect to the sale, offer of sale, or distribution in commerce of a product or commodity after having been subjected to a civil penalty for a prior violation of section 6394 of this title with respect to the sale, offer of sale, or distribution in commerce of such product or commodity shall be fined not more than $50,000 or imprisoned not more than 6 months, or both.

(d) Injunction action by Attorney General

Whenever it appears to any officer or agency of the United States in whom is vested, or to whom is delegated, authority under this chapter that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of section 6394 of this title, such officer or agency may request the Attorney General to bring an action in an appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any rule, regulation, or order described in section 6394 of this title.

(e) Private right of action

(1) Any person suffering legal wrong because of any act or practice arising out of any violation

of any provision of this chapter described in paragraph (2), may bring an action in an appropriate district court of the United States without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this subsection shall authorize any person to recover damages.

(2) The provisions of this chapter referred to in paragraph (1) are as follows:

(A) Section 6262[1] of this title (relating to energy conservation plans).

(B) Section 6271 of this title (relating to international oil allocation).

(C) Section 6272 of this title (relating to international voluntary agreements).

(D) Section 6273 of this title (relating to advisory committees).

(E) Section 6274 of this title (relating to international exchange of information).

(F) Section 6391 of this title (relating to prohibition on certain actions).

(Pub. L. 94–163, title V, § 525, Dec. 22, 1975, 89 Stat. 963.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (d) and (e), was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Section 6262 of this title, referred to in subsec. (e)(2)(A), was repealed by Pub. L. 106–469, title I, § 104(1), Nov. 9, 2000, 114 Stat. 2033.

§ 6396. State laws or programs

No State law or State program in effect on December 22, 1975, or which may become effective thereafter, shall be superseded by any provision of subchapter I or II of this chapter or any rule, regulation, or order thereunder, except insofar as such State law or State program is in conflict with such provision, rule, regulation, or order.

(Pub. L. 94–163, title V, § 526, Dec. 22, 1975, 89 Stat. 964.)

CODIFICATION

Words ''(other than any provision of such title which amends another law)'', appearing in the original in this section, have been omitted as unnecessary. Such title meant title I or title II of Pub. L. 94–163, which titles are classified to subchapters I and II of this chapter. The provisions of such titles that amended other laws were not classified to subchapters I and II of this chapter.

§ 6397. Repealed. Pub. L. 95–619, title VI, § 691(b)(1), Nov. 9, 1978, 92 Stat. 3288

Section, Pub. L. 94–163, title V, § 527, Dec. 22, 1975, 89 Stat. 964, related to transfer of authority on termination of Federal Energy Administration.

§ 6398. Authorization of appropriations

Any authorization of appropriations in this Act, or in any amendment to any other law made by this Act, for the fiscal year 1976 shall be deemed to include an additional authorization of appropriations for the period beginning July 1, 1976, and ending September 30, 1976, in amounts which equal one-fourth of any amount authorized for fiscal year 1976, unless appropriations for the same purpose are specifically authorized in a law hereinafter enacted.

(Pub. L. 94–163, title V, § 528, Dec. 22, 1975, 89 Stat. 964.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act, which is classified principally to this chapter (§ 6201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 6399. Intrastate natural gas

No provision of this chapter shall permit the imposition of any price controls on, or require any allocation of, natural gas not subject to the jurisdiction of the Secretary or the Federal Energy Regulatory Commission.

(Pub. L. 94–163, title V, § 529, Dec. 22, 1975, 89 Stat. 964; Pub. L. 95–91, title III, § 301(a), title IV, § 402, title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 583, 606, 607.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

TRANSFER OF FUNCTIONS

''Secretary or the Federal Energy Regulatory Commission'' substituted for ''Federal Power Commission'' pursuant to sections 301(a), 402, 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7172, 7293, and 7297 of this title and which terminated Federal Power Commission and transferred its functions to Federal Energy Regulatory Commission and Secretary of Energy.

§ 6400. Limitation on loan guarantees

Loan guarantees and obligation guarantees under this Act or any amendment to another law made by this Act may not be issued in violation of any limitation in appropriations or other Acts, with respect to the amounts of outstanding obligational authority.

(Pub. L. 94–163, title V, § 530, Dec. 22, 1975, 89 Stat. 964.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act, which is classified principally to this chapter (§ 6201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 6401. Repealed. Pub. L. 99–58, title I, § 104(c)(3), July 2, 1985, 99 Stat. 105

Section, Pub. L. 94–163, title V, § 531, Dec. 22, 1975, 89 Stat. 965, provided for the expiration of all authority under subchapters I and II of this chapter at midnight June 30, 1985.

[1] See References in Text note below.

PART C—CONGRESSIONAL REVIEW

§ 6421. Procedure for Congressional review of Presidential requests to implement certain authorities

(a) "Energy action" defined

For purposes of this section, the term ''energy action'' means any matter required to be transmitted, or submitted to the Congress in accordance with the procedures of this section.

(b) Transmittal of energy action to Congress

The President shall transmit any energy action (bearing an identification number) to both Houses of Congress on the same day. If both Houses are not in session on the day any energy action is received by the appropriate officers of each House, for purposes of this section such energy action shall be deemed to have been transmitted on the first succeeding day on which both Houses are in session.

(c) Effective date of energy action

(1) Except as provided in paragraph (2) of this subsection, if energy action is transmitted to the Houses of Congress, such action shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such action is transmitted to such Houses, unless between the date of transmittal and the end of such 15-day period, either House passes a resolution stating in substance that such House does not favor such action.

(2) An energy action described in paragraph (1) may take effect prior to the expiration of the 15-calendar-day period after the date on which such action is transmitted, if each House of Congress approves a resolution affirmatively stating in substance that such House does not object to such action.

(d) Computation of period

For the purpose of subsection (c) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 15-calendar-day period.

(e) Provision in energy action for later effective date

Under provisions contained in an energy action, a provision of such an action may take effect on a date later than the date on which such action otherwise takes effect pursuant to the provisions of this section.

(f) Resolutions with respect to energy action

(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) For purposes of this subsection, the term ''resolution'' means only a resolution of either House of Congress described in subparagraph (A) or (B) of this paragraph.

(A) A resolution the matter after the resolving clause of which is as follows: ''That the _____ does not object to the energy action numbered _____ submitted to the Congress on _____, 19___.'', the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy action.

(B) A resolution the matter after the resolving clause of which is as follows: ''That the _____ does not favor the energy action numbered _____ transmitted to Congress on _____, 19___.'', the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy action.

(3) A resolution once introduced with respect to an energy action shall immediately be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to an energy action has been referred has not reported it at the end of 5 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such energy action which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same energy action.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the

motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to; except that it shall be in order—

(i) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(A) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(B) of this subsection with respect to the same such action, or

(ii) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(B) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(A) of this subsection with respect to the same such action.

The amendments described in clauses (i) and (ii) of this subparagraph shall not be amendable.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to an energy action, then it shall not be in order to consider in that House any other resolution with respect to the same such action.

(Pub. L. 94–163, title V, § 551, Dec. 22, 1975, 89 Stat. 965.)

§ 6422. Expedited procedure for Congressional consideration of certain authorities

(a) Contingency plan identification number; transmittal of plan to Congress

Any contingency plan transmitted to the Congress pursuant to section 6261(a)(1)[1] of this title shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(b) Necessity of Congressional resolution within certain period for plan to be considered approved

(1) No such energy conservation contingency plan may be considered approved for purposes of section 6261(b)[1] of this title unless between the date of transmittal and the end of the first period of 60 calendar days of continuous session of Congress after the date on which such action is transmitted to such House, each House of Congress passes a resolution described in subsection (d)(2)(A) of this section.

(2)(A) Subject to subparagraph (B), any such rationing contingency plan shall be considered approved for purposes of section 6261(d)[1] of this title only if such plan is not disapproved by a resolution described in subsection (d)(2)(B)(i) of this section which passes each House of the Congress during the 30-calendar-day period of continuous session after the plan is transmitted to such Houses and which thereafter becomes law.

(B) A rationing contingency plan may be considered approved prior to the expiration of the 30-calendar-day period after such plan is transmitted if a resolution described in subsection (d)(2)(B)(ii) of this section is passed by each House of the Congress and thereafter becomes law.

(c) Computation of period

For the purpose of subsection (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the calendar-day period involved.

(d) Resolution with respect to contingency plan

(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2)(A) For purposes of applying this section with respect to any energy conservation contingency plan, the term ''resolution'' means only a resolution of either House of Congress the matter after the resolving clauses of which is as follows: ''That the _____ approves the energy conservation contingency plan numbered _____ submitted to the Congress on _____, 19____.'', the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy conservation contingency plan.

(B) For purposes of applying this subsection with respect to any rationing contingency plan (other than pursuant to section 6261(d)(2)(B)[1] of this title), the term ''resolution'' means only a joint resolution described in clause (i) or (ii) of this subparagraph with respect to such plan.

(i) A joint resolution of either House of the Congress (I) which is entitled: ''Joint resolu-

[1] See References in Text note below.

tion relating to a rationing contingency plan.'', (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: ''That the Congress of the United States disapproves the rationing contingency plan transmitted to the Congress on _____, 19____.'', the blank spaces therein appropriately filled.

(ii) A joint resolution of either House of the Congress (I) which is entitled: ''Joint resolution relating to a rationing contingency plan.'', (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: ''That the Congress of the United States does not object to the rationing contingency plan transmitted to the Congress on _____, 19____.'', the blank spaces therein appropriately filled.

(3) A resolution once introduced with respect to a contingency plan shall immediately be referred to a committee (and all resolutions with respect to the same contingency plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to a contingency plan has been referred has not reported it at the end of 20 calendar days after its referral in the case of any energy conservation contingency plan or at the end of 10 calendar days after its referral in the case of any rationing contingency plan, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such contingency plan which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same contingency plan), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. Except to the extent provided in paragraph (7)(A), an amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same contingency plan.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. Except to the extent provided in paragraph (7)(B), an amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

(7) With respect to any rationing contingency plan—

(A) In the consideration of any motion to discharge any committee from further consideration of any resolution on any such plan, it shall be in order after debate allowed for under paragraph (4)(B) to offer an amendment in the nature of a substitute for such motion—

(i) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable. Debate on such an amendment shall be limited to not more than 1 hour, which shall be divided equally between those favoring and those opposing the amendment.

(B) In the consideration of any resolution on any such plan which has been reported by a committee, it shall be in order at any time during the debate allowed for under paragraph (5)(B) to offer an amendment in the nature of a substitute for such resolution—

(i) consisting of the text of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of the text of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable.

(C) If one House receives from the other House a resolution with respect to a rationing

contingency plan, then the following procedure applies:

(i) the resolution of the other House with respect to such plan shall not be referred to a committee;

(ii) in the case of a resolution of the first House with respect to such plan—

(I) the procedure with respect to that or other resolutions of such House with respect to such plan shall be the same as if no resolution from the other House with respect to such plan had been received; but

(II) on any vote on final passage of a resolution of the first House with respect to such plan a resolution from the other House with respect to such plan which has the same effect shall be automatically substituted for the resolution of the first House.

(D) Notwithstanding any of the preceding provisions of this subsection, if a House has approved a resolution with respect to a rationing contingency plan, then it shall not be in order to consider in that House any other resolution under this section with respect to the approval of such plan.

(Pub. L. 94–163, title V, § 552, Dec. 22, 1975, 89 Stat. 967; Pub. L. 96–102, title I, §§ 103(b)(2), 105(a)(4), (b)(6), Nov. 5, 1979, 93 Stat. 753, 756; Pub. L. 105–388, § 5(a)(16), Nov. 13, 1998, 112 Stat. 3479.)

REFERENCES IN TEXT

Section 6261 of this title, referred to in subsecs. (a), (b)(1), (2)(A), and (d)(2)(B), was repealed by Pub. L. 106–469, title I, § 104(1), Nov. 9, 2000, 114 Stat. 2033.

AMENDMENTS

1998—Subsec. (d)(5)(A). Pub. L. 105–388 substituted ''motion'' for ''notion'' after ''amendment to the''.

1979—Subsec. (b). Pub. L. 96–102, §§ 103(b)(2)(A), 105(b)(6), designated existing provisions as par. (1) and substituted ''No such energy conservation contingency plan'' for ''No such contingency plan'', ''section 6261(b)'' for ''section 6261(a)(2)'', and ''subsection (d)(2)(A)'' for ''subsection (d)(2)'', and added par. (2).

Subsec. (c)(2). Pub. L. 96–102, § 103(b)(2)(B), substituted ''calendar-day period involved'' for ''60-calendar-day period''.

Subsec. (d)(2). Pub. L. 96–102, §§ 103(b)(2)(C), 105(a)(4), designated existing provisions as subpar. (A), substituted ''For purposes of applying this section with respect to any energy conservation contingency plan'' for ''For purposes of this subsection'' and ''energy conservation contingency plan'' for ''contingency plan'' in two places, and added subpar. (B).

Subsec. (d)(4)(A). Pub. L. 96–102, § 103(b)(2)(D), inserted ''in the case of any energy conservation contingency plan or at the end of 10 calendar days after its referral in the case of any rationing contingency plan'' after ''after its referral''.

Subsec. (d)(4)(B). Pub. L. 96–102, § 103(b)(2)(E), substituted ''Except to the extent provided in paragraph (7)(A), an amendment'' for ''An amendment''.

Subsec. (d)(5)(B). Pub. L. 96–102, § 103(b)(2)(F), substituted ''Except to the extent provided in paragraph (7)(B), an amendment'' for ''An amendment''.

Subsec. (d)(7). Pub. L. 96–102, § 103(b)(2)(G), added par. (7).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–102 effective Nov. 5, 1979, see section 302 of Pub. L. 96–102, set out as an Effective Date note under section 8501 of this title.

CHAPTER 78—NATIONAL PETROLEUM RESERVE IN ALASKA

Sec.
6501. ''Petroleum'' defined.
6502. Designation of National Petroleum Reserve in Alaska; reservation of lands; disposition and conveyance of mineral materials, lands, etc., preexisting property rights.
6503. Transfer of jurisdiction, duties, property, etc., to Secretary of the Interior from Secretary of Navy.
6504. Administration of reserve.
6505. Executive department responsibility for studies to determine procedures used in development, production, transportation, and distribution of petroleum resources in reserve; reports to Congress by President; establishment of task force by Secretary of the Interior; purposes; membership; report and recommendations to Congress by Secretary; contents.
6506. Applicability of antitrust provisions; plans and proposals submitted to Congress to contain report by Attorney General on impact of plans and proposals on competition.
6506a. Competitive leasing of oil and gas.
6507. Authorization of appropriations; Federal financial assistance for increased municipal services and facilities in communities located on or near reserve resulting from authorized exploration and study activities.
6508. Transferred.

§ 6501. "Petroleum" defined

As used in this chapter, the term ''petroleum'' includes crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any of such resources.

(Pub. L. 94–258, title I, § 101, Apr. 5, 1976, 90 Stat. 303.)

SHORT TITLE

Section 1 of Pub. L. 94–258 provided: ''That this Act [enacting this chapter and section 7420 of Title 10, Armed Forces, and amending section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10] may be cited as the 'Naval Petroleum Reserves Production Act of 1976'.''

§ 6502. Designation of National Petroleum Reserve in Alaska; reservation of lands; disposition and conveyance of mineral materials, lands, etc., preexisting property rights

The area known as Naval Petroleum Reserve Numbered 4, Alaska, established by Executive order of the President, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344, dated April 24, 1961, shall be transferred to and administered by the Secretary of the Interior in accordance with the provisions of this Act. Effective on the date of transfer all lands within such area shall be redesignated as the ''National Petroleum Reserve in Alaska'' (hereinafter in this chapter referred to as the ''reserve''). Subject to valid existing rights, all lands within the exterior boundaries of such reserve are hereby reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts; but the Secretary is authorized to (1) make dispositions of mineral materials pursuant to the Act

of July 31, 1947 (61 Stat. 681), as amended [30 U.S.C. 601 et seq.], for appropriate use by Alaska Natives and the North Slope Borough, (2) make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under this Act, (3) convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], and (4) grant such rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 [43 U.S.C. 1761 et seq.] or section 28 of the Mineral Leasing Act, as amended [30 U.S.C. 185], as may be necessary to permit the North Slope Borough to provide energy supplies to villages on the North Slope. All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Naval Petroleum Reserve shall remain in full force and effect to the extent not inconsistent with this Act.

(Pub. L. 94–258, title I, § 102, Apr. 5, 1976, 90 Stat. 303; Pub. L. 98–366, § 4(a), July 17, 1984, 98 Stat. 470.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 94–258, Apr. 5, 1976, 90 Stat. 303, known as the Naval Petroleum Reserves Production Act of 1976, which enacted this chapter and section 7420 of Title 10, Armed Forces, and amended section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10. For complete classification of this Act to the Code, see Short Note set out under section 6501 of this title and Tables.

The public land laws, referred to in text, are classified generally to Title 43, Public Lands.

The mining laws and the mineral leasing laws, referred to in text, are classified generally to Title 30, Mineral Lands and Mining.

Act of July 31, 1947 (61 Stat. 681), as amended, referred to in text, popularly known as the Materials Act of 1947, is classified generally to subchapter I (§ 601 et seq.) of chapter 15 of Title 30. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 30 and Tables.

The Alaska Native Claims Settlement Act, referred to in text, is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Federal Land Policy and Management Act of 1976, referred to in text, is Pub. L. 94–579, Oct. 21, 1976, 90 Stat. 2743, as amended. Title V of the Federal Land Policy and Management Act of 1976 is classified generally to subchapter V (§ 1761 et seq.) of chapter 35 of Title 43. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

AMENDMENTS

1984—Pub. L. 98–366 inserted ''and the North Slope Borough'' after ''Alaska Natives'', struck out ''and'' after ''responsibilities under this Act,'' and inserted '', and (4) grant rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 or section 28 of the Mineral Leasing Act, as amended, as may be necessary to permit the North Slope Borough to provide energy supplies to the villages on the North Slope''.

§ 6503. Transfer of jurisdiction, duties, property, etc., to Secretary of the Interior from Secretary of Navy

(a) Transfer of jurisdiction over reserve; date of transfer

Jurisdiction over the reserve shall be transferred by the Secretary of the Navy to the Secretary of the Interior on June 1, 1977.

(b) Protection of environmental, fish and wildlife, and historical or scenic values; promulgation of rules and regulations

With respect to any activities related to the protection of environmental, fish and wildlife, and historical or scenic values, the Secretary of the Interior shall assume all responsibilities as of April 5, 1976. As soon as possible, but not later than the effective date of transfer, the Secretary of the Interior may promulgate such rules and regulations as he deems necessary and appropriate for the protection of such values within the reserve.

(c) Contract responsibilities and functions

The Secretary of the Interior shall, upon the effective date of the transfer of the reserve, assume the responsibilities and functions of the Secretary of the Navy under any contracts which may be in effect with respect to activities within the reserve.

(d) Equipment, facilities, and other properties used in connection with operation of reserve; transfer without reimbursement

On the date of transfer of jurisdiction of the reserve, all equipment, facilities, and other property of the Department of the Navy used in connection with the operation of the reserve, including all records, maps, exhibits, and other informational data held by the Secretary of the Navy in connection with the reserve, shall be transferred without reimbursement from the Secretary of the Navy to the Secretary of the Interior who shall thereafter be authorized to use them to carry out the provisions of this chapter.

(e) Unexpended funds previously appropriated for use in connection with reserve and civilian personnel ceilings assigned to management and operation of reserve

On the date of transfer of jurisdiction of the reserve, the Secretary of the Navy shall transfer to the Secretary of the Interior all unexpended funds previously appropriated for use in connection with the reserve and all civilian personnel ceilings assigned by the Secretary of the Navy to the management and operation of the reserve as of January 1, 1976.

(Pub. L. 94–258, title I, § 103, Apr. 5, 1976, 90 Stat. 303.)

§ 6504. Administration of reserve

(a) Conduct of exploration within designated areas to protect surface values

Any exploration within the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value,

shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.

(b) Continuation of ongoing petroleum exploration program by Secretary of Navy prior to date of transfer of jurisdiction; duties of Secretary of Navy prior to transfer date

The Secretary of the Navy shall continue the ongoing petroleum exploration program within the reserve until the date of the transfer of jurisdiction specified in section 6503(a) of this title. Prior to the date of such transfer of jurisdiction the Secretary of the Navy shall—

(1) cooperate fully with the Secretary of the Interior providing him access to such facilities and such information as he may request to facilitate the transfer of jurisdiction;

(2) provide to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives copies of any reports, plans, or contracts pertaining to the reserve that are required to be submitted to the Committees on Armed Services of the Senate and the House of Representatives; and

(3) cooperate and consult with the Secretary of the Interior before executing any new contract or amendment to any existing contract pertaining to the reserve and allow him a reasonable opportunity to comment on such contract or amendment, as the case may be.

(c) Commencement of petroleum exploration by Secretary of the Interior as of date of transfer of jurisdiction; powers and duties of Secretary of the Interior in conduct of exploration

The Secretary of the Interior shall commence further petroleum exploration of the reserve as of the date of transfer of jurisdiction specified in section 6503(a) of this title. In conducting this exploration effort, the Secretary of the Interior—

(1) is authorized to enter into contracts for the exploration of the reserve, except that no such contract may be entered into until at least thirty days after the Secretary of the Interior has provided the Attorney General with a copy of the proposed contract and such other information as may be appropriate to determine legal sufficiency and possible violations under, or inconsistencies with, the antitrust laws. If, within such thirty day period, the Attorney General advises the Secretary of the Interior that any such contract would unduly restrict competition or be inconsistent with the antitrust laws, then the Secretary of the Interior may not execute that contract;

(2) shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives any new plans or substantial amendments to ongoing plans for the exploration of the reserve. All such plans or amendments submitted to such committees pursuant to this section shall contain a report by the Attorney General of the United States with respect to the anticipated effects of such plans or amendments on competition. Such plans or amendments shall not be implemented until sixty days after they have been submitted to such committees; and

(3) shall report annually to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives on the progress of, and future plans for, exploration of the reserve.

(Pub. L. 94–258, title I, § 104, Apr. 5, 1976, 90 Stat. 304; Pub. L. 98–366, § 4(b), July 17, 1984, 98 Stat. 470; Pub. L. 103–437, § 15(q), Nov. 2, 1994, 108 Stat. 4594; Pub. L. 109–58, title III, § 347(c), Aug. 8, 2005, 119 Stat. 708.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 94–258, Apr. 5, 1976, 90 Stat. 303, known as the Naval Petroleum Reserves Production Act of 1976, which enacted this chapter and section 7420 of Title 10, Armed Forces, and amended section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10. For complete classification of this Act to the Code, see Short Note set out under section 6501 of this title and Tables.

AMENDMENTS

2005—Pub. L. 109–58 redesignated subsecs. (b) to (d) as (a) to (c), respectively, and struck out former subsec. (a) which read as follows: ''Except as provided in subsection (e) of this section, production of petroleum from the reserve is prohibited and no development leading to production of petroleum from the reserve shall be undertaken until authorized by an Act of Congress.''

1994—Subsecs. (c)(2), (d)(2), (3). Pub. L. 103–437 substituted ''Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House'' for ''Committees on Interior and Insular Affairs of the Senate and the House''.

1984—Subsec. (e). Pub. L. 98–366 struck out subsec. (e) which read as follows: ''Until the reserve is transferred to the jurisdiction of the Secretary of the Interior, the Secretary of the Navy is authorized to develop and continue operation of the South Barrow gas field, or such other fields as may be necessary, to supply gas at reasonable and equitable rates to the native village of Barrow, and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the United States located at or near Point Barrow, Alaska. After such transfer, the Secretary of the Interior shall take such actions as may be necessary to continue such service to such village, communities, installations, and agencies at reasonable and equitable rates.''

CHANGE OF NAME

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 4(b) of Pub. L. 98–366 provided that the amendment made by that section is effective Oct. 1, 1984.

§ 6505. Executive department responsibility for studies to determine procedures used in development, production, transportation, and distribution of petroleum resources in reserve; reports to Congress by President; establishment of task force by Secretary of the Interior; purposes; membership; report and recommendations to Congress by Secretary; contents

(a) Omitted

(b)(1) The President shall direct such Executive departments and/or agencies as he may deem appropriate to conduct a study, in consultation with representatives of the State of Alaska, to determine the best overall procedures to be used in the development, production, transportation, and distribution of petroleum resources in the reserve. Such study shall include, but shall not be limited to, a consideration of—

(A) the alternative procedures for accomplishing the development, production, transportation, and distribution of the petroleum resources from the reserve, and

(B) the economic and environmental consequences of such alternative procedures.

(2) The President shall make semiannual progress reports on the implementation of this subsection to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives beginning not later than six months after April 5, 1976, and shall, not later than one year after the transfer of jurisdiction of the reserve, and annually thereafter, report any findings or conclusions developed as a result of such study together with appropriate supporting data and such recommendations as he deems desirable. The study shall be completed and submitted to such committees, together with recommended procedures and any proposed legislation necessary to implement such procedures not later than January 1, 1980.

(c)(1) The Secretary of the Interior shall establish a task force to conduct a study to determine the values of, and best uses for, the lands contained in the reserve, taking into consideration (A) the natives who live or depend upon such lands, (B) the scenic, historical, recreational, fish and wildlife, and wilderness values, (C) mineral potential, and (D) other values of such lands.

(2) Such task force shall be composed of representatives from the government of Alaska, the Arctic slope native community, and such offices and bureaus of the Department of the Interior as the Secretary of the Interior deems appropriate, including, but not limited to, the Bureau of Land Management, the United States Fish and Wildlife Service, the United States Geological Survey, and the United States Bureau of Mines.

(3) The Secretary of the Interior shall submit a report, together with the concurring or dissenting views, if any, of any non-Federal representatives of the task force, of the results of such study to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives within three years after April 5, 1976, and shall include in such report his recommendations with respect to the value, best use, and appropriate designation of the lands referred to in paragraph (1).

(Pub. L. 94–258, title I, § 105, Apr. 5, 1976, 90 Stat. 305; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

CODIFICATION

Subsec. (a) of this section amended former section 6244 of this title.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (c)(2) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of Title 30, Mineral Lands and Mining. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of Title 30, Mineral Lands and Mining.

Committee on Interior and Insular Affairs of Senate abolished and replaced by Committee on Energy and Natural Resources of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress. Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 6506. Applicability of antitrust provisions; plans and proposals submitted to Congress to contain report by Attorney General on impact of plans and proposals on competition

Unless otherwise provided by Act of Congress, whenever development leading to production of petroleum is authorized, the provisions of subsections (g), (h), and (i) of section 7430 of title 10 shall be deemed applicable to the Secretary of the Interior with respect to rules and regulations, plans of development and amendments thereto, and contracts and operating agreements. All plans and proposals submitted to the Congress under this chapter or pursuant to legislation authorizing development leading to production shall contain a report by the Attorney General of the United States on the anticipated effects upon competition of such plans and proposals.

(Pub. L. 94–258, title I, § 106, Apr. 5, 1976, 90 Stat. 306.)

§ 6506a. Competitive leasing of oil and gas

(a) In general

The Secretary shall conduct an expeditious program of competitive leasing of oil and gas in the Reserve in accordance with this Act.

(b) Mitigation of adverse effects

Activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska.

(c) Land use planning; BLM wilderness study

The provisions of section 1712 and section 1782 of title 43 shall not be applicable to the Reserve.

(d) First lease sale

The;[1] first lease sale shall be conducted within twenty months of December 12, 1980: *Provided*, That the first lease sale shall be conducted only after publication of a final environmental impact statement if such is deemed necessary

[1] So in original.

under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) Withdrawals

The withdrawals established by section 6502 of this title are rescinded for the purposes of the oil and gas leasing program authorized under this section.

(f) Bidding systems

Bidding systems used in lease sales shall be based on bidding systems included in section 205(a)(1)(A) through (H)[2] of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629).

(g) Geological structures

Lease tracts may encompass identified geological structures.

(h) Size of lease tracts

The size of lease tracts may be up to sixty thousand acres, as determined by the Secretary.

(i) Terms

(1) In general

Each lease shall be issued for an initial period of not more than 10 years, and shall be extended for so long thereafter as oil or gas is produced from the lease in paying quantities, oil or gas is capable of being produced in paying quantities, or drilling or reworking operations, as approved by the Secretary, are conducted on the leased land.

(2) Renewal of leases with discoveries

At the end of the primary term of a lease the Secretary shall renew for an additional 10-year term a lease that does not meet the requirements of paragraph (1) if the lessee submits to the Secretary an application for renewal not later than 60 days before the expiration of the primary lease and the lessee certifies, and the Secretary agrees, that hydrocarbon resources were discovered on one or more wells drilled on the leased land in such quantities that a prudent operator would hold the lease for potential future development.

(3) Renewal of leases without discoveries

At the end of the primary term of a lease the Secretary shall renew for an additional 10-year term a lease that does not meet the requirements of paragraph (1) if the lessee submits to the Secretary an application for renewal not later than 60 days before the expiration of the primary lease and pays the Secretary a renewal fee of $100 per acre of leased land, and—

(A) the lessee provides evidence, and the Secretary agrees that, the lessee has diligently pursued exploration that warrants continuation with the intent of continued exploration or future potential development of the leased land; or

(B) all or part of the lease—

(i) is part of a unit agreement covering a lease described in subparagraph (A); and

(ii) has not been previously contracted out of the unit.

(4) Applicability

This subsection applies to a lease that is in effect on or after August 8, 2005.

(5) Expiration for failure to produce

Notwithstanding any other provision of this Act, if no oil or gas is produced from a lease within 30 years after the date of the issuance of the lease the lease shall expire.

(6) Termination

No lease issued under this section covering lands capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same due to circumstances beyond the control of the lessee.

(j) Unit agreements

(1) In general

For the purpose of conservation of the natural resources of all or part of any oil or gas pool, field, reservoir, or like area, lessees (including representatives) of the pool, field, reservoir, or like area may unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for all or part of the pool, field, reservoir, or like area (whether or not any other part of the oil or gas pool, field, reservoir, or like area is already subject to any cooperative or unit plan of development or operation), if the Secretary determines the action to be necessary or advisable in the public interest. In determining the public interest, the Secretary should consider, among other things, the extent to which the unit agreement will minimize the impact to surface resources of the leases and will facilitate consolidation of facilities.

(2) Consultation

In making a determination under paragraph (1), the Secretary shall consult with and provide opportunities for participation by the State of Alaska or a Regional Corporation (as defined in section 1602 of title 43) with respect to the creation or expansion of units that include acreage in which the State of Alaska or the Regional Corporation has an interest in the mineral estate.

(3) Production allocation methodology

(A) The Secretary may use a production allocation methodology for each participating area within a unit that includes solely Federal land in the Reserve.

(B) The Secretary shall use a production allocation methodology for each participating area within a unit that includes Federal land in the Reserve and non-Federal land based on the characteristics of each specific oil or gas pool, field, reservoir, or like area to take into account reservoir heterogeneity and area variation in reservoir producibility across diverse leasehold interests. The implementation of the foregoing production allocation methodology shall be controlled by agreement among the affected lessors and lessees.

(4) Benefit of operations

Drilling, production, and well reworking operations performed in accordance with a unit agreement shall be deemed to be performed for the benefit of all leases that are subject in whole or in part to such unit agreement.

(5) Pooling

If separate tracts cannot be independently developed and operated in conformity with an

[2] See References in Text note below.

established well spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior (in consultation with the owners of the other land) to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed to the agreement.

(k) Exploration incentives

(1) In general

(A) Waiver, suspension, or reduction

To encourage the greatest ultimate recovery of oil or gas or in the interest of conservation, the Secretary may waive, suspend, or reduce the rental fees or minimum royalty, or reduce the royalty on an entire leasehold (including on any lease operated pursuant to a unit agreement), whenever (after consultation with the State of Alaska and the North Slope Borough of Alaska and the concurrence of any Regional Corporation for leases that include land that was made available for acquisition by the Regional Corporation under the provisions of section 1431(*o*) of the Alaska National Interest Lands Conservation Act) in the judgment of the Secretary it is necessary to do so to promote development, or whenever in the judgment of the Secretary the leases cannot be successfully operated under the terms provided therein.

(B) Applicability

This paragraph applies to a lease that is in effect on or after August 8, 2005..[1]

(2) Suspension of operations and production

The Secretary may direct or assent to the suspension of operations and production on any lease or unit.

(3) Suspension of payments

If the Secretary, in the interest of conservation, shall direct or assent to the suspension of operations and production on any lease or unit, any payment of acreage rental or minimum royalty prescribed by such lease or unit likewise shall be suspended during the period of suspension of operations and production, and the term of such lease shall be extended by adding any such suspension period to the lease.

(*l*) Receipts

All receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this section shall be paid into the Treasury of the United States: *Provided*, That 50 percent thereof shall be paid by the Secretary of the Treasury semiannually, as soon thereafter as practicable after March 30 and September 30 each year, to the State of Alaska for: (1) planning; (2) construction, maintenance, and operation of essential public facilities; and (3) other necessary provisions of public service: *Provided further*, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act.

(m) Explorations

Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the National Petroleum Reserve in Alaska which do not interfere with operations under any contract maintained or granted previously. Any information acquired in such explorations shall be subject to the conditions of 43 U.S.C. 1352(a)(1)(A).

(n) Environmental impact statements

(1) Judicial review

Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in the National Petroleum Reserve-Alaska shall be barred unless brought in the appropriate District Court within 60 days after notice of the availability of such statement is published in the Federal Register.

(2) Initial lease sales

The detailed environmental studies and assessments that have been conducted on the exploration program and the comprehensive land-use studies carried out in response to sections[3] 6505(b) and (c) of this title shall be deemed to have fulfilled the requirements of section 102(2)(c)[4] of the National Environmental Policy Act (Public Law 91–190) [42 U.S.C. 4332(2)(C)], with regard to the first two oil and gas lease sales in the National Petroleum Reserve-Alaska: *Provided*, That not more than a total of 2,000,000 acres may be leased in these two sales: *Provided further*, That any exploration or production undertaken pursuant to this section shall be in accordance with section 6504(a) of this title.

(*o*) Regulations

As soon as practicable after August 8, 2005, the Secretary shall issue regulations to implement this section.

(p) Waiver of administration for conveyed lands

(1) In general

Notwithstanding section 1613(g) of title 43—

(A) the Secretary of the Interior shall waive administration of any oil and gas lease to the extent that the lease covers any land in the Reserve in which all of the subsurface estate is conveyed to the Arctic Slope Regional Corporation (referred to in this subsection as the ''Corporation'');

(B)(i) in a case in which a conveyance of a subsurface estate described in subparagraph (A) does not include all of the land covered by the oil and gas lease, the person that owns the subsurface estate in any particular portion of the land covered by the lease shall be entitled to all of the revenues reserved

[3] So in original. Probably should be ''section''.

[4] So in original. Probably should be ''102(2)(C)''.

under the lease as to that portion, including, without limitation, all the royalty payable with respect to oil or gas produced from or allocated to that portion;

(ii) in a case described in clause (i), the Secretary of the Interior shall—

(I) segregate the lease into 2 leases, 1 of which shall cover only the subsurface estate conveyed to the Corporation; and

(II) waive administration of the lease that covers the subsurface estate conveyed to the Corporation; and

(iii) the segregation of the lease described in clause (ii)(I) has no effect on the obligations of the lessee under either of the resulting leases, including obligations relating to operations, production, or other circumstances (other than payment of rentals or royalties); and

(C) nothing in this subsection limits the authority of the Secretary of the Interior to manage the federally-owned surface estate within the Reserve.

(Pub. L. 94–258, title I, § 107, formerly Pub. L. 96–514, title I, Dec. 12, 1980, 94 Stat. 2964; Pub. L. 98–620, title IV, § 402(41), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 105–83, title I, § 128, Nov. 14, 1997, 111 Stat. 1568; renumbered Pub. L. 94–258, title I, § 107, and amended Pub. L. 109–58, title III, § 347(a)(2), (b), Aug. 8, 2005, 119 Stat. 704.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (b), (i)(5), and (*l*) is Pub. L. 94–258, Apr. 5, 1976, 90 Stat. 303, known as the Naval Petroleum Reserves Production Act of 1976, which enacted this chapter and section 7420 of Title 10, Armed Forces, and amended section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10. For complete classification of this Act to the Code, see Short Title note set out under section 6501 of this title and Tables.

December 12, 1980, referred to in subsec. (d), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 96–514, which enacted this section, to reflect the probable intent of Congress.

The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

Section 205(a)(1)(A) through (H) of the Outer Continental Shelf Lands Act Amendments of 1978, referred to in subsec. (f), probably should have been a reference to section 8(a)(1)(A) through (H) of the Outer Continental Shelf Lands Act (act Aug. 7, 1953, ch. 345), as amended by section 205(a) of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95–372), which is classified to section 1337(a)(1)(A)–(H) of Title 43, Public Lands. Subpar. (H) of section 8(a)(1) of act Aug. 7, 1953, was redesignated subpar. (I) and a new subpar. (H) was added by Pub. L. 104–58, title III, § 303, Nov. 28, 1995, 109 Stat. 565.

Section 1431(*o*) of the Alaska National Interest Lands Conservation Act, referred to in subsec. (k)(1)(A), is section 1431(*o*) of title XIV of Pub. L. 96–487, Dec. 2, 1980, 94 Stat. 2542, which was not classified to the Code.

CODIFICATION

Section, which consisted of the matter under the heading ''Exploration of National Petroleum Reserve in Alaska'' in title I of Pub. L. 96–514, as amended, prior to being renumbered section 107 of Pub. L. 94–258, was formerly classified to section 6508 of this title.

PRIOR PROVISIONS

A prior section 107 of Pub. L. 94–258 was renumbered 108 and is classified to section 6507 of this title.

AMENDMENTS

2005—Pub. L. 109–58 amended section catchline and revised and restructured text into subsecs. (a) to (p). Amendments by Pub. L. 109–58, § 347(b)(2) to (7), were executed by disregarding the second set of closed quotation marks in each such paragraph to reflect the probable intent of Congress. Prior to amendment, text related to competitive leasing of oil and gas and consisted of four undesignated pars.

1997—Pub. L. 105–83, in first par., substituted cls. (8) to (11) and two concluding provisos for ''(8) each lease shall be issued for an initial period of up to ten years, and shall be extended for so long thereafter as oil or gas is produced from the lease in paying quantities, or as drilling or reworking operations, as approved by the Secretary, are conducted thereon; and (9) all receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this Act shall be paid into the Treasury of the United States: *Provided*, That 50 per centum thereof shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 30 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: *Provided further*, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act.''

1984—Pub. L. 98–620 struck out provision in third par. that required that any proceeding on such action be assigned for hearing at the earliest possible date and be expedited by the Court.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 6507. Authorization of appropriations; Federal financial assistance for increased municipal services and facilities in communities located on or near reserve resulting from authorized exploration and study activities

(a) There are authorized to be appropriated to the Department of the Interior such sums as may be necessary to carry out the provisions of this chapter.

(b) If the Secretary of the Interior determines that there is an immediate and substantial increase in the need for municipal services and facilities in communities located on or near the reserve as a direct result of the exploration and study activities authorized by this chapter and that an unfair and excessive financial burden will be incurred by such communities as a result of the increased need for such services and facilities, then he is authorized to assist such communities in meeting the costs of providing increased municipal services and facilities. The Secretary of the Interior shall carry out the provisions of this section through existing Federal programs and he shall consult with the heads of the departments or agencies of the Federal Government concerned with the type of services and facilities for which financial assistance is being made available.

(Pub. L. 94–258, title I, § 108, formerly § 107, Apr. 5, 1976, 90 Stat. 306; renumbered § 108, Pub. L.

109–58, title III, § 347(a)(1), Aug. 8, 2005, 119 Stat. 704.)

§ 6508. Transferred

CODIFICATION

Section, Pub. L. 96–514, title I, Dec. 12, 1980, 94 Stat. 2964, as amended, which related to competitive leasing of oil and gas, was renumbered section 107 of Pub. L. 94–258, the Naval Petroleum Reserves Production Act of 1976, by Pub. L. 109–58, title III, § 347(a)(2), August 8, 2005, 119 Stat. 704, and is classified to section 6506a of this title.

CHAPTER 79—SCIENCE AND TECHNOLOGY POLICY, ORGANIZATION AND PRIORITIES

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SUBCHAPTER I—NATIONAL SCIENCE, ENGINEERING, AND TECHNOLOGY POLICY AND PRIORITIES

§ 6601. Congressional findings; priority goals

(a) The Congress, recognizing the profound impact of science and technology on society, and the interrelations of scientific, technological, economic, social, political, and institutional factors, hereby finds and declares that—

(1) the general welfare, the security, the economic health and stability of the Nation, the conservation and efficient utilization of its natural and human resources, and the effective functioning of government and society require vigorous, perceptive support and employment of science and technology in achieving national objectives;

(2) the many large and complex scientific and technological factors which increasingly influence the course of national and international events require appropriate provision, involving long-range, inclusive planning as well as more immediate program development, to incorporate scientific and technological knowledge in the national decisionmaking process;

(3) the scientific and technological capabilities of the United States, when properly fostered, applied, and directed, can effectively assist in improving the quality of life, in anticipating and resolving critical and emerging international, national, and local problems, in strengthening the Nation's international economic position, and in furthering its foreign policy objectives;

(4) Federal funding for science and technology represents an investment in the future which is indispensable to sustained national progress and human betterment, and there should be a continuing national investment in science, engineering, and technology which is commensurate with national needs and opportunities and the prevalent economic situation;

(5) the manpower pool of scientists, engineers, and technicians, constitutes an invaluable national resource which should be utilized to the fullest extent possible; and

(6) the Nation's capabilities for technology assessment and for technological planning and policy formulation must be strengthened at both Federal and State levels.

(b) As a consequence, the Congress finds and declares that science and technology should contribute to the following priority goals without being limited thereto:

(1) fostering leadership in the quest for international peace and progress toward human freedom, dignity, and well-being by enlarging the contributions of American scientists and engineers to the knowledge of man and his universe, by making discoveries of basic science widely available at home and abroad, and by utilizing technology in support of United States national and foreign policy goals;

(2) increasing the efficient use of essential materials and products, and generally contributing to economic opportunity, stability, and appropriate growth;

(3) assuring an adequate supply of food, materials, and energy for the Nation's needs;

(4) contributing to the national security;

(5) improving the quality of health care available to all residents of the United States;

(6) preserving, fostering, and restoring a healthful and esthetic natural environment;

(7) providing for the protection of the oceans and coastal zones, and the polar regions, and the efficient utilization of their resources;

(8) strengthening the economy and promoting full employment through useful scientific and technological innovations;

(9) increasing the quality of educational opportunities available to all residents of the United States;

(10) promoting the conservation and efficient utilization of the Nation's natural and human resources;

(11) improving the Nation's housing, transportation, and communication systems, and assuring the provision of effective public services throughout urban, suburban, and rural areas;

(12) eliminating air and water pollution, and unnecessary, unhealthful, or ineffective drugs and food additives; and

(13) advancing the exploration and peaceful uses of outer space.

(Pub. L. 94–282, title I, § 101, May 11, 1976, 90 Stat. 459.)

SHORT TITLE

Section 1 of Pub. L. 94–282 provided that: ''This Act [enacting this chapter, amending section 1863 of this title, repealing sections 1, 2, 3, and 4 of Reorganization Plan Numbered 2 of 1962 (76 Stat. 1253), set out as a note under section 1861 of this title, and section 2 of Reorganization Plan Numbered 1 of 1973 (87 Stat. 1089), set out as a note under section 5195 of this title, and enacting provisions set out as notes under this section and sections 1862 and 6611 of this title] may be cited as the 'National Science and Technology Policy, Organization, and Priorities Act of 1976'.''

Section 201 of title II of Pub. L. 94–282 provided that: ''This title [enacting subchapter II of this chapter] may be cited as the 'Presidential Science and Technology Advisory Organization Act of 1976'.''

EX. ORD. NO. 12039. TRANSFER OF CERTAIN SCIENCE AND TECHNOLOGY POLICY FUNCTIONS

Ex. Ord. No. 12039, Feb. 24, 1978, 43 F.R. 8095, as amended by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, provided:

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)) [set out in Appendix of Title 5, Government Organization and Employees], Section 301 of Title 3 of the United States Code, and Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], and as President of the United States of America, in order to provide for the transfer of certain science and technology functions, it is hereby ordered as follows:

SECTION 1. (a) The transfer, provided by Section 5A of Reorganization Plan No. 1 of 1977 (42 FR 56101) [set out in Appendix of Title 5, Government Organization and Employees], of certain functions under the National Science and Technology Policy, Organization, and Priorities Act of 1976, hereinafter referred to as the Act (90 Stat. 459, 42 U.S.C. 6601 et seq.), from the Office of Science and Technology Policy and its Director to the Director of the National Science Foundation is hereby effective.

(b) The abolition of the Intergovernmental Science, Engineering, and Technology Advisory Panel, the President's Committee on Science and Technology, and the Federal Coordinating Council for Science, Engineering and Technology (established in accordance with Titles II, III, and IV of the Act) [sections 6611 et seq., 6631 et seq., and 6651 of this title] and the transfer of their functions (Sections 205(b)(1), 303(a) and (b)(1), and 401 of the Act, 42 U.S.C. 6614(b)(1), 6633 (a) and (b)(1), and 6651(e)) to the President of the United States of America, provided by Section 5A of Reorganization Plan No. 1 of 1977 [set out in Appendix of Title 5, Government Organization and Employees], are hereby effective.

SEC. 2. (a) The intergovernmental science, engineering, and technology functions under Section 205(b)(1) of the Act (42 U.S.C. 6614(b)(1)), which were transferred to the President (see Section 1(b) of this Order), are delegated to the Director of the Office of Science and Technology Policy; *Except that*, the responsibility for fostering any policies to facilitate the transfer and utilization of research and development results is delegated to the Director of the Office of Management and Budget.

(b) The functions vested by subsection (a) of this Section in the Director of the Office of Management and Budget shall be performed in accord with the Director's responsibilities under the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 42 U.S.C. 4201 et seq.) [31 U.S.C. 6501 et seq.]. The Director of the Office of Science and Technology Policy shall advise the Director of the Office of Management and Budget with respect to the needs of State, regional, and local governments which may be assisted by the utilization of science, engineering, and technology research and development results.

(c) The functions vested by subsection (a) of this Section in the Director of the Office of Science and Technology Policy shall be performed in coordination with the Director of the Office of Management and Budget and with others as designated by the President.

(d) [Revoked by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379.]

SEC. 3. The Federal science, engineering, and technology functions under Section 303 (a) and (b)(1) of the Act (42 U.S.C. 6633 (a) and (b)(1)), which were transferred to the President (see Section 1(b) of this Order), are delegated to the Director of the Office of Science and Technology Policy: *Except that*, those functions concerned with reorganization, including Federal–State liaison, are delegated to the Director of the Office of Management and Budget, who shall be provided advice and assistance thereon by the Director of the Office of Science and Technology Policy.

SEC. 4. The science, engineering, and technology and related activities functions under Section 401(e) of the Act (42 U.S.C. 6651(e)), which were transferred to the President (see Section 1(b) of this Order), are delegated to the Director of the Office of Science and Technology Policy.

SEC. 5. There is hereby established the Federal Coordinating Council for Science, Engineering, and Technology. The Council shall be composed of the Director of the Office of Science and Technology Policy, who shall be Chairman, and representatives of such other Executive agencies designated by the Chairman. The head of an agency so designated shall designate an appropriate individual to serve on the Council. The Council shall advise and assist the Director of the Office of Science and Technology Policy in the performance of those functions delegated under Section 4 of this Order.

SEC. 6. The records, property, personnel, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, reassigned, or redelegated by this Order are hereby transferred to the Director of the Office of Management and Budget, the Director of the Office of Science and Technology Policy, or the Director of the National Science Foundation, as appropriate.

SEC. 7. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

SEC. 8. This Order shall be effective on February 26, 1978.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12700

Ex. Ord. No. 12700, Jan. 19, 1990, 55 F.R. 2219, as amended by Ex. Ord. No. 12768, June 28, 1991, 56 F.R. 30302, which established the President's Council of Advisors on Science and Technology and provided for its functions, administration, and termination on June 30, 1993, was revoked by section 4(c) of Ex. Ord. No. 12882, § 4(c), Nov. 23, 1993, 58 F.R. 62493. Ex. Ord. No. 12869, Sept. 30, 1993, § 2, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organi-

zation and Employees, which reestablished the President's Council of Advisors on Science and Technology in accordance with the provisions of Ex. Ord. No. 12700 and extended its term until Sept. 30, 1995, was also revoked by Ex. Ord. 12882, § 4(c).

EX. ORD. NO. 12881. ESTABLISHMENT OF NATIONAL SCIENCE AND TECHNOLOGY COUNCIL

Ex. Ord. No. 12881, Nov. 23, 1993, 58 F.R. 62491; Ex. Ord. No. 13284, § 9, Jan. 23, 2003, 68 F.R. 4076, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Establishment*. There is established the National Science and Technology Council (''the Council'').

SEC. 2. *Membership*. The Council shall comprise the:

(a) President, who shall serve as Chairman of the Council;

(b) Vice President;

(c) Secretary of Commerce;

(d) Secretary of Defense;

(e) Secretary of Energy;

(f) Secretary of Health and Human Services;

(g) Secretary of State;

(h) Secretary of the Interior;

(i) Secretary of Homeland Security;

(j) Administrator, National Aeronautics and Space Administration;

(k) Director, National Science Foundation;

(*l*) Director of the Office of Management and Budget;

(m) Administrator, Environmental Protection Agency;

(n) Assistant to the President for Science and Technology;

(*o*) National Security Adviser;

(p) Assistant to the President for Economic Policy;

(q) Assistant to the President for Domestic Policy; and

(r) Such other officials of executive departments and agencies as the President may, from time to time, designate.

SEC. 3. *Meetings of the Council*. The President or, upon his direction, the Assistant to the President for Science and Technology (''the Assistant''), may convene meetings of the Council. The President shall preside over the meetings of the Council, provided that in his absence the Vice President, and in his absence the Assistant, will preside.

SEC. 4. *Functions*. (a) The principal functions of the Council are, to the extent permitted by law: (1) to coordinate the science and technology policy-making process; (2) to ensure science and technology policy decisions and programs are consistent with the President's stated goals; (3) to help integrate the President's science and technology policy agenda across the Federal Government; (4) to ensure science and technology are considered in development and implementation of Federal policies and programs; and (5) to further international cooperation in science and technology. The Assistant may take such actions, including drafting a Charter, as may be necessary or appropriate to implement such functions.

(b) All executive departments and agencies, whether or not represented on the Council, shall coordinate science and technology policy through the Council and shall share information on research and development budget requests with the Council.

(c) The Council shall develop for submission to the Director of the Office of Management and Budget recommendations on research and development budgets that reflect national goals. In addition, the Council shall provide advice to the Director of the Office of Management and Budget concerning the agencies' research and development budget submissions.

(d) The Assistant will, when appropriate, work in conjunction with the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, the Director of the Office of Management and Budget, and the National Security Adviser.

SEC. 5. *Administration*. (a) The Council will oversee the duties of the Federal Coordinating Council for Science, Engineering, and Technology, the National Space Council, and the National Critical Materials Council.

(b) The Council may function through established or ad hoc committees, task forces, or interagency groups.

(c) To the extent practicable and permitted by law, executive departments and agencies shall make resources, including, but not limited to, personnel, office support, and printing, available to the Council as requested by the Assistant.

(d) All executive departments and agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

EXECUTIVE ORDER NO. 12882

Ex. Ord. No. 12882, Nov. 23, 1993, 58 F.R. 62493, as amended by Ex. Ord. No. 12907, Apr. 14, 1994, 59 F.R. 18291, which established the President's Committee of Advisors on Science and Technology, was revoked by Ex. Ord. No. 13226, § 4(c), Sept. 30, 2001, 66 F.R. 50524, set out below.

EXECUTIVE ORDER NO. 12975

Ex. Ord. No. 12975, Oct. 3, 1995, 60 F.R. 52063, as amended by Ex. Ord. No. 13018, Sept. 16, 1996, 61 F.R. 49045; Ex. Ord. No. 13046, May 16, 1997, 62 F.R. 27685; Ex. Ord. No. 13137, Sept. 15, 1999, 64 F.R. 50733, which provided for the protection of human research subjects and created the National Bioethics Advisory Commission, was revoked by Ex. Ord. No. 13316, § 3(b), Sept. 17, 2003, 68 F.R. 55256, eff. Sept. 30, 2003.

EX. ORD. NO. 13226. PRESIDENT'S COUNCIL OF ADVISORS ON SCIENCE AND TECHNOLOGY

Ex. Ord. No. 13226, Sept. 30, 2001, 66 F.R. 50523, as amended by Ex. Ord. No. 13305, May 28, 2003, 68 F.R. 32323; Ex. Ord. No. 13349, July 23, 2004, 69 F.R. 44891; Ex. Ord. No. 13385, § 8, Sept. 29, 2005, 70 F.R. 57991, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to establish an advisory committee on science and technology, it is hereby ordered as follows:

SECTION 1. *Establishment*. There is established the President's Council of Advisors on Science and Technology (PCAST). The PCAST shall be composed of not more than 45 members, one of whom shall be a Federal Government official designated by the President (the ''Official''), and 44 of whom shall be nonfederal members appointed by the President and have diverse perspectives and expertise in science, technology, and the impact of science and technology on the Nation. The Official shall co-chair PCAST with a nonfederal member designated by the President.

SEC. 2. *Functions*. (a) The PCAST shall advise the President, through the Official, on matters involving science and technology policy.

(b) In performance of its advisory duties, the PCAST shall assist the National Science and Technology Council (NSTC) in securing private sector involvement in its activities.

(c) PCAST shall serve as the National Nanotechnology Advisory Panel under section 4 of the 21st Century Nanotechnology Research and Development Act (Public Law 108–153) [15 U.S.C. 7503] (Act). Nothing in this Order shall be construed to require the National Nanotechnology Advisory Panel to comply with any requirement from which it is exempted by section 4(f) of the Act.

(d) PCAST shall serve as the President's Information Technology Advisory Committee under subsections 101(b) and 103(b) of the High-Performance Computing Act of 1991 (Public Law 102–194), as amended (15 U.S.C. 5511(b) and 5513(b)).

SEC. 3. *Administration*. (a) The heads of the executive departments and agencies shall, to the extent per-

mitted by law, provide the PCAST with information concerning scientific and technological matters when requested by the PCAST co-chairs.

(b) In consultation with the Official, the PCAST is authorized to convene ad hoc working groups to provide preliminary nonbinding information and advice directly to the PCAST.

(c) Members shall serve without compensation for their work on the PCAST. However, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(d) Any expenses of the PCAST shall be paid from the funds available for the expenses of the Office of Science and Technology Policy.

(e) The Office of Science and Technology Policy shall provide such administrative services as the PCAST may require, with the approval of the Official.

SEC. 4. *General*. (a) Notwithstanding any other Executive Order, the functions of the President with respect to the PCAST under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, shall be performed by the Office of Science and Technology Policy in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) The PCAST shall terminate September 30, 2005, unless extended by the President prior to that date.

(c) Executive Order 12882 of November 23, 1993; Executive Order 12907 of April 14, 1994; and section 1(h) of Executive Order 13138 of September 30, 1999 [formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees], are hereby revoked.

GEORGE W. BUSH.

EXTENSION OF TERM OF PRESIDENT'S COUNCIL OF ADVISORS ON SCIENCE AND TECHNOLOGY

Term of President's Council of Advisors on Science and Technology extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 13237. CREATION OF THE PRESIDENT'S COUNCIL ON BIOETHICS

Ex. Ord. No. 13237, Nov. 28, 2001, 66 F.R. 59851, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Establishment*. There is established the President's Council on Bioethics (the ''Council'').

SEC. 2. *Mission*.

(a) The Council shall advise the President on bioethical issues that may emerge as a consequence of advances in biomedical science and technology. In connection with its advisory role, the mission of the Council includes the following functions:

(1) to undertake fundamental inquiry into the human and moral significance of developments in biomedical and behavioral science and technology;

(2) to explore specific ethical and policy questions related to these developments;

(3) to provide a forum for a national discussion of bioethical issues;

(4) to facilitate a greater understanding of bioethical issues; and

(5) to explore possibilities for useful international collaboration on bioethical issues.

(b) In support of its mission, the Council may study ethical issues connected with specific technological activities, such as embryo and stem cell research, assisted reproduction, cloning, uses of knowledge and techniques derived from human genetics or the neurosciences, and end of life issues. The Council may also study broader ethical and social issues not tied to a specific technology, such as questions regarding the protection of human subjects in research, the appropriate uses of biomedical technologies, the moral implications of biomedical technologies, and the consequences of limiting scientific research.

(c) The Council shall strive to develop a deep and comprehensive understanding of the issues that it considers. In pursuit of this goal, the Council shall be guided by the need to articulate fully the complex and often competing moral positions on any given issue, rather than by an overriding concern to find consensus. The Council may therefore choose to proceed by offering a variety of views on a particular issue, rather than attempt to reach a single consensus position.

(d) The Council shall not be responsible for the review and approval of specific projects or for devising and overseeing regulations for specific government agencies.

(e) In support of its mission, the Council may accept suggestions of issues for consideration from the heads of other Government agencies and other sources, as it deems appropriate.

(f) In establishing priorities for its activities, the Council shall consider the urgency and gravity of the particular issue; the need for policy guidance and public education on the particular issue; the connection of the bioethical issue to the goal of Federal advancement of science and technology; and the existence of another entity available to deliberate appropriately on the bioethical issue.

SEC. 3. *Membership*.

(a) The Council shall be composed of not more than 18 members appointed by the President from among individuals who are not officers or employees of the Federal Government. The Council shall include members drawn from the fields of science and medicine, law and government, philosophy and theology, and other areas of the humanities and social sciences.

(b) The President shall designate a member of the Council to serve as Chairperson.

(c) The term of office of a member shall be 2 years, and members shall be eligible for reappointment. Members may continue to serve after the expiration of their terms until the President appoints a successor. A member appointed to fill a vacancy shall serve only for the unexpired term of such vacancy.

SEC. 4. *Administration*.

(a) Upon the request of the Chairperson, the heads of executive departments and agencies shall, to the extent permitted by law, provide the Council with information it needs for purposes of carrying out its functions.

(b) The Council may conduct inquiries, hold hearings, and establish subcommittees, as necessary.

(c) The Council is authorized to conduct analyses and develop reports or other materials.

(d) Members of the Council may be compensated to the extent permitted by Federal law for their work on the Council. Members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), to the extent funds are available.

(e) To the extent permitted by law, and subject to the availability of appropriations, the Department of Health and Human Services shall provide the Council with administrative support and with such funds as may be necessary for the performance of the Council's functions.

(f) The Council shall have a staff headed by an Executive Director, who shall be appointed by the Secretary of Health and Human Services in consultation with the Chairperson. To the extent permitted by law, office space, analytical support, and additional staff support for the Council shall be provided by the Department of Health and Human Services or other executive branch departments and agencies as directed by the President.

SEC. 5. *General Provisions*.

(a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Council, any functions of the President under that Act, except

that of reporting to the Congress, shall be performed by the Secretary of Health and Human Services in accordance with the guidelines that have been issued by the Administrator of General Services.

(b) The Council shall terminate 2 years from the date of this order unless extended by the President prior to that date.

(c) This order is intended only to improve the internal management of the executive branch and it is not intended to create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

GEORGE W. BUSH.

EXTENSION OF TERM OF PRESIDENT'S COUNCIL ON BIOETHICS

Term of President's Council on Bioethics extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of President's Council on Bioethics extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

STRENGTHENED PROTECTIONS FOR HUMAN SUBJECTS OF CLASSIFIED RESEARCH

Memorandum of President of the United States, Mar. 27, 1997, 62 F.R. 26369, provided:

Memorandum for the Secretary of Defense, the Attorney General, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Secretary of Education, the Secretary of Veterans Affairs, the Director of Central Intelligence, the Administrator of the Environmental Protection Agency, the Administrator of the Agency for International Development, the Administrator of the National Aeronautics and Space Administration, the Director of the National Science Foundation, the Chair of the Nuclear Regulatory Commission, the Director of the Office of Science and Technology Policy, [and] the Chair of the Consumer Product Safety Commission

I have worked hard to restore trust and ensure openness in government. This memorandum will further our progress toward these goals by strengthening the Federal Government's protections for human subjects of classified research.

In January 1994, I established the Advisory Committee on Human Radiation Experiments (the ''Advisory Committee'') to examine reports that the government had funded and conducted unethical human radiation experiments during the Cold War [see Ex. Ord. No. 12891, set out as a note under section 2210 of this title]. I directed the Advisory Committee to uncover the truth, recommend steps to right past wrongs, and propose ways to prevent unethical human subjects research from occurring in the future. In its October 1995 final report, the Advisory Committee recommended, among other things, that the government modify its policy governing classified research on human subjects (''Recommendations for Balancing National Security Interests and the Rights of the Public,'' Recommendation 15, Final Report, Advisory Committee on Human Radiation Experiments). This memorandum sets forth policy changes in response to those recommendations.

The Advisory Committee acknowledged that it is in the Nation's interest to continue to allow the government to conduct classified research involving human subjects where such research serves important national security interests. The Advisory Committee found, however, that classified human subjects research should be a ''rare event'' and that the ''subjects of such research, as well as the interests of the public in openness in science and in government, deserve special protections.'' The Advisory Committee was concerned about ''exceptions to informed consent requirements and the absence of any special review and approval process for human research that is to be classified.'' The Advisory Committee recommended that in all classified research projects the agency conducting or sponsoring the research meet the following requirements:

—obtain informed consent from all human subjects;

—inform subjects of the identity of the sponsoring agency;

—inform subjects that the project involves classified research;

—obtain approval by an ''independent panel of nongovernmental experts and citizen representatives, all with the necessary security clearances'' that reviews scientific merit, risk-benefit tradeoffs, and ensures subjects have enough information to make informed decisions to give valid consent; and

—maintain permanent records of the panel's deliberations and consent procedures.

This memorandum implements these recommendations with some modifications. For classified research, it prohibits waiver of informed consent and requires researchers to disclose that the project is classified. For all but minimal risk studies, it requires researchers to inform subjects of the sponsoring agency. It also requires permanent recordkeeping.

The memorandum also responds to the Advisory Committee's call for a special review process for classified human subjects research. It requires that institutional review boards for secret projects include a nongovernmental member, and establishes an appeals process so that any member of a review board who believes a project should not go forward can appeal the boards' decision to approve it.

Finally, this memorandum sets forth additional steps to ensure that classified human research is rare. It requires the heads of Federal agencies to disclose annually the number of secret human research projects undertaken by their agency. It also prohibits any agency from conducting secret human research without first promulgating a final rule applying the Federal Policy for the Protection of Human Subjects, as modified in this memorandum, to the agency.

These steps, set forth in detail below, will preserve the government's ability to conduct any necessary classified research involving human subjects while ensuring adequate protection of research participants.

1. *Modifications to the Federal Policy for the Protection of Human Subjects as it Affects Classified Research.* All agencies that may conduct or support classified research that is subject to the 1991 Federal Policy for the Protection of Human Subjects (''Common Rule'') (56 Fed. Reg. 28010–28018) shall promptly jointly publish in the Federal Register the following proposed revisions to the Common Rule as it affects classified research. The Office for Protection from Research Risks in the Department of Health and Human Services shall be the lead agency and, in consultation with the Office of Management and Budget, shall coordinate the joint rulemaking.

(a) The agencies shall jointly propose to prohibit waiver of informed consent for classified research.

(b) The agencies shall jointly propose to prohibit the use of expedited review procedures under the Common Rule for classified research.

(c) The joint proposal should request comment on whether all research exemptions under the Common Rule should be maintained for classified research.

(d) The agencies shall jointly propose to require that in classified research involving human subjects, two additional elements of information be provided to potential subjects when consent is sought from subjects:

(i) the identity of the sponsoring Federal agency. Exceptions are allowed if the head of the sponsoring agency determines that providing this information could compromise intelligence sources or methods and that the research involves no more than minimal risk to

subjects. The determination about sources and methods is to be made in consultation with the Director of Central Intelligence and the Assistant to the President for National Security Affairs. The determination about risk is to be made in consultation with the Director of the White House Office of Science and Technology Policy.

(ii) a statement that the project is ''classified'' and an explanation of what classified means.

(e) The agencies shall jointly propose to modify the institutional review board (''IRB'') approval process for classified human subjects research as follows:

(i) The Common Rule currently requires that each IRB ''include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.'' For classified research, the agencies shall define ''not otherwise affiliated with the institution,'' as a nongovernmental member with the appropriate security clearance.

(ii) Under the Common Rule, research projects are approved by the IRB if a ''majority of those (IRB) members present at a meeting'' approved the project. For classified research, the agencies shall propose to permit any member of the IRB who does not believe a specific project should be approved by the IRB to appeal a majority decision to approve the project to the head of the sponsoring agency. If the agency head affirms the IRB's decision to approve the project, the dissenting IRB member may appeal the IRB's decisions to the Director of OSTP. The Director of OSTP shall review the IRB's decision and approve or disapprove the project, or, at the Director's discretion, convene an IRB made up of nongovernmental officials, each with the appropriate security clearances, to approve or disapprove the project.

(iii) IRBs for classified research shall determine whether potential subjects need access to classified information to make a valid informed consent decision.

2. *Final Rules*. Agencies shall, within 1 year, after considering any comments, promulgate final rules on the protection of human subjects of classified research.

3. *Agency Head Approval of Classified Research Projects*. Agencies may not conduct any classified human research project subject to the Common Rule unless the agency head has personally approved the specific project.

4. *Annual Public Disclosure of the Number of Classified Research Projects*. Each agency head shall inform the Director of OSTP by September 30 of each year of the number of classified research projects involving human subjects underway on that date, the number completed in the previous 12-month period, and the number of human subjects in each project. The Director of OSTP shall report the total number of classified research projects and participating subjects to the President and shall then report to the congressional armed services and intelligence committees and further shall publish the numbers in the Federal Register.

5. *Definitions*. For purposes of this memorandum, the terms ''research'' and ''human subject'' shall have the meaning set forth in the Common Rule. ''Classified human research'' means research involving ''classified information'' as defined in Executive Order 12958 [50 U.S.C. 435 note].

6. *No Classified Human Research Without Common Rule*. Beginning one year after the date of this memorandum, no agency shall conduct or support classified human research without having proposed and promulgated the Common Rule, including the changes set forth in this memorandum and any subsequent amendments.

7. *Judicial Review*. This memorandum is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other persons.

8. The Secretary of Health and Human Services shall publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 6602. Congressional declaration of policy

(a) Principles

In view of the foregoing, the Congress declares that the United States shall adhere to a national policy for science and technology which includes the following principles:

(1) The continuing development and implementation of strategies for determining and achieving the appropriate scope, level, direction, and extent of scientific and technological efforts based upon a continuous appraisal of the role of science and technology in achieving goals and formulating policies of the United States, and reflecting the views of State and local governments and representative public groups.

(2) The enlistment of science and technology to foster a healthy economy in which the directions of growth and innovation are compatible with the prudent and frugal use of resources and with the preservation of a benign environment.

(3) The conduct of science and technology operations so as to serve domestic needs while promoting foreign policy objectives.

(4) The recruitment, education, training, retraining, and beneficial use of adequate numbers of scientists, engineers, and technologists, and the promotion by the Federal Government of the effective and efficient utilization in the national interest of the Nation's human resources in science, engineering, and technology.

(5) The development and maintenance of a solid base for science and technology in the United States, including: (A) strong participation of and cooperative relationships with State and local governments and the private sector; (B) the maintenance and strengthening of diversified scientific and technological capabilities in government, industry, and the universities, and the encouragement of independent initiatives based on such capabilities, together with elimination of needless barriers to scientific and technological innovation; (C) effective management and dissemination of scientific and technological information; (D) establishment of essential scientific, technical and industrial standards and measurement and test methods; and (E) promotion of increased public understanding of science and technology.

(6) The recognition that, as changing circumstances require periodic revision and adaptation of this subchapter, the Federal Government is responsible for identifying and interpreting the changes in those circumstances as they occur, and for effecting subsequent changes in this subchapter as appropriate.

(b) Implementation

To implement the policy enunciated in subsection (a) of this section, the Congress declares that:

(1) The Federal Government should maintain central policy planning elements in the executive branch which assist Federal agencies in (A) identifying public problems and objectives, (B) mobilizing scientific and technological resources for essential national programs, (C) se-

curing appropriate funding for programs so identified, (D) anticipating future concerns to which science and technology can contribute and devising strategies for the conduct of science and technology for such purposes, (E) reviewing systematically Federal science policy and programs and recommending legislative amendment thereof when needed. Such elements should include an advisory mechanism within the Executive Office of the President so that the Chief Executive may have available independent, expert judgment and assistance on policy matters which require accurate assessments of the complex scientific and technological features involved.

(2) It is a responsibility of the Federal Government to promote prompt, effective, reliable, and systematic transfer of scientific and technological information by such appropriate methods as programs conducted by nongovernmental organizations, including industrial groups and technical societies. In particular, it is recognized as a responsibility of the Federal Government not only to coordinate and unify its own science and technology information systems, but to facilitate the close coupling of institutional scientific research with commercial application of the useful findings of science.

(3) It is further an appropriate Federal function to support scientific and technological efforts which are expected to provide results beneficial to the public but which the private sector may be unwilling or unable to support.

(4) Scientific and technological activities which may be properly supported exclusively by the Federal Government should be distinguished from those in which interests are shared with State and local governments and the private sector. Among these entities, cooperative relationships should be established which encourage the appropriate sharing of science and technology decisionmaking, funding support, and program planning and execution.

(5) The Federal Government should support and utilize engineering and its various disciplines and make maximum use of the engineering community, whenever appropriate, as an essential element in the Federal policymaking process.

(6) Comprehensive legislative support for the national science and technology effort requires that the Congress be regularly informed of the condition, health and vitality, and funding requirements of science and technology, the relation of science and technology to changing national goals, and the need for legislative modification of the Federal endeavor and structure at all levels as it relates to science and technology.

(c) Procedures

The Congress declares that, in order to expedite and facilitate the implementation of the policy enunciated in subsection (a) of this section, the following coordinate procedures are of paramount importance:

(1) Federal procurement policy should encourage the use of science and technology to foster frugal use of materials, energy, and appropriated funds; to assure quality environment; and to enhance product performance.

(2) Explicit criteria, including cost-benefit principles where practicable, should be developed to identify the kinds of applied research and technology programs that are appropriate for Federal funding support and to determine the extent of such support. Particular attention should be given to scientific and technological problems and opportunities offering promise of social advantage that are so long range, geographically widespread, or economically diffused that the Federal Government constitutes the appropriate source for undertaking their support.

(3) Federal promotion of science and technology should emphasize quality of research, recognize the singular importance of stability in scientific and technological institutions, and for urgent tasks, seek to assure timeliness of results. With particular reference to Federal support for basic research, funds should be allocated to encourage education in needed disciplines, to provide a base of scientific knowledge from which future essential technological development can be launched, and to add to the cultural heritage of the Nation.

(4) Federal patent policies should be developed, based on uniform principles, which have as their objective the preservation of incentives for technological innovation and the application of procedures which will continue to assure the full use of beneficial technology to serve the public.

(5) Closer relationships should be encouraged among practitioners of different scientific and technological disciplines, including the physical, social, and biomedical fields.

(6) Federal departments, agencies, and instrumentalities should assure efficient management of laboratory facilities and equipment in their custody, including acquisition of effective equipment, disposal of inferior and obsolete properties, and cross-servicing to maximize the productivity of costly property of all kinds. Disposal policies should include attention to possibilities for further productive use.

(7) The full use of the contributions of science and technology to support State and local government goals should be encouraged.

(8) Formal recognition should be accorded those persons whose scientific and technological achievements have contributed significantly to the national welfare.

(9) The Federal Government should support applied scientific research, when appropriate, in proportion to the probability of its usefulness, insofar as this probability can be determined; but while maximizing the beneficial consequences of technology, the Government should act to minimize foreseeable injurious consequences.

(10) Federal departments, agencies, and instrumentalities should establish procedures to insure among them the systematic interchange of scientific data and technological findings developed under their programs.

(Pub. L. 94–282, title I, § 102, May 11, 1976, 90 Stat. 460.)

SUBCHAPTER II—OFFICE OF SCIENCE AND TECHNOLOGY POLICY

§ 6611. Establishment of Office

There is established in the Executive Office of the President an Office of Science and Technology Policy (hereinafter referred to in this subchapter as the ''Office'').

(Pub. L. 94–282, title II, § 202, May 11, 1976, 90 Stat. 463.)

SHORT TITLE

For short title of this subchapter as the ''Presidential Science and Technology Advisory Organization Act of 1976'', see section 201 of Pub. L. 94–282, set out as a Short Title note under section 6601 of this title.

HIGH-RESOLUTION INFORMATION SYSTEM ADVISORY BOARD

Pub. L. 102–245, title V, § 501, Feb. 14, 1992, 106 Stat. 22, authorized the Director of the Office of Science and Technology Policy to establish within that office a High-Resolution Information Systems Advisory Board to monitor and, as appropriate, foster the development and competitiveness of United States-based high-resolution information systems industries, further provided that ''high-resolution information systems'' means equipment and techniques required to create, store, recover, and play back high-resolution images and accompanying sound, further provided for functions of the Board, including provision of guidance and advice relating to establishment of such industries as well as transfer of Federal technologies to the private sector, further provided for membership and procedures of the Board, including submission of annual report of its activities to the President and Congress, and further provided for limitation on functions of Board and appropriations through fiscal year 1993.

§ 6612. Director; Associate Directors

There shall be at the head of the Office a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule in section 5313 of title 5. The President is authorized to appoint not more than four Associate Directors, by and with the advice and consent of the Senate, who shall be compensated at a rate not to exceed that provided for level III of the Executive Schedule in section 5314 of such title. Associate Directors shall perform such functions as the Director may prescribe.

(Pub. L. 94–282, title II, § 203, May 11, 1976, 90 Stat. 463.)

§ 6613. Functions of the Director

(a) The primary function of the Director is to provide, within the Executive Office of the President, advice on the scientific, engineering, and technological aspects of issues that require attention at the highest levels of Government.

(b) In addition to such other functions and activities as the President may assign, the Director shall—

(1) advise the President of scientific and technological considerations involved in areas of national concern including, but not limited to, the economy, national security, homeland security, health, foreign relations, the environment, and the technological recovery and use of resources;

(2) evaluate the scale, quality, and effectiveness of the Federal effort in science and technology and advise on appropriate actions;

(3) advise the President on scientific and technological considerations with regard to Federal budgets, assist the Office of Management and Budget with an annual review and analysis of funding proposed for research and development in budgets of all Federal agencies, and aid the Office of Management and Budget and the agencies throughout the budget development process; and

(4) assist the President in providing general leadership and coordination of the research and development programs of the Federal Government.

(Pub. L. 94–282, title II, § 204, May 11, 1976, 90 Stat. 463; Pub. L. 107–296, title XVII, § 1712(1), Nov. 25, 2002, 116 Stat. 2320.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–296 inserted ''homeland security,'' after ''national security,''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 6614. Policy planning; analysis; advice; establishment of advisory panel

(a) The Office shall serve as a source of scientific and technological analysis and judgment for the President with respect to major policies, plans, and programs of the Federal Government. In carrying out the provisions of this section, the Director shall—

(1) seek to define coherent approaches for applying science and technology to critical and emerging national and international problems and for promoting coordination of the scientific and technological responsibilities and programs of the Federal departments and agencies in the resolution of such problems;

(2) assist and advise the President in the preparation of the Science and Technology Report, in accordance with section 6618[1] of this title;

(3) gather timely and authoritative information concerning significant developments and trends in science, technology, and in national priorities, both current and prospective, to analyze and interpret such information for the purpose of determining whether such developments and trends are likely to affect achievement of the priority goals of the Nation as set forth in section 6601(b) of this title;

(4) encourage the development and maintenance of an adequate data base for human resources in science, engineering, and technology, including the development of appropriate models to forecast future manpower requirements, and assess the impact of major governmental and public programs on human resources and their utilization;

(5) initiate studies and analyses, including systems analyses and technology assessments, of alternatives available for the resolution of

[1] See References in Text note below.

critical and emerging national and international problems amendable to the contributions of science and technology and, insofar as possible, determine and compare probable costs, benefits, and impacts of such alternatives;

(6) advise the President on the extent to which the various scientific and technological programs, policies, and activities of the Federal Government are likely to affect the achievement of the priority goals of the Nation as set forth in section 6601(b) of this title;

(7) provide the President with periodic reviews of Federal statutes and administrative regulations of the various departments and agencies which affect research and development activities, both internally and in relation to the private sector, or which may interfere with desirable technological innovation, together with recommendations for their elimination, reform, or updating as appropriate;

(8) develop, review, revise, and recommend criteria for determining scientific and technological activities warranting Federal support, and recommend Federal policies designed to advance (A) the development and maintenance of broadly based scientific and technological capabilities, including human resources, at all levels of government, academia, and industry, and (B) the effective application of such capabilities to national needs;

(9) assess and advise on policies for international cooperation in science and technology which will advance the national and international objectives of the United States;

(10) identify and assess emerging and future areas in which science and technology can be used effectively in addressing national and international problems;

(11) report at least once each year to the President and the Congress on the overall activities and accomplishments of the Office, pursuant to section 6615 of this title;

(12) periodically survey the nature and needs of national science and technology policy and make recommendations to the President, for review and transmission to the Congress, for the timely and appropriate revision of such policy in accordance with section 6602(a)(6) of this title; and

(13) perform such other duties and functions and make and furnish such studies and reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

(b)(1) The Director shall establish an Intergovernmental Science, Engineering, and Technology Advisory Panel (hereinafter referred to as the ''Panel''), whose purpose shall be to (A) identify and define civilian problems at State, regional, and local levels which science, engineering, and technology may assist in resolving or ameliorating; (B) recommend priorities for addressing such problems; and (C) advise and assist the Director in identifying and fostering policies to facilitate the transfer and utilization of research and development results so as to maximize their application to civilian needs.

(2) The Panel shall be composed of (A) the Director of the Office, or his representative; (B) at least ten members representing the interests of the States, appointed by the Director of the Office after consultation with State officials; and (C) the Director of the National Science Foundation, or his representative.

(3)(A) The Director of the Office, or his representative, shall serve as Chairman of the Panel.

(B) The Panel shall perform such functions as the Chairman may prescribe, and shall meet at the call of the Chairman.

(4) Each member of the Panel shall, while serving on business of the Panel, be entitled to receive compensation at a rate not to exceed the daily rate prescribed for GS–18 of the General Schedule under section 5332 of title 5, including traveltime, and, while so serving away from his home or regular place of business, he may be allowed travel expenses, including per diem in lieu of subsistence in the same manner as the expenses authorized by section 5703(b)[2] of title 5 for persons in government service employed intermittently.

(Pub. L. 94–282, title II, §205, May 11, 1976, 90 Stat. 464; Pub. L. 97–375, title II, §215(2), (4), Dec. 21, 1982, 96 Stat. 1826, 1827.)

REFERENCES IN TEXT

Section 6618 of this title, referred to in subsec. (a)(2), was repealed by Pub. L. 97–375, title II, §215(1), Dec. 21, 1982, 96 Stat. 1826. See section 6615 of this title.

Section 5703 of title 5, referred to in subsec. (b)(4), was amended generally by Pub. L. 94–22, §4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

AMENDMENTS

1982—Subsec. (a)(11). Pub. L. 97–375, §215(2), (4), inserted ''and the Congress'' after ''President'', and substituted ''section 6615'' for ''section 6618''.

TRANSFER OF FUNCTIONS

Functions vested in Office of Science and Technology Policy and Director thereof pursuant to subsec. (a)(2) of this section and sections 6615 and 6618 of this title transferred to Director of National Science Foundation by section 5A of Reorg. Plan No. 1 of 1977, set out in the Appendix to Title 5, Government Organization and Employees, effective Feb. 26, 1978, as provided by section 1(a) of Ex. Ord. No. 12039, Feb. 24, 1978, 43 F.R. 8095, set out under section 6601 of this title.

ABOLITION OF INTERGOVERNMENTAL SCIENCE, ENGINEERING, AND TECHNOLOGY ADVISORY PANEL; TRANSFER OF FUNCTIONS

The Intergovernmental Science, Engineering, and Technology Advisory Panel, established pursuant to this section, was abolished and its functions transferred to the President by Reorg. Plan No. 1 of 1977, §5A, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, effective Feb. 26, 1978, as provided by section 1(b) of Ex. Ord. No. 12039, Feb. 24, 1978, 43 F.R. 8095, set out under section 6601 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

[2] See References in Text note below.

COMPREHENSIVE ACCOUNTABILITY STUDY FOR FEDERALLY-FUNDED RESEARCH

Pub. L. 105–276, title IV, § 430, Oct. 21, 1998, 112 Stat. 2512, provided that:

''(a) STUDY.—The Director of the Office of Science and Technology Policy, in consultation with the Director of the Office of Management and Budget, may enter into an agreement with the National Academy of Sciences for the Academy to conduct a comprehensive study to develop methods for evaluating federally-funded research and development programs. This study shall—

''(1) recommend processes to determine an acceptable level of success for federally-funded research and development programs by—

''(A) describing the research process in the various scientific and engineering disciplines;

''(B) describing in the different sciences what measures and what criteria each community uses to evaluate the success or failure of a program, and on what time scales these measures are considered reliable—both for exploratory long-range work and for short-range goals; and

''(C) recommending how these measures may be adapted for use by the Federal Government to evaluate federally-funded research and development programs;

''(2) assess the extent to which agencies incorporate independent merit-based evaluation into the formulation of the strategic plans of funding agencies and if the quantity or quality of this type of input is unsatisfactory;

''(3) recommend mechanisms for identifying federally-funded research and development programs which are unsuccessful or unproductive;

''(4) evaluate the extent to which independent, merit-based evaluation of federally-funded research and development programs and projects achieves the goal of eliminating unsuccessful or unproductive programs and projects; and

''(5) investigate and report on the validity of using quantitative performance goals for aspects of programs which relate to administrative management of the program and for which such goals would be appropriate, including aspects related to—

''(A) administrative burden on contractors and recipients of financial assistance awards;

''(B) administrative burdens on external participants in independent, merit-based evaluations;

''(C) cost and schedule control for construction projects funded by the program;

''(D) the ratio of overhead costs of the program relative to the amounts expended through the program for equipment and direct funding of research; and

''(E) the timeliness of program responses to requests for funding, participation, or equipment use.

''(b) INDEPENDENT MERIT-BASED EVALUATION DEFINED.—The term 'independent merit-based evaluation' means review of the scientific or technical quality of research or development, conducted by experts who are chosen for their knowledge of scientific and technical fields relevant to the evaluation and who—

''(1) in the case of the review of a program activity, do not derive long-term support from the program activity; or

''(2) in the case of the review of a project proposal, are not seeking funds in competition with the proposal.''

COMPUTER NETWORK STUDY

Pub. L. 99–383, § 10, Aug. 21, 1986, 100 Stat. 816, provided that:

''(a) The Office of Science and Technology Policy (hereinafter referred to as the 'Office') shall undertake a study of critical problems and current and future options regarding communications networks for research computers, including supercomputers, at universities and Federal research facilities in the United States. The study shall include an analysis of—

''(1) the networking needs of the Nation's academic and Federal research computer programs, including supercomputer programs, over the period which is fifteen years after the date of enactment of this Act [Aug. 21, 1986], including requirements in terms of volume of data, reliability of transmission, software compatibility, graphics capability, and transmission security;

''(2) the benefits and opportunities that an improved computer network would offer for electronic mail, file transfer, and remote access and communications for universities and Federal research facilities in the United States; and

''(3) the networking options available for linking academic and other federally supported research computers, including supercomputers, with a particular emphasis on the advantages and disadvantages, if any, of fiber optic systems.

''(b) The Office shall submit to the Congress—

''(1) within one year after the date of enactment of this Act [Aug. 21, 1986], a report on findings from the study undertaken pursuant to subsection (a) with respect to needs and options regarding communications networks for university and Federal research supercomputers within the United States; and

''(2) within two years after the date of enactment of this Act [Aug. 21, 1986], a report on findings from the study undertaken pursuant to subsection (a) with respect to needs and options regarding communications networks for all research computers at universities and Federal research facilities in the United States.''

§ 6615. Science and technology report and outlook

(a) Contents of report

Notwithstanding the provisions of Reorganization Plan Number 1 of 1977, the Director shall render to the President for submission to the Congress no later than January 15 of each odd numbered year, a science and technology report and outlook (hereinafter referred to as the ''report'') which shall be prepared under the guidance of the Office and with the cooperation of the Director of the National Science Foundation, with appropriate assistance from other Federal departments and agencies as the Office or the Director of the National Science Foundation deems necessary. The report shall include—

(1) a statement of the President's current policy for the maintenance of the Nation's leadership in science and technology;

(2) a review of developments of national significance in science and technology;

(3) a description of major Federal decisions and actions related to science and technology that have occurred since the previous such report;

(4) a discussion of currently important national issues in which scientific or technical considerations are of major significance;

(5) a forecast of emerging issues of national significance resulting from, or identified through, scientific research or in which scientific or technical considerations are of major importance; and

(6) a discussion of opportunities for, and constraints on, the use of new and existing scientific and technological information, capabilities, and resources, including manpower resources, to make significant contributions to the achievement of Federal program objectives and national goals.

(b) Printing; availability to public

The Office shall insure that the report, in the form approved by the President, is printed and made available as a public document.

(Pub. L. 94–282, title II, § 206, May 11, 1976, 90 Stat. 466; Pub. L. 97–375, title II, § 215(3), Dec. 21, 1982, 96 Stat. 1826.)

REFERENCES IN TEXT

Reorganization Plan Number 1 of 1977, referred to in subsec. (a), is Reorg. Plan No. 1 of 1977, 42 F.R. 56101, 91 Stat. 1633, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 6618 of this title, Pub. L. 94–282, title II, § 209, May 11, 1976, 90 Stat. 468, prior to repeal by Pub. L. 97–375, title II, § 215(1), Dec. 21, 1982, 96 Stat. 1826.

AMENDMENTS

1982—Pub. L. 97–375 substituted provisions requiring the President to submit to Congress in odd numbered years a science and technology report and outlook for provisions which required the Office of Science and Technology Policy to create a five-year science and technology outlook, dealing with current and emerging problems and with opportunities for and constraints on new and existing capabilities, to be revised annually, composed with the consultation of officials of departments and agencies having related programs and responsibilities, and with officials of the Office of Management and Budget and other appropriate elements of the Executive Office of the President.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section relating to submission of biennial report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 16th item on page 42 of House Document No. 103–7.

§ 6616. Additional functions of Director

(a) Service as Chairman of Federal Coordinating Council for Science, Engineering, and Technology and as member of Domestic Council

The Director shall, in addition to the other duties and functions set forth in this subchapter—

(1) serve as Chairman of the Federal Coordinating Council for Science, Engineering, and Technology established under subchapter IV of this chapter; and

(2) serve as a member of the Domestic Council.

(b) Advice to National Security Council

For the purpose of assuring the optimum contribution of science and technology to the national security, the Director, at the request of the National Security Council, shall advise the National Security Council in such matters concerning science and technology as relate to national security.

(c) Officers and employees; services; contracts; payments

In carrying out his functions under this chapter, the Director is authorized to—

(1) appoint such officers and employees as he may deem necessary to perform the functions now or hereafter vested in him and to prescribe their duties;

(2) obtain services as authorized by section 3109 of title 5 at rates not to exceed the rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5; and

(3) enter into contracts and other arrangements for studies, analyses, and other services with public agencies and with private persons, organizations, or institutions, and make such payments as he deems necessary to carry out the provisions of this chapter without legal consideration, without performance bonds, and without regard to section 5 of title 41.

(Pub. L. 94–282, title II, § 207, May 11, 1976, 90 Stat. 466.)

ABOLITION OF THE FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY; TRANSFER OF FUNCTIONS

See note set out under section 6651 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 6617. Coordination with other organizations

(a) Consultation and cooperation with Federal departments and agencies; utilization of consultants; establishment of advisory panels; consultation with State and local agencies, professional groups, and representatives of industry, etc.; hearings; utilization of services, personnel, equipment, etc., of public and private agencies and organizations, and individuals

In exercising his functions under this chapter, the Director shall—

(1) work in close consultation and cooperation with the Domestic Council, the National Security Council, the Office of Homeland Security, the Council on Environmental Quality, the Council of Economic Advisers, the Office of Management and Budget, the National Science Board, and the Federal departments and agencies;

(2) utilize the services of consultants, establish such advisory panels, and, to the extent practicable, consult with State and local governmental agencies, with appropriate professional groups, and with such representatives of industry, the universities, agriculture, labor, consumers, conservation organizations, and such other public interest groups, organizations, and individuals as he deems advisable;

(3) hold such hearings in various parts of the Nation as he deems necessary, to determine the views of the agencies, groups, and organizations referred to in paragraph (2) of this subsection and of the general public, concerning national needs and trends in science and technology; and

(4) utilize with their consent to the fullest extent possible the services, personnel, equipment, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in

order to avoid duplication of effort and expense, and may transfer funds made available pursuant to this chapter to other Federal agencies as reimbursement for the utilization of such personnel, services, facilities, equipment, and information.

(b) Information from Executive departments, agencies, and instrumentalities

Each department, agency, and instrumentality of the Executive Branch of the Government, including any independent agency, is authorized to furnish the Director such information as the Director deems necessary to carry out his functions under this chapter.

(c) Assistance from Administrator of National Aeronautics and Space Administration

Upon request, the Administrator of the National Aeronautics and Space Administration is authorized to assist the Director with respect to carrying out his activities conducted under paragraph (5) of section 6614(a) of this title.

(Pub. L. 94–282, title II, § 208, May 11, 1976, 90 Stat. 467; Pub. L. 107–296, title XVII, § 1712(2), Nov. 25, 2002, 116 Stat. 2320.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–296 inserted ''the Office of Homeland Security,'' after ''the National Security Council,''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 6618. Major science and technology proposals

The Director shall identify and provide an annual report to Congress on each major multinational science and technology project, in which the United States is not a participant, which has a total estimated cost greater than $1,000,000,000.

(Pub. L. 94–282, title II, § 209, as added Pub. L. 102–245, title V, § 502, Feb. 14, 1992, 106 Stat. 24.)

PRIOR PROVISIONS

A prior section 6618, Pub. L. 94–282, title II, § 209, May 11, 1976, 90 Stat. 468, directed President to transmit annually to Congress a report on science and technology to be prepared by Office of Science and Technology Policy, and directed Director of Office to make the report available as a public document, prior to repeal by Pub. L. 97–375, title II, § 215(1), Dec. 21, 1982, 96 Stat. 1826. See section 6615 of this title.

SUBCHAPTER III—PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY

§ 6631. Establishment of Committee

The President shall establish within the Executive Office of the President a President's Committee on Science and Technology (hereinafter referred to as the ''Committee'').

(Pub. L. 94–282, title III, § 301, May 11, 1976, 90 Stat. 468.)

ABOLITION OF PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY; TRANSFER OF FUNCTIONS

The President's Committee on Science and Technology, established pursuant to this subchapter, was abolished and its functions transferred to the President, by Reorg. Plan No. 1 of 1977, § 5A, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective Feb. 26, 1978, as provided by section 1(b) of Ex. Ord. No. 12039, Feb. 24, 1978, 43 F.R. 8095, set out under section 6601 of this title.

§ 6632. Membership of Committee

(a) Composition; appointment

The Committee shall consist of—

(1) the Director of the Office of Science and Technology Policy established under subchapter II of this chapter; and

(2) not less than eight nor more than fourteen other members appointed by the President not more than sixty days after the Director has assumed office (as provided in section 6612 of this title).

(b) Qualifications

Members of the Committee appointed by the President pursuant to subsection (a)(2) of this section shall—

(1) be qualified and distinguished in one or more of the following areas: science, engineering, technology, information dissemination, education, management, labor, or public affairs;

(2) be capable of critically assessing the policies, priorities, programs, and activities of the Nation, with respect to the findings, policies, and purposes set forth in subchapter I of this chapter; and

(3) shall collectively constitute a balanced composition with respect to (A) fields of science and engineering, (B) academic, industrial, and government experience, and (C) business, labor, consumer, and public interest points of view.

(c) Chairman; Vice Chairman

The President shall appoint one member of the Committee to serve as Chairman and another member to serve as Vice Chairman for such periods as the President may determine.

(d) Compensation

Each member of the Committee who is not an officer of the Federal Government shall, while serving on business of the Committee, be entitled to receive compensation at a rate not to exceed the daily rate prescribed for GS–18 of the General Schedule under section 5332 of title 5, including traveltime, and while so serving away from his home or regular place of business he may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703(b)[1] of title 5 for persons in Government service employed intermittently.

(Pub. L. 94–282, title III, § 302, May 11, 1976, 90 Stat. 468.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (d), was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 95, and, as so amended, does not contain a subsec. (b).

ABOLITION OF PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY; TRANSFER OF FUNCTIONS

See note set out under section 6631 of this title.

[1] See References in Text note below.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 6633. Federal science, engineering, and technology survey; reports

(a) The Committee shall survey, examine, and analyze the overall context of the Federal science, engineering, and technology effort including missions, goals, personnel, funding, organization, facilities, and activities in general, taking adequate account of the interests of individuals and groups that may be affected by Federal scientific, engineering, and technical programs, including, as appropriate, consultation with such individuals and groups. In carrying out its functions under this section, the Committee shall, among other things, consider needs for—

(1) organizational reform, including institutional realinement designed to place Federal agencies whose missions are primarily or solely devoted to scientific and technological research and development, and those agencies primarily or solely concerned with fuels, energy, and materials, within a single cabinet-level department;

(2) improvements in existing systems for handling scientific and technical information on a Government-wide basis, including consideration of the appropriate role to be played by the private sector in the dissemination of such information;

(3) improved technology assessment in the executive branch of the Federal Government;

(4) improved methods for effecting technology innovation, transfer, and use;

(5) stimulating more effective Federal-State and Federal-industry liaison and cooperation in science and technology, including the formation of Federal-State mechanisms for the mutual pursuit of this goal;

(6) reduction and simplification of Federal regulations and administrative practices and procedures which may have the effect of retarding technological innovation or opportunities for its utilization;

(7) a broader base for support of basic research;

(8) ways of strengthening the Nation's academic institutions' capabilities for research and education in science and technology;

(9) ways and means of effectively integrating scientific and technological factors into our national and international policies;

(10) technology designed to meet community and individual needs;

(11) maintenance of adequate scientific and technological manpower with regard to both quality and quantity;

(12) improved systems for planning and analysis of the Federal science and technology programs; and

(13) long-range study, analysis, and planning in regard to the application of science and technology to major national problems or concerns.

(b)(1) Within twelve months from the time the Committee is activated in accordance with section 6632(a) of this title, the Committee shall issue an interim report of its activities and operations to date. Not more than twenty-four months from the time the Committee is activated, the Committee shall submit a final report of its activities, findings, conclusions, and recommendations, including such supporting data and material as may be necessary, to the President.

(2) The President, within sixty days of receipt thereof, shall transmit each such report to each House of Congress together with such comments, observations, and recommendations thereon as he deems appropriate.

(Pub. L. 94–282, title III, § 303, May 11, 1976, 90 Stat. 469.)

ABOLITION OF PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY; TRANSFER OF FUNCTIONS

See note set out under section 6631 of this title.

§ 6634. Continuation of Committee

(a) Ninety days after submission of the final report prepared under section 6633 of this title, the Committee shall cease to exist, unless the President, before the expiration of the ninety-day period, makes a determination that it is advantageous for the Committee to continue in being.

(b) If the President determines that it is advantageous for the Committee to continue in being, (1) the Committee shall exercise such functions as are prescribed by the President; and (2) the members of the Committee shall serve at the pleasure of the President.

(Pub. L. 94–282, title III, § 304, May 11, 1976, 90 Stat. 470.)

ABOLITION OF PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY; TRANSFER OF FUNCTIONS

See note set out under section 6631 of this title.

§ 6635. Staff and consultant support

(a) In the performance of its functions under sections 6633 and 6634 of this title, the Committee is authorized—

(1) to select, appoint, employ, and fix the compensation of such specialists and other experts as may be necessary for the carrying out of its duties and functions, and to select, appoint, and employ, subject to the civil service laws, such other officers and employees as may be necessary for carrying out its duties and functions; and

(2) to provide for participation of such civilian and military personnel as may be detailed to the Committee pursuant to subsection (b) of this section for carrying out the functions of the Committee.

(b) Upon request of the Committee, the head of any Federal department, agency, or instrumentality is authorized (1) to furnish to the Committee such information as may be necessary for carrying out its functions and as may be available to or procurable by such department, agen-

cy, or instrumentality, and (2) to detail to temporary duty with the Committee on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions. Each such detail shall be without loss of seniority, pay, or other employee status, to civilian employees so detailed, and without loss of status, rank, office, or grade, or of any emolument, perquisite, right, privilege, or benefit incident thereto to military personnel so detailed. Each such detail shall be made pursuant to an agreement between the Chairman and the head of the relevant department, agency, or instrumentality, and shall be in accordance with the provisions of subchapter III of chapter 33, title 5.

(Pub. L. 94–282, title III, § 305, May 11, 1976, 90 Stat. 470.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(1), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

ABOLITION OF PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY; TRANSFER OF FUNCTIONS

See note set out under section 6631 of this title.

SUBCHAPTER IV—FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY

§ 6651. Establishment, membership, and functions of Council

(a) Designation

There is established the Federal Coordinating Council for Science, Engineering, and Technology (hereinafter referred to as the ''Council'').

(b) Composition

The Council shall be composed of the Director of the Office of Science and Technology Policy and one representative of each of the following Federal agencies: Department of Agriculture, Department of Commerce, Department of Defense, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of State, Department of Transportation, Department of Veterans Affairs, National Aeronautics and Space Administration, National Science Foundation, Environmental Protection Agency, and Department of Energy. Each such representative shall be an official of policy rank designated by the head of the Federal agency concerned.

(c) Chairman

The Director of the Office of Science and Technology Policy shall serve as Chairman of the Council. The Chairman may designate another member of the Council to act temporarily in the Chairman's absence as Chairman.

(d) Participation of unnamed Federal agencies in meetings; invitations to attend meetings

The Chairman may (1) request the head of any Federal agency not named in subsection (b) of this section to designate a representative to participate in meetings or parts of meetings of the Council concerned with matters of substantial interest to such agency, and (2) invite other persons to attend meetings of the Council.

(e) Consideration of problems and developments affecting more than one Federal agency; recommendations

The Council shall consider problems and developments in the fields of science, engineering, and technology and related activities affecting more than one Federal agency, and shall recommend policies and other measures designed to—

(1) provide more effective planning and administration of Federal scientific, engineering, and technological programs,

(2) identify research needs including areas requiring additional emphasis,

(3) achieve more effective utilization of the scientific, engineering, and technological resources and facilities of Federal agencies, including the elimination of unwarranted duplication, and

(4) further international cooperation in science, engineering, and technology.

(f) Other advisory duties

The Council shall perform such other related advisory duties as shall be assigned by the President or by the Chairman.

(g) Assistance to Council by agency represented thereon

For the purpose of carrying out the provisions of this section, each Federal agency represented on the Council shall furnish necessary assistance to the Council. Such assistance may include—

(1) detailing employees to the Council to perform such functions, consistent with the purposes of this section, as the Chairman may assign to them, and

(2) undertaking, upon request of the Chairman, such special studies for the Council as come within the functions herein assigned.

(h) Establishment of subcommittees and panels

For the purpose of conducting studies and making reports as directed by the Chairman, standing subcommittees and panels of the Council may be established.

(Pub. L. 94–282, title IV, § 401, May 11, 1976, 90 Stat. 471; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–113, title XIV, § 1406, Sept. 29, 1977, 91 Stat. 986; Pub. L. 97–98, title XIV, § 1406(a), (b), Dec. 22, 1981, 95 Stat. 1298; Pub. L. 102–54, § 13(q)(11), June 13, 1991, 105 Stat. 281; Pub. L. 104–127, title VIII, § 851, Apr. 4, 1996, 110 Stat. 1171.)

AMENDMENTS

1996—Subsec. (h). Pub. L. 104–127 struck out after first sentence ''Among such standing subcommittees and panels of the Council shall be the Subcommittee on Food, Agricultural, and Forestry Research. This subcommittee shall review Federal research and development programs relevant to domestic and world food and fiber production and distribution, promote planning and coordination of this research in the Federal Government, and recommend policies and other measures concerning the food and agricultural sciences for the consideration of the Council. The subcommittee

shall include, but not be limited to, representatives of each of the following departments or agencies; the Department of Agriculture, the Department of State, the Department of Defense, the Department of the Interior, the Department of Health and Human Services, the National Oceanic and Atmospheric Administration, the Department of Energy, the National Science Foundation, the Environmental Protection Agency, and the Tennessee Valley Authority. The principal representatives of the Department of Agriculture shall serve as the chairman of the subcommittee.''

1991—Subsec. (b). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1981—Subsec. (h). Pub. L. 97–98 substituted ''Subcommittee on Food, Agricultural, and Forestry Research'' for ''Subcommittee on Food and Renewable Resources'', ''Department of Health and Human Services'' for ''Department of Health, Education, and Welfare'', and ''Department of Energy'' for ''Energy Research and Development Administration''.

1977—Subsec. (h). Pub. L. 95–113 inserted provisions relating to Subcommittee on Food and Renewable Resources.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97–98, set out as an Effective Date note under section 4301 of Title 7, Agriculture.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–113 effective Oct. 1, 1977, see section 1901 of Pub. L. 95–113, set out as a note under section 1307 of Title 7, Agriculture.

TRANSFER OF FUNCTIONS

''Department of Energy'' substituted for ''Energy Research and Development Administration'' in subsec. (b) pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions (with certain exceptions) to Secretary of Energy.

ABOLITION OF FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY; TRANSFER OF FUNCTIONS

The Federal Coordinating Council for Science, Engineering, and Technology, established pursuant to this section, was abolished and its functions transferred to the President by Reorg. Plan No. 1 of 1977, § 5A, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective Feb. 26, 1978, as provided by section 1(b) of Ex. Ord. No. 12039, Feb. 24, 1978, 43 F.R. 8095, set out under section 6601 of this title.

SUBCHAPTER V—GENERAL PROVISIONS

§ 6671. Authorization of appropriations

(a) For the purpose of carrying out subchapter II of this chapter, there are authorized to be appropriated—

(1) $750,000 for the fiscal year ending June 30, 1976;

(2) $500,000 for the period beginning July 1, 1976, and ending September 30, 1976;

(3) $3,000,000 for the fiscal year ending September 30, 1977; and

(4) such sums as may be necessary for each of the succeeding fiscal years.

(b) For the purpose of carrying out subchapter III of this chapter, there are authorized to be appropriated—

(1) $750,000 for the fiscal year ending June 30, 1976;

(2) $500,000 for the period beginning July 1, 1976, and ending September 30, 1976;

(3) $1,000,000 for the fiscal year ending September 30, 1977; and

(4) such sums as may be necessary for each of the succeeding fiscal years.

(Pub. L. 94–282, title V, § 501, May 11, 1976, 90 Stat. 472.)

SUBCHAPTER VI—NATIONAL CRITICAL TECHNOLOGIES PANEL

§§ 6681 to 6685. Omitted

CODIFICATION

Sections 6681 to 6685 were omitted pursuant to section 6685 which provided that sections 6681 to 6685 ceased to be effective Dec. 31, 2000, and that the National Critical Technologies Panel established by this subchapter terminated on that date.

Section 6681, Pub. L. 94–282, title VI, § 601, as added Pub. L. 101–189, div. A, title VIII, § 841(a)(1), Nov. 29, 1989, 103 Stat. 1511, established a National Critical Technologies Panel.

Section 6682, Pub. L. 94–282, title VI, § 602, as added Pub. L. 101–189, div. A, title VIII, § 841(a)(1), Nov. 29, 1989, 103 Stat. 1511, related to membership of the Panel.

Section 6683, Pub. L. 94–282, title VI, § 603, as added Pub. L. 101–189, div. A, title VIII, § 841(a)(1), Nov. 29, 1989, 103 Stat. 1511; amended Pub. L. 102–245, title V, § 503, Feb. 14, 1992, 106 Stat. 24, required the Panel to submit to the President a biennial report on national critical technologies.

Section 6684, Pub. L. 94–282, title VI, § 604, as added Pub. L. 101–189, div. A, title VIII, § 841(a)(1), Nov. 29, 1989, 103 Stat. 1512, related to administration and funding of Panel.

Section 6685, Pub. L. 94–282, title VI, § 605, as added Pub. L. 101–189, div. A, title VIII, § 841(a)(1), Nov. 29, 1989, 103 Stat. 1512, provided that sections 6681 to 6685 ceased to be effective Dec. 31, 2000, and that the Panel terminated on that date.

§ 6686. Science and Technology Policy Institute

(a) Establishment

There shall be established a federally funded research and development center to be known as the ''Science and Technology Policy Institute'' (hereinafter in this section referred to as the ''Institute'').

(b) Incorporation

The Institute shall be—

(1) administered as a separate entity by an organization currently managing another federally funded research and development center; or

(2) incorporated as a nonprofit membership corporation.

(c) Duties

The duties of the Institute shall include the following:

(1) The assembly of timely and authoritative information regarding significant developments and trends in science and technology research and development in the United States and abroad, including information relating to the technologies identified in the most recent biennial report submitted to Congress by the President pursuant to section 6683(d)[1] of this title and developing and maintaining relevant informational and analytical tools.

(2) Analysis and interpretation of the information referred to in paragraph (1) with par-

[1] See References in Text note below.

ticular attention to the scope and content of the Federal science and technology research and development portfolio as it affects interagency and national issues.

(3) Initiation of studies and analysis of alternatives available for ensuring the long-term strength of the United States in the development and application of science and technology, including appropriate roles for the Federal Government, State governments, private industry, and institutions of higher education in the development and application of science and technology.

(4) Provision, upon the request of the Director of the Office of Science and Technology Policy, of technical support and assistance—

(A) to the committees and panels of the President's Council of Advisers on Science and Technology that provide advice to the Executive branch on science and technology policy; and

(B) to the interagency committees and panels of the Federal Government concerned with science and technology.

(d) Consultation on Institute activities

In carrying out the duties referred to in subsection (c) of this section, personnel of the Institute shall—

(1) consult widely with representatives from private industry, institutions of higher education, and nonprofit institutions; and

(2) to the maximum extent practicable, incorporate information and perspectives derived from such consultations in carrying out such duties.

(e) Annual reports

The Institute shall submit to the President an annual report on the activities of the Institute under this section. Each report shall be in accordance with requirements prescribed by the President.

(f) Sponsorship

(1) The Director of the National Science Foundation shall be the sponsor of the Institute.

(2) The Director of the National Science Foundation, in consultation with the Director of Office of Science and Technology Policy, shall enter into a sponsoring agreement with respect to the Institute. The sponsoring agreement shall require that the Institute carry out such functions as the Director of Office of Science and Technology Policy may specify consistent with the duties referred to in subsection (c) of this section. The sponsoring agreement shall be consistent with the general requirements prescribed for such a sponsoring agreement by the Administrator for Federal Procurement Policy.

(Pub. L. 101–510, div. A, title VIII, § 822, Nov. 5, 1990, 104 Stat. 1598; Pub. L. 102–25, title VII, § 704(a)(5), Apr. 6, 1991, 105 Stat. 118; Pub. L. 102–190, div. A, title VIII, § 822(c)(1), Dec. 5, 1991, 105 Stat. 1433; Pub. L. 103–160, div. A, title VIII, § 803, Nov. 30, 1993, 107 Stat. 1701; Pub. L. 104–201, div. A, title X, § 1073(e)(1)(C), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 105–207, title II, § 208(a), July 29, 1998, 112 Stat. 877.)

REFERENCES IN TEXT

Section 6683 of this title, referred to in subsec. (c)(1), was omitted from the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1991, and not as part of the National Science and Technology Policy, Organization, and Priorities Act of 1976 which comprises this chapter.

AMENDMENTS

1998—Pub. L. 105–207, § 208(a)(1), substituted ''Science and Technology Policy Institute'' for ''Critical Technologies Institute'' in section catchline.

Subsec. (a). Pub. L. 105–207, § 208(a)(1), substituted ''Science and Technology Policy Institute'' for ''Critical Technologies Institute''.

Subsec. (b). Pub. L. 105–207, § 208(a)(2), substituted ''The'' for ''As determined by the chairman of the committee referred to in subsection (c) of this section, the''.

Subsec. (c). Pub. L. 105–207, § 208(a)(3), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

''(1) The Institute shall have an Operating Committee composed of six members as follows:

''(A) The Director of the Office of Science and Technology Policy, who shall chair the committee.

''(B) The Director of the National Institutes of Health.

''(C) The Under Secretary of Commerce for Technology.

''(D) The Director of the Defense Advanced Research Projects Agency.

''(E) The Director of the National Science Foundation.

''(F) The Under Secretary of Energy having responsibility for science and technology matters.

''(2) The Operating Committee shall meet not less than four times each year.''

Subsec. (c)(1). Pub. L. 105–207, § 208(a)(4)(A)–(C), inserted ''science and'' after ''developments and trends in'', substituted ''including'' for ''with particular emphasis on'', and inserted before period at end ''and developing and maintaining relevant informational and analytical tools''.

Subsec. (c)(2). Pub. L. 105–207, § 208(a)(4)(D), substituted ''with particular attention to the scope and content of the Federal science and technology research and development portfolio as it affects interagency and national issues'' for ''to determine whether such developments and trends are likely to affect United States technology policies''.

Subsec. (c)(3). Pub. L. 105–207, § 208(a)(4)(E), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Initiation of studies and analyses (including systems analyses and technology assessments) of alternatives available for ensuring long-term leadership by the United States in the development and application of the technologies referred to in paragraph (1), including appropriate roles for the Federal Government, State governments, private industry, and institutions of higher education in the development and application of such technologies.''

Subsec. (c)(4). Pub. L. 105–207, § 208(a)(4)(F), (G), inserted ''science and'' after ''Executive branch on'' in subpar. (A) and amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''to the committees and panels of the Federal Coordinating Council for Science, Engineering, and Technology that are responsible for planning and coordinating activities of the Federal Government to advance the development of critical technologies and sustain and strengthen the technology base of the United States.''

Subsec. (d). Pub. L. 105–207, § 208(a)(3), (5), redesignated subsec. (e) as (d) and substituted ''subsection (c)'' for ''subsection (d)'' in introductory provisions. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 105–207, § 208(a)(6), which directed the substitution of ''Institute'' for ''Committee'' each place appearing, was executed by making the substitution for ''committee'' in two places to reflect the probable intent of Congress.

Pub. L. 105–207, § 208(a)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 105–207, § 208(a)(3), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(2). Pub. L. 105–207, § 208(a)(8), which directed the substitution of ''Director of Office of Science and Technology Policy'' for ''Chairman of Committee'' each place appearing, was executed by making the substitution for ''chairman of the committee'' in two places to reflect the probable intent of Congress.

Pub. L. 105–207, § 208(a)(7), substituted ''subsection (c)'' for ''subsection (d)''.

Subsec. (g). Pub. L. 105–207, § 208(a)(3), redesignated subsec. (g) as (f).

1996—Subsec. (c)(1)(D). Pub. L. 104–201 inserted ''Defense'' before ''Advanced Research Projects Agency''.

1993—Subsec. (c). Pub. L. 103–160 amended heading and text of subsec. (c) generally. Prior to amendment, text consisted of pars. (1) to (4) relating to the composition, designation of chairman, terms of service, and meetings of the Operating Committee.

1991—Pub. L. 102–190 amended section generally, substituting present provisions for provisions establishing ''Critical Technologies Institute'' and providing for incorporation, Board of Trustees, duties of Institute, sponsorship of Institute, deadline for certain actions, and funding.

Subsec. (g)(1). Pub. L. 102–25, § 704(a)(5)(A), substituted ''appropriated pursuant to this Act'' for ''available for the Department of Defense'' and struck out ''in the first fiscal year in which the Institute begins operations'' after ''activities of the Institute''.

Subsec. (g)(2). Pub. L. 102–25, § 704(a)(5)(B), struck out ''for each fiscal year after the fiscal year referred to in paragraph (1)'' after ''for the Institute''.

EFFECTIVE DATE OF 1991 AMENDMENTS

Section 822(c)(2), (3) of Pub. L. 102–190 provided that:

''(2) The amendment made by paragraph (1) [amending this section] shall take effect as of November 5, 1990.

''(3) The sponsoring agreement required by subsection (g) of section 822 of Public Law 101–510 [subsec. (g) of this section], as amended by paragraph (1), shall be entered into not later than February 15, 1992.''

Amendment by Pub. L. 102–25 applicable as if included in enactment of Pub. L. 101–510, see section 704(e) of Pub. L. 102–25, set out as a note under section 12321 of Title 10, Armed Forces.

AUTHORIZATION OF APPROPRIATIONS

Section 822(d)(2) of Pub. L. 102–190 provided that: ''There is authorized to be appropriated for each fiscal year after fiscal year 1991 for the Institute such sums as may be necessary for the operation of the Institute.''

REFERENCES TO CRITICAL TECHNOLOGIES INSTITUTE

Pub. L. 105–207, title II, § 208(b), July 29, 1998, 112 Stat. 878, provided that: ''All references in Federal law or regulations to the Critical Technologies Institute shall be considered to be references to the Science and Technology Policy Institute.''

§ 6687. Critical technology strategies

(a) Requirement for critical technology strategies

(1) The President shall develop and revise as needed a multiyear strategy for federally supported research and development for each critical technology designated by the President. In designating critical technologies for the purpose of this section, the President shall begin with the national critical technologies listed in a biennial report on national critical technologies submitted to Congress by the President pursuant to section 6683(d)[1] of this title. A critical technology strategy may cover more than one critical technology.

(2) The President shall assign responsibilities and develop procedures for conducting executive branch activities to carry out this section.

(3) During the development of a critical technology strategy, the President shall provide for the following:

(A) The development of goals and objectives for the appropriate Federal role in the development of the critical technology or technologies that the President expects to be covered by the strategy.

(B) Close consultation with appropriate representatives of United States industries, members of industry associations, representatives of labor organizations in the United States, members of professional and technical societies in the United States and other persons who are qualified to provide advice and assistance in the development of such critical technology or technologies.

(C) The development of an organizational structure within the Federal Government that is appropriate for coordinating, managing, and reviewing the Federal Government's role in the implementation of the strategy, including allocating roles among Federal departments and agencies.

(D) The development of policies and procedures for synergistic government, industrial, and university participation in the implementation of the strategy.

(E) The development of Federal budget estimates for research and development regarding the critical technology or technologies covered by the strategy for the first five fiscal years covered by that strategy.

(b) Report

Not later than February 15 of each year, beginning in 1993, the President shall submit to Congress an annual report describing the implementation of subsection (a) of this section. The annual report shall include the following:

(1) For each critical technology designated by the President for the purpose of subsection (a) of this section, a description of the progress made in implementing subsection (a) of this section during the fiscal year preceding the fiscal year in which the report is submitted.

(2) A description of each proposed program, if any, for further implementing subsection (a) of this section with respect to a critical technology through the date for the submission of the next annual report.

(3) A copy of each strategy, if any, completed or revised pursuant to subsection (a) of this section during the fiscal year covered by the report.

(Pub. L. 102–190, div. A, title VIII, § 822(a), (b), Dec. 5, 1991, 105 Stat. 1432, 1433.)

REFERENCES IN TEXT

Section 6683 of this title, referred to in subsec. (a)(1), was omitted from the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and

[1] See References in Text note below.

not as part of the National Science and Technology Policy, Organization, and Priorities Act of 1976 which comprises this chapter.

CHAPTER 80—PUBLIC WORKS EMPLOYMENT

SUBCHAPTER I—LOCAL PUBLIC WORKS

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SUBCHAPTER I—LOCAL PUBLIC WORKS

§ 6701. Definitions

As used in this subchapter, the term—

(1) ''Secretary'' means the Secretary of Commerce, acting through the Economic Development Administration.

(2) ''State'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(3) ''local government'' means any city, county, town, parish, or other political subdivision of a State, and any Indian tribe.

(4) ''public works project'' includes a project for the transportation and provision of water to a drought-stricken area.

(Pub. L. 94–369, title I, § 102, July 22, 1976, 90 Stat. 999; Pub. L. 95–28, title I, § 102, May 13, 1977, 91 Stat. 116.)

AMENDMENTS

1977—Par. (2). Pub. L. 95–28, § 102(a), inserted reference to Trust Territory of the Pacific Islands.

Par. (4). Pub. L. 95–28, § 102(b), added par. (4).

SHORT TITLE OF 1977 AMENDMENTS

Pub. L. 95–30, title VI, § 601, May 23, 1977, 91 Stat. 164, provided that: ''This title [enacting section 6736 of this title, amending sections 6722 to 6724, 6727, and 6735 of this title, and repealing section 6726 of this title] may be cited as the 'Intergovernmental Antirecession Assistance Act of 1977'.''

Section 101 of title I of Pub. L. 95–28 provided that: ''This title [amending sections 6701, 6705 to 6708, and 6710 of this title and enacting provisions set out as notes under sections 6701 and 6710 of this title] may be cited as the 'Public Works Employment Act of 1977'.''

SHORT TITLE

Section 1 of Pub. L. 94–369 provided: ''That this Act [enacting this chapter and provision set out as a note under section 1287 of Title 33, Navigation and Navigable Waters] may be cited as the 'Public Works Employment Act of 1976'.''

Section 101 of title I of Pub. L. 94–369 provided that: ''This title [enacting this subchapter] may be cited as the 'Local Public Works Capital Development and Investment Act of 1976'.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PUBLIC WORKS INVESTMENT STUDY; PRELIMINARY REPORT; FINAL REPORT WITHIN 18 MONTHS AFTER MAY 13, 1977

Section 110 of Pub. L. 95–28 directed Secretary of Commerce to study public works investment in United States and implications for future of recent trends in such investment and submit a report with respect to its findings and recommendations no later than 18 months after May 13, 1977.

§ 6702. Direct grants; Federal share

(a) The Secretary is authorized to make grants to any State or local government for construction (including demolition and other site preparation activities), renovation, repair, or other improvement of local public works projects including but not limited to those public works projects of State and local governments for which Federal financial assistance is authorized under provisions of law other than this chapter. In addition the Secretary is authorized to make grants to any State or local government for the completion of plans, specifications, and estimates for local public works projects where either architectural design or preliminary engineering or related planning has already been undertaken and where additional architectural and engineering work or related planning is required to permit construction of the project under this chapter.

(b) The Federal share of any project for which a grant is made under this section shall be 100 per centum of the cost of the project.

(Pub. L. 94–369, title I, § 103, July 22, 1976, 90 Stat. 999.)

§ 6703. Grants supplementing Federal contributions under other Federal laws; Federal share

In addition to the grants otherwise authorized by this chapter, the Secretary is authorized to

make a grant for the purpose of increasing the Federal contribution to a public works project for which Federal financial assistance is authorized under provisions of law other than this chapter. Any grant made for a public works project under this section shall be in such amount as may be necessary to make the Federal share of the cost of such project 100 per centum. No grant shall be made for a project under this section unless the Federal financial assistance for such project authorized under provisions of law other than this chapter is immediately available for such project and construction of such project has not yet been initiated because of lack of funding for the non-Federal share.

(Pub. L. 94–369, title I, § 104, July 22, 1976, 90 Stat. 999.)

§ 6704. Grants providing State or local contributions required under State or local law

In addition to the grants otherwise authorized by this chapter, the Secretary is authorized to make a grant for the purpose of providing all or any portion of the required State or local share of the cost of any public works project for which financial assistance is authorized under any provision of State or local law requiring such contribution. Any grant made for a public works project under this section shall be made in such amount as may be necessary to provide the requested State or local share of the cost of such project. A grant shall be made under this section for either the State or local share of the cost of the project, but not both shares. No grant shall be made for a project under this section unless the share of the financial assistance for such project (other than the share with respect to which a grant is requested under this section) is immediately available for such project and construction of such project has not yet been initiated.

(Pub. L. 94–369, title I, § 105, July 22, 1976, 90 Stat. 999.)

§ 6705. Limitations on use of grants

(a) Projects relating to natural watercourse or canals

No grant shall be made under section 6702, 6703, or 6704 of this title for any project having as its principal purpose the channelization, damming, diversion, or dredging of any natural watercourse, or the construction or enlargement of any canal (other than a canal or raceway designated for maintenance as an historic site) and having as its permanent effect the channelization, damming, diversion, or dredging of such watercourse or construction or enlargement of any canal (other than a canal or raceway designated for maintenance as an historic site).

(b) Acquisition of interest in real property

No part of any grant made under section 6702, 6703, or 6704 of this title shall be used for the acquisition of any interest in real property.

(c) Maintenance costs

Nothing in this chapter shall be construed to authorize the payment of maintenance costs in connection with any projects constructed (in whole or in part) with Federal financial assistance under this chapter.

(d) Commencement of on-site labor within 90 days of project approval as prerequisite

Grants made by the Secretary under this chapter shall be made only for projects for which the applicant gives satisfactory assurances, in such manner and form as may be required by the Secretary and in accordance with such terms and conditions as the Secretary may prescribe, that, if funds are available, on-site labor can begin within ninety days of project approval.

(e) Performance of projects by State or local governments prohibited; competitive bidding; illegal aliens

(1) No part of the construction (including demolition and other site preparation activities), renovation, repair, or other improvement of any public works project for which a grant is made under this chapter after May 13, 1977, shall be performed directly by any department, agency, or instrumentality of any State or local government. Construction of each such project shall be performed by contract awarded by competitive bidding, unless the Secretary shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

(2) No grant shall be made under this chapter for any local public works project unless the State or local government applying for such grant submits with its application a certification acceptable to the Secretary that no contract will be awarded in connection with such project to any bidder who will employ on such project any alien in the United States in violation of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] or any other law, convention, or treaty of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens.

(f) Use of products made in United States; minority business enterprises

(1)(A) Notwithstanding any other provision of law, no grant shall be made under this chapter for any local public works project unless only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, and supplies mined, produced, or manufactured, as the case may be, in the United States, will be used in such project.

(B) Subparagraph (A) of this paragraph shall not apply in any case where the Secretary determines it to be inconsistent with the public interest, or the cost to be unreasonable, or if arti-

cles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(2) Except to the extent that the Secretary determines otherwise, no grant shall be made under this chapter for any local public works project unless the applicant gives satisfactory assurance to the Secretary that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises. For purposes of this paragraph, the term ''minority business enterprise'' means a business at least 50 per centum of which is owned by minority group members or, in case of a publicly owned business, at least 51 per centum of the stock of which is owned by minority group members. For the purposes of the preceding sentence, minority group members are citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts.

(g) Accessibility standards for handicapped and elderly

No grant shall be made under this chapter for any project for which the applicant does not give assurances satisfactory to the Secretary that the project will be designed and constructed in accordance with the standards for accessibility for public buildings and facilities to the handicapped and elderly under the Act entitled ''An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped'', approved August 12, 1968 (42 U.S.C. 4151 et seq.). The Architectural and Transportation Barriers Compliance Board established by the Rehabilitation Act of 1973 (P.L. 93–112) [29 U.S.C. 701 et seq.] is authorized to insure that any construction and renovation done pursuant to any grant made under this chapter complies with the accessibility standards for public bunldings[1] and facilities issued under the Act of August 12, 1968.

(Pub. L. 94–369, title I, § 106, July 22, 1976, 90 Stat. 1000; Pub. L. 95–28, title I, § 103, May 13, 1977, 91 Stat. 116.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (e)(2), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Act of August 12, 1968, entitled ''An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped'', referred to in subsec. (g), is Pub. L. 90–480, Aug. 12, 1968, 82 Stat. 718, as amended, popularly known as the Architectural Barriers Act of 1968, which is classified generally to chapter 51 (§ 4151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4151 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (g), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

[1] So in original. Probably should be ''buildings''.

AMENDMENTS

1977—Subsecs. (e) to (g). Pub. L. 95–28 added subsecs. (e) to (g).

§ 6706. Implementing rules, regulations, and procedures; criteria; employment of disabled and Vietnam-era veterans; determination of applications for grants

The Secretary shall, not later than thirty days after July 22, 1976, prescribe those rules, regulations, and procedures (including application forms) necessary to carry out this chapter. Such rules, regulations, and procedures shall assure that adequate consideration is given to the relative needs of various sections of the country. The Secretary shall consider among other factors (1) the severity and duration of unemployment in proposed project areas, (2) the income levels and extent of underemployment in proposed project area, and (3) the extent to which proposed projects will contribute to the reduction of unemployment. The Secretary, in consultation with the Secretary of Labor, and consistent with existing applicable collective bargaining agreements and practices, shall promulgate regulations to assure special consideration to the employment in projects under this chapter of qualified disabled veterans (as defined in section 4211(1) of title 38) and qualified Vietnam-era veterans (as defined in section 4211(2) of such title 38). The Secretary shall make a final determination with respect to each application for a grant submitted to him under this chapter not later than the sixtieth day after the date he receives such application. Failure to make such final determination within such period shall be deemed to be an approval by the Secretary of the grant requested. For purposes of this section, in considering the extent of unemployment or underemployment, the Secretary shall consider the amount of unemployment or underemployment in the construction and construction-related industries.

(Pub. L. 94–369, title I, § 107, July 22, 1976, 90 Stat. 1000; Pub. L. 95–28, title I, § 104, May 13, 1977, 91 Stat. 117; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title XII, § 1203(c)(3), Nov. 2, 1994, 108 Stat. 4690.)

AMENDMENTS

1994—Pub. L. 103–446, which directed substitution of ''section 4211(2)'' for ''section 4211(2)(A)'' and ''section 4211(1)'' for ''section 2011(1)'', was executed by substituting ''section 4211(2)'' for ''section 4211(2)(A)''. Previously, ''section 4211(1)'' was substituted for ''section 2011(1)'' by Pub. L. 103–83. See 1991 Amendment note below.

1991—Pub. L. 102–83 substituted references to section 4211 of title 38 for references to section 2011 of title 38 in two places.

1977—Pub. L. 95–28 inserted provision directing Secretary to promulgate regulations to assure special consideration to employment in projects of qualified disabled veterans and qualified Vietnam-era veterans.

§ 6707. Priority and amounts of projects

(a) Allocation of appropriated funds; Indian tribes and Alaska Native villages; prior applications; unemployment ratio; limits on grants for any one State; territories

The Secretary shall allocate funds appropriated after May 13, 1977, under section 6710 of this title as follows:

(1) 2½ per centum of such funds shall be set aside and shall be expended only for grants for public works projects under this chapter to Indian tribes and Alaska Native villages. None of the remainder of such funds shall be expended for such grants to such tribes and villages.

(2) After the set aside required by paragraph (1) of this subsection, $70,000,000 shall be set aside and expended only for grants for any public works project the application for a grant for which was made under this chapter after July 22, 1976, and before December 24, 1976, and which application was not received, was not considered, or was rejected solely because of an error by an officer or employee of the United States. Any allocation made to an applicant pursuant to regulation shall be reduced by the amount of any grant made to such applicant under this paragraph.

(3) After the set asides required by paragraphs (1) and (2) of this subsection, 65 per centum of such funds shall be allocated among the States on the basis of the ratio that the number of unemployed persons in each State bears to the total number of unemployed persons in all the States and 35 per centum of such funds shall be allocated among those States with an average unemployment rate for the preceding twelve-month period in excess of 6.5 per centum on the basis of the relative severity of unemployment in each such State, except that (A) no State shall be allocated less than three-quarters of one per centum or more than 12½ per centum of such funds for local public works projects within such State, except that in the case of Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, not less than one-half of one per centum in the aggregate shall be granted for such projects in all four of these jurisdictions, and (B) no State whose unemployment data was converted for the first time in 1976 to the benchmark data of the current population survey annual average compiled by the Bureau of Labor Statistics shall receive a percentage of such funds less than the percentage of funds allocated to such State under this chapter from funds appropriated to carry out this chapter prior to May 13, 1977.

(b) Local government projects; energy conservation; endorsement of project by general purpose local government; projects requested by school districts

(1) In making grants under this chapter, the Secretary shall give priority and preference to public works projects of local governments.

(2) In making grants for projects for construction, renovation, repair, or other improvement of buildings, the Secretary shall also give consideration as between such building projects to those projects which will result in conserving energy, including, but not limited to, projects to redesign and retrofit existing public facilities for energy conservation purposes, and projects using alternative energy systems.

(3) In making grants under this chapter, the Secretary shall also give priority and preference to any public works project requested by a State or by a special purpose unit of local government which is endorsed by a general purpose local government within such State.

(4) A project requested by a school district shall be accorded the full priority and preference to public works projects of local governments provided in paragraph (1).

(c) Unemployment rates; priority; States receiving minimum allocations

In making grants under this chapter, if for the twelve most recent consecutive months, the national unemployment rate is equal to or exceeds 6½ per centum, the Secretary shall (1) expedite and give priority to applications submitted by States or local governments having unemployment rates for the twelve most recent consecutive months in excess of the national unemployment rate and (2) shall give priority thereafter to applications submitted by States or local governments having unemployment rates for the twelve most recent consecutive months in excess of 6½ per centum, but less than the national unemployment rate. Information regarding unemployment rates may be furnished either by the Federal Government, or by States or local governments, provided the Secretary determines that the unemployment rates furnished by States or local governments are accurate, and shall provide assistance to States or local governments in the calculation of such rates to insure validity and standardization. The Secretary may waive the application of the first sentence of this subsection to any State which receives a minimum allocation pursuant to paragraph (3) of subsection (a) of this section.

(d) Priorities for projects in State or localities with two or more projects

Whenever a State or local government submits applications for grants under this chapter for two or more projects, such State or local government shall submit as part of such applications its priority for each such project.

(e) Community or neighborhood basis of unemployment rates

The unemployment rate of a local government shall, for the purposes of this chapter, and upon request of the applicant, be based upon the unemployment rate of any community or neighborhood (defined without regard to political or other subdivisions or boundaries) within the jurisdiction of such local government, except that any grant made to a local government based upon the unemployment rate of a community or neighborhood within its jurisdiction must be for a project to be constructed in such community or neighborhood.

(f) Repealed. Pub. L. 95–28, title I, § 107(e), May 13, 1977, 91 Stat. 119

(g) Criteria for requests

States and local governments making application under this chapter should (1) relate their

specific requests to existing approved plans and programs of a local community development or regional development nature so as to avoid harmful or costly inconsistencies or contradictions; and (2) where feasible, make requests which, although capable of early initiation, will promote or advance longer range plans and programs.

(h) Applications not submitted on or before December 23, 1976; grants prohibited; exceptions

(1) Except as provided in paragraph (2) of this subsection, the Secretary shall not consider or approve or make a grant for any project for which any application was not submitted for a grant under this chapter on or before December 23, 1976.

(2) The Secretary may receive applications for grants for projects under this chapter—

(A) from the Trust Territory of the Pacific Islands;

(B) from Indian tribes and Alaska Native villages;

(C) from any applicant to use any allocation which may be made pursuant to regulation, to the extent necessary to expend such allocation, if a sufficient number of applications were not submitted on or before December 23, 1976, to use such allocation.

(i) Substitution of projects to alleviate drought or other emergency or disaster-related conditions or damage

The Secretary may allow any applicant which has received a grant for a project under this chapter to substitute one or more projects for such project if in the judgment of the Secretary (1) the Federal cost in the aggregate of such substituted project or projects does not exceed such grant, (2) such substituted project or projects comply with section 6705(d) of this title, and (3) such substituted project or projects will in fact aid in alleviating drought or other emergency or disaster-related conditions or damage. Section 6705(a) of this title shall not apply to projects substituted under this subsection.

(j) Private nonprofit health care or rehabilitation facilities

Notwithstanding subsection (h)(1) of this section, grants may be made from appropriations made under section 6710 of this title after September 30, 1977, to States or local governments for projects for the construction, renovation, repair, or other improvements of health care or rehabilitation facilities owned and operated by private nonprofit entities.

(Pub. L. 94–369, title I, § 108, July 22, 1976, 90 Stat. 1000; Pub. L. 95–28, title I, §§ 105–107, May 13, 1977, 91 Stat. 117, 118.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–28, § 105, added par. (1) and introductory provisions preceding par. (1), par. (2), and, in par. (3), introductory provisions preceding cl. (A) and cl. (B), designated existing provisions as cl. (A) of par. (3) and, in such cl. (A) as so designated, inserted reference to Trust Territory of the Pacific Islands and substituted ''three-quarters of one percentum'' for ''one-half of one percentum'' and ''of such funds'' for ''of all amounts appropriated to carry out this subchapter''.

Subsec. (b). Pub. L. 95–28, § 106, designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (c). Pub. L. 95–28, § 107(a), (b), substituted ''twelve most recent consecutive months'' for ''three most recent consecutive months'' and authorized the Secretary to waive the application of the first sentence of the subsection to any State which receives a minimum allocation pursuant to subsec. (a)(3) of this section.

Subsec. (d). Pub. L. 95–28, § 107(c), substituted provisions directing State or local governments that submit two or more projects to submit as part of their applications the priorities assigned to each project for provisions directing that seventy percentum of all amounts appropriated to carry out this chapter be granted for public works projects submitted by State or local governments given priority under clause (1) of the first sentence of subsec. (c) of this section, with the remaining thirty percentum available for public works projects submitted by State or local governments in other classifications of priority.

Subsec. (e). Pub. L. 95–28, § 107(d), substituted ''to be constructed in such community or neighborhood'' for ''of direct benefit to, or provide employment for, unemployed persons who are residents of that community or neighborhood''.

Subsec. (f). Pub. L. 95–28, § 107(e), struck out subsec. (f) which directed that, in determining the unemployment rate of a local government for purposes of this section, the unemployment in those adjoining areas from which the labor force for such project might be drawn were to be taken into consideration.

Subsecs. (h) to (j). Pub. L. 95–28, § 107(f), added subsecs. (h) to (j).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 6708. Wage standards for laborers and mechanics; enforcement

All laborers and mechanics employed on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary shall not extend any financial assistance under this chapter for such project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.

(Pub. L. 94–369, title I, § 109, July 22, 1976, 90 Stat. 1001; Pub. L. 95–28, title I, § 108, May 13, 1977, 91 Stat. 119.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1964, as amended (40 U.S.C. 276c)'', meaning section 2 of the Act of June 13, 1934, on authority of Pub. L. 107–217, § 5(c),

Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1977—Pub. L. 95–28 substituted ''All laborers and mechanics employed'' for ''All laborers and mechanics employed by contractors or subcontractors''.

§ 6709. Sex discrimination; prohibition; enforcement

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any project receiving Federal grant assistance under this chapter, including any supplemental grant made under this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

(Pub. L. 94–369, title I, § 110, July 22, 1976, 90 Stat. 1002.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 6710. Authorization of appropriations

There is authorized to be appropriated not to exceed $6,000,000,000 for the period ending December 31, 1978, to carry out this chapter.

(Pub. L. 94–369, title I, § 111, July 22, 1976, 90 Stat. 1002; Pub. L. 95–28, title I, § 109, May 13, 1977, 91 Stat. 119.)

AMENDMENTS

1977—Pub. L. 95–28 substituted ''$6,000,000,000 for the period ending December 31, 1978'' for ''$2,000,000,000 for the period ending September 30, 1977''.

IMMEDIATE INITIATION OF CONSTRUCTION ON CERTAIN PROJECTS

Section 111 of Pub. L. 95–28 directed Secretary of Agriculture and Secretary of the Interior to immediately initiate construction of those Federal public works projects which are responsibility of their respective departments, which have been authorized, and which can be commenced within 60 days of May 13, 1977, and completed no later than 180th day after commencement of construction, with no funds authorized by this section used to carry out such works.

SUBCHAPTER II—ANTIRECESSION PROVISIONS

§ 6721. Congressional findings of fact and declaration of policy

The Congress finds—

(1) that State and local governments represent a significant segment of the national economy whose economic health is essential to national economic prosperity;

(2) that present national economic problems have imposed considerable hardships on State and local government budgets;

(3) that those governments, because of their own fiscal difficulties, are being forced to take budget-related actions which tend to undermine Federal Government efforts to stimulate the economy;

(4) that efforts to stimulate the economy through reductions in Federal Government tax obligations are weakened when State and local governments are forced to increase taxes;

(5) that the net effect of Federal Government efforts to reduce unemployment through public service jobs is substantially limited if State and local governments use federally financed public service employees to replace regular employees that they have been forced to lay off;

(6) that efforts to stimulate the construction industry and reduce unemployment are substantially undermined when State and local governments are forced to cancel or delay the construction of essential capital projects; and

(7) that efforts by the Federal Government to stimulate the economic recovery will be substantially enhanced by a program of emergency Federal Government assistance to State and local governments to help prevent those governments from taking budget-related actions which undermine the Federal Government efforts to stimulate economic recovery.

(Pub. L. 94–369, title II, § 201, July 22, 1976, 90 Stat. 1002.)

§ 6722. Financial assistance

(a) Payments to State and local governments

The Secretary of the Treasury (hereafter in this subchapter referred to as the ''Secretary'') shall, in accordance with the provisions of this subchapter, make payments to States and to local governments to coordinate budget-related actions by such governments with Federal Government efforts to stimulate economic recovery.

(b) Authorization of appropriations

Subject to the provisions of subsections (c) and (d) of this section, there are authorized to be appropriated for each of the five succeeding calendar quarters (beginning with the calendar quarter which begins on July 1, 1977) for the purpose of payments under this subchapter—

(1) $125,000,000, plus

(2) $30,000,000 multiplied by the number of whole one-tenth percentage points by which the rate of seasonally adjusted national unemployment for the most recent calendar quarter which ended three months before the beginning of such quarter exceeded 6 per centum.

(c) Aggregate authorization

In no case shall the aggregate amount authorized to be appropriated under the provisions of subsection (b) of this section for the five successive calendar quarters beginning with the calendar quarter which begins July 1, 1977, exceed $2,250,000,000.

(d) Termination

No amount is authorized to be appropriated under the provisions of subsection (b) of this section for any calendar quarter if—

(1) the average rate of national unemployment during the most recent calendar quarter

which ended three months before the beginning of such calendar quarter did not exceed 6 percent, or

(2) the rate of national unemployment for the last month of the most recent calendar quarter which ended three months before the beginning of such calendar quarter did not exceed 6 percent.

(Pub. L. 94–369, title II, § 202, July 22, 1976, 90 Stat. 1002; Pub. L. 94–447, title II, § 201(1), Oct. 1, 1976, 90 Stat. 1498; Pub. L. 95–30, title VI, § 602, May 23, 1977, 91 Stat. 164.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95–30, § 602(a), substituted ''July 1, 1977'' for ''July 1, 1976'' in introductory provisions preceding par. (1) and in par. (2) substituted ''$30,000,000 multiplied by the number of whole one-tenth'' for ''$62,500,000 multiplied by the number of one-half'' and ''such quarter exceeded 6 per centum'' for ''such calendar quarter exceeded 6 percent''.

Subsec. (c). Pub. L. 95–30, § 602(b), substituted ''five successive calendar quarters beginning with the calendar quarter which begins July 1, 1977, exceed $2,250,000,000'' for ''five calendar quarters beginning with the calendar quarter which begins July 1, 1976, exceed $1,250,000,000''.

1976—Subsec. (d)(1). Pub. L. 94–447 substituted ''6 percent, or'' for ''6 percent, and''.

§ 6723. Allocation of amounts

(a) Reservations for eligible States and units of local government

(1) The Secretary shall reserve one-third of the amounts appropriated pursuant to authorization under section 6722 of this title for each calendar quarter for the purpose of making payments to eligible State governments under subsection (b) of this section.

(2) The Secretary shall reserve two-thirds of such amounts for the purpose of making payments to eligible units of local government under subsection (c) of this section.

(b) State allocation; percentage; definitions

(1) The Secretary shall allocate from amounts reserved under subsection (a)(1) of this section an amount for the purpose of making payments to each State equal to the total amount reserved under subsection (a)(1) of this section for the calendar quarter multiplied by the applicable State percentage.

(2) For purposes of this subsection, the applicable State percentage is equal to the quotient resulting from the division of the product of—

(A) the State excess unemployment percentage, multiplied by

(B) the State revenue sharing amount by the sum of such products for all the States.

(3) For the purposes of this section—

(A) the term ''State'' means each State of the United States;

(B) the State excess unemployment percentage is equal to the difference resulting from the subtraction of 4.5 percentage points from the State unemployment rate for that State but shall not be less than zero;

(C) the State unemployment rate is equal to the rate of unemployment in the State during the appropriate calendar quarter, as determined by the Secretary of Labor and reported to the Secretary; and

(D) the State revenue sharing amount is the amount determined under sections 6705–6707(a) of title 31[1] for the most recently completed entitlement period, as defined under section 6701(a)(1) of title 31.

(c) Local government allocation; percentage; definitions; special limitation

(1) The Secretary shall allocate from amounts reserved under subsection (a)(2) of this section an amount for the purpose of making payments to each local government, subject to the provisions of paragraph (4), equal to the total amount reserved under such subsection for calendar quarter multiplied by the local government percentage.

(2) For purposes of this subsection, the local government percentage is equal to the quotient resulting from the division of the product of—

(A) the local excess unemployment percentage, multiplied by

(B) the local revenue sharing amount, by the sum of such products for all local governments.

(3) For purposes of this subsection—

(A) the local excess unemployment percentage is equal to the difference resulting from the subtraction of 4.5 percentage points from the local unemployment rate, but shall not be less than zero;

(B) the local unemployment rate is equal to the rate of unemployment in the jurisdiction of the local government during the appropriated calendar quarter, as determined or assigned by the Secretary of Labor and reported to the Secretary (in the case of a local government for which the Secretary of Labor cannot determine a local unemployment rate, he shall assign such local government the local unemployment rate of the smallest unit or subunit of local government for which he has determined a local unemployment rate and within the jurisdiction of which such local government is located, unless—

(i) the Governor of the State in which such local government is located has provided the Secretary of Labor with a local unemployment rate for such local government, and

(ii) the Secretary of Labor finds that such local unemployment rate provided by the Governor has been determined in a manner consistent with the procedures and methodologies used by the Secretary of Labor in determining local unemployment rates,

in which case the Secretary of Labor shall assign such local government the local unemployment rate provided by such Governor);

(C) the local revenue sharing amount is the amount determined under sections 6701(a)(5), (7), (b)–(d), and 6708–6712 of title 31[1] for the most recently completed entitlement period, as defined under section 6701(a)(1) of title 31;[1]

(D) the term ''local government'' means the government of a county, municipality, township, or other unit of government below the State which—

(i) is a unit of general government (determined on the basis of the same principles as

[1] See References in Text note below.

are used by the Bureau of the Census for general statistical purposes), and

(ii) performs substantial governmental functions. Such term includes the District of Columbia and also includes the recognized governing body of an Indian tribe or Alaskan Native village which performs substantial governmental functions. Such term does not include the government of a township area unless such government performs substantial governmental functions.

(4) If the amount which would be allocated to any unit of local government under this subsection is less than $100, then no amount shall be allocated for such unit of local government under this subsection.

(Pub. L. 94–369, title II, § 203, July 22, 1976, 90 Stat. 1003; Pub. L. 94–447, title II, § 201(2), (3), Oct. 1, 1976, 90 Stat. 1498; Pub. L. 95–30, title VI, § 603(a)–(h), May 23, 1977, 91 Stat. 165, 166.)

REFERENCES IN TEXT

Chapter 67 of title 31, including sections 6701 and 6705 to 6712, referred to in subsecs. (b)(3)(D) and (c)(3)(C), was repealed by Pub. L. 99–272, title XIV, § 14001(a)(1), Apr. 7, 1986, 100 Stat. 327. See, also, Codification note below.

CODIFICATION

In subsecs. (b)(3)(D) and (c)(3)(C), ''sections 6705–6707(a) of title 31'' substituted for ''section 107 of the State and Local Fiscal Assistance Act of 1972 [31 U.S.C. 1226]'', ''sections 6701(a)(5), (7), (b)–(d), and 6708–6712 of title 31'' substituted for ''section 108 of the State and Local Fiscal Assistance Act of 1972 [31 U.S.C. 1227], and ''section 6701(a)(1) of title 31'' substituted for ''section 141(b) of such Act [31 U.S.C. 1261(b)]'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance. See, also, References in Text note above.

AMENDMENTS

1977—Subsec. (b)(3)(D). Pub. L. 95–30, § 603(a), substituted ''for the most recently completed entitlement period, as defined under section 1261(b) of title 31'' for ''for the one-year period beginning on July 1, 1975''.

Subsec. (c)(1). Pub. L. 95–30, § 603(b), substituted ''paragraph (4)'' for ''paragraphs (3) and (5)''.

Subsec. (c)(3). Pub. L. 95–30, § 603(c)–(h), struck out par. (3) which set out special rules for local governments other than identifiable local governments, redesignated par. (4) as (3), substituted ''determined or assigned'' for ''determined'' in subpar. (B), substituted provisions covering local governments for which the Secretary of Labor cannot determine a local unemployment rate for provisions covering local governments treated as one local government in subpar. (B), substituted ''for the most recently completed entitlement period, as defined under section 1261(b) of title 31'' for ''for the one–year period beginning July 1, 1975'' in subpar. (C), struck out parenthetical provisions covering local governments treated as one local government in subpar. (C), struck out subpar. (D) which had defined ''identifiable local government'', redesignated former subpar. (E) as (D), substituted ''Bureau of the Census'' for ''Social and Economic Statistics Administration'' in cl. (i) of subpar. (D) as so redesignated, and struck out provisions which had directed the Secretary of Labor to make determinations with respect to rates of unemployment for the purposes of title VI of the Comprehensive Employment and Training Act of 1973.

Subsec. (c)(4), (5). Pub. L. 95–30, § 603(c), redesignated pars. (4) and (5) as (3) and (4), respectively.

1976—Subsec. (c)(3)(C)(ii). Pub. L. 94–447, § 201(2), substituted ''90 days'' for ''thirty days''.

Subsec. (c)(4)(E)(ii). Pub. L. 94–447, § 201(3), substituted ''or Alaskan Native village'' for ''of Alaskan Native village''.

§ 6724. Uses of payments

Each State and local government shall use payments made under this subchapter for the maintenance of basic services customarily provided to persons in that State or in the area under the jurisdiction of that local government, as the case may be. State and local governments may not use emergency support payments made under this subchapter for the acquisition of supplies and materials or for construction, except for normal supplies or repairs necessary to maintain basic services.

(Pub. L. 94–369, title II, § 204, July 22, 1976, 90 Stat. 1006; Pub. L. 94–447, title II, § 201(4), Oct. 1, 1976, 90 Stat. 1498; Pub. L. 95–30, title VI, § 604, May 23, 1977, 91 Stat. 166.)

AMENDMENTS

1977—Pub. L. 95–30 substituted ''or for construction, except for normal supplies or repairs necessary to maintain basic services'' for ''and for construction, unless such supplies and materials or construction are to maintain basic services''.

1976—Pub. L. 94–447 substituted ''support payments'' for ''support grants''.

§ 6725. Statement of assurances as prerequisite for payments; rules governing time and manner of filing; contents of statement

Each State and unit of local government may receive payments under this subchapter only upon filing with the Secretary, at such time and in such manner as the Secretary prescribes by rule, a statement of assurances. Such rules shall be prescribed by the Secretary not later than ninety days after July 22, 1976. The Secretary may not require any State or local government to file more than one such statement during each fiscal year. Each such statement shall contain—

(1) an assurance that payments made under this subchapter to the State or local government will be used for the maintenance, to the extent practical, of levels of public employment and of basic services customarily provided to persons in that State or in the area under the jurisdiction of that unit of local government which is consistent with the provisions of section 6724 of this title;

(2) an assurance that the State or unit of local government will—

(A) use fiscal, accounting, and audit procedures which conform to guidelines established therefor by the Secretary (after consultation with the Comptroller General of the United States), and

(B) provide to the Secretary (and to the Comptroller General of the United States), on reasonable notice, access to, and the right to examine, such books, documents, papers, or records as the Secretary may reasonably require for purposes of reviewing compliance with this subchapter;

(3) an assurance that reasonable reports will be furnished to the Secretary in such form and containing such information as the Secretary may reasonably require to carry out the pur-

poses of this subchapter and that such report shall be published in a newspaper of general circulation in the jurisdiction of such government unless the cost of such publication is excessive in relation to the amount of the payments received by such government under this subchapter or other means of publicizing such report is more appropriate, in which case such report shall be publicized pursuant to rules prescribed by the Secretary;

(4) an assurance that the requirements of section 6727 of this title will be complied with;

(5) an assurance that the requirements of section 6728 of this title will be complied with;

(6) an assurance that the requirements of section 6729 of this title will be complied with;

(7) an assurance that the State or unit of local government will spend any payment it receives under this subchapter before the end of the six-calendar-month period which begins on the day after the date on which such State or local government receives such payment; and

(8) an assurance that the State or unit of local government will spend amounts received under this subchapter only in accordance with the laws and procedures applicable to the expenditure of its own revenues.

(Pub. L. 94–369, title II, § 205, July 22, 1976, 90 Stat. 1006.)

§ 6726. Repealed. Pub. L. 95–30, title VI, § 603(i), May 23, 1977, 91 Stat 166

Section, Pub. L. 94–369, title II, § 206, July 22, 1976, 90 Stat. 1007, provided for the filing of optional State allocation plans.

§ 6727. Nondiscrimination

(a)(1) No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government, which government or unit receives funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 shall also apply to any such program or activity. Any prohibition against discrimination on the basis of religion, or any exemption, from such prohibition, as provided in the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] or title VIII of the Act of April 11, 1968, commonly referred to as Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], shall also apply to any such program or activity.

(2)(A) The provisions of paragraph (1) of this subsection shall not apply where any State government or unit of local government demonstrates, by clear and convincing evidence, that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part with funds made available under this subchapter.

(B) The provisions of paragraph (1), relating to discrimination on the basis of handicapped status, shall not apply with respect to construction projects commenced prior to January 1, 1977.

(b) The provisions of subsection (a) of this section shall be enforced by the Secretary in the same manner and in accordance with the same procedures as are required by sections 6701(a)(2), (3), 6716–6720, 6721, and 6723(f) of title 31[1] to enforce compliance with section 6716(a)–(c) of title 31.[1] The Attorney General shall have the same authority, functions, and duties with respect to funds made available under this subchapter as the Attorney General has under sections 6716(d), 6720, and 6721(d) of title 31[1] with respect to funds made available under chapter 67 of title 31.[1] Any person aggrieved by a violation of subsection (a) of this section shall have the same rights and remedies as a person aggrieved by a violation of section 6716(a)–(c) of title 31,[1] including the rights provided under section 6721(d) of title 31.[1]

(Pub. L. 94–369, title II, § 207, July 22, 1976, 90 Stat. 1007; Pub. L. 95–30, title VI, § 605, May 23, 1977, 91 Stat. 166.)

References in Text

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Act of April 11, 1968, referred to in subsec. (a)(1), is Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, as amended, known as the Civil Rights Act of 1968. Title VIII of Pub. L. 90–284, known as the Fair Housing Act, is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title.

Chapter 67 of title 31, including sections 6701, 6716–6720, 6721, and 6723, referred to in subsec. (b), was repealed by Pub. L. 99–272, title XIV, § 14001(a)(1), Apr. 7, 1986, 100 Stat. 327. See, also, Codification note below.

Codification

In subsec. (b), ''sections 6701(a)(2), (3), 6716–6720, 6721, and 6723(f) of title 31'' substituted for ''sections 122, 124, and 125 of the State and Local Fiscal Assistance Act of 1972 [31 U.S.C. 1242, 1244, 1245]'', ''section 6716(a)–(c) of title 31'' substituted for ''section 122(a) of such Act'' and also for ''subsection (a) of section 122 of such Act'' [31 U.S.C. 1242(a)], ''sections 6716(d), 6720, and 6721(d) of title 31'' substituted for ''sections 122(g) and (h) and 124(c) of such Act [31 U.S.C. 1242(g), (h), 1244(c)]'', and ''chapter 67 of title 31'' substituted for ''that Act [31 U.S.C. 1221 et seq.]'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance. See, also, References in Text note above.

Amendments

1977—Pub. L. 95–30 amended section generally, inserting reference to discriminatory practices prohibited by the Age Discrimination Act of 1975 and the Rehabilitation Act of 1973 and generally restructuring the enforcement and remedies provisions to incorporate the procedures of the Secretary and of the Attorney General under the State and Local Fiscal Assistance Act of 1972.

[1] See References in Text note below.

§ 6728. Wage standards for laborers and mechanics; enforcement

All laborers and mechanics employed by contractors on all construction projects funded in whole or in part by payments under this subchapter shall be paid wages at rates not less than those prevailing on similar projects in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 3145 of title 40.

(Pub. L. 94–369, title II, § 208, July 22, 1976, 90 Stat. 1008.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act (40 U.S.C. 276a to 276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 6729. Reports to Secretary by States and local governments; contents

Each State and unit of local government which receives a payment under the provisions of this subchapter shall report to the Secretary any increase or decrease in any tax which it imposes and any substantial reduction in the number of individuals it employs or in services which such State or local government provides. Each State which receives a payment under the provisions of this subchapter shall report to the Secretary any decrease in the amount of financial assistance which the State provides to the units of local governments during the twelve-month period which ends on the last day of the calendar quarter immediately preceding July 22, 1976, together with an explanation of the reasons for such decrease. Such reports shall be made as soon as it is practical and, in any case, not more than six months after the date on which the decision to impose such tax increase or decrease, such reductions in employment or services, or such decrease in State financial assistance is made public.

(Pub. L. 94–369, title II, § 209, July 22, 1976, 90 Stat. 1008.)

§ 6730. Payments

(a) Time and amount

From the amount allocated for State and local governments under section 6723 of this title, the Secretary shall pay not later than five days after the beginning of each quarter to each State and to each local government which has filed a statement of assurances under section 6725 of this title, an amount equal to the amount allocated to such State or local government under section 6723 of this title.

(b) Adjustments

Payments under this subchapter may be made with necessary adjustments on account of overpayments or underpayments.

(c) Termination

No amount shall be paid to any State or local government under the provisions of this section for any calendar quarter if—

(1) the average rate of unemployment within the jurisdiction of such State or local government during the most recent calendar quarter which ended three months before the beginning of such calendar quarter was less than 4.5 percent, or

(2) the rate of unemployment within the jurisdiction of such government for the last month of the most recent calendar quarter which ended three months before the beginning of such calendar quarter did not exceed 4.5 percent.

(Pub. L. 94–369, title II, § 210, July 22, 1976, 90 Stat. 1009; Pub. L. 94–447, title II, § 201 (5), Oct. 1, 1976, 90 Stat. 1498.)

AMENDMENTS

1976—Subsec. (c)(1). Pub. L. 94–447 substituted ''4.5 percent, or'' for ''4.5 percent, and''.

§ 6731. Economization by State and local governments; statement of assurances, etc., required

Each State or unit of local government which receives payments under this subchapter shall provide assurances in writing to the Secretary, at such time and in such manner and form as the Secretary may prescribe by rule, that it has made substantial economies in its operations and that payments under this subchapter are necessary to maintain essential services without weakening Federal Government efforts to stimulate the economy through reductions in Federal tax obligations.

(Pub. L. 94–369, title II, § 211, July 22, 1976, 90 Stat. 1009.)

§ 6732. Withholding of payments for failure to comply with statement of assurances; procedures applicable

Whenever the Secretary, after affording reasonable notice and an opportunity for a hearing to any State or unit of local government, finds that there has been a failure to comply substantially with any assurance set forth in the statement of assurances of that State or units of local government filed under section 6725 of this title, the Secretary shall notify that State or unit of local government that further payments will not be made under this subchapter until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made under this subchapter.

(Pub. L. 94–369, title II, § 212, July 22, 1976, 90 Stat. 1009.)

§ 6733. Repealed. Pub. L. 104–66, title I, § 1131(b), Dec. 21, 1995, 109 Stat. 725

Section, Pub. L. 94–369, title II, § 213, July 22, 1976, 90 Stat. 1009, related to reports to Congress by Secretary of the Treasury.

§ 6734. Administration; rules; authorization of appropriations

(a) The Secretary is authorized to prescribe, after consultation with the Secretary of Labor, such rules as may be necessary for the purpose of carrying out his functions under this subchapter. Such rules should be prescribed by the Secretary not later than ninety days of July 22, 1976.

(b) There are authorized to be appropriated such sums as may be necessary for the administration of this subchapter.

(Pub. L. 94–369, title II, § 214, July 22, 1976, 90 Stat. 1010.)

§ 6735. Program studies and recommendations; evaluation; countercyclical study

(a) The Comptroller General of the United States shall conduct an investigation of the impact which emergency support grants have on the operations of State and local governments and on the national economy. Before and during the course of such investigation the Comptroller General shall consult with and coordinate his activities with the Congressional Budget Office and the Advisory Commission on Intergovernmental Relations. The Comptroller General shall report the results of such investigation to the Congress within one year after July 22, 1976, together with an evaluation of the macroeconomic effect of the program established under this subchapter and any recommendations for improving the effectiveness of similar programs. All officers and employees of the United States shall make available all information, reports, data, and any other material necessary to carry out the provisions of this subsection to the Comptroller General upon a reasonable request.

(b) The Congressional Budget Office and the Advisory Commission on Intergovernmental Relations shall conduct a study to determine the most effective means by which the Federal Government can stabilize the national economy during periods of rapid economic growth and high inflation through programs directed toward State and local governments. Such study shall include a comparison of the effectiveness of alternative factors for triggering and measuring the extent of the fiscal coordination problem addressed by this program, and the effect of the recession on State and local expenditures. Before and during the course of such study, the Congressional Budget Office and the Advisory Commission shall consult with and coordinate their activities with the Comptroller General of the United States. The Congressional Budget Office and the Advisory Commission shall report the results of such study to Congress within two years after July 22, 1976. Such study shall include the opinions of the Comptroller General with respect to such study.

(c) The Secretary shall, in consultation with the Secretary of Commerce, conduct an investigation of—

(1) the extent to which allocations of funds provided under this chapter might be more precisely related to true economic conditions by the use of data on aggregate declines in private real wages and salaries;

(2) the extent to which other factors, such as relative tax effort, should also be made part of the allocation system provided by this chapter; and

(3) the availability and reliability of data concerning Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, and the extent to which such territories may properly be made part of the regular allocation system applicable to the several States.

The results of such investigation shall be submitted to the Congress not later than March 1, 1978, in order that such results may be available during congressional consideration of any extension of this chapter beyond the fiscal year ending September 30, 1978.

(Pub. L. 94–369, title II, § 215, July 22, 1976, 90 Stat. 1010; Pub. L. 95–30, title VI, § 606, May 23, 1977, 91 Stat. 167.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95–30 added subsec. (c).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 6736. Authorization of appropriations for Puerto Rico, Guam, American Samoa, and Virgin Islands

(a) Authorizations for five calendar quarters beginning July 1, 1977

There is hereby authorized to be appropriated for each of the five succeeding calendar quarters (beginning with the calendar quarter which begins on July 1, 1977) for the purpose of making payments under this subchapter to Puerto Rico, Guam, American Samoa, and the Virgin Islands, an amount equal to 1 percent of the amount authorized for each such quarter under section 6722(b) of this title.

(b) Allocations

(1) The Secretary shall allocate from the amount authorized under subsection (a) of this section an amount for the purpose of making payments to such governments equal to the total authorized for the calendar quarter multiplied by the applicable territorial percentage.

(2) For the purposes of this subsection, the applicable territorial percentage is equal to the quotient resulting from the division of the territorial population by the sum of the territorial population for all territories.

(3) For purposes of this section—

(A) The term ''territory'' means Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(B) The term ''territorial population'' means the most recent population for each territory as determined by the Bureau of Census.

(C) The provisions of sections 6723(c)(4), 6724, 6725, 6726,[1] 6727, 6728, 6729, 6730, 6731, 6732, and

[1] See References in Text note below.

6733[1] of this title shall apply to the funds authorized under this section.

(c) Payments to local governments

The governments of the territories are authorized to make payments to local governments within their jurisdiction from sums received under this section as they deem appropriate.

(Pub. L. 94–369, title II, § 216, as added Pub. L. 95–30, title VI, § 607, May 23, 1977, 91 Stat. 167.)

REFERENCES IN TEXT

Section 6726 of this title, referred to in subsec. (b)(3)(C), was repealed by Pub. L. 95–30, title VI, § 603(i), May 23, 1977, 91 Stat. 166.

Section 6733 of this title, referred to in subsec. (b)(3)(C), was repealed by Pub. L. 104–66, title I, § 1131(b), Dec. 21, 1995, 109 Stat. 725.

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SUBCHAPTER I—ELECTRIC UTILITY RATE DESIGN INITIATIVES

§ 6801. Congressional findings and purpose

(a) The Congress finds that improvement in electric utility rate design has great potential for reducing the cost of electric utility services to consumers and current and projected shortages of capital, and for encouraging energy conservation and better use of existing electrical generating facilities.

(b) It is the purpose of this subchapter to require the Secretary to develop proposals for improvement of electric utility rate design and transmit such proposals to Congress; to fund electric utility rate demonstration projects; to intervene or participate, upon request, in the proceedings of utility regulatory commissions; and to provide financial assistance to State offices of consumer services to facilitate presentation of consumer interests before such commissions.

(Pub. L. 94–385, title II, § 201, Aug. 14, 1976, 90 Stat. 1142; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

SHORT TITLE

Section 1 of Pub. L. 94–385 provided: ''That this Act [enacting this chapter, section 6327 of this title, section 1701z–8 of Title 12, Banks and Banking, sections 787 and 790 to 790h of Title 15, Commerce and Trade, amending sections 5818, 6211, 6295, 6323, 6325, and 6326 of this title and sections 757, 764, 766, 772, 774, 777 and 784 of Title 15, and enacting provisions set out as notes under sections 6801, 6831, and 6851 of this title, and sections 753, 757, 761, and 790 of Title 15] may be cited as the 'Energy Conservation and Production Act'.''

Section 301 of title III of Pub. L. 94–385 provided that: ''This title [enacting subchapter II of this chapter] may be cited as the 'Energy Conservation Standards for New Buildings Act of 1976'.''

Section 401 of title IV of Pub. L. 94–385 provided that: ''This title [enacting subchapter III of this chapter, section 6327 of this title, and section 1701z–8 of Title 12, Banks and Banking, and amending sections 6323, 6325, and 6326 of this title] may be cited as the 'Energy Conservation in Existing Buildings Act of 1976'.''

TRANSFER OF FUNCTIONS

''Secretary'', meaning Secretary of Energy, substituted for ''Federal Energy Administration'' in subsec. (b) pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions (with certain exceptions) to Secretary of Energy.

§ 6802. Definitions

As used in this subchapter:

(1) The term ''Secretary'' means the Secretary of Energy.

(2) The term ''electric utility'' means any person, State agency, or Federal agency which sells electric energy.

(3) The term ''Federal agency'' means any agency or instrumentality of the United States.

(4) The term ''State agency'' means a State, political subdivision thereof, or any agency or instrumentality of either.

(5) The term ''State utility regulatory commission'' means (A) any utility regulatory commission which is a State agency or (B) the Tennessee Valley Authority.

(6) The term ''State'' means any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States.

(7) The term ''utility regulatory commission'' means any State agency or Federal agency which has authority to fix, modify, approve, or disapprove rates for the sale of electric energy by any electric utility (other than by such agency).

(Pub. L. 94–385, title II, § 202, Aug. 14, 1976, 90 Stat. 1142; Pub. L. 95–617, title I, § 143, Nov. 9, 1978, 92 Stat. 3134; Pub. L. 105–388, § 5(b)(2), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Par. (1). Pub. L. 105–388 made technical amendment by striking heading and designation which had been inserted by Pub. L. 95–617.

1978—Par. (1). Pub. L. 95–617 substituted ''The term 'Secretary' means the Secretary of Energy'' for ''The term 'Administrator' means the Administrator of the Federal Energy Administration; except that after such Administration ceases to exist, such term means any officer of the United States designated by the President for purposes of this subchapter''.

§ 6803. Development of electric utility rate design proposals by Secretary; contents; submission to Congress; supporting analysis

(a) The Secretary shall develop proposals to improve electric utility rate design. Such proposals shall be designed to encourage energy conservation, minimize the need for new electrical generating capacity, and minimize costs of electric energy to consumers, and shall include (but not be limited to) proposals which provide for the development and implementation of—

(1) load management techniques which are cost effective;

(2) rates which reflect marginal cost of service, or time of use of service, or both;

(3) ratemaking policies which discourage inefficient use of fuel and encourage economical purchases of fuel; and

(4) rates (or other regulatory policies) which encourage electric utility system reliability and reliability of major items of electric utility equipment.

(b) The proposals prepared under subsection (a) of this section shall be transmitted to each House of Congress not later than 6 months after August 14, 1976, for review and for such further action as the Congress may direct by law. Such proposals shall be accompanied by an analysis of—

(1) the projected savings (if any) in consumption of petroleum products, natural gas, electric energy, and other energy resources,

(2) the reduction (if any) in the need for new electrical generating capacity, and of the demand for capital by the electric utility industry, and

(3) changes (if any) in the cost of electric energy to consumers,

which are likely to result from the implementation nationally of each of the proposals transmitted under this subsection.

(Pub. L. 94–385, title II, § 203, Aug. 14, 1976, 90 Stat. 1143; Pub. L. 95–617, title I, § 143, Nov. 9, 1978, 92 Stat. 3134.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–617 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

§ 6804. Funding, administrative, and judicial authorities of Secretary

The Secretary may—

(1) fund (A) demonstration projects to improve electric utility load management procedures and (B) regulatory rate reform initiatives,

(2) on request of a State, a utility regulatory commission, or of any participant in any proceeding before a State utility regulatory commission which relates to electric utility rates or rate design, intervene and participate in such proceeding, and

(3) on request of any State, utility regulatory commission, or party to any action to obtain judicial review of an administrative proceeding in which the Secretary intervened or participated under paragraph (2), intervene and participate in such action.

(Pub. L. 94–385, title II, § 204, Aug. 14, 1976, 90 Stat. 1143; Pub. L. 95–617, title I, § 143, Nov. 9, 1978, 92 Stat. 3134.)

AMENDMENTS

1978—Pub. L. 95–617 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration in two places.

§ 6805. Grants for State consumer protection offices by Secretary

(a) Establishment, operation, and purpose; qualifications for funds

The Secretary may make grants to States, or otherwise as provided in subsection (c) of this section, under this section to provide for the establishment and operation of offices of consumer services to assist consumers in their presentations before utility regulatory commissions. Any assistance provided under this section shall be provided only for an office of consumer services which is operated independently of any such utility regulatory commission and which is empowered to—

(1) make general factual assessments of the impact of proposed rate changes and other proposed regulatory actions upon all affected consumers;

(2) assist consumers in the presentation of their positions before utility regulatory commissions; and

(3) advocate, on its own behalf, a position which it determines represents the position most advantageous to consumers, taking into account developments in rate design reform.

(b) Grants subject to State assurances on funds

Grants pursuant to subsection (a) of this section shall be made only to States which furnish such assurances as the Secretary may require that funds made available under such section will be in addition to, and not in substitution for, funds made available to offices of consumer services from other sources.

(c) Offices established by Tennessee Valley Authority

Assistance may be provided under this section to an office of consumer services established by the Tennessee Valley Authority, if such office is operated independently of the Tennessee Valley Authority.

(Pub. L. 94–385, title II, § 205, Aug. 14, 1976, 90 Stat. 1144; Pub. L. 95–617, title I, § 143, Nov. 9, 1978, 92 Stat. 3134.)

AMENDMENTS

1978—Subsecs. (a), (b). Pub. L. 95–617 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

§ 6806. Statement in annual report

The Secretary shall include in each annual report submitted under section 7267 of this title a statement with respect to activities conducted under this subchapter and recommendations as to the need for and types of further Federal legislation.

(Pub. L. 94–385, title II, § 206, Aug. 14, 1976, 90 Stat. 1144; Pub. L. 95–617, title I, § 143, Nov. 9, 1978, 92 Stat. 3134; Pub. L. 96–470, title II, § 203(g), Oct. 19, 1980, 94 Stat. 2243.)

AMENDMENTS

1980—Pub. L. 96–470 substituted ''The Secretary shall include in each annual report submitted under section 7267 of this title a statement'' for ''Not later than the last day in December in each year, the Secretary shall transmit to the Congress a report''.

1978—Pub. L. 95–617 substituted ''Secretary'' for ''Administrator'', meaning Administrator of the Federal Energy Administration.

§ 6807. State utility regulatory assistance

(a) Grants to State utility regulatory commissions and nonregulated electric utilities

The Secretary may make grants to State utility regulatory commissions and nonregulated electric utilities (as defined in the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2602]) to carry out duties and responsibilities under titles I [16 U.S.C. 2601 et seq.] and III [15 U.S.C. 3201 et seq.], and section 210 [16 U.S.C. 824a–3], of the Public Utility Regulatory Policies Act of 1978. No grant may be made under this section to any Federal agency.

(b) Unnecessary requirements prohibited

Any requirements established by the Secretary with respect to grants under this section may be only such requirements as are necessary to assure that such grants are expended solely to carry out duties and responsibilities referred to in subsection (a) of this section or such as are otherwise required by law.

(c) Application for grant

No grant may be made under this section unless an application for such grant is submitted to the Secretary in such form and manner as the Secretary may require. The Secretary may not approve an application of a State utility regulatory commission or nonregulated electric utility unless such commission or nonregulated electric utility assures the Secretary that funds made available under this section will be in addition to, and not in substitution for, funds made available to such commission or nonregulated electric utility from other governmental sources.

(d) Apportionment of funds

The funds appropriated for purposes of this section shall be apportioned among the States in such manner that grants made under this section in each State shall not exceed the lesser of—

(1) the amount determined by dividing equally among all States the total amount available under this section for such grants, or

(2) the amount which the Secretary is authorized to provide pursuant to subsections (b) and (c) of this section for such State.

(Pub. L. 94–385, title II, § 207, Aug. 14, 1976, 90 Stat. 1144; Pub. L. 95–617, title I, § 141, Nov. 9, 1978, 92 Stat. 3133.)

REFERENCES IN TEXT

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (a), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, as amended. Title I of such Act is classified principally to chapter 46 (§ 2601 et seq.) of Title 16, Conservation, and title III of such Act is classified generally to chapter 59 (§ 3201 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16 and Tables.

AMENDMENTS

1978—Pub. L. 95–617 substituted provisions relating to grants to State utility regulatory commissions and nonregulated electric utilities for provisions authorizing appropriations to carry out this subchapter.

§ 6807a. Energy efficiency grants to State regulatory authorities

(a) Energy efficiency grants

The Secretary is authorized in accordance with the provisions of this section to provide grants to State regulatory authorities in an amount not to exceed $250,000 per authority, for purposes of encouraging demand-side management including energy conservation, energy efficiency and load management techniques and for meeting the requirements of paragraphs (7), (8), and (9) of section 2621(d) of title 16 and as a means of meeting gas supply needs and to meet the requirements of paragraphs (3) and (4) of section 3203(b) of title 15. Such grants may be utilized by a State regulatory authority to provide financial assistance to nonprofit subgrantees of the Department of Energy's Weatherization Assistance Program in order to facilitate participation by such subgrantees in proceedings of

such regulatory authority to examine energy conservation, energy efficiency, or other demand-side management programs.

(b) Plan

A State regulatory authority wishing to receive a grant under this section shall submit a plan to the Secretary that specifies the actions such authority proposes to take that would achieve the purposes of this section.

(c) Secretarial action

(1) In determining whether, and in what amount, to provide a grant to a State regulatory authority under this section the Secretary shall consider, in addition to other appropriate factors, the actions proposed by the State regulatory authority to achieve the purposes of this section and to consider implementation of the ratemaking standards established in—

(A) paragraphs (7), (8) and (9) of section 2621(d) of title 16; or

(B) paragraphs (3) and (4) of section 3203(b) of title 15.

(2) Such actions—

(A) shall include procedures to facilitate the participation of grantees and nonprofit subgrantees of the Department of Energy's Weatherization Assistance Program in proceedings of such regulatory authorities examining demand-side management programs; and

(B) shall provide for coverage of the cost of such grantee and subgrantees' participation in such proceedings.

(d) Recordkeeping

Each State regulatory authority that receives a grant under this section shall keep such records as the Secretary shall require.

(e) "State regulatory authority" defined

For purposes of this section, the term ''State regulatory authority'' shall have the same meaning as provided by section 2602 of title 16 in the case of electric utilities, and such term shall have the same meaning as provided by section 3202 of title 15 in the case of gas utilities, except that in the case of any State without a statewide ratemaking authority, such term shall mean the State energy office.

(f) Authorization

There are authorized to be appropriated $5,000,000 for each of the fiscal years 1994, 1995 and 1996 to carry out the purposes of this section.

(Pub. L. 102–486, title I, § 112, Oct. 24, 1992, 106 Stat. 2797.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Energy Conservation and Production Act which comprises this chapter.

§ 6808. Authorization of appropriations

There are authorized to be appropriated—

(1) not to exceed $40,000,000 for each of the fiscal years 1979 and 1980 to carry out section 6807 of this title (relating to State utility regulatory assistance);

(2) not to exceed $10,000,000 for each of the fiscal years 1979 and 1980 to carry out section 6805 of this title (relating to State offices of consumer services); and

(3) not to exceed $8,000,000 for the fiscal year 1979, and $10,000,000 for the fiscal year 1980 to carry out section 6804(1)(B) of this title (relating to innovative rate structures).

(Pub. L. 94–385, title II, § 208, as added Pub. L. 95–617, title II, § 142, Nov. 9, 1978, 92 Stat. 3134.)

SUBCHAPTER II—ENERGY CONSERVATION STANDARDS FOR NEW BUILDINGS

§ 6831. Congressional findings and purpose

(a) The Congress finds that—

(1) large amounts of fuel and energy are consumed unnecessarily each year in heating, cooling, ventilating, and providing domestic hot water for newly constructed residential and commercial buildings because such buildings lack adequate energy conservation features;

(2) Federal voluntary performance standards for newly constructed buildings can prevent such waste of energy, which the Nation can no longer afford in view of its current and anticipated energy shortage;

(3) the failure to provide adequate energy conservation measures in newly constructed buildings increases long-term operating costs that may affect adversely the repayment of, and security for, loans made, insured, or guaranteed by Federal agencies or made by federally insured or regulated instrumentalities; and

(4) State and local building codes or similar controls can provide an existing means by which to assure, in coordination with other building requirements and with a minimum of Federal interference in State and local transactions, that newly constructed buildings contain adequate energy conservation features.

(b) The purposes of this subchapter, therefore, are to—

(1) redirect Federal policies and practices to assure that reasonable energy conservation features will be incorporated into new commercial and residential buildings receiving Federal financial assistance;

(2) provide for the development and implementation, as soon as practicable, of voluntary performance standards for new residential and commercial buildings which are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of nondepletable sources of energy; and

(3) encourage States and local governments to adopt and enforce such standards through their existing building codes and other construction control mechanisms, or to apply them through a special approval process.

(Pub. L. 94–385, title III, § 302, Aug. 14, 1976, 90 Stat. 1144; Pub. L. 97–35, title X, § 1041(a), Aug. 13, 1981, 95 Stat. 621.)

AMENDMENTS

1981—Subsecs. (a)(2), (b)(2). Pub. L. 97–35 inserted ''voluntary'' before ''performance standards''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as a note under section 6240 of this title.

SHORT TITLE

For short title of this subchapter as the ''Energy Conservation Standards for New Buildings Act of 1976'', see section 301 of Pub. L. 94–385, set out as a note under section 6801 of this title.

§ 6832. Definitions

As used in this subchapter:

(1) Omitted

(2) The term ''building'' means any structure to be constructed which includes provision for a heating or cooling system, or both, or for a hot water system.

(3) The term ''building code'' means a legal instrument which is in effect in a State or unit of general purpose local government, the provisions of which must be adhered to if a building is to be considered to be in conformance with law and suitable for occupancy and use.

(4) The term ''commercial building'' means any building other than a residential building, including any building developed for industrial or public purposes.

(5) The term ''Federal agency'' means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(6) The term ''Federal building'' means any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements.

(7) The term ''Federal financial assistance'' means (A) any form of loan, grant, guarantee, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance (other than general or special revenue sharing or formula grants made to States) approved by any Federal officer or agency; or (B) any loan made or purchased by any bank, savings and loan association, or similar institution subject to regulation by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration.

(8) The term ''National Institute of Building Sciences'' means the institute established by section 1701j–2 of title 12.

(9) The term ''residential building'' means any structure which is constructed and developed for residential occupancy.

(10) The term ''Secretary'' means the Secretary of Energy.

(11) The term ''State'' includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory and possession of the United States.

(12) The term ''unit of general purpose local government'' means any city, county, town, municipality, or other political subdivision of a State (or any combination thereof), which has a building code or similar authority over a particular geographic area.

(13) The term ''Federal building energy standards'' means energy consumption objectives to be met without specification of the methods, materials, or equipment to be employed in achieving those objectives, but including statements of the requirements, criteria, and evaluation methods to be used, and any necessary commentary.

(14) The term ''voluntary building energy code'' means a building energy code developed and updated through a consensus process among interested persons, such as that used by the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-Conditioning Engineers; or other appropriate organizations.

(15) The term ''CABO'' means the Council of American Building Officials.

(16) The term ''ASHRAE'' means the American Society of Heating, Refrigerating, and Air-Conditioning Engineers.

(Pub. L. 94–385, title III, § 303, Aug. 14, 1976, 90 Stat. 1145; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 97–35, title X, § 1041(a), Aug. 13, 1981, 95 Stat. 621; Pub. L. 100–242, title V, § 570(c), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 102–486, title I, § 101(a)(1), Oct. 24, 1992, 106 Stat. 2782.)

CODIFICATION

Par. (1) of this section which read ''The term 'Administrator' means the Administrator of the Federal Energy Administration; except that after such Administration ceases to exist, such term means any officer of the United States designated by the President for purposes of this subchapter'' has been omitted in view of the termination of the Federal Energy Administration and the transfer of its functions and the functions of the Administrator thereof (with certain exceptions) to the Secretary of Energy pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and the fact that the term ''Secretary'' is defined for the purposes of this subchapter by par. (10) of this section. In this subchapter, ''Secretary of Energy'' has been substituted for ''Administrator'' wherever appearing.

AMENDMENTS

1992—Pars. (9) to (16). Pub. L. 102–486 redesignated pars. (10) to (13) as (9) to (12), respectively, added pars. (13) to (16), and struck out former par. (9) which read as follows: ''The term 'voluntary performance standards' means an energy consumption goal or goals to be met without specification of the methods, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary.''

1988—Par. (11). Pub. L. 100–242 substituted ''Secretary of Energy'' for ''Secretary of Housing and Urban Development''.

1981—Par. (9). Pub. L. 97–35 inserted ''voluntary'' before ''performance standards''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as a note under section 6240 of this title.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation and Federal Home Loan Bank Board abolished and func-

tions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

§ 6833. Updating State building energy efficiency codes

(a) Consideration and determination respecting residential building energy codes

(1) Not later than 2 years after October 24, 1992, each State shall certify to the Secretary that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise such residential building code provisions to meet or exceed CABO Model Energy Code, 1992.

(2) The determination referred to in paragraph (1) shall be—

(A) made after public notice and hearing;

(B) in writing;

(C) based upon findings included in such determination and upon the evidence presented at the hearing; and

(D) available to the public.

(3) Each State may, to the extent consistent with otherwise applicable State law, revise the provisions of its residential building code regarding energy efficiency to meet or exceed CABO Model Energy Code, 1992, or may decline to make such revisions.

(4) If a State makes a determination under paragraph (1) that it is not appropriate for such State to revise its residential building code, such State shall submit to the Secretary, in writing, the reasons for such determination, and such statement shall be available to the public.

(5)(A) Whenever CABO Model Energy Code, 1992,[1] (or any successor of such code) is revised, the Secretary shall, not later than 12 months after such revision, determine whether such revision would improve energy efficiency in residential buildings. The Secretary shall publish notice of such determination in the Federal Register.

(B) If the Secretary makes an affirmative determination under subparagraph (A), each State shall, not later than 2 years after the date of the publication of such determination, certify that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise such residential building code provisions to meet or exceed the revised code for which the Secretary made such determination.

(C) Paragraphs (2), (3), and (4) shall apply to any determination made under subparagraph (B).

(b) Certification of commercial building energy code updates

(1) Not later than 2 years after October 24, 1992, each State shall certify to the Secretary that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency. Such certification shall include a demonstration that such State's code provisions meet or exceed the requirements of ASHRAE Standard 90.1–1989.

(2)(A) Whenever the provisions of ASHRAE Standard 90.1–1989 (or any successor standard) regarding energy efficiency in commercial buildings are revised, the Secretary shall, not later than 12 months after the date of such revision, determine whether such revision will improve energy efficiency in commercial buildings. The Secretary shall publish a notice of such determination in the Federal Register.

(B)(i) If the Secretary makes an affirmative determination under subparagraph (A), each State shall, not later than 2 years after the date of the publication of such determination, certify that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency in accordance with the revised standard for which such determination was made. Such certification shall include a demonstration that the provisions of such State's commercial building code regarding energy efficiency meet or exceed such revised standard.

(ii) If the Secretary makes a determination under subparagraph (A) that such revised standard will not improve energy efficiency in commercial buildings, State commercial building code provisions regarding energy efficiency shall meet or exceed ASHRAE Standard 90.1–1989, or if such standard has been revised, the last revised standard for which the Secretary has made an affirmative determination under subparagraph (A).

(c) Extensions

The Secretary shall permit extensions of the deadlines for the certification requirements under subsections (a) and (b) of this section if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress in doing so.

(d) Technical assistance

The Secretary shall provide technical assistance to States to implement the requirements of this section, and to improve and implement State residential and commercial building energy efficiency codes or to otherwise promote the design and construction of energy efficient buildings.

(e) Availability of incentive funding

(1) The Secretary shall provide incentive funding to States to implement the requirements of this section, and to improve and implement State residential and commercial building energy efficiency codes, including increasing and verifying compliance with such codes. In determining whether, and in what amount, to provide incentive funding under this subsection, the Secretary shall consider the actions proposed by the State to implement the requirements of this section, to improve and implement residential and commercial building energy efficiency codes, and to promote building energy efficiency through the use of such codes.

(2) Additional funding shall be provided under this subsection for implementation of a plan to achieve and document at least a 90 percent rate of compliance with residential and commercial building energy efficiency codes, based on energy performance—

(A) to a State that has adopted and is implementing, on a statewide basis—

[1] So in original. The comma probably should not appear.

(i) a residential building energy efficiency code that meets or exceeds the requirements of the 2004 International Energy Conservation Code, or any succeeding version of that code that has received an affirmative determination from the Secretary under subsection (a)(5)(A) of this section; and

(ii) a commercial building energy efficiency code that meets or exceeds the requirements of the ASHRAE Standard 90.1–2004, or any succeeding version of that standard that has received an affirmative determination from the Secretary under subsection (b)(2)(A) of this section; or

(B) in a State in which there is no statewide energy code either for residential buildings or for commercial buildings, to a local government that has adopted and is implementing residential and commercial building energy efficiency codes, as described in subparagraph (A).

(3) Of the amounts made available under this subsection, the Secretary may use $500,000 for each fiscal year to train State and local officials to implement codes described in paragraph (2).

(4)(A) There are authorized to be appropriated to carry out this subsection—

(i) $25,000,000 for each of fiscal years 2006 through 2010; and

(ii) such sums as are necessary for fiscal year 2011 and each fiscal year thereafter.

(B) Funding provided to States under paragraph (2) for each fiscal year shall not exceed one-half of the excess of funding under this subsection over $5,000,000 for the fiscal year.

(Pub. L. 94–385, title III, § 304, as added Pub. L. 102–486, title I, § 101(a)(2), Oct. 24, 1992, 106 Stat. 2783; amended Pub. L. 109–58, title I, § 128, Aug. 8, 2005, 119 Stat. 619.)

PRIOR PROVISIONS

A prior section 6833, Pub. L. 94–385, title III, § 304, Aug. 14, 1976, 90 Stat. 1146; Pub. L. 95–91, title III, §§ 301(a), 304(a), title VII, §§ 703, 707, 709(e)(1), Aug. 4, 1977, 91 Stat. 577, 580, 606, 608; Pub. L. 96–399, title III, § 326(a)–(c), Oct. 8, 1980, 94 Stat. 1649; Pub. L. 97–35, title X, § 1041(a), (c), Aug. 13, 1981, 95 Stat. 621; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433, related to development and promulgation of energy conservation voluntary performance standards for new commercial and residential buildings, prior to repeal by Pub. L. 102–486, title I, § 101(a)(2), Oct. 24, 1992, 106 Stat. 2783.

AMENDMENTS

2005—Subsec. (e)(1). Pub. L. 109–58, § 128(1), inserted ", including increasing and verifying compliance with such codes" before period at end of first sentence.

Subsec. (e)(2) to (4). Pub. L. 109–58, § 128(2), added pars. (2) to (4) and struck out former par. (2) which read as follows: "There are authorized to be appropriated such sums as may be necessary to carry out this subsection."

§ 6834. Federal building energy efficiency standards

(a) In general

(1) Not later than 2 years after October 24, 1992, the Secretary, after consulting with appropriate Federal agencies, CABO, ASHRAE, the National Association of Home Builders, the Illuminating Engineering Society, the American Institute of Architects, the National Conference of the States on Building Codes and Standards, and other appropriate persons, shall establish, by rule, Federal building energy standards that require in new Federal buildings those energy efficiency measures that are technologically feasible and economically justified. Such standards shall become effective no later than 1 year after such rule is issued.

(2) The standards established under paragraph (1) shall—

(A) contain energy saving and renewable energy specifications that meet or exceed the energy saving and renewable energy specifications of the 2004 International Energy Conservation Code (in the case of residential buildings) or ASHRAE Standard 90.1–2004 (in the case of commercial buildings);

(B) to the extent practicable, use the same format as the appropriate voluntary building energy code; and

(C) consider, in consultation with the Environmental Protection Agency and other Federal agencies, and where appropriate contain, measures with regard to radon and other indoor air pollutants.

(3)(A) Not later than 1 year after August 8, 2005, the Secretary shall establish, by rule, revised Federal building energy efficiency performance standards that require that—

(i) if life-cycle cost-effective for new Federal buildings—

(I) the buildings be designed to achieve energy consumption levels that are at least 30 percent below the levels established in the version of the ASHRAE Standard or the International Energy Conservation Code, as appropriate, that is in effect as of August 8, 2005; and

(II) sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings; and

(ii) if water is used to achieve energy efficiency, water conservation technologies shall be applied to the extent that the technologies are life-cycle cost-effective.

(B) Not later than 1 year after the date of approval of each subsequent revision of the ASHRAE Standard or the International Energy Conservation Code, as appropriate, the Secretary shall determine, based on the cost-effectiveness of the requirements under the amendment, whether the revised standards established under this paragraph should be updated to reflect the amendment.

(C) In the budget request of the Federal agency for each fiscal year and each report submitted by the Federal agency under section 8258(a) of this title, the head of each Federal agency shall include—

(i) a list of all new Federal buildings owned, operated, or controlled by the Federal agency; and

(ii) a statement specifying whether the Federal buildings meet or exceed the revised standards established under this paragraph.

(b) Omitted

(c) Periodic review

The Secretary shall periodically, but not less than once every 5 years, review the Federal building energy standards established under this section and shall, if significant energy savings would result, upgrade such standards to include all new energy efficiency and renewable energy measures that are technologically feasible and economically justified.

(d) Interim standards

Interim energy performance standards for new Federal buildings issued by the Secretary under this subchapter as it existed before October 24, 1992, shall remain in effect until the standards established under subsection (a) of this section become effective.

(Pub. L. 94–385, title III, § 305, as added Pub. L. 102–486, title I, § 101(a)(2), Oct. 24, 1992, 106 Stat. 2784; amended Pub. L. 109–58, title I, § 109, Aug. 8, 2005, 119 Stat. 614.)

CODIFICATION

Subsec. (b) of this section, which required the Secretary to identify and describe, in the annual report required under section 6837 of this title, the basis for any substantive difference between the Federal building energy standards established under this section and the appropriate voluntary building energy code, was omitted because of termination of the annual report. See Codification note set out under section 6837 of this title.

PRIOR PROVISIONS

A prior section 6834, Pub. L. 94–385, title III, § 305, Aug. 14, 1976, 90 Stat. 1147, related to availability or approval of Federal financial assistance for new construction, prior to repeal by Pub. L. 97–35, title X, § 1041(b), Aug. 13, 1981, 95 Stat. 621.

AMENDMENTS

2005—Subsec. (a)(2)(A). Pub. L. 109–58, § 109(1), substituted ''the 2004 International Energy Conservation Code (in the case of residential buildings) or ASHRAE Standard 90.1–2004'' for ''CABO Model Energy Code, 1992 (in the case of residential buildings) or ASHRAE Standard 90.1–1989''.

Subsec. (a)(3). Pub. L. 109–58, § 109(2), added par. (3).

§ 6835. Federal compliance

(a) Procedures

(1) The head of each Federal agency shall adopt procedures necessary to assure that new Federal buildings meet or exceed the Federal building energy standards established under section 6834 of this title.

(2) The Federal building energy standards established under section 6834 of this title shall apply to new buildings under the jurisdiction of the Architect of the Capitol. The Architect shall adopt procedures necessary to assure that such buildings meet or exceed such standards.

(b) Construction of new buildings

The head of a Federal agency may expend Federal funds for the construction of a new Federal building only if the building meets or exceeds the appropriate Federal building energy standards established under section 6834 of this title.

(Pub. L. 94–385, title III, § 306, as added Pub. L. 102–486, title I, § 101(a)(2), Oct. 24, 1992, 106 Stat. 2785.)

PRIOR PROVISIONS

A prior section 6835, Pub. L. 94–385, title III, § 306, Aug. 14, 1976, 90 Stat. 1148; Pub. L. 96–399, title III, § 326(d), Oct. 8, 1980, 94 Stat. 1650; Pub. L. 97–35, title X, § 1041(d), Aug. 13, 1981, 95 Stat. 621, related to compliance with final performance standards by Federal agencies, prior to repeal by Pub. L. 102–486, title I, § 101(a)(2), Oct. 24, 1992, 106 Stat. 2783.

§ 6836. Support for voluntary building energy codes

(a) In general

Not later than 1 year after October 24, 1992, the Secretary, after consulting with the Secretary of Housing and Urban Development, the Secretary of Veterans Affairs, other appropriate Federal agencies, CABO, ASHRAE, the National Conference of States on Building Codes and Standards, and any other appropriate building codes and standards organization, shall support the upgrading of voluntary building energy codes for new residential and commercial buildings. Such support shall include—

(1) a compilation of data and other information regarding building energy efficiency standards and codes in the possession of the Federal Government, State and local governments, and industry organizations;

(2) assistance in improving the technical basis for such standards and codes;

(3) assistance in determining the cost-effectiveness and the technical feasibility of the energy efficiency measures included in such standards and codes; and

(4) assistance in identifying appropriate measures with regard to radon and other indoor air pollutants.

(b) Review

The Secretary shall periodically review the technical and economic basis of voluntary building energy codes and, based upon ongoing research activities—

(1) recommend amendments to such codes including measures with regard to radon and other indoor air pollutants;

(2) seek adoption of all technologically feasible and economically justified energy efficiency measures; and

(3) otherwise participate in any industry process for review and modification of such codes.

(Pub. L. 94–385, title III, § 307, as added Pub. L. 102–486, title I, § 101(a)(2), Oct. 24, 1992, 106 Stat. 2785.)

PRIOR PROVISIONS

A prior section 6836, Pub. L. 94–385, title III, § 307, Aug. 14, 1976, 90 Stat. 1149; Pub. L. 95–619, title II, § 255, Nov. 9, 1978, 92 Stat. 3238, set forth provisions respecting grants to States for adoption and implementation of performance standards, prior to repeal by Pub. L. 97–35, title X, § 1041(b), Aug. 13, 1981, 95 Stat. 621.

§ 6837. Omitted

CODIFICATION

Section, Pub. L. 94–385, title III, § 308, as added Pub. L. 102–486, title I, § 101(a)(2), Oct. 24, 1992, 106 Stat. 2786, which required the Secretary to report annually to Congress on activities conducted pursuant to this subchapter, terminated, effective May 15, 2000, pursuant to

section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 88 of House Document No. 103–7.

A prior section 6837, Pub. L. 94–385, title III, § 308, Aug. 14, 1976, 90 Stat. 1149; Pub. L. 97–35, title X, § 1041(e), Aug. 13, 1981, 95 Stat. 621, related to technical assistance to States, etc., prior to repeal by Pub. L. 102–486, § 101(a)(2).

§§ 6838 to 6840. Repealed. Pub. L. 102–486, title I, § 101(a)(2), Oct. 24, 1992, 106 Stat. 2783

Section 6838, Pub. L. 94–385, title III, § 309, Aug. 14, 1976, 90 Stat. 1149; Pub. L. 97–35, title X, § 1041(a), Aug. 13, 1981, 95 Stat. 621, related to consultations by Secretary with interested and affected groups in developing and promulgating voluntary performance standards and establishment of advisory committees.

Section 6839, Pub. L. 94–385, title III, § 310, Aug. 14, 1976, 90 Stat. 1149; Pub. L. 95–91, title III, §§ 301(a), 304(a), title VII, §§ 703, 707, 709(e)(2), Aug. 4, 1977, 91 Stat. 577, 580, 606, 607, 608; Pub. L. 97–35, title X, § 1041(a), Aug. 13, 1981, 95 Stat. 621; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433, related to support activities necessary or appropriate to develop and implement voluntary performance standards.

Section 6840, Pub. L. 94–385, title III, § 311, Aug. 14, 1976, 90 Stat. 1149; Pub. L. 97–375, title II, § 207(b), Dec. 21, 1982, 96 Stat. 1824, related to monitoring of State and local adoption and implementation of standards and reports to Congress on implementation and effectiveness of standards.

SUBCHAPTER III—ENERGY CONSERVATION AND RENEWABLE-RESOURCE ASSISTANCE FOR EXISTING BUILDINGS

§ 6851. Congressional findings and purpose

(a) The Congress finds that—

(1) the fastest, most cost-effective, and most environmentally sound way to prevent future energy shortages in the United States, while reducing the Nation's dependence on imported energy supplies, is to encourage and facilitate, through major programs, the implementation of energy conservation and renewable-resource energy measures with respect to dwelling units, nonresidential buildings, and industrial plants;

(2) current efforts to encourage and facilitate such measures are inadequate as a consequence of—

(A) a lack of adequate and available financing for such measures, particularly with respect to individual consumers and owners of small businesses;

(B) a shortage of reliable and impartial information and advisory services pertaining to practicable energy conservation measures and renewable-resource energy measures and the cost savings that are likely if they are implemented in such units, buildings, and plants; and

(C) the absence of organized programs which, if they existed, would enable consumers, especially individuals and owners of small businesses, to undertake such measures easily and with confidence in their economic value;

(3) major programs of financial incentives and assistance for energy conservation measures and renewable-resource energy measures in dwelling units, nonresidential buildings, and industrial plants would—

(A) significantly reduce the Nation's demand for energy and the need for petroleum imports;

(B) cushion the adverse impact of the high price of energy supplies on consumers, particularly elderly and handicapped low-income persons who cannot afford to make the modifications necessary to reduce their residential energy use; and

(C) increase, directly and indirectly, job opportunities and national economic output;

(4) the primary responsibility for the implementation of such major programs should be lodged with the governments of the States; the diversity of conditions among the various States and regions of the Nation is sufficiently great that a wholly federally administered program would not be as effective as one which is tailored to meet local requirements and to respond to local opportunities; the State should be allowed flexibility within which to fashion such programs, subject to general Federal guidelines and monitoring sufficient to protect the financial investments of consumers and the financial interest of the United States and to insure that the measures undertaken in fact result in significant energy and cost savings which would probably not otherwise occur;

(5) to the extent that direct Federal administration is more economical and efficient, direct Federal financial incentives and assistance should be extended through existing and proven Federal programs rather than through new programs that would necessitate new and separate administrative bureaucracies; and

(6) such programs should be designed and administered to supplement, and not to supplant or in any other way conflict with, State energy conservation programs under part C of title III of the Energy Policy and Conservation Act [42 U.S.C. 6321 et seq.]; the emergency energy conservation program carried out by community action agencies pursuant to section 2809(a)(12)[1] of this title; and other forms of assistance and encouragement for energy conservation.

(b) It is, therefore, the purpose of this subchapter to encourage and facilitate the implementation of energy conservation measures and renewable-resource energy measures in dwelling units, nonresidential buildings, and industrial plants, through—

(1) supplemental State energy conservation plans; and

(2) Federal financial incentives and assistance.

(Pub. L. 94–385, title IV, § 402, Aug. 14, 1976, 90 Stat. 1150.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsec. (a)(5), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended. Part C of title III of the Energy Policy and Conservation Act is classified generally to part B (§ 6321 et seq.) of subchapter III of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

[1] See References in Text note below.

Section 2809(a)(12) of this title, referred to in subsec. (a)(6), which was redesignated as section 2809(a)(5) by Pub. L. 95–568, § 5(a)(2)(E), Nov. 2, 1978, 92 Stat. 2426, was subsequently repealed by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519.

This subchapter, referred to in subsec. (b), was in the original ''this title,'' meaning title IV of Pub. L. 94–385, known as the Energy Conservation in Existing Buildings Act of 1976, which enacted this subchapter, section 6327 of this title, and section 1701z–8 of Title 12, Banks and Banking, amended sections 6323, 6325, and 6326 of this title, and enacted provisions set out as a note under section 6801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

SHORT TITLE

For short title of title IV of Pub. L. 94–385, which is classified principally to this subchapter, as the ''Energy Conservation in Existing Buildings Act of 1976'', see section 401 of Pub. L. 94–385, set out as a note under section 6801 of this title.

PART A—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

§ 6861. Congressional findings and purpose

(a) The Congress finds that—

(1) a fast, cost-effective, and environmentally sound way to prevent future energy shortages in the United States while reducing the Nation's dependence on imported energy supplies, is to encourage and facilitate, through major programs, the implementation of energy conservation and renewable-resource energy measures with respect to dwelling units;

(2) existing efforts to encourage and facilitate such measures are inadequate because—

(A) many dwellings owned or occupied by low-income persons are energy inefficient;

(B) low-income persons can least afford to make the modifications necessary to provide for efficient energy equipment in such dwellings and otherwise to improve the energy efficiency of such dwellings;

(3) weatherization of such dwellings would lower shelter costs in dwellings owned or occupied by low-income persons as well as save energy and reduce future energy capacity requirements; and

(4) States, through Community Action Agencies established under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] and units of general purpose local government, should be encouraged, with Federal financial and technical assistance, to develop and support coordinated weatherization programs designed to alleviate the adverse effects of energy costs on such low-income persons, to supplement other Federal programs serving such low-income persons, and to increase energy efficiency.

(b) It is, therefore, the purpose of this part to develop and implement a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential energy expenditures, and improve their health and safety, especially low-income persons who are particularly vulnerable such as the elderly, the handicapped, and children.

(Pub. L. 94–385, title IV, § 411, Aug. 14, 1976, 90 Stat. 1151; Pub. L. 101–440, § 7(j), Oct. 18, 1990, 104 Stat. 1015.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsec. (a)(4), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, which was classified generally to chapter 34 (§ 2701 et seq.) of this title prior to repeal, except for titles VIII and X, by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§ 2991 et seq.) and X (§ 2996 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1990—Pub. L. 101–440 amended section generally. Prior to amendment, section read as follows:

''(a) The Congress finds that—

''(1) dwellings owned or occupied by low-income persons frequently are inadequately insulated;

''(2) low-income persons, particularly elderly and handicapped low-income persons, can least afford to make the modifications necessary to provide for adequate insulation in such dwellings and to otherwise reduce residential energy use;

''(3) weatherization of such dwellings would lower utility expenses for such low-income owners or occupants as well as save thousands of barrels per day of needed fuel; and

''(4) States, through community action agencies established under the Economic Opportunity Act of 1964 and units of general purpose local government, should be encouraged, with Federal financial and technical assistance, to develop and support coordinated weatherization programs designed to ameliorate the adverse effects of high energy costs on such low-income persons, to supplement other Federal programs serving such persons, and to conserve energy.

''(b) It is, therefore, the purpose of this part to develop and implement a supplementary weatherization assistance program to assist in achieving a prescribed level of insulation in the dwellings of low-income persons, particularly elderly and handicapped low-income persons, in order both to aid those persons least able to afford higher utility costs and to conserve needed energy.''

§ 6862. Definitions

As used in this part:

(1) The term ''Secretary'' means the Secretary of Energy.

(2) The term ''Director'' means the Director of the Community Services Administration.

(3) The term ''elderly'' means any individual who is 60 years of age or older.

(4) The term ''Governor'' means the chief executive officer of a State (including the Mayor of the District of Columbia).

(5) The term ''handicapped person'' means any individual (A) who is an individual with a disability, as defined in section 705 of title 29, (B) who is under a disability as defined in section 1614(a)(3)(A) or 233(d)(1) of the Social Security Act [42 U.S.C. 1382c(a)(3)(A), 423(d)(1)] or in section 102(7)[1] of the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6001(7)], or (C) who is receiving benefits under chapter 11 or 15 of title 38.

(6) The terms ''Indian'', ''Indian tribe'', and ''tribal organization'' have the meanings prescribed for such terms by section 3002 of this title.

[1] See References in Text note below.

(7) The term ''low-income'' means that income in relation to family size which (A) is at or below 150 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 2809(a)(12) of this title, (B) is the basis on which cash assistance payments have been paid during the preceding 12-month period under titles IV and XVI of the Social Security Act [42 U.S.C. 601 et seq., 1381 et seq.] or applicable State or local law, or (C) if a State elects, is the basis for eligibility for assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621), provided that such basis is at least 150 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

(8) The term ''State'' means each of the States and the District of Columbia.

(9) The term ''weatherization materials'' means—

(A) caulking and weatherstripping of doors and windows;

(B) furnace efficiency modifications, including, but not limited to—

(i) replacement burners, furnaces, or boilers or any combination thereof;

(ii) devices for minimizing energy loss through heating system, chimney, or venting devices; and

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(C) clock thermostats;

(D) ceiling, attic, wall, floor, and duct insulation;

(E) water heater insulation;

(F) storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective window and door materials;

(G) cooling efficiency modifications, including, but not limited to, replacement air-conditioners, ventilation equipment, screening, window films, and shading devices;

(H) solar thermal water heaters;

(I) wood-heating appliances; and

(J) such other insulating or energy conserving devices or technologies as the Secretary may determine, after consulting with the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Director, of the Community Services Administration.

(Pub. L. 94–385, title IV, § 412, Aug. 14, 1976, 90 Stat. 1152; Pub. L. 95–602, title I, § 122(e), Nov. 6, 1978, 92 Stat. 2987; Pub. L. 95–619, title II, § 231(a)(1), (b)(2), Nov. 9, 1978, 92 Stat. 3224, 3225; Pub. L. 96–294, title V, § 577(1), (2), June 30, 1980, 94 Stat. 760; Pub. L. 98–558, title IV, §§ 401, 402, Oct. 30, 1984, 98 Stat. 2887; Pub. L. 100–242, title V, § 570(d), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 101–440, § 7(a), Oct. 18, 1990, 104 Stat. 1012; Pub. L. 102–486, title I, § 142(b), Oct. 24, 1992, 106 Stat. 2843; Pub. L. 105–220, title IV, § 414(f), Aug. 7, 1998, 112 Stat. 1242; Pub. L. 109–58, title I, § 122(b), Aug. 8, 2005, 119 Stat. 616; Pub. L. 109–365, title IX, § 901(b), Oct. 17, 2006, 120 Stat. 2599.)

REFERENCES IN TEXT

Section 102(7) of the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6001(7)], referred to in par. (5), was repealed by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737.

Section 2809(a)(12) of this title, referred to in par. (7), which was redesignated as section 2809(a)(5) by Pub. L. 95–568, § 5(a)(2)(E), Nov. 2, 1978, 92 Stat. 2426, was subsequently repealed by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519.

The Social Security Act, referred to in par. (7), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles IV and XVI of the Social Security Act are classified generally to subchapters IV (§ 601 et seq.) and XVI (§ 1381 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Low-Income Home Energy Assistance Act of 1981, referred to in par. (7), is title XXVI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 893, as amended, which is classified generally to subchapter II (§ 8621 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8621 of this title and Tables.

AMENDMENTS

2006—Par. (6). Pub. L. 109–365 struck out ''paragraphs (4), (5), and (6), respectively, of'' before ''section 3002 of this title''.

2005—Par. (7). Pub. L. 109–58 substituted ''150 percent'' for ''125 percent'' in two places.

1998—Par. (5)(A). Pub. L. 105–220 substituted ''an individual with a disability, as defined in section 705 of title 29'' for ''a handicapped individual as defined in section 7(7) of the Rehabilitation Act of 1973''.

1992—Par. (9)(G) to (J). Pub. L. 102–486 realigned margin of subpar. (G), added subpars. (H) and (I), and redesignated former subpar. (H) as (J).

1990—Par. (9)(G), (H). Pub. L. 101–440 added subpar. (G) and redesignated former subpar. (G) as (H).

1988—Par. (9)(G). Pub. L. 100–242 substituted a single comma for two consecutive commas after ''determine''.

1984—Par. (7)(C). Pub. L. 98–558, § 401, added cl. (C).

Par. (9)(B). Pub. L. 98–558, § 402(1), in amending subpar. (B) generally, substituted '', including, but not limited to'' for ''limited to'' in provisions preceding cl. (i), '', furnaces, or boilers or any combination thereof'' for ''designed to substantially increase the energy efficiency of the heating system,'' in cl. (i), and ''minimizing energy loss through heating system, chimney, or venting devices'' for ''modifying flue openings which will increase the energy efficiency of the heating system,'' in cl. (ii).

Par. (9)(C). Pub. L. 98–558, § 402(2), struck out ''by rule'' after ''may determine,''.

1980—Par. (1). Pub. L. 96–294, § 577(1), substituted provisions defining ''Secretary'' for provisions defining ''Administrator''.

Pars. (7), (9)(G). Pub. L. 96–294, § 577(2), substituted ''Secretary'' for ''Administrator'' wherever appearing.

1978—Par. (5). Pub. L. 95–602 substituted ''section 7(7) of the Rehabilitation Act of 1973'' for ''section 7(6) of the Rehabilitation Act of 1973''.

Par. (7)(A). Pub. L. 95–619, § 231(a)(1), inserted ''125 percent of'' after ''at or below'' and inserted provision authorizing the Administrator to establish a higher level for low-income computations after determining such higher level to be necessary to carry out the purposes of this part.

Par. (9). Pub. L. 95–619, § 231(b)(2), substituted a specific listing of items to be considered weatherization materials for purposes of this part for a general state-

ment of the sort of materials that could be considered as such.

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration, which was established by section 601 of Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), terminated when Economic Opportunity Act of 1964, Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in Department of Health and Human Services by section 676 of Pub. L. 97–35, which is classified to 42 U.S.C. 9905.

§ 6863. Weatherization program

(a) Development and conduct of program by Secretary; grants to States and Indian tribal organizations

The Secretary shall develop and conduct, in accordance with the purpose and provisions of this part, a weatherization program. In developing and conducting such program, the Secretary may, in accordance with this part and regulations promulgated under this part, make grants (1) to States, and (2) in accordance with the provisions of subsection (d) of this section, to Indian tribal organizations to serve Native Americans. Such grants shall be made for the purpose of providing financial assistance with regard to projects designed to provide for the weatherization of dwelling units, particularly those where elderly or handicapped low-income persons reside, occupied by low-income families.

(b) Consultation by Secretary with other Federal departments and agencies on development and publication in Federal Register of proposed regulations; required regulatory provisions; standards and procedures; rental units

(1) The Secretary, after consultation with the Director, the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, the Secretary of Labor, and the heads of such other Federal departments and agencies as the Secretary deems appropriate, shall develop and publish in the Federal Register for public comment, not later than 60 days after August 14, 1976, proposed regulations to carry out the provisions of this part. The Secretary shall take into consideration comments submitted regarding such proposed regulations and shall promulgate and publish final regulations for such purpose not later than 90 days after August 14, 1976. The development of regulations under this part shall be fully coordinated with the Director.

(2) The regulations promulgated pursuant to this section shall include provisions—

(A) prescribing, in coordination with the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, and the Director of the National Institute of Standards and Technology in the Department of Commerce, for use in various climatic, structural, and human need settings, standards for weatherization materials, energy conservation techniques, and balance combinations thereof, which are designed to achieve a balance of a healthful dwelling environment and maximum practicable energy conservation;

(B) that provide guidance to the States in the implementation of this part, including guidance designed to ensure that a State establishes (i) procedures that provide protection under paragraph (5) to tenants paying for energy as a portion of their rent, and (ii) a process for monitoring compliance with its obligations pursuant to this part; and

(C) that secure the Federal investment made under this part and address the issues of eviction from and sale of property receiving weatherization materials under this part.

(3) The Secretary, in coordination with the Secretaries and Director described in paragraph (2)(A) and with the Director of the Community Services Administration and the Secretary of Agriculture, shall develop and publish in the Federal Register for public comment, not later than 60 days after November 9, 1978, proposed amendments to the regulations prescribed under paragraph (1). Such amendments shall provide that the standards described in paragraph (2)(A) shall include a set of procedures to be applied to each dwelling unit to determine the optimum set of cost-effective measures, within the cost guidelines set for the program, to be installed in such dwelling unit. Such standards shall, in order to achieve such optimum savings of energy, take into consideration the following factors—

(A) the cost of the weatherization material;

(B) variation in climate; and

(C) the value of energy saved by the application of the weatherization material.

Such standards shall be utilized by the Secretary in carrying out this part, the Secretary of Agriculture in carrying out the weatherization program under section 1474(c) of this title, and the Director of the Community Services Administration in carrying out weatherization programs under section 222(a)(12) of the Economic Opportunity Act of 1964 [42 U.S.C. 2809(a)(12)]. The Secretary shall take into consideration comments submitted regarding such proposed amendment and shall promulgate and publish final amended regulations not later than 120 days after November 9, 1978.

(4) In carrying out paragraphs (2)(A) and (3), the Secretary shall establish the standards and procedures described in such paragraphs so that weatherization efforts being carried out under this part and under programs described in the fourth sentence of paragraph (3) will accomplish uniform results among the States in any area with a similar climatic condition.

(5) In any case in which a dwelling consists of a rental unit or rental units, the State, in the implementation of this part, shall ensure that—

(A) the benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;

(B) for a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (in-

cluding households paying for their energy through their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed;

(C) the enforcement of subparagraph (B) is provided through procedures established by the State by which tenants may file complaints and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed; and

(D) no undue or excessive enhancement will occur to the value of such dwelling units.

(6) As a condition of having assistance provided under this part with respect to multifamily buildings, a State may require financial participation from the owners of such buildings.

(c) Failure of State to submit application; alternate application by any unit of general purpose local government or community action agency; submission of amended application by State

If a State does not, within 90 days after the date on which final regulations are promulgated under this section, submit an application to the Secretary which meets the requirements set forth in section 6864 of this title, any unit of general purpose local government of sufficient size (as determined by the Secretary), or a community action agency carrying out programs under title II of the Economic Opportunity Act of 1964 [42 U.S.C. 2781 et seq.], may, in lieu of such State, submit an application (meeting such requirements and subject to all other provisions of this part) for carrying out projects under this part within the geographical area which is subject to the jurisdiction of such government or is served by such agency. A State may, in accordance with regulations promulgated under this part, submit an amended application.

(d) Direct grants to low-income members of Indian tribal organizations or alternate service organizations; application for funds

(1) Notwithstanding any other provision of this part, in any State in which the Secretary determines (after having taken into account the amount of funds made available to the State to carry out the purposes of this part) that the low-income members of an Indian tribe are not receiving benefits under this part that are equivalent to the assistance provided to other low-income persons in such State under this part, and if he further determines that the members of such tribe would be better served by means of a grant made directly to provide such assistance, he shall reserve from sums that would otherwise be allocated to such State under this part not less than 100 percent, nor more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as the population of all low-income Indians for whom a determination under this subsection has been made bears to the population of all low-income persons in such State.

(2) The sums reserved by the Secretary on the basis of his determination under this subsection shall be granted to the tribal organization serving the individuals for whom such a determination has been made, or, where there is no tribal organization, to such other entity as he determines has the capacity to provide services pursuant to this part.

(3) In order for a tribal organization or other entity to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary an application meeting the requirements set forth in section 6864 of this title.

(e) Transfer of funds

Notwithstanding any other provision of law, the Secretary may transfer to the Director sums appropriated under this part to be utilized in order to carry out programs, under section 222(a)(12) of the Economic Opportunity Act of 1964 [42 U.S.C. 2809(a)(12)], which further the purpose of this part.

(Pub. L. 94–385, title IV, § 413, Aug. 14, 1976, 90 Stat. 1152; Pub. L. 95–619, title II, § 231(a)(2), (b)(1), Nov. 9, 1978, 92 Stat. 3224; Pub. L. 96–294, title V, §§ 573(b), 574, 577(2), June 30, 1980, 94 Stat. 759, 760; Pub. L. 98–479, title II, § 201(h), Oct. 17, 1984, 98 Stat. 2228; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 101–440, § 7(b), Oct. 18, 1990, 104 Stat. 1012; Pub. L. 103–82, title IV, § 405(*l*), Sept. 21, 1993, 107 Stat. 922.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsecs. (b)(3), (c), and (e), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Title II of the Economic Opportunity Act of 1964 was classified generally to subchapter II (§ 2781 et seq.) of chapter 34 of this title prior to repeal by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Prior to that repeal, section 222(a)(12) of that Act [42 U.S.C. 2809(a)(12)] was redesignated as section 222(a)(5) [42 U.S.C. 2809(a)(5)] by Pub. L. 95–568, § 5(a)(2)(E), Nov. 2, 1978, 94 Stat. 2426. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–82 struck out ''the Director of the ACTION Agency,'' after ''Labor,''.

1990—Subsec. (b)(2)(B), (C). Pub. L. 101–440, § 7(b)(1), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: ''designed to insure that (i) the benefits of weatherization assistance in connection with leased dwelling units will accrue primarily to low-income tenants; (ii) the rents on such dwelling units will not be raised because of any increase in the value thereof due solely to weatherization assistance provided under this part; and (iii) no undue or excessive enhancement will occur to the value of such dwelling units.''

Subsec. (b)(5), (6). Pub. L. 101–440, § 7(b)(2), added pars. (5) and (6).

1988—Subsec. (b)(2)(A). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

1984—Subsec. (b)(1), (2)(A). Pub. L. 98–479 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1980—Subsecs. (a), (b)(1), (3). Pub. L. 96–294, § 577(2), substituted ''Secretary'' for ''Administrator'' wherever appearing.

Subsec. (b)(4). Pub. L. 96–294, § 574, added par. (4).

Subsec. (c). Pub. L. 96–294, §§ 573(b), 577(2), substituted ''Secretary'' for ''Administrator'' wherever appearing, and struck out provisions relating to determinations respecting inapplicability of allocation requirement and priority for an applicable community action agency.

Subsec. (d), (e). Pub. L. 96–294, § 577(2), substituted ''Secretary'' for ''Administrator'' wherever appearing.

1978—Subsec. (a). Pub. L. 95–619, § 231(a)(2), substituted ''occupied by low-income families'' for ''in which the head of the household is a low-income person''.

Subsec. (b)(3). Pub. L. 95–619, § 231(b)(1), added par. (3).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

WEATHERIZATION ASSISTANCE GRANTS COST SHARING

Pub. L. 106–291, title II, Oct. 11, 2000, 114 Stat. 976, provided in part: ''That, hereafter, Indian tribal direct grantees of weatherization assistance shall not be required to provide matching funds.''

Provisions of Pub. L. 106–113, div. B, § 1000(a)(3) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A–180, which provided that sums appropriated for weatherization assistance grants were to be contingent on a cost share of 25 percent by each participating State or other qualified participant, were repealed by Pub. L. 106–469, title VI, § 601(a), Nov. 9, 2000, 114 Stat. 2040.

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration, which was established by section 601 of Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), terminated when Economic Opportunity Act of 1964, Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in Department of Health and Human Services by section 676 of Pub. L. 97–35, which is classified to 42 U.S.C. 9905.

§ 6864. Financial assistance

(a) Annual application; contents; allocation to States

The Secretary shall provide financial assistance, from sums appropriated for any fiscal year under this part, only upon annual application. Each such application shall describe the estimated number and characteristics of the low-income persons and the number of dwelling units to be assisted and the criteria and methods to be used by the applicant in providing weatherization assistance to such persons. The application shall also contain such other information (including information needed for evaluation purposes) and assurances as may be required (1) in the regulations promulgated pursuant to section 6863 of this title and (2) to carry out this section. The Secretary shall allocate financial assistance to each State on the basis of the relative need for weatherization assistance among low-income persons throughout the States, taking into account the following factors:

(A) The number of dwelling units to be weatherized.

(B) The climatic conditions in the State respecting energy conservation, which may include consideration of annual degree days.

(C) The type of weatherization work to be done in the various settings.

(D) Such other factors as the Secretary may determine necessary, such as the cost of heating and cooling, in order to carry out the purpose and provisions of this part.

(b) Requirements for assistance

The Secretary shall not provide financial assistance under this part unless the applicant has provided reasonable assurances that it has—

(1) established a policy advisory council which (A) has special qualifications and sensitivity with respect to solving the problems of low-income persons (including the weatherization and energy-conservation problems of such persons), (B) is broadly representative of organizations and agencies which are providing services to such persons in the State or geographical area in question, and (C) is responsible for advising the responsible official or agency administering the allocation of financial assistance in such State or area with respect to the development and implementation of such weatherization assistance program;

(2) established priorities to govern the provision of weatherization assistance to low-income persons, including methods to provide priority to elderly and handicapped low-income persons, and such priority as the applicant determines is appropriate for single-family or other high-energy-consuming dwelling units;

(3) established policies and procedures designed to assure that financial assistance provided under this part will be used to supplement, and not to supplant, State or local funds, and, to the extent practicable, to increase the amounts of such funds that would be made available in the absence of Federal funds for carrying out the purpose of this part, including plans and procedures (A) for securing, to the maximum extent practicable, the services of volunteers and training participants and public service employment workers, pursuant to title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], to work under the supervision of qualified supervisors and foremen, (B) for using Federal financial assistance under this part to increase the portion of low-income weatherization assistance that the State obtains from non-Federal sources, including private sources, and (C) for complying with the limitations set forth in section 6865 of this title; and

(4) selected on the basis of public comment received during a public hearing conducted pursuant to section 6865(b)(1) of this title, and other appropriate findings, community action agencies or other public or nonprofit entities to undertake the weatherization activities authorized by this subchapter: *Provided*, Such selection shall be based on the agency's experience and performance in weatherization or housing renovation activities, experience in assisting low-income persons in the area to be served, and the capacity to undertake a timely and effective weatherization program: *Provided further*, That in making such selection preference shall be given to any community action agency or other public or nonprofit entity which has, or is currently administering, an effective program under this subchapter or under title II of the Economic Opportunity Act of 1964 [42 U.S.C. 2781 et seq.].

(c) Annual update of data used in allocating funds

Effective with fiscal year 1991, and annually thereafter, the Secretary shall update the population, eligible households, climatic, residential

energy use, and all other data used in allocating the funds under this part among the States pursuant to subsection (a) of this section.

(Pub. L. 94–385, title IV, § 414, Aug. 14, 1976, 90 Stat. 1154; Pub. L. 96–294, title V, §§ 573(c), 577(2), June 30, 1980, 94 Stat. 759, 760; Pub. L. 101–440, § 7(c), (g), Oct. 18, 1990, 104 Stat. 1012, 1014; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(38), (f)(29)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–427, 2681–434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (b)(3), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (b)(4), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Title II of the Economic Opportunity Act of 1964 was classified generally to subchapter II (§ 2781 et seq.) of chapter 34 of this title prior to repeal by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(29)], struck out ''the Job Training Partnership Act or'' after ''pursuant to''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(38)], substituted ''the Job Training Partnership Act or title I of the Workforce Investment Act of 1998'' for ''the Comprehensive Employment and Training Act of 1973''.

1990—Subsec. (a)(D). Pub. L. 101–440, § 7(c)(1), inserted '', such as the cost of heating and cooling,'' after ''necessary''.

Subsec. (b)(3). Pub. L. 101–440, § 7(g), added cl. (B) and redesignated former cl. (B) as (C).

Subsec. (c). Pub. L. 101–440, § 7(c)(2), added subsec. (c).

1980—Subsec. (a). Pub. L. 96–294, § 577(2), substituted ''Secretary'' for ''Administrator'' wherever appearing.

Subsec. (b). Pub. L. 96–294, §§ 573(c), 577(2), substituted ''Secretary'' for ''Administrator'' and added par. (4).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(38)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(29)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

§ 6864a. Private sector investments

(a) In general

The Secretary shall, to the extent funds are made available for such purpose, provide financial assistance to entities receiving funding from the Federal Government or from a State through a weatherization assistance program under section 6863 or section 6864 of this title for the development and initial implementation of partnerships, agreements, or other arrangements with utilities, private sector interests, or other institutions, under which non-Federal financial assistance would be made available to support programs which install energy efficiency improvements in low-income housing.

(b) Use of funds

Financial assistance provided under this section may be used for—

(1) the negotiation of such partnerships, agreements and other arrangements;

(2) the presentation of arguments before State or local agencies;

(3) expert advice on the development of such partnerships, agreements, and other arrangements; or

(4) other activities reasonably associated with the development and initial implementation of such arrangements.

(c) Conditions

(1) Financial assistance provided under this section to entities other than States shall, to the extent practicable, coincide with the timing of financial assistance provided to such entities under section 6863 or section 6864 of this title.

(2) Not less than 80 percent of amounts provided under this section shall be provided to entities other than States.

(3) A recipient of financial assistance under this section shall have up to three years to complete projects undertaken with such assistance.

(Pub. L. 94–385, title IV, § 414A, as added Pub. L. 102–486, title I, § 142(a), Oct. 24, 1992, 106 Stat. 2842.)

§ 6864b. Technical transfer grants

(a) In general

The Secretary may, to the extent funds are made available, provide financial assistance to entities receiving funding from the Federal Government or from a State through a weatherization assistance program under section 6863 or section 6864 of this title for—

(1) evaluating technical and management measures which increase program and/or private entity performance in weatherizing low-income housing;

(2) producing technical information for use by persons involved in weatherizing low-income housing;

(3) exchanging information; and

(4) conducting training programs for persons involved in weatherizing low-income housing.

(b) Conditions

(1) Not less than 50 percent of amounts provided under this section shall be awarded to entities other than States.

(2) A recipient of financial assistance under this section may contract with nonprofit entities to carry out all or part of the activities for which such financial assistance is provided.

(Pub. L. 94–385, title IV, § 414B, as added Pub. L. 102–486, title I, § 142(a), Oct. 24, 1992, 106 Stat. 2842.)

§ 6865. Limitations on financial assistance

(a) Purchase of materials and administration of projects

(1) Not more than an amount equal to 10 percent of any grant made by the Secretary under this part may be used for administrative purposes in carrying out duties under this part, except that not more than one-half of such amount may be used by any State for such purposes, and a State may provide in the plan adopted pursuant to subsection (b) of this section for recipi-

ents of grants of less than $350,000 to use up to an additional 5 percent of such grant for administration if the State has determined that such recipient requires such additional amount to implement effectively the administrative requirements established by the Secretary pursuant to this part.

(2) The Secretary shall establish energy audit procedures and techniques which (i) meet standards established by the Secretary after consultation with the State Energy Advisory Board established under section 6325(g) of this title, (ii) establish priorities for selection of weatherization measures based on their cost and contribution to energy efficiency, (iii) measure the energy requirement of individual dwellings and the rate of return of the total conservation investment in a dwelling, and (iv) account for interaction among energy efficiency measures.

(b) Allocation, termination or discontinuance by Secretary

The Secretary shall insure that financial assistance provided under this part will—

(1) be allocated within the State or area in accordance with a published State or area plan, which is adopted by such State after notice and a public hearing, describing the proposed funding distributions and recipients;

(2) be allocated, pursuant to such State or area plan, to community action agencies carrying out programs under title II of the Economic Opportunity Act of 1964 [42 U.S.C. 2781 et seq.] or to other appropriate and qualified public or nonprofit entities in such State or area so that—

(A) funds will be allocated on the basis of the relative need for weatherization assistance among the low-income persons within such State or area, taking into account appropriate climatic and energy conservation factors; and

(B) due consideration will be given to the results of periodic evaluations of the projects carried out under this part in light of available information regarding the current and anticipated energy and weatherization needs of low-income persons within the State; and

(3) be terminated or discontinued during the application period only in accordance with policies and procedures consistent with the policies and procedures set forth in section 6868 of this title.

(c) Limitations on expenditures; exceptions; annual adjustments

(1) Except as provided in paragraphs (3) and (4), the expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters shall not exceed an average of $2,500 per dwelling unit weatherized in that State. Labor, weatherization materials, and related matter includes, but is not limited to—

(A) the appropriate portion of the cost of tools and equipment used to install weatherization materials for a dwelling unit;

(B) the cost of transporting labor, tools, and materials to a dwelling unit;

(C) the cost of having onsite supervisory personnel;

(D) the cost of making incidental repairs to a dwelling unit if such repairs are necessary to make the installation of weatherization materials effective, and

(E) the cost of making heating and cooling modifications, including replacement[1]

(2) Dwelling units partially weatherized under this part or under other Federal programs during the period September 30, 1975, through September 30, 1979, may receive further financial assistance for weatherization under this part.

(3) Beginning with fiscal year 2000, the dwelling unit averages provided in paragraphs (1) and (4) shall be adjusted annually by increasing the average amount by an amount equal to—

(A) the average amount for the previous fiscal year, multiplied by

(B) the lesser of (i) the percentage increase in the Consumer Price Index (all items, United States city average) for the most recent calendar year completed before the beginning of the fiscal year for which the determination is being made, or (ii) three percent.

(4) The expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters for a renewable energy system shall not exceed an average of $3,000 per dwelling unit.

(5)(A) The Secretary shall by regulations—

(i) establish the criteria which are to be used in prescribing performance and quality standards under paragraph (6)(A)(ii) or in specifying any form of renewable energy under paragraph (6)(A)(i)(I); and

(ii) establish a procedure under which a manufacturer of an item may request the Secretary to certify that the item will be treated, for purposes of this paragraph, as a renewable energy system.

(B) The Secretary shall make a final determination with respect to any request filed under subparagraph (A)(ii) within 1 year after the filing of the request, together with any information required to be filed with such request under subparagraph (A)(ii).

(C) Each month the Secretary shall publish a report of any request under subparagraph (A)(ii) which has been denied during the preceding month and the reasons for the denial.

(D) The Secretary shall not specify any form of renewable energy under paragraph (6)(A)(i)(I) unless the Secretary determines that—

(i) there will be a reduction in oil or natural gas consumption as a result of such specification;

(ii) such specification will not result in an increased use of any item which is known to be, or reasonably suspected to be, environmentally hazardous or a threat to public health or safety; and

(iii) available Federal subsidies do not make such specification unnecessary or inappropriate (in the light of the most advantageous allocation of economic resources).

(6) In this subsection—

(A) the term ''renewable energy system'' means a system which—

[1] So in original. Probably should be followed by a period.

(i) when installed in connection with a dwelling, transmits or uses—

(I) solar energy, energy derived from the geothermal deposits, energy derived from biomass, or any other form of renewable energy which the Secretary specifies by regulations, for the purpose of heating or cooling such dwelling or providing hot water or electricity for use within such dwelling; or

(II) wind energy for nonbusiness residential purposes;

(ii) meets the performance and quality standards (if any) which have been prescribed by the Secretary by regulations;

(iii) in the case of a combustion rated system, has a thermal efficiency rating of at least 75 percent; and

(iv) in the case of a solar system, has a thermal efficiency rating of at least 15 percent; and

(B) the term ''biomass'' means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees, wood and wood wastes and residues, plants (including aquatic plants), grasses, residues, fibers, and animal wastes, municipal wastes, and other waste materials.

(d) Supplementary financial assistance to States

Beginning with fiscal year 1992, the Secretary may allocate funds appropriated pursuant to section 6872(b)[2] of this title to provide supplementary financial assistance to those States which the Secretary determines have achieved the best performance during the previous fiscal year in achieving the purposes of this part. In making this determination, the Secretary shall—

(1) consult with the State Energy Advisory Board established under section 6325(g) of this title; and

(2) give priority to those States which, during such previous fiscal year, obtained a significant portion of income from non-Federal sources for their weatherization programs or increased significantly the portion of low-income weatherization assistance that the State obtained from non-Federal sources.

(e) Supplementary financial assistance to grant recipients

(1)(A) Beginning with fiscal year 1992, the Secretary may allocate, from funds appropriated pursuant to section 6872(b)[2] of this title, among the States an equal amount for each State not to exceed $100,000 per State. Each State shall make available amounts received under this subsection to provide supplementary financial assistance to recipients of grants under this part that have achieved the best performance during the previous fiscal year in advancing the purposes of this part.

(B) None of the funds made available under this subsection may be used by any State for administrative purposes.

(2) The Secretary shall, after consulting with the State Energy Advisory Board referred to in subsection (d)(1) of this section, prescribe guidelines to be used by each State in making available supplementary financial assistance under this subsection, with a priority being given to subgrantees that, by law or through administrative or other executive action, provided non-Federal resources (including private resources) to supplement Federal financial assistance under this part during the previous fiscal year.

(Pub. L. 94–385, title IV, § 415, Aug. 14, 1976, 90 Stat. 1155; Pub. L. 95–619, title II, § 231(c), Nov. 9, 1978, 92 Stat. 3225; Pub. L. 96–294, title V, §§ 571, 572, 573(a), 575, 577(2), June 30, 1980, 94 Stat. 759, 760; Pub. L. 98–558, title IV, §§ 403, 404, Oct. 30, 1984, 98 Stat. 2887, 2888; Pub. L. 101–440, § 7(d)–(f), (i), Oct. 18, 1990, 104 Stat. 1013, 1014; Pub. L. 106–469, title VI, § 601(b), Nov. 9, 2000, 114 Stat. 2040; Pub. L. 109–58, title II, § 206(a), Aug. 8, 2005, 119 Stat. 654.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsec. (b)(2), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Title II of the Economic Opportunity Act of 1964 was classified generally to subchapter II (§ 2781 et seq.) of chapter 34 of this title prior to repeal by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

Section 6872 of this title, referred to in subsecs. (d) and (e)(1)(A), was amended by Pub. L. 105–388, § 3, Nov. 13, 1998, 112 Stat. 3477, and, as so amended, no longer contains a subsec. (b).

AMENDMENTS

2005—Subsec. (c)(1). Pub. L. 109–58, § 206(a)(1), substituted ''in paragraphs (3) and (4)'' for ''in paragraph (3)'' in introductory provisions.

Subsec. (c)(3). Pub. L. 109–58, § 206(a)(2), substituted ''dwelling unit averages provided in paragraphs (1) and (4)'' for ''$2,500 per dwelling unit average provided in paragraph (1)'' in introductory provisions.

Subsec. (c)(4) to (6). Pub. L. 109–58, § 206(a)(3), added pars. (4) to (6).

2000—Subsec. (a)(1). Pub. L. 106–469, § 601(b)(1), struck out first sentence which read as follows: ''Except as provided in paragraph (2), an average of at least forty percent of the funds provided in a State under this part for weatherization materials, labor, and related matters described in subsection (c) of this section shall be spent for weatherization materials.''

Subsec. (a)(2). Pub. L. 106–469, § 601(b)(2)(C), struck out subpar. (B) which read as follows: ''The Secretary shall make information on energy audit procedures and techniques available to States applying for a waiver under subparagraph (A) and shall provide training for State and local agencies in the implementation of such procedures and techniques.''

Pub. L. 106–469, § 601(b)(2)(B), which directed amendment of par. (2) by substituting ''establish'' for ''approve a State's application to waive the 40 percent requirement established in paragraph (1) if the State includes in its plan'', was executed by making the substitution for ''approve a State's application to waive the 40-percent requirement established in paragraph (1) if the State includes in its plan'', to reflect the probable intent of Congress.

Pub. L. 106–469, § 601(b)(2)(A), struck out ''(A)'' before ''The Secretary shall approve''.

Subsec. (c)(1). Pub. L. 106–469, § 601(b)(3)(A), (B), in introductory provisions, substituted ''paragraph (3)'' for ''paragraphs (3) and (4)'' and ''$2,500'' for ''$1,600''.

Subsec. (c)(1)(E). Pub. L. 106–469, § 601(b)(3)(C)–(E), added subpar. (E).

Subsec. (c)(3). Pub. L. 106–469, § 601(b)(4), in introductory provisions, substituted ''2000, the $2,500 per dwelling unit average'' for ''1991, the $1,600 per dwelling unit limitation'' and ''average amount'' for ''limitation

[2] See References in Text note below.

amount'', in subpar. (A), substituted ''average'' for ''limitation'', and, in subpar. (B), inserted ''the'' after ''beginning of''.

Subsec. (c)(4). Pub. L. 106–469, § 601(b)(5), struck out par. (4), which required the Secretary, upon State application, to establish a separate average per dwelling unit limitation for dwelling units in the State.

1990—Subsec. (a). Pub. L. 101–440, § 7(d), substituted ''(1) Except as provided in paragraph (2), an average'' for ''An average'', inserted before period at end '', and a State may provide in the plan adopted pursuant to subsection (b) of this section for recipients of grants of less than $350,000 to use up to an additional 5 percent of such grant for administration if the State has determined that such recipient requires such additional amount to implement effectively the administrative requirements established by the Secretary pursuant to this part'', and added par. (2).

Subsec. (c)(1). Pub. L. 101–440, § 7(e)(1), substituted ''Except as provided in paragraphs (3) and (4), the expenditure'' for ''The expenditure''.

Subsec. (c)(3), (4). Pub. L. 101–440, § 7(e)(2), added pars. (3) and (4).

Subsec. (d). Pub. L. 101–440, § 7(i), added subsec. (d).

Pub. L. 101–440, § 7(f), struck out subsec. (d) which established a performance fund to provide financial assistance to those States the Secretary determined to have demonstrated the best performance during the previous fiscal year in providing weatherization assistance.

Subsec. (e). Pub. L. 101–440, § 7(i), added subsec. (e).

1984—Subsec. (a). Pub. L. 98–558, § 403(1), substituted provisions that an average of at least forty percent of the funds provided shall be spent for weatherization for former provisions which directed the Secretary to use funds to the maximum extent practicable.

Subsec. (c). Pub. L. 98–558, § 403(2), in amending subsec. (c) generally, substituted provisions that expenditures shall not exceed an average of $1,600 per dwelling unit for former provisions which provided for an $800 per dwelling unit limit in par. (1), struck out ''(not to exceed $150)'' after ''the cost'' in par. (1)(D), substituted provisions that dwelling units partially weatherized between certain dates could receive further financial assistance under this part for former provisions that $800 limit would not apply if the State policy advisory council requested greater amounts from the Secretary and the Secretary gave approval in par. (2), and deleted former par. (3) which provided that in areas where the Secretary, after consultation with the Secretary of Labor, determined that there was an insufficient number of volunteers and training participants and public service employment workers, assisted pursuant to the Comprehensive Employment and Training Act of 1973, available to work on weatherization projects under the supervision of qualified supervisors and foremen, the Secretary could increase the limitation of $800 to not more than $1,600 to cover the costs of paying persons who would install the weatherization materials and, to the maximum extent practicable, who would otherwise be able to participate as training participants and public service employment workers pursuant to the Comprehensive Employment and Training Act of 1973.

Subsec. (d). Pub. L. 98–558, § 404, added subsec. (d).

1980—Subsec. (a). Pub. L. 96–294, §§ 571, 577(2), substituted ''Secretary'' for ''Administrator'' and provisions limiting amounts used for administrative purposes in any grant made by the Secretary under this part for provisions limiting amounts used for administrative purposes in any grant made pursuant to section 6863(a) of this title and any allocations under this section.

Subsec. (b). Pub. L. 96–294, §§ 573(a), 577(2), substituted in provision preceding par. (1) ''Secretary'' for ''Administrator'', redesignated former par. (2)(C) as (B), and struck out former par. (2)(B), which related to funds allocated for carrying out weatherization projects under this part in the geographical area served by the emergency program.

Subsec. (c)(1). Pub. L. 96–294, §§ 572(1), 575, inserted in provision preceding subpar. (A) reference to par. (3) and in subpar. (D) substituted ''$150'' for ''$100''.

Subsec. (c)(2). Pub. L. 96–294, § 577(2), substituted ''Secretary'' for ''Administrator'' wherever appearing.

Subsec. (c)(3). Pub. L. 96–294, § 572(2), added par. (3).

1978—Subsec. (a). Pub. L. 95–619, § 231(c)(1), authorized expenditure of allocations under this part for costs related to weatherization of a dwelling unit as provided in subsec. (c) of this section and substituted an administrative expenses limitation of five percent of any allocation under this section for a similar limitation of ten percent of any such allocation.

Subsec. (c). Pub. L. 95–619, § 231(c)(2), included expenditure of financial assistance provided under this section for costs related to procurement and installation of weatherization materials in dwelling units in the maximum amount available per dwelling unit and increased such maximum amount to $800 per unit.

PERFORMANCE FUND; RESTRICTION ON USE

Pub. L. 99–190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1253, provided: ''That section 404 of Public Law 98–558 [enacting subsec. (d) of this section] shall not be effective in any fiscal year in which the amount made available for low income weatherization assistance from appropriations under this head is less than 5 per centum above the amount made available in fiscal year 1985.''

§ 6866. Monitoring and evaluation of funded projects; technical assistance; limitation on assistance

The Secretary, in coordination with the Director, shall monitor and evaluate the operation of projects receiving financial assistance under this part through methods provided for in section 6867(a) of this title, through onsite inspections, or through other means, in order to assure the effective provision of weatherization assistance for the dwelling units of low-income persons. The Secretary shall also carry out periodic evaluations of the program authorized by this part and projects receiving financial assistance under this part. The Secretary may provide technical assistance to any such project, directly and through persons and entities with a demonstrated capacity in developing and implementing appropriate technology for enhancing the effectiveness of the provision of weatherization assistance to the dwelling units of low-income persons, utilizing in any fiscal year not to exceed 10 percent of the sums appropriated for such year under this part.

(Pub. L. 94–385, title IV, § 416, Aug. 14, 1976, 90 Stat. 1156; Pub. L. 96–294, title V, § 577(2), June 30, 1980, 94 Stat. 760.)

AMENDMENTS

1980—Pub. L. 96–294 substituted ''Secretary'' for ''Administrator'' wherever appearing.

§ 6867. Administration of projects receiving financial assistance

(a) Reporting requirements

The Secretary, in consultation with the Director, by general or special orders, may require any recipient of financial assistance under this part to provide, in such form as he may prescribe, such reports or answers in writing to specific questions, surveys, or questionnaires as may be necessary to enable the Secretary and the Director to carry out their functions under this part.

(b) Maintenance of records

Each person responsible for the administration of a weatherization assistance project re-

ceiving financial assistance under this part shall keep such records as the Secretary may prescribe in order to assure an effective financial audit and performance evaluation of such project.

(c) Audit and examination of books, etc.

The Secretary, the Director (with respect to community action agencies), and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, information, and records of any project receiving financial assistance under this part that are pertinent to the financial assistance received under this part.

(d) Method of payments

Payments under this part may be made in installments and in advance, or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

(Pub. L. 94–385, title IV, § 417, Aug. 14, 1976, 90 Stat. 1156; Pub. L. 96–294, title V, § 577(2), June 30, 1980, 94 Stat. 760.)

AMENDMENTS

1980—Subsecs. (a) to (c). Pub. L. 96–294 substituted ''Secretary'' for ''Administrator'' wherever appearing.

§ 6868. Approval of application or amendment for financial assistance; administrative procedures applicable

(a) The Secretary shall not finally disapprove any application submitted under this part, or any amendment thereto, without first affording the State (or unit of general purpose local government or community action agency under section 6863(c) of this title, as appropriate) in question, as well as other interested parties, reasonable notice and an opportunity for a public hearing. The Secretary may consolidate into a single hearing the consideration of more than one such application for a particular fiscal year to carry out projects within a particular State. Whenever the Secretary, after reasonable notice and an opportunity for a public hearing, finds that there is a failure to comply substantially with the provisions of this part or regulations promulgated under this part, he shall notify the agency or institution involved and other interested parties that such State (or unit of general purpose local government or agency, as appropriate) will no longer be eligible to participate in the program under this part until the Secretary is satisfied that there is no longer any such failure to comply.

(b) Reasonable notice under this section shall include a written notice of intention to act adversely (including a statement of the reasons therefor) and a reasonable period of time within which to submit corrective amendments to the application, or to propose corrective action.

(Pub. L. 94–385, title IV, § 418, Aug. 14, 1976, 90 Stat. 1157; Pub. L. 96–294, title V, § 577(2), June 30, 1980, 94 Stat. 760.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–294 substituted ''Secretary'' for ''Administrator'' wherever appearing.

§ 6869. Judicial review of final action by Secretary on application

(a) Time for appeal; jurisdiction; filing of administrative record by Secretary

If any applicant is dissatisfied with the Secretary's final action with respect to the application submitted by it under section 6864 of this title, or with a final action under section 6868 of this title, such applicant may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which the State involved is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28.

(b) Conclusiveness of findings of Secretary; remand; modified findings by Secretary; certification of record

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive. The court may, for good cause shown, remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action. The Secretary shall certify to the court the record of any such further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Power of court to affirm or set aside action of Secretary; appeal to Supreme Court

The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(Pub. L. 94–385, title IV, § 419, Aug. 14, 1976, 90 Stat. 1157; Pub. L. 96–294, title V, § 577(2), (3), June 30, 1980, 94 Stat. 760.)

AMENDMENTS

1980—Subsecs. (a) to (c). Pub. L. 96–294 substituted ''Secretary'' for ''Administrator'' wherever appearing, and ''Secretary's'' for ''Administrator's''.

§ 6870. Prohibition against discrimination; notification to funded project of violation; penalties for failure to comply

(a) No person in the United States shall, on the ground of race, color, national origin, or sex, or on the ground of any other factor specified in any Federal law prohibiting discrimination, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, project, or activity supported in whole or in part with financial assistance under this part.

(b) Whenever the Secretary determines that a recipient of financial assistance under this part has failed to comply with subsection (a) of this section or any applicable regulation, he shall notify the recipient thereof in order to secure compliance. If, within a reasonable period of time thereafter, such recipient fails to comply, the Secretary shall—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) exercise the power and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and any other applicable Federal nondiscrimination law; or

(3) take such other action as may be authorized by law.

(Pub. L. 94–385, title IV, § 420, Aug. 14, 1976, 90 Stat. 1158; Pub. L. 96–294, title V, § 577(2), June 30, 1980, 94 Stat. 760.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–294 substituted ''Secretary'' for ''Administrator'' wherever appearing.

§ 6871. Annual report by Secretary and Director to President and Congress on weatherization program

The Secretary and (with respect to the operation and effectiveness of activities carried out through community action agencies) the Director shall each submit, on or before March 31, 1977, and annually thereafter, a report to the Congress and the President describing the weatherization assistance program carried out under this part or any other provision of law, including the results of the periodic evaluations and monitoring activities required by section 6866 of this title. Such report shall include information and data furnished by each State on the average costs incurred in weatherization of individual dwelling units, the average size of the dwellings being weatherized, and the average income of households receiving assistance under this part.

(Pub. L. 94–385, title IV, § 421, Aug. 14, 1976, 90 Stat. 1158; Pub. L. 96–294, title V, § 577(2), June 30, 1980, 94 Stat. 760; Pub. L. 101–440, § 7(h), Oct. 18, 1990, 104 Stat. 1014.)

AMENDMENTS

1990—Pub. L. 101–440 struck out ''through 1979'' after ''and annually thereafter'' and inserted at end ''Such report shall include information and data furnished by each State on the average costs incurred in weatherization of individual dwelling units, the average size of the dwellings being weatherized, and the average income of households receiving assistance under this part.''

1980—Pub. L. 96–294 substituted ''Secretary'' for ''Administrator''.

§ 6872. Authorization of appropriations

For the purpose of carrying out the weatherization program under this part, there are authorized to be appropriated $500,000,000 for fiscal year 2006, $600,000,000 for fiscal year 2007, and $700,000,000 for fiscal year 2008.

(Pub. L. 94–385, title IV, § 422, Aug. 14, 1976, 90 Stat. 1158; Pub. L. 95–619, title II, § 231(d), Nov. 9, 1978, 92 Stat. 3226; Pub. L. 96–294, title V, § 576, June 30, 1980, 94 Stat. 760; Pub. L. 98–181, title IV, § 464, Nov. 30, 1983, 97 Stat. 1235; Pub. L. 101–440, § 8(c), Oct. 18, 1990, 104 Stat. 1016; Pub. L. 105–388, § 3, Nov. 13, 1998, 112 Stat. 3477; Pub. L. 109–58, title I, § 122(a), Aug. 8, 2005, 119 Stat. 616.)

AMENDMENTS

2005—Pub. L. 109–58 substituted ''$500,000,000 for fiscal year 2006, $600,000,000 for fiscal year 2007, and $700,000,000 for fiscal year 2008'' for ''for fiscal years 1999 through 2003 such sums as may be necessary''.

1998—Pub. L. 105–388 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

''(a) There are authorized to be appropriated for purposes of carrying out the weatherization program under this part, other than under subsections (d) and (e) of section 6865 of this title, not to exceed $200,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992, 1993, and 1994.

''(b) There are authorized to be appropriated for purposes of carrying out the weatherization program under subsections (d) and (e) of section 6865 of this title, not to exceed $20,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994.''

1990—Pub. L. 101–440 amended section generally. Prior to amendment, section read as follows: ''Of the funds authorized by section 1005(1) of the Omnibus Budget Reconciliation Act of 1981 for energy conservation for fiscal year 1984, not less than $190,000,000 is authorized to be appropriated to carry out the weatherization program under this part. There is authorized to be appropriated such sums as may be necessary for fiscal year 1985 to carry out such weatherization program. Any amount appropriated under this section shall remain available until expended.''

1983—Pub. L. 98–181 amended section generally, providing that, of the funds authorized by section 1005(1) of the Omnibus Budget Reconciliation Act of 1981 for energy conservation for fiscal year 1984, not less than $190,000,000 was authorized to be appropriated to carry out the weatherization program under this part, and substituted provisions authorizing the appropriation of such sums as may be necessary for fiscal year 1985 to carry out the weatherization program for provisions that had authorized the appropriations of $55,000,000 for the fiscal year ending on Sept. 30, 1977, $130,000,000 for the fiscal year ending on Sept. 30, 1978, $200,000,000 for the fiscal year ending on Sept. 30, 1979, $200,000,000 for the fiscal year ending on Sept. 30, 1980, and $200,000,000 for the fiscal year ending on Sept. 30, 1981.

1980—Pub. L. 96–294 inserted provisions authorizing to be appropriated $200,000,000 for fiscal year ending on Sept. 30, 1981, such sums to remain available until expended, substituted ''the sum of'' for ''not to exceed'' wherever appearing.

1978—Pub. L. 95–619 substituted an appropriations authorization of not to exceed $130,000,000 for fiscal year ending Sept. 30, 1978, for an authorization of not to exceed $65,000,000 for such fiscal year, substituted an authorization of not to exceed $200,000,000 for fiscal year ending Sept. 30, 1979, for an authorization of $80,000,000 for such fiscal year, and added an authorization of not to exceed $200,000,000 for fiscal year ending Sept. 30, 1980.

§ 6873. Availability of labor

The following actions shall be taken in order to assure that there is a sufficient number of volunteers and training participants and public service employment workers, assisted pursuant to title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and the Older American Community Service Employment Act,[1] available to work in support of weatherization

[1] See References in Text note below.

programs conducted under part A of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6861 et seq.], section 222(a)(12)[1] of the Economic Opportunity Act of 1964 [42 U.S.C. 2809(a)(12)], and section 504 of the Housing Act of 1949 [42 U.S.C. 1474]:

(1) First, the Secretary of Energy (in consultation with the Director of the Community Services Administration, the Secretary of Agriculture, and the Secretary of Labor) shall determine the number of individuals needed to supply sufficient labor to carry out such weatherization programs in the various areas of the country.

(2) After the determination in paragraph (1) is made, the Secretary of Labor shall identify the areas of the country in which there is an insufficient number of such volunteers and training participants and public service employment workers.

(3) After such areas are identified, the Secretary of Labor shall take steps to assure that such weatherization programs are supported to the maximum extent practicable in such areas by such volunteers and training participants and public service employment workers.

(Pub. L. 95–619, title II, § 233, Nov. 9, 1978, 92 Stat. 3227; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(39), (f)(30)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–427, 2681–434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in text, is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Older American Community Service Employment Act, referred to in text, was title V of Pub. L. 89–73, as added Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 720. Title V of Pub. L. 89–73 was amended generally and renamed the Community Service Senior Opportunities Act by Pub. L. 109–365, title V, § 501, Oct. 17, 2006, 120 Stat 2563, and is classified generally to subchapter IX (§ 3056 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Energy Conservation in Existing Buildings Act of 1976, referred to in text, is title IV of Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1150, as amended. Part A of the Energy Conservation in Existing Buildings Act of 1976 is classified generally to part A (§ 6861 et seq.) of subchapter III of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

Section 222(a)(12) of the Economic Opportunity Act of 1964 [42 U.S.C. 2809(a)(12)], referred to in text, which was redesignated as section 222(a)(5) [42 U.S.C. 2809(a)(5)] by Pub. L. 95–568, § 5(a)(2)(E), Nov. 2, 1978, 92 Stat. 2426, was subsequently repealed by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519.

CODIFICATION

Section was enacted as a part of the National Energy Conservation Policy Act, and not as a part of the Energy Conservation and Production Act which comprises this chapter.

AMENDMENTS

1998—Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(30)], struck out ''the Job Training Partnership Act or'' after ''assisted pursuant to''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(39)], which directed the substitution of ''the Job Training Partnership Act or title I of the Workforce Investment Act of 1998'' for ''the Comprehensive Employment and Training Act of 1973'' in introductory provisions, was executed by making the substitution for ''the Comprehensive Employment Training Act of 1973'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(39)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(30)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration, which was established by section 601 of Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), terminated when Economic Opportunity Act of 1964, Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in Department of Health and Human Services by section 676 of Pub. L. 97–35, which is classified to 42 U.S.C. 9905.

PART B—ENERGY CONSERVATION AND RENEWABLE-RESOURCE OBLIGATION GUARANTEES

CODIFICATION

This part was, in the original, designated part D and has been redesignated part B for purposes of codification.

§ 6881. Energy resource and renewable-resource obligation guarantee program

(a) Authorization; requirements for guarantees and commitments to guarantee; procedures

(1) The Secretary may, in accordance with this section and such rules as he shall prescribe after consultation with the Secretary of the Treasury, guarantee and issue commitments to guarantee the payment of the outstanding principal amount of any loan, note, bond, or other obligation evidencing indebtedness, if—

(A) such obligation is entered into or issued by any person or by any State, political subdivision of a State, or agency and instrumentality of either a State or political subdivision thereof; and

(B) the purpose of entering into or issuing such obligation is the financing of any energy conservation measure or renewable-resource energy measure which is to be installed or otherwise implemented in any building or industrial plant owned or operated by the person or State, political subdivision of a State, or agency or instrumentality of either a State or political subdivision thereof, (i) which enters into or issues such obligation, or (ii) to which such measure is leased.

(2) No guarantee or commitment to guarantee may be issued under this subsection with respect to any obligation—

(A) which is a general obligation of a State; or

(B) which is entered into or issued for the purpose of financing any energy conservation

measure or renewable-resource energy measure which is to be installed or otherwise implemented in a residential building containing 2 or fewer dwelling units.

(3) Before prescribing rules pursuant to this subsection, the Secretary shall consult with the Administrator of the Small Business Administration in order to formulate procedures which would assist small business concerns in obtaining guarantees and commitments to guarantee under this section.

(b) Preconditions for issuance of guarantees and commitments to guarantee

No obligation may be guaranteed, and no commitment to guarantee an obligation may be issued, under subsection (a) of this section, unless the Secretary finds that the measure which is to be financed by such obligation—

(1) has been identified by an energy audit to be an energy conservation measure or a renewable-resource energy measure; or

(2) is included on a list of energy conservation measures and renewable-resource energy measures which the Secretary publishes under section 6325(e)(1) of this title.

Before issuing a guarantee under subsection (a) of this section, the Secretary may require that an energy audit be conducted with respect to an energy conservation measure or a renewable-resource energy measure which is on a list described in paragraph (2) and which is to be financed by the obligation to be guaranteed under this section. The amount of any obligation which may be guaranteed under subsection (a) of this section may include the cost of an energy audit.

(c) Limitations on availability of guarantees; term of guarantees; aggregate outstanding principal amount of obligations of one borrower

(1) The Secretary shall limit the availability of a guarantee otherwise authorized by subsection (a) of this section to obligations entered into by or issued by borrowers who can demonstrate that financing is not otherwise available on reasonable terms and conditions to allow the measure to be financed.

(2) No obligation may be guaranteed by the Secretary under subsection (a) of this section unless the Secretary finds—

(A) there is a reasonable prospect for the repayment of such obligation; and

(B) in the case of an obligation issued by a person, such obligation constitutes a general obligation of such person for such guarantee.

(3) The term of any guarantee issued under subsection (a) of this section may not exceed 25 years.

(4) The aggregate outstanding principal amount which may be guaranteed under subsection (a) of this section at any one time with respect to obligations entered into or issued by any borrower may not exceed $5,000,000.

(d) Limitations on original principal amount guaranteed; revocation of guarantees and commitments to guarantee; conclusiveness of guarantee

The original principal amount guaranteed under subsection (a) may not exceed 90 percent of the cost of the energy conservation measure or the renewable-resource energy measure financed by the obligation guaranteed under such subsection; except that such amount may not exceed 25 percent of the fair market value of the building or industrial plant being modified by such energy conservation measure or renewable-resource energy measure. No guarantee issued, and no commitment to guarantee, which is issued under subsection (a) of this section shall be terminated, canceled, or otherwise revoked except in accordance with reasonable terms and conditions prescribed by the Secretary, after consultation with the Secretary of the Treasury, and contained in the written guarantee or commitment to guarantee. The full faith and credit of the United States is pledged to the payment of all guarantees made under subsection (a) of this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligation involved for such guarantee, and the validity of any guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligation except for fraud or material misrepresentation on the part of such holder.

(e) Information and assurances required prior to guarantees and commitments to guarantee; maintenance and availability of records; fees to borrowers; exceptions

(1) No guarantee and no commitment to guarantee may be issued under subsection (a) of this section unless the Secretary obtains any information reasonably requested and such assurances as are in his judgment (after consultation with the Secretary of the Treasury) reasonable to protect the interests of the United States and to assure that such guarantee or commitment to guarantee is consistent with and will further the purpose of this subchapter. The Secretary shall require that records be kept and made available to the Secretary or the Comptroller General, or any of their duly authorized representatives, in such detail and form as are determined necessary to facilitate (A) an effective financial audit of the energy conservation measure or renewable-resource energy measure investment involved, and (B) an adequate evaluation of the effectiveness of this section. The Secretary and the Comptroller General, or any of their duly authorized representatives, shall have access to pertinent books, documents, papers, and records of any recipient of Federal assistance under this section.

(2) The Secretary may collect a fee from any borrower with respect to whose obligation a guarantee or commitment to guarantee is issued under subsection (a) of this section; except that the Secretary may waive any such fee with respect to any such borrower or class of borrowers. Fees shall be designed to recover the estimated administrative expenses incurred under this part; except that the total of the fees charged any such borrower may not exceed (A) one percent of the amount of the guarantee, or (B) one-half percent of the amount of the commitment to guarantee, whichever is greater. Any amount collected under this paragraph shall be deposited in the miscellaneous receipts of the Treasury.

(f) Default in payment of principal due under guaranteed obligation; procedures applicable

(1) If there is a default by the obligor in any payment of principal due under an obligation guaranteed under subsection (a) of this section, and if such default continues for 30 days, the holder of such obligation or his agent has the right to demand payment by the Secretary of the unpaid principal of such obligation, consistent with the terms of the guarantee of such obligation. Such payment may be demanded within such period as may be specified in the guarantee or related agreements, which period shall expire not later than 90 days from the date of such default. If demand occurs within such specified period, then not later than 60 days from the date of such demand, the Secretary shall pay to such holder the unpaid principal of such obligation, consistent with the terms of the guarantee of such obligation; except that (A) the Secretary shall not be required to make any such payment if he finds, prior to the expiration of the 60-day period beginning on the date on which the demand is made, that there was no default by the obligor in the payment of principal or that such default has been remedied, and (B) no such holder shall receive payment or be entitled to retain payment in a total amount which together with any other recovery (including any recovery based upon any security interest) exceeds the actual loss of principal by such holder.

(2) If the Secretary makes payment to a holder under paragraph (1), the Secretary shall thereupon—

(A) have all of the rights granted to him by law or agreement with the obligor; and

(B) be subrogated to all of the rights which were granted such holder, by law, assignment, or security agreement applicable to the guaranteed obligation.

(3) The Secretary may, in his discretion, take possession of, complete, recondition, reconstruct, renovate, repair, maintain, operate, remove, charter, rent, sell, or otherwise dispose of any property or other interests obtained by him pursuant to this subsection. The terms of any such sale or other disposition shall be as approved by the Secretary.

(4) If there is a default by the obligor in any payment due under an obligation guaranteed under subsection (a) of this section, the Secretary shall take such action against such obligor or any other person as is, in his discretion, necessary or appropriate to protect the interests of the United States. Such an action may be brought in the name of the United States or in the name of the holder of such obligation. Such holder shall make available to the Secretary all records and evidence necessary to prosecute any such suit. The Secretary may, in his discretion, accept a conveyance of property in full or partial satisfaction of any sums owed to him. If the Secretary receives, through the sale of property, an amount greater than his cost and the amount paid to the holder under paragraph (1), he shall pay such excess to the obligor.

(g) Limitation on aggregate outstanding principal amount of obligations guaranteed; time limitation on guarantees and commitments to guarantee; authorization of appropriations

(1) The aggregate outstanding principal amount of obligations which may be guaranteed under this section may not at any one time exceed $2,000,000,000. No guarantee or commitment to guarantee may be issued under subsection (a) of this section after September 30, 1979.

(2) There is authorized to be appropriated for the payment of amounts to be paid under subsection (f) of this section, not to exceed $60,000,000. Any amount appropriated pursuant to this paragraph shall remain available until expended.

(3) There is authorized to be appropriated to carry out the provisions of this part, including administrative costs, but not for the payment of amounts to be paid under subsection (f) of this section—

(A) for the fiscal year ending September 30, 1977, not to exceed $1,836,000; and

(B) for the fiscal year ending September 30, 1978, not to exceed $4,950,000.

(h) Wages paid laborers and mechanics; labor standards

All laborers and mechanics employed in construction, alteration, or repair which is financed by an obligation guaranteed under subsection (a) of this section shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary shall not guarantee any obligations under subsection (a) of this section without first obtaining adequate assurance that these labor standards will be maintained during such construction, alteration, or repair. The Secretary of Labor shall, with respect to the labor standards in this subsection, have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 3145 of title 40.

(i) Definitions

As used in this part:

(1) The term ''Secretary'' means the Secretary of Energy.

(2) The term ''Comptroller General'' means the Comptroller General of the United States.

(3) The terms ''energy audit'', ''energy conservation measure'', ''renewable-resource energy measure'', ''building'', and ''industrial plant'' have the meanings prescribed for such terms in section 6326 of this title.

(Pub. L. 94–385, title IV, § 451, Aug. 14, 1976, 90 Stat. 1165; Pub. L. 95–70, § 5, July 21, 1977, 91 Stat. 277; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 104–316, title I, § 122(q), Oct. 19, 1996, 110 Stat. 3838.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (e)(1), was in the original ''this title'', meaning title IV of Pub. L. 94–385, known as the Energy Conservation in Existing Buildings Act of 1976, which enacted this subchapter, section 6327 of this title, and section 1701z–8 of Title 12,

Banks and Banking, amended sections 6323, 6325, and 6326 of this title, and enacted provisions set out as a note under section 6801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (h), is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (h), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act'' and ''section 3145 of title 40'' substituted for ''section 276c of title 40, United States Code'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (i)(1), ''The term 'Secretary' means the Secretary of Energy'' substituted for ''The term 'Administrator' means the Administrator of the Federal Energy Administration; except that after such Administration ceases to exist, such term means any officer of the United States designated by the President for purposes of this part'' in view of termination of Federal Energy Administration and transfer of its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title.

AMENDMENTS

1996—Subsecs. (d), (e)(1). Pub. L. 104–316 struck out ''and the Comptroller General'' after ''Secretary of the Treasury''.

1977—Subsec. (g)(3). Pub. L. 95–70 added par. (3).

TRANSFER OF FUNCTIONS

''Secretary'', meaning Secretary of Energy, substituted for ''Administrator'', meaning Administrator of Federal Energy Administration, in subsecs. (a) to (f) and (h) pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

PART C—MISCELLANEOUS PROVISIONS

CODIFICATION

This part was, in the original, designated Part E and has been redesignated Part C for purposes of codification.

§ 6891. Exchange of energy information among the States

The Secretary of Energy shall (through conferences, publications, and other appropriate means) encourage and facilitate the exchange of information among the States with respect to energy conservation and increased use of nondepletable energy sources.

(Pub. L. 94–385, title IV, § 461, Aug. 14, 1976, 90 Stat. 1168; Pub. L. 95–91, title III, § 301(a), title VII, § 703, Aug. 4, 1977, 91 Stat. 577, 606.)

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted in text for ''Administrator'', meaning Administrator of Federal Energy Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 6892. Annual report to Congress by Comptroller General

(a) Requirements; access to information

For each fiscal year ending before October 1, 1979, the Comptroller General shall report to the Congress on the activities of the Secretary of Energy and the Secretary under this subchapter and any amendments to other statutes made by this subchapter. The provisions of section 771 of title 15 (relating to access by the Comptroller General to books, documents, papers, statistics, data, records, and information in the possession of the Secretary of Energy or of recipients of Federal funds) shall apply to data which relate to such activities.

(b) Contents of report

Each report submitted by the Comptroller General under subsection (a) of this section shall include—

(1) an accounting, by State, of expenditures of Federal funds under each program authorized by this subchapter or by amendments made by this subchapter;

(2) an estimate of the energy savings which have resulted thereby;

(3) a thorough evaluation of the effectiveness of the programs authorized by this subchapter or by amendments made by this title in achieving the energy conservation or renewable resource potential available in the sectors and regions affected by such programs;

(4) a review of the extent and effectiveness of compliance monitoring of programs established by this subchapter or by amendments made by this title and any evidence as to the occurrence of fraud with respect to such programs; and

(5) the recommendations of the Comptroller General with respect to (A) improvements in the administration of programs authorized by this subchapter or by amendments made by this subchapter, and (B) additional legislation, if any, which is needed to achieve the purposes of this subchapter.

(c) Definitions

As used in this part:

(1) Omitted

(2) The term ''Comptroller General'' means the Comptroller General of the United States.

(3) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(Pub. L. 94–385, title IV, § 462, Aug. 14, 1976, 90 Stat. 1168; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), and (b)(1), (3), (4), (5), was in the original ''this title'', meaning title IV of Pub. L. 94–385 which enacted this subchapter, section 6327 of this title, and section 1701z–8 of Title 12, Banks and Banking, amended sections 6323, 6325, and 6326 of this title, and enacted provisions set out as a note under section 6801 of this title.

CODIFICATION

Subsec. (c)(1) of this section which read ''The term 'Administrator' means the Administrator of the Federal Energy Administration; except that after such Administration ceases to exist, such term means any officer of the United States designated by the President for

purposes of this part'' has been omitted in view of termination of Federal Energy Administration and transfer of its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and the fact that the term ''Secretary'' is defined for the purposes of this subchapter by par. (3) of this section. In this part, ''Secretary of Energy'' has been substituted for ''Administrator'' wherever it appears.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted for ''Administrator'', meaning Administrator of Federal Energy Administration, in subsec. (a) pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

CHAPTER 82—SOLID WASTE DISPOSAL

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SUBCHAPTER I—GENERAL PROVISIONS

§ 6901. Congressional findings

(a) Solid waste

The Congress finds with respect to solid waste—

(1) that the continuing technological progress and improvement in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characteristics, of the mass material discarded by the purchaser of such products;

(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;

(3) that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes resulting from the industrial, commercial, domestic, and other activities carried on in such areas;

(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices.

(b) Environment and health

The Congress finds with respect to the environment and health, that—

(1) although land is too valuable a national resource to be needlessly polluted by discarded materials, most solid waste is disposed of on land in open dumps and sanitary landfills;

(2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment;

(3) as a result of the Clean Air Act [42 U.S.C. 7401 et seq.], the Water Pollution Control Act [33 U.S.C. 1251 et seq.], and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;

(4) open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;

(5) the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment;

(6) if hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex, and time consuming;

(7) certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated, and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes; and

(8) alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken.

(c) Materials

The Congress finds with respect to materials, that—

(1) millions of tons of recoverable material which could be used are needlessly buried each year;

(2) methods are available to separate usable materials from solid waste; and

(3) the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments.

(d) Energy

The Congress finds with respect to energy, that—

(1) solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy;

(2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and

(3) technology exists to produce usable energy from solid waste.

(Pub. L. 89–272, title II, §1002, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2796; amended Pub. L. 95–609, §7(a), Nov. 8, 1978, 92 Stat. 3081; Pub. L. 98–616, title I, §101(a), Nov. 8, 1984, 98 Stat. 3224.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Water Pollution Control Act, referred to in subsec. (b)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

CODIFICATION

The statutory system governing the disposal of solid wastes set out in this chapter is found in Pub. L. 89–272, title II, as amended in its entirety and completely revised by section 2 of Pub. L. 94–580, Oct. 21, 1976, 90 Stat. 2795. See Short Title of 1976 Amendment note below.

The act, as set out in this chapter, carries a statutory credit showing the sections as having been added by Pub. L. 94–580, without reference to amendments to the act between its original enactment in 1965 and its complete revision in 1976. The act, as originally enacted in 1965, was classified to section 3251 et seq. of this title. For a recapitulation of the provisions of the act as originally enacted, see notes in chapter 39 (§3251 et seq.) of this title where the act was originally set out.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3251 of this title prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1984—Subsec. (b)(5) to (8). Pub. L. 98–616 added pars. (5) to (7), struck out former par. (5) providing that ''hazardous waste presents, in addition to the problems associated with non-hazardous solid waste, special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste; and'', redesignated former par. (6) as (8), and substituted a period for the semicolon at end.

1978—Subsec. (a)(4). Pub. L. 95–609 substituted ''solid waste'' for ''solid-waste''.

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–58, title XV, §1521, Aug. 8, 2005, 119 Stat. 1092, provided that: ''This subtitle [subtitle B (§§1521–1533) of title XV of Pub. L. 109–58, enacting sections 6991j to 6991m of this title, amending sections 6991 to 6991f, 6991h, and 6991i of this title, and enacting provisions set out as notes under section 6991b of this title] may be cited as the 'Underground Storage Tank Compliance Act'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–119, §1, Mar. 26, 1996, 110 Stat. 830, provided that: ''This Act [amending sections 6921, 6924, 6925, 6947, and 6949a of this title and enacting provisions set out as a note under section 6949a of this title] may be cited as the 'Land Disposal Program Flexibility Act of 1996'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–386, title I, §101, Oct. 6, 1992, 106 Stat. 1505, provided that: ''This title [enacting sections 6908, 6939c to 6939e, and 6965 of this title, amending sections 6903, 6924, 6927, and 6961 of this title, and enacting provisions set out as notes under sections 6939c and 6961 of this title] may be cited as the 'Federal Facility Compliance Act of 1992'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–582, §1, Nov. 1, 1988, 102 Stat. 2950, provided that: ''This Act [enacting sections 6992 to 6992k of this title and section 3063 of Title 18, Crimes and Criminal Procedure, and amending section 6903 of this title] may be cited as the 'Medical Waste Tracking Act of 1988'.''

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98–616 provided that: ''This Act [enacting sections 6917, 6936 to 6939a, 6949a, 6979a, 6979b, and 6991 to 6991i of this title, amending this section and sections 6902, 6905, 6912, 6915, 6916, 6921 to 6933, 6935, 6941 to 6945, 6948, 6956, 6962, 6972, 6973, 6976, 6982 and 6984 of this title and enacting provisions set out as notes under sections 6905, 6921 and 6926 of this title] may be cited as 'The Hazardous and Solid Waste Amendments of 1984'.''

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96–482, §1, Oct. 21, 1980, 94 Stat. 2334, provided: ''This Act [enacting sections 6933, 6934, 6941a, 6955, and 6956 of this title, amending sections 6903, 6905, 6911, 6912, 6916, 6921, 6922, 6924, 6925, 6927 to 6931, 6941 to 6943, 6945, 6946, 6948, 6949, 6952, 6953, 6962, 6963, 6964, 6971, 6973, 6974, 6976, 6979, and 6982 of this title; and enacting and repealing provisions set out as a note under section 6981 of this title] may be cited as the 'Solid Waste Disposal Act Amendments of 1980'.''

Pub. L. 96–463, §1, Oct. 15, 1980, 94 Stat. 2055, provided: ''This Act [enacting sections 6901a, 6914a and 6932 of this title, amending sections 6903, 6943 and 6948 of this title, and enacting provisions set out as notes under sections 6363 and 6932 of this title] may be cited as the 'Used Oil Recycling Act of 1980'.''

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94–580 provided that: ''This Act [enacting this chapter and provisions set out as notes under this section and section 6981 of this title] may be cited as the 'Resource Conservation and Recovery Act of 1976'.''

SHORT TITLE

Pub. L. 89–272, title II, §1001, as added by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, provided that: ''This title (hereinafter in this title referred to as 'this Act'), together with the following table of contents, may be cited as the 'Solid Waste Disposal Act' '' [table of contents omitted].

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with ap-

plicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

NATIONAL COMMISSION ON MATERIALS POLICY

Pub. L. 91–512, title II, §§201–206, Oct. 26, 1970, 84 Stat. 1234, known as the ''National Materials Policy Act of 1970'', provided for the establishment of the National Commission on Materials Policy to make a full investigation and study for the purpose of developing a national materials policy to utilize present resources and technology more efficiently and to anticipate the future materials requirements of the Nation and the world, the Commission to submit to the President and Congress a report on its findings and recommendations no later than June 30, 1973, ninety days after the submission of which it should cease to exist.

§ 6901a. Congressional findings: used oil recycling

The Congress finds and declares that—

(1) used oil is a valuable source of increasingly scarce energy and materials;

(2) technology exists to re-refine, reprocess, reclaim, and otherwise recycle used oil;

(3) used oil constitutes a threat to public health and the environment when reused or disposed of improperly; and

that, therefore, it is in the national interest to recycle used oil in a manner which does not constitute a threat to public health and the environment and which conserves energy and materials.

(Pub. L. 96–463, § 2, Oct. 15, 1980, 94 Stat. 2055.)

CODIFICATION

Section was enacted as part of the Used Oil Recycling Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§ 6902. Objectives and national policy

(a) Objectives

The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by—

(1) providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;

(2) providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;

(3) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;

(4) assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment;

(5) requiring that hazardous waste be properly managed in the first instance thereby reducing the need for corrective action at a future date;

(6) minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment;

(7) establishing a viable Federal-State partnership to carry out the purposes of this chapter and insuring that the Administrator will, in carrying out the provisions of subchapter III of this chapter, give a high priority to assisting and cooperating with States in obtaining full authorization of State programs under subchapter III of this chapter;

(8) providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;

(9) promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;

(10) promoting the demonstration, construction, and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and

(11) establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.

(b) National policy

The Congress hereby declares it to be the national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.

(Pub. L. 89–272, title II, § 1003, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2798; amended Pub. L. 98–616, title I, § 101(b), Nov. 8, 1984, 98 Stat. 3224.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3251 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, § 101(b)(1), designated existing provisions as subsec. (a).

Subsec. (a)(4) to (11). Pub. L. 98–616, § 101(b)(2), struck out par. (4) which provided for regulating the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment, added pars. (4) to (7), and redesignated former pars. (5) to (8) as (8) to (11), respectively.

Subsec. (b). Pub. L. 98–616, § 101(b)(1), added subsec. (b).

§ 6903. Definitions

As used in this chapter:

(1) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) The term ''construction,'' with respect to any project of construction under this chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

(2A) The term ''demonstration'' means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

(3) The term ''disposal'' means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(4) The term ''Federal agency'' means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

(5) The term ''hazardous waste'' means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(6) The term ''hazardous waste generation'' means the act or process of producing hazardous waste.

(7) The term ''hazardous waste management'' means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(8) For purposes of Federal financial assistance (other than rural communities assistance), the term ''implementation'' does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land.

(9) The term ''intermunicipal agency'' means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

(10) The term ''interstate agency'' means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the management of solid wastes and serving two or more municipalities located in different States.

(11) The term ''long-term contract'' means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

(12) The term ''manifest'' means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(13) The term ''municipality'' (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(14) The term ''open dump'' means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste.

(15) The term ''person'' means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

(16) The term ''procurement item'' means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

(17) The term ''procuring agency'' means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(18) The term ''recoverable'' refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.

(19) The term ''recovered material'' means waste material and byproducts which have been

recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

(20) The term ''recovered resources'' means material or energy recovered from solid waste.

(21) The term ''resource conservation'' means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

(22) The term ''resource recovery'' means the recovery of material or energy from solid waste.

(23) The term ''resource recovery system'' means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

(24) The term ''resource recovery facility'' means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(25) The term ''regional authority'' means the authority established or designated under section 6946 of this title.

(26) The term ''sanitary landfill'' means a facility for the disposal of solid waste which meets the criteria published under section 6944 of this title.

(26A) The term ''sludge'' means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

(27) The term ''solid waste'' means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C. 2011 et seq.].

(28) The term ''solid waste management'' means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

(29) The term ''solid waste management facility'' includes—

(A) any resource recovery system or component thereof,

(B) any system, program, or facility for resource conservation, and

(C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

(30) The terms ''solid waste planning'', ''solid waste management'', and ''comprehensive planning'' include planning or management respecting resource recovery and resource conservation.

(31) The term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(32) The term ''State authority'' means the agency established or designated under section 6947 of this title.

(33) The term ''storage'', when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(34) The term ''treatment'', when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(35) The term ''virgin material'' means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

(36) The term ''used oil'' means any oil which has been—

(A) refined from crude oil,

(B) used, and

(C) as a result of such use, contaminated by physical or chemical impurities.

(37) The term ''recycled oil'' means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.

(38) The term ''lubricating oil'' means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

(39) The term ''re-refined oil'' means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(40) Except as otherwise provided in this paragraph, the term ''medical waste'' means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such term does not include any hazardous waste identified or listed under subchapter III of this chapter or any household waste as defined in regulations under subchapter III of this chapter.

(41) The term ''mixed waste'' means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(Pub. L. 89–272, title II, § 1004, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2798; amended Pub. L. 95–609, § 7(b), Nov. 8, 1978, 92 Stat. 3081; Pub. L. 96–463, § 3, Oct. 15, 1980, 94 Stat. 2055; Pub. L. 96–482, § 2, Oct. 21, 1980, 94 Stat. 2334; Pub. L. 100–582, § 3, Nov. 1, 1988, 102 Stat. 2958; Pub. L. 102–386, title I, §§ 103, 105(b), Oct. 6, 1992, 106 Stat. 1507, 1512.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in pars. (27) and (41), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3252 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1992—Par. (15). Pub. L. 102–386, § 103, inserted before period at end ''and shall include each department, agency, and instrumentality of the United States''.

Par. (41). Pub. L. 102–386, § 105(b), added par. (41).

1988—Par. (40). Pub. L. 100–582 added par. (40).

1980—Par. (14). Pub. L. 96–482, § 2(a), defined ''open dump'' to include a facility, substituted requirement that disposal facility or site not be a sanitary landfill meeting section 6944 of this title criteria for prior requirement that disposal site not be a sanitary landfill within meaning of section 6944 of this title, and required that the disposal facility or site not be a facility for disposal of hazardous waste.

Par. (19). Pub. L. 96–482, § 2(b), defined ''recovered material'' to cover byproducts, substituted provision for recovery or diversion of waste material and byproducts from solid waste for prior provision for collection or recovery of material from solid waste, and excluded materials and byproducts generated from and commonly reused within an original manufacturing process.

Pars. (36) to (39). Pub. L. 96–463, § 3, added pars. (36) to (39).

1978—Par. (8). Pub. L. 95–609, § 7(b)(1), struck out provision stating that employees' salaries due pursuant to subchapter IV of this chapter would not be included after Dec. 31, 1979.

Par. (10). Pub. L. 95–609, § 7(b)(2), substituted ''management'' for ''disposal''.

Par. (29)(C). Pub. L. 95–609, § 7(b)(3), substituted ''the collection, source separation, storage, transportation, transfer, processing, treatment or disposal'' for ''the treatment''.

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official of Environmental Protection Agency related to compliance with resource conservation and recovery permits used under this chapter with respect to preconstruction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 6904. Governmental cooperation

(a) Interstate cooperation

The provisions of this chapter to be carried out by States may be carried out by interstate agencies and provisions applicable to States may apply to interstate regions where such agencies and regions have been established by the respective States and approved by the Administrator. In any such case, action required to be taken by the Governor of a State, respecting regional designation shall be required to be taken by the Governor of each of the respective States with respect to so much of the interstate region as is within the jurisdiction of that State.

(b) Consent of Congress to compacts

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for—

(1) cooperative effort and mutual assistance for the management of solid waste or hazardous waste (or both) and the enforcement of their respective laws relating thereto, and

(2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts.

No such agreement or compact shall be binding or obligatory upon any State a party thereto unless it is agreed upon by all parties to the agreement and until it has been approved by the Administrator and the Congress.

(Pub. L. 89–272, title II, § 1005, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2801.)

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6905. Application of chapter and integration with other Acts

(a) Application of chapter

Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], or the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

(b) Integration with other Acts

(1) The Administrator shall integrate all provisions of this chapter for purposes of adminis-

tration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this chapter and in the other acts referred to in this subsection.

(2)(A) As promptly as practicable after November 8, 1984, the Administrator shall submit a report describing—

(i) the current data and information available on emissions of polychlorinated dibenzo-p-dioxins from resource recovery facilities burning municipal solid waste;

(ii) any significant risks to human health posed by these emissions; and

(iii) operating practices appropriate for controlling these emissions.

(B) Based on the report under subparagraph (A) and on any future information on such emissions, the Administrator may publish advisories or guidelines regarding the control of dioxin emissions from such facilities. Nothing in this paragraph shall be construed to preempt or otherwise affect the authority of the Administrator to promulgate any regulations under the Clean Air Act [42 U.S.C. 7401 et seq.] regarding emissions of polychlorinated dibenzo-p-dioxins.

(3) Notwithstanding any other provisions of law, in developing solid waste plans, it is the intention of this chapter that in determining the size of a waste-to-energy facility, adequate provisions shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interests within the area encompassed by the solid waste plan.

(c) Integration with the Surface Mining Control and Reclamation Act of 1977

(1) No later than 90 days after October 21, 1980, the Administrator shall review any regulations applicable to the treatment, storage, or disposal of any coal mining wastes or overburden promulgated by the Secretary of the Interior under the Surface Mining and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.]. If the Administrator determines that any requirement of final regulations promulgated under any section of subchapter III of this chapter relating to mining wastes or overburden is not adequately addressed in such regulations promulgated by the Secretary, the Administrator shall promptly transmit such determination, together with suggested revisions and supporting documentation, to the Secretary.

(2) The Secretary of the Interior shall have exclusive responsibility for carrying out any requirement of subchapter III of this chapter with respect to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.]. The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection and shall integrate such regulations with regulations promulgated under the Surface Mining Control and Reclamation Act of 1977.

(Pub. L. 89–272, title II, § 1006, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2802; amended Pub. L. 96–482, § 3, Oct. 21, 1980, 94 Stat. 2334; Pub. L. 98–616, title I, § 102, title V, § 501(f)(2), Nov. 8, 1984, 98 Stat. 3225, 3276.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsecs. (a) and (b), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Marine Protection, Research and Sanctuaries Act of 1972, referred to in subsecs. (a) and (b), is Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (§ 1431 et seq.) and 32A (§ 1447 et seq.) of Title 16, Conservation, and chapters 27 (§ 1401 et seq.) and 41 (§ 2801 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsecs. (a) and (b), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Clean Air Act, referred to in subsec. (b)(1), (2)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (c), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (§ 1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3257 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1984—Subsec. (b)(1), (2). Pub. L. 98–616, § 102, designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(3). Pub. L. 98–616, § 501(f)(2), added par. (3).

1980—Subsec. (c). Pub. L. 96–482 added subsec. (c).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

URANIUM MILL TAILINGS

Section 703 of Pub. L. 98–616 provided that: ''Nothing in the Hazardous and Solid Waste Amendments of 1984 [see Short Title of 1984 Amendment note set out under section 6901 of this title] shall be construed to affect, modify, or amend the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7901 et seq.]''.

§ 6906. Financial disclosure

(a) Statement

Each officer or employee of the Administrator who—

(1) performs any function or duty under this chapter; and

(2) has any known financial interest in any person who applies for or receives financial assistance under this chapter

shall, beginning on February 1, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Action by Administrator

The Administrator shall—

(1) act within ninety days after October 21, 1976—

(A) to define the term ''known financial interest'' for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

(2) report to the Congress on June 1, 1978, and of each succeeding calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exemption

In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions within the Environmental Protection Agency which are of a nonpolicy-making nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Penalty

Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(Pub. L. 89–272, title II, § 1007, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2802.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (b)(2) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 14th item on page 164 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6907. Solid waste management information and guidelines

(a) Guidelines

Within one year of October 21, 1976, and from time to time thereafter, the Administrator shall, in cooperation with appropriate Federal, State, municipal, and intermunicipal agencies, and in consultation with other interested persons, and after public hearings, develop and publish suggested guidelines for solid waste management. Such suggested guidelines shall—

(1) provide a technical and economic description of the level of performance that can be attained by various available solid waste management practices (including operating practices) which provide for the protection of public health and the environment;

(2) not later than two years after October 21, 1976, describe levels of performance, including appropriate methods and degrees of control, that provide at a minimum for (A) protection of public health and welfare; (B) protection of the quality of ground waters and surface waters from leachates; (C) protection of the quality of surface waters from runoff through compliance with effluent limitations under the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.]; (D) protection of ambient air quality through compliance with new source performance standards or requirements of air quality implementation plans under the Clean Air Act, as amended [42 U.S.C. 7401 et seq.]; (E) disease and vector control; (F) safety; and (G) esthetics; and

(3) provide minimum criteria to be used by the States to define those solid waste management practices which constitute the open dumping of solid waste or hazardous waste and are to be prohibited under subchapter IV of this chapter.

Where appropriate, such suggested guidelines also shall include minimum information for use in deciding the adequate location, design, and construction of facilities associated with solid waste management practices, including the consideration of regional, geographic, demographic, and climatic factors.

(b) Notice

The Administrator shall notify the Committee on Environment and Public Works of the Senate

and the Committee on Energy and Commerce of the House of Representatives a reasonable time before publishing any suggested guidelines or proposed regulations under this chapter of the content of such proposed suggested guidelines or proposed regulations under this chapter.

(Pub. L. 89–272, title II, § 1008, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2803; amended Pub. L. 95–609, § 7(c), (d), Nov. 8, 1978, 92 Stat. 3081; Pub. L. 103–437, § 15(r), Nov. 2, 1994, 108 Stat. 4594.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a)(2), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, as amended, referred to in subsec. (a)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254c of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–437 substituted ''Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House'' for ''Committee on Public Works of the Senate and the Committee on Interstate and Foreign Commerce of the House''.

1978—Subsec. (a)(3). Pub. L. 95–609, § 7(c), substituted ''subchapter IV of this chapter'' for ''title IV of this Act''.

Subsec. (b). Pub. L. 95–609, § 7(d), struck out ''pursuant to this section'' after ''any suggested guidelines'' and inserted ''or proposed regulations under this chapter'' after ''suggested guidelines'' in two places.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6908. Small town environmental planning

(a) Establishment

The Administrator of the Environmental Protection Agency (hereafter referred to as the ''Administrator'') shall establish a program to assist small communities in planning and financing environmental facilities. The program shall be known as the ''Small Town Environmental Planning Program''.

(b) Small Town Environmental Planning Task Force

(1) The Administrator shall establish a Small Town Environmental Planning Task Force which shall be composed of representatives of small towns from different areas of the United States, Federal and State governmental agencies, and public interest groups. The Administrator shall terminate the Task Force not later than 2 years after the establishment of the Task Force.

(2) The Task Force shall—

(A) identify regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns;

(B) identify means to improve the working relationship between the Environmental Protection Agency (hereafter referred to as the Agency) and small towns;

(C) review proposed regulations for the protection of the environmental and public health and suggest revisions that could improve the ability of small towns to comply with such regulations;

(D) identify means to promote regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic condition of such systems and infrastructure; and

(E) provide such other assistance to the Administrator as the Administrator deems appropriate.

(c) Identification of environmental requirements

(1) Not later than 6 months after October 6, 1992, the Administrator shall publish a list of requirements under Federal environmental and public health statutes (and the regulations developed pursuant to such statutes) applicable to small towns. Not less than annually, the Administrator shall make such additions and deletions to and from the list as the Administrator deems appropriate.

(2) The Administrator shall, as part of the Small Town Environmental Planning Program under this section, implement a program to notify small communities of the regulations identified under paragraph (1) and of future regulations and requirements through methods that the Administrator determines to be effective to provide information to the greatest number of small communities, including any of the following:

(A) Newspapers and other periodicals.

(B) Other news media.

(C) Trade, municipal, and other associations that the Administrator determines to be appropriate.

(D) Direct mail.

(d) Small Town Ombudsman

The Administrator shall establish and staff an Office of the Small Town Ombudsman. The Office shall provide assistance to small towns in connection with the Small Town Environmental Planning Program and other business with the

Agency. Each regional office shall identify a small town contact. The Small Town Ombudsman and the regional contacts also may assist larger communities, but only if first priority is given to providing assistance to small towns.

(e) Multi-media permits

(1) The Administrator shall conduct a study of establishing a multi-media permitting program for small towns. Such evaluation shall include an analysis of—

(A) environmental benefits and liabilities of a multi-media permitting program;

(B) the potential of using such a program to coordinate a small town's environmental and public health activities; and

(C) the legal barriers, if any, to the establishment of such a program.

(2) Within 3 years after October 6, 1992, the Administrator shall report to Congress on the results of the evaluation performed in accordance with paragraph (1). Included in this report shall be a description of the activities conducted pursuant to subsections (a) through (d) of this section.

(f) "Small town" defined

For purposes of this section, the term ''small town'' means an incorporated or unincorporated community (as defined by the Administrator) with a population of less than 2,500 individuals.

(g) Authorization

There is authorized to be appropriated the sum of $500,000 to implement this section.

(Pub. L. 102–386, title I, § 109, Oct. 6, 1992, 106 Stat. 1515.)

CODIFICATION

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§ 6908a. Agreements with Indian tribes

On and after October 21, 1998, the Administrator is authorized to enter into assistance agreements with Federally[1] recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the development and implementation of programs to manage hazardous waste, and underground storage tanks.

(Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2499.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, and not as part of the Solid Waste Disposal Act which comprises this chapter.

SUBCHAPTER II—OFFICE OF SOLID WASTE; AUTHORITIES OF THE ADMINISTRATOR

§ 6911. Office of Solid Waste and Interagency Coordinating Committee

(a) Office of Solid Waste

The Administrator shall establish within the Environmental Protection Agency an Office of Solid Waste (hereinafter referred to as the ''Office'') to be headed by an Assistant Administrator of the Environmental Protection Agency. The duties and responsibilities (other than duties and responsibilities relating to research and development) of the Administrator under this chapter (as modified by applicable reorganization plans) shall be carried out through the Office.

(b) Interagency Coordinating Committee

(1) There is hereby established an Interagency Coordinating Committee on Federal Resource Conservation and Recovery Activities which shall have the responsibility for coordinating all activities dealing with resource conservation and recovery from solid waste carried out by the Environmental Protection Agency, the Department of Energy, the Department of Commerce, and all other Federal agencies which conduct such activities pursuant to this chapter or any other Act. For purposes of this subsection, the term ''resource conservation and recovery activities'' shall include, but not be limited to, all research, development and demonstration projects on resource conservation or energy, or material, recovery from solid waste, and all technical or financial assistance for State or local planning for, or implementation of, projects related to resource conservation or energy or material, recovery from solid waste. The Committee shall be chaired by the Administrator of the Environmental Protection Agency or such person as the Administrator may designate. Members of the Committee shall include representatives of the Department of Energy, the Department of Commerce, the Department of the Treasury, and each other Federal agency which the Administrator determines to have programs or responsibilities affecting resource conservation or recovery.

(2) The Interagency Coordinating Committee shall include oversight of the implementation of

(A) the May 1979 Memorandum of Understanding on Energy Recovery from Municipal Solid Waste between the Environmental Protection Agency and the Department of Energy;

(B) the May 30, 1978, Interagency Agreement between the Department of Commerce and the Environmental Protection Agency on the Implementation of the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; and

(C) any subsequent agreements between these agencies or other Federal agencies which address Federal resource recovery or conservation activities.

(Pub. L. 89–272, title II, § 2001, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2804; amended Pub. L. 96–482, § 4(c), Oct. 21, 1980, 94 Stat. 2335; Pub. L. 96–510, title III, § 307(a), Dec. 11, 1980, 94 Stat. 2810.)

REFERENCES IN TEXT

The Resource Conservation and Recovery Act, referred to in subsec. (b)(2)(B), is Pub. L. 94–580, Oct. 21, 1976, 90 Stat. 2796, which is classified generally to this chapter (§ 6901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Subsection (b)(3) of this section, which required the Interagency Coordinating Committee to submit to Con-

[1] So in original. Probably should not be capitalized.

gress on March 1 of each year, a five-year action plan for Federal resource conservation or recovery activities, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 2nd item on page 175 of House Document No. 103–7.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–510 substituted reference to Assistant Administrator for reference to Deputy Assistant Administrator.

Pub. L. 96–482 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1980 AMENDMENT

Section 307(c) of Pub. L. 96–510 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective ninety days after the date of the enactment of this Act [Dec. 11, 1980].''

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6911a. Assistant Administrator of Environmental Protection Agency; appointment, etc.

The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], shall be appointed by the President by and with the advice and consent of the Senate.

(Pub. L. 96–510, title III, § 307(b), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 98–80, § 2(c)(2)(B), Aug. 23, 1983, 97 Stat. 485.)

REFERENCES IN TEXT

Reorganization Plan Numbered 3 of 1970, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

The Toxic Substances Control Act, referred to in text, is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

AMENDMENTS

1983—Pub. L. 98–80 struck out '', and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5'' after ''advice and consent of the Senate''.

EFFECTIVE DATE

Section effective Dec. 11, 1980, see section 9652 of this title.

§ 6912. Authorities of Administrator

(a) Authorities

In carrying out this chapter, the Administrator is authorized to—

(1) prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this chapter;

(2) consult with or exchange information with other Federal agencies undertaking research, development, demonstration projects, studies, or investigations relating to solid waste;

(3) provide technical and financial assistance to States or regional agencies in the development and implementation of solid waste plans and hazardous waste management programs;

(4) consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups, as he deems advisable;

(5) utilize the information, facilities, personnel and other resources of Federal agencies, including the National Institute of Standards and Technology and the National Bureau of the Census, on a reimbursable basis, to perform research and analyses and conduct studies and investigations related to resource recovery and conservation and to otherwise carry out the Administrator's functions under this chapter; and

(6) to delegate to the Secretary of Transportation the performance of any inspection or enforcement function under this chapter relating to the transportation of hazardous waste where such delegation would avoid unnecessary duplication of activity and would carry out the objectives of this chapter and of chapter 51 of title 49.

(b) Revision of regulations

Each regulation promulgated under this chapter shall be reviewed and, where necessary, revised not less frequently than every three years.

(c) Criminal investigations

In carrying out the provisions of this chapter, the Administrator, and duly-designated agents and employees of the Environmental Protection Agency, are authorized to initiate and conduct investigations under the criminal provisions of this chapter, and to refer the results of these investigations to the Attorney General for prosecution in appropriate cases.

(Pub. L. 89–272, title II, § 2002, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2804; amended Pub. L. 96–482, § 5, Oct. 21, 1980, 94 Stat. 2335; Pub. L. 98–616, title IV, § 403(d)(4), Nov. 8, 1984, 98 Stat. 3272; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

CODIFICATION

In subsec. (a)(6), ''chapter 51 of title 49'' substituted for ''the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1988—Subsec. (a)(5). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

1984—Subsec. (c). Pub. L. 98–616 added subsec. (c).
1980—Subsec. (a)(6). Pub. L. 96–482 added par. (6).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6913. Resource Recovery and Conservation Panels

The Administrator shall provide teams of personnel, including Federal, State, and local employees or contractors (hereinafter referred to as ''Resource Conservation and Recovery Panels'') to provide Federal agencies, States and local governments upon request with technical assistance on solid waste management, resource recovery, and resource conservation. Such teams shall include technical, marketing, financial, and institutional specialists, and the services of such teams shall be provided without charge to States or local governments.

(Pub. L. 89–272, title II, § 2003, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2804; amended Pub. L. 95–609, § 7(e), Nov. 8, 1978, 92 Stat. 3081.)

AMENDMENTS

1978—Pub. L. 95–609 inserted ''Federal agencies,'' after ''to provide''.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6914. Grants for discarded tire disposal

(a) Grants

The Administrator shall make available grants equal to 5 percent of the purchase price of tire shredders (including portable shredders attached to tire collection trucks) to those eligible applicants best meeting criteria promulgated under this section. An eligible applicant may be any private purchaser, public body, or public-private joint venture. Criteria for receiving grants shall be promulgated under this section and shall include the policy to offer any private purchaser the first option to receive a grant, the policy to develop widespread geographic distribution of tire shredding facilities, the need for such facilities within a geographic area, and the projected risk and viability of any such venture. In the case of an application under this section from a public body, the Administrator shall first make a determination that there are no private purchasers interested in making an application before approving a grant to a public body.

(b) Authorization of appropriations

There is authorized to be appropriated $750,000 for each of the fiscal years 1978 and 1979 to carry out this section.

(Pub. L. 89–272, title II, § 2004, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2805.)

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6914a. Labeling of lubricating oil

For purposes of any provision of law which requires the labeling of commodities, lubricating oil shall be treated as lawfully labeled only if it bears the following statement, prominently displayed:

''DON'T POLLUTE—CONSERVE RESOURCES; RETURN USED OIL TO COLLECTION CENTERS''.

(Pub. L. 89–272, title II, § 2005, as added Pub. L. 96–463, § 4(a), Oct. 15, 1980, 94 Stat. 2056.)

PRIOR PROVISIONS

A prior section 2005 of Pub. L. 89–272 was renumbered section 2006 and is classified to section 6915 of this title.

§ 6914b. Degradable plastic ring carriers; definitions

As used in this title—

(1) the term ''regulated item'' means any plastic ring carrier device that contains at least one hole greater than 1¾ inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles, and which is of a size, shape, design, or type capable, when discarded, of becoming entangled with fish or wildlife; and

(2) the term ''naturally degradable material'' means a material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photodegradation, or hydrolysis.

(Pub. L. 100–556, title I, § 102, Oct. 28, 1988, 102 Stat. 2779.)

REFERENCES IN TEXT

This title, referred to in text, is title I of Pub. L. 100–556, Oct. 28, 1988, 102 Stat. 2779, which enacted sections 6914b and 6914b–1 of this title, and provisions set out as a note under section 6914b of this title. For complete classification of this title to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

CONGRESSIONAL FINDINGS

Section 101 of Pub. L. 100–556 provided that: ''The Congress finds that—

''(1) plastic ring carrier devices have been found in large quantities in the marine environment;

''(2) fish and wildlife have been known to have become entangled in plastic ring carriers;

''(3) nondegradable plastic ring carrier devices can remain intact in the marine environment for decades, posing a threat to fish and wildlife; and

''(4) 16 States have enacted laws requiring that plastic ring carrier devices be made from degradable material in order to reduce litter and to protect fish and wildlife.''

§ 6914b–1. Regulation of plastic ring carriers

Not later than 24 months after October 28, 1988 (unless the Administrator of the Environmental Protection Agency determines that it is not feasible or that the byproducts of degradable regulated items present a greater threat to the environment than nondegradable regulated items), the Administrator of the Environmental Protection Agency shall require, by regulation, that any regulated item intended for use in the United States shall be made of naturally degradable material which, when discarded, decomposes within a period established by such regulation. The period within which decomposition must occur after being discarded shall be the shortest period of time consistent with the intended use of the item and the physical integrity required for such use. Such regulation shall allow a reasonable time for affected parties to come into compliance, including the use of existing inventories.

(Pub. L. 100–556, title I, § 103, Oct. 28, 1988, 102 Stat. 2779.)

CODIFICATION

Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

§ 6915. Annual report

The Administrator shall transmit to the Congress and the President, not later than ninety days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Office during the preceding fiscal year. Each such report shall include—

(1) a statement of specific and detailed objectives for the activities and programs conducted and assisted under this chapter;

(2) statements of the Administrator's conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this chapter, measured through the end of such fiscal year;

(3) a summary of outstanding solid waste problems confronting the Administrator, in order of priority;

(4) recommendations with respect to such legislation which the Administrator deems necessary or desirable to assist in solving problems respecting solid waste;

(5) all other information required to be submitted to the Congress pursuant to any other provision of this chapter; and

(6) the Administrator's plans for activities and programs respecting solid waste during the next fiscal year.

(Pub. L. 89–272, title II, § 2006, formerly § 2005, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2805, and renumbered Pub. L. 96–463, § 4(a), Oct. 15, 1980, 94 Stat. 2056; amended Pub. L. 98–616, title V, § 502(b), Nov. 8, 1984, 98 Stat. 3276.)

PRIOR PROVISIONS

A prior section 2006 of Pub. L. 89–272 was renumbered section 2007 and is classified to section 6916 of this title.

AMENDMENTS

1984—Par. (1). Pub. L. 98–616 substituted ''detailed'' for ''detail''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to transmittal of annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 19th item on page 164 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6916. General authorization

(a) General administration

There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of this chapter, $35,000,000 for the fiscal year ending September 30, 1977, $38,000,000 for the fiscal year ending September 30, 1978, $42,000,000 for the fiscal year ending September 30, 1979, $70,000,000 for the fiscal year ending September 30, 1980, $80,000,000 for the fiscal year ending September 30, 1981, $80,000,000 for the fiscal year ending September 30, 1982, $70,000,000 for the fiscal year ending September 30, 1985, $80,000,000 for the fiscal year ending September 30, 1986, $80,000,000 for the fiscal year ending September 30, 1987, and $80,000,000 for the fiscal year 1988.

(b) Resource Recovery and Conservation Panels

Not less than 20 percent of the amount appropriated under subsection (a) of this section, or $5,000,000 per fiscal year, whichever is less, shall be used only for purposes of Resource Recovery and Conservation Panels established under section 6913 of this title (including travel expenses incurred by such panels in carrying out their functions under this chapter).

(c) Hazardous waste

Not less than 30 percent of the amount appropriated under subsection (a) of this section shall be used only for purposes of carrying out subchapter III of this chapter (relating to hazardous waste) other than section 6931 of this title.

(d) State and local support

Not less than 25 per centum of the total amount appropriated under this chapter, up to the amount authorized in section 6948(a)(1) of this title, shall be used only for purposes of support to State, regional, local, and interstate agencies in accordance with subchapter IV of this chapter other than section 6948(a)(2) or 6949 of this title.

(e) Criminal investigators

There is authorized to be appropriated to the Administrator $3,246,000 for the fiscal year 1985, $2,408,300 for the fiscal year 1986, $2,529,000 for the fiscal year 1987, and $2,529,000 for the fiscal year 1988 to be used—

(1) for additional officers or employees of the Environmental Protection Agency authorized by the Administrator to conduct criminal investigations (to investigate, or supervise the investigation of, any activity for which a criminal penalty is provided) under this chapter; and

(2) for support costs for such additional officers or employees.

(f) Underground storage tanks

(1) There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of subchapter IX of this chapter (relating to regulation of underground storage tanks), $10,000,000 for each of the fiscal years 1985 through 1988.

(2) There is authorized to be appropriated $25,000,000 for each of the fiscal years 1985 through 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of approved State underground storage tank release detection, prevention, and correction programs under subchapter IX of this chapter.

(Pub. L. 89–272, title II, § 2007, formerly § 2006, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2805, renumbered Pub. L. 96–463, § 4(a), Oct. 15, 1980, 94 Stat. 2055; amended Pub. L. 96–482, §§ 6, 31(a), Oct. 21, 1980, 94 Stat. 2336, 2352; Pub. L. 98–616, § 2(a), (i), Nov. 8, 1984, 98 Stat. 3222, 3223.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, § 2(a), substituted "$80,000,000 for the fiscal year ending September 30, 1982, $70,000,000 for the fiscal year ending September 30, 1985, $80,000,000 for the fiscal year ending September 30, 1986, $80,000,000 for the fiscal year ending September 30, 1987, and $80,000,000 for the fiscal year 1988" for "and $80,000,000 for the fiscal year ending September 30, 1982".

Subsecs. (e), (f). Pub. L. 98–616, § 2(i), added subsecs. (e) and (f).

1980—Subsec. (a). Pub. L. 96–482, § 31(a), authorized appropriation of $70,000,000, $80,000,000, and $80,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

Subsec. (b). Pub. L. 96–482, § 6(a), inserted ", or $5,000,000 per fiscal year, whichever is less," after "subsection (a) of this section".

Subsec. (d). Pub. L. 96–482, § 6(b), added subsec. (d).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6917. Office of Ombudsman

(a) Establishment; functions

The Administrator shall establish an Office of Ombudsman, to be directed by an Ombudsman. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests for information submitted by any person with respect to any program or requirement under this chapter.

(b) Authority to render assistance

The Ombudsman shall render assistance with respect to the complaints, grievances, and requests submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Administrator.

(c) Effect on procedures for grievances, appeals, or administrative matters

The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this chapter, any other provision of law, or any Federal regulation.

(d) Termination

The Office of the Ombudsman shall cease to exist 4 years after November 8, 1984.

(Pub. L. 89–272, title II, § 2008, as added Pub. L. 98–616, title I, § 103(a), Nov. 8, 1984, 98 Stat. 3225.)

SUBCHAPTER III—HAZARDOUS WASTE MANAGEMENT

§ 6921. Identification and listing of hazardous waste

(a) Criteria for identification or listing

Not later than eighteen months after October 21, 1976, the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

(b) Identification and listing

(1) Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 6903(5) of this title), which shall be subject to the provisions of this subchapter. Such regulations shall be based on the criteria promulgated under subsection (a) of this section and shall be revised from time to time thereafter as may be appropriate. The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratagens)[1] at levels in excess of levels which endanger human health.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing State or Federal regulatory programs in lieu of this sub-

[1] So in original. Probably should be "teratogens)".

chapter until at least 24 months after October 21, 1980, and after promulgation of the regulations in accordance with subparagraphs (B) and (C) of this paragraph. It is the sense of the Congress that such State or Federal programs should include, for waste disposal sites which are to be closed, provisions requiring at least the following:

(i) The identification through surveying, platting, or other measures, together with recordation of such information on the public record, so as to assure that the location where such wastes are disposed of can be located in the future; except however, that no such surveying, platting, or other measure identifying the location of a disposal site for drilling fluids and associated wastes shall be required if the distance from the disposal site to the surveyed or platted location to the associated well is less than two hundred lineal feet; and

(ii) A chemical and physical analysis of a produced water and a composition of a drilling fluid suspected to contain a hazardous material, with such information to be acquired prior to closure and to be placed on the public record.

(B) Not later than six months after completion and submission of the study required by section 6982(m) of this title, the Administrator shall, after public hearings and opportunity for comment, determine either to promulgate regulations under this subchapter for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy or that such regulations are unwarranted. The Administrator shall publish his decision in the Federal Register accompanied by an explanation and justification of the reasons for it. In making the decision under this paragraph, the Administrator shall utilize the information developed or accumulated pursuant to the study required under section 6982(m) of this title.

(C) The Administrator shall transmit his decision, along with any regulations, if necessary, to both Houses of Congress. Such regulations shall take effect only when authorized by Act of Congress.

(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subchapter until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (*o*), or (p) of section 6982 of this title and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:

(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(ii) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.

(iii) Cement kiln dust waste.

(B)(i) Owners and operators of disposal sites for wastes listed in subparagraph (A) may be required by the Administrator, through regulations prescribed under authority of section 6912 of this title—

(I) as to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting, or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future, and

(II) to provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

(ii)(I) In conducting any study under subsection (f), (n), (*o*), or (p), of section 6982 of this title, any officer, employee, or authorized representative of the Environmental Protection Agency, duly designated by the Administrator, is authorized, at reasonable times and as reasonably necessary for the purposes of such study, to enter any establishment where any waste subject to such study is generated, stored, treated, disposed of, or transported from; to inspect, take samples, and conduct monitoring and testing; and to have access to and copy records relating to such waste. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or authorized representative obtains any samples prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, or monitoring and testing performed, a copy of the results shall be furnished promptly to the owner, operator, or agent in charge.

(II) Any records, reports, or information obtained from any person under subclause (I) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, to which the Administrator has access under this subparagraph is made public, would divulge information entitled to protection under section 1905 of title 18, the Administrator shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter. Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subparagraph shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(iii) The Administrator may prescribe regulations, under the authority of this chapter, to prevent radiation exposure which presents an unreasonable risk to human health from the use in construction or land reclamation (with or without revegetation) of (I) solid waste from the

extraction, beneficiation, and processing of phosphate rock or (II) overburden from the mining of uranium ore.

(iv) Whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subparagraph, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(C) Not later than six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (*o*), or (p), of section 6982 of this title, the Administrator shall, after public hearings and opportunity for comment, either determine to promulgate regulations under this subchapter for each waste listed in subparagraph (A) of this paragraph or determine that such regulations are unwarranted. The Administrator shall publish his determination, which shall be based on information developed or accumulated pursuant to such study, public hearings, and comment, in the Federal Register accompanied by an explanation and justification of the reasons for it.

(c) Petition by State Governor

At any time after the date eighteen months after October 21, 1976, the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

(d) Small quantity generator waste

(1) By March 31, 1986, the Administrator shall promulgate standards under sections 6922, 6923, and 6924 of this title for hazardous waste generated by a generator in a total quantity of hazardous waste greater than one hundred kilograms but less than one thousand kilograms during a calendar month.

(2) The standards referred to in paragraph (1), including standards applicable to the legitimate use, reuse, recycling, and reclamation of such wastes, may vary from the standards applicable to hazardous waste generated by larger quantity generators, but such standards shall be sufficient to protect human health and the environment.

(3) Not later than two hundred and seventy days after November 8, 1984, any hazardous waste which is part of a total quantity generated by a generator generating greater than one hundred kilograms but less than one thousand kilograms during one calendar month and which is shipped off the premises on which such waste is generated shall be accompanied by a copy of the Environmental Protection Agency Uniform Hazardous Waste Manifest form signed by the generator. This form shall contain the following information:

(A) the name and address of the generator of the waste;

(B) the United States Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA), if applicable;

(C) the number and type of containers;

(D) the quantity of waste being transported; and

(E) the name and address of the facility designated to receive the waste.

If subparagraph (B) is not applicable, in lieu of the description referred to in such subparagraph (B), the form shall contain the Environmental Protection Agency identification number, or a generic description of the waste, or a description of the waste by hazardous waste characteristic. Additional requirements related to the manifest form shall apply only if determined necessary by the Administrator to protect human health and the environment.

(4) The Administrator's responsibility under this subchapter to protect human health and the environment may require the promulgation of standards under this subchapter for hazardous wastes which are generated by any generator who does not generate more than one hundred kilograms of hazardous waste in a calendar month.

(5) Until the effective date of standards required to be promulgated under paragraph (1), any hazardous waste identified or listed under this section generated by any generator during any calendar month in a total quantity greater than one hundred kilograms but less than one thousand kilograms, which is not treated, stored, or disposed of at a hazardous waste treatment, storage, or disposal facility with a permit under section 6925 of this title, shall be disposed of only in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) Standards promulgated as provided in paragraph (1) shall, at a minimum, require that all treatment, storage, or disposal of hazardous wastes generated by generators referred to in paragraph (1) shall occur at a facility with interim status or a permit under this subchapter, except that onsite storage of hazardous waste generated by a generator generating a total quantity of hazardous waste greater than one hundred kilograms, but less than one thousand kilograms during a calendar month, may occur without the requirement of a permit for up to one hundred and eighty days. Such onsite storage may occur without the requirement of a permit for not more than six thousand kilograms for up to two hundred and seventy days if such generator must ship or haul such waste over two hundred miles.

(7)(A) Nothing in this subsection shall be construed to affect or impair the validity of regulations promulgated by the Secretary of Transportation pursuant to chapter 51 of title 49.

(B) Nothing in this subsection shall be construed to affect, modify, or render invalid any requirements in regulations promulgated prior to January 1, 1983 applicable to any acutely hazardous waste identified or listed under this sec-

tion which is generated by any generator during any calendar month in a total quantity less than one thousand kilograms.

(8) Effective March 31, 1986, unless the Administrator promulgates standards as provided in paragraph (1) of this subsection prior to such date, hazardous waste generated by any generator in a total quantity greater than one hundred kilograms but less than one thousand kilograms during a calendar month shall be subject to the following requirements until the standards referred to in paragraph (1) of this subsection have become effective:

(A) the notice requirements of paragraph (3) of this subsection shall apply and in addition, the information provided in the form shall include the name of the waste transporters and the name and address of the facility designated to receive the waste;

(B) except in the case of the onsite storage referred to in paragraph (6) of this subsection, the treatment, storage, or disposal of such waste shall occur at a facility with interim status or a permit under this subchapter;

(C) generators of such waste shall file manifest exception reports as required of generators producing greater amounts of hazardous waste per month except that such reports shall be filed by January 31, for any waste shipment occurring in the last half of the preceding calendar year, and by July 31, for any waste shipment occurring in the first half of the calendar year; and

(D) generators of such waste shall retain for three years a copy of the manifest signed by the designated facility that has received the waste.

Nothing in this paragraph shall be construed as a determination of the standards appropriate under paragraph (1).

(9) The last sentence of section 6930(b) of this title shall not apply to regulations promulgated under this subsection.

(e) Specified wastes

(1) Not later than 6 months after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) of this section, additional wastes containing chlorinated dioxins or chlorinated-dibenzofurans. Not later than one year after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) of this section wastes containing remaining halogenated dioxins and halogenated-dibenzofurans.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall make a determination of whether or not to list under subsection (b)(1) of this section the following wastes: Chlorinated Aliphatics, Dioxin, Dimethyl Hydrazine, TDI (toluene diisocyanate), Carbamates, Bromacil, Linuron, Organo-bromines, solvents, refining wastes, chlorinated aromatics, dyes and pigments, inorganic chemical industry wastes, lithium batteries, coke by-products, paint production wastes, and coal slurry pipeline effluent.

(f) Delisting procedures

(1) When evaluating a petition to exclude a waste generated at a particular facility from listing under this section, the Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. The Administrator shall provide notice and opportunity for comment on these additional factors before granting or denying such petition.

(2)(A) To the maximum extent practicable the Administrator shall publish in the Federal Register a proposal to grant or deny a petition referred to in paragraph (1) within twelve months after receiving a complete application to exclude a waste generated at a particular facility from being regulated as a hazardous waste and shall grant or deny such a petition within twenty-four months after receiving a complete application.

(B) The temporary granting of such a petition prior to November 8, 1984, without the opportunity for public comment and the full consideration of such comments shall not continue for more than twenty-four months after November 8, 1984. If a final decision to grant or deny such a petition has not been promulgated after notice and opportunity for public comment within the time limit prescribed by the preceding sentence, any such temporary granting of such petition shall cease to be in effect.

(g) EP toxicity

Not later than twenty-eight months after November 8, 1984, the Administrator shall examine the deficiencies of the extraction procedure toxicity characteristic as a predictor of the leaching potential of wastes and make changes in the extraction procedure toxicity characteristic, including changes in the leaching media, as are necessary to insure that it accurately predicts the leaching potential of wastes which pose a threat to human health and the environment when mismanaged.

(h) Additional characteristics

Not later than two years after November 8, 1984, the Administrator shall promulgate regulations under this section identifying additional characteristics of hazardous waste, including measures or indicators of toxicity.

(i) Clarification of household waste exclusion

A resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subchapter, if—

(1) such facility—

(A) receives and burns only—

(i) household waste (from single and multiple dwellings, hotels, motels, and other residential sources), and

(ii) solid waste from commercial or industrial sources that does not contain hazardous waste identified or listed under this section, and

(B) does not accept hazardous wastes identified or listed under this section, and

(2) the owner or operator of such facility has established contractual requirements or other

appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(j) Methamphetamine production

Not later than every 24 months, the Administrator shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report setting forth information collected by the Administrator from law enforcement agencies, States, and other relevant stakeholders that identifies the byproducts of the methamphetamine production process and whether the Administrator considers each of the byproducts to be a hazardous waste pursuant to this section and relevant regulations.

(Pub. L. 89–272, title II, § 3001, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2806; amended Pub. L. 96–482, § 7, Oct. 21, 1980, 94 Stat. 2336; Pub. L. 98–616, title II, §§ 221(a), 222, 223(a), Nov. 8, 1984, 98 Stat. 3248, 3251, 3252; Pub. L. 104–119, § 4(1), Mar. 26, 1996, 110 Stat. 833; Pub. L. 109–177, title VII, § 742, Mar. 9, 2006, 120 Stat. 272.)

CODIFICATION

In subsec. (d)(7)(A), ''chapter 51 of title 49'' substituted for ''the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

2006—Subsec. (j). Pub. L. 109–177 added subsec. (j).

1996—Subsec. (d)(5). Pub. L. 104–119 made technical amendment to reference in original act which appears in text as reference to this section.

1984—Subsec. (b)(1). Pub. L. 98–616, § 222(b), inserted at end ''The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratagens) [sic] at levels in excess of levels which endanger human health.''

Subsec. (d). Pub. L. 98–616, § 221(a), added subsec. (d).

Subsecs. (e) to (h). Pub. L. 98–616, § 222(a), added subsecs. (e) to (h).

Subsec. (i). Pub. L. 98–616, § 223(a), added subsec. (i).

1980—Subsec. (b). Pub. L. 96–482 designated existing provisions as par. (1) and added pars. (2) and (3).

REGULATION

Pub. L. 99–499, title I, § 124(b), Oct. 17, 1986, 100 Stat. 1689, provided that: ''Unless the Administrator of the Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921], the preceding sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly.''

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

ASH MANAGEMENT AND DISPOSAL

Pub. L. 101–549, title III, § 306, Nov. 15, 1990, 104 Stat. 2584, provided that: ''For a period of 2 years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], ash from solid waste incineration units burning municipal waste shall not be regulated by the Administrator of the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921]. Such reference and limitation shall not be construed to prejudice, endorse or otherwise affect any activity by the Administrator following the 2-year period from the date of enactment of the Clean Air Act Amendments of 1990.''

SMALL QUANTITY GENERATOR WASTE; INFORM AND EDUCATE; WASTE GENERATORS

Section 221(b) of Pub. L. 98–616 directed Administrator of Environmental Protection Agency to undertake activities to inform and educate waste generators of their responsibilities under subsec. (d) of this section during the period within thirty months after Nov. 8, 1984, to help assure compliance.

STUDY OF EXISTING MANIFEST SYSTEM FOR HAZARDOUS WASTES AS APPLICABLE TO SMALL QUANTITY GENERATORS; SUBMITTAL TO CONGRESS

Section 221(d) of Pub. L. 98–616 directed Administrator of Environmental Protection Agency to cause to be studied the existing manifest system for hazardous wastes as it applies to small quantity generators and recommend whether the current system should be retained or whether a new system should be introduced, such study to include an analysis of the cost versus the benefits of the system studied as well as an analysis of the ease of retrieving and collating information and identifying a given substance, with any new proposal to include a list of those standards that are necessary to protect human health and the environment, and with such study to be submitted to Congress not later than Apr. 1, 1987.

ADMINISTRATIVE BURDENS; SMALL QUANTITY GENERATORS; RETENTION OF CURRENT SYSTEM; REPORT TO CONGRESS

Section 221(e) of Pub. L. 98–616 directed Administrator of Environmental Protection Agency, in conjunction with Secretary of Transportation, to prepare and submit to Congress, not later than Apr. 1, 1987, a report on the feasibility of easing the administrative burden on small quantity generators, increasing compliance with statutory and regulatory requirements, and simplifying enforcement efforts through a program of licensing hazardous waste transporters to assume the responsibilities of small quantity generators relating to preparation of manifests and associated recordkeeping and reporting requirements, such report to examine the appropriate licensing requirements under such a program including the need for financial assurances by licensed transporters and to make recommendations on provisions and requirements for such a program including the appropriate division of responsibilities between Department of Transportation and Environmental Protection Administration.

EDUCATIONAL INSTITUTIONS; ACCUMULATION, STORAGE AND DISPOSAL OF HAZARDOUS WASTES; STUDY

Section 221(f) of Pub. L. 98–616, as amended by Pub. L. 107–110, title X, § 1076(aa), Jan. 8, 2002, 115 Stat. 2093, di-

rected Administrator of Environmental Protection Agency, in consultation with Secretary of Education, the States, and appropriate educational associations, to conduct a comprehensive study of problems associated with accumulation, storage, and disposal of hazardous wastes from educational institutions, such study to include an investigation of feasibility and availability of environmentally sound methods for treatment, storage, or disposal of hazardous waste from such institutions, taking into account the types and quantities of such waste which are generated by these institutions, and the nonprofit nature of these institutions, and directed Administrator to submit a report to Congress containing the findings of the study not later than Apr. 1, 1987.

§ 6922. Standards applicable to generators of hazardous waste

(a) In general

Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

(1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;

(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;

(3) use of appropriate containers for such hazardous waste;

(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

(5) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; and

(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out a permit program pursuant to this subchapter) at least once every two years, setting out—

(A) the quantities and nature of hazardous waste identified or listed under this subchapter that he has generated during the year;

(B) the disposition of all hazardous waste reported under subparagraph (A);

(C) the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(D) the changes in volume and toxicity of waste actually achieved during the year in question in comparison with previous years, to the extent such information is available for years prior to November 8, 1984.

(b) Waste minimization

Effective September 1, 1985, the manifest required by subsection (a)(5) of this section shall contain a certification by the generator that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(Pub. L. 89–272, title II, § 3002, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2806; amended Pub. L. 95–609, § 7(f), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96–482, § 8, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98–616, title II, § 224(a), Nov. 8, 1984, 98 Stat. 3252.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (a)(5), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§ 1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, § 224(a)(1), designated existing provisions as subsec. (a).

Subsec. (a)(6). Pub. L. 98–616, § 224(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subchapter) at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

''(A) the quantities of hazardous waste identified or listed under this subchapter that he has generated during a particular time period; and

''(B) the disposition of all hazardous waste reported under subparagraph (A).''

Subsec. (b). Pub. L. 98–616, § 224(a)(2), added subsec. (b).

1980—Par. (5). Pub. L. 96–482 inserted ''and any other reasonable means necessary'' and '', and arrives at,'' after ''use of a manifest system'' and ''disposal in'', respectively.

1978—Par. (5). Pub. L. 95–609, § 7(f)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Par. (6). Pub. L. 95–609, § 7(f)(2), closed the parenthetical after ''to this subchapter''.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6923. Standards applicable to transporters of hazardous waste

(a) Standards

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

(1) recordkeeping concerning such hazardous waste transported, and their source and delivery points;

(2) transportation of such waste only if properly labeled;

(3) compliance with the manifest system referred to in section 6922(5)[1] of this title; and

(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.].

(b) Coordination with regulations of Secretary of Transportation

In case of any hazardous waste identified or listed under this subchapter which is subject to chapter 51 of title 49, the regulations promulgated by the Administrator under this section shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

(c) Fuel from hazardous waste

Not later than two years after November 8, 1984, and after opportunity for public hearing, the Administrator shall promulgate regulations establishing standards, applicable to transporters of fuel produced (1) from any hazardous waste identified or listed under section 6921 of this title, or (2) from any hazardous waste identified or listed under section 6921 of this title and any other material, as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (4) of subsection (a) of this section as may be appropriate.

(Pub. L. 89–272, title II, § 3003, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2807; amended Pub. L. 95–609, § 7(g), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 98–616, title II, § 204(b)(2), Nov. 8, 1984, 98 Stat. 3238.)

REFERENCES IN TEXT

Section 6922(5) of this title, referred to in subsec. (a)(3), was redesignated section 6922(a)(5) of this title, by Pub. L. 98–616, title II, § 224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (a)(4), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§ 1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

CODIFICATION

In subsec. (b), ''chapter 51 of title 49'' substituted for ''the Hazardous Materials Transportation Act (88 Stat. 2156) [49 App. U.S.C. 1801 et seq.]'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–616 added subsec. (c).

1978—Subsec. (a)(4). Pub. L. 95–609, § 7(g)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Subsec. (b). Pub. L. 95–609, § 7(g)(2), substituted ''Administrator under this section'' for ''Administrator under this subchapter''.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6924. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities

(a) In general

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations. Such standards shall include, but need not be limited to, requirements respecting—

(1) maintaining records of all hazardous wastes identified or listed under this chapter which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;

(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 6922(5)[1] of this title;

(3) treatment, storage, or disposal of all such waste received by the facility pursuant to such

[1] See References in Text note below.

[1] See References in Text note below.

operating methods, techniques, and practices as may be satisfactory to the Administrator;

(4) the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

(5) contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;

(6) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility (including financial responsibility for corrective action) as may be necessary or desirable; and

(7) compliance with the requirements of section 6925 of this title respecting permits for treatment, storage, or disposal.

No private entity shall be precluded by reason of criteria established under paragraph (6) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous waste.

(b) Salt dome formations, salt bed formations, underground mines and caves

(1) Effective on November 8, 1984, the placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as—

(A) the Administrator has determined, after notice and opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment;

(B) the Administrator has promulgated performance and permitting standards for such facilities under this subchapter, and;

(C) a permit has been issued under section 6925(c) of this title for the facility concerned.

(2) Effective on November 8, 1984, the placement of any hazardous waste other than a hazardous waste referred to in paragraph (1) in a salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as a permit has been issued under section 6925(c) of this title for the facility concerned.

(3) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) of this section applies shall affect the prohibition contained in paragraph (1) or (2) of this subsection.

(4) Nothing in this subsection shall apply to the Department of Energy Waste Isolation Pilot Project in New Mexico.

(c) Liquids in landfills

(1) Effective 6 months after November 8, 1984, the placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not absorbents have been added) in any landfill is prohibited. Prior to such date the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator regarding liquid hazardous waste shall remain in force and effect to the extent such requirements are applicable to the placement of bulk or noncontainerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall promulgate final regulations which—

(A) minimize the disposal of containerized liquid hazardous waste in landfills, and

(B) minimize the presence of free liquids in containerized hazardous waste to be disposed of in landfills.

Such regulations shall also prohibit the disposal in landfills of liquids that have been absorbed in materials that biodegrade or that release liquids when compressed as might occur during routine landfill operations. Prior to the date on which such final regulations take effect, the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator shall remain in force and effect to the extent such requirements are applicable to the disposal of containerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(3) Effective twelve months after November 8, 1984, the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required under section 6925(c) of this title or which is operating pursuant to interim status granted under section 6925(e) of this title is prohibited unless the owner or operator of such landfill demonstrates to the Administrator, or the Administrator determines, that—

(A) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted under section 6925(c) of this title or operating pursuant to interim status under section 6925(e) of this title, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(B) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water.

As used in subparagraph (B), the term ''underground source of drinking water'' has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act) [42 U.S.C. 300f et seq.].

(4) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) of this section applies shall affect the prohibition contained in paragraph (1) of this subsection.

(d) Prohibitions on land disposal of specified wastes

(1) Effective 32 months after November 8, 1984 (except as provided in subsection (f) of this section with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition on one or more methods of land disposal of such waste is not required in order to

protect human health and the environment for as long as the waste remains hazardous, taking into account—

(A) the long-term uncertainties associated with land disposal,

(B) the goal of managing hazardous waste in an appropriate manner in the first instance, and

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous wastes and their hazardous constituents.

For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section), unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) Paragraph (1) applies to the following hazardous wastes listed or identified under section 6921 of this title:

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) arsenic and/or compounds (as As) 500 mg/l;

(ii) cadmium and/or compounds (as Cd) 100 mg/l;

(iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/l;

(iv) lead and/or compounds (as Pb) 500 mg/l;

(v) mercury and/or compounds (as Hg) 20 mg/l;

(vi) nickel and/or compounds (as Ni) 134 mg/l;

(vii) selenium and/or compounds (as Se) 100 mg/l; and

(viii) thallium and/or compounds (as Th) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg.

When necessary to protect human health and the environment, the Administrator shall substitute more stringent concentration levels than the levels specified in subparagraphs (A) through (E).

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(e) Solvents and dioxins

(1) Effective twenty-four months after November 8, 1984 (except as provided in subsection (f) of this section with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition of one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraph (A) through (C) of subsection (d)(1) of this section. For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section), unless upon application by an interested person it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) The hazardous wastes to which the prohibition under paragraph (1) applies are as follows—

(A) dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 (as referred to in the proposed rule published by the Administrator in the Federal Register for April 4, 1983), and

(B) those hazardous wastes numbered F001, F002, F003, F004, and F005 in regulations promulgated by the Administrator under section 6921 of this title (40 C.F.R. 261.31 (July 1, 1983)), as those regulations are in effect on July 1, 1983.

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(f) Disposal into deep injection wells; specified subsection (d) wastes; solvents and dioxins

(1) Not later than forty-five months after November 8, 1984, the Administrator shall complete a review of the disposal of all hazardous wastes referred to in paragraph (2) of subsection (d) of this section and in paragraph (2) of subsection (e) of this section by underground injection into deep injection wells.

(2) Within forty-five months after November 8, 1984, the Administrator shall make a determination regarding the disposal by underground injection into deep injection wells of the hazardous wastes referred to in paragraph (2) of subsection (d) of this section and the hazardous wastes referred to in paragraph (2) of subsection (e) of this section. The Administrator shall promulgate final regulations prohibiting the dis-

posal of such wastes into such wells if it may reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1) of this section. In promulgating such regulations, the Administrator shall consider each hazardous waste referred to in paragraph (2) of subsection (d) of this section or in paragraph (2) of subsection (e) of this section which is prohibited from disposal into such wells by any State.

(3) If the Administrator fails to make a determination under paragraph (2) for any hazardous waste referred to in paragraph (2) of subsection (d) of this section or in paragraph (2) of subsection (e) of this section within forty-five months after November 8, 1984, such hazardous waste shall be prohibited from disposal into any deep injection well.

(4) As used in this subsection, the term ''deep injection well'' means a well used for the underground injection of hazardous waste other than a well to which section 6979a(a)[2] of this title applies.

(g) Additional land disposal prohibition determinations

(1) Not later than twenty-four months after November 8, 1984, the Administrator shall submit a schedule to Congress for—

(A) reviewing all hazardous wastes listed (as of November 8, 1984) under section 6921 of this title other than those wastes which are referred to in subsection (d) or (e) of this section; and

(B) taking action under paragraph (5) of this subsection with respect to each such hazardous waste.

(2) The Administrator shall base the schedule on a ranking of such listed wastes considering their intrinsic hazard and their volume such that decisions regarding the land disposal of high volume hazardous wastes with high intrinsic hazard shall, to the maximum extent possible, be made by the date forty-five months after November 8, 1984. Decisions regarding low volume hazardous wastes with lower intrinsic hazard shall be made by the date sixty-six months after November 8, 1984.

(3) The preparation and submission of the schedule under this subsection shall not be subject to the Paperwork Reduction Act of 1980.[2] No hearing on the record shall be required for purposes of preparation or submission of the schedule. The schedule shall not be subject to judicial review.

(4) The schedule under this subsection shall require that the Administrator shall promulgate regulations in accordance with paragraph (5) or make a determination under paragraph (5)—

(A) for at least one-third of all hazardous wastes referred to in paragraph (1) by the date forty-five months after November 8, 1984;

(B) for at least two-thirds of all such listed wastes by the date fifty-five months after November 8, 1984; and

(C) for all such listed wastes and for all hazardous wastes identified under section 6921 of this title by the date sixty-six months after November 8, 1984.

In the case of any hazardous waste identified or listed under section 6921 of this title after November 8, 1984, the Administrator shall determine whether such waste shall be prohibited from one or more methods of land disposal in accordance with paragraph (5) within six months after the date of such identification or listing.

(5) Not later than the date specified in the schedule published under this subsection, the Administrator shall promulgate final regulations prohibiting one or more methods of land disposal of the hazardous wastes listed on such schedule except for methods of land disposal which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1) of this section. For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment (except with respect to a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section) unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(6)(A) If the Administrator fails (by the date forty-five months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first one-third of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (*o*) of this section which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(B) If the Administrator fails (by the date 55 months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first two-thirds of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (*o*) of this section which are applicable to new facilities (relating to minimum technological requirements); and

[2] See References in Text note below.

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(C) If the Administrator fails to promulgate regulations, or make a determination under paragraph (5) for any hazardous waste referred to in paragraph (1) within 66 months after November 8, 1984, such hazardous waste shall be prohibited from land disposal.

(7) Solid waste identified as hazardous based solely on one or more characteristics shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f) of this section, or any requirement promulgated under subsection (m) of this section (other than any applicable specific methods of treatment, as provided in paragraph (8)) if the waste—

(A) is treated in a treatment system that subsequently discharges to waters of the United States pursuant to a permit issued under section 1342 of title 33, treated for the purposes of the pretreatment requirements of section 1317 of title 33, or treated in a zero discharge system that, prior to any permanent land disposal, engages in treatment that is equivalent to treatment required under section 1342 of title 33 for discharges to waters of the United States, as determined by the Administrator; and

(B) no longer exhibits a hazardous characteristic prior to management in any land-based solid waste management unit.

(8) Solid waste that otherwise qualifies under paragraph (7) shall nevertheless be required to meet any applicable specific methods of treatment specified for such waste by the Administrator under subsection (m) of this section, including those specified in the rule promulgated by the Administrator June 1, 1990, prior to management in a land-based unit as part of a treatment system specified in paragraph (7)(A). No solid waste may qualify under paragraph (7) that would generate toxic gases, vapors, or fumes due to the presence of cyanide when exposed to pH conditions between 2.0 and 12.5.

(9) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f) of this section, or any requirement promulgated under subsection (m) of this section if the waste no longer exhibits a hazardous characteristic at the point of injection in any Class I injection well permitted under section 300h–1 of this title.

(10) Not later than five years after March 26, 1996, the Administrator shall complete a study of hazardous waste managed pursuant to paragraph (7) or (9) to characterize the risks to human health or the environment associated with such management. In conducting this study, the Administrator shall evaluate the extent to which risks are adequately addressed under existing State or Federal programs and whether unaddressed risks could be better addressed under such laws or programs. Upon receipt of additional information or upon completion of such study and as necessary to protect human health and the environment, the Administrator may impose additional requirements under existing Federal laws, including subsection (m)(1) of this section, or rely on other State or Federal programs or authorities to address such risks. In promulgating any treatment standards pursuant to subsection (m)(1) of this section under the previous sentence, the Administrator shall take into account the extent to which treatment is occurring in land-based units as part of a treatment system specified in paragraph (7)(A).

(11) Nothing in paragraph (7) or (9) shall be interpreted or applied to restrict any inspection or enforcement authority under the provisions of this chapter.

(h) Variance from land disposal prohibitions

(1) A prohibition in regulations under subsection (d), (e), (f), or (g) of this section shall be effective immediately upon promulgation.

(2) The Administrator may establish an effective date different from the effective date which would otherwise apply under subsection (d), (e), (f), or (g) of this section with respect to a specific hazardous waste which is subject to a prohibition under subsection (d), (e), (f), or (g) of this section or under regulations under subsection (d), (e), (f), or (g) of this section. Any such other effective date shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. Any such other effective date shall in no event be later than 2 years after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g) of this section.

(3) The Administrator, after notice and opportunity for comment and after consultation with appropriate State agencies in all affected States, may on a case-by-case basis grant an extension of the effective date which would otherwise apply under subsection (d), (e), (f), or (g) of this section or under paragraph (2) for up to one year, where the applicant demonstrates that there is a binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date. Such extension shall be renewable once for no more than one additional year.

(4) Whenever another effective date (hereinafter referred to as a ''variance'') is established under paragraph (2), or an extension is granted under paragraph (3), with respect to any hazardous waste, during the period for which such variance or extension is in effect, such hazardous waste may be disposed of in a landfill or surface impoundment only if such facility is in compliance with the requirements of subsection (*o*) of this section.

(i) Publication of determination

If the Administrator determines that a method of land disposal will be protective of human health and the environment, he shall promptly publish in the Federal Register notice of such determination, together with an explanation of the basis for such determination.

(j) Storage of hazardous waste prohibited from land disposal

In the case of any hazardous waste which is prohibited from one or more methods of land disposal under this section (or under regulations promulgated by the Administrator under any provision of this section) the storage of such hazardous waste is prohibited unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

(k) "Land disposal" defined

For the purposes of this section, the term ''land disposal'', when used with respect to a specified hazardous waste, shall be deemed to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

(*l*) Ban on dust suppression

The use of waste or used oil or other material, which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under section 6921 of this title (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

(m) Treatment standards for wastes subject to land disposal prohibition

(1) Simultaneously with the promulgation of regulations under subsection (d), (e), (f), or (g) of this section prohibiting one or more methods of land disposal of a particular hazardous waste, and as appropriate thereafter, the Administrator shall, after notice and an opportunity for hearings and after consultation with appropriate Federal and State agencies, promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

(2) If such hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to any prohibition promulgated under subsection (d), (e), (f), or (g) of this section and may be disposed of in a land disposal facility which meets the requirements of this subchapter. Any regulation promulgated under this subsection for a particular hazardous waste shall become effective on the same date as any applicable prohibition promulgated under subsection (d), (e), (f), or (g) of this section.

(n) Air emissions

Not later than thirty months after November 8, 1984, the Administrator shall promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment.

(*o*) Minimum technological requirements

(1) The regulations under subsection (a) of this section shall be revised from time to time to take into account improvements in the technology of control and measurement. At a minimum, such regulations shall require, and a permit issued pursuant to section 6925(c) of this title after November 8, 1984, by the Administrator or a State shall require—

(A) for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit, for which an application for a final determination regarding issuance of a permit under section 6925(c) of this title is received after November 8, 1984—

(i) the installation of two or more liners and a leachate collection system above (in the case of a landfill) and between such liners; and

(ii) ground water monitoring; and

(B) for each incinerator which receives a permit under section 6925(c) of this title after November 8, 1984, the attainment of the minimum destruction and removal efficiency required by regulations in effect on June 24, 1982.

The requirements of this paragraph shall apply with respect to all waste received after the issuance of the permit.

(2) Paragraph (1)(A)(i) shall not apply if the owner or operator demonstrates to the Administrator, and the Administrator finds for such landfill or surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(3) The double-liner requirement set forth in paragraph (1)(A)(i) may be waived by the Administrator for any monofill, if—

(A) such monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand,

(B) such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Extraction Procedure (''EP'') toxicity characteristics set forth in regulations under this subchapter, and

(C) such monofill meets the same requirements as are applicable in the case of a waiver under section 6925(j)(2) or (4) of this title.

(4)(A) Not later than thirty months after November 8, 1984, the Administrator shall promulgate standards requiring that new landfill units, surface impoundment units, waste piles, underground tanks and land treatment units for the storage, treatment, or disposal of hazardous waste identified or listed under section 6921 of

this title shall be required to utilize approved leak detection systems.

(B) For the purposes of subparagraph (A)—

(i) the term ''approved leak detection system'' means a system or technology which the Administrator determines to be capable of detecting leaks of hazardous constituents at the earliest practicable time; and

(ii) the term ''new units'' means units on which construction commences after the date of promulgation of regulations under this paragraph.

(5)(A) The Administrator shall promulgate regulations or issue guidance documents implementing the requirements of paragraph (1)(A) within two years after November 8, 1984.

(B) Until the effective date of such regulations or guidance documents, the requirement for the installation of two or more liners may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated[3] and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(6) Any permit under section 6925 of this title which is issued for a landfill located within the State of Alabama shall require the installation of two or more liners and a leachate collection system above and between such liners, notwithstanding any other provision of this chapter.

(7) In addition to the requirements set forth in this subsection, the regulations referred to in paragraph (1) shall specify criteria for the acceptable location of new and existing treatment, storage, or disposal facilities as necessary to protect human health and the environment. Within 18 months after November 8, 1984, the Administrator shall publish guidance criteria identifying areas of vulnerable hydrogeology.

(p) Ground water monitoring

The standards under this section concerning ground water monitoring which are applicable to surface impoundments, waste piles, land treatment units, and landfills shall apply to such a facility whether or not—

(1) the facility is located above the seasonal high water table;

(2) two liners and a leachate collection system have been installed at the facility; or

(3) the owner or operator inspects the liner (or liners) which has been installed at the facility.

This subsection shall not be construed to affect other exemptions or waivers from such standards provided in regulations in effect on November 8, 1984, or as may be provided in revisions to those regulations, to the extent consistent with this subsection. The Administrator is authorized on a case-by-case basis to exempt from ground water monitoring requirements under this section (including subsection (*o*) of this section) any engineered structure which the Administrator finds does not receive or contain liquid waste (nor waste containing free liquids), is designed and operated to exclude liquid from precipitation or other runoff, utilizes multiple leak detection systems within the outer layer of containment, and provides for continuing operation and maintenance of these leak detection systems during the operating period, closure, and the period required for post-closure monitoring and for which the Administrator concludes on the basis of such findings that there is a reasonable certainty hazardous constituents will not migrate beyond the outer layer of containment prior to the end of the period required for post-closure monitoring.

(q) Hazardous waste used as fuel

(1) Not later than two years after November 8, 1984, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing such—

(A) standards applicable to the owners and operators of facilities which produce a fuel—

(i) from any hazardous waste identified or listed under section 6921 of this title, or

(ii) from any hazardous waste identified or listed under section 6921 of this title and any other material;

(B) standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title; and

(C) standards applicable to any person who distributes or markets any fuel which is produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title;

as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (7) of subsection (a) of this section as may be appropriate. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. For purposes of this subsection, the term ''hazardous waste listed under section 6921 of this title'' includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel.

(2)(A) This subsection, subsection (r) of this section, and subsection (s) of this section shall not apply to petroleum refinery wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more characteristics by which a substance would be identified as a hazardous waste under section 6921 of this title.

(B) The Administrator may exempt from the requirements of this subsection, subsection (r)

[3] So in original. Probably should be followed by a comma.

of this section, or subsection (s) of this section facilities which burn de minimis quantities of hazardous waste as fuel, as defined by the Administrator, if the wastes are burned at the same facility at which such wastes are generated; the waste is burned to recover useful energy, as determined by the Administrator on the basis of the design and operating characteristics of the facility and the heating value and other characteristics of the waste; and the waste is burned in a type of device determined by the Administrator to be designed and operated at a destruction and removal efficiency sufficient such that protection of human health and environment is assured.

(C)(i) After November 8, 1984, and until standards are promulgated and in effect under paragraph (2) of this subsection, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than five hundred thousand (based on the most recent census statistics) unless such kiln fully complies with regulations (as in effect on November 8, 1984) under this subchapter which are applicable to incinerators.

(ii) Any person who knowingly violates the prohibition contained in clause (i) shall be deemed to have violated section 6928(d)(2) of this title.

(r) Labeling

(1) Notwithstanding any other provision of law, until such time as the Administrator promulgates standards under subsection (q) of this section specifically superceding this requirement, it shall be unlawful for any person who is required to file a notification in accordance with paragraph (1) or (3) of section 6930 of this title to distribute or market any fuel which is produced from any hazardous waste identified or listed under section 6921 of this title, or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title if the invoice or the bill of sale fails—

(A) to bear the following statement: ''WARNING: THIS FUEL CONTAINS HAZARDOUS WASTES'', and

(B) to list the hazardous wastes contained therein.

Beginning ninety days after November 8, 1984, such statement shall be located in a conspicuous place on every such invoice or bill of sale and shall appear in conspicuous and legible type in contrast by typography, layouts, or color with other printed matter on the invoice or bill of sale.

(2) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from petroleum refining waste containing oil if—

(A) such materials are generated and reinserted onsite into the refining process;

(B) contaminants are removed; and

(C) such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from oily materials, resulting from normal petroleum refining, production and transportation practices, if (A) contaminants are removed; and (B) such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(s) Recordkeeping

Not later than fifteen months after November 8, 1984, the Administrator shall promulgate regulations requiring that any person who is required to file a notification in accordance with subparagraph (1), (2), or (3), of section 6930(a) of this title shall maintain such records regarding fuel blending, distribution, or use as may be necessary to protect human health and the environment.

(t) Financial responsibility provisions

(1) Financial responsibility required by subsection (a) of this section may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any State court or any Federal Court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such

guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term ''guarantor'' means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

(u) Continuing releases at permitted facilities

Standards promulgated under this section shall require, and a permit issued after November 8, 1984, by the Administrator or a State shall require, corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit. Permits issued under section 6925 of this title shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(v) Corrective action beyond facility boundary

As promptly as practicable after November 8, 1984, the Administrator shall amend the standards under this section regarding corrective action required at facilities for the treatment, storage, or disposal, of hazardous waste listed or identified under section 6921 of this title to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Administrator that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such regulations shall take effect immediately upon promulgation, notwithstanding section 6930(b) of this title, and shall apply to—

(1) all facilities operating under permits issued under subsection (c) of this section, and

(2) all landfills, surface impoundments, and waste pile units (including any new units, replacements of existing units, or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending promulgation of such regulations, the Administrator shall issue corrective action orders for facilities referred to in paragraphs (1) and (2), on a case-by-case basis, consistent with the purposes of this subsection.

(w) Underground tanks

Not later than March 1, 1985, the Administrator shall promulgate final permitting standards under this section for underground tanks that cannot be entered for inspection. Within forty-eight months after November 8, 1984, such standards shall be modified, if necessary, to cover at a minimum all requirements and standards described in section 6991b of this title.

(x) Mining and other special wastes

If (1) solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium, (2) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, or (3) cement kiln dust waste, is subject to regulation under this subchapter, the Administrator is authorized to modify the requirements of subsections (c), (d), (e), (f), (g), (*o*), and (u) of this section and section 6925(j) of this title, in the case of landfills or surface impoundments receiving such solid waste, to take into account the special characteristics of such wastes, the practical difficulties associated with implementation of such requirements, and site-specific characteristics, including but not limited to the climate, geology, hydrology and soil chemistry at the site, so long as such modified requirements assure protection of human health and the environment.

(y) Munitions

(1) Not later than 6 months after October 6, 1992, the Administrator shall propose, after consulting with the Secretary of Defense and appropriate State officials, regulations identifying when military munitions become hazardous waste for purposes of this subchapter and providing for the safe transportation and storage of such waste. Not later than 24 months after October 6, 1992, and after notice and opportunity for comment, the Administrator shall promulgate such regulations. Any such regulations shall assure protection of human health and the environment.

(2) For purposes of this subsection, the term ''military munitions'' includes chemical and conventional munitions.

(Pub. L. 89–272, title II, § 3004, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2807; amended Pub. L. 96–482, § 9, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98–616, title II, §§ 201(a), 202(a), 203, 204(b)(1), 205–209, Nov. 8, 1984, 98 Stat. 3226, 3233, 3234, 3236, 3238–3240; Pub. L. 102–386, title I, § 107, Oct. 6, 1992, 106 Stat. 1513; Pub. L. 104–119, §§ 2, 4(2)–(5), Mar. 26, 1996, 110 Stat. 830, 833.)

REFERENCES IN TEXT

Section 6922(5) of this title, referred to in subsec. (a)(2), was redesignated section 6922(a)(5) of this title, by Pub. L. 98–616, title II, § 224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

The Safe Drinking Water Act, referred to in subsec. (c)(3), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

Section 6979a of this title, referred to in subsec. (f)(4), was in the original a reference to section 7010 of Pub. L. 89–272, which was renumbered section 3020 of Pub. L. 89–272 by Pub. L. 99–339, title II, § 201(c), June 19, 1986, 100 Stat. 654, and transferred to section 6939b of this title.

The Paperwork Reduction Act of 1980, referred to in subsec. (g)(3), is Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§ 3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Federal Bankruptcy Code, referred to in subsec. (t)(2), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS

1996—Subsec. (g)(5). Pub. L. 104–119, § 4(3), substituted ''subparagraphs (A) through (C)'' for ''subparagraph (A) through (C)''.

Subsec. (g)(7) to (11). Pub. L. 104–119, § 2, added pars. (7) to (11).

Subsec. (q)(1)(C). Pub. L. 104–119, § 4(2), inserted a semicolon at end of subpar. (C).

Subsec. (r)(2)(C). Pub. L. 104–119, § 4(4), substituted ''petroleum-derived'' for ''pertroleum-derived''.

Subsec. (r)(3). Pub. L. 104–119, § 4(5), inserted ''Industrial'' after ''Standard''.

1992—Subsec. (y). Pub. L. 102–386 added subsec. (y).

1984—Subsec. (a). Pub. L. 98–616, § 201(a), designated existing provisions as subsec. (a).

Subsec. (a)(6). Pub. L. 98–616, § 208, inserted ''(including financial responsibility for corrective action)''.

Subsecs. (b) to (n). Pub. L. 98–616, § 201(a), added subsecs. (b) to (n).

Subsec. (*o*). Pub. L. 98–616, § 202(a), added subsec. (*o*).

Subsec. (p). Pub. L. 98–616, § 203, added subsec. (p).

Subsecs. (q) to (s). Pub. L. 98–616, § 204(b)(1), added subsecs. (q) to (s).

Subsec. (t). Pub. L. 98–616, § 205, added subsec. (t).

Subsec. (u). Pub. L. 98–616, § 206, added subsec. (u).

Subsecs. (v), (w). Pub. L. 98–616, § 207, added subsecs. (v) and (w).

Subsec. (x). Pub. L. 98–616, § 209, added subsec. (x).

1980—Pub. L. 96–482 required standards regulations to reflect distinction in requirements appropriate for new facilities and for facilities in existence on date of promulgation of the regulations.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6925. Permits for treatment, storage, or disposal of hazardous waste

(a) Permit requirements

Not later than eighteen months after October 21, 1976, the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 6930 of this title and upon and after such date the treatment, storage, or disposal of any such hazardous waste and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit. No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.

(b) Requirements of permit application

Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

(1) estimates with respect to the composition, quantities, and concentrations of any hazardous waste identified or listed under this subchapter, or combinations of any such hazardous waste and any other solid waste, proposed to be disposed of, treated, transported, or stored, and the time, frequency, or rate of which such waste is proposed to be disposed of, treated, transported, or stored; and

(2) the site at which such hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored.

(c) Permit issuance

(1) Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 6924 of this title, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 6924 of this title, the permit shall specify the time allowed to complete the modifications.

(2)(A)(i) Not later than the date four years after November 8, 1984, in the case of each application under this subsection for a permit for a land disposal facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(ii) Not later than the date five years after November 8, 1984, in the case of each application for a permit under this subsection for an incinerator facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(B) Not later than the date eight years after November 8, 1984, in the case of each application for a permit under this subsection for any facility (other than a facility referred to in subparagraph (A)) which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(C) The time periods specified in this paragraph shall also apply in the case of any State which is administering an authorized hazardous waste program under section 6926 of this title. Interim status under subsection (e) of this section shall terminate for each facility referred to in subparagraph (A)(ii) or (B) on the expiration of the five- or eight-year period referred to in subparagraph (A) or (B), whichever is applicable, unless the owner or operator of the facility applies for a final determination regarding the issuance of a permit under this subsection within—

(i) two years after November 8, 1984 (in the case of a facility referred to in subparagraph (A)(ii)), or

(ii) four years after November 8, 1984 (in the case of a facility referred to in subparagraph (B)).

(3) Any permit under this section shall be for a fixed term, not to exceed 10 years in the case of any land disposal facility, storage facility, or incinerator or other treatment facility. Each permit for a land disposal facility shall be reviewed five years after date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of this section and section 6924 of this title. Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.

(d) Permit revocation

Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) of noncompliance by a facility having a permit under this chapter with the requirements of this section or section 6924 of this title, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) shall revoke such permit.

(e) Interim status

(1) Any person who—

(A) owns or operates a facility required to have a permit under this section which facility—

(i) was in existence on November 19, 1980, or

(ii) is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section,

(B) has complied with the requirements of section 6930(a) of this title, and

(C) has made an application for a permit under this section,

shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated.

(2) In the case of each land disposal facility which has been granted interim status under this subsection before November 8, 1984, interim status shall terminate on the date twelve months after November 8, 1984, unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility before the date twelve months after November 8, 1984; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(3) In the case of each land disposal facility which is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section and which is granted interim status under this subsection, interim status shall terminate on the date twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility before the date twelve months after the date on which the facility first becomes subject to such permit requirement; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(f) Coal mining wastes and reclamation permits

Notwithstanding subsection (a) through (e) of this section, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.] shall be deemed to be a permit issued pursuant to this section with respect to the treatment, storage, or disposal of such wastes or overburden. Regulations promulgated by the Administrator under this subchapter shall not be applicable to treatment, storage, or disposal of coal mining wastes and overburden which are covered by such a permit.

(g) Research, development, and demonstration permits

(1) The Administrator may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under this subchapter. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits—

(A) shall provide for the construction of such facilities, as necessary, and for operation of the facility for not longer than one year (unless renewed as provided in paragraph (4)), and

(B) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(C) shall include such requirements as the Administrator deems necessary to protect human health and the environment (including,

but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial reponsibility,[1] closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

The Administrator may apply the criteria set forth in this paragraph in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(2) For the purpose of expediting review and issuance of permits under this subsection, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the Administrator's general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures established under section 6974(b)(2) of this title regarding public participation.

(3) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(4) Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

(h) Waste minimization

Effective September 1, 1985, it shall be a condition of any permit issued under this section for the treatment, storage, or disposal of hazardous waste on the premises where such waste was generated that the permittee certify, no less often than annually, that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(i) Interim status facilities receiving wastes after July 26, 1982

The standards concerning ground water monitoring, unsaturated zone monitoring, and corrective action, which are applicable under section 6924 of this title to new landfills, surface impoundments, land treatment units, and waste-pile units required to be permitted under subsection (c) of this section shall also apply to any landfill, surface impoundment, land treatment unit, or waste-pile unit qualifying for the authorization to operate under subsection (e) of this section which receives hazardous waste after July 26, 1982.

(j) Interim status surface impoundments

(1) Except as provided in paragraph (2), (3), or (4), each surface impoundment in existence on November 8, 1984, and qualifying for the authorization to operate under subsection (e) of this section shall not receive, store, or treat hazardous waste after the date four years after November 8, 1984, unless such surface impoundment is in compliance with the requirements of section 6924(*o*)(1)(A) of this title which would apply to such impoundment if it were new.

(2) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) has at least one liner, for which there is no evidence that such liner is leaking; (B) is located more than one-quarter mile from an underground source of drinking water; and (C) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section.

(3) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) contains treated waste water during the secondary or subsequent phases of an aggressive biological treatment facility subject to a permit issued under section 1342 of title 33 (or which holds such treated waste water after treatment and prior to discharge); (B) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section; and (C)(i) is part of a facility in compliance with section 1311(b)(2) of title 33, or (ii) in the case of a facility for which no effluent guidelines required under section 1314(b)(2) of title 33 are in effect and no permit under section 1342(a)(1) of title 33 implementing section 1311(b)(2) of title 33 has been issued, is part of a facility in compliance with a permit under section 1342 of title 33, which is achieving significant degradation of toxic pollutants and hazardous constituents contained in the untreated waste stream and which has identified those toxic pollutants and hazardous constituents in the untreated waste stream to the appropriate permitting authority.

(4) The Administrator (or the State, in the case of a State with an authorized program), after notice and opportunity for comment, may modify the requirements of paragraph (1) for any surface impoundment if the owner or operator demonstrates that such surface impoundment is located, designed and operated so as to assure that there will be no migration of any hazardous constitutent[2] into ground water or surface water at any future time. The Administrator or the State shall take into account locational criteria established under section 6924(*o*)(7) of this title.

(5) The owner or operator of any surface impoundment potentially subject to paragraph (1) who has reason to believe that on the basis of paragraph (2), (3), or (4) such surface impoundment is not required to comply with the requirements of paragraph (1), shall apply to the Administrator (or the State, in the case of a State with an authorized program) not later than twenty-four months after November 8, 1984, for a determination of the applicability of paragraph (1) (in the case of paragraph (2) or (3)) or for a modification of the requirements of paragraph (1) (in the case of paragraph (4)), with respect to

[1] So in original. Probably should be ''responsibility''.

[2] So in original. Probably should be ''constituent''.

such surface impoundment. Such owner or operator shall provide, with such application, evidence pertinent to such decision, including:

(A) an application for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility, if not previously submitted;

(B) evidence as to compliance with all applicable ground water monitoring requirements and the information and analysis from such monitoring;

(C) all reasonably ascertainable evidence as to whether such surface impoundment is leaking; and

(D) in the case of applications under paragraph (2) or (3), a certification by a registered professional engineer with academic training and experience in ground water hydrology that—

(i) under paragraph (2), the liner of such surface impoundment is designed, constructed, and operated in accordance with applicable requirements, such surface impoundment is more than one-quarter mile from an underground source of drinking water and there is no evidence such liner is leaking; or

(ii) under paragraph (3), based on analysis of those toxic pollutants and hazardous constituents that are likely to be present in the untreated waste stream, such impoundment satisfies the conditions of paragraph (3).

In the case of any surface impoundment for which the owner or operator fails to apply under this paragraph within the time provided by this paragraph or paragraph (6), such surface impoundment shall comply with paragraph (1) notwithstanding paragraph (2), (3), or (4). Within twelve months after receipt of such application and evidence and not later than thirty-six months after November 8, 1984, and after notice and opportunity to comment, the Administrator (or, if appropriate, the State) shall advise such owner or operator on the applicability of paragraph (1) to such surface impoundment or as to whether and how the requirements of paragraph (1) shall be modified and applied to such surface impoundment.

(6)(A) In any case in which a surface impoundment becomes subject to paragraph (1) after November 8, 1984, due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 6921 of this title, the period for compliance in paragraph (1) shall be four years after the date of such promulgation, the period for demonstrations under paragraph (4) and for submission of evidence under paragraph (5) shall be not later than twenty-four months after the date of such promulgation, and the period for the Administrator (or if appropriate, the State) to advise such owners or operators under paragraph (5) shall be not later than thirty-six months after the date of promulgation.

(B) In any case in which a surface impoundment is initially determined to be excluded from the requirements of paragraph (1) but due to a change in condition (including the existence of a leak) no longer satisfies the provisions of paragraph (2), (3), or (4) and therefore becomes subject to paragraph (1), the period for compliance in paragraph (1) shall be two years after the date of discovery of such change of condition, or in the case of a surface impoundment excluded under paragraph (3) three years after such date of discovery.

(7)(A) The Administrator shall study and report to the Congress on the number, range of size, construction, likelihood of hazardous constituents migrating into ground water, and potential threat to human health and the environment of existing surface impoundments excluded by paragraph (3) from the requirements of paragraph (1). Such report shall address the need, feasibility, and estimated costs of subjecting such existing surface impoundments to the requirements of paragraph (1).

(B) In the case of any existing surface impoundment or class of surface impoundments from which the Administrator (or the State, in the case of a State with an authorized program) determines hazardous constituents are likely to migrate into ground water, the Administrator (or if appropriate, the State) is authorized to impose such requirements as may be necessary to protect human health and the environment, including the requirements of section 6924(*o*) of this title which would apply to such impoundments if they were new.

(C) In the case of any surface impoundment excluded by paragraph (3) from the requirements of paragraph (1) which is subsequently determined to be leaking, the Administrator (or, if appropriate, the State) shall require compliance with paragraph (1), unless the Administrator (or, if appropriate, the State) determines that such compliance is not necessary to protect human health and the environment.

(8) In the case of any surface impoundment in which the liners and leak detection system have been installed pursuant to the requirements of paragraph (1) and in good faith compliance with section 6924(*o*) of this title and the Administrator's regulations and guidance documents governing liners and leak detection systems, no liner or leak detection system which is different from that which was so installed pursuant to paragraph (1) shall be required for such unit by the Administrator when issuing the first permit under this section to such facility. Nothing in this paragraph shall preclude the Administrator from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this subsection is leaking.

(9) In the case of any surface impoundment which has been excluded by paragraph (2) on the basis of a liner meeting the definition under paragraph (12)(A)(ii), at the closure of such impoundment the Administrator shall require the owner or operator of such impoundment to remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment shall be required to comply with appropriate post-closure requirements, including but not limited to ground water monitoring and corrective action.

(10) Any incremental cost attributable to the requirements of this subsection or section

6924(*o*) of this title shall not be considered by the Administrator (or the State, in the case of a State with an authorized program under section 1342 of title 33)—

(A) in establishing effluent limitations and standards under section 1311, 1314, 1316, 1317, or 1342 of title 33 based on effluent limitations guidelines and standards promulgated any time before twelve months after November 8, 1984; or

(B) in establishing any other effluent limitations to carry out the provisions of section 1311, 1317, or 1342 of title 33 on or before October 1, 1986.

(11)(A) If the Administrator allows a hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsections) to be placed in a surface impoundment (which is operating pursuant to interim status) for storage or treatment, such impoundment shall meet the requirements that are applicable to new surface impoundments under section 6924(*o*)(1) of this title, unless such impoundment meets the requirements of paragraph (2) or (4).

(B) In the case of any hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsection) the placement or maintenance of such hazardous waste in a surface impoundment for treatment is prohibited as of the effective date of such prohibition unless the treatment residues which are hazardous are, at a minimum, removed for subsequent management within one year of the entry of the waste into the surface impoundment.

(12)(A) For the purposes of paragraph (2)(A) of this subsection, the term ''liner'' means—

(i) a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility; or

(ii) a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(B) For the purposes of this subsection, the term ''aggressive biological treatment facility'' means a system of surface impoundments in which the initial impoundment of the secondary treatment segment of the facility utilizes intense mechanical aeration to enhance biological activity to degrade waste water pollutants and

(i) the hydraulic retention time in such initial impoundment is no longer than 5 days under normal operating conditions, on an annual average basis;

(ii) the hydraulic retention time in such initial impoundment is no longer than thirty days under normal operating conditions, on an annual average basis: *Provided*, That the sludge in such impoundment does not constitute a hazardous waste as identified by the extraction procedure toxicity characteristic in effect on November 8, 1984; or

(iii) such system utilizes activated sludge treatment in the first portion of secondary treatment.

(C) For the purposes of this subsection, the term ''underground source or[3] drinking water'' has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.]).

(13) The Administrator may modify the requirements of paragraph (1) in the case of a surface impoundment for which the owner or operator, prior to October 1, 1984, has entered into, and is in compliance with, a consent order, decree, or agreement with the Administrator or a State with an authorized program mandating corrective action with respect to such surface impoundment that provides a degree of protection of human health and the environment which is at a minimum equivalent to that provided by paragraph (1).

(Pub. L. 89–272, title II, § 3005, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2808; amended Pub. L. 95–609, § 7(h), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96–482, §§ 10, 11, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98–616, title II, §§ 211–213(a), (c), 214(a), 215, 224(b), 243(c), Nov. 8, 1984, 98 Stat. 3240–3243, 3253, 3261; Pub. L. 104–119, § 4(6), (7), Mar. 26, 1996, 110 Stat. 833.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (f), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (§ 1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

The Safe Drinking Water Act, referred to in subsec. (j)(12)(C), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–119, § 4(6), substituted ''polychlorinated'' for ''polycholorinated''.

Subsec. (e)(1)(C). Pub. L. 104–119, § 4(7), inserted comma at end of subpar. (C).

1984—Subsec. (a). Pub. L. 98–616, § 211, substituted ''an existing facility or planning to construct a new'' for ''a'', inserted ''and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste'', and inserted at end ''No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polycholorinated [sic] biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.''

Subsec. (c)(1), (2). Pub. L. 98–616, § 213(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(3). Pub. L. 98–616, § 212, added par. (3).

Subsec. (e). Pub. L. 98–616, § 213(a), designated existing provisions as par. (1), redesignated former pars. (1), (2), and (3) thereof as subpars. (A), (B), and (C), respec-

[3] So in original. Probably should be ''of''.

tively, designated existing provisions of previously redesignated subpar. (A) as cl. (i) and added cl. (ii), inserted ''This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated.'' to closing provisions of par. (1), and added pars. (2) and (3).

Subsec. (g). Pub. L. 98–616, § 214(a), added subsec. (g).

Subsec. (h). Pub. L. 98–616, § 224(b), added subsec. (h).

Subsec. (i). Pub. L. 98–616, § 243(c), added subsec. (i).

Subsec. (j). Pub. L. 98–616, § 215, added subsec. (j).

1980—Subsec. (e)(1). Pub. L. 96–482, § 10, substituted ''November 19, 1980'' for ''October 21, 1976''.

Subsec. (f). Pub. L. 96–482, § 11, added subsec. (f).

1978—Subsec (a). Pub. L. 95–609 inserted ''treatment, storage, or'' after ''and after such date the''.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6926. Authorized State hazardous waste programs

(a) Federal guidelines

Not later than eighteen months after October 21, 1976, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the Development of State hazardous waste programs.

(b) Authorization of State program

Any State which seeks to administer and enforce a hazardous waste program pursuant to this subchapter may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste (and to enforce permits deemed to have been issued under section 6935(d)(1)[1] of this title) unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subchapter, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subchapter. In authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

(c) Interim authorization

(1) Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 6922, 6923, 6924, and 6925 of this title, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subchapter. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subchapter, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subchapter for a period ending no later than January 31, 1986.

(2) The Administrator shall, by rule, establish a date for the expiration of interim authorization under this subsection.

(3) Pending interim or final authorization of a State program for any State which reflects the amendments made by the Hazardous and Solid Waste Amendments of 1984, the State may enter into an agreement with the Administrator under which the State may assist in the administration of the requirements and prohibitions which take effect pursuant to such Amendments.

(4) In the case of a State permit program for any State which is authorized under subsection (b) of this section or under this subsection, until such program is amended to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program amendments receive interim or final authorization, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984. The Administrator shall coordinate with States the procedures for issuing such permits.

(d) Effect of State permit

Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subchapter.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subchapter. The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(f) Availability of information

No State program may be authorized by the Administrator under this section unless—

[1] See References in Text note below.

(1) such program provides for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and

(2) such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of this subchapter in such State.

(g) Amendments made by 1984 act

(1) Any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed under this subchapter pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984 shall take effect in each State having an interim or finally authorized State program on the same date as such requirement takes effect in other States. The Administrator shall carry out such requirement directly in each such State unless the State program is finally authorized (or is granted interim authorization as provided in paragraph (2)) with respect to such requirement.

(2) Any State which, before November 8, 1984, has an existing hazardous waste program which has been granted interim or final authorization under this section may submit to the Administrator evidence that such existing program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement referred to in paragraph (1) and may request interim authorization to carry out that requirement under this subchapter. The Administrator shall, if the evidence submitted shows the State requirement to be substantially equivalent to the requirement referred to in paragraph (1), grant an interim authorization to the State to carry out such requirement in lieu of direct administration in the State by the Administrator of such requirement.

(h) State programs for used oil

In the case of used oil which is not listed or identified under this subchapter as a hazardous waste but which is regulated under section 6935 of this title, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subchapter.

(Pub. L. 89–272, title II, § 3006, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2809; amended Pub. L. 95–609, § 7(i), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 98–616, title II, §§ 225, 226(a), 227, 228, 241(b)(2), Nov. 8, 1984, 98 Stat. 3254, 3255, 3260; Pub. L. 99–499, title II, § 205(j), Oct. 17, 1986, 100 Stat. 1703.)

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89–272, which was renumbered section 3014(d)(1) of Pub. L. 89–272 by Pub. L. 98–616 and is classified to section 6935(d)(1) of this title.

The Hazardous and Solid Waste Amendments of 1984, referred to in subsecs. (c)(3), (4), and (g), is Pub. L. 98–616, Nov. 8, 1984, 98 Stat. 3221, which amended this chapter. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (h). Pub. L. 99–499 added subsec. (h).

1984—Subsec. (b). Pub. L. 98–616, §§ 225, 241(b)(2), inserted "(and to enforce permits deemed to have been issued under section 6935(d)(1) of this title)", and inserted provision at end that in authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

Subsec. (c)(1). Pub. L. 98–616, § 227(1), (2), designated existing provisions as par. (1) and substituted "period ending no later than January 31, 1986" for "twenty-four month period beginning on the date six months after the date of promulgation of regulations under sections 6922 through 6925 of this title".

Subsec. (c)(2) to (4). Pub. L. 98–616, § 227(3), added pars. (2) to (4).

Subsec. (f). Pub. L. 98–616, § 226(a), added subsec. (f).

Subsec. (g). Pub. L. 98–616, § 228, added subsec. (g).

1978—Subsec. (c). Pub. L. 95–609 substituted "of" for "required for" wherever appearing and "may submit" for "submit".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 226(b) of Pub. L. 98–616 provided that: "The amendment made by subsection (a) [enacting subsec. (f) of this section] shall apply with respect to State programs authorized under section 3006 [this section] before, on, or after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [Nov. 8, 1984]."

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6927. Inspections

(a) Access entry

For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, such officers, employees or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

Each such inspection shall be commenced and completed with reasonable promptness. If the of-

ficer, employee or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) Availability to public

(1) Any records, reports, or information (including records, reports, or information obtained by representatives of the Environmental Protection Agency) obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this chapter, a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this chapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(c) Federal facility inspections

The Administrator shall undertake on an annual basis a thorough inspection of each facility for the treatment, storage, or disposal of hazardous waste which is owned or operated by a department, agency, or instrumentality of the United States to enforce its compliance with this subchapter and the regulations promulgated thereunder. Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility's compliance with the State hazardous waste program. The records of such inspections shall be available to the public as provided in subsection (b) of this section. The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992.

(d) State-operated facilities

The Administrator shall annually undertake a thorough inspection of every facility for the treatment, storage, or disposal of hazardous waste which is operated by a State or local government for which a permit is required under section 6925 of this title. The records of such inspection shall be available to the public as provided in subsection (b) of this section.

(e) Mandatory inspections

(1) The Administrator (or the State in the case of a State having an authorized hazardous waste program under this subchapter) shall commence a program to thoroughly inspect every facility for the treatment, storage, or disposal of hazardous waste for which a permit is required under section 6925 of this title no less often than every two years as to its compliance with this subchapter (and the regulations promulgated under this subchapter). Such inspections shall commence not later than twelve months after November 8, 1984. The Administrator shall, after notice and opportunity for public comment, promulgate regulations governing the minimum frequency and manner of such inspections, including the manner in which records of such inspections shall be maintained and the manner in which reports of such inspections shall be filed. The Administrator may distinguish between classes and categories of facilities commensurate with the risks posed by each class or category.

(2) Not later than six months after November 8, 1984, the Administrator shall submit to the Congress a report on the potential for inspections of hazardous waste treatment, storage, or disposal facilities by nongovernmental inspectors as a supplement to inspections conducted by officers, employees, or representatives of the Environmental Protection Agency or States having authorized hazardous waste programs or operating under a cooperative agreement with the Administrator. Such report shall be prepared in cooperation with the States, insurance companies offering environmental impairment insurance, independent companies providing inspection services, and other such groups as appropriate. Such report shall contain recommendations on provisions and requirements for a program of private inspections to supplement governmental inspections.

(Pub. L. 89–272, title II, § 3007, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2810; amended Pub. L. 95–609, § 7(j), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96–482, § 12, Oct. 21, 1980, 94 Stat. 2339;

Pub. L. 98–616, title II, §§ 229–231, title V, § 502(a), Nov. 8, 1984, 98 Stat. 3255, 3256, 3276; Pub. L. 102–386, title I, § 104, Oct. 6, 1992, 106 Stat. 1507.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–386 in first sentence substituted ''The Administrator shall undertake'' for ''Beginning twelve months after November 8, 1984, the Administrator shall, or in the case of a State with an authorized hazardous waste program the State may, undertake'' and ''department, agency, or instrumentality of the United States'' for ''Federal agency'', inserted after first sentence ''Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility's compliance with the State hazardous waste program.'', and inserted at end ''The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992.''

1984—Subsec. (b)(1). Pub. L. 98–616, § 502(a), modified directory language for amendment by sec. 12(b)(4) of Pub. L. 96–482.

Subsec. (c). Pub. L. 98–616, § 229, added subsec. (c).

Subsec. (d). Pub. L. 98–616, § 230, added subsec. (d).

Subsec. (e). Pub. L. 98–616, § 231, added subsec. (e).

1980—Subsec. (a). Pub. L. 96–482, § 12(a), substituted ''chapter'' for ''subchapter'', ''any officer, employee or representative'' for ''any officer or employee'', ''duly designated officer, employee or representative'' for ''duly designated officer employee'', ''such officers, employees or representatives'' for ''such officers or employees'', ''furnish information relating to such wastes and permit'' for ''furnish or permit'', and ''officer, employee or representative obtains'' for ''officer or employee obtains'', struck out ''maintained by any person'' after ''establishment or other place'', substituted ''officer, employee or representative obtains'' for ''officer or employee obtains'', and inserted ''or has handled'' after ''otherwise handles'' and ''or have been'' after ''where hazardous wastes are''.

Subsec. (b)(1). Pub. L. 96–482, § 12(b)(1)–(3), designated existing provisions as par. (1), inserted ''or any officer, employee or representative thereof'' before ''has access under this section'' and substituted ''such information or particular portion thereof shall be considered'' for ''the Administrator (or the State, as the case may be) shall consider such information or portion thereof''.

Pub. L. 96–482, § 12(b)(4), as modified by Pub. L. 98–616, § 502(a), inserted ''(including records, reports, or information obtained by representatives of the Environmental Protection Agency)'' after ''information''.

Subsec. (b)(2) to (4). Pub. L. 96–482, § 12(b)(3), added pars. (2) to (4).

1978—Subsec. (a)(1). Pub. L. 95–609 substituted ''disposed of, or transported from'' for ''or disposed of''.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6928. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 6926 of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) Any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation. Any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(b) Public hearing

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Violation of compliance orders

If a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty of not more than $25,000 for each day of continued noncompliance with the order and the Administrator may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State).

(d) Criminal penalties

Any person who—

(1) knowingly transports or causes to be transported any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.],

(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter—

(A) without a permit under this subchapter or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; or

(B) in knowing violation of any material condition or requirement of such permit; or

(C) in knowing violation of any material condition or requirement of any applicable interim status regulations or standards;

(3) knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(4) knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter (whether such activity took place before or takes place after November 8, 1984) and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(5) knowingly transports without a manifest, or causes to be transported without a manifest, any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter required by regulations promulgated under this subchapter (or by a State in the case of a State program authorized under this subchapter) to be accompanied by a manifest;

(6) knowingly exports a hazardous waste identified or listed under this subchapter (A) without the consent of the receiving country or, (B) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, in a manner which is not in conformance with such agreement; or

(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under this subchapter—

(A) in knowing violation of any material condition or requirement of a permit under this subchapter; or

(B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this chapter;

shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed two years (five years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(e) Knowing endangerment

Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste identified or listed under this subchapter or used oil not identified or listed as a hazardous waste under this subchapter in violation of paragraph (1), (2), (3), (4), (5), (6), or (7) of subsection (d) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment for not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than $1,000,000.

(f) Special rules

For the purposes of subsection (e) of this section—

(1) A person's state of mind is knowing with respect to—

(A) his conduct, if he is aware of the nature of his conduct;

(B) an existing circumstance, if he is aware or believes that the circumstance exists; or

(C) a result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(2) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—

(A) the person is responsible only for actual awareness or actual belief that he possessed; and

(B) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

(3) It is an affirmative defense to a prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence.

(4) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subsection (e) of this section and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(5) The term ''organization'' means a legal entity, other than a government, established, or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(6) The term ''serious bodily injury'' means—

(A) bodily injury which involves a substantial risk of death;

(B) unconsciousness;

(C) extreme physical pain;

(D) protracted and obvious disfigurement; or

(E) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(g) Civil penalty

Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

(h) Interim status corrective action orders

(1) Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under section 6925(e) of this title, the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment or the Administrator may commence a civil action in the United States district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.

(2) Any order issued under this subsection may include a suspension or revocation of authorization to operate under section 6925(e) of this title, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Administrator may assess, and such person shall be liable to the United States for, a civil penalty in an amount not to exceed $25,000 for each day of noncompliance with the order.

(Pub. L. 89–272, title II, § 3008, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2811; amended Pub. L. 95–609, § 7(k), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96–482, § 13, Oct. 21, 1980, 94 Stat. 2339; Pub. L. 98–616, title II, §§ 232, 233, 245(c), title IV, § 403(d)(1)–(3), Nov. 8, 1984, 98 Stat. 3256, 3257, 3264, 3272; Pub. L. 99–499, title II, § 205(i), Oct. 17, 1986, 100 Stat. 1703.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (d)(1), (2)(A), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§ 1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

AMENDMENTS

1986—Subsec. (d)(4). Pub. L. 99–499, § 205(i)(1), inserted ''or any used oil not identified or listed as a hazardous waste under this subchapter''.

Subsec. (d)(5). Pub. L. 99–499, § 205(i)(1), (2), inserted ''or any used oil not identified or listed as a hazardous waste under this subchapter'' and struck out ''; or'' after ''accompanied by a manifest;''.

Subsec. (d)(6). Pub. L. 99–499, § 205(i)(3), inserted at end ''; or''.

Subsec. (d)(7). Pub. L. 99–499, § 205(i)(4), added par. (7).

Subsec. (e). Pub. L. 99–499, § 205(i)(5), inserted ''or used oil not identified or listed as a hazardous waste under this subchapter'' and substituted ''(5), (6), or (7)'' for ''(5), or (6)''.

1984—Subsec. (a)(1). Pub. L. 98–616, § 403(d)(1), in amending par. (1) generally, expanded authority of Administrator by empowering him to determine that a person ''has violated'' a requirement of this subchapter, and to assess a civil penalty for a past or current violation.

Subsec. (a)(3). Pub. L. 98–616, § 403(d)(2), in amending par. (3) generally, substituted provision that any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation, and provision that any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation of a requirement of this subchapter, and that in assessing such a penalty, the Administrator take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, for provision that if such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance and the Administrator may suspend or revoke any permit issued to the violator, whether issued by the Administrator or the State.

Subsec. (b). Pub. L. 98–616, § 233(b), inserted ''issued under this section''.

Subsec. (c). Pub. L. 98–616, § 403(d)(3), substituted provisions relating to penalties for violation of compliance orders for former provisions which set forth requirements for compliance orders.

Subsec. (d). Pub. L. 98–616, § 232(a)(3), amended closing provisions generally. Prior to amendment, closing provisions read as follows: ''shall, upon conviction, be subject to a fine of not more than $25,000 ($50,000 in the case of a violation of paragraph (1) or (2)) for each day of violation, or to imprisonment not to exceed one year (two years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.''

Subsec. (d)(1). Pub. L. 98–616, § 232(a)(1), inserted ''or causes to be transported'' and substituted ''this subchapter'' for ''section 6925 of this title (or section 6926 of this title in case of a State program)''.

Subsec. (d)(2). Pub. L. 98–616, § 232(a)(2)(A), struck out ''either'' after ''subchapter'' in provision preceding subpar. (A).

Subsec. (d)(2)(A). Pub. L. 98–616, § 232(a)(2)(B), (c), substituted ''this subchapter'' for ''section 6925 of this title (or section 6926 of this title in the case of a State program)'' and struck out ''having obtained'' before ''a permit under''.

Subsec. (d)(2)(C). Pub. L. 98–616, § 232(a)(2)(C), added subpar. (C).

Subsec. (d)(3) to (5). Pub. L. 98–616, § 232(a)(3), in amending pars. (3) and (4) generally, expanded par. (3) by providing criminal penalties for one who knowingly omits material information from documents required to be filed, maintained or used under this subchapter, expanded par. (4) by providing criminal penalties for one who knowingly fails to file required material under this subchapter, and added par. (5).

Subsec. (d)(6). Pub. L. 98–616, § 245(c), added par. (6).

Subsec. (e). Pub. L. 98–616, § 232(b), in amending subsec. (e) generally, struck out provisions referring to violations of interim status standards and omission of material information from permit applications, struck out provision requiring proof of ''unjustifiable and inexcusable disregard for human life'' or ''extreme indifference to human life'' for conviction under this subsection, and inserted provision increasing maximum prison sentence to fifteen years for violation of subsec. (d)(1) through (6) of this section by one who knowingly places another person in imminent danger of death or serious bodily injury, replacing former provision calling for maximum imprisonment of two years, or five years in cases evidencing extreme indifference to human life.

Subsec. (h). Pub. L. 98–616, § 233(a), added subsec. (h).

1980—Subsec. (a)(1). Pub. L. 96–482, § 13(1), (2), struck out ''the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification'' before ''the Administrator may issue'' and substituted ''compliance immediately or within a specified time period'' for ''compliance within a specified time period''.

Subsec. (a)(2). Pub. L. 96–482, § 13(2), struck out ''thirty days'' after ''violation has occurred''.

Subsec. (b). Pub. L. 96–482, § 13(3), substituted ''order shall become final unless, no later than thirty days after the order is served'' for ''order or any suspension or revocation of a permit shall become final unless, no later than thirty days after the order or notice of the suspension or revocation is served''.

Subsec. (c). Pub. L. 96–482, § 13(4), authorized orders for suspension or revocation of permits.

Subsec. (d). Pub. L. 96–482, § 13(5), in par. (2), designated existing provisions as subpar. (A) and added subpar. (B), in par. (3), inserted provision requiring the statement or representation to be material, added par. (4), and in provisions following par. (4), inserted provision authorizing a fine of $50,000 and a two year imprisonment for violation of par. (1) or (2).

Subsecs. (e) to (g). Pub. L. 96–482, § 13(5), added subsecs. (e) to (g).

1978—Subsec. (d)(1). Pub. L. 95–609, § 7(k)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Subsec. (d)(2). Pub. L. 95–609, § 7(k)(2), inserted provisions relating to treatment or storage of hazardous wastes and relating to title I of the Marine Protection, Research, and Sanctuaries Act.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6929. Retention of State authority

Upon the effective date of regulations under this subchapter no State or political subdivision may impose any requirements less stringent than those authorized under this subchapter respecting the same matter as governed by such regulations, except that if application of a regulation with respect to any matter under this subchapter is postponed or enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same aspect of such matter until such time as such regulation takes effect. Nothing in this chapter shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations. Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State.

(Pub. L. 89–272, title II, § 3009, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2812; amended Pub. L. 96–482, § 14, Oct. 21, 1980, 94 Stat. 2342; Pub. L. 98–616, title II, § 213(b), Nov. 8, 1984, 98 Stat. 3242.)

AMENDMENTS

1984—Pub. L. 98–616 inserted ''Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State.''

1980—Pub. L. 96–482 prohibited construction of this chapter as barring a State from imposing more stringent requirements than provided in Federal regulations.

§ 6930. Effective date

(a) Preliminary notification

Not later than ninety days after promulgation of regulations under section 6921 of this title identifying by its characteristics or listing any substance as hazardous waste subject to this subchapter, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not later than fifteen months after November 8, 1984—

(1) the owner or operator of any facility which produces a fuel (A) from any hazardous waste identified or listed under section 6921 of this title, (B) from such hazardous waste identified or listed under section 6921 of this title and any other material, (C) from used oil, or (D) from used oil and any other material;

(2) the owner or operator of any facility (other than a single- or two-family residence) which burns for purposes of energy recovery any fuel produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title; and

(3) any person who distributes or markets any fuel which is produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title [1]

shall file with the Administrator (and with the State in the case of a State with an authorized hazardous waste program) a notification stating the location and general description of the facil-

[1] So in original. Probably should be followed by a semicolon.

ity, together with a description of the identified or listed hazardous waste involved and, in the case of a facility referred to in paragraph (1) or (2), a description of the production or energy recovery activity carried out at the facility and such other information as the Administrator deems necessary. For purposes of the preceding provisions, the term ''hazardous waste listed under section 6921 of this title'' also includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel. Notification shall not be required under the second sentence of this subsection in the case of facilities (such as residential boilers) where the Administrator determines that such notification is not necessary in order for the Administrator to obtain sufficient information respecting current practices of facilities using hazardous waste for energy recovery. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. Nothing in this subsection shall affect regulatory determinations under section 6935 of this title. In revising any regulation under section 6921 of this title identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter, the Administrator may require any person referred to in the preceding provisions to file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) the notification described in the preceding provisions. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection.

(b) Effective date of regulation

The regulations under this subchapter respecting requirements applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal) shall take effect on the date six months after the date of promulgation thereof (or six months after the date of revision in the case of any regulation which is revised after the date required for promulgation thereof). At the time a regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for:

(1) a regulation with which the Administrator finds the regulated community does not need six months to come into compliance;

(2) a regulation which responds to an emergency situation; or

(3) other good cause found and published with the regulation.

(Pub. L. 89–272, title II, § 3010, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2812; amended Pub. L. 96–482, § 15, Oct. 21, 1980, 94 Stat. 2342; Pub. L. 98–616, title II, §§ 204(a), 234, Nov. 8, 1984, 98 Stat. 3235, 3258.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, § 204(a), inserted provisions after first sentence relating to burning and blending of hazardous wastes and substituted ''the preceding provisions'' for ''the preceding sentence'' in three places.

Subsec. (b). Pub. L. 98–616, § 234, inserted provision that at the time a regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for a regulation with which the Administrator finds the regulated community does not need six months to come into compliance, a regulation which responds to an emergency situation, or other good cause found and published with the regulation.

1980—Subsec. (a). Pub. L. 96–482 struck out ''or revision'' after ''after promulgation or revision of regulations'' and inserted provision for filing of notification when revising any regulation identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6931. Authorization of assistance to States

(a) Authorization of appropriations

There is authorized to be appropriated $25,000,000 for each of the fiscal years 1978 and 1979[1] $20,000,000 for fiscal year 1980, $35,000,000 for fiscal year 1981, $40,000,000 for the fiscal year 1982, $55,000,000 for the fiscal year 1985, $60,000,000 for the fiscal year 1986, $60,000,000 for the fiscal year 1987, and $60,000,000 for the fiscal year 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of authorized State hazardous waste programs.

(b) Allocation

Amounts authorized to be appropriated under subsection (a) of this section shall be allocated among the States on the basis of regulations promulgated by the Administrator, after consultation with the States, which take into account, the extent to which hazardous waste is generated, transported, treated, stored, and disposed of within such State, the extent of exposure of human beings and the environment within such State to such waste, and such other factors as the Administrator deems appropriate.

(c) Activities included

State hazardous waste programs for which grants may be made under subsection (a) of this section may include (but shall not be limited to) planning for hazardous waste treatment, storage and disposal facilities, and the development and execution of programs to protect health and the environment from inactive facilities which may contain hazardous waste.

(Pub. L. 89–272, title II, § 3011, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2812; amended

[1] So in original. Probably should be followed by a comma.

Pub. L. 96–482, §§16, 31(b), Oct. 21, 1980, 94 Stat. 2342, 2352; Pub. L. 98–616, §2(b), Nov. 8, 1984, 98 Stat. 3222.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616 substituted ''$40,000,000 for fiscal year 1982, $55,000,000 for fiscal year 1985, $60,000,000 for fiscal year 1986, $60,000,000 for fiscal year 1987, and $60,000,000 for fiscal year 1988'' for ''and $40,000,000 for fiscal year 1982''.

1980—Subsec. (a). Pub. L. 96–482, §31(b), authorized appropriation of $20,000,000, $35,000,000, and $40,000,000 for fiscal years 1980, 1981, and 1982, respectively.

Subsec. (c). Pub. L. 96–482, §16, added subsec. (c).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6932. Transferred

CODIFICATION

Section, Pub. L. 89–272, title II, §3012, as added Pub. L. 96–463, §7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89–272 by Pub. L. 98–616, title V, §502(g)(1), Nov. 8, 1984, 98 Stat. 3277, and was transferred to section 6935 of this title.

§ 6933. Hazardous waste site inventory

(a) State inventory programs

Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory describing the location of each site within such State at which hazardous waste has at any time been stored or disposed of. Such inventory shall contain—

(1) a description of the location of the sites at which any such storage or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage or disposal;

(2) such information relating to the amount, nature, and toxicity of the hazardous waste at each such site as may be practicable to obtain and as may be necessary to determine the extent of any health hazard which may be associated with such site;

(3) the name and address, or corporate headquarters of, the owner of each such site, determined as of the date of preparation of the inventory;

(4) an identification of the types or techniques of waste treatment or disposal which have been used at each such site; and

(5) information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraphs (1) through (5) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 6927 of this title for purposes of this section in the same manner and to the same extent as provided in such section in the case of States having an authorized hazardous waste program, and any State may by order require any person to submit such information as may be necessary to compile the data referred to in paragraphs (1) through (5).

(b) Environmental Protection Agency program

If the Administrator determines that any State program under subsection (a) of this section is not adequately providing information respecting the sites in such State referred to in subsection (a) of this section, the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program in such State. In any such case—

(1) the Administrator shall have the authorities provided with respect to State programs under subsection (a) of this section;

(2) the funds allocated under subsection (c) of this section for grants to States under this section may be used by the Administrator for carrying out such program in such State; and

(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

(c) Grants

(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator may make grants to the States for purposes of carrying out such a program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator may make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before October 21, 1980, to reimburse such State for all, or any portion of, the costs incurred by such State in conducting such program.

(2) There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1985 through 1988.

(d) No impediment to immediate remedial action

Nothing in this section shall be construed to provide that the Administrator or any State should, pending completion of the inventory required under this section, postpone undertaking any enforcement or remedial action with respect to any site at which hazardous waste has been treated, stored, or disposed of.

(Pub. L. 89–272, title II, § 3012, as added Pub. L. 96–482, § 17(a), Oct. 21, 1980, 94 Stat. 2342; amended Pub. L. 98–616, § 2(c), Nov. 8, 1984, 98 Stat. 3222.)

CODIFICATION

Another section 3012 of Pub. L. 89–272 as added by Pub. L. 96–463, § 7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89–272, and is classified to section 6935 of this title.

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98–616 substituted ''$25,000,000 for each of the fiscal years 1985 through 1988'' for ''$20,000,000''.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6934. Monitoring, analysis, and testing

(a) Authority of Administrator

If the Administrator determines, upon receipt of any information, that—

(1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or

(2) the release of any such waste from such facility or site

may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis, and reporting with respect to such facility or site as the Administrator deems reasonable to ascertain the nature and extent of such hazard.

(b) Previous owners and operators

In the case of any facility or site not in operation at the time a determination is made under subsection (a) of this section with respect to the facility or site, if the Administrator finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a) of this section.

(c) Proposal

An order under subsection (a) or (b) of this section shall require the person to whom such order is issued to submit to the Administrator within 30 days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The Administrator may, after providing such person with an opportunity to confer with the Administrator respecting such proposal, require such person to carry out such monitoring, testing, analysis, and reporting in accordance with such proposal, and such modifications in such proposal as the Administrator deems reasonable to ascertain the nature and extent of the hazard.

(d) Monitoring, etc., carried out by Administrator

(1) If the Administrator determines that no owner or operator referred to in subsection (a) or (b) of this section is able to conduct monitoring, testing, analysis, or reporting satisfactory to the Administrator, if the Administrator deems any such action carried out by an owner or operator to be unsatisfactory, or if the Administrator cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) of this section who is able to conduct such monitoring, testing, analysis, or reporting, he may—

(A) conduct monitoring, testing, or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or

(B) authorize a State or local authority or other person to carry out any such action,

and require, by order, the owner or operator referred to in subsection (a) or (b) of this section to reimburse the Administrator or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the Administrator which confirms the results of an order issued under subsection (a) or (b) of this section.

(3) For purposes of carrying out this subsection, the Administrator or any authority or other person authorized under paragraph (1), may exercise the authorities set forth in section 6927 of this title.

(e) Enforcement

The Administrator may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the United States district court in which the defendant is located, resides, or is doing business. Such court shall have jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed $5,000 for each day during which such failure or refusal occurs.

(Pub. L. 89–272, title II, § 3013, as added Pub. L. 96–482, § 17(a), Oct. 21, 1980, 94 Stat. 2344.)

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6935. Restrictions on recycled oil

(a) In general

Not later than one year after October 15, 1980, the Administrator shall promulgate regulations establishing such performance standards and other requirements as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of

the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment.

(b) Identification or listing of used oil as hazardous waste

Not later than twelve months after November 8, 1984, the Administrator shall propose whether to list or identify used automobile and truck crankcase oil as hazardous waste under section 6921 of this title. Not later than twenty-four months after November 8, 1984, the Administrator shall make a final determination whether to list or identify used automobile and truck crankcase oil and other used oil as hazardous wastes under section 6921 of this title.

(c) Used oil which is recycled

(1) With respect to generators and transporters of used oil identified or listed as a hazardous waste under section 6921 of this title, the standards promulgated under section[1] 6921(d), 6922, and 6923 of this title shall not apply to such used oil if such used oil is recycled.

(2)(A) In the case of used oil which is exempt under paragraph (1), not later than twenty-four months after November 8, 1984, the Administrator shall promulgate such standards under this subsection regarding the generation and transportation of used oil which is recycled as may be necessary to protect human health and the environment. In promulgating such regulations with respect to generators, the Administrator shall take into account the effect of such regulations on environmentally acceptable types of used oil recycling and the effect of such regulations on small quantity generators and generators which are small businesses (as defined by the Administrator).

(B) The regulations promulgated under this subsection shall provide that no generator of used oil which is exempt under paragraph (1) from the standards promulgated under section[1] 6921(d), 6922, and 6923 of this title shall be subject to any manifest requirement or any associated recordkeeping and reporting requirement with respect to such used oil if such generator—

(i) either—

(I) enters into an agreement or other arrangement (including an agreement or arrangement with an independent transporter or with an agent of the recycler) for delivery of such used oil to a recycling facility which has a permit under section 6925(c) of this title (or for which a valid permit is deemed to be in effect under subsection (d) of this section), or

(II) recycles such used oil at one or more facilities of the generator which has such a permit under section 6925 of this title (or for which a valid permit is deemed to have been issued under subsection (d) of this section);

(ii) such used oil is not mixed by the generator with other types of hazardous wastes; and

(iii) the generator maintains such records relating to such used oil, including records of agreements or other arrangements for delivery of such used oil to any recycling facility referred to in clause (i)(I), as the Administrator deems necessary to protect human health and the environment.

(3) The regulations under this subsection regarding the transportation of used oil which is exempt from the standards promulgated under section[1] 6921(d), 6922, and 6923 of this title under paragraph (1) shall require the transporters of such used oil to deliver such used oil to a facility which has a valid permit under section 6925 of this title or which is deemed to have a valid permit under subsection (d) of this section. The Administrator shall also establish other standards for such transporters as may be necessary to protect human health and the environment.

(d) Permits

(1) The owner or operator of a facility which recycles used oil which is exempt under subsection (c)(1) of this section, shall be deemed to have a permit under this subsection for all such treatment or recycling (and any associated tank or container storage) if such owner and operator comply with standards promulgated by the Administrator under section 6924 of this title; except that the Administrator may require such owners and operators to obtain an individual permit under section 6925(c) of this title if he determines that an individual permit is necessary to protect human health and the environment.

(2) Notwithstanding any other provision of law, any generator who recycles used oil which is exempt under subsection (c)(1) of this section shall not be required to obtain a permit under section 6925(c) of this title with respect to such used oil until the Administrator has promulgated standards under section 6924 of this title regarding the recycling of such used oil.

(Pub. L. 89–272, title II, § 3014, formerly § 3012, as added Pub. L. 96–463, § 7(a), Oct. 15, 1980, 94 Stat. 2057, and renumbered and amended Pub. L. 98–616, title II, §§ 241(a), 242, title V, § 502(g)(1), Nov. 8, 1984, 98 Stat. 3258, 3260, 3277.)

CODIFICATION

Section was formerly classified to section 6932 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §§ 241(a), 242, designated existing provisions as subsec. (a) and inserted ", consistent with the protection of human health and the environment" at end.

Subsecs. (b) to (d). Pub. L. 98–616, § 241(a), added subsecs. (b) to (d).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6936. Expansion during interim status

(a) Waste piles

The owner or operator of a waste pile qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the

[1] So in original. Probably should be "sections".

same requirements for liners and leachate collection systems or equivalent protection provided in regulations promulgated by the Administrator under section 6924 of this title before October 1, 1982, or revised under section 6924(*o*) of this title (relating to minimum technological requirements), for new facilities receiving individual permits under subsection (c) of section 6925 of this title, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under section 6925 of this title, and with respect to waste received beginning six months after November 8, 1984.

(b) Landfills and surface impoundments

(1) The owner or operator of a landfill or surface impoundment qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the requirements of section 6924(*o*) of this title (relating to minimum technological requirements), with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under this section, and with respect to waste received beginning 6 months after November 8, 1984.

(2) The owner or operator of each unit referred to in paragraph (1) shall notify the Administrator (or the State, if appropriate) at least sixty days prior to receiving waste. The Administrator (or the State) shall require the filing, within six months of receipt of such notice, of an application for a final determination regarding the issuance of a permit for each facility submitting such notice.

(3) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of this section and in good faith compliance with the Administrator's regulations and guidance documents governing liners and leachate collection systems, no liner or leachate collection system which is different from that which was so installed pursuant to this section shall be required for such unit by the Administrator when issuing the first permit under section 6925 of this title to such facility, except that the Administrator shall not be precluded from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this section is leaking. The Administrator may, under section 6924 of this title, amend the requirements for liners and leachate collection systems required under this section as may be necessary to provide additional protection for human health and the environment.

(Pub. L. 89–272, title II, § 3015, as added Pub. L. 98–616, title II, § 243(a), Nov. 8, 1984, 98 Stat. 3260.)

§ 6937. Inventory of Federal agency hazardous waste facilities

(a) Program requirement; submission; availability; contents

Each Federal agency shall undertake a continuing program to compile, publish, and submit to the Administrator (and to the State in the case of sites in States having an authorized hazardous waste program) an inventory of each site which the Federal agency owns or operates or has owned or operated at which hazardous waste is stored, treated, or disposed of or has been disposed of at any time. The inventory shall be submitted every two years beginning January 31, 1986. Such inventory shall be available to the public as provided in section 6927(b) of this title. Information previously submitted by a Federal agency under section 9603 of this title, or under section 6925 or 6930 of this title, or under this section need not be resubmitted except that the agency shall update any previous submission to reflect the latest available data and information. The inventory shall include each of the following:

(1) A description of the location of each site at which any such treatment, storage, or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage, treatment, or disposal, and where hazardous waste has been disposed, a description of hydrogeology of the site and the location of withdrawal wells and surface water within one mile of the site.

(2) Such information relating to the amount, nature, and toxicity of the hazardous waste in each site as may be necessary to determine the extent of any health hazard which may be associated with any site.

(3) Information on the known nature and extent of environmental contamination at each site, including a description of the monitoring data obtained.

(4) Information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated, stored, or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

(5) A list of sites at which hazardous waste has been disposed and environmental monitoring data has not been obtained, and the reasons for the lack of monitoring data at each site.

(6) A description of response actions undertaken or contemplated at contaminated sites.

(7) An identification of the types of techniques of waste treatment, storage, or disposal which have been used at each site.

(8) The name and address and responsible Federal agency for each site, determined as of the date of preparation of the inventory.

(b) Environmental Protection Agency program

If the Administrator determines that any Federal agency under subsection (a) of this section is not adequately providing information respecting the sites referred to in subsection (a) of this section, the Administrator shall notify the chief official of such agency. If within ninety days following such notification, the Federal agency has not undertaken a program to adequately provide such information, the Administrator shall carry out the inventory program for such agency.

(Pub. L. 89–272, title II, § 3016, as added Pub. L. 98–616, title II, § 244, Nov. 8, 1984, 98 Stat. 3261.)

§ 6938. Export of hazardous wastes

(a) In general

Beginning twenty-four months after November 8, 1984, no person shall export any hazardous waste identified or listed under this subchapter unless[1]

(1)(A) such person has provided the notification required in subsection (c) of this section,

(B) the government of the receiving country has consented to accept such hazardous waste,

(C) a copy of the receiving country's written consent is attached to the manifest accompanying each waste shipment, and

(D) the shipment conforms with the terms of the consent of the government of the receiving country required pursuant to subsection (e) of this section, or

(2) the United States and the government of the receiving country have entered into an agreement as provided for in subsection (f) of this section and the shipment conforms with the terms of such agreement.

(b) Regulations

Not later than twelve months after November 8, 1984, the Administrator shall promulgate the regulations necessary to implement this section. Such regulations shall become effective one hundred and eighty days after promulgation.

(c) Notification

Any person who intends to export a hazardous waste identified or listed under this subchapter beginning twelve months after November 8, 1984, shall, before such hazardous waste is scheduled to leave the United States, provide notification to the Administrator. Such notification shall contain the following information:

(1) the name and address of the exporter;

(2) the types and estimated quantities of hazardous waste to be exported;

(3) the estimated frequency or rate at which such waste is to be exported; and the period of time over which such waste is to be exported;

(4) the ports of entry;

(5) a description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and

(6) the name and address of the ultimate treatment, storage or disposal facility.

(d) Procedures for requesting consent of receiving country

Within thirty days of the Administrator's receipt of a complete notification under this section, the Secretary of State, acting on behalf of the Administrator, shall—

(1) forward a copy of the notification to the government of the receiving country;

(2) advise the government that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the hazardous waste;

(3) request the government to provide the Secretary with a written consent or objection to the terms of the notification; and

(4) forward to the government of the receiving country a description of the Federal regulations which would apply to the treatment, storage, and disposal of the hazardous waste in the United States.

(e) Conveyance of written consent to exporter

Within thirty days of receipt by the Secretary of State of the receiving country's written consent or objection (or any subsequent communication withdrawing a prior consent or objection), the Administrator shall forward such a consent, objection, or other communication to the exporter.

(f) International agreements

Where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, only the requirements of subsections (a)(2) and (g) of this section shall apply.

(g) Reports

After November 8, 1984, any person who exports any hazardous waste identified or listed under section 6921 of this title shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

(h) Other standards

Nothing in this section shall preclude the Administrator from establishing other standards for the export of hazardous wastes under section 6922 of this title or section 6923 of this title.

(Pub. L. 89–272, title II, § 3017, as added Pub. L. 98–616, title II, § 245(a), Nov. 8, 1984, 98 Stat. 3262.)

§ 6939. Domestic sewage

(a) Report

The Administrator shall, not later than 15 months after November 8, 1984, submit a report to the Congress concerning those substances identified or listed under section 6921 of this title which are not regulated under this subchapter by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size and number of generators which dispose of such substances in this manner, the types and quantities disposed of in this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner sufficient to protect human health and the environment.

(b) Revisions of regulations

Within eighteen months after submitting the report specified in subsection (a) of this section, the Administrator shall revise existing regulations and promulgate such additional regulations pursuant to this subchapter (or any other authority of the Administrator, including section 1317 of title 33) as are necessary to assure that substances identified or listed under section 6921 of this title which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment.

[1] So in original. Probably should be followed by a dash.

(c) Report on wastewater lagoons

The Administrator shall, within thirty-six months after November 8, 1984, submit a report to Congress concerning wastewater lagoons at publicly owned treatment works and their effect on groundwater quality. Such report shall include—

(1) the number and size of such lagoons;

(2) the types and quantities of waste contained in such lagoons;

(3) the extent to which such waste has been or may be released from such lagoons and contaminate ground water; and

(4) available alternatives for preventing or controlling such releases.

The Administrator may utilize the authority of sections 6927 and 6934 of this title for the purpose of completing such report.

(d) Application of sections 6927 and 6930

The provisions of sections 6927 and 6930 of this title shall apply to solid or dissolved materials in domestic sewage to the same extent and in the same manner as such provisions apply to hazardous waste.

(Pub. L. 89–272, title II, § 3018, as added Pub. L. 98–616, title II, § 246(a), Nov. 8, 1984, 98 Stat. 3264.)

§ 6939a. Exposure information and health assessments

(a) Exposure information

Beginning on the date nine months after November 8, 1984, each application for a final determination regarding a permit under section 6925(c) of this title for a landfill or surface impoundment shall be accompanied by information reasonably ascertainable by the owner or operator on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(1) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(2) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (1); and

(3) the potential magnitude and nature of the human exposure resulting from such releases.

The owner or operator of a landfill or surface impoundment for which an application for such a final determination under section 6925(c) of this title has been submitted prior to November 8, 1984, shall submit the information required by this subsection to the Administrator (or the State, in the case of a State with an authorized program) no later than the date nine months after November 8, 1984.

(b) Health assessments

(1) The Administrator (or the State, in the case of a State with an authorized program) shall make the information required by subsection (a) of this section, together with other relevant information, available to the Agency for Toxic Substances and Disease Registry established by section 9604(i) of this title.

(2) Whenever in the judgment of the Administrator, or the State (in the case of a State with an authorized program), a landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of releases of hazardous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release, or the magnitude of the population exposed to such release or contamination, the Administrator or the State (with the concurrence of the Administrator) may request the Administrator of the Agency for Toxic Substances and Disease Registry to conduct a health assessment in connection with such facility and take other appropriate action with respect to such risks as authorized by section 9604(b) and (i) of this title. If funds are provided in connection with such request the Administrator of such Agency shall conduct such health assessment.

(c) Members of the public

Any member of the public may submit evidence of releases of or exposure to hazardous constituents from such a facility, or as to the risks or health effects associated with such releases or exposure, to the Administrator of the Agency for Toxic Substances and Disease Registry, the Administrator, or the State (in the case of a State with an authorized program).

(d) Priority

In determining the order in which to conduct health assessments under this subsection, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous constituents, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subsection (f) of this section.

(e) Periodic reports

The Administrator of such Agency shall issue periodic reports which include the results of all the assessments carried out under this section. Such assessments or other activities shall be reported after appropriate peer review.

(f) "Health assessments" defined

For the purposes of this section, the term ''health assessments'' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities subject to this section, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of

exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

(g) Cost recovery

In any case in which a health assessment performed under this section discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 9607 of this title from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such release.

(Pub. L. 89–272, title II, § 3019, as added Pub. L. 98–616, title II, § 247(a), Nov. 8, 1984, 98 Stat. 3265.)

§ 6939b. Interim control of hazardous waste injection

(a) Underground source of drinking water

No hazardous waste may be disposed of by underground injection—

(1) into a formation which contains (within one-quarter mile of the well used for such underground injection) an underground source of drinking water; or

(2) above such a formation.

The prohibitions established under this section shall take effect 6 months after November 8, 1984, except in the case of any State in which identical or more stringent prohibitions are in effect before such date under the Safe Drinking Water Act [42 U.S.C. 300f et seq.].

(b) Actions under Comprehensive Environmental Response, Compensation, and Liability Act

Subsection (a) of this section shall not apply to the injection of contaminated ground water into the aquifer from which it was withdrawn, if—

(1) such injection is—

(A) a response action taken under section 9604 or 9606 of this title, or

(B) part of corrective action required under this chapter[1]

intended to clean up such contamination;

(2) such contaminated ground water is treated to substantially reduce hazardous constituents prior to such injection; and

(3) such response action or corrective action will, upon completion, be sufficient to protect human health and the environment.

(c) Enforcement

In addition to enforcement under the provisions of this chapter, the prohibitions established under paragraphs (1) and (2) of subsection (a) of this section shall be enforceable under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] in any State—

(1) which has adopted identical or more stringent prohibitions under part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.] and which has assumed primary enforcement responsibility under that Act for enforcement of such prohibitions; or

(2) in which the Administrator has adopted identical or more stringent prohibitions under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] and is exercising primary enforcement responsibility under that Act for enforcement of such prohibitions.

(d) Definitions

The terms ''primary enforcement responsibility'', ''underground source of drinking water'', ''formation'' and ''well'' have the same meanings as provided in regulations of the Administrator under the Safe Drinking Water Act [42 U.S.C. 300f et seq.]. The term ''Safe Drinking Water Act'' means title XIV of the Public Health Service Act.

(Pub. L. 89–272, title II, § 3020, formerly § 7010, as added Pub. L. 98–616, title IV, § 405(a), Nov. 8, 1984, 98 Stat. 3273; renumbered § 3020, and amended Pub. L. 99–339, title II, § 201(c), June 19, 1986, 100 Stat. 654.)

REFERENCES IN TEXT

Title XIV of the Public Health Service Act, referred to in subsec. (d), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, known as the Safe Drinking Water Act, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. Part C of the Act is classified generally to part C (§ 300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was formerly classified to section 6979a of this title, prior to renumbering by Pub. L. 99–339.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–339, § 201(c)(1), substituted ''enforcement under the provisions of this chapter'' for ''enforcement under sections 6972 and 6973 of this title''.

§ 6939c. Mixed waste inventory reports and plan

(a) Mixed waste inventory reports

(1) Requirement

Not later than 180 days after October 6, 1992, the Secretary of Energy shall submit to the Administrator and to the Governor of each State in which the Department of Energy stores or generates mixed wastes the following reports:

(A) A report containing a national inventory of all such mixed wastes, regardless of the time they were generated, on a State-by-State basis.

(B) A report containing a national inventory of mixed waste treatment capacities and technologies.

(2) Inventory of wastes

The report required by paragraph (1)(A) shall include the following:

(A) A description of each type of mixed waste at each Department of Energy facility

[1] So in original. Probably should be followed by a comma.

in each State, including, at a minimum, the name of the waste stream.

(B) The amount of each type of mixed waste currently stored at each Department of Energy facility in each State, set forth separately by mixed waste that is subject to the land disposal prohibition requirements of section 6924 of this title and mixed waste that is not subject to such prohibition requirements.

(C) An estimate of the amount of each type of mixed waste the Department expects to generate in the next 5 years at each Department of Energy facility in each State.

(D) A description of any waste minimization actions the Department has implemented at each Department of Energy facility in each State for each mixed waste stream.

(E) The EPA hazardous waste code for each type of mixed waste containing waste that has been characterized at each Department of Energy facility in each State.

(F) An inventory of each type of waste that has not been characterized by sampling and analysis at each Department of Energy facility in each State.

(G) The basis for the Department's determination of the applicable hazardous waste code for each type of mixed waste at each Department of Energy facility and a description of whether the determination is based on sampling and analysis conducted on the waste or on the basis of process knowledge.

(H) A description of the source of each type of mixed waste at each Department of Energy facility in each State.

(I) The land disposal prohibition treatment technology or technologies specified for the hazardous waste component of each type of mixed waste at each Department of Energy facility in each State.

(J) A statement of whether and how the radionuclide content of the waste alters or affects use of the technologies described in subparagraph (I).

(3) Inventory of treatment capacities and technologies

The report required by paragraph (1)(B) shall include the following:

(A) An estimate of the available treatment capacity for each waste described in the report required by paragraph (1)(A) for which treatment technologies exist.

(B) A description, including the capacity, number and location, of each treatment unit considered in calculating the estimate under subparagraph (A).

(C) A description, including the capacity, number and location, of any existing treatment unit that was not considered in calculating the estimate under subparagraph (A) but that could, alone or in conjunction with other treatment units, be used to treat any of the wastes described in the report required by paragraph (1)(A) to meet the requirements of regulations promulgated pursuant to section 6924(m) of this title.

(D) For each unit listed in subparagraph (C), a statement of the reasons why the unit was not included in calculating the estimate under subparagraph (A).

(E) A description, including the capacity, number, location, and estimated date of availability, of each treatment unit currently proposed to increase the treatment capacities estimated under subparagraph (A).

(F) For each waste described in the report required by paragraph (1)(A) for which the Department has determined no treatment technology exists, information sufficient to support such determination and a description of the technological approaches the Department anticipates will need to be developed to treat the waste.

(4) Comments and revisions

Not later than 90 days after the date of the submission of the reports by the Secretary of Energy under paragraph (1), the Administrator and each State which received the reports shall submit any comments they may have concerning the reports to the Department of Energy. The Secretary of Energy shall consider and publish the comments prior to publication of the final report.

(5) Requests for additional information

Nothing in this subsection limits or restricts the authority of States or the Administrator to request additional information from the Secretary of Energy.

(b) Plan for development of treatment capacities and technologies

(1) Plan requirement

(A)(i) For each facility at which the Department of Energy generates or stores mixed wastes, except any facility subject to a permit, agreement, or order described in clause (ii), the Secretary of Energy shall develop and submit, as provided in paragraph (2), a plan for developing treatment capacities and technologies to treat all of the facility's mixed wastes, regardless of the time they were generated, to the standards promulgated pursuant to section 6924(m) of this title.

(ii) Clause (i) shall not apply with respect to any facility subject to any permit establishing a schedule for treatment of such wastes, or any existing agreement or administrative or judicial order governing the treatment of such wastes, to which the State is a party.

(B) Each plan shall contain the following:

(i) For mixed wastes for which treatment technologies exist, a schedule for submitting all applicable permit applications, entering into contracts, initiating construction, conducting systems testing, commencing operations, and processing backlogged and currently generated mixed wastes.

(ii) For mixed wastes for which no treatment technologies exist, a schedule for identifying and developing such technologies, identifying the funding requirements for the identification and development of such technologies, submitting treatability study exemptions, and submitting research and development permit applications.

(iii) For all cases where the Department proposes radionuclide separation of mixed

wastes, or materials derived from mixed wastes, it shall provide an estimate of the volume of waste generated by each case of radionuclide separation, the volume of waste that would exist or be generated without radionuclide separation, the estimated costs of waste treatment and disposal if radionuclide separation is used compared to the estimated costs if it is not used, and the assumptions underlying such waste volume and cost estimates.

(C) A plan required under this subsection may provide for centralized, regional, or onsite treatment of mixed wastes, or any combination thereof.

(2) Review and approval of plan

(A) For each facility that is located in a State (i) with authority under State law to prohibit land disposal of mixed waste until the waste has been treated and (ii) with both authority under State law to regulate the hazardous components of mixed waste and authorization from the Environmental Protection Agency under section 6926 of this title to regulate the hazardous components of mixed waste, the Secretary of Energy shall submit the plan required under paragraph (1) to the appropriate State regulatory officials for their review and approval, modification, or disapproval. In reviewing the plan, the State shall consider the need for regional treatment facilities. The State shall consult with the Administrator and any other State in which a facility affected by the plan is located and consider public comments in making its determination on the plan. The State shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(B) For each facility located in a State that does not have the authority described in subparagraph (A), the Secretary shall submit the plan required under paragraph (1) to the Administrator of the Environmental Protection Agency for review and approval, modification, or disapproval. A copy of the plan also shall be provided by the Secretary to the State in which such facility is located. In reviewing the plan, the Administrator shall consider the need for regional treatment facilities. The Administrator shall consult with the State or States in which any facility affected by the plan is located and consider public comments in making a determination on the plan. The Administrator shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(C) Upon the approval of a plan under this paragraph by the Administrator or a State, the Administrator shall issue an order under section 6928(a) of this title, or the State shall issue an order under appropriate State authority, requiring compliance with the approved plan.

(3) Public participation

Upon submission of a plan by the Secretary of Energy to the Administrator or a State, and before approval of the plan by the Administrator or a State, the Administrator or State shall publish a notice of the availability of the submitted plan and make such submitted plan available to the public on request.

(4) Revisions of plan

If any revisions of an approved plan are proposed by the Secretary of Energy or required by the Administrator or a State, the provisions of paragraphs (2) and (3) shall apply to the revisions in the same manner as they apply to the original plan.

(5) Waiver of plan requirement

(A) A State may waive the requirement for the Secretary of Energy to develop and submit a plan under this subsection for a facility located in the State if the State (i) enters into an agreement with the Secretary of Energy that addresses compliance at that facility with section 6924(j) of this title with respect to mixed waste, and (ii) issues an order requiring compliance with such agreement and which is in effect.

(B) Any violation of an agreement or order referred to in subparagraph (A) is subject to the waiver of sovereign immunity contained in section 6961(a) of this title.

(c) Schedule and progress reports

(1) Schedule

Not later than 6 months after October 6, 1992, the Secretary of Energy shall publish in the Federal Register a schedule for submitting the plans required under subsection (b) of this section.

(2) Progress reports

(A) Not later than the deadlines specified in subparagraph (B), the Secretary of Energy shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a progress report containing the following:

(i) An identification, by facility, of the plans that have been submitted to States or the Administrator of the Environmental Protection Agency pursuant to subsection (b) of this section.

(ii) The status of State and Environmental Protection Agency review and approval of each such plan.

(iii) The number of orders requiring compliance with such plans that are in effect.

(iv) For the first 2 reports required under this paragraph, an identification of the plans required under such subsection (b) of this section that the Secretary expects to submit in the 12-month period following submission of the report.

(B) The Secretary of Energy shall submit a report under subparagraph (A) not later than 12 months after October 6, 1992, 24 months after October 6, 1992, and 36 months after October 6, 1992.

(Pub. L. 89–272, title II, § 3021, as added Pub. L. 102–386, title I, § 105(a)(1), Oct. 6, 1992, 106 Stat. 1508.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on

Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

GAO REPORT

Section 105(c) of Pub. L. 102–386 provided that:

''(1) REQUIREMENT.—Not later than 18 months after the date of the enactment of this Act [Oct. 6, 1992], the Comptroller General shall submit to Congress a report on the Department of Energy's progress in complying with section 3021(b) of the Solid Waste Disposal Act [42 U.S.C. 6939c(b)].

''(2) MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall contain, at a minimum, the following:

''(A) The Department of Energy's progress in submitting to the States or the Administrator of the Environmental Protection Agency a plan for each facility for which a plan is required under section 3021(b) of the Solid Waste Disposal Act and the status of State or Environmental Protection Agency review and approval of each such plan.

''(B) The Department of Energy's progress in entering into orders requiring compliance with any such plans that have been approved.

''(C) An evaluation of the completeness and adequacy of each such plan as of the date of submission of the report required under paragraph (1).

''(D) An identification of any recurring problems among the Department of Energy's submitted plans.

''(E) A description of treatment technologies and capacity that have been developed by the Department of Energy since the date of the enactment of this Act and a list of the wastes that are expected to be treated by such technologies and the facilities at which the wastes are generated or stored.

''(F) The progress made by the Department of Energy in characterizing its mixed waste streams at each such facility by sampling and analysis.

''(G) An identification and analysis of additional actions that the Department of Energy must take to—

''(i) complete submission of all plans required under such section 3021(b) for all such facilities;

''(ii) obtain the adoption of orders requiring compliance with all such plans; and

''(iii) develop mixed waste treatment capacity and technologies.''

§ 6939d. Public vessels

(a) Waste generated on public vessels

Any hazardous waste generated on a public vessel shall not be subject to the storage, manifest, inspection, or recordkeeping requirements of this chapter until such waste is transferred to a shore facility, unless—

(1) the waste is stored on the public vessel for more than 90 days after the public vessel is placed in reserve or is otherwise no longer in service; or

(2) the waste is transferred to another public vessel within the territorial waters of the United States and is stored on such vessel or another public vessel for more than 90 days after the date of transfer.

(b) Computation of storage period

For purposes of subsection (a) of this section, the 90-day period begins on the earlier of—

(1) the date on which the public vessel on which the waste was generated is placed in reserve or is otherwise no longer in service; or

(2) the date on which the waste is transferred from the public vessel on which the waste was generated to another public vessel within the territorial waters of the United States;

and continues, without interruption, as long as the waste is stored on the original public vessel (if in reserve or not in service) or another public vessel.

(c) Definitions

For purposes of this section:

(1) The term ''public vessel'' means a vessel owned or bareboat chartered and operated by the United States, or by a foreign nation, except when the vessel is engaged in commerce.

(2) The terms ''in reserve'' and ''in service'' have the meanings applicable to those terms under section 7293 and sections 7304 through 7308 of title 10 and regulations prescribed under those sections.

(d) Relationship to other law

Nothing in this section shall be construed as altering or otherwise affecting the provisions of section 7311 of title 10.

(Pub. L. 89–272, title II, § 3022, as added Pub. L. 102–386, title I, § 106(a), Oct. 6, 1992, 106 Stat. 1513.)

§ 6939e. Federally owned treatment works

(a) In general

For purposes of section 6903(27) of this title, the phrase ''but does not include solid or dissolved material in domestic sewage'' shall apply to any solid or dissolved material introduced by a source into a federally owned treatment works if—

(1) such solid or dissolved material is subject to a pretreatment standard under section 1317 of title 33, and the source is in compliance with such standard;

(2) for a solid or dissolved material for which a pretreatment standard has not been promulgated pursuant to section 1317 of title 33, the Administrator has promulgated a schedule for establishing such a pretreatment standard which would be applicable to such solid or dissolved material not later than 7 years after October 6, 1992, such standard is promulgated on or before the date established in the schedule, and after the effective date of such standard the source is in compliance with such standard;

(3) such solid or dissolved material is not covered by paragraph (1) or (2) and is not prohibited from land disposal under subsections[1] (d), (e), (f), or (g) of section 6924 of this title because such material has been treated in accordance with section 6924(m) of this title; or

(4) notwithstanding paragraphs[1] (1), (2), or (3), such solid or dissolved material is generated by a household or person which generates less than 100 kilograms of hazardous waste per month unless such solid or dissolved material would otherwise be an acutely hazardous waste and subject to standards, regulations, or other requirements under this chapter notwithstanding the quantity generated.

[1] So in original. Probably should be singular.

(b) Prohibition

It is unlawful to introduce into a federally owned treatment works any pollutant that is a hazardous waste.

(c) Enforcement

(1) Actions taken to enforce this section shall not require closure of a treatment works if the hazardous waste is removed or decontaminated and such removal or decontamination is adequate, in the discretion of the Administrator or, in the case of an authorized State, of the State, to protect human health and the environment.

(2) Nothing in this subsection shall be construed to prevent the Administrator or an authorized State from ordering the closure of a treatment works if the Administrator or State determines such closure is necessary for protection of human health and the environment.

(3) Nothing in this subsection shall be construed to affect any other enforcement authorities available to the Administrator or a State under this subchapter.

(d) "Federally owned treatment works" defined

For purposes of this section, the term ''federally owned treatment works'' means a facility that is owned and operated by a department, agency, or instrumentality of the Federal Government treating wastewater, a majority of which is domestic sewage, prior to discharge in accordance with a permit issued under section 1342 of title 33.

(e) Savings clause

Nothing in this section shall be construed as affecting any agreement, permit, or administrative or judicial order, or any condition or requirement contained in such an agreement, permit, or order, that is in existence on October 6, 1992, and that requires corrective action or closure at a federally owned treatment works or solid waste management unit or facility related to such a treatment works.

(Pub. L. 89–272, title II, § 3023, as added Pub. L. 102–386, title I, § 108(a), Oct. 6, 1992, 106 Stat. 1514.)

SUBCHAPTER IV—STATE OR REGIONAL SOLID WASTE PLANS

§ 6941. Objectives of subchapter

The objectives of this subchapter are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources including energy and materials which are recoverable from solid waste and to encourage resource conservation. Such objectives are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry. In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interest within the area encompassed by the planning process.

(Pub. L. 89–272, title II, § 4001, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2813; amended Pub. L. 96–482, § 32(b), Oct. 21, 1980, 94 Stat. 2353; Pub. L. 98–616, title III, § 301(a), title V, § 501(f)(1), Nov. 8, 1984, 98 Stat. 3267, 3276.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1984—Pub. L. 98–616, § 501(f)(1), inserted '', including those needs created by thorough implementation of section 6962(h) of this title,''.

Pub. L. 98–616, § 301(a), inserted at end ''In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.''

1980—Pub. L. 96–482 included as an objective in the disposal of solid waste the utilization of energy and materials recoverable from solid waste.

§ 6941a. Energy and materials conservation and recovery; Congressional findings

The Congress finds that—

(1) significant savings could be realized by conserving materials in order to reduce the volume or quantity of material which ultimately becomes waste;

(2) solid waste contains valuable energy and material resources which can be recovered and used thereby conserving increasingly scarce and expensive fossil fuels and virgin materials;

(3) the recovery of energy and materials from municipal waste, and the conservation of energy and materials contributing to such waste streams, can have the effect of reducing the volume of the municipal waste stream and the burden of disposing of increasing volumes of solid waste;

(4) the technology to conserve resources exists and is commercially feasible to apply;

(5) the technology to recover energy and materials from solid waste is of demonstrated commercial feasibility; and

(6) various communities throughout the nation have different needs and different potentials for conserving resources and for utilizing techniques for the recovery of energy and materials from waste, and Federal assistance in planning and implementing such energy and materials conservation and recovery programs should be available to all such communities on an equitable basis in relation to their needs and potential.

(Pub. L. 96–482, § 32(a), Oct. 21, 1980, 94 Stat. 2353.)

CODIFICATION

Section was enacted as part of the Solid Waste Disposal Act Amendments of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§ 6942. Federal guidelines for plans

(a) Guidelines for identification of regions

For purposes of encouraging and facilitating the development of regional planning for solid

waste management, the Administrator, within one hundred and eighty days after October 21, 1976, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which have common solid waste management problems and are appropriate units for planning regional solid waste management services. Such guidelines shall consider—

(1) the size and location of areas which should be included,

(2) the volume of solid waste which should be included, and

(3) the available means of coordinating regional planning with other related regional planning and for coordination of such regional planning into the State plan.

(b) Guidelines for State plans

Not later than eighteen months after October 21, 1976, and after notice and hearing, the Administrator shall, after consultation with appropriate Federal, State, and local authorities, promulgate regulations containing guidelines to assist in the development and implementation of State solid waste management plans (hereinafter in this chapter referred to as ''State plans''). The guidelines shall contain methods for achieving the objectives specified in section 6941 of this title. Such guidelines shall be reviewed from time to time, but not less frequently than every three years, and revised as may be appropriate.

(c) Considerations for State plan guidelines

The guidelines promulgated under subsection (b) of this section shall consider—

(1) the varying regional, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to insure the reasonable protection of the quality of the ground and surface waters from leachate contamination, the reasonable protection of the quality of the surface waters from surface runoff contamination, and the reasonable protection of ambient air quality;

(2) characteristics and conditions of collection, storage, processing, and disposal operating methods, techniques and practices, and location of facilities where such operating methods, techniques, and practices are conducted, taking into account the nature of the material to be disposed;

(3) methods for closing or upgrading open dumps for purposes of eliminating potential health hazards;

(4) population density, distribution, and projected growth;

(5) geographic, geologic, climatic, and hydrologic characteristics;

(6) the type and location of transportation;

(7) the profile of industries;

(8) the constituents and generation rates of waste;

(9) the political, economic, organizational, financial, and management problems affecting comprehensive solid waste management;

(10) types of resource recovery facilities and resource conservation systems which are appropriate; and

(11) available new and additional markets for recovered material and energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.

(Pub. L. 89–272, title II, § 4002, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2813; amended Pub. L. 96–482, § 32(c), Oct. 21, 1980, 94 Stat. 2353.)

AMENDMENTS

1980—Subsec. (c)(11). Pub. L. 96–482 required State plan guidelines to consider energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6943. Requirements for approval of plans

(a) Minimum requirements

In order to be approved under section 6947 of this title, each State plan must comply with the following minimum requirements—

(1) The plan shall identify (in accordance with section 6946(b) of this title) (A) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (B) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (C) the means for coordinating regional planning and implementation under the State plan.

(2) The plan shall, in accordance with sections 6944(b) and 6945(a) of this title, prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (A) utilized for resource recovery or (B) disposed of in sanitary landfills (within the meaning of section 6944(a) of this title) or otherwise disposed of in an environmentally sound manner.

(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 6945 of this title.

(4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.

(5) The plan shall provide that no State or local government within the State shall be prohibited under State or local law from negotiating and entering into long-term contracts for the supply of solid waste to resource recovery facilities, from entering into long-term contracts for the operation of such facilities, or from securing long-term markets for material and energy recovered from such facilities or for conserving materials or energy by reducing the volume of waste.

(6) The plan shall provide for such resource conservation or recovery and for the disposal of solid waste in sanitary landfills or any com-

bination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

(b) Discretionary plan provisions relating to recycled oil

Any State plan submitted under this subchapter may include, at the option of the State, provisions to carry out each of the following:

(1) Encouragement, to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of recycled oil in all appropriate areas of State and local government.

(2) Encouragement of persons contracting with the State to use recycled oil to the maximum extent feasible, consistent with protection of the public health and the environment.

(3) Informing the public of the uses of recycled oil.

(4) Establishment and implementation of a program (including any necessary licensing of persons and including the use, where appropriate, of manifests) to assure that used oil is collected, transported, treated, stored, reused, and disposed of, in a manner which does not present a hazard to the public health or the environment.

Any plan submitted under this chapter before October 15, 1980, may be amended, at the option of the State, at any time after such date to include any provision referred to in this subsection.

(c) Energy and materials conservation and recovery feasibility planning and assistance

(1) A State which has a plan approved under this subchapter or which has submitted a plan for such approval shall be eligible for assistance under section 6948(a)(3) of this title if the Administrator determines that under such plan the State will—

(A) analyze and determine the economic and technical feasibility of facilities and programs to conserve resources which contribute to the waste stream or to recover energy and materials from municipal waste;

(B) analyze the legal, institutional, and economic impediments to the development of systems and facilities for conservation of energy or materials which contribute to the waste stream or for the recovery of energy and materials from municipal waste and make recommendations to appropriate governmental authorities for overcoming such impediments;

(C) assist municipalities within the State in developing plans, programs, and projects to conserve resources or recover energy and materials from municipal waste; and

(D) coordinate the resource conservation and recovery planning under subparagraph (C).

(2) The analysis referred to in paragraph (1)(A) shall include—

(A) the evaluation of, and establishment of priorities among, market opportunities for industrial and commercial users of all types (including public utilities and industrial parks) to utilize energy and materials recovered from municipal waste;

(B) comparisons of the relative costs of energy recovered from municipal waste in relation to the costs of energy derived from fossil fuels and other sources;

(C) studies of the transportation and storage problems and other problems associated with the development of energy and materials recovery technology, including curbside source separation;

(D) the evaluation and establishment of priorities among ways of conserving energy or materials which contribute to the waste stream;

(E) comparison of the relative total costs between conserving resources and disposing of or recovering such waste; and

(F) studies of impediments to resource conservation or recovery, including business practices, transportation requirements, or storage difficulties.

Such studies and analyses shall also include studies of other sources of solid waste from which energy and materials may be recovered or minimized.

(d) Size of waste-to-energy facilities

Notwithstanding any of the above requirements, it is the intention of this chapter and the planning process developed pursuant to this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.

(Pub. L. 89–272, title II, § 4003, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2814; amended Pub. L. 96–463, § 5(b), Oct. 15, 1980, 94 Stat. 2056; Pub. L. 96–482, §§ 18, 32(d), Oct. 21, 1980, 94 Stat. 2345, 2353; Pub. L. 98–616, title III, § 301(b), title V, § 502(h), Nov. 8, 1984, 98 Stat. 3267, 3277.)

CODIFICATION

Another section 5(b) of Pub. L. 96–463 amended section 6948 of this title.

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98–616, § 502(h), redesignated the subsec. (b) entitled energy and materials conservation and recovery feasibility planning and assistance, as subsec. (c).

Subsec. (d). Pub. L. 98–616, § 301(b), added subsec. (d).

1980—Subsec. (a). Pub. L. 96–463, § 5(b), and Pub. L. 96–482, § 32(d)(2), designated existing provisions as subsec. (a).

Subsec. (a)(2). Pub. L. 96–482, § 18(a), substituted reference to sections 6944(b) and 6945(a) of this title for reference to section 6945(c) of this title.

Subsec. (a)(5). Pub. L. 96–482, §§ 18(b), 32(d)(1), substituted ''State or local government'' for ''local government'' and required State plan recognition of right to enter into long-term contracts for operation of resource recovery facilities and to secure long-term markets for material and energy recovered from such facilities, and required State plan recognition of right to negotiate long-term contracts and to negotiate and enter into such contracts for conserving materials or energy by reducing the volume of waste.

Subsec. (b). Pub. L. 96–463, § 5(b), added subsec. (b) relating to discretionary plan provisions for recycled oil.

Pub. L. 96–482, § 32(d)(2), added subsec. (b) relating to energy and materials conservation and recovery feasibility planning and assistance.

§ 6944. Criteria for sanitary landfills; sanitary landfills required for all disposal

(a) Criteria for sanitary landfills

Not later than one year after October 21, 1976, after consultation with the States, and after notice and public hearings, the Administrator shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter. At a minimum, such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(b) Disposal required to be in sanitary landfills, etc.

For purposes of complying with section 6943(2)[1] of this title each State plan shall prohibit the establishment of open dumps and contain a requirement that disposal of all solid waste within the State shall be in compliance with such section 6943(2)[1] of this title.

(c) Effective date

The prohibition contained in subsection (b) of this section shall take effect on the date six months after the date of promulgation of regulations under subsection (a) of this section.

(Pub. L. 89–272, title II, § 4004, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2815; amended Pub. L. 98–616, title III, § 302(b), Nov. 8, 1984, 98 Stat. 3268.)

REFERENCES IN TEXT

Section 6943(2) of this title, referred to in subsec. (b), was redesignated section 6943(a)(2) of this title by Pub. L. 96–463, § 5(b), Oct. 15, 1980, 94 Stat. 2056, and Pub. L. 96–482, § 32(d)(2), Oct. 21, 1980, 94 Stat. 2353.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–616 struck out ''or on the date of approval of the State plan, whichever is later'' at end.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6945. Upgrading of open dumps

(a) Closing or upgrading of existing open dumps

Upon promulgation of criteria under section 6907(a)(3) of this title, any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under this section. The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping. For purposes of complying with section 6943(a)(2) and 6943(a)(3) of this title, each State plan shall contain a requirement that all existing disposal facilities or sites for solid waste in such State which are open dumps listed in the inventory under subsection (b) of this section shall comply with such measures as may be promulgated by the Administrator to eliminate health hazards and minimize potential health hazards. Each such plan shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of criteria under section 6907(a)(3) of this title).

(b) Inventory

To assist the States in complying with section 6943(a)(3) of this title, not later than one year after promulgation of regulations under section 6944 of this title, the Administrator, with the cooperation of the Bureau of the Census shall publish an inventory of all disposal facilities or sites in the United States which are open dumps within the meaning of this chapter.

(c) Control of hazardous disposal

(1)(A) Not later than 36 months after November 8, 1984, each State shall adopt and implement a permit program or other system of prior approval and conditions to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the applicable criteria promulgated under section 6944(a) and 6907(a)(3) of this title.

(B) Not later than eighteen months after the promulgation of revised criteria under subsection[1] 6944(a) of this title (as required by section 6949a(c) of this title), each State shall adopt and implement a permit program or other system or[2] prior approval and conditions, to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the criteria revised under section 6944(a) of this title.

(C) The Administrator shall determine whether each State has developed an adequate program under this paragraph. The Administrator

[1] See References in Text note below.

[1] So in original. Probably should be ''section''.

[2] So in original. Probably should be ''of''.

may make such a determination in conjunction with approval, disapproval or partial approval of a State plan under section 6947 of this title.

(2)(A) In any State that the Administrator determines has not adopted an adequate program for such facilities under paragraph (1)(B) by the date provided in such paragraph, the Administrator may use the authorities available under sections 6927 and 6928 of this title to enforce the prohibition contained in subsection (a) of this section with respect to such facilities.

(B) For purposes of this paragraph, the term ''requirement of this subchapter'' in section 6928 of this title shall be deemed to include criteria promulgated by the Administrator under sections 6907(a)(3) and 6944(a) of this title, and the term ''hazardous wastes'' in section 6927 of this title shall be deemed to include solid waste at facilities that may handle hazardous household wastes or hazardous wastes from small quantity generators.

(Pub. L. 89–272, title II, § 4005, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2815; amended Pub. L. 96–482, § 19(a), (b), Oct. 21, 1980, 94 Stat. 2345; Pub. L. 98–616, title III, § 302(c), title IV, § 403(c), title V, § 502(c), Nov. 8, 1984, 98 Stat. 3268, 3272, 3276.)

CODIFICATION

Another section 19(b) of Pub. L. 96–482 amended section 6946 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, § 403(c), inserted after first sentence ''The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping.''

Pub. L. 98–616, § 502(c), inserted a closing parenthesis before the period at end.

Subsec. (c). Pub. L. 98–616, § 302(c), added subsec. (c).

1980—Subsec. (a). Pub. L. 96–482, § 19(a), (b)(1), struck out subsec. (a) which defined ''open dump'', which is covered in section 6903(14) of this title, redesignated subsec. (c) as (a) and substituted ''Upon promulgation of criteria under section 6907(a)(3) of this title, any'' for ''Any'', ''section 6943(a)(2) and 6943(a)(3) of this title'' for ''section 6943(2) of this title'', and ''criteria under section 6907(a)(3) of this title'' for ''the inventory under subsection (b) of this section''.

Amendment by section 19(b)(1) of Pub. L. 96–482, directing that following reference to ''4003(2)'', which had been editorially translated as section 6943(2) of this title, the phrase ''and 4003(3)'' be inserted, was executed by translating ''4003(2) and 4003(3)'' as section 6943(a)(2) and 6943(a)(3) of this title, in view of the designation of the existing provisions of section 6943 of this title as subsec. (a) of section 6943 of this title by section 5(b) of Pub. L. 96–463 and also by section 32(d)(2) of Pub. L. 96–482.

Subsec. (b). Pub. L. 96–482, § 19(b)(2), inserted introductory phrase ''To assist the States in complying with section 6943(a)(3) of this title''. Amendment referring to section ''4003(3)'' was executed by translating ''4003(3)'' as section 6943(a)(3) of this title, in view of the designation of the existing provisions of section 6943 of this title as subsec. (a) of section 6943 of this title by section 5(b) of Pub. L. 96–463 and also by section 32(d)(2) of Pub. L. 96–482.

Subsec. (c). Pub. L. 96–482, § 19(a), redesignated subsec. (c) as (a).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6946. Procedure for development and implementation of State plan

(a) Identification of regions

Within one hundred and eighty days after publication of guidelines under section 6942(a) of this title (relating to identification of regions), the Governor of each State, after consultation with local elected officials, shall promulgate regulations based on such guidelines identifying the boundaries of each area within the State which, as a result of urban concentrations, geographic conditions, markets, and other factors, is appropriate for carrying out regional solid waste management. Such regulations may be modified from time to time (identifying additional or different regions) pursuant to such guidelines.

(b) Identification of State and local agencies and responsibilities

(1) Within one hundred and eighty days after the Governor promulgates regulations under subsection (a) of this section, for purposes of facilitating the development and implementation of a State plan which will meet the minimum requirements of section 6943 of this title, the State, together with appropriate elected officials of general purpose units of local government, shall jointly (A) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (B) identify which solid waste management activities will, under such State plan, be planned for and carried out by the State and which such management activities will, under such State plan, be planned for and carried out by a regional or local authority or a combination of regional or local and State authorities. If a multi-functional regional agency authorized by State law to conduct solid waste planning and management (the members of which are appointed by the Governor) is in existence on October 21, 1976, the Governor shall identify such authority for purposes of carrying out within such region clause (A) of this paragraph. Where feasible, designation of the agency for the affected area designated under section 1288 of title 33 shall be considered. A State agency identified under this paragraph shall be established or designated by the Governor of such State. Local or regional agencies identified under this paragraph shall be composed of individuals at least a majority of whom are elected local officials.

(2) If planning and implementation agencies are not identified and designated or established as required under paragraph (1) for any affected area, the governor shall, before the date two hundred and seventy days after promulgation of regulations under subsection (a) of this section, establish or designate a State agency to develop and implement the State plan for such area.

(c) Interstate regions

(1) In the case of any region which, pursuant to the guidelines published by the Adminis-

trator under section 6942(a) of this title (relating to identification of regions), would be located in two or more States, the Governors of the respective States, after consultation with local elected officials, shall consult, cooperate, and enter into agreements identifying the boundaries of such region pursuant to subsection (a) of this section.

(2) Within one hundred and eighty days after an interstate region is identified by agreement under paragraph (1), appropriate elected officials of general purpose units of local government within such region shall jointly establish or designate an agency to develop a plan for such region. If no such agency is established or designated within such period by such officials, the Governors of the respective States may, by agreement, establish or designate for such purpose a single representative organization including elected officials of general purpose units of local government within such region.

(3) Implementation of interstate regional solid waste management plans shall be conducted by units of local government for any portion of a region within their jurisdiction, or by multijurisdictional agencies or authorities designated in accordance with State law, including those designated by agreement by such units of local government for such purpose. If no such unit, agency, or authority is so designated, the respective Governors shall designate or establish a single interstate agency to implement such plan.

(4) For purposes of this subchapter, so much of an interstate regional plan as is carried out within a particular State shall be deemed part of the State plan for such State.

(Pub. L. 89–272, title II, § 4006, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2816; amended Pub. L. 96–482, § 19(b), Oct. 21, 1980, 94 Stat. 2345.)

CODIFICATION

Another section 19(b) of Pub. L. 96–482 amended section 6945 of this title.

AMENDMENTS

1980—Subsec. (b)(1)(B). Pub. L. 96–482 substituted ''management activities'' for ''functions'' in two places.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6947. Approval of State plan; Federal assistance

(a) Plan approval

The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that—

(1) it meets the requirements of paragraphs (1), (2), (3), and (5) of section 6943(a) of this title; and

(2) it contains provision for revision of such plan, after notice and public hearing, whenever the Administrator, by regulation, determines—

(A) that revised regulations respecting minimum requirements have been promulgated under paragraphs (1), (2), (3), and (5) of section 6943(a) of this title with which the State plan is not in compliance;

(B) that information has become available which demonstrates the inadequacy of the plan to effectuate the purposes of this subchapter; or

(C) that such revision is otherwise necessary.

The Administrator shall review approved plans from time to time and if he determines that revision or corrections are necessary to bring such plan into compliance with the minimum requirements promulgated under section 6943 of this title (including new or revised requirements), he shall, after notice and opportunity for public hearing, withdraw his approval of such plan. Such withdrawal of approval shall cease to be effective upon the Administrator's determination that such complies with such minimum requirements.

(b) Eligibility of States for Federal financial assistance

(1) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, if such State and local and regional authorities within such State have complied with the requirements of section 6946 of this title within the period required under such section and if such State has a State plan which has been approved by the Administrator under this subchapter.

(2) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, for fiscal years 1978 and 1979 if the Administrator determines that the State plan continues to be eligible for approval under subsection (a) of this section and is being implemented by the State.

(3) Upon withdrawal of approval of a State plan under subsection (a) of this section, the Administrator shall withhold Federal financial and technical assistance under this subchapter (other than such technical assistance as may be necessary to assist in obtaining the reinstatement of approval) until such time as such approval is reinstated.

(c) Existing activities

Nothing in this subchapter shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State plan approved by the Administrator under this subchapter.

(Pub. L. 89–272, title II, § 4007, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2817; amended Pub. L. 95–609, § 7(*l*), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 104–119, § 4(8), Mar. 26, 1996, 110 Stat. 833.)

AMENDMENTS

1996—Subsec. (a)(1), (2)(A). Pub. L. 104–119 substituted ''section 6943(a) of this title'' for ''section 6943 of this title''.

1978—Subsec. (c). Pub. L. 95–609 substituted ''(c)'' for ''(C)'' in subsection designation.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6948. Federal assistance

(a) Authorization of Federal financial assistance

(1) There are authorized to be appropriated $30,000,000 for fiscal year 1978, $40,000,000 for fiscal year 1979, $20,000,000 for fiscal year 1980, $15,000,000 for fiscal year 1981, $20,000,000 for the fiscal year 1982, and $10,000,000 for each of the fiscal years 1985 through 1988 for purposes of financial assistance to States and local, regional, and interstate authorities for the development and implementation of plans approved by the Administrator under this subchapter (other than the provisions of such plans referred to in section 6943(b)[1] of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery).

(2)(A) The Administrator is authorized to provide financial assistance to States, counties, municipalities, and intermunicipal agencies and State and local public solid waste management authorities for implementation of programs to provide solid waste management, resource recovery, and resource conservation services and hazardous waste management. Such assistance shall include assistance for facility planning and feasibility studies; expert consultation; surveys and analyses of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies; but such assistance shall not include any other element of construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources. Agencies assisted under this subsection shall consider existing solid waste management and hazardous waste management services and facilities as well as facilities proposed for construction.

(B) An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirements of section 6945 of this title and subchapter III of this chapter and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to section 6907 of this title. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or areawide solid waste management plan or program. Applicants for technical and financial assistance under this section shall not preclude or foreclose consideration of programs for the recovery of recyclable materials through source separation or other resource recovery techniques.

(C) There are authorized to be appropriated $15,000,000 for each of the fiscal years 1978 and 1979 for purposes of this section. There are authorized to be appropriated $10,000,000 for fiscal year 1980, $10,000,000 for fiscal year 1981, $10,000,000 for fiscal year 1982, and $10,000,000 for each of the fiscal years 1985 through 1988 for purposes of this paragraph.

(D) There are authorized—

(i) to be made available $15,000,000 out of funds appropriated for fiscal year 1985, and

(ii) to be appropriated for each of the fiscal years 1986 though[2] 1988, $20,000,000[3]

for grants to States (and where appropriate to regional, local, and interstate agencies) to implement programs requiring compliance by solid waste management facilities with the criteria promulgated under section 6944(a) of this title and section 6907(a)(3) of this title and with the provisions of section 6945 of this title. To the extent practicable, such programs shall require such compliance not later than thirty-six months after November 8, 1984.

(3)(A) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, $4,000,000 for purposes of making grants to States to carry out section 6943(b)[4] of this title. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(B) Assistance provided by the Administrator under this paragraph shall be used only for the purposes specified in section 6943(b)[4] of this title. Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

(C) Where appropriate, any State receiving assistance under this paragraph may make all or any part of such assistance available to municipalities within the State to carry out the activities specified in section 6943(b)(1)(A) and (B)[4] of this title.

(b) State allotment

The sums appropriated in any fiscal year under subsection (a)(1) of this section shall be allotted by the Administrator among all States, in the ratio that the population in each State bears to the population in all of the States, except that no State shall receive less than one-half of 1 per centum of the sums so allotted in any fiscal year. No State shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for solid waste management control programs will be less than its expenditures were for such programs during fiscal year 1975, except that such funds may be reduced by an amount equal to their proportionate share of any general reduction of State spending ordered by the Governor or legislature of such State. No State shall receive any grant for solid waste management programs unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, regional, or other non-Federal funds that would in

[1] See References in Text note below.

[2] So in original. Probably should be ''through''.

[3] So in original. Probably should be followed by a comma.

[4] See References in Text note below.

the absence of such grant be made available for the maintenance of such programs.

(c) Distribution of Federal financial assistance within the State

The Federal assistance allotted to the States under subsection (b) of this section shall be allocated by the State receiving such funds to State, local, regional, and interstate authorities carrying out planning and implementation of the State plan. Such allocation shall be based upon the responsibilities of the respective parties as determined pursuant to section 6946(b) of this title.

(d) Technical assistance

(1) The Administrator may provide technical assistance to State and local governments for purposes of developing and implementing State plans. Technical assistance respecting resource recovery and conservation may be provided through resource recovery and conservation panels, established in the Environmental Protection Agency under subchapter II of this chapter, to assist the State and local governments with respect to particular resource recovery and conservation projects under consideration and to evaluate their effect on the State plan.

(2) In carrying out this subsection, the Administrator may, upon request, provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil. Such impediments may include laws, regulations, and policies, including State procurement policies, which are not favorable to the recycling of used oil.

(3) In carrying out this subsection, the Administrator is authorized to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies upon request, to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recovery energy and materials from municipal waste or to conserve energy or materials which contribute to the waste stream. Such impediments may include—

(A) laws, regulations, and policies, including State and local procurement policies, which are not favorable to resource conservation and recovery policies, systems, and facilities;

(B) impediments to the financing of facilities to conserve or recover energy and materials from municipal waste through the exercise of State and local authority to issue revenue bonds and the use of State and local credit assistance; and

(C) impediments to institutional arrangements necessary to undertake projects for the conservation or recovery of energy and materials from municipal waste, including the creation of special districts, authorities, or corporations where necessary having the power to secure the supply of waste of a project, to conserve resources, to implement the project, and to undertake related activities.

(e) Special communities

(1) The Administrator, in cooperation with State and local officials, shall identify local governments within the United States (A) having a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan, and (B) which are located over an aquifer which is the source of drinking water for any person or public water system and which has serious environmental problems resulting from the disposal of such solid waste, including possible methane migration.

(2) There is authorized to be appropriated to the Administrator $2,500,000 for the fiscal year 1980 and $1,500,000 for each of the fiscal years 1981 and 1982 to make grants to be used for containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1). Not more than one community in any State shall be eligible for grants under this paragraph and not more than one project in any State shall be eligible for such grants. No unit of local government shall be eligible for grants under this paragraph with respect to any site which exceeds 65 acres in size.

(f) Assistance to States for discretionary program for recycled oil

(1) The Administrator may make grants to States, which have a State plan approved under section 6947 of this title, or which have submitted a State plan for approval under such section, if such plan includes the discretionary provisions described in section 6943(b) of this title. Grants under this subsection shall be for purposes of assisting the State in carrying out such discretionary provisions. No grant under this subsection may be used for construction or for the acquisition of land or equipment.

(2) Grants under this subsection shall be allotted among the States in the same manner as provided in the first sentence of subsection (b) of this section.

(3) No grant may be made under this subsection unless an application therefor is submitted to, and approved by, the Administrator. The application shall be in such form, be submitted in such manner, and contain such information as the Administrator may require.

(4) For purposes of making grants under this subsection, there are authorized to be appropriated $5,000,000 for fiscal year 1982, $5,000,000 for fiscal year 1983, and $5,000,000 for each of the fiscal years 1985 through 1988.

(g) Assistance to municipalities for energy and materials conservation and recovery planning activities

(1) The Administrator is authorized to make grants to municipalities, regional authorities, and intermunicipal agencies to carry out activities described in subparagraphs (A) and (B) of section 6943(b)(1)[5] of this title. Such grants may be made only pursuant to an application submitted to the Administrator by the municipality which application has been approved by the State and determined by the State to be consistent with any State plan approved or submitted

[5] See References in Text note below.

under this subchapter or any other appropriate planning carried out by the State.

(2) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, $8,000,000 for purposes of making grants to municipalities under this subsection. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(3) Assistance provided by the Administrator under this subsection shall be used only for the purposes specified in paragraph (1). Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

(Pub. L. 89–272, title II, § 4008, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2818; amended Pub. L. 96–463, §§ 5(b), 6, Oct. 15, 1980, 94 Stat. 2057; Pub. L. 96–482, §§ 20, 31(c), (d), 32(e), (f), Oct. 21, 1980, 94 Stat. 2345, 2352, 2354, 2355; Pub. L. 98–616, § 2(d)–(g), (k), title V, § 502(d), (e), Nov. 8, 1984, 98 Stat. 3222, 3223, 3276.)

REFERENCES IN TEXT

Section 6943(b) of this title, referred to in subsecs. (a)(1), (3) and (g)(1), was redesignated section 6943(c) of this title by Pub. L. 98–616, title V, § 502(h), Nov. 8, 1984, 98 Stat. 3277.

CODIFICATION

Section 2(d)–(g) of Pub. L. 98–616, cited as a credit to this section, appears to contain typographical error in that the text of subsec. (f)(1) of section 2007 of the Solid Waste Disposal Act (as added by section 2(i) of Pub. L. 98–616) is also shown as the text of subsec. ''(f)(1)'' of such section 2. Subsec. (f) of section 2, as set out in the Conference Report (H. Rept. 98–1133) to accompany H.R. 2867 (which became Pub. L. 98–616) read:

''(f) Section 4008(e)(2) of the Solid Waste Disposal Act (relating to special communities) is amended by striking out 'and $1,500,000 for each of the fiscal years 1981 and 1982' and substituting ', $1,500,000 for each of the fiscal years 1981 and 1982, and $500,000 for each of the fiscal years 1985 through 1988'.''

Another section 5(b) of Pub. L. 96–463 amended section 6943 of this title.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–616, § 2(d), authorized appropriation of $10,000,000 for each of fiscal years 1985 through 1988.

Subsec. (a)(2)(C). Pub. L. 98–616, § 2(e), authorized appropriation of $10,000,000 for each of fiscal years 1985 through 1988.

Subsec. (a)(2)(D). Pub. L. 98–616, § 2(k), added subpar. (D).

Subsec. (d)(2), (3). Pub. L. 98–616, § 502(d), redesignated second par. (2), relating to recovery of energy and materials from municipal waste, as par. (3).

Subsec. (f). Pub. L. 98–616, § 502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).

Subsec. (f)(4). Pub. L. 98–616, § 2(g), authorized appropriation of $5,000,000 for each of fiscal years 1985 through 1988.

Subsec. (g). Pub. L. 98–616, § 502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).

1980—Subsec. (a)(1). Pub. L. 96–482, § 31(c), authorized appropriations of $20,000,000, $15,000,000, and $20,000,000 for fiscal years, 1980, 1981, and 1982, respectively, and substituted provision making appropriation available for financial assistance to States, and local, regional, and interstate authorities for development and implementation of plans approved by the Administrator, except plans referred to in section 6943(b) of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery for provision making appropriations available to State for development and implementation of State plans.

Subsec. (a)(2)(B). Pub. L. 96–482, § 32(e)(1), provided that applicants for technical and financial assistance shall not preclude or foreclose consideration of programs for recovery of recyclable materials through source separation or other resource recovery techniques.

Subsec. (a)(2)(C). Pub. L. 96–482, § 31(d), authorized appropriation of $10,000,000 for each fiscal year 1980, 1981, and 1982.

Subsec. (a)(3). Pub. L. 96–482, § 32(e)(2), added par. (3).

Subsec. (d). Pub. L. 96–463, § 6, and Pub. L. 96–482, § 32(f), designated existing provisions as par. (1).

Subsec. (d)(2). Pub. L. 96–463, § 6, added par. (2) authorizing the Administrator to provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil.

Pub. L. 96–482, § 32(f), added par. (2) authorizing the Administrator to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recover energy and materials from municipal waste.

Subsec. (e)(1). Pub. L. 96–482, § 20(1)–(5), substituted in provision preceding cl. (A) ''identify local governments'' for ''identify communities'', struck out cl. (A), which required the Administrator to identify populations of less than twenty-five thousand persons, redesignated cls. (B) and (C) as (A) and (B), respectively, in cl. (A) as so redesignated, substituted ''a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan'' for ''solid waste disposal facilities in which more than 75 per centum of the solid waste of is from areas outside the jurisdiction of the communities'' in cl. (B) as so redesignated, substituted ''which are located over an aquifer which is the source of drinking water for any person or public water system and which has'' for ''which have'' and inserted '', including possible methane migration'' after ''such solid waste''.

Subsec. (e)(2). Pub. L. 96–482, § 20(6)–(8), substituted appropriations authorization of $2,500,000; $1,500,000; and $1,500,000 for fiscal years 1980, 1981, and 1982, for prior authorization of $2,500,000 for fiscal years 1978 and 1979, substituted provision for grants for ''containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1)'' for such grants for ''the conversion, improvement, or consolidation of existing solid waste disposal facilities, or for the construction of new solid waste disposal facilities, or for both, within communities identified under paragraph (1)'', and prohibited grants to units of local government when site exceeds 65 acres in size.

Subsec. (e)(3). Pub. L. 96–482, § 20(9), struck out par. (3) which required that grants to States be made only when the projects are consistent with applicable and approved State plan and will assist in carrying out such plan.

Subsec. (f). Pub. L. 96–463, § 5(b), added subsec. (f) relating to assistance to States for discretionary program for recycled oil.

Pub. L. 96–482, § 32(e)(3), added subsec. (f) relating to assistance to municipalities for energy and materials conservation and recovery planning activities.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protec-

tion Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6949. Rural communities assistance

(a) In general

The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 6945 of this title or restrictions on open burning or other requirements arising under the Clean Air Act [42 U.S.C. 7401 et seq.] or the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.]. Such assistance shall only be available—

(1) to any municipality or county which could not feasibly be included in a solid waste management system or facility serving an urbanized, multijurisdictional area because of its distance from such systems;

(2) where existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 6945 of this title; and

(3) for systems which are certified by the State to be consistent with any plans or programs established under any State or areawide planning process.

(b) Allotment

The Administrator shall allot the sums appropriated to carry out this section in any fiscal year among the States in accordance with regulations promulgated by him on the basis of the average of the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States, the ratio which the population of counties in each State having less than twenty persons per square mile bears to the total population of such counties in all the States, and the ratio which the population of such low-density counties in each State having 33 per centum or more of all families with incomes not in excess of 125 per centum of the poverty level bears to the total population of such counties in all the States.

(c) Limit

The amount of any grant under this section shall not exceed 75 per centum of the costs of the project. No assistance under this section shall be available for the acquisition of land or interests in land.

(d) Authorization of appropriations

There are authorized to be appropriated $25,000,000 for each of the fiscal years 1978 and 1979 to carry out this section. There are authorized to be appropriated $10,000,000 for the fiscal year 1980 and $15,000,000 for each of the fiscal years 1981 and 1982 to carry out this section.

(Pub. L. 89–272, title II, § 4009, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2819; amended Pub. L. 96–482, § 31(e), Oct. 21, 1980, 94 Stat. 2353.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short title note set out under section 1251 of title 33 and Tables.

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–482 authorized appropriation of $10,000,000, $15,000,000, and $15,000,000 for fiscal years 1980, 1981, 1982, respectively.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6949a. Adequacy of certain guidelines and criteria

(a) Study

The Administrator shall conduct a study of the extent to which the guidelines and criteria under this chapter (other than guidelines and criteria for facilities to which subchapter III of this chapter applies) which are applicable to solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments, are adequate to protect human health and the environment from ground water contamination. Such study shall include a detailed assessment of the degree to which the criteria under section 6907(a) of this title and the criteria under section 6944 of this title regarding monitoring, prevention of contamination, and remedial action are adequate to protect ground water and shall also include recommendation with respect to any additional enforcement authorities which the Administrator, in consultation with the Attorney General, deems necessary for such purposes.

(b) Report

Not later than thirty-six months after November 8, 1984, the Administrator shall submit a report to the Congress setting forth the results of the study required under this section, together with any recommendations made by the Administrator on the basis of such study.

(c) Revisions of guidelines and criteria

(1) In general

Not later than March 31, 1988, the Administrator shall promulgate revisions of the criteria promulgated under paragraph (1) of section 6944(a) of this title and under section 6907(a)(3) of this title for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators under section 6921(d) of this title. The criteria

shall be those necessary to protect human health and the environment and may take into account the practicable capability of such facilities. At a minimum such revisions for facilities potentially receiving such wastes should require ground water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate.

(2) Additional revisions

Subject to paragraph (3), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—

(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and

(B) the municipal solid waste landfill unit or expansion serves—

(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or

(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

(3) Protection of ground water resources

(A) Monitoring requirement

A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.

(B) Methods

If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

(C) Corrective action

If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

(4) No-migration exemption

(A) In general

Ground water monitoring requirements may be suspended by the Director of an approved State for a landfill operator if the operator demonstrates that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life of the unit and the post-closure care period.

(B) Certification

A demonstration under subparagraph (A) shall be certified by a qualified ground-water scientist and approved by the Director of an approved State.

(C) Guidance

Not later than 6 months after March 26, 1996, the Administrator shall issue a guidance document to facilitate small community use of the no migration[1] exemption under this paragraph.

(5) Alaska Native villages

Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 1602 of title 43) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily, based on an annual average.

(6) Further revisions of guidelines and criteria

Recognizing the unique circumstances of small communities, the Administrator shall, not later than two years after March 26, 1996, promulgate revisions to the guidelines and criteria promulgated under this subchapter to provide additional flexibility to approved States to allow landfills that receive 20 tons or less of municipal solid waste per day, based on an annual average, to use alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltration layers for final cover, and means for demonstrating financial assurance: *Provided*, That such alternative requirements take into account climatic and hydrogeologic conditions and are protective of human health and environment.

(Pub. L. 89–272, title II, § 4010, as added Pub. L. 98–616, title III, § 302(a)(1), Nov. 8, 1984, 98 Stat. 3267; amended Pub. L. 104–119, § 3(a), Mar. 26, 1996, 110 Stat. 831.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–119 designated existing provisions as par. (1), inserted heading, and added pars. (2) to (6).

REINSTATEMENT OF REGULATORY EXEMPTION

Section 3(b) of Pub. L. 104–119 provided that: ''It is the intent of section 4010(c)(2) of the Solid Waste Disposal Act [42 U.S.C. 6949a(c)(2)], as added by subsection (a), to immediately reinstate subpart E of part 258 of title 40, Code of Federal Regulations, as added by the final rule published at 56 Federal Register 50798 on October 9, 1991.''

SUBCHAPTER V—DUTIES OF SECRETARY OF COMMERCE IN RESOURCE AND RECOVERY

§ 6951. Functions

The Secretary of Commerce shall encourage greater commercialization of proven resource recovery technology by providing—

[1] So in original. Probably should be ''no-migration''.

(1) accurate specifications for recovered materials;

(2) stimulation of development of markets for recovered materials;

(3) promotion of proven technology; and

(4) a forum for the exchange of technical and economic data relating to resource recovery facilities.

(Pub. L. 89–272, title II, § 5001, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2820.)

§ 6952. Development of specifications for secondary materials

The Secretary of Commerce, acting through the National Institute of Standards and Technology, and in conjunction with national standards-setting organizations in resource recovery, shall, after public hearings, and not later than two years after September 1, 1979, publish guidelines for the development of specifications for the classification of materials recovered from waste which were destined for disposal. The specifications shall pertain to the physical and chemical properties and characteristics of such materials with regard to their use in replacing virgin materials in various industrial, commercial, and governmental uses. In establishing such guidelines the Secretary shall also, to the extent feasible, provide such information as may be necessary to assist Federal agencies with procurement of items containing recovered materials. The Secretary shall continue to cooperate with national standards-setting organizations, as may be necessary, to encourage the publication, promulgation and updating of standards for recovered materials and for the use of recovered materials in various industrial, commercial, and governmental uses.

(Pub. L. 89–272, title II, § 5002, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2820; amended Pub. L. 96–482, § 21(a), Oct. 21, 1980, 94 Stat. 2346; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

1980—Pub. L. 96–482 substituted ''September 1, 1979'' for ''October 21, 1976''.

§ 6953. Development of markets for recovered materials

The Secretary of Commerce shall within two years after September 1, 1979, take such actions as may be necessary to—

(1) identify the geographical location of existing or potential markets for recovered materials;

(2) identify the economic and technical barriers to the use of recovered materials; and

(3) encourage the development of new uses for recovered materials.

(Pub. L. 89–272, title II, § 5003, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2821; amended Pub. L. 96–482, § 21(b), Oct. 21, 1980, 94 Stat. 2346.)

AMENDMENTS

1980—Pub. L. 96–482 substituted ''September 1, 1979'' for ''October 21, 1976''.

§ 6954. Technology promotion

The Secretary of Commerce is authorized to evaluate the commercial feasibility of resource recovery facilities and to publish the results of such evaluation, and to develop a data base for purposes of assisting persons in choosing such a system.

(Pub. L. 89–272, title II, § 5004, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2821.)

§ 6955. Marketing policies, establishment; nondiscrimination requirement

In establishing any policies which may affect the development of new markets for recovered materials and in making any determination concerning whether or not to impose monitoring or other controls on any marketing or transfer of recovered materials, the Secretary of Commerce may consider whether to establish the same or similar policies or impose the same or similar monitoring or other controls on virgin materials.

(Pub. L. 89–272, title II, § 5005, as added Pub. L. 96–482, § 21(c)(1), Oct. 21, 1980, 94 Stat. 2346.)

§ 6956. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce $5,000,000 for each of fiscal years 1980, 1981, and 1982 and $1,500,000 for each of the fiscal years 1985 through 1988 to carry out the purposes of this subchapter.

(Pub. L. 89–272, title II, § 5006, as added Pub. L. 96–482, § 31(f)(1), Oct. 21, 1980, 94 Stat. 2353; amended Pub. L. 98–616, § 2(h), Nov. 8, 1984, 98 Stat. 3223.)

AMENDMENTS

1984—Pub. L. 98–616 authorized appropriation of $1,500,000 for each of fiscal years 1985 through 1988.

SUBCHAPTER VI—FEDERAL RESPONSIBILITIES

§ 6961. Application of Federal, State, and local law to Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative

orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local solid waste or hazardous waste regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local solid or hazardous waste law with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State solid or hazardous waste law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative enforcement actions

(1) The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this chapter. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against another person. Any voluntary resolution or settlement of such an action shall be set forth in a consent order.

(2) No administrative order issued to such a department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.

(c) Limitation on State use of funds collected from Federal Government

Unless a State law in effect on October 6, 1992, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(Pub. L. 89–272, title II, § 6001, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2821; amended Pub. L. 95–609, § 7(m), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 102–386, title I, § 102(a), (b), Oct. 6, 1992, 106 Stat. 1505, 1506.)

AMENDMENTS

1992—Pub. L. 102–386 designated existing provisions as subsec. (a), inserted heading, inserted in first sentence ''and management'' before ''in the same manner'', inserted second to fourth, sixth, and seventh sentences specifying Federal, State, interstate, and local substantive and procedural requirements, waiving sovereign immunity, determining reasonable service charges, and providing no agent, employee, or officer of the United States be personally liable for a civil penalty for an act or omission within the scope of official duties but be subject to criminal sanction, with no department, agency, or instrumentality of the executive, legislative, or judicial branch subject to such sanction, and added subsecs. (b) and (c).

1978—Pub. L. 95–609 inserted ''or management'' after ''disposal'' in cl. (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 102(c) of Pub. L. 102–386 provided that:

''(1) IN GENERAL.—Except as otherwise provided in paragraphs (2) and (3), the amendments made by subsection (a) [amending this section] shall take effect upon the date of the enactment of this Act [Oct. 6, 1992].

''(2) DELAYED EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—Until the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act [subsec. (a) of this section] with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall not apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act [42 U.S.C. 6924(j)] involving storage of mixed waste that is not subject to an existing agreement, permit, or administrative or judicial order, so long as such waste is managed in compliance with all other applicable requirements.

''(3) EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—(A) Except as provided in subparagraph (B), after the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act with respect to civil, criminal, and administrative penalties

and fines (as added by the amendments made by subsection (a)) shall apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act involving storage of mixed waste.

''(B) With respect to the Department of Energy, the waiver of sovereign immunity referred to in subparagraph (A) shall not apply after the date that is 3 years after the date of the enactment of this Act for violations of section 3004(j) of such Act involving storage of mixed waste, so long as the Department of Energy is in compliance with both—

''(i) a plan that has been submitted and approved pursuant to section 3021(b) of the Solid Waste Disposal Act [42 U.S.C. 6939c(b)] and which is in effect; and

''(ii) an order requiring compliance with such plan which has been issued pursuant to such section 3021(b) and which is in effect.

''(4) APPLICATION OF WAIVER TO AGREEMENTS AND ORDERS.—The waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act (as added by the amendments made by subsection (a)) shall take effect on the date of the enactment of this Act with respect to any agreement, permit, or administrative or judicial order existing on such date of enactment (and any subsequent modifications to such an agreement, permit, or order), including, without limitation, any provision of an agreement, permit, or order that addresses compliance with section 3004(j) of such Act with respect to mixed waste.

''(5) AGREEMENT OR ORDER.—Except as provided in paragraph (4), nothing in this Act [see Short Title of 1992 Amendment note set out under section 6901 of this title] shall be construed to alter, modify, or change in any manner any agreement, permit, or administrative or judicial order, including, without limitation, any provision of an agreement, permit, or order—

''(i) that addresses compliance with section 3004(j) of the Solid Waste Disposal Act with respect to mixed waste;

''(ii) that is in effect on the date of enactment of this Act; and

''(iii) to which a department, agency, or instrumentality of the executive branch of the Federal Government is a party.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 20 of House Document No. 103–7.

EXECUTIVE ORDER NO. 12780

Ex. Ord. No. 12780, Oct. 31, 1991, 56 F.R. 56289, which required Federal agencies to promote cost-effective waste reduction and recycling of reusable materials and established a Council on Federal Recycling and Procurement Policy, was revoked by Ex. Ord. No. 12873, § 901, Oct. 20, 1993, 58 F.R. 54911, formerly set out below.

EXECUTIVE ORDER NO. 12873

Ex. Ord. No. 12873, Oct. 20, 1993, 58 F.R. 54911, as amended by Ex. Ord. No. 12995, Mar. 25, 1996, 61 F.R. 13645, which directed Executive agencies to incorporate waste prevention and recycling in daily operations and work and to acquire and use environmentally preferable products and services and which created a Federal Environmental Executive and established high-level Environmental Executive positions within each agency, was revoked by Ex. Ord. No. 13101, § 901, Sept. 14, 1998, 63 F.R. 49651, set out below.

EX. ORD. NO. 13101. GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION

Ex. Ord. No. 13101, Sept. 14, 1998, 63 F.R. 49643, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89–272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act (RCRA), Public Law 94–580, 90 Stat. 2795, as amended (42 U.S.C. 6901–6907), section 301 of title 3, United States Code, and in order to improve the Federal Government's use of recycled products and environmentally preferable products and services, it is hereby ordered as follows:

PART 1—PREAMBLE

SECTION 101. Consistent with the demands of efficiency and cost effectiveness, the head of each executive agency shall incorporate waste prevention and recycling in the agency's daily operations and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such products. It is the national policy to prefer pollution prevention, whenever feasible. Pollution that cannot be prevented should be recycled; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner. Disposal should be employed only as a last resort.

SEC. 102. Consistent with policies established by the Office of Federal Procurement Policy (OFPP) Policy Letter 92–4, agencies shall comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

SEC. 103. This order creates a Steering Committee, a Federal Environmental Executive (FEE), and a Task Force, and establishes Agency Environmental Executive (AEE) positions within each agency, to be responsible for ensuring the implementation of this order. The FEE, AEEs, and members of the Steering Committee and Task Force shall be full-time Federal Government employees.

PART 2—DEFINITIONS

For purposes of this order:

SEC. 201. ''Environmentally preferable'' means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

SEC. 202. ''Executive agency'' or ''agency'' means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

SEC. 203. ''Postconsumer material'' means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. ''Postconsumer material'' is a part of the broader category of ''recovered material.''

SEC. 204. ''Acquisition'' means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

SEC. 205. ''Recovered materials'' means waste materials and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and

commonly reused within, an original manufacturing process (42 U.S.C. 6903(19)).

SEC. 206. ''Recyclability'' means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

SEC. 207. ''Recycling'' means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

SEC. 208. ''Waste prevention'' means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

SEC. 209. ''Waste reduction'' means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

SEC. 210. ''Life cycle cost'' means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.

SEC. 211. ''Life cycle assessment'' means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.

SEC. 212. ''Pollution prevention'' means ''source reduction'' as defined in the Pollution Prevention Act of 1990 (42 U.S.C. 13102), and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

SEC. 213. ''Biobased product'' means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

SEC. 214. ''Major procuring agencies'' shall include any executive agency that procures over $50 million per year of goods and services.

PART 3—THE ROLES AND DUTIES OF THE STEERING COMMITTEE, FEDERAL ENVIRONMENTAL EXECUTIVE, TASK FORCE, AND AGENCY ENVIRONMENTAL EXECUTIVES

SEC. 301. Committees, Executives, and Task Force. (a) Steering Committee. There is hereby established a Steering Committee on Greening the Government through Waste Prevention and Recycling (''Steering Committee''). The Steering Committee shall be composed of the Chair of the Council on Environmental Quality (CEQ), the Federal Environmental Executive (FEE), and the Administrator for Federal Procurement Policy (OFPP). The Steering Committee, which shall be chaired by the Chair of the CEQ, is directed to charter a Task Force to facilitate implementation of this order, and shall provide the Task Force with policy direction in such implementation.

(b) Federal Environmental Executive. A Federal Environmental Executive, Environmental Protection Agency, shall be designated by the President. The FEE shall chair the Task Force described in subsection (c), take all actions necessary to ensure that the agencies comply with the requirements of this order, and generate a biennial report to the President.

(c) Task Force. The Steering Committee shall charter a Task Force on Greening the Government through Waste Prevention and Recycling (''Task Force''), which shall be chaired by the FEE and composed of staff from the major procuring agencies. The Steering Committee, in consultation with the agencies, shall determine the necessary staffing and resources for the Task Force. The major procuring agencies shall provide, to the extent practicable and permitted by law, resources and support to the Task Force and the FEE, upon request from the Steering Committee. The Task Force shall have the duty of assisting the FEE and the agencies in implementing this order, subject to policy direction provided by the Steering Committee. The Task Force shall report through the FEE to the Chair of the Steering Committee.

(d) Agency Environmental Executives (AEEs). Within 90 days after the date of this order, the head of each major procuring agency shall designate an AEE from among his or her staff, who serves at a level no lower than the Assistant Secretary level or equivalent, and shall notify the Chair of CEQ and the FEE of such designation.

SEC. 302. Duties. (a) The Federal Environmental Executive. The FEE, working through the Task Force, and in consultation with the AEEs, shall:

(1) Develop a Government-wide Waste Prevention and Recycling Strategic Plan (''Strategic Plan'') to further implement this order. The Strategic Plan should be initially developed within 180 days of the date of this order and revised as necessary thereafter. The Strategic Plan should include, but is not limited to, the following elements:

(a) direction and initiatives for acquisition of recycled and recyclable products and environmentally preferable products and services;

(b) development of affirmative procurement programs;

(c) review and revision of standards and product specifications;

(d) assessment and evaluation of compliance;

(e) reporting requirements;

(f) outreach programs to promote adoption of practices endorsed in this order; and

(g) development and implementation of new technologies that are of environmental significance.

(2) Prepare a biennial report to the President on the actions taken by the agencies to comply with this order. The report also may incorporate information from existing agency reports regarding Government-wide progress in implementing the following Executive Orders: 12843, Procurement Requirements and Policies for Federal Agencies for Ozone Depleting Substances [former 42 U.S.C. 7671*l* note]; 13031, Federal Alternative Fueled Vehicle Leadership [former 42 U.S.C. 13212 note]; 12845, Requiring Agencies to Purchase Energy Efficient Computer Equipment [42 U.S.C. 8262*g* note]; 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements [former 42 U.S.C. 11001 note]; 12902, Energy Efficiency and Water Conservation at Federal Facilities [42 U.S.C. 6201 note]; and 12969, Federal Acquisition and Community Right-to-Know [former 41 U.S.C. 401 note].

(3) In coordination with the Office of Federal Procurement Policy, the Environmental Protection Agency (EPA), the General Services Administration (GSA), and the Department of Agriculture (USDA), convene a group of acquisition/procurement managers and environmental State, and local government managers to work with State and local governments to improve the Federal, State, and local governments' use of recycled products and environmentally preferable products and services.

(4) Coordinate appropriate Government-wide education and training programs for agencies.

(5) Establish committees and work groups, as needed, to identify, assess, and recommend actions to be taken to fulfill the goals, responsibilities, and initiatives of the FEE. As these committees and work groups are created, agencies are requested to designate appropriate personnel in the areas of procurement and acquisition, standards and specifications, electronic commerce, facilities management, pollution prevention, waste prevention, recycling, and others as needed to staff and work on these initiatives. An initial group shall be established to develop recommendations for tracking and reporting requirements, taking into account the costs and benefits of such tracking and reporting. The Steering Committee shall consult with the AEEs before approving these recommendations.

(b) Agency Environmental Executives. The AEEs shall:

(1) translate the Government-wide Strategic Plan into specific agency and service plans;

(2) implement the specific agency and service plans;

(3) report to the FEE on the progress of plan implementation;

(4) work with the FEE and the Task Force in furthering implementation of this order; and

(5) track agencies' purchases of EPA-designated guideline items and report agencies' purchases of such guideline items to the FEE per the recommendations developed in subsection 302(a)(5) of this order. Agency acquisition and procurement personnel shall justify in writing to the file and to the AEE the rationale for not purchasing such items, above the micropurchase threshold (as set out in the Office of Federal Procurement Policy Act at 41 U.S.C. 428), and submit a plan and timetable for increasing agency purchases of the designated item(s).

(6) one year after a product is placed on the USDA Biobased Products List, estimate agencies' purchases of products on the list and report agencies' estimated purchases of such products to the Secretary of Agriculture.

PART 4—ACQUISITION PLANNING, AFFIRMATIVE PROCUREMENT PROGRAMS, AND FEDERAL FACILITY COMPLIANCE

SEC. 401. Acquisition Planning. In developing plans, drawings, work statements, specifications, or other product descriptions, agencies shall consider, as appropriate, a broad range of factors including: elimination of virgin material requirements; use of biobased products; use of recovered materials; reuse of product; life cycle cost; recyclability; use of environmentally preferable products; waste prevention (including toxicity reduction or elimination); and ultimate disposal. These factors should be considered in acquisition planning for all procurement and in the evaluation and award of contracts, as appropriate. Program and acquisition managers should take an active role in these activities.

SEC. 402. Affirmative Procurement Programs. (a) The head of each executive agency shall develop and implement affirmative procurement programs in accordance with section 6002 of RCRA (42 U.S.C. 6962) and this order and consider use of the procurement tools and methods described in [former] 7 U.S.C. 5909. Agencies shall ensure that responsibilities for preparation, implementation, and monitoring of affirmative procurement programs are shared between the program personnel and acquisition and procurement personnel. For the purposes of all purchases made pursuant to this order, EPA, in consultation with such other executive agencies as appropriate, shall endeavor to maximize environmental benefits, consistent with price, performance, and availability considerations, and constraints imposed by law, and shall adjust solicitation guidelines as necessary in order to accomplish this goal.

(b) Agencies shall establish affirmative procurement programs for all EPA-designated guideline items purchased by their agency. For newly designated items, agencies shall revise their internal programs within 1 year from the date the EPA designated the new items.

(c) Exclusive of the biobased products described in section 504, for the EPA-designated guideline items, which are contained in 40 CFR part 247, and for all future designated guideline items, agencies shall ensure that their affirmative procurement programs require 100 percent of their purchases of products to meet or exceed the EPA guideline unless written justification is provided that a product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price. Written justification is not required for purchases below the micropurchase threshold. For micropurchases, agencies shall provide guidance regarding purchase of EPA-designated guideline items. This guidance should encourage consideration of aggregating purchases when this method would promote economy and efficiency.

(d) Within 90 days after the date of this order, the head of each executive agency that has not implemented an affirmative procurement program shall ensure that the affirmative procurement program has been established and is being implemented to the maximum extent practicable.

SEC. 403. Federal Facility Compliance. (a) Within 6 months of the date of this order, the Administrator of the EPA shall, in consultation with the Federal Environmental Executive, prepare guidance for use in determining Federal facility compliance with section 6002 of RCRA [42 U.S.C. 6962] and the related requirements of this order.

(b) EPA inspections of Federal facilities conducted pursuant to RCRA and the Federal Facility Compliance Act [of 1992] [see Short Title of 1992 Amendment note set out under section 6901 of this title] and EPA ''multi-media'' inspections carried out at Federal facilities will include, where appropriate, evaluation of facility compliance with section 6002 of RCRA and any implementing guidance.

(c) Where inspections of Federal facilities are carried out by authorized States pursuant to RCRA and the Federal Facility Compliance Act, the Administrator of the EPA will encourage those States to include evaluation of facility compliance with section 6002 of RCRA in light of EPA guidance prepared pursuant to subsection (a), where appropriate, similar to inspections performed by the EPA. The EPA may provide information and technical assistance to the States to enable them to include such considerations in their inspection.

(d) The EPA shall report annually to the Federal Environmental Executive on the results of inspections performed by the EPA to determine Federal facility compliance with section 6002 of RCRA not later than February 1st for those inspections conducted during the previous fiscal year.

PART 5—STANDARDS, SPECIFICATIONS, AND DESIGNATION OF ITEMS

SEC. 501. Specifications, Product Descriptions, and Standards. When developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions), and standards, executive agencies shall consider recovered materials and any environmentally preferable purchasing criteria developed by the EPA, and ensure the criteria are complied with in developing or revising standards. Agencies shall report annually to the FEE on their compliance with this section for incorporation into the biennial report to the President referred to in section 302(a)(2) of this order. (a) If an inconsistency with section 6002 of RCRA [42 U.S.C. 6962] or this order is identified in a specification, standard, or product description, the FEE shall request that the Environmental Executive of the pertinent agency advise the FEE as to why the specification cannot be revised or submit a plan for revising it within 60 days.

(b) If an agency is able to revise an inconsistent specification but cannot do so within 60 days, it is the responsibility of that AEE to monitor and implement the plan for revising it.

SEC. 502. Designation of Items that Contain Recovered Materials. In order to expedite the process of designating items that are or can be made with recovered materials, the EPA shall use the following process for designating these items in accordance with section 6002(e) of RCRA. (a) The EPA shall designate items that are or can be made with recovered material, by promulgating amendments to the Comprehensive Procurement Guideline (CPG). The CPG shall be updated every 2 years or as appropriate after an opportunity for public comment.

(b) Concurrent with the issuance of the CPG, the EPA shall publish for comment in the Federal Register Recovered Materials Advisory Notices that present the range of recovered materials content levels within which the designated items are currently available. These levels shall be updated periodically, after opportunity for public comment, to reflect changes in market conditions.

(c) Once items containing recovered materials have been designated by the EPA in the CPG, agencies shall modify their affirmative procurement programs to require that, to the maximum extent practicable, their purchases of products meet or exceed the EPA guidelines unless written justification is provided that a product is not available competitively, not available within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

SEC. 503. Guidance on Acquisition of Environmentally Preferable Products and Services. (a) The EPA shall develop guidance within 90 days from the date of this order to address environmentally preferable purchasing. The guidance may be based on the EPA's September 1995 Proposed Guidance on the Acquisition of Environmentally Preferable Products and Services and comments received thereon. The guidance should be designed for Government-wide use and targeted towards products and services that have the most effect. The guidance may also address the issues of use of the technical expertise of nongovernmental entities and tools such as life cycle assessment in decisions on environmentally preferable purchasing. The EPA shall update this guidance every 2 years, or as appropriate.

(b) Agencies are encouraged to immediately test and evaluate the principles and concepts contained in the EPA's Guidance on the Acquisition of Environmentally Preferable Products and Services through pilot projects to provide practical information to the EPA for further updating of the guidance. Specifically:

(1) These pilot projects shall be focused around those product and service categories, including printing, that have wide use within the Federal Government. Priorities regarding which product and service categories to pilot shall be developed by the individual agencies and the EPA, in consultation with the OFPP, the FEE, and the appropriate agency procurement executives. Any policy disagreements shall be resolved by the Steering Committee.

(2) Agencies are encouraged to use all of the options available to them to determine the environmentally preferable attributes of products and services in their pilot and demonstration projects, including the use of technical expertise of nongovernmental entities such as labeling, certification, or standards-developing organizations, as well as using the expertise of the National Institute of Standards and Technology.

(3) Upon request and to the extent practicable, the EPA shall assist executive agencies in designing, implementing, and documenting the results of these pilot and demonstration projects.

(4) The EPA, in coordination with other executive agencies, shall develop a database of information about these projects, including, but not limited to, the number and status of pilot projects, examples of agencies' policy directives, revisions to specifications, solicitation procedures, and grant/contract policies that facilitate adoption of environmentally preferable purchasing practices, to be integrated on a commonly available electronic medium (e.g., Internet Web site). These data are to be reported to the FEE.

(c) Executive agencies shall use the principles and concepts in the EPA Guidance on Acquisition of Environmentally Preferable Products and Services, in addition to the lessons from the pilot and demonstration projects, to the maximum extent practicable, in identifying and purchasing environmentally preferable products and services and shall modify their procurement programs as appropriate.

SEC. 504. Designation of Biobased Items by the USDA. The USDA Biobased Products Coordination Council shall, in consultation with the FEE, issue a Biobased Products List. (a) The Biobased Products List shall be published in the Federal Register by the USDA within 180 days after the date of this order and shall be updated biannually after publication to include additional items.

(b) Once the Biobased Products List has been published, agencies are encouraged to modify their affirmative procurement program to give consideration to those products.

SEC. 505. Minimum Content Standard for Printing and Writing Paper. Executive agency heads shall ensure that their agencies meet or exceed the following minimum materials content standards when purchasing or causing the purchase of printing and writing paper: (a) For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard shall be no less than 30 percent postconsumer materials beginning December 31, 1998. If paper containing 30 percent postconsumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency shall purchase paper containing no less than 20 percent postconsumer material. The Steering Committee, in consultation with the AEEs, may revise these levels if necessary.

(b) As an alternative to meeting the standards in sections [sic] 505(a), for all printing and writing papers, the minimum content standard shall be no less than 50 percent recovered materials that are a waste material byproduct of a finished product other than a paper or textile product that would otherwise be disposed of in a landfill, as determined by the State in which the facility is located.

(c) Effective January 1, 1999, no executive branch agency shall purchase, sell, or arrange for the purchase of, printing and writing paper that fails to meet the minimum requirements of this section.

SEC. 506. Revision of Brightness Specifications and Standards. The GSA and other executive agencies are directed to identify, evaluate, and revise or eliminate any standards or specifications unrelated to performance that present barriers to the purchase of paper or paper products made by production processes that minimize emissions of harmful byproducts. This evaluation shall include a review of unnecessary brightness and stock clause provisions, such as lignin content and chemical pulp requirements. The GSA shall complete the review and revision of such specifications within 6 months after the date of this order, and shall consult closely with the Joint Committee on Printing during such process. The GSA shall also compile any information or market studies that may be necessary to accomplish the objectives of this provision.

SEC. 507. Procurement of Re-refined Lubricating Oil and Retread Tires. (a) Agencies shall implement the EPA procurement guidelines for re-refined lubricating oil and retread tires. Fleet and commodity managers shall take immediate steps, as appropriate, to procure these items in accordance with section 6002 of RCRA [42 U.S.C. 6962]. This provision does not preclude the acquisition of biobased (e.g., vegetable) oils.

(b) The FEE shall work to educate executive agencies about the new Department of Defense Cooperative Tire Qualification Program, including the Cooperative Approval Tire List and Cooperative Plant Qualification Program, as they apply to retread tires.

PART 6—AGENCY GOALS AND REPORTING REQUIREMENTS

SEC. 601. Agency Goals. (a)(1) Each agency shall establish either a goal for solid waste prevention and a goal for recycling or a goal for solid waste diversion to be achieved by January 1, 2000. Each agency shall further ensure that the established goals include long-range goals to be achieved by the years 2005 and 2010. These goals shall be submitted to the FEE within 180 days after the date of this order. (2) In addition to white paper, mixed paper/cardboard, aluminum, plastic, and glass, agencies should incorporate into their recycling programs efforts to recycle, reuse, or refurbish pallets and collect toner cartridges for remanufacturing. Agencies should also include programs to reduce or recycle, as appropriate, batteries, scrap metal, and fluorescent lamps and ballasts.

(b) Agencies shall set goals to increase the procurement of products that are made with recovered mate-

rials, in order to maximize the number of recycled products purchased, relative to non-recycled alternatives.

(c) Each agency shall set a goal for increasing the use of environmentally preferable products and services for those products and services for which the agency has completed a pilot program.

(d) Agencies are encouraged to incorporate into their Government Performance [and] Results Act [of 1993] [see Short Title of 1993 Amendment note set out under section 1101 of Title 31, Money and Finance] annual performance plans the goals listed in subsections (a), (b), and (c) above, starting with the submittal to the Office of Management and Budget of the plan accompanying the FY 2001 budget.

(e) Progress on attaining these goals should be reported by the agencies to the FEE for the biennial report specified in section 302(a)(2) of this order.

PART 7—APPLICABILITY AND OTHER REQUIREMENTS

SEC. 701. Contractor Applicability. Contracts that provide for contractor operation of a Government-owned or -leased facility and/or contracts that provide for contractor or other support services at Government-owned or -operated facilities awarded by executive agencies after the date of this order, shall include provisions that obligate the contractor to comply with the requirements of this order within the scope of its operations.

SEC. 702. Real Property Acquisition and Management. Within 90 days after the date of this order, and to the extent permitted by law and where economically feasible, executive agencies shall ensure compliance with the provisions of this order in the acquisition and management of Federally owned and leased space. The GSA and other executive agencies shall also include environmental and recycling provisions in the acquisition and management of all leased space and in the construction of new Federal buildings.

SEC. 703. Retention of Funds. (a) The Administrator of General Services shall continue with the program that retains for the agencies the proceeds from the sale of materials recovered through recycling or waste prevention programs and specifying the eligibility requirements for the materials being recycled.

(b) Agencies in non-GSA managed facilities, to the extent permitted by law, should develop a plan to retain the proceeds from the sale of materials recovered through recycling or waste prevention programs.

SEC. 704. Model Facility Programs. Each executive agency shall establish a model demonstration program incorporating some or all of the following elements as appropriate. Agencies are encouraged to demonstrate and test new and innovative approaches such as incorporating environmentally preferable and bio-based products; increasing the quantity and types of products containing recovered materials; expanding collection programs; implementing source reduction programs; composting organic materials when feasible; and exploring public/private partnerships to develop markets for recovered materials.

SEC. 705. Recycling Programs. (a)(1) Each executive agency that has not already done so shall initiate a program to promote cost-effective waste prevention and recycling of reusable materials in all of its facilities. The recycling programs implemented pursuant to this section must be compatible with applicable State and local recycling requirements.

(2) Agencies shall designate a recycling coordinator for each facility or installation. The recycling coordinator shall implement or maintain waste prevention and recycling programs in the agencies' action plans.

(b) Executive agencies shall also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

SEC. 706. Review of Implementation. The President's Council on Integrity and Efficiency shall request that the Inspectors General periodically review agencies' implementation of this order.

PART 8—AWARENESS

SEC. 801. Training. (a) Within 180 days of the date of this order, the FEE and OFPP should evaluate the training courses provided by the Federal Acquisition Institute and the Defense Acquisition University and recommend any appropriate curriculum changes to ensure that procurement officials are aware of the requirements of this order.

(b) Executive agencies shall provide training to program management and requesting activities as needed to ensure awareness of the requirements of this order.

SEC. 802. Internal Agency Awards Programs. Each agency shall develop an internal agency-wide awards program, as appropriate, to reward its most innovative environmental programs. Among others, winners of agency-wide awards will be eligible for the White House Awards Program.

SEC. 803. White House Awards Program. A Government-wide award will be presented annually by the White House to the best, most innovative programs implementing the objectives of this order to give greater visibility to these efforts so that they can be incorporated Government-wide. The White House Awards Program will be administered jointly by the FEE and the CEQ.

PART 9—REVOCATION, LIMITATION, AND IMPLEMENTATION

SEC. 901. Executive Order 12873 of October 20, 1993, is hereby revoked.

SEC. 902. This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

SEC. 903. The policies and direction expressed in the EPA guidance to be developed pursuant to section 503 of this order shall be implemented and incorporated in the Federal Acquisition Regulation within 180 days after issuance of the guidance.

WILLIAM J. CLINTON.

§ 6962. Federal procurement

(a) Application of section

Except as provided in subsection (b) of this section, a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

(b) Procurement subject to other law

Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6964 of this title (as promulgated before October 21, 1976, under comparable provisions of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

(c) Requirements

(1) After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred

to in subsection (h)(1) of this section practicable), consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items—

(A) are not reasonably available within a reasonable period of time;

(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(C) are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the guidelines of the National Institute of Standards and Technology in any case in which such material is covered by such guidelines.

(2) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

(3)(A) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting officers shall require that vendors:

(i) certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements and

(ii) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials.

(B) Clause (ii) of subparagraph (A) applies only to a contract in an amount greater than $100,000.

(d) Specifications

All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

(1) as expeditiously as possible but in any event no later than eighteen months after November 8, 1984, eliminate from such specifications—

(A) any exclusion of recovered materials and

(B) any requirement that items be manufactured from virgin materials; and

(2) within one year after the date of publication of applicable guidelines under subsection (e) of this section, or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item.

(e) Guidelines

The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the National Institute of Standards and Technology), and the Public Printer, shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1) of this section; and

(2) set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of recovered materials used,

and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

(A) the availability of such items;

(B) the impact of the procurement of such items by procuring agencies on the volume of solid waste which must be treated, stored or disposed of;

(C) the economic and technological feasibility of producing and using such items; and

(D) other uses for such recovered materials.

(f) Procurement of services

A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

(g) Executive Office

The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the requirements of this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section.

(h) "Recovered materials" defined

As used in this section, in the case of paper products, the term ''recovered materials'' includes—

(1) postconsumer materials such as—

(A) paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(B) all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) manufacturing, forest residues, and other wastes such as—

(A) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(B) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(C) fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(D) wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and

(E) fibers recovered from waste water which otherwise would enter the waste stream.

(i) Procurement program

(1) Within one year after the date of publication of applicable guidelines under subsection (e) of this section, each procuring agency shall develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

(2) Each affirmative procurement program required under this subsection shall, at a minimum, contain—

(A) a recovered materials preference program;

(B) an agency promotion program to promote the preference program adopted under subparagraph (A);

(C) a program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications; and

(D) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

In the case of paper, the recovered materials preference program required under subparagraph (A) shall provide for the maximum use of the post consumer recovered materials referred to in subsection (h)(1) of this section.

(3) In developing the preference program, the following options shall be considered for adoption:

(A) Case-by-Case Policy Development: Subject to the limitations of subsection (c)(1)(A) through (C) of this section, a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1) of this section). Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum recovered materials content.

(B) Minimum Content Standards: Minimum recovered materials content specifications which are set in such a way as to assure that the recovered materials content (and in the case of paper, the content of post consumer materials referred to in subsection (h)(1) of this section) required is the maximum available without jeopardizing the intended end use of the item, or violating the limitations of subsection (c)(1)(A) through (C) of this section.

Procuring agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the affirmative procurement program.

(Pub. L. 89–272, title II, § 6002, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2822; amended Pub. L. 95–609, § 7(n), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96–482, § 22, Oct. 21, 1980, 94 Stat. 2346; Pub. L. 97–375, title I, § 102, Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–616, title V, § 501(a)–(e), Nov. 8, 1984, 98 Stat. 3274–3276; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–393, title VI, § 630, Oct. 6, 1992, 106 Stat. 1773; Pub. L. 103–355, title I, § 1554(1), title IV, § 4104(e), Oct. 13, 1994, 108 Stat. 3300, 3342.)

CODIFICATION

Pub. L. 102–393, title VI, § 630, Oct. 6, 1990, 106 Stat. 1773, which directed that this title be amended by adding a new section 6962j, relating to a preference for recycled toner cartridges, and which had been executed by adding the provisions of purported new section as subsec. (j) of this section, to reflect the probable intent of Congress, was repealed by Pub. L. 103–355, title I, § 1554(1), Oct. 13, 1994, 108 Stat. 3300. Similar provisions were contained in Pub. L. 103–123, title IV, § 401, Oct. 28, 1993, 107 Stat. 1238, prior to repeal by Pub. L. 103–355, title I, § 1554(2), Oct. 13, 1994, 108 Stat. 3300.

AMENDMENTS

1994—Subsec. (c)(3). Pub. L. 103–355, § 4104(e), designated existing provisions as subpar. (A), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (j). Pub. L. 103–355, § 1554(1), struck out subsec. (j). See Codification note above.

1992—Subsec. (j). Pub. L. 102–393 added subsec. (j). See Codification note above.

1988—Subsecs. (c)(1)(C), (e). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''Bureau of Standards''.

1984—Subsec. (c)(1). Pub. L. 98–616, § 501(c), inserted ''(and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) of this section practicable)''.

Subsec. (d)(1). Pub. L. 98–616, § 501(e), substituted ''eighteen months after November 8, 1984'' for ''five years after October 21, 1976''.

Subsec. (e). Pub. L. 98–616, § 501(b)(2), substituted ''for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985'' for ''for at least three product categories, including paper, by May 1, 1981, and for two additional product categories, including construction materials, by September 30, 1982.'' in provisions following par. (2).

Subsec. (e)(1). Pub. L. 98–616, § 501(b)(1), inserted '', and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1) of this section''.

Subsec. (g). Pub. L. 98–616, § 501(d), substituted ''the requirements of'' for ''the policy expressed in'' and inserted '', and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section''.

Subsecs. (h), (i). Pub. L. 98–616, § 501(a), added subsecs. (h) and (i).

1982—Subsec. (g). Pub. L. 97–375 struck out provision requiring the Office of Procurement Policy to report annually to Congress on actions taken by Federal agencies and the progress made in the implementation of the policy expressed in this section.

1980—Subsec. (c)(1). Pub. L. 96–482, § 22(1), (2), in provision preceding subpar. (A), substituted ''After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any item designated in such guidelines shall procure such'' for ''After two years after October 21, 1976, each procuring agency shall procure'', and in subpar. (C), ''subparagraph (B)'' for ''clause (B)''.

Subsec. (c)(2). Pub. L. 96–482, § 22(3), substituted ''energy or fuels derived from solid waste'' for ''recovered material and recovered-material-derived fuel''.

Subsec. (c)(3). Pub. L. 96–482, § 22(4), substituted subpars. (A) and (B) for provision requiring certification of the percentage of the total material utilized for the performance of the contract which is recovered materials.

Subsec. (d). Pub. L. 96–482, § 22(5), in par. (1), substituted provision requiring Federal agencies to eliminate from specifications as expeditiously as possible, but in no event later than 5 years after Oct. 21, 1976, any exclusion of recovered materials and any requirement that items be manufactured from virgin materials for provision that Federal agencies in reviewing specifications, ascertain whether those specifications violate prohibitions in par. (2)(A) to (C), with such review undertaken not later than 18 months after Oct. 21, 1976, and in par. (2), substituted provision that Federal agencies act within 1 year from publication of applicable guidelines under subsec. (e) of this section for provision that in drafting or revising specifications after Oct. 21, 1976, any exclusion of recovered materials be eliminated and specifications not require the item to be manufactured from virgin materials.

Subsec. (e). Pub. L. 96–482, § 22(6), designated provision relating to requirements of guidelines as cl. (2) and subpars. (A) and (C), added cl. (1), subpars. (B) and (C), and provision preceding subpar. (A), and struck out provision requiring information on source of supply.

1978—Subsec. (c). Pub. L. 95–609, § 7(n)(1), (2), redesignated subpar. (1)(A) as par. (1), subpars. (1)(B) and (C) as pars. (2) and (3), respectively, and cls. (i) to (iii) of former subpar. (1)(A) as subpars. (A) to (C), respectively, of par. (1), and in par. (3), as so redesignated, inserted ''After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section,'' before ''contracting''.

Subsec. (e). Pub. L. 95–609, § 7(n)(3), inserted provision dealing with certification by vendors of the materials used.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

GREENING THE GOVERNMENT THROUGH WASTE PREVENTION

Executive agency heads to develop and implement affirmative procurement programs in accordance with this section and Ex. Ord. No. 13101, and specifications, standards, and product descriptions inconsistent with this section or Ex. Ord. No. 13101 to be revised, and guidance for use in determining Federal facility compliance with this section and Ex. Ord. No. 13101 to be prepared with evaluations to be based on this implementing guidance, see Ex. Ord. No. 13101, §§ 402, 403, 501(a), Sept. 14, 1998, 63 F.R. 49646, 49647, set out as a note under section 6961 of this title.

§ 6963. Cooperation with Environmental Protection Agency

(a) General rule

All Federal agencies shall assist the Administrator in carrying out his functions under this chapter and shall promptly make available all requested information concerning past or present Agency waste management practices and past or present Agency owned, leased, or operated solid or hazardous waste facilities. This information shall be provided in such format as may be determined by the Administrator.

(b) Information relating to energy and materials conservation and recovery

The Administrator shall collect, maintain, and disseminate information concerning the market potential of energy and materials recovered from solid waste, including materials obtained through source separation, and information concerning the savings potential of conserving resources contributing to the waste stream. The Administrator shall identify the regions in which the increased substitution of such energy for energy derived from fossil fuels and other sources is most likely to be feasible, and provide information on the technical and economic aspects of developing integrated resource conservation or recovery systems which provide for the recovery of source-separated materials to be recycled or the conservation of resources. The Administrator shall utilize the authorities of subsection (a) of this section in carrying out this subsection.

(Pub. L. 89–272, title II, § 6003, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2823; amended Pub. L. 96–482, § 32(g), Oct. 21, 1980, 94 Stat. 2355.)

AMENDMENTS

1980—Pub. L. 96–482 designated existing provision as subsec. (a), substituted provision that information be provided in a format determined by the Administrator for provision that information be furnished on a reimbursable basis, and added subsec. (b).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6964. Applicability of solid waste disposal guidelines to Executive agencies

(a) Compliance

(1) If—

(A) an Executive agency (as defined in section 105 of title 5) or any unit of the legislative branch of the Federal Government has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste management activities, or

(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste management activities,

then such agency shall insure compliance with the guidelines recommended under section 6907 of this title and the purposes of this chapter in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

(2) Each Executive agency or any unit of the legislative branch of the Federal Government which conducts any activity—

(A) which generates solid waste, and

(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste,

shall insure compliance with such guidelines and the purposes of this chapter in conducting such activity.

(3) Each Executive agency which permits the use of Federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this chapter in the disposal of such waste.

(4) The President or the Committee on House Oversight of the House of Representatives and the Committee on Rules and Administration of the Senate with regard to any unit of the legislative branch of the Federal Government shall prescribe regulations to carry out this subsection.

(b) Licenses and permits

Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Administrator to insure compliance with guidelines recommended under section 6907 of this title and the purposes of this chapter.

(Pub. L. 89–272, title II, § 6004, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2823; amended Pub. L. 95–609, § 7(*o*), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 96–482, § 23, Oct. 21, 1980, 94 Stat. 2347; Pub. L. 104–186, title II, § 222(2), Aug. 20, 1996, 110 Stat. 1751.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254e of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–186 substituted ''House Oversight'' for ''House Administration''.

1980—Subsec. (a)(1)(A). Pub. L. 96–482, § 23(1), inserted reference to any unit of the legislative branch of the Federal Government.

Subsec. (a)(2). Pub. L. 96–482, § 23(2), required any unit of the legislative branch of the Federal Government to insure compliance with solid waste disposal guidelines.

Subsec. (a)(4). Pub. L. 96–482, § 23(3), required House Committee on House Administration and Senate Committee on Rules and Administration with regard to any unit of the legislative branch of the Federal Government to prescribe implementing regulations.

1978—Subsec. (a)(1). Pub. L. 95–609, § 7(*o*)(1), (2), substituted ''management'' for ''disposal'' in two places.

Subsec. (b). Pub. L. 95–609, § 7(*o*)(3), substituted ''Administrator'' for ''Secretary''.

CHANGE OF NAME

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6965. Chief Financial Officer report

The Chief Financial Officer of each affected agency shall submit to Congress an annual report containing, to the extent practicable, a detailed description of the compliance activities undertaken by the agency for mixed waste streams, and an accounting of the fines and penalties imposed on the agency for violations involving mixed waste.

(Pub. L. 102–386, title I, § 110, Oct. 6, 1992, 106 Stat. 1516.)

CODIFICATION

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§ 6966. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete

(a) Definitions

In this section:

(1) Agency head

The term ''agency head'' means—

(A) the Secretary of Transportation; and

(B) the head of any other Federal agency that, on a regular basis, procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project

The term ''cement or concrete project'' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and

(B) is carried out, in whole or in part, using Federal funds.

(3) Recovered mineral component

The term ''recovered mineral component'' means—

(A) ground granulated blast furnace slag, excluding lead slag;

(B) coal combustion fly ash; and

(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements

(1) In general

Not later than 1 year after August 8, 2005, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of August 8, 2005 (including guidelines under section 6962 of this title) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority

In carrying out paragraph (1), an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Federal procurement requirements

The Administrator and each agency head shall carry out this subsection in accordance with section 6962 of this title.

(c) Full implementation study

(1) In general

The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which procurement requirements, when fully implemented in accordance with subsection (b) of this section, may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed

The study shall—

(A) quantify—

(i) the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of procurement requirements; and

(ii) the energy savings and environmental benefits associated with the substitution;

(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from the law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) Report

Not later than 30 months after August 8, 2005, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements

Unless the study conducted under subsection (c) of this section identifies any effects or other problems described in subsection (c)(2)(C)(iii) of this section that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the date on which the report under subsection (c)(3) of this section is submitted, take additional actions under this chapter to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects—

(1) to realize more fully the energy savings and environmental benefits associated with increased substitution; and

(2) to eliminate barriers identified under subsection (c)(2)(B) of this section.

(e) Effect of section

Nothing in this section affects the requirements of section 6962 of this title (including the guidelines and specifications for implementing those requirements).

(Pub. L. 89–272, title II, § 6005, as added Pub. L. 109–58, title I, § 108(a), Aug. 8, 2005, 119 Stat. 612.)

CODIFICATION

Another section 6005 of Pub. L. 89–272 is classified to section 6966a of this title.

§ 6966a. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete

(a) Definitions

In this section:

(1) Agency head

The term ''agency head'' means—

(A) the Secretary of Transportation; and

(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project

The term ''cement or concrete project'' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and

(B) is carried out in whole or in part using Federal funds.

(3) Recovered mineral component

The term ''recovered mineral component'' means—

(A) ground granulated blast furnace slag other than lead slag;

(B) coal combustion fly ash;

(C) blast furnace slag aggregate other than lead slag aggregate;

(D) silica fume; and

(E) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements

(1) In general

Not later than 1 year after August 10, 2005, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of August 10, 2005 (including guidelines under section 6962 of this title) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority

In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Conformance

The Administrator and each agency head shall carry out this subsection in accordance with section 6962 of this title.

(c) Full implementation study

(1) In general

The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b) of this section, may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed

The study shall—

(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) Report

Not later than 30 months after August 10, 2005, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements

Unless the study conducted under subsection (c) of this section identifies any effects or other problems described in subsection (c)(2)(C)(iii) of this section that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3) of this section, take additional actions authorized under this chapter to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

(2) eliminate barriers identified under subsection (c) of this section.

(e) Effect of section

Nothing in this section affects the requirements of section 6962 of this title (including the guidelines and specifications for implementing those requirements).

(Pub. L. 89–272, title II, § 6005, as added Pub. L. 109–59, title VI, § 6017(a), Aug. 10, 2005, 119 Stat. 1888.)

CODIFICATION

Another section 6005 of Pub. L. 89–272 is classified to section 6966 of this title.

§ 6966b. Use of granular mine tailings

(a) Mine tailings

(1) In general

Not later than 180 days after August 10, 2005, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as ''chat'', for—

(A) cement or concrete projects; and

(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

(2) Requirements

In establishing criteria under paragraph (1), the Administrator shall consider—

(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

(3) Public participation

In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

(4) Applicability of criteria

On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

(b) Effect of sections

Nothing in this section or section 6966a of this title affects any requirement of any law (including a regulation) in effect on August 10, 2005.

(Pub. L. 89–272, title II, § 6006, as added Pub. L. 109–59, title VI, § 6018(a), Aug. 10, 2005, 119 Stat. 1890.)

REFERENCES IN TEXT

Section 6966a of this title, referred to in subsec. (b), was in the original ''section 6005'' meaning section 6005 of Pub. L. 89–272, which was translated as meaning the section 6005 of Pub. L. 89–272 as added by section 6017(a) of Pub. L. 109–59, to reflect the probable intent of Congress.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§ 6971. Employee protection

(a) General

No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter or of any applicable implementation plan.

(b) Remedy

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this chapter.

(c) Costs

Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Exception

This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of this chapter.

(e) Employment shifts and loss

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provisions of this chapter and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, lay-

off, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this chapter or any applicable implementation plan.

(f) Occupational safety and health

In order to assist the Secretary of Labor and the Director of the National Institute for Occupational Safety and Health in carrying out their duties under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], the Administrator shall—

(1) provide the following information, as such information becomes available, to the Secretary and the Director:

(A) the identity of any hazardous waste generation, treatment, storage, disposal facility or site where cleanup is planned or underway;

(B) information identifying the hazards to which persons working at a hazardous waste generation, treatment, storage, disposal facility or site or otherwise handling hazardous waste may be exposed, the nature and extent of the exposure, and methods to protect workers from such hazards; and

(C) incidents of worker injury or harm at a hazardous waste generation, treatment, storage or disposal facility or site; and

(2) notify the Secretary and the Director of the Administrator's receipt of notifications under section 6930 or reports under sections 6922, 6923, and 6924 of this title and make such notifications and reports available to the Secretary and the Director.

(Pub. L. 89–272, title II, § 7001, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2824; amended Pub. L. 96–482, § 24, Oct. 21, 1980, 94 Stat. 2347.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (f), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

AMENDMENTS

1980—Subsec. (f). Pub. L. 96–482 added subsec. (f).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6972. Citizen suits

(a) In general

Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

(1)(A) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or

(B) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred or the alleged endangerment may occur. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

(b) Actions prohibited

(1) No action may be commenced under subsection (a)(1)(A) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to—

(i) the Administrator;

(ii) the State in which the alleged violation occurs; and

(iii) to any alleged violator of such permit, standard, regulation, condition, requirement, prohibition, or order,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter; or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.

In any action under subsection (a)(1)(A) of this section in a court of the United States, any person may intervene as a matter of right.

(2)(A) No action may be commenced under subsection (a)(1)(B) of this section prior to ninety days after the plaintiff has given notice of the endangerment to—

(i) the Administrator;

(ii) the State in which the alleged endangerment may occur;

(iii) any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in subsection (a)(1)(B) of this section,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter.

(B) No action may be commenced under subsection (a)(1)(B) of this section if the Administrator, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under section 6973 of this title or under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9606],[1]

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604];

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C. 9601 et seq.]; or

(iv) has obtained a court order (including a consent decree) or issued an administrative order under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 980[2] [42 U.S.C. 9606] or section 6973 of this title pursuant to which a responsible party is diligently conducting a removal action, Remedial Investigation and Feasibility Study (RIFS), or proceeding with a remedial action.

In the case of an administrative order referred to in clause (iv), actions under subsection (a)(1)(B) of this section are prohibited only as to the scope and duration of the administrative order referred to in clause (iv).

(C) No action may be commenced under subsection (a)(1)(B) of this section if the State, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) of this section;

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604]; or

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C. 9601 et seq.].

(D) No action may be commenced under subsection (a)(1)(B) of this section by any person (other than a State or local government) with respect to the siting of a hazardous waste treatment, storage, or a disposal facility, nor to restrain or enjoin the issuance of a permit for such facility.

(E) In any action under subsection (a)(1)(B) of this section in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Administrator or the State shows that the applicant's interest is adequately represented by existing parties.

(F) Whenever any action is brought under subsection (a)(1)(B) of this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and with the Administrator.

(c) Notice

No action may be commenced under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice to the Administrator that he will commence such action, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under this chapter may be brought under this section only in the judicial district in which such alleged violation occurs.

(d) Intervention

In any action under this section the Administrator, if not a party, may intervene as a matter of right.

(e) Costs

The court, in issuing any final order in any action brought pursuant to this section or section 6976 of this title, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) Other rights preserved

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous waste, or to seek any other relief (including

[1] So in original. The comma probably should be a semicolon.

[2] So in original. Probably should be ''1980''.

relief against the Administrator or a State agency).

(g) Transporters

A transporter shall not be deemed to have contributed or to be contributing to the handling, storage, treatment, or disposal, referred to in subsection (a)(1)(B) of this section taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste.

(Pub. L. 89–272, title II, § 7002, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2825; amended Pub. L. 95–609, § 7(p), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 98–616, title IV, § 401, Nov. 8, 1984, 98 Stat. 3268.)

REFERENCES IN TEXT

That Act, referred to in subsec. (b)(2)(B)(iii), (C)(iii), means Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to chapter 103 (§ 9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (e), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, § 401(a), (b), designated existing provisions of subsec. (a)(1) as subpar. (A) thereof, inserted ''prohibition,'' after ''requirement,'', added subpar. (B), and in provisions following par. (2) inserted ''or the alleged endangerment may occur'' in first sentence and substituted ''to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title'' for ''to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be''.

Subsec. (b). Pub. L. 98–616, § 401(d), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''No action may be commenced under paragraph (a)(1) of this section—

''(1) prior to sixty days after the plaintiff has given notice of the violation (A) to the Administrator; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of such permit, standard, regulation, condition, requirement, or order; or

''(2) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, or order: *Provided, however*, That in any such action in a court of the United States, any person may intervene as a matter of right.''

Subsec. (e). Pub. L. 98–616, § 401(e), substituted ''to the prevailing or substantially prevailing party'' for ''to any party'' and inserted ''or section 6976 of this title''.

Subsec. (g). Pub. L. 98–616, § 401(c), added subsec. (g).

1978—Subsec. (c). Pub. L. 95–609, § 7(p)(1), substituted ''subchapter III of this chapter'' for ''section 212 of this Act.''

Subsec. (e). Pub. L. 95–609, § 7(p)(2), substituted ''require'' for ''requiring''.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6973. Imminent hazard

(a) Authority of Administrator

Notwithstanding any other provision of this chapter, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractural[1] arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The Administrator shall provide notice to the affected State of any such suit. The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

(b) Violations

Any person who willfully violates, or fails or refuses to comply with, any order of the Administrator under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day in which such violation occurs or such failure to comply continues.

(c) Immediate notice

Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to

[1] So in original. Probably should be ''contractual''.

human health or the environment, the Administrator shall provide immediate notice to the appropriate local government agencies. In addition, the Administrator shall require notice of such endangerment to be promptly posted at the site where the waste is located.

(d) Public participation in settlements

Whenever the United States or the Administrator proposes to covenant not to sue or to forbear from suit or to settle any claim arising under this section, notice, and opportunity for a public meeting in the affected area, and a reasonable opportunity to comment on the proposed settlement prior to its final entry shall be afforded to the public. The decision of the United States or the Administrator to enter into or not to enter into such Consent Decree, covenant or agreement shall not constitute a final agency action subject to judicial review under this chapter or chapter 7 of title 5.

(Pub. L. 89–272, title II, § 7003, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2826; amended Pub. L. 95–609, § 7(q), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 96–482, § 25, Oct. 21, 1980, 94 Stat. 2348; Pub. L. 98–616, title IV, §§ 402, 403(a), 404, Nov. 8, 1984, 98 Stat. 3271, 3273.)

CODIFICATION

In subsec. (d), ''chapter 7 of title 5'' substituted for ''the Administrative Procedure Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, § 402, inserted ''past or present'' after ''evidence that the'', substituted ''against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or, who is'' for ''to immediately restrain any person'', substituted ''to restrain such person from'' for ''to stop'', substituted '', to order such person to take such other action as may be necessary, or both'' for ''or to take such other action as may be necessary'', and inserted ''A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal, taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractural [sic] arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste.''

Subsec. (c). Pub. L. 98–616, § 403(a), added subsec. (c).

Subsec. (d). Pub. L. 98–616, § 404, added subsec. (d).

1980—Pub. L. 96–482, § 25, designated existing provisions as subsec. (a), substituted ''may present'' for ''is presenting'' and ''such handling, storage, treatment, transportation or disposal'' for ''the alleged disposal'' and authorized other action to be taken by the Administrator after notice including issuance of protective orders relating to public health and the environment, and added subsec. (b).

1978—Pub. L. 95–609 struck out ''for'' after ''restrain any person''.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6974. Petition for regulations; public participation

(a) Petition

Any person may petition the Administrator for the promulgation, amendment, or repeal of any regulation under this chapter. Within a reasonable time following receipt of such petition, the Administrator shall take action with respect to such petition and shall publish notice of such action in the Federal Register, together with the reasons therefor.

(b) Public participation

(1) Public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

(2) Before the issuing of a permit to any person with any respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 6925 of this title, the Administrator shall—

(A) cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency's intention to issue such permit, and

(B) transmit in writing notice of the agency's intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such facility.

If within 45 days the Administrator receives written notice of opposition to the agency's intention to issue such permit and a request for a hearing, or if the Administrator determines on his own initiative, he shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the Administrator shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time, and subject matter of such hearing. No State program which provides for the issuance of permits referred to in this paragraph may be authorized by the Administrator under section 6926 of this title unless such program provides for the notice and hearing required by the paragraph.

(Pub. L. 89–272, title II, § 7004, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2826; amended Pub. L. 96–482, § 26, Oct. 21, 1980, 94 Stat. 2348.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–482 designated existing provisions as par. (1) and added par. (2).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protec-

tion Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6975. Separability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

(Pub. L. 89–272, title II, § 7005, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2827.)

§ 6976. Judicial review

(a) Review of final regulations and certain petitions

Any judicial review of final regulations promulgated pursuant to this chapter and the Administrator's denial of any petition for the promulgation, amendment, or repeal of any regulation under this chapter shall be in accordance with sections 701 through 706 of title 5, except that—

(1) a petition for review of action of the Administrator in promulgating any regulation, or requirement under this chapter or denying any petition for the promulgation, amendment or repeal of any regulation under this chapter may be filed only in the United States Court of Appeals for the District of Columbia, and such petition shall be filed within ninety days from the date of such promulgation or denial, or after such date if such petition for review is based solely on grounds arising after such ninetieth day; action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement; and

(2) in any judicial proceeding brought under this section in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if a party seeking review under this chapter applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper; the Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(b) Review of certain actions under sections 6925 and 6926 of this title

Review of the Administrator's action (1) in issuing, denying, modifying, or revoking any permit under section 6925 of this title (or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1)[1] of this title), or (2) in granting, denying, or withdrawing authorization or interim authorization under section 6926 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such issuance, denial, modification, revocation, grant, or withdrawal, or after such date only if such application is based solely on grounds which arose after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement. Such review shall be in accordance with sections 701 through 706 of title 5.

(Pub. L. 89–272, title II, § 7006, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2827; amended Pub. L. 96–482, § 27, Oct. 21, 1980, 94 Stat. 2349; Pub. L. 98–616, title II, § 241(b)(1), title IV, § 403(d)(5), Nov. 8, 1984, 98 Stat. 3259, 3273.)

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89–272, which was renumbered section 3014(d)(1) of Pub. L. 89–272 by Pub. L. 98–616 and is classified to section 6935(d)(1) of this title.

AMENDMENTS

1984—Pub. L. 98–616 inserted ''(or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1) of this title)'' and inserted ''Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.''

1980—Pub. L. 96–482, § 27(a), designated existing provisions as subsec. (a), in provision preceding par. (1), included judicial review of Administrator's denial of any petition for promulgation, amendment, or repeal of any regulation in par. (1), included review of Administrator's denial of any petition for promulgation, amendment, or repeal of any regulation, and substituted ''District of Columbia, and'' for ''District of Columbia. Any'', ''date of such promulgation or denial'' for ''date of such promulgation'', ''petition for review is based'' for ''petition is based'', and ''; action'' for ''. Action'', and in par. (2), substituted ''proper; the'' for ''proper. The'', and added subsec. (b).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6977. Grants or contracts for training projects

(a) General authority

The Administrator is authorized to make grants to, and contracts with any eligible orga-

[1] See References in Text note below.

nization. For purposes of this section the term ''eligible organization'' means a State or interstate agency, a municipality, educational institution, and any other organization which is capable of effectively carrying out a project which may be funded by grant under subsection (b) of this section.

(b) Purposes

(1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Administrator, of any project operated or to be operated by an eligible organization, which is designed—

(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste management and resource recovery equipment and facilities; or

(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste management and resource recovery equipment and facilities.

(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it provides for the same procedures and reports (and access to such reports and to other records) as required by section 3254a(b)(4) and (5)[1] of this title (as in effect before October 21, 1976) with respect to applications made under such section (as in effect before October 21, 1976).

(Pub. L. 89–272, title II, § 7007, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2827; amended Pub. L. 95–609, § 7(r), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 105–362, title V, § 501(f), Nov. 10, 1998, 112 Stat. 3284.)

REFERENCES IN TEXT

Section 3254a(b)(4) and (5) of this title, referred to in subsec. (b)(2), was in the original ''section 207(b)(4) and (5)'', meaning section 207(b)(4) and (5) of the Solid Waste Disposal Act, which was omitted in the general revision of the Solid Waste Disposal Act by Pub. L. 94–580 on Oct. 21, 1976.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254d of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–362 struck out heading and text of subsec. (c) which related to Administrator's study and report on State and local training needs and obstacles to employment and occupational advancement in solid waste management and resource recovery field.

1978—Subsec. (b)(1). Pub. L. 95–609, § 7(r)(1), (2), substituted ''management'' for ''disposal'' in two places, and ''resource'' for ''resources''.

Subsec. (c)(3). Pub. L. 95–609, § 7(r)(3), substituted ''management'' for ''disposal''.

[1] See References in Text note below.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6978. Payments

(a) General rule

Payments of grants under this chapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as the Administrator may determine.

(b) Prohibition

No grant may be made under this chapter to any private profitmaking organization.

(Pub. L. 89–272, title II, § 7008, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2828.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3258 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6979. Labor standards

No grant for a project of construction under this chapter shall be made unless the Administrator finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by sections 3141–3144, 3146, and 3147 of title 40, will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with those sections; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 3145 of title 40.

(Pub. L. 89–272, title II, § 7009, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2828; amended Pub. L. 96–482, § 28, Oct. 21, 1980, 94 Stat. 2349.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)'', ''those sections'' substituted for ''that Act'', and ''section 3145 of title 40'' substituted

for ''section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3256 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1980—Pub. L. 96–482 substituted ''Administrator'' for ''Secretary''.

§ 6979a. Transferred

CODIFICATION

Section, Pub. L. 89–272, title II, § 7010, as added Pub. L. 98–616, title IV, § 405(a), Nov. 8, 1984, 98 Stat. 3273; Pub. L. 99–339, title II, § 201(c)(1), June 19, 1986, 100 Stat. 654, relating to interim control of hazardous waste injection, was renumbered section 3020 of Pub. L. 89–272 by Pub. L. 99–339, title II, § 201(c)(2), June 19, 1986, 100 Stat. 654, and transferred to section 6939b of this title.

§ 6979b. Law enforcement authority

The Attorney General of the United States shall, at the request of the Administrator and on the basis of a showing of need, deputize qualified employees of the Environmental Protection Agency to serve as special deputy United States marshals in criminal investigations with respect to violations of the criminal provisions of this chapter.

(Pub. L. 89–272, title II, § 7010, formerly § 7012, as added Pub. L. 98–616, title IV, § 403(b)(1), Nov. 8, 1984, 98 Stat. 3272; renumbered § 7010, Pub. L. 99–339, title II, § 201(c)(2), June 19, 1986, 100 Stat. 654.)

PRIOR PROVISIONS

A prior section 7010 of Pub. L. 89–272, which was classified to section 6979a of this title, was renumbered section 3020 and transferred to section 6939b of this title.

SUBCHAPTER VIII—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND INFORMATION

§ 6981. Research, demonstration, training, and other activities

(a) General authority

The Administrator, alone or after consultation with the Secretary of Energy, shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—

(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;

(2) the operation and financing of solid waste management programs;

(3) the planning, implementation, and operation of resource recovery and resource conservation systems and hazardous waste management systems, including the marketing of recovered resources;

(4) the production of usable forms of recovered resources, including fuel, from solid waste;

(5) the reduction of the amount of such waste and unsalvageable waste materials;

(6) the development and application of new and improved methods of collecting and disposing of solid waste and processing and recovering materials and energy from solid wastes;

(7) the identification of solid waste components and potential materials and energy recoverable from such waste components;

(8) small scale and low technology solid waste management systems, including but not limited to, resource recovery source separation systems;

(9) methods to improve the performance characteristics of resources recovered from solid waste and the relationship of such performance characteristics to available and potentially available markets for such resources;

(10) improvements in land disposal practices for solid waste (including sludge) which may reduce the adverse environmental effects of such disposal and other aspects of solid waste disposal on land, including means for reducing the harmful environmental effects of earlier and existing landfills, means for restoring areas damaged by such earlier or existing landfills, means for rendering landfills safe for purposes of construction and other uses, and techniques of recovering materials and energy from landfills;

(11) methods for the sound disposal of, or recovery of resources, including energy, from, sludge (including sludge from pollution control and treatment facilities, coal slurry pipelines, and other sources);

(12) methods of hazardous waste management, including methods of rendering such waste environmentally safe; and

(13) any adverse effects on air quality (particularly with regard to the emission of heavy metals) which result from solid waste which is burned (either alone or in conjunction with other substances) for purposes of treatment, disposal or energy recovery.

(b) Management program

(1)(A) In carrying out his functions pursuant to this chapter, and any other Federal legislation respecting solid waste or discarded material research, development, and demonstrations, the Administrator shall establish a management program or system to insure the coordination of all such activities and to facilitate and accelerate the process of development of sound new technology (or other discoveries) from the research phase, through development, and into the demonstration phase.

(B) The Administrator shall (i) assist, on the basis of any research projects which are developed with assistance under this chapter or without Federal assistance, the construction of pilot plant facilities for the purpose of investigating or testing the technological feasibility of any promising new fuel, energy, or resource recovery or resource conservation method or technology;

and (ii) demonstrate each such method and technology that appears justified by an evaluation at such pilot plant stage or at a pilot plant stage developed without Federal assistance. Each such demonstration shall incorporate new or innovative technical advances or shall apply such advances to different circumstances and conditions, for the purpose of evaluating design concepts or to test the performance, efficiency, and economic feasibility of a particular method or technology under actual operating conditions. Each such demonstration shall be so planned and designed that, if successful, it can be expanded or utilized directly as a full-scale operational fuel, energy, or resource recovery or resource conservation facility.

(2) Any energy-related research, development, or demonstration project for the conversion including bioconversion, of solid waste carried out by the Environmental Protection Agency or by the Secretary of Energy pursuant to this chapter or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy from Solid Wastes and specifically, that in accordance with this agreement, (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Secretary of Energy, following which project responsibility will be assigned to one agency; (B) energy-related portions of projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Secretary of Energy; (C) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 6907 of this title, and any applicable State or regional solid waste management plan; and (D) any activities undertaken under provisions of sections 6982 and 6983 of this title as related to energy; as related to energy or synthetic fuels recovery from waste; or as related to energy conservation shall be accomplished through coordination and consultation with the Secretary of Energy.

(c) Authorities

(1) In carrying out subsection (a) of this section respecting solid waste research, studies, development, and demonstration, except as otherwise specifically provided in section 6984(d) of this title, the Administrator may make grants to or enter into contracts (including contracts for construction) with, public agencies and authorities or private persons.

(2) Contracts for research, development, or demonstrations or for both (including contracts for construction) shall be made in accordance with and subject to the limitations provided with respect to research contracts of the military departments in section 2353 of title 10, except that the determination, approval, and certification required thereby shall be made by the Administrator.

(3) Any invention made or conceived in the course of, or under, any contract under this chapter shall be subject to section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5908] to the same extent and in the same manner as inventions made or conceived in the course of contracts under such Act [42 U.S.C. 5901 et seq.], except that in applying such section, the Environmental Protection Agency shall be substituted for the Secretary of Energy and the words ''solid waste'' shall be substituted for the word ''energy'' where appropriate.

(4) For carrying out the purpose of this chapter the Administrator may detail personnel of the Environmental Protection Agency to agencies eligible for assistance under this section.

(Pub. L. 89–272, title II, § 8001, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2829; amended Pub. L. 95–91, title III, § 301, title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–609, § 7(s), Nov. 8, 1978, 92 Stat. 3083.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (c)(3), means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3253 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95–609, § 7(s)(1), substituted ''management'' for ''disposal''.

Subsec. (a)(13). Pub. L. 95–609, § 7(s)(2), inserted ''treatment,'' after ''for purpose of''.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' was substituted for ''Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, or the Chairman of the Federal Power Commission'' in subsec. (a), and for ''Energy Research and Development Administration'' in subsecs. (b)(2) and (c)(3), in view of the termination of the Federal Energy Administration, the Energy Research and Development Administration, and the Federal Power Commission and the transfer of their functions and the functions of the Administrators and Chairman thereof (with certain exceptions) to the Secretary of Energy pursuant to sections 301, 703, and 707 of Pub. L. 95–91, which are classified to sections 7151, 7293, and 7297 of this title.

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

EPA STUDY OF METHODS TO REDUCE PLASTIC POLLUTION

Pub. L. 100–220, title II, § 2202, Dec. 29, 1987, 101 Stat. 1465, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Commerce, to conduct a study of the adverse effects of improper disposal of plastic articles on environment and on waste disposal, and various methods to reduce or eliminate such adverse effects, and directed Adminis-

trator, within 18 months after Dec. 29, 1987, to report results of this study to Congress.

NATIONAL ADVISORY COMMISSION ON RESOURCE CONSERVATION AND RECOVERY

Pub. L. 96–482, § 33, Oct. 21, 1980, 94 Stat. 2356, as amended by Pub. L. 105–362, title V, § 501(g), Nov. 10, 1998, 112 Stat. 3284, provided for establishment, membership, functions, etc., of a National Advisory Commission on Resource Conservation and Recovery, directed Commission, upon expiration of the two-year period beginning on the date when all initial members of the Commission have been appointed or the date initial funds become available, whichever is later, to transmit a final report to President and Congress containing a detailed statement of the findings and conclusions of the Commission, and terminated the Commission 30 days after submission of its final report.

SOLID WASTE CLEANUP ON FEDERAL LANDS IN ALASKA; STUDY AND REPORT TO CONGRESSIONAL COMMITTEES

Section 3 of Pub. L. 94–580 provided for a study of procedures for removal of solid waste from Federal lands in Alaska and submission of a Presidential Report to the Senate Committee on Public Lands and House Committee on Interstate and Foreign Commerce no later than one year after Oct. 21, 1976, and implementing recommendations to such committees within six months thereafter, prior to repeal by Pub. L. 96–482, § 30, Oct. 21, 1980, 94 Stat. 2352.

LEACHATE CONTROL RESEARCH PROGRAM IN DELAWARE

Section 4 of Pub. L. 94–580 directed Administrator of Environmental Protection Agency, in order to demonstrate effective means of dealing with contamination of public water supplies by leachate from abandoned or other landfills, to provide technical and financial assistance for a research program, designed by New Castle County areawide waste treatment management program, to control leachate from Llangollen Landfill in New Castle County, Delaware, and provided up to $250,000 in each of the fiscal years 1978 and 1979 for the operating costs of a counter-pumping program to contain the leachate from the Llangollen Landfill during the period of this study.

§ 6982. Special studies; plans for research, development, and demonstrations

(a) Glass and plastic

The Administrator shall undertake a study and publish a report on resource recovery from glass and plastic waste, including a scientific, technological, and economic investigation of potential solutions to implement such recovery.

(b) Composition of waste stream

The Administrator shall undertake a systematic study of the composition of the solid waste stream and of anticipated future changes in the composition of such stream and shall publish a report containing the results of such study and quantitatively evaluating the potential utility of such components.

(c) Priorities study

For purposes of determining priorities for research on recovery of materials and energy from solid waste and developing materials and energy recovery research, development, and demonstration strategies, the Administrator shall review, and make a study of, the various existing and promising techniques of energy recovery from solid waste (including, but not limited to, waterwall furnace incinerators, dry shredded fuel systems, pyrolysis, densified refuse-derived fuel systems, anerobic digestion, and fuel and feedstock preparation systems). In carrying out such study the Administrator shall investigate with respect to each such technique—

(1) the degree of public need for the potential results of such research, development, or demonstration,

(2) the potential for research, development, and demonstration without Federal action, including the degree of restraint on such potential posed by the risks involved, and

(3) the magnitude of effort and period of time necessary to develop the technology to the point where Federal assistance can be ended.

(d) Small-scale and low technology study

The Administrator shall undertake a comprehensive study and analysis of, and publish a report on, systems of small-scale and low technology solid waste management, including household resource recovery and resource recovery systems which have special application to multiple dwelling units and high density housing and office complexes. Such study and analysis shall include an investigation of the degree to which such systems could contribute to energy conservation.

(e) Front-end source separation

The Administrator shall undertake research and studies concerning the compatibility of front-end source separation systems with high technology resource recovery systems and shall publish a report containing the results of such research and studies.

(f) Mining waste

The Administrator, in consultation with the Secretary of the Interior, shall conduct a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources, and on the adequacy of means and measures currently employed by the mining industry, Government agencies, and others to dispose of and utilize such solid wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

(1) the sources and volume of discarded material generated per year from mining;

(2) present disposal practices;

(3) potential dangers to human health and the environment from surface runoff of leachate and air pollution by dust;

(4) alternatives to current disposal methods;

(5) the cost of those alternatives in terms of the impact on mine product costs; and

(6) potential for use of discarded material as a secondary source of the mine product.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. Not later than thirty-six months after October 21, 1980, the Administrator shall publish a report of such study and shall include appropriate findings and recommendations for

Federal and non-Federal actions concerning such effects. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(g) Sludge

The Administrator shall undertake a comprehensive study and publish a report on sludge. Such study shall include an analysis of—

(1) what types of solid waste (including but not limited to sewage and pollution treatment residues and other residues from industrial operations such as extraction of oil from shale, liquefaction and gasification of coal and coal slurry pipeline operations) shall be classified as sludge;

(2) the effects of air and water pollution legislation on the creation of large volumes of sludge;

(3) the amounts of sludge originating in each State and in each industry producing sludge;

(4) methods of disposal of such sludge, including the cost, efficiency, and effectiveness of such methods;

(5) alternative methods for the use of sludge, including agricultural applications of sludge and energy recovery from sludge; and

(6) methods to reclaim areas which have been used for the disposal of sludge or which have been damaged by sludge.

(h) Tires

The Administrator shall undertake a study and publish a report respecting discarded motor vehicle tires which shall include an analysis of the problems involved in the collection, recovery of resources including energy, and use of such tires.

(i) Resource recovery facilities

The Administrator shall conduct research and report on the economics of, and impediments, to the effective functioning of resource recovery facilities.

(j) Resource Conservation Committee

(1) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior, the Secretary of Energy, the Chairman of the Council of Economic Advisors, and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

(A) the appropriateness of recommended incentives and disincentives to foster resource conservation;

(B) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;

(C) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy;

(D) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management charges on consumer products, which charges would reflect the costs of solid waste management services, litter pickup, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product; and

(E) the need for further research, development, and demonstration in the area of resource conservation.

(2) The study required in paragraph (1)(D) may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to—

(A) the product categories on which such charges would be imposed;

(B) the appropriate state in the production of such consumer product at which to levy such charge;

(C) appropriate criteria for establishing such charges for each consumer product category;

(D) methods for the adjustment of such charges to reflect actions such as recycling which would reduce the overall quantities of solid waste requiring disposal; and

(E) procedures for amending, modifying, or revising such charges to reflect changing conditions.

(3) The design for the study required in paragraph (1) of this subsection shall include timetables for the completion of the study. A preliminary report putting forth the study design shall be sent to the President and the Congress within six months following October 21, 1976, and followup reports shall be sent six months thereafter. Each recommendation resulting from the study shall include at least two alternatives to the proposed recommendation.

(4) The results of such investigation and study, including recommendations, shall be reported to the President and the Congress not later than two years after October 21, 1976.

(5) There are authorized to be appropriated not to exceed $2,000,000 to carry out this subsection.

(k) Airport landfills

The Administrator shall undertake a comprehensive study and analysis of and publish a report on systems to alleviate the hazards to aviation from birds congregating and feeding on landfills in the vicinity of airports.

(*l*) Completion of research and studies

The Administrator shall complete the research and studies, and submit the reports, required under subsections (b), (c), (d), (e), (f), (g), and (k) of this section not later than October 1, 1978. The Administrator shall complete the research and studies, and submit the reports, required under subsections (a), (h), and (i) of this section not later than October 1, 1979. Upon completion, each study specified in subsections (a) through (k) of this section, the Administrator shall prepare a plan for research, development,

and demonstration respecting the findings of the study and shall submit any legislative recommendations resulting from such study to appropriate committees of Congress.

(m) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy

(1) The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy on human health and the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources and on the adequacy of means and measures currently employed by the oil and gas and geothermal drilling and production industry, Government agencies, and others to dispose of and utilize such wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

(A) the sources and volume of discarded material generated per year from such wastes;

(B) present disposal practices;

(C) potential danger to human health and the environment from the surface runoff or leachate;

(D) documented cases which prove or have caused danger to human health and the environment from surface runoff or leachate;

(E) alternatives to current disposal methods;

(F) the cost of such alternatives; and

(G) the impact of those alternatives on the exploration for, and development and production of, crude oil and natural gas or geothermal energy.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. The Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects.

(2) The Administrator shall complete the research and study and submit the report required under paragraph (1) not later than twenty-four months from October 21, 1980. Upon completion of the study, the Administrator shall prepare a summary of the findings of the study, a plan for research, development, and demonstration respecting the findings of the study, and shall submit the findings and the study, along with any recommendations resulting from such study, to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(3) There are authorized to be appropriated not to exceed $1,000,000 to carry out the provisions of this subsection.

(n) Materials generated from the combustion of coal and other fossil fuels

The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects on human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue gas emission control waste, and other by-product materials generated primarily from the combustion of coal or other fossil fuels. Such study shall include an analysis of—

(1) the source and volumes of such material generated per year;

(2) present disposal and utilization practices;

(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;

(4) documented cases in which danger to human health or the environment from surface runoff or leachate has been proved;

(5) alternatives to current disposal methods;

(6) the costs of such alternatives;

(7) the impact of those alternatives on the use of coal and other natural resources; and

(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such material and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report on such study, which shall include appropriate findings, not later than twenty-four months after October 21, 1980. Such study and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(*o*) Cement kiln dust waste

The Administrator shall conduct a detailed and comprehensive study of the adverse effects on human health and the environment, if any, of the disposal of cement kiln dust waste. Such study shall include an analysis of—

(1) the source and volumes of such materials generated per year;

(2) present disposal practices;

(3) potential danger, if any, to human health and the environment from the disposal of such materials;

(4) documented cases in which danger to human health or the environment has been proved;

(5) alternatives to current disposal methods;

(6) the costs of such alternatives;

(7) the impact of those alternatives on the use of natural resources; and

(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, not later than thirty-six months

after October 21, 1980. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(p) Materials generated from extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining

The Administrator shall conduct a detailed and comprehensive study on the adverse effects on human health and the environment, if any, of the disposal and utilization of solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining. Such study shall be conducted in conjunction with the study of mining wastes required by subsection (f) of this section and shall include an analysis of—

(1) the source and volumes of such materials generated per year;

(2) present disposal and utilization practices;

(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;

(4) documented cases in which danger to human health or the environment has been proved;

(5) alternatives to current disposal methods;

(6) the costs of such alternatives;

(7) the impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and

(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, in conjunction with the publication of the report of the study of mining wastes required to be conducted under subsection (f) of this section. Such report and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(q) Authorization of appropriations

There are authorized to be appropriated not to exceed $8,000,000 for the fiscal years 1978 and 1979 to carry out this section other than subsection (j) of this section.

(r) Minimization of hazardous waste

The Administrator shall compile, and not later than October 1, 1986, submit to the Congress, a report on the feasibility and desirability of establishing standards of performance or of taking other additional actions under this chapter to require the generators of hazardous waste to reduce the volume or quantity and toxicity of the hazardous waste they generate, and of establishing with respect to hazardous wastes required management practices or other requirements to assure such wastes are managed in ways that minimize present and future risks to human health and the environment. Such report shall include any recommendations for legislative changes which the Administrator determines are feasible and desirable to implement the national policy established by section 6902 of this title.

(s) Extending landfill life and reusing landfilled areas

The Administrator shall conduct detailed, comprehensive studies of methods to extend the useful life of sanitary landfills and to better use sites in which filled or closed landfills are located. Such studies shall address—

(1) methods to reduce the volume of materials before placement in landfills;

(2) more efficient systems for depositing waste in landfills;

(3) methods to enhance the rate of decomposition of solid waste in landfills, in a safe and environmentally acceptable manner;

(4) methane production from closed landfill units;

(5) innovative uses of closed landfill sites, including use for energy production such as solar or wind energy and use for metals recovery;

(6) potential for use of sewage treatment sludge in reclaiming landfilled areas; and

(7) methods to coordinate use of a landfill owned by one municipality by nearby municipalities, and to establish equitable rates for such use, taking into account the need to provide future landfill capacity to replace that so used.

The Administrator is authorized to conduct demonstrations in the areas of study provided in this subsection. The Administrator shall periodically report on the results of such studies, with the first such report not later than October 1, 1986. In carrying out this subsection, the Administrator need not duplicate other studies which have been completed and may rely upon information which has previously been compiled.

(Pub. L. 89–272, title II, § 8002, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2831; amended Pub. L. 95–609, § 7(t), Nov. 8, 1978, 92 Stat. 3083; H. Res. 549, Mar. 25, 1980; Pub. L. 96–482, § 29, Oct. 21, 1980, 94 Stat. 2349; Pub. L. 98–616, title II, § 224(c), title VII, § 702, Nov. 8, 1984, 98 Stat. 3253, 3289.)

AMENDMENTS

1984—Subsec. (r). Pub. L. 98–616, § 224(c), added subsec. (r).

Subsec. (s). Pub. L. 98–616, § 702, added subsec. (s).

1980—Subsec. (f). Pub. L. 96–482, § 29(1), required publication of report no later than thirty-six months after Oct. 21, 1980, and its submission to Senate Committee on Environment and Public Works and House Committee on Energy and Commerce.

Subsecs. (m) to (q). Pub. L. 96–482, § 29(2), added subsecs. (m) to (p) and redesignated former subsec. (m) as (q).

1978—Subsec. (g)(1). Pub. L. 95–609, § 7(t)(1), substituted ''shale, liquefaction'' for ''shale liquefaction''.

Subsec. (j)(1). Pub. L. 95–609, § 7(t)(2), enacted a provision adding the Secretary of Energy and the Chairman of the Council of Economic Advisors to the Committee.

Subsec. (j)(2). Pub. L. 95–609, § 7(t)(3), substituted ''paragraph (1)(D)'' for ''paragraph (2)(D)''.

Subsec. (j)(3). Pub. L. 95–609, § 7(t)(4), substituted ''paragraph (1)'' for ''paragraph (2)(D)''.

Subsec. (*l*). Pub. L. 95–609, § 7(t)(5), struck out requirement of submission of reports under subsec. (j) of this section.

CHANGE OF NAME

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6983. Coordination, collection, and dissemination of information

(a) Information

The Administrator shall develop, collect, evaluate, and coordinate information on—

(1) methods and costs of the collection of solid waste;

(2) solid waste management practices, including data on the different management methods and the cost, operation, and maintenance of such methods;

(3) the amounts and percentages of resources (including energy) that can be recovered from solid waste by use of various solid waste management practices and various technologies;

(4) methods available to reduce the amount of solid waste that is generated;

(5) existing and developing technologies for the recovery of energy or materials from solid waste and the costs, reliability, and risks associated with such technologies;

(6) hazardous solid waste, including incidents of damage resulting from the disposal of hazardous solid wastes; inherently and potentially hazardous solid wastes; methods of neutralizing or properly disposing of hazardous solid wastes; facilities that properly dispose of hazardous wastes;

(7) methods of financing resource recovery facilities or, sanitary landfills, or hazardous solid waste treatment facilities, whichever is appropriate for the entity developing such facility or landfill (taking into account the amount of solid waste reasonably expected to be available to such entity);

(8) the availability of markets for the purchase of resources, either materials or energy, recovered from solid waste; and

(9) research and development projects respecting solid waste management.

(b) Library

(1) The Administrator shall establish and maintain a central reference library for (A) the materials collected pursuant to subsection (a) of this section and (B) the actual performance and cost effectiveness records and other data and information with respect to—

(i) the various methods of energy and resource recovery from solid waste,

(ii) the various systems and means of resource conservation,

(iii) the various systems and technologies for collection, transport, storage, treatment, and final disposition of solid waste, and

(iv) other aspects of solid waste and hazardous solid waste management.

Such central reference library shall also contain, but not be limited to, the model codes and model accounting systems developed under this section, the information collected under subsection (d) of this section, and, subject to any applicable requirements of confidentiality, information respecting any aspect of solid waste provided by officers and employees of the Environmental Protection Agency which has been acquired by them in the conduct of their functions under this chapter and which may be of value to Federal, State, and local authorities and other persons.

(2) Information in the central reference library shall, to the extent practicable, be collated, analyzed, verified, and published and shall be made available to State and local governments and other persons at reasonable times and subject to such reasonable charges as may be necessary to defray expenses of making such information available.

(c) Model accounting system

In order to assist State and local governments in determining the cost and revenues associated with the collection and disposal of solid waste and with resource recovery operations, the Administrator shall develop and publish a recommended model cost and revenue accounting system applicable to the solid waste management functions of State and local governments. Such system shall be in accordance with generally accepted accounting principles. The Administrator shall periodically, but not less frequently than once every five years, review such accounting system and revise it as necessary.

(d) Model codes

The Administrator is authorized, in cooperation with appropriate State and local agencies, to recommend model codes, ordinances, and statutes, providing for sound solid waste management.

(e) Information programs

(1) The Administrator shall implement a program for the rapid dissemination of information on solid waste management, hazardous waste management, resource conservation, and methods of resource recovery from solid waste, including the results of any relevant research, investigations, experiments, surveys, studies, or other information which may be useful in the implementation of new or improved solid waste management practices and methods and infor-

mation on any other technical, managerial, financial, or market aspect of resource conservation and recovery facilities.

(2) The Administrator shall develop and implement educational programs to promote citizen understanding of the need for environmentally sound solid waste management practices.

(f) Coordination

In collecting and disseminating information under this section, the Administrator shall coordinate his actions and cooperate to the maximum extent possible with State and local authorities.

(g) Special restriction

Upon request, the full range of alternative technologies, programs or processes deemed feasible to meet the resource recovery or resource conservation needs of a jurisdiction shall be described in such a manner as to provide a sufficient evaluative basis from which the jurisdiction can make its decisions, but no officer or employee of the Environmental Protection Agency shall, in an official capacity, lobby for or otherwise represent an agency position in favor of resource recovery or resource conservation, as a policy alternative for adoption into ordinances, codes, regulations, or law by any State or political subdivision thereof.

(Pub. L. 89–272, title II, § 8003, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2834; amended Pub. L. 95–609, § 7(u), Nov. 8, 1978, 92 Stat. 3083.)

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95–609 substituted ''solid waste'' for ''discarded materials''.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6984. Full-scale demonstration facilities

(a) Authority

The Administrator may enter into contracts with public agencies or authorities or private persons for the construction and operation of a full-scale demonstration facility under this chapter, or provide financial assistance in the form of grants to a full-scale demonstration facility under this chapter only if the Administrator finds that—

(1) such facility or proposed facility will demonstrate at full scale a new or significantly improved technology or process, a practical and significant improvement in solid waste management practice, or the technological feasibility and cost effectiveness of an existing, but unproven technology, process, or practice, and will not duplicate any other Federal, State, local, or commercial facility which has been constructed or with respect to which construction has begun (determined as of the date action is taken by the Administrator under this chapter),

(2) such contract or assistance meets the requirements of section 6981 of this title and meets other applicable requirements of this chapter,

(3) such facility will be able to comply with the guidelines published under section 6907 of this title and with other laws and regulations for the protection of health and the environment,

(4) in the case of a contract for construction or operation, such facility is not likely to be constructed or operated by State, local, or private persons or in the case of an application for financial assistance, such facility is not likely to receive adequate financial assistance from other sources, and

(5) any Federal interest in, or assistance to, such facility will be disposed of or terminated, with appropriate compensation, within such period of time as may be necessary to carry out the basic objectives of this chapter.

(b) Time limitation

No obligation may be made by the Administrator for financial assistance under this subchapter for any full-scale demonstration facility after the date ten years after October 21, 1976. No expenditure of funds for any such full-scale demonstration facility under this subchapter may be made by the Administrator after the date fourteen years after October 21, 1976.

(c) Cost sharing

(1) Wherever practicable, in constructing, operating, or providing financial assistance under this subchapter to a full-scale demonstration facility, the Administrator shall endeavor to enter into agreements and make other arrangements for maximum practicable cost sharing with other Federal, State, and local agencies, private persons, or any combination thereof.

(2) The Administrator shall enter into arrangements, wherever practicable and desirable, to provide monitoring of full-scale solid waste facilities (whether or not constructed or operated under this chapter) for purposes of obtaining information concerning the performance, and other aspects, of such facilities. Where the Administrator provides only monitoring and evaluation instruments or personnel (or both) or funds for such instruments or personnel and provides no other financial assistance to a facility, notwithstanding section 6981(c)(3) of this title, title to any invention made or conceived of in the course of developing, constructing, or operating such facility shall not be required to vest in the United States and patents respecting such invention shall not be required to be issued to the United States.

(d) Prohibition

After October 21, 1976, the Administrator shall not construct or operate any full-scale facility (except by contract with public agencies or authorities or private persons).

(Pub. L. 89–272, title II, § 8004, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2836; amended Pub. L. 95–609, § 7(v), Nov. 8, 1978, 92 Stat. 3084; Pub. L. 98–616, title V, § 502(f), Nov. 8, 1984, 98 Stat. 3276.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98–616 inserted ''(1)'' before ''Wherever''.

1978—Subsec. (a)(1). Pub. L. 95–609 substituted ''solid waste'' for ''discarded material''.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6985. Special study and demonstration projects on recovery of useful energy and materials

(a) Studies

The Administrator shall conduct studies and develop recommendations for administrative or legislative action on—

(1) means of recovering materials and energy from solid waste, recommended uses of such materials and energy for national or international welfare, including identification of potential markets for such recovered resources, the impact of distribution of such resources on existing markets, and potentials for energy conservation through resource conservation and resource recovery;

(2) actions to reduce waste generation which have been taken voluntarily or in response to governmental action, and those which practically could be taken in the future, and the economic, social, and environmental consequences of such actions;

(3) methods of collection, separation, and containerization which will encourage efficient utilization of facilities and contribute to more effective programs of reduction, reuse, or disposal of wastes;

(4) the use of Federal procurement to develop market demand for recovered resources;

(5) recommended incentives (including Federal grants, loans, and other assistance) and disincentives to accelerate the reclamation or recycling of materials from solid wastes, with special emphasis on motor vehicle hulks;

(6) the effect of existing public policies, including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives, upon the recycling and reuse of materials, and the likely effect of the modification or elimination of such incentives and disincentives upon the reuse, recycling and conservation of such materials;

(7) the necessity and method of imposing disposal or other charges on packaging, containers, vehicles, and other manufactured goods, which charges would reflect the cost of final disposal, the value of recoverable components of the item, and any social costs associated with nonrecycling or uncontrolled disposal of such items; and

(8) the legal constraints and institutional barriers to the acquisition of land needed for solid waste management, including land for facilities and disposal sites;

(9) in consultation with the Secretary of Agriculture, agricultural waste management problems and practices, the extent of reuse and recovery of resources in such wastes, the prospects for improvement, Federal, State, and local regulations governing such practices, and the economic, social, and environmental consequences of such practices; and

(10) in consultation with the Secretary of the Interior, mining waste management problems, and practices, including an assessment of existing authorities, technologies, and economics, and the environmental and public health consequences of such practices.

(b) Demonstration

The Administrator is also authorized to carry out demonstration projects to test and demonstrate methods and techniques developed pursuant to subsection (a) of this section.

(c) Application of other sections

Section 6981(b) and (c) of this title shall be applicable to investigations, studies, and projects carried out under this section.

(Pub. L. 89–272, title II, § 8005, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2837.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3253a of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6986. Grants for resource recovery systems and improved solid waste disposal facilities

(a) Authority

The Administrator is authorized to make grants pursuant to this section to any State, municipal, or interstate or intermunicipal agency for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

(b) Conditions

(1) Any grant under this section for the demonstration of a resource recovery system may be made only if it (A) is consistent with any plans which meet the requirements of subchapter IV of this chapter; (B) is consistent with the guidelines recommended pursuant to section 6907 of this title; (C) is designed to provide area-wide resource recovery systems consistent with the purposes of this chapter, as determined by the Administrator, pursuant to regulations promulgated under subsection (d) of this section; and (D) provides an equitable system for distributing the costs associated with construction, operation, and maintenance of any resource recovery system among the users of such system.

(2) The Federal share for any project to which paragraph (1) applies shall not be more than 75 percent.

(c) Limitations

(1) A grant under this section for the construction of a new or improved solid waste disposal facility may be made only if—

(A) a State or interstate plan for solid waste disposal has been adopted which applies to the area involved, and the facility to be constructed (i) is consistent with such plan, (ii) is included in a comprehensive plan for the area involved which is satisfactory to the Administrator for the purposes of this chapter, and (iii) is consistent with the guidelines recommended under section 6907 of this title, and

(B) the project advances the state of the art by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or resources, or in recycling useful materials.

(2) The Federal share for any project to which paragraph (1) applies shall be not more than 50 percent in the case of a project serving an area which includes only one municipality, and not more than 75 percent in any other case.

(d) Regulations

(1) The Administrator shall promulgate regulations establishing a procedure for awarding grants under this section which—

(A) provides that projects will be carried out in communities of varying sizes, under such conditions as will assist in solving the community waste problems of urban-industrial centers, metropolitan regions, and rural areas, under representative geographic and environmental conditions; and

(B) provides deadlines for submission of, and action on, grant requests.

(2) In taking action on applications for grants under this section, consideration shall be given by the Administrator (A) to the public benefits to be derived by the construction and the propriety of Federal aid in making such grant; (B) to the extent applicable, to the economic and commercial viability of the project (including contractual arrangements with the private sector to market any resources recovered); (C) to the potential of such project for general application to community solid waste disposal problems; and (D) to the use by the applicant of comprehensive regional or metropolitan area planning.

(e) Additional limitations

A grant under this section—

(1) may be made only in the amount of the Federal share of (A) the estimated total design and construction costs, plus (B) in the case of a grant to which subsection (b)(1) of this section applies, the first-year operation and maintenance costs;

(2) may not be provided for land acquisition or (except as otherwise provided in paragraph (1)(B)) for operating or maintenance costs;

(3) may not be made until the applicant has made provision satisfactory to the Administrator for proper and efficient operation and maintenance of the project (subject to paragraph (1)(B)); and

(4) may be made subject to such conditions and requirements, in addition to those provided in this section, as the Administrator may require to properly carry out his functions pursuant to this chapter.

For purposes of paragraph (1), the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Administrator.

(f) Single State

(1) Not more than 15 percent of the total of funds authorized to be appropriated for any fiscal year to carry out this section shall be granted under this section for projects in any one State.

(2) The Administrator shall prescribe by regulation the manner in which this subsection shall apply to a grant under this section for a project in an area which includes all or part of more than one State.

(Pub. L. 89–272, title II, § 8006, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2838.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254b of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6987. Authorization of appropriations

There are authorized to be appropriated not to exceed $35,000,000 for the fiscal year 1978 to carry out the purposes of this subchapter (except for section 6982 of this title).

(Pub. L. 89–272, title II, § 8007, as added Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2839.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3259 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

SUBCHAPTER IX—REGULATION OF UNDERGROUND STORAGE TANKS

§ 6991. Definitions and exemptions

In this subchapter:

(1) INDIAN TRIBE.—

(A) IN GENERAL.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(B) INCLUSIONS.—The term ''Indian tribe'' includes an Alaska Native village, as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and[1]

(2) The term ''nonoperational storage tank'' means any underground storage tank in which

[1] So in original. The semicolon probably should be a period and the word ''and'' probably should not appear.

regulated substances will not be deposited or from which regulated substances will not be dispensed after November 8, 1984.

(3) The term ''operator'' means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(4) The term ''owner'' means—

(A) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances and

(B) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

(5) The term ''person'' has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

(6) The term ''petroleum'' means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(7) The term ''regulated substance'' means—

(A) any substance defined in section 9601(14) of this title (but not including any substance regulated as a hazardous waste under subchapter III of this chapter), and

(B) petroleum.

(8) The term ''release'' means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

(9) TRUST FUND.—The term ''Trust Fund'' means the Leaking Underground Storage Tank Trust Fund established by section 9508 of title 26.

(10) The term ''underground storage tank'' means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any—

(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(B) tank used for storing heating oil for consumptive use on the premises where stored,

(C) septic tank,

(D) pipeline facility (including gathering lines)—

(i) which is regulated under chapter 601 of title 49, or

(ii) which is an intrastate pipeline facility regulated under State laws as provided in chapter 601 of title 49,

and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline,

(E) surface impoundment, pit, pond, or lagoon,

(F) storm water or waste water collection system,

(G) flow-through process tank,

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term ''underground storage tank'' shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I).

(Pub. L. 89–272, title II, § 9001, as added Pub. L. 98–616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3277; amended Pub. L. 99–499, title II, § 205(a), Oct. 17, 1986, 100 Stat. 1696; Pub. L. 102–508, title III, § 302, Oct. 24, 1992, 106 Stat. 3307; Pub. L. 103–429, § 7(d), Oct. 31, 1994, 108 Stat. 4389; Pub. L. 109–58, title XV, §§ 1532(a), 1533(1), Aug. 8, 2005, 119 Stat. 1104, 1105.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (1)(B), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

2005—Pub. L. 109–58 substituted ''In this subchapter:'' for ''For the purposes of this subchapter—'' in introductory provisions, added pars. (1) and (9), redesignated former pars. (1) to (8) as pars. (10), (7), (4), (3), (8), (5), (2), and (6), respectively, and, in par. (4)(A), substituted ''substances'' for ''sustances''.

1994—Par. (1)(D). Pub. L. 103–429 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''pipeline facility (including gathering lines)—

''(i) which is regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.),

''(ii) which is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.), or

''(iii) which is an intrastate pipeline facility regulated under State laws as provided in the provisions of law referred to in clause (i) or (ii) of this subparagraph,

and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline,''.

1992—Par. (1)(D). Pub. L. 102–508 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''pipeline facility (including gathering lines) regulated under—

''(i) the Natural Gas Pipeline Safety Act of 1968,

''(ii) the Hazardous Liquid Pipeline Safety Act of 1979, or

''(iii) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph,''.

1986—Par. (2)(B). Pub. L. 99–499 struck out '', including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute)''. See par. (8).

Par. (8). Pub. L. 99–499 added par. (8).

ABOVEGROUND STORAGE TANK GRANT PROGRAM

Pub. L. 106–554, § 1(a)(4) [div. B, title XII, § 1201], Dec. 21, 2000, 114 Stat. 2763, 2763A–313, provided that:

''(a) DEFINITIONS.—In this provision:

''(1) ABOVEGROUND STORAGE TANK.—The term 'aboveground storage tank' means any tank or combination of tanks (including any connected pipe)—

''(A) that is used to contain an accumulation of regulated substances; and

''(B) the volume of which (including the volume of any connected pipe) is located wholly above the surface of the ground.

''(2) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(3) DENALI COMMISSION.—The term 'Denali Commission' means the commission established by section 303(a) of the Denali Commission Act of 1998 [Pub. L. 105–277, div. C, title III] (42 U.S.C. 3121 note).

''(4) FEDERAL ENVIRONMENTAL LAW.—The term 'Federal environmental law' means—

''(A) the Oil Pollution Control Act of 1990 (33 U.S.C. 2701 et seq.);

''(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

''(C) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

''(D) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); or

''(E) any other Federal law that is applicable to the release into the environment of a regulated substance, as determined by the Administrator.

''(5) NATIVE VILLAGE.—The term 'Native village' has the meaning given the term in section 11(b) in Public Law 92–203 (85 Stat. 688) [43 U.S.C. 1610(b)].

''(6) PROGRAM.—The term 'program' means the Aboveground Storage Tank Grant Program established by subsection (b)(1).

''(7) REGULATED SUBSTANCE.—The term 'regulated substance' has the meaning given the term in section 9001 of the Solid Waste Disposal Act (42 U.S.C. 6991).

''(8) STATE.—The term 'State' means the State of Alaska.

''(b) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established a grant program to be known as the 'Aboveground Storage Tank Grant Program'

''(2) GRANTS.—Under the program, the Administrator shall award a grant to—

''(A) the State, on behalf of a Native village; or

''(B) the Denali Commission.

''(c) USE OF GRANTS.—The State or the Denali Commission shall use the funds of a grant under subsection (b) to repair, upgrade, or replace one or more aboveground storage tanks that—

''(1) leaks or poses an imminent threat of leaking, as certified by the Administrator, the Commandant of the Coast Guard, or any other appropriate Federal or State agency (as determined by the Administrator); and

''(2) is located in a Native village—

''(A) the median household income of which is less than 80 percent of the median household income in the State;

''(B) that is located—

''(i) within the boundaries of—

''(I) a unit of the National Park System;

''(II) a unit of the National Wildlife Refuge System; or

''(III) a National Forest; or

''(ii) on public land under the administrative jurisdiction of the Bureau of Land Management; or

''(C) that receives payments from the Federal Government under chapter 69 of title 31, United States Code (commonly known as 'payments in lieu of taxes').

''(d) REPORTS.—Not later than 1 year after the date on which the State or the Denali Commission receives a grant under subsection (c), and annually thereafter, the State or the Denali Commission, as the case may be, shall submit a report describing each project completed with grant funds and any projects planned for the following year, to—

''(1) the Administrator;

''(2) the Committee on Resources of the House of Representatives;

''(3) the Committee on Environment and Public Works of the Senate;

''(4) the Committee on Appropriations of the House of Representatives; and

''(5) the Committee on Appropriations of the Senate.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this Act [probably means this section], to remain available until expended—

''(1) $20,000,000 for fiscal year 2001; and

''(2) such sums as are necessary for each fiscal year thereafter.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

§ 6991a. Notification

(a) Underground storage tanks

(1) Within 18 months after November 8, 1984, each owner of an underground storage tank shall notify the State or local agency or department designated pursuant to subsection (b)(1) of this section of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

(2)(A) For each underground storage tank taken out of operation after January 1, 1974, the owner of such tank shall, within eighteen months after November 8, 1984, notify the State or local agency, or department designated pursuant to subsection (b)(1) of this section of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The owner of a tank taken out of operation on or before January 1, 1974, shall not be required to notify the State or local agency under this subsection.

(B) Notice under subparagraph (A) shall specify, to the extent known to the owner—

(i) the date the tank was taken out of operation,

(ii) the age of the tank on the date taken out of operation,

(iii) the size, type and location of the tank, and

(iv) the type and quantity of substances left stored in such tank on the date taken out of operation.

(3) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the designated State or local agency or department within thirty days of the existence of such tank, specifying the age, size, type, location and uses of such tank.

(4) Paragraphs (1) through (3) of this subsection shall not apply to tanks for which notice was given pursuant to section 9603(c) of this title.

(5) Beginning thirty days after the Administrator prescribes the form of notice pursuant to subsection (b)(2) of this section and for eighteen months thereafter, any person who deposits regulated substances in an underground storage tank shall reasonably notify the owner or operator of such tank of the owner's notification requirements pursuant to this subsection.

(6) Beginning thirty days after the Administrator issues new tank performance standards pursuant to section 6991b(c) of this title, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification requirements pursuant to this subsection.

(b) Agency designation

(1) Within one hundred and eighty days after November 8, 1984, the Governors of each State shall designate the appropriate State agency or department or local agencies or departments to receive the notifications under subsection (a)(1), (2), or (3) of this section.

(2) Within twelve months after November 8, 1984, the Administrator, in consultation with State and local officials designated pursuant to subsection (b)(1) of this section, and after notice and opportunity for public comment, shall prescribe the form of the notice and the information to be included in the notifications under subsection (a)(1), (2), or (3) of this section. In prescribing the form of such notice, the Administrator shall take into account the effect on small businesses and other owners and operators.

(c) State inventories

Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after October 17, 1986.

(d) Public record

(1) In general

The Administrator shall require each State that receives Federal funds to carry out this subchapter to maintain, update at least annually, and make available to the public, in such manner and form as the Administrator shall prescribe (after consultation with States), a record of underground storage tanks regulated under this subchapter.

(2) Considerations

To the maximum extent practicable, the public record of a State, respectively, shall include, for each year—

(A) the number, sources, and causes of underground storage tank releases in the State;

(B) the record of compliance by underground storage tanks in the State with—

(i) this subchapter; or

(ii) an applicable State program approved under section 6991c of this title; and

(C) data on the number of underground storage tank equipment failures in the State.

(Pub. L. 89–272, title II, § 9002, as added Pub. L. 98–616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3278; amended Pub. L. 99–499, title II, § 205(b), Oct. 17, 1986, 100 Stat. 1696; Pub. L. 109–58, title XV, § 1526(c), Aug. 8, 2005, 119 Stat. 1098.)

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58 added subsec. (d).
1986—Subsec. (c). Pub. L. 99–499 added subsec. (c).

§ 6991b. Release detection, prevention, and correction regulations

(a) Regulations

The Administrator, after notice and opportunity for public comment, and at least three months before the effective dates specified in subsection (f) of this section, shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.

(b) Distinctions in regulations

In promulgating regulations under this section, the Administrator may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the Administrator may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

(c) Requirements

The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all underground storage tanks—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;

(3) requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment; and

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bod-

ily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(d) Financial responsibility

(1) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term ''guarantor'' means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than $1,000,000 for each occurrence with an appropriate aggregate requirement.

(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:

(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

(ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

(iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

(iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.

(v) Such other factors as the Administrator deems pertinent.

(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or in a particular State, if the Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and—

(i) steps are being taken to form a risk retention group for such class of tanks; or

(ii) such State is taking steps to establish a fund pursuant to section 6991c(c)(1) of this title to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).

(e) New tank performance standards

The Administrator shall, not later than three months prior to the effective date specified in subsection (f) of this section, issue performance standards for underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but need not be limited to, design, construction, installation, release detection, and compatibility standards.

(f) Effective dates

(1) Regulations issued pursuant to subsections (c) and (d) of this section, and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated

substances defined in section 6991(7)(B) of this title (petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure) shall be effective not later than thirty months after November 8, 1984.

(2) Standards issued pursuant to subsection (e) of this section (entitled ''New Tank Performance Standards'') for underground storage tanks containing regulated substances defined in section 6991(7)(A) of this title shall be effective not later than thirty-six months after November 8, 1984.

(3) Regulations issued pursuant to subsection (c) of this section (entitled ''Requirements'') and standards issued pursuant to subsection (d) of this section (entitled ''Financial Responsibility'') for underground storage tanks containing regulated substances defined in section 6991(7)(A) of this title shall be effective not later than forty-eight months after November 8, 1984.

(g) Interim prohibition

(1) Until the effective date of the standards promulgated by the Administrator under subsection (e) of this section and after one hundred and eighty days after November 8, 1984, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction)—

(A) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(B) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) Notwithstanding paragraph (1), if soil tests conducted in accordance with ASTM Standard G57–78, or another standard approved by the Administrator, show that soil resistivity in an installation location is 12,000 ohm/cm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (1).

(h) EPA response program for petroleum

(1) Before regulations

Before the effective date of regulations under subsection (c) of this section, the Administrator (or a State pursuant to paragraph (7)) is authorized to—

(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

(2) After regulations

Following the effective date of regulations under subsection (c) of this section, all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

(i) an owner or operator of the tank concerned,

(ii) subject to such corrective action regulations, and

(iii) capable of carrying out such corrective action properly.

(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Trust Fund are necessary to assure an effective corrective action.

(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 6991e of this title or with the order of a State under this subsection to comply with the corrective action regulations.

(3) Priority of corrective actions

The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners

or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

(4) Corrective action orders

The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4) of this section. A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State's program is approved by the Administrator under section 6991c of this title. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 6991e of this title.

(5) Allowable corrective actions

The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

(6) Recovery of costs

(A) In general

Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 1321 of title 33.

(B) Recovery

In determining the equities for seeking the recovery of costs under subparagraph (A), the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5) of this section.

(C) Effect on liability

(i) No transfers of liability

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(ii) No bar to cause of action

Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(D) Facility

For purposes of this paragraph, the term ''facility'' means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

(E) Inability or limited ability to pay

(i) In general

In determining the level of recovery effort, or amount that should be recovered, the Administrator (or the State pursuant to paragraph (7)) shall consider the owner or operator's ability to pay. An inability or limited ability to pay corrective action costs must be demonstrated to the Administrator (or the State pursuant to paragraph (7)) by the owner or operator.

(ii) Considerations

In determining whether or not a demonstration is made under clause (i), the Administrator (or the State pursuant to paragraph (7)) shall take into consideration the ability of the owner or operator to pay corrective action costs and still maintain its basic business operations, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues.

(iii) Information

An owner or operator requesting consideration under this subparagraph shall promptly provide the Administrator (or the State pursuant to paragraph (7)) with all relevant information needed to determine the ability of the owner or operator to pay corrective action costs.

(iv) Alternative payment methods

The Administrator (or the State pursuant to paragraph (7)) shall consider alternative payment methods as may be necessary or appropriate if the Administrator (or the State pursuant to paragraph (7)) determines that an owner or operator cannot pay all or a portion of the costs in a lump sum payment.

(v) Misrepresentation

If an owner or operator provides false information or otherwise misrepresents their financial situation under clause (ii), the Administrator (or the State pursuant

to paragraph (7)) shall seek full recovery of the costs of all such actions pursuant to the provisions of subparagraph (A) without consideration of the factors in subparagraph (B).

(7) State authorities

(A) General

A State may exercise the authorities in paragraphs (1), (2), and (12), subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and the authority under sections 6991j and 6991k of this title and paragraphs (4), (6), and (8), if—

(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the Trust Fund for the reasonable costs of the State's actions under the cooperative agreement.

(B) Cost share

Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facility where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

(8) Emergency procurement powers

Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

(9) Definition of owner or operator

(A) In general

As used in this subchapter, the terms ''owner'' and ''operator'' do not include a person that, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person's security interest.

(B) Security interest holders

The provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries at section 9607(n) of this title shall apply in determining a person's liability as an owner or operator of an underground storage tank for the purposes of this subchapter.

(C) Effect on rule

Nothing in subparagraph (B) shall be construed as modifying or affecting the final rule issued by the Administrator on September 7, 1995 (60 Fed. Reg. 46,692), or as limiting the authority of the Administrator to amend the final rule, in accordance with applicable law. The final rule in effect on September 30, 1996, shall prevail over any inconsistent provision regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title or any inconsistent provision regarding fiduciaries in section 9607(n) of this title. Any amendment to the final rule shall be consistent with the provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries in section 9607(n) of this title. This subparagraph does not preclude judicial review of any amendment of the final rule made after September 30, 1996.

(10) Definition of exposure assessment

As used in this subsection, the term ''exposure assessment'' means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

(11) Facilities without financial responsibility

At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 6991e of this title to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a

State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

(12) Remediation of oxygenated fuel contamination

(A) In general

The Administrator and the States may use funds made available under section 6991m(2)(B) of this title to carry out corrective actions with respect to a release of a fuel containing an oxygenated fuel additive that presents a threat to human health or welfare or the environment.

(B) Applicable authority

The Administrator or a State shall carry out subparagraph (A) in accordance with paragraph (2), and in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).

(i) Additional measures to protect groundwater from contamination

The Administrator shall require each State that receives funding under this subchapter to require one of the following:

(1) Tank and piping secondary containment

(A) Each new underground storage tank, or piping connected to any such new tank, installed after the effective date of this subsection, or any existing underground storage tank, or existing piping connected to such existing tank, that is replaced after the effective date of this subsection, shall be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(B) In the case of a new underground storage tank system consisting of one or more underground storage tanks and connected by piping, subparagraph (A) shall apply to all underground storage tanks and connected pipes comprising such system.

(C) In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, subparagraph (A) shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system.

(D) Each installation of a new motor fuel dispenser system, after the effective date of this subsection, shall include under-dispenser spill containment if the new dispenser is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(E) This paragraph shall not apply to repairs to an underground storage tank, piping, or dispenser that are meant to restore a tank, pipe, or dispenser to operating condition.

(F) As used in this subsection:

(i) The term ''secondarily contained'' means a release detection and prevention system that meets the requirements of 40 CFR 280.43(g), but shall not include under-dispenser spill containment or control systems.

(ii) The term ''underground storage tank'' has the meaning given to it in section 6991 of this title, except that such term does not include tank combinations or more than a single underground pipe connected to a tank.

(iii) The term ''installation of a new motor fuel dispenser system'' means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system, but does not mean the installation of a motor fuel dispenser installed separately from the equipment need to connect the dispenser to the underground storage tank system.

(2) Evidence of financial responsibility and certification

(A) Manufacturer and installer financial responsibility

A person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility under subsection (d) of this section in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves[1] to be already covered as an owner or operator of an underground storage tank under this section.

(B) Installer certification

The Administrator and each State that receives funding under this subchapter, as appropriate, shall require that a person that installs an underground storage tank system is—

(i) certified or licensed by the tank and piping manufacturer;

(ii) certified or licensed by the Administrator or a State, as appropriate;

(iii) has their[1] underground storage tank system installation certified by a registered professional engineer with education and experience in underground storage tank system installation;

(iv) has had their[1] installation of the underground storage tank inspected and approved by the Administrator or the State, as appropriate;

(v) compliant with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions; or

(vi) compliant with another method that is determined by the Administrator or a State, as appropriate, to be no less protective of human health and the environment.

[1] So in original.

(C) Savings clause

Nothing in subparagraph (A) alters or affects the liability of any owner or operator of an underground storage tank.

(j) Government-owned tanks

(1) State compliance report

(A) Not later than 2 years after August 8, 2005, each State that receives funding under this subchapter shall submit to the Administrator a State compliance report that—

(i) lists the location and owner of each underground storage tank described in subparagraph (B) in the State that, as of the date of submission of the report, is not in compliance with this section; and

(ii) specifies the date of the last inspection and describes the actions that have been and will be taken to ensure compliance of the underground storage tank listed under clause (i) with this subchapter.

(B) An underground storage tank described in this subparagraph is an underground storage tank that is—

(i) regulated under this subchapter; and

(ii) owned or operated by the Federal, State, or local government.

(C) The Administrator shall make each report, received under subparagraph (A), available to the public through an appropriate media.[2]

(2) Financial incentive

The Administrator may award to a State that develops a report described in paragraph (1), in addition to any other funds that the State is entitled to receive under this subchapter, not more than $50,000, to be used to carry out the report.

(3) Not a safe harbor

This subsection does not relieve any person from any obligation or requirement under this subchapter.

(Pub. L. 89–272, title II, § 9003, as added Pub. L. 98–616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3279; amended Pub. L. 99–499, title II, § 205(c), (d), Oct. 17, 1986, 100 Stat. 1697, 1698; Pub. L. 104–208, div. A, title II, § 2503, Sept. 30, 1996, 110 Stat. 3009–468; Pub. L. 109–58, title XV, §§ 1522(c), 1525, 1526(b), 1530(a), 1532(b)(1), (2), 1533(2), Aug. 8, 2005, 119 Stat. 1093, 1096, 1097, 1102, 1105; Pub. L. 109–168, § 1(a)(2), Jan. 10, 2006, 119 Stat. 3580.)

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (d)(2), probably means a reference to Title 11, Bankruptcy.

The effective date of this subsection, referred to in subsec. (i)(1)(A), (D), is 18 months after Aug. 8, 2005. See Effective Date of 2005 Amendment note set out below.

AMENDMENTS

2006—Subsecs. (i), (j). Pub. L. 109–168 redesignated subsec. (i), relating to government-owned tanks, as (j). Subsec. (j) was editorially transferred to the end of the section to reflect the probable intent of Congress.

2005—Subsec. (f)(1). Pub. L. 109–58, § 1533(2), substituted ''subsections (c) and (d)'' for ''subsection (c) and (d)''.

Pub. L. 109–58, § 1532(b)(1)(A), substituted ''6991(7)(B)'' for ''6991(2)(B)''.

Subsec. (f)(2), (3). Pub. L. 109–58, § 1532(b)(1)(B), substituted ''6991(7)(A)'' for ''6991(2)(A)''.

Subsec. (h)(1), (2)(C). Pub. L. 109–58, § 1532(b)(2), substituted ''Trust Fund'' for ''Leaking Underground Storage Tank Trust Fund''.

Subsec. (h)(6)(E). Pub. L. 109–58, § 1522(c), added subpar. (E).

Subsec. (h)(7)(A). Pub. L. 109–58, § 1532(b)(2), substituted ''Trust Fund'' for ''Leaking Underground Storage Tank Trust Fund'' in concluding provisions.

Pub. L. 109–58, § 1525(1), in introductory provisions, substituted ''paragraphs (1), (2), and (12)'' for ''paragraphs (1) and (2) of this subsection'' and ''and the authority under sections 6991j and 6991k of this title and paragraphs (4), (6), and (8),'' for ''and including the authorities of paragraphs (4), (6), and (8) of this subsection''.

Subsec. (h)(11). Pub. L. 109–58, § 1532(b)(2), substituted ''Trust Fund'' for ''Leaking Underground Storage Tank Trust Fund''.

Subsec. (h)(12). Pub. L. 109–58, § 1525(2), added par. (12).

Subsec. (i). Pub. L. 109–58, § 1530(a), added subsec. (i) relating to additional measures to protect groundwater from contamination.

Pub. L. 109–58, § 1526(b), added subsec. (i) relating to government-owned tanks.

1996—Subsec. (h)(9). Pub. L. 104–208 added par. (9) and struck out heading and text of former par. (9). Text read as follows: ''As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank.''

1986—Subsec. (c)(6). Pub. L. 99–499, § 205(c)(1), added par. (6).

Subsec. (d)(1). Pub. L. 99–499, § 205(c)(3), which directed that par. (1) be amended by ''striking out 'or' after 'credit,' and by striking out the period at the end thereof and inserting in lieu thereof the following: 'or any other method satisfactory to the Administrator.' '', was executed by striking the period and making insertion at end of first sentence, rather than at end of par. (1), as the probable intent of Congress, because an earlier version of the amending legislation had provided that such amendment be made to first sentence.

Pub. L. 99–499, § 205(c)(2), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: ''As he deems necessary or desirable, the Administrator shall promulgate regulations containing requirements for maintaining evidence of financial responsibility as he deems necessary and desirable for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.''

Subsec. (d)(2) to (5). Pub. L. 99–499, § 205(c)(2), (4), added par. (5) and redesignated pars. (3) to (5) as (2) to (4), respectively. Former par. (2) redesignated (1).

Subsec. (h). Pub. L. 99–499, § 205(d), added subsec. (h).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XV, § 1530(b), Aug. 8, 2005, 119 Stat. 1104, provided that: ''This subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as notes under this section] shall take effect 18 months after the date of enactment of this subsection [Aug. 8, 2005].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2505 of div. A of Pub. L. 104–208 provided that: ''The amendments made by this subtitle [subtitle E (§§ 2501–2505) of title II of div. A of Pub. L. 104–208, amending this section and sections 9601 and 9607 of this title] shall be applicable with respect to any claim that

[2] So in original. Probably should be ''medium.''

has not been finally adjudicated as of the date of enactment of this Act [Sept. 30, 1996].''

REGULATIONS

Pub. L. 109–58, title XV, § 1530(c), Aug. 8, 2005, 119 Stat. 1104, provided that: ''The Administrator shall issue regulations or guidelines implementing the requirements of this subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as notes under this section], including guidance to differentiate between the terms 'repair' and 'replace' for the purposes of section 9003(i)(1) of the Solid Waste Disposal Act [42 U.S.C. 6991b(i)(1)].''

ASSISTANCE AGREEMENTS WITH INDIAN TRIBES

Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2497, provided in part: ''That hereafter, the Administrator is authorized to enter into assistance agreements with Federally recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the same purposes as are set forth in section 9003(h)(7) of the Resource Conservation and Recovery Act [probably means section 9003(h)(7) of Pub. L. 89–272, 42 U.S.C. 6991b(h)(7)].''

POLLUTION LIABILITY INSURANCE

Section 205(h) of Pub. L. 99–499 provided that:

''(1) STUDY.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and the operation of the Water Quality Insurance Syndicate.

''(2) REPORT.—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection [Oct. 17, 1986]. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all clean-up costs and damages that may result from reasonably foreseeable releases and events.''

§ 6991c. Approval of State programs

(a) Elements of State program

Beginning 30 months after November 8, 1984, any State may,[1] submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator. The program may cover tanks used to store regulated substances referred to in subparagraph (A) or (B) of section 6991(7) of this title. A State program may be approved by the Administrator under this section only if the State demonstrates that the State program includes the following requirements and standards and provides for adequate enforcement of compliance with such requirements and standards—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) requirements for reporting of any releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment;

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;

(7) standards of performance for new underground storage tanks;

(8) requirements—

(A) for notifying the appropriate State agency or department (or local agency or department) designated according to section 6991a(b)(1) of this title of the existence of any operational or non-operational underground storage tank; and

(B) for providing the information required on the form issued pursuant to section 6991a(b)(2) of this title; and

(9) State-specific training requirements as required by section 6991i of this title.

(b) Federal standards

(1) A State program submitted under this section may be approved only if the requirements under paragraphs (1) through (7) of subsection (a) of this section are no less stringent than the corresponding requirements standards promulgated by the Administrator pursuant to section 6991b(a) of this title.

(2)(A) A State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) of this section are less stringent than the corresponding standards under section 6991b(a) of this title during the one-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title if State regulatory action but no State legislative action is required in order to adopt a State program.

(B) If such State legislative action is required, the State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) of this section are less stringent than the corresponding standards under section 6991b(a) of this title during the two-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title (and during an additional one-year period after such legislative action if regulations are required to be promulgated by the State pursuant to such legislative action).

(c) Financial responsibility

(1) Corrective action and compensation programs administered by State or local agencies

[1] So in original. The comma probably should not appear.

or departments may be submitted for approval under subsection (a)(6) of this section as evidence of financial responsibility.

(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(3) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(5) For the purpose of this subsection, the term ''guarantor'' means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(6) WITHDRAWAL OF APPROVAL.—After an opportunity for good faith, collaborative efforts to correct financial deficiencies with a State fund, the Administrator may withdraw approval of any State fund or State assurance program to be used as a financial responsibility mechanism without withdrawing approval of a State underground storage tank program under subsection (a) of this section.

(d) EPA determination

(1) Within one hundred and eighty days of the date of receipt of a proposed State program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section.

(2) If the Administrator determines that a State program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section, he shall approve the State program in lieu of the Federal program and the State shall have primary enforcement responsibility with respect to requirements of its program.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this subchapter in accordance with the provisions of this section, he shall so notify the State. If appropriate action is not taken within a reasonable time, not to exceed one hundred and twenty days after such notification, the Administrator shall withdraw approval of such program and reestablish the Federal program pursuant to this subchapter.

(f) Trust Fund distribution

(1) In general

(A) Amount and permitted uses of distribution

The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 6991m(2)(A) of this title for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State for—

(i) corrective actions taken by the State under section 6991b(h)(7)(A) of this title;

(ii) necessary administrative expenses, as determined by the Administrator, that are directly related to State fund or State assurance programs under subsection (c)(1) of this section; or

(iii) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subchapter.

(B) Use of funds for enforcement

In addition to the uses of funds authorized under subparagraph (A), the Administrator may use funds from the Trust Fund that are not distributed to States under subparagraph (A) for enforcement of any regulation promulgated by the Administrator under this subchapter.

(C) Prohibited uses

Funds provided to a State by the Administrator under subparagraph (A) shall not be used by the State to provide financial assistance to an owner or operator to meet any requirement relating to underground storage tanks under subparts B, C, D, H, and G of part 280 of title 40, Code of Federal Regulations (as in effect on August 8, 2005).

(2) Allocation

(A) Process

Subject to subparagraphs (B) and (C), in the case of a State with which the Administrator has entered into a cooperative agreement under section 6991b(h)(7)(A) of this title, the Administrator shall distribute funds from the Trust Fund to the State using an allocation process developed by the Administrator.

(B) Diversion of State funds

The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) of this section to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage tanks covered by this subchapter, with the exception of those transfers that had been completed earlier than August 8, 2005.

(C) Revisions to process

The Administrator may revise the allocation process referred to in subparagraph (A) after—

(i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks; and

(ii) taking into consideration, at a minimum, each of the following:

(I) The number of confirmed releases from federally regulated leaking underground storage tanks in the States.

(II) The number of federally regulated underground storage tanks in the States.

(III) The performance of the States in implementing and enforcing the program.

(IV) The financial needs of the States.

(V) The ability of the States to use the funds referred to in subparagraph (A) in any year.

(3) Distributions to State agencies

Distributions from the Trust Fund under this subsection shall be made directly to a State agency that—

(A) enters into a cooperative agreement referred to in paragraph (2)(A); or

(B) is enforcing a State program approved under this section.

(Pub. L. 89–272, title II, § 9004, as added Pub. L. 98–616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3282; amended Pub. L. 99–499, title II, § 205(e), Oct. 17, 1986, 100 Stat. 1702; Pub. L. 109–58, title XV, §§ 1522(a), (b), 1524(b), 1533(3), Aug. 8, 2005, 119 Stat. 1092, 1093, 1096, 1105.)

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (c)(3), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, § 1533(3), substituted ''in subparagraph (A) or (B) of section 6991(7)'' for ''in 6991(2)(A) or (B) or both''.

Subsec. (a)(9). Pub. L. 109–58, § 1524(b), added par. (9).

Subsec. (c)(6). Pub. L. 109–58, § 1522(b), added par. (6).

Subsec. (f). Pub. L. 109–58, § 1522(a), added subsec. (f).

1986—Subsec. (c)(1). Pub. L. 99–499, § 205(e)(1), struck out ''financed by fees on tank owners and operators and'' after ''compensation programs''.

Subsec. (c)(2). Pub. L. 99–499, § 205(e)(2), struck out ''or'' after ''letter of credit,'' and inserted ''or any other method satisfactory to the Administrator'' and ''including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title''.

§ 6991d. Inspections, monitoring, testing, and corrective action

(a) Furnishing information

For the purposes of developing or assisting in the development of any regulation, conducting any study, taking any corrective action, or enforcing the provisions of this subchapter, any owner or operator of an underground storage tank (or any tank subject to study under section 6991h of this title that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee, or representative of a State acting pursuant to subsection (h)(7) of section 6991b of this title or with an approved program, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for corrective action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this subchapter, such officers, employees, or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where an underground storage tank is located;

(2) to inspect and obtain samples from any person of any regulated substances contained in such tank;

(3) to conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or ground water; and

(4) to take corrective action.

Each such inspection shall be commenced and completed with reasonable promptness.

(b) Confidentiality

(1) Any records, reports, or information obtained from any persons under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or a particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee, or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers,

employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this subchapter, a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this subchapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained, by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee (including records, reports, or information obtained by representatives of the Environmental Protection Agency).

(c) Inspection requirements

(1) Uninspected tanks

In the case of underground storage tanks regulated under this subchapter that have not undergone an inspection since December 22, 1998, not later than 2 years after August 8, 2005, the Administrator or a State that receives funding under this subchapter, as appropriate, shall conduct on-site inspections of all such tanks to determine compliance with this subchapter and the regulations under this subchapter (40 CFR 280) or a requirement or standard of a State program developed under section 6991c of this title.

(2) Periodic inspections

After completion of all inspections required under paragraph (1), the Administrator or a State that receives funding under this subchapter, as appropriate, shall conduct on-site inspections of each underground storage tank regulated under this subchapter at least once every 3 years to determine compliance with this subchapter and the regulations under this subchapter (40 CFR 280) or a requirement or standard of a State program developed under section 6991c of this title. The Administrator may extend for up to one additional year the first 3-year inspection interval under this paragraph if the State demonstrates that it has insufficient resources to complete all such inspections within the first 3-year period.

(3) Inspection authority

Nothing in this section shall be construed to diminish the Administrator's or a State's authorities under subsection (a) of this section.

(Pub. L. 89–272, title II, § 9005, as added Pub. L. 98–616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3284; amended Pub. L. 99–499, title II, § 205(f), Oct. 17, 1986, 100 Stat. 1702; Pub. L. 109–58, title XV, §§ 1523(a), 1533(4), Aug. 8, 2005, 119 Stat. 1094, 1105.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, § 1533(4)(A), substituted ''study, taking'' for ''study taking'' in introductory provisions.

Subsec. (b)(1). Pub. L. 109–58, § 1533(4)(B), substituted ''relevant'' for ''relevent''.

Subsec. (b)(4). Pub. L. 109–58, § 1533(4)(C), substituted ''Environmental'' for ''Evironmental''.

Subsec. (c). Pub. L. 109–58, § 1523(a), added subsec. (c).

1986—Pub. L. 99–499, § 205(f)(3), inserted reference to corrective action in section catchline.

Subsec. (a). Pub. L. 99–499, § 205(f)(1), in first sentence, inserted ''taking any corrective action'' after ''conducting any study'', inserted ''acting pursuant to subsection (h)(7) of section 6991b of this title or'', struck out ''and'' before ''permit such officer'', and inserted ''and permit such officer to have access for corrective action'', and in second sentence, inserted ''taking corrective action,'' after ''study,''. The amendment directing insertion of ''taking any corrective action'' after ''study'' in first sentence was executed by inserting that language after ''conducting any study'' rather than after ''subject to study'', as the probable intent of Congress.

Subsec. (a)(4). Pub. L. 99–499, § 205(f)(2), added par. (4).

§ 6991e. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information, the Administrator determines that any person is in violation of any requirement of this subchapter, the Administrator may issue an order requiring compliance within a reasonable specified time period or the Administrator may commence a civil action in the United States district court in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State with a program approved under section 6991c of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) If a violator fails to comply with an order under this subsection within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance.

(b) Procedure

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Contents of order

Any order issued under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compli-

ance, and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(d) Civil penalties

(1) Any owner who knowingly fails to notify or submits false information pursuant to section 6991a(a) of this title shall be subject to a civil penalty not to exceed $10,000 for each tank for which notification is not given or false information is submitted.

(2) Any owner or operator of an underground storage tank who fails to comply with—

(A) any requirement or standard promulgated by the Administrator under section 6991b of this title;

(B) any requirement or standard of a State program approved pursuant to section 6991c of this title;

(C) the provisions of section 6991b(g) of this title (entitled ''Interim Prohibition''); or[1]

(D)[2] the requirements established in section 6991b(i) of this title,[3]

(D)[2] the training requirements established by States pursuant to section 6991i of this title (relating to operator training); or

(E) the delivery prohibition requirement established by section 6991k of this title,

shall be subject to a civil penalty not to exceed $10,000 for each tank for each day of violation. Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 6991k of this title shall also be subject to the same civil penalty for each day of such violation.

(e) Incentive for performance

Both of the following may be taken into account in determining the terms of a civil penalty under subsection (d) of this section:

(1) The compliance history of an owner or operator in accordance with this subchapter or a program approved under section 6991c of this title.

(2) Any other factor the Administrator considers appropriate.

(Pub. L. 89–272, title II, § 9006, as added Pub. L. 98–616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3285; Pub. L. 109–58, title XV, §§ 1524(c), 1526(d), 1527(b), 1530(d), Aug. 8, 2005, 119 Stat. 1096, 1098, 1099, 1104.)

AMENDMENTS

2005—Subsec. (d)(2). Pub. L. 109–58, § 1527(b)(2), inserted at end ''Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 6991k of this title shall also be subject to the same civil penalty for each day of such violation.''

Subsec. (d)(2)(B). Pub. L. 109–58, § 1530(d)(1), which directed amendment of subpar. (B) by striking out ''or'' at end, could not be executed because ''or'' did not appear subsequent to amendment by Pub. L. 109–58, § 1524(c)(1). See below.

Pub. L. 109–58, § 1524(c)(1), struck out ''or'' at end.

Subsec. (d)(2)(C). Pub. L. 109–58, § 1530(d)(2), inserted ''; or'' at end.

Subsec. (d)(2)(D). Pub. L. 109–58, § 1530(d)(3), added subpar. (D) relating to requirements established in section 6991b(i) of this title.

Pub. L. 109–58, § 1524(c)(2), added subpar. (D) relating to training requirements established by States pursuant to section 6991i of this title.

Subsec. (d)(2)(E). Pub. L. 109–58, § 1527(b)(1), added subpar. (E).

Subsec. (e). Pub. L. 109–58, § 1526(d), added subsec. (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1530(d) of Pub. L. 109–58 effective 18 months after Aug. 8, 2005, see section 1530(b) of Pub. L. 109–58, set out as a note under section 6991b of this title.

§ 6991f. Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank or underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local underground storage tank regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal

[1] So in original. The word ''or'' probably should not appear.

[2] So in original. Two subpars. (D) have been enacted.

[3] So in original. The comma probably should be a semicolon.

Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning underground storage tanks with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State law concerning underground storage tanks, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any underground storage tank of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to exceed 1 year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Review of and report on Federal underground storage tanks

(1) Review

Not later than 12 months after August 8, 2005, each Federal agency that owns or operates one or more underground storage tanks, or that manages land on which one or more underground storage tanks are located, shall submit to the Administrator, the Committee on Energy and Commerce of the United States House of Representatives, and the Committee on the Environment and Public Works of the Senate a compliance strategy report that—

(A) lists the location and owner of each underground storage tank described in this paragraph;

(B) lists all tanks that are not in compliance with this subchapter that are owned or operated by the Federal agency;

(C) specifies the date of the last inspection by a State or Federal inspector of each underground storage tank owned or operated by the agency;

(D) lists each violation of this subchapter respecting any underground storage tank owned or operated by the agency;

(E) describes the operator training that has been provided to the operator and other persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks owned or operated by the agency; and

(F) describes the actions that have been and will be taken to ensure compliance for each underground storage tank identified under subparagraph (B).

(2) Not a safe harbor

This subsection does not relieve any person from any obligation or requirement under this subchapter.

(Pub. L. 89–272, title II, § 9007, as added Pub. L. 98–616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3286; amended Pub. L. 109–58, title XV, § 1528, Aug. 8, 2005, 119 Stat. 1100.)

AMENDMENTS

2005—Pub. L. 109–58 amended section generally. Prior to amendment, section required each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any underground storage tank to comply with all Federal, State, interstate, and local requirements, applicable to such tank, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable service charges, provided that neither the United States, nor any agent, employee, or officer thereof, was immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such injunctive relief, and authorized the President to exempt any tank from compliance with such requirements upon certain determinations.

§ 6991g. State authority

Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.

(Pub. L. 89–272, title II, § 9008, as added Pub. L. 98–616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3286; amended Pub. L. 99–499, title II, § 205(g), Oct. 17, 1986, 100 Stat. 1702.)

AMENDMENTS

1986—Pub. L. 99–499 amended section generally. Prior to amendment, section read as follows: ''Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter.''

§ 6991h. Study of underground storage tanks

(a) Petroleum tanks

Not later than twelve months after November 8, 1984, the Administrator shall complete a study of underground storage tanks used for the storage of regulated substances defined in section 6991(7)(B) of this title.

(b) Other tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall complete a study of all other underground storage tanks.

(c) Elements of studies

The studies under subsections (a) and (b) of this section shall include an assessment of the

ages, types (including methods of manufacture, coatings, protection systems, the compatibility of the construction materials and the installation methods) and locations (including the climate of the locations) of such tanks; soil conditions, water tables, and the hydrogeology of tank locations; the relationship between the foregoing factors and the likelihood of releases from underground storage tanks; the effectiveness and costs of inventory systems, tank testing, and leak detection systems; and such other factors as the Administrator deems appropriate.

(d) Farm and heating oil tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall conduct a study regarding the tanks referred to in subparagraphs (A) and (B) of section 6991(10) of this title. Such study shall include estimates of the number and location of such tanks and an analysis of the extent to which there may be releases or threatened releases from such tanks into the environment.

(e) Reports

Upon completion of the studies authorized by this section, the Administrator shall submit reports to the President and to the Congress containing the results of the studies and recommendations respecting whether or not such tanks should be subject to the preceding provisions of this subchapter.

(f) Reimbursement

(1) If any owner or operator (excepting an agency, department, or instrumentality of the United States Government, a State or a political subdivision thereof) shall incur costs, including the loss of business opportunity, due to the closure or interruption of operation of an underground storage tank solely for the purpose of conducting studies authorized by this section, the Administrator shall provide such person fair and equitable reimbursement for such costs.

(2) All claims for reimbursement shall be filed with the Administrator not later than ninety days after the closure or interruption which gives rise to the claim.

(3) Reimbursements made under this section shall be from funds appropriated by the Congress pursuant to the authorization contained in section 6916(g)[1] of this title.

(4) For purposes of judicial review, a determination by the Administrator under this subsection shall be considered final agency action.

(Pub. L. 89–272, title II, § 9009, as added Pub. L. 98–616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3287; amended Pub. L. 109–58, title XV, § 1532(b)(3), Aug. 8, 2005, 119 Stat. 1105.)

REFERENCES IN TEXT

Section 6916(g) of this title, referred to in subsec. (f)(3), probably means section 6916(f) of this title which authorizes appropriations for this subchapter. There is no subsec. (g) of section 6916.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, § 1532(b)(3)(A), substituted ''6991(7)(B)'' for ''6991(2)(B)''.

Subsec. (d). Pub. L. 109–58, § 1532(b)(3)(B), substituted ''subparagraphs (A) and (B) of section 6991(10)'' for ''section 6991(1)(A) and (B)''.

[1] See References in Text note below.

§ 6991i. Operator training

(a) Guidelines

(1) In general

Not later than 2 years after August 8, 2005, in consultation and cooperation with States and after public notice and opportunity for comment, the Administrator shall publish guidelines that specify training requirements for—

(A) persons having primary responsibility for on-site operation and maintenance of underground storage tank systems;

(B) persons having daily on-site responsibility for the operation and maintenance of underground storage tanks systems; and

(C) daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

(2) Considerations

The guidelines described in paragraph (1) shall take into account—

(A) State training programs in existence as of the date of publication of the guidelines;

(B) training programs that are being employed by tank owners and tank operators as of August 8, 2005;

(C) the high turnover rate of tank operators and other personnel;

(D) the frequency of improvement in underground storage tank equipment technology;

(E) the nature of the businesses in which the tank operators are engaged;

(F) the substantial differences in the scope and length of training needed for the different classes of persons described in subparagraphs (A), (B), and (C) of paragraph (1); and

(G) such other factors as the Administrator determines to be necessary to carry out this section.

(b) State programs

(1) In general

Not later than 2 years after the date on which the Administrator publishes the guidelines under subsection (a)(1) of this section, each State that receives funding under this subchapter shall develop State-specific training requirements that are consistent with the guidelines developed under subsection (a)(1) of this section.

(2) Requirements

State requirements described in paragraph (1) shall—

(A) be consistent with subsection (a) of this section;

(B) be developed in cooperation with tank owners and tank operators;

(C) take into consideration training programs implemented by tank owners and tank operators as of August 8, 2005; and

(D) be appropriately communicated to tank owners and operators.

(3) Financial incentive

The Administrator may award to a State that develops and implements requirements

described in paragraph (1), in addition to any funds that the State is entitled to receive under this subchapter, not more than $200,000, to be used to carry out the requirements.

(c) Training

All persons that are subject to the operator training requirements of subsection (a) of this section shall—

(1) meet the training requirements developed under subsection (b) of this section; and

(2) repeat the applicable requirements developed under subsection (b) of this section, if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with—

(A) a requirement or standard promulgated by the Administrator under section 6991b of this title; or

(B) a requirement or standard of a State program approved under section 6991c of this title.

(Pub. L. 89–272, title II, § 9010, as added Pub. L. 98–616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3287; amended Pub. L. 109–58, title XV, § 1524(a), Aug. 8, 2005, 119 Stat. 1095.)

REFERENCES IN TEXT

August 8, 2005, referred to in subsec. (b)(2)(C), was in the original ''the date of enactment of this section'', which was translated as meaning the date of enactment of Pub. L. 109–58, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2005—Pub. L. 109–58 amended section catchline and text generally. Prior to amendment, text read as follows: ''For authorization of appropriations to carry out this subchapter, see section 6916(g) of this title.''

§ 6991j. Use of funds for release prevention and compliance

Funds made available under section 6991m(2)(D) of this title from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subchapter—

(1) by a State, in accordance with a grant or cooperative agreement with the Administrator, of[1] State regulations pertaining to underground storage tanks regulated under this subchapter; and

(2) by the Administrator, for tanks regulated under this subchapter (including under a State program approved under section 6991c of this title).

(Pub. L. 89–272, title II, § 9011, as added Pub. L. 109–58, title XV, § 1526(a), Aug. 8, 2005, 119 Stat. 1097.)

§ 6991k. Delivery prohibition

(a) Requirements

(1) Prohibition of delivery or deposit

Beginning 2 years after August 8, 2005, it shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility which has been identified by the Administrator or a State implementing agency to be ineligible for such delivery, deposit, or acceptance.

[1] So in original.

(2) Guidance

Within 1 year after August 8, 2005, the Administrator shall, in consultation with the States, underground storage tank owners, and product delivery industries, publish guidelines detailing the specific processes and procedures they will use to implement the provisions of this section. The processes and procedures include, at a minimum—

(A) the criteria for determining which underground storage tank facilities are ineligible for delivery, deposit, or acceptance of a regulated substance;

(B) the mechanisms for identifying which facilities are ineligible for delivery, deposit, or acceptance of a regulated substance to the underground storage tank owning and fuel delivery industries;

(C) the process for reclassifying ineligible facilities as eligible for delivery, deposit, or acceptance of a regulated substance;

(D) one or more processes for providing adequate notice to underground storage tank owners and operators and supplier industries that an underground storage tank has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance; and

(E) a delineation of, or a process for determining, the specified geographic areas subject to paragraph (4).

(3) Compliance

States that receive funding under this subchapter shall, at a minimum, comply with the processes and procedures published under paragraph (2).

(4) Consideration

(A) Rural and remote areas

Subject to subparagraph (B), the Administrator or a State may consider not treating an underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated substance if such treatment would jeopardize the availability of, or access to, fuel in any rural and remote areas unless an urgent threat to public health, as determined by the Administrator, exists.

(B) Applicability

Subparagraph (A) shall apply only during the 180-day period following the date of a determination by the Administrator or the appropriate State under subparagraph (A).

(b) Effect on State authority

Nothing in this section shall affect or preempt the authority of a State to prohibit the delivery, deposit, or acceptance of a regulated substance to an underground storage tank.

(c) Defense to violation

A person shall not be in violation of subsection (a)(1) of this section if the person has not been provided with notice pursuant to subsection (a)(2)(D) of this section of the ineligibility of a facility for delivery, deposit, or acceptance of a regulated substance as determined by the Administrator or a State, as appropriate, under this section.

(Pub. L. 89–272, title II, § 9012, as added Pub. L. 109–58, title XV, § 1527(a), Aug. 8, 2005, 119 Stat.

1098; amended Pub. L. 109–168, § 1(a)(1), Jan. 10, 2006, 119 Stat. 3580.)

AMENDMENTS

2006—Subsec. (a)(2)(D). Pub. L. 109–168 substituted ''of a regulated'' for ''or a regulated''.

§ 6991*l*. Tanks on tribal lands

(a) Strategy

The Administrator, in coordination with Indian tribes, shall, not later than 1 year after August 8, 2005, develop and implement a strategy—

(1) giving priority to releases that present the greatest threat to human health or the environment, to take necessary corrective action in response to releases from leaking underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or

(B) any other area under the jurisdiction of an Indian tribe; and

(2) to implement and enforce requirements concerning underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or

(B) any other area under the jurisdiction of an Indian tribe.

(b) Report

Not later than 2 years after August 8, 2005, the Administrator shall submit to Congress a report that summarizes the status of implementation and enforcement of this subchapter in areas located wholly within—

(1) the boundaries of Indian reservations; and

(2) any other areas under the jurisdiction of an Indian tribe.

The Administrator shall make the report under this subsection available to the public.

(c) Not a safe harbor

This section does not relieve any person from any obligation or requirement under this subchapter.

(d) State authority

Nothing in this section applies to any underground storage tank that is located in an area under the jurisdiction of a State, or that is subject to regulation by a State, as of August 8, 2005.

(Pub. L. 89–272, title II, § 9013, as added Pub. L. 109–58, title XV, § 1529(a), Aug. 8, 2005, 119 Stat. 1101.)

§ 6991m. Authorization of appropriations

There are authorized to be appropriated to the Administrator the following amounts:

(1) To carry out this subchapter (except sections 6991b(h), 6991d(c), 6991j, and 6991k of this title) $50,000,000 for each of fiscal years 2006 through 2011.

(2) From the Trust Fund—

(A) to carry out section 6991b(h) of this title (except section 6991b(h)(12) of this title) $200,000,000 for each of fiscal years 2006 through 2011;

(B) to carry out section 6991b(h)(12) of this title, $200,000,000 for each of fiscal years 2006 through 2011;

(C) to carry out sections 6991b(i), 6991c(f), and 6991d(c) of this title $100,000,000 for each of fiscal years 2006 through 2011; and

(D) to carry out sections 6991i, 6991j, 6991k, and 6991*l* of this title $55,000,000 for each of fiscal years 2006 through 2011.

(Pub. L. 89–272, title II, § 9014, as added Pub. L. 109–58, title XV, § 1531(a), Aug. 8, 2005, 119 Stat. 1104; amended Pub. L. 109–168, § 1(a)(3), Jan. 10, 2006, 119 Stat. 3580; Pub. L. 109–432, div. A, title II, § 210(b), Dec. 20, 2006, 120 Stat. 2947; Pub. L. 109–433, § 1(b), Dec. 20, 2006, 120 Stat. 3196.)

AMENDMENTS

2006—Par. (2). Pub. L. 109–432 and Pub. L. 109–433 amended par. (2) identically, substituting ''Fund'' for ''Fund, notwithstanding section 9508(c)(1) of title 26'' in introductory provisions.

Pub. L. 109–168 substituted ''2006 through 2011'' for ''2005 through 2009'' wherever appearing.

SUBCHAPTER X—DEMONSTRATION MEDICAL WASTE TRACKING PROGRAM

§ 6992. Scope of demonstration program for medical waste

(a) Covered States

The States within the demonstration program established under this subchapter for tracking medical wastes shall be New York, New Jersey, Connecticut, the States contiguous to the Great Lakes and any State included in the program through the petition procedure described in subsection (c) of this section, except for any of such States in which the Governor notifies the Administrator under subsection (b) of this section that such State shall not be covered by the program.

(b) Opt out

(1) If the Governor of any State covered under subsection (a) of this section which is not contiguous to the Atlantic Ocean notifies the Administrator that such State elects not to participate in the demonstration program, the Administrator shall remove such State from the program.

(2) If the Governor of any other State covered under subsection (a) of this section notifies the Administrator that such State has implemented a medical waste tracking program that is no less stringent than the demonstration program under this subchapter and that such State elects not to participate in the demonstration program, the Administrator shall, if the Administrator determines that such State program is no less stringent than the demonstration program under this subchapter, remove such State from the demonstration program.

(3) Notifications under paragraphs (1) or (2) shall be submitted to the Administrator no later than 30 days after the promulgation of regulations implementing the demonstration program under this subchapter.

(c) Petition in

The Governor of any State may petition the Administrator to be included in the demonstration program and the Administrator may, in his discretion, include any such State. Such petition may not be made later than 30 days after

promulgation of regulations establishing the demonstration program under this subchapter, and the Administrator shall determine whether to include the State within 30 days after receipt of the State's petition.

(d) Expiration of demonstration program

The demonstration program shall expire on the date 24 months after the effective date of the regulations under this subchapter.

(Pub. L. 89–272, title II, § 11001, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2950.)

§ 6992a. Listing of medical wastes

(a) List

Not later than 6 months after November 1, 1988, the Administrator shall promulgate regulations listing the types of medical waste to be tracked under the demonstration program. Except as provided in subsection (b) of this section, such list shall include, but need not be limited to, each of the following types of solid waste:

(1) Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures.

(2) Pathological wastes, including tissues, organs, and body parts that are removed during surgery or autopsy.

(3) Waste human blood and products of blood, including serum, plasma, and other blood components.

(4) Sharps that have been used in patient care or in medical, research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades.

(5) Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals.

(6) Wastes from surgery or autopsy that were in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves.

(7) Laboratory wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents, including slides and cover slips, disposable gloves, laboratory coats, and aprons.

(8) Dialysis wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats.

(9) Discarded medical equipment and parts that were in contact with infectious agents.

(10) Biological waste and discarded materials contaminated with blood, excretion, excudates[1] or secretion from human beings or animals who are isolated to protect others from communicable diseases.

(11) Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Administrator to pose a threat to human health or the environment.

(b) Exclusions from list

The Administrator may exclude from the list under this section any categories or items described in paragraphs (6) through (10) of subsection (a) of this section which he determines do not pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(Pub. L. 89–272, title II, § 11002, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2951.)

§ 6992b. Tracking of medical waste

(a) Demonstration program

Not later than 6 months after November 1, 1988, the Administrator shall promulgate regulations establishing a program for the tracking of the medical waste listed in section 6992a of this title which is generated in a State subject to the demonstration program. The program shall (1) provide for tracking of the transportation of the waste from the generator to the disposal facility, except that waste that is incinerated need not be tracked after incineration, (2) include a system for providing the generator of the waste with assurance that the waste is received by the disposal facility, (3) use a uniform form for tracking in each of the demonstration States, and (4) include the following requirements:

(A) A requirement for segregation of the waste at the point of generation where practicable.

(B) A requirement for placement of the waste in containers that will protect waste handlers and the public from exposure.

(C) A requirement for appropriate labeling of containers of the waste.

(b) Small quantities

In the program under subsection (a) of this section, the Administrator may establish an exemption for generators of small quantities of medical waste listed under section 6992a of this title, except that the Administrator may not exempt from the program any person who, or facility that, generates 50 pounds or more of such waste in any calendar month.

(c) On-site incinerators

Concurrently with the promulgation of regulations under subsection (a) of this section, the Administrator shall promulgate a recordkeeping and reporting requirement for any generator in a demonstration State of medical waste listed in section 6992a of this title that (1) incinerates medical waste listed in section 6992a of this title on site and (2) does not track such waste under the regulations promulgated under subsection (a) of this section. Such requirement shall require the generator to report to the Administrator on the volume and types of medical waste listed in section 6992a of this title that the generator incinerated on site during the 6 months

[1] So in original. Probably should be ''exudates''.

following the effective date of the requirements of this subsection.

(d) Type of medical waste and types of generators

For each of the requirements of this section, the regulations may vary for different types of medical waste and for different types of medical waste generators.

(Pub. L. 89–272, title II, § 11003, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2952.)

§ 6992c. Inspections

(a) Requirements for access

For purposes of developing or assisting in the development of any regulation or report under this subchapter or enforcing any provision of this subchapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled medical waste shall, upon request of any officer, employee, or representative of the Environmental Protection Agency duly designated by the Administrator, furnish information relating to such waste, including any tracking forms required to be maintained under section 6992b of this title, conduct monitoring or testing, and permit such person at all reasonable times to have access to, and to copy, all records relating to such waste. For such purposes, such officers, employees, or representatives are authorized to—

(1) enter at reasonable times any establishment or other place where medical wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) conduct monitoring or testing; and

(3) inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

(b) Procedures

Each inspection under this section shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained if giving such an equal portion is feasible. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge of the premises concerned.

(c) Availability to public

The provisions of section 6927(b) of this title shall apply to records, reports, and information obtained under this section in the same manner and to the same extent as such provisions apply to records, reports, and information obtained under section 6927 of this title.

(Pub. L. 89–272, title II, § 11004, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2952.)

§ 6992d. Enforcement

(a) Compliance orders

(1) Violations

Whenever on the basis of any information the Administrator determines that any person has violated, or is in violation of, any requirement or prohibition in effect under this subchapter (including any requirement or prohibition in effect under regulations under this subchapter) (A) the Administrator may issue an order (i) assessing a civil penalty for any past or current violation, (ii) requiring compliance immediately or within a specified time period, or (iii) both, or (B) the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction. Any order issued pursuant to this subsection shall state with reasonable specificity the nature of the violation.

(2) Orders assessing penalties

Any penalty assessed in an order under this subsection shall not exceed $25,000 per day of noncompliance for each violation of a requirement or prohibition in effect under this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Public hearing

Any order issued under this subsection shall become final unless, not later than 30 days after issuance of the order, the persons named therein request a public hearing. Upon such request, the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section, the Administrator may issue subpoenas for the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(4) Violation of compliance orders

In the case of an order under this subsection requiring compliance with any requirement of or regulation under this subchapter, if a violator fails to take corrective action within the time specified in an order, the Administrator may assess a civil penalty of not more than $25,000 for each day of continued noncompliance with the order.

(b) Criminal penalties

Any person who—

(1) knowingly violates the requirements of or regulations under this subchapter;

(2) knowingly omits material information or makes any false material statement or representation in any label, record, report, or other document filed, maintained, or used for purposes of compliance with this subchapter or regulations thereunder; or

(3) knowingly generates, stores, treats, transports, disposes of, or otherwise handles any medical waste (whether such activity took place before or takes place after November 1, 1988) and who knowingly destroys, alters, conceals, or fails to file any record, report, or other document required to be maintained or filed for purposes of compliance with this subchapter or regulations thereunder

shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed 2 years (5 years

in the case of a violation of paragraph (1)). If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(c) Knowing endangerment

Any person who knowingly violates any provision of subsection (b) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall upon conviction be subject to a fine of not more than $250,000 or imprisonment for not more than 15 years, or both. A defendant that is an organization shall, upon conviction under this subsection, be subject to a fine of not more than $1,000,000. The terms of this paragraph shall be interpreted in accordance with the rules provided under section 6928(f) of this title.

(d) Civil penalties

Any person who violates any requirement of or regulation under this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this section, constitute a separate violation.

(e) Civil penalty policy

Civil penalties assessed by the United States or by the States under this subchapter shall be assessed in accordance with the Administrator's ''RCRA Civil Penalty Policy'', as such policy may be amended from time to time.

(Pub. L. 89–272, title II, § 11005, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2953.)

§ 6992e. Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government in a demonstration State (1) having jurisdiction over any solid waste management facility or disposal site at which medical waste is disposed of or otherwise handled, or (2) engaged in any activity resulting, or which may result, in the disposal, management, or handling of medical waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of medical waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders, civil, criminal, and administrative penalties, and other sanctions, including injunctive relief, fines, and imprisonment. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such order, penalty, or other sanction. For purposes of enforcing any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil, criminal, administrative penalty, or other sanction), against any such department, agency, or instrumentality, the United States hereby expressly waives any immunity otherwise applicable to the United States. The President may exempt any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) "Person" defined

For purposes of this chapter, the term ''person'' shall be treated as including each department, agency, and instrumentality of the United States.

(Pub. L. 89–272, title II, § 11006, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2954.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 20 of House Document No. 103–7.

§ 6992f. Relationship to State law

(a) State inspections and enforcement

A State may conduct inspections under[1] 6992c of this title and take enforcement actions under section 6992d of this title against any person, including any person who has imported medical waste into a State in violation of the requirements of, or regulations under, this subchapter, to the same extent as the Administrator. At the time a State initiates an enforcement action under section 6992d of this title against any person, the State shall notify the Administrator in writing.

(b) Retention of State authority

Nothing in this subchapter shall—

(1) preempt any State or local law; or

(2) except as provided in subsection (c) of this section, otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law.

[1] So in original. Probably should be ''under section''.

(c) State forms

Any State or local law which requires submission of a tracking form from any person subject to this subchapter shall require that the form be identical in content and format to the form required under section 6992b of this title, except that a State may require the submission of other tracking information which is supplemental to the information required on the form required under section 6992b of this title through additional sheets or such other means as the State deems appropriate.

(Pub. L. 89–272, title II, § 11007, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2955.)

§ 6992g. Repealed. Pub. L. 105–362, title V, § 501(h)(1)(A), Nov. 10, 1998, 112 Stat. 3284

Section, Pub. L. 89–272, title II, § 11008, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2956, related to Administrator's report to Congress concerning demonstration medical waste tracking program.

§ 6992h. Health impacts report

Within 24 months after November 1, 1988, the Administrator of the Agency for Toxic Substances and Disease Registry shall prepare for Congress a report on the health effects of medical waste, including each of the following—

(1) A description of the potential for infection or injury from the segregation, handling, storage, treatment, or disposal of medical wastes.

(2) An estimate of the number of people injured or infected annually by sharps, and the nature and seriousness of those injuries or infections.

(3) An estimate of the number of people infected annually by other means related to waste segregation, handling, storage, treatment, or disposal, and the nature and seriousness of those infections.

(4) For diseases possibly spread by medical waste, including Acquired Immune Deficiency Syndrome and hepatitis B, an estimate of what percentage of the total number of cases nationally may be traceable to medical wastes.

(Pub. L. 89–272, title II, § 11008, formerly § 11009, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2957; renumbered § 11008, Pub. L. 105–362, title V, § 501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

PRIOR PROVISIONS

A prior section 11008 of Pub. L. 89–272 was classified to section 6992g of this title prior to repeal by Pub. L. 105–362, § 501(h)(1)(A).

§ 6992i. General provisions

(a) Consultation

(1) In promulgating regulations under this subchapter, the Administrator shall consult with the affected States and may consult with other interested parties.

(2) The Administrator shall also consult with the International Joint Commission to determine how to monitor the disposal of medical waste emanating from Canada.

(b) Public comment

In the case of the regulations required by this subchapter to be promulgated within 9 months after November 1, 1988, the Administrator may promulgate such regulations in interim final form without prior opportunity for public comment, but the Administrator shall provide an opportunity for public comment on the interim final rule. The promulgation of such regulations shall not be subject to the Paperwork Reduction Act of 1980.[1]

(c) Relationship to subchapter III

Nothing in this subchapter shall affect the authority of the Administrator to regulate medical waste, including medical waste listed under section 6992a of this title, under subchapter III of this chapter.

(Pub. L. 89–272, title II, § 11009, formerly § 11010, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2957; renumbered § 11009, Pub. L. 105–362, title V, § 501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

REFERENCES IN TEXT

The Paperwork Reduction Act of 1980, referred to in subsec. (b), is Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§ 3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

PRIOR PROVISIONS

A prior section 11009 of Pub. L. 89–272 was renumbered section 11008 and is classified to section 6992h of this title.

§ 6992j. Effective date

The regulations promulgated under this subchapter shall take effect within 90 days after promulgation, except that, at the time of promulgation, the Administrator may provide for a shorter period prior to the effective date if he finds the regulated community does not need 90 days to come into compliance.

(Pub. L. 89–272, title II, § 11010, formerly § 11011, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2958; renumbered § 11010, Pub. L. 105–362, title V, § 501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

PRIOR PROVISIONS

A prior section 11010 of Pub. L. 89–272 was renumbered section 11009 and is classified to section 6992i of this title.

§ 6992k. Authorization of appropriations

There are authorized to be appropriated to the Administrator such sums as may be necessary for each of the fiscal years 1989 through 1991 for purposes of carrying out activities under this subchapter.

(Pub. L. 89–272, title II, § 11011, formerly § 11012, as added Pub. L. 100–582, § 2(a), Nov. 1, 1988, 102 Stat. 2958; renumbered § 11011, Pub. L. 105–362, title V, § 501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

PRIOR PROVISIONS

A prior section 11011 of Pub. L. 89–272 was renumbered section 11010 and is classified to section 6992j of this title.

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[1] See References in Text note below.

CHAPTER 83—ENERGY EXTENSION SERVICE

§§ 7001 to 7011. Repealed. Pub. L. 102–486, title I, § 143(a), Oct. 24, 1992, 106 Stat. 2843

Section 7001, Pub. L. 95–39, title V, § 502, June 3, 1977, 91 Stat. 191, related to congressional declaration and statement of purposes.

Section 7002, Pub. L. 95–39, title V, § 503, June 3, 1977, 91 Stat. 192, provided for establishment of Energy Extension Service.

Section 7003, Pub. L. 95–39, title V, § 504, June 3, 1977, 91 Stat. 192, provided for development and implementation of comprehensive program.

Section 7004, Pub. L. 95–39, title V, § 505, June 3, 1977, 91 Stat. 193, provided for initial implementation of State energy extension service plans.

Section 7005, Pub. L. 95–39, title V, § 506, June 3, 1977, 91 Stat. 195, provided for national implementation of State energy extension service plans.

Section 7006, Pub. L. 95–39, title V, § 507, June 3, 1977, 91 Stat. 198, related to administration of Energy Extension Service.

Section 7007, Pub. L. 95–39, title V, § 508, June 3, 1977, 91 Stat. 199, related to energy education, extension, and information.

Section 7008, Pub. L. 95–39, title V, § 509, June 3, 1977, 91 Stat. 199, provided for establishment of National Energy Extension Service Advisory Board.

Section 7009, Pub. L. 95–39, title V, § 511, June 3, 1977, 91 Stat. 201, related to records.

Section 7010, Pub. L. 95–39, title V, § 512, June 3, 1977, 91 Stat. 201, related to authorization of appropriations.

Section 7011, Pub. L. 95–39, title V, § 513, June 3, 1977, 91 Stat. 202, set out definitions.

SHORT TITLE

Section 501 of title V of Pub. L. 95–39, which provided that this title, which enacted this chapter and amended sections 5813 and 5818 of this title, could be cited as the ''National Energy Extension Service Act'', was repealed by Pub. L. 102–486, title I, § 143(a), Oct. 24, 1992, 106 Stat. 2843.

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§ 7101. Definitions

(a) As used in this chapter, unless otherwise provided or indicated by the context, the term the ''Department'' means the Department of Energy or any component thereof, including the Federal Energy Regulatory Commission.

(b) As used in this chapter (1) reference to ''function'' includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) reference to ''perform'', when used in relation to functions, includes the undertaking, fulfillment, or execution of any duty or obligation; and the exercise of power, authority, rights, and privileges.

(c) As used in this chapter, ''Federal lease'' means an agreement which, for any consideration, including but not limited to, bonuses, rents, or royalties conferred and covenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction.

(Pub. L. 95–91, § 2, Aug. 4, 1977, 91 Stat. 567.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (c), was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–28, § 1, July 18, 1997, 111 Stat. 245, provided that: ''This Act [amending sections 7191 and 7234 of this title and repealing section 776 of Title 15, Commerce and Trade] may be cited as the 'Department of Energy Standardization Act of 1997'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–271, § 1, Apr. 11, 1990, 104 Stat. 135, provided that: ''This Act [amending section 7171 of this title and enacting provisions set out as a note under section 7171 of this title] may be cited as the 'Federal Energy Regulatory Commission Member Term Act of 1990'.''

SHORT TITLE

Section 1 of Pub. L. 95–91 provided: ''That this Act [enacting this chapter and section 916 of Title 7, Agriculture, amending sections 6833 and 6839 of this title, section 19 of Title 3, The President, sections 101, 5108, and 5312 to 5316 of Title 5, Government Organization and Employees, section 1701z–8 of Title 12, Banks and Banking, and sections 766, 790a, 790d, and 2002 of Title 15, Commerce and Trade, repealing sections 2036 and 5818 of this title and sections 763, 768, and 786 of Title 15, enacting provisions set out as a note under section 2201 of this title, and repealing provisions set out as a note under section 761 of Title 15] may be cited as the 'Department of Energy Organization Act'.''

For short title of part E of title XXXI of div. C of Pub. L. 101–510, which enacted subchapter XIII of this chapter, as the ''Department of Energy Science Education Enhancement Act'', see section 3161 of Pub. L. 101–510, set out as a note under section 7381 of this title.

For short title of part A of title V of Pub. L. 103–382, which enacted subchapter XIV of this chapter, as the

''Albert Einstein Distinguished Educator Fellowship Act of 1994'', see section 511 of Pub. L. 103–382, set out as a note under section 7382 of this title.

For short title of subtitle D of title XXXI of div. C of Pub. L. 106–65, which enacted subchapter XV of this chapter, as the ''Department of Energy Facilities Safeguards, Security, and Counterintelligence Enhancement Act of 1999'', see section 3141 of Pub. L. 106–65, set out as a note under section 7383 of this title.

For short title of section 1 [div. C, title XXXVI] of Pub. L. 106–398, which enacted subchapter XVI of this chapter, as the ''Energy Employees Occupational Illness Compensation Program Act of 2000'', see section 1 [div. C, title XXXVI, § 3601] of Pub. L. 106–398, set out as a note under section 7384 of this title.

EXECUTIVE ORDER NO. 12083

Ex. Ord. No. 12083, Sept. 27, 1978, 43 F.R. 44813, as amended by Ex. Ord. No. 12121, Feb. 26, 1979, 44 F.R. 11195; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which established the Energy Coordinating Committee and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, § 20, Aug. 17, 1982, 47 F.R. 36100, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER I—DECLARATION OF FINDINGS AND PURPOSES

§ 7111. Congressional findings

The Congress of the United States finds that—

(1) the United States faces an increasing shortage of nonrenewable energy resources;

(2) this energy shortage and our increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens;

(3) a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals;

(4) responsibility for energy policy, regulation, and research, development and demonstration is fragmented in many departments and agencies and thus does not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs; and

(5) formulation and implementation of a national energy program require the integration of major Federal energy functions into a single department in the executive branch.

(Pub. L. 95–91, title I, § 101, Aug. 4, 1977, 91 Stat. 567.)

§ 7112. Congressional declaration of purpose

The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs. It is the purpose of this chapter:

(1) To establish a Department of Energy in the executive branch.

(2) To achieve, through the Department, effective management of energy functions of the Federal Government, including consultation with the heads of other Federal departments and agencies in order to encourage them to establish and observe policies consistent with a coordinated energy policy, and to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions.

(3) To provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid- and long-term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy production and import shortages.

(4) To create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program.

(5) To carry out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program, including—

(A) assessing the requirements for energy research and development;

(B) developing priorities necessary to meet those requirements;

(C) undertaking programs for the optimal development of the various forms of energy production and conservation; and

(D) disseminating information resulting from such programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies.

(6) To place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources.

(7) To continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department.

(8) To facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy supply reserve.

(9) To promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost.

(10) To establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President.

(11) To provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs.

(12) To foster and assure competition among parties engaged in the supply of energy and fuels.

(13) To assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety.

(14) To assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes of this chapter.

(15) To provide for, encourage, and assist public participation in the development and enforcement of national energy programs.

(16) To create an awareness of, and responsibility for, the fuel and energy needs of rural and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development.

(17) To foster insofar as possible the continued good health of the Nation's small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising.

(18) To provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this chapter.

(19) To ensure that the Department can continue current support of mathematics, science, and engineering education programs by using the personnel, facilities, equipment, and resources of its laboratories and by working with State and local education agencies, institutions of higher education, and business and industry. The Department's involvement in mathematics, science, and engineering education should be consistent with its main mission and should be coordinated with all Federal efforts in mathematics, science, and engineering education, especially with the Department of Education and the National Science Foundation (which have the primary Federal responsibility for mathematics, science, and engineering education).

(Pub. L. 95–91, title I, § 102, Aug. 4, 1977, 91 Stat. 567; Pub. L. 101–510, div. C, title XXXI, § 3163, Nov. 5, 1990, 104 Stat. 1841.)

AMENDMENTS

1990—Pub. L. 101–510 substituted ''chapter:'' for ''chapter—'' in introductory provisions, capitalized the first letter of the first word in each of pars. (1) to (18), substituted a period for last semicolon in each of pars. (1) to (17), struck out ''and'' at end of par. (17), and added par. (19).

§ 7113. Relationship with States

Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials. Nothing in this chapter shall affect the authority of any State over matters exclusively within its jurisdiction.

(Pub. L. 95–91, title I, § 103, Aug. 4, 1977, 91 Stat. 569.)

SUBCHAPTER II—ESTABLISHMENT OF DEPARTMENT

§ 7131. Establishment

There is established at the seat of government an executive department to be known as the Department of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this chapter referred to as the ''Secretary''), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this chapter, under the supervision and direction of the Secretary.

(Pub. L. 95–91, title II, § 201, Aug. 4, 1977, 91 Stat. 569.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Department of Energy, including the functions of the Secretary of Energy relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 121(g)(4), 183(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7132. Principal officers

(a) Deputy Secretary

There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5. The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

(b) Under Secretary for Science

(1) There shall be in the Department an Under Secretary for Science, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

(3) The Under Secretary for Science shall be appointed from among persons who—

(A) have extensive background in scientific or engineering fields; and

(B) are well qualified to manage the civilian research and development programs of the Department.

(4) The Under Secretary for Science shall—

(A) serve as the Science and Technology Advisor to the Secretary;

(B) monitor the research and development programs of the Department in order to advise the Secretary with respect to any undesirable duplication or gaps in the programs;

(C) advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department;

(D) advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

(E) advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department;

(F) advise the Secretary with respect to long-term planning, coordination, and development of a strategic framework for Department research and development activities; and

(G) carry out such additional duties assigned to the Under Secretary by the Secretary relating to basic and applied research, including supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 7133 of this title, as the Secretary considers advantageous.

(c) Under Secretary for Nuclear Security

(1) There shall be in the Department an Under Secretary for Nuclear Security, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5.

(2) The Under Secretary for Nuclear Security shall be appointed from among persons who—

(A) have extensive background in national security, organizational management, and appropriate technical fields; and

(B) are well qualified to manage the nuclear weapons, nonproliferation, and materials disposition programs of the National Nuclear Security Administration in a manner that advances and protects the national security of the United States.

(3) The Under Secretary for Nuclear Security shall serve as the Administrator for Nuclear Security under section 2402 of title 50. In carrying out the functions of the Administrator, the Under Secretary shall be subject to the authority, direction, and control of the Secretary. Such authority, direction, and control may be delegated only to the Deputy Secretary of Energy, without redelegation.

(d) Under Secretary

(1) There shall be in the Department an Under Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe, consistent with this section.

(2) The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

(e) General Counsel

(1) There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe.

(2) The General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(Pub. L. 95–91, title II, § 202, Aug. 4, 1977, 91 Stat. 569; Pub. L. 106–65, div. C, title XXXII, § 3202, Oct. 5, 1999, 113 Stat. 954; Pub. L. 109–58, title X, § 1006(a), (c)(1), Aug. 8, 2005, 119 Stat. 930, 931.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58, § 1006(a), added subsec. (b) and struck out former subsec. (b) which read as follows: "There shall be in the Department an Under Secretary and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The Under Secretary shall bear primary responsibility for energy conservation. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5."

Subsecs. (d), (e). Pub. L. 109–58, § 1006(c)(1), added subsecs. (d) and (e).

1999—Subsec. (c). Pub. L. 106–65 added subsec. (c).

TERM OF OFFICE OF PERSON FIRST APPOINTED AS UNDER SECRETARY FOR NUCLEAR SECURITY OF THE DEPARTMENT OF ENERGY

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3151], Oct. 30, 2000, 114 Stat. 1654, 1654A–464, provided that:

"(a) LENGTH OF TERM.—The term of office as Under Secretary for Nuclear Security of the Department of Energy of the person first appointed to that position shall be three years.

"(b) EXCLUSIVE REASONS FOR REMOVAL.—The exclusive reasons for removal from office as Under Secretary for Nuclear Security of the person described in subsection (a) shall be inefficiency, neglect of duty, or malfeasance in office.

"(c) POSITION DESCRIBED.—The position of Under Secretary for Nuclear Security of the Department of Energy referred to in this section is the position established by subsection (c) of section 202 of the Department of Energy Organization Act (42 U.S.C. 7132), as added by section 3202 of the National Nuclear Security Administration Act (title XXXII of Public Law 106–65; 113 Stat. 954)."

Substantially identical provisions were contained in Pub. L. 106–377, § 1(a)(2) [title III, § 313], Oct. 27, 2000, 114 Stat. 1441, 1441A–81.

§ 7133. Assistant Secretaries; appointment and confirmation; identification of responsibilities

(a) There shall be in the Department 7 Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of

the Executive Schedule under section 5315 of title 5; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this chapter. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

(1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.

(2) Energy research and development functions, including the responsibility for policy and management of research and development for all aspects of—

(A) solar energy resources;

(B) geothermal energy resources;

(C) recycling energy resources;

(D) the fuel cycle for fossil energy resources; and

(E) the fuel cycle for nuclear energy resources.

(3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a comprehensive program of research and development on the environmental effects of energy technologies and programs.

(4) International programs and international policy functions, including those functions which assist in carrying out the international energy purposes described in section 7112 of this title.

(5) Repealed. Pub. L. 106–65, div. C, title XXXII, § 3294(b), Oct. 5, 1999, 113 Stat. 970.

(6) Intergovernmental policies and relations, including responsibilities for assuring that national energy policies are reflective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.

(7) Competition and consumer affairs, including responsibilities for the promotion of competition in the energy industry and for the protection of the consuming public in the energy policymaking processes, and assisting the Secretary in the formulation and analysis of policies, rules, and regulations relating to competition and consumer affairs.

(8) Nuclear waste management responsibilities, including—

(A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;

(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;

(F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and

(G) the promulgation of such rules and regulations to implement the authority described in this paragraph,

except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.

(9) Energy conservation functions, including the development of comprehensive energy conservation strategies for the Nation, the planning and implementation of major research and demonstration programs for the development of technologies and processes to reduce total energy consumption, the administration of voluntary and mandatory energy conservation programs, and the dissemination to the public of all available information on energy conservation programs and measures.

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

(11) Public and congressional relations functions, including responsibilities for providing a continuing liaison between the Department and the Congress and the Department and the public.

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) of this section (or any portion thereof) for which such individual will be responsible.

(Pub. L. 95–91, title II, § 203, Aug. 4, 1977, 91 Stat. 570; Pub. L. 106–65, div. C, title XXXII, § 3294(a)(2), (b), Oct. 5, 1999, 113 Stat. 970; Pub. L. 109–58, title X, § 1006(b)(1), Aug. 8, 2005, 119 Stat. 931.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58 substituted ''7'' for ''six'' in introductory provisions.

1999—Subsec. (a). Pub. L. 106–65, § 3294(a)(2), substituted ''six'' for ''eight'' in introductory provisions.

Subsec. (a)(5). Pub. L. 106–65, § 3294(b), struck out par. (5) which read as follows: ''National security functions, including those transferred to the Department from the Energy Research and Development Administration which relate to management and implementation of the nuclear weapons program and other national security functions involving nuclear weapons research and development.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

FEDERAL POWER MARKETING ADMINISTRATION EMPLOYMENT LEVELS

Pub. L. 101–514, title V, § 510, Nov. 5, 1990, 104 Stat. 2098, provided that no funds appropriated or made available were to be used by the executive branch to change employment levels determined by Administrators of the Federal Power Marketing Administrations to be necessary to carry out their responsibilities under this chapter and related laws, or to change employment levels of other Department of Energy programs to compensate for employment levels of the Federal Power Marketing Administrations, prior to repeal by Pub. L. 104–46, title V, § 501, Nov. 13, 1995, 109 Stat. 419.

MARKETING AND EXCHANGE OF SURPLUS ELECTRICITY FROM NAVAJO GENERATING STATION

Pub. L. 98–381, title I, § 107, Aug. 17, 1984, 98 Stat. 1339, provided that:

''(a) Subject to the provisions of any existing layoff contracts, electrical capacity and energy associated with the United States' interest in the Navajo generating station which is in excess of the pumping requirements of the Central Arizona project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, as amended [43 U.S.C. 1571(b)(2)(B)] (hereinafter in this Act referred to as 'Navajo surplus') shall be marketed and exchanged by the Secretary of Energy pursuant to this section.

''(b) Navajo surplus shall be marketed by the Secretary of Energy pursuant to the plan adopted under subsection (c) of this section, directly to, with or through the Arizona Power Authority and/or other entities having the status of preference entities under the reclamation law in accordance with the preference provisions of section 9(c) of the Reclamation Project Act of 1939 [43 U.S.C. 485h(c)] and as provided in part IV, section A of the Criteria.

''(c) In the marketing and exchanging of Navajo surplus, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (or its successor in interest to the repayment obligation for the Central Arizona project), for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project. The Secretary of the Interior, in concert with the Secretary of Energy, in accordance with section 14 of the Reclamation Project Act of 1939 [43 U.S.C. 389], shall grant electrical power and energy exchange rights with Arizona entities as necessary to implement the adopted plan: *Provided, however*, That if exchange rights with Arizona entities are not required to implement the adopted plan, exchange rights may be offered to other entities.

''(d) For the purposes provided in subsection (c) of this section, the Secretary of Energy, or the marketing entity or entities under the adopted plan, are authorized to establish and collect or cause to be established and collected, rate components, in addition to those currently authorized, and to deposit the revenues received in the Lower Colorado River Basin Development Fund to be available for such purposes and if required under the adopted plan, to credit, utilize, pay over directly or assign revenues from such additional rate components to make repayment and establish reserves for repayment of funds, including interest incurred, to entities which have advanced funds for the purposes of subsection (c) of this section: *Provided, however*, That rates shall not exceed levels that allow for an appropriate saving for the contractor.

''(e) To the extent that this section may be in conflict with any other provision of law relating to the marketing and exchange of Navajo surplus, or to the disposition of any revenues therefrom, this section shall control.''

§ 7134. Federal Energy Regulatory Commission; compensation of Chairman and members

There shall be within the Department, a Federal Energy Regulatory Commission established by subchapter IV of this chapter (hereinafter referred to in this chapter as the ''Commission''). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5. The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy.

(Pub. L. 95–91, title II, § 204, Aug. 4, 1977, 91 Stat. 571.)

§ 7135. Energy Information Administration

(a) Establishment; appointment of Administrator; compensation; qualifications; duties

(1) There shall be within the Department an Energy Information Administration to be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for in level IV of the Executive Schedule under section 5315 of title 5. The Administrator shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(2) The Administrator shall be responsible for carrying out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

(b) Delegation of functions

The Secretary shall delegate to the Administrator (which delegation may be on a nonexclusive basis as the Secretary may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the functions vested in him by law relating to gathering, analysis, and dissemination of energy information (as defined in section 796 of title 15) and the Administrator may act in the name of the Secretary for the purpose of obtaining enforcement of such delegated functions.

(c) Functions of Director of Office of Energy Information and Analysis

In addition to, and not in limitation of the functions delegated to the Administrator pursuant to other subsections of this section, there

shall be vested in the Administrator, and he shall perform, the functions assigned to the Director of the Office of Energy Information and Analysis under part B of the Federal Energy Administration Act of 1974 [15 U.S.C. 790 et seq.], and the provisions of sections 53(d) and 59 thereof [15 U.S.C. 790b(d), 790h] shall be applicable to the Administrator in the performance of any function under this chapter.

(d) Collection or analysis of information and preparation of reports without approval

The Administrator shall not be required to obtain the approval of any other officer or employee of the Department in connection with the collection or analysis of any information; nor shall the Administrator be required, prior to publication, to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

(e) Annual audit

The Energy Information Administration shall be subject to an annual professional audit review of performance as described in section 55[1] of part B of the Federal Energy Administration Act of 1974.

(f) Furnishing information or analysis to any other administration, commission, or office within Department

The Administrator shall, upon request, promptly provide any information or analysis in his possession pursuant to this section to any other administration, commission, or office within the Department which such administration, commission, or office determines relates to the functions of such administration, commission, or office.

(g) Availability of information to public

Information collected by the Energy Information Administration shall be cataloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily adaptable for public use, except that this subsection shall not require disclosure of matters exempted from mandatory disclosure by section 552(b) of title 5. The provisions of section 796(d) of title 15, and section 5916 of this title, shall continue to apply to any information obtained by the Administrator under such provisions.

(h) Identification and designation of "major energy producing companies"; format for financial report; accounting practices; filing of financial report; annual report of Department; definitions; confidentiality

(1)(A) In addition to the acquisition, collection, analysis, and dissemination of energy information pursuant to this section, the Administrator shall identify and designate ''major energy-producing companies'' which alone or with their affiliates are involved in one or more lines of commerce in the energy industry so that the energy information collected from such major energy-producing companies shall provide a statistically accurate profile of each line of commerce in the energy industry in the United States.

(B) In fulfilling the requirements of this subsection the Administrator shall—

(i) utilize, to the maximum extent practicable, consistent with the faithful execution of his responsibilities under this chapter, reliable statistical sampling techniques; and

(ii) otherwise give priority to the minimization of the reporting of energy information by small business.

(2) The Administrator shall develop and make effective for use during the second full calendar year following August 4, 1977, the format for an energy-producing company financial report. Such report shall be designed to allow comparison on a uniform and standardized basis among energy-producing companies and shall permit for the energy-related activities of such companies—

(A) an evaluation of company revenues, profits, cash flow, and investments in total, for the energy-related lines of commerce in which such company is engaged and for all significant energy-related functions within such company;

(B) an analysis of the competitive structure of sectors and functional groupings within the energy industry;

(C) the segregation of energy information, including financial information, describing company operations by energy source and geographic area;

(D) the determination of costs associated with exploration, development, production, processing, transportation, and marketing and other significant energy-related functions within such company; and

(E) such other analyses or evaluations as the Administrator finds is necessary to achieve the purposes of this chapter.

(3) The Administrator shall consult with the Chairman of the Securities and Exchange Commission with respect to the development of accounting practices required by the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] to be followed by persons engaged in whole or in part in the production of crude oil and natural gas and shall endeavor to assure that the energy-producing company financial report described in paragraph (2) of this subsection, to the extent practicable and consistent with the purposes and provisions of this chapter, is consistent with such accounting practices where applicable.

(4) The Administrator shall require each major energy-producing company to file with the Administrator an energy-producing company financial report on at least an annual basis and may request energy information described in such report on a quarterly basis if he determines that such quarterly report of information will substantially assist in achieving the purposes of this chapter.

(5) A summary of information gathered pursuant to this section, accompanied by such analysis as the Administrator deems appropriate, shall be included in the annual report of the De-

[1] See References in Text note below.

partment required by subsection (a)[2] of section 7267 of this title.

(6) As used in this subsection the term—

(A) ''energy-producing company'' means a person engaged in:

(i) ownership or control of mineral fuel resources or nonmineral energy resources;

(ii) exploration for, or development of, mineral fuel resources;

(iii) extraction of mineral fuel or nonmineral energy resources;

(iv) refining, milling, or otherwise processing mineral fuels or nonmineral energy resources;

(v) storage of mineral fuels or nonmineral energy resources;

(vi) the generation, transmission, or storage of electrical energy;

(vii) transportation of mineral fuels or nonmineral energy resources by any means whatever; or

(viii) wholesale or retail distribution of mineral fuels, nonmineral energy resources or electrical energy;

(B) ''energy industry'' means all energy-producing companies; and

(C) ''person'' has the meaning as set forth in section 796 of title 15.

(7) The provisions of section 1905 of title 18 shall apply in accordance with its terms to any information obtained by the Administration pursuant to this subsection.

(i) Manufacturers energy consumption survey

(1) The Administrator shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States at least once every two years and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information, including—

(A) quantity of fuels consumed;

(B) energy expenditures;

(C) fuel switching capabilities; and

(D) use of nonpurchased sources of energy, such as solar, wind, biomass, geothermal, waste by-products, and cogeneration.

(2) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

(j) Collection and publication of survey results

(1) The Administrator shall annually collect and publish the results of a survey of electricity production from domestic renewable energy resources, including production in kilowatt hours, total installed capacity, capacity factor, and any other measure of production efficiency. Such results shall distinguish between various renewable energy resources.

(2) In carrying out this subsection, the Administrator shall—

(A) utilize, to the maximum extent practicable and consistent with the faithful execution of his responsibilities under this chapter, reliable statistical sampling techniques; and

(B) otherwise take into account the reporting burdens of energy information by small businesses.

(3) As used in this subsection, the term ''renewable energy resources'' includes energy derived from solar thermal, geothermal, biomass, wind, and photovoltaic resources.

(k) Survey procedure

Pursuant to section 52(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a(a)), the Administrator shall—

(1) conduct surveys of residential and commercial energy use at least once every 3 years, and make such information available to the public;

(2) when surveying electric utilities, collect information on demand-side management programs conducted by such utilities, including information regarding the types of demand-side management programs being operated, the quantity of measures installed, expenditures on demand-side management programs, estimates of energy savings resulting from such programs, and whether the savings estimates were verified; and

(3) in carrying out this subsection, take into account reporting burdens and the protection of proprietary information as required by law.

***(l)* Data collection**

In order to improve the ability to evaluate the effectiveness of the Nation's energy efficiency policies and programs, the Administrator shall, in carrying out the data collection provisions of subsections (i) and (k) of this section, consider—

(1) expanding the survey instruments to include questions regarding participation in Government and utility conservation programs;

(2) expanding fuel-use surveys in order to provide greater detail on energy use by user subgroups; and

(3) expanding the scope of data collection on energy efficiency and load-management programs, including the effects of building construction practices such as those designed to obtain peak load shifting.

(m) Renewable fuels survey

(1) In order to improve the ability to evaluate the effectiveness of the Nation's renewable fuels mandate, the Administrator shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information both on a national and regional basis, including each of the following:

(A) The quantity of renewable fuels produced.

(B) The quantity of renewable fuels blended.

(C) The quantity of renewable fuels imported.

(D) The quantity of renewable fuels demanded.

(E) Market price data.

(F) Such other analyses or evaluations as the Administrator finds are necessary to achieve the purposes of this section.

[2] So in original. Section 7267 of this title was enacted without a subsec. (a).

(2) The Administrator shall also collect or estimate information both on a national and regional basis, pursuant to subparagraphs (A) through (F) of paragraph (1), for the 5 years prior to implementation of this subsection.

(3) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

(Pub. L. 95–91, title II, § 205, Aug. 4, 1977, 91 Stat. 572; Pub. L. 99–509, title III, § 3101(a), Oct. 21, 1986, 100 Stat. 1888; Pub. L. 102–486, title I, § 171, Oct. 24, 1992, 106 Stat. 2864; Pub. L. 109–58, title XV, § 1508, Aug. 8, 2005, 119 Stat. 1083.)

REFERENCES IN TEXT

The Federal Energy Administration Act of 1974, referred to in subsec. (c), is Pub. L. 93–275, May 7, 1974, 88 Stat. 96, as amended. Part B of the Federal Energy Administration Act of 1974 is classified generally to subchapter II (§ 790 et seq.) of chapter 16B of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

Section 55 of part B of the Federal Energy Administration Act of 1974, referred to in subsec. (e), was classified to section 790d of Title 15, Commerce and Trade, and was repealed by Pub. L. 104–66, title I, § 1051(k), Dec. 21, 1995, 109 Stat. 717.

The Energy Policy and Conservation Act, referred to in subsec. (h)(3), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

2005—Subsec. (m). Pub. L. 109–58 added subsec. (m).

1992—Subsec. (i)(1). Pub. L. 102–486, § 171(a)(1), in introductory provisions, substituted ''at least once every two years'' for ''on at least a triennial basis''.

Subsec. (i)(1)(D). Pub. L. 102–486, § 171(a)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''use of nonpurchased sources of energy, such as cogeneration and waste by-products.''

Subsecs. (j) to (*l*). Pub. L. 102–486, § 171(b), added subsecs. (j) to (*l*).

1986—Subsec. (i). Pub. L. 99–509 added subsec. (i).

END USE CONSUMPTION SURVEYS; MANUFACTURING ENERGY CONSUMPTION SURVEY

Pub. L. 104–134, title I, § 101(c) [title II], Apr. 26, 1996, 110 Stat. 1321–156, 1321–188; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, provided in part: ''That notwithstanding section 4(d) of the Service Contract Act of 1965 (41 U.S.C. 353(d)) or any other provision of law, funds appropriated under this heading [DEPARTMENT OF ENERGY, ENERGY INFORMATION ADMINISTRATION] hereafter may be used to enter into a contract for end use consumption surveys for a term not to exceed eight years: *Provided further*, That notwithstanding any other provision of law, hereafter the Manufacturing Energy Consumption Survey shall be conducted on a triennial basis.''

§ 7135a. Delegation by Secretary of Energy of energy research, etc., functions to Administrator of Energy Information Administration; prohibition against required delegation; utilization of capabilities by Secretary

Notwithstanding any other provision of law, the Secretary of Energy shall not be required to delegate to the Administrator of the Energy Information Administration any energy research, development, and demonstration function vested in the Secretary, pursuant to the Atomic Energy Act [42 U.S.C. 2011 et seq.], the Federal Nonnuclear Energy Research and Development Act [42 U.S.C. 5901 et seq.], the Geothermal Research, Development and Demonstration Act [30 U.S.C. 1101 et seq.], the Electric and Hybrid Vehicle Research, Development and Demonstration Act [15 U.S.C. 2501 et seq.], the Solar Heating and Cooling Demonstration Act [42 U.S.C. 5501 et seq.], the Solar Energy Research, Development and Demonstration Act [42 U.S.C. 5551 et seq.], and the Energy Reorganization Act [42 U.S.C. 5801 et seq.]. Additionally, the Secretary may utilize the capabilities of the Energy Information Administration as he deems appropriate for the conduct of such programs.

(Pub. L. 95–238, title I, § 104(b), Feb. 25, 1978, 92 Stat. 53.)

REFERENCES IN TEXT

The Atomic Energy Act, referred to in text, probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Nonnuclear Energy Research and Development Act, referred to in text, probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

The Geothermal Research, Development, and Demonstration Act, referred to in text, probably means the Geothermal Energy, Research, Development, and Demonstration Act of 1974, Pub. L. 93–410, Sept. 3, 1974, 88 Stat. 1079, as amended, which is classified generally to chapter 24 (§ 1101 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 30 and Tables.

The Electric and Hybrid Vehicle Research, Development and Demonstration Act, referred to in text, probably means the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94–413, Sept. 17, 1976, 90 Stat. 1260, as amended, which is classified generally to chapter 52 (§ 2501 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 15 and Tables.

The Solar Heating and Cooling Demonstration Act, referred to in text, probably means the Solar Heating and Cooling Demonstration Act of 1974, Pub. L. 93–409, Sept. 3, 1974, 88 Stat. 1069, as amended, which is classified generally to subchapter I (§ 5501 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Solar Energy Research, Development, and Demonstration Act, referred to in text, probably means the Solar Energy Research, Development, and Demonstration Act of 1974, Pub. L. 93–473, Oct. 26, 1974, 88 Stat. 1431, as amended, which is classified generally to subchapter II (§ 5551 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Energy Reorganization Act, referred to in text, probably means the Energy Reorganization Act of 1974, Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7136. Economic Regulatory Administration; appointment of Administrator; compensation; qualifications; functions

(a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of title 5. Such Administrator shall be, by demonstrated ability, background, training, or experience, an individual who is specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to, or vested in, the Administration.

(b) Consistent with the provisions of subchapter IV of this chapter, the Secretary shall utilize the Economic Regulatory Administration to administer such functions as he may consider appropriate.

(Pub. L. 95–91, title II, § 206, Aug. 4, 1977, 91 Stat. 574.)

§ 7137. Functions of Comptroller General

The functions of the Comptroller General of the United States under section 771 of title 15 shall apply with respect to the monitoring and evaluation of all functions and activities of the Department under this chapter or any other Act administered by the Department.

(Pub. L. 95–91, title II, § 207, Aug. 4, 1977, 91 Stat. 574.)

§ 7138. Repealed. Pub. L. 100–504, title I, § 102(e)(1)(A), Oct. 18, 1988, 102 Stat. 2517

Section, Pub. L. 95–91, title II, § 208, Aug. 4, 1977, 91 Stat. 575; Pub. L. 96–226, title II, § 202, Apr. 3, 1980, 94 Stat. 315; Pub. L. 97–375, title II, § 205, Dec. 21, 1982, 96 Stat. 1823, related to the Office of Inspector General in the Department of Energy, providing for (a) appointment and confirmation of Inspector General and Deputy Inspector General, removal, assistants, and compensation; (b) duties and responsibilities of Inspector General; (c) semiannual reports to Secretary and Congress; (d) report on problems, abuses, or deficiencies relating to administration of Department programs and operations; (e) additional investigations and reports; (f) transmittal of reports, information, or documents without clearance or approval; (g) additional authority of Inspector General; (h) auditing requirements; (i) avoidance of duplication and coordination and cooperation with activities of Comptroller General; and (j) report of violations of Federal criminal law to Attorney General. See section 9 of Pub. L. 95–452, Inspector General Act of 1978, as amended, set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 18, 1988, see section 113 of Pub. L. 100–504, set out as an Effective Date of 1988 Amendment note under section 5 of Pub. L. 95–452 [Inspector General Act of 1978] in the Appendix to Title 5, Government Organization and Employees.

§ 7139. Office of Science; establishment; appointment of Director; compensation; duties

(a) There shall be within the Department an Office of Science to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(b) It shall be the duty and responsibility of the Director—

(1) to advise the Secretary with respect to the physical research program transferred to the Department from the Energy Research and Development Administration;

(2) to monitor the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;

(3) to advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department, excluding laboratories that constitute part of the nuclear weapons complex;

(4) to advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

(5) to advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and

(6) to carry out such additional duties assigned to the Office by the Secretary.

(Pub. L. 95–91, title II, § 209, Aug. 4, 1977, 91 Stat. 577; Pub. L. 105–245, title III, § 309(a), Oct. 7, 1998, 112 Stat. 1853; Pub. L. 109–58, title X, § 1006(c)(4), Aug. 8, 2005, 119 Stat. 932.)

AMENDMENTS

2005—Subsec. (b)(6). Pub. L. 109–58 added par. (6) and struck out former par. (6) which read as follows: "to carry out such additional duties assigned to the Office by the Secretary relating to basic and applied research, including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 7133 of this title, as the Secretary considers advantageous."

1998—Pub. L. 105–245 substituted "Office of Science" for "Office of Energy Research" in section catchline and in subsec. (a).

§ 7140. Leasing Liaison Committee; establishment; composition

There is established a Leasing Liaison Committee which shall be composed of an equal number of members appointed by the Secretary and the Secretary of the Interior.

(Pub. L. 95–91, title II, § 210, Aug. 4, 1977, 91 Stat. 577.)

§ 7141. Office of Minority Economic Impact

(a) Establishment; appointment of Director; compensation

There shall be established within the Department an Office of Minority Economic Impact. The Office shall be headed by a Director, who shall be appointed by the President, by and with

the advice and consent of the Senate. The Director shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(b) Advice to Secretary on effect of energy policies, regulations, and other actions of Department respecting minority participation in energy programs

The Director shall have the duty and responsibility to advise the Secretary on the effect of energy policies, regulations, and other actions of the Department and its components on minorities and minority business enterprises and on ways to insure that minorities are afforded an opportunity to participate fully in the energy programs of the Department.

(c) Research programs respecting effects of national energy programs, policies, and regulations of Department on minorities

The Director shall conduct an ongoing research program, with the assistance of the Administrator of the Energy Information Administration, and such other Federal agencies as the Director determines appropriate, to determine the effects (including the socio-economic and environmental effects) of national energy programs, policies, and regulations of the Department on minorities. In conducting such program, the Director shall, from time to time, develop and recommend to the Secretary policies to assist, where appropriate, such minorities and minority business enterprises concerning such effects. In addition, the Director shall, to the greatest extent practicable—

(1) determine the average energy consumption and use patterns of minorities relative to other population categories;

(2) evaluate the percentage of disposable income spent on energy by minorities relative to other population categories; and

(3) determines how programs, policies, and actions of the Department and its components affect such consumption and use patterns and such income.

(d) Management and technical assistance to minority educational institutions and business enterprises to foster participation in research, development, demonstration, and contract activities of Department

The Director may provide the management any[1] technical assistance he considers appropriate to minority educational institutions and minority business enterprises to enable these enterprises and institutions to participate in the research, development, demonstration, and contract activities of the Department. In carrying out his functions under this section, the Director may enter into contracts, in accordance with section 7256 of this title and other applicable provisions of law, with any person, including minority educational institutions, minority business enterprises, and organizations the primary purpose of which is to assist the development of minority communities. The management and technical assistance may include—

(1) a national information clearinghouse which will develop and disseminate information on the aspects of energy programs to minority business enterprises, minority educational institutions and other appropriate minority organizations;

(2) market research, planning economic and business analysis, and feasibility studies to identify and define economic opportunities for minorities in energy research, production, conservation, and development;

(3) technical assistance programs to encourage, promote, and assist minority business enterprises in establishing and expanding energy-related business opportunities which are located in minority communities and that can provide jobs to workers in such communities; and

(4) programs to assist minority business enterprises in the commercial application of energy-related technologies.

(e) Loans to minority business enterprises; restriction on use of funds; interest; deposits into Treasury

(1) The Secretary, acting through the Office, may provide financial assistance in the form of loans to any minority business enterprise under such rules as he shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department to the extent he considers appropriate. He shall limit the use of financial assistance to providing funds necessary for such enterprises to bid for and obtain contracts or other agreements, and shall limit the amount of the financial assistance to any recipient to not more than 75 percent of such costs.

(2) The Secretary shall determine the rate of interest on loans under this section in consultation with the Secretary of the Treasury.

(3) The Secretary shall deposit into the Treasury as miscellaneous receipts amounts received in connection with the repayment and satisfaction of such loans.

(f) Definitions

As used in this section, the term—

(1) ''minority'' means any individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut or is a Spanish speaking individual of Spanish descent;

(2) ''minority business enterprise'' means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a minority or group of minorities; and

(3) ''minority educational institution'' means an educational institution with an enrollment in which a substantial proportion (as determined by the Secretary) of the students are minorities.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out the functions of the Office not to exceed $3,000,000 for fiscal year 1979, not to exceed $5,000,000 for fiscal year 1980, and not to exceed $6,000,000 for fiscal year 1981. Of the amounts so appropriated each fiscal year, not less than 50 percent shall be available for purposes of financial assistance under subsection (e) of this section.

[1] So in original. Probably should be ''and''.

(Pub. L. 95–91, title II, § 211, as added Pub. L. 95–619, title VI, § 641, Nov. 9, 1978, 92 Stat. 3284.)

§ 7142. National Atomic Museum

(a) Recognition and status

The museum operated by the Department of Energy and currently located at Building 20358 on Wyoming Avenue South near the corner of M street within the confines of the Kirtland Air Force Base (East), Albuquerque, New Mexico—

(1) is recognized as the official atomic museum of the United States;

(2) shall be known as the ''National Atomic Museum''; and

(3) shall have the sole right throughout the United States and its possessions to have and use the name ''National Atomic Museum''.

(b) Volunteers

(1) In operating the National Atomic Museum, the Secretary of Energy may—

(A) recruit, train, and accept the services of individuals without compensation as volunteers for, or in aid of, interpretive functions or other services or activities of and related to the museum; and

(B) provide to volunteers incidental expenses, such as nominal awards, uniforms, and transportation.

(2) Except as provided in paragraphs (3) and (4), a volunteer who is not otherwise employed by the Federal Government is not subject to laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, because of service as a volunteer under this subsection.

(3) For purposes of chapter 171 of title 28 (relating to tort claims), a volunteer under this subsection is considered a Federal employee.

(4) For the purposes of subchapter I of chapter 81 of title 5 (relating to compensation for work-related injuries), a volunteer under this subsection is considered an employee of the United States.

(c) Authority

(1) In operating the National Atomic Museum, the Secretary of Energy may—

(A) accept and use donations of money or gifts pursuant to section 7262[1] of this title, if such gifts or money are designated in a written document signed by the donor as intended for the museum, and such donations or gifts are determined by the Secretary to be suitable and beneficial for use by the museum;

(B) operate a retail outlet on the premises of the museum for the purpose of selling or distributing mementos, replicas of memorabilia, literature, materials, and other items of an informative, educational, and tasteful nature relevant to the contents of the museum; and

(C) exhibit, perform, display, and publish information and materials concerning museum mementos, items, memorabilia, and replicas thereof in any media or place anywhere in the world, at reasonable fees or charges where feasible and appropriate, to substantially cover costs.

(2) The net proceeds of activities authorized under subparagraphs (B) and (C) of paragraph (1) may be used by the National Atomic Museum for activities of the museum.

(Pub. L. 102–190, div. C, title XXXI, § 3137, Dec. 5, 1991, 105 Stat. 1578; Pub. L. 103–35, title II, § 203(b)(4), May 31, 1993, 107 Stat. 102.)

REFERENCES IN TEXT

Section 7262 of this title, referred to in subsec. (c)(1)(A), was repealed by Pub. L. 104–206, title V, § 502, Sept. 30, 1996, 110 Stat. 3002.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103–35 struck out comma after ''Secretary of Energy'' in introductory provisions.

§ 7142a. Designation of American Museum of Science and Energy

(a) In general

The Museum—

(1) is designated as the ''American Museum of Science and Energy''; and

(2) shall be the official museum of science and energy of the United States.

(b) References

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Museum is deemed to be a reference to the ''American Museum of Science and Energy''.

(c) Property of the United States

(1) In general

The name ''American Museum of Science and Energy'' is declared the property of the United States.

(2) Use

The Museum shall have the sole right throughout the United States and its possessions to have and use the name ''American Museum of Science and Energy''.

(3) Effect on other rights

This subsection shall not be construed to conflict or interfere with established or vested rights.

(Pub. L. 106–554, § 1(a)(4) [div. B, title IV, § 401], Dec. 21, 2000, 114 Stat. 2763, 2763A–266.)

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7142b. Authority

To carry out the activities of the Museum, the Secretary may—

(1) accept and dispose of any gift, devise, or bequest of services or property, real or personal, that is—

(A) designated in a written document by the person making the gift, devise, or bequest as intended for the Museum; and

[1] See References in Text note below.

(B) determined by the Secretary to be suitable and beneficial for use by the Museum;

(2) operate a retail outlet on the premises of the Museum for the purpose of selling or distributing items (including mementos, food, educational materials, replicas, and literature) that are—

(A) relevant to the contents of the Museum; and

(B) informative, educational, and tasteful;

(3) collect reasonable fees where feasible and appropriate;

(4) exhibit, perform, display, and publish materials and information of or relating to the Museum in any media or place;

(5) consistent with guidelines approved by the Secretary, lease space on the premises of the Museum at reasonable rates and for uses consistent with such guidelines; and

(6) use the proceeds of activities authorized under this section to pay the costs of the Museum.

(Pub. L. 106–554, § 1(a)(4) [div. B, title IV, § 402], Dec. 21, 2000, 114 Stat. 2763, 2763A–267.)

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7142c. Museum volunteers

(a) Authority to use volunteers

The Secretary may recruit, train, and accept the services of individuals or entities as volunteers for services or activities related to the Museum.

(b) Status of volunteers

(1) In general

Except as provided in paragraph (2), service by a volunteer under subsection (a) of this section shall not be considered Federal employment.

(2) Exceptions

(A) Federal Tort Claims Act

For purposes of chapter 171 of title 28, a volunteer under subsection (a) of this section shall be treated as an employee of the Government (as defined in section 2671 of that title).

(B) Compensation for work injuries

For purposes of subchapter I of chapter 81 of title 5, a volunteer described in subsection (a) of this section shall be treated as an employee (as defined in section 8101 of title 5).

(c) Compensation

A volunteer under subsection (a) of this section shall serve without pay, but may receive nominal awards and reimbursement for incidental expenses, including expenses for a uniform or transportation in furtherance of Museum activities.

(Pub. L. 106–554, § 1(a)(4) [div. B, title IV, § 403], Dec. 21, 2000, 114 Stat. 2763, 2763A–267.)

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7142d. Definitions

For purposes of sections 7142a to 7142d of this title:

(1) Museum

The term ''Museum'' means the museum operated by the Secretary of Energy and located at 300 South Tulane Avenue in Oak Ridge, Tennessee.

(2) Secretary

The term ''Secretary'' means the Secretary of Energy or a designated representative of the Secretary.

(Pub. L. 106–554, § 1(a)(4) [div. B, title IV, § 404], Dec. 21, 2000, 114 Stat. 2763, 2763A–268.)

REFERENCES IN TEXT

Sections 7142a to 7142d of this title, referred to in text, was in the original ''this Act'', and was translated as reading ''this title'', meaning § 1(a)(4) [div. B, title IV] of Pub. L. 106–554, which enacted sections 7142a to 7142d of this title, to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7143. Repealed. Pub. L. 106–65, div. C, title XXXII, § 3294(d)(1), Oct. 5, 1999, 113 Stat. 970

Section, Pub. L. 95–91, title II, § 212, as added Pub. L. 103–337, div. C, title XXXI, § 3158(a), Oct. 5, 1994, 108 Stat. 3093, established the Office of Fissile Materials Disposition.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

§ 7144. Establishment of policy for National Nuclear Security Administration

(a) Responsibility for establishing policy

The Secretary shall be responsible for establishing policy for the National Nuclear Security Administration.

(b) Review of programs and activities

The Secretary may direct officials of the Department who are not within the National Nuclear Security Administration to review the programs and activities of the Administration and to make recommendations to the Secretary regarding administration of those programs and activities, including consistency with other similar programs and activities of the Department.

(c) Staff

The Secretary shall have adequate staff to support the Secretary in carrying out the Secretary's responsibilities under this section.

(Pub. L. 95–91, title II, § 213, as added Pub. L. 106–65, div. C, title XXXII, § 3203(a), Oct. 5, 1999, 113 Stat. 954.)

EFFECTIVE DATE

Section effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as a note under section 2401 of Title 50, War and National Defense.

§ 7144a. Establishment of security, counterintelligence, and intelligence policies

(a) Duty of Secretary

The Secretary shall be responsible for developing and promulgating the security, counterintelligence, and intelligence policies of the Department. The Secretary may use the immediate staff of the Secretary to assist in developing and promulgating those policies.

(b) Intelligence Executive Committee

(1) There is within the Department an Intelligence Executive Committee. The Committee shall consist of the Deputy Secretary of Energy, who shall chair the Committee, and each Under Secretary of Energy.

(2) The Committee shall be staffed by the Director of the Office of Intelligence and the Director of the Office of Counterintelligence.

(3) The Secretary shall use the Committee to assist in developing and promulgating the counterintelligence and intelligence policies, requirements, and priorities of the Department.

(c) Budget justification materials

In the budget justification materials submitted to Congress in support of each budget submitted by the President to Congress under title 31, the amounts requested for the Department for intelligence functions and the amounts requested for the Department for counterintelligence functions shall each be specified in appropriately classified individual, dedicated program elements. Within the amounts requested for counterintelligence functions, the amounts requested for the National Nuclear Security Administration shall be specified separately from the amounts requested for other elements of the Department.

(Pub. L. 95–91, title II, § 214, as added Pub. L. 106–65, div. C, title XXXII, § 3204(a), Oct. 5, 1999, 113 Stat. 955; amended Pub. L. 109–364, div. C, title XXXI, § 3117(g), Oct. 17, 2006, 120 Stat. 2508.)

AMENDMENTS

2006—Pub. L. 109–364 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE

Section effective Oct. 5, 1999, see section 3299 of Pub. L. 106–65, set out as a note under section 2401 of Title 50, War and National Defense.

§ 7144b. Office of Counterintelligence

(a) Establishment

There is within the Department an Office of Counterintelligence.

(b) Director

(1) The head of the Office shall be the Director of the Office of Counterintelligence, who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to counterintelligence.

(3) The Director of the Federal Bureau of Investigation may detail, on a reimbursable basis, any employee of the Bureau to the Department for service as Director of the Office. The service of an employee of the Bureau as Director of the Office shall not result in any loss of status, right, or privilege by the employee within the Bureau.

(c) Duties

(1) The Director of the Office shall be responsible for establishing policy for counterintelligence programs and activities at Department facilities in order to reduce the threat of disclosure or loss of classified and other sensitive information at such facilities.

(2) The Director of the Office shall be responsible for establishing policy for the personnel assurance programs of the Department.

(3) The Director shall inform the Secretary, the Director of Central Intelligence, and the Director of the Federal Bureau of Investigation on a regular basis, and upon specific request by any such official, regarding the status and effectiveness of the counterintelligence programs and activities at Department facilities.

(d) Annual reports

(1) Not later than March 1 each year, the Director of the Office shall submit a report on the status and effectiveness of the counterintelligence programs and activities at each Department facility during the preceding year. Each such report shall be submitted to the following:

(A) The Secretary.

(B) The Director of Central Intelligence.

(C) The Director of the Federal Bureau of Investigation.

(D) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(E) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(2) Each such report shall include for the year covered by the report the following:

(A) A description of the status and effectiveness of the counterintelligence programs and activities at Department facilities.

(B) A description of any violation of law or other requirement relating to intelligence, counterintelligence, or security at such facilities, including—

(i) the number of violations that were investigated; and

(ii) the number of violations that remain unresolved.

(C) A description of the number of foreign visitors to Department facilities, including the locations of the visits of such visitors.

(D) The adequacy of the Department's procedures and policies for protecting national security information, making such recommendations to Congress as may be appropriate.

(E) A determination of whether each Department of Energy national laboratory is in full compliance with all departmental security requirements and, in the case of any such laboratory that is not, what measures are being taken to bring that laboratory into compliance.

(3) Not less than 30 days before the date that the report required by paragraph (1) is submitted, the director of each Department of Energy national laboratory shall certify in writing to the Director of the Office whether that laboratory is in full compliance with all departmental security requirements and, if not, what measures are being taken to bring that laboratory into compliance and a schedule for implementing those measures.

(4) Each report under this subsection as submitted to the committees referred to in subparagraphs (D) and (E) of paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(Pub. L. 95–91, title II, § 215, as added Pub. L. 106–65, div. C, title XXXII, § 3204(a), Oct. 5, 1999, 113 Stat. 955; amended Pub. L. 109–364, div. C, title XXXI, § 3117(f), Oct. 17, 2006, 120 Stat. 2508.)

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–364 substituted ''who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate'' for ''which shall be a position in the Senior Executive Service''.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE

Section effective Oct. 5, 1999, see section 3299 of Pub. L. 106–65, set out as a note under section 2401 of Title 50, War and National Defense.

TRANSFER OF FUNCTIONS

Pub. L. 109–364, div. C, title XXXI, § 3117(a), Oct. 17, 2006, 120 Stat. 2507, provided that:

''(a) TRANSFER OF FUNCTIONS.—

''(1) IN GENERAL.—The functions, personnel, funds, assets, and other resources of the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration are transferred to the Secretary of Energy, to be administered (except to any extent otherwise directed by the Secretary) by the Director of the Office of Counterintelligence of the Department of Energy.

''(2) SUNSET.—Effective September 30, 2010—

''(A) the functions, personnel, funds, assets, and other resources transferred by paragraph (1) are transferred to the Administrator for Nuclear Security;

''(B) [Amended section 2410 of Title 50, War and National Defense.]

''(C) [Amended section 2423 of Title 50.]''

§ 7144c. Office of Intelligence

(a) Establishment

There is within the Department an Office of Intelligence.

(b) Director

(1) The head of the Office shall be the Director of the Office of Intelligence, who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to foreign intelligence.

(c) Duties

Subject to the authority, direction, and control of the Secretary, the Director of the Office shall perform such duties and exercise such powers as the Secretary may prescribe.

(Pub. L. 95–91, title II, § 216, as added Pub. L. 106–65, div. C, title XXXII, § 3204(a), Oct. 5, 1999, 113 Stat. 956; amended Pub. L. 109–364, div. C, title XXXI, § 3117(f), Oct. 17, 2006, 120 Stat. 2508.)

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–364 substituted ''who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate'' for ''which shall be a position in the Senior Executive Service''.

EFFECTIVE DATE

Section effective Oct. 5, 1999, see section 3299 of Pub. L. 106–65, set out as a note under section 2401 of Title 50, War and National Defense.

§ 7144d. Office of Arctic Energy

(a) Establishment

The Secretary of Energy may establish within the Department of Energy an Office of Arctic Energy.

(b) Purposes

The purposes of such office shall be as follows:

(1) To promote research, development, and deployment of electric power technology that is cost-effective and especially well suited to meet the needs of rural and remote regions of the United States, especially where permafrost is present or located nearby.

(2) To promote research, development, and deployment in such regions of—

(A) enhanced oil recovery technology, including heavy oil recovery, reinjection of carbon, and extended reach drilling technologies;

(B) gas-to-liquids technology and liquified natural gas (including associated transportation systems);

(C) small hydroelectric facilities, river turbines, and tidal power;

(D) natural gas hydrates, coal bed methane, and shallow bed natural gas; and

(E) alternative energy, including wind, geothermal, and fuel cells.

(c) Location

The Secretary shall locate such office at a university with expertise and experience in the matters specified in subsection (b) of this section.

(Pub. L. 106–398, § 1 [div. C, title XXXI, § 3197], Oct. 30, 2000, 114 Stat. 1654, 1654A–482.)

CODIFICATION

Section was enacted as part of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7144e. Office of Indian Energy Policy and Programs

(a) Establishment

There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the ''Office''). The Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5.

(b) Duties of Director

The Director, in accordance with Federal policies promoting Indian self-determination and the purposes of this chapter, shall provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

(1) promote Indian tribal energy development, efficiency, and use;

(2) reduce or stabilize energy costs;

(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

(4) bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds.

(Pub. L. 95–91, title II, § 217, as added Pub. L. 109–58, title V, § 502(a), Aug. 8, 2005, 119 Stat. 763.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SUBCHAPTER III—TRANSFERS OF FUNCTIONS

§ 7151. General transfers

(a) Except as otherwise provided in this chapter, there are transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration.

(b) Except as provided in subchapter IV of this chapter, there are transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 7172(a)(2) of this title to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

(Pub. L. 95–91, title III, § 301, Aug. 4, 1977, 91 Stat. 577.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Energy, see Parts 1, 2, and 7 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

EX. ORD. NO. 12038. TRANSFER OF CERTAIN FUNCTIONS TO SECRETARY OF ENERGY

Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, as amended by Ex. Ord. No. 12156, Sept. 10, 1979, 44 F.R. 53073, provided:

By virtue of the authority vested in me as President of the United States of America, in order to reflect the responsibilities of the Secretary of Energy for the performance of certain functions previously vested in other officers of the United States by direction of the President and subsequently transferred to the Secretary of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 et seq.) it is hereby ordered as follows:

SECTION 1. *Functions of the Federal Energy Administration.* In accordance with the transfer of all functions vested by law in the Federal Energy Administration, or the Administrator thereof, to the Secretary of Energy pursuant to Section 301(a) of the Department of Energy Organization Act [subsec. (a) of this section], hereinafter referred to as the Act, the Executive Orders and Proclamations referred to in this Section, which conferred authority or responsibility upon the Administrator of the Federal Energy Administration, are amended as follows:

(a) Executive Order No. 11647, as amended [formerly set out as a note under 31 U.S.C. 501], relating to Federal Regional Councils, is further amended by deleting ''The Federal Energy Administration'' in Section 1(a)(10) and substituting ''The Department of Energy'', and by deleting ''The Deputy Administrator of the Federal Energy Administration'' in Section 3(a)(10) and substituting ''The Deputy Secretary of Energy''.

(b) Executive Order No. 11790 of June 25, 1974 [set out as a note under 15 U.S.C. 761], relating to the Federal Energy Administration Act of 1974, is amended by deleting ''Administrator of the Federal Energy Administration'' and ''Administrator'' wherever they appear in Sections 1 through 6 and substituting ''Secretary of Energy'' and ''Secretary'', respectively, and by deleting Section 7 through 10.

(c) Executive Order No. 11912, as amended [set out as a note under 42 U.S.C. 6201], relating to energy policy and conservation, and Proclamation No. 3279, as amended [set out as a note under 19 U.S.C. 1862], relating to imports of petroleum and petroleum products, are further amended by deleting ''Administrator of the

Federal Energy Administration'', ''Federal Energy Administration'', and ''Administrator'' (when used in reference to the Federal Energy Administration) wherever those terms appear and by substituting ''Secretary of Energy'', ''Department of Energy'', and ''Secretary'', respectively, and by deleting ''the Administrator of Energy Research and Development'' in Section 10(a)(1) of Executive Order No. 11912, as amended.

SEC. 2. *Functions of the Federal Power Commission*. In accordance with the transfer of functions vested in the Federal Power Commission to the Secretary of Energy pursuant to Section 301(b) of the Act [subsec. (b) of this section], the Executive Orders referred to in this Section, which conferred authority or responsibility upon the Federal Power Commission, or Chairman thereof, are amended or modified as follows:

(a) Executive Order No. 10485 of September 3, 1953, [set out as a note under 15 U.S.C. 717b], relating to certain facilities at the borders of the United States is amended by deleting Section 2 thereof, and by deleting ''Federal Power Commission'' and ''Commission'' wherever those terms appear in Sections 1, 3 and 4 of such Order and substituting for each ''Secretary of Energy''.

(b) Executive Order No. 11969 of February 2, 1977 [formerly set out as a note under 15 U.S.C. 717], relating to the administration of the Emergency Natural Gas Act of 1977 [formerly set out as a note under 15 U.S.C. 717], is hereby amended by deleting the second sentence in Section 1, by deleting ''the Secretary of the Interior, the Administrator of the Federal Energy Administration, other members of the Federal Power Commission and in Section 2, and by deleting ''Chairman of the Federal Power Commission'' and ''Chairman'' wherever those terms appear and substituting therefor ''Secretary of Energy'' and ''Secretary'', respectively.

(c) Paragraph (2) of Section 3 of Executive Order No. 11331, as amended [formerly set out as a note under 42 U.S.C. 1962b], relating to the Pacific Northwest River Basins Commission, is hereby amended by deleting ''from each of the following Federal departments and agencies'' and substituting therefor ''to be appointed by the head of each of the following Executive agencies'', by deleting ''Federal Power Commission'' and substituting therefor ''Department of Energy'', and by deleting ''such member to be appointed by the head of each department or independent agency he represents,''.

SEC. 3. *Functions of the Secretary of the Interior*. In accordance with the transfer of certain functions vested in the Secretary of the Interior to the Secretary of Energy pursuant to Section 302 of the Act [42 U.S.C. 7152], the Executive Orders referred to in this Section, which conferred authority or responsibility on the Secretary of the Interior, are amended or modified as follows:

(a) Sections 1 and 4 of Executive Order No. 8526 of August 27, 1940, relating to functions of the Bonneville Power Administration, are hereby amended by substituting ''Secretary of Energy'' for ''Secretary of the Interior'', by adding ''of the Interior'' after ''Secretary'' in Sections 2 and 3, and by adding ''and the Secretary of Energy,'' after ''the Secretary of the Interior'' wherever the latter term appears in Section 5.

(b) Executive Order No. 11177 of September 16, 1964, relating to the Columbia River Treaty, is amended by deleting ''Secretary of the Interior'' and ''Department of the Interior'' wherever those terms appear and substituting therefor ''Secretary of Energy'' and ''Department of Energy'', respectively.

SEC. 4. *Functions of the Atomic Energy Commission and the Energy Research and Development Administration*.

(a) In accordance with the transfer of all functions vested by law in the Administrator of Energy Research and Development to the Secretary of Energy pursuant to Section 301(a) of the Act [subsec. (a) of this section] the Executive Orders referred to in this Section are amended or modified as follows:

(1) All current Executive Orders which refer to functions of the Atomic Energy Commission, including Executive Order No. 10127, as amended; Executive Order No. 10865, as amended [set out as a note under 50 U.S.C. 435]; Executive Order No. 10899 of December 9, 1960 [set out as a note under 42 U.S.C. 2162]; Executive Order No. 11057 of December 18, 1962 [set out as a note under 42 U.S.C. 2162]; Executive Order No. 11477 of August 7, 1969 [set out as a note under 42 U.S.C. 2187]; Executive Order No. 11752 of December 17, 1973 [formerly set out as a note under 42 U.S.C. 4331]; and Executive Order No. 11761 of January 17, 1974 [formerly set out as a note under 20 U.S.C. 1221]; are modified to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Public Law 93–438; 88 Stat. 1233) [42 U.S.C. 5801 et seq.], and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.].

(2) Executive Order No. 11652, as amended [formerly set out as a note under 50 U.S.C. 435], relating to the classification of national security matters, is further amended by substituting ''Department of Energy'' for ''Energy Research and Development Administration'' in Sections 2(A), 7(A) and 8 and by deleting ''Federal Power Commission'' in Section 2(B)(3).

(3) Executive Order No. 11902 of February 2, 1976 [formerly set out as a note under 42 U.S.C. 5841], relating to export licensing policy for nuclear materials and equipment, is amended by substituting ''the Secretary of Energy'' for ''the Administrator of the United States Energy Research and Development Administration, hereinafter referred to as the Administrator'' in Section 1(b) and for the ''Administrator'' in Sections 2 and 3.

(4) Executive Order No. 11905, as amended, [formerly set out as a note under 50 U.S.C. 401], relating to foreign intelligence activities, is further amended by deleting ''Energy Research and Development Administration'', ''Administrator or the Energy Research and Development Administration'', and ''ERDA'' wherever those terms appear and substituting ''Department of Energy'', ''Secretary of Energy'', and ''DOE'' respectively.

(5) Section 3(2) of each of the following Executive Orders is amended by substituting ''Department of Energy'' for ''Energy Research and Development Administration'':

(i) Executive Order No. 11345, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Great Lakes River Basin Commission.

(ii) Executive Order No. 11371, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the New England River Basin Commission.

(iii) Executive Order No. 11578, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Ohio River Basin Commission.

(iv) Executive Order No. 11658, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Missouri River Basin Commission.

(v) Executive Order No. 11659, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Mississippi River Basin Commission.

SEC. 5. *Special Provisions Relating to Emergency Preparedness and Mobilization Functions*.

(a) Executive Order No. 10480, as amended [formerly set out as a note under 50 U.S.C. App. 2153], is further amended by adding thereto the following new Sections:

''Sec. 609. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Atomic Energy Commission, and (b) with respect to petroleum, gas, solid fuels and electric power, upon the Secretary of the Interior.

''Sec. 610. Whenever the Administrator of General Services believes that the functions of an Executive agency have been modified pursuant to law in such manner as to require the amendment of any Executive order which relates to the assignment of emergency

preparedness functions or the administration of mobilization programs, he shall promptly submit any proposals for the amendment of such Executive orders to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order No. 11030, as amended [set out as a note under 44 U.S.C. 1505].

(b) Executive Order No. 11490, as amended [formerly set out as a note under 50 U.S.C. App. 2251], is further amended by adding thereto the following new section:

''Sec. 3016. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Federal Power Commission, (b) the Energy Research and Development Administration, and (c) with respect to electric power, petroleum, gas and solid fuels, upon the Department of the Interior.''.

SEC. 6. This Order shall be effective as of October 1, 1977, the effective date of the Department of Energy Organization Act [this chapter] pursuant to the provisions of section 901 [42 U.S.C. 7341] thereof and Executive Order No. 12009 of September 13, 1977 [formerly set out as a note under 42 U.S.C. 7341], and all actions taken by the Secretary of Energy on or after October 1, 1977, which are consistent with the foregoing provisions are entitled to full force and effect.

JIMMY CARTER.

§ 7151a. Jurisdiction over matters transferred from Energy Research and Development Administration

Notwithstanding any other provision of law, jurisdiction over matters transferred to the Department of Energy from the Energy Research and Development Administration which on the effective date of such transfer were required by law, regulation, or administrative order to be made on the record after an opportunity for an agency hearing may be assigned to the Federal Energy Regulatory Commission or retained by the Secretary at his discretion.

(Pub. L. 95–238, title I, § 104(a), Feb. 25, 1978, 92 Stat. 53.)

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7152. Transfers from Department of the Interior

(a) Functions relating to electric power

(1) There are transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 825s of title 16, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

(C) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 [16 U.S.C. 832 et seq.] and the Federal Columbia River Transmission System Act [16 U.S.C. 838 et seq.];

(D) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(E) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration,[1] shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F)[2] of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

(b), (c) Repealed. Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407

(d) Functions of Bureau of Mines

There are transferred to, and vested in, the Secretary those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 15, 1910, and other authorities, exercised by the Bureau of Mines, but limited to—

(1) fuel supply and demand analysis and data gathering;

(2) research and development relating to increased efficiency of production technology of solid fuel minerals, other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining (which shall remain in the Department of the Interior); and

(3) coal preparation and analysis.

(Pub. L. 95–91, title III, § 302, Aug. 4, 1977, 91 Stat. 578; Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407; Pub. L. 104–58, title I, § 104(h), Nov. 28, 1995, 109 Stat. 560.)

REFERENCES IN TEXT

The Bonneville Project Act of 1937, referred to in subsec. (a)(1)(C), is act Aug. 20, 1937, ch. 720, 50 Stat. 731, as amended, which is classified generally to chapter 12B (§ 832 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 832 of Title 16 and Tables.

[1] So in original. The comma probably should not appear.

[2] See References in Text note below.

The Federal Columbia River Transmission System Act, referred to in subsec. (a)(1)(C), is Pub. L. 93–454, Oct. 18, 1974, 88 Stat. 1376, as amended, which is classified generally to chapter 12G (§ 838 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 838 of Title 16 and Tables.

Act of June 18, 1954, as amended by the Act of December 23, 1963, referred to in subsec. (a)(1)(E), is act June 18, 1954, ch. 310, 68 Stat. 255, which was not classified to the Code.

Paragraphs (1)(E) and (1)(F) of this subsection, referred to in subsec. (a)(3), were redesignated as pars. (1)(D) and (1)(E) of this subsection, respectively, by Pub. L. 104–58, title I, § 104(h)(1)(B), Nov. 28, 1995, 109 Stat. 560.

Act of May 15, 1910, referred to in subsec. (d), as amended, probably means act May 16, 1910, ch. 240, 36 Stat. 369, which is classified to sections 1, 3, and 5 to 7 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1995—Subsec. (a)(1)(C) to (F). Pub. L. 104–58, § 104(h)(1), redesignated subpars. (D) to (F) as (C) to (E), respectively, and struck out former subpar. (C) which read as follows: ''the Alaska Power Administration;''.

Subsec. (a)(2). Pub. L. 104–58, § 104(h)(2), inserted ''and'' after ''Southwestern Power Administration,'' and struck out ''and the Alaska Power Administration'' after ''Bonneville Power Administration,''.

1981—Subsecs. (b), (c). Pub. L. 97–100 struck out subsecs. (b) and (c) which related, respectively, to the functions of the Secretary of Energy to promulgate regulations under certain provisions of the Outer Continental Shelf Lands Act, the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act and to the functions of establishing production rates for all Federal leases.

CHANGE OF NAME

Bureau of Mines redesignated United States Bureau of Mines by section 10(b) of Pub. L. 102–285, set out as a note under section 1 of Title 30, Mineral Lands and Mining. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of Title 30.

EFFECTIVE DATE OF 1995 AMENDMENT

For effective date of amendment by Pub. L. 104–58, see section 104(h) of Pub. L. 104–58, set out below.

ALASKA POWER ADMINISTRATION ASSET SALE AND TERMINATION

Title I of Pub. L. 104–58 provided that:

''SEC. 101. SHORT TITLE.

''This title may be cited as the 'Alaska Power Administration Asset Sale and Termination Act'.

''SEC. 102. DEFINITIONS.

''For purposes of this title:

''(1) The term 'Eklutna' means the Eklutna Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Eklutna Purchase Agreement.

''(2) The term 'Eklutna Purchase Agreement' means the August 2, 1989, Eklutna Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Eklutna Purchasers, together with any amendments thereto adopted before the enactment of this section [Nov. 28, 1995].

''(3) The term 'Eklutna Purchasers' means the Municipality of Anchorage doing business as Municipal Light and Power, the Chugach Electric Association, Inc. and the Matanuska Electric Association, Inc.

''(4) The term 'Snettisham' means the Snettisham Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Snettisham Purchase Agreement.

''(5) The term 'Snettisham Purchase Agreement' means the February 10, 1989, Snettisham Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Alaska Power Authority and its successors in interest, together with any amendments thereto adopted before the enactment of this section.

''(6) The term 'Snettisham Purchaser' means the Alaska Industrial Development and Export Authority or a successor State agency or authority.

''SEC. 103. SALE OF EKLUTNA AND SNETTISHAM HYDROELECTRIC PROJECTS.

''(a) SALE OF EKLUTNA.—The Secretary of Energy is authorized and directed to sell Eklutna to the Eklutna Purchasers in accordance with the terms of this Act and the Eklutna Purchase Agreement.

''(b) SALE OF SNETTISHAM.—The Secretary of Energy is authorized and directed to sell Snettisham to the Snettisham Purchaser in accordance with the terms of this Act and the Snettisham Purchase Agreement.

''(c) COOPERATION OF OTHER AGENCIES.—The heads of other Federal departments, agencies, and instrumentalities of the United States shall assist the Secretary of Energy in implementing the sales and conveyances authorized and directed by this title.

''(d) PROCEEDS.—Proceeds from the sales required by this title shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to prepare, survey, and acquire Eklutna and Snettisham for sale and conveyance. Such preparations and acquisitions shall provide sufficient title to ensure the beneficial use, enjoyment, and occupancy by the purchasers.

''(f) CONTRIBUTED FUNDS.—Notwithstanding any other provision of law, the Alaska Power Administration is authorized to receive, administer, and expend such contributed funds as may be provided by the Eklutna Purchasers or customers or the Snettisham Purchaser or customers for the purposes of upgrading, improving, maintaining, or administering Eklutna or Snettisham. Upon the termination of the Alaska Power Administration under section 104(f), the Secretary of Energy shall administer and expend any remaining balances of such contributed funds for the purposes intended by the contributors.

''SEC. 104. EXEMPTION AND OTHER PROVISIONS.

''(a) FEDERAL POWER ACT.—(1) After the sales authorized by this Act occur, Eklutna and Snettisham, including future modifications, shall continue to be exempt from the requirements of Part I of the Federal Power Act (16 U.S.C. 791a et seq.), except as provided in subsection (b).

''(2) The exemption provided by paragraph (1) shall not affect the Memorandum of Agreement entered into among the State of Alaska, the Eklutna Purchasers, the Alaska Energy Authority, and Federal fish and wildlife agencies regarding the protection, mitigation of, damages to, and enhancement of fish and wildlife, dated August 7, 1991, which remains in full force and effect.

''(3) Nothing in this title or the Federal Power Act preempts the State of Alaska from carrying out the responsibilities and authorities of the Memorandum of Agreement.

''(b) SUBSEQUENT TRANSFERS.—Except for subsequent assignment of interest in Eklutna by the Eklutna Purchasers to the Alaska Electric Generation and Transmission Cooperative Inc. pursuant to section 19 of the Eklutna Purchase Agreement, upon any subsequent sale or transfer of any portion of Eklutna or Snettisham from the Eklutna Purchasers or the Snettisham Purchaser to any other person, the exemption set forth in paragraph (1) of subsection (a) of this section shall cease to apply to such portion.

''(c) REVIEW.—(1) The United States District Court for the District of Alaska shall have jurisdiction to review decisions made under the Memorandum of Agreement

and to enforce the provisions of the Memorandum of Agreement, including the remedy of specific performance.

''(2) An action seeking review of a Fish and Wildlife Program ('Program') of the Governor of Alaska under the Memorandum of Agreement or challenging actions of any of the parties to the Memorandum of Agreement prior to the adoption of the Program shall be brought not later than 90 days after the date on which the Program is adopted by the Governor of Alaska, or be barred.

''(3) An action seeking review of implementation of the Program shall be brought not later than 90 days after the challenged act implementing the Program, or be barred.

''(d) EKLUTNA LANDS.—With respect to Eklutna lands described in Exhibit A of the Eklutna Purchase Agreement:

''(1) The Secretary of the Interior shall issue rights-of-way to the Alaska Power Administration for subsequent reassignment to the Eklutna Purchasers—

''(A) at no cost to the Eklutna Purchasers;

''(B) to remain effective for a period equal to the life of Eklutna as extended by improvements, repairs, renewals, or replacements; and

''(C) sufficient for the operation of, maintenance of, repair to, and replacement of, and access to, Eklutna facilities located on military lands and lands managed by the Bureau of Land Management, including lands selected by the State of Alaska.

''(2) Fee title to lands at Anchorage Substation shall be transferred to Eklutna Purchasers at no additional cost if the Secretary of the Interior determines that pending claims to, and selections of, those lands are invalid or relinquished.

''(3) With respect to the Eklutna lands identified in paragraph 1 of Exhibit A of the Eklutna Purchase Agreement, the State of Alaska may select, and the Secretary of the Interior shall convey to the State, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly referred to as the Alaska Statehood Act, Public Law 85–508; 72 Stat. 339) [set out as a note preceding section 21 of Title 48, Territories and Insular Possessions], and the North Anchorage Land Agreement dated January 31, 1983. This conveyance shall be subject to the rights-of-way provided to the Eklutna Purchasers under paragraph (1).

''(e) SNETTISHAM LANDS.—With respect to the Snettisham lands identified in paragraph 1 of Exhibit A of the Snettisham Purchase Agreement and Public Land Order No. 5108, the State of Alaska may select, and the Secretary of the Interior shall convey to the State of Alaska, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly referred to as the Alaska Statehood Act, Public Law 85–508; 72 Stat. 339).

''(f) TERMINATION OF ALASKA POWER ADMINISTRATION.—Not later than one year after both of the sales authorized in section 103 have occurred, as measured by the Transaction Dates stipulated in the Purchase Agreements, the Secretary of Energy shall—

''(1) complete the business of, and close out, the Alaska Power Administration;

''(2) submit to Congress a report documenting the sales; and

''(3) return unobligated balances of funds appropriated for the Alaska Power Administration to the Treasury of the United States.

''(g) REPEALS.—(1) The Act of July 31, 1950 (64 Stat. 382) [enacting sections 312 to 312d of Title 48, Territories and Insular Possessions, and provisions formerly set out as a note under section 312 of Title 48] is repealed effective on the date that Eklutna is conveyed to the Eklutna Purchasers [ownership of Eklutna project transferred Oct. 2, 1997].

''(2) Section 204 of the Flood Control Act of 1962 (76 Stat. 1193) is repealed effective on the date that Snettisham is conveyed to the Snettisham Purchaser [purchase of Snettisham project completed Aug. 19, 1998].

''(3) The Act of August 9, 1955 [enacting sections 1962d–12 to 1962d–14 of this title], concerning water resources investigation in Alaska (69 Stat. 618), is repealed.

''(h) DOE ORGANIZATION ACT.—As of the later of the two dates determined in paragraphs (1) and (2) of subsection (g), section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)) is amended—

''(1) in paragraph (1)—

''(A) by striking subparagraph (C); and

''(B) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E) respectively; and

''(2) in paragraph (2) by striking out 'and the Alaska Power Administration' and by inserting 'and' after 'Southwestern Power Administration,'.

''(i) DISPOSAL.—The sales of Eklutna and Snettisham under this title are not considered disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949 [now chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and title III of the Act of June 30, 1949 (41 U.S.C. 251 et seq.)] (40 U.S.C. 484) [now 40 U.S.C. 541–555] or the Act of October 3, 1944, popularly referred to as the 'Surplus Property Act of 1944' (50 U.S.C. App. 1622).

''SEC. 105. OTHER FEDERAL HYDROELECTRIC PROJECTS.

''The provisions of this title regarding the sale of the Alaska Power Administration's hydroelectric projects under section 103 and the exemption of these projects from Part I of the Federal Power Act [16 U.S.C. 791a et seq.] under section 104 do not apply to other Federal hydroelectric projects.''

USE OF FUNDS TO STUDY NONCOST-BASED METHODS OF PRICING HYDROELECTRIC POWER

Pub. L. 102–377, title V, § 505, Oct. 2, 1992, 106 Stat. 1343, provided that: ''Notwithstanding any other provision of this Act, subsequent Energy and Water Development Appropriations Acts or any other provision of law hereafter, none of the funds made available under this Act, subsequent Energy and Water Development Appropriations Acts or any other law hereafter shall be used for the purposes of conducting any studies relating or leading to the possibility of changing from the currently required 'at cost' to a 'market rate' or any other noncost-based method for the pricing of hydroelectric power by the six Federal public power authorities, or other agencies or authorities of the Federal Government, except as may be specifically authorized by Act of Congress hereafter enacted.''

TRANSFERS TO SECRETARY OF THE INTERIOR OF CERTAIN FOSSIL ENERGY RESEARCH AND DEVELOPMENT AUTHORITIES

Pub. L. 97–257, title I, § 100, Sept. 10, 1982, 96 Stat. 841, provided: ''That there are transferred to, and vested in, the Secretary of the Interior all functions vested in, or delegated to, the Secretary of Energy and the Department of Energy under or with respect to (1) the Act of May 16, 1910 [30 U.S.C. 1, 3, 5–7], and other authorities formerly exercised by the Bureau of Mines [now United States Bureau of Mines], but limited to research and development relating to increased efficiency of production technology of solid fuel minerals; (2) section 908 of the Surface Mining Control and Reclamation Act of 1977, relating to research and development concerning alternative coal mining technologies (30 U.S.C. 1328); (3) sections 5(g)(2), 8(a)(4), 8(a)(9), 27(b)(2)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(g)(2) and 1337(a)(4) and 1337(a)(9) [and 1353(b)(2) and (3)]); and (4) section 105 of the Energy Policy and Conservation Act (42 U.S.C. 6213): *Provided further*, That the personnel employed, personnel positions, equipment, facilities, and unexpended balances of the aforementioned transferred programs shall be merged with the 'Mines and minerals' account of the Bureau of Mines.''

§ 7153. Administration of leasing transfers

(a) Authority retained by Secretary of the Interior

The Secretary of the Interior shall retain any authorities not transferred under section 7152(b)[1] of this title and shall be solely responsible for the issuance and supervision of Federal leases and the enforcement of all regulations applicable to the leasing of mineral resources, including but not limited to lease terms and conditions and production rates. No regulation promulgated by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under section 7152(b)[1] of this title with respect to the issuance or supervision of Federal leases. Nothing in section 7152(b)[1] of this title shall be construed to affect Indian lands and resources or to transfer any functions of the Secretary of the Interior concerning such lands and resources.

(b) Consultation with Secretary of the Interior with respect to promulgation of regulations

In exercising the authority under section 7152(b)[1] of this title to promulgate regulations, the Secretary shall consult with the Secretary of the Interior during the preparation of such regulations and shall afford the Secretary of the Interior not less than thirty days, prior to the date on which the Department first publishes or otherwise prescribes regulations, to comment on the content and effect of such regulations.

(c) Repealed. Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407

(d) Preparation of environmental impact statement

The Department of the Interior shall be the lead agency for the purpose of preparation of an environmental impact statement required by section 4332(2)(C) of this title for any action with respect to the Federal leases taken under the authority of this section, unless the action involves only matters within the exclusive authority of the Secretary.

(Pub. L. 95–91, title III, § 303, Aug. 4, 1977, 91 Stat. 579; Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407.)

REFERENCES IN TEXT

Section 7152(b) of this title, referred to in subsecs. (a) and (b), was repealed by Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407.

AMENDMENTS

1981—Subsec. (c). Pub. L. 97–100 struck out subsec. (c) which afforded the Secretary of Energy the opportunity to disapprove any terms and conditions on which the Secretary of the Interior proposed to issue a Federal lease.

§ 7154. Transfers from Department of Housing and Urban Development

(a) There is transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 304 of the Energy Conservation Standards for New Buildings Act of 1976 [42 U.S.C. 6833], to develop and promulgate energy conservation standards for new buildings. The Secretary of Housing and Urban Development shall provide the Secretary with any necessary technical assistance in the development of such standards. All other responsibilities, pursuant to title III of the Energy Conservation and Production Act [42 U.S.C. 6831 et seq.], shall remain with the Secretary of Housing and Urban Development, except that the Secretary shall be kept fully and currently informed of the implementation of the promulgated standards.

(b) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 1701z–8 of title 12.

(Pub. L. 95–91, title III, § 304, Aug. 4, 1977, 91 Stat. 580.)

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (a), is Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1125, as amended. Title III of the Energy Conservation and Production Act, known as the Energy Conservation Standards for New Buildings Act of 1976, is classified generally to subchapter II (§ 6831 et seq.) of chapter 81 of this title. For complete classification of the Energy Conservation and Production Act and the Energy Standards for New Buildings Act of 1976 to the Code, see Short Title note set out under section 6801 of this title and Tables.

§ 7155. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 95–91, title III, § 306, Aug. 4, 1977, 91 Stat. 581, transferred to Secretary the functions set forth in Interstate Commerce Act and vested by law in Interstate Commerce Commission or Chairman and members thereof as related to transportation of oil by pipeline. See section 60501 of Title 49, Transportation.

§ 7156. Transfers from Department of the Navy

There are transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, in the Secretary of the Navy as they relate to the administration of and jurisdiction over—

(1) Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912;

(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;

(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915;

(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919;

(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and

(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

In the administration of any of the functions transferred to, and vested in, the Secretary by

[1] See References in Text note below.

this section the Secretary shall take into consideration the requirements of national security.

(Pub. L. 95–91, title III, § 307, Aug. 4, 1977, 91 Stat. 581.)

§ 7156a. Repealed. Pub. L. 105–85, div. C, title XXXIV, § 3403, Nov. 18, 1997, 111 Stat. 2059

Section, Pub. L. 96–137, § 2, Dec. 12, 1979, 93 Stat. 1061, related to assignment of naval officers to key management positions within Office of Naval Petroleum and Oil Shale Reserves in Department of Energy and to position of Director.

§ 7157. Transfers from Department of Commerce

There are transferred to, and vested in, the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.

(Pub. L. 95–91, title III, § 308, Aug. 4, 1977, 91 Stat. 581.)

§ 7158. Naval reactor and military application programs

The Division of Naval Reactors established pursuant to section 2035 of this title, and responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs is transferred to the Department under the Under Secretary for Nuclear Security, and such organizational unit shall be deemed to be an organizational unit established by this chapter.

(Pub. L. 95–91, title III, § 309, Aug. 4, 1977, 91 Stat. 581; Pub. L. 106–65, div. C, title XXXII, § 3294(c), Oct. 5, 1999, 113 Stat. 970.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106–65 struck out subsec. (a) designation before ''The Division of Naval Reactors'', substituted ''Under Secretary for Nuclear Security'' for ''Assistant Secretary to whom the Secretary has assigned the function listed in section 7133(a)(2)(E) of this title'', and struck out subsec. (b) which read as follows: ''The Division of Military Application, established by section 2035 of this title, and the functions of the Energy Research and Development Administration with respect to the Military Liaison Committee, established by section 2037 of this title, are transferred to the Department under the Assistant Secretary to whom the Secretary has assigned those functions listed in section 7133(a)(5) of this title, and such organizational units shall be deemed to be organizational units established by this chapter.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

TRANSFER OF FUNCTIONS

All national security functions and activities performed immediately before Oct. 5, 1999, by the Office of Naval Reactors transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, and the Deputy Administrator for Naval Reactors of the Administration to be assigned the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors under Executive Order No. 12344, set out as a note under section 2511 of Title 50, War and National Defense, see sections 2406 and 2481 of Title 50.

Pub. L. 98–525, title XVI, § 1634, Oct. 19, 1984, 98 Stat. 2649, which was formerly set out as a note under this section, was renumbered section 4101 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L 108–136, div. C, title XXXI, § 3141(d)(2), Nov. 24, 2003, 117 Stat. 1757, and is set out as a note under section 2511 of Title 50, War and National Defense.

§ 7159. Transfer to Department of Transportation

Notwithstanding section 7151(a) of this title, there are transferred to, and vested in, the Secretary of Transportation all of the functions vested in the Administrator of the Federal Energy Administration by section 6361(b)(1)(B) of this title.

(Pub. L. 95–91, title III, § 310, Aug. 4, 1977, 91 Stat. 582.)

SUBCHAPTER IV—FEDERAL ENERGY REGULATORY COMMISSION

§ 7171. Appointment and administration

(a) Federal Energy Regulatory Commission; establishment

There is established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b) Composition; term of office; conflict of interest; expiration of terms

(1) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(2) Notwithstanding the third sentence of paragraph (1), the terms of members first taking office after April 11, 1990, shall expire as follows:

(A) In the case of members appointed to succeed members whose terms expire in 1991, one such member's term shall expire on June 30,

1994, and one such member's term shall expire on June 30, 1995, as designated by the President at the time of appointment.

(B) In the case of members appointed to succeed members whose terms expire in 1992, one such member's term shall expire on June 30, 1996, and one such member's term shall expire on June 30, 1997, as designated by the President at the time of appointment.

(C) In the case of the member appointed to succeed the member whose term expires in 1993, such member's term shall expire on June 30, 1998.

(c) Duties and responsibilities of Chairman

The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) Supervision and direction of members, employees, or other personnel of Commission

In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) Designation of Acting Chairman; quorum; seal

The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(f) Rules

The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

(g) Powers of Commission

In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5 relating to hearing examiners.

(h) Principal office of Commission

The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

(i) Commission deemed agency; attorney for Commission

For the purpose of section 552b of title 5, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this chapter or as otherwise authorized by law.

(j) Annual authorization and appropriation request

In each annual authorization and appropriation request under this chapter, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(Pub. L. 95–91, title IV, § 401, Aug. 4, 1977, 91 Stat. 582; Pub. L. 101–271, § 2(a), (b), Apr. 11, 1990, 104 Stat. 135.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (i) and (j), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–271 designated existing provisions as par. (1), substituted "5 years" for "four years", struck out after third sentence "The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three

years, and one at the end of four years.'', substituted ''A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires.'' for ''A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection.'', and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2(c) of Pub. L. 101–271 provided that: ''The amendments made by this section [amending this section] apply only to persons appointed or reappointed as members of the Federal Energy Regulatory Commission after the date of enactment of this Act [Apr. 11, 1990].''

RENEWABLE ENERGY AND ENERGY CONSERVATION INCENTIVES

Pub. L. 101–549, title VIII, § 808, Nov. 15, 1990, 104 Stat. 2690, provided that:

''(a) DEFINITION.—For purposes of this section, 'renewable energy' means energy from photovoltaic, solar thermal, wind, geothermal, and biomass energy production technologies.

''(b) RATE INCENTIVES STUDY.—Within 18 months after enactment [Nov. 15, 1990], the Federal Energy Regulatory Commission, in consultation with the Environmental Protection Agency, shall complete a study which calculates the net environmental benefits of renewable energy, compared to nonrenewable energy, and assigns numerical values to them. The study shall include, but not be limited to, environmental impacts on air, water, land use, water use, human health, and waste disposal.

''(c) MODEL REGULATIONS.—In conjunction with the study in subsection (b), the Commission shall propose one or more models for incorporating the net environmental benefits into the regulatory treatment of renewable energy in order to provide economic compensation for those benefits.

''(d) REPORT.—The Commission shall transmit the study and the model regulations to Congress, along with any recommendations on the best ways to reward renewable energy technologies for their environmental benefits, in a report no later than 24 months after enactment [Nov. 15, 1990].''

RETENTION AND USE OF REVENUES FROM LICENSING FEES, INSPECTION SERVICES, AND OTHER SERVICES AND COLLECTIONS; REDUCTION TO ACHIEVE FINAL FISCAL YEAR APPROPRIATION

Pub. L. 109–103, title III, Nov. 19, 2005, 119 Stat. 2277, provided in part: ''That notwithstanding any other provision of law, not to exceed $220,400,000 of revenues from fees and annual charges, and other services and collections in fiscal year 2006 shall be retained and used for necessary expenses in this account, and shall remain available until expended: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as revenues are received during fiscal year 2006 so as to result in a final fiscal year 2006 appropriation from the general fund estimated at not more than $0.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. C, title III, Dec. 8, 2004, 118 Stat. 2957.

Pub. L. 108–137, title III, Dec. 1, 2003, 117 Stat. 1859.

Pub. L. 108–7, div. D, title III, Feb. 20, 2003, 117 Stat. 153.

Pub. L. 107–66, title III, Nov. 12, 2001, 115 Stat. 508.

Pub. L. 106–377, § 1(a)(2) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–78.

Pub. L. 106–60, title III, Sept. 29, 1999, 113 Stat. 494.

Pub. L. 105–245, title III, Oct. 7, 1998, 112 Stat. 1851.

Pub. L. 105–62, title III, Oct. 13, 1997, 111 Stat. 1334.

Pub. L. 104–206, title III, Sept. 30, 1996, 110 Stat. 2998.

Pub. L. 104–46, title III, Nov. 13, 1995, 109 Stat. 416.

Pub. L. 103–316, title III, Aug. 26, 1994, 108 Stat. 1719.

Pub. L. 103–126, title III, Oct. 28, 1993, 107 Stat. 1330.

Pub. L. 102–377, title III, Oct. 2, 1992, 106 Stat. 1338.

Pub. L. 102–104, title III, Aug. 17, 1991, 105 Stat. 531.

Pub. L. 101–514, title III, Nov. 5, 1990, 104 Stat. 2093.

Pub. L. 101–101, title III, Sept. 29, 1989, 103 Stat. 661.

Pub. L. 100–371, title III, July 19, 1988, 102 Stat. 870.

Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–124.

Pub. L. 99–500, § 101(e) [title III], Oct. 18, 1986, 100 Stat. 1783–194, 1783–208, and Pub. L. 99–591, § 101(e) [title III], Oct. 30, 1986, 100 Stat. 3341–194, 3341–208.

§ 7172. Jurisdiction of Commission

(a) Transfer of functions from Federal Power Commission

(1) There are transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act [16 U.S.C. 791a et seq.];

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act [16 U.S.C. 824 et seq.], and the interconnection, under section 202(b), of such Act [16 U.S.C. 824a(b)], of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act [15 U.S.C. 717, 717c to 717e];

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act [15 U.S.C. 717f];

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act [15 U.S.C. 717 et seq.]; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act [16 U.S.C. 791a et seq.] and Natural Gas Act [15 U.S.C. 717 et seq.].

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act [16

U.S.C. 797, 825, 825a, 825e to 825h, 825k to 825*o*]; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act [15 U.S.C. 717g, 717h, 717*l* to 717p, 717s, 717t].

(b) Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

(c) Consideration of proposals made by Secretary to amend regulations issued under section 753 of title 15; exception

(1) Pursuant to the procedures specified in section 7174 of this title and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 753(a)[1] of title 15 which is required by section 757 or 760a[1] of title 15 to be transmitted by the President to, and reviewed by, each House of Congress, under section 6421 of this title.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 757 or 760a[1] of title 15, and section 6421 of this title.

(d) Matters involving agency determinations to be made on record after agency hearing

The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 6213 and 6214[1] of this title shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) Matters assigned by Secretary after public notice and matters referred under section 7174 of this title

In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 7174 of this title.

(f) Limitation

No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) Final agency action

The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 7174 of this title, shall be final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) Rules, regulations, and statements of policy

The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to this section.

(Pub. L. 95–91, title IV, § 402, Aug. 4, 1977, 91 Stat. 583; Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (a)(1)(A), (B), and (F), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. Parts I and II of the Federal Power Act are classified generally to subchapters I (§ 791a et seq.) and II (§ 824 et seq.), respectively, of chapter 12 of Title 16. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsec. (a)(1)(E), (F), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

Sections 753, 757, and 760a of title 15, referred to in subsec. (c), were omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under those sections on Sept. 30, 1981.

Section 6214 of this title, referred to in subsec. (d), was repealed by Pub. L. 106–469, title I, § 103(3), Nov. 9, 2000, 114 Stat. 2029.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–272 struck out subsec. (b) which read as follows: "There are transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline." See section 60502 of Title 49, Transportation.

OIL PIPELINE REGULATORY REFORM

Pub. L. 102–486, title XVIII, Oct. 24, 1992, 106 Stat. 3010, provided that:

"SEC. 1801. OIL PIPELINE RATEMAKING METHODOLOGY.

"(a) ESTABLISHMENT.—Not later than 1 year after the date of the enactment of this Act [Oct. 24, 1992], the Federal Energy Regulatory Commission shall issue a final rule which establishes a simplified and generally applicable ratemaking methodology for oil pipelines in accordance with section 1(5) of part I of the Interstate Commerce Act [former 49 U.S.C. 1(5)].

"(b) EFFECTIVE DATE.—The final rule to be issued under subsection (a) may not take effect before the 365th day following the date of the issuance of the rule.

"SEC. 1802. STREAMLINING OF COMMISSION PROCEDURES.

"(a) RULEMAKING.—Not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Commission shall issue a final rule to streamline procedures of the Commission relating to oil pipeline rates in order to avoid unnecessary regulatory costs and delays.

[1] See References in Text note below.

''(b) SCOPE OF RULEMAKING.—Issues to be considered in the rulemaking proceeding to be conducted under subsection (a) shall include the following:

''(1) Identification of information to be filed with an oil pipeline tariff and the availability to the public of any analysis of such tariff filing performed by the Commission or its staff.

''(2) Qualification for standing (including definitions of economic interest) of parties who protest oil pipeline tariff filings or file complaints thereto.

''(3) The level of specificity required for a protest or complaint and guidelines for Commission action on the portion of the tariff or rate filing subject to protest or complaint.

''(4) An opportunity for the oil pipeline to file a response for the record to an initial protest or complaint.

''(5) Identification of specific circumstances under which Commission staff may initiate a protest.

''(c) ADDITIONAL PROCEDURAL CHANGES.—In conducting the rulemaking proceeding to carry out subsection (a), the Commission shall identify and transmit to Congress any other procedural changes relating to oil pipeline rates which the Commission determines are necessary to avoid unnecessary regulatory costs and delays and for which additional legislative authority may be necessary.

''(d) WITHDRAWAL OF TARIFFS AND COMPLAINTS.—

''(1) WITHDRAWAL OF TARIFFS.—If an oil pipeline tariff which is filed under part I of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.] and which is subject to investigation is withdrawn—

''(A) any proceeding with respect to such tariff shall be terminated;

''(B) the previous tariff rate shall be reinstated; and

''(C) any amounts collected under the withdrawn tariff rate which are in excess of the previous tariff rate shall be refunded.

''(2) WITHDRAWAL OF COMPLAINTS.—If a complaint which is filed under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] with respect to an oil pipeline tariff is withdrawn, any proceeding with respect to such complaint shall be terminated.

''(e) ALTERNATIVE DISPUTE RESOLUTION.—To the maximum extent practicable, the Commission shall establish appropriate alternative dispute resolution procedures, including required negotiations and voluntary arbitration, early in an oil pipeline rate proceeding as a method preferable to adjudication in resolving disputes relating to the rate. Any proposed rates derived from implementation of such procedures shall be considered by the Commission on an expedited basis for approval.

''SEC. 1803. PROTECTION OF CERTAIN EXISTING RATES.

''(a) RATES DEEMED JUST AND REASONABLE.—Except as provided in subsection (b)—

''(1) any rate in effect for the 365-day period ending on the date of the enactment of this Act [Oct. 24, 1992] shall be deemed to be just and reasonable (within the meaning of section 1(5) of the Interstate Commerce Act [former 49 U.S.C. 1(5)]); and

''(2) any rate in effect on the 365th day preceding the date of such enactment shall be deemed to be just and reasonable (within the meaning of such section 1(5)) regardless of whether or not, with respect to such rate, a new rate has been filed with the Commission during such 365-day period;

if the rate in effect, as described in paragraph (1) or (2), has not been subject to protest, investigation, or complaint during such 365-day period.

''(b) CHANGED CIRCUMSTANCES.—No person may file a complaint under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] against a rate deemed to be just and reasonable under subsection (a) unless—

''(1) evidence is presented to the Commission which establishes that a substantial change has occurred after the date of the enactment of this Act [Oct. 24, 1992]—

''(A) in the economic circumstances of the oil pipeline which were a basis for the rate; or

''(B) in the nature of the services provided which were a basis for the rate; or

''(2) the person filing the complaint was under a contractual prohibition against the filing of a complaint which was in effect on the date of enactment of this Act and had been in effect prior to January 1, 1991, provided that a complaint by a party bound by such prohibition is brought within 30 days after the expiration of such prohibition.

If the Commission determines pursuant to a proceeding instituted as a result of a complaint under section 13 of the Interstate Commerce Act that the rate is not just and reasonable, the rate shall not be deemed to be just and reasonable. Any tariff reduction or refunds that may result as an outcome of such a complaint shall be prospective from the date of the filing of the complaint.

''(c) LIMITATION REGARDING UNDULY DISCRIMINATORY OR PREFERENTIAL TARIFFS.—Nothing in this section shall prohibit any aggrieved person from filing a complaint under section 13 or section 15(l) of the Interstate Commerce Act [former 49 U.S.C. 13, 15(1)] challenging any tariff provision as unduly discriminatory or unduly preferential.

''SEC. 1804. DEFINITIONS.

''For the purposes of this title, the following definitions apply:

''(1) COMMISSION.—The term 'Commission' means the Federal Energy Regulatory Commission and, unless the context requires otherwise, includes the Oil Pipeline Board and any other office or component of the Commission to which the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)) are delegated.

''(2) OIL PIPELINE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'oil pipeline' means any common carrier (within the meaning of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.]) which transports oil by pipeline subject to the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

''(B) EXCEPTION.—The term 'oil pipeline' does not include the Trans-Alaska Pipeline authorized by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) or any pipeline delivering oil directly or indirectly to the Trans-Alaska Pipeline.

''(3) OIL.—The term 'oil' has the same meaning as is given such term for purposes of the transfer of functions from the Interstate Commerce Commission to the Federal Energy Regulatory Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

''(4) RATE.—The term 'rate' means all charges that an oil pipeline requires shippers to pay for transportation services.''

§ 7173. Initiation of rulemaking procedures before Commission

(a) Proposal of rules, regulations, and statements of policy of general applicability by Secretary and Commission

The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 7172 of this title.

(b) Consideration and final action on proposals of Secretary

The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a) of this section, and shall consider

and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Utilization of rulemaking procedures for establishment of rates and charges under Federal Power Act and Natural Gas Act

Any function described in section 7172 of this title which relates to the establishment of rates and charges under the Federal Power Act [16 U.S.C. 791a et seq.] or the Natural Gas Act [15 U.S.C. 717 et seq.], may be conducted by rulemaking procedures. Except as provided in subsection (d) of this section, the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

(d) Submission of written questions by interested persons

With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act [15 U.S.C. 717 et seq.], the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

(Pub. L. 95–91, title IV, § 403, Aug. 4, 1977, 91 Stat. 585.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsecs. (c) and (d), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

§ 7174. Referral of other rulemaking proceedings to Commission

(a) Notification of Commission of proposed action; public comment

Except as provided in section 7173 of this title, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 7151 of this title or section 60501 of title 49, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 7172(a)(1) and (c)(1) of this title and section 60502 of title 49, the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Recommendations of Commission; publication

Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

(1) concur in adoption of the rule or statement as proposed by the Secretary;

(2) concur in adoption of the rule or statement only with such changes as it may recommend; or

(3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Options of Secretary; final agency action

Following publication of the Commission's recommendations the Secretary shall have the option of—

(1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1) of this section;

(2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2) of this section; or

(3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5.

(Pub. L. 95–91, title IV, § 404, Aug. 4, 1977, 91 Stat. 586.)

CODIFICATION

In subsec. (a), ''section 60501 of title 49'' substituted for reference to section 306 of this Act, meaning section 306 of Pub. L. 95–91 [42 U.S.C. 7155], and ''section 60502 of title 49'' substituted for reference to section 402(b), meaning section 402(b) of Pub. L. 95–91 [42 U.S.C. 7172(b)] on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

§ 7175. Right of Secretary to intervene in Commission proceedings

The Secretary may as a matter of right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedure fairness to all participants.

(Pub. L. 95–91, title IV, § 405, Aug. 4, 1977, 91 Stat. 586.)

§ 7176. Reorganization

For the purposes of chapter 9 of title 5 the Commission shall be deemed to be an independent regulatory agency.

(Pub. L. 95–91, title IV, § 406, Aug. 4, 1977, 91 Stat. 586.)

§ 7177. Access to information

(a) The Secretary, each officer of the Department, and each Federal agency shall provide to the Commission, upon request, such existing information in the possession of the Department or other Federal agency as the Commission determines is necessary to carry out its responsibilities under this chapter.

(b) The Secretary, in formulating the information to be requested in the reports or investigations under section 825c and section 825j of title 16 and section 717i and section 717j of title 15 shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be furnished by the Secretary to the Federal Energy Regulatory Commission.

(Pub. L. 95–91, title IV, § 407, Aug. 4, 1977, 91 Stat. 587.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7178. Federal Energy Regulatory Commission fees and annual charges

(a) In general

(1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this section and authority provided by other laws, assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.

(2) The provisions of this section shall not affect the authority, requirements, exceptions, or limitations in sections 803(e) and 823a(e) of title 16.

(b) Basis for assessments

The fees or annual charges assessed shall be computed on the basis of methods that the Commission determines, by rule, to be fair and equitable.

(c) Estimates

The Commission may assess fees and charges under this section by making estimates based on data available to the Commission at the time of assessment.

(d) Time of payment

The Commission shall provide that the fees and charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.

(e) Adjustments

The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person.

(f) Use of funds

All moneys received under this section shall be credited to the general fund of the Treasury.

(g) Waiver

The Commission may waive all or part of any fee or annual charge assessed under this section for good cause shown.

(Pub. L. 99–509, title III, § 3401, Oct. 21, 1986, 100 Stat. 1890.)

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of the Department of Energy Organization Act which comprises this chapter.

SUBCHAPTER V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

§ 7191. Procedures for issuance of rules, regulations, or orders

(a) Applicability of subchapter II of chapter 5 of title 5

(1) Subject to the other requirements of this subchapter, the provisions of subchapter II of chapter 5 of title 5 shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this chapter or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this subchapter. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this chapter, provides administrative procedure requirements in addition to the requirements provided in this subchapter, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this subchapter shall apply to the Commission to the same extent this subchapter applies to the Secretary in the exercise of any of the Commission's functions under section 7172(c)(1) of this title or which the Secretary has assigned under section 7172(e) of this title.

(b) Substantial issue of fact or law or likelihood of substantial impact on Nation's economy, etc.; oral presentation

(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a) of this section) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title

5. If the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.

(3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a) of this section.

(c) Waiver of requirements

The requirements of subsection (b) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of this section are waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.

(d) Effects confined to single unit of local government, geographic area within State, or State; hearing or oral presentation

(1) With respect to any rule, regulation, or order described in subsection (a) of this section, the effects of which, except for indirect effects of an inconsequential nature, are confined to—

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection—

(A) the term ''unit of local government'' means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term ''geographic area within a State'' means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

(e) Prescription of procedures for State and local government agencies

Where authorized by any law vested, transferred, or delegated pursuant to this chapter, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action.

(Pub. L. 95–91, title V, § 501, Aug. 4, 1977, 91 Stat. 587; Pub. L. 105–28, § 2(a), July 18, 1997, 111 Stat. 245.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–28, § 2(a)(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows:

''(1) In addition to the requirements of subsection (a) of this section, notice of any proposed rule, regulation, or order described in subsection (a) of this section shall be given by publication of such proposed rule, regulation, or order in the Federal Register. Such publication shall be accompanied by a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation, or order. Other effective means of publicity shall be utilized as may be reasonably calculated to notify concerned or affected persons of the nature and probable effect of any such proposed rule, regulation, or order. In each case, a minimum of thirty days following such publication shall be provided for an opportunity to comment prior to promulgation of any such rule, regulation, or order.

''(2) Public notice of all rules, regulations, or orders described in subsection (a) of this section which are promulgated by officers of a State or local government agency pursuant to a delegation under this chapter shall be provided by publication of such proposed rules, regulations, or orders in at least two newspapers of statewide circulation. If such publication is not practicable, notice of any such rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will reasonably assure wide public notice.

''(3) For the purposes of this subchapter, the exception from the requirements of section 553 of title 5 provided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available.''

Subsec. (c). Pub. L. 105–28, § 2(a)(2), (3), redesignated subsec. (e) as (c) and substituted ''subsection (b)'' for ''subsections (b), (c), and (d)''. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 105–28, § 2(a)(1), (2), redesignated subsec. (f) as (d) and struck out former subsec. (d) which read as follows: ''Following the notice and comment period, including any oral presentation required by this subsection, the Secretary may promulgate a rule if the rule is accompanied by an explanation responding to the major comments, criticisms, and alternatives offered during the comment period.''

Subsecs. (e) to (g). Pub. L. 105–28, § 2(a)(2), redesignated subsecs. (e) to (g) as (c) to (e), respectively.

§ 7192. Judicial review

(a) Agency action

Judicial review of agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission or any officer, employee, or component of the Department shall, notwithstanding such vesting, transfer, or delegation, be made in the manner specified in or for such law.

(b) Review by district court of United States; removal

Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this chapter, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this chapter, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this chapter or the validity of action taken by any agency under this chapter). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this chapter or the validity of agency action under this chapter, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.

(c) Litigation supervision by Attorney General

Subject to the provisions of section 7171(i) of this title and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court.

(Pub. L. 95–91, title V, § 502, Aug. 4, 1977, 91 Stat. 589.)

§ 7193. Remedial orders

(a) Violations of rules, regulations, or orders promulgated pursuant to Emergency Petroleum Allocation Act of 1973

If upon investigation the Secretary or his authorized representative believes that a person has violated any regulation, rule, or order described in section 7191(a) of this title promulgated pursuant to the Emergency Petroleum Allocation Act of 1973[1] [15 U.S.C. 751 et seq.], he may issue a remedial order to the person. Each remedial order shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of such rule, regulation, or order alleged to have been violated. For purposes of this section ''person'' includes any individual, association, company, corporation, partnership, or other entity however organized.

(b) Notice of intent to contest; final order not subject to review

If within thirty days after the receipt of the remedial order issued by the Secretary, the person fails to notify the Secretary that he intends to contest the remedial order, the remedial order shall become effective and shall be deemed a final order of the Secretary and not subject to review by any court or agency.

(c) Notice of contestation to Commission; stay; hearing; cross examination; final order; enforcement and review

If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall immediately advise the Commission of such notification. Upon such notice, the Commission shall stay the effect of the remedial order, unless the Commission finds the public interest requires immediate compliance with such remedial order. The Commission shall, upon request, afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commission shall afford the right of cross examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action, except that enforcement and other judicial review of such action shall be the responsibility of the Secretary.

(d) Time limits

The Secretary may set reasonable time limits for the Commission to complete action on a proceeding referred to it pursuant to this section.

(e) Effect on procedural action taken by Secretary prior to issuance of initial remedial order

Nothing in preceding provisions of this section shall be construed to affect any procedural action taken by the Secretary prior to or incident to initial issuance of a remedial order which is the subject of the hearing provided in preceding provisions of this section, but such procedures shall be reviewable in the hearing.

(f) Savings provision

The provisions of preceding provisions of this section shall be applicable only with respect to proceedings initiated by a notice of probable violation issued after October 1, 1977.

(g) Retroactive application; marketing of petroleum products

With respect to any person whose sole petroleum industry operation relates to the marketing of petroleum products, the Secretary or any person acting on his behalf may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against such person for any violation of any rule or regulation if—

(1) such civil action or order is based on a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and

(2) such person relied in good faith upon rules, regulations, or ruling in effect on the

[1] See References in Text note below.

date of the violation interpreting such rules or regulations.

(Pub. L. 95–91, title V, § 503, Aug. 4, 1977, 91 Stat. 590; Pub. L. 95–620, title VIII, § 805, Nov. 9, 1978, 92 Stat. 3348.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

AMENDMENTS

1978—Subsecs. (e), (f). Pub. L. 95–620, § 805(b), inserted "preceding provisions of" before "this section".

Subsec. (g). Pub. L. 95–620, § 805(a), added subsec. (g).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–620 effective 180 days after Nov. 9, 1978, see section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

§ 7194. Requests for adjustments

(a) The Secretary or any officer designated by him shall provide for the making of such adjustments to any rule, regulation or order described in section 7191(a) of this title issued under the Federal Energy Administration Act [15 U.S.C. 761 et seq.], the Emergency Petroleum Allocation Act of 1973[1] [15 U.S.C. 751 et seq.], the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], or the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens, and shall by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or recission[2] of, exception to, or exemption from, such rule, regulation or order. The Secretary or any such officer shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition.

(b)(1) If any person is aggrieved or adversely affected by a denial of a request for adjustment under subsection (a) of this section such person may request a review of such denial by the Commission and may obtain judicial review in accordance with this subchapter when such a denial becomes final.

(2) The Commission shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial. Action by the Commission under this section shall be considered final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department. Litigation involving judicial review of such action shall be the responsibility of the Secretary.

[1] See References in Text note below.

[2] So in original. Probably should be "recision".

(Pub. L. 95–91, title V, § 504, Aug. 4, 1977, 91 Stat. 590.)

REFERENCES IN TEXT

The Federal Energy Administration Act, referred to in subsec. (a), is Pub. L. 93–275, May 7, 1974, 88 Stat. 96, as amended, which is classified generally to chapter 16B (§ 761 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a), is Pub. L. 93–319, June 22, 1974, 88 Stat. 246, as amended, which is classified principally to chapter 16C (§ 791 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 7195. Report to Congress; contents

Within one year after October 1, 1977, the Secretary shall submit a report to Congress concerning the actions taken to implement section 7191 of this title. The report shall include a discussion of the adequacy of such section from the standpoint of the Department and the public, including a summary of any comments obtained by the Secretary from the public about such section and implementing regulations, and such recommendations as the Secretary deems appropriate concerning the procedures required by such section.

(Pub. L. 95–91, title V, § 505, Aug. 4, 1977, 91 Stat. 591.)

SUBCHAPTER VI—ADMINISTRATIVE PROVISIONS

PART A—CONFLICT OF INTEREST PROVISIONS

§§ 7211, 7212. Repealed. Pub. L. 104–106, div. D, title XLIII, § 4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section 7211, Pub. L. 95–91, title VI, § 601, Aug. 4, 1977, 91 Stat. 591; Pub. L. 103–160, div. C, title XXXI, § 3161(c)(1)(A), (B), Nov. 30, 1993, 107 Stat. 1958, related to definitions of supervisory employees and energy concern.

Section 7212, Pub. L. 95–91, title VI, § 602, Aug. 4, 1977, 91 Stat. 592; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 103–160, div. C, title XXXI, § 3161(b), (c)(1)(C), Nov. 30, 1993, 107 Stat. 1958, related to divestiture of energy holdings by supervisory employees.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

§§ 7213 to 7217. Repealed. Pub. L. 103–160, div. C, title XXXI, § 3161(a), Nov. 30, 1993, 107 Stat. 1957

Section 7213, Pub. L. 95–91, title VI, § 603, Aug. 4, 1977, 91 Stat. 593, related to disclosure of energy assets.

Section 7214, Pub. L. 95–91, title VI, § 604, Aug. 4, 1977, 91 Stat. 594, required, with exceptions for certain information, that supervisory employees of Department file report on prior employment.

Section 7215, Pub. L. 95–91, title VI, § 605, Aug. 4, 1977, 91 Stat. 594, related to postemployment prohibitions and reporting requirements.

Section 7216, Pub. L. 95–91, title VI, § 606, Aug. 4, 1977, 91 Stat. 595, prohibited former supervisory employees from participating in certain Department proceedings.

Section 7217, Pub. L. 95–91, title VI, § 607, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784, related to procedures applicable to reports under former sections 7213, 7214, and 7215 of this title.

§ 7218. Repealed. Pub. L. 104–106, div. D, title XLIII, § 4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 95–91, title VI, § 603, formerly § 608, Aug. 4, 1977, 91 Stat. 596; renumbered § 603 and amended, Pub. L. 103–160, div. C, title XXXI, § 3161(c)(1)(D), (E), Nov. 30, 1993, 107 Stat. 1958, related to sanctions.

A prior section 603 of Pub. L. 95–91 was classified to section 7213 of this title prior to repeal by Pub. L. 103–160.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

PART B—PERSONNEL PROVISIONS

§ 7231. Officers and employees

(a) Authority of Secretary to appoint and fix compensation

In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5.

(b) Appointment of scientific, engineering, etc., personnel without regard to civil service laws; compensation; termination of authority

(1) Subject to the limitations provided in paragraph (2) and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than three hundred eleven of the scientific, engineering, professional, and administrative personnel of the department without regard to the civil service laws, and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5332 of title 5.

(2) The Secretary's authority under this subsection to appoint an individual to such a position without regard to the civil service laws shall cease—

(A) when a person appointed, within four years after October 1, 1977, to fill such position under paragraph (1) leaves such position, or

(B) on the day which is four years after such date,

whichever is later.

(c) Placement of GS–16, GS–17, and GS–18 positions without regard to section 3324 of title 5; termination of authority

(1) Subject to the provisions of chapter 51 of title 5 but notwithstanding the last two sentences of section 5108(a)[1] of such title, the Secretary may place at GS–16, GS–17, and GS–18, not to exceed one hundred seventy-eight positions of the positions subject to the limitation of the first sentence of section 5108(a)[1] of such title.

(2) Appointments under this subsection may be made without regard to the provisions of sections 3324 of title 5, relating to the approval by the Director of the Office of Personnel Management of appointments under GS–16, GS–17, and GS–18 if the individual placed in such position is an individual who is transferred in connection with a transfer of functions under this chapter and who, immediately before October 1, 1977, held a position and duties comparable to those of such position.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to fill such position leaves such position.

(d) Appointment of additional scientific, engineering, etc., personnel without regard to civil service laws; compensation

In addition to the number of positions which may be placed at GS–16, GS–17, and GS–18 under section 5108 of title 5, under existing law, or under this chapter, and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than two hundred of the scientific, engineering, professional, and administrative personnel without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5332 of title 5.

(e) Determination of maximum aggregate number of positions

For the purposes of determining the maximum aggregate number of positions which may be placed at GS–16, GS–17, or GS–18 under section 5108(a) of title 5, 63 percent of the positions established under subsections (b) and (c) of this section shall be deemed GS–16 positions, 25 percent of such positions shall be deemed GS–17 positions, and 12 percent of such positions shall be deemed GS–18.

(f) Intelligence and intelligence-related positions exempt from competitive service

All positions in the Department which the Secretary determines are devoted to intelligence and intelligence-related activities of the United States Government are excepted from the competitive service, and the individuals who occupy such positions as of August 14, 1991, shall, while employed in such positions, be exempt from the competitive service.

[1] See References in Text note below.

(Pub. L. 95–91, title VI, § 621, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 102–88, title IV, § 403, Aug. 14, 1991, 105 Stat. 434.)

REFERENCES IN TEXT

The civil service laws, referred to in subsecs. (a), (b)(1), (2), and (d), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

Section 5108(a) of title 5, referred to in subsec. (c)(1), was amended generally by Pub. L. 101–509, title V, § 529 [title I, § 102(b)(2)], Nov. 5, 1990, 104 Stat. 1427, 1443, and, as so amended, contains only one sentence.

This chapter, referred to in subsecs. (c)(2) and (d), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

CODIFICATION

August 14, 1991, referred to in subsec. (f), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 102–88, which enacted subsec. (f) of this section, to reflect the probable intent of Congress.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102–88 added subsec. (f).

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (c)(2), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

AUTHORITY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL

Pub. L. 103–337, div. C, title XXXI, § 3161, Oct. 5, 1994, 108 Stat. 3095, as amended by Pub. L. 105–85, div. C, title XXXI, § 3139, Nov. 18, 1997, 111 Stat. 2040; Pub. L. 105–261, div. C, title XXXI, §§ 3152, 3155, Oct. 17, 1998, 112 Stat. 2253, 2257; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3191], Oct. 30, 2000, 114 Stat. 1654, 1654A–480; Pub. L. 107–314, div. C, title XXXI, § 3174, Dec. 2, 2002, 116 Stat. 2745, which was formerly set out as a note under this section, was renumbered section 4601 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(2), Nov. 24, 2003, 117 Stat. 1776, and is classified to section 2701 of Title 50, War and National Defense.

§ 7232. Senior positions

In addition to those positions created by subchapter II of this chapter, there shall be within the Department fourteen additional officers in positions authorized by section 5316 of title 5 who shall be appointed by the Secretary and who shall perform such functions as the Secretary shall prescribe from time to time.

(Pub. L. 95–91, title VI, § 622, Aug. 4, 1977, 91 Stat. 597.)

§ 7233. Experts and consultants

The Secretary may obtain services as authorized by section 3109 of title 5, at rates not to exceed the daily rate prescribed for grade GS–18 of the General Schedule under section 5332 of title 5 for persons in Government service employed intermittently.

(Pub. L. 95–91, title VI, § 623, Aug. 4, 1977, 91 Stat. 598.)

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 7234. Advisory committees

The Secretary is authorized to establish in accordance with the Federal Advisory Committee Act such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government serving without pay.

(Pub. L. 95–91, title VI, § 624, Aug. 4, 1977, 91 Stat. 598; Pub. L. 105–28, § 2(b)(1), July 18, 1997, 111 Stat. 245.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in text, is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1997—Pub. L. 105–28 struck out subsec. (a) designation and struck out subsec. (b) which read as follows: "Section 776 of title 15 shall be applicable to advisory committees chartered by the Secretary, or transferred to the Secretary or the Department under this chapter, except that where an advisory committee advises the Secretary on matters pertaining to research and development, the Secretary may determine that such meeting shall be closed because it involves research and development matters and comes within the exemption of section 552b(c)(4) of title 5."

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration

is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

DEPARTMENT OF ENERGY PROJECT REVIEW GROUPS NOT SUBJECT TO FEDERAL ADVISORY COMMITTEE ACT BY REASON OF INCLUSION OF EMPLOYEES OF DEPARTMENT OF ENERGY MANAGEMENT AND OPERATING CONTRACTORS

Pub. L. 108–136, div. C, title XXXI, § 3112, Nov. 24, 2003, 117 Stat. 1743, provided that: ''An officer or employee of a management and operating contractor of the Department of Energy, when serving as a member of a group reviewing or advising on matters related to any one or more management and operating contracts of the Department, shall be treated as an officer or employee of the Department for purposes of determining whether the group is an advisory committee within the meaning of section 3 of the Federal Advisory Committee Act (5 U.S.C. App.).''

§ 7235. Armed services personnel

(a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions authorized to be performed, on August 4, 1977, in the Energy Research and Development Administration and under chapter 641 of title 10. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as such term is defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.

(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade. A member so detailed shall not be subject to direction or control by his armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

(Pub. L. 95–91, title VI, § 625, Aug. 4, 1977, 91 Stat. 598; Pub. L. 95–509, title II, § 210, Oct. 24, 1978, 92 Stat. 1779.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–509 struck out requirement that a detailed member be charged to the limitations applicable to the Department and prohibition of such member from being charged to any statutory or other limitation or strengths applicable to the Armed Forces.

§ 7236. Transferred

CODIFICATION

Section, Pub. L. 101–189, div. C, title XXXI, § 3142, Nov. 29, 1989, 103 Stat. 1680, which related to executive management training in the Department of Energy, was renumbered section 4621 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(8)(A)–(C), Nov. 24, 2003, 117 Stat. 1778, and is classified to section 2721 of Title 50, War and National Defense.

§ 7237. Priority placement, job placement, retraining, and counseling programs for United States Department of Energy employees affected by reduction in force

(a) Definitions

(1) For the purposes of this section, the term ''agency'' means the United States Department of Energy.

(2) For the purposes of this section, the term ''eligible employee'' means any employee of the agency who—

(A) is scheduled to be separated from service due to a reduction in force under—

(i) regulations prescribed under section 3502 of title 5; or

(ii) procedures established under section 3595 of title 5; or

(B) is separated from service due to such a reduction in force, but does not include—

(i) an employee separated from service for cause on charges of misconduct or delinquency; or

(ii) an employee who, at the time of separation, meets the age and service requirements for an immediate annuity under subchapter III of chapter 83 or chapter 84 of title 5.

(b) Priority placement and retraining program

Not later than 30 days after September 30, 1996, the United States Department of Energy shall establish an agency-wide priority placement and retraining program for eligible employees.

(c) Filling vacancy from outside agency

The priority placement program established under subsection (b) of this section shall include provisions under which a vacant position shall not be filled by the appointment or transfer of any individual from outside of the agency if—

(1) there is then available any eligible employee who applies for the position within 30 days of the agency issuing a job announcement and is qualified (or can be trained or retrained to become qualified within 90 days of assuming the position) for the position; and

(2) the position is within the same commuting area as the eligible employee's last-held position or residence.

(d) Job placement and counseling services

The head of the agency may establish a program to provide job placement and counseling services to eligible employees. A program established under subsection (d) of this section may include, but is not limited to, such services as—

(1) career and personal counseling;

(2) training and job search skills; and

(3) job placement assistance, including assistance provided through cooperative arrangements with State and local employment services offices.

(Pub. L. 104–206, title III, § 301, Sept. 30, 1996, 110 Stat. 2999.)

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1997, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7238. Temporary appointments for scientific and technical experts in Department of Energy research and development programs

(a) The Secretary, utilizing authority under other applicable law and the authority of this section, may appoint for a limited term, or on a temporary basis, scientists, engineers, and other technical and professional personnel on leave of absence from academic, industrial, or research institutions to work for the Department.

(b) The Department may pay, to the extent authorized for certain other Federal employees by section 5723 of title 5, travel expenses for any individual appointed for a limited term or on a temporary basis and transportation expenses of his or her immediate family and his or her household goods and personal effects from that individual's residence at the time of selection or assignment to his or her duty station. The Department may pay such travel expenses to the same extent for such an individual's return to the former place of residence from his or her duty station, upon separation from the Federal service following an agreed period of service. The Department may also pay a per diem allowance at a rate not to exceed the daily amounts prescribed under section 5702 of title 5 to such an individual, in lieu of transportation expenses of the immediate family and household goods and personal effects, for the period of his or her employment with the Department. Notwithstanding any other provision of law, the employer's contribution to any retirement, life insurance, or health benefit plan for an individual appointed for a term of one year or less, which could be extended for no more than one additional year, may be made or reimbursed from appropriations available to the Department.

(Pub. L. 104–271, title III, § 301, Oct. 9, 1996, 110 Stat. 3307.)

CODIFICATION

Section was enacted as part of the Hydrogen Future Act of 1996, and not as part of the Department of Energy Organization Act which comprises this chapter.

DEFINITIONS

Section 2 of Pub. L. 104–271 provided that: ''For purposes of titles II and III [enacting this section and provisions set out as a note under section 12403 of this title]—

''(1) the term 'Department' means the Department of Energy; and

''(2) the term 'Secretary' means the Secretary of Energy.''

§ 7239. Transferred

CODIFICATION

Section, Pub. L. 106–65, div. C, title XXXI, § 3164, Oct. 5, 1999, 113 Stat. 946, which related to the whistleblower protection program, was renumbered section 4602 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(3)(A)–(C), Nov. 24, 2003, 117 Stat. 1776, and is classified to section 2702 of Title 50, War and National Defense.

PART C—GENERAL ADMINISTRATIVE PROVISIONS

§ 7251. General authority

To the extent necessary or appropriate to perform any function transferred by this chapter, the Secretary or any officer or employee of the Department may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.

(Pub. L. 95–91, title VI, § 641, Aug. 4, 1977, 91 Stat. 598.)

DEPARTMENT OF ENERGY SECURITY MANAGEMENT BOARD

Pub. L. 105–85, div. C, title XXXI, § 3161, Nov. 18, 1997, 111 Stat. 2048, required the Secretary of Energy to establish the Department of Energy Security Management Board, and provided for its duties which related to the security functions of the Department, and its membership, appointments, personnel, compensation, expenses, and termination on Oct. 31, 2000, prior to repeal by Pub. L. 106–65, div. C, title XXXI, § 3142(h)(1), Oct. 5, 1999, 113 Stat. 933.

§ 7252. Delegation

Except as otherwise expressly prohibited by law, and except as otherwise provided in this chapter, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate.

(Pub. L. 95–91, title VI, § 642, Aug. 4, 1977, 91 Stat. 599.)

REORGANIZATION OF FIELD ACTIVITIES AND MANAGEMENT OF NATIONAL SECURITY FUNCTIONS

Pub. L. 104–206, title III, § 302, Sept. 30, 1996, 110 Stat. 2999, provided that: ''None of the funds appropriated by this or any other Act may be used to implement section 3140 of H.R. 3230 as reported by the Committee of Conference on July 30, 1996 [Pub. L. 104–201, set out below]. The Secretary of Energy shall develop a plan to reorganize the field activities and management of the national security functions of the Department of Energy and shall submit such plan to the Congress not later than 120 days after the date of enactment of this Act [Sept. 30, 1996]. The plan will specifically identify all significant functions performed by the Department's national security operations and area offices and make recommendations as to where those functions should be performed.''

Pub. L. 104–201, div. C, title XXXI, § 3140, Sept. 23, 1996, 110 Stat. 2833, which was formerly set out as a note under this section, was renumbered section 4102 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(d)(3)(A)–(C), Nov. 24, 2003, 117 Stat. 1757, and is classified to section 2512 of Title 50, War and National Defense.

§ 7253. Reorganization

(a) Subject to subsection (b) of this section, the Secretary is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this chapter, or to the transfer of functions vested by this chapter in any organizational unit or component.

(b)[1] The authority of the Secretary to establish, abolish, alter, consolidate, or discontinue

[1] So in original. Two subsecs. (b) have been enacted.

any organizational unit or component of the National Nuclear Security Administration is governed by the provisions of section 2409 of title 50.

(b)[1] The authority of the Secretary under subsection (a) of this section does not apply to the National Nuclear Security Administration. The corresponding authority that applies to the Administration is set forth in section 2402(e)[2] of title 50.

(Pub. L. 95–91, title VI, § 643, Aug. 4, 1977, 91 Stat. 599; Pub. L. 106–377, § 1(a)(2) [title III, § 314(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–81; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3159(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–470.)

REFERENCES IN TEXT

Section 2402(e) of title 50, referred to in subsec. (b) set out second, probably means the subsec. (e) of section 2402 which relates to reorganization authority and was added by Pub. L. 106–398, § 1 [div. C, title XXXI, § 3159(a)] Oct. 30, 2000, 114 Stat. 1654, 1654A–469 and redesignated section 2402(f) of title 50 by Pub. L. 107–107, div. A, title X, § 1048(i)(12), Dec. 28, 2001, 115 Stat. 1230.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398, § 1 [div. C, title XXXI, § 3159(b)(1)], which directed amendment of section by substituting ''(a) Except as provided in subsection (b) of this section, the Secretary'' for ''The Secretary'', could not be executed because the words ''The Secretary'' did not appear after execution of the amendment by Pub. L. 106–377, § 1(a)(2) [title III, § 314(b)(1)]. See below.

Pub. L. 106–377, § 1(a)(2) [title III, § 314(b)(1)], designated existing provisions as subsec. (a) and substituted ''Subject to subsection (b) of this section, the Secretary'' for ''The Secretary''.

Subsec. (b). Pub. L. 106–398, § 1 [div. C, title XXXI, § 3159(b)(2)], added subsec. (b) relating to nonapplicability of authority of Secretary under subsec. (a) of this section to National Nuclear Security Administration.

Pub. L. 106–377, § 1(a)(2) [title III, § 314(b)(2)], added subsec. (b) relating to authority of Secretary as to National Nuclear Security Administration.

§ 7254. Rules and regulations

The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him.

(Pub. L. 95–91, title VI, § 644, Aug. 4, 1977, 91 Stat. 599.)

§ 7255. Subpoena

For the purpose of carrying out the provisions of this chapter, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 49 of title 15 with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this chapter. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.], the Commission shall have the same powers and authority as the Secretary has under this section.

(Pub. L. 95–91, title VI, § 645, Aug. 4, 1977, 91 Stat. 599; Pub. L. 95–621, title V, § 508(a), Nov. 9, 1978, 92 Stat. 3408.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in text, is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to chapter 60 (§ 3301 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1978—Pub. L. 95–621 inserted provision giving the Commission the same powers and authority as the Secretary under this section for purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978.

§ 7256. Contracts, leases, etc., with public agencies and private organizations and persons

(a) General authority

The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Limitation on authority; appropriations

Notwithstanding any other provision of this subchapter, no authority to enter into contracts or to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Leasing of excess Department of Energy property

The Secretary may lease, upon terms and conditions the Secretary considers appropriate to promote national security or the public interest, acquired real property and related personal property that—

(1) is located at a facility of the Department of Energy to be closed or reconfigured;

(2) at the time the lease is entered into, is not needed by the Department of Energy; and

(3) is under the control of the Department of Energy.

(d) Terms of lease

(1) A lease entered into under subsection (c) of this section may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years if the Secretary determines that entering into such a lease will promote the national security or be in the public interest.

(2) A lease entered into under subsection (c) of this section may provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is less than the fair market rental value of the leasehold interest. Services relating to the protection and maintenance of the leased property may constitute all or part of such consideration.

(e) Environmental concerns

(1) Before entering into a lease under subsection (c) of this section, the Secretary shall consult with the Administrator of the Environmental Protection Agency (with respect to prop-

[2] See References in Text note below.

erty located on a site on the National Priorities List) or the appropriate State official (with respect to property located on a site that is not listed on the National Priorities List) to determine whether the environmental conditions of the property are such that leasing the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment.

(2) Before entering into a lease under subsection (c) of this section, the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency or the appropriate State official, as the case may be, in the determination required under paragraph (1). The Secretary may enter into a lease under subsection (c) of this section without obtaining such concurrence if, within 60 days after the Secretary requests the concurrence, the Administrator or appropriate State official, as the case may be, fails to submit to the Secretary a notice of such individual's concurrence with, or rejection of, the determination.

(f) Retention and use of rentals; report

To the extent provided in advance in appropriations Acts, the Secretary may retain and use money rentals received by the Secretary directly from a lease entered into under subsection (c) of this section in any amount the Secretary considers necessary to cover the administrative expenses of the lease, the maintenance and repair of the leased property, or environmental restoration activities at the facility where the leased property is located. Amounts retained under this subsection shall be retained in a separate fund established in the Treasury for such purpose. The Secretary shall annually submit to the Congress a report on amounts retained and amounts used under this subsection.

(g) Additional authorities

(1) In addition to authority granted to the Secretary under any other provision of law, the Secretary may exercise the same authority to enter into transactions (other than contracts, cooperative agreements, and grants), subject to the same terms and conditions as the Secretary of Defense under section 2371 of title 10 (other than subsections (b) and (f) of that section).

(2) In applying section 2371 of title 10 to the Secretary under paragraph (1)—

(A) the term ''basic'' shall be replaced by the term ''research'';

(B) the term ''applied'' shall be replaced by the term ''development''; and

(C) the terms ''advanced research projects'' and ''advanced research'' shall be replaced by the term ''demonstration projects''.

(3) The authority of the Secretary under paragraph (1) shall not be subject to—

(A) section 5908 of this title; or

(B) section 2182 of this title.

(4)(A) The Secretary shall use such competitive, merit-based selection procedures in entering into transactions under paragraph (1), as the Secretary determines in writing to be practicable.

(B) A transaction under paragraph (1) shall relate to a research, development, or demonstration project only if the Secretary determines in writing that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

(5) The Secretary may protect from disclosure, for up to 5 years after the date on which the information is developed, any information developed pursuant to a transaction under paragraph (1) that would be protected from disclosure under section 552(b)(4) of title 5, if obtained from a person other than a Federal agency.

(6)(A) Not later than 90 days after August 8, 2005, the Secretary shall issue guidelines for transactions under paragraph (1).

(B) The guidelines shall be published in the Federal Register for public comment in accordance with rulemaking procedures of the Department.

(C) The Secretary shall not have authority to carry out transactions under paragraph (1) until the guidelines for transactions required under subparagraph (A) are final.

(7) The annual report of the head of an executive agency under section 2371(h) of title 10 shall be submitted to Congress.

(8)(A) In this paragraph, the term ''nontraditional Government contractor'' has the meaning given the term ''nontraditional defense contractor'' in section 845(f) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

(B) Not later than 1 year after the date on which the final guidelines are published under paragraph (6), the Comptroller General of the United States shall submit to Congress a report describing—

(i) the use by the Department of authorities under this section, including the ability to attract nontraditional Government contractors; and

(ii) whether additional safeguards are necessary to carry out the authorities.

(9) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate.

(10) Notwithstanding any other provision of law, the authority to enter into transactions under paragraph (1) shall terminate on September 30, 2010.

(Pub. L. 95–91, title VI, § 646, Aug. 4, 1977, 91 Stat. 599; Pub. L. 103–160, div. C, title XXXI, § 3154, Nov. 30, 1993, 107 Stat. 1952; Pub. L. 109–58, title X, § 1007, Aug. 8, 2005, 119 Stat. 932.)

AMENDMENTS

2005—Subsec. (g). Pub. L. 109–58 added subsec. (g).

1993—Subsecs. (c) to (f). Pub. L. 103–160 added subsecs. (c) to (f).

SMALL BUSINESS CONTRACTING

Pub. L. 109–13, div. A, title VI, § 6022(a), (b), May 11, 2005, 119 Stat. 285, provided that:

''(a) Not later than September 30, 2005, the Department of Energy and the Small Business Administration shall enter into a memorandum of understanding setting forth an appropriate methodology for measuring the achievement of the Department of Energy with respect to awarding contracts to small businesses.

''(b) The methodology set forth in the memorandum of understanding entered into under subsection (a) shall, at a minimum, include—

''(1) a method of counting the achievement of the Department of Energy in awards of—

''(A) prime contracts; and

''(B) subcontracts to small businesses awarded by Department of Energy management and operating, management and integration, and other facility management prime contractors; and

''(2) uniform criteria that could be used by prime contractors when measuring the value and number of subcontracts awarded to small businesses.''

PILOT PROGRAM RELATING TO USE OF PROCEEDS OF DISPOSAL OR UTILIZATION OF CERTAIN DEPARTMENT OF ENERGY ASSETS

Pub. L. 105–85, div. C, title XXXI, § 3138, Nov. 18, 1997, 111 Stat. 2039, which was formerly set out as a note under this section, was renumbered section 4833 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(13)(A)–(C), Nov. 24, 2003, 117 Stat. 1786, and is classified to section 2813 of Title 50, War and National Defense.

CONTRACT GOAL FOR SMALL DISADVANTAGED BUSINESSES AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION

Section 3159 of Pub. L. 103–160, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(16), Oct. 5, 1994, 108 Stat. 2857, provided that:

''(a) GOAL.—Except as provided in subsection (c), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Energy in carrying out national security programs of the Department in each of fiscal years 1994 through 2000 for the total combined amount obligated for contracts and subcontracts entered into with—

''(1) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals;

''(2) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986; and

''(3) minority institutions (as defined in section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3))), which, for the purposes of this section, shall include Hispanic-serving institutions (as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1))).

''(b) AMOUNT.—(1) Except as provided in paragraph (2), the requirements of subsection (a) for any fiscal year apply to the combined total of the funds obligated for contracts entered into by the Department of Energy pursuant to competitive procedures for such fiscal year for purposes of carrying out national security programs of the Department.

''(2) In computing the combined total of funds under paragraph (1) for a fiscal year, funds obligated for such fiscal year for contracts for naval reactor programs shall not be included.

''(c) APPLICABILITY.—Subsection (a) does not apply—

''(1) to the extent to which the Secretary of Energy determines that compelling national security considerations require otherwise; and

''(2) if the Secretary notifies the Congress of such a determination and the reasons for the determination.''

SMALL BUSINESS CONCERNS PARTICIPATION IN PROGRAMS FUNDED BY DEPARTMENT OF ENERGY ACT OF 1978—CIVILIAN APPLICATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 95–238, title II, § 204, Feb. 25, 1978, 92 Stat. 59, as amended by Pub. L. 96–470, title II, § 203(f), Oct. 19, 1980, 94 Stat. 2243, provided that:

''(a) In carrying out the programs for which funds are authorized by this Act [see Tables for classification], the Secretary of Energy shall provide a realistic and adequate opportunity for small business concerns to participate in such programs to the optimum extent feasible consistent with the size and nature of the projects and activities involved.

''(b) The Secretary of Energy shall submit annually to the appropriate committees of the House of Representatives and the Senate a full report on the actions taken in carrying out subsection (a) during the preceding year, including the extent to which small business concerns are participating in the programs involved and in projects and activities of various types and sizes within each such program, and indicating the steps currently taken to assure such participation in the future. Such report shall also contain such information as may be required by section 308 of the Act of December 31, 1975 (42 U.S.C. 5878a; 89 Stat. 1074).''

[For termination, effective May 15, 2000, of reporting provisions in section 204(b) of Pub. L. 95–238, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 21st item on page 89 of House Document No. 103–7.]

§§ 7256a, 7256b. Transferred

CODIFICATION

Section 7256a, Pub. L. 99–145, title XV, § 1534, Nov. 8, 1985, 99 Stat. 774; Pub. L. 100–180, div. C, title III, § 3131(a), Dec. 4, 1987, 101 Stat. 1238, which related to costs not allowed under covered contracts, was renumbered section 4801 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1783, and is classified to section 2781 of Title 50, War and National Defense.

Section 7256b, Pub. L. 101–189, div. C, title XXXI, § 3151, Nov. 29, 1989, 103 Stat. 1682, which related to the prohibition of bonuses to contractors operating defense nuclear facilities, was renumbered section 4802 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(3)(A)–(C), Nov. 24, 2003, 117 Stat. 1783, and is classified to section 2782 of Title 50, War and National Defense.

§ 7257. Acquisition, construction, etc., of laboratories, research and testing sites, etc.

The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

(Pub. L. 95–91, title VI, § 647, Aug. 4, 1977, 91 Stat. 599.)

PILOT PROGRAM FOR PROJECT MANAGEMENT OVERSIGHT REGARDING DEPARTMENT OF ENERGY CONSTRUCTION PROJECTS

Pub. L. 106–65, div. C, title XXXI, § 3175, Oct. 5, 1999, 113 Stat. 950, provided that:

''(a) REQUIREMENT.—(1) The Secretary of Energy shall carry out a pilot program on use of project management oversight services (in this section referred to as 'PMO services') for construction projects of the Department of Energy.

''(2) The purpose of the pilot program shall be to provide a basis for determining whether or not the use of

competitively procured, external PMO services for those construction projects would permit the Department to control excessive costs and schedule delays associated with those construction projects that have large capital costs.

''(b) PROJECTS COVERED BY PROGRAM.—(1) Subject to paragraph (2), the Secretary shall carry out the pilot program at construction projects selected by the Secretary. The projects shall include one or more construction projects authorized pursuant to section 3101 [113 Stat. 915] and one construction project authorized pursuant to section 3102 [113 Stat. 917].

''(2) Each project selected by the Secretary shall be a project having capital construction costs anticipated to be not less than $25,000,000.

''(c) SERVICES UNDER PROGRAM.—The PMO services used under the pilot program shall include the following services:

''(1) Monitoring the overall progress of a project.

''(2) Determining whether or not a project is on schedule.

''(3) Determining whether or not a project is within budget.

''(4) Determining whether or not a project conforms with plans and specifications approved by the Department.

''(5) Determining whether or not a project is being carried out efficiently and effectively.

''(6) Any other management oversight services that the Secretary considers appropriate for purposes of the pilot program.

''(d) PROCUREMENT OF SERVICES UNDER PROGRAM.—Any PMO services procured under the pilot program shall be acquired—

''(1) on a competitive basis; and

''(2) from among commercial entities that—

''(A) do not currently manage or operate facilities at a location where the pilot program is being conducted; and

''(B) have an expertise in the management of large construction projects.

''(e) REPORT.—Not later than February 1, 2000, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program. The report shall include the assessment of the Secretary as to the feasibility and desirability of using PMO services for construction projects of the Department.''

LABORATORY FUNDING PLAN

Pub. L. 106–60, title III, § 310, Sept. 29, 1999, 113 Stat. 496, which provided that no funds in an Energy and Water Development Appropriations Act were to be expended after December 31 of each year under certain contracts unless the funds were expended pursuant to a Laboratory Funding Plan approved by the Secretary of Energy, and which also provided for directives, approval, and exceptions by the Secretary, was repealed by Pub. L. 108–7, div. D, title III, § 310, Feb. 20, 2003, 117 Stat. 155.

TERMINATION OR CHANGES IN ACTIVITIES OF GOVERNMENT-OWNED AND CONTRACTOR-OPERATED FACILITIES, NATIONAL LABORATORIES, ETC.; REPORTS BY SECRETARY OF ENERGY CONCERNING PROPOSALS PRIOR TO IMPLEMENTATION; CONTENTS; SUBMISSION DATE

Pub. L. 95–238, title I, § 104(c), Feb. 25, 1978, 92 Stat. 53, provided that: ''As part of the Department of Energy's responsibility to keep the Congress fully and currently informed, the Secretary shall make the following reports:

''(i) any proposal by the Secretary of the Department of Energy to terminate or make major changes in activities of the Government-owned and contractor-operated facilities, the national laboratories, energy research centers and the operations offices managing such laboratories, shall not be implemented until the Secretary transmits the proposal, together with all pertinent data, to the Committee on Science and Technology [now Committee on Science] of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, and waits a period of thirty calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which such report is received by such committees; and

''(ii) by January 31, 1978, the Secretary shall file a full and complete report on each such proposal which he has implemented, as described in the preceding paragraph, and any major program structure change with the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.''

§§ 7257a to 7257c. Transferred

CODIFICATION

Section 7257a, Pub. L. 101–510, div. C, title XXXI, § 3132, Nov. 5, 1990, 104 Stat. 1832, which related to laboratory-directed research and development programs, was renumbered section 4811 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(6)(A)–(C), Nov. 24, 2003, 117 Stat. 1784, and is classified to section 2791 of Title 50, War and National Defense.

Section 7257b, Pub. L. 104–201, div. C, title XXXI, § 3136(b), Sept. 23, 1996, 110 Stat. 2831; Pub. L. 107–314, div. D, title XLVIII, § 4812(c), formerly Pub. L. 105–85, div. C, title XXXI, § 3137(c), Nov. 18, 1997, 111 Stat. 2039, renumbered Pub. L. 108–136, div. C, title XXXI, § 3141(k)(7)(A)(i)–(iii), Nov. 24, 2003, 117 Stat. 1784, which related to annual reports by the Secretary of Energy with respect to expenditures of the Department of Energy Laboratory Directed Research and Development Program, was renumbered section 4812A(b) of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(7)(B)(i)–(iii), Nov. 24, 2003, 117 Stat. 1784, 1785, and is classified to section 2793(b) of Title 50, War and National Defense.

Section 7257c, Pub. L. 105–85, div. C, title XXXI, § 3137, Nov. 18, 1997, 111 Stat. 2038, which related to limitations on the use of funds for laboratory directed research and development purposes, was renumbered section 4812 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(7)(A)(i)–(iii), Nov. 24, 2003, 117 Stat. 1784, and is classified to section 2792 of Title 50, War and National Defense.

§ 7257d. Expanded research by Secretary of Energy

(a) Detection and identification research

(1) In general

In conjunction with the working group under section 247d–6(a) of this title, the Secretary of Energy and the Administrator of the National Nuclear Security Administration shall expand, enhance, and intensify research relevant to the rapid detection and identification of pathogens likely to be used in a bioterrorism attack or other agents that may cause a public health emergency.

(2) Authorized activities

Activities carried out under paragraph (1) may include—

(A) the improvement of methods for detecting biological agents or toxins of potential use in a biological attack and the testing of such methods under variable conditions;

(B) the improvement or pursuit of methods for testing, verifying, and calibrating new detection and surveillance tools and techniques; and

(C) carrying out other research activities in relevant areas.

(3) Report

Not later than 180 days after June 12, 2002, the Administrator of the National Nuclear Security Administration shall submit to the Committee on Energy and Natural Resources and the Committee on Armed Services of the Senate, and the Committee on Energy and Commerce and the Committee on Armed Services of the House of Representatives, a report setting forth the programs and projects that will be funded prior to the obligation of funds appropriated under subsection (b) of this section.

(b) Authorization

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary in each of fiscal years 2002 through 2006.

(Pub. L. 107–188, title I, § 152, June 12, 2002, 116 Stat. 630.)

CODIFICATION

Section was enacted as part of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7258. Facilities construction

(a) Employees and dependents stationed at remote locations

As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

(1) Emergency medical services and supplies;

(2) Food and other subsistence supplies;

(3) Messing facilities;

(4) Audio-visual equipment, accessories, and supplies for recreation and training;

(5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) Living and working quarters and facilities; and

(7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.

(b) Medical treatment at reasonable prices

The furnishing of medical treatment under paragraph (1) of subsection (a) of this section and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) of this section shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Use of reimbursement proceeds

Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 7263 of this title, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

(Pub. L. 95–91, title VI, § 648, Aug. 4, 1977, 91 Stat. 600.)

§ 7259. Use of facilities

(a) Facilities of United States and foreign governments

With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, equipment, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) Facilities under custody of Secretary

In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in section 102(3) of title 40.

(c) Use of reimbursement proceeds

Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the equipment, or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 7263 of this title, and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved.

(Pub. L. 95–91, title VI, § 649, Aug. 4, 1977, 91 Stat. 600.)

CODIFICATION

In subsec. (b), ''section 102(3) of title 40'' substituted for ''section 3(e) of the Federal Property and Administrative Services Act of 1949'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 7259a. Activities of Department of Energy facilities

(a) Research and activities on behalf of non-department persons and entities

(1) The Secretary of Energy may conduct research and other activities referred to in paragraph (2) at facilities of the Department of Energy on behalf of other departments and agencies of the Government, agencies of State and local governments, and private persons and entities.

(2) The research and other activities that may be conducted under paragraph (1) are those which the Secretary is authorized to conduct by law, including research and activities authorized under the following provisions of law:

(A) The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(B) The Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.].

(C) The Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.).

(b) Charges

(1) The Secretary shall impose on the department, agency, or person or entity for which research and other activities are carried out under subsection (a) of this section a charge for such research and activities in carrying out such research and activities, which shall include—

(A) the direct cost incurred in carrying out such research and activities; and

(B) the overhead cost, including site-wide indirect costs, associated with such research and activities.

(2)(A) Subject to subparagraph (B), the Secretary shall also impose on the department, agency, or person or entity concerned a Federal administrative charge (which includes any depreciation and imputed interest charges) in an amount not to exceed 3 percent of the full cost incurred in carrying out the research and activities concerned.

(B) The Secretary may waive the imposition of the Federal administrative charge required by subparagraph (A) in the case of research and other activities conducted on behalf of small business concerns, institutions of higher education, non-profit entities, and State and local governments.

(3) Not later than 2 years after October 17, 1998, the Secretary shall terminate any waiver of charges under section 33 of the Atomic Energy Act of 1954 (42 U.S.C. 2053) that were made before such date, unless the Secretary determines that such waiver should be continued.

(c) Pilot program of reduced facility overhead charges

(1) The Secretary may, with the cooperation of participating contractors of the contractor-operated facilities of the Department, carry out a pilot program under which the Secretary and such contractors reduce the facility overhead charges imposed under this section for research and other activities conducted under this section.

(2) The Secretary shall carry out the pilot program at contractor-operated facilities selected by the Secretary in consultation with the contractors concerned.

(3) The Secretary shall determine the facility overhead charges to be imposed under the pilot program at a facility based on a joint review by the Secretary and the contractor for the facility of all items included in the overhead costs of the facility in order to determine which items are appropriately incurred as facility overhead charges by the contractor in carrying out research and other activities at such facility under this section.

(4) The Secretary shall commence carrying out the pilot program under this subsection not later than October 1, 1999, and shall terminate the pilot program on September 30, 2003.

(5) Not later than January 31, 2003, the Secretary shall submit to Congress an interim report on the results of the pilot program under this subsection. The report shall include any recommendations for the extension or expansion of the pilot program, including the establishment of multiple rates of overhead charges for various categories of persons and entities seeking research and other activities in contractor-operated facilities of the Department.

(d) Applicability with respect to user fee practice

This section does not apply to the practice of the Department of Energy with respect to user fees at Department facilities.

(Pub. L. 105–261, div. C, title XXXI, § 3137, Oct. 17, 1998, 112 Stat. 2248.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a)(2)(A), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (a)(2)(B), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (a)(2)(C), is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7260. Field offices

The Secretary is authorized to establish, alter, consolidate or discontinue and to maintain such State, regional, district, local or other field offices as he may deem to be necessary to carry out functions vested in him.

(Pub. L. 95–91, title VI, § 650, Aug. 4, 1977, 91 Stat. 601.)

§ 7261. Acquisition of copyrights, patents, etc.

The Secretary is authorized to acquire any of the following described rights if the property ac-

quired thereby is for use by or for, or useful to, the Department:

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights.

(Pub. L. 95–91, title VI, § 651, Aug. 4, 1977, 91 Stat. 601.)

§ 7261a. Protection of sensitive technical information

(a) Property rights in inventions and discoveries; timely determination; reports to Congressional committees

(1) Whenever any contractor makes an invention or discovery to which the title vests in the Department of Energy pursuant to exercise of section 202(a)(ii) or (iv) of title 35, or pursuant to section 2182 of this title or section 5908 of this title in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy and the contractor requests waiver of any or all of the Government's property rights, the Secretary of Energy may decide to waive the Government's rights and assign the rights in such invention or discovery.

(2) Such decision shall be made within 150 days after the date on which a complete request for waiver of such rights has been submitted to the Secretary by the contractor. For purposes of this paragraph, a complete request includes such information, in such detail and form, as the Secretary by regulation prescribes as necessary to allow the Secretary to take into consideration the matters described in subsection (b) of this section in making the decision.

(3) If the Secretary fails to make the decision within such 150-day period, the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate, within 10 days after the end of the 150-day period, a report on the reasons for such failure. The submission of such report shall not relieve the Secretary of the requirement to make the decision under this section. The Secretary shall, at the end of each 30-day period after submission of the first report during which the Secretary continues to fail to make the decision required by this section, submit another report on the reasons for such failure to the committees listed in this paragraph.

(b) Matters to be considered

In making a decision under this section, the Secretary shall consider, in addition to the applicable policies of section 2182 of this title or subsections (c) and (d) of section 5908 of this title—

(1) whether national security will be compromised;

(2) whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;

(3) whether an organizational conflict of interest contemplated by Federal statutes and regulations will result; and

(4) whether failure to assert such a claim will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

(Pub. L. 99–661, div. C, title I, § 3131, Nov. 14, 1986, 100 Stat. 4062; Pub. L. 100–180, div. C, title III, § 3135(a), Dec. 4, 1987, 101 Stat. 1240.)

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 and also as part of the National Defense Authorization Act for Fiscal Year 1987, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–180 designated existing provisions as par. (1), struck out at end "Such decision shall be made within a reasonable time (which shall usually be six months from the date of the request by the contractor for assignment of such rights).", and added pars. (2) and (3).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 3135(b) of Pub. L. 100–180 provided that: "Paragraphs (2) and (3) of section 3131(a) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 [subsec. (a)(2), (3) of this section] (as added by subsection (a)) shall apply with respect to waiver requests submitted by contractors under that section after March 1, 1988."

§ 7261b. Technology transfer to small businesses

(1) The Secretary of Energy shall establish a program to facilitate and encourage the transfer of technology to small businesses and shall issue guidelines relating to the program not later than May 1, 1993.

(2) For the purposes of this section, the term "small business" means a business concern that meets the applicable size standards prescribed pursuant to section 632(a) of title 15.

(Pub. L. 102–484, div. C, title XXXI, § 3135(b), Oct. 23, 1992, 106 Stat. 2641.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7261c. Technology partnerships ombudsman

(a) Appointment of ombudsman

The Secretary of Energy shall direct the director of each national laboratory of the Department of Energy, and may direct the director of each facility under the jurisdiction of the Department of Energy, to appoint a technology partnership ombudsman to hear and help resolve complaints from outside organizations regarding the policies and actions of each such laboratory

or facility with respect to technology partnerships (including cooperative research and development agreements), patents, and technology licensing.

(b) Qualifications

An ombudsman appointed under subsection (a) of this section shall be a senior official of the national laboratory or facility who is not involved in day-to-day technology partnerships, patents, or technology licensing, or, if appointed from outside the laboratory or facility, function as such a senior official.

(c) Duties

Each ombudsman appointed under subsection (a) of this section shall—

(1) serve as the focal point for assisting the public and industry in resolving complaints and disputes with the national laboratory or facility regarding technology partnerships, patents, and technology licensing;

(2) promote the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low-cost resolution of complaints and disputes, when appropriate; and

(3) report quarterly on the number and nature of complaints and disputes raised, along with the ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information, to—

(A) the Secretary;

(B) the Administrator for Nuclear Security;

(C) the Director of the Office of Dispute Resolution of the Department of Energy; and

(D) the employees of the Department responsible for the administration of the contract for the operation of each national laboratory or facility that is a subject of the report, for consideration in the administration and review of that contract.

(Pub. L. 106–404, § 11, Nov. 1, 2000, 114 Stat. 1749.)

CODIFICATION

Section was enacted as part of the Technology Transfer Commercialization Act of 2000, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7262. Repealed. Pub. L. 104–206, title V, § 502, Sept. 30, 1996, 110 Stat. 3002

Section, Pub. L. 95–91, title VI, § 652, Aug. 4, 1977, 91 Stat. 601, authorized Secretary to accept gifts, bequests, and devises of property for purpose of aiding or facilitating work of Department.

CODIFICATION

Pub. L. 104–206, which directed the repeal of 42 U.S.C. 7262, was executed by repealing section 652 of Pub. L. 95–91, which was classified to this section, to reflect the probable intent of Congress.

§ 7263. Capital fund

The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction, and for graphics and visual aids; and a central library service. The capital of the fund shall consist of any appropriations made for the purpose of providing capital (which appropriations are hereby authorized) and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain said fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized.

(Pub. L. 95–91, title VI, § 653, Aug. 4, 1977, 91 Stat. 601.)

§ 7264. Seal of Department

The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

(Pub. L. 95–91, title VI, § 654, Aug. 4, 1977, 91 Stat. 602.)

§ 7265. Regional Energy Advisory Boards

(a) Establishment; membership

The Governors of the various States may establish Regional Energy Advisory Boards for their regions with such membership as they may determine.

(b) Observers

Representatives of the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard and the Administrator of the Environmental Protection Agency shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section. The Federal Cochairman of the Appalachian Regional Commission or any regional commission under title V of the Public Works and Economic Development Act [42

U.S.C. 3181 et seq.] shall be entitled to participate as an observer in the deliberations of any such Board which contains one or more States which are members of such Commission.

(c) Recommendations of Board

Each Board established pursuant to subsection (a) of this section may make such recommendations as it determines to be appropriate to programs of the Department having a direct effect on the region.

(d) Notice of reasons not to adopt recommendations

If any Regional Advisory Board makes specific recommendations pursuant to subsection (c) of this section, the Secretary shall, if such recommendations are not adopted in the implementation of the program, notify the Board in writing of his reasons for not adopting such recommendations.

(Pub. L. 95–91, title VI, § 655, Aug. 4, 1977, 91 Stat. 602.)

REFERENCES IN TEXT

The Public Works and Economic Development Act, referred to in subsec. (b), is Pub. L. 89–136, Aug. 26, 1965, 79 Stat. 552, as amended. Title V of the Public Works and Economic Development Act was classified generally to subchapter V (§ 3181 et seq.) of chapter 38 of this title prior to repeal by Pub. L. 97–35, title XVIII, § 1821(a)(8), Aug. 13, 1981, 95 Stat. 766. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7266. Designation of conservation officers

The Secretary of Defense, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of the Interior, the United States Postal Service, and the Administrator of General Services shall each designate one Assistant Secretary or Assistant Administrator, as the case may be, as the principal conservation officer of such Department or of the Administration. Such designated principal conservation officer shall be principally responsible for planning and implementation of energy conservation programs by such Department or Administration and principally responsible for coordination with the Department of Energy with respect to energy matters. Each agency, Department or Administration required to designate a principal conservation officer pursuant to this section shall periodically inform the Secretary of the identity of such conservation officer, and the Secretary shall periodically publish a list identifying such officers.

(Pub. L. 95–91, title VI, § 656, Aug. 4, 1977, 91 Stat. 602.)

§ 7267. Annual report

The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following October 1, 1977, make a report to the President for submission to the Congress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 774 of title 15, section 6325(c) of this title, section 10224(c) of this title, section 5877 of this title, and section 5914[1] of this title, and shall include:

(1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, including a comprehensive summary of data pertaining to all fuel and energy needs of residents of the United States residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within such areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas;

(2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium, hydroelectric, solar, and other means) and the expected means of obtaining such quantities;

(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to increase efficiency; and further such summary shall include a description of the activities the Department is performing in support of environmental, social, economic and institutional, biomedical, physical and safety research, development, demonstration, and monitoring activities necessary to guarantee that technological programs, funded by the Department, are undertaken in a manner consistent with and capable of maintaining or improving the quality of the environment and of mitigating any undesirable environmental and safety impacts;

[1] See References in Text note below.

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal/State, and local governments and nongovernmental entities to achieve the purposes of this chapter;

(6) a summary of cooperative and voluntary efforts that have been mobilized to promote conservation and recycling, together with plans for such efforts in the succeeding fiscal year, and recommendations for changes in laws and regulations needed to encourage more conservation and recycling by all segments of the Nation's populace;

(7) a summary of substantive measures taken by the Department to stimulate and encourage the development of new manpower resources through the Nation's colleges and universities and to involve these institutions in the execution of the Department's research and development programs; and

(8) to the extent practicable, a summary of activities in the United States by companies or persons which are foreign owned or controlled and which own or control United States energy sources and supplies, including the magnitude of annual foreign direct investment in the energy sector in the United States and exports of energy resources from the United States by foreign owned or controlled business entities or persons, and such other related matters as the Secretary may deem appropriate.

(Pub. L. 95–91, title VI, § 657, Aug. 4, 1977, 91 Stat. 603; Pub. L. 104–66, title I, § 1052(g), Dec. 21, 1995, 109 Stat. 718.)

REFERENCES IN TEXT

Section 5914 of this title, referred to in text, was omitted from the Code.

AMENDMENTS

1995—Pub. L. 104–66 inserted "section 6325(c) of this title, section 10224(c) of this title," after "section 774 of title 15," in introductory provisions.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 3rd item on page 88 identifies a reporting provision which, as subsequently amended, is contained in this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 7268. Leasing report

The Secretary of the Interior shall submit to the Congress not later than one year after August 4, 1977, a report on the organization of the leasing operations of the Federal Government, together with any recommendations for reorganizing such functions may deem necessary or appropriate.

(Pub. L. 95–91, title VI, § 658, Aug. 4, 1977, 91 Stat. 604.)

§ 7269. Transfer of funds

The Secretary, when authorized in an appropriation Act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

(Pub. L. 95–91, title VI, § 659, Aug. 4, 1977, 91 Stat. 604.)

§ 7269a. Transfer of funds between appropriations for Department of Energy activities

Not to exceed 5 per centum of any appropriation made available for Department of Energy activities funded in this Act or subsequent Energy and Water Development Appropriations Acts may on and after October 2, 1992, be transferred between such appropriations, but no such appropriation, except as otherwise provided, shall be increased or decreased by more than 5 per centum by any such transfers, and any such proposed transfers shall be submitted promptly to the Committees on Appropriations of the House and Senate.

(Pub. L. 102–377, title III, § 302, Oct. 2, 1992, 106 Stat. 1339.)

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7269b. Transfer of unexpended appropriation balances

The unexpended balances of prior appropriations provided for activities in this Act or subsequent Energy and Water Development Appropriations Acts may on and after October 2, 1992, be transferred to appropriation accounts for such activities established pursuant to this title.[1] Balances so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

(Pub. L. 102–377, title III, § 303, Oct. 2, 1992, 106 Stat. 1339.)

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 102–377, Oct. 2, 1992, 106 Stat. 1332. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7270. Authorization of appropriations

Appropriations to carry out the provisions of this chapter shall be subject to annual authorization.

(Pub. L. 95–91, title VI, § 660, Aug. 4, 1977, 91 Stat. 604.)

§ 7270a. Guards for Strategic Petroleum Reserve facilities

Under guidelines prescribed by the Secretary and concurred with by the Attorney General,

[1] See References in Text note below.

employees of the Department of Energy and employees of contractors and subcontractors (at any tier) of the Department of Energy, while discharging their official duties of protecting the Strategic Petroleum Reserve (established under part B of title I of the Energy Policy and Conservation Act [42 U.S.C. 6231 et seq.]) or its storage or related facilities or of protecting persons upon the Strategic Petroleum Reserve or its storage or related facilities, may—

(1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines; and

(2) arrest without warrant any person for an offense against the United States—

(A) in the case of a felony, if the employee has reasonable grounds to believe that the person—

(i) has committed or is committing a felony; and

(ii) is in or is fleeing from the immediate area of the felony; and

(B) in the case of a felony or misdemeanor, if the violation is committed in the presence of the employee.

(Pub. L. 95–91, title VI, § 661, as added Pub. L. 100–531, § 1(a), Oct. 25, 1988, 102 Stat. 2652.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended. Part B of title I of the Act is classified generally to part B (§ 6231 et seq.) of subchapter I of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 7270b. Trespass on Strategic Petroleum Reserve facilities

(a) The Secretary may issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231–6247). The Secretary shall post conspicuously, on the property subject to the regulations, notification that the property is subject to the regulations.

(b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) of this section shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than $5,000, imprisonment for not more than one year, or both.

(Pub. L. 95–91, title VI, § 662, as added Pub. L. 100–531, § 1(a), Oct. 25, 1988, 102 Stat. 2652.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended. Part B of title I of the Act is classified generally to part B (§ 6231 et seq.) of subchapter I of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 7270c. Annual assessment and report on vulnerability of facilities to terrorist attack

(a) The Secretary shall, on an annual basis, conduct a comprehensive assessment of the vulnerability of Department facilities to terrorist attack.

(b) Not later than January 31 each year, the Secretary shall submit to Congress a report on the assessment conducted under subsection (a) of this section during the preceding year. Each report shall include the results of the assessment covered by such report, together with such findings and recommendations as the Secretary considers appropriate.

(Pub. L. 95–91, title VI, § 663, as added Pub. L. 107–107, div. C, title XXXI, § 3154(a), Dec. 28, 2001, 115 Stat. 1377.)

§ 7271. Transferred

CODIFICATION

Section, Pub. L. 95–509, title II, § 208, Oct. 24, 1978, 92 Stat. 1779, which related to single annual requests by the Secretary for authorizations of appropriations for programs involving the common defense and security of the United States, was renumbered section 4731 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(7), Nov. 24, 2003, 117 Stat. 1782, and is classified to section 2771 of Title 50, War and National Defense.

§ 7271a. Repealed. Pub. L. 105–85, div. C, title XXXI, § 3152(h), Nov. 18, 1997, 111 Stat. 2042

Section, Pub. L. 101–189, div. C, title XXXI, § 3143, Nov. 29, 1989, 103 Stat. 1681, related to major Department of Energy national security programs.

§ 7271b. Repealed. Pub. L. 106–65, div. C, title XXXII, § 3294(f), Oct. 5, 1999, 113 Stat. 970

Section, Pub. L. 104–201, div. C, title XXXI, § 3155, Sept. 23, 1996, 110 Stat. 2841, related to requirement for annual five-year budget for national security programs of Department of Energy.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

§ 7271c. Repealed. Pub. L. 105–85, div. C, title XXXI, § 3152(b), Nov. 18, 1997, 111 Stat. 2042

Section, Pub. L. 104–201, div. C, title XXXI, § 3156, Sept. 23, 1996, 110 Stat. 2841, related to requirements for Department of Energy weapons activities budgets for fiscal years after fiscal year 1997.

§§ 7271d to 7273a. Transferred

CODIFICATION

Section 7271d, Pub. L. 107–314, div. C, title XXXI, § 3143, Dec. 2, 2002, 116 Stat. 2733, which related to requirements for specific funding requests for new or modified nuclear weapons, was renumbered section 4209 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(10), Nov. 24, 2003, 117 Stat. 1759, and is classified to section 2529 of Title 50, War and National Defense.

Section 7272, Pub. L. 96–540, title II, § 210, Dec. 17, 1980, 94 Stat. 3202, which prohibited the use of funds for purposes related to the licensing of defense activities or facilities of the Department of Energy by the Nuclear

Regulatory Commission, was renumbered section 4103 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(d)(4)(A)–(C)(ii), Nov. 24, 2003, 117 Stat. 1757, and is classified to section 2513 of Title 50, War and National Defense.

Section 7273, Pub. L. 96–540, title II, § 211, Dec. 17, 1980, 94 Stat. 3203, which related to restrictions on the use of funds to pay penalties under the Clean Air Act, was renumbered section 4722 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(5)(A)–(C)(ii), Nov. 24, 2003, 117 Stat. 1781, 1782, and is classified to section 2762 of Title 50, War and National Defense.

Section 7273a, Pub. L. 99–661, div. C, title I, § 3132, Nov. 14, 1986, 100 Stat. 4063, which related to restrictions on the use of funds to pay penalties under environmental laws, was renumbered section 4721 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(4)(A)–(C), Nov. 24, 2003, 117 Stat. 1781, and is classified to section 2761 of Title 50, War and National Defense.

§ 7273b. Security investigations

(1) No funds appropriated to the Department of Energy may be obligated or expended for the conduct of an investigation by the Department of Energy or any other Federal department or agency for purposes of determining whether to grant a security clearance to an individual or a facility unless the Secretary of Energy determines both of the following:

(A) That a current, complete investigation file is not available from any other department or agency of the Federal government with respect to that individual or facility.

(B) That no other department or agency of the Federal government is conducting an investigation with respect to that individual or facility that could be used as the basis for determining whether to grant the security clearance.

(2) For purposes of paragraph (1)(A), a current investigation file is a file on an investigation that has been conducted within the past five years.

(Pub. L. 101–510, div. C, title XXXI, § 3104(d), Nov. 5, 1990, 104 Stat. 1828.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1991, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7273c. Transferred

CODIFICATION

Section, Pub. L. 105–85, div. C, title XXXI, § 3133, Nov. 18, 1997, 111 Stat. 2036; Pub. L. 105–261, div. A, title X, § 1069(b)(3), div. C, title XXXI, § 3131, Oct. 17, 1998, 112 Stat. 2136, 2246, which related to international cooperative stockpile stewardship, was renumbered section 4301 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(f)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1762, and is classified to section 2561 of Title 50, War and National Defense.

§ 7274. Environmental impact statements relating to defense facilities of Department of Energy

(1) The Secretary may not proceed with the preparation of an environmental impact statement relating to the construction or operation of a defense facility of the Department of Energy if the estimated cost of preparing such statement exceeds $250,000 unless—

(A) the Secretary has notified the Committees on Armed Services of the Senate and the House of Representatives of his intent to prepare such statement and a period of thirty days has expired after the date on which such notice was received by such committees; or

(B) the Secretary has received from each such committee, before the expiration of such thirty-day period, a written notice that the committee agrees with the decision of the Secretary regarding the preparation of such statement.

(2) The provisions of paragraph (1) shall not apply in the case of any environmental impact statement on which the Secretary began preparation before December 4, 1981.

(Pub. L. 97–90, title II, § 212(b), Dec. 4, 1981, 95 Stat. 1171.)

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1982, and not as part of the Department of Energy Organization Act which comprises this chapter.

NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE REPORT REQUIREMENT

Pub. L. 101–510, div. C, title XXXI, § 3133, Nov. 5, 1990, 104 Stat. 1832, directed Secretary of Energy, not later than 30 days after the end of each quarter of fiscal years 1991 and 1992, to submit to Congress a brief report on Department of Energy's compliance with National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), which was to contain a brief description of each proposed action to be taken by the Department of Energy, the environmental impact of which was not clearly insignificant, and a description of the steps taken or proposed to be taken by the Department of Energy to assess the environmental impact of the proposed action, and if the Secretary found that the proposed action of the Department of Energy would have no significant impact, the Secretary was to include the rationale for that determination.

§§ 7274a to 7274d. Transferred

CODIFICATION

Section 7274a, Pub. L. 101–189, div. C, title XXXI, § 3141, Nov. 29, 1989, 103 Stat. 1679; Pub. L. 105–85, div. C, title XXXI, § 3152(g), Nov. 18, 1997, 111 Stat. 2042, which related to a defense waste cleanup technology program, was renumbered section 4406 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(7)(A)–(C), Nov. 24, 2003, 117 Stat. 1765, and is classified to section 2586 of Title 50, War and National Defense.

Section 7274b, Pub. L. 101–189, div. C, title XXXI, § 3156, Nov. 29, 1989, 103 Stat. 1683, which related to the submission of reports in connection with permanent closures of Department of Energy defense nuclear facilities, was renumbered section 4422 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(12)(A)–(C), Nov. 24, 2003, 117 Stat. 1766, and is classified to section 2602 of Title 50, War and National Defense.

Section 7274c, Pub. L. 101–510, div. C, title XXXI, § 3134, Nov. 5, 1990, 104 Stat. 1833, which related to the submission of reports on environmental restoration ex-

penditures, was renumbered section 4407 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(8)(A)–(C), Nov. 24, 2003, 117 Stat. 1765, and is classified to section 2587 of Title 50, War and National Defense.

Section 7274d, Pub. L. 102–190, div. C, title XXXI, § 3131, Dec. 5, 1991, 105 Stat. 1571, which related to worker protection at nuclear weapons facilities, was renumbered section 4641 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(12)(A)–(C), Nov. 24, 2003, 117 Stat. 1779, and is classified to section 2731 of Title 50, War and National Defense.

§ 7274e. Scholarship and fellowship program for environmental restoration and waste management

(a) Establishment

The Secretary of Energy shall conduct a scholarship and fellowship program for the purpose of enabling individuals to qualify for employment in environmental restoration and waste management positions in the Department of Energy. The scholarship and fellowship program shall be known as the ''Marilyn Lloyd Scholarship and Fellowship Program''.

(b) Eligibility

To be eligible to participate in the scholarship and fellowship program, an individual must—

(1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001]);

(2) be pursuing a program of education that leads to an appropriate higher education degree in a qualifying field of study, as determined by the Secretary;

(3) sign an agreement described in subsection (c) of this section;

(4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and

(5) meet such other requirements as the Secretary prescribes.

(c) Agreement

An agreement between the Secretary and a participant in the scholarship and fellowship program established under this section shall be in writing, shall be signed by the participant, and shall include the following provisions:

(1) The Secretary's agreement to provide the participant with educational assistance for a specified number of school years (not exceeding 5) during which the participant is pursuing a program of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.

(2) The participant's agreement (A) to accept such educational assistance, (B) to maintain enrollment and attendance in the program of education until completed, (C) while enrolled in such program, to maintain satisfactory academic progress as prescribed by the institution of higher education in which the participant is enrolled, and (D) after completion of the program of education, to serve as a full-time employee in an environmental restoration or waste management position in the Department of Energy for a period of 12 months for each school year or part thereof for which the participant is provided a scholarship or fellowship under the program established under this section.

(d) Repayment

(1) Any person participating in a scholarship or fellowship program established under this section shall agree to pay to the United States the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), if the person—

(A) does not complete the course of education as agreed to pursuant to subsection (c) of this section, or completes the course of education but declines to serve in a position in the Department of Energy as agreed to pursuant to subsection (c) of this section; or

(B) is voluntarily separated from service or involuntarily separated for cause from the Department of Energy before the end of the period for which the person has agreed to continue in the service of the Department of Energy.

(2) If an employee fails to fulfill his agreement to pay to the Government the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), a sum equal to the amount of the educational assistance (plus such interest) is recoverable by the Government from the person or his estate by—

(A) in the case of a person who is an employee, setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(B) such other method as is provided by law for the recovery of amounts owing to the Government.

(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) For purposes of repayment under this section, the total amount of educational assistance provided to a person under the program shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

(e) Preference for cooperative education students

In evaluating applicants for award of scholarships and fellowships under the program, the Secretary of Energy may give a preference to an individual who is enrolled in, or accepted for enrollment in, an educational institution that has a cooperative education program with the Department of Energy.

(f) Coordination of benefits

A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the student for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]).

(g) Award of scholarships and fellowships

(1) Subject to paragraph (2), the Secretary shall award at least 20 scholarships (for undergraduate students) and 20 fellowships (for graduate students) during fiscal year 1992.

(2) The requirement to award 20 scholarships and 20 fellowships under paragraph (1) applies only to the extent there is a sufficient number of applicants qualified for such awards.

(h) Report to Congress

Not later than January 1, 1993, the Secretary of Energy shall submit to Congress a report on activities undertaken under the program and recommendations for future activities under the program.

(i) Funding

Of the funds authorized to be appropriated pursuant to section 3101(9)(B), $1,000,000 may be used for the purpose of carrying out this section.

(Pub. L. 102–190, div. C, title XXXI, § 3132, Dec. 5, 1991, 105 Stat. 1572; Pub. L. 103–337, div. C, title XXXI, § 3156(b)(1), Oct. 5, 1994, 108 Stat. 3092; Pub. L. 105–244, title I, § 102(a)(13)(F), Oct. 7, 1998, 112 Stat. 1620.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (f), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Section 3101(9)(B), referred to in subsec. (i), is section 3101(9)(B) of Pub. L. 102–190, div. C, title XXXI, Dec. 5, 1991, 105 Stat. 1564, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–244 substituted ''section 101 of the Higher Education Act of 1965'' for ''section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))''.

1994—Subsec. (a). Pub. L. 103–337 inserted at end ''The scholarship and fellowship program shall be known as the 'Marilyn Lloyd Scholarship and Fellowship Program'.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 3156(b)(2) of Pub. L. 103–337 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 3, 1995.''

§ 7274f. Transferred

CODIFICATION

Section, Pub. L. 102–190, div. C, title XXXI, § 3134, Dec. 5, 1991, 105 Stat. 1575, which related to the Defense Environmental Restoration and Waste Management Account, was renumbered section 4401 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(2), Nov. 24, 2003, 117 Stat. 1764, and is classified to section 2581 of Title 50, War and National Defense.

§ 7274g. Environmental restoration and waste management five-year plan and budget reports

(a) Five-year plan

(1) Not later than September 1 of each year, the Secretary of Energy shall issue a plan for environmental restoration and waste management activities to be conducted, during the five-year period beginning on October 1 of the next calendar year, at all facilities owned or operated by the Department of Energy except defense nuclear facilities. The plan also shall contain a description of environmental restoration and waste management activities conducted during the fiscal year in which the plan is submitted and of such activities to be conducted during the fiscal year beginning on October 1 of the same calendar year. Such five-year plan shall be designed to complete environmental restoration at all such Department of Energy facilities not later than the year 2019.

(2) The Secretary shall prepare each annual five-year plan in a preliminary form at least four months before the date on which that plan is required to be issued under paragraph (1). The preliminary plan shall contain the matters referred to in paragraph (4) (other than the matters referred to in subparagraph (J) of that paragraph). The Secretary shall provide the preliminary plan to the Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and the public for coordination, review, and comment.

(3) At the same time the Secretary issues an annual five-year plan under paragraph (1), the Secretary shall submit the plan to the President and Congress, publish a notice of the issuance of the plan in the Federal Register, and make the plan available to the Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and the public.

(4) The annual five-year plan, and the actions and other matters contained in the plan, shall be in accordance with all laws, regulations, permits, orders, and agreements. The plan shall include, with respect to the Department of Energy facilities required by paragraph (1) to be covered by the plan, the following matters:

(A) A description of the actions, including identification of specific projects, necessary to maintain or achieve compliance with Federal, State, or local environmental laws, regulations, permits, orders, and agreements.

(B) A description of the actions, including identification of specific projects, to be taken at each Department of Energy facility in order to implement environmental restoration activities planned for each such facility.

(C) A description of research and development activities for the expeditious and efficient environmental restoration of such facilities.

(D) A description of the technologies and facilities necessary to carry out the environmental restoration activities.

(E) A description of the waste management activities, including identification of specific

projects, necessary to continue to operate the Department of Energy facilities or to decontaminate and decommission the facilities, as the case may be.

(F) A description of research and development activities for waste management.

(G) A description of the technologies and facilities necessary to carry out the waste management activities.

(H) A description of activities and practices that the Secretary is undertaking or plans to undertake to minimize the generation of waste.

(I) The estimated costs of, and personnel required for, each project, action, or activity contained in the plan.

(J) A description of the respects in which the plan differs from the preliminary form of that plan issued pursuant to paragraph (2), together with the reasons for any differences.

(K) A discussion of the implementation of the preceding annual five-year plan.

(L) Such other matters as the Secretary finds appropriate and in the public interest.

(5) The Secretary shall consult with the Administrator of the Environmental Protection Agency, Governors and Attorneys General of affected States, and appropriate representatives of affected Indian tribes in the preparation of the plan and the preliminary form of the plan pursuant to paragraphs (1) and (2). The Secretary shall include as an appendix to the plan (A) all comments submitted on the preliminary form of the plan by the Administrator, Governors and Attorneys General of affected States, and affected Indian tribes, and (B) a summary of comments submitted by the public.

(6) The first annual five-year plan issued pursuant to this section shall be issued in 1992.

(b) Treatment of plans under section 4332

The development and adoption of any part of any plan (including any preliminary form of any such plan) under subsection (a) of this section shall not be considered a major Federal action for the purposes of subparagraph (C), (E), or (F) of section 4332(2) of this title. Nothing in this subsection shall affect the Department of Energy's ongoing preparation of a programmatic environmental impact statement on environmental restoration and waste management.

(c) Grants

The Secretary of Energy is authorized to award grants to, and enter into cooperative agreements with, affected States and affected Indian tribes to assist such States and tribes in participating in the development of the annual five-year plan (including the preliminary form of such plan).

(d) Funding

Of the funds authorized to be appropriated pursuant to section 3103, $20,000,000 may be used for the purpose of carrying out subsection (c) of this section.

(e) Budget reports

Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31), the President shall submit to Congress a description of proposed activities and funding levels contained in the annual five-year plan (issued, pursuant to subsection (a)(1) of this section, in the year preceding the year in which the budget is submitted to Congress) that are not included in the budget or are included in the budget in a different form or at a different funding level, together with the reasons for such differences.

(Pub. L. 102–190, div. C, title XXXI, § 3135, Dec. 5, 1991, 105 Stat. 1575; Pub. L. 103–337, div. C, title XXXI, § 3160(a), Oct. 5, 1994, 108 Stat. 3094.)

REFERENCES IN TEXT

Section 3103, referred to in subsec. (d), is section 3103 of Pub. L. 102–190, div. C, title XXXI, Dec. 5, 1991, 105 Stat. 1566, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337, § 3160(a)(1), substituted ''all facilities owned or operated by the Department of Energy except defense nuclear facilities'' for ''(A) defense nuclear facilities and (B) all other facilities owned or operated by the Department of Energy'' in first sentence and inserted ''such'' after ''restoration at all'' in third sentence.

Subsec. (a)(4). Pub. L. 103–337, § 3160(a)(2), substituted ''The plan shall include, with respect to the Department of Energy facilities required by paragraph (1) to be covered by the plan, the following matters:'' for ''The plan shall contain the following matters:'' in introductory provisions.

Subsec. (a)(6), (7). Pub. L. 103–337, § 3160(a)(3), (4), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''The Secretary shall include in the annual five-year plan issued in 1992 a discussion of the feasibility and need, if any, for the establishment of a contingency fund in the Department of Energy to provide funds necessary to meet the requirements in environmental laws, to remove an immediate threat to worker or public health and safety, to prevent or improve a condition where postponement of activity would lead to deterioration of the environment, and to undertake additional environmental restoration activities at Department of Energy defense nuclear facilities that are not provided for in the budgets for fiscal years in which it is necessary to meet such requirements or undertake such activities.''

PUBLIC PARTICIPATION IN PLANNING

Pub. L. 103–337, div. C, title XXXI, § 3160(e), Oct. 5, 1994, 108 Stat. 3095, which was formerly set out as a note under this section, was renumbered section 4408 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(9), Nov. 24, 2003, 117 Stat. 1765, and is classified to section 2588 of Title 50, War and National Defense.

§§ 7274h, 7274i. Transferred

CODIFICATION

Section 7274h, Pub. L. 102–484, div. C, title XXXI, § 3161, Oct. 23, 1992, 106 Stat. 2644; Pub. L. 103–337, div. A, title X, § 1070(c)(2), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(7)(A), (f)(6)(A)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430; Pub. L. 107–107, div. A, title X, § 1048(h)(1), Dec. 28, 2001, 115 Stat. 1229, which related to the Department of Energy's workforce restructuring plan for defense nuclear facilities, was renumbered section 4604 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fis-

cal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(5)(A)–(C), Nov. 24, 2003, 117 Stat. 1777, and is classified to section 2704 of Title 50, War and National Defense.

Section 7274i, Pub. L. 102–484, div. C, title XXXI, § 3162, Oct. 23, 1992, 106 Stat. 2646, which related to a program to monitor Department of Energy workers exposed to hazardous and radioactive substances, was renumbered section 4643 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(14)(A)–(C), Nov. 24, 2003, 117 Stat. 1779, 1780, and is classified to section 2733 of Title 50, War and National Defense.

SEMIANNUAL REPORT TO CONGRESS OF LOCAL IMPACT ASSISTANCE

Pub. L. 105–85, div. C, title XXXI, § 3153(f), Nov. 18, 1997, 111 Stat. 2044, which was formerly set out as a note under section 7274h of this title, was renumbered section 4851 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(15)(A)–(C)(ii), Nov. 24, 2003, 117 Stat. 1786, and is classified to section 2821 of Title 50, War and National Defense.

§ 7274j. Repealed. Pub. L. 108–136, div. C, title XXXI, § 3141(m)(2), Nov. 24, 2003, 117 Stat. 1787

Section, Pub. L. 102–484, div. C, title XXXI, § 3163, Oct. 23, 1992, 106 Stat. 2647; Pub. L. 104–106, div. A, title XV, § 1504(c)(2), Feb. 10, 1996, 110 Stat. 514, related to definitions for purposes of former sections 7274h to 7274j of this title.

§ 7274k. Transferred

CODIFICATION

Section, Pub. L. 103–160, div. C, title XXXI, § 3153, Nov. 30, 1993, 107 Stat. 1950; Pub. L. 103–337, div. C, title XXXI, § 3160(b)–(d), Oct. 5, 1994, 108 Stat. 3094; Pub. L. 104–201, div. C, title XXXI, § 3152, Sept. 23, 1996, 110 Stat. 2839; Pub. L. 105–85, div. C, title XXXI, § 3160, Nov. 18, 1997, 111 Stat. 2048, which related to baseline environmental management reports, was renumbered section 4404 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(5), Nov. 24, 2003, 117 Stat. 1765, and is classified to section 2584 of Title 50, War and National Defense.

REQUIREMENT TO DEVELOP FUTURE USE PLANS FOR ENVIRONMENTAL MANAGEMENT PROGRAMS

Pub. L. 104–201, div. C, title XXXI, § 3153, Sept. 23, 1996, 110 Stat. 2839, which was formerly set out as a note under this section, was renumbered section 4402 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(3)(A)–(C), Nov. 24, 2003, 117 Stat. 1764, and is classified to section 2582 of Title 50, War and National Defense.

ACCELERATED SCHEDULE FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT ACTIVITIES

Pub. L. 104–106, div. C, title XXXI, § 3156, Feb. 10, 1996, 110 Stat. 625, which was formerly set out as a note under this section, was renumbered section 4405 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003 by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(6)(A)–(C), Nov. 24, 2003, 117 Stat. 1765, and is classified to section 2585 of Title 50, War and National Defense.

§ 7274*l*. Authority to transfer certain Department of Energy property

(a) Authority to transfer

(1) Notwithstanding any other provision of law, the Secretary of Energy may transfer, for consideration, all right, title, and interest of the United States in and to the property referred to in subsection (b) of this section to any person if the Secretary determines that such transfer will mitigate the adverse economic consequences that might otherwise arise from the closure of a Department of Energy facility.

(2) The amount of consideration received by the United States for a transfer under paragraph (1) may be less than the fair market value of the property transferred if the Secretary determines that the receipt of such lesser amount by the United States is in accordance with the purpose of such transfer under this section.

(3) The Secretary may require any additional terms and conditions with respect to a transfer of property under paragraph (1) that the Secretary determines appropriate to protect the interests of the United States.

(b) Covered property

Property referred to in subsection (a) of this section is the following property of the Department of Energy that is located at a Department of Energy facility to be closed or reconfigured:

(1) The personal property and equipment at the facility that the Secretary determines to be excess to the needs of the Department of Energy.

(2) Any personal property and equipment at the facility (other than the property and equipment referred to in paragraph (1)) the replacement cost of which does not exceed an amount equal to 110 percent of the costs of relocating the property or equipment to another facility of the Department of Energy.

(Pub. L. 103–160, div. C, title XXXI, § 3155, Nov. 30, 1993, 107 Stat. 1953.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1994, and not as part of the Department of Energy Organization Act which comprises this chapter.

§§ 7274m to 7274*o*. Transferred

CODIFICATION

Section 7274m, Pub. L. 103–337, div. C, title XXXI, § 3163, Oct. 5, 1994, 108 Stat. 3097, which related to safety oversight and enforcement at defense nuclear facilities, was renumbered section 4642 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(13)(A)–(C), Nov. 24, 2003, 117 Stat. 1779, and is classified to section 2732 of Title 50, War and National Defense.

Section 7274n, Pub. L. 104–201, div. C, title XXXI, § 3143, Sept. 23, 1996, 110 Stat. 2836, which related to projects to accelerate closure activities at defense nuclear facilities, was renumbered section 4421 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(11)(A)–(C), Nov. 24, 2003, 117 Stat. 1766, and is classified to section 2601 of Title 50, War and National Defense.

Section 7274*o*, Pub. L. 104–201, div. C, title XXXI, § 3159, Sept. 23, 1996, 110 Stat. 2842; Pub. L. 105–85, div. A, title XIII, § 1305(c), (d), Nov. 18, 1997, 111 Stat. 1954; Pub. L. 106–65, div. C, title XXXI, § 3163(f), Oct. 5, 1999, 113 Stat. 946, which related to reports on critical difficulties at nuclear weapons laboratories and nuclear weapons production plants, was renumbered section 4213 of Pub. L. 107–314, the Bob Stump National Defense

Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(14), Nov. 24, 2003, 117 Stat. 1760, and is classified to section 2533 of Title 50, War and National Defense.

SUBMITTAL OF ANNUAL REPORT ON STATUS OF SECURITY FUNCTIONS AT NUCLEAR WEAPONS FACILITIES

Pub. L. 105–85, div. C, title XXXI, § 3162, Nov. 18, 1997, 111 Stat. 2049, as amended by Pub. L. 106–65, div. C, title XXXI, § 3142(h)(2), Oct. 5, 1999, 113 Stat. 934, which was formerly set out as a note under section 7274m of this title, was renumbered section 4506 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(7)(A)–(C), Nov. 24, 2003, 117 Stat. 1773, and is classified to section 2657 of Title 50, War and National Defense.

EMPLOYEE INCENTIVES FOR EMPLOYEES AT CLOSURE PROJECT FACILITIES

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3136], Oct. 30, 2000, 114 Stat. 1654, 1654A–458, which was formerly set out as a note under section 7274n of this title, was renumbered section 4603 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(4)(A)–(C), Nov. 24, 2003, 117 Stat. 1777, and is classified to section 2703 of Title 50, War and National Defense.

§ 7274p. Advice to President and Congress regarding safety, security, and reliability of United States nuclear weapons stockpile

(a) Findings

Congress makes the following findings:

(1) Nuclear weapons are the most destructive weapons on earth. The United States and its allies continue to rely on nuclear weapons to deter potential adversaries from using weapons of mass destruction. The safety and reliability of the nuclear weapons stockpile are essential to ensure its credibility as a deterrent.

(2) On September 24, 1996, President Clinton signed the Comprehensive Test Ban Treaty.

(3) Effective as of September 30, 1996, the United States is prohibited by section 507 of the Energy and Water Development Appropriations Act, 1993 (Public Law 102–377; 42 U.S.C. 2121 note)[1] from conducting underground nuclear tests ''unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted''.

(4) Section 1436(b) of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456; 42 U.S.C. 2121 note)[1] requires the Secretary of Energy to ''establish and support a program to assure that the United States is in a position to maintain the reliability, safety, and continued deterrent effect of its stockpile of existing nuclear weapons designs in the event that a low-threshold or comprehensive test ban on nuclear explosive testing is negotiated and ratified.''.

(5) Section 3138(d) of the National Defense Authorization Act for Fiscal Year 1994[1] (Public Law 103–160; 42 U.S.C. 2121 note) required the President to submit an annual report to Congress which sets forth ''any concerns with respect to the safety, security, effectiveness, or reliability of existing United States nuclear weapons raised by the Stockpile Stewardship Program of the Department of Energy''.

(6) President Clinton declared in July 1993 that ''to assure that our nuclear deterrent remains unquestioned under a test ban, we will explore other means of maintaining our confidence in the safety, reliability, and the performance of our weapons''. This decision was incorporated in a Presidential Directive.

(7) Section 3138 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 42 U.S.C. 2121 note)[1] also requires that the Secretary of Energy establish a ''stewardship program to ensure the preservation of the core intellectual and technical competencies of the United States in nuclear weapons''.

(8) The plan of the Department of Energy to maintain the safety and reliability of the United States nuclear weapons stockpile is known as the Stockpile Stewardship and Management Program. The ability of the United States to maintain and certify the safety, security, effectiveness, and reliability of the nuclear weapons stockpile without testing will require utilization of new and sophisticated computational capabilities and diagnostic technologies, methods, and procedures. Current diagnostic technologies and laboratory testing techniques are insufficient to certify the safety and reliability of the United States nuclear weapons stockpile into the future. Whereas in the past laboratory and diagnostic tools were used in conjunction with nuclear testing, in the future they will provide, under the Department of Energy's stockpile stewardship plan, the sole basis for assessing past test data and for making judgments on phenomena observed in connection with the aging of the stockpile.

(9) Section 3159 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 42 U.S.C. 7274*o*) requires that the directors of the nuclear weapons laboratories and the nuclear weapons production plants submit a report to the Assistant Secretary of Energy for Defense Programs if they identify a problem that has significant bearing on confidence in the safety or reliability of a nuclear weapon or nuclear weapon type, that the Assistant Secretary must transmit that report, along with any comments, to the congressional defense committees and to the Secretary of Energy and the Secretary of Defense, and that the Joint Nuclear Weapons Council advise Congress regarding its analysis of any such problems.

(10) On August 11, 1995, President Clinton directed ''the establishment of a new annual reporting and certification requirement [to] ensure that our nuclear weapons remain safe and reliable under a comprehensive test ban''.

(11) On the same day, the President noted that the Secretary of Defense and the Secretary of Energy have the responsibility, after being ''advised by the Nuclear Weapons Council, the Directors of DOE's nuclear weapons laboratories, and the Commander of United States Strategic Command'', to provide the President with the information regarding the certification referred to in paragraph (10).

[1] See References in Text note below.

(12) The Joint Nuclear Weapons Council established by section 179 of title 10 is responsible for providing advice to the Secretary of Energy and the Secretary of Defense regarding nuclear weapons issues, including ''considering safety, security, and control issues for existing weapons''. The Council plays a critical role in advising Congress in matters relating to nuclear weapons.

(13) It is essential that the President receive well-informed, objective, and honest opinions, including dissenting views, from his advisers and technical experts regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(b) Policy

(1) In general

It is the policy of the United States—

(A) to maintain a safe, secure, effective, and reliable nuclear weapons stockpile; and

(B) as long as other nations control or actively seek to acquire nuclear weapons, to retain a credible nuclear deterrent.

(2) Nuclear weapons stockpile

It is in the security interest of the United States to sustain the United States nuclear weapons stockpile through a program of stockpile stewardship, carried out at the nuclear weapons laboratories and nuclear weapons production plants.

(3) Sense of Congress

It is the sense of Congress that—

(A) the United States should retain a triad of strategic nuclear forces sufficient to deter any future hostile foreign leadership with access to strategic nuclear forces from acting against the vital interests of the United States;

(B) the United States should continue to maintain nuclear forces of sufficient size and capability to implement an effective and robust deterrent strategy; and

(C) the advice of the persons required to provide the President and Congress with assurances of the safety, security, effectiveness, and reliability of the nuclear weapons force should be scientifically based, without regard for politics, and of the highest quality and integrity.

(c), (d) Omitted

(e) Advice and opinions regarding nuclear weapons stockpile

In addition to a director of a nuclear weapons laboratory or a nuclear weapons production plant (under section 3159 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 42 U.S.C. 7274*o*)),[1] any member of the Joint Nuclear Weapons Council or the commander of the United States Strategic Command may also submit to the President, the Secretary of Defense, the Secretary of Energy, or the congressional defense committees advice or opinion regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(f) Expression of individual views

A representative of the President may not take any action against, or otherwise constrain, a director of a nuclear weapons laboratory or a nuclear weapons production plant, a member of the Joint Nuclear Weapons Council, or the Commander of United States Strategic Command for presenting individual views to the President, the National Security Council, or Congress regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(g) Definitions

In this section:

(1) The term ''representative of the President'' means the following:

(A) Any official of the Department of Defense or the Department of Energy who is appointed by the President and confirmed by the Senate.

(B) Any member of the National Security Council.

(C) Any member of the Joint Chiefs of Staff.

(D) Any official of the Office of Management and Budget.

(2) The term ''nuclear weapons laboratory'' means any of the following:

(A) Lawrence Livermore National Laboratory, California.

(B) Los Alamos National Laboratory, New Mexico.

(C) Sandia National Laboratories.

(3) The term ''nuclear weapons production plant'' means any of the following:

(A) The Pantex Plant, Texas.

(B) The Savannah River Site, South Carolina.

(C) The Kansas City Plant, Missouri.

(D) The Y–12 Plant, Oak Ridge, Tennessee.

(Pub. L. 105–85, div. A, title XIII, § 1305, Nov. 18, 1997, 111 Stat. 1952.)

REFERENCES IN TEXT

Section 507 of the Energy and Water Development Appropriations Act, 1993 (Public Law 102–377), referred to in subsec. (a)(3), which is set out as a note under section 2121 of this title, was amended by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(11), Nov. 24, 2003, 117 Stat. 1760, and no longer contains the words ''unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted''. Those words were transferred to section 2530 of Title 50, War and National Defense.

Section 1436 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456), referred to in subsec. (a)(4), was set out as a note under section 2121 of this title and was renumbered section 4207 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(8)(A)–(C), Nov. 24, 2003, 117 Stat. 1759, which is classified to section 2527 of Title 50, War and National Defense.

Section 3138 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160), referred to in subsec. (a)(5) and (7), was amended by Pub. L. 105–85, div. C, title XXXI, § 3152(e)(1), Nov. 18, 1997, 111 Stat. 2042, to strike out subsec. (d) and subsequently renumbered section 4201 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(2), Nov. 24, 2003, 117 Stat. 1758, which is classified to section 2521 of Title 50, War and National Defense.

Section 3159 of the National Defense Authorization Act for Fiscal Year 1997, referred to in subsecs. (a)(9) and (e), was classified to section 7274*o* of this title and was renumbered section 4213 of Pub. L. 107–314, the Bob

Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(14), Nov. 24, 2003, 117 Stat. 1760, which is classified to section 2533 of Title 50, War and National Defense.

CODIFICATION

Section is comprised of section 1305 of Pub. L. 105–85. Subsecs. (c) and (d) of section 1305 of Pub. L. 105–85 amended section 2533 of Title 50, War and National Defense.

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1998, and not as part of the Department of Energy Organization Act which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory, including the functions of the Secretary of Energy relating thereto, to the Secretary of Homeland Security, see sections 183(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

All national security functions and activities performed immediately before Oct. 5, 1999, by nuclear weapons laboratories and production plants defined in this section, transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, see section 2481 of Title 50, War and National Defense.

''CONGRESSIONAL DEFENSE COMMITTEES'' DEFINED

Congressional defense committees means the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, see section 3 of Pub. L. 105–85, 111 Stat. 1645, as amended by Pub. L. 106–65, div. A, title X, § 1067(4), Oct. 5, 1999, 113 Stat. 774. See note under section 101 of Title 10, Armed Forces.

§ 7274q. Transferred

CODIFICATION

Section, Pub. L. 105–85, div. C, title XXXI, § 3158, Nov. 18, 1997, 111 Stat. 2046; Pub. L. 108–7, div. D, title V, § 506, Feb. 20, 2003, 117 Stat. 158, which related to transfers of real property at certain Department of Energy facilities, was renumbered section 4831 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(11), Nov. 24, 2003, 117 Stat. 1785, and is classified to section 2811 of Title 50, War and National Defense.

§ 7274r. Transferred

CODIFICATION

Section, Pub. L. 108–7, div. D, title III, § 308, Feb. 20, 2003, 117 Stat. 154, which related to research, development, and demonstration activities with respect to engineering and manufacturing capabilities at covered nuclear weapons production plants, was transferred and is listed in a similar provisions note under the heading Activities at Covered Nuclear Weapons Facilities under section 2812 of Title 50, War and National Defense.

ENGINEERING AND MANUFACTURING RESEARCH, DEVELOPMENT, AND DEMONSTRATION BY PLANT MANAGERS OF CERTAIN NUCLEAR WEAPONS PRODUCTION PLANTS

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3156], Oct. 30, 2000, 114 Stat. 1654, 1654A–467, which was formerly set out as a note under this section, was renumbered section 4832 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(12), Nov. 24, 2003, 117 Stat. 1785, and is classified to section 2812 of Title 50, War and National Defense.

§ 7274s. Transferred

CODIFICATION

Section, Pub. L. 107–314, div. C, title XXXI, § 3141, Dec. 2, 2002, 116 Stat. 2730, which related to annual assessments and reports to the President and Congress regarding the condition of the United States nuclear weapons stockpile, was renumbered section 4205 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(6)(A)–(C), Nov. 24, 2003, 117 Stat. 1759, and is classified to section 2525 of Title 50, War and National Defense.

§ 7275. Definitions

As used in sections 7275 to 7276c of this title:

(1) The term ''Administrator'' means the Administrator of the Western Area Power Administration.

(2) The term ''integrated resource planning'' means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

(3) The term ''least cost option'' means an option for providing reliable electric services to electric customers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing such service. To the extent practicable, energy efficiency and renewable resources may be given priority in any least-cost option.

(4) The term ''long-term firm power service contract'' means any contract for the sale by Western Area Power Administration of firm capacity, with or without energy, which is to be delivered over a period of more than one year.

(5) The terms ''customer'' or ''customers'' means any entity or entities purchasing firm capacity with or without energy, from the Western Area Power Administration under a long-term firm power service contract. Such terms include parent-type entities and their distribution or user members.

(6) For any customer, the term ''applicable integrated resource plan'' means the integrated resource plan approved by the Administrator under sections 7275 to 7276c of this title for that customer.

(Pub. L. 98–381, title II, § 201, as added Pub. L. 102–486, title I, § 114, Oct. 24, 1992, 106 Stat. 2799.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 7275, Pub. L. 98–381, title II, § 201, Aug. 17, 1984, 98 Stat. 1340, related to energy conservation program of Western Area Power Administration, prior to the general amendment of title II of Pub. L. 98–381 by section 114 of Pub. L. 102–486.

§ 7276. Regulations to require integrated resource planning

(a) Regulations

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer purchasing electric energy under a long-term firm power service contract with the Western Area Power Administration to implement, within 3 years after October 24, 1992, integrated resource planning in accordance with the requirements of sections 7275 to 7276c of this title.

(b) Certain small customers

Notwithstanding subsection (a) of this section, for customers with total annual energy sales or usage of 25 Gigawatt Hours or less which are not members of a joint action agency or a generation and transmission cooperative with power supply responsibility, the Administrator may establish different regulations and apply such regulations to customers that the Administrator finds have limited economic, managerial, and resource capability to conduct integrated resource planning. The regulations under this subsection shall require such customers to consider all reasonable opportunities to meet their future energy service requirements using demand-side techniques, new renewable resources and other programs that will provide retail customers with electricity at the lowest possible cost, and minimize, to the extent practicable, adverse environmental effects.

(Pub. L. 98–381, title II, § 202, as added Pub. L. 102–486, title I, § 114, Oct. 24, 1992, 106 Stat. 2800.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 7276, Pub. L. 98–381, title II, § 202, Aug. 17, 1984, 98 Stat. 1341, related to regulations of Western Area Power Administration, including amendment of regulations after notice and comment, evaluation of energy conservation programs, and allowance by Western for incorporation of elements of such programs, prior to the general amendment of title II of Pub. L. 98–381 by section 114 of Pub. L. 102–486.

§ 7276a. Technical assistance

The Administrator may provide technical assistance to customers to, among other things, conduct integrated resource planning, implement applicable integrated resource plans, and otherwise comply with the requirements of sections 7275 to 7276c of this title. Technical assistance may include publications, workshops, conferences, one-to-one assistance, equipment loans, technology and resource assessment studies, marketing studies, and other mechanisms to transfer information on energy efficiency and renewable energy options and programs to customers. The Administrator shall give priority to providing technical assistance to customers that have limited capability to conduct integrated resource planning.

(Pub. L. 98–381, title II, § 203, as added Pub. L. 102–486, title I, § 114, Oct. 24, 1992, 106 Stat. 2800.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7276b. Integrated resource plans

(a) Review by Western Area Power Administration

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to submit an integrated resource plan to the Administrator within 12 months after such regulations are amended. The regulation shall require a revision of such plan to be submitted every 5 years after the initial submission. The Administrator shall review the initial plan in accordance with a schedule established by the Administrator (which schedule will provide for the review of all initial plans within 24 months after such regulations are amended), and each revision thereof within 120 days after his receipt of the plan or revision and determine whether the customer has in the development of the plan or revision, complied with sections 7275 to 7276c of this title. Plan amendments may be submitted to the Administrator at any time and the Administrator shall review each such amendment within 120 days after receipt thereof to determine whether the customer in amending its plan has complied with sections 7275 to 7276c of this title. If the Administrator determines that the customer, in developing its plan, revision, or amendment, has not complied with the requirements of sections 7275 to 7276c of this title, the customer shall resubmit the plan at any time thereafter. Whenever a plan or revision or amendment is resubmitted the Administrator shall review the plan or revision or amendment within 120 days after his receipt thereof to determine whether the customer has complied with sections 7275 to 7276c of this title.

(b) Criteria for approval of integrated resource plans

The Administrator shall approve an integrated resource plan submitted as required under subsection (a) of this section if, in developing the plan, the customer has:

(1) Identified and accurately compared all practicable energy efficiency and energy supply resource options available to the customer.

(2) Included a 2-year action plan and a 5-year action plan which describe specific actions the

customer will take to implement its integrated resource plan.

(3) Designated ''least-cost options'' to be utilized by the customer for the purpose of providing reliable electric service to its retail consumers and explained the reasons why such options were selected.

(4) To the extent practicable, minimized adverse environmental effects of new resource acquisitions.

(5) In preparation and development of the plan (and each revision or amendment of the plan) has provided for full public participation, including participation by governing boards.

(6) Included load forecasting.

(7) Provided methods of validating predicted performance in order to determine whether objectives in the plan are being met.

(8) Met such other criteria as the Administrator shall require.

(c) Use of other integrated resource plans

Where a customer or group of customers are implementing integrated resource planning under a program responding to Federal, State, or other initiatives, including integrated resource planning considered and implemented pursuant to section 2621(d) of title 16, in evaluating that customer's integrated resource plan under sections 7275 to 7276c of this title, the Administrator shall accept such plan as fulfillment of the requirements of sections 7275 to 7276c of this title to the extent such plan substantially complies with the requirements of sections 7275 to 7276c of this title.

(d) Compliance with integrated resource plans

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to fully comply with the applicable integrated resource plan and submit an annual report to the Administrator (in such form and containing such information as the Administrator may require) describing the customer's progress to the goals established in such plan. After the initial review under subsection (a) of this section the Administrator shall periodically conduct reviews of a representative sample of applicable integrated resource plans and the customer's implementation of the applicable integrated resource plan to determine if the customers are in compliance with their plans. If the Administrator finds a customer out-of-compliance, the Administrator shall impose a surcharge under this section on all electric energy purchased by the customer from the Western Area Power Administration or reduce such customer's power allocation by 10 percent, unless the Administrator finds that a good faith effort has been made to comply with the approved plan.

(e) Enforcement

(1) No approved plan

If an integrated resource plan for any customer is not submitted before the date 12 months after the guidelines are amended as required under this section or if the plan is disapproved by the Administrator and a revised plan is not resubmitted by the date 9 months after the date of such disapproval, the Administrator shall impose a surcharge of 10 percent of the purchase price on all power obtained by that customer from the Western Area Power Administration after such date. The surcharge shall remain in effect until an integrated resource plan is approved for that customer. If the plan is not submitted for more than one year after the required date, the surcharge shall increase to 20 percent for the second year (or any portion thereof prior to approval of the plan) and to 30 percent thereafter until the plan is submitted or the contract for the purchase of power by such customer from the Western Area Power Administration terminates.

(2) Failure to comply with approved plan

After approval by the Administrator of an applicable integrated resource plan for any customer, the Administrator shall impose a 10 percent surcharge on all power purchased by such customer from the Western Area Power Administration whenever the Administrator determines that such customer's activities are not consistent with the applicable integrated resource plan. The surcharge shall remain in effect until the Administrator determines that the customer's activities are consistent with the applicable integrated resource plan. The surcharge shall be increased to 20 percent if the customer's activities are out of compliance for more than one year and to 30 percent after more than 2 years, except that no surcharge shall be imposed if the customer demonstrates, to the satisfaction of the Administrator, that a good faith effort has been made to comply with the approved plan.

(3) Reduction in power allocation

In the case of any customer subject to a surcharge under paragraph (1) or (2), in lieu of imposing such surcharge the Administrator may reduce such customer's power allocation from the Western Area Power Administration by 10 percent. The Administrator shall provide by regulation the terms and conditions under which a power allocation terminated under this subsection may be reinstated.

(f) Integrated resource planning cooperatives

With the approval of the Administrator, customers within any State or region may form integrated resource planning cooperatives for the purposes of complying with sections 7275 to 7276c of this title, and such customers shall be allowed an additional 6 months to submit an initial integrated resource plan to the Administrator.

(g) Customers with more than 1 contract

If more than one long-term firm power service contract exists between the Administrator and a customer, only one integrated resource plan shall be required for that customer under sections 7275 to 7276c of this title.

(h) Program review

Within 1 year after January 1, 1999, and at appropriate intervals thereafter, the Adminis-

trator shall initiate a public process to review the program established by this section. The Administrator is authorized at that time to revise the criteria set forth in subsection (b) of this section to reflect changes, if any, in technology, needs, or other developments.

(Pub. L. 98–381, title II, § 204, as added Pub. L. 102–486, title I, § 114, Oct. 24, 1992, 106 Stat. 2800.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7276c. Miscellaneous provisions

(a) Environmental impact statement

The provisions of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] shall apply to actions of the Administrator implementing sections 7275 to 7276c of this title in the same manner and to the same extent as such provisions apply to other major Federal actions significantly affecting the quality of the human environment.

(b) Annual reports

The Administrator shall include in the annual report submitted by the Western Area Power Administration (1) a description of the activities undertaken by the Administrator and by customers under sections 7275 to 7276c of this title and (2) an estimate of the energy savings and renewable resource benefits achieved as a result of such activities.

(c) State regulated investor-owned utilities

Any State regulated electric utility (as defined in section 2602(18) of title 16) shall be exempt from the provisions of sections 7275 to 7276c of this title.

(d) Rural Electrification Administration requirements

Nothing in sections 7275 to 7276c of this title shall require a customer to take any action inconsistent with a requirement imposed by the Rural Electrification Administration [1]

(Pub. L. 98–381, title II, § 205, as added Pub. L. 102–486, title I, § 114, Oct. 24, 1992, 106 Stat. 2803.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7276d. Property protection program for power marketing administrations

The Administrators of the Western Area Power Administration, the Southwestern Power Administration, and the Southeastern Power Administration may each carry out programs to reduce vandalism, theft, and destruction of property that is under their jurisdiction.

(Pub. L. 107–78, § 1, Nov. 28, 2001, 115 Stat. 808.)

CODIFICATION

Section was not enacted as part of the Department of Energy Organization Act which comprises this chapter.

§ 7276e. Provision of rewards

In carrying out a program under this section and section 7276d of this title, each Administrator referred to in section 7276d of this title is authorized to provide rewards (including cash rewards) to individuals who provide information or evidence leading to the arrest and prosecution of individuals causing damage to, or loss of, Federal property under their jurisdiction. The amount of any one such reward paid to any individual may not exceed a value of $1,000.

(Pub. L. 107–78, § 2, Nov. 28, 2001, 115 Stat. 808.)

CODIFICATION

Section was not enacted as part of the Department of Energy Organization Act which comprises this chapter.

§ 7277. Report concerning review of United States coal imports

(a) In general

The Energy Information Administration shall issue a report quarterly, and provide an annual summary of the quarterly reports to the Congress, on the status of United States coal imports. Such quarterly reports may be published as a part of the Quarterly Coal Report published by the Energy Information Administration.

(b) Contents

Each report required by this section shall—

(1) include current and previous year data on the quantity, quality (including heating value, sulfur content, and ash content), and delivered price of all coals imported by domestic electric utility plants that imported more than 10,000 tons during the previous calendar year into the United States;

(2) identify the foreign nations exporting the coal, the domestic electric utility plants receiving coal from each exporting nation, the domestically produced coal supplied to such plants, and the domestic coal production, by State, displaced by the imported coal;

(3) identify (to the extent allowed under disclosure policy), at regional and State levels of aggregation, transportation modes and costs for delivery of imported coal from the exporting country port of origin to the point of consumption in the United States; and

(4) specifically highlight and analyze any significant trends of unusual variations in coal imports.

(c) Date of reports

The first report required by this section shall be submitted to Congress in March 1986. Subsequent reports shall be submitted within 90 days after the end of each quarter.

(d) Limitation

Information and data required for the purpose of this section shall be subject to the law regarding the collection and disclosure of such data.

[1] So in original. Probably should be followed by a period.

(Pub. L. 99–58, title II, § 202, July 2, 1985, 99 Stat. 107.)

CODIFICATION

Section was enacted as part of the Energy Policy and Conservation Amendments Act of 1985, and also as part of the National Coal Imports Reporting Act of 1985, and not as part of the Department of Energy Organization Act which comprises this chapter.

SHORT TITLE

Section 201 of title II of Pub. L. 99–58 provided that: ''This title [enacting this section and provisions set out as a note below] may be cited as the 'National Coal Imports Reporting Act of 1985'.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section requiring submittal of reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 14th item on page 90 of House Document No. 103–7.

ANALYSIS OF UNITED STATES COAL IMPORT MARKET; REPORT BY SECRETARY OF ENERGY TO CONGRESS

Section 203 of Pub. L. 99–58 provided that:

''(a) IN GENERAL.—The Secretary of Energy shall, through the Energy Information Administration, conduct a comprehensive analysis of the coal import market in the United States and report the findings of such analysis to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives, within nine months of the date of enactment of this Act [July 2, 1985].

''(b) CONTENTS.—The report required by this section shall—

''(1) contain a detailed analysis of potential domestic markets for foreign coals, by producing nation, between 1985 and 1995;

''(2) identify potential domestic consuming sectors of imported coal and evaluate the magnitude of any potential economic disruptions for each impacted State, including analysis of direct and indirect employment impact in the domestic coal industry and resulting income loss to each State;

''(3) identify domestically produced coal that potentially could be replaced by imported coal;

''(4) identify contractual commitments of domestic utilities expiring between 1985 and 1995 and describe spot buying practices of domestic utilities, fuel cost patterns, plant modification costs required to burn foreign coals, proximity of navigable waters to utilities, demand for compliance coal, availability of less expensive purchased power from Canada, and State and local considerations;

''(5) evaluate increased coal consumption by domestic electric utilities resulting from increased power sales and analyze the potential coal import market represented by this increased coal consumption, including consumption by existing coal-fired plants, new coal-fired plants projected up to the year 1995, and plants planning to convert to coal by 1995;

''(6) identify existing authorities available to the Federal Government relating to coal imports, assess the potential impact of exercising each of these authorities, and describe executive branch plans and strategies to address coal imports;

''(7) identify and characterize the coal export policies of all major coal exporting nations, including the United States, Australia, Canada, Colombia, Poland, and South Africa, with specific analysis of—

''(A) direct or indirect Government subsidies to coal exporters;

''(B) health, safety, and environmental regulations imposed on each coal producer; and

''(C) trade policies relating to coal exports;

''(8) evaluate the excess capacity of foreign producers, potential development of new export-oriented coal mines in foreign nations, operating costs of foreign coal mines, capacity of ocean vessels to transport foreign coal, and constraints on importing coal into the United States because of port and harbor availability;

''(9) identify specifically the participation of all United States corporations involved in mining and exporting coal from foreign nations; and

''(10) identify the policies governing coal imports of all coal-importing industrialized nations (including the United States, Japan, and European nations) by considering such factors as import duties or tariffs, import quotas, and other governmental restrictions or trade policies impacting coal imports.''

§ 7278. Availability of appropriations for Department of Energy for transportation, uniforms, security, and price support and loan guarantee programs; transfer of funds; acceptance of contributions

Appropriations for the Department of Energy under this title[1] in this and subsequent Energy and Water Development Appropriations Acts, on and after October 2, 1992, shall be available for hire of passenger motor vehicles; hire, maintenance and operation of aircraft; purchase, repair and cleaning of uniforms; and reimbursement to the General Services Administration for security guard services. From these appropriations, transfers of sums may on and after October 2, 1992, be made to other agencies of the United States Government for the performance of work for which this appropriation is made. None of the funds made available to the Department of Energy under this Act or subsequent Energy and Water Development Appropriations Acts shall be used to implement or finance authorized price support or loan guarantee programs unless specific provision is made for such programs in an appropriation Act. The Secretary is authorized on and after October 2, 1992, to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, private, or foreign.

(Pub. L. 102–377, title III, § 301, Oct. 2, 1992, 106 Stat. 1338.)

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 102–377, Oct. 2, 1992, 106 Stat. 1332. For complete classification of title III to Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

SUBCHAPTER VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

§ 7291. Transfer and allocations of appropriations and personnel

(a) Except as otherwise provided in this chapter, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations authorizations, allocations, and other funds employed, held, used, arising from, avail-

[1] See References in Text note below.

able to or to be made available in connection with the functions transferred by this chapter, subject to section 1531 of title 31, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out function transferred by this chapter personnel occupying those positions on October 1, 1977, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312–5316) on October 1, 1977, shall be subject to the provisions of section 7293 of this title.

(Pub. L. 95–91, title VII, § 701, Aug. 4, 1977, 91 Stat. 605.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

CODIFICATION

In subsec. (a), ''section 1531 of title 31'' substituted for ''section 202 of the Budget and Accounting Procedures Act of 1950 [31 U.S.C. 581c]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 7292. Effect on personnel

(a) Full-time and part-time personnel holding permanent positions

Except as otherwise provided in this chapter, the transfer pursuant to this subchapter of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this subchapter shall not cause any such employee to be separated or reduced in grade or compensation for one year after August 4, 1977, except that full-time temporary personnel employed at the Energy Research Centers of the Energy Research and Development Administration upon the establishment of the Department who are determined by the Department to be performing continuing functions may at the employee's option be converted to permanent full-time status within one hundred and twenty days following their transfer to the Department. The employment levels of full-time permanent personnel authorized for the Department by other law or administrative action shall be increased by the number of employees who exercise the option to be so converted.

(b) Person who held position compensated in accordance with chapter 53 of title 5

Any person who, on October 1, 1977, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, and who, without a break in service, is appointed in the Department to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.

(c) Employees holding reemployment rights acquired under section 786 of title 15

Employees transferred to the Department holding reemployment rights acquired under section 786 of title 15[1] or any other provision of law or regulation may exercise such rights only within one hundred twenty days from October 1, 1977, or within two years of acquiring such rights, whichever is later. Reemployment rights may only be exercised at the request of the employee.

(Pub. L. 95–91, title VII, § 702, Aug. 4, 1977, 91 Stat. 605.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

This subchapter, referred to in subsec. (a), was in the original ''this title'' meaning title VII of Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 605, which enacted this subchapter and section 916 of Title 7, Agriculture, amended sections 6833 and 6839 of this title, section 19 of Title 3, The President, sections 101, 5108, and 5312 to 5316 of Title 5, Government Organization and Employees, section 1701z–8 of Title 12, Banks and Banking, and sections 766, 790a, and 790d of Title 15, Commerce and Trade, repealed sections 2036 and 5818 of this title and sections 763, 768 and 786 of Title 15, enacted provisions set out as a note under 2201 of this title, and repealed provisions set out as a note under section 761 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Section 786 of title 15, referred to in subsec. (c), was repealed by Pub. L. 95–91, title VII, § 709(a)(1), Aug. 4, 1977, 91 Stat. 607.

EX. ORD. NO. 12026. REINSTATEMENT RIGHTS OF CERTAIN EMPLOYEES OF DEPARTMENT OF ENERGY

Ex. Ord. No. 12026, Dec. 5, 1977, 42 F.R. 61849, provided:

By virtue of the authority vested in me by Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, the service of an employee of the Atomic Energy Commission or of the Energy Research and Development Administration pursuant to a Regular or Regular (Conditional) appointment, other than such service in an attorney position, who was transferred to the Department of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 *et seq.*) shall be considered as Career or Career-Conditional service, respectively, for purposes of eligibility for reinstatement in the competitive Civil Service.

JIMMY CARTER.

§ 7293. Agency terminations

Except as otherwise provided in this chapter, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this chapter, the agency, commission, or other body, or compo-

[1] See References in Text note below.

nent, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall terminate.

(Pub. L. 95–91, title VII, § 703, Aug. 4, 1977, 91 Stat. 606.)

§ 7294. Incidental transfers

The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this chapter, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this chapter, as he may deem necessary to accomplish the purposes of this chapter.

(Pub. L. 95–91, title VII, § 704, Aug. 4, 1977, 91 Stat. 606.)

§ 7295. Savings provisions

(a) Orders, determinations, rules, etc., in effect prior to effective date of this chapter

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter to the Department or the Commission after August 4, 1977, and

(2) which are in effect on October 1, 1977,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) Proceedings or applications for licenses, permits, etc., pending at effective date of this chapter; regulations

(1) The provisions of this chapter shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending on October 1, 1977, before any department, agency, commission, or component thereof, functions of which are transferred by this chapter; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this chapter had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(c) Suits commenced prior to effective date of this chapter

Except as provided in subsection (e) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to October 1, 1977, and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this chapter had not been enacted.

(d) Suits, actions, etc., commenced by or against any officer or agency or cause of action by or against any department or agency

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter.

(e) Suits with officers, departments, or agencies as parties

If, before October 1, 1977, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted.

(Pub. L. 95–91, title VIII, § 705, Aug. 4, 1977, 91 Stat. 606.)

§ 7296. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, neither the remainder of this chapter nor the application of such provision to other persons or circumstances shall be affected thereby.

(Pub. L. 95–91, title VII, § 706, Aug. 4, 1977, 91 Stat. 607.)

§ 7297. Cross references

With respect to any functions transferred by this chapter and exercised after October 1, 1977,

reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this chapter vests such functions.

(Pub. L. 95–91, title VII, § 707, Aug. 4, 1977, 91 Stat. 607.)

§ 7298. Presidential authority

Except as provided in subchapter IV of this chapter, nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before October 1, 1977; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

(Pub. L. 95–91, title VII, § 708, Aug. 4, 1977, 91 Stat. 607.)

§ 7299. Transition

With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this chapter.

(Pub. L. 95–91, title VII, § 711, Aug. 4, 1977, 91 Stat. 609.)

§ 7300. Report to Congress; effect on personnel

The Civil Service Commission shall, as soon as practicable but not later than one year after October 1, 1977, prepare and transmit to the Congress a report on the effects on employees of the reorganization under this chapter which shall include—

(1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this chapter;

(2) a statement of the number of employees entitled to pay savings by reason of the reorganization under this chapter;

(3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;

(4) an estimate of the personnel costs associated with such reorganization;

(5) the effects of such reorganization on labor management relations; and

(6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Commission considers necessary.

(Pub. L. 95–91, title VII, § 712, Aug. 4, 1977, 91 Stat. 609.)

TRANSFER OF FUNCTIONS

Functions vested by statute in United States Civil Service Commission transferred to Director of Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 7301. Environmental impact statements

The transfer of functions under subchapters III and IV of this chapter shall not affect the validity of any draft environmental impact statement published before October 1, 1977.

(Pub. L. 95–91, title VII, § 713, Aug. 4, 1977, 91 Stat. 610.)

SUBCHAPTER VIII—ENERGY PLANNING

§ 7321. National Energy Policy Plan

(a) Preparation by President and submission to Congress; formulation and review

The President shall—

(1) prepare and submit to the Congress a proposed National Energy Policy Plan (hereinafter in this subchapter referred to as a ''proposed Plan'') as provided in subsection (b) of this section;

(2) seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan;

(3) include within the proposed Plan a comprehensive summary of data pertaining to all fuel and energy needs of persons residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within standard metropolitan statistical areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas.

(b) Biennial transmittal to Congress; contents

Not later than April 1, 1979, and biennially thereafter, the President shall transmit to the Congress the proposed Plan. Such proposed Plan shall—

(1) consider and establish energy production, utilization, and conservation objectives, for periods of five and ten years, necessary to satisfy projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, paying particular attention to the needs for full employment, price stability, energy security, economic growth, environmental protection, nuclear non-proliferation, special regional needs, and the efficient utilization of public and private resources;

(2) identify the strategies that should be followed and the resources that should be committed to achieve such objectives, forecasting the level of production and investment necessary in each of the significant energy supply sectors and the level of conservation and investment necessary in each consuming sector, and outlining the appropriate policies and actions of the Federal Government that will maximize the private production and investment necessary in each of the significant en-

ergy supply sectors consistent with applicable Federal, State, and local environmental laws, standards, and requirements; and

(3) recommend legislative and administrative actions necessary and desirable to achieve the objectives of such proposed Plan, including legislative recommendations with respect to taxes or tax incentives, Federal funding, regulatory actions, antitrust policy, foreign policy, and international trade.

(c) Submission of report to Congress; contents

The President shall submit to the Congress with the proposed Plan a report which shall include—

(1) whatever data and analysis are necessary to support the objectives, resource needs, and policy recommendations contained in such proposed Plan;

(2) an estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs in an economic manner consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives;

(3) an evaluation of current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to otherwise protect environmental quality, including recommendations for developing technologies to accomplish such purposes; and

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of the Plan.

(d) Consultation with consumers, small businesses, etc.

The President shall insure that consumers, small businesses, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the Plan.

(Pub. L. 95–91, title VIII, § 801, Aug. 4, 1977, 91 Stat. 610.)

§ 7322. Congressional review

(a) Each proposed Plan shall be referred to the appropriate committees in the Senate and the House of Representatives.

(b) Each such committee shall review the proposed Plan and, if it deems appropriate and necessary, report to the Senate or the House of Representatives legislation regarding such Plan which may contain such alternatives to, modifications of, or additions to the proposed Plan submitted by the President as the committee deems appropriate.

(Pub. L. 95–91, title VIII, § 802, Aug. 4, 1977, 91 Stat. 611.)

SUBCHAPTER IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

§ 7341. Effective date

The provisions of this chapter shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after August 4, 1977, (1) any of the officers provided for in subchapters II and IV of this chapter may be nominated and appointed, as provided in those subchapters, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 7295(b)(2) of this title at any time after August 4, 1977. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this chapter, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

(Pub. L. 95–91, title IX, § 901, Aug. 4, 1977, 91 Stat. 612.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

EXECUTIVE ORDER NO. 12009

Ex. Ord. No. 12009, Sept. 13, 1977, 42 F.R. 46267, which prescribed Oct. 1, 1977, as the effective date of this chapter, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 7342. Interim appointments

In the event that one or more officers required by this chapter to be appointed by and with the advice and consent of the Senate shall not have entered upon office on October 1, 1977, the President may designate any officer, whose appointment was required to be made, by and with the advice and consent of the Senate, and who was such an officer immediately prior to October 1, 1977, to act in such office until the office is filled as provided in this chapter. While so acting such persons shall receive compensation at the rates provided by this chapter for the respective offices in which they act.

(Pub. L. 95–91, title IX, § 902, Aug. 4, 1977, 91 Stat. 612.)

SUBCHAPTER X—SUNSET PROVISIONS

§ 7351. Submission of comprehensive review

Not later than January 15, 1982, the President shall prepare and submit to the Congress a comprehensive review of each program of the Department. Each such review shall be made available to the committee or committees of the Sen-

ate and House of Representatives having jurisdiction with respect to the annual authorization of funds, pursuant to section 7270 of this title, for such programs for the fiscal year beginning October 1, 1982.

(Pub. L. 95–91, title X, § 1001, Aug. 4, 1977, 91 Stat. 612.)

§ 7352. Contents of review

Each comprehensive review prepared for submission under section 7351 of this title shall include—

(1) the name of the component of the Department responsible for administering the program;

(2) an identification of the objectives intended for the program and the problem or need which the program was intended to address;

(3) an identification of any other programs having similar or potentially conflicting or duplicative objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;

(6) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis appropriate to the type or character of the program;

(7) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and of the budgetary costs incurred in the operation of the program;

(8) a statement of the number and types of beneficiaries or persons served by the program;

(9) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;

(10) an assessment of the impact of the program on the Nation's health and safety;

(11) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the officers executing the program, are believed to meet the objectives of the Congress in establishing the program;

(12) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applicable of the date on which, and the conditions under which, the program may fulfill such objectives;

(13) an analysis of the services which could be provided and performance which could be achieved if the program were continued at a level less than, equal to, or greater than the existing level; and

(14) recommendations for necessary transitional requirements in the event that funding for such program is discontinued, including proposals for such executives or legislative action as may be necessary to prevent such discontinuation from being unduly disruptive.

(Pub. L. 95–91, title X, § 1002, Aug. 4, 1977, 91 Stat. 612.)

SUBCHAPTER XI—ENERGY TARGETS

§§ 7361 to 7364. Repealed. Pub. L. 102–486, title XVI, § 1606, Oct. 24, 1992, 106 Stat. 3003

Section 7361, Pub. L. 96–294, title III, § 301, June 30, 1980, 94 Stat. 712, related to preparation of energy targets.

Section 7362, Pub. L. 96–294, title III, § 302, June 30, 1980, 94 Stat. 712, related to congressional consideration.

Section 7363, Pub. L. 96–294, title III, § 303, June 30, 1980, 94 Stat. 714, set out energy target form and definitions.

Section 7364, Pub. L. 96–294, title III, § 304, June 30, 1980, 94 Stat. 715, set out general provisions regarding targets.

SUBCHAPTER XII—RENEWABLE ENERGY INITIATIVES

CODIFICATION

This subchapter was enacted as part of title IV of the Energy Security Act, which title is known as the Renewable Energy Resources Act of 1980, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7371. Statement of purpose

The purpose of this subchapter is to establish incentives for the use of renewable energy resources, to improve and coordinate the dissemination of information to the public with respect to renewable energy resources, to encourage the use of certain cost effective solar energy systems and conservation measures by the Federal Government, to establish a program for the promotion of local energy self-sufficiency, to broaden the existing program for accelerating the procurement and use of photovoltaic systems, and to provide further encouragement for the development of small hydroelectric power projects.

(Pub. L. 96–294, title IV, § 402, June 30, 1980, 94 Stat. 715.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title IV of Pub. L. 96–294, June 30, 1980, 94 Stat. 715, known as the Renewable Energy Resources Act of 1980. For complete classification of title IV to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 401 of title IV Pub. L. 96–294 provided that: ''This title [enacting this subchapter, amending sections 8255, 8271, and 8274 to 8276 of this title and sections 2705 and 2708 of Title 16, Conservation, and enacting a provision set out as a note under section 2701 of Title 16] may be cited as the 'Renewable Energy Resources Act of 1980'.''

§ 7372. "Secretary" and "renewable energy resource" defined

For purposes of this subchapter—

(1) the term ''Secretary'' means the Secretary of Energy; and

(2) the term ''renewable energy resource'' means any energy resource which has recently originated in the sun, including direct and indirect solar radiation and intermediate solar energy forms such as wind, ocean thermal gradients, ocean currents and waves, hydropower, photovoltaic energy, products of photosynthetic processes, organic wastes, and others.

(Pub. L. 96–294, title IV, § 403, June 30, 1980, 94 Stat. 716.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title IV of Pub. L. 96–294, June 30, 1980, 94 Stat. 715, known as the Renewable Energy Resources Act of 1980, which enacted this subchapter, amended sections 8255, 8271, and 8274 to 8276 of this title and sections 2705 and 2708 of Title 16, Conservation, and enacted a provision set out as a note under section 2701 of Title 16. For complete classification of title IV to the Code, see Short Title note set out under section 7371 of this title and Tables.

§ 7373. Coordinated dissemination of information on renewable energy resources and conservation

In order to improve the effectiveness of Federal information dissemination activities in the fields of renewable energy resources and energy conservation with the objective of developing and promoting better public understanding of these resources and their potential uses, the Secretary shall—

(1) take affirmative steps to coordinate all of the activities of the Department of Energy, whether conducted by the Department itself or by other public or private entities with assistance from the Department, which are aimed at or involve the dissemination of information with respect to renewable energy resources or energy conservation, and

(2) report annually to the Congress on the status of such activities, including a description of how the information dissemination activities and services of the Department of Energy in the fields of renewable energy resources and energy conservation are being coordinated with similar or related activities and services of other Federal agencies.

(Pub. L. 96–294, title IV, § 404, June 30, 1980, 94 Stat. 716.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in par. (2) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 18th item on page 87 of House Document No. 103–7.

§ 7374. Energy self-sufficiency initiatives

(a) Establishment of 3-year pilot program

There is hereby established under the direction of the Secretary a 3-year pilot energy self-sufficiency program to demonstrate energy self-sufficiency through the use of renewable energy resources in one or more States in the United States.

(b) Establishment of subprograms to pilot programs; scope of subprograms

As a part of the pilot program, the Secretary shall establish such subprograms as the Secretary determines are necessary to achieve the purpose of this section, including subprograms—

(1) to promote the development and utilization of synergistic combinations of different renewable energy resources in specific projects aimed at reducing fossil fuel importation;

(2) to initiate and encourage energy self-sufficiency at appropriate levels of government;

(3) to stimulate private industry participation in the realization of the objective stated in subsection (a) of this section; and

(4) to stimulate the utilization of abandoned or underutilized industrial facilities for the generation of energy from any locally available renewable resource, such as municipal solid waste, agricultural waste, or forest products waste.

(c) Implementation of subprograms; preparation of plan of program and additional Federal actions

In carrying out the provisions of this section, the Secretary is authorized to assign to an existing office in the Department of Energy the responsibility of undertaking and carrying out the subprograms established under subsection (b) of this section. In addition, the Secretary shall prepare a detailed plan within one hundred eighty days of June 30, 1980, setting forth (1) the 3-year pilot program itself, and (2) any additional Federal actions needed to encourage and promote the adoption of programs for energy self-sufficiency.

(d) Submission of plan and implementation report to Congress

The Secretary shall submit to the Congress, within one year after June 30, 1980, the plan prepared under the second sentence of subsection (c) of this section along with a report suggesting the legislative initiatives needed to fully implement such plan.

(Pub. L. 96–294, title IV, § 406, June 30, 1980, 94 Stat. 716.)

§ 7375. Authorization of appropriations

(a) There is authorized to be appropriated for each of the fiscal years 1981 and 1982 not to exceed $10,000,000 for loans under section 402 of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2702], in addition to any amounts authorized for such loans by that Act; and the amounts appropriated pursuant to this subsection shall remain available until expended.

(b) There is authorized to be appropriated for each of the fiscal years 1981 and 1982 not to exceed $100,000,000 for loans under section 403 of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2703]; and the amounts appropriated pursuant to this subsection shall remain available until expended.

(c) There is authorized to be appropriated for the fiscal year 1981 not to exceed $10,000,000 to carry out section 7374 of this title (relating to energy self-sufficiency initiatives).

(Pub. L. 96–294, title IV, § 409, June 30, 1980, 94 Stat. 719.)

REFERENCES IN TEXT

That Act, referred to in subsec. (a), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, as amended, known as the

Public Utility Regulatory Policies Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

SUBCHAPTER XIII—DEPARTMENT OF ENERGY SCIENCE EDUCATION PROGRAMS

CODIFICATION

This subchapter was enacted as part of part E (§§ 3161–3168) of title XXXI of div. C of the National Defense Authorization Act for Fiscal Year 1991, known as the Department of Energy Science Education Enhancement Act, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7381. Findings and purposes

(a) Findings

The Congress finds the following:

(1) Scientific, technical, and engineering competence is essential to the Nation's future well-being.

(2) The scientific, technical, and engineering capability at the Federal laboratories is unmatched throughout the world.

(3) Superb research, development, testing, and evaluation occur in Department of Energy research and development facilities.

(4) Department of Energy research and development facilities will play an increasing role in assuring that the United States remains competitive in world markets.

(5) Improvements in mathematics, science, and engineering education are needed desperately to provide the trained and educated citizenry essential to the future competitiveness of the United States.

(6) The future health and vitality of the economy of the United States is predicated on the availability of an adequate supply of scientists, mathematicians, and engineers to provide for growing needs and to replenish the workforce.

(7) United States college and university enrollment in science, mathematics, and engineering programs is sharply declining at undergraduate, graduate, and post-graduate levels.

(8) The Federal Government is the largest United States employer of research scientists, mathematicians, and engineers, and the Department of Energy has a growing need for scientists, mathematicians, and engineers at a time when these enrollments are declining.

(9) Women and minorities are grossly under-represented in science and mathematics fields, and this group represents more than 80 percent of the projected increase in the national workforce through the year 2000.

(b) Purposes

The purposes of this subchapter are—

(1) to encourage the development and implementation of science, mathematics, and engineering education programs at the Department of Energy and at its research and development facilities as part of a national effort to improve science, mathematics, and engineering education; and

(2) to provide more efficient coordination among science, mathematics, and engineering education programs.

(Pub. L. 101–510, div. C, title XXXI, § 3162, Nov. 5, 1990, 104 Stat. 1840.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original "this part", meaning part E of title XXXI of div. C of Pub. L. 101–510, which is classified principally to this subchapter. For complete classification of part E to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 3161 of Pub. L. 101–510 provided that: "This part [part E (§§ 3161–3168) of title XXXI of div. C of Pub. L. 101–510, enacting this subchapter and amending section 7112 of this title] may be cited as the 'Department of Energy Science Education Enhancement Act'."

UNIVERSITY-BASED RESEARCH COLLABORATION PROGRAM

Pub. L. 105–85, div. C, title XXXI, § 3155, Nov. 18, 1997, 111 Stat. 2044, which was formerly set out as a note under this section, was renumbered section 4814 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(9)(A)–(C), Nov. 24, 2003, 117 Stat. 1785, and is classified to section 2795 of Title 50, War and National Defense.

§ 7381a. Science education programs

(a) Programs

The Secretary is authorized to establish programs to enhance the quality of mathematics, science, and engineering education. Any such programs shall be operated at or through the support of Department research and development facilities, shall use the scientific resources of the Department, and shall be consistent with the overall Federal plan for education and human resources in science and technology developed by the Federal Coordinating Council for Science, Engineering, and Technology.

(b) Relationship to other Department activities

The programs described in subsection (a) of this section shall supplement and be coordinated with current activities of the Department, but shall not supplant them.

(c) Science education enhancement fund

The Secretary shall use not less than 0.3 percent of the amount made available to the Department for research, development, demonstration, and commercial application for fiscal year 2006 and each fiscal year thereafter to carry out activities authorized by this subchapter.

(d) Programs for students from under-represented groups

In carrying out a program under subsection (a) of this section, the Secretary shall give priority to activities that are designed to encourage students from under-represented groups to pursue scientific and technical careers.

(Pub. L. 101–510, div. C, title XXXI, § 3164, Nov. 5, 1990, 104 Stat. 1841; Pub. L. 109–58, title XI, §§ 1102(a), 1105(a), Aug. 8, 2005, 119 Stat. 938, 939.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (c), was in the original "this part", meaning part E of title XXXI of div. C of Pub. L. 101–510, which is classified principally to this subchapter. For complete classification of part E to the Code, see Short Title note set out under section 7381 of this title and Tables.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–58, § 1102(a), added subsec. (c).

Subsec. (d). Pub. L. 109–58, § 1105(a), added subsec. (d).

§ 7381b. Laboratory cooperative science centers and other authorized education activities

(a) Activities

The Secretary is authorized to:

(1) Support research appointments for college and university science and engineering students, and for faculty-student teams, at Department research and development facilities.

(2) Support research appointments for high school science teachers at Department research and development facilities.

(3) Support research apprenticeship appointments at Department research and development facilities for students underrepresented in science and technology careers.

(4) Support research experience programs at Department research and development facilities for nationally selected high school honor students.

(5) Operate mathematics and science education programs for elementary and secondary students at Department research and development facilities.

(6) Establish a museum-based science education program.

(7) Establish collaborative inner-city and rural partnership programs designed to meet the special mathematics and science education needs of students in inner-city and rural areas.

(8) Provide paid administrative leave for employees of the Department or Department research and development facilities who volunteer to interact with schools, colleges, universities, teachers, or students for the purpose of science, mathematics, and engineering education.

(9) Establish a talent pool of volunteer scientists, mathematicians, and engineers who have retired from the Department or Department research and development facilities to serve at schools and school districts for the purpose of (A) assisting teachers, with activities such as experiments, lectures, or the preparation of materials; (B) serving as counselors to students on science, mathematics, and engineering; and (C) otherwise assisting science, mathematics, and engineering classes. The Secretary, acting through Department research and development facilities, shall, wherever possible, identify and match schools and school districts with retired scientists, mathematicians, and engineers.

(10) Establish a Young Americans' Summer Science Camp Program to provide secondary school students with a hands-on science experience as well as exposure to working scientists and career counseling.

(11) Establish a program for mathematics and science teachers to provide teachers serving large numbers of disadvantaged students with new strategies for mathematics and science instruction.

(12) Support graduate students and, through university-based cooperative programs, undergraduate students for the purpose of encouraging more students to pursue scientific and technical careers, with a particular focus on the recruitment of women and minority students.

(13) Establish a prefreshman enrichment program in which middle-school students attend summer workshops on mathematics, science, and engineering conducted by universities on their campuses.

(14) Support competitive events for students under the supervision of teachers, designed to encourage student interest and knowledge in science and mathematics.

(15) Support competitively-awarded, peer-reviewed programs to promote professional development for mathematics teachers and science teachers who teach in grades from kindergarten through grade 12 at Department research and development facilities.

(16) Support summer internships at Department research and development facilities, for mathematics teachers and science teachers who teach in grades from kindergarten through grade 12.

(17) Sponsor and assist in educational and training activities identified as critical skills needs for future workforce development at Department research and development facilities.

(b) Use of facilities

Any of the activities authorized by subsection (a) of this section may be conducted through Department research and development facilities. The Secretary may designate facilities conducting such education activities as ''Laboratory Cooperative Science Centers''.

(c) Funding

The Secretary is authorized to accept non-Federal funds to finance education activities described in subsection (a) of this section.

(Pub. L. 101–510, div. C, title XXXI, § 3165, Nov. 5, 1990, 104 Stat. 1841; Pub. L. 102–25, title VII, § 704(d), Apr. 6, 1991, 105 Stat. 120; Pub. L. 109–58, title XI, § 1102(b), Aug. 8, 2005, 119 Stat. 938.)

AMENDMENTS

2005—Subsec. (a)(14) to (17). Pub. L. 109–58, which directed amendment of this section by adding pars. (14) to (17) at the end, was executed by making the addition at the end of subsec. (a), to reflect the probable intent of Congress.

1991—Subsec. (a). Pub. L. 102–25, § 704(d)(1), redesignated subpars. (J) to (M) as pars. (10) to (13), respectively.

Subsec. (b). Pub. L. 102–25, § 704(d)(2), inserted ''such'' before ''education activities'' in second sentence.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–25 applicable as if included in enactment of Pub. L. 101–510, see section 704(e) of Pub. L. 102–25, set out as a note under section 12321 of Title 10, Armed Forces.

§ 7381c. Education partnerships

(a) Education partnerships

The Secretary may authorize each Department research and development facility, to the extent practicable and consistent with the provisions of the laboratory's management and operating contract, to enter into education partnership agreements with educational institu-

tions in the United States (including local educational agencies, colleges, and universities) for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education.

(b) Types of assistance

Under a partnership agreement entered into with an educational institution under subsection (a) of this section and as authorized by the Secretary, a Department research and development facility may provide assistance to the educational institution by—

(1) loaning or transferring equipment to the institution;

(2) transferring to the institution equipment determined by the director of the Department research and development facility to be surplus;

(3) making personnel of Department research and development facilities available to teach science courses or to assist in the development of science courses and materials for the institution;

(4) involving faculty and students of the institution in research programs of Department research and development facilities;

(5) cooperating with the institution in developing a program under which students may be given academic credit for work on research projects of Department research and development facilities;

(6) providing academic and career advice and assistance to students of the institution; and

(7) providing funds to educational institutions to hire personnel to facilitate interactions between local school systems, Department research and development facilities, and corporate and governmental entities.

(Pub. L. 101–510, div. C, title XXXI, § 3166, Nov. 5, 1990, 104 Stat. 1843; Pub. L. 109–58, title XI, § 1102(c), Aug. 8, 2005, 119 Stat. 938.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–58, § 1102(c)(1), added par. (1) and struck out former par. (1) which read as follows: ''loaning equipment to the institution;''.

Subsec. (b)(7). Pub. L. 109–58, § 1102(c)(2)–(4), added par. (7).

§ 7381c–1. Partnerships with historically Black colleges and universities, Hispanic-serving institutions, and tribal colleges

(a) Definitions

In this section:

(1) Hispanic-serving institution

The term ''Hispanic-serving institution'' has the meaning given the term in section 1101a(a) of title 20.

(2) Historically Black college or university

The term ''historically Black college or university'' has the meaning given the term ''part B institution'' in section 1061 of title 20.

(3) National Laboratory

The term ''National Laboratory'' has the meaning given the term in section 15801 of this title.

(4) Science facility

The term ''science facility'' has the meaning given the term ''single-purpose research facility'' in section 16182 of this title.

(5) Tribal college

The term ''tribal college'' has the meaning given the term ''tribally controlled college or university'' in section 1801(a)[1] of title 25.

(b) Education partnership

The Secretary shall require the director of each National Laboratory, and may require the head of any science facility, to increase the participation of historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges in any activity that increases the capacity of the historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges to train personnel in science or engineering.

(c) Activities

An activity described in subsection (b) of this section includes—

(1) collaborative research;

(2) equipment transfer;

(3) training activities carried out at a National Laboratory or science facility; and

(4) mentoring activities carried out at a National Laboratory or science facility.

(d) Report

Not later than 2 years after August 8, 2005, the Secretary shall submit to Congress a report describing the activities carried out under this section.

(Pub. L. 101–510, div. C, title XXXI, § 3167, as added Pub. L. 109–58, title XI, § 1105(b)(2), Aug. 8, 2005, 119 Stat. 940.)

REFERENCES IN TEXT

Section 1801(a) of title 25, referred to in subsec. (a)(5), was in the original ''section 2(a) of the Tribally Controlled College Assistance Act of 1978'', and was translated as meaning section 2(a) of the Tribally Controlled College or University Assistance Act of 1978 to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 3167 of Pub. L. 101–510 was renumbered section 3168 and is classified to section 7381d of this title.

§ 7381d. Definitions

In this subchapter:

(1) The term ''Secretary'' means the Secretary of Energy.

(2) The term ''Department'' means the Department of Energy.

(3) The term ''Department research and development facilities'' means all Department of Energy single-purpose and multipurpose National Laboratories and research and development facilities and programs, and any other facility or program operated by a contractor funded by the Department of Energy.

(4) The term ''local educational agency'' has the meaning given that term by section 2891(12)[1] of title 20.

(Pub. L. 101–510, div. C, title XXXI, § 3168, formerly § 3167, Nov. 5, 1990, 104 Stat. 1843; Pub. L. 105–245, title III, § 309(b)(2)(D), Oct. 7, 1998, 112

[1] See References in Text note below.

[1] See References in Text note below.

Stat. 1853; renumbered § 3168 and amended Pub. L. 109–58, title XI, §§ 1102(d), 1105(b)(1), Aug. 8, 2005, 119 Stat. 938, 939.)

REFERENCES IN TEXT

Section 2891(12) of title 20, referred to in par. (4), was in the original ''section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))'', Pub. L. 89–10, and was omitted in the general amendment of that Act by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. See section 7801 of Title 20, Education.

PRIOR PROVISIONS

A prior section 3168 of Pub. L. 101–510 was renumbered section 3169 and is classified to section 7381e of this title.

AMENDMENTS

2005—Par. (3). Pub. L. 109–58, § 1102(d), substituted ''by the Department of Energy'' for ''from the Office of Science of the Department of Energy''.

1998—Par. (3). Pub. L. 105–245 substituted ''Office of Science'' for ''Office of Energy Research''.

§ 7381e. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out university research support and other science, mathematics, and engineering education programs authorized by this subchapter and administered by the Office of Science of the Department of Energy, $40,000,000 for fiscal year 1991.

(Pub. L. 101–510, div. C, title XXXI, § 3169, formerly § 3168, Nov. 5, 1990, 104 Stat. 1843; Pub. L. 105–245, title III, § 309(b)(2)(D), Oct. 7, 1998, 112 Stat. 1853; renumbered § 3169, Pub. L. 109–58, title XI, § 1105(b)(1), Aug. 8, 2005, 119 Stat. 939.)

AMENDMENTS

1998—Pub. L. 105–245 substituted ''Office of Science'' for ''Office of Energy Research''.

SUBCHAPTER XIV—ALBERT EINSTEIN DISTINGUISHED EDUCATOR FELLOWSHIPS

CODIFICATION

This subchapter was enacted as part A (§§ 511–518) of title V of the Improving America's Schools Act of 1994, known as the Albert Einstein Distinguished Educator Fellowship Act of 1994, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7382. Findings

The Congress finds that—

(1) the Department of Energy has unique and extensive mathematics and science capabilities that contribute to mathematics and science education programs throughout the Nation;

(2) a need exists to increase understanding, communication, and cooperation between the Congress, the Department of Energy, other Federal agencies, and the mathematics and science education community;

(3) elementary and secondary school mathematics and science teachers can provide practical insight to the legislative and executive branches in establishing and operating education programs; and

(4) a pilot program that placed elementary and secondary school mathematics and science teachers in professional staff positions in the Senate and the House of Representatives has proven successful and demonstrated the value of expanding the program.

(Pub. L. 103–382, title V, § 512, Oct. 20, 1994, 108 Stat. 4042.)

SHORT TITLE

Section 511 of Pub. L. 103–382 provided that: ''This part [part A (§§ 511–518) of title V of Pub. L. 103–382, enacting this subchapter] may be cited as the 'Albert Einstein Distinguished Educator Fellowship Act of 1994'.''

§ 7382a. Purpose; designation

(a) Purpose

The purpose of this subchapter is to establish within the Department of Energy a national fellowship program for elementary and secondary school mathematics and science teachers.

(b) Designation

A recipient of a fellowship under this subchapter shall be known as an ''Albert Einstein Fellow''.

(Pub. L. 103–382, title V, § 513, Oct. 20, 1994, 108 Stat. 4042.)

§ 7382b. Definitions

As used in this subchapter—

(1) the term ''elementary school'' has the meaning provided by section 7801 of title 20;

(2) the term ''local educational agency'' has the meaning provided by section 7801 of title 20;

(3) the term ''secondary school'' has the meaning provided by section 7801 of title 20;

(4) the term ''Secretary'' means the Secretary of Energy.

(Pub. L. 103–382, title V, § 514, Oct. 20, 1994, 108 Stat. 4042; Pub. L. 107–110, title X, § 1076(bb), Jan. 8, 2002, 115 Stat. 2093.)

AMENDMENTS

2002—Pars. (1) to (3). Pub. L. 107–110 substituted ''7801'' for ''8801''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

§ 7382c. Fellowship Program

(a) In general

(1) Establishment

The Secretary shall establish the Albert Einstein Distinguished Educator Fellowship Program (hereafter in this subchapter referred to as the ''Program'') to provide 12 elementary or secondary school mathematics or science teachers with fellowships in each fiscal year in accordance with this subchapter.

(2) Order of priority

The Secretary may reduce the number of fellowships awarded under this subchapter for any fiscal year in which the amount appropriated for the Program is insufficient to support 12 fellowships. If the number of fellow-

ships awarded under this subchapter is reduced for any fiscal year, then the Secretary shall award fellowships based on the following order of priority:

(A) Three fellowships in the Department of Energy.

(B) Two fellowships in the Senate.

(C) Two fellowships in the House of Representatives.

(D) One fellowship in each of the following entities:

(i) The Department of Education.

(ii) The National Institutes of Health.

(iii) The National Science Foundation.

(iv) The National Aeronautics and Space Administration.

(v) The Office of Science and Technology Policy.

(3) Terms of fellowships

Each fellowship awarded under this subchapter shall be awarded for a period of ten months that, to the extent practicable, coincide with the academic year.

(4) Eligibility

To be eligible for a fellowship under this subchapter, an elementary or secondary school mathematics or science teacher must demonstrate—

(A) that such teacher would bring unique and valuable contributions to the Program;

(B) that such teacher is recognized for excellence in mathematics or science education; and

(C)(i) a sabbatical leave from teaching will be granted in order to participate in the Program; or

(ii) the teacher will return to a teaching position comparable to the position held prior to participating in the Program.

(b) Administration

The Secretary shall—

(1) provide for the development and administration of an application and selection process for fellowships under the Program, including a process whereby final selections of fellowship recipients are made in accordance with subsection (c) of this section;

(2) provide for the publication of information on the Program in appropriate professional publications, including an invitation for applications from teachers listed in the directories of national and State recognition programs;

(3) select from the pool of applicants 12 elementary and secondary school mathematics teachers and 12 elementary and secondary school science teachers;

(4) develop a program of orientation for fellowship recipients under this subchapter; and

(5) not later than August 31 of each year in which fellowships are awarded, prepare and submit an annual report and evaluation of the Program to the appropriate Committees of the Senate and the House of Representatives.

(c) Selection

(1) In general

The Secretary shall arrange for the 24 semifinalists to travel to Washington, D.C., to participate in interviews in accordance with the selection process described in paragraph (2).

(2) Final selection

(A) Not later than May 1 of each year preceding each year in which fellowships are to be awarded, the Secretary shall select and announce the names of the fellowship recipients.

(B) The Secretary shall provide for the development and administration of a process to select fellowship recipients from the pool of semifinalists as follows:

(i) The Secretary shall select three fellowship recipients who shall be assigned to the Department of Energy.

(ii) The Majority Leader of the Senate and the Minority Leader of the Senate, or their designees, shall each select a fellowship recipient who shall be assigned to the Senate.

(iii) The Speaker of the House of Representatives and the Minority Leader of the House of Representatives, or their designees, shall each select a fellowship recipient who shall be assigned to the House of Representatives.

(iv) Each of the following individuals, or their designees, shall select one fellowship recipient who shall be assigned within the department, office, agency, or institute such individual administers:

(I) The Secretary of Education.

(II) The Director of the National Institutes of Health.

(III) The Director of the National Science Foundation.

(IV) The Administrator of the National Aeronautics and Space Administration.

(V) The Director of the Office of Science and Technology Policy.

(Pub. L. 103–382, title V, § 515, Oct. 20, 1994, 108 Stat. 4042.)

§ 7382d. Fellowship awards

(a) Fellowship recipient compensation

Each recipient of a fellowship under this subchapter shall be paid during the fellowship period at a rate of pay that shall not exceed the minimum annual rate payable for a position under GS–13 of the General Schedule.

(b) Local educational agency

The Secretary shall seek to ensure that no local educational agency penalizes a teacher who elects to participate in the Program.

(Pub. L. 103–382, title V, § 516, Oct. 20, 1994, 108 Stat. 4044.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5, Government Organization and Employees.

§ 7382e. Waste management education research consortium (WERC)

(a)[1] In general

The Secretary is authorized to establish a partnership of Department of Energy laboratories, academic institutions, and private sector industries to conduct environmentally-related education programs, including programs involv-

[1] So in original. No subsec. (b) has been enacted.

ing environmentally conscious manufacturing and waste management activities that have undergraduate and graduate educational training as a component.

(Pub. L. 103–382, title V, § 517, Oct. 20, 1994, 108 Stat. 4044.)

§ 7382f. Authorization of appropriations

(a) In general

There are authorized to be appropriated for the Program $700,000 for fiscal year 1995, and such sums as may be necessary for each of the four succeeding fiscal years.

(b) WERC program

There are authorized to be appropriated for the WERC program under section 7382e of this title such sums as may be necessary for fiscal year 1995 and each of the four succeeding fiscal years.

(Pub. L. 103–382, title V, § 518, Oct. 20, 1994, 108 Stat. 4044.)

SUBCHAPTER XV—MATTERS RELATING TO SAFEGUARDS, SECURITY, AND COUNTERINTELLIGENCE

CODIFICATION

This subchapter was enacted as part of subtitle D (§§ 3141–3156) of title XXXI of div. C of the National Defense Authorization Act for Fiscal Year 2000, known as the Department of Energy Facilities Safeguards, Security, and Counterintelligence Enhancement Act of 1999, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7383. Commission on Safeguards, Security, and Counterintelligence at Department of Energy Facilities

(a) Establishment

There is hereby established a commission to be known as the Commission on Safeguards, Security, and Counterintelligence at Department of Energy Facilities (in this section referred to as the ''Commission'').

(b) Membership and organization

(1) The Commission shall be composed of nine members appointed from among individuals in the public and private sectors who have significant experience in matters related to the security of nuclear weapons and materials, the classification of information, or counterintelligence matters, as follows:

(A) Two shall be appointed by the chairman of the Committee on Armed Services of the Senate, in consultation with the ranking member of that Committee.

(B) One shall be appointed by the ranking member of the Committee on Armed Services of the Senate, in consultation with the chairman of that Committee.

(C) Two shall be appointed by the chairman of the Committee on Armed Services of the House of Representatives, in consultation with the ranking member of that Committee.

(D) One shall be appointed by the ranking member of the Committee on Armed Services of the House of Representatives, in consultation with the chairman of that Committee.

(E) One shall be appointed by the Secretary of Defense.

(F) One shall be appointed by the Director of the Federal Bureau of Investigation.

(G) One shall be appointed by the Director of Central Intelligence.

(2) Members of the Commission shall be appointed for four year terms, except as follows:

(A) One member initially appointed under paragraph (1)(A) shall serve a term of two years, to be designated at the time of appointment.

(B) One member initially appointed under paragraph (1)(C) shall serve a term of two years, to be designated at the time of appointment.

(C) The member initially appointed under paragraph (1)(E) shall serve a term of two years.

(3) Any vacancy in the Commission shall be filled in the same manner as the original appointment and shall not affect the powers of the Commission.

(4)(A) After five members of the Commission have been appointed under paragraph (1), the chairman of the Committee on Armed Services of the Senate, in consultation with the chairman of the Committee on Armed Services of the House of Representatives, shall designate the chairman of the Commission from among the members appointed under paragraph (1)(A).

(B) The chairman of the Commission may be designated once five members of the Commission have been appointed under paragraph (1).

(5) The initial members of the Commission shall be appointed not later than 60 days after October 5, 1999.

(6) The members of the Commission shall establish procedures for the activities of the Commission, including procedures for calling meetings, requirements for quorums, and the manner of taking votes.

(7) The Commission shall meet not less often than once every three months.

(8) The Commission may commence its activities under this section upon the designation of the chairman of the Commission under paragraph (4).

(c) Duties

(1) The Commission shall, in accordance with this section, review the safeguards, security, and counterintelligence activities (including activities relating to information management, computer security, and personnel security) at Department of Energy facilities to—

(A) determine the adequacy of those activities to ensure the security of sensitive information, processes, and activities under the jurisdiction of the Department against threats to the disclosure of such information, processes, and activities; and

(B) make recommendations for actions the Commission determines as being necessary to ensure that such security is achieved and maintained.

(2) The activities of the Commission under paragraph (1) shall include the following:

(A) An analysis of the sufficiency of the Design Threat Basis documents as a basis for the

allocation of resources for safeguards, security, and counterintelligence activities at the Department facilities in light of applicable guidance with respect to such activities, including applicable laws, Department of Energy orders, Presidential Decision Directives, and Executive orders.

(B) Visits to Department facilities to assess the adequacy of the safeguards, security, and counterintelligence activities at such facilities.

(C) Evaluations of specific concerns set forth in Department reports regarding the status of safeguards, security, or counterintelligence activities at particular Department facilities or at facilities throughout the Department.

(D) Reviews of relevant laws, Department orders, and other requirements relating to safeguards, security, and counterintelligence activities at Department facilities.

(E) Any other activities relating to safeguards, security, and counterintelligence activities at Department facilities that the Secretary of Energy considers appropriate.

(d) Reports

(1) Not later than February 15 each year, the Commission shall submit to the Secretary of Energy and to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the activities of the Commission during the preceding year. The report shall be submitted in unclassified form, but may include a classified annex.

(2) Each report—

(A) shall describe the activities of the Commission during the year covered by the report;

(B) shall set forth proposals for any changes in safeguards, security, or counterintelligence activities at Department of Energy facilities that the Commission considers appropriate in light of such activities; and

(C) may include any other recommendations for legislation or administrative action that the Commission considers appropriate.

(e) Personnel matters

(1)(A) Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(B) All members of the Commission who are officers or employees of the United States shall serve without compensation by reason of their service on the Commission.

(2) The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Commission.

(3)(A) The Commission may, without regard to the civil service laws and regulations, appoint and terminate such personnel as may be necessary to enable the Commission to perform its duties.

(B) The Commission may fix the compensation of the personnel of the Commission without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates.

(4) Any officer or employee of the United States may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) The members and employees of the Commission shall hold security clearances appropriate for the matters considered by the Commission in the discharge of its duties under this section.

(f) Applicability of FACA

The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission.

(g) Funding

(1) From amounts authorized to be appropriated by sections 3101 and 3103, the Secretary of Energy shall make available to the Commission not more than $1,000,000 for the activities of the Commission under this section.

(2) Amounts made available to the Commission under this subsection shall remain available until expended.

(Pub. L. 106–65, div. C, title XXXI, § 3142, Oct. 5, 1999, 113 Stat. 931.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (e)(3)(A), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The Federal Advisory Committee Act, referred to in subsec. (f), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Sections 3101 and 3103, referred to in subsec. (g), are sections 3101 and 3103 of Pub. L. 106–65, div. C, title XXXI, Oct. 5, 1999, 113 Stat. 915, 919, which are not classified to the Code.

CODIFICATION

Section is comprised of section 3142 of Pub. L. 106–65. Subsec. (h)(1) of section 3142 of Pub. L. 106–65 repealed section 3161 of Pub. L. 105–85, formerly set out as a note under section 7251 of this title. Subsec. (h)(2) of section 3142 of Pub. L. 106–65 amended section 2657 of Title 50, War and National Defense.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

SHORT TITLE

Pub. L. 106–65, div. C, title XXXI, § 3141, Oct. 5, 1999, 113 Stat. 931, provided that: "This subtitle [subtitle D, §§ 3141–3156, of title XXXI of div. C of Pub. L. 106–65, enacting this subchapter and section 2282b of this title,

amending sections 2165, 2274, 2275, 2277, and 2282a of this title, enacting provisions set out as notes under sections 2165 and 2282b of this title and section 435 of Title 50, War and National Defense, amending provisions set out as a note under section 7274m of this title, and repealing provisions set out as a note under section 7251 of this title] may be cited as the 'Department of Energy Facilities Safeguards, Security, and Counterintelligence Enhancement Act of 1999'.''

§§ 7383a to 7383d. Transferred

CODIFICATION

Section 7383a, Pub. L. 106–65, div. C, title XXXI, § 3143, Oct. 5, 1999, 113 Stat. 934, which related to background investigations of certain personnel at Department of Energy facilities, was renumbered section 4503 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(4)(A)–(C), Nov. 24, 2003, 117 Stat. 1772, and is classified to section 2653 of Title 50, War and National Defense.

Section 7383b, Pub. L. 106–65, div. C, title XXXI, § 3145, Oct. 5, 1999, 113 Stat. 935, which related to protection of classified information during laboratory-to-laboratory exchanges, was renumbered section 4524 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(14), Nov. 24, 2003, 117 Stat. 1775, and is classified to section 2674 of Title 50, War and National Defense.

Section 7383c, Pub. L. 106–65, div. C, title XXXI, § 3146, Oct. 5, 1999, 113 Stat. 935, which related to restrictions on access to national laboratories by foreign visitors from sensitive countries, was renumbered section 4502 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(3)(A)–(C), Nov. 24, 2003, 117 Stat. 1771, and is classified to section 2652 of Title 50, War and National Defense.

Section 7383d, Pub. L. 106–65, div. C, title XXXI, § 3150, Oct. 5, 1999, 113 Stat. 939, which related to notice to congressional committees of certain security and counterintelligence failures within nuclear energy defense programs, was renumbered section 4505 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(6), Nov. 24, 2003, 117 Stat. 1773, and is classified to section 2656 of Title 50, War and National Defense.

§ 7383e. Annual report by the President on espionage by the People's Republic of China

(a) Annual report required

The President shall transmit to Congress an annual report on the steps being taken by the Department of Energy, the Department of Defense, the Federal Bureau of Investigation, the Central Intelligence Agency, and all other relevant executive departments and agencies to respond to espionage and other intelligence activities by the People's Republic of China, particularly with respect to—

(1) the theft of sophisticated United States nuclear weapons design information; and

(2) the targeting by the People's Republic of China of United States nuclear weapons codes and other national security information of strategic concern.

(b) Initial report

The first report under this section shall be transmitted not later than March 1, 2000.

(Pub. L. 106–65, div. C, title XXXI, § 3151, Oct. 5, 1999, 113 Stat. 939.)

§§ 7383f to 7383h–1. Transferred

CODIFICATION

Section 7383f, Pub. L. 106–65, div. C, title XXXI, § 3152, Oct. 5, 1999, 113 Stat. 940, which related to the submission of annual reports on counterintelligence and security practices at national laboratories, was renumbered section 4507 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(8)(A)–(C), Nov. 24, 2003, 117 Stat. 1773, and is classified to section 2658 of Title 50, War and National Defense.

Section 7383g, Pub. L. 106–65, div. C, title XXXI, § 3153, Oct. 5, 1999, 113 Stat. 940, which related to the submission of annual reports on security vulnerabilities of national laboratory computers, was renumbered section 4508 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(9)(A)–(C), Nov. 24, 2003, 117 Stat. 1774, and is classified to section 2659 of Title 50, War and National Defense.

Section 7383h, Pub. L. 106–65, div. C, title XXXI, § 3154, Oct. 5, 1999, 113 Stat. 941; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3135], Oct. 30, 2000, 114 Stat. 1654, 1654A–456, which related to a counterintelligence polygraph program for defense-related activities of the Department of Energy, was renumbered section 4504A of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(5)(B)(i)–(iii), Nov. 24, 2003, 117 Stat. 1773, and is classified to section 2655 of Title 50, War and National Defense.

Section 7383h–1, Pub. L. 107–107, div. C, title XXXI, § 3152, Dec. 28, 2001, 115 Stat. 1376, which related to a new counterintelligence polygraph program for the Department of Energy, was renumbered section 4504 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(5)(A)(i)–(iii), Nov. 24, 2003, 117 Stat. 1772, and is classified to section 2654 of Title 50, War and National Defense.

§ 7383i. Definitions of national laboratory and nuclear weapons production facility

For purposes of this subchapter:

(1) The term ''national laboratory'' means any of the following:

(A) The Lawrence Livermore National Laboratory, Livermore, California.

(B) The Los Alamos National Laboratory, Los Alamos, New Mexico.

(C) The Sandia National Laboratories, Albuquerque, New Mexico and Livermore, California.

(2) The term ''nuclear weapons production facility'' means any of the following:

(A) The Kansas City Plant, Kansas City, Missouri.

(B) The Pantex Plant, Amarillo, Texas.

(C) The Y–12 Plant, Oak Ridge, Tennessee.

(D) The tritium operations at the Savannah River Site, Aiken, South Carolina.

(E) The Nevada Test Site, Nevada.

(Pub. L. 106–65, div. C, title XXXI, § 3155, Oct. 5, 1999, 113 Stat. 942.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this subtitle'', meaning subtitle D of title XXXI of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 931, which is classified principally to this subchapter. For complete classification of subtitle D to the Code, see Short Title note set out under section 7383 of this title and Tables.

§ 7383j. Definition of Restricted Data

In this subchapter, the term ''Restricted Data'' has the meaning given that term in section 2014(y) of this title.

(Pub. L. 106–65, div. C, title XXXI, § 3156, Oct. 5, 1999, 113 Stat. 942.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this subtitle'', meaning subtitle D of title XXXI of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 931, which is classified principally to this subchapter. For complete classification of subtitle D to the Code, see Short Title note set out under section 7383 of this title and Tables.

SUBCHAPTER XVI—ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM

CODIFICATION

This subchapter was enacted as title XXXVI of div. C of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, known as the Energy Employees Occupational Illness Compensation Program Act of 2000, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7384. Findings; sense of Congress

(a) Findings

The Congress finds the following:

(1) Since World War II, Federal nuclear activities have been explicitly recognized under Federal law as activities that are ultra-hazardous. Nuclear weapons production and testing have involved unique dangers, including potential catastrophic nuclear accidents that private insurance carriers have not covered and recurring exposures to radioactive substances and beryllium that, even in small amounts, can cause medical harm.

(2) Since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the Department of Energy and at sites of vendors who supplied the Cold War effort were put at risk without their knowledge and consent for reasons that, documents reveal, were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.

(3) Many previously secret records have documented unmonitored exposures to radiation and beryllium and continuing problems at these sites across the Nation, at which the Department of Energy and its predecessor agencies have been, since World War II, self-regulating with respect to nuclear safety and occupational safety and health. No other hazardous Federal activity has been permitted to be carried out under such sweeping powers of self-regulation.

(4) The policy of the Department of Energy has been to litigate occupational illness claims, which has deterred workers from filing workers' compensation claims and has imposed major financial burdens for such employees who have sought compensation. Contractors of the Department have been held harmless and the employees have been denied workers' compensation coverage for occupational disease.

(5) Over the past 20 years, more than two dozen scientific findings have emerged that indicate that certain of such employees are experiencing increased risks of dying from cancer and non-malignant diseases. Several of these studies have also established a correlation between excess diseases and exposure to radiation and beryllium.

(6) While linking exposure to occupational hazards with the development of occupational disease is sometimes difficult, scientific evidence supports the conclusion that occupational exposure to dust particles or vapor of beryllium can cause beryllium sensitivity and chronic beryllium disease. Furthermore, studies indicate than 98 percent of radiation-induced cancers within the nuclear weapons complex have occurred at dose levels below existing maximum safe thresholds.

(7) Existing information indicates that State workers' compensation programs do not provide a uniform means of ensuring adequate compensation for the types of occupational illnesses and diseases that relate to the employees at those sites.

(8) To ensure fairness and equity, the civilian men and women who, over the past 50 years, have performed duties uniquely related to the nuclear weapons production and testing programs of the Department of Energy and its predecessor agencies should have efficient, uniform, and adequate compensation for beryllium-related health conditions and radiation-related health conditions.

(9) On April 12, 2000, the Secretary of Energy announced that the Administration intended to seek compensation for individuals with a broad range of work-related illnesses throughout the Department of Energy's nuclear weapons complex.

(10) However, as of October 2, 2000, the Administration has failed to provide Congress with the necessary legislative and budget proposals to enact the promised compensation program.

(b) Sense of Congress

It is the sense of Congress that—

(1) a program should be established to provide compensation to covered employees;

(2) a fund for payment of such compensation should be established on the books of the Treasury;

(3) payments from that fund should be made only after—

(A) the identification of employees of the Department of Energy (including its predecessor agencies), and of contractors of the Department, who may be members of the group of covered employees;

(B) the establishment of a process to receive and administer claims for compensation for disability or death of covered employees;

(C) the submittal by the President of a legislative proposal for compensation of such employees that includes the estimated annual budget resources for that compensation; and

(D) consideration by the Congress of the legislative proposal submitted by the President; and

(4) payments from that fund should commence not later than fiscal year 2002.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3602], Oct. 30, 2000, 114 Stat. 1654, 1654A–495.)

SHORT TITLE

Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3601], Oct. 30, 2000, 114 Stat. 1654, 1654A–495, provided that: ''This title [enacting this subchapter] may be cited as the 'Energy Employees Occupational Illness Compensation Program Act of 2000'.''

UPDATE OF REPORT ON RESIDUAL CONTAMINATION OF FACILITIES

Pub. L. 108–375, div. C, title XXXI, § 3169, Oct. 28, 2004, 118 Stat. 2191, provided that:

''(a) UPDATE OF REPORT.—Not later than December 31, 2006, the Director of the National Institute for Occupational Safety and Health shall submit to Congress an update to the report required by section 3151(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 42 U.S.C. 7384 note).

''(b) ELEMENTS.—The update shall—

''(1) for each facility for which such report found that insufficient information was available to determine whether significant residual contamination was present, determine whether significant residual contamination was present;

''(2) for each facility for which such report found that significant residual contamination remained present as of the date of the report, determine the date on which such contamination ceased to be present;

''(3) for each facility for which such report found that significant residual contamination was present but for which the Director has been unable to determine the extent to which such contamination is attributable to atomic weapons-related activities, identify the specific dates of coverage attributable to such activities and, in so identifying, presume that such contamination is attributable to such activities until there is evidence of decontamination of residual contamination identified with atomic weapons-related activities;

''(4) for each facility for which such report found significant residual contamination, determine whether it is at least as likely as not that such contamination could have caused an employee who was employed at such facility only during the residual contamination period to contract a cancer or beryllium illness compensable under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384*l* et seq.]; and

''(5) if new information that pertains to the report has been made available to the Director since that report was submitted, identify and describe such information.

''(c) PUBLICATION.—The Director shall ensure that the report referred to in subsection (a) is published in the Federal Register not later than 15 days after being released.''

STUDY OF RESIDUAL CONTAMINATION OF FACILITIES

Pub. L. 107–107, div. C, title XXXI, § 3151(b), Dec. 28, 2001, 115 Stat. 1375, provided that:

''(1) The National Institute for Occupational Safety and Health shall, with the cooperation of the Department of Energy and the Department of Labor, carry out a study on the following matters:

''(A) Whether or not significant contamination remained in any atomic weapons employer facility or facility of a beryllium vendor after such facility discontinued activities relating to the production of nuclear weapons.

''(B) If so, whether or not such contamination could have caused or substantially contributed to the cancer of a covered employee with cancer or a covered beryllium illness, as the case may be.

''(2)(A) The National Institute for Occupational Safety and Health shall submit to the applicable congressional committees the following reports:

''(i) Not later than 180 days after the date of the enactment of this Act [Dec. 28, 2001], a report on the progress made as of the date of the report on the study required by paragraph (1).

''(ii) Not later than one year after the date of the enactment of this Act, a final report on the study required by paragraph (1).

''(B) In this paragraph, the term 'applicable congressional committees' means—

''(i) the Committee on Armed Services, Committee on Appropriations, Committee on the Judiciary, and Committee on Health, Education, Labor, and Pensions of the Senate; and

''(ii) the Committee on Armed Services, Committee on Appropriations, Committee on the Judiciary, and Committee on Education and the Workforce of the House of Representatives.

''(3) Amounts for the study under paragraph (1) shall be derived from amounts authorized to be appropriated by section 3614(a) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (114 Stat. 1654A–498) [42 U.S.C. 7384g(a)].

''(4) In this subsection:

''(A) The terms 'atomic weapons employer facility', 'beryllium vendor', 'covered employee with cancer', and 'covered beryllium illness' have the meanings given those terms in section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (114 Stat. 1654A–498; 42 U.S.C. 7384*l*).

''(B) The term 'contamination' means the presence of any—

''(i) material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; or

''(ii) beryllium dust, particles, or vapor,

exposure to which could cause or substantially contribute to the cancer of a covered employee with cancer or a covered beryllium illness, as the case may be.''

EX. ORD. NO. 13179. PROVIDING COMPENSATION TO AMERICA'S NUCLEAR WEAPONS WORKERS

Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Public Law 106–398, the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384 et seq.] (Public Law 106–398, the ''Act''), and to allocate the responsibilities imposed by that legislation and to provide for further legislative efforts, it is hereby ordered as follows:

SECTION 1. *Policy*. Since World War II, hundreds of thousands of men and women have served their Nation in building its nuclear defense. In the course of their work, they overcame previously unimagined scientific and technical challenges. Thousands of these courageous Americans, however, paid a high price for their service, developing disabling or fatal illnesses as a result of exposure to beryllium, ionizing radiation, and other hazards unique to nuclear weapons production and testing. Too often, these workers were neither adequately protected from, nor informed of, the occupational hazards to which they were exposed.

Existing workers' compensation programs have failed to provide for the needs of these workers and their families. Federal workers' compensation programs have generally not included these workers. Further, because of long latency periods, the uniqueness of the hazards to which they were exposed, and inadequate exposure data, many of these individuals have been unable to obtain State workers' compensation benefits. This problem has been exacerbated by the past policy of the Department of Energy (DOE) and its predecessors of encouraging and assisting DOE contractors in opposing the claims of workers who sought those benefits. This policy has recently been reversed.

While the Nation can never fully repay these workers or their families, they deserve recognition and com-

pensation for their sacrifices. Since the Administration's historic announcement in July of 1999 that it intended to compensate DOE nuclear weapons workers who suffered occupational illnesses as a result of exposure to the unique hazards in building the Nation's nuclear defense, it has been the policy of this Administration to support fair and timely compensation for these workers and their survivors. The Federal Government should provide necessary information and otherwise help employees of the DOE or its contractors determine if their illnesses are associated with conditions of their nuclear weapons-related work; it should provide workers and their survivors with all pertinent and available information necessary for evaluating and processing claims; and it should ensure that this program minimizes the administrative burden on workers and their survivors, and respects their dignity and privacy. This order sets out agency responsibilities to accomplish these goals, building on the Administration's articulated principles and the framework set forth in the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384 et seq.]. The Departments of Labor, Health and Human Services, and Energy shall be responsible for developing and implementing actions under the Act to compensate these workers and their families in a manner that is compassionate, fair, and timely. Other Federal agencies, as appropriate, shall assist in this effort.

SEC. 2. *Designation of Responsibilities for Administering the Energy Employees' Occupational Illness Compensation Program (''Program'').*

(a) *Secretary of Labor*. The Secretary of Labor shall have primary responsibility for administering the Program. Specifically, the Secretary shall:

(i) Administer and decide all questions arising under the Act not assigned to other agencies by the Act or by this order, including determining the eligibility of individuals with covered occupational illnesses and their survivors and adjudicating claims for compensation and benefits;

(ii) No later than May 31, 2001, promulgate regulations for the administration of the Program, except for functions assigned to other agencies pursuant to the Act or this order;

(iii) No later than July 31, 2001, ensure the availability, in paper and electronic format, of forms necessary for making claims under the Program; and

(iv) Develop informational materials, in coordination with the Secretary of Energy and the Secretary of Health and Human Services, to help potential claimants understand the Program and the application process, and provide these materials to individuals upon request and to the Secretary of Energy and the Attorney General for dissemination to potentially eligible individuals.

(b) *Secretary of Health and Human Services*. The Secretary of Health and Human Services shall:

(i) No later than May 31, 2001, promulgate regulations establishing:

(A) guidelines, pursuant to section 3623(c) of the Act [42 U.S.C. 7384n(c)], to assess the likelihood that an individual with cancer sustained the cancer in the performance of duty at a Department of Energy facility or an atomic weapons employer facility, as defined by the Act; and

(B) methods, pursuant to section 3623(d) of the Act, for arriving at and providing reasonable estimates of the radiation doses received by individuals applying for assistance under this program for whom there are inadequate records of radiation exposure;

(ii) In accordance with procedures developed by the Secretary of Health and Human Services, consider and issue determinations on petitions by classes of employees to be treated as members of the Special Exposure Cohort;

(iii) With the assistance of the Secretary of Energy, apply the methods promulgated under subsection (b)(i)(B) to estimate the radiation doses received by individuals applying for assistance;

(iv) Upon request from the Secretary of Energy, appoint members for a physician panel or panels to consider individual workers' compensation claims as part of the Worker Assistance Program under the process established pursuant to subsection (c)(v); and

(v) Provide the Advisory Board established under section 4 of this order with administrative services, funds, facilities, staff, and other necessary support services and perform the administrative functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), with respect to the Advisory Board.

(c) *Secretary of Energy*. The Secretary of Energy shall:

(i) Provide the Secretary of Health and Human Services and the Advisory Board on Radiation and Worker Health access, in accordance with law, to all relevant information pertaining to worker exposures, including access to restricted data, and any other technical assistance needed to carry out their responsibilities under subsection (b)(ii) and section 4(b), respectively.

(ii) Upon request from the Secretary of Health and Human Services or the Secretary of Labor, and as permitted by law, require a DOE contractor, subcontractor, or designated beryllium vendor, pursuant to section 3631(c) of the Act [42 U.S.C. 7384v(c)], to provide information relevant to a claim under this Program;

(iii) Identify and notify potentially eligible individuals of the availability of compensation under the Program;

(iv) Designate, pursuant to sections 3621(4)(B) and 3622 of the Act [42 U.S.C. 7384*l*(4)(B), 7384m], atomic weapons employers and additions to the list of designated beryllium vendors;

(v) Pursuant to Subtitle D of the Act [42 U.S.C. 7385*o*], negotiate agreements with the chief executive officer of each State in which there is a DOE facility, and other States as appropriate, to provide assistance to a DOE contractor employee on filing a State workers' compensation system claim, and establish a Worker Assistance Program to help individuals whose illness is related to employment in the DOE's nuclear weapons complex, or the individual's survivor if the individual is deceased, in applying for State workers' compensation benefits. This assistance shall include:

(1) Submittal of reasonable claims to a physician panel, appointed by the Secretary of Health and Human Services and administered by the Secretary of Energy, under procedures established by the Secretary of Energy, for determination of whether the individual's illness or death arose out of and in the course of employment by the DOE or its contractors and exposure to a toxic substance at a DOE facility; and

(2) For cases determined by the physician panel and the Secretary of Energy under section 3661(d) and (e) of the Act [42 U.S.C. 7385*o*(d), (e)] to have arisen out of and in the course of employment by the DOE or its contractors and exposure to a toxic substance at a DOE facility, provide assistance to the individual in filing for workers' compensation benefits. The Secretary shall not contest these claims and, to the extent permitted by law, shall direct a DOE contractor who employed the applicant not to contest the claim;

(vi) Report on the Worker Assistance Program by making publicly available on at least an annual basis claims-related data, including the number of claims filed, the number of illnesses found to be related to work at a DOE facility, job location and description, and number of successful State workers' compensation claims awarded; and

(vii) No later than January 15, 2001, publish in the Federal Register a list of atomic weapons employer facilities within the meaning of section 3621(5) of the Act [42 U.S.C. 7384*l*(5)], Department of Energy employer facilities within the meaning of section 3621(12) of the Act, and a list of facilities owned and operated by a beryllium vendor, within the meaning of section 3621(6) of the Act.

(d) *Attorney General*. The Attorney General shall:

(i) Develop procedures to notify, to the extent possible, each claimant (or the survivor of that claimant if deceased) whose claim for compensation under section 5 of the Radiation Exposure Compensation Act

[Pub. L. 101–426, 42 U.S.C. 2210 note] has been or is approved by the Department of Justice, of the availability of supplemental compensation and benefits under the Energy Employees Occupational Illness Compensation Program;

(ii) Identify and notify eligible covered uranium employees or their survivors of the availability of supplemental compensation under the Program; and

(iii) Upon request by the Secretary of Labor, provide information needed to adjudicate the claim of a covered uranium employee under this Program.

SEC. 3. *Establishment of Interagency Working Group*.

(a) There is hereby established an Interagency Working Group to be composed of representatives from the Office of Management and Budget, the National Economic Council, and the Departments of Labor, Energy, Health and Human Services, and Justice.

(b) The Working Group shall:

(i) By January 1, 2001, develop a legislative proposal to ensure the Program's fairness and efficiency, including provisions to assure adequate administrative resources and swift dispute resolution; and

(ii) Address any impediments to timely and coordinated Program implementation.

SEC. 4. *Establishment of Advisory Board on Radiation and Worker Health*.

(a) Pursuant to Public Law 106–398, there is hereby established an Advisory Board on Radiation and Health (Advisory Board). The Advisory Board shall consist of no more than 20 members to be appointed by the President. Members shall include affected workers and their representatives, and representatives from scientific and medical communities. The President shall designate a Chair for the Board among its members.

(b) The Advisory Board shall:

(i) Advise the Secretary of Health and Human Services on the development of guidelines under section 2(b)(i) of this order;

(ii) Advise the Secretary of Health and Human Services on the scientific validity and quality of dose reconstruction efforts performed for this Program; and

(iii) Upon request by the Secretary of Health and Human Services, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

SEC. 5. *Reporting Requirements*. The Secretaries of Labor, Health and Human Services, and Energy shall, as part of their annual budget submissions, report to the Office of Management and Budget (OMB) on their activities under this Program, including total expenditures related to benefits and program administration. They shall also report to the OMB, no later than March 1, 2001, on the manner in which they will carry out their respective responsibilities under the Act and this order. This report shall include, among other things, a description of the administrative structure established within their agencies to implement the Act and this order. In addition, the Secretary of Labor shall annually report on the total number and types of claims for which compensation was considered and other data pertinent to evaluating the Federal Government's performance fulfilling the requirements of the Act and this order.

SEC. 6. *Administration and Judicial Review*. (a) This Executive Order shall be carried out subject to the availability of appropriations, and to the extent permitted by law.

(b) This Executive Order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON.

PART A—ESTABLISHMENT OF COMPENSATION PROGRAM AND COMPENSATION FUND

§ 7384d. Establishment of Energy Employees Occupational Illness Compensation Program

(a) Program established

There is hereby established a program to be known as the ''Energy Employees Occupational Illness Compensation Program'' (in this subchapter referred to as the ''compensation program''). The President shall carry out the compensation program through one or more Federal agencies or officials, as designated by the President.

(b) Purpose of program

The purpose of the compensation program is to provide for timely, uniform, and adequate compensation of covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred by such employees in the performance of duty for the Department of Energy and certain of its contractors and subcontractors.

(c) Eligibility for compensation

The eligibility of covered employees for compensation under the compensation program shall be determined in accordance with the provisions of part B as may be modified by a law enacted after the date of the submittal of the proposal for legislation required by section 7384f of this title.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3611], Oct. 30, 2000, 114 Stat. 1654, 1654A–497.)

§ 7384e. Establishment of Energy Employees Occupational Illness Compensation Fund

(a) Establishment

There is hereby established on the books of the Treasury a fund to be known as the ''Energy Employees Occupational Illness Compensation Fund'' (in this subchapter referred to as the ''compensation fund'').

(b) Amounts in compensation fund

The compensation fund shall consist of the following amounts:

(1) Amounts appropriated to the compensation fund pursuant to the authorization of appropriations in section 7384g(b) of this title.

(2) Amounts transferred to the compensation fund under subsection (c) of this section.

(c) Financing of compensation fund

Upon the exhaustion of amounts in the compensation fund attributable to the authorization of appropriations in section 7384g(b) of this title, the Secretary of the Treasury shall transfer directly to the compensation fund from the General Fund of the Treasury, without further appropriation, such amounts as are further necessary to carry out the compensation program.

(d) Use of compensation fund

Subject to subsection (e) of this section, amounts in the compensation fund shall be used to carry out the compensation program.

(e) Administrative costs not paid from compensation fund

No cost incurred in carrying out the compensation program, or in administering the com-

pensation fund, shall be paid from the compensation fund or set off against or otherwise deducted from any payment to any individual under the compensation program.

(f) Investment of amounts in compensation fund

Amounts in the compensation fund shall be invested in accordance with section 9702 of title 31, and any interest on, and proceeds from, any such investment shall be credited to and become a part of the compensation fund.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3612], Oct. 30, 2000, 114 Stat. 1654, 1654A–497.)

§ 7384f. Legislative proposal

(a) Legislative proposal required

Not later than March 15, 2001, the President shall submit to Congress a proposal for legislation to implement the compensation program. The proposal for legislation shall include, at a minimum, the specific recommendations (including draft legislation) of the President for the following:

(1) The types of compensation and benefits, including lost wages, medical benefits, and any lump-sum settlement payments, to be provided under the compensation program.

(2) Any adjustments or modifications necessary to appropriately administer the compensation program under part B.

(3) Whether to expand the compensation program to include other illnesses associated with exposure to toxic substances.

(4) Whether to expand the class of individuals who are members of the Special Exposure Cohort (as defined in section 7384*l*(14) of this title).

(b) Assessment of potential covered employees and required amounts

The President shall include with the proposal for legislation under subsection (a) of this section the following:

(1) An estimate of the number of covered employees that the President determines were exposed in the performance of duty.

(2) An estimate, for each fiscal year of the compensation program, of the amounts to be required for compensation and benefits anticipated to be provided in such fiscal year under the compensation program.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3613], Oct. 30, 2000, 114 Stat. 1654, 1654A–498.)

§ 7384g. Authorization of appropriations

(a) In general

Pursuant to the authorization of appropriations in section 3103(a),[1] $25,000,000 may be used for purposes of carrying out this subchapter.

(b) Compensation fund

There is hereby authorized to be appropriated $250,000,000 to the Energy Employees Occupational Illness Compensation Fund established by section 7384e of this title.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3614], Oct. 30, 2000, 114 Stat. 1654, 1654A–498.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 3103(a), referred to in subsec. (a), means section 1 [div. C, title XXXVI, §3103(a)] of Pub. L. 106–398, Oct. 30, 2000, 114 Stat. 1654, 1654A–449, which is not classified to the Code.

PART B—PROGRAM ADMINISTRATION

§ 7384*l*. Definitions for program administration

In this subchapter:

(1) The term ''covered employee'' means any of the following:

(A) A covered beryllium employee.

(B) A covered employee with cancer.

(C) To the extent provided in section 7384r of this title, a covered employee with chronic silicosis (as defined in that section).

(2) The term ''atomic weapon'' has the meaning given that term in section 2014(d) of this title.

(3) The term ''atomic weapons employee'' means any of the following:

(A) An individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.

(B) An individual employed—

(i) at a facility with respect to which the National Institute for Occupational Safety and Health, in its report dated October 2003 and titled ''Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities'', or any update to that report, found that there is a potential for significant residual contamination outside of the period in which weapons-related production occurred;

(ii) by an atomic weapons employer or subsequent owner or operators of a facility described in clause (i); and

(iii) during a period, as specified in such report or any update to such report, of potential for significant residual radioactive contamination at such facility.

(4) The term ''atomic weapons employer'' means an entity, other than the United States, that—

(A) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and

(B) is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program.

(5) The term ''atomic weapons employer facility'' means a facility, owned by an atomic weapons employer, that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling.

(6) The term ''beryllium vendor'' means any of the following:

(A) Atomics International.

(B) Brush Wellman, Incorporated, and its predecessor, Brush Beryllium Company.

(C) General Atomics.

(D) General Electric Company.

(E) NGK Metals Corporation and its predecessors, Kawecki-Berylco, Cabot Corporation, BerylCo, and Beryllium Corporation of America.

(F) Nuclear Materials and Equipment Corporation.

(G) StarMet Corporation and its predecessor, Nuclear Metals, Incorporated.

(H) Wyman Gordan, Incorporated.

(I) Any other vendor, processor, or producer of beryllium or related products designated as a beryllium vendor for purposes of the compensation program under section 7384m of this title.

(7) The term ''covered beryllium employee'' means the following, if and only if the employee is determined to have been exposed to beryllium in the performance of duty in accordance with section 7384n(a) of this title:

(A) A current or former employee (as that term is defined in section 8101(1) of title 5) who may have been exposed to beryllium at a Department of Energy facility or at a facility owned, operated, or occupied by a beryllium vendor.

(B) A current or former employee of—

(i) any entity that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility; or

(ii) any contractor or subcontractor that provided services, including construction and maintenance, at such a facility.

(C) A current or former employee of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, during a period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy.

(8) The term ''covered beryllium illness'' means any of the following:

(A) Beryllium sensitivity as established by an abnormal beryllium lymphocyte proliferation test performed on either blood or lung lavage cells.

(B) Established chronic beryllium disease.

(C) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in subparagraph (A) or (B).

(9) The term ''covered employee with cancer'' means any of the following:

(A) An individual with a specified cancer who is a member of the Special Exposure Cohort, if and only if that individual contracted that specified cancer after beginning employment at a Department of Energy facility (in the case of a Department of Energy employee or Department of Energy contractor employee) or at an atomic weapons employer facility (in the case of an atomic weapons employee).

(B)(i) An individual with cancer specified in subclause (I), (II), or (III) of clause (ii), if and only if that individual is determined to have sustained that cancer in the performance of duty in accordance with section 7384n(b) of this title.

(ii) Clause (i) applies to any of the following:

(I) A Department of Energy employee who contracted that cancer after beginning employment at a Department of Energy facility.

(II) A Department of Energy contractor employee who contracted that cancer after beginning employment at a Department of Energy facility.

(III) An atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility.

(10) The term ''Department of Energy'' includes the predecessor agencies of the Department of Energy, including the Manhattan Engineering District.

(11) The term ''Department of Energy contractor employee'' means any of the following:

(A) An individual who is or was in residence at a Department of Energy facility as a researcher for one or more periods aggregating at least 24 months.

(B) An individual who is or was employed at a Department of Energy facility by—

(i) an entity that contracted with the Department of Energy to provide management and operating, management and integration, or environmental remediation at the facility; or

(ii) a contractor or subcontractor that provided services, including construction and maintenance, at the facility.

(12) The term ''Department of Energy facility'' means any building, structure, or premise, including the grounds upon which such building, structure, or premise is located—

(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy (except for buildings, structures, premises, grounds, or operations covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and

(B) with regard to which the Department of Energy has or had—

(i) a proprietary interest; or

(ii) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

(13) The term ''established chronic beryllium disease'' means chronic beryllium disease as established by the following:

(A) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with paragraph (8)(A)), together with lung pathology consistent with chronic beryllium disease, including—

(i) a lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;

(ii) a computerized axial tomography scan showing changes consistent with chronic beryllium disease; or

(iii) pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.

(B) For diagnoses before January 1, 1993, the presence of—

(i) occupational or environmental history, or epidemiologic evidence of beryllium exposure; and

(ii) any three of the following criteria:

(I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

(II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.

(III) Lung pathology consistent with chronic beryllium disease.

(IV) Clinical course consistent with a chronic respiratory disorder.

(V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

(14) The term ''member of the Special Exposure Cohort'' means a Department of Energy employee, Department of Energy contractor employee, or atomic weapons employee who meets any of the following requirements:

(A) The employee was so employed for a number of work days aggregating at least 250 work days before February 1, 1992, at a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or Oak Ridge, Tennessee, and, during such employment—

(i) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of employee's body to radiation; or

(ii) worked in a job that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.

(B) The employee was so employed before January 1, 1974, by the Department of Energy or a Department of Energy contractor or subcontractor on Amchitka Island, Alaska, and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(C)(i) Subject to clause (ii), the employee is an individual designated as a member of the Special Exposure Cohort by the President for purposes of the compensation program under section 7384q of this title.

(ii) A designation under clause (i) shall, unless Congress otherwise provides, take effect on the date that is 30 days after the date on which the President submits to Congress a report identifying the individuals covered by the designation and describing the criteria used in designating those individuals.

(15) The term ''occupational illness'' means a covered beryllium illness, cancer referred to in paragraph (9)(B), specified cancer, or chronic silicosis, as the case may be.

(16) The term ''radiation'' means ionizing radiation in the form of—

(A) alpha particles;

(B) beta particles;

(C) neutrons;

(D) gamma rays; or

(E) accelerated ions or subatomic particles from accelerator machines.

(17) The term ''specified cancer'' means any of the following:

(A) A specified disease, as that term is defined in section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).

(B) Bone cancer.

(C) Renal cancers.

(D) Leukemia (other than chronic lymphocytic leukemia), if initial occupational exposure occurred before 21 years of age and onset occurred more than two years after initial occupational exposure.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3621], Oct. 30, 2000, 114 Stat. 1654, 1654A–498; Pub. L. 107–20, title II, § 2403(a), July 24, 2001, 115 Stat. 175; Pub. L. 107–107, div. C, title XXXI, § 3151(a)(1), (4)(C), Dec. 28, 2001, 115 Stat. 1371, 1374; Pub. L. 108–375, div. C, title XXXI, §§ 3166(b)(2), 3168(a), Oct. 28, 2004, 118 Stat. 2189, 2190.)

REFERENCES IN TEXT

Executive Order No. 12344, referred to in par. (12)(A), is set out as a note under section 2511 of Title 50, War and National Defense.

Section 4(b)(2) of the Radiation Exposure Compensation Act, referred to in par. (17)(A), is section 4(b)(2) of Pub. L. 101–426, which is set out in a note under section 2210 of this title.

AMENDMENTS

2004—Par. (3). Pub. L. 108–375, § 3168(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'atomic weapons employee' means an individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.''

Par. (14)(C)(ii). Pub. L. 108–375, § 3166(b)(2), substituted ''30 days'' for ''180 days''.

2001—Par. (17)(C). Pub. L. 107–20 added subpar. (C).

Par. (17)(D). Pub. L. 107–107, § 3151(a)(1), added subpar. (D).

Par. (18). Pub. L. 107–107, § 3151(a)(4)(C), struck out par. (18) which read as follows: ''The term 'survivor' means any individual or individuals eligible to receive compensation pursuant to section 8133 of title 5.''

EFFECTIVE DATE OF 2001 AMENDMENTS

Pub. L. 107–107, div. C, title XXXI, § 3151(a)(4)(D), Dec. 28, 2001, 115 Stat. 1374, provided that: ''The amendments made by this paragraph [amending this section and sections 7384s and 7384u of this title] shall take effect on July 1, 2001.''

Pub. L. 107–20, title II, § 2403(b), July 24, 2001, 115 Stat. 175, provided that: ''This section [amending this section] shall be effective on October 1, 2001.''

§ 7384m. Expansion of list of beryllium vendors

Not later than December 31, 2002, the President may, in consultation with the Secretary of Energy, designate as a beryllium vendor for purposes of section 7384*l*(6) of this title any vendor, processor, or producer of beryllium or related products not previously listed under or designated for purposes of such section 7384*l*(6) of

this title if the President finds that such vendor, processor, or producer has been engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy in a manner similar to the entities listed in such section 7384*l*(6) of this title.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3622], Oct. 30, 2000, 114 Stat. 1654, 1654A–502.)

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, set out as a note under section 7384 of this title.

§ 7384n. Exposure in the performance of duty

(a) Beryllium

A covered beryllium employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to beryllium in the performance of duty for the purposes of the compensation program if, and only if, the covered beryllium employee was—

(1) employed at a Department of Energy facility; or

(2) present at a Department of Energy facility, or a facility owned and operated by a beryllium vendor, because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of the Department of Energy,

during a period when beryllium dust, particles, or vapor may have been present at such facility.

(b) Cancer

An individual with cancer specified in subclause (I), (II), or (III) of section 7384*l*(9)(B)(ii) of this title shall be determined to have sustained that cancer in the performance of duty for purposes of the compensation program if, and only if, the cancer specified in that subclause was at least as likely as not related to employment at the facility specified in that subclause, as determined in accordance with the guidelines established under subsection (c) of this section.

(c) Guidelines

(1) For purposes of the compensation program, the President shall by regulation establish guidelines for making the determinations required by subsection (b) of this section.

(2) The President shall establish such guidelines after technical review by the Advisory Board on Radiation and Worker Health under section 7384*o* of this title.

(3) Such guidelines shall—

(A) be based on the radiation dose received by the employee (or a group of employees performing similar work) at such facility and the upper 99 percent confidence interval of the probability of causation in the radioepidemiological tables published under section 7(b) of the Orphan Drug Act (42 U.S.C. 241 note), as such tables may be updated under section 7(b)(3) of such Act from time to time;

(B) incorporate the methods established under subsection (d) of this section; and

(C) take into consideration the type of cancer, past health-related activities (such as smoking), information on the risk of developing a radiation-related cancer from workplace exposure, and other relevant factors.

(4) In the case of an atomic weapons employee described in section 7384*l*(3)(B) of this title, the following doses of radiation shall be treated, for purposes of paragraph (3)(A) of this subsection, as part of the radiation dose received by the employee at such facility:

(A) Any dose of ionizing radiation received by that employee from facilities, materials, devices, or byproducts used or generated in the research, development, production, dismantlement, transportation, or testing of nuclear weapons, or from any activities to research, produce, process, store, remediate, or dispose of radioactive materials by or on behalf of the Department of Energy (except for activities covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note) pertaining to the Naval Nuclear Propulsion Program).

(B) Any dose of ionizing radiation received by that employee from a source not covered by subparagraph (A) that is not distinguishable through reliable documentation from a dose covered by subparagraph (A).

(d) Methods for radiation dose reconstructions

(1) The President shall, through any Federal agency (other than the Department of Energy) or official (other than the Secretary of Energy or any other official within the Department of Energy) that the President may designate, establish by regulation methods for arriving at reasonable estimates of the radiation doses received by an individual specified in subparagraph (B) of section 7384*l*(9) of this title at a facility specified in that subparagraph by each of the following employees:

(A) An employee who was not monitored for exposure to radiation at such facility.

(B) An employee who was monitored inadequately for exposure to radiation at such facility.

(C) An employee whose records of exposure to radiation at such facility are missing or incomplete.

(2) The President shall establish an independent review process using the Advisory Board on Radiation and Worker Health to—

(A) assess the methods established under paragraph (1); and

(B) verify a reasonable sample of the doses established under paragraph (1).

(e) Information on radiation doses

(1) The Secretary of Energy shall provide, to each covered employee with cancer specified in section 7384*l*(9)(B) of this title, information specifying the estimated radiation dose of that employee during each employment specified in section 7384*l*(9)(B) of this title, whether established by a dosimetry reading, by a method established under subsection (d) of this section, or by both a dosimetry reading and such method.

(2) The Secretary of Health and Human Services and the Secretary of Energy shall each make available to researchers and the general public information on the assumptions, methodology, and data used in establishing radiation doses under subsection (d) of this section. The actions taken under this paragraph shall be consistent with the protection of private medical records.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3623], Oct. 30, 2000, 114 Stat. 1654, 1654A–502; Pub. L. 108–375, div. C, title XXXI, § 3168(b), Oct. 28, 2004, 118 Stat. 2190.)

REFERENCES IN TEXT

Section 7(b) of the Orphan Drug Act, referred to in subsec. (c)(3)(A), is section 7(b) of Pub. L. 97–414, which is set out in a note under section 241 of this title.

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108–375 added par. (4).

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, set out as a note under section 7384 of this title.

§ 7384*o*. Advisory Board on Radiation and Worker Health

(a) Establishment

(1) Not later than 120 days after October 30, 2000, the President shall establish and appoint an Advisory Board on Radiation and Worker Health (in this section referred to as the ''Board'').

(2) The President shall make appointments to the Board in consultation with organizations with expertise on worker health issues in order to ensure that the membership of the Board reflects a balance of scientific, medical, and worker perspectives.

(3) The President shall designate a Chair for the Board from among its members.

(b) Duties

The Board shall advise the President on—

(1) the development of guidelines under section 7384n(c) of this title;

(2) the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and

(3) such other matters related to radiation and worker health in Department of Energy facilities as the President considers appropriate.

(c) Staff

(1) The President shall appoint a staff to facilitate the work of the Board. The staff shall be headed by a Director who shall be appointed under subchapter VIII of chapter 33 of title 5.

(2) The President may accept as staff of the Board personnel on detail from other Federal agencies. The detail of personnel under this paragraph may be on a nonreimbursable basis.

(d) Expenses

Members of the Board, other than full-time employees of the United States, while attending meetings of the Board or while otherwise serving at the request of the President, while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government serving without pay.

(e) Security clearances

(1) The Secretary of Energy shall ensure that the members and staff of the Board, and the contractors performing work in support of the Board, are afforded the opportunity to apply for a security clearance for any matter for which such a clearance is appropriate. The Secretary should, not later than 180 days after receiving a completed application, make a determination whether or not the individual concerned is eligible for the clearance.

(2) For fiscal year 2007 and each fiscal year thereafter, the Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) a report specifying the number of applications for security clearances under this subsection, the number of such applications granted, and the number of such applications denied.

(f) Information

The Secretary of Energy shall, in accordance with law, provide to the Board and the contractors of the Board access to any information that the Board considers relevant to carry out its responsibilities under this subchapter, including information such as Restricted Data (as defined in section 2014(y) of this title) and information covered by the Privacy Act [5 U.S.C. 552a].

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3624], Oct. 30, 2000, 114 Stat. 1654, 1654A–504; Pub. L. 108–375, div. C, title XXXI, § 3166(a), Oct. 28, 2004, 118 Stat. 2188.)

REFERENCES IN TEXT

The Privacy Act, referred to in subsec. (f), is probably a reference to section 552a of Title 5, Government Organization and Employees. See Short Title note set out under section 552a of Title 5.

AMENDMENTS

2004—Subsecs. (e), (f). Pub. L. 108–375 added subsecs. (e) and (f).

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 7384p. Responsibilities of Secretary of Health and Human Services

The Secretary of Health and Human Services shall carry out that Secretary's responsibilities with respect to the compensation program with the assistance of the Director of the National Institute for Occupational Safety and Health.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3625], Oct. 30, 2000, 114 Stat. 1654, 1654A–504.)

§ 7384q. Designation of additional members of special exposure cohort

(a) Advice on additional members

(1) The Advisory Board on Radiation and Worker Health under section 7384*o* of this title

shall advise the President whether there is a class of employees at any Department of Energy facility who likely were exposed to radiation at that facility but for whom it is not feasible to estimate with sufficient accuracy the radiation dose they received.

(2) The advice of the Advisory Board on Radiation and Worker Health under paragraph (1) shall be based on exposure assessments by radiation health professionals, information provided by the Department of Energy, and such other information as the Advisory Board considers appropriate.

(3) The President shall request advice under paragraph (1) after consideration of petitions by classes of employees described in that paragraph for such advice. The President shall consider such petitions pursuant to procedures established by the President.

(b) Designation of additional members

Subject to the provisions of section 7384*l*(14)(C) of this title, the members of a class of employees at a Department of Energy facility, or at an atomic weapons employer facility, may be treated as members of the Special Exposure Cohort for purposes of the compensation program if the President, upon recommendation of the Advisory Board on Radiation and Worker Health, determines that—

(1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and

(2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

(c) Deadlines

(1) Not later than 180 days after the date on which the President receives a petition for designation as members of the Special Exposure Cohort, the Director of the National Institute for Occupational Safety and Health shall submit to the Advisory Board on Radiation and Worker Health a recommendation on that petition, including all supporting documentation.

(2)(A) Upon receipt by the President of a recommendation of the Advisory Board on Radiation and Worker Health that the President should determine in the affirmative that paragraphs (1) and (2) of subsection (b) of this section apply to a class, the President shall have a period of 30 days in which to determine whether such paragraphs apply to the class and to submit that determination (whether affirmative or negative) to Congress.

(B) If the determination submitted by the President under subparagraph (A) is in the affirmative, the President shall also submit a report meeting the requirements of section 7384*l*(14)(C)(ii) of this title.

(C) If the President does not submit a determination required by subparagraph (A) within the period required by subparagraph (A), then upon the day following the expiration of that period, it shall be deemed for purposes of section 7384*l*(14)(C)(ii) of this title that the President submitted the report under that provision on that day.

(d) Access to information

The Secretary of Energy shall provide, in accordance with law, the Secretary of Health and Human Services and the members and staff of the Advisory Board on Radiation and Worker Health access to relevant information on worker exposures, including access to Restricted Data (as defined in section 2014(y) of this title.[1]

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3626], Oct. 30, 2000, 114 Stat. 1654, 1654A–504; Pub. L. 107–107, div. C, title XXXI, § 3151(a)(2), Dec. 28, 2001, 115 Stat. 1372; Pub. L. 108–375, div. C, title XXXI, § 3166(b)(1), Oct. 28, 2004, 118 Stat. 2188.)

AMENDMENTS

2004—Subsecs. (c), (d). Pub. L. 108–375 added subsec. (c) and redesignated former subsec. (c) as (d).

2001—Subsec. (b). Pub. L. 107–107 inserted ‘‘, or at an atomic weapons employer facility,’’ after ‘‘Department of Energy facility’’ in introductory provisions.

§ 7384r. Separate treatment of chronic silicosis

(a) Sense of Congress

Congress finds that employees who worked in Department of Energy test sites and later contracted chronic silicosis should also be considered for inclusion in the compensation program. Recognizing that chronic silicosis resulting from exposure to silica is not a condition unique to the nuclear weapons industry, it is not the intent of Congress with this subchapter to establish a precedent on the question of chronic silicosis as a compensable occupational disease. Consequently, it is the sense of Congress that a further determination by the President is appropriate before these workers are included in the compensation program.

(b) Certification by President

A covered employee with chronic silicosis shall be treated as a covered employee (as defined in section 7384*l*(1) of this title) for the purposes of the compensation program required by section 7384d of this title unless the President submits to Congress not later than 180 days after October 30, 2000, the certification of the President that there is insufficient basis to include such employees. The President shall submit with the certification any recommendations about the compensation program with respect to covered employees with chronic silicosis as the President considers appropriate.

(c) Exposure to silica in the performance of duty

A covered employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to silica in the performance of duty for the purposes of the compensation program if, and only if, the employee was present for a number of work days aggregating at least 250 work days during the mining of tunnels at a Department of Energy facility located in Nevada or Alaska for tests or experiments related to an atomic weapon.

(d) Covered employee with chronic silicosis

For purposes of this subchapter, the term ‘‘covered employee with chronic silicosis’’ means a Department of Energy employee, or a Department of Energy contractor employee, with chronic silicosis who was exposed to silica in the performance of duty as determined under subsection (c) of this section.

[1] So in original. A closing parenthesis should probably follow ‘‘title’’.

(e) Chronic silicosis

For purposes of this subchapter, the term ''chronic silicosis'' means a nonmalignant lung disease if—

(1) the initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and

(2) a written diagnosis of silicosis is made by a medical doctor and is accompanied by—

(A) a chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher;

(B) results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(C) lung biopsy findings consistent with silicosis.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3627], Oct. 30, 2000, 114 Stat. 1654, 1654A–505; Pub. L. 107–107, div. C, title XXXI, § 3151(a)(3), Dec. 28, 2001, 115 Stat. 1372.)

AMENDMENTS

2001—Subsec. (e)(2)(A). Pub. L. 107–107 substituted ''category 1/0'' for ''category 1/1''.

§ 7384s. Compensation and benefits to be provided

(a) Compensation provided

(1) Except as provided in paragraph (2), a covered employee, or the survivor of that covered employee if the employee is deceased, shall receive compensation for the disability or death of that employee from that employee's occupational illness in the amount of $150,000.

(2) A covered employee shall, to the extent that employee's occupational illness is established beryllium sensitivity, receive beryllium sensitivity monitoring under subsection (c) of this section in lieu of compensation under paragraph (1).

(b) Medical benefits

A covered employee shall receive medical benefits under section 7384t of this title for that employee's occupational illness.

(c) Beryllium sensitivity monitoring

An individual receiving beryllium sensitivity monitoring under this subsection shall receive the following:

(1) A thorough medical examination to confirm the nature and extent of the individual's established beryllium sensitivity.

(2) Regular medical examinations thereafter to determine whether that individual has developed established chronic beryllium disease.

(d) Payment from compensation fund

The compensation provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(e) Payments in the case of deceased persons

(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or not the death is the result of the covered employee's occupational illness, such payment may be made only as follows:

(A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.

(C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.

(D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.

(E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.

(F) Notwithstanding the other provisions of this paragraph, if there is—

(i) a surviving spouse described in subparagraph (A); and

(ii) at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse,

then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

(2) If a covered employee eligible for payment dies before filing a claim under this subchapter, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

(3) For purposes of this subsection—

(A) the ''spouse'' of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(B) a ''child'' includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(C) a ''parent'' includes fathers and mothers through adoption;

(D) a ''grandchild'' of an individual is a child of a child of that individual; and

(E) a ''grandparent'' of an individual is a parent of a parent of that individual.

(f) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3628], Oct. 30, 2000, 114 Stat. 1654, 1654A–506; Pub. L. 107–107, div. C, title XXXI, § 3151(a)(4)(A), Dec. 28, 2001, 115 Stat. 1372.)

AMENDMENTS

2001—Subsec. (e). Pub. L. 107–107 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

''(1) Subject to the provisions of this section, if a covered employee dies before the effective date specified in subsection (f) of this section, whether or not the death is a result of that employee's occupational illness, a survivor of that employee may, on behalf of that survivor and any other survivors of that employee, receive the compensation provided for under this section.

''(2) The right to receive compensation under this section shall be afforded to survivors in the same order of precedence as that set forth in section 8109 of title 5.''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective July 1, 2001, see section 3151(a)(4)(D) of Pub. L. 107–107, set out as a note under section 7384*l* of this title.

§ 7384t. Medical benefits

(a) Medical benefits provided

The United States shall furnish, to an individual receiving medical benefits under this section for an illness, the services, appliances, and supplies prescribed or recommended by a qualified physician for that illness, which the President considers likely to cure, give relief, or reduce the degree or the period of that illness.

(b) Persons furnishing benefits

(1) These services, appliances, and supplies shall be furnished by or on the order of United States medical officers and hospitals, or, at the individual's option, by or on the order of physicians and hospitals designated or approved by the President.

(2) The individual may initially select a physician to provide medical services, appliances, and supplies under this section in accordance with such regulations and instructions as the President considers necessary.

(c) Transportation and expenses

The individual may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies.

(d) Commencement of benefits

An individual receiving benefits under this section shall be furnished those benefits as of the date on which that individual submitted the claim for those benefits in accordance with this subchapter.

(e) Payment from compensation fund

The benefits provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(f) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3629], Oct. 30, 2000, 114 Stat. 1654, 1654A–507.)

§ 7384u. Separate treatment of certain uranium employees

(a) Compensation provided

An individual who receives, or has received, $100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act (hereafter in this section referred to as a ''covered uranium employee''), or the survivor of that covered uranium employee if the employee is deceased, shall receive compensation under this section in the amount of $50,000.

(b) Medical benefits

A covered uranium employee shall receive medical benefits under section 7384t of this title for the illness for which that employee received $100,000 under section 5 of that Act.

(c) Coordination with RECA

The compensation and benefits provided in subsections (a) and (b) of this section are separate from any compensation or benefits provided under that Act.

(d) Payment from compensation fund

The compensation provided under this section and the compensation provided under section 5 of the Radiation Exposure Compensation Act, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(e) Payments in the case of deceased persons

(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or not the death is the result of the covered employee's occupational illness, such payment may be made only as follows:

(A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.

(C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.

(D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.

(E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.

(F) Notwithstanding the other provisions of this paragraph, if there is—

(i) a surviving spouse described in subparagraph (A); and

(ii) at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse,

then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

(2) If a covered employee eligible for payment dies before filing a claim under this subchapter, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

(3) For purposes of this subsection—

(A) the ''spouse'' of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(B) a ''child'' includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(C) a ''parent'' includes fathers and mothers through adoption;

(D) a ''grandchild'' of an individual is a child of a child of that individual; and

(E) a ''grandparent'' of an individual is a parent of a parent of that individual.

(f) Procedures required

The President shall establish procedures to identify and notify each covered uranium employee, or the survivor of that covered uranium employee if that employee is deceased, of the availability of compensation and benefits under this section.

(g) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3630], Oct. 30, 2000, 114 Stat. 1654, 1654A–507; Pub. L. 107–107, div. C, title XXXI, § 3151(a)(4)(B), Dec. 28, 2001, 115 Stat. 1373; Pub. L. 108–375, div. C, title XXXI, § 3165(a), Oct. 28, 2004, 118 Stat. 2187.)

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in subsecs. (a) to (d), is Pub. L. 101–426, Oct. 15, 1990, 104 Stat. 920, as amended, which is set out as a note under section 2210 of this title.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–375 inserted ''and the compensation provided under section 5 of the Radiation Exposure Compensation Act'' after ''The compensation provided under this section''.

2001—Subsec. (e). Pub. L. 107–107 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

''(1) Subject to the provisions of this section, if a covered uranium employee dies before the effective date specified in subsection (g) of this section, whether or not the death is a result of the illness specified in subsection (b) of this section, a survivor of that employee may, on behalf of that survivor and any other survivors of that employee, receive the compensation provided for under this section.

''(2) The right to receive compensation under this section shall be afforded to survivors in the same order of precedence as that set forth in section 8109 of title 5.''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective July 1, 2001, see section 3151(a)(4)(D) of Pub. L. 107–107, set out as a note under section 7384*l* of this title.

§ 7384v. Assistance for claimants and potential claimants

(a) Assistance for claimants

The President shall, upon the receipt of a request for assistance from a claimant under the compensation program, provide assistance to the claimant in connection with the claim, including—

(1) assistance in securing medical testing and diagnostic services necessary to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and

(2) such other assistance as may be required to develop facts pertinent to the claim.

(b) Assistance for potential claimants

The President shall take appropriate actions to inform and assist covered employees who are potential claimants under the compensation program, and other potential claimants under the compensation program, of the availability of compensation under the compensation program, including actions to—

(1) ensure the ready availability, in paper and electronic format, of forms necessary for making claims;

(2) provide such covered employees and other potential claimants with information and other support necessary for making claims, including—

(A) medical protocols for medical testing and diagnosis to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and

(B) lists of vendors approved for providing laboratory services related to such medical testing and diagnosis; and

(3) provide such additional assistance to such covered employees and other potential claimants as may be required for the development of facts pertinent to a claim.

(c) Information from beryllium vendors and other contractors

As part of the assistance program provided under subsections (a) and (b) of this section, and as permitted by law, the Secretary of Energy shall, upon the request of the President, require a beryllium vendor or other Department of Energy contractor or subcontractor to provide information relevant to a claim or potential claim under the compensation program to the President.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3631], Oct. 30, 2000, 114 Stat. 1654, 1654A–508.)

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, set out as a note under section 7384 of this title.

§ 7384w. Subpoenas; oaths; examination of witnesses

The Secretary of Labor, with respect to any matter under this part, may—

(1) issue subpoenas for and compel the attendance of witnesses;

(2) administer oaths;

(3) examine witnesses; and

(4) require the production of books, papers, documents, and other evidence.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3632], as added Pub. L. 108–375, div. C, title XXXI, § 3163(a), Oct. 28, 2004, 118 Stat. 2186.)

§ 7384w–1. Completion of site profiles

(a) In general

To the extent that the Secretary of Labor determines it useful and practicable, the Secretary of Labor shall direct the Director of the National Institute for Occupational Safety and Health to prepare site profiles for a Department of Energy facility based on the records, files, and other data provided by the Secretary of Energy and such other information as is available, including information available from the former worker medical screening programs of the Department of Energy.

(b) Information

The Secretary of Energy shall furnish to the Secretary of Labor any information that the Secretary of Labor finds necessary or useful for the production of such site profiles, including records from the Department of Energy former worker medical screening program.

(c) Definition

In this section, the term ''site profile'' means an exposure assessment of a facility that identifies the toxic substances or processes that were commonly used in each building or process of the facility, and the time frame during which the potential for exposure to toxic substances existed.

(d) Time frames

The Secretary of Health and Human Services shall establish time frames for completing site profiles for those Department of Energy facilities for which a site profile has not been completed. Not later than March 1, 2005, the Secretary of Health and Human Services shall submit to Congress a report setting forth those time frames.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3633], as added Pub. L. 108–375, div. C, title XXXI, § 3166(c), Oct. 28, 2004, 118 Stat. 2189.)

PART C—TREATMENT, COORDINATION, AND FORFEITURE OF COMPENSATION AND BENEFITS

§ 7385. Offset for certain payments

A payment of compensation to an individual, or to a survivor of that individual, under this subchapter shall be offset by the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation), against any person, that is based on injuries incurred by that individual on account of the exposure for which compensation is payable under this subchapter.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3641], Oct. 30, 2000, 114 Stat. 1654, 1654A–509; Pub. L. 108–375, div. C, title XXXI, § 3162(a), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108–375 substituted ''this subchapter'' for ''part B'' and ''on account of the exposure for which compensation is payable under this subchapter'' for ''on account of the exposure of a covered beryllium employee, covered employee with cancer, covered employee with chronic silicosis (as defined in section 7384r of this title), or covered uranium employee (as defined in section 7384u of this title), while so employed, to beryllium, radiation, silica, or radiation, respectively''.

§ 7385a. Subrogation of the United States

Upon payment of compensation under this subchapter, the United States is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in section 7385 of this title.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3642], Oct. 30, 2000, 114 Stat. 1654, 1654A–509; Pub. L. 108–375, div. C, title XXXI, § 3162(b), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108–375 substituted ''this subchapter'' for ''part B''.

§ 7385b. Payment in full settlement of claims

Except as provided in part E, the acceptance by an individual of payment of compensation under part B with respect to a covered employee shall be in full satisfaction of all claims of or on behalf of that individual against the United States, against a Department of Energy contractor or subcontractor, beryllium vendor, or atomic weapons employer, or against any person with respect to that person's performance of a contract with the United States, that arise out of an exposure referred to in section 7385 of this title.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3643], Oct. 30, 2000, 114 Stat. 1654, 1654A–509; Pub. L. 108–375, div. C, title XXXI, § 3162(c), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108–375 substituted ''Except as provided in part E, the acceptance'' for ''The acceptance''.

§ 7385c. Exclusivity of remedy against the United States and against contractors and subcontractors

(a) In general

The liability of the United States or an instrumentality of the United States under this subchapter with respect to a cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death related thereto of a covered employee is exclusive and instead of all other liability—

(1) of—

(A) the United States;

(B) any instrumentality of the United States;

(C) a contractor that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility (in its capacity as a contractor);

(D) a subcontractor that provided services, including construction, at a Department of Energy facility (in its capacity as a subcontractor); and

(E) an employee, agent, or assign of an entity specified in subparagraphs (A) through (D);

(2) to—

(A) the covered employee;

(B) the covered employee's legal representative, spouse, dependents, survivors, and next of kin; and

(C) any other person, including any third party as to whom the covered employee, or the covered employee's legal representative, spouse, dependents, survivors, or next of kin, has a cause of action relating to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death, otherwise entitled to recover damages from the United States, the instrumentality, the contractor, the subcontractor, or the employee, agent, or assign of one of them,

because of the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death in any proceeding or action including a direct judicial proceeding, a civil action, a proceeding in admiralty, or a proceeding under a tort liability statute or the common law.

(b) Applicability

This section applies to all cases filed on or after October 30, 2000.

(c) Workers' compensation

This section does not apply to an administrative or judicial proceeding under a Federal or State workers' compensation law.

(d) Applicability to part E

This section applies with respect to part E to the covered medical condition or covered illness or death of a covered DOE contractor employee on the same basis as it applies with respect to part B to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death of a covered employee.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3644], Oct. 30, 2000, 114 Stat. 1654, 1654A–509; Pub. L. 108–375, div. C, title XXXI, §3162(d), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–375 added subsec. (d).

§ 7385d. Election of remedy for beryllium employees and atomic weapons employees

(a) Effect of tort cases filed before enactment of original law

(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) of this section before October 30, 2000, such individual shall be eligible for compensation and benefits under part B.

(2) If such tort case remained pending as of December 28, 2001, and such individual does not dismiss such tort case before December 31, 2003, such individual shall not be eligible for such compensation or benefits.

(b) Effect of tort cases filed between enactment of original law and enactment of 2001 amendments

(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) of this section during the period beginning on October 30, 2000, and ending on December 28, 2001, such individual shall not be eligible for such compensation or benefits.

(2) If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation or benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by part B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 7384n of this title.

(c) Effect of tort cases filed after enactment of 2001 amendments

(1) If an otherwise eligible individual files a tort case specified in subsection (d) of this section after December 28, 2001, such individual shall not be eligible for such compensation or benefits if a final court decision is entered against such individual in such tort case.

(2) If such a final court decision is not entered, such individual shall nonetheless not be eligible for such compensation or benefits, except as follows: If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation and benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by part B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 7384n of this title.

(d) Covered tort cases

A tort case specified in this subsection is a tort case alleging a claim referred to in section 7385b of this title against a beryllium vendor or atomic weapons employer.

(e) Workers' compensation

This section does not apply to an administrative or judicial proceeding under a State or Federal workers' compensation law.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3645], Oct. 30, 2000, 114 Stat. 1654, 1654A–510; Pub. L. 107–107, div. C, title XXXI, §3151(a)(5), Dec. 28, 2001, 115 Stat. 1374.)

AMENDMENTS

2001—Subsecs. (a) to (d). Pub. L. 107–107 amended headings and text of subsecs. (a) to (d) generally, sub-

stituting present provisions for provisions relating to election to file suit in subsec. (a), applicable time limits in subsec. (b), dismissal of claims in subsec. (c), and dismissal of pending suit in subsec. (d).

§ 7385e. Certification of treatment of payments under other laws

Compensation or benefits provided to an individual under this subchapter—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31 or the amount of such benefits.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3646], Oct. 30, 2000, 114 Stat. 1654, 1654A–510; Pub. L. 108–375, div. C, title XXXI, § 3162(e), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108–375 substituted ''this subchapter'' for ''part B''.

§ 7385f. Claims not assignable or transferable; choice of remedies

(a) Claims not assignable or transferable

No claim cognizable under this subchapter shall be assignable or transferable.

(b) Choice of remedies

No individual may receive more than one payment of compensation under part B.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3647], Oct. 30, 2000, 114 Stat. 1654, 1654A–511; Pub. L. 108–375, div. C, title XXXI, § 3162(f), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375 substituted ''this subchapter'' for ''part B''.

§ 7385g. Attorney fees

(a) General rule

Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual for payment of lump-sum compensation under part B, more than that percentage specified in subsection (b) of this section of a payment made under part B on such claim.

(b) Applicable percentage limitations

The percentage referred to in subsection (a) of this section is—

(1) 2 percent for the filing of an initial claim for payment of lump-sum compensation; and

(2) 10 percent with respect to objections to a recommended decision denying payment of lump-sum compensation.

(c) Inapplicability to other services

This section shall not apply with respect to services rendered that are not in connection with such a claim for payment of lump-sum compensation.

(d) Penalty

Any such representative who violates this section shall be fined not more than $5,000.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3648], Oct. 30, 2000, 114 Stat. 1654, 1654A–511; Pub. L. 107–107, div. C, title XXXI, § 3151(a)(6), Dec. 28, 2001, 115 Stat. 1375.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, § 3151(a)(6)(A), inserted ''for payment of lump-sum compensation'' after ''the claim of an individual''.

Subsec. (b)(1). Pub. L. 107–107, § 3151(a)(6)(B), inserted ''for payment of lump-sum compensation'' after ''initial claim''.

Subsec. (b)(2). Pub. L. 107–107, § 3151(a)(6)(C), substituted ''with respect to objections to a recommended decision denying payment of lump-sum compensation'' for ''with respect to any claim with respect to which a representative has made a contract for services before October 30, 2000''.

Subsecs. (c), (d). Pub. L. 107–107, § 3151(a)(6)(D), (E), added subsec. (c) and redesignated former subsec. (c) as (d).

§ 7385h. Certain claims not affected by awards of damages

A payment under this subchapter shall not be considered as any form of compensation or reimbursement for a loss for purposes of imposing liability on any individual receiving such payment, on the basis of such receipt, to repay any insurance carrier for insurance payments, or to repay any person on account of worker's compensation payments; and a payment under this subchapter shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3649], Oct. 30, 2000, 114 Stat. 1654, 1654A–511; Pub. L. 108–375, div. C, title XXXI, § 3162(g), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108–375 substituted ''this subchapter'' for ''part B'' in two places.

§ 7385i. Forfeiture of benefits by convicted felons

(a) Forfeiture of compensation

Any individual convicted of a violation of section 1920 of title 18, or any other Federal or State criminal statute relating to fraud in the application for or receipt of any benefit under this subchapter or under any other Federal or State workers' compensation law, shall forfeit (as of the date of such conviction) any entitlement to any compensation or benefit under this subchapter such individual would otherwise be awarded for any injury, illness or death covered by this subchapter for which the time of injury was on or before the date of the conviction.

(b) Information

Notwithstanding section 552a of title 5, or any other Federal or State law, an agency of the United States, a State, or a political subdivision of a State shall make available to the President, upon written request from the President and if the President requires the information to carry out this section, the names and Social Security account numbers of individuals confined, for conviction of a felony, in a jail, prison, or other penal institution or correctional facility under the jurisdiction of that agency.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3650], Oct. 30, 2000, 114 Stat. 1654, 1654A–511; Pub. L. 108–375, div. C, title XXXI, § 3162(h), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375 substituted ''this subchapter'' for ''part B'' wherever appearing.

§ 7385j. Coordination with other Federal radiation compensation laws

Except in accordance with section 7384u of this title, an individual may not receive compensation or benefits under the compensation program for cancer and also receive compensation under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) or section 1112(c) of title 38.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3651], Oct. 30, 2000, 114 Stat. 1654, 1654A–512.)

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in text, is Pub. L. 101–426, Oct. 15, 1990, 104 Stat. 920, as amended, which is set out as a note under section 2210 of this title.

§ 7385j–1. Social Security earnings information

Notwithstanding the provision of section 552a of title 5 or any other provision of Federal or State law, the Social Security Administration shall make available to the Secretary of Labor, upon written request, the Social Security earnings information of living or deceased employees who may have sustained an illness that is the subject of a claim under this subchapter, which the Secretary of Labor may require to carry out the provisions of this subchapter.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3652], as added Pub. L. 108–375, div. C, title XXXI, § 3163(b), Oct. 28, 2004, 118 Stat. 2187.)

§ 7385j–2. Recovery and waiver of overpayments

(a) In general

When an overpayment has been made to an individual under this subchapter because of an error of fact or law, recovery shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled. If the individual dies before the recovery is completed, recovery shall be made by decreasing later benefits payable under this subchapter with respect to the individual's death.

(b) Waiver

Recovery by the United States under this section may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) Liability

A certifying or disbursing official is not liable for an amount certified or paid by him when recovery of the amount is waived under subsection (b) of this section, or when recovery under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3653], as added Pub. L. 108–375, div. C, title XXXI, § 3163(c), Oct. 28, 2004, 118 Stat. 2187.)

PART D—ASSISTANCE IN STATE WORKERS' COMPENSATION PROCEEDINGS

§ 7385*o*. Repealed. Pub. L. 108–375, div. C, title XXXI, § 3162(i), Oct. 28, 2004, 118 Stat. 2186

Section, Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3661], Oct. 30, 2000, 114 Stat. 1654, 1654A–512, authorized Secretary of Energy to enter agreements with States to provide assistance to Department of Energy contractor employees in filing claims under the appropriate State workers' compensation system.

PART E—CONTRACTOR EMPLOYEE COMPENSATION

§ 7385s. Definitions

In this part:

(1) The term ''covered DOE contractor employee'' means any Department of Energy contractor employee determined under section 7385s–4 of this title to have contracted a covered illness through exposure at a Department of Energy facility.

(2) The term ''covered illness'' means an illness or death resulting from exposure to a toxic substance.

(3) The term ''Secretary'' means the Secretary of Labor.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3671], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2178.)

§ 7385s–1. Compensation to be provided

Subject to the other provisions of this part:

(1) Contractor employees

A covered DOE contractor employee shall receive contractor employee compensation under this part in accordance with section 7385s–2 of this title.

(2) Survivors

After the death of a covered DOE contractor employee, compensation referred to in paragraph (1) shall not be paid. Instead, the survivor of that employee shall receive compensation as follows:

(A) Except as provided in subparagraph (B), the survivor of that employee shall receive contractor employee compensation under this part in accordance with section 7385s–3 of this title.

(B) In a case in which the employee's death occurred after the employee applied under this part and before compensation was paid under paragraph (1), and the employee's death occurred from a cause other than the covered illness of the employee, the survivor of that employee may elect to receive, in lieu of compensation under subparagraph (A), the amount of contractor employee compensation that the employee would have received in accordance with section 7385s–2 of this title if the employee's death had not occurred before compensation was paid under paragraph (1).

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3672], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2178.)

§ 7385s–2. Compensation schedule for contractor employees

(a) Compensation provided

The amount of contractor employee compensation under this part for a covered DOE contractor employee shall be the sum of the amounts determined under paragraphs (1) and (2), as follows:

(1) Impairment

(A) The Secretary shall determine—

(i) the minimum impairment rating of that employee, expressed as a number of percentage points; and

(ii) the number of those points that are the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility.

(B) The employee shall receive an amount under this paragraph equal to $2,500 multiplied by the number referred to in clause (ii) of subparagraph (A).

(2) Wage loss

(A) The Secretary shall determine—

(i) the calendar month during which the employee first experienced wage loss as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility;

(ii) the average annual wage of the employee for the 36-month period immediately preceding the calendar month referred to in clause (i), excluding any portions of that period during which the employee was unemployed; and

(iii) beginning with the calendar year that includes the calendar month referred to in clause (i), through and including the calendar year during which the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.])—

(I) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage exceeded 50 percent of the average annual wage determined under clause (ii), but did not exceed 75 percent of the average annual wage determined under clause (ii); and

(II) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage determined under clause (ii).

(B) The employee shall receive an amount under this paragraph equal to the sum of—

(i) $10,000 multiplied by the number referred to in clause (iii)(I) of subparagraph (A); and

(ii) $15,000 multiplied by the number referred to in clause (iii)(II) of subparagraph (A).

(b) Determination of minimum impairment rating

For purposes of subsection (a) of this section, a minimum impairment rating shall be determined in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3673], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2179.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2)(A)(iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 7385s–3. Compensation schedule for survivors

(a) Categories of compensation

The amount of contractor employee compensation under this part for the survivor of a covered DOE contractor employee shall be determined as follows:

(1) Category one

The survivor shall receive the amount of $125,000, if the Secretary determines that—

(A) the employee would have been entitled to compensation under section 7385s–4 of this title for a covered illness; and

(B) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the death of such employee.

(2) Category two

The survivor shall receive the amount of $150,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 10 years, before the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.]), during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 7385s–2(a)(2)(A)(ii) of this title.

(3) Category three

The survivor shall receive the amount of $175,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 20 years, before the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.]), during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 7385s–2(a)(2)(A)(ii) of this title.

(b) One amount only

The survivor of a covered DOE contractor employee to whom more than one amount under

subsection (a) of this section applies shall receive only the highest such amount.

(c) Determination and allocation of shares

The amount under subsection (a) of this section shall be paid only as follows:

(1) If a covered spouse is alive at the time of payment, such payment shall be made to such surviving spouse.

(2) If there is no covered spouse described in paragraph (1), such payment shall be made in equal shares to all covered children who are alive at the time of payment.

(3) Notwithstanding the other provisions of this subsection, if there is—

(A) a covered spouse described in paragraph (1); and

(B) at least one covered child of the employee who is living at the time of payment and who is not a recognized natural child or adopted child of such covered spouse,

then half of such payment shall be made to such covered spouse, and the other half of such payment shall be made in equal shares to each covered child of the employee who is living at the time of payment.

(d) Definitions

In this section:

(1) The term ''covered spouse'' means a spouse of the employee who was married to the employee for at least one year immediately before the employee's death.

(2) The term ''covered child'' means a child of the employee who, as of the employee's death—

(A) had not attained the age of 18 years;

(B) had not attained the age of 23 years and was a full-time student who had been continuously enrolled as a full-time student in one or more educational institutions since attaining the age of 18 years; or

(C) had been incapable of self-support.

(3) The term ''child'' includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3674], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2180.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 7385s–4. Determinations regarding contraction of covered illnesses

(a) Cases determined under part B

A determination under part B that a Department of Energy contractor employee is entitled to compensation under that part for an occupational illness shall be treated for purposes of this part as a determination that the employee contracted that illness through exposure at a Department of Energy facility.

(b) Cases determined under former part D

In the case of a covered illness of an employee with respect to which a panel has made a positive determination under section 7385*o*(d) of this title and the Secretary of Energy has accepted that determination under section 7385*o*(e)(2) of this title, or with respect to which a panel has made a negative determination under section 7385*o*(d) of this title and the Secretary of Energy has found significant evidence to the contrary under section 7385*o*(e)(2) of this title, that determination shall be treated for purposes of this part as a determination that the employee contracted the covered illness through exposure at a Department of Energy facility.

(c) Other cases

(1) In any other case, a Department of Energy contractor employee shall be determined for purposes of this part to have contracted a covered illness through exposure at a Department of Energy facility if—

(A) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness; and

(B) it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility.

(2) A determination under paragraph (1) shall be made by the Secretary.

(d) Applications by spouses and children

If a spouse or child of a Department of Energy contractor employee applies for benefits under this part, the Secretary shall make a determination under this section with respect to that employee without regard to whether the spouse is a ''covered spouse'', or the child is a ''covered child'', under this part.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3675], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2181.)

REFERENCES IN TEXT

Section 7385*o* of this title, referred to in subsec. (b), was repealed by Pub. L. 108–375, div. C, title XXXI, § 3162(i), Oct. 28, 2004, 118 Stat. 2186.

§ 7385s–5. Applicability to certain uranium employees

(a) In general

This part shall apply to—

(1) a section 5 payment recipient who contracted a section 5 illness through a section 5 exposure at a section 5 facility, or

(2) a section 5 uranium worker determined under section 7385s–4(c) of this title to have contracted a covered illness through exposure to a toxic substance at a section 5 mine or mill,

(or to the survivor of that employee, as applicable) on the same basis as it applies to a Department of Energy contractor employee determined under section 7385s–4 of this title to have contracted a covered illness through exposure to a toxic substance at a Department of Energy facility (or to the survivor of that employee, as applicable).

(b) Definitions

In this section:

(1) The term ''section 5 payment recipient'' means an individual who receives, or has received, $100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act.

(2) The terms ''section 5 exposure'', ''section 5 facility'', and ''section 5 illness'' mean the exposure, facility, and illness, respectively, to which an individual's status as a section 5 payment recipient relates.

(3) The term ''section 5 uranium worker'' means an individual to whom subsection (a)(1)(A)(i) of section 5 of the Radiation Exposure Compensation Act applies (whether directly or by reason of subsection (a)(2) of this section).

(4) The term ''section 5 mine or mill'' means the mine or mill to which an individual's status as a section 5 uranium worker relates.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3676], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2182.)

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in subsec. (b), is Pub. L. 101–426, Oct. 15, 1990, 104 Stat. 920, as amended, which is set out as a note under section 2210 of this title.

§ 7385s–6. Administrative and judicial review

(a) Judicial review

A person adversely affected or aggrieved by a final decision of the Secretary under this part may review that order in the United States district court in the district in which the injury was sustained, the employee lives, the survivor lives, or the District of Columbia, by filing in such court within 60 days after the date on which that final decision was issued a written petition praying that such decision be modified or set aside. The person shall also provide a copy of the petition to the Secretary. Upon such filing, the court shall have jurisdiction over the proceeding and shall have the power to affirm, modify, or set aside, in whole or in part, such decision. The court may modify or set aside such decision only if the court determines that such decision was arbitrary and capricious.

(b) Administrative review

The Secretary shall ensure that recommended decisions of the Secretary with respect to a claim under this part are subject to administrative review. The Secretary shall prescribe regulations for carrying out such review or shall apply to this part the regulations applicable to recommended decisions under part B.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3677], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2182.)

§ 7385s–7. Physicians services

(a) In general

The Secretary may utilize the services of physicians for purposes of making determinations under this part.

(b) Physicians

Any physicians whose services are utilized under subsection (a) of this section shall possess appropriate expertise and experience in the evaluation and determination of the extent of permanent physical impairments or in the evaluation and diagnosis of illnesses or deaths aggravated, contributed to, or caused by exposure to toxic substances.

(c) Arrangement

The Secretary may secure the services of physicians utilized under subsection (a) of this section through the appointment of physicians or by contract.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3678], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2182.)

§ 7385s–8. Medical benefits

A covered DOE contractor employee shall be furnished medical benefits specified in section 7384t of this title for the covered illness to the same extent, and under the same conditions and limitations, as an individual eligible for medical benefits under that section is furnished medical benefits under that section.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3679], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2183.)

§ 7385s–9. Attorney fees

Section 7385g of this title shall apply to a payment under this part to the same extent that it applies to a payment under part B.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3680], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2183.)

§ 7385s–10. Administrative matters

(a) In general

The Secretary shall administer this part.

(b) Contract authority

The Secretary may enter into contracts with appropriate persons and entities to administer this part.

(c) Records

(1)(A) The Secretary of Energy shall provide to the Secretary all records, files, and other data, whether paper, electronic, imaged, or otherwise, developed by the Secretary of Energy that are applicable to the administration of this part, including records, files, and data on facility industrial hygiene, employment of individuals or groups, exposure and medical records, and claims applications.

(B) In providing records, files, and other data under this paragraph, the Secretary of Energy shall preserve the current organization of such records, files, and other data, and shall provide such description and indexing of such records, files, and other data as the Secretary considers appropriate to facilitate their use by the Secretary.

(2) The Secretary of Energy and the Secretary shall jointly undertake such actions as are appropriate to retrieve records applicable to the claims of Department of Energy contractor employees for contractor employee compensation under this part, including employment records,

records of exposure to beryllium, radiation, silica, or other toxic substances, and records regarding medical treatment.

(d) Information

At the request of the Secretary, the Secretary of Energy and any contractor who employed a Department of Energy contractor employee shall, within time periods specified by the Secretary, provide to the Secretary and to the employee information or documents in response to the request.

(e) Regulations

The Secretary shall prescribe regulations necessary for the administration of this part. The initial regulations shall be prescribed not later than 210 days after October 28, 2004. The Secretary may prescribe interim final regulations necessary to meet the deadlines specified in this part.

(f) Transition provisions

(1) The Secretary shall commence the administration of the provisions of this part not later than 210 days after October 28, 2004.

(2) Until the commencement of the administration of this part, the Department of Energy Physicians Panels appointed pursuant to part D shall continue to consider and issue determinations concerning any cases pending before such Panels immediately before October 28, 2004.

(3) The Secretary shall take such actions as are appropriate to identify other activities under part D that will continue until the commencement of the administration of this part.

(g) Previous applications

Upon the commencement of the administration of this part, any application previously filed with the Secretary of Energy pursuant to part D shall be considered to have been filed with the Secretary as a claim for benefits pursuant to this part.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3681], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2183.)

REFERENCES IN TEXT

Part D, referred to in subsecs. (f)(2), (3) and (g), was repealed by Pub. L. 108–375, div. C, title XXXI, § 3162(i), Oct. 28, 2004, 118 Stat. 2186.

§ 7385s–11. Coordination of benefits with respect to State workers compensation

(a) In general

An individual who has been awarded compensation under this part, and who has also received benefits from a State workers compensation system by reason of the same covered illness, shall receive compensation specified in this part reduced by the amount of any workers compensation benefits, other than medical benefits and benefits for vocational rehabilitation, that the individual has received under the State workers compensation system by reason of the covered illness, after deducting the reasonable costs, as determined by the Secretary, of obtaining those benefits under the State workers compensation system.

(b) Waiver

The Secretary may waive the provisions of subsection (a) of this section if the Secretary determines that the administrative costs and burdens of implementing subsection (a) of this section with respect to a particular case or class of cases justifies such a waiver.

(c) Information

Notwithstanding any other provision of law, each State workers compensation authority shall, upon request of the Secretary, provide to the Secretary on a quarterly basis information concerning workers compensation benefits received by any covered DOE contractor employee entitled to compensation or benefits under this part, which shall include the name, Social Security number, and nature and amount of workers compensation benefits for each such employee for which the request was made.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3682], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2184.)

§ 7385s–12. Maximum aggregate compensation

For each individual whose illness or death serves as the basis for compensation or benefits under this part, the total amount of compensation (other than medical benefits) paid under this part, to all persons, in the aggregate, on the basis of that illness or death shall not exceed $250,000.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3683], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2184.)

§ 7385s–13. Funding of administrative costs

There is authorized and hereby appropriated to the Secretary for fiscal year 2005 and thereafter such sums as may be necessary to carry out this part.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3684], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2184.)

§ 7385s–14. Payment of compensation and benefits from compensation fund

The compensation and benefits provided under this subchapter, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(Pub. L. 106–398, § 1 [div. C, title XXXVI, § 3685], as added Pub. L. 108–375, div. C, title XXXI, § 3161, Oct. 28, 2004, 118 Stat. 2185.)

§ 7385s–15. Office of Ombudsman

(a) Establishment

There is established in the Department of Labor an office to be known as the ''Office of the Ombudsman'' (in this section referred to as the ''Office'').

(b) Head

The head of the Office shall be the Ombudsman. The individual serving as Ombudsman shall be either of the following:

(1) An officer or employee of the Department of Labor designated by the Secretary for purposes of this section from among officers and employees of the Department who have experi-

ence and expertise necessary to carry out the duties of the Office specified in subsection (c) of this section.

(2) An individual employed by the Secretary from the private sector from among individuals in the private sector who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c) of this section.

(c) Duties

The duties of the Office shall be as follows:

(1) To provide information on the benefits available under this part and on the requirements and procedures applicable to the provision of such benefits.

(2) To make recommendations to the Secretary regarding the location of centers (to be known as ''resource centers'') for the acceptance and development of claims for benefits under this part.

(3) To carry out such other duties with respect to this part as the Secretary shall specify for purposes of this section.

(d) Independent Office

The Secretary shall take appropriate actions to ensure the independence of the Office within the Department of Labor, including independence from other officers and employees of the Department engaged in activities relating to the administration of the provisions of this part.

(e) Annual report

(1) Not later than February 15 each year, the Ombudsman shall submit to Congress a report on activities under this part.

(2) Each report under paragraph (1) shall set forth the following:

(A) The number and types of complaints, grievances, and requests for assistance received by the Ombudsman under this part during the preceding year.

(B) An assessment of the most common difficulties encountered by claimants and potential claimants under this part during the preceding year.

(3) The first report under paragraph (1) shall be the report submitted in 2006.

(f) Outreach

The Secretary of Labor and the Secretary of Health and Human Services shall each undertake outreach to advise the public of the existence and duties of the Office.

(g) Sunset

Effective on the date that is 3 years after October 28, 2004, this section shall have no further force or effect.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3686], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2185.)

SUBCHAPTER XVII—[Repealed]

AMENDMENTS

2003—Pub. L. 108–136, div. C, title XXXI, §3141(m)(1), Nov. 24, 2003, 117 Stat. 1787, struck out heading for subchapter XVII ''Department of Energy National Security Authorizations General Provisions''.

§§ 7386 to 7386k. Transferred

CODIFICATION

Sections 7386 to 7386k, Pub. L. 107–314, div. C, title XXXVI, §§3620–3631, Dec. 2, 2002, 116 Stat. 2756–2762, were renumbered sections 4701 to 4712, respectively, of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, §3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781, and are classified to sections 2741 to 2752, respectively, of Title 50, War and National Defense.

Section 7386 related to definitions for purposes of former sections 7386 to 7386k of this title.

Section 7386a related to reprogramming of amounts appropriated pursuant to a Department of Energy national security authorization.

Section 7386b related to minor construction projects.

Section 7386c related to limits on construction projects.

Section 7386d related to fund transfer authority.

Section 7386e related to conceptual and construction design.

Section 7386f related to authority for emergency planning, design, and construction activities.

Section 7386g related to scope of authority to carry out plant projects.

Section 7386h related to availability of funds.

Section 7386i related to transfer of defense environmental management funds.

Section 7386j related to transfer of weapons activities funds.

Section 7386k related to funds available for all national security programs of the Department of Energy.

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CODIFICATION

Act July 14, 1955, ch. 360, 69 Stat. 322, as amended, known as the Clean Air Act, which was formerly classified to chapter 15B (§ 1857 et seq.) of this title, was completely revised by Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 685, and was reclassified to this chapter.

SUBCHAPTER I—PROGRAMS AND ACTIVITIES

PART A—AIR QUALITY AND EMISSION LIMITATIONS

AMENDMENTS

1977—Pub. L. 95–95, title I, § 117(a), Aug. 7, 1977, 91 Stat. 712, designated sections 7401 to 7428 of this title as part A.

§ 7401. Congressional findings and declaration of purpose

(a) Findings

The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) Declaration

The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

(c) Pollution prevention

A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention.

(July 14, 1955, ch. 360, title I, § 101, formerly § 1, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 392; renumbered § 101 and amended Pub. L. 89–272, title I, § 101(2), (3), Oct. 20, 1965, 79 Stat. 992; Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 485; Pub. L. 101–549, title I, § 108(k), Nov. 15, 1990, 104 Stat. 2468.)

CODIFICATION

Section was formerly classified to section 1857 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in a prior section 1857 of this title, act of July 14, 1955, ch. 360, §1, 69 Stat. 322, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101–549, §108(k)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and''.

Subsec. (b)(4). Pub. L. 101–549, §108(k)(2), inserted ''prevention and'' after ''pollution''.

Subsec. (c). Pub. L. 101–549, §108(k)(3), added subsec. (c).

1967—Subsec. (b)(1). Pub. L. 90–148 inserted ''and enhance the quality of'' after ''to protect''.

1965—Subsec. (b). Pub. L. 89–272 substituted ''this title'' for ''this Act'', which for purposes of codification has been changed to ''this subchapter''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 711(b) of Pub. L. 101–549 provided that:

''(1) Except as otherwise expressly provided, the amendments made by this Act [see Tables for classification] shall be effective on the date of enactment of this Act [Nov. 15, 1990].

''(2) The Administrator's authority to assess civil penalties under section 205(c) of the Clean Air Act [42 U.S.C. 7524(c)], as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act. Civil penalties for violations that occur prior to such date and do not continue after such date shall be assessed in accordance with the provisions of the Clean Air Act [42 U.S.C. 7401 et seq.] in effect immediately prior to the date of enactment of this Act.

''(3) The civil penalties prescribed under sections 205(a) and 211(d)(1) of the Clean Air Act [42 U.S.C. 7524(a), 7545(d)(1)], as amended by this Act, shall apply to violations that occur on or after the date of enactment of this Act. Violations that occur prior to such date shall be subject to the civil penalty provisions prescribed in sections 205(a) and 211(d) of the Clean Air Act in effect immediately prior to the enactment of this Act. The injunctive authority prescribed under section 211(d)(2) of the Clean Air Act, as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act.

''(4) For purposes of paragraphs (2) and (3), where the date of a violation cannot be determined it will be assumed to be the date on which the violation is discovered.''

EFFECTIVE DATE OF 1977 AMENDMENT; PENDING ACTIONS; CONTINUATION OF RULES, CONTRACTS, AUTHORIZATIONS, ETC.; IMPLEMENTATION PLANS

Section 406 of Pub. L. 95–95, as amended by Pub. L. 95–190, §14(b)(6), Nov. 16, 1977, 91 Stat. 1405, provided that:

''(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977] shall abate by reason of the taking effect of the amendments made by this Act [see Short Title of 1977 Amendment note below]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

''(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977], and pertaining to any functions, powers, requirements, and duties under the Clean Air Act, as in effect immediately prior to the date of enactment of this Act, and not suspended by the Administrator or the courts, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Clean Air Act as amended by this Act [see Short Title of 1977 Amendment note below].

''(c) Nothing in this Act [see Short Title of 1977 Amendment note below] nor any action taken pursuant to this Act shall in any way affect any requirement of an approved implementation plan in effect under section 110 of the Clean Air Act [section 7410 of this title] or any other provision of the Act in effect under the Clean Air Act before the date of enactment of this section [Aug. 7, 1977] until modified or rescinded in accordance with the Clean Air Act [this chapter] as amended by this Act [see Short Title of 1977 Amendment note below].

''(d)(1) Except as otherwise expressly provided, the amendments made by this Act [see Short Title of 1977 Amendment note below] shall be effective on date of enactment [Aug. 7, 1977].

''(2) Except as otherwise expressly provided, each State required to revise its applicable implementation plan by reason of any amendment made by this Act [see Short Title of 1977 Amendment note below] shall adopt and submit to the Administrator of the Environmental Protection Administration such plan revision before the later of the date—

''(A) one year after the date of enactment of this Act [Aug. 7, 1977], or

''(B) nine months after the date of promulgation by the Administrator of the Environmental Protection Administration of any regulations under an amendment made by this Act which are necessary for the approval of such plan revision.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–40, §1, Aug. 5, 1999, 113 Stat. 207, provided that: ''This Act [amending section 7412 of this title and enacting provisions set out as notes under section 7412 of this title] may be cited as the 'Chemical Safety Information, Site Security and Fuels Regulatory Relief Act'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–286, §1, Oct. 27, 1998, 112 Stat. 2773, provided that: ''This Act [amending section 7511b of this title and enacting provisions set out as a note under section 7511b of this title] may be cited as the 'Border Smog Reduction Act of 1998'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399, is popularly known as the ''Clean Air Act Amendments of 1990''. See Tables for classification.

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–23, §1, July 17, 1981, 95 Stat. 139, provided: ''That this Act [amending sections 7410 and 7413 of this title] may be cited as the 'Steel Industry Compliance Extension Act of 1981'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–95, §1, Aug. 7, 1977, 91 Stat. 685, provided that: ''This Act [enacting sections 4362, 7419 to 7428, 7450 to 7459, 7470 to 7479, 7491, 7501 to 7508, 7548, 7549, 7551, 7617 to 7625, and 7626 of this title, amending sections 7403, 7405, 7407 to 7415, 7417, 7418, 7521 to 7525, 7541, 7543, 7544, 7545, 7550, 7571, 7601 to 7605, 7607, 7612, 7613, and 7616 of this title, repealing section 1857c–10 of this title, and enacting provisions set out as notes under this section,

sections 7403, 7422, 7470, 7479, 7502, 7521, 7548, and 7621 of this title, and section 792 of Title 15, Commerce and Trade] may be cited as the 'Clean Air Act Amendments of 1977'.''

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–604, § 1, Dec. 31, 1970, 84 Stat. 1676, provided: ''That this Act [amending this chapter generally] may be cited as the 'Clean Air Amendments of 1970'.''

SHORT TITLE OF 1967 AMENDMENT

Section 1 of Pub. L. 90–148 provided: ''That this Act [amending this chapter generally] may be cited as the 'Air Quality Act of 1967'.''

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–675, § 1, Oct. 15, 1966, 80 Stat. 954, provided: ''That this Act [amending sections 7405 and 7616 of this title and repealing section 1857f–8 of this title] may be cited as the 'Clean Air Act Amendments of 1966'.''

SHORT TITLE

Section 317, formerly section 14, of act July 14, 1955, as added by section 1 of Pub. L. 88–206, renumbered section 307 by section 101(4) of Pub. L. 89–272, renumbered section 310 by section 2 of Pub. L. 90–148, and renumbered section 317 by Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1705, provided that: ''This Act [enacting this chapter] may be cited as the 'Clean Air Act'.''

Section 201 of title II of act July 14, 1955, as added by Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 992, and amended by Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 499, provided that: ''This title [enacting subchapter II of this chapter] may be cited as the 'National Emission Standards Act'.'' Prior to its amendment by Pub. L. 90–148, title II of act June 14, 1955, was known as the ''Motor Vehicle Air Pollution Control Act''.

Section 401 of title IV of act July 14, 1955, as added Dec. 31, 1970, Pub. L. 91–604, § 14, 84 Stat. 1709, provided that: ''This title [enacting subchapter IV of this chapter] may be cited as the 'Noise Pollution and Abatement Act of 1970'.''

SAVINGS PROVISION

Section 711(a) of Pub. L. 101–549 provided that: ''Except as otherwise expressly provided in this Act [see Tables for classification], no suit, action, or other proceeding lawfully commenced by the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [42 U.S.C. 7401 et seq.], as in effect immediately prior to the date of enactment of this Act [Nov. 15, 1990], shall abate by reason of the taking effect of the amendments made by this Act.''

TRANSFER OF FUNCTIONS

Reorg. Plan No. 3 of 1970, § 2(a)(3), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, transferred to Administrator of Environmental Protection Agency functions vested by law in Secretary of Health, Education, and Welfare or in Department of Health, Education, and Welfare which are administered through Environmental Health Service, including functions exercised by National Air Pollution Control Administration, and Environmental Control Administration's Bureau of Solid Waste Management, Bureau of Water Hygiene, and Bureau of Radiological Health, except insofar as functions carried out by Bureau of Radiological Health pertain to regulation of radiation from consumer products, including electronic product radiation, radiation as used in healing arts, occupational exposure to radiation, and research, technical assistance, and training related to radiation from consumer products, radiation as used in healing arts, and occupational exposure to radiation.

IMPACT ON SMALL COMMUNITIES

Section 810 of Pub. L. 101–549 provided that: ''Before implementing a provision of this Act [see Tables for classification], the Administrator of the Environmental Protection Agency shall consult with the Small Communities Coordinator of the Environmental Protection Agency to determine the impact of such provision on small communities, including the estimated cost of compliance with such provision.''

RADON ASSESSMENT AND MITIGATION

Pub. L. 99–499, title I, § 118(k), Oct. 17, 1986, 100 Stat. 1659, as amended by Pub. L. 105–362, title V, § 501(i), Nov. 10, 1998, 112 Stat. 3284, provided that:

''(1) NATIONAL ASSESSMENT OF RADON GAS.—No later than one year after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a report which shall, to the extent possible—

''(A) identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions;

''(B) assess the levels of radon gas that are present in such structures;

''(C) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under subparagraph (A) the extent of the threat to human health;

''(D) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters; and

''(E) include guidance and public information materials based on the findings or research of mitigating radon.

''(2) RADON MITIGATION DEMONSTRATION PROGRAM.—

''(A) DEMONSTRATION PROGRAM.—The Administrator shall conduct a demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where it poses a threat to human health. The Administrator shall take into consideration any demonstration program underway in the Reading Prong of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

''(B) LIABILITY.—Liability, if any, for persons undertaking activities pursuant to the radon mitigation demonstration program authorized under this subsection shall be determined under principles of existing law.

''(3) CONSTRUCTION OF SECTION.—Nothing in this subsection shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this subsection. Nothing in paragraph (1) or (2) shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.''

SPILL CONTROL TECHNOLOGY

Pub. L. 99–499, title I, § 118(n), Oct. 17, 1986, 100 Stat. 1660, provided that:

''(1) ESTABLISHMENT OF PROGRAM.—Within 180 days of enactment of this subsection [Oct. 17, 1986], the Secretary of the United States Department of Energy is directed to carry out a program of testing and evaluation of technologies which may be utilized in responding to liquefied gaseous and other hazardous substance spills at the Liquefied Gaseous Fuels Spill Test Facility that threaten public health or the environment.

''(2) TECHNOLOGY TRANSFER.—In carrying out the program established under this subsection, the Secretary shall conduct a technology transfer program that, at a minimum—

''(A) documents and archives spill control technology;

''(B) investigates and analyzes significant hazardous spill incidents;

''(C) develops and provides generic emergency action plans;

''(D) documents and archives spill test results;

''(E) develops emergency action plans to respond to spills;

''(F) conducts training of spill response personnel; and

''(G) establishes safety standards for personnel engaged in spill response activities.

''(3) CONTRACTS AND GRANTS.—The Secretary is directed to enter into contracts and grants with a nonprofit organization in Albany County, Wyoming, that is capable of providing the necessary technical support and which is involved in environmental activities related to such hazardous substance related emergencies.

''(4) USE OF SITE.—The Secretary shall arrange for the use of the Liquefied Gaseous Fuels Spill Test Facility to carry out the provisions of this subsection.''

RADON GAS AND INDOOR AIR QUALITY RESEARCH

Pub. L. 99–499, title IV, Oct. 17, 1986, 100 Stat. 1758, provided that:

''SEC. 401. SHORT TITLE.

''This title may be cited as the 'Radon Gas and Indoor Air Quality Research Act of 1986'.

''SEC. 402. FINDINGS.

''The Congress finds that:

''(1) High levels of radon gas pose a serious health threat in structures in certain areas of the country.

''(2) Various scientific studies have suggested that exposure to radon, including exposure to naturally occurring radon and indoor air pollutants, poses a public health risk.

''(3) Existing Federal radon and indoor air pollutant research programs are fragmented and underfunded.

''(4) An adequate information base concerning exposure to radon and indoor air pollutants should be developed by the appropriate Federal agencies.

''SEC. 403. RADON GAS AND INDOOR AIR QUALITY RESEARCH PROGRAM.

''(a) DESIGN OF PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to radon gas and indoor air quality. Such program shall be designed to—

''(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health problems associated with the existence of air pollutants in the indoor environment;

''(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

''(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

''(b) PROGRAM REQUIREMENTS.—The research program required under this section shall include—

''(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

''(A) the measurement of various pollutant concentrations and their strengths and sources,

''(B) high-risk building types, and

''(C) instruments for indoor air quality data collection;

''(2) research relating to the effects of indoor air pollution and radon on human health;

''(3) research and development relating to control technologies or other mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

''(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

''(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

''(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and radon content of soil; and

''(B) design measures to avoid indoor air pollution; and

''(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

''(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for radon gas and indoor air quality.

''(d) IMPLEMENTATION PLAN.—Not later than 90 days after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

''(e) REPORT.—Not later than 2 years after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to Congress a report respecting his activities under this section and making such recommendations as appropriate.

''SEC. 404. CONSTRUCTION OF TITLE.

''Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this title. Nothing in this title shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

''SEC. 405. AUTHORIZATIONS.

''There are authorized to be appropriated to carry out the activities under this title and under section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (relating to radon gas assessment and demonstration program) [section 118(k) of Pub. L. 99–499, set out as a note above] not to exceed $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of such sums appropriated in fiscal years 1987 and 1988, two-fifths shall be reserved for the implementation of section 118(k)(2).''

STUDY OF ODORS AND ODOROUS EMISSIONS

Pub. L. 95–95, title IV, § 403(b), Aug. 7, 1977, 91 Stat. 792, directed Administrator of Environmental Protection Agency to conduct a study and report to Congress not later than Jan. 1, 1979, on effects on public health and welfare of odors and odorous emissions, source of such emissions, technology or other measures available for control of such emissions and costs of such technology or measures, and costs and benefits of alternative measures or strategies to abate such emissions.

LIST OF CHEMICAL CONTAMINANTS FROM ENVIRONMENTAL POLLUTION FOUND IN HUMAN TISSUE

Pub. L. 95–95, title IV, § 403(c), Aug. 7, 1977, 91 Stat. 792, directed Administrator of EPA, not later than twelve months after Aug. 7, 1977, to publish throughout the United States a list of all known chemical contaminants resulting from environmental pollution which have been found in human tissue including blood, urine, breast milk, and all other human tissue, such list to be prepared for the United States and to indicate approximate number of cases, range of levels found, and mean levels found, directed Administrator, not later than eighteen months after Aug. 7, 1977, to publish in same manner an explanation of what is known about the

manner in which chemicals entered the environment and thereafter human tissue, and directed Administrator, in consultation with National Institutes of Health, the National Center for Health Statistics, and the National Center for Health Services Research and Development, to, if feasible, conduct an epidemiological study to demonstrate the relationship between levels of chemicals in the environment and in human tissue, such study to be made in appropriate regions or areas of the United States in order to determine any different results in such regions or areas, and the results of such study to be reported, as soon as practicable, to appropriate committee of Congress.

STUDY ON REGIONAL AIR QUALITY

Pub. L. 95–95, title IV, § 403(d), Aug. 7, 1977, 91 Stat. 793, directed Administrator of EPA to conduct a study of air quality in various areas throughout the country including the gulf coast region, such study to include analysis of liquid and solid aerosols and other fine particulate matter and contribution of such substances to visibility and public health problems in such areas, with Administrator to use environmental health experts from the National Institutes of Health and other outside agencies and organizations.

RAILROAD EMISSION STUDY

Pub. L. 95–95, title IV, § 404, Aug. 7, 1977, 91 Stat. 793, as amended by H. Res. 549, Mar. 25, 1980, directed Administrator of EPA to conduct a study and investigation of emissions of air pollutants from railroad locomotives, locomotive engines, and secondary power sources on railroad rolling stock, in order to determine extent to which such emissions affect air quality in air quality control regions throughout the United States, technological feasibility and current state of technology for controlling such emissions, and status and effect of current and proposed State and local regulations affecting such emissions, and within one hundred and eighty days after commencing such study and investigation, Administrator to submit a report of such study and investigation, together with recommendations for appropriate legislation, to Senate Committee on Environment and Public Works and House Committee on Energy and Commerce.

STUDY AND REPORT CONCERNING ECONOMIC APPROACHES TO CONTROLLING AIR POLLUTION

Pub. L. 95–95, title IV, § 405, Aug. 7, 1977, 91 Stat. 794, directed Administrator, in conjunction with Council of Economic Advisors, to undertake a study and assessment of economic measures for control of air pollution which could strengthen effectiveness of existing methods of controlling air pollution, provide incentives to abate air pollution greater than that required by Clean Air Act, and serve as primary incentive for controlling air pollution problems not addressed by Clean Air Act, and directed that not later than 2 years after Aug. 7, 1977, Administrator and Council conclude study and submit a report to President and Congress.

NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL

For provisions relating to establishment of National Industrial Pollution Control Council, see Ex. Ord. No. 11523, Apr. 9, 1970, 35 F.R. 5993, set out as a note under section 4321 of this title.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to responsibility of head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

EXECUTIVE ORDER NO. 10779

Ex. Ord. No. 10779, Aug. 21, 1958, 23 F.R. 6487, which related to cooperation of Federal agencies with State and local authorities, was superseded by Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663, formerly set out under section 7418 of this title.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for prevention, control, and abatement of air pollution at Federal facilities, was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title.

§ 7402. Cooperative activities

(a) Interstate cooperation; uniform State laws; State compacts

The Administrator shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

(b) Federal cooperation

The Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

(c) Consent of Congress to compacts

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after November 21, 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

(July 14, 1955, ch. 360, title I, § 102, formerly § 2, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 393; renumbered § 102, Pub. L. 89–272, title I, § 101(3), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 485; Pub. L. 91–604, § 15(c)(2), Dec. 31, 1970, 84 Stat. 1713.)

CODIFICATION

Section was formerly classified to section 1857a of this title.

PRIOR PROVISIONS

Provisions similar to those in the first clause of subsec. (a) of this section were contained in subsec. (b)(1) of a prior section 1857a, of this title, act July 14, 1955,

ch. 360, § 2, 69 Stat. 322, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1970—Subsecs. (a), (b). Pub. L. 91–604 substituted ''Administrator'' for ''Secretary'' wherever appearing.

1967—Subsec. (c). Pub. L. 90–148 inserted declaration that it is the intent of Congress that no agreement or compact entered into between States after the date of enactment of the Air Quality Act of 1967, which for purposes of codification was changed to November 21, 1967, the date of approval of such Act, relating to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

§ 7403. Research, investigation, training, and other activities

(a) Research and development program for prevention and control of air pollution

The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution;

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research; and

(5) conduct and promote coordination and acceleration of training for individuals relating to the causes, effects, extent, prevention, and control of air pollution.

(b) Authorized activities of Administrator in establishing research and development program

In carrying out the provisions of the preceding subsection the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of this section;

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 3324(a) and (b) of title 31 and section 5 of title 41;

(5) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof;

(7) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution; and

(8) construct facilities, provide equipment, and employ staff as necessary to carry out this chapter.

In carrying out the provisions of subsection (a) of this section, the Administrator shall provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsection (a)(5) of this section. Reasonable fees may be charged for such training provided to persons other than personnel of air pollution control agencies but such training shall be provided to such personnel of air pollution control agencies without charge.

(c) Air pollutant monitoring, analysis, modeling, and inventory research

In carrying out subsection (a) of this section, the Administrator shall conduct a program of research, testing, and development of methods for sampling, measurement, monitoring, analysis, and modeling of air pollutants. Such program shall include the following elements:

(1) Consideration of individual, as well as complex mixtures of, air pollutants and their chemical transformations in the atmosphere.

(2) Establishment of a national network to monitor, collect, and compile data with quantification of certainty in the status and trends of air emissions, deposition, air quality, surface water quality, forest condition, and visibility impairment, and to ensure the comparability of air quality data collected in different States and obtained from different nations.

(3) Development of improved methods and technologies for sampling, measurement, monitoring, analysis, and modeling to increase

understanding of the sources of ozone percursors,[1] ozone formation, ozone transport, regional influences on urban ozone, regional ozone trends, and interactions of ozone with other pollutants. Emphasis shall be placed on those techniques which—

(A) improve the ability to inventory emissions of volatile organic compounds and nitrogen oxides that contribute to urban air pollution, including anthropogenic and natural sources;

(B) improve the understanding of the mechanism through which anthropogenic and biogenic volatile organic compounds react to form ozone and other oxidants; and

(C) improve the ability to identify and evaluate region-specific prevention and control options for ozone pollution.

(4) Submission of periodic reports to the Congress, not less than once every 5 years, which evaluate and assess the effectiveness of air pollution control regulations and programs using monitoring and modeling data obtained pursuant to this subsection.

(d) Environmental health effects research

(1) The Administrator, in consultation with the Secretary of Health and Human Services, shall conduct a research program on the short-term and long-term effects of air pollutants, including wood smoke, on human health. In conducting such research program the Administrator—

(A) shall conduct studies, including epidemiological, clinical, and laboratory and field studies, as necessary to identify and evaluate exposure to and effects of air pollutants on human health;

(B) may utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers; and

(C) shall consult with other Federal agencies to ensure that similar research being conducted in other agencies is coordinated to avoid duplication.

(2) In conducting the research program under this subsection, the Administrator shall develop methods and techniques necessary to identify and assess the risks to human health from both routine and accidental exposures to individual air pollutants and combinations thereof. Such research program shall include the following elements:

(A) The creation of an Interagency Task Force to coordinate such program. The Task Force shall include representatives of the National Institute for Environmental Health Sciences, the Environmental Protection Agency, the Agency for Toxic Substances and Disease Registry, the National Toxicology Program, the National Institute of Standards and Technology, the National Science Foundation, the Surgeon General, and the Department of Energy. This Interagency Task Force shall be chaired by a representative of the Environmental Protection Agency and shall convene its first meeting within 60 days after November 15, 1990.

(B) An evaluation, within 12 months after November 15, 1990, of each of the hazardous air pollutants listed under section 7412(b) of this title, to decide, on the basis of available information, their relative priority for preparation of environmental health assessments pursuant to subparagraph (C). The evaluation shall be based on reasonably anticipated toxicity to humans and exposure factors such as frequency of occurrence as an air pollutant and volume of emissions in populated areas. Such evaluation shall be reviewed by the Interagency Task Force established pursuant to subparagraph (A).

(C) Preparation of environmental health assessments for each of the hazardous air pollutants referred to in subparagraph (B), beginning 6 months after the first meeting of the Interagency Task Force and to be completed within 96 months thereafter. No fewer than 24 assessments shall be completed and published annually. The assessments shall be prepared in accordance with guidelines developed by the Administrator in consultation with the Interagency Task Force and the Science Advisory Board of the Environmental Protection Agency. Each such assessment shall include—

(i) an examination, summary, and evaluation of available toxicological and epidemiological information for the pollutant to ascertain the levels of human exposure which pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects;

(ii) a determination of gaps in available information related to human health effects and exposure levels; and

(iii) where appropriate, an identification of additional activities, including toxicological and inhalation testing, needed to identify the types or levels of exposure which may present significant risk of adverse health effects in humans.

(e) Ecosystem research

In carrying out subsection (a) of this section, the Administrator, in cooperation, where appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere, the Director of the Fish and Wildlife Service, and the Secretary of Agriculture, shall conduct a research program to improve understanding of the short-term and long-term causes, effects, and trends of ecosystems damage from air pollutants on ecosystems. Such program shall include the following elements:

(1) Identification of regionally representative and critical ecosystems for research.

(2) Evaluation of risks to ecosystems exposed to air pollutants, including characterization of the causes and effects of chronic and episodic exposures to air pollutants and determination of the reversibility of those effects.

(3) Development of improved atmospheric dispersion models and monitoring systems and networks for evaluating and quantifying exposure to and effects of multiple environmental stresses associated with air pollution.

(4) Evaluation of the effects of air pollution on water quality, including assessments of the short-term and long-term ecological effects of

[1] So in original. Probably should be ''precursors,''.

acid deposition and other atmospherically derived pollutants on surface water (including wetlands and estuaries) and groundwater.

(5) Evaluation of the effects of air pollution on forests, materials, crops, biological diversity, soils, and other terrestrial and aquatic systems exposed to air pollutants.

(6) Estimation of the associated economic costs of ecological damage which have occurred as a result of exposure to air pollutants.

Consistent with the purpose of this program, the Administrator may use the estuarine research reserves established pursuant to section 1461 of title 16 to carry out this research.

(f) Liquefied Gaseous Fuels Spill Test Facility

(1) The Administrator, in consultation with the Secretary of Energy and the Federal Coordinating Council for Science, Engineering, and Technology, shall oversee an experimental and analytical research effort, with the experimental research to be carried out at the Liquefied Gaseous Fuels Spill Test Facility. In consultation with the Secretary of Energy, the Administrator shall develop a list of chemicals and a schedule for field testing at the Facility. Analysis of a minimum of 10 chemicals per year shall be carried out, with the selection of a minimum of 2 chemicals for field testing each year. Highest priority shall be given to those chemicals that would present the greatest potential risk to human health as a result of an accidental release—

(A) from a fixed site; or

(B) related to the transport of such chemicals.

(2) The purpose of such research shall be to—

(A) develop improved predictive models for atmospheric dispersion which at a minimum—

(i) describe dense gas releases in complex terrain including man-made structures or obstacles with variable winds;

(ii) improve understanding of the effects of turbulence on dispersion patterns; and

(iii) consider realistic behavior of aerosols by including physicochemical reactions with water vapor, ground deposition, and removal by water spray;

(B) evaluate existing and future atmospheric dispersion models by—

(i) the development of a rigorous, standardized methodology for dense gas models; and

(ii) the application of such methodology to current dense gas dispersion models using data generated from field experiments; and

(C) evaluate the effectiveness of hazard mitigation and emergency response technology for fixed site and transportation related accidental releases of toxic chemicals.

Models pertaining to accidental release shall be evaluated and improved periodically for their utility in planning and implementing evacuation procedures and other mitigative strategies designed to minimize human exposure to hazardous air pollutants released accidentally.

(3) The Secretary of Energy shall make available to interested persons (including other Federal agencies and businesses) the use of the Liquefied Gaseous Fuels Spill Test Facility to conduct research and other activities in connection with the activities described in this subsection.

(g) Pollution prevention and emissions control

In carrying out subsection (a) of this section, the Administrator shall conduct a basic engineering research and technology program to develop, evaluate, and demonstrate nonregulatory strategies and technologies for air pollution prevention. Such strategies and technologies shall be developed with priority on those pollutants which pose a significant risk to human health and the environment, and with opportunities for participation by industry, public interest groups, scientists, and other interested persons in the development of such strategies and technologies. Such program shall include the following elements:

(1) Improvements in nonregulatory strategies and technologies for preventing or reducing multiple air pollutants, including sulfur oxides, nitrogen oxides, heavy metals, PM–10 (particulate matter), carbon monoxide, and carbon dioxide, from stationary sources, including fossil fuel power plants. Such strategies and technologies shall include improvements in the relative cost effectiveness and long-range implications of various air pollutant reduction and nonregulatory control strategies such as energy conservation, including end-use efficiency, and fuel-switching to cleaner fuels. Such strategies and technologies shall be considered for existing and new facilities.

(2) Improvements in nonregulatory strategies and technologies for reducing air emissions from area sources.

(3) Improvements in nonregulatory strategies and technologies for preventing, detecting, and correcting accidental releases of hazardous air pollutants.

(4) Improvements in nonregulatory strategies and technologies that dispose of tires in ways that avoid adverse air quality impacts.

Nothing in this subsection shall be construed to authorize the imposition on any person of air pollution control requirements. The Administrator shall consult with other appropriate Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.

(h) NIEHS studies

(1) The Director of the National Institute of Environmental Health Sciences may conduct a program of basic research to identify, characterize, and quantify risks to human health from air pollutants. Such research shall be conducted primarily through a combination of university and medical school-based grants, as well as through intramural studies and contracts.

(2) The Director of the National Institute of Environmental Health Sciences shall conduct a program for the education and training of physicians in environmental health.

(3) The Director shall assure that such programs shall not conflict with research undertaken by the Administrator.

(4) There are authorized to be appropriated to the National Institute of Environmental Health

Sciences such sums as may be necessary to carry out the purposes of this subsection.

(i) Coordination of research

The Administrator shall develop and implement a plan for identifying areas in which activities authorized under this section can be carried out in conjunction with other Federal ecological and air pollution research efforts. The plan, which shall be submitted to Congress within 6 months after November 15, 1990, shall include—

(1) an assessment of ambient monitoring stations and networks to determine cost effective ways to expand monitoring capabilities in both urban and rural environments;

(2) a consideration of the extent of the feasibility and scientific value of conducting the research program under subsection (e) of this section to include consideration of the effects of atmospheric processes and air pollution effects; and

(3) a methodology for evaluating and ranking pollution prevention technologies, such as those developed under subsection (g) of this section, in terms of their ability to reduce cost effectively the emissions of air pollutants and other airborne chemicals of concern.

Not later than 2 years after November 15, 1990, and every 4 years thereafter, the Administrator shall report to Congress on the progress made in implementing the plan developed under this subsection, and shall include in such report any revisions of the plan.

(j) Continuation of national acid precipitation assessment program

(1) The acid precipitation research program set forth in the Acid Precipitation Act of 1980 [42 U.S.C. 8901 et seq.] shall be continued with modifications pursuant to this subsection.

(2) The Acid Precipitation Task Force shall consist of the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, the Secretary of Agriculture, the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the National Aeronautics and Space Administration, and such additional members as the President may select. The President shall appoint a chairman for the Task Force from among its members within 30 days after November 15, 1990.

(3) The responsibilities of the Task Force shall include the following:

(A) Review of the status of research activities conducted to date under the comprehensive research plan developed pursuant to the Acid Precipitation Act of 1980 [42 U.S.C. 8901 et seq.], and development of a revised plan that identifies significant research gaps and establishes a coordinated program to address current and future research priorities. A draft of the revised plan shall be submitted by the Task Force to Congress within 6 months after November 15, 1990. The plan shall be available for public comment during the 60 day period after its submission, and a final plan shall be submitted by the President to the Congress within 45 days after the close of the comment period.

(B) Coordination with participating Federal agencies, augmenting the agencies' research and monitoring efforts and sponsoring additional research in the scientific community as necessary to ensure the availability and quality of data and methodologies needed to evaluate the status and effectiveness of the acid deposition control program. Such research and monitoring efforts shall include, but not be limited to—

(i) continuous monitoring of emissions of precursors of acid deposition;

(ii) maintenance, upgrading, and application of models, such as the Regional Acid Deposition Model, that describe the interactions of emissions with the atmosphere, and models that describe the response of ecosystems to acid deposition; and

(iii) analysis of the costs, benefits, and effectiveness of the acid deposition control program.

(C) Publication and maintenance of a National Acid Lakes Registry that tracks the condition and change over time of a statistically representative sample of lakes in regions that are known to be sensitive to surface water acidification.

(D) Submission every two years of a unified budget recommendation to the President for activities of the Federal Government in connection with the research program described in this subsection.

(E) Beginning in 1992 and biennially thereafter, submission of a report to Congress describing the results of its investigations and analyses. The reporting of technical information about acid deposition shall be provided in a format that facilitates communication with policymakers and the public. The report shall include—

(i) actual and projected emissions and acid deposition trends;

(ii) average ambient concentrations of acid deposition percursors[2] and their transformation products;

(iii) the status of ecosystems (including forests and surface waters), materials, and visibility affected by acid deposition;

(iv) the causes and effects of such deposition, including changes in surface water quality and forest and soil conditions;

(v) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds; and

(vi) the confidence level associated with each conclusion to aid policymakers in use of the information.

(F) Beginning in 1996, and every 4 years thereafter, the report under subparagraph (E) shall include—

(i) the reduction in deposition rates that must be achieved in order to prevent adverse ecological effects; and

(ii) the costs and benefits of the acid deposition control program created by subchapter IV–A of this chapter.

(k) Air pollution conferences

If, in the judgment of the Administrator, an air pollution problem of substantial significance

[2] So in original. Probably should be ''precursors''.

may result from discharge or discharges into the atmosphere, the Administrator may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator. If the Administrator finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under this part, the Administrator shall send such findings, together with recommendations concerning the measures which the Administrator finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 7408 of this title.

(July 14, 1955, ch. 360, title I, § 103, formerly § 3, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 394; renumbered § 103 and amended Pub. L. 89–272, title I, §§ 101(3), 103, Oct. 20, 1965, 79 Stat. 992, 996; Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 486; Pub. L. 91–604, §§ 2(a), 4(2), 15(a)(2), (c)(2), Dec. 31, 1970, 84 Stat. 1676, 1689, 1710, 1713; Pub. L. 95–95, title I, § 101(a), (b), Aug. 7, 1977, 91 Stat. 686, 687; Pub. L. 101–549, title IX, § 901(a)–(c), Nov. 15, 1990, 104 Stat. 2700–2703.)

REFERENCES IN TEXT

The Acid Precipitation Act of 1980, referred to in subsec. (j)(1), (3)(A), is title VII of Pub. L. 96–294, June 30, 1980, 94 Stat. 770, which is classified generally to chapter 97 (§ 8901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8901 of this title and Tables.

CODIFICATION

In subsec. (b)(4), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 1857b of this title.

PRIOR PROVISIONS

Provisions similar to those in subsec. (a)(3) of this section were contained in subsec. (a) of a prior section 1857b of this title, act July 14, 1955, ch. 360, § 3, 69 Stat. 322, as amended Oct. 9, 1962, Pub. L. 87–761, § 2, 76 Stat. 760, prior to the general amendment of this chapter by Pub. L. 88–206.

Provisions similar to those in this section were contained in prior sections 1857a to 1857d of this title, act July 14, 1955, ch. 360, §§ 2 to 5, 69 Stat. 322 (section 1857b as amended Oct. 9, 1962, Pub. L. 87–761, § 2, 76 Stat. 760; section 1857d as amended Sept. 22, 1959, Pub. L. 86–365, § 1, 73 Stat. 646 and Oct. 9, 1962, Pub. L. 87–761, § 1, 76 Stat. 760), prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, § 901(a)(1), inserted ''(including health and welfare effects)'' after ''effects''.

Subsec. (b)(8). Pub. L. 101–549, § 901(a)(2), which directed amendment of subsec. (b) by adding par. (8) at end, was executed by adding par. (8) after par. (7) to reflect the probable intent of Congress.

Subsecs. (c) to (f). Pub. L. 101–549, § 901(b), amended subsecs. (c) to (f) generally, substituting present provisions for provisions which related to: in subsec. (c), results of other scientific studies; in subsec. (d), construction of facilities; in subsec. (e), potential air pollution problems, conferences, and findings and recommendations of the Administrator; and, in subsec. (f), accelerated research programs.

Subsecs. (g) to (k). Pub. L. 101–549, § 901(c), added subsecs. (g) to (k).

1977—Subsec. (a). Pub. L. 95–95, § 101(b), struck out reference to ''training'' in par. (1) and added par. (5).

Subsec. (b). Pub. L. 95–95, § 101(a), struck out par. (5) which provided for training and training grants to personnel of air pollution control agencies and other persons with suitable qualifications, redesignated pars. (6), (7), and (8) as (5), (6), and (7), respectively, and, following par. (7) as so redesignated, inserted provisions directing the Administrator, in carrying out subsec. (a), to provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and to make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsec. (a)(5) and allowing reasonable fees to be charged for such training provided to persons other than personnel of air pollution control agencies but requiring that such training be provided to such personnel of air pollution control agencies without charge.

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

Subsec. (b). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' and ''Environmental Protection Agency'' for ''Department of Health, Education, and Welfare''.

Subsec. (c). Pub. L. 91–604, § 15(a)(2), (c)(2), substituted ''Administrator'' for ''Secretary'' and ''air pollutants'' for ''air pollution agents (or combinations of agents)''.

Subsec. (d). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

Subsec. (e). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing, substituted ''7415'' for ''7415(a)'', and inserted references to subsecs. (b) and (c) of section 7415 of this title.

Subsec. (f). Pub. L. 91–604, § 2(a), added subsec. (f).

1967—Subsec. (a). Pub. L. 90–148 substituted ''establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research'' for ''initiate and conduct a program of research directed toward the development of improved, low-cost techniques for extracting sulfur from fuels'' as cl. (4) and struck out cl. (5) which related to research programs relating to the control of hydrocarbon emissions from evaporation of gasoline and nitrogen and aldehyde oxide emission from gasoline and diesel powered vehicles and relating to the development of improved low-cost techniques to reduce emissions of oxides of sulfur produced by the combustion of sulfur-containing fuels.

Subsec. (c). Pub. L. 90–148 struck out provision for promulgation of criteria in the case of particular air pollution agents present in the air in certain quantities reflecting the latest scientific knowledge and allowing for availability and revision and provided for recommendation by Secretary of air quality criteria.

Subsec. (e). Pub. L. 90–148 substituted references to subsections (d), (e), and (f) of section 7415 of this title

for references to subsections (c), (d), and (e) of section 7415 of this title in provision for admission of advisory findings and recommendations together with the record of the conference and made such findings and recommendations part of the proceedings of the conference, not merely part of the record of proceedings.

1965—Subsec. (a)(5). Pub. L. 89–272, § 103(3), added par. (5).

Subsecs. (d), (e). Pub. L. 89–272, § 103(4), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (i) of this section requiring quadrennial reports to Congress and of reporting provisions in subsec. (j)(3)(E) and (F) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 7th and 8th items on page 163 of House Document No. 103–7.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

PILOT DESIGN PROGRAMS

Pub. L. 106–246, div. B, title II, § 2603, July 13, 2000, 114 Stat. 558, required the Administrator of the Environmental Protection Agency to make grants to carry out a 2-year program to implement in five metropolitan areas pilot design programs and report to Congress on the results not later than 360 days from first day of the second year of the 2-year program.

NATIONAL ACID LAKES REGISTRY

Section 405 of Pub. L. 101–549 provided that: ''The Administrator of the Environmental Protection Agency shall create a National Acid Lakes Registry that shall list, to the extent practical, all lakes that are known to be acidified due to acid deposition, and shall publish such list within one year of the enactment of this Act [Nov. 15, 1990]. Lakes shall be added to the registry as they become acidic or as data becomes available to show they are acidic. Lakes shall be deleted from the registry as they become nonacidic.''

ASSESSMENT OF INTERNATIONAL AIR POLLUTION CONTROL TECHNOLOGIES

Section 901(e) of Pub. L. 101–549 directed Administrator of Environmental Protection Agency to conduct a study that compares international air pollution control technologies of selected industrialized countries to determine if there exist air pollution control technologies in countries outside the United States that may have beneficial applications to this Nation's air pollution control efforts, including, with respect to each country studied, the topics of urban air quality, motor vehicle emissions, toxic air emissions, and acid deposition, and within 2 years after Nov. 15, 1990, submit to Congress a report detailing the results of such study.

WESTERN STATES ACID DEPOSITION RESEARCH

Section 901(g) of Pub. L. 101–549 provided that:

''(1) The Administrator of the Environmental Protection Agency shall sponsor monitoring and research and submit to Congress annual and periodic assessment reports on—

''(A) the occurrence and effects of acid deposition on surface waters located in that part of the United States west of the Mississippi River;

''(B) the occurrence and effects of acid deposition on high elevation ecosystems (including forests, and surface waters); and

''(C) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds.

''(2) The Administrator of the Environmental Protection Agency shall analyze data generated from the studies conducted under paragraph (1), data from the Western Lakes Survey, and other appropriate research and utilize predictive modeling techniques that take into account the unique geographic, climatological, and atmospheric conditions which exist in the western United States to determine the potential occurrence and effects of acid deposition due to any projected increases in the emission of sulfur dioxide and nitrogen oxides in that part of the United States located west of the Mississippi River. The Administrator shall include the results of the project conducted under this paragraph in the reports issued to Congress under paragraph (1).''

CONSULTATION WITH COMMITTEE ON SCIENCE OF HOUSE OF REPRESENTATIVES

Section 101(c) of Pub. L. 95–95 provided that: ''The Administrator of the Environmental Protection Agency shall consult with the House Committee on Science and Technology [now Committee on Science] on the environmental and atmospheric research, development, and demonstration aspects of this Act [see Short Title of 1977 Amendment note set out under section 7401 of this title]. In addition, the reports and studies required by this Act that relate to research, development, and demonstration issues shall be transmitted to the Committee on Science and Technology [now Committee on Science] at the same time they are made available to other committees of the Congress.''

STUDY OF SUBSTANCES DISCHARGED FROM EXHAUSTS OF MOTOR VEHICLES

Pub. L. 86–493, June 8, 1960, 74 Stat. 162, directed Surgeon General of Public Health Service to conduct a thorough study for purposes of determining, with respect to the various substances discharged from exhausts of motor vehicles, the amounts and kinds of such substances which, from the standpoint of human health, it is safe for motor vehicles to discharge into the atmosphere under the various conditions under which such vehicles may operate, and, not later than two years after June 8, 1960, submit to Congress a report on results of the study, together with such recommendations, if any, based upon the findings made in such study, as he deemed necessary for the protection of the public health.

§ 7404. Research relating to fuels and vehicles

(a) Research programs; grants; contracts; pilot and demonstration plants; byproducts research

The Administrator shall give special emphasis to research and development into new and improved methods, having industry-wide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

(1) conduct and accelerate research programs directed toward development of improved, cost-effective techniques for—

(A) control of combustion byproducts of fuels,

(B) removal of potential air pollutants from fuels prior to combustion,

(C) control of emissions from the evaporation of fuels,

(D) improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and

(E) producing synthetic or new fuels which, when used, result in decreased atmospheric emissions.[1]

(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industry-wide application of preventing or controlling discharges into the air of various types of pollutants; (B) part of the cost of programs to develop low emission alternatives to the present internal combustion engine; (C) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and (D) carrying out the other provisions of this section, without regard to section 3324(a) and (b) of title 31 and section 5 of title 41: *Provided*, That research or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of title 10, except that the determination, approval, and certification required thereby shall be made by the Administrator; *Provided further*, That no grant may be made under this paragraph in excess of $1,500,000;

(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where they can be demonstrated on a large and practical scale;

(4) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of new or improved demonstration plants or processes which have promise of accomplishing the purposes of this chapter;[2]

(5) study new or improved methods for the recovery and marketing of commercially valuable byproducts resulting from the removal of pollutants.

(b) Powers of Administrator in establishing research and development programs

In carrying out the provisions of this section, the Administrator may—

(1) conduct and accelerate research and development of cost-effective instrumentation techniques to facilitate determination of quantity and quality of air pollutant emissions, including, but not limited to, automotive emissions;

(2) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories;

(3) establish and operate necessary facilities and test sites at which to carry on the research, testing, development, and programming necessary to effectuate the purposes of this section;

(4) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, and facilities, and other property or rights by purchase, license, lease, or donation; and

(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of the chapter will be served thereby.

(c) Clean alternative fuels

The Administrator shall conduct a research program to identify, characterize, and predict air emissions related to the production, distribution, storage, and use of clean alternative fuels to determine the risks and benefits to human health and the environment relative to those from using conventional gasoline and diesel fuels. The Administrator shall consult with other Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.

(July 14, 1955, ch. 360, title I, § 104, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 487; amended Pub. L. 91–137, Dec. 5, 1969, 83 Stat. 283; Pub. L. 91–604, §§ 2(b), (c), 13(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1676, 1677, 1709, 1713; Pub. L. 93–15, § 1(a), Apr. 9, 1973, 87 Stat. 11; Pub. L. 93–319, § 13(a), June 22, 1974, 88 Stat. 265; Pub. L. 101–549, title IX, § 901(d), Nov. 15, 1990, 104 Stat. 2706.)

CODIFICATION

In subsec. (a)(2), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 1857b–1 of this title.

PRIOR PROVISIONS

A prior section 104 of act July 14, 1955, was renumbered section 105 by Pub. L. 90–148 and is classified to section 7405 of this title.

AMENDMENTS

1990—Subsecs. (a)(1), (b)(1). Pub. L. 101–549, § 901(d)(1), substituted ''cost-effective'' for ''low-cost''.

Subsec. (c). Pub. L. 101–549, § 901(d)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read

[1] So in original. The period probably should be a semicolon.

[2] So in original. The word ''and'' probably should appear.

as follows: ''For the purposes of this section there are authorized to be appropriated $75,000,000 for the fiscal year ending June 30, 1971, $125,000,000 for the fiscal year ending June 30, 1972, $150,000,000 for the fiscal year ending June 30, 1973, and $150,000,000 for the fiscal year ending June 30, 1974, and $150,000,000 for the fiscal year ending June 30, 1975. Amounts appropriated pursuant to this subsection shall remain available until expended.''

1974—Subsec. (c). Pub. L. 93–319 authorized appropriation of $150,000,000 for fiscal year ending June 30, 1975.

1973—Subsec. (c). Pub. L. 93–15 authorized appropriation of $150,000,000 for fiscal year ending June 30, 1974.

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

Subsec. (a)(1). Pub. L. 91–604, § 2(b), inserted provisions authorizing research programs directed toward development of techniques for improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and producing synthetic or new fuels which result in decreased atmospheric emissions.

Subsec. (a)(2). Pub. L. 91–604, § 2(c), added cls. (B) and (C) and redesignated former cl. (B) as (D).

Subsec. (b). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

Subsec. (c). Pub. L. 91–604, § 13(a), substituted provisions authorizing appropriations for fiscal years ending June 30, 1971, 1972, and 1973, for provisions authorizing appropriations for fiscal years ending June 30, 1968 and 1969.

1969—Subsec. (c). Pub. L. 91–137 authorized appropriation of $45,000,000 for fiscal year ending June 30, 1970.

HYDROGEN FUEL CELL VEHICLE STUDY AND TEST PROGRAM

Section 807 of Pub. L. 101–549 provided that: ''The Administrator of the Environmental Protection Agency, in conjunction with the National Aeronautics and Space Administration and the Department of Energy, shall conduct a study and test program on the development of a hydrogen fuel cell electric vehicle. The study and test program shall determine how best to transfer existing NASA hydrogen fuel cell technology into the form of a mass-producible, cost effective hydrogen fuel cell vehicle. Such study and test program shall include at a minimum a feasibility-design study, the construction of a prototype, and a demonstration. This study and test program should be completed and a report submitted to Congress within 3 years after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990]. This study and test program should be performed in the university or universities which are best exhibiting the facilities and expertise to develop such a fuel cell vehicle.''

COMBUSTION OF CONTAMINATED USED OIL IN SHIPS

Section 813 of Pub. L. 101–549 provided that: ''Within 2 years after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator of the Environmental Protection Agency shall complete a study and submit a report to Congress evaluating the health and environmental impacts of the combustion of contaminated used oil in ships, the reasons for using such oil for such purposes, the alternatives to such use, the costs of such alternatives, and other relevant factors and impacts. In preparing such study, the Administrator shall obtain the view and comments of all interested persons and shall consult with the Secretary of Transportation and the Secretary of the department in which the Coast Guard is operating.''

EXTENSION TO AUG. 31, 1970 OF AUTHORIZATION PERIOD FOR FISCAL YEAR 1970

Pub. L. 91–316, July 10, 1970, 84 Stat. 416, provided in part that the authorization contained in section 104(c) of the Clean Air Act [subsec. (c) of this section] for the fiscal year ending June 30, 1970, should remain available through Aug. 31, 1970, notwithstanding any provisions of this section.

§ 7405. Grants for support of air pollution planning and control programs

(a) Amounts; limitations; assurances of plan development capability

(1)(A) The Administrator may make grants to air pollution control agencies, within the meaning of paragraph (1), (2), (3), (4), or (5) of section 7602 of this title, in an amount up to three-fifths of the cost of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. For the purpose of this section, ''implementing'' means any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such programs.

(B) Subject to subsections (b) and (c) of this section, an air pollution control agency which receives a grant under subparagraph (A) and which contributes less than the required two-fifths minimum shall have 3 years following November 15, 1990, in which to contribute such amount. If such an agency fails to meet and maintain this required level, the Administrator shall reduce the amount of the Federal contribution accordingly.

(C) With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 7410 of this title, grants under subparagraph (A) may be made only to air pollution control agencies which have substantial responsibilities for carrying out such applicable implementation plan.

(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 7602(b)(2) and 7602(b)(4) of this title, the Administrator shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 7602(b)(2) and 7602(b)(4) of this title, the Administrator shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

(b) Terms and conditions; regulations; factors for consideration; State expenditure limitations

(1) From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Administrator shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Administrator may find necessary to carry out the purpose of this section. In establishing regulations

for the granting of such funds the Administrator shall, so far as practicable, give due consideration to (A) the population, (B) the extent of the actual or potential air pollution problem, and (C) the financial need of the respective agencies.

(2) Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends. Subject to the provisions of paragraph (1) of this subsection, no State shall have made available to it for application less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.

(c) Maintenance of effort

(1) No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for the Administrator to award grants under this section in a timely manner each fiscal year, the Administrator shall compare an agency's prospective expenditure level to that of its second preceding fiscal year. The Administrator shall revise the current regulations which define applicable nonrecurrent and recurrent expenditures, and in so doing, give due consideration to exempting an agency from the limitations of this paragraph and subsection (a) of this section due to periodic increases experienced by that agency from time to time in its annual expenditures for purposes acceptable to the Administrator for that fiscal year.

(2) The Administrator may still award a grant to an agency not meeting the requirements of paragraph (*l*)[1] of this subsection if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government. No agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such a grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds. No grants shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

(d) Reduction of payments; availability of reduced amounts; reduced amount as deemed paid to agency for purpose of determining amount of grant

The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 7601 of this title, when such detail is for the convenience of, and at the request of, such recipient and for the purpose of carrying out the provisions of this chapter. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency.

(e) Notice and opportunity for hearing when affected by adverse action

No application by a State for a grant under this section may be disapproved by the Administrator without prior notice and opportunity for a public hearing in the affected State, and no commitment or obligation of any funds under any such grant may be revoked or reduced without prior notice and opportunity for a public hearing in the affected State (or in one of the affected States if more than one State is affected).

(July 14, 1955, ch. 360, title I, § 105, formerly § 4, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 395; renumbered § 104 and amended Pub. L. 89–272, title I, § 101(2)–(4), Oct. 20, 1965, 79 Stat. 992; Pub. L. 89–675, § 3, Oct. 15, 1966, 80 Stat. 954; renumbered § 105 and amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 489; Pub. L. 91–604, §§ 3(a), (b)(1), 15(c)(2), Dec. 31, 1970, 84 Stat. 1677, 1713; Pub. L. 95–95, title I, § 102, title III, § 305(b), Aug. 7, 1977, 91 Stat. 687, 776; Pub. L. 101–549, title VIII, § 802(a)–(e), Nov. 15, 1990, 104 Stat. 2687, 2688.)

CODIFICATION

Section was formerly classified to section 1857c of this title.

PRIOR PROVISIONS

A prior section 105 of act July 14, 1955, was renumbered section 108 by Pub. L. 90–148 and is classified to section 7415 of this title.

Provisions similar to those in subsecs. (a) and (b) of this section were contained in a prior section 1857d of this title, act July 14, 1955, ch. 360, § 5, 69 Stat. 322, as amended Sept. 22, 1959, Pub. L. 86–365, § 1, 73 Stat. 646; Oct. 9, 1962, Pub. L. 87–761, § 1, 76 Stat. 760, prior to the general amendment by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (a)(1)(A), (B). Pub. L. 101–549, § 802(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

"(A) The Administrator may make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and up to one-half of the cost of maintaining, programs for the prevention and control of air pollution or implementation of national primary and secondry [sic] ambient air quality standards.

"(B) Subject to subparagraph (C), the Administrator may make grants to air pollution control agencies within the meaning of paragraph (1), (2), or (4) of section 7602(b) of this title in an amount up to three-fourths of the cost of planning, developing, establishing, or improving, and up to three-fifths of the cost of maintaining, any program for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in

[1] So in original. Probably should be paragraph "(1)".

an area that includes two or more municipalities, whether in the same or different States.''

Subsec. (a)(1)(C). Pub. L. 101–549, § 802(b), substituted ''subparagraph (A)'' for ''subparagraph (B)''.

Subsec. (b)(1). Pub. L. 101–549, § 802(c), designated existing provisions of subsec. (b) as par. (1), redesignated former cls. (1) to (3) as cls. (A) to (C), respectively, and struck out at end ''No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.''

Subsec. (b)(2). Pub. L. 101–549, § 802(d), redesignated subsec. (c) as subsec. (b)(2) and substituted ''Subject to the provisions of paragraph (1) of this subsection, no State shall have made available to it for application less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.'' for ''In fiscal year 1978 and subsequent fiscal years, subject to the provisions of subsection (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.''

Subsec. (c). Pub. L. 101–549, § 802(e), added subsec. (c). Former subsec. (c) redesignated (b)(2).

1977—Subsec. (b). Pub. L. 95–95, § 102(a), inserted '', unless the Administrator, after notice and opportunity for hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government'' after ''will be less than its expenditures were for such programs during the preceding fiscal year''.

Subsec. (c). Pub. L. 95–95, § 102(b), provided that in fiscal year 1978 and subsequent fiscal years, subject to provisions of subsec. (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.

Subsec. (e). Pub. L. 95–95, § 305(b), added subsec. (e).

1970—Subsec. (a)(1). Pub. L. 91–604, § 3(a), substituted provisions authorizing the Administrator to make grants, for provisions authorizing the Secretary to make grants, and provisions authorizing grants for programs implementing national primary and secondary ambient air quality standards, for provisions authorizing grants for programs implementing air quality standards authorized by this subchapter, and inserted the provision requiring grants to air pollution control agencies be made to agencies having substantial responsibilities for carrying out the applicable implementation plan with respect to the air quality control region or portion thereof.

Subsecs. (a)(2), (3), (b), (c). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 91–604, § 3(b)(1), added subsec. (d).

1967—Subsec. (a). Pub. L. 90–148 designated existing provisions as par. (1), substituted ''regional air quality control program'' for ''regional air pollution control program,'' added planning to list of authorized activities, and added programs for implementation of air quality standards authorized by this chapter to list of authorized programs, and added pars. (2) and (3).

Subsec. (b). Pub. L. 90–148 made minor changes in the order of provisions.

Subsec. (c). Pub. L. 90–148 reduced percentage limitation on portion of total funds which might be granted for air pollution control programs in any one State from 12½ per centum to 10 per centum.

1966—Subsec. (a). Pub. L. 89–675, § 3(a)(1), struck out provisions limiting available funds to 20 per centum of sums appropriated annually for purpose of this subchapter, inserted provisions allowing grants to air pollution control agencies up to one-half of cost of maintaining programs for prevention and control of air pollution, and authorized Secretary to make grants of up to three-fifths of cost of maintaining regional air pollution control programs.

Subsec. (b). Pub. L. 89–675, § 3(a)(2), substituted ''for the purpose of'' for ''under'', permitted grantees to reduce annual expenditures to the extent that nonrecurrent costs are involved for purposes of application of the provision that no agency may receive grants during any fiscal year when its expenditures of non-Federal funds for air pollution control programs are less than its expenditures for such programs during the preceding year, and inserted provisions insuring that Federal funds will in no event be used to supplant State or local government funds in maintaining air pollution control programs.

Subsec. (c). Pub. L. 89–675, § 3(b), substituted ''total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs'' for ''grant funds available under subsection (a) of this section shall be expended'' and authorized the Secretary to determine the portion of grants to interstate agencies to be charged against the twelve and one-half percent limitation of grant funds to any one State.

1965—Subsec. (a). Pub. L. 89–272 substituted ''this title'' for ''this Act'', which for purposes of codification has been changed to ''this subchapter'', and ''section 302(b)(2) and (4)'' for ''section 9(b)(2) and (4)'', which for purposes of codification has been changed to ''section 7602(b)(2) and (4) of this title''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7406. Interstate air quality agencies; program cost limitations

For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to section 7407 of this title or of implementing section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution), the Ad-

ministrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any commission established under section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution) or any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Administrator is authorized to make grants to such agency or such commission in an amount up to three-fifths of the air quality implementation program costs of such agency or commission.

(July 14, 1955, ch. 360, title I, § 106, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 490; amended Pub. L. 91–604, § 3(c), Dec. 31, 1970, 84 Stat. 1677; Pub. L. 101–549, title I, § 102(f)(2), title VIII, § 802(f), Nov. 15, 1990, 104 Stat. 2420, 2688.)

CODIFICATION

Section was formerly classified to section 1857c–1 of this title.

PRIOR PROVISIONS

A prior section 106 of act July 14, 1955, was renumbered section 117 by Pub. L. 91–604 and is classified to section 7417 of this title.

AMENDMENTS

1990—Pub. L. 101–549, § 102(f)(2)(A), inserted ''or of implementing section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution)'' after ''section 7407 of this title''.

Pub. L. 101–549, § 102(f)(2)(B), which directed insertion of ''any commission established under section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution) or'' after ''program costs of'', was executed by making the insertion after that phrase the first place it appeared to reflect the probable intent of Congress.

Pub. L. 101–549, § 102(f)(2)(C), which directed insertion of ''or such commission'' after ''such agency'' in last sentence, was executed by making insertion after ''such agency'' the first place it appeared in the last sentence to reflect the probable intent of Congress.

Pub. L. 101–549, §§ 102(f)(2)(D), 802(f), substituted ''three-fifths of the air quality implementation program costs of such agency or commission'' for ''three-fourths of the air quality planning program costs of such agency''.

1970—Pub. L. 91–604 struck out designation ''(a)'', substituted provisions authorizing Federal grants for the purpose of developing implementation plans and provisions requiring the designated State agency to be capable of recommending plans for implementation of national primary and secondary ambient air quality standards, for provisions authorizing Federal grants for the purpose of expediting the establishment of air quality standards and provisions requiring the designated State agency to be capable of recommending standards of air quality and plans for implementation thereof, respectively, and struck out subsec. (b) which authorized establishment of air quality planning commissions.

§ 7407. Air quality control regions

(a) Responsibility of each State for air quality; submission of implementation plan

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

(b) Designated regions

For purposes of developing and carrying out implementation plans under section 7410 of this title—

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c) of this section, shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

(c) Authority of Administrator to designate regions; notification of Governors of affected States

The Administrator shall, within 90 days after December 31, 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

(d) Designations

(1) Designations generally

(A) Submission by Governors of initial designations following promulgation of new or revised standards

By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section 7409 of this title, the Governor of each State shall (and at any other time the Governor of a State deems appropriate the Governor may) submit to the Administrator a list of all areas (or portions thereof) in the State, designating as—

(i) nonattainment, any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant,

(ii) attainment, any area (other than an area identified in clause (i)) that meets the national primary or secondary ambient air quality standard for the pollutant, or

(iii) unclassifiable, any area that cannot be classified on the basis of available information as meeting or not meeting the na-

tional primary or secondary ambient air quality standard for the pollutant.

The Administrator may not require the Governor to submit the required list sooner than 120 days after promulgating a new or revised national ambient air quality standard.

(B) Promulgation by EPA of designations

(i) Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) submitted under subparagraph (A) as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.

(ii) In making the promulgations required under clause (i), the Administrator may make such modifications as the Administrator deems necessary to the designations of the areas (or portions thereof) submitted under subparagraph (A) (including to the boundaries of such areas or portions thereof). Whenever the Administrator intends to make a modification, the Administrator shall notify the State and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate. The Administrator shall give such notification no later than 120 days before the date the Administrator promulgates the designation, including any modification thereto. If the Governor fails to submit the list in whole or in part, as required under subparagraph (A), the Administrator shall promulgate the designation that the Administrator deems appropriate for any area (or portion thereof) not designated by the State.

(iii) If the Governor of any State, on the Governor's own motion, under subparagraph (A), submits a list of areas (or portions thereof) in the State designated as nonattainment, attainment, or unclassifiable, the Administrator shall act on such designations in accordance with the procedures under paragraph (3) (relating to redesignation).

(iv) A designation for an area (or portion thereof) made pursuant to this subsection shall remain in effect until the area (or portion thereof) is redesignated pursuant to paragraph (3) or (4).

(C) Designations by operation of law

(i) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(A), (B), or (C) of this subsection (as in effect immediately before November 15, 1990) is designated, by operation of law, as a nonattainment area for such pollutant within the meaning of subparagraph (A)(i).

(ii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(E) (as in effect immediately before November 15, 1990) is designated by operation of law, as an attainment area for such pollutant within the meaning of subparagraph (A)(ii).

(iii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(D) (as in effect immediately before November 15, 1990) is designated, by operation of law, as an unclassifiable area for such pollutant within the meaning of subparagraph (A)(iii).

(2) Publication of designations and redesignations

(A) The Administrator shall publish a notice in the Federal Register promulgating any designation under paragraph (1) or (5), or announcing any designation under paragraph (4), or promulgating any redesignation under paragraph (3).

(B) Promulgation or announcement of a designation under paragraph (1), (4) or (5) shall not be subject to the provisions of sections 553 through 557 of title 5 (relating to notice and comment), except nothing herein shall be construed as precluding such public notice and comment whenever possible.

(3) Redesignation

(A) Subject to the requirements of subparagraph (E), and on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate, the Administrator may at any time notify the Governor of any State that available information indicates that the designation of any area or portion of an area within the State or interstate area should be revised. In issuing such notification, which shall be public, to the Governor, the Administrator shall provide such information as the Administrator may have available explaining the basis for the notice.

(B) No later than 120 days after receiving a notification under subparagraph (A), the Governor shall submit to the Administrator such redesignation, if any, of the appropriate area (or areas) or portion thereof within the State or interstate area, as the Governor considers appropriate.

(C) No later than 120 days after the date described in subparagraph (B) (or paragraph (1)(B)(iii)), the Administrator shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor in accordance with subparagraph (B), making such modifications as the Administrator may deem necessary, in the same manner and under the same procedure as is applicable under clause (ii) of paragraph (1)(B), except that the phrase ''60 days'' shall be substituted for the phrase ''120 days'' in that clause. If the Governor does not submit, in accordance with subparagraph (B), a redesignation for an area (or portion thereof) identified by the Administrator under subparagraph (A), the Administrator shall promulgate such redesignation, if any, that the Administrator deems appropriate.

(D) The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State. Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation. The submis-

sion of a redesignation by a Governor shall not affect the effectiveness or enforceability of the applicable implementation plan for the State.

(E) The Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless—

(i) the Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under section 7410(k) of this title;

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 7505a of this title; and

(v) the State containing such area has met all requirements applicable to the area under section 7410 of this title and part D of this subchapter.

(F) The Administrator shall not promulgate any redesignation of any area (or portion thereof) from nonattainment to unclassifiable.

(4) Nonattainment designations for ozone, carbon monoxide and particulate matter (PM–10)

(A) Ozone and carbon monoxide

(i) Within 120 days after November 15, 1990, each Governor of each State shall submit to the Administrator a list that designates, affirms or reaffirms the designation of, or redesignates (as the case may be), all areas (or portions thereof) of the Governor's State as attainment, nonattainment, or unclassifiable with respect to the national ambient air quality standards for ozone and carbon monoxide.

(ii) No later than 120 days after the date the Governor is required to submit the list of areas (or portions thereof) required under clause (i) of this subparagraph, the Administrator shall promulgate such designations, making such modifications as the Administrator may deem necessary, in the same manner, and under the same procedure, as is applicable under clause (ii) of paragraph (1)(B), except that the phrase ''60 days'' shall be substituted for the phrase ''120 days'' in that clause. If the Governor does not submit, in accordance with clause (i) of this subparagraph, a designation for an area (or portion thereof), the Administrator shall promulgate the designation that the Administrator deems appropriate.

(iii) No nonattainment area may be redesignated as an attainment area under this subparagraph.

(iv) Notwithstanding paragraph (1)(C)(ii) of this subsection, if an ozone or carbon monoxide nonattainment area located within a metropolitan statistical area or consolidated metropolitan statistical area (as established by the Bureau of the Census) is classified under part D of this subchapter as a Serious, Severe, or Extreme Area, the boundaries of such area are hereby revised (on the date 45 days after such classification) by operation of law to include the entire metropolitan statistical area or consolidated metropolitan statistical area, as the case may be, unless within such 45-day period the Governor (in consultation with State and local air pollution control agencies) notifies the Administrator that additional time is necessary to evaluate the application of clause (v). Whenever a Governor has submitted such a notice to the Administrator, such boundary revision shall occur on the later of the date 8 months after such classification or 14 months after November 15, 1990, unless the Governor makes the finding referred to in clause (v), and the Administrator concurs in such finding, within such period. Except as otherwise provided in this paragraph, a boundary revision under this clause or clause (v) shall apply for purposes of any State implementation plan revision required to be submitted after November 15, 1990.

(v) Whenever the Governor of a State has submitted a notice under clause (iv), the Governor, in consultation with State and local air pollution control agencies, shall undertake a study to evaluate whether the entire metropolitan statistical area or consolidated metropolitan statistical area should be included within the nonattainment area. Whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in such finding, that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the national ambient air quality standard, the Administrator shall approve the Governor's request to exclude such portion from the nonattainment area. In making such finding, the Governor and the Administrator shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport.

(B) PM–10 designations

By operation of law, until redesignation by the Administrator pursuant to paragraph (3)—

(i) each area identified in 52 Federal Register 29383 (Aug. 7, 1987) as a Group I area (except to the extent that such identification was modified by the Administrator before November 15, 1990) is designated nonattainment for PM–10;

(ii) any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standard for PM–10 before January 1, 1989 (as determined under part 50, appendix K of title 40 of the Code of Federal Regulations) is hereby designated nonattainment for PM–10; and

(iii) each area not described in clause (i) or (ii) is hereby designated unclassifiable for PM–10.

Any designation for particulate matter (measured in terms of total suspended particulates) that the Administrator promulgated pursuant to this subsection (as in effect immediately before November 15, 1990) shall remain in effect for purposes of implementing the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) pursuant to section 7473(b) of this title, until the Administrator determines that such designation is no longer necessary for that purpose.

(5) Designations for lead

The Administrator may, in the Administrator's discretion at any time the Administrator deems appropriate, require a State to designate areas (or portions thereof) with respect to the national ambient air quality standard for lead in effect as of November 15, 1990, in accordance with the procedures under subparagraphs (A) and (B) of paragraph (1), except that in applying subparagraph (B)(i) of paragraph (1) the phrase ''2 years from the date of promulgation of the new or revised national ambient air quality standard'' shall be replaced by the phrase ''1 year from the date the Administrator notifies the State of the requirement to designate areas with respect to the standard for lead''.

(6) Designations

(A) Submission

Notwithstanding any other provision of law, not later than February 15, 2004, the Governor of each State shall submit designations referred to in paragraph (1) for the July 1997 $PM_{2.5}$ national ambient air quality standards for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.

(B) Promulgation

Notwithstanding any other provision of law, not later than December 31, 2004, the Administrator shall, consistent with paragraph (1), promulgate the designations referred to in subparagraph (A) for each area of each State for the July 1997 $PM_{2.5}$ national ambient air quality standards.

(7) Implementation plan for regional haze

(A) In general

Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations referred to in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under section 7492(e)(1) of this title (referred to in this paragraph as ''regional haze requirements'').

(B) No preclusion of other provisions

Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming by December 31, 2003, for implementation of regional haze requirements applicable to those States.

(e) Redesignation of air quality control regions

(1) Except as otherwise provided in paragraph (2), the Governor of each State is authorized, with the approval of the Administrator, to redesignate from time to time the air quality control regions within such State for purposes of efficient and effective air quality management. Upon such redesignation, the list under subsection (d) of this section shall be modified accordingly.

(2) In the case of an air quality control region in a State, or part of such region, which the Administrator finds may significantly affect air pollution concentrations in another State, the Governor of the State in which such region, or part of a region, is located may redesignate from time to time the boundaries of so much of such air quality control region as is located within such State only with the approval of the Administrator and with the consent of all Governors of all States which the Administrator determines may be significantly affected.

(3) No compliance date extension granted under section 7413(d)(5)[1] of this title (relating to coal conversion) shall cease to be effective by reason of the regional limitation provided in section 7413(d)(5)[1] of this title if the violation of such limitation is due solely to a redesignation of a region under this subsection.

(July 14, 1955, ch. 360, title I, § 107, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1678; amended Pub. L. 95–95, title I, § 103, Aug. 7, 1977, 91 Stat. 687; Pub. L. 101–549, title I, § 101(a), Nov. 15, 1990, 104 Stat. 2399; Pub. L. 108–199, div. G, title IV, § 425(a), Jan. 23, 2004, 118 Stat. 417.)

REFERENCES IN TEXT

Section 7413 of this title, referred to in subsec. (e)(3), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) of section 7413 no longer relates to final compliance orders.

CODIFICATION

Section was formerly classified to section 1857c–2 of this title.

PRIOR PROVISIONS

A prior section 107 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 490, related to air quality control regions and was classified to section 1857c–2 of this title, prior to repeal by Pub. L. 91–604.

Another prior section 107 of act July 14, 1955, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 399, was renumbered section 111 by Pub. L. 90–148 and is classified to section 7411 of this title.

AMENDMENTS

2004—Subsec. (d)(6), (7). Pub. L. 108–199 added pars. (6) and (7).

1990—Subsec. (d). Pub. L. 101–549 amended subsec. (d) generally, substituting present provisions for provi-

[1] See References in Text note below.

sions which required States to submit lists of regions not in compliance on Aug. 7, 1977, with certain air quality standards to be submitted to the Administrator, and which authorized States to revise and resubmit such lists from time to time.

1977—Subsecs. (d), (e). Pub. L. 95–95 added subsecs. (d) and (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

OZONE AND PARTICULATE MATTER STANDARDS

Pub. L. 108–199, div. G, title IV, § 425(b), Jan. 23, 2004, 118 Stat. 417, provided that: ''Except as provided in paragraphs (6) and (7) of section 107(d) of the Clean Air Act [subsec. (d)(6), (7) of this section] (as added by subsection (a)), section 6101, subsections (a) and (b) of section 6102, and section 6103 of the Transportation Equity Act for the 21st Century [Pub. L. 105–178] (42 U.S.C. 7407 note; 112 Stat. 463), as in effect on the day before the date of enactment of this Act [Jan. 23, 2004], shall remain in effect.''

Pub. L. 105–178, title VI, June 9, 1998, 112 Stat. 463, as amended by Pub. L. 109–59, title VI, § 6012(a), Aug. 10, 2005, 119 Stat. 1882, provided that:

''SEC. 6101. FINDINGS AND PURPOSE.

''(a) The Congress finds that—

''(1) there is a lack of air quality monitoring data for fine particle levels, measured as $PM_{2.5}$, in the United States and the States should receive full funding for the monitoring efforts;

''(2) such data would provide a basis for designating areas as attainment or nonattainment for any $PM_{2.5}$ national ambient air quality standards pursuant to the standards promulgated in July 1997;

''(3) the President of the United States directed the Administrator of the Environmental Protection Agency (referred to in this title as the 'Administrator') in a memorandum dated July 16, 1997, to complete the next periodic review of the particulate matter national ambient air quality standards by July 2002 in order to determine 'whether to revise or maintain the standards';

''(4) the Administrator has stated that 3 years of air quality monitoring data for fine particle levels, measured as $PM_{2.5}$ and performed in accordance with any applicable Federal reference methods, is appropriate for designating areas as attainment or nonattainment pursuant to the July 1997 promulgated standards; and

''(5) the Administrator has acknowledged that in drawing boundaries for attainment and nonattainment areas for the July 1997 ozone national air quality standards, Governors would benefit from considering implementation guidance from EPA on drawing area boundaries.

''(b) The purposes of this title are—

''(1) to ensure that 3 years of air quality monitoring data regarding fine particle levels are gathered for use in the determination of area attainment or nonattainment designations respecting any $PM_{2.5}$ national ambient air quality standards;

''(2) to ensure that the Governors have adequate time to consider implementation guidance from EPA on drawing area boundaries prior to submitting area designations respecting the July 1997 ozone national ambient air quality standards;

''(3) to ensure that the schedule for implementation of the July 1997 revisions of the ambient air quality standards for particulate matter and the schedule for the Environmental Protection Agency's visibility regulations related to regional haze are consistent with the timetable for implementation of such particulate matter standards as set forth in the President's Implementation Memorandum dated July 16, 1997.

''SEC. 6102. PARTICULATE MATTER MONITORING PROGRAM.

''(a) Through grants under section 103 of the Clean Air Act [42 U.S.C. 7403] the Administrator of the Environmental Protection Agency shall use appropriated funds no later than fiscal year 2000 to fund 100 percent of the cost of the establishment, purchase, operation and maintenance of a $PM_{2.5}$ monitoring network necessary to implement the national ambient air quality standards for $PM_{2.5}$ under section 109 of the Clean Air Act [42 U.S.C. 7409]. This implementation shall not result in a diversion or reprogramming of funds from other Federal, State or local Clean Air Act activities. Any funds previously diverted or reprogrammed from section 105 Clean Air Act [42 U.S.C. 7405] grants for $PM_{2.5}$ monitors must be restored to State or local air programs in fiscal year 1999.

''(b) EPA and the States, consistent with their respective authorities under the Clean Air Act [42 U.S.C. 7401 et seq.], shall ensure that the national network (designated in subsection (a)) which consists of the $PM_{2.5}$ monitors necessary to implement the national ambient air quality standards is established by December 31, 1999.

''(c)(1) The Governors shall be required to submit designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] for each area following promulgation of the July 1997 $PM_{2.5}$ national ambient air quality standard within 1 year after receipt of 3 years of air quality monitoring data performed in accordance with any applicable Federal reference methods for the relevant areas. Only data from the monitoring network designated in subsection (a) and other Federal reference method $PM_{2.5}$ monitors shall be considered for such designations. Nothing in the previous sentence shall be construed as affecting the Governor's authority to designate an area initially as nonattainment, and the Administrator's authority to promulgate the designation of an area as nonattainment, under section 107(d)(1) of the Clean Air Act, based on its contribution to ambient air quality in a nearby nonattainment area.

''(2) For any area designated as nonattainment for the July 1997 $PM_{2.5}$ national ambient air quality standard in accordance with the schedule set forth in this section, notwithstanding the time limit prescribed in paragraph (2) of section 169B(e) of the Clean Air Act [42 U.S.C. 7492(e)(2)], the Administrator shall require State implementation plan revisions referred to in such paragraph (2) to be submitted at the same time as State implementation plan revisions referred to in section 172 of the Clean Air Act [42 U.S.C. 7502] implementing the revised national ambient air quality standard for fine particulate matter are required to be submitted. For any area designated as attainment or unclassifiable for such standard, the Administrator shall require the State implementation plan revisions referred to in such paragraph (2) to be submitted 1 year after the area has been so designated. The preceding provisions of this paragraph shall not preclude the implementation of the agreements and recommendations set forth in the Grand Canyon Visibility Transport Commission Report dated June 1996.

''(d) The Administrator shall promulgate the designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] for each area following promulgation of the July 1997 $PM_{2.5}$ national ambient air quality standard by the earlier of 1 year after the initial designations required under subsection (c)(1) are required to be submitted or December 31, 2005.

''(e) FIELD STUDY.—Not later than 2 years after the date of enactment of the SAFETEA–LU [Aug. 10, 2005], the Administrator shall—

''(1) conduct a field study of the ability of the $PM_{2.5}$ Federal Reference Method to differentiate those particles that are larger than 2.5 micrometers in diameter;

''(2) develop a Federal reference method to measure directly particles that are larger than 2.5 micrometers in diameter without reliance on subtracting

from coarse particle measurements those particles that are equal to or smaller than 2.5 micrometers in diameter;

''(3) develop a method of measuring the composition of coarse particles; and

''(4) submit a report on the study and responsibilities of the Administrator under paragraphs (1) through (3) to—

''(A) the Committee on Energy and Commerce of the House of Representatives; and

''(B) the Committee on Environment and Public Works of the Senate.

''SEC. 6103. OZONE DESIGNATION REQUIREMENTS.

''(a) The Governors shall be required to submit the designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] within 2 years following the promulgation of the July 1997 ozone national ambient air quality standards.

''(b) The Administrator shall promulgate final designations no later than 1 year after the designations required under subsection (a) are required to be submitted.

''SEC. 6104. ADDITIONAL PROVISIONS.

''Nothing in sections 6101 through 6103 shall be construed by the Administrator of Environmental Protection Agency or any court, State, or person to affect any pending litigation or to be a ratification of the ozone or $PM_{2.5}$ standards.''

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7408. Air quality criteria and control techniques

(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970 but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership

(1) Simultaneously with the issuance of criteria under subsection (a) of this section, the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1) of this section, which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) Review, modification, and reissuance of criteria or information

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section. Not later than six months after August 7, 1977, the Administrator shall revise and reissue criteria relating

to concentrations of NO_2 over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

(d) Publication in Federal Register; availability of copies for general public

The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

(e) Transportation planning and guidelines

The Administrator shall, after consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, and with State and local officials, within nine months after November 15, 1990,[1] and periodically thereafter as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. Such guidelines shall include information on—

(1) methods to identify and evaluate alternative planning and control activities;

(2) methods of reviewing plans on a regular basis as conditions change or new information is presented;

(3) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;

(4) methods to assure participation by the public in all phases of the planning process; and

(5) such other methods as the Administrator determines necessary to carry out a continuous planning process.

(f) Information regarding processes, procedures, and methods to reduce or control pollutants in transportation; reduction of mobile source related pollutants; reduction of impact on public health

(1) The Administrator shall publish and make available to appropriate Federal, State, and local environmental and transportation agencies not later than one year after November 15, 1990, and from time to time thereafter—

(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors, including, but not limited to—

(i) programs for improved public transit;

(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) programs to control extended idling of vehicles;

(xii) programs to reduce motor vehicle emissions, consistent with subchapter II of this chapter, which are caused by extreme cold start conditions;

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) program to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks.[2]

(B) information on additional methods or strategies that will contribute to the reduction of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded and during episodes for which an air pollution alert, warning, or emergency has been declared;

(C) information on other measures which may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and

(D) information on the extent to which any process, procedure, or method to reduce or control such air pollutant may cause an increase in the emissions or formation of any other pollutant.

(2) In publishing such information the Administrator shall also include an assessment of—

[1] See Codification note below.

[2] So in original. The period probably should be a semicolon.

(A) the relative effectiveness of such processes, procedures, and methods;

(B) the potential effect of such processes, procedures, and methods on transportation systems and the provision of transportation services; and

(C) the environmental, energy, and economic impact of such processes, procedures, and methods.

(g) Assessment of risks to ecosystems

The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in the Administrator's sole discretion).

(h) RACT/BACT/LAER clearinghouse

The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.

(July 14, 1955, ch. 360, title I, § 108, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1678; amended Pub. L. 95–95, title I, §§ 104, 105, title IV, § 401(a), Aug. 7, 1977, 91 Stat. 689, 790; Pub. L. 101–549, title I, §§ 108(a)–(c), (*o*), 111, Nov. 15, 1990, 104 Stat. 2465, 2466, 2469, 2470; Pub. L. 105–362, title XV, § 1501(b), Nov. 10, 1998, 112 Stat. 3294.)

CODIFICATION

November 15, 1990, referred to in subsec. (e), was in the original ''enactment of the Clean Air Act Amendments of 1989'', and was translated as meaning the date of the enactment of Pub. L. 101–549, popularly known as the Clean Air Act Amendments of 1990, to reflect the probable intent of Congress.

Section was formerly classified to section 1857c–3 of this title.

PRIOR PROVISIONS

A prior section 108 of act July 14, 1955, was renumbered section 115 by Pub. L. 91–604 and is classified to section 7415 of this title.

AMENDMENTS

1998—Subsec. (f)(3), (4). Pub. L. 105–362 struck out par. (3), which required reports by the Secretary of Transportation and the Administrator to be submitted to Congress by Jan. 1, 1993, and every 3 years thereafter, reviewing and analyzing existing State and local air quality related transportation programs, evaluating achievement of goals, and recommending changes to existing programs, and par. (4), which required that in each report after the first report the Secretary of Transportation include a description of the actions taken to implement the changes recommended in the preceding report.

1990—Subsec. (e). Pub. L. 101–549, § 108(a), inserted first sentence and struck out former first sentence which read as follows: ''The Administrator shall, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development and State and local officials and within 180 days after August 7, 1977, and from time to time thereafter, publish guidelines on the basic program elements for the planning process assisted under section 7505 of this title.''

Subsec. (f)(1). Pub. L. 101–549, § 108(b), in introductory provisions, substituted present provisions for provisions relating to Federal agencies, States, and air pollution control agencies within either 6 months or one year after Aug. 7, 1977.

Subsec. (f)(1)(A). Pub. L. 101–549, § 108(b), substituted present provisions for provisions relating to information prepared in cooperation with Secretary of Transportation, regarding processes, procedures, and methods to reduce certain pollutants.

Subsec. (f)(3), (4). Pub. L. 101–549, § 111, added pars. (3) and (4).

Subsec. (g). Pub. L. 101–549, § 108(*o*), added subsec. (g).

Subsec. (h). Pub. L. 101–549, § 108(c), added subsec. (h).

1977—Subsec. (a)(1)(A). Pub. L. 95–95, § 401(a), substituted ''emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' for ''which in his judgment has an adverse effect on public health or welfare''.

Subsec. (b)(1). Pub. L. 95–95, § 104(a), substituted ''cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology'' for ''technology and costs of emission control''.

Subsec. (c). Pub. L. 95–95, § 104(b), inserted provision directing the Administrator, not later than six months after Aug. 7, 1977, to revise and reissue criteria relating to concentrations of NO_2 over such period (not more than three hours) as he deems appropriate, with the criteria to include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

Subsecs. (e), (f). Pub. L. 95–95, § 105, added subsecs. (e) and (f).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7409. National primary and secondary ambient air quality standards

(a) Promulgation

(1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31,

1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this section shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO_2 concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 7408(c) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 7408 of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 7408 of this title and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

(July 14, 1955, ch. 360, title I, § 109, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1679; amended Pub. L. 95–95, title I, § 106, Aug. 7, 1977, 91 Stat. 691.)

CODIFICATION

Section was formerly classified to section 1857c–4 of this title.

PRIOR PROVISIONS

A prior section 109 of act July 14, 1955, was renumbered section 116 by Pub. L. 91–604 and is classified to section 7416 of this title.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95–95, § 106(b), added subsec. (c).

Subsec. (d). Pub. L. 95–95, § 106(a), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

ROLE OF SECONDARY STANDARDS

Pub. L. 101–549, title VIII, § 817, Nov. 15, 1990, 104 Stat. 2697, provided that:

''(a) REPORT.—The Administrator shall request the National Academy of Sciences to prepare a report to the Congress on the role of national secondary ambient air quality standards in protecting welfare and the environment. The report shall:

''(1) include information on the effects on welfare and the environment which are caused by ambient concentrations of pollutants listed pursuant to section 108 [42 U.S.C. 7408] and other pollutants which may be listed;

''(2) estimate welfare and environmental costs incurred as a result of such effects;

''(3) examine the role of secondary standards and the State implementation planning process in preventing such effects;

''(4) determine ambient concentrations of each such pollutant which would be adequate to protect welfare and the environment from such effects;

''(5) estimate the costs and other impacts of meeting secondary standards; and

''(6) consider other means consistent with the goals and objectives of the Clean Air Act [42 U.S.C. 7401 et seq.] which may be more effective than secondary standards in preventing or mitigating such effects.

''(b) SUBMISSION TO CONGRESS; COMMENTS; AUTHORIZATION.—(1) The report shall be transmitted to the Congress not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

''(2) At least 90 days before issuing a report the Administrator shall provide an opportunity for public comment on the proposed report. The Administrator shall include in the final report a summary of the comments received on the proposed report.

''(3) There are authorized to be appropriated such sums as are necessary to carry out this section.''

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter;

(D) contain adequate provisions—

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator—

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 7603 of this title and adequate contingency plans to implement such authority;

(H) provide for revision of such plan—

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas);

(J) meet the applicable requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for—

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V of this chapter; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3)(A) Repealed. Pub. L. 101–549, title I, § 101(d)(1), Nov. 15, 1990, 104 Stat. 2409.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c) of this section, shall be required to revise an applicable implementation plan because one or more exemptions under section 7418 of this title (relating to Federal facilities), enforcement orders under section 7413(d)[1] of this title, suspensions under subsection (f) or (g) of this section (relating to temporary energy or economic authority), orders under section 7419 of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 7413(e)[1] of this title (relating to iron- and steel-producing operations) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, or extensions had been granted.

(4) Repealed. Pub. L. 101–549, title I, § 101(d)(2), Nov. 15, 1990, 104 Stat. 2409.

(5)(A)(i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under this subsection to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under subsection (c) of this section re-

[1] See References in Text note below.

specting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term ''indirect source'' means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of subsection (c)(2)(D)(ii) of this section), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term ''indirect source review program'' means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations—

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term ''transportation control measure'' does not include any measure which is an ''indirect source review program''.

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 7413(d)[1] of this title or section 7419 of this title (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) Extension of period for submission of plans

The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under subsection (k)(1)(A) of this section, or

(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2)(A) Repealed. Pub. L. 101–549, title I, § 101(d)(3)(A), Nov. 15, 1990, 104 Stat. 2409.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) Repealed. Pub. L. 101–549, title I, § 101(d)(3)(B), Nov. 15, 1990, 104 Stat. 2409.

(D) For purposes of this paragraph—

(i) The term ''parking surcharge regulation'' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term ''management of parking supply'' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term ''preferential bus/carpool lane'' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the authority to implement and enforce within the jurisdiction of such unit any part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

(4) Repealed. Pub. L. 101–549, title I, § 101(d)(3)(C), Nov. 15, 1990, 104 Stat. 2409.

(5)(A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after August 7, 1977, be revised to include comprehensive measures to:

(i) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards,

and such revised plan shall, for the purpose of implementing such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of an implementation plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D of this subchapter.

(d), (e) Repealed. Pub. L. 101–549, title I, § 101(d)(4), (5), Nov. 15, 1990, 104 Stat. 2409

(f) National or regional energy emergencies; determination by President

(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that—

(A) a temporary suspension of any part of the applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) may be necessary, and

(B) other means of responding to the energy emergency may be inadequate.

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that—

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator, if any. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of paragraph (2).

(4) This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c) of this section, but in any such case the President may grant a temporary emergency suspension for a four month period of any such provision or requirement if he makes the determinations and findings specified in paragraphs (1) and (2).

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c–10[2] of this title, as in effect before August 7, 1977, or section 7413(d)[2] of this title, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(g) Governor's authority to issue temporary emergency suspensions

(1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines—

(A) meets the requirements of this section, and

(B) is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and

which the Administrator has not approved or disapproved under this section within 12 months of submission of the proposed plan revision, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

(2) A temporary emergency suspension issued by a Governor under this subsection shall re-

[2] See References in Text note below.

main in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of this subsection.

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c–10[2] of this title as in effect before August 7, 1977, or under section 7413(d)[2] of this title upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(h) Publication of comprehensive document for each State setting forth requirements of applicable implementation plan

(1) Not later than 5 years after November 15, 1990, and every 3 years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) of this section (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d)[2] of this title (relating to compliance orders), a plan promulgation under subsection (c) of this section, or a plan revision under subsection (a)(3) of this section; no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

As a condition for issuance of any permit required under this subchapter, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at such source will enable it to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this chapter.

(k) Environmental Protection Agency action on plan submissions

(1) Completeness of plan submissions

(A) Completeness criteria

Within 9 months after November 15, 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this chapter.

(B) Completeness finding

Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness

Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action

Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval

In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.

(4) Conditional approval

The Administrator may approve a plan revision based on a commitment of the State to

adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 7506a of this title or section 7511c of this title, or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).

(6) Corrections

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

(*l*) Plan revisions

Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

(m) Sanctions

The Administrator may apply any of the sanctions listed in section 7509(b) of this title at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of section 7509(a) of this title in relation to any plan or plan item (as that term is defined by the Administrator) required under this chapter, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this chapter relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in section 7509(a) of this title to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 7509(a) of this title, such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

(n) Savings clauses

(1) Existing plan provisions

Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this chapter.

(2) Attainment dates

For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State—

(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on November 15, 1990, or

(B) in response to a finding of substantial inadequacy under subsection (a)(2) of this section (as in effect immediately before November 15, 1990),

shall provide for attainment of the national primary ambient air quality standards within 3 years of November 15, 1990, or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

(3) Retention of construction moratorium in certain areas

In the case of an area to which, immediately before November 15, 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) of this section (as in effect immediately before November 15, 1990) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of section 7502(b)(6) of this title (relating to establishment of a permit program) (as in effect immediately before November 15, 1990) or 7502(a)(1) of this title (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before November 15, 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section

7502(c)(5) of this title (relating to permit programs) or subpart 5 of part D of this subchapter (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

(*o*) Indian tribes

If an Indian tribe submits an implementation plan to the Administrator pursuant to section 7601(d) of this title, the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to section 7601(d)(2) of this title. When such plan becomes effective in accordance with the regulations promulgated under section 7601(d) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(p) Reports

Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development[3] effectiveness, need for revision, or implementation of any plan or plan revision required under this chapter.

(July 14, 1955, ch. 360, title I, § 110, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1680; amended Pub. L. 93–319, § 4, June 22, 1974, 88 Stat. 256; Pub. L. 95–95, title I, §§ 107, 108, Aug. 7, 1977, 91 Stat. 691, 693; Pub. L. 95–190, § 14(a)(1)–(6), Nov. 16, 1977, 91 Stat. 1399; Pub. L. 97–23, § 3, July 17, 1981, 95 Stat. 142; Pub. L. 101–549, title I, §§ 101(b)–(d), 102(h), 107(c), 108(d), title IV, § 412, Nov. 15, 1990, 104 Stat. 2404–2408, 2422, 2464, 2466, 2634.)

REFERENCES IN TEXT

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a)(3)(B), is Pub. L. 93–319, June 22, 1974, 88 Stat. 246, as amended, which is classified principally to chapter 16C (§ 791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

Section 7413 of this title, referred to in subsecs. (a)(3)(C), (6), (f)(5), (g)(3), and (i), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsecs. (d) and (e) of section 7413 no longer relates to final compliance orders and steel industry compliance extension, respectively.

Section 1857c–10 of this title, as in effect before August 7, 1977, referred to in subsecs. (f)(5) and (g)(3), was in the original ''section 119, as in effect before the date of the enactment of this paragraph'', meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of subsecs. (f)(5) and (g)(3) of this section by Pub. L. 95–95, § 107, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title. Section 7413 of this title was subsequently amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, see note above. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

CODIFICATION

Section was formerly classified to section 1857c–5 of this title.

PRIOR PROVISIONS

A prior section 110 of act July 14, 1955, was renumbered section 117 by Pub. L. 91–604 and is classified to section 7417 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, § 101(d)(8), substituted ''3 years (or such shorter period as the Administrator may prescribe)'' for ''nine months'' in two places.

Subsec. (a)(2). Pub. L. 101–549, § 101(b), amended par. (2) generally, substituting present provisions for provisions setting the time within which the Administrator was to approve or disapprove a plan or portion thereof and listing the conditions under which the plan or portion thereof was to be approved after reasonable notice and hearing.

Subsec. (a)(3)(A). Pub. L. 101–549, § 101(d)(1), struck out subpar. (A) which directed Administrator to approve any revision of an implementation plan if it met certain requirements and had been adopted by the State after reasonable notice and public hearings.

Subsec. (a)(3)(D). Pub. L. 101–549, § 101(d)(1), struck out subpar. (D) which directed that certain implementation plans be revised to include comprehensive measures and requirements.

Subsec. (a)(4). Pub. L. 101–549, § 101(d)(2), struck out par. (4) which set forth requirements for review procedure.

Subsec. (c)(1). Pub. L. 101–549, § 102(h), amended par. (1) generally, substituting present provisions for provisions relating to preparation and publication of regulations setting forth an implementation plan, after opportunity for a hearing, upon failure of a State to make required submission or revision.

Subsec. (c)(2)(A). Pub. L. 101–549, § 101(d)(3)(A), struck out subpar. (A) which required a study and report on necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations to achieve and maintain national primary ambient air quality standards.

Subsec. (c)(2)(C). Pub. L. 101–549, § 101(d)(3)(B), struck out subpar. (C) which authorized suspension of certain regulations and requirements relating to management of parking supply.

Subsec. (c)(4). Pub. L. 101–549, § 101(d)(3)(C), struck out par. (4) which permitted Governors to temporarily suspend measures in implementation plans relating to retrofits, gas rationing, and reduction of on-street parking.

Subsec. (c)(5)(B). Pub. L. 101–549, § 101(d)(3)(D), struck out ''(including the written evidence required by part D),'' after ''include comprehensive measures''.

Subsec. (d). Pub. L. 101–549, § 101(d)(4), struck out subsec. (d) which defined an applicable implementation plan for purposes of this chapter.

Subsec. (e). Pub. L. 101–549, § 101(d)(5), struck out subsec. (e) which permitted an extension of time for attainment of a national primary ambient air quality standard.

Subsec. (f)(1). Pub. L. 101–549, § 412, inserted ''or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets)'' in subpar. (A) and in last sentence.

[3] So in original. Probably should be followed by a comma.

Subsec. (g)(1). Pub. L. 101–549, §101(d)(6), substituted ''12 months of submission of the proposed plan revision'' for ''the required four month period'' in closing provisions.

Subsec. (h)(1). Pub. L. 101–549, §101(d)(7), substituted ''5 years after November 15, 1990, and every three years thereafter'' for ''one year after August 7, 1977, and annually thereafter'' and struck out at end ''Each such document shall be revised as frequently as practicable but not less often than annually.''

Subsecs. (k) to (n). Pub. L. 101–549, §101(c), added subsecs. (k) to (n).

Subsec. (*o*). Pub. L. 101–549, §107(c), added subsec. (*o*).

Subsec. (p). Pub. L. 101–549, §108(d), added subsec. (p).

1981—Subsec. (a)(3)(C). Pub. L. 97–23 inserted reference to extensions of compliance in decrees entered under section 7413(e) of this title (relating to iron- and steel-producing operations).

1977—Subsec. (a)(2)(A). Pub. L. 95–95, §108(a)(1), substituted ''(A) except as may be provided in subparagraph (I)(i) in the case of a plan'' for ''(A)(i) in the case of a plan''.

Subsec. (a)(2)(B). Pub. L. 95–95, §108(a)(2), substituted ''transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D)'' for ''land use and transportation controls''.

Subsec. (a)(2)(D). Pub. L. 95–95, §108(a)(3), substituted ''it includes a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit program as required in parts C and D and a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that national ambient air quality standards are achieved and maintained, and (ii) a procedure'' for ''it includes a procedure''.

Subsec. (a)(2)(E). Pub. L. 95–95, §108(a)(4), substituted ''it contains adequate provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, and (ii) insuring compliance with the requirements of section 7426 of this title, relating to interstate pollution abatement'' for ''it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region''.

Subsec. (a)(2)(F). Pub. L. 95–95, §108(a)(5), added cl. (vi).

Subsec. (a)(2)(H). Pub. L. 95–190, §14(a)(1), substituted ''1977;'' for ''1977''.

Pub. L. 95–95, §108(a)(6), inserted ''except as provided in paragraph (3)(C),'' after ''or (ii)'' and ''or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977'' after ''to achieve the national ambient air quality primary or secondary standard which it implements''.

Subsec. (a)(2)(I). Pub. L. 95–95, §108(b), added subpar. (I).

Subsec. (a)(2)(J). Pub. L. 95–190, §14(a)(2), substituted ''; and'' for '', and''.

Pub. L. 95–95, §108(b), added subpar. (J).

Subsec. (a)(2)(K). Pub. L. 95–95, §108(b) added subpar. (K).

Subsec. (a)(3)(C). Pub. L. 95–95, §108(c), added subpar. (C).

Subsec. (a)(3)(D). Pub. L. 95–190, §14(a)(4), added subpar. (D).

Subsec. (a)(5). Pub. L. 95–95, §108(e), added par. (5).

Subsec. (a)(5)(D). Pub. L. 95–190, §14(a)(3), struck out ''preconstruction or premodification'' before ''review''.

Subsec. (a)(6). Pub. L. 95–95, §108(e), added par. (6).

Subsec. (c)(1). Pub. L. 95–95, §108(d)(1), (2), substituted ''plan which meets the requirements of this section'' for ''plan for any national ambient air quality primary or secondary standard within the time prescribed'' in subpar. (A) and, in provisions following subpar. (C), directed that any portion of a plan relating to any measure described in first sentence of 7421 of this title (relating to consultation) or the consultation process required under such section 7421 of this title not be required to be promulgated before the date eight months after such date required for submission.

Subsec. (c)(3) to (5). Pub. L. 95–95, §108(d)(3), added pars. (3) to (5).

Subsec. (d). Pub. L. 95–95, §108(f), substituted ''and which implements the requirements of this section'' for ''and which implements a national primary or secondary ambient air quality standard in a State''.

Subsec. (f). Pub. L. 95–95, §107(a), substituted provisions relating to the handling of national or regional energy emergencies for provisions relating to the postponement of compliance by stationary sources or classes of moving sources with any requirement of applicable implementation plans.

Subsec. (g). Pub. L. 95–95, §108(g), added subsec. (g) relating to publication of comprehensive document.

Pub. L. 95–95, §107(b), added subsec. (g) relating to Governor's authority to issue temporary emergency suspensions.

Subsec. (h). Pub. L. 95–190, §14(a)(5), redesignated subsec. (g), added by Pub. L. 95–95, §108(g), as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95–190, §14(a)(5), redesignated subsec. (h), added by Pub. L. 95–95, §108(g), as (i). Former subsec. (i) redesignated (j) and amended.

Subsec. (j). Pub. L. 95–190 §14(a)(5), (6), redesignated subsec. (i), added by Pub. L. 95–95, §108(g), as (j) and in subsec. (j) as so redesignated, substituted ''will enable such source'' for ''at such source will enable it''.

1974—Subsec. (a)(3). Pub. L. 93–319, §4(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 93–319, §4(b), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, of such redesignated par. (1), and added par. (2).

Effective Date of 1977 Amendment

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

Pending Actions and Proceedings

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective

Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF IMPLEMENTATION PLANS APPROVED AND IN EFFECT PRIOR TO AUG. 7, 1977

Nothing in the Clean Air Act Amendments of 1977 [Pub. L. 95–95] to affect any requirement of an approved implementation plan under this section or any other provision in effect under this chapter before Aug. 7, 1977, until modified or rescinded in accordance with this chapter as amended by the Clean Air Act Amendments of 1977, see section 406(c) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SAVINGS PROVISION

Section 16 of Pub. L. 91–604 provided that:

''(a)(1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act [this chapter] prior to enactment of this Act [Dec. 31, 1970] may be approved under section 110 of the Clean Air Act [this section] (as amended by this Act) [Pub. L. 91–604] and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with applicable requirements of the Clean Air Act [this chapter] (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within 90 days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act [section 7409(a) of this title], notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act [subsec. (c) of this section].

''(2) The amendments made by section 4(b) [amending sections 7403 and 7415 of this title] shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act [section 7415 of this title] before the date of enactment of this Act [Dec. 31, 1970].

''(b) Regulations or standards issued under this title II of the Clean Air Act [subchapter II of this chapter] prior to the enactment of this Act [Dec. 31, 1970] shall continue in effect until revised by the Administrator consistent with the purposes of such Act [this chapter].''

FEDERAL ENERGY ADMINISTRATOR

''Federal Energy Administrator'', for purposes of this chapter, to mean Administrator of Federal Energy Administration established by Pub. L. 93–275, May 7, 1974, 88 Stat. 97, which is classified to section 761 et seq. of Title 15, Commerce and Trade, but with the term to mean any officer of the United States designated as such by the President until Federal Energy Administrator takes office and after Federal Energy Administration ceases to exist, see section 798 of Title 15, Commerce and Trade.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 7411. Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term ''standard of performance'' means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(2) The term ''new source'' means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term ''stationary source'' means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

(4) The term ''modification'' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term ''owner or operator'' means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term ''existing source'' means any stationary source other than a new source.

(7) The term ''technological system of continuous emission reduction'' means—

(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or

(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act [15 U.S.C. 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii)[1] of this title, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within one year after the inclusion of a category of stationary sources in a list under

[1] See References in Text note below.

subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one year after such publication, such standards with such modifications as he deems appropriate. The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard. Standards of performance or revisions thereof shall become effective upon promulgation. When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h) of this section, nothing in this section shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(6) The revised standards of performance required by enactment of subsection (a)(1)(A)(i) and (ii)[1] of this section shall be promulgated not later than one year after August 7, 1977. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

(c) State implementation and enforcement of standards of performance

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) Standards of performance for existing sources; remaining useful life of source

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 7410(c) of this title in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 7413 and 7414 of this title with respect to an implementation plan.

In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.

(e) Prohibited acts

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(f) New source standards of performance

(1) For those categories of major stationary sources that the Administrator listed under subsection (b)(1)(A) of this section before November 15, 1990, and for which regulations had not been proposed by the Administrator by November 15, 1990, the Administrator shall—

(A) propose regulations establishing standards of performance for at least 25 percent of such categories of sources within 2 years after November 15, 1990;

(B) propose regulations establishing standards of performance for at least 50 percent of such categories of sources within 4 years after November 15, 1990; and

(C) propose regulations for the remaining categories of sources within 6 years after November 15, 1990.

(2) In determining priorities for promulgating standards for categories of major stationary

sources for the purpose of paragraph (1), the Administrator shall consider—

(A) the quantity of air pollutant emissions which each such category will emit, or will be designed to emit;

(B) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare; and

(C) the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.

(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

(g) Revision of regulations

(1) Upon application by the Governor of a State showing that the Administrator has failed to specify in regulations under subsection (f)(1) of this section any category of major stationary sources required to be specified under such regulations, the Administrator shall revise such regulations to specify any such category.

(2) Upon application of the Governor of a State, showing that any category of stationary sources which is not included in the list under subsection (b)(1)(A) of this section contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources), the Administrator shall revise such regulations to specify such category of stationary sources.

(3) Upon application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be considered under subsection (f)(2) of this section, the Administrator shall revise the list under subsection (b)(1)(A) of this section to apply properly such criteria.

(4) Upon application of the Governor of a State showing that—

(A) a new, innovative, or improved technology or process which achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources, and

(B) as a result of such technology or process, the new source standard of performance in effect under this section for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated,

the Administrator shall revise such standard of performance for such category accordingly.

(5) Unless later deadlines for action of the Administrator are otherwise prescribed under this section, the Administrator shall, not later than three months following the date of receipt of any application by a Governor of a State, either—

(A) find that such application does not contain the requisite showing and deny such application, or

(B) grant such application and take the action required under this subsection.

(6) Before taking any action required by subsection (f) of this section or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

(h) Design, equipment, work practice, or operational standard; alternative emission limitation

(1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase ''not feasible to prescribe or enforce a standard of performance'' means any situation in which the Administrator determines that (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of standard of performance whenever it becomes feasible to promulgate and enforce such standard in such terms.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this chapter (other than the provisions of subsection (a) of this section and this subsection).

(i) Country elevators

Any regulations promulgated by the Administrator under this section applicable to grain ele-

vators shall not apply to country elevators (as defined by the Administrator) which have a storage capacity of less than two million five hundred thousand bushels.

(j) Innovative technological systems of continuous emission reduction

(1)(A) Any person proposing to own or operate a new source may request the Administrator for one or more waivers from the requirements of this section for such source or any portion thereof with respect to any air pollutant to encourage the use of an innovative technological system or systems of continuous emission reduction. The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a waiver under this paragraph, if the Administrator determines after notice and opportunity for public hearing, that—

(i) the proposed system or systems have not been adequately demonstrated,

(ii) the proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under the standards of performance which would otherwise apply, or achieve at least an equivalent reduction at lower cost in terms of energy, economic, or nonair quality environmental impact,

(iii) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction, and

(iv) the granting of such waiver is consistent with the requirements of subparagraph (C).

In making any determination under clause (ii), the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards. In determining whether an unreasonable risk exists under clause (iii), the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under this section without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out clause (iii) of this subparagraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without use of such system.

(B) A waiver under this paragraph shall be granted on such terms and conditions as the Administrator determines to be necessary to assure—

(i) emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

(ii) proper functioning of the technological system or systems authorized.

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 7413 of this title.

(C) The number of waivers granted under this paragraph with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such system will achieve the conditions specified in clauses (ii) and (iii) of subparagraph (A).

(D) A waiver under this paragraph shall extend to the sooner of—

(i) the date determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of the technological system or systems being used, or

(ii) the date on which the Administrator determines that such system has failed to—

(I) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance which would otherwise apply, or

(II) comply with the condition specified in paragraph (1)(A)(iii),

and that such failure cannot be corrected.

(E) In carrying out subparagraph (D)(i), the Administrator shall not permit any waiver for a source or portion thereof to extend beyond the date—

(i) seven years after the date on which any waiver is granted to such source or portion thereof, or

(ii) four years after the date on which such source or portion thereof commences operation,

whichever is earlier.

(F) No waiver under this subsection shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction is used.

(2)(A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 7413 of this title.

(July 14, 1955, ch. 360, title I, §111, as added Pub. L. 91–604, §4(a), Dec. 31, 1970, 84 Stat. 1683; amended Pub. L. 92–157, title III, §302(f), Nov. 18, 1971, 85 Stat. 464; Pub. L. 95–95, title I, §109(a)–(d)(1), (e), (f), title IV, §401(b), Aug. 7, 1977, 91 Stat. 697–703, 791; Pub. L. 95–190, §14(a)(7)–(9), Nov. 16, 1977, 91 Stat. 1399; Pub. L. 95–623, §13(a), Nov. 9, 1978, 92 Stat. 3457; Pub. L. 101–549, title I, §108(e)–(g), title III, §302(a), (b), title IV, §403(a), Nov. 15, 1990, 104 Stat. 2467, 2574, 2631.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (a)(8), means Pub. L. 93–319, June 22, 1974, 88 Stat. 246, as amended, known as the Energy Supply and Environmental Coordination Act of 1974, which is classified principally to chapter 16C (§791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

Section 7413 of this title, referred to in subsec. (a)(8), was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) of section 7413 no longer relates to final compliance orders.

Subsection (a)(1) of this section, referred to in subsec. (b)(6), was amended generally by Pub. L. 101–549, title VII, §403(a), Nov. 15, 1990, 104 Stat. 2631, and, as so amended, no longer contains subpars.

CODIFICATION

Section was formerly classified to section 1857c–6 of this title.

PRIOR PROVISIONS

A prior section 111 of act July 14, 1955, was renumbered section 118 by Pub. L. 91–604 and is classified to section 7418 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, §403(a), amended par. (1) generally, substituting provisions defining ''standard of performance'' with respect to any air pollutant for provisions defining such term with respect to subsec. (b) fossil fuel fired and other stationary sources and subsec. (d) particular sources.

Subsec. (a)(3). Pub. L. 101–549, §108(f), inserted at end ''Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.''

Subsec. (b)(1)(B). Pub. L. 101–549, §108(e)(1), substituted ''Within one year'' for ''Within 120 days'', ''within one year'' for ''within 90 days'', and ''every 8 years'' for ''every four years'', inserted before last sentence ''Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.'', and inserted at end ''When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.''

Subsec. (d)(1)(A)(i). Pub. L. 101–549, §302(a), which directed the substitution of ''7412(b)'' for ''7412(b)(1)(A)'', could not be executed, because of the prior amendment by Pub. L. 101–549, §108(g), see below.

Pub. L. 101–549, §108(g), substituted ''or emitted from a source category which is regulated under section 7412 of this title'' for ''or 7412(b)(1)(A)''.

Subsec. (f)(1). Pub. L. 101–549, §108(e)(2), amended par. (1) generally, substituting present provisions for provisions requiring the Administrator to promulgate regulations listing the categories of major stationary sources not on the required list by Aug. 7, 1977, and regulations establishing standards of performance for such categories.

Subsec. (g)(5) to (8). Pub. L. 101–549, §302(b), redesignated par. (7) as (5) and struck out ''or section 7412 of this title'' after ''this section'', redesignated par. (8) as (6), and struck out former pars. (5) and (6) which read as follows:

''(5) Upon application by the Governor of a State showing that the Administrator has failed to list any air pollutant which causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness as a hazardous air pollutant under section 7412 of this title the Administrator shall revise the list of hazardous air pollutants under such section to include such pollutant.

''(6) Upon application by the Governor of a State showing that any category of stationary sources of a hazardous air pollutant listed under section 7412 of this title is not subject to emission standards under such section, the Administrator shall propose and promulgate such emission standards applicable to such category of sources.''

1978—Subsecs. (d)(1)(A)(ii), (g)(4)(B). Pub. L. 95–623, §13(a)(2), substituted ''under this section'' for ''under subsection (b) of this section''.

Subsec. (h)(5). Pub. L. 95–623, §13(a)(1), added par. (5).

Subsec. (j). Pub. L. 95–623, §13(a)(3), substituted in pars. (1)(A) and (2)(A) ''standards under this section'' and ''under this section'' for ''standards under subsection (b) of this section'' and ''under subsection (b) of this section'', respectively.

1977—Subsec. (a)(1). Pub. L. 95–95, §109(c)(1)(A), added subpars. (A), (B), and (C), substituted ''For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect'' for ''a standard for emissions of air pollutants which reflects'', ''and the percentage reduction achievable'' for ''achievable'', and ''technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environment impact and energy requirements)'' for ''system of emission reduction which (taking into account the cost of achieving such reduction)'' in existing provisions, and inserted provision that, for the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

Subsec. (a)(7). Pub. L. 95–95, §109(c)(1)(B), added par. (7) defining ''technological system of continuous emission reduction''.

Pub. L. 95–95, §109(f), added par. (7) directing that under certain circumstances a conversion to coal not be deemed a modification for purposes of pars. (2) and (4).

Subsec. (a)(7), (8). Pub. L. 95–190, §14(a)(7), redesignated second par. (7) as (8).

Subsec. (b)(1)(A). Pub. L. 95–95, §401(b), substituted ''such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger'' for ''such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of''.

Subsec. (b)(1)(B). Pub. L. 95–95, §109(c)(2), substituted ''shall, at least every four years, review and, if appropriate,'' for ''may, from time to time,''.

Subsec. (b)(5), (6). Pub. L. 95–95, §109(c)(3), added pars. (5) and (6).

Subsec. (c)(1). Pub. L. 95–95, §109(d)(1), struck out ''(except with respect to new sources owned or operated by the United States)'' after ''implement and enforce such standards''.

Subsec. (d)(1). Pub. L. 95–95, §109(b)(1), substituted ''standards of performance'' for ''emission standards''

and inserted provisions directing that regulations of the Administrator permit the State, in applying a standard of performance to any particular source under a submitted plan, to take into consideration, among other factors, the remaining useful life of the existing source to which the standard applies.

Subsec. (d)(2). Pub. L. 95–95, §109(b)(2), provided that, in promulgating a standard of performance under a plan, the Administrator take into consideration, among other factors, the remaining useful lives of the sources in the category of sources to which the standard applies.

Subsecs. (f) to (i). Pub. L. 95–95, §109(a), added subsecs. (f) to (i).

Subsecs. (j), (k). Pub. L. 95–190, §14(a)(8), (9), redesignated subsec. (k) as (j) and, as so redesignated, substituted ''(B)'' for ''(8)'' as designation for second subpar. in par. (2). Former subsec. (j), added by Pub. L. 95–95, §109(e), which related to compliance with applicable standards of performance, was struck out.

Pub. L. 95–95, §109(e), added subsec. (k).

1971—Subsec. (b)(1)(B). Pub. L. 92–157 substituted in first sentence ''publish proposed'' for ''propose''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

REGULATIONS

Section 403(b), (c) of Pub. L. 101–549 provided that:

''(b) REVISED REGULATIONS.—Not later than three years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator shall promulgate revised regulations for standards of performance for new fossil fuel fired electric utility units commencing construction after the date on which such regulations are proposed that, at a minimum, require any source subject to such revised standards to emit sulfur dioxide at a rate not greater than would have resulted from compliance by such source with the applicable standards of performance under this section [amending sections 7411 and 7479 of this title] prior to such revision.

''(c) APPLICABILITY.—The provisions of subsections (a) [amending this section] and (b) apply only so long as the provisions of section 403(e) of the Clean Air Act [42 U.S.C. 7651b(e)] remain in effect.''

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official in Environmental Protection Agency related to compliance with new source performance standards under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7412. Hazardous air pollutants

(a) Definitions

For purposes of this section, except subsection (r) of this section—

(1) Major source

The term ''major source'' means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(2) Area source

The term ''area source'' means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term ''area source'' shall not include motor vehicles or nonroad vehicles subject to regulation under subchapter II of this chapter.

(3) Stationary source

The term ''stationary source'' shall have the same meaning as such term has under section 7411(a) of this title.

(4) New source

The term ''new source'' means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

(5) Modification

The term ''modification'' means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de

minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

(6) Hazardous air pollutant

The term ''hazardous air pollutant'' means any air pollutant listed pursuant to subsection (b) of this section.

(7) Adverse environmental effect

The term ''adverse environmental effect'' means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

(8) Electric utility steam generating unit

The term ''electric utility steam generating unit'' means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

(9) Owner or operator

The term ''owner or operator'' means any person who owns, leases, operates, controls, or supervises a stationary source.

(10) Existing source

The term ''existing source'' means any stationary source other than a new source.

(11) Carcinogenic effect

Unless revised, the term ''carcinogenic effect'' shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment.[1] Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

(b) List of pollutants

(1) Initial list

The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
105602	Caprolactam
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3′-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (l-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene

[1] See References in Text note below.

CAS number	Chemical name
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4′-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds[1]
0	Glycol ethers[2]
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers[3]
0	Nickel Compounds
0	Polycylic Organic Matter[4]
0	Radionuclides (including radon)[5]
0	Selenium Compounds

NOTE: For all listings above which contain the word ''compounds'' and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

[1] X′CN where X = H′ or any other group where a formal dissociation may occur. For example KCN or $Ca(CN)_2$.

[2] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol $R–(OCH2CH2)_n–OR'$ where

n = 1, 2, or 3

R = alkyl or aryl groups

R′ = R, H, or groups which, when removed, yield glycol ethers with the structure: $R–(OCH2CH)_n–OH$. Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

[4] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

[5] A type of atom which spontaneously undergoes radioactive decay.

(2) Revision of the list

The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) of this section as a result of emissions to the air. No air pollutant which is listed under section 7408(a) of this title may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 7408(a) of this title or to any pollutant which is in a class of pollutants list-

ed under such section. No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment.

(3) Petitions to modify the list

(A) Beginning at any time after 6 months after November 15, 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental defects[2] of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

(B) The Administrator shall add a substance to the list upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

(C) The Administrator shall delete a substance from the list upon a showing by the petitioner or on the Administrator's own determination that there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions, mineral fibers, or polycyclic organic matter) upon a showing by the petitioner or on the Administrator's own determination that such unique chemical substances that contain the named chemical of such listed hazardous air pollutant meet the deletion requirements of subparagraph (C). The Administrator must grant or deny a deletion petition prior to promulgating any emission standards pursuant to subsection (d) of this section applicable to any source category or subcategory of a listed hazardous air pollutant without a CAS number listed under subsection (b) of this section for which a deletion petition has been filed within 12 months of November 15, 1990.

(4) Further information

If the Administrator determines that information on the health or environmental effects of a substance is not sufficient to make a determination required by this subsection, the Administrator may use any authority available to the Administrator to acquire such information.

(5) Test methods

The Administrator may establish, by rule, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of hazardous air pollutants.

(6) Prevention of significant deterioration

The provisions of part C of this subchapter (prevention of significant deterioration) shall not apply to pollutants listed under this section.

(7) Lead

The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

(c) List of source categories

(1) In general

Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b) of this section. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 7411 of this title and part C of this subchapter. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

(2) Requirement for emissions standards

For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d) of this section, according to the schedule in this subsection and subsection (e) of this section.

(3) Area sources

The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after November 15, 1990, and pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after November 15, 1990.

[2] So in original. Probably should be ''effects''.

(4) Previously regulated categories

The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section as in effect before November 15, 1990.

(5) Additional categories

In addition to those categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants according to the same criteria for listing applicable under such paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) of this section for the category or subcategory shall be promulgated within 10 years after November 15, 1990, or within 2 years after the date on which such category or subcategory is listed, whichever is later.

(6) Specific pollutants

With respect to alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin, the Administrator shall, not later than 5 years after November 15, 1990, list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) of this section. Such standards shall be promulgated not later than 10 years after November 15, 1990. This paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.

(7) Research facilities

The Administrator shall establish a separate category covering research or laboratory facilities, as necessary to assure the equitable treatment of such facilities. For purposes of this section, ''research or laboratory facility'' means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

(8) Boat manufacturing

When establishing emissions standards for styrene, the Administrator shall list boat manufacturing as a separate subcategory unless the Administrator finds that such listing would be inconsistent with the goals and requirements of this chapter.

(9) Deletions from the list

(A) Where the sole reason for the inclusion of a source category on the list required under this subsection is the emission of a unique chemical substance, the Administrator shall delete the source category from the list if it is appropriate because of action taken under either subparagraphs (C) or (D) of subsection (b)(3) of this section.

(B) The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:

(i) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).

(ii) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

The Administrator shall grant or deny a petition under this paragraph within 1 year after the petition is filed.

(d) Emission standards

(1) In general

The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) of this section in accordance with the schedules provided in subsections (c) and (e) of this section. The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) of this section as the result of the authority provided by this sentence.

(2) Standards and methods

Emissions standards promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of

measures, processes, methods, systems or techniques including, but not limited to, measures which—

(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

(B) enclose systems or processes to eliminate emissions,

(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h) of this section, or

(E) are a combination of the above.

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 7414(c) of this title, in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

(3) New and existing sources

The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. Emission standards promulgated under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than—

(A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 7501 of this title) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources, or

(B) the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

(4) Health threshold

With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

(5) Alternative standard for area sources

With respect only to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

(6) Review and revision

The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

(7) Other requirements preserved

No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 7411 of this title, part C or D of this subchapter, or other authority of this chapter or a standard issued under State authority.

(8) Coke ovens

(A) Not later than December 31, 1992, the Administrator shall promulgate regulations establishing emission standards under paragraphs (2) and (3) of this subsection for coke oven batteries. In establishing such standards, the Administrator shall evaluate—

(i) the use of sodium silicate (or equivalent) luting compounds to prevent door leaks, and other operating practices and technologies for their effectiveness in reducing coke oven emissions, and their suitability for use on new and existing coke oven batteries, taking into account costs and reasonable commercial door warranties; and

(ii) as a basis for emission standards under this subsection for new coke oven batteries that begin construction after the date of proposal of such standards, the Jewell design Thompson non-recovery coke oven batteries and other non-recovery coke oven technologies, and other appropriate emission control and coke production technologies, as to their effectiveness in reducing coke oven emissions and their capability for production of steel quality coke.

Such regulations shall require at a minimum that coke oven batteries will not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing oven doors. Notwithstanding subsection (i) of this section, the compliance date for such emission standards for existing coke oven batteries shall be December 31, 1995.

(B) The Administrator shall promulgate work practice regulations under this sub-

section for coke oven batteries requiring, as appropriate—

(i) the use of sodium silicate (or equivalent) luting compounds, if the Administrator determines that use of sodium silicate is an effective means of emissions control and is achievable, taking into account costs and reasonable commercial warranties for doors and related equipment; and

(ii) door and jam cleaning practices.

Notwithstanding subsection (i) of this section, the compliance date for such work practice regulations for coke oven batteries shall be not later than the date 3 years after November 15, 1990.

(C) For coke oven batteries electing to qualify for an extension of the compliance date for standards promulgated under subsection (f) of this section in accordance with subsection (i)(8) of this section, the emission standards under this subsection for coke oven batteries shall require that coke oven batteries not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing doors. Notwithstanding subsection (i) of this section, the compliance date for such emission standards for existing coke oven batteries seeking an extension shall be not later than the date 3 years after November 15, 1990.

(9) Sources licensed by the Nuclear Regulatory Commission

No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act [42 U.S.C. 2011 et seq.] for such category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 7411 of this title or this section.

(10) Effective date

Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation.

(e) Schedule for standards and review

(1) In general

The Administrator shall promulgate regulations establishing emission standards for categories and subcategories of sources initially listed for regulation pursuant to subsection (c)(1) of this section as expeditiously as practicable, assuring that—

(A) emission standards for not less than 40 categories and subcategories (not counting coke oven batteries) shall be promulgated not later than 2 years after November 15, 1990;

(B) emission standards for coke oven batteries shall be promulgated not later than December 31, 1992;

(C) emission standards for 25 per centum of the listed categories and subcategories shall be promulgated not later than 4 years after November 15, 1990;

(D) emission standards for an additional 25 per centum of the listed categories and subcategories shall be promulgated not later than 7 years after November 15, 1990; and

(E) emission standards for all categories and subcategories shall be promulgated not later than 10 years after November 15, 1990.

(2) Priorities

In determining priorities for promulgating standards under subsection (d) of this section, the Administrator shall consider—

(A) the known or anticipated adverse effects of such pollutants on public health and the environment;

(B) the quantity and location of emissions or reasonably anticipated emissions of hazardous air pollutants that each category or subcategory will emit; and

(C) the efficiency of grouping categories or subcategories according to the pollutants emitted, or the processes or technologies used.

(3) Published schedule

Not later than 24 months after November 15, 1990, and after opportunity for comment, the Administrator shall publish a schedule establishing a date for the promulgation of emission standards for each category and subcategory of sources listed pursuant to subsection (c)(1) and (3) of this section which shall be consistent with the requirements of paragraphs (1) and (2). The determination of priorities for the promulgation of standards pursuant to this paragraph is not a rulemaking and shall not be subject to judicial review, except that, failure to promulgate any standard pursuant to the schedule established by this paragraph shall be subject to review under section 7604 of this title.

(4) Judicial review

Notwithstanding section 7607 of this title, no action of the Administrator adding a pollutant to the list under subsection (b) of this section or listing a source category or subcategory under subsection (c) of this section shall be a final agency action subject to judicial review, except that any such action may be reviewed under such section 7607 of this title when the Administrator issues emission standards for such pollutant or category.

(5) Publicly owned treatment works

The Administrator shall promulgate standards pursuant to subsection (d) of this section applicable to publicly owned treatment works (as defined in title II of the Federal Water Pollution Control Act [33 U.S.C. 1281 et seq.]) not later than 5 years after November 15, 1990.

(f) Standard to protect health and environment

(1) Report

Not later than 6 years after November 15, 1990, the Administrator shall investigate and

report, after consultation with the Surgeon General and after opportunity for public comment, to Congress on—

(A) methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d) of this section;

(B) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risks;

(C) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, any uncertainties in risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and

(D) recommendations as to legislation regarding such remaining risk.

(2) Emission standards

(A) If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d) of this section, promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) of this section and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

(B) Nothing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator's interpretation of this section, as in effect before November 15, 1990, and set forth in the Federal Register of September 14, 1989 (54 Federal Register 38044).

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under subsection (d) of this section for each source category or subcategory concerned. In the case of categories or subcategories for which standards under subsection (d) of this section are required to be promulgated within 2 years after November 15, 1990, the Administrator shall have 9 years after promulgation of the standards under subsection (d) of this section to make the determination under the preceding sentence and, if required, to promulgate the standards under this paragraph.

(3) Effective date

Any emission standard established pursuant to this subsection shall become effective upon promulgation.

(4) Prohibition

No air pollutant to which a standard under this subsection applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

(A) such standard shall not apply until 90 days after its effective date, and

(B) the Administrator may grant a waiver permitting such source a period of up to 2 years after the effective date of a standard to comply with the standard if the Administrator finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(5) Area sources

The Administrator shall not be required to conduct any review under this subsection or promulgate emission limitations under this subsection for any category or subcategory of area sources that is listed pursuant to subsection (c)(3) of this section and for which an emission standard is promulgated pursuant to subsection (d)(5) of this section.

(6) Unique chemical substances

In establishing standards for the control of unique chemical substances of listed pollutants without CAS numbers under this subsection, the Administrator shall establish such standards with respect to the health and environmental effects of the substances actually emitted by sources and direct transformation byproducts of such emissions in the categories and subcategories.

(g) Modifications

(1) Offsets

(A) A physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous, pursuant to guidance issued by the Administrator under subparagraph (B). The owner or

operator of such source shall submit a showing to the Administrator (or the State) that such increase has been offset under the preceding sentence.

(B) The Administrator shall, after notice and opportunity for comment and not later than 18 months after November 15, 1990, publish guidance with respect to implementation of this subsection. Such guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants listed under subsection (b) of this section sufficient to facilitate the offset showing authorized by subparagraph (A). Such guidance shall not authorize offsets between pollutants where the increased pollutant (or more than one pollutant in a stream of pollutants) causes adverse effects to human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutant(s).

(2) Construction, reconstruction and modifications

(A) After the effective date of a permit program under subchapter V of this chapter in any State, no person may modify a major source of hazardous air pollutants in such State, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for existing sources will be met. Such determination shall be made on a case-by-case basis where no applicable emissions limitations have been established by the Administrator.

(B) After the effective date of a permit program under subchapter V of this chapter in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

(3) Procedures for modifications

The Administrator (or the State) shall establish reasonable procedures for assuring that the requirements applying to modifications under this section are reflected in the permit.

(h) Work practice standards and other requirements

(1) In general

For purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f) of this section. In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) Definition

For the purpose of this subsection, the phrase ''not feasible to prescribe or enforce an emission standard'' means any situation in which the Administrator determines that—

(A) a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or

(B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(3) Alternative standard

If after notice and opportunity for comment, the owner or operator of any source establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Numerical standard required

Any standard promulgated under paragraph (1) shall be promulgated in terms of an emission standard whenever it is feasible to promulgate and enforce a standard in such terms.

(i) Schedule for compliance

(1) Preconstruction and operating requirements

After the effective date of any emission standard, limitation, or regulation under subsection (d), (f) or (h) of this section, no person may construct any new major source or reconstruct any existing major source subject to such emission standard, regulation or limitation unless the Administrator (or a State with a permit program approved under subchapter V of this chapter) determines that such source, if properly constructed, reconstructed and operated, will comply with the standard, regulation or limitation.

(2) Special rule

Notwithstanding the requirements of paragraph (1), a new source which commences construction or reconstruction after a standard, limitation or regulation applicable to such source is proposed and before such standard, limitation or regulation is promulgated shall not be required to comply with such promulgated standard until the date 3 years after the date of promulgation if—

(A) the promulgated standard, limitation or regulation is more stringent than the standard, limitation or regulation proposed; and

(B) the source complies with the standard, limitation, or regulation as proposed during the 3-year period immediately after promulgation.

(3) Compliance schedule for existing sources

(A) After the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided in subparagraph (B) and paragraphs (4) through (8).

(B) The Administrator (or a State with a program approved under subchapter V of this chapter) may issue a permit that grants an extension permitting an existing source up to 1 additional year to comply with standards under subsection (d) of this section if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 4-year compliance time is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under subsection (b) of this section.

(4) Presidential exemption

The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

(5) Early reduction

(A) The Administrator (or a State acting pursuant to a permit program approved under subchapter V of this chapter) shall issue a permit allowing an existing source, for which the owner or operator demonstrates that the source has achieved a reduction of 90 per centum or more in emissions of hazardous air pollutants (95 per centum in the case of hazardous air pollutants which are particulates) from the source, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under subsection (d) of this section for a period of 6 years from the compliance date for the otherwise applicable standard, provided that such reduction is achieved before the otherwise applicable standard under subsection (d) of this section is first proposed. Nothing in this paragraph shall preclude a State from requiring reductions in excess of those specified in this subparagraph as a condition of granting the extension authorized by the previous sentence.

(B) An existing source which achieves the reduction referred to in subparagraph (A) after the proposal of an applicable standard but before January 1, 1994, may qualify under subparagraph (A), if the source makes an enforceable commitment to achieve such reduction before the proposal of the standard. Such commitment shall be enforceable to the same extent as a regulation under this section.

(C) The reduction shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987, provided that, there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures. The Administrator may allow a source to use a baseline year of 1985 or 1986 provided that the source can demonstrate to the satisfaction of the Administrator that emissions data for the source reflects verifiable data based on information for such source, received by the Administrator prior to November 15, 1990, pursuant to an information request issued under section 7414 of this title.

(D) For each source granted an alternative emission limitation under this paragraph there shall be established by a permit issued pursuant to subchapter V of this chapter an enforceable emission limitation for hazardous air pollutants reflecting the reduction which qualifies the source for an alternative emission limitation under this paragraph. An alternative emission limitation under this paragraph shall not be available with respect to standards or requirements promulgated pursuant to subsection (f) of this section and the Administrator shall, for the purpose of determining whether a standard under subsection (f) of this section is necessary, review emissions from sources granted an alternative emission limitation under this paragraph at the same time that other sources in the category or subcategory are reviewed.

(E) With respect to pollutants for which high risks of adverse public health effects may be associated with exposure to small quantities including, but not limited to, chlorinated dioxins and furans, the Administrator shall by regulation limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 per centum reduction in such high-risk pollutants qualifying for an alternative emissions limitation under this paragraph.

(6) Other reductions

Notwithstanding the requirements of this section, no existing source that has installed—

(A) best available control technology (as defined in section 7479(3) of this title), or

(B) technology required to meet a lowest achievable emission rate (as defined in section 7501 of this title),

prior to the promulgation of a standard under this section applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to an action described in subparagraph (A) or (B) shall be required to comply with such standard under this section until the date 5 years after the date on which

such installation or reduction has been achieved, as determined by the Administrator. The Administrator may issue such rules and guidance as are necessary to implement this paragraph.

(7) Extension for new sources

A source for which construction or reconstruction is commenced after the date an emission standard applicable to such source is proposed pursuant to subsection (d) of this section but before the date an emission standard applicable to such source is proposed pursuant to subsection (f) of this section shall not be required to comply with the emission standard under subsection (f) of this section until the date 10 years after the date construction or reconstruction is commenced.

(8) Coke ovens

(A) Any coke oven battery that complies with the emission limitations established under subsection (d)(8)(C) of this section, subparagraph (B), and subparagraph (C), and complies with the provisions of subparagraph (E), shall not be required to achieve emission limitations promulgated under subsection (f) of this section until January 1, 2020.

(B)(i) Not later than December 31, 1992, the Administrator shall promulgate emission limitations for coke oven emissions from coke oven batteries. Notwithstanding paragraph (3) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 1998. Such emission limitations shall reflect the lowest achievable emission rate as defined in section 7501 of this title for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than—

(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

with an exclusion for emissions during the period after the closing of self-sealing oven doors (or the total mass emissions equivalent). The rulemaking in which such emission limitations are promulgated shall also establish an appropriate measurement methodology for determining compliance with such emission limitations, and shall establish such emission limitations in terms of an equivalent level of mass emissions reduction from a coke oven battery, unless the Administrator finds that such a mass emissions standard would not be practicable or enforceable. Such measurement methodology, to the extent it measures leaking doors, shall take into consideration alternative test methods that reflect the best technology and practices actually applied in the affected industries, and shall assure that the final test methods are consistent with the performance of such best technology and practices.

(ii) If the Administrator fails to promulgate such emission limitations under this subparagraph prior to the effective date of such emission limitations, the emission limitations applicable to coke oven batteries under this subparagraph shall be—

(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

or the total mass emissions equivalent (if the total mass emissions equivalent is determined to be practicable and enforceable), with no exclusion for emissions during the period after the closing of self-sealing oven doors.

(C) Not later than January 1, 2007, the Administrator shall review the emission limitations promulgated under subparagraph (B) and revise, as necessary, such emission limitations to reflect the lowest achievable emission rate as defined in section 7501 of this title at the time for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than the emission limitation promulgated under subparagraph (B). Notwithstanding paragraph (2) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 2010.

(D) At any time prior to January 1, 1998, the owner or operator of any coke oven battery may elect to comply with emission limitations promulgated under subsection (f) of this section by the date such emission limitations would otherwise apply to such coke oven battery, in lieu of the emission limitations and the compliance dates provided under subparagraphs (B) and (C) of this paragraph. Any such owner or operator shall be legally bound to comply with such emission limitations promulgated under subsection (f) of this section with respect to such coke oven battery as of January 1, 2003. If no such emission limitations have been promulgated for such coke oven battery, the Administrator shall promulgate such emission limitations in accordance with subsection (f) of this section for such coke oven battery.

(E) Coke oven batteries qualifying for an extension under subparagraph (A) shall make available not later than January 1, 2000, to the surrounding communities the results of any risk assessment performed by the Administrator to determine the appropriate level of any emission standard established by the Administrator pursuant to subsection (f) of this section.

(F) Notwithstanding the provisions of this section, reconstruction of any source of coke oven emissions qualifying for an extension under this paragraph shall not subject such source to emission limitations under subsection (f) of this section more stringent than those established under subparagraphs (B) and (C) until January 1, 2020. For the purposes of this subparagraph, the term ''reconstruction'' includes the replacement of existing coke oven battery capacity with new coke oven batteries of comparable or lower capacity and lower potential emissions.

(j) Equivalent emission limitation by permit

(1) Effective date

The requirements of this subsection shall apply in each State beginning on the effective date of a permit program established pursuant to subchapter V of this chapter in such State, but not prior to the date 42 months after November 15, 1990.

(2) Failure to promulgate a standard

In the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e)(1) and (3) of this section, and beginning 18 months after such date (but not prior to the effective date of a permit program under subchapter V of this chapter), the owner or operator of any major source in such category or subcategory shall submit a permit application under paragraph (3) and such owner or operator shall also comply with paragraphs (5) and (6).

(3) Applications

By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit. If the owner or operator of a source has submitted a timely and complete application for a permit required by this subsection, any failure to have a permit shall not be a violation of paragraph (2), unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application. The Administrator shall not later than 18 months after November 15, 1990, and after notice and opportunity for comment, establish requirements for applications under this subsection including a standard application form and criteria for determining in a timely manner the completeness of applications.

(4) Review and approval

Permit applications submitted under this subsection shall be reviewed and approved or disapproved according to the provisions of section 7661d of this title. In the event that the Administrator (or the State) disapproves a permit application submitted under this subsection or determines that the application is incomplete, the applicant shall have up to 6 months to revise the application to meet the objections of the Administrator (or the State).

(5) Emission limitation

The permit shall be issued pursuant to subchapter V of this chapter and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d) of this section. In the alternative, if the applicable criteria are met, the permit may contain an emissions limitation established according to the provisions of subsection (i)(5) of this section. For purposes of the preceding sentence, the reduction required by subsection (i)(5)(A) of this section shall be achieved by the date on which the relevant standard should have been promulgated under subsection (d) of this section. No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i) of this section.

(6) Applicability of subsequent standards

If the Administrator promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to paragraph (5), provided that the source shall have the compliance period provided under subsection (i) of this section. If the Administrator promulgates a standard under subsection (d) of this section that would be applicable to the source in lieu of the emission limitation established by permit under this subsection after the date on which the permit has been issued, the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

(k) Area source program

(1) Findings and purpose

The Congress finds that emissions of hazardous air pollutants from area sources may individually, or in the aggregate, present significant risks to public health in urban areas. Considering the large number of persons exposed and the risks of carcinogenic and other adverse health effects from hazardous air pollutants, ambient concentrations characteristic of large urban areas should be reduced to levels substantially below those currently experienced. It is the purpose of this subsection to achieve a substantial reduction in emissions of hazardous air pollutants from area sources and an equivalent reduction in the public health risks associated with such sources including a reduction of not less than 75 per centum in the incidence of cancer attributable to emissions from such sources.

(2) Research program

The Administrator shall, after consultation with State and local air pollution control officials, conduct a program of research with respect to sources of hazardous air pollutants in urban areas and shall include within such program—

(A) ambient monitoring for a broad range of hazardous air pollutants (including, but not limited to, volatile organic compounds, metals, pesticides and products of incomplete combustion) in a representative number of urban locations;

(B) analysis to characterize the sources of such pollution with a focus on area sources and the contribution that such sources make to public health risks from hazardous air pollutants; and

(C) consideration of atmospheric transformation and other factors which can elevate public health risks from such pollutants.

Health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the role of such pollutants as precursors of ozone or acid aerosol formation. The Administrator shall report the preliminary results of such research not later than 3 years after November 15, 1990.

(3) National strategy

(A) Considering information collected pursuant to the monitoring program authorized by paragraph (2), the Administrator shall, not later than 5 years after November 15, 1990, and after notice and opportunity for public comment, prepare and transmit to the Congress a comprehensive strategy to control emissions of hazardous air pollutants from area sources in urban areas.

(B) The strategy shall—

(i) identify not less than 30 hazardous air pollutants which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas and that are or will be listed pursuant to subsection (b) of this section, and

(ii) identify the source categories or subcategories emitting such pollutants that are or will be listed pursuant to subsection (c) of this section. When identifying categories and subcategories of sources under this subparagraph, the Administrator shall assure that sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to standards pursuant to subsection (d) of this section.

(C) The strategy shall include a schedule of specific actions to substantially reduce the public health risks posed by the release of hazardous air pollutants from area sources that will be implemented by the Administrator under the authority of this or other laws (including, but not limited to, the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the Federal Insecticide, Fungicide and Rodenticide Act [7 U.S.C. 136 et seq.] and the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]) or by the States. The strategy shall achieve a reduction in the incidence of cancer attributable to exposure to hazardous air pollutants emitted by stationary sources of not less than 75 per centum, considering control of emissions of hazardous air pollutants from all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws.

(D) The strategy may also identify research needs in monitoring, analytical methodology, modeling or pollution control techniques and recommendations for changes in law that would further the goals and objectives of this subsection.

(E) Nothing in this subsection shall be interpreted to preclude or delay implementation of actions with respect to area sources of hazardous air pollutants under consideration pursuant to this or any other law and that may be promulgated before the strategy is prepared.

(F) The Administrator shall implement the strategy as expeditiously as practicable assuring that all sources are in compliance with all requirements not later than 9 years after November 15, 1990.

(G) As part of such strategy the Administrator shall provide for ambient monitoring and emissions modeling in urban areas as appropriate to demonstrate that the goals and objectives of the strategy are being met.

(4) Areawide activities

In addition to the national urban air toxics strategy authorized by paragraph (3), the Administrator shall also encourage and support areawide strategies developed by State or local air pollution control agencies that are intended to reduce risks from emissions by area sources within a particular urban area. From the funds available for grants under this section, the Administrator shall set aside not less than 10 per centum to support areawide strategies addressing hazardous air pollutants emitted by area sources and shall award such funds on a demonstration basis to those States with innovative and effective strategies. At the request of State or local air pollution control officials, the Administrator shall prepare guidelines for control technologies or management practices which may be applicable to various categories or subcategories of area sources.

(5) Report

The Administrator shall report to the Congress at intervals not later than 8 and 12 years after November 15, 1990, on actions taken under this subsection and other parts of this chapter to reduce the risk to public health posed by the release of hazardous air pollutants from area sources. The reports shall also identify specific metropolitan areas that continue to experience high risks to public health as the result of emissions from area sources.

***(l)* State programs**

(1) In general

Each State may develop and submit to the Administrator for approval a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emission standards and other requirements for air pollutants subject to this section or requirements for the prevention and mitigation of accidental releases pursuant to subsection (r) of this section. A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements but shall not include authority to set standards

less stringent than those promulgated by the Administrator under this chapter.

(2) Guidance

Not later than 12 months after November 15, 1990, the Administrator shall publish guidance that would be useful to the States in developing programs for submittal under this subsection. The guidance shall also provide for the registration of all facilities producing, processing, handling or storing any substance listed pursuant to subsection (r) of this section in amounts greater than the threshold quantity. The Administrator shall include as an element in such guidance an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b) of this section.

(3) Technical assistance

The Administrator shall establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and ecological risk assessment, risk analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section 7403 of this title to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with not-for-profit organizations. The Administrator may conduct research on methods for preventing, measuring and controlling emissions and evaluating associated health and environment risks. All information collected under this paragraph shall be available to the public.

(4) Grants

Upon application of a State, the Administrator may make grants, subject to such terms and conditions as the Administrator deems appropriate, to such State for the purpose of assisting the State in developing and implementing a program for submittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollutants or extremely hazardous substances other than those specifically subject to this section. Grants under this paragraph may include support for high-risk point source review as provided in paragraph (2) and support for the development and implementation of areawide area source programs pursuant to subsection (k) of this section.

(5) Approval or disapproval

Not later than 180 days after receiving a program submitted by a State, and after notice and opportunity for public comment, the Administrator shall either approve or disapprove such program. The Administrator shall disapprove any program submitted by a State, if the Administrator determines that—

(A) the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the Administrator under paragraph (2) or is not likely to satisfy, in whole or in part, the objectives of this chapter.

If the Administrator disapproves a State program, the Administrator shall notify the State of any revisions or modifications necessary to obtain approval. The State may revise and resubmit the proposed program for review and approval pursuant to the provisions of this subsection.

(6) Withdrawal

Whenever the Administrator determines, after public hearing, that a State is not administering and enforcing a program approved pursuant to this subsection in accordance with the guidance published pursuant to paragraph (2) or the requirements of paragraph (5), the Administrator shall so notify the State and, if action which will assure prompt compliance is not taken within 90 days, the Administrator shall withdraw approval of the program. The Administrator shall not withdraw approval of any program unless the State shall have been notified and the reasons for withdrawal shall have been stated in writing and made public.

(7) Authority to enforce

Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard or requirement under this section.

(8) Local program

The Administrator may, after notice and opportunity for public comment, approve a program developed and submitted by a local air pollution control agency (after consultation with the State) pursuant to this subsection and any such agency implementing an approved program may take any action authorized to be taken by a State under this section.

(9) Permit authority

Nothing in this subsection shall affect the authorities and obligations of the Administrator or the State under subchapter V of this chapter.

(m) Atmospheric deposition to Great Lakes and coastal waters

(1) Deposition assessment

The Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall conduct a program to identify and assess the extent of atmospheric deposition of hazardous air pollutants (and in the discretion of the Administrator, other air pollutants) to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters. As part of such program, the Administrator shall—

(A) monitor the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters, including monitoring of the Great Lakes through the monitoring network established pursuant to paragraph (2) of this subsection and designing and deploying an atmospheric monitoring network for coastal waters pursuant to paragraph (4);

(B) investigate the sources and deposition rates of atmospheric deposition of air pollutants (and their atmospheric transformation precursors);

(C) conduct research to develop and improve monitoring methods and to determine the relative contribution of atmospheric pollutants to total pollution loadings to the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal waters;

(D) evaluate any adverse effects to public health or the environment caused by such deposition (including effects resulting from indirect exposure pathways) and assess the contribution of such deposition to violations of water quality standards established pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and drinking water standards established pursuant to the Safe Drinking Water Act [42 U.S.C. 300f et seq.]; and

(E) sample for such pollutants in biota, fish, and wildlife of the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters and characterize the sources of such pollutants.

(2) Great Lakes monitoring network

The Administrator shall oversee, in accordance with Annex 15 of the Great Lakes Water Quality Agreement, the establishment and operation of a Great Lakes atmospheric deposition network to monitor atmospheric deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) to the Great Lakes.

(A) As part of the network provided for in this paragraph, and not later than December 31, 1991, the Administrator shall establish in each of the 5 Great Lakes at least 1 facility capable of monitoring the atmospheric deposition of hazardous air pollutants in both dry and wet conditions.

(B) The Administrator shall use the data provided by the network to identify and track the movement of hazardous air pollutants through the Great Lakes, to determine the portion of water pollution loadings attributable to atmospheric deposition of such pollutants, and to support development of remedial action plans and other management plans as required by the Great Lakes Water Quality Agreement.

(C) The Administrator shall assure that the data collected by the Great Lakes atmospheric deposition monitoring network is in a format compatible with databases sponsored by the International Joint Commission, Canada, and the several States of the Great Lakes region.

(3) Monitoring for the Chesapeake Bay and Lake Champlain

The Administrator shall establish at the Chesapeake Bay and Lake Champlain atmospheric deposition stations to monitor deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) within the Chesapeake Bay and Lake Champlain watersheds. The Administrator shall determine the role of air deposition in the pollutant loadings of the Chesapeake Bay and Lake Champlain, investigate the sources of air pollutants deposited in the watersheds, evaluate the health and environmental effects of such pollutant loadings, and shall sample such pollutants in biota, fish and wildlife within the watersheds, as necessary to characterize such effects.

(4) Monitoring for coastal waters

The Administrator shall design and deploy atmospheric deposition monitoring networks for coastal waters and their watersheds and shall make any information collected through such networks available to the public. As part of this effort, the Administrator shall conduct research to develop and improve deposition monitoring methods, and to determine the relative contribution of atmospheric pollutants to pollutant loadings. For purposes of this subsection, ''coastal waters'' shall mean estuaries selected pursuant to section 320(a)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1330(a)(2)(A)] or listed pursuant to section 320(a)(2)(B) of such Act [33 U.S.C. 1330(a)(2)(B)] or estuarine research reserves designated pursuant to section 1461 of title 16.

(5) Report

Within 3 years of November 15, 1990, and biennially thereafter, the Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall submit to the Congress a report on the results of any monitoring, studies, and investigations conducted pursuant to this subsection. Such report shall include, at a minimum, an assessment of—

(A) the contribution of atmospheric deposition to pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(B) the environmental and public health effects of any pollution which is attributable to atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(C) the source or sources of any pollution to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters which is attributable to atmospheric deposition;

(D) whether pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain or coastal waters cause or contribute to exceedances of drinking water standards pursuant to the Safe Drinking Water Act [42 U.S.C. 300f et seq.] or water quality standards pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] or, with respect to the Great Lakes, exceedances of the specific objectives of the Great Lakes Water Quality Agreement; and

(E) a description of any revisions of the requirements, standards, and limitations pursuant to this chapter and other applicable Federal laws as are necessary to assure pro-

tection of human health and the environment.

(6) Additional regulation

As part of the report to Congress, the Administrator shall determine whether the other provisions of this section are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects, including such effects resulting from indirect exposure pathways, associated with atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters of hazardous air pollutants (and their atmospheric transformation products). The Administrator shall take into consideration the tendency of such pollutants to bioaccumulate. Within 5 years after November 15, 1990, the Administrator shall, based on such report and determination, promulgate, in accordance with this section, such further emission standards or control measures as may be necessary and appropriate to prevent such effects, including effects due to bioaccumulation and indirect exposure pathways. Any requirements promulgated pursuant to this paragraph with respect to coastal waters shall only apply to the coastal waters of the States which are subject to section 7627(a) of this title.

(n) Other provisions

(1) Electric utility steam generating units

(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) of this section after imposition of the requirements of this chapter. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

(B) The Administrator shall conduct, and transmit to the Congress not later than 4 years after November 15, 1990, a study of mercury emissions from electric utility steam generating units, municipal waste combustion units, and other sources, including area sources. Such study shall consider the rate and mass of such emissions, the health and environmental effects of such emissions, technologies which are available to control such emissions, and the costs of such technologies.

(C) The National Institute of Environmental Health Sciences shall conduct, and transmit to the Congress not later than 3 years after November 15, 1990, a study to determine the threshold level of mercury exposure below which adverse human health effects are not expected to occur. Such study shall include a threshold for mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health.

(2) Coke oven production technology study

(A) The Secretary of the Department of Energy and the Administrator shall jointly undertake a 6-year study to assess coke oven production emission control technologies and to assist in the development and commercialization of technically practicable and economically viable control technologies which have the potential to significantly reduce emissions of hazardous air pollutants from coke oven production facilities. In identifying control technologies, the Secretary and the Administrator shall consider the range of existing coke oven operations and battery design and the availability of sources of materials for such coke ovens as well as alternatives to existing coke oven production design.

(B) The Secretary and the Administrator are authorized to enter into agreements with persons who propose to develop, install and operate coke production emission control technologies which have the potential for significant emissions reductions of hazardous air pollutants provided that Federal funds shall not exceed 50 per centum of the cost of any project assisted pursuant to this paragraph.

(C) On completion of the study, the Secretary shall submit to Congress a report on the results of the study and shall make recommendations to the Administrator identifying practicable and economically viable control technologies for coke oven production facilities to reduce residual risks remaining after implementation of the standard under subsection (d) of this section.

(D) There are authorized to be appropriated $5,000,000 for each of the fiscal years 1992 through 1997 to carry out the program authorized by this paragraph.

(3) Publicly owned treatment works

The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions. The Administrator may prescribe uniform sampling, modeling and risk assessment methods for use in implementing this subsection.

(4) Oil and gas wells; pipeline facilities

(A) Notwithstanding the provisions of subsection (a) of this section, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in

a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

(B) The Administrator shall not list oil and gas production wells (with its associated equipment) as an area source category under subsection (c) of this section, except that the Administrator may establish an area source category for oil and gas production wells located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of 1 million, if the Administrator determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

(5) Hydrogen sulfide

The Administrator is directed to assess the hazards to public health and the environment resulting from the emission of hydrogen sulfide associated with the extraction of oil and natural gas resources. To the extent practicable, the assessment shall build upon and not duplicate work conducted for an assessment pursuant to section 8002(m) of the Solid Waste Disposal Act [42 U.S.C. 6982(m)] and shall reflect consultation with the States. The assessment shall include a review of existing State and industry control standards, techniques and enforcement. The Administrator shall report to the Congress within 24 months after November 15, 1990, with the findings of such assessment, together with any recommendations, and shall, as appropriate, develop and implement a control strategy for emissions of hydrogen sulfide to protect human health and the environment, based on the findings of such assessment, using authorities under this chapter including sections[3] 7411 of this title and this section.

(6) Hydrofluoric acid

Not later than 2 years after November 15, 1990, the Administrator shall, for those regions of the country which do not have comprehensive health and safety regulations with respect to hydrofluoric acid, complete a study of the potential hazards of hydrofluoric acid and the uses of hydrofluoric acid in industrial and commercial applications to public health and the environment considering a range of events including worst-case accidental releases and shall make recommendations to the Congress for the reduction of such hazards, if appropriate.

(7) RCRA facilities

In the case of any category or subcategory of sources the air emissions of which are regulated under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], the Administrator shall take into account any regulations of such emissions which are promulgated under such subtitle and shall, to the maximum extent practicable and consistent with the provisions of this section, ensure that the requirements of such subtitle and this section are consistent.

(*o*) National Academy of Sciences study

(1) Request of the Academy

Within 3 months of November 15, 1990, the Administrator shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of—

(A) risk assessment methodology used by the Environmental Protection Agency to determine the carcinogenic risk associated with exposure to hazardous air pollutants from source categories and subcategories subject to the requirements of this section; and

(B) improvements in such methodology.

(2) Elements to be studied

In conducting such review, the National Academy of Sciences should consider, but not be limited to, the following—

(A) the techniques used for estimating and describing the carcinogenic potency to humans of hazardous air pollutants; and

(B) the techniques used for estimating exposure to hazardous air pollutants (for hypothetical and actual maximally exposed individuals as well as other exposed individuals).

(3) Other health effects of concern

To the extent practicable, the Academy shall evaluate and report on the methodology for assessing the risk of adverse human health effects other than cancer for which safe thresholds of exposure may not exist, including, but not limited to, inheritable genetic mutations, birth defects, and reproductive dysfunctions.

(4) Report

A report on the results of such review shall be submitted to the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, the Risk Assessment and Management Commission established by section 303 of the Clean Air Act Amendments of 1990 and the Administrator not later than 30 months after November 15, 1990.

(5) Assistance

The Administrator shall assist the Academy in gathering any information the Academy deems necessary to carry out this subsection. The Administrator may use any authority under this chapter to obtain information from any person, and to require any person to conduct tests, keep and produce records, and make reports respecting research or other activities conducted by such person as necessary to carry out this subsection.

(6) Authorization

Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out this subsection.

(7) Guidelines for carcinogenic risk assessment

The Administrator shall consider, but need not adopt, the recommendations contained in

[3] So in original. Probably should be ''section''.

the report of the National Academy of Sciences prepared pursuant to this subsection and the views of the Science Advisory Board, with respect to such report. Prior to the promulgation of any standard under subsection (f) of this section, and after notice and opportunity for comment, the Administrator shall publish revised Guidelines for Carcinogenic Risk Assessment or a detailed explanation of the reasons that any recommendations contained in the report of the National Academy of Sciences will not be implemented. The publication of such revised Guidelines shall be a final Agency action for purposes of section 7607 of this title.

(p) Mickey Leland National Urban Air Toxics Research Center

(1) Establishment

The Administrator shall oversee the establishment of a National Urban Air Toxics Research Center, to be located at a university, a hospital, or other facility capable of undertaking and maintaining similar research capabilities in the areas of epidemiology, oncology, toxicology, pulmonary medicine, pathology, and biostatistics. The center shall be known as the Mickey Leland National Urban Air Toxics Research Center. The geographic site of the National Urban Air Toxics Research Center should be further directed to Harris County, Texas, in order to take full advantage of the well developed scientific community presence on-site at the Texas Medical Center as well as the extensive data previously compiled for the comprehensive monitoring system currently in place.

(2) Board of Directors

The National Urban Air Toxics Research Center shall be governed by a Board of Directors to be comprised of 9 members, the appointment of which shall be allocated pro rata among the Speaker of the House, the Majority Leader of the Senate and the President. The members of the Board of Directors shall be selected based on their respective academic and professional backgrounds and expertise in matters relating to public health, environmental pollution and industrial hygiene. The duties of the Board of Directors shall be to determine policy and research guidelines, submit views from center sponsors and the public and issue periodic reports of center findings and activities.

(3) Scientific Advisory Panel

The Board of Directors shall be advised by a Scientific Advisory Panel, the 13 members of which shall be appointed by the Board, and to include eminent members of the scientific and medical communities. The Panel membership may include scientists with relevant experience from the National Institute of Environmental Health Sciences, the Center for Disease Control, the Environmental Protection Agency, the National Cancer Institute, and others, and the Panel shall conduct peer review and evaluate research results. The Panel shall assist the Board in developing the research agenda, reviewing proposals and applications, and advise on the awarding of research grants.

(4) Funding

The center shall be established and funded with both Federal and private source funds.

(q) Savings provision

(1) Standards previously promulgated

Any standard under this section in effect before the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990] shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) of this section within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. If a timely petition for review of any such standard under section 7607 of this title is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(2) Special rule

Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from such plants and stacks.

(3) Other categories

Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from non-Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission, coal-fired utility and industrial boilers, underground uranium mines, surface uranium mines, and disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

(4) Medical facilities

Notwithstanding paragraph (1), no standard promulgated under this section prior to November 15, 1990, with respect to medical research or treatment facilities shall take effect

for two years following November 15, 1990, unless the Administrator makes a determination pursuant to a rulemaking under subsection (d)(9) of this section. If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such facilities does not provide an ample margin of safety to protect public health, the requirements of this section shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in subsection (d)(9) of this section.

(r) Prevention of accidental releases

(1) Purpose and general duty

It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654 of title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. For purposes of this paragraph, the provisions of section 7604 of this title shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

(2) Definitions

(A) The term ''accidental release'' means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(B) The term ''regulated substance'' means a substance listed under paragraph (3).

(C) The term ''stationary source'' means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

(D) The term ''retail facility'' means a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

(3) List of substances

The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know[4] Act of 1986 [42 U.S.C. 11001 et seq.], with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under subchapter VI of this chapter shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b) of this section.

(4) Factors to be considered

In listing substances under paragraph (3), the Administrator—

(A) shall consider—

(i) the severity of any acute adverse health effects associated with accidental releases of the substance;

(ii) the likelihood of accidental releases of the substance; and

(iii) the potential magnitude of human exposure to accidental releases of the substance; and

(B) shall not list a flammable substance when used as a fuel or held for sale as a fuel at a retail facility under this subsection solely because of the explosive or flammable properties of the substance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or impact of the explosion.

(5) Threshold quantity

At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the

[4] So in original. Probably should be ''Right-To-Know''.

substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

(6) Chemical Safety Board

(A) There is hereby established an independent safety board to be known as the Chemical Safety and Hazard Investigation Board.

(B) The Board shall consist of 5 members, including a Chairperson, who shall be appointed by the President, by and with the advice and consent of the Senate. Members of the Board shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, toxicology, or air pollution regulation. The terms of office of members of the Board shall be 5 years. Any member of the Board, including the Chairperson, may be removed for inefficiency, neglect of duty, or malfeasance in office. The Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board.

(C) The Board shall—

(i) investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages;

(ii) issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible and may include in such reports proposed rules or orders which should be issued by the Administrator under the authority of this section or the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.] to prevent or minimize the consequences of any release of substances that may cause death, injury or other serious adverse effects on human health or substantial property damage as the result of an accidental release; and

(iii) establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.

(D) The Board may utilize the expertise and experience of other agencies.

(E) The Board shall coordinate its activities with investigations and studies conducted by other agencies of the United States having a responsibility to protect public health and safety. The Board shall enter into a memorandum of understanding with the National Transportation Safety Board to assure coordination of functions and to limit duplication of activities which shall designate the National Transportation Safety Board as the lead agency for the investigation of releases which are transportation related. The Board shall not be authorized to investigate marine oil spills, which the National Transportation Safety Board is authorized to investigate. The Board shall enter into a memorandum of understanding with the Occupational Safety and Health Administration so as to limit duplication of activities. In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.

(F) The Board is authorized to conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which indicates the presence of a potential hazard or hazards. To the extent practicable, the Board shall conduct such studies in cooperation with other Federal agencies having emergency response authorities, State and local governmental agencies and associations and organizations from the industrial, commercial, and nonprofit sectors.

(G) No part of the conclusions, findings, or recommendations of the Board relating to any accidental release or the investigation thereof shall be admitted as evidence or used in any action or suit for damages arising out of any matter mentioned in such report.

(H) Not later than 18 months after November 15, 1990, the Board shall publish a report accompanied by recommendations to the Administrator on the use of hazard assessments in preventing the occurrence and minimizing the consequences of accidental releases of extremely hazardous substances. The recommendations shall include a list of extremely hazardous substances which are not regulated substances (including threshold quantities for such substances) and categories of stationary sources for which hazard assessments would be an appropriate measure to aid in the prevention of accidental releases and to minimize the consequences of those releases that do occur. The recommendations shall also include a description of the information and analysis which would be appropriate to include in any hazard assessment. The Board shall also make recommendations with respect to the role of risk management plans as required by para-

graph (8)(B)[5] in preventing accidental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

(I) Whenever the Board submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Administrator will—

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;[6]

(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Administrator setting forth the reasons for such determination.

(J) The Board may make recommendations with respect to accidental releases to the Secretary of Labor. Whenever the Board submits such recommendation, the Secretary shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator[7] shall indicate whether the Secretary will—

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;[6]

(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Secretary setting forth the reasons for such determination.

(K) Within 2 years after November 15, 1990, the Board shall issue a report to the Administrator of the Environmental Protection Agency and to the Administrator of the Occupational Safety and Health Administration recommending the adoption of regulations for the preparation of risk management plans and general requirements for the prevention of accidental releases of regulated substances into the ambient air (including recommendations for listing substances under paragraph (3)) and for the mitigation of the potential adverse effect on human health or the environment as a result of accidental releases which should be applicable to any stationary source handling any regulated substance in more than threshold amounts. The Board may include proposed rules or orders which should be issued by the Administrator under authority of this subsection or by the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.]. Any such recommendations shall be specific and shall identify the regulated substance or class of regulated substances (or other substances) to which the recommendations apply. The Administrator shall consider such recommendations before promulgating regulations required by paragraph (7)(B).

(L) The Board, or upon authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Board, may for the purpose of carrying out duties authorized by subparagraph (C)—

(i) hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise attendance and testimony of such witnesses and the production of evidence and may require by order that any person engaged in the production, processing, handling, or storage of extremely hazardous substances submit written reports and responses to requests and questions within such time and in such form as the Board may require; and

(ii) upon presenting appropriate credentials and a written notice of inspection authority, enter any property where an accidental release causing a fatality, serious injury or substantial property damage has occurred and do all things therein necessary for a proper investigation pursuant to subparagraph (C) and inspect at reasonable times records, files, papers, processes, controls, and facilities and take such samples as are relevant to such investigation.

Whenever the Administrator or the Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives shall have the same rights to participate in such inspections as provided in the Occupational Safety and Health Act [29 U.S.C. 651 et seq.].

(M) In addition to that described in subparagraph (L), the Board may use any information gathering authority of the Administrator under this chapter, including the subpoena power provided in section 7607(a)(1) of this title.

(N) The Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board is authorized without regard to section 5 of title 41 to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person.

(O) After the effective date of any reporting requirement promulgated pursuant to subparagraph (C)(iii) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by such subparagraph. The Administrator is authorized to enforce any regulation or require-

[5] So in original. Probably should be paragraph ''(7)(B)''.

[6] So in original. The word ''or'' probably should appear.

[7] So in original. The word ''Administrator'' probably should be ''Secretary''.

ments established by the Board pursuant to subparagraph (C)(iii) using the authorities of sections 7413 and 7414 of this title. Any request for information from the owner or operator of a stationary source made by the Board or by the Administrator under this section shall be treated, for purposes of sections 7413, 7414, 7416, 7420, 7603, 7604 and 7607 of this title and any other enforcement provisions of this chapter, as a request made by the Administrator under section 7414 of this title and may be enforced by the Chairperson of the Board or by the Administrator as provided in such section.

(P) The Administrator shall provide to the Board such support and facilities as may be necessary for operation of the Board.

(Q) Consistent with subsection[8] (G) and section 7414(c) of this title any records, reports or information obtained by the Board shall be available to the Administrator, the Secretary of Labor, the Congress and the public, except that upon a showing satisfactory to the Board by any person that records, reports, or information, or particular part thereof (other than release or emissions data) to which the Board has access, if made public, is likely to cause substantial harm to the person's competitive position, the Board shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, and authorized representatives of the United States concerned with carrying out this chapter or when relevant under any proceeding under this chapter. This subparagraph does not constitute authority to withhold records, reports, or information from the Congress.

(R) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget request, or other budget information, legislative recommendation, prepared testimony for congressional hearings, recommendation or study to the President, the Secretary of Labor, the Administrator, or the Director of the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No report of the Board shall be subject to review by the Administrator or any Federal agency or to judicial review in any court. No officer or agency of the United States shall have authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony, comments, recommendations or reports to any officer or agency of the United States for approval or review prior to the submission of such recommendations, testimony, comments or reports to the Congress. In the performance of their functions as established by this chapter, the members, officers and employees of the Board shall not be responsible to or subject to supervision or direction, in carrying out any duties under this subsection, of any officer or employee or agent of the Environmental Protection Agency, the Department of Labor or any other agency of the United States except that the President may remove any member, officer or employee of the Board for inefficiency, neglect of duty or malfeasance in office. Nothing in this section shall affect the application of title 5 to officers or employees of the Board.

(S) The Board shall submit an annual report to the President and to the Congress which shall include, but not be limited to, information on accidental releases which have been investigated by or reported to the Board during the previous year, recommendations for legislative or administrative action which the Board has made, the actions which have been taken by the Administrator or the Secretary of Labor or the heads of other agencies to implement such recommendations, an identification of priorities for study and investigation in the succeeding year, progress in the development of risk-reduction technologies and the response to and implementation of significant research findings on chemical safety in the public and private sector.

(7) Accident prevention

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable.

(B)(i) Within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of

[8] So in original. Probably should be ''subparagraph''.

such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:

(I) a hazard assessment to assess the potential effects of an accidental release of any regulated substance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental releases;

(II) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source; and

(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 7414(c) of this title. The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

(D) In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation. Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 7413, 7414, 7416, 7420, 7604, and 7607 of this title and other enforcement provisions of this chapter, be treated as a standard in effect under subsection (d) of this section.

(F) Notwithstanding the provisions of subchapter V of this chapter or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such subchapter solely because such source is subject to regulations or requirements under this subsection.

(G) In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of title 29, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(H) PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—

(i) DEFINITIONS.—In this subparagraph:

(I) COVERED PERSON.—The term ''covered person'' means—

(aa) an officer or employee of the United States;

(bb) an officer or employee of an agent or contractor of the Federal Government;

(cc) an officer or employee of a State or local government;

(dd) an officer or employee of an agent or contractor of a State or local government;

(ee) an individual affiliated with an entity that has been given, by a State or local government, responsibility for preventing, planning for, or responding to accidental releases;

(ff) an officer or employee or an agent or contractor of an entity described in item (ee); and

(gg) a qualified researcher under clause (vii).

(II) OFFICIAL USE.—The term ''official use'' means an action of a Federal, State, or local government agency or an entity referred to in subclause (I)(ee) intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(III) OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—The term ''off-site consequence analysis information'' means those portions of a risk management plan, excluding the executive summary of the plan, consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios, and any electronic data base created by the Administrator from those portions.

(IV) RISK MANAGEMENT PLAN.—The term ''risk management plan'' means a risk management plan submitted to the Administrator by an owner or operator of a stationary source under subparagraph (B)(iii).

(ii) REGULATIONS.—Not later than 1 year after August 5, 1999, the President shall—

(I) assess—

(aa) the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence analysis information on the Internet; and

(bb) the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

(II) based on the assessment under subclause (I), promulgate regulations governing the distribution of off-site consequence analysis information in a manner that, in the opinion of the President, minimizes the likelihood of accidental releases and the risk described in subclause (I)(aa) and the likelihood of harm to public health and welfare, and—

(aa) allows access by any member of the public to paper copies of off-site consequence analysis information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction;

(bb) allows other public access to off-site consequence analysis information as appropriate;

(cc) allows access for official use by a covered person described in any of items (cc) through (ff) of clause (i)(I) (referred to in this subclause as a ''State or local covered person'') to off-site consequence analysis information relating to stationary sources located in the person's State;

(dd) allows a State or local covered person to provide, for official use, off-site consequence analysis information relating to stationary sources located in the person's State to a State or local covered person in a contiguous State; and

(ee) allows a State or local covered person to obtain for official use, by request to the Administrator, off-site consequence analysis information that is not available to the person under item (cc).

(iii) AVAILABILITY UNDER FREEDOM OF INFORMATION ACT.—

(I) FIRST YEAR.—Off-site consequence analysis information, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5 during the 1-year period beginning on August 5, 1999.

(II) AFTER FIRST YEAR.—If the regulations under clause (ii) are promulgated on or before the end of the period described in subclause (I), off-site consequence analysis information covered by the regulations, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5 after the end of that period.

(III) APPLICABILITY.—Subclauses (I) and (II) apply to off-site consequence analysis information submitted to the Administrator before, on, or after August 5, 1999.

(iv) AVAILABILITY OF INFORMATION DURING TRANSITION PERIOD.—The Administrator shall make off-site consequence analysis information available to covered persons for official use in a manner that meets the requirements of items (cc) through (ee) of clause (ii)(II), and to the public in a form that does not make available any information concerning the identity or location of stationary sources, during the period—

(I) beginning on August 5, 1999; and

(II) ending on the earlier of the date of promulgation of the regulations under clause (ii) or the date that is 1 year after August 5, 1999.

(v) PROHIBITION ON UNAUTHORIZED DISCLOSURE OF INFORMATION BY COVERED PERSONS.—

(I) IN GENERAL.—Beginning on August 5, 1999, a covered person shall not disclose to the public off-site consequence analysis information in any form, or any statewide or national ranking of identified stationary sources derived from such information, except as authorized by this subparagraph (including the regulations promulgated under clause (ii)). After the end of the 1-year period beginning on August 5, 1999, if regulations have not been promulgated under clause (ii), the preceding sentence shall not apply.

(II) CRIMINAL PENALTIES.—Notwithstanding section 7413 of this title, a covered person that willfully violates a restriction or

prohibition established by this subparagraph (including the regulations promulgated under clause (ii)) shall, upon conviction, be fined for an infraction under section 3571 of title 18 (but shall not be subject to imprisonment) for each unauthorized disclosure of off-site consequence analysis information, except that subsection (d) of such section 3571 shall not apply to a case in which the offense results in pecuniary loss unless the defendant knew that such loss would occur. The disclosure of off-site consequence analysis information for each specific stationary source shall be considered a separate offense. The total of all penalties that may be imposed on a single person or organization under this item shall not exceed $1,000,000 for violations committed during any 1 calendar year.

(III) APPLICABILITY.—If the owner or operator of a stationary source makes off-site consequence analysis information relating to that stationary source available to the public without restriction—

(aa) subclauses (I) and (II) shall not apply with respect to the information; and

(bb) the owner or operator shall notify the Administrator of the public availability of the information.

(IV) LIST.—The Administrator shall maintain and make publicly available a list of all stationary sources that have provided notification under subclause (III)(bb).

(vi) NOTICE.—The Administrator shall provide notice of the definition of official use as provided in clause (i)(III)[9] and examples of actions that would and would not meet that definition, and notice of the restrictions on further dissemination and the penalties established by this chapter to each covered person who receives off-site consequence analysis information under clause (iv) and each covered person who receives off-site consequence analysis information for an official use under the regulations promulgated under clause (ii).

(vii) QUALIFIED RESEARCHERS.—

(I) IN GENERAL.—Not later than 180 days after August 5, 1999, the Administrator, in consultation with the Attorney General, shall develop and implement a system for providing off-site consequence analysis information, including facility identification, to any qualified researcher, including a qualified researcher from industry or any public interest group.

(II) LIMITATION ON DISSEMINATION.—The system shall not allow the researcher to disseminate, or make available on the Internet, the off-site consequence analysis information, or any portion of the off-site consequence analysis information, received under this clause.

(viii) READ-ONLY INFORMATION TECHNOLOGY SYSTEM.—In consultation with the Attorney General and the heads of other appropriate Federal agencies, the Administrator shall establish an information technology system that provides for the availability to the public of off-site consequence analysis information by means of a central data base under the control of the Federal Government that contains information that users may read, but that provides no means by which an electronic or mechanical copy of the information may be made.

(ix) VOLUNTARY INDUSTRY ACCIDENT PREVENTION STANDARDS.—The Environmental Protection Agency, the Department of Justice, and other appropriate agencies may provide technical assistance to owners and operators of stationary sources and participate in the development of voluntary industry standards that will help achieve the objectives set forth in paragraph (1).

(x) EFFECT ON STATE OR LOCAL LAW.—

(I) IN GENERAL.—Subject to subclause (II), this subparagraph (including the regulations promulgated under this subparagraph) shall supersede any provision of State or local law that is inconsistent with this subparagraph (including the regulations).

(II) AVAILABILITY OF INFORMATION UNDER STATE LAW.—Nothing in this subparagraph precludes a State from making available data on the off-site consequences of chemical releases collected in accordance with State law.

(xi) REPORT.—

(I) IN GENERAL.—Not later than 3 years after August 5, 1999, the Attorney General, in consultation with appropriate State, local, and Federal Government agencies, affected industry, and the public, shall submit to Congress a report that describes the extent to which regulations promulgated under this paragraph have resulted in actions, including the design and maintenance of safe facilities, that are effective in detecting, preventing, and minimizing the consequences of releases of regulated substances that may be caused by criminal activity. As part of this report, the Attorney General, using available data to the extent possible, and a sampling of covered stationary sources selected at the discretion of the Attorney General, and in consultation with appropriate State, local, and Federal governmental agencies, affected industry, and the public, shall review the vulnerability of covered stationary sources to criminal and terrorist activity, current industry practices regarding site security, and security of transportation of regulated substances. The Attorney General shall submit this report, containing the results of the review, together with recommendations, if any, for reducing vulnerability of covered stationary sources to criminal and terrorist activity, to the Committee on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate and other relevant committees of Congress.

[9] So in original. Probably should be ''(i)(II)''.

(II) INTERIM REPORT.—Not later than 12 months after August 5, 1999, the Attorney General shall submit to the Committee on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate, and other relevant committees of Congress, an interim report that includes, at a minimum—

(aa) the preliminary findings under subclause (I);

(bb) the methods used to develop the findings; and

(cc) an explanation of the activities expected to occur that could cause the findings of the report under subclause (I) to be different than the preliminary findings.

(III) AVAILABILITY OF INFORMATION.—Information that is developed by the Attorney General or requested by the Attorney General and received from a covered stationary source for the purpose of conducting the review under subclauses (I) and (II) shall be exempt from disclosure under section 552 of title 5 if such information would pose a threat to national security.

(xii) SCOPE.—This subparagraph—

(I) applies only to covered persons; and

(II) does not restrict the dissemination of off-site consequence analysis information by any covered person in any manner or form except in the form of a risk management plan or an electronic data base created by the Administrator from off-site consequence analysis information.

(xiii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator and the Attorney General such sums as are necessary to carry out this subparagraph (including the regulations promulgated under clause (ii)), to remain available until expended.

(8) Research on hazard assessments

The Administrator may collect and publish information on accident scenarios and consequences covering a range of possible events for substances listed under paragraph (3). The Administrator shall establish a program of long-term research to develop and disseminate information on methods and techniques for hazard assessment which may be useful in improving and validating the procedures employed in the preparation of hazard assessments under this subsection.

(9) Order authority

(A) In addition to any other action taken, when the Administrator determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the Administrator may secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The Administrator may also, after notice to the State in which the stationary source is located, take other action under this paragraph including, but not limited to, issuing such orders as may be necessary to protect human health. The Administrator shall take action under section 7603 of this title rather than this paragraph whenever the authority of such section is adequate to protect human health and the environment.

(B) Orders issued pursuant to this paragraph may be enforced in an action brought in the appropriate United States district court as if the order were issued under section 7603 of this title.

(C) Within 180 days after November 15, 1990, the Administrator shall publish guidance for using the order authorities established by this paragraph. Such guidance shall provide for the coordinated use of the authorities of this paragraph with other emergency powers authorized by section 9606 of this title, sections 311(c), 308, 309 and 504(a) of the Federal Water Pollution Control Act [33 U.S.C. 1321(c), 1318, 1319, 1364(a)], sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act [42 U.S.C. 6927, 6928, 6934, 6973], sections 1445 and 1431 of the Safe Drinking Water Act [42 U.S.C. 300j–4, 300i], sections 5 and 7 of the Toxic Substances Control Act [15 U.S.C. 2604, 2606], and sections 7413, 7414, and 7603 of this title.

(10) Presidential review

The President shall conduct a review of release prevention, mitigation and response authorities of the various Federal agencies and shall clarify and coordinate agency responsibilities to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources which may exist. The President may utilize the resources and solicit the recommendations of the Chemical Safety and Hazard Investigation Board in conducting such review. At the conclusion of such review, but not later than 24 months after November 15, 1990, the President shall transmit a message to the Congress on the release prevention, mitigation and response activities of the Federal Government making such recommendations for change in law as the President may deem appropriate. Nothing in this paragraph shall be interpreted, construed or applied to authorize the President to modify or reassign release prevention, mitigation or response authorities otherwise established by law.

(11) State authority

Nothing in this subsection shall preclude, deny or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation or standard in effect under this subsection or that applies to a substance not subject to this subsection.

(s) Periodic report

Not later than January 15, 1993 and every 3 years thereafter, the Administrator shall prepare and transmit to the Congress a comprehen-

sive report on the measures taken by the Agency and by the States to implement the provisions of this section. The Administrator shall maintain a database on pollutants and sources subject to the provisions of this section and shall include aggregate information from the database in each annual report. The report shall include, but not be limited to—

(1) a status report on standard-setting under subsections (d) and (f) of this section;

(2) information with respect to compliance with such standards including the costs of compliance experienced by sources in various categories and subcategories;

(3) development and implementation of the national urban air toxics program; and

(4) recommendations of the Chemical Safety and Hazard Investigation Board with respect to the prevention and mitigation of accidental releases.

(July 14, 1955, ch. 360, title I, § 112, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1685; amended Pub. L. 95–95, title I, §§ 109(d)(2), 110, title IV, § 401(c), Aug. 7, 1977, 91 Stat. 701, 703, 791; Pub. L. 95–623, § 13(b), Nov. 9, 1978, 92 Stat. 3458; Pub. L. 101–549, title III, § 301, Nov. 15, 1990, 104 Stat. 2531; Pub. L. 102–187, Dec. 4, 1991, 105 Stat. 1285; Pub. L. 105–362, title IV, § 402(b), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 106–40, §§ 2, 3(a), Aug. 5, 1999, 113 Stat. 207, 208.)

REFERENCES IN TEXT

The date of enactment, referred to in subsec. (a)(11), probably means the date of enactment of Pub. L. 101–549, which amended this section generally and was approved Nov. 15, 1990.

The Atomic Energy Act, referred to in subsec. (d)(9), probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsecs. (e)(5) and (m)(1)(D), (5)(D), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. Title II of the Act is classified generally to subchapter II (§ 1281 et seq.) of chapter 26 of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in subsec. (k)(3)(C), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Federal Insecticide, Fungicide and Rodenticide Act, referred to in subsec. (k)(3)(C), probably means the Federal Insecticide, Fungicide, and Rodenticide Act, act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Resource Conservation and Recovery Act, referred to in subsec. (k)(3)(C), probably means the Resource Conservation and Recovery Act of 1976, Pub. L. 94–580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 6901 of this title and Tables.

The Safe Drinking Water Act, referred to in subsec. (m)(1)(D), (5)(D), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (n)(7), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 303 of the Clean Air Act Amendments of 1990, referred to in subsec. (*o*)(4), probably means section 303 of Pub. L. 101–549, which is set out below.

The Clean Air Act Amendments of 1990, referred to in subsec. (q)(1)–(3), probably means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Emergency Planning and Community Right-To-Know Act of 1986, referred to in subsec. (r)(3), is title III of Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1728, which is classified generally to chapter 116 (§ 11001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11001 of this title and Tables.

The Occupational Safety and Health Act, referred to in subsec. (r)(6)(C)(ii), (K), (L), probably means the Occupational Safety and Health Act of 1970, Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CODIFICATION

Section was formerly classified to section 1857c-7 of this title.

AMENDMENTS

1999—Subsec. (r)(2)(D). Pub. L. 106–40, § 2(5), added subpar. (D).

Subsec. (r)(4). Pub. L. 106–40, § 2, substituted ''Administrator—

''(A) shall consider—''

for ''Administrator shall consider each of the following criteria—'' in introductory provisions, redesignated subpars. (A) to (C) as cls. (i) to (iii), respectively, of subpar. (A) and added subpar. (B).

Subsec. (r)(7)(H). Pub. L. 106–40, § 3(a), added subpar. (H).

1998—Subsec. (n)(2)(C). Pub. L. 105–362 substituted ''On completion of the study, the Secretary shall submit to Congress a report on the results of the study and'' for ''The Secretary shall prepare annual reports to Congress on the status of the research program and at the completion of the study''.

1991—Subsec. (b)(1). Pub. L. 102–187 struck out ''7783064 Hydrogen sulfide'' from list of pollutants.

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), definitions; in subsec. (b), list of hazardous air pollutants, emission standards, and pollution control techniques; in subsec. (c), prohibited acts and exemption; in subsec. (d), State implementation and enforcement; and in subsec. (e), design, equipment, work practice, and operational standards.

1978—Subsec. (e)(5). Pub. L. 95–623 added par. (5).

1977—Subsec. (a)(1). Pub. L. 95–95, § 401(c), substituted ''causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mor-

tality or an increase in serious irreversible, or incapacitating reversible, illness'' for ''may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness''.

Subsec. (d)(1). Pub. L. 95–95, § 109(d)(2), struck out ''(except with respect to stationary sources owned or operated by the United States)'' after ''implement and enforce such standards''.

Subsec. (e). Pub. L. 95–95, § 110, added subsec. (e).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsecs. (m)(5), (r)(6)(C)(ii), and (s) of this section are listed, respectively, as the 8th item on page 162, the 9th item on page 198, and the 9th item on page 162), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Aug. 19, 1993, 58 F.R. 52397, provided:

Memorandum for the Administrator of the Environmental Protection Agency

WHEREAS, the Environmental Protection Agency, the agencies and departments that are members of the National Response Team (authorized under Executive Order No. 12580, 52 Fed. Reg. 2923 (1987) [42 U.S.C. 9615 note]), and other Federal agencies and departments undertake emergency release prevention, mitigation, and response activities pursuant to various authorities;

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(r)(10) of the Clean Air Act (the ''Act'') (section 7412(r)(10) of title 42 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act [42 U.S.C. 7401 et seq.], I hereby:

(1) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to conduct a review of release prevention, mitigation, and response authorities of Federal agencies in order to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources that may exist, to the extent such review is required by section 112(r)(10) of the Act; and

(2) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to prepare and transmit a message to the Congress concerning the release prevention, mitigation, and response activities of the Federal Government with such recommendations for change in law as you deem appropriate, to the extent such message is required by section 112(r)(10) of the Act.

The authority delegated by this memorandum may be further redelegated within the Environmental Protection Agency.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Jan. 27, 2000, 65 F.R. 8631, provided:

Memorandum for the Attorney General[,] the Administrator of the Environmental Protection Agency[, and] the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 112(r)(7)(H) of the Clean Air Act (''Act'') (42 U.S.C. 7412(r)(7)(H)), as added by section 3 of the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Public Law 106–40), and section 301 of title 3, United States Code, I hereby delegate to:

(1) the Attorney General the authority vested in the President under section 112(r)(7)(H)(ii)(I)(aa) of the Act to assess the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence analysis information on the Internet;

(2) the Administrator of the Environmental Protection Agency (EPA) the authority vested in the President under section 112(r)(7)(H)(ii)(I)(bb) of the Act to assess the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

(3) the Attorney General and the Administrator of EPA, jointly, the authority vested in the President under section 112(r)(7)(H)(ii)(II) of the Act to promulgate regulations, based on these assessments, governing the distribution of off-site consequence analysis information. These regulations, in proposed and final form, shall be subject to review and approval by the Director of the Office of Management and Budget.

The Administrator of EPA is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

REPORTS

Pub. L. 106–40, § 3(b), Aug. 5, 1999, 113 Stat. 213, provided that:

''(1) DEFINITION OF ACCIDENTAL RELEASE.—In this subsection, the term 'accidental release' has the meaning given the term in section 112(r)(2) of the Clean Air Act (42 U.S.C. 7412(r)(2)).

''(2) REPORT ON STATUS OF CERTAIN AMENDMENTS.—Not later than 2 years after the date of enactment of this Act [Aug. 5, 1999], the Comptroller General of the United States shall submit to Congress a report on the status of the development of amendments to the National Fire Protection Association Code for Liquefied Petroleum Gas that will result in the provision of information to local emergency response personnel concerning the off-site effects of accidental releases of substances exempted from listing under section 112(r)(4)(B) of the Clean Air Act (as added by section 3).

''(3) REPORT ON COMPLIANCE WITH CERTAIN INFORMATION SUBMISSION REQUIREMENTS.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that—

''(A) describes the level of compliance with Federal and State requirements relating to the submission to local emergency response personnel of information intended to help the local emergency response personnel respond to chemical accidents or related environmental or public health threats; and

''(B) contains an analysis of the adequacy of the information required to be submitted and the efficacy of the methods for delivering the information to local emergency response personnel.''

REEVALUATION OF REGULATIONS

Pub. L. 106–40, § 3(c), Aug. 5, 1999, 113 Stat. 213, provided that: ''The President shall reevaluate the regulations promulgated under this section within 6 years after the enactment of this Act [Aug. 5, 1999]. If the President determines not to modify such regulations, the President shall publish a notice in the Federal Register stating that such reevaluation has been completed and that a determination has been made not to modify the regulations. Such notice shall include an explanation of the basis of such decision.''

PUBLIC MEETING DURING MORATORIUM PERIOD

Pub. L. 106–40, § 4, Aug. 5, 1999, 113 Stat. 214, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Aug. 5, 1999], each owner or operator of a stationary source covered by section 112(r)(7)(B)(ii) of the Clean Air Act [42 U.S.C. 7412(r)(7)(B)(ii)] shall convene a public meeting, after reasonable public notice, in order to describe and discuss the local implications of the risk management plan submitted by the stationary source pursuant to section 112(r)(7)(B)(iii) of the Clean Air Act, including a summary of the off-site consequence analysis portion of the plan. Two or more stationary sources may conduct a joint meeting. In lieu of conducting such a meeting, small business stationary sources as defined in section 507(c)(1) of the Clean Air Act [42 U.S.C. 7661f(c)(1)] may comply with this section by publicly posting a summary of the off-site consequence analysis information for their facility not later than 180 days after the enactment of this Act. Not later than 10 months after the date of enactment of this Act, each such owner or operator shall send a certification to the director of the Federal Bureau of Investigation stating that such meeting has been held, or that such summary has been posted, within 1 year prior to, or within 6 months after, the date of the enactment of this Act. This section shall not apply to sources that employ only Program 1 processes within the meaning of regulations promulgated under section 112(r)(7)(B)(i) of the Clean Air Act.

''(b) ENFORCEMENT.—The Administrator of the Environmental Protection Agency may bring an action in the appropriate United States district court against any person who fails or refuses to comply with the requirements of this section, and such court may issue such orders, and take such other actions, as may be necessary to require compliance with such requirements.''

RISK ASSESSMENT AND MANAGEMENT COMMISSION

Section 303 of Pub. L. 101–549 provided that:

''(a) ESTABLISHMENT.—There is hereby established a Risk Assessment and Management Commission (hereafter referred to in this section as the 'Commission'), which shall commence proceedings not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] and which shall make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

''(b) CHARGE.—The Commission shall consider—

''(1) the report of the National Academy of Sciences authorized by section 112(*o*) of the Clean Air Act [42 U.S.C. 7412(*o*)], the use and limitations of risk assessment in establishing emission or effluent standards, ambient standards, exposure standards, acceptable concentration levels, tolerances or other environmental criteria for hazardous substances that present a risk of carcinogenic effects or other chronic health effects and the suitability of risk assessment for such purposes;

''(2) the most appropriate methods for measuring and describing cancer risks or risks of other chronic health effects from exposure to hazardous substances considering such alternative approaches as the lifetime risk of cancer or other effects to the individual or individuals most exposed to emissions from a source or sources on both an actual and worst case basis, the range of such risks, the total number of health effects avoided by exposure reductions, effluent standards, ambient standards, exposures standards, acceptable concentration levels, tolerances and other environmental criteria, reductions in the number of persons exposed at various levels of risk, the incidence of cancer, and other public health factors;

''(3) methods to reflect uncertainties in measurement and estimation techniques, the existence of synergistic or antagonistic effects among hazardous substances, the accuracy of extrapolating human health risks from animal exposure data, and the existence of unquantified direct or indirect effects on human health in risk assessment studies;

''(4) risk management policy issues including the use of lifetime cancer risks to individuals most exposed, incidence of cancer, the cost and technical feasibility of exposure reduction measures and the use of site-specific actual exposure information in setting emissions standards and other limitations applicable to sources of exposure to hazardous substances; and

''(5) and comment on the degree to which it is possible or desirable to develop a consistent risk assessment methodology, or a consistent standard of acceptable risk, among various Federal programs.

''(c) MEMBERSHIP.—Such Commission shall be composed of ten members who shall have knowledge or experience in fields of risk assessment or risk management, including three members to be appointed by the President, two members to be appointed by the Speaker of the House of Representatives, one member to be appointed by the Minority Leader of the House of Representatives, two members to be appointed by the Majority Leader of the Senate, one member to be appointed by the Minority Leader of the Senate, and one member to be appointed by the President of the National Academy of Sciences. Appointments shall be made not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

''(d) ASSISTANCE FROM AGENCIES.—The Administrator of the Environmental Protection Agency and the heads of all other departments, agencies, and instrumentalities of the executive branch of the Federal Government shall, to the maximum extent practicable, assist the Commission in gathering such information as the Commission deems necessary to carry out this section subject to other provisions of law.

''(e) STAFF AND CONTRACTS.—

''(1) In the conduct of the study required by this section, the Commission is authorized to contract (in

accordance with Federal contract law) with nongovernmental entities that are competent to perform research or investigations within the Commission's mandate, and to hold public hearings, forums, and workshops to enable full public participation.

''(2) The Commission may appoint and fix the pay of such staff as it deems necessary in accordance with the provisions of title 5, United States Code. The Commission may request the temporary assignment of personnel from the Environmental Protection Agency or other Federal agencies.

''(3) The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chair, shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for Grade GS–18, as provided in the General Schedule under section 5332 of title 5 of the United States Code, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in the Government service employed intermittently.

''(f) REPORT.—A report containing the results of all Commission studies and investigations under this section, together with any appropriate legislative recommendations or administrative recommendations, shall be made available to the public for comment not later than 42 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] and shall be submitted to the President and to the Congress not later than 48 months after such date of enactment. In the report, the Commission shall make recommendations with respect to the appropriate use of risk assessment and risk management in Federal regulatory programs to prevent cancer or other chronic health effects which may result from exposure to hazardous substances. The Commission shall cease to exist upon the date determined by the Commission, but not later than 9 months after the submission of such report.

''(g) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to carry out the activities of the Commission established by this section.''

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

§ 7413. Federal enforcement

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as ''period of federally assumed enforcement''), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

(A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

(C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

(A) issue an administrative penalty order in accordance with subsection (d) of this section,

(B) issue an order requiring such person to comply with such requirement or prohibition,

(C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or

(D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an op-

portunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

(A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies;[1]

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:

(1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced (A) during any period of federally assumed enforcement, or (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such person has violated, or is in violation of, such requirement or prohibition.

(2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).

(3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411(e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475(a) of this title (relating to preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a(a) or 7661b(c) of this title (relating to permits), or any requirement or prohibition of subchapter IV–A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any

[1] So in original. The semicolon probably should be a comma.

rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter[2]

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV–A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than $1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury—

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(i) an occupation, a business, or a profession; or

(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(E) The term ''organization'' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(F) The term ''serious bodily injury'' means bodily injury which involves a substantial risk

[2] So in original. Probably should be followed by a comma.

of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) For the purpose of this subsection, the term ''person'' includes, in addition to the entities referred to in section 7602(e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

(A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued (i) during any period of federally assumed enforcement, or (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

(B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV–A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

(C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity,

amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

(1) In determining the amount of any penalty to be assessed under this section or section 7604(a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607(a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604(a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV–A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,[3] or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term ''operator'', as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term ''a person'' shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term ''a person'' shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

(July 14, 1955, ch. 360, title I, § 113, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1686; amended Pub. L. 92–157, title III, § 302(b), (c), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93–319, § 6(a)(1)–(3), June 22, 1974, 88 Stat. 259; Pub. L. 95–95, title I, §§ 111, 112(a), Aug. 7, 1977, 91 Stat. 704, 705; Pub. L. 95–190, § 14(a)(10)–(21), (b)(1), Nov. 16, 1977, 91 Stat. 1400, 1404; Pub. L. 97–23, § 2, July 17, 1981, 95 Stat. 139; Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672.)

CODIFICATION

Section was formerly classified to section 1857c–8 of this title.

[3] So in original. The comma probably should not appear.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), finding of violation, notice, compliance order, civil action, State failure to enforce plan, and construction or modification of major stationary sources; in subsec. (b), violations by owners or operators of major stationary sources; in subsec. (c), penalties; in subsec. (d), final compliance orders; and in subsec. (e), steel industry compliance extension.

1981—Subsec. (e). Pub. L. 97–23 added subsec. (e).

1977—Subsec. (a)(5). Pub. L. 95–95, §111(a), added par. (5).

Subsec. (b). Pub. L. 95–95, §111(b), (c), substituted ''shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever such person'' for ''may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person'' in provisions preceding par. (1), inserted references to subsec. (d)(5) of this section, sections 7419 and 7620 of this title, and regulations under part in par. (3), inserted reference to subsec. (d) of this section in par. (4), added par. (5), and, in provisions following par. (5), authorized the commencement of civil actions to recover noncompliance penalties and nonpayment penalties under section 7420 of this title, expanded jurisdictional provisions to authorize actions in districts in which the violation occurred and to authorize the district court to restrain violations, to require compliance, to assess civil penalties, and to collect penalties under section 7420 of this title, enumerated factors to be taken into consideration in determining the amount of civil penalties, and authorized awarding of costs to the party or parties against whom the action was brought in cases where the court finds that the action was unreasonable.

Subsec. (b)(3). Pub. L. 95–190, §14(a)(10), (11), inserted ''or'' after ''ozone);'', and substituted ''7624'' for ''7620'', ''conversion), section'' for ''conversion) section'', and ''orders), or'' for ''orders) or''.

Subsec. (c)(1). Pub. L. 95–95, §111(d)(1), (2), substituted ''any order issued under section 7419 of this title or under subsection (a) or (d) of this section'' for ''any order issued by the Administrator under subsection (a) of this section'' in subpar. (B), struck out reference to section 119(g) (as in effect before the date of the enactment of Pub. L. 95–95) in subpar. (C), and added subpar. (D).

Subsec. (c)(1)(B). Pub. L. 95–190, §14(a)(12), inserted ''or'' after ''section,''.

Subsec. (c)(1)(D). Pub. L. 95–190, §14(a)(13), substituted ''1977 subsection'' for ''1977) subsection'' and ''penalties), or'' for ''penalties) or''.

Subsec. (c)(3). Pub. L. 95–95, §111(d)(3), added par. (3).

Subsec. (d). Pub. L. 95–95, §112(a), added subsec. (d).

Subsec. (d)(1). Pub. L. 95–190, §14(a)(14), substituted ''to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order'' for ''an order for any stationary source'' and ''such requirement'' for ''any requirement of an applicable implementation plan''.

Subsec. (d)(1)(E). Pub. L. 95–190, §14(a)(15), inserted provision relating to exemption under section 7420(a)(2)(B) or (C) of this title, provision relating to noncompliance penalties effective July 1, 1979, and reference to subsec. (b)(3) or (g) of section 7420 of this title.

Subsec. (d)(2). Pub. L. 95–190, §14(a)(16), inserted provisions relating to determinations by the Administrator of compliance with requirements of this chapter of State orders issued under this subsection.

Subsec. (d)(4)(A). Pub. L. 95–190, §14(a)(17), substituted ''title) upon'' for ''title upon''.

Subsec. (d)(5)(A). Pub. L. 95–190, §14(a)(18), substituted ''an additional period for'' for ''an additional period of''.

Subsec. (d)(8). Pub. L. 95–190, §14(a)(19), struck out reference to par. (3) of this subsection.

Subsec. (d)(10). Pub. L. 95–190, §14(a)(20), substituted ''in effect'' for ''issued'', ''Federal'' for ''other'', and ''and no action under'' for ''or''.

Subsec. (d)(11). Pub. L. 95–190, §14(a)(21), substituted ''and in effect'' for ''(and approved by the Administrator)''.

1974—Subsec. (a)(3). Pub. L. 93–319, §6(a)(1), inserted reference to section 1857c–10(g) of this title (relating to energy-related authorities).

Subsecs. (b)(3), (c)(1)(C). Pub. L. 93–319, §6(a)(2), (3), inserted reference to section 1857c–10(g) of this title.

1971—Subsec. (b)(2). Pub. L. 92–157, §302(b), inserted ''(A)'' before ''during'' and '', or (B)'' after ''assumed enforcement''.

Subsec. (c)(1)(A). Pub. L. 92–157, §302(c), inserted ''(i)'' before ''during'' and '', or (ii)'' after ''assumed enforcement''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and its functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

§ 7414. Recordkeeping, inspections, monitoring, and entry

(a) Authority of Administrator or authorized representative

For the purpose (i) of developing or assisting in the development of any implementation plan under section 7410 or section 7411(d) of this title, any standard of performance under section 7411 of this title, any emission standard under section 7412 of this title,,[1] or any regulation of solid waste combustion under section 7429 of this title, or any regulation under section 7429 of this

[1] So in original.

title (relating to solid waste combustion), (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this chapter (except a provision of subchapter II of this chapter with respect to a manufacturer of new motor vehicles or new motor vehicle engines)—

(1) the Administrator may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title with respect to a provision of subchapter II of this chapter) on a one-time, periodic or continuous basis to—

(A) establish and maintain such records;

(B) make such reports;

(C) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;

(D) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe);

(E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;

(F) submit compliance certifications in accordance with subsection (a)(3) of this section; and

(G) provide such other information as the Administrator may reasonably require; and[2]

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises of such person or in which any records required to be maintained under paragraph (1) of this section are located, and

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which such person is required to sample under paragraph (1).[3]

(3) The[4] Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement this chapter. The Administrator shall promulgate rules to provide guidance and to implement this paragraph within 2 years after November 15, 1990.

(b) State enforcement

(1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section.

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

(c) Availability of records, reports, and information to public; disclosure of trade secrets

Any records, reports or information obtained under subsection (a) of this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(d) Notice of proposed entry, inspection, or monitoring

(1) In the case of any emission standard or limitation or other requirement which is adopted by a State, as part of an applicable implementation plan or as part of an order under section 7413(d)[5] of this title, before carrying out an entry, inspection, or monitoring under paragraph (2) of subsection (a) of this section with respect to such standard, limitation, or other requirement, the Administrator (or his representatives) shall provide the State air pollution control agency with reasonable prior notice of such action, indicating the purpose of such action. No State agency which receives notice under this paragraph of an action proposed to be taken may use the information contained in the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has reasonable basis for believing that a State agency is so using or will so use such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency will no longer so use information contained in a notice under this paragraph. Nothing in this section shall be construed to require notification to

[2] So in original. The "and" probably should not appear.

[3] The period probably should be "; and".

[4] So in original. Probably should not be capitalized.

[5] See References in Text note below.

any State agency of any action taken by the Administrator with respect to any standard, limitation, or other requirement which is not part of an applicable implementation plan or which was promulgated by the Administrator under section 7410(c) of this title.

(2) Nothing in paragraph (1) shall be construed to provide that any failure of the Administrator to comply with the requirements of such paragraph shall be a defense in any enforcement action brought by the Administrator or shall make inadmissible as evidence in any such action any information or material obtained notwithstanding such failure to comply with such requirements.

(July 14, 1955, ch. 360, title I, § 114, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1687; amended Pub. L. 93–319, § 6(a)(4), June 22, 1974, 88 Stat. 259; Pub. L. 95–95, title I, §§ 109(d)(3), 113, title III, § 305(d), Aug. 7, 1977, 91 Stat. 701, 709, 776; Pub. L. 95–190, § 14(a)(22), (23), Nov. 16, 1977, 91 Stat. 1400; Pub. L. 101–549, title III, § 302(c), title VII, § 702(a), (b), Nov. 15, 1990, 104 Stat. 2574, 2680, 2681.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (d)(1), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

CODIFICATION

Section was formerly classified to section 1857c–9 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 702(a)(1), which directed that ''or'' be struck out in first sentence immediately before ''any emission standard under section 7412 of this title,'' could not be executed because of the prior amendment by Pub. L. 101–549, § 302(c), see below.

Pub. L. 101–549, § 702(a)(2), inserted ''or any regulation under section 7429 of this title (relating to solid waste combustion),'' before ''(ii) of determining''.

Pub. L. 101–549, § 302(c), struck out ''or'' after ''performance under section 7411 of this title,'' and inserted '', or any regulation of solid waste combustion under section 7429 of this title,'' after ''standard under section 7412 of this title''.

Subsec. (a)(1). Pub. L. 101–549, § 702(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the Administrator may require any person who owns or operates any emission source or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title) with respect to a provision of subchapter II of this chapter to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information as he may reasonably require; and''.

Subsec. (a)(3). Pub. L. 101–549, § 702(b), added par. (3).

1977—Subsec. (a). Pub. L. 95–190, § 14(a)(22), inserted reference to subchapter II of this chapter and ''new'' before ''motor'' in two places.

Pub. L. 95–95, § 305(d), substituted ''carrying out any provision of this chapter (except with respect to a manufacturer of motor vehicles or motor vehicle engines)'' for ''carrying out sections 119 or 303'' in cl. (iii) preceding par. (1), substituted ''any person subject to any requirement of this chapter (other than a manufacturer subject to the provisions of sections 7525(c) or 7542 of this title)'' for ''the owner or operator of any emission source'' in par. (1), substituted ''any premises of such person'' for ''any premises in which an emission source is located'' in subpar. (A) of par. (2), and substituted ''emissions which such person is required to sample'' for ''emissions which the owner or operator of such source is required to sample'' in subpar. (B) of subpar. (2).

Subsec. (a)(1). Pub. L. 95–190, § 14(a)(23), inserted reference to subchapter II of this chapter and ''who owns or operates any emission source or who is'' after ''any person''.

Subsec. (b)(1). Pub. L. 95–95, § 109(d)(3), struck out ''(except with respect to new sources owned or operated by the United States)'' after ''to carry out this section''.

Subsec. (d). Pub. L. 95–95, § 113, added subsec. (d).

1974—Subsec. (a). Pub. L. 93–319 inserted reference to section 119.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7415. International air pollution

(a) Endangerment of public health or welfare in foreign countries from pollution emitted in United States

Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.

(b) Prevention or elimination of endangerment

The notice of the Administrator shall be deemed to be a finding under section 7410(a)(2)(H)(ii) of this title which requires a plan revision with respect to so much of the ap-

plicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a) of this section. Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

(c) Reciprocity

This section shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section.

(d) Recommendations

Recommendations issued following any abatement conference conducted prior to August 7, 1977, shall remain in effect with respect to any pollutant for which no national ambient air quality standard has been established under section 7409 of this title unless the Administrator, after consultation with all agencies which were party to the conference, rescinds any such recommendation on grounds of obsolescence.

(July 14, 1955, ch. 360, title I, § 115, formerly § 5, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 396; renumbered § 105 and amended Pub. L. 89–272, title I, §§ 101(2), (3), 102, Oct. 20, 1965, 79 Stat. 992, 995, renumbered § 108 and amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 491, renumbered § 115 and amended Pub. L. 91–604, §§ 4(a), (b)(2)–(10), 15(c)(2), Dec. 31, 1970, 84 Stat. 1678, 1688, 1689, 1713; Pub. L. 95–95, title I, § 114, Aug. 7, 1977, 91 Stat. 710.)

CODIFICATION

Section was formerly classified to section 1857d of this title.

AMENDMENTS

1977—Pub. L. 95–95 completely revised section by substituting provisions establishing a mechanism for the Administrator to trigger a revision of a State implementation plan under section 7410(a)(2)(H) upon a petition of an international agency or the Secretary of State if he finds that emissions originating in a State endanger the health or welfare of persons in a foreign country for provisions calling for the abatement of air pollution by means of conference procedures.

1970—Subsec. (a). Pub. L. 91–604, § 4(b)(2), inserted ''and which is covered by subsection (b) or (c) of this section'' after ''persons''.

Subsec. (b). Pub. L. 91–604, §§ 4(b)(3), (4), (5), 15(c)(2), redesignated former subsec. (d)(1)(A), (B), and (C) as (b)(1), (2), and (3), substituted ''Administrator'' for ''Secretary'' wherever appearing, and added subsec. (b)(4). Former subsec. (b), which related to the encouragement of municipal, State, and interstate action to abate air pollution, was struck out.

Subsec. (c). Pub. L. 91–604, §§ 4(b)(3), (6), 15(c)(2), redesignated former subsec. (d)(1)(D) as (c) and substituted ''Administrator'' for ''Secretary'' and ''Secretary of Health, Education, and Welfare'' wherever appearing and ''subsection'' for ''subparagraph'' wherever appearing. Former subsec. (c), which related to the procedure for the promulgation of State air quality standards, was struck out.

Subsec. (d). Pub. L. 91–604, §§ 4(b)(4), (6), (7), (8), 15(c)(2), redesignated former subsec. (d)(2) and (3) as (d)(1) and (2), in (d)(1) substituted ''Administrator'' for ''Secretary'' wherever appearing and ''any conference under this section'' for ''such conference'', and in (d)(2) substituted ''Administrator'' for ''Secretary''. Former subsec. (d)(1)(A), (B), and (C) were redesignated as (b)(1), (2), and (3), respectively, and subsec. (d)(1)(D) was redesignated as (c).

Subsec. (e). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing and ''Environmental Protection Agency'' for ''Department of Health, Education, and Welfare''.

Subsec. (g). Pub. L. 91–604, §§ 4(b)(9), 15(c)(2), substituted ''Administrator'' for ''Secretary'' and ''subsection (c)'' for ''subparagraph (D) of subsection (d)''.

Subsecs. (i), (j). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (k). Pub. L. 91–604, § 4(b)(3), (10), substituted provisions relating to compliance with any requirement of an applicable implementation plan or with any standard prescribed under section 7411 of this title or section 7412 of this title, for provisions relating to the enjoining of imminent and substantial endangerment from pollution sources.

1967—Subsec. (b). Pub. L. 90–148 substituted reference to subsec. (c), (h), or (k) of this section for reference to subsec. (g) of this section.

Subsecs. (c), (d). Pub. L. 90–148 added subsec. (c), redesignated former subsec. (c) as (d), inserted in par. (2) provisions for the delivery prior to the conference of a Federal report to agencies and interested parties covering matters before the conference, raised from three weeks to thirty days the required notice of the conference, and inserted provisions for notice by newspapers, presentation of views on the Federal report, and transcript of proceedings. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 90–148 redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f) and amended.

Subsec. (f). Pub. L. 90–148 redesignated former subsec. (e) as (f) and inserted in par. (1) requirement that all interested parties be given a reasonable opportunity to present evidence to the hearing board. Former subsec. (f) redesignated (g) and amended.

Subsec. (g). Pub. L. 90–148 redesignated former subsec. (f) as (g) and substituted reference to subsec. (d) of this section for reference to subsec. (c) of this section. Former subsec. (g) redesignated (h) and amended.

Subsec. (h). Pub. L. 90–148 redesignated former subsec. (g) as (h) and substituted reference to subsec. (g) of this section for reference to subsec. (f) of this section. Former subsec. (h) redesignated (i) and amended.

Subsec. (i). Pub. L. 90–148 redesignated former subsec. (h) as (i) and substituted reference to subsec. (f) of this section for reference to subsec. (e) of this section and raised the per diem maximum from $50 to $100. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 90–148 redesignated former subsec. (i) as (j).

Subsec. (k). Pub. L. 90–148 added subsec. (k).

1965—Subsec. (b). Pub. L. 89–272, § 101(2), substituted ''this title'' for ''this Act'', which for purposes of codification has been changed to ''this subchapter''.

Subsec. (c)(1)(D). Pub. L. 89–272, § 102(a), added subpar. (D).

Subsec. (d)(3). Pub. L. 89–272, § 101(2), substituted ''subchapter'' for ''chapter''.

Subsec. (f)(1). Pub. L. 89–272, § 102(b), designated existing provisions as cl. (A) and added cl. (B).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or

other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

UNITED STATES-CANADIAN NEGOTIATIONS ON AIR QUALITY

Pub. L. 95–426, title VI, § 612, Oct. 7, 1978, 92 Stat. 990, provided that:

''(a) The Congress finds that—

''(1) the United States and Canada share a common environment along a 5,500 mile border;

''(2) the United States and Canada are both becoming increasingly concerned about the effects of pollution, particularly that resulting from power generation facilities, since the facilities of each country affect the environment of the other;

''(3) the United States and Canada have subscribed to international conventions; have joined in the environmental work of the United Nations, the Organization for Economic Cooperation and Development, and other international environmental forums; and have entered into and implemented effectively the provisions of the historic Boundary Waters Treaty of 1909; and

''(4) the United States and Canada have a tradition of cooperative resolution of issues of mutual concern which is nowhere more evident than in the environmental area.

''(b) It is the sense of the Congress that the President should make every effort to negotiate a cooperative agreement with the Government of Canada aimed at preserving the mutual airshed of the United States and Canada so as to protect and enhance air resources and insure the attainment and maintenance of air quality protective of public health and welfare.

''(c) It is further the sense of the Congress that the President, through the Secretary of State working in concert with interested Federal agencies and the affected States, should take whatever diplomatic actions appear necessary to reduce or eliminate any undesirable impact upon the United States and Canada resulting from air pollution from any source.''

§ 7416. Retention of State authority

Except as otherwise provided in sections 1857c–10(c), (e), and (f) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

(July 14, 1955, ch. 360, title I, § 116, formerly § 109, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 497; renumbered § 116 and amended Pub. L. 91–604, § 4(a), (c), Dec. 31, 1970, 84 Stat. 1678, 1689; Pub. L. 93–319, § 6(b), June 22, 1974, 88 Stat. 259; Pub. L. 95–190, § 14(a)(24), Nov. 16, 1977, 91 Stat. 1400.)

REFERENCES IN TEXT

1857c–10(c), (e), and (f) (as in effect before August 7, 1977), referred to in text, was in the original ''119(c), (e), and (f) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)'' meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413 of this title was subsequently amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

CODIFICATION

Section was formerly classified to section 1857d–1 of this title.

AMENDMENTS

1977—Pub. L. 95–190 inserted reference to specified provisions in effect before Aug. 7, 1977.

1974—Pub. L. 93–319 inserted reference to section 1857c–10(c), (e), and (f).

1970—Pub. L. 91–604, § 4(c), substituted provisions which authorized any State or political subdivision thereof to adopt or enforce, except as otherwise provided, emission standards or limitations under the specified conditions, or any requirement respecting control or abatement of air pollution, for provisions which authorized any State, political subdivision, or intermunicipal or interstate agency to adopt standards and plans to achieve a higher level of air quality than approved by the Secretary.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7417. Advisory committees

(a) Establishment; membership

In order to obtain assistance in the development and implementation of the purposes of this chapter including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Administrator shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics or technology.

(b) Compensation

The members of any other advisory committees appointed pursuant to this chapter who are not officers or employees of the United States while attending conferences or meetings or while otherwise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(c)[1] Consultations by Administrator

Prior to—

(1) issuing criteria for an air pollutant under section 7408(a)(2) of this title,

(2) publishing any list under section 7411(b)(1)(A) or section 7412(b)(1)(A)[2] of this title,

(3) publishing any standard under section 7411 or section 7412 of this title, or

(4) publishing any regulation under section 7521(a) of this title,

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independence experts, and Federal departments and agencies.

(July 14, 1955, ch. 360, title I, § 117 formerly § 6, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 399; renumbered § 106, Pub. L. 89–272, title I, § 101(3), Oct. 20, 1965, 79 Stat. 992; renumbered § 110 and amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 498; renumbered § 117 and amended Pub. L. 91–604, §§ 4(a), (d), 15(c)(2), Dec. 31, 1970, 84 Stat. 1678, 1689, 1713; Pub. L. 95–95, title I, § 115, Aug. 7, 1977, 91 Stat. 711; Pub. L. 95–623, § 13(c), Nov. 9, 1978, 92 Stat. 3458.)

REFERENCES IN TEXT

Section 7412(b)(1), referred to in subsec. (c)(2), was amended generally by Pub. L. 101–549, title III, § 301, Nov. 15, 1990, 104 Stat. 2531, and, as so amended, no longer contains a subpar. (A).

CODIFICATION

Subsec. (c) was originally enacted as subsec. (f) but has been redesignated (c) for purposes of codification in view of the failure of Pub. L. 95–95 to redesignate subsec. (f) as (c) after repealing former subsecs. (a) and (b) and redesignating former subsecs. (d) and (e) as (a) and (b).

Section was formerly classified to section 1857e of this title.

AMENDMENTS

1978—Subsec. (c)(3). Pub. L. 95–623 substituted ''7411'' for ''7411(b)(1)(B)'' and ''7412'' for ''7412(b)(1)(B)''.

1977—Subsec. (a). Pub. L. 95–95, § 115(1), (2), redesignated subsec. (d) as (a). Former subsec. (a), establishing an Air Quality Advisory Board in the Environmental Protection Agency, was struck out.

Subsec. (b). Pub. L. 95–95, § 115(1)–(3), redesignated subsec. (e) as (b) and substituted ''The members of any other advisory committees'' for ''The members of the Board and other advisory committees'' and ''conferences or meetings or while otherwise serving'' for ''conferences or meetings of the Board or while otherwise serving''. Former subsec. (b), setting out the duties of the Air Quality Advisory Board, was struck out.

Subsecs. (c) to (e). Pub. L. 95–95, § 115(1), (2), struck out subsec. (c) which related to clerical and technical assistance for the Air Quality Advisory Board, and redesignated subsecs. (d) and (e) as (a) and (b), respectively.

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted ''Environmental Protection Agency'' for ''Department of Health, Education, and Welfare'' and ''Administrator'' for ''Secretary''.

Subsec. (b). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (c). Pub. L. 91–604, § 15(c)(2), substituted ''Environmental Protection Agency'' for ''Department of Health, Education, and Welfare''.

Subsecs. (d), (e). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 91–604, § 4(d), added subsec. (f).

1967—Subsec. (a). Pub. L. 90–148 substituted provisions establishing in the Department of Health, Education, and Welfare an Air Quality Advisory Board and providing for the appointment and term of its members for provisions directing the Secretary to maintain liaison with manufacturers looking toward development of devices and fuels to reduce pollutants in automotive exhaust and to appoint a technical committee and call it together from time to time to evaluate progress and develop and recommend research programs.

Subsec. (b). Pub. L. 90–148 substituted provision setting out the duties of the Air Quality Advisory Board for provisions requiring the Secretary to make semiannual reports to Congress on measures being taken toward the resolution of vehicle exhaust pollution problems.

Subsecs. (c) to (e). Pub. L. 90–148 added subsecs. (c) to (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of

[1] See Codification note below.

[2] See References in Text note below.

a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 7418. Control of pollution from Federal facilities

(a) General compliance

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program, (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he is not otherwise liable.

(b) Exemption

The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 7411 of this title, and an exemption from section 7412 of this title may be granted only in accordance with section 7412(i)(4) of this title. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. In addition to any such exemption of a particular emission source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(c) Government vehicles

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government shall comply with all applicable provisions of a valid inspection and maintenance program established under the provisions of subpart 2 of part D of this subchapter or subpart 3 of part D of this subchapter except for such vehicles that are considered military tactical vehicles.

(d) Vehicles operated on Federal installations

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility shall require all employees which operate motor vehicles on the property or facility to furnish proof of compliance with the applicable requirements of any vehicle inspection and maintenance program established under the provisions of subpart 2 of part D of this subchapter or subpart 3 of part D of this subchapter for the State in which such property or facility is located (without regard to whether such vehicles are registered in the State). The installation shall use one of the following methods to establish proof of compliance—

(1) presentation by the vehicle owner of a valid certificate of compliance from the vehicle inspection and maintenance program;

(2) presentation by the vehicle owner of proof of vehicle registration within the geographic area covered by the vehicle inspection and maintenance program (except for any program whose enforcement mechanism is not through the denial of vehicle registration);

(3) another method approved by the vehicle inspection and maintenance program administrator.

(July 14, 1955, ch. 360, title I, § 118, formerly, § 7, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 399; renumbered § 107, Pub. L. 89–272, title I, § 101(3), Oct. 20, 1965, 79 Stat. 992; renumbered § 111 and amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 499; renumbered § 118 and amended Pub. L. 91–604, §§ 4(a), 5, Dec. 31, 1970, 84 Stat. 1678, 1689; Pub. L. 95–95, title I, § 116, Aug. 7, 1977, 91 Stat. 711; Pub. L. 101–549, title I, § 101(e), title II, § 235, title III, § 302(d), Nov. 15, 1990, 104 Stat. 2409, 2530, 2574.)

CODIFICATION

Section was formerly classified to section 1857f of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 235, inserted heading.

Pub. L. 101–549, § 101(e), amended second sentence generally. Prior to amendment, second sentence read as follows: "The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any

requirement respecting permits and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner.''

Subsec. (b). Pub. L. 101–549, § 302(d), substituted ''section 7412(i)(4) of this title'' for ''section 7412(c) of this title''.

Subsecs. (c), (d). Pub. L. 101–549, § 235, added subsecs. (c) and (d).

1977—Subsec. (a). Pub. L. 95–95, § 116(a), designated existing first sentence as subsec. (a) and inserted provisions enumerating the legal and administrative areas to which the compliance requirements apply and directing that agencies, officers, agents, and employees not be immune and that officers, agents, or employees of the United States not be personally liable for civil penalties for which they are not otherwise liable.

Subsec. (b). Pub. L. 95–95, § 116(b), designated second and following existing sentences as subsec. (b) and inserted provisions authorizing the President to exempt weaponry, equipment, aircraft, vehicles, and other classes and categories of property of the Armed Forces and the National Guard from compliance but to reconsider the need for such an exemption at three-year intervals.

1970—Pub. L. 91–604, § 5, struck out lettered designations (a) and (b), and, as so redesignated, substituted provisions requiring Federal facilities to comply with Federal, State, local, and interstate air pollution control and abatement requirements and provisions authorizing the President to exempt, under the specified terms and conditions, any emission source of any department, etc., in the executive branch from compliance with control and abatement requirements, for provisions requiring, to the extent practicable and consistent with the interests of the United States and within any available appropriations, Federal facilities to cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency to prevent and control air pollution and provisions authorizing the Secretary to establish classes of potential pollution sources for which any Federal department or agency having jurisdiction over any facility was required to obtain a permit, under the specified terms and conditions, for the discharge of any matter into the air of the United States.

1967—Pub. L. 90–148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 12th item on page 20 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

EXECUTIVE ORDER NO. 11282

Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663, which provided for the prevention, control, and abatement of air pollution from Federal activities, was superseded by Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for the prevention, control, and abatement of air pollution at Federal facilities, was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title.

§ 7419. Primary nonferrous smelter orders

(a) Issuance; hearing; enforcement orders; statement of grounds for application; findings

(1) Upon application by the owner or operator of a primary nonferrous smelter, a primary nonferrous smelter order under subsection (b) of this section may be issued—

(A) by the Administrator, after thirty days' notice to the State, or

(B) by the State in which such source is located, but no such order issued by the State shall take effect until the Administrator determines that such order has been issued in accordance with the requirements of this chapter.

Not later than ninety days after submission by the State to the Administrator of notice of the issuance of a primary nonferrous smelter order under this section, the Administrator shall determine whether or not such order has been issued by the State in accordance with the requirements of this chapter. If the Administrator determines that such order has not been issued in accordance with such requirements, he shall conduct a hearing respecting the reasonably available control technology for primary nonferrous smelters.

(2)(A) An order issued under this section to a primary nonferrous smelter shall be referred to as a ''primary nonferrous smelter order''. No primary nonferrous smelter may receive both an enforcement order under section 7413(d)[1] of this title and a primary nonferrous smelter order under this section.

(B) Before any hearing conducted under this section, in the case of an application made by

[1] See References in Text note below.

the owner or operator of a primary nonferrous smelter for a second order under this section, the applicant shall furnish the Administrator (or the State as the case may be) with a statement of the grounds on which such application is based (including all supporting documents and information). The statement of the grounds for the proposed order shall be provided by the Administrator or the State in any case in which such State or Administrator is acting on its own initiative. Such statement (including such documents and information) shall be made available to the public for a thirty-day period before such hearing and shall be considered as part of such hearing. No primary nonferrous smelter order may be granted unless the applicant establishes that he meets the conditions required for the issuance of such order (or the Administrator or State establishes the meeting of such conditions when acting on their own initiative).

(C) Any decision with respect to the issuance of a primary nonferrous smelter order shall be accompanied by a concise statement of the findings and of the basis of such findings.

(3) For the purposes of sections 7410, 7604, and 7607 of this title, any order issued by the State and in effect pursuant to this subsection shall become part of the applicable implementation plan.

(b) Prerequisites to issuance of orders

A primary nonferrous smelter order under this section may be issued to a primary nonferrous smelter if—

(1) such smelter is in existence on August 7, 1977;

(2) the requirement of the applicable implementation plan with respect to which the order is issued is an emission limitation or standard for sulfur oxides which is necessary and intended to be itself sufficient to enable attainment and maintenance of national primary and secondary ambient air quality standards for sulfur oxides; and

(3) such smelter is unable to comply with such requirement by the applicable date for compliance because no means of emission limitation applicable to such smelter which will enable it to achieve compliance with such requirement has been adequately demonstrated to be reasonably available (as determined by the Administrator, taking into account the cost of compliance, non-air quality health and environmental impact, and energy consideration).

(c) Second orders

(1) A second order issued to a smelter under this section shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable. The increments of progress shall be limited to requiring compliance with subsection (d) of this section and, in the case of a second order, to procuring, installing, and operating the necessary means of emission limitation as expeditiously as practicable after the Administrator determines such means have been adequately demonstrated to be reasonably available within the meaning of subsection (b)(3) of this section.

(2) Not in excess of two primary nonferrous smelter orders may be issued under this section to any primary nonferrous smelter. The first such order issued to a smelter shall not result in the postponement of the requirement with respect to which such order is issued beyond January 1, 1983. The second such order shall not result in the postponement of such requirement beyond January 1, 1988.

(d) Interim measures; continuous emission reduction technology

(1)(A) Each primary nonferrous smelter to which an order is issued under this section shall be required to use such interim measures for the period during which such order is in effect as may be necessary in the judgment of the Administrator to assure attainment and maintenance of the national primary and secondary ambient air quality standards during such period, taking into account the aggregate effect on air quality of such order together with all variances, extensions, waivers, enforcement orders, delayed compliance orders and primary nonferrous smelter orders previously issued under this chapter.

(B) Such interim requirements shall include—

(i) a requirement that the source to which the order applies comply with such reporting requirements and conduct such monitoring as the Administrator determines may be necessary, and

(ii) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons.

(C) Such interim measures shall also, except as provided in paragraph (2), include continuous emission reduction technology. The Administrator shall condition the use of any such interim measures upon the agreement of the owner or operator of the smelter—

(i) to comply with such conditions as the Administrator determines are necessary to maximize the reliability and enforceability of such interim measures, as applied to the smelter, in attaining and maintaining the national ambient air quality standards to which the order relates, and

(ii) to commit reasonable resources to research and development of appropriate emission control technology.

(2) The requirement of paragraph (1) for the use of continuous emission reduction technology may be waived with respect to a particular smelter by the State or the Administrator, after notice and a hearing on the record, and upon a showing by the owner or operator of the smelter that such requirement would be so costly as to necessitate permanent or prolonged temporary cessation of operations of the smelter. Upon application for such waiver, the Administrator shall be notified and shall, within ninety days, hold a hearing on the record in accordance with section 554 of title 5. At such hearing the Administrator shall require the smelter involved to present information relating to any alleged cessation of operations and the detailed reasons or justifications therefor. On the basis of such hearing the Administrator shall make findings of fact as to the effect of such requirement and on the alleged cessation of operations and shall make such recommendations as he deems appro-

priate. Such report, findings, and recommendations shall be available to the public, and shall be taken into account by the State or the Administrator in making the decision whether or not to grant such waiver.

(3) In order to obtain information for purposes of a waiver under paragraph (2), the Administrator may, on his own motion, conduct an investigation and use the authority of section 7621 of this title.

(4) In the case of any smelter which on August 7, 1977, uses continuous emission reduction technology and supplemental controls and which receives an initial primary nonferrous smelter order under this section, no additional continuous emission reduction technology shall be required as a condition of such order unless the Administrator determines, at any time, after notice and public hearing, that such additional continuous emission reduction technology is adequately demonstrated to be reasonably available for the primary nonferrous smelter industry.

(e) Termination of orders

At any time during which an order under this section applies, the Administrator may enter upon a public hearing respecting the availability of technology. Any order under this section shall be terminated if the Administrator determines on the record, after notice and public hearing, that the conditions upon which the order was based no longer exist. If the owner or operator of the smelter to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under subsection (c) of this section.

(f) Violation of requirements

If the Administrator determines that a smelter to which an order is issued under this section is in violation of any requirement of subsection (c) or (d) of this section, he shall—

(1) enforce such requirement under section 7413 of this title,

(2) (after notice and opportunity for public hearing) revoke such order and enforce compliance with the requirement with respect to which such order was granted,

(3) give notice of noncompliance and commence action under section 7420 of this title, or

(4) take any appropriate combination of such actions.

(July 14, 1955, ch. 360, title I, § 119, as added Pub. L. 95–95, title I, § 117(b), Aug. 7, 1977, 91 Stat. 712; amended Pub. L. 95–190, § 14(a)(25)–(27), Nov. 16, 1977, 91 Stat. 1401.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (a)(2)(A), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

PRIOR PROVISIONS

A prior section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, was classified to section 1857c–10 of this title and provided for the authority to deal with energy shortages, prior to repeal by Pub. L. 95–95, title I, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709, which provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title.

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95–190, § 14(a)(25), added par. (3).

Subsec. (d)(3). Pub. L. 95–190, § 14(a)(26), substituted ''7621'' for ''7619''.

Subsec. (e). Pub. L. 95–190, § 14(a)(27), substituted ''an order under this section'' for ''such order''.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7420. Noncompliance penalty

(a) Assessment and collection

(1)(A) Not later than 6 months after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations requiring the assessment and collection of a noncompliance penalty against persons referred to in paragraph (2)(A).

(B)(i) Each State may develop and submit to the Administrator a plan for carrying out this section in such State. If the Administrator finds that the State plan meets the requirements of this section, he may delegate to such State any authority he has to carry out this section.

(ii) Notwithstanding a delegation to a State under clause (i), the Administrator may carry out this section in such State under the circumstances described in subsection (b)(2)(B) of this section.

(2)(A) Except as provided in subparagraph (B) or (C) of this paragraph, the State or the Administrator shall assess and collect a noncompliance penalty against every person who owns or operates—

(i) a major stationary source (other than a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title), which is not in compliance with any emission limitation, emission standard or compliance schedule under any applicable implementation plan (whether or not such source is subject to a Federal or State consent decree), or

(ii) a stationary source which is not in compliance with an emission limitation, emission

standard, standard of performance, or other requirement established under section 7411, 7477, 7603, or 7412 of this title, or

(iii) a stationary source which is not in compliance with any requirement of subchapter IV–A, V, or VI of this chapter, or

(iv) any source referred to in clause (i), (ii), or (iii) (for which an extension, order, or suspension referred to in subparagraph (B), or Federal or State consent decree is in effect), or a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title which is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, suspension, or consent decree.

For purposes of subsection (d)(2) of this section, in the case of a penalty assessed with respect to a source referred to in clause (iii) of this subparagraph, the costs referred to in such subsection (d)(2) shall be the economic value of noncompliance with the interim emission control requirement or the remaining steps in the schedule of compliance referred to in such clause.

(B) Notwithstanding the requirements of subparagraph (A)(i) and (ii), the owner or operator of any source shall be exempted from the duty to pay a noncompliance penalty under such requirements with respect to that source if, in accordance with the procedures in subsection (b)(5) of this section, the owner or operator demonstrates that the failure of such source to comply with any such requirement is due solely to—

(i) a conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under section 7413(d)(5)[1] of this title or section 1857c–10[1] of this title (as in effect before August 7, 1977);

(ii) in the case of a coal-burning source granted an extension under the second sentence of section 1857c–10(c)(1)[1] of this title (as in effect before August 7, 1977), a prohibition from using petroleum products or natural gas or both, by reason of an order under the provisions of section 792(a) and (b) of title 15 or under any legislation which amends or supersedes such provisions;

(iii) the use of innovative technology sanctioned by an enforcement order under section 7413(d)(4)[1] of this title;

(iv) an inability to comply with any such requirement, for which inability the source has received an order under section 7413(d)[1] of this title (or an order under section 7413 of this title issued before August 7, 1977) which has the effect of permitting a delay or violation of any requirement of this chapter (including a requirement of an applicable implementation plan) which inability results from reasons entirely beyond the control of the owner or operator of such source or of any entity controlling, controlled by, or under common control with the owner or operator of such source; or

(v) the conditions by reason of which a temporary emergency suspension is authorized under section 7410(f) or (g) of this title.

[1] See References in Text note below.

An exemption under this subparagraph shall cease to be effective if the source fails to comply with the interim emission control requirements or schedules of compliance (including increments of progress) under any such extension, order, or suspension.

(C) The Administrator may, after notice and opportunity for public hearing, exempt any source from the requirements of this section with respect to a particular instance of noncompliance if he finds that such instance of noncompliance is de minimis in nature and in duration.

(b) Regulations

Regulations under subsection (a) of this section shall—

(1) permit the assessment and collection of such penalty by the State if the State has a delegation of authority in effect under subsection (a)(1)(B)(i) of this section;

(2) provide for the assessment and collection of such penalty by the Administrator, if—

(A) the State does not have a delegation of authority in effect under subsection (a)(1)(B)(i) of this section, or

(B) the State has such a delegation in effect but fails with respect to any particular person or source to assess or collect the penalty in accordance with the requirements of this section;

(3) require the States, or in the event the States fail to do so, the Administrator, to give a brief but reasonably specific notice of noncompliance under this section to each person referred to in subsection (a)(2)(A) of this section with respect to each source owned or operated by such person which is not in compliance as provided in such subsection, not later than July 1, 1979, or thirty days after the discovery of such noncompliance, whichever is later;

(4) require each person to whom notice is given under paragraph (3) to—

(A) calculate the amount of the penalty owed (determined in accordance with subsection (d)(2) of this section) and the schedule of payments (determined in accordance with subsection (d)(3) of this section) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator, or

(B) submit a petition, within forty–five days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under subsection (a)(2)(B) of this section with respect to a particular source;

(5) require the Administrator to provide a hearing on the record (within the meaning of subchapter II of chapter 5 of title 5) and to make a decision on such petition (including findings of fact and conclusions of law) not later than ninety days after the receipt of any petition under paragraph (4)(B), unless the State agrees to provide a hearing which is sub-

stantially similar to such a hearing on the record and to make a decision on such petition (including such findings and conclusions) within such ninety-day period;

(6)(A) authorize the Administrator on his own initiative to review the decision of the State under paragraph (5) and disapprove it if it is not in accordance with the requirements of this section, and (B) require the Administrator to do so not later than sixty days after receipt of a petition under this subparagraph, notice, and public hearing and a showing by such petitioner that the State decision under paragraph (5) is not in accordance with the requirements of this section;

(7) require payment, in accordance with subsection (d) of this section, of the penalty by each person to whom notice of noncompliance is given under paragraph (3) with respect to each noncomplying source for which such notice is given unless there has been a final determination granting a petition under paragraph (4)(B) with respect to such source;

(8) authorize the State or the Administrator to adjust (and from time to time to readjust) the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under paragraph (4), if the Administrator finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of this section; and

(9) require a final adjustment of the penalty within 180 days after such source comes into compliance in accordance with subsection (d)(4) of this section.

In any case in which the State establishes a noncompliance penalty under this section, the State shall provide notice thereof to the Administrator. A noncompliance penalty established by a State under this section shall apply unless the Administrator, within ninety days after the date of receipt of notice of the State penalty assessment under this section, objects in writing to the amount of the penalty as less than would be required to comply with guidelines established by the Administrator. If the Administrator objects, he shall immediately establish a substitute noncompliance penalty applicable to such source.

(c) Contract to assist in determining amount of penalty assessment or payment schedule

If the owner or operator of any stationary source to whom a notice is issued under subsection (b)(3) of this section—

(1) does not submit a timely petition under subsection (b)(4)(B) of this section, or

(2) submits a petition under subsection (b)(4)(B) of this section which is denied, and

fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the State (or the Administrator, as the case may be) may enter into a contract with any person who has no financial interest in the owner or operator of the source (or in any person controlling, controlled by or under common control with such source) to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(d) Payment

(1) All penalties assessed by the Administrator under this section shall be paid to the United States Treasury. All penalties assessed by the State under this section shall be paid to such State.

(2) The amount of the penalty which shall be assessed and collected with respect to any source under this section shall be equal to—

(A) the amount determined in accordance with regulations promulgated by the Administrator under subsection (a) of this section, which is no less than the economic value which a delay in compliance beyond July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source, minus

(B) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into, and maintaining compliance with, such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subparagraph (A).

To the extent that any expenditure under subparagraph (B) made during any quarter is not subtracted for such quarter from the costs under subparagraph (A), such expenditure may be subtracted for any subsequent quarter from such costs. In no event shall the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3)(A) The assessed penalty required under this section shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments (determined without regard to any adjustment or any subtraction under paragraph (2)(B)) after the first payment shall be equal.

(B) The first payment shall be due on the date six months after the date of issuance of the notice of noncompliance under subsection (b)(3) of this section with respect to any source or on January 1, 1980, whichever is later. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(C) For the purpose of this section, the term ''period of covered noncompliance'' means the period which begins—

(i) two years after August 7, 1977, in the case of a source for which notice of noncompliance under subsection (b)(3) of this section is issued on or before the date two years after August 7, 1977, or

(ii) on the date of issuance of the notice of noncompliance under subsection (b)(3) of this

section, in the case of a source for which such notice is issued after July 1, 1979,

and ending on the date on which such source comes into (or for the purpose of establishing the schedule of payments, is estimated to come into) compliance with such requirement.

(4) Upon making a determination that a source with respect to which a penalty has been paid under this section is in compliance and is maintaining compliance with the applicable requirement, the State (or the Administrator as the case may be) shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance, and shall within 180 days after such source comes into compliance—

(A) provide reimbursement with interest (to be paid by the State or Secretary of the Treasury, as the case may be) at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any overpayment by such person, or

(B) assess and collect an additional payment with interest at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any underpayment by such person.

(5) Any person who fails to pay the amount of any penalty with respect to any source under this section on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

(e) Judicial review

Any action pursuant to this section, including any objection of the Administrator under the last sentence of subsection (b) of this section, shall be considered a final action for purposes of judicial review of any penalty under section 7607 of this title.

(f) Other orders, payments, sanctions, or requirements

Any orders, payments, sanctions, or other requirements under this section shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this chapter, and shall in no way affect any civil or criminal enforcement proceedings brought under any provision of this chapter or State or local law.

(g) More stringent emission limitations or other requirements

In the case of any emission limitation or other requirement approved or promulgated by the Administrator under this chapter after August 7, 1977, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation or requirement approved or promulgated before August 7, 1977, the date for imposition of the non-compliance penalty under this section, shall be either July 1, 1979, or the date on which the source is required to be in full compliance with such emission limitation or requirement, whichever is later, but in no event later than three years after the approval or promulgation of such emission limitation or requirement.

(July 14, 1955, ch. 360, title I, § 120, as added Pub. L. 95–95, title I, § 118, Aug. 7, 1977, 91 Stat. 714; amended Pub. L. 95–190, § 14(a)(28)–(38), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101–549, title VII, § 710(a), Nov. 15, 1990, 104 Stat. 2684.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (a)(2)(B), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

Section 1857c–10 of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(i), was in the original "section 119 (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413(d) of this title was subsequently amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Section 1857c–10(c)(1) of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(ii), was in the original "section 119(c)(1) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)." See paragraph set out above for explanation of codification.

AMENDMENTS

1990—Subsec. (a)(2)(A). Pub. L. 101–549 inserted reference to sections 7477 and 7603 of this title in cl. (ii), added cl. (iii), and redesignated former cl. (iii) as (iv) and inserted reference to cl. (iii).

1977—Subsec. (a)(2)(A). Pub. L. 95–190, § 14(a)(28), (29), in cls. (i) and (iii) inserted provisions relating to consent decrees wherever appearing.

Subsec. (a)(2)(B). Pub. L. 95–190, § 14(a)(30), (31), in cl. (i) inserted reference to section 7413(d)(5) of this title, and in cls. (i) and (ii) inserted provision relating to orders in effect under section 1857c–10 of this title before Aug. 7, 1977, wherever appearing.

Subsec. (b). Pub. L. 95–190, § 14(a)(34)–(36), in closing provisions inserted provisions relating to notice to the Administrator when a noncompliance penalty is established by a State, and substituted references to noncompliance for references to delayed compliance in two places, "source" for "facility", and "receipt of notice of the State penalty assessment" for "publication of the proposed penalty".

Subsec. (b)(2)(A). Pub. L. 95–190, § 14(a)(33), substituted "(a)(1)(B)(i)" for "(e)".

Subsec. (b)(8). Pub. L. 95–190, § 14(a)(32), substituted "(4)" for "(6)".

Subsec. (d)(2)(A). Pub. L. 95–190, § 14(a)(37), inserted provisions relating to inclusion of the economic value of a delay in compliance, and substituted "such a delay" for "a delay in compliance beyond July 1, 1979,".

Subsec. (e). Pub. L. 95–190, § 14(a)(38), substituted "subsection, shall" for "subsection shall".

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set

out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7421. Consultation

In carrying out the requirements of this chapter requiring applicable implementation plans to contain—

(1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of air pollution, or

(2) any measure referred to—

(A) in part D of this subchapter (pertaining to nonattainment requirements), or

(B) in part C of this subchapter (pertaining to prevention of significant deterioration),

and in carrying out the requirements of section 7413(d)[1] of this title (relating to certain enforcement orders), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after August 7, 1977, as part of such plan. Such process shall be in accordance with regulations promulgated by the Administrator to assure adequate consultation. The Administrator shall update as necessary the original regulations required and promulgated under this section (as in effect immediately before November 15, 1990) to ensure adequate consultation. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection may petition for judicial review of such action on the basis of a violation of the requirements of this section.

(July 14, 1955, ch. 360, title I, § 121, as added Pub. L. 95–95, title I, § 119, Aug. 7, 1977, 91 Stat. 719; amended Pub. L. 101–549, title I, § 108(h), Nov. 15, 1990, 104 Stat. 2467.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in text, was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

AMENDMENTS

1990—Pub. L. 101–549 amended penultimate sentence generally. Prior to amendment, penultimate sentence read as follows: ''Such regulations shall be promulgated after notice and opportunity for public hearing and not later than 6 months after August 7, 1977.''

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7422. Listing of certain unregulated pollutants

(a) Radioactive pollutants, cadmium, arsenic, and polycyclic organic matter

Not later than one year after August 7, 1977 (two years for radioactive pollutants) and after notice and opportunity for public hearing, the Administrator shall review all available relevant information and determine whether or not emissions of radioactive pollutants (including source material, special nuclear material, and byproduct material), cadmium, arsenic and polycyclic organic matter into the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. If the Administrator makes an affirmative determination with respect to any such substance, he shall simultaneously with such determination include such substance in the list published under section 7408(a)(1) or 7412(b)(1)(A)[1] of this title (in the case of a substance which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness), or shall include each category of stationary sources emitting such substance in significant amounts in the list published under section 7411(b)(1)(A) of this title, or take any combination of such actions.

(b) Revision authority

Nothing in subsection (a) of this section shall be construed to affect the authority of the Administrator to revise any list referred to in subsection (a) of this section with respect to any substance (whether or not enumerated in subsection (a) of this section).

(c) Consultation with Nuclear Regulatory Commission; interagency agreement; notice and hearing

(1) Before listing any source material, special nuclear,[2] or byproduct material (or component or derivative thereof) as provided in subsection (a) of this section, the Administrator shall consult with the Nuclear Regulatory Commission.

(2) Not later than six months after listing any such material (or component or derivative thereof) the Administrator and the Nuclear Regulatory Commission shall enter into an interagency agreement with respect to those sources or facilities which are under the jurisdiction of the Commission. This agreement shall, to the maximum extent practicable consistent with this chapter, minimize duplication of effort and conserve administrative resources in the establishment, implementation, and enforcement of emission limitations, standards of performance, and other requirements and authorities (substantive and procedural) under this chapter respecting the emission of such material (or component or derivative thereof) from such sources or facilities.

(3) In case of any standard or emission limitation promulgated by the Administrator, under this chapter or by any State (or the Administrator) under any applicable implementation plan under this chapter, if the Nuclear Regulatory Commission determines, after notice and opportunity for public hearing that the application of such standard or limitation to a source or facility within the jurisdiction of the Com-

[1] See References in Text note below.

[1] See References in Text note below.

[2] So in original. The word ''material'' probably should precede the comma.

mission would endanger public health or safety, such standard or limitation shall not apply to such facilities or sources unless the President determines otherwise within ninety days from the date of such finding.

(July 14, 1955, ch. 360, title I, § 122, as added Pub. L. 95–95, title I, § 120(a), Aug. 7, 1977, 91 Stat. 720.)

REFERENCES IN TEXT

Section 7412(b)(1), referred to in subsec. (a), was amended generally by Pub. L. 101–549, title III, § 301, Nov. 15, 1990, 104 Stat. 2531, and, as so amended, no longer contains a subpar. (A).

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

STUDY BY ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY

Section 120(b) of Pub. L. 95–95 directed Administrator of Environmental Protection Agency to conduct a study, in conjunction with other appropriate agencies, concerning effect on public health and welfare of sulfates, radioactive pollutants, cadmium, arsenic, and polycyclic organic matter which are present or may reasonably be anticipated to occur in the ambient air, such study to include a thorough investigation of how sulfates are formed and how to protect public health and welfare from the injurious effects, if any, of sulfates, cadmium, arsenic, and polycyclic organic matter.

§ 7423. Stack heights

(a) Heights in excess of good engineering practice; other dispersion techniques

The degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this subchapter shall not be affected in any manner by—

(1) so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator), or

(2) any other dispersion technique.

The preceding sentence shall not apply with respect to stack heights in existence before December 31, 1970, or dispersion techniques implemented before such date. In establishing an emission limitation for coal-fired steam electric generating units which are subject to the provisions of section 7418 of this title and which commenced operation before July 1, 1957, the effect of the entire stack height of stacks for which a construction contract was awarded before February 8, 1974, may be taken into account.

(b) Dispersion technique

For the purpose of this section, the term ''dispersion technique'' includes any intermittent or supplemental control of air pollutants varying with atmospheric conditions.

(c) Regulations; good engineering practice

Not later than six months after August 7, 1977, the Administrator, shall after notice and opportunity for public hearing, promulgate regulations to carry out this section. For purposes of this section, good engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles (as determined by the Administrator). For purposes of this section such height shall not exceed two and a half times the height of such source unless the owner or operator of the source demonstrates, after notice and opportunity for public hearing, to the satisfaction of the Administrator, that a greater height is necessary as provided under the preceding sentence. In no event may the Administrator prohibit any increase in any stack height or restrict in any manner the stack height of any source.

(July 14, 1955, ch. 360, title I, § 123, as added Pub. L. 95–95, title I, § 121, Aug. 7, 1977, 91 Stat. 721.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7424. Assurance of adequacy of State plans

(a) State review of implementation plans which relate to major fuel burning sources

As expeditiously as practicable but not later than one year after August 7, 1977, each State shall review the provisions of its implementation plan which relate to major fuel burning sources and shall determine—

(1) the extent to which compliance with requirements of such plan is dependent upon the use by major fuel burning stationary sources of petroleum products or natural gas,

(2) the extent to which such plan may reasonably be anticipated to be inadequate to meet the requirements of this chapter in such State on a reliable and long-term basis by reason of its dependence upon the use of such fuels, and

(3) the extent to which compliance with the requirements of such plan is dependent upon use of coal or coal derivatives which is not locally or regionally available.

Each State shall submit the results of its review and its determination under this paragraph to the Administrator promptly upon completion thereof.

(b) Plan revision

(1) Not later than eighteen months after August 7, 1977, the Administrator shall review the submissions of the States under subsection (a) of this section and shall require each State to revise its plan if, in the judgment of the Administrator, such plan revision is necessary to assure that such plan will be adequate to assure compliance with the requirements of this chapter in such State on a reliable and long-term basis, taking into account the actual or potential prohibitions on use of petroleum products or natural gas, or both, under any other authority of law.

(2) Before requiring a plan revision under this subsection, with respect to any State the Administrator shall take into account the report of the review conducted by such State under paragraph (1) and shall consult with the Governor of the State respecting such required revision.

(July 14, 1955, ch. 360, title I, § 124, as added Pub. L. 95–95, title I, § 122, Aug. 7, 1977, 91 Stat. 722.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7425. Measures to prevent economic disruption or unemployment

(a) Determination that action is necessary

After notice and opportunity for a public hearing—

(1) the Governor of any State in which a major fuel burning stationary source referred to in this subsection (or class or category thereof) is located,

(2) the Administrator, or

(3) the President (or his designee),

may determine that action under subsection (b) of this section is necessary to prevent or minimize significant local or regional economic disruption or unemployment which would otherwise result from use by such source (or class or category) of—

(A) coal or coal derivatives other than locally or regionally available coal,

(B) petroleum products,

(C) natural gas, or

(D) any combination of fuels referred to in subparagraphs (A) through (C),

to comply with the requirements of a State implementation plan.

(b) Use of locally or regionally available coal or coal derivatives to comply with implementation plan requirements

Upon a determination under subsection (a) of this section—

(1) such Governor, with the written consent of the President or his designee,

(2) the President's designee with the written consent of such Governor, or

(3) the President

may by rule or order prohibit any such major fuel burning stationary source (or class or category thereof) from using fuels other than locally or regionally available coal or coal derivatives to comply with implementation plan requirements. In taking any action under this subsection, the Governor, the President, or the President's designee as the case may be, shall take into account, the final cost to the consumer of such an action.

(c) Contracts; schedules

The Governor, in the case of action under subsection (b)(1) of this section, or the Administrator, in the case of an action under subsection (b)(2) or (3) of this section shall, by rule or order, require each source to which such action applies to—

(1) enter into long-term contracts of at least ten years in duration (except as the President or his designee may otherwise permit or require by rule or order for good cause) for supplies of regionally available coal or coal derivatives,

(2) enter into contracts to acquire any additional means of emission limitation which the Administrator or the State determines may be necessary to comply with the requirements of this chapter while using such coal or coal derivatives as fuel, and

(3) comply with such schedules (including increments of progress), timetables and other requirements as may be necessary to assure compliance with the requirements of this chapter.

Requirements under this subsection shall be established simultaneously with, and as a condition of, any action under subsection (b) of this section.

(d) Existing or new major fuel burning stationary sources

This section applies only to existing or new major fuel burning stationary sources—

(1) which have the design capacity to produce 250,000,000 Btu's per hour (or its equivalent), as determined by the Administrator, and

(2) which are not in compliance with the requirements of an applicable implementation plan or which are prohibited from burning oil or natural gas, or both, under any other authority of law.

(e) Actions not to be deemed modifications of major fuel burning stationary sources

Except as may otherwise be provided by rule by the State or the Administrator for good cause, any action required to be taken by a major fuel burning stationary source under this section shall not be deemed to constitute a modification for purposes of section 7411(a)(2) and (4) of this title.

(f) Treatment of prohibitions, rules, or orders as requirements or parts of plans under other provisions

For purposes of sections 7413 and 7420 of this title a prohibition under subsection (b) of this section, and a corresponding rule or order under subsection (c) of this section, shall be treated as a requirement of section 7413 of this title. For purposes of any plan (or portion thereof) promulgated under section 7410(c) of this title, any rule or order under subsection (c) of this section corresponding to a prohibition under subsection (b) of this section, shall be treated as a part of such plan. For purposes of section 7413 of this title, a prohibition under subsection (b) of this section, applicable to any source, and a corresponding rule or order under subsection (c) of this section, shall be treated as part of the applicable implementation plan for the State in which subject source is located.

(g) Delegation of Presidential authority

The President may delegate his authority under this section to an officer or employee of the United States designated by him on a case-by-case basis or in any other manner he deems suitable.

(h) "Locally or regionally available coal or coal derivatives" defined

For the purpose of this section the term ''locally or regionally available coal or coal derivatives'' means coal or coal derivatives which is, or can in the judgment of the State or the Administrator feasibly be, mined or produced in the local or regional area (as determined by the Administrator) in which the major fuel burning stationary source is located.

(July 14, 1955, ch. 360, title I, § 125, as added Pub. L. 95–95, title I, § 122, Aug. 7, 1977, 91 Stat. 722.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7426. Interstate pollution abatement

(a) Written notice to all nearby States

Each applicable implementation plan shall—

(1) require each major proposed new (or modified) source—

(A) subject to part C of this subchapter (relating to significant deterioration of air quality) or

(B) which may significantly contribute to levels of air pollution in excess of the national ambient air quality standards in any air quality control region outside the State in which such source intends to locate (or make such modification),

to provide written notice to all nearby States the air pollution levels of which may be affected by such source at least sixty days prior to the date on which commencement of construction is to be permitted by the State providing notice, and

(2) identify all major existing stationary sources which may have the impact described in paragraph (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources not later than three months after August 7, 1977.

(b) Petition for finding that major sources emit or would emit prohibited air pollutants

Any State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 7410(a)(2)(D)(ii) of this title or this section. Within 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition.

(c) Violations; allowable continued operation

Notwithstanding any permit which may have been granted by the State in which the source is located (or intends to locate), it shall be a violation of this section and the applicable implementation plan in such State—

(1) for any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) of this section to be constructed or to operate in violation of the prohibition of section 7410(a)(2)(D)(ii) of this title or this section, or

(2) for any major existing source to operate more than three months after such finding has been made with respect to it.

The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 7410(a)(2)(D)(ii) of this title or this section as expeditiously as practicable, but in no case later than three years after the date of such finding. Nothing in the preceding sentence shall be construed to preclude any such source from being eligible for an enforcement order under section 7413(d)[1] of this title after the expiration of such period during which the Administrator has permitted continuous operation.

(July 14, 1955, ch. 360, title I, § 126, as added Pub. L. 95–95, title I, § 123, Aug. 7, 1977, 91 Stat. 724; amended Pub. L. 95–190, § 14(a)(39), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101–549, title I, § 109(a), Nov. 15, 1990, 104 Stat. 2469.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (c), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–549, § 109(a)(1), inserted ''or group of stationary sources'' after ''any major source'' and substituted ''section 7410(a)(2)(D)(ii) of this title or this section'' for ''section 7410(a)(2)(E)(i) of this title''.

Subsec. (c). Pub. L. 101–549, § 109(a)(2)(A), which directed the insertion of ''this section and'' after ''violation of'', was executed by making the insertion after first reference to ''violation of'' to reflect the probable intent of Congress.

Pub. L. 101–549, § 109(a)(2)(B), substituted ''section 7410(a)(2)(D)(ii) of this title or this section'' for ''section 7410(a)(2)(E)(i) of this title'' in par. (1) and penultimate sentence.

1977—Subsec. (a)(1). Pub. L. 95–190 substituted ''(relating to significant deterioration of air quality)'' for '', relating to significant deterioration of air quality''.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7427. Public notification

(a) Warning signs; television, radio, or press notices or information

Each State plan shall contain measures which will be effective to notify the public during any calendar[1] on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be

[1] See References in Text note below.

[1] So in original. Probably should be ''calendar year''.

taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Such measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information.

(b) Grants

The Administrator is authorized to make grants to States to assist in carrying out the requirements of subsection (a) of this section.

(July 14, 1955, ch. 360, title I, § 127, as added Pub. L. 95–95, title I, § 124, Aug. 7, 1977, 91 Stat. 725.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7428. State boards

(a)[1] Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—

(1) any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and

(2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of paragraph (1) and (2), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.

(July 14, 1955, ch. 360, title I, § 128, as added Pub. L. 95–95, title I, § 125, Aug. 7, 1977, 91 Stat. 725.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7429. Solid waste combustion

(a) New source performance standards

(1) In general

(A) The Administrator shall establish performance standards and other requirements pursuant to section 7411 of this title and this section for each category of solid waste incineration units. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines (under section 7411(d) of this title and this section) and other requirements applicable to existing units.

(B) Standards under section 7411 of this title and this section applicable to solid waste incineration units with capacity greater than 250 tons per day combusting municipal waste shall be promulgated not later than 12 months after November 15, 1990. Nothing in this subparagraph shall alter any schedule for the promulgation of standards applicable to such units under section 7411 of this title pursuant to any settlement and consent decree entered by the Administrator before November 15, 1990: *Provided*, That, such standards are subsequently modified pursuant to the schedule established in this subparagraph to include each of the requirements of this section.

(C) Standards under section 7411 of this title and this section applicable to solid waste incineration units with capacity equal to or less than 250 tons per day combusting municipal waste and units combusting hospital waste, medical waste and infectious waste shall be promulgated not later than 24 months after November 15, 1990.

(D) Standards under section 7411 of this title and this section applicable to solid waste incineration units combusting commercial or industrial waste shall be proposed not later than 36 months after November 15, 1990, and promulgated not later than 48 months after November 15, 1990.

(E) Not later than 18 months after November 15, 1990, the Administrator shall publish a schedule for the promulgation of standards under section 7411 of this title and this section applicable to other categories of solid waste incineration units.

(2) Emissions standard

Standards applicable to solid waste incineration units promulgated under section 7411 of this title and this section shall reflect the maximum degree of reduction in emissions of air pollutants listed under section[1] (a)(4) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category. The Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular and other types of units), and sizes of units within a category in establishing such standards. The degree of reduction in emissions that is deemed achievable for new units in a category shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, as determined by the Administrator. Emissions standards for existing units in a category may be less stringent than standards for new units in the same category but shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category (excluding units which first met lowest achievable emissions rates 18 months before the date such standards are proposed or 30 months before the date such standards are promulgated, whichever is later).

(3) Control methods and technologies

Standards under section 7411 of this title and this section applicable to solid waste inciner-

[1] So in original. Section enacted without a subsec. (b).

[1] So in original. Probably should be "subsection".

ation units shall be based on methods and technologies for removal or destruction of pollutants before, during, or after combustion, and shall incorporate for new units siting requirements that minimize, on a site specific basis, to the maximum extent practicable, potential risks to public health or the environment.

(4) Numerical emissions limitations

The performance standards promulgated under section 7411 of this title and this section and applicable to solid waste incineration units shall specify numerical emission limitations for the following substances or mixtures: particulate matter (total and fine), opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. The Administrator may promulgate numerical emissions limitations or provide for the monitoring of postcombustion concentrations of surrogate substances, parameters or periods of residence time in excess of stated temperatures with respect to pollutants other than those listed in this paragraph.

(5) Review and revision

Not later than 5 years following the initial promulgation of any performance standards and other requirements under this section and section 7411 of this title applicable to a category of solid waste incineration units, and at 5 year intervals thereafter, the Administrator shall review, and in accordance with this section and section 7411 of this title, revise such standards and requirements.

(b) Existing units

(1) Guidelines

Performance standards under this section and section 7411 of this title for solid waste incineration units shall include guidelines promulgated pursuant to section 7411(d) of this title and this section applicable to existing units. Such guidelines shall include, as provided in this section, each of the elements required by subsection (a) of this section (emissions limitations, notwithstanding any restriction in section 7411(d) of this title regarding issuance of such limitations), subsection (c) of this section (monitoring), subsection (d) of this section (operator training), subsection (e) of this section (permits), and subsection (h)(4)[2] of this section (residual risk).

(2) State plans

Not later than 1 year after the Administrator promulgates guidelines for a category of solid waste incineration units, each State in which units in the category are operating shall submit to the Administrator a plan to implement and enforce the guidelines with respect to such units. The State plan shall be at least as protective as the guidelines promulgated by the Administrator and shall provide that each unit subject to the guidelines shall be in compliance with all requirements of this section not later than 3 years after the State plan is approved by the Administrator but not later than 5 years after the guidelines were promulgated. The Administrator shall approve or disapprove any State plan within 180 days of the submission, and if a plan is disapproved, the Administrator shall state the reasons for disapproval in writing. Any State may modify and resubmit a plan which has been disapproved by the Administrator.

(3) Federal plan

The Administrator shall develop, implement and enforce a plan for existing solid waste incineration units within any category located in any State which has not submitted an approvable plan under this subsection with respect to units in such category within 2 years after the date on which the Administrator promulgated the relevant guidelines. Such plan shall assure that each unit subject to the plan is in compliance with all provisions of the guidelines not later than 5 years after the date the relevant guidelines are promulgated.

(c) Monitoring

The Administrator shall, as part of each performance standard promulgated pursuant to subsection (a) of this section and section 7411 of this title, promulgate regulations requiring the owner or operator of each solid waste incineration unit—

(1) to monitor emissions from the unit at the point at which such emissions are emitted into the ambient air (or within the stack, combustion chamber or pollution control equipment, as appropriate) and at such other points as necessary to protect public health and the environment;

(2) to monitor such other parameters relating to the operation of the unit and its pollution control technology as the Administrator determines are appropriate; and

(3) to report the results of such monitoring.

Such regulations shall contain provisions regarding the frequency of monitoring, test methods and procedures validated on solid waste incineration units, and the form and frequency of reports containing the results of monitoring and shall require that any monitoring reports or test results indicating an exceedance of any standard under this section shall be reported separately and in a manner that facilitates review for purposes of enforcement actions. Such regulations shall require that copies of the results of such monitoring be maintained on file at the facility concerned and that copies shall be made available for inspection and copying by interested members of the public during business hours.

(d) Operator training

Not later than 24 months after November 15, 1990, the Administrator shall develop and promote a model State program for the training and certification of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators. The Administrator may authorize any State to implement a model program for the training of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators, if the State has adopted a program which is at least as effective as the model program developed by the Administrator. Beginning on the date 36 months after the date on

[2] So in original. Probably should be subsection ''(h)(3)''.

which performance standards and guidelines are promulgated under subsection (a) of this section and section 7411 of this title for any category of solid waste incineration units it shall be unlawful to operate any unit in the category unless each person with control over processes affecting emissions from such unit has satisfactorily completed a training program meeting the requirements established by the Administrator under this subsection.

(e) Permits

Beginning (1) 36 months after the promulgation of a performance standard under subsection (a) of this section and section 7411 of this title applicable to a category of solid waste incineration units, or (2) the effective date of a permit program under subchapter V of this chapter in the State in which the unit is located, whichever is later, each unit in the category shall operate pursuant to a permit issued under this subsection and subchapter V of this chapter. Permits required by this subsection may be renewed according to the provisions of subchapter V of this chapter. Notwithstanding any other provision of this chapter, each permit for a solid waste incineration unit combusting municipal waste issued under this chapter shall be issued for a period of up to 12 years and shall be reviewed every 5 years after date of issuance or reissuance. Each permit shall continue in effect after the date of issuance until the date of termination, unless the Administrator or State determines that the unit is not in compliance with all standards and conditions contained in the permit. Such determination shall be made at regular intervals during the term of the permit, such intervals not to exceed 5 years, and only after public comment and public hearing. No permit for a solid waste incineration unit may be issued under this chapter by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit. Notwithstanding any other provision of this subsection, the Administrator or the State shall require the owner or operator of any unit to comply with emissions limitations or implement any other measures, if the Administrator or the State determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment. The Administrator's determination under the preceding sentence is a discretionary decision.

(f) Effective date and enforcement

(1) New units

Performance standards and other requirements promulgated pursuant to this section and section 7411 of this title and applicable to new solid waste incineration units shall be effective as of the date 6 months after the date of promulgation.

(2) Existing units

Performance standards and other requirements promulgated pursuant to this section and section 7411 of this title and applicable to existing solid waste incineration units shall be effective as expeditiously as practicable after approval of a State plan under subsection (b)(2) of this section (or promulgation of a plan by the Administrator under subsection (b)(3) of this section) but in no event later than 3 years after the State plan is approved or 5 years after the date such standards or requirements are promulgated, whichever is earlier.

(3) Prohibition

After the effective date of any performance standard, emission limitation or other requirement promulgated pursuant to this section and section 7411 of this title, it shall be unlawful for any owner or operator of any solid waste incineration unit to which such standard, limitation or requirement applies to operate such unit in violation of such limitation, standard or requirement or for any other person to violate an applicable requirement of this section.

(4) Coordination with other authorities

For purposes of sections 7411(e), 7413, 7414, 7416, 7420, 7603, 7604, 7607 of this title and other provisions for the enforcement of this chapter, each performance standard, emission limitation or other requirement established pursuant to this section by the Administrator or a State or local government, shall be treated in the same manner as a standard of performance under section 7411 of this title which is an emission limitation.

(g) Definitions

For purposes of section 306 of the Clean Air Act Amendments of 1990 and this section only—

(1) Solid waste incineration unit

The term ''solid waste incineration unit'' means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act [42 U.S.C. 6925]. The term ''solid waste incineration unit'' does not include (A) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals, (B) qualifying small power production facilities, as defined in section 796(17)(C) of title 16, or qualifying cogeneration facilities, as defined in section 796(18)(B) of title 16, which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or (C) air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

(2) New solid waste incineration unit

The term ''new solid waste incineration unit'' means a solid waste incineration unit the construction of which is commenced after

the Administrator proposes requirements under this section establishing emissions standards or other requirements which would be applicable to such unit or a modified solid waste incineration unit.

(3) Modified solid waste incineration unit

The term ''modified solid waste incineration unit'' means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under subsection (a) of this section if (A) the cumulative cost of the modifications, over the life of the unit, exceed 50 per centum of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or (B) the modification is a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under this section or section 7411 of this title.

(4) Existing solid waste incineration unit

The term ''existing solid waste incineration unit'' means a solid waste unit which is not a new or modified solid waste incineration unit.

(5) Municipal waste

The term ''municipal waste'' means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass and rock, provided that: (A) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (B) an incineration unit shall not be considered to be combusting municipal waste for purposes of section 7411 of this title or this section if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste.

(6) Other terms

The terms ''solid waste'' and ''medical waste'' shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(h) Other authority

(1) State authority

Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard relating to solid waste incineration units that is more stringent than a regulation, requirement, limitation or standard in effect under this section or under any other provision of this chapter.

(2) Other authority under this chapter

Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to solid waste incineration units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no solid waste incineration unit subject to performance standards under this section and section 7411 of this title shall be subject to standards under section 7412(d) of this title.

(3) Residual risk

The Administrator shall promulgate standards under section 7412(f) of this title for a category of solid waste incineration units, if promulgation of such standards is required under section 7412(f) of this title. For purposes of this[3] preceding sentence only—

(A) the performance standards under subsection (a) of this section and section 7411 of this title applicable to a category of solid waste incineration units shall be deemed standards under section 7412(d)(2) of this title, and

(B) the Administrator shall consider and regulate, if required, the pollutants listed under subsection (a)(4) of this section and no others.

(4) Acid rain

A solid waste incineration unit shall not be a utility unit as defined in subchapter IV–A of this chapter: *Provided*, That, more than 80 per centum of its annual average fuel consumption measured on a Btu basis, during a period or periods to be determined by the Administrator, is from a fuel (including any waste burned as a fuel) other than a fossil fuel.

(5) Requirements of parts C and D

No requirement of an applicable implementation plan under section 7475 of this title (relating to construction of facilities in regions identified pursuant to section 7407(d)(1)(A)(ii) or (iii) of this title) or under section 7502(c)(5) of this title (relating to permits for construction and operation in nonattainment areas) may be used to weaken the standards in effect under this section.

(July 14, 1955, ch. 360, title I, § 129, as added Pub. L. 101–549, title III, § 305(a), Nov. 15, 1990, 104 Stat. 2577.)

REFERENCES IN TEXT

Section 306 of the Clean Air Act Amendments of 1990, referred to in subsec. (g), probably means section 306 of Pub. L. 101–549, which is set out as a note under section 6921 of this title.

The Solid Waste Disposal Act, referred to in subsec. (g)(6), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

REVIEW OF ACID GAS SCRUBBING REQUIREMENTS

Section 305(c) of Pub. L. 101–549 provided that: ''Prior to the promulgation of any performance standard for solid waste incineration units combusting municipal waste under section 111 or section 129 of the Clean Air Act [42 U.S.C. 7411, 7429], the Administrator shall review the availability of acid gas scrubbers as a pollution control technology for small new units and for existing units (as defined in 54 Federal Register 52190 (December 20, 1989)[)], taking into account the provisions of subsection (a)(2) of section 129 of the Clean Air Act.''

[3] So in original. Probably should be ''the''.

§ 7430. Emission factors

Within 6 months after November 15, 1990, and at least every 3 years thereafter, the Administrator shall review and, if necessary, revise, the methods (''emission factors'') used for purposes of this chapter to estimate the quantity of emissions of carbon monoxide, volatile organic compounds, and oxides of nitrogen from sources of such air pollutants (including area sources and mobile sources). In addition, the Administrator shall establish emission factors for sources for which no such methods have previously been established by the Administrator. The Administrator shall permit any person to demonstrate improved emissions estimating techniques, and following approval of such techniques, the Administrator shall authorize the use of such techniques. Any such technique may be approved only after appropriate public participation. Until the Administrator has completed the revision required by this section, nothing in this section shall be construed to affect the validity of emission factors established by the Administrator before November 15, 1990.

(July 14, 1955, ch. 360, title I, § 130, as added Pub. L. 101–549, title VIII, § 804, Nov. 15, 1990, 104 Stat. 2689.)

§ 7431. Land use authority

Nothing in this chapter constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this chapter provides or transfers authority over such land use.

(July 14, 1955, ch. 360, title I, § 131, as added Pub. L. 101–549, title VIII, § 805, Nov. 15, 1990, 104 Stat. 2689.)

PART B—OZONE PROTECTION

§§ 7450 to 7459. Repealed. Pub. L. 101–549, title VI, § 601, Nov. 15, 1990, 104 Stat. 2648

Section 7450, act July 14, 1955, ch. 360, title I, § 150, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 725, set forth Congressional declaration of purpose.

Section 7451, act July 14, 1955, ch. 360, title I, § 151, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 726, set forth Congressional findings.

Section 7452, act July 14, 1955, ch. 360, title I, § 152, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 726, set forth definitions applicable to this part.

Section 7453, act July 14, 1955, ch. 360, title I, § 153, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 726, related to studies by Environmental Protection Agency.

Section 7454, act July 14, 1955, ch. 360, title I, § 154, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 728; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to research and monitoring activities by Federal agencies.

Section 7455, act July 14, 1955, ch. 360, title I, § 155, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 729, related to reports on progress of regulation.

Section 7456, act July 14, 1955, ch. 360, title I, § 156, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 729, authorized President to enter into international agreements to foster cooperative research.

Section 7457, act July 14, 1955, ch. 360, title I, § 157, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 729, related to promulgation of regulations.

Section 7458, act July 14, 1955, ch. 360, title I, § 158, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 730, set forth other provisions of law that would be unaffected by this part.

Section 7459, act July 14, 1955, ch. 360, title I, § 159, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 730, related to authority of States to protect the stratosphere.

SIMILAR PROVISIONS

For provisions relating to stratospheric ozone protection, see section 7671 et seq. of this title.

PART C—PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

SUBPART I—CLEAN AIR

§ 7470. Congressional declaration of purpose

The purposes of this part are as follows:

(1) to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipate[1] to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air)[2], notwithstanding attainment and maintenance of all national ambient air quality standards;

(2) to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value;

(3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources;

(4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and

(5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

(July 14, 1955, ch. 360, title I, § 160, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 731.)

EFFECTIVE DATE

Subpart effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

GUIDANCE DOCUMENT

Section 127(c) of Pub. L. 95–95 required Administrator, not later than 1 year after Aug. 7, 1977, to publish a guidance document to assist States in carrying out their functions under part C of title I of the Clean Air Act (this part) with respect to pollutants for which national ambient air quality standards are promulgated.

STUDY AND REPORT ON PROGRESS MADE IN PROGRAM RELATING TO SIGNIFICANT DETERIORATION OF AIR QUALITY

Section 127(d) of Pub. L. 95–95 directed Administrator, not later than 2 years after Aug. 7, 1977, to complete a

[1] So in original. Probably should be ''anticipated''.

[2] So in original. Section was enacted without an opening parenthesis.

study and report to Congress on progress made in carrying out part C of title I of the Clean Air Act (this part) and the problems associated in carrying out such section.

§ 7471. Plan requirements

In accordance with the policy of section 7401(b)(1) of this title, each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) designated pursuant to section 7407 of this title as attainment or unclassifiable.

(July 14, 1955, ch. 360, title I, § 161, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 731; amended Pub. L. 101–549, title I, § 110(1), Nov. 15, 1990, 104 Stat. 2470.)

AMENDMENTS

1990—Pub. L. 101–549 substituted ''designated pursuant to section 7407 of this title as attainment or unclassifiable'' for ''identified pursuant to section 7407(d)(1)(D) or (E) of this title''.

§ 7472. Initial classifications

(a) Areas designated as class I

Upon the enactment of this part, all—

(1) international parks,

(2) national wilderness areas which exceed 5,000 acres in size,

(3) national memorial parks which exceed 5,000 acres in size, and

(4) national parks which exceed six thousand acres in size,

and which are in existence on August 7, 1977, shall be class I areas and may not be redesignated. All areas which were redesignated as class I under regulations promulgated before August 7, 1977, shall be class I areas which may be redesignated as provided in this part. The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.

(b) Areas designated as class II

All areas in such State designated pursuant to section 7407(d) of this title as attainment or unclassifiable which are not established as class I under subsection (a) of this section shall be class II areas unless redesignated under section 7474 of this title.

(July 14, 1955, ch. 360, title I, § 162, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 731; amended Pub. L. 95–190, § 14(a)(40), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101–549, title I, §§ 108(m), 110(2), Nov. 15, 1990, 104 Stat. 2469, 2470.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 108(m), inserted at end ''The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.''

Subsec. (b). Pub. L. 101–549, § 110(2), substituted ''designated pursuant to section 7407(d) of this title as attainment or unclassifiable'' for ''identified pursuant to section 7407(d)(1)(D) or (E) of this title''.

1977—Subsec. (a)(4). Pub. L. 95–190 inserted a comma after ''size''.

§ 7473. Increments and ceilings

(a) Sulfur oxide and particulate matter; requirement that maximum allowable increases and maximum allowable concentrations not be exceeded

In the case of sulfur oxide and particulate matter, each applicable implementation plan shall contain measures assuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, such pollutant shall not be exceeded. In the case of any maximum allowable increase (except an allowable increase specified under section 7475(d)(2)(C)(iv) of this title) for a pollutant based on concentrations permitted under national ambient air quality standards for any period other than an annual period, such regulations shall permit such maximum allowable increase to be exceeded during one such period per year.

(b) Maximum allowable increases in concentrations over baseline concentrations

(1) For any class I area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	5
Twenty-four-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
Twenty-four-hour maximum	5
Three-hour maximum	25

(2) For any class II area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	512

(3) For any class III area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	37
Twenty-four-hour maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
Twenty-four-hour maximum	182
Three-hour maximum	700

(4) The maximum allowable concentration of any air pollutant in any area to which this part applies shall not exceed a concentration for such pollutant for each period of exposure equal to—

(A) the concentration permitted under the national secondary ambient air quality standard, or

(B) the concentration permitted under the national primary ambient air quality standard,

whichever concentration is lowest for such pollutant for such period of exposure.

(c) Orders or rules for determining compliance with maximum allowable increases in ambient concentrations of air pollutants

(1) In the case of any State which has a plan approved by the Administrator for purposes of carrying out this part, the Governor of such State may, after notice and opportunity for public hearing, issue orders or promulgate rules providing that for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutant shall not be taken into account:

(A) concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of sections 792(a) and (b) of title 15 (or any subsequent legislation which supersedes such provisions) over the emissions from such sources before the effective date of such order.[1]

(B) the concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from using natural gas by reason of a natural gas curtailment pursuant to a natural gas curtailment plan in effect pursuant to the Federal Power Act [16 U.S.C. 791a et seq.] over the emissions from such sources before the effective date of such plan,

(C) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities, and

(D) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration determined in accordance with section 7479(4) of this title.

(2) No action taken with respect to a source under paragraph (1)(A) or (1)(B) shall apply more than five years after the effective date of the order referred to in paragraph (1)(A) or the plan referred to in paragraph (1)(B), whichever is applicable. If both such order and plan are applicable, no such action shall apply more than five years after the later of such effective dates.

(3) No action under this subsection shall take effect unless the Governor submits the order or rule providing for such exclusion to the Administrator and the Administrator determines that such order or rule is in compliance with the provisions of this subsection.

(July 14, 1955, ch. 360, title I, § 163, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 732; amended Pub. L. 95–190, § 14(a)(41), Nov. 16, 1977, 91 Stat. 1401.)

[1] So in original. The period probably should be a comma.

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c)(1)(B), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–190 inserted ''section'' before ''7475''.

§ 7474. Area redesignation

(a) Authority of States to redesignate areas

Except as otherwise provided under subsection (c) of this section, a State may redesignate such areas as it deems appropriate as class I areas. The following areas may be redesignated only as class I or II:

(1) an area which exceeds ten thousand acres in size and is a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore, and

(2) a national park or national wilderness area established after August 7, 1977, which exceeds ten thousand acres in size.

The extent of the areas referred to in paragraph[1] (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990. Any area (other than an area referred to in paragraph (1) or (2) or an area established as class I under the first sentence of section 7472(a) of this title) may be redesignated by the State as class III if—

(A) such redesignation has been specifically approved by the Governor of the State, after consultation with the appropriate Committees of the legislature if it is in session or with the leadership of the legislature if it is not in session (unless State law provides that such redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation (including for such units of local government resolutions where appropriate) concurring in the State's redesignation;

(B) such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and

(C) such redesignation otherwise meets the requirements of this part.

Subparagraph (A) of this paragraph shall not apply to area redesignations by Indian tribes.

(b) Notice and hearing; notice to Federal land manager; written comments and recommendations; regulations; disapproval of redesignation

(1)(A) Prior to redesignation of any area under this part, notice shall be afforded and public

[1] So in original. Probably should be ''paragraphs''.

hearings shall be conducted in areas proposed to be redesignated and in areas which may be affected by the proposed redesignation. Prior to any such public hearing a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation shall be prepared and made available for public inspection and prior to any such redesignation, the description and analysis of such effects shall be reviewed and examined by the redesignating authorities.

(B) Prior to the issuance of notice under subparagraph (A) respecting the redesignation of any area under this subsection, if such area includes any Federal lands, the State shall provide written notice to the appropriate Federal land manager and afford adequate opportunity (but not in excess of 60 days) to confer with the State respecting the intended notice of redesignation and to submit written comments and recommendations with respect to such intended notice of redesignation. In redesignating any area under this section with respect to which any Federal land manager has submitted written comments and recommendations, the State shall publish a list of any inconsistency between such redesignation and such recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the Federal land manager).

(C) The Administrator shall promulgate regulations not later than six months after August 7, 1977, to assure, insofar as practicable, that prior to any public hearing on redesignation of any area, there shall be available for public inspection any specific plans for any new or modified major emitting facility which may be permitted to be constructed and operated only if the area in question is designated or redesignated as class III.

(2) The Administrator may disapprove the redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this section or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(c) Indian reservations

Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body. Such Indian governing body shall be subject in all respect to the provisions of subsection (e) of this section.

(d) Review of national monuments, primitive areas, and national preserves

The Federal Land Manager shall review all national monuments, primitive areas, and national preserves, and shall recommend any appropriate areas for redesignation as class I where air quality related values are important attributes of the area. The Federal Land Manager shall report such recommendations, within[2] supporting analysis, to the Congress and the affected States within one year after August 7, 1977. The Federal Land Manager shall consult with the appropriate States before making such recommendations.

(e) Resolution of disputes between State and Indian tribes

If any State affected by the redesignation of an area by an Indian tribe or any Indian tribe affected by the redesignation of an area by a State disagrees with such redesignation of any area, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in any State which the Governor of an affected State or governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or tribal reservation, the Governor or Indian ruling body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.

(July 14, 1955, ch. 360, title I, § 164, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 733; amended Pub. L. 95–190, § 14(a)(42), (43), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101–549, title I, § 108(n), Nov. 15, 1990, 104 Stat. 2469.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, which directed the insertion of ''The extent of the areas referred to in paragraph (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.'' before ''Any area (other than an area referred to in paragraph (1) or (2))'', was executed by making the insertion before ''Any area (other than an area referred to in paragraph (1) or (2)'', to reflect the probable intent of Congress.

1977—Subsec. (b)(2). Pub. L. 95–190, § 14(a)(42), inserted ''or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of this section'' after ''this section''.

Subsec. (e). Pub. L. 95–190, § 14(a)(43), inserted ''an'' after ''If any State affected by the redesignation of''.

§ 7475. Preconstruction requirements

(a) Major emitting facilities on which construction is commenced

No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless—

(1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part;

[2] So in original. Probably should be ''with''.

(2) the proposed permit has been subject to a review in accordance with this section, the required analysis has been conducted in accordance with regulations promulgated by the Administrator, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations;

(3) the owner or operator of such facility demonstrates, as required pursuant to section 7410(j) of this title, that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this chapter;

(4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility;

(5) the provisions of subsection (d) of this section with respect to protection of class I areas have been complied with for such facility;

(6) there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;

(7) the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source; and

(8) in the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under section 7411 of this title has been promulgated subsequent to August 7, 1977, for such source category, the Administrator has approved the determination of best available technology as set forth in the permit.

(b) Exception

The demonstration pertaining to maximum allowable increases required under subsection (a)(3) of this section shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility which is in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with subsection (a)(4) of this section, will be less than fifty tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such pollutants.

(c) Permit applications

Any completed permit application under section 7410 of this title for a major emitting facility in any area to which this part applies shall be granted or denied not later than one year after the date of filing of such completed application.

(d) Action taken on permit applications; notice; adverse impact on air quality related values; variance; emission limitations

(1) Each State shall transmit to the Administrator a copy of each permit application relating to a major emitting facility received by such State and provide notice to the Administrator of every action related to the consideration of such permit.

(2)(A) The Administrator shall provide notice of the permit application to the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within a class I area which may be affected by emissions from the proposed facility.

(B) The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands shall have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values.

(C)(i) In any case where the Federal official charged with direct responsibility for management of any lands within a class I area or the Federal Land Manager of such lands, or the Administrator, or the Governor of an adjacent State containing such a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

(ii) In any case where the Federal Land Manager demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.

(iii) In any case where the owner or operator of such facility demonstrates to the satisfaction of the Federal Land Manager, and the Federal Land Manager so certifies, that the emissions from such facility will have no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations which exceed the max-

imum allowable increases for class I areas, the State may issue a permit.

(iv) In the case of a permit issued pursuant to clause (iii), such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides and particulates from such facility will not cause or contribute to concentrations of such pollutant which exceed the following maximum allowable increases over the baseline concentration for such pollutants:

	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	325

(D)(i) In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under subparagraph (C)(iii) demonstrates to the satisfaction of the Governor, after notice and public hearing, and the Governor finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any class I area and, in the case of Federal mandatory class I areas, that a variance under this clause will not adversely affect the air quality related values of the area (including visibility), the Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this subparagraph.

(ii) In any case in which the Governor recommends a variance under this subparagraph in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that such variance is in the national interest. No Presidential finding shall be reviewable in any court. The variance shall take effect if the President approves the Governor's recommendations. The President shall approve or disapprove such recommendation within ninety days after his receipt of the recommendations of the Governor and the Federal Land Manager.

(iii) In the case of a permit issued pursuant to this subparagraph, such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides from such facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the following maximum allowable increases for such areas over the baseline concentration for such pollutant and to assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period:

MAXIMUM ALLOWABLE INCREASE
(In micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hr maximum	36	62
3-hr maximum	130	221

(iv) For purposes of clause (iii), the term ''high terrain area'' means with respect to any facility, any area having an elevation of 900 feet or more above the base of the stack of such facility, and the term ''low terrain area'' means any area other than a high terrain area.

(e) Analysis; continuous air quality monitoring data; regulations; model adjustments

(1) The review provided for in subsection (a) of this section shall be preceded by an analysis in accordance with regulations of the Administrator, promulgated under this subsection, which may be conducted by the State (or any general purpose unit of local government) or by the major emitting facility applying for such permit, of the ambient air quality at the proposed site and in areas which may be affected by emissions from such facility for each pollutant subject to regulation under this chapter which will be emitted from such facility.

(2) Effective one year after August 7, 1977, the analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from such facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this part. Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this part unless the State, in accordance with regulations promulgated by the Administrator, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

(3) The Administrator shall within six months after August 7, 1977, promulgate regulations respecting the analysis required under this subsection which regulations—

(A) shall not require the use of any automatic or uniform buffer zone or zones,

(B) shall require an analysis of the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site of the proposed major emitting facility and in the area potentially affected by the emissions from such facility for each pollutant regulated under this chapter which will be emitted from, or which results from the construction or operation of, such facility, the size and nature of the proposed facility, the degree of continuous emission reduction which could be achieved by such facility, and such other factors as may be relevant in determining the effect of emissions from a proposed facility on any air quality control region,

(C) shall require the results of such analysis shall be available at the time of the public hearing on the application for such permit, and

(D) shall specify with reasonable particularity each air quality model or models to be

used under specified sets of conditions for purposes of this part.

Any model or models designated under such regulations may be adjusted upon a determination, after notice and opportunity for public hearing, by the Administrator that such adjustment is necessary to take into account unique terrain or meteorological characteristics of an area potentially affected by emissions from a source applying for a permit required under this part.

(July 14, 1955, ch. 360, title I, § 165, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 735; amended Pub. L. 95–190, § 14(a)(44)–(51), Nov. 16, 1977, 91 Stat. 1402.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95–190, § 14(a)(44), substituted ''part;'' for ''part:''.

Subsec. (a)(3). Pub. L. 95–190, § 14(a)(45), inserted provision making applicable requirement of section 7410(j) of this title.

Subsec. (b). Pub. L. 95–190, § 14(a)(46), inserted ''cause or'' before ''contribute'' and struck out ''actual'' before ''allowable emissions''.

Subsec. (d)(2)(C). Pub. L. 95–190, § 14(a)(47)–(49), in cl. (ii) substituted ''contribute'' for ''contrbute'', in cl. (iii) substituted ''quality-related'' for ''quality related'' and ''concentrations which'' for ''concentrations, which'', and in cl. (iv) substituted ''such facility'' for ''such sources'' and ''will not cause or contribute to concentrations of such pollutant which exceed'' for ''together with all other sources, will not exceed''.

Subsec. (d)(2)(D). Pub. L. 95–190, § 14(a)(50), (51), in cl. (iii) substituted provisions relating to determinations of amounts of emissions of sulfur oxides from facilities, for provisions relating to determinations of amounts of emissions of sulfur oxides from sources operating under permits issued pursuant to this subpar., together with all other sources, and added cl. (iv).

§ 7476. Other pollutants

(a) Hydrocarbons, carbon monoxide, petrochemical oxidants, and nitrogen oxides

In the case of the pollutants hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides, the Administrator shall conduct a study and not later than two years after August 7, 1977, promulgate regulations to prevent the significant deterioration of air quality which would result from the emissions of such pollutants. In the case of pollutants for which national ambient air quality standards are promulgated after August 7, 1977, he shall promulgate such regulations not more than 2 years after the date of promulgation of such standards.

(b) Effective date of regulations

Regulations referred to in subsection (a) of this section shall become effective one year after the date of promulgation. Within 21 months after such date of promulgation such plan revision shall be submitted to the Administrator who shall approve or disapprove the plan within 25 months after such date or[1] promulgation in the same manner as required under section 7410 of this title.

(c) Contents of regulations

Such regulations shall provide specific numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, protection of air quality values, and fulfill the goals and purposes set forth in section 7401 and section 7470 of this title.

(d) Specific measures to fulfill goals and purposes

The regulations of the Administrator under subsection (a) of this section shall provide specific measures at least as effective as the increments established in section 7473 of this title to fulfill such goals and purposes, and may contain air quality increments, emission density requirements, or other measures.

(e) Area classification plan not required

With respect to any air pollutant for which a national ambient air quality standard is established other than sulfur oxides or particulate matter, an area classification plan shall not be required under this section if the implementation plan adopted by the State and submitted for the Administrator's approval or promulgated by the Administrator under section 7410(c) of this title contains other provisions which when considered as a whole, the Administrator finds will carry out the purposes in section 7470 of this title at least as effectively as an area classification plan for such pollutant. Such other provisions referred to in the preceding sentence need not require the establishment of maximum allowable increases with respect to such pollutant for any area to which this section applies.

(f) PM–10 increments

The Administrator is authorized to substitute, for the maximum allowable increases in particulate matter specified in section 7473(b) of this title and section 7475(d)(2)(C)(iv) of this title, maximum allowable increases in particulate matter with an aerodynamic diameter smaller than or equal to 10 micrometers. Such substituted maximum allowable increases shall be of equal stringency in effect as those specified in the provisions for which they are substituted. Until the Administrator promulgates regulations under the authority of this subsection, the current maximum allowable increases in concentrations of particulate matter shall remain in effect.

(July 14, 1955, ch. 360, title I, § 166, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 739; amended Pub. L. 101–549, title I, § 105(b), Nov. 15, 1990, 104 Stat. 2462.)

AMENDMENTS

1990—Subsec. (f). Pub. L. 101–549 added subsec. (f).

§ 7477. Enforcement

The Administrator shall, and a State may, take such measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction or modification of a major emitting facility which does not conform to the requirements of this part, or which is proposed to be constructed in any area designated pursuant to section 7407(d) of this title as attainment or unclassifiable and which is not subject to an implementation plan which meets the requirements of this part.

[1] So in original. Probably should be ''of''.

(July 14, 1955, ch. 360, title I, § 167, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 101–549, title I, § 110(3), title VII, § 708, Nov. 15, 1990, 104 Stat. 2470, 2684.)

AMENDMENTS

1990—Pub. L. 101–549, § 708, substituted ''construction or modification of a major emitting facility'' for ''construction of a major emitting facility''.

Pub. L. 101–549, § 110(3), substituted ''designated pursuant to section 7407(d) as attainment or unclassifiable'' for ''included in the list promulgated pursuant to paragraph (1)(D) or (E) of subsection (d) of section 7407 of this title''.

§ 7478. Period before plan approval

(a) Existing regulations to remain in effect

Until such time as an applicable implementation plan is in effect for any area, which plan meets the requirements of this part to prevent significant deterioration of air quality with respect to any air pollutant, applicable regulations under this chapter prior to August 7, 1977, shall remain in effect to prevent significant deterioration of air quality in any such area for any such pollutant except as otherwise provided in subsection (b) of this section.

(b) Regulations deemed amended; construction commenced after June 1, 1975

If any regulation in effect prior to August 7, 1977, to prevent significant deterioration of air quality would be inconsistent with the requirements of section 7472(a), section 7473(b) or section 7474(a) of this title, then such regulations shall be deemed amended so as to conform with such requirements. In the case of a facility on which construction was commenced (in accordance with the definition of ''commenced'' in section 7479(2) of this title) after June 1, 1975, and prior to August 7, 1977, the review and permitting of such facility shall be in accordance with the regulations for the prevention of significant deterioration in effect prior to August 7, 1977.

(July 14, 1955, ch. 360, title I, § 168, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 95–190, § 14(a)(52), Nov. 16, 1977, 91 Stat. 1402.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95–190 substituted ''(in accordance with the definition of 'commenced' in section 7479(2) of this title)'' for ''in accordance with this definition''.

§ 7479. Definitions

For purposes of this part—

(1) The term ''major emitting facility'' means any of the following stationary sources of air pollutants which emit, or have the potential to emit, one hundred tons per year or more of any air pollutant from the following types of stationary sources: fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than fifty tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than two hundred and fifty million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities. Such term also includes any other source with the potential to emit two hundred and fifty tons per year or more of any air pollutant. This term shall not include new or modified facilities which are nonprofit health or education institutions which have been exempted by the State.

(2)(A) The term ''commenced'' as applied to construction of a major emitting facility means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time.

(B) The term ''necessary preconstruction approvals or permits'' means those permits or approvals, required by the permitting authority as a precondition to undertaking any activity under clauses (i) or (ii) of subparagraph (A) of this paragraph.

(C) The term ''construction'' when used in connection with any source or facility, includes the modification (as defined in section 7411(a) of this title) of any source or facility.

(3) The term ''best available control technology'' means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of ''best available control technology'' result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 7411 or 7412 of this title. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to November 15, 1990.

(4) The term ''baseline concentration'' means, with respect to a pollutant, the ambient concentration levels which exist at the time of the first application for a permit in an area subject to this part, based on air quality data available in the Environmental Protection Agency or a State air pollution control agency and on such monitoring data as the permit applicant is required to submit. Such ambient concentration levels shall take into account all projected emissions in, or which may affect, such area from any major emitting facility on which construction commenced prior to January 6, 1975, but which has not begun operation by the date of the baseline air quality concentration determination. Emissions of sulfur oxides and particulate matter from any major emitting facility on which construction commenced after January 6, 1975, shall not be included in the baseline and shall be counted against the maximum allowable increases in pollutant concentrations established under this part.

(July 14, 1955, ch. 360, title I, § 169, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 95–190, § 14(a)(54), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101–549, title III, § 305(b), title IV, § 403(d), Nov. 15, 1990, 104 Stat. 2583, 2631.)

AMENDMENTS

1990—Par. (1). Pub. L. 101–549, § 305(b), struck out ''two hundred and'' after ''municipal incinerators capable of charging more than''.

Par. (3). Pub. L. 101–549, § 403(d), directed the insertion of '', clean fuels,'' after ''including fuel cleaning,'', which was executed by making the insertion after ''including fuel cleaning'' to reflect the probable intent of Congress, and inserted at end ''Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to November 15, 1990.''

1977—Par. (2)(C). Pub. L. 95–190 added subpar. (C).

STUDY OF MAJOR EMITTING FACILITIES WITH POTENTIAL OF EMITTING 250 TONS PER YEAR

Section 127(b) of Pub. L. 95–95 directed Administrator, within 1 year after Aug. 7, 1977, to report to Congress on consequences of that portion of definition of ''major emitting facility'' under this subpart which applies to facilities with potential to emit 250 tons per year or more.

SUBPART II—VISIBILITY PROTECTION

CODIFICATION

As originally enacted, subpart II of part C of subchapter I of this chapter was added following section 7478 of this title. Pub. L. 95–190, § 14(a)(53), Nov. 16, 1977, 91 Stat. 1402, struck out subpart II and inserted such subpart following section 7479 of this title.

§ 7491. Visibility protection for Federal class I areas

(a) Impairment of visibility; list of areas; study and report

(1) Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.

(2) Not later than six months after August 7, 1977, the Secretary of the Interior in consultation with other Federal land managers shall review all mandatory class I Federal areas and identify those where visibility is an important value of the area. From time to time the Secretary of the Interior may revise such identifications. Not later than one year after August 7, 1977, the Administrator shall, after consultation with the Secretary of the Interior, promulgate a list of mandatory class I Federal areas in which he determines visibility is an important value.

(3) Not later than eighteen months after August 7, 1977, the Administrator shall complete a study and report to Congress on available methods for implementing the national goal set forth in paragraph (1). Such report shall include recommendations for—

(A) methods for identifying, characterizing, determining, quantifying, and measuring visibility impairment in Federal areas referred to in paragraph (1), and

(B) modeling techniques (or other methods) for determining the extent to which manmade air pollution may reasonably be anticipated to cause or contribute to such impairment, and

(C) methods for preventing and remedying such manmade air pollution and resulting visibility impairment.

Such report shall also identify the classes or categories of sources and the types of air pollutants which, alone or in conjunction with other sources or pollutants, may reasonably be anticipated to cause or contribute significantly to impairment of visibility.

(4) Not later than twenty-four months after August 7, 1977, and after notice and public hearing, the Administrator shall promulgate regulations to assure (A) reasonable progress toward meeting the national goal specified in paragraph (1), and (B) compliance with the requirements of this section.

(b) Regulations

Regulations under subsection (a)(4) of this section shall—

(1) provide guidelines to the States, taking into account the recommendations under subsection (a)(3) of this section on appropriate techniques and methods for implementing this section (as provided in subparagraphs (A) through (C) of such subsection (a)(3)), and

(2) require each applicable implementation plan for a State in which any area listed by the Administrator under subsection (a)(2) of this section is located (or for a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal specified in subsection (a) of this section, including—

(A) except as otherwise provided pursuant to subsection (c) of this section, a requirement that each major stationary source which is in existence on August 7, 1977, but which has not been in operation for more than fifteen years as of such date, and

which, as determined by the State (or the Administrator in the case of a plan promulgated under section 7410(c) of this title) emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the State (or the Administrator in the case of a plan promulgated under section 7410(c) of this title) for controlling emissions from such source for the purpose of eliminating or reducing any such impairment, and

(B) a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal specified in subsection (a) of this section.

In the case of a fossil-fuel fired generating powerplant having a total generating capacity in excess of 750 megawatts, the emission limitations required under this paragraph shall be determined pursuant to guidelines, promulgated by the Administrator under paragraph (1).

(c) Exemptions

(1) The Administrator may, by rule, after notice and opportunity for public hearing, exempt any major stationary source from the requirement of subsection (b)(2)(A) of this section, upon his determination that such source does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I Federal area.

(2) Paragraph (1) of this subsection shall not be applicable to any fossil-fuel fired powerplant with total design capacity of 750 megawatts or more, unless the owner or operator of any such plant demonstrates to the satisfaction of the Administrator that such powerplant is located at such distance from all areas listed by the Administrator under subsection (a)(2) of this section that such powerplant does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such area.

(3) An exemption under this subsection shall be effective only upon concurrence by the appropriate Federal land manager or managers with the Administrator's determination under this subsection.

(d) Consultations with appropriate Federal land managers

Before holding the public hearing on the proposed revision of an applicable implementation plan to meet the requirements of this section, the State (or the Administrator, in the case of a plan promulgated under section 7410(c) of this title) shall consult in person with the appropriate Federal land manager or managers and shall include a summary of the conclusions and recommendations of the Federal land managers in the notice to the public.

(e) Buffer zones

In promulgating regulations under this section, the Administrator shall not require the use of any automatic or uniform buffer zone or zones.

(f) Nondiscretionary duty

For purposes of section 7604(a)(2) of this title, the meeting of the national goal specified in subsection (a)(1) of this section by any specific date or dates shall not be considered a ''nondiscretionary duty'' of the Administrator.

(g) Definitions

For the purpose of this section—

(1) in determining reasonable progress there shall be taken into consideration the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements;

(2) in determining best available retrofit technology the State (or the Administrator in determining emission limitations which reflect such technology) shall take into consideration the costs of compliance, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology;

(3) the term ''manmade air pollution'' means air pollution which results directly or indirectly from human activities;

(4) the term ''as expeditiously as practicable'' means as expeditiously as practicable but in no event later than five years after the date of approval of a plan revision under this section (or the date of promulgation of such a plan revision in the case of action by the Administrator under section 7410(c) of this title for purposes of this section);

(5) the term ''mandatory class I Federal areas'' means Federal areas which may not be designated as other than class I under this part;

(6) the terms ''visibility impairment'' and ''impairment of visibility'' shall include reduction in visual range and atmospheric discoloration; and

(7) the term ''major stationary source'' means the following types of stationary sources with the potential to emit 250 tons or more of any pollutant: fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and trans-

fer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities.

(July 14, 1955, ch. 360, title I, § 169A, as added Pub. L. 95–95, title I, § 128, Aug. 7, 1977, 91 Stat. 742.)

EFFECTIVE DATE

Subpart effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7492. Visibility

(a) Studies

(1) The Administrator, in conjunction with the National Park Service and other appropriate Federal agencies, shall conduct research to identify and evaluate sources and source regions of both visibility impairment and regions that provide predominantly clean air in class I areas. A total of $8,000,000 per year for 5 years is authorized to be appropriated for the Environmental Protection Agency and the other Federal agencies to conduct this research. The research shall include—

(A) expansion of current visibility related monitoring in class I areas;

(B) assessment of current sources of visibility impairing pollution and clean air corridors;

(C) adaptation of regional air quality models for the assessment of visibility;

(D) studies of atmospheric chemistry and physics of visibility.

(2) Based on the findings available from the research required in subsection (a)(1) of this section as well as other available scientific and technical data, studies, and other available information pertaining to visibility source-receptor relationships, the Administrator shall conduct an assessment and evaluation that identifies, to the extent possible, sources and source regions of visibility impairment including natural sources as well as source regions of clear air for class I areas. The Administrator shall produce interim findings from this study within 3 years after November 15, 1990.

(b) Impacts of other provisions

Within 24 months after November 15, 1990, the Administrator shall conduct an assessment of the progress and improvements in visibility in class I areas that are likely to result from the implementation of the provisions of the Clean Air Act Amendments of 1990 other than the provisions of this section. Every 5 years thereafter the Administrator shall conduct an assessment of actual progress and improvement in visibility in class I areas. The Administrator shall prepare a written report on each assessment and transmit copies of these reports to the appropriate committees of Congress.

(c) Establishment of visibility transport regions and commissions

(1) Authority to establish visibility transport regions

Whenever, upon the Administrator's motion or by petition from the Governors of at least two affected States, the Administrator has reason to believe that the current or projected interstate transport of air pollutants from one or more States contributes significantly to visibility impairment in class I areas located in the affected States, the Administrator may establish a transport region for such pollutants that includes such States. The Administrator, upon the Administrator's own motion or upon petition from the Governor of any affected State, or upon the recommendations of a transport commission established under subsection (b) of this section[1] may—

(A) add any State or portion of a State to a visibility transport region when the Administrator determines that the interstate transport of air pollutants from such State significantly contributes to visibility impairment in a class I area located within the transport region, or

(B) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the protection or enhancement of visibility in any class I area in the region.

(2) Visibility transport commissions

Whenever the Administrator establishes a transport region under subsection (c)(1) of this section, the Administrator shall establish a transport commission comprised of (as a minimum) each of the following members:

(A) the Governor of each State in the Visibility Transport Region, or the Governor's designee;

(B) The[2] Administrator or the Administrator's designee; and

(C) A[2] representative of each Federal agency charged with the direct management of each class I area or areas within the Visibility Transport Region.

(3) Ex officio members

All representatives of the Federal Government shall be ex officio members.

(4) Federal Advisory Committee Act

The visibility transport commissions shall be exempt from the requirements of the Federal Advisory Committee Act [5 U.S.C. App.].

(d) Duties of visibility transport commissions

A Visibility Transport Commission—

(1) shall assess the scientific and technical data, studies, and other currently available information, including studies conducted pursuant to subsection (a)(1) of this section, pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the Visibility Transport Region; and

(2) shall, within 4 years of establishment, issue a report to the Administrator recommending what measures, if any, should be taken under this chapter to remedy such adverse impacts. The report required by this sub-

[1] So in original. Words "subsection (b) of this section" probably should be "paragraph (2)".

[2] So in original. Probably should not be capitalized.

section shall address at least the following measures:

(A) the establishment of clean air corridors, in which additional restrictions on increases in emissions may be appropriate to protect visibility in affected class I areas;

(B) the imposition of the requirements of part D of this subchapter affecting the construction of new major stationary sources or major modifications to existing sources in such clean air corridors specifically including the alternative siting analysis provisions of section 7503(a)(5) of this title; and

(C) the promulgation of regulations under section 7491 of this title to address long range strategies for addressing regional haze which impairs visibility in affected class I areas.

(e) Duties of Administrator

(1) The Administrator shall, taking into account the studies pursuant to subsection (a)(1) of this section and the reports pursuant to subsection (d)(2) of this section and any other relevant information, within eighteen months of receipt of the report referred to in subsection (d)(2) of this section, carry out the Administrator's regulatory responsibilities under section 7491 of this title, including criteria for measuring ''reasonable progress'' toward the national goal.

(2) Any regulations promulgated under section 7491 of this title pursuant to this subsection shall require affected States to revise within 12 months their implementation plans under section 7410 of this title to contain such emission limits, schedules of compliance, and other measures as may be necessary to carry out regulations promulgated pursuant to this subsection.

(f) Grand Canyon visibility transport commission

The Administrator pursuant to subsection (c)(1) of this section shall, within 12 months, establish a visibility transport commission for the region affecting the visibility of the Grand Canyon National Park.

(July 14, 1955, ch. 360, title I, § 169B, as added Pub. L. 101–549, title VIII, § 816, Nov. 15, 1990, 104 Stat. 2695.)

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (b), probably means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (c)(4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS

SUBPART 1—NONATTAINMENT AREAS IN GENERAL

§ 7501. Definitions

For the purpose of this part—

(1) REASONABLE FURTHER PROGRESS.—The term ''reasonable further progress'' means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.

(2) NONATTAINMENT AREA.—The term ''nonattainment area'' means, for any air pollutant, an area which is designated ''nonattainment'' with respect to that pollutant within the meaning of section 7407(d) of this title.

(3) The term ''lowest achievable emission rate'' means for any source, that rate of emissions which reflects—

(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(4) The terms ''modifications'' and ''modified'' mean the same as the term ''modification'' as used in section 7411(a)(4) of this title.

(July 14, 1955, ch. 360, title I, § 171, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 745; amended Pub. L. 101–549, title I, § 102(a)(2), Nov. 15, 1990, 104 Stat. 2412.)

AMENDMENTS

1990—Pub. L. 101–549, § 102(a)(2)(A), struck out ''and section 7410(a)(2)(I) of this title'' after ''purpose of this part''.

Pars. (1), (2). Pub. L. 101–549, § 102(a)(2)(B), (C), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) The term 'reasonable further progress' means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 7410(a)(2)(I) of this title and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 7502(a) of this title.

''(2) The term 'nonattainment area' means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under subparagraphs (A) through (C) of section 7407(d)(1) of this title.''

EFFECTIVE DATE

Part effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7502. Nonattainment plan provisions in general

(a) Classifications and attainment dates

(1) Classifications

(A) On or after the date the Administrator promulgates the designation of an area as a

nonattainment area pursuant to section 7407(d) of this title with respect to any national ambient air quality standard (or any revised standard, including a revision of any standard in effect on November 15, 1990), the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in such area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of such standard in such area.

(B) The Administrator shall publish a notice in the Federal Register announcing each classification under subparagraph (A), except the Administrator shall provide an opportunity for at least 30 days for written comment. Such classification shall not be subject to the provisions of sections 553 through 557 of title 5 (concerning notice and comment) and shall not be subject to judicial review until the Administrator takes final action under subsection (k) or (*l*) of section 7410 of this title (concerning action on plan submissions) or section 7509 of this title (concerning sanctions) with respect to any plan submissions required by virtue of such classification.

(C) This paragraph shall not apply with respect to nonattainment areas for which classifications are specifically provided under other provisions of this part.

(2) Attainment dates for nonattainment areas

(A) The attainment date for an area designated nonattainment with respect to a national primary ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under section 7407(d) of this title, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

(B) The attainment date for an area designated nonattainment with respect to a secondary national ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable after the date such area was designated nonattainment under section 7407(d) of this title.

(C) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the attainment date determined by the Administrator under subparagraph (A) or (B) if—

(i) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(ii) in accordance with guidance published by the Administrator, no more than a minimal number of exceedances of the relevant national ambient air quality standard has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this subparagraph for a single nonattainment area.

(D) This paragraph shall not apply with respect to nonattainment areas for which attainment dates are specifically provided under other provisions of this part.

(b) Schedule for plan submissions

At the time the Administrator promulgates the designation of an area as nonattainment with respect to a national ambient air quality standard under section 7407(d) of this title, the Administrator shall establish a schedule according to which the State containing such area shall submit a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) of this section and section 7410(a)(2) of this title. Such schedule shall at a minimum, include a date or dates, extending no later than 3 years from the date of the nonattainment designation, for the submission of a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) of this section and section 7410(a)(2) of this title.

(c) Nonattainment plan provisions

The plan provisions (including plan items) required to be submitted under this part shall comply with each of the following:

(1) In general

Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.

(2) RFP

Such plan provisions shall require reasonable further progress.

(3) Inventory

Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.

(4) Identification and quantification

Such plan provisions shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 7503(a)(1)(B) of this title, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient

air quality standard by the applicable attainment date.

(5) Permits for new and modified major stationary sources

Such plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 7503 of this title.

(6) Other measures

Such plan provisions shall include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part.

(7) Compliance with section 7410(a)(2)

Such plan provisions shall also meet the applicable provisions of section 7410(a)(2) of this title.

(8) Equivalent techniques

Upon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

(9) Contingency measures

Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

(d) Plan revisions required in response to finding of plan inadequacy

Any plan revision for a nonattainment area which is required to be submitted in response to a finding by the Administrator pursuant to section 7410(k)(5) of this title (relating to calls for plan revisions) must correct the plan deficiency (or deficiencies) specified by the Administrator and meet all other applicable plan requirements of section 7410 of this title and this part. The Administrator may reasonably adjust the dates otherwise applicable under such requirements to such revision (except for attainment dates that have not yet elapsed), to the extent necessary to achieve a consistent application of such requirements. In order to facilitate submittal by the States of adequate and approvable plans consistent with the applicable requirements of this chapter, the Administrator shall, as appropriate and from time to time, issue written guidelines, interpretations, and information to the States which shall be available to the public, taking into consideration any such guidelines, interpretations, or information provided before November 15, 1990.

(e) Future modification of standard

If the Administrator relaxes a national primary ambient air quality standard after November 15, 1990, the Administrator shall, within 12 months after the relaxation, promulgate requirements applicable to all areas which have not attained that standard as of the date of such relaxation. Such requirements shall provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.

(July 14, 1955, ch. 360, title I, § 172, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 746; amended Pub. L. 95–190, § 14(a)(55), (56), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101–549, title I, § 102(b), Nov. 15, 1990, 104 Stat. 2412.)

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), expeditious attainment of national ambient air quality standards; in subsec. (b), requisite provisions of plan; and in subsec. (c), attainment of applicable standard not later than July 1, 1987.

1977—Subsec. (b)(4). Pub. L. 95–190, § 14(a)(55), substituted ''subsection (a) of this section'' for ''paragraph (1)''.

Subsec. (c). Pub. L. 95–190, § 14(a)(56), substituted ''December 31'' for ''July 1''.

NONATTAINMENT AREAS

Section 129(a) of Pub. L. 95–95, as amended by Pub. L. 95–190, § 14(b)(2), (3), Nov. 16, 1977, 91 Stat. 1404, provided that:

''(1) Before July 1, 1979, the interpretative regulation of the Administrator of the Environmental Protection Agency published in 41 Federal Register 55524–30, December 21, 1976, as may be modified by rule of the Administrator, shall apply except that the baseline to be used for determination of appropriate emission offsets under such regulation shall be the applicable implementation plan of the State in effect at the time of application for a permit by a proposed major stationary source (within the meaning of section 302 of the Clean Air Act) [section 7602 of this title].

''(2) Before July 1, 1979, the requirements of the regulation referred to in paragraph (1) shall be waived by the Administrator with respect to any pollutant if he determines that the State has—

''(A) an inventory of emissions of the applicable pollutant for each nonattainment area (as defined in section 171 of the Clean Air Act [section 7501 of this title]) that identifies the type, quantity, and source of such pollutant so as to provide information sufficient to demonstrate that the requirements of subparagraph (C) are being met;

''(B) an enforceable permit program which—

''(i) requires new or modified major stationary sources to meet emission limitations at least as stringent as required under the permit requirements referred to in paragraphs (2) and (3) of section 173 of the Clean Air Act [section 7503 of this title] (relating to lowest achievable emission rate and compliance by other sources) and which assures compliance with the annual reduction requirements of subparagraph (C); and

''(ii) requires existing sources to achieve such reduction in emissions in the area as may be obtained through the adoption, at a minimum of reasonably available control technology, and

''(C) a program which requires reductions in total allowable emissions in the area prior to July 1, 1979, so as to provide for the same level of emission reduction as would result from the application of the regulation referred to in paragraph (1).

The Administrator shall terminate such waiver if in his judgment the reduction in emissions actually being at-

tained is less than the reduction on which the waiver was conditioned pursuant to subparagraph (C), or if the Administrator determines that the State is no longer in compliance with any requirement of this paragraph. Upon application by the State, the Administrator may reinstate a waiver terminated under the preceding sentence if he is satisfied that such State is in compliance with all requirements of this subsection.

''(3) Operating permits may be issued to those applicants who were properly granted construction permits, in accordance with the law and applicable regulations in effect at the time granted, for construction of a new or modified source in areas exceeding national primary air quality standards on or before the date of the enactment of this Act [Aug. 7, 1977] if such construction permits were granted prior to the date of the enactment of this Act and the person issued any such permit is able to demonstrate that the emissions from the source will be within the limitations set forth in such construction permit.''

STATE IMPLEMENTATION PLAN REVISION

Section 129(c) of Pub. L. 95–95, as amended by Pub. L. 95–190, § 14(b)(4), Nov. 16, 1977, 91 Stat. 1405, provided that: ''Notwithstanding the requirements of section 406(d)(2) [set out as an Effective Date of 1977 Amendment note under section 7401 of this title] (relating to date required for submission of certain implementation plan revisions), for purposes of section 110(a)(2) of the Clean Air Act [section 7410(a)(2) of this title] each State in which there is any nonattainment area (as defined in part D of title I of the Clean Air Act) [this part] shall adopt and submit an implementation plan revision which meets the requirements of section 110(a)(2)(I) [section 7410(a)(2)(I) of this title] and part D of title I of the Clean Air Act [this part] not later than January 1, 1979. In the case of any State for which a plan revision adopted and submitted before such date has made the demonstration required under section 172(a)(2) of the Clean Air Act [subsec. (a)(2) of this section] (respecting impossibility of attainment before 1983), such State shall adopt and submit to the Administrator a plan revision before July 1, 1982, which meets the requirements of section 172(b) and (c) of such Act [subsecs. (b) and (c) of this section].''

§ 7503. Permit requirements

(a) In general

The permit program required by section 7502(b)(6)[1] of this title shall provide that permits to construct and operate may be issued if—

(1) in accordance with regulations issued by the Administrator for the determination of baseline emissions in a manner consistent with the assumptions underlying the applicable implementation plan approved under section 7410 of this title and this part, the permitting agency determines that—

(A) by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources (as determined in accordance with the regulations under this paragraph) prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under section 7502 of this title) reasonable further progress (as defined in section 7501 of this title); or

(B) in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 7502(c) of this title;

(2) the proposed source is required to comply with the lowest achievable emission rate;

(3) the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this chapter; and[2]

(4) the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this part; and

(5) an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Any emission reductions required as a precondition of the issuance of a permit under paragraph (1) shall be federally enforceable before such permit may be issued.

(b) Prohibition on use of old growth allowances

Any growth allowance included in an applicable implementation plan to meet the requirements of section 7502(b)(5) of this title (as in effect immediately before November 15, 1990) shall not be valid for use in any area that received or receives a notice under section 7410(a)(2)(H)(ii) of this title (as in effect immediately before November 15, 1990) or under section 7410(k)(1) of this title that its applicable implementation plan containing such allowance is substantially inadequate.

(c) Offsets

(1) The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this part for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the State may allow the owner or operator of a source to obtain such emission reductions in another nonattainment area if (A) the other area has an equal or higher nonattainment classification

[1] See References in Text note below.

[2] So in original. The word ''and'' probably should not appear.

than the area in which the source is located and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. Such emission reductions shall be, by the time a new or modified source commences operation, in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(2) Emission reductions otherwise required by this chapter shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this chapter shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

(d) Control technology information

The State shall provide that control technology information from permits issued under this section will be promptly submitted to the Administrator for purposes of making such information available through the RACT/BACT/LAER clearinghouse to other States and to the general public.

(e) Rocket engines or motors

The permitting authority of a State shall allow a source to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

(1) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.

(2) The source demonstrates to the satisfaction of the permitting authority of the State that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

(3) The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration or other appropriate Federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(4) The source will comply with an alternative measure, imposed by the permitting authority, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the permitting authority may impose an emissions fee to be paid to such authority of a State which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous 3 years. The permitting authority shall utilize the fees in a manner that maximizes the emissions reductions in that area.

(July 14, 1955, ch. 360, title I, § 173, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 748; amended Pub. L. 95–190, § 14(a)(57), (58), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title I, § 102(c), Nov. 15, 1990, 104 Stat. 2415.)

REFERENCES IN TEXT

Section 7502(b) of this title, referred to in subsec. (a), was amended generally by Pub. L. 101–549, title I, § 102(b), Nov. 15, 1990, 104 Stat. 2412, and, as so amended, does not contain a par. (6). See section 7502(c)(5) of this title.

AMENDMENTS

1990—Pub. L. 101–549, § 102(c)(1), made technical amendment to section catchline.

Pub. L. 101–549, § 102(c)(2), (8), designated existing provisions as subsec. (a), inserted heading, and substituted ''(1) shall be federally enforceable'' for ''(1)(A) shall be legally binding'' in last sentence.

Subsec. (a)(1). Pub. L. 101–549, § 102(c)(3), inserted at beginning ''in accordance with regulations issued by the Administrator for the determination of baseline emissions in a manner consistent with the assumptions underlying the applicable implementation plan approved under section 7410 of this title and this part,''.

Subsec. (a)(1)(A). Pub. L. 101–549, § 102(c)(4), inserted ''sufficient offsetting emissions reductions have been obtained, such that'' after ''to commence operation,'' and substituted ''(as determined in accordance with the regulations under this paragraph)'' for ''allowed under the applicable implementation plan''.

Subsec. (a)(1)(B). Pub. L. 101–549, § 102(c)(5), inserted at beginning ''in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted,'' and substituted ''7502(c)'' for ''7502(b)''.

Subsec. (a)(4). Pub. L. 101–549, § 102(c)(6), inserted at beginning ''the Administrator has not determined that'', substituted ''not being adequately implemented'' for ''being carried out'', and substituted ''; and'' for period at end.

Subsec. (a)(5). Pub. L. 101–549, § 102(c)(7), added par. (5).

Subsec. (b). Pub. L. 101–549, § 102(c)(9), added subsec. (b).

Subsecs. (c) to (e). Pub. L. 101–549, § 102(c)(10), added subsecs. (c) to (e).

1977—Par. (1)(A). Pub. L. 95–190, § 14(a)(57), inserted ''or modified'' after ''from new'' and ''applicable'' before ''implementation plan'', and substituted ''source'' for ''facility'' wherever appearing.

Par. (4). Pub. L. 95–190, § 14(a)(58), added par. (4).

FAILURE TO ATTAIN NATIONAL PRIMARY AMBIENT AIR QUALITY STANDARDS UNDER CLEAN AIR ACT

Pub. L. 100–202, § 101(f) [title II], Dec. 22, 1987, 101 Stat. 1329–187, 1329–199, provided that: ''No restriction or prohibition on construction, permitting, or funding under sections 110(a)(2)(I), 173(4), 176(a), 176(b), or 316 of the Clean Air Act [sections 7410(a)(2)(I), 7503(4), 7506(a), (b), 7616 of this title] shall be imposed or take effect during the period prior to August 31, 1988, by reason of (1) the failure of any nonattainment area to attain the national primary ambient air quality standard under the Clean Air Act [this chapter] for photochemical oxidants (ozone) or carbon monoxide (or both) by December 31, 1987, (2) the failure of any State to adopt and submit to the Administrator of the Environmental Protection Agency an implementation plan that meets the requirements of part D of title I of such Act [this part] and provides for attainment of such standards by December 31, 1987, (3) the failure of any State or designated local government to implement the applicable implementation plan, or (4) any combination of the

foregoing. During such period and consistent with the preceding sentence, the issuance of a permit (including required offsets) under section 173 of such Act [this section] for the construction or modification of a source in a nonattainment area shall not be denied solely or partially by reason of the reference contained in section 171(1) of such Act [section 7501(1) of this title] to the applicable date established in section 172(a) [section 7502(a) of this title]. This subsection [probably means the first 3 sentences of this note] shall not apply to any restriction or prohibition in effect under sections 110(a)(2)(I), 173(4), 176(a), 176(b), or 316 of such Act prior to the enactment of this section [Dec. 22, 1987]. Prior to August 31, 1988, the Administrator of the Environmental Protection Agency shall evaluate air quality data and make determinations with respect to which areas throughout the nation have attained, or failed to attain, either or both of the national primary ambient air quality standards referred to in subsection (a) [probably means the first 3 sentences of this note] and shall take appropriate steps to designate those areas failing to attain either or both of such standards as nonattainment areas within the meaning of part D of title I of the Clean Air Act.''

§ 7504. Planning procedures

(a) In general

For any ozone, carbon monoxide, or PM–10 nonattainment area, the State containing such area and elected officials of affected local governments shall, before the date required for submittal of the inventory described under sections 7511a(a)(1) and 7512a(a)(1) of this title, jointly review and update as necessary the planning procedures adopted pursuant to this subsection as in effect immediately before November 15, 1990, or develop new planning procedures pursuant to this subsection, as appropriate. In preparing such procedures the State and local elected officials shall determine which elements of a revised implementation plan will be developed, adopted, and implemented (through means including enforcement) by the State and which by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. The implementation plan required by this part shall be prepared by an organization certified by the State, in consultation with elected officials of local governments and in accordance with the determination under the second sentence of this subsection. Such organization shall include elected officials of local governments in the affected area, and representatives of the State air quality planning agency, the State transportation planning agency, the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, the organization responsible for the air quality maintenance planning process under regulations implementing this chapter, and any other organization with responsibilities for developing, submitting, or implementing the plan required by this part. Such organization may be one that carried out these functions before November 15, 1990.

(b) Coordination

The preparation of implementation plan provisions and subsequent plan revisions under the continuing transportation-air quality planning process described in section 7408(e) of this title shall be coordinated with the continuing, cooperative and comprehensive transportation planning process required under section 134 of title 23, and such planning processes shall take into account the requirements of this part.

(c) Joint planning

In the case of a nonattainment area that is included within more than one State, the affected States may jointly, through interstate compact or otherwise, undertake and implement all or part of the planning procedures described in this section.

(July 14, 1955, ch. 360, title I, § 174, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 748; amended Pub. L. 101–549, title I, § 102(d), Nov. 15, 1990, 104 Stat. 2417.)

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), preparation of implementation plan by designated organization; and in subsec. (b), coordination of plan preparation.

§ 7505. Environmental Protection Agency grants

(a) Plan revision development costs

The Administrator shall make grants to any organization of local elected officials with transportation or air quality maintenance planning responsibilities recognized by the State under section 7504(a) of this title for payment of the reasonable costs of developing a plan revision under this part.

(b) Uses of grant funds

The amount granted to any organization under subsection (a) of this section shall be 100 percent of any additional costs of developing a plan revision under this part for the first two fiscal years following receipt of the grant under this paragraph, and shall supplement any funds available under Federal law to such organization for transportation or air quality maintenance planning. Grants under this section shall not be used for construction.

(July 14, 1955, ch. 360, title I, § 175, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 749.)

§ 7505a. Maintenance plans

(a) Plan revision

Each State which submits a request under section 7407(d) of this title for redesignation of a nonattainment area for any air pollutant as an area which has attained the national primary ambient air quality standard for that air pollutant shall also submit a revision of the applicable State implementation plan to provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation. The plan shall contain such additional measures, if any, as may be necessary to ensure such maintenance.

(b) Subsequent plan revisions

8 years after redesignation of any area as an attainment area under section 7407(d) of this title, the State shall submit to the Administrator an additional revision of the applicable

State implementation plan for maintaining the national primary ambient air quality standard for 10 years after the expiration of the 10-year period referred to in subsection (a) of this section.

(c) Nonattainment requirements applicable pending plan approval

Until such plan revision is approved and an area is redesignated as attainment for any area designated as a nonattainment area, the requirements of this part shall continue in force and effect with respect to such area.

(d) Contingency provisions

Each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area. The failure of any area redesignated as an attainment area to maintain the national ambient air quality standard concerned shall not result in a requirement that the State revise its State implementation plan unless the Administrator, in the Administrator's discretion, requires the State to submit a revised State implementation plan.

(July 14, 1955, ch. 360, title I, § 175A, as added Pub. L. 101–549, title I, § 102(e), Nov. 15, 1990, 104 Stat. 2418.)

§ 7506. Limitations on certain Federal assistance

(a), (b) Repealed. Pub. L. 101–549, title I, § 110(4), Nov. 15, 1990, 104 Stat. 2470

(c) Activities not conforming to approved or promulgated plans

(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 7410 of this title. No metropolitan planning organization designated under section 134 of title 23, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 7410 of this title. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. Conformity to an implementation plan means—

(A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

(B) that such activities will not—

(i) cause or contribute to any new violation of any standard in any area;

(ii) increase the frequency or severity of any existing violation of any standard in any area; or

(iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

(2) Any transportation plan or program developed pursuant to title 23 or chapter 53 of title 49 shall implement the transportation provisions of any applicable implementation plan approved under this chapter applicable to all or part of the area covered by such transportation plan or program. No Federal agency may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this chapter. In particular—

(A) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under title 23 or chapter 53 of title 49, or be found to be in conformity by a metropolitan planning organization until a final determination has been made that emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan, and that the plan or program will conform to the requirements of paragraph (1)(B);

(B) no metropolitan planning organization or other recipient of funds under title 23 or chapter 53 of title 49 shall adopt or approve a transportation improvement program of projects until it determines that such program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan;

(C) a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23 or chapter 53 of title 49, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the Department of Transportation only if it meets either the requirements of subparagraph (D) or the following requirements—

(i) such a project comes from a conforming plan and program;

(ii) the design concept and scope of such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and

(iii) the design concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions.

(D) Any project not referred to in subparagraph (C) shall be treated as conforming to the applicable implementation plan only if it is demonstrated that the projected emissions from such project, when considered together

with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause such plans and programs to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan.

(E) The appropriate metropolitan planning organization shall redetermine conformity of existing transportation plans and programs not later than 2 years after the date on which the Administrator—

(i) finds a motor vehicle emissions budget to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004);

(ii) approves an implementation plan that establishes a motor vehicle emissions budget if that budget has not yet been determined to be adequate in accordance with clause (i); or

(iii) promulgates an implementation plan that establishes or revises a motor vehicle emissions budget.

(3) Until such time as the implementation plan revision referred to in paragraph (4)(C)[1] is approved, conformity of such plans, programs, and projects will be demonstrated if—

(A) the transportation plans and programs—

(i) are consistent with the most recent estimates of mobile source emissions;

(ii) provide for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(iii) with respect to ozone and carbon monoxide nonattainment areas, contribute to annual emissions reductions consistent with sections 7511a(b)(1) and 7512a(a)(7) of this title; and

(B) the transportation projects—

(i) come from a conforming transportation plan and program as defined in subparagraph (A) or for 12 months after November 15, 1990, from a transportation program found to conform within 3 years prior to November 15, 1990; and

(ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

With regard to subparagraph (B)(ii), such determination may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.

(4) CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY.—

(A) IN GENERAL.—The Administrator shall promulgate, and periodically update, criteria and procedures for determining conformity (except in the case of transportation plans, programs, and projects) of, and for keeping the Administrator informed about, the activities referred to in paragraph (1).

(B) TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS.—The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update, criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects.

(C) CIVIL ACTION TO COMPEL PROMULGATION.—A civil action may be brought against the Administrator and the Secretary of Transportation under section 7604 of this title to compel promulgation of such criteria and procedures and the Federal district court shall have jurisdiction to order such promulgation.

(D) The procedures and criteria shall, at a minimum—

(i) address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and State departments of transportation before such organizations and the Secretary make conformity determinations;

(ii) address the appropriate frequency for making conformity determinations, but the frequency for making conformity determinations on updated transportation plans and programs shall be every 4 years, except in a case in which—

(I) the metropolitan planning organization elects to update a transportation plan or program more frequently; or

(II) the metropolitan planning organization is required to determine conformity in accordance with paragraph (2)(E); and

(iii) address how conformity determinations will be made with respect to maintenance plans.

(E) INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—Not later than 2 years after August 10, 2005, the procedures under subparagraph (A) shall include a requirement that each State include in the State implementation plan criteria and procedures for consultation required by subparagraph (D)(i), and enforcement and enforceability (pursuant to sections 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regulations) in accordance with the Administrator's criteria and procedures for consultation, enforcement and enforceability.

(F) Compliance with the rules of the Administrator for determining the conformity of transportation plans, programs, and projects funded or approved under title 23 or chapter 53 of title 49 to State or Federal implementation plans shall not be required for traffic signal synchronization projects prior to the funding, approval or implementation of such projects. The supporting regional emissions analysis for any conformity determination made with respect to a transportation plan, program, or project shall consider the effect on emissions of any such project funded, approved, or implemented prior to the conformity determination.

(5) APPLICABILITY.—This subsection shall apply only with respect to—

(A) a nonattainment area and each pollutant for which the area is designated as a nonattainment area; and

(B) an area that was designated as a nonattainment area but that was later redesig-

[1] See References in Text note below.

nated by the Administrator as an attainment area and that is required to develop a maintenance plan under section 7505a of this title with respect to the specific pollutant for which the area was designated nonattainment.

(6) Notwithstanding paragraph 5,[2] this subsection shall not apply with respect to an area designated nonattainment under section 7407(d)(1) of this title until 1 year after that area is first designated nonattainment for a specific national ambient air quality standard. This paragraph only applies with respect to the national ambient air quality standard for which an area is newly designated nonattainment and does not affect the area's requirements with respect to all other national ambient air quality standards for which the area is designated nonattainment or has been redesignated from nonattainment to attainment with a maintenance plan pursuant to section 7505a[1] of this title (including any pre-existing national ambient air quality standard for a pollutant for which a new or revised standard has been issued).

(7) CONFORMITY HORIZON FOR TRANSPORTATION PLANS.—

(A) IN GENERAL.—Each conformity determination required under this section for a transportation plan under section 134(i) of title 23 or section 5303(i) of title 49 shall require a demonstration of conformity for the period ending on either the final year of the transportation plan, or at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, the longest of the following periods:

(i) The first 10-year period of any such transportation plan.

(ii) The latest year in the implementation plan applicable to the area that contains a motor vehicle emission budget.

(iii) The year after the completion date of a regionally significant project if the project is included in the transportation improvement program or the project requires approval before the subsequent conformity determination.

(B) REGIONAL EMISSIONS ANALYSIS.—The conformity determination shall be accompanied by a regional emissions analysis for the last year of the transportation plan and for any year shown to exceed emission budgets by a prior analysis, if such year extends beyond the applicable period as determined under subparagraph (A).

(C) EXCEPTION.—In any case in which an area has a revision to an implementation plan under section 7505a(b) of this title and the Administrator has found the motor vehicles emissions budgets from that revision to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or has approved the revision, the demonstration of conformity at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, shall be required to extend only through the last year of the implementation plan required under section 7505a(b) of this title.

(D) EFFECT OF ELECTION.—Any election by a metropolitan planning organization under this paragraph shall continue in effect until the metropolitan planning organization elects otherwise.

(E) AIR POLLUTION CONTROL AGENCY DEFINED.—In this paragraph, the term ''air pollution control agency'' means an air pollution control agency (as defined in section 7602(b) of this title) that is responsible for developing plans or controlling air pollution within the area covered by a transportation plan.

(8) SUBSTITUTION OF TRANSPORTATION CONTROL MEASURES.—

(A) IN GENERAL.—Transportation control measures that are specified in an implementation plan may be replaced or added to the implementation plan with alternate or additional transportation control measures—

(i) if the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as demonstrated with an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

(ii) if the substitute control measures are implemented—

(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after the implementation plan date but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iii) if the substitute and additional control measures are accompanied with evidence of adequate personnel and funding and authority under State or local law to implement, monitor, and enforce the control measures;

(iv) if the substitute and additional control measures were developed through a collaborative process that included—

(I) participation by representatives of all affected jurisdictions (including local air pollution control agencies, the State air pollution control agency, and State and local transportation agencies);

(II) consultation with the Administrator; and

(III) reasonable public notice and opportunity for comment; and

(v) if the metropolitan planning organization, State air pollution control agency, and the Administrator concur with the equivalency of the substitute or additional control measures.

(B) ADOPTION.—(i) Concurrence by the metropolitan planning organization, State air pol-

[2] So in original. Probably should be ''paragraph (5),''.

lution control agency and the Administrator as required by subparagraph (A)(v) shall constitute adoption of the substitute or additional control measures so long as the requirements of subparagraphs (A)(i), (A)(ii), (A)(iii) and (A)(iv) are met.

(ii) Once adopted, the substitute or additional control measures become, by operation of law, part of the State implementation plan and become federally enforceable.

(iii) Within 90 days of its concurrence under subparagraph (A)(v), the State air pollution control agency shall submit the substitute or additional control measure to the Administrator for incorporation in the codification of the applicable implementation plan. Nothwithstanding[3] any other provision of this chapter, no additional State process shall be necessary to support such revision to the applicable plan.

(C) NO REQUIREMENT FOR EXPRESS PERMISSION.—The substitution or addition of a transportation control measure in accordance with this paragraph and the funding or approval of such a control measure shall not be contingent on the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

(D) NO REQUIREMENT FOR NEW CONFORMITY DETERMINATION.—The substitution or addition of a transportation control measure in accordance with this paragraph shall not require—

(i) a new conformity determination for the transportation plan; or

(ii) a revision of the implementation plan.

(E) CONTINUATION OF CONTROL MEASURE BEING REPLACED.—A control measure that is being replaced by a substitute control measure under this paragraph shall remain in effect until the substitute control measure is adopted by the State pursuant to subparagraph (B).

(F) EFFECT OF ADOPTION.—Adoption of a substitute control measure shall constitute rescission of the previously applicable control measure.

(9) LAPSE OF CONFORMITY.—If a conformity determination required under this subsection for a transportation plan under section 134(i) of title 23 or section 5303(i) of title 49 or a transportation improvement program under section 134(j) of such title 23 or under section 5303(j) of such title 49 is not made by the applicable deadline and such failure is not corrected by additional measures to either reduce motor vehicle emissions sufficient to demonstrate compliance with the requirements of this subsection within 12 months after such deadline or other measures sufficient to correct such failures, the transportation plan shall lapse.

(10) LAPSE.—In this subsection, the term ''lapse'' means that the conformity determination for a transportation plan or transportation improvement program has expired, and thus there is no currently conforming transportation plan or transportation improvement program.

(d) Priority of achieving and maintaining national primary ambient air quality standards

Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air-quality standard. This paragraph extends to, but is not limited to, authority exercised under chapter 53 of title 49, title 23, and the Housing and Urban Development Act.

(July 14, 1955, ch. 360, title I, § 176, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 749; amended Pub. L. 95–190, § 14(a)(59), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title I, §§ 101(f), 110(4), Nov. 15, 1990, 104 Stat. 2409, 2470; Pub. L. 104–59, title III, § 305(b), Nov. 28, 1995, 109 Stat. 580; Pub. L. 104–260, § 1, Oct. 9, 1996, 110 Stat. 3175; Pub. L. 106–377, § 1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–44; Pub. L. 109–59, title VI, § 6011(a)–(f), Aug. 10, 2005, 119 Stat. 1878–1881.)

REFERENCES IN TEXT

Paragraph (4) of subsec. (c), referred to in subsec. (c)(3), was amended by Pub. L. 109–59, title VI, § 6011(f), Aug. 10, 2005, 119 Stat. 1881, to redesignate subpar. (C) as (E), strike it out, and add new subpars. (C) and (E). See 2005 Amendment notes below.

Section 7505a of this title, referred to in subsec. (c)(6), was in the original ''section 175(A)'' and was translated as reading ''section 175A'', meaning section 175A of act July 14, 1955, which is classified to section 7505a of this title, to reflect the probable intent of Congress.

The Housing and Urban Development Act, referred to in subsec. (d), may be the name for a series of acts sharing the same name but enacted in different years by Pub. L. 89–117, Aug. 10, 1965, 79 Stat. 451; Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476; Pub. L. 91–152, Dec. 24, 1969, 83 Stat. 379; and Pub. L. 91–609, Dec. 31, 1970, 84 Stat. 1770, respectively. For complete classification of these Acts to the Code, see Short Title notes set out under section 1701 of Title 12, Banks and Banking, and Tables.

CODIFICATION

In subsecs. (c)(2) and (d), ''chapter 53 of title 49'' substituted for ''the Urban Mass Transportation Act [49 App. U.S.C. 1601 et seq.]'' and in subsec. (c)(4)(F) substituted for ''Federal Transit Act'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378 (the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation), and of Pub. L. 102–240, title III, § 3003(b), Dec. 18, 1991, 105 Stat. 2088, which provided that references in laws to the Urban Mass Transportation Act of 1964 be deemed to be references to the Federal Transit Act.

AMENDMENTS

2005—Subsec. (c)(2)(E). Pub. L. 109–59, § 6011(a), added subpar. (E).

Subsec. (c)(4). Pub. L. 109–59, § 6011(f)(1)–(3), inserted par. (4) and subpar. (A) headings, in first sentence substituted ''The Administrator shall promulgate, and periodically update,'' for ''No later than one year after November 15, 1990, the Administrator shall promulgate'', designated second sentence as subpar. (B), inserted heading, substituted ''The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update,'' for ''No later than one year after November 15, 1990, the Administrator, with the concurrence of the Secretary of Transportation, shall promulgate'', designated third sentence as subpar. (C), inserted heading, substituted ''A civil action'' for ''A suit'', and redesignated former subpars. (B) to (D) as (D) to (F), respectively.

Subsec. (c)(4)(B)(ii). Pub. L. 109–59, § 6011(b), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as

[3] So in original. Probably should be ''Notwithstanding''.

follows: ''address the appropriate frequency for making conformity determinations, but in no case shall such determinations for transportation plans and programs be less frequent than every three years; and''.

Subsec. (c)(4)(E). Pub. L. 109–59, § 6011(f)(4), added subpar. (E) and struck out former subpar. (E) which read as follows: ''Such procedures shall also include a requirement that each State shall submit to the Administrator and the Secretary of Transportation within 24 months of November 15, 1990, a revision to its implementation plan that includes criteria and procedures for assessing the conformity of any plan, program, or project subject to the conformity requirements of this subsection.''

Subsec. (c)(7) to (10). Pub. L. 109–59, § 6011(c)–(e), added pars. (7) to (10).

2000—Subsec. (c)(6). Pub. L. 106–377 added par. (6).

1996—Subsec. (c)(4)(D). Pub. L. 104–260 added subpar. (D).

1995—Subsec. (c)(5). Pub. L. 104–59 added par. (5).

1990—Subsecs. (a), (b). Pub. L. 101–549, § 110(4), struck out subsec. (a) which related to approval of projects or award of grants, and subsec. (b) which related to implementation of approved or promulgated plans.

Subsec. (c). Pub. L. 101–549, § 101(f), designated existing provisions as par. (1), struck out ''(1)'', ''(2)'', ''(3)'', and ''(4)'' before ''engage in'', ''support in'', ''license or'', and ''approve, any'', respectively, substituted ''conform to an implementation plan after it'' for ''conform to a plan after it'', ''conform to an implementation plan approved'' for ''conform to a plan approved'', and ''conformity to such an implementation plan shall'' for ''conformity to such a plan shall'', inserted ''Conformity to an implementation plan means—'' followed immediately by subpars. (A) and (B) and closing provisions relating to determination of conformity being based on recent estimates of emissions and the determination of such estimates, and added pars. (2) to (4).

1977—Subsec. (a)(1). Pub. L. 95–190 inserted ''national'' before ''primary''.

REGULATIONS

Pub. L. 109–59, title VI, § 6011(g), Aug. 10, 2005, 119 Stat. 1882, provided that: ''Not later than 2 years after the date of enactment of this Act [Aug. 10, 2005], the Administrator of the Environmental Protection Agency shall promulgate revised regulations to implement the changes made by this section [amending this section].''

§ 7506a. Interstate transport commissions

(a) Authority to establish interstate transport regions

Whenever, on the Administrator's own motion or by petition from the Governor of any State, the Administrator has reason to believe that the interstate transport of air pollutants from one or more States contributes significantly to a violation of a national ambient air quality standard in one or more other States, the Administrator may establish, by rule, a transport region for such pollutant that includes such States. The Administrator, on the Administrator's own motion or upon petition from the Governor of any State, or upon the recommendation of a transport commission established under subsection (b) of this section, may—

(1) add any State or portion of a State to any region established under this subsection whenever the Administrator has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the standard in the transport region, or

(2) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the attainment of the standard in any area in the region.

The Administrator shall approve or disapprove any such petition or recommendation within 18 months of its receipt. The Administrator shall establish appropriate proceedings for public participation regarding such petitions and motions, including notice and comment.

(b) Transport commissions

(1) Establishment

Whenever the Administrator establishes a transport region under subsection (a) of this section, the Administrator shall establish a transport commission comprised of (at a minimum) each of the following members:

(A) The Governor of each State in the region or the designee of each such Governor.

(B) The Administrator or the Administrator's designee.

(C) The Regional Administrator (or the Administrator's designee) for each Regional Office for each Environmental Protection Agency Region affected by the transport region concerned.

(D) An air pollution control official representing each State in the region, appointed by the Governor.

Decisions of, and recommendations and requests to, the Administrator by each transport commission may be made only by a majority vote of all members other than the Administrator and the Regional Administrators (or designees thereof).

(2) Recommendations

The transport commission shall assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and recommend to the Administrator such measures as the Commission determines to be necessary to ensure that the plans for the relevant States meet the requirements of section 7410(a)(2)(D) of this title. Such commission shall not be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) Commission requests

A transport commission established under subsection (b) of this section may request the Administrator to issue a finding under section 7410(k)(5) of this title that the implementation plan for one or more of the States in the transport region is substantially inadequate to meet the requirements of section 7410(a)(2)(D) of this title. The Administrator shall approve, disapprove, or partially approve and partially disapprove such a request within 18 months of its receipt and, to the extent the Administrator approves such request, issue the finding under section 7410(k)(5) of this title at the time of such approval. In acting on such request, the Administrator shall provide an opportunity for public participation and shall address each specific recommendation made by the commission. Approval or disapproval of such a request shall

constitute final agency action within the meaning of section 7607(b) of this title.

(July 14, 1955, ch. 360, title I, § 176A, as added Pub. L. 101–549, title I, § 102(f)(1), Nov. 15, 1990, 104 Stat. 2419.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b)(2), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 7507. New motor vehicle emission standards in nonattainment areas

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a ''third vehicle'') or otherwise create such a ''third vehicle''.

(July 14, 1955, ch. 360, title I, § 177, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 750; amended Pub. L. 101–549, title II, § 232, Nov. 15, 1990, 104 Stat. 2529.)

AMENDMENTS

1990—Pub. L. 101–549 added sentence at end prohibiting States from limiting or prohibiting sale or manufacture of new vehicles or engines certified in California as having met California standards and from taking any actions where effect of those actions would be to create a ''third vehicle''.

§ 7508. Guidance documents

The Administrator shall issue guidance documents under section 7408 of this title for purposes of assisting States in implementing requirements of this part respecting the lowest achievable emission rate. Such a document shall be published not later than nine months after August 7, 1977, and shall be revised at least every two years thereafter.

(July 14, 1955, ch. 360, title I, § 178, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 750.)

§ 7509. Sanctions and consequences of failure to attain

(a) State failure

For any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in section 7410(k)(5) of this title), if the Administrator—

(1) finds that a State has failed, for an area designated nonattainment under section 7407(d) of this title, to submit a plan, or to submit 1 or more of the elements (as determined by the Administrator) required by the provisions of this chapter applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under section 7410(k) of this title,

(2) disapproves a submission under section 7410(k) of this title, for an area designated nonattainment under section 7407 of this title, based on the submission's failure to meet one or more of the elements required by the provisions of this chapter applicable to such an area,

(3)(A) determines that a State has failed to make any submission as may be required under this chapter, other than one described under paragraph (1) or (2), including an adequate maintenance plan, or has failed to make any submission, as may be required under this chapter, other than one described under paragraph (1) or (2), that satisfies the minimum criteria established in relation to such submission under section 7410(k)(1)(A) of this title, or

(B) disapproves in whole or in part a submission described under subparagraph (A), or

(4) finds that any requirement of an approved plan (or approved part of a plan) is not being implemented,

unless such deficiency has been corrected within 18 months after the finding, disapproval, or determination referred to in paragraphs (1), (2), (3), and (4), one of the sanctions referred to in subsection (b) of this section shall apply, as selected by the Administrator, until the Administrator determines that the State has come into compliance, except that if the Administrator finds a lack of good faith, sanctions under both paragraph (1) and paragraph (2) of subsection (b) of this section shall apply until the Administrator determines that the State has come into compliance. If the Administrator has selected one of such sanctions and the deficiency has not been corrected within 6 months thereafter, sanctions under both paragraph (1) and paragraph (2) of subsection (b) of this section shall apply until the Administrator determines that the State has come into compliance. In addition to any other sanction applicable as provided in this section, the Administrator may withhold all or part of the grants for support of air pollution planning and control programs that the Administrator may award under section 7405 of this title.

(b) Sanctions

The sanctions available to the Administrator as provided in subsection (a) of this section are as follows:

(1) Highway sanctions

(A) The Administrator may impose a prohibition, applicable to a nonattainment area, on the approval by the Secretary of Transportation of any projects or the awarding by the

Secretary of any grants, under title 23 other than projects or grants for safety where the Secretary determines, based on accident or other appropriate data submitted by the State, that the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and likely will result in a significant reduction in, or avoidance of, accidents. Such prohibition shall become effective upon the selection by the Administrator of this sanction.

(B) In addition to safety, projects or grants that may be approved by the Secretary, notwithstanding the prohibition in subparagraph (A), are the following—

(i) capital programs for public transit;

(ii) construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles;

(iii) planning for requirements for employers to reduce employee work-trip-related vehicle emissions;

(iv) highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;

(v) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;

(vi) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;

(vii) programs for breakdown and accident scene management, nonrecurring congestion, and vehicle information systems, to reduce congestion and emissions; and

(viii) such other transportation-related programs as the Administrator, in consultation with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

In considering such measures, the State should seek to ensure adequate access to downtown, other commercial, and residential areas, and avoid increasing or relocating emissions and congestion rather than reducing them.

(2) Offsets

In applying the emissions offset requirements of section 7503 of this title to new or modified sources or emissions units for which a permit is required under this part, the ratio of emission reductions to increased emissions shall be at least 2 to 1.

(c) Notice of failure to attain

(1) As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.

(2) Upon making the determination under paragraph (1), the Administrator shall publish a notice in the Federal Register containing such determination and identifying each area that the Administrator has determined to have failed to attain. The Administrator may revise or supplement such determination at any time based on more complete information or analysis concerning the area's air quality as of the attainment date.

(d) Consequences for failure to attain

(1) Within 1 year after the Administrator publishes the notice under subsection (c)(2) of this section (relating to notice of failure to attain), each State containing a nonattainment area shall submit a revision to the applicable implementation plan meeting the requirements of paragraph (2) of this subsection.

(2) The revision required under paragraph (1) shall meet the requirements of section 7410 of this title and section 7502 of this title. In addition, the revision shall include such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts.

(3) The attainment date applicable to the revision required under paragraph (1) shall be the same as provided in the provisions of section 7502(a)(2) of this title, except that in applying such provisions the phrase ''from the date of the notice under section 7509(c)(2) of this title'' shall be substituted for the phrase ''from the date such area was designated nonattainment under section 7407(d) of this title'' and for the phrase ''from the date of designation as nonattainment''.

(July 14, 1955, ch. 360, title I, § 179, as added Pub. L. 101–549, title I, § 102(g), Nov. 15, 1990, 104 Stat. 2420.)

§ 7509a. International border areas

(a) Implementation plans and revisions

Notwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if—

(1) such plan or revision meets all the requirements applicable to it under the[1] chapter other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, and

(2) the submitting State establishes to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States.

[1] So in original. Probably should be ''this''.

(b) Attainment of ozone levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in such State, such State would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7511(a)(2) or (5) of this title or section 7511d of this title.

(c) Attainment of carbon monoxide levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator, with respect to a carbon monoxide nonattainment area in such State, that such State has attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7512(b)(2) or (9)[2] of this title.

(d) Attainment of PM–10 levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to a PM–10 nonattainment area in such State, such State would have attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from outside the United States, shall not be subject to the provisions of section 7513(b)(2) of this title.

(July 14, 1955, ch. 360, title I, § 179B, as added Pub. L. 101–549, title VIII, § 818, Nov. 15, 1990, 104 Stat. 2697.)

ESTABLISHMENT OF PROGRAM TO MONITOR AND IMPROVE AIR QUALITY IN REGIONS ALONG BORDER BETWEEN UNITED STATES AND MEXICO

Section 815 of Pub. L. 101–549 provided that:

''(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') is authorized, in cooperation with the Department of State and the affected States, to negotiate with representatives of Mexico to authorize a program to monitor and improve air quality in regions along the border between the United States and Mexico. The program established under this section shall not extend beyond July 1, 1995.

''(b) MONITORING AND REMEDIATION.—

''(1) MONITORING.—The monitoring component of the program conducted under this section shall identify and determine sources of pollutants for which national ambient air quality standards (hereinafter referred to as 'NAAQS') and other air quality goals have been established in regions along the border between the United States and Mexico. Any such monitoring component of the program shall include, but not be limited to, the collection of meteorological data, the measurement of air quality, the compilation of an emissions inventory, and shall be sufficient to the extent necessary to successfully support the use of a state-of-the-art mathematical air modeling analysis. Any such monitoring component of the program shall collect and produce data projecting the level of emission reductions necessary in both Mexico and the United States to bring about attainment of both primary and secondary NAAQS, and other air quality goals, in regions along the border in the United States. Any such monitoring component of the program shall include to the extent possible, data from monitoring programs undertaken by other parties.

''(2) REMEDIATION.—The Administrator is authorized to negotiate with appropriate representatives of Mexico to develop joint remediation measures to reduce the level of airborne pollutants to achieve and maintain primary and secondary NAAQS, and other air quality goals, in regions along the border between the United States and Mexico. Such joint remediation measures may include, but not be limited to measures included in the Environmental Protection Agency's Control Techniques and Control Technology documents. Any such remediation program shall also identify those control measures implementation of which in Mexico would be expedited by the use of material and financial assistance of the United States.

''(c) ANNUAL REPORTS.—The Administrator shall, each year the program authorized in this section is in operation, report to Congress on the progress of the program in bringing nonattainment areas along the border of the United States into attainment with primary and secondary NAAQS. The report issued by the Administrator under this paragraph shall include recommendations on funding mechanisms to assist in implementation of monitoring and remediation efforts.

''(d) FUNDING AND PERSONNEL.—The Administrator may, where appropriate, make available, subject to the appropriations, such funds, personnel, and equipment as may be necessary to implement the provisions of this section. In those cases where direct financial assistance of the United States is provided to implement monitoring and remediation programs in Mexico, the Administrator shall develop grant agreements with appropriate representatives of Mexico to assure the accuracy and completeness of monitoring data and the performance of remediation measures which are financed by the United States. With respect to any control measures within Mexico funded by the United States, the Administrator shall, to the maximum extent practicable, utilize resources of Mexico where such utilization would reduce costs to the United States. Such funding agreements shall include authorization for the Administrator to—

''(1) review and agree to plans for monitoring and remediation;

''(2) inspect premises, equipment and records to insure compliance with the agreements established under and the purposes set forth in this section; and

''(3) where necessary, develop grant agreements with affected States to carry out the provisions of this section.''

SUBPART 2—ADDITIONAL PROVISIONS FOR OZONE NONATTAINMENT AREAS

§ 7511. Classifications and attainment dates

(a) Classification and attainment dates for 1989 nonattainment areas

(1) Each area designated nonattainment for ozone pursuant to section 7407(d) of this title shall be classified at the time of such designation, under table 1, by operation of law, as a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary standard attainment date for ozone shall be as expeditiously as practicable but not later than the date provided in table 1.

[2] So in original. Section 7512(b) of this title does not contain a par. (9).

TABLE 1

Area class	Design value*	Primary standard attainment date**
Marginal ..	0.121 up to 0.138 ...	3 years after November 15, 1990
Moderate ..	0.138 up to 0.160 ...	6 years after November 15, 1990
Serious	0.160 up to 0.180 ...	9 years after November 15, 1990
Severe	0.180 up to 0.280 ...	15 years after November 15, 1990
Extreme ...	0.280 and above ...	20 years after November 15, 1990

*The design value is measured in parts per million (ppm).

**The primary standard attainment date is measured from November 15, 1990.

(2) Notwithstanding table 1, in the case of a severe area with a 1988 ozone design value between 0.190 and 0.280 ppm, the attainment date shall be 17 years (in lieu of 15 years) after November 15, 1990.

(3) At the time of publication of the notice under section 7407(d)(4) of this title (relating to area designations) for each ozone nonattainment area, the Administrator shall publish a notice announcing the classification of such ozone nonattainment area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice and comment and judicial review) shall apply to such classification.

(4) If an area classified under paragraph (1) (Table 1) would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the initial classification, by the procedure required under paragraph (3), adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

(5) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

(b) New designations and reclassifications

(1) New designations to nonattainment

Any area that is designated attainment or unclassifiable for ozone under section 7407(d)(4) of this title, and that is subsequently redesignated to nonattainment for ozone under section 7407(d)(3) of this title, shall, at the time of the redesignation, be classified by operation of law in accordance with table 1 under subsection (a) of this section. Upon its classification, the area shall be subject to the same requirements under section 7410 of this title, subpart 1 of this part, and this subpart that would have applied had the area been so classified at the time of the notice under subsection (a)(3) of this section, except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between November 15, 1990, and the date the area is classified under this paragraph.

(2) Reclassification upon failure to attain

(A) Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) of this section to the higher of—

(i) the next higher classification for the area, or

(ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

(B) The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

(3) Voluntary reclassification

The Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 of subsection (a) of this section to a higher classification. The Administrator shall publish a notice in the Federal Register of any such request and of action by the Administrator granting the request.

(4) Failure of Severe Areas to attain standard

(A) If any Severe Area fails to achieve the national primary ambient air quality standard for ozone by the applicable attainment date (including any extension thereof), the fee provisions under section 7511d of this title shall apply within the area, the percent reduction requirements of section 7511a(c)(2)(B) and (C) of this title (relating to reasonable further progress demonstration and NO_x control) shall continue to apply to the area, and the State shall demonstrate that such percent reduction has been achieved in each 3-year interval after such failure until the standard is attained.

Any failure to make such a demonstration shall be subject to the sanctions provided under this part.

(B) In addition to the requirements of subparagraph (A), if the ozone design value for a Severe Area referred to in subparagraph (A) is above 0.140 ppm for the year of the applicable attainment date, or if the area has failed to achieve its most recent milestone under section 7511a(g) of this title, the new source review requirements applicable under this subpart in Extreme Areas shall apply in the area and the term[1] ''major source'' and ''major stationary source'' shall have the same meaning as in Extreme Areas.

(C) In addition to the requirements of subparagraph (A) for those areas referred to in subparagraph (A) and not covered by subparagraph (B), the provisions referred to in subparagraph (B) shall apply after 3 years from the applicable attainment date unless the area has attained the standard by the end of such 3-year period.

(D) If, after November 15, 1990, the Administrator modifies the method of determining compliance with the national primary ambient air quality standard, a design value or other indicator comparable to 0.140 in terms of its relationship to the standard shall be used in lieu of 0.140 for purposes of applying the provisions of subparagraphs (B) and (C).

(c) References to terms

(1) Any reference in this subpart to a ''Marginal Area'', a ''Moderate Area'', a ''Serious Area'', a ''Severe Area'', or an ''Extreme Area'' shall be considered a reference to a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area as respectively classified under this section.

(2) Any reference in this subpart to ''next higher classification'' or comparable terms shall be considered a reference to the classification related to the next higher set of design values in table 1.

(July 14, 1955, ch. 360, title I, § 181, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2423.)

EXEMPTIONS FOR STRIPPER WELLS

Section 819 of Pub. L. 101–549 provided that: ''Notwithstanding any other provision of law, the amendments to the Clean Air Act made by section 103 of the Clean Air Act Amendments of 1990 [enacting this section and sections 7511a to 7511f of this title] (relating to additional provisions for ozone nonattainment areas), by section 104 of such amendments [enacting sections 7512 and 7512a of this title] (relating to additional provisions for carbon monoxide nonattainment areas), by section 105 of such amendments [enacting sections 7513 to 7513b of this title and amending section 7476 of this title] (relating to additional provisions for PM–10 nonattainment areas), and by section 106 of such amendments [enacting sections 7514 and 7514a of this title] (relating to additional provisions for areas designated as nonattainment for sulfur oxides, nitrogen dioxide, and lead) shall not apply with respect to the production of and equipment used in the exploration, production, development, storage or processing of—

''(1) oil from a stripper well property, within the meaning of the June 1979 energy regulations (within the meaning of section 4996(b)(7) of the Internal Revenue Code of 1986 [26 U.S.C. 4996(b)(7)], as in effect before the repeal of such section); and

''(2) stripper well natural gas, as defined in section 108(b) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3318(b)).[,]

except to the extent that provisions of such amendments cover areas designated as Serious pursuant to part D of title I of the Clean Air Act [this part] and having a population of 350,000 or more, or areas designated as Severe or Extreme pursuant to such part D.''

§ 7511a. Plan submissions and requirements

(a) Marginal Areas

Each State in which all or part of a Marginal Area is located shall, with respect to the Marginal Area (or portion thereof, to the extent specified in this subsection), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection except to the extent the State has made such submissions as of November 15, 1990.

(1) Inventory

Within 2 years after November 15, 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 7502(c)(3) of this title, in accordance with guidance provided by the Administrator.

(2) Corrections to the State implementation plan

Within the periods prescribed in this paragraph, the State shall submit a revision to the State implementation plan that meets the following requirements—

(A) Reasonably available control technology corrections

For any Marginal Area (or, within the Administrator's discretion, portion thereof) the State shall submit, within 6 months of the date of classification under section 7511(a) of this title, a revision that includes such provisions to correct requirements in (or add requirements to) the plan concerning reasonably available control technology as were required under section 7502(b) of this title (as in effect immediately before November 15, 1990), as interpreted in guidance issued by the Administrator under section 7408 of this title before November 15, 1990.

(B) Savings clause for vehicle inspection and maintenance

(i) For any Marginal Area (or, within the Administrator's discretion, portion thereof), the plan for which already includes, or was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) to have included, a specific schedule for implementation of a vehicle emission control inspection and maintenance program, the State shall submit, immediately after November 15, 1990, a revision that includes any provisions necessary to provide for a vehicle inspection and maintenance program of no less stringency than that of either the program defined in House Report Numbered 95–294, 95th Congress, 1st Session, 281–291 (1977) as interpreted in guidance of

[1] So in original. Probably should be ''terms''.

the Administrator issued pursuant to section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) or the program already included in the plan, whichever is more stringent.

(ii) Within 12 months after November 15, 1990, the Administrator shall review, revise, update, and republish in the Federal Register the guidance for the States for motor vehicle inspection and maintenance programs required by this chapter, taking into consideration the Administrator's investigations and audits of such program. The guidance shall, at a minimum, cover the frequency of inspections, the types of vehicles to be inspected (which shall include leased vehicles that are registered in the nonattainment area), vehicle maintenance by owners and operators, audits by the State, the test method and measures, including whether centralized or decentralized, inspection methods and procedures, quality of inspection, components covered, assurance that a vehicle subject to a recall notice from a manufacturer has complied with that notice, and effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective action and providing for denial of vehicle registration in the case of tampering or misfueling. The guidance which shall be incorporated in the applicable State implementation plans by the States shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer. No later than 2 years after the Administrator promulgates regulations under section 7521(m)(3) of this title (relating to emission control diagnostics), the State shall submit a revision to such program to meet any requirements that the Administrator may prescribe under that section.

(C) Permit programs

Within 2 years after November 15, 1990, the State shall submit a revision that includes each of the following:

(i) Provisions to require permits, in accordance with sections 7502(c)(5) and 7503 of this title, for the construction and operation of each new or modified major stationary source (with respect to ozone) to be located in the area.

(ii) Provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 7502(b)(6) of this title (as in effect immediately before November 15, 1990), as interpreted in regulations of the Administrator promulgated as of November 15, 1990.

(3) Periodic inventory

(A) General requirement

No later than the end of each 3-year period after submission of the inventory under paragraph (1) until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1) of this section.

(B) Emissions statements

(i) Within 2 years after November 15, 1990, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after November 15, 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraphs[1] (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

(4) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increased emissions of such air pollutant shall be at least 1.1 to 1.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area. Section 7502(c)(9) of this title (relating to contingency measures) shall not apply to Marginal Areas.

(b) Moderate Areas

Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area, make the submissions described under subsection (a) of this section (relating to Marginal Areas), and shall also submit the revisions to the applicable implementation plan described under this subsection.

(1) Plan provisions for reasonable further progress

(A) General rule

(i) By no later than 3 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions, within 6 years after November

[1] So in original. Probably should be "subparagraph".

15, 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after 1990. Such plan shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this chapter. This subparagraph shall not apply in the case of oxides of nitrogen for those areas for which the Administrator determines (when the Administrator approves the plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment.

(ii) A percentage less than 15 percent may be used for purposes of clause (i) in the case of any State which demonstrates to the satisfaction of the Administrator that—

(I) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as required under subsection (e) of this section in the case of Extreme Areas (with the exception that, in applying such provisions, the terms ''major source'' and ''major stationary source'' shall include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);

(II) reasonably available control technology is required for all existing major sources (as defined in subclause (I)); and

(III) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To qualify for a lesser percentage under this clause, a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

(B) Baseline emissions

For purposes of subparagraph (A), the term ''baseline emissions'' means the total amount of actual VOC or NO_x emissions from all anthropogenic sources in the area during the calendar year 1990, excluding emissions that would be eliminated under the regulations described in clauses (i) and (ii) of subparagraph (D).

(C) General rule for creditability of reductions

Except as provided under subparagraph (D), emissions reductions are creditable toward the 15 percent required under subparagraph (A) to the extent they have actually occurred, as of 6 years after November 15, 1990, from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under subchapter V of this chapter.

(D) Limits on creditability of reductions

Emission reductions from the following measures are not creditable toward the 15 percent reductions required under subparagraph (A):

(i) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990.

(ii) Regulations concerning Reid Vapor Pressure promulgated by the Administrator by November 15, 1990, or required to be promulgated under section 7545(h) of this title.

(iii) Measures required under subsection (a)(2)(A) of this section (concerning corrections to implementation plans prescribed under guidance by the Administrator).

(iv) Measures required under subsection (a)(2)(B) of this section to be submitted immediately after November 15, 1990 (concerning corrections to motor vehicle inspection and maintenance programs).

(2) Reasonably available control technology

The State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology under section 7502(c)(1) of this title with respect to each of the following:

(A) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between November 15, 1990, and the date of attainment.

(B) All VOC sources in the area covered by any CTG issued before November 15, 1990.

(C) All other major stationary sources of VOCs that are located in the area.

Each revision described in subparagraph (A) shall be submitted within the period set forth by the Administrator in issuing the relevant CTG document. The revisions with respect to sources described in subparagraphs (B) and (C) shall be submitted by 2 years after November 15, 1990, and shall provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.

(3) Gasoline vapor recovery

(A) General rule

Not later than 2 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to require all owners or operators of gasoline dispensing systems to install and operate, by the date prescribed under subparagraph (B), a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. The Administrator shall issue guidance as appropriate as to the effectiveness of such system. This subparagraph shall apply only to facilities which sell more than 10,000 gallons of gasoline per month (50,000 gallons per month in the case of an independent small business marketer of gasoline as defined in section 7625–1[2] of this title).

(B) Effective date

The date required under subparagraph (A) shall be—

[2] So in original. Probably should be section ''7625''.

(i) 6 months after the adoption date, in the case of gasoline dispensing facilities for which construction commenced after November 15, 1990;

(ii) one year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date; or

(iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities.

Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

(C) Reference to terms

For purposes of this paragraph, any reference to the term ''adoption date'' shall be considered a reference to the date of adoption by the State of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

(4) Motor vehicle inspection and maintenance

For all Moderate Areas, the State shall submit, immediately after November 15, 1990, a revision to the applicable implementation plan that includes provisions necessary to provide for a vehicle inspection and maintenance program as described in subsection (a)(2)(B) of this section (without regard to whether or not the area was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) to have included a specific schedule for implementation of such a program).

(5) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase[3] emissions of such air pollutant shall be at least 1.15 to 1.

(c) Serious Areas

Except as otherwise specified in paragraph (4), each State in which all or part of a Serious Area is located shall, with respect to the Serious Area (or portion thereof, to the extent specified in this subsection), make the submissions described under subsection (b) of this section (relating to Moderate Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Serious Area, the terms ''major source'' and ''major stationary source'' include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds.

(1) Enhanced monitoring

In order to obtain more comprehensive and representative data on ozone air pollution, not later than 18 months after November 15, 1990, the Administrator shall promulgate rules, after notice and public comment, for enhanced monitoring of ozone, oxides of nitrogen, and volatile organic compounds. The rules shall, among other things, cover the location and maintenance of monitors. Immediately following the promulgation of rules by the Administrator relating to enhanced monitoring, the State shall commence such actions as may be necessary to adopt and implement a program based on such rules, to improve monitoring for ambient concentrations of ozone, oxides of nitrogen and volatile organic compounds and to improve monitoring of emissions of oxides of nitrogen and volatile organic compounds. Each State implementation plan for the area shall contain measures to improve the ambient monitoring of such air pollutants.

(2) Attainment and reasonable further progress demonstrations

Within 4 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan that includes each of the following:

(A) Attainment demonstration

A demonstration that the plan, as revised, will provide for attainment of the ozone national ambient air quality standard by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(B) Reasonable further progress demonstration

A demonstration that the plan, as revised, will result in VOC emissions reductions from the baseline emissions described in subsection (b)(1)(B) of this section equal to the following amount averaged over each consecutive 3-year period beginning 6 years after November 15, 1990, until the attainment date:

(i) at least 3 percent of baseline emissions each year; or

(ii) an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such lesser amount includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To lessen the 3 percent requirement under clause (ii), a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. Any determination to lessen the 3 percent requirement shall be reviewed at each milestone under subsection (g) of this section and revised to reflect such new measures (if any) achieved in practice by sources in the same category in any State, allowing a reasonable time to implement such measures. The emission reductions described in this subparagraph shall be calculated in accord-

[3] So in original. Probably should be ''increased''.

ance with subsection (b)(1)(C) and (D) of this section (concerning creditability of reductions). The reductions creditable for the period beginning 6 years after November 15, 1990, shall include reductions that occurred before such period, computed in accordance with subsection (b)(1) of this section, that exceed the 15-percent amount of reductions required under subsection (b)(1)(A) of this section.

(C) NO_x control

The revision may contain, in lieu of the demonstration required under subparagraph (B), a demonstration to the satisfaction of the Administrator that the applicable implementation plan, as revised, provides for reductions of emissions of VOC's and oxides of nitrogen (calculated according to the creditability provisions of subsection (b)(1)(C) and (D) of this section), that would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B). Within 1 year after November 15, 1990, the Administrator shall issue guidance concerning the conditions under which NO_x control may be substituted for VOC control or may be combined with VOC control in order to maximize the reduction in ozone air pollution. In accord with such guidance, a lesser percentage of VOCs may be accepted as an adequate demonstration for purposes of this subsection.

(3) Enhanced vehicle inspection and maintenance program

(A) Requirement for submission

Within 2 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to provide for an enhanced program to reduce hydrocarbon emissions and NO_x emissions from in-use motor vehicles registered in each urbanized area (in the nonattainment area), as defined by the Bureau of the Census, with a 1980 population of 200,000 or more.

(B) Effective date of State programs; guidance

The State program required under subparagraph (A) shall take effect no later than 2 years from November 15, 1990, and shall comply in all respects with guidance published in the Federal Register (and from time to time revised) by the Administrator for enhanced vehicle inspection and maintenance programs. Such guidance shall include—

(i) a performance standard achievable by a program combining emission testing, including on-road emission testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light-duty trucks subject to standards under section 7521 of this title; and

(ii) program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

Compliance with the performance standard under clause (i) shall be determined using a method to be established by the Administrator.

(C) State program

The State program required under subparagraph (A) shall include, at a minimum, each of the following elements—

(i) Computerized emission analyzers, including on-road testing devices.

(ii) No waivers for vehicles and parts covered by the emission control performance warranty as provided for in section 7541(b) of this title unless a warranty remedy has been denied in writing, or for tampering-related repairs.

(iii) In view of the air quality purpose of the program, if, for any vehicle, waivers are permitted for emissions-related repairs not covered by warranty, an expenditure to qualify for the waiver of an amount of $450 or more for such repairs (adjusted annually as determined by the Administrator on the basis of the Consumer Price Index in the same manner as provided in subchapter V of this chapter).

(iv) Enforcement through denial of vehicle registration (except for any program in operation before November 15, 1990, whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in assuring that noncomplying vehicles are not operated on public roads).

(v) Annual emission testing and necessary adjustment, repair, and maintenance, unless the State demonstrates to the satisfaction of the Administrator that a biennial inspection, in combination with other features of the program which exceed the requirements of this chapter, will result in emission reductions which equal or exceed the reductions which can be obtained through such annual inspections.

(vi) Operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective. An electronically connected testing system, a licensing system, or other measures (or any combination thereof) may be considered, in accordance with criteria established by the Administrator, as equally effective for such purposes.

(vii) Inspection of emission control diagnostic systems and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

Each State shall biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program required under this paragraph based on data collected during inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator.

(4) Clean-fuel vehicle programs

(A) Except to the extent that substitute provisions have been approved by the Adminis-

trator under subparagraph (B), the State shall submit to the Administrator, within 42 months of November 15, 1990, a revision to the applicable implementation plan for each area described under part C of subchapter II of this chapter to include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter, including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in part C of subchapter II of this chapter) economic from the standpoint of vehicle owners. Such a revision shall also be submitted for each area that opts into the clean fuel-vehicle program as provided in part C of subchapter II of this chapter.

(B) The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter, any revision to the relevant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under part C of subchapter II of this chapter, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute. The Administrator may approve such revision only if it consists exclusively of provisions other than those required under this chapter for the area. Any State seeking approval of such revision must submit the revision to the Administrator within 24 months of November 15, 1990. The Administrator shall approve or disapprove any such revision within 30 months of November 15, 1990. The Administrator shall publish the revision submitted by a State in the Federal Register upon receipt. Such notice shall constitute a notice of proposed rulemaking on whether or not to approve such revision and shall be deemed to comply with the requirements concerning notices of proposed rulemaking contained in sections 553 through 557 of title 5 (related to notice and comment). Where the Administrator approves such revision for any area, the State need not submit the revision required by subparagraph (A) for the area with respect to the portions of the Federal clean-fuel vehicle program for which the Administrator has approved the revision as a substitute.

(C) If the Administrator determines, under section 7509 of this title, that the State has failed to submit any portion of the program required under subparagraph (A), then, in addition to any sanctions available under section 7509 of this title, the State may not receive credit, in any demonstration of attainment or reasonable further progress for the area, for any emission reductions from implementation of the corresponding aspects of the Federal clean-fuel vehicle requirements established in part C of subchapter II of this chapter.

(5) Transportation control

(A)[4] Beginning 6 years after November 15, 1990, and each third year thereafter, the State shall submit a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment. Where such parameters and emissions levels exceed the levels projected for purposes of the area's attainment demonstration, the State shall within 18 months develop and submit a revision of the applicable implementation plan that includes a transportation control measures program consisting of measures from, but not limited to, section 7408(f) of this title that will reduce emissions to levels that are consistent with emission levels projected in such demonstration. In considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(e) of this title and with the requirements of section 7504(b) of this title and shall include implementation and funding schedules that achieve expeditious emissions reductions in accordance with implementation plan projections.

(6) De minimis rule

The new source review provisions under this part shall ensure that increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this chapter unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

(7) Special rule for modifications of sources emitting less than 100 tons

In the case of any major stationary source of volatile organic compounds located in the area (other than a source which emits or has the potential to emit 100 tons or more of volatile organic compounds per year), whenever any change (as described in section 7411(a)(4) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that such increase shall not be considered a modification for such purposes if the owner or operator of the source elects to offset the increase by a

[4] So in original. No subpar. (B) has been enacted.

greater reduction in emissions of volatile organic compounds concerned from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such election, such change shall be considered a modification for such purposes, but in applying section 7503(a)(2) of this title in the case of any such modification, the best available control technology (BACT), as defined in section 7479 of this title, shall be substituted for the lowest achievable emission rate (LAER). The Administrator shall establish and publish policies and procedures for implementing the provisions of this paragraph.

(8) Special rule for modifications of sources emitting 100 tons or more

In the case of any major stationary source of volatile organic compounds located in the area which emits or has the potential to emit 100 tons or more of volatile organic compounds per year, whenever any change (as described in section 7411(a)(4) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, the requirements of section 7503(a)(2) of this title (concerning the lowest achievable emission rate (LAER)) shall not apply.

(9) Contingency provisions

In addition to the contingency provisions required under section 7502(c)(9) of this title, the plan revision shall provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator upon a failure by the State to meet the applicable milestone.

(10) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.2 to 1.

Any reference to ''attainment date'' in subsection (b) of this section, which is incorporated by reference into this subsection, shall refer to the attainment date for serious areas.

(d) Severe Areas

Each State in which all or part of a Severe Area is located shall, with respect to the Severe Area, make the submissions described under subsection (c) of this section (relating to Serious Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Severe Area, the terms ''major source'' and ''major stationary source'' include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.

(1) Vehicle miles traveled

(A) Within 2 years after November 15, 1990, the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection[5] (b)(2)(B) and (c)(2)(B) of this section (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 7408(f) of this title, and choose from among and implement such measures as necessary to demonstrate attainment with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them.

(B) The State may also, in its discretion, submit a revision at any time requiring employers in such area to implement programs to reduce work-related vehicle trips and miles travelled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(f) of this title and may require that employers in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes. Any State required to submit a revision under this subparagraph (as in effect before December 23, 1995) containing provisions requiring employers to reduce work-related vehicle trips and miles travelled by employees may, in accordance with State law, remove such provisions from the implementation plan, or withdraw its submission, if the State notifies the Administrator, in writing, that the State has undertaken, or will undertake, one or more alternative methods that will achieve emission reductions equivalent to those to be achieved by the removed or withdrawn provisions.

(2) Offset requirement

For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased

[5] So in original. Probably should be ''subsections''.

emissions of such air pollutant shall be at least 1.3 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 7479(3) of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(3) Enforcement under section 7511d

By December 31, 2000, the State shall submit a plan revision which includes the provisions required under section 7511d of this title.

Any reference to the term ''attainment date'' in subsection (b) or (c) of this section, which is incorporated by reference into this subsection (d), shall refer to the attainment date for Severe Areas.

(e) Extreme Areas

Each State in which all or part of an Extreme Area is located shall, with respect to the Extreme Area, make the submissions described under subsection (d) of this section (relating to Severe Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. The provisions of clause (ii) of subsection (c)(2)(B) of this section (relating to reductions of less than 3 percent), the provisions of paragaphs[6] (6), (7) and (8) of subsection (c) of this section (relating to de minimus[7] rule and modification of sources), and the provisions of clause (ii) of subsection (b)(1)(A) of this section (relating to reductions of less than 15 percent) shall not apply in the case of an Extreme Area. For any Extreme Area, the terms ''major source'' and ''major stationary source'' includes[8] (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 10 tons per year of volatile organic compounds.

(1) Offset requirement

For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.5 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 7479(3) of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(2) Modifications

Any change (as described in section 7411(a)(4) of this title) at a major stationary source which results in any increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that for purposes of complying with the offset requirement pursuant to section 7503(a)(1) of this title, any such increase shall not be considered a modification if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of the air pollutant concerned from other discrete operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. The offset requirements of this part shall not be applicable in Extreme Areas to a modification of an existing source if such modification consists of installation of equipment required to comply with the applicable implementation plan, permit, or this chapter.

(3) Use of clean fuels or advanced control technology

For Extreme Areas, a plan revision shall be submitted within 3 years after November 15, 1990, to require, effective 8 years after November 15, 1990, that each new, modified, and existing electric utility and industrial and commercial boiler which emits more than 25 tons per year of oxides of nitrogen—

(A) burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or

(B) use advanced control technology (such as catalytic control technology or other comparably effective control methods) for reduction of emissions of oxides of nitrogen.

For purposes of this subsection, the term ''primary fuel'' means the fuel which is used 90 percent or more of the operating time. This paragraph shall not apply during any natural gas supply emergency (as defined in title III of the Natural Gas Policy Act of 1978 [15 U.S.C. 3361 et seq.]).

(4) Traffic control measures during heavy traffic hours

For Extreme Areas, each implementation plan revision under this subsection may contain provisions establishing traffic control measures applicable during heavy traffic hours to reduce the use of high polluting vehicles or heavy-duty vehicles, notwithstanding any other provision of law.

(5) New technologies

The Administrator may, in accordance with section 7410 of this title, approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, if the State demonstrates to the satisfaction of the Administrator that—

(A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after November 15, 1990; and

(B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.

Such contingency measures shall be submitted to the Administrator no later than 3 years before proposed implementation of the plan provisions and approved or disapproved by the Administrator in accordance with section 7410 of

[6] So in original. Probably should be ''paragraphs''.
[7] So in original. Probably should be ''de minimis''.
[8] So in original. Probably should be ''include''.

this title. The contingency measures shall be adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions required by subsection (b)(1) or (c)(2) of this section and attainment by the applicable dates. If the Administrator determines that an Extreme Area has failed to achieve an emission reduction requirement set forth in subsection (b)(1) or (c)(2) of this section, and that such failure is due in whole or part to an inability to fully implement provisions approved pursuant to this subsection, the Administrator shall require the State to implement the contingency measures to the extent necessary to assure compliance with subsections (b)(1) and (c)(2) of this section.

Any reference to the term ''attainment date'' in subsection (b), (c), or (d) of this section which is incorporated by reference into this subsection, shall refer to the attainment date for Extreme Areas.

(f) NO_x requirements

(1) The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen. This subsection shall not apply in the case of oxides of nitrogen for those sources for which the Administrator determines (when the Administrator approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the sources concerned. This subsection shall also not apply in the case of oxides of nitrogen for—

(A) nonattainment areas not within an ozone transport region under section 7511c of this title, if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(B) nonattainment areas within such an ozone transport region if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not produce net ozone air quality benefits in such region.

The Administrator shall, in the Administrator's determinations, consider the study required under section 7511f of this title.

(2)(A) If the Administrator determines that excess reductions in emissions of NO_x would be achieved under paragraph (1), the Administrator may limit the application of paragraph (1) to the extent necessary to avoid achieving such excess reductions.

(B) For purposes of this paragraph, excess reductions in emissions of NO_x are emission reductions for which the Administrator determines that net air quality benefits are greater in the absence of such reductions. Alternatively, for purposes of this paragraph, excess reductions in emissions of NO_x are, for—

(i) nonattainment areas not within an ozone transport region under section 7511c of this title, emission reductions that the Administrator determines would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(ii) nonattainment areas within such ozone transport region, emission reductions that the Administrator determines would not produce net ozone air quality benefits in such region.

(3) At any time after the final report under section 7511f of this title is submitted to Congress, a person may petition the Administrator for a determination under paragraph (1) or (2) with respect to any nonattainment area or any ozone transport region under section 7511c of this title. The Administrator shall grant or deny such petition within 6 months after its filing with the Administrator.

(g) Milestones

(1) Reductions in emissions

6 years after November 15, 1990, and at intervals of every 3 years thereafter, the State shall determine whether each nonattainment area (other than an area classified as Marginal or Moderate) has achieved a reduction in emissions during the preceding intervals equivalent to the total emission reductions required to be achieved by the end of such interval pursuant to subsection (b)(1) of this section and the corresponding requirements of subsections (c)(2)(B) and (C), (d), and (e) of this section. Such reduction shall be referred to in this section as an applicable milestone.

(2) Compliance demonstration

For each nonattainment area referred to in paragraph (1), not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which a milestone occurs in cases where the standard has been attained), each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require, by rule. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) Serious and Severe Areas; State election

If a State fails to submit a demonstration under paragraph (2) for any Serious or Severe Area within the required period or if the Administrator determines that the area has not met any applicable milestone, the State shall elect, within 90 days after such failure or determination—

(A) to have the area reclassified to the next higher classification,

(B) to implement specific additional measures adequate, as determined by the Administrator, to meet the next milestone as provided in the applicable contingency plan, or

(C) to adopt an economic incentive program as described in paragraph (4).

If the State makes an election under subparagraph (B), the Administrator shall, within 90

days after the election, review such plan and shall, if the Administrator finds the contingency plan inadequate, require further measures necessary to meet such milestone. Once the State makes an election, it shall be deemed accepted by the Administrator as meeting the election requirement. If the State fails to make an election required under this paragraph within the required 90-day period or within 6 months thereafter, the area shall be reclassified to the next higher classification by operation of law at the expiration of such 6-month period. Within 12 months after the date required for the State to make an election, the State shall submit a revision of the applicable implementation plan for the area that meets the requirements of this paragraph. The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(4) Economic incentive program

(A) An economic incentive program under this paragraph shall be consistent with rules published by the Administrator and sufficient, in combination with other elements of the State plan, to achieve the next milestone. The State program may include a nondiscriminatory system, consistent with applicable law regarding interstate commerce, of State established emissions fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to ozone formation, or any combination of the foregoing or other similar measures. The program may also include incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 7408(f) of this title.

(B) Within 2 years after November 15, 1990, the Administrator shall publish rules for the programs to be adopted pursuant to subparagraph (A). Such rules shall include model plan provisions which may be adopted for reducing emissions from permitted stationary sources, area sources, and mobile sources. The guidelines shall require that any revenues generated by the plan provisions adopted pursuant to subparagraph (A) shall be used by the State for any of the following:

(i) Providing incentives for achieving emission reductions.

(ii) Providing assistance for the development of innovative technologies for the control of ozone air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of either the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

(iii) Funding the administrative costs of State programs under this chapter. Not more than 50 percent of such revenues may be used for purposes of this clause.

(5) Extreme Areas

If a State fails to submit a demonstration under paragraph (2) for any Extreme Area within the required period, or if the Administrator determines that the area has not met any applicable milestone, the State shall, within 9 months after such failure or determination, submit a plan revision to implement an economic incentive program which meets the requirements of paragraph (4). The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(h) Rural transport areas

(1) Notwithstanding any other provision of section 7511 of this title or this section, a State containing an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census), which area is treated by the Administrator, in the Administrator's discretion, as a rural transport area within the meaning of paragraph (2), shall be treated by operation of law as satisfying the requirements of this section if it makes the submissions required under subsection (a) of this section (relating to marginal areas).

(2) The Administrator may treat an ozone nonattainment area as a rural transport area if the Administrator finds that sources of VOC (and, where the Administrator determines relevant, NO_x) emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.

(i) Reclassified areas

Each State containing an ozone nonattainment area reclassified under section 7511(b)(2) of this title shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.

(j) Multi-State ozone nonattainment areas

(1) Coordination among States

Each State in which there is located a portion of a single ozone nonattainment area which covers more than one State (hereinafter in this section referred to as a ''multi-State ozone nonattainment area'') shall—

(A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and

(B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective.

The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State ozone nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) Failure to demonstrate attainment

If any State in which there is located a portion of a multi-State ozone nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for ozone in that portion within the required period, the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under this section (relating to plan submissions and requirements for ozone nonattainment areas). If the Administrator makes such finding, the provisions of section 7509 of this title (relating to sanctions) shall not apply, by reason of the failure to make such demonstration, in the portion of the multi-State ozone nonattainment area within the State submitting such petition.

(July 14, 1955, ch. 360, title I, § 182, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2426; amended Pub. L. 104–70, § 1, Dec. 23, 1995, 109 Stat. 773.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (e)(3), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, as amended. Title III of the Act is classified generally to subchapter III (§ 3361 et seq.) of chapter 60 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1995—Subsec. (d)(1)(B). Pub. L. 104–70 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Within 2 years after November 15, 1990, the State shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(f) of this title and shall, at a minimum, require that each employer of 100 or more persons in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 25 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes. The revision shall provide that each employer subject to a vehicle occupancy requirement shall submit a compliance plan within 2 years after the date the revision is submitted which shall convincingly demonstrate compliance with the requirements of this paragraph not later than 4 years after such date.''

MORATORIUM ON CERTAIN EMISSIONS TESTING REQUIREMENTS

Pub. L. 104–59, title III, § 348, Nov. 28, 1995, 109 Stat. 617, provided that:

''(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the 'Administrator') shall not require adoption or implementation by a State of a test-only I/M240 enhanced vehicle inspection and maintenance program as a means of compliance with section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a), but the Administrator may approve such a program if a State chooses to adopt the program as a means of compliance with such section.

''(b) LIMITATION ON PLAN DISAPPROVAL.—The Administrator shall not disapprove or apply an automatic discount to a State implementation plan revision under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a) on the basis of a policy, regulation, or guidance providing for a discount of emissions credits because the inspection and maintenance program in such plan revision is decentralized or a test-and-repair program.

''(c) EMISSIONS REDUCTION CREDITS.—

''(1) STATE PLAN REVISION; APPROVAL.—Within 120 days of the date of the enactment of this subsection [Nov. 28, 1995], a State may submit an implementation plan revision proposing an interim inspection and maintenance program under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a). The Administrator shall approve the program based on the full amount of credits proposed by the State for each element of the program if the proposed credits reflect good faith estimates by the State and the revision is otherwise in compliance with such Act. If, within such 120-day period, the State submits to the Administrator proposed revisions to the implementation plan, has all of the statutory authority necessary to implement the revisions, and has proposed a regulation to make the revisions, the Administrator may approve the revisions without regard to whether or not such regulation has been issued as a final regulation by the State.

''(2) EXPIRATION OF INTERIM APPROVAL.—The interim approval shall expire on the earlier of (A) the last day of the 18-month period beginning on the date of the interim approval, or (B) the date of final approval. The interim approval may not be extended.

''(3) FINAL APPROVAL.—The Administrator shall grant final approval of the revision based on the credits proposed by the State during or after the period of interim approval if data collected on the operation of the State program demonstrates that the credits are appropriate and the revision is otherwise in compliance with the Clean Air Act [42 U.S.C. 7401 et seq.].

''(4) BASIS OF APPROVAL; NO AUTOMATIC DISCOUNT.—Any determination with respect to interim or full approval shall be based on the elements of the program and shall not apply any automatic discount because the program is decentralized or a test-and-repair program.''

§ 7511b. Federal ozone measures

(a) Control techniques guidelines for VOC sources

Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines, in accordance with section 7408 of this title, for 11 categories of stationary sources of VOC emissions for which such guidelines have not been issued as of November 15, 1990, not including the categories referred to in paragraphs (3) and (4) of subsection (b) of this section. The Administrator may issue such additional control techniques guidelines as the Administrator deems necessary.

(b) Existing and new CTGS

(1) Within 36 months after November 15, 1990, and periodically thereafter, the Administrator shall review and, if necessary, update control technique guidance issued under section 7408 of this title before November 15, 1990.

(2) In issuing the guidelines the Administrator shall give priority to those categories which the Administrator considers to make the most significant contribution to the formation of ozone air pollution in ozone nonattainment areas, in-

cluding hazardous waste treatment, storage, and disposal facilities which are permitted under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.]. Thereafter the Administrator shall periodically review and, if necessary, revise such guidelines.

(3) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds into the ambient air from aerospace coatings and solvents. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds into the ambient air from the application of such coatings and solvents to such level as the Administrator determines may be achieved through the adoption of best available control measures. Such control technology guidance shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control technology guidance under this subsection, the Administrator shall consult with the Secretary of Defense, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration with regard to the establishment of specifications for such coatings. In evaluating VOC reduction strategies, the guidance shall take into account the applicable requirements of section 7412 of this title and the need to protect stratospheric ozone.

(4) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds and PM–10 into the ambient air from paints, coatings, and solvents used in shipbuilding operations and ship repair. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds and PM–10 into the ambient air from the removal or application of such paints, coatings, and solvents to such level as the Administrator determines may be achieved through the adoption of the best available control measures. Such control techniques guidelines shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control techniques guidelines under this subsection, the Administrator shall consult with the appropriate Federal agencies.

(c) Alternative control techniques

Within 3 years after November 15, 1990, the Administrator shall issue technical documents which identify alternative controls for all categories of stationary sources of volatile organic compounds and oxides of nitrogen which emit, or have the potential to emit 25 tons per year or more of such air pollutant. The Administrator shall revise and update such documents as the Administrator determines necessary.

(d) Guidance for evaluating cost-effectiveness

Within 1 year after November 15, 1990, the Administrator shall provide guidance to the States to be used in evaluating the relative cost-effectiveness of various options for the control of emissions from existing stationary sources of air pollutants which contribute to nonattainment of the national ambient air quality standards for ozone.

(e) Control of emissions from certain sources

(1) Definitions

For purposes of this subsection—

(A) Best available controls

The term ''best available controls'' means the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

(B) Consumer or commercial product

The term ''consumer or commercial product'' means any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds. The term does not include fuels or fuel additives regulated under section 7545 of this title, or motor vehicles, non-road vehicles, and non-road engines as defined under section 7550 of this title.

(C) Regulated entities

The term ''regulated entities'' means—

(i) manufacturers, processors, wholesale distributors, or importers of consumer or commercial products for sale or distribution in interstate commerce in the United States; or

(ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

(2) Study and report

(A) Study

The Administrator shall conduct a study of the emissions of volatile organic compounds into the ambient air from consumer and commercial products (or any combination thereof) in order to—

(i) determine their potential to contribute to ozone levels which violate the national ambient air quality standard for ozone; and

(ii) establish criteria for regulating consumer and commercial products or classes or categories thereof which shall be subject to control under this subsection.

The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990.

(B) Consideration of certain factors

In establishing the criteria under subparagraph (A)(ii), the Administrator shall take into consideration each of the following:

(i) The uses, benefits, and commercial demand of consumer and commercial products.

(ii) The health or safety functions (if any) served by such consumer and commercial products.

(iii) Those consumer and commercial products which emit highly reactive volatile organic compounds into the ambient air.

(iv) Those consumer and commercial products which are subject to the most cost-effective controls.

(v) The availability of alternatives (if any) to such consumer and commercial products which are of comparable costs, considering health, safety, and environmental impacts.

(3) Regulations to require emission reductions

(A) In general

Upon submission of the final report under paragraph (2), the Administrator shall list those categories of consumer or commercial products that the Administrator determines, based on the study, account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer or commercial products in areas that violate the NAAQS for ozone. Credit toward the 80 percent emissions calculation shall be given for emission reductions from consumer or commercial products made after November 15, 1990. At such time, the Administrator shall divide the list into 4 groups establishing priorities for regulation based on the criteria established in paragraph (2). Every 2 years after promulgating such list, the Administrator shall regulate one group of categories until all 4 groups are regulated. The regulations shall require best available controls as defined in this section. Such regulations may exempt health use products for which the Administrator determines there is no suitable substitute. In order to carry out this section, the Administrator may, by regulation, control or prohibit any activity, including the manufacture or introduction into commerce, offering for sale, or sale of any consumer or commercial product which results in emission of volatile organic compounds into the ambient air.

(B) Regulated entities

Regulations under this subsection may be imposed only with respect to regulated entities.

(C) Use of CTGS

For any consumer or commercial product the Administrator may issue control techniques guidelines under this chapter in lieu of regulations required under subparagraph (A) if the Administrator determines that such guidance will be substantially as effective as regulations in reducing emissions of volatile organic compounds which contribute to ozone levels in areas which violate the national ambient air quality standard for ozone.

(4) Systems of regulation

The regulations under this subsection may include any system or systems of regulation as the Administrator may deem appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or economic incentives (including marketable permits and auctions of emissions rights) concerning the manufacture, processing, distribution, use, consumption, or disposal of the product.

(5) Special fund

Any amounts collected by the Administrator under such regulations shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available until expended, subject to annual appropriation Acts, solely to carry out the activities of the Administrator for which such fees, charges, or collections are established or made.

(6) Enforcement

Any regulation established under this subsection shall be treated, for purposes of enforcement of this chapter, as a standard under section 7411 of this title and any violation of such regulation shall be treated as a violation of a requirement of section 7411(e) of this title.

(7) State administration

Each State may develop and submit to the Administrator a procedure under State law for implementing and enforcing regulations promulgated under this subsection. If the Administrator finds the State procedure is adequate, the Administrator shall approve such procedure. Nothing in this paragraph shall prohibit the Administrator from enforcing any applicable regulations under this subsection.

(8) Size, etc.

No regulations regarding the size, shape, or labeling of a product may be promulgated, unless the Administrator determines such regulations to be useful in meeting any national ambient air quality standard.

(9) State consultation

Any State which proposes regulations other than those adopted under this subsection shall consult with the Administrator regarding whether any other State or local subdivision has promulgated or is promulgating regulations on any products covered under this part. The Administrator shall establish a clearinghouse of information, studies, and regulations proposed and promulgated regarding products covered under this subsection and disseminate such information collected as requested by State or local subdivisions.

(f) Tank vessel standards

(1) Schedule for standards

(A) Within 2 years after November 15, 1990, the Administrator, in consultation with the Secretary of the Department in which the Coast Guard is operating, shall promulgate

standards applicable to the emission of VOCs and any other air pollutant from loading and unloading of tank vessels (as that term is defined in section 2101 of title 46) which the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare. Such standards shall require the application of reasonably available control technology, considering costs, any nonair-quality benefits, environmental impacts, energy requirements and safety factors associated with alternative control techniques. To the extent practicable such standards shall apply to loading and unloading facilities and not to tank vessels.

(B) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds (after consultation with the Secretary of the department[1] in which the Coast Guard is operating) necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period, except that the effective date shall not be more than 2 years after promulgation of such regulations.

(2) Regulations on equipment safety

Within 6 months after November 15, 1990, the Secretary of the Department in which the Coast Guard is operating shall issue regulations to ensure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels, under section 3703 of title 46 and section 1225 of title 33. The standards promulgated by the Administrator under paragraph (1) and the regulations issued by a State or political subdivision regarding emissions from the loading and unloading of tank vessels shall be consistent with the regulations regarding safety of the Department in which the Coast Guard is operating.

(3) Agency authority

(A) The Administrator shall ensure compliance with the tank vessel emission standards prescribed under paragraph (1)(A). The Secretary of the Department in which the Coast Guard is operating shall also ensure compliance with the tank vessel standards prescribed under paragraph (1)(A).

(B) The Secretary of the Department in which the Coast Guard is operating shall ensure compliance with the regulations issued under paragraph (2).

(4) State or local standards

After the Administrator promulgates standards under this section, no State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions from tank vessels subject to regulation under paragraph (1) unless such standard is no less stringent than the standards promulgated under paragraph (1).

(5) Enforcement

Any standard established under paragraph (1)(A) shall be treated, for purposes of enforcement of this chapter, as a standard under section 7411 of this title and any violation of such standard shall be treated as a violation of a requirement of section 7411(e) of this title.

(g) Ozone design value study

The Administrator shall conduct a study of whether the methodology in use by the Environmental Protection Agency as of November 15, 1990, for establishing a design value for ozone provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The Administrator shall obtain input from States, local subdivisions thereof, and others. The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990. The results of the study shall be subject to peer and public review before submitting it to Congress.

(h) Vehicles entering ozone nonattainment areas

(1) Authority regarding ozone inspection and maintenance testing

(A) In general

No noncommercial motor vehicle registered in a foreign country and operated by a United States citizen or by an alien who is a permanent resident of the United States, or who holds a visa for the purposes of employment or educational study in the United States, may enter a covered ozone nonattainment area from a foreign country bordering the United States and contiguous to the nonattainment area more than twice in a single calendar-month period, if State law has requirements for the inspection and maintenance of such vehicles under the applicable implementation plan in the nonattainment area.

(B) Applicability

Subparagraph (A) shall not apply if the operator presents documentation at the United States border entry point establishing that the vehicle has complied with such inspection and maintenance requirements as are in effect and are applicable to motor vehicles of the same type and model year.

(2) Sanctions for violations

The President may impose and collect from the operator of any motor vehicle who violates, or attempts to violate, paragraph (1) a civil penalty of not more than $200 for the second violation or attempted violation and $400 for the third and each subsequent violation or attempted violation.

(3) State election

The prohibition set forth in paragraph (1) shall not apply in any State that elects to be exempt from the prohibition. Such an election shall take effect upon the President's receipt of written notice from the Governor of the State notifying the President of such election.

(4) Alternative approach

The prohibition set forth in paragraph (1) shall not apply in a State, and the President may implement an alternative approach, if—

(A) the Governor of the State submits to the President a written description of an al-

[1] So in original. Probably should be capitalized.

ternative approach to facilitate the compliance, by some or all foreign-registered motor vehicles, with the motor vehicle inspection and maintenance requirements that are—

(i) related to emissions of air pollutants;

(ii) in effect under the applicable implementation plan in the covered ozone nonattainment area; and

(iii) applicable to motor vehicles of the same types and model years as the foreign-registered motor vehicles; and

(B) the President approves the alternative approach as facilitating compliance with the motor vehicle inspection and maintenance requirements referred to in subparagraph (A).

(5) Definition of covered ozone nonattainment area

In this section, the term ''covered ozone nonattainment area'' means a Serious Area, as classified under section 7511 of this title as of October 27, 1998.

(July 14, 1955, ch. 360, title I, § 183, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2443; amended Pub. L. 105–286, § 2, Oct. 27, 1998, 112 Stat. 2773.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1998—Subsec. (h). Pub. L. 105–286 added subsec. (h).

EFFECTIVE DATE OF 1998 AMENDMENT; PUBLICATION OF PROHIBITION

Pub. L. 105–286, § 3, Oct. 27, 1998, 112 Stat. 2774, provided that:

''(a) IN GENERAL.—The amendment made by section 2 [amending this section] takes effect 180 days after the date of the enactment of this Act [Oct. 27, 1998]. Nothing in that amendment shall require action that is inconsistent with the obligations of the United States under any international agreement.

''(b) INFORMATION.—As soon as practicable after the date of the enactment of this Act, the appropriate agency of the United States shall distribute information to publicize the prohibition set forth in the amendment made by section 2.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7511c. Control of interstate ozone air pollution

(a) Ozone transport regions

A single transport region for ozone (within the meaning of section 7506a(a) of this title), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia, is hereby established by operation of law. The provisions of section 7506a(a)(1) and (2) of this title shall apply with respect to the transport region established under this section and any other transport region established for ozone, except to the extent inconsistent with the provisions of this section. The Administrator shall convene the commission required (under section 7506a(b) of this title) as a result of the establishment of such region within 6 months of November 15, 1990.

(b) Plan provisions for States in ozone transport regions

(1) In accordance with section 7410 of this title, not later than 2 years after November 15, 1990 (or 9 months after the subsequent inclusion of a State in a transport region established for ozone), each State included within a transport region established for ozone shall submit a State implementation plan or revision thereof to the Administrator which requires the following—

(A) that each area in such State that is in an ozone transport region, and that is a metropolitan statistical area or part thereof with a population of 100,000 or more comply with the provisions of section 7511a(c)(2)(A) of this title (pertaining to enhanced vehicle inspection and maintenance programs); and

(B) implementation of reasonably available control technology with respect to all sources of volatile organic compounds in the State covered by a control techniques guideline issued before or after November 15, 1990.

(2) Within 3 years after November 15, 1990, the Administrator shall complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through vehicle refueling controls contained in section 7511a(b)(3) of this title, and such measures or such vehicle refueling controls shall be implemented in accordance with the provisions of this section. Notwithstanding other deadlines in this section, the applicable implementation plan shall be revised to reflect such measures within 1 year of completion of the study. For purposes of this section any stationary source that emits or has the potential to emit at least 50 tons per year of volatile organic compounds shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a Moderate nonattainment area.

(c) Additional control measures

(1) Recommendations

Upon petition of any State within a transport region established for ozone, and based on a majority vote of the Governors on the Commission[1] (or their designees), the Commission[1] may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within

[1] So in original. Probably should not be capitalized.

all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart. The commission shall transmit such recommendations to the Administrator.

(2) Notice and review

Whenever the Administrator receives recommendations prepared by a commission pursuant to paragraph (1) (the date of receipt of which shall hereinafter in this section be referred to as the ''receipt date''), the Administrator shall—

(A) immediately publish in the Federal Register a notice stating that the recommendations are available and provide an opportunity for public hearing within 90 days beginning on the receipt date; and

(B) commence a review of the recommendations to determine whether the control measures in the recommendations are necessary to bring any area in such region into attainment by the dates provided by this subpart and are otherwise consistent with this chapter.

(3) Consultation

In undertaking the review required under paragraph (2)(B), the Administrator shall consult with members of the commission of the affected States and shall take into account the data, views, and comments received pursuant to paragraph (2)(A).

(4) Approval and disapproval

Within 9 months after the receipt date, the Administrator shall (A) determine whether to approve, disapprove, or partially disapprove and partially approve the recommendations; (B) notify the commission in writing of such approval, disapproval, or partial disapproval; and (C) publish such determination in the Federal Register. If the Administrator disapproves or partially disapproves the recommendations, the Administrator shall specify—

(i) why any disapproved additional control measures are not necessary to bring any area in such region into attainment by the dates provided by this subpart or are otherwise not consistent with the[2] chapter; and

(ii) recommendations concerning equal or more effective actions that could be taken by the commission to conform the disapproved portion of the recommendations to the requirements of this section.

(5) Finding

Upon approval or partial approval of recommendations submitted by a commission, the Administrator shall issue to each State which is included in the transport region and to which a requirement of the approved plan applies, a finding under section 7410(k)(5) of this title that the implementation plan for such State is inadequate to meet the requirements of section 7410(a)(2)(D) of this title. Such finding shall require each such State to revise its implementation plan to include the approved additional control measures within one year after the finding is issued.

[2] So in original. Probably should be ''this''.

(d) Best available air quality monitoring and modeling

For purposes of this section, not later than 6 months after November 15, 1990, the Administrator shall promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone in another area which is a nonattainment area for ozone. Such criteria shall require that the best available air quality monitoring and modeling techniques be used for purposes of making such determinations.

(July 14, 1955, ch. 360, title I, § 184, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2448.)

§ 7511d. Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain

(a) General rule

Each implementation plan revision required under section 7511a(d) and (e) of this title (relating to the attainment plan for Severe and Extreme ozone nonattainment areas) shall provide that, if the area to which such plan revision applies has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date, each major stationary source of VOCs located in the area shall, except as otherwise provided under subsection (c) of this section, pay a fee to the State as a penalty for such failure, computed in accordance with subsection (b) of this section, for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees.

(b) Computation of fee

(1) Fee amount

The fee shall equal $5,000, adjusted in accordance with paragraph (3), per ton of VOC emitted by the source during the calendar year in excess of 80 percent of the baseline amount, computed under paragraph (2).

(2) Baseline amount

For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the Administrator may provide, as the lower of the amount of actual VOC emissions (''actuals'') or VOC emissions allowed under the permit applicable to the source (or, if no such permit has been issued for the attainment year, the amount of VOC emissions allowed under the applicable implementation plan (''allowables'')) during the attainment year. Notwithstanding the preceding sentence, the Administrator may issue guidance authorizing the baseline amount to be determined in accordance with the lower of average actuals or average allowables, determined over a period of more than one calendar year. Such guidance may provide that such average calculation for a specific source may be used if that source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

(3) Annual adjustment

The fee amount under paragraph (1) shall be adjusted annually, beginning in the year beginning after 1990, in accordance with section 7661a(b)(3)(B)(v) of this title (relating to inflation adjustment).

(c) Exception

Notwithstanding any provision of this section, no source shall be required to pay any fee under subsection (a) of this section with respect to emissions during any year that is treated as an Extension Year under section 7511(a)(5) of this title.

(d) Fee collection by Administrator

If the Administrator has found that the fee provisions of the implementation plan do not meet the requirements of this section, or if the Administrator makes a finding that the State is not administering and enforcing the fee required under this section, the Administrator shall, in addition to any other action authorized under this subchapter, collect, in accordance with procedures promulgated by the Administrator, the unpaid fees required under subsection (a) of this section. If the Administrator makes such a finding under section 7509(a)(4) of this title, the Administrator may collect fees for periods before the determination, plus interest computed in accordance with section 6621(a)(2) of title 26 (relating to computation of interest on underpayment of Federal taxes), to the extent the Administrator finds such fees have not been paid to the State. The provisions of clauses (ii) through (iii) of section 7661a(b)(3)(C) of this title (relating to penalties and use of the funds, respectively) shall apply with respect to fees collected under this subsection.

(e) Exemptions for certain small areas

For areas with a total population under 200,000 which fail to attain the standard by the applicable attainment date, no sanction under this section or under any other provision of this chapter shall apply if the area can demonstrate, consistent with guidance issued by the Administrator, that attainment in the area is prevented because of ozone or ozone precursors transported from other areas. The prohibition applies only in cases in which the area has met all requirements and implemented all measures applicable to the area under this chapter.

(July 14, 1955, ch. 360, title I, § 185, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2450.)

§ 7511e. Transitional areas

If an area designated as an ozone nonattainment area as of November 15, 1990, has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989, the Administrator shall suspend the application of the requirements of this subpart to such area until December 31, 1991. By June 30, 1992, the Administrator shall determine by order, based on the area's design value as of the attainment date, whether the area attained such standard by December 31, 1991. If the Administrator determines that the area attained the standard, the Administrator shall require, as part of the order, the State to submit a maintenance plan for the area within 12 months of such determination. If the Administrator determines that the area failed to attain the standard, the Administrator shall, by June 30, 1992, designate the area as nonattainment under section 7407(d)(4) of this title.

(July 14, 1955, ch. 360, title I, § 185A, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2451.)

§ 7511f. NO_x and VOC study

The Administrator, in conjunction with the National Academy of Sciences, shall conduct a study on the role of ozone precursors in tropospheric ozone formation and control. The study shall examine the roles of NO_x and VOC emission reductions, the extent to which NO_x reductions may contribute (or be counterproductive) to achievement of attainment in different nonattainment areas, the sensitivity of ozone to the control of NO_x, the availability and extent of controls for NO_x, the role of biogenic VOC emissions, and the basic information required for air quality models. The study shall be completed and a proposed report made public for 30 days comment within 1 year of November 15, 1990, and a final report shall be submitted to Congress within 15 months after November 15, 1990. The Administrator shall utilize all available information and studies, as well as develop additional information, in conducting the study required by this section.

(July 14, 1955, ch. 360, title I, § 185B, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2452.)

SUBPART 3—ADDITIONAL PROVISIONS FOR CARBON MONOXIDE NONATTAINMENT AREAS

§ 7512. Classification and attainment dates

(a) Classification by operation of law and attainment dates for nonattainment areas

(1) Each area designated nonattainment for carbon monoxide pursuant to section 7407(d) of this title shall be classified at the time of such designation under table 1, by operation of law, as a Moderate Area or a Serious Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary standard attainment date for carbon monoxide shall be as expeditiously as practicable but not later than the date provided in table 1:

TABLE 3[1]

Area classification	Design value	Primary standard attainment date
Moderate	9.1–16.4 ppm	December 31, 1995
Serious	16.5 and above	December 31, 2000

(2) At the time of publication of the notice required under section 7407 of this title (designat-

[1] So in original. Probably should be "TABLE 1".

ing carbon monoxide nonattainment areas), the Administrator shall publish a notice announcing the classification of each such carbon monoxide nonattainment area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

(3) If an area classified under paragraph (1), table 1, would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after November 15, 1990, by the procedure required under paragraph (2), adjust the classification of the area. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for carbon monoxide in the area, the level of pollution transport between the area and the other affected areas, and the mix of sources and air pollutants in the area. The Administrator may make the same adjustment for purposes of paragraphs (2), (3), (6), and (7) of section 7512a(a) of this title.

(4) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter in this subpart referred to as the ''Extension Year'') the date specified in table 1 of subsection (a) of this section if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than one exceedance of the national ambient air quality standard level for carbon monoxide has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

(b) New designations and reclassifications

(1) New designations to nonattainment

Any area that is designated attainment or unclassifiable for carbon monoxide under section 7407(d)(4) of this title, and that is subsequently redesignated to nonattainment for carbon monoxide under section 7407(d)(3) of this title, shall, at the time of the redesignation, be classified by operation of law in accordance with table 1 under subsections (a)(1) and (a)(4) of this section. Upon its classification, the area shall be subject to the same requirements under section 7410 of this title, subpart 1 of this part, and this subpart that would have applied had the area been so classified at the time of the notice under subsection (a)(2) of this section, except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between November 15, 1990, and the date the area is classified.

(2) Reclassification of Moderate Areas upon failure to attain

(A) General rule

Within 6 months following the applicable attainment date for a carbon monoxide nonattainment area, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area has attained the standard by that date. Any Moderate Area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a)(1) of this section as a Serious Area.

(B) Publication of notice

The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that the Administrator has determined, under subparagraph (A), as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

(c) References to terms

Any reference in this subpart to a ''Moderate Area'' or a ''Serious Area'' shall be considered a reference to a Moderate Area or a Serious Area, respectively, as classified under this section.

(July 14, 1955, ch. 360, title I, § 186, as added Pub. L. 101–549, title I, § 104, Nov. 15, 1990, 104 Stat. 2452.)

§ 7512a. Plan submissions and requirements

(a) Moderate Areas

Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area (or portion thereof, to the extent specified in guidance of the Administrator issued before November 15, 1990), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection, within such periods as are prescribed under this subsection, except to the extent the State has made such submissions as of November 15, 1990:

(1) Inventory

No later than 2 years from November 15, 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 7502(c)(3) of this title, in accordance with guidance provided by the Administrator.

(2)(A) Vehicle miles traveled

No later than 2 years after November 15, 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall contain a forecast of vehicle miles traveled in the nonattainment area concerned for each year before the year in which the plan projects the national ambient air quality standard for carbon monoxide to be attained in the area. The forecast shall be based on guidance which shall be published by the Administrator, in consultation with the Secretary of Transportation, within 6 months after November 15, 1990. The plan revision shall provide for annual updates of the forecasts to be submitted to the Administrator together with annual reports regarding the extent to which such forecasts proved to be accurate. Such annual reports shall contain estimates of actual vehicle miles traveled in each year for which a forecast was required.

(B) Special rule for Denver

Within 2 years after November 15, 1990, in the case of Denver, the State shall submit a revision that includes the transportation control measures as required in section 7511a(d)(1)(A) of this title except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. If the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

(3) Contingency provisions

No later than 2 years after November 15, 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall provide for the implementation of specific measures to be undertaken if any estimate of vehicle miles traveled in the area which is submitted in an annual report under paragraph (2) exceeds the number predicted in the most recent prior forecast or if the area fails to attain the national primary ambient air quality standard for carbon monoxide by the primary standard attainment date. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator if the prior forecast has been exceeded by an updated forecast or if the national standard is not attained by such deadline.

(4) Savings clause for vehicle inspection and maintenance provisions of the State implementation plan

Immediately after November 15, 1990, for any Moderate Area (or, within the Administrator's discretion, portion thereof), the plan for which is of the type described in section 7511a(a)(2)(B) of this title any provisions necessary to ensure that the applicable implementation plan includes the vehicle inspection and maintenance program described in section 7511a(a)(2)(B) of this title.

(5) Periodic inventory

No later than September 30, 1995, and no later than the end of each 3 year period thereafter, until the area is redesignated to attainment, a revised inventory meeting the requirements of subsection (a)(1) of this section.

(6) Enhanced vehicle inspection and maintenance

No later than 2 years after November 15, 1990, in the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, a revision that includes provisions for an enhanced vehicle inspection and maintenance program as required in section 7511a(c)(3) of this title (concerning serious ozone nonattainment areas), except that such program shall be for the purpose of reducing carbon monoxide rather than hydrocarbon emissions.

(7) Attainment demonstration and specific annual emission reductions

In the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, no later than 2 years after November 15, 1990, a revision to provide, and a demonstration that the plan as revised will provide, for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. In the case of Moderate Areas with a design value of 12.7 ppm or lower at the time of classification, the requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the carbon monoxide standard by the applicable attainment date.

(b) Serious Areas

(1) In general

Each State in which all or part of a Serious Area is located shall, with respect to the Serious Area, make the submissions (other than those required under subsection (a)(1)(B)[1] of this section) applicable under subsection (a) of this section to Moderate Areas with a design value of 12.7 ppm or greater at the time of classification, and shall also submit the revision and other items described under this subsection.

(2) Vehicle miles traveled

Within 2 years after November 15, 1990, the State shall submit a revision that includes the transportation control measures as required in section 7511a(d)(1) of this title except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. In the case of any such area (other than an area in New York State) which is a covered area (as defined in section 7586(a)(2)(B) of this title) for purposes of the Clean Fuel Fleet program under part C of subchapter II of this chapter, if the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

(3) Oxygenated gasoline

(A) Within 2 years after November 15, 1990, the State shall submit a revision to require that gasoline sold, supplied, offered for sale or supply, dispensed, transported or introduced into commerce in the larger of—

(i) the Consolidated Metropolitan Statistical Area (as defined by the United States

[1] So in original. Subsec. (a)(1) of this section does not contain a subpar. (B).

Office of Management and Budget) (CMSA) in which the area is located, or

(ii) if the area is not located in a CMSA, the Metropolitan Statistical Area (as defined by the United States Office of Management and Budget) in which the area is located,

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide (as determined by the Administrator), with fuels containing such level of oxygen as is necessary, in combination with other measures, to provide for attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area. The revision shall provide that such requirement shall take effect no later than October 1, 1993, and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

(B) Notwithstanding subparagraph (A), the revision described in this paragraph shall not be required for an area if the State demonstrates to the satisfaction of the Administrator that the revision is not necessary to provide for attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area.

(c) Areas with significant stationary source emissions of CO

(1) Serious Areas

In the case of Serious Areas in which stationary sources contribute significantly to carbon monoxide levels (as determined under rules issued by the Administrator), the State shall submit a plan revision within 2 years after November 15, 1990, which provides that the term ''major stationary source'' includes (in addition to the sources described in section 7602 of this title) any stationary source which emits, or has the potential to emit, 50 tons per year or more of carbon monoxide.

(2) Waivers for certain areas

The Administrator may, on a case-by-case basis, waive any requirements that pertain to transportation controls, inspection and maintenance, or oxygenated fuels where the Administrator determines by rule that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in the area.

(3) Guidelines

Within 6 months after November 15, 1990, the Administrator shall issue guidelines for and rules determining whether stationary sources contribute significantly to carbon monoxide levels in an area.

(d) CO milestone

(1) Milestone demonstration

By March 31, 1996, each State in which all or part of a Serious Area is located shall submit to the Administrator a demonstration that the area has achieved a reduction in emissions of CO equivalent to the total of the specific annual emission reductions required by December 31, 1995. Such reductions shall be referred to in this subsection as the milestone.

(2) Adequacy of demonstration

A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) Failure to meet emission reduction milestone

If a State fails to submit a demonstration under paragraph (1) within the required period, or if the Administrator notifies the State that the State has not met the milestone, the State shall, within 9 months after such a failure or notification, submit a plan revision to implement an economic incentive and transportation control program as described in section 7511a(g)(4) of this title. Such revision shall be sufficient to achieve the specific annual reductions in carbon monoxide emissions set forth in the plan by the attainment date.

(e) Multi-State CO nonattainment areas

(1) Coordination among States

Each State in which there is located a portion of a single nonattainment area for carbon monoxide which covers more than one State (''multi-State nonattainment area'') shall take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned. The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) Failure to demonstrate attainment

If any State in which there is located a portion of a multi-State nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for carbon monoxide in that portion within the period required under this part the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under this section (relating to plan submissions for carbon monoxide nonattainment areas). If the Administrator makes such finding, in the portion of the nonattainment area within the State submitting such petition, no sanction shall be imposed under section 7509 of this title or under any other provision of this chapter, by reason of the failure to make such demonstration.

(f) Reclassified areas

Each State containing a carbon monoxide nonattainment area reclassified under section 7512(b)(2) of this title shall meet the requirements of subsection (b) of this section, as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than the attainment date) where such deadlines are shown to be infeasible.

(g) Failure of Serious Area to attain standard

If the Administrator determines under section 7512(b)(2) of this title that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that a program of incentives and requirements as described in section 7511a(g)(4) of this title shall be applicable in the area, and such program, in combination with other elements of the revised plan, shall be adequate to reduce the total tonnage of emissions of carbon monoxide in the area by at least 5 percent per year in each year after approval of the plan revision and before attainment of the national primary ambient air quality standard for carbon monoxide.

(July 14, 1955, ch. 360, title I, § 187, as added Pub. L. 101–549, title I, § 104, Nov. 15, 1990, 104 Stat. 2454.)

MORATORIUM ON CERTAIN EMISSIONS TESTING REQUIREMENTS

For provisions prohibiting Administrator of Environmental Protection Agency from requiring adoption or implementation by State of test-only I/M240 enhanced vehicle inspection and maintenance program as means of compliance with this section, with further provisions relating to plan disapproval and emissions reduction credits, see section 348 of Pub. L. 104–59, set out as a note under section 7511a of this title.

SUBPART 4—ADDITIONAL PROVISIONS FOR PARTICULATE MATTER NONATTAINMENT AREAS

§ 7513. Classifications and attainment dates

(a) Initial classifications

Every area designated nonattainment for PM–10 pursuant to section 7407(d) of this title shall be classified at the time of such designation, by operation of law, as a moderate PM–10 nonattainment area (also referred to in this subpart as a ''Moderate Area'') at the time of such designation. At the time of publication of the notice under section 7407(d)(4) of this title (relating to area designations) for each PM–10 nonattainment area, the Administrator shall publish a notice announcing the classification of such area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

(b) Reclassification as Serious

(1) Reclassification before attainment date

The Administrator may reclassify as a Serious PM–10 nonattainment area (identified in this subpart also as a ''Serious Area'') any area that the Administrator determines cannot practicably attain the national ambient air quality standard for PM–10 by the attainment date (as prescribed in subsection (c) of this section) for Moderate Areas. The Administrator shall reclassify appropriate areas as Serious by the following dates:

(A) For areas designated nonattainment for PM–10 under section 7407(d)(4) of this title, the Administrator shall propose to reclassify appropriate areas by June 30, 1991, and take final action by December 31, 1991.

(B) For areas subsequently designated nonattainment, the Administrator shall reclassify appropriate areas within 18 months after the required date for the State's submission of a SIP for the Moderate Area.

(2) Reclassification upon failure to attain

Within 6 months following the applicable attainment date for a PM–10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date—

(A) the area shall be reclassified by operation of law as a Serious Area; and

(B) the Administrator shall publish a notice in the Federal Register no later than 6 months following the attainment date, identifying the area as having failed to attain and identifying the reclassification described under subparagraph (A).

(c) Attainment dates

Except as provided under subsection (d) of this section, the attainment dates for PM–10 nonattainment areas shall be as follows:

(1) Moderate Areas

For a Moderate Area, the attainment date shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment, except that, for areas designated nonattainment for PM–10 under section 7407(d)(4) of this title, the attainment date shall not extend beyond December 31, 1994.

(2) Serious Areas

For a Serious Area, the attainment date shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment, except that, for areas designated nonattainment for PM–10 under section 7407(d)(4) of this title, the date shall not extend beyond December 31, 2001.

(d) Extension of attainment date for Moderate Areas

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the date specified in paragraph[1] (c)(1) if—

(1) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and

[1] So in original. Probably should be ''subsection''.

(2) no more than one exceedance of the 24-hour national ambient air quality standard level for PM–10 has occurred in the area in the year preceding the Extension Year, and the annual mean concentration of PM–10 in the area for such year is less than or equal to the standard level.

No more than 2 one-year extensions may be issued under the subsection for a single nonattainment area.

(e) Extension of attainment date for Serious Areas

Upon application by any State, the Administrator may extend the attainment date for a Serious Area beyond the date specified under subsection (c) of this section, if attainment by the date established under subsection (c) of this section would be impracticable, the State has complied with all requirements and commitments pertaining to that area in the implementation plan, and the State demonstrates to the satisfaction of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area. At the time of such application, the State must submit a revision to the implementation plan that includes a demonstration of attainment by the most expeditious alternative date practicable. In determining whether to grant an extension, and the appropriate length of time for any such extension, the Administrator may consider the nature and extent of nonattainment, the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries), the population exposed to concentrations in excess of the standard, the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and the technological and economic feasibility of various control measures. The Administrator may not approve an extension until the State submits an attainment demonstration for the area. The Administrator may grant at most one such extension for an area, of no more than 5 years.

(f) Waivers for certain areas

The Administrator may, on a case-by-case basis, waive any requirement applicable to any Serious Area under this subpart where the Administrator determines that anthropogenic sources of PM–10 do not contribute significantly to the violation of the PM–10 standard in the area. The Administrator may also waive a specific date for attainment of the standard where the Administrator determines that non-anthropogenic sources of PM–10 contribute significantly to the violation of the PM–10 standard in the area.

(July 14, 1955, ch. 360, title I, § 188, as added Pub. L. 101–549, title I, § 105(a), Nov. 15, 1990, 104 Stat. 2458.)

§ 7513a. Plan provisions and schedules for plan submissions

(a) Moderate Areas

(1) Plan provisions

Each State in which all or part of a Moderate Area is located shall submit, according to the applicable schedule under paragraph (2), an implementation plan that includes each of the following:

(A) For the purpose of meeting the requirements of section 7502(c)(5) of this title, a permit program providing that permits meeting the requirements of section 7503 of this title are required for the construction and operation of new and modified major stationary sources of PM–10.

(B) Either (i) a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date; or (ii) a demonstration that attainment by such date is impracticable.

(C) Provisions to assure that reasonably available control measures for the control of PM–10 shall be implemented no later than December 10, 1993, or 4 years after designation in the case of an area classified as moderate after November 15, 1990.

(2) Schedule for plan submissions

A State shall submit the plan required under subparagraph (1) no later than the following:

(A) Within 1 year of November 15, 1990, for areas designated nonattainment under section 7407(d)(4) of this title, except that the provision required under subparagraph (1)(A) shall be submitted no later than June 30, 1992.

(B) 18 months after the designation as nonattainment, for those areas designated nonattainment after the designations prescribed under section 7407(d)(4) of this title.

(b) Serious Areas

(1) Plan provisions

In addition to the provisions submitted to meet the requirements of paragraph[1] (a)(1) (relating to Moderate Areas), each State in which all or part of a Serious Area is located shall submit an implementation plan for such area that includes each of the following:

(A) A demonstration (including air quality modeling)—

(i) that the plan provides for attainment of the PM–10 national ambient air quality standard by the applicable attainment date, or

(ii) for any area for which the State is seeking, pursuant to section 7513(e) of this title, an extension of the attainment date beyond the date set forth in section 7513(c) of this title, that attainment by that date would be impracticable, and that the plan provides for attainment by the most expeditious alternative date practicable.

(B) Provisions to assure that the best available control measures for the control of PM–10 shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a Serious Area.

[1] So in original. Probably should be ''subsection''.

(2) Schedule for plan submissions

A State shall submit the demonstration required for an area under paragraph (1)(A) no later than 4 years after reclassification of the area to Serious, except that for areas reclassified under section 7513(b)(2) of this title, the State shall submit the attainment demonstration within 18 months after reclassification to Serious. A State shall submit the provisions described under paragraph (1)(B) no later than 18 months after reclassification of the area as a Serious Area.

(3) Major sources

For any Serious Area, the terms ''major source'' and ''major stationary source'' include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM–10.

(c) Milestones

(1) Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

(2) Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration that all measures in the plan approved under this section have been implemented and that the milestone has been met. A demonstration under this subsection shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration under this subsection is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) If a State fails to submit a demonstration under paragraph (2) with respect to a milestone within the required period or if the Administrator determines that the area has not met any applicable milestone, the Administrator shall require the State, within 9 months after such failure or determination to submit a plan revision that assures that the State will achieve the next milestone (or attain the national ambient air quality standard for PM–10, if there is no next milestone) by the applicable date.

(d) Failure to attain

In the case of a Serious PM–10 nonattainment area in which the PM–10 standard is not attained by the applicable attainment date, the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM–10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

(e) PM–10 precursors

The control requirements applicable under plans in effect under this part for major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. The Administrator shall issue guidelines regarding the application of the preceding sentence.

(July 14, 1955, ch. 360, title I, § 189, as added Pub. L. 101–549, title I, § 105(a), Nov. 15, 1990, 104 Stat. 2460.)

§ 7513b. Issuance of RACM and BACM guidance

The Administrator shall issue, in the same manner and according to the same procedure as guidance is issued under section 7408(c) of this title, technical guidance on reasonably available control measures and best available control measures for urban fugitive dust, and emissions from residential wood combustion (including curtailments and exemptions from such curtailments) and prescribed silvicultural and agricultural burning, no later than 18 months following November 15, 1990. The Administrator shall also examine other categories of sources contributing to nonattainment of the PM–10 standard, and determine whether additional guidance on reasonably available control measures and best available control measures is needed, and issue any such guidance no later than 3 years after November 15, 1990. In issuing guidelines and making determinations under this section, the Administrator (in consultation with the State) shall take into account emission reductions achieved, or expected to be achieved, under subchapter IV–A of this chapter and other provisions of this chapter.

(July 14, 1955, ch. 360, title I, § 190, as added Pub. L. 101–549, title I, § 105(a), Nov. 15, 1990, 104 Stat. 2462.)

SUBPART 5—ADDITIONAL PROVISIONS FOR AREAS DESIGNATED NONATTAINMENT FOR SULFUR OXIDES, NITROGEN DIOXIDE, OR LEAD

§ 7514. Plan submission deadlines

(a) Submission

Any State containing an area designated or redesignated under section 7407(d) of this title as nonattainment with respect to the national primary ambient air quality standards for sulfur oxides, nitrogen dioxide, or lead subsequent to November 15, 1990, shall submit to the Administrator, within 18 months of the designation, an applicable implementation plan meeting the requirements of this part.

(b) States lacking fully approved State implementation plans

Any State containing an area designated nonattainment with respect to national primary ambient air quality standards for sulfur oxides or nitrogen dioxide under section 7407(d)(1)(C)(i) of this title, but lacking a fully approved implementation plan complying with the require-

ments of this chapter (including this part) as in effect immediately before November 15, 1990, shall submit to the Administrator, within 18 months of November 15, 1990, an implementation plan meeting the requirements of subpart 1 (except as otherwise prescribed by section 7514a of this title).

(July 14, 1955, ch. 360, title I, § 191, as added Pub. L. 101–549, title I, § 106, Nov. 15, 1990, 104 Stat. 2463.)

§ 7514a. Attainment dates

(a) Plans under section 7514(a)

Implementation plans required under section 7514(a) of this title shall provide for attainment of the relevant primary standard as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation.

(b) Plans under section 7514(b)

Implementation plans required under section 7514(b) of this title shall provide for attainment of the relevant primary national ambient air quality standard within 5 years after November 15, 1990.

(c) Inadequate plans

Implementation plans for nonattainment areas for sulfur oxides or nitrogen dioxide with plans that were approved by the Administrator before November 15, 1990, but, subsequent to such approval, were found by the Administrator to be substantially inadequate, shall provide for attainment of the relevant primary standard within 5 years from the date of such finding.

(July 14, 1955, ch. 360, title I, § 192, as added Pub. L. 101–549, title I, § 106, Nov. 15, 1990, 104 Stat. 2463.)

SUBPART 6—SAVINGS PROVISIONS

§ 7515. General savings clause

Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this chapter, as in effect before November 15, 1990, shall remain in effect according to its terms, except to the extent otherwise provided under this chapter, inconsistent with any provision of this chapter, or revised by the Administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

(July 14, 1955, ch. 360, title I, § 193, as added Pub. L. 101–549, title I, § 108(*l*), Nov. 15, 1990, 104 Stat. 2469.)

SUBCHAPTER II—EMISSION STANDARDS FOR MOVING SOURCES

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

§ 7521. Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) of this section—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A) IN GENERAL.—(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) REVISED STANDARDS FOR HEAVY DUTY TRUCKS.—(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this

subsection applicable to emissions of oxides of nitrogen (NO_x) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

(C) LEAD TIME AND STABILITY.—Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

(D) REBUILDING PRACTICES.—The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) MOTORCYCLES.—For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1)[1] of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) of this section applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with requirements prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to requirements prescribed under this subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term ''fill pipe'' shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) ONBOARD VAPOR RECOVERY.—Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based (''onboard'') systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

[1] See References in Text note below.

IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

Model year commencing after standards promulgated	Percentage*
Fourth	40
Fifth	80
After Fifth	100

*Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 7511a(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 7511 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 7511a(b)(3) of this title for areas classified under section 7511 of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) of this section applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5),[1] regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that—

(i) the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

(ii) such manufacturer lacks the financial resources and technological ability to develop such technology.

(C) The Administrator may promulgate regulations under subsection (a)(1) of this section revising any standard prescribed or previously revised under this subsection, as needed to protect public health or welfare, taking costs, energy, and safety into account. Any revised standard shall require a reduction of emissions from the standard that was previously applicable. Any such revision under this subchapter may provide for a phase-in of the standard. It is the intent of Congress that the numerical emission standards specified in subsections (a)(3)(B)(ii), (g), (h), and (i) of this section shall not be modified by the Administrator after November 15, 1990, for any model year before the model year 2004.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to November 15, 1990), shall be promulgated by regulation within 180 days after November 15, 1990.

(3) For purposes of this part—

(A)(i) The term ''model year'' with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term ''model year'' shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b) of this section, the Administrator may prescribe regulations defining ''model year'' otherwise than as provided in clause (i).

(B) Repealed. Pub. L. 101–549, title II, § 230(1), Nov. 15, 1990, 104 Stat. 2529.

(C) The term ''heavy duty vehicle'' means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and

highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.

(3)[2] Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines—

(A) that such waiver would not endanger public health,

(B) that there is a substantial likelihood that the vehicles or engines will be able to comply with the applicable standard under this section at the expiration of the waiver, and

(C) that the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] upon the expiration of the waiver.

No waiver under this subparagraph[3] granted to any manufacturer shall apply to more than 5 percent of such manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater.

(c) Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information

(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this chapter (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

(d) Useful life of vehicles

The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a)(1) of this section and section 7541 of this title. Such regulations shall provide that except where a different useful life period is specified in this subchapter useful life shall—

(1) in the case of light duty vehicles and light duty vehicle engines and light-duty trucks up to 3,750 lbs. LVW and up to 6,000 lbs. GVWR, be a period of use of five years or fifty thousand miles (or the equivalent), whichever first occurs, except that in the case of any requirement of this section which first becomes applicable after November 15, 1990, where the useful life period is not otherwise specified for such vehicles and engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under section 7541 of this title up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;

(2) in the case of any other motor vehicle or motor vehicle engine (other than motorcycles or motorcycle engines), be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate; and

(3) in the case of any motorcycle or motorcycle engine, be a period of use the Administrator shall determine.

(e) New power sources or propulsion systems

In the event of a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 7525(a) of this title, the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger the public health or welfare but for which standards have not been prescribed under subsection (a) of this section.

[2] So in original. Probably should be "(4)".

[3] So in original. Probably should be "paragraph".

(f)[4] High altitude regulations

(1) The high altitude regulation in effect with respect to model year 1977 motor vehicles shall not apply to the manufacture, distribution, or sale of 1978 and later model year motor vehicles. Any future regulation affecting the sale or distribution of motor vehicles or engines manufactured before the model year 1984 in high altitude areas of the country shall take effect no earlier than model year 1981.

(2) Any such future regulation applicable to high altitude vehicles or engines shall not require a percentage of reduction in the emissions of such vehicles which is greater than the required percentage of reduction in emissions from motor vehicles as set forth in subsection (b) of this section. This percentage reduction shall be determined by comparing any proposed high altitude emission standards to high altitude emissions from vehicles manufactured during model year 1970. In no event shall regulations applicable to high altitude vehicles manufactured before the model year 1984 establish a numerical standard which is more stringent than that applicable to vehicles certified under non-high altitude conditions.

(3) Section 7607(d) of this title shall apply to any high altitude regulation referred to in paragraph (2) and before promulgating any such regulation, the Administrator shall consider and make a finding with respect to—

(A) the economic impact upon consumers, individual high altitude dealers, and the automobile industry of any such regulation, including the economic impact which was experienced as a result of the regulation imposed during model year 1977 with respect to high altitude certification requirements;

(B) the present and future availability of emission control technology capable of meeting the applicable vehicle and engine emission requirements without reducing model availability; and

(C) the likelihood that the adoption of such a high altitude regulation will result in any significant improvement in air quality in any area to which it shall apply.

(g) Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles; standards for model years after 1993

(1) NMHC, CO, and NO_x

Effective with respect to the model year 1994 and thereafter, the regulations under subsection (a) of this section applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), and oxides of nitrogen (NO_x) from light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles (LDVs) shall contain standards which provide that emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall comply with the levels specified in table G. The percentage shall be as specified in the implementation schedule below:

TABLE G—EMISSION STANDARDS FOR NMHC, CO, AND NO_x FROM LIGHT-DUTY TRUCKS OF UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	Column A (5 yrs/50,000 mi)			Column B (10 yrs/100,000 mi)		
	NMHC	CO	NO_x	NMHC	CO	NO_x
LDTs (0–3,750 lbs. LVW) and light-duty vehicles	0.25	3.4	0.4*	0.31	4.2	0.6*
LDTs (3,751–5,750 lbs. LVW)	0.32	4.4	0.7**	0.40	5.5	0.97

Standards are expressed in grams per mile (gpm).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs.

*In the case of diesel-fueled LDTs (0–3,750 lvw) and light-duty vehicles, before the model year 2004, in lieu of the 0.4 and 0.6 standards for NO_x, the applicable standards for NO_x shall be 1.0 gpm for a useful life of 5 years or 50,000 miles (or the equivalent), whichever first occurs, and 1.25 gpm for a useful life of 10 years or 100,000 miles (or the equivalent) whichever first occurs.

**This standard does not apply to diesel-fueled LDTs (3,751–5,750 lbs. LVW).

IMPLEMENTATION SCHEDULE FOR TABLE G STANDARDS

Model year	Percentage*
1994	40
1995	80
after 1995	100

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

(2) PM Standard

Effective with respect to model year 1994 and thereafter in the case of light-duty vehicles, and effective with respect to the model year 1995 and thereafter in the case of light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR), the regulations under subsection (a) of this section applicable to emissions of particulate matter (PM) from such vehicles and trucks shall contain standards which provide that such emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall not exceed the levels specified in the table below. The percentage shall be as specified in the Implementation Schedule below.

[4] Another subsec. (f) is set out after subsec. (m).

PM STANDARD FOR LDTS OF UP TO 6,000 LBS. GVWR

Useful life period	Standard
5/50,000	0.08 gpm
10/100,000	0.10 gpm

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of the 5/50,000 standard.

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of the 10/100,000 standard.

IMPLEMENTATION SCHEDULE FOR PM STANDARDS

Model year	Light-duty vehicles	LDTs
1994	40%*	
1995	80%*	40%*
1996	100%*	80%*

IMPLEMENTATION SCHEDULE FOR PM STANDARDS—CONTINUED

Model year	Light-duty vehicles	LDTs
after 1996	100%*	100%*

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

(h) Light-duty trucks of more than 6,000 lbs. GVWR; standards for model years after 1995

Effective with respect to the model year 1996 and thereafter, the regulations under subsection (a) of this section applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), oxides of nitrogen (NO_x), and particulate matter (PM) from light-duty trucks (LDTs) of more than 6,000 lbs. gross vehicle weight rating (GVWR) shall contain standards which provide that emissions from a specified percentage of each manufacturer's sales volume of such trucks shall comply with the levels specified in table H. The specified percentage shall be 50 percent in model year 1996 and 100 percent thereafter.

TABLE H—EMISSION STANDARDS FOR NMHC AND CO FROM GASOLINE AND DIESEL FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000 LBS. GVWR

LDT Test weight	Column A (5 yrs/50,000 mi)			Column B (11 yrs/120,000 mi)			
	NMHC	CO	NO_x	NMHC	CO	NO_x	PM
3,751–5,750 lbs. TW	0.32	4.4	0.7*	0.46	6.4	0.98	0.10
Over 5,750 lbs. TW	0.39	5.0	1.1*	0.56	7.3	1.53	0.12

Standards are expressed in grams per mile (GPM).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent) whichever first occurs.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 11 years or 120,000 miles (or the equivalent), whichever first occurs.

*Not applicable to diesel-fueled LDTs.

(i) Phase II study for certain light-duty vehicles and light-duty trucks

(1) The Administrator, with the participation of the Office of Technology Assessment, shall study whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required pursuant to this subchapter. The study shall consider whether to establish with respect to model years commencing after January 1, 2003, the standards and useful life period for gasoline and diesel-fueled light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less specified in the following table:

TABLE 3—PENDING EMISSION STANDARDS FOR GASOLINE AND DIESEL FUELED LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS 3,750 LBS. LVW OR LESS

Pollutant	Emission level*
NMHC	0.125 GPM
NO_x	0.2 GPM
CO	1.7 GPM

*Emission levels are expressed in grams per mile (GPM). For vehicles and engines subject to this subsection for purposes of subsection (d) of this section and any reference thereto, the useful life of such vehicles and engines shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs.

Such study shall also consider other standards and useful life periods which are more stringent or less stringent than those set forth in table 3 (but more stringent than those referred to in subsections (g) and (h) of this section).

(2)(A) As part of the study under paragraph (1), the Administrator shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards, taking into consideration the waiver provisions of section 7543(b) of this title. As part of such study, the Administrator shall also examine—

(i) the availability of technology (including the costs thereof), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for meeting more stringent emission standards than those provided in subsections (g) and (h) of this section for model years commencing not earlier than after January 1, 2003, and not later than model year 2006, including the lead time and safety and energy impacts of meeting more stringent emission standards; and

(ii) the need for, and cost effectiveness of, obtaining further reductions in emissions from such light-duty vehicles and light-duty trucks, taking into consideration alternative means of attaining or maintaining the national primary

ambient air quality standards pursuant to State implementation plans and other requirements of this chapter, including their feasibility and cost effectiveness.

(B) The Administrator shall submit a report to Congress no later than June 1, 1997, containing the results of the study under this subsection, including the results of the examination conducted under subparagraph (A). Before submittal of such report the Administrator shall provide a reasonable opportunity for public comment and shall include a summary of such comments in the report to Congress.

(3)(A) Based on the study under paragraph (1) the Administrator shall determine, by rule, within 3 calendar years after the report is submitted to Congress, but not later than December 31, 1999, whether—

(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii).

The rulemaking under this paragraph shall commence within 3 months after submission of the report to Congress under paragraph (2)(B).

(B) If the Administrator determines under subparagraph (A) that—

(i) there is no need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will not be available as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); or

(iii) obtaining further reductions in emissions from such vehicles will not be needed or cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall not promulgate more stringent standards than those in effect pursuant to subsections (g) and (h) of this section. Nothing in this paragraph shall prohibit the Administrator from exercising the Administrator's authority under subsection (a) of this section to promulgate more stringent standards for light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less at any other time thereafter in accordance with subsection (a) of this section.

(C) If the Administrator determines under subparagraph (A) that—

(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall either promulgate the standards (and useful life periods) set forth in Table 3 in paragraph (1) or promulgate alternative standards (and useful life periods) which are more stringent than those referred to in subsections (g) and (h) of this section. Any such standards (or useful life periods) promulgated by the Administrator shall take effect with respect to any such vehicles or engines no earlier than the model year 2003 but not later than model year 2006, as determined by the Administrator in the rule.

(D) Nothing in this paragraph shall be construed by the Administrator or by a court as a presumption that any standards (or useful life period) set forth in Table 3 shall be promulgated in the rulemaking required under this paragraph. The action required of the Administrator in accordance with this paragraph shall be treated as a nondiscretionary duty for purposes of section 7604(a)(2) of this title (relating to citizen suits).

(E) Unless the Administrator determines not to promulgate more stringent standards as provided in subparagraph (B) or to postpone the effective date of standards referred to in Table 3 in paragraph (1) or to establish alternative standards as provided in subparagraph (C), effective with respect to model years commencing after January 1, 2003, the regulations under subsection (a) of this section applicable to emissions of nonmethane hydrocarbons (NMHC), oxides of nitrogen (NO_x), and carbon monoxide (CO) from motor vehicles and motor vehicle engines in the classes specified in Table 3 in paragraph (1) above shall contain standards which provide that emissions may not exceed the pending emission levels specified in Table 3 in paragraph (1).

(j) Cold CO standard

(1) Phase I

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) of this section applicable to emissions of carbon monoxide from 1994 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit. The regulations shall contain standards which provide that emissions of carbon monoxide from a manufacturer's vehicles when operated at 20 degrees Fahrenheit may not exceed, in the case of light-duty vehicles, 10.0 grams per mile, and in the case of light-duty trucks, a level comparable in stringency to the standard applicable to light-duty vehicles. The standards shall take effect after model year 1993 according to a phase-in schedule which requires a percentage of each manufacturer's sales volume of light-duty vehicles

and light-duty trucks to comply with applicable standards after model year 1993. The percentage shall be as specified in the following table:

PHASE-IN SCHEDULE FOR COLD START STANDARDS

Model Year	Percentage
1994	40
1995	80
1996 and after	100

(2) Phase II

(A) Not later than June 1, 1997, the Administrator shall complete a study assessing the need for further reductions in emissions of carbon monoxide and the maximum reductions in such emissions achievable from model year 2001 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit.

(B)(i) If as of June 1, 1997, 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the regulations under subsection (a)(1) of this section applicable to emissions of carbon monoxide from model year 2002 and later model year light-duty vehicles and light-duty trucks shall contain standards which provide that emissions of carbon monoxide from such vehicles and trucks when operated at 20 degrees Fahrenheit may not exceed 3.4 grams per mile (gpm) in the case of light-duty vehicles and 4.4 grams per mile (gpm) in the case of light-duty trucks up to 6,000 GVWR and a level comparable in stringency in the case of light-duty trucks 6,000 GVWR and above.

(ii) In determining for purposes of this subparagraph whether 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the Administrator shall exclude the areas of Steubenville, Ohio, and Oshkosh, Wisconsin.

(3) Useful-life for phase I and phase II standards

In the case of the standards referred to in paragraphs (1) and (2), for purposes of certification under section 7525 of this title and in-use compliance under section 7541 of this title, the applicable useful life period shall be 5 years or 50,000 miles, whichever first occurs, except that the Administrator may extend such useful life period (for purposes of section 7525 of this title, or section 7541 of this title, or both) if he determines that it is feasible for vehicles and engines subject to such standards to meet such standards for a longer useful life. If the Administrator extends such useful life period, the Administrator may make an appropriate adjustment of applicable standards for such extended useful life. No such extended useful life shall extend beyond the useful life period provided in regulations under subsection (d) of this section.

(4) Heavy-duty vehicles and engines

The Administrator may also promulgate regulations under subsection (a)(1) of this section applicable to emissions of carbon monoxide from heavy-duty vehicles and engines when operated at cold temperatures.

(k) Control of evaporative emissions

The Administrator shall promulgate (and from time to time revise) regulations applicable to evaporative emissions of hydrocarbons from all gasoline-fueled motor vehicles—

(1) during operation; and

(2) over 2 or more days of nonuse;

under ozone-prone summertime conditions (as determined by regulations of the Administrator). The regulations shall take effect as expeditiously as possible and shall require the greatest degree of emission reduction achievable by means reasonably expected to be available for production during any model year to which the regulations apply, giving appropriate consideration to fuel volatility, and to cost, energy, and safety factors associated with the application of the appropriate technology. The Administrator shall commence a rulemaking under this subsection within 12 months after November 15, 1990. If final regulations are not promulgated under this subsection within 18 months after November 15, 1990, the Administrator shall submit a statement to the Congress containing an explanation of the reasons for the delay and a date certain for promulgation of such final regulations in accordance with this chapter. Such date certain shall not be later than 15 months after the expiration of such 18 month deadline.

***(l)* Mobile source-related air toxics**

(1) Study

Not later than 18 months after November 15, 1990, the Administrator shall complete a study of the need for, and feasibility of, controlling emissions of toxic air pollutants which are unregulated under this chapter and associated with motor vehicles and motor vehicle fuels, and the need for, and feasibility of, controlling such emissions and the means and measures for such controls. The study shall focus on those categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain, including emissions of benzene, formaldehyde, and 1,3 butadiene. The proposed report shall be available for public review and comment and shall include a summary of all comments.

(2) Standards

Within 54 months after November 15, 1990, the Administrator shall, based on the study under paragraph (1), promulgate (and from time to time revise) regulations under subsection (a)(1) of this section or section 7545(c)(1) of this title containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels. The regulations shall contain standards for such fuels or vehicles, or both, which the Administrator determines reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the standards established under subsection (a) of this section, the availability and costs of the technology, and noise, energy, and safety factors, and lead time. Such regulations shall not be inconsistent with standards under subsection (a) of this section. The regulations shall, at a

minimum, apply to emissions of benzene and formaldehyde.

(m) Emissions control diagnostics

(1) Regulations

Within 18 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) of this section requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostics systems capable of—

(A) accurately identifying for the vehicle's useful life as established under this section, emission-related systems deterioration or malfunction, including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,

(B) alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair,

(C) storing and retrieving fault codes specified by the Administrator, and

(D) providing access to stored information in a manner specified by the Administrator.

The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.

(2) Effective date

The regulations required under paragraph (1) of this subsection shall take effect in model year 1994, except that the Administrator may waive the application of such regulations for model year 1994 or 1995 (or both) with respect to any class or category of motor vehicles if the Administrator determines that it would be infeasible to apply the regulations to that class or category in such model year or years, consistent with corresponding regulations or policies adopted by the California Air Resources Board for such systems.

(3) State inspection

The Administrator shall by regulation require States that have implementation plans containing motor vehicle inspection and maintenance programs to amend their plans within 2 years after promulgation of such regulations to provide for inspection of onboard diagnostics systems (as prescribed by regulations under paragraph (1) of this subsection) and for the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems. Such regulations shall not be inconsistent with the provisions for warranties promulgated under section 7541(a) and (b) of this title.

(4) Specific requirements

In promulgating regulations under this subsection, the Administrator shall require—

(A) that any connectors through which the emission control diagnostics system is accessed for inspection, diagnosis, service, or repair shall be standard and uniform on all motor vehicles and motor vehicle engines;

(B) that access to the emission control diagnostics system through such connectors shall be unrestricted and shall not require any access code or any device which is only available from a vehicle manufacturer; and

(C) that the output of the data from the emission control diagnostics system through such connectors shall be usable without the need for any unique decoding information or device.

(5) Information availability

The Administrator, by regulation, shall require (subject to the provisions of section 7542(c) of this title regarding the protection of methods or processes entitled to protection as trade secrets) manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, with any and all information needed to make use of the emission control diagnostics system prescribed under this subsection and such other information including instructions for making emission related diagnosis and repairs. No such information may be withheld under section 7542(c) of this title if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Such information shall also be available to the Administrator, subject to section 7542(c) of this title, in carrying out the Administrator's responsibilities under this section.

(f)[5] Model years after 1990

For model years prior to model year 1994, the regulations under subsection (a) of this section applicable to buses other than those subject to standards under section 7554 of this title shall contain a standard which provides that emissions of particulate matter (PM) from such buses may not exceed the standards set forth in the following table:

PM STANDARD FOR BUSES

Model year	Standard*
1991	0.25
1992	0.25
1993 and thereafter	0.10

*Standards are expressed in grams per brake horsepower hour (g/bhp/hr).

(July 14, 1955, ch. 360, title II, § 202, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 499; Pub. L. 91–604, § 6(a), Dec. 31, 1970, 84 Stat. 1690; Pub. L. 93–319, § 5, June 22, 1974, 88 Stat. 258; Pub. L. 95–95, title II, §§ 201, 202(b), 213(b), 214(a), 215–217, 224(a), (b), (g), title IV, § 401(d), Aug. 7, 1977, 91 Stat. 751–753, 758–761, 765, 767, 769, 791; Pub. L. 95–190, § 14(a)(60)–(65), (b)(5), Nov. 16, 1977, 91 Stat. 1403, 1405; Pub. L. 101–549, title II, §§ 201–207, 227(b), 230(1)–(5), Nov. 15, 1990, 104 Stat. 2472–2481, 2507, 2529.)

REFERENCES IN TEXT

The enactment of the Clean Air Act Amendments of 1990, referred to in subsec. (a)(3)(B), probably means the

[5] So in original. Probably should be "(n)".

enactment of Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399, which was approved Nov. 15, 1990. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

Section 7525(f)(1) of this title, referred to in subsec. (a)(3)(E), was redesignated section 7525(f) of this title by Pub. L. 101–549, title II, § 230(8), Nov. 15, 1990, 104 Stat. 2529.

Paragraph (5) of subsec. (b), referred to in subsec. (b)(1)(A), related to waivers for model years 1981 and 1982, and was repealed by Pub. L. 101–549, title II, § 230(3), Nov. 15, 1990, 104 Stat. 2529. See 1990 Amendment note below.

The Energy Policy and Conservation Act, referred to in subsec. (b)(3)(C), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1857f–1 of this title.

AMENDMENTS

1990—Subsec. (a)(3)(A). Pub. L. 101–549, § 201(1), added subpar. (A) and struck out former subpar. (A) which related to promulgation of regulations applicable to reduction of emissions from heavy-duty vehicles or engines manufactured during and after model year 1979 in the case of carbon monoxide, hydrocarbons, and oxides of nitrogen, and from vehicles manufactured during and after model year 1981 in the case of particulate matter.

Subsec. (a)(3)(B). Pub. L. 101–549, § 201(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''During the period of June 1 through December 31, 1978, in the case of hydrocarbons and carbon monoxide, or during the period of June 1 through December 31, 1980, in the case of oxides of nitrogen, and during each period of June 1 through December 31 of each third year thereafter, the Administrator may, after notice and opportunity for a public hearing promulgate regulations revising any standard prescribed as provided in subparagraph (A)(ii) for any class or category of heavy-duty vehicles or engines. Such standard shall apply only for the period of three model years beginning four model years after the model year in which such revised standard is promulgated. In revising any standard under this subparagraph for any such three model year period, the Administrator shall determine the maximum degree of emission reduction which can be achieved by means reasonably expected to be available for production of such period and shall prescribe a revised emission standard in accordance with such determination. Such revised standard shall require a reduction of emissions from any standard which applies in the previous model year.''

Subsec. (a)(3)(C). Pub. L. 101–549, § 201(1), added subpar. (C) and struck out former subpar. (C) which read as follows: ''Action revising any standard for any period may be taken by the Administrator under subparagraph (B) only if he finds—

''(i) that compliance with the emission standards otherwise applicable for such model year cannot be achieved by technology, processes, operating methods, or other alternatives reasonably expected to be available for production for such model year without increasing cost or decreasing fuel economy to an excessive and unreasonable degree; and

''(ii) the National Academy of Sciences has not, pursuant to its study and investigation under subsection (c) of this section, issued a report substantially contrary to the findings of the Administrator under clause (i).''

Subsec. (a)(3)(D). Pub. L. 101–549, § 201(1), added subpar. (D) and struck out former subpar. (D) which read as follows: ''A report shall be made to the Congress with respect to any standard revised under subparagraph (B) which shall contain—

''(i) a summary of the health effects found, or believed to be associated with, the pollutant covered by such standard,

''(ii) an analysis of the cost-effectiveness of other strategies for attaining and maintaining national ambient air quality standards and carrying out regulations under part C of subchapter I (relating to significant deterioration) in relation to the cost-effectiveness for such purposes of standards which, but for such revision, would apply.

''(iii) a summary of the research and development efforts and progress being made by each manufacturer for purposes of meeting the standards promulgated as provided in subparagraph (A)(ii) or, if applicable, subparagraph (E), and

''(iv) specific findings as to the relative costs of compliance, and relative fuel economy, which may be expected to result from the application for any model year of such revised standard and the application for such model year of the standard, which, but for such revision, would apply.''

Subsec. (a)(3)(E), (F). Pub. L. 101–549, § 201, redesignated subpar. (F) as (E), inserted heading, and struck out former subpar. (E) which read as follows:

''(i) The Administrator shall conduct a continuing pollutant-specific study concerning the effects of each air pollutant emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare. The results of such study shall be published in the Federal Register and reported to the Congress not later than June 1, 1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen, and before June 1 of each third year thereafter.

''(ii) On the basis of such study and such other information as is available to him (including the studies under section 7548 of this title), the Administrator may, after notice and opportunity for a public hearing, promulgate regulations under paragraph (1) of this subsection changing any standard prescribed in subparagraph (A)(ii) (or revised under subparagraph (B) or previously changed under this subparagraph). No such changed standard shall apply for any model year before the model year four years after the model year during which regulations containing such changed standard are promulgated.''

Subsec. (a)(4)(A), (B). Pub. L. 101–549, § 227(b), substituted ''requirements prescribed under this subchapter'' for ''standards prescribed under this subsection''.

Subsec. (a)(6). Pub. L. 101–549, § 202, amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The Administrator shall determine the feasibility and desirability of requiring new motor vehicles to utilize onboard hydrocarbon control technology which would avoid the necessity of gasoline vapor recovery of uncontrolled emissions emanating from the fueling of motor vehicles. The Administrator shall compare the costs and effectiveness of such technology to that of implementing and maintaining vapor recovery systems (taking into consideration such factors as fuel economy, economic costs of such technology, administrative burdens, and equitable distribution of costs). If the Administrator finds that it is feasible and desirable to employ such technology, he shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, standards requiring the use of onboard hydrocarbon technology which shall not become effective until the introduction to the model year for which it would be feasible to implement such standards, taking into consideration compliance costs and the restraints of an adequate lead time for design and production.''

Subsec. (b)(1)(C). Pub. L. 101–549, § 203(c), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Effective with respect to vehicles and engines manufactured after model year 1978 (or in the case of heavy-duty vehicles or engines, such later model year as the Administrator determines is the earliest feasible model year), the test procedure promul-

gated under paragraph (2) for measurement of evaporative emissions of hydrocarbons shall require that such emissions be measured from the vehicle or engine as a whole. Regulations to carry out this subparagraph shall be promulgated not later than two hundred and seventy days after August 7, 1977.''

Subsec. (b)(2). Pub. L. 101–549, § 203(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to December 31, 1970), shall be prescribed by regulation within 180 days after such date.''

Subsec. (b)(3). Pub. L. 101–549, § 230(4), redesignated par. (6) relating to waiver of standards for oxides of nitrogen as par. (3), struck out subpar. (A) designation before ''Upon the petition'', redesignated former cls. (i) to (iii) as subpars. (A) to (C), respectively, and struck out former subpar. (B) which authorized the Administrator to waive the standard under subsec. (b)(1)(B) of this section for emissions of oxides of nitrogen from light-duty vehicles and engines beginning in model year 1981 after providing notice and opportunity for a public hearing, and set forth conditions under which a waiver could be granted.

Subsec. (b)(3)(B). Pub. L. 101–549, § 230(1), in the par. (3) defining terms for purposes of this part struck out subpar. (B) which defined ''light duty vehicles and engines''.

Subsec. (b)(4). Pub. L. 101–549, § 230(2), struck out par. (4) which read as follows: ''On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this chapter. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 7607(a) of this title (relating to subpenas) shall apply.''

Subsec. (b)(5). Pub. L. 101–549, § 230(3), struck out par. (5) which related to waivers for model years 1981 and 1982 of the effective date of the emissions standard required under par. (1)(A) for carbon monoxide applicable to light-duty vehicles and engines manufactured in those model years.

Subsec. (b)(6). Pub. L. 101–549, § 230(4), redesignated par. (6) as (3).

Subsec. (b)(7). Pub. L. 101–549, § 230(5), struck out par. (7) which read as follows: ''The Congress hereby declares and establishes as a research objective, the development of propulsion systems and emission control technology to achieve standards which represent a reduction of at least 90 per centum from the average emissions of oxides of nitrogen actually measured from light duty motor vehicles manufactured in model year 1971 not subject to any Federal or State emission standard for oxides of nitrogen. The Administrator shall, by regulations promulgated within one hundred and eighty days after August 7, 1977, require each manufacturer whose sales represent at least 0.5 per centum of light duty motor vehicle sales in the United States, to build and, on a regular basis, demonstrate the operation of light duty motor vehicles that meet this research objective, in addition to any other applicable standards or requirements for other pollutants under this chapter. Such demonstration vehicles shall be submitted to the Administrator no later than model year 1979 and in each model year thereafter. Such demonstration shall, in accordance with applicable regulations, to the greatest extent possible, (A) be designed to encourage the development of new powerplant and emission control technologies that are fuel efficient, (B) assure that the demonstration vehicles are or could reasonably be expected to be within the productive capability of the manufacturers, and (C) assure the utilization of optimum engine, fuel, and emission control systems.''

Subsec. (d). Pub. L. 101–549, § 203(b)(1), substituted ''provide that except where a different useful life period is specified in this subchapter'' for ''provide that''.

Subsec. (d)(1). Pub. L. 101–549, § 203(b)(2), (3), inserted ''and light-duty trucks up to 3,750 lbs. LVW and up to 6,000 lbs. GVWR'' after ''engines'' and substituted for semicolon at end '', except that in the case of any requirement of this section which first becomes applicable after November 15, 1990, where the useful life period is not otherwise specified for such vehicles and engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under section 7541 of this title up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;''.

Subsec. (f). Pub. L. 101–549, § 207(b), added (after subsec. (m) at end) subsec. (f) relating to regulations applicable to buses for model years after 1990.

Subsecs. (g) to (i). Pub. L. 101–549, § 203(a), added subsecs. (g) to (i).

Subsecs. (j) to (m). Pub. L. 101–549, §§ 204–207(a), added subsecs. (j) to (m).

1977—Subsec. (a)(1). Pub. L. 95–190, § 14(a)(60), restructured subsec. (a) by providing for designation of par. (1) to precede ''The Administrator'' in place of ''Except as''.

Pub. L. 95–95, § 401(d)(1), substituted ''Except as otherwise provided in subsection (b) of this section the Administrator'' for ''The Administrator'', ''cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare'' for ''causes or contributes to, or is likely to cause or contribute to, air pollution which endangers the public health or welfare'', and ''useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices'' for ''useful life (as determined under subsection (d) of this section) whether such vehicles and engines are designed as complete systems or incorporated devices''.

Subsec. (a)(2). Pub. L. 95–95, § 214(a), substituted ''prescribed under paragraph (1) of this subsection'' for ''prescribed under this subsection''.

Subsec. (a)(3). Pub. L. 95–95, § 224(a), added par. (3).

Subsec. (a)(3)(B). Pub. L. 95–190, § 14(a)(61), (62), substituted provisions setting forth applicable periods of from June 1 through Dec. 31, 1978, June 1 through Dec. 31, 1980, and during each period of June 1 through Dec. 31 of each third year thereafter, for provisions setting forth applicable periods of from June 1 through Dec. 31, 1979, and during each period of June 1 through Dec. 31 of each third year after 1979, and substituted ''from any'' for ''of from any''.

Subsec. (a)(3)(E). Pub. L. 95–190, § 14(a)(63), substituted ''1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen'' for ''1979,''.

Subsec. (a)(4). Pub. L. 95–95, § 214(a), added par. (4).

Subsec. (a)(5). Pub. L. 95–95, § 215, added par. (5).

Subsec. (a)(6). Pub. L. 95–95, § 216, added par. (6).

Subsec. (b)(1)(A). Pub. L. 95–95, § 201(a), substituted provisions setting the standards for emissions from light-duty vehicles and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 and 1976, substituted ''model year 1980'' for ''model year 1977'' in provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970, and inserted provisions that, unless waived as provided in par. (5), the standards for vehicles and engines manufactured during or after the model year 1981 represent a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970.

Subsec. (b)(1)(B). Pub. L. 95–190, § 14(a)(64), (65), substituted ''calendar year 1976'' for ''model year 1976'' and in cl. (i) substituted ''other'' for ''United States''.

Pub. L. 95–95, § 201(b), substituted provisions setting the standards for emissions from light-duty vehicles and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 through 1977, substituted provisions that the standards for model years 1981 and after allow emissions of no more than 1.0 gram per vehicle mile for provisions that the standards for model year 1978 and after require a reduction of at least 90 per centum from the average of emissions actually measured from light-duty vehicles manufactured during model year 1971 which were not subject to any Federal or State emission standards for oxides of nitrogen, and inserted provisions directing the Administrator to prescribe separate standards for model years 1981 and 1982 for manufacturers whose production, by corporate identity, for model year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the manufacturer's capability to meet emission standards depends upon United States technology and if the manufacturer cannot develop one.

Subsec. (b)(1)(C). Pub. L. 95–95, § 217, added subpar. (C).

Subsec. (b)(3)(C). Pub. L. 95–95, § 224(b), added subpar. (C).

Subsec. (b)(5). Pub. L. 95–95, § 201(c), substituted provisions setting up a procedure under which a manufacturer may apply for a waiver for model years 1981 and 1982 of the effective date of the emission standards for carbon monoxide required by par. (1)(A) for provisions which had set up a procedure under which a manufacturer, after Jan. 1, 1975, could apply for a one-year suspension of the effective date of any emission standard required by par. (1)(A) for model year 1977.

Subsec. (b)(6). Pub. L. 95–95, § 201(c), added par. (6).

Subsec. (b)(7). Pub. L. 95–95, § 202(b), added par. (7).

Subsec. (d)(2). Pub. L. 95–95, § 224(g), as amended by Pub. L. 95–190, § 14(b)(5), to correct typographical error in directory language, inserted ''(other than motorcycles or motorcycle engines)'' after ''motor vehicle or motor vehicle engine''.

Subsec. (d)(3). Pub. L. 95–95, § 224(g), added par. (3).

Subsec. (e). Pub. L. 95–95, § 401(d)(2), substituted ''which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger'' for ''which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers''.

Subsec. (f). Pub. L. 95–95, § 213(b), added subsec. (f).

1974—Subsec. (b)(1)(A). Pub. L. 93–319, § 5(a), substituted ''model year 1977'' for ''model year 1975'' in provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970 and inserted provisions covering regulations for model years 1975 and 1976.

Subsec. (b)(1)(B). Pub. L. 93–319, § 5(b), substituted ''model year 1978'' for ''model year 1976'' in provisions requiring a reduction of at least 90 per centum from the average of emissions actually measured from vehicles manufactured during model year 1971 and inserted provisions covering regulations for model years 1975, 1976, and 1977.

Subsec. (b)(5). Pub. L. 93–319, § 5(c), (d), substituted in subpar. (A), ''At any time after January 1, 1975'' for ''At any time after January 1, 1972'', ''with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977'' for ''with respect to such manufacturer'', ''sixty days'' for ''60 days'', ''paragraph (1)(A) of this subsection'' for ''paragraph (1)(A)'', and ''vehicles and engines manufactured during model year 1977'' for ''vehicles and engines manufactured during model year 1975'', redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which had allowed manufacturers, at any time after Jan. 1, 1973, to file with the Administrator an application requesting a 1-year suspension of the effective date of any emission standard required by subsec. (b)(1)(B) with respect to such manufacturer.

1970—Subsec. (a). Pub. L. 91–604 redesignated existing provisions as par. (1), substituted Administrator for Secretary as the issuing authority for standards, inserted references to the useful life of engines, and substituted the emission of any air pollutant for the emission of any kind of substance as the subject to be regulated, and added par. (2).

Subsec. (b). Pub. L. 91–604 added subsec. (b). Former subsec. (b) redesignated as par. (2) of subsec. (a).

Subsecs. (c) to (e). Pub. L. 91–604 added subsecs. (c) to (e).

1967—Pub. L. 90–148 reenacted section without change.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Study on Oxides of Nitrogen From Light-Duty Vehicles

Section 202(a) of Pub. L. 95–95 provided that the Administrator of the Environmental Protection Agency conduct a study of the public health implications of attaining an emission standard on oxides of nitrogen from light-duty vehicles of 0.4 gram per vehicle mile, the cost and technological capability of attaining such standard, and the need for such a standard to protect public health or welfare and that the Administrator submit a report of such study to the Congress, together with recommendations not later than July 1, 1980.

Study of Carbon Monoxide Intrusion Into Sustained-Use Vehicles

Section 226 of Pub. L. 95–95 provided that the Administrator, in conjunction with the Secretary of Transportation, study the problem of carbon monoxide intrusion into the passenger area of sustained-use motor vehicles and that within one year the Administrator report to the Congress respecting the results of such study.

Continuing Comprehensive Studies and Investigations by National Academy of Sciences

Section 403(f) of Pub. L. 95–95 provided that: ''The Administrator of the Environmental Protection Agency shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct continuing comprehensive studies and investigations of the effects on public health and welfare of emissions subject to section 202(a) of the Clean Air Act [subsec. (a) of this section] (including sulfur compounds) and the technological feasibility of meeting emission standards required to be prescribed by the Administrator by section 202(b) of such Act [subsec. (b) of this section]. The Administrator shall report to the Congress within six months of the date of enactment of this section [Aug. 7, 1977] and each year thereafter regarding the status of the contractual arrangements and conditions necessary to implement this paragraph.''

[For termination, effective May 15, 2000, of provisions relating to annual report to Congress in section 403(f)

of Pub. L. 95–95, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 2nd item on page 165 of House Document No. 103–7.]

STUDY ON EMISSION OF SULFUR-BEARING COMPOUNDS FROM MOTOR VEHICLES AND MOTOR VEHICLE AND AIRCRAFT ENGINES

Section 403(g) of Pub. L. 95–95 provided that the Administrator of the Environmental Protection Agency conduct a study and report to the Congress by the date one year after Aug. 7, 1977, on the emission of sulfur-bearing compounds from motor vehicles and motor vehicle engines and aircraft engines.

§ 7522. Prohibited acts

(a) Enumerated prohibitions

The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part or part C in the case of clean-fuel vehicles (except as provided in subsection (b) of this section);

(2)(A) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 7542 of this title;

(B) for any person to fail or refuse to permit entry, testing or inspection authorized under section 7525(c) of this title or section 7542 of this title;

(C) for any person to fail or refuse to perform tests, or have tests performed as required under section 7542 of this title;

(D) for any manufacturer to fail to make information available as provided by regulation under section 7521(m)(5) of this title;

(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 7521 of this title or part C of this subchapter—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with (i) the requirements of section 7541(a) and (b) of this title with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 7541(c)(3) of this title, or (ii) the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles unless the manufacturer has complied with the corresponding requirements of part C of this subchapter[1]

(B) to fail or refuse to comply with the requirements of section 7541(c) or (e) of this title, or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles[1]

(C) except as provided in subsection (c)(3) of section 7541 of this title and the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles, to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this chapter is conditioned upon use of any part, component, or system manufactured by such manufacturer or any person acting for such manufacturer or under his control, or conditioned upon service performed by any such person, or

(D) to fail or refuse to comply with the terms and conditions of the warranty under section 7541(a) or (b) of this title or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles with respect to any vehicle; or

(5) for any person to violate section 7553 of this title, 7554 of this title, or part C of this subchapter or any regulations under section 7553 of this title, 7554 of this title, or part C of this subchapter.

No action with respect to any element of design referred to in paragraph (3) (including any adjustment or alteration of such element) shall be treated as a prohibited act under such paragraph (3) if such action is in accordance with section 7549 of this title. Nothing in paragraph (3) shall be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine. For the purposes of the preceding sentence, the term ''manufacturer parts'' means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine. No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if (i) the action is for the purpose of repair or replacement of the device or element, or is a necessary and temporary procedure to repair or replace any other item and the device or element is replaced upon completion of the procedure, and (ii) such action thereafter results in the proper functioning of the device or element

[1] So in original. Probably should be followed by a comma.

referred to in paragraph (3). No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this subchapter) and if such vehicle complies with the applicable standard under section 7521 of this title when operating on such fuel, and if in the case of a clean alternative fuel vehicle (as defined by rule by the Administrator), the device or element is replaced upon completion of the conversion procedure and such action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel.

(b) Exemptions; refusal to admit vehicle or engine into United States; vehicles or engines intended for export

(1) The Administrator may exempt any new motor vehicle or new motor vehicle engine, from subsection (a) of this section, upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) of this section shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this part.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a) of this section, except that if the country which is to receive such vehicle or engine has emission standards which differ from the standards prescribed under section 7521 of this title, then such vehicle or engine shall comply with the standards of such country which is to receive such vehicle or engine.

(July 14, 1955, ch. 360, title II, § 203, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 993; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 499; Pub. L. 91–604, §§ 7(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1693, 1705, 1713; Pub. L. 95–95, title II, §§ 206, 211(a), 218(a), (d), 219(a), (b), Aug. 7, 1977, 91 Stat. 755, 757, 761, 762; Pub. L. 95–190, § 14(a)(66)–(68), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title II, §§ 228(a), (b), (e), 230(6), Nov. 15, 1990, 104 Stat. 2507, 2511, 2529.)

CODIFICATION

Section was formerly classified to section 1857f–2 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 228(b)(2), inserted two sentences at end which set forth conditions under which actions with respect to devices or elements of design, referred to in par. (3), would not be deemed prohibited acts.

Subsec. (a)(1). Pub. L. 101–549, § 228(e)(1), inserted ''or part C of this subchapter in the case of clean-fuel vehicles'' before ''(except''.

Subsec. (a)(2). Pub. L. 101–549, § 228(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 7542 of this title or for any person to fail or refuse to permit entry, testing, or inspection authorized under section 7525(c) of this title;''.

Subsec. (a)(3). Pub. L. 101–549, § 228(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

''(B) for any person engaged in the business of repairing, servicing, selling, leasing, or trading motor vehicles or motor vehicle engines, or who operates a fleet of motor vehicles, knowingly to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter following its sale and delivery to the ultimate purchaser; or''.

Subsec. (a)(4). Pub. L. 101–549, § 228(e)(2), inserted ''part C of this subchapter'' after ''section 7521 of this title''.

Subsec. (a)(4)(A). Pub. L. 101–549, § 228(e)(3), inserted cl. (i) designation and added cl. (ii).

Subsec. (a)(4)(B). Pub. L. 101–549, § 228(e)(4), inserted at end ''or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles''.

Subsec. (a)(4)(C). Pub. L. 101–549, § 228(e)(5), inserted ''and the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles'' after ''section 7541 of this title''.

Subsec. (a)(4)(D). Pub. L. 101–549, § 228(e)(6), inserted ''or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles'' before ''with respect to any vehicle''.

Subsec. (a)(5). Pub. L. 101–549, § 228(e)(7), added par. (5).

Subsec. (c). Pub. L. 101–549, § 230(6), struck out subsec. (c) which related to exemptions to permit modifications of emission control devices or systems.

1977—Subsec. (a). Pub. L. 95–190, § 14(a)(68), in closing text inserted a period after ''section 7549 of this title''.

Pub. L. 95–95, §§ 206, 211(a), 218(a), 219(a), (b), inserted ''or for any person to fail or refuse to permit entry, testing, or inspection authorized under section 7525(c) of this title'' in par. (2), designated existing provisions of par. (3) as subpar. (A) and added subpar. (B), added subpars. (C) and (D) in par. (4), and, following par. (4),

inserted provisions that no action with respect to any element of design referred to in par. (3) (including adjustment or alteration of such element) be treated as a prohibited act under par. (3) if the action is in accordance with section 7549 of this title and that nothing in par. (3) be construed to require the use of manufacturer parts in maintaining or repairing motor vehicles or motor vehicle engines.

Subsec. (a)(3)(B). Pub. L. 95–190, § 14(a)(66), substituted ''purchaser;'' for ''purchaser,''.

Subsec. (a)(4)(C). Pub. L. 95–190, § 14(a)(67), inserted ''or'' after ''such person,''.

Subsec. (b)(3). Pub. L. 95–95, § 218(d), substituted ''section 7521 of this title'' for ''subsection (a) of this section'' and ''country which is to receive such vehicle or engine'' for ''country of export''.

1970—Subsec. (a)(1). Pub. L. 91–604, § 7(a)(1), struck out reference to the manufacture of new motor vehicles or new motor vehicle engines for sale, inserted provision for issuance by the Administrator of regulations regarding exceptions in the case of importation of new motor vehicles or new motor vehicle engines, and substituted ''importation'' into the United States of such units for ''importation for sale or resale'' into the United States of such units.

Subsec. (a)(2). Pub. L. 91–604, § 7(a)(2), substituted ''section 208'' for ''section 207'', both of which, for purposes of codification, are translated as ''section 7542 of this title''.

Subsec. (a)(3). Pub. L. 91–604, §§ 7(a)(3), 11(a)(2)(A), substituted ''part'' for ''subchapter'' and inserted provisions prohibiting the knowing removal or inoperation by manufacturers or dealers of devices or elements of design after sale and delivery to the ultimate purchaser.

Subsec. (a)(4). Pub. L. 91–604, § 7(a)(4), added par. (4).

Subsec. (b)(1). Pub. L. 91–604, §§ 7(a)(5), 15(c)(2), struck out reference to the exemption of a class of new motor vehicles or new motor vehicle engines, struck out the protection of the public health and welfare from the enumeration of purposes for which exemptions may be made, and substituted ''Administrator'' for ''Secretary''.

Subsec. (b)(2). Pub. L. 91–604, §§ 7(a)(6), 11(a)(2)(A), 15(c)(2), substituted ''Administrator'' for ''Secretary of Health, Education, and Welfare'', ''importation or imported by any person'' for ''importation by a manufacturer'', and ''part'' for ''subchapter''.

Subsec. (b)(3). Pub. L. 91–604, § 7(a)(7)(A), inserted provision that, if the country of export has emission standards which differ from the standards prescribed under subsec. (a), such vehicle or engine must comply with the standards of such country of export.

Subsec. (c). Pub. L. 91–604, § 7(a)(7)(B), added subsec. (c).

1967—Subsec. (a). Pub. L. 90–148 substituted ''conformity with regulations prescribed under this subchapter'' for ''conformity with regulations prescribed under section 7521 of this title'' in par. (1).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7523. Actions to restrain violations

(a) Jurisdiction

The district courts of the United States shall have jurisdiction to restrain violations of section 7522(a) of this title.

(b) Actions brought by or in name of United States; subpenas

Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpenas for witnesses who are required to attend a district court in any district may run into any other district.

(July 14, 1955, ch. 360, title II, § 204, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 500; Pub. L. 91–604, § 7(b), Dec. 31, 1970, 84 Stat. 1694; Pub. L. 95–95, title II, § 218(b), Aug. 7, 1977, 91 Stat. 761.)

CODIFICATION

Section was formerly classified to section 1857f–3 of this title.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–95 struck out ''paragraph (1), (2), (3), or (4)'' after ''restrain violations of''.

1970—Subsec. (a). Pub. L. 91–604 inserted reference to par. (4) of section 7522(a) of this title.

1967—Pub. L. 90–148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 amendment note under section 7401 of this title.

§ 7524. Civil penalties

(a) Violations

Any person who violates sections[1] 7522(a)(1), 7522(a)(4), or 7522(a)(5) of this title or any manufacturer or dealer who violates section 7522(a)(3)(A) of this title shall be subject to a civil penalty of not more than $25,000. Any person other than a manufacturer or dealer who violates section 7522(a)(3)(A) of this title or any person who violates section 7522(a)(3)(B) of this title shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3)(A), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. Any such violation with

[1] So in original. Probably should be ''section''.

respect to section 7522(a)(3)(B) of this title shall constitute a separate offense with respect to each part or component. Any person who violates section 7522(a)(2) of this title shall be subject to a civil penalty of not more than $25,000 per day of violation.

(b) Civil actions

The Administrator may commence a civil action to assess and recover any civil penalty under subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title. Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has the Administrator's principal place of business, and the court shall have jurisdiction to assess a civil penalty. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) Administrative assessment of certain penalties

(1) Administrative penalty authority

In lieu of commencing a civil action under subsection (b) of this section, the Administrator may assess any civil penalty prescribed in subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review. Assessment of a civil penalty under this subsection shall be by an order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) Determining amount

In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) Effect of Administrator's action

(A) Action by the Administrator under this subsection shall not affect or limit the Administrator's authority to enforce any provision of this chapter; except that any violation,

(i) with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or

(ii) for which the Administrator has issued a final order not subject to further judicial review and the violator has paid a penalty assessment under this subsection,

shall not be the subject of civil penalty action under subsection (b) of this section.

(B) No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this chapter.

(4) Finality of order

An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (5).

(5) Judicial review

Any person against whom a civil penalty is assessed in accordance with this subsection may seek review of the assessment in the United States District Court for the District of Columbia, or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. Such person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court a certified copy, or certified index, as appropriate, of the record on which the order was issued within 30 days. The court shall not set aside or remand any order issued in accordance with the requirements of this subsection unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court shall not impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) Collection

If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this subsection—

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be in an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(July 14, 1955, ch. 360, title I, § 205, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 500; Pub. L. 91–604, § 7(c), Dec. 31, 1970, 84 Stat. 1694; Pub. L. 95–95, title II, § 219(c), Aug. 7, 1977, 91 Stat. 762; Pub. L. 101–549, title II, § 228(c), Nov. 15, 1990, 104 Stat. 2508.)

CODIFICATION

Section was formerly classified to section 1857f–4 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally. Prior to amendment, section read as follows: ''Any person who violates paragraph (1), (2), or (4) of section 7522(a) of this title or any manufacturer, dealer, or other person who violates paragraph (3)(A) of section 7522(a) of this title shall be subject to a civil penalty of not more than $10,000. Any person who violates paragraph (3)(B) of such section 7522(a) shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.''

1977—Pub. L. 95–95 substituted ''Any person who violates paragraph (1), (2), or (4) of section 7522(a) of this title, or any manufacturer, dealer, or other person who violates paragraph (3)(A) of section 7522(a) of this title'' for ''Any person who violates paragraph (1), (2), (3), or (4) of section 7522(a) of this title'' in provisions covering the civil penalty of $10,000, and inserted provisions for a civil penalty of not more than $2,500 for violations of par. (3)(B) of section 7522(a) of this title.

1970—Pub. L. 91–604 increased the upper limit of the allowable fine from ''$1,000'' to ''$10,000''.

1967—Pub. L. 90–148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

§ 7525. Motor vehicle and motor vehicle engine compliance testing and certification

(a) Testing and issuance of certificate of conformity

(1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 7521 of this title. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe. In the case of any original equipment manufacturer (as defined by the Administrator in regulations promulgated before November 15, 1990) of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed 300, the Administrator shall not require, for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine, operation of any vehicle or engine manufactured during such model year for more than 5,000 miles or 160 hours, respectively, unless the Administrator, by regulation, prescribes otherwise. The Administrator shall apply any adjustment factors that the Administrator deems appropriate to assure that each vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title.

(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 7521(b) of this title. If the Administrator finds on the basis of such tests that such vehicle or engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

(3)(A) A certificate of conformity may be issued under this section only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorporated in, such vehicle or engine conforms to applicable requirements of section 7521(a)(4) of this title.

(B) The Administrator may conduct such tests and may require the manufacturer (or any such person) to conduct such tests and provide such information as is necessary to carry out sub-

paragraph (A) of this paragraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system, device, or element of design if such pollutant was not emitted, or was emitted in significantly lesser amounts, from the vehicle or engine without use of the system, device, or element of design.

(4)(A) Not later than 12 months after November 15, 1990, the Administrator shall revise the regulations promulgated under this subsection to add test procedures capable of determining whether model year 1994 and later model year light-duty vehicles and light-duty trucks, when properly maintained and used, will pass the inspection methods and procedures established under section 7541(b) of this title for that model year, under conditions reasonably likely to be encountered in the conduct of inspection and maintenance programs, but which those programs cannot reasonably influence or control. The conditions shall include fuel characteristics, ambient temperature, and short (30 minutes or less) waiting periods before tests are conducted. The Administrator shall not grant a certificate of conformity under this subsection for any 1994 or later model year vehicle or engine that the Administrator concludes cannot pass the test procedures established under this paragraph.

(B) From time to time, the Administrator may revise the regulations promulgated under subparagraph (A), as the Administrator deems appropriate.

(b) Testing procedures; hearing; judicial review; additional evidence

(1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

(2)(A)(i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do conform to such regulations and requirements. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations and requirements, he shall issue a certificate of conformity applicable to such vehicle or engine.

(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations and requirements, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations and requirements, and he shall so notify the manufacturer.

(B)(i) At the request of any manufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of title 28.

(iii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter.

(c) Inspection

For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such manufacturer, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect, at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Adminis-

trator. Each such inspection shall be commenced and completed with reasonable promptness.

(d) Rules and regulations

The Administrator shall by regulation establish methods and procedures for making tests under this section.

(e) Publication of test results

The Administrator shall make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) of this section as promptly as possible after December 31, 1970, and at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 7521 of this title.

(f) High altitude regulations

All light duty[1] vehicles and engines manufactured during or after model year 1984 and all light-duty trucks manufactured during or after model year 1995 shall comply with the requirements of section 7521 of this title regardless of the altitude at which they are sold.

(g) Nonconformance penalty

(1) In the case of any class or category of heavy-duty vehicles or engines to which a standard promulgated under section 7521(a) of this title applies, except as provided in paragraph (2), a certificate of conformity shall be issued under subsection (a) of this section and shall not be suspended or revoked under subsection (b) of this section for such vehicles or engines manufactured by a manufacturer notwithstanding the failure of such vehicles or engines to meet such standard if such manufacturer pays a nonconformance penalty as provided under regulations promulgated by the Administrator after notice and opportunity for public hearing. In the case of motorcycles to which such a standard applies, such a certificate may be issued notwithstanding such failure if the manufacturer pays such a penalty.

(2) No certificate of conformity may be issued under paragraph (1) with respect to any class or category of vehicle or engine if the degree by which the manufacturer fails to meet any standard promulgated under section 7521(a) of this title with respect to such class or category exceeds the percentage determined under regulations promulgated by the Administrator to be practicable. Such regulations shall require such testing of vehicles or engines being produced as may be necessary to determine the percentage of the classes or categories of vehicles or engines which are not in compliance with the regulations with respect to which a certificate of conformity was issued and shall be promulgated not later than one year after August 7, 1977.

(3) The regulations promulgated under paragraph (1) shall, not later than one year after August 7, 1977, provide for nonconformance penalties in amounts determined under a formula established by the Administrator. Such penalties under such formula—

(A) may vary from pollutant-to-pollutant;

(B) may vary by class or category or vehicle or engine;

(C) shall take into account the extent to which actual emissions of any air pollutant exceed allowable emissions under the standards promulgated under section 7521 of this title;

(D) shall be increased periodically in order to create incentives for the development of production vehicles or engines which achieve the required degree of emission reduction; and

(E) shall remove any competitive disadvantage to manufacturers whose engines or vehicles achieve the required degree of emission reduction (including any such disadvantage arising from the application of paragraph (4)).

(4) In any case in which a certificate of conformity has been issued under this subsection, any warranty required under section 7541(b)(2) of this title and any action under section 7541(c) of this title shall be required to be effective only for the emission levels which the Administrator determines that such certificate was issued and not for the emission levels required under the applicable standard.

(5) The authorities of section 7542(a) of this title shall apply, subject to the conditions of section 7542(b)[2] of this title, for purposes of this subsection.

(h) Review and revision of regulations

Within 18 months after November 15, 1990, the Administrator shall review and revise as necessary the regulations under subsection[3] (a) and (b) of this section regarding the testing of motor vehicles and motor vehicle engines to insure that vehicles are tested under circumstances which reflect the actual current driving conditions under which motor vehicles are used, including conditions relating to fuel, temperature, acceleration, and altitude.

(July 14, 1955, ch. 360, title II, § 206, as added Pub. L. 91–604, § 8(a), Dec. 31, 1970, 84 Stat. 1694; amended Pub. L. 95–95, title II, §§ 213(a), 214(b), (c), 220, 224(e), Aug. 7, 1977, 91 Stat. 758–760, 762, 768; Pub. L. 95–190, § 14(a)(69), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title II, §§ 208, 230(7), (8), Nov. 15, 1990, 104 Stat. 2483, 2529.)

REFERENCES IN TEXT

Section 7542 of this title, referred to in subsec. (g)(5), was amended generally by Pub. L. 101–549, title II, § 211, Nov. 15, 1990, 104 Stat. 2487, and provisions formerly contained in section 7542(b) of this title are contained in section 7542(c).

CODIFICATION

Section was formerly classified to section 1857f–5 of this title.

PRIOR PROVISIONS

A prior section 206 of act July 14, 1955, related to testing of motor vehicles and motor vehicle engines and

[1] So in original. Probably should be ''light-duty''.

[2] See References in Text note below.

[3] So in original. Probably should be ''subsections''.

was classified to section 1857f–5 of this title, prior to repeal by Pub. L. 91–604.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, § 208(b), inserted new third sentence and struck out former third sentence which read as follows: ''In the case of any manufacturer of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed three hundred, the regulations prescribed by the Administrator concerning testing by the manufacturer for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine shall not require operation of any vehicle or engine manufactured during such model year for more than five thousand miles or one hundred and sixty hours, respectively, but the Administrator shall apply such adjustment factors as he deems appropriate to assure that each such vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title.''

Subsec. (a)(4). Pub. L. 101–549, § 208(a), added par. (4).

Subsec. (e). Pub. L. 101–549, § 230(7), struck out ''announce in the Federal Register and'' after ''The Administrator shall''.

Subsec. (f). Pub. L. 101–549, § 230(8), struck out par. (1) designation before ''All light duty vehicles'', inserted reference to all light-duty trucks manufactured during or after model year 1995, and struck out par. (2) which required the Administrator to report to Congress by Oct. 1, 1978, on the economic impact and technological feasibility of the requirements of former par. (1).

Subsec. (h). Pub. L. 101–549, § 208(c), added subsec. (h).

1977—Subsec. (a)(1). Pub. L. 95–95, § 220, inserted provisions covering testing by small manufacturers.

Subsec. (a)(3). Pub. L. 95–95, § 214(b), added par. (3).

Subsec. (b)(2)(A)(i). Pub. L. 95–95, § 214(c)(1), (2), substituted ''certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend'' for ''certificate of conformity was issued, he may suspend'' and ''such regulations and requirements'' for ''such regulations''.

Subsec. (b)(2)(A)(ii). Pub. L. 95–95, § 214(c)(2), substituted ''such regulations and requirements'' for ''such regulations''.

Subsec. (f). Pub. L. 95–95, § 213(a), added subsec. (f).

Subsec. (g). Pub. L. 95–95, § 224(e), added subsec. (g).

Subsec. (g)(3)(D). Pub. L. 95–190 inserted ''shall'' before ''be''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

EFFECTIVE DATE

Section 8(b) of Pub. L. 91–604 provided that: ''The amendments made by this section [enacting this section and section 7541 of this title] shall not apply to vehicles or engines imported into the United States before the sixtieth day after the date of enactment of this Act [Dec. 31, 1970].''

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7541. Compliance by vehicles and engines in actual use

(a) Warranty; certification; payment of replacement costs of parts, devices, or components designed for emission control

(1) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after December 31, 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (A) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 7521 of this title, and (B) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 7521(d) of this title). In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i) of this section.

(2) In the case of a motor vehicle part or motor vehicle engine part, the manufacturer or rebuilder of such part may certify that use of such part will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 7521 of this title. Such certification shall be made only under such regulations as may be promulgated by the Administrator to carry out the purposes of subsection (b) of this section. The Administrator shall promulgate such regulations no later than two years following August 7, 1977.

(3) The cost of any part, device, or component of any light-duty vehicle that is designed for emission control and which in the instructions issued pursuant to subsection (c)(3) of this section is scheduled for replacement during the useful life of the vehicle in order to maintain compliance with regulations under section 7521 of this title, the failure of which shall not interfere with the normal performance of the vehicle, and the expected retail price of which, including installation costs, is greater than 2 percent of the suggested retail price of such vehicle, shall be borne or reimbursed at the time of replacement by the vehicle manufacturer and such replacement shall be provided without cost to the ultimate purchaser, subsequent purchaser, or dealer. The term ''designed for emission control'' as used in the preceding sentence means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions (not including those vehicle components which were in general use prior to model year 1968 and the primary function of which is not related to emission control).

(b) Testing methods and procedures

If the Administrator determines that (i) there are available testing methods and procedures to ascertain whether, when in actual use through-

out its[1] the warranty period (as determined under subsection (i) of this section), each vehicle and engine to which regulations under section 7521 of this title apply complies with the emission standards of such regulations, (ii) such methods and procedures are in accordance with good engineering practices, and (iii) such methods and procedures are reasonably capable of being correlated with tests conducted under section 7525(a)(1) of this title, then—

(1) he shall establish such methods and procedures by regulation, and

(2) at such time as he determines that inspection facilities or equipment are available for purposes of carrying out testing methods and procedures established under paragraph (1), he shall prescribe regulations which shall require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under section 7521 of this title applies and which is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this paragraph (2). The warranty under such regulations shall run to the ultimate purchaser and each subsequent purchaser and shall provide that if—

(A) the vehicle or engine is maintained and operated in accordance with instructions under subsection (c)(3) of this section,

(B) it fails to conform at any time during its[1] the warranty period (as determined under subsection (i) of this section) to the regulations prescribed under section 7521 of this title, and

(C) such nonconformity results in the ultimate purchaser (or any subsequent purchaser) of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law,

then such manufacturer shall remedy such nonconformity under such warranty with the cost thereof to be borne by the manufacturer. No such warranty shall be invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if such part was certified as provided under subsection (a)(2) of this section.

(c) Nonconforming vehicles; plan for remedying nonconformity; instructions for maintenance and use; label or tag

Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after December 31, 1970—

(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 7521 of this title, when in actual use throughout their useful life (as determined under section 7521(d) of this title), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

(2) Any notification required by paragraph (1) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulations require.

(3)(A) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine written instructions for the proper maintenance and use of the vehicle or engine by the ultimate purchaser and such instructions shall correspond to regulations which the Administrator shall promulgate. The manufacturer shall provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any automotive repair establishment or individual using any automotive part which has been certified as provided in subsection (a)(2) of this section.

(B) The instruction under subparagraph (A) of this paragraph shall not include any condition on the ultimate purchaser's using, in connection with such vehicle or engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name; or directly or indirectly distinguishing between service performed by the franchised dealers of such manufacturer or any other service establishments with which such manufacturer has a commercial relationship, and service performed by independent automotive repair facilities with which such manufacturer has no commercial relationship; except that the prohibition of this subsection may be waived by the Administrator if—

(i) the manufacturer satisfies the Administrator that the vehicle or engine will function properly only if the component or service so identified is used in connection with such vehicle or engine, and

(ii) the Administrator finds that such a waiver is in the public interest.

(C) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 7521 of this title. Such label or

[1] So in original. The word ''its'' probably should not appear.

tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

(4) INTERMEDIATE IN-USE STANDARDS.—

(A) MODEL YEARS 1994 AND 1995.—For light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are subject to standards under table G of section 7521(g)(1) of this title in model years 1994 and 1995 (40 percent of the manufacturer's sales volume in model year 1994 and 80 percent in model year 1995), the standards applicable to NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in table A below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

TABLE A—INTERMEDIATE IN-USE STANDARDS LDTS UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	NMHC	CO	NO_x
Light-duty vehicles	0.32	3.4	0.4*
LDT's (0–3,750 LVW)	0.32	5.2	0.4*
LDT's (3,751–5,750 LVW)	0.41	6.7	0.7*

*Not applicable to diesel-fueled vehicles.

(B) MODEL YEARS 1996 AND THEREAFTER.—(i) In the model years 1996 and 1997, light-duty trucks (LDTs) up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are not subject to final in-use standards under paragraph (5) (60 percent of the manufacturer's sales volume in model year 1996 and 20 percent in model year 1997) shall be subject to the standards set forth in table A of subparagraph (A) for NMHC, CO, and NO_x for purposes of this subsection in lieu of those set forth in paragraph (5).

(ii) For LDTs of more than 6,000 lbs. GVWR—

(I) in model year 1996 which are subject to the standards set forth in Table H of section 7521(h) of this title (50%);

(II) in model year 1997 (100%); and

(III) in model year 1998 which are not subject to final in-use standards under paragraph (5) (50%);

the standards for NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in Table B below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

TABLE B—INTERMEDIATE IN-USE STANDARDS LDTS MORE THAN 6,000 LBS. GVWR

Vehicle type	NMHC	CO	NO_x
LDTs (3,751–5,750 lbs. TW)	0.40	5.5	0.88*
LDTs (over 5,750 lbs. TW)	0.49	6.2	1.38*

*Not applicable to diesel-fueled vehicles.

(C) USEFUL LIFE.—In the case of the in-use standards applicable under this paragraph, for purposes of applying this subsection, the applicable useful life shall be 5 years or 50,000 miles or the equivalent (whichever first occurs).

(5) FINAL IN-USE STANDARDS.—(A) After the model year 1995, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light duty[2] vehicles, the standards for NMHC, CO, and NO_x shall be as provided in Table G in section 7521(g) of this title, except that in applying the standards set forth in Table G for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 100,000 miles, except that no testing shall be done beyond 7 years or 75,000 miles, or the equivalent whichever first occurs.

LDTS UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLE SCHEDULE FOR IMPLEMENTATION OF FINAL IN-USE STANDARDS

Model year	Percent
1996	40
1997	80
1998	100

(B) After the model year 1997, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of more than 6,000 lbs. gross vehicle weight rating (GVWR), the standards for NMHC, CO, and NO_x shall be as provided in Table H in section 7521(h) of this title, except that in applying the standards set forth in Table H for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 11 years or 120,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that no testing shall be done beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

LDTS OF MORE THAN 6,000 LBS. GVWR IMPLEMENTATION SCHEDULE FOR IMPLEMENTATION OF FINAL IN-USE STANDARDS

Model year	Percent
1998	50
1999	100

(6) DIESEL VEHICLES; IN-USE USEFUL LIFE AND TESTING.—(A) In the case of diesel-fueled light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles, the useful life for purposes of determining in-use compliance with the standards under section 7521(g) of this title for NO_x shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of

[2] So in original. Probably should be "light-duty".

certification at 100,000 miles, except that testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

(B) In the case of diesel-fueled light-duty trucks of 6,000 lbs. GVWR or more, the useful life for purposes of determining in-use compliance with the standards under section 7521(h) of this title for NO_x shall be a period of 11 years or 120,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 120,000 miles, except that testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

(d) Dealer costs borne by manufacturer

Any cost obligation of any dealer incurred as a result of any requirement imposed by subsection (a), (b), or (c) of this section shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(e) Cost statement

If a manufacturer includes in any advertisement a statement respecting the cost or value of emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 7611 of this title.

(f) Inspection after sale to ultimate purchaser

Any inspection of a motor vehicle or a motor vehicle engine for purposes of subsection (c)(1) of this section, after its sale to the ultimate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any State or local inspection program.

(g) Replacement and maintenance costs borne by owner

For the purposes of this section, the owner of any motor vehicle or motor vehicle engine warranted under this section is responsible in the proper maintenance of such vehicle or engine to replace and to maintain, at his expense at any service establishment or facility of his choosing, such items as spark plugs, points, condensers, and any other part, item, or device related to emission control (but not designed for emission control under the terms of the last sentence of subsection (a)(3) of this section)),[3] unless such part, item, or device is covered by any warranty not mandated by this chapter.

(h) Dealer certification

(1) Upon the sale of each new light-duty motor vehicle by a dealer, the dealer shall furnish to the purchaser a certificate that such motor vehicle conforms to the applicable regulations under section 7521 of this title, including notice of the purchaser's rights under paragraph (2).

(2) If at any time during the period for which the warranty applies under subsection (b) of this section, a motor vehicle fails to conform to the applicable regulations under section 7521 of this title as determined under subsection (b) of this section such nonconformity shall be remedied by the manufacturer at the cost of the manufacturer pursuant to such warranty as provided in subsection (b)(2) of this section (without regard to subparagraph (C) thereof).

(3) Nothing in section 7543(a) of this title shall be construed to prohibit a State from testing, or requiring testing of, a motor vehicle after the date of sale of such vehicle to the ultimate purchaser (except that no new motor vehicle manufacturer or dealer may be required to conduct testing under this paragraph).

(i) Warranty period

(1) In general

For purposes of subsection (a)(1) of this section and subsection (b) of this section, the warranty period, effective with respect to new light-duty trucks and new light-duty vehicles and engines, manufactured in the model year 1995 and thereafter, shall be the first 2 years or 24,000 miles of use (whichever first occurs), except as provided in paragraph (2). For purposes of subsection (a)(1) of this section and subsection (b) of this section, for other vehicles and engines the warranty period shall be the period established by the Administrator by regulation (promulgated prior to November 15, 1990) for such purposes unless the Administrator subsequently modifies such regulation.

(2) Specified major emission control components

In the case of a specified major emission control component, the warranty period for new light-duty trucks and new light-duty vehicles and engines manufactured in the model year 1995 and thereafter for purposes of subsection (a)(1) of this section and subsection (b) of this section shall be 8 years or 80,000 miles of use (whichever first occurs). As used in this paragraph, the term ''specified major emission control component'' means only a catalytic converter, an electronic emissions control unit, and an onboard emissions diagnostic device, except that the Administrator may designate any other pollution control device or component as a specified major emission control component if—

(A) the device or component was not in general use on vehicles and engines manufactured prior to the model year 1990; and

(B) the Administrator determines that the retail cost (exclusive of installation costs) of such device or component exceeds $200 (in 1989 dollars), adjusted for inflation or deflation as calculated by the Administrator at the time of such determination.

For purposes of this paragraph, the term ''onboard emissions diagnostic device'' means any device installed for the purpose of storing or processing emissions related diagnostic information, but not including any parts or other systems which it monitors except specified

[3] So in original. The second closing parenthesis probably should not appear.

major emissions control components. Nothing in this chapter shall be construed to provide that any part (other than a part referred to in the preceding sentence) shall be required to be warranted under this chapter for the period of 8 years or 80,000 miles referred to in this paragraph.

(3) Instructions

Subparagraph (A) of subsection (b)(2) of this section shall apply only where the Administrator has made a determination that the instructions concerned conform to the requirements of subsection (c)(3) of this section.

(July 14, 1955, ch. 360, title II, § 207, as added Pub. L. 91–604, § 8(a), Dec. 31, 1970, 84 Stat. 1696; amended Pub. L. 95–95, title II, §§ 205, 208–210, 212, Aug. 7, 1977, 91 Stat. 754–756, 758; Pub. L. 95–190, § 14(a)(70)–(72), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title II, §§ 209, 210, 230(9), Nov. 15, 1990, 104 Stat. 2484, 2485, 2529.)

CODIFICATION

Section was formerly classified to section 1857f–5a of this title.

PRIOR PROVISIONS

A prior section 207 of act July 14, 1955, was renumbered section 208 by Pub. L. 91–604 and is classified to section 7542 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, § 209(4), inserted at end ''In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i) of this section.''

Subsec. (b). Pub. L. 101–549, § 209(1), (2), substituted ''the warranty period (as determined under subsection (i) of this section)'' for ''useful life (as determined under section 7521(d) of this title)'' in introductory provisions and par. (2)(B), and struck out closing provisions which read as follows: ''For purposes of the warranty under this subsection, for the period after twenty-four months or twenty-four thousand miles (whichever first occurs) the term 'emission control device or system' means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions. Such term shall not include those vehicle components which were in general use prior to model year 1968.''

Subsec. (c)(4) to (6). Pub. L. 101–549, § 210, added pars. (4) to (6).

Subsec. (g). Pub. L. 101–549, § 230(9), substituted ''the last sentence of subsection (a)(3) of this section)'' for ''the last three sentences of subsection (a)(1) of this section''.

Subsec. (i). Pub. L. 101–549, § 209(3), added subsec. (i).

1977—Subsec. (a). Pub. L. 95–190, § 14(a)(70), designated provisions contained in cl. (3) of subsec. (a), formerly set out as containing cls. (1), (2), and (3), to be par. (3) of subsec. (a) after the amendment by Pub. L. 95–95, § 209(b), which designated provisions of former subsec. (a) as par. (1) and former cls. (1) and (2) as (A) and (B) of par. (1) and added a new par. (2).

Pub. L. 95–95, § 205, added cl. (3).

Subsec. (b). Pub. L. 95–95, § 209(a), (c), inserted provisions to par. (2) that no warranty be held invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if the part was certified as provided in subsec. (a)(2) of this section, and, following par. (2), inserted provisions defining ''emission control device or system''.

Subsec. (c)(3). Pub. L. 95–95, § 208, designated existing provisions as subpars. (A) and (C), added requirement for the bold face printing of a required notice on the first page of the written maintenance instructions in subpar. (A), and added subpar. (B).

Subsec. (f). Pub. L. 95–190, § 14(a)(71), redesignated subsec. (f) as added by Pub. L. 95–95, § 212, as (h).

Subsec. (g). Pub. L. 95–95, § 210, added subsec. (g).

Subsec. (h). Pub. L. 95–190, § 14(a)(71), redesignated subsec. (f) as added by Pub. L. 95–95, § 212, as (h).

Subsec. (h)(2). Pub. L. 95–190, § 14(a)(72), substituted ''determined under'' for ''determined and''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 209 of Pub. L. 101–549 provided that the amendments made by that section are effective with respect to new motor vehicles and engines manufactured in model year 1995 and thereafter.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

EFFECTIVE DATE

Section not applicable to vehicles or engines imported into United States before sixtieth day after Dec. 31, 1970, see section 8(b) of Pub. L. 91–604, set out as a note under section 7525 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7542. Information collection

(a) Manufacturer's responsibility

Every manufacturer of new motor vehicles or new motor vehicle engines, and every manufacturer of new motor vehicle or engine parts or components, and other persons subject to the requirements of this part or part C of this subchapter, shall establish and maintain records, perform tests where such testing is not otherwise reasonably available under this part and part C of this subchapter (including fees for testing), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part and part C of this subchapter and regulations thereunder, or to otherwise carry out the provision of this part and part C of this subchapter, and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.

(b) Enforcement authority

For the purposes of enforcement of this section, officers or employees duly designated by the Administrator upon presenting appropriate credentials are authorized—

(1) to enter, at reasonable times, any establishment of the manufacturer, or of any person

whom the manufacturer engages to perform any activity required by subsection (a) of this section, for the purposes of inspecting or observing any activity conducted pursuant to subsection (a) of this section, and

(2) to inspect records, files, papers, processes, controls, and facilities used in performing any activity required by subsection (a) of this section, by such manufacturer or by any person whom the manufacturer engages to perform any such activity.

(c) Availability to public; trade secrets

Any records, reports, or information obtained under this part or part C of this subchapter shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or a particular portion thereof (other than emission data), to which the Administrator has access under this section, if made public, would divulge methods or processes entitled to protection as trade secrets of that person, the Administrator shall consider the record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18. Any authorized representative of the Administrator shall be considered an employee of the United States for purposes of section 1905 of title 18. Nothing in this section shall prohibit the Administrator or authorized representative of the Administrator from disclosing records, reports or information to other officers, employees or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under the Administrator's control from the duly authorized committees of the Congress.

(July 14, 1955, ch. 360, title II, § 208, formerly § 207, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 501; renumbered and amended Pub. L. 91–604, §§ 8(a), 10(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1694, 1700, 1705, 1713; Pub. L. 101–549, title II, § 211, Nov. 15, 1990, 104 Stat. 2487.)

CODIFICATION

Section was formerly classified to section 1857f–6 of this title.

PRIOR PROVISIONS

A prior section 208 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 501, was renumbered section 209 by Pub. L. 91–604 and is classified to section 7543 of this title.

Another prior section 208 of act July 14, 1955, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994, was renumbered section 212 by Pub. L. 90–148, renumbered section 213 by Pub. L. 91–604, renumbered 214 by Pub. L. 93–319, and renumbered section 216 by Pub. L. 95–95, and is classified to section 7550 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), manufacturer's responsibility; and in subsec. (b), availability to public except for trade secrets.

1970—Subsec. (a). Pub. L. 91–604, §§ 11(a)(2)(A), 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing and ''part'' for ''subchapter''.

Subsec. (b). Pub. L. 91–604, §§ 10(a), 15(c)(2), substituted provisions authorizing the Administrator to make available to the public any records, reports, of information obtained under subsec. (a) of this section, except those shown to the Administrator to be entitled to protection as trade secrets, for provisions that all information reported or otherwise obtained by the Secretary or his representative pursuant to subsec. (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, be considered confidential for the purpose of such section 1905, and substituted ''Administrator'' for ''Secretary''.

1967—Pub. L. 90–148 reenacted section without change.

§ 7543. State standards

(a) Prohibition

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) Waiver

(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this subchapter.

(c) Certification of vehicle parts or engine parts

Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 7541(a)(2) of this title, no State or political subdivision thereof shall

adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b) of this section.

(d) Control, regulation, or restrictions on registered or licensed motor vehicles

Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(e) Nonroad engines or vehicles

(1) Prohibition on certain State standards

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this chapter—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

Subsection (b) of this section shall not apply for purposes of this paragraph.

(2) Other nonroad engines or vehicles

(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—

(i) the determination of California is arbitrary and capricious,

(ii) California does not need such California standards to meet compelling and extraordinary conditions, or

(iii) California standards and accompanying enforcement procedures are not consistent with this section.

(B) Any State other than California which has plan provisions approved under part D of subchapter I of this chapter may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those referred to in subparagraph (A) or (B) of paragraph (1)) and take such other actions as are referred to in subparagraph (A) of this paragraph respecting such vehicles or engines if—

(i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A), and

(ii) California and such State adopt such standards at least 2 years before commencement of the period for which the standards take effect.

The Administrator shall issue regulations to implement this subsection.

(July 14, 1955, ch. 360, title II, § 209, formerly § 208, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 501; renumbered and amended Pub. L. 91–604, §§ 8(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1694, 1705, 1713; Pub. L. 95–95, title II, §§ 207, 221, Aug. 7, 1977, 91 Stat. 755, 762; Pub. L. 101–549, title II, § 222(b), Nov. 15, 1990, 104 Stat. 2502.)

CODIFICATION

Section was formerly classified to section 1857f–6a of this title.

PRIOR PROVISIONS

A prior section 209 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 502, was renumbered section 210 by Pub. L. 91–604 and is classified to section 7544 of this title.

Another prior section 209 of act July 14, 1955, ch. 360, title II, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 995, related to appropriations for the fiscal years ending June 30, 1966, 1967, 1968, and 1969, and was classified to section 1857f–8 of this title, prior to repeal by Pub. L. 89–675, § 2(b), Oct. 15, 1966, 80 Stat. 954.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–549 added subsec. (e).

1977—Subsec. (b). Pub. L. 95–95, § 207, designated existing provisions as par. (1), substituted ''March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards'' for ''March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling the extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title'', added subpars. (A), (B), and (C), and added pars. (2) and (3).

Subsecs. (c), (d). Pub. L. 95–95, § 221, added subsec. (c) and redesignated former subsec. (c) as (d).

1970—Subsec. (a). Pub. L. 91–604, § 11(a)(2)(A), substituted ''part'' for ''subchapter''.

Subsec. (b). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

Subsec. (c). Pub. L. 91–604, § 11(a)(2)(A), substituted ''part'' for ''subchapter''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7544. State grants

The Administrator is authorized to make grants to appropriate State agencies in an

amount up to two-thirds of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs, except that—

(1) no such grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program;

(2) no such grant shall be made unless the Secretary of Transportation has certified to the Administrator that such program is consistent with any highway safety program developed pursuant to section 402 of title 23; and

(3) no such grant shall be made unless the program includes provisions designed to insure that emission control devices and systems on vehicles in actual use have not been discontinued or rendered inoperative.

Grants may be made under this section by way of reimbursement in any case in which amounts have been expended by the State before the date on which any such grant was made.

(July 14, 1955, ch. 360, title II, § 210, formerly § 209, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 502; renumbered and amended Pub. L. 91–604, §§ 8(a), 10(b), Dec. 31, 1970, 84 Stat. 1694, 1700; Pub. L. 95–95, title II, § 204, Aug. 7, 1977, 91 Stat. 754.)

CODIFICATION

Section was formerly classified to section 1857f–6b of this title.

PRIOR PROVISIONS

A prior section 210 of act July 14, 1955, was renumbered section 211 by Pub. L. 91–604 and is classified to section 7545 of this title.

AMENDMENTS

1977—Pub. L. 95–95 inserted provision allowing grants to be made by way of reimbursement in any case in which amounts have been expended by States before the date on which the grants were made.

1970—Pub. L. 91–604, § 10(b), substituted provisions authorizing the Administrator to make grants to appropriate State agencies for the development and maintenance of effective vehicle emission devices and systems inspection and emission testing and control programs, for provisions authorizing the Secretary to make grants to appropriate State air pollution control agencies for the development of meaningful uniform motor vehicle emission device inspection and emission testing programs.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

§ 7545. Regulation of fuels

(a) Authority of Administrator to regulate

The Administrator may by regulation designate any fuel or fuel additive (including any fuel or fuel additive used exclusively in nonroad engines or nonroad vehicles) and, after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce such fuel or additive unless the Administrator has registered such fuel or additive in accordance with subsection (b) of this section.

(b) Registration requirement

(1) For the purpose of registration of fuels and fuel additives, the Administrator shall require—

(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

(2) For the purpose of registration of fuels and fuel additives, the Administrator shall, on a regular basis, require the manufacturer of any fuel or fuel additive—

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control performance of any vehicle, vehicle engine, nonroad engine or nonroad vehicle, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with test procedures and protocols established by the Administrator. The result of such tests shall not be considered confidential.

(3) Upon compliance with the provision of this subsection, including assurances that the Administrator will receive changes in the information required, the Administrator shall register such fuel or fuel additive.

(4) STUDY ON CERTAIN FUEL ADDITIVES AND BLENDSTOCKS.—

(A) IN GENERAL.—Not later than 2 years after August 8, 2005, the Administrator shall—

(i) conduct a study on the effects on public health (including the effects on children, pregnant women, minority or low-income communities, and other sensitive populations), air quality, and water resources of increased use of, and the feasibility of using as substitutes for methyl tertiary butyl ether in gasoline—

(I) ethyl tertiary butyl ether;

(II) tertiary amyl methyl ether;

(III) di-isopropyl ether;

(IV) tertiary butyl alcohol;

(V) other ethers and heavy alcohols, as determined by then[1] Administrator;

(VI) ethanol;

(VII) iso-octane; and

(VIII) alkylates; and

(ii) conduct a study on the effects on public health (including the effects on children,

[1] So in original. Probably should be ''the''.

pregnant women, minority or low-income communities, and other sensitive populations), air quality, and water resources of the adjustment for ethanol-blended reformulated gasoline to the volatile organic compounds performance requirements that are applicable under paragraphs (1) and (3) of subsection (k) of this section; and

(iii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report describing the results of the studies under clauses (i) and (ii).

(B) CONTRACTS FOR STUDY.—In carrying out this paragraph, the Administrator may enter into one or more contracts with nongovernmental entities such as—

(i) the national energy laboratories; and

(ii) institutions of higher education (as defined in section 1001 of title 20).

(c) Offending fuels and fuel additives; control; prohibition

(1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle (A) if in the judgment of the Administrator any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

(2)(A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other technologically or economically feasible means of achieving emission standards under section 7521 of this title.

(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control or prohibition with emission control devices or systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such finding, that in his judgment such prohibition will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

(3)(A) For the purpose of obtaining evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

(B) In obtaining information under subparagraph (A), section 7607(a) of this title (relating to subpenas) shall be applicable.

(4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition of the characteristic or component of a fuel or fuel additive under paragraph (1) is necessary and has published his finding in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such characteristic or component of a fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

(B) Any State for which application of section 7543(a) of this title has at any time been waived under section 7543(b) of this title may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

(C)(i) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 7410 of this title so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment.

(ii) The Administrator may temporarily waive a control or prohibition respecting the use of a

fuel or fuel additive required or regulated by the Administrator pursuant to subsection (c), (h), (i), (k), or (m) of this section or prescribed in an applicable implementation plan under section 7410 of this title approved by the Administrator under clause (i) of this subparagraph if, after consultation with, and concurrence by, the Secretary of Energy, the Administrator determines that—

(I) extreme and unusual fuel or fuel additive supply circumstances exist in a State or region of the Nation which prevent the distribution of an adequate supply of the fuel or fuel additive to consumers;

(II) such extreme and unusual fuel and fuel additive supply circumstances are the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuel or fuel additive to such State or region; and

(III) it is in the public interest to grant the waiver (for example, when a waiver is necessary to meet projected temporary shortfalls in the supply of the fuel or fuel additive in a State or region of the Nation which cannot otherwise be compensated for).

(iii) If the Administrator makes the determinations required under clause (ii), such a temporary extreme and unusual fuel and fuel additive supply circumstances waiver shall be permitted only if—

(I) the waiver applies to the smallest geographic area necessary to address the extreme and unusual fuel and fuel additive supply circumstances;

(II) the waiver is effective for a period of 20 calendar days or, if the Administrator determines that a shorter waiver period is adequate, for the shortest practicable time period necessary to permit the correction of the extreme and unusual fuel and fuel additive supply circumstances and to mitigate impact on air quality;

(III) the waiver permits a transitional period, the exact duration of which shall be determined by the Administrator (but which shall be for the shortest practicable period), after the termination of the temporary waiver to permit wholesalers and retailers to blend down their wholesale and retail inventory;

(IV) the waiver applies to all persons in the motor fuel distribution system; and

(V) the Administrator has given public notice to all parties in the motor fuel distribution system, and local and State regulators, in the State or region to be covered by the waiver.

The term ''motor fuel distribution system'' as used in this clause shall be defined by the Administrator through rulemaking.

(iv) Within 180 days of August 8, 2005, the Administrator shall promulgate regulations to implement clauses (ii) and (iii).

(v)[2] Nothing in this subparagraph shall—

(I) limit or otherwise affect the application of any other waiver authority of the Administrator pursuant to this section or pursuant to a regulation promulgated pursuant to this section; and

(II) subject any State or person to an enforcement action, penalties, or liability solely arising from actions taken pursuant to the issuance of a waiver under this subparagraph.

(v)(I)[2] The Administrator shall have no authority, when considering a State implementation plan or a State implementation plan revision, to approve under this paragraph any fuel included in such plan or revision if the effect of such approval increases the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans.

(II) The Administrator, in consultation with the Secretary of Energy, shall determine the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans and shall publish a list of such fuels, including the States and Petroleum Administration for Defense District in which they are used, in the Federal Register for public review and comment no later than 90 days after August 8, 2005.

(III) The Administrator shall remove a fuel from the list published under subclause (II) if a fuel ceases to be included in a State implementation plan or if a fuel in a State implementation plan is identical to a Federal fuel formulation implemented by the Administrator, but the Administrator shall not reduce the total number of fuels authorized under the list published under subclause (II).

(IV) Subclause (I) shall not limit the Administrator's authority to approve a control or prohibition respecting any new fuel under this paragraph in a State implementation plan or revision to a State implementation plan if such new fuel—

(aa) completely replaces a fuel on the list published under subclause (II); or

(bb) does not increase the total number of fuels on the list published under subclause (II) as of September 1, 2004.

In the event that the total number of fuels on the list published under subclause (II) at the time of the Administrator's consideration of a control or prohibition respecting a new fuel is lower than the total number of fuels on such list as of September 1, 2004, the Administrator may approve a control or prohibition respecting a new fuel under this subclause if the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register after notice and comment a finding that, in the Administrator's judgment, such control or prohibition respecting a new fuel will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.

(V) The Administrator shall have no authority under this paragraph, when considering any particular State's implementation plan or a revision to that State's implementation plan, to approve any fuel unless that fuel was, as of the date of such consideration, approved in at least one State implementation plan in the applicable Petroleum Administration for Defense District.

[2] So in original. Two cls. (v) have been enacted.

However, the Administrator may approve as part of a State implementation plan or State implementation plan revision a fuel with a summertime Reid Vapor Pressure of 7.0 psi. In no event shall such approval by the Administrator cause an increase in the total number of fuels on the list published under subclause (II).

(VI) Nothing in this clause shall be construed to have any effect regarding any available authority of States to require the use of any fuel additive registered in accordance with subsection (b) of this section, including any fuel additive registered in accordance with subsection (b) of this section after August 8, 2005.

(d) Penalties and injunctions

(1) Civil penalties

Any person who violates subsection (a), (f), (g), (k), (*l*), (m), (n), or (*o*) of this section or the regulations prescribed under subsection (c), (h), (i), (k), (*l*), (m), (n), or (*o*) of this section or who fails to furnish any information or conduct any tests required by the Administrator under subsection (b) of this section shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or savings resulting from the violation. Any violation with respect to a regulation prescribed under subsection (c), (k), (*l*), (m), or (*o*) of this section which establishes a regulatory standard based upon a multiday averaging period shall constitute a separate day of violation for each and every day in the averaging period. Civil penalties shall be assessed in accordance with subsections (b) and (c) of section 7524 of this title.

(2) Injunctive authority

The district courts of the United States shall have jurisdiction to restrain violations of subsections (a), (f), (g), (k), (*l*), (m), (n), and (*o*) of this section and of the regulations prescribed under subsections (c), (h), (i), (k), (*l*), (m), (n), and (*o*) of this section, to award other appropriate relief, and to compel the furnishing of information and the conduct of tests required by the Administrator under subsection (b) of this section. Actions to restrain such violations and compel such actions shall be brought by and in the name of the United States. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(e) Testing of fuels and fuel additives

(1) Not later than one year after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations which implement the authority under subsection (b)(2)(A) and (B) of this section with respect to each fuel or fuel additive which is registered on the date of promulgation of such regulations and with respect to each fuel or fuel additive for which an application for registration is filed thereafter.

(2) Regulations under subsection (b) of this section to carry out this subsection shall require that the requisite information be provided to the Administrator by each such manufacturer—

(A) prior to registration, in the case of any fuel or fuel additive which is not registered on the date of promulgation of such regulations; or

(B) not later than three years after the date of promulgation of such regulations, in the case of any fuel or fuel additive which is registered on such date.

(3) In promulgating such regulations, the Administrator may—

(A) exempt any small business (as defined in such regulations) from or defer or modify the requirements of, such regulations with respect to any such small business;

(B) provide for cost-sharing with respect to the testing of any fuel or fuel additive which is manufactured or processed by two or more persons or otherwise provide for shared responsibility to meet the requirements of this section without duplication; or

(C) exempt any person from such regulations with respect to a particular fuel or fuel additive upon a finding that any additional testing of such fuel or fuel additive would be duplicative of adequate existing testing.

(f) New fuels and fuel additives

(1)(A) Effective upon March 31, 1977, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for general use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 7525 of this title.

(B) Effective upon November 15, 1990, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 7525 of this title.

(2) Effective November 30, 1977, it shall be unlawful for any manufacturer of any fuel to introduce into commerce any gasoline which contains a concentration of manganese in excess of .0625 grams per gallon of fuel, except as otherwise provided pursuant to a waiver under paragraph (4).

(3) Any manufacturer of any fuel or fuel additive which prior to March 31, 1977, and after January 1, 1974, first introduced into commerce or increased the concentration in use of a fuel or fuel additive that would otherwise have been prohibited under paragraph (1)(A) if introduced on or after March 31, 1977 shall, not later than September 15, 1978, cease to distribute such fuel or fuel additive in commerce. During the period beginning 180 days after August 7, 1977, and before September 15, 1978, the Administrator shall prohibit, or restrict the concentration of any fuel additive which he determines will cause or contribute to the failure of an emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the

emission standards with respect to which it has been certified under section 7525 of this title.

(4) The Administrator, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under paragraph (1) or (3) of this subsection or the limitation specified in paragraph (2) of this subsection, if he determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, and the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 7525 of this title. If the Administrator has not acted to grant or deny an application under this paragraph within one hundred and eighty days of receipt of such application, the waiver authorized by this paragraph shall be treated as granted.

(5) No action of the Administrator under this section may be stayed by any court pending judicial review of such action.

(g) Misfueling

(1) No person shall introduce, or cause or allow the introduction of, leaded gasoline into any motor vehicle which is labeled ''unleaded gasoline only,'' which is equipped with a gasoline tank filler inlet designed for the introduction of unleaded gasoline, which is a 1990 or later model year motor vehicle, or which such person knows or should know is a vehicle designed solely for the use of unleaded gasoline.

(2) Beginning October 1, 1993, no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40 or such equivalent alternative aromatic level as prescribed by the Administrator under subsection (i)(2) of this section.

(h) Reid Vapor Pressure requirements

(1) Prohibition

Not later than 6 months after November 15, 1990, the Administrator shall promulgate regulations making it unlawful for any person during the high ozone season (as defined by the Administrator) to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi). Such regulations shall also establish more stringent Reid Vapor Pressure standards in a nonattainment area as the Administrator finds necessary to generally achieve comparable evaporative emissions (on a per-vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.

(2) Attainment areas

The regulations under this subsection shall not make it unlawful for any person to sell, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure of 9.0 pounds per square inch (psi) or lower in any area designated under section 7407 of this title as an attainment area. Notwithstanding the preceding sentence, the Administrator may impose a Reid vapor pressure requirement lower than 9.0 pounds per square inch (psi) in any area, formerly an ozone nonattainment area, which has been redesignated as an attainment area.

(3) Effective date; enforcement

The regulations under this subsection shall provide that the requirements of this subsection shall take effect not later than the high ozone season for 1992, and shall include such provisions as the Administrator determines are necessary to implement and enforce the requirements of this subsection.

(4) Ethanol waiver

For fuel blends containing gasoline and 10 percent denatured anhydrous ethanol, the Reid vapor pressure limitation under this subsection shall be one pound per square inch (psi) greater than the applicable Reid vapor pressure limitations established under paragraph (1); *Provided*, *however*, That a distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer shall be deemed to be in full compliance with the provisions of this subsection and the regulations promulgated thereunder if it can demonstrate (by showing receipt of a certification or other evidence acceptable to the Administrator) that—

(A) the gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection;

(B) the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4) of this section; and

(C) no additional alcohol or other additive has been added to increase the Reid Vapor Pressure of the ethanol portion of the blend.

(5) Exclusion from ethanol waiver

(A) Promulgation of regulations

Upon notification, accompanied by supporting documentation, from the Governor of a State that the Reid vapor pressure limitation established by paragraph (4) will increase emissions that contribute to air pollution in any area in the State, the Administrator shall, by regulation, apply, in lieu of the Reid vapor pressure limitation established by paragraph (4), the Reid vapor pressure limitation established by paragraph (1) to all fuel blends containing gasoline and 10 percent denatured anhydrous ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in the area during the high ozone season.

(B) Deadline for promulgation

The Administrator shall promulgate regulations under subparagraph (A) not later than 90 days after the date of receipt of a notification from a Governor under that subparagraph.

(C) Effective date

(i) In general

With respect to an area in a State for which the Governor submits a notification under subparagraph (A), the regulations under that subparagraph shall take effect on the later of—

(I) the first day of the first high ozone season for the area that begins after the date of receipt of the notification; or

(II) 1 year after the date of receipt of the notification.

(ii) Extension of effective date based on determination of insufficient supply

(I) In general

If, after receipt of a notification with respect to an area from a Governor of a State under subparagraph (A), the Administrator determines, on the Administrator's own motion or on petition of any person and after consultation with the Secretary of Energy, that the promulgation of regulations described in subparagraph (A) would result in an insufficient supply of gasoline in the State, the Administrator, by regulation—

(aa) shall extend the effective date of the regulations under clause (i) with respect to the area for not more than 1 year; and

(bb) may renew the extension under item (aa) for two additional periods, each of which shall not exceed 1 year.

(II) Deadline for action on petitions

The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.

(6) Areas covered

The provisions of this subsection shall apply only to the 48 contiguous States and the District of Columbia.

(i) Sulfur content requirements for diesel fuel

(1) Effective October 1, 1993, no person shall manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40.

(2) Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations to implement and enforce the requirements of paragraph (1). The Administrator may require manufacturers and importers of diesel fuel not intended for use in motor vehicles to dye such fuel in a particular manner in order to segregate it from motor vehicle diesel fuel. The Administrator may establish an equivalent alternative aromatic level to the cetane index specification in paragraph (1).

(3) The sulfur content of fuel required to be used in the certification of 1991 through 1993 model year heavy-duty diesel vehicles and engines shall be 0.10 percent (by weight). The sulfur content and cetane index minimum of fuel required to be used in the certification of 1994 and later model year heavy-duty diesel vehicles and engines shall comply with the regulations promulgated under paragraph (2).

(4) The States of Alaska and Hawaii may be exempted from the requirements of this subsection in the same manner as provided in section 7625[3] of this title. The Administrator shall take final action on any petition filed under section 7625[3] of this title or this paragraph for an exemption from the requirements of this subsection, within 12 months from the date of the petition.

(j) Lead substitute gasoline additives

(1) After November 15, 1990, any person proposing to register any gasoline additive under subsection (a) of this section or to use any previously registered additive as a lead substitute may also elect to register the additive as a lead substitute gasoline additive for reducing valve seat wear by providing the Administrator with such relevant information regarding product identity and composition as the Administrator deems necessary for carrying out the responsibilities of paragraph (2) of this subsection (in addition to other information which may be required under subsection (b) of this section).

(2) In addition to the other testing which may be required under subsection (b) of this section, in the case of the lead substitute gasoline additives referred to in paragraph (1), the Administrator shall develop and publish a test procedure to determine the additives' effectiveness in reducing valve seat wear and the additives' tendencies to produce engine deposits and other adverse side effects. The test procedures shall be developed in cooperation with the Secretary of Agriculture and with the input of additive manufacturers, engine and engine components manufacturers, and other interested persons. The Administrator shall enter into arrangements with an independent laboratory to conduct tests of each additive using the test procedures developed and published pursuant to this paragraph. The Administrator shall publish the results of the tests by company and additive name in the Federal Register along with, for comparison purposes, the results of applying the same test procedures to gasoline containing 0.1 gram of lead per gallon in lieu of the lead substitute gasoline additive. The Administrator shall not rank or otherwise rate the lead substitute additives. Test procedures shall be established within 1 year after November 15, 1990. Additives shall be tested within 18 months of November 15, 1990, or 6 months after the lead substitute additives are identified to the Administrator, whichever is later.

(3) The Administrator may impose a user fee to recover the costs of testing of any fuel additive referred to in this subsection. The fee shall be paid by the person proposing to register the fuel additive concerned. Such fee shall not exceed $20,000 for a single fuel additive.

(4) There are authorized to be appropriated to the Administrator not more than $1,000,000 for the second full fiscal year after November 15, 1990, to establish test procedures and conduct

[3] So in original. Probably should be section ''7625–1''.

engine tests as provided in this subsection. Not more than $500,000 per year is authorized to be appropriated for each of the 5 subsequent fiscal years.

(5) Any fees collected under this subsection shall be deposited in a special fund in the United States Treasury for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency's activities for which the fees were collected.

(k) Reformulated gasoline for conventional vehicles

(1) EPA regulations

(A) In general

Not later than November 15, 1991, the Administrator shall promulgate regulations under this section establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas. Such regulations shall require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

(B) Maintenance of toxic air pollutant emissions reductions from reformulated gasoline

(i) Definition of PADD

In this subparagraph the term ''PADD'' means a Petroleum Administration for Defense District.

(ii) Regulations concerning emissions of toxic air pollutants

Not later than 270 days after August 8, 2005, the Administrator shall establish by regulation, for each refinery or importer (other than a refiner or importer in a State that has received a waiver under section 7543(b) of this title with respect to gasoline produced for use in that State), standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refiner or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refiner or importer during calendar years 2001 and 2002 (as determined on the basis of data collected by the Administrator with respect to the refiner or importer).

(iii) Standards applicable to specific refineries or importers

(I) Applicability of standards

For any calendar year, the standards applicable to a refiner or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refiner or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refiner or importer during calendar years 2001 and 2002.

(II) Applicability of other standards

For any calendar year, the quantity of gasoline produced or distributed by a refiner or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for emissions of toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

(iv) Credit program

The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

(v) Regional protection of toxics reduction baselines

(I) In general

Not later than 60 days after August 8, 2005, and not later than April 1 of each calendar year that begins after August 8, 2005, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 2001 and 2002; and

(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

(II) Effect of failure to maintain aggregate toxics reductions

If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 2001 and 2002, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refiner or importer shall meet the standards applicable under clause (iii)(I) beginning not later than April 1 of the calendar year following publication of the report under

subclause (I) and in each calendar year thereafter.

(vi) Not later than July 1, 2007, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on August 8, 2005), and as authorized under section 7521(*l*)[4] of this title. If the Administrator promulgates by such date, final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels that achieve and maintain greater overall reductions in emissions of air toxics from reformulated gasoline than the reductions that would be achieved under subsection (k)(1)(B) of this section as amended by this clause, then subsections (k)(1)(B)(i) through (k)(1)(B)(v) of this section shall be null and void and regulations promulgated thereunder shall be rescinded and have no further effect.

(2) General requirements

The regulations referred to in paragraph (1) shall require that reformulated gasoline comply with paragraph (3) and with each of the following requirements (subject to paragraph (7)):

(A) NO_x emissions

The emissions of oxides of nitrogen (NO_x) from baseline vehicles when using the reformulated gasoline shall be no greater than the level of such emissions from such vehicles when using baseline gasoline. If the Administrator determines that compliance with the limitation on emissions of oxides of nitrogen under the preceding sentence is technically infeasible, considering the other requirements applicable under this subsection to such gasoline, the Administrator may, as appropriate to ensure compliance with this subparagraph, adjust (or waive entirely), any other requirements of this paragraph or any requirements applicable under paragraph (3)(A).

(B) Benzene content

The benzene content of the gasoline shall not exceed 1.0 percent by volume.

(C) Heavy metals

The gasoline shall have no heavy metals, including lead or manganese. The Administrator may waive the prohibition contained in this subparagraph for a heavy metal (other than lead) if the Administrator determines that addition of the heavy metal to the gasoline will not increase, on an aggregate mass or cancer-risk basis, toxic air pollutant emissions from motor vehicles.

(3) More stringent of formula or performance standards

The regulations referred to in paragraph (1) shall require compliance with the more stringent of either the requirements set forth in subparagraph (A) or the requirements of subparagraph (B) of this paragraph. For purposes of determining the more stringent provision, clause (i) and clause (ii) of subparagraph (B) shall be considered independently.

(A) Formula

(i) Benzene

The benzene content of the reformulated gasoline shall not exceed 1.0 percent by volume.

(ii) Aromatics

The aromatic hydrocarbon content of the reformulated gasoline shall not exceed 25 percent by volume.

(iii) Lead

The reformulated gasoline shall have no lead content.

(iv) Detergents

The reformulated gasoline shall contain additives to prevent the accumulation of deposits in engines or vehicle fuel supply systems.

(B) Performance standard

(i) VOC emissions

During the high ozone season (as defined by the Administrator), the aggregate emissions of ozone forming volatile organic compounds from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of ozone forming volatile organic compounds from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving such reductions in VOC emissions. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

(ii) Toxics

During the entire year, the aggregate emissions of toxic air pollutants from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of toxic air pollutants from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving such reductions in toxic air pollutants. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

[4] So in original. See References in Text note below.

Any reduction greater than a specific percentage reduction required under this subparagraph shall be treated as satisfying such percentage reduction requirement.

(4) Certification procedures

(A) Regulations

The regulations under this subsection shall include procedures under which the Administrator shall certify reformulated gasoline as complying with the requirements established pursuant to this subsection. Under such regulations, the Administrator shall establish procedures for any person to petition the Administrator to certify a fuel formulation, or slate of fuel formulations. Such procedures shall further require that the Administrator shall approve or deny such petition within 180 days of receipt. If the Administrator fails to act within such 180-day period, the fuel shall be deemed certified until the Administrator completes action on the petition.

(B) Certification; equivalency

The Administrator shall certify a fuel formulation or slate of fuel formulations as complying with this subsection if such fuel or fuels—

(i) comply with the requirements of paragraph (2), and

(ii) achieve equivalent or greater reductions in emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants than are achieved by a reformulated gasoline meeting the applicable requirements of paragraph (3).

(C) EPA determination of emissions level

Within 1 year after November 15, 1990, the Administrator shall determine the level of emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants emitted by baseline vehicles when operating on baseline gasoline. For purposes of this subsection, within 1 year after November 15, 1990, the Administrator shall, by rule, determine appropriate measures of, and methodology for, ascertaining the emissions of air pollutants (including calculations, equipment, and testing tolerances).

(5) Prohibition

Effective beginning January 1, 1995, each of the following shall be a violation of this subsection:

(A) The sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area.

(B) The sale or dispensing by any refiner, blender, importer, or marketer of conventional gasoline for resale in any covered area, without (i) segregating such gasoline from reformulated gasoline, and (ii) clearly marking such conventional gasoline as ''conventional gasoline, not for sale to ultimate consumer in a covered area''.

Any refiner, blender, importer or marketer who purchases property[5] segregated and marked conventional gasoline, and thereafter labels, represents, or wholesales such gasoline as reformulated gasoline shall also be in violation of this subsection. The Administrator may impose sampling, testing, and recordkeeping requirements upon any refiner, blender, importer, or marketer to prevent violations of this section.

(6) Opt-in areas

(A) Classified areas

(i) In general

Upon the application of the Governor of a State, the Administrator shall apply the prohibition set forth in paragraph (5) in any area in the State classified under subpart 2 of part D of subchapter I of this chapter as a Marginal, Moderate, Serious, or Severe Area (without regard to whether or not the 1980 population of the area exceeds 250,000). In any such case, the Administrator shall establish an effective date for such prohibition as he deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later. The Administrator shall publish such application in the Federal Register upon receipt.

(ii) Effect of insufficient domestic capacity to produce reformulated gasoline

If the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient domestic capacity to produce gasoline certified under this subsection, the Administrator shall, by rule, extend the effective date of such prohibition in Marginal, Moderate, Serious, or Severe Areas referred to in clause (i) for one additional year, and may, by rule, renew such extension for 2 additional one-year periods. The Administrator shall act on any petition submitted under this subparagraph within 6 months after receipt of the petition. The Administrator shall issue such extensions for areas with a lower ozone classification before issuing any such extension for areas with a higher classification.

(B) Ozone transport region

(i) Application of prohibition

(I) In general

On application of the Governor of a State in the ozone transport region established by section 7511c(a) of this title, the Administrator, not later than 180 days after the date of receipt of the application, shall apply the prohibition specified in paragraph (5) to any area in the State (other than an area classified as a marginal, moderate, serious, or severe ozone nonattainment area under subpart 2 of part D of subchapter I of this chapter) unless the Administrator determines under clause (iii) that there is insufficient capacity to supply reformulated gasoline.

(II) Publication of application

As soon as practicable after the date of receipt of an application under subclause

[5] So in original. Probably should be ''properly''.

(I), the Administrator shall publish the application in the Federal Register.

(ii) Period of applicability

Under clause (i), the prohibition specified in paragraph (5) shall apply in a State—

(I) commencing as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State; and

(II) ending not earlier than 4 years after the commencement date determined under subclause (I).

(iii) Extension of commencement date based on insufficient capacity

(I) In general

If, after receipt of an application from a Governor of a State under clause (i), the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient capacity to supply reformulated gasoline, the Administrator, by regulation—

(aa) shall extend the commencement date with respect to the State under clause (ii)(I) for not more than 1 year; and

(bb) may renew the extension under item (aa) for 2 additional periods, each of which shall not exceed 1 year.

(II) Deadline for action on petitions

The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.

(7) Credits

(A) The regulations promulgated under this subsection shall provide for the granting of an appropriate amount of credits to a person who refines, blends, or imports and certifies a gasoline or slate of gasoline that—

(i) has an aromatic hydrocarbon content (by volume) that is less than the maximum aromatic hydrocarbon content required to comply with paragraph (3); or

(ii) has a benzene content (by volume) that is less than the maximum benzene content specified in paragraph (2).

(B) The regulations described in subparagraph (A) shall also provide that a person who is granted credits may use such credits, or transfer all or a portion of such credits to another person for use within the same nonattainment area, for the purpose of complying with this subsection.

(C) The regulations promulgated under subparagraphs (A) and (B) shall ensure the enforcement of the requirements for the issuance, application, and transfer of the credits. Such regulations shall prohibit the granting or transfer of such credits for use with respect to any gasoline in a nonattainment area, to the extent the use of such credits would result in any of the following:

(i) An average gasoline aromatic hydrocarbon content (by volume) for the nonattainment (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average fuel aromatic hydrocarbon content (by volume) that would occur in the absence of using any such credits.

(ii) An average benzene content (by volume) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average benzene content (by volume) that would occur in the absence of using any such credits.

(8) Anti-dumping rules

(A) In general

Within 1 year after November 15, 1990, the Administrator shall promulgate regulations applicable to each refiner, blender, or importer of gasoline ensuring that gasoline sold or introduced into commerce by such refiner, blender, or importer (other than reformulated gasoline subject to the requirements of paragraph (1)) does not result in average per gallon emissions (measured on a mass basis) of (i) volatile organic compounds, (ii) oxides of nitrogen, (iii) carbon monoxide, and (iv) toxic air pollutants in excess of such emissions of such pollutants attributable to gasoline sold or introduced into commerce in calendar year 1990 by that refiner, blender, or importer. Such regulations shall take effect beginning January 1, 1995.

(B) Adjustments

In evaluating compliance with the requirements of subparagraph (A), the Administrator shall make appropriate adjustments to insure that no credit is provided for improvement in motor vehicle emissions control in motor vehicles sold after the calendar year 1990.

(C) Compliance determined for each pollutant independently

In determining whether there is an increase in emissions in violation of the prohibition contained in subparagraph (A) the Administrator shall consider an increase in each air pollutant referred to in clauses (i) through (iv) as a separate violation of such prohibition, except that the Administrator shall promulgate regulations to provide that any increase in emissions of oxides of nitrogen resulting from adding oxygenates to gasoline may be offset by an equivalent or greater reduction (on a mass basis) in emissions of volatile organic compounds, carbon monoxide, or toxic air pollutants, or any combination of the foregoing.

(D) Compliance period

The Administrator shall promulgate an appropriate compliance period or appropriate compliance periods to be used for assessing compliance with the prohibition contained in subparagraph (A).

(E) Baseline for determining compliance

If the Administrator determines that no adequate and reliable data exists regarding

the composition of gasoline sold or introduced into commerce by a refiner, blender, or importer in calendar year 1990, for such refiner, blender, or importer, baseline gasoline shall be substituted for such 1990 gasoline in determining compliance with subparagraph (A).

(9) Emissions from entire vehicle

In applying the requirements of this subsection, the Administrator shall take into account emissions from the entire motor vehicle, including evaporative, running, refueling, and exhaust emissions.

(10) Definitions

For purposes of this subsection—

(A) Baseline vehicles

The term ''baseline vehicles'' mean representative model year 1990 vehicles.

(B) Baseline gasoline

(i) Summertime

The term ''baseline gasoline'' means in the case of gasoline sold during the high ozone period (as defined by the Administrator) a gasoline which meets the following specifications:

BASELINE GASOLINE FUEL PROPERTIES	
API Gravity	57.4
Sulfur, ppm	339
Benzene, %	1.53
RVP, psi	8.7
Octane, R+M/2	87.3
IBP, F	91
10%, F	128
50%, F	218
90%, F	330
End Point, F	415
Aromatics, %	32.0
Olefins, %	9.2
Saturates, %	58.8

(ii) Wintertime

The Administrator shall establish the specifications of ''baseline gasoline'' for gasoline sold at times other than the high ozone period (as defined by the Administrator). Such specifications shall be the specifications of 1990 industry average gasoline sold during such period.

(C) Toxic air pollutants

The term ''toxic air pollutants'' means the aggregate emissions of the following:

Benzene
1,3 Butadiene
Polycyclic organic matter (POM)
Acetaldehyde
Formaldehyde.

(D) Covered area

The 9 ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during the period 1987 through 1989 shall be ''covered areas'' for purposes of this subsection. Effective one year after the reclassification of any ozone nonattainment area as a Severe ozone nonattainment area under section 7511(b) of this title, such Severe area shall also be a ''covered area'' for purposes of this subsection.

(E) Reformulated gasoline

The term ''reformulated gasoline'' means any gasoline which is certified by the Administrator under this section as complying with this subsection.

(F) Conventional gasoline

The term ''conventional gasoline'' means any gasoline which does not meet specifications set by a certification under this subsection.

(*l*) Detergents

Effective beginning January 1, 1995, no person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons who sell or dispense to ultimate consumers in the United States any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems. Not later than 2 years after November 15, 1990, the Administrator shall promulgate a rule establishing specifications for such additives.

(m) Oxygenated fuels

(1) Plan revisions for CO nonattainment areas

(A) Each State in which there is located all or part of an area which is designated under subchapter I of this chapter as a nonattainment area for carbon monoxide and which has a carbon monoxide design value of 9.5 parts per million (ppm) or above based on data for the 2-year period of 1988 and 1989 and calculated according to the most recent interpretation methodology issued by the Administrator prior to November 15, 1990, shall submit to the Administrator a State implementation plan revision under section 7410 of this title and part D of subchapter I of this chapter for such area which shall contain the provisions specified under this subsection regarding oxygenated gasoline.

(B) A plan revision which contains such provisions shall also be submitted by each State in which there is located any area which, for any 2-year period after 1989 has a carbon monoxide design value of 9.5 ppm or above. The revision shall be submitted within 18 months after such 2-year period.

(2) Oxygenated gasoline in CO nonattainment areas

Each plan revision under this subsection shall contain provisions to require that any gasoline sold, or dispensed, to the ultimate consumer in the carbon monoxide nonattainment area or sold or dispensed directly or indirectly by fuel refiners or marketers to persons who sell or dispense to ultimate consumers, in the larger of—

(A) the Consolidated Metropolitan Statistical Area (CMSA) in which the area is located, or

(B) if the area is not located in a CMSA, the Metropolitan Statistical Area in which the area is located,

be blended, during the portion of the year in which the area is prone to high ambient con-

centrations of carbon monoxide to contain not less than 2.7 percent oxygen by weight (subject to a testing tolerance established by the Administrator). The portion of the year in which the area is prone to high ambient concentrations of carbon monoxide shall be as determined by the Administrator, but shall not be less than 4 months. At the request of a State with respect to any area designated as nonattainment for carbon monoxide, the Administrator may reduce the period specified in the preceding sentence if the State can demonstrate that because of meteorological conditions, a reduced period will assure that there will be no exceedances of the carbon monoxide standard outside of such reduced period. For areas with a carbon monoxide design value of 9.5 ppm or more of[6] November 15, 1990, the revision shall provide that such requirement shall take effect no later than November 1, 1992 (or at such other date during 1992 as the Administrator establishes under the preceding provisions of this paragraph). For other areas, the revision shall provide that such requirement shall take effect no later than November 1 of the third year after the last year of the applicable 2-year period referred to in paragraph (1) (or at such other date during such third year as the Administrator establishes under the preceding provisions of this paragraph) and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

(3) Waivers

(A) The Administrator shall waive, in whole or in part, the requirements of paragraph (2) upon a demonstration by the State to the satisfaction of the Administrator that the use of oxygenated gasoline would prevent or interfere with the attainment by the area of a national primary ambient air quality standard (or a State or local ambient air quality standard) for any air pollutant other than carbon monoxide.

(B) The Administrator shall, upon demonstration by the State satisfactory to the Administrator, waive the requirement of paragraph (2) where the Administrator determines that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in an area.

(C)(i) Any person may petition the Administrator to make a finding that there is, or is likely to be, for any area, an inadequate domestic supply of, or distribution capacity for, oxygenated gasoline meeting the requirements of paragraph (2) or fuel additives (oxygenates) necessary to meet such requirements. The Administrator shall act on such petition within 6 months after receipt of the petition.

(ii) If the Administrator determines, in response to a petition under clause (i), that there is an inadequate supply or capacity described in clause (i), the Administrator shall delay the effective date of paragraph (2) for 1 year. Upon petition, the Administrator may extend such effective date for one additional year. No partial delay or lesser waiver may be granted under this clause.

(iii) In granting waivers under this subparagraph the Administrator shall consider distribution capacity separately from the adequacy of domestic supply and shall grant such waivers in such manner as will assure that, if supplies of oxygenated gasoline are limited, areas having the highest design value for carbon monoxide will have a priority in obtaining oxygenated gasoline which meets the requirements of paragraph (2).

(iv) As used in this subparagraph, the term distribution capacity includes capacity for transportation, storage, and blending.

(4) Fuel dispensing systems

Any person selling oxygenated gasoline at retail pursuant to this subsection shall be required under regulations promulgated by the Administrator to label the fuel dispensing system with a notice that the gasoline is oxygenated and will reduce the carbon monoxide emissions from the motor vehicle.

(5) Guidelines for credit

The Administrator shall promulgate guidelines, within 9 months after November 15, 1990, allowing the use of marketable oxygen credits from gasolines during that portion of the year specified in paragraph (2) with higher oxygen content than required to offset the sale or use of gasoline with a lower oxygen content than required. No credits may be transferred between nonattainment areas.

(6) Attainment areas

Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is in attainment for carbon monoxide, except that in a carbon monoxide nonattainment area which is redesignated as attainment for carbon monoxide, the requirements of this subsection shall remain in effect to the extent such program is necessary to maintain such standard thereafter in the area.

(7) Failure to attain CO standard

If the Administrator determines under section 7512(b)(2) of this title that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that the minimum oxygen content of gasoline referred to in paragraph (2) shall be 3.1 percent by weight unless such requirement is waived in accordance with the provisions of this subsection.

(n) Prohibition on leaded gasoline for highway use

After December 31, 1995, it shall be unlawful for any person to sell, offer for sale, supply, offer for supply, dispense, transport, or introduce into commerce, for use as fuel in any motor vehicle (as defined in section 7554(2)[7] of this title) any gasoline which contains lead or lead additives.

[6] So in original. Probably should be ''as of''.

[7] So in original. Probably should be section ''7550(2)''.

(*o*) Renewable fuel program

(1) Definitions

In this section:

(A) Cellulosic biomass ethanol

The term ''cellulosic biomass ethanol'' means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

(i) dedicated energy crops and trees;

(ii) wood and wood residues;

(iii) plants;

(iv) grasses;

(v) agricultural residues;

(vi) fibers;

(vii) animal wastes and other waste materials; and

(viii) municipal solid waste.

The term also includes any ethanol produced in facilities where animal wastes or other waste materials are digested or otherwise used to displace 90 percent or more of the fossil fuel normally used in the production of ethanol.

(B) Waste derived ethanol

The term ''waste derived ethanol'' means ethanol derived from—

(i) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

(ii) municipal solid waste.

(C) Renewable fuel

(i) In general

The term ''renewable fuel'' means motor vehicle fuel that—

(I)(aa) is produced from grain, starch, oilseeds, vegetable, animal, or fish materials including fats, greases, and oils, sugarcane, sugar beets, sugar components, tobacco, potatoes, or other biomass; or

(bb) is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found; and

(II) is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.

(ii) Inclusion

The term ''renewable fuel'' includes—

(I) cellulosic biomass ethanol and ''waste derived ethanol''; and

(II) biodiesel (as defined in section 13220(f) of this title) and any blending components derived from renewable fuel (provided that only the renewable fuel portion of any such blending component shall be considered part of the applicable volume under the renewable fuel program established by this subsection).

(D) Small refinery

The term ''small refinery'' means a refinery for which the average aggregate daily crude oil throughput for a calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

(2) Renewable fuel program

(A) Regulations

(i) In general

Not later than 1 year after August 8, 2005, the Administrator shall promulgate regulations to ensure that gasoline sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains the applicable volume of renewable fuel determined in accordance with subparagraph (B).

(ii) Noncontiguous State opt-in

(I) In general

On the petition of a noncontiguous State or territory, the Administrator may allow the renewable fuel program established under this subsection to apply in the noncontiguous State or territory at the same time or any time after the Administrator promulgates regulations under this subparagraph.

(II) Other actions

In carrying out this clause, the Administrator may—

(aa) issue or revise regulations under this paragraph;

(bb) establish applicable percentages under paragraph (3);

(cc) provide for the generation of credits under paragraph (5); and

(dd) take such other actions as are necessary to allow for the application of the renewable fuels program in a noncontiguous State or territory.

(iii) Provisions of regulations

Regardless of the date of promulgation, the regulations promulgated under clause (i)—

(I) shall contain compliance provisions applicable to refineries, blenders, distributors, and importers, as appropriate, to ensure that the requirements of this paragraph are met; but

(II) shall not—

(aa) restrict geographic areas in which renewable fuel may be used; or

(bb) impose any per-gallon obligation for the use of renewable fuel.

(iv) Requirement in case of failure to promulgate regulations

If the Administrator does not promulgate regulations under clause (i), the percentage of renewable fuel in gasoline sold or dispensed to consumers in the United States, on a volume basis, shall be 2.78 percent for calendar year 2006.

(B) Applicable volume

(i) Calendar years 2006 through 2012

For the purpose of subparagraph (A), the applicable volume for any of calendar years 2006 through 2012 shall be determined in accordance with the following table:

Calendar year:	Applicable volume of renewable fuel (in billions of gallons):
2006	4.0
2007	4.7
2008	5.4
2009	6.1
2010	6.8
2011	7.4
2012	7.5.

(ii) Calendar year 2013 and thereafter

Subject to clauses (iii) and (iv), for the purposes of subparagraph (A), the applicable volume for calendar year 2013 and each calendar year thereafter shall be determined by the Administrator, in coordination with the Secretary of Agriculture and the Secretary of Energy, based on a review of the implementation of the program during calendar years 2006 through 2012, including a review of—

(I) the impact of the use of renewable fuels on the environment, air quality, energy security, job creation, and rural economic development; and

(II) the expected annual rate of future production of renewable fuels, including cellulosic ethanol.

(iii) Minimum quantity derived from cellulosic biomass

For calendar year 2013 and each calendar year thereafter—

(I) the applicable volume referred to in clause (ii) shall contain a minimum of 250,000,000 gallons that are derived from cellulosic biomass; and

(II) the 2.5-to-1 ratio referred to in paragraph (4) shall not apply.

(iv) Minimum applicable volume

For the purpose of subparagraph (A), the applicable volume for calendar year 2013 and each calendar year thereafter shall be equal to the product obtained by multiplying—

(I) the number of gallons of gasoline that the Administrator estimates will be sold or introduced into commerce in the calendar year; and

(II) the ratio that—

(aa) 7,500,000,000 gallons of renewable fuel; bears to

(bb) the number of gallons of gasoline sold or introduced into commerce in calendar year 2012.

(3) Applicable percentages

(A) Provision of estimate of volumes of gasoline sales

Not later than October 31 of each of calendar years 2005 through 2011, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate, with respect to the following calendar year, of the volumes of gasoline projected to be sold or introduced into commerce in the United States.

(B) Determination of applicable percentages

(i) In general

Not later than November 30 of each of calendar years 2005 through 2012, based on the estimate provided under subparagraph (A), the Administrator of the Environmental Protection Agency shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.

(ii) Required elements

The renewable fuel obligation determined for a calendar year under clause (i) shall—

(I) be applicable to refineries, blenders, and importers, as appropriate;

(II) be expressed in terms of a volume percentage of gasoline sold or introduced into commerce in the United States; and

(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

(C) Adjustments

In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

(i) to prevent the imposition of redundant obligations on any person specified in subparagraph (B)(ii)(I); and

(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (9).

(4) Cellulosic biomass ethanol or waste derived ethanol

For the purpose of paragraph (2), 1 gallon of cellulosic biomass ethanol or waste derived ethanol shall be considered to be the equivalent of 2.5 gallons of renewable fuel.

(5) Credit program

(A) In general

The regulations promulgated under paragraph (2)(A) shall provide—

(i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2);

(ii) for the generation of an appropriate amount of credits for biodiesel; and

(iii) for the generation of credits by small refineries in accordance with paragraph (9)(C).

(B) Use of credits

A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

(C) Duration of credits

A credit generated under this paragraph shall be valid to show compliance for the 12 months as of the date of generation.

(D) Inability to generate or purchase sufficient credits

The regulations promulgated under paragraph (2)(A) shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements of paragraph (2) to carry forward a renewable fuel deficit on condition that the person, in the calendar year following the year in which the renewable fuel deficit is created—

(i) achieves compliance with the renewable fuel requirement under paragraph (2); and

(ii) generates or purchases additional renewable fuel credits to offset the renewable fuel deficit of the previous year.

(6) Seasonal variations in renewable fuel use

(A) Study

For each of calendar years 2006 through 2012, the Administrator of the Energy Information Administration shall conduct a study of renewable fuel blending to determine whether there are excessive seasonal variations in the use of renewable fuel.

(B) Regulation of excessive seasonal variations

If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator of the Environmental Protection Agency shall promulgate regulations to ensure that 25 percent or more of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) is used during each of the 2 periods specified in subparagraph (D) of each subsequent calendar year.

(C) Determinations

The determinations referred to in subparagraph (B) are that—

(i) less than 25 percent of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) has been used during 1 of the 2 periods specified in subparagraph (D) of the calendar year;

(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

(iii) promulgating regulations or other requirements to impose a 25 percent or more seasonal use of renewable fuels will not prevent or interfere with the attainment of national ambient air quality standards or significantly increase the price of motor fuels to the consumer.

(D) Periods

The 2 periods referred to in this paragraph are—

(i) April through September; and

(ii) January through March and October through December.

(E) Exclusion

Renewable fuel blended or consumed in calendar year 2006 in a State that has received a waiver under section 7543(b) of this title shall not be included in the study under subparagraph (A).

(F) State exemption from seasonality requirements

Notwithstanding any other provision of law, the seasonality requirement relating to renewable fuel use established by this paragraph shall not apply to any State that has received a waiver under section 7543(b) of this title or any State dependent on refineries in such State for gasoline supplies.

(7) Waivers

(A) In general

The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements of paragraph (2) in whole or in part on petition by one or more States by reducing the national quantity of renewable fuel required under paragraph (2)—

(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply.

(B) Petitions for waivers

The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirements of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

(C) Termination of waivers

A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

(8) Study and waiver for initial year of program

(A) In general

Not later than 180 days after August 8, 2005, the Secretary of Energy shall conduct for the Administrator a study assessing whether the renewable fuel requirement under paragraph (2) will likely result in significant adverse impacts on consumers in 2006, on a national, regional, or State basis.

(B) Required evaluations

The study shall evaluate renewable fuel—

(i) supplies and prices;

(ii) blendstock supplies; and

(iii) supply and distribution system capabilities.

(C) Recommendations by the Secretary

Based on the results of the study, the Secretary of Energy shall make specific recommendations to the Administrator concerning waiver of the requirements of paragraph (2), in whole or in part, to prevent any adverse impacts described in subparagraph (A).

(D) Waiver

(i) In general

Not later than 270 days after August 8, 2005, the Administrator shall, if and to the extent recommended by the Secretary of Energy under subparagraph (C), waive, in whole or in part, the renewable fuel requirement under paragraph (2) by reducing the national quantity of renewable fuel required under paragraph (2) in calendar year 2006.

(ii) No effect on waiver authority

Clause (i) does not limit the authority of the Administrator to waive the requirements of paragraph (2) in whole, or in part, under paragraph (7).

(9) Small refineries

(A) Temporary exemption

(i) In general

The requirements of paragraph (2) shall not apply to small refineries until calendar year 2011.

(ii) Extension of exemption

(I) Study by Secretary of Energy

Not later than December 31, 2008, the Secretary of Energy shall conduct for the Administrator a study to determine whether compliance with the requirements of paragraph (2) would impose a disproportionate economic hardship on small refineries.

(II) Extension of exemption

In the case of a small refinery that the Secretary of Energy determines under subclause (I) would be subject to a disproportionate economic hardship if required to comply with paragraph (2), the Administrator shall extend the exemption under clause (i) for the small refinery for a period of not less than 2 additional years.

(B) Petitions based on disproportionate economic hardship

(i) Extension of exemption

A small refinery may at any time petition the Administrator for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship.

(ii) Evaluation of petitions

In evaluating a petition under clause (i), the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study under subparagraph (A)(ii) and other economic factors.

(iii) Deadline for action on petitions

The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.

(C) Credit program

If a small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A), the regulations promulgated under paragraph (2)(A) shall provide for the generation of credits by the small refinery under paragraph (5) beginning in the calendar year following the date of notification.

(D) Opt-in for small refineries

A small refinery shall be subject to the requirements of paragraph (2) if the small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A).

(10) Ethanol market concentration analysis

(A) Analysis

(i) In general

Not later than 180 days after August 8, 2005, and annually thereafter, the Federal Trade Commission shall perform a market concentration analysis of the ethanol production industry using the Herfindahl-Hirschman Index to determine whether there is sufficient competition among industry participants to avoid price-setting and other anticompetitive behavior.

(ii) Scoring

For the purpose of scoring under clause (i) using the Herfindahl-Hirschman Index, all marketing arrangements among industry participants shall be considered.

(B) Report

Not later than December 1, 2005, and annually thereafter, the Federal Trade Commission shall submit to Congress and the Administrator a report on the results of the market concentration analysis performed under subparagraph (A)(i).

(q)[8] Analyses of motor vehicle fuel changes and emissions model

(1) Anti-backsliding analysis

(A) Draft analysis

Not later than 4 years after August 8, 2005, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by the Energy Policy Act of 2005.

(B) Final analysis

After providing a reasonable opportunity for comment but not later than 5 years after August 8, 2005, the Administrator shall publish the analysis in final form.

(2) Emissions model

For the purposes of this section, not later than 4 years after August 8, 2005, the Administrator shall develop and finalize an emissions model that reflects, to the maximum extent practicable, the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2007.

(3) Permeation effects study

(A) In general

Not later than 1 year after August 8, 2005, the Administrator shall conduct a study,

[8] So in original. No subsec. (p) has been enacted.

and report to Congress the results of the study, on the effects of ethanol content in gasoline on permeation, the process by which fuel molecules migrate through the elastomeric materials (rubber and plastic parts) that make up the fuel and fuel vapor systems of a motor vehicle.

(B) Evaporative emissions

The study shall include estimates of the increase in total evaporative emissions likely to result from the use of gasoline with ethanol content in a motor vehicle, and the fleet of motor vehicles, due to permeation.

(r)[9] Fuel and fuel additive importers and importation

For the purposes of this section, the term ''manufacturer'' includes an importer and the term ''manufacture'' includes importation.

(r)[9] Conversion assistance for cellulosic biomass, waste-derived ethanol, approved renewable fuels

(1) In general

The Secretary of Energy may provide grants to merchant producers of cellulosic biomass ethanol, waste-derived ethanol, and approved renewable fuels in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of ethanol or approved renewable fuels.

(2) Eligible production facilities

A production facility shall be eligible to receive a grant under this subsection if the production facility—

(A) is located in the United States; and

(B) uses cellulosic or renewable biomass or waste-derived feedstocks derived from agricultural residues, wood residues, municipal solid waste, or agricultural byproducts.

(3) Authorization of appropriations

There are authorized to be appropriated the following amounts to carry out this subsection:

(A) $100,000,000 for fiscal year 2006.

(B) $250,000,000 for fiscal year 2007.

(C) $400,000,000 for fiscal year 2008.

(4) Definitions

For the purposes of this subsection:

(A) The term ''approved renewable fuels'' are fuels and components of fuels that have been approved by the Department of Energy, as defined in section 13211 of this title, which have been made from renewable biomass.

(B) The term ''renewable biomass'' is, as defined in Presidential Executive Order 13134, published in the Federal Register on August 16, 1999, any organic matter that is available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, animal wastes, wood and wood residues, paper and paper residues, and other vegetative waste materials. Old-growth timber means timber of a forest from the late successional stage of forest development.

(s) Blending of compliant reformulated gasolines

(1) In general

Notwithstanding subsections (h) and (k) of this section and subject to the limitations in paragraph (2) of this subsection, it shall not be a violation of this part[10] for a gasoline retailer, during any month of the year, to blend at a retail location batches of ethanol-blended and non-ethanol-blended reformulated gasoline, provided that—

(A) each batch of gasoline to be blended has been individually certified as in compliance with subsections (h) and (k) of this section prior to being blended;

(B) the retailer notifies the Administrator prior to such blending, and identifies the exact location of the retail station and the specific tank in which such blending will take place;

(C) the retailer retains and, as requested by the Administrator or the Administrator's designee, makes available for inspection such certifications accounting for all gasoline at the retail outlet; and

(D) the retailer does not, between June 1 and September 15 of each year, blend a batch of VOC-controlled, or ''summer'', gasoline with a batch of non-VOC-controlled, or ''winter'', gasoline (as these terms are defined under subsections (h) and (k) of this section).

(2) Limitations

(A) Frequency limitation

A retailer shall only be permitted to blend batches of compliant reformulated gasoline under this subsection a maximum of two blending periods between May 1 and September 15 of each calendar year.

(B) Duration of blending period

Each blending period authorized under subparagraph (A) shall extend for a period of no more than 10 consecutive calendar days.

(3) Surveys

A sample of gasoline taken from a retail location that has blended gasoline within the past 30 days and is in compliance with subparagraphs (A), (B), (C), and (D) of paragraph (1) shall not be used in a VOC survey mandated by 40 CFR Part 80.

(4) State implementation plans

A State shall be held harmless and shall not be required to revise its State implementation plan under section 7410 of this title to account for the emissions from blended gasoline authorized under paragraph (1).

(5) Preservation of State law

Nothing in this subsection shall—

(A) preempt existing State laws or regulations regulating the blending of compliant gasolines; or

(B) prohibit a State from adopting such restrictions in the future.

(6) Regulations

The Administrator shall promulgate, after notice and comment, regulations implement-

[9] So in original. Two subsecs. (r) have been enacted.

[10] See References in Text note below.

ing this subsection within 1 year after August 8, 2005.

(7) Effective date

This subsection shall become effective 15 months after August 8, 2005, and shall apply to blended batches of reformulated gasoline on or after that date, regardless of whether the implementing regulations required by paragraph (6) have been promulgated by the Administrator by that date.

(8) Liability

No person other than the person responsible for blending under this subsection shall be subject to an enforcement action or penalties under subsection (d) of this section solely arising from the blending of compliant reformulated gasolines by the retailers.

(9) Formulation of gasoline

This subsection does not grant authority to the Administrator or any State (or any subdivision thereof) to require reformulation of gasoline at the refinery to adjust for potential or actual emissions increases due to the blending authorized by this subsection.

(July 14, 1955, ch. 360, title II, § 211, formerly § 210, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 502; renumbered and amended Pub. L. 91–604, §§ 8(a), 9(a), Dec. 31, 1970, 84 Stat. 1694, 1698; Pub. L. 92–157, title III, § 302(d), (e), Nov. 18, 1971, 85 Stat. 464; Pub. L. 95–95, title II, §§ 222, 223, title IV, § 401(e), Aug. 7, 1977, 91 Stat. 762, 764, 791; Pub. L. 95–190, § 14(a)(73), (74), Nov. 16, 1977, 91 Stat. 1403, 1404; Pub. L. 101–549, title II, §§ 212–221, 228(d), Nov. 15, 1990, 104 Stat. 2488–2500, 2510; Pub. L. 109–58, title XV, §§ 1501(a)–(c), 1504(a)(1), (b), 1505–1507, 1512, 1513, 1541(a), (b), Aug. 8, 2005, 119 Stat. 1067–1074, 1076, 1077, 1080, 1081, 1088, 1089, 1106, 1107.)

REFERENCES IN TEXT

August 8, 2005, referred to in subsec. (c)(4)(C)(v)(II), was in the original ''enactment'', which was translated as meaning the date of enactment of Pub. L. 109–58, which enacted subsec. (c)(4)(C)(v), to reflect the probable intent of Congress.

Section 7521(*l*) of this title, referred to in subsec. (k)(1)(B)(vi), was in the original ''section 202(1) of the Clean Air Act'', which was translated as meaning section 202(*l*) of the Clean Air Act, to reflect the probable intent of Congress.

The Energy Policy Act of 2005, referred to in subsec. (q)(1)(A), is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

Executive Order 13134, referred to in subsec. (r)(4)(B), is set out as a note under section 8101 of Title 7, Agriculture.

This part, referred to in subsec. (s)(1), was in the original ''this subtitle'' which was translated as ''this part'', meaning part A of title II of act July 14, 1955, as the probable intent of Congress, because title II of act July 14, 1955, does not contain subtitles.

CODIFICATION

Section was formerly classified to section 1857f–6c of this title.

PRIOR PROVISIONS

A prior section 211 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 503, provided for a national emissions standards study and was classified to section 1857f–6d of this title, prior to repeal by section 8(a) of Pub. L. 91–604.

AMENDMENTS

2005—Subsec. (b)(2). Pub. L. 109–58, § 1505(1)(A), substituted ''shall, on a regular basis,'' for ''may also'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 109–58, § 1505(1)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: ''to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and''.

Subsec. (b)(4). Pub. L. 109–58, § 1505(2), added par. (4).

Subsec. (c)(4)(C). Pub. L. 109–58, § 1541(a), designated existing provisions as cl. (i) and added cls. (ii) to (iv) and (v) relating to waiver authority.

Subsec. (c)(4)(C)(v). Pub. L. 109–58, § 1541(b), added cl. (v) relating to approval of fuels.

Subsec. (d)(1). Pub. L. 109–58, § 1501(b)(1), substituted ''(n), or (*o*)'' for ''or (n)'' in two places in first sentence and ''(m), or (*o*)'' for ''or (m)'' in second sentence.

Subsec. (d)(2). Pub. L. 109–58, § 1501(b)(2), substituted ''(n), and (*o*)'' for ''and (n)'' in two places in first sentence.

Subsec. (h)(5), (6). Pub. L. 109–58, § 1501(c), added par. (5) and redesignated former par. (5) as (6).

Subsec. (k)(1). Pub. L. 109–58, § 1504(b), designated existing provisions as subpar. (A), inserted heading, substituted ''Not later than November 15, 1991,'' for ''Within 1 year after November 15, 1990,'', and added subpar. (B).

Subsec. (k)(2)(A). Pub. L. 109–58, § 1504(a)(1)(A)(i), struck out ''(including the oxygen content requirement contained in subparagraph (B))'' after ''requirements of this paragraph''.

Subsec. (k)(2)(B) to (D). Pub. L. 109–58, § 1504(a)(1)(A)(ii), (iii), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out heading and text of former subpar. (B). Text read as follows: ''The oxygen content of the gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this chapter. The Administrator may waive, in whole or in part, the application of this subparagraph for any ozone nonattainment area upon a determination by the Administrator that compliance with such requirement would prevent or interfere with the attainment by the area of a national primary ambient air quality standard.''

Subsec. (k)(3)(A)(v). Pub. L. 109–58, § 1504(a)(1)(B), struck out heading and text of cl. (v). Text read as follows: ''The oxygen content of the reformulated gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this chapter.''

Subsec. (k)(6). Pub. L. 109–58, § 1507, redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), inserted subpar. and cl. headings, in cl. (ii) substituted ''clause (i)'' for ''subparagraph (A)'' and ''this subparagraph'' for ''this paragraph'', and added subpar. (B).

Subsec. (k)(7)(A). Pub. L. 109–58, § 1504(a)(1)(C)(i), redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: ''has an oxygen content (by weight) that exceeds the minimum oxygen content specified in paragraph (2);''.

Subsec. (k)(7)(C)(ii), (iii). Pub. L. 109–58, § 1504(a)(1)(C)(ii), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: ''An average gasoline oxygen content (by weight) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) lower than the average gasoline oxygen content (by weight) that would occur in the absence of using any such credits.''

Subsec. (*o*). Pub. L. 109–58, § 1501(a)(2), added subsec. (*o*). Former subsec. (*o*) redesignated (r) relating to fuel and fuel additive importers and importation.

Subsec. (q). Pub. L. 109–58, § 1506, which directed amendment of this section by adding subsec. (q) after

subsec. (p), was executed by making the addition after subsec. (*o*) to reflect the probable intent of Congress.

Subsec. (r). Pub. L. 109–58, § 1512, added subsec. (r) relating to conversion assistance for cellulosic biomass, waste-derived ethanol, approved renewable fuels.

Pub. L. 109–58, § 1501(a)(1), redesignated subsec. (*o*) as (r) relating to fuel and fuel additive importers and importation.

Subsec. (s). Pub. L. 109–58, § 1513, added subsec. (s).

1990—Subsec. (a). Pub. L. 101–549, § 212, inserted ''(including any fuel or fuel additive used exclusively in nonroad engines or nonroad vehicles)'' after ''fuel or fuel additive''.

Subsecs. (b)(2)(B), (c)(1). Pub. L. 101–549, § 212(b), (c), inserted reference to nonroad engine or nonroad vehicle.

Subsec. (c)(4)(A). Pub. L. 101–549, § 213(a), substituted ''any characteristic or component of a'' for ''use of a'', inserted ''of the characteristic or component of a fuel or fuel additive'' after ''control or prohibition'' in cl. (i), and inserted ''characteristic or component of a'' after ''such'' in cl. (ii).

Subsec. (c)(4)(C). Pub. L. 101–549, § 213(b), inserted last two sentences, authorizing Administrator to make a finding that State control or prohibition is necessary to achieve the standard.

Subsec. (d). Pub. L. 101–549, § 228(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Any person who violates subsection (a) or (f) of this section or the regulations prescribed under subsection (c) of this section or who fails to furnish any information required by the Administrator under subsection (b) of this section shall forfeit and pay to the United States a civil penalty of $10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Administrator may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the facts upon all such applications.''

Subsec. (f)(1). Pub. L. 101–549, § 214(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(3). Pub. L. 101–549, § 214(b), substituted reference to paragraph (1)(A) for reference to paragraph (1).

Subsec. (g). Pub. L. 101–549, § 215, amended subsec. (g) generally, substituting present provisions for provisions which defined ''gasoline'', ''refinery'', and ''small refinery'' and which limited Administrator's authority to require small refineries to reduce average lead content per gallon of gasoline.

Subsec. (h). Pub. L. 101–549, § 216, added subsec. (h).

Subsec. (i). Pub. L. 101–549, § 217, added subsec. (i).

Subsec. (j). Pub. L. 101–549, § 218(a), added subsec. (j).

Subsecs. (k) to (m). Pub. L. 101–549, § 219, added subsecs. (k) to (m).

Subsec. (n). Pub. L. 101–549, § 220, added subsec. (n).

Subsec. (*o*). Pub. L. 101–549, § 221, added subsec. (*o*).

1977—Subsec. (c)(1)(A). Pub. L. 95–95, § 401(e), substituted ''if in the judgment of the Administrator any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger'' for ''if any emission products of such fuel or fuel additive will endanger''.

Subsec. (d). Pub. L. 95–95, § 222(b), inserted ''or (f)'' after ''Any person who violates subsection (a)''.

Subsecs. (e), (f). Pub. L. 95–95, § 222(a), added subsecs. (e) and (f).

Subsec. (f)(2). Pub. L. 95–190, § 14(a)(73), inserted provision relating to waiver under par. (4) of this subsec., and struck out ''first'' before ''introduce''.

Subsec. (f)(4). Pub. L. 95–190, § 14(a)(74), inserted provision relating to applicability of limitation specified under par. (2) of this subsection.

Subsec. (g). Pub. L. 95–95, § 223, added subsec. (g).

1971—Subsec. (c)(3)(A). Pub. L. 92–157, § 302(d), substituted ''purpose of obtaining'' for ''purpose of''.

Subsec. (d). Pub. L. 92–157, § 302(e), substituted ''subsection (b)'' for ''subsection (c)'' where appearing the second time.

1970—Subsec. (a). Pub. L. 91–604, § 9(a), substituted ''Administrator'' for ''Secretary'' as the registering authority, inserted references to fuel additives, and substituted the selling, offering for sale, and introduction into commerce of fuel or fuel additives, for the delivery for introduction into interstate commerce or delivery to another person who can reasonably be expected to deliver fuel into interstate commerce.

Subsec. (b). Pub. L. 91–604, § 9(a), designated existing provisions as pars. (1) and (3), added par. (2), and substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (c). Pub. L. 91–604, § 9(a), substituted provisions covering the control or prohibition of offending fuels and fuel additives, for provisions covering trade secrets and substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 91–604, § 9(a), inserted references to failure to obey regulations prescribed under subsec. (c) and failure to furnish information required by the Administrator under subsec. (c), increased the daily civil penalty from $1,000 to $10,000 and substituted ''Administrator'' for ''Secretary''.

Subsec. (e). Pub. L. 91–604, § 9(a), struck out subsec. (e) which directed the various United States Attorneys to prosecute for the recovery of forfeitures.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XV, § 1504(a)(2), Aug. 8, 2005, 119 Stat. 1077, provided that: ''The amendments made by paragraph (1) [amending this section] apply—

''(A) in the case of a State that has received a waiver under section 209(b) of the Clean Air Act (42 U.S.C. 7543(b)), beginning on the date of enactment of this Act [Aug. 8, 2005]; and

''(B) in the case of any other State, beginning 270 days after the date of enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

SAVINGS

Pub. L. 109–58, title XV, § 1504(d), Aug. 8, 2005, 119 Stat. 1079, provided that:

''(1) IN GENERAL.—Nothing in this section [amending this section and enacting provisions set out as notes under this section] or any amendment made by this section affects or prejudices any legal claim or action with respect to regulations promulgated by the Administrator [of the Environmental Protection Agency] before the date of enactment of this Act [Aug. 8, 2005] regarding—

''(A) emissions of toxic air pollutants from motor vehicles; or

''(B) the adjustment of standards applicable to a specific refinery or importer made under those regulations.

''(2) ADJUSTMENT OF STANDARDS.—

''(A) APPLICABILITY.—The Administrator may apply any adjustments to the standards applicable to a refinery or importer under subparagraph (B)(iii)(I) of section 211(k)(1) of the Clean Air Act [42 U.S.C. 7545(k)(1)(B)(iii)(I)] (as added by subsection (b)(2)), except that—

''(i) the Administrator shall revise the adjustments to be based only on calendar years 1999 and 2000;

''(ii) any such adjustment shall not be made at a level below the average percentage of reductions of emissions of toxic air pollutants for reformulated gasoline supplied to PADD I during calendar years 1999 and 2000; and

''(iii) in the case of an adjustment based on toxic air pollutant emissions from reformulated gasoline significantly below the national annual average emissions of toxic air pollutants from all reformulated gasoline—

''(I) the Administrator may revise the adjustment to take account of the scope of the prohibition on methyl tertiary butyl ether imposed by a State; and

''(II) any such adjustment shall require the refiner or importer, to the maximum extent practicable, to maintain the reduction achieved during calendar years 1999 and 2000 in the average annual aggregate emissions of toxic air pollutants from reformulated gasoline produced or distributed by the refiner or importer.''

SURVEY OF RENEWABLE FUEL MARKET

Pub. L. 109–58, title XV, § 1501(d), Aug. 8, 2005, 119 Stat. 1075, provided that:

''(1) SURVEY AND REPORT.—Not later than December 1, 2006, and annually thereafter, the Administrator of the Environmental Protection Agency (in consultation with the Secretary [of Energy] acting through the Administrator of the Energy Information Administration) shall—

''(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of—

''(i) conventional gasoline containing ethanol;

''(ii) reformulated gasoline containing ethanol;

''(iii) conventional gasoline containing renewable fuel; and

''(iv) reformulated gasoline containing renewable fuel; and

''(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).

''(2) RECORDKEEPING AND REPORTING REQUIREMENTS.—The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the 'Administrator') may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate. The Administrator, to avoid duplicative requirements, shall rely, to the extent practicable, on existing reporting and recordkeeping requirements and other information available to the Administrator including gasoline distribution patterns that include multistate use areas.

''(3) APPLICABLE LAW.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.''

FINDINGS

Pub. L. 109–58, title XV, § 1502, Aug. 8, 2005, 119 Stat. 1076, provided that: ''Congress finds that—

''(1) since 1979, methyl tertiary butyl ether (hereinafter in this section referred to as 'MTBE') has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent;

''(2) Public Law 101–549 (commonly known as the 'Clean Air Act Amendments of 1990') (42 U.S.C. 7401 et seq.) [see Tables for classification] established a fuel oxygenate standard under which reformulated gasoline must contain at least 2 percent oxygen by weight; and

''(3) the fuel industry responded to the fuel oxygenate standard established by Public Law 101–549 by making substantial investments in—

''(A) MTBE production capacity; and

''(B) systems to deliver MTBE-containing gasoline to the marketplace.''

CLAIMS FILED AFTER AUGUST 8, 2005

Pub. L. 109–58, title XV, § 1503, Aug. 8, 2005, 119 Stat. 1076, provided that: ''Claims and legal actions filed after the date of enactment of this Act [Aug. 8, 2005] related to allegations involving actual or threatened contamination of methyl tertiary butyl ether (MTBE) may be removed to the appropriate United States district court.''

FINDINGS AND SENSE OF CONGRESS ON ETHANOL USAGE

Pub. L. 100–203, title I, § 1508, Dec. 22, 1987, 101 Stat. 1330–29, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) the United States is dependent for a large and growing share of its energy needs on the Middle East at a time when world petroleum reserves are declining;

''(2) the burning of gasoline causes pollution;

''(3) ethanol can be blended with gasoline to produce a cleaner source of fuel;

''(4) ethanol can be produced from grain, a renewable resource that is in considerable surplus in the United States;

''(5) the conversion of grain into ethanol would reduce farm program costs and grain surpluses; and

''(6) increasing the quantity of motor fuels that contain at least 10 percent ethanol from current levels to 50 percent by 1992 would create thousands of new jobs in ethanol production facilities.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator of the Environmental Protection Agency should use authority provided under the Clean Air Act (42 U.S.C. 7401 et seq.) to require greater use of ethanol as motor fuel.''

AGRICULTURAL MACHINERY: STUDY OF UNLEADED FUEL

Pub. L. 99–198, title XVII, § 1765, Dec. 23, 1985, 99 Stat. 1653, directed Administrator of EPA and Secretary of Agriculture jointly to conduct a study of use of fuel containing lead additives, and alternative lubricating additives, in gasoline engines that are used in agricultural machinery, and designed to combust fuel containing such additives, study to analyze potential for mechanical problems (including but not limited to valve recession) that may be associated with use of other fuels in such engines, and not later than Jan. 1, 1987, Administrator and Secretary to publish results of the study, with Administrator to publish in Federal Register notice of publication of such study and a summary thereof; directed Administrator, after notice and opportunity for hearing, but not later than 6 months after publication of the study, to make findings and recommendations on need for lead additives in gasoline to be used on a farm for farming purposes, including a determination of whether a modification of regulations limiting lead content of gasoline would be appropriate in the case of gasoline used on a farm for farming purposes, and submit to President and Congress a report containing the study, a summary of comments received during public hearing (including comments of Secretary), and findings and recommendations of Administrator made in accordance with clause (1), such report to be transmitted named congressional committees; directed Administrator between Jan. 1, 1986, and Dec. 31, 1987, to monitor actual lead content of leaded gasoline sold in the United States, with Administrator to determine average lead content of such gasoline for each 3-month period between Jan. 1, 1986, and Dec. 31, 1987, and if actual lead content falls below an average of 0.2 of a gram of lead per gallon in any such 3-month period, to report to Congress, and publish a notice thereof in Federal Register; provided that until Jan. 1, 1988, no regulation of Administrator issued under this section 211 could require an average lead content per gallon that is less than 0.1 of a gram per gallon; and authorized an appropriation.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or

other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7546. Renewable fuel

(a) Definitions

In this section:

(1) Municipal solid waste

The term ''municipal solid waste'' has the meaning given the term ''solid waste'' in section 6903 of this title.

(2) RFG State

The term ''RFG State'' means a State in which is located one or more covered areas (as defined in section 7545(k)(10)(D) of this title).

(3) Secretary

The term ''Secretary'' means the Secretary of Energy.

(b) Cellulosic biomass ethanol and municipal solid waste loan guarantee program

(1) In general

Funds may be provided for the cost (as defined in the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)) of loan guarantees issued under title XIV of the Energy Policy Act[1] to carry out commercial demonstration projects for celluosic[2] biomass and sucrose-derived ethanol.

(2) Demonstration projects

(A) In general

The Secretary shall issue loan guarantees under this section to carry out not more than 4 projects to commercially demonstrate the feasibility and viability of producing cellulosic biomass ethanol or sucrose-derived ethanol, including at least 1 project that uses cereal straw as a feedstock and 1 project that uses municipal solid waste as a feedstock.

(B) Design capacity

Each project shall have a design capacity to produce at least 30,000,000 gallons of cellulosic biomass ethanol each year.

(3) Applicant assurances

An applicant for a loan guarantee under this section shall provide assurances, satisfactory to the Secretary, that—

(A) the project design has been validated through the operation of a continuous process facility with a cumulative output of at least 50,000 gallons of ethanol;

(B) the project has been subject to a full technical review;

(C) the project is covered by adequate project performance guarantees;

(D) the project, with the loan guarantee, is economically viable; and

(E) there is a reasonable assurance of repayment of the guaranteed loan.

(4) Limitations

(A) Maximum guarantee

Except as provided in subparagraph (B), a loan guarantee under this section may be issued for up to 80 percent of the estimated cost of a project, but may not exceed $250,000,000 for a project.

(B) Additional guarantees

(i) In general

The Secretary may issue additional loan guarantees for a project to cover up to 80 percent of the excess of actual project cost over estimated project cost but not to exceed 15 percent of the amount of the original guarantee.

(ii) Principal and interest

Subject to subparagraph (A), the Secretary shall guarantee 100 percent of the principal and interest of a loan made under subparagraph (A).

(5) Equity contributions

To be eligible for a loan guarantee under this section, an applicant for the loan guarantee shall have binding commitments from equity investors to provide an initial equity contribution of at least 20 percent of the total project cost.

(6) Insufficient amounts

If the amount made available to carry out this section is insufficient to allow the Secretary to make loan guarantees for 3 projects described in subsection (b) of this section, the Secretary shall issue loan guarantees for one or more qualifying projects under this section in the order in which the applications for the projects are received by the Secretary.

(7) Approval

An application for a loan guarantee under this section shall be approved or disapproved by the Secretary not later than 90 days after the application is received by the Secretary.

(c) Authorization of appropriations for resource center

There is authorized to be appropriated, for a resource center to further develop bioconversion technology using low-cost biomass for the production of ethanol at the Center for Biomass-Based Energy at the Mississippi State University and the Oklahoma State University, $4,000,000 for each of fiscal years 2005 through 2007.

(d) Renewable fuel production research and development grants

(1) In general

The Administrator shall provide grants for the research into, and development and implementation of, renewable fuel production technologies in RFG States with low rates of ethanol production, including low rates of production of cellulosic biomass ethanol.

(2) Eligibility

(A) In general

The entities eligible to receive a grant under this subsection are academic institu-

[1] See References in Text note below.

[2] So in original.

tions in RFG States, and consortia made up of combinations of academic institutions, industry, State government agencies, or local government agencies in RFG States, that have proven experience and capabilities with relevant technologies.

(B) Application

To be eligible to receive a grant under this subsection, an eligible entity shall submit to the Administrator an application in such manner and form, and accompanied by such information, as the Administrator may specify.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $25,000,000 for each of fiscal years 2006 through 2010.

(e) Cellulosic biomass ethanol conversion assistance

(1) In general

The Secretary may provide grants to merchant producers of cellulosic biomass ethanol in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of cellulosic biomass ethanol.

(2) Eligible production facilities

A production facility shall be eligible to receive a grant under this subsection if the production facility—

(A) is located in the United States; and

(B) uses cellulosic biomass feedstocks derived from agricultural residues or municipal solid waste.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection—

(A) $250,000,000 for fiscal year 2006; and

(B) $400,000,000 for fiscal year 2007.

(July 14, 1955, ch. 360, title II, § 212, as added Pub. L. 109–58, title XV, § 1511, Aug. 8, 2005, 119 Stat. 1086.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (b)(1), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, as amended, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

The Energy Policy Act, referred to in subsec. (b)(1), probably means the Energy Policy Act of 2005, Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594. Title XIV of the Act probably should be a reference to title XV of the Act which relates to ethanol and motor fuels and enacted subchapter XIV (§ 16501 et seq.) of chapter 149 of this title and sections 6991i to 6991m and 7546 of this title, amended sections 6991 to 6991f, 6991h, 1991i, 7135, 7545, and 13220 of this title, and enacted provisions set out as notes under section 7545 of this title. Title XIV of the Act, which contains miscellaneous provisions, is classified principally to subchapter XIII (§ 16491 et seq.) of chapter 149 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

PRIOR PROVISIONS

A prior section 7546, act July 14, 1955, ch. 360, title II, § 212, as added Dec. 31, 1970, Pub. L. 91–604, § 10(c), 84 Stat. 1700; amended Dec. 31, 1970, Pub. L. 91–605, § 202(a), 84 Stat. 1739; Apr. 9, 1973, Pub. L. 93–15, § 1(b), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, § 13(b), 88 Stat. 265, related to low-emission vehicles, prior to repeal by Pub. L. 101–549, title II, § 230(10), Nov. 15, 1990, 104 Stat. 2529.

A prior section 212 of act July 14, 1955, was renumbered section 213 by Pub. L. 91–604, renumbered section 214 by Pub. L. 93–319, and renumbered section 216 by Pub. L. 95–95, and is classified to section 7550 of this title.

§ 7547. Nonroad engines and vehicles

(a) Emissions standards

(1) The Administrator shall conduct a study of emissions from nonroad engines and nonroad vehicles (other than locomotives or engines used in locomotives) to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such study shall be completed within 12 months of November 15, 1990.

(2) After notice and opportunity for public hearing, the Administrator shall determine within 12 months after completion of the study under paragraph (1), based upon the results of such study, whether emissions of carbon monoxide, oxides of nitrogen, and volatile organic compounds from new and existing nonroad engines or nonroad vehicles (other than locomotives or engines used in locomotives) are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards for ozone or carbon monoxide. Such determination shall be included in the regulations under paragraph (3).

(3) If the Administrator makes an affirmative determination under paragraph (2) the Administrator shall, within 12 months after completion of the study under paragraph (1), promulgate (and from time to time revise) regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 7521 of this title, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(4) If the Administrator determines that any emissions not referred to in paragraph (2) from

new nonroad engines or vehicles significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, the Administrator may promulgate (and from time to time revise) such regulations as the Administrator deems appropriate containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution, taking into account costs, noise, safety, and energy factors associated with the application of technology which the Administrator determines will be available for the engines and vehicles to which such standards apply. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(5) Within 5 years after November 15, 1990, the Administrator shall promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the locomotives or engines to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

(b) Effective date

Standards under this section shall take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period and energy and safety.

(c) Safe controls

Effective with respect to new engines or vehicles to which standards under this section apply, no emission control device, system, or element of design shall be used in such a new nonroad engine or new nonroad vehicle for purposes of complying with such standards if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function. In determining whether an unreasonable risk exists, the Administrator shall consider factors including those described in section 7521(a)(4)(B) of this title.

(d) Enforcement

The standards under this section shall be subject to sections 7525, 7541, 7542, and 7543 of this title, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section 7521 of this title. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section.

(July 14, 1955, ch. 360, title II, § 213, as added Pub. L. 93–319, § 10, June 22, 1974, 88 Stat. 261; amended Pub. L. 101–549, title II, § 222(a), Nov. 15, 1990, 104 Stat. 2500.)

CODIFICATION

Section was formerly classified to section 1857f–6f of this title.

PRIOR PROVISIONS

A prior section 213 of act July 14, 1955, was renumbered section 214 by Pub. L. 93–319 and renumbered section 216 by Pub. L. 95–95, and is classified to section 7550 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions requiring Administrator and Secretary of Transportation to conduct study on fuel economy improvement for new motor vehicles manufactured during and after model year 1980.

REGULATIONS RELATING TO STANDARDS TO REDUCE EMISSIONS

Pub. L. 108–199, div. G, title IV, § 428(b), Jan. 23, 2004, 118 Stat. 418, provided that: "Not later than December 1, 2004, the Administrator of the Environmental Protection Agency shall propose regulations under the Clean Air Act [42 U.S.C. 7401 et seq.] that shall contain standards to reduce emissions from new nonroad spark-ignition engines smaller than 50 horsepower. Not later than December 31, 2005, the Administrator shall publish in the Federal Register final regulations containing such standards."

§ 7548. Study of particulate emissions from motor vehicles

(a) Study and analysis

(1) The Administrator shall conduct a study concerning the effects on health and welfare of particulate emissions from motor vehicles or motor vehicle engines to which section 7521 of this title applies. Such study shall characterize and quantify such emissions and analyze the relationship of such emissions to various fuels and fuel additives.

(2) The study shall also include an analysis of particulate emissions from mobile sources which are not related to engine emissions (including, but not limited to tire debris, and asbestos from brake lining).

(b) Report to Congress

The Administrator shall report to the Congress the findings and results of the study conducted under subsection (a) of this section not later than two years after August 7, 1977. Such report shall also include recommendations for standards or methods to regulate particulate emissions described in paragraph (2) of subsection (a) of this section.

(July 14, 1955, ch. 360, title II, § 214, as added Pub. L. 95–95, title II, § 224(d), Aug. 7, 1977, 91 Stat. 767.)

PRIOR PROVISIONS

A prior section 214 of act July 14, 1955, was renumbered section 216 by Pub. L. 95–95 and is classified to section 7550 of this title.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY ON SUSPENDED PARTICULATE MATTER

Section 403(a) of Pub. L. 95–95 directed Administrator of EPA, not later than 18 months after Aug. 7, 1977, in

cooperation with National Academy of Sciences, to study and report to Congress on relationship between size, weight, and chemical composition of suspended particulate matter and nature and degree of endangerment to public health or welfare presented by such particulate matter and availability of technology for controlling such particulate matter.

§ 7549. High altitude performance adjustments

(a) Instruction of the manufacturer

(1) Any action taken with respect to any element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter (including any alteration or adjustment of such element), shall be treated as not in violation of section 7522(a) of this title if such action is performed in accordance with high altitude adjustment instructions provided by the manufacturer under subsection (b) of this section and approved by the Administrator.

(2) If the Administrator finds that adjustments or modifications made pursuant to instructions of the manufacturer under paragraph (1) will not insure emission control performance with respect to each standard under section 7521 of this title at least equivalent to that which would result if no such adjustments or modifications were made, he shall disapprove such instructions. Such finding shall be based upon minimum engineering evaluations consistent with good engineering practice.

(b) Regulations

(1) Instructions respecting each class or category of vehicles or engines to which this subchapter applies providing for such vehicle and engine adjustments and modifications as may be necessary to insure emission control performance at different altitudes shall be submitted by the manufacturer to the Administrator pursuant to regulations promulgated by the Administrator.

(2) Any knowing violation by a manufacturer of requirements of the Administrator under paragraph (1) shall be treated as a violation by such manufacturer of section 7522(a)(3) of this title for purposes of the penalties contained in section 7524 of this title.

(3) Such instructions shall provide, in addition to other adjustments, for adjustments for vehicles moving from high altitude areas to low altitude areas after the initial registration of such vehicles.

(c) Manufacturer parts

No instructions under this section respecting adjustments or modifications may require the use of any manufacturer parts (as defined in section 7522(a) of this title) unless the manufacturer demonstrates to the satisfaction of the Administrator that the use of such manufacturer parts is necessary to insure emission control performance.

(d) State inspection and maintenance programs

Before January 1, 1981 the authority provided by this section shall be available in any high altitude State (as determined under regulations of the Administrator under regulations promulgated before August 7, 1977) but after December 31, 1980, such authority shall be available only in any such State in which an inspection and maintenance program for the testing of motor vehicle emissions has been instituted for the portions of the State where any national ambient air quality standard for auto-related pollutants has not been attained.

(e) High altitude testing

(1) The Administrator shall promptly establish at least one testing center (in addition to the testing centers existing on November 15, 1990) located at a site that represents high altitude conditions, to ascertain in a reasonable manner whether, when in actual use throughout their useful life (as determined under section 7521(d) of this title), each class or category of vehicle and engines to which regulations under section 7521 of this title apply conforms to the emissions standards established by such regulations. For purposes of this subsection, the term ''high altitude conditions'' refers to high altitude as defined in regulations of the Administrator in effect as of November 15, 1990.

(2) The Administrator, in cooperation with the Secretary of Energy and the Administrator of the Federal Transit Administration, and such other agencies as the Administrator deems appropriate, shall establish a research and technology assessment center to provide for the development and evaluation of less-polluting heavy-duty engines and fuels for use in buses, heavy-duty trucks, and non-road engines and vehicles, which shall be located at a high-altitude site that represents high-altitude conditions. In establishing and funding such a center, the Administrator shall give preference to proposals which provide for local cost-sharing of facilities and recovery of costs of operation through utilization of such facility for the purposes of this section.

(3) The Administrator shall designate at least one center at high-altitude conditions to provide research on after-market emission components, dual-fueled vehicles and conversion kits, the effects of tampering on emissions equipment, testing of alternate fuels and conversion kits, and the development of curricula, training courses, and materials to maximize the effectiveness of inspection and maintenance programs as they relate to promoting effective control of vehicle emissions at high-altitude elevations. Preference shall be given to existing vehicle emissions testing and research centers that have established reputations for vehicle emissions research and development and training, and that possess in-house Federal Test Procedure capacity.

(July 14, 1955, ch. 360, title II, § 215, as added Pub. L. 95–95, title II, § 211(b), Aug. 7, 1977, 91 Stat. 757; amended Pub. L. 95–190, § 14(a)(75), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title II, § 224, Nov. 15, 1990, 104 Stat. 2503; Pub. L. 102–240, title III, § 3004(b), Dec. 18, 1991, 105 Stat. 2088.)

CODIFICATION

In subsec. (d), ''August 7, 1977'' substituted for ''the date of enactment of this Act'' to reflect the probable intent of Congress that such date of enactment meant the date of enactment of Pub. L. 95–95.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–549 added subsec. (e).

1977—Subsec. (d). Pub. L. 95–190 substituted ''December 31, 1980'' for ''December 31, 1981''.

CHANGE OF NAME

''Federal Transit Administration'' substituted for ''Urban Mass Transportation Administration'' in subsec. (e)(2) pursuant to section 3004(b) of Pub. L. 102–240, set out as a note under section 107 of Title 49, Transportation.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7550. Definitions

As used in this part—

(1) The term ''manufacturer'' as used in sections 7521, 7522, 7525, 7541, and 7542 of this title means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce.

(2) The term ''motor vehicle'' means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) Except with respect to vehicles or engines imported or offered for importation, the term ''new motor vehicle'' means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term ''new motor vehicle engine'' means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 7521 of this title which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term ''dealer'' means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term ''ultimate purchaser'' means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term ''commerce'' means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

(7) VEHICLE CURB WEIGHT, GROSS VEHICLE WEIGHT RATING, LIGHT-DUTY TRUCK, LIGHT-DUTY VEHICLE, AND LOADED VEHICLE WEIGHT.—The terms ''vehicle curb weight'', ''gross vehicle weight rating'' (GVWR), ''light-duty truck'' (LDT), light-duty vehicle,[1] and ''loaded vehicle weight'' (LVW) have the meaning provided in regulations promulgated by the Administrator and in effect as of November 15, 1990. The abbreviations in parentheses corresponding to any term referred to in this paragraph shall have the same meaning as the corresponding term.

(8) TEST WEIGHT.—The term ''test weight'' and the abbreviation ''tw'' mean the vehicle curb weight added to the gross vehicle weight rating (gvwr) and divided by 2.

(9) MOTOR VEHICLE OR ENGINE PART MANUFACTURER.—The term ''motor vehicle or engine part manufacturer'' as used in sections 7541 and 7542 of this title means any person engaged in the manufacturing, assembling or rebuilding of any device, system, part, component or element of design which is installed in or on motor vehicles or motor vehicle engines.

(10) NONROAD ENGINE.—The term ''nonroad engine'' means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

(11) NONROAD VEHICLE.—The term ''nonroad vehicle'' means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

(July 14, 1955, ch. 360, title II, § 216, formerly § 208, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 994; renumbered § 212, and amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 503; renumbered § 213, and amended Pub. L. 91–604, §§ 8(a), 10(d), 11(a)(2)(A), Dec. 31, 1970, 84 Stat. 1694, 1703, 1705; renumbered § 214, Pub. L. 93–319, § 10, June 22, 1974, 88 Stat. 261; renumbered § 216, Pub. L. 95–95, title II, § 224(d), Aug. 7, 1977, 91 Stat. 767; Pub. L. 101–549, title II, § 223, Nov. 15, 1990, 104 Stat. 2503.)

CODIFICATION

Section was formerly classified to section 1857f–7 of this title.

AMENDMENTS

1990—Par. (1). Pub. L. 101–549, § 223(b), inserted references to new nonroad vehicles or new nonroad engines.

Pars. (7) to (11). Pub. L. 101–549, § 223(a), added pars. (7) to (11).

1970—Pub. L. 91–604, § 11(a)(2)(A), substituted ''part'' for ''subchapter''.

Par. (1). Pub. L. 91–604, § 10(d)(1), inserted reference to section 7521 of this title.

Par. (3). Pub. L. 91–604, § 10(d)(2), inserted provisions which defined such terms with respect to imported vehicles or engines.

1967—Pub. L. 90–148 inserted ''as used in sections 7522, 7525, 7541, and 7542 of this title'' after ''manufacturer'' in par. (1).

§ 7551. Omitted

Section, Pub. L. 95–95, title II, § 203, Aug. 7, 1977, 91 Stat. 754; Pub. L. 97–375, title I, § 106(a), Dec. 21, 1982, 96 Stat. 1820, which required the Administrator of the Environmental Protection Agency to report to Congress

[1] So in original. Probably should be set off by quotation marks.

respecting the motor vehicle fuel consumption associated with the standards applicable for the immediately preceding model year, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 5th item on page 165 of House Document No. 103–7. Section was enacted as part of the Clean Air Act Amendments of 1977, and not as part of the Clean Air Act which comprises this chapter.

§ 7552. Motor vehicle compliance program fees

(a) Fee collection

Consistent with section 9701 of title 31, the Administrator may promulgate (and from time to time revise) regulations establishing fees to recover all reasonable costs to the Administrator associated with—

(1) new vehicle or engine certification under section 7525(a) of this title or part C of this subchapter,

(2) new vehicle or engine compliance monitoring and testing under section 7525(b) of this title or part C of this subchapter, and

(3) in-use vehicle or engine compliance monitoring and testing under section 7541(c) of this title or part C of this subchapter.

The Administrator may establish for all foreign and domestic manufacturers a fee schedule based on such factors as the Administrator finds appropriate and equitable and nondiscriminatory, including the number of vehicles or engines produced under a certificate of conformity. In the case of heavy-duty engine and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs.

(b) Special Treasury fund

Any fees collected under this section shall be deposited in a special fund in the United States Treasury for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency's activities for which the fees were collected.

(c) Limitation on fund use

Moneys in the special fund referred to in subsection (b) of this section shall not be used until after the first fiscal year commencing after the first July 1 when fees are paid into the fund.

(d) Administrator's testing authority

Nothing in this subsection shall be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in this part.

(July 14, 1955, ch. 360, title II, § 217, as added Pub. L. 101–549, title II, § 225, Nov. 15, 1990, 104 Stat. 2504.)

§ 7553. Prohibition on production of engines requiring leaded gasoline

The Administrator shall promulgate regulations applicable to motor vehicle engines and nonroad engines manufactured after model year 1992 that prohibit the manufacture, sale, or introduction into commerce of any engine that requires leaded gasoline.

(July 14, 1955, ch. 360, title II, § 218, as added Pub. L. 101–549, title II, § 226, Nov. 15, 1990, 104 Stat. 2505.)

§ 7554. Urban bus standards

(a) Standards for model years after 1993

Not later than January 1, 1992, the Administrator shall promulgate regulations under section 7521(a) of this title applicable to urban buses for the model year 1994 and thereafter. Such standards shall be based on the best technology that can reasonably be anticipated to be available at the time such measures are to be implemented, taking costs, safety, energy, lead time, and other relevant factors into account. Such regulations shall require that such urban buses comply with the provisions of subsection (b) of this section (and subsection (c) of this subsection,[1] if applicable) in addition to compliance with the standards applicable under section 7521(a) of this title for heavy-duty vehicles of the same type and model year.

(b) PM standard

(1) 50 percent reduction

The standards under section 7521(a) of this title applicable to urban buses shall require that, effective for the model year 1994 and thereafter, emissions of particulate matter (PM) from urban buses shall not exceed 50 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 7521(a) of this title as of November 15, 1990, for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

(2) Revised reduction

The Administrator shall increase the level of emissions of particulate matter allowed under the standard referred to in paragraph (1) if the Administrator determines that the 50 percent reduction referred to in paragraph (1) is not technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors. The Administrator may not increase such level of emissions above 70 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 7521(a) of this title as of November 15, 1990, for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

(3) Determination as part of rule

As part of the rulemaking under subsection (a) of this section, the Administrator shall make a determination as to whether the 50 percent reduction referred to in paragraph (1) is technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors.

(c) Low-polluting fuel requirement

(1) Annual testing

Beginning with model year 1994 buses, the Administrator shall conduct annual tests of a representative sample of operating urban buses subject to the particulate matter (PM) standard applicable pursuant to subsection (b) of this section to determine whether such buses comply with such standard in use over their full useful life.

[1] So in original. Probably should be "section,".

(2) Promulgation of additional low-polluting fuel requirement

(A) If the Administrator determines, based on the testing under paragraph (1), that urban buses subject to the particulate matter (PM) standard applicable pursuant to subsection (b) of this section do not comply with such standard in use over their full useful life, he shall revise the standards applicable to such buses to require (in addition to compliance with the PM standard applicable pursuant to subsection (b) of this section) that all new urban buses purchased or placed into service by owners or operators of urban buses in all metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of 750,000 or more shall be capable of operating, and shall be exclusively operated, on low-polluting fuels. The Administrator shall establish the pass-fail rate for purposes of testing under this subparagraph.

(B) The Administrator shall promulgate a schedule phasing in any low-polluting fuel requirement established pursuant to this paragraph to an increasing percentage of new urban buses purchased or placed into service in each of the first 5 model years commencing 3 years after the determination under subparagraph (A). Under such schedule 100 percent of new urban buses placed into service in the fifth model year commencing 3 years after the determination under subparagraph (A) shall comply with the low-polluting fuel requirement established pursuant to this paragraph.

(C) The Administrator may extend the requirements of this paragraph to metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of less than 750,000, if the Administrator determines that a significant benefit to public health could be expected to result from such extension.

(d) Retrofit requirements

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations under section 7521(a) of this title requiring that urban buses which—

(1) are operating in areas referred to in subparagraph (A) of subsection (c)(2) of this section (or subparagraph (C) of subsection (c)(2) of this section if the Administrator has taken action under that subparagraph);

(2) were not subject to standards in effect under the regulations under subsection (a) of this section; and

(3) have their engines replaced or rebuilt after January 1, 1995,

shall comply with an emissions standard or emissions control technology requirement established by the Administrator in such regulations. Such emissions standard or emissions control technology requirement shall reflect the best retrofit technology and maintenance practices reasonably achievable.

(e) Procedures for administration and enforcement

The Administrator shall establish, within 18 months after November 15, 1990, and in accordance with section 7525(h) of this title, procedures for the administration and enforcement of standards for buses subject to standards under this section, testing procedures, sampling protocols, in-use compliance requirements, and criteria governing evaluation of buses. Procedures for testing (including, but not limited to, certification testing) shall reflect actual operating conditions.

(f) Definitions

For purposes of this section—

(1) Urban bus

The term ''urban bus'' has the meaning provided under regulations of the Administrator promulgated under section 7521(a) of this title.

(2) Low-polluting fuel

The term ''low-polluting fuel'' means methanol, ethanol, propane, or natural gas, or any comparably low-polluting fuel. In determining whether a fuel is comparably low-polluting, the Administrator shall consider both the level of emissions of air pollutants from vehicles using the fuel and the contribution of such emissions to ambient levels of air pollutants. For purposes of this paragraph, the term ''methanol'' includes any fuel which contains at least 85 percent methanol unless the Administrator increases such percentage as he deems appropriate to protect public health and welfare.

(July 14, 1955, ch. 360, title II, § 219, as added Pub. L. 101–549, title II, § 227[(a)], Nov. 15, 1990, 104 Stat. 2505.)

PART B—AIRCRAFT EMISSION STANDARDS

§ 7571. Establishment of standards

(a) Study; proposed standards; hearings; issuance of regulations

(1) Within 90 days after December 31, 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine—

(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

(B) the technological feasibility of controlling such emissions.

(2)(A) The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B)(i) The Administrator shall consult with the Administrator of the Federal Aviation Administration on aircraft engine emission standards.

(ii) The Administrator shall not change the aircraft engine emission standards if such change would significantly increase noise and adversely affect safety.

(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such pro-

posed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

(b) Effective date of regulations

Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(c) Regulations which create hazards to aircraft safety

Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made.

(July 14, 1955, ch. 360, title II, § 231, as added Pub. L. 91–604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1703; amended Pub. L. 95–95, title II, § 225, title IV, § 401(f), Aug. 7, 1977, 91 Stat. 769, 791; Pub. L. 104–264, title IV, § 406(b), Oct. 9, 1996, 110 Stat. 3257.)

CODIFICATION

Section was formerly classified to section 1857f–9 of this title.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–264 designated existing provisions as subpar. (A) and added subpar. (B).

1977—Subsec. (a)(2). Pub. L. 95–95, § 401(f), substituted ''The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare'' for ''Within 180 days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare''.

Subsec. (c). Pub. L. 95–95, § 225, substituted ''Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety'' for ''Any regulations under this section, or amendments thereto, with respect to aircraft, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for aircraft safety'' and inserted provision that findings include a reasonably specific statement of the basis upon which the finding was made.

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of Title 49, Transportation.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY AND INVESTIGATION OF UNINSTALLED AIRCRAFT ENGINES

Pub. L. 101–549, title II, § 233, Nov. 15, 1990, 104 Stat. 2529, provided that:

''(a) STUDY.—The Administrator of the Environmental Protection Agency and the Secretary of Transportation, in consultation with the Secretary of Defense, shall commence a study and investigation of the testing of uninstalled aircraft engines in enclosed test cells that shall address at a minimum the following issues and such other issues as they shall deem appropriate—

''(1) whether technologies exist to control some or all emissions of oxides of nitrogen from test cells;

''(2) the effectiveness of such technologies;

''(3) the cost of implementing such technologies;

''(4) whether such technologies affect the safety, design, structure, operation, or performance of aircraft engines;

''(5) whether such technologies impair the effectiveness and accuracy of aircraft engine safety design, and performance tests conducted in test cells; and

''(6) the impact of not controlling such oxides of nitrogen in the applicable nonattainment areas and on other sources, stationary and mobile, on oxides of nitrogen in such areas.

''(b) REPORT, AUTHORITY TO REGULATE.—Not later than 24 months after enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator of the Environmental Protection Agency and the Secretary of Transportation shall submit to Congress a report of the study conducted under this section. Following the completion of such study, any of the States may adopt or enforce any standard for emissions of oxides of nitrogen from test cells only after issuing a public notice stating whether such standards are in accordance with the findings of the study.''

§ 7572. Enforcement of standards

(a) Regulations to insure compliance with standards

The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 7571 of this title by the Administrator. The regulations of the Secretary of Transportation shall include provisions making such standards applicable in the issuance, amendment, modification, suspen-

sion, or revocation of any certificate authorized by part A of subtitle VII of title 49 or the Department of Transportation Act. Such Secretary shall insure that all necessary inspections are accomplished, and,[1] may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

(b) Notice and appeal rights

In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 7571 of this title or of a regulation prescribed under subsection (a) of this section is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in part A of subtitle VII of title 49 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation.

(July 14, 1955, ch. 360, title II, § 232, as added Pub. L. 91–604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1704.)

REFERENCES IN TEXT

The Department of Transportation Act, referred to in subsecs. (a) and (b), is Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, as amended, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103–272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104–287, § 7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

CODIFICATION

In subsecs. (a) and (b), ''part A of subtitle VII of title 49'' substituted for ''the Federal Aviation Act [49 App. U.S.C. 1301 et seq.]'' and ''the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Section was formerly classified to section 1857f–10 of this title.

§ 7573. State standards and controls

No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

(July 14, 1955, ch. 360, title II, § 233, as added Pub. L. 91–604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1704.)

CODIFICATION

Section was formerly classified to section 1857f–11 of this title.

§ 7574. Definitions

Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 40102(a) of title 49.

(July 14, 1955, ch. 360, title II, § 234, as added Pub. L. 91–604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1705.)

CODIFICATION

In text, ''section 40102(a) of title 49'' substituted for ''section 101 of the Federal Aviation Act of 1958'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Section was formerly classified to section 1857f–12 of this title.

PART C—CLEAN FUEL VEHICLES

§ 7581. Definitions

For purposes of this part—

(1) Terms defined in part A

The definitions applicable to part A under section 7550 of this title shall also apply for purposes of this part.

(2) Clean alternative fuel

The term ''clean alternative fuel'' means any fuel (including methanol, ethanol, or other alcohols (including any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels), reformulated gasoline, diesel, natural gas, liquefied petroleum gas, and hydrogen) or power source (including electricity) used in a clean-fuel vehicle that complies with the standards and requirements applicable to such vehicle under this subchapter when using such fuel or power source. In the case of any flexible fuel vehicle or dual fuel vehicle, the term ''clean alternative fuel'' means only a fuel with respect to which such vehicle was certified as a clean-fuel vehicle meeting the standards applicable to clean-fuel vehicles under section 7583(d)(2) of this title when operating on clean alternative fuel (or any CARB standards which replaces such standards pursuant to section 7583(e) of this title).

(3) NMOG

The term nonmethane organic gas (''NMOG'') means the sum of nonoxygenated and oxygenated hydrocarbons contained in a gas sample, including, at a minimum, all oxygenated organic gases containing 5 or fewer carbon atoms (i.e., aldehydes, ketones, alcohols, ethers, etc.), and all known alkanes, alkenes, alkynes, and aromatics containing 12 or fewer carbon atoms. To demonstrate compliance with a NMOG standard, NMOG emissions shall be measured in accordance with the ''California Non-Methane Organic Gas Test Procedures''. In the case of vehicles using fuels other than base gasoline, the level of NMOG emissions shall be adjusted based on the reactivity of the emissions relative to vehicles using base gasoline.

(4) Base gasoline

The term ''base gasoline'' means gasoline which meets the following specifications:

Specifications of Base Gasoline Used as Basis for Reactivity Readjustment:	
API gravity	57.8
Sulfur, ppm	317
Color	Purple
Benzene, vol. %	1.35

[1] So in original. The comma probably should not appear.

Reid vapor pressure	8.7
Drivability	1195
Antiknock index	87.3
Distillation, D–86 °F	
IBP	92
10%	126
50%	219
90%	327
EP	414
Hydrocarbon Type, Vol. % FIA:	
Aromatics	30.9
Olefins	8.2
Saturates	60.9

The Administrator shall modify the definitions of NMOG, base gasoline, and the methods for making reactivity adjustments, to conform to the definitions and method used in California under the Low-Emission Vehicle and Clean Fuel Regulations of the California Air Resources Board, so long as the California definitions are, in the aggregate, at least as protective of public health and welfare as the definitions in this section.

(5) Covered fleet

The term ''covered fleet'' means 10 or more motor vehicles which are owned or operated by a single person. In determining the number of vehicles owned or operated by a single person for purposes of this paragraph, all motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person shall be treated as owned by such person. The term ''covered fleet'' shall not include motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other emergency vehicles, or nonroad vehicles (including farm and construction vehicles).

(6) Covered fleet vehicle

The term ''covered fleet vehicle'' means only a motor vehicle which is—

(i) in a vehicle class for which standards are applicable under this part; and

(ii) in a covered fleet which is centrally fueled (or capable of being centrally fueled).

No vehicle which under normal operations is garaged at a personal residence at night shall be considered to be a vehicle which is capable of being centrally fueled within the meaning of this paragraph.

(7) Clean-fuel vehicle

The term ''clean-fuel vehicle'' means a vehicle in a class or category of vehicles which has been certified to meet for any model year the clean-fuel vehicle standards applicable under this part for that model year to clean-fuel vehicles in that class or category.

(July 14, 1955, ch. 360, title II, § 241, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2511.)

§ 7582. Requirements applicable to clean-fuel vehicles

(a) Promulgation of standards

Not later than 24 months after November 15, 1990, the Administrator shall promulgate regulations under this part containing clean-fuel vehicle standards for the clean-fuel vehicles specified in this part.

(b) Other requirements

Clean-fuel vehicles of up to 8,500 gvwr subject to standards set forth in this part shall comply with all motor vehicle requirements of this subchapter (such as requirements relating to on-board diagnostics, evaporative emissions, etc.) which are applicable to conventional gasoline-fueled vehicles of the same category and model year, except as provided in section 7584 of this title with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of this part. Clean-fuel vehicles of 8,500 gvwr or greater subject to standards set forth in this part shall comply with all requirements of this subchapter which are applicable in the case of conventional gasoline-fueled or diesel fueled vehicles of the same category and model year, except as provided in section 7584 of this title with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of this part.

(c) In-use useful life and testing

(1) In the case of light-duty vehicles and light-duty trucks up to 6,000 lbs gvwr, the useful life for purposes of determining in-use compliance with the standards under section 7583 of this title shall be—

(A) a period of 5 years or 50,000 miles (or the equivalent) whichever first occurs, in the case of standards applicable for purposes of certification at 50,000 miles; and

(B) a period of 10 years or 100,000 miles (or the equivalent) whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

(2) In the case of light-duty trucks of more than 6,000 lbs gvwr, the useful life for purposes of determining in-use compliance with the standards under section 7583 of this title shall be—

(A) a period of 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and

(B) a period of 11 years or 120,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

(July 14, 1955, ch. 360, title II, § 242, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2513.)

§ 7583. Standards for light-duty clean-fuel vehicles

(a) Exhaust standards for light-duty vehicles and certain light-duty trucks

The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (gvwr) (but not including light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw)) or light-duty vehicles:

(1) Phase I

Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table:

PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Pollutant	NMOG	CO	NO_x	PM	HCHO (formaldehyde)
50,000 mile standard.	0.125	3.4	0.4	.....	0.015
100,000 mile standard.	0.156	4.2	0.6	0.08*	0.018

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(2) Phase II

Beginning with model year 2001, for air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.075	3.4	0.2	.....	0.015
100,000 mile standard.	0.090	4.2	0.3	0.08	0.018

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(b) Exhaust standards for light-duty trucks of more than 3,750 lbs. LVW and up to 5,750 lbs. LVW and up to 6,000 lbs. GVWR

The standards set forth in this paragraph[1] shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw) but not more than 5,750 lbs. lvw and not more than 6,000 lbs. gross weight rating (GVWR):

(1) Phase I

Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. AND UP TO 5,750 LBS. LVW AND UP TO 6,000 LBS. GVWR

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.160	4.4	0.7	.....	0.018
100,000 mile standard.	0.200	5.5	0.9	0.08	0.023

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(2) Phase II

Beginning with model year 2001, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. LVW AND UP TO 5,750 LBS. LVW AND UP TO 6,000 LBS. GVWR

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.100	4.4	0.4	.....	0.018
100,000 mile standard.	0.130	5.5	0.5	0.08	0.023

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(c) Exhaust standards for light-duty trucks greater than 6,000 lbs. GVWR

The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 6,000 lbs. gross weight rating (GVWR) and less than or

[1] So in original. Probably should be ''subsection''.

equal to 8,500 lbs. GVWR, beginning with model year 1998. For the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions of vehicles within the test weight categories specified in the following table shall not exceed the levels specified in such table.

CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT DUTY TRUCKS GREATER THAN 6,000 LBS. GVWR

Test Weight Category: Up to 3,750 lbs. tw

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.125	3.4	0.4**	.....	0.015
120,000 mile standard.	0.180	5.0	0.6	0.08	0.022

Test Weight Category: Above 3,750 but not above 5,750 lbs. tw

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.160	4.4	0.7**	.....	0.018
120,000 mile standard.	0.230	6.4	1.0	0.10	0.027

Test Weight Category: Above 5,750 tw but not above 8,500 lbs. gvwr

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.195	5.0	1.1**	.....	0.022
120,000 mile standard.	0.280	7.3	1.5	0.12	0.032

Standards are expressed in grams per mile (gpm).

*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

**Standard not applicable to diesel-fueled vehicles.

For the 50,000 mile standards and the 120,000 mile standards set forth in the table, the applicable useful life for purposes of certification shall be 50,000 miles or 120,000 miles, respectively.

(d) Flexible and dual-fuel vehicles

(1) In general

The Administrator shall establish standards and requirements under this section for the model year 1996 and thereafter for vehicles weighing not more than 8,500 lbs. gvwr which are capable of operating on more than one fuel. Such standards shall require that such vehicles meet the exhaust standards applicable under subsection[2] (a), (b), and (c) of this section for CO, NO_x, and HCHO, and if appropriate, PM for single-fuel vehicles of the same vehicle category and model year.

(2) Exhaust NMOG standard for operation on clean alternative fuel

In addition to standards for the pollutants referred to in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below when the vehicle is operated on the clean alternative fuel for which such vehicle is certified:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL

Light-duty Trucks up to 6,000 lbs. GVWR and Light-duty vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 1996:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles.	0.125	0.156
LDT's (3,751–5,750 lbs. LVW).	0.160	0.20
Beginning MY 2001:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles.	0.075	0.090
LDT's (3,751–5,750 lbs. LVW).	0.100	0.130

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks More than 6,000 lbs. GVWR

Vehicle Type	Column A (50,000 mi.) Standard	Column B (120,000 mi.) Standard
Beginning MY 1998:		
LDT's (0–3,750 lbs. TW)	0.125	0.180
LDT's (3,751–5,750 lbs. TW)	0.160	0.230
LDT's (above 5,750 lbs. TW)	0.195	0.280

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 120,000 miles.

(3) NMOG standard for operation on conventional fuel

In addition to the standards referred to in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL

Light-duty Trucks of up to 6,000 lbs. GVWR and Light-duty vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 1996:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles.	0.25	0.31
LDT's (3,751–5,750 lbs. LVW).	0.32	0.40

[2] So in original. Probably should be ''subsections''.

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL

Light-duty Trucks of up to 6,000 lbs. GVWR and Light-duty vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 2001:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles.	0.125	0.156
LDT's (3,751–5,750 lbs. LVW).	0.160	0.200

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks of up to 6,000 lbs. GVWR

Vehicle Type	Column A (50,000 mi.) Standard	Column B (120,000 mi.) Standard
Beginning MY 1998:		
LDT's (0–3,750 lbs. TW)	0.25	0.36
LDT's (3,751–5,750 lbs. TW)	0.32	0.46
LDT's (above 5,750 lbs. TW)	0.39	0.56

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 120,000 miles.

(e) Replacement by CARB standards

(1) Single set of CARB standards

If the State of California promulgates regulations establishing and implementing a single set of standards applicable in California pursuant to a waiver approved under section 7543 of this title to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and such set of standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 7582 of this title and subsection (a), (b), (c), or (d) of this section, such set of California standards shall apply to clean-fuel vehicles in such category in lieu of the standards otherwise applicable under section 7582 of this title and subsection (a), (b), (c), or (d) of this section, as the case may be.

(2) Multiple sets of CARB standards

If the State of California promulgates regulations establishing and implementing several different sets of standards applicable in California pursuant to a waiver approved under section 7543 of this title to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and each of such sets of California standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 7582 of this title and subsection (a), (b), (c), or (d) of this section, such standards shall be treated as ''qualifying California standards'' for purposes of this paragraph. Where more than one set of qualifying standards are established and administered by the State of California, the least stringent set of qualifying California standards shall apply to the clean-fuel vehicles concerned in lieu of the standards otherwise applicable to such vehicles under section 7582 of this title and this section.

(f) Less stringent CARB standards

If the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board applicable to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section are modified after November 15, 1990, to provide an emissions standard which is less stringent than the otherwise applicable standard set forth in subsection (a), (b), (c), or (d) of this section, or if any effective date contained in such regulations is delayed, such modified standards or such delay (or both, as the case may be) shall apply, for an interim period, in lieu of the standard or effective date otherwise applicable under subsection (a), (b), (c), or (d) of this section to any vehicles covered by such modified standard or delayed effective date. The interim period shall be a period of not more than 2 model years from the effective date otherwise applicable under subsection (a), (b), (c), or (d) of this section. After such interim period, the otherwise applicable standard set forth in subsection (a), (b), (c), or (d) of this section shall take effect with respect to such vehicles (unless subsequently replaced under subsection (e) of this section).

(g) Not applicable to heavy-duty vehicles

Notwithstanding any provision of the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board nothing in this section shall apply to heavy-duty engines in vehicles of more than 8,500 lbs. GVWR.

(July 14, 1955, ch. 360, title II, § 243, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2514.)

§ 7584. Administration and enforcement as per California standards

Where the numerical clean-fuel vehicle standards applicable under this part to vehicles of not more than 8,500 lbs. GVWR are the same as numerical emission standards applicable in California under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board (''CARB''), such standards shall be administered and enforced by the Administrator—

(1) in the same manner and with the same flexibility as the State of California administers and enforces corresponding standards applicable under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board (''CARB''); and

(2) subject to the same requirements, and utilizing the same interpretations and policy judgments, as are applicable in the case of such CARB standards, including, but not limited to, requirements regarding certification, production-line testing, and in-use compliance,

unless the Administrator determines (in promulgating the rules establishing the clean fuel vehi-

cle program under this section) that any such administration and enforcement would not meet the criteria for a waiver under section 7543 of this title. Nothing in this section shall apply in the case of standards under section 7585 of this title for heavy-duty vehicles.

(July 14, 1955, ch. 360, title II, § 244, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2519.)

§ 7585. Standards for heavy-duty clean-fuel vehicles (GVWR above 8,500 up to 26,000 lbs.)

(a) Model years after 1997; combined NO_x and NMHC standard

For classes or categories of heavy-duty vehicles or engines manufactured for the model year 1998 or thereafter and having a GVWR greater than 8,500 lbs. and up to 26,000 lbs. GVWR, the standards under this part for clean-fuel vehicles shall require that combined emissions of oxides of nitrogen (NO_x) and nonmethane hydrocarbons (NMHC) shall not exceed 3.15 grams per brake horsepower hour (equivalent to 50 percent of the combined emission standards applicable under section 7521 of this title for such air pollutants in the case of a conventional model year 1994 heavy-duty diesel-fueled vehicle or engine). No standard shall be promulgated as provided in this section for any heavy-duty vehicle of more than 26,000 lbs. GVWR.

(b) Revised standards that are less stringent

(1) The Administrator may promulgate a revised less stringent standard for the vehicles or engines referred to in subsection (a) of this section if the Administrator determines that the 50 percent reduction required under subsection (a) of this section is not technologically feasible for clean diesel-fueled vehicles and engines, taking into account durability, costs, lead time, safety, and other relevant factors. To provide adequate lead time the Administrator shall make a determination with regard to the technological feasibility of such 50 percent reduction before December 31, 1993.

(2) Any person may at any time petition the Administrator to make a determination under paragraph (1). The Administrator shall act on such a petition within 6 months after the petition is filed.

(3) Any revised less stringent standards promulgated as provided in this subsection shall require at least a 30 percent reduction in lieu of the 50 percent reduction referred to in paragraph (1).

(July 14, 1955, ch. 360, title II, § 245, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2519.)

§ 7586. Centrally fueled fleets

(a) Fleet program required for certain nonattainment areas

(1) SIP revision

Each State in which there is located all or part of a covered area (as defined in paragraph (2)) shall submit, within 42 months after November 15, 1990, a State implementation plan revision under section 7410 of this title and part D of subchapter I of this chapter to establish a clean-fuel vehicle program for fleets under this section.

(2) Covered areas

For purposes of this subsection, each of the following shall be a ''covered area'':

(A) Ozone nonattainment areas

Any ozone nonattainment area with a 1980 population of 250,000 or more classified under subpart 2 of part D of subchapter I of this chapter as Serious, Severe, or Extreme based on data for the calendar years 1987, 1988, and 1989. In determining the ozone nonattainment areas to be treated as covered areas pursuant to this subparagraph, the Administrator shall use the most recent interpretation methodology issued by the Administrator prior to November 15, 1990.

(B) Carbon monoxide nonattainment areas

Any carbon monoxide nonattainment area with a 1980 population of 250,000 or more and a carbon monoxide design value at or above 16.0 parts per million based on data for calendar years 1988 and 1989 (as calculated according to the most recent interpretation methodology issued prior to November 15, 1990, by the United States Environmental Protection Agency), excluding those carbon monoxide nonattainment areas in which mobile sources do not contribute significantly to carbon monoxide exceedances.

(3) Plan revisions for reclassified areas

In the case of ozone nonattainment areas reclassified as Serious, Severe, or Extreme under part D of subchapter I of this chapter with a 1980 population of 250,000 or more, the State shall submit a plan revision meeting the requirements of this subsection within 1 year after reclassification. Such plan revision shall implement the requirements applicable under this subsection at the time of reclassification and thereafter, except that the Administrator may adjust for a limited period the deadlines for compliance where compliance with such deadlines would be infeasible.

(4) Consultation; consideration of factors

Each State required to submit an implementation plan revision under this subsection shall develop such revision in consultation with fleet operators, vehicle manufacturers, fuel producers and distributors, motor vehicle fuel, and other interested parties, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values of vehicles and equipment and other relevant factors.

(b) Phase-in of requirements

The plan revision required under this section shall contain provisions requiring that at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area. For the applicable model years (MY) specified in the following table and thereafter, the specified percentage shall be as provided in the table for the vehicle types set forth in the table:

CLEAN FUEL VEHICLE PHASE-IN REQUIREMENTS FOR FLEETS

Vehicle Type	MY1998	MY1999	MY2000
Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles	30%	50%	70%
Heavy-duty trucks above 8,500 lbs. GVWR	50%	50%	50%

The term MY refers to model year.

(c) Accelerated standard for light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles

Notwithstanding the model years for which clean-fuel vehicle standards are applicable as provided in section 7583 of this title, for purposes of this section, light duty[1] trucks of up to 6,000 lbs. GVWR and light-duty vehicles manufactured in model years 1998 through model year 2000 shall be treated as clean-fuel vehicles only if such vehicles comply with the standards applicable under section 7583 of this title for vehicles in the same class for the model year 2001. The requirements of subsection (b) of this section shall take effect on the earlier of the following:

(1) The first model year after model year 1997 in which new light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles which comply with the model year 2001 standards under section 7583 of this title are offered for sale in California.

(2) Model year 2001.

Whenever the effective date of subsection (b) of this section is delayed pursuant to paragraph (1) of this subsection, the phase-in schedule under subsection (b) of this section shall be modified to commence with the model year referred to in paragraph (1) in lieu of model year 1998.

(d) Choice of vehicles and fuel

The plan revision under this subsection shall provide that the choice of clean-fuel vehicles and clean alternative fuels shall be made by the covered fleet operator subject to the requirements of this subsection.

(e) Availability of clean alternative fuel

The plan revision shall require fuel providers to make clean alternative fuel available to covered fleet operators at locations at which covered fleet vehicles are centrally fueled.

(f) Credits

(1) Issuance of credits

The State plan revision required under this section shall provide for the issuance by the State of appropriate credits to a fleet operator for any of the following (or any combination thereof):

(A) The purchase of more clean-fuel vehicles than required under this section.

(B) The purchase of clean fuel[2] vehicles which meet more stringent standards established by the Administrator pursuant to paragraph (4).

(C) The purchase of vehicles in categories which are not covered by this section but which meet standards established for such vehicles under paragraph (4).

(2) Use of credits; limitations based on weight classes

(A) Use of credits

Credits under this subsection may be used by the person holding such credits to demonstrate compliance with this section or may be traded or sold for use by any other person to demonstrate compliance with other requirements applicable under this section in the same nonattainment area. Credits obtained at any time may be held or banked for use at any later time, and when so used, such credits shall maintain the same value as if used at an earlier date.

(B) Limitations based on weight classes

Credits issued with respect to the purchase of vehicles of up to 8,500 lbs. GVWR may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles of more than 8,500 lbs. GVWR. Credits issued with respect to the purchase of vehicles of more than 8,500 lbs. GVWR may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles weighing up to 8,500 lbs. GVWR.

(C) Weighting

Credits issued for purchase of a clean fuel[2] vehicle under this subsection shall be adjusted with appropriate weighting to reflect the level of emission reduction achieved by the vehicle.

(3) Regulations and administration

Within 12 months after November 15, 1990, the Administrator shall promulgate regulations for such credit program. The State shall administer the credit program established under this subsection.

(4) Standards for issuing credits for cleaner vehicles

Solely for purposes of issuing credits under paragraph (1)(B), the Administrator shall establish under this paragraph standards for Ultra-Low Emission Vehicles (''ULEV''s) and Zero Emissions Vehicles (''ZEV''s) which shall be more stringent than those otherwise applicable to clean-fuel vehicles under this part. The Administrator shall certify clean fuel[2] vehicles as complying with such more stringent standards, and administer and enforce such more stringent standards, in the same manner as in the case of the otherwise applicable clean-fuel vehicle standards established under this section. The standards established by the Administrator under this paragraph for vehicles under 8,500 lbs. GVWR or greater shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class. For vehicles of 8,500 lbs. GVWR or more, the Administrator shall promulgate comparable standards for purposes of this subsection.

(5) Early fleet credits

The State plan revision shall provide credits under this subsection to fleet operators that

[1] So in original. Probably should be ''light-duty''.

[2] So in original. Probably should be ''clean-fuel''.

purchase vehicles certified to meet clean-fuel vehicle standards under this part during any period after approval of the plan revision and prior to the effective date of the fleet program under this section.

(g) Availability to public

At any facility owned or operated by a department, agency, or instrumentality of the United States where vehicles subject to this subsection are supplied with clean alternative fuel, such fuel shall be offered for sale to the public for use in other vehicles during reasonable business times and subject to national security concerns, unless such fuel is commercially available for vehicles in the vicinity of such Federal facilities.

(h) Transportation control measures

The Administrator shall by rule, within 1 year after November 15, 1990, ensure that certain transportation control measures including time-of-day or day-of-week restrictions, and other similar measures that restrict vehicle usage, do not apply to any clean-fuel vehicle that meets the requirements of this section. This subsection shall apply notwithstanding subchapter I of this chapter.

(July 14, 1955, ch. 360, title II, § 246, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2520.)

§ 7587. Vehicle conversions

(a) Conversion of existing and new conventional vehicles to clean-fuel vehicles

The requirements of section 7586 of this title may be met through the conversion of existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles which comply with the applicable requirements of that section. For purposes of such provisions the conversion of a vehicle to clean fuel[1] vehicle shall be treated as the purchase of a clean fuel[1] vehicle. Nothing in this part shall be construed to provide that any covered fleet operator subject to fleet vehicle purchase requirements under section 7586 of this title shall be required to convert existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles or to purchase converted vehicles.

(b) Regulations

The Administrator shall, within 24 months after November 15, 1990, consistent with the requirements of this subchapter applicable to new vehicles, promulgate regulations governing conversions of conventional vehicles to clean-fuel vehicles. Such regulations shall establish criteria for such conversions which will ensure that a converted vehicle will comply with the standards applicable under this part to clean-fuel vehicles. Such regulations shall provide for the application to such conversions of the same provisions of this subchapter (including provisions relating to administration enforcement) as are applicable to standards under section[2] 7582, 7583, 7584, and 7585 of this title, except that in the case of conversions the Administrator may modify the applicable regulations implementing such provisions as the Administrator deems necessary to implement this part.

(c) Enforcement

Any person who converts conventional vehicles to clean fuel[1] vehicles pursuant to subsection (b) of this section, shall be considered a manufacturer for purposes of sections 7525 and 7541 of this title and related enforcement provisions. Nothing in the preceding sentence shall require a person who performs such conversions to warrant any part or operation of a vehicle other than as required under this part. Nothing in this paragraph shall limit the applicability of any other warranty to unrelated parts or operations.

(d) Tampering

The conversion from a vehicle capable of operating on gasoline or diesel fuel only to a clean-fuel vehicle shall not be considered a violation of section 7522(a)(3) of this title if such conversion complies with the regulations promulgated under subsection (b) of this section.

(e) Safety

The Secretary of Transportation shall, if necessary, promulgate rules under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles.

(July 14, 1955, ch. 360, title II, § 247, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2523.)

§ 7588. Federal agency fleets

(a) Additional provisions applicable

The provisions of this section shall apply, in addition to the other provisions of this part, in the case of covered fleet vehicles owned or operated by an agency, department, or instrumentality of the United States, except as otherwise provided in subsection (e) of this section.

(b) Cost of vehicles to Federal agency

Notwithstanding the provisions of sections 601–611 of title 40, the Administrator of General Services shall not include the incremental costs of clean-fuel vehicles in the amount to be reimbursed by Federal agencies if the Administrator of General Services determines that appropriations provided pursuant to this paragraph are sufficient to provide for the incremental cost of such vehicles over the cost of comparable conventional vehicles.

(c) Limitations on appropriations

Funds appropriated pursuant to the authorization under this paragraph shall be applicable only—

(1) to the portion of the cost of acquisition, maintenance and operation of vehicles acquired under this subparagraph which exceeds the cost of acquisition, maintenance and operation of comparable conventional vehicles;

(2) to the portion of the costs of fuel storage and dispensing equipment attributable to such vehicles which exceeds the costs for such purposes required for conventional vehicles; and

(3) to the portion of the costs of acquisition of clean-fuel vehicles which represents a reduction in revenue from the disposal of such

[1] So in original. Probably should be "clean-fuel".

[2] So in original. Probably should be "sections".

vehicles as compared to revenue resulting from the disposal of comparable conventional vehicles.

(d) Vehicle costs

The incremental cost of vehicles acquired under this part over the cost of comparable conventional vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles which may be required by the United States.

(e) Exemptions

The requirements of this part shall not apply to vehicles with respect to which the Secretary of Defense has certified to the Administrator that an exemption is needed based on national security consideration.

(f) Acquisition requirement

Federal agencies, to the extent practicable, shall obtain clean-fuel vehicles from original equipment manufacturers.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as may be required to carry out the provisions of this section: *Provided*, That such sums as are appropriated for the Administrator of General Services pursuant to the authorization under this section shall be added to the General Supply Fund established in section 321 of title 40.

(July 14, 1955, ch. 360, title II, § 248, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2524.)

CODIFICATION

In subsec. (b), ''sections 601–611 of title 40'' substituted for ''section 211 of the Federal Property and Administrative Services Act of 1949'', and, in subsec. (g), ''the General Supply Fund established in section 321 of title 40'' substituted for ''the General Supply Fund established in section 109 of the Federal Property and Administrative Services Act of 1949'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

ABOLITION OF GENERAL SUPPLY FUND

The General Supply Fund, referred to in subsec. (g), was abolished and its capital assets and balances transferred to the Acquisition Services Fund by section 3(a)–(c) of Pub. L. 109–313, set out as an Acquisition Services Fund note under section 321 of Title 40, Public Buildings, Property, and Works.

§ 7589. California pilot test program

(a) Establishment

The Administrator shall establish a pilot program in the State of California to demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas.

(b) Applicability

The provisions of this section shall only apply to light-duty trucks and light-duty vehicles, and such provisions shall apply only in the State of California, except as provided in subsection (f) of this section.

(c) Program requirements

Not later than 24 months after November 15, 1990, the Administrator shall promulgate regulations establishing requirements under this section applicable in the State of California. The regulations shall provide the following:

(1) Clean-fuel vehicles

Clean-fuel vehicles shall be produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California (including owners of covered fleets referred to in section 7586 of this title) in numbers that meet or exceed the following schedule:

Model Years	Number of Clean-Fuel Vehicles
1996, 1997, 1998	150,000 vehicles
1999 and thereafter	300,000 vehicles

(2) Clean alternative fuels

(A) Within 2 years after November 15, 1990, the State of California shall submit a revision of the applicable implementation plan under part D of subchapter I of this chapter and section 7410 of this title containing a clean fuel plan that requires that clean alternative fuels on which the clean-fuel vehicles required under this paragraph can operate shall be produced and distributed by fuel suppliers and made available in California. At a minimum, sufficient clean alternative fuels shall be produced, distributed and made available to assure that all clean-fuel vehicles required under this section can operate, to the maximum extent practicable, exclusively on such fuels in California. The State shall require that clean alternative fuels be made available and offered for sale at an adequate number of locations with sufficient geographic distribution to ensure convenient refueling with clean alternative fuels, considering the number of, and type of, such vehicles sold and the geographic distribution of such vehicles within the State. The State shall determine the clean alternative fuels to be produced, distributed, and made available based on motor vehicle manufacturers' projections of future sales of such vehicles and consultations with the affected local governments and fuel suppliers.

(B) The State may by regulation grant persons subject to the requirements prescribed under this paragraph an appropriate amount of credits for exceeding such requirements, and any person granted credits may transfer some or all of the credits for use by one or more persons in demonstrating compliance with such requirements. The State may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as the State finds appropriate.

(C) The State may also by regulation establish specifications for any clean alternative fuel produced and made available under this paragraph as the State finds necessary to reduce or eliminate an unreasonable risk to public health, welfare, or safety associated with its use or to ensure acceptable vehicle maintenance and performance characteristics.

(D) If a retail gasoline dispensing facility would have to remove or replace one or more

motor vehicle fuel underground storage tanks and accompanying piping in order to comply with the provisions of this section, and it had removed and replaced such tank or tanks and accompanying piping in order to comply with subtitle I of the Solid Waste Disposal Act [42 U.S.C. 6991 et seq.] prior to November 15, 1990, it shall not be required to comply with this subsection until a period of 7 years has passed from the date of the removal and replacement of such tank or tanks.

(E) Nothing in this section authorizes any State other than California to adopt provisions regarding clean alternative fuels.

(F) If the State of California fails to adopt a clean fuel program that meets the requirements of this paragraph, the Administrator shall, within 4 years after November 15, 1990, establish a clean fuel program for the State of California under this paragraph and section 7410(c) of this title that meets the requirements of this paragraph.

(d) Credits for motor vehicle manufacturers

(1) The Administrator may (by regulation) grant a motor vehicle manufacturer an appropriate amount of credits toward fulfillment of such manufacturer's share of the requirements of subsection (c)(1) of this section for any of the following (or any combination thereof):

(A) The sale of more clean-fuel vehicles than required under subsection (c)(1) of this section.

(B) The sale of clean fuel[1] vehicles which meet standards established by the Administrator as provided in paragraph (3) which are more stringent than the clean-fuel vehicle standards otherwise applicable to such clean-fuel vehicle. A manufacturer granted credits under this paragraph may transfer some or all of the credits for use by one or more other manufacturers in demonstrating compliance with the requirements prescribed under this paragraph. The Administrator may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as he finds appropriate. The Administrator shall grant credits in accordance with this paragraph, notwithstanding any requirements of State law or any credits granted with respect to the same vehicles under any State law, rule, or regulation.

(2) REGULATIONS AND ADMINISTRATION.—The Administrator shall administer the credit program established under this subsection. Within 12 months after November 15, 1990, the Administrator shall promulgate regulations for such credit program.

(3) STANDARDS FOR ISSUING CREDITS FOR CLEANER VEHICLES.—The more stringent standards and other requirements (including requirements relating to the weighting of credits) established by the Administrator for purposes of the credit program under 7585(e)[2] of this title (relating to credits for clean fuel[1] vehicles in the fleets program) shall also apply for purposes of the credit program under this paragraph.

(e) Program evaluation

(1) Not later than June 30, 1994 and again in connection with the report under paragraph (2), the Administrator shall provide a report to the Congress on the status of the California Air Resources Board Low-Emissions Vehicles and Clean Fuels Program. Such report shall examine the capability, from a technological standpoint, of motor vehicle manufacturers and motor vehicle fuel suppliers to comply with the requirements of such program and with the requirements of the California Pilot Program under this section.

(2) Not later than June 30, 1998, the Administrator shall complete and submit a report to Congress on the effectiveness of the California pilot program under this section. The report shall evaluate the level of emission reductions achieved under the program, the costs of the program, the advantages and disadvantages of extending the program to other nonattainment areas, and desirability of continuing or expanding the program in California.

(3) The program under this section cannot be extended or terminated by the Administrator except by Act of Congress enacted after November 15, 1990. Section 7507 of this title does not apply to the program under this section.

(f) Voluntary opt-in for other States

(1) EPA regulations

Not later than 2 years after November 15, 1990, the Administrator shall promulgate regulations establishing a voluntary opt-in program under this subsection pursuant to which—

(A) clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California under this section, and

(B) clean alternative fuels required to be produced and distributed under this section by fuel suppliers and made available in California[3]

may also be sold and used in other States which submit plan revisions under paragraph (2).

(2) Plan revisions

Any State in which there is located all or part of an ozone nonattainment area classified under subpart[4] D of subchapter I of this chapter as Serious, Severe, or Extreme may submit a revision of the applicable implementation plan under part D of subchapter I of this chapter and section 7410 of this title to provide incentives for the sale or use in such an area or State of clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California, and for the use in such an area or State of clean alternative fuels required to be produced and distributed by fuel suppliers and made available in California. Such plan provisions shall not take effect until 1 year after the State has provided notice of such provisions to motor vehicle manufacturers and to fuel suppliers.

(3) Incentives

The incentives referred to in paragraph (2) may include any or all of the following:

[1] So in original. Probably should be "clean-fuel".

[2] So in original. Probably should be "section 7586(f)".

[3] So in original. Probably should be followed by a comma.

[4] So in original. Probably should be "part".

(A) A State registration fee on new motor vehicles registered in the State which are not clean-fuel vehicles in the amount of at least 1 percent of the cost of the vehicle. The proceeds of such fee shall be used to provide financial incentives to purchasers of clean-fuel vehicles and to vehicle dealers who sell high volumes or high percentages of clean-fuel vehicles and to defray the administrative costs of the incentive program.

(B) Provisions to exempt clean-fuel vehicles from high occupancy vehicle or trip reduction requirements.

(C) Provisions to provide preference in the use of existing parking spaces for clean-fuel vehicles.

The incentives under this paragraph shall not apply in the case of covered fleet vehicles.

(4) No sales or production mandate

The regulations and plan revisions under paragraphs (1) and (2) shall not include any production or sales mandate for clean-fuel vehicles or clean alternative fuels. Such regulations and plan revisions shall also provide that vehicle manufacturers and fuel suppliers may not be subject to penalties or sanctions for failing to produce or sell clean-fuel vehicles or clean alternative fuels.

(July 14, 1955, ch. 360, title II, § 249, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2525.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(2)(D), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle I of the Act is classified generally to subchapter IX (§ 6991 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

November 15, 1990, referred to in subsec. (e)(3), was in the original ''the date of the Clean Air Act Amendments of 1990'', which was translated as meaning the date of enactment of Pub. L. 101–549, which enacted this section, to reflect the probable intent of Congress.

§ 7590. General provisions

(a) State refueling facilities

If any State adopts enforceable provisions in an implementation plan applicable to a nonattainment area which provides that existing State refueling facilities will be made available to the public for the purchase of clean alternative fuels or that State-operated refueling facilities for such fuels will be constructed and operated by the State and made available to the public at reasonable times, taking into consideration safety, costs, and other relevant factors, in approving such plan under section 7410 of this title and part D,[1] the Administrator may credit a State with the emission reductions for purposes of part D[1] attributable to such actions.

(b) No production mandate

The Administrator shall have no authority under this part to mandate the production of clean-fuel vehicles except as provided in the California pilot test program or to specify as applicable the models, lines, or types of, or marketing or price practices, policies, or strategies for, vehicles subject to this part. Nothing in this part shall be construed to give the Administrator authority to mandate marketing or pricing practices, policies, or strategies for fuels.

(c) Tank and fuel system safety

The Secretary of Transportation shall, in accordance with chapter 301 of title 49, promulgate applicable regulations regarding the safety and use of fuel storage cylinders and fuel systems, including appropriate testing and retesting, in conversions of motor vehicles.

(d) Consultation with Department of Energy and Department of Transportation

The Administrator shall coordinate with the Secretaries of the Department of Energy and the Department of Transportation in carrying out the Administrator's duties under this part.

(July 14, 1955, ch. 360, title II, § 250, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2528.)

CODIFICATION

In subsec. (c), ''chapter 301 of title 49'' substituted for ''the National Motor Vehicle Traffic Safety Act of 1966 [15 U.S.C. 1381 et seq.]'', meaning ''the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.]'', on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

SUBCHAPTER III—GENERAL PROVISIONS

§ 7601. Administration

(a) Regulations; delegation of powers and duties; regional officers and employees

(1) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this chapter, except the making of regulations subject to section 7607(d) of this title, as he may deem necessary or expedient.

(2) Not later than one year after August 7, 1977, the Administrator shall promulgate regulations establishing general applicable procedures and policies for regional officers and employees (including the Regional Administrator) to follow in carrying out a delegation under paragraph (1), if any. Such regulations shall be designed—

(A) to assure fairness and uniformity in the criteria, procedures, and policies applied by the various regions in implementing and enforcing the chapter;

(B) to assure at least an adequate quality audit of each State's performance and adherence to the requirements of this chapter in implementing and enforcing the chapter, particularly in the review of new sources and in enforcement of the chapter; and

(C) to provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed by such officers and employees in implementing and enforcing the chapter.

[1] So in original. Probably should be ''part D of subchapter I of this chapter''.

(b) Detail of Environmental Protection Agency personnel to air pollution control agencies

Upon the request of an air pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this chapter.

(c) Payments under grants; installments; advances or reimbursements

Payments under grants made under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator.

(d) Tribal authority

(1) Subject to the provisions of paragraph (2), the Administrator—

(A) is authorized to treat Indian tribes as States under this chapter, except for purposes of the requirement that makes available for application by each State no less than one-half of 1 percent of annual appropriations under section 7405 of this title; and

(B) may provide any such Indian tribe grant and contract assistance to carry out functions provided by this chapter.

(2) The Administrator shall promulgate regulations within 18 months after November 15, 1990, specifying those provisions of this chapter for which it is appropriate to treat Indian tribes as States. Such treatment shall be authorized only if—

(A) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

(B) the functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(C) the Indian tribe is reasonably expected to be capable, in the judgment of the Administrator, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this chapter and all applicable regulations.

(3) The Administrator may promulgate regulations which establish the elements of tribal implementation plans and procedures for approval or disapproval of tribal implementation plans and portions thereof.

(4) In any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provisions so as to achieve the appropriate purpose.

(5) Until such time as the Administrator promulgates regulations pursuant to this subsection, the Administrator may continue to provide financial assistance to eligible Indian tribes under section 7405 of this title.

(July 14, 1955, ch. 360, title III, § 301, formerly § 8, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 400, renumbered Pub. L. 89–272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 504; Pub. L. 91–604, §§ 3(b)(2), 15(c)(2), Dec. 31, 1970, 84 Stat. 1677, 1713; Pub. L. 95–95, title III, § 305(e), Aug. 7, 1977, 91 Stat. 776; Pub. L. 101–549, title I, §§ 107(d), 108(i), Nov. 15, 1990, 104 Stat. 2464, 2467.)

CODIFICATION

Section was formerly classified to section 1857g of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, § 108(i), inserted "subject to section 7607(d) of this title" after "regulations".

Subsec. (d). Pub. L. 101–549, § 107(d), added subsec. (d).

1977—Subsec. (a). Pub. L. 95–95 designated existing provisions as par. (1) and added par. (2).

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary" and "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (b). Pub. L. 91–604, § 3(b)(2), substituted "Environmental Protection Agency" for "Public Health Service" and struck out provisions covering the payment of salaries and allowances.

Subsec. (c). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary".

1967—Pub. L. 90–148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

DISADVANTAGED BUSINESS CONCERNS; USE OF QUOTAS PROHIBITED

Title X of Pub. L. 101–549 provided that:

"SEC. 1001. DISADVANTAGED BUSINESS CONCERNS.

"(a) IN GENERAL.—In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments of 1990 [Pub. L. 101–549, see Tables for classification] which uses funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of total Federal funding for such research will be made available to disadvantaged business concerns.

"(b) DEFINITION.—

"(1)(A) For purposes of subsection (a), the term 'disadvantaged business concern' means a concern—

"(i) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly traded company, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

"(ii) the management and daily business operations of which are controlled by such individuals.

"(B)(i) A for-profit business concern is presumed to be a disadvantaged business concern for purposes of subsection (a) if it is at least 51 percent owned by, or in the case of a concern which is a publicly traded

company at least 51 percent of the stock of the company is owned by, one or more individuals who are members of the following groups:

''(I) Black Americans.

''(II) Hispanic Americans.

''(III) Native Americans.

''(IV) Asian Americans.

''(V) Women.

''(VI) Disabled Americans.

''(ii) The presumption established by clause (i) may be rebutted with respect to a particular business concern if it is reasonably established that the individual or individuals referred to in that clause with respect to that business concern are not experiencing impediments to establishing or developing such concern as a result of the individual's identification as a member of a group specified in that clause.

''(C) The following institutions are presumed to be disadvantaged business concerns for purposes of subsection (a):

''(i) Historically black colleges and universities, and colleges and universities having a student body in which 40 percent of the students are Hispanic.

''(ii) Minority institutions (as that term is defined by the Secretary of Education pursuant to the General Education Provision Act (20 U.S.C. 1221 et seq.)).

''(iii) Private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

''(D) A joint venture may be considered to be a disadvantaged business concern under subsection (a), notwithstanding the size of such joint venture, if—

''(i) a party to the joint venture is a disadvantaged business concern; and

''(ii) that party owns at least 51 percent of the joint venture.

A person who is not an economically disadvantaged individual or a disadvantaged business concern, as a party to a joint venture, may not be a party to more than 2 awarded contracts in a fiscal year solely by reason of this subparagraph.

''(E) Nothing in this paragraph shall prohibit any member of a racial or ethnic group that is not listed in subparagraph (B)(i) from establishing that they have been impeded in establishing or developing a business concern as a result of racial or ethnic discrimination.

''SEC. 1002. USE OF QUOTAS PROHIBITED.—Nothing in this title shall permit or require the use of quotas or a requirement that has the effect of a quota in determining eligibility under section 1001.''

§ 7602. Definitions

When used in this chapter—

(a) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(b) The term ''air pollution control agency'' means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this chapter.

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency.

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(5) An agency of an Indian tribe.

(c) The term ''interstate air pollution control agency'' means—

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term ''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

(e) The term ''person'' includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

(f) The term ''municipality'' means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) The term ''air pollutant'' means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term ''air pollutant'' is used.

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

(i) The term ''Federal land manager'' means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(j) Except as otherwise expressly provided, the terms ''major stationary source'' and ''major emitting facility'' mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

(k) The terms ''emission limitation'' and ''emission standard'' mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design,

equipment, work practice or operational standard promulgated under this chapter..[1]

(*l*) The term ''standard of performance'' means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(m) The term ''means of emission limitation'' means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution characteristics).

(n) The term ''primary standard attainment date'' means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

(*o*) The term ''delayed compliance order'' means an order issued by the State or by the Administrator to an existing stationary source, postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan.

(p) The term ''schedule and timetable of compliance'' means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

(q) For purposes of this chapter, the term ''applicable implementation plan'' means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 7410 of this title, or promulgated under section 7410(c) of this title, or promulgated or approved pursuant to regulations promulgated under section 7601(d) of this title and which implements the relevant requirements of this chapter.

(r) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(s) VOC.—The term ''VOC'' means volatile organic compound, as defined by the Administrator.

(t) PM–10.—The term ''PM–10'' means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, as measured by such method as the Administrator may determine.

(u) NAAQS AND CTG.—The term ''NAAQS'' means national ambient air quality standard. The term ''CTG'' means a Control Technique Guideline published by the Administrator under section 7408 of this title.

(v) NO_x.—The term ''NO_x'' means oxides of nitrogen.

(w) CO.—The term ''CO'' means carbon monoxide.

(x) SMALL SOURCE.—The term ''small source'' means a source that emits less than 100 tons of regulated pollutants per year, or any class of persons that the Administrator determines, through regulation, generally lack technical ability or knowledge regarding control of air pollution.

(y) FEDERAL IMPLEMENTATION PLAN.—The term ''Federal implementation plan'' means a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.

(z) STATIONARY SOURCE.—The term ''stationary source'' means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title.

(July 14, 1955, ch. 360, title III, § 302, formerly § 9, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 400, renumbered Pub. L. 89–272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 504; Pub. L. 91–604, § 15(a)(1), (c)(1), Dec. 31, 1970, 84 Stat. 1710, 1713; Pub. L. 95–95, title II, § 218(c), title III, § 301, Aug. 7, 1977, 91 Stat. 761, 769; Pub. L. 95–190, § 14(a)(76), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title I, §§ 101(d)(4), 107(a), (b), 108(j), 109(b), title III, § 302(e), title VII, § 709, Nov. 15, 1990, 104 Stat. 2409, 2464, 2468, 2470, 2574, 2684.)

CODIFICATION

Section was formerly classified to section 1857h of this title.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (b) and (d) of this section were contained in a section 1857e of this title, act July 14, 1955, ch. 360, § 6, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (b)(1) to (3). Pub. L. 101–549, § 107(a)(1), (2), struck out ''or'' at end of par. (3) and substituted periods for semicolons at end of pars. (1) to (3).

Subsec. (b)(5). Pub. L. 101–549, § 107(a)(3), added par. (5).

Subsec. (g). Pub. L. 101–549, § 108(j)(2), inserted at end ''Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.''

Subsec. (h). Pub. L. 101–549, § 109(b), inserted before period at end '', whether caused by transformation, conversion, or combination with other air pollutants''.

Subsec. (k). Pub. L. 101–549, § 303(e), inserted before period at end '', and any design, equipment, work practice or operational standard promulgated under this chapter.''

Subsec. (q). Pub. L. 101–549, § 101(d)(4), added subsec. (q).

Subsec. (r). Pub. L. 101–549, § 107(b), added subsec. (r).

Subsecs. (s) to (y). Pub. L. 101–549, § 108(j)(1), added subsecs. (s) to (y).

Subsec. (z). Pub. L. 101–549, § 709, added subsec. (z).

1977—Subsec. (d). Pub. L. 95–95, § 218(c), inserted ''and includes the Commonwealth of the Northern Mariana Islands'' after ''American Samoa''.

Subsec. (e). Pub. L. 95–190 substituted ''individual, corporation'' for ''individual corporation''.

Pub. L. 95–95, § 301(b), expanded definition of ''person'' to include agencies, departments, and instrumentalities of the United States and officers, agents, and employees thereof.

[1] So in original.

Subsec. (g). Pub. L. 95–95, § 301(c), expanded definition of ''air pollutant'' so as, expressly, to include physical, chemical, biological, and radioactive substances or matter emitted into or otherwise entering the ambient air.

Subsecs. (i) to (p). Pub. L. 95–95, § 301(a), added subsecs. (i) to (p).

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(1), substituted definition of ''Administrator'' as meaning Administrator of the Environmental Protection Agency for definition of ''Secretary'' as meaning Secretary of Health, Education, and Welfare.

Subsecs. (g), (h). Pub. L. 91–604, § 15(a)(1), added subsec. (g) defining ''air pollutant'', redesignated former subsec. (g) as (h) and substituted references to effects on soil, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate for references to injury to agricultural crops and livestock, and inserted references to effects on economic values and on personal comfort and well being.

1967—Pub. L. 90–148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

§ 7603. Emergency powers

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

(July 14, 1955, ch. 360, title III, § 303, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1705; amended Pub. L. 95–95, title III, § 302(a), Aug. 7, 1977, 91 Stat. 770; Pub. L. 101–549, title VII, § 704, Nov. 15, 1990, 104 Stat. 2681.)

CODIFICATION

Section was formerly classified to section 1857h–1 of this title.

PRIOR PROVISIONS

A prior section 303 of act July 14, 1955, was renumbered section 310 by Pub. L. 91–604 and is classified to section 7610 of this title.

AMENDMENTS

1990—Pub. L. 101–549, § 704(2)–(5), struck out subsec. (a) designation before ''Notwithstanding any other'', struck out subsec. (b) which related to violation of or failure or refusal to comply with subsec. (a) orders, and substituted new provisions for provisions following first sentence which read as follows: ''If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action within such period, such order shall be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter.''

Pub. L. 101–549, § 704(1), which directed that ''public health or welfare, or the environment'' be substituted for ''the health of persons and that appropriate State or local authorities have not acted to abate such sources'', was executed by making the substitution for ''the health of persons, and that appropriate State or local authorities have not acted to abate such sources'' to reflect the probable intent of Congress.

1977—Pub. L. 95–95 designated existing provisions as subsec. (a), inserted provisions that, if it is not practicable to assure prompt protection of the health of persons solely by commencement of a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources), that, prior to taking any action under this section, the Administrator consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking, that the order be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period, and that, whenever the Administrator brings such an action within such period, such order be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter, and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L.

95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7604. Citizen suits

(a) Authority to bring civil action; jurisdiction

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment) or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties (except for actions under paragraph (2)). The district courts of the United States shall have jurisdiction to compel (consistent with paragraph (2) of this subsection) agency action unreasonably delayed, except that an action to compel agency action referred to in section 7607(b) of this title which is unreasonably delayed may only be filed in a United States District Court within the circuit in which such action would be reviewable under section 7607(b) of this title. In any such action for unreasonable delay, notice to the entities referred to in subsection (b)(1)(A) of this section shall be provided 180 days before commencing such action.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.[1]

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 7412(i)(3)(A) or (f)(4) of this title or an order issued by the Administrator pursuant to section 7413(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator; service of complaint; consent judgment

(1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In any action under this section, the Administrator, if not a party, may intervene as a matter of right at any time in the proceeding. A judgment in an action under this section to which the United States is not a party shall not, however, have any binding effect upon the United States.

(3) Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and on the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator during which time the Government may submit its comments on the proposed consent judgment to the court and parties or may intervene as a matter of right.

(d) Award of costs; security

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nonrestriction of other rights

Nothing in this section shall restrict any right which any person (or class of persons) may have

[1] So in original. The period probably should be ‘‘, or’’.

under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency). Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State, local, or interstate authority from—

(1) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court, or

(2) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department or instrumentality,

against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee thereof under State or local law respecting control and abatement of air pollution. For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see section 7418 of this title.

(f) "Emission standard or limitation under this chapter" defined

For purposes of this section, the term "emission standard or limitation under this chapter" means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard,

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive, or[2]

(3) any condition or requirement of a permit under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment),,[3] section 7419 of this title (relating to primary nonferrous smelter orders), any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs or vapor recovery requirements, section 7545(e) and (f) of this title (relating to fuels and fuel additives), section 7491 of this title (relating to visibility protection), any condition or requirement under subchapter VI of this chapter (relating to ozone protection), or any requirement under section 7411 or 7412 of this title (without regard to whether such requirement is expressed as an emission standard or otherwise);[4] or

(4) any other standard, limitation, or schedule established under any permit issued pursuant to subchapter V of this chapter or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations.[5]

which is in effect under this chapter (including a requirement applicable by reason of section 7418 of this title) or under an applicable implementation plan.

(g) Penalty fund

(1) Penalties received under subsection (a) of this section shall be deposited in a special fund in the United States Treasury for licensing and other services. Amounts in such fund are authorized to be appropriated and shall remain available until expended, for use by the Administrator to finance air compliance and enforcement activities. The Administrator shall annually report to the Congress about the sums deposited into the fund, the sources thereof, and the actual and proposed uses thereof.

(2) Notwithstanding paragraph (1) the court in any action under this subsection[6] to apply civil penalties shall have discretion to order that such civil penalties, in lieu of being deposited in the fund referred to in paragraph (1), be used in beneficial mitigation projects which are consistent with this chapter and enhance the public health or the environment. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects. The amount of any such payment in any such action shall not exceed $100,000.

(July 14, 1955, ch. 360, title III, § 304, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1706; amended Pub. L. 95–95, title III, § 303(a)–(c), Aug. 7, 1977, 91 Stat. 771, 772; Pub. L. 95–190, § 14(a) (77), (78), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title III, § 302(f), title VII, § 707(a)–(g), Nov. 15, 1990, 104 Stat. 2574, 2682, 2683.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Section was formerly classified to section 1857h–2 of this title.

PRIOR PROVISIONS

A prior section 304 of act July 14, 1955, was renumbered section 311 by Pub. L. 91–604 and is classified to section 7611 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 707(a), (f), in closing provisions, inserted before period at end ", and to apply any appropriate civil penalties (except for actions under paragraph (2))" and inserted sentences at end giving courts jurisdiction to compel agency action unreasonably delayed and requiring 180 days notice prior to commencement of action.

Subsec. (a)(1), (3). Pub. L. 101–549, § 707(g), inserted "to have violated (if there is evidence that the alleged violation has been repeated) or" before "to be in violation".

Subsec. (b). Pub. L. 101–549, § 302(f), substituted "section 7412(i)(3)(A) or (f)(4)" for "section 7412(c)(1)(B)" in closing provisions.

Subsec. (c)(2). Pub. L. 101–549, § 707(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In such action under this section, the Administrator, if not a party, may intervene as a matter of right."

Subsec. (c)(3). Pub. L. 101–549, § 707(d), added subsec. (c)(3).

Subsec. (f)(3). Pub. L. 101–549, § 707(e), struck out "any condition or requirement of section 7413(d) of this title

[2] So in original. The word "or" probably should not appear.

[3] So in original.

[4] So in original. The semicolon probably should be a comma.

[5] So in original. The period probably should be a comma.

[6] So in original. Probably should be "this section".

(relating to certain enforcement orders)'' before '', section 7419 of this title'', substituted ''subchapter VI of this chapter'' for ''part B of subchapter I of this chapter'', and substituted ''; or'' for period at end.

Subsec. (f)(4). Pub. L. 101–549, § 707(e), which directed that par. (4) be added at end of subsec. (f), was executed by adding par. (4) after par. (3), to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 101–549, § 707(b), added subsec. (g).

1977—Subsec. (a)(3). Pub. L. 95–190, § 14(a)(77), inserted ''or modified'' after ''new''.

Pub. L. 95–95, § 303(a), added subsec. (a)(3).

Subsec. (e). Pub. L. 95–95, § 303(c), inserted provisions which prohibited any construction of this section or any other law of the United States which would prohibit, exclude, or restrict any State, local, or interstate authority from bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court against the United States or bringing any administrative enforcement action or obtaining any administrative remedy or sanction against the United States in any State or local administrative agency, department, or instrumentality under State or local law.

Subsec. (f)(3). Pub. L. 95–190, § 14(a)(78), inserted '', or'' after ''(relating to ozone protection)'', substituted ''any condition or requirement under an'' for ''requirements under an'', and struck out ''or'' before ''section 7491''.

Pub. L. 95–95, § 303(b), added par. (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 707(g) of Pub. L. 101–549 provided that: ''The amendment made by this subsection [amending this section] shall take effect with respect to actions brought after the date 2 years after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (g)(1) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 6th item on page 165 of House Document No. 103–7.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7605. Representation in litigation

(a) Attorney General; attorneys appointed by Administrator

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this chapter to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action, within a reasonable time, attorneys appointed by the Administrator shall appear and represent him.

(b) Memorandum of understanding regarding legal representation

In the event the Attorney General agrees to appear and represent the Administrator in any such action, such representation shall be conducted in accordance with, and shall include participation by, attorneys appointed by the Administrator to the extent authorized by, the memorandum of understanding between the Department of Justice and the Environmental Protection Agency, dated June 13, 1977, respecting representation of the agency by the department in civil litigation.

(July 14, 1955, ch. 360, title III, § 305, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 95–95, title III, § 304(a), Aug. 7, 1977, 91 Stat. 772.)

CODIFICATION

Section was formerly classified to section 1857h–3 of this title.

PRIOR PROVISIONS

A prior section 305 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 505, was renumbered section 312 by Pub. L. 91–604 and is classified to section 7612 of this title.

Another prior section 305 of act July 14, 1955, ch. 360, title III, formerly § 12, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401, was renumbered section 305 by Pub. L. 89–272, renumbered section 308 by Pub. L. 90–148, and renumbered section 315 by Pub. L. 91–604, and is classified to section 7615 of this title.

AMENDMENTS

1977—Pub. L. 95–95 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or

other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7606. Federal procurement

(a) Contracts with violators prohibited

No Federal agency may enter into any contract with any person who is convicted of any offense under section 7413(c) of this title for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 7413(c)(2) of this title, the condition giving rise to the conviction also shall be considered to include any substantive violation of this chapter associated with the violation of 7413(c)(2) of this title. The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.

(b) Notification procedures

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

(c) Federal agency contracts

In order to implement the purposes and policy of this chapter to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after December 31, 1970, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this chapter in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) Exemptions; notification to Congress

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(July 14, 1955, ch. 360, title III, § 306, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 101–549, title VII, § 705, Nov. 15, 1990, 104 Stat. 2682.)

CODIFICATION

Subsec. (e) of this section, which required the President to annually report to Congress on measures taken toward implementing the purpose and intent of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 14th item on page 20 of House Document No. 103–7.

Section was formerly classified to section 1857h–4 of this title.

PRIOR PROVISIONS

A prior section 306 of act July 14, 1955, ch. 360, title III, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506, was renumbered section 313 by Pub. L. 91–604 and is classified to section 7613 of this title.

Another prior section 306 of act July 14, 1955, ch. 360, title III, formerly § 13, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401, renumbered § 306, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992, renumbered § 309, Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506, renumbered § 316, Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1705, related to appropriations and was classified to section 1857*l* of this title, prior to repeal by section 306 of Pub. L. 95–95. See section 7626 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549 substituted "section 7413(c)" for "section 7413(c)(1)" and inserted sentences at end relating to convictions arising under section 7413(c)(2) of this title and extension of prohibition to other facilities owned by convicted persons.

FEDERAL ACQUISITION REGULATION: CONTRACTOR CERTIFICATION OR CONTRACT CLAUSE FOR ACQUISITION OF COMMERCIAL ITEMS

Pub. L. 103–355, title VIII, § 8301(g), Oct. 13, 1994, 108 Stat. 3397, provided that: "The Federal Acquisition Regulation may not contain a requirement for a certification by a contractor under a contract for the acquisition of commercial items, or a requirement that such a contract include a contract clause, in order to implement a prohibition or requirement of section 306 of the Clean Air Act (42 U.S.C. 7606) or a prohibition or requirement issued in the implementation of that section, since there is nothing in such section 306 that requires such a certification or contract clause."

EXECUTIVE ORDER NO. 11602

Ex. Ord. No. 11602, June 29, 1971, 36 F.R. 12475, which related to the administration of the Clean Air Act with respect to Federal contracts, grants, or loans, was superseded by Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, set out below.

EX. ORD. NO. 11738. ADMINISTRATION OF THE CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, provided:

By virtue of the authority vested in me by the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.) [42 U.S.C. 7401 et seq.], particularly section 306 of that Act as added by the Clean Air Amendments of 1970 (Public Law 91–604) [this section], and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), particularly section 508 of that Act as added by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500) [33 U.S.C. 1368], it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act [this chapter] (hereinafter referred to as "the Air Act") and the Federal Water Pollution Control Act (hereinafter referred to as "the Water Act") [33 U.S.C. 1251 et seq.].

SEC. 2. *Designation of Facilities*. (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as ''the Administrator'') shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c)(1) of the Air Act [42 U.S.C. 7413(c)(1)] or section 309(c) of the Water Act [33 U.S.C. 1319(c)]. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

SEC. 3. *Contracts, Grants, or Loans*. (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

SEC. 4. *Procurement, Grant, and Loan Regulations*. The Federal Procurement Regulations, the Armed Services Procurement Regulations, and to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Air Act, the Water Act, and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

SEC. 5. *Rules and Regulations*. The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

SEC. 6. *Cooperation and Assistance*. The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of this agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Air Act or the Water Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such reports to the Administrator.

SEC. 7. *Enforcement*. The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

SEC. 8. *Exemptions—Reports to Congress*. (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefor; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans, which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contractors or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

SEC. 9. *Related Actions*. The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provisions of the Air Act or the Water Act.

SEC. 10. *Applicability*. This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

SEC. 11. *Uniformity*. Rules, regulations, standards, and guidelines issued pursuant to this order and section 508 of the Water Act [33 U.S.C. 1368] shall, to the maximum extent feasible, be uniform with regulations issued pursuant to this order, Executive Order No. 11602 of June 29, 1971 [formerly set out above], and section 306 of the Air Act [this section].

SEC. 12. *Order Superseded*. Executive Order No. 11602 of June 29, 1971, is hereby superseded.

RICHARD NIXON.

§ 7607. Administrative proceedings and judicial review

(a) Administrative subpenas; confidentiality; witnesses

In connection with any determination under section 7410(f) of this title, or for purposes of obtaining information under section 7521(b)(4)[1] or 7545(c)(3) of this title, any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the[2] chapter (including but not limited to section 7413, section 7414, section 7420, section 7429, section 7477, section 7524, section 7525, section 7542, section 7603, or section 7606 of this title),,[3] the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such paper, book, document, or information may be dis-

[1] See References in Text note below.

[2] So in original. Probably should be ''this''.

[3] So in original.

closed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 7521(c) of this title, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph,[4] the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Judicial review

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 7412 of this title, any standard of performance or requirement under section 7411 of this title, any standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5)[1] of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412 of this title,,[3] under section 7419 of this title, or under section 7420 of this title, or his action under section 1857c–10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I of this chapter) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement. Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

(c) Additional evidence

In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to[5] the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(d) Rulemaking

(1) This subsection applies to—

(A) the promulgation or revision of any national ambient air quality standard under section 7409 of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

(C) the promulgation or revision of any standard of performance under section 7411 of this title, or emission standard or limitation under section 7412(d) of this title, any standard under section 7412(f) of this title, or any regulation under section 7412(g)(1)(D) and (F) of this title, or any regulation under section 7412(m) or (n) of this title,

(D) the promulgation of any requirement for solid waste combustion under section 7429 of this title,

[4] So in original. Probably should be ''subsection,''.

[5] So in original. The word ''to'' probably should not appear.

(E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

(F) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

(G) the promulgation or revision of any regulation under subchapter IV–A of this chapter (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

(I) promulgation or revision of regulations under subchapter VI of this chapter (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality and protection of visibility),

(K) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title, and the revision of a standard under section 7521(a)(3) of this title,

(L) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

(M) promulgation or revision of any regulations promulgated under section 7541 of this title (relating to warranties and compliance by vehicles in actual use),

(N) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement),

(O) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 7511b(e) of this title,

(P) the promulgation or revision of any regulation pertaining to field citations under section 7413(d)(3) of this title,

(Q) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of subchapter II of this chapter,

(R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 7547 of this title,

(S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 7552 of this title,

(T) the promulgation or revision of any regulation under subchapter IV–A of this chapter (relating to acid deposition),

(U) the promulgation or revision of any regulation under section 7511b(f) of this title pertaining to marine vessels, and

(V) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of title 5.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a ''rule''). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the ''comment period''). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of—

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 7409(d) of this title and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management

and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after August 7, 1977.

(e) Other methods of judicial review not authorized

Nothing in this chapter shall be construed to authorize judicial review of regulations or orders of the Administrator under this chapter, except as provided in this section.

(f) Costs

In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties

In any action respecting the promulgation of regulations under section 7420 of this title or the administration or enforcement of section 7420 of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

(h) Public participation

It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of

title 5, the Administrator in promulgating any regulation under this chapter, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days, except as otherwise expressly provided in section[6] 7407(d), 7502(a), 7511(a) and (b), and 7512(a) and (b) of this title.

(July 14, 1955, ch. 360, title III, §307, as added Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 92–157, title III, §302(a), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93–319, §6(c), June 22, 1974, 88 Stat. 259; Pub. L. 95–95, title III, §§303(d), 305(a), (c), (f)–(h), Aug. 7, 1977, 91 Stat. 772, 776, 777; Pub. L. 95–190, §14(a)(79), (80), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title I, §§108(p), 110(5), title III, §302(g), (h), title VII, §§702(c), 703, 706, 707(h), 710(b), Nov. 15, 1990, 104 Stat. 2469, 2470, 2574, 2681–2684.)

REFERENCES IN TEXT

Section 7521(b)(4) of this title, referred to in subsec. (a), was repealed by Pub. L. 101–549, title II, §230(2), Nov. 15, 1990, 104 Stat. 2529.

Section 7521(b)(5) of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 101–549, title II, §230(3), Nov. 15, 1990, 104 Stat. 2529.

Section 1857c–10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977), referred to in subsec. (b)(1), was in the original ''section 119(c)(2)(A), (B), or (C) (as in effect before the date of enactment of the Clean Air Act Amendments of 1977)'', meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, §3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413(d) of this title was subsequently amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Part C of subchapter I of this chapter, referred to in subsec. (d)(1)(J), was in the original ''subtitle C of title I'', and was translated as reading ''part C of title I'' to reflect the probable intent of Congress, because title I does not contain subtitles.

CODIFICATION

In subsec. (h), ''subchapter II of chapter 5 of title 5'' was substituted for ''the Administrative Procedures Act'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 1857h–5 of this title.

PRIOR PROVISIONS

A prior section 307 of act July 14, 1955, was renumbered section 314 by Pub. L. 91–604 and is classified to section 7614 of this title.

Another prior section 307 of act July 14, 1955, ch. 360, title III, formerly §14, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 401, was renumbered section 307 by Pub. L. 89–272, renumbered section 310 by Pub. L. 90–148, and renumbered section 317 by Pub. L. 91–604, and is set out as a Short Title note under section 7401 of this title.

[6] So in original. Probably should be ''sections''.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, §703, struck out par. (1) designation at beginning, inserted provisions authorizing issuance of subpoenas and administration of oaths for purposes of investigations, monitoring, reporting requirements, entries, compliance inspections, or administrative enforcement proceedings under this chapter, and struck out ''or section 7521(b)(5)'' after ''section 7410(f)''.

Subsec. (b)(1). Pub. L. 101–549, §706, struck out ''under section 7413(d) of this title'' before '', under section 7419 of this title'' and inserted at end: ''The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.''

Pub. L. 101–549, §702(c), inserted ''or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title,'' before ''or any other final action of the Administrator''.

Pub. L. 101–549, §302(g), substituted ''section 7412'' for ''section 7412(c)''.

Subsec. (b)(2). Pub. L. 101–549, §707(h), inserted sentence at end authorizing challenge to deferrals of performance of nondiscretionary statutory actions.

Subsec. (d)(1)(C). Pub. L. 101–549, §110(5)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''the promulgation or revision of any standard of performance under section 7411 of this title or emission standard under section 7412 of this title,''.

Subsec. (d)(1)(D), (E). Pub. L. 101–549, §302(h), added subpar. (D) and redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (d)(1)(F). Pub. L. 101–549, §302(h), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 101–549, §110(5)(B), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''promulgation or revision of regulations pertaining to orders for coal conversion under section 7413(d)(5) of this title (but not including orders granting or denying any such orders),''.

Subsec. (d)(1)(G), (H). Pub. L. 101–549, §302(h), redesignated subpars. (F) and (G) as (G) and (H), respectively. Former subpar. (H) redesignated (I).

Subsec. (d)(1)(I). Pub. L. 101–549, §710(b), which directed that subpar. (H) be amended by substituting ''subchapter VI of this chapter'' for ''part B of subchapter I of this chapter'', was executed by making the substitution in subpar. (I), to reflect the probable intent of Congress and the intervening redesignation of subpar. (H) as (I) by Pub. L. 101–549, §302(h), see below.

Pub. L. 101–549, §302(h), redesignated subpar. (H) as (I). Former subpar. (I) redesignated (J).

Subsec. (d)(1)(J) to (M). Pub. L. 101–549, §302(h), redesignated subpars. (I) to (L) as (J) to (M), respectively. Former subpar. (M) redesignated (N).

Subsec. (d)(1)(N). Pub. L. 101–549, §302(h), redesignated subpar. (M) as (N). Former subpar. (N) redesignated (O).

Pub. L. 101–549, §110(5)(C), added subpar. (N) and redesignated former subpar. (N) as (U).

Subsec. (d)(1)(O) to (T). Pub. L. 101–549, §302(h), redesignated subpars. (N) to (S) as (O) to (T), respectively. Former subpar. (T) redesignated (U).

Pub. L. 101–549, §110(5)(C), added subpars. (O) to (T).

Subsec. (d)(1)(U). Pub. L. 101–549, §302(h), redesignated subpar. (T) as (U). Former subpar. (U) redesignated (V).

Pub. L. 101–549, §110(5)(C), redesignated former subpar. (N) as (U).

Subsec. (d)(1)(V). Pub. L. 101–549, §302(h), redesignated subpar. (U) as (V).

Subsec. (h). Pub. L. 101–549, §108(p), added subsec. (h).

1977—Subsec. (b)(1). Pub. L. 95–190 in text relating to filing of petitions for review in the United States Court of Appeals for the District of Columbia inserted provision respecting requirements under sections 7411 and

7412 of this title, and substituted provisions authorizing review of any rule issued under section 7413, 7419, or 7420 of this title, for provisions authorizing review of any rule or order issued under section 7420 of this title, relating to noncompliance penalties, and in text relating to filing of petitions for review in the United States Court of Appeals for the appropriate circuit inserted provision respecting review under section 7411(j), 7412(c), 7413(d), or 7419 of this title, provision authorizing review under section 1857c–10(c)(2)(A), (B), or (C) to the period prior to Aug. 7, 1977, and provisions authorizing review of denials or disapprovals by the Administrator under subchapter I of this chapter.

Pub. L. 95–95, § 305(c), (h), inserted rules or orders issued under section 7420 of this title (relating to noncompliance penalties) and any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter to the enumeration of actions of the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the District of Columbia, added the approval or promulgation by the Administrator of orders under section 7420 of this title, or any other final action of the Administrator under this chapter which is locally or regionally applicable to the enumeration of actions by the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the appropriate circuit, inserted provision that petitions otherwise capable of being filed in the Court of Appeals for the appropriate circuit may be filed only in the Court of Appeals for the District of Columbia if the action is based on a determination of nationwide scope, and increased from 30 days to 60 days the period during which the petition must be filed.

Subsec. (d). Pub. L. 95–95, § 305(a), added subsec. (d).

Subsec. (e). Pub. L. 95–95, § 303(d), added subsec. (e).

Subsec. (f). Pub. L. 95–95, § 305(f), added subsec. (f).

Subsec. (g). Pub. L. 95–95, § 305(g), added subsec. (g).

1974—Subsec. (b)(1). Pub. L. 93–319 inserted reference to the Administrator's action under section 1857c–10(c)(2)(A), (B), or (C) of this title or under regulations thereunder and substituted reference to the filing of a petition within 30 days from the date of promulgation, approval, or action for reference to the filing of a petition within 30 days from the date of promulgation or approval.

1971—Subsec. (a)(1). Pub. L. 92–157 substituted reference to section ''7545(c)(3)'' for ''7545(c)(4)'' of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7608. Mandatory licensing

Whenever the Attorney General determines, upon application of the Administrator—

(1) that—

(A) in the implementation of the requirements of section 7411, 7412, or 7521 of this title, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

(B) there are no reasonable alternative methods to accomplish such purpose, and

(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country,

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

(July 14, 1955, ch. 360, title III, § 308, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1708.)

CODIFICATION

Section was formerly classified to section 1857h–6 of this title.

PRIOR PROVISIONS

A prior section 308 of act July 14, 1955, was renumbered section 315 by Pub. L. 91–604 and is classified to section 7615 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective

Date of 1977 Amendment note under section 7401 of this title.

§ 7609. Policy review

(a) Environmental impact

The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) Unsatisfactory legislation, action, or regulation

In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

(July 14, 1955, ch. 360, title III, § 309, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1709.)

CODIFICATION

Section was formerly classified to section 1857h–7 of this title.

PRIOR PROVISIONS

A prior section 309 of act July 14, 1955, ch. 360, title III, formerly § 13, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401; renumbered § 306, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992; renumbered § 309, Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 316, Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1705, related to appropriations and was classified to section 1857*l* of this title, prior to repeal by section 306 of Pub. L. 95–95. See section 7626 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7610. Other authority

(a) Authority and responsibilities under other laws not affected

Except as provided in subsection (b) of this section, this chapter shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.

(b) Nonduplication of appropriations

No appropriation shall be authorized or made under section 241, 243, or 246 of this title for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this chapter.

(July 14, 1955, ch. 360, title III, § 310, formerly § 10, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 401; renumbered § 303, Pub. L. 89–272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 505; renumbered § 310 and amended Pub. L. 91–604, §§ 12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

CODIFICATION

Section was formerly classified to section 1857i of this title.

PRIOR PROVISIONS

A prior section 310 of act July 14, 1955, was renumbered section 317 by Pub. L. 91–604 and is set out as a Short Title note under section 7401 of this title.

Provisions similar to those in subsec. (a) of this section were contained in section 1857f of this title, act July 14, 1955, ch. 360, § 7, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

1967—Subsec. (b). Pub. L. 90–148 substituted reference to section 246 of this title for reference to section 246(c) of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7611. Records and audit

(a) Recipients of assistance to keep prescribed records

Each recipient of assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Audits

The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(July 14, 1955, ch. 360, title III, § 311, formerly § 11, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 401; renumbered § 304, Pub. L. 89–272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 505; renumbered § 311 and amended Pub. L. 91–604, §§ 12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

CODIFICATION

Section was formerly classified to section 1857j of this title.

AMENDMENTS

1970—Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' and ''Secretary of Health, Education, and Welfare''.

1967—Pub. L. 90–148 reenacted section without change.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7612. Economic impact analyses

(a) Cost-benefit analysis

The Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis (as established under subsection (f) of this section), shall conduct a comprehensive analysis of the impact of this chapter on the public health, economy, and environment of the United States. In performing such analysis, the Administrator should consider the costs, benefits and other effects associated with compliance with each standard issued for—

(1) a criteria air pollutant subject to a standard issued under section 7409 of this title;

(2) a hazardous air pollutant listed under section 7412 of this title, including any technology-based standard and any risk-based standard for such pollutant;

(3) emissions from mobile sources regulated under subchapter II of this chapter;

(4) a limitation under this chapter for emissions of sulfur dioxide or nitrogen oxides;

(5) a limitation under subchapter VI of this chapter on the production of any ozone-depleting substance; and

(6) any other section of this chapter.

(b) Benefits

In describing the benefits of a standard described in subsection (a) of this section, the Administrator shall consider all of the economic, public health, and environmental benefits of efforts to comply with such standard. In any case where numerical values are assigned to such benefits, a default assumption of zero value shall not be assigned to such benefits unless supported by specific data. The Administrator shall assess how benefits are measured in order to assure that damage to human health and the environment is more accurately measured and taken into account.

(c) Costs

In describing the costs of a standard described in subsection (a) of this section, the Administrator shall consider the effects of such standard on employment, productivity, cost of living, economic growth, and the overall economy of the United States.

(d) Initial report

Not later than 12 months after November 15, 1990, the Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, shall submit a report to the Congress that summarizes the results of the analysis described in subsection (a) of this section, which reports—

(1) all costs incurred previous to November 15, 1990, in the effort to comply with such standards; and

(2) all benefits that have accrued to the United States as a result of such costs.

(e) Omitted

(f) Appointment of Advisory Council on Clean Air Compliance Analysis

Not later than 6 months after November 15, 1990, the Administrator, in consultation with the Secretary of Commerce and the Secretary of Labor, shall appoint an Advisory Council on Clean Air Compliance Analysis of not less than nine members (hereafter in this section referred to as the ''Council''). In appointing such members, the Administrator shall appoint recognized experts in the fields of the health and environmental effects of air pollution, economic analysis, environmental sciences, and such other fields that the Administrator determines to be appropriate.

(g) Duties of Advisory Council

The Council shall—

(1) review the data to be used for any analysis required under this section and make recommendations to the Administrator on the use of such data;

(2) review the methodology used to analyze such data and make recommendations to the Administrator on the use of such methodology; and

(3) prior to the issuance of a report required under subsection (d) or (e) of this section, review the findings of such report, and make recommendations to the Administrator concerning the validity and utility of such findings.

(July 14, 1955, ch. 360, title III, § 312, formerly § 305, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 505; renumbered § 312 and amended Pub. L. 91–604, §§ 12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713; Pub. L. 95–95, title II, § 224(c), Aug. 7, 1977, 91 Stat. 767; Pub. L. 101–549, title VIII, § 812(a), Nov. 15, 1990, 104 Stat. 2691.)

CODIFICATION

Subsec. (e) of this section, which required the Administrator, in consultation with the Secretary of Com-

merce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, to submit a report to Congress that updates the report issued pursuant to subsec. (d) of this section, and which, in addition, makes projections into the future regarding expected costs, benefits, and other effects of compliance with standards pursuant to this chapter as listed in subsec. (a) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 163 of House Document No. 103–7.

Section was formerly classified to section 1857j–1 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), detailed cost estimate, comprehensive cost and economic impact studies, and annual reevaluation; in subsec. (b), personnel study and report to President and Congress; and in subsec. (c), cost-effectiveness analyses.

1977—Subsec. (c). Pub. L. 95–95 added subsec. (c).

1970—Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

EQUIVALENT AIR QUALITY CONTROLS AMONG TRADING NATIONS

Section 811 of Pub. L. 101–549 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) all nations have the responsibility to adopt and enforce effective air quality standards and requirements and the United States, in enacting this Act [see Tables for classification], is carrying out its responsibility in this regard;

''(2) as a result of complying with this Act, businesses in the United States will make significant capital investments and incur incremental costs in implementing control technology standards;

''(3) such compliance may impair the competitiveness of certain United States jobs, production, processes, and products if foreign goods are produced under less costly environmental standards and requirements than are United States goods; and

''(4) mechanisms should be sought through which the United States and its trading partners can agree to eliminate or reduce competitive disadvantages.

''(b) ACTION BY THE PRESIDENT.—

''(1) IN GENERAL.—Within 18 months after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the President shall submit to the Congress a report—

''(A) identifying and evaluating the economic effects of—

''(i) the significant air quality standards and controls required under this Act, and

''(ii) the differences between the significant standards and controls required under this Act and similar standards and controls adopted and enforced by the major trading partners of the United States,

on the international competitiveness of United States manufacturers; and

''(B) containing a strategy for addressing such economic effects through trade consultations and negotiations.

''(2) ADDITIONAL REPORTING REQUIREMENTS.—(A) The evaluation required under paragraph (1)(A) shall examine the extent to which the significant air quality standards and controls required under this Act are comparable to existing internationally-agreed norms.

''(B) The strategy required to be developed under paragraph (1)(B) shall include recommended options (such as the harmonization of standards and trade adjustment measures) for reducing or eliminating competitive disadvantages caused by differences in standards and controls between the United States and each of its major trading partners.

''(3) PUBLIC COMMENT.—Interested parties shall be given an opportunity to submit comments regarding the evaluations and strategy required in the report under paragraph (1). The President shall take any such comment into account in preparing the report.

''(4) INTERIM REPORT.—Within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the President shall submit to the Congress an interim report on the progress being made in complying with paragraph (1).''

GAO REPORTS ON COSTS AND BENEFITS

Section 812(b) of Pub. L. 101–549, which directed Comptroller General, commencing on second year after Nov. 15, 1990, and annually thereafter, in consultation with other agencies, to report to Congress on pollution control strategies and technologies required by Clean Air Act Amendments of 1990, was repealed by Pub. L. 104–316, title I, § 122(r), Oct. 19, 1996, 110 Stat. 3838.

§ 7613. Repealed. Pub. L. 101–549, title VIII, § 803, Nov. 15, 1990, 104 Stat. 2689

Section, act July 14, 1955, ch. 360, title III, § 313, formerly § 306, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 313 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713; Aug. 7, 1977, Pub. L. 95–95, title III, § 302(b), 91 Stat. 771, required annual report to Congress on progress of programs under this chapter.

§ 7614. Labor standards

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection,[1] the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(July 14, 1955, ch. 360, title III, § 314, formerly § 307, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 506; renumbered § 314 and amended Pub. L. 91–604, §§ 12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

[1] So in original. Probably should be ''section,''.

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C. 276a—276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c)'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Section was formerly classified to section 1857j–3 of this title.

AMENDMENTS

1970—Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' meaning the Secretary of Health, Education, and Welfare.

§ 7615. Separability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter shall not be affected thereby.

(July 14, 1955, ch. 360, title III, § 315, formerly § 12, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 401; renumbered § 305, Pub. L. 89–272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; renumbered § 308 and amended, Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 506; renumbered § 315, Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1705.)

CODIFICATION

Section was formerly classified to section 1857k of this title.

AMENDMENTS

1967—Pub. L. 90–148 reenacted section without change.

§ 7616. Sewage treatment grants

(a) Construction

No grant which the Administrator is authorized to make to any applicant for construction of sewage treatment works in any area in any State may be withheld, conditioned, or restricted by the Administrator on the basis of any requirement of this chapter except as provided in subsection (b) of this section.

(b) Withholding, conditioning, or restriction of construction grants

The Administrator may withhold, condition, or restrict the making of any grant for construction referred to in subsection (a) of this section only if he determines that—

(1) such treatment works will not comply with applicable standards under section 7411 or 7412 of this title,

(2) the State does not have in effect, or is not carrying out, a State implementation plan approved by the Administrator which expressly quantifies and provides for the increase in emissions of each air pollutant (from stationary and mobile sources in any area to which either part C or part D of subchapter I of this chapter applies for such pollutant) which increase may reasonably be anticipated to result directly or indirectly from the new sewage treatment capacity which would be created by such construction.[1]

(3) the construction of such treatment works would create new sewage treatment capacity which—

(A) may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any air pollutant in excess of the increase provided for under the provisions referred to in paragraph (2) for any such area, or

(B) would otherwise not be in conformity with the applicable implementation plan, or

(4) such increase in emissions would interfere with, or be inconsistent with, the applicable implementation plan for any other State.

In the case of construction of a treatment works which would result, directly or indirectly, in an increase in emissions of any air pollutant from stationary and mobile sources in an area to which part D of subchapter I of this chapter applies, the quantification of emissions referred to in paragraph (2) shall include the emissions of any such pollutant resulting directly or indirectly from areawide and nonmajor stationary source growth (mobile and stationary) for each such area.

(c) National Environmental Policy Act

Nothing in this section shall be construed to amend or alter any provision of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] or to affect any determination as to whether or not the requirements of such Act have been met in the case of the construction of any sewage treatment works.

(July 14, 1955, ch. 360, title III, § 316, as added Pub. L. 95–95, title III, § 306, Aug. 7, 1977, 91 Stat. 777.)

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in subsec. (c), probably means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

PRIOR PROVISIONS

A prior section 316 of act July 14, 1955, ch. 360, title III, formerly § 13, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401; renumbered § 306 and amended Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89–675, § 2(a), 80 Stat. 954; renumbered § 309 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 316 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93–15, § 1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, § 13(c), 88 Stat. 265, authorized appropriations for air pollution control, prior to repeal by section 306 of Pub. L. 95–95. See section 7626 of this title.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. The period probably should be a comma.

§ 7617. Economic impact assessment

(a) Notice of proposed rulemaking; substantial revisions

This section applies to action of the Administrator in promulgating or revising—

(1) any new source standard of performance under section 7411 of this title,

(2) any regulation under section 7411(d) of this title,

(3) any regulation under part B[1] of subchapter I of this chapter (relating to ozone and stratosphere protection),

(4) any regulation under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality),

(5) any regulation establishing emission standards under section 7521 of this title and any other regulation promulgated under that section,

(6) any regulation controlling or prohibiting any fuel or fuel additive under section 7545(c) of this title, and

(7) any aircraft emission standard under section 7571 of this title.

Nothing in this section shall apply to any standard or regulation described in paragraphs (1) through (7) of this subsection unless the notice of proposed rulemaking in connection with such standard or regulation is published in the Federal Register after the date ninety days after August 7, 1977. In the case of revisions of such standards or regulations, this section shall apply only to revisions which the Administrator determines to be substantial revisions.

(b) Preparation of assessment by Administrator

Before publication of notice of proposed rulemaking with respect to any standard or regulation to which this section applies, the Administrator shall prepare an economic impact assessment respecting such standard or regulation. Such assessment shall be included in the docket required under section 7607(d)(2) of this title and shall be available to the public as provided in section 7607(d)(4) of this title. Notice of proposed rulemaking shall include notice of such availability together with an explanation of the extent and manner in which the Administrator has considered the analysis contained in such economic impact assessment in proposing the action. The Administrator shall also provide such an explanation in his notice of promulgation of any regulation or standard referred to in subsection (a) of this section. Each such explanation shall be part of the statements of basis and purpose required under sections 7607(d)(3) and 7607(d)(6) of this title.

(c) Analysis

Subject to subsection (d) of this section, the assessment required under this section with respect to any standard or regulation shall contain an analysis of—

(1) the costs of compliance with any such standard or regulation, including extent to which the costs of compliance will vary depending on (A) the effective date of the standard or regulation, and (B) the development of less expensive, more efficient means or methods of compliance with the standard or regulation;

(2) the potential inflationary or recessionary effects of the standard or regulation;

(3) the effects on competition of the standard or regulation with respect to small business;

(4) the effects of the standard or regulation on consumer costs; and

(5) the effects of the standard or regulation on energy use.

Nothing in this section shall be construed to provide that the analysis of the factors specified in this subsection affects or alters the factors which the Administrator is required to consider in taking any action referred to in subsection (a) of this section.

(d) Extensiveness of assessment

The assessment required under this section shall be as extensive as practicable, in the judgment of the Administrator taking into account the time and resources available to the Environmental Protection Agency and other duties and authorities which the Administrator is required to carry out under this chapter.

(e) Limitations on construction of section

Nothing in this section shall be construed—

(1) to alter the basis on which a standard or regulation is promulgated under this chapter;

(2) to preclude the Administrator from carrying out his responsibility under this chapter to protect public health and welfare; or

(3) to authorize or require any judicial review of any such standard or regulation, or any stay or injunction of the proposal, promulgation, or effectiveness of such standard or regulation on the basis of failure to comply with this section.

(f) Citizen suits

The requirements imposed on the Administrator under this section shall be treated as nondiscretionary duties for purposes of section 7604(a)(2) of this title, relating to citizen suits. The sole method for enforcement of the Administrator's duty under this section shall be by bringing a citizen suit under such section 7604(a)(2) for a court order to compel the Administrator to perform such duty. Violation of any such order shall subject the Administrator to penalties for contempt of court.

(g) Costs

In the case of any provision of this chapter in which costs are expressly required to be taken into account, the adequacy or inadequacy of any assessment required under this section may be taken into consideration, but shall not be treated for purposes of judicial review of any such provision as conclusive with respect to compliance or noncompliance with the requirement of such provision to take cost into account.

(July 14, 1955, ch. 360, title III, § 317, as added Pub. L. 95–95, title III, § 307, Aug. 7, 1977, 91 Stat. 778; amended Pub. L. 95–623, § 13(d), Nov. 9, 1978, 92 Stat. 3458.)

REFERENCES IN TEXT

Part B of subchapter I of this chapter, referred to in subsec. (a)(3), was repealed by Pub. L. 101–549, title VI,

[1] See References in Text note below.

§ 601, Nov. 15, 1990, 104 Stat. 2648. See subchapter VI (§ 7671 et seq.) of this chapter.

CODIFICATION

Another section 317 of act July 14, 1955, is set out as a Short Title note under section 7401 of this title.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95–623 substituted ''section 7411'' for ''section 7411(b)''.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7618. Repealed. Pub. L. 101–549, title I, § 108(q), Nov. 15, 1990, 104 Stat. 2469

Section, act July 14, 1955, ch. 360, title III, § 318, as added Aug. 7, 1977, Pub. L. 95–95, title III, § 308, 91 Stat. 780, related to financial disclosure and conflicts of interest.

§ 7619. Air quality monitoring

(a) In general

After notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which—

(1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index,

(2) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan,

(3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and

(4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air quality monitoring system required under any applicable implementation plan under section 7410 of this title shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.

(b) Air quality monitoring data influenced by exceptional events

(1) Definition of exceptional event

In this section:

(A) In general

The term ''exceptional event'' means an event that—

(i) affects air quality;

(ii) is not reasonably controllable or preventable;

(iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and

(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

(B) Exclusions

In this subsection, the term ''exceptional event'' does not include—

(i) stagnation of air masses or meteorological inversions;

(ii) a meteorological event involving high temperatures or lack of precipitation; or

(iii) air pollution relating to source noncompliance.

(2) Regulations

(A) Proposed regulations

Not later than March 1, 2006, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

(B) Final regulations

Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling or[1] air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

(3) Principles and requirements

(A) Principles

In promulgating regulations under this section, the Administrator shall follow—

(i) the principle that protection of public health is the highest priority;

(ii) the principle that timely information should be provided to the public in any case in which the air quality is unhealthy;

(iii) the principle that all ambient air quality data should be included in a timely manner,[2] an appropriate Federal air quality database that is accessible to the public;

(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and

(v) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

(B) Requirements

Regulations promulgated under this section shall, at a minimum, provide that—

[1] So in original. Probably should be ''of''.

[2] So in original. Probably should be followed by ''in''.

(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

(iii) there is a public process for determining whether an event is exceptional; and

(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards.

(4) Interim provision

Until the effective date of a regulation promulgated under paragraph (2), the following guidance issued by the Administrator shall continue to apply:

(A) Guidance on the identification and use of air quality data affected by exceptional events (July 1986).

(B) Areas affected by PM–10 natural events, May 30, 1996.

(C) Appendices I, K, and N to part 50 of title 40, Code of Federal Regulations.

(July 14, 1955, ch. 360, title III, § 319, as added Pub. L. 95–95, title III, § 309, Aug. 7, 1977, 91 Stat. 781; amended Pub. L. 109–59, title VI, § 6013(a), Aug. 10, 2005, 119 Stat. 1882.)

AMENDMENTS

2005—Pub. L. 109–59 designated existing provisions as subsec. (a), inserted heading, substituted ''After notice and opportunity for public hearing'' for ''Not later than one year after August 7, 1977, and after notice and opportunity for public hearing'', and added subsec. (b).

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7620. Standardized air quality modeling

(a) Conferences

Not later than six months after August 7, 1977, and at least every three years thereafter, the Administrator shall conduct a conference on air quality modeling. In conducting such conference, special attention shall be given to appropriate modeling necessary for carrying out part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality).

(b) Conferees

The conference conducted under this section shall provide for participation by the National Academy of Sciences, representatives of State and local air pollution control agencies, and appropriate Federal agencies, including the National Science Foundation;[1] the National Oceanic and Atmospheric Administration, and the National Institute of Standards and Technology.

(c) Comments; transcripts

Interested persons shall be permitted to submit written comments and a verbatim transcript of the conference proceedings shall be maintained.

(d) Promulgation and revision of regulations relating to air quality modeling

The comments submitted and the transcript maintained pursuant to subsection (c) of this section shall be included in the docket required to be established for purposes of promulgating or revising any regulation relating to air quality modeling under part C of subchapter I of this chapter.

(July 14, 1955, ch. 360, title III, § 320, as added Pub. L. 95–95, title III, § 310, Aug. 7, 1977, 91 Stat. 782; amended Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7621. Employment effects

(a) Continuous evaluation of potential loss or shifts of employment

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this chapter and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.

(b) Request for investigation; hearings; record; report

Any employee, or any representative of such employee, who is discharged or laid off, threatened with discharge or layoff, or whose employment is otherwise adversely affected or threatened to be adversely affected because of the alleged results of any requirement imposed or proposed to be imposed under this chapter, including any requirement applicable to Federal facilities and any requirement imposed by a State or political subdivision thereof, may request the Administrator to conduct a full investigation of the matter. Any such request shall be reduced to writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice. At such hearings, the Administrator shall re-

[1] So in original. The semicolon probably should be a comma.

quire the parties, including the employer involved, to present information relating to the actual or potential effect of such requirements on employment and the detailed reasons or justification therefor. If the Administrator determines that there are no reasonable grounds for conducting a public hearing he shall notify (in writing) the party requesting such hearing of such a determination and the reasons therefor. If the Administrator does convene such a hearing, the hearing shall be on the record. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such requirements on employment and on the alleged actual or potential discharge, layoff, or other adverse effect on employment, and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public.

(c) Subpenas; confidential information; witnesses; penalty

In connection with any investigation or public hearing conducted under subsection (b) of this section or as authorized in section 7419 of this title (relating to primary nonferrous smelter orders), the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner, or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpena served upon any person under this subparagraph,[1] the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Limitations on construction of section

Nothing in this section shall be construed to require or authorize the Administrator, the States, or political subdivisions thereof, to modify or withdraw any requirement imposed or proposed to be imposed under this chapter.

[1] So in original. Probably should be ''subsection,''

(July 14, 1955, ch. 360, title III, § 321, as added Pub. L. 95–95, title III, § 311, Aug. 7, 1977, 91 Stat. 782.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY OF POTENTIAL DISLOCATION OF EMPLOYEES

Section 403(e) of Pub. L. 95–95 provided that the Secretary of Labor, in consultation with the Administrator, conduct a study of potential dislocation of employees due to implementation of laws administered by the Administrator and that the Secretary submit to Congress the results of the study not more than one year after Aug. 7, 1977.

§ 7622. Employee protection

(a) Discharge or discrimination prohibited

No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or a proceeding for the administration or enforcement of any requirement imposed under this chapter or under any applicable implementation plan,

(2) testified or is about to testify in any such proceeding, or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this chapter.

(b) Complaint charging unlawful discharge or discrimination; investigation; order

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the ''Secretary'') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or de-

nying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) Review

(1) Any person adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph[1] shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Enforcement of order by Secretary

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Enforcement of order by person on whose behalf order was issued

(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) of this section may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Mandamus

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(g) Deliberate violation by employee

Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter.

(July 14, 1955, ch. 360, title III, § 322, as added Pub. L. 95–95, title III, § 312, Aug. 7, 1977, 91 Stat. 783.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7623. Repealed. Pub. L. 96–300, § 1(c), July 2, 1980, 94 Stat. 831

Section, act July 14, 1955, ch. 360, title III, § 323, as added Aug. 7, 1977, Pub. L. 95–95, title III, § 313, 91 Stat. 785; amended Nov. 16, 1977, Pub. L. 95–190, § 14(a)(81), 91 Stat. 1404; S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980; July 2, 1980, Pub. L. 96–300, § 1(a), 94 Stat. 831, established a National Commission on Air Quality, prescribed numerous subjects for study and report to Congress, enumerated specific questions for study and investigation, required specific identification of loss or irretrievable commitment of resources, and provided for appointment and confirmation of its membership, cooperation of Federal executive agencies, submission of a National Academy of Sciences study to Congress, compensation and travel expenses, termination of Commission, appointment and compensation of staff, and public participation.

EFFECTIVE DATE OF REPEAL

Section 1(c) of Pub. L. 96–300 provided that this section is repealed on date on which National Commission on Air Quality ceases to exist pursuant to provisions of former subsec. (g) of this section, which provided that not later than Mar. 1, 1981, a report be submitted containing results of all Commission studies and investigations and that Commission cease to exist on Mar. 1, 1981, if report is not submitted on Mar. 1, 1981, or Commission would cease to exist on such date, but not later than May 1, 1981, as determined and ordered by Commission if report is submitted on Mar. 1, 1981.

NATIONAL COMMISSION ON AIR QUALITY; EXTENSION PROHIBITION

Section 1(d) of Pub. L. 96–300 provided that nothing in any other authority of law shall be construed to authorize or permit the extension of the National Commission on Air Quality pursuant to any Executive order or other Executive or agency action.

§ 7624. Cost of vapor recovery equipment

(a) Costs to be borne by owner of retail outlet

The regulations under this chapter applicable to vapor recovery with respect to mobile source fuels at retail outlets of such fuels shall provide that the cost of procurement and installation of such vapor recovery shall be borne by the owner of such outlet (as determined under such regulations). Except as provided in subsection (b) of

[1] So in original.

this section, such regulations shall provide that no lease of a retail outlet by the owner thereof which is entered into or renewed after August 7, 1977, may provide for a payment by the lessee of the cost of procurement and installation of vapor recovery equipment. Such regulations shall also provide that the cost of procurement and installation of vapor recovery equipment may be recovered by the owner of such outlet by means of price increases in the cost of any product sold by such owner, notwithstanding any provision of law.

(b) Payment by lessee

The regulations of the Administrator referred to in subsection (a) of this section shall permit a lease of a retail outlet to provide for payment by the lessee of the cost of procurement and installation of vapor recovery equipment over a reasonable period (as determined in accordance with such regulations), if the owner of such outlet does not sell, trade in, or otherwise dispense any product at wholesale or retail at such outlet.

(July 14, 1955, ch. 360, title III, § 323, formerly § 324, as added Pub. L. 95–95, title III, § 314(a), Aug. 7, 1977, 91 Stat. 788; amended Pub. L. 95–190, § 14(a)(82), Nov. 16, 1977, 91 Stat. 1404; renumbered § 323 and amended Pub. L. 96–300, § 1(b), (c), July 2, 1980, 94 Stat. 831.)

PRIOR PROVISIONS

A prior section 323 of act July 14, 1955, was classified to section 7623 of this title prior to repeal by Pub. L. 96–300, § 1(c), July 2, 1980, 94 Stat. 831.

AMENDMENTS

1980—Pub. L. 96–300, § 1(b), which directed that last sentence of this section be struck out was probably intended to strike sentence purportedly added by Pub. L. 95–190. See 1977 Amendment note below and section 7623(i) of this title.

1977—Pub. L. 95–190 which purported to amend subsec. (j) of this section by inserting ''The Commission may appoint and fix the pay of such staff as it deems necessary.'' after ''(j)'' was not executed to this section because it did not contain a subsec. (j). See 1980 Amendment note above.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7625. Vapor recovery for small business marketers of petroleum products

(a) Marketers of gasoline

The regulations under this chapter applicable to vapor recovery from fueling of motor vehicles at retail outlets of gasoline shall not apply to any outlet owned by an independent small business marketer of gasoline having monthly sales of less than 50,000 gallons. In the case of any other outlet owned by an independent small business marketer, such regulations shall provide, with respect to independent small business marketers of gasoline, for a three-year phase-in period for the installation of such vapor recovery equipment at such outlets under which such marketers shall have—

(1) 33 percent of such outlets in compliance at the end of the first year during which such regulations apply to such marketers,

(2) 66 percent at the end of such second year, and

(3) 100 percent at the end of the third year.

(b) State requirements

Nothing in subsection (a) of this section shall be construed to prohibit any State from adopting or enforcing, with respect to independent small business marketers of gasoline having monthly sales of less than 50,000 gallons, any vapor recovery requirements for mobile source fuels at retail outlets. Any vapor recovery requirement which is adopted by a State and submitted to the Administrator as part of its implementation plan may be approved and enforced by the Administrator as part of the applicable implementation plan for that State.

(c) Refiners

For purposes of this section, an independent small business marketer of gasoline is a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment under section 7624[1] of this title or under regulations of the Administrator, unless such person—

(1)(A) is a refiner, or[2]

(B) controls, is controlled by, or is under common control with, a refiner,

(C) is otherwise directly or indirectly affiliated (as determined under the regulations of the Administrator) with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation referred to herein is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person), or

(2) receives less than 50 percent of his annual income from refining or marketing of gasoline.

For the purpose of this section, the term ''refiner'' shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. For purposes of this section, ''control'' of a corporation means ownership of more than 50 percent of its stock.

(July 14, 1955, ch. 360, title III, § 324, formerly § 325, as added Pub. L. 95–95, title III, § 314(b), Aug. 7, 1977, 91 Stat. 789; renumbered § 324, Pub. L. 96–300, § 1(c), July 2, 1980, 94 Stat. 831.)

REFERENCES IN TEXT

Section 7624 of this title, referred to in subsec. (c), was in the original ''section 324 of this Act'', meaning section 324 of the Act July 14, 1955. Sections 324 and 325 of that Act, were renumbered sections 323 and 324, respectively, by Pub. L. 96–300, § 1(b), July 2, 1980, 94 Stat. 831, and are classified to sections 7624 and 7625, respectively, of this title.

PRIOR PROVISIONS

A prior section 324 of act July 14, 1955, was renumbered section 323 by Pub. L. 96–300 and is classified to section 7624 of this title.

[1] See References in Text note below.

[2] So in original. The word ''or'' probably should appear at the end of subpar. (B).

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7625–1. Exemptions for certain territories

(a)(1) Upon petition by the governor[1] of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator is authorized to exempt any person or source or class of persons or sources in such territory from any requirement under this chapter other than section 7412 of this title or any requirement under section 7410 of this title or part D of subchapter I of this chapter necessary to attain or maintain a national primary ambient air quality standard. Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 7607(d) of this title and any exemption under this subsection shall be considered final action by the Administrator for the purposes of section 7607(b) of this title.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Natural Resources of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this subsection and of the approval or rejection of such petition and the basis for such action.

(b) Notwithstanding any other provision of this chapter, any fossil fuel fired steam electric power plant operating within Guam as of December 8, 1983, is hereby exempted from:

(1) any requirement of the new source performance standards relating to sulfur dioxide promulgated under section 7411 of this title as of December 8, 1983; and

(2) any regulation relating to sulfur dioxide standards or limitations contained in a State implementation plan approved under section 7410 of this title as of December 8, 1983: *Provided*, That such exemption shall expire eighteen months after December 8, 1983, unless the Administrator determines that such plant is making all emissions reductions practicable to prevent exceedances of the national ambient air quality standards for sulfur dioxide.

(July 14, 1955, ch. 360, title III, § 325, as added Pub. L. 98–213, § 11, Dec. 8, 1983, 97 Stat. 1461; amended Pub. L. 101–549, title VIII, § 806, Nov. 15, 1990, 104 Stat. 2689; Pub. L. 103–437, § 15(s), Nov. 2, 1994, 108 Stat. 4594.)

PRIOR PROVISIONS

A prior section 325 of act July 14, 1955, was renumbered section 326 by Pub. L. 98–213 and is classified to section 7625a of this title.

Another prior section 325 of act July 14, 1955, was renumbered section 324 by Pub. L. 96–300 and is classified to section 7625 of this title.

[1] So in original. Probably should be capitalized.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–437 substituted ''Natural Resources'' for ''Interior and Insular Affairs'' before ''of the House''.

1990—Subsec. (a)(1). Pub. L. 101–549, which directed the insertion of ''the Virgin Islands,'' after ''American Samoa,'' in ''[s]ection 324(a)(1) of the Clean Air Act (42 U.S.C. 7625–1(a)(1))'', was executed by making the insertion in subsec. (a)(1) of this section to reflect the probable intent of Congress.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives and Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 7625a. Statutory construction

The parenthetical cross references in any provision of this chapter to other provisions of the chapter, or other provisions of law, where the words ''relating to'' or ''pertaining to'' are used, are made only for convenience, and shall be given no legal effect.

(July 14, 1955, ch. 360, title III, § 326, as added Pub. L. 95–190, § 14(a)(84), Nov. 16, 1977, 91 Stat. 1404; renumbered § 325, Pub. L. 96–300, § 1(c), July 2, 1980, 94 Stat. 831; renumbered § 326, Pub. L. 98–213, § 11, Dec. 8, 1983, 97 Stat. 1461.)

PRIOR PROVISIONS

A prior section 326 of act July 14, 1955, was renumbered section 327 by Pub. L. 98–213 and is classified to section 7626 of this title.

§ 7626. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this chapter such sums as may be necessary for the 7 fiscal years commencing after November 15, 1990.

(b) Grants for planning

There are authorized to be appropriated (1) not more than $50,000,000 to carry out section 7505 of this title beginning in fiscal year 1991, to be available until expended, to develop plan revisions required by subpart 2, 3, or 4 of part D of subchapter I of this chapter, and (2) not more than $15,000,000 for each of the 7 fiscal years commencing after November 15, 1990, to make grants to the States to prepare implementation plans as required by subpart 2, 3, or 4 of part D of subchapter I of this chapter.

(July 14, 1955, ch. 360, title III, § 327, formerly § 325, as added Pub. L. 95–95, title III, § 315, Aug. 7, 1977, 91 Stat. 790; renumbered § 327 and amended Pub. L. 95–190, § 14(a)(83), Nov. 16, 1977, 91 Stat. 1404; renumbered § 326, Pub. L. 96–300, § 1(c), July 2, 1980, 94 Stat. 831; renumbered § 327, Pub. L. 98–213, § 11, Dec. 8, 1983, 97 Stat. 1461; Pub. L.

101–549, title VIII, § 822, Nov. 15, 1990, 104 Stat. 2699.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1857*l* of this title, act July 14, 1955, ch. 360, title III, § 316, formerly § 13, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401; renumbered § 306 and amended Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89–675, § 2(a), 80 Stat. 954; renumbered § 309 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 316 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93–15, § 1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, § 13(c), 88 Stat. 265, prior to repeal by section 306 of Pub. L. 95–95.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions authorizing specific appropriations for certain programs and periods and appropriations of $200,000,000 for fiscal years 1978 through 1981 to carry out the other programs under this chapter.

1977—Subsec. (b)(4). Pub. L. 95–190 substituted ''section 7403(a)(5)'' for ''section 7403(b)(5)''.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7627. Air pollution from Outer Continental Shelf activities

(a) Applicable requirements for certain areas

(1) In general

Not later than 12 months after November 15, 1990, following consultation with the Secretary of the Interior and the Commandant of the United States Coast Guard, the Administrator, by rule, shall establish requirements to control air pollution from Outer Continental Shelf sources located offshore of the States along the Pacific, Arctic and Atlantic Coasts, and along the United States Gulf Coast off the State of Florida eastward of longitude 87 degrees and 30 minutes (''OCS sources'') to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of subchapter I of this chapter. For such sources located within 25 miles of the seaward boundary of such States, such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area, and shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting. New OCS sources shall comply with such requirements on the date of promulgation and existing OCS sources shall comply on the date 24 months thereafter. The Administrator shall update such requirements as necessary to maintain consistency with onshore regulations. The authority of this subsection shall supersede section 5(a)(8) of the Outer Continental Shelf Lands Act [43 U.S.C. 1334(a)(8)] but shall not repeal or modify any other Federal, State, or local authorities with respect to air quality. Each requirement established under this section shall be treated, for purposes of sections 7413, 7414, 7416, 7420, and 7604 of this title, as a standard under section 7411 of this title and a violation of any such requirement shall be considered a violation of section 7411(e) of this title.

(2) Exemptions

The Administrator may exempt an OCS source from a specific requirement in effect under regulations under this subsection if the Administrator finds that compliance with a pollution control technology requirement is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator shall make written findings explaining the basis of any exemption issued pursuant to this subsection and shall impose another requirement equal to or as close in stringency to the original requirement as possible. The Administrator shall ensure that any increase in emissions due to the granting of an exemption is offset by reductions in actual emissions, not otherwise required by this chapter, from the same source or other sources in the area or in the corresponding onshore area. The Administrator shall establish procedures to provide for public notice and comment on exemptions proposed pursuant to this subsection.

(3) State procedures

Each State adjacent to an OCS source included under this subsection may promulgate and submit to the Administrator regulations for implementing and enforcing the requirements of this subsection. If the Administrator finds that the State regulations are adequate, the Administrator shall delegate to that State any authority the Administrator has under this chapter to implement and enforce such requirements. Nothing in this subsection shall prohibit the Administrator from enforcing any requirement of this section.

(4) Definitions

For purposes of subsections (a) and (b) of this section—

(A) Outer Continental Shelf

The term ''Outer Continental Shelf'' has the meaning provided by section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(B) Corresponding onshore area

The term ''corresponding onshore area'' means, with respect to any OCS source, the onshore attainment or nonattainment area that is closest to the source, unless the Administrator determines that another area with more stringent requirements with respect to the control and abatement of air pollution may reasonably be expected to be affected by such emissions. Such determination shall be based on the potential for air pollutants from the OCS source to reach the other onshore area and the potential of such air pollutants to affect the efforts of the other onshore area to attain or maintain any Federal or State ambient air quality standard or to comply with the provisions of part C of subchapter I of this chapter.

(C) Outer Continental Shelf source

The terms ''Outer Continental Shelf source'' and ''OCS source'' include any equipment, activity, or facility which—

(i) emits or has the potential to emit any air pollutant,

(ii) is regulated or authorized under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], and

(iii) is located on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf.

Such activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation. For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source.

(D) New and existing OCS sources

The term ''new OCS source'' means an OCS source which is a new source within the meaning of section 7411(a) of this title. The term ''existing OCS source'' means any OCS source other than a new OCS source.

(b) Requirements for other offshore areas

For portions of the United States Gulf Coast Outer Continental Shelf that are adjacent to the States not covered by subsection (a) of this section which are Texas, Louisiana, Mississippi, and Alabama, the Secretary shall consult with the Administrator to assure coordination of air pollution control regulation for Outer Continental Shelf emissions and emissions in adjacent onshore areas. Concurrently with this obligation, the Secretary shall complete within 3 years of November 15, 1990, a research study examining the impacts of emissions from Outer Continental Shelf activities in such areas that fail to meet the national ambient air quality standards for either ozone or nitrogen dioxide. Based on the results of this study, the Secretary shall consult with the Administrator and determine if any additional actions are necessary. There are authorized to be appropriated such sums as may be necessary to provide funding for the study required under this section.

(c) Coastal waters

(1) The study report of section 7412(n)[1] of this title shall apply to the coastal waters of the United States to the same extent and in the same manner as such requirements apply to the Great Lakes, the Chesapeake Bay, and their tributary waters.

(2) The regulatory requirements of section 7412(n)[1] of this title shall apply to the coastal waters of the States which are subject to subsection (a) of this section, to the same extent and in the same manner as such requirements apply to the Great Lakes, the Chesapeake Bay, and their tributary waters.

(July 14, 1955, ch. 360, title III, § 328, as added Pub. L. 101–549, title VIII, § 801, Nov. 15, 1990, 104 Stat. 2685.)

[1] So in original. Probably should be section ''7412(m)''.

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (a)(4)(C)(ii), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER IV—NOISE POLLUTION

CODIFICATION

Another title IV of act July 14, 1955, as added by Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2584, is classified to subchapter IV–A (§ 7651 et seq.) of this chapter.

§ 7641. Noise abatement

(a) Office of Noise Abatement and Control

The Administrator shall establish within the Environmental Protection Agency an Office of Noise Abatement and Control, and shall carry out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare in order to (1) identify and classify causes and sources of noise, and (2) determine—

(A) effects at various levels;

(B) projected growth of noise levels in urban areas through the year 2000;

(C) the psychological and physiological effect on humans;

(D) effects of sporadic extreme noise (such as jet noise near airports) as compared with constant noise;

(E) effect on wildlife and property (including values);

(F) effect of sonic booms on property (including values); and

(G) such other matters as may be of interest in the public welfare.

(b) Investigation techniques; report and recommendations

In conducting such investigation, the Administrator shall hold public hearings, conduct research, experiments, demonstrations, and studies. The Administrator shall report the results of such investigation and study, together with his recommendations for legislation or other action, to the President and the Congress not later than one year after December 31, 1970.

(c) Abatement of noise from Federal activities

In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise.

(July 14, 1955, ch. 360, title IV, § 402, as added Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1709.)

CODIFICATION

Another section 402 of act July 14, 1955, as added by Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2585, is classified to section 7651a of this title.

Section was formerly classified to section 1858 of this title.

§ 7642. Authorization of appropriations

There is authorized to be appropriated such amount, not to exceed $30,000,000, as may be necessary for the purposes of this subchapter.

(July 14, 1955, ch. 360, title IV, § 403, as added Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1710.)

CODIFICATION

Another section 403 of act July 14, 1955, as added by Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2589, is classified to section 7651b of this title.

Section was formerly classified to section 1858a of this title.

SUBCHAPTER IV–A—ACID DEPOSITION CONTROL

CODIFICATION

Another title IV of act July 14, 1955, as added by Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1709, is classified principally to subchapter IV (§ 7641 et seq.) of this chapter.

§ 7651. Findings and purposes

(a) Findings

The Congress finds that—

(1) the presence of acidic compounds and their precursors in the atmosphere and in deposition from the atmosphere represents a threat to natural resources, ecosystems, materials, visibility, and public health;

(2) the principal sources of the acidic compounds and their precursors in the atmosphere are emissions of sulfur and nitrogen oxides from the combustion of fossil fuels;

(3) the problem of acid deposition is of national and international significance;

(4) strategies and technologies for the control of precursors to acid deposition exist now that are economically feasible, and improved methods are expected to become increasingly available over the next decade;

(5) current and future generations of Americans will be adversely affected by delaying measures to remedy the problem;

(6) reduction of total atmospheric loading of sulfur dioxide and nitrogen oxides will enhance protection of the public health and welfare and the environment; and

(7) control measures to reduce precursor emissions from steam-electric generating units should be initiated without delay.

(b) Purposes

The purpose of this subchapter is to reduce the adverse effects of acid deposition through reductions in annual emissions of sulfur dioxide of ten million tons from 1980 emission levels, and, in combination with other provisions of this chapter, of nitrogen oxides emissions of approximately two million tons from 1980 emission levels, in the forty-eight contiguous States and the District of Columbia. It is the intent of this subchapter to effectuate such reductions by requiring compliance by affected sources with prescribed emission limitations by specified deadlines, which limitations may be met through alternative methods of compliance provided by an emission allocation and transfer system. It is also the purpose of this subchapter to encourage energy conservation, use of renewable and clean alternative technologies, and pollution prevention as a long-range strategy, consistent with the provisions of this subchapter, for reducing air pollution and other adverse impacts of energy production and use.

(July 14, 1955, ch. 360, title IV, § 401, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2584.)

CODIFICATION

Another section 401 of act July 14, 1955, as added by Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1709, is set out as a Short Title note under section 7401 of this title.

ACID DEPOSITION STANDARDS

Section 404 of Pub. L. 101–549 directed Administrator of Environmental Protection Agency, not later than 36 months after Nov. 15, 1990, to transmit to Congress a report on the feasibility and effectiveness of an acid deposition standard or standards to protect sensitive and critically sensitive aquatic and terrestrial resources.

INDUSTRIAL SO_2 EMISSIONS

Section 406 of Pub. L. 101–549 provided that:

''(a) REPORT.—Not later than January 1, 1995 and every 5 years thereafter, the Administrator of the Environmental Protection Agency shall transmit to the Congress a report containing an inventory of national annual sulfur dioxide emissions from industrial sources (as defined in title IV of the Act [42 U.S.C. 7651 et seq.]), including units subject to section 405(g)(6) of the Clean Air Act [42 U.S.C. 7651d(g)(6)], for all years for which data are available, as well as the likely trend in such emissions over the following twenty-year period. The reports shall also contain estimates of the actual emission reduction in each year resulting from promulgation of the diesel fuel desulfurization regulations under section 214 [42 U.S.C. 7548].

''(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 405(g)(5) of the Clean Air Act [42 U.S.C. 7651d(g)(5)], may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator of the Environmental Protection Agency shall take such actions under the Clean Air Act [42 U.S.C. 7401 et seq.] as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 405(g)(5) of the Clean Air Act, under section 111(b) of the Clean Air Act [42 U.S.C. 7411(b)], as well as promulgation of standards of performance for existing sources, including units subject to section 405(g)(5) of the Clean Air Act, under authority of this section. For an existing source regulated under this section, 'standard of performance' means a standard which the Administrator determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

''(c) ELECTION.—Regulations promulgated under section 405(b) of the Clean Air Act [42 U.S.C. 7651d(b)] shall not prohibit a source from electing to become an affected unit under section 410 of the Clean Air Act [42 U.S.C. 7651i].''

[For termination, effective May 15, 2000, of reporting provisions in section 406(a) of Pub. L. 101–549, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 162 of House Document No. 103–7.]

SENSE OF CONGRESS ON EMISSION REDUCTIONS COSTS

Section 407 of Pub. L. 101–549 provided that: ''It is the sense of the Congress that the Clean Air Act Amendments of 1990 [Pub. L. 101–549, see Tables for classification], through the allowance program, allocates the costs of achieving the required reductions in emissions of sulfur dioxide and oxides of nitrogen among sources in the United States. Broad based taxes and emissions fees that would provide for payment of the costs of achieving required emissions reductions by any party or parties other than the sources required to achieve the reductions are undesirable.''

MONITORING OF ACID RAIN PROGRAM IN CANADA

Section 408 of Pub. L. 101–549 provided that:

''(a) REPORTS TO CONGRESS.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary of State, the Secretary of Energy, and other persons the Administrator deems appropriate, shall prepare and submit a report to Congress on January 1, 1994, January 1, 1999, and January 1, 2005.

''(b) CONTENTS.—The report to Congress shall analyze the current emission levels of sulfur dioxide and nitrogen oxides in each of the provinces participating in Canada's acid rain control program, the amount of emission reductions of sulfur dioxide and oxides of nitrogen achieved by each province, the methods utilized by each province in making those reductions, the costs to each province and the employment impacts in each province of making and maintaining those reductions.

''(c) COMPLIANCE.—Beginning on January 1, 1999, the reports shall also assess the degree to which each province is complying with its stated emissions cap.''

§ 7651a. Definitions

As used in this subchapter:

(1) The term ''affected source'' means a source that includes one or more affected units.

(2) The term ''affected unit'' means a unit that is subject to emission reduction requirements or limitations under this subchapter.

(3) The term ''allowance'' means an authorization, allocated to an affected unit by the Administrator under this subchapter, to emit, during or after a specified calendar year, one ton of sulfur dioxide.

(4) The term ''baseline'' means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units (''mmBtu's''), calculated as follows:

(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3).[1] For nonutility units, the baseline is the NAPAP Emissions Inventory, Version 2. The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of four calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents that caused prolonged outages.

(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3),[1] the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the administrator shall prescribe by regulation to be promulgated not later than eighteen months after November 15, 1990.

(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this subchapter and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under the[2] subchapter. Such corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in such reports be subject to judicial review.

(5) The term ''capacity factor'' means the ratio between the actual electric output from a unit and the potential electric output from that unit.

(6) The term ''compliance plan'' means, for purposes of the requirements of this subchapter, either—

(A) a statement that the source will comply with all applicable requirements under this subchapter, or

(B) where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the source is in compliance with the requirements of this subchapter.

(7) The term ''continuous emission monitoring system'' (CEMS) means the equipment as required by section 7651k of this title, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 7651k of this title).

(8) The term ''existing unit'' means a unit (including units subject to section 7411 of this title) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990, which is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an existing unit for the pur-

[1] So in original. The reference to ''paragraph (3)'' probably should be to ''subparagraph (C)''.

[2] So in original. Probably should be ''this''.

poses of this subchapter. For the purposes of this subchapter, existing units shall not include simple combustion turbines, or units which serve a generator with a nameplate capacity of 25MWe or less.

(9) The term ''generator'' means a device that produces electricity and which is reported as a generating unit pursuant to Department of Energy Form 860.

(10) The term ''new unit'' means a unit that commences commercial operation on or after November 15, 1990.

(11) The term ''permitting authority'' means the Administrator, or the State or local air pollution control agency, with an approved permitting program under part B[3] of title III of the Act.

(12) The term ''repowering'' means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Notwithstanding the provisions of section 7651h(a) of this title, for the purpose of this subchapter, the term ''repowering'' shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(13) The term ''reserve'' means any bank of allowances established by the Administrator under this subchapter.

(14) The term ''State'' means one of the 48 contiguous States and the District of Columbia.

(15) The term ''unit'' means a fossil fuel-fired combustion device.

(16) The term ''actual 1985 emission rate'', for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emissions Inventory, Version 2, National Utility Reference File. For nonutility units, the term ''actual 1985 emission rate'' means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

(17)(A) The term ''utility unit'' means—

(i) a unit that serves a generator in any State that produces electricity for sale, or

(ii) a unit that, during 1985, served a generator in any State that produced electricity for sale.

(B) Notwithstanding subparagraph (A), a unit described in subparagraph (A) that—

(i) was in commercial operation during 1985, but

(ii) did not, during 1985, serve a generator in any State that produced electricity for sale shall not be a utility unit for purposes of this subchapter.

(C) A unit that cogenerates steam and electricity is not a ''utility unit'' for purposes of this subchapter unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990, and supplies, more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale.

(18) The term ''allowable 1985 emissions rate'' means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation in pounds per million Btu to establish the allowable 1985 emissions rate.

(19) The term ''qualifying phase I technology'' means a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion.

(20) The term ''alternative method of compliance'' means a method of compliance in accordance with one or more of the following authorities:

(A) a substitution plan submitted and approved in accordance with subsections[4] 7651c(b) and (c) of this title;

(B) a Phase I extension plan approved by the Administrator under section 7651c(d) of this title, using qualifying phase I technology as determined by the Administrator in accordance with that section; or

(C) repowering with a qualifying clean coal technology under section 7651h of this title.

(21) The term ''commenced'' as applied to construction of any new electric utility unit means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

(22) The term ''commenced commercial operation'' means to have begun to generate electricity for sale.

(23) The term ''construction'' means fabrication, erection, or installation of an affected unit.

(24) The term ''industrial source'' means a unit that does not serve a generator that produces electricity, a ''nonutility unit'' as de-

[3] See References in Text note below.

[4] So in original. Probably should be ''section''.

fined in this section, or a process source as defined in section 7651i(e)[5] of this title.

(25) The term ''nonutility unit'' means a unit other than a utility unit.

(26) The term ''designated representative'' means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

(27) The term ''life-of-the-unit, firm power contractual arrangement'' means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit's total costs, pursuant to a contract either—

(A) for the life of the unit;

(B) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or re-lease some portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

(28) The term ''basic Phase II allowance allocations'' means:

(A) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 7651b of this title and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i) and (j) of section 7651d of this title.

(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 7651b of this title and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4) and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i) and (j) of section 7651d of this title.

(29) The term ''Phase II bonus allowance allocations'' means, for calendar year 2000 through 2009, inclusive, and only for such years, allocations made by the Administrator pursuant to section 7651b of this title, subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as otherwise provided therein), and (h)(2) of section 7651d of this title, and section 7651e of this title.

(July 14, 1955, ch. 360, title IV, § 402, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2585.)

REFERENCES IN TEXT

Part B of title III of the Act, referred to in par. (11), means title III of the Clean Air Act, act July 14, 1955, ch. 360, as added, which is classified to subchapter III of this chapter, but title III does not contain parts. For provisions of the Clean Air Act relating to permits, see subchapter V (§ 7661 et seq.) of this chapter.

CODIFICATION

Another section 402 of act July 14, 1955, as added by Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1709, is classified to section 7641 of this title.

§ 7651b. Sulfur dioxide allowance program for existing and new units

(a) Allocations of annual allowances for existing and new units

(1)[1] For the emission limitation programs under this subchapter, the Administrator shall allocate annual allowances for the unit, to be held or distributed by the designated representative of the owner or operator of each affected unit at an affected source in accordance with this subchapter, in an amount equal to the annual tonnage emission limitation calculated under section 7651c, 7651d, 7651e, 7651h, or 7651i of this title except as otherwise specifically provided elsewhere in this subchapter. Except as provided in sections 7651d(a)(2), 7651d(a)(3), 7651h and 7651i of this title, beginning January 1, 2000, the Administrator shall not allocate annual allowances to emit sulfur dioxide pursuant to section 7651d of this title in such an amount as would result in total annual emissions of sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not take into account unused allowances carried forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated. If necessary to meeting the restrictions imposed in the preceding sentence, the Administrator shall reduce, pro rata, the basic Phase II allowance allocations for each unit subject to the requirements of section 7651d of this title. Subject to the provisions of section 7651*o* of this title, the Administrator shall allocate allowances for each affected unit at an affected source annually, as provided in paragraphs (2) and (3)[1] and section 7651g of this title. Except as provided in sections 7651h and 7651i of this title, the removal of an existing affected unit or source from commercial operation at any time after November 15, 1990 (whether before or after January 1, 1995, or January 1, 2000) shall not terminate or otherwise affect the allocation of allowances pursuant to section 7651c or 7651d of this title to which the unit is entitled. Allowances shall be allocated by the Administrator without cost to the recipient, except for allowances sold by the Administrator pursuant to section 7651*o* of this title. Not later than December 31, 1991, the Administrator shall publish a proposed list of the basic Phase II allowance allocations, the Phase II bonus allowance allocations and, if applicable, allocations pursuant to section 7651d(a)(3) of this title for each unit subject to the emissions limitation requirements of section 7651d of this title for the year 2000 and the year 2010. After notice and opportunity for public comment, but not later than December 31, 1992, the Administrator shall publish a final list of such allocations, subject to the provisions of section 7651d(a)(2) of this title. Any owner or op-

[5] So in original. Probably should be section ''7651i(d)''.

[1] So in original. No pars. (2) and (3) have been enacted.

erator of an existing unit subject to the requirements of section 7651d(b) or (c) of this title who is considering applying for an extension of the emission limitation requirement compliance deadline for that unit from January 1, 2000, until not later than December 31, 2000, pursuant to section 7651h of this title, shall notify the Administrator no later than March 31, 1991. Such notification shall be used as the basis for estimating the basic Phase II allowances under this subsection. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 7651d(a)(2) of this title and taking into account the effect of any compliance date extensions granted pursuant to section 7651h of this title on such allocations. Any person who may make an election concerning the amount of allowances to be allocated to a unit or units shall make such election and so inform the Administrator not later than March 31, 1991, in the case of an election under section 7651d of this title (or June 30, 1991, in the case of an election under section 7651e of this title). If such person fails to make such election, the Administrator shall set forth for each unit owned or operated by such person, the amount of allowances reflecting the election that would, in the judgment of the Administrator, provide the greatest benefit for the owner or operator of the unit. If such person is a Governor who may make an election under section 7651e of this title and the Governor fails to make an election, the Administrator shall set forth for each unit in the State the amount of allowances reflecting the election that would, in the judgment of the Administrator, provide the greatest benefit for units in the State.

(b) Allowance transfer system

Allowances allocated under this subchapter may be transferred among designated representatives of the owners or operators of affected sources under this subchapter and any other person who holds such allowances, as provided by the allowance system regulations to be promulgated by the Administrator not later than eighteen months after November 15, 1990. Such regulations shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this subchapter. Such regulations shall prohibit the use of any allowance prior to the calendar year for which the allowance was allocated, and shall provide, consistent with the purposes of this subchapter, for the identification of unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years, including allowances allocated to units subject to Phase I requirements (as described in section 7651c of this title) which are applied to emissions limitations requirements in Phase II (as described in section 7651d of this title). Transfers of allowances shall not be effective until written certification of the transfer, signed by a responsible official of each party to the transfer, is received and recorded by the Administrator. Such regulations shall permit the transfer of allowances prior to the issuance of such allowances. Recorded pre-allocation transfers shall be deducted by the Administrator from the number of allowances which would otherwise be allocated to the transferor, and added to those allowances allocated to the transferee. Pre-allocation transfers shall not affect the prohibition contained in this subsection against the use of allowances prior to the year for which they are allocated.

(c) Interpollutant trading

Not later than January 1, 1994, the Administrator shall furnish to the Congress a study evaluating the environmental and economic consequences of amending this subchapter to permit trading sulfur dioxide allowances for nitrogen oxides allowances.

(d) Allowance tracking system

(1) The Administrator shall promulgate, not later than 18 months after November 15, 1990, a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. All allowance allocations and transfers shall, upon recordation by the Administrator, be deemed a part of each unit's permit requirements pursuant to section 7651g of this title, without any further permit review and revision.

(2) In order to insure electric reliability, such regulations shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recordation. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned.

(e) New utility units

After January 1, 2000, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator. Such new utility units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1) of this section, unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 7651d of this title. New utility units may obtain allowances from any person, in accordance with this subchapter. The owner or operator of any new utility unit in violation of this subsection shall be liable for fulfilling the obligations specified in section 7651j of this title.

(f) Nature of allowances

An allowance allocated under this subchapter is a limited authorization to emit sulfur dioxide in accordance with the provisions of this subchapter. Such allowance does not constitute a property right. Nothing in this subchapter or in any other provision of law shall be construed to limit the authority of the United States to ter-

minate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this chapter to an affected unit or source, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act [16 U.S.C. 791a et seq.] or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this subchapter shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established. Allowances, once allocated to a person by the Administrator, may be received, held, and temporarily or permanently transferred in accordance with this subchapter and the regulations of the Administrator without regard to whether or not a permit is in effect under subchapter V of this chapter or section 7651g of this title with respect to the unit for which such allowance was originally allocated and recorded. Each permit under this subchapter and each permit issued under subchapter V of this chapter for any affected unit shall provide that the affected unit may not emit an annual tonnage of sulfur dioxide in excess of the allowances held for that unit.

(g) Prohibition

It shall be unlawful for any person to hold, use, or transfer any allowance allocated under this subchapter, except in accordance with regulations promulgated by the Administrator. It shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that unit for that year by the owner or operator of the unit. Upon the allocation of allowances under this subchapter, the prohibition contained in the preceding sentence shall supersede any other emission limitation applicable under this subchapter to the units for which such allowances are allocated. Allowances may not be used prior to the calendar year for which they are allocated. Nothing in this section or in the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring and enforcement obligations under this chapter, nor relieve affected sources of their requirements and liabilities under this chapter.

(h) Competitive bidding for power supply

Nothing in this subchapter shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established.

(i) Applicability of antitrust laws

(1) Nothing in this section affects—

(A) the applicability of the antitrust laws to the transfer, use, or sale of allowances, or

(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

(2) As used in this section, ''antitrust laws'' means those Acts set forth in section 12 of title 15.

(j) Public Utility Holding Company Act

The acquisition or disposition of allowances pursuant to this subchapter including the issuance of securities or the undertaking of any other financing transaction in connection with such allowances shall not be subject to the provisions of the Public Utility Holding Company Act of 1935.[2]

(July 14, 1955, ch. 360, title IV, § 403, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2589.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (f), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Public Utility Holding Company Act of 1935, referred to in subsec. (j), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 803, as amended, which was classified generally to chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 109–58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Another section 403 of act July 14, 1955, as added by Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1710, is classified to section 7642 of this title.

FOSSIL FUEL USE

Section 402 of title IV of Pub. L. 101–549 provided that:

''(a) CONTRACTS FOR HYDROELECTRIC ENERGY.—Any person who, after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], enters into a contract under which such person receives hydroelectric energy in return for the provision of electric energy by such person shall use allowances held by such person as necessary to satisfy such person's obligations under such contract.

''(b) FEDERAL POWER MARKETING ADMINISTRATION.—A Federal Power Marketing Administration shall not be subject to the provisions and requirements of this title [enacting this subchapter, amending sections 7410, 7411, and 7479 of this title, and enacting provisions set out as notes under sections 7403, 7411, and 7651 of this title] with respect to electric energy generated by hydroelectric facilities and marketed by such Power Marketing Administration. Any person who sells or provides electric energy to a Federal Power Marketing Administration shall comply with the provisions and requirements of this title.''

§ 7651c. Phase I sulfur dioxide requirements

(a) Emission limitations

(1) After January 1, 1995, each source that includes one or more affected units listed in table A is an affected source under this section. After January 1, 1995, it shall be unlawful for any affected unit (other than an eligible phase I unit under subsection (d)(2) of this section) to emit sulfur dioxide in excess of the tonnage limitation stated as a total number of allowances in

[2] See References in Text note below.

table A for phase I, unless (A) the emissions reduction requirements applicable to such unit have been achieved pursuant to subsection (b) or (d) of this section, or (B) the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, except that, after January 1, 2000, the emissions limitations established in this section shall be superseded by those established in section 7651d of this title. The owner or operator of any unit in violation of this section shall be fully liable for such violation including, but not limited to, liability for fulfilling the obligations specified in section 7651j of this title.

(2) Not later than December 31, 1991, the Administrator shall determine the total tonnage of reductions in the emissions of sulfur dioxide from all utility units in calendar year 1995 that will occur as a result of compliance with the emissions limitation requirements of this section, and shall establish a reserve of allowances equal in amount to the number of tons determined thereby not to exceed a total of 3.50 million tons. In making such a determination, the Administrator shall compute for each unit subject to the emissions limitation requirements of this section the difference between:

(A) the product of its baseline multiplied by the lesser of each unit's allowable 1985 emissions rate and its actual 1985 emissions rate, divided by 2,000, and

(B) the product of each unit's baseline multiplied by 2.50 lbs/mmBtu divided by 2,000,

and sum the computations. The Administrator shall adjust the foregoing calculation to reflect projected calendar year 1995 utilization of the units subject to the emissions limitations of this subchapter that the Administrator finds would have occurred in the absence of the imposition of such requirements. Pursuant to subsection (d) of this section, the Administrator shall allocate allowances from the reserve established hereinunder until the earlier of such time as all such allowances in the reserve are allocated or December 31, 1999.

(3) In addition to allowances allocated pursuant to paragraph (1), in each calendar year beginning in 1995 and ending in 1999, inclusive, the Administrator shall allocate for each unit on Table A that is located in the States of Illinois, Indiana, or Ohio (other than units at Kyger Creek, Clifty Creek and Joppa Steam), allowances in an amount equal to 200,000 multiplied by the unit's pro rata share of the total number of allowances allocated for all units on Table A in the 3 States (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) pursuant to paragraph (1). Such allowances shall be excluded from the calculation of the reserve under paragraph (2).

(b) Substitutions

The owner or operator of an affected unit under subsection (a) of this section may include in its section 7651g of this title permit application and proposed compliance plan a proposal to reassign, in whole or in part, the affected unit's sulfur dioxide reduction requirements to any other unit(s) under the control of such owner or operator. Such proposal shall specify—

(1) the designation of the substitute unit or units to which any part of the reduction obligations of subsection (a) of this section shall be required, in addition to, or in lieu of, any original affected units designated under such subsection;

(2) the original affected unit's baseline, the actual and allowable 1985 emissions rate for sulfur dioxide, and the authorized annual allowance allocation stated in table A;

(3) calculation of the annual average tonnage for calendar years 1985, 1986, and 1987, emitted by the substitute unit or units, based on the baseline for each unit, as defined in section 7651a(d)[1] of this title, multiplied by the lesser of the unit's actual or allowable 1985 emissions rate;

(4) the emissions rates and tonnage limitations that would be applicable to the original and substitute affected units under the substitution proposal;

(5) documentation, to the satisfaction of the Administrator, that the reassigned tonnage limits will, in total, achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution; and

(6) such other information as the Administrator may require.

(c) Administrator's action on substitution proposals

(1) The Administrator shall take final action on such substitution proposal in accordance with section 7651g(c) of this title if the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a substitution proposal in whole or in part and with such modifications or conditions as may be consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this subchapter. If a proposal does not meet the requirements of subsection (b) of this section, the Administrator shall disapprove it. The owner or operator of a unit listed in table A shall not substitute another unit or units without the prior approval of the Administrator.

(2) Upon approval of a substitution proposal, each substitute unit, and each source with such unit, shall be deemed affected under this subchapter, and the Administrator shall issue a permit to the original and substitute affected source and unit in accordance with the approved substitution plan and section 7651g of this title. The Administrator shall allocate allowances for the original and substitute affected units in accordance with the approved substitution proposal pursuant to section 7651b of this title. It shall be unlawful for any source or unit that is allocated allowances pursuant to this section to emit sulfur dioxide in excess of the emissions limitation provided for in the approved substitution permit and plan unless the owner or operator of each unit governed by the permit and approved substitution plan holds allowances to emit not less than the units[2] total annual emissions. The owner or operator of any original or substitute affected unit operated in violation of

[1] So in original. Probably should be section ''7651a(4)''.

[2] So in original. Probably should be ''unit's''.

this subsection shall be fully liable for such violation, including liability for fulfilling the obligations specified in section 7651j of this title. If a substitution proposal is disapproved, the Administrator shall allocate allowances to the original affected unit or units in accordance with subsection (a) of this section.

(d) Eligible phase I extension units

(1) The owner or operator of any affected unit subject to an emissions limitation requirement under this section may petition the Administrator in its permit application under section 7651g of this title for an extension of 2 years of the deadline for meeting such requirement, provided that the owner or operator of any such unit holds allowances to emit not less than the unit's total annual emissions for each of the 2 years of the period of extension. To qualify for such an extension, the affected unit must either employ a qualifying phase I technology, or transfer its phase I emissions reduction obligation to a unit employing a qualifying phase I technology. Such transfer shall be accomplished in accordance with a compliance plan, submitted and approved under section 7651g of this title, that shall govern operations at all units included in the transfer, and that specifies the emissions reduction requirements imposed pursuant to this subchapter.

(2) Such extension proposal shall—

(A) specify the unit or units proposed for designation as an eligible phase I extension unit;

(B) provide a copy of an executed contract, which may be contingent upon the Administrator approving the proposal, for the design engineering, and construction of the qualifying phase I technology for the extension unit, or for the unit or units to which the extension unit's emission reduction obligation is to be transferred;

(C) specify the unit's or units' baseline, actual 1985 emissions rate, allowable 1985 emissions rate, and projected utilization for calendar years 1995 through 1999;

(D) require CEMS on both the eligible phase I extension unit or units and the transfer unit or units beginning no later than January 1, 1995; and

(E) specify the emission limitation and number of allowances expected to be necessary for annual operation after the qualifying phase I technology has been installed.

(3) The Administrator shall review and take final action on each extension proposal in order of receipt, consistent with section 7651g of this title, and for an approved proposal shall designate the unit or units as an eligible phase I extension unit. The Administrator may approve an extension proposal in whole or in part, and with such modifications or conditions as may be necessary, consistent with the orderly functioning of the allowance system, and to ensure the emissions reductions contemplated by the[3] subchapter.

(4) In order to determine the number of proposals eligible for allocations from the reserve under subsection (a)(2) of this section and the number of allowances remaining available after each proposal is acted upon, the Administrator shall reduce the total number of allowances remaining available in the reserve by the number of allowances calculated according to subparagraphs (A), (B) and (C) until either no allowances remain available in the reserve for further allocation or all approved proposals have been acted upon. If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the Administrator, any pending proposals shall be disapproved. The Administrator shall calculate allowances equal to—

(A) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1995 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000;

(B) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1996 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000; and

(C) the amount by which (i) the product of each unit's baseline multiplied by an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (ii) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection multiplied by a factor of 3.

(5) Each eligible Phase I extension unit shall receive allowances determined under subsection (a)(1) or (c) of this section. In addition, for calendar year 1995, the Administrator shall allocate to each eligible Phase I extension unit, from the allowance reserve created pursuant to subsection (a)(2) of this section, allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1995 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. In calendar year 1996, the Administrator shall allocate for each eligible unit, from the allowance reserve created pursuant to subsection (a)(2) of this section, allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1996 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. It shall be unlawful for any source or unit subject to an approved extension plan under this subsection to emit sulfur dioxide in excess of the emissions limitations provided for in the permit and approved extension plan, unless the owner or operator of each unit governed by the permit and approved plan holds allowances to emit not less than the unit's total annual emissions.

(6) In addition to allowances specified in paragraph (5), the Administrator shall allocate for each eligible Phase I extension unit employing qualifying Phase I technology, for calendar years 1997, 1998, and 1999, additional allowances,

[3] So in original. Probably should be ''this''.

from any remaining allowances in the reserve created pursuant to subsection (a)(2) of this section, following the reduction in the reserve provided for in paragraph (4), not to exceed the amount by which (A) the product of each eligible unit's baseline times an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (B) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection.

(7) After January 1, 1997, in addition to any liability under this chapter, including under section 7651j of this title, if any eligible phase I extension unit employing qualifying phase I technology or any transfer unit under this subsection emits sulfur dioxide in excess of the annual tonnage limitation specified in the extension plan, as approved in paragraph (3) of this subsection, the Administrator shall, in the calendar year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

(e) Allocation of allowances

(1) In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements: (A) the total coal-fired generation within the utility system as a percentage of total system generation decreased by more than 20 percent between January 1, 1980, and December 31, 1985; and (B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances under this paragraph for the unit pursuant to this subsection. The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 7651d of this title (but is not also an affected unit under this section) and part of a utility system that includes 1 or more affected units under section 7651d of this title for reductions in the emissions of sulfur dioxide made during the period 1995–1999 if the unit meets the requirements of this subsection and the requirements of the preceding sentence, except that for the purposes of applying this subsection to any such unit, the prior year concerned as specified below, shall be any year after January 1, 1995 but prior to January 1, 2000.

(2) In the case of an affected unit under this section described in subparagraph (A),[4] the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which (A) the product of the unit's baseline multiplied by the unit's 1985 actual sulfur dioxide emission rate (in lbs. per mmBtu), divided by 2,000, exceeds (B) the allowances specified for such unit in Table A. In the case of an affected unit under section 7651d of this title described in subparagraph (A),[4] the allowances awarded under this subsection for early reductions in any prior year may not exceed the amount by which (i) the product of the quantity of fossil fuel consumed by the unit (in mmBtu) in the prior year multiplied by the lesser of 2.50 or the most stringent emission rate (in lbs. per mmBtu) applicable to the unit under the applicable implementation plan, divided by 2,000, exceeds (ii) the unit's actual tonnage of sulfur dioxide emission for the prior year concerned. Allowances allocated under this subsection for units referred to in subparagraph (A)[4] may be allocated only for emission reductions achieved as a result of physical changes or changes in the method of operation made after November 15, 1990, including changes in the type or quality of fossil fuel consumed.

(3) In no event shall the provisions of this paragraph[5] be interpreted as an event of force majeur[6] or a commercial impractibility[7] or in any other way as a basis for excused nonperformance by a utility system under a coal sales contract in effect before November 15, 1990.

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)

State	Plant Name	Generator	Phase I Allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
		7	31,680
Georgia	Bowen	1	56,320
		2	54,770
		3	71,750
		4	71,740
	Hammond	1	8,780
		2	9,220
		3	8,910
		4	37,640
	J. McDonough	1	19,910
		2	20,600
	Wansley	1	70,770
		2	65,430
	Yates	1	7,210
		2	7,040
		3	6,950
		4	8,910
		5	9,410
		6	24,760
		7	21,480
Illinois	Baldwin	1	42,010
		2	44,420
		3	42,550
	Coffeen	1	11,790
		2	35,670
	Grand Tower	4	5,910
	Hennepin	2	18,410
	Joppa Steam	1	12,590
		2	10,770
		3	12,270
		4	11,360
		5	11,420
		6	10,620

[4] So in original. Probably should be "paragraph (1)".

[5] So in original. Probably should be "subsection".

[6] So in original. Probably should be "majeure".

[7] So in original. Probably should be "impracticability".

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—CONTINUED

State	Plant Name	Generator	Phase I Allowances
	Kincaid	1	31,530
		2	33,810
	Meredosia	3	13,890
	Vermilion	2	8,880
Indiana	Bailly	7	11,180
		8	15,630
	Breed	1	18,500
	Cayuga	1	33,370
		2	34,130
	Clifty Creek	1	20,150
		2	19,810
		3	20,410
		4	20,080
		5	19,360
		6	20,380
	E. W. Stout	5	3,880
		6	4,770
		7	23,610
	F. B. Culley	2	4,290
		3	16,970
	F. E. Ratts	1	8,330
		2	8,480
	Gibson	1	40,400
		2	41,010
		3	41,080
		4	40,320
	H. T. Pritchard	6	5,770
	Michigan City	12	23,310
	Petersburg	1	16,430
		2	32,380
	R. Gallagher	1	6,490
		2	7,280
		3	6,530
		4	7,650
	Tanners Creek	4	24,820
	Wabash River	1	4,000
		2	2,860
		3	3,750
		5	3,670
		6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
		2	12,840
		3	12,340
	Cooper	1	7,450
		2	15,320
	E.W. Brown	1	7,110
		2	10,910
		3	26,100
	Elmer Smith	1	6,520
		2	14,410
	Ghent	1	28,410
	Green River	4	7,820
	H.L. Spurlock	1	22,780
	Henderson II	1	13,340
		2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910
		2	24,330
	C. P. Crane	1	10,330
		2	9,230
	Morgantown	1	35,260
		2	38,480

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—CONTINUED

State	Plant Name	Generator	Phase I Allowances
Michigan	J. H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890
		3	5,500
		4	48,770
	Eastlake	1	7,800
		2	8,640
		3	10,020
		4	14,510
		5	34,070
	Edgewater	4	5,050
	Gen. J.M. Gavin	1	79,080
		2	80,560
	Kyger Creek	1	19,280
		2	18,560
		3	17,910
		4	18,710
		5	18,740
	Miami Fort	5	760
		6	11,380
		7	38,510
	Muskingum River	1	14,880
		2	14,170
		3	13,950
		4	11,780
		5	40,470
	Niles	1	6,940
		2	9,100
	Picway	5	4,930
	R.E. Burger	3	6,150
		4	10,780
		5	12,430

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—CONTINUED

State	Plant Name	Generator	Phase I Allowances
	W.H. Sammis	5	24,170
		6	39,930
		7	43,220
	W.C. Beckjord	5	8,950
		6	23,020
Pennsylvania	Armstrong	1	14,410
		2	15,430
	Brunner Island	1	27,760
		2	31,100
		3	53,820
	Cheswick	1	39,170
	Conemaugh	1	59,790
		2	66,450
	Hatfield's Ferry	1	37,830
		2	37,320
		3	40,270
	Martins Creek	1	12,660
		2	12,820
	Portland	1	5,940
		2	10,230
	Shawville	1	10,320
		2	10,320
		3	14,220
		4	14,070
	Sunbury	3	8,760
		4	11,450
Tennessee	Allen	1	15,320
		2	16,770
		3	15,670
	Cumberland	1	86,700
		2	94,840
	Gallatin	1	17,870
		2	17,310
		3	20,020
		4	21,260
	Johnsonville	1	7,790
		2	8,040
		3	8,410
		4	7,990
		5	8,240
		6	7,890
		7	8,980
		8	8,700
		9	7,080
		10	7,550
West Virginia	Albright	3	12,000
	Fort Martin	1	41,590
		2	41,200
	Harrison	1	48,620
		2	46,150
		3	41,500
	Kammer	1	18,740
		2	19,460
		3	17,390
	Mitchell	1	43,980
		2	45,510
	Mount Storm	1	43,720
		2	35,580
		3	42,430
Wisconsin	Edgewater	4	24,750
	La Crosse/Genoa	3	22,700
	Nelson Dewey	1	6,010
		2	6,680
	N. Oak Creek	1	5,220
		2	5,140
		3	5,370
		4	6,320
	Pulliam	8	7,510
	S. Oak Creek	5	9,670
		6	12,040
		7	16,180
		8	15,790

(f) Energy conservation and renewable energy

(1) Definitions

As used in this subsection:

(A) Qualified energy conservation measure

The term ''qualified energy conservation measure'' means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

(B) Qualified renewable energy

The term ''qualified renewable energy'' means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

(C) Electric utility

The term ''electric utility'' means any person, State agency, or Federal agency, which sells electric energy.

(2) Allowances for emissions avoided through energy conservation and renewable energy

(A) In general

The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an electric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g) of this section, up to a total of 300,000 allowances for allocation from such Reserve.

(B) Requirements for issuance

The Administrator shall allocate allowances to an electric utility under this subsection only if all of the following requirements are met:

(i) Such electric utility is paying for the qualified energy conservation measures or qualified renewable energy directly or through purchase from another person.

(ii) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

(iii)(I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan

which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

(III) Electric utilities subject to the jurisdiction of a State regulatory authority must have such plan approved by such authority. For electric utilities not subject to the jurisdiction of a State regulatory authority such plan shall be approved by the entity with rate-making authority for such utility.

(iv) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of Energy certifies that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the net income of such electric utility after implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would have been allocated under subparagraph (A) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

(v) Such utility or any subsidiary of the utility's holding company owns or operates at least one affected unit.

(C) Period of applicability

Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992 and before the earlier of (i) December 31, 2000, or (ii) the date on which any electric utility steam generating unit owned or operated by the electric utility to which the allowances are allocated becomes subject to this subchapter (including those sources that elect to become affected by this subchapter, pursuant to section 7651i of this title).

(D) Determination of avoided emissions

(i) Application

In order to receive allowances under this subsection, an electric utility shall make an application which—

(I) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of avoiding emissions,[8]

(II) calculates, in accordance with subparagraphs (F) and (G), the number of tons of emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

(III) demonstrates that the requirements of subparagraph (B) have been met.

Such application for allowances by a State-regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. The authority shall review the application for accuracy and compliance with this subsection and the rules under this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

(E) Avoided emissions from qualified energy conservation measures

For the purposes of this subsection, the emission tonnage deemed avoided by reason of the implementation of qualified energy conservation measures for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the kilowatt hours that would otherwise have been supplied by the utility during such year in the absence of such qualified energy conservation measures, by

(ii) 0.004,

and dividing by 2,000.

(F) Avoided emissions from the use of qualified renewable energy

The emissions tonnage deemed avoided by reason of the use of qualified renewable energy by an electric utility for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the actual kilowatt hours generated by, or purchased from, qualified renewable energy, by

(ii) 0.004,

and dividing by 2,000.

(G) Prohibitions

(i) No allowances shall be allocated under this subsection for the implementation of programs that are exclusively informational or educational in nature.

(ii) No allowances shall be allocated for energy conservation measures or renewable energy that were operational before January 1, 1992.

(3) Savings provision

Nothing in this subsection precludes a State or State regulatory authority from providing additional incentives to utilities to encourage investment in demand-side resources.

(4) Regulations

Not later than 18 months after November 15, 1990, and in conjunction with the regulations required to be promulgated under subsections (b) and (c) of this section, the Administrator shall, in consultation with the Secretary of Energy, promulgate regulations under this subsection. Such regulations shall list energy conservation measures and renewable energy

[8] So in original. The comma probably should be a semicolon.

sources which may be treated as qualified energy conservation measures and qualified renewable energy for purposes of this subsection. Allowances shall only be allocated if all requirements of this subsection and the rules promulgated to implement this subsection are complied with. The Administrator shall review the determinations of each State regulatory authority under this subsection to encourage consistency from electric utility to electric utility and from State to State in accordance with the Administrator's rules. The Administrator shall publish the findings of this review no less than annually.

(g) Conservation and Renewable Energy Reserve

The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 7651b of this title. In order to provide 300,000 allowances for such reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic Phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. If allowances remain in the reserve after January 2, 2010, the Administrator shall allocate such allowances for affected units under section 7651d of this title on a pro rata basis. For purposes of this subsection, for any unit subject to the emissions limitation requirements of section 7651d of this title, the term ''pro rata basis'' refers to the ratio which the reductions made in such unit's allowances in order to establish the reserve under this subsection bears to the total of such reductions for all such units.

(h) Alternative allowance allocation for units in certain utility systems with optional baseline

(1) Optional baseline for units in certain systems

In the case of a unit subject to the emissions limitation requirements of this section which (as of November 15, 1990)—

(A) has an emission rate below 1.0 lbs/mmBtu,

(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

(C) is part of a utility system which has a weighted average sulfur dioxide emissions rate for all fossil fueled-fired units below 1.0 lbs/mmBtu,

at the election of the owner or operator of such unit, the unit's baseline may be calculated (i) as provided under section 7651a(d)[9] of this title, or (ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor. Such election shall be made no later than March 1, 1991.

(2) Allowance allocation

Whenever a unit referred to in paragraph (1) elects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to section 7651b(a)(1) of this title, this section, and section 7651d of this title (as basic Phase II allowance allocations) in an amount equal to the baseline selected multiplied by the lower of the average annual emission rate for such unit in 1989, or 1.0 lbs./mmBtu. Such allowance allocation shall be in lieu of any allocation of allowances under this section and section 7651d of this title.

(July 14, 1955, ch. 360, title IV, § 404, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2592.)

§ 7651d. Phase II sulfur dioxide requirements

(a) Applicability

(1) After January 1, 2000, each existing utility unit as provided below is subject to the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subchapter. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate. The owner or operator of any unit operated in violation of this section shall be fully liable under this chapter for fulfilling the obligations specified in section 7651j of this title.

(2) In addition to basic Phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall allocate up to 530,000 Phase II bonus allowances pursuant to subsections (b)(2), (c)(4), (d)(3)(A) and (B), and (h)(2) of this section and section 7651e of this title. Not later than June 1, 1998, the Administrator shall calculate, for each unit granted an extension pursuant to section 7651h of this title the difference between (A) the number of allowances allocated for the unit in calendar year 2000, and (B) the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2000, and sum the computations. In each year, beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall deduct from each unit's basic Phase II allowance allocation its pro rata share of 10 percent of the sum calculated pursuant to the preceding sentence.

(3) In addition to basic Phase II allowance allocations and Phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on Table A in section 7651c of this title (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky, or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on Table A (other than units at Kyger Creek, Clifty Creek, and Joppa Steam). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 7651b(a) of this title.

[9] So in original. Probably should be section ''7651a(4)''.

(b) Units equal to, or above, 75 MWe and 1.20 lbs/mmBtu

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal to or greater than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 7407 of this title for any pollutant subject to the requirements of section 7409 of this title to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(4) After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980 and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of allowances allocated for the unit pursuant to paragraph (1): *Provided*, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

(c) Coal or oil-fired units below 75 MWe and above 1.20 lbs/mmBtu

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 7411 of this title or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of November 15, 1990, to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit not less than the units[1] total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions.

(4) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of

[1] So in original. Probably should be ''unit's''.

this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which is part of an electric utility system which, as of November 15, 1990, (A) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices, (B) has more than 10 percent of its fossil-fuel capacity consisting of coal-fired units of less than 75 MWe, and (C) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions.

(d) Coal-fired units below 1.20 lbs/mmBtu

(1) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is less than 0.60 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(3)(A) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the amount by which (i) the product of the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations.

(B) In addition to allowances allocated pursuant to paragraph (2) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the amount by which (i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 7651b(a)(1) of this title as basic Phase II allowance allocations.

(C) An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

(4) Notwithstanding any other provision of this section, at the election of the owner or operator, after January 1, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1), (2), (3), (5), or (6),[2] allowances for a unit subject to the emissions limitation requirements of this subsection which commenced commercial operation on or after January 1, 1981 and before December 31, 1985, which was subject to, and in compliance with, section 7411 of this title in an amount equal to the unit's annual fuel consumption, on a Btu basis, at a 65 percent

[2] So in original. This subsection does not contain a paragraph (6).

capacity factor multiplied by the unit's allowable 1985 emissions rate, divided by 2,000.

(5) For the purposes of this section, in the case of an oil- and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2000, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(e) Oil and gas-fired units equal to or greater than 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu

After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(f) Oil and gas-fired units less than 0.60 lbs/mmBtu

(1) After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowable 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) as basic Phase II allowance allocations and section 7651b(a)(1) of this title, beginning January 1, 2000, the Administrator shall,[3] in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Administrator shall allocate for each unit in the utility its pro rata share of 7,000 allowances and for each unit in the State authority its pro rata share of 2,000 allowances.

(g) Units that commence operation between 1986 and December 31, 1995

(1) After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, the Administrator shall allocate allowances pursuant to section 7651b of this title to each unit which is listed in table B of this paragraph in an annual amount equal to the amount specified in table B.

TABLE B

Unit	Allowances
Brandon Shores	8,907
Miller 4	9,197
TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, Provided[4] that the owner or operator of a unit listed on Table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

(3) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial operation, on or after October 1, 1990, but not later than December 31, 1992 allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(4) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993 and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985 and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b)[5] of the Powerplant and Industrial Fuel Use Act of 1978

[3] So in original. The words "the Administrator shall," probably should not appear.

[4] So in original. Probably should not be capitalized.

[5] See References in Text note below.

(42 U.S.C. 8301 et seq,[6] repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions.

(6)(A)[7] Unless the Administrator has approved a designation of such facility under section 7651i of this title, the provisions of this subchapter shall not apply to a ''qualifying small power production facility'' or ''qualifying cogeneration facility'' (within the meaning of section 796(17)(C) or 796(18)(B) of title 16) or to a ''new independent power production facility'' as defined in section 7651*o* of this title except[8] that clause (iii)[9] of such definition in section 7651*o* of this title shall not apply for purposes of this paragraph if, as of November 15, 1990,

(i) an applicable power sales agreement has been executed;

(ii) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

(iii) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

(iv) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

(h) Oil and gas-fired units less than 10 percent oil consumed

(1) After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(3) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title, beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(i) Units in high growth States

(1) In addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that—

(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981–1988 allocated by the United States Department of Commerce, and

(B) had an installed electrical generating capacity of more than 30,000,000 kw in 1988,

in an amount equal to the difference between (A) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator and (B) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section: *Provided*, That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the 40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

(2) Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1) of this section, (A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990, (B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000, (C) which commenced operation after January 1, 1970, (D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between calendar year 1980 and November 15, 1990, and (E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 per centum or more from 1980 to 1988, allowances in an amount equal to the difference between (i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) of this section adjusted to reflect the unit's annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator and (ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) of this section:

[6] So in original. Probably should be ''seq.,''.

[7] So in original. No subpar. (B) has been enacted.

[8] So in original. Probably should be preceded by a comma.

[9] So in original. Probably means clause ''(C)''.

Provided, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000-allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

(j) Certain municipally owned power plants

Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe, the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

(July 14, 1955, ch. 360, title IV, § 405, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2605.)

REFERENCES IN TEXT

Section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978, referred to in subsec. (g)(5), is section 301(b) of Pub. L. 95–620, which is classified to section 8341(b) of this title. A prior section 301(b) of Pub. L. 95–620, title III, Nov. 9, 1978, 92 Stat. 3305, which was formerly classified to section 8341(b) of this title, was repealed by Pub. L. 97–35, title X, § 1021(a), Aug. 13, 1981, 95 Stat. 614.

§ 7651e. Allowances for States with emissions rates at or below 0.80 lbs/mmBtu

(a) Election of Governor

In addition to basic Phase II allowance allocations, upon the election of the Governor of any State, with a 1985 state-wide annual sulfur dioxide emissions rate equal to or less than, 0.80 lbs/mmBtu, averaged over all fossil fuel-fired utility steam generating units, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate, in lieu of other Phase II bonus allowance allocations, allowances from the reserve created pursuant to section 7651d(a)(2) of this title to all such units in the State in an amount equal to 125,000 multiplied by the unit's pro rata share of electricity generated in calendar year 1985 at fossil fuel-fired utility steam units in all States eligible for the election.

(b) Notification of Administrator

Pursuant to section 7651b(a)(1) of this title, each Governor of a State eligible to make an election under paragraph[1] (a) shall notify the Administrator of such election. In the event that the Governor of any such State fails to notify the Administrator of the Governor's elections, the Administrator shall allocate allowances pursuant to section 7651d of this title.

(c) Allowances after January 1, 2010

After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 7651d of this title.

(July 14, 1955, ch. 360, title IV, § 406, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2613.)

§ 7651f. Nitrogen oxides emission reduction program

(a) Applicability

On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 7651c, 7651d,[1] 7651h of this title, or on the date a unit subject to the provisions of section 7651c(d) or 7651h(b) of this title, must meet the SO_2 reduction requirements, each such unit shall become an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

(b) Emission limitations

(1) Not later than eighteen months after November 15, 1990, the Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed the rates listed below: *Provided*, That the Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NO_x burner technology. The maximum allowable emission rates are as follows:

(A) for tangentially fired boilers, 0.45 lb/mmBtu;

(B) for dry bottom wall-fired boilers (other than units applying cell burner technology), 0.50 lb/mmBtu.

After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.

(2) Not later than January 1, 1997, the Administrator shall, by regulation, establish allowable emission limitations on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

(A) wet bottom wall-fired boilers;

(B) cyclones;

(C) units applying cell burner technology;

(D) all other types of utility boilers.

The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1) of this section. Not later than January 1, 1997, the Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low NO_x burner technology is available: *Provided*, That, no unit that is an affected unit pur-

[1] So in original. Probably should be "subsection".

[1] So in original. Probably should be followed by "or".

suant to section 7651c of this title and that is subject to the requirements of subsection (b)(1) of this section, shall be subject to the revised emission limitations, if any.

(c) Revised performance standards

(1)[2] Not later than January 1, 1993, the Administrator shall propose revised standards of performance to section 7411 of this title for nitrogen oxides emissions from fossil-fuel fired steam generating units, including both electric utility and nonutility units. Not later than January 1, 1994, the Administrator shall promulgate such revised standards of performance. Such revised standards of performance shall reflect improvements in methods for the reduction of emissions of oxides of nitrogen.

(d) Alternative emission limitations

The permitting authority shall, upon request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) of this section upon a determination that—

(1) a unit subject to subsection (b)(1) of this section cannot meet the applicable limitation using low NO_x burner technology; or

(2) a unit subject to subsection (b)(2) of this section cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

The permitting authority shall base such determination upon a showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator not later than eighteen months after November 15, 1990, that the owner or operator—

(1) has properly installed appropriate control equipment designed to meet the applicable emission rate;

(2) has properly operated such equipment for a period of fifteen months (or such other period of time as the Administrator determines through the regulations), and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

(3) has specified an emission rate that such unit can meet on an annual average basis.

The permitting authority shall issue an operating permit for the unit in question, in accordance with section 7651g of this title and part B[3] of title III—

(i) that permits the unit during the demonstration period referred to in subparagraph (2) above, to emit at a rate in excess of the applicable emission rate;

(ii) at the conclusion of the demonstration period to revise the operating permit to reflect the alternative emission rate demonstrated in paragraphs (2) and (3) above.

Units subject to subsection (b)(1) of this section for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NO_x burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative NO_x control technology capable of achieving the applicable emission limitation. If the owner or operator of a unit subject to the emissions limitation requirements of subsection (b)(1) of this section demonstrates to the satisfaction of the Administrator that the technology necessary to meet such requirements is not in adequate supply to enable its installation and operation at the unit, consistent with system reliability, by January 1, 1995, then the Administrator shall extend the deadline for compliance for the unit by a period of 15 months. Any owner or operator may petition the Administrator to make a determination under the previous sentence. The Administrator shall grant or deny such petition within 3 months of submittal.

(e) Emissions averaging

In lieu of complying with the applicable emission limitations under subsection (b)(1), (2), or (d) of this section, the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections,[4] may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that (1) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to (2) the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to subsections (b)(1) and (2) of this section.

If the permitting authority determines, in accordance with regulations issued by the Administrator not later than eighteen months after November 15, 1990;[5] that the conditions in the paragraph above can be met, the permitting authority shall issue operating permits for such units, in accordance with section 7651g of this title and part B[3] of title III, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits.

(July 14, 1955, ch. 360, title IV, § 407, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2613.)

REFERENCES IN TEXT

Part B of title III, referred to in subsecs. (d) and (e), means title III of the Clean Air Act, act July 14, 1955, ch. 360, as added, which is classified to subchapter III of this chapter, but title III does not contain parts. For provisions of the Clean Air Act relating to permits, see subchapter V (§ 7661 et seq.) of this chapter.

§ 7651g. Permits and compliance plans

(a) Permit program

The provisions of this subchapter shall be implemented, subject to section 7651b of this title, by permits issued to units subject to this sub-

[2] So in original. No par. (2) has been enacted.

[3] See References in Text note below.

[4] So in original. Probably should be ''subsections,''.

[5] So in original. The semicolon probably should be a comma.

chapter (and enforced) in accordance with the provisions of subchapter V of this chapter, as modified by this subchapter. Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

(1) annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide the owner or operator, or the designated representative of the owners or operators, of the unit hold for the unit,

(2) exceedances of applicable emissions rates,

(3) the use of any allowance prior to the year for which it was allocated, and

(4) contravention of any other provision of the permit.

Permits issued to implement this subchapter shall be issued for a period of 5 years, notwithstanding subchapter V of this chapter. No permit shall be issued that is inconsistent with the requirements of this subchapter, and subchapter V of this chapter as applicable.

(b) Compliance plan

Each initial permit application shall be accompanied by a compliance plan for the source to comply with its requirements under this subchapter. Where an affected source consists of more than one affected unit, such plan shall cover all such units, and for purposes of section 7661a(c) of this title, such source shall be considered a ''facility''. Nothing in this section regarding compliance plans or in subchapter V of this chapter shall be construed as affecting allowances. Except as provided under subsection (c)(1)(B) of this section, submission of a statement by the owner or operator, or the designated representative of the owners and operators, of a unit subject to the emissions limitation requirements of sections 7651c, 7651d, and 7651f of this title, that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of sections 7651c and 7651d of this title, the owners and operators will hold allowances to emit not less than the total annual emissions of the unit, shall be deemed to meet the proposed and approved compliance planning requirements of this section and subchapter V of this chapter, except that, for any unit that will meet the requirements of this subchapter by means of an alternative method of compliance authorized under section 7651c(b), (c), (d), or (f) of this title[1] section 7651f(d) or (e) of this title, section 7651h of this title and section 7651i of this title, the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under this subchapter. Recordation by the Administrator of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits. The Administrator may also require—

(1) for a source, a demonstration of attainment of national ambient air quality standards, and

(2) from the owner or operator of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance at the affected sources.

(c) First phase permits

The Administrator shall issue permits to affected sources under sections 7651c and 7651f of this title.

(1) Permit application and compliance plan

(A) Not later than 27 months after November 15, 1990, the designated representative of the owners or operators, or the owner and operator, of each affected source under sections 7651c and 7651f of this title shall submit a permit application and compliance plan for that source in accordance with regulations issued by the Administrator under paragraph (3). The permit application and the compliance plan shall be binding on the owner or operator or the designated representative of owners and operators for purposes of this subchapter and section 7651a(a)[2] of this title, and shall be enforceable in lieu of a permit until a permit is issued by the Administrator for the source.

(B) In the case of a compliance plan for an affected source under sections 7651c and 7651f of this title for which the owner or operator proposes to meet the requirements of that section by reducing utilization of the unit as compared with its baseline or by shutting down the unit, the owner or operator shall include in the proposed compliance plan a specification of the unit or units that will provide electrical generation to compensate for the reduced output at the affected source, or a demonstration that such reduced utilization will be accomplished through energy conservation or improved unit efficiency. The unit to be used for such compensating generation, which is not otherwise an affected unit under sections 7651c and 7651f of this title, shall be deemed an affected unit under section 7651c of this title, subject to all of the requirements for such units under this subchapter, except that allowances shall be allocated to such compensating unit in the amount of an annual limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000.

(2) EPA action on compliance plans

The Administrator shall review each proposed compliance plan to determine whether it satisfies the requirements of this subchapter, and shall approve or disapprove such plan within 6 months after receipt of a complete submission. If a plan is disapproved, it may be resubmitted for approval with such changes as the Administrator shall require consistent with the requirements of this subchapter and within such period as the Administrator prescribes as part of such disapproval.

[1] So in original. Probably should be followed by a comma.

[2] So in original. Section 7651a of this title does not contain subsections.

(3) Regulations; issuance of permits

Not later than 18 months after November 15, 1990, the Administrator shall promulgate regulations, in accordance with subchapter V of this chapter, to implement a Federal permit program to issue permits for affected sources under this subchapter. Following promulgation, the Administrator shall issue a permit to implement the requirements of section 7651c of this title and the allowances provided under section 7651b of this title to the owner or operator of each affected source under section 7651c of this title. Such a permit shall supersede any permit application and compliance plan submitted under paragraph (1).

(4) Fees

During the years 1995 through 1999 inclusive, no fee shall be required to be paid under section 7661a(b)(3) of this title or under section 7410(a)(2)(L) of this title with respect to emissions from any unit which is an affected unit under section 7651c of this title.

(d) Second phase permits

(1) To provide for permits for (A) new electric utility steam generating units required under section 7651b(e) of this title to have allowances, (B) affected units or sources under section 7651d of this title, and (C) existing units subject to nitrogen oxide emission reductions under section 7651f of this title, each State in which one or more such units or sources are located shall submit in accordance with subchapter V of this chapter, a permit program for approval as provided by that subchapter. Upon approval of such program, for the units or sources subject to such approved program the Administrator shall suspend the issuance of permits as provided in subchapter V of this chapter.

(2) The owner or operator or the designated representative of each affected source under section 7651d of this title shall submit a permit application and compliance plan for that source to the permitting authority, not later than January 1, 1996.

(3) Not later than December 31, 1997, each State with an approved permit program shall issue permits to the owner or operator, or the designated representative of the owners and operators, of affected sources under section 7651d of this title that satisfy the requirements of subchapter V of this chapter and this subchapter and that submitted to such State a permit application and compliance plan pursuant to paragraph (2). In the case of a State without an approved permit program by July 1, 1996, the Administrator shall, not later than January 1, 1998, issue a permit to the owner or operator or the designated representative of each such affected source. In the case of affected sources for which applications and plans are timely received under paragraph (2), the permit application and the compliance plan, including amendments thereto, shall be binding on the owner or operator or the designated representative of the owners or operators and shall be enforceable as a permit for purposes of this subchapter and subchapter V of this chapter until a permit is issued by the permitting authority for the affected source. The provisions of section 558(c) of title 5 (relating to renewals) shall apply to permits issued by a permitting authority under this subchapter and subchapter V of this chapter.

(4) The permit issued in accordance with this subsection for an affected source shall provide that the affected units at the affected source may not emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide the owner or operator or designated representative hold for the unit.

(e) New units

The owner or operator of each source that includes a new electric utility steam generating unit shall submit a permit application and compliance plan to the permitting authority not later than 24 months before the later of (1) January 1, 2000, or (2) the date on which the unit commences operation. The permitting authority shall issue a permit to the owner or operator, or the designated representative thereof, of the unit that satisfies the requirements of subchapter V of this chapter and this subchapter.

(f) Units subject to certain other limits

The owner or operator, or designated representative thereof, of any unit subject to an emission rate requirement under section 7651f of this title shall submit a permit application and compliance plan for such unit to the permitting authority, not later than January 1, 1998. The permitting authority shall issue a permit to the owner or operator that satisfies the requirements of subchapter V of this chapter and this subchapter, including any appropriate monitoring and reporting requirements.

(g) Amendment of application and compliance plan

At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section. In considering any permit application and compliance plan under this subchapter, the permitting authority shall ensure coordination with the applicable electric ratemaking authority, in the case of regulated utilities, and with unregulated public utilities.

(h) Prohibition

(1) It shall be unlawful for an owner or operator, or designated representative, required to submit a permit application or compliance plan under this subchapter to fail to submit such application or plan in accordance with the deadlines specified in this section or to otherwise fail to comply with regulations implementing this section.

(2) It shall be unlawful for any person to operate any source subject to this subchapter except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 7661c(f) of this title, with a permit issued under subchapter V of this chapter which complies with this subchapter for sources subject to this subchapter shall be deemed compliance with this subsection as well as section 7661a(a) of this title.

(3) In order to ensure reliability of electric power, nothing in this subchapter or subchapter V of this chapter shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan, except that any such unit may be subject to the applicable enforcement provisions of section 7413 of this title.

(i) Multiple owners

No permit shall be issued under this section to an affected unit until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this subchapter, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate shall state (1) that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or (2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract. A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during either the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances received by the unit are deemed to be held for that person.

(July 14, 1955, ch. 360, title IV, § 408, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2616.)

§ 7651h. Repowered sources

(a) Availability

Not later than December 31, 1997, the owner or operator of an existing unit subject to the emissions limitation requirements of section 7651d(b) and (c) of this title may demonstrate to the permitting authority that one or more units will be repowered with a qualifying clean coal technology to comply with the requirements under section 7651d of this title. The owner or operator shall, as part of any such demonstration, provide, not later than January 1, 2000, satisfactory documentation of a preliminary design and engineering effort for such repowering and an executed and binding contract for the majority of the equipment to repower such unit and such other information as the Administrator may require by regulation. The replacement of an existing utility unit with a new utility unit using a repowering technology referred to in section 7651a(2)[1] of this title which is located at a different site, shall be treated as repowering of the existing unit for purposes of this subchapter, if—

(1) the replacement unit is designated by the owner or operator to replace such existing unit, and

(2) the existing unit is retired from service on or before the date on which the designated replacement unit enters commercial operation.

(b) Extension

(1) An owner or operator satisfying the requirements of subsection (a) of this section shall be granted an extension of the emission limitation requirement compliance date for that unit from January 1, 2000, to December 31, 2003. The extension shall be specified in the permit issued to the source under section 7651g of this title, together with any compliance schedule and other requirements necessary to meet second phase requirements by the extended date. Any unit that is granted an extension under this section shall not be eligible for a waiver under section 7411(j) of this title, and shall continue to be subject to requirements under this subchapter as if it were a unit subject to section 7651d of this title.

(2) If (A) the owner or operator of an existing unit has been granted an extension under paragraph (1) in order to repower such unit with a clean coal unit, and (B) such owner or operator demonstrates to the satisfaction of the Administrator that the repowering technology to be utilized by such unit has been properly constructed and tested on such unit, but nevertheless has been unable to achieve the emission reduction limitations and is economically or technologically infeasible, such existing unit may be retrofitted or repowered with equipment or facilities utilizing another clean coal technology or other available control technology.

(c) Allowances

(1) For the period of the extension under this section, the Administrator shall allocate to the owner or operator of the affected unit, annual allowances for sulfur dioxide equal to the affected unit's baseline multiplied by the lesser of the unit's federally approved State Implementation Plan emissions limitation or its actual emission rate for 1995 in lieu of any other allocation. Such allowances may not be transferred or used by any other source to meet emission requirements under this subchapter. The source owner or operator shall notify the Administrator sixty days in advance of the date on which the affected unit for which the extension has been granted is to be removed from operation to install the repowering technology.

(2) Effective on that date, the unit shall be subject to the requirements of section 7651d of this title. Allowances for the year in which the unit is removed from operation to install the repowering technology shall be calculated as the product of the unit's baseline multiplied by 1.20

[1] So in original. Probably should be section ''7651a(12)''.

lbs/mmBtu, divided by 2,000, and prorated accordingly, and are transferable.

(3) Allowances for such existing utility units for calendar years after the year the repowering is complete shall be calculated as the product of the existing unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(4) Notwithstanding the provisions of section 7651b(a) and (e) of this title, allowances shall be allocated under this section for a designated replacement unit which replaces an existing unit (as provided in the last sentence of subsection (a) of this section) in lieu of any further allocations of allowances for the existing unit.

(5) For the purpose of meeting the aggregate emissions limitation requirement set forth in section 7651b(a)(1) of this title, the units with an extension under this subsection shall be treated in each calendar year during the extension period as holding allowances allocated under paragraph (3).

(d) Control requirements

Any unit qualifying for an extension under this section that does not increase actual hourly emissions for any pollutant regulated under the[2] chapter shall not be subject to any standard of performance under section 7411 of this title. Notwithstanding the provisions of this subsection, no new unit (1) designated as a replacement for an existing unit, (2) qualifying for the extension under subsection (b) of this section, and (3) located at a different site than the existing unit shall receive an exemption from the requirements imposed under section 7411 of this title.

(e) Expedited permitting

State permitting authorities and, where applicable, the Administrator, are encouraged to give expedited consideration to permit applications under parts C and D of subchapter I of this chapter for any source qualifying for an extension under this section.

(f) Prohibition

It shall be unlawful for the owner or operator of a repowered source to fail to comply with the requirement of this section, or any regulations of permit requirements to implement this section, including the prohibition against emitting sulfur dioxide in excess of allowances held.

(July 14, 1955, ch. 360, title IV, § 409, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2619.)

§ 7651i. Election for additional sources

(a) Applicability

The owner or operator of any unit that is not, nor will become, an affected unit under section 7651b(e), 7651c, or 7651d of this title, or that is a process source under subsection (d) of this section, that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subchapter. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 7651g of this title. The Administrator shall approve a designation that meets the requirements of this section, and such designated unit, or source, shall be allocated allowances, and be an affected unit for purposes of this subchapter.

(b) Establishment of baseline

The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data is not available, the Administrator may prescribe a baseline based on alternative representative data.

(c) Emission limitations

Annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 2,000.

(d) Process sources

Not later than 18 months after November 15, 1990, the Administrator shall establish a program under which the owner or operator of a process source that emits sulfur dioxide may elect to designate that source as an affected unit for the purpose of receiving allowances under this subchapter. The Administrator shall, by regulation, define the sources that may be designated; specify the emissions limitation; specify the operating, emission baseline, and other data requirements; prescribe CEMS or other monitoring requirements; and promulgate permit, reporting, and any other requirements necessary to implement such a program.

(e) Allowances and permits

The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation calculated under subsection (c) or (d) of this section, in accordance with section 7651b of this title. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 7651b of this title. Affected sources under this section shall be subject to the requirements of sections 7651b, 7651g, 7651j, 7651k, 7651*l*, and 7651m of this title.

(f) Limitation

Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section, with thermal energy generated by any other unit or units subject to the requirements of this subchapter, and the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance

[2] So in original. Probably should be ''this''.

with the requirements of this chapter. No such allowances shall authorize operation of a unit in violation of any other requirements of this chapter.

(g) Implementation

The Administrator shall issue regulations to implement this section not later than eighteen months after November 15, 1990.

(h) Small diesel refineries

The Administrator shall issue allowances to owners or operators of small diesel refineries who produce diesel fuel after October 1, 1993, meeting the requirements of subsection[1] 7545(i) of this title.

(1) Allowance period

Allowances may be allocated under this subsection only for the period from October 1, 1993, through December 31, 1999.

(2) Allowance determination

The number of allowances allocated pursuant to this paragraph shall equal the annual number of pounds of sulfur dioxide reduction attributable to desulfurization by a small refinery divided by 2,000. For the purposes of this calculation, the concentration of sulfur removed from diesel fuel shall be the difference between 0.274 percent (by weight) and 0.050 percent (by weight).

(3) Refinery eligibility

As used in this subsection, the term ''small refinery'' shall mean a refinery or portion of a refinery—

(A) which, as of November 15, 1990, has bona fide crude oil throughput of less than 18,250,000 barrels per year, as reported to the Department of Energy, and

(B) which, as of November 15, 1990, is owned or controlled by a refiner with a total combined bona fide crude oil throughput of less than 50,187,500 barrels per year, as reported to the Department of Energy.

(4) Limitation per refinery

The maximum number of allowances that can be annually allocated to a small refinery pursuant to this subsection is one thousand and five hundred.

(5) Limitation on total

In any given year, the total number of allowances allocated pursuant to this subsection shall not exceed thirty-five thousand.

(6) Required certification

The Administrator shall not allocate any allowances pursuant to this subsection unless the owner or operator of a small diesel refinery shall have certified, at a time and in a manner prescribed by the Administrator, that all motor diesel fuel produced by the refinery for which allowances are claimed, including motor diesel fuel for off-highway use, shall have met the requirements of subsection[1] 1545(i) of this title.

(July 14, 1955, ch. 360, title IV, § 410, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2621.)

[1] So in original. Probably should be ''section''.

§ 7651j. Excess emissions penalty

(a) Excess emissions penalty

The owner or operator of any unit or process source subject to the requirements of sections[1] 7651b, 7651c, 7651d, 7651e, 7651f or 7651h of this title, or designated under section 7651i of this title, that emits sulfur dioxide or nitrogen oxides for any calendar year in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the allowances the owner or operator holds for use for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 7410(f) of this title. That penalty shall be calculated on the basis of the number of tons emitted in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the allowances the operator holds for use for the unit for that year, multiplied by $2,000. Any such penalty shall be due and payable without demand to the Administrator as provided in regulations to be issued by the Administrator by no later than eighteen months after November 15, 1990. Any such payment shall be deposited in the United States Treasury pursuant to the Miscellaneous Receipts Act.[2] Any penalty due and payable under this section shall not diminish the liability of the unit's owner or operator for any fine, penalty or assessment against the unit for the same violation under any other section of this chapter.

(b) Excess emissions offset

The owner or operator of any affected source that emits sulfur dioxide during any calendar year in excess of the unit's emissions limitation requirement or of the allowances held for the unit for the calendar year, shall be liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The owner or operator of the source shall, within sixty days after the end of the year in which the excess emissions occured,[3] submit to the Administrator, and to the State in which the source is located, a proposed plan to achieve the required offsets. Upon approval of the proposed plan by the Administrator, as submitted, modified or conditioned, the plan shall be deemed at[4] a condition of the operating permit for the unit without further review or revision of the permit. The Administrator shall also deduct allowances equal to the excess tonnage from those allocated for the source for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(c) Penalty adjustment

The Administrator shall, by regulation, adjust the penalty specified in subsection (a) of this section for inflation, based on the Consumer Price Index, on November 15, 1990, and annually thereafter.

[1] So in original. Probably should be ''section''.

[2] See References in Text note below.

[3] So in original. Probably should be ''occurred,''.

[4] So in original.

(d) Prohibition

It shall be unlawful for the owner or operator of any source liable for a penalty and offset under this section to fail (1) to pay the penalty under subsection (a) of this section, (2) to provide, and thereafter comply with, a compliance plan as required by subsection (b) of this section, or (3) to offset excess emissions as required by subsection (b) of this section.

(e) Savings provision

Nothing in this subchapter shall limit or otherwise affect the application of section 7413, 7414, 7420, or 7604 of this title except as otherwise explicitly provided in this subchapter.

(July 14, 1955, ch. 360, title IV, § 411, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2623.)

REFERENCES IN TEXT

The Miscellaneous Receipts Act, referred to in subsec. (a), is not a recognized popular name for an act. For provisions relating to deposit of monies, see section 3302 of Title 31, Money and Finance.

§ 7651k. Monitoring, reporting, and recordkeeping requirements

(a) Applicability

The owner and operator of any source subject to this subchapter shall be required to install and operate CEMS on each affected unit at the source, and to quality assure the data for sulfur dioxide, nitrogen oxides, opacity and volumetric flow at each such unit. The Administrator shall, by regulations issued not later than eighteen months after November 15, 1990, specify the requirements for CEMS, for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timeliness as that provided by CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations or the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this subchapter. Where 2 or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

(b) First phase requirements

Not later than thirty-six months after November 15, 1990, the owner or operator of each affected unit under section 7651c of this title, including, but not limited to, units that become affected units pursuant to subsections (b) and (c) and eligible units under subsection (d), shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under subsection (a).

(c) Second phase requirements

Not later than January 1, 1995, the owner or operator of each affected unit that has not previously met the requirements of subsections (a) and (b) shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under subsection (a). Upon commencement of commercial operation of each new utility unit, the unit shall comply with the requirements of subsection (a).

(d) Unavailability of emissions data

If CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this subchapter, and the owner or operator cannot provide information, satisfactory to the Administrator, on emissions during that period, the Administrator shall deem the unit to be operating in an uncontrolled manner during the entire period for which the data was not available and shall, by regulation which shall be issued not later than eighteen months after November 15, 1990, prescribe means to calculate emissions for that period. The owner or operator shall be liable for excess emissions fees and offsets under section 7651j of this title in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee or assessment against the unit for the same violation under any other section of this chapter.

(e) Prohibition

It shall be unlawful for the owner or operator of any source subject to this subchapter to operate a source without complying with the requirements of this section, and any regulations implementing this section.

(July 14, 1955, ch. 360, title IV, § 412, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2624.)

INFORMATION GATHERING ON GREENHOUSE GASES CONTRIBUTING TO GLOBAL CLIMATE CHANGE

Section 821 of Pub. L. 101–549 provided that:

''(a) MONITORING.—The Administrator of the Environmental Protection Agency shall promulgate regulations within 18 months after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] to require that all affected sources subject to title V of the Clean Air Act [probably means title IV of the Clean Air Act as added by Pub. L. 101–549, which is classified to section 7651 et seq. of this title] shall also monitor carbon dioxide emissions according to the same timetable as in section 511(b) and (c) [probably means section 412(b) and (c) of the Clean Air Act, which is classified to section 7651k(b) and (c) of this title]. The regulations shall require that such data be reported to the Administrator. The provisions of section 511(e) of title V of the Clean Air Act [probably means section 412(e) of title IV of the Clean Air Act, which is classified to section 7651k(e) of this title] shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 511 [probably means section 412 of the Clean Air Act, which is classified to section 7651k of this title].

''(b) PUBLIC AVAILABILITY OF CARBON DIOXIDE INFORMATION.—For each unit required to monitor and provide carbon dioxide data under subsection (a), the Administrator shall compute the unit's aggregate annual total carbon dioxide emissions, incorporate such data into a computer data base, and make such aggregate annual data available to the public.''

§ 7651*l*. General compliance with other provisions

Except as expressly provided, compliance with the requirements of this subchapter shall not exempt or exclude the owner or operator of any source subject to this subchapter from compliance with any other applicable requirements of this chapter.

(July 14, 1955, ch. 360, title IV, § 413, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2625.)

§ 7651m. Enforcement

It shall be unlawful for any person subject to this subchapter to violate any prohibition of, requirement of, or regulation promulgated pursuant to this subchapter shall be a violation of this chapter.[1] In addition to the other requirements and prohibitions provided for in this subchapter, the operation of any affected unit to emit sulfur dioxide in excess of allowances held for such unit shall be deemed a violation, with each ton emitted in excess of allowances held constituting a separate violation.

(July 14, 1955, ch. 360, title IV, § 414, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2625.)

§ 7651n. Clean coal technology regulatory incentives

(a) "Clean coal technology" defined

For purposes of this section, ''clean coal technology'' means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of November 15, 1990.

(b) Revised regulations for clean coal technology demonstrations

(1) Applicability

This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of this section, a clean coal technology demonstration project shall mean a project using funds appropriated under the heading ''Department of Energy—Clean Coal Technology'', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(2) Temporary projects

Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 7411 of this title or part C or D of subchapter I of this chapter.

(3) Permanent projects

For permanent clean coal technology demonstration projects that constitute repowering as defined in section 7651a(*l*)[1] of this title, any qualifying project shall not be subject to standards of performance under section 7411 of this title or to the review and permitting requirements of part C[2] for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

(4) EPA regulations

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 7411 of this title and parts C and D,[2] as appropriate, to facilitate projects consistent in[3] this subsection. With respect to parts C and D,[2] such regulations or rulings shall apply to all areas in which EPA is the permitting authority. In those instances in which the State is the permitting authority under part C or D,[2] any State may adopt and submit to the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

(c) Exemption for reactivation of very clean units

Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 7411 of this title or part C of the Act[2] where the unit (1) has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment, (2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent, (3) is equipped with low-NO_x burners prior to the time of commencement, and (4) is otherwise in compliance with the requirements of this chapter.

(July 14, 1955, ch. 360, title IV, § 415, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2625.)

REFERENCES IN TEXT

Parts C and D and part C of the Act, referred to in subsecs. (b)(3), (4) and (c), probably mean parts C and D of subchapter I of this chapter.

[1] So in original.

[1] So in original. Probably should be section ''7651a(12)''.

[2] See References in Text note below.

[3] So in original. Probably should be ''with''.

§ 7651*o*. Contingency guarantee, auctions, reserve

(a) Definitions

For purposes of this section—

(1) The term ''independent power producer'' means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

(2) The term ''new independent power production facility'' means a facility that—

(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

(B) is nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of November 15, 1990);

(C) does not generate electric energy sold to any affiliate (as defined in section 79b(a)(11)[1] of title 15) of the facility's owner or operator unless the owner or operator of the facility demonstrates that it cannot obtain allowances from the affiliate; and

(D) is a new unit required to hold allowances under this subchapter.

(3) The term ''required allowances'' means the allowances required to operate such unit for so much of the unit's useful life as occurs after January 1, 2000.

(b) Special reserve of allowances

Within 36 months after November 15, 1990, the Administrator shall promulgate regulations establishing a Special Allowance Reserve containing allowances to be sold under this section. For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

(1) 2.8 percent of the allocation of allowances for each year from 1995 through 1999 inclusive; and

(2) 2.8 percent of the basic Phase II allowance allocation of allowances for each year beginning in the year 2000

which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

(c) Direct sale at $1,500 per ton

(1) Subaccount for direct sales

In accordance with regulations under this section, the Administrator shall establish a Direct Sale Subaccount in the Special Allowance Reserve established under this section. The Direct Sale Subaccount shall contain allowances in the amount of 50,000 tons per year for each year beginning in the year 2000.

(2) Sales

Allowances in the subaccount shall be offered for direct sale to any person at the times and in the amounts specified in table 1 at a price of $1,500 per allowance, adjusted by the Consumer Price Index in the same manner as provided in paragraph (3). Requests to purchase allowances from the Direct Sale Subaccount established under paragraph (1) shall be approved in the order of receipt until no allowances remain in such subaccount, except that an opportunity to purchase such allowances shall be provided to the independent power producers referred to in this subsection before such allowances are offered to any other person. Each applicant shall be required to pay 50 percent of the total purchase price of the allowances within 6 months after the approval of the request to purchase. The remainder shall be paid on or before the transfer of the allowances.

TABLE 1—NUMBER OF ALLOWANCES AVAILABLE FOR SALE AT $1,500 PER TON

Year of Sale	Spot Sale (same year)	Advance Sale
1993–1999	.....	25,000
2000 and after	25,000	25,000

Allowances sold in the spot sale in any year are allowances which may only be used in that year (unless banked for use in a later year). Allowances sold in the advance sale in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year).

(3) Entitlement to written guarantee

Any independent power producer that submits an application to the Administrator establishing that such independent power producer—

(A) proposes to construct a new independent power production facility for which allowances are required under this subchapter;

(B) will apply for financing to construct such facility after January 1, 1990, and before the date of the first auction under this section;

(C) has submitted to each owner or operator of an affected unit listed in table A (in section 7651c of this title) a written offer to purchase the required allowances for $750 per ton; and

(D) has not received (within 180 days after submitting offers to purchase under subparagraph (C)) an acceptance of the offer to purchase the required allowances,

shall, within 30 days after submission of such application, be entitled to receive the Administrator's written guarantee (subject to the eligibility requirements set forth in paragraph (4)) that such required allowances will be made available for purchase from the Direct Sale Subaccount established under this subsection and at a guaranteed price. The guaranteed price at which such allowances shall be made available for purchase shall be $1,500 per ton, adjusted by the percentage, if any, by which the Consumer Price Index (as determined under section 7661a(b)(3)(B)(v) of this title) for the year in which the allowance is purchased exceeds the Consumer Price Index for the calendar year 1990.

(4) Eligibility requirements

The guarantee issued by the Administrator under paragraph (3) shall be subject to a demonstration by the independent power producer, satisfactory to the Administrator, that—

[1] See References in Text note below.

(A) the independent power producer has—

(i) made good faith efforts to purchase the required allowances from the owners or operators of affected units to which allowances will be allocated, including efforts to purchase at annual auctions under this section, and from industrial sources that have elected to become affected units pursuant to section 7651i of this title; and

(ii) such bids and efforts were unsuccessful in obtaining the required allowances; and

(B) the independent power producer will continue to make good faith efforts to purchase the required allowances from the owners or operators of affected units and from industrial sources.

(5) Issuance of guaranteed allowances from Direct Sale Subaccount under this section

From the allowances available in the Direct Sale Subaccount established under this subsection, upon payment of the guaranteed price, the Administrator shall issue to any person exercising the right to purchase allowances pursuant to a guarantee under this subsection the allowances covered by such guarantee. Persons to which guarantees under this subsection have been issued shall have the opportunity to purchase allowances pursuant to such guarantee from such subaccount before the allowances in such reserve are offered for sale to any other person.

(6) Proceeds

Notwithstanding section 3302 of title 31 or any other provision of law, the Administrator shall require that the proceeds of any sale under this subsection be transferred, within 90 days after the sale, without charge, on a pro rata basis to the owners or operators of the affected units from whom the allowances were withheld under subsection (b) of this section and that any unsold allowances be transferred to the Subaccount for Auction Sales established under subsection (d) of this section. No proceeds of any sale under this subsection shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or to the Administrator.

(7) Termination of subaccount

If the Administrator determines that, during any period of 2 consecutive calendar years, less than 20 percent of the allowances available in the subaccount for direct sales established under this subsection have been purchased under this paragraph, the Administrator shall terminate the subaccount and transfer such allowances to the Auction Subaccount under subsection (d) of this section.

(d) Auction sales

(1) Subaccount for auctions

The Administrator shall establish an Auction Subaccount in the Special Reserve established under this section. The Auction Subaccount shall contain allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year beginning in the calendar year 2000.

(2) Annual auctions

Commencing in 1993 and in each year thereafter, the Administrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator, in consultation with the Secretary of the Treasury, within 12 months of November 15, 1990. The allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table 2. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowances at specified prices. Such regulations shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated. The regulations shall not permit that a minimum price be set for the purchase of withheld allowances. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this subchapter.

TABLE 2—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

Year of Sale	Spot Auction (same year)	Advance Auction
1993	50,000*	100,000
1994	50,000*	100,000
1995	50,000*	100,000
1996	150,000	100,000
1997	150,000	100,000
1998	150,000	100,000
1999	150,000	100,000
2000 and after	100,000	100,000

Allowances sold in the spot sale in any year are allowances which may only be used in that year (unless banked for use in a later year), except as otherwise noted. Allowances sold in the advance auction in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year).

*Available for use only in 1995 (unless banked for use in a later year).

(3) Proceeds

(A) Notwithstanding section 3302 of title 31 or any other provision of law, within 90 days of receipt, the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or operators of the affected units at an affected source from whom allowances were withheld under subsection (b) of this section. No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(B) At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata

basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

(4) Additional auction participants

Any person holding allowances or to whom allowances are allocated by the Administrator may submit those allowances to the Administrator to be offered for sale at auction under this subsection. The proceeds of any such sale shall be transferred at the time of sale by the purchaser to the person submitting such allowances for sale. The holder of allowances offered for sale under this paragraph may specify a minimum sale price. Any person may purchase allowances offered for auction under this paragraph. Such allowances shall be allocated and sold to purchasers on the basis of bid price after the auction under paragraph (2) is complete. No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(5) Recording by EPA

The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subchapter.

(e) Changes in sales, auctions, and withholding

Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance sales or advance auctions) and 2005 (in the case of spot sales or spot auctions) decrease the number of allowances withheld and sold under this section.

(f) Termination of auctions

The Administrator may terminate the withholding of allowances and the auction sales under this section if the Administrator determines that, during any period of 3 consecutive calendar years after 2002, less than 20 percent of the allowances available in the auction subaccount have been purchased. Pursuant to regulations under this section, the Administrator may by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

(July 14, 1955, ch. 360, title IV, § 416, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2626.)

REFERENCES IN TEXT

Section 79b of title 15, referred to in subsec. (a)(2)(C), was repealed by Pub. L. 109–58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974. See section 16451(1) of this title.

SUBCHAPTER V—PERMITS

§ 7661. Definitions

As used in this subchapter—

(1) Affected source

The term ''affected source'' shall have the meaning given such term in subchapter IV–A of this chapter.

(2) Major source

The term ''major source'' means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

(A) A major source as defined in section 7412 of this title.

(B) A major stationary source as defined in section 7602 of this title or part D of subchapter I of this chapter.

(3) Schedule of compliance

The term ''schedule of compliance'' means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

(4) Permitting authority

The term ''permitting authority'' means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this subchapter.

(July 14, 1955, ch. 360, title V, § 501, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2635.)

§ 7661a. Permit programs

(a) Violations

After the effective date of any permit program approved or promulgated under this subchapter, it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate an affected source (as provided in subchapter IV–A of this chapter), a major source, any other source (including an area source) subject to standards or regulations under section 7411 or 7412 of this title, any other source required to have a permit under parts[1] C or D of subchapter I of this chapter, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this subchapter. (Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator

[1] So in original. Probably should be ''part''.

finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

(b) Regulations

The Administrator shall promulgate within 12 months after November 15, 1990, regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

(1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

(2) Monitoring and reporting requirements.

(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this subchapter pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter, including section 7661f of this title, including the reasonable costs of—

(i) reviewing and acting upon any application for such a permit,

(ii) if the owner or operator receives a permit for such source, whether before or after November 15, 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

(iii) emissions and ambient monitoring,

(iv) preparing generally applicable regulations, or guidance,

(v) modeling, analyses, and demonstrations, and

(vi) preparing inventories and tracking emissions.

(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs[2] (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than $25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

(ii) As used in this subparagraph, the term ''regulated pollutant'' shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 7411 or 7412 of this title; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after 1990, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause—

(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year, and

(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(C)(i) If the Administrator determines, under subsection (d) of this section, that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i) of this section, that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this subchapter, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of title 26 (relating to computation of interest on underpayment of Federal taxes).

(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

(4) Requirements for adequate personnel and funding to administer the program.

[2] So in original. Probably should be ''clauses''.

(5) A requirement that the permitting authority have adequate authority to:

(A) issue permits and assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter;

(B) issue permits for a fixed term, not to exceed 5 years;

(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

(D) terminate, modify, or revoke and reissue permits for cause;

(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties; and

(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this subchapter.

(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 7661b of this title or, as appropriate, subchapter IV–A of this chapter) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 7661b(e) of this title, subject to the provisions of section 7414(c) of this title.

(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this chapter after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this subchapter regarding renewals.

(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 7661b(d) of this title) without requiring a permit revision, if the changes are not modifications under any provision of subchapter I of this chapter and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions:[3] *Provided*, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

(c) Single permit

A single permit may be issued for a facility with multiple sources.

(d) Submission and approval

(1) Not later than 3 years after November 15, 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this subchapter. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this chapter, including the regulations issued under subsection (b) of this section. If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 7509(b) of this title.

(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date re-

[3] So in original. A closing parenthesis probably should precede the colon.

quired for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 7509(b) of this title in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 7509(a) of this title.

(C) The sanctions under section 7509(b)(2) of this title shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in part D of subchapter I of this chapter).

(3) If a program meeting the requirements of this subchapter has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this subchapter for that State.

(e) Suspension

The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally issued permits under this subchapter until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

(f) Prohibition

No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this subchapter and each of the following:

(1) All requirements established under subchapter IV–A of this chapter applicable to ''affected sources''.

(2) All requirements established under section 7412 of this title applicable to ''major sources'', ''area sources,'' and ''new sources''.

(3) All requirements of subchapter I of this chapter (other than section 7412 of this title) applicable to sources required to have a permit under this subchapter.

Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this chapter for failure to submit an approvable permit program.

(g) Interim approval

If a program (including a partial permit program) submitted under this subchapter substantially meets the requirements of this subchapter, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than 2 years after such approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2) of this section, and the obligation of the Administrator to promulgate a program under this subchapter for the State pursuant to subsection (d)(3) of this section, shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

(h) Effective date

The effective date of a permit program, or partial or interim program, approved under this subchapter, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

(i) Administration and enforcement

(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subchapter, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 7509(b) of this title.

(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subchapter, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 7509(b) of this title in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 7509(a) of this title.

(3) The sanctions under section 7509(b)(2) of this title shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this subchapter for that State. Nothing in this paragraph shall be construed to affect the validity of a program which has been approved under this subchapter or the authority of any permitting authority acting under such program until such time as such program is promulgated by the Administrator under this paragraph.

(July 14, 1955, ch. 360, title V, § 502, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2635.)

§ 7661b. Permit applications

(a) Applicable date

Any source specified in section 7661a(a) of this title shall become subject to a permit program, and required to have a permit, on the later of the following dates—

(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

(2) the date such source becomes subject to section 7661a(a) of this title.

(b) Compliance plan

(1) The regulations required by section 7661a(b) of this title shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this chapter. The compliance plan shall include a schedule of compliance, and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every 6 months.

(2) The regulations shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

(c) Deadline

Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this subchapter, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application (consistent with the procedures established under this subchapter for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one-third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date. Such authority shall establish reasonable procedures to prioritize such approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this chapter.

(d) Timely and complete applications

Except for sources required to have a permit before construction or modification under the applicable requirements of this chapter, if an applicant has submitted a timely and complete application for a permit required by this subchapter (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this chapter, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this subchapter shall be in violation of section 7661a(a) of this title before the date on which the source is required to submit an application under subsection (c) of this section.

(e) Copies; availability

A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this subchapter, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 7414(c) of this title, the applicant or permittee may submit such information separately. The requirements of section 7414(c) of this title shall apply to such information. The contents of a permit shall not be entitled to protection under section 7414(c) of this title.

(July 14, 1955, ch. 360, title V, § 503, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2641.)

§ 7661c. Permit requirements and conditions

(a) Conditions

Each permit issued under this subchapter shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.

(b) Monitoring and analysis

The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this chapter, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of subchapter IV–A of this chapter, or where required elsewhere in this chapter.

(c) Inspection, entry, monitoring, certification, and reporting

Each permit issued under this subchapter shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b) of this section. Any report required to be submitted by a permit issued to a corporation under this subchapter shall be signed by a responsible corporate official, who shall certify its accuracy.

(d) General permits

The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this subchapter. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 7661b of this title.

(e) Temporary sources

The permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this chapter at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of subchapter I of this chapter. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location. The permitting authority may require a separate permit fee for operations at each location.

(f) Permit shield

Compliance with a permit issued in accordance with this subchapter shall be deemed compliance with section 7661a of this title. Except as otherwise provided by the Administrator by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this chapter that relate to the permittee if—

(1) the permit includes the applicable requirements of such provisions, or

(2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Nothing in the preceding sentence shall alter or affect the provisions of section 7603 of this title, including the authority of the Administrator under that section.

(July 14, 1955, ch. 360, title V, § 504, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2642.)

§ 7661d. Notification to Administrator and contiguous States

(a) Transmission and notice

(1) Each permitting authority—

(A) shall transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this chapter, and

(B) shall provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit.

(2) The permitting authority shall notify all States—

(A) whose air quality may be affected and that are contiguous to the State in which the emission originates, or

(B) that are within 50 miles of the source,

of each permit application or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefor.

(b) Objection by EPA

(1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this chapter, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance. The permitting authority shall respond in writing if the Administrator (A) within 45 days after receiving a copy of the proposed permit under subsection (a)(1) of this section, or (B) within 45 days after receiving notification under subsection (a)(2) of this section, objects in writing to its issuance as not in compliance with such requirements. With the objection, the Administrator shall provide a statement of the reasons for the objection. A copy of the objection and statement shall be provided to the applicant.

(2) If the Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to take such action. A copy of such petition shall be provided to the permitting authority and the applicant by the petitioner. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). The petition shall identify all such objections. If the permit has been issued by the permitting agency, such petition shall not postpone the effectiveness of the permit. The Administrator shall grant or deny such petition within 60 days after the petition is filed. The Administrator shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan. Any denial of such petition shall be subject to judicial review under section 7607 of this title. The Administrator shall include in regulations under this subchapter provisions to implement this paragraph. The Administrator may not delegate the requirements of this paragraph.

(3) Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c) of this section. If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a

revised permit in accordance with subsection (c) of this section.

(c) Issuance or denial

If the permitting authority fails, within 90 days after the date of an objection under subsection (b) of this section, to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this subchapter. No objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.

(d) Waiver of notification requirements

(1) The Administrator may waive the requirements of subsections (a) and (b) of this section at the time of approval of a permit program under this subchapter for any category (including any class, type, or size within such category) of sources covered by the program other than major sources.

(2) The Administrator may, by regulation, establish categories of sources (including any class, type, or size within such category) to which the requirements of subsections (a) and (b) of this section shall not apply. The preceding sentence shall not apply to major sources.

(3) The Administrator may exclude from any waiver under this subsection notification under subsection (a)(2) of this section. Any waiver granted under this subsection may be revoked or modified by the Administrator by rule.

(e) Refusal of permitting authority to terminate, modify, or revoke and reissue

If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit under this subchapter, the Administrator shall notify the permitting authority and the source of the Administrator's finding. The permitting authority shall, within 90 days after receipt of such notification, forward to the Administrator under this section a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend such 90 day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary, or that the permitting authority must require the permittee to submit additional information. The Administrator may review such proposed determination under the provisions of subsections (a) and (b) of this section. If the permitting authority fails to submit the required proposed determination, or if the Administrator objects and the permitting authority fails to resolve the objection within 90 days, the Administrator may, after notice and in accordance with fair and reasonable procedures, terminate, modify, or revoke and reissue the permit.

(July 14, 1955, ch. 360, title V, § 505, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2643.)

§ 7661e. Other authorities

(a) In general

Nothing in this subchapter shall prevent a State, or interstate permitting authority, from establishing additional permitting requirements not inconsistent with this chapter.

(b) Permits implementing acid rain provisions

The provisions of this subchapter, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of subchapter IV–A of this chapter except as modified by that subchapter.

(July 14, 1955, ch. 360, title V, § 506, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2645.)

§ 7661f. Small business stationary source technical and environmental compliance assistance program

(a) Plan revisions

Consistent with sections 7410 and 7412 of this title, each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator as part of the State implementation plan for such State or as a revision to such State implementation plan under section 7410 of this title, plans for establishing a small business stationary source technical and environmental compliance assistance program. Such submission shall be made within 24 months after November 15, 1990. The Administrator shall approve such program if it includes each of the following:

(1) Adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this chapter.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

(3) A designated State office within the relevant State agency to serve as ombudsman for small business stationary sources in connection with the implementation of this chapter.

(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this chapter in a timely and efficient manner.

(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this chapter in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this chapter.

(6) Adequate mechanisms for informing small business stationary sources of their obligations under this chapter, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with this chapter.

(7) Procedures for consideration of requests from a small business stationary source for modification of—

(A) any work practice or technological method of compliance, or

(B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date,

based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of this chapter, including the requirements of the applicable implementation plan. Where such applicable requirements are set forth in Federal regulations, only modifications authorized in such regulations may be allowed.

(b) Program

The Administrator shall establish within 9 months after November 15, 1990, a small business stationary source technical and environmental compliance assistance program. Such program shall—

(1) assist the States in the development of the program required under subsection (a) of this section (relating to assistance for small business stationary sources);

(2) issue guidance for the use of the States in the implementation of these programs that includes alternative control technologies and pollution prevention methods applicable to small business stationary sources; and

(3) provide for implementation of the program provisions required under subsection (a)(4) of this section in any State that fails to submit such a program under that subsection.

(c) Eligibility

(1) Except as provided in paragraphs (2) and (3), for purposes of this section, the term ''small business stationary source'' means a stationary source that—

(A) is owned or operated by a person that employs 100 or fewer individuals,

(B) is a small business concern as defined in the Small Business Act [15 U.S.C. 631 et seq.];

(C) is not a major stationary source;

(D) does not emit 50 tons or more per year of any regulated pollutant; and

(E) emits less than 75 tons per year of all regulated pollutants.

(2) Upon petition by a source, the State may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subparagraphs[1] (C), (D), or (E) of paragraph (1) but which does not emit more than 100 tons per year of all regulated pollutants.

(3)(A) The Administrator, in consultation with the Administrator of the Small Business Administration and after providing notice and opportunity for public comment, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the Administrator determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the application of this subsection.

(B) The State, in consultation with the Administrator and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the application of this subsection.

(d) Monitoring

The Administrator shall direct the Agency's Office of Small and Disadvantaged Business Utilization through the Small Business Ombudsman (hereinafter in this section referred to as the ''Ombudsman'') to monitor the small business stationary source technical and environmental compliance assistance program under this section. In carrying out such monitoring activities, the Ombudsman shall—

(1) render advisory opinions on the overall effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

(2) make periodic reports to the Congress on the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act,[2] the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and the Equal Access to Justice Act;

(3) review information to be issued by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program for small business stationary sources to ensure that the information is understandable by the layperson; and

(4) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(e) Compliance Advisory Panel

(1) There shall be created a Compliance Advisory Panel (hereinafter referred to as the ''Panel'') on the State level of not less than 7 individuals. This Panel shall—

(A) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;

(B) make periodic reports to the Administrator concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act,[2] the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and the Equal Access to Justice Act;

(C) review information for small business stationary sources to assure such information is understandable by the layperson; and

(D) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the sec-

[1] So in original. Probably should be ''subparagraph''.

[2] See References in Text note below.

retariat for the development and dissemination of such reports and advisory opinions.

(2) The Panel shall consist of—

(A) 2 members, who are not owners, or representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

(B) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the lower house, or in the case of a unicameral State legislature, 2 members each shall be selected by the majority leadership and the minority leadership, respectively, of such legislature, and subparagraph (C) shall not apply);

(C) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the upper house, or the equivalent State entity); and

(D) 1 member selected by the head of the department or agency of the State responsible for air pollution permit programs to represent that agency.

(f) Fees

The State (or the Administrator) may reduce any fee required under this chapter to take into account the financial resources of small business stationary sources.

(g) Continuous emission monitors

In developing regulations and CTGs under this chapter that contain continuous emission monitoring requirements, the Administrator, consistent with the requirements of this chapter, before applying such requirements to small business stationary sources, shall consider the necessity and appropriateness of such requirements for such sources. Nothing in this subsection shall affect the applicability of subchapter IV–A of this chapter provisions relating to continuous emissions monitoring.

(h) Control technique guidelines

The Administrator shall consider, consistent with the requirements of this chapter, the size, type, and technical capabilities of small business stationary sources (and sources which are eligible under subsection (c)(2) of this section to be treated as small business stationary sources) in developing CTGs applicable to such sources under this chapter.

(July 14, 1955, ch. 360, title V, § 507, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2645.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (c)(1)(B), is Pub. L. 85–536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

The Paperwork Reduction Act, referred to in subsecs. (d)(2) and (e)(1)(B), probably means the Paperwork Reduction Act of 1980, Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§ 3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Regulatory Flexibility Act, referred to in subsecs. (d)(2) and (e)(1)(B), is Pub. L. 96–354, Sept. 19, 1980, 94 Stat. 1164, which is classified generally to chapter 6 (§ 601 et seq.) of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 5 and Tables.

The Equal Access to Justice Act, referred to in subsecs. (d)(2) and (e)(1)(B), is title II of Pub. L. 96–481, Oct. 21, 1980, 94 Stat. 2325. For complete classification of this Act to the Code, see Short Title note set out under section 504 of Title 5.

SUBCHAPTER VI—STRATOSPHERIC OZONE PROTECTION

§ 7671. Definitions

As used in this subchapter—

(1) Appliance

The term ''appliance'' means any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(2) Baseline year

The term ''baseline year'' means—

(A) the calendar year 1986, in the case of any class I substance listed in Group I or II under section 7671a(a) of this title,

(B) the calendar year 1989, in the case of any class I substance listed in Group III, IV, or V under section 7671a(a) of this title, and

(C) a representative calendar year selected by the Administrator, in the case of—

(i) any substance added to the list of class I substances after the publication of the initial list under section 7671a(a) of this title, and

(ii) any class II substance.

(3) Class I substance

The term ''class I substance'' means each of the substances listed as provided in section 7671a(a) of this title.

(4) Class II substance

The term ''class II substance'' means each of the substances listed as provided in section 7671a(b) of this title.

(5) Commissioner

The term ''Commissioner'' means the Commissioner of the Food and Drug Administration.

(6) Consumption

The term ''consumption'' means, with respect to any substance, the amount of that substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol. Such term shall be construed in a manner consistent with the Montreal Protocol.

(7) Import

The term ''import'' means to land on, bring into, or introduce into, or attempt to land on,

bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) Medical device

The term ''medical device'' means any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—

(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner; and

(B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.

(9) Montreal Protocol

The terms ''Montreal Protocol'' and ''the Protocol'' mean the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by Parties thereto and amendments that have entered into force.

(10) Ozone-depletion potential

The term ''ozone-depletion potential'' means a factor established by the Administrator to reflect the ozone-depletion potential of a substance, on a mass per kilogram basis, as compared to chlorofluorocarbon-11 (CFC–11). Such factor shall be based upon the substance's atmospheric lifetime, the molecular weight of bromine and chlorine, and the substance's ability to be photolytically disassociated, and upon other factors determined to be an accurate measure of relative ozone-depletion potential.

(11) Produce, produced, and production

The terms ''produce'', ''produced'', and ''production'', refer to the manufacture of a substance from any raw material or feedstock chemical, but such terms do not include—

(A) the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, or

(B) the reuse or recycling of a substance.

(July 14, 1955, ch. 360, title VI, § 601, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2649.)

REFERENCES IN TEXT

The customs laws of the United States, referred to in par. (7), are classified generally to Title 19, Customs Duties.

The Federal Food, Drug, and Cosmetic Act, referred to in par. (8), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

§ 7671a. Listing of class I and class II substances

(a) List of class I substances

Within 60 days after November 15, 1990, the Administrator shall publish an initial list of class I substances, which list shall contain the following substances:

Group I
chlorofluorocarbon-11 (CFC–11)
chlorofluorocarbon-12 (CFC–12)
chlorofluorocarbon-113 (CFC–113)
chlorofluorocarbon-114 (CFC–114)
chlorofluorocarbon-115 (CFC–115)

Group II
halon-1211
halon-1301
halon-2402

Group III
chlorofluorocarbon-13 (CFC–13)
chlorofluorocarbon-111 (CFC–111)
chlorofluorocarbon-112 (CFC–112)
chlorofluorocarbon-211 (CFC–211)
chlorofluorocarbon-212 (CFC–212)
chlorofluorocarbon-213 (CFC–213)
chlorofluorocarbon-214 (CFC–214)
chlorofluorocarbon-215 (CFC–215)
chlorofluorocarbon-216 (CFC–216)
chlorofluorocarbon-217 (CFC–217)

Group IV
carbon tetrachloride

Group V
methyl chloroform

The initial list under this subsection shall also include the isomers of the substances listed above, other than 1,1,2-trichloroethane (an isomer of methyl chloroform). Pursuant to subsection (c) of this section, the Administrator shall add to the list of class I substances any other substance that the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer. The Administrator shall, pursuant to subsection (c) of this section, add to such list all substances that the Administrator determines have an ozone depletion potential of 0.2 or greater.

(b) List of class II substances

Simultaneously with publication of the initial list of class I substances, the Administrator shall publish an initial list of class II substances, which shall contain the following substances:

hydrochlorofluorocarbon-21 (HCFC–21)
hydrochlorofluorocarbon-22 (HCFC–22)
hydrochlorofluorocarbon-31 (HCFC–31)
hydrochlorofluorocarbon-121 (HCFC–121)
hydrochlorofluorocarbon-122 (HCFC–122)
hydrochlorofluorocarbon-123 (HCFC–123)
hydrochlorofluorocarbon-124 (HCFC–124)
hydrochlorofluorocarbon-131 (HCFC–131)
hydrochlorofluorocarbon-132 (HCFC–132)
hydrochlorofluorocarbon-133 (HCFC–133)
hydrochlorofluorocarbon-141 (HCFC–141)
hydrochlorofluorocarbon-142 (HCFC–142)
hydrochlorofluorocarbon-221 (HCFC–221)
hydrochlorofluorocarbon-222 (HCFC–222)
hydrochlorofluorocarbon-223 (HCFC–223)
hydrochlorofluorocarbon-224 (HCFC–224)
hydrochlorofluorocarbon-225 (HCFC–225)
hydrochlorofluorocarbon-226 (HCFC–226)
hydrochlorofluorocarbon-231 (HCFC–231)
hydrochlorofluorocarbon-232 (HCFC–232)
hydrochlorofluorocarbon-233 (HCFC–233)

hydrochlorofluorocarbon-234 (HCFC–234)
hydrochlorofluorocarbon-235 (HCFC–235)
hydrochlorofluorocarbon-241 (HCFC–241)
hydrochlorofluorocarbon-242 (HCFC–242)
hydrochlorofluorocarbon-243 (HCFC–243)
hydrochlorofluorocarbon-244 (HCFC–244)
hydrochlorofluorocarbon-251 (HCFC–251)
hydrochlorofluorocarbon-252 (HCFC–252)
hydrochlorofluorocarbon-253 (HCFC–253)
hydrochlorofluorocarbon-261 (HCFC–261)
hydrochlorofluorocarbon-262 (HCFC–262)
hydrochlorofluorocarbon-271 (HCFC–271)

The initial list under this subsection shall also include the isomers of the substances listed above. Pursuant to subsection (c) of this section, the Administrator shall add to the list of class II substances any other substance that the Administrator finds is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

(c) Additions to the lists

(1) The Administrator may add, by rule, in accordance with the criteria set forth in subsection (a) or (b) of this section, as the case may be, any substance to the list of class I or class II substances under subsection (a) or (b) of this section. For purposes of exchanges under section 7661f[1] of this title, whenever a substance is added to the list of class I substances the Administrator shall, to the extent consistent with the Montreal Protocol, assign such substance to existing Group I, II, III, IV, or V or place such substance in a new Group.

(2) Periodically, but not less frequently than every 3 years after November 15, 1990, the Administrator shall list, by rule, as additional class I or class II substances those substances which the Administrator finds meet the criteria of subsection (a) or (b) of this section, as the case may be.

(3) At any time, any person may petition the Administrator to add a substance to the list of class I or class II substances. Pursuant to the criteria set forth in subsection (a) or (b) of this section as the case may be, within 180 days after receiving such a petition, the Administrator shall either propose to add the substance to such list or publish an explanation of the petition denial. In any case where the Administrator proposes to add a substance to such list, the Administrator shall add, by rule, (or make a final determination not to add) such substance to such list within 1 year after receiving such petition. Any petition under this paragraph shall include a showing by the petitioner that there are data on the substance adequate to support the petition. If the Administrator determines that information on the substance is not sufficient to make a determination under this paragraph, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(4) Only a class II substance which is added to the list of class I substances may be removed from the list of class II substances. No substance referred to in subsection (a) of this section, including methyl chloroform, may be removed from the list of class I substances.

[1] So in original. Probably should be section ''7671f''.

(d) New listed substances

In the case of any substance added to the list of class I or class II substances after publication of the initial list of such substances under this section, the Administrator may extend any schedule or compliance deadline contained in section 7671c or 7671d of this title to a later date than specified in such sections if such schedule or deadline is unattainable, considering when such substance is added to the list. No extension under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances. No extension under this subsection may extend the date for termination of production of any class II substance to a date more than 10 years after January 1 of the year after the year in which the substance is added to the list of class II substances.

(e) Ozone-depletion and global warming potential

Simultaneously with publication of the lists under this section and simultaneously with any addition to either of such lists, the Administrator shall assign to each listed substance a numerical value representing the substance's ozone-depletion potential. In addition, the Administrator shall publish the chlorine and bromine loading potential and the atmospheric lifetime of each listed substance. One year after November 15, 1990 (one year after the addition of a substance to either of such lists in the case of a substance added after the publication of the initial lists of such substances), and after notice and opportunity for public comment, the Administrator shall publish the global warming potential of each listed substance. The preceding sentence shall not be construed to be the basis of any additional regulation under this chapter. In the case of the substances referred to in table 1, the ozone-depletion potential shall be as specified in table 1, unless the Administrator adjusts the substance's ozone-depletion potential based on criteria referred to in section 7671(10) of this title:

TABLE 1

Substance	Ozone-depletion potential
chlorofluorocarbon-11 (CFC–11)	1.0
chlorofluorocarbon-12 (CFC–12)	1.0
chlorofluorocarbon-13 (CFC–13)	1.0
chlorofluorocarbon-111 (CFC–111)	1.0
chlorofluorocarbon-112 (CFC–112)	1.0
chlorofluorocarbon-113 (CFC–113)	0.8
chlorofluorocarbon-114 (CFC–114)	1.0
chlorofluorocarbon-115 (CFC–115)	0.6
chlorofluorocarbon-211 (CFC–211)	1.0
chlorofluorocarbon-212 (CFC–212)	1.0
chlorofluorocarbon-213 (CFC–213)	1.0
chlorofluorocarbon-214 (CFC–214)	1.0
chlorofluorocarbon-215 (CFC–215)	1.0
chlorofluorocarbon-216 (CFC–216)	1.0
chlorofluorocarbon-217 (CFC–217)	1.0
halon-1211	3.0
halon-1301	10.0
halon-2402	6.0
carbon tetrachloride	1.1

TABLE 1—Continued

Substance	Ozone-depletion potential
methyl chloroform	0.1
hydrochlorofluorocarbon-22 (HCFC–22)	0.05
hydrochlorofluorocarbon-123 (HCFC–123)	0.02
hydrochlorofluorocarbon-124 (HCFC–124)	0.02
hydrochlorofluorocarbon-141(b) (HCFC–141(b))	0.1
hydrochlorofluorocarbon-142(b) (HCFC–142(b))	0.06

Where the ozone-depletion potential of a substance is specified in the Montreal Protocol, the ozone-depletion potential specified for that substance under this section shall be consistent with the Montreal Protocol.

(July 14, 1955, ch. 360, title VI, § 602, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2650.)

§ 7671b. Monitoring and reporting requirements

(a) Regulations

Within 270 days after November 15, 1990, the Administrator shall amend the regulations of the Administrator in effect on such date regarding monitoring and reporting of class I and class II substances. Such amendments shall conform to the requirements of this section. The amended regulations shall include requirements with respect to the time and manner of monitoring and reporting as required under this section.

(b) Production, import, and export level reports

On a quarterly basis, or such other basis (not less than annually) as determined by the Administrator, each person who produced, imported, or exported a class I or class II substance shall file a report with the Administrator setting forth the amount of the substance that such person produced, imported, and exported during the preceding reporting period. Each such report shall be signed and attested by a responsible officer. No such report shall be required from a person after April 1 of the calendar year after such person permanently ceases production, importation, and exportation of the substance and so notifies the Administrator in writing.

(c) Baseline reports for class I substances

Unless such information has previously been reported to the Administrator, on the date on which the first report under subsection (b) of this section is required to be filed, each person who produced, imported, or exported a class I substance (other than a substance added to the list of class I substances after the publication of the initial list of such substances under this section) shall file a report with the Administrator setting forth the amount of such substance that such person produced, imported, and exported during the baseline year. In the case of a substance added to the list of class I substances after publication of the initial list of such substances under this section, the regulations shall require that each person who produced, imported, or exported such substance shall file a report with the Administrator within 180 days after the date on which such substance is added to the list, setting forth the amount of the substance that such person produced, imported, and exported in the baseline year.

(d) Monitoring and reports to Congress

(1) The Administrator shall monitor and, not less often than every 3 years following November 15, 1990, submit a report to Congress on the production, use and consumption of class I and class II substances. Such report shall include data on domestic production, use and consumption, and an estimate of worldwide production, use and consumption of such substances. Not less frequently than every 6 years the Administrator shall report to Congress on the environmental and economic effects of any stratospheric ozone depletion.

(2) The Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration shall monitor, and not less often than every 3 years following November 15, 1990, submit a report to Congress on the current average tropospheric concentration of chlorine and bromine and on the level of stratospheric ozone depletion. Such reports shall include updated projections of—

(A) peak chlorine loading;

(B) the rate at which the atmospheric abundance of chlorine is projected to decrease after the year 2000; and

(C) the date by which the atmospheric abundance of chlorine is projected to return to a level of two parts per billion.

Such updated projections shall be made on the basis of current international and domestic controls on substances covered by this subchapter as well as on the basis of such controls supplemented by a year 2000 global phase out of all halocarbon emissions (the base case). It is the purpose of the Congress through the provisions of this section to monitor closely the production and consumption of class II substances to assure that the production and consumption of such substances will not:

(i) increase significantly the peak chlorine loading that is projected to occur under the base case established for purposes of this section;

(ii) reduce significantly the rate at which the atmospheric abundance of chlorine is projected to decrease under the base case; or

(iii) delay the date by which the average atmospheric concentration of chlorine is projected under the base case to return to a level of two parts per billion.

(e) Technology status report in 2015

The Administrator shall review, on a periodic basis, the progress being made in the development of alternative systems or products necessary to manufacture and operate appliances without class II substances. If the Administrator finds, after notice and opportunity for public comment, that as a result of technological development problems, the development of such alternative systems or products will not occur within the time necessary to provide for the manufacture of such equipment without such substances prior to the applicable deadlines under section 7671d of this title, the Adminis-

trator shall, not later than January 1, 2015, so inform the Congress.

(f) Emergency report

If, in consultation with the Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, and after notice and opportunity for public comment, the Administrator determines that the global production, consumption, and use of class II substances are projected to contribute to an atmospheric chlorine loading in excess of the base case projections by more than 5/10ths parts per billion, the Administrator shall so inform the Congress immediately. The determination referred to in the preceding sentence shall be based on the monitoring under subsection (d) of this section and updated not less often than every 3 years.

(July 14, 1955, ch. 360, title VI, § 603, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2653.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d)(1) of this section relating to submittal of triennial report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 12th item on page 162 of House Document No. 103–7.

METHANE STUDIES

Section 603 of Pub. L. 101–549 provided that:

''(a) ECONOMICALLY JUSTIFIED ACTIONS.—Not later than 2 years after enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit a report to the Congress that identifies activities, substances, processes, or combinations thereof that could reduce methane emissions and that are economically and technologically justified with and without consideration of environmental benefit.

''(b) DOMESTIC METHANE SOURCE INVENTORY AND CONTROL.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator, in consultation and coordination with the Secretary of Energy and the Secretary of Agriculture, shall prepare and submit to the Congress reports on each of the following:

''(1) Methane emissions associated with natural gas extraction, transportation, distribution, storage, and use. Such report shall include an inventory of methane emissions associated with such activities within the United States. Such emissions include, but are not limited to, accidental and intentional releases from natural gas and oil wells, pipelines, processing facilities, and gas burners. The report shall also include an inventory of methane generation with such activities.

''(2) Methane emissions associated with coal extraction, transportation, distribution, storage, and use. Such report shall include an inventory of methane emissions associated with such activities within the United States. Such emissions include, but are not limited to, accidental and intentional releases from mining shafts, degasification wells, gas recovery wells and equipment, and from the processing and use of coal. The report shall also include an inventory of methane generation with such activities.

''(3) Methane emissions associated with management of solid waste. Such report shall include an inventory of methane emissions associated with all forms of waste management in the United States, including storage, treatment, and disposal.

''(4) Methane emissions associated with agriculture. Such report shall include an inventory of methane emissions associated with rice and livestock production in the United States.

''(5) Methane emissions associated with biomass burning. Such report shall include an inventory of methane emissions associated with the intentional burning of agricultural wastes, wood, grasslands, and forests.

''(6) Other methane emissions associated with human activities. Such report shall identify and inventory other domestic sources of methane emissions that are deemed by the Administrator and other such agencies to be significant.

''(c) INTERNATIONAL STUDIES.—

''(1) METHANE EMISSIONS.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report on methane emissions from countries other than the United States. Such report shall include inventories of methane emissions associated with the activities listed in subsection (b).

''(2) PREVENTING INCREASES IN METHANE CONCENTRATIONS.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report that analyzes the potential for preventing an increase in atmospheric concentrations of methane from activities and sources in other countries. Such report shall identify and evaluate the technical options for reducing methane emission from each of the activities listed in subsection (b), as well as other activities or sources that are deemed by the Administrator in consultation with other relevant Federal agencies and departments to be significant and shall include an evaluation of costs. The report shall identify the emissions reductions that would need to be achieved to prevent increasing atmospheric concentrations of methane. The report shall also identify technology transfer programs that could promote methane emissions reductions in lesser developed countries.

''(d) NATURAL SOURCES.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report on—

''(1) methane emissions from biogenic sources such as (A) tropical, temperate, and subarctic forests, (B) tundra, and (C) freshwater and saltwater wetlands; and

''(2) the changes in methane emissions from biogenic sources that may occur as a result of potential increases in temperatures and atmospheric concentrations of carbon dioxide.

''(e) STUDY OF MEASURES TO LIMIT GROWTH IN METHANE CONCENTRATIONS.—Not later than 2 years after the completion of the studies in subsections (b), (c), and (d), the Administrator shall prepare and submit to the Congress a report that presents options outlining measures that could be implemented to stop or reduce the growth in atmospheric concentrations of methane from sources within the United States referred to in paragraphs (1) through (6) of subsection (b). This study shall identify and evaluate the technical options for reducing methane emissions from each of the activities listed in subsection (b), as well as other activities or sources deemed by such agencies to be significant, and shall include an evaluation of costs, technology, safety, energy, and other factors. The study shall be based on the other studies under this section. The study shall also identify programs of the United States and international lending agencies that could be used to induce lesser developed countries to undertake measures that will reduce methane emissions and the resource needs of such programs.

''(f) INFORMATION GATHERING.—In carrying out the studies under this section, the provisions and requirements of section 114 of the Clean Air Act [42 U.S.C. 7414] shall be available for purposes of obtaining information to carry out such studies.

''(g) CONSULTATION AND COORDINATION.—In preparing the studies under this section the Administrator shall consult and coordinate with the Secretary of Energy, the Administrators of the National Aeronautics and Space Administration and the National Oceanic and

Atmospheric Administration, and the heads of other relevant Federal agencies and departments. In the case of the studies under subsections (a), (b), and (e), such consultation and coordination shall include the Secretary of Agriculture.''

§ 7671c. Phase-out of production and consumption of class I substances

(a) Production phase-out

Effective on January 1 of each year specified in Table 2, it shall be unlawful for any person to produce any class I substance in an annual quantity greater than the relevant percentage specified in Table 2. The percentages in Table 2 refer to a maximum allowable production as a percentage of the quantity of the substance produced by the person concerned in the baseline year.

TABLE 2

Date	Carbon tetrachloride	Methyl chloroform	Other class I substances
1991	100%	100%	85%
1992	90%	100%	80%
1993	80%	90%	75%
1994	70%	85%	65%
1995	15%	70%	50%
1996	15%	50%	40%
1997	15%	50%	15%
1998	15%	50%	15%
1999	15%	50%	15%
2000		20%	
2001		20%	

(b) Termination of production of class I substances

Effective January 1, 2000 (January 1, 2002 in the case of methyl chloroform), it shall be unlawful for any person to produce any amount of a class I substance.

(c) Regulations regarding production and consumption of class I substances

The Administrator shall promulgate regulations within 10 months after November 15, 1990, phasing out the production of class I substances in accordance with this section and other applicable provisions of this subchapter. The Administrator shall also promulgate regulations to insure that the consumption of class I substances in the United States is phased out and terminated in accordance with the same schedule (subject to the same exceptions and other provisions) as is applicable to the phase-out and termination of production of class I substances under this subchapter.

(d) Exceptions for essential uses of methyl chloroform, medical devices, and aviation safety

(1) Essential uses of methyl chloroform

Notwithstanding the termination of production required by subsection (b) of this section, during the period beginning on January 1, 2002, and ending on January 1, 2005, the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of methyl chloroform solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available. Notwithstanding this paragraph, the authority to produce methyl chloroform for use in medical devices shall be provided in accordance with paragraph (2).

(2) Medical devices

Notwithstanding the termination of production required by subsection (b) of this section, the Administrator, after notice and opportunity for public comment, shall, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of class I substances solely for use in medical devices if such authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

(3) Aviation safety

(A) Notwithstanding the termination of production required by subsection (b) of this section, the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211 (bromochlorodifluoromethane), halon-1301 (bromotrifluoromethane), and halon-2402 (dibromotetrafluoroethane) solely for purposes of aviation safety if the Administrator of the Federal Aviation Administration, in consultation with the Administrator, determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes.

(B) The Administrator of the Federal Aviation Administration shall, in consultation with the Administrator, examine whether safe and effective substitutes for methyl chloroform or alternative techniques will be available for nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue and whether an exception for such uses of methyl chloroform under this paragraph will be necessary for purposes of airline safety after January 1, 2005 and provide a report to Congress in 1998.

(4) Cap on certain exceptions

Under no circumstances may the authority set forth in paragraphs (1), (2), and (3) of subsection (d) of this section be applied to authorize any person to produce a class I substance in annual quantities greater than 10 percent of that produced by such person during the baseline year.

(5) Sanitation and food protection

To the extent consistent with the Montreal Protocol's quarantine and preshipment provisions, the Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements or with any international, Federal, State, or local sanitation or food protection standard.

(6) Critical uses

To the extent consistent with the Montreal Protocol, the Administrator, after notice and the opportunity for public comment, and after consultation with other departments or instrumentalities of the Federal Government having regulatory authority related to methyl bromide, including the Secretary of Agriculture, may exempt the production, importation, and consumption of methyl bromide for critical uses.

(e) Developing countries

(1) Exception

Notwithstanding the phase-out and termination of production required under subsections (a) and (b) of this section, the Administrator, after notice and opportunity for public comment, may, consistent with the Montreal Protocol, authorize the production of limited quantities of a class I substance in excess of the amounts otherwise allowable under subsection (a) or (b) of this section, or both, solely for export to, and use in, developing countries that are Parties to the Montreal Protocol and are operating under article 5 of such Protocol. Any production authorized under this paragraph shall be solely for purposes of satisfying the basic domestic needs of such countries.

(2) Cap on exception

(A) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in any year for which a production percentage is specified in Table 2 of subsection (a) of this section in an annual quantity greater than the specified percentage, plus an amount equal to 10 percent of the amount produced by such person in the baseline year.

(B) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in the applicable termination year referred to in subsection (b) of this section, or in any year thereafter, in an annual quantity greater than 15 percent of the baseline quantity of such substance produced by such person.

(C) An exception authorized under this subsection shall terminate no later than January 1, 2010 (2012 in the case of methyl chloroform).

(3) Methyl bromide

Notwithstanding the phaseout and termination of production of methyl bromide pursuant to subsection (h) of this section, the Administrator may, consistent with the Montreal Protocol, authorize the production of limited quantities of methyl bromide, solely for use in developing countries that are Parties to the Copenhagen Amendments to the Montreal Protocol.

(f) National security

The President may, to the extent such action is consistent with the Montreal Protocol, issue such orders regarding production and use of CFC–114 (chlorofluorocarbon-114), halon-1211, halon-1301, and halon-2402, at any specified site or facility or on any vessel as may be necessary to protect the national security interests of the United States if the President finds that adequate substitutes are not available and that the production and use of such substance are necessary to protect such national security interest. Such orders may include, where necessary to protect such interests, an exemption from any prohibition or requirement contained in this subchapter. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph. Each such additional exemption shall be for a specified period which may not exceed one year. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(g) Fire suppression and explosion prevention

(1) Notwithstanding the production phase-out set forth in subsection (a) of this section, the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 in excess of the amount otherwise permitted pursuant to the schedule under subsection (a) of this section solely for purposes of fire suppression or explosion prevention if the Administrator, in consultation with the Administrator of the United States Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression or explosion prevention purposes. The Administrator shall not authorize production under this paragraph for purposes of fire safety or explosion prevention training or testing of fire suppression or explosion prevention equipment. In no event shall the Administrator grant an exception under this paragraph that permits production after December 31, 1999.

(2) The Administrator shall periodically monitor and assess the status of efforts to obtain substitutes for the substances referred to in paragraph (1) for purposes of fire suppression or explosion prevention and the probability of such substitutes being available by December 31, 1999. The Administrator, as part of such assessment, shall consider any relevant assessments under the Montreal Protocol and the actions of the Parties pursuant to Article 2B of the Montreal Protocol in identifying essential uses and in permitting a level of production or consumption that is necessary to satisfy such uses for which no adequate alternatives are available after December 31, 1999. The Administrator shall report to Congress the results of such assessment in 1994 and again in 1998.

(3) Notwithstanding the termination of production set forth in subsection (b) of this section, the Administrator, after notice and oppor-

tunity for public comment, may, to the extent consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 in the period after December 31, 1999, and before December 31, 2004, solely for purposes of fire suppression or explosion prevention in association with domestic production of crude oil and natural gas energy supplies on the North Slope of Alaska, if the Administrator, in consultation with the Administrator of the United States Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression and explosion prevention purposes. The Administrator shall not authorize production under the paragraph for purposes of fire safety or explosion prevention training or testing of fire suppression or explosion prevention equipment. In no event shall the Administrator authorize under this paragraph any person to produce any such halon in an amount greater than 3 percent of that produced by such person during the baseline year.

(h) Methyl bromide

Notwithstanding subsections (b) and (d) of this section, the Administrator shall not terminate production of methyl bromide prior to January 1, 2005. The Administrator shall promulgate rules for reductions in, and terminate the production, importation, and consumption of, methyl bromide under a schedule that is in accordance with, but not more stringent than, the phaseout schedule of the Montreal Protocol Treaty as in effect on October 21, 1998.

(July 14, 1955, ch. 360, title VI, § 604, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2655; amended Pub. L. 105–277, div. A, § 101(a) [title VII, § 764], Oct. 21, 1998, 112 Stat. 2681, 2681–36.)

AMENDMENTS

1998—Subsec. (d)(5), (6). Pub. L. 105–277, § 101(a) [title VII, § 764(b)], added pars. (5) and (6).

Subsec. (e)(3). Pub. L. 105–277, § 101(a) [title VII, § 764(c)], added par. (3).

Subsec. (h). Pub. L. 105–277, § 101(a) [title VII, § 764(a)], added subsec. (h).

§ 7671d. Phase-out of production and consumption of class II substances

(a) Restriction of use of class II substances

Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance—

(1) has been used, recovered, and recycled;

(2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; or

(3) is used as a refrigerant in appliances manufactured prior to January 1, 2020.

As used in this subsection, the term ''refrigerant'' means any class II substance used for heat transfer in a refrigerating system.

(b) Production phase-out

(1) Effective January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year.

(2) Effective January 1, 2030, it shall be unlawful for any person to produce any class II substance.

(c) Regulations regarding production and consumption of class II substances

By December 31, 1999, the Administrator shall promulgate regulations phasing out the production, and restricting the use, of class II substances in accordance with this section, subject to any acceleration of the phase-out of production under section 7671e of this title. The Administrator shall also promulgate regulations to insure that the consumption of class II substances in the United States is phased out and terminated in accordance with the same schedule (subject to the same exceptions and other provisions) as is applicable to the phase-out and termination of production of class II substances under this subchapter.

(d) Exceptions

(1) Medical devices

(A) In general

Notwithstanding the termination of production required under subsection (b)(2) of this section and the restriction on use referred to in subsection (a) of this section, the Administrator, after notice and opportunity for public comment, shall, to the extent such action is consistent with the Montreal Protocol, authorize the production and use of limited quantities of class II substances solely for purposes of use in medical devices if such authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

(B) Cap on exception

Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in annual quantities greater than 10 percent of that produced by such person during the baseline year.

(2) Developing countries

(A) In general

Notwithstanding the provisions of subsection (a) or (b) of this section, the Administrator, after notice and opportunity for public comment, may authorize the production of limited quantities of a class II substance in excess of the quantities otherwise permitted under such provisions solely for export to and use in developing countries that are Parties to the Montreal Protocol, as determined by the Administrator. Any production authorized under this subsection shall be solely for purposes of satisfying the basic domestic needs of such countries.

(B) Cap on exception

(i) Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in any year following the effective date of subsection (b)(1) of this section and before the year 2030 in annual quan-

tities greater than 110 percent of the quantity of such substance produced by such person during the baseline year.

(ii) Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in the year 2030, or any year thereafter, in an annual quantity greater than 15 percent of the quantity of such substance produced by such person during the baseline year.

(iii) Each exception authorized under this paragraph shall terminate no later than January 1, 2040.

(July 14, 1955, ch. 360, title VI, § 605, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2658.)

§ 7671e. Accelerated schedule

(a) In general

The Administrator shall promulgate regulations, after notice and opportunity for public comment, which establish a schedule for phasing out the production and consumption of class I and class II substances (or use of class II substances) that is more stringent than set forth in section 7671c or 7671d of this title, or both, if—

(1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects,

(2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors, or

(3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this subchapter.

In making any determination under paragraphs (1) and (2), the Administrator shall consider the status of the period remaining under the applicable schedule under this subchapter.

(b) Petition

Any person may petition the Administrator to promulgate regulations under this section. The Administrator shall grant or deny the petition within 180 days after receipt of any such petition. If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied. If the Administrator grants such petition, such final regulations shall be promulgated within 1 year. Any petition under this subsection shall include a showing by the petitioner that there are data adequate to support the petition. If the Administrator determines that information is not sufficient to make a determination under this subsection, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(July 14, 1955, ch. 360, title VI, § 606, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2660.)

§ 7671f. Exchange authority

(a) Transfers

The Administrator shall, within 10 months after November 15, 1990, promulgate rules under this subchapter providing for the issuance of allowances for the production of class I and II substances in accordance with the requirements of this subchapter and governing the transfer of such allowances. Such rules shall insure that the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions.

(b) Interpollutant transfers

(1) The rules under this section shall permit a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year on an ozone depletion weighted basis.

(2) Allowances for substances in each group of class I substances (as listed pursuant to section 7671a of this title) may only be transferred for allowances for other substances in the same Group.

(3) The Administrator shall, as appropriate, establish groups of class II substances for trading purposes and assign class II substances to such groups. In the case of class II substances, allowances may only be transferred for allowances for other class II substances that are in the same Group.

(c) Trades with other persons

The rules under this section shall permit 2 or more persons to transfer production allowances (including interpollutant transfers which meet the requirements of subsections (a) and (b) of this section) if the transferor of such allowances will be subject, under such rules, to an enforceable and quantifiable reduction in annual production which—

(1) exceeds the reduction otherwise applicable to the transferor under this subchapter,

(2) exceeds the production allowances transferred to the transferee, and

(3) would not have occurred in the absence of such transaction.

(d) Consumption

The rules under this section shall also provide for the issuance of consumption allowances in accordance with the requirements of this subchapter and for the trading of such allowances in the same manner as is applicable under this section to the trading of production allowances under this section.

(July 14, 1955, ch. 360, title VI, § 607, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2660.)

§ 7671g. National recycling and emission reduction program

(a) In general

(1) The Administrator shall, by not later than January 1, 1992, promulgate regulations estab-

lishing standards and requirements regarding the use and disposal of class I substances during the service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than July 1, 1992.

(2) The Administrator shall, within 4 years after November 15, 1990, promulgate regulations establishing standards and requirements regarding use and disposal of class I and II substances not covered by paragraph (1), including the use and disposal of class II substances during service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than 12 months after promulgation of the regulations.

(3) The regulations under this subsection shall include requirements that—

(A) reduce the use and emission of such substances to the lowest achievable level, and

(B) maximize the recapture and recycling of such substances.

Such regulations may include requirements to use alternative substances (including substances which are not class I or class II substances) or to minimize use of class I or class II substances, or to promote the use of safe alternatives pursuant to section 7671k of this title or any combination of the foregoing.

(b) Safe disposal

The regulations under subsection (a) of this section shall establish standards and requirements for the safe disposal of class I and II substances. Such regulations shall include each of the following—

(1) Requirements that class I or class II substances contained in bulk in appliances, machines or other goods shall be removed from each such appliance, machine or other good prior to the disposal of such items or their delivery for recycling.

(2) Requirements that any appliance, machine or other good containing a class I or class II substance in bulk shall not be manufactured, sold, or distributed in interstate commerce or offered for sale or distribution in interstate commerce unless it is equipped with a servicing aperture or an equally effective design feature which will facilitate the recapture of such substance during service and repair or disposal of such item.

(3) Requirements that any product in which a class I or class II substance is incorporated so as to constitute an inherent element of such product shall be disposed of in a manner that reduces, to the maximum extent practicable, the release of such substance into the environment. If the Administrator determines that the application of this paragraph to any product would result in producing only insignificant environmental benefits, the Administrator shall include in such regulations an exception for such product.

(c) Prohibitions

(1) Effective July 1, 1992, it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment. De minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance shall not be subject to the prohibition set forth in the preceding sentence.

(2) Effective 5 years after November 15, 1990, paragraph (1) shall also apply to the venting, release, or disposal of any substitute substance for a class I or class II substance by any person maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration which contains and uses as a refrigerant any such substance, unless the Administrator determines that venting, releasing, or disposing of such substance does not pose a threat to the environment. For purposes of this paragraph, the term ''appliance'' includes any device which contains and uses as a refrigerant a substitute substance and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(July 14, 1955, ch. 360, title VI, § 608, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2661.)

§ 7671h. Servicing of motor vehicle air conditioners

(a) Regulations

Within 1 year after November 15, 1990, the Administrator shall promulgate regulations in accordance with this section establishing standards and requirements regarding the servicing of motor vehicle air conditioners.

(b) Definitions

As used in this section—

(1) The term ''refrigerant'' means any class I or class II substance used in a motor vehicle air conditioner. Effective 5 years after November 15, 1990, the term ''refrigerant'' shall also include any substitute substance.

(2)(A) The term ''approved refrigerant recycling equipment'' means equipment certified by the Administrator (or an independent standards testing organization approved by the Administrator) to meet the standards established by the Administrator and applicable to equipment for the extraction and reclamation of refrigerant from motor vehicle air conditioners. Such standards shall, at a minimum, be at least as stringent as the standards of the Society of Automotive Engineers in effect as of November 15, 1990, and applicable to such equipment (SAE standard J–1990).

(B) Equipment purchased before the proposal of regulations under this section shall be considered certified if it is substantially identical to equipment certified as provided in subparagraph (A).

(3) The term ''properly using'' means, with respect to approved refrigerant recycling equipment, using such equipment in conformity with standards established by the Administrator and applicable to the use of such equipment. Such standards shall, at a minimum, be at least as stringent as the standards of the

Society of Automotive Engineers in effect as of November 15, 1990, and applicable to the use of such equipment (SAE standard J–1989).

(4) The term ''properly trained and certified'' means training and certification in the proper use of approved refrigerant recycling equipment for motor vehicle air conditioners in conformity with standards established by the Administrator and applicable to the performance of service on motor vehicle air conditioners. Such standards shall, at a minimum, be at least as stringent as specified, as of November 15, 1990, in SAE standard J–1989 under the certification program of the National Institute for Automotive Service Excellence (ASE) or under a similar program such as the training and certification program of the Mobile Air Conditioning Society (MACS).

(c) Servicing motor vehicle air conditioners

Effective January 1, 1992, no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recycling equipment and no such person may perform such service unless such person has been properly trained and certified. The requirements of the previous sentence shall not apply until January 1, 1993 in the case of a person repairing or servicing motor vehicles for consideration at an entity which performed service on fewer than 100 motor vehicle air conditioners during calendar year 1990 and if such person so certifies, pursuant to subsection (d)(2) of this section, to the Administrator by January 1, 1992.

(d) Certification

(1) Effective 2 years after November 15, 1990, each person performing service on motor vehicle air conditioners for consideration shall certify to the Administrator either—

(A) that such person has acquired, and is properly using, approved refrigerant recycling equipment in service on motor vehicle air conditioners involving refrigerant and that each individual authorized by such person to perform such service is properly trained and certified; or

(B) that such person is performing such service at an entity which serviced fewer than 100 motor vehicle air conditioners in 1991.

(2) Effective January 1, 1993, each person who certified under paragraph (1)(B) shall submit a certification under paragraph (1)(A).

(3) Each certification under this subsection shall contain the name and address of the person certifying under this subsection and the serial number of each unit of approved recycling equipment acquired by such person and shall be signed and attested by the owner or another responsible officer. Certifications under paragraph (1)(A) may be made by submitting the required information to the Administrator on a standard form provided by the manufacturer of certified refrigerant recycling equipment.

(e) Small containers of class I or class II substances

Effective 2 years after November 15, 1990, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce to any person (other than a person performing service for consideration on motor vehicle air-conditioning systems in compliance with this section) any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air-conditioning system and that is in a container which contains less than 20 pounds of such refrigerant.

(July 14, 1955, ch. 360, title VI, § 609, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2662.)

§ 7671i. Nonessential products containing chlorofluorocarbons

(a) Regulations

The Administrator shall promulgate regulations to carry out the requirements of this section within 1 year after November 15, 1990.

(b) Nonessential products

The regulations under this section shall identify nonessential products that release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce. At a minimum, such prohibition shall apply to—

(1) chlorofluorocarbon-propelled plastic party streamers and noise horns,

(2) chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment, and

(3) other consumer products that are determined by the Administrator—

(A) to release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal), and

(B) to be nonessential.

In determining whether a product is nonessential, the Administrator shall consider the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors.

(c) Effective date

Effective 24 months after November 15, 1990, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce any nonessential product to which regulations under subsection (a) of this section implementing subsection (b) of this section are applicable.

(d) Other products

(1) Effective January 1, 1994, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—

(A) any aerosol product or other pressurized dispenser which contains a class II substance; or

(B) any plastic foam product which contains, or is manufactured with, a class II substance.

(2) The Administrator is authorized to grant exceptions from the prohibition under subparagraph (A) of paragraph (1) where—

(A) the use of the aerosol product or pressurized dispenser is determined by the Administrator to be essential as a result of flammability or worker safety concerns, and

(B) the only available alternative to use of a class II substance is use of a class I substance which legally could be substituted for such class II substance.

(3) Subparagraph (B) of paragraph (1) shall not apply to—

(A) a foam insulation product, or

(B) an integral skin, rigid, or semi-rigid foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards where no adequate substitute substance (other than a class I or class II substance) is practicable for effectively meeting such Standards.

(e) Medical devices

Nothing in this section shall apply to any medical device as defined in section 7671(8) of this title.

(July 14, 1955, ch. 360, title VI, § 610, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2664.)

§ 7671j. Labeling

(a) Regulations

The Administrator shall promulgate regulations to implement the labeling requirements of this section within 18 months after November 15, 1990, after notice and opportunity for public comment.

(b) Containers containing class I or class II substances and products containing class I substances

Effective 30 months after November 15, 1990, no container in which a class I or class II substance is stored or transported, and no product containing a class I substance, shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating:

''Warning: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere''.

(c) Products containing class II substances

(1) After 30 months after November 15, 1990, and before January 1, 2015, no product containing a class II substance shall be introduced into interstate commerce unless it bears the label referred to in subsection (b) of this section if the Administrator determines, after notice and opportunity for public comment, that there are substitute products or manufacturing processes (A) that do not rely on the use of such class II substance, (B) that reduce the overall risk to human health and the environment, and (C) that are currently or potentially available.

(2) Effective January 1, 2015, the requirements of subsection (b) of this section shall apply to all products containing a class II substance.

(d) Products manufactured with class I and class II substances

(1) In the case of a class II substance, after 30 months after November 15, 1990, and before January 1, 2015, if the Administrator, after notice and opportunity for public comment, makes the determination referred to in subsection (c) of this section with respect to a product manufactured with a process that uses such class II substance, no such product shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating:

''Warning: Manufactured with [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere''[1]

(2) In the case of a class I substance, effective 30 months after November 15, 1990, and before January 1, 2015, the labeling requirements of this subsection shall apply to all products manufactured with a process that uses such class I substance unless the Administrator determines that there are no substitute products or manufacturing processes that (A) do not rely on the use of such class I substance, (B) reduce the overall risk to human health and the environment, and (C) are currently or potentially available.

(e) Petitions

(1) Any person may, at any time after 18 months after November 15, 1990, petition the Administrator to apply the requirements of this section to a product containing a class II substance or a product manufactured with a class I or II substance which is not otherwise subject to such requirements. Within 180 days after receiving such petition, the Administrator shall, pursuant to the criteria set forth in subsection (c) of this section, either propose to apply the requirements of this section to such product or publish an explanation of the petition denial. If the Administrator proposes to apply such requirements to such product, the Administrator shall, by rule, render a final determination pursuant to such criteria within 1 year after receiving such petition.

(2) Any petition under this paragaph[2] shall include a showing by the petitioner that there are data on the product adequate to support the petition.

(3) If the Administrator determines that information on the product is not sufficient to make the required determination the Administrator shall use any authority available to the Administrator under any law administered by the Administrator to acquire such information.

(4) In the case of a product determined by the Administrator, upon petition or on the Administrator's own motion, to be subject to the requirements of this section, the Administrator shall establish an effective date for such requirements. The effective date shall be 1 year after such determination or 30 months after November 15, 1990, whichever is later.

(5) Effective January 1, 2015, the labeling requirements of this subsection[3] shall apply to all products manufactured with a process that uses a class I or class II substance.

(f) Relationship to other law

(1) The labeling requirements of this section shall not constitute, in whole or part, a defense

[1] So in original. Probably should be followed by a period.

[2] So in original. Probably should be ''paragraph''.

[3] So in original. Probably should be ''section''.

to liability or a cause for reduction in damages in any suit, whether civil or criminal, brought under any law, whether Federal or State, other than a suit for failure to comply with the labeling requirements of this section.

(2) No other approval of such label by the Administrator under any other law administered by the Administrator shall be required with respect to the labeling requirements of this section.

(July 14, 1955, ch. 360, title VI, § 611, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2665.)

§ 7671k. Safe alternatives policy

(a) Policy

To the maximum extent practicable, class I and class II substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment.

(b) Reviews and reports

The Administrator shall—

(1) in consultation and coordination with interested members of the public and the heads of relevant Federal agencies and departments, recommend Federal research programs and other activities to assist in identifying alternatives to the use of class I and class II substances as refrigerants, solvents, fire retardants, foam blowing agents, and other commercial applications and in achieving a transition to such alternatives, and, where appropriate, seek to maximize the use of Federal research facilities and resources to assist users of class I and class II substances in identifying and developing alternatives to the use of such substances as refrigerants, solvents, fire retardants, foam blowing agents, and other commercial applications;

(2) examine in consultation and coordination with the Secretary of Defense and the heads of other relevant Federal agencies and departments, including the General Services Administration, Federal procurement practices with respect to class I and class II substances and recommend measures to promote the transition by the Federal Government, as expeditiously as possible, to the use of safe substitutes;

(3) specify initiatives, including appropriate intergovernmental, international, and commercial information and technology transfers, to promote the development and use of safe substitutes for class I and class II substances, including alternative chemicals, product substitutes, and alternative manufacturing processes; and

(4) maintain a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and class II substances.

(c) Alternatives for class I or II substances

Within 2 years after November 15, 1990, the Administrator shall promulgate rules under this section providing that it shall be unlawful to replace any class I or class II substance with any substitute substance which the Administrator determines may present adverse effects to human health or the environment, where the Administrator has identified an alternative to such replacement that—

(1) reduces the overall risk to human health and the environment; and

(2) is currently or potentially available.

The Administrator shall publish a list of (A) the substitutes prohibited under this subsection for specific uses and (B) the safe alternatives identified under this subsection for specific uses.

(d) Right to petition

Any person may petition the Administrator to add a substance to the lists under subsection (c) of this section or to remove a substance from either of such lists. The Administrator shall grant or deny the petition within 90 days after receipt of any such petition. If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied. If the Administrator grants such petition the Administrator shall publish such revised list within 6 months thereafter. Any petition under this subsection shall include a showing by the petitioner that there are data on the substance adequate to support the petition. If the Administrator determines that information on the substance is not sufficient to make a determination under this subsection, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(e) Studies and notification

The Administrator shall require any person who produces a chemical substitute for a class I substance to provide the Administrator with such person's unpublished health and safety studies on such substitute and require producers to notify the Administrator not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. This subsection shall be subject to section 7414(c) of this title.

(July 14, 1955, ch. 360, title VI, § 612, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2667.)

§ 7671*l*. Federal procurement

Not later than 18 months after November 15, 1990, the Administrator, in consultation with the Administrator of the General Services Administration and the Secretary of Defense, shall promulgate regulations requiring each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of this subchapter and to maximize the substitution of safe alternatives identified under section 7671k of this title for class I and class II substances. Not later than 30 months after November 15, 1990, each department, agency, and instrumentality of the United States shall so conform its procurement regulations and certify to the President that its regulations have been modified in accordance with this section.

(July 14, 1955, ch. 360, title VI, § 613, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2668.)

EXECUTIVE ORDER NO. 12843

Ex. Ord. No. 12843, Apr. 21, 1993, 58 F.R. 21881, which provided for Federal agencies to implement policies and programs to minimize procurement of ozone-depleting substances, was revoked by Ex. Ord. No. 13148, § 901, Apr. 21, 2000, 65 F.R. 24604, set out as a note under section 4321 of this title.

§ 7671m. Relationship to other laws

(a) State laws

Notwithstanding section 7416 of this title, during the 2-year period beginning on November 15, 1990, no State or local government may enforce any requirement concerning the design of any new or recalled appliance for the purpose of protecting the stratospheric ozone layer.

(b) Montreal Protocol

This subchapter as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this subchapter and any provision of the Montreal Protocol, the more stringent provision shall govern. Nothing in this subchapter shall be construed, interpreted, or applied to affect the authority or responsibility of the Administrator to implement Article 4 of the Montreal Protocol with other appropriate agencies.

(c) Technology export and overseas investment

Upon November 15, 1990, the President shall—

(1) prohibit the export of technologies used to produce a class I substance;

(2) prohibit direct or indirect investments by any person in facilities designed to produce a class I or class II substance in nations that are not parties to the Montreal Protocol; and

(3) direct that no agency of the government provide bilateral or multilateral subsidies, aids, credits, guarantees, or insurance programs, for the purpose of producing any class I substance.

(July 14, 1955, ch. 360, title VI, § 614, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2668.)

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (b), probably means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

§ 7671n. Authority of Administrator

If, in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, the Administrator shall promptly promulgate regulations respecting the control of such substance, practice, process, or activity, and shall submit notice of the proposal and promulgation of such regulation to the Congress.

(July 14, 1955, ch. 360, title VI, § 615, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2669.)

§ 7671*o*. Transfers among Parties to Montreal Protocol

(a) In general

Consistent with the Montreal Protocol, the United States may engage in transfers with other Parties to the Protocol under the following conditions:

(1) The United States may transfer production allowances to another Party if, at the time of such transfer, the Administrator establishes revised production limits for the United States such that the aggregate national United States production permitted under the revised production limits equals the lesser of (A) the maximum production level permitted for the substance or substances concerned in the transfer year under the Protocol minus the production allowances transferred, (B) the maximum production level permitted for the substance or substances concerned in the transfer year under applicable domestic law minus the production allowances transferred, or (C) the average of the actual national production level of the substance or substances concerned for the 3 years prior to the transfer minus the production allowances transferred.

(2) The United States may acquire production allowances from another Party if, at the time of such transfer, the Administrator finds that the other Party has revised its domestic production limits in the same manner as provided with respect to transfers by the United States in this subsection.

(b) Effect of transfers on production limits

The Administrator is authorized to reduce the production limits established under this chapter as required as a prerequisite to transfers under paragraph (1) of subsection (a) of this section or to increase production limits established under this chapter to reflect production allowances acquired under a transfer under paragraph (2) of subsection (a) of this section.

(c) Regulations

The Administrator shall promulgate, within 2 years after November 15, 1990, regulations to implement this section.

(d) "Applicable domestic law" defined

In the case of the United States, the term ''applicable domestic law'' means this chapter.

(July 14, 1955, ch. 360, title VI, § 616, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2669.)

§ 7671p. International cooperation

(a) In general

The President shall undertake to enter into international agreements to foster cooperative research which complements studies and research authorized by this subchapter, and to develop standards and regulations which protect the stratosphere consistent with regulations applicable within the United States. For these pur-

poses the President through the Secretary of State and the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums and shall report to the Congress periodically on efforts to arrive at such agreements.

(b) Assistance to developing countries

The Administrator, in consultation with the Secretary of State, shall support global participation in the Montreal Protocol by providing technical and financial assistance to developing countries that are Parties to the Montreal Protocol and operating under article 5 of the Protocol. There are authorized to be appropriated not more than $30,000,000 to carry out this section in fiscal years 1991, 1992 and 1993 and such sums as may be necessary in fiscal years 1994 and 1995. If China and India become Parties to the Montreal Protocol, there are authorized to be appropriated not more than an additional $30,000,000 to carry out this section in fiscal years 1991, 1992, and 1993.

(July 14, 1955, ch. 360, title VI, § 617, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2669.)

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103–236, set out as a note under section 2651a of Title 22.

§ 7671q. Miscellaneous provisions

For purposes of section 7416 of this title, requirements concerning the areas addressed by this subchapter for the protection of the stratosphere against ozone layer depletion shall be treated as requirements for the control and abatement of air pollution. For purposes of section 7418 of this title, the requirements of this subchapter and corresponding State, interstate, and local requirements, administrative authority, and process, and sanctions respecting the protection of the stratospheric ozone layer shall be treated as requirements for the control and abatement of air pollution within the meaning of section 7418 of this title.

(July 14, 1955, ch. 360, title VI, § 618, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2670.)

CHAPTER 86—EARTHQUAKE HAZARDS REDUCTION

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§ 7701. Congressional findings

The Congress finds and declares the following:

(1) All 50 States are vulnerable to the hazards of earthquakes, and at least 39 of them are subject to major or moderate seismic risk, including Alaska, California, Hawaii, Illinois, Massachusetts, Missouri, Montana, Nevada, New Jersey, New York, South Carolina, Utah, and Washington. A large portion of the population of the United States lives in areas vulnerable to earthquake hazards.

(2) Earthquakes have caused, and can cause in the future, enormous loss of life, injury, destruction of property, and economic and social disruption. With respect to future earthquakes, such loss, destruction, and disruption can be substantially reduced through the development and implementation of earthquake hazards reduction measures, including (A) improved design and construction methods and practices, (B) land-use controls and redevelopment, (C) prediction techniques and early-warning systems, (D) coordinated emergency preparedness plans, and (E) public education and involvement programs.

(3) An expertly staffed and adequately financed earthquake hazards reduction program, based on Federal, State, local, and private research, planning, decisionmaking, and contributions would reduce the risk of such loss, destruction, and disruption in seismic areas by an amount far greater than the cost of such program.

(4) A well-funded seismological research program in earthquake prediction could provide data adequate for the design, of an operational system that could predict accurately the time, place, magnitude, and physical effects of earthquakes in selected areas of the United States.

(5) The geological study of active faults and features can reveal how recently and how frequently major earthquakes have occurred on those faults and how much risk they pose. Such long-term seismic risk assessments are needed in virtually every aspect of earthquake hazards management, whether emergency planning, public regulation, detailed building design, insurance rating, or investment decision.

(6) The vulnerability of buildings, lifelines, public works, and industrial and emergency facilities can be reduced through proper earthquake resistant design and construction practices. The economy and efficacy of such procedures can be substantially increased through research and development.

(7) Programs and practices of departments and agencies of the United States are important to the communities they serve; some functions, such as emergency communications

and national defense, and lifelines, such as dams, bridges, and public works, must remain in service during and after an earthquake. Federally owned, operated, and influenced structures and lifelines should serve as models for how to reduce and minimize hazards to the community.

(8) The implementation of earthquake hazards reduction measures would, as an added benefit, also reduce the risk of loss, destruction, and disruption from other natural hazards and manmade hazards, including hurricanes, tornadoes, accidents, explosions, landslides, building and structural cave-ins, and fires.

(9) Reduction of loss, destruction, and disruption from earthquakes will depend on the actions of individuals, and organizations in the private sector and governmental units at Federal, State, and local levels. The current capability to transfer knowledge and information to these sectors is insufficient. Improved mechanisms are needed to translate existing information and research findings into reasonable and usable specifications, criteria, and practices so that individuals, organizations, and governmental units may make informed decisions and take appropriate actions.

(10) Severe earthquakes are a worldwide problem. Since damaging earthquakes occur infrequently in any one nation, international cooperation is desirable for mutual learning from limited experiences.

(11) An effective Federal program in earthquake hazards reduction will require input from and review by persons outside the Federal Government expert in the sciences of earthquake hazards reduction and in the practical application of earthquake hazards reduction measures.

(Pub. L. 95–124, § 2, Oct. 7, 1977, 91 Stat. 1098; Pub. L. 101–614, § 2, Nov. 16, 1990, 104 Stat. 3231.)

AMENDMENTS

1990—Pars. (5) to (11). Pub. L. 101–614 added pars. (5) to (7), struck out former pars. (5) and (6), and redesignated former pars. (7) to (10) as (8) to (11), respectively. Prior to amendment, pars. (5) and (6) read as follows:

''(5) An operational earthquake prediction system can produce significant social, economic, legal, and political consequences.

''(6) There is a scientific basis for hypothesizing that major earthquakes may be moderated, in at least some seismic areas, by application of the findings of earthquake control and seismological research.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–360, title I, § 101, Oct. 25, 2004, 118 Stat. 1668, provided that: ''This title [amending sections 7703, 7704, and 7706 to 7708 of this title] may be cited as the 'National Earthquake Hazards Reduction Program Reauthorization Act of 2004'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–503, title II, § 201, Nov. 13, 2000, 114 Stat. 2304, provided that: ''This title [enacting sections 7707 to 7709 of this title, amending sections 7703, 7704, and 7706 of this title, repealing section 7705d of this title, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 7704 of this title] may be cited as the 'Earthquake Hazards Reduction Authorization Act of 2000'.''

SHORT TITLE OF 1990 AMENDMENT

Section 1 of Pub. L. 101–614 provided that: ''This Act [enacting sections 7705a to 7705e, amending this section and sections 7702 to 7705, and 7706 of this title, and enacting provisions set out as notes under sections 7704, 7705b, and 7705e of this title] may be cited as the 'National Earthquake Hazards Reduction Program Reauthorization Act'.''

SHORT TITLE

Section 1 of Pub. L. 95–124 provided: ''That this Act [enacting this chapter] may be cited as the 'Earthquake Hazards Reduction Act of 1977'.''

DELEGATION OF FUNCTIONS

Functions of President under Earthquake Hazards Reduction Act of 1977 delegated, transferred, or reassigned to Secretary of Homeland Security pursuant to sections 1–104 and 4–204 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended, set out as a note under section 5195 of this title.

REPORT ON AT-RISK POPULATIONS

Pub. L. 106–503, title II, § 207, Nov. 13, 2000, 114 Stat. 2307, required the Director of the Federal Emergency Management Agency to transmit to Congress a report no later than 1 year after Nov. 13, 2000, describing the elements of the National Earthquake Hazards Reduction Program that specifically addressed the needs of at-risk populations.

§ 7702. Congressional statement of purpose

It is the purpose of the Congress in this chapter to reduce the risks of life and property from future earthquakes in the United States through the establishment and maintenance of an effective earthquake hazards reduction program. The objectives of such program shall include—

(1) the education of the public, including State and local officials, as to earthquake phenomena, the identification of locations and structures which are especially susceptible to earthquake damage, ways to reduce the adverse consequences of an earthquake, and related matters;

(2) the development of technologically and economically feasible design and construction methods and procedures to make new and existing structures, in areas of seismic risk, earthquake resistant, giving priority to the development of such methods and procedures for power generating plants, dams, hospitals, schools, public utilities and other lifelines, public safety structures, high occupancy buildings, and other structures which are especially needed in time of disaster;

(3) the implementation to the greatest extent practicable, in all areas of high or moderate seismic risk, of a system (including personnel, technology, and procedures) for predicting damaging earthquakes and for identifying, evaluating, and accurately characterizing seismic hazards;

(4) the development, publication, and promotion, in conjunction with State and local officials and professional organizations, of model building codes and other means to encourage consideration of information about seismic risk in making decisions about land-use policy and construction activity;

(5) the development, in areas of seismic risk, of improved understanding of, and capability with respect to, earthquake-related issues, in-

cluding methods of mitigating the risks from earthquakes, planning to prevent such risks, disseminating warnings of earthquakes, organization emergency services, and planning for reconstruction and redevelopment after an earthquake;

(6) the development of ways to increase the use of existing scientific and engineering knowledge to mitigate earthquake hazards; and

(7) the development of ways to assure the availability of affordable earthquake insurance.

(Pub. L. 95–124, § 3, Oct. 7, 1977, 91 Stat. 1099; Pub. L. 101–614, § 3, Nov. 16, 1990, 104 Stat. 3231.)

AMENDMENTS

1990—Pub. L. 101–614 inserted sentence at end, listing objectives of program.

§ 7703. Definitions

As used in this chapter, unless the context otherwise requires:

(1) The term ''includes'' and variants thereof should be read as if the phrase ''but is not limited to'' were also set forth.

(2) The term ''Program'' means the National Earthquake Hazards Reduction Program established under section 7704 of this title.

(3) The term ''seismic'' and variants thereof mean having to do with, or caused by earthquakes.

(4) The term ''State'' means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands, and any other territory or possession of the United States.

(5) The term ''United States'' means, when used in a geographical sense, all of the States as defined in paragraph (4) of this section.

(6) The term ''lifelines'' means public works and utilities, including transportation facilities and infrastructure, oil and gas pipelines, electrical power and communication facilities and infrastructure, and water supply and sewage treatment facilities.

(7) The term ''Program agencies'' means the Federal Emergency Management Agency, the United States Geological Survey, the National Science Foundation, and the National Institute of Standards and Technology.

(8) The term ''Interagency Coordinating Committee'' means the Interagency Coordinating Committee on Earthquake Hazards Reduction established under section 7704(a) of this title.

(9) The term ''Advisory Committee'' means the Advisory Committee established under section 7704(a)(5) of this title.

(Pub. L. 95–124, § 4, Oct. 7, 1977, 91 Stat. 1099; Pub. L. 101–614, § 4, Nov. 16, 1990, 104 Stat. 3232; Pub. L. 106–503, title II, § 209, Nov. 13, 2000, 114 Stat. 2308; Pub. L. 108–360, title I, § 102, Oct. 25, 2004, 118 Stat. 1668.)

AMENDMENTS

2004—Pars. (8), (9). Pub. L. 108–360 added pars. (8) and (9).

2000—Par. (6). Pub. L. 106–503 inserted ''and infrastructure'' after ''communication facilities''.

1990—Par. (2). Pub. L. 101–614, § 4(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'program' means the earthquake hazards reduction program established under section 7704 of this title.''

Pars. (6), (7). Pub. L. 101–614, § 4(2), added pars. (6) and (7).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7704. National Earthquake Hazards Reduction Program

(a) Establishment

(1) In general

There is established the National Earthquake Hazards Reduction Program.

(2) Program activities

The activities of the Program shall be designed to—

(A) develop effective measures for earthquake hazards reduction;

(B) promote the adoption of earthquake hazards reduction measures by Federal, State, and local governments, national standards and model code organizations, architects and engineers, building owners, and others with a role in planning and constructing buildings, structures, and lifelines through—

(i) grants, contracts, cooperative agreements, and technical assistance;

(ii) development of standards, guidelines, and voluntary consensus codes for earthquake hazards reduction for buildings, structures, and lifelines;

(iii) development and maintenance of a repository of information, including technical data, on seismic risk and hazards reduction; and

(C) improve the understanding of earthquakes and their effects on communities, buildings, structures, and lifelines, through interdisciplinary research that involves engineering, natural sciences, and social, economic, and decisions sciences; and

(D) develop, operate, and maintain an Advanced National Seismic Research and Monitoring System established under section 7707 of this title, the George E. Brown, Jr. Network for Earthquake Engineering Simulation established under section 7708 of this title, and the Global Seismographic Network.

(3) Interagency Coordinating Committee on Earthquake Hazards Reduction

(A) In general

There is established an Interagency Coordinating Committee on Earthquake Hazards Reduction chaired by the Director of the National Institute of Standards and Technology (referred to in this subsection as the ''Director'').

(B) Membership

The committee shall be composed of the directors of—

(i) the Federal Emergency Management Agency;

(ii) the United States Geological Survey;

(iii) the National Science Foundation;

(iv) the Office of Science and Technology Policy; and

(v) the Office of Management and Budget.

(C) Meetings

The Committee shall meet not less than 3 times a year at the call of the Director.

(D) Purpose and duties

The Interagency Coordinating Committee shall oversee the planning, management, and coordination of the Program. The Interagency Coordinating Committee shall—

(i) develop, not later than 6 months after October 25, 2004, and update periodically—

(I) a strategic plan that establishes goals and priorities for the Program activities described under subsection (a)(2) of this section; and

(II) a detailed management plan to implement such strategic plan; and

(ii) develop a coordinated interagency budget for the Program that will ensure appropriate balance among the Program activities described under subsection (a)(2) of this section, and, in accordance with the plans developed under clause (i), submit such budget to the Director of the Office of Management and Budget at the time designated by that office for agencies to submit annual budgets.

(4) Annual report

The Interagency Coordinating Committee shall transmit, at the time of the President's budget request to Congress, an annual report to the Committee on Science and the Committee on Resources of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate. Such report shall include—

(A) the Program budget for the current fiscal year for each agency that participates in the Program, and for each major goal established for the Program activities under subparagraph (3)(A);

(B) the proposed Program budget for the next fiscal year for each agency that participates in the Program, and for each major goal established for the Program activities under subparagraph (3)(A);

(C) a description of the activities and results of the Program during the previous year, including an assessment of the effectiveness of the Program in furthering the goals established in the strategic plan under (3)(A)[1];

(D) a description of the extent to which the Program has incorporated the recommendations of the Advisory Committee;

(E) a description of activities, including budgets for the current fiscal year and proposed budgets for the next fiscal year, that are carried out by Program agencies and contribute to the Program, but are not included in the Program; and

(F) a description of the activities, including budgets for the current fiscal year and proposed budgets for the following fiscal year, related to the grant program carried out under subsection (b)(2)(A)(i) of this section.

(5) Advisory Committee

(A) In general

The Director shall establish an Advisory Committee on Earthquake Hazards Reduction of at least 11 members, none of whom may be an employee (as defined in subparagraphs (A) through (F) of section 7342(a)(1) of title 5[2] including representatives of research and academic institutions, industry standards development organizations, State and local government, and financial communities who are qualified to provide advice on earthquake hazards reduction and represent all related scientific, architectural, and engineering disciplines. The recommendations of the Advisory Committee shall be considered by Federal agencies in implementing the Program.

(B) Assessment

The Advisory Committee shall assess—

(i) trends and developments in the science and engineering of earthquake hazards reduction;

(ii) effectiveness of the Program in carrying out the activities under (a)(2)[3] of this section;

(iii) the need to revise the Program; and

(iv) the management, coordination, implementation, and activities of the Program.

(C) Report

Not later than 1 year after October 25, 2004, and at least once every 2 years thereafter, the Advisory Committee shall report to the Director on its findings of the assessment carried out under subparagraph (B) and its recommendations for ways to improve the Program. In developing recommendations, the Committee shall consider the recommendations of the United States Geological Survey Scientific Earthquake Studies Advisory Committee.

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[1] So in original. Probably should be preceded by ''subparagraph''.

[2] So in original. Probably should be followed by a closing parenthesis.

[3] So in original. Probably should be preceded by ''subsection''.

(D) Federal Advisory Committee Act application

Section 14 of the Federal Advisory Committee Act (5 App. U.S.C. 14) shall not apply to the Advisory Committee.

(b) Responsibilities of Program agencies

(1) Lead agency

The National Institute of Standards and Technology shall have the primary responsibility for planning and coordinating the Program. In carrying out this paragraph, the Director of the Institute shall—

(A) ensure that the Program includes the necessary steps to promote the implementation of earthquake hazard reduction measures by Federal, State, and local governments, national standards and model building code organizations, architects and engineers, and others with a role in planning and constructing buildings and lifelines;

(B) support the development of performance-based seismic engineering tools, and work with appropriate groups to promote the commercial application of such tools, through earthquake-related building codes, standards, and construction practices;

(C) request the assistance of Federal agencies other than the Program agencies, as necessary to assist in carrying out this chapter; and

(D) work with the Federal Emergency Management Agency, the National Science Foundation, and the United States Geological Survey, to develop a comprehensive plan for earthquake engineering research to effectively use existing testing facilities and laboratories (existing at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner.

(2) Department of Homeland Security; Federal Emergency Management Agency

(A) Program responsibilities

The Under Secretary of Homeland Security for Emergency Preparedness and Response (the Administrator of the Federal Emergency Management Agency)—

(i) shall work closely with national standards and model building code organizations, in conjunction with the National Institute of Standards and Technology, to promote the implementation of research results;

(ii) shall promote better building practices within the building design and construction industry including architects, engineers, contractors, builders, and inspectors;

(iii) shall operate a program of grants and assistance to enable States to develop mitigation, preparedness, and response plans, prepare inventories and conduct seismic safety inspections of critical structures and lifelines, update building and zoning codes and ordinances to enhance seismic safety, increase earthquake awareness and education, and encourage the development of multi-State groups for such purposes;

(iv) shall support the implementation of a comprehensive earthquake education and public awareness program, including development of materials and their wide dissemination to all appropriate audiences and support public access to locality-specific information that may assist the public in preparing for, mitigating against, responding to and recovering from earthquakes and related disasters;

(v) shall assist the National Institute of Standards and Technology, other Federal agencies, and private sector groups, in the preparation, maintenance, and wide dissemination of seismic resistant design guidance and related information on building codes, standards, and practices for new and existing buildings, structures, and lifelines, and aid in the development of performance-based design guidelines and methodologies supporting model codes for buildings, structures, and lifelines that are cost effective and affordable;

(vi) shall develop, coordinate, and execute the National Response Plan when required following an earthquake, and support the development of specific State and local plans for each high risk area to ensure the availability of adequate emergency medical resources, search and rescue personnel and equipment, and emergency broadcast capability;

(vii) shall develop approaches to combine measures for earthquake hazards reduction with measures for reduction of other natural and technological hazards including performance-based design approaches;

(viii) shall provide preparedness, response, and mitigation recommendations to communities after an earthquake prediction has been made under paragraph (3)(D); and

(ix) may enter into cooperative agreements or contracts with States and local jurisdictions and other Federal agencies to establish demonstration projects on earthquake hazard mitigation, to link earthquake research and mitigation efforts with emergency management programs, or to prepare educational materials for national distribution.

(B) State assistance program criteria

In order to qualify for assistance under subparagraph (A)(i), a State must—

(i) demonstrate that the assistance will result in enhanced seismic safety in the State;

(ii) provide a share of the costs of the activities for which assistance is being given, in accordance with subparagraph (C); and

(iii) meet such other requirements as the Administrator of the Agency shall prescribe.

(C) Non-Federal cost sharing

(i) In the case of any State which has received, before October 1, 1990, a grant from the Agency for activities under this chapter which included a requirement for cost sharing by matching such grant, any grant obtained from the Agency for activities under

subparagraph (A)(i) after such date shall not include a requirement for cost sharing in an amount greater than 50 percent of the cost of the project for which the grant is made.

(ii) In the case of any State which has not received, before October 1, 1990, a grant from the Agency for activities under this chapter which included a requirement for cost sharing by matching such grant, any grant obtained from the Agency for activities under subparagraph (A)(i) after such date—

(I) shall not include a requirement for cost sharing for the first fiscal year of such a grant;

(II) shall not include a requirement for cost sharing in an amount greater than 25 percent of the cost of the project for which the grant is made for the second fiscal year of such grant, and any cost sharing requirement may be satisfied through in-kind contributions;

(III) shall not include a requirement for cost sharing in an amount greater than 35 percent of the cost of the project for which the grant is made for the third fiscal year of such grant, and any cost sharing requirement may be satisfied through in-kind contributions; and

(IV) shall not include a requirement for cost sharing in an amount greater than 50 percent of the cost of the project for which the grant is made for the fourth and subsequent fiscal years of such grant.

(3) United States Geological Survey

The United States Geological Survey shall conduct research and other activities necessary to characterize and identify earthquake hazards, assess earthquake risks, monitor seismic activity, and improve earthquake predictions. In carrying out this paragraph, the Director of the United States Geological Survey shall—

(A) conduct a systematic assessment of the seismic risks in each region of the Nation prone to earthquakes, including, where appropriate, the establishment and operation of intensive monitoring projects on hazardous faults, seismic microzonation studies in urban and other developed areas where earthquake risk is determined to be significant, and engineering seismology studies;

(B) work with officials of State and local governments to ensure that they are knowledgeable about the specific seismic risks in their areas;

(C) develop standard procedures, in consultation with the Administrator of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology, for issuing earthquake predictions, including aftershock advisories;

(D) issue when necessary, and notify the Administrator of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology of, an earthquake prediction or other earthquake advisory, which may be evaluated by the National Earthquake Prediction Evaluation Council, which shall be exempt from the requirements of section 10(a)(2) of the Federal Advisory Committee Act when meeting for such purposes;

(E) operate, using the National Earthquake Information Center, a forum for the international exchange of earthquake information which shall—

(i) promote the exchange of information on earthquake research and earthquake preparedness between the United States and other nations;

(ii) maintain a library containing selected reports, research papers, and data produced through the Program;

(iii) answer requests from other nations for information on United States earthquake research and earthquake preparedness programs; and

(iv) direct foreign requests to the agency involved in the Program which is best able to respond to the request;

(F) operate a National Seismic System;

(G) support regional seismic networks, which shall complement the National Seismic Network; and[4]

(H) work with the National Science Foundation, the Federal Emergency Management Agency, and the National Institute of Standards and Technology to develop a comprehensive plan for earthquake engineering research to effectively use existing testing facilities and laboratories (in existence at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner.[5]

(I) work with other Program agencies to coordinate Program activities with similar earthquake hazards reduction efforts in other countries, to ensure that the Program benefits from relevant information and advances in those countries; and

(J) maintain suitable seismic hazard maps in support of building codes for structures and lifelines, including additional maps needed for performance-based design approaches.

(4) National Science Foundation

The National Science Foundation shall be responsible for funding research on earth sciences to improve the understanding of the causes and behavior of earthquakes, on earthquake engineering, and on human response to earthquakes. In carrying out this paragraph, the Director of the National Science Foundation shall—

(A) encourage prompt dissemination of significant findings, sharing of data, samples, physical collections, and other supporting materials, and development of intellectual property so research results can be used by appropriate organizations to mitigate earthquake damage;

(B) in addition to supporting individual investigators, support university research con-

[4] So in original. The word ''and'' probably should not appear.

[5] So in original. The period probably should be a semicolon.

sortia and centers for research in geosciences and in earthquake engineering;

(C) work closely with the United States Geological Survey to identify geographic regions of national concern that should be the focus of targeted solicitations for earthquake-related research proposals;

(D) support research that improves the safety and performance of buildings, structures, and lifeline systems using large-scale experimental and computational facilities of the George E. Brown Jr. Network for Earthquake Engineering Simulation and other institutions engaged in research and the implementation of the National Earthquake Hazards Reduction Program;

(E) emphasize, in earthquake engineering research, development of economically feasible methods to retrofit existing buildings and to protect lifelines to mitigate earthquake damage;

(F) support research that studies the political, economic, and social factors that influence the implementation of hazard reduction measures;

(G) include to the maximum extent practicable diverse institutions, including Historically Black Colleges and Universities and those serving large proportions of Hispanics, Native Americans, Asian-Pacific Americans, and other underrepresented populations; and

(H) develop, in conjunction with the Federal Emergency Management Agency, the National Institute of Standards and Technology, and the United States Geological Survey, a comprehensive plan for earthquake engineering research to effectively use existing testing facilities and laboratories (in existence at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner.

(5) National Institute of Standards and Technology

In addition to the lead agency responsibilities described under paragraph (1), the National Institute of Standards and Technology shall be responsible for carrying out research and development to improve building codes and standards and practices for structures and lifelines. In carrying out this paragraph, the Director of the National Institute of Standards and Technology shall—

(A) work closely with national standards and model building code organizations, in conjunction with the Agency, to promote the implementation of research results;

(B) promote better building practices among architects and engineers;

(C) work closely with national standards organizations to develop seismic safety standards and practices for new and existing lifelines;

(D) support the development and commercial application of cost effective and affordable performance-based seismic engineering by providing technical support for seismic engineering practices and related building code, standards, and practices development; and

(E) work with the National Science Foundation, the Federal Emergency Management Agency, and the United States Geological Survey to develop a comprehensive plan for earthquake engineering research to effectively use existing testing facilities and laboratories (in existence at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner.

(c) Budget coordination

(1) Guidance

The Interagency Coordinating Committee shall each year provide guidance to the other Program agencies concerning the preparation of requests for appropriations for activities related to the Program, and shall prepare, in conjunction with the other Program agencies, an annual Program budget to be submitted to the Office of Management and Budget.

(2) Reports

Each Program agency shall include with its annual request for appropriations submitted to the Office of Management and Budget a report that—

(A) identifies each element of the proposed Program activities of the agency;

(B) specifies how each of these activities contributes to the Program; and

(C) states the portion of its request for appropriations allocated to each element of the Program.

(Pub. L. 95–124, § 5, Oct. 7, 1977, 91 Stat. 1099; Pub. L. 96–472, title I, § 101, Oct. 19, 1980, 94 Stat. 2257; Pub. L. 99–105, §§ 5, 6, Sept. 30, 1985, 99 Stat. 475; Pub. L. 100–252, § 2, Feb. 29, 1988, 102 Stat. 18; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 100–707, title I, § 109(u), Nov. 23, 1988, 102 Stat. 4710; Pub. L. 101–614, § 5, Nov. 16, 1990, 104 Stat. 3232; Pub. L. 105–47, § 3, Oct. 1, 1997, 111 Stat. 1162; Pub. L. 106–503, title II, §§ 206, 208, Nov. 13, 2000, 114 Stat. 2307; Pub. L. 108–360, title I, § 103, Oct. 25, 2004, 118 Stat. 1669; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

Sections 14 and 10(a)(2) of the Federal Advisory Committee Act, referred to in subsecs. (a)(5)(D) and (b)(3)(D), are sections 14 and 10(a)(2) of Pub. L. 92–463, which are set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–360, § 103(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''There is established a National Earthquake Hazards Reduction Program.''

Subsec. (b)(1). Pub. L. 108–360, § 103(2)(A)(i), (iv), in introductory provisions, substituted ''National Institute of Standards and Technology shall have the primary responsibility for planning and coordinating the Program. In carrying out this paragraph, the Director of the Institute'' for ''Federal Emergency Management Agency (hereafter in this chapter referred to as the 'Agency') shall have the primary responsibility for planning and coordinating the Program. In carrying

out this paragraph, the Director of the Agency'' and struck out concluding provisions which read as follows: ''The principal official carrying out the responsibilities described in this paragraph shall be at a level no lower than that of Associate Director.''

Subsec. (b)(1)(B). Pub. L. 108–360, § 103(2)(A)(ii), (iii), added subpar. (B) and struck out former subpar. (B) which read as follows: ''prepare, in conjunction with the other Program agencies, a written plan for the Program, which shall include specific tasks and milestones for each Program agency, and which shall be submitted to the Congress and updated at such times as may be required by significant Program events, but in no event less frequently than every 3 years;''.

Subsec. (b)(1)(C). Pub. L. 108–360, § 103(2)(A)(ii), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: ''prepare, in conjunction with the other Program agencies, a biennial report, to be submitted to the Congress within 90 days after the end of each even-numbered fiscal year, which shall describe the activities and achievements of the Program during the preceding two fiscal years;''.

Subsec. (b)(1)(D), (E). Pub. L. 108–360, § 103(2)(A)(ii), (v), redesignated subpar. (E) as (D) and substituted ''Federal Emergency Management Agency, the National Science Foundation'' for ''National Science Foundation, the National Institute of Standards and Technology''. Former subpar. (D) redesignated (C).

Subsec. (b)(2). Pub. L. 108–360, § 103(2)(B), inserted heading, struck out former heading ''Federal Emergency Management Agency'', added subpar. (A), and struck out heading and text of former subpar. (A) which related to earthquake program responsibilities of the Director of the Federal Emergency Management Agency.

Subsec. (b)(3). Pub. L. 108–360, § 103(2)(C)(i), inserted ''and other activities'' after ''shall conduct research'' in introductory provisions.

Subsec. (b)(3)(C). Pub. L. 108–360, § 103(2)(C)(ii), substituted ''the Director of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology'' for ''the Agency''.

Subsec. (b)(3)(D). Pub. L. 108–360, § 103(2)(C)(iii), substituted ''the Director of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology'' for ''the Director of the Agency''.

Subsec. (b)(3)(E). Pub. L. 108–360, § 103(2)(C)(iv), substituted ''operate, using the National Earthquake Information Center, a forum for the international exchange of earthquake information'' for ''establish, using existing facilities, a Center for the International Exchange of Earthquake Information'' in introductory provisions.

Subsec. (b)(3)(F). Pub. L. 108–360, § 103(2)(C)(v), substituted ''System'' for ''Network''.

Subsec. (b)(3)(I), (J). Pub. L. 108–360, § 103(2)(C)(vi), added subpars. (I) and (J).

Subsec. (b)(4)(D) to (H). Pub. L. 108–360, § 103(2)(D), added subpars. (D) and (G) and redesignated former subpars. (D), (E), and (F) as (E), (F), and (H), respectively.

Subsec. (b)(5). Pub. L. 108–360, § 103(2)(E), in introductory provisions, substituted ''In addition to the lead agency responsibilities described under paragraph (1), the National'' for ''The National''.

Subsec. (b)(5)(D), (E). Pub. L. 108–360, § 103(2)(F), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (c)(1). Pub. L. 108–360, § 103(3), substituted ''Interagency Coordinating Committee'' for ''Agency''.

2000—Subsec. (b)(1). Pub. L. 106–503, § 206(1), redesignated subpars. (B) to (F) as (A) to (E), respectively, and struck out former subpar. (A) which read as follows: ''prepare, in conjunction with the other Program agencies, an annual budget for the Program to be submitted to the Office of Management and Budget;''.

Subsec. (b)(2)(A)(ii). Pub. L. 106–503, § 208, inserted before semicolon at end '', and development of means of increasing public access to available locality-specific information that may assist the public in preparing for or responding to earthquakes''.

Subsec. (c). Pub. L. 106–503, § 206(2), added subsec. (c).

1997—Subsec. (b)(1)(F). Pub. L. 105–47, § 3(b), added subpar. (F).

Subsec. (b)(3)(H). Pub. L. 105–47, § 3(c), added subpar. (H).

Subsec. (b)(4)(F). Pub. L. 105–47, § 3(a), added subpar. (F).

Subsec. (b)(5)(D). Pub. L. 105–47, § 3(d), added subpar. (D).

1990—Pub. L. 101–614 amended section generally, substituting present provisions consisting of subsecs. (a) and (b) for former provisions which provided for: in subsec. (a), establishment of program; in subsec. (b), duties of President and Director of Federal Emergency Management Agency; in subsec. (c), objectives of program; in subsec. (d), Federal participation; in subsec. (e), research elements; in subsec. (f), mitigation elements; in subsec. (g), State assistance; in subsec. (h), non-Federal participation; in subsec. (i), study and recommendations on disaster relief; and in subsec. (j), cost sharing.

1988—Subsec. (b)(2)(F). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

Subsecs. (g), (i). Pub. L. 100–707 substituted ''Disaster Relief and Emergency Assistance Act'' for ''Disaster Relief Act of 1974''.

Subsec. (j). Pub. L. 100–252 added subsec. (j).

1985—Subsec. (b)(2)(E). Pub. L. 99–105, § 5, amended subpar. (E) generally, substituting ''to be submitted to the Congress and updated at such times as may be required by significant program events, but in no event less frequently than every three years;'' for ''which plan will recommend base and incremental budget options for the agencies to carry out the elements and programs specified through at least 1985, and which plan shall be completed by September 30, 1981, and transmitted to the Congress and shall be updated annually; and''.

Subsec. (b)(2)(F), (G). Pub. L. 99–105, § 6, added subpar. (F) and redesignated former subpar. (F) as (G).

1980—Subsec. (a). Pub. L. 96–472, § 101(a), inserted provisions relating to non-Federal participation in par. (2), and substituted provisions respecting the elements described in subsec. (f) of this section, for provisions respecting the implementation plan described in subsec. (f) of this section in par. (3).

Subsec. (b). Pub. L. 96–472, § 101(b), substituted provisions setting forth the duties of the President and the Director of the Federal Emergency Management Agency with respect to the Program for provisions setting forth the duties of the President with respect to the program and plan.

Subsec. (d). Pub. L. 96–472, § 101(c), substituted ''(1)(A)'' for ''(3)(B)'', ''Department of Commerce'' for ''National Bureau of Standards'', and ''Federal Emergency Management Agency'' for ''National Fire Prevention and Control Administration''.

Subsec. (e)(6). Pub. L. 96–472, § 101(d), substituted ''potential'' for ''political''.

Subsec. (f). Pub. L. 96–472, § 101(e), substituted in provision preceding par. (1), provision directing that the mitigation elements of the program are to be as specified in pars. (1) to (8) for provision authorizing the establishment of a implementation plan, year-by-year targets, and Federal and non-Federal roles, in par. (1), substituted provision including as one of the mitigating elements, issuance of earthquake predictions for provision including in the implementation plan development of measures in preparing for earthquakes, actual predictions, warnings, and insuring a comprehensive response to an earthquake, added pars. (7) and (8), and struck out provision following par. (8), that when the implementation plan developed by the President contemplates specific action to be taken by a Federal agency, department, or entity, and at the end of the 30-day period beginning on the date the President submits such plan to the appropriate authorizing committees of Congress and such action has not been initiated, the President submit to such committees a report why such action has not been taken.

Subsec. (i). Pub. L. 96–472, § 101(f), added subsec. (i).

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' and ''Administrator of the Agency'' substituted for ''Director of the Federal Emergency Management Agency'' and ''Director of the Agency'', respectively, in subsec. (b)(2)(A), (B)(iii), (3)(C), (D) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REAL-TIME PUBLIC AVAILABILITY OF RAW SEISMOLOGICAL DATA

Pub. L. 107–228, div. B, title XVI, § 1602, Sept. 30, 2002, 116 Stat. 1460, provided that: ''The head of the Air Force Technical Applications Center shall make available to the public, immediately upon receipt or as soon after receipt as is practicable, all raw seismological data provided to the United States Government by any international monitoring organization that is directly responsible for seismological monitoring.''

Pub. L. 106–113, div. B, § 1000(a)(7) [div. B, title XI, § 1116], Nov. 29, 1999, 113 Stat. 1536, 1501A–489, provided that: ''The United States Government shall, to the maximum extent practicable, make available to the public in real time, or as quickly as possible, all raw seismological data provided to the United States Government by any international organization that is directly responsible for seismological monitoring.''

AUTHORIZATION OF REAL-TIME SEISMIC HAZARD WARNING SYSTEM DEVELOPMENT, AND OTHER ACTIVITIES

Section 2 of Pub. L. 105–47, as amended by Pub. L. 106–503, title II, § 202(c), Nov. 13, 2000, 114 Stat. 2305; Pub. L. 107–110, title X, § 1076(cc), Jan. 8, 2002, 115 Stat. 2093, provided that:

''(a) AUTOMATIC SEISMIC WARNING SYSTEM DEVELOPMENT.—

''(1) DEFINITIONS.—In this section:

''(A) DIRECTOR.—The term 'Director' means the Director of the United States Geological Survey.

''(B) HIGH-RISK ACTIVITY.—The term 'high-risk activity' means an activity that may be adversely affected by a moderate to severe seismic event (as determined by the Director). The term includes high-speed rail transportation.

''(C) REAL-TIME SEISMIC WARNING SYSTEM.—The term 'real-time seismic warning system' means a system that issues warnings in real-time from a network of seismic sensors to a set of analysis processors, directly to receivers related to high-risk activities.

''(2) IN GENERAL.—The Director shall conduct a program to develop a prototype real-time seismic warning system. The Director may enter into such agreements or contracts as may be necessary to carry out the program.

''(3) UPGRADE OF SEISMIC SENSORS.—In carrying out a program under paragraph (2), in order to increase the accuracy and speed of seismic event analysis to provide for timely warning signals, the Director shall provide for the upgrading of the network of seismic sensors participating in the prototype to increase the capability of the sensors—

''(A) to measure accurately large magnitude seismic events (as determined by the Director); and

''(B) to acquire additional parametric data.

''(4) DEVELOPMENT OF COMMUNICATIONS AND COMPUTATION INFRASTRUCTURE.—In carrying out a program under paragraph (2), the Director shall develop a communications and computation infrastructure that is necessary—

''(A) to process the data obtained from the upgraded seismic sensor network referred to in paragraph (3); and

''(B) to provide for, and carry out, such communications engineering and development as is necessary to facilitate—

''(i) the timely flow of data within a real-time seismic hazard warning system; and

''(ii) the issuance of warnings to receivers related to high-risk activities.

''(5) PROCUREMENT OF COMPUTER HARDWARE AND COMPUTER SOFTWARE.—In carrying out a program under paragraph (2), the Director shall procure such computer hardware and computer software as may be necessary to carry out the program.

''(6) REPORTS ON PROGRESS.—

''(A) IN GENERAL.—Not later than 120 days after the date of enactment of this Act [Oct. 1, 1997], the Director shall prepare and submit to Congress a report that contains a plan for implementing a real-time seismic hazard warning system.

''(B) ADDITIONAL REPORTS.—Not later than 1 year after the date on which the Director submits the report under subparagraph (A), and annually thereafter, the Director shall prepare and submit to Congress a report that summarizes the progress of the Director in implementing the plan referred to in subparagraph (A).

''(7) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts made available to the Director under section 12(b) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7706(b)), there are authorized to be appropriated to the Department of the Interior, to be used by the Director to carry out paragraph (2), $3,000,000 for each of fiscal years 1998 and 1999; $2,600,000 for fiscal year 2001; $2,710,000 for fiscal year 2002; and $2,825,000 for fiscal year 2003.

''(b) SEISMIC MONITORING NETWORKS ASSESSMENT.—

''(1) IN GENERAL.—The Director shall provide for an assessment of regional seismic monitoring networks in the United States. The assessment shall address—

''(A) the need to update the infrastructure used for collecting seismological data for research and monitoring of seismic events in the United States;

''(B) the need for expanding the capability to record strong ground motions, especially for urban area engineering purposes;

''(C) the need to measure accurately large magnitude seismic events (as determined by the Director);

''(D) the need to acquire additional parametric data; and

''(E) projected costs for meeting the needs described in subparagraphs (A) through (D).

''(2) RESULTS.—The Director shall transmit the results of the assessment conducted under this subsection to Congress not later than 1 year after the date of enactment of this Act [Oct. 1, 1997].

''(c) EARTH SCIENCE TEACHING MATERIALS.—

''(1) DEFINITIONS.—In this subsection:

''(A) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given

that term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801].

''(B) SCHOOL.—The term 'school' means a nonprofit institutional day or residential school that provides education for any of the grades kindergarten through grade 12.

''(2) TEACHING MATERIALS.—In a manner consistent with the requirement under section 5(b)(4) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704(b)(4)) and subject to a merit based competitive process, the Director of the National Science Foundation may use funds made available to him or her under section 12(c) of such Act (42 U.S.C. 7706(c)) to develop, and make available to schools and local educational agencies for use by schools, at a minimal cost, earth science teaching materials that are designed to meet the needs of elementary and secondary school teachers and students.

''(d) IMPROVED SEISMIC HAZARD ASSESSMENT.—

''(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act [Oct. 1, 1997], the Director shall conduct a project to improve the seismic hazard assessment of seismic zones.

''(2) REPORTS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and annually during the period of the project, the Director shall prepare, and submit to Congress, a report on the findings of the project.

''(B) FINAL REPORT.—Not later than 60 days after the date of termination of the project conducted under this subsection, the Director shall prepare and submit to Congress a report concerning the findings of the project.

''(e) STUDY OF NATIONAL EARTHQUAKE EMERGENCY TRAINING CAPABILITIES.—

''(1) IN GENERAL.—The Director of the Federal Emergency Management Agency shall conduct an assessment of the need for additional Federal disaster-response training capabilities that are applicable to earthquake response.

''(2) CONTENTS OF ASSESSMENT.—The assessment conducted under this subsection shall include—

''(A) a review of the disaster training programs offered by the Federal Emergency Management Agency at the time of the assessment;

''(B) an estimate of the number and types of emergency response personnel that have, during the period beginning on January 1, 1990 and ending on July 1, 1997, sought the training referred to in subparagraph (A), but have been unable to receive that training as a result of the oversubscription of the training capabilities of the Federal Emergency Management Agency; and

''(C) a recommendation on the need to provide additional Federal disaster-response training centers.

''(3) REPORT.—Not later than 180 days after the date of enactment of this Act [Oct. 1, 1997], the Director shall prepare and submit to Congress a report that addresses the results of the assessment conducted under this subsection.''

STUDIES ON ECONOMIC IMPACT OF CATASTROPHIC EARTHQUAKES AND IMPROVING EARTHQUAKE MITIGATION

Section 14 of Pub. L. 101–614 directed Director of Federal Emergency Management Agency to submit two reports to Congress within 12 months after Nov. 16, 1990, one report outlining results of a study on impact and repercussions of a catastrophic earthquake on local, regional, and national economies, and the other report outlining results of a study on adequacy of preparation and response capabilities for reducing and recovering from losses caused by a catastrophic earthquake.

EARTHQUAKE ENGINEERING RESEARCH

Pub. L. 100–570, title I, § 115, Oct. 31, 1988, 102 Stat. 2871, directed National Academy of Sciences to conduct a study of earthquake engineering activities being carried out by the Foundation and other Federal agencies under the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), such study to include (1) an assessment of adequacy of each agency's current Federal earthquake engineering efforts, including those designed to increase the implementation of new techniques; the need for specialized research facilities, including large-scale facilities; the division of responsibilities among the various Federal agencies; and recommended levels of funding that the Foundation and other agencies should provide, in the form of grants to individuals, groups, and centers, to non-Federal researchers principally engaged in earthquake engineering research; and (2) recommendations, if any, of the National Academy of Sciences for improvements in the current Federal efforts in the area of earthquake engineering research, with results of the study to be reported to Congress on or before expiration of 12-month period following Oct. 31, 1988.

EX. ORD. NO. 12699. SEISMIC SAFETY OF FEDERAL AND FEDERALLY ASSISTED OR REGULATED NEW BUILDING CONSTRUCTION

Ex. Ord. No. 12699, Jan. 5, 1990, 55 F.R. 835, as amended by Ex. Ord. No. 13286, § 40, Feb. 28, 2003, 68 F.R. 10626, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in furtherance of the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 *et seq.*), which requires that Federal preparedness and mitigation activities are to include ''development and promulgation of specifications, building standards, design criteria, and construction practices to achieve appropriate earthquake resistance for new . . . structures,'' and ''an examination of alternative provisions and requirements for reducing earthquake hazards through Federal and federally financed construction, loans, loan guarantees, and licenses. . . .'' (42 U.S.C. 7704(f)(3, 4)), it is hereby ordered as follows:

SECTION 1. Requirements for Earthquake Safety of New Federal Buildings.

The purposes of these requirements are to reduce risks to the lives of occupants of buildings owned by the Federal Government and to persons who would be affected by the failures of Federal buildings in earthquakes, to improve the capability of essential Federal buildings to function during or after an earthquake, and to reduce earthquake losses of public buildings, all in a cost-effective manner. A building means any structure, fully or partially enclosed, used or intended for sheltering persons or property.

Each Federal agency responsible for the design and construction of each new Federal building shall ensure that the building is designed and constructed in accord with appropriate seismic design and construction standards. This requirement pertains to all building projects for which development of detailed plans and specifications is initiated subsequent to the issuance of the order. Seismic design and construction standards shall be adopted for agency use in accord with sections 3(a) and 4(a) of this order.

SEC. 2. Federally Leased, Assisted, or Regulated Buildings.

The purposes of these requirements are to reduce risks to the lives of occupants of buildings leased for Federal uses or purchased or constructed with Federal assistance, to reduce risks to the lives of persons who would be affected by earthquake failures of federally assisted or regulated buildings, and to protect public investments, all in a cost-effective manner. The provisions of this order shall apply to all the new construction activities specified in the subsections below.

(a) Space Leased for Federal Occupancy. Each Federal agency responsible for the construction and lease of a new building for Federal use shall ensure that the building is designed and constructed in accord with appropriate seismic design and construction standards. This requirement pertains to all leased building projects for which the agreement covering development of detailed plans and specifications is effected subse-

quent to the issuance of this order. Local building codes shall be used in design and construction by those concerned with such activities in accord with section 3(a) and 3(c) of this order and augmented when necessary to achieve appropriate seismic design and construction standards.

(b) Federal Domestic Assistance Programs. Each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings shall plan, and shall initiate no later than 3 years subsequent to the issuance of this order, measures consistent with section 3(a) of this order, to assure appropriate consideration of seismic safety.

(c) Federally Regulated Buildings. Each Federal agency with generic responsibility for regulating the structural safety of buildings shall plan to require use of appropriate seismic design and construction standards for new buildings within the agency's purview. Implementation of the plan shall be initiated no later than 3 years subsequent to the issuance of this order.

SEC. 3. Concurrent Requirements. (a) In accord with Office of Management and Budget Circular A–119 of January 17, 1980, entitled ''Federal Participation in the Development and Use of Voluntary Standards,'' nationally recognized private sector standards and practices shall be used for the purposes identified in sections 1 and 2 above unless the responsible agency finds that none is available that meets its requirements. The actions ordered herein shall consider the seismic hazards in various areas of the country to be as shown in the most recent edition of the American National Standards Institute Standards A58, *Minimum Design Loans for Buildings and Other Structures*, or subsequent maps adopted for Federal use in accord with this order. Local building codes determined by the responsible agency or by the Interagency Committee for Seismic Safety in Construction to provide adequately for seismic safety, or special seismic standards and practices required by unique agency mission needs, may be used.

(b) All orders, regulations, circulars, or other directives issued, and all other actions taken prior to the date of this order that meet the requirements of this order, are hereby confirmed and ratified and shall be deemed to have been issued under this order.

(c) Federal agencies that are as of this date requiring seismic safety levels that are higher than those imposed by this order in their assigned new building construction programs shall continue to maintain in force such levels.

(d) Nothing in this order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 402, 403, 502, and 503 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5170a, 5170b, 5192, and 5193), or for temporary housing assistance programs and individual and family grants performed pursuant to Sections 408 and 411 of the Stafford Act (42 U.S.C. 5174 and former 5178). However, this order shall apply to other provisions of the Stafford Act [42 U.S.C. 5121 et seq.] after a presidentially declared major disaster or emergency when assistance actions involve new construction or total replacement of a building. Grantees and subgrantees shall be encouraged to adopt the standards established in section 3(a) of this order for use when the construction does not involve Federal funding as well as when Department of Homeland Security funding applies.

SEC. 4. Agency Responsibilities. (a) The Secretary of Homeland Security shall be responsible for reporting to the President on the execution of this order and providing support for the secretariat of the Interagency Committee on Seismic Safety in Construction (ICSSC). The ICSSC, using consensus procedures, shall be responsible to FEMA for the recommendation for adoption of cost-effective seismic design and construction standards and practices required by sections 1 and 2 of this order. Participation in ICSSC shall be open to all agencies with programs affected by this order.

(b) To the extent permitted by law, each agency shall issue or amend existing regulations or procedures to comply with this order within 3 years of its issuance and plan for their implementation through the usual budget process. Thereafter, each agency shall review, within a period not to exceed 3 years, its regulations or procedures to assess the need to incorporate new or revised standards and practices.

SEC. 5. Reporting. The Department of Homeland Security shall request, from each agency affected by this order, information on the status of its procedures, progress in its implementation plan, and the impact of this order on its operations. The Department of Homeland Security shall include an assessment of the execution of this order in its annual report to the Congress on the National Earthquake Hazards Reduction Program.

SEC. 6. Judicial Review. Nothing in this order is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

§ 7704a. Report on seismic safety property standards

(a) Authority

The Secretary of Housing and Urban Development (in this section referred to as the ''Secretary'') shall assess the risk of earthquake-related damage to properties assisted under programs administered by the Secretary and shall develop seismic safety standards for such properties. This section may not be construed to prohibit the Secretary from deferring to local building codes that meet the requirements of the seismic safety standards developed under this section.

(b) Standards

The standards shall be designed to reduce the risk of loss of life to building occupants to the maximum extent feasible and to reduce the risk of shake-related property damage to the maximum extent practicable.

(c) Consultation

In carrying out this section, the Secretary shall consult with the Administrator of the Federal Emergency Management Agency and may utilize the resources under the National Earthquake Hazards Reduction Program (established under the Earthquake Hazards Reduction Act of 1977 [42 U.S.C. 7701 et seq.]) and any other resources as may be required to carry out the activities under this section.

(Pub. L. 101–625, title IX, § 947, Nov. 28, 1990, 104 Stat. 4416; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

The Earthquake Hazards Reduction Act of 1977, referred to in subsec. (c), is Pub. L. 95–124, Oct. 7, 1977, 91 Stat. 1098, as amended, which is classified generally to this chapter (§ 7701 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

CODIFICATION

Subsec. (d) of this section, which required the Secretary to submit a report to Congress not less than biennially on the findings of the risk assessment study conducted under this section and the activities undertaken, and the expenditures made, by the Secretary to carry out this section and Executive Order No. 12699, terminated, effective May 15, 2000, pursuant to section

3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 104 of House Document No. 103–7.

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Earthquake Hazards Reduction Act of 1977 which comprises this chapter.

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (c) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§§ 7705, 7705a. Repealed. Pub. L. 105–47, § 4, Oct. 1, 1997, 111 Stat. 1164

Section 7705, Pub. L. 95–124, § 6, Oct. 7, 1977, 91 Stat. 1102; Pub. L. 96–472, title I, § 102(a), Oct. 19, 1980, 94 Stat. 2259; Pub. L. 101–614, § 6, Nov. 16, 1990, 104 Stat. 3236, related to Office of Science and Technology Policy report.

Section 7705a, Pub. L. 95–124, § 7, as added Pub. L. 101–614, § 7(2), Nov. 16, 1990, 104 Stat. 3236, related to establishment of a National Earthquake Hazards Reduction Program Advisory Committee.

§ 7705b. Seismic standards

(a) Buildings

(1) Adoption of standards

The President shall adopt, not later than December 1, 1994, standards for assessing and enhancing the seismic safety of existing buildings constructed for or leased by the Federal Government which were designed and constructed without adequate seismic design and construction standards. Such standards shall be developed by the Interagency Committee on Seismic Safety in Construction, whose chairman is the Director of the National Institute of Standards and Technology or his designee, and which shall work in consultation with appropriate private sector organizations.

(2) Report to Congress

The President shall report to the Congress, not later than December 1, 1994, on how the standards adopted under paragraph (1) could be applied with respect to buildings—

(A) for which Federal financial assistance has been obtained through grants, loans, financing guarantees, or loan or mortgage insurance programs; or

(B) the structural safety of which is regulated by a Federal agency.

(3) Regulations

The President shall ensure the issuance, before February 1, 1993, by all Federal agencies of final regulations required by section 4(b) of Executive Order numbered 12699, issued January 5, 1990.

(b) Lifelines

The Administrator of the Agency, in consultation with the Director of the National Institute of Standards and Technology, shall submit to the Congress, not later than June 30, 1992, a plan, including precise timetables and budget estimates, for developing and adopting, in consultation with appropriate private sector organizations, design and construction standards for lifelines. The plan shall include recommendations of ways Federal regulatory authority could be used to expedite the implementation of such standards.

(Pub. L. 95–124, § 8, as added Pub. L. 101–614, § 8(a), Nov. 16, 1990, 104 Stat. 3237; amended Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

Executive Order numbered 12699, referred to in subsec. (a)(3), is set out as a note under section 7704 of this title.

CHANGE OF NAME

''Administrator of the Agency'' substituted for ''Director of the Agency'' in subsec. (b) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORT ON VULNERABILITY OF BUILDINGS OWNED AND LEASED BY GOVERNMENT

Section 8(b) of Pub. L. 101–614 directed Comptroller General, not later than 18 months after Nov. 16, 1990, to report to Congress on vulnerability of buildings owned and leased by the Federal Government and on efforts of

Federal agencies to improve the seismic resistance of buildings they own or lease, and for each such agency, the Comptroller General to enumerate the number of buildings owned or leased by the agency, the seriousness of the seismic risk to such buildings, and the value of the buildings at risk, as well as tabulate the expenditures each such agency had devoted to reducing earthquake damage and estimate the total expenditure necessary to address the problem adequately.

EX. ORD. NO. 12941. SEISMIC SAFETY OF EXISTING FEDERALLY OWNED OR LEASED BUILDINGS

Ex. Ord. No. 12941, Dec. 1, 1994, 59 F.R. 62545, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the Earthquake Hazards Reduction Act of 1977 [42 U.S.C. 7701 et seq.], as amended by Public Law 101–614, which requires the President to adopt ''standards for assessing and enhancing the seismic safety of existing buildings constructed for or leased by the Federal Government which were designed and constructed without adequate seismic design and construction standards'' (42 U.S.C. 7705b(a)), it is hereby ordered as follows:

SECTION 1. *Adoption of Minimum Standards. The Standards of Seismic Safety for Existing Federally Owned or Leased Buildings* (Standards), developed, issued, and maintained by the Interagency Committee on Seismic Safety in Construction (ICSSC), are hereby adopted as the minimum level acceptable for use by Federal departments and agencies in assessing the seismic safety of their owned and leased buildings and in mitigating unacceptable seismic risks in those buildings. The Standards shall be applied, at a minimum, to those buildings identified in the Standards as requiring evaluation and, if necessary, mitigation. Evaluations and mitigations that were completed prior to the date of this order under agency programs that were based on standards deemed adequate and appropriate by the individual agency need not be reconsidered unless otherwise stipulated by the Standards.

For the purposes of this order, buildings are defined as any structure, fully or partially enclosed, located within the United States as defined in the Earthquake Hazards Reduction Act of 1977, as amended, (42 U.S.C. 7703(5)), used or intended for sheltering persons or property, except for the exclusions specified in the Standards.

SEC. 2. *Estimating Costs of Mitigation*. Each agency that owns or leases buildings for Federal use shall, within 4 years of the issuance of this order, develop an inventory of their owned and leased buildings and shall estimate the costs of mitigating unacceptable seismic risks in those buildings. The cost estimate shall be based on the exemptions and evaluation and mitigation requirements in the Standards. Guidance for the development of the inventory and cost estimates will be issued by the ICSSC no later than 1 year after the signing of this order. Cost estimates with supporting documentation shall be submitted to the Director [now Administrator] of the Federal Emergency Management Agency (FEMA) no later than 4 years after the signing of this order.

SEC. 3. *Implementation Responsibilities*. (a) The Federal Emergency Management Agency is responsible for (1) notifying all Federal departments and agencies of the existence and content of this order; (2) preparing for the Congress, in consultation with the ICSSC, no later than 6 years after the issuance of this order, a comprehensive report on how to achieve an adequate level of seismic safety in federally owned and leased buildings in an economically feasible manner; and (3) preparing for the Congress on a biennial basis, a report on the execution of this order.

(b) The National Institute of Standards and Technology is responsible for providing technical assistance to the Federal departments and agencies in the implementation of this order.

(c) Federal departments and agencies may request an exemption from this order from the Director of the Office of Management and Budget.

SEC. 4. *Updating Programs*. The ICSSC shall update the Standards at least every 5 years. It shall also update the Standards within 2 years of the publication of the first edition of FEMA's *Guidelines for Seismic Rehabilitation of Buildings and Commentary*.

SEC. 5. *Judicial Review*. Nothing in this order is intended to create any right to administrative or judicial review, or any other right, benefit, or trust responsibility, substantive or procedural, enforceable at law by any party against the United States, its agencies or instrumentalities, its officers or employees, or any person.

WILLIAM J. CLINTON.

§ 7705c. Acceptance of gifts

(a) Authority

In furtherance of the purposes of this chapter, the Administrator of the Agency may accept and use bequests, gifts, or donations of services, money, or property, notwithstanding section 1342 of title 31.

(b) Criteria

The Administrator of the Agency shall establish by regulation criteria for determining whether to accept bequests, gifts, or donations of services, money, or property. Such criteria shall take into consideration whether the acceptance of the bequest, gift, or donation would reflect unfavorably on the Administrator's ability to carry out his responsibilities in a fair and objective manner, or would compromise the integrity of, or the appearance of the integrity of, the Program or any official involved in administering the Program.

(Pub. L. 95–124, § 9, as added Pub. L. 101–614, § 9, Nov. 16, 1990, 104 Stat. 3238; amended Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

CODIFICATION

In subsec. (a), ''section 1342 of title 31'' was substituted for ''section 3679 of the Revised Statutes (31 U.S.C. 1342)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

CHANGE OF NAME

''Administrator of the Agency'' and ''Administrator's'' substituted for ''Director of the Agency'' and ''Director's'', respectively, in subsecs. (a) and (b) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and

sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7705d. Repealed. Pub. L. 106–503, title II, § 203, Nov. 13, 2000, 114 Stat. 2305

Section, Pub. L. 95–124, § 10, as added Pub. L. 101–614, § 10, Nov. 16, 1990, 104 Stat. 3238, related to non-Federal cost sharing for supplemental funds.

§ 7705e. Post-earthquake investigations program

There is established within the United States Geological Survey a post-earthquake investigations program, the purpose of which is to investigate major earthquakes, so as to learn lessons which can be applied to reduce the loss of lives and property in future earthquakes. The United States Geological Survey, in consultation with each Program agency, shall organize investigations to study the implications of the earthquake in the areas of responsibility of each Program agency. The investigations shall begin as rapidly as possible and may be conducted by grantees and contractors. The Program agencies shall ensure that the results of investigations are disseminated widely. The Director of the Survey is authorized to utilize earthquake expertise from the Agency, the National Science Foundation, the National Institute of Standards and Technology, other Federal agencies, and private contractors, on a reimbursable basis, in the conduct of such earthquake investigations. At a minimum, investigations under this section shall include—

(1) analysis by the National Science Foundation and the United States Geological Survey of the causes of the earthquake and the nature of the resulting ground motion;

(2) analysis by the National Science Foundation and the National Institute of Standards and Technology of the behavior of structures and lifelines, both those that were damaged and those that were undamaged; and

(3) analysis by each of the Program agencies of the effectiveness of the earthquake hazards mitigation programs and actions relating to its area of responsibility under the Program, and how those programs and actions could be strengthened.

(Pub. L. 95–124, § 11, as added Pub. L. 101–614, § 11(a), Nov. 16, 1990, 104 Stat. 3239.)

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORT ON FUNDING OF PROGRAM

Section 11(b) of Pub. L. 101–614 directed Director of Federal Emergency Management Agency in consultation with other agencies of National Earthquake Hazards Reduction Program, not later than one year after Nov. 16, 1990, to report to Congress on possible options for funding a program for post-earthquake investigations, which would, at a minimum, consider funding such a program either by setting aside a percentage of disaster relief funds provided by Federal Emergency Management Agency after a major earthquake or by a revolving fund, and which would also include a recommendation on how the funding for such investigations would be allocated among the other Program agencies.

§ 7706. Authorization of appropriations

(a) General authorization for program

(1) There are authorized to be appropriated to the President to carry out the provisions of sections 7704 and 7705[1] of this title (in addition to any authorizations for similar purposes included in other Acts and the authorizations set forth in subsections (b) and (c) of this section), not to exceed $1,000,000 for the fiscal year ending September 30, 1978, not to exceed $2,000,000 for the fiscal year ending September 30, 1979, and not to exceed $2,000,000 for the fiscal year ending September 30, 1980.

(2) There are authorized to be appropriated to the Director to carry out the provisions of sections 7704 and 7705[1] of this title for the fiscal year ending September 30, 1981—

(A) $1,000,000 for continuation of the Interagency Committee on Seismic Safety in Construction and the Building Seismic Safety Council programs,

(B) $1,500,000 for plans and preparedness for earthquake disasters,

(C) $500,000 for prediction response planning,

(D) $600,000 for architectural and engineering planning and practice programs,

(E) $1,000,000 for development and application of a public education program,

(F) $3,000,000 for use by the National Science Foundation in addition to the amount authorized to be appropriated under subsection (c) of this section, which amount includes $2,400,000 for earthquake policy research and $600,000 for the strong ground motion element of the siting program, and

(G) $1,000,000 for use by the Center for Building Technology, National Institute of Standards and Technology in addition to the amount authorized to be appropriated under subsection (d) of this section for earthquake activities in the Center.

(3) There are authorized to be appropriated to the Director for the fiscal year ending September 30, 1982, $2,000,000 to carry out the provisions of sections 7704 and 7705[1] of this title.

(4) There are authorized to be appropriated to the Director, to carry out the provisions of sections 7704 and 7705[1] of this title, $1,281,000 for the fiscal year ending September 30, 1983.

(5) There are authorized to be appropriated to the Director, to carry out the provisions of sections 7704 and 7705[1] of this title, for the fiscal year ending September 30, 1984, $3,705,000, and for the fiscal year ending September 30, 1985, $6,096,000.

(6) There are authorized to be appropriated to the Director, to carry out the provisions of sec-

[1] See References in Text note below.

tions 7704 and 7705[1] of this title, for the fiscal year ending September 30, 1986, $5,596,000, and for the fiscal year ending September 30, 1987, $5,848,000.

(7) There are authorized to be appropriated to the Administrator of the Agency, to carry out this chapter, $5,778,000 for the fiscal year ending September 30, 1988, $5,788,000 for the fiscal year ending September 30, 1989, $8,798,000 for the fiscal year ending September 30, 1990, $14,750,000 for the fiscal year ending September 30, 1991, $19,000,000 for the fiscal year ending September 30, 1992, $22,000,000 for the fiscal year ending September 30, 1993, $25,000,000 for the fiscal year ending September 30, 1995, $25,750,000 for the fiscal year ending September 30, 1996, $20,900,000 for the fiscal year ending September 30, 1998, $21,500,000 for the fiscal year ending September 30, 1999; $19,861,000 for the fiscal year ending September 30, 2001, of which $450,000 is for National Earthquake Hazard Reduction Program-eligible efforts of an established multi-state consortium to reduce the unacceptable threat of earthquake damages in the New Madrid seismic region through efforts to enhance preparedness, response, recovery, and mitigation; $20,705,000 for the fiscal year ending September 30, 2002; and $21,585,000 for the fiscal year ending September 30, 2003.

(8) There are authorized to be appropriated to the Federal Emergency Management Agency for carrying out this chapter—

(A) $21,000,000 for fiscal year 2005,

(B) $21,630,000 for fiscal year 2006,

(C) $22,280,000 for fiscal year 2007,

(D) $22,950,000 for fiscal year 2008, and

(E) $23,640,000 for fiscal year 2009,

of which not less than 10 percent of available program funds actually appropriated shall be made available each such fiscal year for supporting the development of performance-based, cost-effective, and affordable design guidelines and methodologies in codes for buildings, structures, and lifelines.

(b) United States Geological Survey

(1) There are authorized to be appropriated to the Secretary of the Interior for purposes for carrying out, through the Director of the United States Geological Survey, the responsibilities that may be assigned to the Director under this chapter not to exceed $27,500,000 for the fiscal year ending September 30, 1978; not to exceed $35,000,000 for the fiscal year ending September 30, 1979; not to exceed $40,000,000 for the fiscal year ending September 30, 1980; $32,484,000 for the fiscal year ending September 30, 1981; $34,425,000 for the fiscal year ending September 30, 1982; $31,843,000 for the fiscal year ending September 30, 1983; $35,524,000 for the fiscal year ending September 30, 1984; $37,300,200 for the fiscal year ending September 30, 1985[2] $35,578,000 for the fiscal year ending September 30, 1986; $37,179,000 for the fiscal year ending September 30, 1987; $38,540,000 for the fiscal year ending September 30, 1988; $41,819,000 for the fiscal year ending September 30, 1989; $55,283,000 for the fiscal year ending September 30, 1990, of which $8,000,000 shall be for earthquake investigations under section 7705e of this title; $50,000,000 for the fiscal year ending September 30, 1991; $54,500,000 for the fiscal year ending September 30, 1992; $62,500,000 for the fiscal year ending September 30, 1993; $49,200,000 for the fiscal year ending September 30, 1995; $50,676,000 for the fiscal year ending September 30, 1996; $52,565,000 for the fiscal year ending September 30, 1998, of which $3,800,000 shall be used for the Global Seismic Network operated by the Agency; and $54,052,000 for the fiscal year ending September 30, 1999, of which $3,800,000 shall be used for the Global Seismic Network operated by the Agency. There are authorized to be appropriated to the Secretary of the Interior for purposes of carrying out, through the Director of the United States Geological Survey, the responsibilities that may be assigned to the Director under this chapter $48,360,000 for fiscal year 2001, of which $3,500,000 is for the Global Seismic Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee established under section 7709 of this title; $50,415,000 for fiscal year 2002, of which $3,600,000 is for the Global Seismic Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee; and $52,558,000 for fiscal year 2003, of which $3,700,000 is for the Global Seismic Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee. Of the amounts authorized to be appropriated under this paragraph, at least—

(A) $8,000,000 of the amount authorized to be appropriated for the fiscal year ending September 30, 1998;

(B) $8,250,000 of the amount authorized for the fiscal year ending September 30, 1999;

(C) $9,000,000 of the amount authorized to be appropriated for fiscal year 2001;

(D) $9,250,000 of the amount authorized to be appropriated for fiscal year 2002; and

(E) $9,500,000 of the amount authorized to be appropriated for fiscal year 2003,

shall be used for carrying out a competitive, peer-reviewed program under which the Director, in close coordination with and as a complement to related activities of the United States Geological Survey, awards grants to, or enters into cooperative agreements with, State and local governments and persons or entities from the academic community and the private sector.

(2) There are authorized to be appropriated to the United States Geological Survey for carrying out this chapter—

(A) $77,000,000 for fiscal year 2005, of which not less than $30,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 7707 of this title;

(B) $84,410,000 for fiscal year 2006, of which not less than $36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 7707 of this title;

(C) $85,860,000 for fiscal year 2007, of which not less than $36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 7707 of this title;

(D) $87,360,000 for fiscal year 2008, of which not less than $36,000,000 shall be made avail-

[2] So in original. Probably should be followed by a semicolon.

able for completion of the Advanced National Seismic Research and Monitoring System established under section 7707 of this title; and

(E) $88,900,000 for fiscal year 2009, of which not less than $36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 7707 of this title.

(c) National Science Foundation

(1) To enable the Foundation to carry out responsibilities that may be assigned to it under this chapter, there are authorized to be appropriated to the Foundation not to exceed $27,500,000 for the fiscal year ending September 30, 1978; not to exceed $35,000,000 for the fiscal year ending September 30, 1979; not to exceed $40,000,000 for the fiscal year ending September 30, 1980; $26,600,000 for the fiscal year ending September 30, 1981; $27,150,000 for the fiscal year ending September 30, 1982; $25,000,000 for the fiscal year ending September 30, 1983; $25,800,000 for the fiscal year ending September 30, 1984; $28,665,000 for the fiscal year ending September 30, 1985[2] $27,760,000 for the fiscal year ending September 30, 1986; $29,009,000 for the fiscal year ending September 30, 1987; $28,235,000 for the fiscal year ending September 30, 1988; $31,634,000 for the fiscal year ending September 30, 1989; $38,454,000 for the fiscal year ending September 30, 1990. Of the amounts authorized for Engineering under section 101(d)(1)(B) of the National Science Foundation Authorization Act of 1988, $24,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991, and of the amounts authorized for Geosciences[3] under section 101(d)(1)(D) of the National Science Foundation Authorization Act of 1988, $13,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991. Of the amounts authorized for Research and Related Activities under section 101(e)(1) of the National Science Foundation Authorization Act of 1988, $29,000,000 is authorized for engineering research under this chapter, and $14,750,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1992. Of the amounts authorized for Research and Related Activities under section 101(f)(1) of the National Science Foundation Authorization Act of 1988, $34,500,000 is authorized for engineering research under this chapter, and $17,500,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1993. There are authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Science Foundation: (1) $16,200,000 for engineering research and $10,900,000 for geosciences research for the fiscal year ending September 30, 1995, (2) $16,686,000 for engineering research and $11,227,000 for geosciences research for the fiscal year ending September 30, 1996, (3) $18,450,000 for engineering research and $11,920,000 for geosciences research for the fiscal year ending September 30, 1998, (4) $19,000,000 for engineering research and $12,280,000 for geosciences research for the fiscal year ending September 30, 1999. There are authorized to be appropriated to the National Science Foundation $19,000,000 for engineering research and $11,900,000 for geosciences research for fiscal year 2001; $19,808,000 for engineering research and $12,406,000 for geosciences research for fiscal year 2002; and $20,650,000 for engineering research and $12,933,000 for geosciences research for fiscal year 2003.

(2) There are authorized to be appropriated to the National Science Foundation for carrying out this chapter—

(A) $38,000,000 for fiscal year 2005;
(B) $39,140,000 for fiscal year 2006;
(C) $40,310,000 for fiscal year 2007;
(D) $41,520,000 for fiscal year 2008; and
(E) $42,770,000 for fiscal year 2009.

(d) National Institute of Standards and Technology

(1) To enable the National Institute of Standards and Technology to carry out responsibilities that may be assigned to it under this chapter, there are authorized to be appropriated $425,000 for the fiscal year ending September 30, 1981; $425,000 for the fiscal year ending September 30, 1982; $475,000 for the fiscal year ending September 30, 1983; $475,000 for the fiscal year ending September 30, 1984; $498,750 for the fiscal year ending September 30, 1985[2] $499,000 for the fiscal year ending September 30, 1986; $521,000 for the fiscal year ending September 30, 1987; $525,000 for the fiscal year ending September 30, 1988; $525,000 for the fiscal year ending September 30, 1989; $2,525,000 for the fiscal year ending September 30, 1990; $1,000,000 for the fiscal year ending September 30, 1991; $3,000,000 for the fiscal year ending September 30, 1992; and $4,750,000 for the fiscal year ending September 30, 1993. There are authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Institute of Standards and Technology, $1,900,000 for the fiscal year ending September 30, 1995, $1,957,000 for the fiscal year ending September 30, 1996, $2,000,000 for the fiscal year ending September 30, 1998, $2,060,000 for the fiscal year ending September 30, 1999, $2,332,000 for fiscal year 2001, $2,431,000 for fiscal year 2002, and $2,534,300 for fiscal year 2003.

(2) There are authorized to be appropriated to the National Institute of Standards and Technology for carrying out this chapter—

(A) $10,000,000 for fiscal year 2005,
(B) $11,000,000 for fiscal year 2006,
(C) $12,100,000 for fiscal year 2007,
(D) $13,310,000 for fiscal year 2008, and
(E) $14,640,000 for fiscal year 2009,

of which $2,000,000 shall be made available each such fiscal year for supporting the development of performance-based, cost-effective, and affordable codes for buildings, structures, and lifelines.

(Pub. L. 95–124, § 12, formerly § 7, Oct. 7, 1977, 91 Stat. 1102; Pub. L. 96–472, title I, § 103, Oct. 19, 1980, 94 Stat. 2259; Pub. L. 97–80, title I, § 101, Nov. 20, 1981, 95 Stat. 1081; Pub. L. 97–464, title I, § 101, Jan. 12, 1983, 96 Stat. 2533; Pub. L. 98–241, title I, § 101, Mar. 22, 1984, 98 Stat. 95; Pub. L. 99–105, §§ 1–4, Sept. 30, 1985, 99 Stat. 475; Pub. L. 100–252, § 1, Feb. 29, 1988, 102 Stat. 18; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; renumbered § 12 and amended Pub. L.

[3] So in original. Probably should not be capitalized.

101–614, §§ 7(1), 12, Nov. 16, 1990, 104 Stat. 3236, 3240; Pub. L. 103–374, § 1, Oct. 19, 1994, 108 Stat. 3492; Pub. L. 105–47, § 1, Oct. 1, 1997, 111 Stat. 1159; Pub. L. 106–503, title II, §§ 202(a), (b), (d), (e), 203, Nov. 13, 2000, 114 Stat. 2304, 2305; Pub. L. 108–360, title I, § 104(a), Oct. 25, 2004, 118 Stat. 1674; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

Section 7705 of this title, referred to in subsec. (a)(1) to (6), was repealed by Pub. L. 105–47, § 4, Oct. 1, 1997, 111 Stat. 1164.

This chapter, referred to in subsecs. (a)(8), (b)(2), (c)(2), and (d)(2), was in the original ''this title'', and was translated as reading ''this Act'', meaning Pub. L. 95–124, known as the Earthquake Hazards Reduction Act of 1977, to reflect the probable intent of Congress, because Pub. L. 95–124, which enacted this chapter, does not contain titles.

Section 101(d)(1)(B), (D), (e)(1), and (f)(1) of the National Science Foundation Authorization Act of 1988, referred to in subsec. (c)(1), is section 101(d)(1)(B), (D), (e)(1), and (f)(1) of Pub. L. 100–570, Oct. 31, 1988, 102 Stat. 2865, 2866, which is not classified to the Code.

AMENDMENTS

2004—Subsec. (a)(8). Pub. L. 108–360, § 104(a)(1), added par. (8).

Subsec. (b). Pub. L. 108–360, § 104(a)(2)–(5), designated existing provisions as par. (1) and substituted ''paragraph'' for ''subsection'' in last sentence, redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, and added par. (2).

Subsec. (c). Pub. L. 108–360, § 104(a)(6), (7), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 108–360, § 104(a)(8), (9), designated existing provisions as par. (1) and added par. (2).

2000—Subsec. (a)(7). Pub. L. 106–503, § 202(a), struck out ''and'' after ''1998,'' and substituted ''1999; $19,861,000 for the fiscal year ending September 30, 2001, of which $450,000 is for National Earthquake Hazard Reduction Program-eligible efforts of an established multi-state consortium to reduce the unacceptable threat of earthquake damages in the New Madrid seismic region through efforts to enhance preparedness, response, recovery, and mitigation; $20,705,000 for the fiscal year ending September 30, 2002; and $21,585,000 for the fiscal year ending September 30, 2003.'' for ''1999.''

Subsec. (b). Pub. L. 106–503, § 202(b)(1), in introductory provisions, inserted after ''operated by the Agency.'' ''There are authorized to be appropriated to the Secretary of the Interior for purposes of carrying out, through the Director of the United States Geological Survey, the responsibilities that may be assigned to the Director under this chapter $48,360,000 for fiscal year 2001, of which $3,500,000 is for the Global Seismic Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee established under section 7709 of this title; $50,415,000 for fiscal year 2002, of which $3,600,000 is for the Global Seismic Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee; and $52,558,000 for fiscal year 2003, of which $3,700,000 is for the Global Seismic Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee.''

Subsec. (b)(3) to (5). Pub. L. 106–503, § 202(b)(2)–(4), added pars. (3) to (5).

Subsec. (c). Pub. L. 106–503, § 202(d), struck out ''and'' after ''1998,'' and inserted at end ''There are authorized to be appropriated to the National Science Foundation $19,000,000 for engineering research and $11,900,000 for geosciences research for fiscal year 2001; $19,808,000 for engineering research and $12,406,000 for geosciences research for fiscal year 2002; and $20,650,000 for engineering research and $12,933,000 for geosciences research for fiscal year 2003.''

Subsec. (d). Pub. L. 106–503, § 202(e), struck out ''and'' after ''1998,'' and substituted ''1999, $2,332,000 for fiscal year 2001, $2,431,000 for fiscal year 2002, and $2,534,300 for fiscal year 2003.'' for ''1999.''

Subsecs. (e), (f). Pub. L. 106–503, § 203, struck out subsecs. (e) and (f), which related, respectively, to funds for certain required adjustments and availability of funds.

1997—Subsec. (a)(7). Pub. L. 105–47, § 1(1), struck out ''and'' after ''1995,'' and inserted before period at end '', $20,900,000 for the fiscal year ending September 30, 1998, and $21,500,000 for the fiscal year ending September 30, 1999''.

Subsec. (b). Pub. L. 105–47, § 1(2), substituted ''$50,676,000 for the fiscal year ending September 30, 1996; $52,565,000 for the fiscal year ending September 30, 1998, of which $3,800,000 shall be used for the Global Seismic Network operated by the Agency; and $54,052,000 for the fiscal year ending September 30, 1999, of which $3,800,000 shall be used for the Global Seismic Network operated by the Agency. Of the amounts authorized to be appropriated under this subsection, at least—

''(1) $8,000,000 of the amount authorized to be appropriated for the fiscal year ending September 30, 1998; and

''(2) $8,250,000 of the amount authorized for the fiscal year ending September 30, 1999,

shall be used for carrying out a competitive, peer-reviewed program under which the Director, in close coordination with and as a complement to related activities of the United States Geological Survey, awards grants to, or enters into cooperative agreements with, State and local governments and persons or entities from the academic community and the private sector.'' for ''and $50,676,000 for the fiscal year ending September 30, 1996.''

Subsec. (c). Pub. L. 105–47, § 1(3), struck out ''and'' after ''September 30, 1995,'' and inserted before period at end '', (3) $18,450,000 for engineering research and $11,920,000 for geosciences research for the fiscal year ending September 30, 1998, and (4) $19,000,000 for engineering research and $12,280,000 for geosciences research for the fiscal year ending September 30, 1999''.

Subsec. (d). Pub. L. 105–47, § 1(4), struck out ''and'' after ''September 30, 1995,'' and inserted before period at end '', $2,000,000 for the fiscal year ending September 30, 1998, and $2,060,000 for the fiscal year ending September 30, 1999''.

1994—Subsec. (a)(7). Pub. L. 103–374, § 1(1), inserted ''of the Agency'' after ''to the Director'', struck out ''and'' after ''September 30, 1992,'', and inserted before period at end '', $25,000,000 for the fiscal year ending September 30, 1995, and $25,750,000 for the fiscal year ending September 30, 1996'' after ''September 30, 1993''.

Subsec. (b). Pub. L. 103–374, § 1(2), struck out ''and'' after ''September 30, 1992;'' and inserted before period at end ''; $49,200,000 for the fiscal year ending September 30, 1995; and $50,676,000 for the fiscal year ending September 30, 1996''.

Subsec. (c). Pub. L. 103–374, § 1(3), inserted at end ''There are authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Science Foundation: (1) $16,200,000 for engineering research and $10,900,000 for geosciences research for the fiscal year ending September 30, 1995, and (2) $16,686,000 for engineering research and $11,227,000 for geosciences research for the fiscal year ending September 30, 1996.''

Subsec. (d). Pub. L. 103–374, § 1(4), inserted at end ''There are authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Institute of Standards and Technology, $1,900,000 for the fiscal year ending September 30, 1995, and $1,957,000 for the fiscal year ending September 30, 1996.''

1990—Subsec. (a)(7). Pub. L. 101–614, § 12(1), substituted ''carry out this chapter'' for ''carry out the provisions of sections 7704 and 7705 of this title'', substituted ''$8,798,000'' for ''and $5,798,000'', and inserted before period at end '', $14,750,000 for the fiscal year ending September 30, 1991, $19,000,000 for the fiscal year ending September 30, 1992, and $22,000,000 for the fiscal year ending September 30, 1993''.

Subsec. (b). Pub. L. 101–614, § 12(2), substituted ''$55,283,000'' for ''and $43,283,000'' and inserted before period at end '', of which $8,000,000 shall be for earthquake investigations under section 7705e of this title; $50,000,000 for the fiscal year ending September 30, 1991; $54,500,000 for the fiscal year ending September 30, 1992; and $62,500,000 for the fiscal year ending September 30, 1993''.

Subsec. (c). Pub. L. 101–614, § 12(3), substituted ''$38,454,000'' for ''and $35,454,000'' and inserted at end ''Of the amounts authorized for Engineering under section 101(d)(1)(B) of the National Science Foundation Authorization Act of 1988, $24,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991, and of the amounts authorized for Geosciences under section 101(d)(1)(D) of the National Science Foundation Authorization Act of 1988, $13,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991. Of the amounts authorized for Research and Related Activities under section 101(e)(1) of the National Science Foundation Authorization Act of 1988, $29,000,000 is authorized for engineering research under this chapter, and $14,750,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1992. Of the amounts authorized for Research and Related Activities under section 101(f)(1) of the National Science Foundation Authorization Act of 1988, $34,500,000 is authorized for engineering research under this chapter, and $17,500,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1993.''

Subsec. (d). Pub. L. 101–614, § 12(4), substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards'' in heading and for ''Bureau'' in text, substituted ''$2,525,000'' for ''and $525,000'', and inserted before period at end ''; $1,000,000 for the fiscal year ending September 30, 1991; $3,000,000 for the fiscal year ending September 30, 1992; and $4,750,000 for the fiscal year ending September 30, 1993''.

Subsec. (f). Pub. L. 101–614, § 12(5), added subsec. (f).

1988—Subsec. (a)(2)(G). Pub. L. 100–418 substituted ''Institute'' for ''Bureau''.

Subsec. (a)(7). Pub. L. 100–252, § 1(a), added par. (7).

Subsec. (b). Pub. L. 100–252, § 1(b), struck out ''and'' after ''1986;'' and inserted ''; $38,540,000 for the fiscal year ending September 30, 1988; $41,819,000 for the fiscal year ending September 30, 1989; and $43,283,000 for the fiscal year ending September 30, 1990''.

Subsec. (c). Pub. L. 100–252, § 1(c), struck out ''and'' after ''1986;'' and inserted ''; $28,235,000 for the fiscal year ending September 30, 1988; $31,634,000 for the fiscal year ending September 30, 1989; and $35,454,000 for the fiscal year ending September 30, 1990''.

Subsec. (d). Pub. L. 100–252, § 1(d), struck out ''and'' after ''1986;'' and inserted ''; $525,000 for the fiscal year ending September 30, 1988; $525,000 for the fiscal year ending September 30, 1989; and $525,000 for the fiscal year ending September 30, 1990''.

1985—Subsec. (a)(6). Pub. L. 99–105, § 1, added par. (6).

Subsec. (b). Pub. L. 99–105, § 2, substituted a semicolon for '', and'' after ''1984'' and inserted ''$35,578,000 for the fiscal year ending September 30, 1986; and $37,179,000 for the fiscal year ending September 30, 1987''.

Subsec. (c). Pub. L. 99–105, § 3, struck out ''and'' after ''1984;'' and inserted ''$27,760,000 for the fiscal year ending September 30, 1986; and $20,009,000 for the fiscal year ending September 30, 1987''.

Subsec. (d). Pub. L. 99–105, § 4, struck out ''and'' after ''1984;'' and inserted ''$499,000 for the fiscal year ending September 30, 1986; and $521,000 for the fiscal year ending September 30, 1987''.

1984—Subsec. (a). Pub. L. 98–241, § 101(a), added par. (5).

Subsec. (b). Pub. L. 98–241, § 101(b), struck out ''and'' after ''1982;'' and inserted ''; $35,524,000 for the fiscal year ending September 30, 1984, and $37,300,200 for the fiscal year ending September 30, 1985''.

Subsec. (c). Pub. L. 98–241, § 101(c), struck out ''and'' after ''1982;'' and inserted ''; $25,800,000 for the fiscal year ending September 30, 1984; and $28,665,000 for the fiscal year ending September 30, 1985''.

Subsec. (d). Pub. L. 98–241, § 101(d), struck out ''and'' after ''1982;'' and inserted ''; $475,000 for the fiscal year ending September 30, 1984; and $498,750 for the fiscal year ending September 30, 1985''.

Subsec. (e). Pub. L. 98–241, § 101(e), substituted ''1982,'' for ''1982 and'' and inserted ''September 30, 1984, and September 30, 1985,''.

1983—Subsec. (a)(4). Pub. L. 97–464, § 101(a), added par. (4).

Subsecs. (b) to (d). Pub. L. 97–464, § 101(b)–(d), inserted authorization for fiscal year ending Sept. 30, 1983.

Subsec. (e). Pub. L. 97–464, § 101(e), substituted ''each of the fiscal years ending September 30, 1982 and September 30, 1983'' for ''the fiscal year ending September 30, 1982''.

1981—Subsec. (a)(3). Pub. L. 97–80, § 101(a), added par. (3).

Subsecs. (b) to (d). Pub. L. 97–80, § 101(b)–(d), inserted authorization for fiscal year ending Sept. 30, 1982.

Subsec. (e). Pub. L. 97–80, § 101(e), added subsec. (e).

1980—Subsec. (a). Pub. L. 96–472, § 103(a), designated existing provisions as par. (1) and added par. (2).

Subsecs. (b), (c). Pub. L. 96–472, § 103(b), (c), inserted authorization for fiscal year ending Sept. 30, 1981.

Subsec. (d). Pub. L. 96–472, § 103(d), added subsec. (d).

CHANGE OF NAME

''Administrator of the Agency'' substituted for ''Director of the Agency'' in subsec. (a)(7) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7707. Advanced National Seismic Research and Monitoring System

(a) Establishment

The Director of the United States Geological Survey shall establish and operate an Advanced National Seismic Research and Monitoring System. The purpose of such system shall be to organize, modernize, standardize, and stabilize the national, regional, and urban seismic monitoring systems in the United States, including sensors, recorders, and data analysis centers, into a coordinated system that will measure and record the full range of frequencies and amplitudes exhibited by seismic waves, in order to enhance earthquake research and warning capabilities.

(b) Management plan

Not later than 90 days after November 13, 2000, the Director of the United States Geological Survey shall transmit to the Congress a 5-year management plan for establishing and operating the Advanced National Seismic Research and Monitoring System. The plan shall include annual cost estimates for both modernization and operation, milestones, standards, and performance goals, as well as plans for securing the participation of all existing networks in the Advanced National Seismic Research and Monitoring System and for establishing new, or enhancing existing, partnerships to leverage resources.

(Pub. L. 95–124, § 13, as added Pub. L. 106–503, title II, § 204, Nov. 13, 2000, 114 Stat. 2305; amended Pub. L. 108–360, title I, § 104(b), Oct. 25, 2004, 118 Stat. 1675.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–360 struck out subsec. (c) which related to authorization of appropriations.

§ 7708. Network for Earthquake Engineering Simulation

(a) Establishment

The Director of the National Science Foundation shall establish the George E. Brown, Jr. Network for Earthquake Engineering Simulation that will upgrade, link, and integrate a system of geographically distributed experimental facilities for earthquake engineering testing of full-sized structures and their components and partial-scale physical models. The system shall be integrated through networking software so that integrated models and databases can be used to create model-based simulation, and the components of the system shall be interconnected with a computer network and allow for remote access, information sharing, and collaborative research.

(b) Authorization of appropriations

In addition to amounts appropriated under section 7706(c) of this title, there are authorized to be appropriated to the National Science Foundation for the George E. Brown, Jr. Network for Earthquake Engineering Simulation—

(1) $28,200,000 for fiscal year 2001;

(2) $24,400,000 for fiscal year 2002;

(3) $4,500,000 for fiscal year 2003;

(4) $17,000,000 for fiscal year 2004;

(5) $20,000,000 for fiscal year 2005, all of which shall be available for operations and maintenance;

(6) $20,400,000 for fiscal year 2006, all of which shall be available for operations and maintenance;

(7) $20,870,000 for fiscal year 2007, all of which shall be available for operations and maintenance;

(8) $21,390,000 for fiscal year 2008, all of which shall be available for operations and maintenance; and

(9) $21,930,000 for fiscal year 2009, all of which shall be available for operations and maintenance.

(Pub. L. 95–124, § 14, as added Pub. L. 106–503, title II, § 205, Nov. 13, 2000, 114 Stat. 2306; amended Pub. L. 108–360, title I, § 104(c), Oct. 25, 2004, 118 Stat. 1675.)

AMENDMENTS

2004—Subsec. (b)(5) to (9). Pub. L. 108–360 added pars. (5) to (9).

§ 7709. Scientific Earthquake Studies Advisory Committee

(a) Establishment

The Director of the United States Geological Survey shall establish a Scientific Earthquake Studies Advisory Committee.

(b) Organization

The Director shall establish procedures for selection of individuals not employed by the Federal Government who are qualified in the seismic sciences and other appropriate fields and may, pursuant to such procedures, select up to 10 individuals, one of whom shall be designated Chairman, to serve on the Advisory Committee. Selection of individuals for the Advisory Committee shall be based solely on established records of distinguished service, and the Director shall ensure that a reasonable cross-section of views and expertise is represented. In selecting individuals to serve on the Advisory Committee, the Director shall seek and give due consideration to recommendations from the National Academy of Sciences, professional societies, and other appropriate organizations.

(c) Meetings

The Advisory Committee shall meet at such times and places as may be designated by the Chairman in consultation with the Director.

(d) Duties

The Advisory Committee shall advise the Director on matters relating to the United States Geological Survey's participation in the National Earthquake Hazards Reduction Program, including the United States Geological Survey's roles, goals, and objectives within that Program, its capabilities and research needs, guidance on achieving major objectives, and establishing and measuring performance goals. The Advisory Committee shall issue an annual report to the Director for submission to Congress on or before September 30 of each year. The report shall describe the Advisory Committee's activities and address policy issues or matters that affect the United States Geological Survey's participation in the National Earthquake Hazards Reduction Program.

(Pub. L. 106–503, title II, § 210, Nov. 13, 2000, 114 Stat. 2308.)

CODIFICATION

Section was enacted as part of the Earthquake Hazards Reduction Authorization Act of 2000, and not as part of the Earthquake Hazards Reduction Act of 1977 which comprises this chapter.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub.

L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 87—WATER RESEARCH AND DEVELOPMENT

§§ 7801, 7802. Repealed. Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101

Section 7801, Pub. L. 95–467, § 2, Oct. 17, 1978, 92 Stat. 1305, set out Congressional findings and declarations for a water research and development program.

Section 7802, Pub. L. 95–467, § 3, Oct. 17, 1978, 92 Stat. 1305, set out Congressional statement of purpose.

For similar provisions, see section 10301 et seq. of this title.

SAVINGS PROVISION

Section 110(b) of Pub. L. 98–242 provided that: ''Rules and regulations issued prior to the date of enactment of this Act [Mar. 22, 1984] under the authority of Public Law 95–467 [this chapter] shall remain in full force and effect under this Act [repealing this chapter and enacting chapter 109 (§ 10301 et seq.) of this title] until superseded by new rules and regulations promulgated under this Act.''

SHORT TITLE

Section 1 of Pub. L. 95–467, which provided that Pub. L. 95–467 was to be cited as the ''Water Research and Development Act of 1978'', was repealed by section 110(a) of Pub. L. 98–242.

SUBCHAPTER I—WATER RESOURCES RESEARCH AND DEVELOPMENT

§§ 7811 to 7819. Repealed. Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101

Section 7811, Pub. L. 95–467, title I, § 101, Oct. 17, 1978, 92 Stat. 1306, related to establishment of research and technology institutes.

Section 7812, Pub. L. 95–467, title I, § 102, Oct. 17, 1978, 92 Stat. 1307, authorized use of appropriated funds for printing and publishing of program results, and planning, coordinating, and conducting of cooperative research.

Section 7813, Pub. L. 95–467, title I, § 103, Oct. 17, 1978, 92 Stat. 1308, set out responsibilities of Secretary of the Interior in prescribing procedures, rules, and regulations, and in developing a 5-year water resource research program.

Section 7814, Pub. L. 95–467, title I, § 104, Oct. 17, 1978, 92 Stat. 1308, related to non-impairment of legal relationship between State governments and educational institutions involved in water research and to prohibition with regard to any Federal control of educational institutions.

Section 7815, Pub. L. 95–467, title I, § 105, Oct. 17, 1978, 92 Stat. 1308, provided for making of grants and contracts.

Section 7816, Pub. L. 95–467, title I, § 106, Oct. 17, 1978, 92 Stat. 1309, set out range of program issues and provided for due consideration to be given to priority problems.

Section 7817, Pub. L. 95–467, title I, § 107, Oct. 17, 1978, 92 Stat. 1309, defined ''State''.

Section 7818, Pub. L. 95–467, title I, § 108, Oct. 17, 1978, 92 Stat. 1309, authorized advance payment of initial expenses.

Section 7819, Pub. L. 95–467, title I, § 109, Oct. 17, 1978, 92 Stat. 1309, provided for study and design of water resources programs and activities and for reports to Congress.

For similar provisions, see section 10301 et seq. of this title.

SUBCHAPTER II—WATER RESEARCH AND DEVELOPMENT FOR SALINE AND OTHER IMPAIRED WATERS

§§ 7831 to 7835. Repealed. Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101

Section 7831, Pub. L. 95–467, title II, § 200, Oct. 17, 1978, 92 Stat. 1310, set out Congressional findings and declaration of policy in establishing a program for water research and development for saline and other impaired waters.

Section 7832, Pub. L. 95–467, title II, § 201, Oct. 17, 1978, 92 Stat. 1310, set out functions of the Secretary.

Section 7833, Pub. L. 95–467, title II, § 202, Oct. 17, 1978, 92 Stat. 1310, set out additional functions of the Secretary with regard to demonstrations and prototype plants, utilization of Federal expertise, and financial assistance from State or public agencies.

Section 7834, Pub. L. 95–467, title II, § 203, Oct. 17, 1978, 92 Stat. 1311, authorized the Secretary to issue rules and regulations to carry out this subchapter.

Section 7835, Pub. L. 95–467, title II, § 204, Oct. 17, 1978, 92 Stat. 1311, defined ''saline and other impaired water'', ''United States'', ''pilot plant'', ''demonstration'', and ''prototype''.

For similar provisions, see section 10301 et seq. of this title.

§ 7836. Transferred

CODIFICATION

Section, Pub. L. 95–84, § 2, Aug. 2, 1977, 91 Stat. 400; Pub. L. 95–467, title II, § 205(a), (b), Oct. 17, 1978, 92 Stat. 1311; Pub. L. 96–457, § 3, Oct. 15, 1980, 94 Stat. 2032; Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101, which directed Secretary of the Interior to construct facilities demonstrating the engineering and economic viability of various desalting processes, was transferred, and is set out as a Desalting Plants note under section 10301 of this title.

ADDITIONAL AUTHORIZATION OF APPROPRIATIONS

Section 205(c) of Pub. L. 95–467, which authorized an appropriation of $10,000,000 to remain available until expended for the fiscal year ending Sept. 30, 1980, and thereafter in addition to sums previously authorized to be appropriated to carry out the purpose of this section, was repealed by Pub. L. 96–457, § 4, Oct. 15, 1980, 94 Stat. 2034, and Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101.

SUBCHAPTER III—TECHNOLOGY TRANSFER AND INFORMATION DISSEMINATION

§§ 7851 to 7853. Repealed. Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101

Section 7851, Pub. L. 95–467, title III, § 300, Oct. 17, 1978, 92 Stat. 1312, provided for creation and operation of a research assessment and technology transfer program.

Section 7852, Pub. L. 95–467, title III, § 301, Oct. 17, 1978, 92 Stat. 1312, authorized the Secretary to maintain a national center for acquisition, processing, and dissemination of information dealing with all areas of water research.

Section 7853, Pub. L. 95–467, title III, § 302, Oct. 17, 1978, 92 Stat. 1312, provided for establishment of a center for cataloging current scientific research in all fields of water resources.

For similar provisions, see section 10301 et seq. of this title.

SUBCHAPTER IV—GENERAL PROVISIONS

§§ 7871 to 7883. Repealed. Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101

Section 7871, Pub. L. 95–467, title IV, § 400, Oct. 17, 1978, 92 Stat. 1313, enumerated powers of Secretary of the Interior in carrying out this chapter.

Section 7872, Pub. L. 95–467, title IV, § 401, Oct. 17, 1978, 92 Stat. 1313; Pub. L. 96–457, §§ 1, 2(a), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for programs under sections 7811(a) and (c), 7815(a) and (b), and 7819 of this title.

Section 7873, Pub. L. 95–467, title IV, § 402, Oct. 17, 1978, 92 Stat. 1314; Pub. L. 96–457, § 2(b)(1), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for research, development, and demonstration plants.

Section 7874, Pub. L. 95–467, title IV, § 403, Oct. 17, 1978, 92 Stat. 1314; Pub. L. 96–457, § 2(b)(2), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for programs conducted under this chapter for which there were no specific appropriations.

Section 7875, Pub. L. 95–467, title IV, § 404, Oct. 17, 1978, 92 Stat. 1314, related to grant applications, approval of applications by the Secretary, and the basis of approvals.

Section 7876, Pub. L. 95–467, title IV, § 405, Oct. 17, 1978, 92 Stat. 1315, related to payments to institutes and accounting for such payments.

Section 7877, Pub. L. 95–467, title IV, § 406, Oct. 17, 1978, 92 Stat. 1315, related to cooperation in research programs between Federal agencies, State and local governments, private institutions, and individuals.

Section 7878, Pub. L. 95–467, title IV, § 407, Oct. 17, 1978, 92 Stat. 1316, authorized conveyance of property acquired by the Secretary to a cooperating institute, educational institution, or cooperating nonprofit organization, and empowered the Secretary to dispose of water and byproducts resulting from operations under this chapter.

Section 7879, Pub. L. 95–467, title IV, § 408, Oct. 17, 1978, 92 Stat. 1316, set out policy under this chapter with regard to patents.

Section 7880, Pub. L. 95–467, title IV, § 409, Oct. 17, 1978, 92 Stat. 1316, provided for annual reports to the Secretary by various water research institutes.

Section 7881, Pub. L. 95–467, title IV, § 410, Oct. 17, 1978, 92 Stat. 1316, provided that the chapter was not intended to repeal, supersede, or diminish existing authorities of agencies concerning water resources, or to be construed to alter existing law with respect to ownership and control of water.

Section 7882, Pub. L. 95–467, title IV, § 411, Oct. 17, 1978, 92 Stat. 1317, Pub. L. 96–457, § 2(b)(3), Oct. 15, 1980, 94 Stat. 2032, provided for transmittal of rules, regulations, etc., to the Speaker of the House and President of the Senate.

Section 7883, Pub. L. 95–467, title IV, § 412, Oct. 17, 1978, 92 Stat. 1317, provided that authority to enter into contracts or cooperative agreements and to make payments under this chapter was effective only to the extent or in such amounts as were provided in advance in appropriations acts.

For prior provisions, see section 10301 of this title.

LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982 TO 1984

Pub. L. 97–35, title XVIII, § 1807(b), Aug. 13, 1979, 95 Stat. 765, provided that no funds were authorized to be appropriated to the Secretary of the Interior for the purposes of water resources research and development, saline water research, development, and demonstration, and associated activities in excess of $23,650,000 per fiscal year for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984.

CHAPTER 88—URANIUM MILL TAILINGS RADIATION CONTROL

Sec.
7901. Congressional findings and purposes.

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7916. Acquisition of land by Secretary; transfer of public lands by Secretary of the Interior to Secretary; consultations with Governor; consent of Governor; transfer from Federal agency to Secretary.
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7925. Active operations; liability for remedial action.

SUBCHAPTER II—STUDY AND DESIGNATION OF TWO MILL TAILING SITES IN NEW MEXICO

7941. Study of authority for regulation and control of residual radioactive materials at New Mexico sites for protection of public health, safety, and the environment; report to Congress and Secretary; basis for determination of inadequacy of authority; interim regulation pending completion of study.
7942. Designation by Secretary as processing sites for subchapter I purposes.

§ 7901. Congressional findings and purposes

(a) The Congress finds that uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and that the protection of the public health, safety, and welfare and the regulation of interstate commerce require that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings.

(b) The purposes of this chapter are to provide—

(1) in cooperation with the interested States, Indian tribes, and the persons who own or control inactive mill tailings sites, a program of assessment and remedial action at such sites, including, where appropriate, the reprocessing of tailings to extract residual uranium and other mineral values where practicable, in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public, and

(2) a program to regulate mill tailings during uranium or thorium ore processing at active mill operations and after termination of such operations in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public.

(Pub. L. 95–604, § 2, Nov. 8, 1978, 92 Stat. 3021.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, as amended, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–616, §1, Nov. 5, 1988, 102 Stat. 3192, provided: ''That this Act [amending sections 7916 and 7922 of this title] may be cited as the 'Uranium Mill Tailings Remedial Action Amendments Act of 1988'.''

SHORT TITLE

Section 1 of Pub. L. 95–604 provided that: ''This Act [enacting this chapter and sections 2022, 2113, and 2114 of this title, amending sections 2014, 2021, 2111, and 2201 of this title, and enacting provisions set out as notes under sections 2014, 2021, and 2113 of this title] may be cited as the 'Uranium Mill Tailings Radiation Control Act of 1978'.''

SUBCHAPTER I—REMEDIAL ACTION PROGRAM

§ 7911. Definitions

For purposes of this subchapter—

(1) The term ''Secretary'' means the Secretary of Energy.

(2) The term ''Commission'' means the Nuclear Regulatory Commission.

(3) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(4) The term ''Indian tribe'' means any tribe, band, clan, group, pueblo, or community of Indians recognized as eligible for services provided by the Secretary of the Interior to Indians.

(5) The term ''person'' means any individual, association, partnership, corporation, firm, joint venture, trust, government entity, and any other entity, except that such term does not include any Indian or Indian tribe.

(6) The term ''processing site'' means—

(A) any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(i) such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency, or

(ii) a license (issued by the Commission or its predecessor agency under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or by a State as permitted under section 274 of such Act [42 U.S.C. 2021]) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(B) any other real property or improvement thereon which—

(i) is in the vicinity of such site, and

(ii) is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

Any ownership or control of an area by a Federal agency which is acquired pursuant to a cooperative agreement under this subchapter shall not be treated as ownership or control by such agency for purposes of subparagraph (A)(i). A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of subparagraph (A)(ii) if such production is in accordance with section 7918(b) of this title.

(7) The term ''residual radioactive material'' means—

(A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and

(B) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low-grade materials.

(8) The term ''tailings'' means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

(9) The term ''Federal agency'' includes any executive agency as defined in section 105 of title 5.

(10) The term ''United States'' means the 48 contiguous States and Alaska, Hawaii, Puerto Rico, the District of Columbia, and the territories and possessions of the United States.

(Pub. L. 95–604, title I, §101, Nov. 8, 1978, 92 Stat. 3022.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in par. (6)(A)(ii), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

§ 7912. Processing site designations

(a) Specific and other site locations; remedial action; consultations; boundaries; Grand Junction, Colorado, site restriction

(1) As soon as practicable, but no later than one year after November 8, 1978, the Secretary shall designate processing sites at or near the following locations:

Salt Lake City, Utah
Green River, Utah
Mexican Hat, Utah
Durango, Colorado
Grand Junction, Colorado
Rifle, Colorado (two sites)
Gunnison, Colorado
Naturita, Colorado
Maybell, Colorado
Slick Rock, Colorado (two sites)
Shiprock, New Mexico
Ambrosia Lake, New Mexico
Riverton, Wyoming
Converse County, Wyoming
Lakeview, Oregon
Falls City, Texas
Tuba City, Arizona
Monument Valley, Arizona
Lowman, Idaho
Cannonsburg, Pennsylvania

Subject to the provisions of this subchapter, the Secretary shall complete remedial action at the above listed sites before his authority termi-

nates under this subchapter. The Secretary shall within one year of November 8, 1978, also designate all other processing sites within the United States which he determines requires remedial action to carry out the purposes of this subchapter. In making such designation, the Secretary shall consult with the Administrator, the Commission, and the affected States, and in the case of Indian lands, the appropriate Indian tribe and the Secretary of the Interior.

(2) As part of his designation under this subsection, the Secretary, in consultation with the Commission, shall determine the boundaries of each such site.

(3) No site or structure with respect to which remedial action is authorized under Public Law 92–314 in Grand Junction, Colorado, may be designated by the Secretary as a processing site under this section.

(b) Health hazard assessment; priorities for remedial action

Within one year from November 8, 1978, the Secretary shall assess the potential health hazard to the public from the residual radioactive materials at designated processing sites. Based upon such assessment, the Secretary shall, within such one year period, establish priorities for carrying out remedial action at each such site. In establishing such priorities, the Secretary shall rely primarily on the advice of the Administrator.

(c) Notification

Within thirty days after making designations of processing sites and establishing the priorities for such sites under this section, the Secretary shall notify the Governor of each affected State, and, where appropriate, the Indian tribes and the Secretary of the Interior.

(d) Finality of determinations

The designations made, and priorities established, by the Secretary under this section shall be final and not be subject to judicial review.

(e) Certain real property or improved areas

(1) The designation of processing sites within one year after November 8, 1978, under this section shall include, to the maximum extent practicable, the areas referred to in section 7911(6)(B) of this title.

(2) Notwithstanding the one year limitation contained in this section, the Secretary may, after such one year period, include any area described in section 7911(6)(B) of this title as part of a processing site designated under this section if he determines such inclusion to be appropriate to carry out the purposes of this subchapter.

(3) The Secretary shall designate as a processing site within the meaning of section 7911(6) of this title any real property, or improvements thereon, in Edgemont, South Dakota, that—

(A) is in the vicinity of the Tennessee Valley Authority uranium mill site at Edgemont (but not including such site), and

(B) is determined by the Secretary to be contaminated with residual radioactive materials.

In making the designation under this paragraph, the Secretary shall consult with the Administrator, the Commission and the State of South Dakota. The provisions of this subchapter shall apply to the site so designated in the same manner and to the same extent as to the sites designated under subsection (a) of this section except that, in applying such provisions to such site, any reference in this subchapter to November 8, 1978, shall be treated as a reference to January 4, 1983, and in determining the State share under section 7917 of this title of the costs of remedial action, there shall be credited to the State, expenditures made by the State prior to January 4, 1983, which the Secretary determines would have been made by the State or the United States in carrying out the requirements of this subchapter.

(f) Designation of Moab Site as processing site

(1) Designation

Notwithstanding any other provision of law, the Moab uranium milling site (referred to in this subsection as the ''Moab site'') located approximately three miles northwest of Moab, Utah, and identified in the Final Environmental Impact Statement issued by the Nuclear Regulatory Commission in March 1996 in conjunction with Source Materials License No. SUA–917, is designated as a processing site.

(2) Applicability

This subchapter applies to the Moab site in the same manner and to the same extent as to other processing sites designated under subsection (a) of this section, except that—

(A) sections 7913, 7914(b), 7917(a), 7922(a), and 7925(a) of this title shall not apply; and

(B) a reference in this subchapter to November 8, 1978, shall be treated as a reference to October 30, 2000.

(3) Remediation

Subject to the availability of appropriations for this purpose, the Secretary shall conduct remediation at the Moab site in a safe and environmentally sound manner that takes into consideration the remedial action plan prepared pursuant to section 3405(i) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 7420 note; Public Law 105–261), including—

(A) ground water restoration; and

(B) the removal, to a site in the State of Utah, for permanent disposition and any necessary stabilization, of residual radioactive material and other contaminated material from the Moab site and the floodplain of the Colorado River.

(Pub. L. 95–604, title I, § 102, Nov. 8, 1978, 92 Stat. 3023; Pub. L. 97–415, § 21, Jan. 4, 1983, 96 Stat. 2079; Pub. L. 106–398, § 1 [div. C, title XXXIV, § 3403(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–489.)

REFERENCES IN TEXT

Remedial action authorized under Public Law 92–314, referred to in subsec. (a)(3), means the remedial action authorized by title II of Pub. L. 92–314, June 16, 1972, 86 Stat. 222, which is not classified to the Code.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106–398 added subsec. (f).

1983—Subsec. (e)(3). Pub. L. 97–415 added par. (3).

§ 7913. State cooperative agreements

(a) Authority of Secretary; prompt commencement of preparations

After notifying a State of the designation referred to in section 7912 of this title, the Secretary subject to section 7923 of this title, is authorized to enter into cooperative agreements with such State to perform remedial actions at each designated processing site in such State (other than a site located on Indian lands referred to in section 7915 of this title). The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 7912 of this title. The Secretary shall commence preparations for cooperative agreements with respect to each designated processing site as promptly as practicable following the designation of each site.

(b) Terms and conditions; limitation of Federal assistance

Each cooperative agreement under this section shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this chapter, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to complete the remedial action selected pursuant to section 7918 of this title.

(c) Written consent of record interest holder; waiver

(1) Except where the State is required to acquire the processing site as provided in subsection (a) of section 7914 of this title, each cooperative agreement with a State under this section shall provide that the State shall obtain, in a form prescribed by the Secretary, written consent from any person holding any record interest in the designated processing site for the Secretary or any person designated by him to perform remedial action at such site.

(2) Such written consent shall include a waiver by each such person on behalf of himself, his heirs, successors, and assigns—

(A) releasing the United States of any liability or claim thereof by such person, his heirs, successors, and assigns concerning such remedial action, and

(B) holding the United States harmless against any claim by such person on behalf of himself, his heirs, successors, or assigns arising out of the performance of any such remedial action.

(d) Inspection entries; termination of right of entry

Each cooperative agreement under this section shall require the State to assure that the Secretary, the Commission, and the Administrator and their authorized representatives have a permanent right of entry at any time to inspect the processing site and the site provided pursuant to section 7914(b)(1) of this title in furtherance of the provisions of this subchapter and to carry out such agreement and enforce this chapter and any rules prescribed under this chapter. Such right of entry under this section or section 7916 of this title into an area described in section 7911(6)(B) of this title shall terminate on completion of the remedial action, as determined by the Secretary.

(e) Effective date

Each agreement under this section shall take effect only upon the concurrence of the Commission with the terms and conditions thereof.

(f) Reimbursement

The Secretary may, in any cooperative agreement entered into under this section or section 7915 of this title, provide for reimbursement of the actual costs, as determined by the Secretary, of any remedial action performed with respect to so much of a designated processing site as is described in section 7911(6)(B) of this title. Such reimbursement shall be made only to a property owner of record at the time such remedial action was undertaken and only with respect to costs incurred by such property owner. No such reimbursement may be made unless—

(1) such remedial action was completed prior to November 8, 1978, and unless the application for such reimbursement was filed by such owner within one year after an agreement under this section or section 7915 of this title is approved by the Secretary and the Commission, and

(2) the Secretary is satisfied that such action adequately achieves the purposes of this chapter with respect to the site concerned and is consistent with the standards established by the Administrator pursuant to section 2022(a) of this title.

(Pub. L. 95–604, title I, § 103, Nov. 8, 1978, 92 Stat. 3024.)

§ 7914. Acquisition and disposition of lands and materials

(a) State acquisition; windfall profits prevention

Each cooperative agreement under section 7913 of this title shall require the State, where determined appropriate by the Secretary with the concurrence of the Commission, to acquire any designated processing site, including where appropriate any interest therein. In determining whether to require the State to acquire a designated processing site or interest therein, consideration shall be given to the prevention of windfall profits.

(b) Disposition and stabilization site for residual radioactive materials; Federal site available

(1) If the Secretary with the concurrence of the Commission determines that removal of residual radioactive material from a processing site is appropriate, the cooperative agreement shall provide that the State shall acquire land (including, where appropriate, any interest therein) to be used as a site for the permanent disposition and stabilization of such residual radioactive materials in a safe and environmentally sound manner.

(2) Acquisition by the State shall not be required under this subsection if a site located on land controlled by the Secretary or made available by the Secretary of the Interior pursuant to section 7916(2) of this title is designated by the Secretary, with the concurrence of the Commission, for such disposition and stabilization.

(c) Boundary limitations

No State shall be required under subsection (a) or (b) of this section to acquire any real property or improvement outside the boundaries of—

(1) that portion of the processing site which is described in section 7911(6)(A) of this title, and

(2) the site used for disposition of the residual radioactive materials.

(d) Purchasers of sites; notification; rules and regulations

In the case of each processing site designated under this subchapter other than a site designated on Indian land, the State shall take such action as may be necessary, and pursuant to regulations of the Secretary under this subsection, to assure that any person who purchases such a processing site after the removal of radioactive materials from such site shall be notified in an appropriate manner prior to such purchase, of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place, and the condition of such site after such action. If the State is the owner of such site, the State shall so notify any prospective purchaser before entering into a contract, option, or other arrangement to sell or otherwise dispose of such site. The Secretary shall issue appropriate rules and regulations to require notice in the local land records of the residual radioactive materials which were located at any processing site and notice of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place. For purposes of this subsection, the term ''site'' does not include any property described in section 7911(6)(B) of this title which is in a State which the Secretary has certified has a program which would achieve the purposes of this subsection.

(e) State disposition; terms and conditions; fair market value; offer of sale to prior owner

(1) The terms and conditions of any cooperative agreement with a State under section 7913 of this title shall provide that in the case of any lands or interests therein acquired by the State pursuant to subsection (a) of this section, the State, with the concurrence of the Secretary and the Commission, may—

(A) sell such lands and interests,

(B) permanently retain such land and interests in lands (or donate such lands and interests therein to another governmental entity within such State) for permanent use by such State or entity solely for park, recreational, or other public purposes, or

(C) transfer such lands and interests to the United States as provided in subsection (f) of this section.

No lands may be sold under subparagraph (A) without the consent of the Secretary and the Commission. No site may be sold under subparagraph (A) or retained under subparagraph (B) if such site is used for the disposition of residual radioactive materials.

(2) Before offering for sale any lands and interests therein which comprise a processing site, the State shall offer to sell such lands and interests at their fair market value to the person from whom the State acquired them.

(f) Transfer of title to Secretary; payment from funds for administrative and legal costs; custody of property; compliance with health and environmental standards for uranium mill tailings; transfer of title restriction

(1) Each agreement under section 7913 of this title shall provide that title to—

(A) the residual radioactive materials subject to the agreement, and

(B) any lands and interests therein which have been acquired by the State, under subsection (a) or (b) of this section, for the disposition of such materials,

shall be transferred by the State to the Secretary when the Secretary (with the concurrence of the Commission) determines that remedial action is completed in accordance with the requirements imposed pursuant to this subchapter. No payment shall be made in connection with the transfer of such property from funds appropriated for purposes of this chapter other than payments for any administrative and legal costs incurred in carrying out such transfer.

(2) Custody of any property transferred to the United States under this subsection shall be assumed by the Secretary or such Federal agency as the President may designate. Notwithstanding any other provision of law, upon completion of the remedial action program authorized by this subchapter, such property and minerals shall be maintained pursuant to a license issued by the Commission in such manner as will protect the public health, safety, and the environment. The Commission may, pursuant to such license or by rule or order, require the Secretary or other Federal agency having custody of such property and minerals to undertake such monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions as the Commission deems necessary to comply with the standards of section 2022(a) of this title. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring and emergency measures under this subsection, but shall take no other action pursuant to such license, rule or order with respect to such property and minerals unless expressly authorized by Congress after November 8, 1978. The United States shall not transfer title to property or interest therein acquired under this subsection to any person or State, except as provided in subsection (h) of this section.

(g) Reimbursement; fair market value; deposits in Treasury

Each agreement under section 7913 of this title which permits any sale described in subsection (e)(1)(A) of this section shall provide for the prompt reimbursement to the Secretary from the proceeds of such sale. Such reimbursement shall be in an amount equal to the lesser of—

(1) that portion of the fair market value of the lands or interests therein which bears the same ratio to such fair market value as the Federal share of the costs of acquisition by the State to such lands or interest therein bears to the total cost of such acquisition, or

(2) the total amount paid by the Secretary with respect to such acquisition.

The fair market value of such lands or interest shall be determined by the Secretary as of the date of the sale by the State. Any amounts received by the Secretary under this subchapter shall be deposited in the Treasury of the United States as miscellaneous receipts.

(h) Subsurface mineral rights; sale, lease, or other disposition; restoration costs for disturbance of residual radioactive materials

No provision of any agreement under section 7913 of this title shall prohibit the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, from disposing of any subsurface mineral rights by sale or lease (in accordance with laws of the United States applicable to the sale, lease, or other disposal of such rights) which are associated with land on which residual radioactive materials are disposed and which are transferred to the United States as required under this section if the Secretary of the Interior takes such action as the Commission deems necessary pursuant to a license issued by the Commission to assure that the residual radioactive materials will not be disturbed by reason of any activity carried on following such disposition. If any such materials are disturbed by any such activity, the Secretary of the Interior shall insure, prior to the disposition of the minerals, that such materials will be restored to a safe and environmentally sound condition as determined by the Commission, and that the costs of such restoration will be borne by the person acquiring such rights from the Secretary of the Interior or from his successor or assign.

(Pub. L. 95–604, title I, § 104, Nov. 8, 1978, 92 Stat. 3025; Pub. L. 104–259, § 4(a), Oct. 9, 1996, 110 Stat. 3174.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–259 inserted at end ''For purposes of this subsection, the term 'site' does not include any property described in section 7911(6)(B) of this title which is in a State which the Secretary has certified has a program which would achieve the purposes of this subsection.''

§ 7915. Indian tribe cooperative agreements

(a) Authority of Secretary; priorities for remedial action; use of Indian personnel; terms and conditions

After notifying the Indian tribe of the designation pursuant to section 7912 of this title, the Secretary, in consultation with the Secretary of the Interior, is authorized to enter into a cooperative agreement, subject to section 7923 of this title, with any Indian tribe to perform remedial action at a designated processing site located on land of such Indian tribe. The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 7912 of this title. In performing any remedial action under this section and in carrying out any continued monitoring or maintenance respecting residual radioactive materials associated with any site subject to a cooperative agreement under this section, the Secretary shall make full use of any qualified members of Indian tribes resident in the vicinity of any such site. Each such agreement shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this chapter. Such terms and conditions shall require the following:

(1) The Indian tribe and any person holding any interest in such land shall execute a waiver (A) releasing the United States of any liability or claim thereof by such tribe or person concerning such remedial action and (B) holding the United States harmless against any claim arising out of the performance of any such remedial action.

(2) The remedial action shall be selected and performed in accordance with section 7918 of this title by the Secretary or such person as he may designate.

(3) The Secretary, the Commission, and the Administrator and their authorized representatives shall have a permanent right of entry at any time to inspect such processing site in furtherance of the provisions of this subchapter, to carry out such agreement, and to enforce any rules prescribed under this chapter.

Each agreement under this section shall take effect only upon concurrence of the Commission with the terms and conditions thereof.

(b) Disposition and stabilization sites for residual radioactive materials; transfer to Secretary of the Interior

When the Secretary with the concurrence of the Commission determines removal of residual radioactive materials from a processing site on lands described in subsection (a) of this section to be appropriate, he shall provide, consistent with other applicable provisions of law, a site or sites for the permanent disposition and stabilization in a safe and environmentally sound manner of such residual radioactive materials. Such materials shall be transferred to the Secretary (without payment therefor by the Secretary) and permanently retained and maintained by the Secretary under the conditions established in a license issued by the Commission, subject to section 7914(f)(2) and (h) of this title.

(Pub. L. 95–604, title I, § 105, Nov. 8, 1978, 92 Stat. 3028.)

§ 7916. Acquisition of land by Secretary; transfer of public lands by Secretary of the Interior to Secretary; consultations with Governor; consent of Governor; transfer from Federal agency to Secretary

Where necessary or appropriate in order to consolidate in a safe and environmentally sound manner the location of residual radioactive materials which are removed from processing sites under cooperative agreements under this subchapter, or where otherwise necessary for the permanent disposition and stabilization of such materials in such manner—

(1) the Secretary may acquire land and interests in land for such purposes by purchase, donation, or under any other authority of law or

(2) the Secretary of the Interior may transfer permanently to the Secretary to carry out the purposes of this chapter, public lands under the jurisdiction of the Bureau of Land Management in the vicinity of processing sites in the following counties:

(A) Apache County in the State of Arizona;

(B) Mesa, Gunnison, Moffat, Montrose, Garfield, and San Miguel Counties in the State of Colorado;

(C) Boise County in the State of Idaho;

(D) Billings and Bowman Counties in the State of North Dakota;

(E) Grand and San Juan Counties in the State of Utah;

(F) Converse and Fremont Counties in the State of Wyoming; and

(G) Any other county in the vicinity of a processing site, if no site in the county in which a processing site is located is suitable.

Any permanent transfer of lands under the jurisdiction of the Bureau of Land Management by the Secretary of the Interior to the Secretary shall not take place until the Secretary complies with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) with respect to the selection of a site for the permanent disposition and stabilization of residual radioactive materials. Section 1714 of title 43 shall not apply to this transfer of jurisdiction. Prior to acquisition of land under paragraph (1) or (2) of this subsection[1] in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this subchapter or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this chapter without the concurrence of the chief administrative officer of such agency.

(Pub. L. 95–604, title I, § 106, Nov. 8, 1978, 92 Stat. 3029; Pub. L. 100–616, § 2, Nov. 5, 1988, 102 Stat. 3192.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, as amended, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of this title and Tables.

The National Environmental Policy Act, referred to in text, probably means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1988—Par. (2). Pub. L. 100–616 added par. (2) and concluding provisions and struck out former par. (2) and concluding provisions which read as follows:

''(2) the Secretary of the Interior may make available public lands administered by him for such purposes in accordance with other applicable provisions of law.

Prior to acquisition of land under paragraph (1) or (2) of this subsection in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this subchapter or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this chapter without the concurrence of the chief administrative officer of such agency.''

[1] So in original. Probably should be ''section''.

§ 7917. Financial assistance

(a) Federal and non-Federal funds; administrative costs

In the case of any designated processing site for which an agreement is executed with any State for remedial action at such site, the Secretary shall pay 90 per centum of the actual cost of such remedial action, including the actual costs of acquiring such site (and any interest therein) or any disposition site (and any interest therein) pursuant to section 7913 of this title, and the State shall pay the remainder of such costs from non-Federal funds. The Secretary shall not pay the administrative costs incurred by any State to develop, prepare, and carry out any cooperative agreement executed with such State under this subchapter, except the proportionate share of the administrative costs associated with the acquisition of lands and interests therein acquired by the State pursuant to this subchapter.

(b) Indian land processing sites

In the case of any designated processing site located on Indian lands, the Secretary shall pay the entire cost of such remedial action.

(Pub. L. 95–604, title I, § 107, Nov. 8, 1978, 92 Stat. 3029.)

§ 7918. Remedial action and mineral recovery activities

(a) General standards for remedial action; Federal performance and State participation; use of technology; promulgation of standards

(1) The Secretary or such person as he may designate shall select and perform remedial actions at designated processing sites and disposal sites in accordance with the general standards prescribed by the Administrator pursuant to section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)]. The State shall participate fully in the selection and performance of a remedial action for which it pays part of the cost. Such remedial action shall be selected and performed with the concurrence of the Commission and in consultation, as appropriate, with the Indian tribe and the Secretary of the Interior. Residual radioactive material from a processing site designated under this subchapter may be disposed of at a facility licensed under title II under the administrative and technical requirements of such title. Disposal of such material at such a site in accordance with such requirements shall be considered to have been done in accordance with the administrative and technical requirements of this subchapter.

(2) The Secretary shall use technology in performing such remedial action as will insure

compliance with the general standards promulgated by the Administrator under section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)] and will assure the safe and environmentally sound stabilization of residual radioactive materials, consistent with existing law.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, after October 31, 1982, if the Administrator has not promulgated standards under section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)] in final form by such date, remedial action taken by the Secretary under this subchapter shall comply with the standards proposed by the Administrator under such section 275 a. until such time as the Administrator promulgates the standards in final form.

(b) Mineral concentration evaluation; terms and conditions for mineral recovery; payment of Federal and State share of net profits; recovery costs; licenses

Prior to undertaking any remedial action at a designated site pursuant to this subchapter, the Secretary shall request expressions of interest from private parties regarding the remilling of the residual radioactive materials and the site and, upon receipt of any expression of interest, the Secretary shall evaluate among other things the mineral concentration of the residual radioactive materials at each designated processing site to determine whether, as a part of any remedial action program, recovery of such minerals is practicable. The Secretary, with the concurrence of the Commission, may permit the recovery of such minerals, under such terms and conditions as he may prescribe to carry out the purposes of this subchapter. No such recovery shall be permitted unless such recovery is consistent with remedial action. Any person permitted by the Secretary to recover such mineral shall pay to the Secretary a share of the net profits derived from such recovery, as determined by the Secretary. Such share shall not exceed the total amount paid by the Secretary for carrying out remedial action at such designated site. After payment of such share to the United States under this subsection, such person shall pay to the State in which the residual radioactive materials are located a share of the net profits derived from such recovery, as determined by the Secretary. The person recovering such minerals shall bear all costs of such recovery. Any person carrying out mineral recovery activities under this paragraph shall be required to obtain any necessary license under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or under State law as permitted under section 274 of such Act [42 U.S.C. 2021].

(Pub. L. 95–604, title I, § 108, Nov. 8, 1978, 92 Stat. 3029; Pub. L. 97–415, § 18(b), Jan. 4, 1983, 96 Stat. 2078; Pub. L. 104–259, § 4(b), Oct. 9, 1996, 110 Stat. 3174.)

REFERENCES IN TEXT

Title II, referred to in subsec. (a)(1), is title II (§§ 201–209) of Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3033, as amended, which enacted sections 2022, 2113, and 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–259 inserted at end "Residual radioactive material from a processing site designated under this subchapter may be disposed of at a facility licensed under title II under the administrative and technical requirements of such title. Disposal of such material at such a site in accordance with such requirements shall be considered to have been done in accordance with the administrative and technical requirements of this subchapter."

1983—Subsec. (a)(2). Pub. L. 97–415, § 18(b)(2), struck out provision that no such remedial action could be undertaken under this section before the promulgation by the Administrator of general standards pursuant to section 275 a. of the Atomic Energy Act of 1954.

Subsec. (a)(3). Pub. L. 97–415, § 18(b)(1), added par. (3).

§ 7919. Rules

The Secretary may prescribe such rules consistent with the purposes of this chapter as he deems appropriate pursuant to title V of the Department of Energy Organization Act [42 U.S.C. 7191 et seq.].

(Pub. L. 95–604, title I, § 109, Nov. 8, 1978, 92 Stat. 3030.)

REFERENCES IN TEXT

The Department of Energy Organization Act, referred to in text, is Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended. Title V of the Department of Energy Organization Act is classified generally to subchapter V (§ 7191 et seq.) of chapter 84 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7920. Enforcement

(a) Civil penalty; appellate review; action to recover civil penalty; sovereign immunity; equitable remedies

(1) Any person who violates any provision of this subchapter or any cooperative agreement entered into pursuant to this subchapter or any rule prescribed under this chapter concerning any designated processing site, disposition site, or remedial action shall be subject to an assessment by the Secretary of a civil penalty of not more than $1,000 per day per violation. Such assessment shall be made by order after notice and an opportunity for a public hearing, pursuant to section 554 of title 5.

(2) Any person against whom a penalty is assessed under this section may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, the Secretary shall institute an action to recover the amount of such

penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review. Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this section.

(4) No civil penalty may be assessed against the United States or any State or political subdivision of a State or any official or employee of the foregoing.

(5) Nothing in this section shall prevent the Secretary from enforcing any provision of this subchapter or any cooperative agreement or any such rule by injunction or other equitable remedy.

(b) Atomic energy licensing requirements

Subsection (a) of this section shall not apply to any licensing requirement under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]. Such licensing requirements shall be enforced by the Commission as provided in such Act.

(Pub. L. 95–604, title I, § 110, Nov. 8, 1978, 92 Stat. 3030.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

§ 7921. Public participation; public hearings

In carrying out the provisions of this subchapter, including the designation of processing sites, establishing priorities for such sites, the selection of remedial actions, and the execution of cooperative agreements, the Secretary, the Administrator, and the Commission shall encourage public participation and, where appropriate, the Secretary shall hold public hearings relative to such matters in the States where processing sites and disposal sites are located.

(Pub. L. 95–604, title I, § 111, Nov. 8, 1978, 92 Stat. 3031.)

§ 7922. Termination of authority of Secretary

(a) Exceptions; "byproduct material" defined

(1) The authority of the Secretary to perform remedial action under this subchapter shall terminate on September 30, 1998, except that—

(A) the authority of the Secretary to perform groundwater restoration activities under this subchapter is without limitation, and

(B) the Secretary may continue operation of the disposal site in Mesa County, Colorado (known as the Cheney disposal cell) for receiving and disposing of residual radioactive material from processing sites and of byproduct material from property in the vicinity of the uranium milling site located in Monticello, Utah, until the Cheney disposal cell has been filled to the capacity for which it was designed, or September 30, 2023, whichever comes first.

(2) For purposes of this subsection, the term "byproduct material" has the meaning given that term in section 2014(e)(2) of this title.

(b) Authorization of appropriations

The amounts authorized to be appropriated to carry out the purposes of this subchapter by the Secretary, the Administrator, the Commission, and the Secretary of the Interior shall not exceed such amounts as are established in annual authorization Acts for fiscal year 1979 and each fiscal year thereafter applicable to the Department of Energy. Any sums appropriated for the purposes of this subchapter shall be available until expended.

(Pub. L. 95–604, title I, § 112, Nov. 8, 1978, 92 Stat. 3031; Pub. L. 100–616, § 3, Nov. 5, 1988, 102 Stat. 3193; Pub. L. 102–486, title X, § 1031, Oct. 24, 1992, 106 Stat. 2951; Pub. L. 104–259, § 2, Oct. 9, 1996, 110 Stat. 3173.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–259 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The authority of the Secretary to perform remedial action under this subchapter shall terminate on September 30, 1996, except that the authority of the Secretary to perform groundwater restoration activities under this subchapter is without limitation."

1992—Subsec. (a). Pub. L. 102–486 substituted "1996" for "1994".

1988—Subsec. (a). Pub. L. 100–616 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The authority of the Secretary to perform remedial action under this subchapter shall terminate on the date seven years after the date of promulgation by the Administrator of general standards applicable to such remedial action unless such termination date is specifically extended by an Act of Congress enacted after November 8, 1978."

§ 7923. Limitation of contractual authority

The authority under this subchapter to enter into contracts or other obligations requiring the United States to make outlays may be exercised only to the extent provided in advance in annual authorization and appropriation Acts.

(Pub. L. 95–604, title I, § 113, Nov. 8, 1978, 92 Stat. 3031.)

§ 7924. Reports to Congress

(a) Information; consultations; separate official views; partial report concerning uranium mill tailings provisions

Beginning on January 1, 1980, and each year thereafter until January 1, 1986, the Secretary shall submit a report to the Congress with respect to the status of the actions required to be taken by the Secretary, the Commission, the Secretary of the Interior, the Administrator, and the States and Indian tribes under this chapter and any amendments to other laws made by this Act. Each report shall—

(1) include data on the actual and estimated costs of the program authorized by this subchapter;

(2) describe the extent of participation by the States and Indian tribes in this program;

(3) evaluate the effectiveness of remedial actions, and describe any problems associated with the performance of such actions; and

(4) contain such other information as may be appropriate.

Such report shall be prepared in consultation with the Commission, the Secretary of the Inte-

rior, and the Administrator and shall contain their separate views, comments, and recommendations, if any. The Commission shall submit to the Secretary and Congress such portion of the report under this subsection as relates to the authorities of the Commission under title II of this Act.

(b) Identification of sites; Federal agency jurisdiction; contents; duplication prohibition; use and cooperation respecting other Federal agency information

Not later than July 1, 1979, the Secretary shall provide a report to the Congress which identifies all sites located on public or acquired lands of the United States containing residual radioactive materials and other raidoactive[1] waste (other than waste resulting from the production of electric energy) and specifies which Federal agency has jurisdiction over such sites. The report shall include the identity of property and other structures in the vicinity of such site that are contaminated or may be contaminated by such materials and the actions planned or taken to remove such materials. The report shall describe in what manner such sites are adequately stabilized and otherwise controlled to prevent radon diffusion from such sites into the environment and other environmental harm. If any site is not so stabilized or controlled, the report shall describe the remedial actions planned for such site and the time frame for performing such actions. In preparing the reports under this section, the Secretary shall avoid duplication of previous or ongoing studies and shall utilize all information available from other departments and agencies of the United States respecting the subject matter of such report. Such agencies shall cooperate with the Secretary in the preparation of such report and furnish such information as available to them and necessary for such report.

(c) Uranium mine wastes hazards elimination program

Not later than January 1, 1980, the Administrator, in consultation with the Commission, shall provide a report to the Congress which identifies the location and potential health, safety, and environmental hazards of uranium mine wastes together with recommendations, if any, for a program to eliminate these hazards.

(d) Reports to Congressional committees

Copies of the reports required by this section to be submitted to the Congress shall be separately submitted to the Committees on Interior and Insular Affairs and on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(e) Documentation of information; public availability; trade secrets and other disclosure exempt information

The Commission, in cooperation with the Secretary, shall ensure that any relevant information, other than trade secrets and other proprietary information otherwise exempted from mandatory disclosure under any other provision of law, obtained from the conduct of each of the remedial actions authorized by this subchapter and the subsequent perpetual care of those residual radioactive materials is documented systematically, and made publicly available conveniently for use.

(Pub. L. 95–604, title I, § 114, Nov. 8, 1978, 92 Stat. 3032; H. Res. 549, Mar. 25, 1980.)

REFERENCES IN TEXT

This chapter and this Act, referred to in subsec. (a), mean Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, as amended, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of this title and Tables.

Title II of this Act, referred to in subsec. (a), is title II (§§ 201–209) of Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3033, as amended, which enacted sections 2022, 2113, and 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

CHANGE OF NAME

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress. Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 7925. Active operations; liability for remedial action

(a) No amount may be expended under this subchapter with respect to any site licensed by the Commission under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or by a State as permitted under section 274 of such Act [42 U.S.C. 2021] at which production of any uranium product from ores (other than from residual radioactive materials) takes place. This subsection does not prohibit the disposal of residual radioactive material from a processing site under this subchapter at a site licensed under title II or the expenditure of funds under this subchapter for such disposal.

(b) In the case of each processing site designated under this subchapter, the Attorney General shall conduct a study to determine the identity and legal responsibility which any person (other than the United States, a State, or Indian tribe) who owned or operated or controlled (as determined by the Attorney General) such site before November 8, 1978, may have

[1] So in original. Probably should be ''radioactive''.

under any law or rule of law for reclamation or other remedial action with respect to such site. The Attorney General shall publish the results of such study, and provide copies thereof to the Congress, as promptly as practicable following November 8, 1978. The Attorney General, based on such study, shall, to the extent he deems it appropriate and in the public interest, take such action under any provision of law in effect when uranium was produced at such site to require payment by such person of all or any part of the costs incurred by the United States for such remedial action for which he determines such person is liable.

(Pub. L. 95–604, title I, § 115, Nov. 8, 1978, 92 Stat. 3033; Pub. L. 104–259, § 4(c), Oct. 9, 1996, 110 Stat. 3174.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Title II, referred to in subsec. (a), is title II (§§ 201–209) of Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3033, as amended, which enacted sections 2022, 2113, 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–259 inserted at end "This subsection does not prohibit the disposal of residual radioactive material from a processing site under this subchapter at a site licensed under title II or the expenditure of funds under this subchapter for such disposal."

SUBCHAPTER II—STUDY AND DESIGNATION OF TWO MILL TAILING SITES IN NEW MEXICO

§ 7941. Study of authority for regulation and control of residual radioactive materials at New Mexico sites for protection of public health, safety, and the environment; report to Congress and Secretary; basis for determination of inadequacy of authority; interim regulation pending completion of study

The Commission, in consultation with the Attorney General and the Attorney General of the State of New Mexico, shall conduct a study to determine the extent and adequacy of the authority of the Commission and the State of New Mexico to require, under the Atomic Energy Act of 1954 (as amended by title II of this Act) [42 U.S.C. 2011 et seq.] or under State authority as permitted under section 274 of such Act [42 U.S.C. 2021] or under other provision of law, the owners of the following active uranium mill sites to undertake appropriate action to regulate and control all residual radioactive materials at such sites to protect public health, safety, and the environment: the former Homestake-New Mexico Partners site near Milan, New Mexico, and the Anaconda carbonate process tailings site near Bluewater, New Mexico. Such study shall be completed and a report thereof submitted to the Congress and to the Secretary within one year after November 8, 1978, together with such recommendations as may be appropriate. If the Commission determines that such authority is not adequate to regulate and control such materials at such sites in the manner provided in the first sentence of this section, the Commission shall include in the report a statement of the basis for such determination. Nothing in this chapter shall be construed to prevent or delay action by a State as permitted under section 274 of the Atomic Energy Act of 1954 [42 U.S.C. 2021] or under any other provision of law or by the Commission to regulate such residual radioactive materials at such sites prior to completion of such study.

(Pub. L. 95–604, title III, § 301, Nov. 8, 1978, 92 Stat. 3042.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Title II of this Act, referred to in text, is title II (§§ 201–209) of Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3033, as amended, which enacted sections 2022, 2113, 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

§ 7942. Designation by Secretary as processing sites for subchapter I purposes

(a) New Mexico cooperative agreement respecting certain residual radioactive materials; submission to Congressional committees

Within ninety days from the date of his receipt of the report and recommendations submitted by the Commission under section 7941 of this title, notwithstanding the limitations contained in section 7911(6)(A) and in section 7925(a) of this title, if the Commission determines, based on such study, that such sites cannot be regulated and controlled by the State or the Commission in the manner described in section 7941 of this title, the Secretary may designate either or both of the sites referred to in section 7941 of this title as a processing site for purposes of subchapter I of this chapter. Following such designation, the Secretary may enter into cooperative agreements with New Mexico to perform remedial action pursuant to such subchapter I concerning only the residual radioactive materials at such site resulting from uranium produced for sale to a Federal agency prior to January 1, 1971, under contract with such agency. Any such designation shall be submitted by the Secretary, together with his estimate of the cost of carrying out such remedial action at the designated site, to the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate.

(b) Effective date

(1)[1] No designation under subsection (a) of this section shall take effect before the expiration of

[1] So in original. Subsec. (b) enacted without a par. (2).

one hundred and twenty calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) after receipt by such Committees of such designation.

(c) Subchapter I provisions applicable

Except as otherwise specifically provided in subsection (a) of this section, any remedial action under subchapter I of this chapter with respect to any sites designated under this subchapter shall be subject to the provisions of subchapter I of this chapter (including the authorization of appropriations referred to in section 7922(b) of this title).

(Pub. L. 95–604, title III, § 302, Nov. 8, 1978, 92 Stat. 3042; H. Res. 549, Mar. 25, 1980.)

CHANGE OF NAME

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress. Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

CHAPTER 89—CONGREGATE HOUSING SERVICES

Sec.
8001. Congressional findings.
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§ 8001. Congressional findings

The Congress finds that—

(1) congregate housing, coordinated with the delivery of supportive services, offers an innovative, proven, and cost-effective means of enabling temporarily disabled or handicapped individuals to maintain their dignity and independence and to avoid costly and unnecessary institutionalization;

(2) a large and growing number of elderly and handicapped residents of public housing projects and of nonprofit projects for the elderly and handicapped face premature and unnecessary institutionalization because of the absence of or deficiencies in the availability, adequacy, coordination, or delivery of the supportive services required for the successful development of adequate numbers of congregate housing projects; and

(3) supplemental supportive services, available on a secure and continuing basis, are essential to a successful congregate housing program.

(Pub. L. 95–557, title IV, § 402, Oct. 31, 1978, 92 Stat. 2104.)

SHORT TITLE

Section 401 of title IV of Pub. L. 95–557 provided that: ''This title [enacting this chapter and amending section 1437e of this title] may be cited as the 'Congregate Housing Services Act of 1978'.''

§ 8002. Definitions

For the purpose of this chapter—

(1) the term ''congregate housing'' means (A) low-rent housing which, as of January 1, 1979, was built or under construction, with which there is connected a central dining facility where wholesome and economical meals can be served to such occupants; or (B) low-rent housing constructed after, but not under construction prior to, January 1, 1979, connected with which there is a central dining facility to provide wholesome and economical meals for such occupants;

(2) the term ''congregate services programs'' means programs to be undertaken by a public housing agency or a nonprofit corporation to provide assistance, including personal assistance and nutritional meals, to eligible project residents who, with such assistance, can remain independent and avoid unnecessary institutionalization;

(3) the term ''elderly'' means sixty-two years of age or over;

(4) the term ''eligible project resident'' means elderly handicapped individuals, nonelderly handicapped individuals, or temporarily disabled individuals, who are residents of congregate housing projects administered by a public housing agency or by a nonprofit corporation;

(5) the term ''handicapped'' means having an impairment which (A) is expected to be of long-continued and indefinite duration, and (B) substantially impedes an individual's ability to live independently unless the individual receives supportive congregate services; such impairment may include a functional disability or frailty which is a normal consequence of the human aging process;

(6) the term ''personal assistance'' means service provided under this chapter which may include, but is not limited to, aid given to eligible project residents in grooming, dressing, and other activities which maintain personal appearance and hygiene;

(7) the term ''professional assessment committee'' means a group of at least three persons appointed by a local public housing agency or a nonprofit corporation and shall include qualified medical professionals and other per-

sons professionally competent to appraise the functional abilities of elderly or permanently disabled adult persons, or both, in relation to the performance of the normal tasks of daily living;

(8) the term ''temporarily disabled'' means an impairment which (A) is expected to be of no more than six months' duration, and (B) substantially impedes an individual's ability to live independently unless the individual receives supportive congregate services; and

(9) the term ''nonprofit corporation'' means any corporation responsible for a housing project assisted under section 1701q of title 12.

(Pub. L. 95–557, title IV, § 403, Oct. 31, 1978, 92 Stat. 2105.)

§ 8003. Contracts to provide congregate services programs

The Secretary of Housing and Urban Development (hereinafter referred to as the ''Secretary'') is authorized to enter into contracts with local public housing agencies under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] (hereinafter referred to as ''public housing agencies'') and with nonprofit corporations, utilizing sums appropriated under this chapter, to provide congregate services programs for eligible project residents in order to promote and encourage maximum independence within a home environment for such residents capable of self-care with appropriate supportive congregate services. Each contract between the Secretary and a public housing agency or nonprofit corporation shall be for a term of not less than three years or more than five years and shall be renewable at the expiration of such term. Each public housing agency or nonprofit corporation entering into such a contract shall be reserved a sum equal to its total approved contract amount from the moneys authorized and appropriated for the fiscal year in which the notification date of funding approval falls.

(Pub. L. 95–557, title IV, § 404, Oct. 31, 1978, 92 Stat. 2106.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

§ 8004. Congregate services program

(a) Essential services for maintaining independent living

Congregate services programs assisted under this chapter must include full meal service adequate to meet nutritional needs, and may also include housekeeping aid, personal assistance, and other services essential for maintaining independent living.

(b) Duplication of services

No services funded under this chapter may duplicate services which are already affordable, accessible, and sufficiently available on a long-term basis to eligible project residents under programs administered by or receiving appropriations through any department, agency, or instrumentality of the Federal Government or any other public or private department, agency, or organization.

(c) Consultation with Area Agency on Aging or other appropriate State agency

A public housing agency or nonprofit corporation applying for assistance to provide congregate services to elderly residents shall consult with the Area Agency on Aging (or, where no Area Agency on Aging exists, with the appropriate State agency under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.]) in determining the means of providing services under this chapter and in identifying alternative available sources of funding for such services.

(d) Submission of proposed application to Area Agency on Aging or other appropriate State agency

Prior to the submission of a final application for either new or renewed funding under this chapter for the provision of congregate services to elderly residents, a public housing agency and a nonprofit corporation shall present a copy of a proposed application to the Area Agency on Aging (or, where no Area Agency on Aging exists to the appropriate State agency under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.]) for review and comment. Such agency and nonprofit corporation shall consider such review and comment in the development of any final application for either new or renewed funding under this chapter.

(e) Nonelderly handicapped individuals as eligible project residents

(1) A public housing agency or nonprofit corporation applying for assistance to provide congregate services to nonelderly handicapped residents shall consult with the appropriate agency, if any, designated by applicable State law as having responsibility for the development, provision, or identification of social services to permanently disabled adults, for the purpose of determining the means of providing services under this chapter and of identifying alternative available sources of funding for such services.

(2) Such public housing agency and nonprofit corporation shall also, prior to the submission of a final application for either new or renewed funding under this chapter, present a copy of the proposed application to such appropriate agency for review and comment. The public housing agency and nonprofit corporation shall consider such review and comment in the development of any final application for either new or renewed funding under this chapter.

(f) Manner of providing congregate services

Any nonprofit corporation or public housing agency receiving assistance under this chapter may provide congregate services directly to eligible project residents or may, by contract or lease, provide such services through other appropriate agencies or providers.

(g) Amount of annual contributions of receiving agency

Nonprofit corporations and public housing agencies receiving assistance for congregate

services programs under this chapter shall be required to maintain the same dollar amount of annual contribution which they were making, if any, in support of the provision of services eligible for assistance under this chapter before the date of the submission of the application for such assistance unless the Secretary determines that the waiver of this requirement is necessary for the maintenance of adequate levels of services to eligible project residents. If any contract or lease entered into by a public housing agency or nonprofit corporation pursuant to subsection (f) of this section provides for adjustments in payments for services to reflect changes in the cost of living, then the amount of annual contribution required to be maintained by such public agency or nonprofit corporation under the preceding sentence shall be readjusted in the same manner.

(h) Fees for meal and other services

Each nonprofit corporation and public housing agency shall establish fees for meal service and other appropriate services provided to eligible project residents. These fees shall be reasonable, may not exceed the cost of providing the service, and shall be calculated on a sliding scale related to income which permits the provision of services to such residents who cannot afford meal and service fees. When meal services are provided to other project residents, fees shall be reasonable and may not exceed the cost of providing the meal service.

(i) Standards for provision of services

The Secretary shall establish standards for the provision of services under this chapter, and, in developing such service standards, the Secretary shall consult with the Secretary of Health and Human Services and with appropriate organizations representing the elderly and handicapped, as determined by the Secretary.

(Pub. L. 95–557, title IV, § 405, Oct. 31, 1978, 92 Stat. 2106; Pub. L. 96–399, title II, § 208, Oct. 8, 1980, 94 Stat. 1634; Pub. L. 98–479, title II, § 201(j), Oct. 17, 1984, 98 Stat. 2228.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsecs. (c) and (d), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

AMENDMENTS

1984—Subsec. (i). Pub. L. 98–479 substituted ''Health and Human Services'' for ''the Department of Health, Education, and Welfare''.

1980—Subsecs. (c), (d). Pub. L. 96–399, § 208(a), (b), inserted reference to congregate services to elderly residents.

Subsec. (e). Pub. L. 96–399, § 208(c), in par. (1) substituted ''A public housing agency or nonprofit corporation applying for assistance to provide congregate services to nonelderly handicapped residents shall consult with the appropriate agency'' for ''When nonelderly handicapped individuals are included among the eligible project residents, the public housing agency and nonprofit corporation shall consult with the appropriate local agency'', and in par. (2) substituted ''appropriate agency'' for ''appropriate local agency''.

§ 8005. Eligibility for services

(a) Professional assessment committee for determination of eligibility

The identification of project residents eligible to participate in a congregate services program assisted under this chapter, and the designation of the services appropriate to their individual functional abilities and needs, shall be made by a professional assessment committee. Such committee shall utilize procedures which insure that the process of determining eligibility of individuals for services under this title shall accord such individuals fair treatment and due process and a right of appeal of such determination of eligibility, and shall also assure the confidentiality of personal and medical records.

(b) Participation of other residents in meal services program

Other residents may participate in a congregate meal service program assisted under this chapter if the local public housing agency or nonprofit corporation determines that the participation of these individuals will not adversely affect the cost-effectiveness or operation of the program.

(c) Notification of change in membership of professional assessment committee

Any public housing agency or nonprofit corporation receiving assistance under this chapter shall notify the Secretary of any change in the membership of the professional assessment committee within thirty days of such change. Such notification shall list the names and professional qualifications of new members of the committee.

(d) Procedure for changes in membership of professional assessment committee

Procedures shall be established to insure that changes in the membership of the professional assessment committee are consistent with the requirements of section 8002(7) of this title.

(Pub. L. 95–557, title IV, § 406, Oct. 31, 1978, 92 Stat. 2107.)

§ 8006. Application procedure for assistance

(a) Matters included in application

An application for assistance under this chapter shall include—

(1) a plan specifying the types and priorities of the basic services the public housing agency or nonprofit corporation proposes to provide during the term of the contract; such plan must be related to the needs and characteristics of the eligible project residents and, to the maximum extent practicable, provide for the changing needs and characteristics of all project residents; such plan shall be determined after consultation with eligible project residents and with the professional assessment committee;

(2) a list of names and professional qualifications of the members of the professional assessment committee;

(3) the fee schedule established pursuant to section 8004(h) of this title;

(4) any comment received in connection with any review of a proposed application pursuant to section 8004(d) or 8004(e)(2) of this title; and

(5) a statement affirming (A) that the nonprofit corporation or public housing agency has followed the consultation procedures required in subsections (c), (d), and (e) of section 8004 of this title, and (B) that such application complies with subsection (b) of such section.

(b) Deadlines for submission of application

The Secretary shall establish appropriate deadlines for each fiscal year for the submission of applications for funding under this chapter and shall notify any public housing agency and nonprofit corporation applying for assistance under this chapter of acceptance or rejection of its application within ninety days of such submission.

(c) Review of performance of services program prior to submission of application for renewed funding

Within twelve months prior to the submission of an application for renewed funding under this chapter, each nonprofit corporation and public housing agency shall review the performance, appropriateness, and fee schedules of their congregate services program with eligible project residents and with the professional assessment committee. The results of such review shall be included in any application for renewal and shall be considered in the development of the application for renewal by the nonprofit corporation or public housing agency and in its evaluation by the Secretary.

(Pub. L. 95–557, title IV, § 407, Oct. 31, 1978, 92 Stat. 2108.)

§ 8007. Evaluation of applications and programs

(a) Application evaluations

In evaluating applications for assistance under this chapter, the Secretary shall consider—

(1) the types and priorities of the basic services proposed to be provided, and the relationship of such proposal to the needs and characteristics of the eligible residents of the projects where the services are to be provided;

(2) how quickly services will be established following approval of the application;

(3) the degree to which local social services are adequate for the purpose of assisting eligible project residents to maintain independent living and avoid unnecessary institutionalization;

(4) the professional qualifications of the members of the professional assessment committee; and

(5) the reasonableness of fee schedules established for each congregate service.

(b) Program evaluations

In evaluating programs receiving assistance under this chapter, the Secretary shall—

(1) establish procedures for the review and evaluation of the performance of nonprofit corporations and public housing agencies receiving assistance under this chapter, including provisions for the submission of an annual report, by each such nonprofit corporation and public housing agency, which evaluates the impact and effectiveness of its congregate services program; and

(2) publish annually and submit to the Congress, a report on and evaluation of the impact and effectiveness of congregate services programs assisted under this chapter. Such report and evaluation shall be based, in part, on the evaluations required to be submitted pursuant to paragraph (1).

(c) Report to Congress

(1) The Secretary shall contract with a university or qualified research institution to produce a report—

(A) documenting the number of elderly living in federally assisted housing at risk of institutionalization;

(B) studying and comparing alternative delivery systems in the States, including the congregate housing services program, to provide services to older persons in assisted congregate housing;

(C) assessing existing and potential financial resources at the Federal, State, and local levels for the support of congregate housing services; and

(D) making legislative recommendations as to the feasibility of permitting State housing agencies and other appropriate State agencies to participate and operate the program on a matching grant basis.

(2) The Secretary shall submit the report to the Congress not later than September 30, 1988.

(Pub. L. 95–557, title IV, § 408, Oct. 31, 1978, 92 Stat. 2108; Pub. L. 98–181, title II, § 224(a), Nov. 30, 1983, 97 Stat. 1191; Pub. L. 100–242, title I, § 163(b), (c), Feb. 5, 1988, 101 Stat. 1860.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–242 added subsec. (c) and struck out former subsec. (c) which required Secretary to prepare and submit a report to Congress evaluating the congregate housing services program, not later than March 15, 1984.

1983—Subsec. (c). Pub. L. 98–181 added subsec. (c).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b)(2) of this section relating to submitting the annually published report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 106 of House Document No. 103–7.

§ 8008. Funding procedures

(a) The Secretary shall establish procedures—

(1) to assure timely payments to nonprofit corporations and public housing agencies for approved assisted congregate services programs with provision made for advance funding sufficient to meet necessary startup costs;

(2) to permit reallocation of funds approved for the establishment of congregate services in existing public housing projects and projects assisted under section 1701q of title 12 if the services are not established within six months of the notification date of funding approval;

(3) to assure that where such funding has been approved for the establishment of congregate services for public housing projects and projects assisted under section 1701q of title 12 under construction or approved for construction, these services shall be in place

at the start of the project's occupancy by tenants requiring such services for maintaining independent living;

(4) to establish accounting and other standards in order to prevent any fraudulent or inappropriate use of funds under this chapter; and

(5) to assure that no more than 1 per centum of the funds appropriated under this chapter for any fiscal year may be used by public housing agencies and nonprofit corporations for evaluative purposes as required by section 8007(b)(1) of this title.

(b) The Secretary shall establish a reserve fund, not to exceed 10 per centum of the funds appropriated in each fiscal year for the provision of services under this chapter, in order to supplement grants awarded to public housing agencies and nonprofit corporations under this chapter when, in the determination of the Secretary, such supplemental adjustments are required to maintain adequate levels of services to eligible project residents.

(Pub. L. 95–557, title IV, § 409, Oct. 31, 1978, 92 Stat. 2109.)

§ 8009. Miscellaneous provisions

(a) Utilization of elderly and permanently disabled adult persons

Each public housing agency and nonprofit corporation shall, to the maximum extent practicable, utilize elderly and permanently disabled adult persons who are residents of public housing projects or projects assisted under section 1701q of title 12, but who are not eligible project residents, to participate in providing the services assisted under this chapter. Such persons shall be paid wages which shall not be lower than whichever is the highest of—

(1) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], if section 6(a)(1) of such Act [29 U.S.C. 206(a)(1)] applied to the resident and if he or she were not exempt under section 13 [29 U.S.C. 213] thereof;

(2) the State or local minimum wage for the most nearly comparable covered employment; or

(3) the prevailing rates of pay for persons employed in similar public occupations by the same employer.

(b) Tax treatment of services received

No service provided to a public housing resident or to a resident of a housing project assisted under section 1701q of title 12 under this chapter, except for wages paid under subsection (a) of this section, may be treated as income for the purpose of any other program or provision of State or Federal law.

(c) Individuals receiving aid considered residents of own household

Individuals receiving services assisted under this chapter shall be deemed to be residents of their own households, and not to be residents of a public institution, for the purpose of any other program or provision of State or Federal law.

(d) Regulations

The Secretary may issue regulations to carry out the provisions of this chapter.

(Pub. L. 95–557, title IV, § 410, Oct. 31, 1978, 92 Stat. 2109.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (a)(1), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

§ 8010. Authorization of appropriations

(a) There are authorized to be appropriated to carry out this chapter $10,000,000 for each of the fiscal years 1988 and 1989.

(b) Sums appropriated pursuant to this section shall remain available until expended.

(Pub. L. 95–557, title IV, § 411, Oct. 31, 1978, 92 Stat. 2110; Pub. L. 98–181, title II, § 224(b), Nov. 30, 1983, 97 Stat. 1191; Pub. L. 98–479, title I, § 102(f), Oct. 17, 1984, 98 Stat. 2222; Pub. L. 100–242, title I, § 163(a), Feb. 5, 1988, 101 Stat. 1860.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–242 amended subsec. (a) generally, substituting provisions authorizing appropriations to carry out this chapter for fiscal years 1988 and 1989, for provisions authorizing appropriations to carry out this chapter for fiscal years 1979 through 1982, 1984, and 1985.

1984—Subsec. (a)(4). Pub. L. 98–479 inserted a semicolon at end.

1983—Subsec. (a)(5), (6). Pub. L. 98–181 added pars. (5) and (6).

§ 8011. Revised congregate housing services program

(a) Findings and purposes

(1) Findings

The Congress finds that—

(A) the effective provision of congregate services may require the redesign of units and buildings to meet the special physical needs of the frail elderly persons and the creation of congregate space to accommodate services that enhance independent living;

(B) congregate housing, coordinated with the delivery of supportive services, offers an innovative, proven, and cost-effective means of enabling frail older persons and persons with disabilities to maintain their dignity and independence;

(C) independent living with assistance is a preferable housing alternative to institutionalization for many frail older persons and persons with disabilities;

(D) 365,000 persons in federally assisted housing experience some form of frailty, and the number is expected to increase as the general population ages;

(E) an estimated 20 to 30 percent of older adults living in federally assisted housing experience some form of frailty;

(F) a large and growing number of frail elderly residents face premature or unnecessary institutionalization because of the absence of or deficiencies in the availability, adequacy, coordination, or delivery of supportive services;

(G) the support service needs of frail residents of assisted housing are beyond the re-

sources and experience that housing managers have for meeting such needs;

(H) supportive services would promote the invaluable option of independent living for nonelderly persons with disabilities in federally assisted housing;

(I) approximately 25 percent of congregate housing services program sites provide congregate services to young individuals with disabilities;

(J) to the extent that institutionalized older adults do not need the full costly support provided by such care, public moneys could be more effectively spent providing the necessary services in a noninstitutional setting; and

(K) the Congregate Housing Services Program, established by Congress in 1978, and similar programs providing in-home services have been effective in preventing unnecessary institutionalization and encouraging deinstitutionalization.

(2) Purposes

The purposes of this section are—

(A) to provide assistance to retrofit individual dwelling units and renovate public and common areas in eligible housing to meet the special physical needs of eligible residents;

(B) to create and rehabilitate congregate space in or adjacent to such housing to accommodate supportive services that enhance independent living;

(C) to improve the capacity of management to assess the service needs of eligible residents, coordinate the provision of supportive services that meet the needs of eligible residents and ensure the long-term provision of such services;

(D) to provide services in federally assisted housing to prevent premature and inappropriate institutionalization in a manner that respects the dignity of the elderly and persons with disabilities;

(E) to provide readily available and efficient supportive services that provide a choice in supported living arrangements by utilizing the services of an on-site coordinator, with emphasis on maintaining a continuum of care for the vulnerable elderly;

(F) to improve the quality of life of older Americans living in federally assisted housing;

(G) to preserve the viability of existing affordable housing projects for lower-income older residents who are aging in place by assisting managers of such housing with the difficulties and challenges created by serving older residents;

(H) to develop partnerships between the Federal Government and State governments in providing services to the frail elderly and persons with disabilities; and

(I) to utilize Federal and State funds in a more cost-effective and humane way in serving the needs of older adults.

(b) Contracts for congregate services programs

(1) In general

The Secretary of Housing and Urban Development and the Secretary of Agriculture (through Administrator of the Farmers Home Administration) shall enter into contracts with States, Indian tribes, units of general local government and local nonprofit housing sponsors, utilizing any amounts appropriated under subsection (n) of this section—

(A) to provide congregate services programs for eligible project residents to promote and encourage maximum independence within a home environment for such residents capable of self-care with appropriate supportive services; or

(B) to adapt housing to better accommodate the physical requirements and service needs of eligible residents.

(2) Term of contracts

Each contract between the Secretary concerned and a State, Indian tribe, or unit of general local government, or local nonprofit housing sponsor, shall be for a term of 5 years and shall be renewable at the expiration of the term, except as otherwise provided in this section.

(c) Reservation of amounts

For each State, Indian tribe, unit of general local government, and nonprofit housing sponsor, receiving a contract under this subsection,[1] the Secretary concerned shall reserve a sum equal to the total approved contract amount from the amount authorized and appropriated for the fiscal year in which the notification date of funding approval occurs.

(d) Eligible activities

(1) In general

A congregate services program under this section shall provide meal and other services for eligible project residents (and other residents and nonresidents, as provided in subsection (e) of this section), as provided in this section, that are coordinated on site.

(2) Meal services

Congregate services programs assisted under this section shall include meal service adequate to meet at least one-third of the daily nutritional needs of eligible project residents, as follows:

(A) Food stamps and agricultural commodities

In providing meal services under this paragraph, each congregate services program—

(i) shall—

(I) apply for approval as a retail food store under section 2018 of title 7; and

(II) if approved under such section, accept coupons (as defined in section 2012(e) of title 7) as payment from individuals to whom such meal services are provided; and

(ii) shall request, and use to provide such meal services, agricultural commodities made available without charge by the Secretary of Agriculture.

(B) Preference for nutrition providers

In contracting for or otherwise providing for meal services under this paragraph, each

[1] So in original. Probably should be ''section,''.

congregate services program shall give preference to any provider of meal services who—

(i) receives assistance under title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.]; or

(ii) has experience, according to standards as the Secretary shall require, in providing meal services in a housing project under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] or any other program for congregate services.

(3) Retrofit and renovation

Assistance under this section may be provided with respect to eligible housing for the elderly for—

(A) retrofitting of individual dwelling units to meet the special physical needs of current or future residents who are or are expected to be eligible residents, which retrofitting may include—

(i) widening of doors to allow passage by persons with disabilities in wheelchairs into and within units in the project;

(ii) placement of light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(iii) installation of grab bars in bathrooms or the placement of reinforcements in bathroom walls to allow later installation of grab bars;

(iv) redesign of usable kitchens and bathrooms to permit a person in a wheelchair to maneuver about the space; and

(v) such other features of adaptive design that the Secretary finds are appropriate to meet the special needs of such residents;

(B) such renovation as is necessary to ensure that public and common areas are readily accessible to and usable by eligible residents;

(C) renovation, conversion, or combination of vacant dwelling units to create congregate space to accommodate the provision of supportive services to eligible residents;

(D) renovation of existing congregate space to accommodate the provision of supportive services to eligible residents; and

(E) construction or renovation of facilities to create conveniently located congregate space to accommodate the provision of supportive services to eligible residents.

For purposes of this paragraph, the term ''congregate space'' shall include space for cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other outpatient health facilities, or other essential service facilities.

(4) Service coordinator

Assistance under this section may be provided with respect to the employment of one or more individuals (hereinafter referred to as ''service coordinator'') who may be responsible for—

(A) working with the professional assessment committee established under subsection (f)[2] of this section on an ongoing basis to assess the service needs of eligible residents;

(B) working with service providers and the professional assessment committee to tailor the provision of services to the needs and characteristics of eligible residents;

(C) mobilizing public and private resources to ensure that the qualifying supportive services identified pursuant to subsection (d) of this section can be funded over the time period identified under such subsection;

(D) monitoring and evaluating the impact and effectiveness of any supportive service program receiving capital or operating assistance under this section; and

(E) performing such other duties and functions that the Secretary deems appropriate to enable frail elderly persons residing in federally assisted housing to live with dignity and independence.

The Secretary shall establish such minimum qualifications and standards for the position of service coordinator that the Secretary deems necessary to ensure sound management. Such qualifications and standards shall include requiring each service coordinator to be trained in the aging process, elder services, disability services, eligibility for and procedures of Federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues. The Secretary may fund the employment of service coordinators by using amounts appropriated under this section and by permitting owners to use existing sources of funds, including excess project reserves.

(5) Other services

Congregate services programs assisted under this section may include services for transportation, personal care, dressing, bathing, toileting, housekeeping, chore assistance, nonmedical counseling, assessment of the safety of housing units, group and socialization activities, assistance with medications (in accordance with any applicable State law), case management, personal emergency response, and other services to prevent premature and unnecessary institutionalization of eligible project residents.

(6) Determination of needs

In determining the services to be provided to eligible project residents under a congregate services program assisted under this section, the program shall provide for consideration of the needs and wants of eligible project residents.

(7) Fees

(A) Eligible project residents

The owner of each eligible housing project shall establish fees for meals and other services provided under a congregate services program to eligible project residents, which shall be sufficient to provide 10 percent of the costs of the services provided. The Secretary concerned shall provide for the waiver of fees under this paragraph for individuals whose incomes are insufficient to pro-

[2] So in original. Probably should be subsection ''(e)''.

vide for any payment. The fees for meals shall be in the following amounts:

(i) Full meal services

The fees for residents receiving more than 1 meal per day, 7 days per week, shall be reasonable and shall equal between 10 and 20 percent of the adjusted income of the project resident (as such income is determined under section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]), or the cost of providing the services, whichever is less.

(ii) Less than full meal services

The fees for residents receiving meal services less frequently than as described in the preceding sentence shall be in an amount equal to 10 percent of such adjusted income of the project resident or the cost of providing the services, whichever is less.

(B) Other residents and nonresidents

Fees shall be established under this paragraph for residents of eligible housing projects (other than eligible project residents) and for nonresidents that receive services from a congregate services program pursuant to subsection (e) of this section. Such fees shall be in an amount equal to the cost of providing the services.

(8) Direct and indirect provision of services

Any State, Indian tribe, unit of general local government, or nonprofit housing sponsor that receives assistance under this section may provide congregate services directly to eligible project residents or may, by contract or lease, provide such services through other appropriate agencies or providers.

(e) Eligibility for services

(1) Eligible project residents

Any eligible resident who is a resident of an eligible housing project (or who with deinstitutionalization and appropriate supportive services under this section could become a resident of eligible federally assisted housing) shall be eligible for services under a congregate services program assisted under this section.

(2) Economic need

In providing services under a congregate services program, the program shall give consideration to serving eligible project residents with the greatest economic need.

(3) Identification

(A) In general

A professional assessment committee under subparagraph (B) shall identify eligible project residents under paragraph (1) and shall designate services appropriate to the functional abilities and needs of each eligible project resident. The committee shall utilize procedures that ensure that the process of determining eligibility of individuals for congregate services shall accord such individuals fair treatment and due process and a right of appeal of the determination of eligibility, and shall also ensure the confidentiality of personal and medical records.

(B) Professional assessment committee

A professional assessment committee under this section shall consist of not less than 3 individuals, who shall be appointed to the committee by the officials of the eligible housing project responsible for the congregate services program, and shall include qualified medical and other health and social services professionals competent to appraise the functional abilities of the frail elderly and persons with disabilities in relation to the performance of tasks of daily living.

(4) Eligibility of other residents

The elderly and persons with disabilities who reside in an eligible housing project other than eligible project residents under paragraph (1) may receive services from a congregate services program under this section if the housing managers, congregate service coordinators, and the professional assessment committee jointly determine that the participation of such individuals will not negatively affect the provision of services to eligible project residents. Residents eligible for services under this paragraph shall pay fees as provided under subsection (d) of this section.

(5) Eligibility of nonresidents

The Secretary may permit the provision of services to elderly persons and persons with disabilities who are not residents if the participation of such persons will not adversely affect the cost-effectiveness or operation of the program or add significantly to the need for assistance under this section.

(f) Eligible contract recipients and distribution of assistance

The Secretary concerned may provide assistance under this section and enter into contracts under subsection (b) of this section with—

(1) owners of eligible housing;

(2) States that submit applications in behalf of owners of eligible housing; and

(3) Indian tribes and units of general local government that submit applications on behalf of owners of eligible housing.

(g) Applications

The funds made available under this section shall be allocated by the Secretary among approvable applications submitted by or on behalf of owners. Applications for assistance under this section shall be submitted in such form and in accordance with such procedures as the Secretary shall establish. Applications for assistance shall contain—

(1) a description of the type of assistance the applicant is applying for;

(2) in the case of an application involving rehabilitation or retrofit, a description of the activities to be carried out, the number of elderly persons to be served, the costs of such activities, and evidence of a commitment for the services to be associated with the project;

(3) a description of qualifying supportive services that can reasonably be expected to be made available to eligible residents over a 5-year period;

(4) a firm commitment from one or more sources of assistance ensuring that some or all

of the qualifying supportive services identified under paragraph (3) will be provided for not less than 1 year following the completion of activities assisted under subsection (d) of this section;

(5) a description of public or private sources of assistance that are likely to fund or provide qualifying supportive services, including evidence of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including for-profit and nonprofit organizations);

(6) a certifications[3] from the appropriate State or local agency (as determined by the Secretary) that—

(A) the provision of the qualifying supportive services identified under paragraph (3) will enable eligible residents to live independently and avoid unnecessary institutionalization,

(B) there is a reasonable likelihood that such services will be funded or provided for the entire period specified under paragraph (3), and

(C) the agency and the applicant will, during the term of the contract, actively seek assistance for such services from other sources;

(7) a description of any fees that would be established pursuant to subsection (d) of this section; and

(8) such other information or certifications that the Secretary determines to be necessary or appropriate to achieve the purposes of this section.

The Secretary shall act on each application within 60 days of its submission.

(h) Selection and evaluation of applications and programs

(1) In general

Each Secretary concerned shall establish criteria for selecting States, Indian tribes, units of general local government, and local nonprofit housing sponsors to receive assistance under this section, and shall select such entities to receive assistance. The criteria for selection shall include consideration of—

(A) the extent to which the activities described in subsection (d)(3) of this section will foster independent living and the provision of such services;

(B) the types and priorities of the basic services proposed to be provided, the appropriateness of the targeting of services, the methods of providing for deinstitutionalized older individuals and individuals with disabilities, and the relationship of the proposal to the needs and characteristics of the eligible residents of the projects where the services are to be provided;

(C) the schedule for establishment of services following approval of the application;

(D) the degree to which local social services are adequate for the purpose of assisting eligible project residents to maintain independent living and avoid unnecessary institutionalization;

(E) the professional qualifications of the members of the professional assessment committee;

(F) the reasonableness and application of fees schedules established for congregate services;

(G) the adequacy and accuracy of the proposed budgets; and

(H) the extent to which the owner will provide funds from other services in excess of that required by this section.

(2) Evaluation of provision of congregate services programs

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall, by regulation under subsection (n)[4] of this section, establish procedures for States, Indian tribes, and units of general local government receiving assistance under this section—

(A) to review and evaluate the performance of the congregate services programs of eligible housing projects receiving assistance under this section in such State; and

(B) to submit annually, to the Secretary concerned, a report evaluating the impact and effectiveness of congregate services programs in the entity assisted under this section.

(i) Congregate services program funding

(1) Cost distribution

(A) Contribution requirement

In providing contracts under subsection (b) of this section, each Secretary concerned shall provide for the cost of providing the congregate services program assisted under this section to be distributed as follows:

(i) Each State, Indian tribe, unit of general[5] government, or nonprofit housing sponsor that receives amounts under a contract under subsection (b) of this section shall supplement any such amount with amounts sufficient to provide 50 percent of the cost of providing the congregate services program. Any monetary or in-kind contributions received by a congregate services program under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] may be considered for purposes of fulfilling the requirement under this clause. The Secretary concerned shall encourage owners to use excess residual receipts to the extent available to supplement funds for retrofit and supportive services under this section.

(ii) The Secretary concerned shall provide 40 percent of the cost, with amounts under contracts under subsection (b) of this section.

(iii) Fees under subsection (d)(7) of this section shall provide 10 percent of the cost.

(B) Exceptions

(i) For any congregate services program that was receiving assistance under a contract under the Congregate Housing Services

[3] So in original. Probably should be ''certification''.

[4] So in original. Probably should be subsection ''(m)''.

[5] So in original. Probably should be ''general local''.

Act of 1978 [42 U.S.C. 8001 et seq.] on November 28, 1990,[6] the unit of general local government or nonprofit housing sponsor, in coordination with a local government with respect to such program shall not be subject to the requirement to provide supplemental contributions under subparagraph (A)(i) (for such program) for the 6-year period beginning on the expiration of the contract for such assistance. The Secretary concerned shall require each such program to maintain, for such 6-year period, the same dollar amount of annual contributions in support of the services eligible for assistance under this section as were contributed to such program during the year preceding November 28, 1990.[6]

(ii) To the extent that the limitations under subsection (d)(7) of this section regarding the percentage of income eligible residents may pay for services will result in collected fees for any congregate services program of less than 10 percent of the cost of providing the program, 50 percent of such remaining costs shall be provided by the recipient of amounts under the contract and 50 percent of such remaining costs shall be provided by the Secretary concerned under such contract.

(C) Eligible supplemental contributions

If provided by the State, Indian tribe, unit of general local government, or local nonprofit housing sponsor, any salary paid to staff from governmental sources to carry out the program of the recipient and salary paid to residents employed by the program (other than from amounts under a contract under subsection (b) of this section), and any other in-kind contributions from governmental sources shall be considered as supplemental contributions for purposes of meeting the supplemental contribution requirement under subparagraph (A)(i), except that the amount of in-kind contributions considered for purposes of fulfilling such contribution requirement may not exceed 10 percent of the total amount to be provided by the State, Indian tribe, local government, or local nonprofit housing sponsor.

(D) Prohibition of substitution of funds

The Secretary concerned shall require each State, Indian tribe, unit of general local government, and local nonprofit housing sponsor, that receives assistance under this section to maintain the same dollar amount of annual contribution that such State, Indian tribe, local government, or sponsor was making, if any, in support of services eligible for assistance under this section before the date of the submission of the application for such assistance.

(E) Limitation

For purposes of complying with the requirement under subparagraph (A)(i), the appropriate Secretary concerned may not consider any amounts contributed or provided by any local government to any State receiving assistance under this section that exceed 10 percent of the amount required of the State under subparagraph (A)(i).

(2) Consultation

The Secretary shall consult with the Secretary of Health and Human Services regarding the availability of assistance from other Federal programs to support services under this section and shall make information available to applicants for assistance under this section.

(j) Miscellaneous provisions

(1) Use of residents in providing services

Each housing project that receives assistance under this section shall, to the maximum extent practicable, utilize the elderly and persons with disabilities who are residents of the housing project, but who are not eligible project residents, to participate in providing the services provided under congregate services programs under this section. Such individuals shall be paid wages that shall not be lower than the higher of—

(A) the minimum wage that would be applicable to the employee under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], if section 6(a)(1) of such Act [29 U.S.C. 206(a)(1)] applied to the resident and if the resident were not exempt under section 13 of such Act [29 U.S.C. 213];

(B) the State of[7] local minimum wage for the most nearly comparable covered employment; or

(C) the prevailing rates of pay for persons employed in similar public occupations by the same employer.

(2) Effect of services

Except for wages paid under paragraph (1) of this subsection, services provided to a resident of an eligible housing project under a congregate services program under this section may not be considered as income for the purpose of determining eligibility for or the amount of assistance or aid furnished under any Federal, federally assisted, or State program based on need.

(3) Eligibility and priority for 1978 Act recipients

Notwithstanding any other provision of this section, any public housing agency, housing assisted under section 1701q of title 12, or nonprofit corporation that was receiving assistance under a contract under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] on November 5, 1990,[8] shall (subject to approval and allocation of sufficient amounts under the Congregate Housing Services Act of 1978 and appropriations Acts under such Act) receive assistance under the Congregate Housing Services Act of 1978 for the remainder of the term of the contract for assistance for such agency or corporation under such Act, and shall receive priority for assistance under

[6] See Codification note below.

[7] So in original. Probably should be ''or''.

[8] See Codification note below.

this section after the expiration of such period.

(4) Administrative cost limitation

A recipient of assistance under this section may not use more than 10 percent of the sum of such assistance and the contribution amounts required under subsection (i)(1)(A)(i) of this section for administrative costs and shall ensure that any entity to which the recipient distributes amounts from such sum may not expend more than a reasonable amount from such distributed amounts for administrative costs. Administrative costs may not include any capital expenses.

(k) Definitions

For purposes of this section:

(1) The term ''activity of daily living'' means an activity regularly necessary for personal care and includes bathing, dressing, eating, getting in and out of bed and chairs, walking, going outdoors, and using the toilet.

(2) The term ''case management'' means assessment of the needs of a resident, ensuring access to and coordination of services for the resident, monitoring delivery of services to the resident, and periodic reassessment to ensure that services provided are appropriate to the needs and wants of the resident.

(3) The term ''congregate housing'' means low-rent housing that is connected to a central dining facility where wholesome and economical meals can be served to the residents.

(4) The term ''congregate services'' means services described in subsection (d) of this section.

(5) The term ''congregate services program'' means a program assisted under this section undertaken by an eligible housing project to provide congregate services to eligible residents.

(6) The term ''eligible housing project'' means—

(A) public housing (as such term is defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]) and lower income housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority under title II[9] of the United States Housing Act of 1937;

(B) housing assisted under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] with a contract that is attached to the structure under subsection (d)(2) of such section or with a contract entered into in connection with the new construction or moderate rehabilitation of the structure under section 8(b)(2) of the United States Housing Act,[9] as such section existed before October 1, 1983;

(C) housing assisted under section 1701q of title 12;

(D) housing assisted under section 1715*l*(d) or 1715z–1 of title 12, with respect to which the owner has made a binding commitment to the Secretary of Housing and Urban Development not to prepay the mortgage or terminate the insurance contract under section 1715t of title 12 (unless the binding commitments have been made to extend the low-income use restrictions relating to such housing for the remaining useful life of the housing);

(E) housing assisted under section 1484 or 1485 of this title, with respect to which the owner has made a binding commitment to the Secretary of Agriculture not to prepay or refinance the mortgage (unless the binding commitments have been made to extend the low-income use restrictions relating to such housing for not less than the 20-year period under section 1472(c)(4) of this title); and

(F) housing assisted under section 1486 of this title.

(7) The term ''eligible resident'' means a person residing in eligible housing for the elderly who qualifies under the definition of frail elderly, person with disabilities (regardless of whether the person is elderly), or temporarily disabled.

(8) The term ''frail elderly'' means an elderly person who is unable to perform at least 3 activities of daily living adopted by the Secretary for purposes of this program. Owners may establish additional eligibility requirements (acceptable to the Secretary) based on the standards in local supportive services programs.

(9) The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(10) The term ''instrumental activity of daily living'' means a regularly necessary home management activity and includes preparing meals, shopping for personal items, managing money, using the telephone, and performing light or heavy housework.

(11) The term ''local nonprofit housing sponsor'' includes public housing agencies (as such term is defined in section 3(b)(6) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(6)].[10]

(12) The term ''nonprofit'', as applied to an organization, means no part of the net earnings of the organization inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(13) The term ''elderly person'' means a person who is at least 62 years of age.

(14) The term ''person with disabilities'' has the meaning given the term by section 8013 of this title.

(15) The term ''professional assessment committee'' means a committee established under subsection (e)(3)(B) of this section.

(16) The term ''qualifying supportive services'' means new or significantly expanded services that the Secretary deems essential to

[9] See References in Text note below.

[10] So in original. Probably should be preceded by a closing parenthesis.

enable eligible residents to live independently and avoid unnecessary institutionalization. Such services may include but not be limited to (A) meal service adequate to meet nutritional need; (B) housekeeping aid; (C) personal assistance (which may include, but is not limited to, aid given to eligible residents in grooming, dressing, and other activities which maintain personal appearance and hygiene); (D) transportation services; (E) health-related services; and (F) personal emergency response systems; the owner may provide the qualifying services directly to eligible residents or may, by contract or lease, provide such services through other appropriate agencies or providers.

(17) The term ''Secretary concerned'' means—

(A) the Secretary of Housing and Urban Development, with respect to eligible federally assisted housing administered by such Secretary; and

(B) the Secretary of Agriculture, with respect to eligible federally assisted housing administered by the Administrator of the Farmers Home Administration.

(18) The term ''State'' means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(19) The term ''temporarily disabled'' means having an impairment that—

(A) is expected to be of no more than 6 months duration; and

(B) impedes the ability of the individual to live independently unless the individual receives congregate services.

(20) The term ''unit of general local government''—

(A) means any city, town, township, county, parish, village, or other general purpose political subdivision of a State; and

(B) includes a unit of general government acting as an applicant for assistance under this section in cooperation with a nonprofit housing sponsor and a nonprofit housing sponsor acting as an applicant for assistance under this section in cooperation with a unit of general local government, as provided under subsection (g)(1)(B)[11] of this section.

(*l*) Reports to Congress

(1) In general

Each Secretary concerned shall submit to the Congress, for each fiscal year for which assistance is provided for congregate services programs under this section, an annual report—

(A) describing the activities being carried out with assistance under this section and the population being served by such activities;

(B) evaluating the effectiveness of the program of providing assistance for congregate services under this section, and a comparison of the effectiveness of the program under this section with the HOPE for Elderly Independence Program under section 8012 of this title; and

(C) containing any other information that the Secretary concerned considers helpful to the Congress in evaluating the effectiveness of this section.

(2) Submission of data to Secretary concerned

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall provide, by regulation under subsection (m) of this section, for the submission of data by recipients of assistance under this section to be used in the repeat[12] required by paragraph (1).

(m) Regulations

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall, not later than the expiration of the 180-day period beginning on November 28, 1990, jointly issue any regulations necessary to carry out this section.

(n) Authorization of appropriations

(1) Authorization and use

There are authorized to be appropriated to carry out this section $21,000,000 for fiscal year 1993, and $21,882,000 for fiscal year 1994, of which not more than—

(A) the amount of such sums appropriated that, with respect to the total amount appropriated, represents the ratio of the total number of units of eligible federally assisted housing for elderly individuals assisted by programs administered by the Secretary of Housing and Urban Development to the total number of units assisted by programs administered by such Secretary and the Secretary of Agriculture, shall be used for assistance for congregate services programs in eligible federally assisted housing administered by the Secretary of Housing and Urban Development;[13] and

(B) the amount of such sums appropriated that, with respect to the total amount appropriated, represents the ratio of the total number of units of eligible federally assisted housing for elderly individuals assisted by programs administered by the Secretary of Agriculture to the total number of units assisted by programs administered by such Secretary and the Secretary of Housing and Urban Development, shall be used for assistance for congregate services programs in eligible federally assisted housing administered by the Secretary of Agriculture (through the Administrator of the Farmers Home Administration).

(2) Availability

Any amounts appropriated under this subsection shall remain available until expended.

(*o*) Reserve fund

The Secretary may reserve not more than 5 percent of the amounts made available in each

[11] So in original. Probably should be subsection ''(h)(1)(B)''.

[12] So in original. Probably should be ''report''.

[13] So in original. The colon probably should be a semicolon.

fiscal year to supplement grants awarded to owners under this section when, in the determination of the Secretary, such supplemental adjustments are required to maintain adequate levels of services to eligible residents.

(Pub. L. 101–625, title VIII, § 802, Nov. 28, 1990, 104 Stat. 4304; Pub. L. 102–550, title VI, §§ 604(a), (b), 672, Oct. 28, 1992, 106 Stat. 3805, 3826.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (d)(2)(B)(i), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Title III of the Act is classified generally to subchapter III (§ 3021 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

The Congregate Housing Services Act of 1978, referred to in subsecs. (d)(2)(B)(ii), (i)(1)(A)(i), (B)(i), and (j)(3), is title IV of Pub. L. 95–557, Oct. 31, 1978, 92 Stat. 2104, as amended, which is classified principally to this chapter (§ 8001 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 8001 of this title and Tables.

The Fair Labor Standards Act of 1938, referred to in subsec. (j)(1)(A), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

The United States Housing Act of 1937, referred to in subsec. (k)(6)(A), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended. Title II of the Act, which was classified generally to subchapter II (§ 1437aa et seq.) of chapter 8 of this title, was repealed by Pub. L. 104–330, title V, § 501(a), Oct. 26, 1996, 110 Stat. 4041. For complete classification of this Act to the Code, see Short title note set out under section 1437 of this title and Tables.

Section 8(b)(2) of the United States Housing Act, referred to in subsec. (k)(6)(B), probably means section 8(b)(2) of the United States Housing Act of 1937, which was classified to section 1437f(b)(2) of this title and was repealed by Pub. L. 98–181, title II, § 209(a)(2), Nov. 30, 1983, 97 Stat. 1183.

The Alaska Native Claims Settlement Act, referred to in subsec. (k)(9), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Congregate Housing Services Act of 1978 which comprises this chapter.

Section is comprised of section 802 of Pub. L. 101–625. Subsec. (p) of section 802 of Pub. L. 101–625 amended section 1437g of this title.

November 28, 1990, referred to in subsecs. (i)(1)(B)(i) and (m), was in the original "the date of the enactment of this Act" and November 5, 1990, referred to in subsec. (j)(3), was in the original "the date of the enactment of this section", see Effective Date note below.

AMENDMENTS

1992—Subsec. (d)(4). Pub. L. 102–550, § 672, inserted after first sentence of concluding provisions "Such qualifications and standards shall include requiring each service coordinator to be trained in the aging process, elder services, disability services, eligibility for and procedures of Federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues."

Subsec. (i)(1)(B)(i). Pub. L. 102–550, § 604(b), substituted "6-year" for "3-year" in two places.

Subsec. (n)(1). Pub. L. 102–550, § 604(a), in introductory provisions, substituted provisions authorizing appropriations for fiscal years 1993 and 1994 for provisions authorizing appropriations of $25,000,000 for fiscal year 1991 and $26,100,000 for fiscal year 1992.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE

This section was enacted as part of Pub. L. 101–625, which was approved Nov. 28, 1990. However, this section was deemed enacted as of Nov. 5, 1990, by Pub. L. 101–507, title II, Nov. 5, 1990, 104 Stat. 1358, set out as an Effective Date of 1990 Amendment note under section 1701q of Title 12, Banks and Banking.

REGULATIONS

Section 604(c) of Pub. L. 102–550 provided that:

"(1) INTERIM REGULATIONS.—Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development and the Secretary of Agriculture shall submit to the Congress a copy of proposed interim regulations implementing section 802 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8011] with respect to eligible federally assisted housing (as such term is defined in section 802(k) of such Act) administered by each such Secretary. Not later than the expiration of the 45-day period beginning on the date of the enactment of this Act, but not before the expiration of the 15-day period beginning upon the submission of the proposed interim regulations to the Congress, each such Secretary shall publish interim regulations implementing such section 802, which shall take effect upon publication.

"(2) FINAL REGULATIONS.—Not later than the expiration of the 90-day period beginning upon the publication of interim regulations under paragraph (1), each such Secretary shall issue final regulations implementing section 802 of the Cranston-Gonzalez National Affordable Housing Act after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment under such section 553 shall be not less than 60 days, and the final regulations shall take effect upon issuance.

"(3) FAILURE UNDER 1990 ACT.—This subsection may not be construed to authorize any failure to comply with the requirements of section 802(m) of the Cranston-Gonzalez National Affordable Housing Act."

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 8012. Hope for elderly independence

(a) Purpose

The purpose of this section is to establish a demonstration program to test the effectiveness of combining housing certificates and vouchers with supportive services to assist frail elderly persons to continue to live independently. The demonstration program under this section shall terminate upon the expiration of the 5-year period determined by the Secretary.

(b) Housing assistance

In connection with this demonstration, the Secretary of Housing and Urban Development

may enter into contracts with public housing agencies to provide not more than 1,500 incremental vouchers and certificates under sections 1437f(b) and 1437f(*o*) of this title. A public housing agency may not require that a frail elderly person live in a particular structure or unit, but the agency may restrict the program under this section to a geographic area, where necessary to ensure that the provision of supportive services is feasible. At the end of the demonstration period, the public housing agency shall give each frail elderly person the option to continue to receive assistance under the housing certificate or voucher program of the agency. In the demonstration, the Secretary may also provide for supportive services in connection with existing contracts for housing assistance under sections 1437f(b) and 1437f(*o*) of this title.

(c) Supportive services requirements and matching funding

(1) Federal, PHA and,[1] individual contributions

The amount estimated by the public housing agency and approved by the Secretary as necessary to provide the supportive services for the demonstration period shall be funded as follows:

(A) The Secretary shall provide 40 percent, using amounts appropriated under this section.

(B) The public housing agency shall ensure the provision of at least 50 percent from sources other than under this section.

(C) Notwithstanding any other provision of law, each frail elderly person shall pay 10 percent of the costs of the supportive services that the person receives, except that a frail elderly person may not be required to pay an amount that exceeds 20 percent of the adjusted income (as the term is defined in section 1437a(b)(5) of this title) of such person and the Secretary shall provide for the waiver of the requirement to pay costs under this subparagraph for persons whose income is determined to be insufficient to provide for any payment.

(D) To the extent that the limitation under subparagraph (C) regarding the percentage of income frail elderly persons may pay for services will result in collected amounts for any public housing agency of less than 10 percent of the cost of providing the services, 50 percent of such remaining costs shall be provided by the public housing agency and 50 percent of such remaining costs shall be provided by the Secretary from amounts appropriated under this section.

(2) Provision of services for entire demonstration

Each public housing agency shall ensure that supportive services appropriate to the needs of the frail elderly persons to be served under this demonstration are provided throughout the demonstration period. Expenditures for supportive services need not be made in equal amounts for each year, but may vary depending on the needs of the frail elderly persons assisted under this section. A public housing agency may use up to 20 percent of the Federal assistance provided for supportive services in each year of this demonstration and any amounts from any prior year in which the public housing agency did not use 20 percent of the available Federal assistance.

(3) Calculation of match

In determining compliance with paragraph (1)(B), an agency may include the value of such items as the Secretary determines to be appropriate, which may include the salary paid to staff to provide supportive services, if such items have a readily discernible market value.

(d) Applications

An application under this section shall be submitted by a public housing agency in such form and in accordance with such procedures as the Secretary shall establish. The Secretary shall require that an application contain at a minimum—

(1) an application for housing assistance under section 1437f of this title, if necessary, and a description of any such assistance already made available that will be used in the demonstration;

(2) a description of the size and characteristics of the population of frail elderly persons and of their housing and supportive services needs;

(3) a description of the proposed method of determining whether a person qualifies as a frail elderly person (specifying any additional eligibility requirements proposed by the agency), and of selecting frail elderly persons to participate;

(4) a statement that the public housing agency will create a professional assessment committee or will work with another entity which will assist the public housing agency in identifying and providing only services that each frail elderly person needs to remain living independently;

(5) a description of the mechanisms for developing housing and supportive services plans for each person and for monitoring the person's progress in meeting that plan;

(6) the identity of the proposed service providers and a statement of qualifications;

(7) a description of the supportive services the public housing agency proposes to make available for the frail elderly persons to be served, the estimated costs of such services, a description of the resources that are expected to be made available to cover the portion of the costs required by subsection (c)(1) of this section;

(8) assurances satisfactory to the Secretary that the supportive services will be provided for the demonstration period;

(9) the plan for coordinating the provision of housing assistance and supportive services;

(10) a description of how the public housing agency will ensure that the service providers are providing supportive services, at a reasonable cost, adequate to meet the needs of the persons to be served;

(11) a plan for continuing supportive services to frail elderly persons that continue to re-

[1] So in original. The comma probably should precede ''and''.

ceive housing assistance under section 1437f of this title after the end of the demonstration period; and

(12) a statement that the application has been developed in consultation with the area agency on aging under title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.] and that the public housing agency will periodically consult with the area agency during the demonstration.

(e) Selection

(1) Criteria

The Secretary shall establish selection criteria for a national competition for assistance under this section, which shall include—

(A) the ability of the public housing agency to develop and operate the proposed housing assistance and supportive services program;

(B) the need for a program providing both housing assistance and supportive services for frail elderly persons in the area to be served;

(C) the quality of the proposed program for providing supportive services;

(D) the extent to which the proposed funding for the supportive services is or will be available;

(E) the extent to which the program would meet the needs of the frail elderly persons proposed to be served by the program; and

(F) such other factors as the Secretary specifies to be appropriate for purposes of carrying out the demonstration program established by this section in an effective and efficient manner.

(2) Consultation with HHS

In reviewing the applications, the Secretary shall consult with the Secretary of Health and Human Services with respect to the supportive services aspects.

(3) Funding limitations

No more than 10 percent of the assistance made available under this section may be used for programs located within any one unit of general local government.

(f) Required agreements

The Secretary may not approve any assistance for any program under this section unless the public housing agency agrees—

(1) to operate the proposed program in accordance with the program requirements established by the Secretary;

(2) to conduct an ongoing assessment of the housing assistance and supportive services required by each frail elderly person participating in the program;

(3) to ensure the adequate provision of supportive services, at a reasonable cost, to each frail elderly person participating in the program; and

(4) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the program in an effective and efficient manner.

(g) Definitions

For purposes of this section:

(1) The term ''demonstration period'' means the 5-year period referred to in subsection (a) of this section.

(2) The term ''elderly person'' means a person who is at least 62 years of age.

(3) The term ''frail elderly person'' means an elderly person who is unable to perform at least 3 activities of daily living adopted by the Secretary for purposes of this program. Owners may establish additional eligibility requirements (acceptable to the Secretary) based on the standards in local supportive services programs.

(4) The term ''professional assessment committee'' means a group of at least 3 persons appointed by a public housing agency which shall include at least 1 qualified medical professional and other persons professionally competent to appraise the functional abilities of the frail elderly in relation to the performance of activities of daily living.

(5) The term ''public housing agency'' has the meaning given such term in section 1437a(b)(6) of this title. The term includes an Indian Housing Authority, as defined in section 1437a(b)(11)[2] of this title.

(6) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(7) The term ''supportive services''—

(A) means assistance, that the Secretary determines—

(i) addresses the special needs of frail elderly persons; and

(ii) provides appropriate supportive services or assists such persons in obtaining appropriate services, including personal care, case management services, transportation, meal services, counseling, supervision, and other services essential for achieving and maintaining independent living; and

(B) does not include medical services, as determined by the Secretary.

(h) Multifamily project demonstration

(1) In general

In addition to the demonstration program authorized by the preceding provisions of this section, the Secretary shall conduct a demonstration in one Federal region, subject to the terms and conditions of this subsection, to determine the feasibility of using housing assistance under section 1437f of this title to assist elderly persons who may become frail to live independently in housing specifically designed for occupancy by such persons in sufficient proportion to achieve economies of scale in the provision of services and facilities.

(2) Section 1437f allocation

From amounts provided pursuant to subsection (j) of this section and subject to availability in appropriation Acts, the Secretary shall enter into a contract with a public housing agency to provide housing assistance under section 1437f(b) of this title to assist elderly persons in at least 75 percent of the units in a single housing project with more than 100 units.

[2] See References in Text note below.

(3) Section 1437f terms

The assistance payment contract under section 1437f of this title shall be attached to the structure and shall be in an initial term of 5 years. The contract shall (at the option of the public housing agency and subject to availability of amounts approved in appropriations Acts) be renewable for 3 additional 5-year terms. Rents for units in the project assisted pursuant to this subsection shall be subject to the rent limitations in effect for the area under section 1437f of this title for projects for the elderly receiving loans under section 1701q of title 12.

(4) Supportive services

The Secretary shall allocate, for the project assisted pursuant to this subsection, a reasonable portion of the amounts appropriated pursuant to the authorization for funds for supportive services in subsection (k) of this section, based on the estimated number of project residents who will be frail elderly individuals during the 5-year period beginning on the date of initial occupancy of the project. Grants for supportive services may be used to assist any occupant in the demonstration project who is a frail elderly individual. Grants for supportive services under this subsection shall be subject to the other terms and conditions specified in this section.

(5) Applications

An application for assistance under this subsection may be submitted by any unit of general local government with a population under 50,000 and shall contain such information as the Secretary deems appropriate.

(6) Selection

The Secretary shall select one application for funding under this subsection based on the following criteria:

(A) The number of elderly persons residing in the applicant's jurisdiction.

(B) The extent of existing housing constructed prior to 1940 in the applicant's jurisdiction.

(C) The number of elderly persons living in adjacent projects to whom the services and facilities provided by the project would be available.

(D) The level of State and local contributions toward the cost of developing the project and of providing supportive services.

(E) The project's contribution to neighborhood improvement.

(i) Report

The Secretary shall submit to Congress an annual report evaluating the effectiveness of the demonstrations under this section. The report shall include a statement of the number of persons served, the types of services provided, the cost of providing such services, and any other information the Secretary considers appropriate in evaluating the demonstration.

(j) Section 1437f funding

The budget authority available under section 1437c(c) of this title for assistance under sections 1437f(b) and 1437f(*o*) of this title is authorized to be increased by $38,288,000 on or after October 1, 1992, and by $39,896,096 on or after October 1, 1993. The amounts made available under this subsection shall be used only in connection with the demonstration under this section.

(k) Funding for services

There are authorized to be appropriated for the Secretary to carry out the responsibilities for supportive services under the demonstrations under this section $10,000,000 to become available in fiscal year 1993, and $10,420,000 to become available in fiscal year 1994. Any such amounts appropriated under this subsection shall remain available until expended.

***(l)* Implementation**

Not later than the expiration of the 180-day period beginning on the date that funds authorized for the demonstrations under this section first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the demonstration programs authorized under this section.

(Pub. L. 101–625, title VIII, § 803, Nov. 28, 1990, 104 Stat. 4317; Pub. L. 102–550, title VI, § 605, Oct. 28, 1992, 106 Stat. 3806.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (d)(12), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Title III of the Act is classified generally to subchapter III (§ 3021 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Section 1437a(b)(11) of this title, referred to in subsec. (g)(5), was repealed by Pub. L. 104–330, title V, § 501(b)(1)(D), Oct. 26, 1996, 110 Stat. 4041, and a new section 1437a(b)(11), defining ''public housing agency plan'', was enacted by Pub. L. 105–276, title V, § 506(4), Oct. 21, 1998, 112 Stat. 2524.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Congregate Housing Services Act of 1978 which comprises this chapter.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, § 605(c)(1), substituted ''determined by the Secretary'' for ''beginning on November 28, 1990''.

Subsec. (g)(1). Pub. L. 102–550, § 605(c)(2), added par. (1) and struck out former par. (1) which read as follows: ''The term 'demonstration period' means the period beginning on November 28, 1990, and ending upon the termination date under subsection (a) of this section.''

Subsec. (j). Pub. L. 102–550, § 605(a), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''The Secretary may provide assistance under sections 1437f(b) and 1437f(*o*) of this title in connection with the demonstrations under this section, in an amount not to exceed $34,000,000 for fiscal year 1991, and $35,500,000 for fiscal year 1992, subject to the approval of sufficient amounts in appropriations Acts under section 1437c of this title.''

Subsec. (k). Pub. L. 102–550, § 605(b), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: ''There are authorized to be appropriated for the Secretary to carry out the responsibilities for supportive services under the demonstrations under this section, $10,000,000 to become available in fiscal year 1991, and $10,400,000 to become available in fiscal year 1992, and remain available until expended.''

§ 8013. Supportive housing for persons with disabilities

(a) Purpose

The purpose of this section is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that—

(1) is designed to accommodate the special needs of such persons; and

(2) provides supportive services that address the individual health, mental health, and other needs of such persons.

(b) Authority to provide assistance

The Secretary is authorized—

(1) to provide tenant-based rental assistance to eligible persons with disabilities, in accordance with subsection (d)(4) of this section; and

(2) to provide assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities, which shall be provided as—

(A) capital advances in accordance with subsection (d)(1) of this section, and

(B) contracts for project rental assistance in accordance with subsection (d)(2) of this section;

assistance under this paragraph may be used to finance the acquisition, acquisition and moderate rehabilitation, construction, reconstruction, or moderate or substantial rehabilitation of housing, including the acquisition from the Resolution Trust Corporation, to be used as supportive housing for persons with disabilities and may include real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

(c) General requirements

The Secretary shall take such actions as may be necessary to ensure that—

(1) assistance made available under this section will be used to meet the special needs of persons with disabilities by providing a variety of housing options, ranging from group homes and independent living facilities to dwelling units in multifamily housing developments, condominium housing, and cooperative housing; and

(2) supportive housing for persons with disabilities assisted under this section shall—

(A) provide persons with disabilities occupying such housing with supportive services that address their individual needs;

(B) provide such persons with opportunities for optimal independent living and participation in normal daily activities,[1] and

(C) facilitate access by such persons to the community at large and to suitable employment opportunities within such community.

(d) Forms of assistance

(1) Capital advances

A capital advance provided under subsection (b)(2) of this section shall bear no interest and its repayment shall not be required so long as the housing remains available for very-low-income persons with disabilities in accordance with this section. Such advance shall be in an amount calculated in accordance with the development cost limitation established in subsection (h) of this section.

(2) Project rental assistance

Contracts for project rental assistance shall obligate the Secretary to make monthly payments to cover any part of the costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by very low-income persons with disabilities that is not met from project income. The annual contract amount for any project shall not exceed the sum of the initial annual project rentals for all units and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The Secretary may adjust the annual contract amount if the sum of the project income and the amount of assistance payments available under this paragraph are inadequate to provide for reasonable project costs. In the case of an intermediate care facility which is the residence of persons assisted under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], project income under this paragraph shall include the same amount as if such person were being assisted under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

(3) Rent contribution

A very low-income person shall pay as rent for a dwelling unit assisted under subsection (b)(2) of this section the higher of the following amounts, rounded to the nearest dollar: (A) 30 percent of the person's adjusted monthly income, (B) 10 percent of the person's monthly income, or (C) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person's actual housing costs, is specifically designated by such agency to meet the person's housing costs, the portion of such payments which is so designated; except that the gross income of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall be the same amount as if the person were being assisted under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

(4) Tenant-based rental assistance

(A) Administering entities

Tenant-based rental assistance provided under subsection (b)(1) of this section may be provided only through a public housing agency that has submitted and had approved a plan under section 1437e(d) of this title that provides for such assistance, or through a private nonprofit organization. A public housing agency shall be eligible to apply under this section only for the purposes of providing such tenant-based rental assistance.

[1] So in original. The comma probably should be a semicolon.

(B) Program rules

Tenant-based rental assistance under subsection (b)(1) of this section shall be made available to eligible persons with disabilities and administered under the same rules that govern tenant-based rental assistance made available under section 1437f of this title, except that the Secretary may waive or modify such rules, but only to the extent necessary to provide for administering such assistance under subsection (b)(1) of this section through private nonprofit organizations rather than through public housing agencies.

(C) Allocation of assistance

In determining the amount of assistance provided under subsection (b)(1) of this section for a private nonprofit organization or public housing agency, the Secretary shall consider the needs and capabilities of the organization or agency, in the case of a public housing agency, as described in the plan for the agency under section 1437e of this title.

(e) Term of commitment

(1) Use limitations

All units in housing assisted under subsection (b)(2) of this section shall be made available for occupancy by very low-income persons with disabilities for not less than 40 years.

(2) Contract terms

The initial term of a contract entered into under subsection (d)(2) of this section shall be 240 months. The Secretary shall, to the extent approved in appropriation Acts, extend any expiring contract for a term of not less than 60 months. In order to facilitate the orderly extension of expiring contracts, the Secretary is authorized to make commitments to extend expiring contracts during the year prior to the date of expiration.

(f) Applications

Funds made available under subsection (b)(2) of this section shall be allocated by the Secretary among approvable applications submitted by private nonprofit organizations. Applications for assistance under subsection (b)(2) of this section shall be submitted in such form and in accordance with such procedures as the Secretary shall establish. Such applications shall contain—

(1) a description of the proposed housing;

(2) a description of the assistance the applicant seeks under this section;

(3) a supportive service plan that contains—

(A) a description of the needs of persons with disabilities that the housing is expected to serve;

(B) assurances that persons with disabilities occupying such housing will receive supportive services based on their individual needs;

(C) evidence of the applicant's (or a designated service provider's) experience in providing such supportive services;

(D) a description of the manner in which such services will be provided to such persons, including evidence of such residential supervision as the Secretary determines is necessary to facilitate the adequate provision of such services; and

(E) identification of the extent of State and local funds available to assist in the provision of such services;

(4) a certification from the appropriate State or local agency (as determined by the Secretary) that the provision of the services identified in paragraph (3) are well designed to serve the special needs of persons with disabilities;

(5) reasonable assurances that the applicant will own or have control of an acceptable site for the proposed housing not later than 6 months after notification of an award for assistance;

(6) a certification from the public official responsible for submitting a housing strategy for the jurisdiction to be served in accordance with section 12705 of this title that the proposed housing is consistent with the approved housing strategy; and

(7) such other information or certifications that the Secretary determines to be necessary or appropriate to achieve the purposes of this section.

(g) Selection criteria

The Secretary shall establish selection criteria for assistance under subsection (b)(2) of this section, which shall include—

(1) the ability of the applicant to develop and operate the proposed housing;

(2) the need for housing for persons with disabilities in the area to be served;

(3) the extent to which the proposed design of the housing will meet the special needs of persons with disabilities;

(4) the extent to which the applicant has demonstrated that the necessary supportive services will be provided on a consistent, long-term basis;

(5) the extent to which the proposed design of the housing will accommodate the provision of such services;

(6) the extent to which the applicant has control of the site of the proposed housing; and

(7) such other factors as the Secretary determines to be appropriate to ensure that funds made available under subsection (b)(2) of this section are used effectively.

(h) Development cost limitations

(1) In general

The Secretary shall periodically establish development cost limitations by market area for various types and sizes of supportive housing for persons with disabilities by publishing a notice of the cost limitations in the Federal Register. The cost limitations shall reflect—

(A) the cost of acquisition, construction, reconstruction, or rehabilitation of supportive housing for persons with disabilities that (i) meets applicable State and local housing and building codes; and (ii) conforms with the design characteristics of the neighborhood in which it is to be located;

(B) the cost of movables necessary to the basic operation of the housing, as determined by the Secretary;

(C) the cost of special design features necessary to make the housing accessible to persons with disabilities;

(D) the cost of special design features necessary to make individual dwelling units meet the special needs of persons with disabilities;

(E) the cost of congregate space necessary to accommodate the provision of supportive services to persons with disabilities;

(F) if the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title; and

(G) the cost of land, including necessary site improvement.

In establishing development cost limitations for a given market area, the Secretary shall use data that reflect currently prevailing costs of acquisition, construction, reconstruction, or rehabilitation, and land acquisition in the area. Neither this section nor any other provision of law may be construed as prohibiting or preventing the location and operation, in a project assisted under this section, of commercial facilities for the benefit of residents of the project and the community in which the project is located, except that assistance made available under this section may not be used to subsidize any such commercial facility.

(2) RTC properties

In the case of existing housing and related facilities from the Resolution Trust Corporation under section 1441a(c) of title 12, the cost limitations shall include—

(A) the cost of acquiring such housing,

(B) the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation thereof, and

(C) the cost of the land on which the housing and related facilities are located.

(3) Annual adjustments

The Secretary shall adjust the cost limitation not less than once annually to reflect changes in the general level of acquisition, construction, reconstruction, or rehabilitation costs.

(4) Incentives for savings

(A) Special project account

The Secretary shall use the development cost limitations established under paragraph (1) to calculate the amount of financing to be made available to individual owners. Owners which incur actual development costs that are less than the amount of financing shall be entitled to retain 50 percent of the savings in a special project account. Such percentage shall be increased to 75 percent for owners which add energy efficiency features which (i) exceed the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title; (ii) substantially reduce the lifecycle cost of the housing; (iii) reduce gross rent requirements; and (iv) enhance tenant comfort and convenience.

(B) Uses

The special project account established under subparagraph (A) may be used (i) to supplement services provided to residents of the housing or funds set-aside for replacement reserves, or (ii) for such other purposes as determined by the Secretary.

(5) Funds from other sources

An owner shall be permitted voluntarily to provide funds from sources other than this section for amenities and other features of appropriate design and construction suitable for supportive housing for persons with disabilities if the cost of such amenities is (A) not financed with the advance, and (B) is not taken into account in determining the amount of Federal assistance or of the rent contribution of tenants. Notwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant.

(i) Tenant selection

(1) An owner shall adopt written tenant selection procedures that are satisfactory to the Secretary as (A) consistent with the purpose of improving housing opportunities for very low-income persons with disabilities; and (B) reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(2) Notwithstanding any other provision of law, an owner may, with the approval of the Secretary, limit occupancy within housing developed under this section to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment.

(j) Miscellaneous provisions

(1) Technical assistance

The Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the program carried out under this section.

(2) Civil rights compliance

Each owner shall certify, to the satisfaction of the Secretary, that assistance made available under this section will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.] and other Federal, State, and local laws prohibiting discrimination and promoting equal opportunity; and[2]

(3) Site control

An applicant may obtain ownership or control of a suitable site different from the site specified in the initial application. If an applicant fails to obtain ownership or control of the site within 1 year after notification of an award for assistance, the assistance shall be recaptured and reallocated.

(4) Owner deposit

The Secretary may require an owner to deposit an amount not to exceed $10,000 in a spe-

[2] So in original. The word ''opportunity'' probably should be followed by a period.

cial escrow account to assure the owner's commitment to the housing.

(5) Notice of appeal

The Secretary shall notify an owner not less than 30 days prior to canceling any reservation of assistance provided under this section. During the 30-day period following the receipt of a notice under the preceding sentence, an owner may appeal the proposed cancellation. Such appeal, including review by the Secretary, shall be completed not later than 45 days after the appeal is filed.

(6) Labor standards

(A) In general

The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing with 12 or more units assisted under this section shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40.

(B) Exemption

Subparagraph (A) shall not apply to any individual who—

(i) performs services for which the individual volunteered;

(ii)(I) does not receive compensation for such services; or

(II) is paid expenses, reasonable benefits, or a nominal fee for such services; and

(iii) is not otherwise employed at any time in the construction work.

(7) Use of project reserves

Amounts for project reserves for a project assisted under this section may be used for costs, subject to reasonable limitations as the Secretary determines appropriate, for reducing the number of dwelling units in the project. Such use shall be subject to the approval of the Secretary to ensure that the use is designed to retrofit units that are currently obsolete or unmarketable.

(k) Definitions

As used in this section—

(1) The term ''group home'' means a single family residential structure designed or adapted for occupancy by not more than 8 persons with disabilities. The Secretary may waive the project size limitation contained in the previous sentence if the applicant demonstrates that local market conditions dictate the development of a larger project. Not more than 1 home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

(2) The term ''person with disabilities'' means a household composed of one or more persons at least one of whom is an adult who has a disability. A person shall be considered to have a disability if such person is determined, pursuant to regulations issued by the Secretary to have a physical, mental, or emotional impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if such person has a developmental disability as defined in section 15002 of this title. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, the eligibility of families and persons for admission to and occupancy of housing assisted under this section. Notwithstanding the preceding provisions of this paragraph, the term ''person with disabilities'' includes two or more persons with disabilities living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary) to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this paragraph who were living, in a unit assisted under this section, with the deceased member of the household at the time of his or her death.

(3) The term ''supportive housing for persons with disabilities'' means housing that—

(A) is designed to meet the special needs of persons with disabilities, and

(B) provides supportive services that address the individual health, mental health or other special needs of such persons.

(4) The term ''independent living facility'' means a project designed for occupancy by not more than 24 persons with disabilities (or such higher number of persons as permitted under criteria that the Secretary shall prescribe, subject to the limitation under subsection (h)(6)[3] of this section) in separate dwelling units where each dwelling unit includes a kitchen and a bath.

(5) The term ''owner'' means a private nonprofit organization that receives assistance under this section to develop and operate a project for supportive housing for persons with disabilities.

(6) The term ''private nonprofit organization'' means any institution or foundation—

(A) that has received, or has temporary clearance to receive, tax-exempt status under section 501(c)(3) of title 26;

(B) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(C) which has a governing board (i) the membership of which is selected in a manner to assure that there is significant representation of the views of persons with disabilities, and (ii) which is responsible for the operation of the housing assisted under this section; and

(D) which is approved by the Secretary as to financial responsibility.

Such term includes a for-profit limited partnership the sole general partner of which is an organization meeting the requirements under

[3] So in original. No subsec. (h)(6) has been enacted.

subparagraphs (A), (B), (C), and (D) or a corporation wholly owned and controlled by an organization meeting the requirements under subparagraphs (A), (B), (C), and (D).

(7) The term ''State'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(8) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(9) The term ''very low-income'' has the same meaning as given the term ''very low-income families'' under section 1437a(b)(2) of this title.

(*l*) Allocation of funds

(1) Allocation

Of any amount made available for assistance under this section in any fiscal year, an amount shall be used for assistance under subsection (b)(2) of this section that is not less than the amount made available in appropriation Acts for such assistance in the preceding year.

(2) Capital advances

Of any amounts made available for assistance under subsection (b) of this section, such sums as may be necessary shall be available for funding capital advances in accordance with subsection (c)(1)[4] of this section. Such amounts, the repayments from such advances, and the proceeds from notes or obligations issued under this section prior to November 28, 1990,[5] shall constitute a revolving fund to be used by the Secretary in carrying out this section.

(3) Project rental assistance

Of any amounts made available for assistance under subsection (b) of this section, such sums as may be necessary shall be available for funding project rental assistance in accordance with subsection (c)(2)[6] of this section.

(4) Size limitation

Of any amounts made available for any fiscal year and used for capital advances or project rental assistance under paragraphs (1) and (2) of subsection (d) of this section, not more than 25 percent may be used for supportive housing which contains more than 24 separate dwelling units.

(m) Authorization of appropriations

There are authorized to be appropriated for providing assistance under this section such sums as may be necessary for each of fiscal years 2001, 2002, and 2003.

(n) Effective date and applicability

(1) In general

The amendments made by this section shall take effect on October 1, 1991, with respect to projects approved on or after such date. The Secretary shall issue regulations for such purpose after notice and public comment.

(2) Earlier applicability

The Secretary shall, upon the request of an owner, apply the provisions of this section to any housing for which a loan reservation was made under section 1701q of title 12 before November 28, 1990,[5] but for which no loan has been executed and recorded. In the absence of such a request, any housing identified under the preceding sentence shall continue to be subject to the provisions of section 1701q of title 12 as they were in effect when such assistance was made or reserved.

(3) Coordination

When responding to an owner's request under paragraph (1), the Secretary shall, notwithstanding any other provision of law, apply such portion of amounts obligated at the time of loan reservation, including amounts reserved with respect to such housing under section 1437f of this title, as are required for the owner's housing under the provisions of this section and shall make any remaining portion available for other housing under this section.

(Pub. L. 101–625, title VIII, § 811, Nov. 28, 1990, 104 Stat. 4324; Pub. L. 102–27, title II, Apr. 10, 1991, 105 Stat. 150; Pub. L. 102–550, title VI, §§ 601(d), 603, 623(a), title IX, § 913(b), Oct. 28, 1992, 106 Stat. 3803, 3805, 3818, 3877; Pub. L. 106–74, title V, §§ 512, 524(a), Oct. 20, 1999, 113 Stat. 1101, 1106; Pub. L. 106–402, title IV, § 401(b)(11), Oct. 30, 2000, 114 Stat. 1739; Pub. L. 106–569, title VIII, §§ 822, 841–845, Dec. 27, 2000, 114 Stat. 3020, 3022, 3023.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(2), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI and XIX of the Act are classified generally to subchapters XVI (§ 1381 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (j)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (j)(2), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I of chapter 45 (§ 3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Congregate Housing Services Act of 1978 which comprises this chapter.

In subsec. (j)(6)(A), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931 (commonly known as the Davis-Bacon Act)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

November 28, 1990, referred to in subsecs. (*l*)(2) and (n)(2), was in the original ''the enactment of this Act'' and ''the date of enactment of this Act'', respectively, see Enactment of Section note below.

AMENDMENTS

2000—Subsec. (d)(4). Pub. L. 106–569, § 843(1), added par. (4) and struck out heading and text of former par. (4). Text read as follows: ''Tenant-based rental assistance provided under subsection (b)(1) of this section may be provided only through a public housing agency that has

[4] So in original. Probably should be subsection ''(d)(1)''.

[5] See Codification note below.

[6] So in original. Probably should be subsection ''(d)(2)''.

submitted, and had approved, an allocation plan under section 1437e(f) of this title, and a public housing agency shall be eligible to apply under this section only for the purposes of providing such assistance. Such assistance shall be made available to eligible persons with disabilities and administered under the same rules that govern rental assistance made available under section 1437f of this title. In determining the amount of assistance provided under subsection (b)(1) of this section for a public housing agency, the Secretary shall consider the needs of the agency as described in the allocation plan.''

Subsec. (h)(1). Pub. L. 106–569, § 845, inserted at end of concluding provisions ''Neither this section nor any other provision of law may be construed as prohibiting or preventing the location and operation, in a project assisted under this section, of commercial facilities for the benefit of residents of the project and the community in which the project is located, except that assistance made available under this section may not be used to subsidize any such commercial facility.''

Subsec. (h)(5). Pub. L. 106–569, § 842, substituted ''sources other than this section'' for ''non-Federal sources'' and inserted at end ''Notwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant.''

Subsec. (j)(7). Pub. L. 106–569, § 844, added par. (7).

Subsec. (k)(2). Pub. L. 106–402 substituted ''as defined in section 15002 of this title'' for ''as defined in section 6001(7) of this title'' in third sentence.

Subsec. (k)(6). Pub. L. 106–569, § 841, which directed insertion of concluding provisions after section 811(k)(6)(D) of the Housing Act of 1959, was executed by making the insertion in this section, which is section 811 of the Cranston-Gonzalez National Affordable Housing Act, to reflect the probable intent of Congress.

Subsec. (*l*)(1). Pub. L. 106–569, § 843(2), substituted ''subsection (b)(2) of this section'' for ''subsection (b) of this section'' and struck out before period at end '', and the remainder shall be available for tenant-based assistance under subsection (n)''.

Subsec. (m). Pub. L. 106–569, § 822, added subsec. (m) and struck out heading and text of former subsec. (m). Text read as follows: ''There is authorized to be appropriated for providing assistance under this section $201,000,000 for fiscal year 2000.''

1999—Subsec. (k)(4). Pub. L. 106–74, § 524(a)(1), inserted '', subject to the limitation under subsection (h)(6) of this section'' after ''prescribe''.

Subsec. (*l*)(4). Pub. L. 106–74, § 524(a)(2), added par. (4).

Subsecs. (m), (n). Pub. L. 106–74, § 512, added subsec. (m) and redesignated former subsec. (m) as (n).

1992—Pub. L. 102–550, § 623(a)(1), reenacted section catchline without change.

Subsec. (b). Pub. L. 102–550, § 623(a)(2), added heading, introductory provisions, and pars. (1) and (2) and struck out former heading ''General authority'', introductory provisions, and pars. (1) and (2) which authorized assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities, which assistance would be provided as capital advances and contracts for project rental assistance, and, in concluding provisions, realigned margin and substituted ''assistance under this paragraph'' for ''Such assistance''.

Subsec. (d)(1). Pub. L. 102–550, § 623(a)(3)(A), which directed the substitution of ''subsection (b)(2) of this section'' for ''this section'', was executed by making the substitution the first place appearing in first sentence, to reflect the probable intent of Congress.

Subsec. (d)(3). Pub. L. 102–550, § 623(a)(3)(A), substituted ''subsection (b)(2) of this section'' for ''this section''.

Subsec. (d)(4). Pub. L. 102–550, § 623(a)(3)(B), added par. (4).

Subsec. (e)(1). Pub. L. 102–550, § 623(a)(4), substituted ''subsection (b)(2) of this section'' for ''this section''.

Subsec. (f). Pub. L. 102–550, § 623(a)(5), substituted ''subsection (b)(2) of this section'' for ''this section'' in first and second sentences.

Subsec. (g). Pub. L. 102–550, § 623(a)(6), which directed the substitution of ''subsection (b)(2) of this section'' for ''this section'', was executed by making the substitution in the introductory provisions and in par. (7), to reflect the probable intent of Congress.

Subsec. (j)(6). Pub. L. 102–550, § 913(b), designated existing provisions as subpar. (A), inserted subpar. heading, substituted ''with 12 or more units assisted under this section'' for ''assisted under this section and designed for dwelling use by 12 or more persons with disabilities'', inserted ''commonly known as'' before ''the Davis-Bacon Act'', struck out before period at end ''; but the Secretary may waive the application of this paragraph in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction of such housing, voluntarily donate their services without full compensation for the purposes of lowering the costs of construction and the Secretary determines that any amounts saved thereby are fully credited to the corporation, cooperative, or public body or agency undertaking the construction'', and added subpar. (B).

Subsec. (k)(6). Pub. L. 102–550, § 603, struck out ''incorporated private'' before ''institution'' in introductory provisions, added subpar. (A), and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Subsec. (*l*). Pub. L. 102–550, § 601(d)(1), substituted ''Allocation of funds'' for ''Authorizations'' in heading.

Subsec. (*l*)(1). Pub. L. 102–550, § 601(d)(5), added par. (1). Former par. (1) redesignated (2).

Pub. L. 102–550, § 601(d)(2), inserted first sentence, struck out former first sentence which authorized an appropriation of $271,000,000 for fiscal year 1992 for the purpose of funding capital advances in accordance with subsection (d)(1) of this section, and in second sentence, substituted ''Such amounts'' for ''Amounts so appropriated''.

Subsec. (*l*)(2). Pub. L. 102–550, § 601(d)(4), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Pub. L. 102–550, § 601(d)(3), added par. (2) and struck out former par. (2) which read as follows: ''For the purpose of funding contracts for project rental assistance in accordance with subsection (d)(2) of this section, the Secretary may, to the extent approved in an appropriations Act, reserve authority to enter into obligations aggregating $246,000,000 for fiscal year 1992.''

Subsec. (*l*)(3). Pub. L. 102–550, § 601(d)(4), redesignated par. (2) as (3).

1991—Subsec. (k)(4). Pub. L. 102–27 substituted ''24 persons with disabilities (or such higher number of persons as permitted under criteria that the Secretary shall prescribe)'' for ''20 persons with disabilities''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by title VIII of Pub. L. 106–569 effective Dec. 27, 2000, unless effectiveness or applicability upon another date certain is specifically provided for, with provisions relating to effect of regulatory authority, see section 803 of Pub. L. 106–569, set out as a note under section 1701q of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

ENACTMENT OF SECTION

This section was enacted as part of Pub. L. 101–625, which was approved Nov. 28, 1990. However, this section was deemed enacted as of Nov. 5, 1990, by Pub. L. 101–507, title II, Nov. 5, 1990, 104 Stat. 1358, set out as an Effective Date of 1990 Amendment note under section 1701q of Title 12, Banks and Banking.

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Amendment by section 623(a) of Pub. L. 102–550 not applicable with respect to lower income housing devel-

oped or operated pursuant to contract between Secretary of Housing and Urban Development and Indian housing authority, see section 626 of Pub. L. 102–550, set out as a note under section 1437a of this title.

CHAPTER 90—NEIGHBORHOOD AND CITY REINVESTMENT, SELF-HELP AND REVITALIZATION

SUBCHAPTER I—NEIGHBORHOOD REINVESTMENT CORPORATION

Sec.
8101. Congressional findings and declaration of purpose.
8102. Neighborhood Reinvestment Corporation.
8103. Board of Directors.
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8106. Reports and audits.
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SUBCHAPTER II—NEIGHBORHOOD SELF-HELP DEVELOPMENT

8121 to 8124. Repealed.

SUBCHAPTER III—LIVABLE CITIES

8141. Congressional findings.
8142. Statement of purpose.
8143. Definitions.
8144. Grants to or contracts with organizations.
8145. Coordination and development of program with other Federal and non-Federal programs.
8146. Authorization of appropriations.

SUBCHAPTER I—NEIGHBORHOOD REINVESTMENT CORPORATION

§ 8101. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the neighborhood housing services demonstration of the Urban Reinvestment Task Force has proven its worth as a successful program to revitalize older urban neighborhoods by mobilizing public, private, and community resources at the neighborhood level; and

(2) the demand for neighborhood housing services programs in cities throughout the United States warrants the creation of a public corporation to institutionalize and expand the neighborhood housing services program and other programs of the present Urban Reinvestment Task Force.

(b) The purpose of this subchapter is to establish a public corporation which will continue the joint efforts of the Federal financial supervisory agencies and the Department of Housing and Urban Development to promote reinvestment in older neighborhoods by local financial institutions working cooperatively with community people and local government, and which will continue the nonbureaucratic approach of the Urban Reinvestment Task Force, relying largely on local initiative for the specific design of local programs.

(Pub. L. 95–557, title VI, § 602, Oct. 31, 1978, 92 Stat. 2115.)

SHORT TITLE

Section 601 of title VI of Pub. L. 95–557 provided that: ''This title [enacting this subchapter] may be cited as the 'Neighborhood Reinvestment Corporation Act'.''

Section 701 of title VII of Pub. L. 95–557, which provided that such title, which was classified to subchapter II of this chapter, was to be cited as the ''Neighborhood Self-Help Development Act of 1978'', was repealed by Pub. L. 97–35, title III, § 313(a), Aug. 13, 1981, 95 Stat. 398.

Section 801 of title VIII of Pub. L. 95–557 provided that: ''This title [enacting subchapter III of this chapter] may be cited as the 'Livable Cities Act of 1978'.''

§ 8102. Neighborhood Reinvestment Corporation

(a) Establishment

There is established a Neighborhood Reinvestment Corporation (hereinafter referred to as the ''corporation'') which shall be a body corporate and shall possess the powers, and shall be subject to the direction and limitations specified herein.

(b) Implementation and expansion of demonstration activities

The corporation shall implement and expand the demonstration activities carried out by the Urban Reinvestment Task Force.

(c) Principal office

The corporation shall maintain its principal office in the District of Columbia or at such other place the corporation may from time to time prescribe.

(d) Exemption from taxation

The corporation, including its franchise, activities, assets, and income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(Pub. L. 95–557, title VI, § 603, Oct. 31, 1978, 92 Stat. 2115; Pub. L. 96–399, title III, § 315(1), Oct. 8, 1980, 94 Stat. 1645.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–399 struck out ''National'' before ''Neighborhood''.

§ 8103. Board of Directors

(a) Membership

The corporation shall be under the direction of a board of directors made up of the following members:

(1) the Chairman of the Federal Home Loan Bank Board or a member of the Federal Home Loan Bank Board to be designated by the Chairman;

(2) the Secretary of Housing and Urban Development;

(3) the Chairman of the Board of Governors of the Federal Reserve System, or a member of the Board of Governors of the Federal Reserve System to be designated by the Chairman;

(4) the Chairman of the Federal Deposit Insurance Corporation or the appointive member of the Board of Directors of the Federal Deposit Insurance Corporation if so designated by the Chairman;

(5) the Comptroller of the Currency; and

(6) the Chairman of the National Credit Union Administration or a member of the

Board of the National Credit Union Administration to be designated by the Chairman.

(b) Election of chairman

The Board shall elect from among its members a chairman who shall serve for a term of two years, except that the Chairman of the Federal Home Loan Bank Board shall serve as Chairman of the Board of Directors for the first such two-year term.

(c) Terms of office

Each director of the corporation shall serve ex officio during the period he holds the office to which he is appointed by the President.

(d) Compensation and expenses

The directors of the corporation, as full-time officers of the United States, shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as directors of the corporation.

(e) Bylaws, policies and administrative provisions

The directors of the corporation shall adopt such bylaws, policies, and administrative provisions as are necessary to the functioning of the corporation and consistent with the provisions of this subchapter.

(f) Director absences; designated representatives

A director who is necessarily absent from a meeting of the board, or of a committee of the board, may participate in such meeting through a duly designated representative who is serving, pursuant to appointment by the President of the United States, by and with the advice and consent of the Senate, in the same department, agency, corporation, or instrumentality as the absent director, or in the case of the Comptroller of the Currency, through a duly designated Deputy Comptroller.

(g) Quorum

The presence of a majority of the board members, or their representatives as provided in subsection (f) of this section, shall constitute a quorum.

(h) Application of other laws

The corporation shall be subject to the provisions of section 552 of title 5.

(i) Meetings of board

All meetings of the board of directors will be conducted in accordance with the provisions of section 552b of title 5.

(Pub. L. 95–557, title VI, § 604, Oct. 31, 1978, 92 Stat. 2115; Pub. L. 97–320, title VII, § 710(a), Oct. 15, 1982, 96 Stat. 1544; Pub. L. 100–242, title V, § 520(a), Feb. 5, 1988, 101 Stat. 1938; Pub. L. 100–628, title X, § 1085, Nov. 7, 1988, 102 Stat. 3278.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–242, § 520(a)(1), inserted ''or a member of the Federal Home Loan Bank Board to be designated by the Chairman'' before semicolon.

Subsec. (a)(3). Pub. L. 100–242, § 520(a)(2), added par. (3) and struck out former par. (3) which read as follows: ''a member of the Board of Governors of the Federal Reserve System, to be designated by the Chairman of the Board of Governors of the Federal Reserve System;''.

Subsec. (a)(4). Pub. L. 100–242, § 520(a)(3), inserted ''or the appointive member of the Board of Directors of the Federal Deposit Insurance Corporation if so designated by the Chairman'' before semicolon.

Subsec. (a)(6). Pub. L. 100–628 struck out second of the two periods at end.

Pub. L. 100–242, § 520(a)(4), substituted ''Chairman'' for ''Administrator'' and inserted ''or a member of the Board of the National Credit Union Administration to be designated by the Chairman.'' before period.

1982—Subsecs. (f) to (i). Pub. L. 97–320 added subsec. (f), redesignated former subsecs. (f) to (h) as (g) to (i), respectively, and in subsec. (g) inserted '', or their representatives as provided in subsection (f) of this section,''.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

§ 8104. Officers and employees

(a) Employment, compensation and benefits

The board shall have power to select, employ, and fix the salary and benefits of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this subchapter, without regard to the provisions of title 5 governing appointments in the competitive service, classification, and General Schedule pay rates, except that no officer, employee, attorney, or agent of the corporation may be paid salary at a rate in excess of the rate for level IV of the Executive Schedule. The Corporation shall also apply the provisions of section 5307(a)(1), (b)(1) and (b)(2) of title 5 governing limitations on certain pay as if its employees were Federal employees receiving payments under title 5.

(b) Appointment of executive director

The directors of the corporation shall appoint an executive director who shall serve as chief executive officer of the corporation.

(c) Appointment and removal of employees by executive director

The executive director of the corporation, subject to approval by the board, may appoint and remove such employees of the corporation as he determines necessary to carry out the purposes of the corporation.

(d) Prohibition of political tests and qualifications in selection, etc., of personnel

No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the corporation or of any recipient, or in selecting or monitoring any grantee, contractor, or person or entity receiving financial assistance under this subchapter.

(e) Employee status; applicability of administrative and cost standards of Office of Management and Budget

Officers and employees of the corporation shall not be considered officers or employees of the United States, and the corporation shall not be considered a department, agency, or instrumentality of the Federal Government. The corporation shall be subject to administrative and

cost standards issued by the Office of Management and Budget similar to standards applicable to non-profit grantees and educational institutions.

(Pub. L. 95–557, title VI, § 605, Oct. 31, 1978, 92 Stat. 2116; Pub. L. 108–199, div. G, title III,[(1), (2)], Jan. 23, 2004, 118 Stat. 413.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

Level IV of the Executive Schedule, referred to in subsec. (a), is set out in section 5315 of Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–199, title III, [(2)], added second sentence.

Pub. L. 108–199, title III, [(1)], which directed the substitution of ''salary'' for ''compensation'', was executed by making the substitution both places that ''compensation'' appeared to reflect the probable intent of Congress.

Pub. L. 108–199, title III, [(1)], which directed substitution of ''rate for level IV of the Executive Schedule'' for ''highest rate provided for GS–18 of the General Schedule under section 5332 of title 5 United States Code'', was executed by making the substitution for ''highest rate provided for GS–18 of the General Schedule under section 5332 of title 5, United States Code'' to reflect the probable intent of Congress.

§ 8105. Powers and duties of corporation

(a) Continuance of work of Urban Reinvestment Task Force regarding neighborhood housing services programs and preservation projects

(1) The corporation shall continue the work of the Urban Reinvestment Task Force in establishing neighborhood housing services programs in neighborhoods throughout the United States, monitoring their progress, and providing them with grants and technical assistance. For the purpose of this paragraph, a neighborhood housing services program may involve a partnership of neighborhood residents and representatives of local governmental and financial institutions, organized as a State-chartered non-profit corporation, working to bring about reinvestment in one or more neighborhoods through a program of systematic housing inspections, increased public investment, increased private lending, increased resident investment, and a revolving loan fund to make loans available at flexible rates and terms to homeowners not meeting private lending criteria.

(2) The corporation shall continue the work of the Urban Reinvestment Task Force in identifying, monitoring, evaluating, and providing grants and technical assistance to selected neighborhood preservation projects which show promise as mechanisms for reversing neighborhood decline and improving the quality of neighborhood life.

(3) The corporation shall experimentally replicate neighborhood preservation projects which have demonstrated success, and after creating reliable developmental processes, bring the new programs to neighborhoods throughout the United States which in the judgment of the corporation can benefit therefrom, by providing assistance in organizing programs, providing grants in partial support of program costs, and providing technical assistance to ongoing programs.

(4) The corporation shall continue the work of the Urban Reinvestment Task Force in supporting Neighborhood Housing Services of America, a nonprofit corporation established to provide services to local neighborhood housing services programs, with support which may include technical assistance and grants to expand its national loan purchase pool and may contract with it for services which it can perform more efficiently or effectively than the corporation.

(5) The corporation shall, in making and providing the foregoing grants and technical and other assistance, determine the reporting and management restrictions or requirements with which the recipients of such grants or other assistance must comply. In making such determinations, the corporation shall assure that recipients of grants and other assistance make available to the corporation such information as may be necessary to determine compliance with applicable Federal laws.

(b) General administrative powers

To carry out the foregoing purposes and engage in the foregoing activities, the corporation is authorized—

(1) to adopt, alter, and use a corporate seal;

(2) to have succession until dissolved by Act of Congress;

(3) to make and perform contracts, agreements, and commitments;

(4) to sue and be sued, complain and defend, in any State, Federal, or other court;

(5) to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid, and appoint, employ, and fix and provide for the compensation of consultants, without regard to any other law, except as provided in section 8107(d) of this title;

(6) to settle, adjust, and compromise, and with or without compensation or benefit to the corporation to release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the corporation;

(7) to invest such funds of the corporation in such investments as the board of directors may prescribe;

(8) to acquire, take, hold, and own, and to deal with and dispose of any property; and

(9) to exercise all other powers that are necessary and proper to carry out the purposes of this subchapter.

(c) Contracting powers

(1) The corporation may contract with the Office of Neighborhood Reinvestment of the Federal home loan banks for all staff, services, facilities, and equipment now or in the future furnished by the Office of Neighborhood Reinvestment to the Urban Reinvestment Task Force, including receiving the services of the Director of the Office of Neighborhood Reinvestment as the corporation's executive director.

(2) The corporation shall have the power to award contracts and grants to—

(A) neighborhood housing services corporations and other nonprofit corporations en-

gaged in neighborhood preservation activities; and

(B) local governmental bodies.

(3) The Secretary of Housing and Urban Development, the Federal Home Loan Bank Board and the Federal home loan banks, the Board of Governors of the Federal Reserve System and the Federal Reserve banks, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency, the National Credit Union Administration or any other department, agency, or other instrumentality of the Federal Government are authorized to provide funds, services and facilities, with or without reimbursement, necessary to achieve the objectives and to carry out the purposes of this subchapter.

(d) Non-profit nature of corporation

(1) The corporation shall have no power to issue any shares of stocks, or to declare or pay any dividends.

(2) No part of the income or assets of the corporation shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) The corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(Pub. L. 95–557, title VI, § 606, Oct. 31, 1978, 92 Stat. 2117; Pub. L. 96–399, title III, § 315(2), Oct. 8, 1980, 94 Stat. 1645; Pub. L. 97–320, title VII, § 710(b), Oct. 15, 1982, 96 Stat. 1544.)

AMENDMENTS

1982—Subsec. (c)(3). Pub. L. 97–320 inserted ''funds,'' after ''provide''.

1980—Subsec. (a)(1). Pub. L. 96–399 substituted ''monitoring'' for ''supervising''.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

§ 8106. Reports and audits

(a) Annual report to President and Congress

The corporation shall publish an annual report which shall be transmitted by the corporation to the President and the Congress.

(b) Annual audit of accounts

The accounts of the corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(c) Additional audits by Government Accountability Office

In addition to the annual audit, the financial transactions of the corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the Government Accountability Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(d) Audit of grantees and contractors of corporation

For any fiscal year during which Federal funds are available to finance any portion of the corporation's grants or contracts, the Government Accountability Office, in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States, may audit the grantees or contractors of the corporation.

(e) Annual financial audit

The corporation shall conduct or require each grantee or contractor to provide for an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the corporation.

(Pub. L. 95–557, title VI, § 607, Oct. 31, 1978, 92 Stat. 2118; Pub. L. 104–66, title II, § 2161, Dec. 21, 1995, 109 Stat. 731; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsecs. (c), (d). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1995—Subsec. (c). Pub. L. 104–66 struck out at end ''The financial transactions of the corporation shall be audited by the General Accounting Office at least once during each three years.''

NATIONAL DEMONSTRATION PROGRAM OF MUTUAL HOUSING ASSOCIATIONS; REPORT TO CONGRESS

Pub. L. 96–399, title III, § 316, Oct. 8, 1980, 94 Stat. 1645, directed submission to Congress, not later than Sept. 30, 1981, of report by Neighborhood Reinvestment Corporation, in conjunction with the National Consumer Cooperative Bank and the Secretary of Housing and Urban Development, on the findings, conclusions, and legislative recommendations reached as a result of the national demonstration program of mutual housing associations.

§ 8107. Appropriations

(a) Authorization

(1) There are authorized to be appropriated to the corporation to carry out this subchapter $29,476,000 for fiscal year 1993 and $30,713,992 for fiscal year 1994. Not more than 15 percent of any amount appropriated under this paragraph for any fiscal year may be used for administrative expenses.

(2) Of the amount appropriated pursuant to this subsection for any fiscal year, amounts appropriated in excess of the amount necessary to continue existing services of the Neighborhood Reinvestment Corporation in revitalizing declining neighborhoods shall be available—

(A) to expand the national neighborhood housing services network and to assist network capacity development, including expansion of rental housing resources;

(B) to expand the loan purchase capacity of the national neighborhood housing services secondary market operated by Neighborhood Housing Services of America;

(C) to make grants to provide incentives to extend low-income housing use in connection with properties subject to prepayment pursuant to the Low-Income Housing Preservation and Resident Ownership Act of 1990 [12 U.S.C. 4101 et seq.];

(D) to increase the resources available to the national neighborhood housing services network programs for the purchase of multifamily and single-family properties owned by the Secretary of Housing and Urban Development for rehabilitation (if necessary) and sale to low- and moderate-income families; and

(E) to provide matching capital grants, operating subsidies, and technical services to mutual housing associations for the development, acquisition, and rehabilitation of multifamily and single-family properties (including properties owned by the Secretary of Housing and Urban Development) to ensure affordability by low- and moderate-income families.

(b) Availability of funds until expended

Funds appropriated pursuant to this section shall remain available until expended.

(c) Accounting and reporting of non-Federal funds

Non-Federal funds received by the corporation, and funds received by any recipient from a source other than the corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

(d) Preparation of business-type budget

The corporation shall prepare annually a business-type budget which shall be submitted to the Office of Management and Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented. The budget of the corporation as modified, amended, or revised by the President shall be transmitted to the Congress as a part of the annual budget required by chapter 11 of title 31. Amendments to the annual budget program may be submitted from time to time.

(Pub. L. 95–557, title VI, § 608, Oct. 31, 1978, 92 Stat. 2119; Pub. L. 96–153, title III, § 307, Dec. 21, 1979, 93 Stat. 1113; Pub. L. 96–399, title III, § 315(3), Oct. 8, 1980, 94 Stat. 1645; Pub. L. 97–35, title III, § 314, Aug. 13, 1981, 95 Stat. 398; Pub. L. 98–181, title I, § 125, Nov. 30, 1983, 97 Stat. 1175; Pub. L. 98–479, title II, § 203(m), Oct. 17, 1984, 98 Stat. 2231; Pub. L. 100–242, title V, § 520(b), Feb. 5, 1988, 101 Stat. 1938; Pub. L. 101–625, title IX, § 917(c), Nov. 28, 1990, 104 Stat. 4398; Pub. L. 102–550, title VIII, § 831, Oct. 28, 1992, 106 Stat. 3851.)

REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Ownership Act of 1990, referred to in subsec. (a)(2)(C), probably means the Low-Income Housing Preservation and Resident Homeownership Act of 1990, title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, which is classified principally to chapter 42 (§ 4101 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–550, § 831(a), amended first sentence generally, substituting present provisions for provisions authorizing appropriations of $35,000,000 for fiscal year 1991 and $36,500,000 for fiscal year 1992.

Subsec. (a)(2). Pub. L. 102–550, § 831(b), substituted ''any fiscal year'' for ''each of the fiscal years 1991 and 1992'' in introductory provisions.

1990—Subsec. (a). Pub. L. 101–625 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There are authorized to be appropriated to the corporation to carry out this subchapter $19,000,000 for fiscal year 1988, and $19,000,000 for fiscal year 1989.''

1988—Subsec. (a). Pub. L. 100–242 amended subsec. (a) generally, substituting appropriations authorization of $19,000,000 for fiscal years 1988 and 1989 for prior authorizations not to exceed $16,512,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985.

1984—Subsec. (d). Pub. L. 98–479 substituted ''chapter 11 of title 31'' for ''the Budget and Accounting Act, 1921''.

1983—Subsec. (a). Pub. L. 98–181 substituted appropriations authorization not in excess of $16,512,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985 for prior authorization not to exceed $12,500,000, $12,000,000, $13,426,000, and $14,950,000 for fiscal years 1979, 1980, 1981, and 1982, respectively.

1981—Subsec. (a). Pub. L. 97–35 inserted authorized of appropriations for fiscal year 1982.

1980—Subsec. (a). Pub. L. 96–399 authorized appropriations of not to exceed $13,426,000 for fiscal year 1981.

1979—Subsec. (a). Pub. L. 96–153 authorized appropriation of $12,000,000 for fiscal year 1980.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EXPANSION OF NATIONAL NEIGHBORHOOD HOUSING SERVICES NETWORK

Section 917(a), (b) of Pub. L. 101–625 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) protecting the existing stock of unsubsidized privately held lower income housing through the rehabilitation and revitalization of declining neighborhoods is essential to a national housing policy that seeks to increase the availability of affordable housing for low- and moderate-income families;

''(2) the Neighborhood Reinvestment Corporation, the anchor of the national neighborhood housing services network, was chartered by Congress more than 10 years ago to revitalize neighborhoods for the benefit of current residents by mobilizing public, private, and community resources at the neighborhood level;

''(3) the national neighborhood housing services network has proven its worth as a successful cost-effective program relying largely on local initiative for the specific design of local programs;

''(4) the national neighborhood housing services network has had more than 10 years of experience in revitalizing declining neighborhoods, creating housing for low- and moderate-income families, and equipping residents with skills and resources required to maintain safe and healthy communities; and

''(5) expanding upon the existing capabilities, resources, and potential of the national neighborhood housing services network is a cost-effective response to the affordable housing and neighborhood revitalization needs confronting the Nation, and is a strong preventive measure in addressing the national tragedy of homelessness.

''(b) PURPOSE.—It is the purpose of this section [amending this section] to authorize appropriations for the Neighborhood Reinvestment Corporation for fiscal years 1991 and 1992 to permit the corporation—

''(1) to carefully expand the capacities of the national neighborhood housing services network;

''(2) to begin to meet the urgent need for neighborhood housing services and mutual housing associations in neighborhoods across the Nation as the effort

to preserve affordable housing for low- and moderate-income American families increases;

''(3) to increase and provide ongoing technical and capacity development assistance to neighborhood housing services and related public-private partnership-based nonprofit institutions involved in the revitalization of neighborhoods for the benefit of current residents, rehabilitation, preservation of existing housing stock, and production of additional housing opportunities for low- and moderate-income families;

''(4) to expand the loan purchase capacity of the national neighborhood housing services secondary market, operated by Neighborhood Housing Services of America, for loans made by neighborhood housing services to residents who are unable to meet conventional lending standards, and other loans for community development purposes;

''(5) to provide increased capacity development and matching grants to preserve existing privately held unsubsidized rental housing affordable to low- and moderate-income households and to create flexible strategies effective in the diverse economic and geographic environments of the Nation;

''(6) to make grants to provide incentives to extend low-income housing use in connection with properties subject to prepayment pursuant to the Low-Income Housing Preservation and Resident Ownership [Homeownership] Act of 1990 [12 U.S.C. 4101 et seq.];

''(7) to increase the resources available to neighborhood housing services network programs for the purchase of multifamily and single-family properties owned by the Secretary of Housing and Urban Development for rehabilitation (if necessary) and sale to low- and moderate-income families;

''(8) to expand the national mutual housing association demonstration by providing technical assistance and matching grants to assist low- and moderate-income families to participate in such associations;

''(9) to increase resources available to neighborhood housing services network programs for foreclosure intervention and prevention; and

''(10) to create additional neighborhood housing services partnership organizations to serve rural communities, Native Americans, Native Hawaiians, and other communities in need.''

SUBCHAPTER II—NEIGHBORHOOD SELF-HELP DEVELOPMENT

§§ 8121 to 8124. Repealed. Pub. L. 97–35, title III, § 313(a), Aug. 13, 1981, 95 Stat. 398

Section 8121, Pub. L. 95–557, title VII, § 702, Oct. 31, 1978, 92 Stat. 2119, set forth congressional findings and statement of purposes for neighborhood self-help development programs.

Section 8122, Pub. L. 95–557, title VII, § 703, Oct. 31, 1978, 92 Stat. 2120, defined terms applicable to subchapter.

Section 8123, Pub. L. 95–557, title VII, § 704, Oct. 31, 1978, 92 Stat. 2120; Pub. L. 96–153, title I, § 107(b), Dec. 21, 1979, 93 Stat. 1104, set forth provisions respecting grants and other forms of assistance.

Section 8124, Pub. L. 95–557, title VII, § 705, Oct. 31, 1978, 92 Stat. 2121; Pub. L. 96–153, title I, § 107(a), Dec. 21, 1979, 93 Stat. 1104; Pub. L. 96–399, title I, § 115, Oct. 8, 1980, 94 Stat. 1623, related to authorization of appropriations for grants.

EFFECTIVE DATE OF REPEAL

Sections 8121 to 8124 repealed effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

SUBCHAPTER III—LIVABLE CITIES

§ 8141. Congressional findings

The Congress finds and declares—

(1) that artistic, cultural, and historic resources, including urban design, constitute an integral part of a suitable living environment for the residents of the Nation's urban areas, and should be available to all residents of such areas, regardless of income;

(2) that the development or preservation of such resources is a significant and necessary factor in restoring and maintaining the vitality of the urban environment, and can serve as a catalyst for improving decaying or deteriorated urban communities and expanding economic opportunities, and for creating a sense of community identity, spirit, and pride; and

(3) that the encouragement and support of local initiatives to develop or preserve such resources, particularly in connection with federally assisted housing or community development activities or in communities with a high proportion of low-income residents, is an appropriate function of the Federal Government.

(Pub. L. 95–557, title VIII, § 802, Oct. 31, 1978, 92 Stat. 2122.)

SHORT TITLE

For short title of this subchapter as the ''Livable Cities Act of 1978'', see section 801 of Pub. L. 95–557, set out as a note under section 8101 of this title.

§ 8142. Statement of purpose

The primary purpose of this subchapter is to assist the efforts of States, local governments, neighborhood and other organizations to provide a more suitable living environment, expand cultural opportunities, and to the extent practicable, stimulate economic opportunities, primarily for the low and moderate income residents of communities and neighborhoods in need of conservation and revitalization, through the utilization, design or development of artistic, cultural, or historic resources.

(Pub. L. 95–557, title VIII, § 803, Oct. 31, 1978, 92 Stat. 2122.)

§ 8143. Definitions

For the purpose of this subchapter—

(1) the terms ''art'' and ''arts'' include, but are not limited to, architecture (including preservation, restoration, or adaptive use of existing structures), landscape architecture, urban design, interior design, graphic arts, fine arts (including painting and sculpture), performing arts (including music, drama, and dance), literature, crafts, photography, communications media and film, as well as other similar activities which reflect the cultural heritage of the Nation's communities and their citizens;

(2) the term ''nonprofit organization'' means an organization in which no part of its net earnings inures to the benefit of any private stockholder or stockholders, individual or individuals and, if a private entity, which is not disqualified for tax exemption under section 501(c)(3) of title 26 by reason of attempting to influence legislation and does not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office; such organizations may include States and units of local government (including public agencies or special authorities thereof), re-

gional organizations of local governments and nonprofit societies, neighborhood groups, institutions, organizations, associations or museums;

(3) the term ''project'' means a program or activity intended to carry out the purposes of this subchapter, including programs for neighborhood and community-based arts programs, urban design, user needs design, and the encouragement of the preservation of historic or other structures which have neighborhood or community significance;

(4) the term ''Secretary'' means the Secretary of Housing and Urban Development;

(5) the term ''Chairman'' means the Chairman of the National Endowment for the Arts;

(6) the term ''Department'' means the Department of Housing and Urban Development; and

(7) the term ''Endowment'' means the National Endowment for the Arts.

(Pub. L. 95–557, title VIII, § 804, Oct. 31, 1978, 92 Stat. 2122; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Par. (2). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

§ 8144. Grants to or contracts with organizations

(a) Authorization; purposes

The Secretary is authorized to make grants to, or enter into contracts with, nonprofit organizations for the purpose of enabling such organizations to undertake or support in cities, urban communities, or neighborhoods, projects which the Secretary, in consultation with the Chairman, determines will carry out the purposes of this subchapter and which—

(1) have substantial artistic, cultural, historical, or design merit,

(2) represent community or neighborhood initiatives which have a significant potential for conserving or revitalizing communities or neighborhoods, and for enhancing community or neighborhood identity and pride, and

(3) meet the criteria established jointly by the Secretary and the Chairman pursuant to this section.

(b) Establishment of criteria and procedures for evaluation and selection of projects; scope of criteria

The Secretary and the Chairman shall establish jointly criteria and procedures for evaluating and selecting projects to be assisted under this subchapter. Such criteria shall address, but need not be limited to—

(1) artistic, cultural, historical, or design quality;

(2) the degree of broadly based, active involvement of neighborhood residents, community groups, local officials, and persons with expertise in the arts with the proposed project;

(3) the degree of or the potential for utilization or stimulation of assistance or cooperation from other Federal, State, and local public and private sources, including arts organizations;

(4) the feasibility of project implementation, including the capability of the sponsor organization;

(5) the potential contribution to neighborhood revitalization and the creation of a sense of community identity and pride;

(6) the potential for stimulating neighborhood economic and community development, particularly for the benefit of persons of low and moderate income; and

(7) the potential of utilization of the project by neighborhood residents, particularly residents of low and moderate income, senior citizens, and handicapped persons.

(c) Application requirements

No assistance shall be made under this subchapter except upon application therefor submitted to the Secretary in accordance with regulations and procedures established jointly by the Secretary and the Chairman.

(d) Consultation requirements

Prior to the approval of any application for assistance under this subchapter, the Secretary shall consult with the Chairman and, in accordance with regulations and procedures established jointly by the Secretary and the Chairman, seek the recommendations of State and local officials and private citizens who have broad knowledge of, or experience or expertise in, community and economic development and revitalization, and of such officials and citizens who have broad knowledge of, or expertise in, the arts.

(e) Regulations respecting matching requirements; waiver, etc.

The Secretary, in cooperation with the Chairman, shall prescribe regulations which require that specific portions of the cost of any projects assisted under this subchapter shall be provided from sources other than funds made available under this subchapter. Such matching requirements may vary depending on the type of applicant, and the Secretary may reduce or waive such requirements solely in order to take account of the financial capacity of the applicant.

(f) Certification of application

Grants and other assistance may be made available under this subchapter only if the application contains a certification by the unit of general local government in which the project will be located that the project is consistent with and supportive of the objectives of that government for the area in which the project is located.

(g) Available funds not to supplant other public or private funds

Funds made available under this subchapter shall not be used to supplant other public or private funds.

(h) Availability of funds for administrative expenses

No more than 10 per centum of the funds appropriated for any fiscal year under section 8146 of this title shall be available for administrative expenses.

(Pub. L. 95–557, title VIII, § 805, Oct. 31, 1978, 92 Stat. 2123.)

§ 8145. Coordination and development of program with other Federal and non-Federal programs

The Secretary shall coordinate the administration of the provisions of this subchapter in cooperation with other Federal agencies and assure that projects assisted under this subchapter are coordinated with efforts undertaken by State and local public and private entities, including arts organizations.

(Pub. L. 95–557, title VIII, § 806, Oct. 31, 1978, 92 Stat. 2124.)

§ 8146. Authorization of appropriations

There are authorized to be appropriated for carrying out the purposes of this subchapter not to exceed $5,000,000 for fiscal year 1979, and not to exceed $5,000,000 for fiscal year 1980. Any amounts appropriated under this section shall remain available until expended.

(Pub. L. 95–557, title VIII, § 807, Oct. 31, 1978, 92 Stat. 2124; Pub. L. 96–153, title I, § 108, Dec. 21, 1979, 93 Stat. 1105.)

AMENDMENTS

1979—Pub. L. 96–153 reduced authorization of appropriation for fiscal year 1980 from ''$10,000,000'' to ''$5,000,000''.

CHAPTER 91—NATIONAL ENERGY CONSERVATION POLICY

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SUBCHAPTER IV—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

PART A—GENERAL PROVISIONS

8281 to 8281b. Repealed.

PART B—ENERGY CONSERVATION PLANS

8282 to 8282b. Repealed.

PART C—UTILITY PROGRAMS

8283, 8283a. Repealed.

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SUBCHAPTER V—ENERGY AUDITOR TRAINING AND CERTIFICATION

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8287. Authority to enter into contracts.
8287a. Payment of costs.
8287b. Reports.
8287c. Definitions.
8287d. Assistance to Federal agencies in achieving energy efficiency in Federal facilities and operations.

SUBCHAPTER I—GENERAL PROVISIONS

§ 8201. Findings and statement of purposes

(a) Findings

The Congress finds that—

(1) the United States has survived a period of energy shortage and has made significant progress toward improving energy efficiency in all sectors of the economy;

(2) effective measures must continue to be taken by the Federal Government and other users and suppliers of energy to control the rate of growth of demand for energy and the efficiency of its use;

(3) the continuation of this effort will permit the United States to become increasingly independent of the world oil market, less vulnerable to interruption of foreign oil supplies, and more able to provide energy to meet future needs; and

(4) all sectors of the economy of the United States should continue to reduce significantly the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.

(b) Statement of purposes

The purposes of this chapter are to provide for the regulation of interstate commerce, to reduce the growth in demand for energy in the United States, and to conserve nonrenewable energy resources produced in this Nation and elsewhere, without inhibiting beneficial economic growth.

(Pub. L. 95–619, title I, § 102, Nov. 9, 1978, 92 Stat. 3208; Pub. L. 99–412, title I, § 101, Aug. 28, 1986, 100 Stat. 932.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, as amended, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–412 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Congress finds that—

''(1) the United States faces an energy shortage arising from increasing demand for energy, particularly for oil and natural gas, and insufficient domestic supplies of oil and natural gas to satisfy that demand;

''(2) unless effective measures are promptly taken by the Federal Government and other users of energy to reduce the rate of growth of demand for energy, the United States will become increasingly dependent on the world oil market, increasingly vulnerable to interruptions of foreign oil supplies, and unable to provide the energy to meet future needs; and

''(3) all sectors of our Nation's economy must begin immediately to significantly reduce the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–615, § 1, Nov. 5, 1988, 102 Stat. 3185, provided that: ''This Act [enacting section 5001 of Title 15, Commerce and Trade, amending sections 6361 and 8251 to 8259 of this title, omitting sections 8260 and 8261 of this title, and enacting provisions set out as a note under section 8253 of this title] may be cited as the 'Federal Energy Management Improvement Act of 1988'.''

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–412 provided that: ''This Act [enacting sections 8227 to 8229 of this title, amending sections 8201, 8211, 8213 to 8220, and 8226 of this title, repealing sections 8281 to 8281b, 8282 to 8282b, 8283, 8283a, and 8284 of this title, and enacting provisions set out as notes under sections 8211, 8216, 8217, 8281, and 8282 of this title] may be cited as the 'Conservation Service Reform Act of 1986'.''

SHORT TITLE

Section 101(a) of Pub. L. 95–619 provided that: ''This Act [enacting this chapter, sections 1490i, 6215, 6311 to 6317, 6344a, 6371, 6371a to 6371j, 6372, 6372a to 6372i, 6373, 6873, and 7141 of this title, and sections 1723f to 1723h of Title 12, Banks and Banking, amending sections 300k–2, 300n–1, 1437c, 1471, 1474, 1483, 6202, 6211, 6233 to 6241, 6243 to 6245, 6272 to 6274, 6291 to 6299, 6303 to 6309, 6321 to 6327, 6341 to 6346, 6361, 6381, 6383, 6392, 6836, 6862, 6863, 6865, and 6872 of this title, sections 1451, 1703, 1709, 1713, 1715z–6, 1717, and 1735f–4 of Title 12, and sections 2006 and 2008 of Title 15, Commerce and Trade, repealing section 6397 of this title, and enacting provisions set out as notes under this section, sections 6321, 6344a, 6345, 6371, and 6372 of this title, section 2006 of Title 15, and section 217 of Title 23, Highways] may be cited as the 'National Energy Conservation Policy Act'.''

Section 561 of Pub. L. 95–619 provided that: ''This part [part 4 (§§ 561–569) of title V of Pub. L. 95–619, enacting sections 8271 to 8278 of this title] may be cited as the 'Federal Photovoltaic Utilization Act'.''

SUBCHAPTER II—RESIDENTIAL ENERGY CONSERVATION

PART A—UTILITY PROGRAM

§§ 8211 to 8229. Omitted

CODIFICATION

Sections were omitted pursuant to section 8229 of this title, which terminated authority under this part June 30, 1989.

Section 8211, Pub. L. 95–619, title II, § 210, Nov. 9, 1978, 92 Stat. 3209; Pub. L. 96–294, title V, §§ 541, 542(a), June 30, 1980, 94 Stat. 741; Pub. L. 99–412, title I, § 102(d)(1), (h)(1), Aug. 28, 1986, 100 Stat. 933, 934, defined terms for this part.

Section 8212, Pub. L. 95–619, title II, § 211, Nov. 9, 1978, 92 Stat. 3211, related to coverage of this part.

Section 8213, Pub. L. 95–619, title II, § 212, Nov. 9, 1978, 92 Stat. 3211; Pub. L. 96–294, title V, § 542(b), June 30,

1980, 94 Stat. 741; Pub. L. 99–412, title I, § 102(c), (d)(2), (h)(2), Aug. 28, 1986, 100 Stat. 933, 934; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433, related to rules of Secretary for submission and approval of plans.

Section 8214, Pub. L. 95–619, title II, § 213, Nov. 9, 1978, 92 Stat. 3213; Pub. L. 96–294, title V, §§ 542(c), 543, 546(b), (c), June 30, 1980, 94 Stat. 742, 744; Pub. L. 99–412, title I, § 102(b)(3), (h)(3), Aug. 28, 1986, 100 Stat. 933, 934, related to requirements for State residential energy conservation plans for regulated utilities.

Section 8215, Pub. L. 95–619, title II, § 214, Nov. 9, 1978, 92 Stat. 3214; Pub. L. 99–412, title I, § 102(h)(4), Aug. 28, 1986, 100 Stat. 934, related to plan requirements for nonregulated utilities and home heating suppliers.

Section 8216, Pub. L. 95–619, title II, § 215, Nov. 9, 1978, 92 Stat. 3215; Pub. L. 96–294, title V, § 544, June 30, 1980, 94 Stat. 742; Pub. L. 99–412, title I, § 102(a)(1), (2)(A), (b)(1), (e), (h)(5)–(7), Aug. 28, 1986, 100 Stat. 932–934, related to utility programs.

Section 8217, Pub. L. 95–619, title II, § 216, Nov. 9, 1978, 92 Stat. 3217; Pub. L. 96–294, title V, §§ 545, 546(a), 547, June 30, 1980, 94 Stat. 743, 744; Pub. L. 99–412, title I, §§ 102(h)(8), (9), 106(a)–(c), Aug. 28, 1986, 100 Stat. 934, 941, 942; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 105–388, § 5(c)(2), Nov. 13, 1998, 112 Stat. 3479, related to supply and installation by public utilities.

Section 8218, Pub. L. 95–619, title II, § 217, Nov. 9, 1978, 92 Stat. 3219; Pub. L. 99–412, title I, § 102(a)(1), (b)(2), Aug. 28, 1986, 100 Stat. 932, 933, related to home heating supplier programs.

Section 8219, Pub. L. 95–619, title II, § 218, Nov. 9, 1978, 92 Stat. 3220; Pub. L. 99–412, title I, § 102(g), Aug. 28, 1986, 100 Stat. 934, related to temporary programs.

Section 8220, Pub. L. 95–619, title II, § 219, Nov. 9, 1978, 92 Stat. 3220; Pub. L. 99–412, title I, § 102(f), Aug. 28, 1986, 100 Stat. 933, related to Federal standby authority.

Section 8221, Pub. L. 95–619, title II, § 220, Nov. 9, 1978, 92 Stat. 3222; Pub. L. 96–294, title V, §§ 542(d), 550, June 30, 1980, 94 Stat. 742, 745, provided relationship to other laws.

Section 8222, Pub. L. 95–619, title II, § 221, Nov. 9, 1978, 92 Stat. 3223, authorized promulgation of rules.

Section 8223, Pub. L. 95–619, title II, § 222, Nov. 9, 1978, 92 Stat. 3223; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433, related to product standards.

Section 8224, Pub. L. 95–619, title II, § 223, Nov. 9, 1978, 92 Stat. 3223, authorized appropriations.

Section 8225, Pub. L. 95–619, title II, § 224, Nov. 9, 1978, 92 Stat. 3223, required report on energy conservation in apartment buildings.

Section 8226, Pub. L. 95–619, title II, § 225, Nov. 9, 1978, 92 Stat. 3224; Pub. L. 99–412, title I, § 104(a), Aug. 28, 1986, 100 Stat. 939, provided for reports and dissemination of information.

Section 8227, Pub. L. 95–619, title II, § 226, as added Pub. L. 99–412, title I, § 103(a), Aug. 28, 1986, 100 Stat. 935, related to alternative State plans.

Section 8228, Pub. L. 95–619, title II, § 227, as added Pub. L. 99–412, title I, § 103(a), Aug. 28, 1986, 100 Stat. 937, related to waiver for regulated and nonregulated utilities.

Section 8229, Pub. L. 95–619, title II, § 228, as added Pub. L. 99–412, title I, § 105(a), Aug. 28, 1986, 100 Stat. 941, provided that all authority, including authority to enforce any prohibitions, under this part would terminate June 30, 1989, except that such expiration would not affect any action or proceeding based upon an act committed prior to midnight June 30, 1989, and not finally determined by such date.

PART B—MISCELLANEOUS

§ 8231. Grants for energy conserving improvements; establishment of standards; authorization of appropriations

(1) The Secretary of Housing and Urban Development is authorized to make grants to finance energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 1703(a) of title 12) to projects which are financed with loans under section 1701q of title 12, or which are subject to mortgages insured under section 1715*l*(d)(3) or section 1715z–1 of title 12. The Secretary shall make assistance available under this section on a priority basis to those projects which are in financial difficulty as a result of high energy costs. In carrying out the program authorized by this section, the Secretary shall issue regulations requiring that any grant made under this section shall be made only on the condition that the recipient of such grant shall take steps (prescribed by the Secretary) to assure that the benefits derived from such grants in terms of lower energy costs shall accrue to tenants in the form of lower rentals or to the Federal Government in the form of a lower operating subsidy if such a subsidy is being paid to such recipient.

(2) The Secretary shall establish minimum standards for energy conserving improvements to multifamily dwelling units to be assisted under this section.

(3) There are authorized to be appropriated to carry out the provisions of this section not to exceed $25,000,000.

(Pub. L. 95–619, title II, § 251(b), Nov. 9, 1978, 92 Stat. 3235; Pub. L. 105–388, § 5(c)(3), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Par. (1). Pub. L. 105–388 inserted closing parenthesis after ''section 1703(a) of title 12'' and substituted ''accrue'' for ''accure''.

§ 8232. Residential energy efficiency standards study

(a) General authority

The Secretary of Housing and Urban Development (hereinafter in this section referred to as the ''Secretary'') shall, in coordination with the Secretary of Agriculture, the Secretary of the Treasury, the Secretary of Veterans Affairs, the Secretary of Energy, and such other representatives of Federal, State, and local governments as the Secretary shall designate, conduct a study, utilizing the services of the National Institute of Building Sciences pursuant to appropriate contractual arrangements, for the purpose of determining the need for, the feasibility of, and the problems of requiring, by mandatory Federal action, that all residential dwelling units meet applicable energy efficient standards. The subjects to be examined shall include, but not be limited to, mandatory notification to purchasers, and policies to prohibit exchange or sale, of properties which do not conform to such standards.

(b) Specific factors

In conducting such study, the Secretary shall consider at least the following factors—

(1) the extent to which such requirement would protect a prospective purchaser from the uncertainty of not knowing the energy efficiency of the property he proposes to purchase;

(2) the extent to which such requirement would contribute to the Nation's energy conservation goals;

(3) the extent to which such a requirement would affect the real estate, home building, and mortgage banking industries;

(4) the sanctions which might be necessary to make such a requirement effective and the administrative impediments there might be to enforcement of such sanctions;

(5) the possible impact on sellers and purchasers as a result of the implementation of mandatory Federal actions, taking into account the experience of the Federal Government in imposing mandatory requirements concerning the purchase and sale of real property as occurred under the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] and the Federal Disaster Protection Act of 1973;

(6) an analysis of the effect of such a requirement on the economy as a whole and on the Nation's security as compared to the impact on the credit and housing markets caused by such a requirement;

(7) the effect of such a requirement on availability of credit in the housing industry;

(8) the extent to which the imposition of mandatory Federal requirements would temporarily reduce the number of residential dwellings available for sale and the resulting effect of such mandatory actions on the price of those remaining dwelling units eligible for sale; and

(9) the possible uncertainty, during the period of developing the standards, as to what standards might be imposed and any resulting effect on major housing rehabilitation efforts and voluntary efforts for energy conservation.

(c) Comments and findings by Secretary of Energy

The Secretary shall incorporate into such study comments by the Secretary of Energy on the effects on the economy as a whole and on the Nation's security which may result from the requirement described in subsection (a) of this section as compared to the impact on the credit and housing markets likely to be caused by such a requirement. In addition, the Secretary shall incorporate into such study the following findings by the Secretary of Energy:

(1) the savings in energy costs resulting from the requirement described in subsection (a) of this section throughout the estimated remaining useful life of the existing residential buildings to which such requirement would apply; and

(2) the total cost per barrel of oil equivalent, in obtaining the energy savings likely to result from such requirement, computed for each class of existing residential buildings to which such requirement would apply.

(d) Report date

The Secretary shall report, no later than one year after November 9, 1978, to both Houses of the Congress with regard to the findings made as a result of such study along with any recommendations for legislative proposals which the Secretary determines should be enacted with respect to the subject of such study.

(Pub. L. 95–619, title II, § 253, Nov. 9, 1978, 92 Stat. 3236; Pub. L. 102–54, § 13(q)(12), June 13, 1991, 105 Stat. 281.)

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b)(5), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, as amended, which is classified principally to chapter 27 (§ 2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

The Federal Disaster Protection Act of 1973, referred to in subsec. (b)(5), probably means the Flood Disaster Protection Act of 1973, Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 975, as amended, which enacted sections 4002, 4003, 4012a, 4104 to 4107, and 4128 of this title, amended sections 4001, 4013 to 4016, 4026, 4054, 4056, 4101, and 4121 of this title and sections 24 and 1709–1 of Title 12, repealed section 4021 of this title, and enacted a provision set out as a note under section 4001 of this title. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of this title and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

§ 8233. Weatherization study

The President shall conduct a study which shall monitor the weatherization activities authorized by this Act and amendments made thereby and those weatherization activities undertaken, independently of this Act and such amendments. The President shall report to the Congress within one year from November 9, 1978, and annually thereafter, concerning—

(1) the extent of progress being made through weatherization activities toward the achievement of national energy conservation goals;

(2) adequacy and costs of materials necessary for weatherization activities; and

(3) the need for and desirability of modifying weatherization activities authorized by this Act, and amendments made thereby and of extending such activities to a broader range of income groups than are being assisted under this Act and such amendments.

(Pub. L. 95–619, title II, § 254, Nov. 9, 1978, 92 Stat. 3237.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, as amended, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to the requirement that the President report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 40 of House Document No. 103–7.

PART C—RESIDENTIAL ENERGY EFFICIENCY PROGRAMS

§ 8235. "Residential building" defined

As used in this part, the term ''residential building'' means any building used as a residence which is not a new building to which final standards under sections 6833(a) and 6834[1] of this

[1] See References in Text note below.

title apply and which has a system for heating, cooling, or both.

(Pub. L. 95–619, title II, § 261, as added Pub. L. 96–294, title V, § 562, June 30, 1980, 94 Stat. 746.)

REFERENCES IN TEXT

Section 6834 of this title, referred to in text, was repealed by Pub. L. 97–35, title X, § 1041(b), Aug. 13, 1981, 95 Stat. 621.

STATEMENT OF PURPOSE

Section 561 of subtitle C (§§ 562–563) of title V of Pub. L. 96–294 provided that: ''It is the purpose of this subtitle [enacting this part]—

''(1) to establish a program under which the Secretary of Energy may provide assistance to State and local governments to encourage up to four demonstration programs that make energy conservation measures available without charge to residential property owners and tenants under a plan designed to maximize the energy savings available in residential buildings in designated areas; and

''(2) to demonstrate through such program prototype residential energy efficiency plans under which State and local governments, State regulatory authorities, and public utilities may participate in a cooperative manner with public or private entities to install energy conservation measures in the greatest possible number of residential buildings within their respective jurisdictions or service areas.''

§ 8235a. Approval of plans for prototype residential energy efficiency programs and provision of financial assistance for such programs

(a) Plan approval

The Secretary may approve any plan developed by a State or local government, for the establishment of a prototype residential energy efficiency program, which is designed to demonstrate the feasibility, economics, and energy conserving potential of such program, if an application for such plan is submitted pursuant to section 8235b of this title, the application is approved pursuant to section 8235c of this title, and the plan provides for—

(1) the entering into a contract by a public utility with one or more persons not under the control of, and not affiliates or subsidiaries of, such utility for the implementation of a program to encourage energy conservation, including the supply and installation of the energy conservation measures as specified in such contract in residential buildings located in the portion of the utility's service area designated by the contract, which contract includes the provisions described in subsection (b) of this section;

(2) the selection by the public utility in a fair, open, and nondiscriminatory manner of the person or persons to contract with pursuant to paragraph (1);

(3) the payment by the public utility to the person or persons contracted with under paragraph (1) of a specified price for each unit of energy saved by such utility as a result of the program during the period the contract is in effect, which price is based on the value to the utility of the energy saved;

(4) the determination, by a procedure established by the State or local government developing the plan, of the amount of energy saved by a public utility as a result of the program carried out under the plan, which procedure is described in the contract;

(5) in the case of a regulated public utility, the approval in writing by the State regulatory authority exercising ratemaking authority over such utility of the contract described in paragraph (1), the manner of selection described in paragraph (2), the payment described in paragraph (3), and the procedure described in paragraph (4); and

(6) the enforcement of the provisions of the contract, entered into pursuant to paragraph (1), which are required to be included pursuant to subsection (b) of this section.

(b) Contract requirements

Any contract entered into by a public utility under subsection (a)(1) of this section shall require any person or persons entering into such contract with a public utility to offer to the owner or occupant of each residential building in the portion of the utility's service area designated in the contract, without charge—

(1) an inspection of such building to determine and inform such owner or occupant of—

(A) the energy conservation measures which will be supplied and installed in such residential building pursuant to paragraph (2);

(B) the savings in energy costs that are likely to result from the installation of such energy conservation measures;

(C) suggestions (including suggestions developed by the Secretary) of energy conservation techniques, including adjustments in energy use patterns and modifications in household activities, which can be used by the owner or occupant of the building to save energy and which do not require the installation of energy conservation measures; and

(D) the savings in energy costs that are likely to result from the adoption of such suggested energy conservation techniques;

(2) the supply and installation, with the approval of the owner of the residential building, in such building in a timely manner of the energy conservation measures which are as specified in the contract and which the owner or occupant was informed (pursuant to the inspection under paragraph (1)) would be supplied and installed in such building; and

(3) a written warranty that at a minimum any defect in materials, manufacture, design, or installation of any energy conservation measures supplied and installed pursuant to paragraph (2), found not later than one year after the date of installation, will be remedied without charge and within a reasonable period of time.

(c) Provision of financial assistance

The Secretary may provide financial assistance to any State or local government to carry out any plan for the establishment of a prototype residential energy efficiency program if the plan is approved under subsection (a) of this section.

(d) Limitation

The Secretary may approve under subsection (a) of this section not more than 4 plans for the

establishment of prototype residential energy efficiency programs.

(Pub. L. 95–619, title II, § 262, as added Pub. L. 96–294, title V, § 562, June 30, 1980, 94 Stat. 746.)

§ 8235b. Applications for approval of plans for prototype residential energy efficiency programs

Each application for the approval of a plan under section 8235a(a) of this title for the establishment of a prototype residential energy efficiency program shall be submitted by a State or local government and shall include, at least—

(1) a description of the plan, including the provisions of the plan specified in section 8235a(a) of this title and a description of the portion of the service area of the public utility proposing to enter into a contract under section 8235a(a)(1) of this title which is designated under the contract;

(2) a description of the manner in which the provisions of the plan specified in section 8235a(a) of this title are to be met;

(3) a description of the contract to be entered into pursuant to section 8235a(a)(1) of this title and the manner in which the requirements of the contract contained in section 8235a(b) of this title are to be met;

(4) the record of the public hearing conducted pursuant to section 8235c(a)(2) of this title; and

(5) any other information determined by the Secretary to be necessary to carry out this part.

(Pub. L. 95–619, title II, § 263, as added Pub. L. 96–294, title V, § 562, June 30, 1980, 94 Stat. 748.)

§ 8235c. Approval of applications for plans for prototype residential energy efficiency programs

(a) Approval requirements

The Secretary may approve an application submitted under section 8235b of this title for a plan establishing a prototype residential energy efficiency program only if—

(1) the application is approved in writing—

(A) by the public utility which is to enter into the contract under the plan;

(B) by the State regulatory authority having ratemaking authority over such public utility, in the case of a regulated utility; and

(C) by the Governor (or any State agency specifically authorized under State law to approve such plans) of the State whose government is submitting the application (if the application is submitted by a State government) or of the State in which the local government is located (if the application is submitted by a local government); and

(2) the application has been published, a public hearing on the application has been conducted, after notice to the public, at which representatives of the public utility which is to enter into the contract under the plan, persons engaged in the supply or installation of residential energy conservation measures, and members of the public (including ratepayers of such public utility and other interested individuals) had an opportunity to provide comment on the application, and any amendments to the application, which may be made to take into account the proceedings of the hearing, are made.

(b) Factors in approving applications

The Secretary shall take into consideration in approving an application under subsection (a) of this section for a plan establishing a prototype residential energy efficiency program—

(1) the potential for energy savings from the demonstration of the program;

(2) the likelihood that the value of the energy saved by public utilities under the program will be sufficient to cover the estimated cost of the energy conservation measures to be supplied and installed under the program;

(3) the anticipated effects of the program on competition in the portion of the service area of the public utility designated in the contract entered into under the plan; and

(4) such other factors as the Secretary determines are appropriate.

(Pub. L. 95–619, title II, § 264, as added Pub. L. 96–294, title V, § 562, June 30, 1980, 94 Stat. 748.)

§ 8235d. Rules and regulations

(a) Proposed rules and regulations

The Secretary shall issue proposed rules and regulations to carry out this part not later than 120 days after June 30, 1980.

(b) Final rules and regulations

The Secretary shall issue final rules and regulations to carry out this part not later than 90 days after the issuance of proposed rules and regulations under subsection (a) of this section.

(Pub. L. 95–619, title II, § 265, as added Pub. L. 96–294, title V, § 562, June 30, 1980, 94 Stat. 749.)

§ 8235e. Authority of Federal Energy Regulatory Commission to exempt application of certain laws

The Federal Energy Regulatory Commission may exempt from any provisions in sections 4, 5, and 7 of the Natural Gas Act (15 U.S.C. 717c, 717d, and 717f) and titles II and IV of the Natural Gas Policy Act of 1978 (15 U.S.C. 3341 through 3348 and 3391 through 3394) the sale or transportation, by any public utility, local distribution company, interstate or intrastate pipeline, or any other person, of any natural gas which is determined (in the case of a regulated utility, company, pipeline, or person) by the State regulatory authority having rate-making authority over such utility, company, pipeline, or person, or (in the case of a nonregulated utility, company, pipeline, or person) by such utility, company, pipeline, or person, to have been conserved because of a prototype residential energy efficiency program which is established under a plan approved under section 8235a(a) of this title, if the Commission determines that such exemption is necessary to make feasible the demonstration of such prototype residential energy efficiency program.

(Pub. L. 95–619, title II, § 266, as added Pub. L. 96–294, title V, § 562, June 30, 1980, 94 Stat. 749;

amended Pub. L. 105–388, § 5(c)(4), Nov. 13, 1998, 112 Stat. 3479.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in text, is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, as amended. Title II of the Natural Gas Policy Act of 1978 was classified generally to subchapter II (§ 3341 et seq.) of chapter 60 of Title 15, Commerce and Trade, prior to its repeal by Pub. L. 100–42, § 2(a), May 21, 1987, 101 Stat. 314. Title IV of the Natural Gas Policy Act of 1978 is classified generally to subchapter IV (§ 3391 et seq.) of chapter 60 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1998—Pub. L. 105–388 substituted ''(15 U.S.C. 717c'' for ''(17 U.S.C. 717c''.

§ 8235f. Application of other laws

(a) Lack of immunity

No provision contained in this part—

(1) shall restrict any agency of the United States or any State from exercising its powers under any law to prevent unfair methods of competition and unfair or deceptive acts or practices;

(2) shall provide to any person any immunity from civil or criminal liability;

(3) shall create any defenses to actions brought under the antitrust laws; or

(4) shall modify or abridge any private right of action under the antitrust laws.

(b) Utility programs under part A

Any public utility entering into a contract under a plan for the establishment of a prototype residential energy efficiency program approved under section 8235a(a) of this title shall not be required to carry out, with respect to any residential building located in the portion of the utility's service area designated in the contract, the actions required to be contained in such utility's program by subsections (a) and (b) of section 8216[1] of this title, if the contract requires such actions (or equivalent actions as determined by the Secretary) to be taken.

(c) "Antitrust laws" defined

For purposes of this section, the term ''antitrust laws'' means—

(1) the Sherman Act (15 U.S.C. 1 et seq.);

(2) the Clayton Act (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9); and

(5) sections 2, 3, and 4 of the Act entitled ''An Act to amend section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes'' approved June 19, 1936 (15 U.S.C. 21a, 13a, and 13b, commonly known as the Robinson-Patman Antidiscrimination Act).

(Pub. L. 95–619, title II, § 267, as added Pub. L. 96–294, title V, § 562, June 30, 1980, 94 Stat. 749.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 8216 of this title, referred to in subsec. (b), was omitted from the Code pursuant to section 8229 of this title, which terminated authority under that section June 30, 1989.

The Sherman Act (15 U.S.C. 1 et seq.), referred to in subsec. (c)(1), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act (15 U.S.C. 12 et seq.), referred to in subsec. (c)(2), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in subsec. (c)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

§ 8235g. Records and reports

(a) Records

Each State and local government submitting any application for a plan which is approved under section 8235a(a) of this title, and each public utility and person or persons entering into a contract under such a plan, shall keep such records and make such reports as the Secretary may require. The Secretary and the Comptroller General of the United States shall have access, at reasonable times and under reasonable conditions, to any books, documents, papers, records, and reports of each such State and local government, utility, and person or persons which the Secretary determines, in consultation with the Comptroller General of the United States, are pertinent to this part.

(b) Reports

The Secretary shall make an annual report to the President on the activities carried out under this part which shall be submitted to the Congress with the annual report on the activities of the Department of Energy required by section 7267 of this title and which shall contain—

(1) an estimate of the total amount of energy saved as a result of the activities carried out under this part;

(2) an estimate of the annual savings in energy anticipated as a result of each prototype residential energy efficiency program established under a plan approved under section 8235a(a) of this title;

(3) an analysis, developed in consultation with the Federal Trade Commission and the Department of Justice, of the impact on competition of each prototype residential energy efficiency program established under a plan approved under section 8235a(a) of this title; and

(4) if the Secretary determines that it is appropriate, an analysis of the impact of expanding the approval of plans under section 8235a(a) of this title to establish prototype residential energy efficiency programs, and the provision of financial assistance to such programs, on a national basis and an assessment

of the alternative methods by which such an expansion could be accomplished.

(Pub. L. 95–619, title II, § 268, as added Pub. L. 96–294, title V, § 562, June 30, 1980, 94 Stat. 750.)

§ 8235h. Revoking approval of plans and terminating financial assistance

The Secretary shall revoke the approval of any plan under section 8235a(a) of this title for the establishment of a prototype residential energy efficiency program, and shall terminate the provision of financial assistance under section 8235a(c) of this title to carry out such plan, if the Secretary determines, in consultation with the Federal Trade Commission and after notice and the opportunity for a hearing, that carrying out such plan—

(1) causes unfair methods of competition;

(2) has a substantial adverse effect on competition in the portion of the service area of the public utility designated by the contract entered into under the plan; or

(3) provides a supplier or contractor of energy conservation measures with an unreasonably large share of the contracts for the supply or installation of such measures under such plan in the service area of the public utility designated by the contract entered into under such plan.

(Pub. L. 95–619, title II, § 269, as added Pub. L. 96–294, title V, § 562, June 30, 1980, 94 Stat. 751.)

§ 8235i. Authorization of appropriations

(a) Authorization of appropriations

There is authorized to be appropriated to carry out this part—

(1) the sum of $10,000,000 for the fiscal year ending on September 30, 1981; and

(2) the sum equal to $10,000,000 minus the amount appropriated for the fiscal year ending on September 30, 1981, under the authorization contained in this section, for the fiscal year ending on September 30, 1982.

(b) Availability

Any funds appropriated under the authorization contained in this section shall remain available until expended.

(Pub. L. 95–619, title II, § 270, as added Pub. L. 96–294, title V, § 562, June 30, 1980, 94 Stat. 751.)

PART D—RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES

§ 8236. Voluntary rating guidelines

(a) In general

Not later than 18 months after October 24, 1992, the Secretary, in consultation with the Secretary of Housing and Urban Development, the Secretary of Veterans Affairs, representatives of existing home energy rating programs, and other appropriate persons, shall, by rule, issue voluntary guidelines that may be used by State and local governments, utilities, builders, real estate agents, lenders, agencies in mortgage markets, and others, to enable and encourage the assignment of energy efficiency ratings to residential buildings.

(b) Contents of guidelines

The voluntary guidelines issued under subsection (a) of this section shall—

(1) encourage uniformity with regard to systems for rating the annual energy efficiency of residential buildings;

(2) establish protocols and procedures for—

(A) certification of the technical accuracy of building energy analysis tools used to determine energy efficiency ratings;

(B) training of personnel conducting energy efficiency ratings;

(C) data collection and reporting;

(D) quality control; and

(E) monitoring and evaluation;

(3) encourage consistency with, and support for, the uniform plan for Federal energy efficient mortgages, including that developed under section 946 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12712 note) and pursuant to sections 105 and 106 of the Energy Policy Act of 1992;

(4) provide that rating systems take into account local climate conditions and construction practices, solar energy collected on-site, and the benefits of peak load shifting construction practices, and not discriminate among fuel types; and

(5) establish procedures to ensure that residential buildings can receive an energy efficiency rating at the time of sale and that such rating is communicated to potential buyers.

(Pub. L. 95–619, title II, § 271, as added Pub. L. 102–486, title I, § 102(a), Oct. 24, 1992, 106 Stat. 2787.)

REFERENCES IN TEXT

Section 946 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (b)(3), is section 946 of Pub. L. 101–625, which is set out as a note under section 12712 of this title.

Sections 105 and 106 of the Energy Policy Act of 1992, referred to in subsec. (b)(3), are sections 105 and 106 of Pub. L. 102–486. Section 105 amended section 12704 of this title and provisions set out as a note under section 12712 of this title. Section 106 is set out as a note under section 12712 of this title.

§ 8236a. Technical assistance

Not later than 2 years after October 24, 1992, the Secretary shall establish a program to provide technical assistance to State and local organizations to encourage the adoption of and use of residential energy efficiency rating systems consistent with the voluntary guidelines issued under section 8236 of this title.

(Pub. L. 95–619, title II, § 272, as added Pub. L. 102–486, title I, § 102(a), Oct. 24, 1992, 106 Stat. 2788.)

§ 8236b. Report

Not later than 3 years after October 24, 1992, the Secretary shall transmit to the President and the Congress a final report containing—

(1) a description of actions taken by the Secretary and other Federal agencies to implement this part;

(2) a description of the action taken by States, local governments, and other organizations to implement the voluntary guidelines issued under section 8236 of this title and any problems encountered in implementing such guidelines; and

(3) recommendations on the feasibility of requiring, as a prerequisite to receiving federally assisted, guaranteed, or insured mortgages, the achievement of a minimum energy efficiency rating.

(Pub. L. 95–619, title II, § 273, as added Pub. L. 102–486, title I, § 102(a), Oct. 24, 1992, 106 Stat. 2788.)

SUBCHAPTER III—FEDERAL ENERGY INITIATIVE

PART A—DEMONSTRATION OF SOLAR HEATING AND COOLING IN FEDERAL BUILDINGS

§ 8241. Definitions

As used in the part—

(1) The term ''Federal agency'' means—

(A) an Executive agency as defined in section 105 of title 5; and

(B) each entity specified in paragraphs (B) through (H) of subsection (1) of section 5721 of title 5.

(2) The term ''Federal building'' means any building or other structure owned in whole or part by the United States or any Federal agency, including any such structure occupied by a Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation.

(3) The term ''solar heating'' means, with respect to any Federal building, the use of solar energy to meet all or part of the heating needs of such building (including hot water), or all or part of the needs of such building for hot water.

(4) The term ''solar heating and cooling'' means the use of solar energy to provide all or part of the heating needs of a Federal building (including hot water) and all or part of the cooling needs of such building, or all or part of the needs of such building for hot water.

(5) The term ''solar energy equipment'' means equipment for solar heating or solar heating and cooling.

(6) The term ''Secretary'' means the Secretary of Energy.

(Pub. L. 95–619, title V, § 521, Nov. 9, 1978, 92 Stat. 3275.)

§ 8242. Federal solar program

The Secretary, in consultation with the Administrator of the General Services Administration, shall develop and carry out a program to demonstrate the application to buildings of solar heating and solar heating and cooling technology in Federal buildings.

(Pub. L. 95–619, title V, § 522, Nov. 9, 1978, 92 Stat. 3276.)

§ 8243. Duties of Secretary

(a) Duties

In exercising the authority provided by section 8242 of this title, the Secretary, in consultation with the Administrator of the General Services Administration, shall—

(1) promulgate, by rule—

(A) requirements under which Federal agencies shall submit proposals for the installation of solar energy equipment in Federal buildings which are under their control and which are selected in accordance with procedures set forth in such rule, and

(B) criteria by which proposals under subparagraph (A) will be evaluated, which criteria shall provide for the inclusion in each proposal of a complete analysis of the present value, as determined by the Secretary, of the costs and benefits of the proposal to the Federal agency, and for the demonstration, to the maximum extent practicable, of innovative and diverse applications to a variety of types of Federal buildings of solar heating and solar heating and cooling technology, and for location of demonstration projects in areas where a private sector market for solar energy equipment is likely to develop;

(2) evaluate in writing each such proposal pursuant to the criteria promulgated pursuant to paragraph (1)(B), and make such evaluation available to the agency and, upon request, to any person;

(3) provide technical and financial assistance by interagency agreement for implementing a proposal evaluated under paragraph (2) and approved by the Secretary; except that such assistance shall be limited to the design, acquisition, construction, and installation of solar energy equipment;

(4) provide, by rule, that Federal agencies report to the Secretary periodically such information as they acquire respecting maintenance and operation of solar energy equipment for which assistance is provided under paragraph (3);

(5) require that a life cycle cost analysis in accordance with part B be done for any Federal building for which a proposal is submitted under this section and the results of such analysis be included in such proposal; and

(6) if solar energy equipment for which assistance is to be provided under paragraph (3) is not the minimum life-cycle cost alternative, require the Federal agency involved to submit a report to the Secretary stating the amount by which the life-cycle cost of such equipment exceeds the minimum life-cycle cost.

(b) Contents of proposals

Proposals under paragraph (1)(A) of subsection (a) of this section shall include a list of the specific Federal buildings proposed to be provided with solar energy equipment, the funds necessary for the acquisition and installation of such equipment, the proposed implementation schedule, maintenance costs, the estimated savings in fossil fuels and electricity, the estimated payback time, and such other information as may be required by the Secretary.

(c) Initial submission of proposals

Under the requirements established under subsection (a)(1)(A) of this section, initial proposals for the installation of solar energy equipment in Federal buildings selected under subsection (a)(1)(A) of this section shall be submitted not

later than 180 days after the date of promulgation of the rule under subsection (a)(1) of this section.

(d) Program to disseminate information to Federal procurement and loan officers

In order to more widely disseminate information about the program under this part and under part B and the benefits of renewable energy and energy efficiency technology, the Secretary shall establish a program which includes site visits and technical briefings, to disseminate such information to Federal procurement officers and Federal loan officers. The Secretary shall utilize available funds for the program under this subsection.

(Pub. L. 95–619, title V, § 523, Nov. 9, 1978, 92 Stat. 3276; Pub. L. 101–218, § 8(a), Dec. 11, 1989, 103 Stat. 1868.)

AMENDMENTS

1989—Subsec. (d). Pub. L. 101–218 added subsec. (d).

§ 8244. Authorization of appropriations

There are authorized to be appropriated to the Secretary through fiscal year ending September 30, 1980, to carry out the purposes of this part not to exceed $100,000,000. Funds so appropriated may be transferred by the Secretary to any Federal agency to the extent necessary to carry out the purposes of section 8243(a)(3) of this title.

(Pub. L. 95–619, title V, § 524, Nov. 9, 1978, 92 Stat. 3277.)

PART B—FEDERAL ENERGY MANAGEMENT

§ 8251. Findings

The Congress finds that—

(1) the Federal Government is the largest single energy consumer in the Nation;

(2) the cost of meeting the Federal Government's energy requirement is substantial;

(3) there are significant opportunities in the Federal Government to conserve and make more efficient use of energy through improved operations and maintenance, the use of new energy efficient technologies, and the application and achievement of energy efficient design and construction;

(4) Federal energy conservation measures can be financed at little or no cost to the Federal Government by using private investment capital made available through contracts authorized by subchapter VII of this chapter; and

(5) an increase in energy efficiency by the Federal Government would benefit the Nation by reducing the cost of government, reducing national dependence on foreign energy resources, and demonstrating the benefits of greater energy efficiency to the Nation.

(Pub. L. 95–619, title V, § 541, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100–615, § 2(a), Nov. 5, 1988, 102 Stat. 3185.)

AMENDMENTS

1988—Pub. L. 100–615 amended Congressional findings provisions generally.

EX. ORD. NO. 13123. GREENING THE GOVERNMENT THROUGH EFFICIENT ENERGY MANAGEMENT

Ex. Ord. No. 13123, June 3, 1999, 64 F.R. 30851, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95–619, 92 Stat. 3206, 42 U.S.C. 8252 *et seq.*), as amended by the Energy Policy Act of 1992 (EPACT) (Public Law 102–486, 106 Stat. 2776), and section 301 of title 3, United States Code, it is hereby ordered as follows:

PART 1—PREAMBLE

SECTION 101. *Federal Leadership*. The Federal Government, as the Nation's largest energy consumer, shall significantly improve its energy management in order to save taxpayer dollars and reduce emissions that contribute to air pollution and global climate change. With more than 500,000 buildings, the Federal Government can lead the Nation in energy efficient building design, construction, and operation. As a major consumer that spends $200 billion annually on products and services, the Federal Government can promote energy efficiency, water conservation, and the use of renewable energy products, and help foster markets for emerging technologies. In encouraging effective energy management in the Federal Government, this order builds on work begun under EPACT and previous Executive orders.

PART 2—GOALS

SEC. 201. *Greenhouse Gases Reduction Goal*. Through life-cycle cost-effective energy measures, each agency shall reduce its greenhouse gas emissions attributed to facility energy use by 30 percent by 2010 compared to such emissions levels in 1990. In order to encourage optimal investment in energy improvements, agencies can count greenhouse gas reductions from improvements in nonfacility energy use toward this goal to the extent that these reductions are approved by the Office of Management and Budget (OMB).

SEC. 202. *Energy Efficiency Improvement Goals*. Through life-cycle cost-effective measures, each agency shall reduce energy consumption per gross square foot of its facilities, excluding facilities covered in section 203 of this order, by 30 percent by 2005 and 35 percent by 2010 relative to 1985. No facilities will be exempt from these goals unless they meet new criteria for exemptions, to be issued by the Department of Energy (DOE).

SEC. 203. *Industrial and Laboratory Facilities*. Through life-cycle cost-effective measures, each agency shall reduce energy consumption per square foot, per unit of production, or per other unit as applicable by 20 percent by 2005 and 25 percent by 2010 relative to 1990. No facilities will be exempt from these goals unless they meet new criteria for exemptions, as issued by DOE.

SEC. 204. *Renewable Energy*. Each agency shall strive to expand the use of renewable energy within its facilities and in its activities by implementing renewable energy projects and by purchasing electricity from renewable energy sources. In support of the Million Solar Roofs initiative, the Federal Government shall strive to install 2,000 solar energy systems at Federal facilities by the end of 2000, and 20,000 solar energy systems at Federal facilities by 2010.

SEC. 205. *Petroleum*. Through life-cycle cost-effective measures, each agency shall reduce the use of petroleum within its facilities. Agencies may accomplish this reduction by switching to a less greenhouse gas-intensive, nonpetroleum energy source, such as natural gas or renewable energy sources; by eliminating unnecessary fuel use; or by other appropriate methods. Where alternative fuels are not practical or life-cycle cost-effective, agencies shall strive to improve the efficiency of their facilities.

SEC. 206. *Source Energy*. The Federal Government shall strive to reduce total energy use and associated greenhouse gas and other air emissions, as measured at the source. To that end, agencies shall undertake life-cycle cost-effective projects in which source energy decreases, even if site energy use increases. In such cases, agencies will receive credit toward energy reduction goals through guidelines developed by DOE.

SEC. 207. *Water Conservation*. Through life-cycle cost-effective measures, agencies shall reduce water consumption and associated energy use in their facilities to reach the goals set under section 503(f) of this order. Where possible, water cost savings and associated energy cost savings shall be included in Energy-Savings Performance Contracts and other financing mechanisms.

PART 3—ORGANIZATION AND ACCOUNTABILITY

SEC. 301. *Annual Budget Submission*. Each agency's budget submission to OMB shall specifically request funding necessary to achieve the goals of this order. Budget submissions shall include the costs associated with: encouraging the use of, administering, and fulfilling agency responsibilities under Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and other contractual platforms for achieving conservation goals; implementing life-cycle cost-effective measures; procuring life-cycle cost-effective products; and constructing sustainably designed new buildings, among other energy costs. OMB shall issue guidelines to assist agencies in developing appropriate requests that support sound investments in energy improvements and energy-using products. OMB shall explore the feasibility of establishing a fund that agencies could draw on to finance exemplary energy management activities and investments with higher initial costs but lower life-cycle costs. Budget requests to OMB in support of this order must be within each agency's planning guidance level.

SEC. 302. *Annual Implementation Plan*. Each agency shall develop an annual implementation plan for fulfilling the requirements of this order. Such plans shall be included in the annual reports to the President under section 303 of this order.

SEC. 303. *Annual Reports to the President*. (a) Each agency shall measure and report its progress in meeting the goals and requirements of this order on an annual basis. Agencies shall follow reporting guidelines as developed under section 306(b) of this order. In order to minimize additional reporting requirements, the guidelines will clarify how the annual report to the President should build on each agency's annual Federal energy reports submitted to DOE and the Congress. Annual reports to the President are due on January 1 of each year beginning in the year 2000.

(b) Each agency's annual report to the President shall describe how the agency is using each of the strategies described in Part 4 of this order to help meet energy and greenhouse gas reduction goals. The annual report to the President shall explain why certain strategies, if any, have not been used. It shall also include a listing and explanation of exempt facilities.

SEC. 304. *Designation of Senior Agency Official*. Each agency shall designate a senior official, at the Assistant Secretary level or above, to be responsible for meeting the goals and requirements of this order, including preparing the annual report to the President. Such designation shall be reported by each Cabinet Secretary or agency head to the Deputy Director for Management of OMB within 30 days of the date of this order. Designated officials shall participate in the Interagency Energy Policy Committee, described in section 306(d) of this order. The Committee shall communicate its activities to all designated officials to assure proper coordination and achievement of the goals and requirements of this order.

SEC. 305. *Designation of Agency Energy Teams*. Within 90 days of the date of this order, each agency shall form a technical support team consisting of appropriate procurement, legal, budget, management, and technical representatives to expedite and encourage the agency's use of appropriations, Energy-Savings Performance Contracts, and other alternative financing mechanisms necessary to meet the goals and requirements of this order. Agency energy team activities shall be undertaken in collaboration with each agency's representative to the Interagency Energy Management Task Force, as described in section 306(e) of this order.

SEC. 306. *Interagency Coordination*. (a) *Office of Management and Budget*. The Deputy Director for Management of OMB, in consultation with DOE, shall be responsible for evaluating each agency's progress in improving energy management and for submitting agency energy scorecards to the President to report progress.

(1) OMB, in consultation with DOE and other agencies, shall develop the agency energy scorecards and scoring system to evaluate each agency's progress in meeting the goals of this order. The scoring criteria shall include the extent to which agencies are taking advantage of key tools to save energy and reduce greenhouse gas emissions, such as Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy efficient products, renewable energy technologies, electricity from renewable energy sources, and other strategies and requirements listed in Part 4 of this order, as well as overall efficiency and greenhouse gas metrics and use of other innovative energy efficiency practices. The scorecards shall be based on the annual energy reports submitted to the President under section 303 of this order.

(2) The Deputy Director for Management of OMB shall also select outstanding agency energy management team(s), from among candidates nominated by DOE, for a new annual Presidential award for energy efficiency.

(b) *Federal Energy Management Program*. The DOE's Federal Energy Management Program (FEMP) shall be responsible for working with the agencies to ensure that they meet the goals of this order and report their progress. FEMP, in consultation with OMB, shall develop and issue guidelines for agencies' preparation of their annual reports to the President on energy management, as required in section 303 of this order. FEMP shall also have primary responsibility for collecting and analyzing the data, and shall assist OMB in ensuring that agency reports are received in a timely manner.

(c) *President's Management Council*. The President's Management Council (PMC), chaired by the Deputy Director for Management of OMB and consisting of the Chief Operating Officers (usually the Deputy Secretary) of the largest Federal departments and agencies, will periodically discuss agencies' progress in improving Federal energy management.

(d) *Interagency Energy Policy Committee*. This Committee was established by the Department of Energy Organization Act [42 U.S.C. 7101 et seq.]. It consists of senior agency officials designated in accordance with section 304 of this order. The Committee is responsible for encouraging implementation of energy efficiency policies and practices. The major energy-consuming agencies designated by DOE are required to participate in the Committee. The Committee shall communicate its activities to all designated senior agency officials to promote coordination and achievement of the goals of this order.

(e) *Interagency Energy Management Task Force*. The Task Force was established by the National Energy Conservation Policy Act. It consists of each agency's chief energy manager. The Committee shall continue to work toward improving agencies' use of energy management tools and sharing information on Federal energy management across agencies.

SEC. 307. *Public/Private Advisory Committee*. The Secretary of Energy will appoint an advisory committee consisting of representatives from Federal agencies, State governments, energy service companies, utility companies, equipment manufacturers, construction and architectural companies, environmental, energy and consumer groups, and other energy-related organizations. The committee will provide input on Federal energy management, including how to improve use of Energy-Savings Performance Contracts and utility energy-efficiency service contracts, improve procurement of ENERGY STAR® and other energy efficient products, improve building design, reduce process energy use, and enhance applications of efficient and renewable energy technologies at Federal facilities.

SEC. 308. *Applicability*. This order applies to all Federal departments and agencies. General Services Administration (GSA) is responsible for working with agencies to meet the requirements of this order for those facilities for which GSA has delegated operations and maintenance authority. The Department of Defense (DOD) is subject to this order to the extent that it does not impair or adversely affect military operations and training (including tactical aircraft, ships, weapons systems, combat training, and border security).

PART 4—PROMOTING FEDERAL LEADERSHIP IN ENERGY MANAGEMENT

SEC. 401. *Life-Cycle Cost Analysis*. Agencies shall use life-cycle cost analysis in making decisions about their investments in products, services, construction, and other projects to lower the Federal Government's costs and to reduce energy and water consumption. Where appropriate, agencies shall consider the life-cycle costs of combinations of projects, particularly to encourage bundling of energy efficiency projects with renewable energy projects. Agencies shall also retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs. Agencies that minimize life-cycle costs with efficiency measures will be recognized in their scorecard evaluations.

SEC. 402. *Facility Energy Audits*. Agencies shall continue to conduct energy and water audits for approximately 10 percent of their facilities each year, either independently or through Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

SEC. 403. *Energy Management Strategies and Tools*. Agencies shall use a variety of energy management strategies and tools, where life-cycle cost-effective, to meet the goals of this order. An agency's use of these strategies and tools shall be taken into account in assessing the agency's progress and formulating its scorecard.

(a) *Financing Mechanisms*. Agencies shall maximize their use of available alternative financing contracting mechanisms, including Energy-Savings Performance Contracts and utility energy-efficiency service contracts, when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy-Savings Performance Contracts, which are authorized under the National Energy Conservation Policy Act, as modified by the Energy Policy Act of 1992, and utility energy-efficiency service contracts provide significant opportunities for making Federal facilities more energy efficient at no net cost to taxpayers.

(b) *ENERGY STAR® and Other Energy Efficient Products*.

(1) Agencies shall select, where life-cycle cost-effective, ENERGY STAR® and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR® labels are not yet available, agencies shall select products that are in the upper 25 percent of energy efficiency as designated by FEMP. The Environmental Protection Agency (EPA) and DOE shall expedite the process of designating products as ENERGY STAR® and will merge their current efficiency rating procedures.

(2) GSA and the Defense Logistics Agency (DLA), with assistance from EPA and DOE, shall create clear catalogue listings that designate these products in both print and electronic formats. In addition, GSA and DLA shall undertake pilot projects from selected energy-using products to show a ''second price tag'', which means an accounting of the operating and purchase costs of the item, in both printed and electronic catalogues and assess the impact of providing this information on Federal purchasing decisions.

(3) Agencies shall incorporate energy efficient criteria consistent with ENERGY STAR® and other FEMP-designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for Basic Ordering Agreements, Blanket Purchasing Agreements, Government Wide Acquisition Contracts, and all other purchasing procedures.

(4) DOE and OMB shall also explore the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products. Within 9 months of the date of this order, DOE shall report back to the President's Management Council on the viability of such alternative financing options.

(c) *ENERGY STAR® Buildings*. Agencies shall strive to meet the ENERGY STAR® Building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by the end of 2002. Agencies may use Energy-Savings Performance Contracts, utility energy-efficiency service contracts, or other means to conduct evaluations and make improvements to buildings in order to meet the criteria. Buildings that rank in the top 25 percent in energy efficiency relative to comparable commercial and Federal buildings will receive the ENERGY STAR® building label. Agencies shall integrate this building rating tool into their general facility audits.

(d) *Sustainable Building Design*. DOD and GSA, in consultation with DOE and EPA, shall develop sustainable design principles. Agencies shall apply such principles to the siting, design, and construction of new facilities. Agencies shall optimize life-cycle costs, pollution, and other environmental and energy costs associated with the construction, life-cycle operation, and decommissioning of the facility. Agencies shall consider using Energy-Savings Performance Contracts or utility energy-efficiency service contracts to aid them in constructing sustainably designed buildings.

(e) *Model Lease Provisions*. Agencies entering into leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of building performance. Agencies shall include a preference for buildings having the ENERGY STAR® building label in their selection criteria for acquiring leased buildings. In addition, all agencies shall encourage lessors to apply for the ENERGY STAR® building label and to explore and implement projects that would reduce costs to the Federal Government, including projects carried out through the lessors' Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

(f) *Industrial Facility Efficiency Improvements*. Agencies shall explore efficiency opportunities in industrial facilities for steam systems, boiler operation, air compressor systems, industrial processes, and fuel switching, including cogeneration and other efficiency and renewable energy technologies.

(g) *Highly Efficient Systems*. Agencies shall implement district energy systems, and other highly efficient systems, in new construction or retrofit projects when life-cycle cost-effective. Agencies shall consider combined cooling, heat, and power when upgrading and assessing facility power needs and shall use combined cooling, heat, and power systems when life-cycle cost-effective. Agencies shall survey local natural resources to optimize use of available biomass, bioenergy, geothermal, or other naturally occurring energy sources.

(h) *Off-Grid Generation*. Agencies shall use off-grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life-cycle cost-effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.

SEC. 404. *Electricity Use*. To advance the greenhouse gas and renewable energy goals of this order, and reduce source energy use, each agency shall strive to use electricity from clean, efficient, and renewable energy sources. An agency's efforts in purchasing electricity

from efficient and renewable energy sources shall be taken into account in assessing the agency's progress and formulating its score card.

(a) *Competitive Power*. Agencies shall take advantage of competitive opportunities in the electricity and natural gas markets to reduce costs and enhance services. Agencies are encouraged to aggregate demand across facilities or agencies to maximize their economic advantage.

(b) *Reduced Greenhouse Gas Intensity of Electric Power*. When selecting electricity providers, agencies shall purchase electricity from sources that use high efficiency electric generating technologies when life-cycle cost-effective. Agencies shall consider the greenhouse gas intensity of the source of the electricity and strive to minimize the greenhouse gas intensity of purchased electricity.

(c) *Purchasing Electricity from Renewable Energy Sources*.

(1) Each agency shall evaluate its current use of electricity from renewable energy sources and report this level in its annual report to the President. Based on this review, each agency should adopt policies and pursue projects that increase the use of such electricity. Agencies should include provisions for the purchase of electricity from renewable energy sources as a component of their requests for bids whenever procuring electricity. Agencies may use savings from energy efficiency projects to pay additional incremental costs of electricity from renewable energy sources.

(2) In evaluating opportunities to comply with this section, agencies should consider: my Administration's goal of tripling nonhydroelectric renewable energy capacity in the United States by 2010; the renewable portfolio standard specified in the restructuring guidelines for the State in which the facility is located; GSA's efforts to make electricity from renewable energy sources available to Federal electricity purchasers; and EPA's guidelines on crediting renewable energy power in implementation of Clean Air Act [42 U.S.C. 7401 et seq.] standards.

SEC. 405. *Mobile Equipment*. Each agency shall seek to improve the design, construction, and operation of its mobile equipment, and shall implement all life-cycle cost-effective energy efficiency measures that result in cost savings while improving mission performance. To the extent that such measures are life-cycle cost-effective, agencies shall consider enhanced use of alternative or renewable-based fuels.

SEC. 406. *Management and Government Performance*. Agencies shall use the following management strategies in meeting the goals of this order.

(a) *Awards*. Agencies shall use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations*. Agencies shall include successful implementation of provisions of this order in areas such as Energy-Savings Performance Contracts, sustainable design, energy efficient procurement, energy efficiency, water conservation, and renewable energy projects in the position descriptions and performance evaluations of agency heads, members of the agency energy team, principal program managers, heads of field offices, facility managers, energy managers, and other appropriate employees.

(c) *Retention of Savings and Rebates*. Agencies granted statutory authority to retain a portion of savings generated from efficient energy and water management are encouraged to permit the retention of the savings at the facility or site where the savings occur to provide greater incentive for that facility and its site managers to undertake more energy management initiatives, invest in renewable energy systems, and purchase electricity from renewable energy sources.

(d) *Training and Education*. Agencies shall ensure that all appropriate personnel receive training for implementing this order.

(1) DOE, DOD, and GSA shall provide relevant training or training materials for those programs that they make available to all Federal agencies relating to the energy management strategies contained in this order.

(2) The Federal Acquisition Institute and the Defense Acquisition University shall incorporate into existing procurement courses information on Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy efficient products, and life-cycle cost analysis.

(3) All agencies are encouraged to develop outreach programs that include education, training, and promotion of ENERGY STAR® and other energy-efficient products for Federal purchase card users. These programs may include promotions with billing statements, user training, catalogue awareness, and exploration of vendor data collection of purchases.

(e) *Showcase Facilities*. Agencies shall designate exemplary new and existing facilities with significant public access and exposure as showcase facilities to highlight energy or water efficiency and renewable energy improvements.

PART 5—TECHNICAL ASSISTANCE

SEC. 501. Within 120 days of this order, the Director of OMB shall:

(a) develop and issue guidance to agency budget officers on preparation of annual funding requests associated with the implementation of the order for the FY 2001 budget;

(b) in collaboration with the Secretary of Energy, explain to agencies how to retain savings and reinvest in other energy and water management projects; and

(c) in collaboration with the Secretary of Energy through the Office of Federal Procurement Policy, periodically brief agency procurement executives on the use of Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and procurement of energy efficient products and electricity from renewable energy sources.

SEC. 502. Within 180 days of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) issue guidelines to assist agencies in measuring energy per square foot, per unit of production, or other applicable unit in industrial, laboratory, research, and other energy-intensive facilities;

(b) establish criteria for determining which facilities are exempt from the order. In addition, DOE must provide guidance for agencies to report proposed exemptions;

(c) develop guidance to assist agencies in calculating appropriate energy baselines for previously exempt facilities and facilities occupied after 1990 in order to measure progress toward goals;

(d) issue guidance to clarify how agencies determine the life-cycle cost for investments required by the order, including how to compare different energy and fuel options and assess the current tools;

(e) issue guidance for providing credit toward energy efficiency goals for cost-effective projects where source energy use declines but site energy use increases; and

(f) provide guidance to assist each agency to determine a baseline of water consumption.

SEC. 503. Within 1 year of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) provide guidance for counting renewable and highly efficient energy projects and purchases of electricity from renewable and highly efficient energy sources toward agencies' progress in reaching greenhouse gas and energy reduction goals;

(b) develop goals for the amount of energy generated at Federal facilities from renewable energy technologies;

(c) support efforts to develop standards for the certification of low environmental impact hydropower facilities in order to facilitate the Federal purchase of such power;

(d) work with GSA and DLA to develop a plan for purchasing advanced energy products in bulk quantities for use in by multiple agencies;

(e) issue guidelines for agency use estimating the greenhouse gas emissions attributable to facility energy use. These guidelines shall include emissions associated with the production, transportation, and use of energy consumed in Federal facilities; and

(f) establish water conservation goals for Federal agencies.

SEC. 504. Within 120 days of this order, the Secretary of Defense and the Administrator of GSA, in consultation with other agency heads, shall develop and issue sustainable design and development principles for the siting, design, and construction of new facilities.

SEC. 505. Within 180 days of this order, the Administrator of GSA, in collaboration with the Secretary of Defense, the Secretary of Energy, and other agency heads, shall:

(a) develop and issue guidance to assist agencies in ensuring that all project cost estimates, bids, and agency budget requests for design, construction, and renovation of facilities are based on life-cycle costs. Incentives for contractors involved in facility design and construction must be structured to encourage the contractors to design and build at the lowest life-cycle cost;

(b) make information available on opportunities to purchase electricity from renewable energy sources as defined by this order. This information should accommodate relevant State regulations and be updated periodically based on technological advances and market changes, at least every 2 years;

(c) develop Internet-based tools for both GSA and DLA customers to assist individual and agency purchasers in identifying and purchasing ENERGY STAR® and other energy efficient products for acquisition; and

(d) develop model lease provisions that incorporate energy efficiency and sustainable design.

PART 6—GENERAL PROVISIONS

SEC. 601. *Compliance by Independent Agencies*. Independent agencies are encouraged to comply with the provisions of this order.

SEC. 602. *Waivers*. If an agency determines that a provision in this order is inconsistent with its mission, the agency may ask DOE for a waiver of the provision. DOE will include a list of any waivers it grants in its Federal Energy Management Programs annual report to the Congress.

SEC. 603. *Scope*. (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to agency facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Agencies with facilities outside of these areas, however, are encouraged to make best efforts to comply with the goals of this order for those facilities. In addition, agencies can report energy improvements made outside the United States in their annual report to the President; these improvements may be considered in agency scorecard evaluations.

SEC. 604. *Revocations*. Executive Order 12902 of March 9 [8], 1994, Executive Order 12759 of April 17, 1991, and Executive Order 12845 of April 21, 1993, are revoked.

SEC. 605. *Amendments to Federal Regulations*. The Federal Acquisition Regulation and other Federal regulations shall be amended to reflect changes made by this order, including an amendment to facilitate agency purchases of electricity from renewable energy sources.

PART 7—DEFINITIONS

For the purposes of this order:

SEC. 701. ''Acquisition'' means acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

SEC. 702. ''Agency'' means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of DOD.

SEC. 703. ''Energy-Savings Performance Contract'' means a contract that provides for the performance of services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations. Such contracts shall provide that the contractor must incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract. Payment to the contractor is contingent upon realizing a guaranteed stream of future energy and cost savings. All additional savings will accrue to the Federal Government.

SEC. 704. ''Exempt facility'' or ''Exempt mobile equipment'' means a facility or a piece of mobile equipment for which an agency uses DOE-established criteria to determine that compliance with the Energy Policy Act of 1992 or this order is not practical.

SEC. 705. ''Facility'' means any individual building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, including the associated energy or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government. It includes leased facilities where the Federal Government has a purchase option or facilities planned for purchase. In any provision of this order, the term ''facility'' also includes any building 100 percent leased for use by the Federal Government where the Federal Government pays directly or indirectly for the utility costs associated with its leased space. The term also includes Government-owned contractor-operated facilities.

SEC. 706. ''Industrial facility'' means any fixed equipment, building, or complex for production, manufacturing, or other processes that uses large amounts of capital equipment in connection with, or as part of, any process or system, and within which the majority of energy use is not devoted to the heating, cooling, lighting, ventilation, or to service the water heating energy load requirements of the facility.

SEC. 707. ''Life-cycle costs'' means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure. Additional guidance on measuring life-cycle costs is specified in 10 C.F.R. 436.19.

SEC. 708. ''Life-cycle cost-effective'' means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product). Additional guidance on measuring cost-effectiveness is specified in 10 C.F.R. 436.18 (a), (b), and (c), 436.20, and 436.21.

SEC. 709. ''Mobile equipment'' means all Federally owned ships, aircraft, and nonroad vehicles.

SEC. 710. ''Renewable energy'' means energy produced by solar, wind, geothermal, and biomass power.

SEC. 711. ''Renewable energy technology'' means technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities. The term also

means the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

SEC. 712. ''Source energy'' means the energy that is used at a site and consumed in producing and in delivering energy to a site, including, but not limited to, power generation, transmission, and distribution losses, and that is used to perform a specific function, such as space conditioning, lighting, or water heating.

SEC. 713. ''Utility'' means public agencies and privately owned companies that market, generate, and/or distribute energy or water, including electricity, natural gas, manufactured gas, steam, hot water, and chilled water as commodities for public use and that provide the service under Federal, State, or local regulated authority to all authorized customers. Utilities include: Federally owned nonprofit producers; municipal organizations; and investor or privately owned producers regulated by a State and/or the Federal Government; cooperatives owned by members and providing services mostly to their members; and other nonprofit State and local government agencies serving in this capacity.

SEC. 714. ''Utility energy-efficiency service'' means demand side management services provided by a utility to improve the efficiency of use of the commodity (electricity, gas, etc.) being distributed. Services can include, but are not limited to, energy efficiency and renewable energy project auditing, financing, design, installation, operation, maintenance, and monitoring.

WILLIAM J. CLINTON.

EX. ORD. NO. 13221. ENERGY EFFICIENT STANDBY POWER DEVICES

Ex. Ord. No. 13221, July 31, 2001, 66 F.R. 40571, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95–619, 92 Stat. 3206, 42 U.S.C. 8252 *et seq.*), as amended by the Energy Policy Act of 1992 (EPACT) (Public Law 102–486, 106 Stat. 2776), and section 301 of title 3, United States Code, and in order to further encourage energy conservation by the Federal Government, it is hereby ordered as follows:

SECTION 1. *Energy Efficient Standby Power Devices.* Each agency, when it purchases commercially available, off-the-shelf products that use external standby power devices, or that contain an internal standby power function, shall purchase products that use no more than one watt in their standby power consuming mode. If such products are not available, agencies shall purchase products with the lowest standby power wattage while in their standby power consuming mode. Agencies shall adhere to these requirements, when lifecycle cost-effective and practicable and where the relevant product's utility and performance are not compromised as a result. By December 31, 2001, and on an annual basis thereafter, the Department of Energy, in consultation with the Department of Defense and the General Services Administration, shall compile a preliminary list of products to be subject to these requirements. The Department of Energy shall finalize the list and may remove products deemed inappropriate for listing.

SEC. 2. *Independent Agencies.* Independent agencies are encouraged to comply with the provisions of this order.

SEC. 3. *Definition.* ''Agency'' means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered by the Department of Defense.

GEORGE W. BUSH.

§ 8252. Purpose

It is the purpose of this part to promote the conservation and the efficient use of energy and water, and the use of renewable energy sources, by the Federal Government.

(Pub. L. 95–619, title V, § 542, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100–615, § 2(a), Nov. 5, 1988, 102 Stat. 3185; Pub. L. 102–486, title I, § 152(a), Oct. 24, 1992, 106 Stat. 2844.)

AMENDMENTS

1992—Pub. L. 102–486 inserted ''and water, and the use of renewable energy sources,'' after ''use of energy''.

1988—Pub. L. 100–615 amended section generally, substituting statement of purpose for policy statement declaring it to be United States policy for Federal Government to have the opportunity and responsibility, with participation of industry, to further develop, demonstrate, and promote use of energy conservation, solar heating and cooling, and other renewable energy sources in Federal buildings.

§ 8253. Energy management requirements

(a) Energy performance requirement for Federal buildings

(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2006 through 2015 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2003, by the percentage specified in the following table:

Fiscal Year	Percentage reduction
2006	2
2007	4
2008	6
2009	8
2010	10
2011	12
2012	14
2013	16
2014	18
2015	20.

(2) An agency may exclude from the requirements of paragraph (1) any building, and the associated energy consumption and gross square footage, in which energy intensive activities are carried out. Each agency shall identify and list in each report made under section 8258(a) of this title the buildings designated by it for such exclusion.

(3) Not later than December 31, 2014, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2016 through 2025.

(b) Energy management requirement for Federal agencies

(1) Not later than January 1, 2005, each agency shall, to the maximum extent practicable, install in Federal buildings owned by the United States all energy and water conservation measures with payback periods of less than 10 years, as determined by using the methods and procedures developed pursuant to section 8254 of this title.

(2) The Secretary may waive the requirements of this subsection for any agency for such peri-

ods as the Secretary may determine if the Secretary finds that the agency is taking all practicable steps to meet the requirements and that the requirements of this subsection will pose an unacceptable burden upon the agency. If the Secretary waives the requirements of this subsection, the Secretary shall, as part of the report required under section 8258(b) of this title, notify the Congress in writing with an explanation and a justification of the reasons for such waiver.

(3) This subsection shall not apply to an agency's facilities that generate or transmit electric energy or to the uranium enrichment facilities operated by the Department of Energy.

(4) An agency may participate in the Environmental Protection Agency's ''Green Lights'' program for purposes of receiving technical assistance in complying with the requirements of this section.

(c) Exclusions

(1)(A) An agency may exclude, from the energy performance requirement for a fiscal year established under subsection (a) of this section and the energy management requirement established under subsection (b) of this section, any Federal building or collection of Federal buildings, if the head of the agency finds that—

(i) compliance with those requirements would be impracticable;

(ii) the agency has completed and submitted all federally required energy management reports;

(iii) the agency has achieved compliance with the energy efficiency requirements of this chapter, the Energy Policy Act of 1992, Executive orders, and other Federal law; and

(iv) the agency has implemented all practicable, life cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

(i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or

(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.

(2) Each agency shall identify and list, in each report made under section 8258(a) of this title, the Federal buildings designated by it for such exclusion. The Secretary shall review such findings for consistency with the standards for exclusion set forth in paragraph (1), and may within 90 days after receipt of the findings, reverse the exclusion. In the case of any such reversal, the agency shall comply with the requirements of subsections (a) and (b)(1) of this section for the building concerned.

(3) Not later than 180 days after August 8, 2005, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).

(d) Implementation steps

The Secretary shall consult with the Secretary of Defense and the Administrator of General Services in developing guidelines for the implementation of this part. To meet the requirements of this section, each agency shall—

(1) prepare and submit to the Secretary, not later than December 31, 1993, a plan describing how the agency intends to meet such requirements, including how it will—

(A) designate personnel primarily responsible for achieving such requirements;

(B) identify high priority projects through calculation of payback periods;

(C) take maximum advantage of contracts authorized under subchapter VII of this chapter, of financial incentives and other services provided by utilities for efficiency investment, and of other forms of financing to reduce the direct costs to the Government; and

(D) otherwise implement this part;

(2) perform energy surveys of its Federal buildings to the extent necessary and update such surveys as needed, incorporating any relevant information obtained from the survey conducted pursuant to section 8258b of this title;

(3) using such surveys, determine the cost and payback period of energy and water conservation measures likely to achieve the requirements of this section;

(4) install energy and water conservation measures that will achieve the requirements of this section through the methods and procedures established pursuant to section 8254 of this title; and

(5) ensure that the operation and maintenance procedures applied under this section are continued.

(e) Metering of energy use

(1) Deadline

By October 1, 2012, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility managers.

(2) Guidelines

(A) In general

Not later than 180 days after August 8, 2005, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, energy efficiency advocacy organizations, national laboratories, universities, and Federal facility managers, shall establish guidelines for agencies to carry out paragraph (1).

(B) Requirements for guidelines

The guidelines shall—

(i) take into consideration—

(I) the cost of metering and the reduced cost of operation and maintenance expected to result from metering;

(II) the extent to which metering is expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

(III) the measurement and verification protocols of the Department of Energy;

(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

(iii) establish priorities for types and locations of buildings to be metered based on cost-effectiveness and a schedule of one or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirements specified in paragraph (1) shall take effect; and

(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

(3) Plan

Not later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 8258(a) of this title, each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including (A) how the agency will designate personnel primarily responsible for achieving the requirements and (B) demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.

(Pub. L. 95–619, title V, § 543, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100–615, § 2(a), Nov. 5, 1988, 102 Stat. 3185; Pub. L. 102–486, title I, § 152(b), (c), Oct. 24, 1992, 106 Stat. 2844, 2845; Pub. L. 104–66, title I, § 1052(b), Dec. 21, 1995, 109 Stat. 718; Pub. L. 109–58, title I, §§ 102(a)(1), (b)–(e), 103, Aug. 8, 2005, 119 Stat. 606–608.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1)(A)(iii), was in the original ''this Act'', meaning Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, as amended, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

The Energy Policy Act of 1992, referred to in subsec. (c)(1)(A)(iii), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109–58, § 102(a)(1), substituted provisions relating to reduction of energy consumption in fiscal years 2006 to 2015 as compared to consumption in fiscal year 2003 and table of percentages specifying amount of reduction in each fiscal year for provisions relating to energy consumption during fiscal year 1995 at least 10 percent less than consumption during fiscal year 1985 and energy consumption during fiscal year 2000 at least 20 percent less than consumption during fiscal year 1985.

Subsec. (a)(3). Pub. L. 109–58, § 102(b), added par. (3).

Subsec. (c)(1). Pub. L. 109–58, § 102(c), added par. (1) and struck out former par. (1) which read as follows: ''An agency may exclude, from the energy consumption requirements for the year 2000 established under subsection (a) of this section and the requirements of subsection (b)(1) of this section, any Federal building or collection of Federal buildings, and the associated energy consumption and gross square footage, if the head of such agency finds that compliance with such requirements would be impractical. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such Federal buildings or collection of Federal buildings, the type and amount of energy consumed, the technical feasibility of making the desired changes, and, in the cases of the Departments of Defense and Energy, the unique character of certain facilities operated by such Departments.''

Subsec. (c)(2). Pub. L. 109–58, § 102(d), substituted ''standards for exclusion'' for ''impracticability standards'', ''the exclusion'' for ''a finding of impracticability'', and ''requirements of subsections (a) and (b)(1) of this section'' for ''energy consumption requirements''.

Subsec. (c)(3). Pub. L. 109–58, § 102(e), added par. (3).

Subsec. (e). Pub. L. 109–58, § 103, added subsec. (e).

1995—Subsec. (b)(2). Pub. L. 104–66 in last sentence inserted '', as part of the report required under section 8258(b) of this title,'' after ''the Secretary shall'' and struck out ''promptly'' after ''Congress''.

1992—Pub. L. 102–486, § 152(b)(1), substituted ''requirements'' for ''goals'' in section catchline.

Subsec. (a). Pub. L. 102–486, § 152(b)(2), (3), in heading substituted ''requirement'' for ''goal'' and in par. (1) inserted before period at end ''and so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 2000 is at least 20 percent less than the energy consumption per gross square foot of its Federal buildings in use during fiscal year 1985''.

Subsecs. (b), (c). Pub. L. 102–486, § 152(b)(4), added subsecs. (b) and (c). Former subsec. (b) redesignated (d).

Subsec. (d). Pub. L. 102–486, § 152(b)(4), (c)(1), redesignated subsec. (b) as (d) and in introductory provisions substituted ''The Secretary shall consult with the Secretary of Defense and the Administrator of General Services in developing guidelines for the implementation of this part. To meet the requirements of this section,'' for ''To achieve the goal established in subsection (a) of this section,''.

Subsec. (d)(1). Pub. L. 102–486, § 152(c)(2), added par. (1) and struck out former par. (1) which read as follows: ''prepare or update, within 6 months after November 5, 1988, a plan describing how the agency intends to meet such goal, including how it will implement this part, designate personnel primarily responsible for achieving such goal, and identify high priority projects;''.

Subsec. (d)(2). Pub. L. 102–486, § 152(c)(3), inserted before semicolon at end ''and update such surveys as needed, incorporating any relevant information obtained from the survey conducted pursuant to section 8258b of this title''.

Subsec. (d)(3) to (5). Pub. L. 102–486, § 152(c)(4), (5), added pars. (3) and (4), redesignated former par. (4) as (5), and struck out former par. (3) which read as follows: ''using such surveys, apply energy conservation measures in a manner which will attain the goal established in subsection (a) of this section in the most cost-effective manner practicable; and''.

1988—Pub. L. 100–615 amended section generally, substituting energy management goals statement for statement of purpose to promote (1) use of commonly accepted methods to establish and compare life cycle costs of operating Federal buildings, and life cycle fuel and energy requirements of such buildings, with and without special features for energy conservation and (2) use of solar heating and cooling and other renewable energy sources in Federal buildings.

REPORTING BASELINE

Pub. L. 109–58, title I, § 102(a)(2), Aug. 8, 2005, 119 Stat. 606, provided that: ''The energy reduction goals and

baseline established in paragraph (1) of section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)), as amended by this subsection, supersede all previous goals and baselines under such paragraph, and related reporting requirements.''

SURVEY OF ENERGY SAVING POTENTIAL

Section 3 of Pub. L. 100–615, which authorized Secretary of Energy to carry out an energy survey to determine maximum potential cost effective energy savings in federally used buildings and recommend cost effective energy efficiency and renewable energy improvements in those buildings, devise a plan for implementing such survey, and report its findings and conclusions to Congress, was repealed by Pub. L. 102–486, title I, § 152(i)(3), Oct. 24, 1992, 106 Stat. 2851.

§ 8254. Establishment and use of life cycle cost methods and procedures

(a) Establishment of life cycle cost methods and procedures

The Secretary, in consultation with the Director of the Office of Management and Budget, the Secretary of Defense, the Director of the National Institute of Standards and Technology, and the Administrator of the General Services Administration, shall—

(1) establish practical and effective present value methods for estimating and comparing life cycle costs for Federal buildings, using the sum of all capital and operating expenses associated with the energy system of the building involved over the expected life of such system or during a period of 25 years, whichever is shorter, and using average fuel costs and a discount rate determined by the Secretary; and

(2) develop and prescribe the procedures to be followed in applying and implementing the methods so established.

(b) Use of life cycle cost methods and procedures

(1) The design of new Federal buildings, and the application of energy conservation measures to existing Federal buildings, shall be made using life cycle cost methods and procedures established under subsection (a) of this section.

(2) In leasing buildings for its own use or that of another agency, each agency shall, after January 1, 1994, fully consider the efficiency of all potential building space at the time of renewing or entering into a new lease.

(c) Use in non-Federal structures

The Secretary shall make available information to the public on the use of life cycle cost methods in the construction of buildings, structures, and facilities in all segments of the economy.

(Pub. L. 95–619, title V, § 544, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100–615, § 2(a), Nov. 5, 1988, 102 Stat. 3186; Pub. L. 102–486, title I, § 152(d), Oct. 24, 1992, 106 Stat. 2845.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486, § 152(d)(1), substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

Subsec. (b)(2). Pub. L. 102–486, § 152(d)(2), substituted ''agency shall, after January 1, 1994, fully consider the efficiency of all potential building space at the time of renewing or entering into a new lease.'' for ''agency shall give appropriate preference to buildings which minimize life cycle costs.''

1988—Pub. L. 100–615 amended section generally, substituting provisions relating to establishment and use of life cycle cost methods and procedures for provisions defining terms (1) Secretary, (2) life cycle cost, (3) preliminary energy audit, (4) energy survey, (5) Federal building, (6) construction, and (7) energy performance target.

§ 8255. Budget treatment for energy conservation measures

The President shall transmit to the Congress, along with each budget that is submitted to the Congress under section 1105 of title 31, a statement of the amount of appropriations requested in such budget, if any, on an individual agency basis, for—

(1) electric and other energy costs to be incurred in operating and maintaining agency facilities; and

(2) compliance with the provisions of this part, the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.), and all applicable Executive orders, including Executive Order 12003 (42 U.S.C. 6201 note) and Executive Order 12759 (56 Fed. Reg. 16257).

(Pub. L. 95–619, title V, § 545, Nov. 9, 1978, 92 Stat. 3278; Pub. L. 96–294, title IV, § 405, June 30, 1980, 94 Stat. 716; Pub. L. 99–509, title III, § 3301, Oct. 21, 1986, 100 Stat. 1890; Pub. L. 100–615, § 2(a), Nov. 5, 1988, 102 Stat. 3186; Pub. L. 102–486, title I, § 152(e), Oct. 24, 1992, 106 Stat. 2846.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in par. (2), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Executive Order 12003, referred to in par. (2), is Ex. Ord. No. 12003, July 20, 1977, 42 F.R. 37523 which amended Ex. Ord. No. 11912, April 13, 1976, 41 F.R. 15825, set out as a note under section 6201 of this title.

Executive Order 12759, referred to in par. (2), is Ex. Ord. No. 12759, April 17, 1991, 56 F.R. 16257, as amended, which was set out as a note under section 6201 of this title, prior to revocation by Ex. Ord. No. 13123, § 604, June 3, 1999, 64 F.R. 30859, set out as a note under section 8251 of this title.

AMENDMENTS

1992—Pub. L. 102–486 amended section generally. Prior to amendment, section read as follows: ''Each agency, in support of the President's annual budget request to the Congress, shall specifically set forth and identify funds requested for energy conservation measures.''

1988—Pub. L. 100–615 amended section generally, substituting provision relating to budget treatment for energy conservation measures for provisions relating to establishment and use of life cycle cost methods, use of life cycle costs, and use in non-Federal structures.

1986—Subsec. (a)(2). Pub. L. 99–509 substituted ''average'' for ''marginal''.

1980—Subsec. (a)(1). Pub. L. 96–294, which directed amendment of par. (1) by inserting provisions setting forth criteria for establishing life-cycle costs for Federal buildings before the period at end, was executed to par. (2) as the probable intent of Congress because par. (1) does not contain a period.

§ 8256. Incentives for agencies

(a) Contracts

(1) Each agency shall establish a program of incentives for conserving, and otherwise making

more efficient use of, energy as a result of entering into contracts under subchapter VII of this chapter.

(2) The Secretary shall, not later than 18 months after October 24, 1992, and after consultation with the Director of the Office of Management and Budget, the Secretary of Defense, and the Administrator of General Services, develop appropriate procedures and methods for use by agencies to implement the incentives referred to in paragraph (1).

(b) Federal Energy Efficiency Fund

(1) The Secretary shall establish a Federal Energy Efficiency Fund to provide grants to agencies to assist them in meeting the requirements of section 8253 of this title.

(2) Not later than June 30, 1993, the Secretary shall issue guidelines to be followed by agencies submitting proposals for such grants. All agencies shall be eligible to submit proposals for grants under the Fund.

(3) The Secretary shall award grants from the Fund after a competitive assessment of the technical and economic effectiveness of each agency proposal. The Secretary shall consider the following factors in determining whether to provide funding under this subsection:

(A) The cost-effectiveness of the project.

(B) The amount of energy and cost savings anticipated to the Federal Government.

(C) The amount of funding committed to the project by the agency requesting financial assistance.

(D) The extent that a proposal leverages financing from other non-Federal sources.

(E) Any other factor which the Secretary determines will result in the greatest amount of energy and cost savings to the Federal Government.

(4) There are authorized to be appropriated, to remain available to be expended, to carry out this subsection not more than $10,000,000 for fiscal year 1994, $50,000,000 for fiscal year 1995, and such sums as may be necessary for fiscal years thereafter.

(c) Utility incentive programs

(1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

(2) Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.

(3) Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.

(4) If an agency satisfies the criteria which generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives.

(5)(A) An amount equal to fifty percent of the energy and water cost savings realized by an agency (other than the Department of Defense) with respect to funds appropriated for any fiscal year beginning after fiscal year 1992 (including financial benefits resulting from energy savings performance contracts under subchapter VII of this chapter and utility energy efficiency rebates) shall, subject to appropriation, remain available for expenditure by such agency for additional energy efficiency measures which may include related employee incentive programs, particularly at those facilities at which energy savings were achieved.

(B) Agencies shall establish a fund and maintain strict financial accounting and controls for savings realized and expenditures made under this subsection. Records maintained pursuant to this subparagraph shall be made available for public inspection upon request.

(d) Financial incentive program for facility energy managers

(1) The Secretary shall, in consultation with the Task Force established pursuant to section 8257 of this title, establish a financial bonus program to reward, with funds made available for such purpose, outstanding Federal facility energy managers in agencies and the United States Postal Service.

(2) Not later than June 1, 1993, the Secretary shall issue procedures for implementing and conducting the award program, including the criteria to be used in selecting outstanding energy managers and contributors who have—

(A) improved energy performance through increased energy efficiency;

(B) implemented proven energy efficiency and energy conservation techniques, devices, equipment, or procedures;

(C) developed and implemented training programs for facility energy managers, operators, and maintenance personnel;

(D) developed and implemented employee awareness programs;

(E) succeeded in generating utility incentives, shared energy savings contracts, and other federally approved performance based energy savings contracts;

(F) made successful efforts to fulfill compliance with energy reduction mandates, including the provisions of section 8253 of this title; and

(G) succeeded in the implementation of the guidelines established under section 8262e[1] of this title.

(3) There is authorized to be appropriated to carry out this subsection not more than $250,000 for each of the fiscal years 1993, 1994, and 1995.

(e) Retention of energy and water savings

An agency may retain any funds appropriated to that agency for energy expenditures, water expenditures, or wastewater treatment expenditures, at buildings subject to the requirements of section 8253(a) and (b) of this title, that are not made because of energy savings or water savings. Except as otherwise provided by law, such funds may be used only for energy efficiency, water conservation, or unconventional and renewable energy resources projects. Such

[1] See References in Text note below.

projects shall be subject to the requirements of section 3307 of title 40.

(Pub. L. 95–619, title V, § 546, Nov. 9, 1978, 92 Stat. 3278; Pub. L. 100–615, § 2(a), Nov. 5, 1988, 102 Stat. 3187; Pub. L. 102–486, title I, § 152(f), Oct. 24, 1992, 106 Stat. 2846; Pub. L. 109–58, title I, § 102(f), Aug. 8, 2005, 119 Stat. 607.)

REFERENCES IN TEXT

Section 8262e of this title, referred to in subsec. (d)(2)(G), was in the original ''section 159'' and was translated as meaning section 159 of Pub. L. 102–486, title I, Oct. 24, 1992, 106 Stat. 2857, which enacted section 8262e of this title, to reflect the probable intent of Congress.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–58 added subsec. (e).

1992—Subsec. (a). Pub. L. 102–486, § 152(f)(1), (2), substituted ''Contracts'' for ''In general'' in heading, designated existing provisions as par. (1), and redesignated former subsec. (b) as subsec. (a)(2) and amended it generally. Prior to amendment, par. (2) read as follows: ''The head of each agency shall, no later than 120 days after November 5, 1988, implement procedures for entering into such contracts and for identifying, verifying, and utilizing, on a fiscal year basis, the cost savings resulting from such contracts.''

Subsec. (b). Pub. L. 102–486, § 152(f)(4), added subsec. (b). Former subsec. (b) redesignated par. (2) of subsec. (a).

Subsecs. (c), (d). Pub. L. 102–486, § 152(f)(3), (4), added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: ''The portion of the funds appropriated to an agency for energy expenses for a fiscal year that is equal to the amount of cost savings realized by such agency for such year from contracts entered into under subchapter VII of this chapter shall remain available for obligation, without further appropriation, to undertake additional energy conservation measures.''

1988—Pub. L. 100–615 amended section generally, substituting statement of incentives for agencies for provisions relating to energy performance targets for Federal buildings.

ENERGY EFFICIENCY AND WATER CONSERVATION MEASURES; USE OF REBATES AND SAVINGS

Pub. L. 104–52, title VI, § 625, Nov. 19, 1995, 109 Stat. 502, provided that:

''(a) Beginning in fiscal year 1996 and thereafter, for each Federal agency, except the Department of Defense (which has separate authority), and except as provided in Public Law 102–393, title IV, section 13 (40 U.S.C. 490g) [now 40 U.S.C. 592(f)] with respect to the Fund established pursuant to 40 U.S.C. 490(f) [now 40 U.S.C. 592(a)–(c)(1), (d), (e)], an amount equal to 50 percent of—

''(1) the amount of each utility rebate received by the agency for energy efficiency and water conservation measures, which the agency has implemented; and

''(2) the amount of the agency's share of the measured energy savings resulting from energy-savings performance contracts,

may be retained and credited to accounts that fund energy and water conservation activities at the agency's facilities, and shall remain available until expended for additional specific energy efficiency or water conservation projects or activities, including improvements and retrofits, facility surveys, additional or improved utility metering, and employee training and awareness programs, as authorized by section 152(f) of the Energy Policy Act (Public Law 102–486) [amending this section].

''(b) The remaining 50 percent of each rebate, and the remaining 50 percent of the amount of the agency's share of savings from energy-savings performance contracts, shall be transferred to the General Fund of the Treasury at the end of the fiscal year in which received.''

§ 8257. Interagency Energy Management Task Force

(a) In general

To assist the interagency committee organized under section 7266 of this title to coordinate the activities of the Federal Government in promoting energy conservation and the efficient use of energy and in informing non-Federal entities of the Federal experience in energy conservation, the Secretary shall establish an Interagency Energy Management Task Force (hereafter in this section referred to as the ''Task Force'').

(b) Members

The Task Force shall be composed of the chief energy managers of agencies represented on the interagency committee organized under section 7266 of this title.

(c) Duties

The Task Force shall meet when the Secretary requests, but not less often than twice a year, to—

(1) assess the progress of the various agencies in achieving energy savings;

(2) collect and disseminate information to agencies, States, local governments, and the public on effective survey techniques, innovative approaches to the efficient use of energy, incentive programs developed under section 8256 of this title, innovative contracting methods developed under subchapter VII of this chapter, the use of cogeneration facilities and renewable resources, and other technologies that promote the conservation and efficient use of energy;

(3) coordinate energy surveys conducted by the agencies;

(4) develop options for use in conserving energy;

(5) report to the committee organized under section 7266 of this title; and

(6) review, from time to time as may be necessary, the regulations relating to building temperature settings to determine whether changes in such regulations would be appropriate to assist in meeting the goals specified in section 8253 of this title.

(Pub. L. 95–619, title V, § 547, Nov. 9, 1978, 92 Stat. 3279; Pub. L. 100–615, § 2(a), Nov. 5, 1988, 102 Stat. 3187.)

AMENDMENTS

1988—Pub. L. 100–615 amended section generally, substituting provisions relating to creation of an Interagency Energy Management Task Force for provisions relating to energy audits and retrofitting of existing Federal buildings.

§ 8258. Reports

(a) Reports to Secretary

Each agency shall transmit a report to the Secretary, at times specified by the Secretary but at least annually, with complete information on its activities under this part, including information on—

(1) the agency's progress in achieving the goals established by section 8253 of this title; and

(2) the procedures being used by the agency pursuant to section 8256(a)(2) of this title, the number of contracts entered into by such agency under subchapter VII of this chapter, the energy and cost savings that have resulted from such contracts, the use of such cost savings under section 8256(c) of this title, and any problem encountered in entering into such contracts and otherwise implementing section 8256 of this title.

(b) Reports to the President and Congress

The Secretary shall report, not later than April 2 of each year, with respect to each fiscal year beginning after November 5, 1988, to the President and Congress—

(1) on all activities carried out under this part and on the progress made toward achievement of the objectives of this part, including—

(A) a copy of the list of the exclusions made under sections 8253(a)(2) and 8253(c)(3) of this title;

(B) the information required under section 8253(b)(2) of this title; and

(C) a statement detailing the amount of funds awarded to each agency under section 8256(b) of this title, the energy and water conservation measures installed with such funds, the projected energy and water savings to be realized from installed measures, and, for each installed measure for which the projected energy and water savings reported in the previous year were not realized, the percentage of such projected savings that was not realized, the reasons such savings were not realized, and proposals for, and projected costs of, achieving such projected savings in the future;

(2) the number of contracts entered into by all agencies under subchapter VII of this chapter, the difficulties (if any) encountered in attempting to enter into such contracts, and proposed solutions to those difficulties;

(3) the extent and nature of interagency exchange of information concerning the conservation and efficient utilization of energy; and

(4) the information required under section 8262g(d) of this title.

(c) Other report

The Secretary, in consultation with the Administrator of General Services, shall—

(1) conduct a study and evaluate legal, institutional, and other constraints to connecting buildings owned or leased by the Federal Government to district heating and district cooling systems; and

(2) not later than 18 months after October 24, 1992, transmit to the Congress a report containing the findings and conclusions of such study, including recommendations for the development of streamlined processes for the consideration of connecting buildings owned or leased by the Federal Government to district heating and cooling systems.

(Pub. L. 95–619, title V, § 548, Nov. 9, 1978, 92 Stat. 3279; Pub. L. 100–615, § 2(a), Nov. 5, 1988, 102 Stat. 3187; Pub. L. 102–486, title I, § 152(g), (i)(1), Oct. 24, 1992, 106 Stat. 2848, 2851; Pub. L. 104–66, title I, § 1052(d), Dec. 21, 1995, 109 Stat. 718; Pub. L. 109–58, title I, § 102(g), Aug. 8, 2005, 119 Stat. 608.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 inserted ''the President and'' before ''Congress'' in heading and ''President and'' before ''Congress'' in introductory provisions.

1995—Subsec. (b)(1). Pub. L. 104–66, § 1052(d)(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(4). Pub. L. 104–66, § 1052(d)(2)–(4), added par. (4).

1992—Subsec. (a)(2). Pub. L. 102–486, § 152(i)(1)(A), substituted ''8256(a)(2)'' for ''8256(b)''.

Subsec. (b). Pub. L. 102–486, § 152(i)(1)(B), substituted '', not later than April 2 of each year,'' for ''annually,''.

Subsec. (b)(1). Pub. L. 102–486, § 152(g)(1), substituted ''including—'' and subpars. (A) and (B) for ''including a copy of the list of the exclusions made under section 8253(a)(2) of this title;''.

Subsec. (c). Pub. L. 102–486, § 152(g)(2), added subsec. (c).

1988—Pub. L. 100–615 amended section generally, substituting provisions relating to reports to Secretary and Congress for former requirement that in leasing Federal buildings for its own use or that of another Federal agency, each Federal agency should give appropriate preference to buildings which used solar heating and cooling equipment or other renewable energy sources or which otherwise minimized life cycle costs.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 16th item on page 89 identifies a reporting provision which, as subsequently amended, is contained in subsec. (b) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 8258a. Demonstration of new technology

(a) Demonstration program

Not later than January 1, 1994, the Secretary, in cooperation with the Administrator of General Services, shall establish a demonstration program to install, in federally owned facilities or federally assisted housing, energy conservation measures for which the Secretary has determined that such installation would accelerate commercial viability. In those cases where technologies are determined to be equivalent, priority shall be given to those technologies that have received or are receiving Federal financial assistance.

(b) Selection criteria

In addition to the determination under subsection (a) of this section, the Secretary shall select, in cooperation with the Administrator of General Services, proposals to be funded under this section on the basis of—

(1) cost-effectiveness;

(2) technical feasibility and system reliability in a working environment;

(3) lack of market penetration in the Federal sector;

(4) the potential needs of the proposing Federal agency for the technology, projected over 5 to 10 years;

(5) the potential Federal sector market, projected over 5 to 10 years;

(6) energy efficiency; and

(7) other environmental benefits, including the projected reduction of greenhouse gas emissions and indoor air pollution.

(c) Proposals

Federal agencies may submit to the Secretary, for each fiscal year, proposals for projects to be

funded by the Secretary under this section. Each such proposal shall include—

(1) a description of the proposed project emphasizing the innovative use of technology in the Federal sector;

(2) a description of the technical reliability and cost-effectiveness data expected to be acquired;

(3) an identification of the potential needs of the Federal agency for the technology;

(4) a commitment to adopt the technology, if the project establishes its technical reliability and life cycle cost-effectiveness, to supply at least 10 percent of the Federal agency's potential needs identified under paragraph (3);

(5) schedules and milestones for installing additional units; and

(6) a technology transfer plan to publicize the results of the project.

(d) Participation by GSA

The Secretary may only select a project for funding under this section which is proposed to be carried out in a building under the jurisdiction of the General Services Administration if the project will be carried out by the Administrator of General Services. If such project involves a total expenditure in excess of $1,600,000, no appropriation shall be made for such project unless such project has been approved by a resolution adopted by the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(e) Study

The Secretary shall conduct a study to evaluate the potential use of the purchasing power of the Federal Government to promote the development and commercialization of energy efficient products. The study shall identify products for which there is a high potential for Federal purchasing power to substantially promote their development and commercialization, and shall include a plan to develop such potential. The study shall be conducted in consultation with utilities, manufacturers, and appropriate nonprofit organizations concerned with energy efficiency. The Secretary shall report to the Congress on the results of the study not later than two years after October 24, 1992.

(f) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section $5,000,000 for each of the fiscal years 1993, 1994, and 1995.

(Pub. L. 95–619, title V, § 549, as added Pub. L. 102–486, title I, § 152(h)(2), Oct. 24, 1992, 106 Stat. 2848.)

PRIOR PROVISIONS

A prior section 549 of Pub. L. 95–619 was renumbered section 551 and is classified to section 8259 of this title.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 8258b. Survey of energy saving potential

(a) In general

The Secretary shall, in consultation with the Interagency Energy Management Task Force established under section 8257 of this title, carry out an energy survey for the purposes of—

(1) determining the maximum potential cost effective energy savings that may be achieved in a representative sample of buildings owned or leased by the Federal Government in different areas of the country;

(2) making recommendations for cost effective energy efficiency and renewable energy improvements in those buildings and in other similar Federal buildings; and

(3) identifying barriers which may prevent an agency's ability to comply with section 8253 of this title and other energy management goals.

(b) Implementation

(1) The Secretary shall transmit to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate and the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, within 180 days after October 24, 1992, a plan for implementing this section.

(2) The Secretary shall designate buildings to be surveyed in the project so as to obtain a sample of the buildings of the types and in the climates that is representative of buildings owned or leased by Federal agencies in the United States that consume the major portion of the energy consumed in Federal buildings. Such sample shall include, where appropriate, the following types of Federal facility space:

(A) Housing.
(B) Storage.
(C) Office.
(D) Services.
(E) Schools.
(F) Research and Development.
(G) Industrial.
(H) Prisons.
(I) Hospitals.

(3) For purposes of this section, an improvement shall be considered cost effective if the cost of the energy saved or displaced by the improvement exceeds the cost of the improvement over the remaining life of a Federal building or the remaining term of a lease of a building leased by the Federal Government as determined by the life cycle costing methodology developed under section 8254 of this title.

(c) Personnel

(1) In carrying out this section, the Secretary shall utilize personnel who are—

(A) employees of the Department of Energy; or

(B) selected by the agencies utilizing the buildings which are being surveyed under this section.

(2) Such personnel shall be detailed for the purpose of carrying out this section without any reduction of salary or benefits.

(d) Report

As soon as practicable after the completion of the project carried out under this section, the

Secretary shall transmit a report of the findings and conclusions of the project to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, and the agencies who own the buildings involved in such project. Such report shall include an analysis of the probability of each agency achieving each of the energy reduction goals established under section 8253(a) of this title.

(Pub. L. 95–619, title V, § 550, as added Pub. L. 102–486, title I, § 152(h)(2), Oct. 24, 1992, 106 Stat. 2850; amended Pub. L. 109–58, title I, § 102(h), Aug. 8, 2005, 119 Stat. 608.)

PRIOR PROVISIONS

A prior section 550 of Pub. L. 95–619 was classified to section 8260 of this title prior to the general amendment of this part by Pub. L. 100–615.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58 substituted ''each of the energy reduction goals'' for ''the 20 percent reduction goal''.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2.

§ 8259. Definitions

For the purposes of this part—

(1) the term ''agency'' has the meaning given it in section 551(1) of title 5;

(2) the term ''construction'' means new construction or substantial rehabilitation of existing structures;

(3) the term ''cogeneration facilities'' has the same meaning given such term in section 796(18)(A) of title 16;

(4) the term ''energy conservation measures'' means measures that are applied to a Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies, or retrofit activities;

(5) the term ''energy survey'' means a procedure used to determine energy and cost savings likely to result from the use of appropriate energy related maintenance and operating procedures and modifications, including the purchase and installation of particular energy-related equipment and the use of renewable energy sources;

(6) the term ''Federal building'' means any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal Government and which consumes energy; such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection;

(7) the term ''life cycle cost'' means the total costs of owning, operating, and maintaining a building over its useful life (including such costs as fuel, energy, labor, and replacement components) determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle costs shall be calculated over the effective remaining term of the lease;

(8) the term ''renewable energy sources'' includes, but is not limited to, sources such as agriculture and urban waste, geothermal energy, solar energy, and wind energy; and

(9) the term ''Secretary'' means the Secretary of Energy.

(Pub. L. 95–619, title V, § 551, formerly § 549, Nov. 9, 1978, 92 Stat. 3280; Pub. L. 100–615, § 2(a), Nov. 5, 1988, 102 Stat. 3188; renumbered § 551, Pub. L. 102–486, title I, § 152(h)(1), Oct. 24, 1992, 106 Stat. 2848; amended Pub. L. 105–388, § 5(c)(5), Nov. 13, 1998, 112 Stat. 3479.)

PRIOR PROVISIONS

A prior section 551 of Pub. L. 95–619 was classified to section 8261 of this title prior to the general amendment of this part by Pub. L. 100–615.

AMENDMENTS

1998—Par. (8). Pub. L. 105–388 substituted ''geothermal'' for ''goethermal''.

1988—Pub. L. 100–615 amended section generally, substituting provisions relating to definitions for Federal energy management for former provision relating to budget treatment of energy conserving improvements by Federal agencies.

§ 8259a. Energy and water savings measures in congressional buildings

(a) In general

The Architect of the Capitol—

(1) shall develop, update, and implement a cost-effective energy conservation and management plan (referred to in this section as the ''plan'') for all facilities administered by Congress (referred to in this section as ''congressional buildings'') to meet the energy performance requirements for Federal buildings

established under section 8253(a)(1) of this title; and

(2) shall submit the plan to Congress, not later than 180 days after August 8, 2005.

(b) Plan requirements

The plan shall include—

(1) a description of the life cycle cost analysis used to determine the cost-effectiveness of proposed energy efficiency projects;

(2) a schedule of energy surveys to ensure complete surveys of all congressional buildings every 5 years to determine the cost and payback period of energy and water conservation measures;

(3) a strategy for installation of life cycle cost-effective energy and water conservation measures;

(4) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

(5) information packages and ''how-to'' guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars in the workplace.

(c) Annual report

The Architect of the Capitol shall submit to Congress annually a report on congressional energy management and conservation programs required under this section that describes in detail—

(1) energy expenditures and savings estimates for each facility;

(2) energy management and conservation projects; and

(3) future priorities to ensure compliance with this section.

(Pub. L. 95–619, title V, § 552, as added Pub. L. 109–58, title I, § 101(a), Aug. 8, 2005, 119 Stat. 605.)

§ 8259b. Federal procurement of energy efficient products

(a) Definitions

In this section:

(1) Agency

The term ''agency'' has the meaning given that term in section 7902(a) of title 5.

(2) Energy Star product

The term ''Energy Star product'' means a product that is rated for energy efficiency under an Energy Star program.

(3) Energy Star program

The term ''Energy Star program'' means the program established by section 6294a of this title.

(4) FEMP designated product

The term ''FEMP designated product'' means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

(5) Product

The term ''product'' does not include any energy consuming product or system designed or procured for combat or combat-related missions.

(b) Procurement of energy efficient products

(1) Requirement

To meet the requirements of an agency for an energy consuming product, the head of the agency shall, except as provided in paragraph (2), procure—

(A) an Energy Star product; or

(B) a FEMP designated product.

(2) Exceptions

The head of an agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the agency finds in writing that—

(A) an Energy Star product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account; or

(B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the agency.

(3) Procurement planning

The head of an agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

(c) Listing of energy efficient products in Federal catalogs

Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer's functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

(d) Specific products

(1) In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard not later than 120 days after August 8, 2005, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

(2) All Federal agencies are encouraged to take actions to maximize the efficiency of air

conditioning and refrigeration equipment, including appropriate cleaning and maintenance, including the use of any system treatment or additive that will reduce the electricity consumed by air conditioning and refrigeration equipment. Any such treatment or additive must be—

(A) determined by the Secretary to be effective in increasing the efficiency of air conditioning and refrigeration equipment without having an adverse impact on air conditioning performance (including cooling capacity) or equipment useful life;

(B) determined by the Administrator of the Environmental Protection Agency to be environmentally safe; and

(C) shown to increase seasonal energy efficiency ratio (SEER) or energy efficiency ratio (EER) when tested by the National Institute of Standards and Technology according to Department of Energy test procedures without causing any adverse impact on the system, system components, the refrigerant or lubricant, or other materials in the system.

Results of testing described in subparagraph (C) shall be published in the Federal Register for public review and comment. For purposes of this section, a hardware device or primary refrigerant shall not be considered an additive.

(e) Regulations

Not later than 180 days after August 8, 2005, the Secretary shall issue guidelines to carry out this section.

(Pub. L. 95–619, title V, § 553, as added Pub. L. 109–58, title I, § 104(a), Aug. 8, 2005, 119 Stat. 609.)

§§ 8260, 8261. Omitted

CODIFICATION

Sections 8260 and 8261 were omitted in the general amendment of this part by Pub. L 100–615, § 2(a), Nov. 5, 1988, 102 Stat. 3185.

Section 8260, Pub. L. 95–619, title V, § 550, Nov. 9, 1978, 92 Stat. 3280, directed each Federal agency to periodically furnish Secretary with full and complete information on its activities under this part, and directed Secretary to annually submit to Congress a comprehensive report on all activities under this part and on progress made toward achievement of objectives of this part.

Section 8261, Pub. L. 95–619, title V, § 551, Nov. 9, 1978, 92 Stat. 3280, authorized to be appropriated to Secretary not to exceed $2,000,000 for fiscal year ending Sept. 30, 1979, to enable Secretary to perform analytical and administrative functions under this part.

§ 8262. Definitions

For purposes of this subtitle—[1]

(1) the term ''agency'' means[2] has the meaning given such term in section 551(1) of title 5, except that such term does not include the United States Postal Service;

(2) the term ''facility energy supervisor'' means the employee with responsibility for the daily operations of a Federal facility, including the management, installation, operation, and maintenance of energy systems in Federal facilities which may include more than one building;

(3) the term ''trained energy manager'' means a person who has demonstrated proficiency, or who has completed a course of study in the areas of fundamentals of building energy systems, building energy codes and applicable professional standards, energy accounting and analysis, life-cycle cost methodology, fuel supply and pricing, and instrumentation for energy surveys and audits;

(4) the term ''Task Force'' means the Interagency Energy Management Task Force established under section 8257 of this title; and

(5) the term ''energy conservation measures'' has the meaning given such term in section 8259(4) of this title.

(Pub. L. 102–486, title I, § 151, Oct. 24, 1992, 106 Stat. 2843.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle F (§§ 151–168) of title I of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262a to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and former section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262a. Report by General Services Administration

Not later than one year after October 24, 1992, and annually thereafter, the Administrator of General Services shall report to the Committee on Governmental Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives on the activities of the General Services Administration conducted pursuant to this subtitle.[1]

(Pub. L. 102–486, title I, § 154, Oct. 24, 1992, 106 Stat. 2852.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle F (§§ 151–168) of title I of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262a to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and former section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

[1] See References in Text note below.

[2] So in original. The word ''means'' probably should not appear.

[1] See References in Text note below.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2.

§ 8262b. Intergovernmental energy management planning and coordination

(a) Conference workshops

The Administrator of General Services, in consultation with the Secretary and the Task Force, shall hold regular, biennial conference workshops in each of the 10 standard Federal regions on energy management, conservation, efficiency, and planning strategy. The Administrator shall work and consult with the Department of Energy and other Federal agencies to plan for particular regional conferences. The Administrator shall invite Department of Energy, State, local, tribal, and county public officials who have responsibilities for energy management or may have an interest in such conferences and shall seek the input of, and be responsive to, the views of such officials in the planning and organization of such workshops.

(b) Focus of workshops

Such workshops and conferences shall focus on the following (but may include other topics):

(1) Developing strategies among Federal, State, tribal, and local governments to coordinate energy management policies and to maximize available intergovernmental energy management resources within the region regarding the use of governmental facilities and buildings.

(2) The design, construction, maintenance, and retrofitting of governmental facilities to incorporate energy efficient techniques.

(3) Procurement and use of energy efficient products.

(4) Dissemination of energy information on innovative programs, technologies, and methods which have proven successful in government.

(5) Technical assistance to design and incorporate effective energy management strategies.

(c) Establishment of workshop timetable

As a part of the first report to be submitted pursuant to section 8262a of this title, the Administrator shall set forth the schedule for the regional energy management workshops to be conducted under this section. Not less than five such workshops shall be held by September 30, 1993, and at least one such workshop shall be held in each of the 10 Federal regions every two years beginning on September 30, 1993.

(Pub. L. 102–486, title I, § 156, Oct. 24, 1992, 106 Stat. 2855.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262c. Federal agency energy management training

(a) Energy management training

(1) Each executive department described under section 101 of title 5, the Environmental Protection Agency, the National Aeronautics and Space Administration, the General Services Administration, and the United States Postal Service shall establish and maintain a program to ensure that facility energy managers are trained energy managers. Such programs shall be managed—

(A) by the department or agency representative on the Task Force; or

(B) if a department or agency is not represented on the Task Force, by the designee of the head of such department or agency.

(2) Departments and agencies described in paragraph (1) shall encourage appropriate employees to participate in energy manager training courses. Employees may enroll in courses of study in the areas described in section 8262(3) of this title including, but not limited to, courses offered by—

(A) private or public educational institutions;

(B) Federal agencies; or

(C) professional associations.

(b) Report to Task Force

(1) Each department and agency described in subsection (a)(1) of this section shall, not later than 60 days following October 24, 1992, report to the Task Force the following information:

(A) Those individuals employed by such department or agency on October 24, 1992, who qualify as trained energy managers.

(B) The General Schedule (GS) or grade level at which each of the individuals described in subparagraph (A) is employed.

(C) The facility or facilities for which such individuals are responsible or otherwise stationed.

(2) The Secretary shall provide a summary of the reports described in paragraph (1) to the Congress as part of the first report submitted under section 8258 of this title after October 24, 1992.

(c) Requirements at Federal facilities

(1) Not later than one year after October 24, 1992, the departments and agencies described

under subsection (a)(1) of this section shall upgrade their energy management capabilities by—

(A) designating facility energy supervisors;

(B) encouraging facility energy supervisors to become trained energy managers; and

(C) increasing the overall number of trained energy managers within such department or agency to a sufficient level to ensure effective implementation of this Act.

(2) Departments and agencies described in subsection (a)(1) of this section may hire trained energy managers to be facility energy supervisors. Trained energy managers, including those who are facility supervisors as well as other trained personnel, shall focus their efforts on improving energy efficiency in the following facilities—

(A) department or agency facilities identified as most costly to operate or most energy inefficient; or

(B) other facilities identified by the department or agency head as having significant energy savings potential.

(d) Annual report to Secretary and Congress

Each department and agency listed in subsection (a)(1) of this section shall report to the Secretary on the status and implementation of the requirements of this section. The Secretary shall include a summary of each such report in the annual report to Congress as required under section 8258(b) of this title.

(Pub. L. 102–486, title I, § 157, Oct. 24, 1992, 106 Stat. 2856.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(1)(B), is set out under section 5332 of Title 5, Government Organization and Employees.

This Act, referred to in subsec. (c)(1)(C), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262d. Energy audit teams

(a) Establishment

The Secretary shall assemble from existing personnel with appropriate expertise, and with particular utilization of the national laboratories, and make available to all Federal agencies, one or more energy audit teams which shall be equipped with instruments and other advanced equipment needed to perform energy audits of Federal facilities.

(b) Monitoring programs

The Secretary shall also assist in establishing, at each site that has utilized an energy audit team, a program for monitoring the implementation of energy efficiency improvements based upon energy audit team recommendations, and for recording the operating history of such improvements.

(Pub. L. 102–486, title I, § 158, Oct. 24, 1992, 106 Stat. 2857.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262e. Federal energy cost accounting and management

(a) Guidelines

Not later than 120 days after October 24, 1992, the Director of the Office of Management and Budget, in cooperation with the Secretary, the Administrator of General Services, and the Secretary of Defense, shall establish guidelines to be employed by each Federal agency to assess accurate energy consumption for all buildings or facilities which the agency owns, operates, manages or leases, where the Government pays utilities separate from the lease and the Government operates the leased space. Such guidelines are to be used in reports required under section 8258 of this title. Each agency shall implement such guidelines no later than 120 days after their establishment. Each facility energy manager shall maintain energy consumption and energy cost records for review by the Inspector General, the Congress, and the general public.

(b) Contents of guidelines

Such guidelines shall include the establishment of a monitoring system to determine—

(1) which facilities are the most costly to operate when measured on an energy consumption per square foot basis or other relevant analytical basis;

(2) unusual or abnormal changes in energy consumption; and

(3) the accuracy of utility charges for electric and gas consumption.

(c) Federally leased space energy reporting requirement

The Administrator of General Services shall include, in each report submitted under section 8262a of this title, the estimated energy cost of leased buildings or space in which the Federal Government does not directly pay the utility bills.

(Pub. L. 102–486, title I, § 159, Oct. 24, 1992, 106 Stat. 2857.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262f. Inspector General review and agency accountability

(a) Audit survey

Not later than 120 days after October 24, 1992, each Inspector General created to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2) of the Inspector General Act of 1978 (5 U.S.C. App.), and the Chief Postal Inspector of the United States Postal Service, in accordance with section 8E(f)(1) as established by section 8E(a)(2) of the Inspector General Act Amendments of 1988 (Public Law 100–504) shall—

(1) identify agency compliance activities to meet the requirements of section 543 of the

National Energy Conservation Policy Act (42 U.S.C. 8253) and any other matters relevant to implementing the goals of such Act; and

(2) determine if the agency has the internal accounting mechanisms necessary to assess the accuracy and reliability of energy consumption and energy cost figures required under such section.

(b) President's Council on Integrity and Efficiency report to Congress

Not later than 150 days after October 24, 1992, the President's Council on Integrity and Efficiency shall submit a report to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, on the review conducted by the Inspector General of each agency under this section.

(c) Inspector General review

Each Inspector General established under section 2 of the Inspector General Act of 1978 (5 U.S.C. App.) is encouraged to conduct periodic reviews of agency compliance with part 3 of title V of the National Energy Conservation Policy Act [42 U.S.C. 8251 et seq.], the provisions of this subtitle,[1] and other laws relating to energy consumption. Such reviews shall not be inconsistent with the performance of the required duties of the Inspector General's office.

(Pub. L. 102–486, title I, § 160, Oct. 24, 1992, 106 Stat. 2858.)

REFERENCES IN TEXT

Sections 2 and 11(2) of the Inspector General Act of 1978, referred to in subsecs. (a) and (c), are sections 2 and 11(2) of Pub. L. 95–452, which are set out in the Appendix to Title 5, Government Organization and Employees.

Section 8E as established by section 8E(a)(2) of the Inspector General Act Amendments of 1988, referred to in subsec. (a), probably means section 8E of the Inspector General Act of 1978, Pub. L. 95–452, as added by Pub. L. 100–504, title I, § 104(a), Oct. 18, 1988, 102 Stat. 2522. Section 8E of the Inspector General Act of 1978 was successively renumbered section 8F by Pub. L. 103–82, title II, § 202(g)(1), Sept. 21, 1993, 107 Stat. 889, then section 8G by Pub. L. 103–204, § 23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5.

The National Energy Conservation Policy Act, referred to in subsecs. (a)(1) and (c), is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, as amended. Part 3 of title V of the Act is classified generally to part B (§ 8251 et seq.) of subchapter III of chapter 91 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

This subtitle, referred to in subsec. (c), is subtitle F (§§ 151–168) of title I of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262a to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and former section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

[1] See References in Text note below.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2.

§ 8262g. Procurement and identification of energy efficient products

(a) Procurement

The Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, each shall undertake a program to include energy efficient products in carrying out their procurement and supply functions.

(b) Identification program

The Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, in consultation with the Secretary of Energy, each shall implement, in conjunction with carrying out their procurement and supply functions, a program to identify and designate those energy efficient products that offer significant potential savings, using, to the extent practicable, the life cycle cost methods and procedures developed under section 8254 of this title. The Secretary of Energy shall, to the extent necessary to carry out this section and after consultation with the aforementioned agency heads, provide estimates of the degree of relative energy efficiency of products.

(c) Guidelines

The Administrator for Federal Procurement Policy, in consultation with the Administrator of General Services, the Secretary of Energy, the Secretary of Defense, and the Director of the Defense Logistics Agency, shall issue guidelines to encourage the acquisition and use by all Federal agencies of products identified pursuant to

this section. The Secretary of Defense and the Director of the Defense Logistics Agency shall consider, and place emphasis on, the acquisition of such products as part of the Agency's ongoing review of military specifications.

(d) Report to Congress

Not later than December 31 of 1993 and thereafter as part of the report required under section 8258(b) of this title, the Secretary of Energy, in consultation with the Administrator for Federal Procurement Policy, the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, shall report on the progress, status, activities, and results of the programs under subsections (a), (b), and (c) of this section. The report shall include—

(1) the types and functions of each product identified under subsection (b) of this section, and efforts undertaken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to encourage the acquisition and use of such products;

(2) the actions taken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to identify products under subsection (b) of this section, the barriers which inhibit implementation of identification of such products, and recommendations for legislative action, if necessary;

(3) progress on the development and issuance of guidelines under subsection (c) of this section;

(4) an indication of whether energy cost savings technologies identified by the Advanced Building Technology Council, under section 1701j–2(h) of title 12, have been used in the identification of products under subsection (b) of this section;

(5) an estimate of the potential cost savings to the Federal Government from acquiring products identified under subsection (b) of this section with respect to which energy is a significant component of life cycle cost, based on the quantities of such products that could be utilized throughout the Government; and

(6) the actual quantities acquired of products described in paragraph (5).

(Pub. L. 102–486, title I, § 161, Oct. 24, 1992, 106 Stat. 2858; Pub. L. 104–66, title I, § 1052(c), Dec. 21, 1995, 109 Stat. 718.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–66 substituted ''thereafter as part of the report required under section 8258(b) of this title,'' for ''of each year thereafter,'' in introductory provisions.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 12th item on page 85 identifies a reporting provision which, as subsequently amended, is contained in subsec. (d) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

EXECUTIVE ORDER NO. 12845

Ex. Ord. No. 12845, Apr. 21, 1993, 58 F.R. 21887, which required Federal agencies to procure computer equipment that met EPA Energy Star requirements for energy efficiency, was revoked by Ex. Ord. No. 13123, § 604, June 3, 1999, 64 F.R. 30859, set out as a note under section 8251 of this title.

§ 8262h. United States Postal Service energy regulations

(a) In general

The Postmaster General shall issue regulations to ensure the reliable and accurate accounting of energy consumption costs for all buildings or facilities which it owns, leases, operates, or manages. Such regulations shall—

(1) establish a monitoring system to determine which facilities are the most costly to operate on an energy consumption per square foot basis or other relevant analytical basis;

(2) identify unusual or abnormal changes in energy consumption; and

(3) check the accuracy of utility charges for electricity and gas consumption.

(b) Identification of energy efficiency products

The Postmaster General shall actively undertake a program to identify and procure energy efficiency products for use in its facilities. In carrying out this subsection, the Postmaster General shall, to the maximum extent practicable, incorporate energy efficient information available on Federal Supply Schedules maintained by the General Services Administration and the Defense Logistics Agency.

(Pub. L. 102–486, title I, § 163, Oct. 24, 1992, 106 Stat. 2860.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

UNITED STATES POSTAL SERVICE BUILDING ENERGY SURVEY AND REPORT

Section 164 of Pub. L. 102–486 directed Postmaster General to conduct an energy survey, as defined in 42 U.S.C. 8259(5), for purposes of determining maximum potential cost effective energy savings that may be achieved in a representative sample of buildings owned or leased by United States Postal Service in different areas of the country, making recommendations for cost effective energy efficiency and renewable energy improvements in those buildings and in other similar United States Postal Service buildings, and identifying barriers which may prevent the United States Postal Service from complying with energy management goals, and further directed Postmaster General to transmit to Congress within 180 days after Oct. 24, 1992, a plan for implementing this survey, and to report to Congress on the findings and conclusions of such survey as soon as practicable after its completion.

§ 8262i. United States Postal Service energy management report

Not later than one year after October 24, 1992, and not later than January 1 of each year thereafter, the Postmaster General shall submit a report to the Committee on Governmental Affairs

and the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce and the Committee on Post Office and Civil Service of the House of Representatives on the United States Postal Service's building management program as it relates to energy efficiency. The report shall include, but not be limited to—

(1) a description of actions taken to reduce energy consumption;

(2) future plans to reduce energy consumption;

(3) an assessment of the success of the energy conservation program;

(4) a statement of energy costs incurred in operating and maintaining all United States Postal Service facilities; and

(5) the status of the energy efficient procurement program established under section 8262h of this title.

(Pub. L. 102–486, title I, § 165, Oct. 24, 1992, 106 Stat. 2861.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

ABOLITION OF HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Committee on Post Office and Civil Service of House of Representatives abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. References to Committee on Post Office and Civil Service treated as referring to Committee on Government Reform and Oversight of House of Representatives, see section 1(b) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

§ 8262j. Energy management requirements for United States Postal Service

(a) Energy management requirements for postal facilities

(1) The Postmaster General shall, to the maximum extent practicable, ensure that each United States Postal Service facility meets the energy management requirements for Federal buildings and agencies specified in section 8253 of this title.

(2) The Postmaster General may exclude from the requirements of such section any facility or collection of facilities, and the associated energy consumption and gross square footage if the Postmaster General finds that compliance with the requirements of such section would be impracticable. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such facility or collection of facilities, the type and amount of energy consumed, or the technical feasibility of making the desired changes. The Postmaster General shall identify and list in the report required under section 8262i of this title the facilities designated by it for such exclusion.

(b) Implementation steps

In carrying subsection (a) of this section, the Postmaster General shall—

(1) not later than 1 year after October 24, 1992, prepare or update, as appropriate, a plan (which may be submitted as part of the first report submitted under section 8262i of this title)—

(A) describing how this section will be implemented;

(B) designating personnel primarily responsible for achieving the requirements of this section; and

(C) identifying high priority projects;

(2) perform energy surveys of United States Postal Service facilities as necessary to achieve the requirements of this section;

(3) install those energy conservation measures that will attain the requirements of this section in a cost-effective manner as defined in section 8254 of this title; and

(4) ensure that the operation and maintenance procedures applied under this section are continued.

(Pub. L. 102–486, title I, § 166, Oct. 24, 1992, 106 Stat. 2861.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262k. Government contract incentives

(a) Establishment of criteria

Each agency, in consultation with the Federal Acquisition Regulatory Council, shall establish criteria for the improvement of energy efficiency in Federal facilities operated by Federal Government contractors or subcontractors.

(b) Purpose of criteria

The criteria established under subsection (a) of this section shall be used to encourage Federal contractors, and their subcontractors, which manage and operate federally-owned facilities, to adopt and utilize energy conservation measures designed to reduce energy costs in Government-owned and contractor-operated facilities and which are ultimately borne by the Federal Government.

(Pub. L. 102–486, title I, § 167, Oct. 24, 1992, 106 Stat. 2862.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

PART C—FEDERAL PHOTOVOLTAIC UTILIZATION

§ 8271. "Federal facility" and "Secretary" defined

For purposes of this part—

(1) The term ''Federal facility'' means any building, structure, or fixture or part thereof which is owned by the United States or any Federal agency or which is held by the United States or any Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation. Such term also applies to facilities related to programs administered by Federal agencies.

(2) The term ''Secretary'' means the Secretary of Energy.

(Pub. L. 95–619, title V, § 562, Nov. 9, 1978, 92 Stat. 3280; Pub. L. 96–294, title IV, § 407(1), June 30, 1980, 94 Stat. 717.)

AMENDMENTS

1980—Par. (1). Pub. L. 96–294 inserted applicability to facilities related to programs administered by Federal agencies.

SHORT TITLE

For short title of this part as the ''Federal Photovoltaic Utilization Act'', see section 561 of Pub. L. 95–619, set out as a note under section 8201 of this title.

§ 8272. Photovoltaic energy program

There is hereby established a photovoltaic energy commercialization program for the accelerated procurement and installation of photovoltaic solar electric systems for electric production in Federal facilities.

(Pub. L. 95–619, title V, § 563, Nov. 9, 1978, 92 Stat. 3280.)

§ 8273. Purpose of program

The purpose of the program established by section 8272 of this title is to—

(1) accelerate the growth of a commercially viable and competitive industry to make photovoltaic solar electric systems available to the general public as an option in order to reduce national consumption of fossil fuel;

(2) reduce fossil fuel costs to the Federal Government;

(3) stimulate the general use within the Federal Government of methods for the minimization of life cycle costs; and

(4) develop performance data on the program established by section 8272 of this title.

(Pub. L. 95–619, title V, § 564, Nov. 9, 1978, 92 Stat. 3280.)

§ 8274. Acquisition of systems

The program established by section 8272 of this title shall provide for the acquisition of photovoltaic solar electric systems and associated storage capability by the Secretary for their use by Federal agencies, and for the acquisition of such systems and associated capability by Federal agencies for their own use in cases where the authority to make such acquisition has been delegated to the agency involved by the Secretary. The acquisition of photovoltaic solar electric systems shall be at an annual level substantial enough to allow use of low-cost production techniques by suppliers of such systems. The Secretary (or other Federal agency acting under delegation from the Secretary) is authorized to make such acquisitions through the use of multiyear contracts. Authority under this part to enter into acquisition contracts shall be only to the extent as may be provided in advance in appropriation Acts.

(Pub. L. 95–619, title V, § 565, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96–294, title IV, § 407(2)(A), (B), June 30, 1980, 94 Stat. 717.)

AMENDMENTS

1980—Pub. L. 96–294 inserted provisions relating to acquisition of systems and associated capability by Federal agencies and inserted ''(or other Federal agency acting under delegation from the Secretary)''.

§ 8275. Administration

The Secretary shall administer the program established under section 8272 of this title and shall—

(1) consult with the Secretary of Defense to insure that the installation and purchase of photovoltaic solar electric systems pursuant to this part shall not interfere with defense-related activities;

(2) prescribe such requirements as may be appropriate to monitor and assess the performance and operation of photovoltaic electric systems installed pursuant to this part; and

(3) report annually to the Congress on the status of the program.

Notwithstanding any other provision of law, the Secretary shall not be subject to the requirements of section 553 of title 5, in the performance of his functions under this part.

(Pub. L. 95–619, title V, § 566, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96–294, title IV, § 407(3), (4), June 30, 1980, 94 Stat. 717, 718.)

AMENDMENTS

1980—Pub. L. 96–294 inserted provisions relating to inapplicability of section 553 of title 5 and substituted ''requirements'' for ''rules and regulations'' in par. (2).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of the reporting provision in par. (3) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 3rd item on page 87 of House Document No. 103–7.

§ 8276. System evaluation and purchase program

(a) Program

The Secretary shall establish, within 60 days after November 9, 1978, a photovoltaic systems evaluation and purchase program to provide such systems as are required by the Federal agencies to carry out this part. In acquiring photovoltaic solar electric systems under this part, the Secretary (or other Federal agency acting under delegation from the Secretary) shall insure that such systems reflect to the maximum extent practicable the most advanced and reliable technologies and shall schedule purchases in a manner which will stimulate the

early development of a permanent low-cost private photovoltaic production capability in the United States, and to stimulate the private sector market for photovoltaic power systems. The Secretary and other Federal agencies acting under delegation from the Secretary shall, subject to the availability of appropriated funds, procure not more than 30 megawatts of photovoltaic solar electric systems during fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(b) Other procurement

Nothing in this part shall preclude any Federal agency from directly procuring a photovoltaic solar electric system (in lieu of obtaining one under the program under subsection (a) of this section), except that any such Federal agency shall consult with the Secretary before procuring such a system.

(Pub. L. 95–619, title V, § 567, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96–294, title IV, § 407(2)(C), (D), June 30, 1980, 94 Stat. 717.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–294 inserted provisions relating to Federal agencies acting under delegations from the Secretary.

§ 8277. Advisory committee

(a) Establishment

There is hereby established an advisory committee to assist the Secretary in the establishment and conduct of the programs established under this part.

(b) Membership

Such committee shall be composed of the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of the National Aeronautics and Space Administration, the Administrator of the General Services Administration, the Secretary of Transportation, the Administrator of the Small Business Administration, the chairman of the Federal Trade Commission, the Postmaster General, and such other persons as the Secretary deems necessary. The Secretary shall appoint such other nongovernmental persons to the extent necessary to assure that the membership of the committee will be fairly balanced in terms of the point of view represented and the functions to be performed by the committee.

(c) Termination

The advisory committee shall terminate October 1, 1981.

(Pub. L. 95–619, title V, § 568, Nov. 9, 1978, 92 Stat. 3281.)

§ 8278. Authorization of appropriations

For the purposes of this part, there is authorized to be appropriated to the Secretary not to exceed $98,000,000 for the period beginning October 1, 1978, and ending September 30, 1981.

(Pub. L. 95–619, title V, § 569, Nov. 9, 1978, 92 Stat. 3282.)

SUBCHAPTER IV—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

PART A—GENERAL PROVISIONS

§§ 8281 to 8281b. Repealed. Pub. L. 99–412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section 8281, Pub. L. 95–619, title VII, § 710, as added Pub. L. 96–294, title V, § 565, June 30, 1980, 94 Stat. 752, provided that definitions in section 8211 of this title apply to this subchapter and defined additional terms.

Section 8281a, Pub. L. 95–619, title VII, § 711, as added Pub. L. 96–294, title V, § 565, June 30, 1980, 94 Stat. 754, provided that this subchapter apply to any public utility for which coverage is provided under section 8212 of this title.

Section 8281b, Pub. L. 95–619, title VII, § 712, as added Pub. L. 96–294, title V, § 565, June 30, 1980, 94 Stat. 754, related to rules of the Secretary for submission and approval of plans.

DEMONSTRATION PROJECTS FOR ENERGY EFFICIENCY IN COMMERCIAL BUILDINGS

Pub. L. 99–412, title II, § 202, Aug. 28, 1986, 100 Stat. 943, provided that: ''The Secretary of Energy shall, using funds appropriated for energy conservation activities of the Department of Energy, carry out demonstration projects by sharing the cost of the construction and development by nongovernmental entities of facilities which demonstrate innovative technologies for utility applications that increase energy efficiency in commercial buildings.''

PART B—ENERGY CONSERVATION PLANS

§§ 8282 to 8282b. Repealed. Pub. L. 99–412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section 8282, Pub. L. 95–619, title VII, § 721, as added Pub. L. 96–294, title V, § 565, June 30, 1980, 94 Stat. 754, related to procedures for submission and approval of State energy conservation plans for commercial buildings and multifamily dwellings.

Section 8282a, Pub. L. 95–619, title VII, § 722, as added Pub. L. 96–294, title V, § 565, June 30, 1980, 94 Stat. 755, related to requirements for State plans for regulated utilities.

Section 8282b, Pub. L. 95–619, title VII, § 723, as added Pub. L. 96–294, title V, § 565, June 30, 1980, 94 Stat. 756, related to plan requirements for nonregulated utilities and building heating suppliers.

AUTHORITY TO CONTINUE CERTAIN STATE ENERGY CONSERVATION PLANS

Pub. L. 99–412, title II, § 201(c), Aug. 28, 1986, 100 Stat. 943, provided that: ''Notwithstanding subsection (a) [repealing this subchapter], any State energy conservation plan for commercial buildings and multifamily dwellings approved under section 721 of the National Energy Conservation Policy Act [42 U.S.C. 8282] before August 1, 1984, may, with respect to regulated utilities, continue in effect until January 1, 1990.''

PART C—UTILITY PROGRAMS

§§ 8283, 8283a. Repealed. Pub. L. 99–412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section 8283, Pub. L. 95–619, title VII, § 731, as added Pub. L. 96–294, title V, § 565, June 30, 1980, 94 Stat. 756, related to general requirements for utility programs and requirements concerning accounting and payment of costs.

Section 8283a, Pub. L. 95–619, title VII, § 732, as added Pub. L. 96–294, title V, § 565, June 30, 1980, 94 Stat. 757, related to requirements for building heating supplier programs and waiver of such requirements.

PART D—FEDERAL IMPLEMENTATION

§ 8284. Repealed. Pub. L. 99–412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section, Pub. L. 95–619, title VII, § 741, as added Pub. L. 96–294, title V, § 565, June 30, 1980, 94 Stat. 757, related to Federal standby authority to promulgate plans.

SUBCHAPTER V—ENERGY AUDITOR TRAINING AND CERTIFICATION

CODIFICATION

This subchapter was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8285. Purpose

It is the purpose of this subchapter to encourage the training and certification of individuals to conduct energy audits for residential and commercial buildings in order to serve the various private and public needs of the Nation for energy audits.

(Pub. L. 96–294, title V, § 581, June 30, 1980, 94 Stat. 760.)

§ 8285a. Definitions

For the purposes of this subchapter—

(1) the term ''Governor'' means the chief executive officer of each State, including the Mayor of the District of Columbia;

(2) the term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands;

(3) the term ''energy audit'' means an inspection as described in section 8216(b)(1)(A)[1] of this title, or an energy audit as defined in section 8281(b)(7)[1] of this title, which in addition may provide information on the utilization of renewable resources and may make energy-related improvements in the building; and

(4) the term ''Secretary'' means the Secretary of Energy.

(Pub. L. 96–294, title V, § 582, June 30, 1980, 94 Stat. 761.)

REFERENCES IN TEXT

Section 8216 of this title, referred to in par. (3), was omitted from the Code pursuant to section 8229 of this title, which terminated authority under that section June 30, 1989.

Section 8281 of this title, referred to in par. (3), was repealed by Pub. L. 99–412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943.

§ 8285b. Grants

(a) The Secretary may make grants to any Governor of a State for the training and certification of individuals to conduct energy audits.

(b) Before making a grant under subsection (a) of this section to a Governor, the Secretary must receive from the Governor an application containing—

(A) any information which the Secretary deems is necessary to carry out this subchapter; and

(B) an assurance that the grant will supplement and not supplant other funds available for such training and certification and will be used to increase the total amount of funds available for such training and certification.

(c)(1) Before making any grant under subsection (a) of this section the Secretary shall establish minimum standards for the training and certification of individuals to conduct energy audits.

(2) The Secretary shall require each Governor receiving any grant under this subchapter to agree to meet the standards established pursuant to paragraph (1) in any training and certification conducted using funds provided under this subchapter.

(Pub. L. 96–294, title V, § 583, June 30, 1980, 94 Stat. 761.)

§ 8285c. Authorization of appropriations

(a) To carry out this subchapter there is authorized to be appropriated the sum of $10,000,000 for the fiscal year ending on September 30, 1981, and the sum of $15,000,000 for the fiscal year ending on September 30, 1982.

(b) Any funds appropriated under the authorization contained in this section shall remain available until expended.

(Pub. L. 96–294, title V, § 584, June 30, 1980, 94 Stat. 761.)

SUBCHAPTER VI—COORDINATION OF FEDERAL ENERGY CONSERVATION FACTORS AND DATA

CODIFICATION

This subchapter was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8286. Consensus on factors and data for energy conservation standards

The Secretary of Energy shall assure that within 6 months after June 30, 1980, the Secretary of Energy, the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Secretary of Health and Human Services, the Secretary of Defense, the Administrator of the General Services Administration, and the head of any other agency responsible for developing energy conservation standards for new or existing residential, commercial, or agricultural buildings shall reach a consensus regarding factors and data used to develop such standards. This consensus shall apply to, but not be limited to—

(1) fuel price projections;

(2) discount rates;

(3) inflation rates;

(4) climatic conditions and zones; and

(5) the cost and energy saving characteristics of construction materials.

(Pub. L. 96–294, title V, § 595, June 30, 1980, 94 Stat. 762.)

§ 8286a. Use of factors and data

Factors and data consented to pursuant to section 8286 of this title may be revised and agreed to by a consensus of the heads of the various

[1] See References in Text note below.

Federal agencies involved. Such factors and data shall be used by all Federal agencies in establishing and revising various energy conservation standards used by such agencies, except that other factors and data may be used with respect to the standards applicable to any program if—

(1) the other factors and data are approved by the Secretary of Energy solely on the basis that such other factors and data are critical to meet the unique needs of the program concerned;

(2) using the consented to factors and data would cause a violation of an express provision of law; or

(3) statutory requirements or responsibilities require a modification of the consented to factors and data.

(Pub. L. 96–294, title V, § 596, June 30, 1980, 94 Stat. 762.)

§ 8286b. Omitted

CODIFICATION

Section, Pub. L. 96–294, title V, § 597, June 30, 1980, 94 Stat. 762, which required the President (who delegated the duty to the Secretary of Energy by Memorandum of June 23, 1993, 58 F.R. 34519) to report annually to Congress on activities carried out under this subchapter and on other efforts to coordinate Federal energy conservation programs, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 15th item on page 19 of House Document No. 103–7.

SUBCHAPTER VII—ENERGY SAVINGS PERFORMANCE CONTRACTS

§ 8287. Authority to enter into contracts

(a) In general

(1) The head of a Federal agency may enter into contracts under this subchapter solely for the purpose of achieving energy savings and benefits ancillary to that purpose. Each such contract may, notwithstanding any other provision of law, be for a period not to exceed 25 years. Such contract shall provide that the contractor shall incur costs of implementing energy savings measures, including at least the costs (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract.

(2)(A) Contracts under this subchapter shall be energy savings performance contracts and shall require an annual energy audit and specify the terms and conditions of any Government payments and performance guarantees. Any such performance guarantee shall provide that the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software systems.

(B) Aggregate annual payments by an agency to both utilities and energy savings performance contractors, under an energy savings performance contract, may not exceed the amount that the agency would have paid for utilities without an energy savings performance contract (as estimated through the procedures developed pursuant to this section) during contract years. The contract shall provide for a guarantee of savings to the agency, and shall establish payment schedules reflecting such guarantee, taking into account any capital costs under the contract.

(C) Federal agencies may incur obligations pursuant to such contracts to finance energy conservation measures provided guaranteed savings exceed the debt service requirements.

(D) A Federal agency may enter into a multiyear contract under this subchapter for a period not to exceed 25 years, without funding of cancellation charges before cancellation, if—

(i) such contract was awarded in a competitive manner pursuant to subsection (b)(2) of this section, using procedures and methods established under this subchapter;

(ii) funds are available and adequate for payment of the costs of such contract for the first fiscal year;

(iii) 30 days before the award of any such contract that contains a clause setting forth a cancellation ceiling in excess of $10,000,000, the head of such agency gives written notification of such proposed contract and of the proposed cancellation ceiling for such contract to the appropriate authorizing and appropriating committees of the Congress; and

(iv) such contract is governed by part 17.1 of the Federal Acquisition Regulation promulgated under section 421 of title 41 or the applicable rules promulgated under this subchapter.

(b) Implementation

(1)(A) The Secretary, with the concurrence of the Federal Acquisition Regulatory Council established under section 421(a) of title 41, not later than 180 days after October 24, 1992, shall, by rule, establish appropriate procedures and methods for use by Federal agencies to select, monitor, and terminate contracts with energy service contractors in accordance with laws governing Federal procurement that will achieve the intent of this section in a cost-effective manner. In developing such procedures and methods, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of this section and shall formulate substitute regulations consistent with laws governing Federal procurement.

(B) The procedures and methods established pursuant to subparagraph (A) shall be the procedures and contracting methods for selection, by an agency, of a contractor to provide energy savings performance services. Such procedures and methods shall provide for the calculation of energy savings based on sound engineering and financial practices.

(2) The procedures and methods established pursuant to paragraph (1)(A) shall—

(A) allow the Secretary to—

(i) request statements of qualifications, which shall, at a minimum, include prior experience and capabilities of contractors to perform the proposed types of energy savings services and financial and performance information, from firms engaged in providing energy savings services; and

(ii) from the statements received, designate and prepare a list, with an update at

least annually, of those firms that are qualified to provide energy savings services;

(B) require each agency to use the list prepared by the Secretary pursuant to subparagraph (A)(ii) unless the agency elects to develop an agency list of firms qualified to provide energy savings performance services using the same selection procedures and methods as are required of the Secretary in preparing such lists; and

(C) allow the head of each agency to—

(i) select firms from the list prepared pursuant to subparagraph (A)(ii) or the list prepared by the agency pursuant to subparagraph (B) to conduct discussions concerning a particular proposed energy savings project, including requesting a technical and price proposal from such selected firms for such project;

(ii) select from such firms the most qualified firm to provide energy savings services based on technical and price proposals and any other relevant information;

(iii) permit receipt of unsolicited proposals for energy savings performance contracting services from a firm that such agency has determined is qualified to provide such services under the procedures established pursuant to paragraph (1)(A), and require agency facility managers to place a notice in the Commerce Business Daily announcing they have received such a proposal and invite other similarly qualified firms to submit competing proposals; and

(iv) enter into an energy savings performance contract with a firm qualified under clause (iii), consistent with the procedures and methods established pursuant to paragraph (1)(A).

(3) A firm not designated as qualified to provide energy savings services under paragraph (2)(A)(i) or paragraph (2)(B) may request a review of such decision to be conducted in accordance with procedures to be developed by the board of contract appeals of the General Services Administration.

(c) Sunset requirements

The authority to enter into new contracts under this section shall cease to be effective on October 1, 2016.

(Pub. L. 95–619, title VIII, § 801, as added Pub. L. 99–272, title VII, § 7201(a), Apr. 7, 1986, 100 Stat. 142; amended Pub. L. 102–486, title I, § 155(a), Oct. 24, 1992, 106 Stat. 2852; Pub. L. 104–106, div. E, title LVI, § 5607(e), Feb. 10, 1996, 110 Stat. 702; Pub. L. 104–316, title I, § 122(s), Oct. 19, 1996, 110 Stat. 3838; Pub. L. 105–388, § 4(a), Nov. 13, 1998, 112 Stat. 3477; Pub. L. 106–291, title III, § 335, Oct. 11, 2000, 114 Stat. 997; Pub. L. 106–469, title IV, § 401, Nov. 9, 2000, 114 Stat. 2037; Pub. L. 108–375, div. A, title X, § 1090(a), Oct. 28, 2004, 118 Stat. 2067; Pub. L. 109–58, title I, § 105(a), Aug. 8, 2005, 119 Stat. 611.)

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–58 substituted ''2016'' for ''2006''.

2004—Subsec. (c). Pub. L. 108–375 substituted ''2006'' for ''2003''.

2000—Subsec. (a)(2)(D)(iii). Pub. L. 106–291 and Pub. L. 106–469 amended cl. (iii) identically, substituting ''$10,000,000'' for ''$750,000''.

1998—Subsec. (c). Pub. L. 105–388 substituted ''on October 1, 2003'' for ''five years after the date procedures and methods are established under subsection (b) of this section''.

1996—Subsec. (b)(3). Pub. L. 104–106 struck out at end ''Procedures developed by the board of contract appeals under this paragraph shall be substantially equivalent to procedures established under section 759(f) of title 40.''

Subsec. (c). Pub. L. 104–316 struck out par. (1) designation before ''The authority to'' and struck out par. (2) which required Comptroller General of the United States to report annually for five years on implementation of this section, including an assessment of various energy issues.

1992—Pub. L. 102–486 inserted subsec. (a) designation and heading, designated existing provisions as par. (1), and added par. (2) and subsecs. (b) and (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

ARCHITECT OF THE CAPITOL AS AGENCY ELECTING TO DEVELOP LIST OF FIRMS QUALIFIED TO PROVIDE ENERGY SAVING SERVICES AND AS AGENCY HEAD SELECTING FROM LIST

Pub. L. 103–211, title III, § 402, Feb. 12, 1994, 108 Stat. 40, provided that: ''The Architect of the Capitol shall be considered the agency for the purposes of the election in section 801(b)(2)(B) of the National Energy Conservation Policy Act [42 U.S.C. 8287(b)(2)(B)] and the head of the agency for purposes of subsection (b)(2)(C) of such section.''

REVIEW

Pub. L. 108–375, div. A, title X, § 1090(f), Oct. 28, 2004, 118 Stat. 2068, provided that: ''Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2004], the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.''

EXTENSION OF AUTHORITY

Pub. L. 109–58, title I, § 105(b), Aug. 8, 2005, 119 Stat. 611, provided that: ''Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act [Aug. 8, 2005], shall be considered to have been entered into under that section.''

Pub. L. 108–375, div. A, title X, § 1090(g), Oct. 28, 2004, 118 Stat. 2068, provided that: ''Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act [Oct. 28, 2004], shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section.''

ENERGY EFFICIENCY INCENTIVE

Pub. L. 100–456, div. A, title VII, § 736, Sept. 29, 1988, 102 Stat. 2006, as amended by Pub. L. 101–189, div. A, title III, § 331, Nov. 29, 1989, 103 Stat. 1417, provided that:

''(a) ENERGY CONSERVATION INCENTIVE.—In order to provide additional incentive for the Secretary of a military department to enter into contracts under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.), the Secretary may use the energy cost savings realized by the United States during the first five years under any such contract in the manner provided in subsection (b). The amount of savings available for use under subsection (b) shall be determined as provided in subsection (c) and shall remain available for obligation until expended.

''(b) AUTHORIZED USES OF SAVINGS.—The energy cost savings realized by the United States in each of the first five years under a contract may be used as follows:

''(1) One-half of the amount of such savings may be used for the acquisition of energy conserving measures for military installations, and such measures may be in addition to any such energy conserving measures acquired for military installations under contracts entered into under title VIII of the National Energy Conservation Policy Act.

''(2) One-half of the amount of such savings may be used for any morale, welfare, or recreation facility or service that is normally provided with appropriated funds, or for any minor military construction project (as defined in section 2805(a) of title 10, United States Code), that will enhance the quality of life of members of the Armed Forces at the military installation at which the energy cost savings were realized.

''(c) DETERMINATION OF AMOUNT OF SAVINGS.—Not more than 90 days after the end of each of the first five years during which energy savings measures have been in operation under a contract entered into by the Secretary of a military department under title VIII of the National Energy Conservation Policy Act, the Secretary of the military department concerned shall determine the amount of energy cost savings realized by the United States under the terms of the contract during that year by reason of the energy savings measures acquired and installed at that installation pursuant to that contract.''

§ 8287a. Payment of costs

Any amount paid by a Federal agency pursuant to any contract entered into under this subchapter may be paid only from funds appropriated or otherwise made available to the agency for fiscal year 1986 or any fiscal year thereafter for the payment of energy, water, or wastewater treatment expenses (and related operation and maintenance expenses).

(Pub. L. 95–619, title VIII, § 802, as added Pub. L. 99–272, title VII, § 7201(a), Apr. 7, 1986, 100 Stat. 142; amended Pub. L. 108–375, div. A, title X, § 1090(b), Oct. 28, 2004, 118 Stat. 2067.)

AMENDMENTS

2004—Pub. L. 108–375 inserted '', water, or wastewater treatment'' after ''payment of energy''.

§ 8287b. Reports

Each Federal agency shall periodically furnish the Secretary of Energy with full and complete information on its activities under this subchapter, and the Secretary shall include in the report submitted to Congress under section 8260[1] of this title a description of the progress made by each Federal agency in—

(1) including the authority provided by this subchapter in its contracting practices; and

(2) achieving energy savings under contracts entered into under this subchapter.

(Pub. L. 95–619, title VIII, § 803, as added Pub. L. 99–272, title VII, § 7201(a), Apr. 7, 1986, 100 Stat. 142.)

REFERENCES IN TEXT

Section 8260 of this title, referred to in text, was omitted in the general revision of part B (§ 8251 et seq.) of subchapter III of this chapter by Pub. L. 100–615, § 2(a), Nov. 5, 1988, 102 Stat. 3185.

§ 8287c. Definitions

For purposes of this subchapter, the following definitions apply:

(1) The term ''Federal agency'' means each authority of the Government of the United States, whether or not it is within or subject to review by another agency.

(2) The term ''energy savings'' means a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

(C) the increased efficient use of existing water sources in either interior or exterior applications.

(3) The terms ''energy savings contract'' and ''energy savings performance contract'' mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40), be in compliance with the prospectus requirements and procedures of section 3307 of title 40.

(4) The term ''energy or water conservation measure'' means—

(A) an energy conservation measure, as defined in section 8259 of this title; or

(B) a water conservation measure that improves the efficiency of water use, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.

(Pub. L. 95–619, title VIII, § 804, as added Pub. L. 99–272, title VII, § 7201(a), Apr. 7, 1986, 100 Stat. 143; amended Pub. L. 102–486, title I, § 155(b), Oct. 24, 1992, 106 Stat. 2855; Pub. L. 105–388, § 4(b), Nov. 13, 1998, 112 Stat. 3477; Pub. L. 108–375, div. A, title X, § 1090(c)–(e), Oct. 28, 2004, 118 Stat. 2067.)

AMENDMENTS

2004—Par. (2). Pub. L. 108–375, § 1090(c), amended par. (2) generally. Prior to amendment, par. (2) read as fol-

[1] See References in Text note below.

lows: ''The term 'energy savings' means a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, utilized in an existing federally owned building or buildings or other federally owned facilities as a result of—

''(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or

''(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.''

Par. (3). Pub. L. 108–375, § 1090(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The terms 'energy savings contract' and 'energy savings performance contract' mean a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations. Such contracts—

''(A) may provide for appropriate software licensing agreements; and

''(B) shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).''

Par. (4). Pub. L. 108–375, § 1090(e), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The term 'energy conservation measures' has the meaning given such term in section 8259(4) of this title.''

1998—Par. (1). Pub. L. 105–388 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'Federal agency' means an agency defined in section 551(1) of title 5.''

1992—Pub. L. 102–486, § 155(b)(1), substituted ''subchapter, the following definitions apply:'' for ''subchapter—'' in introductory provisions

Par. (1). Pub. L. 102–486, § 155(b)(2), substituted ''The'' for ''the'' and a period for '', and'' at end.

Par. (2). Pub. L. 102–486, § 155(b)(3), substituted ''The term'' for ''the term''.

Pars. (3), (4). Pub. L. 102–486, § 155(b)(4), added pars. (3) and (4).

§ 8287d. Assistance to Federal agencies in achieving energy efficiency in Federal facilities and operations

The Secretary in fiscal year 1999 and thereafter, shall continue the process begun in fiscal year 1998 of accepting funds from other Federal agencies in return for assisting agencies in achieving energy efficiency in Federal facilities and operations by the use of privately financed, energy savings performance contracts and other private financing mechanisms. The funds may be provided after agencies begin to realize energy cost savings; may be retained by the Secretary until expended; and may be used only for the purpose of assisting Federal agencies in achieving greater efficiency, water conservation and use of renewable energy by means of privately financed mechanisms, including energy savings performance contracts and utility incentive programs. These recovered funds will continue to be used to administer even greater energy efficiency, water conservation and use of renewable energy by means of privately financed mechanisms such as utility efficiency service contracts and energy savings performance contracts. The recoverable funds will be used for all necessary program expenses, including contractor support and resources needed, to achieve overall Federal energy management program objectives for greater energy savings. Any such privately financed contracts shall meet the provisions of the Energy Policy Act of 1992, Public Law 102–486 regarding energy savings performance contracts and utility incentive programs.

(Pub. L. 105–277, div. A, § 101(e) [title II], Oct. 21, 1998, 112 Stat. 2681–231, 2681–278.)

REFERENCES IN TEXT

The Energy Policy Act of 1992, referred to in text, is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

CODIFICATION

Section was enacted as part of Department of the Interior and Related Agencies Appropriations Act, 1999, and also as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

Pub. L. 105–83, title II, Nov. 14, 1997, 111 Stat. 1582.

CHAPTER 92—POWERPLANT AND INDUSTRIAL FUEL USE

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8301. Findings; statement of purposes.
8302. Definitions.
8303. Territorial application.

SUBCHAPTER II—NEW FACILITIES

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8311. Coal capability of new electric powerplants; certification of compliance.
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PART B—EXEMPTIONS

8321. Temporary exemptions.
8322. Permanent exemptions.
8323. General requirements for exemptions.
8324. Terms and conditions; compliance plans.

SUBCHAPTER III—EXISTING FACILITIES

PART A—PROHIBITIONS

8341. Existing electric powerplants.
8342. Repealed.
8343. Rules relating to case-by-case and category prohibitions.

PART B—EXEMPTIONS

8351. Temporary exemptions.
8352. Permanent exemptions.
8353. General requirements for exemptions.
8354. Terms and conditions; compliance plans.

SUBCHAPTER IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

8371, 8372. Repealed
8373. Conservation in Federal facilities, contracts, and financial assistance programs.
8374. Emergency authorities.
8375. Repealed.

SUBCHAPTER V—SYSTEM COMPLIANCE OPTION

8391. Repealed.

SUBCHAPTER VI—FINANCIAL ASSISTANCE

8401. Assistance to areas impacted by increased coal or uranium production.

Sec.
8401a. ''Local government'' defined.
8402. Loans to assist powerplant acquisitions of air pollution control equipment.

SUBCHAPTER VII—ADMINISTRATION AND ENFORCEMENT

PART A—PROCEDURES

8411. Administrative procedures.
8412. Judicial review.

PART B—INFORMATION AND REPORTING

8421. Information.
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PART C—ENFORCEMENT

8431. Notice of violation; other general provisions.
8432. Criminal penalties.
8433. Civil penalties.
8434. Injunctions and other equitable relief.
8435. Citizens suits.

PART D—PRESERVATION OF CONTRACTUAL RIGHTS

8441. Preservation of contractual interest.

PART E—STUDIES

8451. National coal policy study.
8452. Repealed.
8453. Impact on employees.
8454. Study of compliance problem of small electric utility systems.
8455. Repealed.
8456. Socioeconomic impacts of increased coal production and other energy development.
8457. Use of petroleum and natural gas in combustors.

PART F—APPROPRIATIONS AUTHORIZATION

8461. Authorization of appropriations.

PART G—COORDINATION WITH OTHER PROVISIONS OF LAW

8471. Effect on environmental requirements.
8472. Effect of orders under section 792 of title 15.
8473. Environmental impact statements under section 4332 of this title.

SUBCHAPTER VIII—MISCELLANEOUS PROVISIONS

8481, 8482. Repealed.
8483. Submission of reports.
8484. Electric utility conservation plan.

SUBCHAPTER I—GENERAL PROVISIONS

§ 8301. Findings; statement of purposes

(a) Findings

The Congress finds that—

(1) the protection of public health and welfare, the preservation of national security, and the regulation of interstate commerce require the establishment of a program for the expended[1] use, consistent with applicable environmental requirements, of coal and other alternate fuels as primary energy sources for existing and new electric powerplants; and

(2) the purposes of this chapter are furthered in cases in which coal or other alternate fuels are used by electric powerplants, consistent with applicable environmental requirements, as primary energy sources in lieu of natural gas or petroleum.

(b) Statement of purposes

The purpose[2] of this chapter, which shall be carried out in a manner consistent with applicable environmental requirements, are—

(1) to reduce the importation of petroleum and increase the Nation's capability to use indigenous energy resources of the United States to the extent such reduction and use further the goal of national energy self-sufficiency and otherwise are in the best interests of the United States;

(2) to encourage and foster the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum, as a primary energy source;

(3) to the extent permitted by this chapter, to encourage the use of synthetic gas derived from coal or other alternate fuels;

(4) to encourage the rehabilitation and upgrading of railroad service and equipment necessary to transport coal to regions or States which can use coal in greater quantities;

(5) to encourage the modernization or replacement of existing and new electric powerplants which utilize natural gas or petroleum as a primary energy source and which cannot utilize coal or other alternate fuels where to do so furthers the conservation of natural gas and petroleum;

(6) to require that existing and new electric powerplants which utilize natural gas, petroleum, or coal or other alternate fuels pursuant to this chapter comply with applicable environmental requirements;

(7) to insure that all Federal agencies utilize their authorities fully in furtherance of the purposes of this chapter by carrying out programs designed to prohibit or discourage the use of natural gas and petroleum as a primary energy source and by taking such actions as lie within their authorities to maximize the efficient use of energy and conserve natural gas and petroleum in programs funded or carried out by such agencies;

(8) to insure that adequate supplies of natural gas are available for essential agricultural uses (including crop drying, seed drying, irrigation, fertilizer production, and production of essential fertilizer ingredients for such uses);

(9) to reduce the vulnerability of the United States to energy supply interruptions; and

(10) to regulate interstate commerce.

(Pub. L. 95–620, title I, § 102, Nov. 9, 1978, 92 Stat. 3291; Pub. L. 100–42, § 1(c)(1), May 21, 1987, 101 Stat. 310.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, as amended, known as the Powerplant and Industrial Fuel Use Act of 1978, which enacted this chapter, amended sections 6211 and 7193 of this title, section 796 of Title 15, Commerce and Trade, section 1202 of Title 19, Customs Duties, sections 821, 822, and 825 of Title 45, Railroads, and section 26b of former Title 49, Transportation, and enacted provisions set out as notes under this section and section 822 of Title 45. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1987—Subsec. (a)(1), (2). Pub. L. 100–42, § 1(c)(1)(A), struck out ''and major fuel-burning installations'' after ''electric powerplants''.

Subsec. (b)(2). Pub. L. 100–42, § 1(c)(1)(B), redesignated par. (3) as (2) and struck out former par. (2) relating to

[1] So in original. Probably should be ''expanded''.

[2] So in original. Probably should be ''purposes''.

conservation of natural gas and petroleum for uses for which there are no alternatives.

Subsec. (b)(3), (4). Pub. L. 100–42, §1(c)(1)(B), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) redesignated (2).

Subsec. (b)(5). Pub. L. 100–42, §1(c)(1), redesignated par. (7) as (5) and struck out ''and major fuel-burning installations'' after ''electric powerplants''. Former par. (5) redesignated (4).

Subsec. (b)(6). Pub. L. 100–42, §1(c)(1), redesignated par. (8) as (6) and struck out ''and major fuel-burning installations'' after ''electric powerplants'', and struck out former par. (6) which related to prohibition or minimization of use of natural gas and petroleum as a primary energy source.

Subsec. (b)(7) to (10). Pub. L. 100–42, §1(c)(1)(B), redesignated former pars. (9) to (12) as (7) to (10), respectively. Former pars. (7) and (8) redesignated (5) and (6), respectively.

EFFECTIVE DATE

Section 901 of Pub. L. 95–620 provided that: ''Unless otherwise provided in this Act [see Short Title note set out below] the provisions of this Act shall take effect 180 days after the date of the enactment of this Act [Nov. 9, 1978], except that the Secretary may issue rules pursuant to such provisions at any time after such date of enactment, which rules may take effect no earlier than 180 days after such date of enactment.''

SHORT TITLE

Section 101(a) of Pub. L. 95–620 provided that: ''This Act [enacting this chapter, amending sections 6211 and 7193 of this title, section 796 of Title 15, Commerce and Trade, section 1202 of Title 19, Customs Duties, sections 821, 822 and 825 of Title 45, Railroads, and section 26b of former Title 49, Transportation, and enacting provisions set out as notes under this section and section 822 of Title 45] may be cited as the 'Powerplant and Industrial Fuel Use Act of 1978'.''

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AND TEMPORARY EXEMPTION ISSUED UNDER SECTION 8321(d) AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

Section 902 of Pub. L. 95–620 provided that:

''(a) EXEMPTIONS IN THE CASE OF CERTAIN POWERPLANTS.—In the case of—

''(1) any electric powerplant which, as of April 20, 1977, has received a final decision from the appropriate State agency authorizing the construction of such powerplant, and

''(2) any electric powerplant (A) consisting of one or more combined cycle units owned or operated by an electric utility which serves at least 2,000,000 customers and (B) for which an application has been filed for at least one year before the date of the enactment of this Act [Nov. 9, 1978] with the appropriate State agency for authorization to construct such powerplant,

the Secretary may receive, consider, and grant (or deny) any petition for an exemption under title II or III [subchapters II and III of this chapter] notwithstanding section 901 [section 901 of Pub. L. 95–620, set out as a note above] or the fact that all rules related to such petition have not been prescribed at the time.

''(b) EXEMPTIONS UNDER SECTION 211(d).—The Secretary may receive, consider, and grant (or deny) any petition for any exemption under section 211(d) [section 8321(d) of this title] notwithstanding section 901 [section 901 of Pub. L. 95–620, set out as a note above], or the fact that all rules related to such petition have not been prescribed at the time.''

§ 8302. Definitions

(a) Generally

Unless otherwise expressly provided, for the purposes of this chapter—

(1) The term ''Secretary'' means the Secretary of Energy.

(2) The term ''person'' means any (A) individual, corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company, (B) any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States, or (C) any agency or instrumentality (including any municipality) thereof.

(3)(A) Except as provided in subparagraph (B), the term ''natural gas'' means any fuel consisting in whole or in part of—

(i) natural gas;

(ii) liquid petroleum gas;

(iii) synthetic gas derived from petroleum or natural gas liquids; or

(iv) any mixture of natural gas and synthetic gas.

(B) The term ''natural gas'' does not include—

(i) natural gas which is commercially unmarketable (either by reason of quality or quantity), as determined under rules prescribed by the Secretary;

(ii) natural gas produced by the user from a well the maximum efficient production rate of which is less than 250 million Btu's per day;

(iii) natural gas to the extent the exclusion of such gas is provided for in subsection (b) of this section; or

(iv) synthetic gas, derived from coal or other alternate fuel, the heat content of which is less than 600 Btu's per cubic foot at 14.73 pounds per square inch (absolute) and 60 degrees Fahrenheit.

(4) The term ''petroleum'' means crude oil and products derived from crude oil, other than—

(A) synthetic gas derived from crude oil;

(B) liquid petroleum gas;

(C) liquid, solid, or gaseous waste byproducts of refinery operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; or

(D) petroleum coke or waste gases from industrial operations.

(5) The term ''coal'' means anthracite and bituminous coal, lignite, and any fuel derivative thereof.

(6) The term ''alternate fuel'' means electricity or any fuel, other than natural gas or petroleum, and includes—

(A) petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood, and renewable and geothermal energy sources;

(B) liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; and

(C) waste gases from industrial operations.

(7)(A) The terms ''electric powerplant'' and ''powerplant'' mean any stationary electric generating unit, consisting of a boiler, a gas

turbine, or a combined cycle unit, which produces electric power for purposes of sale or exchange and—

(i) has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) For purposes of subparagraph (A), the term ''electric generating unit'' does not include—

(i) any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(ii) any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale, as determined by the Secretary.

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule, to be appropriate.

(8) The term ''new electric powerplant'' means—

(A) any electric powerplant for which construction or acquisition began on a date on or after November 9, 1978; and

(B) any electric powerplant for which construction or acquisition began on a date after April 20, 1977, and before November 9, 1978, unless the Secretary finds the construction or acquisition of such powerplant could not be canceled, rescheduled, or modified to comply with the applicable requirements of this chapter without—

(i) adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority), or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(9)(A) The term ''existing electric powerplant'' means any electric powerplant other than a new electric powerplant.

(B) Any powerplant treated under this chapter as an existing electric powerplant shall not be treated thereafter as a new electric powerplant merely by reason of a transfer of ownership.

(10)(A) The terms ''major fuel-burning installation'' and ''installation'' means a stationary unit consisting of a boiler, gas turbine unit, combined cycle unit, or internal combustion engine which—

(i) has a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more such units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) The terms ''major fuel-burning installation'' and ''installation'' do not include—

(i) any electric powerplant; or

(ii) any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to the Secretary of such use (in accordance with rules prescribed by the Secretary).

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule to be appropriate.

(11) The term ''new major fuel-burning installation'' means—

(A) any major fuel-burning installation on which construction or acquisition began on a date on or after November 9, 1978; and

(B) any major fuel-burning installation on which construction or acquisition began on a date after April 20, 1977, and before November 9, 1978, unless the Secretary finds the construction or acquisition of such installation could not be canceled, rescheduled, or modified to comply with applicable requirements of this chapter without—

(i) incurring significant operational detriment of the unit (as determined by the Secretary); or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(12)(A) The term ''existing major fuel-burning installation'' means any installation which is not a new major fuel-burning installation.

(B) Such term does not include a major fuel-burning installation for the extraction of mineral resources located—

(i) on or above the Continental Shelf of the United States, or

(ii) on wetlands areas adjacent to the Continental Shelf of the United States,

where coal storage is not practicable or would produce adverse effects on environmental quality.

(C) Any installation treated as an existing major fuel-burning installation shall not be treated thereafter as a new major fuel-burning installation merely by reason of a transfer of ownership.

(13) The term ''construction or acquisition began'' means, when used with reference to a certain date, that—

(A) construction in accordance with final drawings or equivalent design documents (as defined by the Secretary, by rule) began on or after that date; or

(B)(i) construction or acquisition had been contracted for on or after that date, or (ii) if

the construction or acquisition had been contracted for before such date, such construction or acquisition could be canceled, rescheduled, or modified to comply with the applicable requirements of this chapter—

(I) without imposing substantial financial penalty, as determined under rules prescribed by the Secretary; and

(II) in the case of a powerplant, without adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority).

(14) The term ''construction'' means substantial onsite construction or reconstruction, as defined by rule by the Secretary.

(15) The term ''primary energy source'' means the fuel or fuels used by any existing or new electric powerplant, except it does not include, as determined under rules prescribed by the Secretary—

(A) the minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses, and

(B) the minimum amounts of fuel required to alleviate or prevent (i) unanticipated equipment outages and (ii) emergencies directly affecting the public health, safety, or welfare which would result from electric power outages.

(16) The term ''site limitation'' means, when used with respect to any powerplant, any specific physical limitation associated with a particular site which relates to the use of coal or other alternate fuels as a primary energy source for such powerplant, such as—

(A) inaccessibility to coal or other alternate fuels;

(B) lack of transportation facilities for coal or other alternate fuels;

(C) lack of adequate land or facilities for the handling, use, and storage of coal or other alternate fuels;

(D) lack of adequate land or facilities for the control or disposal of wastes from such powerplant, including lack of pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(E) lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

(17) The term ''applicable environmental requirements'' includes—

(A) any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State court) applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary energy source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(B) any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], or the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(18)(A) The term ''peakload powerplant'' means a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1,500 hours.

(B) The term ''intermediate load powerplant'' means a powerplant (other than a peakload powerplant), the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(C) The term ''base load powerplant'' means a powerplant the electrical generation of which in kilowatt hours exceeds, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(D) Not later than 90 days after November 9, 1978, the Federal Energy Regulatory Commission shall prescribe rules under which a powerplant's design capacity may be determined for purposes of this paragraph.

(19) the[1] term ''cogeneration facility'' means an electric powerplant which produces—

(A) electric power; and

(B) any other form of useful energy (such as steam, gas, or heat) which is, or will be, used for industrial, commercial, or space heating purposes.

(20) The term ''cost'', unless the context indicates otherwise, means total costs (both operating and capital) incurred over the estimated remaining useful life of an electric powerplant, discounted to present value, as determined by the Secretary (in the case of powerplants, in consultation with the State regulatory authorities). In the case of an electric powerplant, such costs shall take into account any change required in the use of existing electric powerplants in the relevant dispatching system and other economic factors which are included in planning for the production, transmission, and distribution of electric power within such system.

(21) The term ''State regulatory authority'' means any State agency which has ratemaking authority with respect to the sale of electricity by any State regulated electric utility.

(22) The term ''air pollution control agency'' has the same meaning as given such term by section 302(b) of the Clean Air Act [42 U.S.C. 7602(b)].

(23) The term ''electric utility'' means any person, including any affiliate, or Federal agency which sells electric power.

(24) The term ''affiliate'', when used in relation to a person, means another person which

[1] So in original. Probably should be capitalized.

controls, is controlled by, or is under common control with, such person.

(25) The term ''Federal agency'' means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States; and

(D) the government of the District of Columbia.

(26) The term ''Btu'' means British thermal unit.

(27) the term ''Mcf'' means, when used in relation to natural gas, 1,000 cubic feet of natural gas.

(28) The term ''mixture'', when used in relation to fuels used in a unit, means a mixture of such fuels or a combination of such fuels used simultaneously or alternately in such unit.

(29) The term ''fluidized bed combustion'' means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid-like state by the means of air or other gases being passed through such materials.

(b) Special rules relating to definitions of natural gas and alternate fuel

(1) Subject to paragraph (2), natural gas which is to be used by a powerplant shall for purposes of this chapter (other than this subsection), be excluded from the definition of ''natural gas'' under subsection (a)(3)(B)(iii) of this section and shall be included within the definition of ''alternate fuel'' under subsection (a)(6) of this section if the person proposing to use such natural gas certifies to the Secretary (together with such supporting documents as the Secretary may require) that—

(A) such person owns, or is entitled to receive, at the point of manufacture, synthetic gas derived from coal or another alternate fuel;

(B) the Btu content of such synthetic gas is equal to, or greater than, the Btu content of the natural gas to be covered by this subsection by reason of such certification, plus the approximate Btu content of any natural gas consumed or lost in transportation;

(C) such person delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to such person; and

(D) all necessary permits, licenses, or approvals from appropriate Federal, State, and local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved.

(2) The application of paragraph (1) with respect to the use of natural gas by any powerplant shall be conditioned on the person using such natural gas submitting to the Secretary a report not later than one year after certification is made under paragraph (1), and annually thereafter, containing the following information:

(A) the source, amount, quality, and point of delivery to the pipeline of the synthetic gas to which paragraph (1) applied during the annual period ending with the calendar month preceding the date of such report; and

(B) the amount, quality, and point of delivery by the pipeline to such person of the natural gas covered by paragraph (1) which is used by the person during such annual period.

(3) Repealed. Pub. L. 100–42, §1(c)(2)(H), May 21, 1987, 101 Stat. 310.

(4) For purposes of this subsection, the term ''pipeline'' means any interstate or intrastate pipeline or local distribution company.

(Pub. L. 95–620, title I, §103, Nov. 9, 1978, 92 Stat. 3292; Pub. L. 100–42, §1(c)(2), May 21, 1987, 101 Stat. 310.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(17)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a)(17)(B), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (a)(17)(B), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (a)(17)(B), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1987—Subsec. (a)(13)(B)(ii). Pub. L. 100–42, §1(c)(2)(A), inserted ''and'' at end of subcl. (I), substituted period for ''; or'' at end of subcl. (II), and struck out subcl. (III) which read as follows: ''in the case of a major fuel-burning installation, without incurring significant operational detriment of the unit (as determined by the Secretary).''

Subsec. (a)(15). Pub. L. 100–42, §1(c)(2)(B), struck out ''or major fuel-burning installation'' after ''electric powerplant''.

Subsec. (a)(16). Pub. L. 100–42, §1(c)(2)(C), struck out ''or installation'' after ''any powerplant'' in introductory provisions and after ''such powerplant'' in introductory provisions and subpar. (D).

Subsec. (a)(19). Pub. L. 100–42, §1(c)(2)(D), struck out ''or a major fuel-burning installation'' after ''electric powerplant''.

Subsec. (a)(20). Pub. L. 100–42, §1(c)(2)(E), struck out ''or major fuel-burning installation'' after ''life of an electric powerplant''.

Subsec. (b)(1). Pub. L. 100–42, §1(c)(2)(F), struck out ''or major fuel-burning installation'' after ''used by a powerplant'' in introductory provisions.

Subsec. (b)(1)(D). Pub. L. 100–42, §1(c)(2)(G), substituted a period for '', except that for purposes of the prohibition under section 8311(2) of this title against powerplants being constructed without the capability

of using coal or another alternate fuel, only permits, licenses, and approvals for the construction of such synthetic gas facilities shall be required under this subparagraph to be certified and documented.''

Subsec. (b)(2). Pub. L. 100–42, §1(c)(2)(F), struck out ''or major fuel-burning installation'' after ''by any powerplant'' in introductory provisions.

Subsec. (b)(3). Pub. L. 100–42, §1(c)(2)(H), struck out par. (3) which read as follows: ''In the case of any boiler subject to a prohibition under section 8371 of this title, the preceding provisions of this subsection shall apply with respect to such boiler to the same extent and in the same manner as they apply in the case of major fuel-burning installations.''

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 8303. Territorial application

The provisions of this chapter shall only apply within the contiguous 48 States and the District of Columbia.

(Pub. L. 95–620, title I, §104, Nov. 9, 1978, 92 Stat. 3298; Pub. L. 100–42, §1(c)(3), May 21, 1987, 101 Stat. 311.)

AMENDMENTS

1987—Pub. L. 100–42 amended section generally. Prior to amendment, section read as follows: ''The provisions of this chapter shall apply in all the States, Puerto Rico, and the territories and possessions of the United States, except that—

''(1) the provisions of subchapters II and III of this chapter (other than section 8341 of this title) shall only apply to powerplants and installations situated within the contiguous 48 States, Alaska, and the District of Columbia; and

''(2) the provisions of section 8341 of this title shall only apply to powerplants situated within the contiguous 48 States and the District of Columbia.''

SUBCHAPTER II—NEW FACILITIES

PART A—PROHIBITIONS

§ 8311. Coal capability of new electric powerplants; certification of compliance

(a) General prohibition

Except to such extent as may be authorized under part B, no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source.

(b) Capability to use coal or alternate fuel

An electric powerplant has the capability to use coal or another alternate fuel for purposes of this section if such electric powerplant—

(1) has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(c) Applicability to base load powerplants

(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

(d) Self-certification

(1) In order to meet the requirement of subsection (a) of this section, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction, or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b) of this section. Such certification shall be effective to establish compliance with the requirement of subsection (a) of this section as of the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the Federal Register a notice reciting that the certification has been filed.

(2) The Secretary, within 60 days after the filing of a certification under paragraph (1), may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification.

(Pub. L. 95–620, title II, §201, Nov. 9, 1978, 92 Stat. 3298; Pub. L. 100–42, §1(c)(4)(A), May 21, 1987, 101 Stat. 311.)

AMENDMENTS

1987—Pub. L. 100–42 substituted ''Coal capability of new electric powerplants; certification of compliance'' for ''New electric powerplants'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Except to such extent as may be authorized under part B—

''(1) natural gas or petroleum shall not be used as a primary energy source in any new electric powerplant; and

''(2) no new electric powerplant may be constructed without the capability to use coal or any other alternate fuel as a primary energy source.''

§ 8312. Repealed. Pub. L. 100–42, §1(a)(1), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95–620, title II, §202, Nov. 9, 1978, 92 Stat. 3298, prohibited, except to extent authorized under part B, use of natural gas or petroleum as primary energy source in new major fuel-burning installation consisting of a boiler, and authorized Secretary to prohibit nonboilers from using natural gas or petroleum.

PART B—EXEMPTIONS

§ 8321. Temporary exemptions

(a) General exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of the fuel that would be used as a primary energy source;

(2) one or more site limitations exist which would ot[1] permit the location or operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 8311 of this title could not be satisfied without violating applicable environmental requirements.

(b) Temporary exemption based upon future use of synthetic fuels

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of part A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8324(b) of this title.

(c), (d) Repealed. Pub. L. 100–42, § 1(c)(5)(E), May 21, 1987, 101 Stat. 312

(e) Duration of temporary exemptions

(1) Except as provided in paragraph (2), exemptions under this section for any powerplant may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) of this section may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) An exemption under subsection (b) of this section may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) If an exemption is granted for any powerplant before the powerplant is placed in service, the period before it is placed in service shall not be taken into account in computing the 5-year and the 10-year limitations of paragraphs (1) and (2).

(Pub. L. 95–620, title II, § 211, Nov. 9, 1978, 92 Stat. 3299; Pub. L. 100–42, § 1(c)(5), May 21, 1987, 101 Stat. 312.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42, § 1(c)(5)(A)–(D), substituted ''from'' for ''or installation from one or more of'' in introductory provisions, substituted ''the fuel that would be used'' for ''using imported petroleum'' and struck out ''or installation'' after ''powerplant'' in par. (1), struck out ''or installation'' after ''powerplant'' in par. (2), and struck out ''or 8312'' after ''8311'' in par. (3).

Subsec. (b). Pub. L. 100–42, § 1(c)(5)(A), substituted ''from'' for ''or installation from one or more of''.

Subsec. (c). Pub. L. 100–42, § 1(c)(5)(E), struck out subsec. (c) which read as follows: ''After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of part A, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption would be in the public interest and would be consistent with the purposes of this chapter.''

Subsec. (d). Pub. L. 100–42, § 1(c)(5)(E), struck out subsec. (d) which read as follows: ''After consideration of a petition (and comments thereon) for an exemption from the prohibition of the use of petroleum under section 8312 of this title for an installation with a design capacity of consuming any fuel (or any mixture thereof) at a fuel heat input rate which does not exceed 300 million Btu's per hour, the Secretary may, by order, grant an exemption under this subsection for the use of petroleum if he finds that the petitioner has demonstrated, by the existence of binding contracts or other evidence, including appropriate State construction permits, that he will use coal or another alternate fuel for at least 75 percent of the annual fuel heat input rate upon the expiration of such exemption. For provisions relating to authority to receive, consider and granting (or denying) certain petitons [sic] for an exemption under this subsection, see section 902(b).''

Subsec. (e)(1), (3). Pub. L. 100–42, § 1(c)(5)(B), struck out ''or installation'' after ''powerplant'' wherever appearing.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AND TEMPORARY EXEMPTION ISSUED UNDER SUBSECTION (d) AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants and the temporary exemption issued under subsec. (d) of this section as prior to 180 days after Nov. 9, 1978, see section 902 of Pub. L. 95–620, set out as a note under section 8301 of this title.

§ 8322. Permanent exemptions

(a) Permanent exemption due to lack of alternate fuel supply, site limitations, environmental requirements, or adequate capital

(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to

[1] So in original. Probably should be ''not''.

natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source (i) will not be available within the first 10 years of the useful life of the powerplant, or (ii) will not be available at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of the fuel that would be used as a primary energy source during the useful life of the powerplant involved;

(B) one or more site limitations exist which would not permit the location or operation of such powerplant using coal or any other alternate fuel as a primary energy source;

(C) the prohibitions of part A could not be satisfied without violating applicable environmental requirements; or

(D) the required use of coal or any other alternate fuel would not allow the petitioner to obtain adequate capital for the financing of such powerplant.

(2) The demonstration required to be made by a petitioner under paragraph (1) shall be made with respect to the site of such powerplant and reasonable alternative sites.

(b) Permanent exemption due to certain State or local requirements

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) with respect to the proposed site of the powerplant, the construction or operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement (other than a building code or a nuisance or zoning law);

(2) there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1)(A) through (D) of this section; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this chapter.

(c) Permanent exemption for cogeneration

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) Permanent exemption for certain mixtures containing natural gas or petroleum

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the powerplant uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(2) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant needed to maintain reliability of operation of such powerplant consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(e) Permanent exemption for emergency purposes

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) Permanent exemption for powerplants necessary to maintain reliability of service

After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of part A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum if he finds that the petitioner has demonstrated that—

(1) such exemption is necessary to prevent impairment of reliability of service, and

(2) the petitioner, despite diligent good faith efforts, is not able to make the demonstration necessary to obtain an exemption under subsection (a) or (b) of this section in the time required to prevent such impairment of service.

(Pub. L. 95–620, title II, § 212, Nov. 9, 1978, 92 Stat. 3300; Pub. L. 100–42, § 1(c)(6), May 21, 1987, 101 Stat. 312.)

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–42, § 1(c)(6)(A)–(C), substituted ''from'' for ''or installation from one or more of'' in introductory provisions, substituted ''the fuel that would be used'' for ''using imported petroleum'' and struck out ''or installation'' after ''powerplant'' wherever appearing in subpar. (A), and struck out ''or installation'' after ''powerplant'' in subpars. (B) and (D).

Subsec. (a)(2). Pub. L. 100–42, § 1(c)(1)(D), struck out ''—

''(A) in the case of a new major fuel-burning installation, be made with respect to the site of such installation proposed by the petitioner; and

''(B) in the case of a new electric powerplant,''

after ''paragraph (1) shall''.

Subsec. (a)(3). Pub. L. 100–42, §1(c)(6)(E), struck out par. (3) which read as follows: ''Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (h) of this section may not be granted an exemption under this subsection.''

Subsec. (b). Pub. L. 100–42, §1(c)(6)(A), (B), (F), in introductory provisions substituted ''from'' for ''or installation from one or more of'', in par. (1) struck out ''or installation'' after ''powerplant'', and in par. (2) struck out ''in the case of a powerplant,'' after ''(2)''.

Subsec. (d). Pub. L. 100–42, §1(c)(6)(A), (B), (G), struck out ''(1)'' before ''After consideration of'', substituted ''from'' for ''installation from one or more of'' in introductory provisions, redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, struck out ''or installation'' after ''powerplant'' wherever appearing in such pars., and struck out former par. (2) which read as follows: ''In the case of a new major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent.''

Subsec. (e). Pub. L. 100–42, §1(c)(6)(B), struck out ''or installation'' after ''powerplant'' wherever appearing.

Subsec. (g). Pub. L. 100–42, §1(c)(6)(H), struck out subsec. (g) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for peakload powerplants.

Subsec. (h). Pub. L. 100–42, §1(c)(6)(H), struck out subsec. (h) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of petroleum for intermediate load powerplants.

Subsec. (i). Pub. L. 100–42, §1(c)(6)(H), struck out subsec. (i) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations based upon product or process requirements.

Subsec. (j). Pub. L. 100–42, §1(c)(6)(H), struck out subsec. (j) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations necessary to meet scheduled equipment outages.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

§ 8323. General requirements for exemptions

(a) Use of mixtures or fluidized bed combustion not feasible

Except in the case of an exemption under section 8322(d) of this title, the Secretary may grant a permanent exemption for a powerplant under this part only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal or another alternate fuel, for which an exemption under section 8322(d) of this title would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or another alternate fuel is economically and technically feasible.

(b) State approval required for powerplant

If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption, to the extent it applies to the prohibition under section 8311 of this title against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

(c) No alternative power supply in the case of a powerplant

(1) Except in the case of an exemption under section 8322(c) of this title, the Secretary may not grant an exemption for a new powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with such Commission before making any finding on such petition under paragraph (1).

(Pub. L. 95–620, title II, §213, Nov. 9, 1978, 92 Stat. 3304; Pub. L. 100–42, §1(c)(7), May 21, 1987, 101 Stat. 312.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42, §1(c)(7)(A), (B), in introductory provisions struck out ''or (g)'' after ''8322(d)'' and ''or installation'' after ''powerplant''.

Subsec. (b). Pub. L. 100–42, §1(c)(7)(C), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption—

''(1) to the extent it applies to the prohibition under section 8311(2) of this title against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained; and

''(2) to the extent it applies to the prohibition under section 8311(1) of this title against the use of natural gas or petroleum as a primary energy source, shall not take effect until all approvals required by such State regulatory authority which relate to construction or operation have been obtained.''

Subsec. (c)(1). Pub. L. 100–42, §1(c)(7)(A), in introductory provisions struck out ''or (g)'' after ''section 8322(c)''.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

§ 8324. Terms and conditions; compliance plans

(a) Terms and conditions generally

Any exemption from any prohibition under this part shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this chapter. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b) of this section) shall be designed to insure that upon the expiration of

such exemption, the persons and powerplant covered by such exemption will comply with the applicable prohibitions.

(b) Compliance plans

A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibitions of this chapter will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow or[1] such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

(Pub. L. 95–620, title II, § 214, Nov. 9, 1978, 92 Stat. 3304; Pub. L. 100–42, § 1(c)(8), May 21, 1987, 101 Stat. 312.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42 struck out ''or installation'' after ''powerplant''.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

SUBCHAPTER III—EXISTING FACILITIES

PART A—PROHIBITIONS

§ 8341. Existing electric powerplants

(a) Certification by powerplants of coal capability

At any time, the owner or operator of an existing electric powerplant may certify to the Secretary, for purposes of subsection (b) of this section—

(1) whether or not such powerplant has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

(2) whether or not such powerplant could have the technical capability to use coal or another alternate fuel as a primary energy source without having—

(A) substantial physical modification of the powerplant, or

(B) substantial reduction in the rated capacity of the powerplant; and

(3) whether or not it is financially feasible to use coal or another alternate fuel as a primary energy source in such a powerplant.

(b) Authority of Secretary to prohibit where coal or alternate fuel capability exists

The Secretary may prohibit, in accordance with section 8343(a) or (b) of this title, the use of petroleum or natural gas, or both, as a primary energy source in any existing electric powerplant, if an affirmative certification under subsection (a)(1), (2), and (3) of this section is in effect with respect to such powerplant and if, after examining the basis for the certification, the Secretary concurs with the certification.

(c) Authority of Secretary to prohibit excessive use in mixtures

At any time, the owner or operator of an existing electric powerplant may certify to the Secretary for purposes of this subsection whether or not it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source in that powerplant. If an affirmative certification under this subsection is in effect with respect to such powerplant and if, after examining the basis for the certification, the Secretary concurs with the certification, the Secretary may prohibit, in accordance with section 8343(a) of this title, the use of petroleum or natural gas, or both, in such powerplant in amounts in excess of the minimum amount necessary to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

(d) Amendment of subsection (a) and (c) certifications

The owner or operator of any such powerplant may at any time amend any certification under subsection (a) or (c) of this section in order to take into account changes in relevant facts and circumstances; except that no such amendment to such a certification may be made after the date of any final prohibition under subsection (b) or (c) of this section based on that certification.

(Pub. L. 95–620, title III, § 301, as added Pub. L. 97–35, title X, § 1021(a), Aug. 13, 1981, 95 Stat. 614.)

PRIOR PROVISIONS

A prior section 8341, Pub. L. 95–620, title III, § 301, Nov. 9, 1978, 92 Stat. 3305, related to existing electric powerplants, prior to repeal by Pub. L. 97–35, title X, § 1021(a), Aug. 13, 1981, 95 Stat. 614.

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 6240 of this title.

VALIDITY OF ORDERS UNDER FORMER PROVISIONS OF THIS SECTION

Section 1022 of Pub. L. 97–35 provided that:

''(a) The amendments made by section 1021 to section 301(b) and (c) of the Powerplant and Industrial Fuel Use Act of 1978 [subsecs. (b) and (c) of this section] shall not apply to any electric powerplant for which a final order was issued pursuant to section 301(b) or (c) of such Act before the date of the enactment of this Act [Aug. 13, 1981].

''(b) Any electric powerplant issued a proposed order under section 301(b) or (c) of such Act which is pending on the date of the enactment of this Act may elect not to have the amendments made by section 1021 to such section 301(b) or (c) apply with respect to that powerplant. Such an election shall be irrevocable and shall be made in such form and manner as the Secretary of Energy shall, within 45 days after the date of the enactment of this Act, prescribe. Such an election shall be made not later than 60 days after the date on which the Secretary of Energy prescribes the form and manner of making such election.

''(c)(1) The amendments made by section 1021 shall not affect the validity of any final order issued under section 301(b) or (c) of the Powerplant and Industrial Fuel Use Act of 1978 before the date of the enactment of this Act.

[1] So in original. Probably should be ''for''.

''(2) The validity of any proposed order issued under such section 301(b) or (c) shall not be affected in the case of powerplants covered by elections made under subsection (b).

''(3) The authority of the Secretary of Energy to amend, repeal, rescind, modify, or enforce any order referred to in paragraph (1) or (2), or rules applicable thereto, shall remain in effect notwithstanding any such amendments.''

§ 8342. Repealed. Pub. L. 100–42, § 1(a)(2), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95–620, title III, § 302, Nov. 9, 1978, 92 Stat. 3306, authorized Secretary to prohibit use of petroleum or natural gas as primary energy source in existing major fuel-burning installations having coal or alternate fuel capability and, in installations in which mixtures of petroleum or natural gas and coal or other alternate fuels are found feasible, to prohibit excessive use of petroleum or natural gas in such mixtures.

§ 8343. Rules relating to case-by-case and category prohibitions

(a) Case-by-case prohibitions

(1) Except to the extent authorized by subsection (b) of this section, the Secretary shall prohibit any powerplant from using natural gas or petroleum under the authority granted him under section 8341(b) or (c) of this title only by means of a final order issued by him which shall be limited to the particular powerplant involved.

(2) The Secretary may issue such a final order only with respect to a powerplant which is not, at the time the proposed order is issued, covered by a final rule issued under subsection (b) of this section.

(b) Prohibitions applicable to categories of facilities

(1) The Secretary may prohibit, by rule, the use of natural gas or petroleum under section 8341(b) of this title in existing electric powerplants.

(2) Each powerplant to be covered by any final rule issued under this subsection shall be specifically identified in the proposed rule published under section 8411(b) of this title.

(3) In prescribing any final rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of powerplants (such as the intermittent use, size, age, or geographic location of such powerplants). Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.

(Pub. L. 95–620, title III, § 303, Nov. 9, 1978, 92 Stat. 3306; Pub. L. 100–42, § 1(c)(9), May 21, 1987, 101 Stat. 312.)

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–42, § 1(c)(9)(A), (B), struck out ''or installation'' after ''powerplant'' in two places and ''or 8342'' after ''section 8341(b) or (c)''.

Subsec. (a)(2). Pub. L. 100–42, § 1(c)(9)(A), struck out ''or installation'' after ''powerplant''.

Subsec. (a)(3). Pub. L. 100–42, § 1(c)(9)(C), struck out par. (3) which read as follows:

''(A) Subject to subparagraph (B), the Secretary shall not issue a final order under this subsection to any powerplant if it is demonstrated that such powerplant would have been granted an exemption if such prohibition had been established by a final rule pursuant to subsection (b) of this section rather than by order pursuant to this subsection, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as the temporary exemption would have terminated.

''(B) In any case in which an order is not issued by reason of subparagraph (A) or in which the effective date of such order is delayed under subparagraph (A), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 8354(a) of this title) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.''

Subsec. (b)(1). Pub. L. 100–42, § 1(c)(9)(D), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary may, by rule, prohibit the use of natural gas or petroleum pursuant to section 8341(b) or 8342(a) of this title—

''(A) in the case of any category of existing electric powerplants identified in such rule; and

''(B) in the case of any category of existing major fuel-burning installations which have design capabilities of consuming fuel (or any mixture thereof) at a fuel heat input rate of 300 million Btu's per hour or greater which are identified in such rule.''

Subsec. (b)(2). Pub. L. 100–42, § 1(c)(9)(A), struck out ''or installation'' after ''powerplant''.

Subsec. (b)(3). Pub. L. 100–42, § 1(c)(9)(A), (E), struck out ''or installations'' after ''powerplants'' in two places in introductory provisions, and amended last sentence generally. Prior to amendment, last sentence read as follows: ''Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.''

PART B—EXEMPTIONS

§ 8351. Temporary exemptions

(a) Temporary exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant such an exemption for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source, will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the costs, as determined by rule by the Secretary, of using imported petroleum as a primary energy source;

(2) one or more site limitations exist which would not permit the operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 8341 of this title could not be satisfied without violating applicable environmental requirements.

(b) Temporary exemption based upon future use of synthetic fuels

After consideration of a petition (and comments thereon) for an exemption from one or

more of the prohibitions of part A for a powerplant, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of part A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) of this title.

(c) Temporary exemption based upon use of innovative technologies

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant will comply with such prohibitions at the expiration of such exemption by the adoption of a technology for the use of coal or another alternate fuel which at the time of the granting of the exemption is determined by the Secretary to be an innovative technology. The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) of this title.

(d) Temporary exemption for units to be retired

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant is to permanently cease operation at or before the expiration of the exemption period. An exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) (other than paragraph (1)(B)) of this title.

(2) Notwithstanding any other provision of this chapter, an exemption under this part may not be granted for any powerplant once an exemption under this subsection has been granted for such powerplant.

(e) Temporary public interest exemption

After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of part A for a powerplant, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption is in the public interest and is consistent with the purposes of this chapter.

(f) Temporary exemption for peakload powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

(g) Temporary exemption for powerplants where necessary to maintain reliability of service

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such exemption is necessary to prevent impairment of reliability of service.

(2) Notwithstanding any other provision of this chapter, an exemption under this part (other than a permanent exemption under section 8352(f) of this title for the use of petroleum) may not be granted for any powerplant for which an exemption under this subsection has been granted.

(h) Duration of temporary exemptions

(1) Except as provided in paragraphs (2) and (3), exemptions under this section for any powerplant may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) of this section may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) Subject to paragraph (3), an exemption under subsections (b), (c), and (g) of this section may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) An exemption under subsections (d), (f), and (g) of this section for the use of natural gas by a powerplant may not extend beyond December 31, 1994.

(4) In computing the 5-year and 10-year limitations of paragraphs (1) and (2) in the case of any exemption under this section, the period before the prohibition on the use of natural gas and petroleum would first apply (if the exemption had not been granted) shall be disregarded.

(Pub. L. 95–620, title III, § 311, Nov. 9, 1978, 92 Stat. 3307; Pub. L. 100–42, § 1(c)(10), (11), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42, § 1(c)(10), (11), struck out ''or installation'' after ''powerplant'' in introductory provisions and in pars. (1) and (2) and struck out ''or 8342'' after ''section 8341'' in par. (3).

Subsecs. (b) to (e), (h)(1). Pub. L. 100–42, § 1(c)(10), struck out ''or installation'' after ''powerplant'' wherever appearing.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

§ 8352. Permanent exemptions

(a) Permanent exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuels of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the remaining useful life of the powerplant;

(B) one or more site limitations exist which would not permit the operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(C) the prohibitions of part A could not be satisfied without violating applicable environmental requirements.

(2) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (g) of this section may not be granted an exemption under this subsection.

(b) Permanent exemption due to certain State or local requirements

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) with respect to the site of the powerplant, the operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement;

(2) if such State or local requirement is under a building code or nuisance or zoning law, no other exemption under this part could be granted for such facility; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this chapter.

(c) Permanent exemption for cogeneration

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) Permanent exemption for certain fuel mixtures containing natural gas or petroleum

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the powerplant uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant needed to maintain reliability of operation of the unit consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(2) Repealed. Pub. L. 100–42, § 1(c)(12)(A), May 21, 1987, 101 Stat. 313.

(3) The Secretary may authorize a higher percentage than that referred to in paragraph (1)(B) if he finds that the higher percentage of natural gas allowed would be mixed with synthetic fuels derived from municipal wastes or agricultural wastes and would encourage the use of alternate or new technologies which use renewable sources of energy.

(e) Permanent exemption for emergency purposes

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such powerplant will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) Permanent exemption for peakload powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that—

(1) the powerplant is operated solely as a peakload powerplant;

(2) a denial of such petition is likely to result in an impairment of reliability of service; and

(3)(A) modification of the powerplant to permit compliance with such prohibitions is technically infeasible; or

(B) such modification would result in an unreasonable expense.

(g) Permanent exemption for intermediate load powerplants

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A on the use of

petroleum by a powerplant, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such area;

(B) such powerplant is to be operated only to replace no more than the equivalent capacity of existing electric powerplants—

(i) which use natural gas or petroleum as a primary energy source,

(ii) which are owned by the same person who is to operate such powerplant, and

(iii) which, if they used coal as a primary energy source, would cause or contribute to such a concentration in such region;

(C) such powerplant is and shall continue to be operated solely as an intermediate load powerplant;

(D) the net fuel heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the remaining useful life of the powerplant; and

(E) the powerplant has the capability to use synthetic fuels derived from coal or other alternate fuel.

(2) The Secretary shall, from time to time, review each exemption granted to a powerplant under this subsection, and shall terminate such exemption if he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

(h) Permanent exemption for use of natural gas by certain powerplants with capacities of less than 250 million Btu's per hour

(1) Subject to paragraph (2), after consideration of a petition (and comments thereon) for an exemption from any prohibition of part A for the use of natural gas by a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for such use, if he finds that the petitioner has demonstrated that—

(A) such powerplant has a design capability of consuming fuel (or any mixture thereof) at a fuel heat input rate of less than 250 million Btu's per hour;

(B) such powerplant was a baseload powerplant on April 20, 1977; and

(C) such powerplant is not capable of consuming coal without—

(i) substantial physical modification of the unit; or

(ii) substantial reduction in the rated capacity of the unit (as determined by the Secretary).

(2) An exemption under this subsection may only apply to the prohibitions under section 8341 of this title and prohibitions established by final rules or orders issued before January 1, 1990.

(i) Permanent exemption for use of LNG by certain powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of liquefied natural gas if the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) has certified to the Secretary that the use of coal by such powerplant as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such region or area and the use of coal would not comply with applicable environmental requirements.

(Pub. L. 95–620, title III, § 312, Nov. 9, 1978, 92 Stat. 3309; Pub. L. 100–42, § 1(c)(10), (12), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsecs. (a)(1), (b), (d)(1). Pub. L. 100–42, § 1(c)(10), struck out "or installation" after "powerplant" wherever appearing.

Subsec. (d)(2). Pub. L. 100–42, § 1(c)(12)(A), struck out par. (2) which read as follows: "In the case of an existing major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent."

Subsec. (d)(3). Pub. L. 100–42, § 1(c)(12)(B), substituted "The" for "In the case of an existing electric powerplant, the".

Subsec. (e). Pub. L. 100–42, § 1(c)(10), struck out "or installation" after "powerplant" wherever appearing.

Subsec. (j). Pub. L. 100–42, § 1(c)(12)(C), struck out subsec. (j) which related to granting, by Secretary of Energy, of permanent exemptions for use of natural gas for installations served by international pipelines.

Subsec. (k). Pub. L. 100–42, § 1(c)(12)(C), struck out subsec. (k) which related to granting, by Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations based upon product or process requirements.

Subsec. (*l*). Pub. L. 100–42, § 1(c)(12)(C), struck out subsec. (*l*) which related to granting, by Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations necessary to meet scheduled equipment outages.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

§ 8353. General requirements for exemptions

(a) Use of mixtures or fluidized bed combustion not feasible

Except in the case of an exemption under section 8352(b), (f), or (i) of this title, the Secretary may grant a permanent exemption for a powerplant under this part only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal (or other alternate fuels), for which an exemption under section 8352(b) of this title would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or an alternate fuel is economically and technically feasible.

(b) No alternative power supply in case of a powerplant

(1) In the case of an exemption under section 8352(b) or (g) of this title, the Secretary may not grant an exemption for an existing powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with the Commission before making any finding on such petition under paragraph (1).

(Pub. L. 95–620, title III, § 313, Nov. 9, 1978, 92 Stat. 3313; Pub. L. 100–42, § 1(c)(10), (13), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42, § 1(c)(13), struck out ''or installation'' after ''powerplant'' in introductory provisions.

Pub. L. 100–42, § 1(c)(10), which directed the substitution of ''or (i)'' for ''(i), or (j)'' was executed by making the substitution for ''(i) or (j)'' to reflect the probable intent of Congress.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

§ 8354. Terms and conditions; compliance plans

(a) Terms and conditions generally

Any exemption from any prohibition under this part shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this chapter. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b) of this section) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant covered by such exemption will comply with the applicable prohibitions.

(b) Compliance plans

A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibition of this chapter will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow for such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

(Pub. L. 95–620, title III, § 314, Nov. 9, 1978, 92 Stat. 3314; Pub. L. 100–42, § 1(c)(10), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42 struck out ''or installation'' after ''powerplant''.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

SUBCHAPTER IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

§§ 8371, 8372. Repealed. Pub. L. 100–42, § 1(a)(3), (4), May 21, 1987, 101 Stat. 310

Section 8371, Pub. L. 95–620, title IV, § 401, Nov. 9, 1978, 92 Stat. 3314, authorized Secretary to prohibit by order the use of natural gas as primary energy source in existing boilers used for space heating purposes which consume 300 Mcf or more natural gas per day and have capability to use petroleum as primary energy source, and in new boilers to be used for space heating purposes which would be capable of consuming 300 Mcf or more of natural gas per day.

Section 8372, Pub. L. 95–620, title IV, § 402, Nov. 9, 1978, 92 Stat. 3315; Pub. L. 97–35, title X, § 1024, Aug. 13, 1981, 95 Stat. 617, prohibited installation of outdoor lighting fixtures using natural gas before Nov. 9, 1978, phased out distribution of natural gas to be used in outdoor lighting other than that installed for residential use before Nov. 9, 1978, and required distributors of natural gas to disseminate information to customers to discourage use of natural gas for outdoor lighting.

§ 8373. Conservation in Federal facilities, contracts, and financial assistance programs

(a) Federal facilities

(1) Each Federal agency owning or operating any electric powerplant shall comply with any prohibition, term, condition, or other substantial or procedural requirement under this chapter, to the same extent as would be the case if such powerplant were owned or operated by a nongovernmental person.

(2) The President may, by order, exempt from the application of paragraph (1) any powerplant owned or operated by any Federal agency, if the President determines that—

(A) such use is in the paramount interest of the United States and that the powerplant involved is a component of or is used solely in connection with any weaponry, equipment, aircraft, vessels, vehicles or other classes or categories of property which—

(i) are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State; and

(ii) are uniquely military in nature; or

(B) there is a lack of appropriation for such use but only if the President specifically requested such appropriations as a part of the budgetary process and the Congress failed to make available such requested appropriation.

Such order shall not take effect until 60 days after a copy of such order has been transmitted

to each House of the Congress. The President shall review each such determination every 2 years and submit a report to the Congress on the results of such review.

(b) Federal contracts and financial assistance

(1) In order to implement the purposes of this chapter, the President shall, not later than 30 days after the effective date of this chapter, issue an order—

(A) requiring each Federal agency which is authorized to extend Federal assistance by way of grant, loan, contract, or other form of financial assistance, to promptly effectuate the purposes of this chapter relating to the conservation of petroleum and natural gas, by rule, in such contracting or assistance activities within 180 days after issuance of such order, and

(B) setting forth procedures, sanctions, penalties, and such other provisions as the President determines necessary to carry out such requirement effectively, including a requirement that each agency annually transmit to the President, and make available to the public, a report on the actions taken and to be taken to implement such order.

(2) The President may exempt by order any specific grant, loan, contract, or other form of financial assistance from all or part of the provisions of this subsection if he determines such exemption is in the national interest. The President shall notify the Congress in writing of such exemption at least 60 days before it is effective.

(3) The President or any Federal agency may not use the authority granted under paragraph (1) to require compliance, including the use of coal, by any person or facility with any prohibition under other sections of this chapter if such person or facility has been specifically determined by the Secretary as subject to such prohibition or has been exempted from the application of such prohibition.

(Pub. L. 95–620, title IV, § 403, Nov. 9, 1978, 92 Stat. 3317; Pub. L. 100–42, § 1(c)(14), May 21, 1987, 101 Stat. 313; Pub. L. 102–486, title XXX, § 3011, Oct. 24, 1992, 106 Stat. 3128.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b)(1), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–486 struck out subsec. (c), which read as follows: ''The President shall annually submit a detailed report to each House of the Congress on the actions taken by the President and each Federal agency to implement this section, including the progress and problems associated with implementation of this section.''

1987—Subsec. (a)(1). Pub. L. 100–42, § 1(c)(14)(A), struck out '', major fuel-burning installation, or other unit'' after ''electric powerplant'' and '', installation, or unit'' after ''such powerplant''.

Subsec. (a)(2). Pub. L. 100–42, § 1(c)(14)(B), (C), struck out '', installation, or other unit'' after ''powerplant'' in introductory provisions, '', installation, or unit'' after ''powerplant'' in subpar. (A), and last sentence which read as follows: ''Any powerplant, installation, or other unit permitted to use natural gas or petroleum under an exemption under this paragraph shall establish and carry out effective fuel conservation measures, as determined by the Secretary.''

Subsec. (a)(3). Pub. L. 100–42, § 1(c)(14)(D), struck out par. (3) which read as follows: ''Any powerplant, installation, or unit owned or operated by any such Federal agency shall be entitled to any exemption by the Secretary to the same extent, in the same manner, and under the same terms and conditions as would apply if it were owned or operated by a nongovernmental person.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the report under the last sentence of subsec. (a)(2) of this section is listed as the 16th item on page 19), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EX. ORD. NO. 12185. EFFECTUATION OF CONSERVATION OF PETROLEUM AND NATURAL GAS BY RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE

Ex. Ord. No. 12185, Dec. 17, 1979, 44 F.R. 75093, provided:

By the authority vested in me as President of the United States of America by Section 403(b) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3318; Public Law 95–620) [42 U.S.C. 8373(b)] and Section 301 of Title 3 of the United States Code, in order to encourage additional conservation of petroleum and natural gas by recipients of Federal financial assistance, it is hereby ordered as follows:

1–101. Each Federal agency, as that term is defined in Section 103(a)(25) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3297) [42 U.S.C. 8302(a)(25)], shall effectuate through its financial assistance programs the purposes of that Act relating to the conservation of petroleum and natural gas.

1–102. Each Federal agency which extends financial assistance shall review those programs of financial assistance and identify those which are most likely to offer opportunities for significant conservation of petroleum and natural gas.

1–103. Within two months, and annually thereafter, each agency shall publish for comment a list of those programs which it has identified as likely to offer significant opportunity for conservation. The public shall be given 60 days to submit comments, including suggestions for rules which would effectuate the conservation purposes of the Act [see Short Title note set out under 42 U.S.C. 8301].

1–104. After receiving public comment and suggestions, and after consulting with the Director of the Office of Management and Budget, each agency shall publish proposed rules designed to achieve conservation of petroleum and natural gas in connection with the receipt of financial assistance.

Proposed rules should be published within 30 days of the close of the comment period under Section 1–103.

1–105. Final rules shall be adopted by each agency in accordance with the provisions of Sections 102(b) [42 U.S.C. 8301(b)], 403(b) [42 U.S.C. 8373(b)] and 701(a) [42 U.S.C. 8411(a)] of the Powerplant and Industrial Fuel Use Act of 1978, and the provisions of this Order, not later than 180 days from the date of this Order.

1–106. No one shall be awarded any financial assistance unless that award complies with the provisions of

the conservation rules adopted by the agency pursuant to this Order.

1–107. To the extent permitted by law and where not inconsistent with the financial assistance program, final rules may provide for the reduction or suspension of financial assistance under any award. Such reduction or suspension shall not be ordered until there has been an opportunity for a hearing on the record, and shall last for such time as the recipient fails to comply with the terms of the conservation rule.

1–108. No conservation rule shall be adopted which is inconsistent with the statutory provisions establishing the financial assistance program.

1–109. No conservation rule shall be used to enforce compliance with any prohibition under the Act [see Short Title note set out under 42 U.S.C. 8301] against any person or facility which has been specifically determined by the Secretary of Energy as subject to or exempt from a prohibition under the Act. The conservation rules shall be used to enforce other new ways of achieving the purposes of the Act related to the conservation of petroleum and natural gas.

1–110. In order to assess the effectiveness of this program, each agency shall annually prepare a report on its activities in accord with Section 403(b)(1)(B) of the Act [42 U.S.C. 8373(b)]. These reports shall be submitted to the President through the Secretary of Energy.

1–111. The Secretary of Energy shall prepare for the President's consideration and transmittal to the Congress the report required by Section 403(c) of the Act [42 U.S.C. 8373(c)].

1–112. The Director of the Office of Management and Budget may issue any rules, regulations, or orders he deems necessary to ensure the implementation of this Order. The Director may exercise any of the authority vested in the President by Section 403(b) of the Act [42 U.S.C. 8373(b)], and may redelegate such of that authority as he deems appropriate to the head of any other agency.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12217

Ex. Ord. No. 12217, June 18, 1980, 45 F.R. 41623, which established the responsibilities and duties of Executive agencies for compliance with this chapter, was revoked by Ex. Ord. No. 12437, Aug. 11, 1983, 48 F.R. 36801.

§ 8374. Emergency authorities

(a) Coal allocation authority

(1) If the President—

(A) declares a severe energy supply interruption, as defined in section 6202(8) of this title, or

(B) finds, and publishes such finding, that a national or regional fuel supply shortage exists or may exist which the President determines—

(i) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(ii) causes, or may cause, major adverse impact on public health, safety, or welfare or on the economy; and

(iii) results, or is likely to result, from an interruption in the supply of coal or from sabotage, or an act of God;

the President may, by order, allocate coal (and require the transportation thereof) for the use of any electric powerplant or major fuel-burning installation, in accordance with such terms and conditions as he may prescribe, to insure reliability of electric service or prevent unemployment, or protect public health, safety, or welfare.

(2) For purposes of this subsection, the term ''coal'' means anthracite and bituminous coal and lignite (but does not mean any fuel derivative thereof).

(b) Emergency prohibition on use of natural gas or petroleum

If the President declares a severe energy supply interruption, as defined in section 6202(8) of this title, the President may, by order, prohibit any electric powerplant or major fuel-burning installation from using natural gas or petroleum, or both, as a primary energy source for the duration of such interruption. Notwithstanding any other provision of this section, any suspension of emission limitations or other requirements of applicable implementation plans, as defined in section 7410(d)[1] of this title, required by such prohibition shall be issued only in accordance with section 7410(f) of this title.

(c) Emergency stays

The President may, by order, stay the application of any provision of this chapter, or any rule or order thereunder, applicable to any new or existing electric powerplant, if the President finds, and publishes such finding, that an emergency exists, due to national, regional, or systemwide shortages of coal or other alternate fuels, or disruption of transportation facilities, which emergency is likely to affect reliability of service of any such electric powerplant.

(d) Duration of emergency orders

(1) Except as provided in paragraph (3), any order issued by the President under this section shall not be effective for longer than the duration of the interruption or emergency, or 90 days, whichever is less.

(2) Any such order may be extended by a subsequent order which the President shall transmit to the Congress in accordance with section 6421 of this title. Such order shall be subject to congressional review pursuant to such section.

(3) Notwithstanding paragraph (1), the effectiveness of any order issued under this section shall not terminate under this subsection during the 15-calendar-day period during which any such subsequent order described in paragraph (2) is subject to congressional review under section 6421 of this title.

(4) For purposes of this subsection, the provisions of this subsection supersede the provisions of subchapter II of chapter 34 of title 50.

(e) Delegation of authority prohibited

The authority of the President to issue any order under this section may not be delegated. This subsection shall not be construed to prevent the President from directing any Federal agency to issue rules or regulations or take such other action, consistent with this section, in the implementation of such order.

(f) Publication and reports to Congress of orders

Any order issued under this section shall be published in the Federal Register. To the greatest extent practicable, the President shall, before issuing any order under this section, but in no event later than 5 days after issuing such order, report to the Congress of his intention to issue such order and state his reasons therefor.

[1] See References in Text note below.

(Pub. L. 95–620, title IV, § 404, Nov. 9, 1978, 92 Stat. 3319; Pub. L. 100–42, § 1(c)(15), May 21, 1987, 101 Stat. 313.)

REFERENCES IN TEXT

Section 7410(d) of this title, referred to in subsec. (b), was repealed by Pub. L. 101–549, title I, § 101(d)(4), Nov. 15, 1990, 104 Stat. 2409.

Subchapter II (§ 1621 et seq.) of chapter 34 of title 50, referred to in subsec. (d)(4), was in the original ''title II of the Act of September 14, 1976 (Public Law 94–412)'', which is known as the National Emergencies Act.

AMENDMENTS

1987—Subsec. (g). Pub. L. 100–42 struck out subsec. (g) which permitted use of natural gas or petroleum as primary energy source in peakload powerplant or major fuel-burning installation during temporary emergency condition (other than emergency conditions provided for under section 8302(a)(15) of this title).

§ 8375. Repealed. Pub. L. 100–42, § 1(a)(5), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95–620, title IV, § 405, Nov. 9, 1978, 92 Stat. 3320, prohibited increased use of petroleum as primary energy source in existing electric powerplants which, during calendar year 1977, used coal or another alternate fuel as primary energy source, unless permit authorizing such increased use had been issued by Secretary.

SUBCHAPTER V—SYSTEM COMPLIANCE OPTION

§ 8391. Repealed. Pub. L. 100–42, § 1(a)(6), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95–620, title V, § 501, Nov. 9, 1978, 92 Stat. 3321, mandated that existing electric powerplants owned or operated by an electric utility be considered in compliance with prohibitions under subchapter III of this chapter relating to use of natural gas if there is in effect an approved plan of system compliance for such utility, and set forth requirements for approval of such plan.

SUBCHAPTER VI—FINANCIAL ASSISTANCE

§ 8401. Assistance to areas impacted by increased coal or uranium production

(a) Designation of impacted areas

(1) In accordance with such criteria and guidelines as the Secretary of Agriculture shall, by rule, prescribe, the Governor of any State may designate any area within such State for the purposes of this section, if he finds that—

(A) either (i) employment in coal or uranium production development activities in such area has increased for the most recent calendar year by 8 percent or more from the immediately preceding year or (ii) employment in such activities will increase 8 percent or more per year during each of the 3 calendar years beginning after the date of such finding;

(B) such employment increase has required or will require substantial increases in housing or public facilities and services or a combination of both in such area; and

(C) the State and the local government or governments serving such area lack the financial and other resources to meet any such increases in public facilities and services within a reasonable time.

The Secretary of Agriculture shall prescribe a rule containing criteria and guidelines for making a designation under this subsection, after consultation with the Secretary of Labor and the Secretary of Energy, not later than 180 days after the effective date of this chapter.

(2) For purposes of paragraph (1)(C), increased revenues, including severance tax revenues, royalties, and similar fees to the State and local governments which are associated with the increase in coal or uranium development activities and which are not prohibited from being used under provisions of law in effect on November 9, 1978, shall be taken into account in determining if a State or local government lacks financial resources.

(3) The Secretary shall, after consultation with the Secretary of Agriculture, approve any designation of an area under paragraph (1) only if—

(A) the Governor of the State making the designation provides the Secretary in writing with the data and information on which such designation was made, together with such additional information as the Secretary may require to carry out the purposes of this section; and

(B) the Secretary determines that the requirements of subparagraphs (A), (B), and (C) of paragraph (1) have been met.

(b) Planning grants

(1) The Secretary of Agriculture may make a grant to any State in which there is an area designated and approved under subsection (a) of this section for the purposes of developing a plan for such area which shall include determinations of—

(A) the anticipated level of coal or uranium production activities in such area;

(B) the socio-economic impacts which have occurred or which are reasonably projected to occur as a result of the increase in coal or uranium production activities;

(C) the availability and location of resources within such area to meet the increased needs resulting from socio-economic impacts determined under subparagraph (B) (such as any increased need for housing, or public facilities and services); and

(D) the nature and expense of measures necessary to meet within a reasonable time the increased needs resulting from such impact for which there are no resources reasonably available other than under this section.

(2)(A) Any grant for developing a plan under this subsection shall be for an amount equal to 100 percent of the costs of such plan, as determined by the Secretary of Agriculture.

(B) The aggregate amount granted under this subsection in any fiscal year may not exceed 10 percent of the total amount appropriated for purposes of this section for such year.

(3) The Governor of a State receiving a grant under this subsection for developing a plan shall submit a copy of such plan to the Secretary of Agriculture as soon as practicable after it has been prepared.

(c) Land acquisition and development grants

(1) In the case of any real property—

(A) within an area for which a plan meeting the requirements of subsection (b)(1) of this section has been approved;

(B) which is for housing or public facilities determined in such plan as necessary due to an increase in employment due to coal or uranium development activities;

(C) with respect to which the Secretary of Agriculture has determined that the State and the local governments serving such area do not have the financial resources to acquire or the legal authority to acquire by condemnation; and

(D) with respect to which there has been an approval in writing by the Governor of such State that the Secretary of Agriculture exercise his authority under this paragraph;

the Secretary of Agriculture may acquire such real property or interest therein, by purchase, donation, lease, or exchange. Property so acquired shall be transferred to the State under such terms and conditions as the Secretary of Agriculture deems appropriate. Such terms and conditions shall provide for the reimbursement to the Secretary of Agriculture for the fair market value of the property, as determined by the Secretary of Agriculture. The value of any improvement of such property made after such acquisition shall not be taken into account in determining the fair market value of such property under this subsection. Amounts so received by the Secretary of Agriculture shall be deposited in the Treasury of the United States as miscellaneous receipts.

(2) Any approval by a Governor of a State under paragraph (1)(D) shall constitute a binding commitment of such State to accept the property to be acquired and to provide reimbursement for the amount of the fair market value of such property, as determined under paragraph (1).

(3) The Secretary of Agriculture may acquire property under paragraph (1) by condemnation only if he finds that—

(A) such property is not available by means other than condemnation at a price which does not substantially exceed the fair market value of such property;

(B) other real property is not similarly available which is within the same designated area and which is suitable for the purposes to which the property involved is to be applied; and

(C) the State and the local governments serving such area lack the legal authority to acquire such property by condemnation.

(4)(A) In the case of any real property which meets the requirements of subparagraphs (A), (B), and (C) of paragraph (1), the Secretary of Agriculture may make a grant to the State in which such property is located for the purposes of acquiring such property, and for any site development which is consistent with the plan developed under subsection (b) of this section.

(B) In the case of property acquired by the Secretary of Agriculture under paragraph (1) and transferred to the State, the Secretary of Agriculture may make a grant to such unit of government for the purposes of site development which is consistent with such plan.

(C) Grants for real property acquisition or site development or both under this paragraph may not exceed 75 percent of the costs thereof, as determined by the Secretary of Agriculture.

(5) In the selection of real property for acquisition and in such acquisition under this subsection, preference shall be given to real property which the Secretary of Agriculture determines at such time to be unoccupied or previously mined and abandoned.

(6)(A) Property held by the United States in trust for Indians or any Indian tribe may not be acquired by condemnation under this section.

(B) No property within the National Forest System (as defined in section 1609[1] of title 16) may be exchanged by the Secretary in any acquisition under paragraph (1).

(d) General requirements regarding assistance

(1) Assistance under this section shall be provided only upon application, which application shall contain such information as the Secretary of Agriculture shall prescribe.

(2) The Secretary of Agriculture may make any grant under this section in whole or in part to the local government or governments serving an area designated and approved under subsection (a) of this section, or to a council of local governments which includes one or more local governments serving such area (in lieu of making such grant solely to the State), if he has determined, after consultation with the Governor of the State, that to do so would be appropriate.

(3) The Secretary of Agriculture shall prescribe, by rule, criteria for the allocation of assistance under this section. Such criteria shall give due weight to the magnitude of the employment increase involved, the financial resources of the designated area, and the ratio of the financial burden on the area to the resources available to such area.

(4) Assistance under this section shall be provide only if the Secretary of Agriculture is satisfied that—

(A) the amounts expended by the State and the local governments involved for the same purposes for which such assistance is provided will not be reduced; and

(B) the amount of such assistance does not reflect any amount for which other Federal financial assistance is provided or on proper application would be provided.

(e) "Coal or uranium development activities" and "site development" defined

For the purposes of this section—

(1) The term ''coal or uranium development activities'' means the production, processing, or transportation of coal or uranium.

(2) The term ''site development'' means necessary off-site improvements, such as the construction of sewer and water connections, construction of access roads, and appropriate site restoration, but does not include any portion of the construction of housing or public facilities.

(f) Reports

Any person regularly engaged in any coal or uranium development activity within an area designated and approved under subsection (a) of this section shall prepare and transmit a report to the Secretary of Energy within 90 days after

[1] See References in Text note below.

a written request to such person by the Governor of the State in which such area is located. Such report shall include—

(1) projected employment levels for such activity by such person within such area during each of the following 3 calendar years;

(2) the projected increase in employees in such area to engage in such activity during each of such calendar years;

(3) the projected quantity of coal (or uranium) to be produced, processed, or transported by such person during each of such calendar years; and

(4) actions such companies plan to take or are taking to provide needed housing and other facilities for their employees directly or by providing funds to the States or local communities for this purpose.

Copies of the report shall be provided to the Secretary of Energy and the Secretary shall, subject to the provisions of section 796(d) of title 15, provide the report to the Secretary of Agriculture, the Governor, and the appropriate county or local officials and make it available for public review.

(g) Administration

The Secretary of Agriculture shall carry out his responsibilities under this section through the Farmers Home Administration and such other agencies within the Department of Agriculture as he may determine appropriate.

(h) Appropriations authorization

(1)[2] There is hereby authorized to be appropriated to the Secretary of Energy for purposes of this section, $60,000,000 for fiscal year 1979 and $120,000,000 for fiscal year 1980. The Secretary of Energy and the Secretary of Agriculture shall enter into an agreement for the allocation of funds appropriated pursuant to this section for carrying out their respective responsibilities under this section, including the amounts for personnel and administrative costs, and upon such agreement, the Secretary of Energy shall transfer to the Secretary of Agriculture amounts determined under that agreement.

(i) Protection from certain hazardous actions

Federal agencies having responsibilities concerning the health and safety of any person working in any coal, uranium, metal, or nonmetallic mine regulated by any Federal agency shall interpret and utilize their authorities fully and promptly, including the promulgation of standards and regulations, to protect existing and future housing, property, persons, and public facilities located adjacent to or near active and abandoned coal, uranium, metal, and nonmetallic mines from actions occurring at such activities that pose a hazard to such property or persons.

(j) Reorganization

The authority of the Secretary of Agriculture and the authority of the Secretary of Energy under this section may not be transferred to any other Secretary or to any other Federal agency under chapter 9 of title 5 or under any other provision of law, other than under specific provisions of a law enacted after November 9, 1978. The preceding provisions of this subsection shall not preclude either Secretary from delegating any such authority to any officer, employee, or entity within such Secretary's department.

(Pub. L. 95–620, title VI, § 601, Nov. 9, 1978, 92 Stat. 3323.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(1), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

Section 1609 of title 16, referred to in subsec. (c)(6)(B), was in the original ''section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974''. Such section 10 is classified to section 1608 of title 16 but has been editorially translated as section 1609 of title 16 as the probable intent of Congress in that the properties defined as being in the National Forest System appear in section 1609.

§ 8401a. "Local government" defined

For the purposes of section 8401 of this title, the term ''local government'' shall include—

(1) any county, parish, city, town, township, village or other general purpose political subdivision of a State with the power to levy taxes and expend Federal, State, and local funds and exercise governmental powers; and

(2) which (in whole or in part) is located in, or has authority over the energy impacted area: *Provided further*, That such term shall include a public or private nonprofit corporation, or a school, water, sewer, highway, or other public special purpose district, authority, or body, with the concurrence of the Governor: *Provided further*, That such term shall be applicable to all applications for assistance received since the effective date of section 8401 of this title.

(Pub. L. 96–514, title II, § 201, Dec. 12, 1980, 94 Stat. 2975.)

REFERENCES IN TEXT

For effective date of section 8401 of this title, referred to in par. (2), see section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1981, and not as part of the Powerplant and Industrial Fuel Use Act of 1978 which comprises this chapter.

§ 8402. Loans to assist powerplant acquisitions of air pollution control equipment

(a) Authority to make loans

The Secretary may, in accordance with the provisions of this section and such rules and regulations as he shall prescribe, make a loan (and may make a commitment to loan) to any person who owns or operates any existing electric powerplant converting to coal or other alternate fuel as its primary energy source after the effective date of this chapter for the purpose of financing the purchase and installation of one or more certified air pollution control devices for such electric powerplant.

(b) Limitations and conditions

A loan made under this section shall—

[2] So in original. No par. (2) has been enacted.

(1) not exceed two-thirds of the cost of purchasing and installing the certified air pollution control devices;

(2) have a maturity date not extending beyond 10 years after the date such loan is made;

(3) bear interest at a rate not less than (A) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield of outstanding Treasury obligations of comparable maturity, plus (B) 1 percent;

(4) be made on the condition of payment to the Secretary of a loan fee in an amount equal to (A) such insurance fee as the Secretary determines is necessary to avoid a Federal revenue loss under this section, plus (B) 1 percent of the loan amount; and

(5) be made only if the Secretary finds that—

(A) the financial assistance applied for is not otherwise available from other Federal agencies;

(B) the applicant is unable to obtain sufficient funds on reasonable terms and conditions from any other source;

(C) there is continued reasonable assurance of full repayment of the principal, interest, and fees; and

(D) competition among private entities for the provision of air pollution control devices for electric powerplants using coal as their primary energy source to be assisted under this section will be in no way limited or precluded.

(c) Allocation and priorities

In making loans or commitments to loan pursuant to this section, the Secretary shall—

(1) allocate a minimum of 25 percent of available financial assistance to existing small municipal and rural powerplants; and

(2) give priority consideration to requests for financial assistance by existing electric powerplants subject to any prohibition under subchapter III of this chapter (or under section 792 of title 15).

(d) Definitions

For purposes of this section—

(1) The term ''certified pollution control device'' means a new identifiable device which—

(A) is used, in connection with a powerplant, to abate or control atmospheric pollution by removing, altering, disposing, storing, or preventing the emission of pollutants;

(B) the appropriate State air pollution control agency has certified to the Administrator of the Environmental Protection Agency that such device is needed to meet, and is in conformity with, State requirements for abatement or control of atmospheric pollution or contamination;

(C) the Administrator of the Environmental Protection Agency has certified to the Secretary as not duplicating or displacing existing air pollution control devices with a remaining useful economic life in excess of 2 years and as otherwise being in furtherance of the requirements and purposes of the Clean Air Act [42 U.S.C. 7401 et seq.];

(D) does not constitute or include a building, or a structural component of a building, other than a building used exclusively for the purposes set forth in subparagraph (A); and

(E) the construction of which began after the effective date of this chapter.

(2) The term ''small municipal or rural cooperative electric powerplant'' means an electric generating unit, which—

(A) by design is not capable of consuming fuel at a fuel heat input rate in excess of a rate determined appropriate by the Secretary by rule; and

(B) is owned or operated by a municipality or a rural electric cooperative.

(e) Records

(1) The Secretary shall require all persons receiving financial assistance under this section to keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the later of—

(A) the expiration of 3 years after completion of the project or undertaking referred to in subsection (a) of this section, or

(B) full repayment of interest and principal on a loan made under this section, occurs,

have access for the purposes of audit, evaluation, examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to such loan.

(f) Default

(1) If there is a default in any payment by the obligor of interest or principal due under a loan entered into by the Secretary under this section and such default has continued for 90 days, the Secretary has the right to demand payment of such unpaid amount, unless the Secretary finds that such default has been remedied, or a satisfactory plan to remedy such default by the obligor has been accepted by the Secretary.

(2) In demanding payment of unpaid interest or principal by the obligor, the Secretary has all rights specified in the loan-related agreements with respect to any security which he held with respect to the loan, including the authority to complete, maintain, operate, lease, sell, or otherwise dispose of any property acquired pursuant to such loan or related agreements.

(3) If there is a default under any loan, the Secretary shall notify the Attorney General who shall take such action against the obligator or other parties liable thereunder as is, in his discretion, necessary to protect the interests of the United States. The holder of such loan shall make available to the United States all records and evidence necessary to prosecute any such suit.

(g) Deposit of receipts

Amounts received by the Secretary as principal, interest, fees, proceeds from security acquired following default, or other amounts received by the Secretary in connection with loans made under this section shall be paid into the Treasury of the United States as miscellaneous receipts.

(h) Authorization of appropriation

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this section, but not to exceed $400,000,000 for fiscal year 1979 and $400,000,000 for fiscal year 1980. Authority granted to the Secretary under subsection (a) of this section may be exercised only to the extent as may be provided in advance in appropriation Acts.

(Pub. L. 95–620, title VI, § 602, Nov. 9, 1978, 92 Stat. 3327.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a) and (d)(1)(E), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

The Clean Air Act, referred to in subsec. (d)(1)(C), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

SUBCHAPTER VII—ADMINISTRATION AND ENFORCEMENT

PART A—PROCEDURES

§ 8411. Administrative procedures

(a) General rulemaking

Except to the extent otherwise provided in this section or other provisions of this chapter, rules prescribed under this chapter shall be made in accordance with the procedures set forth in section 553 of title 5.

(b) Notices of rules and orders imposing prohibitions

Before the Secretary prescribes any rule or issues any order imposing a prohibition under this chapter, he shall publish such proposed rule or order in the Federal Register, together with a statement of the reasons for such rule or order and, in the case of a rule, a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the person who operates any such powerplant required to be specifically identified in such rule or order.

(c) Petitions for exemptions

(1) Any petition for an exemption from any prohibition under this chapter shall be filed at such time and shall be in such form as the Secretary shall by rule prescribe. The Secretary, upon receipt of such petition, shall publish a notice thereof in the Federal Register together with a statement of the reasons set forth in such a petition for requesting such exemption, and provide a period of public comment of at least 45 days for written comments thereon. Rules required under this paragraph shall be prescribed not later than 120 days after November 9, 1978.

(2) The Secretary, upon receipt of such petition, shall notify the appropriate State agencies having primary authority to permit or regulate the construction or operation of the electric powerplant which is the subject of such petition, and, to the maximum extent practicable, consult with such agencies.

(3) The Secretary, within 6 months after the period for public comment and hearing applicable to any petition for an exemption, shall issue a final order granting or denying the petition for such exemption, except that the Secretary may extend such period to a specified date if he publishes notice thereof in the Federal Register and includes with such notice a statement of the reasons for such extension.

(d) Public comment on prohibitions and exemptions

(1) In the case of any proposed rule or order by the Secretary imposing a prohibition or any petition for any order granting an exemption under this chapter, any interested person shall be afforded an opportunity to present oral data, views, and arguments at a public hearing. At such hearing any interested person shall have an opportunity to question—

(A) other interested persons who make oral presentations,

(B) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of such petition, and

(C) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation,

with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(2) A rule or order subject to this section may not be issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.

(e) Transcript

A transcript shall be kept of any public hearing made in accordance with this section.

(f) Environmental Protection Agency comment

A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this chapter (other than under section 8374 of this title), or a petition for an exemption (or permit) under this chapter (other than under section 8374 of this title), shall be transmitted by the Secretary to the Administrator of the Environmental Protection Agency and the Secretary shall request such agency to comment thereon within the period provided to the public unless a longer pe-

riod is provided under the Clean Air Act [42 U.S.C. 7401 et seq.]. In any such case, the Administrator of the Environmental Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d) of this section.

(g) Repealed. Pub. L. 100–42, § 1(c)(16)(E), May 21, 1987, 101 Stat. 313

(h) Coordination with other provisions of law

(1) Except as provided in sections 8412(c)(4), 8433(d)(5), and 8434 of this title, title V of the Department of Energy Organization Act (42 U.S.C. 7191, et seq.) shall not apply with respect to this chapter.

(2) The preceding provisions of this section shall not apply with respect to any exercise of authority under section 8374 of this title.

(3) The procedures applicable under this chapter shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this chapter (or provisions of law cited herein), or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this chapter, and declaring that such provision supersedes, in whole or in part, the procedures of this chapter.

(Pub. L. 95–620, title VII, § 701, Nov. 9, 1978, 92 Stat. 3329; Pub. L. 100–42, § 1(c)(16), May 21, 1987, 101 Stat. 313.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (f), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Department of Energy Organization Act, referred to in subsec. (h)(1), is Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 567, as amended. Title V of the Department of Energy Organization Act is classified generally to subchapter V (§ 7191 et seq.) of chapter 84 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–42, § 1(c)(16)(A), struck out ''(other than under section 8372 of this title)'' after ''this chapter'' and ''or installation'' after ''powerplant''.

Subsec. (c)(1). Pub. L. 100–42, § 1(c)(16)(B)(i), (ii), struck out ''or for any permit under section 8375 of this title'' after ''this chapter'' and ''or permit'' after ''such exemption''.

Subsec. (c)(2). Pub. L. 100–42, § 1(c)(16)(B)(iii), struck out ''or, where appropriate, major fuel-burning installation'' after ''powerplant''.

Subsec. (c)(3). Pub. L. 100–42, § 1(c)(16)(B)(i), struck out ''or permit'' after ''exemption'' in two places.

Subsec. (c)(4). Pub. L. 100–42, § 1(c)(16)(B)(iv), struck out par. (4) which read as follows: ''Any order for the approval of a system compliance plan under section 8391 of this title, and any petition for such an order, shall be treated for purposes of this subchapter the same as an order (or petition) for an exemption.''

Subsec. (d)(1). Pub. L. 100–42, § 1(c)(16)(C), struck out ''(or permit)'' after ''an exemption'' and ''(other than under section 8372 of this title)'' after ''under this chapter''.

Subsec. (f). Pub. L. 100–42, § 1(c)(16)(D), struck out ''8372 or'' after ''(other than under section'' in two places.

Subsec. (g). Pub. L. 100–42, § 1(c)(16)(E), struck out subsec. (g) which read as follows: ''A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this chapter (other than under section 8372 or 8374 of this title) with respect to a major fuel-burning installation or a boiler subject to section 8371 of this title or a petition by such installation or boiler for an exemption (or permit) under this chapter (other than under section 8372 or 8374 of this title), shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request such Commission to comment thereon within the period provided to the public. In any such case, the Federal Trade Commission shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d) of this section.''

§ 8412. Judicial review

(a) Publication and delay of prohibition or exemption to allow for review

Any final rule or order prescribed by the Secretary imposing a prohibition or granting an exemption (or permit) under this chapter shall be published in the Federal Register, and shall not take effect earlier than the 60th calendar day after such rule or order is published.

(b) Publication of denial of exemption or permit

Any final order issued by the Secretary denying any petition for an exemption or a permit under this chapter shall be published in the Federal Register, together with the reasons for such action.

(c) Judicial review

(1) Any person aggrieved by any final rule or order referred to in subsection (a) of this section or in section 8374 of this title, or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b) of this section, may at any time before the 60th day after the date such rule, order, or denial is published under subsection (a) or (b) of this section, file a petition with the United States court of appeals for the circuit wherein such person resides, or has his principal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which the rule or order was based as provided in section 2112 of title 28.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule, order, or denial in accordance with chapter 7 of title 5, and to grant appropriate relief as provided in such chapter. No rule or order (or denial thereof) may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule, order, or denial shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(4) Subject to the direction and control of the Attorney General, as provided in section 519 of title 28, attorneys appointed by the Secretary

may appear for and represent the Secretary in any proceeding instituted under this section in accordance with section 7192(c) of this title.

(Pub. L. 95–620, title VII, § 702, Nov. 9, 1978, 92 Stat. 3331.)

PART B—INFORMATION AND REPORTING

§ 8421. Information

(a) Authority of Secretary

For purposes of carrying out his responsibilities under this chapter, the Secretary may require, under the authority of this chapter or any other authority administered by him, any person owning, operating or controlling any electric powerplant, or any other person otherwise subject to this chapter to submit such information and reports of any kind or nature directly to the Secretary necessary to implement the provisions of this chapter, and insure compliance with the provisions of this chapter, and any rule or order thereunder. The provisions of section 796(d) of title 15 shall apply with respect to information obtained under this section to the same extent and in the same manner as it applies with respect to energy information obtained under section 796 of title 15.

(b) Authority of President and Federal Energy Regulatory Commission

In the case of responsibilities expressly given by this chapter to the President or the Federal Energy Regulatory Commission, subsection (a) of this section shall be applied as if the references to the Secretary were references to the President or the Federal Energy Regulatory Commission, as the case may be.

(c) Natural gas usage by electric utilities

(1) For purposes of section 8374(b) of this title and other emergency authorities, the Secretary shall obtain data necessary to determine—

(A) within 6 months after August 13, 1981, the total quantities of natural gas used as a primary energy source by each electric utility during calendar year 1977, and

(B) on a semiannual basis, the total quantities of natural gas used as a primary energy source during the previous 6-month period by each electric utility.

(2) Repealed. Pub. L. 104–66, title I, § 1051(e), Dec. 21, 1995, 109 Stat. 716.

(Pub. L. 95–620, title VII, § 711, Nov. 9, 1978, 92 Stat. 3332; Pub. L. 97–35, title X, § 1021(b), Aug. 13, 1981, 95 Stat. 615; Pub. L. 100–42, § 1(c)(17), May 21, 1987, 101 Stat. 313; Pub. L. 104–66, title I, § 1051(e), Dec. 21, 1995, 109 Stat. 716.)

AMENDMENTS

1995—Subsec. (c)(2). Pub. L. 104–66 struck out par. (2) which read as follows: ''The Secretary shall include in each annual report to the Congress under section 8482 of this title a summary of information received by the Secretary under this subsection.''

1987—Subsec. (a). Pub. L. 100–42 struck out ''or major fuel-burning installation'' after ''powerplant''.

1981—Subsec. (c). Pub. L. 97–35 added subsec. (c).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as a note under section 6240 of this title.

§ 8422. Compliance report

(a) Generally

Any person owning, operating, or proposing to operate one or more existing electric powerplants required to come into compliance with the prohibitions of this chapter shall on or before January 1, 1980, and annually thereafter, submit to the Secretary a report identifying all such existing electric powerplants owned or operated by such person. Such report shall—

(1) set forth the anticipated schedule for compliance with the applicable requirements and prohibitions by each such electric powerplant;

(2) indicate proposed or existing contracts or other commitments or good faith negotiations for such contracts or commitments for coal or another alternate fuel, equipment, or combinations thereof, which would enable such powerplant to comply with such prohibitions; and

(3) identify those electric powerplants, if any, for which application for temporary or permanent exemption from the prohibitions of this chapter may be filed.

(b) Report on implementation of section 8484 plan

Any electric utility required to submit a conservation plan under section 8484 of this title shall annually submit to the Secretary a report identifying the steps taken during the preceding year to implement such plan.

(Pub. L. 95–620, title VII, § 712, Nov. 9, 1978, 92 Stat. 3332; Pub. L. 97–35, title X, § 1023(b), Aug. 13, 1981, 95 Stat. 617.)

AMENDMENTS

1981—Pub. L. 97–35 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as a note under section 6240 of this title.

PART C—ENFORCEMENT

§ 8431. Notice of violation; other general provisions

(a) Notice of violation

(1) Whenever, on the basis of any information available, the Secretary finds that any person is in violation of any provision of this chapter, or any rule or order thereunder, the Secretary shall issue notice of such violation. Any notice issued under this subsection shall be in writing and shall state with reasonable specificity the nature of the violation.

(2) Paragraph (1) shall not be construed to relieve any person of liability under the other provisions of this chapter for any act or omission occurring before the issuance of notice.

(b) Individual liability of corporate personnel

Any individual director, officer, or agent of a corporation who willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of this chapter, or any rule or order thereunder, shall be

subject to penalties under this section without regard to any penalties to which the corporation may be subject, except that no such individual director, officer, or agent shall be subject to imprisonment under section 8432 of this title, unless he also knew of noncompliance by the corporation or had received from the Secretary notice of noncompliance by the corporation.

(c) Repealed. Pub. L. 100–42, § 1(c)(18), May 21, 1987, 101 Stat. 313

(d) Federal agencies

The provisions of sections 8432 and 8433 of this title shall not be construed to apply to any Federal agency or officer or employee thereof acting in his official capacity.

(Pub. L. 95–620, title VII, § 721, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100–42, § 1(c)(18), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–42 struck out subsec. (c) which read as follows: ''No person shall be subject to any penalty under this part with respect to the operation of any powerplant in excess of that allowed by an exemption granted on the basis of the operation of such powerplant as a peakload powerplant if it is demonstrated to the Secretary that such operation was necessary to meet peakload demand and that other peakload powerplants within the same system as such powerplant—

''(1) were unavailable for service—

''(A) due to unit or system outages; or

''(B) because operation of such other powerplants would result in their exceeding the hours of operation allowed under an exemption; and

''(2) have not been operated other than to meet peakload demand.''

§ 8432. Criminal penalties

Any person who willfully violates any provision of this chapter, or any rule or order thereunder, shall be subject to a fine of not more than $50,000, or to imprisonment for not more than one year, or both, for each violation.

(Pub. L. 95–620, title VII, § 722, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100–42, § 1(c)(19), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Pub. L. 100–42 struck out ''(other than section 8372 of this title)'' after ''this chapter''.

§ 8433. Civil penalties

(a) General civil penalty

Any person who violates any provision of this chapter, or rule or order thereunder, shall be subject to a civil penalty, which shall be assessed by the Secretary, of not more than $25,000 for each violation. Each day of violation shall constitute a separate violation.

(b) Civil penalty for operation in excess of exemption

In the case of any electric powerplant granted an exemption, any person who operates such powerplant during any 12-calendar-month period in excess of that authorized in such exemption, shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas used in operation of such powerplant in excess of that authorized in such exemption.

(c) Repealed. Pub. L. 100–42, § 1(c)(20)(C), May 21, 1987, 101 Stat. 314

(d) Assessment

(1) Before issuing an order assessing a civil penalty against any person under this chapter, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28, or of section 7192(c) of this title, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 7192(c) of this title, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this subsection.

(Pub. L. 95–620, title VII, § 723, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100–42, § 1(c)(20), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42, § 1(c)(20)(A), struck out ''(other than section 8372 of this title)'' after ''this chapter''.

Subsec. (b). Pub. L. 100–42, § 1(c)(20)(B), (C), struck out ''(1)'' before ''In the case of'' and struck out par. (2) which read as follows: ''Any person operating a major fuel-burning installation granted an exemption which, for any 12-calendar-month period, uses petroleum or natural gas, or both, in excess of that use allowed by such exemption shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas which was used in excess of that use allowed by such exemption.''

Subsec. (c). Pub. L. 100–42, § 1(c)(20)(C), struck out subsec. (c) which set forth civil penalties for violation of section 8372 of this title.

§ 8434. Injunctions and other equitable relief

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of this chapter, or any rule or order thereunder, a civil action,[1] may be brought, in accordance with section 7192(c) of this title, in the appropriate district court of the United States to enjoin such acts or practices, and, upon a proper showing, the court shall grant, without bond, mandatory or prohibitive injunctive relief, including interim equitable relief.

(Pub. L. 95–620, title VII, § 724, Nov. 9, 1978, 92 Stat. 3335.)

§ 8435. Citizens suits

(a) General rule

Except as otherwise provided in subsection (b) of this section, any aggrieved person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against the Secretary or the head of any Federal agency which has a responsibility under this chapter if there is an alleged failure of the Secretary or such agency head to perform any act or duty under this chapter which is not discretionary. The United States district courts shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) Notice to Secretary or agency head

No action may be commenced under subsection (a) of this section before the 60th calendar day after the date on which the plaintiff has given notice of such action to the Secretary or the agency head involved. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by rule.

(c) Authority of Secretary to intervene

In any action brought under subsection (a) of this section, the Secretary, if not a party, may intervene as a matter of right.

(d) Costs of litigation

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) Other remedies to remain available

Nothing in this section shall restrict any right which any aggrieved person (or class of aggrieved persons) may have under any statute or common law to seek enforcement of this chapter or any rule thereunder, or to seek any other relief (including relief against the Secretary or the agency head involved).

(Pub. L. 95–620, title VII, § 725, Nov. 9, 1978, 92 Stat. 3335.)

PART D—PRESERVATION OF CONTRACTUAL RIGHTS

§ 8441. Preservation of contractual interest

(a) Right to transfer contractual interests

(1) If any person receives natural gas, the use of which is prohibited by the provisions of subchapter III of this chapter or any rule or order thereunder, and if such natural gas is received pursuant to a contract in effect on April 20, 1977, between such person and any other person, such person receiving such natural gas may transfer all or any portion of such person's contractual interests under such contract and receive consideration from the person to whom such contractual interests are transferred. The consideration authorized by this subsection shall not exceed the maximum consideration established as just compensation under this section.

(2) Any person who would have transported or distributed the natural gas subject to a contract with respect to which contractual interests are transferred pursuant to paragraph (1) shall be entitled to receive just compensation (as determined by the Commission) from the person to whom such contractual interests are transferred.

[1] So in original. The comma probably should not appear.

(b) Determination of consideration

(1) The Commission shall, by rule, establish guidelines for the application on a regional or national basis (as may be appropriate) of the criteria specified in subsection (e)(1) of this section to determine the maximum consideration permitted as just compensation under this section.

(2) The person transferring contractual interests pursuant to subsection (a)(1) of this section and the person to whom such interests are transferred may agree on the amount of, or method of determining, the consideration to be paid for such transfer and certify such consideration to the Commission. Except as provided in paragraph (4), such agreed-upon consideration shall not exceed the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1).

(3) In the event the person transferring contractual interests pursuant to subsection (a)(1) of this section and the person to whom such interests are to be transferred fail to agree, under paragraph (2), on the amount of, or method of determining, the consideration to be paid for such transfer, the Commission may, at the request of both such persons, prescribe the amount of, or method of determining, such consideration. Upon the request of either such person, the Commission shall make such determination on the record, after an opportunity for agency hearing. In any such latter case, the determination of the Commission shall be binding upon the party requesting that such determination be made on the record of the agency hearing. The consideration prescribed by the Commission shall not exceed the maximum consideration permitted as just compensation under this section. In prescribing the amount of, or method of determining, consideration under this paragraph, to the maximum extent practicable, the Commission shall utilize any liquidated damages provision set forth in the applicable contract, but in no event may the Commission prescribe consideration in excess of the maximum consideration permitted as just compensation under this section.

(4) In the event that the consideration agreed upon under paragraph (2) exceeds the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1), the Commission may approve such agreed-upon consideration if the Commission determines such agreed-upon consideration does not exceed the maximum consideration permitted as just compensation under this section.

(5) If consideration is agreed upon under paragraph (2) and such consideration exceeds the consideration determined by application of the guidelines prescribed under paragraph (1), but does not exceed the maximum consideration permitted as just compensation under this section, the Commission may not require a refund of any portion of the agreed-upon consideration paid with respect to deliveries of natural gas occurring prior to the Commission's action under paragraph (4) approving or disapproving such consideration unless the Commission determines—

(A) such agreed-upon consideration was fraudulently established;

(B) the processing of the request for approval of such agreed-upon consideration under paragraph (4) was willfully delayed by a party to the transfer; or

(C) such agreed-upon consideration exceeds the maximum consideration permitted as just compensation under this section.

(c) Restrictions on transfers unenforceable

(1) Any provision of any contract, which prohibits any transfer authorized by subsection (a)(1) of this section or terminates such contract on the basis of such transfer, shall be unenforceable in any court of the United States and in any court of any State.

(2) No State may enforce any prohibition on any transfer authorized by subsection (a)(1) of this section.

(d) Contractual obligations unaffected

The person acquiring contractual interests transferred pursuant to subsection (a)(1) of this section shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This subsection shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) Definitions

For purposes of this section—

(1) The term ''just compensation'', when used with respect to any transfer of contractual interests authorized by subsection (a)(1) of this section, means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (excluding capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred under subsection (a)(1) of this section, in direct association with the use of a fuel, other than natural gas, as a primary energy source by the applicable existing electric powerplant, exceed

(B) the price of natural gas under such contract during such period.

For purposes of subparagraph (A), the reasonable costs associated with the use of a fuel, other than natural gas, as a primary energy source shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such electric powerplant, which assets were directly associated with the use of natural gas and are not usable in connection with the use of such other fuel.

(2) The term ''just compensation'', when used with respect to subsection (a)(2) of this section, means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to subsection (a)(1) of this section, to the extent such loss (A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to subsection (a)(1) of this section, and (B) is not offset by revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(3) The term ''contractual interests'', with respect to a contract described in subsection (a)(1) of this section, includes the right to receive natural gas as affected by any applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(4) The term ''State'' means each of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, and any political subdivision of any of the foregoing.

(5) The term ''interstate pipeline'' means any person engaged in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.].

(6) The term ''Commission'' means the Federal Energy Regulatory Commission.

(7) The term ''contract'', when used with respect to a contract for receipt of natural gas, which contract was in existence on April 20, 1977, does not include any renewal or extension occurring after such date unless such renewal or extension occurs pursuant to the exercise of an option by the person receiving natural gas under such contract.

(f) Coordination with Natural Gas Act

(1) Consideration paid by any interstate pipeline pursuant to this section shall be deemed just and reasonable for purposes of sections 4, 5, and 7 of the Natural Gas Act [15 U.S.C. 717c, 717d, 717f]. The Commission shall not deny a passthrough by such interstate pipeline of such consideration based upon the amount of such consideration paid pursuant to this section.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1) of this section.

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale or person is subject to the juridiction[1] of the Commission under such Act without regard to the transfer of contractual interests under subsection (a)(1) of this section.

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the transportation by an interstate pipeline of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1) of this section. The Commission shall not deny such a certificate for the transportation in interstate commerce of natural gas based upon the amount of consideration paid pursuant to this section.

(g) Volume limitation

No supplier of natural gas under any contract, with respect to which contractual interests have been transferred under subsection (a)(1) of this section, shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests under subsection (a)(1) of this section, if no such transfer had occurred;

(3) the volume which would have been delivered, or for which payment would have been made, pursuant to such contract but for the prohibition on the use of such natural gas under subchapter III of this chapter or any rule or order thereunder; and

(4) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests pursuant to this section.

(h) Judicial review

Any action by the Commission under this section is subject to judicial review in accordance with chapter 7 of title 5.

(Pub. L. 95–620, title VII, § 731, Nov. 9, 1978, 92 Stat. 3336; Pub. L. 100–42, § 1(c)(21), May 21, 1987, 101 Stat. 314.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsecs. (e)(5) and (f)(2), (3), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–42, § 1(c)(21)(A), struck out reference to subchapter II of this chapter.

Subsec. (e)(1). Pub. L. 100–42, § 1(c)(21)(B), struck out ''or major fuel-burning installation'' after ''powerplant'' in subpar. (A) and ''or major fuel-burning installation'' after ''powerplant'' in last sentence.

Subsec. (g)(3). Pub. L. 100–42, § 1(c)(21)(A), struck out reference to subchapter II of this chapter.

PART E—STUDIES

§ 8451. National coal policy study

(a) Study

The President, acting through the Secretary and the Administrator of the Environmental Protection Agency, shall make a full and complete investigation and study of the alternative national uses of coal available in the United States to meet the Nation's energy requirements consistent with national policies for the protection and enhancement of the quality of the environment and for economic recovery and full employment. In particular the study should identify and evaluate—

(1) current and prospective coal requirements of the United States;

(2) current and prospective voluntary and mandatory energy conservation measures and their potential for reduction of the United States coal requirements;

[1] So in original. Probably should be ''jurisdiction''.

(3) current and prospective coal resource production, transportation, conversion, and utilization requirements;

(4) the extent and adequacy of coal research, development, and demonstration programs being carried out by Federal, State, local, and nongovernmental entities (including financial resources, manpower, and statutory authority);

(5) programs for the development of coal mining technologies which increase coal production and utilization while protecting the health and safety of coal miners;

(6) alternative strategies for meeting anticipated United States coal requirements, consistent with achieving other national goals, including national security and environmental protection;

(7) existing and prospective governmental policies and laws affecting the coal industry with the view of determining what, if any, changes in and implementation of such policies and laws may be advisable in order to consolidate, coordinate, and provide an effective and equitable national energy policy consistent with other national policies; and

(8) the most efficient use of the Nation's coal resources considering economic (including capital and consumer costs, and balance of payments), social (including employment), environmental, technological, national defense, and other aspects.

(b) Report

Within 18 months after the effective date of this chapter, the President shall submit to the Congress a report with respect to the studies and investigations, together with findings and recommendations in order that the Congress may have such information in a timely fashion. Such report shall include the President's determinations and recommendations with respect to—

(1) the Nation's projected coal needs nationally and regionally, for the next 2 decades with particular reference to electric power;

(2) the coal resources available or which must be developed to meet those needs, including, as applicable, the programs for research, development, and demonstration necessary to provide technological advances which may greatly enhance the Nation's ability to efficiently and economically utilize its fuel resources, consistent with applicable environmental requirements;

(3) the air, water, and other pollution created by coal requirements, including any programs to overcome promptly and efficiently any technological or economic barriers to the elimination of such pollution;

(4) the existing policies and programs of the Federal Government and of State and local governments, which have any significant impact on the availability, production or efficient and economic utilization of coal resources and on the ability to meet the Nation's energy needs and environmental requirements; and

(5) the adequacy of various transportation systems, including roads, railroads, and waterways to meet projected increases in coal production and utilization.

Before submitting a report to the Congress under subsection (b) of this section, the President shall publish in the Federal Register a notice and summary of the proposed report, make copies of such report available, and accord interested persons an opportunity (of not less than 90 days' duration) to present written comments; and shall make such modifications of such report as he may consider appropriate on the basis of such comments.

(c) Authorization of appropriations

There is hereby authorized to be appropriated to the Secretary for allocation between the Department of Energy and the Environmental Protection Agency for fiscal years 1979 and 1980, not to exceed $18,000,000, for use in carrying out the purposes of this section.

(Pub. L. 95–620, title VII, § 741, Nov. 9, 1978, 92 Stat. 3339.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

§ 8452. Repealed. Pub. L. 97–375, title I, § 106(d), Dec. 21, 1982, 96 Stat. 1820

Section, Pub. L. 95–620, title VII, § 742, Nov. 9, 1978, 92 Stat. 3341, related to an investigation by the Secretary of the performance and competition of the coal industry, to be reported to Congress in interim reports with a final report to be submitted not later than eighteen months after Nov. 9, 1978.

§ 8453. Impact on employees

(a) Evaluation

The Secretary shall conduct continuing evaluations of potential loss or shifts of employment which may result from any prohibition under this chapter, including, if appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such prohibition. The results of such evaluations and each investigation shall promptly be made available to the public.

(b) Investigation and hearings

On a written request filed with the Secretary by or on behalf of any employee who is discharged or laid off, threatened with discharge or layoff, or otherwise discriminated against, by any person because of the alleged effects of any such prohibition, the Secretary shall investigate the matter and, at the request of any party, shall hold public hearings, after not less than 30 days notice, at which the Secretary shall require the parties, including any employer involved, to present information on the actual or potential effect of such prohibition on employment and on any alleged employee discharge, layoff, or other discrimination relating to prohibitions and the detailed reasons or justification therefor. At the completion of such investigation, the Secretary shall make findings of fact as to the effect of such prohibition on employment and on the alleged employee discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be

available to the public. The Secretary of Labor shall participate in each such investigation.

(c) Rule of construction

Nothing in this section shall be construed to require or authorize the Secretary to modify or withdraw any prohibition under this chapter.

(Pub. L. 95–620, title VII, § 743, Nov. 9, 1978, 92 Stat. 3342.)

§ 8454. Study of compliance problem of small electric utility systems

(a) Study

The Secretary shall conduct a study of the problems of compliance with this chapter experienced by those electric utility systems which have a total system generating capacity of less than 2,000 megawatts. The Secretary shall report his findings and his recommendations to the Congress not later than 2 years after the effective date of this chapter.

(b) Authorization of appropriations

There is authorized to be appropriated to the Secretary for the fiscal year 1979 not to exceed $500,000 to carry out the provisions of this section.

(Pub. L. 95–620, title VII, § 744, Nov. 9, 1978, 92 Stat. 3343.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

§ 8455. Repealed. Pub. L. 104–66, title II, § 2021(j)(1), Dec. 21, 1995, 109 Stat. 727

Section, Pub. L. 95–620, title VII, § 745, Nov. 9, 1978, 92 Stat. 3343; Pub. L. 100–42, § 1(c)(22), May 21, 1987, 101 Stat. 314, related to emissions monitoring.

§ 8456. Socioeconomic impacts of increased coal production and other energy development

(a) Committee

There is hereby established an interagency committee composed of the heads of the Departments of Energy, Commerce, Interior, Transportation, Housing and Urban Development, and Health and Human Services, the Environmental Protection Agency, the Appalachian Regional Commission, the Farmers' Home Administration, the Office of Management and Budget, and such other Federal agencies as the Secretary shall designate. In carrying out its functions the committee shall consult with the National Governors' Conference and interested persons, organizations, and entities. The chairman of the committee shall be designated by the President. The committee shall terminate 90 days after the submission of its report under subsection (c) of this section.

(b) Functions of committee

It is the function of the committee to conduct a study of the socioeconomic impacts of expanded coal production and rapid energy development in general, on States, including local communities, and on the public, including the adequacy of housing and public, recreational, and cultural facilities for coal miners and their families and the effect of any Federal or State laws or regulations on providing such housing and facilities. The committee shall gather data and information on—

(1) the level of assistance provided under this chapter and any other programs related to impact assistance,

(2) the timeliness of assistance in meeting impacts caused by Federal decisions on energy policy as well as private sector decisions, and

(3) the obstacles to effective assistance contained in regulations of existing programs related to impact assistance.

(c) Report

Within 1 year after the effective date of this chapter, the committee shall submit a detailed report on the results of such study to the Congress, together with any recommendations for additional legislation it may consider appropriate.

(Pub. L. 95–620, title VII, § 746, Nov. 9, 1978, 92 Stat. 3344; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (c), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

CHANGE OF NAME

''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (a), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 8457. Use of petroleum and natural gas in combustors

The Secretary shall conduct a detailed study of the uses of petroleum and natural gas as a primary energy source for combustors and installations not subject to the prohibitions of this chapter. In conducting such study, the Secretary shall—

(1) identify those categories of major fuel-burning installations in which the substitution of coal or other alternate fuels for petroleum and natural gas is economically and technically feasible, and

(2) determine the estimated savings of natural gas and petroleum expected from such substitution.

Within 1 year after the effective date of this chapter, the Secretary shall submit a detailed report on the results of such study to the Congress, together with any recommendations for legislation he may consider appropriate.

(Pub. L. 95–620, title VII, § 747, Nov. 9, 1978, 92 Stat. 3344.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in text, is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

PART F—APPROPRIATIONS AUTHORIZATION

§ 8461. Authorization of appropriations

There is authorized to be appropriated to the Secretary for fiscal year 1979 $11,900,000, to carry

out the provisions of this chapter (other than provisions for which an appropriations authorization is otherwise expressly provided in this chapter) and section 792 of title 15.

(Pub. L. 95–620, title VII, § 751, Nov. 9, 1978, 92 Stat. 3344.)

PART G—COORDINATION WITH OTHER PROVISIONS OF LAW

§ 8471. Effect on environmental requirements

(a) Compliance with applicable environmental requirements

Except as provided in section 8374 of this title, nothing in this chapter shall be construed as permitting any existing or new electric powerplant to delay or avoid compliance with applicable environmental requirements.

(b) Local environmental requirements

In the case of any new or existing facility—

(1) which is subject to any prohibition under this chapter, and

(2) which is also subject to any requirement of any local environmental requirement which may be stricter than any Federal or State environmental requirement,

the existence of such local requirement shall not be construed to affect the validity or applicability of such prohibition to such facility, except to the extent provided under section 8322(b) or section 8352(b) of this title; and the existence of such prohibition shall not be construed to preempt such local requirement with respect to that facility.

(Pub. L. 95–620, title VII, § 761, Nov. 9, 1978, 92 Stat. 3345; Pub. L. 100–42, § 1(c)(23), May 21, 1987, 101 Stat. 314.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42 struck out ''or major fuel-burning installation'' after ''powerplant''.

§ 8472. Effect of orders under section 792 of title 15

(a) Effect of construction orders

Any electric powerplant or major fuel-burning installation issued an order pursuant to section 792(c) of title 15 that is pending on the effective date of this chapter shall, notwithstanding the provisions of such section 792(c) or any other provision of this chapter, be subject to the provisions of this chapter as if it were a new electric powerplant or new major fuel-burning installation, as the case may be, except that if such order became final before such date, the provisions of subchapter II of this chapter shall not apply to such powerplant or installation.

(b) Effect of prohibition orders

The provisions of subchapters II and III of this chapter shall not apply to any powerplant or installation for which an order issued pursuant to section 792(a) of title 15 before the effective date of this chapter is pending or final or which, on review, was held unlawful and set aside on the merits; except that any installation issued such an order under such section 792(a) which is pending on the effective date of this chapter may elect to be covered by subchapter II or III of this chapter (as the case may be) rather than such section 792. Such an election shall be irrevocable and shall be made in such form and manner as the Secretary shall, within 90 days after November 9, 1978, prescribe. Such an election shall be made not later than 60 days after the date on which the Secretary prescribes the form and manner of making such election.

(c) Validity of orders

The preceding provisions of this chapter shall not affect the validity of any order issued under subsection (a), or any final order under subsection (c), of section 792 of title 15, and the authority of the Secretary to amend, repeal, rescind, modify, or enforce any such order, or rules applicable thereto, shall remain in effect notwithstanding any limitation of time otherwise applicable to such authority. Except as provided in this section, the authority of the Secretary under section 792 of title 15 shall terminate on the effective date of this chapter.

(Pub. L. 95–620, title VII, § 762(a)–(c), Nov. 9, 1978, 92 Stat. 3345.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in text, is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

§ 8473. Environmental impact statements under section 4332 of this title

The following actions are not deemed to be major Federal actions for purposes of section 4332(2)(C) of this title:

(1) the grant or denial of any temporary exemption under this chapter for any electric powerplant;

(2) the grant or denial of any permanent exemption under this chapter for any existing electric powerplant, other than an exemption—

(A) under section 8352(c) of this title, relating to cogeneration;

(B) Repealed. Pub. L. 100–42, § 1(c)(24)(B), May 21, 1987, 101 Stat. 314;

(C) under section 8352(b) of this title, relating to certain State or local requirements;

(D) under section 8352(g) of this title, relating to certain intermediate load powerplants; and

(3) the grant or denial of any exemption under this chapter for any powerplant for which the Secretary finds, in consultation with the appropriate Federal agency, and publishes such finding that an environmental impact statement is required in connection with another Federal action and such statement will be prepared by such agency and will reflect the exemption adequately.

Except as provided in the preceding provisions of this section, any determination of what constitutes or does not constitute a major Federal action shall be made under section 4332 of this title.

(Pub. L. 95–620, title VII, § 763, Nov. 9, 1978, 92 Stat. 3346; Pub. L. 100–42, § 1(c)(24), May 21, 1987, 101 Stat. 314.)

AMENDMENTS

1987—Par. (1). Pub. L. 100–42, § 1(c)(24)(A), struck out ''or major fuel-burning installation'' after ''powerplant''.

Par. (2). Pub. L. 100–42, § 1(c)(24), struck out ''or major fuel-burning installation'' after ''powerplant'' and struck out subpar. (B) which read as follows: ''under section 8352(*l*) of this title, relating to scheduled equipment outages;''.

Par. (3). Pub. L. 100–42, § 1(c)(24)(A), struck out ''or major fuel-burning installation'' after ''powerplant''.

SUBCHAPTER VIII—MISCELLANEOUS PROVISIONS

§ 8481. Repealed. Pub. L. 100–42, § 1(a)(7), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95–620, title VIII, § 801, Nov. 9, 1978, 92 Stat. 3346, required annual disclosure of extent, characteristics, and productive capacity of coal reserves, and of interests held therein, with discretionary exception for small reserves, and publication of such information by Secretary.

§ 8482. Repealed. Pub. L. 104–66, title I, § 1051(e), Dec. 21, 1995, 109 Stat. 716

Section, Pub. L. 95–620, title VIII, § 806, Nov. 9, 1978, 92 Stat. 3348, directed Secretary of Energy to submit annual report to Congress on actions already taken and actions to be taken under this chapter and under section 792 of title 15.

§ 8483. Submission of reports

Copies of any report required by this chapter to be submitted to the Congress shall be separately submitted to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(Pub. L. 95–620, title VIII, § 807, Nov. 9, 1978, 92 Stat. 3348.)

CHANGE OF NAME

Committee on Interstate and Foreign Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 8484. Electric utility conservation plan

(a) Applicability

An electric utility is subject to this subsection[1] if—

(1) the utility owns or operates any existing electric powerplant in which natural gas was used as a primary energy source at any time during the 1-year period ending on August 13, 1981, and

(2) the utility plans to use natural gas as a primary energy source in any electric powerplant.

(b) Submission and approval of plan

The Secretary shall require each electric utility subject to this section to—

(1) submit, within 1 year after August 13, 1981, and have approved by the Secretary, a conservation plan which meets the requirements of subsection (c) of this section; and

(2) implement such plan during the 5-year period beginning on the date of the initial approval of such plan.

(c) Contents of plan

(1) Any conservation plan under this section shall set forth means determined by the utility to achieve conservation of electric energy not later than the 5th year after its initial approval at a level, measured on an annual basis, at least equal to 10 percent of the electric energy output of that utility during the most recent 4 calendar quarters ending prior to August 13, 1981, which is attributable to natural gas.

(2) The conservation plan shall include—

(A) all activities required for such utility by part 1 of title II of the National Energy Conservation Policy Act [42 U.S.C. 8211 et seq.];

(B) an effective public information program for conservation; and

(C) such other measures as the utility may consider appropriate.

(3) Any such plan may set forth a program for the use of renewable energy sources (other than hydroelectric power).

(4) Any such plan shall contain procedures to permit the amounts expended by such utility in developing and implementing the plan to be recovered in a manner specified by the appropriate State regulatory authority (or by the utility in the case of a nonregulated utility).

(d) Plan approval

(1) The Secretary shall, by order, approve or disapprove any conservation plan proposed under this subsection[1] by an electric utility within 120 days after its submission. The Secretary shall approve any such proposed plan unless the Secretary finds that such plan does not meet the requirements of subsection (c) of this section and states in writing the reasons therefor.

(2) In the event the Secretary disapproves under paragraph (1) the plan originally submitted, the Secretary shall provide a reasonable period of time for resubmission.

(3) An electric utility may amend any approved plan, except that the plan as amended shall be subject to approval in accordance with paragraph (1).

(Pub. L. 95–620, title VIII, § 808, as added Pub. L. 97–35, title X, § 1023(a), Aug. 13, 1981, 95 Stat. 616.)

REFERENCES IN TEXT

The National Energy Conservation Policy Act, referred to in subsec. (c)(2)(A), is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3208, as amended. Part 1 of title II of the National Energy Conservation Policy Act was classified generally to part A (§ 8211 et seq.) of subchapter II of chapter 91 of this title, and was omitted from the Code pursuant to section 8229 of this title which terminated authority under that part June 30, 1989. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

[1] So in original. Probably should be ''section''.

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 6240 of this title.

CHAPTER 93—EMERGENCY ENERGY CONSERVATION

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8541. Administration.

§ 8501. Congressional findings and purposes

(a) Findings

The Congress finds that—

(1) serious disruptions have recently occurred in the gasoline and diesel fuel markets of the United States;

(2) it is likely that such disruptions will recur;

(3) interstate commerce is significantly affected by those market disruptions;

(4) an urgent need exists to provide for emergency conservation and other measures with respect to gasoline, diesel fuel, home heating oil, and other energy sources in potentially short supply in order to cope with market disruptions and protect interstate commerce; and

(5) up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public.

(b) Purposes

The purposes of this chapter are to—

(1) provide a means for the Federal Government, States, and units of local government to establish emergency conservation measures with respect to gasoline, diesel fuel, home heating oil, and other energy sources which may be in short supply;

(2) establish other emergency measures to alleviate disruptions in gasoline and diesel fuel markets;

(3) obtain data concerning such fuels; and

(4) protect interstate commerce.

(Pub. L. 96–102, title II, § 201, Nov. 5, 1979, 93 Stat. 757.)

EFFECTIVE DATE

Section 302 of Pub. L. 96–102 provided that: ''The amendments made by this Act [enacting this chapter, amending sections 6262, 6263, and 6422 of this title, and enacting provisions set out as notes under this section and section 6261 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1979].''

SHORT TITLE

Section 1(a) of Pub. L. 96–102 provided that: ''This Act [enacting this chapter, amending sections 6261, 6262, 6263, and 6422 of this title, and enacting provisions set out as notes under this section and section 6261 of this title] may be cited as the 'Emergency Energy Conservation Act of 1979'.''

CONGRESSIONAL FINDINGS

Section 101 of Pub. L. 96–102 provided that: ''The Congress finds that—

''(1) a standby rationing plan for gasoline and diesel fuel should provide, to the maximum extent practicable, that the burden of reduced supplies of gasoline and diesel fuel be shared by all persons in a fair and equitable manner and that the economic and social impacts of such plan be minimized; and

''(2) such a plan should be sufficiently flexible to respond to changed conditions and sufficiently simple to be effectively administered and enforced.''

FUNDING FOR FISCAL YEARS 1979 AND 1980

Section 301 of Pub. L. 96–102 provided that: ''For purposes of any law relating to appropriations or authorizations for appropriations as such law relates to the fiscal year ending September 30, 1979, or the fiscal year ending September 30, 1980, the provisions of this Act (including amendments made by this Act) [see Short Title note above] shall be treated as if it were a contingency plan under section 202 or 203 of the Energy Policy and Conservation Act [former sections 6262 and 6263 of this title] which was approved in accordance with the procedures under that Act [see Short Title note set out under section 6201 of this title] or as otherwise provided by law, and funds made available pursuant to such appropriations shall be available to carry out the provisions of this Act and the amendments made by this Act.''

§ 8502. Definitions

For purposes of this chapter—

(1) The term ''severe energy supply interruption'', when used with respect to motor fuel or any other energy source, means a national energy supply shortage of such energy source which the President determines—

(A) is, or is likely to be, of significant scope and duration;

(B) may cause major adverse impact on national security or the national economy; and

(C) results, or is likely to result, from an interruption in the energy supplies of the United States, including supplies of imported petroleum products, or from sabotage or an act of God.

(2) The term ''international energy program'' has the meaning given that term in section 6202(7) of this title.

(3) The term ''motor fuel'' means gasoline and diesel fuel.

(4) The term ''person'' includes (A) any individual, (B) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, and (C) the government or any agency of the United States or any State or political subdivision thereof.

(5) The term ''vehicle'' means any vehicle propelled by motor fuel and manufactured pri-

marily for use on public streets, roads, and highways.

(6) The term ''Secretary'' means the Secretary of Energy.

(7) The term ''Governor'' means the chief executive officer of a State.

(8) The term ''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(Pub. L. 96–102, title II, § 202, Nov. 5, 1979, 93 Stat. 757.)

SUBCHAPTER I—EMERGENCY ENERGY CONSERVATION PROGRAM

§ 8511. National and State emergency conservation targets

(a) Determination and publication of targets

(1) Whenever the President finds, with respect to any energy source for which the President determines a severe energy supply interruption exists or is imminent or that actions to restrain domestic energy demand are required in order to fulfill the obligations of the United States under the international energy program, the President, in furtherance of the purposes of this chapter, may establish monthly emergency conservation targets for any such energy source for the Nation generally and for each State.

(2) Any finding of the President under paragraph (1) shall be promptly transmitted to the Congress, accompanied by such information and analysis as is necessary to provide the basis for such finding, and shall be disseminated to the public.

(3)(A) The State conservation target for any energy source shall be equal to (i) the State base period consumption reduced by (ii) a uniform national percentage.

(B) For the purposes of this subsection, the term ''State base period consumption'' means, for any month, the product of the following factors, as determined by the President:

(i) the consumption of the energy source for which a target is established during the corresponding month in the 12-month period prior to the first month for which the target is established; and

(ii) a growth adjustment factor, which shall be determined on the basis of the trends in the use in that State of such energy source during the 36-month period prior to the first month for which the target is established.

(C)(i) The President shall adjust, to the extent he determines necessary, any State base period consumption to insure that achievement of a target established for that State under this subsection will not impair the attainment of the objectives of section 753(b)(1)[1] of title 15.

(ii) The President may, to the extent he determines appropriate, further adjust any State base period consumption to reflect—

(I) reduction in energy consumption already achieved by energy conservation programs;

(II) energy shortages which may affect energy consumption; and

(III) variations in weather from seasonal norms.

(D) For purposes of this subsection, the uniform national percentage shall be designed by the President to minimize the impact on the domestic economy of the projected shortage in the energy source for which a target is established by saving an amount of such energy source equivalent to the projected shortage, taking into consideration such other factors related to that shortage as the President considers appropriate.

(b) Notification and publication of targets

The President shall notify the Governor of each State of each target established under subsection (a) of this section for that State, and shall publish in the Federal Register, the targets, the base period consumption for each State and other data on which the targets are based, and the factors considered under subsection (a)(3) of this section.

(c) Establishment of targets for Federal agencies

In connection with the establishment of any national target under subsection (a) of this section the President shall make effective an emergency energy conservation plan for the Federal Government, which plan shall be designed to achieve an equal or greater reduction in use of the energy source for which a target is established than the national percentage referred to in subsection (a)(3)(D) of this section. Such plan shall contain measures which the President will implement, in accordance with other applicable provisions of law, to reduce on an emergency basis the use of energy by the Federal Government. In developing such plan the President shall consider the potential for emergency reductions in energy use—

(1) by buildings, facilities, and equipment owned, leased, or under contract by the Federal Government; and

(2) by Federal employees and officials through increased use of car and van pooling, preferential parking for multipassenger vehicles, and greater use of mass transit.

(d) Review of targets

(1) From time to time, the President shall review and, consistent with subsection (a) of this section, modify to the extent the President considers appropriate the national and State energy conservation targets established under this subsection.

(2) Any modification under this paragraph shall be accompanied by such information and analysis as is necessary to provide the basis therefor and shall be available to the Congress and the public.

(3)(A) Before the end of the 12th month following the establishment of any conservation target under this section, and annually thereafter while such target is in effect, the President shall determine, for the energy source for which that target was established, whether a severe energy supply interruption exists or is imminent or that actions to restrain domestic energy demand are required in order to fulfill the obligations of the United States under the international energy program. The President shall transmit to the Congress and make public the information and other data on which any determination under this subparagraph is based.

[1] See References in Text note below.

(B) If the President determines such an energy supply interruption does not exist or is not imminent or such actions are not required, the conservation targets established under this section with respect to such energy source shall cease to be effective.

(e) Determination and publication of actual consumption nationally and State-by-State

Each month the Secretary shall determine and publish in the Federal Register (1) the level of consumption for the most recent month for which the President determines accurate data is available, nationally and for each State, of any energy source for which a target under subsection (a) of this section is in effect, and (2) whether the targets under subsection (a) of this section have been substantially met or are likely to be met.

(f) Presidential authority not to be delegated

Notwithstanding any other provision of law, the authority vested in the President under this section may not be delegated.

(Pub. L. 96–102, title II, § 211, Nov. 5, 1979, 93 Stat. 758.)

REFERENCES IN TEXT

Section 753 of title 15, referred to in subsec. (a)(3)(C)(i), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (d)(3)(A) of this section is listed in the 19th item on page 19), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 8512. State emergency conservation plan

(a) State emergency conservation plans

(1)(A) Not later than 45 days after the date of the publication of an energy conservation target for a State under section 8511(b) of this title, the Governor of that State shall submit to the Secretary a State emergency conservation plan designed to meet or exceed the emergency conservation target in effect for that State under section 8511(a) of this title. Such plan shall contain such information as the Secretary may reasonably require. At any time, the Governor may, with the approval of the Secretary, amend a plan established under this section.

(B) The Secretary may, for good cause shown, extend to a specific date the period for the submission of any State's plan under subparagraph (A) if the Secretary publishes in the Federal Register notice of that extension together with the reasons therefor.

(2) Each State is encouraged to submit to the Secretary a State emergency conservation plan as soon as possible after November 5, 1979, and in advance of such publication of any such target. The Secretary may tentatively approve such a plan in accordance with the provisions of this section. For the purposes of this subchapter such tentative approval shall not be construed to result in a delegation of Federal authority to administer or enforce any measure contained in a State plan.

(b) Conservation measures under State plans

(1) Each State emergency conservation plan under this section shall provide for emergency reduction in the public and private use of each energy source for which an emergency conservation target is in effect under section 8511 of this title. Such State plan shall contain adequate assurances that measures contained therein will be effectively implemented in that State. Such plan may provide for reduced use of that energy source through voluntary programs or through the application of one or more of the following measures described in such plan:

(A) measures which are authorized under the laws of that State and which will be administered and enforced by officers and employees of the State (or political subdivisions of the State) pursuant to the laws of such State (or political subdivisions); and

(B) measures—

(i) which the Governor requests, and agrees to assume, the responsibility for administration and enforcement in accordance with subsection (d) of this section;

(ii) which the attorney general of that State has found that (I) absent a delegation of authority under Federal law, the Governor lacks the authority under the laws of the State to invoke, (II) under applicable State law, the Governor and other appropriate State officers and employees are not prevented from administering and enforcing under a delegation of authority pursuant to Federal law; and (III) if implemented, would not be contrary to State law; and

(iii) which either the Secretary determines are contained in the standby Federal conservation plan established under section 8513 of this title or are approved by the Secretary, in his discretion.

(2) In the preparation of such plan (and any amendment to the plan) the Governor shall, to the maximum extent practicable, provide for consultation with representatives of affected businesses and local governments and provide an opportunity for public comment.

(3) Any State plan submitted to the Secretary under this section may permit persons affected by any measure in such plan to use alternative means of conserving at least as much energy as would be conserved by such measure. Such plan shall provide an effective procedure, as determined by the Secretary, for the approval and enforcement of such alternative means by such State or by any political subdivision of such State.

(c) Approval of State plans

(1) As soon as practicable after the date of the receipt of any State plan, but in no event later than 30 days after such date, the Secretary shall review such plan and shall approve it unless the Secretary finds—

(A) that, taken as a whole, the plan is not likely to achieve the emergency conservation target established for that State under section 8511(a) of this title for each energy source involved,

(B) that, taken as a whole, the plan is likely to impose an unreasonably disproportionate share of the burden of restrictions of energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof,

(C) that the requirements of this subchapter regarding the plan have not been met, or

(D) that a measure described in subsection (b)(1) of this section is—

(i) inconsistent with any otherwise applicable Federal law (including any rule or regulation under such law),

(ii) an undue burden on interstate commerce, or

(iii) a tax, tariff, or user fee not authorized by State law.

(2) Any measure contained in a State plan shall become effective in that State on the date the Secretary approves the plan under this subsection or such later date as may be prescribed in, or pursuant to, the plan.

(d) State administration and enforcement

(1) The authority to administer and enforce any measure described in subsection (b)(1)(B) of this section which is in a State plan approved under this section is hereby delegated to the Governor of the State and the other State and local officers and employees designated by the Governor. Such authority includes the authority to institute actions on behalf of the United States for the imposition and collection of civil penalties under subsection (e) of this section.

(2) All delegation of authority under paragraph (1) with respect to any State shall be considered revoked effective upon a determination by the President that such delegation should be revoked, but only to the extent of that determination.

(3) If at any time the conditions of subsection (b)(1)(B)(ii) of this section are no longer satisfied in any State with respect to any measure for which a delegation has been made under paragraph (1), the attorney general of that State shall transmit a written statement to that effect to the Governor of that State and to the President. Such delegation shall be considered revoked effective upon receipt by the President of such written statement and a determination by the President that such conditions are no longer satisfied, but only to the extent of that determination and consistent with such attorney general's statement.

(4) Any revocation under paragraph (2) or (3) shall not affect any action or pending proceedings, administrative or civil, not finally determined on the date of such revocation, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such revocation.

(e) Civil penalty

(1) Whoever violates the requirements of any measure described in subsection (b)(1)(B) of this section which is in a State plan in effect under this section shall be subject to a civil penalty of not to exceed $1,000 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided in paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of measures the authority for which is delegated under subsection (d) of this section.

(Pub. L. 96–102, title II, § 212, Nov. 5, 1979, 93 Stat. 759.)

§ 8513. Standby Federal conservation plan

(a) Establishment of standby conservation plan

(1) Within 90 days after November 5, 1979, the Secretary, in accordance with section 7191 of this title, shall establish a standby Federal emergency conservation plan. The Secretary may amend such plan at any time, and shall make such amendments public upon their adoption.

(2) The plan under this section shall be consistent with the attainment of the objectives of section 753(b)(1)[1] of title 15, and shall provide for the emergency reduction in the public and private use of each energy source for which an emergency conservation target is in effect or may be in effect under section 8511 of this title.

(b) Implementation of standby conservation plan

(1) If the President finds—

(A) after a reasonable period of operation, but not less than 90 days, that a State emergency conservation plan approved and implemented under section 8512 of this title is not substantially meeting a conservation target established under section 8511(a) of this title for such State and it is likely that such target will continue to be unmet; and

(B) a shortage exists or is likely to exist in such State for the 60-day period beginning after such finding that is equal to or greater than 8 percent of the projected normal demand, as determined by the President, for an energy source for which such conservation target has been established under section 8511(a) of this title;

then the President shall, after consultation with the Governor of such State, make effective in such State all or any part of the standby Federal conservation plan established under subsection (a) of this section for such period or periods as the President determines appropriate to achieve the target in that State.

(2) If the President finds after a reasonable period of time, that the conservation target established under section 8511(a) of this title is not being substantially met and it is likely that such target will continue to be unmet in a State which—

(A) has no emergency conservation plan approved under section 8512 of this title; or

[1] See References in Text note below.

(B) the President finds has substantially failed to carry out the assurances regarding implementation set forth in the plan approved under section 8512 of this title,

then the President shall, after consultation with the Governor of such State, make effective in such State all or any part of the standby Federal conservation plan established under subsection (a) of this section for such period or periods as the President determines appropriate to achieve the target in that State.

(c) Basis for findings

Any finding under subsection (b) of this section shall be accompanied by such information and analysis as is necessary to provide a basis therefor and shall be available to the Congress and the public.

(d) Submission of State emergency conservation plan

(1)[2] The Governor of a State in which all or any portion of the standby Federal conservation plan is or will be in effect may submit at any time a State emergency conservation plan, and if it is approved under section 8512(c) of this title, all or such portion of the standby Federal conservation plan shall cease to be effective in that State. Nothing in this paragraph shall affect any action or pending proceedings, administrative or civil, not finally determined on such date, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such cessation of effectiveness.

(e) State substitute emergency conservation measures

(1) After the President makes all or any part of the standby Federal conservation plan effective in any State or political subdivision under subsection (b) of this section, the Secretary shall provide procedures whereby such State or any political subdivision thereof may submit to the Secretary for approval one or more measures under authority of State or local law to be implemented by such State or political subdivision and to be substituted for any Federal measure in the Federal plan. The measures may include provisions whereby persons affected by such Federal measure are permitted to use alternative means of conserving at least as much energy as would be conserved by such Federal measure. Such measures shall provide effective procedures, as determined by the Secretary, for the approval and enforcement of such alternative means by such State or by any political subdivision thereof.

(2) The Secretary may approve the measures under paragraph (1) if he finds—

(A) that such measures when in effect will conserve at least as much energy as would be conserved by such Federal measure which would have otherwise been in effect in such State or political subdivision;

(B) such measures otherwise meet the requirements of this paragraph; and

(C) such measures would be approved under section 8512(c)(1)(B), (C), and (D) of this title.

(3) If the Secretary approves measures under this subsection such Federal measure shall cease to be effective in that State or political subdivision. Nothing in this paragraph shall affect any action or pending proceedings, administrative or civil, not finally determined on the date the Federal measure ceases to be effective in that State or political subdivision, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such cessation of effectiveness.

(4) If the Secretary finds after a reasonable period of time that the requirements of this subsection are not being met under the measures in effect under this subsection he may reimpose the Federal measure referred to in paragraph (1).

(f) State authority to administer plan

At the request of the Governor of any State, the President may provide that the administration and enforcement of all or a portion of the standby Federal conservation plan made effective in that State under subsection (b) of this section be in accordance with section 8512(d)(1), (2), and (4) of this title.

(g) Presidential authority not to be delegated

Notwithstanding any other provision of law (other than subsection (f) of this section), the authority vested in the President under this section may not be delegated.

(h) Requirements of plan

The plan established under subsection (a) of this section shall—

(1) taken as a whole, be designed so that the plan, if implemented, would be likely to achieve the emergency conservation target under section 8511 of this title for which it would be implemented,

(2) taken as a whole, be designed so as not to impose an unreasonably disproportionate share of the burden of restrictions on energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof, and

(3) not contain any measure which the Secretary finds—

(A) is inconsistent with any otherwise applicable Federal law (including any rule or regulation under such law),

(B) is an undue burden on interstate commerce,

(C) is a tax, tariff, or user fee, or

(D) is a program for the assignment of rights for end-user purchases of gasoline or diesel fuel, as described in section 6263(a)(1)(A) and (B)[3] of this title.

(i) Plan may not authorize weekend closings of retail gasoline stations

(1) Except as provided in paragraph (2), the plan established under subsection (a) of this section may not provide for the restriction of hours of sale of motor fuel at retail at any time between Friday noon and Sunday midnight.

(2) Paragraph (1) shall not preclude the restriction on such hours of sale if that restriction occurs in connection with a program for re-

[2] So in original. No par. (2) has been enacted.

[3] See References in Text note below.

stricting hours of sale of motor fuel each day of the week on a rotating basis.

(j) Civil penalties

(1) Whoever violates the requirements of such a plan implemented under subsection (b) of this section shall be subject to a civil penalty not to exceed $1,000 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided under paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of that portion of the standby Federal conservation plan for which authority is delegated to that State under subsection (f) of this section.

(Pub. L. 96–102, title II, § 213, Nov. 5, 1979, 93 Stat. 762.)

REFERENCES IN TEXT

Section 753 of title 15, referred to in subsec. (a)(2), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

Section 6263 of this title, referred to in subsec. (h)(3)(D), was repealed by Pub. L. 106–469, title I, § 104(1), Nov. 9, 2000, 114 Stat. 2033.

§ 8514. Judicial review

(a) State actions

(1) Any State may institute an action in the appropriate district court of the United States, including actions for declaratory judgment, for judicial review of—

(A) any target established by the President under section 8511(a) of this title;

(B) any finding by the President under section 8513(b)(1)(A) of this title, relating to the achievement of the emergency energy conservation target of such State, or 8513(b)(2) of this title, relating to the achievement of the emergency energy conservation target of such State or the failure to carry out the assurances regarding implementation contained in an approved plan of such State; or

(C) any determination by the Secretary disapproving a State plan under section 8512(c) of this title, including any determination by the Secretary under section 8512(c)(1)(B) of this title that the plan is likely to impose an unreasonably disproportionate share of the burden of restrictions of energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof.

Such action shall be barred unless it is instituted within 30 calendar days after the date of publication of the establishment of a target referred to in subparagraph (A), the finding by the President referred to in subparagraph (B), or the determination by the Secretary referred to in subparagraph (C), as the case may be.

(2) The district court shall determine the questions of law and upon such determination certify such questions immediately to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(3) Any decision by such court of appeals on a matter certified under paragraph (2) shall be reviewable by the Supreme Court upon attainment of a writ of certiorari. Any petition for such a writ shall be filed no later than 20 days after the decision of the court of appeals.

(b) Repealed. Pub. L. 98–620, title IV, § 402(42), Nov. 8, 1984, 98 Stat. 3360

(c) Injunctive relief

With respect to judicial review under subsection (a)(1)(A) of this section, the court shall not have jurisdiction to grant any injunctive relief except in conjunction with a final judgment entered in the case.

(Pub. L. 96–102, title II, § 214, Nov. 5, 1979, 93 Stat. 764; Pub. L. 98–620, title IV, § 402(42), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–620 struck out subsec. (b) which required the court of appeals to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsec. (a)(2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 8515. Reports

(a) Monitoring

The Secretary shall monitor the implementation of State emergency conservation plans and of the standby Federal conservation plan and make such recommendations to the Governor of each affected State as he deems appropriate for modification to such plans.

(b) Omitted

(Pub. L. 96–102, title II, § 215, Nov. 5, 1979, 93 Stat. 765.)

CODIFICATION

Subsec. (b) of this section, which required the President to report annually to Congress on any activities undertaken pursuant to this subchapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 20th item on page 19 of House Document No. 103–7.

SUBCHAPTER II—OTHER AUTOMOBILE FUEL PURCHASE MEASURES

§ 8521. Minimum automobile fuel purchase measures

(a) General rule

If the provisions of this subsection are made applicable under subsection (c) of this section, no person shall purchase motor fuel from a motor fuel retailer in any transaction for use in any automobile or other vehicle unless—

(1) the price for the quantity purchased and placed into the fuel tank of that vehicle equals or exceeds $5.00; or

(2) in any case in which the amount paid for the quantity of motor fuel necessary to fill the fuel tank of that vehicle to capacity is less than $5.00, such person pays to the retailer an additional amount so that the total amount paid in that transaction equals $5.00.

Any person selling motor fuel in transactions to which the provisions of this subsection apply shall display at the point of sale notice of such provisions in accordance with regulations prescribed by the Secretary.

(b) $7.00 to be applicable in case of 8-cylinder vehicles

In applying subsection (a) of this section in the case of any vehicle with an engine having 8 cylinders (or more), ''$7.00'' shall be substituted for ''$5.00''.

(c) Applicability

(1) Unless applicable pursuant to paragraph (2), the requirements of subsection (a) of this section shall apply in any State and shall be administered and enforced as provided in subsection (g) of this section only if—

(A) the Governor of that State submits a request to the Secretary to have such requirements applicable in that State; and

(B) the attorney general of that State has found that (i) absent a delegation of authority under a Federal law, the Governor lacks the authority under the laws of the State to invoke comparable requirements, (ii) under applicable State law, the Governor and other appropriate State officers and employees are not prevented from administering and enforcing such requirements under a delegation of authority pursuant to Federal law, and (iii) if implemented such requirements would not be contrary to State law.

Subject to paragraph (2), such provisions shall cease to apply in any State if the Governor of the State withdraws any request under subparagraph (A).

(2) The requirements of subsection (a) of this section shall apply in every State if there is in effect a finding by the President that nationwide implementation of such requirements would be appropriate and consistent with the purposes of this chapter.

(3) Such requirements shall take effect in any State beginning on the 5th day after the Secretary or the President (as the case may be) publishes notice in the Federal Register of the applicability of the requirements to the State pursuant to paragraph (1) or (2).

(4) Notwithstanding any other provision of law, the authority vested in the President under paragraph (2) may not be delegated.

(d) Exemptions

The requirements of subsection (a) of this section shall not apply to any motorcycle or motorpowered bicycle, or to any comparable vehicle as may be determined by the Secretary by regulation.

(e) Adjustment of minimum levels

The Secretary may increase the $5.00 and $7.00 amounts specified in subsections (a) and (b) of this section if the Secretary considers it appropriate. Adjustments under this subsection shall be only in even dollar amounts.

(f) Civil penalties

(1) Whoever violates the requirements of subsection (a) of this section shall be subject to a civil penalty of not to exceed $100 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action under this section brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided in paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of the requirements of subsection (a) of this section the authority for which is delegated under subsection (g) of this section.

(g) Administration and enforcement delegated to States

(1) There is hereby delegated to the Governor of any State, and other State and local officers and employees designated by the Governor, the authority to administer and enforce, within that State, any provision of this subchapter which is to be administered and enforced in accordance with this section. Such authority includes the authority to institute actions on behalf of the United States for the imposition and collection of civil penalties under subsection (f) of this section.

(2)(A) All delegation of authority under paragraph (1) with respect to any State shall be considered revoked effective (i) upon the receipt of a written waiver of authority signed by the Governor of such State or (ii) upon a determination by the President that such delegation should be revoked, but only to the extent of that determination.

(B) If at any time the conditions of subsection (c)(1)(B) of this section are no longer satisfied in any State to which a delegation has been made under paragraph (1), the attorney general of that State shall transmit a written statement to that effect to the Governor of that State and to the President. Such delegation shall be considered revoked effective upon receipt by the President of such written statement and a determination by the President that such conditions are no longer satisfied, but only to the extent of that determination and consistent with such attorney general's statement.

(C) Any revocation under subparagraph (A) or (B) shall not affect any action or pending proceedings, administrative or civil, not finally determined on the date of such revocation, nor any administrative or civil action or proceeding, whether or not pending, based on any act committed or liability incurred prior to such revocation.

(D) The Secretary shall administer and enforce any provision of this subchapter which has been made effective under subsection (c)(2) of

this section and for which a delegation of authority is considered revoked under subparagraph (A).

(h) Coordination with other law

The charging and collecting of amounts referred to in subsection (a)(2) of this section under the requirements of subsection (a) of this section, or similar amounts collected under comparable requirements under any State law, shall not be considered a violation of—

(1) the Emergency Petroleum Allocation Act of 1973[1] [15 U.S.C. 751 et seq.] or any regulation thereunder; or

(2) any Federal or State law requiring the labeling or disclosure of the maximum price per gallon of any fuel.

(Pub. L. 96–102, title II, § 221, Nov. 5, 1979, 93 Stat. 765.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (h)(1), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

§ 8522. Out-of-State vehicles to be exempted from odd-even motor fuel purchase restrictions

(a) General rule

Notwithstanding any provision of any Federal, State, or local law, any odd-even fuel purchase plan in effect in any State may not prohibit the sale of motor fuel to any person for use in a vehicle bearing a license plate issued by any authority other than that State or a State contiguous to that State.

(b) "Odd-even fuel purchase plan" defined

For purposes of this section the term ''odd-even fuel purchase plan'' means any motor fuel sales restriction under which a person may purchase motor fuel for use in any vehicle only on days (or other periods of time) determined on the basis of a number or letter appearing on the license plate of that vehicle (or on any similar basis).

(Pub. L. 96–102, title II, § 222, Nov. 5, 1979, 93 Stat. 767.)

SUBCHAPTER III—STUDIES

§ 8531. Study and report

(a) Study of commercial and industrial storage of fuel

Not later than 180 days after November 5, 1979, the Secretary shall conduct a study and report to the Congress regarding the commercial and industrial storage of gasoline and middle distillates (other than storage in facilities which have capacities of less than 500 gallons or storage used exclusively and directly for agricultural, residential, petroleum refining, or pipeline transportation purposes).

(b) Contents of report

Such report shall—

(1) indicate to what extent storage activities have increased since November 1, 1978, and what business establishments (including utilities) have been involved;

(2) the estimated amount of gasoline and middle distillates (in the aggregate and by type and region) which are in storage within the United States at the time of the study, the amounts which were in storage at the same time during the calendar year preceding the study, and the purposes for which such storage is maintained; and

(3) contain such findings and recommendations for legislation and administrative action as the Secretary considers appropriate, including recommendations for improving the availability and quality of data concerning such storage.

(Pub. L. 96–102, title II, § 241, Nov. 5, 1979, 93 Stat. 768.)

§ 8532. Middle distillate monitoring program

(a) Monitoring program

(1) Not later than 60 days after November 5, 1979, the Secretary shall establish and maintain a data collection program for monitoring, at the refining, wholesale, and retail levels, the supply and demand levels of middle distillates on a periodic basis in each State.

(2) The program to be established under paragraph (1) shall provide for—

(A) the prompt collection of relevant demand and supply data under the authority available to the Secretary under other law; and

(B) the submission to Congress of periodic reports each containing a concise narrative analysis of the most recent data which the Secretary determines are accurate, and a discussion on a State-by-State basis of trends in such data which the Secretary determines are significant.

(3) All data and information collected under this program shall be available to the Congress and committees of the Congress, and, in accordance with otherwise applicable law, to appropriate State and Federal agencies and the public.

(4) Nothing in this subsection authorizes the direct or indirect regulation of the price of any middle distillate.

(5) For purposes of this section, the term ''middle distillate'' has the same meaning as given that term in section 211.51 of title 10, Code of Federal Regulations, as in effect on November 5, 1979.

(b) Report

Before December 31, 1979, the President shall submit a report to Congress in which the President shall examine the middle distillate situation, summarizing the data, information, and analyses described in subsection (a) of this section and discussing in detail matters required to be addressed in findings made pursuant to section 760a(d)(1)[1] of title 15.

(Pub. L. 96–102, title II, § 242, Nov. 5, 1979, 93 Stat. 768.)

[1] See References in Text note below.

[1] See References in Text note below.

REFERENCES IN TEXT

Section 760a of title 15, referred to in subsec. (b), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS

§ 8541. Administration

(a) Information

(1) The Secretary shall use the authority provided under section 796 of title 15 for the collection of such information as may be necessary for the enforcement of the provisions of subchapters I and II of this chapter.

(2) In carrying out his responsibilities under this chapter, the Secretary shall insure that timely and adequate information concerning the supplies, pricing, and distribution of motor fuels (and other energy sources which are the subject of targets in effect under section 8511 of this title) is obtained, analyzed, and made available to the public. Any Federal agency having responsibility for collection of such information under any other authority shall cooperate fully in facilitating the collection of such information.

(b) Effect on other laws

No State law or State program in effect on November 5, 1979, or which may become effective thereafter, shall be superseded by any provision of this chapter, or any rule, regulation, or order thereunder, except insofar as such State law or State program is in conflict with any such provision of section 8513 or 8521 of this title (or any rule, regulation, or order under this subchapter relating thereto) in any case in which measures have been implemented in that State under the authority of section 8513 or 8521 of this title (as the case may be).

(c) Termination

(1) The provisions of subchapters I, II, III, and IV of this chapter, including any actions taken thereunder, shall cease to have effect on July 1, 1983.

(2) Such expiration shall not affect any action or pending proceeding, administrative or civil, not finally determined on such date, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such expiration date.

(Pub. L. 96–102, title II, § 251, Nov. 5, 1979, 93 Stat. 769.)

CHAPTER 94—LOW-INCOME ENERGY ASSISTANCE

SUBCHAPTER I—HOME ENERGY ASSISTANCE

Sec.
8601 to 8612. Repealed.

SUBCHAPTER II—LOW-INCOME HOME ENERGY ASSISTANCE

8621. Home energy grants.
8622. Definitions.
8623. State allotments.
8624. Applications and requirements.
8625. Nondiscrimination provisions.
8626. Payments to States; fiscal year requirements respecting availability, etc.
8626a. Incentive program for leveraging non-Federal resources.
8626b. Residential Energy Assistance Challenge option (R.E.A.Ch.).
8627. Withholding of funds.
8628. Limitation on use of grants for construction.
8628a. Technical assistance, training, and compliance reviews.
8629. Studies and reports.
8630. Renewable fuels.

SUBCHAPTER I—HOME ENERGY ASSISTANCE

§§ 8601 to 8612. Repealed. Pub. L. 97–35, title XXVI, § 2611, Aug. 13, 1981, 95 Stat. 902

Section 8601, Pub. L. 96–223, title III, § 302, Apr. 2, 1980, 94 Stat. 288, set forth Congressional findings and declaration of purpose for low-income energy assistance program.

Section 8602, Pub. L. 96–223, title III, § 303, Apr. 2, 1980, 94 Stat. 288, defined ''household'', ''home energy'', ''lower living standard income level'', ''Secretary'', and ''State''.

Section 8603, Pub. L. 96–223, title III, § 304, Apr. 2, 1980, 94 Stat. 289, related to authorizations for home energy grants.

Section 8604, Pub. L. 96–223, title III, § 305, Apr. 2, 1980, 94 Stat. 289, set forth eligibility requirements for households.

Section 8605, Pub. L. 96–223, title III, § 306, Apr. 2, 1980, 94 Stat. 289, set forth provisions respecting allotments for grants.

Section 8606, Pub. L. 96–223, title III, § 307, Apr. 2, 1980, 94 Stat. 293, set forth limitations on uses of home energy grants for fiscal year 1981.

Section 8607, Pub. L. 96–223, title III, § 308, Apr. 2, 1980, 94 Stat. 294, set forth provisions respecting submission, contents, etc., for State plans.

Section 8608, Pub. L. 96–223, title III, § 309, Apr. 2, 1980, 94 Stat. 298, related to uniform collection data.

Section 8609, Pub. L. 96–223, title III, § 310, Apr. 2, 1980, 94 Stat. 298, related to amount and methods of payment.

Section 8610, Pub. L. 96–223, title III, § 311, Apr. 2, 1980, 94 Stat. 298, related to withholding of payments.

Section 8611, Pub. L. 96–223, title III, § 312, Apr. 2, 1980, 94 Stat. 298, set forth criminal penalties for violations of provisions.

Section 8612, Pub. L. 96–223, title III, § 313(a)–(c)(1), (d)–(g), Apr. 2, 1980, 94 Stat. 298, 299, related to administration and implementation of energy assistance programs.

EFFECTIVE DATE OF REPEAL

Section 2611 of Pub. L. 97–35 provided that the repeal made by that section is effective Oct. 1, 1981.

SHORT TITLE

Section 301 of title III of Pub. L. 96–223 provided that title III of Pub. L. 96–223, which enacted sections 8601 to 8612 of this title, and amended section 2014(d) of Title 7, Agriculture, was to be cited as the ''Home Energy Assistance Act of 1980'', prior to repeal by Pub. L. 97–35, title XXVI, § 2611, Aug. 13, 1981, 95 Stat. 902.

SUBCHAPTER II—LOW-INCOME HOME ENERGY ASSISTANCE

§ 8621. Home energy grants

(a) Authorization

The Secretary is authorized to make grants, in accordance with the provisions of this sub-

chapter, to States to assist low-income households, particularly those with the lowest incomes, that pay a high proportion of household income for home energy, primarily in meeting their immediate home energy needs.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this subchapter (other than section 8626a of this title), $2,000,000,000 for each of fiscal years 1995 through 1999, such sums as may be necessary for each of fiscal years 2000 and 2001, and $5,100,000,000 for each of fiscal years 2005 through 2007. The authorizations of appropriations contained in this subsection are subject to the program year provisions of subsection (c) of this section.

(c) Availability of appropriations

Amounts appropriated under this section for any fiscal year for programs and activities under this subchapter shall be made available for obligation in the succeeding fiscal year.

(d) Authorization of appropriations for leveraged resources

(1) There is authorized to be appropriated to carry out section 8626a of this title, $30,000,000 for each of fiscal years 1999 through 2004, except as provided in paragraph (2).

(2) For any of fiscal years 1999 through 2004 for which the amount appropriated under subsection (b) of this section is not less than $1,400,000,000, there is authorized to be appropriated $50,000,000 to carry out section 8626a of this title.

(e) Emergency funds

There is authorized to be appropriated in each fiscal year for payments under this subchapter, in addition to amounts appropriated for distribution to all the States in accordance with section 8623 of this title (other than subsection (e) of such section), $600,000,000 to meet the additional home energy assistance needs of one or more States arising from a natural disaster or other emergency. Funds appropriated pursuant to this subsection are hereby designated to be emergency requirements pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 901(b)(2)(D)], except that such funds shall be made available only after the submission to Congress of a formal budget request by the President (for all or a part of the appropriation pursuant to this subsection) that includes a designation of the amount requested as an emergency requirement as defined in such Act [2 U.S.C. 900 et seq.].

(Pub. L. 97–35, title XXVI, § 2602, Aug. 13, 1981, 95 Stat. 893; Pub. L. 98–558, title VI, § 601, Oct. 30, 1984, 98 Stat. 2889; Pub. L. 99–425, title V, § 501, Sept. 30, 1986, 100 Stat. 973; Pub. L. 101–501, title VII, §§ 701, 702, 707(b), Nov. 3, 1990, 104 Stat. 1258, 1261; Pub. L. 103–43, title XX, § 2011, June 10, 1993, 107 Stat. 214; Pub. L. 103–252, title III, §§ 302–304(a), 311(c)(1), May 18, 1994, 108 Stat. 657, 658, 661; Pub. L. 105–285, title III, § 302, Oct. 27, 1998, 112 Stat. 2756; Pub. L. 109–58, title I, § 121(a), Aug. 8, 2005, 119 Stat. 616.)

REFERENCES IN TEXT

Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (e), is classified to section 901 of Title 2, The Congress. Section 251 was amended by Pub. L. 105–33, title X, § 10203(a)(4), Aug. 5, 1997, 111 Stat. 699, and, as so amended, section 251(b)(2)(D) no longer refers to ''emergency requirements''. However, ''emergency requirements'' is referred to elsewhere in section 251.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (e), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of this title, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of this title, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 substituted ''and $5,100,000,000 for each of fiscal years 2005 through 2007'' for ''and $2,000,000,000 for each of fiscal years 2002 through 2004''.

1998—Subsec. (b). Pub. L. 105–285, § 302(a), inserted '', such sums as may be necessary for each of fiscal years 2000 and 2001, and $2,000,000,000 for each of fiscal years 2002 through 2004'' after ''1995 through 1999''.

Subsec. (c). Pub. L. 105–285, § 302(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(c)(1) In fiscal year 1993 and each fiscal year thereafter, amounts appropriated under this section for any fiscal year for programs and activities under this subchapter shall be made available for obligation only on the basis of a program year. The program year shall begin on October 1 of the fiscal year following the year in which the appropriation is made.

''(2) Amounts appropriated for fiscal year 1993 shall be available both to fund activities for the period between October 1, 1992, and July 1, 1993, and for the program year beginning July 1, 1993.

''(3) There are authorized to be appropriated such additional sums as may be necessary for the transition to carry out this subsection.''

Subsec. (d). Pub. L. 105–285, § 302(c), designated existing provisions as par. (1), substituted ''There is authorized'' for ''There are authorized'' and ''$30,000,000 for each of fiscal years 1999 through 2004, except as provided in paragraph (2)'' for ''$50,000,000 for each of the fiscal years 1996 and 1997, and such sums as may be necessary for each of the fiscal years 1998 and 1999'', and added par. (2).

Subsec. (e). Pub. L. 105–285, § 302(d), substituted ''There is authorized'' for ''There are authorized'' and ''(other than subsection (e) of such section)'' for ''(other than subsection (g))''.

1994—Subsec. (a). Pub. L. 103–252, § 302, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary of Health and Human Services is authorized to make grants, in accordance with the provisions of this subchapter, to States to assist eligible households to meet the costs of home energy.''

Subsec. (b). Pub. L. 103–252, §§ 303(a)(1), 311(c)(1)(A), substituted ''this subchapter (other than section 8626a of this title), $2,000,000,000 for each of fiscal years 1995 through 1999'' for ''this subchapter (other than section 8626a of this title) $2,307,000,000 for fiscal year 1990, $2,150,000,000 for fiscal year 1991, $2,230,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995'' and struck out second period at end.

Subsec. (c)(1). Pub. L. 103–252, § 311(c)(1)(B), made technical amendment to reference to this subchapter to correct reference to corresponding provision of original act.

Pub. L. 103–252, § 303(a)(2), which directed the substitution of ''October 1'' for ''July 1'' and ''following the year in which'' for ''for which'' in last sentence of sub-

sec. (c), was executed by making the substitutions in last sentence of subsec. (c)(1) to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 103–252, § 303(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''There are authorized to be appropriated to carry out section 8626a of this title, $25,000,000 in fiscal year 1992, and $50,000,000 for each of the fiscal years 1993, 1994, and 1995.''

Subsec. (e). Pub. L. 103–252, § 304(a), added subsec. (e).

1993—Subsec. (b). Pub. L. 103–43, § 2011(1), substituted ''1993, 1994, and 1995'' for ''1993 and 1994''.

Subsec. (d). Pub. L. 103–43, § 2011(2), substituted ''for each of the fiscal years 1993, 1994, and 1995'' for ''in each of the fiscal years 1993 and 1994''.

1990—Subsec. (b). Pub. L. 101–501, § 707(b)(1), which directed the amendment of this section by inserting ''(other than section 8626a of this title)'' after ''subchapter'', was executed to subsec. (b) to reflect the probable intent of Congress.

Pub. L. 101–501, § 702, struck out ''$2,050,000,000 for fiscal year 1987, $2,132,000,000 for fiscal year 1988, $2,218,000,000 for fiscal year 1989, and'' before ''$2,307,000,000'' and inserted '', $2,150,000,000 for fiscal year 1991, $2,230,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994. The authorizations of appropriations contained in this subsection are subject to the program year provisions of subsection (c) of this section.'' after ''1990''.

Subsec. (c). Pub. L. 101–501, § 701, added subsec. (c).

Subsec. (d). Pub. L. 101–501, § 707(b)(2), added subsec. (d).

1986—Subsec. (b). Pub. L. 99–425 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''There is authorized to be appropriated to carry out the provisions of this subchapter $2,140,000,000 for the fiscal year 1985, and $2,275,000,000 for the fiscal year 1986.''

1984—Subsec. (b). Pub. L. 98–558 substituted ''$2,140,000,000 for fiscal year 1985, and $2,275,000,000 for fiscal year 1986'' for ''$1,875,000,000 for each of fiscal years 1982, 1983, and 1984''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 314 of title III of Pub. L. 103–252 provided that: ''The amendments and repeals made by this title [see Short Title of 1994 Amendment note below] shall become effective on October 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1001 of Pub. L. 101–501 provided that:

''(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act [see Tables for classification] shall take effect on October 1, 1990.

''(b) SPECIAL EFFECTIVE DATES.—(1) The amendment made by section 207(b) [repealing a provision set out as a note preceding section 9861 of this title] shall take effect immediately before October 1, 1990.

''(2) Section 646(b) of the Head Start Act [section 9841(b) of this title], as added by section 115, shall take effect on April 1, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1001 of Pub. L. 99–425 provided that:

''(a) GENERAL EFFECTIVE DATE.—Except as provided in subsections (b) and (c), this Act and the amendments made by this Act [enacting sections 8628a, 9812a, 9910b, and 10901 to 10905 of this title, amending this section, sections 8623, 8624, 8629, 9803, 9834, 9835, 9837, 9840, 9862, 9867, 9871, 9874, 9877, 9901 to 9904, 9905a, 9908 to 9910, and 9910a of this title and section 4033 of Title 20, Education, enacting provisions set out as notes under this section and sections 8623, 9801, and 10901 of this title, and amending provisions set out as notes under section 9861 of this title and section 1932 of Title 7, Agriculture] shall take effect on October 1, 1986, or the date of the enactment of this Act [Sept. 30, 1986], whichever occurs later.

''(b) EFFECTIVE DATE FOR ENERGY CRISIS INTERVENTION AMENDMENTS.—The amendments made by section 502(a) [amending section 8623 of this title and enacting provisions set out as a note under section 8623 of this title] shall take effect on December 1, 1986, or 60 days after the date of the enactment of this Act [Sept. 30, 1986], whichever occurs later.

''(c) APPLICATION OF CERTAIN OTHER AMENDMENTS RELATING TO ENERGY ASSISTANCE.—The amendments made by subsections (a), (b), (c), and (d) of section 504 [amending section 8624 of this title] shall not apply with respect to any fiscal year beginning in or before the 60-day period ending on the effective date of this Act [Oct. 1, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 609 of Pub. L. 98–558 provided that:

''(a) Except as provided in subsections (b), (c), and (d), the amendments made by this title [amending this section and sections 8622 to 8624, 8626, 8627, and 8629 of this title] shall take effect on the date of enactment of this Act [Oct. 30, 1984].

''(b) The amendments made by section 605 [amending section 8624 of this title] shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act [Oct. 30, 1984].

''(c) The amendments made by section 606 [amending section 8626 of this title] shall apply to amounts held available for fiscal years beginning after September 30, 1985.

''(d) The amendment made by section 607 [amending section 8629 of this title] shall apply to data collected and compiled after the date of the enactment of this Act [Oct. 30, 1984]. Section 2610 of the Act [section 8629 of this title] as in effect before the date of the enactment of this Act shall apply with respect to the report submitted under such section 2610 for fiscal year 1984.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–285, title III, § 301, Oct. 27, 1998, 112 Stat. 2756, provided that: ''This title [amending this section and sections 8622 to 8624, 8626, 8626b, and 8628a of this title and enacting provisions set out as a note under section 8626b of this title] may be cited as the 'Low-Income Home Energy Assistance Amendments of 1998'.''

SHORT TITLE OF 1994 AMENDMENT

Section 301(a) of title III of Pub. L. 103–252 provided that: ''This title [enacting section 8626b of this title, amending this section and sections 8622 to 8624, 8626, 8626a, 8628a, and 8629 of this title, and enacting provisions set out above] may be cited as the 'Low-Income Home Energy Assistance Amendments of 1994'.''

SHORT TITLE

Section 2601 of title XXVI of Pub. L. 97–35 provided that: ''This title [enacting this subchapter and repealing subchapter I of this chapter] may be cited as the 'Low-Income Home Energy Assistance Act of 1981'.''

§ 8622. Definitions

As used in this subchapter:

(1) The term ''emergency'' means—

(A) a natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) a significant increase in the cost of home energy, as determined by the Secretary;

(D) a significant increase in home energy disconnections reported by a utility, a State regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food

Stamp Act of 1977 (7 U.S.C. 2011 et seq.), the national program to provide supplemental security income carried out under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), or the State temporary assistance for needy families program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), as determined by the head of the appropriate Federal agency;

(F) a significant increase in unemployment, layoffs, or the number of households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary, in the discretion of the Secretary, may determine to be appropriate.

(2) The term ''energy burden'' means the expenditures of the household for home energy divided by the income of the household.

(3) The term ''energy crisis'' means weather-related and supply shortage emergencies and other household energy-related emergencies.

(4) The term ''highest home energy needs'' means the home energy requirements of a household determined by taking into account both the energy burden of such household and the unique situation of such household that results from having members of vulnerable populations, including very young children, individuals with disabilities, and frail older individuals.

(5) The term ''household'' means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(6) The term ''home energy'' means a source of heating or cooling in residential dwellings.

(7) The term ''natural disaster'' means a weather event (relating to cold or hot weather), flood, earthquake, tornado, hurricane, or ice storm, or an event meeting such other criteria as the Secretary, in the discretion of the Secretary, may determine to be appropriate.

(8) The term ''poverty level'' means, with respect to a household in any State, the income poverty line as prescribed and revised at least annually pursuant to section 9902(2) of this title, as applicable to such State.

(9) The term ''Secretary'' means the Secretary of Health and Human Services.

(10) The term ''State'' means each of the several States and the District of Columbia.

(11) The term ''State median income'' means the State median income promulgated by the Secretary in accordance with procedures established under section 1397a(a)(6) of this title (as such procedures were in effect on August 12, 1981) and adjusted, in accordance with regulations prescribed by the Secretary, to take into account the number of individuals in the household.

(Pub. L. 97–35, title XXVI, § 2603, Aug. 13, 1981, 95 Stat. 894; Pub. L. 97–115, § 16, Dec. 29, 1981, 95 Stat. 1609; Pub. L. 98–558, title VI, § 602, Oct. 30, 1984, 98 Stat. 2890; Pub. L. 103–252, title III, §§ 304(b), 311(c)(2), May 18, 1994, 108 Stat. 658, 662; Pub. L. 105–285, title III, §§ 303, 304(a), Oct. 27, 1998, 112 Stat. 2756.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, referred to in par. (1)(E), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Social Security Act, referred to in par. (1)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. Title XVI of the Act is classified generally to subchapter XVI (§ 1381 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In par. (11), ''August 12, 1981'' substituted for ''the day before the date of the enactment of this Act'', which date of enactment is Aug. 13, 1981.

AMENDMENTS

1998—Pars. (1) to (3). Pub. L. 105–285, § 304(a)(3), (4), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively. Former par. (3) redesignated (4).

Par. (4). Pub. L. 105–285, § 304(a)(3), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Pub. L. 105–285, § 303, substituted ''The term'' for ''the term'' and a period for the semicolon at end.

Pars. (5), (6). Pub. L. 105–285, § 304(a)(3), redesignated pars. (4) and (5) as (5) and (6), respectively. Former par. (6) redesignated (8).

Pars. (7) to (11). Pub. L. 105–285, § 304(a)(1), (2), added par. (7) and redesignated formers pars. (6) to (9) as (8) to (11), respectively.

1994—Par. (1). Pub. L. 103–252, § 304(b)(1), (2), added par. (1). Former par. (1) redesignated (2).

Par. (2). Pub. L. 103–252, § 311(c)(2), which directed the substitution of ''The'' for ''the'' and a period for the semicolon at end, could not be executed because the word ''the'' and a semicolon did not appear in par. (2) after the redesignations by Pub. L. 103–252, § 304(b)(1). See below.

Pub. L. 103–252, § 304(b)(1), redesignated par. (1) as (2). Former par. (2) redesignated (4).

Par. (3). Pub. L. 103–252, § 304(b)(3), added par. (3). Former par. (3) redesignated (5).

Par. (4). Pub. L. 103–252, § 304(b)(1), redesignated par. (2) as (4). Former par. (4) redesignated (6).

Pars. (5) to (9). Pub. L. 103–252, § 304(b)(1), redesignated pars. (3) to (7) as (5) to (9), respectively.

1984—Par. (1). Pub. L. 98–558, § 602(a), struck out ''intervention'' after ''energy crisis'' and inserted ''and other household energy-related emergencies'' at the end.

Par. (4). Pub. L. 98–558, § 602(b), substituted ''the income poverty line as prescribed and revised at least annually pursuant to section 9902(2) of this title,'' for ''the income poverty guidelines for the nonfarm population of the United States as prescribed by the Office of Management and Budget (and as adjusted annually pursuant to section 9902(2) of this title)''.

1981—Pub. L. 97–115 designated par. (2)(A) as par. (2), substituted provisions including individuals and groups of individuals who are living together as one economic unit for whom residential energy is customarily purchased in the form of rent in the definition of household, for provisions including individuals who occupy a housing unit in such definition, and struck out par. (2)(B), which provided that for purposes of subpar. (A), one or more rooms shall be treated as a housing unit when occupied as a separate living quarters.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 effective Oct. 30, 1984, see section 609(a) of Pub. L. 98–558, set out as a note under section 8621 of this title.

§ 8623. State allotments

(a) Amount; distribution, computation, etc.

(1)(A) Except as provided in subparagraph (B), the Secretary shall, from that percentage of the amount appropriated under section 8621(b) of this title for each fiscal year which is remaining after reserving any amount permitted to be reserved under section 8628a of this title and after the amount of allotments for such fiscal year under subsection (b)(1) of this section is determined by the Secretary, allot to each State an amount equal to such remaining percentage multiplied by the State's allotment percentage.

(B) From the sums appropriated therefor after reserving any amount permitted to be reserved under section 8628a of this title, if for any period a State has a plan which is described in section 8624(c)(1) of this title, the Secretary shall pay to such State an amount equal to 100 percent of the expenditures of such State made during such period in carrying out such plan, including administrative costs (subject to the provisions of section 8624(b)(9)(B) of this title), with respect to households described in section 8624(b)(2) of this title.

(2) For purposes of paragraph (1), for fiscal year 1985 and thereafter, a State's allotment percentage is the percentage which expenditures for home energy by low-income households in that State bears to such expenditures in all States, except that States which thereby receive the greatest proportional increase in allotments by reason of the application of this paragraph from the amount they received pursuant to Public Law 98–139 shall have their allotments reduced to the extent necessary to ensure that—

(A)(i) no State for fiscal year 1985 shall receive less than the amount of funds the State received in fiscal year 1984; and

(ii) no State for fiscal year 1986 and thereafter shall receive less than the amount of funds the State would have received in fiscal year 1984 if the appropriations for this subchapter for fiscal year 1984 had been $1,975,000,000, and

(B) any State whose allotment percentage out of funds available to States from a total appropriation of $2,250,000,000 would be less than 1 percent, shall not, in any year when total appropriations equal or exceed $2,250,000,000, have its allotment percentage reduced from the percentage it would receive from a total appropriation of $2,140,000,000.

(3) If the sums appropriated for any fiscal year for making grants under this subchapter are not sufficient to pay in full the total amount allocated to a State under paragraph (1) for such fiscal year, the amount which all States will receive under this subchapter for such fiscal year shall be ratably reduced.

(4) For the purpose of this section, the Secretary shall determine the expenditure for home energy by low-income households on the basis of the most recent satisfactory data available to the Secretary.

(b) Allotments to insular areas

(1) The Secretary shall apportion not less than one-tenth of 1 percent, and not more than one-half of 1 percent, of the amounts appropriated for each fiscal year to carry out this subchapter on the basis of need among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. The Secretary shall determine the total amount to be apportioned under this paragraph for any fiscal year (which shall not exceed one-half of 1 percent) after evaluating the extent to which each jurisdiction specified in the preceding sentence requires assistance under this paragraph for the fiscal year involved.

(2) Each jurisdiction to which paragraph (1) applies may receive grants under this subchapter upon an application submitted to the Secretary containing provisions which describe the programs for which assistance is sought under this subchapter, and which are consistent with the requirements of section 8624 of this title.

(c) Energy crisis intervention

Of the funds available to each State under subsection (a) of this section, a reasonable amount based on data from prior years shall be reserved until March 15 of each program year by each State for energy crisis intervention. The program for which funds are reserved by this subsection shall be administered by public or nonprofit entities which have experience in administering energy crisis programs under the Low-Income Energy Assistance Act of 1980, or under this subchapter,[1] experience in assisting low-income individuals in the area to be served, the capacity to undertake a timely and effective energy crisis intervention program, and the ability to carry out the program in local communities. The program for which funds are reserved under this subsection shall—

(1) not later than 48 hours after a household applies for energy crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits;

(2) not later than 18 hours after a household applies for crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits and is in a life-threatening situation; and

(3) require each entity that administers such program—

(A) to accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served by such entity; and

(B) to provide to low-income individuals who are physically infirm the means—

(i) to submit applications for energy crisis benefits without leaving their residences; or

(ii) to travel to the sites at which such applications are accepted by such entity.

The preceding sentence shall not apply to a program in a geographical area affected by a natu-

[1] See References in Text note below.

ral disaster in the United States designated by the Secretary, or by a major disaster or emergency designated by the President under the Disaster Relief Act of 1974[1] [42 U.S.C. 5121 et seq.], for so long as such designation remains in effect, if the Secretary determines that such disaster or such emergency makes compliance with such sentence impracticable.

(d) Allotments to Indian tribes

(1) If, with respect to any State, the Secretary—

(A) receives a request from the governing organization of an Indian tribe within the State that assistance under this subchapter be made directly to such organization; and

(B) determines that the members of such tribe would be better served by means of grants made directly to provide benefits under this subchapter;

the Secretary shall reserve from amounts which would otherwise be payable to such State from amounts allotted to it under this subchapter for the fiscal year involved the amount determined under paragraph (2).

(2) The amount determined under this paragraph for a fiscal year is the amount which bears the same ratio to the amount which would (but for this subsection) be allotted to such State under this subchapter for such fiscal year (other than by reason of section 8626(b)(2) of this title) as the number of Indian households described in subparagraphs (A) and (B) of section 8624(b)(2) of this title and residing within the State on the reservation of the tribes or on trust lands adjacent to such reservation bears to the number of all households described in subparagraphs (A) and (B) of section 8624(b)(2) of this title in such State, or such greater amount as the Indian tribe and the State may agree upon. In cases where a tribe has no reservation, the Secretary, in consultation with the tribe and the State, shall define the number of Indian households for the determination under this paragraph.

(3) The sums reserved by the Secretary on the basis of a determination under this subsection shall be granted to—

(A) the tribal organization serving the individuals for whom such a determination has been made; or

(B) in any case where there is no tribal organization serving an individual for whom such a determination has been made, such other entity as the Secretary determines has the capacity to provide assistance pursuant to this subchapter.

(4) In order for a tribal organization or other entity to be eligible for an amount under this subsection for a fiscal year, it shall submit to the Secretary a plan (in lieu of being under the State's plan) for such fiscal year which meets such criteria as the Secretary may by regulations prescribe.

(e) Allotment of emergency funds

Notwithstanding subsections (a) through (d) of this section, the Secretary may allot amounts appropriated pursuant to section 8621(e) of this title to one or more than one State. In determining whether to make such an allotment to a State, the Secretary shall take into account the extent to which the State was affected by the natural disaster or other emergency involved, the availability to the State of other resources under the program carried out under this subchapter or any other program, and such other factors as the Secretary may find to be relevant. Not later than 30 days after making the determination, but prior to releasing an allotted amount to a State, the Secretary shall notify Congress of the allotments made pursuant to this subsection.

(Pub. L. 97–35, title XXVI, § 2604, Aug. 13, 1981, 95 Stat. 894; Pub. L. 98–558, title VI, §§ 603, 604, Oct. 30, 1984, 98 Stat. 2890; Pub. L. 99–425, title V, §§ 502(a), 503, 505(b), Sept. 30, 1986, 100 Stat. 973–975; Pub. L. 101–501, title VII, § 703, Nov. 3, 1990, 104 Stat. 1258; Pub. L. 103–252, title III, §§ 304(c), 311(c)(3), May 18, 1994, 108 Stat. 659, 662; Pub. L. 105–285, title III, §§ 304(b), 305, Oct. 27, 1998, 112 Stat. 2757.)

REFERENCES IN TEXT

Public Law 98–139, referred to in subsec. (a)(2), is Pub. L. 98–139, Oct. 31, 1983, 97 Stat. 871, known as the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1984. For complete classification of this Act to the Code see Tables.

The Low-Income Energy Assistance Act of 1980, referred to in subsec. (c), probably means the Home Energy Assistance Act of 1980, which is title III of Pub. L. 96–223, Apr. 2, 1980, 94 Stat. 288, and which was classified generally to subchapter I of this chapter prior to repeal by Pub. L. 97–35, title XXVI, § 2611, Aug. 13, 1981, 95 Stat. 902. For complete classification of this Act to the Code, see Tables.

This subchapter, referred to in subsec. (c), was in the original "this Act" which was translated as reading "this title", meaning title XXVI of Pub. L. 97–35, as the probable intent of Congress.

The Disaster Relief Act of 1974, referred to in subsec. (c), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. The 1974 Act was renamed "The Robert T. Stafford Disaster Relief and Emergency Assistance Act", and was substantially revised by Pub. L. 100–707, Nov. 23, 1988, 102 Stat. 4689. Section 102(b) of Pub. L. 100–707 provided that a reference in any other law to a provision of the Disaster Relief Act of 1974 shall be deemed to be a reference to such provision of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The name of the Act was subsequently changed to the "Robert T. Stafford Disaster Relief and Emergency Assistance Act" by Pub. L. 106–390, title III, § 301, Oct. 30, 2000, 1114 Stat. 1572. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–285, § 305(1), substituted "and the Commonwealth of the Northern Mariana Islands." for "the Northern Mariana Islands, and the Trust Territory of the Pacific Islands."

Subsec. (c)(3)(B)(ii). Pub. L. 105–285, § 305(2), substituted "applications" for "application".

Subsec. (e). Pub. L. 105–285, § 305(5), redesignated subsec. (g) as (e).

Subsec. (f). Pub. L. 105–285, § 305(3), struck out subsec. (f) relating to optional transfer of funds to block grants for community service programs, preventive health services, etc.

Subsec. (g). Pub. L. 105–285, § 305(5), redesignated subsec. (g) as (e).

Pub. L. 105–285, §§ 304(b), 305(4), substituted "subsections (a) through (d) of this section" for "sub-

sections (a) through (f) of this section'' and ''In determining whether to make such an allotment to a State, the Secretary shall take into account the extent to which the State was affected by the natural disaster or other emergency involved, the availability to the State of other resources under the program carried out under this subchapter or any other program, and such other factors as the Secretary may find to be relevant. Not later than 30 days after making the determination, but prior to releasing an allotted amount to a State, the Secretary shall notify Congress of the allotments made pursuant to this subsection.'' for ''In determining to which State or States additional funds may be allotted, the Secretary shall take into account the extent to which a State was affected by the emergency or disaster, the availability to an affected State of other resources under this or any other program, and such other factors as the Secretary determines relevant. The Secretary shall notify Congress of the allotment pursuant to this subsection prior to releasing the allotted funds.''

1994—Subsec. (b)(1). Pub. L. 103–252, § 311(c)(3), inserted ''of the United States'' after ''Virgin Islands''.

Subsec. (g). Pub. L. 103–252, § 304(c), added subsec. (g).

1990—Subsec. (f). Pub. L. 101–501 designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, substituted ''in accordance with paragraph (2) a percentage'' for ''up to 10 percent'', ''or a combination'' for ''or any combination'', and ''subparagraphs (A), (B), and (C)'' for ''paragraphs (1), (2), and (3)'', and added par. (2).

1986—Subsec. (a)(1)(A). Pub. L. 99–425, § 505(b)(1), inserted ''after reserving any amount permitted to be reserved under section 8628a of this title and'' after ''remaining''.

Subsec. (a)(1)(B). Pub. L. 99–425, § 505(b)(2), inserted ''after reserving any amount permitted to be reserved under section 8628a of this title'' after ''therefor''.

Subsec. (c). Pub. L. 99–425, § 502(a), substituted ''the capacity'' for ''and the capacity'', inserted '', and the ability to carry out the program in local communities'', and inserted provisions relating to hourly time periods in which the program must respond, application for benefits, and nonapplicability of the program to areas affected by a natural disaster or major disaster.

Subsec. (d)(2). Pub. L. 99–425, § 503, substituted ''and residing within the State on the reservation of the tribes or on trust lands adjacent to such reservation'' for ''in such State with respect to which a determination under this subsection is made'', inserted '', or such greater amount as the Indian tribe and the State may agree upon'', and inserted ''In cases where a tribe has no reservation, the Secretary, in consultation with the tribe and the State, shall define the number of Indian households for the determination under this paragraph.''

1984—Subsec. (a)(2). Pub. L. 98–558, § 604(a), amended par. (2) generally, substituting provisions relating to State allotment computation for former provisions which also related to computation of State allotment formulas and adding subpars. (A) and (B).

Subsec. (a)(4). Pub. L. 98–558, § 604(b), added par. (4).

Subsec. (c). Pub. L. 98–558, § 603(a), inserted ''until March 15 of each program year'' after ''reserved'' and inserted ''The program for which funds are reserved by this subsection shall be administered by public or nonprofit entities which have experience in administering energy crisis programs under the Low-Income Energy Assistance Act of 1980, or under this subchapter, experience in assisting low-income individuals in the area to be served, and the capacity to undertake a timely and effective energy crisis intervention program.''

Subsec. (d)(1). Pub. L. 98–558, § 603(b), substituted ''otherwise be payable'' for ''otherwise be paid'' in provisions following subpar. (B).

Subsec. (e). Pub. L. 98–558, § 603(c), struck out subsec. (e) which related to direct payments to households and State options.

Subsec. (f). Pub. L. 98–558, § 603(d), substituted ''the funds payable to it'' for ''its allotment''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 502(a) of Pub. L. 99–425 effective Dec. 1, 1986, and amendment by sections 503 and 505(b) of Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 effective Oct. 30, 1984, see section 609(a) of Pub. L. 98–558, set out as a note under section 8621 of this title.

RULES FOR ENERGY CRISIS INTERVENTION

Section 502(b) of Pub. L. 99–425 provided that: ''Not later than 60 days after the date of the enactment of this Act [Sept. 30, 1986], the Secretary of Health and Human Services shall issue rules to carry out the amendments made by subsection (a) [amending this section].''

§ 8624. Applications and requirements

(a) Form; assurances; public hearings

(1) Each State desiring to receive an allotment for any fiscal year under this subchapter shall submit an application to the Secretary. Each such application shall be in such form as the Secretary shall require. Each such application shall contain assurances by the chief executive officer of the State that the State will meet the conditions enumerated in subsection (b) of this section.

(2) After the expiration of the first fiscal year for which a State receives funds under this subchapter, no funds shall be allotted to such State for any fiscal year under this subchapter unless such State conducts public hearings with respect to the proposed use and distribution of funds to be provided under this subchapter for such fiscal year.

(b) Certifications required for covered activities

As part of the annual application required by subsection (a) of this section, the chief executive officer of each State shall certify that the State agrees to—

(1) use the funds available under this subchapter to—

(A) conduct outreach activities and provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes that pay a high proportion of household income for home energy, consistent with paragraph (5);

(B) intervene in energy crisis situations;

(C) provide low-cost residential weatherization and other cost-effective energy-related home repair; and

(D) plan, develop, and administer the State's program under this subchapter including leveraging programs,

and the State agrees not to use such funds for any purposes other than those specified in this subchapter;

(2) make payments under this subchapter only with respect to—

(A) households in which 1 or more individuals are receiving—

(i) assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.];

(ii) supplemental security income payments under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.];

(iii) food stamps under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; or

(iv) payments under section 1315, 1521, 1541, or 1542 of title 38, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; or

(B) households with incomes which do not exceed the greater of—

(i) an amount equal to 150 percent of the poverty level for such State; or

(ii) an amount equal to 60 percent of the State median income;

except that a State may not exclude a household from eligibility in a fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income;

(3) conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this subchapter, and any similar energy-related assistance available under subtitle B of title VI (relating to community services block grant program) [42 U.S.C. 9901 et seq.] or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] before August 13, 1981;

(4) coordinate its activities under this subchapter with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program) [42 U.S.C. 9901 et seq.], under the supplemental security income program, under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], under title XX of the Social Security Act [42 U.S.C. 1397 et seq.], under the low-income weatherization assistance program under title IV of the Energy Conservation and Production Act [42 U.S.C. 6851 et seq.], or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] before August 13, 1981;

(5) provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between the households described in clause (2)(A) and (2)(B) of this subsection;

(6) to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of this subchapter, give special consideration, in the designation of such agencies, to any local public or private nonprofit agency which was receiving Federal funds under any low-income energy assistance program or weatherization program under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] or any other provision of law on August 12, 1981, except that—

(A) the State shall, before giving such special consideration, determine that the agency involved meets program and fiscal requirements established by the State; and

(B) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the State shall give special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the fiscal year preceding the fiscal year for which the determination is made;

(7) if the State chooses to pay home energy suppliers directly, establish procedures to—

(A) notify each participating household of the amount of assistance paid on its behalf;

(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this subchapter;

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this subchapter will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and

(D) ensure that the provision of vendored payments remains at the option of the State in consultation with local grantees and may be contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households, including providing for agreements between suppliers and individuals eligible for benefits under this subchapter[1] that seek to reduce home energy costs, minimize the risks of home energy crisis, and encourage regular payments by individuals receiving financial assistance for home energy costs;

(8) provide assurances that (A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits under clause (2), and (B) the State will treat owners and renters equitably under the program assisted under this subchapter;

(9) provide that—

(A) the State may use for planning and administering the use of funds under this sub-

[1] See References in Text note below.

chapter an amount not to exceed 10 percent of the funds payable to such State under this subchapter for a fiscal year; and

(B) the State will pay from non-Federal sources the remaining costs of planning and administering the program assisted under this subchapter and will not use Federal funds for such remaining costs (except for the costs of the activities described in paragraph (16));

(10) provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under this subchapter, including procedures for monitoring the assistance provided under this subchapter, and provide that the State will comply with the provisions of chapter 75 of title 31 (commonly known as the ''Single Audit Act'');

(11) permit and cooperate with Federal investigations undertaken in accordance with section 8627 of this title;

(12) provide for timely and meaningful public participation in the development of the plan described in subsection (c) of this section;

(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) of this section are denied or are not acted upon with reasonable promptness;

(14) cooperate with the Secretary with respect to data collecting and reporting under section 8629 of this title;

(15) beginning in fiscal year 1992, provide, in addition to such services as may be offered by State Departments of Public Welfare at the local level, outreach and intake functions for crisis situations and heating and cooling assistance that is administered by additional State and local governmental entities or community-based organizations (such as community action agencies, area agencies on aging, and not-for-profit neighborhood-based organizations), and in States where such organizations do not administer intake functions as of September 30, 1991, preference in awarding grants or contracts for intake services shall be provided to those agencies that administer the low-income weatherization or energy crisis intervention programs; and

(16) use up to 5 percent of such funds, at its option, to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance, including needs assessments, counseling, and assistance with energy vendors, and report to the Secretary concerning the impact of such activities on the number of households served, the level of direct benefits provided to those households, and the number of households that remain unserved.

The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection. The Secretary shall issue regulations to prevent waste, fraud, and abuse in the programs assisted by this subchapter.

Not later than 18 months after May 18, 1994, the Secretary shall develop model performance goals and measurements in consultation with State, territorial, tribal, and local grantees, that the States may use to assess the success of the States in achieving the purposes of this subchapter. The model performance goals and measurements shall be made available to States to be incorporated, at the option of the States, into the plans for fiscal year 1997. The Secretary may request data relevant to the development of model performance goals and measurements.

(c) State plan; revision; public inspection

(1) As part of the annual application required in subsection (a) of this section, the chief executive officer of each State shall prepare and furnish to the Secretary, in such format as the Secretary may require, a plan which—

(A) describes the eligibility requirements to be used by the State for each type of assistance to be provided under this subchapter, including criteria for designating an emergency under section 8623(c) of this title;

(B) describes the benefit levels to be used by the State for each type of assistance including assistance to be provided for emergency crisis intervention and for weatherization and other energy-related home repair;

(C) contains estimates of the amount of funds the State will use for each of the programs under such plan and describes the alternative use of funds reserved under section 8623(c) of this title in the event any portion of the amount so reserved is not expended for emergencies;

(D) describes weatherization and other energy-related home repair the State will provide under subsection (k) of this section, including any steps the State will take to address the weatherization and energy-related home repair needs of households that have high home energy burdens, and describes any rules promulgated by the Department of Energy for administration of its Low Income Weatherization Assistance Program which the State, to the extent permitted by the Secretary to increase consistency between federally assisted programs, will follow regarding the use of funds provided under this subchapter by the State for such weatherization and energy-related home repairs and improvements;

(E) describes any steps that will be taken (in addition to those necessary to carry out the assurance contained in paragraph (5) of subsection (b) of this section) to target assistance to households with high home energy burdens;

(F) describes how the State will carry out assurances in clauses (3), (4), (5), (6), (7), (8), (10), (12), (13), and (15) of subsection (b) of this section;

(G) states, with respect to the 12-month period specified by the Secretary, the number and income levels of households which apply and the number which are assisted with funds provided under this subchapter, and the number of households so assisted with—

(i) one or more members who had attained 60 years of age;

(ii) one or more members who were disabled; and

(iii) one or more young children; and

(H) contains any other information determined by the Secretary to be appropriate for purposes of this subchapter.

The chief executive officer may revise any plan prepared under this paragraph and shall furnish the revised plan to the Secretary.

(2) Each plan prepared under paragraph (1) and each substantial revision thereof shall be made available for public inspection within the State involved in such a manner as will facilitate timely and meaningful review of, and comment upon, such plan or substantial revision.

(3) Not later than April 1 of each fiscal year the Secretary shall make available to the States a model State plan format that may be used, at the option of each State, to prepare the plan required under paragraph (1) for the next fiscal year.

(d) Expending of funds

The State shall expend funds in accordance with the State plan under this subchapter or in accordance with revisions applicable to such plan.

(e) Conduct of audits

Each State shall, in carrying out the requirements of subsection (b)(10) of this section, obtain financial and compliance audits of any funds which the State receives under this subchapter. Such audits shall be made public within the State on a timely basis. The audits shall be conducted in accordance with chapter 75 of title 31.

(f) Payments or assistance not to be deemed income or resources for any purpose under Federal or State law; determination of excess shelter expense deduction

(1) Notwithstanding any other provision of law unless enacted in express limitation of this paragraph, the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this subchapter shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law, including any law relating to taxation, food stamps, public assistance, or welfare programs.

(2) For purposes of paragraph (1) of this subsection and for purposes of determining any excess shelter expense deduction under section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e))—

(A) the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of, such household; and

(B) no distinction may be made among households on the basis of whether such payments or allowances are provided directly to, or indirectly for the benefit of, any of such households.

(g) Repayment of funds expended improperly; offset

The State shall repay to the United States amounts found not to have been expended in accordance with this subchapter or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this subchapter.

(h) Periodic evaluation of expenditures by Comptroller General

The Comptroller General of the United States shall, from time to time[2] evaluate the expenditures by States of grants under this subchapter in order to assure that expenditures are consistent with the provisions of this subchapter and to determine the effectiveness of the State in accomplishing the purposes of this subchapter.

(i) Certain recipients of supplemental security income ineligible for payments or assistance

A household which is described in subsection (b)(2)(A) of this section solely by reason of clause (ii) thereof shall not be treated as a household described in subsection (b)(2) of this section if the eligibility of the household is dependent upon—

(1) an individual whose annual supplemental security income benefit rate is reduced pursuant to section 1611(e)(1) of the Social Security Act [42 U.S.C. 1382(e)(1)] by reason of being in an institution receiving payments under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] with respect to such individual;

(2) an individual to whom the reduction specified in section 1612(a)(2)(A)(i) of the Social Security Act [42 U.S.C. 1382a(a)(2)(A)(i)] applies; or

(3) a child described in section 1614(f)(2) of the Social Security Act [42 U.S.C. 1382c(f)(2)] who is living together with a parent, or the spouse of a parent, of the child.

(j) State verification of income eligibility; policies and procedures applicable

In verifying income eligibility for purposes of subsection (b)(2)(B) of this section, the State may apply procedures and policies consistent with procedures and policies used by the State agency administering programs under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], under title XX of the Social Security Act [42 U.S.C. 1397 et seq.], under subtitle B of title VI of this Act (relating to community services block grant program) [42 U.S.C. 9901 et seq.], under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] before August 13, 1981, or under other income assistance or service programs (as determined by the State).

(k) Limitation on use of funds; waiver

(1) Except as provided in paragraph (2), not more than 15 percent of the greater of—

(A) the funds allotted to a State under this subchapter for any fiscal year; or

(B) the funds available to such State under this subchapter for such fiscal year;

may be used by the State for low-cost residential weatherization or other energy-related home repair for low-income households, particularly those low-income households with the lowest incomes that pay a high proportion of household income for home energy.

[2] So in original. Probably should be followed by a comma.

(2)(A) If a State receives a waiver granted under subparagraph (B) for a fiscal year, the State may use not more than the greater of 25 percent of—

(i) the funds allotted to a State under this subchapter for such fiscal year; or

(ii) the funds available to such State under this subchapter for such fiscal year;

for residential weatherization or other energy-related home repair for low-income households, particularly those low-income households with the lowest incomes that pay a high proportion of household income for home energy.

(B) For purposes of subparagraph (A), the Secretary may grant a waiver to a State for a fiscal year if the State submits a written request to the Secretary after March 31 of such fiscal year and if the Secretary determines, after reviewing such request and any public comments, that—

(i)(I) the number of households in the State that will receive benefits, other than weatherization and energy-related home repair, under this subchapter in such fiscal year will not be fewer than the number of households in the State that received benefits, other than weatherization and energy-related home repair, under this subchapter in the preceding fiscal year;

(II) the aggregate amounts of benefits that will be received under this subchapter by all households in the State in such fiscal year will not be less than the aggregate amount of such benefits that were received under this subchapter by all households in the State in the preceding fiscal year; and

(III) such weatherization activities have been demonstrated to produce measurable savings in energy expenditures by low-income households; or

(ii) in accordance with rules issued by the Secretary, the State demonstrates good cause for failing to satisfy the requirements specified in clause (i).

(*l*) State tax credits to energy suppliers who supply home energy at reduced rates to low-income households

(1) Any State may use amounts provided under this subchapter for the purpose of providing credits against State tax to energy suppliers who supply home energy at reduced rates to low-income households.

(2) Any such credit provided by a State shall not exceed the amount of the loss of revenue to such supplier on account of such reduced rate.

(3) Any certification for such tax credits shall be made by the State, but such State may use Federal data available to such State with respect to recipients of supplemental security income benefits if timely delivery of benefits to households described in subsection (b) of this section and suppliers will not be impeded by the use of such data.

(Pub. L. 97–35, title XXVI, § 2605, Aug. 13, 1981, 95 Stat. 896; Pub. L. 98–558, title VI, § 605, Oct. 30, 1984, 98 Stat. 2891; Pub. L. 99–425, title V, § 504, Sept. 30, 1986, 100 Stat. 974; Pub. L. 101–501, title VII, §§ 704, 705, Nov. 3, 1990, 104 Stat. 1259; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–252, title III, §§ 305–309, 311(a)(1), (b), (c)(4), (5), May 18, 1994, 108 Stat. 659–662; Pub. L. 104–66, title I, § 1072(c), Dec. 21, 1995, 109 Stat. 721; Pub. L. 104–193, title I, § 110(p), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 105–285, title III, § 306, Oct. 27, 1998, 112 Stat. 2758.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(2)(A)(i), (ii), (4), (i)(1), and (j), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Social Security Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. Titles XVI, XIX, and XX of the Social Security Act are classified generally to subchapters XVI (§ 1381 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (b)(2)(A)(iii), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, referred to in subsec. (b)(2)(A)(iv), is section 306 of Pub. L. 95–588, title III, Nov. 4, 1978, 92 Stat. 2508, which is set out as a note under section 521 of Title 38, Veterans' Benefits.

Subtitle B of title VI, referred to in subsecs. (b)(3), (4), and (j), is subtitle B of title VI of Pub. L. 97–35, § 671 et seq., Aug. 13, 1981, 95 Stat. 511, as amended, known as the Community Services Block Grant Act, which is classified generally to chapter 106 (§ 9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsecs. (b)(3), (4), (6), and (j), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, which was classified generally to chapter 34 (§ 2701 et seq.) of this title prior to repeal, except for titles VIII and X, by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§ 2991 et seq.) and X (§ 2996 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Tables.

The Energy Conservation and Production Act, referred to in subsec. (b)(4), is Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1142, as amended. Title IV of the Energy Conservation and Production Act is classified principally to subchapter III (§ 6851 et seq.) of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

This subchapter, referred to in subsec. (b)(7)(D), was in the original ''this Act'' and was translated as reading ''this title'', meaning title XXVI of Pub. L. 97–35, known as the Low-Income Home Energy Assistance Act of 1981, to reflect the probable intent of Congress.

CODIFICATION

In subsec. (b)(6), ''August 12, 1981'' substituted for ''the day before the date of the enactment of this Act'', which date of enactment is Aug. 13, 1981.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–285, § 306(1)(C), (D), struck out ''The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection.'' in provisions after par. (14) and inserted identical language before ''The Secretary shall issue'' in concluding provisions after par. (16).

Subsec. (b)(9)(A). Pub. L. 105–285, § 306(1)(A), struck out ''and not transferred pursuant to section 8623(f) of this title for use under another block grant'' before the semicolon.

Subsec. (b)(14). Pub. L. 105–285, § 306(1)(B), struck out ''and'' at end.

Subsec. (c)(1)(B). Pub. L. 105–285, § 306(2)(A), substituted ''State'' for ''States''.

Subsec. (c)(1)(G)(i). Pub. L. 105–285, § 306(2)(B), substituted ''had'' for ''has''.

Subsec. (k)(1), (2)(A). Pub. L. 105–285, § 306(3), inserted before period at end '', particularly those low-income households with the lowest incomes that pay a high proportion of household income for home energy''.

1996—Subsec. (b)(2)(A)(i). Pub. L. 104–193 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''aid to families with dependent children under the State's plan approved under part A of title IV of the Social Security Act (other than such aid in the form of foster care in accordance with section 408 of such Act);''.

1995—Subsec. (h). Pub. L. 104–66 struck out ''(but not less frequently than every three years),'' after ''from time to time''.

1994—Subsec. (b). Pub. L. 103–252, § 311(c)(4), transferred the sentence immediately preceding par. (15) to appear as a flush sentence immediately after par. (16).

Pub. L. 103–252, § 311(b), inserted at end ''Not later than 18 months after May 18, 1994, the Secretary shall develop model performance goals and measurements in consultation with State, territorial, tribal, and local grantees, that the States may use to assess the success of the States in achieving the purposes of this subchapter. The model performance goals and measurements shall be made available to States to be incorporated, at the option of the States, into the plans for fiscal year 1997. The Secretary may request data relevant to the development of model performance goals and measurements.''

Subsec. (b)(1). Pub. L. 103–252, § 305(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''use the funds available under this subchapter for the purposes described in section 8621(a) of this title and otherwise in accordance with the requirements of this subchapter, and agrees not to use such funds for any payments other than payments specified in this section;''.

Subsec. (b)(2)(B). Pub. L. 103–252, § 306(a), in concluding provisions substituted ''except that a State may not exclude a household from eligibility in a fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income;'' for ''except that no household may be excluded from eligibility under this subclause for payments under this subchapter for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year''.

Subsec. (b)(3). Pub. L. 103–252, §§ 306(b), 311(c)(3), substituted ''disabled'' for ''handicapped'' and ''and households with high home energy burdens, are made aware'' for ''are made aware''.

Subsec. (b)(5). Pub. L. 103–252, § 306(c), inserted ''or needs'' after ''highest energy costs''.

Subsec. (b)(7)(D). Pub. L. 103–252, § 311(a)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''assure that any home energy supplier receiving direct payments agrees not to discriminate, either in the cost of the goods supplied or the services provided, against the eligible household on whose behalf payments are made;''.

Subsec. (b)(9)(B). Pub. L. 103–252, § 305(b)(1), inserted before semicolon at end ''(except for the costs of the activities described in paragraph (16))''.

Subsec. (b)(10). Pub. L. 103–252, § 307(1), substituted ''and provide that the State will comply with the provisions of chapter 75 of title 31 (commonly known as the 'Single Audit Act')'' for ''and provide that at least every two years the State shall prepare an audit of its expenditures of amounts received under this subchapter and amounts transferred to carry out the purposes of this subchapter''.

Subsec. (b)(16). Pub. L. 103–252, § 305(b)(2), (3), added par. (16).

Subsec. (c)(1)(D). Pub. L. 103–252, § 308, inserted before semicolon at end '', including any steps the State will take to address the weatherization and energy-related home repair needs of households that have high home energy burdens, and describes any rules promulgated by the Department of Energy for administration of its Low Income Weatherization Assistance Program which the State, to the extent permitted by the Secretary to increase consistency between federally assisted programs, will follow regarding the use of funds provided under this subchapter by the State for such weatherization and energy-related home repairs and improvements''.

Subsec. (c)(1)(E). Pub. L. 103–252, § 306(d)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (c)(1)(F). Pub. L. 103–252, §§ 306(d)(1), 309(1), redesignated subpar. (E) as (F), substituted ''(13), and (15)'' for ''and (13)'', and struck out ''and'' at end. Former subpar. (F) redesignated (H).

Subsec. (c)(1)(G). Pub. L. 103–252, § 309(2), added subpar. (G).

Subsec. (c)(1)(H). Pub. L. 103–252, § 306(d)(1), redesignated subpar. (F) as (H).

Subsec. (e). Pub. L. 103–252, § 307(2), substituted ''in accordance with chapter 75 of title 31'' for ''at least every two years by an organization or person independent of any agency administering activities under this subchapter. The audits shall be conducted in accordance with the Comptroller General's standards for audit of governmental organizations, programs, activities, and functions. Within 30 days after completion of each audit, the chief executive officer of the State shall submit a copy of the audit to the legislature of the State and to the Secretary''.

1991—Subsec. (b)(2)(A)(iv). Pub. L. 102–83 substituted ''section 1315, 1521, 1541, or 1542 of title 38'' for ''section 415, 521, 541, or 542 of title 38''.

1990—Subsec. (b)(12). Pub. L. 101–501, § 704(a)(1), inserted ''timely and meaningful'' after ''provide for''.

Subsec. (b)(15). Pub. L. 101–501, § 704(a)(2)–(4), added par. (15) at end.

Subsec. (c)(2). Pub. L. 101–501, § 704(b), inserted ''timely and meaningful'' after ''will facilitate''.

Subsec. (k). Pub. L. 101–501, § 705, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, substituted ''Except as provided in paragraph (2), not'' for ''Not'', and added par. (2).

1986—Subsec. (b)(5). Pub. L. 99–425, § 504(a), substituted ''in a timely manner'' for ''in a manner consistent with the efficient and timely payment of benefits''.

Subsec. (b)(14) to (17). Pub. L. 99–425, § 504(b), redesignated cl. (17) as (14), and struck out former cls. (14) to (16) which read as follows:

''(14) describe the procedures by which households in the State are identified as eligible to participate under this subchapter and the manner in which the State determines benefit levels;

''(15) describe the amount that the State will reserve in accordance with section 8623(c) of this title in each fiscal year for energy crisis intervention activities together with the administrative procedures (A) for designating an emergency, (B) for determining the assistance to be provided in any such emergency, and (C) for the use of funds reserved under such section for the purposes under this subchapter in the event any portion of the amount so reserved is not expended for emergencies.

''(16) describe energy usage and the average cost of home energy in the State, identified by type of fuel and by region of the State;''.

Subsec. (c)(1). Pub. L. 99–425, § 504(c), revised provisions relating to requirements for State plans, restating as subpars. (A) to (F), provisions of former subpars. (A) to (E).

Subsec. (c)(3). Pub. L. 99–425, § 504(d), added par. (3).

Subsec. (f). Pub. L. 99–425, § 504(e), designated existing provisions as par. (1), substituted ''provided directly to, or indirectly for the benefit of'' for ''provided to'', and added par. (2).

1984—Subsec. (b). Pub. L. 98–558, § 605(a)(9), inserted at end ''The Secretary shall issue regulations to prevent waste, fraud, and abuse in the programs assisted by this subchapter.''.

Subsec. (b)(1). Pub. L. 98–558, § 605(a)(1), substituted ''section'' for ''subsection''.

Subsec. (b)(2)(B). Pub. L. 98–558, § 605(a)(2), inserted ''except that no household may be excluded from eligibility under this subclause for payments under this subchapter for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year''.

Subsec. (b)(5). Pub. L. 98–558, § 605(a)(3), inserted '', except that the State may not differentiate in implementing this section between the households described in clause (2)(A) and (2)(B) of this subsection''.

Subsec. (b)(7)(C). Pub. L. 98–558, § 605(a)(4), substituted ''adversely'' for ''any differently''.

Subsec. (b)(8). Pub. L. 98–558, § 605(a)(5), designated existing provisions as subpar. (B) and added subpar. (A).

Subsec. (b)(9)(A). Pub. L. 98–558, § 605(a)(6), in amending subpar. (A) generally, struck out ''in each fiscal year'' before ''the State may'' and substituted ''for a fiscal year and not transferred pursuant to section 8623(f) of this title for use under another block grant'' for ''for such fiscal year''.

Subsec. (b)(10). Pub. L. 98–558, § 605(a)(7), substituted ''every two years'' for ''every year''.

Subsec. (b)(14) to (17). Pub. L. 98–558, § 605(a)(8), which directed amendment of subsec. (b) by adding pars. (14) to (17) at the end thereof, was executed by adding those pars. after par. (13) to reflect the probable intent of Congress.

Subsec. (c)(1). Pub. L. 98–558, § 605(b)(1), in amending par. (1) generally, designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (c)(2). Pub. L. 98–558, § 605(b)(2), inserted ''and each substantial revision thereof'' and ''or substantial revision'' at the end.

Subsec. (d). Pub. L. 98–558, § 605(c), in amending subsec. (d) generally, substituted provisions that the State shall expend funds in accordance with the State plan or revisions thereto for former provisions which related to waiver of requirements.

Subsec. (e). Pub. L. 98–558, § 605(d), in amending subsec. (e) generally, inserted provisions requiring that the audits be made public and that they shall be conducted in accordance with the Comptroller General's standards.

Subsec. (f). Pub. L. 98–558, § 605(e), inserted ''unless enacted in express limitation of this paragraph''.

Subsec. (h). Pub. L. 98–558, § 605(f), inserted ''(but not less frequently than every three years)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 504(a)–(d) of Pub. L. 99–425 not applicable with respect to any fiscal year beginning in or before the 60-day period ending on Oct. 1, 1986, and amendment by section 504(e) effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 effective on first day of first fiscal year beginning after Oct. 30, 1984, see section 609(b) of Pub. L. 98–558, set out as a note under section 8621 of this title.

CLARIFICATION ON UTILITY ALLOWANCES

Pub. L. 102–550, title IX, § 927, Oct. 28, 1992, 106 Stat. 3885, as amended by Pub. L. 103–185, § 1, Dec. 14, 1993, 107 Stat. 2244, provided that:

''(a) ELIGIBILITY.—Tenants who—

''(1) are responsible for making out-of-pocket payments for utility bills; and

''(2) receive energy assistance through utility allowances that include energy costs under programs identified in subsection (c);

shall not have their eligibility or benefits under other programs designed to assist low-income people with increases in energy costs since 1978 reduced or eliminated, except as provided in subsection (d).

''(b) EQUAL TREATMENT IN BENEFIT PROGRAMS.—Tenants described in subsection (a) shall be treated identically with other households eligible for or receiving energy assistance, including in the determination of the home energy costs for which they are individually responsible and in the determination of their incomes for any program in which eligibility or benefits are based on need, except as provided in subsection (d).

''(c) APPLICABILITY.—This section applies to programs under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], and title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

''(d) SPECIAL RULE FOR LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.—For purposes of the Low-Income Home Energy Assistance Program, tenants described in subsection (a)(2) who are responsible for paying some or all heating or cooling costs shall not have their eligibility automatically denied. A State may consider the amount of the heating or cooling component of utility allowances received by tenants described in subsection (a)(2) when setting benefit levels under the Low-Income Home Energy Assistance Program. The size of any reduction in Low-Income Home Energy Assistance Program benefits must be reasonably related to the amount of the heating or cooling component of the utility allowance received and must ensure that the highest level of assistance will be furnished to those households with the lowest incomes and the highest energy costs in relation to income, taking into account family size, in compliance with section 2605(b)(5) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8624(b)(5)).''

§ 8625. Nondiscrimination provisions

(a) Prohibitions

No person shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 also shall apply to any such program or activity.

(b) Procedures applicable to secure compliance

Whenever the Secretary determines that a State that has received a payment under this

subchapter has failed to comply with subsection (a) of this section or an applicable regulation, he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 794 of title 29, as may be applicable; or (3) take such other action as may be provided by law.

(c) Maintenance of civil actions

When a matter is referred to the Attorney General pursuant to subsection (b) of this section, or whenever he has reason to believe that the State is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(Pub. L. 97–35, title XXVI, § 2606, Aug. 13, 1981, 95 Stat. 900.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a) and (b), is title III of Pub. L. 94–135, Nov. 28, 1975, 78 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 8626. Payments to States; fiscal year requirements respecting availability, etc.

(a)(1) From its allotment under section 8623 of this title, the Secretary shall make payments to each State in accordance with section 6503(a) of title 31, for use under this subchapter.

(2) Each State shall notify the Secretary, not later than 2 months prior to the close of a fiscal year, of the amount (if any) of its allotment for such year that will not be obligated in such year, and, if such State elects to submit a request described in subsection (b)(2) of this section, such State shall submit such request at the same time. The Secretary shall make no payment under paragraph (1) to a State for a fiscal year unless the State has complied with this paragraph with respect to the prior fiscal year.

(b)(1) If—

(A) the Secretary determines that, as of September 1 of any fiscal year, an amount allotted to a State under section 8623 of this title for any fiscal year will not be used by such State during such fiscal year;

(B) the Secretary—

(i) notifies the chief executive officer of such State; and

(ii) publishes a timely notice in the Federal Register;

that, after the 30-day period beginning on the date of the notice to such chief executive officer, such amount may be reallotted; and

(C) the State does not request, under paragraph (2), that such amount be held available for such State for the following fiscal year;

then such amount shall be treated by the Secretary for purposes of this subchapter as an amount appropriated for the following fiscal year to be allotted under section 8623 of this title for such following fiscal year.

(2)(A) Any State may request that an amount allotted to such State for a fiscal year be held available for such State for the following fiscal year. Such request shall include a statement of the reasons that the amount allotted to such State for a fiscal year will not be used by such State during such fiscal year and a description of the types of assistance to be provided with the amount held available for the following fiscal year. Any amount so held available for the following fiscal year shall not be taken into account in computing the allotment of or the amount payable to such State for such fiscal year under this subchapter.

(B) No amount may be held available under this paragraph for a State from a prior fiscal year to the extent such amount exceeds 10 percent of the amount payable to such State for such prior fiscal year. For purposes of the preceding sentence, the amount payable to a State for a fiscal year shall be determined without regard to any amount held available under this paragraph for such State for such fiscal year from the prior fiscal year.

(C) The Secretary shall reallot amounts made available under this paragraph for the fiscal year following the fiscal year of the original allotment in accordance with paragraph (1) of this subsection.

(3) During the 30-day period described in paragraph (1)(B), comments may be submitted to the Secretary. After considering such comments, the Secretary shall notify the chief executive officer of the State of any decision to reallot funds, and shall publish such decision in the Federal Register.

(Pub. L. 97–35, title XXVI, § 2607, Aug. 13, 1981, 95 Stat. 900; Pub. L. 98–558, title VI, § 606, Oct. 30, 1984, 98 Stat. 2892; Pub. L. 101–501, title VII, § 706, Nov. 3, 1990, 104 Stat. 1260; Pub. L. 103–252, title III, § 310, May 18, 1994, 108 Stat. 661; Pub. L. 105–285, title III, § 307, Oct. 27, 1998, 112 Stat. 2758.)

CODIFICATION

In subsec. (a)(1), ''section 6503(a) of title 31'' substituted for ''section 203 of the Intergovernmental Cooperation Act of 1968 [42 U.S.C. 4213]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1998—Subsec. (b)(2)(B). Pub. L. 105–285 struck out ''and not transferred pursuant to section 8623(f) of this title'' after ''such prior fiscal year'' in first sentence and ''but not transferred by the State'' after ''the amount payable to a State'' in second sentence.

1994—Subsec. (a). Pub. L. 103–252 designated existing provisions as par. (1) and added par. (2).

1990—Subsec. (b)(2)(B). Pub. L. 101–501 substituted ''10 percent'' for ''15 percent''.

1984—Subsec. (b)(2)(A). Pub. L. 98–558, § 606(a), inserted ''Such request shall include a statement of the reasons that the amount allotted to such State for a fiscal year will not be used by such State during such fiscal year and a description of the types of assistance to be provided with the amount held available for the following fiscal year.'' and ''or the amount payable to'' after ''computing the allotment of''.

Subsec. (b)(2)(B). Pub. L. 98–558, § 606(b), substituted ''15 percent'' for ''25 percent'', ''payable to such State for such prior fiscal year and not transferred pursuant to section 8623(f) of this title'' for ''allotted to such State for such prior fiscal year'', and ''payable to a State but not transferred by the State'' for ''allotted to a State'' in second sentence.

Subsec. (b)(2)(C). Pub. L. 98–558, § 606(c), added subpar. (C).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 applicable to amounts held available for fiscal years beginning after Sept. 30, 1985, see section 609(c) of Pub. L. 98–558, set out as a note under section 8621 of this title.

§ 8626a. Incentive program for leveraging non-Federal resources

(a) Allotment of funds

Beginning in fiscal year 1992, the Secretary may allocate amounts appropriated under section 8621(d) of this title to provide supplementary funds to States that have acquired non-Federal leveraged resources for the program established under this subchapter.

(b) "Leveraged resources" defined

For purposes of this section, the term ''leveraged resources'' means the benefits made available to the low-income home energy assistance program of the State, or to federally qualified low-income households, that—

(1) represent a net addition to the total energy resources available to State and federally qualified households in excess of the amount of such resources that could be acquired by such households through the purchase of energy at commonly available household rates; and

(2)(A) result from the acquisition or development by the State program of quantifiable benefits that are obtained from energy vendors through negotiation, regulation or competitive bid; or

(B) are appropriated or mandated by the State for distribution—

(i) through the State program; or

(ii) under the plan referred to in section 8624(c)(1)(A) of this title to federally qualified low-income households and such benefits are determined by the Secretary to be integrated with the State program.

(c) Formula for distribution of amounts

(1) Distribution of amounts made available under this section shall be based on a formula developed by the Secretary that is designed to take into account the success in leveraging existing appropriations in the preceding fiscal year as measured under subsection (d) of this section. Such formula shall take into account the size of the allocation of the State under this subchapter and the ratio of leveraged resources to such allocation.

(2) A State may expend funds allocated under this subchapter as are necessary, not to exceed 0.08 percent of such allocation or $35,000 each fiscal year, whichever is greater, to identify, develop, and demonstrate leveraging programs. Funds allocated under this section shall only be used for increasing or maintaining benefits to households.

(d) Dollar value of leveraged resources

Each State shall quantify the dollar value of leveraged resources received or acquired by such State under this section by using the best available data to calculate such leveraged resources less the sum of any costs incurred by the State to leverage such resources and any cost imposed on the federally eligible low-income households in such State.

(e) Report to Secretary

Not later than 2 months after the close of the fiscal year during which the State provided leveraged resources to eligible households, as described in subsection (b) of this section, each State shall prepare and submit, to the Secretary, a report that quantifies the leveraged resources of such State in order to qualify for assistance under this section for the following fiscal year.

(f) Determination of State share; regulations; documentation

The Secretary shall determine the share of each State of the amounts made available under this section based on the formula described in subsection (c) of this section and the State reports. The Secretary shall promulgate regulations for the calculation of the leveraged resources of the State and for the submission of supporting documentation. The Secretary may request any documentation that the Secretary determines necessary for the verification of the application of the State for assistance under this section.

(Pub. L. 97–35, title XXVI, § 2607A, as added Pub. L. 101–501, title VII, § 707(a), Nov. 3, 1990, 104 Stat. 1260; amended Pub. L. 103–252, title III, § 311(a)(2), (c)(6), May 18, 1994, 108 Stat. 661, 662.)

AMENDMENTS

1994—Subsec. (c)(2). Pub. L. 103–252, § 311(c)(6), substituted ''0.08 percent'' for ''.0008 percent''.

Subsec. (e). Pub. L. 103–252, § 311(a)(2), substituted ''2 months after the close of the fiscal year during which the State provided leveraged resources to eligible households, as described in subsection (b) of this section'' for ''July 31, of each year''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as an Effective Date of 1990 Amendment note under section 8621 of this title.

§ 8626b. Residential Energy Assistance Challenge option (R.E.A.Ch.)

(a) Purpose

The purpose of the Residential Energy Assistance Challenge (in this section referred to as ''R.E.A.Ch.'') program is to—

(1) minimize health and safety risks that result from high energy burdens on low-income Americans;

(2) prevent homelessness as a result of inability to pay energy bills;

(3) increase the efficiency of energy usage by low-income families; and

(4) target energy assistance to individuals who are most in need.

(b) Funding

(1) Allocation

For each fiscal year, the Secretary may allocate not more than 25 percent of the amount made available pursuant to section 8621(d) of this title for such fiscal year to a R.E.A.Ch. fund for the purpose of making incentive grants to States that submit qualifying plans that are approved by the Secretary as R.E.A.Ch. initiatives. States may use such grants for the costs of planning, implementing, and evaluating the initiative.

(2) Reservation

The Secretary shall reserve from any funds allocated under this subsection, funds to make additional payments to State R.E.A.Ch. programs that—

(A) have energy efficiency education services plans that meet quality standards established by the Secretary in consultation with the Secretary of Energy; and

(B) have the potential for being replicable model designs for other programs.

States shall use such supplemental funds for the implementation and evaluation of the energy efficiency education services.

(c) Criteria

(1) In general

Not later than May 31, 1995, the Secretary shall establish criteria for approving State plans required by subsection (a) of this section, for energy efficiency education quality standards described in subsection (b)(2)(A) of this section, and for the distribution of funds to States with approved plans.

(2) Documentation

Notwithstanding the limitations of section 8624(b) of this title regarding the authority of the Secretary with respect to plans, the Secretary may require a State to provide appropriate documentation that its R.E.A.Ch. activities conform to the State plan as approved by the Secretary.

(d) Focus

The State may designate all or part of the State, or all or part of the client population, as a focus of its R.E.A.Ch. initiative.

(e) State plans

(1) In general

Each State plan shall include each of the elements described in paragraph (2), to be met by State and local agencies.

(2) Elements of State plans

Each State plan shall include—

(A) an assurance that such State will deliver services through community-based nonprofit entities in such State, by—

(i) awarding grants to, or entering into contracts with, such entities for the purpose of providing such services and payments directly to individuals eligible for benefits; or

(ii) if a State makes payments directly to eligible individuals or energy suppliers, making contracts with such entities to administer such programs, including—

(I) determining eligibility;

(II) providing outreach services; and

(III) providing benefits other than payments;

(B) an assurance that, in awarding grants or entering into contracts to carry out its R.E.A.Ch. initiative, the State will give priority to organizations that—

(i) are described in section 9902(1) of this title, except where significant geographic portions of the State are not served by such entities;

(ii) the Secretary has determined have a record of successfully providing services under the Low-Income Home Energy Assistance Program; and

(iii) receive weatherization assistance program funds under part A of title IV of the Energy Conservation and Production Act [42 U.S.C. 6861 et seq.];

except that a State may not require any such entity to operate a R.E.A.Ch. program;

(C) an assurance that, subject to subparagraph (D), each entity that receives a grant or enters into a contract under subparagraph (A)(i) will provide a variety of services and benefits, including—

(i) payments to, or on behalf of, individuals eligible for residential energy assistance services and benefits under section 8624(b) of this title for home energy costs;

(ii) energy efficiency education;

(iii) residential energy demand management services, including any other energy related residential repair and energy efficiency improvements in coordination with, or delivered by, Department of Energy weatherization assistance programs at the discretion of the State;

(iv) family services, such as counseling and needs assessment, related to energy budget management, payment plans, and related services; and

(v) negotiation with home energy suppliers on behalf of households eligible for R.E.A.Ch. services and benefits;

(D) a description of the methodology the State and local agencies will use to determine—

(i) which households will receive one or more forms of benefits under the State R.E.A.Ch. initiative;

(ii) the cases in which nonmonetary benefits are likely to provide more cost-effective long-term outcomes than payment benefits alone; and

(iii) the amount of such benefit required to meet the goals of the program;

(E) a method for targeting nonmonetary benefits;

(F) a description of the crisis and emergency assistance activities the State will undertake that are designed to—

(i) discourage family energy crises;

(ii) encourage responsible vendor and consumer behavior; and

(iii) provide only financial incentives that encourage household payment;

(G) a description of the activities the State will undertake to—

(i) provide incentives for recipients of assistance to pay home energy costs; and

(ii) provide incentives for vendors to help reduce the energy burdens of recipients of assistance;

(H) an assurance that the State will require each entity that receives a grant or enters into a contract under this section to solicit and be responsive to the views of individuals who are financially eligible for benefits and services under this section in establishing its local program;

(I) a description of performance goals for the State R.E.A.Ch. initiative including—

(i) a reduction in the energy costs of participating households over one or more fiscal years;

(ii) an increase in the regularity of home energy bill payments by eligible households; and

(iii) an increase in energy vendor contributions towards reducing energy burdens of eligible households;

(J) a description of the indicators that will be used by the State to measure whether the performance goals have been achieved;

(K) a demonstration that the plan is consistent with section 8622 of this title, paragraphs (2), (3), (4), (5), (7), (9), (10), (11), (12), (13), and (14) of section 8624(b) of this title, subsections (d), (e), (f), (g), (h), (i), and (j) of section 8624 of this title, and section 8625 of this title;

(L) an assurance that benefits and services will be provided in addition to other benefit payments and services provided under this subchapter and in coordination with such benefit payments and services; and

(M) an assurance that no regulated utility covered by the plan will be required to act in a manner that is inconsistent with applicable regulatory requirements.

(f) Cost or function

None of the costs of providing services or benefits under this section shall be considered to be an administrative cost or function for purposes of any limitation on administrative costs or functions contained in this subchapter.

(Pub. L. 97–35, title XXVI, § 2607B, as added Pub. L. 103–252, title III, § 312, May 18, 1994, 108 Stat. 662; amended Pub. L. 105–285, title III, § 308(c), (d), Oct. 27, 1998, 112 Stat. 2758.)

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (e)(2)(B)(iii), is Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1125, as amended. Part A of title IV of the Act is classified generally to part A (§ 6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–285, § 308(c), substituted ''For each fiscal year'' for ''For each of the fiscal years 1996 through 1999''.

Subsec. (e)(2)(E) to (H). Pub. L. 105–285, § 308(d)(1)(A), redesignated subpars. (F) to (I) as (E) to (H), respectively.

Subsec. (e)(2)(I). Pub. L. 105–285, § 308(d)(1)(A), redesignated subpar. (J) as (I). Former subpar. (I) redesignated (H).

Subsec. (e)(2)(I)(i). Pub. L. 105–285, § 308(d)(1)(B), substituted ''of'' for ''on''.

Subsec. (e)(2)(J) to (N). Pub. L. 105–285, § 308(d)(1)(A), redesignated subpars. (K) to (N) as (J) to (M), respectively.

Subsecs. (f), (g). Pub. L. 105–285, § 308(d)(2), redesignated subsec. (g) as (f).

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 8621 of this title.

EVALUATION AND REPORT ON RESIDENTIAL ENERGY ASSISTANCE CHALLENGE OPTION

Pub. L. 105–285, title III, § 308(a), (b), Oct. 27, 1998, 112 Stat. 2758, provided that:

''(a) EVALUATION.—The Comptroller General of the United States shall conduct an evaluation of the Residential Energy Assistance Challenge program described in section 2607B of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8626b).

''(b) REPORT.—Not later than 2 years after the date of enactment of this Act [Oct. 27, 1998], the Comptroller General of the United States shall prepare and submit to Congress a report containing—

''(1) the findings resulting from the evaluation described in subsection (a); and

''(2) the State evaluations described in paragraphs (1) and (2) of subsection (b) of such section 2607B.''

§ 8627. Withholding of funds

(a) Improper utilization of funds; response to complaints respecting improprieties

(1) The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not utilize its allotment substantially in accordance with the provisions of this subchapter and the assurances such State provided under section 8624 of this title.

(2) The Secretary shall respond in writing in no more than 60 days to matters raised in complaints of a substantial or serious nature that a State has failed to use funds in accordance with the provisions of this subchapter or the assurances provided by the State under section 8624 of this title. For purposes of this paragraph, a violation of any one of the assurances contained in section 8624(b) of this title that constitutes a

disregard of such assurance shall be considered a serious complaint.

(b) Investigations; conduct, etc.

(1) The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this subchapter in order to evaluate compliance with the provisions of this subchapter.

(2) Whenever the Secretary determines that there is a pattern of complaints from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this subchapter by such State in order to ensure compliance with the provisions of this subchapter.

(3) The Comptroller General of the United States may conduct an investigation of the use of funds received under this subchapter by a State in order to ensure compliance with the provisions of this subchapter.

(c) Inspection of books, documents, etc.

Pursuant to an investigation conducted under subsection (b) of this section, a State shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(d) Request for information not readily available

In conducting any investigation under subsection (b) of this section, the Secretary may not request any information not readily available to such State or require that any information be compiled, collected, or transmitted in any new form not already available.

(Pub. L. 97–35, title XXVI, § 2608, Aug. 13, 1981, 95 Stat. 901; Pub. L. 98–558, title VI, § 608, Oct. 30, 1984, 98 Stat. 2893; Pub. L. 101–501, title VII, § 708, Nov. 3, 1990, 104 Stat. 1261.)

AMENDMENTS

1990—Subsec. (a)(2). Pub. L. 101–501 substituted ''in writing in no more than 60 days to matters raised in'' for ''in an expeditious and speedy manner to''.

1984—Subsec. (b)(2). Pub. L. 98–558 substituted ''the Secretary'' for ''he'' before ''shall conduct''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 effective Oct. 30, 1984, see section 609(a) of Pub. L. 98–558 set out as a note under section 8621 of this title.

§ 8628. Limitation on use of grants for construction

Grants made under this subchapter may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this subchapter, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.

(Pub. L. 97–35, title XXVI, § 2609, Aug. 13, 1981, 95 Stat. 902.)

§ 8628a. Technical assistance, training, and compliance reviews

(a) Of the amounts appropriated under section 8621(b) of this title for any fiscal year, not more than $300,000 of such amounts may be reserved by the Secretary—

(1) to—

(A) make grants to State and public agencies and private nonprofit organizations; or

(B) enter into contracts or jointly financed cooperative arrangements or interagency agreements with States and public agencies (including Federal agencies) and private nonprofit organizations;

to provide for training and technical assistance related to the purposes of this subchapter, including collection and dissemination of information about programs and projects assisted under this subchapter, and ongoing matters of regional or national significance that the Secretary finds would assist in the more effective provision of services under this subchapter; or

(2) to conduct onsite compliance reviews of programs supported under this subchapter.

(b) No provision of this section shall be construed to prevent the Secretary from making a grant pursuant to subsection (a) of this section to one or more private nonprofit organizations that apply jointly with a business concern to receive such grant.

(Pub. L. 97–35, title XXVI, § 2609A, as added Pub. L. 99–425, title V, § 505(a), Sept. 30, 1986, 100 Stat. 975; amended Pub. L. 103–252, title III, § 311(a)(3), May 18, 1994, 108 Stat. 661; Pub. L. 105–285, title III, § 309, Oct. 27, 1998, 112 Stat. 2759.)

REFERENCES IN TEXT

This subchapter, the first and second time appearing in subsec. (a)(1), was in the original ''this subtitle'' which was translated as ''this title'', meaning title XXVI of Pub. L. 97–35, as the probable intent of Congress.

AMENDMENTS

1998—Pub. L. 105–285, § 309(b), substituted ''Technical assistance, training, and compliance reviews'' for ''Technical assistance and training'' as section catchline.

Subsec. (a). Pub. L. 105–285, § 309(a), substituted ''$300,000'' for ''$250,000'' in introductory provisions, designated existing provisions as par. (1) and inserted ''to—'', redesignated former par. (1) as subpar. (A), realigned margin, and substituted ''make grants'' for ''to make grants'', redesignated former par. (2) as subpar. (B), realigned margin, substituted ''enter into'' for ''to enter into'' and inserted ''or interagency agreements'' after ''cooperative arrangements'' and ''(including Federal agencies)'' after ''public agencies'', realigned margin of concluding provisions and substituted ''; or'' for period at end, and added par. (2).

1994—Subsec. (a). Pub. L. 103–252 substituted ''$250,000'' for ''$500,000'' in introductory provisions.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

§ 8629. Studies and reports

(a) The Secretary, after consultation with the Secretary of Energy, shall provide for the collection of data, including—

(1) information concerning home energy consumption;

(2) the amount, cost and type of fuels used for households eligible for assistance under this subchapter;

(3) the type of fuel used by various income groups;

(4) the number and income levels of households assisted by this subchapter;

(5) the number of households which received such assistance and include one or more individuals who are 60 years or older or disabled or include young children; and

(6) any other information which the Secretary determines to be reasonably necessary to carry out the provisions of this subchapter.

Nothing in this subsection may be construed to require the Secretary to collect data which has been collected and made available to the Secretary by any other agency of the Federal Government.

(b) The Secretary shall, no later than June 30 of each fiscal year, submit a report to the Congress containing a detailed compilation of the data under subsection (a) of this section with respect to the prior fiscal year, and a report that describes for the prior fiscal year—

(1) the manner in which States carry out the requirements of clauses (2), (5), (8), and (15) of section 8624(b) of this title; and

(2) the impact of each State's program on recipient and eligible households.

(Pub. L. 97–35, title XXVI, § 2610, Aug. 13, 1981, 95 Stat. 902; Pub. L. 98–558, title VI, § 607, Oct. 30, 1984, 98 Stat. 2893; Pub. L. 99–425, title V, § 506, Sept. 30, 1986, 100 Stat. 976; Pub. L. 103–252, title III, § 311(c)(7), May 18, 1994, 108 Stat. 662.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–252, § 311(c)(7)(A), struck out semicolon after "used" and inserted semicolon after "subchapter".

Subsec. (a)(5). Pub. L. 103–252, § 311(c)(7)(B), substituted "disabled or include young children" for "handicapped".

1986—Subsec. (b). Pub. L. 99–425 inserted provisions relating to report describing for prior fiscal year the manner of carrying out requirements of clauses of section 8624 of this title and impact of State programs on recipient and eligible households.

1984—Subsec. (a). Pub. L. 98–558, § 607(c), inserted at end "Nothing in this subsection may be construed to require the Secretary to collect data which has been collected and made available to the Secretary by any other agency of the Federal Government."

Subsec. (a)(2). Pub. L. 98–558, § 607(a), inserted "amount," before "cost" and inserted at end "for households eligible for assistance under this subchapter".

Subsec. (a)(5), (6). Pub. L. 98–558, § 607(b), added par. (5) and redesignated former par. (5) as (6).

Subsec. (b). Pub. L. 98–558, § 607(d), in amending subsec. (b) generally, inserted "no later than June 30 of each fiscal year," and substituted "a detailed compilation of the data under subsection (a) of this section with respect to the prior fiscal year" for "a summary of data collected under subsection (a) of this section".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 applicable to data collected and compiled after Oct. 30, 1984, and this section as in effect before Oct. 30, 1984, applicable with respect to the report submitted under this section for fiscal year 1984, see section 609(d) of Pub. L. 98–558, set out as a note under section 8621 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 12th item on page 93 identifies a reporting provision which, as amended, is contained in subsec. (b) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 8630. Renewable fuels

In providing assistance pursuant to this subchapter, a State, or any other person with which the State makes arrangements to carry out the purposes of this subchapter, may purchase renewable fuels, including biomass.

(Pub. L. 97–35, title XXVI, § 2612, as added Pub. L. 109–58, title I, § 121(b), Aug. 8, 2005, 119 Stat. 616.)

REPORT TO CONGRESS

Pub. L. 109–58, title I, § 121(c), Aug. 8, 2005, 119 Stat. 616, provided that: "The Secretary [of Energy] shall report to Congress on the use of renewable fuels in providing assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.)."

CHAPTER 95—UNITED STATES SYNTHETIC FUELS CORPORATION

§ 8701. Omitted

CODIFICATION

Section, Pub. L. 96–294, title I, § 100, June 30, 1980, 94 Stat. 616, which related to Congressional findings, declarations, and purposes, was omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

SUBCHAPTER I—INTRODUCTORY PROVISIONS

§ 8702. Omitted

CODIFICATION

Section, Pub. L. 96–294, title I, § 112, June 30, 1980, 94 Stat. 633, which defined terms for this chapter, was omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

SUBCHAPTER II—ESTABLISHMENT OF CORPORATION

§§ 8711 to 8719. Omitted

CODIFICATION

Sections 8711 to 8719 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8711, Pub. L. 96–294, title I, § 115, June 30, 1980, 94 Stat. 636, created the Corporation, provided for its offices and residence status, and referred to its general powers.

Section 8712, Pub. L. 96–294, title I, § 116, June 30, 1980, 94 Stat. 636, provided for board of directors of Corporation.

Section 8713, Pub. L. 96–294, title I, § 117, June 30, 1980, 94 Stat. 638; Pub. L. 98–473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1860, related to officers and employees of Corporation.

Section 8714, Pub. L. 96–294, title I, § 118, June 30, 1980, 94 Stat. 638, related to conflicts of interest and financial disclosure.

Section 8715, Pub. L. 96–294, title I, § 119, June 30, 1980, 94 Stat. 639, related to delegation of authority and transfer of functions.

Section 8716, Pub. L. 96–294, title I, § 120, June 30, 1980, 94 Stat. 640, authorized administrative expenses.

Section 8717, Pub. L. 96–294, title I, § 121, June 30, 1980, 94 Stat. 641, related to public access to information.

Section 8718, Pub. L. 96–294, title I, § 122, June 30, 1980, 94 Stat. 641, related to Inspector General of Corporation.

Section 8719, Pub. L. 96–294, title I, § 123, June 30, 1980, 94 Stat. 644, established an Advisory Committee to the Board of Directors. For continuation of Advisory Committee, see section 7404(c) of Pub. L. 99–272, set out as a note under section 8791 of this title.

SUBCHAPTER III—PRODUCTION GOAL OF THE CORPORATION

§§ 8721 to 8725. Omitted

CODIFICATION

Sections 8721 to 8725 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8721, Pub. L. 96–294, title I, § 125, June 30, 1980, 94 Stat. 644, established a national synthetic fuel production goal.

Section 8722, Pub. L. 96–294, title I, § 126, June 30, 1980, 94 Stat. 644, related to production strategy.

Section 8723, Pub. L. 96–294, title I, § 127, June 30, 1980, 94 Stat. 649, related to solicitation of proposals.

Section 8724, Pub. L. 96–294, title I, § 128, June 30, 1980, 94 Stat. 650, related to Congressional disapproval procedure.

Section 8725, Pub. L. 96–294, title I, § 129, June 30, 1980, 94 Stat. 652, related to Congressional approval procedure.

SUBCHAPTER IV—FINANCIAL ASSISTANCE

§§ 8731 to 8740. Omitted

CODIFICATION

Sections 8731 to 8740 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8731, Pub. L. 96–294, title I, § 131, June 30, 1980, 94 Stat. 654, authorized financial assistance.

Section 8732, Pub. L. 96–294, title I, § 132, June 30, 1980, 94 Stat. 658, related to loans made by Corporation.

Section 8733, Pub. L. 96–294, title I, § 133, June 30, 1980, 94 Stat. 660, related to loan guarantees made by Corporation.

Section 8734, Pub. L. 96–294, title I, § 134, June 30, 1980, 94 Stat. 661, related to price guarantees by Corporation.

Section 8735, Pub. L. 96–294, title I, § 135, June 30, 1980, 94 Stat. 661, related to purchase agreements made by Corporation.

Section 8736, Pub. L. 96–294, title I, § 136, June 30, 1980, 94 Stat. 662, related to joint ventures by Corporation.

Section 8737, Pub. L. 96–294, title I, § 137, June 30, 1980, 94 Stat. 663, related to control of assets.

Section 8738, Pub. L. 96–294, title I, § 138, June 30, 1980, 94 Stat. 665, related to unlawful contracts.

Section 8739, Pub. L. 96–294, title I, § 139, June 30, 1980, 94 Stat. 665, related to fees and application of receipts.

Section 8740, Pub. L. 96–294, title I, § 140, June 30, 1980, 94 Stat. 665, related to disposition of securities.

SUBCHAPTER V—CORPORATION CONSTRUCTION PROJECTS

§§ 8741 to 8745. Omitted

CODIFICATION

Sections 8741 to 8745 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8741, Pub. L. 96–294, title I, § 141, June 30, 1980, 94 Stat. 665, related to construction and operation of synthetic fuel projects.

Section 8742, Pub. L. 96–294, title I, § 142, June 30, 1980, 94 Stat. 666, limited construction projects.

Section 8743, Pub. L. 96–294, title I, § 143, June 30, 1980, 94 Stat. 666, subjected construction projects and joint ventures to certain Federal laws and provided for monitoring of environmental and health related emissions.

Section 8744, Pub. L. 96–294, title I, § 144, June 30, 1980, 94 Stat. 667, related to construction project reports.

Section 8745, Pub. L. 96–294, title I, § 145, June 30, 1980, 94 Stat. 667, related to financial record requirements for contract recipients.

SUBCHAPTER VI—CAPITALIZATION AND FINANCE

§§ 8751 to 8755. Omitted

CODIFICATION

Sections 8751 to 8755 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8751, Pub. L. 96–294, title I, § 151, June 30, 1980, 94 Stat. 667, related to issue by Corporation of obligations purchasable by United States only.

Section 8752, Pub. L. 96–294, title I, § 152, June 30, 1980, 94 Stat. 668, related to limitations on total amount of obligational authority.

Section 8753, Pub. L. 96–294, title I, § 153, June 30, 1980, 94 Stat. 669, related to budgetary treatment.

Section 8754, Pub. L. 96–294, title I, § 154, June 30, 1980, 94 Stat. 669, related to receipts of Corporation.

Section 8755, Pub. L. 96–294, title I, § 155, June 30, 1980, 94 Stat. 669, related to tax status of Corporation.

SUBCHAPTER VII—UNLAWFUL ACTS, PENALTIES, AND SUITS AGAINST THE CORPORATION

§§ 8761 to 8768. Omitted

CODIFICATION

Sections 8761 to 8768 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8761, Pub. L. 96–294, title I, § 161, June 30, 1980, 94 Stat. 670, related to penalty for false statements.

Section 8762, Pub. L. 96–294, title I, § 162, June 30, 1980, 94 Stat. 670, related to penalty for forgery.

Section 8763, Pub. L. 96–294, title I, § 163, June 30, 1980, 94 Stat. 671, related to penalties and injunctive relief for misappropriation of funds and for unauthorized activities.

Section 8764, Pub. L. 96–294, title I, § 164, June 30, 1980, 94 Stat. 671, related to penalty for conspiracy.

Section 8765, Pub. L. 96–294, title I, § 165, June 30, 1980, 94 Stat. 672, related to deceptive use of corporate name.

Section 8766, Pub. L. 96–294, title I, § 166, June 30, 1980, 94 Stat. 672, authorized an action for damages by Corporation in addition to penalties prescribed for violations.

Section 8767, Pub. L. 96–294, title I, § 167, June 30, 1980, 94 Stat. 672, related to actions by Attorney General.

Section 8768, Pub. L. 96–294, title I, § 168, June 30, 1980, 94 Stat. 672; Pub. L. 98–473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1860, related to civil actions against Corporation.

SUBCHAPTER VIII—GENERAL PROVISIONS

§§ 8771 to 8780. Omitted

CODIFICATION

Sections 8771 to 8780 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8771, Pub. L. 96–294, title I, § 171, June 30, 1980, 94 Stat. 673, related to general powers of Corporation.

Section 8772, Pub. L. 96–294, title I, § 172, June 30, 1980, 94 Stat. 674, related to coordination by Corporation with Federal entities.

Section 8773, Pub. L. 96–294, title I, § 173, June 30, 1980, 94 Stat. 675, related to patents.

Section 8774, Pub. L. 96–294, title I, § 174, June 30, 1980, 94 Stat. 676, related to utilization of small and disadvantaged businesses.

Section 8775, Pub. L. 96–294, title I, § 175, June 30, 1980, 94 Stat. 676; Pub. L. 98–426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654, provided relationship to other Federal laws.

Section 8776, Pub. L. 96–294, title I, § 176, June 30, 1980, 94 Stat. 678, provided for severability of provisions.

Section 8777, Pub. L. 96–294, title I, § 177, June 30, 1980, 94 Stat. 678, specified Corporation's fiscal year and provided for audits and reports.

Section 8778, Pub. L. 96–294, title I, § 178, June 30, 1980, 94 Stat. 679, related to water rights.

Section 8779, Pub. L. 96–294, title I, § 179, June 30, 1980, 94 Stat. 679, related to Western Hemisphere projects.

Section 8780, Pub. L. 96–294, title I, § 180, June 30, 1980, 94 Stat. 680, related to a lender financial protection and completion guarantee study.

SUBCHAPTER IX—DISPOSAL OF ASSETS

§§ 8781, 8782. Omitted

CODIFICATION

Sections 8781 and 8782 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8781, Pub. L. 96–294, title I, § 181, June 30, 1980, 94 Stat. 680, related to disposal of corporate tangible assets.

Section 8782, Pub. L. 96–294, title I, § 182, June 30, 1980, 94 Stat. 681, related to disposal of assets other than as provided for in section 8781.

SUBCHAPTER X—TERMINATION OF CORPORATION

§§ 8791 to 8793. Omitted

CODIFICATION

Sections 8791 to 8793 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note below.

Section 8791, Pub. L. 96–294, title I, § 191, June 30, 1980, 94 Stat. 681, related to dates for termination of awards or commitments by Corporation.

Section 8792, Pub. L. 96–294, title I, § 192, June 30, 1980, 94 Stat. 681, related to termination of Corporation's affairs.

Section 8793, Pub. L. 96–294, title I, § 193, June 30, 1980, 94 Stat. 681, transferred Corporation's powers to Department of the Treasury.

TERMINATION OF UNITED STATES SYNTHETIC FUELS CORPORATION

Pub. L. 99–272, title VII, subtitle E, Apr. 7, 1986, 100 Stat. 143, as amended by Pub. L. 101–508, title VI, § 6401, Nov. 5, 1990, 104 Stat. 1388–319, provided that:

''SEC. 7401. SHORT TITLE.

''This subtitle may be cited as the 'Synthetic Fuels Corporation Act of 1985'.

''SEC. 7402. CESSATION OF FINANCIAL ASSISTANCE AUTHORITY.

''Effective on the date of enactment of this Act [Apr. 7, 1986], the United States Synthetic Fuels Corporation (hereafter in this subtitle referred to as the 'Corporation') may not make any legally binding awards or commitments for financial assistance (including any changes in an existing award or commitment) pursuant to the Energy Security Act [Pub. L. 96–294; see Short Title note set out under section 8801 of this title] for synthetic fuel project proposals, except that nothing in this Act [see Tables for classification] shall impair or alter the powers, duties, rights, obligations, privileges, or liabilities of the Corporation, its Board or Chairman, or project sponsors in the performance and completion of the terms and undertakings of a legally binding award or commitment entered into prior to the date of enactment of this Act.

''SEC. 7403. TERMINATION OF THE CORPORATION.

''(a) Within 60 days of the date of enactment of this Act [Apr. 7, 1986], the Directors of the Corporation shall terminate their duties under the Energy Security Act [Pub. L. 96–294; see Short Title note set out under section 8801 of this title] and be discharged.

''(b) Within 120 days of the date of enactment of this Act [Apr. 7, 1986], the Corporation shall terminate, except as otherwise provided in this subtitle, in accordance with subtitle J of part B of title I of the Energy Security Act [42 U.S.C. 8791 to 8793].

''SEC. 7404. DUTIES OF SECRETARY OF THE TREASURY.

''(a) Within 60 days of the date of enactment of this Act [Apr. 7, 1986] (or earlier, in the event of absence of a Chairman of the Board of Directors of the Corporation), the Secretary of the Treasury shall assume the duties of the Chairman of the Board of Directors of the Corporation. The Secretary of the Treasury shall have the authority to negotiate and execute agreements modifying an existing contract relating to the production of synthetic crude oil from oil shale, entered into under the Defense Production Act Amendments of 1980 [Pub. L. 96–294, title I, part A, see Short Title of 1980 Amendment note set out under section 2061 of Title 50, Appendix, War and National Defense] and subsequently transferred to the Secretary of the Treasury for administration, provided the terms and conditions of any modification(s) are revenue neutral or result in a fiscal savings to the United States Government, and in no event would increase the financial exposure of the United States Government under the contract: *Provided, however*, That the Secretary of the Treasury shall have no authority to increase the total amount of funds originally authorized for the existing contract: *And provided further*, That the Secretary shall have no authority to negotiate and execute any agreement modifying the existing contract if such modification(s) would increase or accelerate the financial support per unit for the synthetic fuel to be produced under the contract.

''(b) Notwithstanding any other provision of law, the duties and responsibilities of the Secretary of the Treasury under subtitle J of part B of title I of the Energy Security Act [42 U.S.C. 8791 to 8793] or this Act [see Tables for classification] may not be transferred to any other Federal department or agency.

''(c) Notwithstanding such termination of the Corporation, the Advisory Committee established under section 123 of the Energy Security Act (42 U.S.C 8719) shall remain in effect to advise the Secretary of the Treasury regarding the administration of any contract or obligation of the Corporation pursuant to subtitle D of part B of title I of such Act [42 U.S.C. 8731 to 8740].

''(d) To the extent that the Secretary of the Treasury may be required to take an action under section 131(q) of the Energy Security Act [42 U.S.C. 8731(q)] in connection with an award or commitment of financial assistance under such Act [Pub. L. 96–294; see Short Title note set out under section 8801 of this title], the Secretary shall complete such action within 30 days of the date of enactment of this Act [Apr. 7, 1986].

''SEC. 7405. SALARIES AND COMPENSATION RIGHTS.

''(a) The Director of the Office of Personnel Management shall, before February 1, 1986, determine the amount of compensation or benefits which each Director, officer, or employee of the Corporation shall be legally entitled to under any contract as of the date of enactment of this Act [Apr. 7, 1986].

''(b) Effective on the date of enactment of this Act [Apr. 7, 1986], no change in any Director, officer, or employee compensation or benefits shall be allowed or permitted, unless the Director of the Office of Personnel Management agrees that such change is reasonable.

''(c) Effective on the date of enactment of this Act [Apr. 7, 1986]—

''(1) no officer or employee of the Corporation shall receive a salary in excess of the rate of basic pay payable for level IV of the Executive Schedule under title 5 of the United States Code; and

''(2) the Corporation shall not waive any requirements in its By-Laws which are necessary for a Director, officer, or employee to qualify for pension or termination benefits under the By-Laws and written personnel policies and procedures in effect on the date of enactment of this Act [Apr. 7, 1986].

''SEC. 7406. REPORT TO THE CONGRESS.

''The Corporation shall, within 60 days of the date of enactment of this Act [Apr. 7, 1986], transmit to the Committee on Energy and Natural Resources of the Senate and to the Committee on Energy and Commerce and Committee on Banking, Housing and Urban Affairs of the House of Representatives a report—

''(1) containing a review of implementation of its Phase I Business Plan dated February 19, 1985; and

''(2) fulfilling the requirements of section 126(b)(3) of the Energy Security Act (42 U.S.C. 8722(b)(3)).''

Similar provisions were contained in Pub. L. 99–190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1249.

SUBCHAPTER XI—DEPARTMENT OF THE TREASURY

§ 8795. Omitted

CODIFICATION

Section, Pub. L. 96–294, title I, § 195, June 30, 1980, 94 Stat. 682, which authorized appropriations to purchase corporate obligations and authorized public debt status for purchases and redemptions of corporate obligations, was omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

CHAPTER 96—BIOMASS ENERGY AND ALCOHOL FUELS

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§ 8801. Congressional findings

The Congress finds that—

(1) the dependence of the United States on imported petroleum and natural gas must be reduced by all economically and environmentally feasible means, including the use of biomass energy resources; and

(2) a national program for increased production and use of biomass energy that does not impair the Nation's ability to produce food and fiber on a sustainable basis for domestic and export use must be formulated and implemented within a multiple-use framework.

(Pub. L. 96–294, title II, § 202, June 30, 1980, 94 Stat. 683.)

SHORT TITLE

Section 1 of Pub. L. 96–294 provided: ''That this Act [enacting chapters 95 to 97, and sections 6347, 7361 to

7364, 7371 to 7375, 8235 to 8235i, 8281 to 8284, 8285 to 8285c, and 8286 to 8286b of this title, sections 1435 and 3129 of Title 7, Agriculture, sections 3601 to 3620 of Title 12, Banks and Banking, section 3391a of Title 15, Commerce and Trade, sections 1146, 1147, 1501, 1511 to 1516, 1521, 1522, 1531, 1541, and 1542 of Title 30, Mineral Lands and Mining, and sections 2075, 2076, and 2095 to 2098 of the Appendix to Title 50, War and National Defense, amending sections 6240, 6862 to 6872, 8211, 8213, 8214, 8216, 8217, 8221, 8255, 8271, and 8274 to 8276 of this title, sections 341, 342, 427, and 3154 of Title 7, section 7430 of Title 10, Armed Forces, sections 1451, 1454, 1717, 1723g, and 1723h of Title 12, section 753 of Title 15, sections 590h, 796, 824a–3, 824i, 824j, 1642, 2705, and 2708 of Title 16, Conservation, sections 1141 and 1143 of Title 30, and sections 2062, 2091 to 2093, 2151, 2161, and 2166 of the Appendix to Title 50, repealing section 1723f of Title 12, and enacting provisions set out as notes under this section and sections 6240, 7371, 8211, 8235, 8701, and 8901 of this title, section 3601 of Title 12, section 2701 of Title 16, section 1501 of Title 30, and sections 2061 and 2062 of the Appendix to Title 50] may be cited as the 'Energy Security Act'.''

Section 201 of title II of Pub. L. 96–294 provided that: ''This title [enacting this chapter, sections 1435 and 3129 of Title 7, Agriculture, and section 3391a of Title 15, Commerce and Trade, and amending sections 341, 342, 427, and 3154 of Title 7, section 753 of Title 15, and sections 590h and 1642 of Title 16, Conservation] may be cited as the 'Biomass Energy and Alcohol Fuels Act of 1980'.''

§ 8802. Definitions

As used in this chapter—

(1) The term ''alcohol'' means alcohol (including methanol and ethanol) which is produced from biomass and which is suitable for use by itself or in combination with other substances as a fuel or as a substitute for petroleum or petrochemical feedstocks.

(2)(A) The term ''biomass'' means any organic matter which is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, municipal wastes, and aquatic plants.

(B) For purposes of subchapter I of this chapter, such term does not include municipal wastes; and for purposes of subchapter III of this chapter, such term does not include aquatic plants and municipal wastes.

(3) The term ''biomass fuel'' means any gaseous, liquid, or solid fuel produced by conversion of biomass.

(4) The term ''biomass energy'' means—

(A) biomass fuel; or

(B) energy or steam derived from the direct combustion of biomass for the generation of electricity, mechanical power, or industrial process heat.

(5) The term ''biomass energy project'' means any facility (or portion of a facility) located in the United States which is primarily for—

(A) the production of biomass fuel (and byproducts); or

(B) the combustion of biomass for the purpose of generating industrial process heat, mechanical power, or electricity (including cogeneration).

(6) The term ''Btu'' means British thermal unit.

(7) The term ''cogeneration'' means the combined generation by any facility of—

(A) electrical or mechanical power, and

(B) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes.

(8) The term ''cooperative'' means any agricultural association, as that term is defined in section 1141j(a) of title 12.

(9)(A) The term ''construction'' means—

(i) the construction or acquisition of any biomass energy project;

(ii) the conversion of any facility to a biomass energy project; or

(iii) the expansion or improvement of any biomass energy project which increases the capacity or efficiency of that facility to produce biomass energy.

(B) Such term includes—

(i) the acquisition of equipment and machinery for use in or at the site of a biomass energy project; and

(ii) the acquisition of land and improvements thereon for the construction, expansion, or improvement of such a project, or the conversion of a facility to such a project.

(C) Such term does not include the acquisition of any facility which was operated as a biomass energy project before the acquisition.

(10) The term ''Federal agency'' means any Executive agency, as defined in section 105 of title 5.

(11)(A) The term ''financial assistance'' means any of the following forms of financial assistance provided under this chapter, or any combination of such forms:

(i) loans,

(ii) loan guarantees,

(iii) price guarantees, and

(iv) purchase agreements.

(B) Such term includes any commitment to provide such assistance.

(12) The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(13) The term ''motor fuel'' means gasoline, kerosene, and middle distillates (including diesel fuel).

(14)(A) The term ''municipal waste'' means any organic matter, including sewage, sewage sludge, and industrial or commercial waste, and mixtures of such matter and inorganic refuse—

(i) from any publicly or privately operated municipal waste collection or similar disposal system, or

(ii) from similar waste flows (other than such flows which constitute agricultural wastes or residues, or wood wastes or residues from wood harvesting activities or production of forest products).

(B) Such term does not include any hazardous waste, as determined by the Secretary of Energy for purposes of this chapter.

(15)(A) The term ''municipal waste energy project'' means any facility (or portion of a facility) located in the United States primarily for—

(i) the production of biomass fuel (and by-products) from municipal waste; or

(ii) the combustion of municipal waste for the purpose of generating steam or forms of useful energy, including industrial process heat, mechanical power, or electricity (including cogeneration).

(B) Such term includes any necessary transportation, preparation, and disposal equipment and machinery for use in or at the site of the facility involved.

(16) The term ''Office of Alcohol Fuels'' means the Office of Alcohol Fuels established under section 8820 of this title.

(17) The term ''person'' means any individual, company, cooperative, partnership, corporation, association, consortium, unincorporated organization, trust, estate, or any entity organized for a common business purpose, any State or local government (including any special purpose district or similar governmental unit) or any agency or instrumentality thereof, or any Indian tribe or tribal organization.

(18) The term ''State'' means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(19) The term ''small scale biomass energy project'' means a biomass energy project with an anticipated annual production capacity of not more than 1,000,000 gallons of ethanol per year, or its energy equivalent of other forms of biomass energy.

(Pub. L. 96–294, title II, § 203, June 30, 1980, 94 Stat. 683.)

REFERENCES IN TEXT

This chapter, referred to in provision preceding par. (1) and in pars. (11)(A) and (14)(B), was in the original ''this title'', meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, as amended, known as the Biomass Energy and Alcohol Fuels Act of 1980, which enacted this chapter, sections 1435 and 3129 of Title 7, Agriculture, and section 3391a of Title 15, Commerce and Trade, and amended sections 341, 342, 427, and 3154 of Title 7, section 753 of Title 15, and sections 590h and 1642 of Title 16, Conservation. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

Subchapter III of this chapter, referred to in par. (2)(B), was in the original ''subtitle C'', meaning subtitle C of title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 705, which enacted subchapter III of this chapter and sections 1435 and 3129 of Title 7, and amended sections 341, 342, 427, and 3154 of Title 7 and sections 590h and 1642 of Title 16.

The Alaska Native Claims Settlement Act, referred to in par. (12), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 8803. Funding

(a) Authorization of appropriations

To the extent provided in advance in appropriation Acts, for the two year period beginning October 1, 1980, there is authorized to be appropriated and transferred $1,170,000,000 from the Energy Security Reserve established in the Treasury of the United States under title II of the Act entitled ''An Act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1980, and for other purposes'' (Public Law 96–126; 93 Stat. 970) and made available for obligation by such Act only to the extent provided in advance in appropriation Acts, as follows:

(1) $460,000,000 to the Secretary of Agriculture for carrying out activities under subchapter I of this chapter, except of the amount of the financial assistance provided by the Secretary of Agriculture under subchapter I of this chapter, up to one-third shall be for small-scale biomass energy projects;

(2) $460,000,000 to the Secretary of Energy for carrying out biomass energy activities under subchapter I of this chapter, of which at least $500,000,000[1] shall be available to the Office of Alcohol Fuels for carrying out its activities, and any amount not made available to the Office of Alcohol Fuels shall be available to the Secretary to carry out the purposes of subchapter I of this chapter under available authorities of the Secretary, including authorities under subchapter I of this chapter; and

(3) $250,000,000 shall be available to the Secretary of Energy for carrying out activities under subchapter II of this chapter.

(b) Availability of funds until expended

Funds made available under subsection (a) of this section shall remain available until expended.

(c) Determinations respecting amount of appropriations remaining available

(1) For purposes of determining the amount of such appropriations which remain available for purposes of this chapter—

(A) loans shall be counted at the initial face value of the loan;

(B) loan guarantees shall be counted at the initial face value of such loan guarantee;

(C) price guarantees and purchase agreements shall be counted at the value determined by the Secretary concerned as of the date of each such contract based upon the Secretary's determination of the maximum potential liability of the United States under the contract; and

(D) any increase in the liability of the United States pursuant to any amendment or other modification to a contract for a loan,

[1] So in original. Pub. L. 97–35 decreased appropriation to $460,000,000 from $600,000,000 without amending sum of $500,000,000.

loan guarantee, price guarantee, or purchase agreement, shall be counted to the extent of such increase.

(2) Determinations under paragraph (1) shall be made in accordance with generally accepted accounting principles, consistently applied.

(3) If more than one form of financial assistance is to be provided to any one project, the obligations and commitments thereunder shall be counted at the maximum potential exposure of the United States on such project at any time during the life of such project.

(4) Any commitment to provide financial assistance shall be treated the same as such assistance for purposes of this subsection; except that any such commitment which is nullified or voided for any reason shall not be considered for purposes of this subsection.

(d) Financial assistance provided only to extent advanced in appropriation Acts

Financial assistance may be provided under this chapter only to the extent provided in advance in appropriation Acts.

(Pub. L. 96–294, title II, § 204, June 30, 1980, 94 Stat. 685; Pub. L. 97–35, title X, §§ 1061–1063, Aug. 13, 1981, 95 Stat. 622.)

REFERENCES IN TEXT

The Energy Security Reserve established in the Treasury of the United States under title II of the Act entitled ''An Act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1980, and for other purposes'' (Public Law 96–126; 93 Stat. 970), referred to in subsec. (a), was established by Pub. L. 96–126, title II, § 201, Nov. 27, 1979, 93 Stat. 970, which is set out as a note under section 5915 of this title.

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35, § 1063, substituted ''$1,170,000,000'' for ''$1,450,000,000''.

Subsec. (a)(1). Pub. L. 97–35, § 1061, substituted ''$460,000,000'' for ''$600,000,000''.

Subsec. (a)(2). Pub. L. 97–35, § 1062, substituted ''$460,000,000'' for ''$600,000,000''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as a note under section 6240 of this title.

§ 8804. Coordination with other authorities and programs

The authorities in this chapter are in addition to and do not modify (except to the extent expressly provided for in this chapter) authorities and programs of the Department of Energy and of the Department of Agriculture under other provisions of law.

(Pub. L. 96–294, title II, § 205, June 30, 1980, 94 Stat. 686.)

SUBCHAPTER I—GENERAL BIOMASS ENERGY DEVELOPMENT

§ 8811. Biomass energy development plans

(a) Plan respecting maximized production and use by December 31, 1982; preparation, transmission, etc.

Not later than 180 days after June 30, 1980, the Secretary of Agriculture and the Secretary of Energy shall jointly prepare, and transmit to the President and the Congress, a plan for maximizing in accordance with this subchapter biomass energy production and use. Such plan shall be designed to achieve a total level of alcohol production and use within the United States of at least 60,000 barrels per day of alcohol by December 31, 1982.

(b) Comprehensive plan respecting maximized production and use from January 1, 1983, to December 31, 1990, preparation, transmission, etc.

(1) Not later than January 1, 1982, the Secretary of Agriculture and the Secretary of Energy shall jointly prepare, and transmit to the President and the Congress, a comprehensive plan for maximizing in accordance with this subchapter biomass energy production and use, for the period beginning January 1, 1983, and ending December 31, 1990. Such plan shall be designed to achieve a level of alcohol production within the United States equal to at least 10 percent of the level of gasoline consumption within the United States as estimated by the Secretary of Energy for the calendar year 1990.

(2) The plan prepared under this subsection shall evaluate the feasibility of reaching the goals set forth in such subsection.

(c) Required guidelines

The plans prepared under subsections (a) and (b) of this section shall each include guidelines for use in awarding financial assistance under this subchapter which are designed to increase, during the period covered by the plan, the amount of motor fuel displaced by biomass energy.

(Pub. L. 96–294, title II, § 211, June 30, 1980, 94 Stat. 686.)

§ 8812. Program responsibility and administration and effect on other programs

(a) Duties and functions of Secretary of Agriculture and Secretary of Energy over projects

(1) Except as provided in paragraph (2), in the case of any financial assistance under this subchapter for a biomass energy project, the Secretary concerned shall be—

(A) the Secretary of Agriculture, in the case of any biomass energy project which will have an anticipated annual production capacity of less than 15,000,000 gallons of ethanol (or the energy equivalent of other forms of biomass energy) and which will use feedstocks other than aquatic plants; and

(B) the Secretary of Energy, in the case of any biomass energy project which will use aquatic plants as feedstocks or which will have an anticipated annual production capacity of 15,000,000 gallons or more of ethanol (or the energy equivalent of other forms of biomass energy).

(2)(A) Either the Secretary of Agriculture or the Secretary of Energy may be the Secretary concerned in the case of any biomass energy project which will have an anticipated annual production capacity of 15,000,000 gallons or more of ethanol (or the energy equivalent of other forms of biomass energy) and—

(i) which will use wood or wood wastes or residue, or

(ii) which is owned and operated by a cooperative and will use feedstocks other than aquatic plants.

(B) Financial assistance may not be provided by either Secretary under subparagraph (A) without the written concurrence of the other Secretary. Such concurrence shall be granted or denied by such Secretary in accordance with subparagraph (C) and on the same standards as that Secretary applies in making his own awards of financial assistance under this paragraph.

(C)(i) In the case of a project described in subparagraph (A), the Secretary concerned shall provide the other Secretary a copy of the application and such supporting information as may be material, and shall provide the other Secretary at least 15 days to review the project. If during such 15-day period the reviewing Secretary provides written notification to the Secretary concerned specifying reasons why such project should not proceed, the Secretary concerned shall defer the final decision on the application for an additional 30 days. During such 30-day period, both Secretaries shall attempt to reach agreement regarding all issues raised in the written notice. Before the end of the 30-day period, the reviewing Secretary shall notify the Secretary concerned of his decision regarding concurrence. If the reviewing Secretary fails to provide such notice before the end of such period, concurrence shall be deemed to have been given.

(ii) The project applicant may reapply for financial assistance for such project, after making such modifications to the project as may be necessary to address issues raised by the reviewing Secretary in the original notice of objection. The subsequent review of such project by the reviewing Secretary shall be limited to the issues originally raised by the reviewing Secretary and any issues raised by changed circumstances.

(D) Both Secretaries may jointly act as the Secretary concerned in accordance with such procedures as the Secretaries may jointly prescribe, in which case—

(i) subparagraphs (B) and (C) and subsection (c) of this section shall not apply, and

(ii) the proportion of financial assistance provided by each Secretary shall be determined in accordance with the procedures jointly prescribed.

(b) Procedural requirements applicable

(1) Each Secretary shall take such action as may be necessary to assure that—

(A) guidelines for soliciting and receiving applications for financial assistance are established within 90 days after June 30, 1980;

(B) applications for financial assistance for biomass energy projects are initially solicited within 30 days after such guidelines are established;

(C) additional applications for financial assistance are solicited within 1 year after the date of the initial solicitation;

(D) any application is evaluated and a decision made on such application within 120 days after the receipt of the application, including review under subsections (a)(2)(C), (a)(2)(D), or (c) of this section; and

(E) all interested persons are provided the easiest possible access to the application process, including procedures which assure that—

(i) information concerning financial assistance from either Secretary is available through all appropriate offices of the Department of Agriculture and the Department of Energy, and other regional and local offices of the Federal Government, as may be appropriate;

(ii) all such locations where such information is available will be able to accept and file applications, and will forward them to the Secretary concerned; and

(iii) the procedures established for accepting, evaluating, and awarding financial assistance will provide for categories of biomass energy projects, according to size and provide to the maximum extent practicable the simplest procedures for small producers.

(2) The procedural requirements of subparagraphs (A) through (D) of paragraph (1) shall not apply to either Secretary to the extent that the Secretary finds that other procedures are adopted for the solicitation, evaluation, and awarding of financial assistance which will result in applications being processed more expeditiously.

(c) Notice to and reviewing functions of other Secretary concerning application for financial assistance

(1) After evaluating any application and before awarding any financial assistance on the basis of that application, the Secretary concerned shall provide the other Secretary with—

(A) a copy of the application and such supporting material as may be appropriate, and

(B) an opportunity of not less than 15 days to review the application.

This subsection shall not apply in the case of a project subject to review under subsection (a)(2)(C) of this section.

(2) If the reviewing Secretary provides written notice specifying any issues regarding matters subject to the Secretary's review to the Secretary concerned before the end of the 15-day review period, the Secretary concerned shall defer a final decision on the application for an additional 30 days to provide an opportunity for both Secretaries to answer and resolve such issues. At the expiration of the 30-day period, the Secretary concerned may make a final decision with respect to the application, using the best judgment of the Secretary concerned to resolve any remaining issues.

(3) Reviews of projects under the provisions of subsection (a)(2)(C) of this section or paragraph (1)(B) by the Secretary of Agriculture shall be for the purpose of considering the national, regional, and local agricultural policy impacts of such project on agricultural supply, production, and use, and reviews by the Secretary of Energy under such provisions shall be for the purpose of considering national energy policy impacts and the technical feasibility of the project.

(4) The Secretary of Agriculture and the Secretary of Energy may jointly establish categories of projects to which paragraphs (1) and

(2) shall not apply. Within 90 days after June 30, 1980, the Secretaries shall identify potential categories and make an initial determination of exempted categories.

(d) Notification of applicant upon disapproval of application for financial assistance

If any application for financial assistance under this subchapter is disapproved, the applicant shall be provided written notice of the reasons for the disapproval.

(e) Implementation of functions assigned to Secretary of Agriculture by administrative entities within Department of Agriculture; issuance of regulations; coordination of functions by designated entities

(1) The functions assigned under this subchapter to the Secretary of Agriculture may be carried out by any of the administrative entities in the Department of Agriculture which the Secretary of Agriculture may designate. Within 30 days after June 30, 1980, the Secretary of Agriculture shall make such designations and notify the Congress of the administrative entity or entities so designated and the officials in such administrative entity or entities who are to be responsible for such functions.

(2) The Secretary of Agriculture may issue such regulations as are necessary to carry out functions assigned to the Secretary of Agriculture under this subchapter.

(3) The entities or entity designated under paragraph (1) shall coordinate the administration of functions assigned to it under this subsection with any other biomass energy programs within the Department of Agriculture established under other provisions of law.

(f) Implementation of functions assigned to Secretary of Energy by Office of Alcohol Fuels

The functions under this subchapter which are assigned to the Secretary of Energy and which relate to alcohol production shall be carried out by the Office of Alcohol Fuels.

(g) Energy equivalency determinations respecting biomass energy and ethanol

For purposes of this subchapter, the quantity of any biomass energy which is the energy equivalent to 15,000,000 gallons of ethanol shall be prescribed jointly by the Secretary of Agriculture and the Secretary of Energy within 30 days after June 30, 1980.

(Pub. L. 96–294, title II, § 212, June 30, 1980, 94 Stat. 687.)

§ 8813. Insured loans

(a) Authority of Secretary of Agriculture; maximum amount per project

Subject to sections 8812 and 8817 of this title, the Secretary of Agriculture may commit to make, and make, insured loans in amounts not to exceed $1,000,000 per project for the construction of small-scale biomass energy projects.

(b) Estimated project construction costs as determinative of initial and revised amount of loan; interest rate

(1) Any insured loan under this section—

(A) may not exceed 90 per centum of the total estimated cost of construction of the biomass energy project involved, and

(B) shall bear interest at rates determined by the Secretary of Agriculture, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus not to exceed one per centum, as determined by the Secretary of Agriculture, and adjusted to the nearest one-eighth of one per centum.

(2) In the event the total estimated costs of construction of the project thereafter exceed the total estimated costs initially determined by the Secretary of Agriculture, the Secretary may in addition, upon application therefor, make an insured loan for so much of the additional estimated total costs as does not exceed 10 per centum of the total costs initially estimated.

(c) Funding requirements; "insured loan" defined

(1) The Secretary of Agriculture shall make insured loans under this section using, to the extent provided in advance in appropriations Acts, the Agricultural Credit Insurance Fund in section 309 of the Consolidated Farm and Rural Development Act [7 U.S.C. 1929] or the Rural Development Insurance Fund in section 309A of such Act [7 U.S.C. 1929a] (hereinafter in this section referred to as the ''Funds''). The Secretary of Agriculture may not use an aggregate amount of funds to make or commit to make insured loans under this section in excess of the aggregate amount for insured loans and administrative costs appropriated and transferred under section 8803 of this title. The terms, conditions, and requirements applicable to such insured loans shall be in accordance with this subchapter.

(2) There shall be reimbursed to the Funds, from appropriations made under section 8803 of this title, amounts equal to the operating and administrative costs incurred by the Secretary of Agriculture in insuring loans under this section.

(3) Notwithstanding any provision of the Consolidated Farm and Rural Development Act [7 U.S.C. 1921 et seq.], no funds made available to the Secretary of Agriculture under this section for insured loans shall be used for any other purpose.

(4) For purposes of this section, the term ''insured loan'' means a loan which is made, sold, and insured.

(d) Preconditions

An insured loan may not be made under this section unless the applicant for such loan has established to the satisfaction of the Secretary that the applicant is unable without such a loan to obtain sufficient credit elsewhere at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms for loans for similar purposes and periods of time, to finance the construction of the biomass energy project for which such loan is sought.

(Pub. L. 96–294, title II, § 213, June 30, 1980, 94 Stat. 690.)

REFERENCES IN TEXT

The Consolidated Farm and Rural Development Act, referred to in subsec. (c)(3), is title III of Pub. L. 87–128,

Aug. 8, 1961, 75 Stat. 307, as amended, which is classified principally to chapter 50 (§ 1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

§ 8814. Loan guarantees

(a) Authority of Secretary concerned

Subject to sections 8812 and 8817 of this title, the Secretary concerned may commit to guarantee, and guarantee, against loss of principal and interest, loans which are made to provide funds for the construction of biomass energy projects.

(b) Estimated project construction costs as determinative of initial and revised amount of guarantee

(1) Any guarantee of a loan under this section may not exceed 90 per centum of the cost of the construction of the biomass energy project involved, as estimated by the Secretary on the date of the guarantee or commitment to guarantee.

(2) In the event the construction costs of the project are thereafter estimated by the Secretary concerned to exceed the construction costs initially estimated by the Secretary, the Secretary may in addition, upon application therefor, guarantee, against loss of principal and interest, a loan for up to 60 per centum of the difference between the construction costs then estimated and the construction costs initially estimated.

(c) Debt obligation; ineligibility for purchase, etc., by Federal Financing Bank or any Federal agency

Notwithstanding the provisions of the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 et seq.) or any other provision of law (except as may be specifically provided by reference to this subsection in any Act enacted after June 30, 1980), no debt obligation which is guaranteed or committed to be guaranteed by the Secretary of Agriculture or the Secretary of Energy under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank or any Federal agency.

(d) Terms and conditions

The terms and conditions of loan guarantees under this section shall provide that, if the Secretary concerned makes a payment of principal or interest upon the default by a borrower, the Secretary shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the loan guarantee or related agreements).

(e) Termination, cancellation, or revocation, and conclusive nature of guarantee

Any loan guarantee under this section shall not be terminated, canceled, or otherwise revoked, except in accordance with the terms thereof and shall be conclusive evidence that such guarantee complies fully with the provisions of this chapter and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans and of the guarantee.

(f) Payment to lender

If the Secretary concerned determines that—

(1) the borrower is unable to meet payments and is not in default,

(2) it is in the public interest to permit the borrower to continue with such project, and

(3) the probable net benefit to the United States in paying the principal and interest due under the loan will be greater than that which would result in the event of a default,

then the Secretary may pay to the lender under a loan guarantee agreement an amount not greater than the principal and interest which the borrower is obligated to pay to such lender, if the borrower agrees to reimburse the Secretary for such payment on terms and conditions, including interest, which the Secretary determines are sufficient to protect the financial interests of the United States.

(g) Preconditions

(1) A loan may not be guaranteed under this section unless the applicant for such loan has established to the satisfaction of the Secretary concerned that the lender is not willing without such a guarantee to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing rates and terms for loans for similar purposes and periods of time, to finance the construction of the biomass energy project for which such loan is sought.

(2) The Secretary concerned shall ensure that the lender bears a reasonable degree of risk in the financing of such project.

(Pub. L. 96–294, title II § 214, June 30, 1980, 94 Stat. 690.)

REFERENCES IN TEXT

The Federal Financing Bank Act of 1973, referred to in subsec. (c), is Pub. L. 93–224, Dec. 29, 1973, 87 Stat. 937, as amended, which is classified generally to chapter 24 (§ 2281 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2281 of Title 12 and Tables.

DEFAULTED LOANS UNDER DEPARTMENT OF ENERGY ALCOHOL FUELS LOAN GUARANTEE PROGRAM; SALE OF ASSETS; UNOBLIGATED FUNDS

Pub. L. 101–121, title II, Oct. 23, 1989, 103 Stat. 732, provided that:

"Notwithstanding 31 U.S.C. 3302, funds derived from the sale of assets as a result of defaulted loans made under the Department of Energy Alcohol Fuels Loan Guarantee program, or any other funds received in connection with this program, shall hereafter be credited to the Biomass Energy Development account, and shall be available solely for payment of the guaranteed portion of defaulted loans and associated costs of the Department of Energy Alcohol Fuels Loan Guarantee program for loans guaranteed prior to January 1, 1987.

"Unobligated balances available in the 'Alternative fuels production' account may hereafter be used for payment of the guaranteed portion of defaulted loans and associated costs of the Department of Energy Alcohol Fuels Loan Guarantee program, subject to the determination by the Secretary of Energy that such unobligated funds are not needed for carrying out the purposes of the Alternative Fuels Production program: *Provided*, That the use of these unobligated funds for payment of defaulted loans and associated costs shall be available only for loans guaranteed prior to January 1, 1987: *Provided further*, That such funds shall be used only after the unobligated balance in the Department of Energy Alcohol Fuel Loan Guarantee reserve has been exhausted."

§ 8815. Price guarantees

(a) Authority of Secretary concerned; minimum sales price

Subject to sections 8812 and 8817 of this title, the Secretary concerned may commit to guarantee, and guarantee, that the price that the owner or operator of any biomass energy project will receive for all or part of the production from that project shall not be less than a specified sales price determined as of the date of execution of the price guarantee or commitment to guarantee.

(b) Cost-plus arrangements as basis

(1) No price guarantee under this section may be based upon a cost-plus arrangement, or variant thereof, which guarantees a profit to the owner or operator involved.

(2) The use of a cost-of-service pricing mechanism by a person pursuant to law, or by a regulatory body establishing rates for a regulated person, shall not be deemed to be a cost-plus arrangement, or variant thereof, for purposes of paragraph (1).

(c) Maximum dollar amount of liability of United States

Each price guarantee, or commitment to guarantee, which is made under this section shall specify the maximum dollar amount of liability of the United States under that guarantee.

(d) Renegotiation of sales price and maximum liability

If the Secretary determines, in the discretion of the Secretary, that—

(1) a biomass energy project would not otherwise be satisfactorily completed or continued, and

(2) completion or continuation of such project would be necessary to achieve the purposes of this chapter,

the sales price set forth in the price guarantee, and maximum liability under such guarantee, may be renegotiated.

(Pub. L. 96–294, title II, § 215, June 30, 1980, 94 Stat. 692.)

§ 8816. Purchase agreements

(a) Authority of Secretary concerned; consultative requirements

Subject to sections 8812 and 8817 of this title, the Secretary concerned may commit to make, and make, purchase agreements for all or part of the biomass energy production of any biomass energy project, if the Secretary determines—

(1) that such biomass energy is of a type, quantity, and quality that can be used by Federal agencies; and

(2) that the quantity of such biomass energy, if delivery is accepted, would not exceed the likely needs of Federal agencies.

Each Secretary concerned shall consult with the other Secretary before making any determination under paragraph (2).

(b) Maximum sales price

The sales price specified in a purchase agreement under this section may not exceed the estimated prevailing market price as of the date of delivery, as determined by the Secretary of Energy, unless the Secretary concerned determines that such sales price must exceed the estimated prevailing market price in order to ensure the production of biomass energy to achieve the purposes of this chapter.

(c) Assurances required

The Secretary concerned in entering into, or committing to enter into, a purchase agreement under this section shall require—

(1) assurances that the quality of the biomass energy purchased will meet standards for the use for which such energy is purchased;

(2) assurances that the ordered quantities of such energy will be delivered on a timely basis; and

(3) such other assurances as may reasonably be required.

(d) Arrangements for delivery pursuant to agreement; charge to Federal agency receiving delivery

The Secretary concerned may take delivery of biomass energy pursuant to a purchase agreement under this section if appropriate arrangements have been made for its distribution to and use by one or more Federal agencies. Any Federal agency receiving such energy shall be charged (in accordance with otherwise applicable law), from sums appropriated to such Federal agency, for the prevailing market price as of the date of delivery, as determined by the Secretary of Energy, for the product which the biomass energy is replacing.

(e) Consultative requirements

The Secretary concerned shall consult with the Secretary of Defense and the Administrator of the General Services Administration in carrying out this section.

(f) Terms and conditions

Each purchase agreement, and commitment to enter into a purchase agreement, under this section shall provide that the Secretary concerned retains the right to refuse delivery of the biomass energy involved upon such terms and conditions as shall be specified in the purchase agreement.

(g) Maximum dollar amount of liability of United States

Each purchase agreement, or commitment to enter into a purchase agreement, which is made under this section shall specify the maximum dollar amount of liability of the United States under that agreement.

(h) Renegotiation of sales price and maximum liability

If the Secretary concerned determines, in the discretion of the Secretary, that—

(1) a biomass energy project would not otherwise be satisfactorily completed or continued, and

(2) completion or continuation of such project would be necessary to achieve the purposes of this chapter,

the sales price set forth in the purchase agreement, and maximum liability under such agreement, may be renegotiated.

(Pub. L. 96–294, title II, § 216, June 30, 1980, 94 Stat. 692.)

§ 8817. General requirements regarding financial assistance

(a) Priorities, terms, availability, etc.

(1) Priority for financial assistance under this subchapter, and the most favorable financial terms available, shall be provided to a person for any biomass energy project that—

(A) uses a primary fuel other than petroleum or natural gas in the production of biomass fuel, such as geothermal energy resources, solar energy resources, or waste heat; or

(B) applies new technologies which expand the possible feedstocks, produces new forms of biomass energy, or produces biomass fuel using improved or new technologies.

Nothing in this paragraph shall be construed to exclude financial assistance for any project which does not use such a fuel or apply such a technology.

(2)(A) Financial assistance under this subchapter shall be available for a biomass energy project only if the Secretary concerned finds that the Btu content of the motor fuels to be used in the facility involved to produce the biomass fuel will not exceed the Btu content of the biomass fuel produced in the facility.

(B) In making the determination under subparagraph (A), the Secretary concerned shall take into account any displacement of motor fuel or other petroleum products which the applicant has demonstrated to the satisfaction of the Secretary would result from the use of the biomass fuel produced in the facility involved.

(3) No financial assistance may be provided under this subchapter to any person for any biomass energy project if the Secretary concerned finds that the process to be used by the project will not extract the protein content of the feedstock for utilization as food or feed for readily available markets in any case in which to do so would be technically and economically practicable.

(4) Financial assistance may not be provided under this subchapter to any person unless the Secretary concerned—

(A) finds that necessary feedstocks are available and it is reasonable to expect they will continue to be available in the future, and, for biomass energy projects using wood or wood wastes or residues from the National Forest System, there shall be taken into account current levels of use by then existing facilities;

(B) has obtained assurance that the person receiving such financial assistance will bear a reasonable degree of risk in the construction and operation of the project; and

(C) has determined that the amount of financial assistance provided for the project is not greater than is necessary to achieve the purposes of this chapter.

(5) In providing financial assistance under this subchapter, the Secretary concerned shall give due consideration to promoting competition.

(6) In determining the amount of financial assistance for any biomass energy project which will yield byproducts in addition to biomass energy, the Secretary shall consider the potential value of such byproducts and the costs attributable to their production.

(b) Terms, conditions, maturity, etc., for insured loans, and loan guarantees

An insured loan may not be made, and a loan guarantee may not be issued, under this subchapter unless the Secretary concerned determines that the terms, conditions, maturity, security, and schedule and amounts of repayments with respect to such loan are reasonable and meet such standards as the Secretary determines are sufficient to protect the financial interests of the United States.

(c) Application requirements

(1) No financial assistance may be provided to any person under this subchapter unless an application therefor—

(A) has been submitted to the Secretary concerned by that person in such form and under such procedures as the Secretary shall prescribe, consistent with the requirements of this subchapter, and

(B) has been approved by the Secretary in accordance with such procedures.

(2) Each such application shall include information regarding the construction costs of the biomass energy project involved, and estimates of operating costs and income relating to that project (including the sale of any byproducts from that project). In addition, each applicant shall provide—

(A) access at reasonable times to such other information, and

(B) such assurances,

as the Secretary concerned may require.

(d) Reports and recordkeeping

(1) Every recipient of financial assistance under this subchapter shall, as a condition precedent thereto, consent to such examinations and reports regarding the biomass energy project involved as the Secretary concerned may require.

(2) With respect to each biomass energy project for which financial assistance is provided under this subchapter, the Secretary shall—

(A) require from the recipient of financial assistance such reports and records relating to that project as the Secretary deems necessary;

(B) prescribe the manner in which such recipient shall keep such records; and

(C) have access to such records at reasonable times for the purpose of ensuring compliance with the terms and conditions upon which financial assistance is provided.

(e) Contracts and instruments of Secretary concerned backed by full faith and credit of United States

All contracts and instruments of the Secretary concerned to provide, or providing, for financial assistance shall be general obligations of the United States backed by its full faith and credit.

(f) Contestability of contracts

Subject to the conditions of any contract for financial assistance, such contract shall be incontestable in the hands of the holder, except as

to fraud or material misrepresentation on the part of the holder.

(g) Fees for loan guarantees, etc.

(1) A fee or fees may be charged and collected by the Secretary concerned for any loan guarantee, price guarantee, or purchase agreement provided under this subchapter.

(2) The amount of such fee shall be based on the estimated administrative costs and risk of loss, except that such fee may not exceed 1 per centum of the amount of the financial assistance provided.

(h) Deposit of amounts received by Secretary concerned

All amounts received by the Secretary of Agriculture or the Secretary of Energy as fees, interest, repayment of principal, and any other moneys received by either Secretary from activities under this subchapter shall be deposited in the Treasury of the United States as miscellaneous receipts. The preceding sentence shall not apply to insured loans made under section 8813 of this title.

(Pub. L. 96–294, title II, § 217, June 30, 1980, 94 Stat. 693.)

§ 8818. Reports

(a) Repealed. Pub. L. 99–386, title I, § 101(a), Aug. 22, 1986, 100 Stat. 821

(b) Comprehensive list of loans, grants, etc.

Within 120 days after June 30, 1980, the Secretary of Energy and the Secretary of Agriculture shall submit to the Congress a comprehensive list of all the types of loans, grants, incentives, rebates, or any other such private, State, or Federal economic or financial benefits now in effect or proposed which can be or have been used for production of alcohol to be used as a motor fuel or petroleum substitute.

(c) Annual reports; report evaluating overall impact and plan for termination of Office of Alcohol Fuels

(1)(A) The Office of Alcohol Fuels shall submit to the Congress and the President annual reports containing a general description of the Office's operations during the year and a description and evaluation of each biomass energy project for which financial assistance by the Office is then in effect.

(B) Each annual report shall describe progress made toward meeting the goals of this subchapter and contain specific recommendations on what actions the Congress could take in order to facilitate the work of the Office in achieving such goals.

(C) Each annual report under this subsection shall contain financial statements prepared by the Office.

(2) On or before September 30, 1990, the Office shall submit to the Congress and the President a report evaluating the overall impact made by the Office and describing the status of each biomass energy project which has received financial assistance under this subchapter from the Office. Such report shall contain a plan for the termination of the work of the Office.

(Pub. L. 96–294, title II, § 218, June 30, 1980, 94 Stat. 695; Pub. L. 99–386, title I, § 101(a), Aug. 22, 1986, 100 Stat. 821.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–386 struck out subsec. (a) which related to submission of quarterly reports to the President and Congress by Secretary of Agriculture and Secretary of Energy.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(1) of this section relating to the requirement that the Office of Alcohol Fuels submit annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 12th item on page 91 of House Document No. 103–7.

§ 8819. Review; reorganization

(a) The President shall review periodically the progress of the Secretary of Agriculture and the Secretary of Energy in carrying out the purposes of this subchapter.

(b) If the President determines it necessary in order to achieve such purposes the President may, in accordance with the provisions of chapter 9 of title 5, provide for a reorganization, including any required realignment of the respective programs of the Secretaries under this subchapter.

(Pub. L. 96–294, title II, § 219, June 30, 1980, 94 Stat. 695.)

§ 8820. Office of Alcohol Fuels

(a) Establishment in Department of Energy; appointment and compensation of Director

There is hereby established within the Department of Energy an Office of Alcohol Fuels (hereinafter in this section referred to as the ''Office'') to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(b) Responsibilities of Director

(1) The Director shall be responsible for carrying out the functions of the Secretary of Energy under this subchapter which relate to alcohol, including the terms and conditions of financial assistance and the selection of recipients for that assistance, subject to the general supervision of the Secretary of Energy.

(2) The Director shall be responsible directly to the Secretary of Energy.

(c) Annual authorization and appropriation requests for support of Office

In each annual authorization and appropriation request, the Secretary shall identify the portion thereof intended for the support of the Office and include a statement by the Office (1) showing the amount requested by the Office in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Office. Whenever the Office submits to the Secretary, the President, or the Office of Management and Budget, any formal legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Office shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(d) Consultations respecting coordination of programs

The Secretary of Energy, after consultation with the Director, shall consult with the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of Commerce, the Administrator of the Community Services Administration, the Administrator of the Environmental Protection Agency, or their appointed representatives, in order to coordinate the programs under the Director's responsibility with other programs within the Department of Energy and in such Federal agencies, which are related to the production of alcohol.

(Pub. L. 96–294, title II, § 220, June 30, 1980, 94 Stat. 696.)

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration, which was established by section 601 of Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), terminated when Economic Opportunity Act of 1964, Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in Department of Health and Human Services by section 676 of Pub. L. 97–35, which is classified to 42 U.S.C. 9905.

§ 8821. Termination of authorities; modification of terms and conditions of conditional commitments for loan guarantees

No insured loan, loan guarantee, price guarantee, or purchase agreement may be committed to or made under this subchapter after September 30, 1984, except that all conditional commitments for loan guarantees under this subchapter which were in existence on September 30, 1984, are hereby extended through June 30, 1987. This section shall not be construed to affect the authority of the Secretary concerned to spend funds after such date pursuant to any contract for financial assistance made on or before that date under this subchapter. Notwithstanding any other provision of this subchapter, the Secretary of Energy may modify the terms and conditions of any conditional commitment for a loan guarantee under this subchapter made before October 1, 1984, including the amount of the loan guarantee. Nothing in this section shall be interpreted as indicating Congressional approval with respect to any pending conditional commitments under this Act.

(Pub. L. 96–294, title II, § 221, June 30, 1980, 94 Stat. 696; Pub. L. 99–24, § 1(a), Apr. 16, 1985, 99 Stat. 50; Pub. L. 99–190, § 101(a), Dec. 19, 1985, 99 Stat. 1185; Pub. L. 99–272, title VII, § 7301, Apr. 7, 1986, 100 Stat. 143; Pub. L. 99–500, § 101(h) [title III, § 318], Oct. 18, 1986, 100 Stat. 1783–242, 1783–286, and Pub. L. 99–591, § 101(h) [title III, § 318], Oct. 30, 1986, 100 Stat. 3341–242, 3341–287; Pub. L. 100–202, § 106, Dec. 22, 1987, 101 Stat. 1329–433.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96–294, June 30, 1980, 94 Stat. 611, as amended, known as the Energy Security Act. For complete classification of this Act to the Code, see Short Title note set out under section 8801 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendment of section by Pub. L. 99–190 is based on section 630 of title VI of H.R. 3037 [Agriculture, Rural Development, and Related Agencies Appropriations Act, 1986], as incorporated by reference by section 101(a) of Pub. L. 99–190, and enacted into law by section 106 of Pub. L. 100–202.

AMENDMENTS

1987—For amendment by Pub. L. 100–202, see 1985 Amendment note below.

1986—Pub. L. 99–500 and Pub. L. 99–591 substituted ''through June 30, 1987'' for ''through June 30, 1986''.

Pub. L. 99–272 made amendment substantially identical to that by Pub. L. 99–190, substituting ''through June 30, 1986'' for ''through September 30, 1985'' and inserting provisions authorizing the Secretary of Energy to modify the terms and conditions of any conditional commitment for a loan guarantee under this subchapter made before Oct. 1, 1984, including the amount of the guarantee, and further providing that nothing in this section shall be interpreted as indicating Congressional approval with respect to any pending conditional commitments.

1985—Pub. L. 99–190, § 101(a), as enacted by Pub. L. 100–202, substituted ''through June 30, 1986'' for ''through September 30, 1985'' and inserted provisions authorizing the Secretary of Energy to modify the terms and conditions of any conditional commitment for a loan guarantee under this subchapter made before Oct. 1, 1984, including the amount of the guarantee, and further providing that nothing in this section shall be interpreted as indicating Congressional approval with respect to any pending conditional commitments. See Codification note above.

Pub. L. 99–24 inserted '', except that all conditional commitments for loan guarantees under this subchapter which were in existence on September 30, 1984, are hereby extended through September 30, 1985''.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 106 of Pub. L. 100–202 provided that the amendment made by that section is effective on date of enactment [Dec. 19, 1985] of the ''pertinent joint resolution'' making continuing appropriations for fiscal year 1986 [Pub. L. 99–190].

PENDING CONDITIONAL COMMITMENTS

Section 1(b) of Pub. L. 99–24 provided that: ''Enactment of this Act [amending this section] shall not be interpreted as indicating congressional approval with respect to any pending conditional commitments under this Act.''

SUBCHAPTER II—MUNICIPAL WASTE BIOMASS ENERGY

§ 8831. Municipal waste energy development plan

(a) Preparation by Secretary of Energy; consultative requirements

The Secretary of Energy shall prepare a comprehensive plan for carrying out this subchapter. In the preparation of such plan, the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the head of such other Federal agencies as the Secretary deems appropriate.

(b) Transmittal to President and Congress

Not later than 90 days after June 30, 1980, the Secretary shall transmit the comprehensive plan to the President and the Congress.

(c) Required statements

The comprehensive plan under this section shall include a statement setting forth—

(1) the anticipated research, development, demonstration, and commercialization objectives to be achieved;

(2) the management structure and approach to be adopted to carry out such plan;

(3) the program strategies, including detailed milestone goals to be achieved;

(4) the specific funding requirements for individual program elements and activities, including the total estimated construction costs of proposed projects; and

(5) the estimated relative financial contributions of the Federal Government and non-Federal participants in the program.

(d) Report to President and Congress; contents

Not later than January 1, 1982, the Secretary shall prepare and submit to the President and the Congress a report containing a complete description of any financial, institutional, environmental, and social barriers to the development and application of technologies for the recovery of energy from municipal wastes.

(Pub. L. 96–294, title II, § 231, June 30, 1980, 94 Stat. 696.)

§ 8832. Construction loans

(a) Authority of Secretary of Energy

Subject to sections 8835 and 8836 of this title, the Secretary of Energy may commit to make, and make, loans for the construction of municipal waste energy projects.

(b) Estimated project construction costs as determinative of initial and revised amount of loan; interest rate

(1) Any loan under this section—

(A) may not exceed 80 per centum of the total estimated cost of the construction of the municipal waste energy project involved, and

(B) shall bear interest at a rate determined by the Secretary of Energy (taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans) plus not to exceed one per centum, as determined by the Secretary of Energy, and adjusted to the nearest one-eighth of one per centum.

(2) In the event the total estimated costs of construction of the project thereafter exceed the total estimated costs initially determined by the Secretary of Energy, the Secretary may in addition, upon application therefor, make a loan for so much of the additional estimated costs as does not exceed 10 per centum of the initial total estimated costs of construction.

(c) Preconditions

A loan may not be made under this section unless the person applying for such loan has established to the satisfaction of the Secretary of Energy that the applicant is unable without such a loan to obtain sufficient credit elsewhere at reasonable rates and terms, taking into consideration prevailing market rates and terms for loans for similar periods of time, to finance the construction of the project for which such loan is sought.

(Pub. L. 96–294, title II, § 232, June 30, 1980, 94 Stat. 697.)

§ 8833. Guaranteed construction loans

(a) Authority of Secretary of Energy

Subject to sections 8835 and 8836 of this title, the Secretary of Energy may commit to guarantee, and guarantee, against loss on up to 90 per centum of the principal and interest, any loan which is made solely to provide funds for the construction of a municipal waste energy project and which does not exceed 90 per centum of the cost of the construction of the project involved, as estimated by the Secretary on the date of the guarantee or commitment to guarantee.

(b) Estimated project construction costs as determinative of revised amount of guarantee

In the event the total estimated costs of construction of the project thereafter exceed the total estimated costs initially determined by the Secretary of Energy, the Secretary may in addition, upon application therefor, guarantee, against loss on up to 90 per centum of the principal and interest, a loan for so much of the additional estimated total costs as does not exceed 10 per centum of the total estimated costs.

(c) Terms and conditions

The terms and conditions of loan guarantees under this section shall provide that, if the Secretary of Energy makes a payment of principal or interest upon the default by a borrower, the Secretary shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the loan guarantee or related agreements).

(d) Termination, cancellation, or revocation, and conclusive nature of guarantee

Any loan guarantee under this section shall not be terminated, canceled, or otherwise revoked, except in accordance with the terms thereof and shall be conclusive evidence that such guarantee complies fully with the provisions of this chapter and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans and of the guarantee.

(e) Payment to lender

If the Secretary of Energy determines that—

(1) the borrower is unable to meet payments and is not in default,

(2) it is in the public interest to permit the borrower to continue to pursue the purposes of such project, and

(3) the probable net benefit to the United States in paying the principal and interest due under a loan guarantee agreement will be greater than that which would result in the event of a default,

then the Secretary may pay to the lender under a loan guarantee agreement an amount not greater than the principal and interest which the borrower is obligated to pay to such lender, if the borrower agrees to reimburse the Secretary for such payment on terms and conditions, including interest, which the Secretary determines are sufficient to protect the financial interests of the United States.

(f) Preconditions

A loan may not be guaranteed under this section unless the applicant for such loan has established to the satisfaction of the Secretary of Energy that the lender is not willing without such a guarantee to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing market rates and terms for loans for similar periods of time, to finance the construction of the project for which such loan is sought.

(g) Payment of interest; tax consequences

(1) With respect to any loan or debt obligation which is—

(A) issued after June 30, 1980, by, or on behalf of, any State or any political subdivision or governmental entity thereof,

(B) guaranteed by the Secretary of Energy under this section, and

(C) not supported by the full faith and credit of the issuer as a general obligation of the issuer,

the interest paid on such obligation and received by the purchaser thereof (or the purchaser's successors in interest) shall be included in gross income for the purposes of chapter 1 of title 26.

(2) With respect to the amount of obligations described in paragraph (1) that the issuer would have been able to issue as tax exempt obligations (other than obligations secured by the full faith and credit of the issuer as a general obligation of the issuer), the Secretary of Energy is authorized to pay only to the issuer any portion of the interest on such obligations, as determined by the Secretary of the Treasury after taking into account the interest rate which would have been paid on the obligations had they been issued as tax exempt obligations without being so guaranteed by the Secretary of Energy and the interest rate actually paid on the obligations when issued as taxable obligations. Such payments shall be made in amounts determined by the Secretary of Energy, and in accordance with such terms and conditions as the Secretary of the Treasury shall require.

(h) Fees

(1) A fee or fees may be charged and collected by the Secretary of Energy for any loan guarantee under this section.

(2) The amount of such fee shall be based on the estimated administrative costs and risk of loss, except that such fee may not exceed 1 per centum of the maximum of the guarantee.

(Pub. L. 96–294, title II, § 233, June 30, 1980, 94 Stat. 698; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original ''this title'', meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, as amended, known as the Biomass Energy and Alcohol Fuels Act of 1980, which enacted this chapter, sections 1435 and 3129 of Title 7, Agriculture, and section 3391a of Title 15, Commerce and Trade, and amended sections 341, 342, 427, and 3154 of Title 7, section 753 of Title 15, and sections 590h and 1642 of Title 16, Conservation. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

AMENDMENTS

1986—Subsec. (g)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

§ 8834. Price support loans and price guarantees

(a) Authority of Secretary of Energy with respect to loans for existing projects; disbursements, etc.

(1) In the case of any existing municipal waste energy project which produces and sells biomass energy, the Secretary of Energy may commit to make, and make, a price support loan in amounts determined under paragraph (3) for the operation of such project. Payments under any such loan shall be disbursed on an annual basis, as determined (in accordance with paragraph (3)) on the basis of the amount of biomass energy produced and sold by that project during the 12-month period involved and the type and cost of fuel displaced by the biomass energy sold.

(2)(A) In the case of any support loan under this section for an existing municipal waste energy project—

(i) disbursements under such loan may not be made for more than 5 consecutive 12-month periods;

(ii) the amount of the disbursement for the second and any subsequent 12-month period for which disbursements are to be made under the support loan shall be reduced by an amount determined by multiplying the amount calculated under paragraph (3) by a factor determined by dividing the number of 12-month periods for which disbursements are made under the support loan into the number of such periods which have elapsed;

(iii) commencing at the end of the last of such 12-month periods, the support loan shall be repayable over a period equal to the then remaining useful life of the project (as determined by the Secretary) or 10 years, whichever is shorter; and

(iv) commencing at the end of such last 12-month period, such loan shall bear interest at a rate determined by the Secretary of Energy (taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans) plus not to exceed one per centum, as determined by the Secretary of Energy, and adjusted to the nearest one-eighth of one per centum.

(3) The amount of the loan payment to be disbursed under this subsection for any year with respect to each type of biomass energy produced and sold by an existing municipal waste energy project shall be equal to—

(A)(i) the standard support price reduced by the cost of the fuel displaced by the biomass energy sold, or (ii) $2.00, whichever is lower, multiplied by

(B) the amount of such biomass energy sold (in millions of Btu's).

(b) Authority of Secretary of Energy with respect to loans for new projects; disbursements, etc.

(1) In the case of any new municipal waste energy project which produces and sells biomass

energy, the Secretary of Energy may commit to make, and make, a price support loan in amounts determined in accordance with the provisions of subsection (a) of this section, except as provided in paragraph (2).

(2) In the case of any loan under this subsection for a new municipal waste energy project—

(A) disbursements under such loan may not be made for more than 7 consecutive 12-month periods (with reductions as provided in subsection (a)(2)(A)(ii)) of this section;

(B) such loan shall bear interest at a rate not in excess of the rate prescribed under subsection (a) of this section; and

(C) the principal of or interest on such loan shall, in accordance with the support loan agreement, be repayable, commencing at the end of the last 12-month period covered by the support loan, over a period not in excess of the period equal to the then remaining useful life of the project (as determined by the Secretary) or 15 years, whichever is shorter.

(c) Authority of Secretary of Energy with respect to guarantees for new projects; pricing determinations, etc.

(1) In the case of any new municipal waste energy project which produces and sells biomass energy, the Secretary of Energy may commit to make, and make, a price guarantee for the operation of such project which guarantees that the price the owner or operator will receive for all or part of the production from that project shall not be less than a specified sales price determined as of the date of execution of the guarantee agreement.

(2)(A) No price guarantee under this section may be based upon a cost-plus arrangement, or variant thereof, which guarantees a profit to the owner or operator involved.

(B) The use of a cost-of-service pricing mechanism by a person pursuant to law, or by a regulatory body establishing rates for a regulated person, shall not be deemed to be a cost-plus arrangement, or variant thereof, for purposes of subparagraph (A).

(3) In the case of any price guarantee under this subsection for a new municipal waste energy project—

(A) disbursements under such guarantee may not be made for more than 7 consecutive 12-month periods; and

(B) amounts paid under this subsection may be required to be repaid to the Secretary of Energy under such terms and conditions as the Secretary may prescribe, including interest at a rate not in excess of the rate prescribed under subsection (a) of this section.

(d) Definitions; sale price of retained fuel; rules relating to fuel displacement

For purposes of this section—

(1) The term ''new municipal waste energy project'' means any municipal waste energy project which—

(A) is initially placed in service after June 30, 1980; or

(B) if initially placed in service before June 30, 1980, has an increased capacity by reason of additional construction, and as such is placed in service after such date.

(2) The term ''existing municipal waste energy project'' means any municipal waste energy project which is not a new municipal waste project.

(3) The term ''placed in service'' means operated at more than 50 percent of the estimated operational capacity.

(4)(A) Except as provided in subparagraphs (B) and (C), the term ''standard support price'' means the average price (per million Btu's) for No. 6 fuel oil imported into the United States on June 30, 1980, as determined, by rule, by the Secretary of Energy not later than 90 days after June 30, 1980.

(B) In any case in which the fuel displaced is No. 6 fuel oil or any higher grade of petroleum (as determined by the Secretary of Energy), the term ''standard support price'' means 125 per centum of the price determined by rule under subparagraph (A).

(C) In any case in which biomass energy produced and sold by a project is steam or electricity, the term ''standard support price'' means the price determined by rule under subparagraph (A), subject to such adjustments as the Secretary of Energy may authorize by rule.

(5) The term ''cost of the fuel displaced'' means the cost of the fuel (per million Btu's) which the purchaser of biomass energy would have purchased if the biomass energy had not been available for sale to that purchaser.

(6) Any biomass energy produced by a municipal waste energy project which may be retained for use by the owner or operator of such project shall be considered to be sold at such price as the Secretary of Energy determines.

(7) Not later than 90 days after June 30, 1980, the Secretary of Energy shall prescribe, by rule, the manner of determining the fuel displaced by the sale of any biomass energy, and the price of the fuel displaced.

(Pub. L. 96–294, title II, § 234, June 30, 1980, 94 Stat. 699.)

§ 8835. General requirements regarding financial assistance

(a) Priorities, terms, availability, etc.

(1) Priority for financial assistance under the provisions of sections 8832, 8833, and 8834 of this title and the most favorable financial terms available, shall be provided for any municipal waste energy project that will—

(A) produce a liquid fuel from municipal waste; or

(B) will displace petroleum or natural gas as a fuel.

(2)(A) With respect to projects producing biomass energy other than biomass fuel, financial assistance under the provisions of sections 8832, 8833, and 8834 of this title shall be available only if the Secretary of Energy finds that the project does not use petroleum or natural gas except for flame stabilization or start-up.

(B) With respect to projects producing biomass fuel, financial assistance under such provisions shall be available to such project only if the Secretary of Energy finds that the Btu content of the biomass fuel produced substantially ex-

ceeds the Btu content of any petroleum or natural gas used in the project to produce the biomass fuel.

(3) Financial assistance may not be provided under section 8832, 8833, or 8834 of this title unless the Secretary of Energy finds that necessary municipal waste feedstocks are available and it is reasonable to expect they will continue to be available for the expected economic life of the project.

(4) In providing financial assistance under section 8832, 8833, or 8834 of this title, the Secretary of Energy shall give due consideration to promoting competition.

(5) In determining the amount of financial assistance for any municipal waste energy project which will yield byproducts in addition to biomass energy, the Secretary shall consider the value of such byproducts and the costs attributable to their production.

(6) The Secretary of Energy shall not provide financial assistance under section 8832, 8833, or 8834 of this title for any municipal waste energy unless the Secretary determines—

(A) the project will be technically and economically viable;

(B) the financial assistance provided encourages and supplements, but does not compete with nor supplant, any private capital investment which otherwise would be available to the proposed municipal waste energy project on reasonable terms and conditions which would permit such project to be undertaken;

(C) assurances are provided that the project will not use, in any substantial quantities, waste paper which would otherwise be recycled for a use other than as a fuel and will not substantially compete with facilities in existence on the date of the financial assistance which are engaged in the separation or recovery of reuseable materials from municipal waste; and

(D) that the amount of financial assistance provided for the project is not greater than is necessary to achieve the purposes of this chapter.

(b) Terms, conditions, maturity, etc.

Financial assistance may not be provided under section 8832, 8833, or 8834 of this title unless the Secretary of Energy determines that—

(1) the terms, conditions, maturity, security and schedule and amounts of repayments with respect to such assistance are reasonable and meet such standards as the Secretary determines are sufficient to protect the financial interests of the United States; and

(2) the person receiving such financial assistance will bear a reasonable degree of risk with respect to the project.

(c) Application requirements

(1) No financial assistance may be provided to any person under section 8832, 8833, or 8834 of this title unless an application therefor—

(A) has been submitted to the Secretary of Energy by such person in such form and under such procedures as the Secretary shall prescribe, consistent with the requirements of this subchapter, and

(B) has been approved by the Secretary in accordance with such procedures.

(2) Each such application shall include information regarding the construction costs of the municipal waste energy project involved (if appropriate), and estimates of operating costs and income relating to that project (including the sale of any byproducts from that project). In addition, each applicant shall provide—

(A) access at reasonable times to such other information, and

(B) such assurances,

as the Secretary of Energy may require.

(d) Reports and recordkeeping

(1) Every person receiving financial assistance under section 8832, 8833, or 8834 of this title shall, as a condition precedent thereto, consent to such examinations and reports thereon regarding the municipal waste energy project involved as the Secretary of Energy may require.

(2) With respect to each municipal waste energy project for which financial assistance is provided under section 8832, 8833, or 8834 of this title, the Secretary shall—

(A) require from the recipient of financial assistance such reports and records relating to that project as the Secretary deems necessary;

(B) prescribe the manner in which such recipient shall keep such records; and

(C) have access to such records at reasonable times for the purpose of ensuring compliance with the terms and conditions upon which financial assistance is provided.

(e) Deposit of amounts received

All amounts received by the Secretary of Energy as fees, interest, repayment of principal, and any other moneys received by the Secretary from operations under section 8832, 8833, or 8834 of this title shall be deposited in the general fund of[1] Treasury of the United States as miscellaneous receipts.

(f) Contracts and instruments backed by full faith and credit of United States

All contracts and instruments of the Secretary of Energy to provide, or providing, for financial assistance shall be general obligations of the United States backed by its full faith and credit.

(g) Contestability of contracts

Subject to the conditions of any contract for financial assistance, such contract shall be incontestable in the hands of the holder, except as to fraud or material misrepresentation on the part of the holder.

(h) Eligibility of debt obligations for purchase, sale, or issuance to Federal Financing Bank or any Federal agency

Notwithstanding the provisions of the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 et seq.) or any other provision of law (except as may be specifically provided by reference to this subsection in any Act enacted after June 30, 1980), no debt obligation which is made or committed to be made, or which is guaranteed or committed to be guaranteed by the Secretary of Energy under section 8832, 8833, or 8834 of this title shall be eligible for purchase by, or com-

[1] So in original. Probably should be ''of the''.

mitment to purchase by, or sale or issuance to, the Federal Financing Bank or any Federal agency.

(Pub. L. 96–294, title II, § 235, June 30, 1980, 94 Stat. 701.)

REFERENCES IN TEXT

The Federal Financing Bank Act of 1973, referred to in subsec. (h), is Pub. L. 93–224, Dec. 29, 1973, 87 Stat. 937, as amended, which is classified generally to chapter 24 (§ 2281 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2281 of Title 12 and Tables.

§ 8836. Financial assistance program administration

The Secretary of Energy shall establish procedures and take such other actions as may be necessary regarding the solicitation, review, and evaluation of applications, and awarding of financial assistance under section 8832, 8833, or 8834 of this title as may be necessary to carry out the plan established under section 8831 of this title.

(Pub. L. 96–294, title II, § 236, June 30, 1980, 94 Stat. 703.)

§ 8837. Commercialization demonstration program pursuant to Federal nonnuclear energy research and development

(a) Establishment and conduct pursuant to other Federal statutory authorities; required undertakings subsequent to consultations

(1) The Secretary of Energy shall establish and conduct, pursuant to the authorities contained in the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5901 et seq.], an accelerated research, development, and demonstration program for promoting the commercial viability of processes for the recovery of energy from municipal wastes.

(2) The provisions of subsections (d), (m), and (x)(2) of section 19 of such Act[1] shall not apply with respect to the program established under this section.

(3) As part of the program established under this section, the Secretary, after consulting with the Administrator of the Environmental Protection Agency and the Secretary of Commerce, shall undertake—

(A) the research, development, and demonstration of technologies to recover energy from municipal wastes;

(B) the development and application of new municipal waste-to-energy recovery technologies;

(C) the assessment, evaluation, demonstration, and improvement of the performance of existing municipal waste-to-energy recovery technologies with respect to capital costs, operating and maintenance costs, total project financing, recovery efficiency, and the quality of recovered energy and energy intensive materials;

(D) the evaluation of municipal waste energy projects for the purpose of developing a base of engineering data that can be used in the design of future municipal waste energy projects to recover energy from municipal wastes; and

(E) research studies on the size and other significant characteristics of potential markets for municipal waste-to-energy recovery technologies, and recovered energy, and energy intensive materials.

(b) Financial assistance

Under such program, the Secretary of Energy may provide financial assistance consisting of price supports, loans, and loan guarantees, for the cost of planning, designing, constructing, operating, and maintaining demonstration facilities, and, in the case of existing facilities, modifications of such facilities solely for demonstration purposes, for the conversion of municipal wastes into energy or the recovery of materials.

(c) Priority for funding

Priority for funding of activities under subsection (a) of this section and financial assistance under subsection (b) of this section shall be provided for any activity or project for the demonstration of technologies for the production of liquid fuels or biomass energy which substitute for petroleum or natural gas.

(d) Obligation and expenditure of funds

The Secretary of Energy may not obligate or expend any funds authorized under this chapter in carrying out subsection (b) of this section until the plan required under section 8831(a) of this title has been prepared and submitted to the Congress.

(e) Deposit of moneys received

All amounts received by the Secretary of Energy as fees, interest, repayment of principal, and any other moneys received by the Secretary from operations under this section shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(Pub. L. 96–294, title II, § 237, June 30, 1980, 94 Stat. 703.)

REFERENCES IN TEXT

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (a)(1), is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of this title. Section 19 of the Act was classified to section 5919 of this title prior to repeal by Pub. L. 109–58, title X, § 1009(b)(12), Aug. 8, 2005, 119 Stat. 936. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

§ 8838. Jurisdiction of Department of Energy and Environmental Protection Agency

The provisions of section 5920(c)[1] of this title, relating to the responsibilities of the Environmental Protection Agency and the Department of Energy, shall apply with respect to actions under this subchapter to the same extent and in the same manner as such provisions apply to actions under section 5920[1] of this title.

(Pub. L. 96–294, title II, § 238, June 30, 1980, 94 Stat. 704.)

[1] See References in Text note below.

[1] See References in Text note below.

REFERENCES IN TEXT

Section 5920 of this title, referred to in text, was repealed by Pub. L. 109–58, title X, § 1009(b)(12), Aug. 8, 2005, 119 Stat. 936.

§ 8839. Office of Energy from Municipal Waste

(a) Establishment in Department of Energy; appointment of Director

There is hereby established within the Department of Energy an Office of Energy from Municipal Waste (hereinafter in this section referred to as the ''Office'') to be headed by a Director, who shall be appointed by the Secretary of Energy.

(b) Functions

It shall be the function of the Office to perform—

(1) the research, development, demonstration, and commercialization activities authorized under this subchapter (including those authorized under section 8837 of this title), and

(2) such other duties relating to the production of energy from municipal waste as the Secretary of Energy may assign to the Office.

(c) Consultations respecting implementation of functions

In carrying out functions tranferred[1] or assigned to the Office, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the heads of such other Federal agencies, as appropriate.

(d) Transfer of related functions and personnel from Department of Energy

The Secretary shall provide for the transfer to the Office of the functions relating to, and personnel of the Department who are responsible for the administration of, programs in existence on June 30, 1980, which relate to the research, development, demonstration, and commercialization of technologies for the recovery of energy from municipal waste.

(Pub. L. 96–294, title II, § 239, June 30, 1980, 94 Stat. 704.)

§ 8840. Termination of authorities

No financial assistance may be committed to or made under this subchapter after September 30, 1984. This section shall not be construed to affect the authority of the Secretary of Energy to spend funds after such date pursuant to any award of financial assistance made on or before that date.

(Pub. L. 96–294, title II, § 240, June 30, 1980, 94 Stat. 705.)

SUBCHAPTER III—RURAL, AGRICULTURAL, AND FORESTRY BIOMASS ENERGY

§ 8851. Model demonstration biomass energy facilities; establishment, public inspection, etc.; authorization of appropriations

(a) The Secretary of Agriculture shall establish not more than ten model demonstration biomass energy facilities for purposes of exhibiting the most advanced technology available for producing biomass energy. Such facilities and information regarding the operation of such facilities shall be available for public inspection, and, to the extent practicable, such facilities shall be established in various regions in the United States. Such facilities may be established in cooperation with appropriate departments or agencies of the States, or appropriate in various regions in the United States. Such facilities may be established in cooperation with appropriate departments or agencies of the States, or appropriate departments, agencies, or other instrumentalities of the United States.

(b) For purposes of carrying out subsection (a) of this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1981, 1982, 1983, and 1984.

(Pub. L. 96–294, title II, § 251, June 30, 1980, 94 Stat. 705.)

§ 8852. Coordination of research and extension activities; consultative requirements

(a) The Secretary of Agriculture shall coordinate the applied research and extension programs conducted under this subchapter and under the amendments made by this subchapter to section 1419 [7 U.S.C. 3154] and subtitle B of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 [7 U.S.C. 3129],[1] section 1 of the Bankhead-Jones Act [7 U.S.C. 427], section 3 of the Forest and Rangeland Renewable Resources Research Act of 1978 [16 U.S.C. 1642], and sections 1 and 2 of the Smith-Lever Act [7 U.S.C. 341, 342] with the programs of the Department of Energy.

(b) In carrying out this subchapter and the amendments made by this subchapter, the Secretary of Agriculture shall consult on a continuing basis with—

(1) the Subcommittee on Food, Agricultural, and Forestry Research of the Federal Coordinating Council for Science, Engineering, and Technology;

(2) the Joint Council on Food and Agricultural Sciences; and

(3) the National Agricultural Research and Extension Users Advisory Board;

for the purpose of coordinating research and extension activities.

(Pub. L. 96–294, title II, § 257, June 30, 1980, 94 Stat. 708; Pub. L. 97–98, title XIV, § 1406(c), Dec. 22, 1981, 95 Stat. 1299.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this subtitle'', meaning subtitle C (§§ 251–262) of title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 705, as amended, which enacted this subchapter and sections 1435 and 3129 of Title 7, Agriculture, and amended sections 341, 342, 427, and 3154 of Title 7 and sections 590h and 1642 of Title 16, Conservation. For complete classification of subtitle C to the Code, see Tables.

7 U.S.C. 3129, referred to in subsec. (a), was repealed by Pub. L. 101–624, title XVI, § 1601(f)(1)(C), Nov. 28, 1990, 104 Stat. 3704.

AMENDMENTS

1981—Subsec. (b)(1). Pub. L. 97–98 substituted ''Subcommittee on Food, Agricultural, and Forestry Re-

[1] So in original. Probably should be ''transferred''.

[1] See References in Text note below.

search'' for ''Subcommittee on Food and Renewable Resources''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97–98, set out as an Effective Date note under section 4301 of Title 7, Agriculture.

§ 8853. Lending for energy production and conservation projects by production credit associations, Federal land banks, and banks for cooperatives

The Farm Credit Administration shall encourage production credit associations, Federal land banks, and banks for cooperatives to use existing authorities to make loans to eligible persons for commercially feasible biomass energy projects.

(Pub. L. 96–294, title II, § 258, June 30, 1980, 94 Stat. 709.)

§ 8854. Utilization of National Forest System in wood energy development projects

The Secretary of Agriculture may make available the timber resources of the National Forest System, in accordance with appropriate timber appraisal and sale procedures, for use by biomass energy projects.

(Pub. L. 96–294, title II, § 261, June 30, 1980, 94 Stat. 710.)

§ 8855. Forest Service leases and permits

It is the intent of the Congress that the Secretary of Agriculture shall process applications for leases of National Forest System lands and for permits to explore, drill, and develop resources on land leased from the Forest Service, notwithstanding the current status of any plan being prepared under section 1604 of title 16.

(Pub. L. 96–294, title II, § 262, June 30, 1980, 94 Stat. 710.)

SUBCHAPTER IV—MISCELLANEOUS BIOMASS PROVISIONS

§ 8871. Use of gasohol in Federal motor vehicles

(a) Exercise of President's authority pursuant to executive order respecting use

The President shall, by executive order, require that motor vehicles which are owned or leased by Federal agencies and are capable of operating on gasohol shall use gasohol where available at reasonable prices and in reasonable quantities.

(b) Exceptions

The President may provide for exceptions to the requirement of subsection (a) of this section where necessary, including to protect the national security.

(c) Gasohol requirements

Such executive order shall specify the alcohol-gasoline mixture or mixtures which shall constitute ''gasohol'' for purposes of such order, as well as specifications for its use.

(Pub. L. 96–294, title II, § 271, June 30, 1980, 94 Stat. 710.)

REPORT ON EXEMPTIONS AND SENSE OF CONGRESS REGARDING PURCHASE OF DOMESTIC GASOHOL

Pub. L. 102–190, div. A, title VIII, § 841(c), (d), Dec. 5, 1991, 105 Stat. 1449, provided that:

''(c) REPORT ON EXEMPTIONS.—The Secretary of Defense shall review all exemptions granted for the Department of Defense, and the Administrator of the General Services Administration shall review all exemptions granted for Federal agencies and departments, to the requirements of section 2398 of title 10, United States Code, and section 271 of the Energy Security Act (Public Law 96–294; 42 U.S.C. 8871) and shall terminate any exemption that the Secretary or the Administrator determines is no longer appropriate. Not later than 90 days after the date of the enactment of this Act [Dec. 5, 1991], the Secretary and the Administrator shall submit jointly to Congress a report on the results of the review, with a justification for the exemptions that remain in effect under those provisions of law.

''(d) SENSE OF CONGRESS.—It is the sense of Congress that whenever any motor vehicle capable of operating on gasoline or alcohol-gasoline blends that is owned or operated by the Department of Defense or any other department or agency of the Federal Government is refueled, it shall be refueled with an alcohol-gasoline blend containing at least 10 percent domestically produced alcohol if available along the normal travel route of the vehicle at the same or lower price than unleaded gasoline.''

EX. ORD. NO. 12261. IMPLEMENTATION OF USE OF GASOHOL IN FEDERAL MOTOR VEHICLES

Ex. Ord. No. 12261, Jan. 5, 1981, 46 F.R. 2023, provided:

By the authority vested in me as President of the United States of America by Section 271 of the Energy Security Act (94 Stat. 710; Public Law 96–294; 42 U.S.C. 8871), in order to require Federal agencies which own or lease motor vehicles to use gasohol in those vehicles which are capable of operating on gasohol where it is available at reasonable prices and in reasonable quantities, it is hereby ordered as follows:

1–101. In procurement actions for unleaded gasoline motor fuel, Federal agencies shall, whenever feasible, specify that gasohol is an acceptable substitute motor fuel. In such procurements there shall be a preference for the purchase of gasohol.

1–102. Agencies may procure the components of gasohol and do their own blending.

1–103. In determining the feasibility of specifying gasohol as a substitute motor fuel in procurement actions for unleaded gasoline, agencies shall include in their considerations such factors as the availability of storage facilities for bulk purchases and the number of vehicles capable of operating on gasohol.

1–104. Agencies shall designate those vehicles which are capable of using gasohol, consistent with overall agency needs and sound vehicle management practices. Agencies shall specify the conditions governing the use of gasohol, including when gasohol shall be purchased from normal retail outlets by vehicle operators.

1–105. The use of gasohol by the Department of Defense pursuant to this Order shall be in accordance with Section 815 of the Department of Defense Authorization Act, 1980 (93 Stat. 817; Public Law 96–107; 10 U.S.C. 2388 note) which provides for the use of gasohol to the maximum extent feasible and consistent with overall defense needs and sound vehicle management practices, as determined by the Secretary of Defense.

1–106. Vehicles used in experimental programs to test fuels other than gasohol are excepted from this Order.

1–107. The authority vested in the President by Section 271(b) of the Energy Security Act (42 U.S.C. 8871(b)) is delegated to the Secretary of Defense with respect to gasohol use by the Department of Defense, and delegated to the Administrator of General Services with respect to gasohol use by other agencies.

1–108. Federal agencies shall make available to the Department of Energy, upon request, relevant data or information they possess concerning agency gasohol usage.

1–109. For purposes of this Order ''Gasohol'' means a motor fuel which has an octane rating of not less than 87 (R+M)/2 and which consists of approximately 90 percent unleaded gasoline and approximately 10 percent anhydrous (199 proof or above) ethyl alcohol derived from biomass, as defined in Section 203(2)(A) of the Energy Security Act (94 Stat. 683; Public Law 96–294; 42 U.S.C. 8802(2)(A)).

1–110. (a) The Secretary of Defense with respect to gasohol use by the Department of Defense, and the Administrator of General Services with respect to gasohol use by other agencies, shall issue such guidelines for the implementation of this Order as they deem appropriate.

(b) Such guidelines shall provide for a determination of reasonable prices and reasonable quantities based on the local prevailing price of unleaded gasolines, the octane requirements for vehicles in the Federal fleet, local market availability of gasohol or its components, and other such factors, as may be appropriate.

JIMMY CARTER.

CHAPTER 97—ACID PRECIPITATION PROGRAM AND CARBON DIOXIDE STUDY

SUBCHAPTER I—ACID PRECIPITATION

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8901. Introductory provisions.
8902. Comprehensive ten-year program.
8903. Comprehensive research plan.
8904. Implementation of comprehensive plan; new or existing regulatory authorities, etc., not granted or modified.
8905. Authorization of appropriations.
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SUBCHAPTER II—CARBON DIOXIDE

8911. Comprehensive study of projected impact on atmospheric levels of fossil fuel combustion, etc.
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SUBCHAPTER I—ACID PRECIPITATION

§ 8901. Introductory provisions

(a) Congressional statement of findings and purpose

The Congress finds and declares that acid precipitation resulting from other than natural sources—

(1) could contribute to the increasing pollution of natural and man-made water systems;

(2) could adversely affect agricultural and forest crops;

(3) could adversely affect fish and wildlife and natural ecosystems generally;

(4) could contribute to corrosion of metals, wood, paint, and masonry used in construction and ornamentation of buildings and public monuments;

(5) could adversely affect public health and welfare; and

(6) could affect areas distant from sources and thus involve issues of national and international policy.

(b) Congressional declaration of purpose

The Congress declares that it is the purpose of this subchapter—

(1) to identify the causes and sources of acid precipitation;

(2) to evaluate the environmental, social, and economic effects of acid precipitation; and

(3) based on the results of the research program established by this subchapter and to the extent consistent with existing law, to take action to the extent necessary and practicable (A) to limit or eliminate the identified emissions which are sources of acid precipitation, and (B) to remedy or otherwise ameliorate the harmful effects which may result from acid precipitation.

(c) "Acid precipitation" defined

For purposes of this subchapter the term ''acid precipitation'' means the wet or dry deposition from the atmosphere of acid chemical compounds.

(Pub. L. 96–294, title VII, § 702, June 30, 1980, 94 Stat. 770.)

SHORT TITLE

Section 701 of title VII Pub. L. 96–294 provided that: ''This title [enacting this chapter] may be cited as the 'Acid Precipitation Act of 1980'.''

§ 8902. Comprehensive ten-year program

(a) Implementation by Acid Precipitation Task Force; membership, etc., of Task Force

There is hereby established a comprehensive ten-year program to carry out the provisions of this subchapter; and to implement this program there shall be formed an Acid Precipitation Task Force (hereafter in this subchapter referred to as the ''Task Force''), of which the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the Administrator of the National Oceanic and Atmospheric Administration shall be joint chairmen. The remaining membership of the Task Force shall consist of—

(1) one representative each from the Department of the Interior, the Department of Health and Human Services, the Department of Commerce, the Department of Energy, the Department of State, the National Aeronautics and Space Administration, the Council on Environmental Quality, the National Science Foundation, and the Tennessee Valley Authority;

(2) the director of the Argonne National Laboratory, the director of the Brookhaven National Laboratory, the director of the Oak Ridge National Laboratory, and the director of the Pacific Northwest National Laboratory; and

(3) four additional members to be appointed by the President.

(b) Research management consortium; membership, responsibilities, etc.

The four National Laboratories (referred to in subsection (a)(2) of this section) shall constitute a research management consortium having the responsibilities described in section 8903(b)(13) of this title as well as the general responsibilities required by their representation on the Task Force. In carrying out these responsibilities the consortium shall report to, and act pursuant to direction from, the joint chairmen of the Task Force.

(c) Director of research program

The Administrator of the National Oceanic and Atmospheric Administration shall serve as the director of the research program established by this subchapter.

(Pub. L. 96–294, title VII, § 703, June 30, 1980, 94 Stat. 771.)

§ 8903. Comprehensive research plan

(a) Preparation by Task Force for ten-year program; purposes

The Task Force shall prepare a comprehensive research plan for the ten-year program (hereafter in this subchapter referred to as the ''comprehensive plan''), setting forth a coordinated program (1) to identify the causes and effects of acid precipitation and (2) to identify actions to limit or ameliorate the harmful effects of acid precipitation.

(b) Scope

The comprehensive plan shall include programs for—

(1) identifying the sources of atmospheric emissions contributing to acid precipitation;

(2) establishing and operating a nationwide long-term monitoring network to detect and measure levels of acid precipitation;

(3) research in atmospheric physics and chemistry to facilitate understanding of the processes by which atmospheric emissions are transformed into acid precipitation;

(4) development and application of atmospheric transport models to enable prediction of long-range transport of substances causing acid precipitation;

(5) defining geographic areas of impact through deposition monitoring, identification of sensitive areas, and identification of areas at risk;

(6) broadening of impact data bases through collection of existing data on water and soil chemistry and through temporal trend analysis;

(7) development of dose-response functions with respect to soils, soil organisms, aquatic and amphibious organisms, crop plants, and forest plants;

(8) establishing and carrying out system studies with respect to plant physiology, aquatic ecosystems, soil chemistry systems, soil microbial systems, and forest ecosystems;

(9) economic assessments of (A) the environmental impacts caused by acid precipitation on crops, forests, fisheries, and recreational and aesthetic resources and structures, and (B) alternative technologies to remedy or otherwise ameliorate the harmful effects which may result from acid precipitation;

(10) documenting all current Federal activities related to research on acid precipitation and ensuring that such activities are coordinated in ways that prevent needless duplication and waste of financial and technical resources;

(11) effecting cooperation in acid precipitation research and development programs, ongoing and planned, with the affected and contributing States and with other sovereign nations having a commonality of interest;

(12) subject to subsection (f)(1) of this section, management by the Task Force of financial resources committed to Federal acid precipitation research and development;

(13) subject to subsection (f)(2) of this section, management of the technical aspects of Federal acid precipitation research and development programs, including but not limited to (A) the planning and management of research and development programs and projects, (B) the selection of contractors and grantees to carry out such programs and projects, and (C) the establishment of peer review procedures to assure the quality of research and development programs and their products; and

(14) analyzing the information available regarding acid precipitation in order to formulate and present periodic recommendations to the Congress and the appropriate agencies about actions to be taken by these bodies to alleviate acid precipitation and its effects.

(c) Procedures applicable

The comprehensive plan—

(1) shall be submitted in draft form to the Congress, and for public review, within six months after June 30, 1980;

(2) shall be available for public comment for a period of sixty days after its submission in draft form under paragraph (1);

(3) shall be submitted in final form, incorporating such needed revisions as arise from comments received during the review period, to the President and the Congress within forty-five days after the close of the period allowed for comments on the draft comprehensive plan under paragraph (2); and

(4) shall constitute the basis on which requests for authorizations and appropriations are to be made for the nine fiscal years following the fiscal year in which the comprehensive plan is submitted in final form under paragraph (3).

(d) Convening of Task Force

The Task Force shall convene as necessary, but no less than twice during each fiscal year of the ten-year period covered by the comprehensive plan.

(e) Submission of annual report to President and Congress by Task Force

The Task Force shall submit to the President and the Congress by January 15 of each year an annual report which shall detail the progress of the research program under this subchapter and which shall contain such recommendations as are developed under subsection (b)(14) of this section.

(f) Applicability of other statutory provisions to Task Force or plan

(1) Subsection (b)(12) of this section shall not be construed as modifying, or as authorizing the Task Force or the comprehensive plan to modify, any provision of an appropriation Act (or any other provision of law relating to the use of appropriated funds) which specifies (A) the department or agency to which funds are appropriated, or (B) the obligations of such department or agency with respect to the use of such funds.

(2) Subsection (b)(13) of this section shall not be construed as modifying, or as authorizing the Task Force or the comprehensive plan to modify, any provision of law (relating to or involving a department or agency) which specifies (A) procurement practices for the selection, award,

or management of contracts or grants by such department or agency, or (B) program activities, limitations, obligations, or responsibilities of such department or agency.

(Pub. L. 96–294, title VII, § 704, June 30, 1980, 94 Stat. 771.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e) of this section relating to the requirement that the Task Force submit an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 1st item on page 153 of House Document No. 103–7.

§ 8904. Implementation of comprehensive plan; new or existing regulatory authorities, etc., not granted or modified

(a) The comprehensive plan shall be carried out during the nine fiscal years following the fiscal year in which the comprehensive plan is submitted in its final form under section 8903(c)(3) of this title; and—

(1) shall be carried out in accord with, and meet the program objectives specified in, paragraphs (1) through (11) of section 8903(b) of this title;

(2) shall be managed in accord with paragraphs (12) through (14) of such section; and

(3) shall be funded by annual appropriations, subject to annual authorizations which shall be made for each fiscal year of the program (as provided in section 8905 of this title) after the submission of the Task Force progress report which under section 8903(e) of this title is required to be submitted by January 15 of the calendar year in which such fiscal year begins.

(b) Nothing in this subchapter shall be deemed to grant any new regulatory authority or to limit, expand, or otherwise modify any regulatory authority under existing law, or to establish new criteria, standards, or requirements for regulation under existing law.

(Pub. L. 96–294, title VII, § 705, June 30, 1980, 94 Stat. 773.)

§ 8905. Authorization of appropriations

(a) For the purpose of establishing the Task Force and developing the comprehensive plan under section 8903 of this title there is authorized to be appropriated to the National Oceanic and Atmospheric Administration for fiscal year 1981 the sum of $5,000,000 to remain available until expended.

(b) Authorizations of appropriations for the nine fiscal years following the fiscal year in which the comprehensive plan is submitted in final form under section 8903(c)(3) of this title, for purposes of carrying out the comprehensive ten-year program established by section 8902(a) of this title and implementing the comprehensive plan under sections 8903 and 8904 of this title, shall be provided on an annual basis in authorization Acts hereafter enacted; but the total sum of dollars authorized for such purposes for such nine fiscal years shall not exceed $45,000,000 except as may be specifically provided by reference to this paragraph in the authorization Acts involved.

(Pub. L. 96–294, title VII, § 706, June 30, 1980, 94 Stat. 773.)

§ 8906. Updated data base on acid content in precipitation; new monitoring site not required

(a)(1) The National Weather Service of the National Oceanic and Atmospheric Administration shall maintain an updated data base describing the acid content in precipitation in the United States, using information from Federal acid precipitation monitoring sites.

(2) Such data shall be available to interested parties by Weather Service Forecast Offices in the National Weather Service, or through such other facilities or means as the Assistant Administrator for Weather Services, National Oceanic and Atmospheric Administration, shall direct, for those areas of the United States where and at such time as such information is presently available, within 120 days after November 17, 1988.

(3) Where other Federal agencies collect such data in the course of carrying out their statutory missions, the heads of those agencies and the Administrator of the National Oceanic and Atmospheric Administration shall arrange for the transfer of such data to the National Weather Service.

(b) Nothing in this section shall be construed to require any Federal agency to establish any new acid precipitation monitoring site.

(Pub. L. 100–685, title IV, § 414, Nov. 17, 1988, 102 Stat. 4101.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989, and not as part of the Acid Precipitation Act of 1980 which comprises this chapter.

SUBCHAPTER II—CARBON DIOXIDE

§ 8911. Comprehensive study of projected impact on atmospheric levels of fossil fuel combustion, etc.

(a) Implementing agreement between Director of Office of Science and Technology and National Academy of Sciences; contents; conduct; status report by President respecting negotiations of Office

(1) The Director of the Office of Science and Technology Policy shall enter into an agreement with the National Academy of Sciences to carry out a comprehensive study of the projected impact, on the level of carbon dioxide in the atmosphere, of fossil fuel combustion, coal-conversion and related synthetic fuels activities authorized in this Act, and other sources. Such study should also include an assessment of the economic, physical, climatic, and social effects of such impacts. In conducting such study the Office and the Academy are encouraged to work with domestic and foreign governmental and non-governmental entities, and international entities, so as to develop an international, worldwide assessment of the problems involved and to suggest such original research on any aspect of such problems as the Academy deems necessary.

(2) The President shall report to the Congress within six months after June 30, 1980, regarding

the status of the Office's negotiations to implement the study required under this section.

(b) Final report by Office and Academy; contents; prior clearance or review of work of Academy; recommendations

A report including the major findings and recommendations resulting from the study required under this section shall be submitted to the Congress by the Office and the Academy not later than three years after June 30, 1980. The Academy contribution to such report shall not be subject to any prior clearance or review, nor shall any prior clearance or conditions be imposed on the Academy as part of the agreement made by the Office with the Academy under this section. Such report shall in any event include recommendations regarding—

(1) how a long-term program of domestic and international research, monitoring, modeling, and assessment of the causes and effects of varying levels of atmospheric carbon dioxide should be structured, including comments by the Office on the interagency requirements of such a program and comments by the Secretary of State on the international agreements required to carry out such a program;

(2) how the United States can best play a role in the development of such a long-term program on an international basis;

(3) what domestic resources should be made available to such a program;

(4) how the ongoing United States Government carbon dioxide assessment program should be modified so as to be of increased utility in providing information and recommendations of the highest possible value to government policy makers; and

(5) the need for periodic reports to the Congress in conjunction with any long-term program the Office and the Academy may recommend under this section.

(c) Information from other Federal agencies and departments

The Secretary of Energy, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the Director of the National Science Foundation shall furnish to the Office or the Academy upon request any information which the Office or the Academy determines to be necessary for purposes of conducting the study required by this section.

(d) Separate assessment by Office of interagency implementation requirements

The Office shall provide a separate assessment of the interagency requirements to implement a comprehensive program of the type described in the third sentence of subsection (b) of this section.

(Pub. L. 96–294, title VII, § 711, June 30, 1980, 94 Stat. 774.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 96–294, June 30, 1980, 94 Stat. 611, as amended, known as the Energy Security Act. For complete classification of this Act to the Code, see Short Title note set out under section 8801 of this title and Tables.

§ 8912. Authorization of appropriations

For the expenses of carrying out the carbon dioxide study authorized by section 8911 of this title (as determined by the Office of Science and Technology Policy) there are authorized to be appropriated such sums, not exceeding $3,000,000 in the aggregate, as may be necessary. At least 80 percent of any amounts appropriated pursuant to the preceding sentence shall be provided to the National Academy of Sciences.

(Pub. L. 96–294, title VII, § 712, June 30, 1980, 94 Stat. 775.)

CHAPTER 98—OCEAN THERMAL ENERGY CONVERSION RESEARCH AND DEVELOPMENT

Sec.
9001. Congressional findings and declaration of purpose.
9002. Comprehensive program management plan.
9003. Research and development.
9004. Pilot and demonstration plants.
9005. Technology application.
9006. Program selection criteria.
9007. Technical Panel of Energy Research Advisory Board.
9008. Definitions.
9009. Authorization of appropriations.

§ 9001. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the supply of nonrenewable fuels in the United States is slowly being depleted;

(2) alternative sources of energy must be developed;

(3) ocean thermal energy is a renewable energy resource that can make a significant contribution to the energy needs of the United States;

(4) the technology base for ocean thermal energy conversion has improved over the past two years, and has consequently lowered the technical risk involved in constructing moderate-sized pilot plants with an electrical generating capacity of about ten to forty megawatts;

(5) while the Federal ocean thermal energy conversion program has grown in size and scope over the past several years, it is in the national interest to accelerate efforts to commercialize ocean thermal energy conversion by building pilot and demonstration facilities and to begin planning for the commercial demonstration of ocean thermal energy conversion technology;

(6) a strong and innovative domestic industry committed to the commercialization of ocean thermal energy conversion must be established, and many competent domestic industrial groups are already involved in ocean thermal energy conversion research and development activity; and

(7) consistent with the findings of the Domestic Policy Review on Solar Energy, ocean thermal energy conversion energy can potentially contribute at least one-tenth of quad of energy per year by the year 2000.

(b) Therefore, the purpose of this chapter is to accelerate ocean thermal energy conversion technology development to provide a technical base for meeting the following goals:

(1) demonstration by 1986 of at least one hundred megawatts of electrical capacity or

energy product equivalent from ocean thermal energy conversion systems;

(2) demonstration by 1989 of at least five hundred megawatts of electrical capacity or energy product equivalent from ocean thermal energy conversion systems;

(3) achievement in the mid-1990's, for the gulf coast region of the continental United States and for islands in the United States, its possessions and its territories, an average cost of electricity or energy product equivalent produced by installed ocean thermal energy conversion systems that is competitive with conventional energy sources; and

(4) establish as a national goal ten thousand megawatts of electrical capacity or energy product equivalent from ocean thermal energy conversion systems by the year 1999.

(Pub. L. 96–310, § 2, July 17, 1980, 94 Stat. 941.)

SHORT TITLE

Section 1 of Pub. L. 96–310 provided: ''That this Act [enacting this chapter] may be cited as the 'Ocean Thermal Energy Conversion Research, Development, and Demonstration Act'.''

§ 9002. Comprehensive program management plan

(a) Preparation of plan

(1) The Secretary is authorized and directed to prepare a comprehensive program management plan for the conduct under this chapter of research, development, and demonstration activities consistent with the provisions of sections 9003, 9004, and 9005 of this title.

(2) In the preparation of such plan, the Secretary shall consult with the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Maritime Administration, the Administrator of the National Aeronautics and Space Administration, and the heads of such other Federal agencies and such public and private organizations as he deems appropriate.

(b) Transmittal of plan to Congress

The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate within nine months after July 17, 1980.

(c) Requisite provisions of plan

The detailed description of the comprehensive plan under this section shall include, but need not be limited to—

(1) the anticipated research, development, and demonstration objectives to be achieved by the program;

(2) the program strategies and technology application and market development plans, including detailed milestone goals to be achieved during the next fiscal year for all major activities and projects;

(3) a five-year implementation schedule for program elements with associated budget and program management resources requirements;

(4) a detailed description of the functional organization of the program management including identification of permanent test facilities and of a lead center responsible for technology support and project management;

(5) the estimated relative financial contributions of the Federal Government and non-Federal participants in the pilot and demonstration projects;

(6) supporting research needed to solve problems which may inhibit or limit development of ocean thermal energy conversion systems; and

(7) an analysis of the environmental, economic, and societal impacts of ocean thermal energy conversion facilities.

(Pub. L. 96–310, § 3, July 17, 1980, 94 Stat. 942; Pub. L. 104–66, title I, § 1051(c), Dec. 21, 1995, 109 Stat. 716.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–66 struck out subsec. (d) which read as follows:

''(d)(1) Concurrently with the submission of the President's annual budget for each subsequent year, the Secretary shall transmit to the Congress a detailed description of modifications which may be necessary to revise appropriately the comprehensive plan as then in effect, setting forth any changes in circumstances which may have occurred since the plan or the last previous modification thereof was transmitted in accordance with this section.

''(2) Such description shall also include a detailed justification of any such changes, a detailed description of the progress made toward achieving the goals of this chapter, a statement on the status of interagency cooperation in meeting such goals, any comments on and recommendations for improvements in the comprehensive program management plan made by the Technical Panel established under section 9007 of this title, and any legislative or other recommendations which the Secretary may have to help attain such goals.''

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 9003. Research and development

(a) Initiation of research

The Secretary shall initiate research or accelerate existing research in areas in which the lack of knowledge limits development of ocean thermal energy conversion systems in order to achieve the purposes of this chapter.

(b) Evaluations, tests, and dissemination of information, data, and materials

The Secretary shall conduct evaluations, arrange for tests, and disseminate to developers information, data, and materials necessary to support the design efforts undertaken pursuant to section 9004 of this title. Specific technical areas to be addressed shall include, but not be limited to—

(1) interface requirements between the platform and cold water pipe;

(2) cold water pipe deployment techniques;

(3) heat exchangers;

(4) control system simulation;

(5) stationkeeping requirements; and

(6) energy delivery systems, such as electric cable or energy product transport.

(c) Consideration of new or improved technologies

The Secretary shall, for the purpose of performing his responsibilities pursuant to this chapter, solicit proposals and evaluate any reasonable new or improved technology, a description of which is submitted to the Secretary in writing, which could lead or contribute to the development of ocean thermal energy conversion system technology.

(Pub. L. 96–310, § 4, July 17, 1980, 94 Stat. 943.)

§ 9004. Pilot and demonstration plants

(a) Initiation of program

The Secretary is authorized to initiate a program to design, construct, and operate well instrumented ocean thermal energy conversion facilities of sufficient size to demonstrate the technical feasibility and potential economic feasibility of utilizing the various forms of ocean thermal energy conversion to displace nonrenewable fuels. To achieve the goals of this section and to facilitate development of a strong industrial basis for the application of ocean thermal energy conversion system technology, at least two independent parallel demonstration projects shall be competitively selected.

(b) Demonstration program goals

The specific goals of the demonstration program shall include at a minimum—

(1) the demonstration of ocean thermal energy conversion technical feasibility through multiple pilot and demonstration plants with a combined capacity of at least one hundred megawatts of electrical capacity or energy product equivalent by the year 1986;

(2) the delivery of baseload electricity to utilities located on land or the production of commercially attractive quantities of energy product; and

(3) the continuous operation of each pilot and demonstration facility for a sufficient period of time to collect and analyze system performance and reliability data.

(c) Financial assistance

In providing any financial assistance under this section, the Secretary shall (1) give full consideration to those projects which will provide energy to United States offshore States, its territories, and its possessions and (2) seek satisfactory cost-sharing arrangements when he deems such arrangements to be appropriate.

(Pub. L. 96–310, § 5, July 17, 1980, 94 Stat. 943.)

§ 9005. Technology application

(a) Technology application and market development plan

The Secretary shall, in consultation with the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Maritime Administration, the Administrator of the National Aeronautics and Space Administration, and the Technical Panel established under section 9007 of this title, prepare a comprehensive technology application and market development plan that will permit realization of the ten-thousand-megawatt national goal by the year 1999. Such plans shall include at a minimum—

(1) an assessment of those Government actions required to achieve a two-hundred- to four-hundred-megawatt electrical-commercial demonstration of ocean thermal energy conversion systems in time to have industry meet the goal contained in section 9001(b)(2) of this title including a listing of those financial, property, and patent right packages most likely to lead to early commercial demonstration at minimum cost to the Federal Government;

(2) an assessment of further Government actions required to permit expansion of the domestic ocean thermal energy conversion industry to meet the goal contained in section 9001(b)(3) of this title;

(3) an analysis of further Government actions necessary to aid the industry in minimizing and removing any legal and institutional barriers such as the designation of a lead agency; and

(4) an assessment of the necessary Government actions to assist in eliminating economic uncertainties through financial incentives, such as loan guarantees, price supports, or other inducements.

(b) Transmittal of plan to Congress

The Secretary shall transmit such comprehensive technology application and market development plan to the Congress within three years after July 17, 1980, and update the plan on an annual basis thereafter.

(c) Respondent proposals

As part of the competitive procurement initiative for design and construction of the pilot and demonstration projects authorized in section 9009(c) of this title, each respondent shall include in its proposal (1) a plan leading to a full-scale, first-of-a-kind facility based on a proposed demonstration system; and (2) the financial and other contributions the respondent will make toward meeting the national goals.

(Pub. L. 96–310, § 6, July 17, 1980, 94 Stat. 944.)

§ 9006. Program selection criteria

The Secretary shall, in fulfilling his responsibilities under this chapter, select program activities and set priorities which are consistent with the following criteria:

(1) realization of energy production costs for ocean thermal energy conversion systems that are competitive with costs from conventional energy production systems;

(2) encouragement of projects for which contributions to project costs are forthcoming from private, industrial, utility, or governmental entities for the purpose of sharing with the Federal Government the costs of purchasing and installing ocean thermal energy conversion systems;

(3) promotion of ocean thermal energy conversion facilities for coastal areas, islands, and isolated military institutions which are vulnerable to interruption in the fossil fuel supply;

(4) preference for and priority to persons and domestic firms whose base of operations is in

the United States as will assure that the program under this chapter promotes the development of a United States domestic technology for ocean thermal energy conversion; and

(5) preference for proposals for pilot and demonstration projects in which the respondents certify their intent to become an integral part of the industrial infrastructure necessary to meet the goals of this chapter.

(Pub. L. 96–310, § 7, July 17, 1980, 94 Stat. 944.)

§ 9007. Technical Panel of Energy Research Advisory Board

(a) Establishment

A Technical Panel of the Energy Research Advisory Board shall be established to advise the Board on the conduct of the ocean thermal energy conversion program.

(b) Membership

(1) The Technical Panel shall be comprised of such representatives from domestic industry, universities, Government laboratories, financial, environmental and other organizations as the Chairman of the Energy Research Advisory Board deems appropriate based on his assessment of the technical and other qualifications of such representative.

(2) Members of the Technical Panel need not be members of the full Energy Research Advisory Board.

(c) Compliance with laws and regulations

The activities of the Technical Panel shall be in compliance with any laws and regulations guiding the activities of technical and fact-finding groups reporting to the Energy Research Advisory Board.

(d) Review and recommendations

The Technical Panel shall review and may make recommendations on the following items, among others:

(1) implementation and conduct of the programs established by this chapter;

(2) definition of ocean thermal energy conversion system performance requirements for various user applications; and

(3) economic, technological, and environmental consequences of the deployment of ocean thermal energy conversion systems.

(e) Report

The Technical Panel shall submit to the Energy Research Advisory Board on at least an annual basis a written report of its findings and recommendations with regard to the program. Such report, shall include at a minimum—

(1) a summary of the Panel's activities for the preceding year;

(2) an assessment and evaluation of the status of the programs mandated by this chapter; and

(3) comments on and recommendations for improvements in the comprehensive program management plan required under section 9002 of this title.

(f) Submittal of report to Secretary of Energy

After consideration of the Technical Panel report, the Energy Research Advisory Board shall submit such report, together with any comments such Board deems appropriate, to the Secretary.

(g) Cooperation by agency heads

The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Technical Panel in carrying out the requirements of this section and shall furnish to the Technical Panel such information as the Technical Panel deems necessary to carry out this section.

(h) Staff, funds, and other support from Secretary of Energy

The Secretary shall provide sufficient staff, funds, and other support as necessary to enable the Technical Panel to carry out the functions described in this section.

(Pub. L. 96–310, § 8, July 17, 1980, 94 Stat. 945.)

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 9008. Definitions

As used in this chapter, the term—

(1) ''ocean thermal energy conversion'' means a method of converting part of the heat from the Sun which is stored in the surface layers of a body of water into electrical energy or energy product equivalent;

(2) ''energy product equivalent'' means an energy carrier including, but not limited to, ammonia, hydrogen, or molten salts or an energy-intensive commodity, including, but not limited to, electrometals, fresh water, or nutrients for aquaculture; and

(3) ''Secretary'' means the Secretary of Energy.

(Pub. L. 96–310, § 9, July 17, 1980, 94 Stat. 946.)

§ 9009. Authorization of appropriations

(a) There is hereby authorized to be appropriated to carry out the purposes of this chapter the sum of $20,000,000 for operating expenses for the fiscal year ending September 30, 1981, in addition to any amounts authorized to be appropriated in the fiscal year 1981 Authorization Act pursuant to section 7270 of this title.

(b) There is hereby authorized to be appropriated to carry out the purposes of this chapter the sum of $60,000,000 for operating expenses for the fiscal year ending September 30, 1982.

(c) Funds are hereby authorized to be appropriated for fiscal year 1981 to carry out the purposes of section 9004 of this title for plant and capital equipment as follows:

Project 81–ES–1, ocean thermal energy conversion demonstration plants with a combined capacity of at least one hundred megawatts elec-

trical or the energy product equivalent, sites to be determined, conceptual and preliminary design activities only $5,000,000.

(d) Funds are hereby authorized to be appropriated for fiscal year 1982 to carry out the purposes of section 9004 of this title for plant and capital equipment as follows:

Project 81–ES–1, ocean thermal energy conversion demonstration plants with a combined capacity of at least one hundred megawatts electrical or the energy product equivalent, sites to be determined, conceptual and preliminary design activities only $25,000,000.

(Pub. L. 96–310, §10, July 17, 1980, 94 Stat. 946.)

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9166. Authorization of appropriations.
9167. Severability.
9168. Report to Congress on promotion and enhancement of export potential of ocean thermal energy conversion components, facilities, and plantships.

§9101. Congressional declaration of policy

(a) It is declared to be the purposes of the Congress in this chapter to—

(1) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion facilities connected to the United States by pipeline or cable, or located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States consistent with the Convention on the High Seas, and general principles of international law;

(2) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships documented under the laws of the United States, consistent with the Convention on the High Seas and general principles of international law;

(3) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships by United States citizens, consistent with the Convention on the High Seas and general principles of international law;

(4) establish a legal regime which will permit and encourage the development of ocean thermal energy conversion as a commercial energy technology;

(5) provide for the protection of the marine and coastal environment, and consideration of the interests of ocean users, to prevent or minimize any adverse impact which might occur as a consequence of the development of such ocean thermal energy conversion facilities or plantships;

(6) make applicable certain provisions of the Merchant Marine Act, 1936 (46 U.S.C. 1177 et seq.)[1] to assist in financing of ocean thermal energy conversion facilities and plantships;

(7) protect the interests of the United States in the location, construction, and operation of ocean thermal energy conversion facilities and plantships; and

(8) protect the rights and responsibilities of adjacent coastal States in ensuring that Federal actions are consistent with approved State coastal zone management programs and other applicable State and local laws.

(b) The Congress declares that nothing in this chapter shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

(Pub. L. 96–320, §2, Aug. 3, 1980, 94 Stat. 974; Pub. L. 98–623, title VI, §602(a)(1), Nov. 8, 1984, 98 Stat. 3410.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original a reference to "this Act" meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Merchant Marine Act, 1936, referred to in subsec. (a)(6), is act June 29, 1936, ch. 858, 49 Stat. 1985, which was classified principally to chapter 27 (§1101 et seq.) of the former Appendix to Title 46, Shipping. Most of this Act was repealed and restated mainly as subtitle V of Title 46, Shipping, by Pub. L. 109–304, §§8, 19, Oct. 6, 2006, 120 Stat. 1555, 1710. For complete classification of

[1] See References in Text note below.

this Act to the Code, see Tables. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–623 substituted ''located in whole or in part between the highwater mark and the seaward boundary of the territorial sea'' for ''located in the territorial sea''.

SHORT TITLE

Section 1 of Pub. L. 96–320 provided: ''That this Act [enacting this chapter and section 1279c of Title 46, Appendix, Shipping, amending sections 1271, 1273, and 1274 of Title 46, Appendix, and enacting provisions set out as a note under section 1273 of Title 46, Appendix] may be cited as the 'Ocean Thermal Energy Conversion Act of 1980'.''

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 9102. Definitions

As used in this chapter, unless the context otherwise requires, the term—

(1) ''adjacent coastal State'' means any coastal State which is required to be designated as such by section 9115(a)(1) of this title or is designated as such by the Administrator in accordance with section 9115(a)(2) of this title;

(2) ''Administrator'' means the Administrator of the National Oceanic and Atmospheric Administration;

(3) ''antitrust laws'' includes the Act of July 2, 1890, as amended [15 U.S.C. 1 et seq.], the Act of October 15, 1914, as amended [15 U.S.C. 12 et seq.], and sections 73 and 74 of the Act of August 27, 1894, as amended [15 U.S.C. 8 and 9];

(4) ''application'' means any application submitted under this chapter (A) for issuance of a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship; (B) for transfer or renewal of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;

(5) ''coastal State'' means a State in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes;

(6) ''construction'' means any activities conducted at sea to supervise, inspect, actually build, or perform other functions incidental to the building, repairing, or expanding of an ocean thermal energy conversion facility or plantship or any of its components, including but not limited to, piledriving, emplacement of mooring devices, emplacement of cables and pipelines, and deployment of the cold water pipe, and alterations, modifications, or additions to an ocean thermal energy conversion facility or plantship;

(7) ''facility'' means an ocean thermal energy conversion facility;

(8) ''Governor'' means the Governor of a State or the person designated by law to exercise the powers granted to the Governor pursuant to this chapter;

(9) ''high seas'' means that part of the oceans lying seaward of the territorial sea of the United States and outside the territorial sea, as recognized by the United States, of any other nation;

(10) ''licensee'' means the holder of a valid license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship that was issued, transferred, or renewed pursuant to this chapter;

(11) ''ocean thermal energy conversion facility'' means any facility which is standing, fixed or moored in whole or in part seaward of the highwater mark and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, fresh water, or product to shore, and all other associated equipment and appurtenances of such facility, to the extent they are located seaward of the highwater mark;

(12) ''ocean thermal energy conversion plantship'' means any vessel which is designed to use temperature differences in ocean water while floating unmoored or moving through such water, to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any equipment used to transfer such product to other vessels for transportation to users, and all other associated equipment and appurtenances of such vessel;

(13) ''plantship'' means an ocean thermal energy conversion plantship;

(14) ''person'' means any individual (whether or not a citizen of the United States), any corporation, partnership, association, or other entity organized or existing under the laws of any nation, and any Federal, State, local or foreign government or any entity of any such government;

(15) ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and any other Commonwealth, territory, or possession over which the United States has jurisdiction;

(16) ''test platform'' means any floating or moored platform, barge, ship, or other vessel which is designed for limited-scale, at sea operation in order to test or evaluate the operation of components or all of an ocean thermal energy conversion system and which will not operate as an ocean thermal energy conversion facility or plantship after the conclusion of such tests or evaluation;

(17) ''thermal plume'' means the area of the ocean in which a significant difference in temperature, as defined in regulations by the Administrator, occurs as a result of the operation of an ocean thermal energy conversion facility or plantship; and

(18) ''United States citizen'' means (A) any individual who is a citizen of the United

States by law, birth, or naturalization; (B) any Federal, State, or local government in the United States, or any entity of any such government; or (C) any corporation, partnership, association, or other entity, organized or existing under the laws of the United States, or of any State, which has as its president or other executive officer and as its chairman of the board of directors, or holder of similar office, an individual who is a United States citizen and which has no more of its directors who are not United States citizens than constitute a minority of the number required for a quorum necessary to conduct the business of the board.

(Pub. L. 96–320, §3, Aug. 3, 1980, 94 Stat. 975; Pub. L. 98–623, title VI, §602(a)(2), (e)(7), Nov. 8, 1984, 98 Stat. 3410, 3412.)

REFERENCES IN TEXT

Act of July 2, 1890, as amended, referred to in par. (3), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914, as amended, referred to in par. (3), is act Oct. 15, 1914, ch. 323, 78 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, as amended, referred to in par. (3), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570. Sections 73 to 77 of such Act are known as the Wilson Tariff Act. Sections 73 to 76 enacted sections 8 to 11 of Title 15. Section 77 is not classified to the Code. For complete classification of this Act to the Code, see Short Title note under section 8 of Title 15 and Tables.

AMENDMENTS

1984—Par. (11). Pub. L. 98–623, §602(a)(2), substituted ''standing, fixed or moored in whole or in part seaward of the highwater mark'' for ''standing or moored in or beyond the territorial sea of the United States''.

Pub. L. 98–623, §602(e)(7), substituted ''fresh water'' for ''freshwater''.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

SUBCHAPTER I—REGULATION OF OCEAN THERMAL ENERGY CONVERSION FACILITIES AND PLANTSHIPS

§9111. License for ownership, construction, and operation of ocean thermal energy conversion facilities or plantships

(a) License requirement

No person may engage in the ownership, construction, or operation of an ocean thermal energy conversion facility which is documented under the laws of the United States, which is located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or which is connected to the United States by pipeline or cable, except in accordance with a license issued pursuant to this chapter. No citizen of the United States may engage in the ownership, construction or operation of an ocean thermal energy conversion plantship except in accordance with a license issued pursuant to this chapter, or in accordance with a license issued by a foreign nation whose licenses are found by the Administrator, after consultation with the Secretary of State, to be compatible with licenses issued pursuant to this chapter.

(b) Documented plantships; documented facilities; facilities located in territorial sea; facilities connected to United States by pipeline or cable

The Administrator shall, upon application and in accordance with the provisions of this chapter, issue, transfer, amend, or renew licenses for the ownership, construction, and operation of—

(1) ocean thermal energy conversion plantships documented under the laws of the United States, and

(2) ocean thermal energy conversion facilities documented under the laws of the United States, located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or connected to the United States by pipeline or cable.

(c) License issuance prerequisites

The Administrator may issue a license to a citizen of the United States in accordance with the provisions of this chapter unless—

(1) he determines that the applicant cannot or will not comply with applicable laws, regulations, and license conditions;

(2) he determines that the construction and operation of the ocean thermal energy conversion facility or plantship will not be in the national interest and consistent with national security and other national policy goals and objectives, including energy self-sufficiency and environmental quality;

(3) he determines, after consultation with the Secretary of the department in which the Coast Guard is operating, that the ocean thermal energy conversion facility or plantship will not be operated with reasonable regard to the freedom of navigation or other reasonable uses of the high seas and authorized uses of the Continental Shelf, as defined by United States law, treaty, convention, or customary international law;

(4) he has been informed, within 45 days after the conclusion of public hearings on that application, or on proposed licenses for the designated application area, by the Administrator of the Environmental Protection Agency that the ocean thermal energy conversion facility or plantship will not conform with all applicable provisions of any law for which he has regulatory authority;

(5) he has received the opinion of the Attorney General, pursuant to section 9114 of this title, stating that issuance of the license would create a situation in violation of the antitrust laws, or the 90-day period provided in section 9114 of this title has not expired;

(6) he has consulted with the Secretary of Energy, the Secretary of Transportation, the Secretary of State, the Secretary of the Inte-

rior, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions and determines on the basis thereof, that the application for a license is inadequate;

(7) the proposed ocean thermal energy conversion facility or plantship will be documented under the laws of a foreign nation;

(8) the applicant has not agreed to the condition that no vessel may be used for the transportation to the United States of things produced, processed, refined, or manufactured at the ocean thermal energy conversion facility or plantship unless such vessel is documented under the laws of the United States;

(9) when the license is for an ocean thermal energy conversion facility, he determines that the facility, including any submarine electric transmission cables and equipment or pipelines which are components of the facility, will not be located and designed so as to minimize interference with other uses of the high seas or the Continental Shelf, including cables or pipelines already in position on or in the seabed and the possibility of their repair;

(10) the Governor of any adjacent coastal State with an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) determines that, in his or her view, the application is inadequate or inconsistent with respect to programs within his or her jurisdiction;

(11) when the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge on so as to degrade the thermal gradient used by any other ocean thermal energy conversion facility already licensed or operating, without the consent of its owner;

(12) when the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation, unless the Secretary of State approves such impingement after consultation with such nation;

(13) when the license is for an ocean thermal energy conversion plantship, he determines that the applicant has not provided adequate assurance that the plantship will be operated in such a way as to prevent its thermal plume from impinging on so as to degrade the thermal gradient used by any other ocean thermal energy conversion facility or plantship without the consent of its owner, and from impinging on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State approves such impingement after consultation with such nation; or

(14) if a regulation has been adopted which places an upper limit on the number or total capacity of ocean thermal energy conversion facilities or plantships to be licensed under this chapter for simultaneous operation, either overall or within specific geographic areas, pursuant to a determination under the provisions of section 9117(b)(4) of this title, issuance of the license will cause such upper limit to be exceeded.

(d) Issuance conditions; written agreement of compliance; disposal or removal requirements

(1) In issuing a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship, the Administrator shall prescribe conditions which he deems necessary to carry out the provisions of this chapter, or which are otherwise required by any Federal department or agency pursuant to the terms of this chapter.

(2) No license shall be issued, transferred, or renewed under this chapter unless the applicant, licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Administrator, and (B) he will comply with conditions the Administrator may prescribe in accordance with the provisions of this chapter.

(3) The Administrator shall establish such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation, termination, relinquishment, or surrender of a license, the licensee will dispose of or remove all components of the ocean thermal energy conversion facility or plantship as directed by the Administrator. In the case of components which another applicant or licensee desires to use, the Administrator may waive the disposal or removal requirements until he has reached a decision on the application. In the case of components lying on or below the seabed, the Administrator may waive the disposal or removal requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to the environment, navigation, fishing, or other uses of the seabed.

(e) License transfer

Upon application, a license issued under this chapter may be transferred if the Administrator determines that such transfer is in the public interest and that the transferee meets the requirements of this chapter and the prerequisites to issuance under subsection (c) of this section.

(f) License eligibility

Any United States citizen who otherwise qualifies under the terms of this chapter shall be eligible to be issued a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship.

(g) License term and renewal

Licenses issued under this chapter shall be for a term of not to exceed 25 years. Each licensee shall have a preferential right to renew his license subject to the requirements of subsection (c) of this section, upon such conditions and for such term, not to exceed an additional 10 years upon each renewal, as the Administrator determines to be reasonable and appropriate.

(Pub. L. 96–320, title I, § 101, Aug. 3, 1980, 94 Stat. 976; Pub. L. 98–623, title VI, § 602(a)(3)–(5), (b), (e)(8)–(11), Nov. 8, 1984, 98 Stat. 3410–3412.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (c)(10), is title III of Pub. L. 89–454 as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, and amended, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

AMENDMENTS

1984—Subsecs. (a), (b)(2). Pub. L. 98–623, §602(a)(3), (4), substituted ''located in whole or in part between the highwater mark and the seaward boundary of the territorial sea'' for ''located in the territorial sea''.

Subsec. (c)(1). Pub. L. 98–623, §602(b)(1), substituted ''cannot or will not'' for ''cannot and will not''.

Subsec. (c)(4). Pub. L. 98–623, §602(e)(8), substituted ''regulatory authority'' for ''enforcement authority''.

Subsec. (c)(5). Pub. L. 98–623, §602(b)(2), substituted ''has not expired'' for ''has expired''.

Subsec. (c)(6). Pub. L. 98–623, §602(e)(9), substituted ''application for a license'' for ''application for license''.

Subsec. (c)(7). Pub. L. 98–623, §602(a)(5), substituted ''will be documented under the laws of a foreign nation'' for ''will not be documented under the laws of the United States''.

Subsec. (c)(10). Pub. L. 98–623, §602(b)(3), (5), substituted ''any adjacent'' for ''each adjacent'' and ''(16 U.S.C. 1451 et seq.)'' for ''(33 U.S.C. 1451 et seq.)''.

Subsec. (c)(13). Pub. L. 98–623, §602(b)(4), substituted ''or'' for ''and'' after the semicolon at the end.

Subsec. (c)(14). Pub. L. 98–623, §602(e)(10), substituted ''if a regulation'' for ''when a regulation''.

Subsec. (d)(2). Pub. L. 98–623, §602(e)(11), substituted ''applicant, licensee'' for ''licensee''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§9112. Procedure

(a) Rules and regulations

The Administrator shall, after consultation with the Secretary of Energy and the heads of other Federal agencies, issue regulations to carry out the purposes and provisions of this chapter, in accordance with the provisions of section 553 of title 5, without regard to subsection (a) thereof. Such regulations shall pertain to, but need not be limited to, application for issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Administrator is further authorized, consistent with the purposes and provisions of this chapter, to amend or rescind any such regulation. The Administrator shall complete issuance of final regulations to implement this chapter within 1 year of August 3, 1980.

(b) Site evaluation and preconstruction testing

The Administrator, in consultation with the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating may, if he determines it to be necessary, prescribe regulations consistent with the purposes of this chapter, relating to those activities in site evaluation and preconstruction testing at potential ocean thermal energy conversion facility or plantship locations that may (1) adversely affect the environment; (2) interfere with other reasonable uses of the high seas or with authorized uses of the Outer Continental Shelf; or (3) pose a threat to human health and safety. If the Administrator prescribes regulations relating to such activities, such activities may not be undertaken after the effective date of such regulations except in accordance therewith.

(c) Expertise or statutory responsibility descriptions

Not later than 60 days after August 3, 1980, the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Secretary of the department in which the Coast Guard is operating, the Secretary of the Interior, the Chief of Engineers of the United States Army Corps of Engineers, and the heads of any other Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of ocean thermal energy conversion facilities or plantships, shall transmit to the Administrator written description of their expertise or statutory responsibilities pursuant to this chapter or any other Federal law.

(d) Application

(1) Within 21 days after the receipt of an application, the Administrator shall determine whether the application appears to contain all of the information required by paragraph (2) of this subsection. If the Administrator determines that such information appears to be contained in the application, the Administrator shall, no later than 5 days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Administrator determines that all of the required information does not appear to be contained in the application, the Administrator shall notify the applicant and take no further action with respect to the application until such deficiencies have been remedied.

(2) Each application shall include such financial, technical, and other information as the Administrator determines by regulation to be necessary or appropriate to process the license pursuant to section 9111 of this title.

(e) Area description; additional license applications

(1) At the time notice of an application for an ocean thermal energy conversion facility is published pursuant to subsection (d) of this section, the Administrator shall publish a description in the Federal Register of an application area encompassing the site proposed in the application for such facility and within which the thermal plume of one ocean thermal energy conversion facility might be expected to impinge on so as to degrade the thermal gradient used by another

ocean thermal energy conversion facility, unless the application is for a license for an ocean thermal energy conversion facility to be located within an application area which has already been designated.

(2) The Administrator shall accompany such publication with a call for submission of any other applications for licenses for the ownership, construction, and operation of an ocean thermal energy conversion facility within the designated application area. Any person intending to file such an application shall submit a notice of intent to file an application to the Administrator not later than 60 days after the publication of notice pursuant to subsection (d) of this section, and shall submit the completed application no later than 90 days after publication of such notice. The Administrator shall publish notice of any such application received in accordance with subsection (d) of this section. No application for a license for the ownership, construction, and operation of an ocean thermal energy conversion facility within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until action has been completed on all timely filed applications pending with respect to such application area.

(f) Copies of application to other agencies

An application filed with the Administrator shall constitute an application for all Federal authorizations required for ownership, construction, and operation of an ocean thermal energy conversion facility or plantship, except for authorizations required by documentation, inspection, certification, construction, and manning laws and regulations administered by the Secretary of the department in which the Coast Guard is operating. At the time notice of any application is published pursuant to subsection (d) of this section, the Administrator shall forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such ownership, construction, or operation for comment, review, or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Administrator the approval or disapproval of the application not later than 45 days after public hearings are concluded pursuant to subsection (g) of this section. In any case in which an agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Administrator of the manner in which the application may be amended or the license conditioned so as to bring it into compliance with the law or regulation involved.

(g) Notice, comments, and hearing

A license may be issued, transferred, or renewed only after public notice, opportunity for comment, and public hearings in accordance with this subsection. At least one such public hearing shall be held in the District of Columbia and in any adjacent coastal State to which a facility is proposed to be directly connected by pipeline or electric transmission cable. Any interested person may present relevant material at any such hearing. After the hearings required by this subsection are concluded, if the Administrator determines that there exist one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in the District of Columbia in accordance with the provisions of section 554 of title 5. The record developed in any such adjudicatory hearing shall be part of the basis for the Administrator's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications with respect to facilities for any designated application area shall be consolidated and shall be concluded not later than 240 days after notice of the initial application has been published pursuant to subsection (d) of this section. All public hearings on applications with respect to ocean thermal energy conversion plantships shall be concluded not later than 240 days after notice of the application has been published pursuant to subsection (d) of this section.

(h) Administrative fee

The Administrator shall not take final action on any application unless the applicant has paid to the Administrator a reasonable administrative fee, which shall be deposited into miscellaneous receipts of the Treasury. The amount of the fee imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred by the National Oceanic and Atmospheric Administration in reviewing and processing the application.

(i) Approval or denial of application; applications for same area; factors determinative of facility selection

(1) The Administrator shall approve or deny any timely filed application with respect to a facility for a designated application area submitted in accordance with the provision of this chapter not later than 90 days after public hearings on proposed licenses for that area are concluded pursuant to subsection (g) of this section. The Administrator shall approve or deny an application for a license for ownership, construction, and operation of an ocean thermal energy conversion plantship submitted pursuant to this chapter no later than 90 days after the public hearings on that application are concluded pursuant to subsection (g) of this section.

(2) In the event more than one application for a license for ownership, construction, and operation of an ocean thermal energy conversion facility is submitted pursuant to this chapter for the same designated application area, the Administrator, unless one or a specific combination of the proposed facilities clearly best serves the national interest, shall make decisions on license applications in the order in which they were submitted to him.

(3) In determining whether any one or a specific combination of the proposed ocean thermal energy conversion facilities clearly best serves the national interest, the Administrator, in consultation with the Secretary of Energy, shall consider the following factors:

(A) the goal of making the greatest possible use of ocean thermal energy conversion by installing the largest capacity practicable in each application area;

(B) the amount of net energy impact of each of the proposed ocean thermal energy conversion facilities;

(C) the degree to which the proposed ocean thermal energy conversion facilities will affect the environment;

(D) any significant differences between anticipated dates and commencement of operation of the proposed ocean thermal energy conversion facilities; and

(E) any differences in costs of construction and operation of the proposed ocean thermal energy conversion facilities, to the extent that such differentials may significantly affect the ultimate cost of energy or products to the consumer.

(Pub. L. 96–320, title I, § 102, Aug. 3, 1980, 94 Stat. 979; Pub. L. 98–623, title VI, § 602(f), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (h). Pub. L. 98–623 substituted ''The Administrator shall not take final action on any application unless the applicant has paid to the Administrator a reasonable administrative fee'' for ''Each person applying for a license pursuant to this chapter shall remit to the Administrator at the time the application is filed a nonrefundable application fee'' and ''imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred by the National Oceanic and Atmospheric Administration'' for ''shall be established by regulation by the Administrator, and shall reflect the reasonable administrative costs incurred''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 9113. Protection of submarine electric transmission cables and equipment

(a) Prohibited acts; misdemeanor; penalty and fine

Any person who shall willfully and wrongfully break or injure, or attempt to break or injure, or who shall in any manner procure, counsel, aid, abet, or be accessory to such breaking or injury, or attempt to break or injure, any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall be liable to imprisonment for a term not exceeding 2 years, or to a fine not exceeding $5,000, or to both fine and imprisonment, at the discretion of the court.

(b) Culpable negligence; misdemeanor; penalty and fine

Any person who by culpable negligence shall break or injure any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall be liable to imprisonment for a term not exceeding 3 months, or to a fine not exceeding $500, or to both fine and imprisonment, at the discretion of the court.

(c) Exceptions

The provisions of subsections (a) and (b) of this section shall not apply to any person who, after having taken all necessary precautions to avoid such breaking or injury, breaks or injures any submarine electric transmission cable or equipment in an effort to save the life or limb of himself or of any other person, or to save his own or any other vessel.

(d) Suits for damages

The penalties provided in subsections (a) and (b) of this section for the breaking or injury of any submarine electric transmission cable or equipment shall not be a bar to a suit for damages on account of such breaking or injury.

(e) Indemnity

Whenever any vessel sacrifices any anchor, fishing net, or other fishing gear to avoid injuring any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this chapter, the licensee shall indemnify the owner of such vessel for the items sacrificed: *Provided*, That the owner of the vessel had taken all reasonable precautionary measures beforehand.

(f) Repair costs

Any licensee who causes any break in or injury to any submarine cable or pipeline of any type shall bear the cost of the repairs.

(Pub. L. 96–320, title I, § 103, Aug. 3, 1980, 94 Stat. 982.)

§ 9114. Antitrust review

(a) Review of applications by Attorney General

Whenever any application for issuance, transfer, or renewal of any license is received, the Administrator shall transmit promptly to the Attorney General a complete copy of such application. Within 90 days of the receipt of the application, the Attorney General shall conduct such antitrust review of the application as he deems appropriate, and submit to the Administrator any advice or recommendations he deems advisable to avoid any action upon such application by the Administrator which would create a situation inconsistent with the antitrust laws. If the Attorney General fails to file such views within the 90-day period, the Administrator shall proceed as if such views had been received. The Administrator shall not issue, transfer, or renew the license during the 90-day period, except upon written confirmation by the Attorney General that he does not intend to submit any further advice or recommendation on the application during such period.

(b) Issuance of license as constituting no defense for antitrust violations

The issuance of a license under this chapter shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor

shall it in any way modify or abridge any private right of action under such laws. Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging any anticompetitive situation involved in the ownership, construction, or operation of an ocean thermal energy conversion facility or plantship.

(Pub. L. 96–320, title I, § 104, Aug. 3, 1980, 94 Stat. 983.)

§ 9115. Adjacent coastal States

(a) Designation of adjacent coastal State

(1) The Administrator, in issuing notice of application pursuant to section 9112(d) of this title, shall designate as an ''adjacent coastal State'' any coastal State which (A) would be directly connected by electric transmission cable or pipeline to an ocean thermal energy conversion facility as proposed in an application, or (B) in whose waters any part of such proposed ocean thermal energy conversion facility would be located, or (C) in whose waters an ocean thermal energy conversion plantship would be operated as proposed in an application.

(2) The Administrator shall, upon request of a State, designate such State as an ''adjacent coastal State'' if he determines (A) that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State required to be designated as an ''adjacent coastal State'' by paragraph (1) of this subsection or (B) that the thermal plume of the proposed ocean thermal energy conversion facility or plantship is likely to impinge on so as to degrade the thermal gradient at possible locations for ocean thermal energy conversion facilities which could reasonably be expected to be directly connected by electric transmission cable or pipeline to such State. This paragraph shall apply only with respect to requests made by a State not later than the 14th day after the date of publication of notice of application for a proposed ocean thermal energy conversion facility in the Federal Register in accordance with section 9112(d) of this title. The Administrator shall make any designation required by this paragraph not later than the 45th day after the date he receives such a request from a State.

(b) State coastal zone management program

(1) Not later than 5 days after the designation of an adjacent coastal State pursuant to this section, the Administrator shall transmit a complete copy of the application to the Governor of such State. The Administrator shall not issue a license without consultation with the Governor of each adjacent coastal State which has an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.). If the Governor of such a State has not transmitted his approval or disapproval to the Administrator by the 45th day after public hearings on the application are concluded pursuant to section 9112(g) of this title, such approval shall be conclusively presumed. If the Governor of such a State notifies the Administrator that an application which the Governor would otherwise approve pursuant to this paragraph is inconsistent in some respect with the State's coastal zone management program, the Administrator shall condition the license granted so as to make it consistent with such State program.

(2) Any adjacent coastal State which does not have an approved coastal zone management program in good standing, and any other interested State, shall have the opportunity to make its views known to, and to have them given full consideration by, the Administrator regarding the location, construction, and operation of an ocean thermal energy conversion facility or plantship.

(c) Agreements and compacts between States

The consent of Congress is given to 2 or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, (1) to apply for a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship or for the transfer of such a license, and (2) to establish such agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact shall be binding and obligatory upon any State or other party thereto without further approval by the Congress.

(Pub. L. 96–320, title I, § 105, Aug. 3, 1980, 94 Stat. 983; Pub. L. 98–623, title VI, § 602(e)(12)–(14), Nov. 8, 1984, 98 Stat. 3412.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), referred to in subsec. (b)(1), is title III of Pub. L. 89–454 as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, and amended, which is classified generally to chapter 33 (§ 1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98–623, § 602(e)(12), substituted ''(A) that'' for ''that (A)''.

Subsec. (b)(1). Pub. L. 98–623, § 602(e)(13), (14), substituted ''of an adjacent coastal State'' for ''of adjacent coastal State'' and ''application are concluded'' for ''application is concluded''.

§ 9116. Diligence requirements

(a) Rules and regulations

The Administrator shall promulgate regulations requiring each licensee to pursue diligently the construction and operation of the ocean thermal energy conversion facility or plantship to which the license applies.

(b) Termination of license

If the Administrator determines that a licensee is not pursuing diligently the construction and operation of the ocean thermal energy conversion facility or plantship to which the license applies, or that the project has apparently been abandoned, the Administrator shall cause proceedings to be instituted under section 9121 of this title to terminate the license.

(Pub. L. 96–320, title I, § 106, Aug. 3, 1980, 94 Stat. 984.)

§9117. Protection of the environment

(a) Environmental assessment program

The Administrator shall initiate a program to assess the effects on the environment of ocean thermal energy conversion facilities and plantships. The program shall include baseline studies of locations where ocean thermal energy conversion facilities or plantships are likely to be sited or operated; and research; and monitoring of the effects of ocean thermal energy conversion facilities and plantships in actual operation. The purpose of the program shall be to assess the environmental effects of individual ocean thermal energy facilities and plantships, and to assess the magnitude of any cumulative environmental effects of large numbers of ocean thermal energy facilities and plantships.

(b) Program purposes

The program shall be designed to determine, among other things—

(1) any short-term and long-term effects on the environment which may occur as a result of the operation of ocean thermal energy conversion facilities and plantships;

(2) the nature and magnitude of any oceanographic, atmospheric, weather, climatic, or biological changes in the environment which may occur as a result of deployment and operation of large numbers of ocean thermal energy conversion facilities and plantships;

(3) the nature and magnitude of any oceanographic, biological or other changes in the environment which may occur as a result of the operation of electric transmission cables and equipment located in the water column or on or in the seabed, including the hazards of accidentally severed transmission cables; and

(4) whether the magnitude of one or more of the cumulative environmental effects of deployment and operation of large numbers of ocean thermal energy conversion facilities and plantships requires that an upper limit be placed on the number or total capacity of such facilities or plantships to be licensed under this chapter for simultaneous operation, either overall or within specific geographic areas.

(c) Plan submittal to Congress

Within 180 days after August 3, 1980, the Administrator shall prepare a plan to carry out the program described in subsections (a) and (b) of this section, including necessary funding levels for the next 5 fiscal years, and submit the plan to the Congress.

(d) Reduction of program to minimum necessary level

The program established by subsections (a) and (b) of this section shall be reduced to the minimum necessary to perform baseline studies and to analyze monitoring data, when the Administrator determines that the program has resulted in sufficient knowledge to make the determinations enumerated in subsection (b) of this section with an acceptable level of confidence.

(e) Environmental impact statement

The issuance of any license for ownership, construction, and operation of an ocean thermal energy conversion facility or plantship shall be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 4332(2)(C) of this title. For all timely applications covering proposed facilities in a single application area, and for each application relating to a proposed plantship, the Administrator shall, pursuant to such section 4332(2)(C) of this title and in cooperation with other involved Federal agencies and departments, prepare a single environmental impact statement, which shall fulfill the requirement of all Federal agencies in carrying out their responsibilities pursuant to this chapter to prepare an environmental impact statement. Each such draft environmental impact statement relating to proposed facilities shall be prepared and published within 180 days after notice of the initial application has been published pursuant to section 9112(d) of this title. Each such draft environmental impact statement relating to a proposed plantship shall be prepared and published within 180 days after notice of the application has been published pursuant to section 9112(d) of this title. Each final environmental impact statement shall be published not later than 90 days following the date on which public hearings are concluded pursuant to section 9112(g) of this title. The Administrator may extend the deadline for publication of a specific draft or final environmental impact statement to a later specified time for good cause shown in writing.

(f) Discharge of pollutants

An ocean thermal energy conversion facility or plantship licensed under this subchapter shall be deemed not to be a ''vessel or other floating craft'' for the purposes of section 1362(12)(B) of title 33.

(Pub. L. 96–320, title I, §107, Aug. 3, 1980, 94 Stat. 984.)

§9118. Marine environmental protection and safety of life and property at sea

(a) Coast Guard operations

The Secretary of the department in which the Coast Guard is operating shall, subject to recognized principles of international law, prescribe by regulation and enforce procedures with respect to any ocean thermal energy conversion facility or plantship licensed under this chapter, including, but not limited to, rules governing vessel movement, procedures for transfer of materials between such a facility or plantship and transport vessels, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (1) to promote the safety of life and property at sea, (2) to prevent pollution of the marine environment, (3) to clean up any pollutants which may be discharged, and (4) to otherwise prevent or minimize any adverse impact from the construction and operation of such ocean thermal energy conversion facility or plantship.

(b) Promotion of safety of life and property

The Secretary of the department in which the Coast Guard is operating shall issue and enforce regulations, subject to recognized principles of

international law, with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on any ocean thermal energy conversion facility or plantship licensed under this chapter.

(c) Marking components for protection of navigation

Whenever a licensee fails to mark any component of such an ocean thermal energy conversion facility or plantship in accordance with applicable regulations, the Secretary of the department in which the Coast Guard is operating shall mark such components for the protection of navigation, and the licensee shall pay the cost of such marking.

(d) Safety zones

(1) Subject to recognized principles of international law and after consultation with the Secretary of Commerce, the Secretary of the Interior, the Secretary of State, and the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating shall designate a zone of appropriate size around and including any ocean thermal energy conversion facility licensed under this chapter and may designate such a zone around and including any ocean thermal energy conversion plantship licensed under this chapter for the purposes of navigational safety and protection of the facility or plantship. The Secretary of the department in which the Coast Guard is operating shall by regulation define permitted activities within such zone consistent with the purpose for which it was designated. The Secretary of the department in which the Coast Guard is operating shall, not later than 30 days after publication of notice pursuant to section 9112(d) of this title, designate such safety zone with respect to any proposed ocean thermal energy conversion facility or plantship.

(2) In addition to any other regulations, the Secretary of the department in which the Coast Guard is operating is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of an ocean thermal energy conversion facility or plantship licensed under this chapter, and to issue rules and regulations relating thereto.

(3) Except in a situation involving force majeure, a licensee of an ocean thermal energy conversion facility or plantship shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, load or unload cargo at, or otherwise utilize such a facility or plantship licensed under this chapter unless (A) the foreign state involved has agreed, by specific agreement with the United States, to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this chapter, while the vessel is located within the safety zone, and (B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(e) Rules and regulations; vessels; "ocean thermal energy conversion facility" defined

(1) The Secretary of the department in which the Coast Guard is operating shall promulgate and enforce regulations specified in paragraph (2) of this subsection and such other regulations as he deems necessary concerning the documentation, design, construction, alteration, equipment, maintenance, repair, inspection, certification, and manning of ocean thermal energy conversion facilities and plantships. In addition to other requirements prescribed under those regulations, the Secretary of the department in which the Coast Guard is operating may require compliance with those vessel documentation, inspection, and manning laws which he determines to be appropriate.

(2) Within 1 year after August 3, 1980, the Secretary of the department in which the Coast Guard is operating shall promulgate regulations under paragraph (1) of this subsection which require that any ocean thermal energy conversion facility or plantship—

(A) be documented;

(B) comply with minimum standards of design, construction, alteration, and repair; and

(C) be manned or crewed by United States citizens or aliens lawfully admitted to the United States for permanent residence, unless—

(i) there is not a sufficient number of United States citizens, or aliens lawfully admitted to the United States for permanent residence, qualified and available for such work, or

(ii) the President makes a specific finding, with respect to the particular vessel, platform, or moored, fixed or standing structure, that application of this requirement would not be consistent with the national interest.

(3) For the purposes of the documentation laws, for which compliance is required under paragraph (1) of this subsection, ocean thermal energy conversion facilities and plantships shall be deemed to be vessels and, if documented, vessels of the United States for the purposes of the Ship Mortgage Act, 1920 (46 U.S.C. 911–984).

(4) For the purposes of this subsection the term ''ocean thermal energy conversion facility'' refers only to an ocean thermal energy conversion facility which has major components other than water intake or discharge pipes located seaward of the highwater mark[1]

(f) Protection of navigation

Subject to recognized principles of international law, the Secretary of the department in which the Coast Guard is operating shall promulgate and enforce such regulations as he deems necessary to protect navigation in the vicinity of a vessel engaged in the installation, repair, or maintenance of any submarine electric transmission cable or equipment, and to govern the markings and signals used by such a vessel.

(Pub. L. 96–320, title I, § 108, Aug. 3, 1980, 94 Stat. 986; Pub. L. 98–623, title VI, § 602(a)(6), (7), (e)(1), (15), Nov. 8, 1984, 98 Stat. 3410–3412.)

[1] So in original. Probably should be followed by a period.

REFERENCES IN TEXT

The Ship Mortgage Act, 1920, referred to in subsec. (e)(3), is section 30 of act June 5, 1920, ch. 250, 41 Stat. 1000, which was classified generally to chapter 25 (§ 911 et seq.) of former Title 46, Shipping, and was repealed by Pub. L. 100–710, title I, § 106(b)(2), Nov. 23, 1988, 102 Stat. 4752, and reenacted by section 102(c) thereof as chapters 301 and 313 of Title 46, Shipping. Chapter 301 of Title 46, consisting solely of section 30101 which defined, among other terms, ''vessel of the United States'', was subsequently repealed by Pub. L. 109–304, § 6(b), Oct. 6, 2006, 120 Stat. 1509. For a definition of ''vessel of the United States'' as that term applies to Title 46, see section 116 of Title 46.

AMENDMENTS

1984—Subsec. (d)(1). Pub. L. 98–623, § 602(e)(1), substituted ''navigational safety'' for ''reorganizational safety''.

Subsec. (d)(3). Pub. L. 98–623, § 602(e)(15), added par. (3) by inserting text of former subsec. (b)(3) of section 9119 of this title.

Subsec. (e)(2)(C)(ii). Pub. L. 98–623, § 602(a)(6), substituted ''moored, fixed or standing'' for ''moored or standing''.

Subsec. (e)(4). Pub. L. 98–623, § 602(a)(7), added par. (4).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 9119. Prevention of interference with other uses of high seas

(a) License conditions

Each license shall include such conditions as may be necessary and appropriate to ensure that construction and operation of the ocean thermal energy conversion facility or plantship are conducted with reasonable regard for navigation, fishing, energy production, scientific research, or other uses of the high seas, either by citizens of the United States or by other nations in their exercise of the freedoms of the high seas as recognized under the Convention of the High Seas and the general principles of international law.

(b) Rules and regulations

The Administrator shall promulgate regulations specifying under what conditions and in what circumstances the thermal plume of an ocean thermal energy conversion facility or plantship licensed under this chapter will be deemed—

(1) to impinge on so as to degrade the thermal gradient used by another ocean thermal energy conversion facility or plantship, or

(2) to impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation.

Such regulations shall also provide for the Administrator to mediate or arbitrate any disputes among licensees regarding the extent to which the thermal plume of one licensee's facility or plantship impinges on the operation of another licensee's facility or plantship.

(c) Coast Guard operations

The Secretary of the department in which the Coast Guard is operating shall promulgate, after consultation with the Administrator, and shall enforce, regulations governing the movement and navigation of ocean thermal energy conversion plantships licensed under this chapter to ensure that the thermal plume of such an ocean thermal energy conversion plantship does not unreasonably impinge on so as to degrade the thermal gradient used by the operation of any other ocean thermal energy conversion plantship or facility except in case of force majeure or with the consent of owner of the other such plantship or facility, and to ensure that the thermal plume of such an ocean thermal energy conversion plantship does not impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State has approved such impingement after consultation with such nation.

(Pub. L. 96–320, title I, § 109, Aug. 3, 1980, 94 Stat. 987; Pub. L. 98–623, title VI, § 602(e)(2), (15), (16), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98–623, § 602(e)(2), substituted ''national resource jurisdiction'' for ''natural resource jurisdiction''.

Subsec. (b)(3). Pub. L. 98–623, § 602(e)(15), struck out par. (3) which prohibited a licensee of an ocean thermal energy conversion facility or plantship under this chapter, except in the case of force majeure, from permitting foreign vessels to call at, or load or unload cargo at, or otherwise use such facility or plantship unless the foreign state involved had specifically agreed to recognize the jurisdiction of the United States over the vessel and its personnel while such vessel was located in the safety zone and the vessel owner or operator had designated an agent in the United States for receipt of service of process for legal claims or proceedings arising from activities of the vessel or its personnel while located in such zone. See section 9118(d)(3) of this title.

Subsec. (c). Pub. L. 98–623, § 602(e)(16), substituted ''the thermal plume of such'' for ''the thermal plume such of'' in second place appearing, and substituted ''impingement'' for ''impingment''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 9120. Monitoring of licensees' activities

Each license shall require the licensee—

(1) to allow the Administrator to place appropriate Federal officers or employees in or aboard the ocean thermal energy conversion facility or plantship to which the license applies, at such times and to such extent as the Administrator deems reasonable and necessary to assess compliance with any condition or regulation applicable to the license, and to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply;

(2) to cooperate with such officers and employees in the performance of monitoring functions; and

(3) to monitor the environmental effects, if any, of the operation of the ocean thermal energy conversion facility or plantship in accordance with regulations issued by the Administrator, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate mitigation methods and possibilities.

(Pub. L. 96–320, title I, § 110, Aug. 3, 1980, 94 Stat. 988; Pub. L. 98–623, title VI, § 602(a)(8), Nov. 8, 1984, 98 Stat. 3411.)

AMENDMENTS

1984—Par. (1). Pub. L. 98–623 substituted ''in or aboard'' for ''aboard''.

§ 9121. Suspension, revocation, and termination of licenses

(a) Filing of action by Attorney General; automatic suspension

Whenever a licensee fails to comply with any applicable provision of this chapter or any applicable rule, regulation, restriction, or condition issued or imposed by the Administrator under the authority of this chapter, the Attorney General, at the request of the Administrator, shall file an action in the appropriate United States district court to—

(1) suspend the license; or

(2) if such failure is knowing and continues for a period of 30 days after the Administrator mails notification of such failure by registered letter to the licensee at his record post office address, revoke such license.

No proceeding under this section is necessary if the license, by its terms, provides for automatic suspension or termination upon the occurrence of a fixed or agreed upon condition, event, or time.

(b) Immediate suspension of construction or operation pending completion of proceedings

If the Administrator determines that immediate suspension of the construction or operation of an ocean thermal energy conversion facility or plantship or any component thereof is necessary to protect public health and safety or to eliminate imminent and substantial danger to the environment the Administrator may order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section.

(Pub. L. 96–320, title I, § 111, Aug. 3, 1980, 94 Stat. 988; Pub. L. 98–623, title VI, § 602(e)(17), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–623 substituted ''environment'' for ''environment established by any treaty or convention,''.

§ 9122. Recordkeeping and public access to information

(a) Records and reports

Each licensee shall establish and maintain such records, make such reports, and provide such information as the Administrator, after consultation with other interested Federal departments and agencies, shall by regulation prescribe to carry out the provisions of this chapter. Each licensee shall submit such reports and shall make available such records and information as the Administrator may request.

(b) Confidential information

Any information reported to or collected by the Administrator under this chapter which is exempt from disclosure pursuant to section 552(b)(4) of title 5 (relating to trade secrets and commercial or financial information which is privileged or confidential) shall not—

(1) be publicly disclosed by the Administrator or by any other officer or employee of the United States, unless the Administrator has—

(A) determined that the disclosure is necessary to protect the public health or safety or the environment against an unreasonable risk of injury, and

(B) notified the person who submitted the information 10 days before the disclosure is to be made, unless the delay resulting from such notice would be detrimental to the public health or safety or the environment, or

(2) be otherwise disclosed except—

(A)(i) to other Federal and adjacent coastal State government departments and agencies for official use,

(ii) to any committee of the Congress of appropriate jurisdiction, or

(iii) pursuant to court order, and

(B) when the Administrator has taken appropriate steps to inform the recipient of the confidential nature of the information.

(Pub. L. 96–320, title I, § 112, Aug. 3, 1980, 94 Stat. 989; Pub. L. 98–623, title VI, § 602(e)(3), (18), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–623, § 602(e)(3), substituted ''(relating to trade secrets and commercial or financial information which is privileged or confidential)'' for ''(relating to trade secrets and confidential commercial and financial information)''.

Subsec. (b)(2)(B). Pub. L. 98–623, § 602(e)(18), substituted ''Administrator'' for ''administrator''.

§ 9123. Relinquishment or surrender of license

(a) Relinquishment or surrender authority; continuation of liability

Any licensee may at any time, without penalty, surrender to the Administrator a license issued to him, or relinquish to the Administrator, in whole or in part, any right to conduct construction or operation of an ocean thermal energy conversion facility or plantship, including part or all of any right of way which may have been granted in conjunction with such license: *Provided*, That such surrender or relinquishment shall not relieve the licensee of any obligation or liability established by this chapter, or any other Act, or of any obligation or liability for actions taken by him prior to such surrender or relinquishment, or during disposal or removal of any components required to be disposed of or removed pursuant to this chapter.

(b) Transfer of right of way

If part or all of a right of way which is relinquished, or for which the license is surrendered, to the Administrator pursuant to subsection (a) of this section contains an electric transmission cable or pipeline which is used in conjunction with another license for an ocean thermal energy conversion facility, the Administrator shall allow the other licensee an opportunity to add such right of way to his license before informing the Secretary of the Interior that the right of way has been vacated.

(Pub. L. 96–320, title I, § 113, Aug. 3, 1980, 94 Stat. 989.)

§ 9124. Civil actions

(a) Jurisdiction

Except as provided in subsection (b) of this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action for equitable relief on his own behalf in the United States District Court for the District of Columbia whenever such action constitutes a case or controversy—

(1) against any person who is alleged to be in violation of any provision of this chapter or any regulation or condition of a license issued pursuant to this chapter; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary.

In suits brought under this chapter, the district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this chapter or any regulation or term or condition of a license issued pursuant to this chapter or to order the Administrator to perform such act or duty, as the case may be.

(b) Notice

No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to the Administrator and to any alleged violator; or

(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

(c) Right of Administrator or Attorney General to intervene

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) Award of costs

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

(e) Other remedies not restricted

Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement or to seek any other relief.

(Pub. L. 96–320, title I, § 114, Aug. 3, 1980, 94 Stat. 990.)

§ 9125. Judicial review

Any person suffering legal wrong, or who is adversely affected or aggrieved by the Administrator's decision to issue, transfer, modify, renew, suspend, or terminate a license may, not later than 60 days after such decision is made, seek judicial review of such decision in the United States Court of Appeals for the District of Columbia. A person shall be deemed to be aggrieved by the Administrator's decision within the meaning of this chapter if he—

(1) has participated in the administrative proceedings before the Administrator (or if he did not so participate, he can show that his failure to do so was caused by the Administrator's failure to provide the required notice); and

(2) is adversely affected by the Administrator's action.

(Pub. L. 96–320, title I, § 115, Aug. 3, 1980, 94 Stat. 990.)

§ 9126. Exempt operations

(a) Test platforms

The provisions of this subchapter shall not apply to any test platform which will not operate as an ocean thermal energy conversion facility or plantship after conclusion of the testing period.

(b) Commercial demonstration ocean thermal energy conversion facilities or plantships

The provisions of this subchapter shall not apply to ownership, construction, or operation of any ocean thermal energy conversion facility or plantship which the Secretary of Energy has designated in writing as a demonstration project for the development of alternative energy sources for the United States which is conducted by, participated in, or approved by the Department of Energy. The Secretary of Energy, after consultation with the Administrator, shall require such demonstration projects to abide by as many of the substantive requirements of this subchapter as he deems to be practicable without damaging the nature of or unduly delaying such projects.

(Pub. L. 96–320, title I, § 116, Aug. 3, 1980, 94 Stat. 991; Pub. L. 98–623, title VI, § 602(e)(4), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–623 substituted ''facility or plantship'' for ''facility or platform''.

§ 9127. Periodic review and revision of regulations

The Administrator and the Secretary of the department in which the Coast Guard is operat-

ing shall periodically, at intervals of not more than every 3 years, and in consultation with the Secretary of Energy, review any regulations promulgated pursuant to the provisions of this subchapter to determine the status and impact of such regulations on the continued development, evolution, and commercialization of ocean thermal energy conversion technology. The results of each such review shall be included in the next annual report required by section 9165[1] of this title. The Administrator and such Secretary are authorized and directed to promulgate any revisions to the then effective regulations as are deemed necessary and appropriate based on such review, to ensure that any regulations promulgated pursuant to the provisions of this subchapter do not impede such development, evolution, and commercialization of such technology. Additionally, the Secretary of Energy is authorized to propose, based on such review, such revisions for the same purpose. The Administrator or such Secretary, as appropriate, shall have exclusive jurisdiction with respect to any such proposal by the Secretary of Energy and, pursuant to applicable procedures, shall consider and take final action on any such proposal in an expeditious manner. Such consideration shall include at least one informal hearing pursuant to the procedures in section 553 of title 5.

(Pub. L. 96–320, title I, § 117, Aug. 3, 1980, 94 Stat. 991.)

REFERENCES IN TEXT

Section 9165 of this title, referred to in text, was omitted from the Code.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER II—MARITIME FINANCING FOR OCEAN THERMAL ENERGY CONVERSION

§ 9141. Determinations under Merchant Marine Act, 1936

(a)(1) For the purposes of chapter 535 of title 46, any ocean thermal energy conversion facility or plantship licensed pursuant to this chapter, and any vessel providing shipping service to or from such an ocean thermal energy conversion facility or plantship, shall be deemed to be a vessel operated in the foreign commerce of the United States.

(2) The provisions of paragraph (1) of this subsection shall apply for taxable years beginning after December 31, 1981.

(b) For the purposes of the Merchant Marine Act, 1936 (46 U.S.C. 1177 et seq.),[1] any vessel documented under the laws of the United States and used in providing shipping service to or from any ocean thermal energy conversion facility or plantship licensed pursuant to the provisions of this chapter shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 109 of title 46.

(Pub. L. 96–320, title II, § 201, Aug. 3, 1980, 94 Stat. 991.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsec. (b), is act June 29, 1936, ch. 858, 49 Stat. 1985, which was classified principally to chapter 27 (§ 1101 et seq.) of the former Appendix to Title 46, Shipping. Most of this Act was repealed and restated mainly as subtitle V of Title 46, Shipping, by Pub. L. 109–304, §§ 8, 19, Oct. 6, 2006, 120 Stat. 1555, 1710. For complete classification of this Act to the Code, see Tables. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

CODIFICATION

In subsec. (a)(1), ''chapter 535 of title 46'' substituted for ''section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177)'' and in subsec. (b), ''section 109 of title 46'' substituted for ''section 905(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1244(a))'' on authority of Pub. L. 109–304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted chapter 535 and section 109 of Title 46, Shipping.

SUBCHAPTER III—ENFORCEMENT

§ 9151. Prohibited acts

It is unlawful for any person who is a United States citizen or national, or a foreign national in or on board an ocean thermal energy conversion facility or plantship or on board any vessel documented or numbered under the laws of the United States, or who is subject to the jurisdiction of the United States by an international agreement to which the United States is a party—

(1) to violate any provision of this chapter; or any rule, regulation, or order issued pursuant to this chapter; or any term or condition of any license issued to such person pursuant to this chapter;

(2) to refuse to permit any Federal officer or employee authorized to monitor or enforce the provisions of sections 9120 and 9153 of this title to enter or board an ocean thermal energy conversion facility or plantship or any vessel documented or numbered under the laws of the United States, for purposes of conducting any search or inspection in connection with the monitoring or enforcement of this chapter or any rule, regulation, order, term, or condition referred to in paragraph (1) of this section;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer or employee in the conduct of any search or inspection described in paragraph (2) of this section;

(4) to resist a lawful arrest for any act prohibited by this section; or

(5) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person subject to this section knowing that the other person has committed any act prohibited by this section.

(Pub. L. 96–320, title III, § 301, Aug. 3, 1980, 94 Stat. 994; Pub. L. 98–623, title VI, § 602(a)(9), Nov. 8, 1984, 98 Stat. 3411.)

[1] See References in Text note below.

[1] See References in Text note below.

AMENDMENTS

1984—Pub. L. 98–623 substituted ''in or on board an ocean thermal energy conversion facility or plantship or on board any vessel'' for ''on board an ocean thermal energy conversion facility or plantship or other vessel'' in provisions preceding par. (1).

Par. (2). Pub. L. 98–623 substituted ''to enter or board'' for ''to board''.

§ 9152. Remedies and penalties

(a) Issuance and enforcement of orders

(1) The Administrator or his delegate shall have the authority to issue and enforce orders during proceedings brought under this chapter. Such authority shall include the authority to issue subpenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses.

(2) Whenever on the basis of any information available to him the Administrator finds that any person subject to section 9151 of this title is in violation of any provision of this chapter or any rule, regulation, order, license, or term or condition thereof, or other requirements under this chapter, he may issue an order requiring such person to comply with such provision or requirement, or bring a civil action in accordance with subsection (b) of this section.

(3) Any compliance order issued under this subsection shall state with reasonable specificity the nature of the violation and a time for compliance, not to exceed 30 days, which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(b) Civil actions by Attorney General; equitable relief

(1) Upon a request by the Administrator, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction, to halt any violation for which the Administrator is authorized to issue a compliance order under subsection (a)(2) of this section.

(2) Upon a request by the Administrator, the Attorney General shall bring an action in an appropriate district court of the United States for equitable relief to redress a violation, by any person subject to section 9151 of this title, of any provision of this chapter, any regulation issued pursuant to this chapter, or any license condition.

(c) Civil penalties

(1) Any person who is found by the Administrator, after notice and an opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 9151 of this title shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Administrator, or his designee, by written notice. In determining the amount of such penalty, the Administrator shall take into account the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under paragraph (1) of this subsection may obtain a review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28. The findings and order of the Administrator shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5.

(3) If any person subject to section 9151 of this title fails to pay an assessment of a civil penalty against him after it has become final, or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection.

(d) Criminal penalties

(1) Any person subject to section 9151 of this title is guilty of an offense if he willfully commits any act prohibited by such section.

(2) Any offense, other than an offense for which the punishment is prescribed by section 9113 of this title, is punishable by a fine of not more than $75,000 for each day during which the violation continues. Any offense described in paragraphs (2), (3), (4), and (5) of section 9151 of this title is punishable by the fine or imprisonment for not more than 6 months, or both. If, in the commission of any offense, the person subject to section 9151 of this title uses a dangerous weapon, engages in conduct that causes bodily injury to any Federal officer or employee, or places any Federal officer or employee in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000 or imprisonment for not more than 10 years, or both.

(e) In rem liability of vessels

Any ocean thermal energy conversion facility or plantship licensed pursuant to this chapter and any other vessel documented or numbered under the laws of the United States, except a public vessel engaged in noncommercial activities, used in any violation of this chapter or of any rule, regulation, order, license, or term or condition thereof, or other requirements of this chapter, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof, when-

ever it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(Pub. L. 96–320, title III, § 302, Aug. 3, 1980, 94 Stat. 995; Pub. L. 98–623, title VI, § 602(e)(5), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–623 substituted ''to halt any violation'' for ''any violation''.

§ 9153. Enforcement

(a) Enforcement responsibility of Administrator of National Oceanic and Atmospheric Administration; Coast Guard

Except where a specific section of this chapter designates enforcement responsibility, the provisions of this chapter shall be enforced by the Administrator. The Secretary of the department in which the Coast Guard is operating shall have exclusive responsibility for enforcement measures which affect the safety of life and property at sea, shall exercise such other enforcement responsibilities with respect to vessels subject to the provisions of this chapter as are authorized under other provisions of law, and may, upon the specific request of the Administrator, assist the Administrator in the enforcement of any provision of this chapter. The Administrator and the Secretary of the department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment, including aircraft and vessels, and facilities of any other Federal agency or department, and may authorize officers or employees of other departments or agencies to provide assistance as necessary in carrying out subsection (b) of this section. The Administrator and the Secretary of the department in which the Coast Guard is operating may issue regulations jointly or severally as may be necessary and appropriate to carry out their duties under this section.

(b) Enforcement activities of authorized officers

To enforce the provisions of this chapter in or on board any ocean thermal energy conversion facility or plantship or any vessel subject to the provisions of this chapter, any officer who is authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating may—

(1) enter or board, and inspect, any ocean thermal energy conversion facility or plantship or any vessel which is subject to the provisions of this chapter;

(2) search the vessel if the officer has reasonable cause to believe that the vessel has been used or employed in the violation of any provision of this chapter;

(3) arrest any person subject to section 9151 of this title if the officer has reasonable cause to believe that the person has committed a criminal act prohibited by sections 9151 and 9152(d) of this title;

(4) seize the vessel together with its gear, furniture, appurtenances, stores, and cargo, used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this chapter if such seizure is necessary to prevent evasion of the enforcement of this chapter;

(5) seize any evidence related to any violation of any provision of this chapter;

(6) execute any warrant or other process issued by any court of competent jurisdiction; and

(7) exercise any other lawful authority.

(c) Jurisdiction; venue

Except as otherwise specified in section 9125 of this title, the district courts of the United States shall have exclusive original jurisdiction over any case or controversy arising under the provisions of this chapter. Except as otherwise specified in this chapter, venue shall lie in any district wherein, or nearest to which, the cause of action arose, or wherein any defendant resides, may be found, or has his principal office. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

(d) Definitions

For the purposes of this section, the term ''vessel'' includes an ocean thermal energy conversion facility or plantship, and the term ''provisions of this chapter'' or ''provision of this chapter'' includes any rule, regulation, or order issued pursuant to this chapter and any term or condition of any license issued pursuant to this chapter.

(Pub. L. 96–320, title III, § 303, Aug. 3, 1980, 94 Stat. 996; Pub. L. 98–623, title VI, § 602(a)(10), Nov. 8, 1984, 98 Stat. 3411.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–623 substituted ''in or on board any ocean thermal energy conversion facility or plantship or any vessel'' for ''on board any ocean thermal energy conversion facility or plantship or other vessel'' in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98–623 substituted ''enter or board, and inspect, any ocean thermal energy conversion facility or plantship or'' for ''board and inspect''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 9161. Law of the Sea Treaty

If the United States ratifies a treaty, which includes provisions with respect to jurisdiction over ocean thermal energy conversion activities, resulting from any United Nations Conference on the Law of the Sea, the Administrator, after consultation with the Secretary of State, shall promulgate any amendment to the regulations promulgated under this chapter which is necessary and appropriate to conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

(Pub. L. 96–320, title IV, § 401, Aug. 3, 1980, 94 Stat. 998.)

§ 9162. International negotiations

The Secretary of State, in cooperation with the Administrator and the Secretary of the department in which the Coast Guard is operating, shall seek effective international action and cooperation in support of the policy and purposes of this chapter and may initiate and conduct negotiations for the purpose of entering into international agreements designed to guarantee noninterference of ocean thermal energy conversion facilities and plantships with the thermal gradients used by other such facilities and plantships, to assure protection of such facilities and plantships and of navigational safety in the vicinity thereof, and to resolve such other matters relating to ocean thermal energy conversion facilities and plantships as need to be resolved in international agreements.

(Pub. L. 96–320, title IV, § 402, Aug. 3, 1980, 94 Stat. 998.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 9163. Relationship to other laws

(a) Facilities and plantships as comparable to areas of exclusive Federal jurisdiction located within a State

(1) The Constitution, laws, and treaties of the United States shall apply to an ocean thermal energy conversion facility or plantship licensed under this chapter and all of which is located seaward of the highwater mark, and to activities connected, associated, or potentially interfering with the use or operation of any such facility or plantship, in the same manner as if such facility or plantship were an area of exclusive Federal jurisdiction located within a State. Nothing in this chapter shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty.

(2) Ocean thermal energy conversion facilities and plantships licensed under this chapter do not possess the status of islands and have no territorial seas of their own.

(b) Responsibilities and authorities of States or United States within territorial seas; applicability of State law to facilities located beyond territorial seas

(1) Except as may otherwise be provided by this chapter, nothing in this chapter shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(2) The law of the nearest adjacent coastal State to which an ocean thermal energy conversion facility located beyond the territorial sea and licensed under this chapter is connected by electric transmission cable or pipeline, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to such facility, to the extent applicable and not inconsistent with any provision or regulation under this chapter or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed: *Provided*, *however*, That the application of State taxation laws is not extended hereby outside the seaward boundary of any State. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States outside the seaward boundary of any State.

(c) Customs laws

(1) For the purposes of the customs laws administered by the Secretary of the Treasury, ocean thermal energy conversion facilities and plantships documented under the laws of the United States and licensed under this chapter shall be deemed to be vessels.

(2) Except insofar as they apply to vessels documented under the laws of the United States, the customs laws administered by the Secretary of the Treasury, including the provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202), and other laws codified in title 19, shall not apply to any ocean thermal energy conversion facility or plantship documented under the laws of the United States and licensed under the provisions of this chapter, but all foreign articles to be used in the construction of any such facility or plantship, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

(Pub. L. 96–320, title IV, § 403, Aug. 3, 1980, 94 Stat. 998; Pub. L. 98–623, title VI, § 602(a)(11), (12), (e)(6), Nov. 8, 1984, 98 Stat. 3411, 3412.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (c), are classified generally to Title 19, Customs Duties.

The Tariff Act of 1930, as amended, referred to in subsec. (c)(2), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§ 1202 et seq.) of Title 19. For complete classification of

this Act to the Code, see section 1654 of Title 19 and Tables.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–623, § 602(a)(11), inserted ''and all of which is located seaward of the high-water mark,''.

Subsec. (c)(2). Pub. L. 98–623, § 602(a)(12), substituted ''ocean thermal energy conversion facility or plantship documented under the laws of the United States and licensed'' for ''ocean thermal energy conversion facility or plantship licensed''.

Pub. L. 98–623, § 602(e)(6), substituted ''Secretary of the Treasury, including the provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202), and other laws codified in title 19,'' for ''Secretary of the Treasury''.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 9164. Submarine electric transmission cable and equipment safety

(a) Standards and regulations

The Secretary of Energy, in cooperation with other interested Federal agencies and departments, shall establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of submarine electric transmission cables and equipment subject to the jurisdiction of the United States. Such standards and regulations shall include, but not be limited to, requirements for the use of the safest and best available technology for submarine electric transmission cable shielding, and for the use of automatic switches to shut off electric current in the event of a break in such a cable.

(b) Report to Congress on appropriation and staffing needs

The Secretary of Energy, in cooperation with other interested Federal agencies and departments, is authorized and directed to report to the Congress within 60 days after August 3, 1980, on appropriations and staffing needed to monitor submarine electric transmission cables and equipment subject to the jurisdiction of the United States so as to assure that they meet all applicable standards for construction, operation, and maintenance.

(Pub. L. 96–320, title IV, § 404, Aug. 3, 1980, 94 Stat. 999.)

§ 9165. Omitted

CODIFICATION

Section, Pub. L. 96–320, title IV, § 405, Aug. 3, 1980, 94 Stat. 999; Pub. L. 98–623, title VI, § 602(c), Nov. 8, 1984, 98 Stat. 3411, which required the Administrator of the National Oceanic and Atmospheric Administration to submit an annual report on the administration of this chapter to the President of the Senate and the Speaker of the House of Representatives, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 8th item on page 54 of House Document No. 103–7.

§ 9166. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce, for the use of the Administrator in carrying out the provisions of this chapter, not to exceed $3,000,000 for the fiscal year ending September 30, 1981, not to exceed $3,500,000 for the fiscal year ending September 30, 1982, not to exceed $3,500,000 for the fiscal year ending September 30, 1983, not to exceed $480,000 for each of the fiscal years ending September 30, 1984 and September 30, 1985, and not to exceed $630,000 for each of the fiscal years ending September 30, 1986 and September 30, 1987.

(Pub. L. 96–320, title IV, § 406, Aug. 3, 1980, 94 Stat. 1000; Pub. L. 98–623, title VI, § 601, Nov. 8, 1984, 98 Stat. 3410.)

AMENDMENTS

1984—Pub. L. 98–623 inserted provisions authorizing appropriations not to exceed $480,000 for each of the fiscal years ending September 30, 1984 and September 30, 1985, and not to exceed $630,000 for each of the fiscal years ending September 30, 1986 and September 30, 1987.

§ 9167. Severability

If any provision of this chapter or any application thereof is held invalid, the validity of the remainder of the chapter, or any other application, shall not be affected thereby.

(Pub. L. 96–320, title IV, § 407, Aug. 3, 1980, 94 Stat. 1000.)

§ 9168. Report to Congress on promotion and enhancement of export potential of ocean thermal energy conversion components, facilities, and plantships

Within 18 months after November 8, 1984, the Administrator shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing what steps the United States Government is taking and plans to take to promote and enhance the export potential of ocean thermal energy conversion components, facilities, and plantships manufactured by United States industry. Such report shall include—

(1) the relevant views of the National Oceanic and Atmospheric Administration, International Trade Administration, Maritime Administration, Department of Energy, Small Business Administration, United States International Development Cooperative Agency, the Office of the Special Trade Representative, and other relevant United States Government agencies;

(2) the findings of studies conducted by the Administrator to fulfill the intent of this section;

(3) a summary of activities, including consultations held with representatives of both the ocean thermal energy conversion and financial industries conducted by the Administrator to fulfill the intent of this section; and

(4) such recommendations as the Administrator deems appropriate for amending this chapter or other relevant Acts to better promote and enhance the export potential of ocean thermal energy conversion components, facilities and plantships manufactured by United States industry.

(Pub. L. 96–320, title IV, § 408, as added Pub. L. 98–623, title VI, § 602(d), Nov. 8, 1984, 98 Stat. 3411.)

CHAPTER 100—WIND ENERGY SYSTEMS

Sec.
9201. Congressional findings and declaration of purpose.
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§ 9201. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the United States is faced with a finite and diminishing resource base of native fossil fuels and, as a consequence, must develop as quickly as possible a diversified, pluralistic national energy capability and posture;

(2) the current imbalance between supply and demand for fuels and energy in the United States is likely to grow for many years;

(3) it is in the Nation's interest to provide opportunities for the increased production of electricity from renewable energy sources;

(4) the early wide-spread utilization of wind energy for the generation of electricity and for mechanical power could lead to relief on the demand for existing non-renewable fuel and energy supplies;

(5) the use of large wind energy systems for certain limited applications is already economically feasible;

(6) the use of small wind energy systems for certain applications is already economically feasible, and therefore, the Federal Government should not undertake any financial incentive or financial initiative which may detrimentally affect commercial markets for small wind energy systems;

(7) an aggressive research, development and demonstration program to accelerate widespread utilization of wind energy should solve existing technical problems of converting wind energy into electricity and mechanical energy and, supported by an assured and growing market for wind energy systems during the next decade, should maximize the future contribution of wind energy to the Nation's future energy production;

(8) it is the proper and appropriate role of the Federal Government to undertake research and development, to participate in demonstration programs for wind energy systems, and to assist private industry, other entities, and the general public in hastening the widespread utilization of such systems;

(9) the widespread use of wind energy systems to supplement and replace conventional methods for the generation of electricity and mechanical power would have a beneficial effect upon the environment;

(10) the evaluation of the performance and reliability of wind energy technologies can be expedited by the testing of prototypes under carefully controlled conditions;

(11) innovation and creativity in the development of components and systems for converting wind energy into electricity and mechanical energy can be fostered through encouraging direct contact between the manufacturers of such components and systems and utilities and other persons interested in utilizing such components and systems; and

(12) consistent with the findings of the Domestic Policy Review on Solar Energy, wind energy can potentially contribute 1.7 quads of energy per year by the year 2000.

(b) It is declared to be the policy of the United States and the purpose of this chapter to establish during the next eight years an aggressive research, development, demonstration, and technology applications program for converting wind energy into electricity and mechanical energy. It is declared to be the further policy of the United States and the purpose of this chapter that the objectives of such program are—

(1) to reduce the average cost of electricity produced by installed wind energy systems, by the end of fiscal year 1988, to a level competitive with conventional energy sources;

(2) to reach a total megawatt capacity in the United States from wind energy systems, by the end of fiscal year 1988, of at least eight hundred megawatts, of which at least one hundred megawatts are provided by small wind energy systems; and

(3) to accelerate the growth of a commercially viable and competitive industry to make wind energy systems available to the general public as an option in order to reduce national consumption of fossil fuel.

(Pub. L. 96–345, § 2, Sept. 8, 1980, 94 Stat. 1139.)

SHORT TITLE

Section 1 of Pub. L. 96–345 provided: ''That this Act [enacting this chapter] may be cited as the 'Wind Energy Systems Act of 1980'.''

§ 9202. Definitions

For purposes of this chapter—

(1) the term ''wind energy system'' means a system of components which converts the kinetic energy of the wind into electricity or mechanical power, and which comprises all necessary components, including energy storage, power conditioning, control systems, and transmission systems, where appropriate, to provide electricity or mechanical power for individual, residential, agricultural, commercial, industrial, utility, or governmental use;

(2) the term ''small wind energy system'' means a wind energy system having a maximum rated capacity of one hundred kilowatts or less;

(3) the term ''large wind energy system'' means a wind energy system which is not a small wind energy system;

(4) the term ''public and private entity'' means any individual, corporation, partnership, firm, association, agricultural cooperative, public- or investor-owned utility, public or private institution or group, any State or local government agency, or any other domestic entity;

(5) the term ''known wind resource'' means a site with an estimated average annual wind velocity of at least twelve miles per hour;

(6) the term ''conventional energy source'' means energy produced from oil, gas, coal, and nuclear fuels; and

(7) the term ''Secretary'' means the Secretary of Energy.

(Pub. L. 96–345, § 3, Sept. 8, 1980, 94 Stat. 1140.)

§ 9203. Comprehensive program management plan

(a) Program activities and periods; consultations with heads of Federal agencies and non-Federal organizations

The Secretary shall prepare a comprehensive program management plan for the research, development, demonstration, and technology application activities to carry out the purposes of this chapter. The program activities shall be conducted in accordance with such comprehensive plan which shall include—

(1) a five-year program for small wind energy systems,

(2) an eight-year program for large wind energy systems, and

(3) a three-year program for wind resource assessment[1]

which shall be consistent with the provisions of sections 9204, 9205, and 9206 of this title. In the preparation of such plan, the Secretary shall consult with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Interior, and the heads of such other Federal agencies and such public and private organizations as he deems appropriate.

(b) Initial transmittal to Congressional committees

The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate within nine months after September 8, 1980.

(c) Subsequent transmittals to Congress; descriptive statement: current plan, changes, justification for changes, progress, interagency cooperation, and recommendations for achievement of goals

Concurrently with the submission of the President's annual budget to the Congress for each year after the year in which the comprehensive plan is initially transmitted under subsection (b) of this section, the Secretary shall transmit to the Congress a detailed description of the comprehensive plan as then in effect, setting forth the modifications which may be necessary to appropriately revise such plan and any changes in circumstances which may have occurred since the plan or the last previous modification thereof was transmitted in accordance with this section. The detailed description of the comprehensive plan under this subsection shall include but need not be limited to a statement setting forth with respect to each of the programs under this chapter any changes in—

(1) the anticipated research, development, demonstration, and technology application objectives to be achieved by the program;

(2) the program elements, management structure, and activities, including any regional aspects and field responsibilities thereof;

(3) the program strategies and technology applications plans, including detailed milestone goals to be achieved during the next fiscal year for all major activities and projects;

(4) any significant economic, environmental, and societal effects which the program may have;

(5) the total estimated cost of individual program items; and

(6) the estimated relative financial contributions of the Federal Government and non-Federal participants in the program.

Such description shall also include a detailed justification of any such changes, a detailed description of the progress made toward achieving the goals of this chapter, a statement on the status of interagency cooperation in meeting such goals, and any legislative or other recommendations which the Secretary may have to help attain such goals.

(Pub. L. 96–345, § 4, Sept. 8, 1980, 94 Stat. 1141.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (c) of this section is listed as the 6th item on page 87), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, § 1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

§ 9204. Research, development, and demonstration

(a) Areas of knowledge limiting system utilization

The Secretary shall initiate research and development or accelerate existing research and development in areas in which the lack of knowledge limits the widespread utilization of wind energy systems in order to achieve the purposes of this chapter.

(b) Development of system prototypes and improvements

(1) The Secretary shall continue an aggressive program for the development of prototypes of advanced wind energy systems.

(2) As often as he deems appropriate, the Secretary shall solicit and evaluate proposals for the research and development of any new or improved technologies, which, in the Secretary's opinion, will contribute to the development of improvements in current wind energy systems.

[1] So in original. Probably should be followed by a comma.

(c) Acquisition of economic, scientific, and technological information of system operations under various circumstances and conditions

The Secretary is authorized to enter into contracts, grants, and cooperative agreements with public and private entities for the purchase, fabrication, installation, and testing to obtain scientific, technological, and economic information from the demonstration of a variety of prototypes of advanced wind energy systems under a variety of circumstances and conditions.

(d) Other provisions inapplicable

In carrying out the responsibilities under this section, the Secretary is not subject to the requirements of section 553 of title 5 or section 7191 of this title.

(Pub. L. 96–345, § 5, Sept. 8, 1980, 94 Stat. 1141.)

§ 9205. Technology application programs

(a) Unit, operating, and maintenance costs

The Secretary shall establish a technology application program for wind energy systems to achieve the purposes of this chapter by reduction in unit costs of wind energy systems through mass production and by determination of operating and maintenance costs through broad operational systems experience.

(b) Proposals for Federal assistance

In achieving the objectives of this section, the Secretary shall solicit and evaluate proposals for Federal assistance pursuant to paragraphs (1), (2), and (3) of subsection (c) of this section for investigating, purchasing, and installing such wind energy systems from public or private entities wishing to utilize wind energy systems.

(c) Forms of Federal assistance

In achieving the objectives of this section, the Secretary is authorized to use various forms of Federal assistance including, but not limited to—

(1) contracts and cooperative agreements;
(2) grants;
(3) loans; and
(4) direct Federal procurement.

(d) Quantity production and utilization

In carrying out his duties under this chapter, the Secretary is authorized to enter into such contracts and cooperative agreements with any public or private entity as may be necessary or appropriate for the production and utilization of large and small wind energy systems in quantities sufficient to achieve the objectives of this section.

(e) Procedure for direct grants for large systems; limitation of amount

In carrying out his duties under this chapter, the Secretary shall, within six months of September 8, 1980, establish procedures to allow any public or private entity wishing to install a large wind energy system to apply for and, upon meeting such terms and conditions as the Secretary may prescribe, to receive a direct grant for a portion of the total purchase and installation cost of such wind energy system: *Provided*, That grants for the portion of such cost in the case of large wind energy systems shall not exceed (A) 50 per centum of such cost during the first six years of the program under this subsection, and (B) 25 per centum of such cost during the seventh or eighth year of the program.

(f) Procedure for loans for small or large systems; limitation of amount; term; interest; prepayment; other terms and conditions

(1) In carrying out his duties under this chapter, the Secretary shall, within six months of September 8, 1980, establish procedures to allow public or private entities wishing to install a small or large wind energy system to apply for and, upon meeting such terms and conditions as the Secretary may prescribe, to receive loans for up to 75 per centum of the total purchase and installation costs of wind energy systems providing in the aggregate up to three hundred and twenty megawatts peak generating capacity involving at a minimum four projects: *Provided*, That no such loan in any fiscal year shall be for more than 50 per centum of the amount appropriated under this chapter for such fiscal year.

(2) Each loan shall be for a term which the Secretary deems appropriate, but no loan shall exceed twenty years beyond the date the wind energy system becomes operational.

(3) Each loan made pursuant to this section shall bear interest at the discount or interest rate used at the time the loan is made for water resource planning projects under section 1962d–17 of this title. Such loan can be prepaid at any time without prepayment penalty and shall be contingent upon such other terms and conditions prescribed by the Secretary.

(g) Funds for Federal agency systems; projects and activities for technology applications of systems

(1) In carrying out his duties under this chapter, the Secretary is authorized to provide funds for the accelerated procurement and installation of small and large wind energy systems by Federal agencies.

(2) The Secretary is authorized to enter into arrangements with appropriate Federal agencies, including the Water and Power Resources Services and the Federal power marketing agencies for large wind energy systems, to carry out such projects and activities as may be appropriate for the broad technology applications of small and large wind energy systems which are suitable and effective for use by such Federal agencies.

(h) Observation, monitoring, and reporting requirements; public inspection

The terms and conditions prescribed by the Secretary under this subsection shall require such observation, monitoring, and reporting requirements as the Secretary deems necessary for a period of five years and shall provide for members of the public to view and inspect the system under reasonable conditions.

(i) Termination of new Federal assistance and Federal assistance programs

New Federal assistance for technology applications systems shall terminate upon the appropriate determination by the Secretary, in the annual update of the comprehensive program management plan pursuant to section 9203 of

this title. Termination of the small wind energy systems program shall occur when the Secretary finds that such systems have become economically competitive with conventional energy sources, or on September 30, 1985, whichever occurs first. Termination of the large wind energy systems program shall occur when the Secretary finds that such systems have become economically competitive with conventional energy sources, or on September 30, 1988, whichever occurs first.

(Pub. L. 96–345, § 6, Sept. 8, 1980, 94 Stat. 1142.)

REFERENCES IN TEXT

Section 1962d–17 of this title, referred to in subsec. (f)(3), was in the original ''section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 1962(d)–17(a))''. Section 80 of the Water Resources Development Act of 1974 is classified to section 1962d–17 of this title.

§ 9206. Wind resource assessment

The Secretary shall initiate a three-year national wind resource assessment program. As part of such program, the Secretary shall—

(1) conduct activities to validate existing assessments of known wind resources;

(2) perform wind resource assessments in regions of the United States where the use of wind energy may prove feasible;

(3) initiate a general site prospecting program;

(4) establish standard wind data collection and siting techniques; and

(5) establish, in consultation with the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the National Aeronautics and Space Administration, and the Administrator of the Environmental Protection Agency, a national wind data center which shall make public information available on the known wind energy resources of various regions throughout the United States.

(Pub. L. 96–345, § 7, Sept. 8, 1980, 94 Stat. 1143.)

§ 9207. Criteria for program selection

The Secretary shall set priorities which are, as far as possible, consistent with the intent and purposes of this chapter and which are set in accordance with the following criteria:

(1) the construction, operation, and maintenance costs of wind energy systems shall be minimized;

(2) programs established under this chapter shall be conducted with the express intent of bringing wind energy system costs down to a level competitive with energy costs from conventional energy systems;

(3) priority shall be given in the conduct of programs established under this chapter to those projects in which cost-sharing funds are provided by private, industrial, agricultural, or governmental entities or utilities; and

(4) to the extent that the Secretary is limited by the availability of funds to carry out the objectives of this chapter, priority, but not exclusive emphasis, should be given in the early years of the programs to activities under sections 9204 and 9206 of this title and in the later years of the programs to activities under section 9205 of this title.

(Pub. L. 96–345, § 8, Sept. 8, 1980, 94 Stat. 1144.)

§ 9208. Administrative provisions

(a) Monitoring of performance; collection and evaluation of data

The Secretary, in coordination with such Government agencies as may be appropriate, shall—

(1) monitor the performance and operation of wind energy systems installed under this chapter; and

(2) collect and evaluate data and information on the performance and operation of wind energy systems installed under this chapter.

(b) Liaison

The Secretary shall also maintain continuing liaison with related industries and interests and with the scientific and technical community in order to assure that the benefits of programs under this chapter are and will continue to be realized to the maximum extent feasible.

(c) Availability of information

The Secretary shall assure, subject to section 552 of title 5 and section 1905 of title 18, that full and complete information with respect to any program, project, or other activity conducted under this chapter is made available to Federal, State, and local authorities, relevant segments of the economy, the scientific community, and the public so that the early, widespread, and practical use of wind energy throughout the United States is promoted to the maximum extent feasible.

(Pub. L. 96–345, § 9, Sept. 8, 1980, 94 Stat. 1144; Pub. L. 104–66, title I, § 1051(b), Dec. 21, 1995, 109 Stat. 716.)

AMENDMENTS

1995—Subsec. (a)(3). Pub. L. 104–66 struck out par. (3) which read as follows: ''from time to time carry out such studies and investigations and take such other actions, including the submission of special reports to the Congress when appropriate, as may be necessary to assure that the programs for which the Secretary is responsible under this chapter effectively carry out the purposes of this chapter.''

§ 9209. Utilization of capabilities and facilities

The Secretary shall utilize the technological and management capabilities, equipment, and facilities of the National Aeronautics and Space Administration to the maximum extent practicable in carrying out his duties under this chapter, and shall enter into such additional agreements with the Administrator of such Administration as may be necessary for this purpose.

(Pub. L. 96–345, § 10, Sept. 8, 1980, 94 Stat. 1145.)

§ 9210. Analysis of applications of wind energy systems

The Secretary shall—

(1) initiate and conduct a federal applications study for wind energy systems, cooperatively with appropriate Federal agencies to determine the potential for the use of wind systems at specific Federal facilities; and this study shall—

(A) include an analysis which determines those sites at which wind energy systems are economically competitive with the marginal costs of new conventional energy sources in the areas;

(B) identify potential sites and uses of wind energy systems at the following agencies as well as any others which the Secretary deems necessary:

(i) the Department of Defense;

(ii) the Department of Transportation (including the United States Coast Guard, the Federal Aviation Administration, and the Federal Highway Administration);

(iii) the Department of Commerce;

(iv) the Department of Agriculture; and

(v) the Department of the Interior;

(C) provide a preliminary report to the Congress within nine months after September 8, 1980; and

(D) include the presentation of a detailed plan for the use of wind energy systems for power generation at specific sites in Federal Government agencies to the Congress within twelve months after September 8, 1980;

(2) study the effects, at varying levels of market penetration, of the widespread utilization of wind energy systems on the existing electrical utility system;

(3) determine the necessity for, and make recommendations to the Committee on Energy and Natural Resources of the Senate and the Committee on Science and Technology of the House of Representatives within eighteen months after September 8, 1980, on, the need for any additional incentives for either users or manufacturers, in each of the potential markets for wind energy systems, to accelerate the widespread utilization of wind energy technologies;

(4) evaluate the actual performance of wind energy systems in various applications, including but not limited to residential, agricultural, large and small scale irrigation pumping, industrial, commercial, remote nonnetwork utility, and other applications, and report thereon to the Congress within two years after September 8, 1980; and

(5) in carrying out his functions under this section, consult with the appropriate government agencies, industry representatives, and members of the scientific and technical community having expertise and interest in this subject.

The Secretary, as appropriate, may merge any continuing or on-going studies within the Department of Energy or any other Federal agency with those required under this section to avoid any unnecessary duplication of effort or funding.

(Pub. L. 96–345, § 11, Sept. 8, 1980, 94 Stat. 1145; Pub. L. 99–386, title I, § 104(b), Aug. 22, 1986, 100 Stat. 821.)

AMENDMENTS

1986—Pars. (5), (6). Pub. L. 99–386 redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''initiate and conduct a study involving the prospects for applications of wind energy systems for power generation in foreign countries, particularly lesser developed countries and the potential for the exploration of these energy systems. This study shall involve the cooperation of the Department of State and the Department of Commerce, as well as other Federal agencies which the Secretary deems appropriate. A final report shall be submitted to the Congress, as well as a preliminary report within twelve months of September 8, 1980; and''.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 9211. Encouragement and protection of small business

(a) Opportunities for participation in programs

In carrying out his functions under this chapter, the Secretary shall take steps to assure that small business concerns will have realistic and adequate opportunities to participate in the programs under this chapter to the maximum extent practicable.

(b) Protection of trade secrets and other proprietary information

The Secretary shall, to the maximum extent practicable, use all authority provided by law to protect trade secrets and other proprietary information submitted by small business under this chapter and to avoid the unnecessary disclosure of such information.

(c) Manufacture or sale of wind energy systems in compliance with antitrust laws; restriction against creation of noncompetitive market situations

The Secretary shall take such steps as may be necessary to assure compliance with the antitrust laws in the conduct of activities related to the manufacture or sale of wind energy systems directly or indirectly assisted under this chapter and shall implement this chapter in a manner which will protect against the creation of noncompetitive market situations in the conduct of such activities.

(Pub. L. 96–345, § 12, Sept. 8, 1980, 94 Stat. 1146.)

§ 9212. General provisions

(a) Additional projects or activities

Nothing in this chapter shall be construed as preventing the Secretary from undertaking projects or activities in addition to those specified in this chapter if such projects or activities appropriately further the purposes set forth in this subsection.[1]

[1] So in original. Probably should be ''chapter.''

(b) Application to States, territories and possessions

This chapter applies to each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands and the territories and possessions of the United States including the Trust Territory of the Pacific Islands.

(Pub. L. 96–345, § 13, Sept. 8, 1980, 94 Stat. 1146.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 9213. Authorization of appropriations

(a) There is authorized to be appropriated to the Secretary to carry out this chapter (1) for the fiscal year ending September 30, 1981, the sum of $100,000,000 (of which $10,000,000 shall be available exclusively for purposes of section 9206 of this title), and (2) for each fiscal year beginning after that date, such sum as may be authorized by legislation hereafter enacted.

(b) In each of the five years of the small wind energy systems program, at least 25 per centum of the total authorization for appropriations under subsection (a) of this section shall be for small wind energy systems activities, including supporting activities.

(Pub. L. 96–345, § 14, Sept. 8, 1980, 94 Stat. 1146.)

CHAPTER 101—MAGNETIC FUSION ENERGY ENGINEERING

Sec.
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§ 9301. Congressional findings and declaration of policy

(a) The Congress hereby finds that—

(1) the United States must formulate an energy policy designed to meet an impending worldwide shortage of many exhaustible, conventional energy resources in the next few decades;

(2) the energy policy of the United States must be designed to ensure that energy technologies using essentially inexhaustible resources are commercially available at a time prior to serious depletion of conventional resources;

(3) fusion energy is one of the few known energy sources which are essentially inexhaustible, and thus constitutes a long-term energy option;

(4) major progress in all aspects of magnetic fusion energy technology during the past decade instills confidence that power production from fusion energy systems is achievable;

(5) the United States must aggressively pursue research and development programs in magnetic fusion designed to foster advanced concepts and advanced technology and to develop efficient, reliable components and subsystems;

(6) to ensure the timely commercialization of magnetic fusion energy systems, the United States must demonstrate at an early date the engineering feasibility of magnetic fusion energy systems;

(7) progress in magnetic fusion energy systems is currently limited by the funds made available rather than technical barriers;

(8) it is a proper role for the Federal Government to accelerate research, development, and demonstration programs in magnetic fusion energy technologies; and

(9) acceleration of the current magnetic fusion program will require a doubling within seven years of the present funding level without consideration of inflation and a 25 per centum increase in funding each of fiscal years 1982 and 1983.

(b) It is therefore declared to be the policy of the United States and the purpose of this chapter to accelerate the national effort in research, development, and demonstration activities related to magnetic fusion energy systems. Further, it is declared to be the policy of the United States and the purpose of this chapter that the objectives of such program shall be—

(1) to promote an orderly transition from the current research and development program through commercial development;

(2) to establish a national goal of demonstrating the engineering feasibility of magnetic fusion by the early 1990's;

(3) to achieve at the earliest practicable time, but not later than the year 1990, operation of a magnetic fusion engineering device based on the best available confinement concept;

(4) to establish as a national goal the operation of a magnetic fusion demonstration plant at the turn of the twenty-first century;

(5) to foster cooperation in magnetic fusion research and development among government, universities, industry, and national laboratories;

(6) to promote the broad participation of domestic industry in the national magnetic fusion program;

(7) to continue international cooperation in magnetic fusion research for the benefit of all nations;

(8) to promote greater public understanding of magnetic fusion; and

(9) to maintain the United States as the world leader in magnetic fusion.

(Pub. L. 96–386, § 2, Oct. 7, 1980, 94 Stat. 1539.)

SHORT TITLE

Section 1 of Pub. L. 96–386 provided: ''That this Act [enacting this chapter] may be cited as the 'Magnetic Fusion Energy Engineering Act of 1980'.''

§ 9302. Definitions

For the purposes of this chapter—

(1) ''fusion'' means a process whereby two light nuclei, such as deuterium and tritium, collide at high velocity, forming a compound nucleus, which subsequently separates into constituents which are different from the original colliding nuclei, and which carry away the accompanying energy release;

(2) ''magnetic fusion'' means the use of magnetic fields to confine a very hot, fully ionized gas of light nuclei, so that the fusion process can occur;

(3) ''energy system'' means a facility designed to utilize energy released in the magnetic fusion process for the generation of electricity and the production of hydrogen or other fuels;

(4) ''fusion engineering device'' means a magnetic fusion facility which achieves at least a burning plasma and serves to test components for engineering purposes;

(5) ''demonstration plant'' means a prototype energy system which is of sufficient size to provide safety, environmental reliability, availability, and ready engineering extrapolation of all components to commercial size but which system need not be economically competitive with then alternative energy sources; and

(6) ''Secretary'' means Secretary of Energy.

(Pub. L. 96–386, § 3, Oct. 7, 1980, 94 Stat. 1540.)

§ 9303. Program activities

(a) Development in areas where lack of knowledge limits magnetic fusion energy systems

The Secretary shall initiate activities or accelerate existing activities in research areas in which the lack of knowledge limits magnetic fusion energy systems in order to ensure the achievement of the purposes of this chapter.

(b) Research programs on plasma confinement, alternate confinement concepts, advanced fuels, and properties of materials likely to be used in construction of fusion engineering devices

(1) The Secretary shall maintain an aggressive plasma confinement research program on the current lead concept to provide a full measure of support for the design, construction, and operation of the fusion engineering devices.

(2) The Secretary shall maintain a broadly based research program on alternate confinement concepts and on advanced fuels at a sufficient level of funding to achieve optimal design of each successive magnetic fusion facility using the then best available confinement and fuel concept.

(3) The Secretary shall ensure that research on properties of materials likely to be required for the construction of fusion engineering devices is adequate to provide timely information for the design of such devices.

(c) Fusion engineering device designs

(1) The Secretary shall initiate design activities on a fusion engineering device using the best available confinement concept to ensure operation of such a device at the earliest practicable time, but not later than the year 1990.

(2) The Secretary shall develop and test the adequacy of the engineering design of components to be utilized in the fusion engineering device.

(d) Operation of demonstration plant at turn of twenty-first century

The Secretary shall initiate at the earliest practical time each activity which he deems necessary to achieve the national goal for operation of a demonstration plant at the turn of the twenty-first century.

(e) Assessment of factors in determining commercial introduction of magnetic fusion energy systems

The Secretary shall continue efforts to assess factors which will determine the commercial introduction of magnetic fusion energy systems including, but not limited to—

(1) projected costs relative to other alternative energy sources;

(2) projected growth rates in energy demand;

(3) safety-related design limitations;

(4) environmental impacts; and

(5) limitations on the availability of strategic elements, such as helium, lithium, and special metals.

(Pub. L. 96–386, § 4, Oct. 7, 1980, 94 Stat. 1540.)

§ 9304. Comprehensive program management plan; submittal to Congressional committees

(a) The Secretary shall prepare a comprehensive program management plan for the conduct of the research, development, and demonstration activities under this chapter. Such plan shall include at a minimum—

(1) a presentation of the program strategy which will be used to achieve the purposes of this chapter;

(2) a five-year program implementation schedule, including identification of detailed milestone goals, with associated budget and program resources requirements;

(3) risk assessments;

(4) supporting research and development needed to solve problems which may inhibit or limit development of magnetic fusion energy systems; and

(5) an analysis of institutional, environmental, and economic considerations which are limiting the national magnetic fusion program.

(b) The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than January 1, 1982.

(Pub. L. 96–386, § 5, Oct. 7, 1980, 94 Stat. 1541.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to

Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 9305. Magnetic fusion engineering center

(a) Development plan

The Secretary shall develop a plan for the creation of a national magnetic fusion engineering center for the purpose of accelerating fusion technology development via the concentration and coordination of major magnetic fusion engineering devices and associated activities at such a national center.

(b) Factors considered in formulation of development plan

In developing the plan, the Secretary shall include relevant factors including, but not limited to—

(1) means of saving cost and time through the establishment of the national center relative to the cost and schedule currently projected for the program;

(2) means of providing common facilities to be shared by many magnetic fusion concepts;

(3) assessment of the environmental and safety-related aspects of the national center;

(4) provisions for international cooperation in magnetic fusion activities at the national center;

(5) provision of access to facilities for the broader technical involvement of domestic industry and universities in the magnetic fusion energy program;

(6) siting criteria for the national center including a list of potential sites;

(7) the advisability of establishing such a center considering all factors, including the alternative means and associated costs of pursuing such technology; and

(8) changes in the management structure of the magnetic fusion program to allow more effective direction of activities related to the national center.

(c) Report to Congressional committees

The Secretary shall submit not later than July 1, 1981, a report to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources characterizing the plan and setting forth the steps necessary for implementation of the plan, including any steps already implemented.

(Pub. L. 96–386, § 6, Oct. 7, 1980, 94 Stat. 1541.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 9306. Repealed. Pub. L. 104–46, title V, § 509, Nov. 13, 1995, 109 Stat. 421

Section, Pub. L. 96–386, § 7, Oct. 7, 1980, 94 Stat. 1542, related to establishment, membership, duties, etc., of technical panel on magnetic fusion and required panel to submit to Energy Research Advisory Board on at least a triennial basis a written report of its findings and recommendations with regard to magnetic fusion program.

§ 9307. Program advisory committees

The Secretary may direct the director of each laboratory or installation at which a major magnetic fusion facility is operated for, or funded primarily by, the Federal Government to establish, for the sole purpose of providing advice to such director, a program advisory committee composed of persons with expertise in magnetic fusion from such domestic industry, universities, government laboratories, and other scientific and technical organizations as such director deems appropriate.

(Pub. L. 96–386, § 8, Oct. 7, 1980, 94 Stat. 1543.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 9308. International cooperation; examination of impact on national magnetic fusion program; exploration of prospects for joint funding in construction of fusion engineering device; report to Congressional committees on results of examination and exploration

(a)(1) The Secretary in consultation with the Secretary of State shall actively seek to enter into or to strengthen existing international cooperative agreements in magnetic fusion research and development activities of mutual benefit to all parties.

(2) The Secretary shall seek to achieve equitable exchange of information, data, scientific personnel, and other considerations in the conduct of cooperative efforts with technologically advanced nations.

(b)(1) The Secretary shall examine the potential impacts on the national magnetic fusion program of United States participation in an international effort to construct fusion engineering devices.

(2) The Secretary shall explore, to the extent feasible, the prospects for joint financial participation by other nations with the United States in the construction of a fusion engineering device.

(3) Within two years of October 7, 1980, the Secretary shall transmit to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources the results of such examinations and explorations with his recommendations for construction of a national or international fusion engineering device: *Provided, however*, That such examinations and explorations shall not have the effect of delaying design activities related to a national fusion engineering device.

(Pub. L. 96–386, § 9, Oct. 7, 1980, 94 Stat. 1543.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 9309. Technical manpower requirements; report to President and Congress

(a) The Secretary shall assess the adequacy of the projected United States supply of manpower in the engineering and scientific disciplines required to achieve the purposes of this chapter taking cognizance of the other demands likely to be placed on such manpower supply.

(b) The Secretary shall within one year of October 7, 1980, submit a report to the President and to the Congress setting forth his assessment along with his recommendations regarding the need for increased support for education in such engineering and scientific disciplines.

(Pub. L. 96–386, § 10, Oct. 7, 1980, 94 Stat. 1543.)

§ 9310. Dissemination of information

(a) The Secretary shall take all necessary steps to assure that technical information relevant to the status and progress of the national magnetic fusion program is made readily available to interested persons in domestic industry and universities in the United States: *Provided, however*, That upon a showing to the Secretary by any person that any information or portion thereof provided to the Secretary directly or indirectly from such person would, if made public, divulge (1) trade secrets or (2) other proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18.

(b) The Secretary shall maintain an aggressive program in the United States for the provision of public information and educational materials to promote widespread knowledge of magnetic fusion among educational, community, business, environmental, labor, and governmental entities and the public at large.

(Pub. L. 96–386, § 11, Oct. 7, 1980, 94 Stat. 1544.)

§ 9311. Repealed. Pub. L. 104–66, title I, § 1051(n), Dec. 21, 1995, 109 Stat. 717

Section, Pub. L. 96–386, § 12, Oct. 7, 1980, 94 Stat. 1544, directed Secretary of Energy to submit annual report of activities pursuant to this chapter as a separate part of the annual report submitted pursuant to section 7321 of this title.

§ 9312. Authorization of appropriations; contract authority

(a) There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1981, such sums as are provided in the annual authorization Act pursuant to section 7270 of this title.

(b) In carrying out the provisions of this chapter, the Secretary is authorized to enter into contracts only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Pub. L. 96–386, § 13, Oct. 7, 1980, 94 Stat. 1544.)

CHAPTER 102—MENTAL HEALTH SYSTEMS

Sec.
9401. Congressional statement of findings.

SUBCHAPTER I—GENERAL PROVISIONS

9411. Repealed.
9412. Definitions.
9421 to 9423. Repealed.

SUBCHAPTER II—GRANT PROGRAMS

9431 to 9438. Repealed.

SUBCHAPTER III—GENERAL PROVISIONS RESPECTING GRANT PROGRAMS

PART A—STATE MENTAL HEALTH SERVICE PROGRAMS

9451, 9452. Repealed.

PART B—APPLICATIONS AND RELATED PROVISIONS

9461 to 9465. Repealed.

PART C—PERFORMANCE

9471 to 9473. Repealed.

PART D—ENFORCEMENT

9481. Repealed.

PART E—MISCELLANEOUS

9491 to 9493. Repealed.

SUBCHAPTER IV—MENTAL HEALTH RIGHTS AND ADVOCACY

9501. Bill of Rights.
9502. Repealed.

SUBCHAPTER V—SEX OFFENSE PREVENTION AND CONTROL

9511. Grants for sex offense prevention and control.
9512. Repealed.

SUBCHAPTER VI—MISCELLANEOUS

9521. Repealed.
9522. Report on shelter and basic living needs of chronically mentally ill individuals.
9523. Repealed.

§ 9401. Congressional statement of findings

The Congress finds—

(1) despite the significant progress that has been made in making community mental health services available and in improving residential mental health facilities since the original community mental health centers legislation was enacted in 1963, unserved and underserved populations remain and there are certain groups in the population, such as chronically mentally ill individuals, children and youth, elderly individuals, racial and ethnic minorities, women, poor persons, and persons in rural areas, which often lack access to adequate private and public mental health services and support services;

(2) the process of transferring or diverting chronically mentally ill individuals from unwarranted or inappropriate institutionalized settings to their home communities has frequently not been accompanied by a process of providing those individuals with the mental health and support services they need in community-based settings;

(3) the shift in emphasis from institutional care to community-based care has not always been accompanied by a process of affording training, retraining, and job placement for employees affected by institutional closure and conversion;

(4) the delivery of mental health and support services is typically uncoordinated within and among local, State, and Federal entities;

(5) mentally ill persons are often inadequately served by (A) programs of the Department of Health and Human Services such as medicare, medicaid, supplemental security income, and social services, and (B) programs of the Department of Housing and Urban Development, the Department of Labor, and other Federal agencies;

(6) health care systems often lack general health care personnel with adequate mental health care training and often lack mental health care personnel and consequently many individuals with some level of mental disorder do not receive appropriate mental health care;

(7) present knowledge of methods to prevent mental illness through discovery and elimination of its causes and through early detection and treatment is too limited;

(8) a comprehensive and coordinated array of appropriate private and public mental health and support services for all people in need within specific geographic areas, based upon a cooperative local-State-Federal partnership, remains the most effective and humane way to provide a majority of mentally ill individuals with mental health care and needed support; and

(9) because of the rising demand for mental health services and the wide disparity in the distribution of psychiatrists, clinical psychologists, social workers, and psychiatric nurses, there is a shortage in the medical specialty of psychiatry and there are also shortages among the other health personnel who provide mental health services.

(Pub. L. 96–398, § 2, Oct. 7, 1980, 94 Stat. 1565.)

SHORT TITLE

Section 1 of Pub. L. 96–398 provided that: ''This Act [enacting this chapter, amending sections 210, 225a, 229b, 242a, 246, 289k–1, 300*l*–2, 300m–2, 1396b, 2689a to 2689c, 2689e, 2689g, and 2689h of this title, repealing section 2689q of this title, and enacting provisions set out as notes under section 242a, 246, 289k–1, and 2689b of this title] may be cited as the 'Mental Health Systems Act'.''

SUBCHAPTER I—GENERAL PROVISIONS

AMENDMENTS

1981—Pub. L. 97–35, title IX, § 902(e)(1), (f)(1)(A), Aug. 13, 1981, 95 Stat. 560, struck out heading ''Part A—Definitions'' before section 9411 and heading ''Part B—State Administrative Responsibilities'' before section 9421.

§ 9411. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title I, § 101, Oct. 7, 1980, 94 Stat. 1566, set forth general provisions respecting community mental health centers.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

§ 9412. Definitions

For purposes of this chapter:

(1) The term ''Secretary'' means the Secretary of Health and Human Services.

(2) The term ''State'' includes (in addition to the fifty States) the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(3) The term ''nonprofit'', as applied to any entity, means an entity which is owned and operated by one or more corporations or associations no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or person.

(Pub. L. 96–398, title I, § 102, Oct. 7, 1980, 94 Stat. 1569; Pub. L. 97–35, title IX, § 902(f)(1)(B), (C), Aug. 13, 1981, 95 Stat. 560.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 96–398, Oct. 7, 1980, 94 Stat. 1564, as amended, known as the Mental Health Systems Act, which enacted this chapter, amended sections 210, 225a, 229b, 242a, 246, 289k–1, 300*l*–2, 300m–2, 1396b, 2689a to 2689c, 2689e, 2689g, and 2689h of this title, repealed section 2689q of this title, and enacted provisions set out as notes under sections 242a, 246, 289k–1, and 2689b of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

AMENDMENTS

1981—Pub. L. 97–35 redesignated former par. (5) as (3). Former pars. (3), (4), (6), and (7), which defined ''State mental health authority'', ''mental health service area'', ''priority population group'', and ''Governor'', respectively, were struck out.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§§ 9421 to 9423. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9421, Pub. L. 96–398, title I, § 105, Oct. 7, 1980, 94 Stat. 1570, related to designation of State agency for mental health programs.

Section 9422, Pub. L. 96–398, title I, § 106, Oct. 7, 1980, 94 Stat. 1570, related to establishment, etc., of State mental health service areas.

Section 9423, Pub. L. 96–398, title I, § 107(a)–(c), Oct. 7, 1980, 94 Stat. 1570, related to allotments to improve State administration of mental health programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

SUBCHAPTER II—GRANT PROGRAMS

§§ 9431 to 9438. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9431, Pub. L. 96–398, title II, § 201, Oct. 7, 1980, 94 Stat. 1571, set forth authority, etc., for grants for community mental health centers.

Section 9432, Pub. L. 96–398, title II, § 202, Oct. 7, 1980, 94 Stat. 1573, set forth authority, etc., for grants for services for chronically, mentally ill individuals.

Section 9433, Pub. L. 96–398, title II, § 203, Oct. 7, 1980, 94 Stat. 1575, set forth authority, etc., for grants for services for severely, mentally disturbed children and adults.

Section 9434, Pub. L. 96–398, title II, § 204, Oct. 7, 1980, 94 Stat. 1577, set forth authority, etc., for grants for mental health services for elderly individuals and other priority populations.

Section 9435, Pub. L. 96–398, title II, § 205, Oct. 7, 1980, 94 Stat. 1581, set forth authority, etc., for grants for non-revenue producing services.

Section 9436, Pub. L. 96–398, title II, § 206, Oct. 7, 1980, 94 Stat. 1582, set forth authority, etc., for grants for mental health services in health care centers.

Section 9437, Pub. L. 96–398, title II, § 207, Oct. 7, 1980, 94 Stat. 1583, set forth authority, etc., for grants and contracts for innovative projects.

Section 9438, Pub. L. 96–398, title II, § 208, Oct. 7, 1980, 94 Stat. 1584, set forth authority, etc., for grants for prevention of mental illness and promotion of mental health.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

SUBCHAPTER III—GENERAL PROVISIONS RESPECTING GRANT PROGRAMS

PART A—STATE MENTAL HEALTH SERVICE PROGRAMS

§§ 9451, 9452. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9451, Pub. L. 96–398, title III, § 301, Oct. 7, 1980, 94 Stat. 1585, set forth requirements for State mental health services programs.

Section 9452, Pub. L. 96–398, title III, § 302, Oct. 7, 1980, 94 Stat. 1585, related to contents of programs with respect to administrative and service parts.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

PART B—APPLICATIONS AND RELATED PROVISIONS

§§ 9461 to 9465. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9461, Pub. L. 96–398, title III, § 305, Oct. 7, 1980, 94 Stat. 1588, set forth provisions respecting State administration of programs, and authorized agreements, etc., for implementation.

Section 9462, Pub. L. 96–398, title III, § 306, Oct. 7, 1980, 94 Stat. 1590, related to processing of applications by State mental health authorities.

Section 9463, Pub. L. 96–398, title III, § 307, Oct. 7, 1980, 94 Stat. 1592, set forth provisions relating to requirements for applications.

Section 9464, Pub. L. 96–398, title III, § 308, Oct. 7, 1980, 94 Stat. 1594, related to Indian tribes and organizations.

Section 9465, Pub. L. 96–398, title III, § 309, Oct. 7, 1980, 94 Stat. 1595, related to procedures for consideration of grant or contract application.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

PART C—PERFORMANCE

§§ 9471 to 9473. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9471, Pub. L. 96–398, title III, § 315, Oct. 7, 1980, 94 Stat. 1595, related to performance contracts.

Section 9472, Pub. L. 96–398, title III, § 316, Oct. 7, 1980, 94 Stat. 1595, related to performance standards.

Section 9473, Pub. L. 96–398, title III, § 317, Oct. 7, 1980, 94 Stat. 1595, related to evaluation and monitoring of projects and activities.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

PART D—ENFORCEMENT

§ 9481. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title III, § 321, Oct. 7, 1980, 94 Stat. 1596, set forth enforcement procedures.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

PART E—MISCELLANEOUS

§§ 9491 to 9493. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9491, Pub. L. 96–398, title III, § 326, Oct. 7, 1980, 94 Stat. 1597, related to provision of technical assistance.

Section 9492, Pub. L. 96–398, title III, § 327, Oct. 7, 1980, 94 Stat. 1597, related to indirect provision of services.

Section 9493, Pub. L. 96–398, title III, § 328, Oct. 7, 1980, 94 Stat. 1597, related to cooperative agreements.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

SUBCHAPTER IV—MENTAL HEALTH RIGHTS AND ADVOCACY

§ 9501. Bill of Rights

It is the sense of the Congress that each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require; and in making such review and revision should take into account the recommendations of the President's Commission on Mental Health and the following:

(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:

(A) The right to appropriate treatment and related services in a setting and under conditions that—

(i) are the most supportive of such person's personal liberty; and

(ii) restrict such liberty only to the extent necessary consistent with such person's treatment needs, applicable requirements of law, and applicable judicial orders.

(B) The right to an individualized, written, treatment or service plan (such plan to be

developed promptly after admission of such person), the right to treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs, and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

(C) The right to ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand, of—

(i) such person's general mental condition and, if such program or facility has provided a physical examination, such person's general physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, and types of providers of mental health services.

(D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person's informed, voluntary, written consent to such mode or course of treatment, except treatment—

(i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.

(E) The right not to participate in experimentation in the absence of such person's informed, voluntary, written consent, the right to appropriate protections in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks, and the right and opportunity to revoke such consent.

(F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(G) The right to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such person with regard to personal needs.

(H) The right to confidentiality of such person's records.

(I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to—

(i) information in such records provided by a third party under assurance that such information shall remain confidential; and

(ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in such material to such person.

(J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails, and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited, and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

(K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.

(L) The right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely, and impartial grievance procedure provided for or by the program or facility.

(M) Notwithstanding subparagraph (J), the right of access to (including the opportunities and facilities for private communication with) any available—

(i) rights protection service within the program or facility;

(ii) rights protection service within the State mental health system designed to be available to such person; and

(iii) qualified advocate;

for the purpose of receiving assistance to understand, exercise, and protect the rights described in this section and in other provisions of law.

(N) The right to exercise the rights described in this section without reprisal, in-

cluding reprisal in the form of denial of any appropriate, available treatment.

(O) The right to referral as appropriate to other providers of mental health services upon discharge.

(2)(A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.

(B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

(3)(A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.

(B) Nothing in this section should—

(i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;

(ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;

(iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by withholding consent to proposed treatment; or

(iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(C) In order to assist a person admitted to a program or facility in the exercise or protection of such person's rights, such person's attorney or legal representatives should have reasonable access to—

(i) such person;

(ii) the areas of the program or facility where such person has received treatment, resided, or had access; and

(iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treatment, and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all persons admitted to such program or facility. Each such notice should conform to the format and content for such notices, and should be posted in all appropriate locations.

(4)(A) In the case of a person adjudicated by a court of competent jurisdiction as being incompetent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guardian or representative for the purpose of exercising such right or such authorization.

(B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under State law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.

(C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.

(Pub. L. 96–398, title V, § 501, Oct. 7, 1980, 94 Stat. 1598.)

§ 9502. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title V, § 502, Oct. 7, 1980, 94 Stat. 1601, related to grants for protection and advocacy programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

SUBCHAPTER V—SEX OFFENSE PREVENTION AND CONTROL

§ 9511. Grants for sex offense prevention and control

(a) Authority of National Center for the Prevention and Control of Sex Offenses; functions

The Secretary, acting through the National Center for the Prevention and Control of Sex Offenses (hereafter in this section referred to as the ''Center''), may, directly or by grant, carry out the following:

(1) A continuing study of sex offenses, including a study and investigation of—

(A) the effectiveness of existing Federal, State, and local laws dealing with sex offenses;

(B) the relationship, if any, between traditional legal and social attitudes toward sexual roles, sex offenses, and the formulation of laws dealing with rape;

(C) the treatment of the victims of sex offenses by law enforcement agencies, hospitals or other medical institutions, prosecutors, and the courts;

(D) the causes of sex offenses, identifying to the degree possible—

(i) social conditions which encourage sexual attacks, and

(ii) the motives of offenders, and

(E) the impact of a sex offense on the victim and family of the victim;

(F) sexual assaults in correctional institutions;

(G) the estimated actual incidence of forcible sex offenses as compared to the reported incidence of forcible sex offenses and the reasons for any difference between the two; and

(H) the effectiveness of existing private and local and State government educational, counseling, and other programs designed to prevent and control sex offenses.

(2) The compilation, analysis, and publication of summaries of the continuing study conducted under paragraph (1) and the research and demonstration projects conducted under paragraph (5). The Secretary shall submit not later than March 30, 1983, to the Congress a summary of such study and projects together with a review of their effectiveness and recommendations where appropriate.

(3) The development and maintenance of an information clearinghouse with regard to—

(A) the prevention and control of sex offenses;

(B) the treatment and counseling of the victims of sex offenses and their families; and

(C) the rehabilitation of offenders.

(4) The compilation and publication of training materials for personnel who are engaged or intend to engage in programs designed to prevent and control sex offense.

(5) Assistance to qualified public and nonprofit private entities in conducting research and demonstration projects concerning the prevention and control of sex offense, including projects (A) for the planning, development, implementation, and evaluation of alternative methods used in the prevention and control of sex offense, the treatment and counseling of the victims of sex offense and their families, and the rehabilitation of offenders; (B) for the application of such alternative methods; and (C) for the promotion of community awareness of the specific locations in which, and the specific social and other conditions under which sexual attacks are most likely to occur.

(b) Advisory committee; functions, membership, etc.

The Secretary shall appoint an advisory committee to advise, consult with, and make recommendations to the Secretary on the implementation of subsection (a) of this section. The recommendations of the committee shall be submitted directly to the Secretary without review or revision by any person without the consent of the committee. The Secretary shall appoint to such committee persons who are particularly qualified to assist in carrying out the functions of the committee. A majority of the members of the committee shall be women. Members of the advisory committee shall receive compensation at rates, not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule, for each day (including traveltime) they are engaged in the performance of their duties as members of the advisory committee and, while so serving away from their homes or regular places of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(c) Submission and approval of application; form, manner and contents

No grant may be made under subsection (a) of this section unless an application therefor is submitted to and approved by the Secretary. The application shall be submitted in such form and manner and contain such information as the Secretary may prescribe.

(d) Authorization of appropriations

For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1981, $1,500,000 for the fiscal year ending September 30, 1982, $1,500,000 for the fiscal year ending September 30, 1983.

(e) "Sex offense" defined

For purposes of subsection (a) of this section, the term ''sex offense'' includes statutory and attempted rape and any other criminal sexual assault (whether homosexual or heterosexual) which involves force or the threat of force.

(Pub. L. 96–398, title VI, § 601(a)–(e), Oct. 7, 1980, 94 Stat. 1602, 1603; Pub. L. 97–35, title IX, § 902(f)(20), Aug. 13, 1981, 95 Stat. 560; Pub. L. 99–646, § 87(d)(3)–(7), Nov. 10, 1986, 100 Stat. 3624; Pub. L. 99–654, § 3(b)(3)–(7), Nov. 14, 1986, 100 Stat. 3663, 3664.)

AMENDMENTS

1986—Pub. L. 99–646, § 87(d)(3), and Pub. L. 99–654, § 3(b)(3), amended section catchline identically, substituting ''sex offense'' for ''rape''.

Subsec. (a). Pub. L. 99–646, § 87(d)(4)–(6), and Pub. L. 99–654, § 3(b)(4)–(6), in amending subsec. (a) identically, in introductory provision substituted ''Sex Offenses'' for ''Rape'', in par. (1) and in subpars. (A), (C), (D), (G), and (H) of par. (1) substituted ''sex offenses'' for ''rape'' wherever appearing, in par. (1)(B) substituted ''sex offenses'' for ''the act of rape'', in par. (1)(E) substituted ''a sex offense'' for ''rape'', and in par. (3)(A) and (B) substituted ''sex offenses'' for ''rape''.

Subsec. (e). Pub. L. 99–646, § 87(d)(7), and Pub. L. 99–654, § 3(b)(7), amended subsec. (e) identically, substituting ''the term 'sex offense' '' for ''the term 'rape' ''.

1981—Subsec. (a). Pub. L. 97–35 in par. (5) struck out ''community mental health centers and other'' after ''Assistance to'', and struck out par. (6) which related to provision of consultation and education services.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective respectively 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 9512. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title VI, § 602, Oct. 7, 1980, 94 Stat. 1604, related to grants for services for rape victims.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

SUBCHAPTER VI—MISCELLANEOUS

§ 9521. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title VIII, § 801, Oct. 7, 1980, 94 Stat. 1605, related to employee protection arrangements.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

§ 9522. Report on shelter and basic living needs of chronically mentally ill individuals

(a) Submission to Congressional committees by Secretaries of Health and Human Services and Housing and Urban Development

The Secretary of Health and Human Services and the Secretary of Housing and Urban Development shall jointly submit a report to the Committees on Labor and Human Resources and Banking, Housing, and Urban Affairs of the Senate, and the Committees on Energy and Commerce and Banking, Finance, and Urban Affairs of the House of Representatives, relating to Federal efforts to respond to the shelter and basic living needs of chronically mentally ill individuals.

(b) Contents

The report required by subsection (a) of this section shall include—

(1) an analysis of the extent to which chronically mentally ill individuals remain inappropriately housed in institutional facilities or have otherwise inadequate or inappropriate housing arrangements;

(2) an analysis of available permanent noninstitutional housing arrangements for the chronically mentally ill;

(3) an evaluation of ongoing permanent and demonstration programs, funded in whole or in part by Federal funds, which are designed to provide noninstitutional shelter and basic living services for the chronically mentally ill, including—

(A) a description of each program;

(B) the total number of individuals estimated to be eligible to participate in each program, the number of individuals served by each program, and an estimate of the total population each program expects to serve; and

(C) an assessment of the effectiveness of each program in the provision of shelter and basic living services;

(4) recommendations of measures to encourage States to coordinate and link the provisions in State health plans which relate to mental health and, in particular, the shelter and basic living needs of chronically mentally ill individuals, with local and State housing plans;

(5) recommendations for Federal legislation relating to the provision of permanent residential noninstitutional housing arrangements and basic living services for chronically mentally ill individuals, including an estimate of the cost of such recommendations; and

(6) any other recommendations for Federal initiatives which, in the judgment of the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, will lead to improved shelter and basic living services for chronically mentally ill individuals.

(c) Submission date

The report required by subsection (a) of this section shall be submitted to the committees referred to in subsection (a) of this section no later than January 1, 1981.

(Pub. L. 96–398, title VIII, § 802, Oct. 7, 1980, 94 Stat. 1606; H. Res. 549, Mar. 25, 1980.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 9523. Repealed. Pub. L. 97–35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title VIII, § 806, Oct. 7, 1980, 94 Stat. 1609, related to contracting authority.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238*l* of this title.

CHAPTER 103—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY

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SUBCHAPTER I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

§ 9601. Definitions

For purpose of this subchapter—

(1) The term ''act of God'' means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(2) The term ''Administrator'' means the Administrator of the United States Environmental Protection Agency.

(3) The term ''barrel'' means forty-two United States gallons at sixty degrees Fahrenheit.

(4) The term ''claim'' means a demand in writing for a sum certain.

(5) The term ''claimant'' means any person who presents a claim for compensation under this chapter.

(6) The term ''damages'' means damages for injury or loss of natural resources as set forth in section 9607(a) or 9611(b) of this title.

(7) The term ''drinking water supply'' means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act [42 U.S.C. 300f et seq.]) or as drinking water by one or more individuals.

(8) The term ''environment'' means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.], and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

(9) The term ''facility'' means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(10) The term ''federally permitted release'' means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act [33 U.S.C. 1342], (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point

source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act [33 U.S.C. 1344], (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act [42 U.S.C. 6925(a)–(d)] from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases, (F) any release in compliance with a legally enforceable permit issued under section 1412 of title 33 of[1] section 1413 of title 33, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.], (H) any emission into the air subject to a permit or control regulation under section 111 [42 U.S.C. 7411], section 112 [42 U.S.C. 7412], title I part C [42 U.S.C. 7470 et seq.], title I part D [42 U.S.C. 7501 et seq.], or State implementation plans submitted in accordance with section 110 of the Clean Air Act [42 U.S.C. 7410] (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the Clean Water Act [33 U.S.C. 1317(b), (c)] and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act [33 U.S.C. 1342], and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954.

(11) The term ''Fund'' or ''Trust Fund'' means the Hazardous Substance Superfund established by section 9507 of title 26.

(12) The term ''ground water'' means water in a saturated zone or stratum beneath the surface of land or water.

(13) The term ''guarantor'' means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this chapter.

(14) The term ''hazardous substance'' means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(15) The term ''navigable waters'' or ''navigable waters of the United States'' means the waters of the United States, including the territorial seas.

(16) The term ''natural resources'' means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

(17) The term ''offshore facility'' means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

(18) The term ''onshore facility'' means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States.

(19) The term ''otherwise subject to the jurisdiction of the United States'' means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as pro-

[1] So in original. Probably should be ''or''.

vided by international agreement to which the United States is a party.

(20)(A) The term ''owner or operator'' means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility.

(B) In the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 9607(a)(3) or (4) of this title, (i) the term ''owner or operator'' shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control.

(C) In the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 9607(a)(3) or (4) of this title, (i) the term ''owner or operator'' shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control.

(D) The term ''owner or operator'' does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title.

(E) EXCLUSION OF LENDERS NOT PARTICIPANTS IN MANAGEMENT.—

(i) INDICIA OF OWNERSHIP TO PROTECT SECURITY.—The term ''owner or operator'' does not include a person that is a lender that, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect the security interest of the person in the vessel or facility.

(ii) FORECLOSURE.—The term ''owner or operator'' does not include a person that is a lender that did not participate in management of a vessel or facility prior to foreclosure, notwithstanding that the person—

(I) forecloses on the vessel or facility; and

(II) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, undertakes a response action under section 9607(d)(1) of this title or under the direction of an on-scene coordinator appointed under the National Contingency Plan, with respect to the vessel or facility, or takes any other measure to preserve, protect, or prepare the vessel or facility prior to sale or disposition,

if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(F) PARTICIPATION IN MANAGEMENT.—For purposes of subparagraph (E)—

(i) the term ''participate in management''—

(I) means actually participating in the management or operational affairs of a vessel or facility; and

(II) does not include merely having the capacity to influence, or the unexercised right to control, vessel or facility operations;

(ii) a person that is a lender and that holds indicia of ownership primarily to protect a security interest in a vessel or facility shall be considered to participate in management only if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, the person—

(I) exercises decisionmaking control over the environmental compliance related to the vessel or facility, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the vessel or facility; or

(II) exercises control at a level comparable to that of a manager of the vessel or facility, such that the person has assumed or manifested responsibility—

(aa) for the overall management of the vessel or facility encompassing day-to-day decisionmaking with respect to environmental compliance; or

(bb) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the vessel or facility other than the function of environmental compliance;

(iii) the term ''participate in management'' does not include performing an act or failing to act prior to the time at which a se-

curity interest is created in a vessel or facility; and

(iv) the term ''participate in management'' does not include—

(I) holding a security interest or abandoning or releasing a security interest;

(II) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(III) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(IV) monitoring or undertaking 1 or more inspections of the vessel or facility;

(V) requiring a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the vessel or facility prior to, during, or on the expiration of the term of the extension of credit;

(VI) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the vessel or facility;

(VII) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(VIII) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(IX) conducting a response action under section 9607(d) of this title or under the direction of an on-scene coordinator appointed under the National Contingency Plan,

if the actions do not rise to the level of participating in management (within the meaning of clauses (i) and (ii)).

(G) OTHER TERMS.—As used in this chapter:

(i) EXTENSION OF CREDIT.—The term ''extension of credit'' includes a lease finance transaction—

(I) in which the lessor does not initially select the leased vessel or facility and does not during the lease term control the daily operations or maintenance of the vessel or facility; or

(II) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisor (as those terms are defined in section 1813 of title 12[2] or with regulations issued by the National Credit Union Administration Board, as appropriate.

(ii) FINANCIAL OR ADMINISTRATIVE FUNCTION.—The term ''financial or administrative function'' includes a function such as that of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or a similar function.

(iii) FORECLOSURE; FORECLOSE.—The terms ''foreclosure'' and ''foreclose'' mean, respectively, acquiring, and to acquire, a vessel or facility through—

(I)(aa) purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;

(bb) a deed in lieu of foreclosure, or similar conveyance from a trustee; or

(cc) repossession,

if the vessel or facility was security for an extension of credit previously contracted;

(II) conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

(III) any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a vessel or facility in order to protect the security interest of the person.

(iv) LENDER.—The term ''lender'' means—

(I) an insured depository institution (as defined in section 1813 of title 12);

(II) an insured credit union (as defined in section 1752 of title 12);

(III) a bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.);

(IV) a leasing or trust company that is an affiliate of an insured depository institution;

(V) any person (including a successor or assignee of any such person) that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

(VI) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner buys or sells loans or interests in loans;

(VII) a person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person; and

(VIII) a person that provides title insurance and that acquires a vessel or facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(v) OPERATIONAL FUNCTION.—The term ''operational function'' includes a function such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(vi) SECURITY INTEREST.—The term ''security interest'' includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person.

(21) The term ''person'' means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipal-

[2] So in original. Probably should be followed by a closing parenthesis.

ity, commission, political subdivision of a State, or any interstate body.

(22) The term ''release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act [42 U.S.C. 2210], or, for the purposes of section 9604 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 7912(a)(1) or 7942(a) of this title, and (D) the normal application of fertilizer.

(23) The terms ''remove'' or ''removal'' means[3] the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 9604(b) of this title, and any emergency assistance which may be provided under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.].

(24) The terms ''remedy'' or ''remedial action'' means[3] those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(25) The terms ''respond'' or ''response'' means[3] remove, removal, remedy, and remedial action;,[4] all such terms (including the terms ''removal'' and ''remedial action'') include enforcement activities related thereto.

(26) The terms ''transport'' or ''transportation'' means[3] the movement of a hazardous substance by any mode, including a hazardous liquid pipeline facility (as defined in section 60101(a) of title 49), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term ''transport'' or ''transportation'' shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance.

(27) The terms ''United States'' and ''State'' include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

(28) The term ''vessel'' means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(29) The terms ''disposal'', ''hazardous waste'', and ''treatment'' shall have the meaning provided in section 1004 of the Solid Waste Disposal Act [42 U.S.C. 6903].

(30) The terms ''territorial sea'' and ''contiguous zone'' shall have the meaning provided in section 502 of the Federal Water Pollution Control Act [33 U.S.C. 1362].

(31) The term ''national contingency plan'' means the national contingency plan published under section 311(c)[5] of the Federal

[3] So in original. Probably should be ''mean''.

[4] So in original.

[5] See References in Text note below.

Water Pollution Control Act or revised pursuant to section 9605 of this title.

(32) The terms ''liable'' or ''liability'' under this subchapter shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act [33 U.S.C. 1321].

(33) The term ''pollutant or contaminant'' shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term ''pollutant or contaminant'' shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(34) The term ''alternative water supplies'' includes, but is not limited to, drinking water and household water supplies.

(35)(A) The term ''contractual relationship'', for the purpose of section 9607(b)(3) of this title, includes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that the defendant has satisfied the requirements of section 9607(b)(3)(a) and (b) of this title, provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.

(B) REASON TO KNOW.—

(i) ALL APPROPRIATE INQUIRIES.—To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that—

(I) on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and

(II) the defendant took reasonable steps to—

(aa) stop any continuing release;

(bb) prevent any threatened future release; and

(cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

(ii) STANDARDS AND PRACTICES.—Not later than 2 years after January 11, 2002, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

(iii) CRITERIA.—In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

(I) The results of an inquiry by an environmental professional.

(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

(VI) Visual inspections of the facility and of adjoining properties.

(VII) Specialized knowledge or experience on the part of the defendant.

(VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.

(IX) Commonly known or reasonably ascertainable information about the property.

(X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

(iv) INTERIM STANDARDS AND PRACTICES.—

(I) PROPERTY PURCHASED BEFORE MAY 31, 1997.—With respect to property purchased before May 31, 1997, in making a determination with respect to a defendant described in clause (i), a court shall take into account—

(aa) any specialized knowledge or experience on the part of the defendant;

(bb) the relationship of the purchase price to the value of the property, if the property was not contaminated;

(cc) commonly known or reasonably ascertainable information about the property;

(dd) the obviousness of the presence or likely presence of contamination at the property; and

(ee) the ability of the defendant to detect the contamination by appropriate inspection.

(II) PROPERTY PURCHASED ON OR AFTER MAY 31, 1997.—With respect to property purchased on or after May 31, 1997, and until the Administrator promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as ''Standard E1527–97'', entitled ''Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process'', shall satisfy the requirements in clause (i).

(v) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

(C) Nothing in this paragraph or in section 9607(b)(3) of this title shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this chapter. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 9607(a)(1) of this title and no defense under section 9607(b)(3) of this title shall be available to such defendant.

(D) Nothing in this paragraph shall affect the liability under this chapter of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

(36) The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(37)(A) The term ''service station dealer'' means any person—

(i) who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles, and

(ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that (I) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and (II) is presented, by such owner, to such person for collection, accumulation, and delivery to an oil recycling facility.

(B) For purposes of section 9614(c) of this title, the term ''service station dealer'' shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

(C) The President shall promulgate regulations regarding the determination of what constitutes a significant percentage of the gross revenues of an establishment for purposes of this paragraph.

(38) The term ''incineration vessel'' means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.

(39) BROWNFIELD SITE.—

(A) IN GENERAL.—The term ''brownfield site'' means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(B) EXCLUSIONS.—The term ''brownfield site'' does not include—

(i) a facility that is the subject of a planned or ongoing removal action under this subchapter;

(ii) a facility that is listed on the National Priorities List or is proposed for listing;

(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this chapter;

(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321) [33 U.S.C. § 1251 et seq.], the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(v) a facility that—

(I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and

(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

(vi) a land disposal unit with respect to which—

(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

(II) closure requirements have been specified in a closure plan or permit;

(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

(viii) a portion of a facility—

(I) at which there has been a release of polychlorinated biphenyls; and

(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of title 26.

(C) SITE-BY-SITE DETERMINATIONS.—Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 9604(k) of this title to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

(D) ADDITIONAL AREAS.—For the purposes of section 9604(k) of this title, the term ''brownfield site'' includes a site that—

(i) meets the definition of ''brownfield site'' under subparagraphs (A) through (C); and

(ii)(I) is contaminated by a controlled substance (as defined in section 802 of title 21);

(II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of ''hazardous substance'' under this section; and

(bb) is a site determined by the Administrator or the State, as appropriate, to be—

(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and

(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

(III) is mine-scarred land.

(40) BONA FIDE PROSPECTIVE PURCHASER.—The term ''bona fide prospective purchaser'' means a person (or a tenant of a person) that acquires ownership of a facility after January 11, 2002, and that establishes each of the following by a preponderance of the evidence:

(A) DISPOSAL PRIOR TO ACQUISITION.—All disposal of hazardous substances at the facility occurred before the person acquired the facility.

(B) INQUIRIES.—

(i) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with clauses (ii) and (iii).

(ii) STANDARDS AND PRACTICES.—The standards and practices referred to in clauses (ii) and (iv) of paragraph (35)(B) shall be considered to satisfy the requirements of this subparagraph.

(iii) RESIDENTIAL USE.—In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

(C) NOTICES.—The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

(D) CARE.—The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—

(i) stop any continuing release;

(ii) prevent any threatened future release; and

(iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation,

assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility).

(F) INSTITUTIONAL CONTROL.—The person—

(i) is in compliance with any land use restrictions established or relied on in connection with the response action at a vessel or facility; and

(ii) does not impede the effectiveness or integrity of any institutional control employed at the vessel or facility in connection with a response action.

(G) REQUESTS; SUBPOENAS.—The person complies with any request for information or administrative subpoena issued by the President under this chapter.

(H) NO AFFILIATION.—The person is not—

(i) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through—

(I) any direct or indirect familial relationship; or

(II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or

(ii) the result of a reorganization of a business entity that was potentially liable.

(41) ELIGIBLE RESPONSE SITE.—

(A) IN GENERAL.—The term ''eligible response site'' means a site that meets the definition of a brownfield site in subparagraphs (A) and (B) of paragraph (39), as modified by subparagraphs (B) and (C) of this paragraph.

(B) INCLUSIONS.—The term ''eligible response site'' includes—

(i) notwithstanding paragraph (39)(B)(ix), a portion of a facility, for which portion assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of title 26; or

(ii) a site for which, notwithstanding the exclusions provided in subparagraph (C) or paragraph (39)(B), the President determines, on a site-by-site basis and after consultation with the State, that limitations on enforcement under section 9628 of this title at sites specified in clause (iv), (v), (vi) or (viii) of paragraph (39)(B) would be appropriate and will—

(I) protect human health and the environment; and

(II) promote economic development or facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

(C) EXCLUSIONS.—The term ''eligible response site'' does not include—

(i) a facility for which the President—

(I) conducts or has conducted a preliminary assessment or site inspection; and

(II) after consultation with the State, determines or has determined that the site obtains a preliminary score sufficient for possible listing on the National Priorities List, or that the site otherwise qualifies for listing on the National Priorities List; unless the President has made a determination that no further Federal action will be taken; or

(ii) facilities that the President determines warrant particular consideration as identified by regulation, such as sites posing a threat to a sole-source drinking water aquifer or a sensitive ecosystem.

(Pub. L. 96–510, title I, § 101, Dec. 11, 1980, 94 Stat. 2767; Pub. L. 96–561, title II, § 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 99–499, title I, §§ 101, 114(b), 127(a), title V, § 517(c)(2), Oct. 17, 1986, 100 Stat. 1615, 1652, 1692, 1774; Pub. L. 100–707, title I, § 109(v), Nov. 23, 1988, 102 Stat. 4710; Pub. L. 103–429, § 7(e)(1), Oct. 31, 1994, 108 Stat. 4390; Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], title II, § 2502(b), Sept. 30, 1996, 110 Stat. 3009, 3009–41, 3009–464; Pub. L. 104–287, § 6(j)(1), Oct. 11, 1996, 110 Stat. 3399; Pub. L. 106–74, title IV, § 427, Oct. 20, 1999, 113 Stat. 1095; Pub. L. 107–118, title II, §§ 211(a), 222(a), 223, 231(a), Jan. 11, 2002, 115 Stat. 2360, 2370, 2372, 2375.)

REFERENCES IN TEXT

This chapter, referred to in pars. (5), (13), (20)(D), (G), (35)(C), (D), (39)(B)(iii), and (40)(G), was in the original ''this Act'', meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Safe Drinking Water Act, referred to in pars. (7), (10), and (39)(B)(iv), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. Part C of the Safe Drinking Water Act is classified generally to part C (§ 300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in pars. (8) and (16), is Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§ 1801 et seq.) of Title 16, Conservation. The fishery conservation zone established by this Act, referred to in par. (16), was established by section 101 of this Act (16 U.S.C. 1811), which as amended generally by Pub. L. 99–659, title I, § 101(b), Nov. 14, 1986, 100 Stat. 3706, relates to United States sovereign rights and fishery management authority over fish within the exclusive economic zone as defined in section 1802 of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The Clean Air Act, referred to in par. (10), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88–206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95–95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. Parts C

and D of title I of the Clean Air Act are classified generally to parts C (§ 7470 et seq.) and D (§ 7501 et seq.), respectively, of subchapter I of chapter 85 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Atomic Energy Act of 1954, referred to in pars. (10) and (22), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Solid Waste Disposal Act, referred to in pars. (14), (39)(B)(iv), (vi)(I), (ix), and (41)(B)(i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. Subtitles C and I of the Act are classified generally to subchapters III (§ 6921 et seq.) and IX (§ 6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Farm Credit Act of 1971, referred to in par. (20)(G)(iv)(III), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§ 2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

The Disaster Relief and Emergency Assistance Act, referred to in par. (23), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

The Federal Water Pollution Control Act, referred to in par. (39)(B)(iv), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Clean Water Act, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. Section 311(c) of the Act was amended generally by Pub. L. 101–380, title IV, § 4201(a), Aug. 18, 1990, 104 Stat. 523, and no longer contains provisions directing the publishing of a National Contingency Plan. However, such provisions are contained in section 1321(d) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in par. (39)(B)(iv), (viii)(II), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

AMENDMENTS

2002—Par. (35)(A). Pub. L. 107–118, § 223(1), in introductory provisions substituted ''deeds, easements, leases, or'' for ''deeds or'' and in concluding provisions substituted ''the defendant has satisfied'' for ''he has satisfied'' and inserted before period at end '', provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action''.

Par. (35)(B). Pub. L. 107–118, § 223(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.''

Par. (39). Pub. L. 107–118, § 211(a), added par. (39).

Par. (40). Pub. L. 107–118, § 222(a), added par. (40).

Par. (41). Pub. L. 107–118, § 231(a), added par. (41).

1999—Par. (20)(D). Pub. L. 106–74, which directed the amendment of subpar. (D) by inserting ''through seizure or otherwise in connection with law enforcement activity'' before ''involuntary'' the first place it appears, could not be executed because the word ''involuntary'' does not appear in subpar. (D).

1996—Pars. (8), (16). Pub. L. 104–208, § 101(a) [title II, § 211(b)], substituted ''Magnuson-Stevens Fishery'' for ''Magnuson Fishery''.

Par. (20)(E) to (G). Pub. L. 104–208, § 2502(b), added subpars. (E) to (G).

Par. (26). Pub. L. 104–287 substituted ''section 60101(a) of title 49'' for ''the Pipeline Safety Act''.

1994—Par. (26). Pub. L. 103–429 substituted ''a hazardous liquid pipeline facility'' for ''pipeline''.

1988—Par. (23). Pub. L. 100–707 substituted ''Disaster Relief and Emergency Assistance Act'' for ''Disaster Relief Act of 1974''.

1986—Pub. L. 99–499, § 101(f), struck out '', the term'' after ''subchapter'' in introductory text.

Pars. (1) to (10). Pub. L. 99–499, § 101(f), inserted ''The term'' and substituted a period for the semicolon at end.

Par. (11). Pub. L. 99–499, § 517(c)(2), amended par. (11) generally. Prior to amendment, par. (11) read as follows: ''The term 'Fund' or 'Trust Fund' means the Hazardous Substance Response Fund established by section 9631 of this title or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 9607(k) of this title, the Post-closure Liability Fund established by section 9641 of this title.''

Pub. L. 99–499, § 101(f), inserted ''The term'' and substituted a period for the semicolon at end.

Pars. (12) to (15). Pub. L. 99–499, § 101(f), inserted ''The term'' and substituted a period for the semicolon at end.

Par. (16). Pub. L. 99–499, § 101(a), (f), inserted ''The term'', struck out ''or'' after ''local government,'' inserted '', any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe'', and substituted a period for the semicolon at end.

Pars. (17) to (19). Pub. L. 99–499, § 101(f), inserted ''The term'' and substituted a period for the semicolon at end.

Par. (20)(A). Pub. L. 99–499, § 101(f), inserted ''The term''.

Pub. L. 99–499, § 101(b)(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment.''

Pub. L. 99–499, § 101(b)(3), in provisions following subcl. (iii), substituted a period for the semicolon at end.

Par. (20)(B), (C). Pub. L. 99–499, § 101(b)(3), substituted ''In the case'' for ''in the case'' and a period for the semicolon at end.

Par. (20)(D). Pub. L. 99–499, § 101(b)(1), (f), added subpar. (D). The part of § 101(f) of Pub. L. 99–499 which directed the amendment of par. (20) by changing the

semicolon at end to a period could not be executed in view of the prior amendment of par. (20) by § 101(b)(1) of Pub. L. 99–499 which added subpar. (D) ending in a period.

Par. (21). Pub. L. 99–499, § 101(f), inserted ''The term'' and substituted a period for the semicolon at end.

Par. (22). Pub. L. 99–499, § 101(c), (f), inserted ''The term'' and ''(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)'', substituted a period for the semicolon at end.

Par. (23). Pub. L. 99–499, § 101(f), inserted ''The terms'' and substituted a period for the semicolon at end.

Par. (24). Pub. L. 99–499, § 101(d), (f), inserted ''The terms'' and substituted ''and associated contaminated materials'' for ''or contaminated materials'' and ''welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.'' for ''welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials;''. The part of § 101(f) of Pub. L. 99–499 which directed amendment of par. (24) by changing the semicolon at end to a period could not be executed in view of prior amendment of par. (24) by § 101(d) of Pub. L. 99–499 which substituted language at end of par. (24) ending in a period for former language ending in a semicolon.

Par. (25). Pub. L. 99–499, § 101(e), (f), inserted ''The terms'' and '', all such terms (including the terms 'removal' and 'remedial action') include enforcement activities related thereto.'' The part of § 101(f) of Pub. L. 99–499 which directed amendment of par. (25) by changing the semicolon at end to a period could not be executed in view of prior amendment of par. (25) by § 101(e) of Pub. L. 99–499 inserting language and a period at end of par. (25).

Pars. (26), (27). Pub. L. 99–499, § 101(f), inserted ''The terms'' and substituted a period for the semicolon at end.

Par. (28). Pub. L. 99–499, § 101(f), inserted ''The term'' and substituted a period for the semicolon at end.

Par. (29). Pub. L. 99–499, § 101(f), inserted ''The terms'' and substituted a period for the semicolon at end.

Par. (30). Pub. L. 99–499, § 101(f), inserted ''The terms''.

Par. (31). Pub. L. 99–499, § 101(f), inserted ''The term'' and substituted a period for ''; and''.

Par. (32). Pub. L. 99–499, § 101(f), inserted ''The terms''.

Pars. (33) to (36). Pub. L. 99–499, § 101(f), added pars. (33) to (36).

Par. (37). Pub. L. 99–499, § 114(b), added par. (37).

Par. (38). Pub. L. 99–499, § 127(a), added par. (38).

1980—Pars. (8), (16). Pub. L. 96–561 substituted ''Magnuson Fishery Conservation and Management Act'' for ''Fishery Conservation and Management Act of 1976''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

Amendment by section 2502(b) of Pub. L. 104–208 applicable with respect to any claim that has not been finally adjudicated as of Sept. 30, 1996, see section 2505 of Pub. L. 104–208, set out as a note under section 6991b of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4 of Pub. L. 99–499 provided that: ''Except as otherwise specified in section 121(b) of this Act [set out as an Effective Date note under section 9621 of this title] or in any other provision of titles I, II, III, and IV of this Act [see Tables for classification], the amendments made by titles I through IV of this Act [enacting subchapter IV of this chapter and sections 9616 to 9626, 9658 to 9660, and 9661 of this title and sections 2701 to 2707 and 2810 of Title 10, Armed Forces, amending sections 6926, 6928, 6991 to 6991d, 6991g, 9601 to 9609, 9611 to 9614, 9631, 9651, 9656, and 9657 of this title and section 1416 of Title 33, Navigation and Navigable Waters, and renumbering former section 2701 of Title 10 as section 2721 of Title 10] shall take effect on the enactment of this Act [Oct. 17, 1986].''

Amendment by section 517(c)(2) of Pub. L. 99–499 effective Jan. 1, 1987, see section 517(e) of Pub. L. 99–499, set out as an Effective Date note under section 9507 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96–561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107–118, § 1, Jan. 11, 2002, 115 Stat. 2356, provided that: ''This Act [enacting section 9628 of this title, amending this section and sections 9604, 9605, 9607, and 9622 of this title, and enacting provisions set out as notes under this section and section 9607 of this title] may be cited as the 'Small Business Liability Relief and Brownfields Revitalization Act'.''

Pub. L. 107–118, title I, § 101, Jan. 11, 2002, 115 Stat. 2356, provided that: ''This title [amending sections 9607 and 9622 of this title and enacting provisions set out as a note under section 9607 of this title] may be cited as the 'Small Business Liability Protection Act'.''

Pub. L. 107–118, title II, § 201, Jan. 11, 2002, 115 Stat. 2360, provided that: ''This title [enacting section 9628 of this title and amending this section and sections 9604, 9605, and 9607 of this title] may be cited as the 'Brownfields Revitalization and Environmental Restoration Act of 2001'.''

SHORT TITLE OF 1996 AMENDMENT

Section 2501 of div. A of Pub. L. 104–208 provided that: ''This subtitle [subtitle E (§§ 2501–2505) of title II of div. A of Pub. L. 104–208, amending this section and sections 6991b and 9607 of this title and enacting provisions set out as a note under section 6991b of this title] may be cited as the 'Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–426, § 1, Oct. 19, 1992, 106 Stat. 2174, provided that: ''This Act [amending section 9620 of this title and enacting provisions set out as a note under section 9620 of this title] may be cited as the 'Community Environmental Response Facilitation Act'.''

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–499 provided that: ''This Act [enacting subchapter IV of this chapter and sections 9616 to 9626, 9658 to 9662, 11001 to 11005, 11021 to 11023, and 11041 to 11050 of this title, sections 2701 to 2707 and 2810 of Title 10, Armed Forces, and sections 59A, 4671, 4672, 9507, and 9508 of Title 26, Internal Revenue Code, amending this section, sections 6926, 6928, 6991 to 6991d, 6991g, 9602 to 9609, 9611 to 9614, 9631, 9651, 9656, and 9657 of this title, sections 26, 164, 275, 936, 1561, 4041, 4042, 4081, 4221, 4611, 4612, 4661, 4662, 6154, 6416, 6420, 6421, 6425, 6427, 6655, 9502, 9503, and 9506 of Title 26, and section 1416 of Title 33, Navigation and Navigable Waters, renumbering former section 2701 of Title 10 as section 2721 of Title 10, repealing sections 9631 to 9633, 9641, and 9653 of this title and sections 4681 and 4682 of Title 26, and enacting provisions set out as notes under this section, sections 6921, 6991b, 7401, 9620, 9621, 9658, 9660, 9661, and 11001 of this title, section 2703 of Title 10, sections 1, 26, 4041, 4611, 4661, 4671, 4681, 9507, and 9508 of Title 26, and

section 655 of Title 29, Labor] may be cited as the 'Superfund Amendments and Reauthorization Act of 1986'.''

SHORT TITLE

Section 1 of Pub. L. 96–510 provided: ''That this Act [enacting this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amending section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacting provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26] may be cited as the 'Comprehensive Environmental Response, Compensation, and Liability Act of 1980'.''

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

DEFINITIONS

Section 2 of Pub. L. 99–499 provided that: ''As used in this Act [see Short Title of 1986 Amendment note above]—

''(1) CERCLA.—The term 'CERCLA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

''(2) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.''

§ 9602. Designation of additional hazardous substances and establishment of reportable released quantities; regulations

(a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 9601(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 9603 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released. For all hazardous substances for which proposed regulations establishing reportable quantities were published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall promulgate under this subsection final regulations establishing reportable quantities not later than December 31, 1986. For all hazardous substances for which proposed regulations establishing reportable quantities were not published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall publish under this subsection proposed regulations establishing reportable quantities not later than December 31, 1986, and promulgate final regulations under this subsection establishing reportable quantities not later than April 30, 1988.''

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 9601(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 1321(b)(4) of title 33, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 9603(a) or (b) of this title.

(Pub. L. 96–510, title I, § 102, Dec. 11, 1980, 94 Stat. 2772; Pub. L. 99–499, title I, § 102, Oct. 17, 1986, 100 Stat. 1617.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–499 inserted provisions setting deadlines for promulgation of proposed and final regulations.

§ 9603. Notification requirements respecting released substances

(a) Notice to National Response Center upon release from vessel or offshore or onshore facility by person in charge; conveyance of notice by Center

Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 9602 of this title, immediately notify the National Response Center established under the Clean Water Act [33 U.S.C. 1251 et seq.] of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

(b) Penalties for failure to notify; use of notice or information pursuant to notice in criminal case

Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release,

in a quantity equal to or greater than that determined pursuant to section 9602 of this title who fails to notify immediately the appropriate agency of the United States Government as soon

as he has knowledge of such release or who submits in such a notification any information which he knows to be false or misleading shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Notice to Administrator of EPA of existence of storage, etc., facility by owner or operator; exception; time, manner, and form of notice; penalties for failure to notify; use of notice or information pursuant to notice in criminal case

Within one hundred and eighty days after December 11, 1980, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 9601(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 9607 of this title: *Provided, however*, That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(d) Recordkeeping requirements; promulgation of rules and regulations by Administrator of EPA; penalties for violations; waiver of retention requirements

(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with December 11, 1980, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.

(3) At any time prior to the date which occurs fifty years after December 11, 1980, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this chapter. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

(e) Applicability to registered pesticide product

This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or to the handling and storage of such a pesticide product by an agricultural producer.

(f) Exemptions from notice and penalty provisions for substances reported under other Federal law or is in continuous release, etc.

No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported (or specifically exempted from a requirement for re-

porting) under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] or regulations thereunder and which has been reported to the National Response Center, or

(2) which is a continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

Provided, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

(Pub. L. 96–510, title I, § 103, Dec. 11, 1980, 94 Stat. 2772; Pub. L. 96–561, title II, § 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 99–499, title I, §§ 103, 109(a)(1), (2), Oct. 17, 1986, 100 Stat. 1617, 1632, 1633; Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41.)

REFERENCES IN TEXT

The Clean Water Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b)(2), is Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§ 1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The Solid Waste Disposal Act, referred to in subsecs. (c) and (f)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (e), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–208 substituted ''Magnuson-Stevens Fishery'' for ''Magnuson Fishery''.

1986—Subsec. (b). Pub. L. 99–499, §§ 103, 109(a), adjusted left hand margin of text following ''federally permitted release,'' third place appearing so that there is no indentation of that text, inserted ''or who submits in such a notification any information which he knows to be false or misleading'', and substituted ''in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both'' for ''not more than $10,000 or imprisoned for not more than one year, or both'' and ''subsection'' for ''paragraph''.

Subsec. (d)(2). Pub. L. 99–499, § 109(a)(2), substituted ''in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both'' for ''not more than $20,000, or imprisoned for not more than one year, or both'' as the probable intent of Congress, notwithstanding directory language that the substitution be made for ''not more than $20,000, or imprisoned for not more than one year or both''.

1980—Subsec. (b)(2). Pub. L. 96–561 substituted ''Magnuson Fishery Conservation and Management Act'' for ''Fishery Conservation and Management Act of 1976''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96–561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

§ 9604. Response authorities

(a) Removal and other remedial action by President; applicability of national contingency plan; response by potentially responsible parties; public health threats; limitations on response; exception

(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 9622 of this title. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject

to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.

(2) REMOVAL ACTION.—Any removal action undertaken by the President under this subsection (or by any other person referred to in section 9622 of this title) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.

(3) LIMITATIONS ON RESPONSE.—The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

(4) EXCEPTION TO LIMITATIONS.—Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.

(b) Investigations, monitoring, coordination, etc., by President

(1) Information; studies and investigations

Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this chapter.

(2) Coordination of investigations

The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.

(c) Criteria for continuance of obligations from Fund over specified amount for response actions; consultation by President with affected States; contracts or cooperative agreements by States with President prior to remedial actions; cost-sharing agreements; selection by President of remedial actions; State credits: granting of credit, expenses before listing or agreement, response actions between 1978 and 1980, State expenses after December 11, 1980, in excess of 10 percent of costs, item-by-item approval, use of credits; operation and maintenance; limitation on source of funds for O&M; recontracting; siting

(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken[1] obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after $2,000,000 has been obligated for response actions or 12 months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the

[1] So in original. Probably should be followed by a comma.

remedial action, including all future maintenance, or (ii) 50 percent (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of clause (ii) of this subparagraph, the term ''facility'' does not include navigable waters or the beds underlying those waters. In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.

(4) SELECTION OF REMEDIAL ACTION.—The President shall select remedial actions to carry out this section in accordance with section 9621 of this title (relating to cleanup standards).

(5) STATE CREDITS.—

(A) GRANTING OF CREDIT.—The President shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such facility pursuant to a contract or cooperative agreement with the President. The credit under this paragraph shall be limited to those State expenses which the President determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) of this section for the facility if—

(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

(ii) the President determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

(C) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 9611 of this title.

(D) STATE EXPENSES AFTER DECEMBER 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) of this section and only to expenses incurred after December 11, 1980, but before October 17, 1986.

(E) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after October 17, 1986, the President may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

(F) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.

(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period of up to 10 years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

(7) LIMITATION ON SOURCE OF FUNDS FOR O&M.—During any period after the availability of funds received by the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 from tax revenues or appropriations from general revenues, the Federal share of the payment of the cost of operation or maintenance pursuant to paragraph (3)(C)(i) or paragraph (6) of this subsection (relating to operation and maintenance) shall be from funds received by the Hazardous Substance Superfund from amounts recovered on behalf of such fund under this chapter.

(8) RECONTRACTING.—The President is authorized to undertake or continue whatever interim remedial actions the President determines to be appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types, or quantities of hazardous substances not known at the time of entry into the original contract. The total cost of interim actions undertaken at a facility pursuant to this paragraph shall not exceed $2,000,000.

(9) SITING.—Effective 3 years after October 17, 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

(C) are acceptable to the President, and

(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.].

(d) Contracts or cooperative agreements by President with States or political subdivisions or Indian tribes; State applications, terms and conditions; reimbursements; cost-sharing provisions; enforcement requirements and procedures

(1) COOPERATIVE AGREEMENTS.—

(A) STATE APPLICATIONS.—A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 9605(a)(8) of this title and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The President shall make a determination regarding such an application within 90 days after the President receives the application.

(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the President may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

(C) REIMBURSEMENTS.—Any State which expended funds during the period beginning September 30, 1985, and ending on October 17, 1986, for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this chapter shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this chapter.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this subchapter, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

(e) Information gathering and access

(1) Action authorized

Any officer, employee, or representative of the President, duly designated by the President, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State or political subdivision under a contract or cooperative agreement under subsection (d)(1) of this section is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this subchapter, or otherwise enforcing the provisions of this subchapter.

(2) Access to information

Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either (i) shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect

and copy all documents or records relating to such matters or (ii) shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

(3) Entry

Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from.

(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this subchapter.

(4) Inspection and samples

(A) Authority

Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.

(B) Samples

If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(5) Compliance orders

(A) Issuance

If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the President may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(B) Compliance

The President may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

(6) Other authority

Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

(7) Confidentiality of information

(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(B) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this chapter, a person required to provide such data may (i)

designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this chapter. A designation under this paragraph shall be made in writing and in such manner as the President may prescribe by regulation.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the President (or any representative of the President) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(E) No person required to provide information under this chapter may claim that the information is entitled to protection under this paragraph unless such person shows each of the following:

(i) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under title III of the Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.], an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(ii) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(iii) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(iv) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

(F) The following information with respect to any hazardous substance at the facility or vessel shall not be entitled to protection under this paragraph:

(i) The trade name, common name, or generic class or category of the hazardous substance.

(ii) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.

(iii) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

(iv) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

(v) The location of disposal of any waste stream.

(vi) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

(vii) Any hydrogeologic or geologic data.

(viii) Any groundwater monitoring data.

(f) Contracts for response actions; compliance with Federal health and safety standards

In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 9651(f) of this title by contractors and subcontractors as a condition of such contracts.

(g) Rates for wages and labor standards applicable to covered work

(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(h) Emergency procurement powers; exercise by President

Notwithstanding any other provision of law, subject to the provisions of section 9611 of this title, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this chapter. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

(i) Agency for Toxic Substances and Disease Registry; establishment, functions, etc.

(1) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, the Administrator of the Occupational Safety and Health Administration, the Administrator of the Social Security Administration, the Secretary of Transportation, and appropriate State and local health officials, effectuate and implement the health related authorities of this chapter. In addition, said Administrator shall—

(A) in cooperation with the States, establish and maintain a national registry of serious

diseases and illnesses and a national registry of persons exposed to toxic substances;

(B) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

(C) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

(D) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing where appropriate, epidemiological studies, or any other assistance appropriate under the circumstances; and

(E) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

(2)(A) Within 6 months after October 17, 1986, the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Administrator of the Environmental Protection Agency (''EPA'') shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under this section is under consideration.

(B) Within 24 months after October 17, 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared under subparagraph (A). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

(3) Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

(A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(B) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(C) Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after October 17, 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

(4) The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this chapter.

(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act [15 U.S.C. 2603(e)] on the types of re-

search that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

(iv) where there is a possibility of obtaining human data, the collection of such information.

(B) In assessing the need to perform laboratory and other studies, as required by subparagraph (A), the Administrator of ATSDR shall consider—

(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by paragraph (3); and

(iii) such other scientific and technical factors as the Administrator of ATSDR may determine are necessary for the effective implementation of this subsection.

(C) In the development and implementation of any research program under this paragraph, the Administrator of ATSDR and the Administrator of EPA shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] and the Federal Insecticide, Fungicide and Rodenticide Act [7 U.S.C. 136 et seq.]. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

(D) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.]. Within 1 year after October 17, 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], and recovery of such costs from responsible parties under this chapter.

(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 9605 of this title. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to October 17, 1986, or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after October 17, 1986.

(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator of ATSDR providing such information and requesting a health assessment. If such a petition is submitted and the Administrator of ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

(C) In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for remedial investigation and feasibility studies.

(D) Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

(F) For the purposes of this subsection and section 9611(c)(4) of this title, the term ''health assessments'' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food

chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

(G) The purpose of health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

(H) At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator of EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this chapter. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator of EPA who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 9605(a)(8)(A) of this title to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the peer review group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

(8) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator of ATSDR shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

(A) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

(10) Two years after October 17, 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding—

(A) health assessments and pilot health effects studies conducted;

(B) epidemiologic studies conducted;

(C) hazardous substances which have been listed under paragraph (2), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under this subsection;

(D) registries established under paragraph (8); and

(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this chapter or the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] and any increased incidence or prevalence of adverse health effects in humans.

(11) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce

such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this chapter, including, but not limited to—

(A) provision of alternative water supplies, and

(B) permanent or temporary relocation of individuals.

In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the President to determine a significant human exposure level with respect to a hazardous substance, the President may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the President deems necessary to protect human health.

(12) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority vested in the President, the Administrator of ATSDR or the Administrator of EPA under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act [42 U.S.C. 6973]) or the response and abatement authorities of this chapter.

(13) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.

(14) In the implementation of this subsection and other health-related authorities of this chapter, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.

(15) The activities of the Administrator of ATSDR described in this subsection and section 9611(c)(4) of this title shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act [42 U.S.C. 6939a(b)], health studies, registries, and health surveillance.

(16) The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

(17) In accordance with section 9620 of this title (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

(18) If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.

(j) Acquisition of property

(1) Authority

The President is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the President in his discretion determines is needed to conduct a remedial action under this chapter. There shall be no cause of action to compel the President to acquire any interest in real property under this chapter.

(2) State assurance

The President may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the President, through a contract or cooperative agreement or otherwise, that the State will accept transfer of the interest following completion of the remedial action.

(3) Exemption

No Federal, State, or local government agency shall be liable under this chapter solely as a result of acquiring an interest in real estate under this subsection.

(k) Brownfields revitalization funding

(1) Definition of eligible entity

In this subsection, the term ''eligible entity'' means—

(A) a general purpose unit of local government;

(B) a land clearance authority or other quasi-governmental entity that operates

under the supervision and control of or as an agent of a general purpose unit of local government;

(C) a government entity created by a State legislature;

(D) a regional council or group of general purpose units of local government;

(E) a redevelopment agency that is chartered or otherwise sanctioned by a State;

(F) a State;

(G) an Indian Tribe other than in Alaska; or

(H) an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) and the Metlakatla Indian community.

(2) Brownfield site characterization and assessment grant program

(A) Establishment of program

The Administrator shall establish a program to—

(i) provide grants to inventory, characterize, assess, and conduct planning related to brownfield sites under subparagraph (B); and

(ii) perform targeted site assessments at brownfield sites.

(B) Assistance for site characterization and assessment

(i) In general

On approval of an application made by an eligible entity, the Administrator may make a grant to the eligible entity to be used for programs to inventory, characterize, assess, and conduct planning related to one or more brownfield sites.

(ii) Site characterization and assessment

A site characterization and assessment carried out with the use of a grant under clause (i) shall be performed in accordance with section 9601(35)(B) of this title.

(3) Grants and loans for brownfield remediation

(A) Grants provided by the President

Subject to paragraphs (4) and (5), the President shall establish a program to provide grants to—

(i) eligible entities, to be used for capitalization of revolving loan funds; and

(ii) eligible entities or nonprofit organizations, where warranted, as determined by the President based on considerations under subparagraph (C), to be used directly for remediation of one or more brownfield sites owned by the entity or organization that receives the grant and in amounts not to exceed $200,000 for each site to be remediated.

(B) Loans and grants provided by eligible entities

An eligible entity that receives a grant under subparagraph (A)(i) shall use the grant funds to provide assistance for the remediation of brownfield sites in the form of—

(i) one or more loans to an eligible entity, a site owner, a site developer, or another person; or

(ii) one or more grants to an eligible entity or other nonprofit organization, where warranted, as determined by the eligible entity that is providing the assistance, based on considerations under subparagraph (C), to remediate sites owned by the eligible entity or nonprofit organization that receives the grant.

(C) Considerations

In determining whether a grant under subparagraph (A)(ii) or (B)(ii) is warranted, the President or the eligible entity, as the case may be, shall take into consideration—

(i) the extent to which a grant will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

(ii) the extent to which a grant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

(iii) the extent to which a grant will facilitate the use or reuse of existing infrastructure;

(iv) the benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation; and

(v) such other similar factors as the Administrator considers appropriate to consider for the purposes of this subsection.

(D) Transition

Revolving loan funds that have been established before January 11, 2002, may be used in accordance with this paragraph.

(4) General provisions

(A) Maximum grant amount

(i) Brownfield site characterization and assessment

(I) In general

A grant under paragraph (2) may be awarded to an eligible entity on a community-wide or site-by-site basis, and shall not exceed, for any individual brownfield site covered by the grant, $200,000.

(II) Waiver

The Administrator may waive the $200,000 limitation under subclause (I) to permit the brownfield site to receive a grant of not to exceed $350,000, based on the anticipated level of contamination, size, or status of ownership of the site.

(ii) Brownfield remediation

A grant under paragraph (3)(A)(i) may be awarded to an eligible entity on a community-wide or site-by-site basis, not to exceed $1,000,000 per eligible entity. The Administrator may make an additional grant to an eligible entity described in the previous sentence for any year after the year for which the initial grant is made, taking into consideration—

(I) the number of sites and number of communities that are addressed by the revolving loan fund;

(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;

(III) the demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and

(IV) such other similar factors as the Administrator considers appropriate to carry out this subsection.

(B) Prohibition

(i) In general

No part of a grant or loan under this subsection may be used for the payment of—

(I) a penalty or fine;

(II) a Federal cost-share requirement;

(III) an administrative cost;

(IV) a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under section 9607 of this title; or

(V) a cost of compliance with any Federal law (including a Federal law specified in section 9601(39)(B) of this title), excluding the cost of compliance with laws applicable to the cleanup.

(ii) Exclusions

For the purposes of clause (i)(III), the term ''administrative cost'' does not include the cost of—

(I) investigation and identification of the extent of contamination;

(II) design and performance of a response action; or

(III) monitoring of a natural resource.

(iii) Exception

Notwithstanding clause (i)(IV), the Administrator may use up to 25 percent of the funds made available to carry out this subsection to make a grant or loan under this subsection to eligible entities that satisfy all of the elements set forth in section 9601(40) of this title to qualify as a bona fide prospective purchaser, except that the date of acquisition of the property was on or before January 11, 2002.

(C) Assistance for development of local government site remediation programs

A local government that receives a grant under this subsection may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program that may include—

(i) monitoring the health of populations exposed to one or more hazardous substances from a brownfield site; and

(ii) monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance from a brownfield site.

(D) Insurance

A recipient of a grant or loan awarded under paragraph (2) or (3) that performs a characterization, assessment, or remediation of a brownfield site may use a portion of the grant or loan to purchase insurance for the characterization, assessment, or remediation of that site.

(5) Grant applications

(A) Submission

(i) In general

(I) Application

An eligible entity may submit to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, an application for a grant under this subsection for one or more brownfield sites (including information on the criteria used by the Administrator to rank applications under subparagraph (C), to the extent that the information is available).

(II) NCP requirements

The Administrator may include in any requirement for submission of an application under subclause (I) a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection.

(ii) Coordination

The Administrator shall coordinate with other Federal agencies to assist in making eligible entities aware of other available Federal resources.

(iii) Guidance

The Administrator shall publish guidance to assist eligible entities in applying for grants under this subsection.

(B) Approval

The Administrator shall—

(i) at least annually, complete a review of applications for grants that are received from eligible entities under this subsection; and

(ii) award grants under this subsection to eligible entities that the Administrator determines have the highest rankings under the ranking criteria established under subparagraph (C).

(C) Ranking criteria

The Administrator shall establish a system for ranking grant applications received under this paragraph that includes the following criteria:

(i) The extent to which a grant will stimulate the availability of other funds for environmental assessment or remediation, and subsequent reuse, of an area in which one or more brownfield sites are located.

(ii) The potential of the proposed project or the development plan for an area in which one or more brownfield sites are located to stimulate economic development of the area on completion of the cleanup.

(iii) The extent to which a grant would address or facilitate the identification and reduction of threats to human health and the environment, including threats in

areas in which there is a greater-than-normal incidence of diseases or conditions (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, or contaminants.

(iv) The extent to which a grant would facilitate the use or reuse of existing infrastructure.

(v) The extent to which a grant would facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

(vi) The extent to which a grant would meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community.

(vii) The extent to which the applicant is eligible for funding from other sources.

(viii) The extent to which a grant will further the fair distribution of funding between urban and nonurban areas.

(ix) The extent to which the grant provides for involvement of the local community in the process of making decisions relating to cleanup and future use of a brownfield site.

(x) The extent to which a grant would address or facilitate the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations.

(6) Implementation of brownfields programs

(A) Establishment of program

The Administrator may provide, or fund eligible entities or nonprofit organizations to provide, training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.

(B) Funding restrictions

The total Federal funds to be expended by the Administrator under this paragraph shall not exceed 15 percent of the total amount appropriated to carry out this subsection in any fiscal year.

(7) Audits

(A) In general

The Inspector General of the Environmental Protection Agency shall conduct such reviews or audits of grants and loans under this subsection as the Inspector General considers necessary to carry out this subsection.

(B) Procedure

An audit under this subparagraph shall be conducted in accordance with the auditing procedures of the Government Accountability Office, including chapter 75 of title 31.

(C) Violations

If the Administrator determines that a person that receives a grant or loan under this subsection has violated or is in violation of a condition of the grant, loan, or applicable Federal law, the Administrator may—

(i) terminate the grant or loan;

(ii) require the person to repay any funds received; and

(iii) seek any other legal remedies available to the Administrator.

(D) Report to Congress

Not later than 3 years after January 11, 2002, the Inspector General of the Environmental Protection Agency shall submit to Congress a report that provides a description of the management of the program (including a description of the allocation of funds under this subsection).

(8) Leveraging

An eligible entity that receives a grant under this subsection may use the grant funds for a portion of a project at a brownfield site for which funding is received from other sources if the grant funds are used only for the purposes described in paragraph (2) or (3).

(9) Agreements

Each grant or loan made under this subsection shall—

(A) include a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection, as determined by the Administrator; and

(B) be subject to an agreement that—

(i) requires the recipient to—

(I) comply with all applicable Federal and State laws; and

(II) ensure that the cleanup protects human health and the environment;

(ii) requires that the recipient use the grant or loan exclusively for purposes specified in paragraph (2) or (3), as applicable;

(iii) in the case of an application by an eligible entity under paragraph (3)(A), requires the eligible entity to pay a matching share (which may be in the form of a contribution of labor, material, or services) of at least 20 percent, from non-Federal sources of funding, unless the Administrator determines that the matching share would place an undue hardship on the eligible entity; and

(iv) contains such other terms and conditions as the Administrator determines to be necessary to carry out this subsection.

(10) Facility other than brownfield site

The fact that a facility may not be a brownfield site within the meaning of section 9601(39)(A) of this title has no effect on the eligibility of the facility for assistance under any other provision of Federal law.

(11) Effect on Federal laws

Nothing in this subsection affects any liability or response authority under any Federal law, including—

(A) this chapter (including the last sentence of section 9601(14) of this title);

(B) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(D) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

(E) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(12) Funding

(A) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $200,000,000 for each of fiscal years 2002 through 2006.

(B) Use of certain funds

Of the amount made available under subparagraph (A), $50,000,000, or, if the amount made available is less than $200,000,000, 25 percent of the amount made available, shall be used for site characterization, assessment, and remediation of facilities described in section 9601(39)(D)(ii)(II) of this title.

(Pub. L. 96–510, title I, § 104, Dec. 11, 1980, 94 Stat. 2774; Pub. L. 99–499, title I, §§ 104, 110, title II, § 207(b), Oct. 17, 1986, 100 Stat. 1617, 1636, 1705; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–531, title III, § 312(h), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 107–118, title II, § 211(b), Jan. 11, 2002, 115 Stat. 2362; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–59, title I, § 1956, Aug. 10, 2005, 119 Stat. 1515.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (c)(3), (9)(D), (i)(10)(E), and (k)(11)(B), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. Subtitle C of the Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Title III of the Amendments and Reauthorization Act of 1986, referred to in subsec. (e)(7)(E)(i), probably means title III of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1728, known as the Emergency Planning and Community Right-To-Know Act of 1986, which is classified generally to chapter 116 (§ 11001 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 11001 of this title and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (g)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

The Toxic Substances Control Act, referred to in subsecs. (i)(5)(C), (D) and (k)(11)(D), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (i)(5)(C), (D), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (k)(1)(H), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (k)(11)(C), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsec. (k)(11)(E), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

In subsec. (g)(1), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act'' and, in subsec. (g)(2), ''section 3145 of title 40'' substituted for ''section 276c of title 40 of the United States Code'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2005—Subsec. (k)(4)(B)(iii). Pub. L. 109–59 added cl. (iii).

2004—Subsec. (k)(7)(B). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2002—Subsec. (k). Pub. L. 107–118 added subsec. (k).

1992—Subsec. (i)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1986—Subsec. (a)(1). Pub. L. 99–499, § 104(a), substituted provisions authorizing the President to allow owner or operator of facility or vessel or any other responsible party to carry out action, conduct the remedial investigation, or conduct feasibility study under section 9622 of this title, specifying conditions under which a remedial investigation or feasibility study would be authorized, providing for treatment of potentially responsible parties, and requiring President to give primary attention to those releases which the President deems may present a public health threat, for '', unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.''

Subsec. (a)(2). Pub. L. 99–499, § 104(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For the purposes of this section, 'pollutant or contaminant' shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 9601(14)(A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).''

Subsec. (a)(3), (4). Pub. L. 99–499, § 104(c), added pars. (3) and (4).

Subsec. (b). Pub. L. 99–499, § 104(d), designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (c)(1). Pub. L. 99–499, § 104(e)(1), substituted ''$2,000,000'' for ''$1,000,000'' and ''12 months'' for ''six months''.

Subsec. (c)(1)(C). Pub. L. 99–499, § 104(e)(2), added cl. (C).

Subsec. (c)(3). Pub. L. 99–499, §§ 104(f), 207(b), substituted text of cl. (C)(ii) and sentence providing that ''facility'' does not include navigable waters or beds underlying those waters for ''(ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 9611 of this title relating to the specific release in question: *Provided, however*, That in no event shall the amount of the credit granted exceed the total response costs relating to the release.'' and inserted provisions relating to remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation.

Subsec. (c)(4). Pub. L. 99–499, § 104(g), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under subchapter II of this chapter to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.''

Subsec. (c)(5). Pub. L. 99–499, § 104(h), added par. (5).

Subsec. (c)(6). Pub. L. 99–499, § 104(i), added par. (6).

Subsec. (c)(7). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Pub. L. 99–499, § 104(i), added par. (7).

Subsec. (c)(8). Pub. L. 99–499, § 104(j), added par. (8).

Subsec. (c)(9). Pub. L. 99–499, § 104(k), added par. (9).

Subsec. (d)(1). Pub. L. 99–499, § 104(*l*), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 9605(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.''

Subsec. (e)(1). Pub. L. 99–499, § 104(m), added par. (1), and struck out former par. (1) which provided for access to, and copying of, records relating to covered substances, and entry by officers, employees or representatives of the President or a State into places where hazardous substances were or had been generated, stored, treated or disposed of, or transported from, and inspection and obtaining of samples of such substances and samples of containers or labeling for such substances.

Subsec. (e)(2) to (6). Pub. L. 99–499, § 104(m), added pars. (2) to (6). Former par. (2) redesignated (7).

Subsec. (e)(7). Pub. L. 99–499, § 104(m), (n), redesignated par. (2) as (7), aligned margin of par. (7) with pars. (1) through (6), and added par. heading and subpars. (E) and (F).

Subsec. (i). Pub. L. 99–499, § 110, designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1), in introductory provisions of par. (1), struck out ''and'' after ''Health Administration,'' and inserted ''the Secretary of Transportation, and appropriate State and local health officials,'' in par. (1)(D), inserted ''where appropriate'', and added pars. (2) to (18).

Subsec. (j). Pub. L. 99–499, § 104(*o*)(1), added subsec. (j).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (i)(10) of this section relating to the requirement that the Administrator of ATSDR submit a biennial report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 13th item on page 154 of House Document No. 103–7.

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9605. National contingency plan

(a) Revision and republication

Within one hundred and eighty days after December 11, 1980, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 1321 of title 33, to reflect and effectuate the responsibilities and powers created by this chapter, in addition to those matters specified in section 1321(c)(2)[1] of title 33. Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this chapter;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such fa-

[1] See References in Text note below.

cilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release, State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after December 11, 1980, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. To the extent practicable, the highest priority facilities shall be designated individually and shall be referred to as the ''top priority among known response targets'', and, to the extent practicable, shall include among the one hundred highest priority facilities one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. A State shall be allowed to designate its highest priority facility only once. Other priority facilities or incidents may be listed singly or grouped for response priority purposes;

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor and including consideration of minority firms in accordance with subsection (f) of this section; and

(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this chapter.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 1321(c)(2)(F) and (G) and (j)(1) of title 33. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the national contingency plan.

(b) Revision of plan

Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986 [October 17, 1986], the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as ''the National Hazardous Substance Response Plan'' shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this chapter which are consistent with amendments made by the Superfund Amendments and Reauthorization Act of 1986 relating to the selection of remedial action.

(c) Hazard ranking system

(1) Revision

Not later than 18 months after October 17, 1986, and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than 24 months after October 17, 1986. Such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue in full force and effect.

(2) Health assessment of water contamination risks

In carrying out this subsection, the President shall ensure that the human health risks associated with the contamination or potential contamination (either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities) of surface water are appropriately assessed where such surface water is, or can be, used for recreation or potable water consumption. In making the assessment required pur-

suant to the preceding sentence, the President shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

(3) Reevaluation not required

The President shall not be required to reevaluate, after October 17, 1986, the hazard ranking of any facility which was evaluated in accordance with the criteria under this section before the effective date of the amendments to the hazard ranking system under this subsection and which was assigned a national priority under the National Contingency Plan.

(4) New information

Nothing in paragraph (3) shall preclude the President from taking new information into account in undertaking response actions under this chapter.

(d) Petition for assessment of release

Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the President has not previously conducted a preliminary assessment of such release, the President shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the President shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) of this section to determine the national priority of such release or threatened release.

(e) Releases from earlier sites

Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a ''Site Cleaned Up To Date'' on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

(f) Minority contractors

In awarding contracts under this chapter, the President shall consider the availability of qualified minority firms. The President shall describe, as part of any annual report submitted to the Congress under this chapter, the participation of minority firms in contracts carried out under this chapter. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this chapter and of the efforts made by the President to encourage the participation of such firms in programs carried out under this chapter.

(g) Special study wastes

(1) Application

This subsection applies to facilities—

(A) which as of October 17, 1986, were not included on, or proposed for inclusion on, the National Priorities List; and

(B) at which special study wastes described in paragraph (2), (3)(A)(ii) or (3)(A)(iii) of section 6921(b) of this title are present in significant quantities, including any such facility from which there has been a release of a special study waste.

(2) Considerations in adding facilities to NPL

Pending revision of the hazard ranking system under subsection (c) of this section, the President shall consider each of the following factors in adding facilities covered by this section to the National Priorities List:

(A) The extent to which hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility.

(B) Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from such facility, the extent of or potential for release of such hazardous constituents, the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at such facility. This subparagraph refers only to available information on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility.

(3) Savings provisions

Nothing in this subsection shall be construed to limit the authority of the President to remove any facility which as of October 17, 1986, is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

(4) Information gathering and analysis

Nothing in this chapter shall be construed to preclude the expenditure of monies from the Fund for gathering and analysis of information which will enable the President to consider the specific factors required by paragraph (2).

(h) NPL deferral

(1) Deferral to State voluntary cleanups

At the request of a State and subject to paragraphs (2) and (3), the President generally shall defer final listing of an eligible response site on the National Priorities List if the President determines that—

(A) the State, or another party under an agreement with or order from the State, is conducting a response action at the eligible response site—

(i) in compliance with a State program that specifically governs response actions for the protection of public health and the environment; and

(ii) that will provide long-term protection of human health and the environment; or

(B) the State is actively pursuing an agreement to perform a response action de-

scribed in subparagraph (A) at the site with a person that the State has reason to believe is capable of conducting a response action that meets the requirements of subparagraph (A).

(2) Progress toward cleanup

If, after the last day of the 1-year period beginning on the date on which the President proposes to list an eligible response site on the National Priorities List, the President determines that the State or other party is not making reasonable progress toward completing a response action at the eligible response site, the President may list the eligible response site on the National Priorities List.

(3) Cleanup agreements

With respect to an eligible response site under paragraph (1)(B), if, after the last day of the 1-year period beginning on the date on which the President proposes to list the eligible response site on the National Priorities List, an agreement described in paragraph (1)(B) has not been reached, the President may defer the listing of the eligible response site on the National Priorities List for an additional period of not to exceed 180 days if the President determines deferring the listing would be appropriate based on—

(A) the complexity of the site;

(B) substantial progress made in negotiations; and

(C) other appropriate factors, as determined by the President.

(4) Exceptions

The President may decline to defer, or elect to discontinue a deferral of, a listing of an eligible response site on the National Priorities List if the President determines that—

(A) deferral would not be appropriate because the State, as an owner or operator or a significant contributor of hazardous substances to the facility, is a potentially responsible party;

(B) the criteria under the National Contingency Plan for issuance of a health advisory have been met; or

(C) the conditions in paragraphs (1) through (3), as applicable, are no longer being met.

(Pub. L. 96–510, title I, § 105, Dec. 11, 1980, 94 Stat. 2779; Pub. L. 99–499, title I, § 105, Oct. 17, 1986, 100 Stat. 1625; Pub. L. 107–118, title II, § 232, Jan. 11, 2002, 115 Stat. 2379.)

REFERENCES IN TEXT

Section 1321(c)(2) of title 33, referred to in subsec. (a), was amended generally by Pub. L. 101–380, title IV, § 4201(a), Aug. 18, 1990, 104 Stat. 523. Prior to general amendment, subsec. (c)(2) related to preparation of a National Contingency Plan. Provisions relating to a National Contingency Plan are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

Such amendments and the amendments made by the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (b), are the amendments made by Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

AMENDMENTS

2002—Subsec. (h). Pub. L. 107–118 added subsec. (h).

1986—Subsec. (a). Pub. L. 99–499, § 105(a)(1), designated existing provisions as subsec. (a) and added heading.

Subsec. (a)(8)(A). Pub. L. 99–499, § 105(a)(2), inserted ''the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release,'' after ''ecosystems,''.

Subsec. (a)(8)(B). Pub. L. 99–499, § 105(a)(3), struck out ''at least four hundred of'' after ''To the extent practicable,'', substituted ''one hundred highest priority facilities'' for ''one hundred highest priority facilities at least'', and inserted ''A State shall be allowed to designate its highest priority facility only once.''

Subsec. (a)(9). Pub. L. 99–499, § 105(a)(4), inserted ''and including consideration of minority firms in accordance with subsection (f) of this section''.

Subsec. (a)(10). Pub. L. 99–499, § 105(a)(5), added par. (10).

Subsecs. (b) to (g). Pub. L. 99–499, § 105(b), added subsecs. (b) to (g).

§ 9606. Abatement actions

(a) Maintenance, jurisdiction, etc.

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

(b) Fines; reimbursement

(1) Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) of this section may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26.

(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 9607(a) of this title and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 9607(a) of this title may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28.

(c) Guidelines for using imminent hazard, enforcement, and emergency response authorities; promulgation by Administrator of EPA, scope, etc.

Within one hundred and eighty days after December 11, 1980, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this chapter. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 1321(c)(2),[1] 1318, 1319, and 1364(a) of title 33, (2) sections 6927, 6928, 6934, and 6973 of this title, (3) sections 300j–4 and 300i of this title, (4) sections 7413, 7414, and 7603 of this title, and (5) section 2606 of title 15.

(Pub. L. 96–510, title I, § 106, Dec. 11, 1980, 94 Stat. 2780; Pub. L. 99–499, title I, §§ 106, 109(b), Oct. 17, 1986, 100 Stat. 1628, 1633; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this Act'', meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Section 1321(c)(2) of title 33, referred to in subsec. (c), was amended generally by Pub. L. 101–380, title IV, § 4201(a), Aug. 18, 1990, 104 Stat. 523. Prior to general amendment, subsec. (c)(2) related to preparation of a National Contingency Plan. Provisions relating to a National Contingency Plan are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–499 designated existing provisions as par. (1), substituted ''who, without sufficient cause, willfully'' for ''who willfully'' and ''$25,000'' for ''$5,000'', and added par. (2).

Subsec. (b)(2)(A). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9607. Liability

(a) Covered persons; scope; recoverable costs and damages; interest rate; "comparable maturity" date

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

[1] See References in Text note below.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26. For purposes of applying such amendments to interest under this subsection, the term ''comparable maturity'' shall be determined with reference to the date on which interest accruing under this subsection commences.

(b) Defenses

There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c) Determination of amounts

(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel, other than an incineration vessel, which carries any hazardous substance as cargo or residue, $300 per gross ton, or $5,000,000, whichever is greater;

(B) for any other vessel, other than an incineration vessel, $300 per gross ton, or $500,000, whichever is greater;

(C) for any motor vehicle, aircraft, hazardous liquid pipeline facility (as defined in section 60101(a) of title 49), or rolling stock, $50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than $5,000,000 (or, for releases of hazardous substances as defined in section 9601(14)(A) of this title into the navigable waters, $8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for any incineration vessel or any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus $50,000,000 for any damages under this subchapter.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 or vessels subject to the provisions of title 33 or 46, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 9612(c) of this title. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) Rendering care or advice

(1) In general

Except as provided in paragraph (2), no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan (''NCP'') or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(2) State and local governments

No State or local government shall be liable under this subchapter for costs or damages as a result of actions taken in response to an emergency created by the release or threat-

ened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(3) Savings provision

This subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.

(e) Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights

(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this subchapter, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f) Natural resources liability; designation of public trustees of natural resources

(1) Natural resources liability

In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) of this section liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: *Provided, however*, That no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a) of this section, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) of this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource. There shall be no recovery under the authority of subparagraph (C) of subsection (a) of this section where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(2) Designation of Federal and State officials

(A) Federal

The President shall designate in the National Contingency Plan published under section 9605 of this title the Federal officials who shall act on behalf of the public as trustees for natural resources under this chapter and section 1321 of title 33. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this chapter and such section 1321 of title 33 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

(B) State

The Governor of each State shall designate State officials who may act on behalf of the public as trustees for natural resources under this chapter and section 1321 of title 33 and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this chapter and such section 1321 of title 33 for those natural resources under their trusteeship.

(C) Rebuttable presumption

Any determination or assessment of damages to natural resources for the purposes of this chapter and section 1321 of title 33 made by a Federal or State trustee in accordance with the regulations promulgated under section 9651(c) of this title shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this chapter or section 1321 of title 33.

(g) Federal agencies

For provisions relating to Federal agencies, see section 9620 of this title.

(h) Owner or operator of vessel

The owner or operator of a vessel shall be liable in accordance with this section, under maritime tort law, and as provided under section 9614 of this title notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff)[1] or the absence of any physical damage to the proprietary interest of the claimant.

(i) Application of a registered pesticide product

No person (including the United States or any State or Indian tribe) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Obligations or liability pursuant to federally permitted release

Recovery by any person (including the United States or any State or Indian tribe) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 9601(10)(B) or (C) of this title shall be recoverable in an action brought under section 1319(b) of title 33.

(k) Transfer to, and assumption by, Post-Closure Liability Fund of liability of owner or operator of hazardous waste disposal facility in receipt of permit under applicable solid waste disposal law; time, criteria applicable, procedures, etc.; monitoring costs; reports

(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], shall be transferred to and assumed by the Post-closure Liability Fund established by section 9641[1] of this title when—

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act [42 U.S.C. 6926(b)]) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 9641[1] of this title, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 9641[1] of this title may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

(4)(A) Not later than one year after December 11, 1980, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in subchapter II[1] of this chapter.

(B) Not later than eighteen months after December 11, 1980, and after a public hearing, the President shall by rule determine whether or

[1] See References in Text note below.

not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this chapter and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under subchapter II[1] of this chapter.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

(5) SUSPENSION OF LIABILITY TRANSFER.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 9611 of this title, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 9641[1] of this title prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

(6) STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.—

(A) STUDY.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

(B) PROGRAM ELEMENTS.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

(C) ASSESSMENTS.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act [42 U.S.C. 6925] and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

(i) the current and future financial capabilities of facility owners and operators;

(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

(D) PROCEDURES.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

(E) CONSIDERATION OF OPTIONS.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq., 6991 et seq.];

(ii) voluntary risk pooling by owners and operators;

(iii) legislation to require risk pooling by owners and operators;

(iv) modification of the Post-Closure Liability Trust Fund previously established by section 9641[1] of this title, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

(v) private insurance;

(vi) insurance provided by the Federal Government;

(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the pri-

vate sector or provided or assisted by the Federal Government; and

(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.

(*l*) Federal lien

(1) In general

All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a) of this section) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) Duration

The lien imposed by this subsection shall arise at the later of the following:

(A) The time costs are first incurred by the United States with respect to a response action under this chapter.

(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 9613 of this title.

(3) Notice and validity

The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms ''purchaser'' and ''security interest'' shall have the definitions provided under section 6323(h) of title 26.

(4) Action in rem

The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

(m) Maritime lien

All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) of this section with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(n) Liability of fiduciaries

(1) In general

The liability of a fiduciary under any provision of this chapter for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.

(2) Exclusion

Paragraph (1) does not apply to the extent that a person is liable under this chapter independently of the person's ownership of a vessel or facility as a fiduciary or actions taken in a fiduciary capacity.

(3) Limitation

Paragraphs (1) and (4) do not limit the liability pertaining to a release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or threatened release.

(4) Safe harbor

A fiduciary shall not be liable in its personal capacity under this chapter for—

(A) undertaking or directing another person to undertake a response action under subsection (d)(1) of this section or under the direction of an on scene coordinator designated under the National Contingency Plan;

(B) undertaking or directing another person to undertake any other lawful means of addressing a hazardous substance in connection with the vessel or facility;

(C) terminating the fiduciary relationship;

(D) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying or enforcing the term or condition;

(E) monitoring or undertaking 1 or more inspections of the vessel or facility;

(F) providing financial or other advice or counseling to other parties to the fiduciary

relationship, including the settlor or beneficiary;

(G) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

(H) administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began; or

(I) declining to take any of the actions described in subparagraphs (B) through (H).

(5) Definitions

As used in this chapter:

(A) Fiduciary

The term ''fiduciary''—

(i) means a person acting for the benefit of another party as a bona fide—

(I) trustee;

(II) executor;

(III) administrator;

(IV) custodian;

(V) guardian of estates or guardian ad litem;

(VI) receiver;

(VII) conservator;

(VIII) committee of estates of incapacitated persons;

(IX) personal representative;

(X) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(XI) representative in any other capacity that the Administrator, after providing public notice, determines to be similar to the capacities described in subclauses (I) through (X); and

(ii) does not include—

(I) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, 1 or more estate plans or because of the incapacity of a natural person; or

(II) a person that acquires ownership or control of a vessel or facility with the objective purpose of avoiding liability of the person or of any other person.

(B) Fiduciary capacity

The term ''fiduciary capacity'' means the capacity of a person in holding title to a vessel or facility, or otherwise having control of or an interest in the vessel or facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.

(6) Savings clause

Nothing in this subsection—

(A) affects the rights or immunities or other defenses that are available under this chapter or other law that is applicable to a person subject to this subsection; or

(B) creates any liability for a person or a private right of action against a fiduciary or any other person.

(7) No effect on certain persons

Nothing in this subsection applies to a person if the person—

(A)(i) acts in a capacity other than that of a fiduciary or in a beneficiary capacity; and

(ii) in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(B)(i) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

(ii) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(8) Limitation

This subsection does not preclude a claim under this chapter against—

(A) the assets of the estate or trust administered by the fiduciary; or

(B) a nonemployee agent or independent contractor retained by a fiduciary.

(*o*) De micromis exemption

(1) In general

Except as provided in paragraph (2), a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under this chapter if liability is based solely on paragraph (3) or (4) of subsection (a) of this section, and the person, except as provided in paragraph (4) of this subsection, can demonstrate that—

(A) the total amount of the material containing hazardous substances that the person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility was less than 110 gallons of liquid materials or less than 200 pounds of solid materials (or such greater or lesser amounts as the Administrator may determine by regulation); and

(B) all or part of the disposal, treatment, or transport concerned occurred before April 1, 2001.

(2) Exceptions

Paragraph (1) shall not apply in a case in which—

(A) the President determines that—

(i) the materials containing hazardous substances referred to in paragraph (1) have contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility; or

(ii) the person has failed to comply with an information request or administrative subpoena issued by the President under this chapter or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility; or

(B) a person has been convicted of a criminal violation for the conduct to which the

exemption would apply, and that conviction has not been vitiated on appeal or otherwise.

(3) No judicial review

A determination by the President under paragraph (2)(A) shall not be subject to judicial review.

(4) Nongovernmental third-party contribution actions

In the case of a contribution action, with respect to response costs at a facility on the National Priorities List, brought by a party, other than a Federal, State, or local government, under this chapter, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraph (1)(A) and (B) of this subsection are not met.

(p) Municipal solid waste exemption

(1) In general

Except as provided in paragraph (2) of this subsection, a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under paragraph (3) of subsection (a) of this section for municipal solid waste disposed of at a facility if the person, except as provided in paragraph (5) of this subsection, can demonstrate that the person is—

(A) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility; or

(C) an organization described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title that, during its taxable year preceding the date of transmittal of written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

For purposes of this subsection, the term ''affiliate'' has the meaning of that term provided in the definition of ''small business concern'' in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

(2) Exception

Paragraph (1) shall not apply in a case in which the President determines that—

(A) the municipal solid waste referred to in paragraph (1) has contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility;

(B) the person has failed to comply with an information request or administrative subpoena issued by the President under this chapter; or

(C) the person has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility.

(3) No judicial review

A determination by the President under paragraph (2) shall not be subject to judicial review.

(4) Definition of municipal solid waste

(A) In general

For purposes of this subsection, the term ''municipal solid waste'' means waste material—

(i) generated by a household (including a single or multifamily residence); and

(ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material—

(I) is essentially the same as waste normally generated by a household;

(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

(III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

(B) Examples

Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.

(C) Exclusions

The term ''municipal solid waste'' does not include—

(i) combustion ash generated by resource recovery facilities or municipal incinerators; or

(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.

(5) Burden of proof

In the case of an action, with respect to response costs at a facility on the National Priorities List, brought under this section or section 9613 of this title by—

(A) a party, other than a Federal, State, or local government, with respect to municipal solid waste disposed of on or after April 1, 2001; or

(B) any party with respect to municipal solid waste disposed of before April 1, 2001, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraphs (1) and (4) for exemption for entities and organizations described in paragraph (1)(B) and (C) are not met.

(6) Certain actions not permitted

No contribution action may be brought by a party, other than a Federal, State, or local government, under this chapter with respect to circumstances described in paragraph (1)(A).

(7) Costs and fees

A nongovernmental entity that commences, after January 11, 2002, a contribution action under this chapter shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (*o*) of this section.

(q) Contiguous properties

(1) Not considered to be an owner or operator

(A) In general

A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or operator of a vessel or facility under paragraph (1) or (2) of subsection (a) of this section solely by reason of the contamination if—

(i) the person did not cause, contribute, or consent to the release or threatened release;

(ii) the person is not—

(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or

(II) the result of a reorganization of a business entity that was potentially liable;

(iii) the person takes reasonable steps to—

(I) stop any continuing release;

(II) prevent any threatened future release; and

(III) prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person;

(iv) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility);

(v) the person—

(I) is in compliance with any land use restrictions established or relied on in connection with the response action at the facility; and

(II) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

(vi) the person is in compliance with any request for information or administrative subpoena issued by the President under this chapter;

(vii) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and

(viii) at the time at which the person acquired the property, the person—

(I) conducted all appropriate inquiry within the meaning of section 9601(35)(B) of this title with respect to the property; and

(II) did not know or have reason to know that the property was or could be contaminated by a release or threatened release of one or more hazardous substances from other real property not owned or operated by the person.

(B) Demonstration

To qualify as a person described in subparagraph (A), a person must establish by a preponderance of the evidence that the conditions in clauses (i) through (viii) of subparagraph (A) have been met.

(C) Bona fide prospective purchaser

Any person that does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in subparagraph (A)(viii) at the time of acquisition of the real property may qualify as a bona fide prospective purchaser under section 9601(40) of this title if the person is otherwise described in that section.

(D) Ground water

With respect to a hazardous substance from one or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995.

(2) Effect of law

With respect to a person described in this subsection, nothing in this subsection—

(A) limits any defense to liability that may be available to the person under any other provision of law; or

(B) imposes liability on the person that is not otherwise imposed by subsection (a) of this section.

(3) Assurances

The Administrator may—

(A) issue an assurance that no enforcement action under this chapter will be initiated against a person described in paragraph (1); and

(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 9613(f) of this title.

(r) Prospective purchaser and windfall lien

(1) Limitation on liability

Notwithstanding subsection (a)(1) of this section, a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

(2) Lien

If there are unrecovered response costs incurred by the United States at a facility for which an owner of the facility is not liable by reason of paragraph (1), and if each of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may by agreement with the owner, obtain from the owner a lien on any other property or other assurance of payment satisfactory to the Administrator, for the unrecovered response costs.

(3) Conditions

The conditions referred to in paragraph (2) are the following:

(A) Response action

A response action for which there are unrecovered costs of the United States is carried out at the facility.

(B) Fair market value

The response action increases the fair market value of the facility above the fair market value of the facility that existed before the response action was initiated.

(4) Amount; duration

A lien under paragraph (2)—

(A) shall be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property;

(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

(C) shall be subject to the requirements of subsection (*l*)(3) of this section; and

(D) shall continue until the earlier of—

(i) satisfaction of the lien by sale or other means; or

(ii) notwithstanding any statute of limitations under section 9613 of this title, recovery of all response costs incurred at the facility.

(Pub. L. 96–510, title I, § 107, Dec. 11, 1980, 94 Stat. 2781; Pub. L. 99–499, title I, §§ 107(a)–(d)(2), (e), (f), 127(b), (e), title II, §§ 201, 207(c), Oct. 17, 1986, 100 Stat. 1628–1630, 1692, 1693, 1705; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–429, § 7(e)(2), Oct. 31, 1994, 108 Stat. 4390; Pub. L. 104–208, div. A, title II, § 2502(a), Sept. 30, 1996, 110 Stat. 3009–462; Pub. L. 104–287, § 6(j)(2), Oct. 11, 1996, 110 Stat. 3400; Pub. L. 107–118, title I, § 102(a), title II, §§ 221, 222(b), Jan. 11, 2002, 115 Stat. 2356, 2368, 2371.)

REFERENCES IN TEXT

Such amendments, referred to in the last sentence of subsec. (a), probably means the amendments made by Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1613, known as the "Superfund Amendments and Reauthorization Act of 1986". For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

Act of March 3, 1851 (46 U.S.C. 183ff), referred to in subsec. (h), is act Mar. 3, 1851, ch. 43, 9 Stat. 635, which was incorporated into the Revised Statutes as R.S. §§ 4282, 4283, 4284 to 4287 and 4289, which were classified to sections 182, 183, and 184 to 188 of the former Appendix to Title 46, Shipping, prior to being repealed and restated in chapter 305 of Title 46 by Pub. L. 109–304, §§ 6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (i), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (k)(1), (3), (6)(E)(i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitles C and I of the Solid Waste Disposal Act are classified generally to subchapters III (§ 6921 et seq.) and IX (§ 6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 9641 of this title, referred to in subsec. (k), was repealed by Pub. L. 99–499, title V, § 514(b), Oct. 17, 1986, 100 Stat. 1767.

Subchapter II of this chapter, referred to in subsec. (k)(4)(A) and (C), was in the original "title II of this Act", meaning title II of Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96–510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99–499, title V, §§ 514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Hazardous and Solid Waste Amendments of 1984, referred to in subsec. (k)(6)(A), (E), is Pub. L. 98–616, Nov. 8, 1984, 98 Stat. 3221. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

The Small Business Act, referred to in subsec. (p)(1), is Pub. L. 85–536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (§ 631 et

seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2002—Subsecs. (*o*), (p). Pub. L. 107–118, §102(a), added subsecs. (*o*) and (p).

Subsec. (q). Pub. L. 107–118, §221, added subsec. (q).

Subsec. (r). Pub. L. 107–118, §222(b), added subsec. (r).

1996—Subsec. (c)(1)(C). Pub. L. 104–287 substituted ''section 60101(a) of title 49'' for ''the Hazardous Liquid Pipeline Safety Act of 1979''.

Subsec. (n). Pub. L. 104–208 added subsec. (n).

1994—Subsec. (c)(1)(C). Pub. L. 103–429 substituted ''hazardous liquid pipeline facility'' for ''pipeline''.

1986—Subsec. (a). Pub. L. 99–514, in penultimate sentence, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Pub. L. 99–499, §107(b), inserted concluding provisions relating to accrual and rate of interest on amounts recoverable under this section.

Subsec. (a)(1). Pub. L. 99–499, §107(a), struck out ''(otherwise subject to the jurisdiction of the United States)'' after ''vessel''.

Subsec. (a)(3). Pub. L. 99–499, §127(b)(1), inserted ''or incineration vessel'' after ''facility''.

Subsec. (a)(4). Pub. L. 99–499, §§107(b), 127(b)(2), 207(c)(1), in introductory provisions, inserted '', incineration vessels'' after ''vessels'', in subpar. (A), inserted ''or an Indian tribe'' after ''State'', and added subpar. (D).

Subsec. (c)(1)(A). Pub. L. 99–499, §127(b)(3), inserted '', other than an incineration vessel,'' after ''vessel''.

Subsec. (c)(1)(B). Pub. L. 99–499, §127(b)(4), inserted ''other than an incineration vessel,'' after ''other vessel,''.

Subsec. (c)(1)(D). Pub. L. 99–499, §127(b)(5), inserted ''any incineration vessel or'' before ''any facility''.

Subsec. (d). Pub. L. 99–499, §107(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''No person shall be liable under this subchapter for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.''

Subsec. (f)(1). Pub. L. 99–499, §107(d)(1), designated existing provisions as par. (1) and added heading.

Pub. L. 99–499, §207(c)(2)(A), inserted ''and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation'' after third reference to ''State''.

Pub. L. 99–499, §207(c)(2)(B), inserted ''or Indian tribe'' after fourth reference to ''State''.

Pub. L. 99–499, §207(c)(2)(C), inserted in first sentence '', so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe''.

Pub. L. 99–499, §107(d)(2), substituted ''Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) of this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource'' for ''Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources''.

Pub. L. 99–499, §207(c)(2)(D), which directed the insertion of ''or the Indian tribe'' after ''State government'', could not be executed because the prior amendment by section 107(d)(2) of Pub. L. 99–499, struck out third sentence referring to ''State government''.

Subsec. (f)(2). Pub. L. 99–499, §107(d)(1), added par. (2).

Subsec. (g). Pub. L. 99–499, §107(e), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.''

Subsec. (h). Pub. L. 99–499, §127(e), inserted '', under maritime tort law,'' after ''with this section'' and inserted ''or the absence of any physical damage to the proprietary interest of the claimant'' before the period at end.

Subsec. (i). Pub. L. 99–499, §207(c)(3), inserted ''or Indian tribe'' after ''State''.

Subsec. (j). Pub. L. 99–499, §207(c)(4), inserted ''or Indian tribe'' after first reference to ''State''.

Subsec. (k)(5), (6). Pub. L. 99–499, §201, added pars. (5) and (6).

Subsec. (*l*). Pub. L. 99–499, §107(f), added subsec. (*l*).

Subsec. (*l*)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (m). Pub. L. 99–499, §107(f), added subsec. (m).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to any claim that has not been finally adjudicated as of Sept. 30, 1996, see section 2505 of Pub. L. 104–208, set out as a note under section 6991b of this title.

EFFECT ON CONCLUDED ACTIONS

Pub. L. 107–118, title I, §103, Jan. 11, 2002, 115 Stat. 2360, provided that: ''The amendments made by this title [amending this section and section 9622 of this title] shall not apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before the date of the enactment of this Act [Jan. 11, 2002].''

CENTRAL HAZARDOUS MATERIALS FUND

Pub. L. 109–54, title I, Aug. 2, 2005, 119 Stat. 518, provided in part: ''That hereafter, notwithstanding 31 U.S.C. 3302, sums recovered from or paid by a party in advance of or as reimbursement for remedial action or response activities conducted by the Department [of the Interior] pursuant to section 107 or 113(f) [42 U.S.C. 9601, 9613(f)] of such Act [Pub. L. 96–510], shall be credited to this account, to be available until expended without further appropriation: *Provided further*, That hereafter such sums recovered from or paid by any party are not limited to monetary payments and may include stocks, bonds or other personal or real prop-

erty, which may be retained, liquidated, or otherwise disposed of by the Secretary and which shall be credited to this account.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. E, title I, Dec. 8, 2004, 118 Stat. 3041.

Pub. L. 108–108, title I, § 310, Nov. 10, 2003, 117 Stat. 1243.

Pub. L. 108–7, div. F, title I, Feb. 20, 2003, 117 Stat. 218.

Pub. L. 107–63, title I, Nov. 5, 2001, 115 Stat. 416.

Pub. L. 106–291, title I, Oct. 11, 2000, 114 Stat. 923.

Pub. L. 106–113, div. B, § 1000(a)(3) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A–136.

Pub. L. 105–277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–233.

Pub. L. 105–83, title I, Nov. 14, 1997, 111 Stat. 1544.

Pub. L. 104–208, div. A, title I, § 101(d) [title I], Sept. 30, 1996, 110 Stat. 3009–181, 3009–182.

Pub. L. 104–134, title I, § 101(c) [title I], Apr. 26, 1996, 110 Stat. 1321–156, 1321–157; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–332, title I, Sept. 30, 1994, 108 Stat. 2500.

RECOVERY OF COSTS

Pub. L. 104–303, title II, § 209, Oct. 12, 1996, 110 Stat. 3681, provided that: ''Amounts recovered under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) for any response action taken by the Secretary in support of the civil works program of the Department of the Army and any other amounts recovered by the Secretary from a contractor, insurer, surety, or other person to reimburse the Department of the Army for any expenditure for environmental response activities in support of the Army civil works program shall be credited to the appropriate trust fund account from which the cost of such response action has been paid or will be charged.''

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9608. Financial responsibility

(a) Establishment and maintenance by owner or operator of vessel; amount; failure to obtain certification of compliance

(1) The owner or operator of each vessel (except a nonself-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater) to cover the liability prescribed under paragraph (1) of section 9607(a) of this title. Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 60105 of title 46 of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and any other factors deemed relevant.

(b) Establishment and maintenance by owner or operator of production, etc., facilities; amount; adjustment; consolidated form of responsibility; coverage of motor carriers

(1) Beginning not earlier than five years after December 11, 1980, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after December 11, 1980, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or

defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements as quickly as can reasonably be achieved but in no event more than 4 years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this chapter shall be determined under section 31139 of title 49.

(c) Direct action

(1) Releases from vessels

In the case of a release or threatened release from a vessel, any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a) of this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this subchapter. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

(2) Releases from facilities

In the case of a release or threatened release from a facility, any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b) of this section, if the person liable under section 9607 of this title is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 9607 of this title who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 9607 of this title if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

(d) Limitation of guarantor liability

(1) Total liability

The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 9607 of this title for the purpose of satisfying the requirement for evidence of financial responsibility.

(2) Other liability

Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 9607 of this title or other applicable law.

(Pub. L. 96–510, title I, § 108, Dec. 11, 1980, 94 Stat. 2785; Pub. L. 99–499, title I, §§ 108, 127(c), Oct. 17, 1986, 100 Stat. 1631, 1692.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Bankruptcy Code, referred to in subsec. (c)(2), probably means a reference to Title 11, Bankruptcy.

CODIFICATION

In subsec. (a)(2), ''section 60105 of title 46'' substituted for ''section 4197 of the Revised Statutes of the United States'' on authority of Pub. L. 109–304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

In subsec. (b)(5), ''section 31139 of title 49'' substituted for ''section 30 of the Motor Carrier Act of 1980, Public Law 96–296'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–499, § 127(c)(1), inserted ''to cover the liability prescribed under paragraph (1) of section 9607(a) of this title'' after ''whichever is greater)''.

Subsec. (a)(4). Pub. L. 99–499, § 127(c)(2), added par. (4).

Subsec. (b)(2). Pub. L. 99–499, § 108(a), inserted provisions relating to evidence of financial responsibility and authority of the President regarding establishment of that evidence.

Subsec. (b)(3). Pub. L. 99–499, § 108(b), substituted ''as quickly as can reasonably be achieved but in no event more than 4 years'' for ''over a period of not less than three and no more than six years''.

Subsec. (c). Pub. L. 99–499, § 108(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as

follows: ''Any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this subchapter. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.''

Subsec. (d). Pub. L. 99–499, § 108(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Any guarantor acting in good faith against which claims under this chapter are asserted as a guarantor shall be liable under section 9607 of this title or section 9612(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under this section, and only to the extent that liability is not excluded by restrictive endorsement: *Provided*, That this subsection shall not alter the liability of any person under section 9607 of this title.''

§ 9609. Civil penalties and awards

(a) Class I administrative penalty

(1) Violations

A civil penalty of not more than $25,000 per violation may be assessed by the President in the case of any of the following—

(A) A violation of the requirements of section 9603(a) or (b) of this title (relating to notice).

(B) A violation of the requirements of section 9603(d)(2) of this title (relating to destruction of records, etc.).

(C) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.

(D) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).

(E) Any failure or refusal referred to in section 9622(*l*) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

(2) Notice and hearings

No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(3) Determining amount

In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(4) Review

Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(5) Subpoenas

The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Class II administrative penalty

A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the President in the case of any of the following—

(1) A violation of the notice requirements of section 9603(a) or (b) of this title.

(2) A violation of section 9603(d)(2) of this title (relating to destruction of records, etc.).

(3) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.

(4) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).

(5) Any failure or refusal referred to in section 9622(*l*) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed

and collected after notice and opportunity for hearing on the record in accordance with section 554 of title 5. In any proceeding for the assessment of a civil penalty under this subsection the President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(c) Judicial assessment

The President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation (or failure or refusal) continues in the case of any of the following—

(1) A violation of the notice requirements of section 9603(a) or (b) of this title.

(2) A violation of section 9603(d)(2) of this title (relating to destruction of records, etc.).

(3) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.

(4) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).

(5) Any failure or refusal referred to in section 9622(*l*) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

In the case of a second or subsequent violation (or failure or refusal), the amount of such penalty may be not more than $75,000 for each day during which the violation (or failure or refusal) continues. For additional provisions providing for judicial assessment of civil penalties for failure to comply with a request or order under section 9604(e) of this title (relating to information gathering and access authorities), see section 9604(e) of this title.

(d) Awards

The President may pay an award of up to $10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this chapter, including any violation of section 9603 of this title and any other violation referred to in this section. The President shall, by regulation, prescribe criteria for such an award and may pay any award under this subsection from the Fund, as provided in section 9611 of this title.

(e) Procurement procedures

Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this chapter, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this chapter and need not furnish for publication in the Commerce Business Daily or otherwise any notice of solicitation or synopsis with respect to such procurement.

(f) Savings clause

Action taken by the President pursuant to this section shall not affect or limit the President's authority to enforce any provisions of this chapter.

(Pub. L. 96–510, title I, § 109, Dec. 11, 1980, 94 Stat. 2787; Pub. L. 99–499, title I, § 109(c), Oct. 17, 1986, 100 Stat. 1633.)

AMENDMENTS

1986—Pub. L. 99–499 amended section generally. Prior to amendment, section read as follows: "Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 9608 of this title, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each day of violation."

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9610. Employee protection

(a) Activities of employee subject to protection

No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

(b) Administrative grievance procedure in cases of alleged violations

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged

violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this chapter.

(c) Assessment of costs and expenses against violator subsequent to issuance of order of abatement

Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Defenses

This section shall have no application to any employee who acting without discretion from his employer (or his agent) deliberately violates any requirement of this chapter.

(e) Presidential evaluations of potential loss of shifts of employment resulting from administration or enforcement of provisions; investigations; procedures applicable, etc.

The President shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this chapter, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore.[1] Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the President shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this chapter.

(Pub. L. 96–510, title I, § 110, Dec. 11, 1980, 94 Stat. 2787.)

[1] So in original.

§ 9611. Uses of Fund

(a) In general

For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 not more than $8,500,000,000 for the 5-year period beginning on October 17, 1986, and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund). The President shall use the money in the Fund for the following purposes:

(1) Payment of governmental response costs incurred pursuant to section 9604 of this title, including costs incurred pursuant to the Intervention on the High Seas Act [33 U.S.C. 1471 et seq.].

(2) Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 1321(c)[1] of title 33 and amended by section 9605 of this title: *Provided*, *however*, That such costs must be approved under said plan and certified by the responsible Federal official.

(3) Payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 9612 of this title, including those costs set out in subsection 9612(c)(3) of this title.

(4) Payment of costs specified under subsection (c) of this section.

(5) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 9617(e) of this title (relating to public participation grants for technical assistance).

(6) LEAD CONTAMINATED SOIL.—Payment of not to exceed $15,000,000 for the costs of a pilot program for removal, decontamination, or other action with respect to lead-contaminated soil in one to three different metropolitan areas.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this subchapter.

[1] See References in Text note below.

(b) Additional authorized purposes

(1) In general

Claims asserted and compensable but unsatisfied under provisions of section 1321 of title 33, which are modified by section 304 of this Act may be asserted against the Fund under this subchapter; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this subchapter for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however*, That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State, or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.

(2) Limitation on payment of natural resource claims

(A) General requirements

No natural resource claim may be paid from the Fund unless the President determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 9607 of this title.

(B) Definition

As used in this paragraph, the term ''natural resource claim'' means any claim for injury to, or destruction or loss of, natural resources. The term does not include any claim for the costs of natural resource damage assessment.

(c) Peripheral matters and limitations

Uses of the Fund under subsection (a) of this section include—

(1) The costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance.

(2) The costs of Federal or State or Indian tribe efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance.

(3) Subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances.

(4) Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 9604(i) of this title, including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases.

(5) Subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this chapter and section 1321 of title 33, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan.

(6) Subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

(7) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 9605(d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 9605(d) of this title (relating to petitions for assessment of release).

(8) CONTRACT COSTS UNDER SECTION 9604(a)(1).—The costs of contracts or arrangements entered into under section 9604(a)(1) of this title to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

(9) ACQUISITION COSTS UNDER SECTION 9604(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 9604(j) of this title (relating to acquisition of property).

(10) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 9660.—The cost of carrying out section 9660 of this title (relating to research, development, and demonstration), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (n) of this section.

(11) LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursements to local governments under

section 9623 of this title, except that during the 8-fiscal year period beginning October 1, 1986, not more than 0.1 percent of the total amount appropriated from the Fund may be used for such reimbursements.

(12) WORKER TRAINING AND EDUCATION GRANTS.—The costs of grants under section 9660a of this title for training and education of workers to the extent that such costs do not exceed $20,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994.

(13) AWARDS UNDER SECTION 9609.—The costs of any awards granted under section 9609(d) of this title.

(14) LEAD POISONING STUDY.—The cost of carrying out the study under subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986 (relating to lead poisoning in children).

(d) Additional limitations

(1) No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(e) Funding requirements respecting moneys in Fund; limitation on certain claims; Fund use outside Federal property boundaries

(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under subchapter II[2] of this chapter shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section. No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) Obligation of moneys by Federal officials; obligation of moneys or settlement of claims by State officials or Indian tribe

The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State or Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 9604(d) of this title.

(g) Notice to potential injured parties by owner and operator of vessel or facility causing release of substance; rules and regulations

The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this subchapter. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

(h) Repealed. Pub. L. 99–499, title I, § 111(c)(2), Oct. 17, 1986, 100 Stat. 1643

(i) Restoration, etc., of natural resources

Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this chapter for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation, after adequate public notice and op-

[2] See References in Text note below.

portunity for hearing and consideration of all public comment.

(j) Use of Post-closure Liability Fund

The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 9607(k) of this title, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 9607 of this title or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

(k) Inspector General

In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this chapter shall conduct an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a sample of agreements with States (in accordance with the provisions of the Single Audit Act [31 U.S.C. 7501 et seq.]) carrying out response actions under this subchapter and an examination of remedial investigations and feasibility studies prepared for remedial actions. The Inspector General shall submit to the Congress an annual report regarding the audit report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each department, agency, or instrumentality of the United States shall cooperate with its inspector general in carrying out this subsection.

(*l*) Foreign claimants

To the extent that the provisions of this chapter permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if—

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(2) the claimant is not otherwise compensated for his loss;

(3) the hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(m) Agency for Toxic Substances and Disease Registry

There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) of this section and section 9604(i) of this title not less than $50,000,000 per fiscal year for each of fiscal years 1987 and 1988, not less than $55,000,000 for fiscal year 1989, and not less than $60,000,000 per fiscal year for each of fiscal years 1990, 1991, 1992, 1993, and 1994. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.

(n) Limitations on research, development, and demonstration program

(1) Section 9660(b)

For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 9660(b) of this title (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

(2) Section 9660(a)

From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 9660(a) of this title (relating to hazardous substance research, demonstration, and training activities):

(A) For the fiscal year 1987, $3,000,000.

(B) For the fiscal year 1988, $10,000,000.

(C) For the fiscal year 1989, $20,000,000.

(D) For the fiscal year 1990, $30,000,000.

(E) For each of the fiscal years 1991, 1992, 1993, and 1994, $35,000,000.

No more than 10 percent of such amounts shall be used for training under section 9660(a) of this title in any fiscal year.

(3) Section 9660(d)

For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 9660(d) of this title (relating to university hazardous substance research centers).

(*o*) Notification procedures for limitations on certain payments

Not later than 90 days after October 17, 1986, the President shall develop and implement procedures to adequately notify, as soon as practicable after a site is included on the National Priorities List, concerned local and State officials and other concerned persons of the limitations, set forth in subsection (a)(2) of this section, on the payment of claims for necessary response costs incurred with respect to such site.

(p) General revenue share of Superfund

(1) In general

The following sums are authorized to be appropriated, out of any money in the Treasury

not otherwise appropriated, to the Hazardous Substance Superfund:

(A) For fiscal year 1987, $212,500,000.
(B) For fiscal year 1988, $212,500,000.
(C) For fiscal year 1989, $212,500,000.
(D) For fiscal year 1990, $212,500,000.
(E) For fiscal year 1991, $212,500,000.
(F) For fiscal year 1992, $212,500,000.
(G) For fiscal year 1993, $212,500,000.
(H) For fiscal year 1994, $212,500,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 9631(b)[3] of this title) as has not been appropriated before the beginning of the fiscal year involved.

(2) Computation

The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 9507(b)(2) of title 26 for the prior fiscal year.

(Pub. L. 96–510, title I, § 111, Dec. 11, 1980, 94 Stat. 2788; Pub. L. 99–499, title I, § 111, title II, § 207(d), Oct. 17, 1986, 100 Stat. 1642, 1706; Pub. L. 101–144, title III, Nov. 9, 1989, 103 Stat. 857; Pub. L. 101–508, title VI, § 6301, Nov. 5, 1990, 104 Stat. 1388–319.)

REFERENCES IN TEXT

Title II of Public Law 99–160 (relating to payment to the Hazardous Substances Trust Fund), referred to in subsec. (a), is title II of Pub. L. 99–160, Nov. 25, 1985, 99 Stat. 914. Provisions of title II relating to the Hazardous Substance Response Trust Fund are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Intervention on the High Seas Act, referred to in subsec. (a)(1), is Pub. L. 93–248, Feb. 5, 1974, 88 Stat. 8, as amended, which is classified generally to chapter 28 (§ 1471 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of Title 33 and Tables.

Section 1321(c) of title 33, referred to in subsec. (a)(2), was amended generally by Pub. L. 101–380, title IV, § 4201(a), Aug. 18, 1990, 104 Stat. 523, and no longer contains provisions establishing a National Contingency Plan. However, such provisions are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

Section 304 of this Act, referred to in subsec. (b), is section 304 of Pub. L. 96–510, title III, Dec. 11, 1980, 94 Stat. 2809, which enacted section 9654 of this title and amended section 1364 of Title 33.

Fishery conservation zone, referred to in subsec. (b), probably means the fishery conservation zone established by section 1811 of Title 16, Conservation, which as amended generally by Pub. L. 99–659, title I, § 101(b), Nov. 14, 1986, 100 Stat. 3706, relates to United States sovereign rights and fishery management authority over fish within the exclusive economic zone as defined in section 1802 of Title 16.

Subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (c)(14), is section 118(f) of Pub. L. 99–499, title I, Oct. 17, 1986, 100 Stat. 1657, which is not classified to the Code.

Subchapter II of this chapter, referred to in subsec. (e)(2), was in the original "title II of this Act", meaning title II of Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96–510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99–499, title V, §§ 514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Single Audit Act, referred to in subsec. (k), probably means the Single Audit Act of 1984, Pub. L. 98–502, Oct. 19, 1984, 98 Stat. 2327, as amended, which is classified generally to chapter 75 (§ 7501 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 31 and Tables.

The Outer Continental Shelf Lands Act as amended, referred to in subsec. (*l*)(3), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

The Deepwater Port Act of 1974, as amended, referred to in subsec. (*l*)(3), is Pub. L. 93–627, Jan. 3, 1975, 88 Stat. 2126, as amended, which is classified generally to chapter 29 (§ 1501 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 33 and Tables.

Section 9631(b) of this title, referred to in subsec. (p)(1), was repealed by Pub. L. 99–499, title V, § 517(c)(1), Oct. 17, 1986, 100 Stat. 1774.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508, § 6301(1), inserted "and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994," after "October 17, 1986," in introductory provisions.

Subsec. (c)(11). Pub. L. 101–508, § 6301(2), substituted "8-fiscal year period" for "5-fiscal-year period".

Subsec. (c)(12). Pub. L. 101–508, § 6301(3), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (m). Pub. L. 101–508, § 6301(4), substituted "1990, 1991, 1992, 1993, and 1994" for "1990 and 1991".

Subsec. (n)(1). Pub. L. 101–508, § 6301(5), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (n)(2)(E). Pub. L. 101–508, § 6301(6), added subpar. (E) and struck out former subpar. (E) which read as follows: "For the fiscal year 1991, $35,000,000."

Subsec. (n)(3). Pub. L. 101–508, § 6301(7), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (p)(1)(F) to (H). Pub. L. 101–508, § 6301(8), added subpars. (F) to (H).

1989—Subsec. (c)(12). Pub. L. 101–144, which directed that section 9611(c)(12) of the Superfund Amendments and Reauthorization Act of 1986 be amended by substituting "$20,000,000" for "$10,000,000", was executed by making the substitution in subsec. (c)(12) of this section, as the probable intent of Congress because the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, does not contain a section 9611, but section 111(d)(2) of Pub. L. 99–499 enacted subsec. (c)(12) of this section.

1986—Subsec. (a). Pub. L. 99–499, § 111(a), (b), inserted heading and "For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 not more than $8,500,000,000 for the 5-year period beginning on October 17, 1986, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund)." in introductory provisions, substituted "Payment" for "payment" in pars. (1) to (4), a

[3] See References in Text note below.

period for a semicolon in pars. (1) and (2), and a period for "; and" in par. (3), and added pars. (5) and (6).

Subsec. (b). Pub. L. 99–499, §§ 111(c)(1), 207(d)(1), designated existing provisions as par. (1), inserted ", or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation" in par. (1), and added par. (2).

Subsec. (c). Pub. L. 99–499, §§ 111(d), 207(d)(2), in par. (1), substituted "The" for "the" and substituted a period for the semicolon at end, in par. (2), substituted "The" for "the", inserted "or Indian tribe" and substituted a period for the semicolon at end, in par. (3), substituted "Subject" for "subject" and substituted a period for the semicolon at end, in par. (4), substituted "Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 9604(i) of this title, including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles" for "the costs of epidemiologic studies" and substituted a period for the semicolon at end, in par. (5), substituted a period for "; and", in pars. (5) and (6), substituted "Subject" for "subject", and added pars. (7) to (14).

Subsec. (e)(2). Pub. L. 99–499, § 111(e), inserted at end "No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances."

Subsec. (e)(3). Pub. L. 99–499, § 111(f), inserted before the period at end "; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party".

Subsec. (f). Pub. L. 99–499, § 207(d)(3), inserted "or Indian tribe".

Subsec. (h). Pub. L. 99–499, § 111(c)(2), struck out subsec. (h) which read as follows:

"(1) In accordance with regulations promulgated under section 9651(c) of this title, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this chapter and section 1321(f)(4) and (5) of title 33, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 9605 of this title, and such officials shall act for the President as trustee under this section and section 1321(f)(5) of title 33.

"(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this chapter and section 1321(f)(4) and (5) of title 33 shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 9607 of this title or a Federal agency) in any judicial or adjudicatory administrative proceeding under this chapter or section 1321 of title 33."

Subsec. (i). Pub. L. 99–499, § 207(d)(4), inserted "and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation," after "State,".

Subsec. (k). Pub. L. 99–499, § 111(g), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection."

Subsecs. (m) to (p). Pub. L. 99–499, § 111(h), (i), added subsecs. (m) to (p).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (k) of this section relating to the requirement that the Inspector General submit an annual report to Congress on the audit report required under subsec. (k), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 7th item on page 151 of House Document No. 103–7.

SATISFACTION OF SUPERFUND AUDIT REQUIREMENTS BY INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

Pub. L. 108–375, div. A, title III, § 311, Oct. 28, 2004, 118 Stat. 1842, provided that:

"(a) SATISFACTION OF REQUIREMENTS.—The Inspector General of the Department of Defense shall be deemed to be in compliance with the requirements of section 111(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(k)) if the Inspector General conducts periodic audits of the payments, obligations, reimbursements, and other uses of the Hazardous Substance Superfund by the Department of Defense, even if such audits do not occur on an annual basis.

"(b) REPORTS TO CONGRESS ON AUDITS.—The Inspector General shall submit to Congress a report on each audit conducted by the Inspector General as described in subsection (a)."

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9612. Claims procedure

(a) Claims against Fund for response costs

No claim may be asserted against the Fund pursuant to section 9611(a) of this title unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 9607 of this title. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

(b) Forms and procedures applicable

(1) Prescribing forms and procedures

The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any

person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.

(2) Payment or request for hearing

The President may, if satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim, except that no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within 30 days after receiving notice of the President's decision, request an administrative hearing.

(3) Burden of proof

In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

(4) Decisions

All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed sixty days.

(5) Finality and appeal

All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within 30 days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of discretion.

(6) Payment

Within 20 days after the expiration of the appeal period for any administrative decision concerning an award, or within 20 days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.

(c) Subrogation rights; actions maintainable

(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this chapter to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this chapter or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this subchapter, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

(d) Statute of limitations

(1) Claims for recovery of costs

No claim may be presented under this section for recovery of the costs referred to in section 9607(a) of this title after the date 6 years after the date of completion of all response action.

(2) Claims for recovery of damages

No claim may be presented under this section for recovery of the damages referred to in section 9607(a) of this title unless the claim is presented within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which final regulations are promulgated under section 9651(c) of this title.

(3) Minors and incompetents

The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such person's incompetency ends or the date on which a legal representative is duly appointed for such incompetent person.

(e) Other statutory or common law claims not waived, etc.

Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this subchapter shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this subchapter arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this subchapter shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this subchapter arising from the same incident, transaction, or set of circumstances.

(f) Double recovery prohibited

Where the President has paid out of the Fund for any response costs or any costs specified

under section 9611(c)(1) or (2) of this title, no other claim may be paid out of the Fund for the same costs.

(Pub. L. 96–510, title I, § 112, Dec. 11, 1980, 94 Stat. 2792; Pub. L. 99–499, title I, §§ 109(a)(3), 112, Oct. 17, 1986, 100 Stat. 1633, 1646.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–499, § 112(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''All claims which may be asserted against the Fund pursuant to section 9611 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 9607 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person or to present the claim to the Fund for payment.''

Subsec. (b)(1). Pub. L. 99–499, § 112(b), added heading. Pub. L. 99–499, § 109(a)(3), substituted ''in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both'' for ''up to $5,000 or imprisoned for not more than one year, or both''.

Subsec. (b)(2) to (6). Pub. L. 99–499, § 112(b), added pars. (2) to (6) and struck out former pars. (2) to (4) which related to the settlement and arbitration of claims against liable persons and against the Fund.

Subsec. (d). Pub. L. 99–499, § 112(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''No claim may be presented, nor may an action be commenced for damages under this subchapter, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or December 11, 1980, whichever is later: *Provided, however*, That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.''

Subsec. (f). Pub. L. 99–499, § 112(d), added subsec. (f).

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9613. Civil proceedings

(a) Review of regulations in Circuit Court of Appeals of the United States for the District of Columbia

Review of any regulation promulgated under this chapter may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Jurisdiction; venue

Except as provided in subsections (a) and (h) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this chapter, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) Controversies or other matters resulting from tax collection or tax regulation review

The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by subchapter II[1] of this chapter, or to the review of any regulation promulgated under title 26.

(d) Litigation commenced prior to December 11, 1980

No provision of this chapter shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to December 11, 1980.

(e) Nationwide service of process

In any action by the United States under this chapter, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

(f) Contribution

(1) Contribution

Any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title.

(2) Settlement

A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(3) Persons not party to settlement

(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action

[1] See References in Text note below.

against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

(g) Period in which action may be brought

(1) Actions for natural resource damages

Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 9601(6) of this title) under this chapter, unless that action is commenced within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which regulations are promulgated under section 9651(c) of this title.

With respect to any facility listed on the National Priorities List (NPL), any Federal facility identified under section 9620 of this title (relating to Federal facilities), or any vessel or facility at which a remedial action under this chapter is otherwise scheduled, an action for damages under this chapter must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this chapter with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 9604(b) of this title or section 9620 of this title (relating to Federal facilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before October 17, 1986.

(2) Actions for recovery of costs

An initial action for recovery of the costs referred to in section 9607 of this title must be commenced—

(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 9604(c)(1)(C) of this title for continued response action; and

(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 9607 of this title for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 9607 of this title for recovery of costs at any time after such costs have been incurred.

(3) Contribution

No action for contribution for any response costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this chapter for recovery of such costs or damages, or

(B) the date of an administrative order under section 9622(g) of this title (relating to de minimis settlements) or 9622(h) of this title (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

(4) Subrogation

No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this subchapter more than 3 years after the date of payment of such claim.

(5) Actions to recover indemnification payments

Notwithstanding any other provision of this subsection, where a payment pursuant to an indemnification agreement with a response action contractor is made under section 9619 of this title, an action under section 9607 of this title for recovery of such indemnification payment from a potentially responsible party may be brought at any time before the expiration of 3 years from the date on which such payment is made.

(6) Minors and incompetents

The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(h) Timing of review

No Federal court shall have jurisdiction under Federal law other than under section 1332 of

title 28 (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 9621 of this title (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 9604 of this title, or to review any order issued under section 9606(a) of this title, in any action except one of the following:

(1) An action under section 9607 of this title to recover response costs or damages or for contribution.

(2) An action to enforce an order issued under section 9606(a) of this title or to recover a penalty for violation of such order.

(3) An action for reimbursement under section 9606(b)(2) of this title.

(4) An action under section 9659 of this title (relating to citizens suits) alleging that the removal or remedial action taken under section 9604 of this title or secured under section 9606 of this title was in violation of any requirement of this chapter. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site.

(5) An action under section 9606 of this title in which the United States has moved to compel a remedial action.

(i) Intervention

In any action commenced under this chapter or under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] in a court of the United States, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the President or the State shows that the person's interest is adequately represented by existing parties.

(j) Judicial review

(1) Limitation

In any judicial action under this chapter, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(2) Standard

In considering objections raised in any judicial action under this chapter, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

(3) Remedy

If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award (A) only the response costs or damages that are not inconsistent with the national contingency plan, and (B) such other relief as is consistent with the National Contingency Plan.

(4) Procedural errors

In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(k) Administrative record and participation procedures

(1) Administrative record

The President shall establish an administrative record upon which the President shall base the selection of a response action. The administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location.

(2) Participation procedures

(A) Removal action

The President shall promulgate regulations in accordance with chapter 5 of title 5 establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the President will base the selection of removal actions and on which judicial review of removal actions will be based.

(B) Remedial action

The President shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the President will base the selection of remedial actions and on which judicial review of remedial actions will be based. The procedures developed under this subparagraph shall include, at a minimum, each of the following:

(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

(ii) A reasonable opportunity to comment and provide information regarding the plan.

(iii) An opportunity for a public meeting in the affected area, in accordance with section 9617(a)(2) of this title (relating to public participation).

(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 9617(d) of this title. The President shall promulgate regulations in accordance with chapter 5 of title 5 to carry out the requirements of this subparagraph.

(C) Interim record

Until such regulations under subparagraphs (A) and (B) are promulgated, the administrative record shall consist of all items developed and received pursuant to current

procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this chapter shall not include an adjudicatory hearing.

(D) Potentially responsible parties

The President shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability.

(*l*) Notice of actions

Whenever any action is brought under this chapter in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.

(Pub. L. 96–510, title I, § 113, Dec. 11, 1980, 94 Stat. 2795; Pub. L. 99–499, title I, § 113, Oct. 17, 1986, 100 Stat. 1647; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in subsec. (c), was in the original ''title II of this Act'', meaning title II of Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96–510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99–499, title V, §§ 514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Solid Waste Disposal Act, referred to in subsec. (i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–499, § 113(c)(1), substituted ''subsections (a) and (h)'' for ''subsection (a)''.

Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsecs. (e) to (*l*). Pub. L. 99–499, § 113(a), (b), (c)(2), added subsecs. (e) to (*l*).

§ 9614. Relationship to other law

(a) Additional State liability or requirements with respect to release of substances within State

Nothing in this chapter shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

(b) Recovery under other State or Federal law of compensation for removal costs or damages, or payment of claims

Any person who receives compensation for removal costs or damages or claims pursuant to this chapter shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this chapter.

(c) Recycled oil

(1) Service station dealers, etc.

No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 9607 of this title, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 9606 of this title against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 9607 of this title, if such recycled oil—

(A) is not mixed with any other hazardous substance, and

(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act [42 U.S.C. 6935] and other applicable authorities.

Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release or threatened release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action.

(2) Presumption

Solely for the purposes of this subsection, a service station dealer may presume that a small quantity of used oil is not mixed with other hazardous substances if it—

(A) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and

(B) is presented, by such owner, to the dealer for collection, accumulation, and delivery to an oil recycling facility.

(3) Definition

For purposes of this subsection, the terms ''used oil'' and ''recycled oil'' have the same meanings as set forth in sections 1004(36) and 1004(37) of the Solid Waste Disposal Act [42 U.S.C. 6903(36), (37)] and regulations promulgated pursuant to that Act [42 U.S.C. 6901 et seq.].

(4) Effective date

The effective date of paragraphs (1) and (2) of this subsection shall be the effective date of regulations or standards promulgated under section 3014 of the Solid Waste Disposal Act

[42 U.S.C. 6935] that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act [42 U.S.C. 6921 et seq., 6991 et seq.].

(d) Financial responsibility of owner or operator of vessel or facility under State or local law, rule, or regulation

Except as provided in this subchapter, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this subchapter shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this subchapter shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

(Pub. L. 96–510, title I, § 114, Dec. 11, 1980, 94 Stat. 2795; Pub. L. 99–499, title I, § 114(a), Oct. 17, 1986, 100 Stat. 1652.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(3), (4), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. Subtitles C and I of the Solid Waste Disposal Act are classified generally to subchapters III (§ 6921 et seq.) and IX (§ 6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–499 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Except as provided in this chapter, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this subchapter. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.''

§ 9615. Presidential delegation and assignment of duties or powers and promulgation of regulations

The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this subchapter.

(Pub. L. 96–510, title I, § 115, Dec. 11, 1980, 94 Stat. 2796.)

EX. ORD. NO. 12580. SUPERFUND IMPLEMENTATION

Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2923, as amended by Ex. Ord. No. 12777, § 1(a), Oct. 18, 1991, 56 F.R. 54757; Ex. Ord. No. 13016, Aug. 28, 1996, 61 F.R. 45871; Ex. Ord. No. 13286, § 43, Feb. 28, 2003, 68 F.R. 10627; Ex. Ord. No. 13308, June 20, 2003, 68 F.R. 37691, provided:

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9615 *et seq.*) (''the Act''), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. *National Contingency Plan*. (a)(1) The National Contingency Plan (''the NCP''), shall provide for a National Response Team (''the NRT'') composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.

(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Department of Homeland Security, Environmental Protection Agency,, [sic] United States Coast Guard, and the Nuclear Regulatory Commission.

(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency (''EPA'') shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies' representatives shall be co-chairs of the Regional Response Teams (''the RRTs''). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).

(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.

(b)(1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105(a), (b), (c), (g) and (h), 125, and 301(f) of the Act [42 U.S.C. 9605(a), (b), (c), (g), (h), 9625, 9651(f)], by Section 311(d)(1) of the Federal Water Pollution Control Act [33 U.S.C. 1321(d)(1)], and by Section 4201(c) of the Oil Pollution Act of 1990 [Pub. L. 101–380, 33 U.S.C. 1321 note] is delegated to the Administrator of the Environmental Protection Agency (''the Administrator'').

(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499) (''SARA'') [100 Stat. 1662] is delegated to the Administrator.

(c) In accord with Section 107(f)(2)(A) of the Act [42 U.S.C. 9607(f)(2)(A)], Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), and Section 1006(b)(1) and (2) of the Oil Pollution Act of 1990 [33 U.S.C. 2706(b)(1), (2)], the following shall be among those designated in the NCP as Federal trustees for natural resources:

(1) Secretary of Defense;
(2) Secretary of the Interior;
(3) Secretary of Agriculture;
(4) Secretary of Commerce;
(5) Secretary of Energy.

In the event of a spill, the above named Federal trustees for natural resources shall designate one trust-

ee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.

(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.

(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget (''OMB'').

SEC. 2. *Response and Related Authorities.* (a) The functions vested in the President by the first sentence of Section 104(b)(1) of the Act [42 U.S.C. 9604(b)(1)] relating to ''illness, disease, or complaints thereof'' are delegated to the Secretary of Health and Human Services who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service.

(b) The functions vested in the President by Sections 104(e)(7)(C), 113(k)(2), 119(c)(7), and 121(f)(1) of the Act [42 U.S.C. 9604(e)(7)(C), 9613(k)(2), 9619(c)(7), 9621(f)(1)], relating to promulgation of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the NRT.

(c)(1) The functions vested in the President by Sections 104(a) and the second sentence of 126(b) of the Act [42 U.S.C. 9604(a), 9626(b)], to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency.

(2) Subject to subsection (b) of this Section, the functions vested in the President by Sections 117(a) and (c), and 119 of the Act [42 U.S.C. 9617(a), (c), 9619], to the extent such authority is needed to carry out the functions delegated under paragraph (1) of this subsection, are delegated to the Director of the Federal Emergency Management Agency.

(d) Subject to subsections (a), (b) and (c) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9613(k), 9617(a), (c), 9619, 9621] are delegated to the Secretaries of Defense and Energy, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated. These functions must be exercised consistent with the requirements of Section 120 of the Act [42 U.S.C. 9620].

(e)(1) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(a), (b), and (c)(4), and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9621] are delegated to the heads of Executive departments and agencies, with respect to remedial actions for releases or threatened releases which are not on the National Priorities List (''the NPL'') and removal actions other than emergencies, where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated. The Administrator shall define the term ''emergency'', solely for the purposes of this subsection, either by regulation or by a memorandum of understanding with the head of an Executive department or agency.

(2) Subject to subsections (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(b)(2), 113(k), 117(a) and (c), and 119 of the Act [42 U.S.C. 9604(b)(2), 9613(k), 9617(a), (c), 9619] are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated.

(f) Subject to subsections (a), (b), (c), (d), and (e) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9613(k), 9617(a), (c), 9619, 9621] are delegated to the Secretary of the Department in which the Coast Guard is operating (''the Coast Guard''), with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(g) Subject to subsections (a), (b), (c), (d), (e), and (f) of this Section, the functions vested in the President by Sections 101(24), 104(a), (b), (c)(4) and (c)(9), 113(k), 117(a) and (c), 119, 121, and 126(b) of the Act [42 U.S.C. 9601(24), 9604(a), (b), (c)(4), (9), 9613(k), 9617(a), (c), 9619, 9621, 9626(b)] are delegated to the Administrator. The Administrator's authority under Section 119 of the Act is retroactive to the date of enactment of SARA [Oct. 17, 1986].

(h) The functions vested in the President by Section 104(c)(3) of the Act [42 U.S.C. 9604(c)(3)] are delegated to the Administrator, with respect to providing assurances for Indian tribes, to be exercised in consultation with the Secretary of the Interior.

(i) Subject to subsections (d), (e), (f), (g) and (h) of this Section, the functions vested in the President by Section 104(c) and (d) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by this Section.

(j)(1) The functions vested in the President by Section 104(e)(5)(A) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, to be exercised with the concurrence of the Attorney General.

(2) Subject to subsection (b) of this Section and paragraph (1) of this subsection, the functions vested in the President by Section 104(e) are delegated to the heads of Executive departments and agencies in order to carry out their functions under this Order or the Act.

(k) The functions vested in the President by Section 104(f), (g), (h), (i)(11), and (j) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Section. The exercise of authority under Section 104(h) of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

SEC. 3. *Cleanup Schedules.* (a) The functions vested in the President by Sections 116(a) and the first two sentences of 105(d) of the Act [42 U.S.C. 9616(a), 9605(d)] are delegated to the heads of Executive departments and agencies with respect to facilities under the jurisdiction, custody or control of those departments and agencies.

(b) Subject to subsection (a) of this Section, the functions vested in the President by Sections 116 and 105(d) are delegated to the Administrator.

SEC. 4. *Enforcement.* (a) The functions vested in the President by Sections 109(d) and 122(e)(3)(A) of the Act [42 U.S.C. 9609(d), 9622(e)(3)(A)], relating to development of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(b)(1) Subject to subsection (a) of this Section, the functions vested in the President by Section 122 [42 U.S.C. 9622] (except subsection (b)(1)) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive depart-

ments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(2) Subject to subsection (a) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Section 122 of the Act, are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(c)(1) Subject to subsection[s] (a) and (b)(1) of this Section, the functions vested in the President by Sections 106(a) and 122 of the Act [42 U.S.C. 9606(a), 9622] are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(2) Subject to subsection[s] (a) and (b)(2) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Sections 103(a) and (b), and 122 of the Act [42 U.S.C. 9603(a), (b), 9622], are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(3) Subject to subsections (a) and (b)(1) of this section, the functions vested in the President by sections 106(a) [42 U.S.C. 9606(a)] and 122 [42 U.S.C. 9622] (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Secretary of Energy, to be exercised only with the concurrence of the Coast Guard, with respect to any release or threatened release in the coastal zone, Great Lakes waters, ports, and harbors, affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Coast Guard is the lead Federal agency for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.

(d)(1) Subject to subsections (a), (b)(1), and (c)(1) of this Section, the functions vested in the President by Sections 106 and 122 of the Act [42 U.S.C. 9606, 9622] are delegated to the Administrator.

(2) Subject to subsections (a), (b)(2), and (c)(2) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Sections 103 and 122 of the Act [42 U.S.C. 9603, 9622], are delegated to the Administrator.

(3) Subject to subsections (a), (b)(1), and (c)(1) of this section, the functions vested in the President by sections 106(a) [42 U.S.C. 9606(a)] and 122 [42 U.S.C. 9622] (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Department of Energy, to be exercised only with the concurrence of the Administrator, with respect to any release or threatened release affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Administrator is the lead Federal official for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.

(e) Notwithstanding any other provision of this Order, the authority under Sections 104(e)(5)(A) and 106(a) of the Act [42 U.S.C. 9604(e)(5)(A), 9606(a)] to seek information, entry, inspection, samples, or response actions from Executive departments and agencies may be exercised only with the concurrence of the Attorney General.

SEC. 5. *Liability*. (a) The function vested in the President by Section 107(c)(1)(C) of the Act [42 U.S.C. 9607(c)(1)(C)] is delegated to the Secretary of Transportation.

(b) The functions vested in the President by Section 107(c)(3) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports and harbors.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 107(c)(3) of the Act are delegated to the Administrator.

(d) The functions vested in the President by Section 107(f)(1) of the Act are delegated to each of the Federal trustees for natural resources designated in the NCP for resources under their trusteeship.

(e) The functions vested in the President by Section 107(f)(2)(B) of the Act, to receive notification of the state natural resource trustee designations, are delegated to the Administrator.

(f) The functions vested in the President by Section 107(*o*) and (p) of the Act are delegated to the heads of the Executive departments and agencies, to be exercised in consultation with the Administrator, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody, or control of those departments and agencies.

(g) Subject to subsection (f) of this Section, the functions vested in the President by Section 107(*o*) and (p) of the Act are delegated to the Administrator except that, with respect to determinations regarding natural resource restoration, the Administrator shall make such determinations in consultation with the appropriate Federal natural resource trustee.

SEC. 6. *Litigation*. (a) Notwithstanding any other provision of this Order, any representation pursuant to or under this Order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Act shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this Order, the authority under the Act to require the Attorney General to commence litigation is retained by the President.

(c) The functions vested in the President by Section 113(g) of the Act [42 U.S.C. 9613(g)], to receive notification of a natural resource trustee's intent to file suit, are delegated to the heads of Executive departments and agencies with respect to response actions for which they have been delegated authority under Section 2 of this Order. The Administrator shall promulgate procedural regulations for providing such notification.

(d) The functions vested in the President by Sections [sic] 310(d) and (e) of the Act [42 U.S.C. 9659(d), (e)], relating to promulgation of regulations, are delegated to the Administrator.

SEC. 7. *Financial Responsibility*. (a) The functions vested in the President by Section 107(k)(4)(B) of the Act [42 U.S.C. 9607(k)(4)(B)] are delegated to the Secretary of

the Treasury. The Administrator will provide the Secretary with such technical information and assistance as the Administrator may have available.

(b)(1) The functions vested in the President by Section 108(a)(1) of the Act [42 U.S.C. 9608(a)(1)] are delegated to the Coast Guard.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Section 108(a)(1) of the Act, are delegated to the Coast Guard.

(c)(1) The functions vested in the President by Section 108(b) of the Act are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(3) of the Act, are delegated to the Secretary of Transportation.

(3) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(b) of the Act, are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(d)(1) Subject to subsection (c)(1) of this Section, the functions vested in the President by Section 108(a)(4) and (b) of the Act are delegated to the Administrator.

(2) Subject to Section 4(a) of this Order and subsection (c)(3) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(4) and (b) of the Act, are delegated to the Administrator.

SEC. 8. *Employee Protection and Notice to Injured*. (a) The functions vested in the President by Section 110(e) of the Act [42 U.S.C. 9610(e)] are delegated to the Administrator.

(b) The functions vested in the President by Section 111(g) of the Act [42 U.S.C. 9611(g)] are delegated to the Secretaries of Defense and Energy with respect to releases from facilities or vessels under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 111(g) of the Act are delegated to the Administrator.

SEC. 9. *Management of the Hazardous Substance Superfund and Claims*. (a) The functions vested in the President by Section 111(a) of the Act [42 U.S.C. 9611(a)] are delegated to the Administrator, subject to the provisions of this Section and other applicable provisions of this Order.

(b) The Administrator shall transfer to other agencies, from the Hazardous Substance Superfund out of sums appropriated, such amounts as the Administrator may determine necessary to carry out the purposes of the Act. These amounts shall be consistent with the President's Budget, within the total approved by the Congress, unless a revised amount is approved by OMB. Funds appropriated specifically for the Agency for Toxic Substances and Disease Registry (''ATSDR''), shall be directly transferred to ATSDR, consistent with fiscally responsible investment of trust fund money.

(c) The Administrator shall chair a budget task force composed of representatives of Executive departments and agencies having responsibilities under this Order or the Act. The Administrator shall also, as part of the budget request for the Environmental Protection Agency, submit to OMB a budget for the Hazardous Substance Superfund which is based on recommended levels developed by the budget task force. The Administrator may prescribe reporting and other forms, procedures, and guidelines to be used by the agencies of the Task Force in preparing the budget request, consistent with budgetary reporting requirements issued by OMB. The Administrator shall prescribe forms to agency task force members for reporting the expenditure of funds on a site specific basis.

(d) The Administrator and each department and agency head to whom funds are provided pursuant to this Section, with respect to funds provided to them, are authorized in accordance with Section 111(f) of the Act [42 U.S.C. 9611(f)] to designate Federal officials who may obligate such funds.

(e) The functions vested in the President by Section 112 of the Act [42 U.S.C. 9612] are delegated to the Administrator for all claims presented pursuant to Section 111 of the Act.

(f) The functions vested in the President by Section 111(o) of the Act are delegated to the Administrator.

(g) The functions vested in the President by Section 117(e) of the Act [42 U.S.C. 9617(e)] are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(h) The functions vested in the President by Section 123 of the Act [42 U.S.C. 9623] are delegated to the Administrator.

(i) Funds from the Hazardous Substance Superfund may be used, at the discretion of the Administrator or the Coast Guard, to pay for removal actions for releases or threatened releases from facilities or vessels under the jurisdiction, custody or control of Executive departments and agencies but must be reimbursed to the Hazardous Substance Superfund by such Executive department or agency.

SEC. 10. *Federal Facilities*. (a) When necessary, prior to selection of a remedial action by the Administrator under Section 120(e)(4)(A) of the Act [42 U.S.C. 9620(e)(4)(A)], Executive agencies shall have the opportunity to present their views to the Administrator after using the procedures under Section 1–6 of Executive Order No. 12088 of October 13, 1978 [set out as a note under section 4321 of this title], or any other mutually acceptable process. Notwithstanding subsection 1–602 of Executive Order No. 12088, the Director of the Office of Management and Budget shall facilitate resolution of any issues.

(b) Executive Order No. 12088 of October 13, 1978, is amended by renumbering the current Section 1–802 as Section 1–803 and inserting the following new Section 1–802.

''1–802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.''

SEC. 11. *General Provisions*. (a) The function vested in the President by Section 101(37) of the Act [42 U.S.C. 9601(37)] is delegated to the Administrator.

(b)(1) The function vested in the President by Section 105(f) of the Act [42 U.S.C. 9605(f)], relating to reporting on minority participation in contracts, is delegated to the Administrator.

(2) Subject to paragraph 1 of this subsection, the functions vested in the President by Section 105(f) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Order. Each Executive department and agency shall provide to the Administrator any requested information on minority contracting for inclusion in the Section 105(f) annual report.

(c) The functions vested in the President by Section 126(c) of the Act [42 U.S.C. 9626(c)] are delegated to the Administrator, to be exercised in consultation with the Secretary of the Interior.

(d) The functions vested in the President by Section 301(c) of the Act [42 U.S.C. 9651(c)] are delegated to the Secretary of the Interior.

(e) Each agency shall have authority to issue such regulations as may be necessary to carry out the functions delegated to them by this Order.

(f) The performance of any function under this Order shall be done in consultation with interested Federal departments and agencies represented on the NRT, as well as with any other interested Federal agency.

(g) The following functions vested in the President by the Act which have been delegated or assigned by this Order may be redelegated to the head of any Executive department or agency with his consent: functions set forth in Sections 2 (except subsection (b)), 3, 4(b), 4(c), 4(d), 5(b), 5(c), and 8(c) of this Order.

(h) Executive Order No. 12316 of August 14, 1981, is revoked.

SEC. 12. *Brownfields*. (a) The functions vested in the President by Sections 101(39) and (41) and 104(k) of the Act [42 U.S.C. 9601(39), (41), 9604(k)] are delegated to the Administrator.

(b) The functions vested in the President by Section 128(b)(1)(B)(ii) of the Act [42 U.S.C. 9628(b)(1)(B)(ii)] are delegated to the heads of the Executive departments and agencies, to be exercised in consultation with the Administrator, with respect to property subject to their jurisdiction, custody, or control.

(c) The functions vested in the President by Section 128(b)(1)(E) of the Act [42 U.S.C. 9628(b)(1)(E)] are delegated to the heads of Executive departments and agencies in cases where they have acted under subsection (b) of this Section.

(d) Subject to subsections (b) and (c) of this Section, the functions vested in the President by Section 128 of the Act [42 U.S.C. 9628] are delegated to the Administrator.

SEC. 13. *Preservation of Authorities*. Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

SEC. 14. *General Provision*. This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

§ 9616. Schedules

(a) Assessment and listing of facilities

It shall be a goal of this chapter that, to the maximum extent practicable—

(1) not later than January 1, 1988, the President shall complete preliminary assessments of all facilities that are contained (as of October 17, 1986) on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) including in each assessment a statement as to whether a site inspection is necessary and by whom it should be carried out; and

(2) not later than January 1, 1989, the President shall assure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary pursuant to paragraph (1).

(b) Evaluation

Within 4 years after October 17, 1986, each facility listed (as of October 17, 1986) in the CERCLIS shall be evaluated if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. The evaluation shall be in accordance with the criteria established in section 9605 of this title under the National Contingency Plan for determining priorities among release for inclusion on the National Priorities List. In the case of a facility listed in the CERCLIS after October 17, 1986, the facility shall be evaluated within 4 years after the date of such listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

(c) Explanations

If any of the goals established by subsection (a) or (b) of this section are not achieved, the President shall publish an explanation of why such action could not be completed by the specified date.

(d) Commencement of RI/FS

The President shall assure that remedial investigations and feasibility studies (RI/FS) are commenced for facilities listed on the National Priorities List, in addition to those commenced prior to October 17, 1986, in accordance with the following schedule:

(1) not fewer than 275 by the date 36 months after October 17, 1986, and

(2) if the requirement of paragraph (1) is not met, not fewer than an additional 175 by the date 4 years after October 17, 1986, an additional 200 by the date 5 years after October 17, 1986, and a total of 650 by the date 5 years after October 17, 1986.

(e) Commencement of remedial action

The President shall assure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List, in addition to those facilities on which remedial action has commenced prior to October 17, 1986, at a rate not fewer than:

(1) 175 facilities during the first 36-month period after October 17, 1986; and

(2) 200 additional facilities during the following 24 months after such 36-month period.

(Pub. L. 96–510, title I, § 116, as added Pub. L. 99–499, title I, § 116, Oct. 17, 1986, 100 Stat. 1653.)

§ 9617. Public participation

(a) Proposed plan

Before adoption of any plan for remedial action to be undertaken by the President, by a State, or by any other person, under section 9604, 9606, 9620, or 9622 of this title, the President or State, as appropriate, shall take both of the following actions:

(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any proposed findings under section 9621(d)(4) of this title (relating to cleanup standards). The President or the State shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

(b) Final plan

Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data

submitted in written or oral presentations under subsection (a) of this section.

(c) Explanation of differences

After adoption of a final remedial action plan—

(1) if any remedial action is taken,

(2) if any enforcement action under section 9606 of this title is taken, or

(3) if any settlement or consent decree under section 9606 of this title or section 9622 of this title is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the President or the State shall publish an explanation of the significant differences and the reasons such changes were made.

(d) Publication

For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

(e) Grants for technical assistance

(1) Authority

Subject to such amounts as are provided in appropriations Acts and in accordance with rules promulgated by the President, the President may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.

(2) Amount

The amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. The President may waive the $50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.

(Pub. L. 96–510, title I, § 117, as added Pub. L. 99–499, title I, § 117, Oct. 17, 1986, 100 Stat. 1654.)

§ 9618. High priority for drinking water supplies

For purposes of taking action under section 9604 or 9606 of this title and listing facilities on the National Priorities List, the President shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.

(Pub. L. 96–510, title I, § 118, as added Pub. L. 99–499, title I, § 118(a), Oct. 17, 1986, 100 Stat. 1655.)

§ 9619. Response action contractors

(a) Liability of response action contractors

(1) Response action contractors

A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this subchapter or under any other Federal law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

(2) Negligence, etc.

Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

(3) Effect on warranties; employer liability

Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law. Nothing in this subsection shall affect the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision of any law relating to worker's compensation.

(4) Governmental employees

A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

(b) Savings provisions

(1) Liability of other persons

The defense provided by section 9607(b)(3) of this title shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) of this section and the preceding sentence, nothing in this section shall affect the liability under this chapter or under any other Federal or State law of any person, other than a response action contractor.

(2) Burden of plaintiff

Nothing in this section shall affect the plaintiff's burden of establishing liability under this subchapter.

(c) Indemnification

(1) In general

The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this subchapter, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

(2) Applicability

This subsection shall apply only with respect to a response action carried out under written agreement with—

(A) the President;

(B) any Federal agency;

(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 9604(d)(1) of this title; or

(D) any potentially responsible party carrying out any agreement under section 9622 of this title (relating to settlements) or section 9606 of this title (relating to abatement).

(3) Source of funding

This subsection shall not be subject to section 1301 or 1341 of title 31 or section 11 of title 41 or to section 9662 of this title. For purposes of section 9611 of this title, amounts expended pursuant to this subsection for indemnification of any response action contractor (except with respect to federally owned or operated facilities) shall be considered governmental response costs incurred pursuant to section 9604 of this title. If sufficient funds are unavailable in the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 to make payments pursuant to such indemnification or if the Fund is repealed, there are authorized to be appropriated such amounts as may be necessary to make such payments.

(4) Requirements

An indemnification agreement may be provided under this subsection only if the President determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.

(C) In the case of a response action contract covering more than one facility, the response action contractor agrees to continue to make such diligent efforts each time the contractor begins work under the contract at a new facility.

(5) Limitations

(A) Liability covered

Indemnification under this subsection shall apply only to response action contractor liability which results from a release of any hazardous substance or pollutant or contaminant if such release arises out of response action activities.

(B) Deductibles and limits

An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(C) Contracts with potentially responsible parties

(i) Decision to indemnify

In deciding whether to enter into an indemnification agreement with a response action contractor carrying out a written contract or agreement with any potentially responsible party, the President shall determine an amount which the potentially responsible party is able to indemnify the contractor. The President may enter into such an indemnification agreement only if the President determines that such amount of indemnification is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. The President shall make the determinations in the preceding sentences (with respect to the amount and the adequacy of the amount) taking into account the total net assets and resources of potentially responsible parties with respect to the facility at the time of such determinations.

(ii) Conditions

The President may pay a claim under an indemnification agreement referred to in clause (i) for the amount determined under clause (i) only if the contractor has exhausted all administrative, judicial, and common law claims for indemnification against all potentially responsible parties participating in the clean-up of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. Such indemnification agreement shall require such contractor to pay any deductible established under subparagraph (B) before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(D) RCRA facilities

No owner or operator of a facility regulated under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] may be indemnified under this subsection with respect to such facility.

(E) Persons retained or hired

A person retained or hired by a person described in subsection (e)(2)(B) of this section shall be eligible for indemnification under

this subsection only if the President specifically approves of the retaining or hiring of such person.

(6) Cost recovery

For purposes of section 9607 of this title, amounts expended pursuant to this subsection for indemnification of any person who is a response action contractor with respect to any release or threatened release shall be considered a cost of response incurred by the United States Government with respect to such release.

(7) Regulations

The President shall promulgate regulations for carrying out the provisions of this subsection. Before promulgation of the regulations, the President shall develop guidelines to carry out this section. Development of such guidelines shall include reasonable opportunity for public comment.

(8) Study

The Comptroller General shall conduct a study in the fiscal year ending September 30, 1989, on the application of this subsection, including whether indemnification agreements under this subsection are being used, the number of claims that have been filed under such agreements, and the need for this subsection. The Comptroller General shall report the findings of the study to Congress no later than September 30, 1989.

(d) Exception

The exemption provided under subsection (a) of this section and the authority of the President to offer indemnification under subsection (c) of this section shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 9607(a) of this title with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (e) of this section.

(e) Definitions

For purposes of this section—

(1) Response action contract

The term ''response action contract'' means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

(A) the President;

(B) any Federal agency;

(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 9604(d)(1) of this title; or

(D) any potentially responsible party carrying out an agreement under section 9606 or 9622 of this title;

to provide any remedial action under this chapter at a facility listed on the National Priorities List, or any removal under this chapter, with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.

(2) Response action contractor

The term ''response action contractor'' means—

(A) any—

(i) person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and[1]

(ii) person, public or nonprofit private entity, conducting a field demonstration pursuant to section 9660(b) of this title; and

(iii) Recipients[2] of grants (including subgrantees) under section 9660a[3] of this title for the training and education of workers who are or may be engaged in activities related to hazardous waste removal, containment, or emergency response under this chapter; and[1]

(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action; and

(C) any surety who after October 16, 1990, provides a bid, performance or payment bond to a response action contractor, and begins activities to meet its obligations under such bond, but only in connection with such activities or obligations.

(3) Insurance

The term ''insurance'' means liability insurance which is fair and reasonably priced, as determined by the President, and which is made available at the time the contractor enters into the response action contract to provide response action.

(f) Competition

Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949.[3] The Federal selection procedures shall apply to appropriate contracts negotiated by all Federal governmental agencies involved in carrying out this chapter. Such procedures shall be followed by response action contractors and subcontractors.

(g) Surety bonds

(1) If under sections 3131 and 3133 of title 40, surety bonds are required for any direct Federal procurement of any response action contract and are not waived pursuant to section 3134 of title 40, they shall be issued in accordance with sections 3131 and 3133 of title 40.

(2) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, no

[1] So in original. The word ''and'' probably should not appear.

[2] So in original. Probably should not be capitalized.

[3] See References in Text note below.

right of action shall accrue on the performance bond issued on such response action contract to or for the use of any person other than the obligee named in the bond.

(3) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, unless otherwise provided for by the procuring agency in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

(4) Nothing in this subsection shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices or procedures. Nothing in this subsection shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgments, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(5) This subsection shall not apply to bonds executed before October 17, 1990.

(Pub. L. 96–510, title I, § 119, as added Pub. L. 99–499, title I, § 119, Oct. 17, 1986, 100 Stat. 1662; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–202, § 101(f) [title II, § 201], Dec. 22, 1987, 101 Stat. 1329–187, 1329–198; Pub. L. 101–584, § 1, Nov. 15, 1990, 104 Stat. 2872; Pub. L. 102–484, div. A, title III, § 331(a), Oct. 23, 1992, 106 Stat. 2373; Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2497.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(5)(D), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 9660a of this title, referred to in subsec. (e)(2)(A)(iii), was in the original ''section 126'' probably meaning section 126 of Pub. L. 99–499, title I, Oct. 17, 1986, 100 Stat. 1690. Subsecs. (a) to (f) of section 126, which relate to worker protection standards, are set out as a note under section 655 of Title 29, Labor. Subsec. (g) of section 126, which relates grants for training and education of workers who are or may be engaged in activities related to hazardous waste removal, etc., is classified to section 9660a of this title.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (f), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title IX of the Act, which was classified generally to subchapter VI (§ 541 et seq.) of chapter 10 of former Title 40, Public Buildings, Property, and Works, was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapter 11 (§ 1101 et seq.) of Title 40, Public Buildings, Property, and Works. For disposition of sections of former Title 40 to revised Title 40, see Table preceding section 101 of Title 40. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (g)(1), ''sections 3131 and 3133 of title 40'' substituted for ''the Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the 'Miller Act' '' and for ''such Act of August 24, 1935'' and ''section 3134 of title 40'' substituted for ''the Act of April 29, 1941 (40 U.S.C. 270e–270f)'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1998—Subsec. (e)(2)(C). Pub. L. 105–276 struck out ''and before January 1, 1996,'' after ''1990,''.

Subsec. (g)(5). Pub. L. 105–276 struck out '', or after December 31, 1995'' before period at end.

1992—Subsec. (e)(2)(C). Pub. L. 102–484, § 321(a)(1)(A), substituted ''January 1, 1996,'' for ''January 1, 1993''.

Subsec. (g)(1). Pub. L. 102–484, § 331(a)(2), substituted ''the Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the 'Miller Act','' for ''the Miller Act, 40 U.S.C. sections 270a–270f,'', inserted ''and are not waived pursuant to the Act of April 29, 1941 (40 U.S.C. 270e–270f)'', and substituted ''in accordance with such Act of August 24, 1935.'' for ''in accordance with 40 U.S.C. sections 270a–270d.''

Subsec. (g)(5). Pub. L. 102–484, § 331(a)(1)(B), substituted ''December 31, 1995'' for ''December 31, 1992''.

1990—Subsec. (e)(2)(C). Pub. L. 101–584, § 1(1), (2), added subpar. (C).

Subsec. (g). Pub. L. 101–584, § 1(3), added subsec. (g).

1987—Subsec. (e)(2)(A)(iii). Pub. L. 100–202 added cl. (iii).

1986—Subsec. (c)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9620. Federal facilities

(a) Application of chapter to Federal Government

(1) In general

Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title. Nothing in this section shall be construed to affect the liability of any person or entity under sections 9606 and 9607 of this title.

(2) Application of requirements to Federal facilities

All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this chapter for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to fa-

cilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this chapter.

(3) Exceptions

This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this chapter shall be construed to require a State to comply with section 9604(c)(3) of this title in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(4) State laws

State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States or facilities that are the subject of a deferral under subsection (h)(3)(C) of this section when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

(b) Notice

Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C. 6937] (in addition to the information required under section 3016(a)(3) of such Act [42 U.S.C. 6937(a)(3)]) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) Federal Agency Hazardous Waste Compliance Docket

The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the ''docket'') which shall contain each of the following:

(1) All information submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C. 6937] and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this chapter with respect to the facility.

(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act [42 U.S.C. 6925, 6930].

(3) Information submitted by the department, agency, or instrumentality under section 9603 of this title.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

(d) Assessment and evaluation

(1) In general

The Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

(A) evaluate such facilities in accordance with the criteria established in accordance with section 9605 of this title under the National Contingency Plan for determining priorities among releases; and

(B) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

(2) Application of criteria

(A) In general

Subject to subparagraph (B), the criteria referred to in paragraph (1) shall be applied in the same manner as the criteria are applied to facilities that are owned or operated by persons other than the United States.

(B) Response under other law

It shall be an appropriate factor to be taken into consideration for the purposes of section 9605(a)(8)(A) of this title that the head of the department, agency, or instrumentality that owns or operates a facility has arranged with the Administrator or appropriate State authorities to respond appropriately, under authority of a law other than this chapter, to a release or threatened release of a hazardous substance.

(3) Completion

Evaluation and listing under this subsection shall be completed in accordance with a reasonable schedule established by the Administrator.

(e) Required action by department

(1) RI/FS

Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in

consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before October 17, 1986, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after October 17, 1986. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

(2) Commencement of remedial action; interagency agreement

The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 9617 of this title.

(3) Completion of remedial actions

Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) Contents of agreement

Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

(5) Annual report

Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A brief summary of the public comments regarding each proposed interagency agreement.

(D) A description of the instances in which no agreement was reached.

(E) A report on progress in conducting investigations and studies under paragraph (1).

(F) A report on progress in conducting remedial actions.

(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

(6) Settlements with other parties

If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 9622 of this title (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 9606 of this title.

(f) State and local participation

The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 9621 of this title.

(g) Transfer of authorities

Except for authorities which are delegated by the Administrator to an officer or employee of

the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

(h) Property transferred by Federal agencies

(1) Notice

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

(2) Form of notice; regulations

Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after October 17, 1986, but not later than 18 months after October 17, 1986, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) Contents of certain deeds

(A) In general

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

(i) to the extent such information is available on the basis of a complete search of agency files—

(I) a notice of the type and quantity of such hazardous substances,

(II) notice of the time at which such storage, release, or disposal took place, and

(III) a description of the remedial action taken, if any;

(ii) a covenant warranting that—

(I) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

(II) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States; and

(iii) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

(B) Covenant requirements

For purposes of subparagraphs (A)(ii)(I) and (C)(iii), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (A)(ii) that has not been taken on the date of the lease.

(C) Deferral

(i) In general

The Administrator, with the concurrence of the Governor of the State in which the facility is located (in the case of real property at a Federal facility that is listed on the National Priorities List), or the Governor of the State in which the facility is located (in the case of real property at a Federal facility not listed on the National Priorities List) may defer the requirement of subparagraph (A)(ii)(I) with respect to the property if the Administrator or the Governor, as the case may be, determines that the property is suitable for transfer, based on a finding that—

(I) the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;

(II) the deed or other agreement proposed to govern the transfer between the United States and the transferee of the

property contains the assurances set forth in clause (ii);

(III) the Federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and

(IV) the deferral and the transfer of the property will not substantially delay any necessary response action at the property.

(ii) Response action assurances

With regard to a release or threatened release of a hazardous substance for which a Federal agency is potentially responsible under this section, the deed or other agreement proposed to govern the transfer shall contain assurances that—

(I) provide for any necessary restrictions on the use of the property to ensure the protection of human health and the environment;

(II) provide that there will be restrictions on use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;

(III) provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and

(IV) provide that the Federal agency responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.

(iii) Warranty

When all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken, and the making of the warranty shall be considered to satisfy the requirement of subparagraph (A)(ii)(I).

(iv) Federal responsibility

A deferral under this subparagraph shall not increase, diminish, or affect in any manner any rights or obligations of a Federal agency (including any rights or obligations under this section and sections 9606 and 9607 of this title existing prior to transfer) with respect to a property transferred under this subparagraph.

(4) Identification of uncontaminated property

(A) In the case of real property to which this paragraph applies (as set forth in subparagraph (E)), the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall identify the real property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. Such identification shall be based on an investigation of the real property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property. The identification shall consist, at a minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:

(i) A detailed search of Federal Government records pertaining to the property.

(ii) Recorded chain of title documents regarding the real property.

(iii) Aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies.

(iv) A visual inspection of the real property and any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property, and a visual inspection of properties immediately adjacent to the real property.

(v) A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.

(vi) Reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.

(vii) Interviews with current or former employees involved in operations on the real property.

Such identification shall also be based on sampling, if appropriate under the circumstances. The results of the identification shall be provided immediately to the Administrator and State and local government officials and made available to the public.

(B) The identification required under subparagraph (A) is not complete until concurrence in the results of the identification is obtained, in the case of real property that is part of a facility on the National Priorities List, from the Administrator, or, in the case of real property that is not part of a facility on the National Priorities List, from the appropriate State official. In the case of a concurrence which is required from a State official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the

concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence.

(C)(i) Except as provided in clauses (ii), (iii), and (iv), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made at least 6 months before the termination of operations on the real property.

(ii) In the case of real property described in subparagraph (E)(i)(II) on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in subparagraph (E)(ii)(I) or (E)(ii)(II) by October 19, 1992, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after October 19, 1992.

(iii) In the case of real property described in subparagraph (E)(i)(II) on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in subparagraph (E)(ii)(II) after October 19, 1992, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date by which a joint resolution disapproving the closure or realignment of the real property under section 2904(b) of such base closure law must be enacted, and such a joint resolution has not been enacted.

(iv) In the case of real property described in subparagraphs (E)(i)(II) on which operations are closed or realigned pursuant to a base closure law described in subparagraph (E)(ii)(III) or (E)(ii)(IV), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date on which the real property is selected for closure or realignment pursuant to such a base closure law.

(D) In the case of the sale or other transfer of any parcel of real property identified under subparagraph (A), the deed entered into for the sale or transfer of such property by the United States to any other person or entity shall contain—

(i) a covenant warranting that any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States; and

(ii) a clause granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after such date at such property, or such access is necessary to carry out a response action or corrective action on adjoining property.

(E)(i) This paragraph applies to—

(I) real property owned by the United States and on which the United States plans to terminate Federal Government operations, other than real property described in subclause (II); and

(II) real property that is or has been used as a military installation and on which the United States plans to close or realign military operations pursuant to a base closure law.

(ii) For purposes of this paragraph, the term ''base closure law'' includes the following:

(I) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(II) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(III) Section 2687 of title 10.

(IV) Any provision of law authorizing the closure or realignment of a military installation enacted on or after October 19, 1992.

(F) Nothing in this paragraph shall affect, preclude, or otherwise impair the termination of Federal Government operations on real property owned by the United States.

(5) Notification of States regarding certain leases

In the case of real property owned by the United States, on which any hazardous substance or any petroleum product or its derivatives (including aviation fuel and motor oil) was stored for one year or more, known to have been released, or disposed of, and on which the United States plans to terminate Federal Government operations, the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall notify the State in which the property is located of any lease entered into by the United States that will encumber the property beyond the date of termination of operations on the property. Such notification shall be made before entering into the lease and shall include the length of the lease, the name of person to whom the property is leased, and a description of the uses that will be allowed under the lease of the property and buildings and other structures on the property.

(i) Obligations under Solid Waste Disposal Act

Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] (including corrective action requirements).

(j) National security

(1) Site specific Presidential orders

The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this subchapter or under title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.] with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this

paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(2) Classified information

Notwithstanding any other provision of law, all requirements of the Atomic Energy Act [42 U.S.C. 2011 et seq.] and all Executive orders concerning the handling of restricted data and national security information, including ''need to know'' requirements, shall be applicable to any grant of access to classified information under the provisions of this chapter or under title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.].

(Pub. L. 96–510, title I, §120, as added Pub. L. 99–499, title I, §120(a), Oct. 17, 1986, 100 Stat. 1666; amended Pub. L. 102–426, §§3–5, Oct. 19, 1992, 106 Stat. 2175–2177; Pub. L. 104–106, div. B, title XXVIII, §2834, Feb. 10, 1996, 110 Stat. 559; Pub. L. 104–201, div. A, title III, §§330, 331, 334, Sept. 23, 1996, 110 Stat. 2484, 2486.)

REFERENCES IN TEXT

Section 2904(b) of such base closure law, referred to in subsec. (h)(4)(C)(iii), means section 2904(b) of Pub. L. 101–510, which is set out as a note under section 2687 of Title 10, Armed Forces.

The Solid Waste Disposal Act, referred to in subsec. (i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Title III of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (j), is title III of Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1728, known as the Emergency Planning and Community Right-To-Know Act of 1986, which is classified generally to chapter 116 (§11001 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 11001 of this title and Tables.

The Atomic Energy Act, referred to in subsec. (j)(2), probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–201, §334(b), inserted ''or facilities that are the subject of a deferral under subsection (h)(3)(C) of this section'' after ''United States''.

Subsec. (d). Pub. L. 104–201, §330(2)–(4), designated existing provisions as par. (1), inserted par. heading, substituted ''The Administrator'' for ''Not later than 18 months after October 17, 1986, the Administrator'', realigned margins of par. (1) and subpars. (A) and (B), and substituted pars. (2) and (3) for ''Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after October 17, 1986. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.''

Pub. L. 104–201, §330(1), redesignated pars. (1) and (2) as subpars. (A) and (B), respectively.

Subsec. (h)(3). Pub. L. 104–201, §334(a)(8), added subpar. (C).

Pub. L. 104–201, §334(a)(6), (7), designated existing provisions as subpar. (B), inserted heading, substituted ''For purposes of subparagraphs (A)(ii)(I) and (C)(iii)'' for ''For purposes of subparagraph (B)(i)'', and substituted ''subparagraph (A)(ii)'' for ''subparagraph (B)'' in three places.

Pub. L. 104–201, §334(a)(1)–(5), designated first sentence as subpar. (A), inserted heading, redesignated former subpar. (A) and cls. (i) to (iii) of that subpar. as cl. (i) of subpar. (A) and subcls. (I) to (III) of that cl., respectively, redesignated former subpar. (B) and cls. (i) and (ii) of that subpar. as cl. (ii) of subpar. (A) and subcls. (I) and (II) of that cl., respectively, redesignated former subpar. (C) as cl. (iii) of subpar. (A), and realigned margins of such cls. and subcls.

Pub. L. 104–106, §2834(2), which directed that par. (3) be amended in the matter following subpar. (C) by adding at the end, flush to the paragraph margin, the following, was executed by inserting the following provision at the end of the concluding provisions ''The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (B) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (B) that has not been taken on the date of the lease.''

Pub. L. 104–106, §2834(1), struck out first sentence of concluding provisions which read as follows: ''The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.''

Subsec. (h)(4)(A). Pub. L. 104–201, §331, substituted ''known to have been released'' for ''stored for one year or more, known to have been released,''.

1992—Subsec. (h)(3). Pub. L. 102–426, §4(a), inserted at end ''For purposes of subparagraph (B)(i), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property.''

Subsec. (h)(3)(C). Pub. L. 102–426, §4(b), added subpar. (C).

Subsec. (h)(4). Pub. L. 102–426, § 3, added par. (4).
Subsec. (h)(5). Pub. L. 102–426, § 5, added par. (5).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (e)(5) of this section is listed as the 5th item on page 151), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, § 1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

IDENTIFICATION OF UNCONTAMINATED PROPERTY AT INSTALLATIONS TO BE CLOSED

Pub. L. 103–160, div. B, title XXIX, § 2910, Nov. 30, 1993, 107 Stat. 1924, provided that: ''The identification by the Secretary of Defense required under section 120(h)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(A)), and the concurrence required under section 120(h)(4)(B) of such Act, shall be made not later than the earlier of—

''(1) the date that is 9 months after the date of the submittal, if any, to the transition coordinator for the installation concerned of a specific use proposed for all or a portion of the real property of the installation; or

''(2) the date specified in section 120(h)(4)(C)(iii) of such Act.''

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 102–426 provided that: ''The Congress finds the following:

''(1) The closure of certain Federal facilities is having adverse effects on the economies of local communities by eliminating jobs associated with such facilities, and delay in remediation of environmental contamination of real property at such facilities is preventing transfer and private development of such property.

''(2) Each department, agency, or instrumentality of the United States, in cooperation with local communities, should expeditiously identify real property that offers the greatest opportunity for reuse and redevelopment on each facility under the jurisdiction of the department, agency, or instrumentality where operations are terminating.

''(3) Remedial actions, including remedial investigations and feasibility studies, and corrective actions at such Federal facilities should be expedited in a manner to facilitate environmental protection and the sale or transfer of such excess real property for the purpose of mitigating adverse economic effects on the surrounding community.

''(4) Each department, agency, or instrumentality of the United States, in accordance with applicable law, should make available without delay such excess real property.

''(5) In the case of any real property owned by the United States and transferred to another person, the United States Government should remain responsible for conducting any remedial action or corrective action necessary to protect human health and the environment with respect to any hazardous substance or petroleum product or its derivatives, including aviation fuel and motor oil, that was present on such real property at the time of transfer.''

APPLICABILITY

Section 120(b) of Pub. L. 99–499 provided that: ''Section 120 of CERCLA [42 U.S.C. 9620] shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act [Oct. 17, 1986] with respect to facilities—

''(1) owned or operated by the United States and subject to the jurisdiction of such Department;

''(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

''(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency.''

§ 9621. Cleanup standards

(a) Selection of remedial action

The President shall select appropriate remedial actions determined to be necessary to be carried out under section 9604 of this title or secured under section 9606 of this title which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

(b) General rules

(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

(A) the long-term uncertainties associated with land disposal;

(B) the goals, objectives, and requirements of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.];

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) short- and long-term potential for adverse health effects from human exposure;

(E) long-term maintenance costs;

(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate

for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of support for such remedial action by parties interested in such site.

(c) Review

If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment of the President that action is appropriate at such site in accordance with section 9604 or 9606 of this title, the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.

(d) Degree of cleanup

(1) Remedial actions selected under this section or otherwise required or agreed to by the President under this chapter shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

(2)(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if—

(i) any standard, requirement, criteria, or limitation under any Federal environmental law, including, but not limited to, the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Clean Air Act [42 U.S.C. 7401 et seq.], the Clean Water Act [33 U.S.C. 1251 et seq.], the Marine Protection, Research and Sanctuaries Act [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], or the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]; or

(ii) any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized or delegated by the Administrator under a statute cited in subparagraph (A), and that has been identified to the President by the State in a timely manner,

is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 9604 of this title or secured under section 9606 of this title shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria, or limitation. Such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] and water quality criteria established under section 304 or 303 of the Clean Water Act [33 U.S.C. 1314, 1313], where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release.

(B)(i) In determining whether or not any water quality criteria under the Clean Water Act [33 U.S.C. 1251 et seq.] is relevant and appropriate under the circumstances of the release or threatened release, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.

(ii) For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

(I) there are known and projected points of entry of such groundwater into surface water; and

(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water

then the assumed point of human exposure may be at such known and projected points of entry.

(C)(i) Clause (ii) of this subparagraph shall be applicable only in cases where, due to the President's selection, in compliance with subsection (b)(1) of this section, of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants, the proposed disposition of waste generated by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii).

(ii) Except as provided in clauses (iii) and (iv), a State standard, requirement, criteria, or limitation (including any State siting standard or

requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.

(iii) Any State standard, requirement, criteria, or limitation referred to in clause (ii) shall apply where each of the following conditions is met:

(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.

(iv) Where the remedial action selected by the President does not conform to a State standard and the State has initiated a law suit against the Environmental Protection Agency prior to May 1, 1986, to seek to have the remedial action conform to such standard, the President shall conform the remedial action to the State standard. The State shall assure the availability of an offsite facility for such remedial action.

(3) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with section 3004 and 3005 of the Solid Waste Disposal Act [42 U.S.C. 6924, 6925] (or, where applicable, in compliance with the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] or other applicable Federal law) and all applicable State requirements. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the President determines that both of the following requirements are met:

(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water or soil.

(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.].

The President shall notify the owner or operator of such facility of determinations under this paragraph.

(4) The President may select a remedial action meeting the requirements of paragraph (1) that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation as required by paragraph (2) (including subparagraph (B) thereof), if the President finds that—

(A) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;

(B) compliance with such requirement at that facility will result in greater risk to human health and the environment than alternative options;

(C) compliance with such requirements is technically impracticable from an engineering perspective;

(D) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;

(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or

(F) in the case of a remedial action to be undertaken solely under section 9604 of this title using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

The President shall publish such findings, together with an explanation and appropriate documentation.

(e) Permits and enforcement

(1) No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section.

(2) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this chapter in the United States district court for the district in which the facility is located. Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to exceed $25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.

(f) State involvement

(1) The President shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be

undertaken in that State. The regulations, at a minimum, shall include each of the following:

(A) State involvement in decisions whether to perform a preliminary assessment and site inspection.

(B) Allocation of responsibility for hazard ranking system scoring.

(C) State concurrence in deleting sites from the National Priorities List.

(D) State participation in the long-term planning process for all remedial sites within the State.

(E) A reasonable opportunity for States to review and comment on each of the following:

(i) The remedial investigation and feasibility study and all data and technical documents leading to its issuance.

(ii) The planned remedial action identified in the remedial investigation and feasibility study.

(iii) The engineering design following selection of the final remedial action.

(iv) Other technical data and reports relating to implementation of the remedy.

(v) Any proposed finding or decision by the President to exercise the authority of subsection (d)(4) of this section.

(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations and, subject to paragraph (2), be a party to any settlement.

(G) Notice to the State and an opportunity to comment on the President's proposed plan for remedial action as well as on alternative plans under consideration. The President's proposed decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State, including an explanation regarding any decision under subsection (d)(4) of this section on compliance with promulgated State standards. A copy of such response shall also be provided to the State.

(H) Prompt notice and explanation of each proposed action to the State in which the facility is located.

Prior to the promulgation of such regulations, the President shall provide notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State, and such State may participate in such negotiations and, subject to paragraph (2), any settlements.

(2)(A) This paragraph shall apply to remedial actions secured under section 9606 of this title. At least 30 days prior to the entering of any consent decree, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4) of this section, the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, the State may become a signatory to the consent decree.

(B) If the State does not concur in such selection, and the State desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State shall intervene in the action under section 9606 of this title before entry of the consent decree, to seek to have the remedial action so conform. Such intervention shall be a matter of right. The remedial action shall conform to such standard, requirement, criteria, or limitation if the State establishes, on the administrative record, that the finding of the President was not supported by substantial evidence. If the court determines that the remedial action shall conform to such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State may become a signatory to the decree. If the court determines that the remedial action need not conform to such standard, requirement, criteria, or limitation, and the State pays or assures the payment of the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State shall become a signatory to the decree.

(C) The President may conclude settlement negotiations with potentially responsible parties without State concurrence.

(3)(A) This paragraph shall apply to remedial actions at facilities owned or operated by a department, agency, or instrumentality of the United States. At least 30 days prior to the publication of the President's final remedial action plan, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4) of this section, the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, or does not act within 30 days, the remedial action may proceed.

(B) If the State does not concur in such selection as provided in subparagraph (A), and desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State may maintain an action as follows:

(i) If the President has notified the State of selection of such a remedial action, the State may bring an action within 30 days of such notification for the sole purpose of determining whether the finding of the President is supported by substantial evidence. Such action shall be brought in the United States district court for the district in which the facility is located.

(ii) If the State establishes, on the administrative record, that the President's finding is not supported by substantial evidence, the remedial action shall be modified to conform to such standard, requirement, criteria, or limitation.

(iii) If the State fails to establish that the President's finding was not supported by substantial evidence and if the State pays, within 60 days of judgment, the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be selected to meet such standard, requirement, criteria, or limitation. If the State fails to pay within 60 days, the remedial action selected by the President shall proceed through completion.

(C) Nothing in this section precludes, and the court shall not enjoin, the Federal agency from

taking any remedial action unrelated to or not inconsistent with such standard, requirement, criteria, or limitation.

(Pub. L. 96–510, title I, § 121, as added Pub. L. 99–499, title I, § 121(a), Oct. 17, 1986, 100 Stat. 1672.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (b)(1)(B) and (d)(2)(A)(i), (3)(B), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Toxic Substances Control Act, referred to in subsec. (d)(2)(A)(i), (3), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (d)(2)(A), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Clean Air Act, referred to in subsec. (d)(2)(A)(i), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Clean Water Act, referred to in subsec. (d)(2)(A)(i), (B)(i), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Marine Protection, Research and Sanctuaries Act, referred to in subsec. (d)(2)(A)(i), probably means the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (§ 1431 et seq.) and 32A (§ 1447 et seq.) of Title 16, Conservation, and chapters 27 (§ 1401 et seq.) and 41 (§ 2801 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

EFFECTIVE DATE

Section 121(b) of Pub. L. 99–499 provided that: "With respect to section 121 of CERCLA [this section], as added by this section—

"(1) The requirements of section 121 of CERCLA shall not apply to any remedial action for which the Record of Decision (hereinafter in this section referred to as the 'ROD') was signed, or the consent decree was lodged, before date of enactment [Oct. 17, 1986].

"(2) If the ROD was signed, or the consent decree lodged, within the 30-day period immediately following enactment of the Act [Oct. 17, 1986], the Administrator shall certify in writing that the portion of the remedial action covered by the ROD or consent decree complies to the maximum extent practicable with section 121 of CERCLA.

Any ROD signed before enactment of this Act [Oct. 17, 1986] and reopened after enactment of this Act to modify or supplement the selection of remedy shall be subject to the requirements of section 121 of CERCLA."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the report under subsec. (c) of this section appears to be the report listed as the 15th item on page 20), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 9622. Settlements

(a) Authority to enter into agreements

The President, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any response action (including any action described in section 9604(b) of this title) if the President determines that such action will be done properly by such person. Whenever practicable and in the public interest, as determined by the President, the President shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation. If the President decides not to use the procedures in this section, the President shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. A decision of the President to use or not to use the procedures in this section is not subject to judicial review.

(b) Agreements with potentially responsible parties

(1) Mixed funding

An agreement under this section may provide that the President will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. In any case in which the President provides such reimbursement, the President shall make all reasonable efforts to recover the amount of such reimbursement under section 9607 of this title or under other relevant authorities.

(2) Reviewability

The President's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d) of this section.

(3) Retention of funds

If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

(4) Future obligation of Fund

In the case of a completed remedial action pursuant to an agreement described in paragraph (1), the Fund shall be subject to an obligation for subsequent remedial actions at the same facility but only to the extent that such

subsequent actions are necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the Fund for the original remedial action. The Fund's obligation for such future remedial action may be met through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

(c) Effect of agreement

(1) Liability

Whenever the President has entered into an agreement under this section, the liability to the United States under this chapter of each party to the agreement, including any future liability to the United States, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement pursuant to a covenant not to sue in accordance with subsection (f) of this section. A covenant not to sue may provide that future liability to the United States of a settling potentially responsible party under the agreement may be limited to the same proportion as that established in the original settlement agreement. Nothing in this section shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) of this section any covenant not to sue contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited pursuant to a covenant not to sue, the President shall be guided by the principle that a more complete covenant not to sue shall be provided for a more permanent remedy undertaken by such parties.

(2) Actions against other persons

If an agreement has been entered into under this section, the President may take any action under section 9606 of this title against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) of this section has expired. Nothing in this section shall be construed to affect either of the following:

(A) The liability of any person under section 9606 or 9607 of this title with respect to any costs or damages which are not included in the agreement.

(B) The authority of the President to maintain an action under this chapter against any person who is not a party to the agreement.

(d) Enforcement

(1) Cleanup agreements

(A) Consent decree

Whenever the President enters into an agreement under this section with any potentially responsible party with respect to remedial action under section 9606 of this title, following approval of the agreement by the Attorney General, except as otherwise provided in the case of certain administrative settlements referred to in subsection (g) of this section, the agreement shall be entered in the appropriate United States district court as a consent decree. The President need not make any finding regarding an imminent and substantial endangerment to the public health or the environment in connection with any such agreement or consent decree.

(B) Effect

The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Except as otherwise provided in the Federal Rules of Evidence, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(C) Structure

The President may fashion a consent decree so that the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose.

(2) Public participation

(A) Filing of proposed judgment

At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

(B) Opportunity for comment

The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.

(3) 9604(b) agreements

Whenever the President enters into an agreement under this section with any potentially responsible party with respect to action under section 9604(b) of this title, the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree.

(e) Special notice procedures

(1) Notice

Whenever the President determines that a period of negotiation under this subsection

would facilitate an agreement with potentially responsible parties for taking response action (including any action described in section 9604(b) of this title) and would expedite remedial action, the President shall so notify all such parties and shall provide them with information concerning each of the following:

(A) The names and addresses of potentially responsible parties (including owners and operators and other persons referred to in section 9607(a) of this title), to the extent such information is available.

(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible party identified at the facility.

(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The President shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the President. The provisions of subsection (e) of section 9604 of this title regarding protection of confidential information apply to information provided under this paragraph. Disclosure of information generated by the President under this section to persons other than the Congress, or any duly authorized Committee thereof, is subject to other privileges or protections provided by law, including (but not limited to) those applicable to attorney work product. Nothing contained in this paragraph or in other provisions of this chapter shall be construed, interpreted, or applied to diminish the required disclosure of information under other provisions of this or other Federal or State laws.

(2) Negotiation

(A) Moratorium

Except as provided in this subsection, the President may not commence action under section 9604(a) of this title or take any action under section 9606 of this title for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the President may not commence a remedial investigation and feasibility study under section 9604(b) of this title for 90 days after providing notice and information under this subsection with respect to such action. The President may commence any additional studies or investigations authorized under section 9604(b) of this title, including remedial design, during the negotiation period.

(B) Proposals

Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 9606 of this title shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 9606 of this title. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 9604(b) of this title shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 9604(b) of this title.

(C) Additional parties

If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

(3) Preliminary allocation of responsibility

(A) In general

The President shall develop guidelines for preparing nonbinding preliminary allocations of responsibility. In developing these guidelines the President may include such factors as the President considers relevant, such as: volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors. When it would expedite settlements under this section and remedial action, the President may, after completion of the remedial investigation and feasibility study, provide a nonbinding preliminary allocation of responsibility which allocates percentages of the total cost of response among potentially responsible parties at the facility.

(B) Collection of information

To collect information necessary or appropriate for performing the allocation under subparagraph (A) or for otherwise implementing this section, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

(C) Effect

The nonbinding preliminary allocation of responsibility shall not be admissible as evidence in any proceeding, and no court shall have jurisdiction to review the nonbinding preliminary allocation of responsibility. The nonbinding preliminary allocation of responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

(D) Costs

The costs incurred by the President in producing the nonbinding preliminary allocation of responsibility shall be reimbursed by

the potentially responsible parties whose offer is accepted by the President. Where an offer under this section is not accepted, such costs shall be considered costs of response.

(E) Decision to reject offer

Where the President, in his discretion, has provided a nonbinding preliminary allocation of responsibility and the potentially responsible parties have made a substantial offer providing for response to the President which he rejects, the reasons for the rejection shall be provided in a written explanation. The President's decision to reject such an offer shall not be subject to judicial review.

(4) Failure to propose

If the President determines that a good faith proposal for undertaking or financing action under section 9606 of this title has not been submitted within 60 days of the provision of notice pursuant to this subsection, the President may thereafter commence action under section 9604(a) of this title or take an action against any person under section 9606 of this title. If the President determines that a good faith proposal for undertaking or financing action under section 9604(b) of this title has not been submitted within 60 days after the provision of notice pursuant to this subsection, the President may thereafter commence action under section 9604(b) of this title.

(5) Significant threats

Nothing in this subsection shall limit the President's authority to undertake response or enforcement action regarding a significant threat to public health or the environment within the negotiation period established by this subsection.

(6) Inconsistent response action

When either the President, or a potentially responsible party pursuant to an administrative order or consent decree under this chapter, has initiated a remedial investigation and feasibility study for a particular facility under this chapter, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President.

(f) Covenant not to sue

(1) Discretionary covenants

The President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this chapter, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 9605 of this title.

(C) The person is in full compliance with a consent decree under section 9606 of this title (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

(D) The response action has been approved by the President.

(2) Special covenants not to sue

In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of remedial action—

(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 6924(c), (d), (e), (f), (g), (m), (*o*), (p), (u), and (v) and 6925(c) of this title, where the President has rejected a proposed remedial action that is consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) which involves the treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances, such that, in the judgment of the President, the substances no longer present any current or currently foreseeable future significant risk to public health, welfare or the environment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or the environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare or the environment,

the President shall provide such person with a covenant not to sue with respect to future liability to the United States under this chapter for a future release or threatened release of hazardous substances from such facility, and a person provided such covenant not to sue shall not be liable to the United States under section 9606 or 9607 of this title with respect to such release or threatened release at a future time.

(3) Requirement that remedial action be completed

A covenant not to sue concerning future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this chapter at the facility that is the subject of such covenant.

(4) Factors

In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the response action is demonstrated to be effective.

(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(5) Satisfactory performance

Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

(6) Additional condition for future liability

(A) Except for the portion of the remedial action which is subject to a covenant not to sue under paragraph (2) or under subsection (g) of this section (relating to de minimis settlements), a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the President certifies under paragraph (3) that remedial action has been completed at the facility concerned.

(B) In extraordinary circumstances, the President may determine, after assessment of relevant factors such as those referred to in paragraph (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in subparagraph (A) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility.

(C) The President is authorized to include any provisions allowing future enforcement action under section 9606 or 9607 of this title that in the discretion of the President are necessary and appropriate to assure protection of public health, welfare, and the environment.

(g) De minimis settlements

(1) Expedited final settlement

Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 9606 or 9607 of this title if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

(i) The amount of the hazardous substances contributed by that party to the facility.

(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

(B) The potentially responsible party—

(i) is the owner of the real property on or in which the facility is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(2) Covenant not to sue

The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f) of this section.

(3) Expedited agreement

The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.

(4) Consent decree or administrative order

A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed $500,000 (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

(5) Effect of agreement

A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such set-

tlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(6) Settlements with other potentially responsible parties

Nothing in this subsection shall be construed to affect the authority of the President to reach settlements with other potentially responsible parties under this chapter.

(7) Reduction in settlement amount based on limited ability to pay

(A) In general

The condition for settlement under this paragraph is that the potentially responsible party is a person who demonstrates to the President an inability or a limited ability to pay response costs.

(B) Considerations

In determining whether or not a demonstration is made under subparagraph (A) by a person, the President shall take into consideration the ability of the person to pay response costs and still maintain its basic business operations, including consideration of the overall financial condition of the person and demonstrable constraints on the ability of the person to raise revenues.

(C) Information

A person requesting settlement under this paragraph shall promptly provide the President with all relevant information needed to determine the ability of the person to pay response costs.

(D) Alternative payment methods

If the President determines that a person is unable to pay its total settlement amount at the time of settlement, the President shall consider such alternative payment methods as may be necessary or appropriate.

(8) Additional conditions for expedited settlements

(A) Waiver of claims

The President shall require, as a condition for settlement under this subsection, that a potentially responsible party waive all of the claims (including a claim for contribution under this chapter) that the party may have against other potentially responsible parties for response costs incurred with respect to the facility, unless the President determines that requiring a waiver would be unjust.

(B) Failure to comply

The President may decline to offer a settlement to a potentially responsible party under this subsection if the President determines that the potentially responsible party has failed to comply with any request for access or information or an administrative subpoena issued by the President under this chapter or has impeded or is impeding, through action or inaction, the performance of a response action with respect to the facility.

(C) Responsibility to provide information and access

A potentially responsible party that enters into a settlement under this subsection shall not be relieved of the responsibility to provide any information or access requested in accordance with subsection (e)(3)(B) of this section or section 9604(e) of this title.

(9) Basis of determination

If the President determines that a potentially responsible party is not eligible for settlement under this subsection, the President shall provide the reasons for the determination in writing to the potentially responsible party that requested a settlement under this subsection.

(10) Notification

As soon as practicable after receipt of sufficient information to make a determination, the President shall notify any person that the President determines is eligible under paragraph (1) of the person's eligibility for an expedited settlement.

(11) No judicial review

A determination by the President under paragraph (7), (8), (9), or (10) shall not be subject to judicial review.

(12) Notice of settlement

After a settlement under this subsection becomes final with respect to a facility, the President shall promptly notify potentially responsible parties at the facility that have not resolved their liability to the United States of the settlement.

(h) Cost recovery settlement authority

(1) Authority to settle

The head of any department or agency with authority to undertake a response action under this chapter pursuant to the national contingency plan may consider, compromise, and settle a claim under section 9607 of this title for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. In the case of any facility where the total response costs exceed $500,000 (excluding interest), any claim referred to in the preceding sentence may be compromised and settled only with the prior written approval of the Attorney General.

(2) Use of arbitration

Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States where the total response costs for the facility concerned do not exceed $500,000 (excluding interest). After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection.

(3) Recovery of claims

If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an ap-

propriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

(4) Claims for contribution

A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement shall not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(i) Settlement procedures

(1) Publication in Federal Register

At least 30 days before any settlement (including any settlement arrived at through arbitration) may become final under subsection (h) of this section, or under subsection (g) of this section in the case of a settlement embodied in an administrative order, the head of the department or agency which has jurisdiction over the proposed settlement shall publish in the Federal Register notice of the proposed settlement. The notice shall identify the facility concerned and the parties to the proposed settlement.

(2) Comment period

For a 30-day period beginning on the date of publication of notice under paragraph (1) of a proposed settlement, the head of the department or agency which has jurisdiction over the proposed settlement shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

(3) Consideration of comments

The head of the department or agency shall consider any comments filed under paragraph (2) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

(j) Natural resources

(1) Notification of trustee

Where a release or threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the President shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

(2) Covenant not to sue

An agreement under this section may contain a covenant not to sue under section 9607(a)(4)(C) of this title for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such covenant. The Federal natural resource trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

(k) Section not applicable to vessels

The provisions of this section shall not apply to releases from a vessel.

***(l)* Civil penalties**

A potentially responsible party which is a party to an administrative order or consent decree entered pursuant to an agreement under this section or section 9620 of this title (relating to Federal facilities) or which is a party to an agreement under section 9620 of this title and which fails or refuses to comply with any term or condition of the order, decree or agreement shall be subject to a civil penalty in accordance with section 9609 of this title.

(m) Applicability of general principles of law

In the case of consent decrees and other settlements under this section (including covenants not to sue), no provision of this chapter shall be construed to preclude or otherwise affect the applicability of general principles of law regarding the setting aside or modification of consent decrees or other settlements.

(Pub. L. 96–510, title I, § 122, as added Pub. L. 99–499, title I, § 122(a), Oct. 17, 1986, 100 Stat. 1678; amended Pub. L. 107–118, title I, § 102(b), Jan. 11, 2002, 115 Stat. 2359.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (d)(1)(B), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2002—Subsec. (g)(7) to (12). Pub. L. 107–118 added pars. (7) to (12).

EFFECT ON CONCLUDED ACTIONS

Amendment by Pub. L. 107–118 not to apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before Jan. 11, 2002, see section 103 of Pub. L. 107–118, set out as a note under section 9607 of this title.

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9623. Reimbursement to local governments

(a) Application

Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

(b) Reimbursement

(1) Temporary emergency measures

The President is authorized to reimburse local community authorities for expenses in-

curred (before or after October 17, 1986) in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

(2) Local funds not supplanted

Reimbursement under this section shall not supplant local funds normally provided for response.

(c) Amount

The amount of any reimbursement to any local authority under subsection (b)(1) of this section may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

(d) Procedure

Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after October 17, 1986.

(Pub. L. 96–510, title I, § 123, as added Pub. L. 99–499, title I, § 123(a), Oct. 17, 1986, 100 Stat. 1688.)

§ 9624. Methane recovery

(a) In general

In the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed, for purposes of this chapter:

(1) The owner or operator of such equipment shall not be considered an ''owner or operator'', as defined in section 9601(20) of this title, with respect to such facility.

(2) The owner or operator of such equipment shall not be considered to have arranged for disposal or treatment of any hazardous substance at such facility pursuant to section 9607 of this title.

(3) The owner or operator of such equipment shall not be subject to any action under section 9606 of this title with respect to such facility.

(b) Exceptions

Subsection (a) of this section does not apply with respect to a release or threatened release of a hazardous substance from a facility described in subsection (a) of this section if either of the following circumstances exist:

(1) The release or threatened release was primarily caused by activities of the owner or operator of the equipment described in subsection (a) of this section.

(2) The owner or operator of such equipment would be covered by paragraph (1), (2), (3), or (4) of subsection (a) of section 9607 of this title with respect to such release or threatened release if he were not the owner or operator of such equipment.

In the case of any release or threatened release referred to in paragraph (1), the owner or operator of the equipment described in subsection (a) of this section shall be liable under this chapter only for costs or damages primarily caused by the activities of such owner or operator.

(Pub. L. 96–510, title I, § 124, as added Pub. L. 99–499, title I, § 124(a), Oct. 17, 1986, 100 Stat. 1688.)

§ 9625. Section 6921(b)(3)(A)(i) waste

(a) Revision of hazard ranking system

This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 6921(b)(3)(A)(i) of this title. As expeditiously as practicable, the President shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

(2) The extent of, and potential for, release of such hazardous constituents into the environment.

(3) The degree of risk to human health and the environment posed by such constituents.

(b) Inclusion prohibited

Until the hazard ranking system is revised as required by this section, the President may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 6921(b)(3)(A)(i) of this title on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the President's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this chapter with respect to such other substances.

(Pub. L. 96–510, title I, § 125, as added Pub. L. 99–499, title I, § 125, Oct. 17, 1986, 100 Stat. 1689.)

§ 9626. Indian tribes

(a) Treatment generally

The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 9603(a) of this title (regarding notification of releases), section 9604(c)(2) of this title (regarding consultation on remedial actions), section 9604(e) of this title (regarding access to information), section 9604(i) of this title (regarding health authorities) and section 9605 of this title (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).

(b) Community relocation

Should the President determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The President, in cooperation with the Secretary of the Interior, shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

(c) Study

The President shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this chapter, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

(d) Limitation

Notwithstanding any other provision of this chapter, no action under this chapter by an Indian tribe shall be barred until the later of the following:

(1) The applicable period of limitations has expired.

(2) 2 years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this chapter.

(Pub. L. 96–510, title I, § 126, as added Pub. L. 99–499, title II, § 207(e), Oct. 17, 1986, 100 Stat. 1706.)

§ 9627. Recycling transactions

(a) Liability clarification

(1) As provided in subsections (b), (c), (d), and (e) of this section, a person who arranged for recycling of recyclable material shall not be liable under sections 9607(a)(3) and 9607(a)(4) of this title with respect to such material.

(2) A determination whether or not any person shall be liable under section 9607(a)(3) of this title or section 9607(a)(4) of this title for any material that is not a recyclable material as that term is used in subsections (b) and (c), (d), or (e) of this section shall be made, without regard to subsections[1] (b), (c), (d), or (e) of this section.

(b) Recyclable material defined

For purposes of this section, the term ''recyclable material'' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap; except that such term shall not include—

(1) shipping containers of a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto; or

(2) any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.

(c) Transactions involving scrap paper, plastic, glass, textiles, or rubber

Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

(1) The recyclable material met a commercial specification grade.

(2) A market existed for the recyclable material.

(3) A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a new saleable product.

(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

(5) For transactions occurring 90 days or more after November 29, 1999, the person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a ''consuming facility'') was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material.

(6) For purposes of this subsection, ''reasonable care'' shall be determined using criteria that include (but are not limited to)—

(A) the price paid in the recycling transaction;

(B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with recyclable material; and

(C) the result of inquiries made to the appropriate Federal, State, or local environ-

[1] So in original. Probably should be ''subsection''.

mental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material. For the purposes of this paragraph, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.

(d) Transactions involving scrap metal

(1) Transactions involving scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

(A) the person met the criteria set forth in subsection (c) of this section with respect to the scrap metal;

(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] subsequent to November 29, 1999, and with regard to transactions occurring after the effective date of such regulations or standards; and

(C) the person did not melt the scrap metal prior to the transaction.

(2) For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as ''sweating'').

(3) For purposes of this subsection, the term ''scrap metal'' means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition by regulation.

(e) Transactions involving batteries

Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

(1) the person met the criteria set forth in subsection (c) of this section with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries, but the person did not recover the valuable components of such batteries; and

(2)(A) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

(B) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or

(C) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.

(f) Exclusions

(1) The exemptions set forth in subsections (c), (d), and (e) of this section shall not apply if—

(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction—

(i) that the recyclable material would not be recycled;

(ii) that the recyclable material would be burned as fuel, or for energy recovery or incineration; or

(iii) for transactions occurring before 90 days after November 29, 1999, that the consuming facility was not in compliance with a substantive (not procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

(B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances).

(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other

management activities associated with the recyclable material.

(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

(g) Effect on other liability

Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 9607(a) of this title.

(h) Regulations

The Administrator has the authority, under section 9615 of this title, to promulgate additional regulations concerning this section.

(i) Effect on pending or concluded actions

The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the United States prior to November 29, 1999.

(j) Liability for attorney's fees for certain actions

Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

(k) Relationship to liability under other laws

Nothing in this section shall affect—

(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]; or

(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.

(*l*) Limitation on statutory construction

Nothing in this section shall be construed to—

(1) affect any defenses or liabilities of any person to whom subsection (a)(1) of this section does not apply; or

(2) create any presumption of liability against any person to whom subsection (a)(1) of this section does not apply.

(Pub. L. 96–510, title I, § 127, as added Pub. L. 106–113, div. B, § 1000(a)(9) [title VI, § 6001(b)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–599.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (d)(1)(B) and (k), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

SUPERFUND RECYCLING EQUITY; PURPOSES

Pub. L. 106–113, div. B, § 1000(a)(9) [title VI, § 6001(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–598, provided that: "The purposes of this section [enacting this section] are—

"(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;

"(2) to create greater equity in the statutory treatment of recycled versus virgin materials; and

"(3) to remove the disincentives and impediments to recycling created as an unintended consequence of the 1980 Superfund liability provisions."

§ 9628. State response programs

(a) Assistance to States

(1) In general

(A) States

The Administrator may award a grant to a State or Indian tribe that—

(i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements, listed in paragraph (2); or

(ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs.

(B) Use of grants by States

(i) In general

A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.

(ii) Additional uses

In addition to the uses under clause (i), a State or Indian tribe may use a grant under this subsection to—

(I) capitalize a revolving loan fund for brownfield remediation under section 9604(k)(3) of this title; or

(II) purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.

(2) Elements

The elements of a State or Indian tribe response program referred to in paragraph (1)(A)(i) are the following:

(A) Timely survey and inventory of brownfield sites in the State.

(B) Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that—

(i) a response action will—

(I) protect human health and the environment; and

(II) be conducted in accordance with applicable Federal and State law; and

(ii) if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

(C) Mechanisms and resources to provide meaningful opportunities for public participation, including—

(i) public access to documents that the State, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

(ii) prior notice and opportunity for comment on proposed cleanup plans and site activities; and

(iii) a mechanism by which—

(I) a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which the person works or resides may request the conduct of a site assessment; and

(II) an appropriate State official shall consider and appropriately respond to a request under subclause (I).

(D) Mechanisms for approval of a cleanup plan, and a requirement for verification by and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.

(3) Funding

There is authorized to be appropriated to carry out this subsection $50,000,000 for each of fiscal years 2002 through 2006.

(b) Enforcement in cases of a release subject to State program

(1) Enforcement

(A) In general

Except as provided in subparagraph (B) and subject to subparagraph (C), in the case of an eligible response site at which—

(i) there is a release or threatened release of a hazardous substance, pollutant, or contaminant; and

(ii) a person is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with the State program that specifically governs response actions for the protection of public health and the environment,

the President may not use authority under this chapter to take an administrative or judicial enforcement action under section 9606(a) of this title or to take a judicial enforcement action to recover response costs under section 9607(a) of this title against the person regarding the specific release that is addressed by the response action.

(B) Exceptions

The President may bring an administrative or judicial enforcement action under this chapter during or after completion of a response action described in subparagraph (A) with respect to a release or threatened release at an eligible response site described in that subparagraph if—

(i) the State requests that the President provide assistance in the performance of a response action;

(ii) the Administrator determines that contamination has migrated or will migrate across a State line, resulting in the need for further response action to protect human health or the environment, or the President determines that contamination has migrated or is likely to migrate onto property subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States and may impact the authorized purposes of the Federal property;

(iii) after taking into consideration the response activities already taken, the Administrator determines that—

(I) a release or threatened release may present an imminent and substantial endangerment to public health or welfare or the environment; and

(II) additional response actions are likely to be necessary to address, prevent, limit, or mitigate the release or threatened release; or

(iv) the Administrator, after consultation with the State, determines that information, that on the earlier of the date on which cleanup was approved or completed, was not known by the State, as recorded in documents prepared or relied on in selecting or conducting the cleanup, has been discovered regarding the contamination or conditions at a facility such that the contamination or conditions at the facility present a threat requiring further remediation to protect public health or welfare or the environment. Consultation with the State shall not limit the ability of the Administrator to make this determination.

(C) Public record

The limitations on the authority of the President under subparagraph (A) apply only at sites in States that maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year. The public record shall identify whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy. Each State and tribe receiving financial assistance under subsection (a) of this section shall maintain and make available to the public a record of sites as provided in this paragraph.

(D) EPA notification

(i) In general

In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall—

(I) notify the State of the action the Administrator intends to take; and

(II)(aa) wait 48 hours for a reply from the State under clause (ii); or

(bb) if the State fails to reply to the notification or if the Administrator makes a determination under clause

(iii), take immediate action under that clause.

(ii) State reply

Not later than 48 hours after a State receives notice from the Administrator under clause (i), the State shall notify the Administrator if—

(I) the release at the eligible response site is or has been subject to a cleanup conducted under a State program; and

(II) the State is planning to abate the release or threatened release, any actions that are planned.

(iii) Immediate Federal action

The Administrator may take action immediately after giving notification under clause (i) without waiting for a State reply under clause (ii) if the Administrator determines that one or more exceptions under subparagraph (B) are met.

(E) Report to Congress

Not later than 90 days after the date of initiation of any enforcement action by the President under clause (ii), (iii), or (iv) of subparagraph (B), the President shall submit to Congress a report describing the basis for the enforcement action, including specific references to the facts demonstrating that enforcement action is permitted under subparagraph (B).

(2) Savings provision

(A) Costs incurred prior to limitations

Nothing in paragraph (1) precludes the President from seeking to recover costs incurred prior to January 11, 2002, or during a period in which the limitations of paragraph (1)(A) were not applicable.

(B) Effect on agreements between States and EPA

Nothing in paragraph (1)—

(i) modifies or otherwise affects a memorandum of agreement, memorandum of understanding, or any similar agreement relating to this chapter between a State agency or an Indian tribe and the Administrator that is in effect on or before January 11, 2002 (which agreement shall remain in effect, subject to the terms of the agreement); or

(ii) limits the discretionary authority of the President to enter into or modify an agreement with a State, an Indian tribe, or any other person relating to the implementation by the President of statutory authorities.

(3) Effective date

This subsection applies only to response actions conducted after February 15, 2001.

(c) Effect on Federal laws

Nothing in this section affects any liability or response authority under any Federal law, including—

(1) this chapter, except as provided in subsection (b) of this section;

(2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(4) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

(5) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(Pub. L. 96–510, title I, § 128, as added Pub. L. 107–118, title II, § 231(b), Jan. 11, 2002, 115 Stat. 2375.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in subsec. (c)(4), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (c)(5), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

SUBCHAPTER II—HAZARDOUS SUBSTANCE RESPONSE REVENUE

PART A—HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

§§ 9631 to 9633. Repealed. Pub. L. 99–499, title V, § 517(c)(1), Oct. 17, 1986, 100 Stat. 1774

Section 9631, Pub. L. 96–510, title II, § 221, Dec. 11, 1980, 94 Stat. 2801; Pub. L. 99–499, title II, § 204, Oct. 17, 1986, 100 Stat. 1696, provided for establishment of a Hazardous Substances Superfund, so redesignated by section 204 of Pub. L. 99–499. See section 9507 of Title 26, Internal Revenue Code.

Section 9632, Pub. L. 96–510, title II, § 222, Dec. 11, 1980, 94 Stat. 2802, limited liability of United States to amount in Trust Fund.

Section 9633, Pub. L. 96–510, title II, § 223, Dec. 11, 1980, 94 Stat. 2802, contained administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 99–499 effective Jan. 1, 1987, see section 517(e) of Pub. L. 99–499, set out as an Effective Date note under section 9507 of Title 26, Internal Revenue Code.

PART B—POST-CLOSURE LIABILITY TRUST FUND

§ 9641. Repealed. Pub. L. 99–499, title V, § 514(b), Oct. 17, 1986, 100 Stat. 1767

Section, Pub. L. 96–510, title II, § 232, Dec. 11, 1980, 94 Stat. 2804, provided for establishment of the Post-closure Liability Trust Fund in the Treasury of the United States.

EFFECTIVE DATE OF REPEAL

Section 514(c) of Pub. L. 99–499 provided that:

''(1) IN GENERAL.—The amendments made by this section [repealing this section and sections 4681 and 4682 of Title 26, Internal Revenue Code] shall take effect on October 1, 1983.

''(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 17, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.''

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 9651. Reports and studies

(a) Implementation experiences; identification and disposal of waste

(1) The President shall submit to the Congress, within four years after December 11, 1980, a comprehensive report on experience with the implementation of this chapter including, but not limited to—

(A) the extent to which the chapter and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this chapter;

(F) the impact of the taxes imposed by subchapter II[1] of this chapter on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this chapter. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this chapter, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of title 26 for copper, lead, and zinc oxide, and for feedstocks when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after December 11, 1980, a report identifying additional wastes designated by rule as hazardous after the effective date of this chapter and pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980 [42 U.S.C. 6921(b)(2)(B) and 6921(b)(3)(A)], has determined should be subject to regulation under subtitle C of such Act [42 U.S.C. 6921 et seq.], (ii) within three years after December 11, 1980, a report on the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

(b) Private insurance protection

The President shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 9607 of this title, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations, within two years of December 11, 1980, and shall submit an interim report on his study within one year of December 11, 1980.

(c) Regulations respecting assessment of damages to natural resources

(1) The President, acting through Federal officials designated by the National Contingency Plan published under section 9605 of this title, shall study and, not later than two years after December 11, 1980, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this chapter and sec-

[1] See References in Text note below.

tion 1321(f)(4) and (5) of title 33. Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after October 17, 1986.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) Issues, alternatives, and policy considerations involving selection of locations for waste treatment, storage, and disposal facilities

The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of December 11, 1980, on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and other applicable provisions of law;

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e) Adequacy of existing common law and statutory remedies

(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment, there shall be submitted to the Congress a study within twelve months of December 11, 1980.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available to pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed $300,000.

(f) Modification of national contingency plan

The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Adminis-

trator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and, not later than two years after December 11, 1980, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

(g) Insurability study

(1) Study by Comptroller General

The Comptroller General of the United States, in consultation with the persons described in paragraph (2), shall undertake a study to determine the insurability, and effects on the standard of care, of the liability of each of the following:

(A) Persons who generate hazardous substances: liability for costs and damages under this chapter.

(B) Persons who own or operate facilities: liability for costs and damages under this chapter.

(C) Persons liable for injury to persons or property caused by the release of hazardous substances into the environment.

(2) Consultation

In conducting the study under this subsection, the Comptroller General shall consult with the following:

(A) Representatives of the Administrator.

(B) Representatives of persons described in subparagraphs (A) through (C) of the preceding paragraph.

(C) Representatives (i) of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances and (ii) of groups organized for protecting the interests of consumers.

(D) Representatives of property and casualty insurers.

(E) Representatives of reinsurers.

(F) Persons responsible for the regulation of insurance at the State level.

(3) Items evaluated

The study under this section shall include, among other matters, an evaluation of the following:

(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

(B) Current trends in statutory and common law remedies.

(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

(D) The effect of the standard of liability and extent of the persons upon whom it is imposed under this chapter on the protection of human health and the environment and on the availability, underwriting, and pricing of insurance coverage.

(E) Current trends, if any, in the judicial interpretation and construction of applicable insurance contracts, together with the degree to which amendments in the language of such contracts and the description of the risks assumed, could affect such trends.

(F) The frequency and severity of a representative sample of claims closed during the calendar year immediately preceding October 17, 1986.

(G) Impediments to the acquisition of insurance or other means of obtaining liability coverage other than those referred to in the preceding subparagraphs.

(H) The effects of the standards of liability and financial responsibility requirements imposed pursuant to this chapter on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies, as well as waste generation minimization.

(4) Submission

The Comptroller General shall submit a report on the results of the study to Congress with appropriate recommendations within 12 months after October 17, 1986.

(Pub. L. 96–510, title III, § 301, Dec. 11, 1980, 94 Stat. 2805; Pub. L. 99–499, title I, § 107(d)(3), title II, §§ 208, 212, Oct. 17, 1986, 100 Stat. 1630, 1707, 1726; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A), (E), (G), (c)(1), and (g), was in the original ''this Act'', meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Subchapter II of this chapter, referred to in subsec. (a)(1)(F), was in the original ''title II of this Act'', meaning title II of Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26. Sections 221 to 223 and 232 of Pub. L. 96–510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99–499, title V, §§ 514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

For effective date of this chapter, referred to in subsec. (a)(2), see section 9652 of this title.

Subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, referred to in subsec. (a)(2), probably mean section 3001(b)(2)(B) and (3)(A) of the Solid Waste Disposal Act, as amended by the Solid Waste Disposal Act Amendments of 1980, which enacted section 6921(b)(2)(B) and (3)(A) of this title.

The Solid Waste Disposal Act, referred to in subsecs. (a)(2) and (d)(C), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Subsec. (h) of this section, which required the Administrator of the Environmental Protection Agency to submit an annual report to Congress of such Agency on the progress achieved in implementing this chapter during the preceding fiscal year, required the Inspector General of the Agency to review the report for reasonableness and accuracy and submit to Congress, as a part of that report, a report on the results of the review, and required the appropriate authorizing committees of Congress, after receiving those reports, to conduct oversight hearings to ensure that this chapter is being implemented according to the purposes of this chapter and congressional intent in enacting this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 5th item on page 164 of House Document No. 103–7.

AMENDMENTS

1986—Subsec. (a)(1)(H). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (c)(1). Pub. L. 99–499, § 107(d)(3), inserted at end ''Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after October 17, 1986.''

Subsec. (g). Pub. L. 99–499, § 208, added subsec. (g).

Subsec. (h). Pub. L. 99–499, § 212, added subsec. (h).

§ 9652. Effective dates; savings provisions

(a) Unless otherwise provided, all provisions of this chapter shall be effective on December 11, 1980.

(b) Any regulation issued pursuant to any provisions of section 1321 of title 33 which is repealed or superseded by this chapter and which is in effect on the date immediately preceding the effective date of this chapter shall be deemed to be a regulation issued pursuant to the authority of this chapter and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this chapter, and

(3) in effect on the date immediately preceding the effective date of this chapter shall be deemed to be a regulation issued pursuant to the authority of this chapter and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this chapter shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this chapter shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

(Pub. L. 96–510, title III, § 302, Dec. 11, 1980, 94 Stat. 2808.)

§ 9653. Repealed. Pub. L. 99–499, title V, § 511(b), Oct. 17, 1986, 100 Stat. 1761

Section, Pub. L. 96–510, title III, § 303, Dec. 11, 1980, 94 Stat. 2808, provided for termination of authority to collect taxes under this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1987, see section 511(c) of Pub. L. 99–499, set out as an Effective Date of 1986 Amendment note under section 4611 of Title 26, Internal Revenue Code.

§ 9654. Applicability of Federal water pollution control funding, etc., provisions

(a) Omitted

(b) One-half of the unobligated balance remaining before December 11, 1980, under subsection (k)[1] of section 1321 of title 33 and all sums appropriated under section 1364(b)[1] of title 33 shall be transferred to the Fund established under subchapter II[1] of this chapter.

(c) In any case in which any provision of section 1321 of title 33 is determined to be in conflict with any provisions of this chapter, the provisions of this chapter shall apply.

(Pub. L. 96–510, title III, § 304, Dec. 11, 1980, 94 Stat. 2809.)

REFERENCES IN TEXT

Subsection (k) of section 1321 of title 33, referred to in subsec. (b), was repealed by Pub. L. 101–380, title II, § 2002(b)(2), Aug. 18, 1990, 104 Stat. 507.

Section 1364(b) of title 33, referred to in subsec. (b), was repealed by Pub. L. 96–510, title III, § 304(a), Dec. 11, 1980, 94 Stat. 2809.

Subchapter II of this chapter, referred to in subsec. (b), was in the original ''title II of this Act'', meaning title II of Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96–510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99–499, title V, §§ 514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

CODIFICATION

Subsec. (a) of this section repealed section 1364(b) of Title 33, Navigation and Navigable Waters.

§ 9655. Legislative veto of rule or regulation

(a) Transmission to Congress upon promulgation or repromulgation of rule or regulation; disapproval procedures

Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of subchapter I of this chapter, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of pro-

[1] See References in Text note below.

mulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: ''That Congress disapproves the rule or regulation promulgated by the dealing with the matter of , which rule or regulation was transmitted to Congress on .'', the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) Approval; effective dates

If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) Sessions of Congress as applicable

For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, resolution of disapproval

Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

(Pub. L. 96–510, title III, § 305, Dec. 11, 1980, 94 Stat. 2809.)

§ 9656. Transportation of hazardous substances; listing as hazardous material; liability for release

(a) Each hazardous substance which is listed or designated as provided in section 9601(14) of this title shall, within 30 days after October 17, 1986, or at the time of such listing or designation, whichever is later, be listed and regulated as a hazardous material under chapter 51 of title 49.

(b) A common or contract carrier shall be liable under other law in lieu of section 9607 of this title for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing and regulation of such substance as a hazardous material under chapter 51 of title 49, or for substances listed pursuant to subsection (a) of this section, prior to the effective date of such listing: *Provided, however*, That this subsection shall not apply where such a carrier can demonstrate that he did not have actual knowledge of the identity or nature of the substance released.

(Pub. L. 96–510, title III, § 306(a), (b), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 99–499, title II, § 202, Oct. 17, 1986, 100 Stat. 1695.)

CODIFICATION

In subsecs. (a) and (b), ''chapter 51 of title 49'' substituted for ''the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–499, § 202(a), substituted ''within 30 days after October 17, 1986'' for ''within ninety days after December 11, 1980'' and inserted ''and regulated'' before ''as a hazardous material''.

Subsec. (b). Pub. L. 99–499, § 202(b), inserted ''and regulation'' after ''prior to the effective date of the listing''.

§ 9657. Separability; contribution

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this chapter shall not be affected thereby. If an administrative settlement under section 9622 of this title has the effect of limiting any person's right to obtain contribution from any party to such settlement, and if the effect of such limitation would constitute a taking without just compensation in violation of the fifth amendment of the Constitution of the United States, such person shall not be entitled, under other laws of the United States, to recover compensation from the United States for such taking, but in any such case, such limitation on the right to obtain contribution shall be treated as having no force and effect.

(Pub. L. 96–510, title III, § 308, Dec. 11, 1980, 94 Stat. 2811; Pub. L. 99–499, title I, § 122(b), Oct. 17, 1986, 100 Stat. 1688.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1986—Pub. L. 99–499 inserted sentence at end relating to administrative settlements under section 9622 of this

title which have effect of limiting any person's right to obtain contribution from any party to such settlement.

§ 9658. Actions under State law for damages from exposure to hazardous substances

(a) State statutes of limitations for hazardous substance cases

(1) Exception to State statutes

In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

(2) State law generally applicable

Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

(3) Actions under section 9607

Nothing in this section shall apply with respect to any cause of action brought under section 9607 of this title.

(b) Definitions

As used in this section—

(1) Subchapter I terms

The terms used in this section shall have the same meaning as when used in subchapter I of this chapter.

(2) Applicable limitations period

The term ''applicable limitations period'' means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) of this section may be brought.

(3) Commencement date

The term ''commencement date'' means the date specified in a statute of limitations as the beginning of the applicable limitations period.

(4) Federally required commencement date

(A) In general

Except as provided in subparagraph (B), the term ''federally required commencement date'' means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) of this section were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

(B) Special rules

In the case of a minor or incompetent plaintiff, the term ''federally required commencement date'' means the later of the date referred to in subparagraph (A) or the following:

(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

(Pub. L. 96–510, title III, § 309, as added Pub. L. 99–499, title II, § 203(a), Oct. 17, 1986, 100 Stat. 1695.)

EFFECTIVE DATE

Section 203(b) of Pub. L. 99–499 provided that: ''The amendment made by subsection (a) of this section [enacting this section] shall take effect with respect to actions brought after December 11, 1980.''

§ 9659. Citizens suits

(a) Authority to bring civil actions

Except as provided in subsections (d) and (e) of this section and in section 9613(h) of this title (relating to timing of judicial review), any person may commence a civil action on his own behalf—

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter (including any provision of an agreement under section 9620 of this title, relating to Federal facilities); or

(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this chapter, including an act or duty under section 9620 of this title (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of section 9660 of this title (relating to research, development, and demonstration).

(b) Venue

(1) Actions under subsection (a)(1)

Any action under subsection (a)(1) of this section shall be brought in the district court for the district in which the alleged violation occurred.

(2) Actions under subsection (a)(2)

Any action brought under subsection (a)(2) of this section may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a)(1) of this section to enforce the standard, regulation, con-

dition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) of this section to order the President or other officer to perform the act or duty concerned.

(d) Rules applicable to subsection (a)(1) actions

(1) Notice

No action may be commenced under subsection (a)(1) of this section before 60 days after the plaintiff has given notice of the violation to each of the following:

(A) The President.

(B) The State in which the alleged violation occurs.

(C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

(2) Diligent prosecution

No action may be commenced under paragraph (1) of subsection (a) of this section if the President has commenced and is diligently prosecuting an action under this chapter, or under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title).

(e) Rules applicable to subsection (a)(2) actions

No action may be commenced under paragraph (2) of subsection (a) of this section before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Intervention

In any action under this section, the United States or the State, or both, if not a party may intervene as a matter of right. For other provisions regarding intervention, see section 9613 of this title.

(h) Other rights

This chapter does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of review as provided in section 9613(h) of this title or as otherwise provided in section 9658 of this title (relating to actions under State law).

(i) Definitions

The terms used in this section shall have the same meanings as when used in subchapter I of this chapter.

(Pub. L. 96–510, title III, § 310, as added Pub. L. 99–499, title II, § 206, Oct. 17, 1986, 100 Stat. 1703.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (d)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 9660. Research, development, and demonstration

(a) Hazardous substance research and training

(1) Authorities of Secretary

The Secretary of Health and Human Services (hereinafter in this subsection referred to as the Secretary), in consultation with the Administrator, shall establish and support a basic research and training program (through grants, cooperative agreements, and contracts) consisting of the following:

(A) Basic research (including epidemiologic and ecologic studies) which may include each of the following:

(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

(ii) Methods to assess the risks to human health presented by hazardous substances.

(iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

(B) Training, which may include each of the following:

(i) Short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such facilities.

(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.

(iii) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and

private sectors and to effectuate the purposes of this chapter.

(2) Director of NIEHS

The Director of the National Institute for Environmental Health Sciences shall cooperate fully with the relevant Federal agencies referred to in subparagraph (A) of paragraph (5) in carrying out the purposes of this section.

(3) Recipients of grants, etc.

A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with any of the following:

(A) Generators of hazardous wastes.

(B) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances.

(C) Owners and operators of facilities at which hazardous substances are located.

(D) State and local governments.

(4) Procedures

In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences. In considering the allocation of funds for training purposes, the Director shall ensure that at least one grant, cooperative agreement, or contract shall be awarded for training described in each of clauses (i), (ii), and (iii) of paragraph (1)(B). Where applicable, the Director may choose to operate training activities in cooperation with the Director of the National Institute for Occupational Safety and Health. The procedures applicable to grants and contracts under title IV of the Public Health Service Act [42 U.S.C. 281 et seq.] shall be followed under this subsection.

(5) Advisory council

To assist in the implementation of this subsection and to aid in the coordination of research and demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the ''Advisory Council'') which shall consist of representatives of the following:

(A) The relevant Federal agencies.

(B) The chemical industry.

(C) The toxic waste management industry.

(D) Institutions of higher education.

(E) State and local health and environmental agencies.

(F) The general public.

(6) Planning

Within nine months after October 17, 1986, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this chapter. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among the relevant Federal agencies referred to in subparagraph (A) of paragraph (5).

(b) Alternative or innovative treatment technology research and demonstration program

(1) Establishment

The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the ''program'') which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

(2) Administration

The program shall be administered by the Administrator, acting through an office of technology demonstration and shall be coordinated with programs carried out by the Office of Solid Waste and Emergency Response and the Office of Research and Development.

(3) Contracts and grants

In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and nonprofit private entities which are exempt from tax under section 501(c)(3) of title 26. The Administrator shall, to the maximum extent possible, enter into appropriate cost sharing arrangements under this subsection.

(4) Use of sites

In carrying out the program, the Administrator may arrange for the use of sites at which a response may be undertaken under section 9604 of this title for the purposes of carrying out research, testing, evaluation, development, and demonstration projects. Each such project shall be carried out under such terms and conditions as the Administrator shall require to assure the protection of human health and the environment and to assure adequate control by the Administrator of the research, testing, evaluation, development, and demonstration activities at the site.

(5) Demonstration assistance

(A) Program components

The demonstration assistance program shall include the following:

(i) The publication of a solicitation and the evaluation of applications for demonstration projects utilizing alternative or innovative technologies.

(ii) The selection of sites which are suitable for the testing and evaluation of innovative technologies.

(iii) The development of detailed plans for innovative technology demonstration projects.

(iv) The supervision of such demonstration projects and the providing of quality assurance for data obtained.

(v) The evaluation of the results of alternative innovative technology demonstration projects and the determination of whether or not the technologies used are effective and feasible.

(B) Solicitation

Within 90 days after October 17, 1986, and no less often than once every 12 months thereafter, the Administrator shall publish a solicitation for innovative or alternative technologies at a stage of development suitable for full-scale demonstrations at sites at which a response action may be undertaken under section 9604 of this title. The purpose of any such project shall be to demonstrate the use of an alternative or innovative treatment technology with respect to hazardous substances or pollutants or contaminants which are located at the site or which are to be removed from the site. The solicitation notice shall prescribe information to be included in the application, including technical and economic data derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the technology's potential and the types of remedial action to which it may be applicable.

(C) Applications

Any person and any public or private nonprofit entity may submit an application to the Administrator in response to the solicitation. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

(D) Project selection

In selecting technologies to be demonstrated, the Administrator shall fully review the applications submitted and shall consider at least the criteria specified in paragraph (7). The Administrator shall select or refuse to select a project for demonstration under this subsection within 90 days of receiving the completed application for such project. In the case of a refusal to select the project, the Administrator shall notify the applicant within such 90-day period of the reasons for his refusal.

(E) Site selection

The Administrator shall propose 10 sites at which a response may be undertaken under section 9604 of this title to be the location of any demonstration project under this subsection within 60 days after the close of the public comment period. After an opportunity for notice and public comment, the Administrator shall select such sites and projects. In selecting any such site, the Administrator shall take into account the applicant's technical data and preferences either for onsite operation or for utilizing the site as a source of hazardous substances or pollutants or contaminants to be treated offsite.

(F) Demonstration plan

Within 60 days after the selection of the site under this paragraph to be the location of a demonstration project, the Administrator shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out.

(G) Supervision and testing

Each demonstration project under this subsection shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of the demonstration project, and the limitations established by subparagraph (J) shall not apply to such costs.

(H) Project completion

Each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan.

(I) Extensions

The Administrator may extend any deadline established under this paragraph by mutual agreement with the applicant concerned.

(J) Funding restrictions

The Administrator shall not provide any Federal assistance for any part of a full-scale field demonstration project under this subsection to any applicant unless such applicant can demonstrate that it cannot obtain appropriate private financing on reasonable terms and conditions sufficient to carry out such demonstration project without such Federal assistance. The total Federal funds for any full-scale field demonstration project under this subsection shall not exceed 50 percent of the total cost of such project estimated at the time of the award of such assistance. The Administrator shall not expend more than $10,000,000 for assistance under the program in any fiscal year and shall not expend more than $3,000,000 for any single project.

(6) Field demonstrations

In carrying out the program, the Administrator shall initiate or cause to be initiated at least 10 field demonstration projects of alternative or innovative treatment technologies

at sites at which a response may be undertaken under section 9604 of this title, in fiscal year 1987 and each of the succeeding three fiscal years. If the Administrator determines that 10 field demonstration projects under this subsection cannot be initiated consistent with the criteria set forth in paragraph (7) in any of such fiscal years, the Administrator shall transmit to the appropriate committees of Congress a report explaining the reasons for his inability to conduct such demonstration projects.

(7) Criteria

In selecting technologies to be demonstrated under this subsection, the Administrator shall, consistent with the protection of human health and the environment, consider each of the following criteria:

(A) The potential for contributing to solutions to those waste problems which pose the greatest threat to human health, which cannot be adequately controlled under present technologies, or which otherwise pose significant management difficulties.

(B) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

(C) The availability and suitability of sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in such a manner as to assure the protection of human health and the environment.

(D) The likelihood that the data to be generated from the demonstration project at the site will be applicable to other sites.

(8) Technology transfer

In carrying out the program, the Administrator shall conduct a technology transfer program including the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative treatment technologies for response actions. The Administrator shall establish and maintain a central reference library for such information. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5 and section 1905 of title 18, and to other Government agencies in a manner that will facilitate its dissemination; except, that upon a showing satisfactory to the Administrator by any person that any information or portion thereof obtained under this subsection by the Administrator directly or indirectly from such person, would, if made public, divulge—

(A) trade secrets; or

(B) other proprietary information of such person,

the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18. This subsection is not authority to withhold information from Congress or any committee of Congress upon the request of the chairman of such committee.

(9) Training

The Administrator is authorized and directed to carry out, through the Office of Technology Demonstration, a program of training and an evaluation of training needs for each of the following:

(A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

(B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

(10) Definition

For purposes of this subsection, the term ''alternative or innovative treatment technologies'' means those technologies, including proprietary or patented methods, which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contaminants on complex ecosystems at sites.

(c) Hazardous substance research

The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

(d) University hazardous substance research centers

(1) Grant program

The Administrator shall make grants to institutions of higher learning to establish and operate not fewer than 5 hazardous substance research centers in the United States. In carrying out the program under this subsection, the Administrator should seek to have established and operated 10 hazardous substance research centers in the United States.

(2) Responsibilities of centers

The responsibilities of each hazardous substance research center established under this subsection shall include, but not be limited to, the conduct of research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

(3) Applications

Any institution of higher learning interested in receiving a grant under this subsection

shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) Selection criteria

The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The hazardous substance research center shall be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

(B) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

(C) There is available to the grant recipient for carrying out this subsection demonstrated research resources.

(D) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems.

(E) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year.

(F) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in hazardous substance management and research.

(G) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

(H) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

(5) Maintenance of effort

No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding October 17, 1986.

(6) Federal share

The Federal share of a grant under this subsection shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance research center and related research activities carried out by the grant recipient.

(7) Limitation on use of funds

No funds made available to carry out this subsection shall be used for acquisition of real property (including buildings) or construction of any building.

(8) Administration through the Office of the Administrator

Administrative responsibility for carrying out this subsection shall be in the Office of the Administrator.

(9) Equitable distribution of funds

The Administrator shall allocate funds made available to carry out this subsection equitably among the regions of the United States.

(10) Technology transfer activities

Not less than five percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.

(e) Report to Congress

At the time of the submission of the annual budget request to Congress, the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate and to the advisory council established under subsection (a) of this section, a report on the progress of the research, development, and demonstration program authorized by subsection (b) of this section, including an evaluation of each demonstration project completed in the preceding fiscal year, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous wastes, the costs of such demonstration projects, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

(f) Saving provision

Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(g) Small business participation

The Administrator shall ensure, to the maximum extent practicable, an adequate opportunity for small business participation in the program established by subsection (b) of this section.

(Pub. L. 96–510, title III, § 311, as added Pub. L. 99–499, title II, § 209(b), Oct. 17, 1986, 100 Stat. 1708; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (a)(4), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title IV of the Public Health Service Act is classified generally to subchapter III (§ 281 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (f), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

GULF COAST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Section 118(*l*) of Pub. L. 99–499 provided that:

''(1) ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—The Administrator shall establish a hazardous sub-

stance research, development, and demonstration center (hereinafter in this subsection referred to as the 'Center') for the purpose of conducting research to aid in more effective hazardous substance response and waste management throughout the Gulf Coast.

''(2) PURPOSES OF THE CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions or in normal handling of hazardous wastes to achieve better protection of human health and the environment.

''(3) OPERATION OF CENTER.—(A) For purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a university related institute involved with the improvement of waste management. Such institute shall be located in Jefferson County, Texas.

''(B) The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Texas, Louisiana, Mississippi, Alabama, and Florida in order to carry out the purposes of the Center.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator for purposes of carrying out this subsection for fiscal years beginning after September 30, 1986, not more than $5,000,000.''

PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Section 118(*o*) of Pub. L. 99–499 provided that:

''(1) ESTABLISHMENT.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the 'Center') for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest.

''(2) PURPOSES OF CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

''(3) OPERATION OF CENTER.—

''(A) NONPROFIT ENTITY.—For the purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a nonprofit private entity as defined in section 201(i) of Public Law 96-517 [probably means section 201(i) of Title 35, Patents, which was enacted by section 6(a) of Pub. L. 96–517, Dec. 12, 1980, 94 Stat. 3020] which entity shall agree to provide the basic technical and management personnel. Such nonprofit private entity shall also agree to provide at least two permanent research facilities, one of which shall be located in Benton County, Washington, and one of which shall be located in Clallam County, Washington.

''(B) AUTHORITIES.—The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Washington, Oregon, Idaho, and Montana in order to carry out the purposes of the Center.

''(4) HAZARDOUS WASTE RESEARCH AT THE HANFORD SITE.—

''(A) INTERAGENCY AGREEMENTS.—The Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another for the purpose of providing for research, evaluation, testing, development, and demonstration into alternative or innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site, in the State of Washington.

''(B) FUNDING.—There is authorized to be appropriated to the Secretary of Energy for purposes of carrying out this paragraph for fiscal years beginning after September 30, 1986, not more than $5,000,000. All sums appropriated under this subparagraph shall be provided to the Administrator by the Secretary of Energy, pursuant to the interagency agreement entered into under subparagraph (A), for the purpose of the Administrator entering into contracts and cooperative agreements with, and making grants to, the Center in order to carry out the research, evaluation, testing, development, and demonstration described in paragraph (1).

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator for purposes of carrying out this subsection (other than paragraph (4)) for fiscal years beginning after September 30, 1986, not more than $5,000,000.''

CONGRESSIONAL STATEMENT OF PURPOSE

Section 209(a) of Pub. L. 99–499 provided that: ''The purposes of this section [enacting this section] are as follows:

''(1) To establish a comprehensive and coordinated Federal program of research, development, demonstration, and training for the purpose of promoting the development of alternative and innovative treatment technologies that can be used in response actions under the CERCLA program, to provide incentives for the development and use of such technologies, and to improve the scientific capability to assess, detect and evaluate the effects on and risks to human health from hazardous substances.

''(2) To establish a basic university research and education program within the Department of Health and Human Services and a research, demonstration, and training program within the Environmental Protection Agency.

''(3) To reserve certain funds from the Hazardous Substance Trust Fund to support a basic research program within the Department of Health and Human Services, and an applied and developmental research program within the Environmental Protection Agency.

''(4) To enhance the Environmental Protection Agency's internal research capabilities related to CERCLA activities, including site assessment and technology evaluation.

''(5) To provide incentives for the development of alternative and innovative treatment technologies in a manner that supplements or coordinates with, but does not compete with or duplicate, private sector development of such technologies.''

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 9660a. Grant program

(1) Grant purposes

Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this section.

(2) Administration

Grants under this section shall be administered by the National Institute of Environmental Health Sciences.

(3) Grant recipients

Grants shall be awarded to nonprofit organizations which demonstrate experience in imple-

menting and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

(Pub. L. 99–499, title I, § 126(g), Oct. 17, 1986, 100 Stat. 1692.)

CODIFICATION

Section was enacted as part of the Superfund Amendments and Reauthorization Act of 1986, and not as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which comprises this chapter.

§ 9661. Love Canal property acquisition

(a) Acquisition of property in Emergency Declaration Area

The Administrator of the Environmental Protection Agency (hereinafter referred to as the ''Administrator'') may make grants not to exceed $2,500,000 to the State of New York (or to any duly constituted public agency or authority thereof) for purposes of acquisition of private property in the Love Canal Emergency Declaration Area. Such acquisition shall include (but shall not be limited to) all private property within the Emergency Declaration Area, including non-owner occupied residential properties, commercial, industrial, public, religious, nonprofit, and vacant properties.

(b) Procedures for acquisition

No property shall be acquired pursuant to this section unless the property owner voluntarily agrees to such acquisition. Compensation for any property acquired pursuant to this section shall be based upon the fair market value of the property as it existed prior to the emergency declaration. Valuation procedures for property acquired with funds provided under this section shall be in accordance with those set forth in the agreement entered into between the New York State Disaster Preparedness Commission and the Love Canal Revitalization Agency on October 9, 1980.

(c) State ownership

The Administrator shall not provide any funds under this section for the acquisition of any properties pursuant to this section unless a public agency or authority of the State of New York first enters into a cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State or an agency created under the laws of the State shall take title to the properties to be so acquired.

(d) Maintenance of property

The Administrator shall enter into a cooperative agreement with an appropriate public agency or authority of the State of New York under which the Administrator shall maintain or arrange for the maintenance of all properties within the Emergency Declaration Area that have been acquired by any public agency or authority of the State. Ninety (90) percent of the costs of such maintenance shall be paid by the Administrator. The remaining portion of such costs shall be paid by the State (unless a credit is available under section 9604(c) of this title). The Administrator is authorized, in his discretion, to provide technical assistance to any public agency or authority of the State of New York in order to implement the recommendations of the habitability and land-use study in order to put the land within the Emergency Declaration Area to its best use.

(e) Habitability and land use study

The Administrator shall conduct or cause to be conducted a habitability and land-use study. The study shall—

(1) assess the risks associated with inhabiting of the Love Canal Emergency Declaration Area;

(2) compare the level of hazardous waste contamination in that Area to that present in other comparable communities; and

(3) assess the potential uses of the land within the Emergency Declaration Area, including but not limited to residential, industrial, commercial and recreational, and the risks associated with such potential uses.

The Administrator shall publish the findings of such study and shall work with the State of New York to develop recommendations based upon the results of such study.

(f) Funding

For purposes of section 9611 of this title [and 9631(c)[1] of this title], the expenditures authorized by this section shall be treated as a cost specified in section 9611(c) of this title.

(g) Response

The provisions of this section shall not affect the implementation of other response actions within the Emergency Declaration Area that the Administrator has determined (before October 17, 1986) to be necessary to protect the public health or welfare or the environment.

(h) Definitions

For purposes of this section:

(1) Emergency Declaration Area

The terms ''Emergency Declaration Area'' and ''Love Canal Emergency Declaration Area'' mean the Emergency Declaration Area as defined in section 950, paragraph (2) of the General Municipal Law of the State of New York, Chapter 259, Laws of 1980, as in effect on October 17, 1986.

(2) Private property

As used in subsection (a) of this section, the term ''private property'' means all property which is not owned by a department, agency, or instrumentality of—

(A) the United States, or

(B) the State of New York (or any public agency or authority thereof).

(Pub. L. 96–510, title III, § 312, as added Pub. L. 99–499, title II, § 213(b), Oct. 17, 1986, 100 Stat. 1727.)

REFERENCES IN TEXT

Section 9631 of this title, referred to in subsec. (f), was repealed by Pub. L. 99–499, title V, § 517(c)(1), Oct. 17, 1986, 100 Stat. 1774.

[1] See References in Text note below.

LOVE CANAL PROPERTY ACQUISITION; CONGRESSIONAL FINDINGS

Section 213(a) of Pub. L. 99–499 provided that:

''(1) The area known as Love Canal located in the city of Niagara Falls and the town of Wheatfield, New York, was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.)] to deal with these problems.

''(2) Because Love Canal came to the Nation's attention prior to the passage of CERCLA and because the fund under CERCLA was not available to compensate for all of the hardships endured by the citizens in the area, Congress has determined that special provisions are required. These provisions do not affect the lawfulness, implementation, or selection of any other response actions at Love Canal or at any other facilities.''

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9662. Limitation on contract and borrowing authority

Any authority provided by this Act, including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 99–499, § 3, Oct. 17, 1986, 100 Stat. 1614.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1613, as amended, known as the Superfund Amendments and Reauthorization Act of 1986. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

CODIFICATION

Section was enacted as part of the Superfund Amendments and Reauthorization Act of 1986, and not as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which comprises this chapter.

SUBCHAPTER IV—POLLUTION INSURANCE

§ 9671. Definitions

As used in this subchapter—

(1) Insurance

The term ''insurance'' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

(2) Pollution liability

The term ''pollution liability'' means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

(3) Risk retention group

The term ''risk retention group'' means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

(4) Purchasing group

The term ''purchasing group'' means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(5) State

The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

(Pub. L. 96–510, title IV, § 401, as added Pub. L. 99–499, title II, § 210(a), formerly § 210, Oct. 17, 1986, 100 Stat. 1716; renumbered § 210(a), Pub. L. 99–563, § 11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

STATE POWERS AND AUTHORITIES UNDER RISK RETENTION AMENDMENTS OF 1986

Section 210(b) of Pub. L. 99–499, as added by Pub. L. 99–563, § 11(c)(1), Oct. 27, 1986, 100 Stat. 3177, provided that: ''For purposes of subsection (a) of this section [enacting this subchapter], the powers and authorities of States addressed by the Risk Retention Amendments of 1986 [Pub. L. 99–563, see Short Title of 1986 Amendment note set out under section 3901 of Title 15, Commerce and Trade] are in addition to those of this Act [see Short Title of 1986 Amendment note set out under section 9601 of this title].''

§ 9672. State laws; scope of subchapter

(a) State laws

Nothing in this subchapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this subchapter, including recognition or qualification of risk retention groups or purchasing groups.

(b) Scope of subchapter

The authority to offer or to provide insurance under this subchapter shall be limited to coverage of pollution liability risks and this subchapter does not authorize a risk retention group or purchasing group to provide coverage of any other line of insurance.

(Pub. L. 96–510, title IV, § 402, as added Pub. L. 99–499, title II, § 210(a), formerly § 210, Oct. 17, 1986, 100 Stat. 1716; renumbered § 210(a), Pub. L. 99–563, § 11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§ 9673. Risk retention groups

(a) Exemption

Except as provided in this section, a risk retention group shall be exempt from the following:

(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(b) Exceptions

(1) State laws generally applicable

Nothing in subsection (a) of this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

(2) State regulations not subject to exemption

Subsection (a) of this section shall not apply to any State law which requires a risk retention group to do any of the following:

(A) Comply with the unfair claim settlement practices law of the State.

(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

(c) Application of exemptions

The exemptions specified in subsection (a) of this section apply to—

(1) pollution liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of pollution liability insurance coverage for a risk retention group; and

(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

(d) Agents or brokers

A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub. L. 96–510, title IV, § 403, as added Pub. L. 99–499, title II, § 210(a), formerly § 210, Oct. 17, 1986, 100 Stat. 1717; renumbered § 210(a), Pub. L. 99–563, § 11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§ 9674. Purchasing groups

(a) Exemption

Except as provided in this section, a purchasing group is exempt from the following:

(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

(7) A State law, rule, or order which requires that any insurance policy issued to a purchas-

ing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

(8) A State law, rule, or order which otherwise discriminate[1] against a purchasing group or any of its members.

(b) Application of exemptions

The exemptions specified in subsection (a) of this section apply to the following:

(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group.

(2) The sale of any one of the following to a purchasing group or a member of the group:

(A) Pollution liability insurance and comprehensive general liability coverage.

(B) Insurance related services.

(C) Management services.

(c) Agents or brokers

A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub. L. 96–510, title IV, § 404, as added Pub. L. 99–499, title II, § 210(a), formerly § 210, Oct. 17, 1986, 100 Stat. 1718; renumbered § 210(a), Pub. L. 99–563, § 11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§ 9675. Applicability of securities laws

(a) Ownership interests

The ownership interests of members of a risk retention group shall be considered to be—

(1) exempted securities for purposes of section 77e of title 15 and for purposes of section 78*l* of title 15; and

(2) securities for purposes of the provisions of section 77q of title 15 and the provisions of section 78j of title 15.

(b) Investment Company Act

A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

(c) Blue sky law

The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

(Pub. L. 96–510, title IV, § 405, as added Pub. L. 99–499, title II, § 210(a), formerly § 210, Oct. 17, 1986, 100 Stat. 1719; renumbered § 210(a), Pub. L. 99–563, § 11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

[1] So in original. Probably should be ''discriminates''.

CHAPTER 104—NUCLEAR SAFETY RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Sec.
9701. Congressional findings and declaration of policy.
9702. Definitions.
9703. Research, development, and demonstration program; establishment; purposes; implementation.
9704. National reactor engineering simulator feasibility study.
9705. Federal Nuclear Operations Corps' study.
9706. Dissemination of information.
9707. Comprehensive program management plan.
9708. Authorization of appropriations.

§ 9701. Congressional findings and declaration of policy

(a) The Congress finds that—

(1) nuclear energy is one of the two major energy sources available for electric energy production in the United States during the balance of the twentieth century;

(2) continued development of nuclear power is dependent upon maintaining an extremely high level of safety in the operation of nuclear plants, and on public recognition that these facilities do not constitute a significant threat to human health or safety;

(3) it is the responsibility of utilities, as owners and operators of nuclear powerplants, to assure that such plants are designed and operated safely and reliably; and

(4) a proper role of the Federal Government in assuring nuclear powerplant safety, in addition to its regulatory function, is the conduct of a research, development, and demonstration program to provide important scientific and technical information which can contribute to sound design and safe operation of these plants.

(b) It is declared to be the policy of the United States and the purpose of this chapter to establish a research, development, and demonstration program for developing practical improvements in the generic safety of nuclear powerplants during the next five years, beginning in the fiscal year 1981. The objectives of such program shall be—

(1) to reduce the likelihood and severity of potentially serious nuclear powerplant accidents; and

(2) to reduce the likelihood of disrupting the population in the vicinity of nuclear powerplants as the result of nuclear powerplant accidents.

Nothing in this chapter shall be construed as preventing the Secretary from undertaking projects or activities, in addition to those specified in this chapter, which appropriately further the purpose and objectives set forth in this subsection. Nothing in this chapter shall authorize the Secretary to assume responsibility for the management, cleanup or repair of any commercial nuclear powerplant. Nothing in this chapter shall be construed as limiting the authority of the Secretary under any other law.

(Pub. L. 96–567, § 2, Dec. 22, 1980, 94 Stat. 3329.)

SHORT TITLE

Section 1 of Pub. L. 96–567 provided: ''That this Act [enacting this chapter] may be cited as the 'Nuclear

Safety Research, Development, and Demonstration Act of 1980'.''

§ 9702. Definitions

For purposes of this chapter—

(1) the term ''Secretary'' means the Secretary of Energy;

(2) the term ''Government agency'' means any department, agency, commission, or independent establishment in the executive branch of the Federal Government, or any corporation, wholly or partly owned by the United States, which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Federal Government;

(3) the term ''Commission'' means the Nuclear Regulatory Commission; and

(4) the term ''Advisory Committee'' means the Advisory Committee on Reactor Safeguards established by section 2039 of this title.

(Pub. L. 96–567, § 3, Dec. 22, 1980, 94 Stat. 3329.)

§ 9703. Research, development, and demonstration program; establishment; purposes; implementation

(a) The Secretary shall establish a research, development, and demonstration program to carry out the purpose of this chapter. As part of such program, the Secretary shall at a minimum—

(1) refine further the assessment of risk factors associated with the generic design and operation of nuclear powerplants to determine the degree and consequences of propagation of failures of systems, subsystems, and components, including consideration of the interaction between the primary and secondary systems;

(2) develop potentially cost-beneficial changes in the generic design and operation of nuclear powerplants that can (A) significantly reduce the risks from unintentional release of radioactive material from the various engineered barriers of nuclear powerplants and (B) reduce the radiation exposure to workers during plant operation and maintenance;

(3) develop potentially cost-beneficial generic methods and designs that will significantly improve the performance of operators of nuclear powerplants under routine, abnormal, and accident conditions;

(4) identify the effect of total or partial automation of generic plant systems on reactor safety, operation, reliability, economics, and operator performance;

(5) conduct further experimental investigations under abnormal operational and postulated accident conditions primarily for light water reactors to determine the consequences of such conditions. These investigations shall include, but not be limited to, the following:

(A) fuel failure at higher than standard burn-up levels;

(B) fuel-cladding interactions;

(C) fuel and cladding interactions with coolant under various temperatures and pressures;

(D) thermohydraulic behavior in the reactor core;

(E) mechanisms to suppress and control the generation of hydrogen gas;

(F) improved instrumentation for monitoring reactor cores;

(G) engineered-barrier failure modes; and

(H) fission product release and transport from failed fuel;

(6) provide for the examination and analysis of any nuclear powerplant fuel, component, or system which the Secretary deems to offer significant benefit in safety analysis and which is made available to the Secretary for a nominal cost, such as $1: *Provided, however*, That the Secretary shall accept only the number of samples of such fuel, component, or system necessary to carry out such examination and analysis; and

(7) identify the aptitudes, training, and manning levels which are necessary to assure reliable operator performance under normal, abnormal, and emergency conditions.

(b) In carrying out the generic safety research, development, and demonstration program established under this chapter, the Secretary—

(1) shall coordinate with the Commission and, to the extent necessary, enter into a new memorandum of understanding or revise existing memoranda for the purpose of eliminating unnecessary duplication and avoiding programmatic conflict with any reactor safety research program of the Commission, including the Improved Safety Systems Research program;

(2) shall, to the extent practical, coordinate his activities with such other Government agencies, foreign governments, and industry as he deems appropriate to utilize their expertise, to minimize duplication of effort, and to ensure that information useful for improved concepts applicable to nuclear powerplant safety can be applied in a timely manner. The Secretary may enter into agreements and memoranda of understanding to accomplish these ends, but no such agreement shall have the effect of delaying the development and implementation of programs authorized under this chapter;

(3) shall utilize, to the extent feasible, underutilized federally owned research reactors and facilities, along with the associated personnel, to maintain existing capabilities and to ensure that the research is generic in nature; and

(4) shall make such recommendations as are practical to minimize the complexity of nuclear powerplant systems, including secondary systems, and operations.

(Pub. L. 96–567, § 4, Dec. 22, 1980, 94 Stat. 3330.)

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 9704. National reactor engineering simulator feasibility study

(a) Consultative requirements; purpose

The Secretary, in consultation with the Commission and the Advisory Committee, shall ini-

tiate a study of the need for and feasibility of establishing a reactor engineering simulator facility at a national laboratory, for the primary purpose of fostering research in generic design improvements and simplifications through the simulation of the performance of various types of light water reactors under a wide variety of abnormal conditions and postulated accident conditions.

(b) Applicability of relevant factors

In performing the study, the Secretary shall consider relevant factors including, but not limited to—

(1) the potential advantages that would accrue from the establishment of such a facility;

(2) the extent to which such a facility would further the generic safety research and development program established by this chapter;

(3) the extent to which such a facility can be established by nongovernmental entities;

(4) the opportunities for cost sharing by nongovernmental entities in the construction and operation of such a facility;

(5) the importance of such a facility in emergencies to limit the extent of any future nuclear powerplant excursions;

(6) the potential for international cooperation in the establishment and operation of such a facility; and

(7) the appropriate national laboratory for siting such a facility.

(c) Report to Congressional committees

The Secretary shall, by January 1, 1982, submit to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report characterizing the study and the resulting conclusions and recommendations.

(Pub. L. 96–567, § 5, Dec. 22, 1980, 94 Stat. 3331.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 9705. Federal Nuclear Operations Corps' study

(a) Cooperation and coordination requirements; purpose

The Secretary, in cooperation with the Nuclear Regulatory Commission, shall initiate a study as to the sufficiency of efforts in the United States to provide specially trained professionals to operate the controls of nuclear powerplants and other facilities in the back-end of the nuclear fuel cycle. In carrying out the study, the Secretary shall coordinate his activities with the ongoing programs of the utility industry and other Federal governmental agencies for obtaining high standards of operator performance.

(b) Assessments

(1) In conducting the study the Secretary shall assess the desirability and feasibility of creating a Federal Corps of such professionals to inspect and supervise such operations.

(2) The assessment shall consider the establishment of an academy to train Corps professionals in all aspects of nuclear technology, nuclear operations, nuclear regulatory and related law, and health science.

(3) The assessment shall include the appropriate organizational approach for the establishment of a Federal Corps within the executive branch.

(c) Report to Congress

The Secretary shall complete the study within one year after December 22, 1980, and shall submit a report along with his recommendations to the Congress.

(Pub. L. 96–567, § 6, Dec. 22, 1980, 94 Stat. 3332.)

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 9706. Dissemination of information

The Secretary shall assure that full and complete safety-related information resulting from any project or other activity conducted under this chapter is made available in a timely manner to appropriate committees of Congress, Federal, State, and local authorities, relevant segments of private industry, the scientific community, and the public.

(Pub. L. 96–567, § 7, Dec. 22, 1980, 94 Stat. 3332.)

§ 9707. Comprehensive program management plan

(a) Preparation; scope; consultative requirements

The Secretary is authorized and directed to prepare a comprehensive program management plan for the conduct of research, development, and demonstration activities under this chapter consistent with the provisions of section 9703 of this title. In the preparation of such plan, the Secretary shall consult with the Commission and the Advisory Committee and with the heads of such other Government agencies and such public and private organizations as he deems appropriate.

(b) Transmission to Congressional committees; revisions

The Secretary shall transmit the comprehensive program management plan along with any comments by the Commission on the plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the Senate within twelve months after December 22, 1980. Revisions to the plan shall be transmitted to such committees whenever deemed appropriate by the Secretary.

(Pub. L. 96–567, § 8, Dec. 22, 1980, 94 Stat. 3332; Pub. L. 104–66, title I, § 1051(*l*), Dec. 21, 1995, 109 Stat. 717.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104–66 struck out subsec. (c) which directed Secretary of Energy to transmit to Congress, concurrently with submission of President's annual budget to Congress, detailed description of comprehensive plan as then in effect.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 9708. Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this chapter such sums as may be authorized by legislation hereafter enacted.

(Pub. L. 96–567, § 9, Dec. 22, 1980, 94 Stat. 3333.)

CHAPTER 105—COMMUNITY SERVICES PROGRAMS

SUBCHAPTER I—COMMUNITY ECONOMIC DEVELOPMENT

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9802. ''Community development corporation'' defined.
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SUBCHAPTER II–B—CHILD CARE AND DEVELOPMENT BLOCK GRANT

9858. Authorization of appropriations.
9858a. Establishment of block grant program.
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9858*l*. Nondiscrimination.
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SUBCHAPTER II–C—CHILD CARE SAFETY AND HEALTH GRANTS

9859. Definitions.
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9859c. Amounts reserved; allotments.
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SUBCHAPTER III—FOLLOW THROUGH PROGRAMS

9861 to 9869. Repealed.

SUBCHAPTER IV—GRANTS TO STATES FOR PLANNING AND DEVELOPMENT OF DEPENDENT CARE PROGRAMS AND FOR OTHER PURPOSES

9871. Authorization of appropriations.
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SUBCHAPTER V—COMPREHENSIVE CHILD DEVELOPMENT PROGRAM

9881 to 9887. Repealed.

SUBCHAPTER I—COMMUNITY ECONOMIC DEVELOPMENT

CODIFICATION

Subchapter is based on subchapter A of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 489, as amended.

§ 9801. Statement of purpose

The purpose of this subchapter is to encourage the development of special programs by which the residents of urban and rural low-income areas may, through self-help and mobilization of the community at large, with appropriate Federal assistance, improve the quality of their economic and social participation in community life in such a way as to contribute to the elimination of poverty and the establishment of permanent economic and social benefits.

(Pub. L. 97–35, title VI, § 612, Aug. 13, 1981, 95 Stat. 489.)

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–285, § 1, Oct. 27, 1998, 112 Stat. 2702, provided that: ''This Act [see Tables for classification] may be cited as the 'Community Opportunities, Accountability, and Training and Educational Services Act of 1998' or the 'Coats Human Services Reauthorization Act of 1998'.''

Pub. L. 105–285, title I, § 101, Oct. 27, 1998, 112 Stat. 2703, provided that: ''This title [enacting section 9837a of this title, amending sections 9831 to 9835, 9836 to 9837, 9838 to 9840a, 9843 to 9844, and 9846 of this title, and repealing sections 9852a and 9855 to 9855g of this title and provisions set out as a note under this section] may be cited as the 'Head Start Amendments of 1998'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–193, title VI, § 601(a), Aug. 22, 1996, 110 Stat. 2278, provided that: ''This title [enacting section 618 of this title, amending sections 9858, 9858b to 9858e, 9858g to 9858j, 9858m, and 9858n of this title, repealing section 9858f of this title, enacting provisions set out as notes under section 9858 of this title, and amending provisions set out as a note below] may be cited as the 'Child Care and Development Block Grant Amendments of 1996'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–252, § 1, May 18, 1994, 108 Stat. 623, provided that: ''This Act [see Tables for classification] may be cited as the 'Human Services Amendments of 1994'.''

Pub. L. 103–252, title I, § 101(a), May 18, 1994, 108 Stat. 624, provided that: ''This title [enacting sections 9836a, 9840a, 9843a, and 9852a of this title, transferring sections 3161 to 3161g of Title 20, Education, to sections 1235 to 1235g of Title 20, respectively, amending sections 1396r–5, 9832 to 9835, 9836, 9837, 9839, 9840, 9841, 9843, 9844, 9846, 9855a, 9871, and 10905 of this title and sections 1235, 1235a, and 1235c to 1235e of Title 20, repealing sections 9835a, 9845, 9846a, 9847, and 9881 to 9887 of this title, enacting provisions set out as notes under sections 9832, 9839, 9844, and 9881 of this title, and repealing provisions set out as notes under this section and section 9881 of this title] may be cited as the 'Head Start Act Amendments of 1994'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–401, § 1, Oct. 7, 1992, 106 Stat. 1956, provided that: ''This Act [amending sections 9835 to 9839, 9846, 9846a, and 9858n of this title and enacting provisions set out as notes under sections 9835 and 9836 of this title] may be cited as the 'Head Start Improvement Act of 1992'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–501, § 1(a), Nov. 3, 1990, 104 Stat. 1222, provided that: ''This Act [see Tables for classification] may be cited as the 'Augustus F. Hawkins Human Services Reauthorization Act of 1990'.''

Pub. L. 101–501, title I, § 101, Nov. 3, 1990, 104 Stat. 1224, provided that: ''This subtitle [subtitle A (§§ 101–123) of title I of Pub. L. 101–501, enacting sections 9835a and 9846a of this title and amending sections 9831, 9832, 9834, 9835, 9836 to 9841, 9843 to 9846, 9847, and 9848 of this title] may be cited as the 'Head Start Expansion and Quality Improvement Act'.''

Pub. L. 101–501, title I, § 131, Nov. 3, 1990, 104 Stat. 1238, provided that subtitle B (§§ 131–140) of title I of Pub. L. 101–501, enacting subchapter II–A of this chapter and amending section 9834 of this title, could be cited as the ''Head Start Transition Project Act'', prior to repeal by Pub. L. 105–285, title I, § 119, Oct. 27, 1998, 112 Stat. 2728.

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–120, § 1, Oct. 23, 1989, 103 Stat. 700, provided that: ''This Act [amending section 9834 of this title] may be cited as the 'Head Start Supplemental Authorization Act of 1989'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–297, title II, § 2501, Apr. 28, 1988, 102 Stat. 325, provided that part E (§§ 2501–2504) of title II of Pub. L. 100–297, which enacted subchapter V of this chapter, amended section 9833 of this title, and enacted provisions set out as notes under this section and section 9881 of this title, could be cited as the ''Comprehensive Child Development Centers Act of 1988'', prior to repeal by Pub. L. 103–252, title I, § 112(b)(1), (2)(A), May 18, 1994, 108 Stat. 640, 641.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–425, § 1, Sept. 30, 1986, 100 Stat. 966, provided: ''That this Act [enacting sections 8628a, 9812a, 9910b, and 10901 to 10905 of this title, amending sections 8621, 8623, 8624, 8629, 9803, 9834, 9835, 9837, 9840, 9862, 9867, 9871, 9874, 9877, 9901 to 9904, 9905a, 9908 to 9910, and 9910a of this title and section 4033 of Title 20, Education, enacting provisions set out as notes under this section and sections 8621, 8623, and 10901 of this title, and amending provisions set out as notes under section 9861 of this title and section 1932 of Title 7, Agriculture] may be cited as the 'Human Services Reauthorization Act of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–558, § 1, Oct. 30, 1984, 98 Stat. 2878, provided: ''That this Act [enacting sections 9871 to 9877, 9905a, and 9910a of this title and sections 1070d–31 to 1070d–41,

1119d to 1119d–8, 1119e to 1119e–5, and 4201 to 4206 of Title 20, Education, amending sections 2991b, 2992b to 2992d, 6862, 6865, 8621 to 8624, 8626, 8627, 8629, 9832, 9834 to 9836, 9840, 9843, 9844, 9846, 9862, 9901, 9902, 9904, 9908, and 9910 of this title and section 4061 of Title 20, enacting provisions set out as notes under sections 2991, 8621, and 9904 of this title, and amending provisions set out as a note under section 9861 of this title] may be cited as the 'Human Services Reauthorization Act'.''

SHORT TITLE

Section 611 of subchapter A (§§ 611–633) of chapter 8 of subtitle A of title VI of Pub. L. 97–35 provided that: ''This subchapter [enacting this subchapter] may be cited as the 'Community Economic Development Act of 1981'.''

Section 635 of subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35 provided that: ''This subchapter [enacting subchapter II of this chapter] may be cited as the 'Head Start Act'.''

Section 658A(a) of subchapter C (§ 658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–236, and amended by Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, § 602(2), Aug. 22, 1996, 110 Stat. 2279, provided that: ''This subchapter [enacting subchapter II–B of this chapter] may be cited as the 'Child Care and Development Block Grant Act of 1990'.''

Section 661 of subchapter D [formerly C] (§§ 661–670) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as renumbered by Pub. L. 101–508, title V, § 5082(1), Nov. 5, 1990, 104 Stat. 1388–236, and amended by Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that former subchapter III of this chapter could be cited as the ''Follow Through Act'', prior to repeal by Pub. L. 103–382, title III, § 391(w), Oct. 20, 1994, 108 Stat. 4025.

Section 670H of subchapter E [formerly D] (§§ 670A–670H) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 99–425, title III, § 304, Sept. 30, 1986, 100 Stat. 968, renumbered by Pub. L. 101–508, title V, § 5082(1), Nov. 5, 1990, 104 Stat. 1388–236, and amended by Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that: ''This subchapter [enacting subchapter IV of this chapter] may be cited as the 'State Dependent Care Development Grants Act'.''

Section 670M of subchapter F [formerly E] (§§ 670M–670T) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 100–297, title II, § 2503, Apr. 28, 1988, 102 Stat. 325, renumbered by Pub. L. 101–508, title V, § 5082(1), Nov. 5, 1990, 104 Stat. 1388–236, and amended by Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that former subchapter V of this chapter could be cited as the ''Comprehensive Child Development Act'', prior to repeal by Pub. L. 103–252, title I, § 112(b)(1), (2)(B), May 18, 1994, 108 Stat. 640, 641.

INCONSISTENT LAWS SUPERSEDED DURING FISCAL YEARS 1982, 1983, AND 1984

Section 601 of subtitle A (§§ 601–670) of title VI of Pub. L. 97–35 provided that:

''(a) Any provision of law which is not consistent with the provisions of this subtitle hereby is superseded and shall have only such force and effect during each of the fiscal years 1982, 1983, and 1984 which is consistent with this subtitle.

''(b) Notwithstanding any authorization of appropriations for fiscal year 1982, 1983, or 1984 contained in any provision of law which is specified in this subtitle, no funds are authorized to be appropriated in excess of the limitations imposed upon appropriations by the provisions of this subtitle.''

§ 9802. "Community development corporation" defined

For purposes of this subchapter, the term ''community development corporation'' means a nonprofit organization responsible to residents of the area it serves which is receiving financial assistance under part A of this subchapter and any organization more than 50 percent of which is owned by such an organization, or otherwise controlled by such an organization, or designated by such an organization for the purpose of this subchapter.

(Pub. L. 97–35, title VI, § 613, Aug. 13, 1981, 95 Stat. 489.)

§ 9803. Repealed. Pub. L. 105–285, title II, § 202(b)(1), Oct. 27, 1998, 112 Stat. 2755

Section, Pub. L. 97–35, title VI, § 614, Aug. 13, 1981, 95 Stat. 489; Pub. L. 99–425, title IV, § 405(c)(3), Sept. 30, 1986, 100 Stat. 970, related to source of funds for carrying out this subchapter.

§ 9804. Advisory Community Investment Board

(a) National Community Investment Board; functions, composition, etc.

(1) The President is authorized to establish a National Advisory Community Investment Board (hereinafter in this section referred to as the ''Investment Board''). Such Investment Board shall be composed of 15 members appointed, for staggered terms and without regard to the civil service laws, by the President, in consultation with the Secretary of Health and Human Services (hereinafter in this subchapter referred to as the ''Secretary''). Such members shall be representative of the investment and business communities and appropriate fields of endeavor related to this subchapter. The Investment Board shall meet at the call of the chairperson, but not less often than 3 times each year. The Secretary and the administrator of community economic development programs shall be ex officio members of the Investment Board.

(2) The Secretary shall carry out the provisions of this subchapter through an appropriate office.

(b) Function

The Investment Board shall promote cooperation between private investors and businesses and community development corporation projects through—

(1) advising the Secretary and the community development corporations on ways to facilitate private investment;

(2) advising businesses and other investors of opportunities in community development corporation projects; and

(3) advising the Secretary, community development corporations, and private investors and businesses of ways in which they might engage in mutually beneficial efforts.

(c) Local advisory community investment boards; establishment, composition, etc.

The governing body of each Community Development Corporation may establish an advisory community investment board composed of not to exceed 15 members who shall be appointed by the governing body after consultation with appropriate local officials. Each such board shall promote cooperation between private investors and businesses and the governing body of the Community Development Corporation through—

(1) advising the governing body on ways to facilitate private investors;

(2) advising businesses and other investors of opportunities in Community Development Corporation projects; and

(3) advising the governing body, private investors, and businesses of ways in which they might engage in mutually beneficial efforts.

(Pub. L. 97–35, title VI, § 615, Aug. 13, 1981, 95 Stat. 489; Pub. L. 105–285, title II, § 202(b)(2), Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–285 substituted ''through an appropriate office'' for ''through the Office of Community Services established in section 9905(a) of this title''.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

PART A—URBAN AND RURAL SPECIAL IMPACT PROGRAMS

§ 9805. Statement of purpose

The purpose of this part is to establish special programs of assistance to nonprofit private locally initiated community development corporations which (1) are directed to the solution of the critical problems existing in particular communities or neighborhoods (defined without regard to political or other subdivisions or boundaries) within those urban and rural areas having concentrations or substantial numbers of low-income persons; (2) are of sufficient size, scope, and duration to have an appreciable impact in such communities, neighborhoods, and rural areas in arresting tendencies toward dependency, chronic unemployment, and community deterioration; (3) hold forth the prospect of continuing to have such impact after the termination of financial assistance under this part; and (4) provide financial and other assistance to start, expand, or locate enterprises in or near the area to be served so as to provide employment and ownership opportunities for residents of such areas, including those who are disadvantaged in the labor market because of their limited speaking, reading, and writing abilities in the English language.

(Pub. L. 97–35, title VI, § 616, Aug. 13, 1981, 95 Stat. 490.)

§ 9806. Establishment and scope of programs

(a) The Secretary is authorized to provide financial assistance in the form of grants to nonprofit and for profit community development corporations and other affiliated and supportive agencies and organizations associated with qualifying community development corporations for the payment of all or part of the cost of programs which are designed to carry out the purposes of this part. Financial assistance shall be provided so that each community economic development program is of sufficient size, scope, and duration to have an appreciable impact on the area served. Such programs may include—

(1) community business and commercial development programs, including (A) programs which provide financial and other assistance (including equity capital) to start, expand, or locate businesses in or near the area served so as to provide employment and ownership opportunities for residents of such areas; and (B) programs for small businesses located in or owned by residents of such areas;

(2) community physical development programs, including industrial parks and housing activities, which contribute to an improved environment and which create new training, employment and ownership opportunities for residents of such area;

(3) training and public service employment programs and related services for unemployed or low-income persons which support and complement community development programs financed under this part, including, without limitation, activities such as the activities described in title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.]; and

(4) social service programs which support and complement community business and commercial development programs financed under this part, including child care, educational services, health services, credit counseling, energy conservation, recreation services, and programs for the maintenance of housing facilities.

(b) The Secretary shall conduct programs assisted under this part so as to contribute, on an equitable basis between urban and rural areas, to the elimination of poverty and the establishment of permanent economic and social benefits in such areas.

(Pub. L. 97–35, title VI, § 617, Aug. 13, 1981, 95 Stat. 491; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(40), (f)(31)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–427, 2681–434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(3), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(31)], struck out ''the Job Training Partnership Act or'' after ''activities described in''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(40)], substituted ''activities such as the activities described in the Job Training Partnership Act or title I of the Workforce Investment Act of 1998'' for ''activities such as those described in the Comprehensive Employment and Training Act''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(40)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(31)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

§ 9807. Financial assistance requirements

(a) Conditions

The Secretary, under such regulations as the Secretary may establish, shall not provide financial assistance for any community economic development program under this part unless the Secretary determines that—

(1) such community development corporation is responsible to residents of the area served (A) through a governing body not less than 50 percent of the members of which are area residents; and (B) in accordance with such other guidelines as may be established by the Secretary, except that the composition of the governing bodies of organizations owned or controlled by the community development corporation need not be subject to such residency requirement;

(2) the program will be appropriately coordinated with local planning under this subchapter with housing and community development programs, with employment and training programs, and with other relevant planning for physical and human resources in the areas served;

(3) adequate technical assistance is made available and committed to the programs being supported;

(4) such financial assistance will materially further the purposes of this part;

(5) the applicant is fulfilling or will fulfill a need for services, supplies, or facilities which is otherwise not being met;

(6) all projects and related facilities will, to the maximum feasible extent, be located in the areas served;

(7) projects will, where feasible, promote the development of entrepreneurial and management skills and the ownership or participation in ownership of assisted businesses and housing, cooperatively or otherwise, by residents of the area served;

(8) projects will be planned and carried out with the fullest possible participation of resident or local businessmen and representatives of financial institutions, including participation through contract, joint venture, partnership, stock ownership or membership on the governing boards or advisory councils of such projects consistent with the self-help purposes of this subchapter;

(9) no participant will be employed on projects involving political parties, or the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship;

(10) the program will not result in the displacement of employed workers or impair existing contracts for services, or result in the substitution of Federal or other funds in connection with work that would otherwise be performed;

(11) the rates of pay for time spent in work training and education, and other conditions of employment, will be appropriate and reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant;

(12) the program will, to the maximum extent feasible, contribute to the occupational development or upward mobility of individual participants;

(13) preference will be given to low-income or economically disadvantaged residents of the areas served in filling jobs and training opportunities; and

(14) training programs carried out in connection with projects financed under this part shall be designed wherever feasible to provide those persons who successfully complete such training with skills which are also in demand in communities, neighborhoods, or rural areas other than those for which programs are established under this part.

(b) Relocations substantially increasing unemployment

Financial assistance under this section shall not be extended to assist in the relocation of establishments from one location to another if such relocation would result in a substantial increase in unemployment in the area of original location.

(c) Community economic development program; application; specification of goals

Financial assistance for commercial development under this part shall not be extended until the community economic development program that has applied for assistance under this subchapter has specified in some detail its development goals and its development timetable. The Secretary, in providing continued financial assistance to a community economic development program, shall give serious consideration to the experience such program has had in meeting development goals or in adhering to development timetables.

(Pub. L. 97–35, title VI, § 618, Aug. 13, 1981, 95 Stat. 491.)

§ 9808. Federal share; amount; availability; ownership of property acquired with Federal financial assistance

(a)(1) Assistance provided under this subchapter to any program described in section 9807(a) of this title shall not exceed 90 percent of the cost of such program, including costs of administration, unless the Secretary determines that the assistance in excess of such percentage is required in furtherance of the purposes of this subchapter. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(2) The assistance referred to in paragraph (1) shall be made available (A) for deposit to the order of grantees which have demonstrated successful program performance, under conditions which the Secretary deems appropriate, within 30 days following approval of the grant agreement by the Secretary and such grantee; or (B) whenever the Secretary deems appropriate, in

accordance with applicable rules and regulations prescribed by the Secretary of the Treasury, and including any other conditions which the Secretary of Health and Human Services deems appropriate, within 30 days following approval of the grant agreement by the Secretary and such grantee.

(b) Property acquired as a result of capital investments made by any community development corporation with funds granted as its Federal share of the cost of programs carried out under this subchapter, and the proceeds from such property, shall become the property of the community development corporation and shall not be considered to be Federal property. The Federal Government retains the right to direct that on severance of the grant relationship the assets purchased with grant funds shall continue to be used for the original purpose for which they were granted.

(Pub. L. 97–35, title VI, § 619, Aug. 13, 1981, 95 Stat. 493.)

PART B—SPECIAL RURAL PROGRAMS

§ 9809. Statement of purpose

It is the purpose of this part to meet the special economic needs of rural communities or areas with concentrations or substantial numbers of low-income persons by providing support to self-help programs which promote economic development and independence, as a supplement to existing similar programs conducted by other departments and agencies of the Federal Government. Such programs should encourage low-income families to pool their talents and resources so as to create and expand rural economic enterprise.

(Pub. L. 97–35, title VI, § 620, Aug. 13, 1981, 95 Stat. 493.)

§ 9810. Financial assistance to low-income families, local cooperative associations, and local public or private nonprofit organizations or entities; amount, purposes, etc.

(a) The Secretary is authorized to provide financial assistance, including loans having a maximum maturity of fifteen years and in amounts not resulting in an aggregate principal indebtedness of more than $3,500 at any one time, to any low-income rural family where, in the judgment of the Secretary, such financial assistance has a reasonable possibility of effecting a permanent increase in the income of such families, or will contribute to the improvement of their living or housing conditions, by assisting or permitting them to—

(1) acquire or improve real estate or reduce encumbrances or erect improvements thereon;

(2) operate or improve the operation of farms not larger than family sized, including but not limited to the purchase of feed, seed, fertilizer, livestock, poultry, and equipment; or

(3) participate in cooperative associations, or finance nonagricultral[1] enterprises which will enable such families to supplement their income.

(b) The Secretary is authorized to provide financial assistance to local cooperative associations or local public and private nonprofit organizations or agencies in rural areas containing concentrations or substantial numbers of low-income persons for the purpose of defraying all or part of the costs of establishing and operating cooperative programs for farming, purchasing, marketing, processing, and to improve their income as producers and their purchasing power as consumers, and to provide such essentials as credit and health services. Costs which may be defrayed shall include—

(1) administrative costs of staff and overhead;

(2) costs of planning and developing new enterprises;

(3) costs of acquiring technical assistance; and

(4) initial capital where it is determined by the Secretary that the poverty of the families participating in the program and the social conditions of the rural area require such assistance.

(Pub. L. 97–35, title VI, § 621, Aug. 13, 1981, 95 Stat. 493.)

§ 9811. Limitation on assistance

No financial assistance shall be provided under this part unless the Secretary determines that—

(1) any cooperative association receiving assistance has a minimum of fifteen active members, a majority of which are low-income rural persons;

(2) adequate technical assistance is made available and committed to the programs being supported;

(3) such financial assistance will materially further the purposes of this part; and

(4) the applicant is fulfilling or will fulfill a need for services, supplies, or facilities which is otherwise not being met.

(Pub. L. 97–35, title VI, § 622, Aug. 13, 1981, 95 Stat. 494.)

PART C—DEVELOPMENT LOANS TO COMMUNITY ECONOMIC DEVELOPMENT PROGRAMS

§ 9812. Development loan fund

(a) Authorities, scope, and purposes; conditions; interest rate; repayment

The Secretary is authorized to make or guarantee loans (either directly or in cooperation with banks or other organizations through agreements to participate on an immediate or deferred basis) to community development corporations, to families and local cooperatives and the designated supportive organizations of cooperatives eligible for financial assistance under this subchapter, to private nonprofit organizations receiving assistance under chapter 106 of this title, or to public and private nonprofit organizations or agencies, for business facilities and community development projects, including community development credit unions, which the Secretary determines will carry out the purposes of this part. No loans, guarantees, or other financial assistance shall be provided under this section unless the Secretary determines that—

(1) there is reasonable assurance of repayment of the loan;

[1] So in original. Probably should be ''nonagricultural''.

(2) the loan is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs; and

(3) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made.

Loans made by the Secretary pursuant to this section shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus such additional charge, if any, toward covering other costs of the program as the Secretary of Health and Human Services may determine to be consistent with its purposes, except that, for the 5 years following the date in which funds are initially available to the borrower, the rate of interest shall be set at a rate considered appropriate by the Secretary in light of the particular needs of the borrower, which rate shall not be lower than 1 percent. All such loans shall be repayable within a period of not more than 30 years.

(b) Adjustment of interest rates, moratorium on principal and interest, etc.

The Secretary is authorized to adjust interest rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by the Secretary, and to take such other actions in respect to such loans as the Secretary shall determine to be necessary or appropriate, consistent with the purposes of this section.

(c) Establishment, funding, etc.

(1) To carry out the lending and guaranty functions authorized under this part, there shall be established a Development Loan Fund consisting of two separate accounts, one of which shall be a revolving fund called the Rural Development Loan Fund and the other of which shall be a revolving fund called the Community Development Loan Fund. The capital of each such revolving fund shall remain available until expended.

(2) The Rural Development Loan Fund shall consist of the remaining funds provided for in part A of title III of the Economic Opportunity Act of 1964 [42 U.S.C. 2841 et seq.], as in effect on September 19, 1972, and such amounts as may be deposited in such fund by the Secretary out of funds made available from appropriations for purposes of carrying out this part. The Secretary shall utilize the services of the Farmers Home Administration,[1] or the Rural Development Administration in administering such fund.

(3) The Community Development Loan Fund shall consist of such amounts as may be deposited in such fund by the Secretary out of funds made available from appropriations for purposes of carrying out this subchapter. The Secretary may make deposits in the Community Development Loan Fund in any fiscal year in which the Secretary has made available for grants to community development corporations under this subchapter not less than $60,000,000 out of funds made available from appropriations for purposes of carrying out this subchapter.

(Pub. L. 97–35, title VI, §623, Aug. 13, 1981, 95 Stat. 494; Pub. L. 101–624, title XXIII, §2303(f)(1), Nov. 28, 1990, 104 Stat. 3981.)

[1] So in original. The comma probably should not appear.

REFERENCES IN TEXT

Chapter 106 of this title, referred to in subsec. (a), was in the original ''subtitle B of this title'', meaning subtitle B (§671 et seq.) of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 511, as amended, known as the Community Services Block Grant Act, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (c)(2), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Part A of title III of the Economic Opportunity Act of 1964 was classified generally to part A (§2841 et seq.) of subchapter III of chapter 34 of this title prior to repeal by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1990—Subsec. (c)(2). Pub. L. 101–624 inserted ''or the Rural Development Administration'' after ''Farmers Home Administration''.

TRANSFER OF FUNCTIONS

Functions relating to administration of Community Development Credit Union Revolving Loan Fund transferred from Secretary of Health and Human Services to National Credit Union Administration Board by Pub. L. 99–609, set out as a note under section 9822 of this title.

§9812a. Interest rates payable on certain rural development loans; assignment of loan contracts

(a) Modification of interest rates

Notwithstanding any other provision of law—

(1) any outstanding loan made after December 31, 1982, by the Secretary of Health and Human Services; or

(2) any loan made after September 30, 1986;

with moneys from the Rural Development Loan Fund established by section 9812(c)(1) of this title or with funds available (before October 27, 1998) under section 9910(a) of this title (as in effect before October 27, 1998) to an intermediary borrower shall bear interest at a fixed rate equal to the rate of interest that was in effect on the date of issuance for loans made in 1980 with such moneys or such funds if the weighted average rate of interest for all loans made after December 31, 1982, by such intermediary borrower with such moneys or such funds does not exceed the sum of 6 percent and the rate of interest payable under this subsection by such intermediary borrower.

(b) Assignment of certain loan contracts

Any contract for a loan made during the period beginning on December 31, 1982, and ending on September 30, 1986, with—

(1) moneys from the Rural Development Loan Fund established by section 9812(c)(1) of this title; or

(2) funds available (before October 27, 1998) under section 9910(a) of this title (as in effect before October 27, 1998);

to an intermediary borrower that is a county government may be assigned by such borrower to an entity to which such loan could have been made for the purpose for which such contract was made. Any entity to which such contract is so assigned shall be substituted as a party to such contract and shall be obligated to carry out such contract and the purpose for which such contract was made.

(Pub. L. 99–425, title IV, § 407(a), (b), Sept. 30, 1986, 100 Stat. 971; Pub. L. 105–285, title II, § 202(c), Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

Section 9910 of this title, referred to in subsecs. (a) and (b)(2), was in the original a reference to section 681 of Pub. L. 97–35. Section 681 of Pub. L. 97–35 was omitted, and a new section 681 enacted, in the general amendment of chapter 106 of this title by Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2728. The new section 681 is classified to section 9922 of this title.

CODIFICATION

Section was enacted as part of the Human Services Reauthorization Act of 1986, and not as part of the Community Economic Development Act of 1981 which comprises this subchapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–285, § 202(c)(1), in concluding provisions, inserted ''(before October 27, 1998)'' after ''funds available'' and ''(as in effect before October 27, 1998)'' after ''9910(a) of this title''.

Subsec. (b)(2). Pub. L. 105–285, § 202(c)(2), inserted ''(before October 27, 1998)'' after ''funds available'' and ''(as in effect before October 27, 1998)'' after ''9910(a) of this title''.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

TRANSFER OF LOAN BY UTAH OR OHIO LOCAL PUBLIC BODY TO NONPROFIT CORPORATION

Pub. L. 99–500, § 101(a) [title VI, § 640], Oct. 18, 1986, 100 Stat. 1783, 1783–35, and Pub. L. 99–591, § 101(a) [title VI, § 640], Oct. 30, 1986, 100 Stat. 3341, 3341–35, purported to amend section 623B(b)(2) of the Community Economic Development Act of 1981, a nonexistent section of that Act (Pub. L. 99–35, title VI, § 611 et seq.), by adding at the end thereof the following new sentence: ''Notwithstanding any other provision of law, any Utah or Ohio local public body to which a loan was made after December 31, 1982, from the Rural Development Loan Fund may, at the discretion of such local public body and with the approval of the Secretary of Health and Human Services, transfer such loan to a nonprofit corporation designated by such body to serve as an intermediate borrower and to carry out the purposes of the loan.''

§ 9813. Model Community Economic Development Finance Corporation; establishment; functions

To the extent he deems appropriate, the Secretary shall utilize funds available under this part to prepare a plan of action for the establishment of a Model Community Economic Development Finance Corporation to provide a user-controlled independent and professionally operated long-term financing vehicle with the principal purpose of providing financial support for community economic development corporations, cooperatives, other affiliated and supportive agencies and organizations associated with community economic development corporations, and other entities eligible for assistance under this subchapter.

(Pub. L. 97–35, title VI, § 624, Aug. 13, 1981, 95 Stat. 495.)

PART D—SUPPORTIVE PROGRAMS AND ACTIVITIES

§ 9814. Training and technical assistance

(a) Grants, contracts, and other arrangements; preconditions

The Secretary shall provide, directly or through grants, contracts, or other arrangements, such technical assistance and training of personnel as may be required to effectively implement the purposes of this subchapter. No financial assistance shall be provided to any public or private organization under this section unless the Secretary provides the beneficiaries of these services with opportunity to participate in the selection of and to review the quality and utility of the services furnished them by such organization.

(b) Technical assistance to community development corporations and urban and rural cooperatives

Technical assistance to community development corporations and both urban and rural cooperatives may include planning, management, legal assistance or support, preparation of feasibility studies, product development, marketing, and the provision of stipends to encourage skilled professionals to engage in full-time activities under the direction of a community organization financially assisted under this subchapter.

(c) Training for employees of community development corporations and employees and members of urban and rural cooperatives

Training for employees of community development corporations and for employees and members of urban and rural cooperatives shall include on-the-job training, classroom instruction, and scholarships to assist them in development, managerial, entrepreneurial, planning, and other technical and organizational skills which will contribute to the effectiveness of programs assisted under this subchapter.

(Pub. L. 97–35, title VI, § 625, Aug. 13, 1981, 95 Stat. 496.)

§ 9815. Small Business Administration and Department of Commerce economic development programs; regulations

(a)(1) Funds granted under this subchapter which are invested directly or indirectly, in a small investment company, local development company, limited small business investment company, or small business investment company licensee under section 681(d)[1] of title 15 shall be included as ''private paid-in capital and paid-in surplus'', ''combined paid-in capital and paid-in surplus'', and ''paid-in capital'' for purposes of sections 682, 683, and 696, respectively, of title 15.

(2) Not later than 90 days after August 13, 1981, the Administrator of the Small Business Admin-

[1] See References in Text note below.

istration, after consultation with the Secretary, shall promulgate regulations to ensure the availability to community development corporations of such programs as shall further the purposes of this subchapter, including programs under section 637(a) of title 15.

(b)(1) Areas selected for assistance under this subchapter shall be deemed ''redevelopment areas'' within the meaning of section 401 of the Public[2] Works and Economic Development Act of 1965,[1] shall qualify for assistance under the provisions of title I and title II of such Act, and shall be deemed to have met the overall economic development program requirements of section 202(b)(10) of such Act.

(2) Not later than 90 days after August 13, 1981, the Secretary of Commerce shall prescribe regulations which will ensure that community development corporations and cooperatives shall qualify for assistance and shall be eligible to receive such assistance under all such programs of the Economic Development Administration as shall further the purposes of this subchapter.

(Pub. L. 97–35, title VI, § 626, Aug. 13, 1981, 95 Stat. 496.)

REFERENCES IN TEXT

Section 681(d) of title 15, referred to in subsec. (a)(1), was repealed by Pub. L. 104–208, div. D, title II, § 208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

The Public Works and Economic Development Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89–136, Aug. 26, 1965, 79 Stat. 552, as amended. Titles I to VI of the Act of 1965 were repealed and new titles I to VI were enacted by Pub. L. 105–393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3597. As so enacted, section 401 of the Act no longer defines ''redevelopment areas'' and section 202 of the Act no longer contains a subsec. (b). For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

§ 9816. Department of Housing and Urban Development programs

The Secretary of Housing and Urban Development, after consultation with the Secretary, shall take all necessary steps to assist community development corporations and local cooperative associations to qualify for and receive (1) such assistance in connection with technical assistance, counseling to tenants and homeowners, and loans to sponsors of low-income and moderate-income housing under section 106 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701x], as amended by section 811 of the Housing and Community Development Act of 1974; (2) such land for housing and business location and expansion under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.]; and (3) such funds for comprehensive planning under section 701 of the Housing Act of 1954,[1] as amended by section 401 of the Housing and Community Development Act of 1974, as shall further the purposes of this subchapter.

(Pub. L. 97–35, title VI, § 627, Aug. 13, 1981, 95 Stat. 497.)

REFERENCES IN TEXT

Section 811 of the Housing and Community Development Act of 1974, referred to in text, is section 811 of Pub. L. 93–383, title VIII, Aug. 22, 1974, 88 Stat. 735, which amended section 1701x of Title 12, Banks and Banking.

The Housing and Community Development Act of 1974, referred to in text, is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 701 of the Housing Act of 1954, referred to in text, is section 701 of act Aug. 2, 1954, ch. 649, 68 Stat. 640, as amended, which was classified to section 461 of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97–35, title III, 313(b), Aug. 13, 1981, 95 Stat. 398.

Section 401 of the Housing and Community Development Act of 1974, referred to in text, is section 401 of Pub. L. 93–383, title IV, Aug. 22, 1974, 88 Stat. 686, subsecs. (a) and (b) of which amended section 461 of former Title 40, Public Buildings, Property, and Works, prior to its repeal by Pub. L. 97–35, and subsec. (c) of which amended section 460 of former Title 40.

CAPACITY BUILDING FOR COMMUNITY DEVELOPMENT AND AFFORDABLE HOUSING

Pub. L. 103–120, § 4, Oct. 27, 1993, 107 Stat. 1148, as amended by Pub. L. 105–18, title II, § 10004, June 12, 1997, 111 Stat. 201, provided that:

''(a) IN GENERAL.—The Secretary is authorized to provide assistance through the National Community Development Initiative, Local Initiatives Support Corporation, The Enterprise Foundation, Habitat for Humanity, and Youthbuild USA to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs.

''(b) FORM OF ASSISTANCE.—Assistance under this section may be used for—

''(1) training, education, support, and advice to enhance the technical and administrative capabilities of community development corporations and community housing development organizations;

''(2) loans, grants, or predevelopment assistance to community development corporations and community housing development organizations to carry out community development and affordable housing activities that benefit low-income families; and

''(3) such other activities as may be determined by the National Community Development Initiative, Local Initiatives Support Corporation, The Enterprise Foundation, Habitat for Humanity, and Youthbuild USA in consultation with the Secretary.

''(c) MATCHING REQUIREMENT.—Assistance provided under this section shall be matched from private sources in an amount equal to 3 times the amount made available under this section.

''(d) IMPLEMENTATION.—The Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this section. The notice shall take effect upon issuance.

''(e) AUTHORIZATION.—There are authorized to be appropriated $25,000,000 for fiscal year 1994 to carry out this section.''

§ 9817. Department of Agriculture; Rural Development Administration programs

The Secretary of Agriculture or, where appropriate, the Administrator of the Farmers Home Administration, or of the Rural Development Administration, after consultation with the Secretary of Health and Human Services, shall take all necessary steps to ensure that community development corporations and local cooperative associations shall qualify for and shall receive—

(1) such assistance in connection with housing development under the Housing Act of 1949, as amended [42 U.S.C. 1441 et seq.];

[2] So in original. Probably should be ''Public''.

[1] See References in Text note below.

(2) such assistance in connection with housing, business, industrial, and community development under the Consolidated Farmers Home Administration Act of 1961 [7 U.S.C. 1921 et seq.] and the Rural Development Act of 1972; and

(3) such further assistance under all such programs of the United States Department of Agriculture; as shall further the purposes of this subchapter.

(Pub. L. 97–35, title VI, § 628, Aug. 13, 1981, 95 Stat. 497; Pub. L. 101–624, title XXIII, § 2303(f)(2), Nov. 28, 1990, 104 Stat. 3981.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in par. (1), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to chapter 8A (§ 1441 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Consolidated Farmers Home Administration Act of 1961, referred to in par. (2), is title III of Pub. L. 87–128, Aug. 8, 1961, 75 Stat. 307, as amended, which was redesignated the Consolidated Farm and Rural Development Act by Pub. L. 92–419, § 101, Aug. 30, 1972, 86 Stat. 657, and is classified principally to chapter 50 (§ 1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

The Rural Development Act of 1972, referred to in par. (2), is Pub. L. 92–419, Aug. 30, 1972, 86 Stat. 657, as amended. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1921 of Title 7.

AMENDMENTS

1990—Pub. L. 101–624 substituted ''Department of Agriculture; Rural Development Administration programs'' for ''Department of Agriculture and Farmers Home Administration programs'' in section catchline and inserted '', or of the Rural Development Administration'' after ''of the Farmers Home Administration'' in text.

§ 9818. Coordination and eligibility

(a) The Secretary shall take all necessary and appropriate steps to encourage Federal departments and agencies and State and local governments to make grants, provide technical assistance, enter into contracts, and generally support and cooperate with community development corporations and local cooperative associations.

(b) Eligibility for assistance under other Federal programs shall not be denied to any applicant on the ground that it is a community development corporation or any other entity assisted under this subchapter.

(Pub. L. 97–35, title VI, § 629, Aug. 13, 1981, 95 Stat. 497.)

§ 9819. Evaluation of programs; implementation and funding, etc.; research and demonstration projects; implementation and purposes

(a) Each program for which grants are made under this subchapter shall provide for a thorough evaluation of the effectiveness of the program in achieving its purposes, which evaluation shall be conducted by such public or private organizations as the Secretary in consultation with existing grantees familiar with programs carried out under the Community Services Block Grant Act [42 U.S.C. 9901 et seq.] may designate, and all or part of the costs of evaluation may be paid from funds appropriated to carry out this part. In evaluating the performance of any community development corporation funded under part A of this subchapter, the criteria for evaluation shall be based upon such program objectives, goals, and priorities as are consistent with the purposes of this subchapter and were set forth by such community development corporation in its proposal for funding as approved and agreed upon by or as subsequently modified from time to time by mutual agreement between the Secretary and such community development corporation.

(b) The Secretary shall conduct, either directly or through grants or other arrangements, research and demonstration projects designed to suggest new programs and policies to achieve the purposes of this subchapter in such ways as to provide opportunities for employment, ownership, and a better quality of life for low-income residents.

(Pub. L. 97–35, title VI, § 630, Aug. 13, 1981, 95 Stat. 497.)

REFERENCES IN TEXT

The Community Services Block Grant Act, referred to in subsec. (a), is subtitle B (§ 671 et seq.) of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§ 9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

§ 9820. Grants to plan economic development and cooperative programs

In order to facilitate the purposes of this subchapter, the Secretary is authorized to provide financial assistance to any public or private nonprofit agency or organization for planning of community economic development programs and cooperative programs under this subchapter.

(Pub. L. 97–35, title VI, § 631, Aug. 13, 1981, 95 Stat. 498.)

§ 9821. Nondiscrimination provisions

(a) The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract with respect thereto specifically provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity because of race, creed, color, national origin, sex, political affiliation, or beliefs.

(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under this subchapter. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 2000d–1 of this title. Section 2000d–2 of this title shall apply with respect to any action taken by the Secretary to enforce such sentence. This section shall not be construed as affecting any other

legal remedy that a person may have if such person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program, project, or activity receiving assistance under this subchapter.

(Pub. L. 97–35, title VI, § 632, Aug. 13, 1981, 95 Stat. 498.)

§ 9822. Availability of certain appropriated funds

Funds appropriated to the Rural Development Loan Fund under title VII of the Economic Opportunity Act of 1964 [42 U.S.C. 2981 et seq.] (as in effect on August 12, 1981), and interest accumulated in such fund, shall be deposited in the Rural Development Loan Fund established under section 9812(c)(1) of this title and shall continue to be available to carry out the purposes of such fund. Funds appropriated to the Community Development Credit Union Revolving Loan Fund under title VII of the Economic Opportunity Act of 1964 (as in effect on August 12, 1981), and interest accumulated in such fund, shall continue to be available to carry out the purposes of such fund.

(Pub. L. 97–35, title VI, § 633, Aug. 13, 1981, 95 Stat. 498.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Title VII of the Economic Opportunity Act of 1964 was classified generally to subchapter VII (§ 2981 et seq.) of chapter 34 of this title, prior to repeal by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

CODIFICATION

''August 12, 1981'' substituted in text for ''the day before the date of the enactment of this Act''.

TRANSFER OF COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND

Pub. L. 99–609, Nov. 6, 1986, 100 Stat. 3475, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Community Development Credit Union Revolving Loan Fund Transfer Act'.

''SEC. 2. TRANSFER OF COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND.

''(a) ADMINISTRATION OF FUND BY NCUA.—

''(1) IN GENERAL.—Beginning on the date of the enactment of this Act [Nov. 6, 1986], the National Credit Union Administration Board shall administer the Community Development Credit Union Revolving Loan Fund.

''(2) TRANSFER OF AUTHORITY.—All authority to carry out the purposes of the Fund and to prescribe regulations in connection with the administration of the Fund which, on the day before the date of the enactment of this Act, was vested in the Secretary of Health and Human Services shall vest on such date in the Board. Except as provided in subsection (c), the Secretary shall have no further responsibility with respect to the Fund.

''(b) CONTINUED AVAILABILITY OF APPROPRIATED FUNDS.—All funds appropriated to the Fund and interest accumulated in the Fund which continue to be available under section 633 of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9822] shall continue to be available to the Board to carry out the purposes of the Fund.

''(c) TRANSFER OF ASSETS; ETC.—The Secretary shall transfer to the National Credit Union Administration all assets, liabilities, grants, contracts, property, records, and funds held, used, arising from, or available to the Secretary in connection with the administration of the Fund before the end of the 60-day period beginning on the date of the enactment of this Act [Nov. 6, 1986].

''(d) SAVINGS PROVISIONS.—

''(1) REGULATIONS.—Any regulations prescribed by the Secretary in connection with the administration of the Fund shall continue in effect until superseded by regulations prescribed by the Board.

''(2) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not be construed as affecting the validity of any right, duty, or obligation of the United States or any other person arising under or pursuant to any contract, loan, or other instrument or agreement which was in effect on the day before the date of the enactment of this Act [Nov. 6, 1986].

''(3) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Secretary in connection with the administration of the Fund shall abate by reason of the enactment of this Act, except that the Board shall be substituted for the Secretary as a party to any such action or proceeding.

''(e) DEFINITIONS.—For purposes of this section—

''(1) BOARD.—The term 'Board' means the National Credit Union Administration Board.

''(2) FUND.—The term 'Fund' means the Community Development Credit Union Revolving Loan Fund established under title VII of the Economic Opportunity Act of 1964 [see References in Text note above] (as in effect before the date of the enactment of the Omnibus Budget Reconciliation Act of 1981 [Aug. 13, 1981]).

''(3) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.''

SUBCHAPTER II—HEAD START PROGRAMS

CODIFICATION

Subchapter is based on subchapter B of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended.

§ 9831. Statement of purpose

It is the purpose of this subchapter to promote school readiness by enhancing the social and cognitive development of low-income children through the provision, to low-income children and their families, of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary.

(Pub. L. 97–35, title VI, § 636, Aug. 13, 1981, 95 Stat. 499; Pub. L. 101–501, title I, § 102, Nov. 3, 1990, 104 Stat. 1224; Pub. L. 105–285, title I, § 102, Oct. 27, 1998, 112 Stat. 2703.)

AMENDMENTS

1998—Pub. L. 105–285 amended section catchline and text generally. Prior to amendment, text read as follows:

''(a) In recognition of the role which Project Head Start has played in the effective delivery of comprehensive health, educational, nutritional, social, and other services to economically disadvantaged children and their families, it is the purpose of this subchapter to extend the authority for the appropriation of funds for such program.

''(b) In carrying out the provisions of this subchapter, the Secretary of Health and Human Services shall continue the administrative arrangement responsible for meeting the needs of migrant, non-English language background, and Indian children and shall assure that appropriate funding is provided to meet such needs.''

1990—Subsec. (b). Pub. L. 101–501 inserted ‘‘, non-English language background,’’ after ‘‘migrant’’.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

SHORT TITLE

For short title of this subchapter as the ‘‘Head Start Act’’, see section 635 of Pub. L. 97–35, set out as a note under section 9801 of this title.

§ 9832. Definitions

For purposes of this subchapter:

(1) The term ‘‘child with a disability’’ means—

(A) a child with a disability, as defined in section 1401(3) of title 20; and

(B) an infant or toddler with a disability, as defined in section 1432(5) of title 20.

(2) The term ‘‘delegate agency’’ means a public, private nonprofit, or for-profit organization or agency to which a grantee has delegated all or part of the responsibility of the grantee for operating a Head Start program.

(3) The term ‘‘family literacy services’’ means services that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family, and that integrate all of the following activities:

(A) Interactive literacy activities between parents and their children.

(B) Training for parents regarding how to be the primary teacher for their children and full partners in the education of their children.

(C) Parent literacy training that leads to economic self-sufficiency.

(D) An age-appropriate education to prepare children for success in school and life experiences.

(4) The term ‘‘financial assistance’’ includes assistance provided by grant, agreement, or contract, and payments may be made in installments and in advance or by way of reimbursement with necessary adjustments on account of overpayments or underpayments.

(5) The term ‘‘full calendar year’’ means all days of the year other than Saturday, Sunday, and a legal public holiday.

(6) The term ‘‘full-working-day’’ means not less than 10 hours per day. Nothing in this paragraph shall be construed to require an agency to provide services to a child who has not reached the age of compulsory school attendance for more than the number of hours per day permitted by State law (including regulation) for the provision of services to such a child.

(7) The term ‘‘Head Start classroom’’ means a group of children supervised and taught by two paid staff members (a teacher and a teacher's aide or two teachers) and, where possible, a volunteer.

(8) The term ‘‘Head Start family day care’’ means Head Start services provided in a private residence other than the residence of the child receiving such services.

(9) The term ‘‘home-based Head Start program’’ means a Head Start program that provides Head Start services in the private residence of the child receiving such services.

(10) The term ‘‘Indian tribe’’ means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) The term ‘‘local educational agency’’ has the meaning given such term in the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(12) The term ‘‘migrant and seasonal Head Start program’’ means—

(A) with respect to services for migrant farmworkers, a Head Start program that serves families who are engaged in agricultural labor and who have changed their residence from one geographic location to another in the preceding 2-year period; and

(B) with respect to services for seasonal farmworkers, a Head Start program that serves families who are engaged primarily in seasonal agricultural labor and who have not changed their residence to another geographic location in the preceding 2-year period.

(13) The term ‘‘mobile Head Start program’’ means the provision of Head Start services utilizing transportable equipment set up in various community-based locations on a routine, weekly schedule, operating in conjunction with home-based Head Start programs, or as a Head Start classroom.

(14) The term ‘‘poverty line’’ means the official poverty line (as defined by the Office of Management and Budget)—

(A) adjusted to reflect the percentage change in the Consumer Price Index For[1] All Urban Consumers, issued by the Bureau of Labor Statistics, occurring in the 1-year period or other interval immediately preceding the date such adjustment is made; and

(B) adjusted for family size.

(15) The term ‘‘scientifically based reading research’’—

(A) means the application of rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties; and

(B) shall include research that—

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations; and

(iv) has been accepted by a peer-reviewed journal or approved by a panel of inde-

[1] So in original. Probably should not be capitalized.

pendent experts through a comparably rigorous, objective, and scientific review.

(16) The term ''Secretary'' means the Secretary of Health and Human Services.

(17) The term ''State'' means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, but for fiscal years ending before October 1, 2001 (and fiscal year 2002, if the legislation described in section 9835(a)(2)(B)(iii) of this title has not been enacted before September 30, 2001), also means the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(Pub. L. 97–35, title VI, § 637, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98–558, title I, § 101, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 101–501, title I, §§ 104(b), 116(b), 117(b), 121(b), 123(a), Nov. 3, 1990, 104 Stat. 1228, 1232, 1233, 1237; Pub. L. 103–252, title I, § 102, May 18, 1994, 108 Stat. 624; Pub. L. 105–285, title I, § 103, Oct. 27, 1998, 112 Stat. 2703.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (10), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in par. (11), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§ 6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

AMENDMENTS

1998—Pars. (1), (2). Pub. L. 105–285, § 103(2), added pars. (1) and (2). Former pars. (1) and (2) redesignated (16) and (17), respectively.

Pars. (3), (4). Pub. L. 105–285, § 103(3)–(5), added par. (3), redesignated former par. (3) as (4), and struck out former par. (4) which read as follows: ''The term 'family literacy services' means services and activities that include interactive literacy activities between parents and their children, training for parents on techniques for being the primary teacher of their children and full partners in the education of their children, parent literacy training (including training in English as a second language), and early childhood education.''

Par. (6). Pub. L. 105–285, § 103(6), inserted at end ''Nothing in this paragraph shall be construed to require an agency to provide services to a child who has not reached the age of compulsory school attendance for more than the number of hours per day permitted by State law (including regulation) for the provision of services to such a child.''

Par. (12). Pub. L. 105–285, § 103(7), added par. (12) and struck out former par. (12) which read as follows: ''The term 'migrant Head Start program' means a Head Start program that serves families who are engaged in agricultural work and who have changed their residence from one geographical location to another in the preceding 2-year period.''

Par. (15). Pub. L. 105–285, § 103(8), added par. (15).

Par. (16). Pub. L. 105–285, § 103(1), redesignated par. (1) as (16) and transferred it to appear after par. (15).

Par. (17). Pub. L. 105–285, § 103(9)(B), (C), substituted ''Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, but for fiscal years ending before October 1, 2001 (and fiscal year 2002, if the legislation described in section 9835(a)(2)(B)(iii) of this title has not been enacted before September 30, 2001), also means'' for ''Virgin Islands,'' and ''and the Republic of Palau'' for ''Palau, and the Commonwealth of the Northern Mariana Islands''.

Pub. L. 105–285, § 103(9)(A), which directed substitution of ''term'' for ''Term'', could not be executed because ''Term'' does not appear in par. (17).

Pub. L. 105–285, § 103(1), redesignated par. (2) as (17) and transferred it to appear after par. (16).

1994—Par. (4). Pub. L. 103–252, § 102(1), (4), (5)(A), redesignated par. (12) as (4) and struck out former par. (4) which defined ''adjusted appropriation''.

Par. (5). Pub. L. 103–252, § 102(1), (4), (5)(B), redesignated par. (10) as (5) and struck out former par. (5) which defined ''quality improvement funds''.

Par. (6). Pub. L. 103–252, § 102(4), (5)(B), redesignated par. (11) as (6). Former par. (6) redesignated (7).

Pars. (7), (8). Pub. L. 103–252, § 102(4), redesignated pars. (6) and (7) as (7) and (8), respectively. Former par. (8) redesignated (9).

Par. (9). Pub. L. 103–252, § 102(4), redesignated par. (8) as (9). Former par. (9) redesignated (14).

Pub. L. 103–252, § 102(2), added par. (9) and struck out former par. (9) which defined ''poverty line''.

Par. (10). Pub. L. 103–252, § 102(4), (5)(C), redesignated par. (13) as (10). Former par. (10) redesignated (5).

Par. (11). Pub. L. 103–252, § 102(5)(D), added par. (11). Former par. (11) redesignated (6).

Par. (12). Pub. L. 103–252, § 102(5)(D), added par. (12). Former par. (12) redesignated (4).

Pub. L. 103–252, § 102(3), (4), added par. (12) and redesignated it as (4).

Par. (13). Pub. L. 103–252, § 102(5)(D), added par. (13). Former par. (13) redesignated (10).

Pub. L. 103–252, § 102(3), (4), added par. (13) and redesignated it as (10).

Par. (14). Pub. L. 103–252, § 102(4), redesignated par. (9) as (14).

1990—Par. (2). Pub. L. 101–501, § 104(b)(1), substituted ''the Federated States of Micronesia, the Republic of the Marshall Islands, Palau'' for ''the Trust Territory of the Pacific Islands''.

Pars. (4), (5). Pub. L. 101–501, § 104(b)(2), added pars. (4) and (5).

Par. (6). Pub. L. 101–501, § 116(b), added par. (6).

Pars. (7), (8). Pub. L. 101–501, § 117(b), added pars. (7) and (8).

Par. (9). Pub. L. 101–501, § 121(b), added par. (9).

Pars. (10), (11). Pub. L. 101–501, § 123(a), added pars. (10) and (11).

1984—Par. (2). Pub. L. 98–558 inserted ''the Commonwealth of'' before ''the Northern Mariana Islands''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 127 of title I of Pub. L. 103–252 provided that:

''(a) EFFECTIVE DATE.—This title [see Short Title of 1994 Amendment note set out under section 9801 of this title], and the amendments made by this title, shall take effect on the date of enactment of this title [May 18, 1994].

''(b) APPLICATION.—The requirements of this title and the amendments made by this title shall not apply to Head Start agencies and other recipients of financial assistance under the Head Start Act [42 U.S.C. 9831 et seq.] until October 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

§ 9833. Financial assistance for Head Start programs

The Secretary may, upon application by an agency which is eligible for designation as a Head Start agency pursuant to section 9836 of this title, provide financial assistance to such

agency for the planning, conduct, administration, and evaluation of a Head Start program focused primarily upon children from low-income families who have not reached the age of compulsory school attendance which (1) will provide such comprehensive health, education, parental involvement, nutritional, social, and other services as will enable the children to attain their full potential and attain school readiness; and (2) will provide for direct participation of the parents of such children in the development, conduct, and overall program direction at the local level.

(Pub. L. 97–35, title VI, § 638, Aug. 13, 1981, 95 Stat. 499; Pub. L. 100–297, title II, § 2504, Apr. 28, 1988, 102 Stat. 330; Pub. L. 103–252, title I, §§ 103, 112(c), May 18, 1994, 108 Stat. 625, 641; Pub. L. 105–285, title I, § 104, Oct. 27, 1998, 112 Stat. 2705.)

AMENDMENTS

1998—Cl. (1). Pub. L. 105–285 substituted ''enable the children'' for ''aid the children'' and inserted ''and attain school readiness'' before the semicolon.

1994—Pub. L. 103–252 struck out subsec. (a) designation, in cl. (1), substituted ''health, education, parental involvement, nutritional, social, and other services'' for ''health, nutritional, educational, social, and other services'', and struck out subsec. (b) which read as follows: ''For purposes of providing financial assistance under subsection (a) of this section to agencies, the Secretary may not take into consideration whether such agency applies for or receives funds under subchapter V of this chapter.''

1988—Pub. L. 100–297 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of Title 20, Education.

§ 9834. Authorization of appropriations

(a) There are authorized to be appropriated for carrying out the provisions of this subchapter such sums as may be necessary for fiscal years 1999 through 2003.

(b) From the amount appropriated under subsection (a) of this section, the Secretary shall make available—

(1) for each of fiscal years 1999 through 2003 to carry out activities authorized under section 9837a of this title, not more than $35,000,000 but not less than the amount that was made available for such activities for fiscal year 1998;

(2) not more than $5,000,000 for each of fiscal years 1999 through 2003 to carry out impact studies under section 9844(g) of this title; and

(3) not more than $12,000,000 for fiscal year 1999, and such sums as may be necessary for each of fiscal years 2000 through 2003, to carry out other research, demonstration, and evaluation activities, including longitudinal studies, under section 9844 of this title.

(Pub. L. 97–35, title VI, § 639, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98–558, title I, § 102, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99–425, title I, § 101, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101–120, § 2, Oct. 23, 1989, 103 Stat. 700; Pub. L. 101–501, title I, §§ 103, 120(b), 140, Nov. 3, 1990, 104 Stat. 1224, 1236, 1242; Pub. L. 103–252, title I, § 104, May 18, 1994, 108 Stat. 625; Pub. L. 105–285, title I, § 105, Oct. 27, 1998, 112 Stat. 2705.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–285, § 105(1), substituted ''1999 through 2003'' for ''1995 through 1998''.

Subsec. (b)(1) to (3). Pub. L. 105–285, § 105(2), added pars. (1) to (3) and struck out former pars. (1) and (2) which read as follows:

''(1) $35,000,000 for each of the fiscal years 1995 through 1998 to—

''(A) carry out the Head Start Transition Project Act; and

''(B) carry out activities authorized under section 9837(d) of this title; and

''(2) not more than $3,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1998, to carry out longitudinal research under section 9844(e) of this title.''

1994—Subsec. (a). Pub. L. 103–252, § 104(1), substituted ''such sums as may be necessary for fiscal years 1995 through 1998'' for ''(other than section 9846a of this title) $1,552,000,000 for fiscal year 1990, $2,386,000,000 for fiscal year 1991, $4,273,000,000 for fiscal year 1992, $5,924,000,000 for fiscal year 1993, and $7,660,000,000 for fiscal year 1994''.

Subsecs. (b), (c). Pub. L. 103–252, § 104(2), added subsec. (b) and struck out former subsecs. (b) and (c) which read as follows:

''(b) There are authorized to be appropriated to carry out section 9846a of this title, such sums as may be necessary for fiscal years 1991 through 1996.

''(c)(1) If the amount appropriated under subsection (a) of this section for fiscal year 1991 exceeds the adjusted appropriation, the Secretary shall make available not less than $20,000,000 to carry out the Head Start Transition Project Act.

''(2) The Secretary shall make available not less than $20,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the Head Start Transition Project Act.''

1990—Pub. L. 101–501, § 140, added subsec. (c).

Pub. L. 101–501, § 120(b), designated existing provisions as subsec. (a), inserted ''(other than section 9846a of this title)'' after ''of this subchapter'', and added subsec. (b).

Pub. L. 101–501, § 103, struck out ''$1,198,000,000 for fiscal year 1987, $1,263,000,000 for fiscal year 1988, $1,332,000,000 for fiscal year 1989, and'' after ''of this subchapter'' and inserted '', $2,386,000,000 for fiscal year 1991, $4,273,000,000 for fiscal year 1992, $5,924,000,000 for fiscal year 1993, and $7,660,000,000 for fiscal year 1994'' after ''1990''.

1989—Pub. L. 101–120 substituted ''$1,552,000,000'' for ''$1,405,000,000''.

1986—Pub. L. 99–425 amended section generally, substituting ''$1,198,000,000 for fiscal year 1987, $1,263,000,000 for fiscal year 1988, $1,332,000,000 for fiscal year 1989, and $1,405,000,000 for fiscal year 1990'' for ''$1,093,030,000 for fiscal year 1985, and $1,221,000,000 for fiscal year 1986''.

1984—Pub. L. 98–558 substituted ''$1,093,030,000 for fiscal year 1985, and $1,221,000,000 for fiscal year 1986'' for ''$950,000,000 for fiscal year 1982, $1,007,000,000 for fiscal year 1983, and $1,058,357,000 for fiscal year 1984''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

§ 9835. Allotment of funds

(a) Distribution of appropriations; priorities, etc.

(1) Of the sums appropriated pursuant to section 9834 of this title for any fiscal year beginning after September 30, 1981, the Secretary shall allot such sums in accordance with paragraphs (2) through (4), and subject to paragraphs (5) and (6).

(2) The Secretary shall reserve 13 percent of the amount appropriated for each fiscal year for use in accordance with the following order of priorities—

(A) Indian Head Start programs, services for children with disabilities, and migrant and seasonal Head Start programs, except that there shall be made available for each fiscal year for use by Indian Head Start programs and by migrant and seasonal Head Start programs, on a nationwide basis, not less than the amount that was obligated for use by Indian Head Start programs and by migrant and seasonal Head Start programs for fiscal year 1998;

(B) payments, subject to paragraph (7)—

(i) to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States;

(ii) for fiscal years ending before October 1, 2001, to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau; and

(iii) if legislation approving renegotiated Compacts of Free Association for the jurisdictions described in clause (ii) has not been enacted before September 30, 2001, for fiscal year 2002 to those jurisdictions;

according to their respective needs, except that such amount shall not exceed one-half of 1 percent of the sums appropriated for any fiscal year;

(C) training and technical assistance activities which are sufficient to meet the needs associated with program expansion and to foster program and management improvement activities as described in section 9843 of this title, in an amount for each fiscal year which is not less than 2 percent of the amount appropriated for such fiscal year, of which not less than $3,000,000 of the amount appropriated for such fiscal year shall be made available to carry out activities described in section 9843(c)(4) of this title;

(D) discretionary payments made by the Secretary (including payments for all costs (other than compensation of Federal employees) of reviews of Head Start agencies and programs under section 9836a(c) of this title, and of activities carried out under paragraph (1), (2), or (3) of section 9836a(d) of this title related to correcting deficiencies and conducting proceedings to terminate the designation of Head Start agencies;[1] and

(E) payments for research, demonstration, and evaluation activities under section 9844 of this title.

No funds reserved under this paragraph or paragraph (3) may be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter. No Freely Associated State may receive financial assistance under this subchapter after fiscal year 2002.

(3)(A)(i) In order to provide assistance for activities specified in subparagraph (C) directed at the goals specified in subparagraph (B), the Secretary shall reserve, from the amount (if any) by which the funds appropriated under section 9834(a) of this title for a fiscal year exceed the adjusted prior year appropriation, a share equal to the sum of—

(I) 60 percent of such excess amount for fiscal year 1999, 50 percent of such excess amount for fiscal year 2000, 47.5 percent of such excess amount for fiscal year 2001, 35 percent of such excess amount for fiscal year 2002, and 25 percent of such excess amount for fiscal year 2003; and

(II) any additional amount the Secretary may find necessary to address a demonstrated need for such activities.

(ii) As used in clause (i), the term ''adjusted prior year appropriation'' means, with respect to a fiscal year, the amount appropriated pursuant to section 9834(a) of this title for the preceding fiscal year, adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) during such preceding fiscal year.

(B) Funds reserved under this paragraph (referred to in this paragraph as ''quality improvement funds'') shall be used to accomplish any or all of the following goals:

(i) Ensuring that Head Start programs meet or exceed performance standards pursuant to section 9836a(a)(1)(A) of this title.

(ii) Ensuring that such programs have adequate numbers of qualified staff, and that such staff are furnished adequate training, including developing skills in working with children with non-English language background and children with disabilities, when appropriate.

(iii) Ensuring that salary levels and benefits are adequate to attract and retain qualified staff for such programs.

(iv) Using salary increases to improve staff qualifications, and to assist with the implementation of career development programs, for the staff of Head Start programs, and to encourage the staff to continually improve their skills and expertise by informing the staff of the availability of Federal and State incentive and loan forgiveness programs for professional development.

(v) Improving community-wide strategic planning and needs assessments for such programs and collaboration efforts for such programs.

(vi) Ensuring that the physical environments of Head Start programs are conducive to providing effective program services to children and families, and are accessible to children with disabilities and their parents.

[1] So in original. Probably should be ''agencies);''. See 1998 Amendment note below.

(vii) Ensuring that such programs have qualified staff that can promote language skills and literacy growth of children and that can provide children with a variety of skills that have been identified, through scientifically based reading research, as predictive of later reading achievement.

(viii) Making such other improvements in the quality of such programs as the Secretary may designate.

(C) Quality improvement funds shall be used to carry out any or all of the following activities:

(i)(I) Not less than one-half of the amount reserved under this paragraph, to improve the compensation (including benefits) of classroom teachers and other staff of Head Start agencies and thereby enhance recruitment and retention of qualified staff, including recruitment and retention pursuant to achieving the requirements set forth in section 9843a(a) of this title. The expenditure of funds under this clause shall be subject to section 9848 of this title. Preferences in awarding salary increases, in excess of cost-of-living allowances, with such funds shall be granted to classroom teachers and staff who obtain additional training or education related to their responsibilities as employees of a Head Start program.

(II) If a Head Start agency certifies to the Secretary for such fiscal year that part of the funds set aside under subclause (I) to improve wages cannot be expended by such agency to improve wages because of the operation of section 9848 of this title, then such agency may expend such part for any of the uses specified in this subparagraph (other than wages).

(III) From the remainder of the amount reserved under this paragraph (after the Secretary carries out subclause (I)), the Secretary shall carry out any or all of the activities described in clauses (ii) through (vii), placing the highest priority on the activities described in clause (ii).

(ii) To train classroom teachers and other staff to meet the education performance standards described in section 9836a(a)(1)(B) of this title, through activities—

(I) to promote children's language and literacy growth, through techniques identified through scientifically based reading research;

(II) to promote the acquisition of the English language for non-English background children and families;

(III) to foster children's school readiness skills through activities described in section 9843a(a)(1) of this title; and

(IV) to provide training necessary to improve the qualifications of the staff of the Head Start agencies and to support staff training, child counseling, and other services necessary to address the problems of children participating in Head Start programs, including children from dysfunctional families, children who experience chronic violence in their communities, and children who experience substance abuse in their families.

(iii) To employ additional Head Start staff, including staff necessary to reduce the child-staff ratio and staff necessary to coordinate a Head Start program with other services available to children participating in such program and to their families.

(iv) To pay costs incurred by Head Start agencies to purchase insurance (other than employee benefits) and thereby maintain or expand Head Start services.

(v) To supplement amounts provided under paragraph (2)(C) to provide training necessary to improve the qualifications of the staff of the Head Start agencies, and to support staff training, child counseling, and other services necessary to address the problems of children participating in Head Start programs, including children from dysfunctional families, children who experience chronic violence in their communities, and children who experience substance abuse in their families.

(vi) Such other activities as the Secretary may designate.

(D)(i) Funds reserved under subparagraph (A) shall be allotted by the Secretary as follows:

(I) 80 percent of such funds shall be allotted among the States in the same proportion as the Secretary allots funds among the States under paragraph (4) for the respective fiscal year.

(II) 20 percent of such funds shall be allotted among the States, geographical areas specified in subsection (a)(2)(B) of this section and Indian Head Start programs and migrant and seasonal Head Start programs, and used to make grants to Head Start agencies, at the discretion of the Secretary.

(ii) Funds allotted under clause (i) shall be used by the Secretary to make grants to Head Start agencies that receive grants from funds allotted under paragraph (4) for such fiscal year, in such amounts as the Secretary considers to be appropriate, for expenditure for activities specified in subparagraph (C).

(iii) Funds received under this subparagraph shall be used to supplement, not to supplant, funds received under paragraph (2) or (4).

(4) Subject to section 9834(b) of this title, the Secretary shall allot the remaining amounts appropriated in each fiscal year among the States, in accordance with latest satisfactory data so that—

(A) each State receives an amount which is equal to the amount the State received for fiscal year 1998; and

(B) any amount available after all allotments are made under subparagraph (A) for such fiscal year shall be distributed proportionately on the basis of the number of children less than 5 years of age from families whose income is below the poverty line.

For purposes of this paragraph, for each fiscal year the Secretary shall use the most recent data available on the number of children less than 5 years of age from families whose income is below the poverty line, as published by the Department of Commerce, unless the Secretary and the Secretary of Commerce determine that use of the most recent data available would be inappropriate or unreliable. If the Secretary and the Secretary of Commerce determine that some or all of the data referred to in this paragraph

are inappropriate or unreliable, the Secretaries shall issue a report setting forth their reasons in detail.

(5)(A) From amounts reserved and allotted pursuant to paragraph (4), the Secretary shall reserve such sums as may be necessary to award the collaboration grants described in subparagraphs (B) and (D).

(B) From the reserved sums, the Secretary may award a collaboration grant to each State to facilitate collaboration regarding activities carried out in the State under this subchapter, and other activities carried out in, and by, the State that are designed to benefit low-income children and families and to encourage Head Start agencies to collaborate with entities involved in State and local planning processes (including the State lead agency administering the financial assistance received under subchapter II–B of this chapter and the entities providing resource and referral services in the State) in order to better meet the needs of low-income children and families.

(C) A State that receives a grant under subparagraph (B) shall—

(i) appoint an individual to serve as a State liaison between—

(I) the appropriate regional office of the Administration for Children and Families and agencies and individuals carrying out Head Start programs in the State; and

(II) agencies (including local educational agencies) and entities carrying out programs serving low-income children and families;

(ii) involve the State Head Start Association in the selection of the individual, and involve the association in determinations relating to the ongoing direction of the collaboration;

(iii) ensure that the individual holds a position with sufficient authority and access to ensure that the collaboration described in subparagraph (B) is effective and involves a range of State agencies;

(iv) ensure that the collaboration described in subparagraph (B) involves coordination of Head Start services with health care, welfare, child care, education, and community service activities, family literacy services, activities relating to children with disabilities (including coordination of services with those State officials who are responsible for administering part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431–1444, 1419)), and services for homeless children;

(v) include representatives of the State Head Start Association and local Head Start agencies in unified planning regarding early care and education services at both the State and local levels, including collaborative efforts to plan for the provision of full-working-day, full calendar year early care and education services for children; and

(vi) encourage local Head Start agencies to appoint a State level representative to represent Head Start agencies within the State in conducting collaborative efforts described in subparagraphs (B) and (D), and in clause (v).

(D) Following the award of collaboration grants described in subparagraph (B), the Secretary shall provide, from the reserved sums, supplemental funding for collaboration grants—

(i) to States that (in consultation with their State Head Start Associations) develop statewide, regional, or local unified plans for early childhood education and child care that include the participation of Head Start agencies; and

(ii) to States that engage in other innovative collaborative initiatives, including plans for collaborative training and professional development initiatives for child care, early childhood education and Head Start service managers, providers, and staff.

(E)(i) The Secretary shall—

(I) review on an ongoing basis evidence of barriers to effective collaboration between Head Start programs and other Federal, State, and local child care and early childhood education programs and resources;

(II) develop initiatives, including providing additional training and technical assistance and making regulatory changes, in necessary cases, to eliminate barriers to the collaboration; and

(III) develop a mechanism to resolve administrative and programmatic conflicts between programs described in subclause (I) that would be a barrier to service providers, parents, or children related to the provision of unified services and the consolidation of funding for child care services.

(ii) In the case of a collaborative activity funded under this subchapter and another provision of law providing for Federal child care or early childhood education, the use of equipment and nonconsumable supplies purchased with funds made available under this subchapter or such provision shall not be restricted to children enrolled or otherwise participating in the program carried out under that subchapter or provision, during a period in which the activity is predominantly funded under this subchapter or such provision.

(F) As used in this paragraph, the term ''low-income'', used with respect to children or families, shall not be considered to refer only to children or families that meet the low-income criteria prescribed pursuant to section 9840(a)(1)(A) of this title.

(6)(A) From amounts reserved and allotted pursuant to paragraphs (2) and (4), the Secretary shall use, for grants for programs described in section 9840a(a) of this title, a portion of the combined total of such amounts equal to 7.5 percent for fiscal year 1999, 8 percent for fiscal year 2000, 9 percent for fiscal year 2001, 10 percent for fiscal year 2002, and 10 percent for fiscal year 2003, of the amount appropriated pursuant to section 9834(a) of this title, except as provided in subparagraph (B).

(B)(i) If the Secretary does not submit an interim report on the preliminary findings of the Early Head Start impact study currently being conducted by the Secretary (as of October 27, 1998) to the appropriate committees by June 1, 2001, the amount of the reserved portion for fiscal year 2002 that exceeds the reserved portion for fiscal year 2001, if any, shall be used for quality improvement activities described in subsection (a)(3) of this section and shall not be used to serve an increased number of eligible children under section 9840a of this title.

(ii) If the Secretary does not submit a final report on the Early Head Start impact study to the appropriate committees by June 1, 2002, or if the Secretary finds in the report that there are substantial deficiencies in the programs carried out under section 9840a of this title, the amount of the reserved portion for fiscal year 2003 that exceeds the reserved portion for fiscal year 2002, if any, shall be used for quality improvement activities described in subsection (a)(3) of this section and shall not be used to serve an increased number of eligible children under section 9840a of this title.

(iii) In this subparagraph:

(I) The term ''appropriate committees'' means the Committee on Education and the Workforce and the Committee on Appropriations of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Appropriations of the Senate.

(II) The term ''reserved portion'', used with respect to a fiscal year, means the amount required to be used in accordance with subparagraph (A) for that fiscal year.

(C)(i) For any fiscal year for which the Secretary determines that the amount appropriated under section 9834(a) of this title is not sufficient to permit the Secretary to reserve the portion described in subparagraph (A) without reducing the number of children served by Head Start programs or adversely affecting the quality of Head Start services, relative to the number of children served and the quality of the services during the preceding fiscal year, the Secretary may reduce the percentage of funds required to be reserved for the portion described in subparagraph (A) for the fiscal year for which the determination is made, but not below the percentage required to be so reserved for the preceding fiscal year.

(ii) For any fiscal year for which the amount appropriated under section 9834(a) of this title is reduced to a level that requires a lower amount to be made available under this subchapter to Head Start agencies and entities described in section 9840a of this title, relative to the amount made available to the agencies and entities for the preceding fiscal year, adjusted as described in paragraph (3)(A)(ii), the Secretary shall proportionately reduce—

(I) the amounts made available to the entities for programs carried out under section 9840a of this title; and

(II) the amounts made available to Head Start agencies for Head Start programs.

(7) For purposes of this subsection, the term ''State'' does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(b) Federal share

Financial assistance extended under this subchapter for a Head Start program shall not exceed 80 percent of the approved costs of the assisted program or activities, except that the Secretary may approve assistance in excess of such percentage if the Secretary determines that such action is required in furtherance of the purposes of this subchapter. For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—

(1) the lack of resources available in the community that may prevent the Head Start agency from providing all or a portion of the non-Federal contribution that may be required under this subsection;

(2) the impact of the cost the Head Start agency may incur in initial years it carries out such program;

(3) the impact of an unanticipated increase in the cost the Head Start agency may incur to carry out such program;

(4) whether the Head Start agency is located in a community adversely affected by a major disaster; and

(5) the impact on the community that would result if the Head Start agency ceased to carry out such program.

Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services. The Secretary shall not require non-Federal contributions in excess of 20 percent of the approved costs of programs or activities assisted under this subchapter.

(c) Services covered

No programs shall be approved for assistance under this subchapter unless the Secretary is satisfied that the services to be provided under such program will be in addition to, and not in substitution for, comparable services previously provided without Federal assistance. The requirement imposed by the preceding sentence shall be subject to such regulations as the Secretary may prescribe.

(d) Enrollment of children with disabilities and provision of services

The Secretary shall establish policies and procedures designed to assure that for fiscal year 1999 and thereafter no less than 10 percent of the total number of enrollment opportunities in Head Start programs in each State shall be available for children with disabilities and that services shall be provided to meet their special needs. Such policies and procedures shall require Head Start agencies to coordinate programmatic efforts with efforts to implement part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431–1444, 1419).

(e) Distribution of benefits between residents of rural and urban areas

The Secretary shall adopt appropriate administrative measures to assure that the benefits of this subchapter will be distributed equitably between residents of rural and urban areas.

(f) Guidelines for local service delivery models

The Secretary shall establish procedures to enable Head Start agencies to develop locally designed or specialized service delivery models to address local community needs.

(g) Maintenance of current services; expansion of Head Start programs

(1) If in any fiscal year, the amounts appropriated to carry out the program under this sub-

chapter exceed the amount appropriated in the prior fiscal year, the Secretary shall, prior to using such additional funds to serve an increased number of children, allocate such funds in a manner that makes available the funds necessary to maintain the level of services provided during the prior year, taking into consideration the percentage change in the Consumer Price Index For All Urban Consumers, as published by the Bureau of Labor Statistics.

(2) For the purpose of expanding Head Start programs, in allocating funds to an applicant within a State, from amounts allotted to a State pursuant to subsection (a)(4) of this section, the Secretary shall take into consideration—

(A) the quality of the applicant's programs (including Head Start and other child care or child development programs) in existence on the date of the allocation, including, in the case of Head Start programs in existence on the date of the allocation, the extent to which such programs meet or exceed performance standards and other requirements under this subchapter, and the performance history of the applicant in providing services under other Federal programs (other than the program carried out under this subchapter);

(B) the applicant's capacity to expand services (including, in the case of Head Start programs in existence on the date of the allocation, whether the applicant accomplished any prior expansions in an effective and timely manner);

(C) the extent to which the applicant has undertaken community-wide strategic planning and needs assessments involving other community organizations and public agencies serving children and families (including organizations serving families in whose homes English is not the language customarily spoken), and organizations and public entities serving children with disabilities;

(D) the extent to which the family and community needs assessment of the applicant reflects a need to provide full-working-day or full calendar year services and the extent to which, and manner in which, the applicant demonstrates the ability to collaborate and participate with other local community providers of child care or preschool services to provide full-working-day full calendar year services;

(E) the numbers of eligible children in each community who are not participating in a Head Start program or any other early childhood program;

(F) the concentration of low-income families in each community;

(G) the extent to which the applicant proposes to foster partnerships with other service providers in a manner that will enhance the resource capacity of the applicant; and

(H) the extent to which the applicant, in providing services, plans to coordinate with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, regarding such services and the education services provided by such local educational agency.

(3) In determining the amount of funds reserved pursuant to subparagraph (A) or (B) of subsection (a)(2) of this section to be used for expanding Head Start programs under this subchapter, the Secretary shall take into consideration, to the extent appropriate, the factors specified in paragraph (2).

(4) Notwithstanding subsection (a)(2) of this section, after taking into account paragraph (1), the Secretary may allocate a portion of the remaining additional funds under subsection (a)(2)(A) of this section for the purpose of increasing funds available for activities described in such subsection.

(h) Full-working-day services

Financial assistance provided under this subchapter may be used by each Head Start program to provide full-working-day Head Start services to any eligible child throughout the full calendar year.

(i) Vehicle safety regulations

The Secretary shall issue regulations establishing requirements for the safety features, and the safe operation, of vehicles used by Head Start agencies to transport children participating in Head Start programs.

(j) Compensation of staff

Any agency that receives financial assistance under this subchapter to improve the compensation of staff who provide services under this subchapter[2] shall use the financial assistance to improve the compensation of such staff, regardless of whether the agency has the ability to improve the compensation of staff employed by the agency who do not provide Head Start services.

(k) Flexibility in hours of service requirement

(1) The Secretary shall allow center-based Head Start programs the flexibility to satisfy the total number of hours of service required by the regulations in effect on May 18, 1994, to be provided to children in Head Start programs so long as such agencies do not—

(A) provide less than 3 hours of service per day;

(B) reduce the number of days of service per week; or

(C) reduce the number of days of service per year.

(2) The provisions of this subsection shall not be construed to restrict the authority of the Secretary to fund alternative program variations authorized under section 1306.35 of title 45 of the Code of Federal Regulations in effect on May 18, 1994.

***(l)* Frequent relocation of migrant families**

(1) With funds made available under subsection (a)(2) of this section to migrant and seasonal Head Start programs, the Secretary shall give priority to migrant and seasonal Head Start programs that serve eligible children of migrant and seasonal farmworker families whose work requires them to relocate most frequently.

(2) For purposes of subsection (a)(2)(A) of this section, in determining the need and demand for

[2] See References in Text note below.

migrant and seasonal Head Start programs (and services provided through such programs), the Secretary shall consult with appropriate entities, including providers of services for migrant and seasonal Head Start programs. The Secretary shall, after taking into consideration the need and demand for migrant and seasonal Head Start programs (and such services), ensure that there is an adequate level of such services for eligible children of migrant farmworkers before approving an increase in the allocation of funds provided under such subsection for unserved eligible children of seasonal farmworkers. In serving the eligible children of seasonal farmworkers, the Secretary shall ensure that services provided by migrant and seasonal Head Start programs do not duplicate or overlap with other Head Start services available to eligible children of such farmworkers.

(3) In carrying out this subchapter, the Secretary shall continue the administrative arrangement responsible for meeting the needs of children of migrant and seasonal farmworkers and Indian children and shall ensure that appropriate funding is provided to meet such needs.

(Pub. L. 97–35, title VI, § 640, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98–558, title I, § 103, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99–425, title I, § 102, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101–476, title IX, § 901(d), Oct. 30, 1990, 104 Stat. 1151; Pub. L. 101–501, title I, §§ 104(a), 105, 123(b), Nov. 3, 1990, 104 Stat. 1224, 1228, 1237; Pub. L. 102–119, § 26(g), Oct. 7, 1991, 105 Stat. 607; Pub. L. 102–401, § 2(a)–(d), (k)(1), Oct. 7, 1992, 106 Stat. 1956, 1958; Pub. L. 103–252, title I, § 105, May 18, 1994, 108 Stat. 626; Pub. L. 104–193, title I, § 110(t), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 105–285, title I, § 106(a)–(d), Oct. 27, 1998, 112 Stat. 2705–2711; Pub. L. 108–446, title III, § 305(*l*)(1), (2), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsecs. (a)(5)(C)(iv) and (d), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

This subchapter, referred to in subsec. (j), was in the original ''this Act'' and was translated as reading ''this subchapter'', meaning subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, known as the Head Start Act, which is classified generally to this subchapter, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (a)(5)(C)(iv). Pub. L. 108–446, § 305(*l*)(1), substituted ''1431–1444'' for ''1431–1445''.

Subsec. (d). Pub. L. 108–446, § 305(*l*)(2), substituted ''U.S.C.'' for ''U.S.C'' and ''1431–1444'' for ''1431–1445''.

1998—Subsec. (a)(2). Pub. L. 105–285, § 106(a)(1)(F), inserted at end of concluding provisions ''No Freely Associated State may receive financial assistance under this subchapter after fiscal year 2002.''

Subsec. (a)(2)(A). Pub. L. 105–285, § 106(a)(1)(A), substituted ''Head Start programs, services for children with disabilities, and migrant and seasonal Head Start programs'' for ''and migrant Head Start programs and services for handicapped children'', ''Head Start programs and by migrant and seasonal'' for ''and migrant'' before ''Head Start programs'' in two places, and ''1998'' for ''1994''.

Subsec. (a)(2)(B). Pub. L. 105–285, § 106(a)(1)(B), substituted ''(B) payments, subject to paragraph (7)—'', cls. (i) to (iii), and ''according'' for ''(B) payments to Guam, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands according''.

Subsec. (a)(2)(C). Pub. L. 105–285, § 106(a)(1)(C), substituted '', of which not less than $3,000,000 of the amount appropriated for such fiscal year shall be made available to carry out activities described in section 9843(c)(4) of this title;'' for ''; and''.

Subsec. (a)(2)(D). Pub. L. 105–285, § 106(a)(1)(D), which directed substitution of ''carried out under paragraph (1), (2), or (3) of section 9836a(d) of this title related to correcting deficiencies and conducting proceedings to terminate the designation of Head Start agencies; and'' for ''related to the development and implementation of quality improvement plans under section 9836a(d)(2) of this title.'', was executed by making the substitution for ''related to the development and implementation of quality improvement plans under section 9836a(d)(2) of this title).''

Subsec. (a)(2)(E). Pub. L. 105–285, § 106(a)(1)(E), added subpar. (E).

Subsec. (a)(3)(A)(i)(I). Pub. L. 105–285, § 106(a)(2)(A), substituted ''60 percent of such excess amount for fiscal year 1999, 50 percent of such excess amount for fiscal year 2000, 47.5 percent of such excess amount for fiscal year 2001, 35 percent of such excess amount for fiscal year 2002, and 25 percent of such excess amount for fiscal year 2003;'' for ''25 percent of such excess amount;''.

Subsec. (a)(3)(B)(ii). Pub. L. 105–285, § 106(a)(2)(B)(i), substituted ''adequate numbers of qualified staff'' for ''adequate qualified staff'' and inserted ''and children with disabilities'' before '', when appropriate''.

Subsec. (a)(3)(B)(iv). Pub. L. 105–285, § 106(a)(2)(B)(ii), inserted before period at end '', and to encourage the staff to continually improve their skills and expertise by informing the staff of the availability of Federal and State incentive and loan forgiveness programs for professional development''.

Subsec. (a)(3)(B)(v). Pub. L. 105–285, § 106(a)(2)(B)(iii), inserted ''and collaboration efforts for such programs'' before period at end.

Subsec. (a)(3)(B)(vi). Pub. L. 105–285, § 106(a)(2)(B)(iv), inserted before period at end '', and are accessible to children with disabilities and their parents''.

Subsec. (a)(3)(B)(vii), (viii). Pub. L. 105–285, § 106(a)(2)(B)(v), (vi), added cl. (vii) and redesignated former cl. (vii) as (viii).

Subsec. (a)(3)(C)(i)(I). Pub. L. 105–285, § 106(a)(2)(C)(i)(I), substituted ''this paragraph'' for ''this subparagraph'', ''of classroom teachers and other staff'' for ''of staff'', and ''qualified staff, including recruitment and retention pursuant to achieving the requirements set forth in section 9843a(a) of this title'' for ''such staff'', and inserted at end ''Preferences in awarding salary increases, in excess of cost-of-living allowances, with such funds shall be granted to classroom teachers and staff who obtain additional training or education related to their responsibilities as employees of a Head Start program.''

Subsec. (a)(3)(C)(i)(II). Pub. L. 105–285, § 106(a)(2)(C)(i)(II), substituted ''this subparagraph'' for ''the subparagraph''.

Subsec. (a)(3)(C)(i)(III). Pub. L. 105–285, § 106(a)(2)(C)(i)(III), added subcl. (III).

Subsec. (a)(3)(C)(ii). Pub. L. 105–285, § 106(a)(2)(C)(ii), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''To pay transportation costs incurred by Head Start agencies to enable eligible children to participate in a Head Start program.''

Subsec. (a)(3)(C)(v) to (vii). Pub. L. 105–285, § 106(a)(2)(C)(iii), (iv), redesignated cls. (vi) and (vii) as (v) and (vi), respectively, and struck out former cl. (v) which read as follows: ''To make nonstructural and minor structural changes, and to acquire and install equipment, for the purpose of improving facilities necessary to expand the availability, or enhance the quality, of Head Start programs.''

Subsec. (a)(3)(D)(i)(II). Pub. L. 105–285, §106(a)(2)(D), substituted ''Head Start programs and migrant and seasonal'' for ''and migrant''.

Subsec. (a)(4). Pub. L. 105–285, §106(a)(3)(C), inserted concluding provisions.

Subsec. (a)(4)(A). Pub. L. 105–285, §106(a)(3)(A), substituted ''1998'' for ''1981''.

Subsec. (a)(4)(B). Pub. L. 105–285, §106(a)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(B)(i) 33⅓ percent of any amount available after all allotments have been made under subparagraph (A) for such fiscal year shall be distributed on the basis of the relative number of children from birth through 18 years of age, on whose behalf payments are made under the State program of assistance funded under part A of title IV of the Social Security Act in each State as compared to all States; and

''(ii) 66⅔ percent of such amount shall be distributed on the basis of the relative number of children from birth through 5 years of age living with families with incomes below the poverty line in each State as compared to all States.''

Subsec. (a)(5)(A). Pub. L. 105–285, §106(a)(4)(A), substituted ''subparagraphs (B) and (D)'' for ''subparagraph (B)''.

Subsec. (a)(5)(B). Pub. L. 105–285, §106(a)(4)(B), inserted before period at end ''and to encourage Head Start agencies to collaborate with entities involved in State and local planning processes (including the State lead agency administering the financial assistance received under subchapter II–B of this chapter and the entities providing resource and referral services in the State) in order to better meet the needs of low-income children and families''.

Subsec. (a)(5)(C)(i)(I). Pub. L. 105–285, §106(a)(4)(C)(i), inserted ''the appropriate regional office of the Administration for Children and Families and'' before ''agencies''.

Subsec. (a)(5)(C)(iii). Pub. L. 105–285, §106(a)(4)(C)(ii), struck out ''and'' at end.

Subsec. (a)(5)(C)(iv). Pub. L. 105–285, §106(a)(4)(C)(iii), substituted ''education, and community service activities,'' for ''education, and national service activities,'', ''activities'' for ''and activities'' before ''relating to children with disabilities'', and ''(including coordination of services with those State officials who are responsible for administering part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431–1445, 1419)), and services for homeless children;'' for period at end.

Subsec. (a)(5)(C)(v), (vi). Pub. L. 105–285, §106(a)(4)(C)(iv), added cls. (v) and (vi).

Subsec. (a)(5)(D) to (F). Pub. L. 105–285, §106(a)(4)(D), (E), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

Subsec. (a)(6). Pub. L. 105–285, §106(a)(5), designated existing provisions as subpar. (A), substituted ''7.5 percent for fiscal year 1999, 8 percent for fiscal year 2000, 9 percent for fiscal year 2001, 10 percent for fiscal year 2002, and 10 percent for fiscal year 2003, of the amount appropriated pursuant to section 9834(a) of this title, except as provided in subparagraph (B).'' for ''3 percent for fiscal year 1995, 4 percent for each of fiscal years 1996 and 1997, and 5 percent for fiscal year 1998, of the amount appropriated pursuant to section 9834(a) of this title.'', and added subpars. (B) and (C).

Subsec. (d). Pub. L. 105–285, §106(b)(2), which directed striking out ''(as defined in section 1401(a) of title 20)'', was executed by striking out ''(as defined in section 1401(a)(1) of title 20)'' after ''children with disabilities'' to reflect the probable intent of Congress.

Pub. L. 105–285, §106(b)(1), (3), substituted ''1999'' for ''1982'' and inserted at end ''Such policies and procedures shall require Head Start agencies to coordinate programmatic efforts with efforts to implement part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C 1431–1445, 1419).''.

Subsec. (g)(2)(A). Pub. L. 105–285, §106(c)(1)(A), inserted before semicolon at end '', and the performance history of the applicant in providing services under other Federal programs (other than the program carried out under this subchapter)''.

Subsec. (g)(2)(C). Pub. L. 105–285, §106(c)(1)(B), inserted '', and organizations and public entities serving children with disabilities'' before semicolon at end.

Subsec. (g)(2)(D). Pub. L. 105–285, §106(c)(1)(C), inserted before semicolon at end ''and the extent to which, and manner in which, the applicant demonstrates the ability to collaborate and participate with other local community providers of child care or preschool services to provide full-working-day full calendar year services''.

Subsec. (g)(2)(E). Pub. L. 105–285, §106(c)(1)(D), substituted ''program or any other early childhood program;'' for ''program; and''.

Subsec. (g)(2)(G), (H). Pub. L. 105–285, §106(c)(1)(E), (F), added subpars. (G) and (H).

Subsec. (g)(4). Pub. L. 105–285, §106(c)(2), added par. (4).

Subsec. (*l*). Pub. L. 105–285, §106(d), designated existing provisions as par. (1), substituted ''migrant and seasonal Head Start programs'' for ''migrant Head Start programs'' in two places and ''migrant and seasonal farmworker families'' for ''migrant families'', and added pars. (2) and (3).

1996—Subsec. (a)(4)(B)(i). Pub. L. 104–193 substituted ''State program of assistance funded'' for ''program of aid to families with dependent children under a State plan approved''.

1994—Subsec. (a)(1). Pub. L. 103–252, §105(b)(1), substituted ''through (4), and subject to paragraphs (5) and (6)'' for ''through (5)''.

Subsec. (a)(2)(A). Pub. L. 103–252, §105(b)(2)(A), substituted ''1994'' for ''1990''.

Subsec. (a)(2)(D). Pub. L. 103–252, §105(b)(2)(B), inserted ''(including payments for all costs (other than compensation of Federal employees) of reviews of Head Start agencies and programs under section 9836a(c) of this title, and of activities related to the development and implementation of quality improvement plans under section 9836a(d)(2) of this title)'' after ''Secretary''.

Subsec. (a)(3)(A), (B). Pub. L. 103–252, §105(a)(2), added subpars. (A) and (B). Former subpars. (A) and (B) redesignated subpars. (C) and (D), respectively.

Subsec. (a)(3)(C). Pub. L. 103–252, §105(a)(1)–(3), redesignated subpar. (A) as (C), substituted in introductory provisions ''Quality improvement funds shall be used to carry out any or all of the following activities:'' for ''For any fiscal year for which the amount appropriated under section 9834(a) of this title exceeds the adjusted appropriation, the Secretary shall reserve the quality improvement funds for such fiscal year, for one or more of the following quality improvement activities:'', and added cl. (vii).

Subsec. (a)(3)(D). Pub. L. 103–252, §105(a)(1), redesignated subpar. (B) as (D).

Subsec. (a)(3)(D)(i). Pub. L. 103–252, §105(a)(4)(A), (b)(3), struck out ''for the first, second, and third fiscal years for which funds are so reserved'' after ''subparagraph (A)'' in introductory provisions, substituted ''paragraph (4)'' for ''paragraph (5)'' in subcl. (I), and inserted ''geographical areas specified in subsection (a)(2)(B) of this section and Indian and migrant Head Start programs,'' after ''States,'' in subcl. (II).

Subsec. (a)(3)(D)(ii). Pub. L. 103–252, §105(b)(3), substituted ''paragraph (4)'' for ''paragraph (5)''.

Pub. L. 103–252, §105(a)(4)(B), (E), redesignated cl. (iv) as (ii) and struck out former cl. (ii) which read as follows: ''Funds reserved under subparagraph (A) for any fiscal year subsequent to the third fiscal year for which funds are so reserved shall be allotted by the Secretary among the States in the same proportion as the Secretary allots funds among the States under paragraph (5) for the respective subsequent fiscal year.''

Subsec. (a)(3)(D)(iii). Pub. L. 103–252, §105(a)(4)(B), (E), redesignated cl. (vi) as (iii) and struck out former cl. (iii) which read as follows: ''To be expended for the activities specified in subparagraph (A) in the first fiscal,

second, and third fiscal years for which funds are required by such subparagraph to be reserved, funds allotted under clause (i)(I) shall be used by the Secretary to make a grant to each Head Start agency that receives a grant from funds allotted under paragraph (5) for such fiscal year, in the amount that bears the same ratio to the amount allotted under clause (i)(I) for such fiscal year for the State in which such agency is located as the number of children participating in the Head Start program of such agency in such fiscal year bears to the number of children participating in all Head Start programs in such State in such fiscal year.''

Subsec. (a)(3)(D)(iv). Pub. L. 103–252, §105(a)(4)(E), redesignated cl. (iv) as (ii).

Pub. L. 103–252, §105(a)(4)(C), substituted ''Funds'' for ''To be expended for the activities specified in subparagraph (A) in each subsequent fiscal year for which funds are required by such subparagraph to be reserved, funds'' and ''clause (i)'' for ''clause (ii)'', inserted '', for expenditure for activities specified in subparagraph (C)'', and struck out at end ''The aggregate amount of grants made under this clause to Head Start agencies in a State for a fiscal year may not exceed the amount allotted under clause (ii) for such State for such fiscal year.''

Subsec. (a)(3)(D)(v). Pub. L. 103–252, §105(a)(4)(E), struck out cl. (v) which read as follows: ''If a Head Start agency certifies for such fiscal year to the Secretary that it does not need any funds under subparagraph (A), or does not need part of such funds it would otherwise receive under clause (iii) or (iv), then unneeded funds shall be used by the Secretary to make grants under this subparagraph without regard to such agency.''

Subsec. (a)(3)(D)(vi). Pub. L. 103–252, §105(a)(4)(E), redesignated cl. (vi) as (iii).

Pub. L. 103–252, §105(a)(4)(D), substituted ''paragraph (2) or (4)'' for ''paragraphs (2), (4), and (5)''.

Subsec. (a)(4). Pub. L. 103–252, §105(b)(4), (5), redesignated par. (5) as (4), substituted ''Subject to section 9834(b) of this title, the Secretary'' for ''The Secretary'', and struck out former par. (4), which related to Secretary reserving sums for grants to carry out early childhood intervention programs, known as ''Parent-Child Centers''.

Subsec. (a)(5), (6). Pub. L. 103–252, §105(b)(6), added pars. (5) and (6). Former pars. (5) and (6) redesignated (4) and (7), respectively.

Subsec. (a)(7). Pub. L. 103–252, §105(b)(4), redesignated par. (6) as (7).

Subsec. (g). Pub. L. 103–252, §105(c), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (h). Pub. L. 103–252, §105(d), substituted ''Financial assistance provided under this subchapter may be used by each Head Start program to'' for ''Each Head Start program may''.

Subsecs. (j) to (*l*). Pub. L. 103–252, §105(e), added subsecs. (j) to (*l*).

1992—Subsec. (a)(2)(A). Pub. L. 102–401, §2(k)(1)(A)(i)(I), inserted ''children'' after ''handicapped''.

Subsec. (a)(2)(B). Pub. L. 102–401, §2(k)(1)(A)(i)(II), substituted ''Commonwealth of'' for ''Commonwealth of,''.

Subsec. (a)(2)(C). Pub. L. 102–401, §2(k)(1)(A)(i)(III), substituted ''such fiscal year'' for ''any such fiscal year''.

Subsec. (a)(3)(A)(vi). Pub. L. 102–401, §2(k)(1)(A)(ii), substituted ''paragraph (2)(C)'' for ''subsection (a)(2)(C) of this section''.

Subsec. (a)(3)(B)(i). Pub. L. 102–401, §2(a)(1), substituted '', second, and third'' for ''and second''.

Subsec. (a)(3)(B)(ii). Pub. L. 102–401, §2(a)(2), substituted ''third'' for ''second''.

Subsec. (a)(3)(B)(iii). Pub. L. 102–401, §2(a)(1), substituted '', second, and third'' for ''and second''.

Subsec. (a)(4)(B)(i)(II). Pub. L. 102–401, §2(b), inserted '', literacy,'' after ''skills''.

Subsec. (a)(5)(B)(i). Pub. L. 102–401, §2(k)(1)(A)(iii), substituted ''subparagraph (A)'' for ''clause (A)''.

Subsec. (b). Pub. L. 102–401, §2(c), struck out '', in accordance with regulations establishing objective criteria,'' after ''if the Secretary determines'' and inserted after first sentence ''For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—'' and cls. (1) to (5).

Subsec. (g). Pub. L. 102–401, §2(k)(1)(B), substituted ''Price Index For All'' for ''Price Index for all''.

Subsec. (i). Pub. L. 102–401, §2(d), added subsec. (i).

1991—Subsec. (d). Pub. L. 102–119 substituted ''section 1401(a)(1) of title 20'' for ''paragraph (1) of section 1401 of title 20''. The references to section 1401 of title 20 include the substitution of ''Individuals with Disabilities Education Act'' for ''Education of the Handicapped Act'' in the original.

1990—Subsec. (a)(1). Pub. L. 101–501, §104(a)(1), substituted ''through (5)'' for ''and (3)''.

Subsec. (a)(2). Pub. L. 101–501, §104(a)(2)(D), (E), struck out before last sentence ''The minimum reservation contained in clause (C) of this paragraph shall not apply in any fiscal year in which the appropriation for the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984.'' and inserted ''or paragraph (3)'' after ''under this paragraph'' in last sentence.

Subsec. (a)(2)(A). Pub. L. 101–501, §104(a)(2)(A), substituted '', except that there shall be made available for each fiscal year for use by Indian and migrant Head Start programs, on a nationwide basis, not less than the amount that was obligated for use by Indian and migrant Head Start programs for fiscal year 1990'' for ''children, except that there shall be made available for use by Indian and migrant Head Start programs, on a nationwide basis, no less funds for fiscal year 1987 and each subsequent fiscal year than were obligated for use by Indian and migrant Head Start programs for fiscal year 1985''.

Subsec. (a)(2)(B). Pub. L. 101–501, §104(a)(2)(B), substituted ''the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, the Commonwealth of'' for ''the Trust Territory of the Pacific Islands''.

Subsec. (a)(2)(C). Pub. L. 101–501, §104(a)(2)(C), substituted ''2 percent of the amount appropriated for any such fiscal year'' for ''the amount expended for training and technical assistance activities under this clause for fiscal year 1982''.

Subsec. (a)(3), (4). Pub. L. 101–501, §104(a)(5), added pars. (3) and (4). Former pars. (3) and (4) redesignated (5) and (6), respectively.

Subsec. (a)(5). Pub. L. 101–501, §104(a)(3), (4), redesignated par. (3) as (5) and struck out ''87 percent of the'' after ''allot the remaining''.

Subsec. (a)(6). Pub. L. 101–501, §104(a)(4), (6), redesignated par. (4) as (6), inserted ''the Commonwealth of'' before ''the Northern Mariana'', and substituted ''the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau'' for ''or the Trust Territory of the Pacific Islands''.

Subsec. (d). Pub. L. 101–501, §105(1), struck out sentence at end requiring Secretary to report to Congress at least annually on status of children with disabilities in Head Start programs.

Pub. L. 101–476, §901(d), substituted ''children with disabilities'' for ''handicapped children'' in two places and substituted ''disabling'' for ''handicapping''.

Subsecs. (f), (g). Pub. L. 101–501, §105(2), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 101–501, §123(b), added subsec. (h).

1986—Subsec. (a)(2)(A). Pub. L. 99–425, in amending cl. (A) generally, designated existing subcl. (i) as all of cl. (A), substituted ''1987'' for ''1982'' and ''1985'' for ''1981'', and struck out subcl. (ii) relating to cost-of-living adjustments.

1984—Subsec. (a)(2). Pub. L. 98–558 inserted ''as described in section 9843 of this title, in an amount for each fiscal year which is not less than the amount expended for training and technical assistance activities under this clause for fiscal year 1982'' in cl. (C), and in-

serted at end ''The minimum reservation contained in clause (C) of this paragraph shall not apply in any fiscal year in which the appropriation for the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984. No funds reserved under this paragraph may be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter.''

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4 of Pub. L. 102–401 provided that:

''(a) EFFECTIVE DATES.—(1) Except as provided in paragraph (2) and subsection (b), this Act [amending this section and sections 9835a to 9839, 9846, 9846a, and 9858n of this title and enacting provisions set out as a note under section 9836 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Oct. 7, 1992].

''(2) The amendment made by section 2(e)(1) [amending section 9836 of this title] shall take effect on July 30, 1992.

''(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act, other than the amendment made by section 2(e)(1), shall not apply with respect to fiscal years beginning before October 1, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

Amendment by Pub. L. 101–476 effective Oct. 1, 1990, see section 1001 of Pub. L. 101–476, set out as a note under section 1087ee of Title 20, Education.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

§ 9835a. Repealed. Pub. L. 103–252, title I, § 106, May 18, 1994, 108 Stat. 629

Section, Pub. L. 97–35, title VI, § 640A, as added Pub. L. 101–501, title I, § 106, Nov. 3, 1990, 104 Stat. 1229; amended Pub. L. 102–401, § 2(k)(2), Oct. 7, 1992, 106 Stat. 1958, directed Secretary to prepare both interim and final comprehensive reports to Congress on administration, funding, and demographics of Head Start programs.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9836. Designation of Head Start agencies

(a) Authorization; prerequisites

The Secretary is authorized to designate as a Head Start agency any local public or private nonprofit or for-profit agency, within a community, which (1) has the power and authority to carry out the purposes of this subchapter and perform the functions set forth in section 9837 of this title within a community; and (2) is determined by the Secretary (in consultation with the chief executive officer of the State involved, if such State expends non-Federal funds to carry out Head Start programs) to be capable of planning, conducting, administering, and evaluating, either directly or by other arrangements, a Head Start program.

(b) Definition

For purposes of this subchapter, a community may be a city, county, or multicity or multicounty unit within a State, an Indian reservation (including Indians in any off-reservation area designated by an appropriate tribal government in consultation with the Secretary), or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.

(c) Priority

(1) In the administration of the provisions of this section (subject to paragraph (2)), the Secretary shall, in consultation with the chief executive officer of the State involved if such State expends non-Federal funds to carry out Head Start programs, give priority in the designation of Head Start agencies to any local public or private nonprofit or for-profit agency which is receiving funds under any Head Start program on August 13, 1981, unless the Secretary determines that the agency involved fails to meet program and financial management requirements, performance standards described in section 9836a(a)(1) of this title, results-based performance measures developed by the Secretary under section 9836a(b) of this title, or other requirements established by the Secretary.

(2) If there is no agency of the type referred to in paragraph (1) because of any change in the assistance furnished to programs for economically disadvantaged persons, the Secretary shall, in consultation with the chief executive officer of the State if such State expends non-Federal funds to carry out Head Start programs, give priority in the designation of Head Start agencies to any successor agency that is operating a Head Start program in substantially the same manner as the predecessor agency that did receive funds in the fiscal year preceding the fiscal year for which the determination is made.

(3) Notwithstanding any other provision of this subsection, the Secretary shall not give such priority to any agency with respect to which financial assistance has been terminated, or an application for refunding has been denied, under this subchapter by the Secretary after affording such agency reasonable notice and opportunity for a full and fair hearing in accordance with section 9841(a)(3) of this title.

(d) Designation; Head Start agency; qualified applicants

If no entity in a community is entitled to the priority specified in subsection (c) of this section, then the Secretary may designate a Head Start agency from among qualified applicants in such community. In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall give priority to any qualified agency that functioned as a Head Start delegate agency in the community and carried out a Head Start program that the Secretary determines met or exceeded such performance standards and such results-based performance measures. In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall consider the effectiveness of each such applicant to provide Head Start services, based on—

(1) any past performance of such applicant in providing services comparable to Head Start services, including how effectively such applicant provided such comparable services;

(2) the plan of such applicant to provide comprehensive health, nutritional, educational, social, and other services needed to aid participating children in attaining their full potential;

(3) the plan of such applicant to coordinate the Head Start program it proposes to carry out, with other preschool programs, including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965[1] (20 U.S.C. 2741 et seq.) and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431–1444, 1419), and with the educational programs such children will enter at the age of compulsory school attendance;

(4) the plan of such applicant—

(A) to seek the involvement of parents of participating children in activities (at home and in the center involved where practicable) designed to help such parents become full partners in the education of their children;

(B) to afford such parents the opportunity to participate in the development, conduct, and overall performance of the program at the local level;

(C) to offer (directly or through referral to local entities, such as entities carrying out Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965[1] (20 U.S.C. 2741 et seq.), public and school libraries, and family support programs) to such parents—

(i) family literacy services; and

(ii) parenting skills training;

(D) to offer to parents of participating children substance abuse counseling (either directly or through referral to local entities), including information on drug-exposed infants and fetal alcohol syndrome;

(E) at the option of such applicant, to offer (directly or through referral to local entities) to such parents—

(i) training in basic child development;

(ii) assistance in developing communication skills;

(iii) opportunities for parents to share experiences with other parents; or

(iv) any other activity designed to help such parents become full partners in the education of their children; and

(F) to provide, with respect to each participating family, a family needs assessment that includes consultation with such parents about the benefits of parent involvement and about the activities described in subparagraphs (C), (D), and (E) in which such parents may choose to become involved (taking into consideration their specific family needs, work schedules, and other responsibilities);

(5) the ability of such applicant to carry out the plans described in paragraphs (2), (3), and (4);

(6) other factors related to the requirements of this subchapter;

(7) the plan of such applicant to meet the needs of non-English background children and their families, including needs related to the acquisition of the English language;

(8) the plan of such applicant to meet the needs of children with disabilities;

(9) the plan of such applicant who chooses to assist younger siblings of children who will participate in the proposed Head Start program to obtain health services from other sources; and

(10) the plan of such applicant to collaborate with other entities carrying out early childhood education and child care programs in the community.

(e) Designation of agency on an interim basis

If no agency in the community receives priority designation under subsection (c) of this section, and there is no qualified applicant in the community, the Secretary shall designate a qualified agency to carry out the Head Start program in the community on an interim basis until a qualified applicant from the community is so designated.

(f) Involvement of parents and area residents in selection of agencies

The Secretary shall require that the practice of significantly involving parents and area residents affected by the program in selection of Head Start agencies be continued.

(g) Priority for nonprofit agencies and applicants with demonstrated capacity

If the Secretary determines that a nonprofit agency and a for-profit agency have submitted applications for designation of equivalent quality under subsection (d) of this section, the Secretary may give priority to the nonprofit agen-

[1] See References in Text note below.

cy. In selecting from among qualified applicants for designation as a Head Start agency under subsection (d) of this section, the Secretary shall give priority to applicants that have demonstrated capacity in providing comprehensive early childhood services to children and their families.

(Pub. L. 97–35, title VI, §641, Aug. 13, 1981, 95 Stat. 501; Pub. L. 98–558, title I, §104, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 101–501, title I, §§107, 108, Nov. 3, 1990, 104 Stat. 1229, 1230; Pub. L. 102–401, §2(e)(1), (f)–(h), Oct. 7, 1992, 106 Stat. 1957; Pub. L. 103–252, title I, §107, May 18, 1994, 108 Stat. 629; Pub. L. 105–285, title I, §107, Oct. 27, 1998, 112 Stat. 2712; Pub. L. 108–446, title III, §305(*l*)(3), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

Part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(3), (4)(C), means part B of chapter 1 of title I of Pub. L. 89–10 which was classified generally to part B (§2741 et seq.) of division 1 of subchapter I of chapter 47 of Title 20, Education, prior to being omitted in the general amendment of Pub. L. 89–10 by Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. See section 6381 et seq. of Title 20.

The Individuals with Disabilities Education Act, referred to in subsec. (d)(3), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2004—Subsec. (d)(3). Pub. L. 108–446 substituted ''U.S.C. 1431–1444'' for ''U.S.C 1431–1445''.

1998—Subsec. (a). Pub. L. 105–285, §107(1), inserted ''or for-profit'' after ''nonprofit'' and ''(in consultation with the chief executive officer of the State involved, if such State expends non-Federal funds to carry out Head Start programs)'' after ''Secretary'' in cl. (2).

Subsec. (b). Pub. L. 105–285, §107(2), substituted ''off-reservation area designated by an appropriate tribal government in consultation with the Secretary'' for ''area designated by the Bureau of Indian Affairs as near-reservation''.

Subsec. (c)(1). Pub. L. 105–285, §107(3)(A), inserted '', in consultation with the chief executive officer of the State involved if such State expends non-Federal funds to carry out Head Start programs,'' after ''Secretary shall'' and ''or for-profit'' after ''nonprofit'' and substituted ''determines that the agency involved fails to meet program and financial management requirements, performance standards described in section 9836a(a)(1) of this title, results-based performance measures developed by the Secretary under section 9836a(b) of this title, or other requirements established by the Secretary'' for ''makes a finding that the agency involved fails to meet program, financial management, and other requirements established by the Secretary''.

Subsec. (c)(2). Pub. L. 105–285, §107(3)(B), (C), inserted '', in consultation with the chief executive officer of the State if such State expends non-Federal funds to carry out Head Start programs,'' after ''Secretary shall'' and realigned margins.

Subsec. (c)(3). Pub. L. 105–285, §107(3)(C), realigned margins.

Subsec. (d). Pub. L. 105–285, §107(4)(A), inserted in introductory provisions ''In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall give priority to any qualified agency that functioned as a Head Start delegate agency in the community and carried out a Head Start program that the Secretary determines met or exceeded such performance standards and such results-based performance measures.''

Subsec. (d)(3). Pub. L. 105–285, §107(4)(B), inserted ''and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C 1431–1445, 1419)'' after ''(20 U.S.C. 2741 et seq.)''.

Subsec. (d)(4)(A). Pub. L. 105–285, §107(4)(C)(i), inserted ''(at home and in the center involved where practicable)'' after ''activities''.

Subsec. (d)(4)(D). Pub. L. 105–285, §107(4)(C)(v), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (d)(4)(D)(iii). Pub. L. 105–285, §107(4)(C)(ii)(I), inserted ''or'' at end.

Subsec. (d)(4)(D)(iv), (v). Pub. L. 105–285, §107(4)(C)(ii)(II), (III), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: ''substance abuse counseling; or''.

Subsec. (d)(4)(E). Pub. L. 105–285, §107(4)(C)(iv), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Pub. L. 105–285, §107(4)(C)(iii), substituted '', (D), and (E)'' for ''and (D)''.

Subsec. (d)(4)(F). Pub. L. 105–285, §107(4)(C)(iv), redesignated subpar. (E) as (F).

Subsec. (d)(7). Pub. L. 105–285, §107(4)(D), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''the plan of such applicant to meet the needs of non-English language background children and their families in the community; and''.

Subsec. (d)(8) to (10). Pub. L. 105–285, §107(4)(E)–(G), added pars. (8) and (10) and redesignated former par. (8) as (9).

Subsec. (e). Pub. L. 105–285, §107(5), added subsec. (e) and struck out former subsec. (e) which read as follows: ''If, in a community served by a Head Start program, there is no applicant qualified for designation as a Head Start agency to carry out such program, the Secretary may appoint an interim grantee to carry out such program until a qualified applicant is so designated.''

Subsec. (g). Pub. L. 105–285, §107(6), added subsec. (g).

1994—Subsec. (b). Pub. L. 103–252, §107(a), inserted ''(including Indians in any area designated by the Bureau of Indian Affairs as near-reservation)'' after ''Indian reservation''.

Subsec. (c)(1). Pub. L. 103–252, §107(b)(2), (3), (5), inserted ''(subject to paragraph (2))'' after ''the provisions of this section'', struck out subpar. (A), inserted ''the Secretary makes a finding that the agency involved fails to meet program, financial management, and other requirements established by the Secretary.'' after ''unless'', and redesignated subpar. (B) as par. (2) and concluding provisions as par. (3).

Subsec. (c)(2). Pub. L. 103–252, §107(b)(1), (3), (4), (6), redesignated par. (1)(B) as (2) and realigned margins, substituted ''If'' for ''except that, if'' and ''paragraph (1)'' for ''subparagraph (A)'', and struck out former par. (2) which read as follows:

''(2)(A) The Secretary shall conduct a full review of each designated Head Start agency at least once during each 3-year period, and shall determine whether each agency meets program and fiscal requirements established by the Secretary.

''(B) The Secretary shall conduct a review of each newly designated Head Start agency immediately after the completion of the first year such agency carries out a Head Start program.

''(C) The Secretary shall conduct followup reviews of Head Start agencies when appropriate.''

Subsec. (c)(3). Pub. L. 103–252, §107(b)(1), (5), redesignated concluding provisions of par. (1) as (3), substituted ''this subsection'' for ''this paragraph'', and struck out former par. (3) which read as follows: ''In carrying out a review of each Head Start agency under paragraph (2), the Secretary shall—

''(A) to the maximum extent practicable, carry out such review by using employees of the Department of Health and Human Services who are knowledgeable about Head Start programs;

''(B) ensure that an employee of the Department of Health and Human Services who is knowledgeable

about Head Start programs supervises such review at the site of such agency;

''(C) measure the compliance of the programs of such agency with the performance standards in effect under section 9846(b) of this title; and

''(D) identify the types and conditions of facilities in which such programs are located.''

Subsec. (c)(4). Pub. L. 103–252, § 107(b)(1), struck out par. (4) which read as follows: ''The results of a review conducted under this subsection shall not be sufficient alone for the purpose of determining whether to continue, or to discontinue, providing funds to a particular Head Start agency.''

Subsec. (d). Pub. L. 103–252, § 107(c)(1)–(3)(A), in introductory provisions substituted ''If no entity in a community is entitled to the priority specified in subsection (c) of this section,'' for ''If there is no Head Start agency as described in subsection (c)(2) of this section, and no existing Head Start program serving a community,'' and struck out ''Any such designation shall be governed by the program and fiscal requirements, criteria, and standards applicable on September 1, 1983, to then existing Head Start agencies.'' after first sentence and ''subject to the preceding sentence'' after ''as a Head Start agency''.

Subsec. (d)(3). Pub. L. 103–252, § 107(c)(3)(B), inserted '', including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.),'' after ''preschool programs''.

Subsec. (d)(4). Pub. L. 103–252, § 107(c)(3)(C), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the plan of such applicant to involve parents of children who will participate in the proposed Head Start program in appropriate educational services (in accordance with the performance standards in effect under section 9846(b) of this title or through referral of such parents to educational services available in the community) in order to aid their children to attain their full potential;''.

Subsec. (d)(7). Pub. L. 103–252, § 107(c)(4), substituted ''non-English language background children and their families'' for ''non-English language children'' and inserted ''and'' after semicolon.

Subsec. (d)(8), (9). Pub. L. 103–252, § 107(c)(5), (6), redesignated par. (9) as (8) and struck out former par. (8) which read as follows: ''the plan of such applicant to provide (directly or through referral to educational services available in the community) parents of children who will participate in the proposed Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and''.

Subsecs. (f), (g). Pub. L. 103–252, § 107(d), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''The provisions of subsections (c), (d), and (e) of this section shall be applied by the Secretary in the distribution of any additional appropriations made available under this subchapter during any fiscal year as well as to initial designations of Head Start agencies.''

1992—Subsec. (c)(1). Pub. L. 102–401, § 2(e)(1), inserted at end ''Notwithstanding any other provision of this paragraph, the Secretary shall not give such priority to any agency with respect to which financial assistance has been terminated, or an application for refunding has been denied, under this subchapter by the Secretary after affording such agency reasonable notice and opportunity for a full and fair hearing in accordance with section 9841(a)(3) of this title.''

Subsec. (c)(2). Pub. L. 102–401, § 2(f), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (d)(8), (9). Pub. L. 102–401, § 2(g), added pars. (8) and (9).

Subsec. (e). Pub. L. 102–401, § 2(h)(3), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 102–401, § 2(h)(1), substituted ''(c), (d), and (e)'' for ''(c) and (d)''.

Subsecs. (f), (g). Pub. L. 102–401, § 2(h)(2), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

1990—Subsec. (c). Pub. L. 101–501, § 107, designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A), added subpar. (B) and pars. (2) to (4), and struck out former par. (2) and last sentence which read as follows:

''(2) except that if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the Secretary shall give priority in the designation of Head Start agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds in the fiscal year preceding the fiscal year for which the determination is made.

The provisions of clause (2) shall apply only to agencies actually operating Head Start programs.''

Subsec. (d). Pub. L. 101–501, § 108, inserted at end ''In selecting from among qualified applicants for designation as a Head Start agency and subject to the preceding sentence, the Secretary shall consider the effectiveness of each such applicant to provide Head Start services, based on—'' and pars. (1) to (7).

1984—Subsec. (a). Pub. L. 98–558, § 104(a), inserted '', within a community,'' after ''private nonprofit agency''.

Subsec. (c). Pub. L. 98–558, § 104(b)(1), substituted ''unless'' for '', except that'' in provisions preceding cl. (1).

Subsec. (c)(1). Pub. L. 98–558, § 104(b)(2), (3), substituted ''makes a finding'' for ''shall, before giving such priority, determine'' and ''fails to meet'' for ''meet''.

Subsec. (c)(2). Pub. L. 98–558, § 104(b)(4), inserted ''except that'' before ''if''.

Subsecs. (d) to (f). Pub. L. 98–558, § 104(c), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2(e)(2) of Pub. L. 102–401 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to terminations of financial assistance, and denials of refunding, occurring after July 29, 1992.''

Amendment by section 2(f)–(h) of Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, and amendment by section 2(e)(1) of Pub. L. 102–401 effective July 30, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

§ 9836a. Quality standards; monitoring of Head Start agencies and programs

(a) Quality standards

(1) Establishment of standards

The Secretary shall establish by regulation standards, including minimum levels of overall accomplishment, applicable to Head Start agencies, programs, and projects under this subchapter, including—

(A) performance standards with respect to services required to be provided, including health, parental involvement, nutritional, social, transition activities described in section 9837(d) of this title, and other services;

(B)(i) education performance standards to ensure the school readiness of children participating in a Head Start program, on completion of the Head Start program and prior to entering school; and

(ii) additional education performance standards to ensure that the children participating in the program, at a minimum—

(I) develop phonemic, print, and numeracy awareness;

(II) understand and use language to communicate for various purposes;

(III) understand and use increasingly complex and varied vocabulary;

(IV) develop and demonstrate an appreciation of books; and

(V) in the case of non-English background children, progress toward acquisition of the English language.[1]

(C) administrative and financial management standards;

(D) standards relating to the condition and location of facilities for such agencies, programs, and projects; and

(E) such other standards as the Secretary finds to be appropriate.

(2) Considerations in developing standards

In developing the regulations required under paragraph (1), the Secretary shall—

(A) consult with experts in the fields of child development, early childhood education, child health care, family services (including linguistically and culturally appropriate services to non-English language background children and their families), administration, and financial management, and with persons with experience in the operation of Head Start programs;

(B) take into consideration—

(i) past experience with use of the standards in effect under this subchapter on May 18, 1994;

(ii) changes over the period since August 31, 1981, in the circumstances and problems typically facing children and families served by Head Start agencies;

(iii) developments concerning best practices with respect to early childhood education and development, children with disabilities, family services, program administration, and financial management;

(iv) projected needs of an expanding Head Start program;

(v) guidelines and standards currently in effect or under consideration that promote child health services, and projected needs of expanding Head Start programs;

(vi) changes in the population of children who are eligible to participate in Head Start programs, including the language background and family structure of such children; and

(vii) the need for, and state-of-the-art developments relating to, local policies and activities designed to ensure that children participating in Head Start programs make a successful transition to public schools; and

(C)(i) review and revise as necessary the performance standards in effect under this subsection; and

(ii) ensure that any such revisions in the performance standards will not result in the elimination of or any reduction in the scope or types of health, education, parental involvement, nutritional, social, or other services required to be provided under such standards as in effect on October 27, 1998.

(3) Standards relating to obligations to delegate agencies

In developing standards under this subsection, the Secretary shall describe the obligations of a Head Start agency to a delegate agency to which the Head Start agency has delegated responsibility for providing services under this subchapter and determine whether the Head Start agency complies with the standards. The Secretary shall consider such compliance during the review described in subsection (c)(1)(A) of this section and in determining whether to renew financial assistance to the Head Start agency under this subchapter.

(b) Results-based performance measures

(1) In general

The Secretary, in consultation with representatives of Head Start agencies and with experts in the fields of early childhood education and development, family services, and program management, shall develop methods and procedures for measuring, annually and over longer periods, the quality and effectiveness of programs operated by Head Start agencies, and the impact of the services provided through the programs to children and their families (referred to in this subchapter as ''results-based performance measures'').

(2) Characteristics of measures

The performance measures developed under this subsection shall—

(A) be used to assess the impact of the various services provided by Head Start programs and, to the extent the Secretary finds appropriate, administrative and financial management practices of such programs;

(B) be adaptable for use in self-assessment, peer review, and program evaluation of individual Head Start agencies and programs, not later than July 1, 1999; and

(C) be developed for other program purposes as determined by the Secretary.

The performance measures shall include the performance standards described in subsection (a)(1)(B)(ii) of this section.

(3) Use of measures

The Secretary shall use the performance measures developed pursuant to this subsection—

(A) to identify strengths and weaknesses in the operation of Head Start programs nationally, regionally, and locally; and

(B) to identify problem areas that may require additional training and technical assistance resources.

(4) Educational performance measures

Such results-based performance measures shall include educational performance meas-

[1] So in original. The period should probably be a semicolon.

ures that ensure that children participating in Head Start programs—

(A) know that letters of the alphabet are a special category of visual graphics that can be individually named;

(B) recognize a word as a unit of print;

(C) identify at least 10 letters of the alphabet; and

(D) associate sounds with written words.

(5) Additional local results-based performance measures

In addition to other applicable results-based performance measures, Head Start agencies may establish local results-based educational performance measures.

(c) Monitoring of local agencies and programs

(1) In general

In order to determine whether Head Start agencies meet standards established under this subchapter and results-based performance measures developed by the Secretary under subsection (b) of this section with respect to program, administrative, financial management, and other requirements, the Secretary shall conduct the following reviews of designated Head Start agencies, and of the Head Start programs operated by such agencies:

(A) A full review of each such agency at least once during each 3-year period.

(B) A review of each newly designated agency immediately after the completion of the first year such agency carries out a Head Start program.

(C) Followup reviews including prompt return visits to agencies and programs that fail to meet the standards.

(D) Other reviews as appropriate.

(2) Conduct of reviews

The Secretary shall ensure that reviews described in subparagraphs (A) through (C) of paragraph (1)—

(A) are performed, to the maximum extent practicable, by employees of the Department of Health and Human Services who are knowledgeable about Head Start programs;

(B) are supervised by such an employee at the site of such Head Start agency;

(C) are conducted by review teams that shall include individuals who are knowledgeable about Head Start programs and, to the maximum extent practicable, the diverse (including linguistic and cultural) needs of eligible children (including children with disabilities) and their families;

(D) include as part of the reviews of the programs, a review and assessment of program effectiveness, as measured in accordance with the results-based performance measures developed by the Secretary pursuant to subsection (b) of this section and with the performance standards established pursuant to subparagraphs (A) and (B) of subsection (a)(1) of this section; and

(E) seek information from the communities and the States involved about the performance of the programs and the efforts of the Head Start agencies to collaborate with other entities carrying out early childhood education and child care programs in the community.

(d) Corrective action; termination

(1) Determination

If the Secretary determines, on the basis of a review pursuant to subsection (c) of this section, that a Head Start agency designated pursuant to section 9836 of this title fails to meet the standards described in subsection (a) of this section or results-based performance measures developed by the Secretary under subsection (b) of this section, the Secretary shall—

(A) inform the agency of the deficiencies that shall be corrected;

(B) with respect to each identified deficiency, require the agency—

(i) to correct the deficiency immediately, if the Secretary finds that the deficiency threatens the health or safety of staff or program participants or poses a threat to the integrity of Federal funds;

(ii) to correct the deficiency not later than 90 days after the identification of the deficiency if the Secretary finds, in the discretion of the Secretary, that such a 90-day period is reasonable, in light of the nature and magnitude of the deficiency; or

(iii) in the discretion of the Secretary (taking into consideration the seriousness of the deficiency and the time reasonably required to correct the deficiency), to comply with the requirements of paragraph (2) concerning a quality improvement plan; and

(C) initiate proceedings to terminate the designation of the agency unless the agency corrects the deficiency.

(2) Quality improvement plan

(A) Agency responsibilities

In order to retain a designation as a Head Start agency under this subchapter, a Head Start agency that is the subject of a determination described in paragraph (1) (other than an agency required to correct a deficiency immediately or during a 90-day period under clause (i) or (ii) of paragraph (1)(B)) shall—

(i) develop in a timely manner, obtain the approval of the Secretary regarding, and implement a quality improvement plan that specifies—

(I) the deficiencies to be corrected;

(II) the actions to be taken to correct such deficiencies; and

(III) the timetable for accomplishment of the corrective actions specified; and

(ii) eliminate each deficiency identified, not later than the date for elimination of such deficiency specified in such plan (which shall not be later than 1 year after the date the agency received notice of the determination and of the specific deficiency to be corrected).

(B) Secretarial responsibility

Not later than 30 days after receiving from a Head Start agency a proposed quality improvement plan pursuant to subparagraph (A), the Secretary shall either approve such proposed plan or specify the reasons why the proposed plan cannot be approved.

(3) Training and technical assistance

The Secretary shall provide training and technical assistance to Head Start agencies with respect to the development or implementation of such quality improvement plans to the extent the Secretary finds such provision to be feasible and appropriate given available funding and other statutory responsibilities.

(e) Summaries of monitoring outcomes

Not later than 120 days after the end of each fiscal year, the Secretary shall publish a summary report on the findings of reviews conducted under subsection (c) of this section and on the outcomes of quality improvement plans implemented under subsection (d) of this section, during such fiscal year. Such report shall be widely disseminated and available for public review in both written and electronic formats.

(Pub. L. 97–35, title VI, § 641A, as added Pub. L. 103–252, title I, § 108, May 18, 1994, 108 Stat. 631; amended Pub. L. 105–285, title I, § 108, Oct. 27, 1998, 112 Stat. 2713.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–285, § 108(a)(1)(A), inserted ", including minimum levels of overall accomplishment," after "regulation standards" in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 105–285, § 108(a)(1)(B), struck out "education," after "including health,".

Subsec. (a)(1)(B) to (E). Pub. L. 105–285, § 108(a)(1)(C), (D), added subpar. (B) and redesignated former subpars. (B) to (D) as (C) to (E), respectively.

Subsec. (a)(2). Pub. L. 105–285, § 108(a)(2), (3), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: "The regulations promulgated under this subsection shall establish the minimum levels of overall accomplishment that a Head Start agency shall achieve in order to meet the standards specified in paragraph (1)."

Subsec. (a)(2)(B)(iii). Pub. L. 105–285, § 108(a)(4)(A), substituted "early childhood education and" for "child".

Subsec. (a)(2)(C)(i). Pub. L. 105–285, § 108(a)(4)(B)(i), struck out "not later than 1 year after May 18, 1994," before "review" and substituted "this subsection; and" for "section 9846(b) of this title on the day before May 18, 1994; and".

Subsec. (a)(2)(C)(ii). Pub. L. 105–285, § 108(a)(4)(B)(ii), substituted "October 27, 1998" for "November 2, 1978".

Subsec. (a)(3). Pub. L. 105–285, § 108(a)(5), substituted "to a delegate agency" for "to an agency (referred to in this subchapter as the 'delegate agency')".

Pub. L. 105–285, § 108(a)(3), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 105–285, § 108(a)(3), redesignated par. (4) as (3).

Subsec. (b). Pub. L. 105–285, § 108(b)(1), inserted "Results-based" in heading.

Subsec. (b)(1). Pub. L. 105–285, § 108(b)(2), substituted "The Secretary" for "Not later than 1 year after May 18, 1994, the Secretary", "early childhood education and" for "child", and "results-based performance measures" for "performance measures" and inserted ", and the impact of the services provided through the programs to children and their families" before "(referred".

Subsec. (b)(2). Pub. L. 105–285, § 108(b)(3)(A), (B), (F), substituted "Characteristics" for "Design" in heading and "shall—" for "shall be designed—" in introductory provisions and inserted concluding provisions.

Subsec. (b)(2)(A). Pub. L. 105–285, § 108(b)(3)(C), substituted "be used to assess the impact of" for "to assess".

Subsec. (b)(2)(B). Pub. L. 105–285, § 108(b)(3)(D), substituted "be adaptable" for "to be adaptable" and ", peer review, and program evaluation" for "and peer review" and inserted ", not later than July 1, 1999" before semicolon.

Subsec. (b)(2)(C). Pub. L. 105–285, § 108(b)(3)(E), inserted "be developed" before "for other".

Subsec. (b)(3)(A). Pub. L. 105–285, § 108(b)(4), substituted ", regionally, and locally" for "and by region".

Subsec. (b)(4), (5). Pub. L. 105–285, § 108(b)(5), added pars. (4) and (5).

Subsec. (c)(1). Pub. L. 105–285, § 108(c)(1), inserted "and results-based performance measures developed by the Secretary under subsection (b) of this section" after "standards established under this subchapter".

Subsec. (c)(2)(B). Pub. L. 105–285, § 108(c)(2)(A), struck out "and" at end.

Subsec. (c)(2)(C). Pub. L. 105–285, § 108(c)(2)(B), inserted "(including children with disabilities)" after "eligible children" and substituted semicolon for period at end.

Subsec. (c)(2)(D), (E). Pub. L. 105–285, § 108(c)(2)(C), added subpars. (D) and (E).

Subsec. (d)(1). Pub. L. 105–285, § 108(d)(1)(A), inserted "or results-based performance measures developed by the Secretary under subsection (b) of this section" after "subsection (a) of this section" in introductory provisions.

Subsec. (d)(1)(B). Pub. L. 105–285, § 108(d)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "with respect to each identified deficiency, require the agency—

"(i) to correct the deficiency immediately; or

"(ii) at the discretion of the Secretary (taking into consideration the seriousness of the deficiency and the time reasonably required to correct the deficiency), to comply with the requirements of paragraph (2) concerning a quality improvement plan; and".

Subsec. (d)(2)(A). Pub. L. 105–285, § 108(d)(2), substituted "required to correct a deficiency immediately or during a 90-day period under clause (i) or (ii) of paragraph (1)(B)" for "able to correct a deficiency immediately" in introductory provisions.

Subsec. (e). Pub. L. 105–285, § 108(e), inserted at end "Such report shall be widely disseminated and available for public review in both written and electronic formats."

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9837. Powers and functions of Head Start agencies

(a) Receipt, administration, and transfer of funds; sponsorship of projects; delegation of authority, etc.

In order to be designated as a Head Start agency under this subchapter, an agency must have authority under its charter or applicable law to receive and administer funds under this subchapter, funds and contributions from private or local public sources which may be used in support of a Head Start program, and funds under any Federal or State assistance program pursuant to which a public or private nonprofit or for-profit agency (as the case may be) organized in accordance with this subchapter, could act as grantee, contractor, or sponsor of projects appropriate for inclusion in a Head Start program. Such an agency must also be empowered to transfer funds so received, and to delegate pow-

ers to other agencies, subject to the powers of its governing board and its overall program responsibilities. The power to transfer funds and delegate powers must include the power to make transfers and delegations covering component projects in all cases where this will contribute to efficiency and effectiveness or otherwise further program objectives.

(b) Participation of parents in decisionmaking, implementation, etc.

In order to be so designated, a Head Start agency shall also—

(1) establish effective procedures by which parents and area residents concerned will be enabled to directly participate in decisions that influence the character of programs affecting their interests;

(2) provide for their regular participation in the implementation of such programs;

(3) provide technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources;

(4) seek the involvement of parents of participating children in activities designed to help such parents become full partners in the education of their children, and to afford such parents the opportunity to participate in the development, conduct, and overall performance of the program at the local level;

(5) offer (directly or through referral to local entities, such as entities carrying out Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965[1] (20 U.S.C. 2741 et seq.)), to parents of participating children, family literacy services and parenting skills training;

(6) offer to parents of participating children substance abuse counseling (either directly or through referral to local entities), including information on drug-exposed infants and fetal alcohol syndrome;

(7) at the option of such agency, offer (directly or through referral to local entities), to such parents—

(A) training in basic child development;

(B) assistance in developing communication skills;

(C) opportunities to share experiences with other parents;

(D) regular in-home visitation; or

(E) any other activity designed to help such parents become full partners in the education of their children;

(8) provide, with respect to each participating family, a family needs assessment that includes consultation with such parents about the benefits of parent involvement and about the activities described in paragraphs (4) through (7) in which such parents may choose to be involved (taking into consideration their specific family needs, work schedules, and other responsibilities);

(9) consider providing services to assist younger siblings of children participating in its Head Start program to obtain health services from other sources;

(10) perform community outreach to encourage individuals previously unaffiliated with Head Start programs to participate in its Head Start program as volunteers; and

(11)(A) inform custodial parents in single-parent families that participate in programs, activities, or services carried out or provided under this subchapter about the availability of child support services for purposes of establishing paternity and acquiring child support; and

(B) refer eligible parents to the child support offices of State and local governments.

(c) Coordination with other agencies

The head of each Head Start agency shall coordinate and collaborate with the State agency responsible for administering the State program carried out under subchapter II–B of this chapter, and other early childhood education and development programs, including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965[1] (20 U.S.C. 2741 et seq.) and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C[2] 1431–1444, 1419), serving the children and families served by the Head Start agency to carry out the provisions of this subchapter.

(d) Transition coordination with schools

(1) Each Head Start agency shall take steps to ensure, to the maximum extent possible, that children maintain the developmental and educational gains achieved in Head Start programs and build upon such gains in further schooling.

(2) A Head Start agency may take steps to coordinate with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, including—

(A) collaborating on the shared use of transportation and facilities; and

(B) exchanging information on the provision of noneducational services to such children.

(3) In order to promote the continued involvement of the parents of children that participate in Head Start programs in the education of their children upon transition to school, the Head Start agency shall—

(A) provide training to the parents—

(i) to inform the parents about their rights and responsibilities concerning the education of their children; and

(ii) to enable the parents to understand and work with schools in order to communicate with teachers and other school personnel, to support the school work of their children, and to participate as appropriate in decisions relating to the education of their children; and

(B) take other actions, as appropriate and feasible, to support the active involvement of the parents with schools, school personnel, and school-related organizations.

(4) The Secretary, in cooperation with the Secretary of Education, shall—

(A) evaluate the effectiveness of the projects and activities funded under section 9837a of this title;

[1] See References in Text note below.

[2] So in original. A period should probably follow ''U.S.C''.

(B) disseminate to Head Start agencies information (including information from the evaluation required by subparagraph (A)) on effective policies and activities relating to the transition of children from Head Start programs to public schools; and

(C) provide technical assistance to such agencies to promote and assist such agencies to adopt and implement such effective policies and activities.

(e) Assessment when hiring or evaluating classroom teachers

Head Start agencies shall adopt, in consultation with experts in child development and with classroom teachers, an assessment to be used when hiring or evaluating any classroom teacher in a center-based Head Start program. Such assessment shall measure whether such teacher has mastered the functions described in section 9843a(a)(1) of this title.

(Pub. L. 97–35, title VI, §642, Aug. 13, 1981, 95 Stat. 502; Pub. L. 99–425, title I, §103, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101–501, title I, §109, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102–401, §2(i), (k)(3), Oct. 7, 1992, 106 Stat. 1957, 1959; Pub. L. 103–252, title I, §109, May 18, 1994, 108 Stat. 634; Pub. L. 105–285, title I, §109, Oct. 27, 1998, 112 Stat. 2716; Pub. L. 108–446, title III, §305(*l*)(4), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

Part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, referred to in subsecs. (b)(5) and (c), means part B of chapter 1 of title I of Pub. L. 89–10 which was classified generally to part B (§2741 et seq.) of division 1 of subchapter I of chapter 47 of Title 20, Education, prior to being omitted in the general amendment of Pub. L. 89–10 by Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. See section 6381 et seq. of Title 20.

The Individuals with Disabilities Education Act, referred to in subsec. (c), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–446 substituted ''1431–1444'' for ''1431–1445''.

1998—Subsec. (a). Pub. L. 105–285, §109(1), inserted ''or for-profit'' after ''nonprofit''.

Subsec. (b)(6). Pub. L. 105–285, §109(2)(E), added par. (6). Former par. (6) redesignated (7).

Subsec. (b)(6)(D) to (F). Pub. L. 105–285, §109(2)(A), struck out subpar. (D) which read as follows: ''substance abuse counseling;'' and further directed the amendment of par. (6) ''by redesignating subparagraphs (E) and (F) and subparagraphs (D) and (E), respectively'', which was executed by redesignating subpars. (E) and (F) as (D) and (E), respectively, to reflect the probable intent of Congress.

Subsec. (b)(7). Pub. L. 105–285, §109(2)(D), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 105–285, §109(2)(D), (F), redesignated par. (7) as (8) and substituted ''paragraphs (4) through (7)'' for ''paragraphs (4) through (6)''. Former par. (8) redesignated (9).

Pub. L. 105–285, §109(2)(B), struck out ''and'' at end.

Subsec. (b)(9). Pub. L. 105–285, §109(2)(D), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Pub. L. 105–285, §109(2)(C), substituted ''; and'' for period at end.

Subsec. (b)(10). Pub. L. 105–285, §109(2)(D), redesignated par. (9) as (10).

Subsec. (b)(11). Pub. L. 105–285, §109(2)(G), added par. (11).

Subsec. (c). Pub. L. 105–285, §109(3), inserted ''and collaborate'' after ''shall coordinate'' and ''and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C 1431–1445, 1419)'' after ''(20 U.S.C. 2741 et seq.)'' and substituted ''the State program carried out under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), and other early childhood education and development'' for ''section 602(g) of this title, and other''.

Subsec. (d)(1). Pub. L. 105–285, §109(4)(A), substituted ''take steps to ensure, to the maximum extent possible, that children maintain'' for ''carry out the actions specified in this subsection, to the extent feasible and appropriate in the circumstances (including the extent to which such agency is able to secure the cooperation of parents and schools) to enable children to maintain'' and ''build'' for ''to build'' and inserted ''and educational'' after ''developmental''.

Subsec. (d)(2), (3). Pub. L. 105–285, §109(4)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to coordination between Head Start agency and local education agency and schools.

Subsec. (d)(4). Pub. L. 105–285, §109(4)(C), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (d)(4)(A). Pub. L. 105–285, §109(4)(D), substituted ''section 9837a of this title'' for ''the Head Start Transition Project Act (42 U.S.C. 9855 et seq.)''.

Subsec. (d)(5). Pub. L. 105–285, §109(4)(C), redesignated par. (5) as (4).

Subsec. (e). Pub. L. 105–285, §109(5), added subsec. (e).

1994—Subsec. (b). Pub. L. 103–252, §109(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In order to be so designated, a Head Start agency must also (1) establish effective procedures by which parents and area residents concerned will be enabled to directly participate in decisions that influence the character of programs affecting their interests; (2) provide for their regular participation in the implementation of such programs; (3) provide technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources; (4) involve parents of children participating in its Head Start program in appropriate educational services (in accordance with the performance standards in effect upon section 9846(b) of this title or through referral of such parents to educational services available in the community) in order to aid their children to attain their full potential; (5) establish procedures to seek reimbursement, to the extent feasible, from other agencies for services for which any such other agency is responsible, which are provided to a Head Start participant by the Head Start agency; (6) provide (directly or through referral to educational services available in the community) parents of children participating in its Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and (7) consider providing services to assist younger siblings of children participating in its Head Start program to obtain health services from other sources.''

Subsec. (c). Pub. L. 103–252, §109(2), struck out ''schools that will subsequently serve children in Head Start programs,'' after ''coordinate with'' and inserted '', including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.),'' after ''other programs''.

Subsec. (d). Pub. L. 103–252, §109(3), added subsec. (d).

1992—Subsec. (b)(6), (7). Pub. L. 102–401, §2(i), added cls. (6) and (7).

Subsec. (c). Pub. L. 102–401, §2(k)(3), substituted ''subchapter'' for ''subtitle''.

1990—Subsec. (b)(4), (5). Pub. L. 101–501, §109(1), added cl. (4) and redesignated former cl. (4) as (5).

Subsec. (c). Pub. L. 101–501, § 109(2), substituted ''with schools that will subsequently serve children in Head Start programs, the State agency responsible for administering section 602(g) of this title, and other programs serving the children and families served by the Head Start agency to carry out the provisions of this subtitle'' for ''with other State and local programs serving the children in the Head Start agency to carry out the provisions of this subsection''.

1986—Subsec. (c). Pub. L. 99–425 inserted ''State and local'' before ''programs''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

§ 9837a. Head Start transition

Each Head Start agency shall take steps to coordinate with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, including—

(1) developing and implementing a systematic procedure for transferring, with parental consent, Head Start program records for each participating child to the school in which such child will enroll;

(2) establishing channels of communication between Head Start staff and their counterparts in the schools (including teachers, social workers, and health staff) to facilitate coordination of programs;

(3) conducting meetings involving parents, kindergarten or elementary school teachers, and Head Start program teachers to discuss the educational, developmental, and other needs of individual children;

(4) organizing and participating in joint transition-related training of school staff and Head Start staff;

(5) developing and implementing a family outreach and support program in cooperation with entities carrying out parental involvement efforts under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);

(6) assisting families, administrators, and teachers in enhancing educational and developmental continuity between Head Start services and elementary school classes; and

(7) linking the services provided in such Head Start program with the education services provided by such local educational agency.

(Pub. L. 97–35, title VI, § 642A, as added Pub. L. 105–285, title I, § 110, Oct. 27, 1998, 112 Stat. 2717.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in par. (5), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

§ 9838. Submission of plans to chief executive officer

In carrying out the provisions of this subchapter, no contract, agreement, grant, or other assistance shall be made for the purpose of carrying out a Head Start program within a State unless a plan setting forth such proposed contract, agreement, grant, or other assistance has been submitted to the chief executive officer of the State, and such plan has not been disapproved by such officer within 45 days of such submission, or, if disapproved (for reasons other than failure of the program to comply with State health, safety, and child care laws, including regulations applicable to comparable child care programs in the State), has been reconsidered by the Secretary and found by the Secretary to be fully consistent with the provisions and in furtherance of the purposes of this subchapter, as evidenced by a written statement of the Secretary's findings that is transmitted to such officer. Funds to cover the costs of the proposed contract, agreement, grant, or other assistance shall be obligated from the appropriation which is current at the time the plan is submitted to such officer. This section shall not, however, apply to contracts, agreements, grants, loans, or other assistance to any institution of higher education in existence on August 13, 1981.

(Pub. L. 97–35, title VI, § 643, Aug. 13, 1981, 95 Stat. 502; Pub. L. 101–501, title I, § 110, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102–401, § 2(k)(4), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 105–285, title I, § 111, Oct. 27, 1998, 112 Stat. 2718.)

AMENDMENTS

1998—Pub. L. 105–285, in first sentence, substituted ''45 days'' for ''30 days'' and ''disapproved (for reasons other than failure of the program to comply with State health, safety, and child care laws, including regulations applicable to comparable child care programs in the State)'' for ''so disapproved'' and inserted '', as evidenced by a written statement of the Secretary's findings that is transmitted to such officer'' before period.

1992—Pub. L. 102–401 substituted ''such officer'' for ''the such officer'' in two places.

1990—Pub. L. 101–501 substituted ''chief executive officer'' for first reference to ''Governor'' and ''such officer'' for second and third references to ''Governor''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

§ 9839. Administrative requirements and standards

(a) Employment practices, nonpartisanship, staff accountability, public access to information, etc.

Each Head Start agency shall observe standards of organization, management, and administration which will assure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of this subchapter and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias or personal or family favoritism. Each such agency shall establish or adopt rules to carry out this section, which shall include rules to assure full staff accountability in matters governed by law, regulations, or agency policy. Each agency shall also provide for reasonable public access to information, including public hearings at the request of appropriate community groups and reasonable public access to books and records of the agency or other agencies engaged in program activities or operations involving the use of authority or funds for which it is responsible. Each such agency shall adopt for itself and other agencies using funds or exercising authority for which it is responsible, rules designed to (1) establish specific standards governing salaries, salary increases, travel and per diem allowances, and other employee benefits; (2) assure that only persons capable of discharging their duties with competence and integrity are employed and that employees are promoted or advanced under impartial procedures calculated to improve agency performance and effectiveness; (3) guard against personal or financial conflicts of interest; and (4) define employee duties in an appropriate manner which will in any case preclude employees from participating, in connection with the performance of their duties, in any form of picketing, protest, or other direct action which is in violation of law.

(b) Development and administrative costs of programs

Except as provided in subsection (f) of this section, no financial assistance shall be extended under this subchapter in any case in which the Secretary determines that the costs of developing and administering a program assisted under this subchapter exceed 15 percent of the total costs, including the required non-Federal contributions to such costs, of such program. The Secretary shall establish by regulation, criteria for determining (1) the costs of developing and administering such program; and (2) the total costs of such program. In any case in which the Secretary determines that the cost of administering such program does not exceed 15 percent of such total costs but is, in the judgment of the Secretary, excessive, the Secretary shall forthwith require the recipient of such financial assistance to take such steps prescribed by the Secretary as will eliminate such excessive administrative cost, including the sharing by one or more Head Start agencies of a common director and other administrative personnel. The Secretary may waive the limitation prescribed by this subsection for specific periods of time not to exceed 12 months whenever the Secretary determines that such a waiver is necessary in order to carry out the purposes of this subchapter.

(c) Rules and regulations; special or simplified requirements for small agencies; common or joint use of facilities

The Secretary shall prescribe rules or regulations to supplement subsections (a) and (f) of this section, which shall be binding on all agencies carrying on Head Start program activities with financial assistance under this subchapter. The Secretary may, where appropriate, establish special or simplified requirements for smaller agencies or agencies operating in rural areas. Policies and procedures shall be established to ensure that indirect costs attributable to the common or joint use of facilities and services by programs assisted under this subchapter and other programs shall be fairly allocated among the various programs which utilize such facilities and services.

(d) Publication and notification of proposed rules, etc.

At least 30 days prior to their effective date, all rules, regulations, and application forms shall be published in the Federal Register and shall be sent to each grantee with the notification that each such grantee has the right to submit comments pertaining thereto to the Secretary prior to the final adoption thereof.

(e) Neutrality concerning union organizing

Funds appropriated to carry out this subchapter shall not be used to assist, promote, or deter union organizing.

(f) Purchase of facility; approval requirements; financial assistance

(1) The Secretary shall establish uniform procedures for Head Start agencies to request approval to purchase facilities, or to request approval of the purchase (after December 31, 1986) of facilities, to be used to carry out Head Start programs. The Secretary shall suspend any proceedings pending against any Head Start agency to claim costs incurred in purchasing such facilities until the agency has been afforded an opportunity to apply for approval of the purchase and the Secretary has determined whether the purchase will be approved. The Secretary shall not be required to repay claims previously satisfied by Head Start agencies for costs incurred in the purchase of such facilities.

(2) Financial assistance provided under this subchapter may not be used by a Head Start agency to purchase a facility (including paying the cost of amortizing the principal, and paying interest on, loans) to be used to carry out a Head Start program unless the Secretary approves a request that is submitted by such agency and contains—

(A) a description of the site of the facility proposed to be purchased or that was previously purchased;

(B) the plans and specifications of such facility;

(C) information demonstrating that—

(i) the proposed purchase will result, or the previous purchase has resulted, in sav-

ings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out such program; or

(ii) the lack of alternative facilities will prevent, or would have prevented, the operation of such program;

(D) in the case of a request regarding a previously purchased facility, information demonstrating that the facility will be used principally as a Head Start center, or a direct support facility for a Head Start program; and

(E) such other information and assurances as the Secretary may require.

(3) Upon a determination by the Secretary that suitable facilities are not otherwise available to Indian tribes to carry out Head Start programs, and that the lack of suitable facilities will inhibit the operation of such programs, the Secretary, in the discretion of the Secretary, may authorize the use of financial assistance, from the amount reserved under section 9835(a)(2)(A) of this title, to make payments for the purchase of facilities owned by such tribes. The amount of such a payment for such a facility shall not exceed the fair market value of the facility.

(g) Payments for capital expenditures

(1) Upon a determination by the Secretary that suitable facilities (including public school facilities) are not otherwise available to Indian tribes, rural communities, and other low-income communities to carry out Head Start programs, that the lack of suitable facilities will inhibit the operation of such programs, and that construction of such facilities is more cost effective than purchase of available facilities or renovation, the Secretary, in the discretion of the Secretary, may authorize the use of financial assistance under this subchapter to make payments for capital expenditures related to facilities that will be used to carry out such programs. The Secretary shall establish uniform procedures for Head Start agencies to request approval for such payments, and shall promote, to the extent practicable, the collocation of Head Start programs with other programs serving low-income children and families.

(2) Such payments may be used for capital expenditures (including paying the cost of amortizing the principal, and paying interest on, loans) such as expenditures for—

(A) construction of facilities that are not in existence on the date of the determination;

(B) major renovation of facilities in existence on such date; and

(C) purchase of vehicles used for programs conducted at the Head Start facilities.

(3) All laborers and mechanics employed by contractors or subcontractors in the construction or renovation of facilities to be used to carry out Head Start programs shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40.

(h) Personnel preferences to Indian tribe members

In all personnel actions of the American Indian Programs Branch of the Head Start Bureau of the Administration for Children and Families, the Secretary shall give the same preference to individuals who are members of an Indian tribe as the Secretary gives to a disabled veteran, as defined in section 2108(3)(C) of title 5. The Secretary shall take such additional actions as may be necessary to promote recruitment of such individuals for employment in the Administration.

(Pub. L. 97–35, title VI, § 644, Aug. 13, 1981, 95 Stat. 502; Pub. L. 101–501, title I, §§ 111, 112, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102–401, § 2(j), Oct. 7, 1992, 106 Stat. 1958; Pub. L. 103–218, title IV, § 403, Mar. 9, 1994, 108 Stat. 96; Pub. L. 103–252, title I, § 110, May 18, 1994, 108 Stat. 636; Pub. L. 105–285, title I, § 106(e), Oct. 27, 1998, 112 Stat. 2712.)

CODIFICATION

In subsec. (g)(3), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931, as amended (40 U.S.C. 276a et seq., commonly known as the 'Davis-Bacon Act')'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1998—Subsec. (f)(2). Pub. L. 105–285 substituted ''Financial assistance'' for ''Except as provided in section 9835(a)(3)(C)(v) of this title, financial assistance''.

1994—Subsec. (d). Pub. L. 103–252, § 110(1), struck out ''guidelines, instructions,'' after ''all rules, regulations,''.

Subsec. (f)(1). Pub. L. 103–218, § 403(1), inserted '', or to request approval of the purchase (after December 31, 1986) of facilities,'' after ''to purchase facilities'' and inserted at end ''The Secretary shall suspend any proceedings pending against any Head Start agency to claim costs incurred in purchasing such facilities until the agency has been afforded an opportunity to apply for approval of the purchase and the Secretary has determined whether the purchase will be approved. The Secretary shall not be required to repay claims previously satisfied by Head Start agencies for costs incurred in the purchase of such facilities.''

Subsec. (f)(2). Pub. L. 103–252, § 110(2)(A), substituted ''section 9835(a)(3)(C)(v)'' for ''section 9835(a)(3)(A)(v)''.

Subsec. (f)(2)(A). Pub. L. 103–218, § 403(2)(A), inserted before semicolon at end ''or that was previously purchased''.

Subsec. (f)(2)(C)(i). Pub. L. 103–218, § 403(2)(B)(i), inserted '', or the previous purchase has resulted,'' after ''purchase will result''.

Subsec. (f)(2)(C)(ii). Pub. L. 103–218, § 403(2)(B)(ii), inserted '', or would have prevented,'' after ''will prevent'' and struck out ''and'' after semicolon at end.

Subsec. (f)(2)(D), (E). Pub. L. 103–218, § 403(2)(C), (D), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (f)(3). Pub. L. 103–252, § 110(2)(B), added par. (3).

Subsecs. (g), (h). Pub. L. 103–252, § 110(3), added subsecs. (g) and (h).

1992—Subsec. (b). Pub. L. 102–401, § 2(j)(1), substituted ''Except as provided in subsection (f) of this section, no'' for ''No''.

Subsec. (c). Pub. L. 102–401, § 2(j)(2), substituted ''subsections (a) and (f) of this section'' for ''subsection (a) of this section''.

Subsec. (f). Pub. L. 102–401, § 2(j)(3), added subsec. (f).

1990—Subsec. (b). Pub. L. 101–501, § 111, inserted ''the required'' before ''non-Federal contributions''.

Subsec. (e). Pub. L. 101–501, § 112, added subsec. (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other re-

cipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

STUDY OF BENEFITS FOR HEAD START EMPLOYEES

Section 120 of Pub. L. 103–252 provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall conduct a study regarding the benefits available to individuals employed by Head Start agencies under the Head Start Act (42 U.S.C. 9831 et seq.).

''(b) REPORT.—

''(1) PREPARATION.—The Secretary shall prepare a report, containing the results of the study, that—

''(A) describes the benefits, including health care benefits, family and medical leave, and retirement pension benefits, available to such individuals;

''(B) includes recommendations for increasing the access of the individuals to benefits, including access to a retirement pension program; and

''(C) addresses the feasibility of participation by such individuals in the Federal Employees' Retirement System under chapter 84 of title 5, United States Code.

''(2) SUBMISSION.—The Secretary shall submit the report to the appropriate committees of Congress.''

§ 9840. Participation in Head Start programs

(a) Criteria for eligibility

(1) The Secretary shall by regulation prescribe eligibility for the participation of persons in Head Start programs assisted under this subchapter. Except as provided in paragraph (2), such criteria may provide—

(A) that children from low-income families shall be eligible for participation in programs assisted under this subchapter if their families' incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance; and

(B) pursuant to such regulations as the Secretary shall prescribe, that—

(i) programs assisted under this subchapter may include, to a reasonable extent, participation of children in the area served who would benefit from such programs but whose families do not meet the low-income criteria prescribed pursuant to subparagraph (A); and

(ii) a child who has been determined to meet the low-income criteria and who is participating in a Head Start program in a program year shall be considered to continue to meet the low-income criteria through the end of the succeeding program year.

In determining, for purposes of this paragraph, whether a child who has applied for enrollment in a Head Start program meets the low-income criteria, an entity may consider evidence of family income during the 12 months preceding the month in which the application is submitted, or during the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

(2) Whenever a Head Start program is operated in a community with a population of 1,000 or less individuals and—

(A) there is no other preschool program in the community;

(B) the community is located in a medically underserved area, as designated by the Secretary pursuant to section 254c(b)(3)[1] of this title and is located in a health professional shortage area, as designated by the Secretary pursuant to section 254e(a)(1) of this title;

(C) the community is in a location which, by reason of remoteness, does not permit reasonable access to the types of services described in clauses (A) and (B); and

(D) not less than 50 percent of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph (1);

the Head Start program in each such locality shall establish the criteria for eligibility, except that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of such project's eligibility criteria, be denied an opportunity to participate in such program. During the period beginning on October 30, 1984, and ending on October 1, 1994, and unless specifically authorized in any statute of the United States enacted after October 30, 1984, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.

(b) Establishment of fee schedule or charging of fees; payment by families willing and able to pay

The Secretary shall not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in Head Start programs, unless such fees are authorized by legislation hereafter enacted. Nothing in this subsection shall be construed to prevent the families of children who participate in Head Start programs and who are willing and able to pay the full cost of such participation from doing so. A Head Start agency that provides a Head Start program with full-working-day services in collaboration with other agencies or entities may collect a family copayment to support extended day services if a copayment is required in conjunction with the collaborative. The copayment charged to families receiving services through the Head Start program shall not exceed the copayment charged to families with similar incomes and circumstances who are receiving the services through participation in a program carried out by another agency or entity.

(c) Availability of more than one year of services; children eligible

Each Head Start program operated in a community shall be permitted to provide more than

[1] See References in Text note below.

1 year of Head Start services to eligible children (age 3 to compulsory school attendance) in the State. Each Head Start program operated in a community shall be permitted to recruit and accept applications for enrollment of children throughout the year.

(d) Indian tribes

(1) An Indian tribe that—

(A) operates a Head Start program;

(B) enrolls as participants in the program all children in the community served by the tribe (including a community that is an off-reservation area, designated by an appropriate tribal government, in consultation with the Secretary) from families that meet the low-income criteria prescribed under subsection (a)(1)(A) of this section; and

(C) has the resources to enroll additional children in the community who do not meet the low-income criteria;

may enroll such additional children in a Head Start program, in accordance with this subsection, if the program predominantly serves children who meet the low-income criteria.

(2) The Indian tribe shall enroll the children in the Head Start program in accordance with such requirements as the Secretary may specify by regulation promulgated after consultation with Indian tribes.

(3) In providing services through a Head Start program to such children, the Indian tribe may not use funds that the Secretary has determined, in accordance with section 9835(g)(3) of this title, are to be used for expanding Head Start programs under this subchapter.

(Pub. L. 97–35, title VI, § 645, Aug. 13, 1981, 95 Stat. 504; Pub. L. 98–558, title I, § 105, Oct. 30, 1984, 98 Stat. 2879; Pub. L. 99–425, title I, § 104, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101–501, title I, §§ 113, 114, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 101–597, title IV, § 401(e), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103–252, title I, § 111, May 18, 1994, 108 Stat. 637; Pub. L. 105–285, title I, § 112, Oct. 27, 1998, 112 Stat. 2718.)

REFERENCES IN TEXT

Section 254c of this title, referred to in subsec. (a)(2)(B), was in the original a reference to section 330 of the Public Health Service Act, act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of chapter 6A of this title by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–285, § 112(a), substituted ''criteria may provide—'' for ''criteria may provide'', realigned margins of subpars. (A) and (B), in subpar. (B) substituted ''shall prescribe, that—'' for ''shall prescribe, that'', inserted ''(i)'' before ''programs assisted under this subchapter may'', and substituted ''subparagraph (A); and'', cl. (ii), and concluding provisions for ''clause (A).''

Subsec. (b). Pub. L. 105–285, § 112(b), inserted at end ''A Head Start agency that provides a Head Start program with full-working-day services in collaboration with other agencies or entities may collect a family copayment to support extended day services if a copayment is required in conjunction with the collaborative. The copayment charged to families receiving services through the Head Start program shall not exceed the copayment charged to families with similar incomes and circumstances who are receiving the services through participation in a program carried out by another agency or entity.''

Subsec. (c). Pub. L. 105–285, § 112(c), inserted at end ''Each Head Start program operated in a community shall be permitted to recruit and accept applications for enrollment of children throughout the year.''

Subsec. (d)(1)(B). Pub. L. 105–285, § 112(d), substituted ''a community that is an off-reservation area, designated by an appropriate tribal government, in consultation with the Secretary'' for ''a community with a near-reservation designation, as defined by the Bureau of Indian Affairs''.

1994—Subsec. (c). Pub. L. 103–252, § 111(1), substituted ''shall be permitted to provide more than 1 year of Head Start services to eligible children (age 3 to compulsory school attendance) in the State.'' for ''may provide more than one year of Head Start services to children from age 3 to the age of compulsory school attendance in the State in which the Head Start program is located. The Secretary may not issue or enforce any rule (as defined in section 551(4) of title 5) or guideline that forbids any Head Start agency to carry out a Head Start program in accordance with the authority described in the preceding sentence.''

Subsec. (d). Pub. L. 103–252, § 111(2), added subsec. (d).

1990—Subsec. (a)(2). Pub. L. 101–501, § 113, substituted ''1994'' for ''1990'' in closing provisions.

Subsec. (a)(2)(B). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area''.

Subsec. (c). Pub. L. 101–501, § 114, inserted at end ''The Secretary may not issue or enforce any rule (as defined in section 551(4) of title 5) or guideline that forbids any Head Start agency to carry out a Head Start program in accordance with the authority described in the preceding sentence.''

1986—Subsec. (a)(2). Pub. L. 99–425 substituted ''1990'' for ''1986'' in closing provisions.

1984—Subsec. (a)(2). Pub. L. 98–558, § 105(a), inserted at end ''During the period beginning on October 30, 1984, and ending on October 1, 1986, and unless specifically authorized in any statute of the United States enacted after October 30, 1984, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.''

Subsec. (c). Pub. L. 98–558, § 105(b), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

§ 9840a. Early Head Start programs for families with infants and toddlers

(a) In general

The Secretary shall make grants, in accordance with the provisions of this section for pro-

grams providing family-centered services for low-income families with very young children designed to promote the development of the children, and to enable their parents to fulfill their roles as parents and to move toward self-sufficiency.

(b) Scope and design of programs

In carrying out a program described in subsection (a) of this section, an entity receiving assistance under this section shall—

(1) provide, either directly or through referral, early, continuous, intensive, and comprehensive child development and family support services that will enhance the physical, social, emotional, and intellectual development of participating children;

(2) ensure that the level of services provided to families responds to their needs and circumstances;

(3) promote positive parent-child interactions;

(4) provide services to parents to support their role as parents and to help the families move toward self-sufficiency (including educational and employment services as appropriate);

(5) coordinate services with services provided by programs in the State and programs in the community (including programs for infants and toddlers with disabilities) to ensure a comprehensive array of services (such as health and mental health services);

(6) ensure formal linkages with local Head Start programs in order to provide for continuity of services for children and families;

(7) in the case of a Head Start agency that operates a program and that also provides Head Start services through the age of mandatory school attendance, ensure that children and families participating in the program receive such services through such age;

(8) ensure formal linkages with the agencies and entities described in section 644(b) of the Individuals with Disabilities Education Act (20 U.S.C. 1444(b)) and providers of early intervention services for infants and toddlers with disabilities under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and

(9) meet such other requirements concerning design and operation of the program described in subsection (a) of this section as the Secretary may establish.

(c) Persons eligible to participate

Persons who may participate in programs described in subsection (a) of this section include—

(1) pregnant women; and

(2) families with children under age 3;

who meet the income criteria specified for families in section 9840(a)(1) of this title.

(d) Eligible service providers

To be eligible to receive assistance under this section, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Entities that may apply to carry out activities under this section include—

(1) entities operating Head Start programs under this subchapter; and

(2) other public entities, and nonprofit or for-profit private entities, capable of providing child and family services that meet the standards for participation in programs under this subchapter and meet such other appropriate requirements relating to the activities under this section as the Secretary may establish.

(e) Selection of grant recipients

From the portion specified in section 9835(a)(6) of this title, the Secretary shall award grants under this subsection on a competitive basis to applicants meeting the criteria specified in subsection (d) of this section (giving priority to entities with a record of providing early, continuous, and comprehensive childhood development and family services).

(f) Distribution

In awarding grants to eligible applicants under this section, the Secretary shall—

(1) ensure an equitable national geographic distribution of the grants; and

(2) award grants to applicants proposing to serve communities in rural areas and to applicants proposing to serve communities in urban areas.

(g) Monitoring, training, technical assistance, and evaluation

(1) Requirement

In order to ensure the successful operation of programs assisted under this section, the Secretary shall use funds from the portion specified in section 9835(a)(6) of this title to monitor the operation of such programs, evaluate their effectiveness, and provide training and technical assistance tailored to the particular needs of such programs.

(2) Training and technical assistance account

(A) In general

Of the amount made available to carry out this section for any fiscal year, not less than 5 percent and not more than 10 percent shall be reserved to fund a training and technical assistance account.

(B) Activities

Funds in the account may be used by the Secretary for purposes including—

(i) making grants to, and entering into contracts with, organizations with specialized expertise relating to infants, toddlers, and families and the capacity needed to provide direction and support to a national training and technical assistance system, in order to provide such direction and support;

(ii) providing ongoing training and technical assistance for regional and program staff charged with monitoring and overseeing the administration of the program carried out under this section;

(iii) providing ongoing training and technical assistance for existing recipients (as of the date of such training or assistance) of grants under subsection (a) of this section and support and program planning and implementation assistance for new recipients of such grants; and

(iv) providing professional development and personnel enhancement activities, including the provision of funds to recipients

of grants under subsection (a) of this section for the recruitment and retention of qualified staff with an appropriate level of education and experience.

(Pub. L. 97–35, title VI, § 645A, as added Pub. L. 103–252, title I, § 112(a), May 18, 1994, 108 Stat. 638; amended Pub. L. 105–285, title I, § 113, Oct. 27, 1998, 112 Stat. 2719.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(8), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

1998—Pub. L. 105–285, § 113(1), inserted ''Early Head Start'' in section catchline.

Subsec. (a). Pub. L. 105–285, § 113(2), substituted ''provisions of this section for'' for ''provisions of this section for—'', struck out par. (1) designation before ''programs providing'', substituted ''self-sufficiency.'' for ''self-sufficiency; and'', and struck out par. (2) which read as follows: ''provision of training and technical assistance to entities carrying out programs, and evaluation of programs, that were supported under the Comprehensive Child Development Act (42 U.S.C. 9881 et seq.), as in effect on the day before May 18, 1994.''

Subsec. (b)(5). Pub. L. 105–285, § 113(3)(A), inserted ''(including programs for infants and toddlers with disabilities)'' after ''community''.

Subsec. (b)(7). Pub. L. 105–285, § 113(3)(B), struck out ''and'' at end.

Subsec. (b)(8), (9). Pub. L. 105–285, § 113(3)(C), (D), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c). Pub. L. 105–285, § 113(4)(A), substituted ''subsection (a) of this section'' for ''subsection (a)(1) of this section'' in introductory provisions.

Subsec. (c)(2). Pub. L. 105–285, § 113(4)(B), substituted ''3;'' for ''3 (or under age 5, in the case of children served by an entity specified in subsection (e)(3) of this section);''.

Subsec. (d). Pub. L. 105–285, § 113(5), inserted ''and'' at end of par. (1), redesignated par. (3) as (2), inserted ''or for-profit'' after ''nonprofit'', and struck out former par. (2) which read as follows: ''entities that, on the day before the date of enactment of this section, were operating—

''(A) Parent-Child Centers receiving financial assistance under section 9835(a)(4) of this title, as in effect on such date; or

''(B) programs receiving financial assistance under the Comprehensive Child Development Act, as in effect on such date; and''.

Subsec. (e). Pub. L. 105–285, § 113(8), struck out ''other'' before ''grant recipients'' in heading and substituted ''From the portion specified in section 9835(a)(6) of this title,'' for ''From the balance remaining of the portion specified in section 9835(a)(6) of this title, after making grants to the eligible entities specified in subsection (e) of this section,'' in text.

Pub. L. 105–285, § 113(6), (7), redesignated subsec. (f) as (e) and struck out heading and text of former subsec. (e) which related to time-limited priority for certain entities.

Subsecs. (f), (g). Pub. L. 105–285, § 113(7), (10), added subsec. (g) and redesignated former subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (h). Pub. L. 105–285, § 113(9), struck out heading and text of subsec. (h) which related to Secretarial responsibilities.

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9841. Appeals, notice, hearing, and mediation; alternative agency for Indian tribe

(a) Notice requirements; suspension or termination of assistance stayed pending hearing; mediation

The Secretary shall prescribe procedures to assure that—

(1) special notice of and an opportunity for a timely and expeditious appeal to the Secretary will be provided for an agency or organization which desires to serve as a delegate agency under this subchapter and whose application to the Head Start agency has been wholly or substantially rejected or has not been acted upon within a period of time deemed reasonable by the Secretary, in accordance with regulations which the Secretary shall prescribe;

(2) financial assistance under this subchapter shall not be suspended, except in emergency situations, unless the recipient agency has been given reasonable notice and opportunity to show cause why such action should not be taken;

(3) financial assistance under this subchapter shall not be terminated or reduced, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than 30 days, unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing; and

(4) the Secretary shall develop and publish procedures (including mediation procedures) to be used in order to—

(A) resolve in a timely manner conflicts potentially leading to adverse action between—

(i) recipients of financial assistance under this subchapter; and

(ii) delegate agencies or Head Start Parent Policy Councils; and

(B) avoid the need for an administrative hearing on an adverse action.

(b) Notification of conflict by Head Start agency to regional office

In prescribing procedures for the mediation described in subsection (a)(4) of this section, the Secretary shall specify—

(1) the date by which a Head Start agency engaged in a conflict described in subsection (a)(4) of this section will notify the appropriate regional office of the Department of the conflict; and

(2) a reasonable period for the mediation.

(c) Timeline for administrative hearing

The Secretary shall also specify—

(1) a timeline for an administrative hearing, if necessary, on an adverse action; and

(2) a timeline by which the person conducting the administrative hearing shall issue a decision based on the hearing.

(d) Termination of designation not stayed upon appeal

In any case in which a termination, reduction, or suspension of financial assistance under this

subchapter is upheld in an administrative hearing under this section, such termination, reduction, or suspension shall not be stayed pending any judicial appeal of such administrative decision.

(e) Establishment of alternative agency by Indian tribe

(1) The Secretary shall by regulation specify a process by which an Indian tribe may identify and establish an alternative agency, and request that the alternative agency be designated under section 9836 of this title as the Head Start agency providing services to the tribe, if—

(A) the Secretary terminates financial assistance under this section to the only agency that was receiving financial assistance to provide Head Start services to the Indian tribe; and

(B) the tribe would otherwise be precluded from providing such services to the members of the tribe.

(2) The regulation required by this subsection shall prohibit such designation of an alternative agency that includes an employee who—

(A) served on the administrative staff or program staff of the agency described in paragraph (1)(A); and

(B) was responsible for a deficiency that—

(i) relates to the performance standards or financial management standards described in section 9836a(a)(1) of this title; and

(ii) was the basis for the termination of financial assistance described in paragraph (1)(A);

as determined by the Secretary after providing the notice and opportunity described in subsection (a)(3) of this section.

(Pub. L. 97–35, title VI, § 646, Aug. 13, 1981, 95 Stat. 504; Pub. L. 101–501, title I, § 115, Nov. 3, 1990, 104 Stat. 1232; Pub. L. 103–252, title I, § 113, May 18, 1994, 108 Stat. 641.)

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103–252, § 113(a), added par. (4).

Subsecs. (b) to (e). Pub. L. 103–252, § 113(b), added subsecs. (b) to (e) and struck out former subsec. (b) which read as follows: ''The Secretary may not prescribe any procedure that would modify the operation of section 1303.21 or 1303.33, or any of subdivisions (a) through (f) of section 1303.35, of title 45 of the Code of Federal Regulations as in effect on April 1, 1990.''

1990—Subsec. (a). Pub. L. 101–501, § 115(1), (2), designated existing provisions as subsec. (a) and inserted ''or reduced'' after ''terminated'' in par. (3).

Subsec. (b). Pub. L. 101–501, § 115(3), added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 115(1), (2) of Pub. L. 101–501 effective Oct. 1, 1990, and amendment by section 115(3) of Pub. L. 101–501 effective Apr. 1, 1990, see section 1001(a), (b)(2) of Pub. L. 101–501, set out as a note under section 8621 of this title.

§ 9842. Records and audits

(a) Each recipient of financial assistance under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such financial assistance, the total cost of the project or undertaking in connection with which such financial assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this subchapter.

(Pub. L. 97–35, title VI, § 647, Aug. 13, 1981, 95 Stat. 505.)

§ 9843. Technical assistance and training

(a) Technical assistance and personnel training

The Secretary shall provide, directly or through grants or other arrangements (1) technical assistance to communities in developing, conducting, and administering programs under this subchapter; and (2) training for specialized or other personnel needed in connection with Head Start programs, in accordance with the process, and the provisions for allocating resources, set forth in subsections (b) and (c) of this section.

(b) Consideration of local needs

The process for determining the technical assistance and training activities to be carried out under this section shall—

(1) ensure that the needs of local Head Start agencies and programs relating to improving program quality and to program expansion are addressed to the maximum extent feasible;

(2) incorporate mechanisms to ensure responsiveness to local needs, including an ongoing procedure for obtaining input from the individuals and agencies carrying out Head Start programs; and

(3) ensure the provision of technical assistance to assist Head Start agencies, entities carrying out other child care and early childhood programs, communities, and States in collaborative efforts to provide quality full-working-day, full calendar year services, including technical assistance related to identifying and assisting in resolving barriers to collaboration.

(c) Prioritization of resource allocation

In allocating resources for technical assistance and training under this section, the Secretary shall—

(1) give priority consideration to—

(A) activities to correct program and management deficiencies identified through reviews carried out pursuant to section 9836a(c) of this title (including the provision of assistance to local programs in the development of quality improvement plans under section 9836a(d)(2) of this title); and

(B) assisting Head Start agencies in—

(i) ensuring the school readiness of children; and

(ii) meeting the educational performance measures described in section 9836a(b)(4) of this title;

(2) supplement amounts provided under section 9835(a)(3)(C)(ii) of this title in order to address the training and career development needs of classroom staff (including instruction for providing services to children with disabilities) and nonclassroom staff, including home visitors and other staff working directly with families, including training relating to increasing parent involvement and services designed to increase family literacy and improve parenting skills;

(3) assist Head Start agencies in the development of collaborative initiatives with States and other entities within the States, to foster effective early childhood professional development systems;

(4) provide technical assistance and training, either directly or through a grant, contract, or cooperative agreement with an entity that has experience in the development and operation of successful family literacy services programs, for the purpose of—

(A) assisting Head Start agencies providing family literacy services, in order to improve the quality of such family literacy services; and

(B) enabling those Head Start agencies that demonstrate effective provision of family literacy services, based on improved outcomes for children and their parents, to provide technical assistance and training to other Head Start agencies and to service providers that work in collaboration with such agencies to provide family literacy services;

(5) assist Head Start agencies and programs in conducting and participating in communitywide strategic planning and needs assessment;

(6) assist Head Start agencies and programs in developing and implementing full-working-day and full-calendar-year programs where community need is clearly identified and making the transition to such programs, with particular attention to involving parents and programming for children throughout the day, and assist the agencies and programs in expediting the sharing of information about innovative models for providing full-working-day, full calendar year services for children;

(7) assist Head Start agencies in better serving the needs of families with very young children;

(8) assist Head Start agencies and programs in the development of sound management practices, including financial management procedures;

(9) assist in efforts to secure and maintain adequate facilities for Head Start programs;

(10) assist Head Start agencies in developing innovative program models, including mobile and home-based programs; and

(11) provide support for Head Start agencies (including policy councils and policy committees, as defined in regulation) that meet the standards described in section 9836a(a) of this title but that have, as documented by the Secretary through reviews conducted pursuant to section 9836a(c) of this title, significant programmatic, quality, and fiscal issues to address.

(d) Training in performing and visual arts and electronic media

The Secretary may provide, either directly or through grants to public or private nonprofit entities, training for Head Start personnel in the use of the performing and visual arts and interactive programs using electronic media to enhance the learning experience of Head Start children. Special consideration shall be given to entities that have demonstrated effectiveness in educational programming for preschool children that includes components for parental involvement, care provider training, and developmentally appropriate related activities.

(e) Child development and assessment program

The Secretary shall provide, either directly or through grants or other arrangements, funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children (including services to promote the acquisition of the English language), training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled children.

(Pub. L. 97–35, title VI, § 648, Aug. 13, 1981, 95 Stat. 505; Pub. L. 98–558, title I, § 106, Oct. 30, 1984, 98 Stat. 2879; Pub. L. 101–501, title I, § 116(a), Nov. 3, 1990, 104 Stat. 1232; Pub. L. 102–586, § 7(b), Nov. 4, 1992, 106 Stat. 5035; Pub. L. 103–252, title I, § 114, May 18, 1994, 108 Stat. 642; Pub. L. 105–285, title I, § 114, Oct. 27, 1998, 112 Stat. 2721.)

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105–285, § 114(a)(1), added par. (3).

Subsec. (c)(1). Pub. L. 105–285, § 114(a)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''give priority consideration to activities to correct program and management deficiencies identified through reviews pursuant to section 9836a(c) of this title (including the provision of assistance to local programs in the development of quality improvement plans under section 9836a(d)(2) of this title);''.

Subsec. (c)(2). Pub. L. 105–285, § 114(a)(2)(B), inserted ''supplement amounts provided under section 9835(a)(3)(C)(ii) of this title in order to'' after ''(2)''.

Subsec. (c)(3). Pub. L. 105–285, § 114(a)(2)(G), added par. (3). Former par. (3) redesignated (5).

Subsec. (c)(4). Pub. L. 105–285, § 114(a)(2)(G), added par. (4). Former par. (4) redesignated (6).

Pub. L. 105–285, § 114(a)(2)(C), inserted ''and implementing'' after ''developing'' and substituted ''the day, and assist the agencies and programs in expediting the sharing of information about innovative models for providing full-working-day, full calendar year services for children'' for ''a longer day'' before semicolon.

Subsec. (c)(5), (6). Pub. L. 105–285, § 114(a)(2)(F), redesignated pars. (3) and (4) as (5) and (6), respectively. Former pars. (5) and (6) redesignated (7) and (8), respectively.

Subsec. (c)(7). Pub. L. 105–285, § 114(a)(2)(F), redesignated par. (5) as (7). Former par. (7) redesignated (9).

Pub. L. 105–285, § 114(a)(2)(D), struck out ''and'' at end.

Subsec. (c)(8). Pub. L. 105–285, § 114(a)(2)(F), redesignated par. (6) as (8). Former par. (8) redesignated (10).

Pub. L. 105–285, § 114(a)(2)(E), substituted ''; and'' for period at end.

Subsec. (c)(9), (10). Pub. L. 105–285, § 114(a)(2)(F), redesignated pars. (7) and (8) as (9) and (10), respectively.

Subsec. (c)(11). Pub. L. 105–285, § 114(a)(2)(H), added par. (11).

Subsec. (e). Pub. L. 105–285, § 114(b), inserted ''(including services to promote the acquisition of the English language)'' after ''non-English language background children''.

1994—Pub. L. 103–252, § 114(1), substituted ''Technical assistance and training'' for ''Technical assistance, training, and staff qualifications'' in section catchline.

Subsec. (a). Pub. L. 103–252, § 114(3)(A), redesignated as subsec. (e) the last sentence which read as follows: ''The Secretary shall provide, either directly or through grants or other arrangements, funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children, training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled children.''

Pub. L. 103–252, § 114(2), substituted ''(2) training for specialized or other personnel needed in connection with Head Start programs, in accordance with the process, and the provisions for allocating resources, set forth in subsections (b) and (c) of this section. The Secretary shall provide, either directly or through grants or other arrangements,'' for ''(2) training for specialized or other personnel needed in connection with Head Start programs, including''.

Subsec. (b). Pub. L. 103–252, § 114(4), (5), added subsec. (b) and struck out former subsec. (b) which related to teacher qualifications and waiver of same.

Subsec. (c). Pub. L. 103–252, § 114(4), (5), added subsec. (c) and struck out former subsec. (c) which related to Secretary developing systematic approach to training Head Start personnel and reporting on such approach to Congress.

Subsec. (d). Pub. L. 103–252, § 114(6), inserted at end ''Special consideration shall be given to entities that have demonstrated effectiveness in educational programming for preschool children that includes components for parental involvement, care provider training, and developmentally appropriate related activities.''

Subsec. (e). Pub. L. 103–252, § 114(3), redesignated last sentence of subsec. (a) as (e).

1992—Subsec. (a)(2). Pub. L. 102–586, § 7(b)(1), substituted ''funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children, training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled'' for ''a centralized child development training and national assessment program which may be administered at the State or local level leading to recognized credentials for such personnel, training for personnel providing services to non-English language background children, and resource access projects for personnel of handicapped''.

Subsecs. (c), (d). Pub. L. 102–586, § 7(b)(2), added subsecs. (c) and (d).

1990—Pub. L. 101–501 substituted ''Technical assistance, training, and staff qualifications'' for ''Technical assistance and training'' in section catchline, designated existing provisions as subsec. (a), inserted ''training for personnel providing services to non-English language background children,'' after ''such personnel,'' in cl. (2), and added subsec. (b).

1984—Pub. L. 98–558 substituted ''shall'' for ''may'' and inserted provision including a centralized child development training and national assessment program.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

HEAD START TRAINING IMPROVEMENT

Section 7(a) of Pub. L. 102–586 provided that: ''It is the purpose of this section—

''(1) to promote continued access for Head Start and other early childhood staff to the Child Development Associate credential;

''(2) to increase the ability of Head Start staff to address the problems facing Head Start families;

''(3) to create a systematic approach to training, thereby improving the quality of Head Start instruction and using training funds more efficiently and effectively; and

''(4) to allow the use of training funds for creative approaches to learning for children.''

§ 9843a. Staff qualifications and development

(a) Classroom teachers

(1) Professional requirements

The Secretary shall ensure that each Head Start classroom in a center-based program is assigned one teacher who has demonstrated competency to perform functions that include—

(A) planning and implementing learning experiences that advance the intellectual and physical development of children, including improving the readiness of children for school by developing their literacy and phonemic, print, and numeracy awareness, their understanding and use of language, their understanding and use of increasingly complex and varied vocabulary, their appreciation of books, and their problem solving abilities;

(B) establishing and maintaining a safe, healthy learning environment;

(C) supporting the social and emotional development of children; and

(D) encouraging the involvement of the families of the children in a Head Start program and supporting the development of relationships between children and their families.

(2) Degree requirements

(A) In general

The Secretary shall ensure that not later than September 30, 2003, at least 50 percent of all Head Start teachers nationwide in center-based programs have—

(i) an associate, baccalaureate, or advanced degree in early childhood education; or

(ii) an associate, baccalaureate, or advanced degree in a field related to early childhood education, with experience in teaching preschool children.

(B) Progress

The Secretary shall require Head Start agencies to demonstrate continuing progress each year to reach the result described in subparagraph (A).

(3) Alternative credentialing requirements

The Secretary shall ensure that, for center-based programs, each Head Start classroom that does not have a teacher that meets the requirements of clause (i) or (ii) of paragraph (2)(A) is assigned one teacher who has—

(A) a child development associate credential that is appropriate to the age of the children being served in center-based programs;

(B) a State-awarded certificate for preschool teachers that meets or exceeds the requirements for a child development associate credential; or

(C) a degree in a field related to early childhood education with experience in teaching preschool children and a State-awarded certificate to teach in a preschool program.

(4) Waiver

(A) In general

On request, the Secretary shall grant a 180-day waiver of the requirements of paragraph (3), for a Head Start agency that can demonstrate that the agency has unsuccessfully attempted to recruit an individual who has a credential, certificate, or degree described in paragraph (3), with respect to an individual who—

(i) is enrolled in a program that grants any such credential, certificate, or degree; and

(ii) will receive such credential, certificate, or degree under the terms of such program not later than 180 days after beginning employment as a teacher with such agency.

(B) Limitation

The Secretary may not grant more than one such waiver with respect to such individual.

(b) Mentor teachers

(1) "Mentor teacher" defined; function

For purposes of this subsection, the term ''mentor teacher'' means an individual responsible for observing and assessing the classroom activities of a Head Start program and providing on-the-job guidance and training to the Head Start program staff and volunteers, in order to improve the qualifications and training of classroom staff, to maintain high quality education services, and to promote career development, in Head Start programs.

(2) Requirement

In order to assist Head Start agencies in establishing positions for mentor teachers, the Secretary shall—

(A) provide technical assistance and training to enable Head Start agencies to establish such positions;

(B) give priority consideration, in providing assistance pursuant to subparagraph (A), to Head Start programs that have substantial numbers of new classroom staff or that are experiencing difficulty in meeting applicable education standards;

(C) encourage Head Start programs to give priority consideration for such positions to Head Start teachers at the appropriate level of career advancement in such programs; and

(D) promote the development of model curricula, designed to ensure the attainment of appropriate competencies of mentor teachers in Head Start programs.

(c) Family service workers

In order to improve the quality and effectiveness of staff providing in-home and other services (including needs assessment, development of service plans, family advocacy, and coordination of service delivery) to families of children participating in Head Start programs, the Secretary, in coordination with concerned public and private agencies and organizations examining the issues of standards and training for family service workers, shall—

(1) review and, as necessary, revise or develop new qualification standards for Head Start staff providing such services;

(2) promote the development of model curricula (on subjects including parenting training and family literacy) designed to ensure the attainment of appropriate competencies by individuals working or planning to work in the field of early childhood and family services; and

(3) promote the establishment of a credential that indicates attainment of the competencies and that is accepted nationwide.

(d) Head Start Fellowships

(1) Authority

The Secretary may establish a program of fellowships, to be known as ''Head Start Fellowships'', in accordance with this subsection. The Secretary may award the fellowships to individuals, to be known as ''Head Start Fellows'', who are staff in local Head Start programs or other individuals working in the field of child development and family services.

(2) Purpose

The fellowship program established under this subsection shall be designed to enhance the ability of Head Start Fellows to make significant contributions to programs authorized under this subchapter, by providing opportunities to expand their knowledge and experience through exposure to activities, issues, resources, and new approaches, in the field of child development and family services.

(3) Assignments of Fellows

(A) Placement sites

Fellowship positions under the fellowship program may be located (subject to subparagraphs (B) and (C))—

(i) in agencies of the Department of Health and Human Services administering

programs authorized under this subchapter (in national or regional offices of such agencies);

(ii) in local Head Start agencies and programs;

(iii) in institutions of higher education;

(iv) in public or private entities and organizations concerned with services to children and families; and

(v) in other appropriate settings.

(B) Limitation for Fellows other than Head Start employees

A Head Start Fellow who is not an employee of a local Head Start agency or program may be placed only in a fellowship position located in an agency or program specified in clause (i) or (ii) of subparagraph (A).

(C) No placement in lobbying organizations

Head Start Fellowship positions may not be located in any agency whose primary purpose, or one of whose major purposes, is to influence Federal, State, or local legislation.

(4) Selection of Fellows

Head Start Fellowships shall be awarded on a competitive basis to individuals (other than Federal employees) selected from among applicants who are working, on the date of application, in local Head Start programs or otherwise working in the field of child development and children and family services.

(5) Duration

Head Start Fellowships shall be for terms of 1 year, and may be renewed for a term of 1 additional year.

(6) Authorized expenditures

From amounts appropriated under this subchapter and allotted under section 9835(a)(2)(D) of this title, the Secretary is authorized to make expenditures of not to exceed $1,000,000 for any fiscal year, for stipends and other reasonable expenses of the fellowship program.

(7) Status of Fellows

Except as otherwise provided in this paragraph, Head Start Fellows shall not be considered to be employees or otherwise in the service or employment of the Federal Government. Head Start Fellows shall be considered to be employees for purposes of compensation for injuries under chapter 81 of title 5. Head Start Fellows assigned to positions located in agencies specified in paragraph (3)(A)(i) shall be considered employees in the executive branch of the Federal Government for the purposes of chapter 11 of title 18 and for purposes of any administrative standards of conduct applicable to the employees of the agency to which they are assigned.

(8) Regulations

The Secretary shall promulgate regulations to carry out this subsection.

(e) Model staffing plans

Not later than 1 year after May 18, 1994, the Secretary, in consultation with appropriate public agencies, private agencies, and organizations and with individuals with expertise in the field of children and family services, shall develop model staffing plans to provide guidance to local Head Start agencies and programs on the numbers, types, responsibilities, and qualifications of staff required to operate a Head Start program.

(Pub. L. 97–35, title VI, § 648A, as added Pub. L. 103–252, title I, § 115, May 18, 1994, 108 Stat. 643; amended Pub. L. 105–285, title I, § 115, Oct. 27, 1998, 112 Stat. 2722.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–285, § 115(1), amended heading and text of subsec. (a) generally. Prior to amendment, subsec. (a) required Secretary to ensure that not later than Sept. 30, 1996, each Head Start classroom in a center-based program was assigned a teacher with certain specified credentials and gave Secretary limited authority to waive that requirement.

Subsec. (b)(2)(B). Pub. L. 105–285, § 115(2), substituted ''staff or that are'' for ''staff, that are'' and struck out '', or that lack staff of a similar cultural background to that of the participating children and their families'' before semicolon.

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9844. Research, demonstrations, and evaluation

(a) In general

(1) Requirement; general purposes

The Secretary shall carry out a continuing program of research, demonstration, and evaluation activities, in order to—

(A) foster continuous improvement in the quality of the Head Start programs under this subchapter and in their effectiveness in enabling participating children and their families to succeed in school and otherwise; and

(B) use the Head Start programs to develop, test, and disseminate new ideas and approaches for addressing the needs of low-income preschool children (including children with disabilities) and their families and communities (including demonstrations of innovative noncenter-based program models such as home-based and mobile programs), and otherwise to further the purposes of this subchapter.

(2) Plan

The Secretary shall develop, and periodically update, a plan governing the research, demonstration, and evaluation activities under this section.

(b) Conduct of research, demonstration, and evaluation activities

The Secretary, in order to conduct research, demonstration, and evaluation activities under this section—

(1) may carry out such activities directly, or through grants to, or contracts or cooperative agreements with, public or private entities;

(2) shall, to the extent appropriate, undertake such activities in collaboration with

other Federal agencies, and with non-Federal agencies, conducting similar activities;

(3) shall ensure that evaluation of activities in a specific program or project is conducted by persons not directly involved in the operation of such program or project;

(4) may require Head Start agencies to provide for independent evaluations;

(5) may approve, in appropriate cases, community-based cooperative research and evaluation efforts to enable Head Start programs to collaborate with qualified researchers not directly involved in program administration or operation; and

(6) may collaborate with organizations with expertise in inclusive educational strategies for preschoolers with disabilities.

(c) Consultation and collaboration

In carrying out activities under this section, the Secretary shall—

(1) consult with—

(A) individuals from relevant academic disciplines;

(B) individuals who are involved in the operation of Head Start programs and individuals who are involved in the operation of other child and family service programs; and

(C) individuals from other Federal agencies, and individuals from organizations, involved with children and families, ensuring that the individuals described in this subparagraph reflect the multicultural nature of the children and families served by the Head Start programs and the multidisciplinary nature of the Head Start programs;

(2) whenever feasible and appropriate, obtain the views of persons participating in and served by programs and projects assisted under this subchapter with respect to activities under this section; and

(3) establish, to the extent appropriate, working relationships with the faculties of institutions of higher education, as defined in section 1001 of title 20, located in the area in which any evaluation under this section is being conducted, unless there is no such institution of higher education willing and able to participate in such evaluation.

(d) Specific objectives

The research, demonstration, and evaluation activities under this subchapter shall include components designed to—

(1) permit ongoing assessment of the quality and effectiveness of the programs under this subchapter;

(2) establish evaluation methods that measure the effectiveness and impact of family literacy services program models, including models for the integration of family literacy services with Head Start services;

(3) contribute to developing knowledge concerning factors associated with the quality and effectiveness of Head Start programs and in identifying ways in which services provided under this subchapter may be improved;

(4) assist in developing knowledge concerning the factors that promote or inhibit healthy development and effective functioning of children and their families both during and following participation in a Head Start program;

(5) permit comparisons of children and families participating in Head Start programs with children and families receiving other child care, early childhood education, or child development services and with other appropriate control groups;

(6) contribute to understanding the characteristics and needs of population groups eligible for services provided under this subchapter and the impact of such services on the individuals served and the communities in which such services are provided;

(7) provide for disseminating and promoting the use of the findings from such research, demonstration, and evaluation activities;

(8) promote exploration of areas in which knowledge is insufficient, and that will otherwise contribute to fulfilling the purposes of this subchapter;

(9) study the experiences of small, medium, and large States with Head Start programs in order to permit comparisons of children participating in the programs with eligible children who did not participate in the programs, which study—

(A) may include the use of a data set that existed prior to the initiation of the study; and

(B) shall compare the educational achievement, social adaptation, and health status of the participating children and the eligible nonparticipating children; and

(10) provide for—

(A) using the Survey of Income and Program Participation to conduct an analysis of the different income levels of Head Start participants compared to comparable persons who did not attend Head Start programs;

(B) using the National Longitudinal Survey of Youth, which began gathering data in 1988 on children who attended Head Start programs, to examine the wide range of outcomes measured within the Survey, including outcomes related to cognitive, socioemotional, behavioral, and academic development;

(C) using the Survey of Program Dynamics, the new longitudinal survey required by section 614 of this title, to begin annual reporting, through the duration of the Survey, on Head Start program attendees' academic readiness performance and improvements;

(D) ensuring that the Survey of Program Dynamics is linked with the National Longitudinal Survey of Youth at least once by the use of a common performance test, to be determined by the expert panel, for the greater national usefulness of the National Longitudinal Survey of Youth database; and

(E) disseminating the results of the analysis, examination, reporting, and linkage described in subparagraphs (A) through (D) to persons conducting other studies under this subchapter.

The Secretary shall ensure that an appropriate entity carries out a study described in paragraph (9), and prepares and submits to the ap-

propriate committees of Congress a report containing the results of the study, not later than September 30, 2002.

(e) Longitudinal studies

In developing priorities for research, demonstration, and evaluation activities under this section, the Secretary shall give special consideration to longitudinal studies that—

(1) examine the developmental progress of children and their families both during and following participation in a Head Start program, including the examination of factors that contribute to or detract from such progress;

(2) examine factors related to improving the quality of the Head Start programs and the preparation the programs provide for children and their families to function effectively in schools and other settings in the years following participation in such a program; and

(3) as appropriate, permit comparison of children and families participating in Head Start programs with children and families receiving other child care, early childhood education, or child development services, and with other appropriate control groups.

(f) Ownership of results

The Secretary shall take necessary steps to ensure that all studies, reports, proposals, and data produced or developed with Federal funds under this subchapter shall become the property of the United States.

(g) National Head Start impact research

(1) Expert panel

(A) In general

The Secretary shall appoint an independent panel consisting of experts in program evaluation and research, education, and early childhood programs—

(i) to review, and make recommendations on, the design and plan for the research (whether conducted as a single assessment or as a series of assessments) described in paragraph (2), within 1 year after October 27, 1998;

(ii) to maintain and advise the Secretary regarding the progress of the research; and

(iii) to comment, if the panel so desires, on the interim and final research reports submitted under paragraph (7).

(B) Travel expenses

The members of the panel shall not receive compensation for the performance of services for the panel, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the panel. Notwithstanding section 1342 of title 31, the Secretary may accept the voluntary and uncompensated services of members of the panel.

(2) General authority

After reviewing the recommendations of the expert panel, the Secretary shall make a grant to, or enter into a contract or cooperative agreement with, an organization to conduct independent research that provides a national analysis of the impact of Head Start programs. The Secretary shall ensure that the organization shall have expertise in program evaluation, and research, education, and early childhood programs.

(3) Designs and techniques

The Secretary shall ensure that the research uses rigorous methodological designs and techniques (based on the recommendations of the expert panel), including longitudinal designs, control groups, nationally recognized standardized measures, and random selection and assignment, as appropriate. The Secretary may provide that the research shall be conducted as a single comprehensive assessment or as a group of coordinated assessments designed to provide, when taken together, a national analysis of the impact of Head Start programs.

(4) Programs

The Secretary shall ensure that the research focuses primarily on Head Start programs that operate in the 50 States, the Commonwealth of Puerto Rico, or the District of Columbia and that do not specifically target special populations.

(5) Analysis

The Secretary shall ensure that the organization conducting the research—

(A)(i) determines if, overall, the Head Start programs have impacts consistent with their primary goal of increasing the social competence of children, by increasing the everyday effectiveness of the children in dealing with their present environments and future responsibilities, and increasing their school readiness;

(ii) considers whether the Head Start programs—

(I) enhance the growth and development of children in cognitive, emotional, and physical health areas;

(II) strengthen families as the primary nurturers of their children; and

(III) ensure that children attain school readiness; and

(iii) examines—

(I) the impact of the Head Start programs on increasing access of children to such services as educational, health, and nutritional services, and linking children and families to needed community services; and

(II) how receipt of services described in subclause (I) enriches the lives of children and families participating in Head Start programs;

(B) examines the impact of Head Start programs on participants on the date the participants leave Head Start programs, at the end of kindergarten and at the end of first grade (whether in public or private school), by examining a variety of factors, including educational achievement, referrals for special education or remedial course work, and absenteeism;

(C) makes use of random selection from the population of all Head Start programs described in paragraph (4) in selecting programs for inclusion in the research; and

(D) includes comparisons of individuals who participate in Head Start programs with control groups (including comparison groups) composed of—

(i) individuals who participate in other early childhood programs (such as public or private preschool programs and day care); and

(ii) individuals who do not participate in any other early childhood program.

(6) Consideration of sources of variation

In designing the research, the Secretary shall, to the extent practicable, consider addressing possible sources of variation in impact of Head Start programs, including variations in impact related to such factors as—

(A) Head Start program operations;

(B) Head Start program quality;

(C) the length of time a child attends a Head Start program;

(D) the age of the child on entering the Head Start program;

(E) the type of organization (such as a local educational agency or a community action agency) providing services for the Head Start program;

(F) the number of hours and days of program operation of the Head Start program (such as whether the program is a full-working-day, full calendar year program, a part-day program, or a part-year program); and

(G) other characteristics and features of the Head Start program (such as geographic location, location in an urban or a rural service area, or participant characteristics), as appropriate.

(7) Reports

(A) Submission of interim reports

The organization shall prepare and submit to the Secretary two interim reports on the research. The first interim report shall describe the design of the research, and the rationale for the design, including a description of how potential sources of variation in impact of Head Start programs have been considered in designing the research. The second interim report shall describe the status of the research and preliminary findings of the research, as appropriate.

(B) Submission of final report

The organization shall prepare and submit to the Secretary a final report containing the findings of the research.

(C) Transmittal of reports to Congress

(i) In general

The Secretary shall transmit, to the committees described in clause (ii), the first interim report by September 30, 1999, the second interim report by September 30, 2001, and the final report by September 30, 2003.

(ii) Committees

The committees referred to in clause (i) are the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(8) Definition

In this subsection, the term ''impact'', used with respect to a Head Start program, means a difference in an outcome for a participant in the program that would not have occurred without the participation in the program.

(h) Quality improvement study

(1) Study

The Secretary shall conduct a study regarding the use and effects of use of the quality improvement funds made available under section 9835(a)(3) of this title since fiscal year 1991.

(2) Report

The Secretary shall prepare and submit to Congress not later than September 2000 a report containing the results of the study, including information on—

(A) the types of activities funded with the quality improvement funds;

(B) the extent to which the use of the quality improvement funds has accomplished the goals of section 9835(a)(3)(B) of this title;

(C) the effect of use of the quality improvement funds on teacher training, salaries, benefits, recruitment, and retention; and

(D) the effect of use of the quality improvement funds on the development of children receiving services under this subchapter.

(Pub. L. 97–35, title VI, § 649, Aug. 13, 1981, 95 Stat. 505; Pub. L. 98–558, title I, § 107, Oct. 30, 1984, 98 Stat. 2880; Pub. L. 101–501, title I, § 117(a), Nov. 3, 1990, 104 Stat. 1233; Pub. L. 103–252, title I, § 116, May 18, 1994, 108 Stat. 646; Pub. L. 105–244, title I, § 102(a)(13)(G), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 105–285, title I, § 116, Oct. 27, 1998, 112 Stat. 2723.)

AMENDMENTS

1998—Subsec. (c)(3). Pub. L. 105–244 substituted ''section 1001'' for ''section 1141(a)''.

Subsec. (d). Pub. L. 105–285, § 116(1)(E), inserted concluding provisions.

Subsec. (d)(2) to (8). Pub. L. 105–285, § 116(1)(C), (D), added par. (2) and redesignated former pars. (2) to (7) as (3) to (8), respectively.

Subsec. (d)(9), (10). Pub. L. 105–285, § 116(1)(A), (B), (E), added pars. (9) and (10).

Subsecs. (g), (h). Pub. L. 105–285, § 116(2), added subsecs. (g) and (h).

1994—Pub. L. 103–252 substituted ''Research, demonstrations, and evaluation'' for ''Research, demonstration, pilot projects, studies, and reports'' in section catchline and amended text generally, substituting provisions requiring Secretary to conduct a research, demonstration, and evaluation program to continually improve Head Start programs and develop innovative ways to further purposes of this subchapter, consult with others on the program, consider longitudinal studies in developing priorities for program, and ensure all products of program become United States property and defining objectives of program, for provisions authorizing the Secretary to provide financial assistance through contracts and grants for research, demonstration or pilot projects to develop new approaches to further purposes of this subchapter, directing Secretary to

establish plan for approval of such projects, restricting combination of funds appropriated under this subchapter with other appropriations to make a single grant, requiring Secretary to conduct study of approaches to provide early, continuous, and comprehensive intervention to low-income or at-risk children and study of family day care in compliance with performance standards and to report results of studies to Congress.

1990—Pub. L. 101–501, § 117(a)(1), substituted ''Research, demonstration, pilot projects, studies, and reports'' for ''Research, demonstration, and pilot projects'' in section catchline.

Subsecs. (d) to (f). Pub. L. 101–501, § 117(a)(2), added subsecs. (d) to (f).

1984—Subsec. (c). Pub. L. 98–558 added subsec. (c).

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

STUDY OF FULL-DAY AND FULL-YEAR HEAD START PROGRAMS

Section 126 of Pub. L. 103–252 directed Secretary of Health and Human Services to conduct a study of extent to which Head Start programs address the need for Head Start services during a full working day or full calendar year among eligible low-income families with preschool children and to submit a report to Congress not later than Jan. 31, 1997.

§ 9845. Repealed. Pub. L. 103–252, title I, § 117, May 18, 1994, 108 Stat. 648

Section, Pub. L. 97–35, title VI, § 650, Aug. 13, 1981, 95 Stat. 505; Pub. L. 101–501, title I, § 117(c), Nov. 3, 1990, 104 Stat. 1233, directed Secretary to make public announcement concerning grants or contracts for research, demonstrations, pilot projects, studies, or reports under this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9846. Reports

(a) Status of children

At least once during every 2-year period, the Secretary shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the status of children (including disabled and non-English language background children) in Head Start programs, including the number of children and the services being provided to such children. Such report shall include—

(1) a statement for the then most recently concluded fiscal year specifying—

(A) the amount of funds received by Head Start agencies designated under section 9836 of this title to provide Head Start services in a period before such fiscal year; and

(B) the amount of funds received by Head Start agencies newly designated under section 9836 of this title to provide such services in such fiscal year;

(2) a description of the distribution of Head Start services relative to the distribution of children who are eligible to participate in Head Start programs, including geographic distribution within States;

(3) a statement identifying how funds expended under section 9835(a)(2) of this title, and funds allotted under section 9835(a)(3) of this title, were distributed and used at national, regional, and local levels;

(4) a statement specifying the amount of funds provided by the State, and by local sources, to carry out Head Start programs;

(5) cost per child and how such cost varies by region;

(6) a description of the level and nature of participation of parents in Head Start programs as volunteers and in other capacities;

(7) information concerning Head Start staff, including salaries, education, training, experience, and staff turnover;

(8) information concerning children participating in programs that receive Head Start funding, including information on family income, racial and ethnic background, disability, and receipt of benefits under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.];

(9) the use and source of funds to extend Head Start services to operate full-day and year round;

(10) using data from the monitoring conducted under section 9836a(c) of this title—

(A) a description of the extent to which programs funded under this subchapter comply with performance standards and regulations in effect under this subchapter;

(B) a description of the types and condition of facilities in which such programs are located;

(C) the types of organizations that receive Head Start funds under such programs; and

(D) the number of children served under each program option;

(11) the information contained in the documents entitled ''Program Information Report'' and ''Head Start Cost Analyses System'' (or any document similar to either), prepared with respect to Head Start programs;

(12) a description of the types of services provided to children and their families, both on-site and through referrals, including health, mental health, dental care, parenting education, physical fitness, and literacy training;

(13) a summary of information concerning the research, demonstration, and evaluation activities conducted under section 9844 of this title, including—

(A) a status report on ongoing activities; and

(B) results, conclusions, and recommendations, not included in any previous report, based on completed activities; and

(14) a study of the delivery of Head Start programs to Indian children living on and near Indian reservations, to children of Alaskan Natives, and to children of migrant and seasonal farmworkers.

Promptly after submitting such report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, the Secretary shall publish in the Federal Register a notice indicating that such report is available to the public and specifying how such report may be obtained.

(b) Facilities

At least once during every 5-year period, the Secretary shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the condition, location, and ownership of facilities used, or available to be used, by Indian Head Start agencies (including Native Alaskan Head Start agencies) and Native Hawaiian Head Start agencies.

(Pub. L. 97–35, title VI, § 650, formerly § 651, Aug. 13, 1981, 95 Stat. 506; Pub. L. 98–558, title I, § 108, Oct. 30, 1984, 98 Stat. 2880; Pub. L. 101–501, title I, §§ 118, 119, Nov. 3, 1990, 104 Stat. 1234; Pub. L. 102–401, § 2(k)(5), Oct. 7, 1992, 106 Stat. 1959; renumbered § 650 and amended Pub. L. 103–252, title I, § 118, May 18, 1994, 108 Stat. 648; Pub. L. 105–285, title I, § 117, Oct. 27, 1998, 112 Stat. 2727.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(8), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1998—Pub. L. 105–285 designated existing provisions as subsec. (a), inserted heading, substituted ''Education and the Workforce'' for ''Education and Labor'' in introductory and concluding provisions, and added subsec. (b).

1994—Pub. L. 103–252, § 118(a)(1), substituted ''Reports'' for ''Evaluation'' in section catchline.

Subsecs. (a) to (f). Pub. L. 103–252, § 118(a)(1), struck out subsecs. (a) to (f) which related to evaluations of programs under this subchapter to determine impact and effectiveness, adherence to Head Start performance standards, persons or entities assisting in evaluations, Secretary obtaining views of program participants, publication and submission of results to congressional committees, and all studies and evaluation material remaining property of the United States.

Subsec. (g). Pub. L. 103–252, § 118(a)(2)–(4), struck out subsec. (g) designation, substituted ''monitoring conducted under section 9836a(c) of this title'' for ''evaluations conducted under section 9836(c)(2) of this title'' in par. (10), and added pars. (13) and (14).

1992—Subsec. (g). Pub. L. 102–401 struck out ''(1)'' before ''At least'' at beginning of subsec. and substituted ''physical'' for ''physicial'' in par. (12).

1990—Subsec. (c)(2). Pub. L. 101–501, § 118, inserted at end ''The Secretary is encouraged to provide funds for community-based cooperative research efforts to enable Head Start directors to conduct evaluations of their programs with the assistance of qualified researchers not directly involved in the administration of the program or project operation.''

Subsec. (g). Pub. L. 101–501, § 119, added subsec. (g).

1984—Subsec. (b). Pub. L. 98–558 substituted ''not result in the elimination of nor any reduction in the scope or types of health, education, parental involvement, social or other services required to be provided under the standards'' for ''result in standards which are no less comprehensive than those'' in second sentence.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 4th item on page 79 identifies a reporting provision which, as subsequently amended, is contained in subsec. (a) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§§ 9846a, 9847. Repealed. Pub. L. 103–252, title I, § 119, May 18, 1994, 108 Stat. 648

Section 9846a, Pub. L. 97–35, title VI, § 651A, as added Pub. L. 101–501, title I, § 120(a), Nov. 3, 1990, 104 Stat. 1235; amended Pub. L. 102–401, § 2(k)(6), Oct. 7, 1992, 106 Stat. 1959, related to longitudinal study of Head Start participants.

Section 9847, Pub. L. 97–35, title VI, § 652, Aug. 13, 1981, 95 Stat. 506; Pub. L. 101–501, title I, § 121(a), (c), Nov. 3, 1990, 104 Stat. 1237, directed Secretary to annually determine poverty line to be used as criterion of eligibility for participation in Head Start programs.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9848. Comparability of wages

The Secretary shall take such action as may be necessary to assure that persons employed in

carrying out programs financed under this subchapter shall not receive compensation at a rate which is (1) in excess of the average rate of compensation paid in the area where the program is carried out to a substantial number of the persons providing substantially comparable services, or in excess of the average rate of compensation paid to a substantial number of the persons providing substantially comparable services in the area of the person's immediately preceding employment, whichever is higher; or (2) less than the minimum wage rate prescribed in section 206(a)(1) of title 29. The Secretary shall encourage Head Start agencies to provide compensation according to salary scales that are based on training and experience.

(Pub. L. 97–35, title VI, § 653, Aug. 13, 1981, 95 Stat. 507; Pub. L. 101–501, title I, § 122, Nov. 3, 1990, 104 Stat. 1237.)

AMENDMENTS

1990—Pub. L. 101–501 inserted at end ''The Secretary shall encourage Head Start agencies to provide compensation according to salary scales that are based on training and experience.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

§ 9849. Nondiscrimination provisions

(a) Discrimination based on race, creed, color, etc., as basis for denial of financial assistance

The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract with respect thereto specifically provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity because of race, creed, color, national origin, sex, political affiliation, or beliefs.

(b) Sex discrimination; enforcement provisions applicable

No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under this subchapter. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 2000d–1 of this title. Section 2000d–2 of this title shall apply with respect to any action taken by the Secretary to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if such person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program, project, or activity receiving assistance under this subchapter.

(c) Discrimination based on handicapping condition as basis for denial of financial assistance

The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract relating to the financial assistance specifically provides that no person with responsibilities in the operation of the program, project, or activity will discriminate against any individual because of a handicapping condition in violation of section 794 of title 29.

(Pub. L. 97–35, title VI, § 654, Aug. 13, 1981, 95 Stat. 507.)

§ 9850. Limitation with respect to certain unlawful activities

No individual employed or assigned by any Head Start agency or other agency assisted under this subchapter shall, pursuant to or during the performance of services rendered in connection with any program or activity conducted or assisted under this subchapter by such Head Start agency or such other agency, plan, initiate, participate in, or otherwise aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance.

(Pub. L. 97–35, title VI, § 655, Aug. 13, 1981, 95 Stat. 507.)

§ 9851. Political activities

(a) For purposes of chapter 15 of title 5, any agency which assumes responsibility for planning, developing, and coordinating Head Start programs and receives assistance under this subchapter shall be deemed to be a State or local agency. For purposes of clauses (1) and (2) of section 1502(a) of such title, any agency receiving assistance under this subchapter shall be deemed to be a State or local agency.

(b) Programs assisted under this subchapter shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or (3) any voter registration activity. The Secretary, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.

(Pub. L. 97–35, title VI, § 656, Aug. 13, 1981, 95 Stat. 508.)

§ 9852. Advance funding

For the purpose of affording adequate notice of funding available under this subchapter, appropriations for carrying out this subchapter are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(Pub. L. 97–35, title VI, § 657, Aug. 13, 1981, 95 Stat. 508.)

§ 9852a. Repealed. Pub. L. 105–285, title I, § 118, Oct. 27, 1998, 112 Stat. 2727

Section, Pub. L. 97–35, title VI, § 657A, as added Pub. L. 103–252, title I, § 123, May 18, 1994, 108 Stat. 650, related to consultation with Corporation for National and Community Service.

SUBCHAPTER II–A—HEAD START TRANSITION PROJECT

§§ 9855 to 9855g. Repealed. Pub. L. 105–285, title I, § 119, Oct. 27, 1998, 112 Stat. 2728

Section 9855, Pub. L. 101–501, title I, § 132, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103–382, title III, § 391(v)(1), Oct. 20, 1994, 108 Stat. 4025, defined terms used in this subchapter.

Section 9855a, Pub. L. 101–501, title I, § 133, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103–252, title I, § 125(a), May 18, 1994, 108 Stat. 650, related to Head Start transition grants.

Section 9855b, Pub. L. 101–501, title I, § 134, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103–382, title III, § 391(v)(2), (3), Oct. 20, 1994, 108 Stat. 4025, related to eligibility for Head Start transition grants.

Section 9855c, Pub. L. 101–501, title I, § 135, Nov. 3, 1990, 104 Stat. 1239; Pub. L. 103–382, title III, § 391(v)(4), Oct. 20, 1994, 108 Stat. 4025, related to requirements for awarding Head Start transition grants.

Section 9855d, Pub. L. 101–501, title I, § 136, Nov. 3, 1990, 104 Stat. 1239; Pub. L. 102–119, § 26(d), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103–382, title III, § 391(v)(5)–(7), Oct. 20, 1994, 108 Stat. 4025, related to applications for Head Start transition grants.

Section 9855e, Pub. L. 101–501, title I, § 137, Nov. 3, 1990, 104 Stat. 1241, related to evaluation of and report on programs assisted under Head Start transition project.

Section 9855f, Pub. L. 101–501, title I, § 138, Nov. 3, 1990, 104 Stat. 1242, related to payments and Federal share of payments under Head Start transition project.

Section 9855g, Pub. L. 101–501, title I, § 139, Nov. 3, 1990, 104 Stat. 1242, related to coordination with programs established under the Follow Through Act.

SUBCHAPTER II–B—CHILD CARE AND DEVELOPMENT BLOCK GRANT

CODIFICATION

Subchapter is based on subchapter C of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–236, and amended by Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.

§ 9858. Authorization of appropriations

There is authorized to be appropriated to carry out this subchapter $1,000,000,000 for each of the fiscal years 1996 through 2002.

(Pub. L. 97–35, title VI, § 658B, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–236; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, § 603(a), Aug. 22, 1996, 110 Stat. 2279.)

AMENDMENTS

1996—Pub. L. 104–193 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out this subchapter, $750,000,000 for fiscal year 1991, $825,000,000 for fiscal year 1992, $925,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995.''

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 615 of title VI of Pub. L. 104–193 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), this title [see Short title of 1996 Amendment note set out under section 9801 of this title] and the amendments made by this title shall take effect on October 1, 1996.

''(b) EXCEPTION.—The amendment made by section 603(a) [amending this section] shall take effect on the date of enactment of this Act [Aug. 22, 1996].''

SHORT TITLE

For short title of this subchapter as the Child Care and Development Block Grant Act of 1990, see section 658A(a) of Pub. L. 97–35, as amended, set out as a note under section 9801 of this title.

GOALS OF SUBCHAPTER

Section 658A(b) of subchapter C (§ 658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 104–193, title VI, § 602(3), Aug. 22, 1996, 110 Stat. 2279, provided that: ''The goals of this subchapter are—

''(1) to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such State;

''(2) to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;

''(3) to encourage States to provide consumer education information to help parents make informed choices about child care;

''(4) to assist States to provide child care to parents trying to achieve independence from public assistance; and

''(5) to assist States in implementing the health, safety, licensing, and registration standards established in State regulations.''

§ 9858a. Establishment of block grant program

The Secretary is authorized to make grants to States in accordance with the provisions of this subchapter.

(Pub. L. 97–35, title VI, § 658C, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–236; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

§ 9858b. Lead agency

(a) Designation

The chief executive officer of a State desiring to receive a grant under this subchapter shall designate, in an application submitted to the Secretary under section 9858c of this title, an appropriate State agency that complies with the requirements of subsection (b) of this section to act as the lead agency.

(b) Duties

(1) In general

The lead agency shall—

(A) administer, directly or through other governmental or nongovernmental agencies,

the financial assistance received under this subchapter by the State;

(B) develop the State plan to be submitted to the Secretary under section 9858c(a) of this title;

(C) in conjunction with the development of the State plan as required under subparagraph (B), hold at least one hearing in the State with sufficient time and Statewide distribution of the notice of such hearing, to provide to the public an opportunity to comment on the provision of child care services under the State plan; and

(D) coordinate the provision of services under this subchapter with other Federal, State and local child care and early childhood development programs.

(2) Development of plan

In the development of the State plan described in paragraph (1)(B), the lead agency shall consult with appropriate representatives of units of general purpose local government.

(Pub. L. 97–35, title VI, § 658D, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–236; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, § 604, Aug. 22, 1996, 110 Stat. 2281.)

AMENDMENTS

1996—Subsec. (b)(1)(A). Pub. L. 104–193, § 604(1)(A), substituted ''governmental or nongovernmental agencies'' for ''State agencies''.

Subsec. (b)(1)(C). Pub. L. 104–193, § 604(1)(B), inserted ''with sufficient time and Statewide distribution of the notice of such hearing,'' after ''hearing in the State''.

Subsec. (b)(2). Pub. L. 104–193, § 604(2), struck out at end ''Such consultations may include consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this subchapter can be used to effectively address local shortages.''

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title

§ 9858c. Application and plan

(a) Application

To be eligible to receive assistance under this subchapter, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by rule require, including—

(1) an assurance that the State will comply with the requirements of this subchapter; and

(2) a State plan that meets the requirements of subsection (c) of this section.

(b) Period covered by plan

The State plan contained in the application under subsection (a) of this section shall be designed to be implemented during a 2-year period.

(c) Requirements of a plan

(1) Lead agency

The State plan shall identify the lead agency designated under section 9858b of this title.

(2) Policies and procedures

The State plan shall:

(A) Parental choice of providers

Provide assurances that—

(i) the parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under this subchapter are given the option either—

(I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or

(II) to receive a child care certificate as defined in section 9858n(2) of this title;

(ii) in cases in which the parent selects the option described in clause (i)(I), the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; and

(iii) child care certificates offered to parents selecting the option described in clause (i)(II) shall be of a value commensurate with the subsidy value of child care services provided under the option described in clause (i)(I);

and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph.

(B) Unlimited parental access

Certify that procedures are in effect within the State to ensure that child care providers who provide services for which assistance is made available under this subchapter afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operation of such providers and whenever such children are in the care of such providers and provide a detailed description of such procedures.

(C) Parental complaints

Certify that the State maintains a record of substantiated parental complaints and makes information regarding such parental complaints available to the public on request and provide a detailed description of how such record is maintained and is made available.

(D) Consumer education information

Certify that the State will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.

(E) Compliance with State licensing requirements

(i) In general

Certify that the State has in effect licensing requirements applicable to child care services provided within the State, and provide a detailed description of such requirements and of how such requirements are effectively enforced. Nothing in the preceding sentence shall be construed to require that licensing requirements be

applied to specific types of providers of child care services.

(ii) Indian tribes and tribal organizations

In lieu of any licensing and regulatory requirements applicable under State and local law, the Secretary, in consultation with Indian tribes and tribal organizations, shall develop minimum child care standards (that appropriately reflect tribal needs and available resources) that shall be applicable to Indian tribes and tribal organizations receiving assistance under this subchapter.

(F) Establishment of health and safety requirements

Certify that there are in effect within the State, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under this subchapter. Such requirements shall include—

(i) the prevention and control of infectious diseases (including immunization);

(ii) building and physical premises safety; and

(iii) minimum health and safety training appropriate to the provider setting.

Nothing in this subparagraph shall be construed to require the establishment of additional health and safety requirements for child care providers that are subject to health and safety requirements in the categories described in this subparagraph on November 5, 1990, under State or local law.

(G) Compliance with State and local health and safety requirements

Certify that procedures are in effect to ensure that child care providers within the State that provide services for which assistance is provided under this subchapter comply with all applicable State or local health and safety requirements as described in subparagraph (F).

(H) Meeting the needs of certain populations

Demonstrate the manner in which the State will meet the specific child care needs of families who are receiving assistance under a State program under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], families who are attempting through work activities to transition off of such assistance program, and families that are at risk of becoming dependent on such assistance program.

(3) Use of block grant funds

(A) General requirement

The State plan shall provide that the State will use the amounts provided to the State for each fiscal year under this subchapter as required under subparagraphs (B) through (D).

(B) Child care services and related activities

The State shall use amounts provided to the State for each fiscal year under this subchapter for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b),[1] with priority being given for services provided to children of families with very low family incomes (taking into consideration family size) and to children with special needs.

(C) Limitation on administrative costs

Not more than 5 percent of the aggregate amount of funds available to the State to carry out this subchapter by a State in each fiscal year may be expended for administrative costs incurred by such State to carry out all of its functions and duties under this subchapter. As used in the preceding sentence, the term ''administrative costs'' shall not include the costs of providing direct services.

(D) Assistance for certain families

A State shall ensure that a substantial portion of the amounts available (after the State has complied with the requirement of section 418(b)(2) of the Social Security Act [42 U.S.C. 618(b)(2)] with respect to each of the fiscal years 1997 through 2002) to the State to carry out activities under this subchapter in each fiscal year is used to provide assistance to low-income working families other than families described in paragraph (2)(H).

(4) Payment rates

(A) In general

The State plan shall certify that payment rates for the provision of child care services for which assistance is provided under this subchapter are sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this subchapter or for child care assistance under any other Federal or State programs and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access.

(B) Construction

Nothing in this paragraph shall be construed to create a private right of action.

(5) Sliding fee scale

The State plan shall provide that the State will establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services for which assistance is provided under this subchapter.

(d) Approval of application

The Secretary shall approve an application that satisfies the requirements of this section.

(Pub. L. 97–35, title VI, § 658E, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat.

[1] See References in Text note below.

1388–237; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, § 605, Aug. 22, 1996, 110 Stat. 2281; Pub. L. 105–33, title V, § 5602(1), Aug. 5, 1997, 111 Stat. 645.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2)(H), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Paragraphs (2) through (5) of section 658A(b), referred to in subsec. (c)(3)(B), means pars. (2) through (5) of section 658A(b) of Pub. L. 97–35, which are set out as a note under section 9858 of this title.

AMENDMENTS

1997—Subsec. (c)(2)(E)(ii). Pub. L. 105–33 substituted ''tribal organizations receiving'' for ''tribal organization receiving''.

1996—Subsec. (b). Pub. L. 104–193, § 605(1), substituted ''implemented during a 2-year period'' for ''implemented—

''(1) during a 3-year period for the initial State plan; and

''(2) during a 2-year period for subsequent State plans''.

Subsec. (c)(2)(A). Pub. L. 104–193, § 605(2)(A)(i)(II), in closing provisions, substituted ''and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph.'' for ''except that nothing in this subparagraph shall require a State to have a child care certificate program in operation prior to October 1, 1992.''

Subsec. (c)(2)(A)(i). Pub. L. 104–193, § 605(2)(A)(i)(I), struck out '', other than through assistance provided under paragraph (3)(C),'' after ''provided under this subchapter'' in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 104–193, § 605(2)(A)(ii), substituted ''Certify that procedures are in effect'' for ''Provide assurances that procedures are in effect'' and inserted before period at end ''and provide a detailed description of such procedures''.

Subsec. (c)(2)(C). Pub. L. 104–193, § 605(2)(A)(iii), substituted ''Certify that the State maintains'' for ''Provide assurances that the State maintains'' and inserted before period at end ''and provide a detailed description of how such record is maintained and is made available''.

Subsec. (c)(2)(D). Pub. L. 104–193, § 605(2)(A)(iv), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''Provide assurances that consumer education information will be made available to parents and the general public within the State concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State.''

Subsec. (c)(2)(E). Pub. L. 104–193, § 605(2)(A)(v), amended heading and text of subpar. (E) generally, substituting provisions relating to compliance with State licensing requirements for provisions relating to compliance with State and local regulatory requirements.

Subsec. (c)(2)(F), (G). Pub. L. 104–193, § 605(2)(A)(vi), (vii), substituted ''Certify'' for ''Provide assurances''.

Subsec. (c)(2)(H). Pub. L. 104–193, § 605(2)(A)(viii), added subpar. (H) and struck out heading and text of former subpar. (H). Text read as follows: ''Provide assurances that if the State reduces the level of standards applicable to child care services provided in the State on November 5, 1990, the State shall inform the Secretary of the rationale for such reduction in the annual report of the State described in section 9858i of this title.''

Subsec. (c)(2)(I). Pub. L. 104–193, § 605(2)(A)(viii), struck out heading and text of subpar. (I). Text read as follows: ''Provide assurances that not later than 18 months after the date of the submission of the application under this section, the State will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 3-year period ending on November 5, 1990.''

Subsec. (c)(2)(J). Pub. L. 104–193, § 605(2)(A)(viii), struck out heading and text of subpar. (J). Text read as follows: ''Provide assurances that funds received under this subchapter by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs in the State.''

Subsec. (c)(3)(A). Pub. L. 104–193, § 605(2)(B)(i), substituted ''subparagraphs (B) through (D)'' for ''subparagraphs (B) and (C)''.

Subsec. (c)(3)(B). Pub. L. 104–193, § 605(2)(B)(ii), inserted ''and related activities'' after ''services'' in heading, substituted ''The'' for ''Subject to the reservation contained in subparagraph (C), the'', substituted ''for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b)'' for ''for—

''(i) child care services, that meet the requirements of this subchapter, that are provided to eligible children in the State on a sliding fee scale basis using funding methods provided for in subsection (c)(2)(A) of this section'', substituted ''special needs.'' for ''special needs; and'', and struck out cl. (ii) which read as follows: ''activities designed to improve the availability and quality of child care.''

Subsec. (c)(3)(C). Pub. L. 104–193, § 605(2)(B)(iii), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''The State shall reserve 25 percent of the amounts provided to the State for each fiscal year under this subchapter to carry out activities designed to improve the quality of child care (as described in section 9858e of this title) and to provide before- and after-school and early childhood development services (as described in section 9858f of this title).''

Subsec. (c)(3)(D). Pub. L. 104–193, § 605(2)(B)(iv), added subpar. (D).

Subsec. (c)(4)(A). Pub. L. 104–193, § 605(2)(C), substituted ''State plan shall certify'' for ''State plan shall provide assurances'', inserted ''and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access'' after ''Federal or State programs'', and struck out at end ''Such payment rates shall take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional costs of providing child care for children with special needs.''

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5603 of Pub. L. 105–33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

§ 9858d. Limitations on State allotments

(a) No entitlement to contract or grant

Nothing in this subchapter shall be construed—

(1) to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit; or

(2) to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subchapter.

(b) Construction of facilities

(1) In general

Except as provided for in section 9858m(c)(6) of this title, no funds made available under this subchapter shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

(2) Sectarian agency or organization

In the case of a sectarian agency or organization, no funds made available under this subchapter may be used for the purposes described in paragraph (1) except to the extent that renovation or repair is necessary to bring the facility of such agency or organization into compliance with health and safety requirements referred to in section 9858c(c)(2)(F) of this title.

(Pub. L. 97–35, title VI, § 658F, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–240; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, § 606, Aug. 22, 1996, 110 Stat. 2283.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–193 substituted ''Except as provided for in section 9858m(c)(6) of this title, no funds'' for ''No funds''.

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

§ 9858e. Activities to improve quality of child care

A State that receives funds to carry out this subchapter for a fiscal year, shall use not less than 4 percent of the amount of such funds for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care (such as resource and referral services).

(Pub. L. 97–35, title VI, § 658G, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–241; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, § 607, Aug. 22, 1996, 110 Stat. 2283.)

AMENDMENTS

1996—Pub. L. 104–193 reenacted section catchline without change and amended text generally, substituting current provisions for provisions requiring State receiving financial assistance under this subchapter to utilize not less than 20 percent of such assistance for one or more of following: resource and referral programs, grants or loans to assist in meeting State and local standards, monitoring of compliance with licensing and regulatory requirements, training, or improving salaries or other compensation to staff.

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

§ 9858f. Repealed. Pub. L. 104–193, title VI, § 608, Aug. 22, 1996, 110 Stat. 2284

Section, Pub. L. 97–35, title VI, § 658H, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–241; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036, related to early childhood development and before- and after-school services.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 9858 of this title.

§ 9858g. Administration and enforcement

(a) Administration

The Secretary shall—

(1) coordinate all activities of the Department of Health and Human Services relating to child care, and, to the maximum extent practicable, coordinate such activities with similar activities of other Federal entities;

(2) collect, publish and make available to the public a listing of State child care standards at least once every 3 years; and

(3) provide technical assistance to assist States to carry out this subchapter, including assistance on a reimbursable basis.

(b) Enforcement

(1) Review of compliance with State plan

The Secretary shall review and monitor State compliance with this subchapter and the plan approved under section 9858c(c) of this title for the State.

(2) Noncompliance

(A) In general

If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that—

(i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the plan approved under section 9858c(c) of this title for the State; or

(ii) in the operation of any program for which assistance is provided under this subchapter there is a failure by the State to comply substantially with any provision of this subchapter;

the Secretary shall notify the State of the finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the State allotment for the following fiscal year an amount that is

less than or equal to any improperly expended funds, or a combination of such options.

(B) Additional sanctions

In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to imposing the sanctions described in such subparagraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subchapter, and disqualification from the receipt of financial assistance under this subchapter.

(C) Notice

The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed under subparagraph (B).

(3) Issuance of rules

The Secretary shall establish by rule procedures for—

(A) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subchapter; and

(B) imposing sanctions under this section.

(Pub. L. 97–35, title VI, § 658I, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–242; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, § 609, Aug. 22, 1996, 110 Stat. 2284.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–193, § 609(1), struck out ‘‘, and shall have the power to terminate payments to the State in accordance with paragraph (2)’’ before period at end.

Subsec. (b)(2)(A). Pub. L. 104–193, § 609(2), in closing provisions, substituted before period at end ‘‘finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the State allotment for the following fiscal year an amount that is less than or equal to any improperly expended funds, or a combination of such options’’ for ‘‘finding and that no further payments may be made to such State under this subchapter (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected’’.

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

§ 9858h. Payments

(a) In general

Subject to the availability of appropriations, a State that has an application approved by the Secretary under section 9858c(d) of this title shall be entitled to a payment under this section for each fiscal year in an amount equal to its allotment under section 9858m of this title for such fiscal year.

(b) Method of payment

(1) In general

Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(2) Limitation

The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 9858c(c)(3) of this title.

(c) Spending of funds by State

Payments to a State from the allotment under section 9858m of this title for any fiscal year may be obligated by the State in that fiscal year or in the succeeding fiscal year.

(Pub. L. 97–35, title VI, § 658J, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–243; amended Pub. L. 102–27, title III, § 310, Apr. 10, 1991, 105 Stat. 153; Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(a), (c)(1), Nov. 4, 1992, 106 Stat. 5035, 5036; Pub. L. 103–171, § 8, Dec. 2, 1993, 107 Stat. 1994; Pub. L. 104–193, title VI, § 610, Aug. 22, 1996, 110 Stat. 2284.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–193 substituted ‘‘obligated’’ for ‘‘expended’’ and ‘‘succeeding fiscal year’’ for ‘‘succeeding 3 fiscal years’’.

1993—Subsec. (c). Pub. L. 103–171 made technical correction to directory language of Pub. L. 102–586, § 8(a). See 1992 Amendment note below.

1992—Pub. L. 102–401 and Pub. L. 102–586, § 8(c)(1), made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

Subsec. (c). Pub. L. 102–586, § 8(a), as amended by Pub. L. 103–171, substituted ‘‘expended’’ for ‘‘obligated’’ and ‘‘succeeding 3 fiscal years’’ for ‘‘succeeding fiscal year’’.

1991—Subsec. (c). Pub. L. 102–27 substituted ‘‘obligated’’ for ‘‘expended’’.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 8(d) of Pub. L. 102–586 provided that:

‘‘(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 9858q of this title and amending this section and section 9858n of this title] shall take effect on the date of enactment of this Act [Nov. 4, 1992].

‘‘(2) APPLICATION.—The amendments made by this section shall not apply with respect to fiscal years beginning before October 1, 1992.’’

§ 9858i. Reports and audits

(a) Reports

(1) Collection of information by States

(A) In general

A State that receives funds to carry out this subchapter shall collect the information

described in subparagraph (B) on a monthly basis.

(B) Required information

The information required under this subparagraph shall include, with respect to a family unit receiving assistance under this subchapter information concerning—

(i) family income;

(ii) county of residence;

(iii) the gender, race, and age of children receiving such assistance;

(iv) whether the head of the family unit is a single parent;

(v) the sources of family income, including—

(I) employment, including self-employment;

(II) cash or other assistance under—

(aa) the temporary assistance for needy families program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and

(bb) a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act (42 U.S.C. 609(a)(7));

(III) housing assistance;

(IV) assistance under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(V) other assistance programs;

(vi) the number of months the family has received benefits;

(vii) the type of child care in which the child was enrolled (such as family child care, home care, or center-based child care);

(viii) whether the child care provider involved was a relative;

(ix) the cost of child care for such families; and

(x) the average hours per month of such care;

during the period for which such information is required to be submitted.

(C) Submission to Secretary

A State described in subparagraph (A) shall, on a quarterly basis, submit the information required to be collected under subparagraph (B) to the Secretary.

(D) Use of samples

(i) Authority

A State may comply with the requirement to collect the information described in subparagraph (B) through the use of disaggregated case record information on a sample of families selected through the use of scientifically acceptable sampling methods approved by the Secretary.

(ii) Sampling and other methods

The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid samples of the information described in subparagraph (B). The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.

(2) Annual reports

Not later than December 31, 1997, and every 12 months thereafter, a State described in paragraph (1)(A) shall prepare and submit to the Secretary a report that includes aggregate data concerning—

(A) the number of child care providers that received funding under this subchapter as separately identified based on the types of providers listed in section 9858n(5) of this title;

(B) the monthly cost of child care services, and the portion of such cost that is paid for with assistance provided under this subchapter, listed by the type of child care services provided;

(C) the number of payments made by the State through vouchers, contracts, cash, and disregards under public benefit programs, listed by the type of child care services provided;

(D) the manner in which consumer education information was provided to parents and the number of parents to whom such information was provided; and

(E) the total number (without duplication) of children and families served under this subchapter;

during the period for which such report is required to be submitted.

(b) Audits

(1) Requirement

A State shall, after the close of each program period covered by an application approved under section 9858c(d) of this title audit its expenditures during such program period from amounts received under this subchapter.

(2) Independent auditor

Audits under this subsection shall be conducted by an entity that is independent of the State that receives assistance under this subchapter and be in accordance with generally accepted auditing principles.

(3) Submission

Not later than 30 days after the completion of an audit under this subsection, the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

(4) Repayment of amounts

Each State shall repay to the United States any amounts determined through an audit under this subsection not to have been expended in accordance with this subchapter, or the Secretary may offset such amounts against any other amount to which the State is or may be entitled under this subchapter.

(Pub. L. 97–35, title VI, § 658K, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–243; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, § 611, Aug. 22, 1996, 110 Stat. 2284; Pub. L. 105–33, title V, § 5602(2), Aug. 5, 1997, 111 Stat. 646.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(B)(v)(II)(aa), is act Aug. 14, 1935, ch. 531, 49 Stat.

620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (a)(1)(B)(v)(IV), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

1997—Subsec. (a)(1)(B)(iv). Pub. L. 105–33, § 5602(2)(A)(i)(I), added cl. (iv) and struck out former cl. (iv) which read as follows: ''whether the family includes only one parent;''.

Subsec. (a)(1)(B)(v). Pub. L. 105–33, § 5602(2)(A)(i)(II)(aa), substituted ''including—'' for ''including the amount obtained from (and separately identified)—'' in introductory provisions.

Subsec. (a)(1)(B)(v)(II). Pub. L. 105–33, § 5602(2)(A)(i)(II)(bb), added subcl. (II) and struck out former subcl. (II) which read as follows: ''cash or other assistance under part A of title IV of the Social Security Act;''.

Subsec. (a)(1)(B)(x). Pub. L. 105–33, § 5602(2)(A)(i)(III), substituted ''month'' for ''week''.

Subsec. (a)(1)(D). Pub. L. 105–33, § 5602(2)(A)(ii), added subpar. (D) and struck out heading and text of former subpar. (D). Text read as follows: ''The Secretary may disapprove the information collected by a State under this paragraph if the State uses sampling methods to collect such information.''

Subsec. (a)(2). Pub. L. 105–33, § 5602(2)(B), substituted ''Annual'' for ''Biannual'' in heading and ''12'' for ''6'' in introductory provisions of text.

1996—Pub. L. 104–193, § 611(1), substituted ''Reports'' for ''Annual report'' in section catchline.

Subsec. (a). Pub. L. 104–193, § 611(2), amended heading and text of subsec. (a) generally. Prior to amendment, text related to requirement of reports by Dec. 31, 1992, and annually thereafter, which include specification of expenditures under section 9858c(c)(3) of this title, data on fulfillment of child care needs, description of improvements in affordability and availability, description of review of State licensing and regulatory requirements and policies and results of review, explanation of any reductions in child care standards, and description of standards and health and safety requirements applicable to providers.

Subsec. (b)(1). Pub. L. 104–193, § 611(2)[(3)](A), substituted ''an application approved'' for ''a application approved''.

Subsec. (b)(2). Pub. L. 104–193, § 611(2)[(3)](B), substituted ''the State that receives'' for ''any agency administering activities that receive''.

Subsec. (b)(4). Pub. L. 104–193, § 611(2)[(3)](C), substituted ''entitled under this subchapter'' for ''entitles under this subchapter''.

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5603 of Pub. L. 105–33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

§ 9858j. Report by Secretary

Not later than July 31, 1998, and biennially thereafter, the Secretary shall prepare and submit to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report that contains a summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 9858i of this title. Such report shall include an assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.

(Pub. L. 97–35, title VI, § 658L, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–244; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, § 612, Aug. 22, 1996, 110 Stat. 2285; Pub. L. 105–33, title V, § 5602(3), Aug. 5, 1997, 111 Stat. 646.)

AMENDMENTS

1997—Pub. L. 105–33 substituted ''1998'' for ''1997''.

1996—Pub. L. 104–193 substituted ''July 31, 1997, and biennially thereafter'' for ''July 31, 1993, and annually thereafter'' and ''Committee on Economic and Educational Opportunities'' for ''Committee on Education and Labor''.

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5603 of Pub. L. 105–33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

§ 9858k. Limitations on use of financial assistance for certain purposes

(a) Sectarian purposes and activities

No financial assistance provided under this subchapter, pursuant to the choice of a parent under section 9858c(c)(2)(A)(i)(I) of this title or through any other grant or contract under the State plan, shall be expended for any sectarian purpose or activity, including sectarian worship or instruction.

(b) Tuition

With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subchapter shall be expended for—

(1) any services provided to such students during the regular school day;

(2) any services for which such students receive academic credit toward graduation; or

(3) any instructional services which supplant or duplicate the academic program of any public or private school.

(Pub. L. 97–35, title VI, § 658M, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–244; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

§ 9858*l*. Nondiscrimination

(a) Religious nondiscrimination

(1) Construction

(A) In general

Except as provided in subparagraph (B), nothing in this section shall be construed to modify or affect the provisions of any other Federal law or regulation that relates to discrimination in employment on the basis of religion.

(B) Exception

A sectarian organization may require that employees adhere to the religious tenets and teachings of such organization, and such organization may require that employees adhere to rules forbidding the use of drugs or alcohol.

(2) Discrimination against child

(A) In general

A child care provider (other than a family child care provider) that receives assistance under this subchapter shall not discriminate against any child on the basis of religion in providing child care services.

(B) Non-funded child care slots

Nothing in this section shall prohibit a child care provider from selecting children for child care slots that are not funded directly with assistance provided under this subchapter because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(3) Employment in general

(A) Prohibition

A child care provider that receives assistance under this subchapter shall not discriminate in employment on the basis of the religion of the prospective employee if such employee's primary responsibility is or will be working directly with children in the provision of child care services.

(B) Qualified applicants

If two or more prospective employees are qualified for any position with a child care provider receiving assistance under this subchapter, nothing in this section shall prohibit such child care provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates such provider.

(C) Present employees

This paragraph shall not apply to employees of child care providers receiving assistance under this subchapter if such employees are employed with the provider on November 5, 1990.

(4) Employment and admission practices

Notwithstanding paragraphs (1)(B), (2), and (3), if assistance provided under this subchapter, and any other Federal or State program, amounts to 80 percent or more of the operating budget of a child care provider that receives such assistance, the Secretary shall not permit such provider to receive any further assistance under this subchapter unless the grant or contract relating to the financial assistance, or the employment and admissions policies of the provider, specifically provides that no person with responsibilities in the operation of the child care program, project, or activity of the provider will discriminate against any individual in employment, if such employee's primary responsibility is or will be working directly with children in the provision of child care, or admissions because of the religion of such individual.

(b) Effect on State law

Nothing in this subchapter shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian institutions, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this subchapter.

(Pub. L. 97–35, title VI, § 658N, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–245; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

§ 9858m. Amounts reserved; allotments

(a) Amounts reserved

(1) Territories and possessions

The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under this subchapter in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

(2) Indians[1] tribes

The Secretary shall reserve not less than 1 percent, and not more than 2 percent, of the amount appropriated under section 9858 of this title in each fiscal year for payments to Indian tribes and tribal organizations with applications approved under subsection (c) of this section.

(b) State allotment

(1) General rule

From the amounts appropriated under section 9858 of this title for each fiscal year re-

[1] So in original. Probably should be "Indian".

maining after reservations under subsection (a) of this section, the Secretary shall allot to each State an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

(2) Young child factor

The term ''young child factor'' means the ratio of the number of children in the State under 5 years of age to the number of such children in all States as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

(3) School lunch factor

The term ''school lunch factor'' means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of such children in all the States as determined annually by the Department of Agriculture.

(4) Allotment percentage

(A) In general

The allotment percentage for a State is determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

(B) Limitations

If an allotment percentage determined under subparagraph (A)—

(i) exceeds 1.2 percent, then the allotment percentage of that State shall be considered to be 1.2 percent; and

(ii) is less than 0.8 percent, then the allotment percentage of the State shall be considered to be 0.8 percent.

(C) Per capita income

For purposes of subparagraph (A), per capita income shall be—

(i) determined at 2-year intervals;

(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(c) Payments for benefit of Indian children

(1) General authority

From amounts reserved under subsection (a)(2) of this section, the Secretary may make grants to or enter into contracts with Indian tribes or tribal organizations that submit applications under this section, for the planning and carrying out of programs or activities consistent with the purposes of this subchapter.

(2) Applications and requirements

An application for a grant or contract under this section shall provide that:

(A) Coordination

The applicant will coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out programs or activities under this section.

(B) Services on reservations

In the case of an applicant located in a State other than Alaska, California, or Oklahoma, programs and activities under this section will be carried out on the Indian reservation for the benefit of Indian children.

(C) Reports and audits

The applicant will make such reports on, and conduct such audits of, programs and activities under a grant or contract under this section as the Secretary may require.

(3) Consideration of secretarial approval

In determining whether to approve an application for a grant or contract under this section, the Secretary shall take into consideration—

(A) the availability of child care services provided in accordance with this subchapter by the State or States in which the applicant proposes to carry out a program to provide child care services; and

(B) whether the applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity.

(4) Three-year limit

Grants or contracts under this section shall be for periods not to exceed 3 years.

(5) Dual eligibility of Indian children

The awarding of a grant or contract under this section for programs or activities to be conducted in a State or States shall not affect the eligibility of any Indian child to receive services provided or to participate in programs and activities carried out under a grant to the State or States under this subchapter.

(6) Construction or renovation of facilities

(A) Request for use of funds

An Indian tribe or tribal organization may submit to the Secretary a request to use amounts provided under this subsection for construction or renovation purposes.

(B) Determination

With respect to a request submitted under subparagraph (A), and except as provided in subparagraph (C), upon a determination by the Secretary that adequate facilities are not otherwise available to an Indian tribe or

tribal organization to enable such tribe or organization to carry out child care programs in accordance with this subchapter, and that the lack of such facilities will inhibit the operation of such programs in the future, the Secretary may permit the tribe or organization to use assistance provided under this subsection to make payments for the construction or renovation of facilities that will be used to carry out such programs.

(C) Limitation

The Secretary may not permit an Indian tribe or tribal organization to use amounts provided under this subsection for construction or renovation if such use will result in a decrease in the level of child care services provided by the tribe or organization as compared to the level of such services provided by the tribe or organization in the fiscal year preceding the year for which the determination under subparagraph (B) is being made.

(D) Uniform procedures

The Secretary shall develop and implement uniform procedures for the solicitation and consideration of requests under this paragraph.

(d) Data and information

The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b) of this section.

(e) Reallotments

(1) In general

Any portion of the allotment under subsection (b) of this section to a State that the Secretary determines is not required to carry out a State plan approved under section 9858c(d) of this title, in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(2) Limitations

(A) Reduction

The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 9858c(d) of this title.

(B) Reallotments

The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

(3) Amounts reallotted

For purposes of any other section of this subchapter, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) of this section to the State.

(4) Indian tribes or tribal organizations

Any portion of a grant or contract made to an Indian tribe or tribal organization under subsection (c) of this section that the Secretary determines is not being used in a manner consistent with the provision of this subchapter in the period for which the grant or contract is made available, shall be allotted by the Secretary to other tribes or organizations that have submitted applications under subsection (c) of this section in accordance with their respective needs.

(f) "State" defined

For the purposes of this section, the term ''State'' includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 97–35, title VI, § 658O, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–246; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, § 613, Aug. 22, 1996, 110 Stat. 2286; Pub. L. 105–33, title V, § 5602(4), Aug. 5, 1997, 111 Stat. 646; Pub. L. 106–78, title VII, § 752(b)(17), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(3), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

1999—Subsec. (b)(3). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

1997—Subsec. (c)(6)(C). Pub. L. 105–33 substituted ''subparagraph (B)'' for ''subparagraph (A)''.

1996—Subsec. (a)(1). Pub. L. 104–193, § 613(1)(A), made technical amendment to heading, inserted ''and'' before ''the Commonwealth of the Northern Marianna Islands'', and struck out '', and the Trust Territory of the Pacific Islands'' before ''to be allotted in accordance''.

Subsec. (a)(2). Pub. L. 104–193, § 613(1)(B), substituted ''less than 1 percent, and not more than 2 percent,'' for ''more than 3 percent''.

Subsec. (c)(5). Pub. L. 104–193, § 613(2)(A), substituted ''activities carried out'' for ''activities carried our''.

Subsec. (c)(6). Pub. L. 104–193, § 613(2)(B), added par. (6).

Subsec. (e)(4). Pub. L. 104–193, § 613(3), added par. (4).

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5603 of Pub. L. 105–33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

§ 9858n. Definitions

As used in this subchapter:

(1) Caregiver

The term ''caregiver'' means an individual who provides a service directly to an eligible child on a person-to-person basis.

(2) Child care certificate

The term ''child care certificate'' means a certificate (that may be a check or other disbursement) that is issued by a State or local government under this subchapter directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider. Nothing in this subchapter shall preclude the use of such certificates for sectarian child care services if freely chosen by the parent. For purposes of this subchapter, child care certificates shall not be considered to be grants or contracts.

(3) Repealed. Pub. L. 104–193, title VI, § 614(2), Aug. 22, 1996, 110 Stat. 2287

(4) Eligible child

The term ''eligible child'' means an individual—

(A) who is less than 13 years of age;

(B) whose family income does not exceed 85 percent of the State median income for a family of the same size; and

(C) who—

(i) resides with a parent or parents who are working or attending a job training or educational program; or

(ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

(5) Eligible child care provider

The term ''eligible child care provider'' means—

(A) a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—

(i) is licensed, regulated, or registered under State law as described in section 9858c(c)(2)(E) of this title; and

(ii) satisfies the State and local requirements, including those referred to in section 9858c(c)(2)(F) of this title;

applicable to the child care services it provides; or

(B) a child care provider that is 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, if such provider complies with any applicable requirements that govern child care provided by the relative involved.

(6) Family child care provider

The term ''family child care provider'' means one individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in a private residence.

(7) Indian tribe

The term ''Indian tribe'' has the meaning given it in section 450b(e) of title 25.

(8) Lead agency

The term ''lead agency'' means the agency designated under section 9858(a)[1] of this title.

(9) Parent

The term ''parent'' includes a legal guardian or other person standing in loco parentis.

(10) Repealed. Pub. L. 104–193, title VI, § 614(5), Aug. 22, 1996, 110 Stat. 2287

(11) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services unless the context specifies otherwise.

(12) Sliding fee scale

The term ''sliding fee scale'' means a system of cost sharing by a family based on income and size of the family.

(13) State

The term ''State'' means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(14) Tribal organization

(A) In general

The term ''tribal organization'' has the meaning given it in section 450b(*l*) of title 25.

(B) Other organizations

Such term includes a Native Hawaiian Organization, as defined in section 4909(4)[1] of title 20 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

(Pub. L. 97–35, title VI, § 658P, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–248; amended Pub. L. 102–401, § 3, Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 103–171, § 8, Dec. 2, 1993, 107 Stat. 1994; Pub. L. 104–193, title VI, § 614, Aug. 22, 1996, 110 Stat. 2287; Pub. L. 105–33, title V, § 5602(5), Aug. 5, 1997, 111 Stat. 646.)

REFERENCES IN TEXT

Section 9858 of this title, referred to in par. (8), does not contain a subsec. (a) and does not relate to designation of lead agencies. For provisions relating to designation of a State agency to act as a lead agency, see section 9858b(a) of this title.

Section 4909 of title 20, referred to in par. (14)(B), was repealed by Pub. L. 103–382, title III, § 363, Oct. 20, 1994, 108 Stat. 3975.

AMENDMENTS

1997—Par. (13). Pub. L. 105–33 substituted ''and'' for ''or'' after ''American Samoa,''.

1996—Par. (2). Pub. L. 104–193, § 614(1), in first sentence, inserted ''or as a deposit for child care services if such a deposit is required of other children being cared for by the provider'' after ''payment for child care services''.

Par. (3). Pub. L. 104–193, § 614(2), struck out heading and text of par. (3). Text read as follows: ''The term 'elementary school' means a day or residential school that provides elementary education, as determined under State law.''

Par. (4)(B). Pub. L. 104–193, § 614(3), substituted ''85 percent'' for ''75 percent''.

Par. (5)(B). Pub. L. 104–193, § 614(4), inserted ''great grandchild, sibling (if such provider lives in a separate residence),'' after ''grandchild,'', struck out ''is registered and'' after ''such provider'', and substituted ''any applicable requirements'' for ''any State requirements''.

[1] See References in Text note below.

Par. (10). Pub. L. 104–193, § 614(5), struck out heading and text of par. (10). Text read as follows: ''The term 'secondary school' means a day or residential school which provides secondary education, as determined under State law.''

Par. (13). Pub. L. 104–193, § 614(6), inserted ''or'' after ''Samoa,'' and struck out '', and the Trust Territory of the Pacific Islands'' after ''Northern Mariana Islands''.

Par. (14). Pub. L. 104–193, § 614(7), designated existing text as subpar. (A), inserted heading, and added subpar. (B).

1993—Pars. (7), (14). Pub. L. 103–171 made technical correction to directory language of Pub. L. 102–586, § 8(c)(2). See 1992 Amendment note below.

1992—Pub. L. 102–401, § 3(a), and Pub. L. 102–586, § 8(c)(1), made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

Par. (7). Pub. L. 102–586, § 8(c)(2)(A), as amended by Pub. L. 103–171, which directed the amendment of par. (7) by substituting ''section 450b(e) of title 25'' for ''section 450b(b) of title 25'', could not be executed because the words ''section 450b(b) of title 25'' did not appear subsequent to execution of the amendment by Pub. L. 102–401, § 3(b)(1). See below.

Pub. L. 102–401, § 3(b)(1), substituted ''section 450b(e) of title 25'' for ''section 450b(b) of title 25''.

Par. (14). Pub. L. 102–586, § 8(c)(2)(B), as amended by Pub. L. 103–171, which directed the amendment of par. (14) by substituting ''section 450b(*l*) of title 25'' for ''section 450b(c) of title 25'', could not be executed because the words ''section 450b(c) of title 25'' did not appear subsequent to execution of the amendment by Pub. L. 102–401, § 3(b)(2). See below.

Pub. L. 102–401, § 3(b)(2), substituted ''section 450b(*l*) of title 25'' for ''section 450b(c) of title 25''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5603 of Pub. L. 105–33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–586 effective Nov. 4, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 8(d) of Pub. L. 102–586, set out as a note under section 9858h of this title.

Amendment by Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

§ 9858*o*. Parental rights and responsibilities

Nothing in this subchapter shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

(Pub. L. 97–35, title VI, § 658Q, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–249; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

§ 9858p. Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of applications of this subchapter which can be given effect without regard to the invalid provision or application, and to this end the provisions of this subchapter shall be severable.

(Pub. L. 97–35, title VI, § 658R, as added Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–249; amended Pub. L. 102–401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, § 5082(2), which added this section.

§ 9858q. Miscellaneous provisions

Notwithstanding any other law, the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter shall not be treated as income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need.

(Pub. L. 97–35, title VI, § 658S, as added Pub. L. 102–586, § 8(b), Nov. 4, 1992, 106 Stat. 5035; amended Pub. L. 103–171, § 8, Dec. 2, 1993, 107 Stat. 1994.)

AMENDMENTS

1993—Pub. L. 103–171 made technical correction to directory language of Pub. L. 102–586, § 8(b), which added this section.

EFFECTIVE DATE

Section effective Nov. 4, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 8(d) of Pub. L. 102–586, set out as an Effective Date of 1992 Amendment note under section 9858h of this title.

SUBCHAPTER II–C—CHILD CARE SAFETY AND HEALTH GRANTS

CODIFICATION

This subchapter was enacted as part of title XIV of div. A of the Children's Health Act of 2000, and not as part of chapter 8 of subtitle A of title VI of Pub. L. 97–35 which comprises this chapter.

§ 9859. Definitions

In this subchapter:

(1) Child with a disability; infant or toddler with a disability

The terms ''child with a disability'' and ''infant or toddler with a disability'' have the meanings given the terms in sections 1401 and 1431 of title 20.

(2) Eligible child care provider

The term ''eligible child care provider'' means a provider of child care services for compensation, including a provider of care for a school-age child during non-school hours, that—

(A) is licensed, regulated, registered, or otherwise legally operating, under State and local law; and

(B) satisfies the State and local requirements,

applicable to the child care services the provider provides.

(3) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(4) State

The term ''State'' means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 106–310, div. A, title XIV, § 1401, Oct. 17, 2000, 114 Stat. 1143.)

§ 9859a. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $200,000,000 for fiscal year 2001, and such sums as may be necessary for each subsequent fiscal year.

(Pub. L. 106–310, div. A, title XIV, § 1402, Oct. 17, 2000, 114 Stat. 1143.)

§ 9859b. Programs

The Secretary shall make allotments to eligible States under section 9859c of this title. The Secretary shall make the allotments to enable the States to establish programs to improve the health and safety of children receiving child care outside the home, by preventing illnesses and injuries associated with that care and promoting the health and well-being of children receiving that care.

(Pub. L. 106–310, div. A, title XIV, § 1403, Oct. 17, 2000, 114 Stat. 1143.)

§ 9859c. Amounts reserved; allotments

(a) Amounts reserved

The Secretary shall reserve not more than one-half of 1 percent of the amount appropriated under section 9859a of this title for each fiscal year to make allotments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

(b) State allotments

(1) General rule

From the amounts appropriated under section 9859a of this title for each fiscal year and remaining after reservations are made under subsection (a) of this section, the Secretary shall allot to each State an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

(2) Young child factor

In this subsection, the term ''young child factor'' means the ratio of the number of children under 5 years of age in a State to the number of such children in all States, as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

(3) School lunch factor

In this subsection, the term ''school lunch factor'' means the ratio of the number of children who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) in the State to the number of such children in all States, as determined annually by the Department of Agriculture.

(4) Allotment percentage

(A) In general

For purposes of this subsection, the allotment percentage for a State shall be determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

(B) Limitations

If an allotment percentage determined under subparagraph (A) for a State—

(i) is more than 1.2 percent, the allotment percentage of the State shall be considered to be 1.2 percent; and

(ii) is less than 0.8 percent, the allotment percentage of the State shall be considered to be 0.8 percent.

(C) Per capita income

For purposes of subparagraph (A), per capita income shall be—

(i) determined at 2-year intervals;

(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning after the date such determination is made; and

(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce on the date such determination is made.

(c) Data and information

The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b) of this section.

(d) Definition

In this section, the term ''State'' includes only the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 106–310, div. A, title XIV, § 1404, Oct. 17, 2000, 114 Stat. 1143.)

REFERENCES IN TEXT

The National School Lunch Act, referred to in subsec. (b)(3), probably means the Richard B. Russell National

School Lunch Act, act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

§ 9859d. State applications

To be eligible to receive an allotment under section 9859c of this title, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The application shall contain information assessing the needs of the State with regard to child care health and safety, the goals to be achieved through the program carried out by the State under this subchapter, and the measures to be used to assess the progress made by the State toward achieving the goals.

(Pub. L. 106–310, div. A, title XIV, § 1405, Oct. 17, 2000, 114 Stat. 1145.)

§ 9859e. Use of funds

(a) In general

A State that receives an allotment under section 9859c of this title shall use the funds made available through the allotment to carry out two or more activities consisting of—

(1) providing training and education to eligible child care providers on preventing injuries and illnesses in children, and promoting health-related practices;

(2) strengthening licensing, regulation, or registration standards for eligible child care providers;

(3) assisting eligible child care providers in meeting licensing, regulation, or registration standards, including rehabilitating the facilities of the providers, in order to bring the facilities into compliance with the standards;

(4) enforcing licensing, regulation, or registration standards for eligible child care providers, including holding increased unannounced inspections of the facilities of those providers;

(5) providing health consultants to provide advice to eligible child care providers;

(6) assisting eligible child care providers in enhancing the ability of the providers to serve children with disabilities and infants and toddlers with disabilities;

(7) conducting criminal background checks for eligible child care providers and other individuals who have contact with children in the facilities of the providers;

(8) providing information to parents on what factors to consider in choosing a safe and healthy child care setting; or

(9) assisting in improving the safety of transportation practices for children enrolled in child care programs with eligible child care providers.

(b) Supplement, not supplant

Funds appropriated pursuant to the authority of this subchapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide services for eligible individuals.

(Pub. L. 106–310, div. A, title XIV, § 1406, Oct. 17, 2000, 114 Stat. 1145.)

§ 9859f. Reports

Each State that receives an allotment under section 9859c of this title shall annually prepare and submit to the Secretary a report that describes—

(1) the activities carried out with funds made available through the allotment; and

(2) the progress made by the State toward achieving the goals described in the application submitted by the State under section 9859d of this title.

(Pub. L. 106–310, div. A, title XIV, § 1407, Oct. 17, 2000, 114 Stat. 1145.)

SUBCHAPTER III—FOLLOW THROUGH PROGRAMS

PART I—DIRECT SERVICES

§§ 9861, 9862. Repealed. Pub. L. 103–382, title III, § 391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9861, Pub. L. 97–35, title VI, § 662, Aug. 13, 1981, 95 Stat. 508; Pub. L. 101–501, title II, § 202, Nov. 3, 1990, 104 Stat. 1243, authorized financial assistance for Follow Through programs.

Section 9862, Pub. L. 97–35, title VI, § 663, as added Pub. L. 101–501, title II, § 203, Nov. 3, 1990, 104 Stat. 1244; amended Pub. L. 102–119, § 26(c), Oct. 7, 1991, 105 Stat. 607, related to consideration of applications.

A prior section 9862, Pub. L. 97–35, title VI, § 663, Aug. 13, 1981, 95 Stat. 509; Pub. L. 98–558, title III, § 301, Oct. 30, 1984, 98 Stat. 2887; Pub. L. 99–425, title II, § 201(a), Sept. 30, 1986, 100 Stat. 966, related to funding requirements, prior to repeal by Pub. L. 101–501, title II, § 203, Nov. 3, 1990, 104 Stat. 1244.

PART II—PROGRAM IMPROVEMENT

§§ 9863 to 9865. Repealed. Pub. L. 103–382, title III, § 391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9863, Pub. L. 97–35, title VI, § 664, as added Pub. L. 101–501, title II, § 204(a), Nov. 3, 1990, 104 Stat. 1245, authorized financial assistance for research regarding Follow Through programs and approaches.

A prior section 9863, Pub. L. 97–35, title VI, § 664, Aug. 13, 1981, 95 Stat. 509, related to grants or contracts for research, demonstration, and pilot projects, prior to repeal by Pub. L. 101–501, title II, § 204(a), Nov. 3, 1990, 104 Stat. 1245.

Section 9863a, Pub. L. 97–35, title VI, § 664A, as added Pub. L. 101–501, title II, § 204(a), Nov. 3, 1990, 104 Stat. 1245, related to technical assistance and training.

Section 9863b, Pub. L. 97–35, title VI, § 664B, as added Pub. L. 101–501, title II, § 204(a), Nov. 3, 1990, 104 Stat. 1246, authorized grants to entities which operate, or previously operated, effective Follow Through programs.

Section 9863c, Pub. L. 97–35, title VI, § 664C, as added Pub. L. 101–501, title II, § 204(a), Nov. 3, 1990, 104 Stat. 1246, related to grant to establish national clearinghouse on Follow Through programs.

Section 9864, Pub. L. 97–35, title VI, § 665, Aug. 13, 1981, 95 Stat. 510; Pub. L. 101–501, title II, § 205, Nov. 3, 1990, 104 Stat. 1246, related to announcement of research and evaluation contracts.

Section 9865, Pub. L. 97–35, title VI, § 666, Aug. 13, 1981, 95 Stat. 510; Pub. L. 101–501, title II, § 206, Nov. 3, 1990, 104 Stat. 1247, related to continuing evaluation of programs under this subchapter.

PART III—GENERAL AND ADMINISTRATIVE PROVISIONS

§§ 9866 to 9869. Repealed. Pub. L. 103–382, title III, § 391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9866, Pub. L. 97–35, title VI, § 667, as added Pub. L. 101–501, title II, § 207(a), Nov. 3, 1990, 104 Stat.

1247, related to authorization of appropriations to carry out this subchapter.

A prior section 9866, Pub. L. 97–35, title VI, § 667, Aug. 13, 1981, 95 Stat. 511, provided for technical assistance and training, prior to repeal by Pub. L. 101–501, title II, § 204(b), Nov. 3, 1990, 104 Stat. 1246.

Section 9867, Pub. L. 97–35, title VI, § 668, Aug. 13, 1981, 95 Stat. 511; Pub. L. 99–425, title II, § 201(b), Sept. 30, 1986, 100 Stat. 967; Pub. L. 101–501, title II, §§ 201(2), 209, Nov. 3, 1990, 104 Stat. 1243, 1248, related to special conditions on financial assistance.

Section 9868, Pub. L. 97–35, title VI, § 669, Aug. 13, 1981, 95 Stat. 511, related to applicability of other provisions to administration of this subchapter.

Section 9869, Pub. L. 97–35, title VI, § 669A, as added Pub. L. 101–501, title II, § 208, Nov. 3, 1990, 104 Stat. 1248, related to participation of entities that receive funds under this subchapter in other Federal educational activities and programs.

SUBCHAPTER IV—GRANTS TO STATES FOR PLANNING AND DEVELOPMENT OF DEPENDENT CARE PROGRAMS AND FOR OTHER PURPOSES

CODIFICATION

Subchapter is based on subchapter E, formerly D, of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 98–558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880, and amended and redesignated.

§ 9871. Authorization of appropriations

For the purpose of making allotments to States to carry out the activities described in section 9874 of this title, there is authorized to be appropriated $13,000,000 for fiscal year 1995.

(Pub. L. 97–35, title VI, § 670A, as added Pub. L. 98–558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880; amended Pub. L. 99–425, title III, § 301, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101–501, title III, § 301, Nov. 3, 1990, 104 Stat. 1248; Pub. L. 103–252, title I, § 122, May 18, 1994, 108 Stat. 650.)

AMENDMENTS

1994—Pub. L. 103–252 substituted ''is authorized to be appropriated $13,000,000 for fiscal year 1995'' for ''are authorized to be appropriated $20,000,000 for each of the fiscal years 1990 and 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994''.

1990—Pub. L. 101–501 substituted ''are authorized'' for ''is authorized'', struck out ''1987, 1988, 1989, and'' before ''1990'', and inserted ''and 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994'' after ''1990''.

1986—Pub. L. 99–425 amended section generally. Prior to amendment, section read as follows: ''For the purpose of allotments to States to carry out the activities described in section 9874 of this title, there are authorized to be appropriated $20,000,000 for each of the fiscal years 1985 and 1986.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

SHORT TITLE

For short title of this subchapter as the ''State Dependent Care Development Grants Act'', see section 670H of Pub. L. 97–35, set out as a note under section 9801 of this title.

§ 9872. Allotments

(a) From the amounts appropriated under section 9871 of this title for each fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to the total amount appropriated under such section for such fiscal year as the population of the State bears to the population of all States, except that no State may receive less than $50,000 in each fiscal year.

(b) For the purpose of the exception contained in subsection (a) of this section, the term ''State'' does not include Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97–35, title VI, § 670B, as added Pub. L. 98–558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 9873. Payments under allotments to States

The Secretary shall make payments, as provided by section 6503(a) of title 31, to each State from its allotments under section 9872 of this title from amounts appropriated under section 9871 of this title.

(Pub. L. 97–35, title VI, § 670C, as added Pub. L. 98–558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880.)

§ 9874. Use of allotments

(a) Referral systems; information; contents

(1) Subject to the provisions of subsections (c) and (d) of this section, amounts paid to a State under section 9873 of this title from its allotment under section 9872 of this title may be used for the planning, development, establishment, operation, expansion, or improvement by the States, directly or by grant or contract with public or private entities, of State and local resource and referral systems to provide information concerning the availability, types, costs, and locations of dependent care services. The information provided by any such system may include—

(A) the types of dependent care services available, including services provided by individual homes, religious organizations, community organizations, employers, private industry, and public and private institutions;

(B) the costs of available dependent care services;

(C) the locations in which dependent care services are provided;

(D) the forms of transportation available to such locations;

(E) the hours during which such dependent care services are available;

(F) the dependents eligible to enroll for such dependent care services; and

(G) any resource and referral system planned, developed, established, expanded, or improved with amounts paid to a State under this subchapter.

(2) The State, with respect to the uses of funds described in paragraph (1) of this subsection shall—

(A) provide assurances that no information will be included with respect to any dependent care services which are not provided in compliance with the laws of the State and localities in which such services are provided; and

(B) provide assurances that the information provided will be the latest information available and will be kept up to date.

(b) School-age child care services; assurances; estimates

(1) Subject to the provisions of subsections (c) and (d) of this section, amounts paid to a State under section 9873 of this title from its allotment under section 9872 of this title may be used for the planning, development, establishment, operation, expansion, or improvement by the States, directly, or by grant or contract, with public agencies or private nonprofit organizations of programs to furnish school-age child care services before and after school. Amounts so paid to a State and used for the operation of such child care services shall be designed to enable children, whose families lack adequate financial resources, to participate in before or after school child care programs.

(2) The State, with respect to the uses of funds described in paragraph (1) of this subsection shall—

(A) provide assurances, in the case of an applicant that is not a State or local educational agency, that the applicant has or will enter into an agreement with the State or local educational agency, institution of higher education or community center containing provisions for—

(i) the use of facilities for the provision of before or after school child care services (including such use during holidays and vacation periods),

(ii) the restrictions, if any, on the use of such space, and

(iii) the times when the space will be available for the use of the applicant;

(B) provide an estimate of the costs of the establishment of the child care service program in the facilities;

(C) provide assurances that the parents of school-age children will be involved in the development and implementation of the program for which assistance is sought under this Act;[1]

(D) provide assurances that the applicant is able and willing to seek to enroll racially, ethnically, and economically diverse school-age children, as well as handicapped school-age children, in the child care service program for which assistance is sought under this Act;[1]

(E) provide assurances that the child care program is in compliance with State and local child care licensing laws and regulations governing day care services for school-age children to the extent that such regulations are appropriate to the age group served; and

(F) provide such other assurances as the chief executive officer of the State may reasonably require to carry out this Act.[1]

(c) Percentage of allotment; waiver

(1) Except as provided in paragraph (2), of the allotment to each State in each fiscal year—

(A) 40 percent shall be available for the activities described in subsection (a) of this section;

(B) 60 percent shall be available for the activities described in subsection (b) of this section.

(2) For any fiscal year the Secretary may waive the percentage requirements specified in paragraph (1) on the request of a State if such State demonstrates to the satisfaction of the Secretary—

(A) that the amount of funds available as a result of one of such percentage requirements is not needed in such fiscal year for the activities for which such amount is so made available; and

(B) the adequacy of the alternative percentages, relative to need, the State specifies the State will apply with respect to all of the activities referred to in paragraph (1) if such waiver is granted.

(d) Prohibition; use of amounts

A State may not use amounts paid to it under this subchapter to—

(1) make cash payments to intended recipients of dependent care services including child care services;

(2) pay for construction or renovation; or

(3) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

(e) Federal share; cost of administration

(1) The Federal share of any project supported under this subchapter shall be not more than 75 percent.

(2) Not more than 10 percent of the allotment of each State under this subchapter may be available for the cost of administration.

(f) Duplication of services

Projects supported under this section to plan, develop, establish, expand, operate, or improve a State or local resource and referral system or before or after school child care program shall not duplicate any services which are provided before October 30, 1984, by the State or locality which will be served by such system.

(g) Technical assistance to States; planning and operational activities

The Secretary may provide technical assistance to States in planning and carrying out activities under this subchapter.

(Pub. L. 97–35, title VI, § 670D, as added Pub. L. 98–558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880; amended Pub. L. 99–425, title III, § 302, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101–501, title III, §§ 302, 303, 305(a), Nov. 3, 1990, 104 Stat. 1249, 1250.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(2)(C), (D), (F), is Pub. L. 97–35, known as the Omnibus Budget Reconcili-

[1] So in original. Probably should be ''subchapter''.

ation Act of 1981, but probably should have been ''this subchapter'', meaning subchapter E of chapter 8 of subtitle A of title VI of Pub. L. 97–35, known as the State Dependent Care Development Grants Act, which is classified to this subchapter.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–501, §§ 303(a)(1), 305(a)(1), inserted ''operation,'' after ''establishment,'' and struck out ''for fiscal year 1985 and fiscal year 1986'' before ''may be used''.

Subsec. (b)(1). Pub. L. 101–501, §§ 303(a)(2), (3), 305(a)(2), struck out ''for fiscal year 1985 and fiscal year 1986'' before ''may be used'', inserted ''operation,'' after ''establishment,'', struck out ''in public or private school facilities or in community centers in communities'' after ''before and after school'', and inserted at end ''Amounts so paid to a State and used for the operation of such child care services shall be designed to enable children, whose families lack adequate financial resources, to participate in before or after school child care programs.''

Subsec. (b)(2)(D). Pub. L. 101–501, § 305(a)(3)(A), inserted ''school-age children,'' after ''diverse'' and inserted comma after last reference to ''children''.

Subsec. (b)(2)(F). Pub. L. 101–501, § 305(a)(3)(B), substituted ''chief executive officer of the State'' for ''Governor'' and struck out ''the provisions of'' before ''this Act''.

Subsec. (c). Pub. L. 101–501, § 302, designated existing provision as par. (1), redesignated pars. (1) and (2) as subpars. (A) and (B), respectively, substituted ''Except as provided in paragraph (2), of'' for ''Of'', and added par. (2).

Subsec. (d). Pub. L. 101–501, § 303(b), redesignated pars. (2), (4), and (5) as (1), (2), and (3), respectively, and struck out former pars. (1) and (3) which read as follows:

''(1) pay the costs of operation of any resource and referral system or before or after school child care program established, expanded, or improved under subsection (a) of this section;

''(3) subsidize the direct provision of dependent care services including child care services;''.

Subsec. (d)(1). Pub. L. 101–501, § 305(a)(4), which directed the substitution of ''subsections (a) and (b) of this section'' for ''subsection (a) of this section'', could not be executed because of the intervening amendment by Pub. L. 101–501, § 303(b), see above.

Subsec. (f). Pub. L. 101–501, §§ 303(a)(4), 305(a)(5), inserted ''operate,'' after ''expand,'' and substituted ''which are provided before October 30, 1984,'' for '', which prior to October 30, 1984, are provided''.

Subsec. (g). Pub. L. 101–501, § 305(a)(6), substituted ''carrying out activities'' for ''operating activities to be carried out''.

1986—Subsec. (a). Pub. L. 99–425, § 302(a), designated existing provisions as par. (1), substituted ''system may include'' for ''system shall include'', redesignated cls. (1) to (7) as (A) to (G), respectively, struck out last sentence which read as follows: ''In carrying out clause (7) of the previous sentence, no information shall be included with respect to any dependent care services which are not provided in compliance with the laws of the State and localities in which such services are provided'', and added par. (2).

Subsec. (b)(1). Pub. L. 99–425, § 302(b)(1), struck out ''where school facilities are not available'' after ''centers in communities''.

Subsec. (b)(2)(E). Pub. L. 99–425, § 302(b)(2), inserted ''child care'' before ''licensing laws''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

§ 9875. Application and description of activities; requirements

(a) Applications

(1) In order to receive an allotment under section 9872 of this title, each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require.

(2) Each application required under paragraph (1) for an allotment under section 9872 of this title shall contain assurances that the State will meet the requirements of subsection (b) of this section.

(b) Certifications

As part of the annual application required by subsection (a) of this section, the chief executive officer of each State shall—

(1) certify that the State agrees to use the funds allotted to it under section 9872 of this title in accordance with the requirements of this subchapter; and

(2) certify that the State agrees that Federal funds made available under section 9873 of this title for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.

The Secretary may not prescribe for a State the manner of compliance with the requirements of this subsection.

(c) Description; intended use of payments; comments; revision

(1) The chief executive officer of a State shall, as part of the application required by subsection (a) of this section, also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 9873 of this title, including information on the programs and activities to be supported. The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal. The description shall be revised (consistent with this section) until September 30, 1991, as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this subchapter, and any revision shall be subject to the requirements of the preceding sentence.

(2) The chief executive officer of each State shall include in such a description of—

(A) the number of children who participated in before and after school child care programs assisted under this subchapter;

(B) the characteristics of the children so served including age levels, handicapped condition, income level of families in such programs;

(C) the salary level and benefits paid to employees in such child care programs; and

(D) the number of clients served in resource and referral systems assisted under this sub-

chapter, and the types of assistance they requested.

(d) Application to Public Health Service Act

Except where inconsistent with the provisions of this subchapter, the provisions of section 1903(b) [42 U.S.C. 300w–2(b)], paragraphs (1) through (5) of section 1906(a)[1] [42 U.S.C. 300w–5(a)], and sections 1906(b), 1907, 1908, and 1909 [42 U.S.C. 300w–5(b), 300w–6, 300w–7, 300w–8] of the Public Health Service Act shall apply to this subchapter in the same manner as such provisions apply to part A of title XIX of such Act [42 U.S.C. 300w et seq.].

(Pub. L. 97–35, title VI, § 670E, as added Pub. L. 98–558, title I, § 109, Oct. 30, 1984, 98 Stat. 2882; amended Pub. L. 101–501, title III, §§ 304, 305(b), Nov. 3, 1990, 104 Stat. 1249, 1250.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (d), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part A of title XIX of the Public Health Service Act is classified generally to part A (§ 300w et seq.) of subchapter XVII of chapter 6A of this title. Section 1906(a) of the Act, which is classified to section 300w–5(a) of this title, was amended generally by Pub. L. 102–531, title I, § 104(a), Oct. 27, 1992, 106 Stat. 3473, and, as so amended, consists of pars. (1) to (4) rather than pars. (1) to (5). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–501, § 305(b), which directed that ''until September 30, 1987,'' be struck out, could not be executed, because of the intervening amendment by Pub. L. 101–501, § 304, see below.

Pub. L. 101–501, § 304, designated existing provisions as par. (1), substituted ''September 30, 1991'' for ''September 30, 1987'', and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

§ 9876. Report

Within three years after October 30, 1984, the Secretary shall prepare and transmit to the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor a report concerning the activities conducted by the States with amounts provided under this subchapter.

(Pub. L. 97–35, title VI, § 670F, as added Pub. L. 98–558, title I, § 109, Oct. 30, 1984, 98 Stat. 2883.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

[1] See References in Text note below.

§ 9877. Definitions

For purposes of this subchapter—

(1) the term ''community center'' means facilities operated by nonprofit community-based organizations for the provision of recreational, social, or educational services to the general public;

(2) the term ''dependent'' means—

(A) an individual who has not attained the age of 17 years;

(B) an individual who has attained the age of 55 years; or

(C) an individual with a developmental disability;

(3) the term ''developmental disability'' has the same meaning as in section 15002 of this title;

(4) the term ''equipment'' has the same meaning given that term by section 198(a)(8) of the Elementary and Secondary Education Act of 1965;[1]

(5) the term ''institution of higher education'' has the same meaning given that term under section 1001 of title 20;

(6) the term ''local educational agency'' has the same meaning given that term under section 7801 of title 20;

(7) the term ''school-age children'' means children aged five through thirteen, except that in any State in which by State law children at an earlier age are provided free public education, the age provided in State law shall be substituted for age five;

(8) the term ''school facilities'' means classrooms and related facilities used for the provision of education;

(9) the term ''Secretary'' means the Secretary of Health and Human Services;

(10) the term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Commonwealth of the Northern Mariana Islands; and

(11) the term ''State educational agency'' has the meaning given that term under section 7801 of title 20.

(Pub. L. 97–35, title VI, § 670G, as added Pub. L. 98–558, title I, § 109, Oct. 30, 1984, 98 Stat. 2883; amended Pub. L. 99–425, title III, § 303, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101–501, title III, § 305(c), Nov. 3, 1990, 104 Stat. 1250; Pub. L. 103–382, title III, § 394(*l*), Oct. 20, 1994, 108 Stat. 4029; Pub. L. 105–244, title I, § 102(a)(13)(H), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 106–402, title IV, § 401(b)(12), Oct. 30, 2000, 114 Stat. 1739; Pub. L. 107–110, title X, § 1076(dd), Jan. 8, 2002, 115 Stat. 2093.)

REFERENCES IN TEXT

Section 198 of the Elementary and Secondary Education Act of 1965, referred to in par. (4), is section 198 of Pub. L. 89–10, title I, as added Pub. L. 95–561, title I, § 101(a), Nov. 1, 1978, 92 Stat. 2198, as amended, which was classified to section 2854 of Title 20, Education, prior to the general revision of Pub. L. 89–10 by Pub. L. 100–297, title I, § 1001, Apr. 28, 1988, 102 Stat. 140.

[1] See References in Text note below.

AMENDMENTS

2002—Pars. (6), (11). Pub. L. 107–110 substituted ''7801'' for ''8801''.

2000—Par. (3). Pub. L. 106–402 substituted ''section 15002 of this title'' for ''section 6001(7) of this title''.

1998—Par. (5). Pub. L. 105–244, which directed amendment of section 670G(5) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9877(5)) by substituting ''section 1001'' for ''section 1141(a)'', was executed to this section, which is section 670G(5) of subchapter E of chapter 8 of subtitle A of title VI of Pub. L. 97–35, known as the State Dependent Care Development Grants Act, to reflect the probable intent of Congress.

1994—Par. (6). Pub. L. 103–382, § 394(*l*)(1), substituted ''section 8801 of title 20'' for ''section 198(a)(10) of the Elementary and Secondary Education Act of 1965''.

Par. (11). Pub. L. 103–382, § 394(*l*)(2), substituted ''section 8801 of title 20'' for ''section 198(a)(17) of the Elementary and Secondary Education Act of 1965''.

1990—Par. (2)(C). Pub. L. 101–501, § 305(c)(1), substituted ''an individual'' for ''a person''.

Par. (7). Pub. L. 101–501, § 305(c)(2), inserted ''in'' after first reference to ''State''.

Par. (10). Pub. L. 101–501, § 305(c)(3), substituted ''Federated States of Micronesia, the Republic of the Marshall Islands, Palau'' for ''Trust Territory of the Pacific Islands''.

1986—Par. (7). Pub. L. 99–425 inserted '', except that in any State which by State law children at an earlier age are provided free public education, the age provided in State law shall be substituted for age five''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

SUBCHAPTER V—COMPREHENSIVE CHILD DEVELOPMENT PROGRAM

§§ 9881 to 9887. Repealed. Pub. L. 103–252, title I, §§ 112(b)(1), (2)(B), May 18, 1994, 108 Stat. 640, 641

Section 9881, Pub. L. 97–35, title VI, § 670N, as added Pub. L. 100–297, title II, § 2503, Apr. 28, 1988, 102 Stat. 326, authorized Comprehensive Child Development Program for pre-school children. See section 9840a of this title.

Section 9882, Pub. L. 97–35, title VI, § 670O, as added Pub. L. 100–297, title II, § 2503, Apr. 28, 1988, 102 Stat. 328, proscribed Secretary from taking into consideration, when making a grant under former section 9881, whether the applicant had applied or received funds under subchapter II of this chapter, relating to the Head Start program.

Section 9883, Pub. L. 97–35, title VI, § 670P, as added Pub. L. 100–297, title II, § 2503, Apr. 28, 1988, 102 Stat. 329, related to applicability to this subchapter of rules and regulations prescribed to carry out subchapter II of this chapter to the extent that the services provided were similar.

Section 9884, Pub. L. 97–35, title VI, § 670Q, as added Pub. L. 100–297, title II, § 2503, Apr. 28, 1988, 102 Stat. 329, directed Secretary to continually evaluate projects under this subchapter.

Section 9885, Pub. L. 97–35, title VI, § 670R, as added Pub. L. 100–297, title II, § 2503, Apr. 28, 1988, 102 Stat. 329, directed Secretary to carry out this subchapter through the administrative entity used to carry out subchapter II of this chapter.

Section 9886, Pub. L. 97–35, title VI, § 670S, as added Pub. L. 100–297, title II, § 2503, Apr. 28, 1988, 102 Stat. 329; amended Pub. L. 102–119, § 26(a), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103–382, title III, § 391(x), Oct. 20, 1994, 108 Stat. 4025, provided definitions for terms used in this subchapter.

Section 9887, Pub. L. 97–35, title VI, § 670T, as added Pub. L. 100–297, title II, § 2503, Apr. 28, 1988, 102 Stat. 330; amended Pub. L. 101–501, title VIII, § 801, Nov. 3, 1990, 104 Stat. 1261, authorized appropriations to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

COMPREHENSIVE CHILD DEVELOPMENT PROGRAM; CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 100–297, title II, part E, § 2502, Apr. 28, 1988, 102 Stat. 325, provided that it is the purpose of part E of title II of Pub. L. 100–297 to provide financial assistance to projects that target and support infants and young children from low-income families, enhance their development, and provide support for their parents and other family members, prior to repeal by Pub. L. 103–252, title I, § 112(b)(1), (2)(A), May 18, 1994, 108 Stat. 640, 641.

CONSOLIDATION OF CHILD DEVELOPMENT PROGRAMS

Section 112(b)(1) of Pub. L. 103–252 provided that: ''In recognition that the Comprehensive Child Development Centers Act [enacting this subchapter, amending section 9833 of this title, and enacting provisions set out as notes under this section and section 9801 of this title] has demonstrated positive results, and that its purposes and functions have been consolidated into section 645A of the Head Start Act [42 U.S.C. 9840a], the Comprehensive Child Development Centers Act of 1988 (42 U.S.C. 9801 note) and the Comprehensive Child Development Act (42 U.S.C. 9881 et seq.) are repealed.''

CHAPTER 106—COMMUNITY SERVICES BLOCK GRANT PROGRAM

Sec.
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9917. Accountability and reporting requirements.
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CODIFICATION

The Community Services Block Grant Act, comprising this chapter, was originally enacted by subtitle B of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 511, and amended by Pub. L. 97–115, Dec. 29, 1981, 95 Stat. 1595; Pub. L. 98–288, May 21, 1984, 98 Stat. 189; Pub. L. 98–558, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99–425, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101–501, Nov. 3, 1990, 104 Stat. 1222; Pub. L. 101–624, Nov. 28, 1990, 104 Stat. 3359; Pub. L. 103–94, Oct. 6, 1993, 107 Stat. 1001; Pub. L. 103–171, Dec. 2, 1993, 107 Stat. 1988; Pub. L. 103–252, May 18, 1994, 108 Stat. 623. The Community Services Block Grant Act is shown herein, however, as having been added by Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2728, without reference to those intervening amendments because of the extensive revision of that Act by Pub. L. 105–285.

§ 9901. Purposes and goals

The purposes of this chapter are—

(1) to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and

(2) to accomplish the goals described in paragraph (1) through—

(A) the strengthening of community capabilities for planning and coordinating the use of a broad range of Federal, State, local, and other assistance (including private resources) related to the elimination of poverty, so that this assistance can be used in a manner responsive to local needs and conditions;

(B) the organization of a range of services related to the needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;

(C) the greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;

(D) the maximum participation of residents of the low-income communities and members of the groups served by programs assisted through the block grants made under this chapter to empower such residents and members to respond to the unique problems and needs within their communities; and

(E) the broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for—

(i) private, religious, charitable, and neighborhood-based organizations; and

(ii) individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

(Pub. L. 97–35, title VI, § 672, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2728.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 9901, Pub. L. 97–35, title VI, § 672, Aug. 13, 1981, 95 Stat. 511; Pub. L. 98–558, title II, § 201, Oct. 30, 1984, 98 Stat. 2884; Pub. L. 99–425, title IV, § 401, Sept. 30, 1986, 100 Stat. 968; Pub. L. 101–501, title IV, § 401(a), Nov. 3, 1990, 104 Stat. 1251; Pub. L. 103–252, title II, § 202(a), May 18, 1994, 108 Stat. 651, authorized the Secretary to make community service grants, prior to the general amendment of this chapter by Pub. L. 105–285.

SHORT TITLE OF 1994 AMENDMENT

Section 201(a) of title II of Pub. L. 103–252 provided that: ''This title [enacting section 9910c of this title, amending this section and sections 9903, 9904, 9910, 9910a, 9910b, 9911, 9912, and 11464 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Community Services Block Grant Amendments of 1994'.''

SHORT TITLE

Pub. L. 97–35, title VI, § 671, as added by Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2728, provided that: ''This subtitle [subtitle B (§§ 671–683) of title VI of Pub. L. 97–35, enacting this chapter] may be cited as the 'Community Services Block Grant Act'.''

A prior section 671 of Pub. L. 97–35 provided that subtitle B (§§ 671–683) of title VI of Pub. L. 97–35, which enacted prior chapter and repealed sections 2701, 2706, 2711 to 2716, 2771, 2781, 2790, 2791, 2795 to 2797, 2808 to 2815, 2823 to 2825, 2827, 2828, 2830, 2833 to 2837, 2841, 2851 to 2856, 2881, 2901 to 2906, 2921 to 2923, 2928 to 2928g, 2928h to 2928n, 2929 to 2929c, 2930 to 2930f, 2931 to 2933, 2941 to 2948, 2950, 2951, 2961 to 2970, 2971a to 2971g, 2972 to 2980, 2981 to 2981c, 2982 to 2982c, 2983 to 2983b, 2984, 2984a, 2985 to 2985c, 2985d to 2985g, and 2995 to 2995c of this title and provisions set out as a note under section 2701 of this title, could be cited as the ''Community Services Block Grant Act'', prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9902. Definitions

In this chapter:

(1) Eligible entity; family literacy services

(A) Eligible entity

The term ''eligible entity'' means an entity—

(i) that is an eligible entity described in paragraph (1) of this section (as in effect on the day before October 27, 1998) as of the day before October 27, 1998, or is des-

ignated by the process described in section 9909 of this title (including an organization serving migrant or seasonal farmworkers that is so described or designated); and

(ii) that has a tripartite board or other mechanism described in subsection (a) or (b), as appropriate, of section 9910 of this title.

(B) Family literacy services

The term ''family literacy services'' has the meaning given the term in section 9832 of this title.

(2) Poverty line

The term ''poverty line'' means the official poverty line defined by the Office of Management and Budget based on the most recent data available from the Bureau of the Census. The Secretary shall revise annually (or at any shorter interval the Secretary determines to be feasible and desirable) the poverty line, which shall be used as a criterion of eligibility in the community services block grant program established under this chapter. The required revision shall be accomplished by multiplying the official poverty line by the percentage change in the Consumer Price Index for All Urban Consumers during the annual or other interval immediately preceding the time at which the revision is made. Whenever a State determines that it serves the objectives of the block grant program established under this chapter, the State may revise the poverty line to not to exceed 125 percent of the official poverty line otherwise applicable under this paragraph.

(3) Private, nonprofit organization

The term ''private, nonprofit organization'' includes a religious organization, to which the provisions of section 9920 of this title shall apply.

(4) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(5) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97–35, title VI, § 673, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2729.)

PRIOR PROVISIONS

A prior section 9902, Pub. L. 97–35, title VI, § 673, Aug. 13, 1981, 95 Stat. 511; Pub. L. 97–115, § 17(a)(1), Dec. 29, 1981, 95 Stat. 1609; Pub. L. 98–288, § 31(a), May 21, 1984, 98 Stat. 197; Pub. L. 98–558, title II, § 202, Oct. 30, 1984, 98 Stat. 2884; Pub. L. 99–425, title IV, § 402, Sept. 30, 1986, 100 Stat. 968; Pub. L. 101–501, title IV, §§ 402, 408, Nov. 3, 1990, 104 Stat. 1251, 1255; Pub. L. 103–171, § 7(c)(1), Dec. 2, 1993, 107 Stat. 1994, defined terms used in this chapter, prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9903. Authorization of appropriations

(a) In general

There are authorized to be appropriated such sums as may be necessary for each of fiscal years 1999 through 2003 to carry out the provisions of this chapter (other than sections 9922 and 9923 of this title).

(b) Reservations

Of the amounts appropriated under subsection (a) of this section for each fiscal year, the Secretary shall reserve—

(1) ½ of 1 percent for carrying out section 9905 of this title (relating to payments for territories);

(2) 1½ percent for activities authorized in sections 9913 through 9918 of this title, of which—

(A) not less than ½ of the amount reserved by the Secretary under this paragraph shall be distributed directly to eligible entities, organizations, or associations described in section 9913(c)(2) of this title for the purpose of carrying out activities described in section 9913(c) of this title; and

(B) ½ of the remainder of the amount reserved by the Secretary under this paragraph shall be used by the Secretary to carry out evaluation and to assist States in carrying out corrective action activities and monitoring (to correct programmatic deficiencies of eligible entities), as described in sections 9914(c) and 9913 of this title; and

(3) 9 percent for carrying out section 9921 of this title (relating to discretionary activities) and section 9917(b)(2) of this title.

(Pub. L. 97–35, title VI, § 674, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2730.)

PRIOR PROVISIONS

A prior section 9903, Pub. L. 97–35, title VI, § 674, Aug. 13, 1981, 95 Stat. 512; Pub. L. 99–425, title IV, § 405(c)(1), Sept. 30, 1986, 100 Stat. 970; Pub. L. 101–501, title IV, § 403, Nov. 3, 1990, 104 Stat. 1251; Pub. L. 103–171, § 7(c)(2), Dec. 2, 1993, 107 Stat. 1994; Pub. L. 103–252, title II, § 202(b), May 18, 1994, 108 Stat. 651, related to State allocations for technical assistance and training, prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9904. Establishment of block grant program

The Secretary is authorized to establish a community services block grant program and make grants through the program to States to ameliorate the causes of poverty in communities within the States.

(Pub. L. 97–35, title VI, § 675, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2730.)

PRIOR PROVISIONS

A prior section 9904, Pub. L. 97–35, title VI, § 675, Aug. 13, 1981, 95 Stat. 513; Pub. L. 97–115, § 17(a)(2), (b), Dec. 29, 1981, 95 Stat. 1609; Pub. L. 98–558, title II, § 203(a)–(c), Oct. 30, 1984, 98 Stat. 2885; Pub. L. 99–425, title IV, §§ 403(a)(1), (b), 404(b), Sept. 30, 1986, 100 Stat. 968, 969; Pub. L. 101–501, title IV, § 404(a), (b), Nov. 3, 1990, 104 Stat. 1252; Pub. L. 101–624, title XVII, § 1772(h)(6), Nov. 28, 1990, 104 Stat. 3809; Pub. L. 103–94, § 6, Oct. 6, 1993, 107 Stat. 1005; Pub. L. 103–252, title II, § 202(c)–(g), May 18, 1994, 108 Stat. 652–654, related to applications and requirements for community block grant program, prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9905. Distribution to territories

(a) Apportionment

The Secretary shall apportion the amount reserved under section 9903(b)(1) of this title for

each fiscal year on the basis of need among Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(b) Application

Each jurisdiction to which subsection (a) of this section applies may receive a grant under this section for the amount apportioned under subsection (a) of this section on submitting to the Secretary, and obtaining approval of, an application, containing provisions that describe the programs for which assistance is sought under this section, that is prepared in accordance with, and contains the information described in, section 9908 of this title.

(Pub. L. 97–35, title VI, § 675A, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2730.)

PRIOR PROVISIONS

Prior sections 9905 and 9905a were omitted in the general amendment of this chapter by Pub. L. 105–285.

Section 9905, Pub. L. 97–35, title VI, § 676, Aug. 13, 1981, 95 Stat. 516, related to establishment and functions of the Office of Community Services.

Section 9905a, Pub. L. 97–35, title VI, § 676A, as added Pub. L. 98–558, title II, § 203(d), Oct. 30, 1984, 98 Stat. 2885; amended Pub. L. 99–425, title IV, § 403(a)(2)–(4), Sept. 30, 1986, 100 Stat. 968, 969; Pub. L. 101–501, title IV, § 404(c), Nov. 3, 1990, 104 Stat. 1252, related to procedures for review of termination or reduction of funding.

§ 9906. Allotments and payments to States

(a) Allotments in general

The Secretary shall, from the amount appropriated under section 9903(a) of this title for each fiscal year that remains after the Secretary makes the reservations required in section 9903(b) of this title, allot to each State (subject to section 9911 of this title) an amount that bears the same ratio to such remaining amount as the amount received by the State for fiscal year 1981 under section 2808[1] of this title bore to the total amount received by all States for fiscal year 1981 under such section, except—

(1) that no State shall receive less than ¼ of 1 percent of the amount appropriated under section 9903(a) of this title for such fiscal year; and

(2) as provided in subsection (b) of this section.

(b) Allotments in years with greater available funds

(1) Minimum allotments

Subject to paragraphs (2) and (3), if the amount appropriated under section 9903(a) of this title for a fiscal year that remains after the Secretary makes the reservations required in section 9903(b) of this title exceeds $345,000,000, the Secretary shall allot to each State not less than ½ of 1 percent of the amount appropriated under section 9903(a) of this title for such fiscal year.

(2) Maintenance of fiscal year 1990 levels

Paragraph (1) shall not apply with respect to a fiscal year if the amount allotted under subsection (a) of this section to any State for that year is less than the amount allotted under section 9903(a)(1) of this title (as in effect on September 30, 1989) to such State for fiscal year 1990.

(3) Maximum allotments

The amount allotted under paragraph (1) to a State for a fiscal year shall be reduced, if necessary, so that the aggregate amount allotted to such State under such paragraph and subsection (a) of this section does not exceed 140 percent of the aggregate amount allotted to such State under the corresponding provisions of this chapter for the preceding fiscal year.

(c) Payments

The Secretary shall make grants to eligible States for the allotments described in subsections (a) and (b) of this section. The Secretary shall make payments for the grants in accordance with section 6503(a) of title 31.

(d) Definition

In this section, the term ''State'' does not include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97–35, title VI, § 675B, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2730.)

REFERENCES IN TEXT

Section 2808 of this title, referred to in subsec. (a), was repealed by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519.

PRIOR PROVISIONS

A prior section 9906, Pub. L. 97–35, title VI, § 677, Aug. 13, 1981, 95 Stat. 516, contained nondiscrimination provisions, prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9907. Uses of funds

(a) Grants to eligible entities and other organizations

(1) In general

Not less than 90 percent of the funds made available to a State under section 9905 or 9906 of this title shall be used by the State to make grants for the purposes described in section 9901 of this title to eligible entities.

(2) Obligational authority

Funds distributed to eligible entities through grants made in accordance with paragraph (1) for a fiscal year shall be available for obligation during that fiscal year and the succeeding fiscal year, subject to paragraph (3).

(3) Recapture and redistribution of unobligated funds

(A) Amount

Beginning on October 1, 2000, a State may recapture and redistribute funds distributed to an eligible entity through a grant made under paragraph (1) that are unobligated at the end of a fiscal year if such unobligated funds exceed 20 percent of the amount so distributed to such eligible entity for such fiscal year.

(B) Redistribution

In redistributing funds recaptured in accordance with this paragraph, States shall

[1] See References in Text note below.

redistribute such funds to an eligible entity, or require the original recipient of the funds to redistribute the funds to a private, nonprofit organization, located within the community served by the original recipient of the funds, for activities consistent with the purposes of this chapter.

(b) Statewide activities

(1) Use of remainder

If a State uses less than 100 percent of the grant or allotment received under section 9905 or 9906 of this title to make grants under subsection (a) of this section, the State shall use the remainder of the grant or allotment under section 9905 or 9906 of this title (subject to paragraph (2)) for activities that may include—

(A) providing training and technical assistance to those entities in need of such training and assistance;

(B) coordinating State-operated programs and services, and at the option of the State, locally-operated programs and services, targeted to low-income children and families with services provided by eligible entities and other organizations funded under this chapter, including detailing appropriate employees of State or local agencies to entities funded under this chapter, to ensure increased access to services provided by such State or local agencies;

(C) supporting statewide coordination and communication among eligible entities;

(D) analyzing the distribution of funds made available under this chapter within the State to determine if such funds have been targeted to the areas of greatest need;

(E) supporting asset-building programs for low-income individuals, such as programs supporting individual development accounts;

(F) supporting innovative programs and activities conducted by community action agencies or other neighborhood-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization;

(G) supporting State charity tax credits as described in subsection (c) of this section; and

(H) supporting other activities, consistent with the purposes of this chapter.

(2) Administrative cap

No State may spend more than the greater of $55,000, or 5 percent, of the grant received under section 9905 of this title or State allotment received under section 9906 of this title for administrative expenses, including monitoring activities. Funds to be spent for such expenses shall be taken from the portion of the grant under section 9905 of this title or State allotment that remains after the State makes grants to eligible entities under subsection (a) of this section. The cost of activities conducted under paragraph (1)(A) shall not be considered to be administrative expenses. The startup cost and cost of administrative activities conducted under subsection (c) of this section shall be considered to be administrative expenses.

(c) Charity tax credit

(1) In general

Subject to paragraph (2), if there is in effect under State law a charity tax credit, the State may use for any purpose the amount of the allotment that is available for expenditure under subsection (b) of this section.

(2) Limit

The aggregate amount a State may use under paragraph (1) during a fiscal year shall not exceed 100 percent of the revenue loss of the State during the fiscal year that is attributable to the charity tax credit, as determined by the Secretary of the Treasury without regard to any such revenue loss occurring before January 1, 1999.

(3) Definitions and rules

In this subsection:

(A) Charity tax credit

The term ''charity tax credit'' means a nonrefundable credit against State income tax (or, in the case of a State that does not impose an income tax, a comparable benefit) that is allowable for contributions, in cash or in kind, to qualified charities.

(B) Qualified charity

(i) In general

The term ''qualified charity'' means any organization—

(I) that is—

(aa) described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title;

(bb) an eligible entity; or

(cc) a public housing agency as defined in section 1437a(b)(6) of this title;

(II) that is certified by the appropriate State authority as meeting the requirements of clauses (iii) and (iv); and

(III) if such organization is otherwise required to file a return under section 6033 of such title, that elects to treat the information required to be furnished by clause (v) as being specified in section 6033(b) of such title.

(ii) Certain contributions to collection organizations treated as contributions to qualified charity

(I) In general

A contribution to a collection organization shall be treated as a contribution to a qualified charity if the donor designates in writing that the contribution is for the qualified charity.

(II) Collection organization

The term ''collection organization'' means an organization described in section 501(c)(3) of such title and exempt from tax under section 501(a) of such title—

(aa) that solicits and collects gifts and grants that, by agreement, are distributed to qualified charities;

(bb) that distributes to qualified charities at least 90 percent of the gifts

and grants the organization receives that are designated for such qualified charities; and

(cc) that meets the requirements of clause (vi).

(iii) Charity must primarily assist poor individuals

(I) In general

An organization meets the requirements of this clause only if the appropriate State authority reasonably expects that the predominant activity of such organization will be the provision of direct services within the United States to individuals and families whose annual incomes generally do not exceed 185 percent of the poverty line in order to prevent or alleviate poverty among such individuals and families.

(II) No recordkeeping in certain cases

An organization shall not be required to establish or maintain records with respect to the incomes of individuals and families for purposes of subclause (I) if such individuals or families are members of groups that are generally recognized as including substantially only individuals and families described in subclause (I).

(III) Food aid and homeless shelters

Except as otherwise provided by the appropriate State authority, for purposes of subclause (I), services to individuals in the form of—

(aa) donations of food or meals; or

(bb) temporary shelter to homeless individuals;

shall be treated as provided to individuals described in subclause (I) if the location and provision of such services are such that the service provider may reasonably conclude that the beneficiaries of such services are predominantly individuals described in subclause (I).

(iv) Minimum expense requirement

(I) In general

An organization meets the requirements of this clause only if the appropriate State authority reasonably expects that the annual poverty program expenses of such organization will not be less than 75 percent of the annual aggregate expenses of such organization.

(II) Poverty program expense

For purposes of subclause (I)—

(aa) In general

The term ''poverty program expense'' means any expense in providing direct services referred to in clause (iii).

(bb) Exceptions

Such term shall not include any management or general expense, any expense for the purpose of influencing legislation (as defined in section 4911(d) of title 26), any expense for the purpose of fundraising, any expense for a legal service provided on behalf of any individual referred to in clause (iii), any expense for providing tuition assistance relating to compulsory school attendance, and any expense that consists of a payment to an affiliate of the organization.

(v) Reporting requirement

The information required to be furnished under this clause about an organization is—

(I) the percentages determined by dividing the following categories of the organization's expenses for the year by the total expenses of the organization for the year: expenses for direct services, management expenses, general expenses, fundraising expenses, and payments to affiliates; and

(II) the category or categories (including food, shelter, education, substance abuse prevention or treatment, job training, or other) of services that constitute predominant activities of the organization.

(vi) Additional requirements for collection organizations

The requirements of this clause are met if the organization—

(I) maintains separate accounting for revenues and expenses; and

(II) makes available to the public information on the administrative and fundraising costs of the organization, and information as to the organizations receiving funds from the organization and the amount of such funds.

(vii) Special rule for States requiring tax uniformity

In the case of a State—

(I) that has a constitutional requirement of tax uniformity; and

(II) that, as of December 31, 1997, imposed a tax on personal income with—

(aa) a single flat rate applicable to all earned and unearned income (except insofar as any amount is not taxed pursuant to tax forgiveness provisions); and

(bb) no generally available exemptions or deductions to individuals;

the requirement of paragraph (2) shall be treated as met if the amount of the credit described in paragraph (2) is limited to a uniform percentage (but not greater than 25 percent) of State personal income tax liability (determined without regard to credits).

(4) Limitation on use of funds for startup and administrative activities

Except to the extent provided in subsection (b)(2) of this section, no part of the aggregate amount a State uses under paragraph (1) may be used to pay for the cost of the startup and administrative activities conducted under this subsection.

(5) Prohibition on use of funds for legal services or tuition assistance

No part of the aggregate amount a State uses under paragraph (1) may be used to provide legal services or to provide tuition assistance related to compulsory education requirements (not including tuition assistance for tutoring, camps, skills development, or other supplemental services or training).

(6) Prohibition on supplanting funds

No part of the aggregate amount a State uses under paragraph (1) may be used to supplant non-Federal funds that would be available, in the absence of Federal funds, to offset a revenue loss of the State attributable to a charity tax credit.

(Pub. L. 97–35, title VI, § 675C, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2731.)

PRIOR PROVISIONS

A prior section 9907, Pub. L. 97–35, title VI, § 678, Aug. 13, 1981, 95 Stat. 516, related to payments to States, prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9908. Application and plan

(a) Designation of lead agency

(1) Designation

The chief executive officer of a State desiring to receive a grant or allotment under section 9905 or 9906 of this title shall designate, in an application submitted to the Secretary under subsection (b) of this section, an appropriate State agency that complies with the requirements of paragraph (2) to act as a lead agency for purposes of carrying out State activities under this chapter.

(2) Duties

The lead agency shall—

(A) develop the State plan to be submitted to the Secretary under subsection (b) of this section;

(B) in conjunction with the development of the State plan as required under subsection (b) of this section, hold at least one hearing in the State with sufficient time and statewide distribution of notice of such hearing, to provide to the public an opportunity to comment on the proposed use and distribution of funds to be provided through the grant or allotment under section 9905 or 9906 of this title for the period covered by the State plan; and

(C) conduct reviews of eligible entities under section 9914 of this title.

(3) Legislative hearing

In order to be eligible to receive a grant or allotment under section 9905 or 9906 of this title, the State shall hold at least one legislative hearing every 3 years in conjunction with the development of the State plan.

(b) State application and plan

Beginning with fiscal year 2000, to be eligible to receive a grant or allotment under section 9905 or 9906 of this title, a State shall prepare and submit to the Secretary an application and State plan covering a period of not less than 1 fiscal year and not more than 2 fiscal years. The plan shall be submitted not later than 30 days prior to the beginning of the first fiscal year covered by the plan, and shall contain such information as the Secretary shall require, including—

(1) an assurance that funds made available through the grant or allotment will be used—

(A) to support activities that are designed to assist low-income families and individuals, including families and individuals receiving assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), homeless families and individuals, migrant or seasonal farmworkers, and elderly low-income individuals and families, and a description of how such activities will enable the families and individuals—

(i) to remove obstacles and solve problems that block the achievement of self-sufficiency (including self-sufficiency for families and individuals who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act);

(ii) to secure and retain meaningful employment;

(iii) to attain an adequate education, with particular attention toward improving literacy skills of the low-income families in the communities involved, which may include carrying out family literacy initiatives;

(iv) to make better use of available income;

(v) to obtain and maintain adequate housing and a suitable living environment;

(vi) to obtain emergency assistance through loans, grants, or other means to meet immediate and urgent family and individual needs; and

(vii) to achieve greater participation in the affairs of the communities involved, including the development of public and private grassroots partnerships with local law enforcement agencies, local housing authorities, private foundations, and other public and private partners to—

(I) document best practices based on successful grassroots intervention in urban areas, to develop methodologies for widespread replication; and

(II) strengthen and improve relationships with local law enforcement agencies, which may include participation in activities such as neighborhood or community policing efforts;

(B) to address the needs of youth in low-income communities through youth development programs that support the primary role of the family, give priority to the prevention of youth problems and crime, and promote increased community coordination and collaboration in meeting the needs of youth, and support development and expansion of innovative community-based youth development programs that have demonstrated success in preventing or reducing youth crime, such as—

(i) programs for the establishment of violence-free zones that would involve

youth development and intervention models (such as models involving youth mediation, youth mentoring, life skills training, job creation, and entrepreneurship programs); and

(ii) after-school child care programs; and

(C) to make more effective use of, and to coordinate with, other programs related to the purposes of this chapter (including State welfare reform efforts);

(2) a description of how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in section 9907(b) of this title in accordance with this chapter, including a description of how the State will support innovative community and neighborhood-based initiatives related to the purposes of this chapter;

(3) information provided by eligible entities in the State, containing—

(A) a description of the service delivery system, for services provided or coordinated with funds made available through grants made under section 9907(a) of this title, targeted to low-income individuals and families in communities within the State;

(B) a description of how linkages will be developed to fill identified gaps in the services, through the provision of information, referrals, case management, and followup consultations;

(C) a description of how funds made available through grants made under section 9907(a) of this title will be coordinated with other public and private resources; and

(D) a description of how the local entity will use the funds to support innovative community and neighborhood-based initiatives related to the purposes of this chapter, which may include fatherhood initiatives and other initiatives with the goal of strengthening families and encouraging effective parenting;

(4) an assurance that eligible entities in the State will provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals;

(5) an assurance that the State and the eligible entities in the State will coordinate, and establish linkages between, governmental and other social services programs to assure the effective delivery of such services to low-income individuals and to avoid duplication of such services, and a description of how the State and the eligible entities will coordinate the provision of employment and training activities, as defined in section 101[1] of such Act [29 U.S.C. 2801], in the State and in communities with entities providing activities through statewide and local workforce investment systems under the Workforce Investment Act of 1998;

(6) an assurance that the State will ensure coordination between antipoverty programs in each community in the State, and ensure, where appropriate, that emergency energy crisis intervention programs under title XXVI [42 U.S.C. 8621 et seq.] (relating to low-income home energy assistance) are conducted in such community;

(7) an assurance that the State will permit and cooperate with Federal investigations undertaken in accordance with section 9916 of this title;

(8) an assurance that any eligible entity in the State that received funding in the previous fiscal year through a community services block grant made under this chapter will not have its funding terminated under this chapter, or reduced below the proportional share of funding the entity received in the previous fiscal year unless, after providing notice and an opportunity for a hearing on the record, the State determines that cause exists for such termination or such reduction, subject to review by the Secretary as provided in section 9915(b) of this title;

(9) an assurance that the State and eligible entities in the State will, to the maximum extent possible, coordinate programs with and form partnerships with other organizations serving low-income residents of the communities and members of the groups served by the State, including religious organizations, charitable groups, and community organizations;

(10) an assurance that the State will require each eligible entity in the State to establish procedures under which a low-income individual, community organization, or religious organization, or representative of low-income individuals that considers its organization, or low-income individuals, to be inadequately represented on the board (or other mechanism) of the eligible entity to petition for adequate representation;

(11) an assurance that the State will secure from each eligible entity in the State, as a condition to receipt of funding by the entity through a community services block grant made under this chapter for a program, a community action plan (which shall be submitted to the Secretary, at the request of the Secretary, with the State plan) that includes a community-needs assessment for the community served, which may be coordinated with community-needs assessments conducted for other programs;

(12) an assurance that the State and all eligible entities in the State will, not later than fiscal year 2001, participate in the Results Oriented Management and Accountability System, another performance measure system for which the Secretary facilitated development pursuant to section 9917(b) of this title, or an alternative system for measuring performance and results that meets the requirements of that section, and a description of outcome measures to be used to measure eligible entity performance in promoting self-sufficiency, family stability, and community revitalization; and

(13) information describing how the State will carry out the assurances described in this subsection.

[1] See References in Text note below.

(c) Funding termination or reductions

For purposes of making a determination in accordance with subsection (b)(8) of this section with respect to—

(1) a funding reduction, the term ''cause'' includes—

(A) a statewide redistribution of funds provided through a community services block grant under this chapter to respond to—

(i) the results of the most recently available census or other appropriate data;

(ii) the designation of a new eligible entity; or

(iii) severe economic dislocation; or

(B) the failure of an eligible entity to comply with the terms of an agreement or a State plan, or to meet a State requirement, as described in section 9915(a) of this title; and

(2) a termination, the term ''cause'' includes the failure of an eligible entity to comply with the terms of an agreement or a State plan, or to meet a State requirement, as described in section 9915(a) of this title.

(d) Procedures and information

The Secretary may prescribe procedures for the purpose of assessing the effectiveness of eligible entities in carrying out the purposes of this chapter.

(e) Revisions and inspection

(1) Revisions

The chief executive officer of each State may revise any plan prepared under this section and shall submit the revised plan to the Secretary.

(2) Public inspection

Each plan or revised plan prepared under this section shall be made available for public inspection within the State in such a manner as will facilitate review of, and comment on, the plan.

(f) Transition

For fiscal year 2000, to be eligible to receive a grant or allotment under section 9905 or 9906 of this title, a State shall prepare and submit to the Secretary an application and State plan in accordance with the provisions of this chapter (as in effect on the day before October 27, 1998), rather than the provisions of subsections (a) through (c) of this section relating to applications and plans.

(Pub. L. 97–35, title VI, § 676, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2735.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 101 of such Act, referred to in subsec. (b)(5), is probably a reference to section 101 of the Workforce Investment Act of 1998, Pub. L. 105–220, which is classified to section 2801 of Title 29, Labor.

The Workforce Investment Act of 1998, referred to in subsec. (b)(5), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Title XXVI, referred to in subsec. (b)(6), is title XXVI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 893, as amended, known as the Low-Income Home Energy Assistance Act of 1981, which is classified generally to subchapter II (§ 8621 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8621 of this title and Tables.

PRIOR PROVISIONS

A prior section 9908, Pub. L. 97–35, title VI, § 679, Aug. 13, 1981, 95 Stat. 517; Pub. L. 98–558, title II, § 205, Oct. 30, 1984, 98 Stat. 2886; Pub. L. 99–425, title IV, § 404(a), Sept. 30, 1986, 100 Stat. 969, related to withholding of funds, prior to the general amendment of this chapter by Pub. L. 105–285.

A prior section 676 of Pub. L. 97–35 was classified to section 9905 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9909. Designation and redesignation of eligible entities in unserved areas

(a) Qualified organization in or near area

(1) In general

If any geographic area of a State is not, or ceases to be, served by an eligible entity under this chapter, and if the chief executive officer of the State decides to serve such area, the chief executive officer may solicit applications from, and designate as an eligible entity—

(A) a private nonprofit organization (which may include an eligible entity) that is geographically located in the unserved area, that is capable of providing a broad range of services designed to eliminate poverty and foster self-sufficiency, and that meets the requirements of this chapter; and

(B) a private nonprofit eligible entity that is geographically located in an area contiguous to or within reasonable proximity of the unserved area and that is already providing related services in the unserved area.

(2) Requirement

In order to serve as the eligible entity for the area, an entity described in paragraph (1)(B) shall agree to add additional members to the board of the entity to ensure adequate representation—

(A) in each of the three required categories described in subparagraphs (A), (B), and (C) of section 9910(a)(2) of this title, by members that reside in the community comprised by the unserved area; and

(B) in the category described in section 9910(a)(2)(B) of this title, by members that reside in the neighborhood to be served.

(b) Special consideration

In designating an eligible entity under subsection (a) of this section, the chief executive officer shall grant the designation to an organization of demonstrated effectiveness in meeting the goals and purposes of this chapter and may give priority, in granting the designation, to eligible entities that are providing related services in the unserved area, consistent with the needs identified by a community-needs assessment.

(c) No qualified organization in or near area

If no private, nonprofit organization is identified or determined to be qualified under sub-

section (a) of this section to serve the unserved area as an eligible entity the chief executive officer may designate an appropriate political subdivision of the State to serve as an eligible entity for the area. In order to serve as the eligible entity for that area, the political subdivision shall have a board or other mechanism as required in section 9910(b) of this title.

(Pub. L. 97–35, title VI, § 676A, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2739.)

PRIOR PROVISIONS

A prior section 9909, Pub. L. 97–35, title VI, § 680, Aug. 13, 1981, 95 Stat. 517; Pub. L. 99–425, title IV, § 405(c)(2), Sept. 30, 1986, 100 Stat. 970; Pub. L. 103–171, § 7(c)(3), Dec. 2, 1993, 107 Stat. 1994, related to limitation on use of grants for construction and waiver of such limitation, prior to the general amendment of this chapter by Pub. L. 105–285.

A prior section 676A of Pub. L. 97–35 was classified to section 9905a of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9910. Tripartite boards

(a) Private nonprofit entities

(1) Board

In order for a private, nonprofit entity to be considered to be an eligible entity for purposes of section 9902(1) of this title, the entity shall administer the community services block grant program through a tripartite board described in paragraph (2) that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.

(2) Selection and composition of board

The members of the board referred to in paragraph (1) shall be selected by the entity and the board shall be composed so as to assure that—

(A) ⅓ of the members of the board are elected public officials, holding office on the date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than ⅓ of the membership of the board, membership on the board of appointive public officials or their representatives may be counted in meeting such ⅓ requirement;

(B)(i) not fewer than ⅓ of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and

(ii) each representative of low-income individuals and families selected to represent a specific neighborhood within a community under clause (i) resides in the neighborhood represented by the member; and

(C) the remainder of the members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) Public organizations

In order for a public organization to be considered to be an eligible entity for purposes of section 9902(1) of this title, the entity shall administer the community services block grant program through—

(1) a tripartite board, which shall have members selected by the organization and shall be composed so as to assure that not fewer than ⅓ of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members—

(A) are representative of low-income individuals and families in the neighborhood served;

(B) reside in the neighborhood served; and

(C) are able to participate actively in the development, planning, implementation, and evaluation of programs funded under this chapter; or

(2) another mechanism specified by the State to assure decisionmaking and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded under this chapter.

(Pub. L. 97–35, title VI, § 676B, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2740.)

PRIOR PROVISIONS

Prior sections 9910 and 9910a were omitted in the general amendment of this chapter by Pub. L. 105–285.

Section 9910, Pub. L. 97–35, title VI, § 681, Aug. 13, 1981, 95 Stat. 518; Pub. L. 98–558, title II, § 204, Oct. 30, 1984, 98 Stat. 2886; Pub. L. 99–425, title IV, § 405(a), (b), Sept. 30, 1986, 100 Stat. 969, 970; Pub. L. 101–501, title IV, §§ 405, 407(b), Nov. 3, 1990, 104 Stat. 1252, 1255; Pub. L. 103–171, § 7(a), Dec. 2, 1993, 107 Stat. 1993; Pub. L. 103–252, title II, § 203, May 18, 1994, 108 Stat. 654, related to the discretionary authority of the Secretary.

Section 9910a, Pub. L. 97–35, title VI, § 681A, as added Pub. L. 98–558, title II, § 206, Oct. 30, 1984, 98 Stat. 2886; amended Pub. L. 99–425, title IV, § 406, Sept. 30, 1986, 100 Stat. 970; Pub. L. 101–501, title IV, §§ 401(b), 406, Nov. 3, 1990, 104 Stat. 1251, 1253; Pub. L. 103–171, § 7(c)(4), Dec. 2, 1993, 107 Stat. 1994; Pub. L. 103–252, title II, § 204, May 18, 1994, 108 Stat. 655, related to community food and nutrition.

A prior section 9910b, Pub. L. 99–425, title IV, § 408, Sept. 30, 1986, 100 Stat. 972, as amended, which related to demonstration partnership agreements addressing needs of poor, was transferred to section 9925 of this title.

A prior section 9910c, Pub. L. 97–35, title VI, § 682, as added Pub. L. 103–252, title II, § 205(2), May 18, 1994, 108 Stat. 655; amended Pub. L. 105–244, title I, § 102(a)(13)(I), Oct. 7, 1998, 112 Stat. 1621, related to national or regional programs designed to provide instructional activities for low-income youth, prior to the general amendment of this chapter by Pub. L. 105–285.

A prior section 9910d, Pub. L. 100–485, title V, § 505, Oct. 13, 1988, 102 Stat. 2404, as amended, which related to demonstration partnership agreements addressing needs of poor, was transferred to section 9926 of this title.

§ 9911. Payments to Indian tribes

(a) Reservation

If, with respect to any State, the Secretary—

(1) receives a request from the governing body of an Indian tribe or tribal organization within the State that assistance under this chapter be made directly to such tribe or organization; and

(2) determines that the members of such tribe or tribal organization would be better served by means of grants made directly to provide benefits under this chapter,

the Secretary shall reserve from amounts that would otherwise be allotted to such State under section 9906 of this title for the fiscal year the amount determined under subsection (b) of this section.

(b) Determination of reserved amount

The Secretary shall reserve for the purpose of subsection (a) of this section from amounts that would otherwise be allotted to such State, not less than 100 percent of an amount that bears the same ratio to the State allotment for the fiscal year involved as the population of all eligible Indians for whom a determination has been made under subsection (a) of this section bears to the population of all individuals eligible for assistance through a community services block grant made under this chapter in such State.

(c) Awards

The sums reserved by the Secretary on the basis of a determination made under subsection (a) of this section shall be made available by grant to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(d) Plan

In order for an Indian tribe or tribal organization to be eligible for a grant award for a fiscal year under this section, the tribe or organization shall submit to the Secretary a plan for such fiscal year that meets such criteria as the Secretary may prescribe by regulation.

(e) Definitions

In this section:

(1) Indian tribe; tribal organization

The terms ''Indian tribe'' and ''tribal organization'' mean a tribe, band, or other organized group recognized in the State in which the tribe, band, or group resides, or considered by the Secretary of the Interior, to be an Indian tribe or an Indian organization for any purpose.

(2) Indian

The term ''Indian'' means a member of an Indian tribe or of a tribal organization.

(Pub. L. 97–35, title VI, § 677, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2741.)

PRIOR PROVISIONS

A prior section 9911, Pub. L. 97–35, title VI, § 683, formerly § 682, as added Pub. L. 101–501, title IV, § 407(a), Nov. 3, 1990, 104 Stat. 1254; amended Pub. L. 103–171, § 7(b), Dec. 2, 1993, 107 Stat. 1993; renumbered § 683, Pub. L. 103–252, title II, § 205(1), May 18, 1994, 108 Stat. 655, related to annual reports by Secretary, prior to the general amendment of this chapter by Pub. L. 105–285.

Another prior section 9911, Pub. L. 97–35, title VI, § 682, Aug. 13, 1981, 95 Stat. 518; Pub. L. 97–115, § 17(c), Dec. 29, 1981, 95 Stat. 1609; Pub. L. 97–274, Sept. 30, 1982, 96 Stat. 1183, related to transition provisions, prior to repeal by Pub. L. 101–501, § 407(a).

A prior section 677 of Pub. L. 97–35 was classified to section 9906 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9912. Office of Community Services

(a) Office

The Secretary shall carry out the functions of this chapter through an Office of Community Services, which shall be established in the Department of Health and Human Services. The Office shall be headed by a Director.

(b) Grants, contracts, and cooperative agreements

The Secretary shall carry out functions of this chapter through grants, contracts, or cooperative agreements.

(Pub. L. 97–35, title VI, § 678, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2742.)

PRIOR PROVISIONS

A prior section 9912, Pub. L. 97–35, title VI, § 684, formerly § 683, Aug. 13, 1981, 95 Stat. 519; Pub. L. 98–288, § 31(b), May 21, 1984, 98 Stat. 198; renumbered § 684, Pub. L. 103–252, title II, § 205(1), May 18, 1994, 108 Stat. 655, contained provisions repealing certain other statutory provisions, reauthorizing appropriations, and conforming references, prior to general amendment of this chapter by Pub. L. 105–285.

A prior section 678 of Pub. L. 97–35 was classified to section 9907 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9913. Training, technical assistance, and other activities

(a) Activities

(1) In general

The Secretary shall use amounts reserved in section 9903(b)(2) of this title—

(A) for training, technical assistance, planning, evaluation, and performance measurement, to assist States in carrying out corrective action activities and monitoring (to correct programmatic deficiencies of eligible entities), and for reporting and data collection activities, related to programs carried out under this chapter; and

(B) to distribute amounts in accordance with subsection (c) of this section.

(2) Grants, contracts, and cooperative agreements

The activities described in paragraph (1)(A) may be carried out by the Secretary through grants, contracts, or cooperative agreements with appropriate entities.

(b) Terms and technical assistance process

The process for determining the training and technical assistance to be carried out under this section shall—

(1) ensure that the needs of eligible entities and programs relating to improving program quality (including quality of financial management practices) are addressed to the maximum extent feasible; and

(2) incorporate mechanisms to ensure responsiveness to local needs, including an ongoing procedure for obtaining input from the national and State networks of eligible entities.

(c) Distribution requirement

(1) In general

The amounts reserved under section 9903(b)(2)(A) of this title for activities to be carried out under this subsection shall be distributed directly to eligible entities, organizations, or associations described in paragraph (2) for the purpose of improving program qual-

ity (including quality of financial management practices), management information and reporting systems, and measurement of program results, and for the purpose of ensuring responsiveness to identified local needs.

(2) Eligible entities, organizations, or associations

Eligible entities, organizations, or associations described in this paragraph shall be eligible entities, or statewide or local organizations or associations, with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

(Pub. L. 97–35, title VI, § 678A, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2742.)

§ 9914. Monitoring of eligible entities

(a) In general

In order to determine whether eligible entities meet the performance goals, administrative standards, financial management requirements, and other requirements of a State, the State shall conduct the following reviews of eligible entities:

(1) A full onsite review of each such entity at least once during each 3-year period.

(2) An onsite review of each newly designated entity immediately after the completion of the first year in which such entity receives funds through the community services block grant program.

(3) Followup reviews including prompt return visits to eligible entities, and their programs, that fail to meet the goals, standards, and requirements established by the State.

(4) Other reviews as appropriate, including reviews of entities with programs that have had other Federal, State, or local grants (other than assistance provided under this chapter) terminated for cause.

(b) Requests

The State may request training and technical assistance from the Secretary as needed to comply with the requirements of this section.

(c) Evaluations by the Secretary

The Secretary shall conduct in several States in each fiscal year evaluations (including investigations) of the use of funds received by the States under this chapter in order to evaluate compliance with the provisions of this chapter, and especially with respect to compliance with section 9908(b) of this title. The Secretary shall submit, to each State evaluated, a report containing the results of such evaluations, and recommendations of improvements designed to enhance the benefit and impact of the activities carried out with such funds for people in need. On receiving the report, the State shall submit to the Secretary a plan of action in response to the recommendations contained in the report. The results of the evaluations shall be submitted annually to the Chairperson of the Committee on Education and the Workforce of the House of Representatives and the Chairperson of the Committee on Labor and Human Resources of the Senate as part of the report submitted by the Secretary in accordance with section 9917(b)(2) of this title.

(Pub. L. 97–35, title VI, § 678B, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2743.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

§ 9915. Corrective action; termination and reduction of funding

(a) Determination

If the State determines, on the basis of a final decision in a review pursuant to section 9914 of this title, that an eligible entity fails to comply with the terms of an agreement, or the State plan, to provide services under this chapter or to meet appropriate standards, goals, and other requirements established by the State (including performance objectives), the State shall—

(1) inform the entity of the deficiency to be corrected;

(2) require the entity to correct the deficiency;

(3)(A) offer training and technical assistance, if appropriate, to help correct the deficiency, and prepare and submit to the Secretary a report describing the training and technical assistance offered; or

(B) if the State determines that such training and technical assistance are not appropriate, prepare and submit to the Secretary a report stating the reasons for the determination;

(4)(A) at the discretion of the State (taking into account the seriousness of the deficiency and the time reasonably required to correct the deficiency), allow the entity to develop and implement, within 60 days after being informed of the deficiency, a quality improvement plan to correct such deficiency within a reasonable period of time, as determined by the State; and

(B) not later than 30 days after receiving from an eligible entity a proposed quality improvement plan pursuant to subparagraph (A), either approve such proposed plan or specify the reasons why the proposed plan cannot be approved; and

(5) after providing adequate notice and an opportunity for a hearing, initiate proceedings to terminate the designation of or reduce the funding under this chapter of the eligible entity unless the entity corrects the deficiency.

(b) Review

A determination to terminate the designation or reduce the funding of an eligible entity is reviewable by the Secretary. The Secretary shall, upon request, review such a determination. The review shall be completed not later than 90 days after the Secretary receives from the State all necessary documentation relating to the determination to terminate the designation or reduce the funding. If the review is not completed within 90 days, the determination of the State shall become final at the end of the 90th day.

(c) Direct assistance

Whenever a State violates the assurances contained in section 9908(b)(8) of this title and ter-

minates or reduces the funding of an eligible entity prior to the completion of the State hearing described in that section and the Secretary's review as required in subsection (b) of this section, the Secretary is authorized to provide financial assistance under this chapter to the eligible entity affected until the violation is corrected. In such a case, the grant or allotment for the State under section 9905 or 9906 of this title for the earliest appropriate fiscal year shall be reduced by an amount equal to the funds provided under this subsection to such eligible entity.

(Pub. L. 97–35, title VI, § 678C, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2743.)

§ 9916. Fiscal controls, audits, and withholding

(a) Fiscal controls, procedures, audits, and inspections

(1) In general

A State that receives funds under this chapter shall—

(A) establish fiscal control and fund accounting procedures necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under this chapter, including procedures for monitoring the funds provided under this chapter;

(B) ensure that cost and accounting standards of the Office of Management and Budget apply to a recipient of the funds under this chapter;

(C) subject to paragraph (2), prepare, at least every year, an audit of the expenditures of the State of amounts received under this chapter and amounts transferred to carry out the purposes of this chapter; and

(D) make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request for the items.

(2) Audits

(A) In general

Subject to subparagraph (B), each audit required by subsection (a)(1)(C) of this section shall be conducted by an entity independent of any agency administering activities or services carried out under this chapter and shall be conducted in accordance with generally accepted accounting principles.

(B) Single audit requirements

Audits shall be conducted under this paragraph in the manner and to the extent provided in chapter 75 of title 31 (commonly known as the ''Single Audit Act Amendments of 1996'').

(C) Submission of copies

Within 30 days after the completion of each such audit in a State, the chief executive officer of the State shall submit a copy of such audit to any eligible entity that was the subject of the audit at no charge, to the legislature of the State, and to the Secretary.

(3) Repayments

The State shall repay to the United States amounts found not to have been expended in accordance with this chapter or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this chapter.

(b) Withholding

(1) In general

The Secretary shall, after providing adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State that does not utilize the grant or allotment under section 9905 or 9906 of this title in accordance with the provisions of this chapter, including the assurances such State provided under section 9908 of this title.

(2) Response to complaints

The Secretary shall respond in an expeditious and speedy manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the provisions of this chapter, including the assurances provided by the State under section 9908 of this title. For purposes of this paragraph, a complaint of a failure to meet any one of the assurances provided under section 9908 of this title that constitutes disregarding that assurance shall be considered to be a complaint of a serious nature.

(3) Investigations

Whenever the Secretary determines that there is a pattern of complaints of failures described in paragraph (2) from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this chapter by such State in order to ensure compliance with the provisions of this chapter.

(Pub. L. 97–35, title VI, § 678D, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2744.)

§ 9917. Accountability and reporting requirements

(a) State accountability and reporting requirements

(1) Performance measurement

(A) In general

By October 1, 2001, each State that receives funds under this chapter shall participate, and shall ensure that all eligible entities in the State participate, in a performance measurement system, which may be a performance measurement system for which the Secretary facilitated development pursuant to subsection (b) of this section, or an alternative system that the Secretary is satisfied meets the requirements of subsection (b) of this section.

(B) Local agencies

The State may elect to have local agencies that are subcontractors of the eligible entities under this chapter participate in the performance measurement system. If the State makes that election, references in this section to eligible entities shall be considered to include the local agencies.

(2) Annual report

Each State shall annually prepare and submit to the Secretary a report on the measured performance of the State and the eligible entities in the State. Prior to the participation of the State in the performance measurement system, the State shall include in the report any information collected by the State relating to such performance. Each State shall also include in the report an accounting of the expenditure of funds received by the State through the community services block grant program, including an accounting of funds spent on administrative costs by the State and the eligible entities, and funds spent by eligible entities on the direct delivery of local services, and shall include information on the number of and characteristics of clients served under this chapter in the State, based on data collected from the eligible entities. The State shall also include in the report a summary describing the training and technical assistance offered by the State under section 9915(a)(3) of this title during the year covered by the report.

(b) Secretary's accountability and reporting requirements

(1) Performance measurement

The Secretary, in collaboration with the States and with eligible entities throughout the Nation, shall facilitate the development of one or more model performance measurement systems, which may be used by the States and by eligible entities to measure their performance in carrying out the requirements of this chapter and in achieving the goals of their community action plans. The Secretary shall provide technical assistance, including support for the enhancement of electronic data systems, to States and to eligible entities to enhance their capability to collect and report data for such a system and to aid in their participation in such a system.

(2) Reporting requirements

At the end of each fiscal year beginning after September 30, 1999, the Secretary shall, directly or by grant or contract, prepare a report containing—

(A) a summary of the planned use of funds by each State, and the eligible entities in the State, under the community services block grant program, as contained in each State plan submitted pursuant to section 9908 of this title;

(B) a description of how funds were actually spent by the State and eligible entities in the State, including a breakdown of funds spent on administrative costs and on the direct delivery of local services by eligible entities;

(C) information on the number of entities eligible for funds under this chapter, the number of low-income persons served under this chapter, and such demographic data on the low-income populations served by eligible entities as is determined by the Secretary to be feasible;

(D) a comparison of the planned uses of funds for each State and the actual uses of the funds;

(E) a summary of each State's performance results, and the results for the eligible entities, as collected and submitted by the States in accordance with subsection (a)(2) of this section; and

(F) any additional information that the Secretary considers to be appropriate to carry out this chapter, if the Secretary informs the States of the need for such additional information and allows a reasonable period of time for the States to collect and provide the information.

(3) Submission

The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate the report described in paragraph (2), and any comments the Secretary may have with respect to such report. The report shall include definitions of direct and administrative costs used by the Department of Health and Human Services for programs funded under this chapter.

(4) Costs

Of the funds reserved under section 9903(b)(3) of this title, not more than $350,000 shall be available to carry out the reporting requirements contained in paragraph (2).

(Pub. L. 97–35, title VI, § 678E, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2746.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

§ 9918. Limitations on use of funds

(a) Construction of facilities

(1) Limitations

Except as provided in paragraph (2), grants made under this chapter (other than amounts reserved under section 9903(b)(3) of this title) may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this chapter, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.

(2) Waiver

The Secretary may waive the limitation contained in paragraph (1) upon a State request for such a waiver, if the Secretary finds that the request describes extraordinary circumstances to justify the purchase of land or the construction of facilities (or the making of permanent improvements) and that permitting the waiver will contribute to the ability of the State to carry out the purposes of this chapter.

(b) Political activities

(1) Treatment as a State or local agency

For purposes of chapter 15 of title 5, any entity that assumes responsibility for planning,

developing, and coordinating activities under this chapter and receives assistance under this chapter shall be deemed to be a State or local agency. For purposes of paragraphs (1) and (2) of section 1502(a) of such title, any entity receiving assistance under this chapter shall be deemed to be a State or local agency.

(2) Prohibitions

Programs assisted under this chapter shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel, in a manner supporting or resulting in the identification of such programs with—

(A) any partisan or nonpartisan political activity or any political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(C) any voter registration activity.

(3) Rules and regulations

The Secretary, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this subsection, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.

(c) Nondiscrimination

(1) In general

No person shall, on the basis of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this chapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified individual with a disability as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.) shall also apply to any such program or activity.

(2) Action of Secretary

Whenever the Secretary determines that a State that has received a payment under this chapter has failed to comply with paragraph (1) or an applicable regulation, the Secretary shall notify the chief executive officer of the State and shall request that the officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), as may be applicable; or

(C) take such other action as may be provided by law.

(3) Action of Attorney General

When a matter is referred to the Attorney General pursuant to paragraph (2), or whenever the Attorney General has reason to believe that the State is engaged in a pattern or practice of discrimination in violation of the provisions of this subsection, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(Pub. L. 97–35, title VI, § 678F, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2747.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsec. (c)(1), (2)(B), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (c)(1), (2)(B), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended. Title II of the Act is classified generally to subchapter II (§ 12131 et seq.) of chapter 126 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(B), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 9919. Drug and child support services and referrals

(a) Drug testing and rehabilitation

(1) In general

Nothing in this chapter shall be construed to prohibit a State from testing participants in programs, activities, or services carried out or provided under this chapter for controlled substances. A State that conducts such testing shall inform the participants who test positive for any of such substances about the availability of treatment or rehabilitation services and refer such participants for appropriate treatment or rehabilitation services.

(2) Administrative expenses

Any funds provided under this chapter expended for such testing shall be considered to be expended for administrative expenses and shall be subject to the limitation specified in section 9907(b)(2) of this title.

(3) Definition

In this subsection, the term ''controlled substance'' has the meaning given the term in section 802 of title 21.

(b) Child support services and referrals

During each fiscal year for which an eligible entity receives a grant under section 9907 of this title, such entity shall—

(1) inform custodial parents in single-parent families that participate in programs, activities, or services carried out or provided under this chapter about the availability of child support services; and

(2) refer eligible parents to the child support offices of State and local governments.

(Pub. L. 97–35, title VI, § 678G, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2749.)

§ 9920. Operational rule

(a) Religious organizations included as nongovernmental providers

For any program carried out by the Federal Government, or by a State or local government under this chapter, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, so long as the program is implemented in a manner consistent with the Establishment Clause of the first amendment to the Constitution. Neither the Federal Government nor a State or local government receiving funds under this chapter shall discriminate against an organization that provides assistance under, or applies to provide assistance under, this chapter, on the basis that the organization has a religious character.

(b) Religious character and independence

(1) In general

A religious organization that provides assistance under a program described in subsection (a) of this section shall retain its religious character and control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State or local government shall require a religious organization—

(A) to alter its form of internal governance, except (for purposes of administration of the community services block grant program) as provided in section 9910 of this title; or

(B) to remove religious art, icons, scripture, or other symbols;

in order to be eligible to provide assistance under a program described in subsection (a) of this section.

(3) Employment practices

A religious organization's exemption provided under section 2000e–1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a) of this section.

(c) Limitations on use of funds for certain purposes

No funds provided directly to a religious organization to provide assistance under any program described in subsection (a) of this section shall be expended for sectarian worship, instruction, or proselytization.

(d) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization providing assistance under any program described in subsection (a) of this section shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds provided under such program.

(2) Limited audit

Such organization shall segregate government funds provided under such program into a separate account. Only the government funds shall be subject to audit by the government.

(e) Treatment of eligible entities and other intermediate organizations

If an eligible entity or other organization (referred to in this subsection as an ''intermediate organization''), acting under a contract, or grant or other agreement, with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (a) of this section, the intermediate organization shall have the same duties under this section as the government.

(Pub. L. 97–35, title VI, § 679, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2749.)

PRIOR PROVISIONS

A prior section 679 of Pub. L. 97–35 was classified to section 9908 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9921. Discretionary authority of Secretary

(a) Grants, contracts, arrangements, loans, and guarantees

(1) In general

The Secretary shall, from funds reserved under section 9903(b)(3) of this title, make grants, loans, or guarantees to States and public agencies and private, nonprofit organizations, or enter into contracts or jointly financed cooperative arrangements with States and public agencies and private, nonprofit organizations (and for-profit organizations, to the extent specified in paragraph (2)(E)) for each of the objectives described in paragraphs (2) through (4).

(2) Community economic development

(A) Economic development activities

The Secretary shall make grants described in paragraph (1) on a competitive basis to private, nonprofit organizations that are community development corporations to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families by creating employment and business development opportunities.

(B) Consultation

The Secretary shall exercise the authority provided under subparagraph (A) after consultation with other relevant Federal officials.

(C) Governing boards

For a community development corporation to receive funds to carry out this paragraph,

the corporation shall be governed by a board that shall consist of residents of the community and business and civic leaders and shall have as a principal purpose planning, developing, or managing low-income housing or community development projects.

(D) Geographic distribution

In making grants to carry out this paragraph, the Secretary shall take into consideration the geographic distribution of funding among States and the relative proportion of funding among rural and urban areas.

(E) Reservation

Of the amounts made available to carry out this paragraph, the Secretary may reserve not more than 1 percent for each fiscal year to make grants to private, nonprofit organizations or to enter into contracts with private, nonprofit or for-profit organizations to provide technical assistance to aid community development corporations in developing or implementing activities funded to carry out this paragraph and to evaluate activities funded to carry out this paragraph.

(3) Rural community development activities

The Secretary shall provide the assistance described in paragraph (1) for rural community development activities, which shall include providing—

(A) grants to private, nonprofit corporations to enable the corporations to provide assistance concerning home repair to rural low-income families and concerning planning and developing low-income rural rental housing units; and

(B) grants to multistate, regional, private, nonprofit organizations to enable the organizations to provide training and technical assistance to small, rural communities concerning meeting their community facility needs.

(4) Neighborhood innovation projects

The Secretary shall provide the assistance described in paragraph (1) for neighborhood innovation projects, which shall include providing grants to neighborhood-based private, nonprofit organizations to test or assist in the development of new approaches or methods that will aid in overcoming special problems identified by communities or neighborhoods or otherwise assist in furthering the purposes of this chapter, and which may include providing assistance for projects that are designed to serve low-income individuals and families who are not being effectively served by other programs.

(b) Evaluation

The Secretary shall require all activities receiving assistance under this section to be evaluated for their effectiveness. Funding for such evaluations shall be provided as a stated percentage of the assistance or through a separate grant awarded by the Secretary specifically for the purpose of evaluation of a particular activity or group of activities.

(c) Annual report

The Secretary shall compile an annual report containing a summary of the evaluations required in subsection (b) of this section and a listing of all activities assisted under this section. The Secretary shall annually submit the report to the Chairperson of the Committee on Education and the Workforce of the House of Representatives and the Chairperson of the Committee on Labor and Human Resources of the Senate.

(Pub. L. 97–35, title VI, § 680, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2750.)

PRIOR PROVISIONS

A prior section 680 of Pub. L. 97–35 was classified to section 9909 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

PROCEDURES TO PERMIT GRANT FUNDS OR INTANGIBLE PROPERTY ACQUIRED BY GRANT FUNDS TO BECOME SOLE PROPERTY OF GRANTEES

Pub. L. 109–149, title II, Dec. 30, 2005, 119 Stat. 2855, provided in part: ''That the Secretary shall establish procedures regarding the disposition of intangible property which permits grant funds, or intangible assets acquired with funds authorized under section 680 of the Community Services Block Grant Act, as amended [42 U.S.C. 9921], to become the sole property of such grantees after a period of not more than 12 years after the end of the grant for purposes and uses consistent with the original grant''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. F, title II, Dec. 8, 2004, 118 Stat. 3134.

Pub. L. 108–199, div. E, title II, Jan. 23, 2004, 118 Stat. 249.

Pub. L. 108–7, div. G, title II, Feb. 20, 2003, 117 Stat. 319.

Pub. L. 107–116, title II, Jan. 10, 2002, 115 Stat. 2196.

Pub. L. 106–554, § 1(a)(1) [title II], Dec. 21, 2000, 114 Stat. 2763, 2763A–23.

Pub. L. 106–113, div. B, § 1000(a)(4) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A–235.

§ 9922. Community food and nutrition programs

(a) Grants

The Secretary may, through grants to public and private, nonprofit agencies, provide for community-based, local, statewide, and national programs—

(1) to coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations;

(2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and

(3) to develop innovative approaches at the State and local level to meet the nutrition needs of low-income individuals.

(b) Allotments and distribution of funds

(1) Not to exceed $6,000,000 in appropriations

Of the amount appropriated for a fiscal year to carry out this section (but not to exceed $6,000,000), the Secretary shall distribute funds

for grants under subsection (a) of this section as follows:

(A) Allotments

From a portion equal to 60 percent of such amount (but not to exceed $3,600,000), the Secretary shall allot for grants to eligible agencies for statewide programs in each State the amount that bears the same ratio to such portion as the low-income and unemployed population of such State bears to the low-income and unemployed population of all the States.

(B) Competitive grants

From a portion equal to 40 percent of such amount (but not to exceed $2,400,000), the Secretary shall make grants on a competitive basis to eligible agencies for local and statewide programs.

(2) Greater available appropriations

Any amounts appropriated for a fiscal year to carry out this section in excess of $6,000,000 shall be allotted as follows:

(A) Allotments

The Secretary shall use 40 percent of such excess to allot for grants under subsection (a) of this section to eligible agencies for statewide programs in each State an amount that bears the same ratio to 40 percent of such excess as the low-income and unemployed population of such State bears to the low-income and unemployed population of all the States.

(B) Competitive grants for local and statewide programs

The Secretary shall use 40 percent of such excess to make grants under subsection (a) of this section on a competitive basis to eligible agencies for local and statewide programs.

(C) Competitive grants for nationwide programs

The Secretary shall use the remaining 20 percent of such excess to make grants under subsection (a) of this section on a competitive basis to eligible agencies for nationwide programs, including programs benefiting Indians, as defined in section 9911 of this title, and migrant or seasonal farmworkers.

(3) Eligibility for allotments for statewide programs

To be eligible to receive an allotment under paragraph (1)(A) or (2)(A), an eligible agency shall demonstrate that the proposed program is statewide in scope and represents a comprehensive and coordinated effort to alleviate hunger within the State.

(4) Minimum allotments for statewide programs

(A) In general

From the amounts allotted under paragraphs (1)(A) and (2)(A), the minimum total allotment for each State for each fiscal year shall be—

(i) $15,000 if the total amount appropriated to carry out this section is not less than $7,000,000 but less than $10,000,000;

(ii) $20,000 if the total amount appropriated to carry out this section is not less than $10,000,000 but less than $15,000,000; or

(iii) $30,000 if the total amount appropriated to carry out this section is not less than $15,000,000.

(B) Definition

In this paragraph, the term ''State'' does not include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(5) Maximum grants

From funds made available under paragraphs (1)(B) and (2)(B) for any fiscal year, the Secretary may not make grants under subsection (a) of this section to an eligible agency in an aggregate amount exceeding $50,000. From funds made available under paragraph (2)(C) for any fiscal year, the Secretary may not make grants under subsection (a) of this section to an eligible agency in an aggregate amount exceeding $300,000.

(c) Report

For each fiscal year, the Secretary shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the grants made under this section. Such report shall include—

(1) a list of grant recipients;

(2) information on the amount of funding awarded to each grant recipient; and

(3) a summary of the activities performed by the grant recipients with funding awarded under this section and a description of the manner in which such activities meet the objectives described in subsection (a) of this section.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 1999 through 2003.

(Pub. L. 97–35, title VI, § 681, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2752.)

PRIOR PROVISIONS

A prior section 681 of Pub. L. 97–35 was classified to section 9910 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

§ 9923. National or regional programs designed to provide instructional activities for low-income youth

(a) General authority

The Secretary is authorized to make a grant to an eligible service provider to administer national or regional programs to provide instructional activities for low-income youth. In making such a grant, the Secretary shall give priority to eligible service providers that have a demonstrated ability to operate such a program.

(b) Program requirements

Any instructional activity carried out by an eligible service provider receiving a grant under this section shall be carried out on the campus of an institution of higher education (as defined in section 1141(a)[1] of title 20) and shall include—

(1) access to the facilities and resources of such an institution;

(2) an initial medical examination and follow-up referral or treatment, without charge, for youth during their participation in such activity;

(3) at least one nutritious meal daily, without charge, for participating youth during each day of participation;

(4) high quality instruction in a variety of sports (that shall include swimming and that may include dance and any other high quality recreational activity) provided by coaches and teachers from institutions of higher education and from elementary and secondary schools (as defined in section 7801 of title 20); and

(5) enrichment instruction and information on matters relating to the well-being of youth, to include educational opportunities and information on study practices, education for the prevention of drug and alcohol abuse, and information on health and nutrition, career opportunities, and family and job responsibilities.

(c) Advisory committee; partnerships

The eligible service provider shall, in each community in which a program is funded under this section—

(1) ensure that—

(A) a community-based advisory committee is established, with representatives from local youth, family, and social service organizations, schools, entities providing park and recreation services, and other community-based organizations serving high-risk youth; or

(B) an existing community-based advisory board, commission, or committee with similar membership is utilized to serve as the committee described in subparagraph (A); and

(2) enter into formal partnerships with youth-serving organizations or other appropriate social service entities in order to link program participants with year-round services in their home communities that support and continue the objectives of this chapter.

(d) Eligible providers

A service provider that is a national private, nonprofit organization, a coalition of such organizations, or a private, nonprofit organization applying jointly with a business concern shall be eligible to apply for a grant under this section if—

(1) the applicant has demonstrated experience in operating a program providing instruction to low-income youth;

(2) the applicant agrees to contribute an amount (in cash or in kind, fairly evaluated) of not less than 25 percent of the amount requested, for the program funded through the grant;

(3) the applicant agrees to use no funds from a grant authorized under this section for administrative expenses; and

(4) the applicant agrees to comply with the regulations or program guidelines promulgated by the Secretary for use of funds made available through the grant.

(e) Application process

To be eligible to receive a grant under this section, a service provider shall submit to the Secretary, for approval, an application at such time, in such manner, and containing such information as the Secretary may require.

(f) Promulgation of regulations or program guidelines

The Secretary shall promulgate regulations or program guidelines to ensure funds made available through a grant made under this section are used in accordance with the objectives of this chapter.

(g) Authorization of appropriations

There are authorized to be appropriated $15,000,000 for each of fiscal years 1999 through 2003 for grants to carry out this section.

(Pub. L. 97–35, title VI, § 682, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2753; amended Pub. L. 107–110, title X, § 1076(ee), Jan. 8, 2002, 115 Stat. 2093.)

REFERENCES IN TEXT

Section 1141(a) of title 20, referred to in subsec. (b), was repealed by Pub. L. 105–244, § 3, title I, § 101(b), title VII, § 702, Oct. 7, 1998, 112 Stat. 1585, 1616, 1803, effective Oct. 1, 1998. However, the term ''institution of higher education'' is defined in section 1001 of Title 20, Education.

PRIOR PROVISIONS

A prior section 682 of Pub. L. 97–35 was classified to section 9910c of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

Another prior section 682 of Pub. L. 97–35 was renumbered section 683 and was classified to section 9911 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

Another prior section 682 of Pub. L. 97–35 was classified to section 9911 of this title, prior to repeal by Pub. L. 101–501.

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107–110 substituted ''7801'' for ''8801''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

§ 9924. References

Any reference in any provision of law to the poverty line set forth in section 624 or 625 of the Economic Opportunity Act of 1964 shall be construed to be a reference to the poverty line defined in section 9902 of this title. Except as otherwise provided, any reference in any provision of law to any community action agency designated under title II of the Economic Opportunity Act of 1964 shall be construed to be a reference to an entity eligible to receive funds

[1] See References in Text note below.

under the community services block grant program.

(Pub. L. 97–35, title VI, § 683, as added Pub. L. 105–285, title II, § 201, Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Title II of the Act was classified generally to subchapter II (§ 2781 et seq.) of chapter 34 of this title prior to repeal by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Section 625 of the Act, which was subsequently renumbered section 624 of the Act and related to the poverty line, was classified to section 2971d of this title, prior to repeal by section 683(a) of Pub. L. 97–35. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 683 of Pub. L. 97–35 was classified to section 9911 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

Another prior section 683 of Pub. L. 97–35 was renumbered section 684, and was classified to section 9912 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

§ 9925. Demonstration partnership agreements addressing needs of poor

(a) General authority

(1) In order to stimulate the development of new approaches to provide for greater self-sufficiency of the poor, to test and evaluate such new approaches, to disseminate project results and evaluation findings so that such approaches can be replicated, and to strengthen the integration, coordination, and redirection of activities to promote maximum self-sufficiency among the poor, the Secretary may make grants from funds appropriated under subsection (e) of this section to eligible entities for the development and implementation of new and innovative approaches to deal with particularly critical needs or problems of the poor which are common to a number of communities. Grants may be made only with respect to applications which—

(A) involve activities which can be incorporated into or be closely coordinated with eligible entities' ongoing programs;

(B) involve significant new combinations of resources or new and innovative approaches involving partnership agreements;

(C) are structured in a way that will, within the limits of the type of assistance or activities contemplated, most fully and effectively promote the purposes of the Community Services Block Grant Act [42 U.S.C. 9901 et seq.]; and

(D) contain an assurance that the applicant for such grants will obtain an independent, methodologically sound evaluation of the effectiveness of the activities carried out with such grant and will submit such evaluation to the Secretary.

(2) No grant may be made under this section unless an application is submitted to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may require.

(3) Initial and subsequent grant awards may fully fund projects for periods of up to 3 years.

(b) Federal share; limitations

(1)(A) Subject to subparagraph (B), grants awarded pursuant to this section shall be used for programs and shall not exceed 50 per centum of the cost of such programs.

(B) After the first funding period for which an eligible entity receives a grant under this section to carry out a program, the amount of a subsequent grant made under this section to such entity to carry out such program may not exceed 80 percent of the amount of the grant previously received by such entity under this section to carry out such program.

(2) Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, or services.

(3) Not more than one grant in each fiscal year may be made to any eligible entity, and no grant may exceed $350,000. Not more than 2 grants may be made under this section to an eligible entity to carry out a particular program.

(4) No application may be approved for assistance under this section unless the Secretary is satisfied that—

(A) the activities to be carried out under the application will be in addition to, and not in substitution for, activities previously carried on without Federal assistance; and

(B) funds or other resources devoted to programs designed to meet the needs of the poor within the community, area, or State will not be diminished in order to provide the matching contributions required under this section.

(c) Programs directed to special populations

(1) In addition to the grant programs described in subsection (a) of this section, the Secretary may make grants to community action agencies for the purpose of enabling such agencies to demonstrate new approaches to dealing with the problems caused by entrenched, chronic unemployment and lack of economic opportunities for urban youth. Demonstrations shall include such activities as peer counseling, mentoring, development of job skills, assistance with social skills, community services, family literacy, parenting skills, opportunities for employment or entrepreneurship, and other services designed to assist such at-risk youth to continue their education, to secure meaningful employment, to perform community service, or to pursue other productive alternatives within the community.

(2) Such grants may be made only with respect to applications that—

(A) identify and describe the population to be served, the problems to be addressed, the overall approach and methods of outreach and recruitment to be used, and the services to be provided;

(B) describe how the approach to be used differs from other approaches used for the population to be served by the project;

(C) describe the objectives of the project and contain a plan for measuring progress toward meeting those objectives; and

(D) contain assurances that the grantee will report on the progress and results of the demonstration at such times and in such manner as the Secretary shall require.

(3) Notwithstanding subsection (b) of this section, such grants shall not exceed 80 percent of the cost of such programs.

(4) Such grants made under this subsection on a competitive basis shall be based on an annual competition determined by the Secretary. Grants made under this subsection shall not exceed $500,000.

(d) Dissemination of results

As soon as practicable, but not later than 180 days after the end of the fiscal year in which a recipient of a grant under this section completes the expenditure of such grant, the Secretary shall prepare and make available to each State and each eligible entity a description of the program carried out with such grant, any relevant information developed and results achieved, and a summary of the evaluation of such program received under subsection (a)(1)(D) of this section so as to provide a model of innovative programs for other eligible entities.

(e) Replication of programs

(1) The Secretary shall annually identify programs that receive grants under this section that demonstrate a significant potential for dealing with particularly critical needs or problems of the poor that exist in a number of communities.

(2) Not less than 10 percent, and not more than 25 percent, of the funds appropriated for each fiscal year to carry out this section shall be available to make grants under this section to replicate in additional geographic areas programs identified under paragraph (1).

(f) Omitted

(g) Definitions

As used in this section—

(1) the term ''eligible entity'' has the same meaning given such term by section 673(1) of the Community Services Block Grant Act (42 U.S.C. 9902(1)), except that such term includes an organization that serves migrant and seasonal farm workers and that receives a grant under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) in the fiscal year preceding the fiscal year for which such organization requests a grant under this section; and

(2) the term ''Secretary'' means the Secretary of Health and Human Services.

(h) Authorization of appropriations

(1) There are authorized to be appropriated $30,000,000 for fiscal year 1995, and such sums as may be necessary for fiscal years 1996, 1997, and 1998, to carry out this section.

(2) Of the amounts appropriated for this section, not less than 30 percent and not more than 40 percent shall be used to carry out the programs authorized under subsection (c) of this section.

(3) In addition to sums which are required to carry out the evaluation, reporting, and dissemination of results under subsections (a), (c), (d), and (f)[1] of this section, the Secretary is authorized to reserve up to 2 percent of the amounts appropriated pursuant to subparagraphs (1) and (2) for administration of the program as well as for planning and technical assistance.

(Pub. L. 99–425, title IV, § 408, Sept. 30, 1986, 100 Stat. 972; Pub. L. 101–204, title VII, § 705, Dec. 7, 1989, 103 Stat. 1821; Pub. L. 101–501, title VI, §§ 601, 602, Nov. 3, 1990, 104 Stat. 1257, 1258; Pub. L. 103–252, title II, § 207, May 18, 1994, 108 Stat. 656.)

REFERENCES IN TEXT

The Community Services Block Grant Act, referred to in subsecs. (a)(1)(C) and (g)(1), is subtitle B (§ 671 et seq.) of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to this chapter (§ 9901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

Subsection (f) of this section, referred to in subsec. (h)(3), was omitted from the Code.

CODIFICATION

Subsec. (f) of this section, which required the Secretary to submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate an annual report describing programs for which grants were made under this section in the most recently completed fiscal year and the evaluations received under subsec. (a)(1)(D) of this section in such fiscal year, describing the methods used by the Secretary to comply with subsec. (d) of this section, making recommendations regarding the suitability of carrying out such programs with funds made available under other Federal laws, and describing each program identified under subsec. (d)(1) of this section or replicated under subsec. (e)(2) of this section and identifying the geographical location where such program was carried out, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 98 of House Document No. 103–7.

Section was formerly classified to section 9910b of this title.

Section was enacted as part of the Human Services Reauthorization Act of 1986, and not as part of the Community Services Block Grant Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–252, § 207(1), added par. (3).

Subsec. (b)(1)(B). Pub. L. 103–252, § 207(2), substituted ''After the first funding period'' for ''After the first fiscal year''.

Subsec. (c)(1). Pub. L. 103–252, § 207(3)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In addition to the grant programs described in subsection (a) of this section, the Secretary shall make grants to eligible entities for the purpose of demonstrating new and innovative approaches to addressing the problems of, and providing opportunities for leadership development, community involvement, and educational success to, disadvantaged persons between the ages of 14 and 25 from populations experiencing conditions such as a high poverty rate, high unemployment, high dropout rate, low labor force participation, low enrollment in college or participation in other post high school training classes, high incidence of involvement in violence, and a high rate of incarceration. Services provided through approaches funded by such grants may include assessment and development of employability plans, remedial education, motivational activities, life skills instruction, community service, mentoring, access to information on available financial aid, campus visits, career education, cultural enrichment, and employment training, placement, and follow-up.''

Subsec. (c)(4). Pub. L. 103–252, § 207(3)(B), amended par. (4) generally. Prior to amendment, par. (4) read as

[1] See References in Text note below.

follows: ''Such grants shall be made annually on such terms and conditions as the Secretary shall specify to eligible entities that serve the populations described in paragraph (1) and that are located within those areas where such populations are concentrated.''

Subsec. (h). Pub. L. 103–252, § 207(4), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows:

''(1) There are authorized to be appropriated $10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994, to carry out this section (other than subsection (c) of this section).

''(2) There are authorized to be appropriated $10,000,000 for fiscal year 1991 and such sums as may be necessary in each of the fiscal years 1992 through 1994, to carry out subsection (c) of this section.''

1990—Subsecs. (c) to (e). Pub. L. 101–501, § 601(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101–501, § 601(1), (2), redesignated subsec. (e) as (f) and substituted ''subsection (d)'' for ''subsection (c)'' in par. (2) and ''subsection (e)(2)'' for ''subsection (d)(2)'' in par. (4). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 101–501, § 601(2), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 101–501, §§ 601(2), 602, redesignated subsec. (g) as (h), designated existing provisions as par. (1), substituted ''$10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994'' for ''$5,000,000 for each of the fiscal years 1987, 1988, and 1989, and $7,000,000 for fiscal year 1990'', inserted ''(other than subsection (c) of this section)'' before period at end, and added par. (2).

1989—Subsec. (a)(1). Pub. L. 101–204, § 705(a)(1), substituted ''stimulate the development of new approaches to provide for greater self-sufficiency of the poor, to test and evaluate such new approaches, to disseminate project results and evaluation findings so that such approaches can be replicated, and to strengthen the integration, coordination, and redirection of activities to promote maximum self-sufficiency among the poor'' for ''provide for the self-sufficiency of the Nation's poor''.

Subsec. (a)(1)(D). Pub. L. 101–204, § 705(a)(2), added subpar. (D).

Subsec. (b)(1). Pub. L. 101–204, § 705(b)(1), designated existing provisions as subpar. (A), substituted ''Subject to subparagraph (B), grants'' for ''Grants'', struck out ''new'' before ''programs'' wherever appearing, and added subpar. (B).

Subsec. (b)(3). Pub. L. 101–204, § 705(b)(2), inserted ''in each fiscal year'' after ''than one grant'', substituted ''$350,000'' for ''$250,000'', and inserted at end ''Not more than 2 grants may be made under this section to an eligible entity to carry out a particular program.''

Subsec. (c). Pub. L. 101–204, § 705(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''As soon as practicable, but no later than 90 days after the expiration of the fiscal year for which any grant is awarded under this section, the Secretary shall prepare and make available upon request to each State and eligible entity descriptions of the demonstration programs assisted under this section, and any relevant information developed and results achieved, so as to provide models for innovative programs to other eligible entities.''

Subsecs. (d), (e). Pub. L. 101–204, § 705(f)(2), added subsecs. (d) and (e). Former subsecs. (d) and (e) redesignated (f) and (g), respectively.

Subsec. (f). Pub. L. 101–204, § 705(d), (f)(1), redesignated subsec. (d) as (f) and inserted before semicolon in par. (1) '', except that such term includes an organization that serves migrant and seasonal farm workers and that receives a grant under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) in the fiscal year preceding the fiscal year for which such organization requests a grant under this section''.

Subsec. (g). Pub. L. 101–204, § 705(e), (f)(1), redesignated subsec. (e) as (g), substituted ''are'' for ''is'', and inserted ''and $7,000,000 for fiscal year 1990,'' after ''1989,''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 208 of Pub. L. 103–252, set out as a note under section 9901 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

§ 9926. Projects to expand the number of job opportunities available to certain low-income individuals

(a) In general

The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall enter into agreements with nonprofit organizations (including community development corporations) submitting applications under this section for the purpose of conducting projects in accordance with subsection (b) of this section to create employment opportunities for certain low-income individuals.

(b) Nature of project

(1) Each nonprofit organization conducting a project under this section shall provide technical and financial assistance to private employers in the community to assist them in creating employment and business opportunities for those individuals eligible to participate in the projects as described in this subsection.

(2) For purposes of this section, a nonprofit organization is any organization (including a community development corporation) exempt from taxation under section 501(a) of title 26 by reason of paragraph (3) or (4) of section 501(c) of such title.

(3) A low-income individual eligible to participate in a project conducted under this section is any individual eligible to receive assistance under the program funded part[1] A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] of the State in which the individual resides and any other individual whose income level does not exceed 100 percent of the official poverty line as defined by the Office of Management and Budget and revised in accordance with section 9902(2) of this title.

(c) Content of applications; selection priority

(1) Each nonprofit organization submitting an application under this section shall, as part of such application, describe—

(A) the technical and financial assistance that will be made available under the project conducted under this section;

(B) the geographic area to be served by the project;

(C) the percentage of low-income individuals (as described in subsection (b) of this section) and individuals receiving assistance under a

[1] So in original. Probably should be ''under part''.

State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] in the area to be served by the project; and

(D) unemployment rates in the geographic areas to be served and (to the extent practicable) the jobs available and skills necessary to fill those vacancies in such areas.

(2) In approving applications under this section, the Secretary shall give priority to applications proposing to serve those areas containing the highest percentage of individuals receiving assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.].

(d) Administration

Each nonprofit organization participating in a project conducted under this section shall provide assurances in its agreement with the Secretary that it has or will have a cooperative relationship with the agency responsible for administering the the[2] State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] in the area served by the project.

(e) Authorization of appropriations

For the purpose of conducting projects under this section, there is authorized to be appropriated an amount not to exceed $25,000,000 for any fiscal year.

(Pub. L. 100–485, title V, § 505, Oct. 13, 1988, 102 Stat. 2404; Pub. L. 101–508, title V, § 5063, Nov. 5, 1990, 104 Stat. 1388–232; Pub. L. 103–432, title II, § 261(a), Oct. 31, 1994, 108 Stat. 4467; Pub. L. 104–193, title I, § 112, Aug. 22, 1996, 110 Stat. 2176; Pub. L. 105–33, title V, § 5515, Aug. 5, 1997, 111 Stat. 620.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(3), (c)(1)(C), (2), and (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was formerly classified to section 9910d of this title. Prior to such classification, section was set out as a note under section 1315 of this title.

Section was enacted as part of the Family Support Act of 1988, and not as part of the Community Services Block Grant Act which comprises this chapter.

AMENDMENTS

1997—Subsec. (c)(1)(C), (2). Pub. L. 105–33 which directed the amendment of Pub. L. 104–193, § 112(5), was executed to that section as if the amendment were retroactive to the effective date of the amendment by Pub. L. 104–193 to reflect the probable intent of Congress. See 1996 Amendment notes below.

1996—Pub. L. 104–193, § 112(1), struck out ''Demonstration'' before ''projects'' in section catchline.

Subsec. (a). Pub. L. 104–193, § 112(2), (3), substituted ''shall enter into agreements with'' for ''in each of the fiscal years 1990, 1991, and 1992, shall enter into agreements with not less than 5 nor more than 10'' and ''conducting projects'' for ''conducting demonstration projects''.

Subsec. (b)(1). Pub. L. 104–193, § 112(2), struck out ''demonstration'' after ''organization conducting a''.

Subsec. (b)(3). Pub. L. 104–193, § 112(4), substituted ''assistance under the program funded part A of title IV of the Social Security Act of the State in which the individual resides'' for ''aid to families with dependent children under part A of title IV of the Social Security Act''.

Subsec. (c)(1)(C). Pub. L. 104–193, § 112(5)(A), as amended by Pub. L. 105–33, substituted ''assistance under a State program funded under part A of title IV of the Social Security Act'' for ''aid to families with dependent children under title IV of the Social Security Act''.

Subsec. (c)(2). Pub. L. 104–193, § 112(5)(B), as amended by Pub. L. 105–33, substituted ''assistance under a State program funded under part A of title IV of the Social Security Act'' for ''aid to families with dependent children under title IV of such Act''.

Subsec. (d). Pub. L. 104–193, § 112(2), (6), struck out ''demonstration'' after ''organization participating in a'' and substituted ''the State program funded under part A of title IV of the Social Security Act'' for ''job opportunities and basic skills training program (as provided for under title IV of the Social Security Act)''.

Subsecs. (e) to (g). Pub. L. 104–193, § 112(7), added subsec. (e) and struck out former subsec. (e) which related to duration of demonstration projects under this section, subsec. (f) which required evaluation of the success of each demonstration project, and subsec. (g) which authorized appropriations for the conduct of demonstration projects for each of fiscal years 1990 to 1996.

1994—Subsec. (e). Pub. L. 103–432, § 261(a)(1), substituted ''6-year period'' for ''3-year period''.

Subsec. (f)(2). Pub. L. 103–432, § 261(a)(2), substituted ''January 1, 1995'' for ''January 1, 1993''.

Subsec. (g). Pub. L. 103–432, § 261(a)(3), substituted ''1991, 1992, 1993, 1994, 1995, and 1996'' for ''1991, and 1992''.

1990—Subsec. (a). Pub. L. 101–508, § 5063(1), inserted ''in each of the fiscal years 1990, 1991, and 1992,'' before ''shall''.

Subsec. (e). Pub. L. 101–508, § 5063(2), substituted ''September 30 of the fiscal year specified in the agreement described in subsection (a) of this section'' for ''September 30, 1989''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 261(b) of Pub. L. 103–432 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1993.''

CHAPTER 107—CONSUMER-PATIENT RADIATION HEALTH AND SAFETY

Sec.
10001. Statement of findings.
10002. Statement of purpose.
10003. Definitions.
10004. Promulgation of standards.
10005. Model statute.
10006. Compliance.
10007. Federal radiation guidelines.
10008. Applicability to Federal agencies.

§ 10001. Statement of findings

The Congress finds that—

[2] So in original.

(1) it is in the interest of public health and safety to minimize unnecessary exposure to potentially hazardous radiation due to medical and dental radiologic procedures;

(2) it is in the interest of public health and safety to have a continuing supply of adequately educated persons and appropriate accreditation and certification programs administered by State governments;

(3) the protection of the public health and safety from unnecessary exposure to potentially hazardous radiation due to medical and dental radiologic procedures and the assurance of efficacious procedures are the responsibility of State and Federal governments;

(4) persons who administer radiologic procedures, including procedures at Federal facilities, should be required to demonstrate competence by reason of education, training, and experience; and

(5) the administration of radiologic procedures and the effect on individuals of such procedures have a substantial and direct effect upon United States interstate commerce.

(Pub. L. 97–35, title IX, § 976, Aug. 13, 1981, 95 Stat. 598.)

SHORT TITLE

Section 975 of Pub. L. 97–35 provided that: ''This subtitle [subtitle I (§§ 975–983) of title IX of Pub. L. 97–35, enacting this chapter] may be cited as the 'Consumer-Patient Radiation Health and Safety Act of 1981'.''

§ 10002. Statement of purpose

It is the purpose of this chapter to—

(1) provide for the establishment of minimum standards by the Federal Government for the accreditation of education programs for persons who administer radiologic procedures and for the certification of such persons; and

(2) insure that medical and dental radiologic procedures are consistent with rigorous safety precautions and standards.

(Pub. L. 97–35, title IX, § 977, Aug. 13, 1981, 95 Stat. 599.)

§ 10003. Definitions

Unless otherwise expressly provided, for purposes of this chapter, the term—

(1) ''radiation'' means ionizing and nonionizing radiation in amounts beyond normal background levels from sources such as medical and dental radiologic procedures;

(2) ''radiologic procedure'' means any procedure or article intended for use in—

(A) the diagnosis of disease or other medical or dental conditions in humans (including diagnostic X-rays or nuclear medicine procedures); or

(B) the cure, mitigation, treatment, or prevention of disease in humans;

that achieves its intended purpose through the emission of radiation;

(3) ''radiologic equipment'' means any radiation electronic product which emits or detects radiation and which is used or intended for use to—

(A) diagnose disease or other medical or dental conditions (including diagnostic X-ray equipment); or

(B) cure, mitigate, treat, or prevent disease in humans;

that achieves its intended purpose through the emission or detection of radiation;

(4) ''practitioner'' means any licensed doctor of medicine, osteopathy, dentistry, podiatry, or chiropractic, who prescribes radiologic procedures for other persons;

(5) ''persons who administer radiologic procedures'' means any person, other than a practitioner, who intentionally administers radiation to other persons for medical purposes, and includes medical radiologic technologists (including dental hygienists and assistants), radiation therapy technologists, and nuclear medicine technologists;

(6) ''Secretary'' means the Secretary of Health and Human Services; and

(7) ''State'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(Pub. L. 97–35, title IX, § 978, Aug. 13, 1981, 95 Stat. 599.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 10004. Promulgation of standards

(a) Within twelve months after August 13, 1981, the Secretary, in consultation with the Radiation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, appropriate agencies of the States, and appropriate professional organizations, shall by regulation promulgate minimum standards for the accreditation of educational programs to train individuals to perform radiologic procedures. Such standards shall distinguish between programs for the education of (1) medical radiologic technologists (including radiographers), (2) dental auxiliaries (including dental hygienists and assistants), (3) radiation therapy technologists, (4) nuclear medicine technologists, and (5) such other kinds of health auxiliaries who administer radiologic procedures as the Secretary determines appropriate. Such standards shall not be applicable to educational programs for practitioners.

(b) Within twelve months after August 13, 1981, the Secretary, in consultation with the Radiation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, interested agencies of the States, and appropriate professional organizations, shall by regulation promulgate minimum standards for the certification of persons who administer radiologic procedures. Such standards shall distinguish between certification of (1) medical radiologic technologists (including radiographers), (2) dental auxiliaries (including dental hygienists and assistants), (3) radiation therapy technologists, (4) nuclear medicine technologists, and (5) such other kinds of health auxiliaries who administer radiologic proce-

dures as the Secretary determines appropriate. Such standards shall include minimum certification criteria for individuals with regard to accredited education, practical experience, successful passage of required examinations, and such other criteria as the Secretary shall deem necessary for the adequate qualification of individuals to administer radiologic procedures. Such standards shall not apply to practitioners.

(Pub. L. 97–35, title IX, § 979, Aug. 13, 1981, 95 Stat. 599; Pub. L. 102–54, § 13(q)(13)(A), June 13, 1991, 105 Stat. 281.)

AMENDMENTS

1991—Subsecs. (a), (b). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

§ 10005. Model statute

In order to encourage the administration of accreditation and certification programs by the States, the Secretary shall prepare and transmit to the States a model statute for radiologic procedure safety. Such model statute shall provide that—

(1) it shall be unlawful in a State for individuals to perform radiologic procedures unless such individuals are certified by the State to perform such procedures; and

(2) any educational requirements for certification of individuals to perform radiologic procedures shall be limited to educational programs accredited by the State.

(Pub. L. 97–35, title IX, § 980, Aug. 13, 1981, 95 Stat. 600.)

§ 10006. Compliance

(a) Implementation by Secretary

The Secretary shall take all actions consistent with law to effectuate the purposes of this chapter.

(b) Accreditation or certification program

A State may utilize an accreditation or certification program administered by a private entity if—

(1) such State delegates the administration of the State accreditation or certification program to such private entity;

(2) such program is approved by the State; and

(3) such program is consistent with the minimum Federal standards promulgated under this chapter for such program.

(c) Noncompliance; proposed legislative changes

Absent compliance by the States with the provisions of this chapter within three years after August 13, 1981, the Secretary shall report to the Congress recommendations for legislative changes considered necessary to assure the States' compliance with this chapter.

(d) Repealed. Pub. L. 104–66, title I, § 1061(b), Dec. 21, 1995, 109 Stat. 719

(e) Existing standards and guidelines

Notwithstanding any other provision of this section, in the case of a State which has, prior to the effective date of standards and guidelines promulgated pursuant to this chapter, established standards for the accreditation of educational programs and certification of radiologic technologists, such State shall be deemed to be in compliance with the conditions of this section unless the Secretary determines, after notice and hearing, that such State standards do not meet the minimum standards prescribed by the Secretary or are inconsistent with the purposes of this chapter.

(Pub. L. 97–35, title IX, § 981, Aug. 13, 1981, 95 Stat. 600; Pub. L. 104–66, title I, § 1061(b), Dec. 21, 1995, 109 Stat. 719.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–66 struck out subsec. (d) which read as follows: ''The Secretary shall be responsible for continued monitoring of compliance by the States with the applicable provisions of this chapter and shall report to the Senate and the House of Representatives by January 1, 1982, and January 1 of each succeeding year the status of the States' compliance with the purposes of this chapter.''

§ 10007. Federal radiation guidelines

The Secretary shall, in conjunction with the Radiation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, appropriate agencies of the States, and appropriate professional organizations, promulgate Federal radiation guidelines with respect to radiologic procedures. Such guidelines shall—

(1) determine the level of radiation exposure due to radiologic procedures which is unnecessary and specify the techniques, procedures, and methods to minimize such unnecessary exposure;

(2) provide for the elimination of the need for retakes of diagnostic radiologic procedures;

(3) provide for the elimination of unproductive screening programs;

(4) provide for the optimum diagnostic information with minimum radiologic exposure; and

(5) include the therapeutic application of radiation to individuals in the treatment of disease, including nuclear medicine applications.

(Pub. L. 97–35, title IX, § 982, Aug. 13, 1981, 95 Stat. 601; Pub. L. 102–54, § 13(q)(13)(B), June 13, 1991, 105 Stat. 281.)

AMENDMENTS

1991—Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' in introductory provisions.

§ 10008. Applicability to Federal agencies

(a) Except as provided in subsection (b) of this section, each department, agency, and instrumentality of the executive branch of the Federal Government shall comply with standards promulgated pursuant to this chapter.

(b) The Secretary of Veterans Affairs, through the Under Secretary for Health of the Department of Veterans Affairs, shall, to the maximum extent feasible consistent with the responsibilities of such Secretary and Under Secretary for Health under title 38, prescribe regulations making the standards promulgated pursuant to this chapter applicable to the provision of radiologic

procedures in facilities over which that Secretary has jurisdiction. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs shall consult with the Secretary in order to achieve the maximum possible coordination of the regulations, standards, and guidelines, and the implementation thereof, which the Secretary and the Secretary of Veterans Affairs prescribe under this chapter.

(Pub. L. 97–35, title IX, § 983, Aug. 13, 1981, 95 Stat. 601; Pub. L. 102–54, § 13(q)(13)(C), June 13, 1991, 105 Stat. 282; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director'' in two places.

1991—Subsec. (b). Pub. L. 102–54 substituted ''The Secretary of Veterans Affairs, through the Chief Medical Director of the Department of Veterans Affairs, shall, to the maximum extent feasible consistent with the responsibilities of such Secretary and Chief Medical Director under title 38'' for ''(1) The Administrator of Veterans' Affairs, through the Chief Medical Director of the Veterans' Administration, shall, to the maximum extent feasible consistent with the responsibilities of such Administrator and Chief Medical Director under subtitle 38'', ''over which that Secretary'' for ''over which the Administrator'', and ''Secretary of Veterans Affairs'' for ''Administrator'' wherever else appearing, and struck out pars. (2) and (3) which read as follows:

''(2) Not later than 180 days after standards are promulgated by the Secretary pursuant to this chapter, the Administrator of Veterans' Affairs shall submit to the appropriate committees of Congress a full report with respect to the regulations (including guidelines, policies, and procedures thereunder) prescribed pursuant to paragraph (1) of this subsection. Such report shall include—

''(A) an explanation of any inconsistency between standards made applicable by such regulations and the standards promulgated by the Secretary pursuant to this chapter;

''(B) an account of the extent, substance, and results of consultations with the Secretary respecting the prescription and implementation of regulations by the Administrator; and

''(C) such recommendations for legislation and administrative action as the Administrator determines are necessary and desirable.

''(3) The Administrator of Veterans' Affairs shall publish the report required by paragraph (2) in the Federal Register.''

CHAPTER 108—NUCLEAR WASTE POLICY

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§ 10101. Definitions

For purposes of this chapter:

(1) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) The term ''affected Indian tribe'' means any Indian tribe—

(A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located;

(B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe;[1]

(3) The term ''atomic energy defense activity'' means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

(A) naval reactors development;

(B) weapons activities including defense inertial confinement fusion;

(C) verification and control technology;

(D) defense nuclear materials production;

(E) defense nuclear waste and materials by-products management;

(F) defense nuclear materials security and safeguards and security investigations; and

(G) defense research and development.

(4) The term ''candidate site'' means an area, within a geologic and hydrologic system, that is recommended by the Secretary under section 10132 of this title for site characterization, approved by the President under section 10132 of this title for site characterization, or undergoing site characterization under section 10133 of this title.

(5) The term ''civilian nuclear activity'' means any atomic energy activity other than an atomic energy defense activity.

(6) The term ''civilian nuclear power reactor'' means a civilian nuclear powerplant required to be licensed under section 2133 or 2134(b) of this title.

(7) The term ''Commission'' means the Nuclear Regulatory Commission.

(8) The term ''Department'' means the Department of Energy.

(9) The term ''disposal'' means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.

(10) The terms ''disposal package'' and ''package'' mean the primary container that holds, and is in contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials, and any overpacks that are emplaced at a repository.

(11) The term ''engineered barriers'' means manmade components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.

(12) The term ''high-level radioactive waste'' means—

(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

(13) The term ''Federal agency'' means any Executive agency, as defined in section 105 of title 5.

(14) The term ''Governor'' means the chief executive officer of a State.

[1] So in original. The semicolon probably should be a period.

(15) The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

(16) The term ''low-level radioactive waste'' means radioactive material that—

(A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 2014(e)(2) of this title; and

(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

(17) The term ''Office'' means the Office of Civilian Radioactive Waste Management established in section 10224[2] of this title.

(18) The term ''repository'' means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

(19) The term ''reservation'' means—

(A) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18; or

(B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(20) The term ''Secretary'' means the Secretary of Energy.

(21) The term ''site characterization'' means—

(A) siting research activities with respect to a test and evaluation facility at a candidate site; and

(B) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

(22) The term ''siting research'' means activities, including borings, surface excavations, shaft excavations, subsurface lateral excavations and borings, and in situ testing, to determine the suitability of a site for a test and evaluation facility.

(23) The term ''spent nuclear fuel'' means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(24) The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(25) The term ''storage'' means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

(26) The term ''Storage Fund'' means the Interim Storage Fund established in section 10156(c)[3] of this title.

(27) The term ''test and evaluation facility'' means an at-depth, prototypic, underground cavity with subsurface lateral excavations extending from a central shaft that is used for research and development purposes, including the development of data and experience for the safe handling and disposal of solidified high-level radioactive waste, transuranic waste, or spent nuclear fuel.

(28) The term ''unit of general local government'' means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(29) The term ''Waste Fund'' means the Nuclear Waste Fund established in section 10222(c) of this title.

(30) The term ''Yucca Mountain site'' means the candidate site in the State of Nevada recommended by the Secretary to the President under section 10132(b)(1)(B) of this title on May 27, 1986.

(31) The term ''affected unit of local government'' means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

(32) The term ''Negotiator'' means the Nuclear Waste Negotiator.

(33) As used in subchapter IV of this chapter, the term ''Office'' means the Office of the Nuclear Waste Negotiator established under subchapter IV of this chapter.

(34) The term ''monitored retrievable storage facility'' means the storage facility described in section 10161(b)(1) of this title.

(Pub. L. 97–425, § 2, Jan. 7, 1983, 96 Stat. 2202; Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5002, Dec. 22, 1987, 101 Stat. 1330–227.)

REFERENCES IN TEXT

Section 10224 of this title, referred to in par. (17), was in the original a reference to section 305 of Pub. L. 97–425, which is classified to section 10225 of this title, and was translated as section 10224 of this title as the probable intent of Congress, in view of the Office of Civilian Radioactive Waste Management being established by section 10224 of this title.

The Alaska Native Claims Settlement Act, referred to in par. (19)(B), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat.

[2] See References in Text note below.

[3] See References in Text note below.

688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 10156(c) of this title, referred to in par. (26), was in the original a reference to section 137(c) of Pub. L. 97–425, which is classified to section 10157(c) of this title, and has been translated as section 10156(c) of this title as the probable intent of Congress, in view of the Interim Storage Fund being established by section 10156(c) of this title.

AMENDMENTS

1987—Pars. (30) to (34). Pub. L. 100–202 and Pub. L. 100–203 amended section identically adding pars. (30) to (34).

SHORT TITLE OF 1987 AMENDMENT

Section 101(d) [title III] of Pub. L. 100–202 and section 5001 of title V of Pub. L. 100–203 provided that: ''This subtitle [subtitle A (§§ 5001–5065) of title V, enacting sections 10162, 10163, 10164, 10165, 10166, 10167, 10168, 10169, 10172, 10172a, 10173, 10173a, 10173b, 10173c, 10174, 10174a, 10175, 10204, 10241, 10242, 10243, 10244, 10245, 10246, 10247, 10248, 10249, 10250, 10251, 10261, 10262, 10263, 10264, 10265, 10266, 10267, 10268, 10269, and 10270 of this title, amending this section and sections 10132, 10133, 10134, 10136, 10137, and 10138 of this title and enacting provisions set out as a note under section 5841 of this title] may be cited as the 'Nuclear Waste Policy Amendments Act of 1987'.''

SHORT TITLE

Section 1 of Pub. L. 97–425 provided that: ''This Act [enacting this chapter] may be cited as the 'Nuclear Waste Policy Act of 1982'.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

NUCLEAR WASTE MANAGEMENT PLAN; REPORT

Pub. L. 102–486, title VIII, § 803, Oct. 24, 1992, 106 Stat. 2923, provided that:

''(a) PREPARATION AND SUBMISSION OF REPORT.—The Secretary of Energy, in consultation with the Nuclear Regulatory Commission and the Environmental Protection Agency, shall prepare and submit to the Congress a report on whether current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of the enactment of this Act [Oct. 24, 1992]. The Secretary shall prepare the report for submission to the President and the Congress within 1 year after the date of the enactment of this Act. The report shall examine any new relevant issues related to management of spent nuclear fuel and high-level radioactive waste that might be raised by the addition of new nuclear-generated electric capacity, including anticipated increased volumes of spent nuclear fuel or high-level radioactive waste, any need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste, and any need for additional repositories for deep geologic disposal.

''(b) OPPORTUNITY FOR PUBLIC COMMENT.—In preparation of the report required under subsection (a), the Secretary of Energy shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Nuclear Regulatory Commission, the Environmental Protection Agency, and other interested parties.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.''

§ 10102. Separability

If any provision of this chapter, or the application of such provision to any person or circumstance, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Pub. L. 97–425, § 3, Jan. 7, 1983, 96 Stat. 2205.)

§ 10103. Territories and possessions

Nothing in this chapter shall be deemed to repeal, modify, or amend the provisions of section 1491 of title 48.

(Pub. L. 97–425, § 4, Jan. 7, 1983, 96 Stat. 2205.)

§ 10104. Ocean disposal

Nothing in this chapter shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).

(Pub. L. 97–425, § 5, Jan. 7, 1983, 96 Stat. 2205.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in text, is Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (§ 1431 et seq.) and 32A (§ 1447 et seq.) of Title 16, Conservation, and chapters 27 (§ 1401 et seq.) and 41 (§ 2801 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

§ 10105. Limitation on spending authority

The authority under this chapter to incur indebtedness, or enter into contracts, obligating amounts to be expended by the Federal Government shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 97–425, § 6, Jan. 7, 1983, 96 Stat. 2205.)

§ 10106. Protection of classified national security information

Nothing in this chapter shall require the release or disclosure to any person or to the Commission of any classified national security information.

(Pub. L. 97–425, § 7, Jan. 7, 1983, 96 Stat. 2205.)

§ 10107. Applicability to atomic energy defense activities

(a) Atomic energy defense activities

Subject to the provisions of subsection (c) of this section, the provisions of this chapter shall not apply with respect to any atomic energy defense activity or to any facility used in connection with any such activity.

(b) Evaluation by President

(1) Not later than 2 years after January 7, 1983, the President shall evaluate the use of disposal capacity at one or more repositories to be developed under part A of subchapter I of this chapter for the disposal of high-level radioactive waste resulting from atomic energy defense activities. Such evaluation shall take into consideration factors relating to cost efficiency, health and

safety, regulation, transportation, public acceptability, and national security.

(2) Unless the President finds, after conducting the evaluation required in paragraph (1), that the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required, taking into account all of the factors described in such subsection, the Secretary shall proceed promptly with arrangement for the use of one or more of the repositories to be developed under part A of subchapter I of this chapter for the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repository or repositories. The costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities shall be paid by the Federal Government, into the special account established under section 10222 of this title.

(3) Any repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only shall (A) be subject to licensing under section 5842 of this title; and (B) comply with all requirements of the Commission for the siting, development, construction, and operation of a repository.

(c) Applicability to certain repositories

The provisions of this chapter shall apply with respect to any repository not used exclusively for the disposal of high-level radioactive waste or spent nuclear fuel resulting from atomic energy defense activities, research and development activities of the Secretary, or both.

(Pub. L. 97–425, § 8, Jan. 7, 1983, 96 Stat. 2205.)

§ 10108. Applicability to transportation

Nothing in this chapter shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.

(Pub. L. 97–425, § 9, Jan. 7, 1983, 96 Stat. 2206.)

SUBCHAPTER I—DISPOSAL AND STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE, SPENT NUCLEAR FUEL, AND LOW-LEVEL RADIOACTIVE WASTE

§ 10121. State and affected Indian tribe participation in development of proposed repositories for defense waste

(a) Notification to States and affected Indian tribes

Notwithstanding the provisions of section 10107 of this title, upon any decision by the Secretary or the President to develop a repository for the disposal of high-level radioactive waste or spent nuclear fuel resulting exclusively from atomic energy defense activities, research and development activities of the Secretary, or both, and before proceeding with any site-specific investigations with respect to such repository, the Secretary shall notify the Governor and legislature of the State in which such repository is proposed to be located, or the governing body of the affected Indian tribe on whose reservation such repository is proposed to be located, as the case may be, of such decision.

(b) Participation of States and affected Indian tribes

Following the receipt of any notification under subsection (a) of this section, the State or Indian tribe involved shall be entitled, with respect to the proposed repository involved, to rights of participation and consultation identical to those provided in sections 10135 through 10138 of this title, except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 10136(c) or 10138(b) of this title shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.

(Pub. L. 97–425, title I, § 101, Jan. 7, 1983, 96 Stat. 2206.)

PART A—REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

§ 10131. Findings and purposes

(a) The Congress finds that—

(1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal;

(2) a national problem has been created by the accumulation of (A) spent nuclear fuel from nuclear reactors; and (B) radioactive waste from (i) reprocessing of spent nuclear fuel; (ii) activities related to medical research, diagnosis, and treatment; and (iii) other sources;

(3) Federal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate;

(4) while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and such spent nuclear fuel as may be disposed of in order to protect the public health and safety and the environment, the costs of such disposal should be the responsibility of the generators and owners of such waste and spent fuel;

(5) the generators and owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for, and the responsibility to pay the costs of, the interim storage of such waste and spent fuel until such waste and spent fuel is accepted by the Secretary of Energy in accordance with the provisions of this chapter;

(6) State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel; and

(7) high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations.

(b) The purposes of this part are—

(1) to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the

public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository;

(2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel;

(3) to define the relationship between the Federal Government and the State governments with respect to the disposal of such waste and spent fuel; and

(4) to establish a Nuclear Waste Fund, composed of payments made by the generators and owners of such waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

(Pub. L. 97–425, title I, § 111, Jan. 7, 1983, 96 Stat. 2207.)

§ 10132. Recommendation of candidate sites for site characterization

(a) Guidelines

Not later than 180 days after January 7, 1983, the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the United States Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface facility of such repository would be located (1) in a highly populated area; or (2) adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals. Such guidelines also shall require the Secretary to consider the cost and impact of transporting to the repository site the solidified high-level radioactive waste and spent fuel to be disposed of in the repository and the advantages of regional distribution in the siting of repositories. Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering candidate sites for recommendation under subsection (b) of this section. The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

(b) Recommendation by Secretary to President

(1)(A) Following the issuance of guidelines under subsection (a) of this section and consultation with the Governors of affected States, the Secretary shall nominate at least 5 sites that he determines suitable for site characterization for selection of the first repository site.

(B) Subsequent to such nomination, the Secretary shall recommend to the President 3 of the nominated sites not later than January 1, 1985 for characterization as candidate sites.

(C) Such recommendations under subparagraph (B) shall be consistent with the provisions of section 10225 of this title.

(D) Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detailed statement of the basis for such recommendation and of the probable impacts of the site characterization activities planned for such site, and a discussion of alternative activities relating to site characterization that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an evaluation by the Secretary as to whether such site is suitable for site characterization under the guidelines established under subsection (a) of this section;

(ii) an evaluation by the Secretary as to whether such site is suitable for development as a repository under each such guideline that does not require site characterization as a prerequisite for application of such guideline;

(iii) an evaluation by the Secretary of the effects of the site characterization activities at such site on the public health and safety and the environment;

(iv) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(v) a description of the decision process by which such site was recommended; and

(vi) an assessment of the regional and local impacts of locating the proposed repository at such site.

(E)(i)[1] The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title. Such judicial review shall be limited to the sufficiency of such environmental assessment with respect to the items described in clauses (i) through (vi) of subparagraph (E).

(F) Each environmental assessment prepared under this paragraph shall be made available to the public.

(G) Before nominating a site, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination.

[1] So in original. There is no cl. (ii).

(2) Before nominating any site the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located of the proposed nomination of such site and to receive their comments. At such hearings, the Secretary shall also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment described in paragraph (1) and the site characterization plan described in section 10133(b)(1) of this title.

(3) In evaluating the sites nominated under this section prior to any decision to recommend a site as a candidate site, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at a site unless (i) such preliminary boring or excavation activities were in progress on January 7, 1983, or (ii) the Secretary certifies that such available information from other sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this chapter or any other law: *Provided*, That preliminary borings or excavations under this section shall not exceed a diameter of 6 inches.

(c) Presidential review of recommended candidate sites

(1) The President shall review each candidate site recommendation made by the Secretary under subsection (b) of this section. Not later than 60 days after the submission by the Secretary of a recommendation of a candidate site, the President, in his discretion, may either approve or disapprove such candidate site, and shall transmit any such decision to the Secretary and to either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be. If, during such 60-day period, the President fails to approve or disapprove such candidate site, or fails to invoke his authority under paragraph (2) to delay his decision, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(2) The President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a candidate site, upon determining that the information provided with the recommendation of the Secretary is insufficient to permit a decision within the 60-day period referred to in paragraph (1). The President may invoke his authority under this paragraph by submitting written notice to the Congress, within such 60-day period, of his intent to invoke such authority. If the President invokes such authority, but fails to approve or disapprove the candidate site involved by the end of such 6-month period, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(d) Preliminary activities

Except as otherwise provided in this section, each activity of the President or the Secretary under this section shall be considered to be a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97–425, title I, § 112, Jan. 7, 1983, 96 Stat. 2208; Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5011(b)–(d), Dec. 22, 1987, 101 Stat. 1330–228; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000.)

AMENDMENTS

1987—Subsec. (b)(1)(C) to (H). Pub. L. 100–202 and Pub. L. 100–203, § 5011(b), amended par. (1) identically, redesignating subpars. (D) to (H) as (C) to (G), respectively, in subpar. (C) substituting ''subparagraph (B)'' for ''subparagraphs (B) and (C)'', and striking out former subpar. (C) which read as follows: ''Not later than July 1, 1989, the Secretary shall nominate 5 sites, which shall include at least 3 additional sites not nominated under subparagraph (A), and recommend by such date to the President from such 5 nominated sites 3 candidate sites the Secretary determines suitable for site characterization for selection of the second repository. The Secretary may not nominate any site previously nominated under subparagraph (A), that was not recommended as a candidate site under subparagraph (B).''

Subsec. (d). Pub. L. 100–202 and Pub. L. 100–203, § 5011(c), amended section identically, redesignating subsec. (e) as (d) and striking out former subsec (d) which read as follows: ''After the required recommendation of candidate sites under subsection (b) of this section, the Secretary may continue, as he determines necessary, to identify and study other sites to determine their suitability for recommendation for site characterization, in accordance with the procedures described in this section.''

Subsec. (e). Pub. L. 100–202 and Pub. L. 100–203, § 5011(d), which contained identical amendments directing that subsec. (f) be struck out and all subsequent subsections be redesignated accordingly, was executed by striking out subsec. (e) as the probable intent of Congress because of the redesignation of former subsec. (f) as (e) by Pub. L. 100–202 and Pub. L. 100–203, § 5011(c), and the absence of any subsections subsequent to former subsec. (f). Subsec. (e) read as follows: ''Nothing in this section may be construed as prohibiting the Secretary from continuing ongoing or presently planned site characterization at any site on Department of Energy land for which the location of the principal borehole has been approved by the Secretary by August 1, 1982, except that (1) the environmental assessment described in subsection (b)(1) of this section shall be prepared and made available to the public before proceeding to sink shafts at any such site; and (2) the Secretary shall not continue site characterization at any such site unless such site is among the candidate sites recommended by the Secretary under the first sentence of subsection (b) of this section for site characterization and approved by the President under subsection (c) of this section; and (3) the Secretary shall conduct public hearings under section 10133(b)(2) of this title and comply with requirements under section 10137 of this title within one year of January 7, 1983.''

Pub. L. 100–202 and Pub. L. 100–203, § 5011(c), amended section identically, redesignating subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 100–202 and Pub. L. 100–203, § 5011(c), amended section identically, redesignating subsec. (f) as (e).

CHANGE OF NAME

''United States Geological Survey'' substituted for ''Geological Survey'' in subsec. (a) pursuant to provision of title I of Pub. L. 102–154, set out as a note under section 31 of Title 43, Public Lands.

DELEGATION OF NOTIFICATION FUNCTION

Letter of the President of the United States, dated May 28, 1986, 51 F.R. 19531, provided:

Letter to the Honorable John S. Herrington, Secretary of Energy

Dear Mr. Secretary:

You are hereby authorized to perform the notification function vested in the President pursuant to Section 112(c)(1) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10132(c)(1).

This document shall be published in the Federal Register.

Sincerely,

RONALD REAGAN.

§ 10133. Site characterization

(a) In general

The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) of this section and section 10132(b)(2) of this title and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in such comments or in the environmental assessment submitted under subsection (b)(1) of this section.

(b) Commission and States

(1) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall submit for such candidate site to the Commission and to the Governor or legislature of the State of Nevada, for their review and comment—

(A) a general plan for site characterization activities to be conducted at such candidate site, which plan shall include—

(i) a description of such candidate site;

(ii) a description of such site characterization activities, including the following: the extent of planned excavations, plans for any onsite testing with radioactive or nonradioactive material, plans for any investigation activities that may affect the capability of such candidate site to isolate high-level radioactive waste and spent nuclear fuel, and plans to control any adverse, safety-related impacts from such site characterization activities;

(iii) plans for the decontamination and decommissioning of such candidate site, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities if it is determined unsuitable for application for a construction authorization for a repository;

(iv) criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 10132(a) of this title; and

(v) any other information required by the Commission;

(B) a description of the possible form or packaging for the high-level radioactive waste and spent nuclear fuel to be emplaced in such repository, a description, to the extent practicable, of the relationship between such waste form or packaging and the geologic medium of such site, and a description of the activities being conducted by the Secretary with respect to such possible waste form or packaging or such relationship; and

(C) a conceptual repository design that takes into account likely site-specific requirements.

(2) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall (A) make available to the public the site characterization plan described in paragraph (1); and (B) hold public hearings in the vicinity of such candidate site to inform the residents of the area in which such candidate site is located of such plan, and to receive their comments.

(3) During the conduct of site characterization activities at the Yucca Mountain site, the Secretary shall report not less than once every 6 months to the Commission and to the Governor and legislature of the State of Nevada, on the nature and extent of such activities and the information developed from such activities.

(c) Restrictions

(1) The Secretary may conduct at the Yucca Mountain site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the Commission for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) In conducting site characterization activities—

(A) the Secretary may not use any radioactive material at a site unless the Commission concurs that such use is necessary to provide data for the preparation of the required environmental reports and an application for a construction authorization for a repository at such site; and

(B) if any radioactive material is used at a site—

(i) the Secretary shall use the minimum quantity necessary to determine the suitability of such site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent nuclear fuel; and

(ii) such radioactive material shall be fully retrievable.

(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall—

(A) terminate all site characterization activities at such site;

(B) notify the Congress, the Governor and legislature of Nevada of such termination and the reasons for such termination;

(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;

(D) take reasonable and necessary steps to reclaim the site and to mitigate any signifi-

cant adverse environmental impacts caused by site characterization activities at such site;

(E) suspend all future benefits payments under part F of this subchapter with respect to such site; and

(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

(d) Preliminary activities

Each activity of the Secretary under this section that is in compliance with the provisions of subsection (c) of this section shall be considered a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to[1] require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97–425, title I, § 113, Jan. 7, 1983, 96 Stat. 2211; Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5011(e)–(g), Dec. 22, 1987, 101 Stat. 1330–228.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–202 and Pub. L. 100–203, § 5011(e)(2), which contained identical amendments directing that "at the Yucca Mountain site" be substituted for "beginning" and all that follows through "geological media", were executed by substituting "at the Yucca Mountain site" for "beginning with the candidate sites that have been approved under section 10132 of this title and are located in various geologic media" as the probable intent of Congress.

Pub. L. 100–202 and Pub. L. 100–203, § 5011(e)(1), amended subsec. (a) identically, substituting "State of Nevada" for "State involved or the governing body of the affected Indian tribe involved".

Subsec. (b)(1). Pub. L. 100–202 and Pub. L. 100–203, § 5011(f)(1), amended par. (1) identically, substituting "the Yucca Mountain site" for "any candidate site" and "the Governor or legislature of the State of Nevada" for "either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe on whose reservation such candidate site is located, as the case may be".

Subsec. (b)(2). Pub. L. 100–202 and Pub. L. 100–203, § 5011(f)(2), amended par. (2) identically, substituting "the Yucca Mountain site" for "any candidate site".

Subsec. (b)(3). Pub. L. 100–202 and Pub. L. 100–203, § 5011(f)(3), amended par. (3) identically, substituting "the Yucca Mountain site" for "a candidate site", striking "either" before "the Governor", and substituting "the State of Nevada" for "the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be".

Subsec. (c)(1). Pub. L. 100–202 and Pub. L. 100–203, § 5011(g)(1), amended par. (1) identically, substituting "the Yucca Mountain site" for "any candidate site", "suitability of such site" for "suitability of such candidate site", and "repository at such site" for "repository at such candidate site".

Subsec. (c)(2). Pub. L. 100–202 and Pub. L. 100–203, § 5011(g)(2), amended par. (2) identically, striking out "candidate" before "site" in two places in subpar. (A) and in two places in subpar. (B).

Subsec. (c)(3), (4). Pub. L. 100–202 and Pub. L. 100–203, § 5011(g)(3), amended subsec. (c) identically, adding par. (3) and striking out former pars. (3) and (4) which read as follows:

"(3) If site characterization activities are terminated at a candidate site for any reason, the Secretary shall (A) notify the Congress, the Governors and legislatures of all States in which candidate sites are located, and the governing bodies of all affected Indian tribes where candidate sites are located, of such termination and the reasons for such termination; and (B) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such candidate site as promptly as practicable.

"(4) If a site is determined to be unsuitable for application for a construction authorization for a repository, the Secretary shall take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities."

[1] So in original. The word "to" probably should not appear.

§ 10134. Site approval and construction authorization

(a) Hearings and Presidential recommendation

(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 10133 of this title, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 10133 of this title and this section, including the information described in subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

(A) a description of the proposed repository, including preliminary engineering specifications for the facility;

(B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;

(C) a discussion of data, obtained in site characterization activities, relating to the safety of such site;

(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) of this section and the Na-

tional Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;

(E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

(F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;

(G) such other information as the Secretary considers appropriate; and

(H) any impact report submitted under section 10136(c)(2)(B) of this title by the State of Nevada.

(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

(B) The President shall submit with such recommendation a copy of the statement for such site prepared by the Secretary under paragraph (1).

(3)(A) The President may not recommend the approval of the Yucca Mountain site unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a statement for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to[1] require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(b) Submission of application

If the President recommends to the Congress the Yucca Mountain site under subsection (a) of this section and the site designation is permitted to take effect under section 10135 of this title, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

(c) Status report on application

Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b) of this section, and annually thereafter until the date on which such authorization is granted, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

(1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;

(2) any matters of contention regarding such application; and

(3) any Commission actions regarding the granting or denial of such authorization.

(d) Commission action

The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2) of this section. The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to part C of this subchapter, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

(e) Project decision schedule

(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this part. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an

[1] So in original. The word ''to'' probably should not appear.

agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the Federal agency involved.

(f) Environmental impact statement

(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this chapter shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this part.

(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this part shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(5) Nothing in this chapter shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

(6) In any such statement prepared with respect to the repository to be constructed under this part, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

(Pub. L. 97–425, title I, § 114, Jan. 7, 1983, 96 Stat. 2213; Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5011(h)–(*l*), Dec. 22, 1987, 101 Stat. 1330–229, 1330–230.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(1)(D) and (f), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (f)(4), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (f)(5), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended. Title II of the Energy Reorganization Act of 1974 is classified generally to subchapter II (§ 5841 et seq.) of chapter 73 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–202 and Pub. L. 100–203, § 5011(h)(1)(A)–(E), amended par. (1) identically, in introductory provisions substituting ''vicinity of the Yucca Mountain site'' for ''vicinity of each site under consideration for recommendation to the President under this paragraph as a site for the development of a repository'', striking out ''in which such site is located'' after ''residents of the area'', substituting ''activities at the Yucca Mountain site'' for ''activities at not less than 3 candidate sites for the first proposed repository, or from all of the characterized sites for the development of subsequent respositories'' [sic] and ''of Nevada'' for ''in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be'', and struck out before last sentence ''In making site recommendations and approvals subsequent to the first site recommendation, the Secretary and the President, respectively, shall also consider the need for regional distribution of repositories and the need to minimize, to the extent practicable, the impacts and cost of transporting spent fuel and solidified high-level radioactive waste.''

Subsec. (a)(1)(D). Pub. L. 100–202 and Pub. L. 100–203, § 5011(h)(1)(F), generally amended subpar. (D) identically. Prior to amendment, subpar. (D) read as follows: ''a final environmental impact statement prepared pursuant to subsection (f) of this section and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including an analysis of the consideration given by the Secretary to not less than 3 candidate sites for the first proposed respository [sic] or to all of the characterized sites for the development of subsequent repositories, with respect to which site characterization is completed under section 10133 of this title, together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that any such environmental impact statement concerning the first repository to be developed under this chapter shall not be required to consider the need for a repository or the alternatives to geologic disposal;''.

Subsec. (a)(1)(H). Pub. L. 100–202 and Pub. L. 100–203, § 5011(h)(1)(G), amended subpar. (H) identically, substituting ''the State of Nevada'' for ''the State in which such site is located, or under section 10138(b)(3)(B) of

this title by the affected Indian tribe where such site is located, as the case may be''.

Subsec. (a)(2). Pub. L. 100–202 and Pub. L. 100–203, § 5011(h)(2), amended subsec. (a) identically, adding par. (2) and striking out former par. (2) which required submission of recommendation of one site for repository not later than Mar. 31, 1987, and recommendation of second site not later than Mar. 31, 1990, and permitted subsequent recommendations for other sites and extension of deadlines.

Subsec. (a)(3), (4). Pub. L. 100–202 and Pub. L. 100–203, § 5011(h)(2), (3), amended subsec. (a) identically, redesignating par. (4) as (3), in subpar. (A), substituting ''the Yucca Mountain site'' for ''any site under this subsection'' and ''statement'' for ''report'', and striking out former par. (3) which read as follows: ''If approval of any such site recommendation does not take effect as a result of a disapproval by the Governor or legislature of a State under section 10136 of this title or the governing body of an affected Indian tribe under section 10138 of this title, the President shall submit to the Congress, not later than 1 year after the disapproval of such recommendation, a recommendation of another site for the first or subsequent repository.''

Subsec. (b). Pub. L. 100–202 and Pub. L. 100–203, § 5011(i), amended subsec. (b) identically, substituting ''the Yucca Mountain site'' for ''a site for a repository'' and ''State of Nevada'' for ''State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be,''.

Subsec. (d). Pub. L. 100–202 and Pub. L. 100–203, § 5011(j), amended subsec. (d) identically, substituting ''than the expiration'' for ''than— (1) January 1, 1989, for the first such application, and January 1, 1992 for the second such application; or (2) the expiration'' and ''subsection (e)(2) of this section'' for ''subsection (e)(2) of this section; whichever occurs later''.

Subsec. (e)(1). Pub. L. 100–202 and Pub. L. 100–203, § 5011(k), amended par. (1) identically, substituting ''operation of the repository'' for ''operation of the repository involved''.

Subsec. (f). Pub. L. 100–202 and Pub. L. 100–203, § 5011(*l*), generally amended subsec. (f) identically, substituting provisions consisting of pars. (1) to (6) for former provisions consisting of single unnumbered par.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (c) of this section is listed as the 17th item on page 186), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

VIABILITY ASSESSMENT OF YUCCA MOUNTAIN SITE

Pub. L. 104–206, title III, Sept. 30, 1996, 110 Stat. 2995, provided in part: ''That no later than September 30, 1998, the Secretary shall provide to the President and to the Congress a viability assessment of the Yucca Mountain site. The viability assessment shall include:

''(1) the preliminary design concept for the critical elements for the repository and waste package;

''(2) a total system performance assessment, based upon the design concept and the scientific data and analysis available by September 30, 1998, describing the probable behavior of the repository in the Yucca Mountain geological setting relative to the overall system performance standards;

''(3) a plan and cost estimate for the remaining work required to complete a license application; and

''(4) an estimate of the costs to construct and operate the repository in accordance with the design concept.''

§ 10135. Review of repository site selection

(a) "Resolution of repository siting approval" defined

For purposes of this section, the term ''resolution of repository siting approval'' means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: ''That there hereby is approved the site at ..... for a repository, with respect to which a notice of disapproval was submitted by ..... on .....''. The first blank space in such resolution shall be filled with the name of the geographic location of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

(b) State or Indian tribe petitions

The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 10134 of this title, unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 10136 or 10138 of this title. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c) of this section.

(c) Congressional review of petitions

If any notice of disapproval of a repository site designation has been submitted to the Congress under section 10136 or 10138 of this title after a recommendation for approval of such site is made by the President under section 10134 of this title, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

(d) Procedures applicable to Senate

(1) The provisions of this subsection are enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions of repository siting approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(2)(A) Not later than the first day of session following the day on which any notice of disapproval of a repository site selection is submitted to the Congress under section 10136 or 10138 of this title, a resolution of repository siting approval shall be introduced (by request) in the Senate by the chairman of the committee to which such notice of disapproval is referred, or by a Member or Members of the Senate designated by such chairman.

(B) Upon introduction, a resolution of repository siting approval shall be referred to the appropriate committee or committees of the Senate by the President of the Senate, and all such resolutions with respect to the same repository site shall be referred to the same committee or committees. Upon the expiration of 60 calendar days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall make its recommendations to the Senate.

(3) If any committee to which is referred a resolution of siting approval introduced under paragraph (2)(A), or, in the absence of such a resolution, any other resolution of siting approval introduced with respect to the site involved, has not reported such resolution at the end of 60 days of continuous session of Congress after introduction of such resolution, such committee shall be deemed to be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the Senate.

(4)(A) When each committee to which a resolution of siting approval has been referred has reported, or has been deemed to be discharged from further consideration of, a resolution described in paragraph (3), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which such motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of such resolution is agreed to, such resolution shall remain the unfinished business of the Senate until disposed of.

(B) Debate on a resolution of siting approval, and on all debatable motions and appeals in connection with such resolution, shall be limited to not more than 10 hours, which shall be divided equally between Members favoring and Members opposing such resolution. A motion further to limit debate shall be in order and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business, and a motion to recommit such resolution shall not be in order. A motion to reconsider the vote by which such resolution is agreed to or disagreed to shall not be in order.

(C) Immediately following the conclusion of the debate on a resolution of siting approval, and a single quorum call at the conclusion of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution of siting approval shall be decided without debate.

(5) If the Senate receives from the House a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the House with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the Senate with respect to such site—

(i) the procedure with respect to that or other resolutions of the Senate with respect to such site shall be the same as if no resolution from the House with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the Senate with respect to such site, a resolution from the House with respect to such site where the text is identical shall be automatically substituted for the resolution of the Senate.

(e) Procedures applicable to House of Representatives

(1) The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of repository siting approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the House to change the rules (so far as relating to the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) Resolutions of repository siting approval shall upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

(3) Upon the expiration of 60 days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

(4) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours

of debate in the House, to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

(5) If the House receives from the Senate a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the Senate with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the House with respect to such site—

(i) the procedure with respect to that or other resolutions of the House with respect to such site shall be the same as if no resolution from the Senate with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the House with respect to such site, a resolution from the Senate with respect to such site where the text is identical shall be automatically substituted for the resolution of the House.

(f) Computation of days

For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (c) of this section and the 60-day period referred to in subsections (d) and (e) of this section.

(g) Information provided to Congress

In considering any notice of disapproval submitted to the Congress under section 10136 or 10138 of this title, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.

(Pub. L. 97–425, title I, § 115, Jan. 7, 1983, 96 Stat. 2217.)

YUCCA MOUNTAIN, NEVADA REPOSITORY SITE

Pub. L. 107–200, July 23, 2002, 116 Stat. 735, provided: ''That there hereby is approved the site at Yucca Mountain, Nevada, for a repository, with respect to which a notice of disapproval was submitted by the Governor of the State of Nevada on April 8, 2002.''

§ 10136. Participation of States

(a) Notification of States and affected tribes

The Secretary shall identify the States with one or more potentially acceptable sites for a repository within 90 days after January 7, 1983. Within 90 days of such identification, the Secretary shall notify the Governor, the State legislature, and the tribal council of any affected Indian tribe in any State of the potentially acceptable sites within such State. For the purposes of this subchapter, the term ''potentially acceptable site'' means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the Department undertakes preliminary drilling and geophysical testing for the definition of site location.

(b) State participation in repository siting decisions

(1) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under paragraph (2). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval. Such Governor or legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why such Governor or legislature disapproved the recommended repository site involved.

(3) The authority of the Governor or legislature of each State under this subsection shall not be applicable with respect to any site located on a reservation.

(c) Financial assistance

(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government—

(i) to review activities taken under this part with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada, and any affected unit of local government requesting such assistance.

(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 10133(b) of this title.

(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth—

(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

(ii) the procedures to be followed in providing such assistance.

(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

(ii) the date on which the Yucca Mountain site is disapproved under section 10135 of this title; or

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first.

(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for—

(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

(iii) such funds as may be provided under an agreement entered into under subchapter IV of this chapter.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987.

(d) Additional notification and consultation

Whenever the Secretary is required under any provision of this chapter to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

(Pub. L. 97–425, title I, § 116, Jan. 7, 1983, 96 Stat. 2220; Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5032(a), Dec. 22, 1987, 101 Stat. 1330–241.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–202 and Pub. L. 100–203 generally amended subsec. (c) identically, substituting provisions consisting of pars. (1) to (6) for former provisions consisting of pars. (1) to (5).

§ 10137. Consultation with States and affected Indian tribes

(a) Provision of information

(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and

complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall immediately suspend all activities in such State authorized by this part, and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) Consultation and cooperation

In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to section 10132(c) of this title, and in subsequently developing and loading[1] any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this part, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c) of this section.

(c) Written agreement

Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 10132(c) of this title, or (2) the written request of the State or Indian tribe in any affected State notified under section 10136(a) of this title to the Secretary, whichever,[2] first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b) of this section, and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. Such written agreement shall specify procedures—

(1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;

(2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an affected Indian tribe, including the period in which the Secretary shall so respond;

(3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;

(4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 10136(c) of this title or section 10138(b) of this title, as the case may be;

(5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;

(6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

(8) by which such State may conduct reasonable independent monitoring and testing of activities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

(10) for public notification of the procedures specified under the preceding paragraphs; and

(11) for resolving objections of a State and affected Indian tribes at any stage of the plan-

[1] So in original. Probably should be ''locating''.

[2] So in original. The comma probably should not appear.

ning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

(d) On-site representative

The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this subchapter an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.

(Pub. L. 97–425, title I, § 117, Jan. 7, 1983, 96 Stat. 2222; Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5011(m), Dec. 22, 1987, 101 Stat. 1330–231; Pub. L. 104–66, title I, § 1051(i), Dec. 21, 1995, 109 Stat. 716.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104–66 struck out after third sentence ''If such written agreement is not completed within such period, the Secretary shall report to the Congress in writing within 30 days on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress.''

1987—Subsec. (d). Pub. L. 100–202 and Pub. L. 100–203 amended section identically, adding subsec. (d).

§ 10138. Participation of Indian tribes

(a) Participation of Indian tribes in repository siting decisions

Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an affected Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the governing body of such Indian tribe disapproved the recommended repository site involved.

(b) Financial assistance

(1) The Secretary shall make grants to each affected tribe notified under section 10136(a) of this title for the purpose of participating in activities required by section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such tribe, may not be considered eligible for funding under this paragraph.

(2)(A) The Secretary shall make grants to each affected Indian tribe where a candidate site for a repository is approved under section 10132(c) of this title. Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe—

(i) to review activities taken under this part with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to the residents of its reservation regarding any activities of such Indian tribe, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(B) The amount of funds provided to any affected Indian tribe under this paragraph in any fiscal year may not exceed 100 percent of the costs incurred by such Indian tribe with respect to the activities described in clauses (i) through (v) of subparagraph (A). Any salary or travel expense that would ordinarily be incurred by such Indian tribe may not be considered eligible for funding under this paragraph.

(3)(A) The Secretary shall provide financial and technical assistance to any affected Indian tribe requesting such assistance and where there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such Indian tribe of the development of such repository. Such assistance to such Indian tribe shall commence within 6 months following the granting by the Commission of a construction authorization for such repository and following the initiation of construction activities at such site.

(B) Any affected Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian tribe. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository. As soon as practicable following the granting of a construction authorization for such repository, the Secretary shall seek to enter into a binding agreement with the Indian tribe involved setting forth the amount of assistance to be provided to such Indian tribe under this paragraph and the procedures to be followed in providing such assistance.

(4) The Secretary shall grant to each affected Indian tribe where a site for a repository is approved under section 10132(c) of this title an

amount each fiscal year equal to the amount such Indian tribe would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such Indian tribe taxes the other commercial activities occurring on such reservation. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(5)[1] An affected Indian tribe may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies such Indian tribe of the termination of site characterization activities at the candidate site involved on the reservation of such Indian tribe;

(ii) the date on which such site is disapproved under section 10135 of this title;

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;[2]

(iv) December 22, 1987;

whichever occurs first, unless there is another candidate site on the reservation of such Indian tribe that is approved under section 10132(c) of this title and with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) An affected Indian tribe may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository at a site on the reservation of an affected Indian tribe, no Federal funds shall be made available under paragraph (1) or (2) to such Indian tribe, except for—

(i) such funds as may be necessary to support activities of such Indian tribe related to any other repository where a license to receive and possess has not been in effect for more than 1 year; and

(ii) such funds as may be necessary to support activities of such Indian tribe pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such Indian tribe with the Secretary during such 2-year period.

(6) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Fund established in section 10222 of this title.

(Pub. L. 97–425, title I, § 118, Jan. 7, 1983, 96 Stat. 2225; Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5033, Dec. 22, 1987, 101 Stat. 1330–243.)

AMENDMENTS

1987—Subsec. (b)(5)(iv). Pub. L. 100–202 and Pub. L. 100–203 amended par. (5) identically, adding cl. (iv).

[1] So in original. Probably should be designated "(5)(A)".

[2] So in original. Probably should be followed by "or".

§ 10139. Judicial review of agency actions

(a) Jurisdiction of United States courts of appeals

(1) Except for review in the Supreme Court of the United States, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

(A) for review of any final decision or action of the Secretary, the President, or the Commission under this part;

(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this part;

(C) challenging the constitutionality of any decision made, or action taken, under any provision of this part;

(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this part, or as required under section 10155(c)(1) of this title, or alleging a failure to prepare such statement with respect to any such action;

(E) for review of any environmental assessment prepared under section 10132(b)(1) or 10155(c)(2) of this title; or

(F) for review of any research and development activity under subchapter II of this chapter.

(2) The venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the United States Court of Appeals for the District of Columbia.

(c)[1] Deadline for commencing action

A civil action for judicial review described under subsection (a)(1) of this section may be brought not later than the 180th day after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action not later than the 180th day after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.

(Pub. L. 97–425, title I, § 119, Jan. 7, 1983, 96 Stat. 2227.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1)(D), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

§ 10140. Expedited authorizations

(a) Issuance of authorizations

(1) To the extent that the taking of any action related to the site characterization of a site or the construction or initial operation of a reposi-

[1] So in original. No subsec. (b) has been enacted.

tory under this part requires a certificate, right-of-way, permit, lease, or other authorization from a Federal agency or officer, such agency or officer shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such agency or officer. All actions of a Federal agency or officer with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(2) The provisions of paragraph (1) shall not apply to any certificate, right-of-way, permit, lease, or other authorization issued or granted by, or requested from, the Commission.

(b) Terms of authorizations

Any authorization issued or granted pursuant to subsection (a) of this section shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

(Pub. L. 97–425, title I, § 120, Jan. 7, 1983, 96 Stat. 2227.)

§ 10141. Certain standards and criteria

(a) Environmental Protection Agency standards

Not later than 1 year after January 7, 1983, the Administrator, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories.

(b) Commission requirements and criteria

(1)(A) Not later than January 1, 1984, the Commission, pursuant to authority under other provisions of law, shall, by rule, promulgate technical requirements and criteria that it will apply, under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), in approving or disapproving—

(i) applications for authorization to construct repositories;

(ii) applications for licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repositories; and

(iii) applications for authorization for closure and decommissioning of such repositories.

(B) Such criteria shall provide for the use of a system of multiple barriers in the design of the repository and shall include such restrictions on the retrievability of the solidified high-level radioactive waste and spent fuel emplaced in the repository as the Commission deems appropriate.

(C) Such requirements and criteria shall not be inconsistent with any comparable standards promulgated by the Administrator under subsection (a) of this section.

(2) For purposes of this chapter, nothing in this section shall be construed to prohibit the Commission from promulgating requirements and criteria under paragraph (1) before the Administrator promulgates standards under subsection (a) of this section. If the Administrator promulgates standards under subsection (a) of this section after requirements and criteria are promulgated by the Commission under paragraph (1), such requirements and criteria shall be revised by the Commission if necessary to comply with paragraph (1)(C).

(c) Environmental impact statement

The promulgation of standards or criteria in accordance with the provisions of this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97–425, title I, § 121, Jan. 7, 1983, 96 Stat. 2228.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(1)(A), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (b)(1)(A), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

NUCLEAR WASTE STORAGE AND DISPOSAL AT YUCCA MOUNTAIN SITE

Pub. L. 102–486, title VIII, § 801, Oct. 24, 1992, 106 Stat. 2921, provided that:

''(a) ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—

''(1) PROMULGATION.—Notwithstanding the provisions of section 121(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(a)), section 161 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(b)), and any other authority of the Administrator of the Environmental Protection Agency to set generally applicable standards for the Yucca Mountain site, the Administrator shall, based upon and consistent with the findings and recommendations of the National Academy of Sciences, promulgate, by rule, public health and safety standards for protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site. Such standards shall prescribe the maximum annual effective dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository. The standards shall be promulgated not later than 1 year after the Administrator receives the findings and recommendations of the National Academy of Sciences under paragraph (2) and shall be the only such standards applicable to the Yucca Mountain site.

''(2) STUDY BY NATIONAL ACADEMY OF SCIENCES.—Within 90 days after the date of the enactment of this Act [Oct. 24, 1992], the Administrator shall contract with the National Academy of Sciences to conduct a study to provide, by not later than December 31, 1993, findings and recommendations on reasonable standards for protection of the public health and safety, including—

''(A) whether a health-based standard based upon doses to individual members of the public from releases to the accessible environment (as that term is defined in the regulations contained in subpart B of part 191 of title 40, Code of Federal Regulations,

as in effect on November 18, 1985) will provide a reasonable standard for protection of the health and safety of the general public;

''(B) whether it is reasonable to assume that a system for post-closure oversight of the repository can be developed, based upon active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered or geologic barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits; and

''(C) whether it is possible to make scientifically supportable predictions of the probability that the repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years.

''(3) APPLICABILITY.—The provisions of this section shall apply to the Yucca Mountain site, rather than any other authority of the Administrator to set generally applicable standards for radiation protection.

''(b) NUCLEAR REGULATORY COMMISSION REQUIREMENTS AND CRITERIA.—

''(1) MODIFICATIONS.—Not later than 1 year after the Administrator promulgates standards under subsection (a), the Nuclear Regulatory Commission shall, by rule, modify its technical requirements and criteria under section 121(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(b)), as necessary, to be consistent with the Administrator's standards promulgated under subsection (a).

''(2) REQUIRED ASSUMPTIONS.—The Commission's requirements and criteria shall assume, to the extent consistent with the findings and recommendations of the National Academy of Sciences, that, following repository closure, the inclusion of engineered barriers and the Secretary's post-closure oversight of the Yucca Mountain site, in accordance with subsection (c), shall be sufficient to—

''(A) prevent any activity at the site that poses an unreasonable risk of breaching the repository's engineered or geologic barriers; and

''(B) prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits.

''(c) POST-CLOSURE OVERSIGHT.—Following repository closure, the Secretary of Energy shall continue to oversee the Yucca Mountain site to prevent any activity at the site that poses an unreasonable risk of—

''(1) breaching the repository's engineered or geologic barriers; or

''(2) increasing the exposure of individual members of the public to radiation beyond allowable limits.''

§ 10142. Disposal of spent nuclear fuel

Notwithstanding any other provision of this part, any repository constructed on a site approved under this part shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsections (b) through (d) of section 10134 of this title.

(Pub. L. 97–425, title I, § 122, Jan. 7, 1983, 96 Stat. 2228.)

§ 10143. Title to material

Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this part shall constitute a transfer to the Secretary of title to such waste or spent fuel.

(Pub. L. 97–425, title I, § 123, Jan. 7, 1983, 96 Stat. 2229.)

§ 10144. Consideration of effect of acquisition of water rights

The Secretary shall give full consideration to whether the development, construction, and operation of a repository may require any purchase or other acquisition of water rights that will have a significant adverse effect on the present or future development of the area in which such repository is located. The Secretary shall mitigate any such adverse effects to the maximum extent practicable.

(Pub. L. 97–425, title I, § 124, Jan. 7, 1983, 96 Stat. 2229.)

§ 10145. Termination of certain provisions

Sections 10139 and 10140 of this title shall cease to have effect at such time as a repository developed under this part is licensed to receive and possess high-level radioactive waste and spent nuclear fuel.

(Pub. L. 97–425, title I, § 125, Jan. 7, 1983, 96 Stat. 2229.)

PART B—INTERIM STORAGE PROGRAM

§ 10151. Findings and purposes

(a) The Congress finds that—

(1) the persons owning and operating civilian nuclear power reactors have the primary responsibility for providing interim storage of spent nuclear fuel from such reactors, by maximizing, to the extent practical, the effective use of existing storage facilities at the site of each civilian nuclear power reactor, and by adding new onsite storage capacity in a timely manner where practical;

(2) the Federal Government has the responsibility to encourage and expedite the effective use of existing storage facilities and the addition of needed new storage capacity at the site of each civilian nuclear power reactor; and

(3) the Federal Government has the responsibility to provide, in accordance with the provisions of this part, not more than 1,900 metric tons of capacity for interim storage of spent nuclear fuel for civilian nuclear power reactors that cannot reasonably provide adequate storage capacity at the sites of such reactors when needed to assure the continued, orderly operation of such reactors.

(b) The purposes of this part are—

(1) to provide for the utilization of available spent nuclear fuel pools at the site of each civilian nuclear power reactor to the extent practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor; and

(2) to provide, in accordance with the provisions of this part, for the establishment of a federally owned and operated system for the interim storage of spent nuclear fuel at one or

more facilities owned by the Federal Government with not more than 1,900 metric tons of capacity to prevent disruptions in the orderly operation of any civilian nuclear power reactor that cannot reasonably provide adequate spent nuclear fuel storage capacity at the site of such reactor when needed.

(Pub. L. 97–425, title I, § 131, Jan. 7, 1983, 96 Stat. 2229.)

§ 10152. Available capacity for interim storage of spent nuclear fuel

The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor consistent with—

(1) the protection of the public health and safety, and the environment;

(2) economic considerations;

(3) continued operation of such reactor;

(4) any applicable provisions of law; and

(5) the views of the population surrounding such reactor.

(Pub. L. 97–425, title I, § 132, Jan. 7, 1983, 96 Stat. 2230.)

§ 10153. Interim at-reactor storage

The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 10198(a)[1] of this title for use at the site of any civilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

(Pub. L. 97–425, title I, § 133, Jan. 7, 1983, 96 Stat. 2230.)

REFERENCES IN TEXT

Section 10198(a) of this title, referred to in text, was in the original a reference to section 219(a) of Pub. L. 97–425, which is classified to section 10199(a) of this title, and has been translated as section 10198(a) of this title as the probable intent of Congress in view of the subject matter of section 10198(a) which relates to development of technologies for storage of spent nuclear fuel, and the subject matter of section 10199(a) which relates to payments to States and Indian tribes.

§ 10154. Licensing of facility expansions and transshipments

(a) Oral argument

In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

(b) Adjudicatory hearing

(1) At the conclusion of any oral argument under subsection (a) of this section, the Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that—

(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

(2) In making a determination under this subsection, the Commission—

(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

(B) shall not consider—

(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless (I) such issue results from any revision of siting or design criteria by the Commission following such decision; and (II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

[1] See References in Text note below.

(3) The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

(4) The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear powerplant by the Commission.

(c) Judicial review

No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) of this section because of a failure by the Commission to use a particular procedure pursuant to this section unless—

(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

(Pub. L. 97–425, title I, § 134, Jan. 7, 1983, 96 Stat. 2230.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(3), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

§ 10155. Storage of spent nuclear fuel

(a) Storage capacity

(1) Subject to section 10107 of this title, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

(A) use of available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not—

(i) render such facilities subject to licensing under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); or

(ii) except as provided in subsection (c) of this section require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), such facility is already being used, or has previously been used, for such storage or for any similar purpose.

(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any civilian nuclear power reactor operated by such person or at any site owned by the Federal Government on January 7, 1983;

(C) construction of storage capacity at any site of a civilian nuclear power reactor.

(2) Storage capacity authorized by paragraph (1) shall not be provided at any Federal or non-Federal site within which there is a candidate site for a repository. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository.

(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

(4) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under section 10156(a) of this title, and shall accept upon request any spent nuclear fuel as covered under such contracts.

(6) For purposes of paragraph (1)(A), the term ''facility'' means any building or structure.

(b) Contracts

(1) Subject to the capacity limitation established in subsections (a)(1) and (d) of this section, the Secretary shall offer to enter into, and may enter into, contracts under section 10156(a) of this title with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that—

(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site of any other civilian nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in subparagraph (B); and

(B) such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including—

(i) expansion of storage facilities at the site of any civilian nuclear power reactor operated by such person;

(ii) construction of new or additional storage facilities at the site of any civilian nuclear power reactor operated by such person;

(iii) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and

(iv) transshipment to another civilian nuclear power reactor owned by such person.

(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.

(3) The Commission shall complete the determinations required in paragraph (1) with respect to any request for storage capacity not later than 6 months after receipt of such request by the Commission.

(c) Environmental review

(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) of this section shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(2)(A) The Secretary shall prepare, and make available to the public, an environmental assessment of the probable impacts of any provision of less than 300 metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) of this section that requires the modification or expansion of any facility at the site, and a discussion of alternative activities that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an estimate of the amount of storage capacity to be made available at such site;

(ii) an evaluation as to whether the facilities to be used at such site are suitable for the provision of such storage capacity;

(iii) a description of activities planned by the Secretary with respect to the modification or expansion of the facilities to be used at such site;

(iv) an evaluation of the effects of the provision of such storage capacity at such site on the public health and safety, and the environment;

(v) a reasonable comparative evaluation of current information with respect to such site and facilities and other sites and facilities available for the provision of such storage capacity;

(vi) a description of any other sites and facilities that have been considered by the Secretary for the provision of such storage capacity; and

(vii) an assessment of the regional and local impacts of providing such storage capacity at such site, including the impacts on transportation.

(B) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5. Such judicial review shall be limited to the sufficiency of such assessment with respect to the items described in clauses (i) through (vii) of subparagraph (A).

(3) Judicial review of any environmental impact statement or environmental assessment prepared pursuant to this subsection shall be conducted in accordance with the provisions of section 10139 of this title.

(d) Review of sites and State participation

(1) In carrying out the provisions of this part with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by this section to provide, the Secretary shall, as soon as practicable, notify, in writing, the Governor and the State legislature of any State and the Tribal Council of any affected Indian tribe in such State in which is located a potentially acceptable site or facility for such interim storage of spent fuel of his intention to investigate that site or facility.

(2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify the Governor, the legislature, and any affected Tribal Council in writing of such selection, and subject to the provisions of paragraph (6) of this subsection, shall promptly enter into negotiations with such State and affected Tribal Council to establish a cooperative agreement under which such State and Council shall have the right to participate in a process of consultation and cooperation, based on public health and safety and environmental concerns, in all stages of the planning, development, modification, expansion, operation, and closure of storage capacity at a site or facility within such State for the interim storage of spent fuel from civilian nuclear power reactors. Public participation in the negotiation of such an agreement shall be provided for and encouraged by the Secretary, the State, and the affected Tribal Council. The Secretary, in cooperation with the States and Indian tribes, shall develop and publish minimum guidelines for public participation in such negotiations, but the adequacy of such guidelines or any failure to comply with such guidelines shall not be a basis for judicial review.

(3) The cooperative agreement shall include, but need not be limited to, the sharing in accordance with applicable law of all technical and licensing information, the utilization of available expertise, the facilitating of permitting procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws. The cooperative agreement also shall include a detailed plan or schedule of milestones, decision points and opportunities for State or eligible Tribal Council review and objection. Such cooperative agreement shall provide procedures for negotiating and resolving objections of the State and affected Tribal Council in any stage of planning, development, modi-

fication, expansion, operation, or closure of storage capacity at a site or facility within such State. The terms of any cooperative agreement shall not affect the authority of the Nuclear Regulatory Commission under existing law.

(4) For the purpose of this subsection, ''process of consultation and cooperation'' means a methodology by which the Secretary (A) keeps the State and eligible Tribal Council fully and currently informed about the aspects of the project related to any potential impact on the public health and safety and environment; (B) solicits, receives, and evaluates concerns and objections of such State and Council with regard to such aspects of the project on an ongoing basis; and (C) works diligently and cooperatively to resolve, through arbitration or other appropriate mechanisms, such concerns and objections. The process of consultation and cooperation shall not include the grant of a right to any State or Tribal Council to exercise an absolute veto of any aspect of the planning, development, modification, expansion, or operation of the project.

(5) The Secretary and the State and affected Tribal Council shall seek to conclude the agreement required by paragraph (2) as soon as practicable, but not later than 180 days following the date of notification of the selection under paragraph (2). The Secretary shall periodically report to the Congress thereafter on the status of the agreements approved under paragraph (3). Any report to the Congress on the status of negotiations of such agreement by the Secretary shall be accompanied by comments solicited by the Secretary from the State and eligible Tribal Council.

(6)(A) Upon deciding to provide an aggregate of 300 or more metric tons of storage capacity under subsection (a)(1) of this section at any one site, the Secretary shall notify the Governor and legislature of the State where such site is located, or the governing body of the Indian tribe in whose reservation such site is located, as the case may be, of such decision. During the 60-day period following receipt of notification by the Secretary of his decision to provide an aggregate of 300 or more metric tons of storage capacity at any one site, the Governor or legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, may disapprove the provision of 300 or more metric tons of storage capacity at the site involved and submit to the Congress a notice of such disapproval. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the provision of such storage capacity at such site was disapproved by such Governor or legislature or the governing body of such Indian tribe.

(B) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under subparagraph (A). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(C) The authority of the Governor and legislature of each State under this paragraph shall not be applicable with respect to any site located on a reservation.

(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 10135 of this title and such resolution thereafter becomes law. For purposes of this paragraph, the term ''resolution'' means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: ''That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at _____, with respect to which a notice of disapproval was submitted by _____ on _____.''. The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 10135 of this title to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

(7) As used in this section, the term ''affected Tribal Council'' means the governing body of any Indian tribe within whose reservation boundaries there is located a potentially acceptable site for interim storage capacity of spent nuclear fuel from civilian nuclear power reactors, or within whose boundaries a site for such capacity is selected by the Secretary, or whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties, as determined by the Secretary of the Interior pursuant to a petition filed with him by the appropriate governmental officials of such tribe, may be substantially and adversely affected by the establishment of any such storage capacity.

(e) Limitations

Any spent nuclear fuel stored under this section shall be removed from the storage site or facility involved as soon as practicable, but in any event not later than 3 years following the date on which a repository or monitored retrievable storage facility developed under this chapter is available for disposal of such spent nuclear fuel.

(f) Report

The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than 1 year after January 7, 1983.

(g) Criteria for determining adequacy of available storage capacity

Not later than 90 days after January 7, 1983, the Commission pursuant to section 553 of the Administrative Procedures Act [5 U.S.C. 553], shall propose, by rule, procedures and criteria for making the determination required by subsection (b) of this section that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the civilian nuclear power reactor site when needed to ensure the continued orderly operation of such reactor. Such criteria shall ensure the maintenance of a full core reserve storage capability at the site of such reactor unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor. Such criteria shall identify the feasibility of reasonably providing such adequate spent nuclear fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the use of high-density fuel storage racks, fuel rod compaction, transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, construction of additional spent nuclear fuel pool capacity, or such other technologies as may be approved by the Commission.

(h) Application

Notwithstanding any other provision of law, nothing in this chapter shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on January 7, 1983.

(i) Coordination with research and development program

To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 10198[1] of this title from spent nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be subject to the provisions of subsection (e) of this section.

(Pub. L. 97–425, title I, § 135, Jan. 7, 1983, 96 Stat. 2232.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a)(1)(A)(i), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (a)(1)(A)(i), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

Section 10198 of this title, referred to in subsec. (i), was in the original a reference to section 217 of Pub. L. 97–425, which is classified to section 10197 of this title, and has been translated as section 10198 of this title as the probable intent of Congress in view of section 10198(c)(2) which directs the Secretary to provide spent nuclear fuel for the research and development program authorized by section 10198(c) of this title from spent nuclear fuel received by the Secretary for storage under section 10155 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsecs. (d)(5) and (f) of this section are listed as the 12th and 13th items on page 83), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

[1] See References in Text note below.

§ 10156. Interim Storage Fund

(a) Contracts

(1) During the period following January 7, 1983, but not later than January 1, 1990, the Secretary is authorized to enter into contracts with persons who generate or own spent nuclear fuel resulting from civilian nuclear activities for the storage of such spent nuclear fuel in any storage capacity provided under this part: *Provided, however*, That the Secretary shall not enter into contracts for spent nuclear fuel in amounts in excess of the available storage capacity specified in section 10155(a) of this title. Those contracts shall provide that the Federal Government will (1) take title at the civilian nuclear power reactor site, to such amounts of spent nuclear fuel from the civilian nuclear power reactor as the Commission determines cannot be stored onsite, (2) transport the spent nuclear fuel to a federally owned and operated interim away-from-reactor storage facility, and (3) store such fuel in the facility pending further processing, storage, or disposal. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

(2) The Secretary shall undertake a study and, not later than 180 days after January 7, 1983, submit to the Congress a report, establishing payment charges that shall be calculated on an annual basis, commencing on or before January 1, 1984. Such payment charges and the calculation thereof shall be published in the Federal Register, and shall become effective not less than 30 days after publication. Each payment charge published in the Federal Register under this paragraph shall remain effective for a period of 12 months from the effective date as the charge for the cost of the interim storage of any spent nuclear fuel. The report of the Secretary

shall specify the method and manner of collection (including the rates and manner of payment) and any legislative recommendations determined by the Secretary to be appropriate.

(3) Fees for storage under this part shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a contract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activities under this part with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this part.

(4) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such storage services shall be made available.

(5) Except as provided in section 10157 of this title, nothing in this chapter or any other Act requires the Secretary, in carrying out the responsibilities of this section, to obtain a license or permit to possess or own spent nuclear fuel.

(b) Limitation

No spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5 may be stored by the Secretary in any storage capacity provided under this part unless such department transfers to the Secretary, for deposit in the Interim Storage Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such spent nuclear fuel were generated by any other person.

(c) Establishment of Interim Storage Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Interim Storage Fund. The Storage Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e) of this section, which shall be deposited in the Storage Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Storage Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the interim storage of civilian spent nuclear fuel, which shall automatically be transferred to the Storage Fund on such date.

(d) Use of Storage Fund

The Secretary may make expenditures from the Storage Fund, subject to subsection (e) of this section, for any purpose necessary or appropriate to the conduct of the functions and activities of the Secretary, or the provision or anticipated provision of services, under this part, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this part;

(2) the administrative cost of the interim storage program;

(3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site, consistent with the restrictions in section 10155 of this title;

(4) the cost of transportation of spent nuclear fuel; and

(5) impact assistance as described in subsection (e) of this section.

(e) Impact assistance

(1) Beginning the first fiscal year which commences after January 7, 1983, the Secretary shall make annual impact assistance payments to a State or appropriate unit of local government, or both, in order to mitigate social or economic impacts occasioned by the establishment and subsequent operation of any interim storage capacity within the jurisdicational[1] boundaries of such government or governments and authorized under this part: *Provided, however*, That such impact assistance payments shall not exceed (A) ten per centum of the costs incurred in paragraphs (1) and (2), or (B) $15 per kilogram of spent fuel, whichever is less;

(2) Payments made available to States and units of local government pursuant to this section shall be—

(A) allocated in a fair and equitable manner with a priority to those States or units of local government suffering the most severe impacts; and

(B) utilized by States or units of local governments only for (i) planning, (ii) construction and maintenance of public services, (iii) provision of public services related to the providing of such interim storage authorized under this subchapter, and (iv) compensation for loss of taxable property equivalent to that if the storage had been provided under private ownership.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines necessary to ensure that the purposes of this subsection shall be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Payments under this subsection shall be made available solely from the fees determined under subsection (a) of this section.

(5) The Secretary is authorized to consult with States and appropriate units of local government in advance of commencement of establishment of storage capacity authorized under this part in an effort to determine the level of the payment such government would be eligible to receive pursuant to this subsection.

(6) As used in this subsection, the term ''unit of local government'' means a county, parish, township, municipality, and shall include a borough existing in the State of Alaska on January 7, 1983, and any other unit of government below the State level which is a unit of general government as determined by the Secretary.

(f) Administration of Storage Fund

(1) The Secretary of the Treasury shall hold the Storage Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Storage Fund during the preceding fiscal year.

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[1] So in original. Probably should be ''jurisdictional''.

(2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31. The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures from the Storage Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Storage Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Storage Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Storage Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Storage Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31.

(5) If at any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this part, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Storage Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such Act[2] are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Storage Fund for any purpose described in subsection (d) of this section shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Storage Fund, less the average undisbursed cash balance in the Storage Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(Pub. L. 97–425, title I, § 136, Jan. 7, 1983, 96 Stat. 2237.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (f)(5), probably means chapter 31 of Title 31, Money and Finance.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f)(1) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 1st item on page 140 of House Document No. 103–7.

§ 10157. Transportation

(a)(1)[1] Transportation of spent nuclear fuel under section 10156(a) of this title shall be subject to licensing and regulation by the Commission and by the Secretary of Transportation as provided for transportation of commercial spent nuclear fuel under existing law.

(2) The Secretary, in providing for the transportation of spent nuclear fuel under this chapter, shall utilize by contract private industry to the fullest extent possible in each aspect of such transportation. The Secretary shall use direct Federal services for such transportation only upon a determination of the Secretary of Transportation, in consultation with the Secretary, that private industry is unable or unwilling to provide such transportation services at reasonable cost.

(Pub. L. 97–425, title I, § 137, Jan. 7, 1983, 96 Stat. 2241.)

PART C—MONITORED RETRIEVABLE STORAGE

§ 10161. Monitored retrievable storage

(a) Findings

The Congress finds that—

[2] See References in Text note below.

[1] So in original. No subsec. (b) has been enacted.

(1) long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel;

(2) the executive branch and the Congress should proceed as expeditiously as possible to consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;

(3) the Federal Government has the responsibility to ensure that site-specific designs for such facilities are available as provided in this section;

(4) the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities have the responsibility to pay the costs of the long-term storage of such waste and spent fuel; and

(5) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this chapter should proceed regardless of any construction of a monitored retrievable storage facility pursuant to this section.

(b) Submission of proposal by Secretary

(1) On or before June 1, 1985, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed—

(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

(2) Such proposal shall include—

(A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;

(B) a plan for the funding of the construction and operation of such facilities, which plan shall provide that the costs of such activities shall be borne by the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities;

(C) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of the first such facility; (ii) support congressional authorization of the construction of such facility; and (iii) enable completion and operation of such facility as soon as practicable following congressional authorization of such facility; and

(D) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in this chapter.

(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

(4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs consistent with the criteria of paragraph (1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) of this section shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.

(c) Environmental impact statements

(1) Preparation and submission to the Congress of the proposal required in this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.], an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

(2) If the Congress by law, after review of the proposal submitted by the Secretary under subsection (b) of this section, specifically authorizes construction of a monitored retrievable storage facility, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of such facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1) of this section.

(d) Licensing

Any facility authorized pursuant to this section shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1) of this section.

(e) Clarification

Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of subsection (b)(1) of this section in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored, retrievable facility authorized pursuant to this section.

(f) Impact assistance

(1) Upon receipt by the Secretary of congressional authorization to construct a facility de-

scribed in subsection (b) of this section, the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.

(2) Payments made available to units of general local government under this subsection shall be—

(A) allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and

(B) utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 10222(c) of this title and shall be available only to the extent provided in advance in appropriation Acts.

(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.

(g) Limitation

No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 10132 of this title. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository.

(h) Participation of States and Indian tribes

Any facility authorized pursuant to this section shall be subject to the provisions of sections 10135, 10136(a), 10136(b), 10136(d), 10137, and 10138 of this title. For purposes of carrying out the provisions of this subsection, any reference in sections 10135 through 10138 of this title to a repository shall be considered to refer to a monitored retrievable storage facility.

(Pub. L. 97–425, title I, § 141, Jan. 7, 1983, 96 Stat. 2241.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

§ 10162. Authorization of monitored retrievable storage

(a) Nullification of Oak Ridge siting proposal

The proposal of the Secretary (EC–1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 10164 and 10165 of this title, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

(b) Authorization

The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 10163 through 10169 of this title.

(Pub. L. 97–425, title I, § 142, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330–232.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10163. Monitored Retrievable Storage Commission

(a) [1] Establishment

(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the ''MRS Commission''), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

(B) Members of the MRS Commission shall be appointed not later than 30 days after December 22, 1987, from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system.

(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this chapter. In preparing the report under this subparagraph, the MRS Commission shall—

(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

[1] So in original. No subsec. (b) has been enacted.

(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this chapter, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this chapter. Such comparison shall take into consideration the impact on—

(A) repository design and construction;

(B) waste package design, fabrication and standardization;

(C) waste preparation;

(D) waste transportation systems;

(E) the reliability of the national system for the disposal of radioactive waste;

(F) the ability of the Secretary to fulfill contractual commitments of the Department under this chapter to accept spent nuclear fuel for disposal; and

(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5.

(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS–18 of the General Schedule, for such staff as may be necessary to carry out its functions.

(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5 at rates and under such rules as the MRS Commission considers reasonable.

(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

(Pub. L. 97–425, title I, § 143, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330–232; amended Pub. L. 100–507, § 2, Oct. 18, 1988, 102 Stat. 2541.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a)(4)(A)(i), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100–507 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on June 1, 1989."

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 10164. Survey

After the MRS Commission submits its report to the Congress under section 10163 of this title, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—

(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter;

(2) minimize the impacts of transportation and handling of such fuel and waste;

(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

(4) impose minimal adverse effects on the local community and the local environment;

(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and

(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

(Pub. L. 97–425, title I, § 144, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330–234.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10165. Site selection

(a) In general

The Secretary may select the site evaluated under section 10164 of this title that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter.

(b) Limitation

The Secretary may not select a site under subsection (a) of this section until the Secretary recommends to the President the approval of a site for development as a repository under section 10134(a) of this title.

(c) Site specific activities

The Secretary may conduct such site specific activities at each site surveyed under section 10164 of this title as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

(d) Environmental assessment

Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.]. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

(e) Notification before selection

(1) At least 6 months before selecting a site under subsection (a) of this section, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

(2) Before selecting any site under subsection (a) of this section, the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

(f) Notification of selection

The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a) of this section.

(g) Limitation

No monitored retrievable storage facility authorized pursuant to section 10162(b) of this title may be constructed in the State of Nevada.

(Pub. L. 97–425, title I, § 145, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330–234.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10166. Notice of disapproval

(a) In general

The selection of a site under section 10165 of this title shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 10165 of this title shall not be effective except as provided under section 10135(c) of this title.

(b) References

For purposes of carrying out the provisions of this subsection, references in section 10135(c) of this title to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 10136(b) or 10138(a) of this title shall be considered to refer to a notice of disapproval under this section.

(Pub. L. 97–425, title I, § 146, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330–235.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10167. Benefits agreement

Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 10165 of this title, the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits

agreement with the Secretary under section 10173 of this title.

(Pub. L. 97–425, title I, § 147, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330–235.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10168. Construction authorization

(a) Environmental impact statement

(1) Once the selection of a site is effective under section 10166 of this title, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 10161(b)(1) of this title in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 10162(b) of this title.

(b) Application for construction license

Once the selection of a site for a monitored retrievable storage facility is effective under section 10166 of this title, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this chapter affecting such facility.

(c) Licensing

Any monitored retrievable storage facility authorized pursuant to section 10162(b) of this title shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(d) Licensing conditions

Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 10135(d) of this title;

(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

(Pub. L. 97–425, title I, § 148, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330–235.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10169. Financial assistance

The provisions of section 10136(c) or 10138(b) of this title with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.

(Pub. L. 97–425, title I, § 149, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330–236.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

PART D—LOW-LEVEL RADIOACTIVE WASTE

§ 10171. Financial arrangements for low-level radioactive waste site closure

(a) Financial arrangements

(1) The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 2231 of this title, such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 2021 of this title, by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses.

(2) If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

(b) Title and custody

(1) The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a) of this section;

(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

(2) If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

(c) Special sites

If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

(Pub. L. 97–425, title I, § 151, Jan. 7, 1983, 96 Stat. 2244.)

PART E—REDIRECTION OF NUCLEAR WASTE PROGRAM

§ 10172. Selection of Yucca Mountain site

(a) In general

(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after December 22, 1987.

(b) Eligibility to enter into benefits agreement

Effective on December 22, 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 10173 of this title.

(Pub. L. 97–425, title I, § 160, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5011(a), Dec. 22, 1987, 101 Stat. 1330–227.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10172a. Siting a second repository

(a) Congressional action required

The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

(b) Report

The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

(c) Termination of granite research

Not later than 6 months after December 22, 1987, the Secretary shall phase out in an orderly manner funding for all research programs in existence on December 22, 1987, designed to evaluate the suitability of crystalline rock as a potential repository host medium.

(d) Additional siting criteria

In the event that the Secretary at any time after December 22, 1987, considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 10132 of this title) such potentially disqualifying factors as—

(1) seasonal increases in population;

(2) proximity to public drinking water supplies, including those of metropolitan areas; and

(3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes.

(Pub. L. 97–425, title I, § 161, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5012, Dec. 22, 1987, 101 Stat. 1330–231.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

PART F—BENEFITS

§ 10173. Benefits agreements

(a) In general

(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State

or on the reservation of that tribe, as appropriate.

(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

(4) Benefits and payments under this part may be made available only in accordance with a benefits agreement under this section.

(b) Amendment

A benefits agreement entered into under subsection (a) of this section may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 10173c of this title.

(c) Agreement with Nevada

The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

(d) Monitored retrievable storage

The Secretary shall offer to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

(e) Limitation

Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

(f) Judicial review

Decisions of the Secretary under this section are not subject to judicial review.

(Pub. L. 97–425, title I, § 170, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5031, Dec. 22, 1987, 101 Stat. 1330–237.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10173a. Content of agreements

(a) In general

(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under this subchapter, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 10173 of this title in accordance with the following schedule:

BENEFITS SCHEDULE

(amounts in $ millions)

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt	5	10
(B) Upon first spent fuel receipt	10	20
(C) Annual payments after first spent fuel receipt until closure of the facility	10	20

(2) For purposes of this section, the term—

(A) ''MRS'' means a monitored retrievable storage facility,

(B) ''spent fuel'' means high-level radioactive waste or spent nuclear fuel, and

(C) ''first spent fuel receipt'' does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this subchapter before January 1, 1989, shall be made on or after such date.

(6) Except as provided in paragraph (7), the Secretary may not restrict the purposes for which the payments under this section may be used.

(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 10173 of this title covering such payments.

(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this chapter and applicable State law.

(b) Contents

A benefits agreement under section 10173 of this title shall provide that—

(1) a Review Panel be established in accordance with section 10173b of this title;

(2) the State or Indian tribe that is party to such agreement waive its rights under this subchapter to disapprove the recommendation of a site for a repository;

(3) the parties to the agreement shall share with one another information relevant to the

licensing process for the repository or monitored retrievable storage facility, as it becomes available;

(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and in the preparation of documents required under law or regulation governing the effects of the facility on the public health and safety; and

(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 10136(c)(1)(B)(ii), 10136(c)(2), 10138(b)(2)(A)(ii), and 10138(b)(3) of this title.

(c) Payments by Secretary

The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 10173 of this title shall constitute a commitment by the United States to make payments in accordance with such agreement.

(Pub. L. 97–425, title I, § 171, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5031, Dec. 22, 1987, 101 Stat. 1330–237.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10173b. Review Panel

(a) In general

The Review Panel required to be established by section 10173a(b)(1) of this title shall consist of a Chairman selected by the Secretary in consultation with the Governor of the State or governing body of the Indian tribe, as appropriate, that is party to such agreement and 6 other members as follows:

(1) 2 members selected by the Governor of such State or governing body of such Indian tribe;

(2) 2 members selected by units of local government affected by the repository or monitored retrievable storage facility;

(3) 1 member to represent persons making payments into the Waste Fund, to be selected by the Secretary; and

(4) 1 member to represent other public interests, to be selected by the Secretary.

(b) Terms

(1) The members of the Review Panel shall serve for terms of 4 years each.

(2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.

(3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

(c) Duties

The Review Panel shall—

(1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;

(2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;

(3) recommend corrective actions to the Secretary;

(4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

(d) Information

The Secretary shall promptly[1] make available promptly[1] any information in the Secretary's possession requested by the Panel or its Chairman.

(e) Federal Advisory Committee Act

The requirements of the Federal Advisory Committee Act shall not apply to a Review Panel established under this subchapter.

(Pub. L. 97–425, title I, § 172, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5031, Dec. 22, 1987, 101 Stat. 1330–239.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10173c. Termination

(a) In general

The Secretary may terminate a benefits agreement under this subchapter if—

(1) the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this chapter; or

(2) the Secretary determines that the Commission cannot license the facility within a reasonable time.

(b) Termination by State or Indian tribe

A State or Indian tribe may terminate a benefits agreement under this subchapter only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this chapter or the Secretary determines that the Commission cannot license the facility within a reasonable time.

(c) Decisions of Secretary

Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.

(Pub. L. 97–425, title I, § 173, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101

[1] So in original.

Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5031, Dec. 22, 1987, 101 Stat. 1330–240.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

PART G—OTHER BENEFITS

§ 10174. Consideration in siting facilities

The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.

(Pub. L. 97–425, title I, § 174, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5031, Dec. 22, 1987, 101 Stat. 1330–240.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10174a. Report

(a) In general

Within one year of December 22, 1987, the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 10173a of this title, and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.

(b) Impacts to be considered

Potential impacts to be addressed in the report under this[1] subsection (a) of this section shall include impacts on—

(1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;

(2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;

(3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;

(4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;

(5) medical care, including emergency services and hospitals;

(6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;

(7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;

(8) vocational training and employment services;

(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;

(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;

(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;

(12) availability of energy;

(13) tourism and economic development, including the potential loss of revenue and future economic growth; and

(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the construction, operation, and eventual closure of the repository facility.

(Pub. L. 97–425, title I, § 175, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5031, Dec. 22, 1987, 101 Stat. 1330–240.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

PART H—TRANSPORTATION

§ 10175. Transportation

(a) Packaging

No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under part A of this subchapter or under part C of this subchapter except in packages that have been certified for such purpose by the Commission.

(b) Advance notification

The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under part A of this subchapter or under part C of this subchapter.

(c) Training for public safety officials

The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under part A of this subchapter or under part C of this subchapter. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection.

[1] So in original. The word "this" probably should not appear.

(Pub. L. 97–425, title I, § 180, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5061, Dec. 22, 1987, 101 Stat. 1330–251.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

SUBCHAPTER II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

§ 10191. Purpose

It is the purpose of this subchapter—

(1) to provide direction to the Secretary with respect to the disposal of high-level radioactive waste and spent nuclear fuel;

(2) to authorize the Secretary, pursuant to this subchapter—

(A) to provide for the construction, operation, and maintenance of a deep geologic test and evaluation facility; and

(B) to provide for a focused and integrated high-level radioactive waste and spent nuclear fuel research and development program, including the development of a test and evaluation facility to carry out research and provide an integrated demonstration of the technology for deep geologic disposal of high-level radioactive waste, and the development of the facilities to demonstrate dry storage of spent nuclear fuel; and

(3) to provide for an improved cooperative role between the Federal Government and States, affected Indian tribes, and units of general local government in the siting of a test and evaluation facility.

(Pub. L. 97–425, title II, § 211, Jan. 7, 1983, 96 Stat. 2245.)

§ 10192. Applicability

The provisions of this subchapter are subject to section 10107 of this title and shall not apply to facilities that are used for the disposal of high-level radioactive waste, low-level radioactive waste, transuranic waste, or spent nuclear fuel resulting from atomic energy defense activities.

(Pub. L. 97–425, title II, § 212, Jan. 7, 1983, 96 Stat. 2245.)

§ 10193. Identification of sites

(a) Guidelines

Not later than 6 months after January 7, 1983, and notwithstanding the failure of other agencies to promulgate standards pursuant to applicable law, the Secretary, in consultation with the Commission, the Director of the United States Geological Survey, the Administrator, the Council on Environmental Quality, and such other Federal agencies as the Secretary considers appropriate, is authorized to issue, pursuant to section 553 of title 5, general guidelines for the selection of a site for a test and evaluation facility. Under such guidelines the Secretary shall specify factors that qualify or disqualify a site for development as a test and evaluation facility, including factors pertaining to the location of valuable natural resources, hydrogeophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall require the Secretary to consider the various geologic media in which the site for a test and evaluation facility may be located and, to the extent practicable, to identify sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering and selecting sites under this subchapter.

(b) Site identification by Secretary

(1) Not later than 1 year after January 7, 1983, and following promulgation of guidelines under subsection (a) of this section, the Secretary is authorized to identify 3 or more sites, at least 2 of which shall be in different geologic media in the continental United States, and at least 1 of which shall be in media other than salt. Subject to Commission requirements, the Secretary shall give preference to sites for the test and evaluation facility in media possessing geochemical characteristics that retard aqueous transport of radionuclides. In order to provide a greater possible protection of public health and safety as operating experience is gained at the test and evaluation facility, and with the exception of the primary areas under review by the Secretary on January 7, 1983, for the location of a test and evaluation facility or repository, all sites identified under this subsection shall be more than 15 statute miles from towns having a population of greater than 1,000 persons as determined by the most recent census unless such sites contain high-level radioactive waste prior to identification under this subchapter. Each identification of a site shall be supported by an environmental assessment, which shall include a detailed statement of the basis for such identification and of the probable impacts of the siting research activities planned for such site, and a discussion of alternative activities relating to siting research that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(A) an evaluation by the Secretary as to whether such site is suitable for siting research under the guidelines established under subsection (a) of this section;

(B) an evaluation by the Secretary of the effects of the siting research activities at such site on the public health and safety and the environment;

(C) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(D) a description of the decision process by which such site was recommended; and

(E) an assessment of the regional and local impacts of locating the proposed test and evaluation facility at such site.

(2) When the Secretary identifies a site, the Secretary shall as soon as possible notify the

Governor of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, of such identification and the basis of such identification. Additional sites for the location of the test and evaluation facility authorized in section 10222(d) of this title may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period.

(Pub. L. 97–425, title II, § 213, Jan. 7, 1983, 96 Stat. 2245; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000.)

CHANGE OF NAME

''United States Geological Survey'' substituted for ''Geological Survey'' in subsec. (a) pursuant to provision of title I of Pub. L. 102–154, set out as a note under section 31 of Title 43, Public Lands.

§ 10194. Siting research and related activities

(a) In general

Not later than 30 months after the date on which the Secretary completes the identification of sites under section 10193 of this title, the Secretary is authorized to complete sufficient evaluation of 3 sites to select a site for expanded siting research activities and for other activities under section 10198 of this title. The Secretary is authorized to conduct such preconstruction activities relative to such site selection for the test and evaluation facility as he deems appropriate. Additional sites for the location of the test and evaluation facility authorized in section 10222(d) of this title may be evaluated after such 30-month period, following the same procedures as if such sites were to be evaluated within such period.

(b) Public meetings and environmental assessment

Not later than 6 months after the date on which the Secretary completes the identification of sites under section 10193 of this title, and before beginning siting research activities, the Secretary shall hold at least 1 public meeting in the vicinity of each site to inform the residents of the area of the activities to be conducted at such site and to receive their views.

(c) Restrictions

Except as provided in section 10198 of this title with respect to a test and evaluation facility, in conducting siting research activities pursuant to subsection (a) of this section—

(1) the Secretary shall use the minimum quantity of high-level radioactive waste or other radioactive materials, if any, necessary to achieve the test or research objectives;

(2) the Secretary shall ensure that any radioactive material used or placed on a site shall be fully retrievable; and

(3) upon termination of siting research activities at a site for any reason, the Secretary shall remove any radioactive material at or in the site as promptly as practicable.

(d) Title to material

The Secretary may take title, in the name of the Federal Government, to the high-level radioactive waste, spent nuclear fuel, or other radioactive material emplaced in a test and evaluation facility. If the Secretary takes title to any such material, the Secretary shall enter into the appropriate financial arrangements described in subsection (a) or (b) of section 10222 of this title for the disposal of such material.

(Pub. L. 97–425, title II, § 214, Jan. 7, 1983, 96 Stat. 2247.)

§ 10195. Test and evaluation facility siting review and reports

(a) Consultation and cooperation

The Governor of a State, or the governing body of an affected Indian tribe, notified of a site identification under section 10193 of this title shall have the right to participate in a process of consultation and cooperation as soon as the site involved has been identified pursuant to such section and throughout the life of the test and evaluation facility. For purposes of this section, the term ''process of consultation and cooperation'' means a methodology—

(1) by which the Secretary—

(A) keeps the Governor or governing body involved fully and currently informed about any potential economic or public health and safety impacts in all stages of the siting, development, construction, and operation of a test and evaluation facility;

(B) solicits, receives, and evaluates concerns and objections of such Governor or governing body with regard to such test and evaluation facility on an ongoing basis; and

(C) works diligently and cooperatively to resolve such concerns and objections; and

(2) by which the State or affected Indian tribe involved can exercise reasonable independent monitoring and testing of onsite activities related to all stages of the siting, development, construction and operation of the test and evaluation facility, except that any such monitoring and testing shall not unreasonably interfere with onsite activities.

(b) Written agreements

The Secretary shall enter into written agreements with the Governor of the State in which an identified site is located or with the governing body of any affected Indian tribe where an identified site is located in order to expedite the consultation and cooperation process. Any such written agreement shall specify—

(1) procedures by which such Governor or governing body may study, determine, comment on, and make recommendations with regard to the possible health, safety, and economic impacts of the test and evaluation facility;

(2) procedures by which the Secretary shall consider and respond to comments and recommendations made by such Governor or governing body, including the period in which the Secretary shall so respond;

(3) the documents the Department is to submit to such Governor or governing body, the timing for such submissions, the timing for such Governor or governing body to identify public health and safety concerns and the process to be followed to try to eliminate those concerns;

(4) procedures by which the Secretary and either such Governor or governing body may review or modify the agreement periodically; and

(5) procedures for public notification of the procedures specified under subparagraphs (A) through (D).

(c) Limitation

Except as specifically provided in this section, nothing in this subchapter is intended to grant any State or affected Indian tribe any authority with respect to the siting, development, or loading of the test and evaluation facility.

(Pub. L. 97–425, title II, § 215, Jan. 7, 1983, 96 Stat. 2247.)

§ 10196. Federal agency actions

(a) Cooperation and coordination

Federal agencies shall assist the Secretary by cooperating and coordinating with the Secretary in the preparation of any necessary reports under this subchapter and the mission plan under section 10221 of this title.

(b) Environmental review

(1) No action of the Secretary or any other Federal agency required by this subchapter or section 10221 of this title with respect to a test and evaluation facility to be taken prior to the initiation of onsite construction of a test and evaluation facility shall require the preparation of an environmental impact statement under section 102(2)(C) of the Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require the preparation of environmental reports, except as otherwise specifically provided for in this subchapter.

(2) The Secretary and the heads of all other Federal agencies shall, to the maximum extent possible, avoid duplication of efforts in the preparation of reports under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(Pub. L. 97–425, title II, § 216, Jan. 7, 1983, 96 Stat. 2248.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(2), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

§ 10197. Research and development on disposal of high-level radioactive waste

(a) Purpose

Not later than 64 months after January 7, 1983, the Secretary is authorized to, to the extent practicable, begin at a site evaluated under section 10194 of this title, as part of and as an extension of siting research activities of such site under such section, the mining and construction of a test and evaluation facility. Prior to the mining and construction of such facility, the Secretary shall prepare an environmental assessment. The purpose of such facility shall be—

(1) to supplement and focus the repository site characterization process;

(2) to provide the conditions under which known technological components can be integrated to demonstrate a functioning repository-like system;

(3) to provide a means of identifying, evaluating, and resolving potential repository licensing issues that could not be resolved during the siting research program conducted under section 10192 of this title;

(4) to validate, under actual conditions, the scientific models used in the design of a repository;

(5) to refine the design and engineering of repository components and systems and to confirm the predicted behavior of such components and systems;

(6) to supplement the siting data, the generic and specific geological characteristics developed under section 10194 of this title relating to isolating disposal materials in the physical environment of a repository;

(7) to evaluate the design concepts for packaging, handling, and emplacement of high-level radioactive waste and spent nuclear fuel at the design rate; and

(8) to establish operating capability without exposing workers to excessive radiation.

(b) Design

The Secretary shall design each test and evaluation facility—

(1) to be capable of receiving not more than 100 full-sized canisters of solidified high-level radioactive waste (which canisters shall not exceed an aggregate weight of 100 metric tons), except that spent nuclear fuel may be used instead of such waste if such waste cannot be obtained under reasonable conditions;

(2) to permit full retrieval of solidified high-level radioactive waste, or other radioactive material used by the Secretary for testing, upon completion of the technology demonstration activities; and

(3) based upon the principle that the high-level radioactive waste, spent nuclear fuel, or other radioactive material involved shall be isolated from the biosphere in such a way that the initial isolation is provided by engineered barriers functioning as a system with the geologic environment.

(c) Operation

(1) Not later than 88 months after January 7, 1983, the Secretary shall begin an in situ testing program at the test and evaluation facility in accordance with the mission plan developed under section 10221 of this title, for purposes of—

(A) conducting in situ tests of bore hole sealing, geologic media fracture sealing, and room closure to establish the techniques and performance for isolation of high-level radioactive waste, spent nuclear fuel, or other radioactive materials from the biosphere;

(B) conducting in situ tests with radioactive sources and materials to evaluate and improve reliable models for radionuclide migration, absorption, and containment within the engineered barriers and geologic media involved, if the Secretary finds there is reasonable assurance that such radioactive sources and materials will not threaten the use of such site as a repository;

(C) conducting in situ tests to evaluate and improve models for ground water or brine flow through fractured geologic media;

(D) conducting in situ tests under conditions representing the real time and the accelerated time behavior of the engineered barriers within the geologic environment involved;

(E) conducting in situ tests to evaluate the effects of heat and pressure on the geologic media involved, on the hydrology of the surrounding area, and on the integrity of the disposal packages;

(F) conducting in situ tests under both normal and abnormal repository conditions to establish safe design limits for disposal packages and to determine the effects of the gross release of radionuclides into surroundings, and the effects of various credible failure modes, including—

(i) seismic events leading to the coupling of aquifers through the test and evaluation facility;

(ii) thermal pulses significantly greater than the maximum calculated; and

(iii) human intrusion creating a direct pathway to the biosphere; and

(G) conducting such other research and development activities as the Secretary considers appropriate, including such activities necessary to obtain the use of high-level radioactive waste, spent nuclear fuel, or other radioactive materials (such as any highly radioactive material from the Three Mile Island nuclear powerplant or from the West Valley Demonstration Project) for test and evaluation purposes, if such other activities are reasonably necessary to support the repository program and if there is reasonable assurance that the radioactive sources involved will not threaten the use of such site as a repository.

(2) The in situ testing authorized in this subsection shall be designed to ensure that the suitability of the site involved for licensing by the Commission as a repository will not be adversely affected.

(d) Use of existing Department facilities

During the conducting of siting research activities under section 10194 of this title and for such period thereafter as the Secretary considers appropriate, the Secretary shall use Department facilities owned by the Federal Government on January 7, 1983, for the conducting of generically applicable tests regarding packaging, handling, and emplacement technology for solidified high-level radioactive waste and spent nuclear fuel from civilian nuclear activities.

(e) Engineered barriers

The system of engineered barriers and selected geology used in a test and evaluation facility shall have a design life at least as long as that which the Commission requires by regulations issued under this chapter, or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), for repositories.

(f) Role of Commission

(1)(A) Not later than 1 year after January 7, 1983, the Secretary and the Commission shall reach a written understanding establishing the procedures for review, consultation, and coordination in the planning, construction, and operation of the test and evaluation facility under this section. Such understanding shall establish a schedule, consistent with the deadlines set forth in this subchapter,[1] for submission by the Secretary of, and review by the Commission of and necessary action on—

(i) the mission plan prepared under section 10221 of this title; and

(ii) such reports and other information as the Commission may reasonably require to evaluate any health and safety impacts of the test and evaluation facility.

(B) Such understanding shall also establish the conditions under which the Commission may have access to the test and evaluation facility for the purpose of assessing any public health and safety concerns that it may have. No shafts may be excavated for the test and evaluation until the Secretary and the Commission enter into such understanding.

(2) Subject to section 10225 of this title, the test and evaluation facility, and the facilities authorized in this section, shall be constructed and operated as research, development, and demonstration facilities, and shall not be subject to licensing under section 5842 of this title.

(3)(A) The Commission shall carry out a continuing analysis of the activities undertaken under this section to evaluate the adequacy of the consideration of public health and safety issues.

(B) The Commission shall report to the President, the Secretary, and the Congress as the Commission considers appropriate with respect to the conduct of activities under this section.

(g) Environmental review

The Secretary shall prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) prior to conducting tests with radioactive materials at the test and evaluation facility. Such environmental impact statement shall incorporate, to the extent practicable, the environmental assessment prepared under subsection (a) of this section. Nothing in this subsection may be construed to limit siting research activities conducted under section 10194 of this title. This subsection shall apply only to activities performed exclusively for a test and evaluation facility.

(h) Limitations

(1) If the test and evaluation facility is not located at the site of a repository, the Secretary shall obtain the concurrence of the Commission with respect to the decontamination and decommissioning of such facility.

(2) If the test and evaluation facility is not located at a candidate site or repository site, the Secretary shall conduct only the portion of the in situ testing program required in subsection (c) of this section determined by the Secretary to be useful in carrying out the purposes of this chapter.

(3) The operation of the test and evaluation facility shall terminate not later than—

(A) 5 years after the date on which the initial repository begins operation; or

(B) at such time as the Secretary determines that the continued operation of a test and

[1] See References in Text note below.

evaluation facility is not necessary for research, development, and demonstration purposes;

whichever occurs sooner.

(4) Notwithstanding any other provisions of this subsection, as soon as practicable following any determination by the Secretary, with the concurrence of the Commission, that the test and evaluation facility is unsuitable for continued operation, the Secretary shall take such actions as are necessary to remove from such site any radioactive material placed on such site as a result of testing and evaluation activities conducted under this section. Such requirement may be waived if the Secretary, with the concurrence of the Commission, finds that short-term testing and evaluation activities using radioactive material will not endanger the public health and safety.

(Pub. L. 97–425, title II, § 217, Jan. 7, 1983, 96 Stat. 2249.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (e), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

This subchapter, referred to in subsec. (f)(1)(A), was in the original ''this subtitle'', and was translated as this subchapter to reflect the probable intent of Congress because title II of Pub. L. 97–425, which enacted this subchapter, does not contain subtitles.

§ 10198. Research and development on spent nuclear fuel

(a) Demonstration and cooperative programs

The Secretary shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission. Not later than 1 year after January 7, 1983, the Secretary shall select at least 1, but not more than 3, sites evaluated under section 10194 of this title at such power reactors. In selecting such site or sites, the Secretary shall give preference to civilian nuclear power reactors that will soon have a shortage of interim storage capacity for spent nuclear fuel. Subject to reaching agreement as provided in subsection (b) of this section, the Secretary shall undertake activities to assist such power reactors with demonstration projects at such sites, which may use one of the following types of alternate storage technologies: spent nuclear fuel storage casks, caissons, or silos. The Secretary shall also undertake a cooperative program with civilian nuclear power reactors to encourage the development of the technology for spent nuclear fuel rod consolidation in existing power reactor water storage basins.

(b) Cooperative agreements

To carry out the programs described in subsection (a) of this section, the Secretary shall enter into a cooperative agreement with each utility involved that specifies, at a minimum, that—

(1) such utility shall select the alternate storage technique to be used, make the land and spent nuclear fuel available for the dry storage demonstration, submit and provide site-specific documentation for a license application to the Commission, obtain a license relating to the facility involved, construct such facility, operate such facility after licensing, pay the costs required to construct such facility, and pay all costs associated with the operation and maintenance of such facility;

(2) the Secretary shall provide, on a cost-sharing basis, consultative and technical assistance, including design support and generic licensing documentation, to assist such utility in obtaining the construction authorization and appropriate license from the Commission; and

(3) the Secretary shall provide generic research and development of alternative spent nuclear fuel storage techniques to enhance utility-provided, at-reactor storage capabilities, if authorized in any other provision of this chapter or in any other provision of law.

(c) Dry storage research and development

(1) The consultative and technical assistance referred to in subsection (b)(2) of this section may include, but shall not be limited to, the establishment of a research and development program for the dry storage of not more than 300 metric tons of spent nuclear fuel at facilities owned by the Federal Government on January 7, 1983. The purpose of such program shall be to collect necessary data to assist the utilities involved in the licensing process.

(2) To the extent available, and consistent with the provisions of section 10155 of this title, the Secretary shall provide spent nuclear fuel for the research and development program authorized in this subsection from spent nuclear fuel received by the Secretary for storage under section 10155 of this title. Such spent nuclear fuel shall not be subject to the provisions of section 10155(e) of this title.

(d) Funding

The total contribution from the Secretary from Federal funds and the use of Federal facilities or services shall not exceed 25 percent of the total costs of the demonstration program authorized in subsection (a) of this section, as estimated by the Secretary. All remaining costs of such program shall be paid by the utilities involved or shall be provided by the Secretary from the Interim Storage Fund established in section 10156 of this title.

(e) Relation to spent nuclear fuel storage program

The spent nuclear fuel storage program authorized in section 10155 of this title shall not be construed to authorize the use of research development or demonstration facilities owned by the Department unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain)

has passed after the Secretary has transmitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a written report containing a full and complete statement concerning (A) the facility involved; (B) any necessary modifications; (C) the cost thereof; and (D) the impact on the authorized research and development program; or

(2) each such committee, before the expiration of such period, has transmitted to the Secretary a written notice to the effect that such committee has no objection to the proposed use of such facility.

(Pub. L. 97–425, title II, § 218, Jan. 7, 1983, 96 Stat. 2252; Pub. L. 103–437, § 15(c)(10), Nov. 2, 1994, 108 Stat. 4592.)

AMENDMENTS

1994—Subsec. (e)(1). Pub. L. 103–437 substituted ''Committee on Science, Space, and Technology'' for ''Committee on Science and Technology''.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 10199. Payments to States and Indian tribes

(a) Payments

Subject to subsection (b) of this section, the Secretary shall make payments to each State or affected Indian tribe that has entered into an agreement pursuant to section 10195 of this title. The Secretary shall pay an amount equal to 100 percent of the expenses incurred by such State or Indian tribe in engaging in any monitoring, testing, evaluation, or other consultation and cooperation activity under section 10195 of this title with respect to any site. The amount paid by the Secretary under this paragraph shall not exceed $3,000,000 per year from the date on which the site involved was identified to the date on which the decontamination and decommission of the facility is complete pursuant to section 10197(h) of this title. Any such payment may only be made to a State in which a potential site for a test and evaluation facility has been identified under section 10193 of this title, or to an affected Indian tribe where the potential site has been identified under such section.

(b) Limitation

The Secretary shall make any payment to a State under subsection (a) of this section only if such State agrees to provide, to each unit of general local government within the jurisdictional boundaries of which the potential site or effectively selected site involved is located, at least one-tenth of the payments made by the Secretary to such State under such subsection. A State or affected Indian tribe receiving any payment under subsection (a) of this section shall otherwise have discretion to use such payment for whatever purpose it deems necessary, including the State or tribal activities pursuant to agreements entered into in accordance with section 10195 of this title. Annual payments shall be prorated on a 365-day basis to the specified dates.

(Pub. L. 97–425, title II, § 219, Jan. 7, 1983, 96 Stat. 2253.)

§ 10200. Study of research and development needs for monitored retrievable storage proposal

Not later than 6 months after January 7, 1983, the Secretary shall submit to the Congress a report describing the research and development activities the Secretary considers necessary to develop the proposal required in section 10161(b) of this title with respect to a monitored retrievable storage facility.

(Pub. L. 97–425, title II, § 220, Jan. 7, 1983, 96 Stat. 2254.)

§ 10201. Judicial review

Judicial review of research and development activities under this subchapter shall be in accordance with the provisions of section 10139 of this title.

(Pub. L. 97–425, title II, § 221, Jan. 7, 1983, 96 Stat. 2254.)

§ 10202. Research on alternatives for permanent disposal of high-level radioactive waste

The Secretary shall continue and accelerate a program of research, development, and investigation of alternative means and technologies for the permanent disposal of high-level radioactive waste from civilian nuclear activities and Federal research and development activities except that funding shall be made from amounts appropriated to the Secretary for purposes of carrying out this section. Such program shall include examination of various waste disposal options.

(Pub. L. 97–425, title II, § 222, Jan. 7, 1983, 96 Stat. 2254.)

§ 10203. Technical assistance to non-nuclear weapon states in field of spent fuel storage and disposal

(a) Statement of policy

It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

(b) Publication of joint notice; update

(1) Within 90 days of January 7, 1983, the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research

and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

(c) Notification to non-nuclear weapon states; expressions of interest

Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

(d) Funding requests

With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nuclear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators.

(e) "Non-nuclear weapon state" defined

For the purposes of this subsection,[1] the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.C.[2] 438).

(f) Unauthorized actions

Nothing in this subsection[1] shall authorize the Department or the Commission to take any action not authorized under existing law.

(Pub. L. 97–425, title II, § 223, Jan. 7, 1983, 96 Stat. 2254.)

REFERENCES IN TEXT

The Treaty on the Non-Proliferation of Nuclear Weapons, referred to in subsec. (e), is set out in 21 UST 483; TIAS 6839.

§ 10204. Subseabed disposal

(a) Repealed. Pub. L. 104–66, title I, § 1051(d), Dec. 21, 1995, 109 Stat. 716

(b) Office of Subseabed Disposal Research

(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Science of the Department of Energy. The Office shall be headed by the Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Science, and compensated at a rate determined by applicable law.

(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Science, and the first such Director shall be appointed within 30 days of December 22, 1987.

(3) In carrying out his responsibilities under this chapter, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

(4)(A) Within 60 days of December 22, 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).

(Pub. L. 97–425, title II, § 224, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5063, Dec. 22, 1987, 101 Stat. 1330–253; amended Pub. L. 104–66, title I, § 1051(d), Dec. 21, 1995, 109 Stat. 716; Pub. L. 105–245, title III, § 309(b)(2)(E), Oct. 7, 1998, 112 Stat. 1853.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–245 which directed the substitution of "Science" for "Energy Research", was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (b)(2). Pub. L. 105–245 substituted "Office of Science" for "Office of Energy Research".

1995—Subsec. (a). Pub. L. 104–66 struck out subsec. (a) which required Secretary of Energy to report to Congress on subseabed disposal of spent nuclear fuel and high-level radioactive waste.

Subsec. (b)(5). Pub. L. 104–66 struck out par. (5) which read as follows: "The Director of the Office of Subseabed Disposal Research shall annually prepare and submit a report to the Congress on the activities and expenditures of the Office."

[1] So in original. Probably should be "section".

[2] So in original. Probably should be "UST".

SUBCHAPTER III—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

§ 10221. Mission plan

(a) Contents of mission plan

The Secretary shall prepare a comprehensive report, to be known as the mission plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this chapter. The mission plan shall include—

(1) an identification of the primary scientific, engineering, and technical information, including any necessary demonstration of engineering or systems integration, with respect to the siting and construction of a test and evaluation facility and repositories;

(2) an identification of any information described in paragraph (1) that is not available because of any unresolved scientific, engineering, or technical questions, or undemonstrated engineering or systems integration, a schedule including specific major milestones for the research, development, and technology demonstration program required under this chapter and any additional activities to be undertaken to provide such information, a schedule for the activities necessary to achieve important programmatic milestones, and an estimate of the costs required to carry out such research, development, and demonstration programs;

(3) an evaluation of financial, political, legal, or institutional problems that may impede the implementation of this chapter, the plans of the Secretary to resolve such problems, and recommendations for any necessary legislation to resolve such problems;

(4) any comments of the Secretary with respect to the purpose and program of the test and evaluation facility;

(5) a discussion of the significant results of research and development programs conducted and the implications for each of the different geologic media under consideration for the siting of repositories, and, on the basis of such information, a comparison of the advantages and disadvantages associated with the use of such media for repository sites;

(6) the guidelines issued under section 10132(a) of this title;

(7) a description of known sites at which site characterization activities should be undertaken, a description of such siting characterization activities, including the extent of planned excavations, plans for onsite testing with radioactive or nonradioactive material, plans for any investigations activities which may affect the capability of any such site to isolate high-level radioactive waste or spent nuclear fuel, plans to control any adverse, safety-related impacts from such site characterization activities, and plans for the decontamination and decommissioning of such site if it is determined unsuitable for licensing as a repository;

(8) an identification of the process for solidifying high-level radioactive waste or packaging spent nuclear fuel, including a summary and analysis of the data to support the selection of the solidification process and packaging techniques, an analysis of the requirements for the number of solidification packaging facilities needed, a description of the state of the art for the materials proposed to be used in packaging such waste or spent fuel and the availability of such materials including impacts on strategic supplies and any requirements for new or reactivated facilities to produce any such materials needed, and a description of a plan, and the schedule for implementing such plan, for an aggressive research and development program to provide when needed a high-integrity disposal package at a reasonable price;

(9) an estimate of (A) the total repository capacity required to safely accommodate the disposal of all high-level radioactive waste and spent nuclear fuel expected to be generated through December 31, 2020, in the event that no commercial reprocessing of spent nuclear fuel occurs, as well as the repository capacity that will be required if such reprocessing does occur; (B) the number and type of repositories required to be constructed to provide such disposal capacity; (C) a schedule for the construction of such repositories; and (D) an estimate of the period during which each repository listed in such schedule will be accepting high-level radioactive waste or spent nuclear fuel for disposal;

(10) an estimate, on an annual basis, of the costs required (A) to construct and operate the repositories anticipated to be needed under paragraph (9) based on each of the assumptions referred to in such paragraph; (B) to construct and operate a test and evaluation facility, or any other facilities, other than repositories described in subparagraph (A), determined to be necessary; and (C) to carry out any other activities under this chapter; and

(11) an identification of the possible adverse economic and other impacts to the State or Indian tribe involved that may arise from the development of a test and evaluation facility or repository at a site.

(b) Submission of mission plan

(1) Not later than 15 months after January 7, 1983, the Secretary shall submit a draft mission plan to the States, the affected Indian tribes, the Commission, and other Government agencies as the Secretary deems appropriate for their comments.

(2) In preparing any comments on the mission plan, such agencies shall specify with precision any objections that they may have. Upon submission of the mission plan to such agencies, the Secretary shall publish a notice in the Federal Register of the submission of the mission plan and of its availability for public inspection, and, upon receipt of any comments of such agencies respecting the mission plan, the Secretary shall publish a notice in the Federal Register of the receipt of comments and of the availability of the comments for public inspection. If the Secretary does not revise the mission plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register

a detailed statement for not so revising the mission plan.

(3) The Secretary, after reviewing any other comments made by such agencies and revising the mission plan to the extent that the Secretary may consider to be appropriate, shall submit the mission plan to the appropriate committees of the Congress not later than 17 months after January 7, 1983. The mission plan shall be used by the Secretary at the end of the first period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) following receipt of the mission plan by the Congress.

(Pub. L. 97–425, title III, § 301, Jan. 7, 1983, 96 Stat. 2255.)

§ 10222. Nuclear Waste Fund

(a) Contracts

(1) In the performance of his functions under this chapter, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2) and (3) sufficient to offset expenditures described in subsection (d) of this section.

(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after January 7, 1983, the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days after January 7, 1983, establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to section 10143 of this title, to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c) of this section.[1] In paying such a fee, the person delivering spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

(4) Not later than 180 days after January 7, 1983, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d) of this section. In the event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d) of this section, the Secretary shall propose an adjustment to the fee to insure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 6421 of this title.

(5) Contracts entered into under this section shall provide that—

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subchapter.[1]

(6) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

(b) Advance contracting requirement

(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 2133 or 2134 of this title unless—

(i) such person has entered into a contract with the Secretary under this section; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 2133 or 2134 of this title that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5) may be disposed of by the Secretary in any repository constructed under this chapter unless the generator or owner of such spent fuel or waste has entered

[1] See References in Text note below.

into a contract with the Secretary under this section by not later than—

(A) June 30, 1983; or

(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste;

whichever occurs later.

(3) The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5 may be disposed of by the Secretary in any repository constructed under this chapter unless such department transfers to the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

(c) Establishment of Nuclear Waste Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e) of this section, which shall be deposited in the Waste Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Waste Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

(d) Use of Waste Fund

The Secretary may make expenditures from the Waste Fund, subject to subsection (e) of this section, only for purposes of radioactive waste disposal activities under subchapters I and II of this chapter, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored,[2] retrievable storage facility[3] or test and evaluation facility constructed under this chapter;

(2) the conducting of nongeneric research, development, and demonstration activities under this chapter;

(3) the administrative cost of the radioactive waste disposal program;

(4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, to be stored in a monitored,[2] retrievable storage site[3] or to be used in a test and evaluation facility;

(5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a monitored,[2] retrievable storage site[3] or a test and evaluation facility site and necessary or incident to such repository, monitored,[2] retrievable storage facility[3] or test and evaluation facility; and

(6) the provision of assistance to States, units of general local government, and Indian tribes under sections 10136, 10138, and 10199 of this title.

No amount may be expended by the Secretary under this subchapter[4] for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct one repository and one test and evaluation facility.

(e) Administration of Waste Fund

(1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31. The budget of the Waste Fund shall consist of the estimates made by the Secretary of expenditures from the Waste Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Waste Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31.

(5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under

[2] So in original. The comma probably should not appear.

[3] So in original. Probably should be followed by a comma.

[4] See References in Text note below.

this subchapter,[5] the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such Act[5] are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Waste Fund for any purpose described in subsection (d) of this section shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Waste Fund, less the average undisbursed cash balance in the Waste Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(Pub. L. 97–425, title III, § 302, Jan. 7, 1983, 96 Stat. 2257.)

REFERENCES IN TEXT

Subsection (c) of this section, referred to in subsec. (a)(3), was in the original ''subsection (c) 126(b)'' and was translated as subsection (c) of this section as the probable intent of Congress in view of the establishment of the Nuclear Waste Fund by subsec. (c) of this section and the absence of a section 126 in Pub. L. 97–425.

This subchapter, referred to in subsecs. (a)(5)(B), (d), and (e)(5), was in the original ''this subtitle'', and was translated as this subchapter to reflect the probable intent of Congress because title III of Pub. L. 97–425, which enacted this subchapter, does not contain subtitles.

Such Act, referred to in subsec. (e)(5), probably means chapter 31 of Title 31, Money and Finance.

[5] See References in Text note below.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e)(1) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 4th item on page 143 of House Document No. 103–7.

§ 10223. Alternative means of financing

The Secretary shall undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, including the feasibility of establishing a private corporation for such purposes. In conducting such study, the Secretary shall consult with the Director of the Office of Management and Budget, the Chairman of the Commission, and such other Federal agency representatives as may be appropriate. Such study shall be completed, and a report containing the results of such study shall be submitted to the Congress, within 1 year after January 7, 1983.

(Pub. L. 97–425, title III, § 303, Jan. 7, 1983, 96 Stat. 2261.)

§ 10224. Office of Civilian Radioactive Waste Management

(a) Establishment

There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5.

(b) Functions of Director

The Director of the Office shall be responsible for carrying out the functions of the Secretary under this chapter, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

(c) Annual report to Congress

The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

(d) Audit by GAO

If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the Government Accountability Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.

(Pub. L. 97–425, title III, § 304, Jan. 7, 1983, 96 Stat. 2261; Pub. L. 104–66, title I, § 1052(*l*), Dec. 21, 1995, 109 Stat. 719; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1995—Subsec. (d). Pub. L. 104–66 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: ''The Comptroller General of the United States shall annually make an audit of the Office, in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to annual submittal of report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 13th item on page 91 of House Document No. 103–7.

§ 10225. Location of test and evaluation facility

(a) Report to Congress

Not later than 1 year after January 7, 1983, the Secretary shall transmit to the Congress a report setting forth whether the Secretary plans to locate the test and evaluation facility at the site of a repository.

(b) Procedures

(1) If the test and evaluation facility is to be located at any candidate site or repository site (A) site selection and development of such facility shall be conducted in accordance with the procedures and requirements established in subchapter I of this chapter with respect to the site selection and development of repositories; and (B) the Secretary may not commence construction of any surface facility for such test and evaluation facility prior to issuance by the Commission of a construction authorization for a repository at the site involved.

(2) No test and evaluation facility may be converted into a repository unless site selection and development of such facility was conducted in accordance with the procedures and requirements established in subchapter I of this chapter with respect to the site selection and development of respositories.[1]

(3) The Secretary may not commence construction of a test and evaluation facility at a candidate site or site recommended as the location for a repository prior to the date on which the designation of such site is effective under section 10135 of this title.

(Pub. L. 97–425, title III, § 305, Jan. 7, 1983, 96 Stat. 2262.)

§ 10226. Nuclear Regulatory Commission training authorization

The Nuclear Regulatory Commission is authorized and directed to promulgate regulations, or other appropriate Commission regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors, technicians and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear powerplant operator licenses and for operator requalification programs; requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear powerplant licensee personnel training programs. Such regulations or other regulatory guidance shall be promulgated by the Commission within the 12-month period following January 7, 1983, and the Commission within the 12-month period following January 7, 1983, shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.

(Pub. L. 97–425, title III, § 306, Jan. 7, 1983, 96 Stat. 2262.)

SUBCHAPTER IV—NUCLEAR WASTE NEGOTIATOR

§ 10241. "State" defined

For purposes of this subchapter, the term ''State'' means each of the several States and the District of Columbia.

(Pub. L. 97–425, title IV, § 401, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330–243; amended Pub. L. 102–486, title VIII, § 802(b), Oct. 24, 1992, 106 Stat. 2923.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1992—Pub. L. 102–486 substituted ''several States and the District of Columbia.'' for ''several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, and the Republic of the Marshall Islands.''

§ 10242. Office of Nuclear Waste Negotiator

(a) Establishment

There is established the Office of the Nuclear Waste Negotiator that shall be an independent establishment in the executive branch.

(b) Nuclear Waste Negotiator

(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5.

(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.

(Pub. L. 97–425, title IV, § 402, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat.

[1] So in original. Probably should be ''repositories.''

1329–104, 1329–121; Pub. L. 100–203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330–243; amended Pub. L. 100–507, § 1, Oct. 18, 1988, 102 Stat. 2541.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–507 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There is established within the Executive Office of the President the Office of the Nuclear Waste Negotiator.''

§ 10243. Duties of Negotiator

(a) Negotiations with potential hosts

(1) The Negotiator shall—

(A) seek to enter into negotiations on behalf of the United States, with—

(i) the Governor of any State in which a potential site is located; and

(ii) the governing body of any Indian tribe on whose reservation a potential site is located; and

(B) attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or monitored retrievable storage facility within such State or reservation.

(2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this subchapter to the Governor shall be considered to refer instead to such other person or entity.

(b) Consultation with affected States, subdivisions of States, and tribes

In addition to entering into negotiations under subsection (a) of this section, the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

(c) Consultation with other Federal agencies

The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.

(d) Proposed agreement

(1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) of this section and an environmental assessment prepared under section 10244(a) of this title for the site concerned.

(2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 10136(c), 10137, and 10138(b) of this title.

(3)(A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal law.

(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe. Nothing in this section may be construed to prohibit the disapproval of a proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.

(4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this subchapter only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], title II of the Energy Reorganization Act of 1982 (42 U.S.C. 5841 et seq.) and any other law applicable to authorization of such construction.

(Pub. L. 97–425, title IV, § 403, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330–244.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (d)(4), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1982, referred to in subsec. (d)(4), probably means the Energy Reorganization Act of 1974, Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended. Title II of the Energy Reorganization Act of 1974 is classified generally to subchapter II (§ 5841 et seq.) of chapter 73 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10244. Environmental assessment of sites

(a) In general

Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 10243(a) of this title.

(b) Contents

(1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.

(2) Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.

(c) Judicial review

The issuance of an environmental assessment under subsection (a) of this section shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title.

(d) Public hearings

(1) In preparing an environmental assessment for any repository or monitored retrievable storage facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.

(2) At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) of this section and the site characterization plan described in section 10133(b)(1) of this title.

(e) Public availability

Each environmental assessment prepared under subsection (a) of this section shall be made available to the public.

(f) Evaluation of sites

(1) In preparing an environmental assessment under subsection (a) of this section, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless—

(A) such preliminary boring or excavation activities were in progress on or before December 22, 1987; or

(B) the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this chapter or any other law.

(2) No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.

(Pub. L. 97–425, title IV, § 404, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330–245.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10245. Site characterization; licensing

(a) Site characterization

Upon enactment of legislation to implement an agreement to site a repository negotiated under section 10243(a) of this title, the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in accordance with section 10133 of this title, except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

(b) Licensing

(1) Upon the completion of site characterization activities carried out under subsection (a) of this section, the Secretary shall submit to the Nuclear Regulatory Commission an application for construction authorization for a repository at such site.

(2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.

(Pub. L. 97–425, title IV, § 405, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330–246.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10246. Monitored retrievable storage

(a) Construction and operation

Upon enactment of legislation to implement an agreement negotiated under section 10243(a) of this title to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.

(b) Financial assistance

The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.

(Pub. L. 97–425, title IV, § 406, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330–246.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10247. Environmental impact statement

(a) In general

Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 10245(b) of this title shall be considered a major Federal action significantly affecting the quality of the human environment

for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) Preparation

A final environmental impact statement shall be prepared by the Secretary under such Act and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.

(c) Adoption

(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.

(2)(A) In any such statement prepared with respect to a repository to be constructed under this subchapter at the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

(B) In any such statement prepared with respect to a repository to be constructed under this subchapter at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but shall consider the Yucca Mountain site as an alternate to such site in the preparation of such statement.

(Pub. L. 97–425, title IV, § 407, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330–246.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a) and (b), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10248. Administrative powers of Negotiator

In carrying out his functions under this subchapter, the Negotiator may—

(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;

(2) obtain services as authorized by section 3109 of title 5, at rates not to exceed the rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5;

(3) promulgate such rules and regulations as may be necessary to carry out such functions;

(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);

(5) for purposes of performing administrative functions under this subchapter, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(7) adopt an official seal, which shall be judicially noticed;

(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and

(10) appoint advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.).

(Pub. L. 97–425, title IV, § 408, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330–247.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in par. (10), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 10249. Cooperation of other departments and agencies

Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this subchapter.

(Pub. L. 97–425, title IV, § 409, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330–247.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10250. Termination of Office

The Office shall cease to exist not later than 30 days after the date 7 years after December 22, 1987.

(Pub. L. 97–425, title IV, § 410, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5041,

Dec. 22, 1987, 101 Stat. 1330–247; amended Pub. L. 102–486, title VIII, § 802(a), Oct. 24, 1992, 106 Stat. 2923.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1992—Pub. L. 102–486 substituted ''7 years'' for ''5 years''.

§ 10251. Authorization of appropriations

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 97–425, title IV, § 411, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330–248.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

SUBCHAPTER V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

§ 10261. Definitions

As used in this subchapter:

(1) The term ''Chairman'' means the Chairman of the Nuclear Waste Technical Review Board.

(2) The term ''Board'' means the Nuclear Waste Technical Review Board established under section 10262 of this title.

(Pub. L. 97–425, title V, § 501, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–248.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10262. Nuclear Waste Technical Review Board

(a) Establishment

There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

(b) Members

(1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

(2) The President shall designate a member of the Board to serve as chairman.

(3)(A) The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

(B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

(C)(i) Each person nominated for appointment to the Board shall be—

(I) eminent in a field of science or engineering, including environmental sciences; and

(II) selected solely on the basis of established records of distinguished service.

(ii) The membership of the Board shall be representative of the broad range of scientific and engineering disciplines related to activities under this subchapter.

(iii) No person shall be nominated for appointment to the Board who is an employee of—

(I) the Department of Energy;

(II) a national laboratory under contract with the Department of Energy; or

(III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.

(4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

(5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.

(Pub. L. 97–425, title V, § 502, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–248.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

CONTINUED BOARD SERVICE AFTER EXPIRATION OF TERM

Pub. L. 104–46, title V, § 503, Nov. 13, 1995, 109 Stat. 419, provided that: ''Without fiscal year limitation and notwithstanding section 502(b)(5) of the Nuclear Waste Policy Act, as amended [42 U.S.C. 10262(b)(5)], or any other provision of law, a member of the Nuclear Waste Technical Review Board whose term has expired may continue to serve as a member of the Board until such member's successor has taken office.''

§ 10263. Functions

The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after December 22, 1987, including—

(1) site characterization activities; and

(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

(Pub. L. 97–425, title V, § 503, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–249.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10264. Investigatory powers

(a) Hearings

Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(b) Production of documents

(1) Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this subchapter.

(2) Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

(Pub. L. 97–425, title V, § 504, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–249.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10265. Compensation of members

(a) In general

Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

(b) Travel expenses

Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5.

(Pub. L. 97–425, title V, § 505, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–249.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10266. Staff

(a) Clerical staff

(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

(2) Clerical staff shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) Professional staff

(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

(2) Not more than 10 professional staff members may be appointed under this subsection.

(3) Professional staff members may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

(Pub. L. 97–425, title V, § 506, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–249.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsecs. (a)(2) and (b)(3), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 10267. Support services

(a) General services

To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

(b) Accounting, research, and technology assessment services

The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

(c) Additional support

Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this subchapter.

(d) Mails

The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) Experts and consultants

Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Schedule.

(Pub. L. 97–425, title V, § 507, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–250.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 10268. Report

The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The first such report shall be submitted not later than 12 months after December 22, 1987.

(Pub. L. 97–425, title V, § 508, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–250.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to reporting to Congress 2 times per year, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 186 of House Document No. 103–7.

§ 10269. Authorization of appropriations

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 97–425, title V, § 509, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–251.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§ 10270. Termination of Board

The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository.

(Pub. L. 97–425, title V, § 510, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–251.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

CHAPTER 109—WATER RESOURCES RESEARCH

Sec.
10301. Congressional findings and declarations.
10302. Congressional declaration of purpose.
10303. Water resources research and technology institutes.
10304. Research concerning water resource-related problems deemed to be in national interest.
10305. Development of water-related technology.
10306. Administrative costs.
10307. Types of research and development.
10308. Patent policy.
10309. New spending authority; amounts provided in advance.

§ 10301. Congressional findings and declarations

The Congress finds and declares that—

(1) the existence of an adequate supply of water of good quality for the production of materials and energy for the Nation's needs and for the efficient use of the Nation's energy and water resources is essential to national economic stability and growth, and to the well-being of the people;

(2) the management of water resources is closely related to maintaining environmental quality, productivity of natural resources and agricultural systems, and social well-being;

(3) there is an increasing threat of impairment to the quantity and quality of surface and groundwater resources;

(4) the Nation's capabilities for technological assessment and planning and for policy formulation for water resources must be strengthened at the Federal, State, and local governmental levels;

(5) there should be a continuing national investment in water and related research and technology commensurate with growing national needs;

(6) it is necessary to provide for the research and development of technology for the conversion of saline and other impaired waters to a quality suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(7) the Nation must provide programs to strengthen research and associated graduate education because the pool of scientists, engineers, and technicians trained in fields related to water resources constitutes an invaluable natural resource which should be increased, fully utilized, and regularly replenished; and[1]

(8) long-term planning and policy development are essential to ensure the availability

[1] So in original. The word ''and'' probably should not appear.

of an abundant supply of high quality water for domestic and other uses; and

(9) the States must have the research and problem-solving capacity necessary to effectively manage their water resources.

(Pub. L. 98–242, title I, § 102, Mar. 22, 1984, 98 Stat. 97; Pub. L. 104–147, § 1, May 24, 1996, 110 Stat. 1375.)

AMENDMENTS

1996—Par. (2). Pub. L. 104–147, § 1(1), inserted ‘‘, productivity of natural resources and agricultural systems,’’ after ‘‘environmental quality’’.

Pars. (8), (9). Pub. L. 104–147, § 1(2)–(4), added pars. (8) and (9).

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 109–471, § 1, Jan. 11, 2007, 120 Stat. 3552, provided that: ‘‘This Act [amending sections 10303 and 10306 of this title] may be cited as the ‘Water Resources Research Act Amendments of 2006’.’’

SHORT TITLE

Section 101 of Pub. L. 98–242 provided that: ‘‘This Act [enacting this chapter, repealing sections 7801, 7802, 7811 to 7819, 7831 to 7835, 7851 to 7853, and 7871 to 7883 of this title, and enacting provisions set out as a note under section 7801 of this title] may be cited as the ‘Water Resources Research Act of 1984’.’’

SAVINGS PROVISION

Rules and regulations issued prior to Mar. 22, 1984, under Pub. L. 95–467 [chapter 87 of this title] to remain in full force and effect under this chapter until superseded by new rules and regulations promulgated under this chapter, see section 110(b) of Pub. L. 98–242, set out as a note under section 7801 of this title.

DESALINATION RESEARCH, STUDIES, AND DEMONSTRATION PROJECTS

Pub. L. 104–298, Oct. 11, 1996, 110 Stat. 3622, as amended by Pub. L. 108–7, div. D, title II, § 210, Feb. 20, 2003, 117 Stat. 146; Pub. L. 109–13, div. A, title VI, § 6015, May 11, 2005, 119 Stat. 284; Pub. L. 109–103, title II, § 206, Nov. 19, 2005, 119 Stat. 2268, provided that:

‘‘SECTION 1. SHORT TITLE.

‘‘This Act may be cited as the ‘Water Desalination Act of 1996’.

‘‘SEC. 2. DEFINITIONS.

‘‘As used in this Act:

‘‘(1) DESALINATION OR DESALTING.—The terms ‘desalination’ or ‘desalting’ mean the use of any process or technique for the removal and, when feasible, adaptation to beneficial use, of organic and inorganic elements and compounds from saline or biologically impaired waters, by itself or in conjunction with other processes.

‘‘(2) SALINE WATER.—The term ‘saline water’ means sea water, brackish water, and other mineralized or chemically impaired water.

‘‘(3) UNITED STATES.—The term ‘United States’ means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

‘‘(4) USABLE WATER.—The term ‘usable water’ means water of a high quality suitable for environmental enhancement, agricultural, industrial, municipal, and other beneficial consumptive or nonconsumptive uses.

‘‘(5) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

‘‘SEC. 3. AUTHORIZATION OF RESEARCH AND STUDIES.

‘‘(a) IN GENERAL.—In order to determine the most cost-effective and technologically efficient means by which usable water can be produced from saline water or water otherwise impaired or contaminated, the Secretary is authorized to award grants and to enter into contracts, to the extent provided in advance in appropriation Acts, to conduct, encourage, and assist in the financing of research to develop processes for converting saline water into water suitable for beneficial uses. Awards of research grants and contracts under this section shall be made on the basis of a competitive, merit-reviewed process. Research and study topics authorized by this section include—

‘‘(1) investigating desalination processes;

‘‘(2) ascertaining the optimum mix of investment and operating costs;

‘‘(3) determining the best designs for different conditions of operation;

‘‘(4) investigating methods of increasing the economic efficiency of desalination processes through dual-purpose co-facilities with other processes involving the use of water;

‘‘(5) conducting or contracting for technical work, including the design, construction, and testing of pilot systems and test beds, to develop desalting processes and concepts;

‘‘(6) studying methods for the recovery of byproducts resulting from desalination to offset the costs of treatment and to reduce environmental impacts from those byproducts; and

‘‘(7) salinity modeling and toxicity analysis of brine discharges, cost reduction strategies for constructing and operating desalination facilities, and the horticultural effects of desalinated water used for irrigation.

‘‘(b) PROJECT RECOMMENDATIONS AND REPORTS TO THE CONGRESS.—As soon as practicable and within three years after the date of enactment of this Act [Oct. 11, 1996], the Secretary shall recommend to Congress desalination demonstration projects or full-scale desalination projects to carry out the purposes of this Act and to further evaluate and implement the results of research and studies conducted under the authority of this section. Recommendations for projects shall be accompanied by reports on the engineering and economic feasibility of proposed projects and their environmental impacts.

‘‘(c) AUTHORITY TO ENGAGE OTHERS.—In carrying out research and studies authorized in this section, the Secretary may engage the necessary personnel, industrial or engineering firms, Federal laboratories, water resources research and technology institutes, other facilities, and educational institutions suitable to conduct investigations and studies authorized under this section.

‘‘(d) ALTERNATIVE TECHNOLOGIES.—In carrying out the purposes of this Act, the Secretary shall ensure that at least three separate technologies are evaluated and demonstrated for the purposes of accomplishing desalination.

‘‘SEC. 4. DESALINATION DEMONSTRATION AND DEVELOPMENT.

‘‘(a) IN GENERAL.—In order to further demonstrate the feasibility of desalination processes investigated either independently or in research conducted pursuant to section 3, the Secretary shall administer and conduct a demonstration and development program for water desalination and related activities, including the following:

‘‘(1) DESALINATION PLANTS AND MODULES.—Conduct or contract for technical work, including the design, construction, and testing of plants and modules to develop desalination processes and concepts.

‘‘(2) BYPRODUCTS.—Study methods for the marketing of byproducts resulting from the desalting of water to offset the costs of treatment and to reduce environmental impacts of those byproducts.

‘‘(3) ECONOMIC SURVEYS.—Conduct economic studies and surveys to determine present and prospective costs of producing water for beneficial purposes in various locations by desalination processes compared to other methods.

''(b) COOPERATIVE AGREEMENTS.—Federal participation in desalination activities may be conducted through cooperative agreements, including cost-sharing agreements, with non-Federal public utilities and State and local governmental agencies and other entities, in order to develop recommendations for Federal participation in processes and plants utilizing desalting technologies for the production of water.

''SEC. 5. AVAILABILITY OF INFORMATION.

''All information from studies sponsored or funded under authority of this Act shall be considered public information.

''SEC. 6. TECHNICAL AND ADMINISTRATIVE ASSISTANCE.

''The Secretary may—

''(1) accept technical and administrative assistance from States and public or private agencies in connection with studies, surveys, location, construction, operation, and other work relating to the desalting of water, and

''(2) enter into contracts or agreements stating the purposes for which the assistance is contributed and providing for the sharing of costs between the Secretary and any such agency.

''SEC. 7. COST SHARING.

''The Federal share of the cost of a research, study, or demonstration project or a desalination development project or activity carried out under this Act shall not exceed 50 percent of the total cost of the project or research or study activity. A Federal contribution in excess of 25 percent for a project carried out under this Act may not be made unless the Secretary determines that the project is not feasible without such increased Federal contribution. The Secretary shall prescribe appropriate procedures to implement the provisions of this section. Costs of operation, maintenance, repair, and rehabilitation of facilities funded under the authority of this Act shall be non-Federal responsibilities.

''SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

''(a) SECTION 3.—There are authorized to be appropriated to carry out section 3 of this Act $5,000,000 per year for fiscal years 1997 through 2006. Of these amounts, up to $1,000,000 in each fiscal year may be awarded to institutions of higher education, including United States-Mexico binational research foundations and interuniversity research programs established by the two countries, for research grants without any cost-sharing requirement.

''(b) SECTION 4.—There are authorized to be appropriated to carry out section 4 of this Act $25,000,000 for fiscal years 1997 through 2006.

''SEC. 9. CONSULTATION.

''In carrying out the provisions of this Act, the Secretary shall consult with the heads of other Federal agencies, including the Secretary of the Army, which have experience in conducting desalination research or operating desalination facilities. The authorization provided for in this Act shall not prohibit other agencies from carrying out separately authorized programs for desalination research or operations.''

OGALLALA AQUIFER

Pub. L. 99–662, title XI, § 1121, Nov. 17, 1986, 100 Stat. 4239, provided that:

''(a) The Congress finds that—

''(1) the Ogallala aquifer lies beneath, and provides needed water supplies to, the 8 States of the High Plains Region: Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming;

''(2) the High Plains region has become an important source of agricultural commodities and livestock for domestic and international markets, providing 15 percent of the Nation's supply of wheat, corn, feed grains, sorghum, and cotton, plus 38 percent of the value of livestock raised in the United States; and

''(3) annual precipitation in the High Plains region ranges from 15 to 22 inches, providing inadequate supplies of surface water and recharging of the Ogallala aquifer needed to sustain the agricultural productivity and economic vitality of the High Plains region.

''(b) It is, therefore, the purpose of this section to establish a comprehensive research and development program to assist those portions of the High Plains region dependent on water from the Ogallala aquifer to—

''(1) plan for the development of an adequate supply of water in the region;

''(2) develop and provide information and technical assistance concerning water-conservation management practices to agricultural producers in the region;

''(3) examine alternatives for the development of an adequate supply of water for the region; and

''(4) develop water-conservation management practices which are efficient for agricultural producers in the region.

''(c) The Water Resources Research Act [of 1984] (Public Law 98–242) [see Short Title note above] is amended by adding at the end thereof the following new title:

''TITLE III—OGALLALA AQUIFER RESEARCH AND DEVELOPMENT

''SEC. 301. (a) There is hereby established the High Plains Study Council composed of—

''(1) the Governor of each State of the High Plains region (defined for the purposes of this title as the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming and referred to hereinafter in this title as the 'High Plains region'), or a designee of the Governor;

''(2) a representative of the Department of Agriculture; and

''(3) a representative of the Secretary.

''(b) The Council established pursuant to this section shall—

''(1) review research work being performed by each State committee established under section 302 of this Act; and

''(2) coordinate such research efforts to avoid duplication of research and to assist in the development of research plans within each State of the High Plains region that will benefit the research needs of the entire region.

''SEC. 302. (a) The Secretary shall establish within each State of the High Plains region an Ogallala aquifer technical advisory committee (hereinafter in this title referred to as the 'State committee'). Each State committee shall be composed of no more than seven members, including—

''(1) a representative of the United States Department of Agriculture;

''(2) a representative of the Secretary; and

''(3) at the appointment of the Governor of the State, five representatives from agencies of that State having jurisdiction over water resources, the agricultural community, the State Water Research Institute (as designated under this Act [see Short Title note above]), and others with a special interest or expertise in water resources.

''(b) The State committee established pursuant to subsection (a) of this section shall—

''(1) review existing State laws and institutions concerning water management and, where appropriate, recommend changes to improve State or local management capabilities and more efficiently use the waters of such State, if such a review is not already being undertaken by the State;

''(2) establish, in coordination with other State committees, State priorities for research and demonstration projects involving water resources; and

''(3) provide public information, education, extension, and technical assistance on the need for water conservation and information on proven and cost-effective water management.

''(c) Each State committee established pursuant to this section shall elect a chairman, and shall meet at

least once every three months at the call of the chairman, unless the chairman determines, after consultation with a majority of the members of the committee, that such a meeting is not necessary to achieve the purposes of this section.

''SEC. 303. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated for this section for research in—

''(1) water-use efficiency;
''(2) cultural methods;
''(3) irrigation technologies;
''(4) water-efficient crops; and
''(5) water and soil conservation.

Funds distributed under this section shall be allocated to each State committee for use by institutions of higher education within each State. To qualify for funds under this section an institution of higher education shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

''SEC. 304. The Secretary shall annually divide funds authorized to be appropriated under this section among the States of the High Plains region for research into—

''(1) precipitation management;
''(2) weather modification;
''(3) aquifer recharge opportunities;
''(4) saline water uses;
''(5) desalinization technologies;
''(6) salt tolerant crops; and
''(7) ground water recovery.

Funds distributed under this section shall be allocated by the Secretary to the State committee for distribution to institutions of higher education within such State. To qualify for a grant under this section, an institution of higher education shall submit a research proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

''SEC. 305. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated under this section for grants to farmers for demonstration projects for—

''(1) water-efficient irrigation technologies and practices;
''(2) soil and water conservation management systems; and
''(3) the growing and marketing of more water-efficient crops.

Grants under this section shall be made by each State committee in amounts not to exceed 85 percent of the cost of each demonstration project. To qualify for a grant under this section, a farmer shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed project. Proposals shall be selected by the State committee on the basis of merit. Each State committee shall monitor each demonstration project to assure proper implementation and make the results of the project available to other State committees.

''SEC. 306. The Secretary, acting through the United States Geological Survey and in cooperation with the States of the High Plains region, is authorized and directed to monitor the levels of the Ogallala aquifer, and report biennially to Congress. (As amended Pub. L. 104–66, title I, § 1082(a)(1), Dec. 21, 1995, 109 Stat. 721.)

''SEC. 307. The amount of any allocation of funds to a State under this title shall not exceed 75 percent of the cost of carrying out the purposes for which the grant is made.

''SEC. 308. Not later than one year after the date of enactment of this title [Nov. 17, 1986], and at intervals of 2 years thereafter, the Secretary shall prepare and transmit to the Congress a report on activities undertaken under this title. (As amended Pub. L. 104–66, title I, § 1082(a)(2), Dec. 21, 1995, 109 Stat. 721.)

''SEC. 309. (a) For each of the fiscal years ending September 30, 1987, through September 30, 1995, the following sums are authorized to be appropriated to the Secretary to implement the following sections of this title, and such sums shall remain available until expended:

''(1) $600,000 for the purposes of section 302;
''(2) $4,300,000 for the purposes of section 303;
''(3) $2,200,000 for the purposes of section 304;
''(4) $5,300,000 for the purposes of section 305; and
''(5) $600,000 for the purposes of section 306.

''(b) Funds made available under this title for distribution to the States of the High Plains region shall be distributed equally among the States.'' (As amended Pub. L. 101–397, § 1(*o*), Sept. 28, 1990, 104 Stat. 854.)

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 17th and 18th items on page 72 identify reporting provisions which, as subsequently amended, are contained in sections 306 and 308 of Pub. L. 98–242, set out in the note above), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

DESALTING PLANTS

Pub. L. 95–84, § 2, Aug. 2, 1977, 91 Stat. 400; Pub. L. 95–467, title II, § 205(a), (b), Oct. 17, 1978, 92 Stat. 1311; Pub. L. 96–457, § 3, Oct. 15, 1980, 94 Stat. 2032; Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101, provided that:

''(a) The Secretary of the Interior is authorized and directed to demonstrate the engineering and economic viability of membrane and phase-change desalting processes. Such demonstrations shall include the study, design, construction, operation, and maintenance of desalting plants at locations in the United States (which may include the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Mariana Islands, and the Trust Territory of the Pacific Islands): *Provided*, That at least two such plants shall demonstrate desalting of brackish ground water: *And provided further*, That the plants constructed pursuant to this section shall be for the purpose of showing that the technology being demonstrated is ready for application; such plants shall be sufficient to demonstrate the specific application of the technology, and shall be significantly different in operation and process so as not to duplicate any other demonstration plant constructed pursuant to this section. The Secretary is further authorized to conduct such demonstrations or any portion thereof by means of cooperative agreements (as defined and authorized by 41 U.S.C. 504 et seq. (the Federal Grant and Cooperative Agreement Act of 1977; Public Law 95–224)) [31 U.S.C. 6301 et seq.] with duly authorized non-Federal public entities. Title to demonstration facilities constructed by the non-Federal public entity under a cooperative agreement shall vest in the non-Federal public entity.

''(b) Funds appropriated pursuant to the authority provided by this section [this note] may not be expended until thirty calendar days (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) have elapsed following transmittal of a report to the chairman of the Committee on Interior and Insular Affairs [now Committee on Resources] of the House of Representatives and the chairman of the Committee on Environment and Public Works of the United States Senate. Such report shall present information that includes, but is not limited to, how the plant being proposed differs from others, if any, already constructed under this section, the location of the demonstration plant, the characteristics of the water proposed to be desalted, the process to be utilized, the water supply problems confronting the area in which the plant will be located, alternative sources of water and their probable cost, the capacity of the plant, the initial investment cost of the demonstration plant, the annual operating cost of the demonstration plant, the source of energy for the plant and its cost, the means of reject brine disposal and its environmental consequences, and the unit cost

of product water, considering the amortization of all components of the demonstration plant and ancillary facilities. Such report shall be accompanied by a proposed contract (or cooperative agreement) between the Secretary and a duly authorized non-Federal entity, in which such entity shall agree to provide not less than 15 per centum and not more than 35 per centum of the total cost of the demonstration; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for a period of four years following final acceptance of the construction of the plant from the plant contractor. The contributions of the non-Federal entity under such proposed contract may be in-kind. During the participation by the Secretary in the construction and the operation and maintenance of such demonstration, access to the demonstration and its operating data will not be denied to the Secretary or his representatives. The period of participation by the Secretary in the operation and maintenance of any such demonstration shall be four years. The Secretary is authorized to include in the proposed contract a provision for conveying, as appropriate, and in such amounts as are appropriate, rights, title, and interest of the Federal Government in the demonstration project to the non-Federal public entity.

''(c) There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter, the sum of $50,000,000 to finance the total Federal share of the cost of the demonstration plants authorized by this section; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for the four-year period of Federal participation in such costs.

''(d) When appropriations have been made for the commencement or continuation of design, construction, or operation and maintenance of any demonstration plant authorized under this Act [this note], the Secretary may, in connection with such design, construction, or operation and maintenance, enter into contracts and cooperative agreements for miscellaneous services, for materials and supplies, as well as for construction, which may cover such periods of time as the Secretary may consider necessary but in which the liability of the United States shall be contingent upon appropriations being made therefor.''

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

§ 10302. Congressional declaration of purpose

It is the purpose of this chapter to assist the Nation and the States in augmenting their water resources science and technology as a way to—

(1) assure supplies of water sufficient in quantity and quality to meet the Nation's expanding needs for the production of food, materials, and energy;

(2) discover practical solutions to the Nation's water and water resources related problems, particularly those problems related to impaired water quality;

(3) assure the protection and enhancement of environmental and social values in connection with water resources management and utilization;

(4) promote the interest of State and local governments as well as private industry in research and the development of technology that will reclaim waste water and to convert saline and other impaired waters to waters suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(5) promote more effective coordination of the Nation's water resources research program;

(6) promote the development of a cadre of trained research scientists, engineers, and technicians for future water resources problems; and

(7) encourage long-term planning and research to meet future water management, quality, and supply challenges.

(Pub. L. 98–242, title I, § 103, Mar. 22, 1984, 98 Stat. 97; Pub. L. 101–397, § 1(a), Sept. 28, 1990, 104 Stat. 852; Pub. L. 104–147, § 2, May 24, 1996, 110 Stat. 1375.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 98–242, Mar. 22, 1984, 98 Stat. 97, known as the Water Resources Research Act of 1984. For complete classification of this Act to the Code, see Short Title note set out under section 10301 of this title and Tables.

AMENDMENTS

1996—Par. (5). Pub. L. 104–147, § 2(1), struck out ''to'' before ''promote'' and ''and'' after ''program;''.

Par. (6). Pub. L. 104–147, § 2(2), substituted ''; and'' for period at end.

Par. (7). Pub. L. 104–147, § 2(3), added par. (7).

1990—Par. (5). Pub. L. 101–397 substituted ''to promote more effective coordination of'' for ''coordinate more effectively''.

§ 10303. Water resources research and technology institutes

(a) Establishment; designation of site by State legislature or Governor

Subject to the approval of the Secretary of the Interior (hereafter in this chapter referred to as the ''Secretary'') under this section, one water resources research and technology institute, center, or equivalent agency (hereafter in this chapter referred to as the ''institute'') may be established in each State (as used in this chapter, the term ''State'' includes the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands and the Federated States of Micronesia) at a college or university which was established in accordance with the Act approved July 2, 1862 (12 Stat. 503) [7 U.S.C. 301 et seq.], or at some other institution designated by act of the legislature of the State concerned. If there is more than one such college or university in a State established in accordance with such Act of July 2, 1862, the institute in such State shall, in the absence of a designation to the contrary by act of the legislature of the State, be established at the one such college or university designated by the Governor of the State. Two or more States may cooperate in the establishment of a single institute or regional institute, in which event the sums otherwise allocated to institutes in each of the cooperating States shall be paid to such single or regional institute.

(b) Scope of research; other activities; cooperation and coordination

Each institute shall—

(1) plan, conduct, or otherwise arrange for competent applied and peer reviewed research that fosters—

(A) improvements in water supply reliability;

(B) the exploration of new ideas that—

(i) address water problems; or

(ii) expand understanding of water and water-related phenomena;

(C) the entry of new research scientists, engineers, and technicians into water resources fields; and

(D) the dissemination of research results to water managers and the public.[1]

(2) cooperate closely with other colleges and universities in the State that have demonstrated capabilities for research, information dissemination, and graduate training in order to develop a statewide program designed to resolve State and regional water and related land problems.

Each institute shall also cooperate closely with other institutes and other organizations in the region to increase the effectiveness of the institutes and for the purpose of promoting regional coordination.

(c) Grants; matching funds

From the sums appropriated pursuant to subsection (f) of this section, the Secretary shall make grants to each institute to be matched on a basis of no less than 2 non-Federal dollars for every 1 Federal dollar, such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program.

(d) Submission and approval of water research program; requisite assurances

Prior to and as a condition of the receipt each fiscal year of funds appropriated under subsection (f) of this section, each institute shall submit to the Secretary for his approval a water research program that includes assurances, satisfactory to the Secretary, that such program was developed in close consultation and collaboration with the director of that State's department of water resources or similar agency, other leading water resources officials within the State, and interested members of the public. The program described in the preceding sentence shall include plans to promote research, training, information dissemination, and other activities meeting the needs of the State and Nation, and shall encourage regional cooperation among institutes in research into areas of water management, development, and conservation that have a regional or national character.

(e) Evaluation of water resources research program

The Secretary shall conduct a careful and detailed evaluation of each institute at least once every 3 years to determine that the quality and relevance of its water resources research and its effectiveness at producing measured results and applied water supply research as an institution for planning, conducting, and arranging for research warrants its continued support under this section. If, as a result of any such evaluation, the Secretary determines that an institute does not qualify for further support under this section, then no further grants to the institute may be made until the institute's qualifications are reestablished to the satisfaction of the Secretary.

(f) Authorization of appropriations in general

(1) There is authorized to be appropriated to carry out this section, to remain available until expended, $12,000,000 for each of fiscal years 2007 through 2011.

(2) Any sums appropriated under this subsection but which fail to be obligated by the close of the fiscal year for which they were appropriated shall be transferred by the Secretary and available for obligation during the succeeding fiscal year under the terms of subsection (g) of this section.

(g) Additional appropriations where research focused on water problems of interstate nature

(1) There is further authorized to be appropriated to the Secretary of the Interior the sum of $6,000,000 for each of fiscal years 2007 through 2011 only for reimbursement of the direct cost expenses of additional research or synthesis of the results of research by institutes which focuses on water problems and issues of a regional or interstate nature beyond those of concern only to a single State and which relate to specific program priorities identified jointly by the Secretary and the institutes. Such funds when appropriated shall be matched on a not less than dollar-for-dollar basis by funds made available to institutes or groups of institutes, by States or other non-Federal sources. Funds made available under this subsection shall remain available until expended.

(2) Research funds made available under this subsection shall be made on a competitive basis subject to the merit of the proposal, the need for the information to be produced, and the opportunity such funds will provide for training of water resources scientists or professionals.

(h) Coordination

(1) In general

To carry out this chapter, the Secretary—

(A) shall encourage other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to use and take advantage of the expertise and capabilities that are available through the institutes established by this section, on a cooperative or other basis;

(B) shall encourage cooperation and coordination with other Federal programs concerned with water resources problems and issues;

(C) may enter into contracts, cooperative agreements, and other transactions without regard to section 5 of title 41;

(D) may accept funds from other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to pay for and add to grants made, and contracts entered into, by the Secretary;

(E) may promulgate such regulations as the Secretary considers appropriate; and

[1] So in original. The period probably should be ", and".

(F) may support a program of internships for qualified individuals at the undergraduate and graduate levels to carry out the educational and training objectives of this chapter.

(2) Reports

The Secretary shall report to Congress annually on coordination efforts with other Federal departments, agencies, and instrumentalities under paragraph (1). As part of the annual budget submission to Congress, the Secretary shall also provide a crosscut budget detailing the expenditures on activities listed under subsection (a)(1) and a report which details the level of applied research and the results of the activities authorized by this chapter, including potential and actual—

(A) increases in annual water supplies;

(B) increases in annual water yields;

(C) advances in water infrastructure and water quality improvements; and

(D) methods for identifying, and determining the effectiveness of, treatment technologies and efficiencies.

(3) Relationship to State rights

Nothing in this chapter shall preempt the rights and authorities of any State with respect to its water resources or management of those resources.

(Pub. L. 98–242, title I, §104, Mar. 22, 1984, 98 Stat. 98; Pub. L. 101–397, §1(b)–(h), (m), Sept. 28, 1990, 104 Stat. 852, 853; Pub. L. 104–147, §§3–6, May 24, 1996, 110 Stat. 1376; Pub. L. 106–374, Oct. 27, 2000, 114 Stat. 1434; Pub. L. 109–471, §2(a)–(e), Jan. 11, 2007, 120 Stat. 3552, 3553.)

REFERENCES IN TEXT

Act approved July 2, 1862, referred to in subsec. (a), is act July 2, 1862, ch. 130, 12 Stat. 503, as amended, popularly known as the ''Morrill Act'' and also as the ''First Morrill Act'', which is classified generally to subchapter I (§301 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 301 of Title 7 and Tables.

AMENDMENTS

2007—Subsec. (b)(1). Pub. L. 109–471, §2(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''plan, conduct, or otherwise arrange for competent research that fosters (A) the entry of new research scientists into the water resources fields, (B) the training and education of future water scientists, engineers, and technicians, (C) the preliminary exploration of new ideas that address water problems or expand understanding of water and water-related phenomena, and (D) the dissemination of research results to water managers and the public, and''.

Subsec. (e). Pub. L. 109–471, §2(b), substituted ''3'' for ''5'' and inserted ''at producing measured results and applied water supply research'' after ''effectiveness''.

Subsec. (f)(1). Pub. L. 109–471, §2(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purpose of carrying out this section, there is authorized to be appropriated to the Secretary the sum of $9,000,000 for fiscal year 2001, $10,000,000 for each of fiscal years 2002 and 2003, and $12,000,000 for each of fiscal years 2004 and 2005, such sums to remain available until expended.''

Subsec. (g)(1). Pub. L. 109–471, §2(d), substituted ''$6,000,000 for each of fiscal years 2007 through 2011'' for ''$3,000,000 for fiscal year 2001, $4,000,000 for each of fiscal years 2002 and 2003, and $6,000,000 for each of fiscal years 2004 and 2005''.

Subsec. (h)(2). Pub. L. 109–471, §2(e), substituted ''Reports'' for ''Report'' in heading and inserted after first sentence ''As part of the annual budget submission to Congress, the Secretary shall also provide a crosscut budget detailing the expenditures on activities listed under subsection (a)(1) and a report which details the level of applied research and the results of the activities authorized by this chapter, including potential and actual—'' and subpars. (A) to (D).

2000—Subsec. (f)(1). Pub. L. 106–374, §1, substituted ''$9,000,000 for fiscal year 2001, $10,000,000 for each of fiscal years 2002 and 2003, and $12,000,000 for each of fiscal years 2004 and 2005'' for ''$5,000,000 for fiscal year 1996, $7,000,000 for each of fiscal years 1997 and 1998, and $9,000,000 for each of fiscal years 1999 and 2000''.

Subsec. (g)(1). Pub. L. 106–374, §2, in first sentence, substituted ''$3,000,000 for fiscal year 2001, $4,000,000 for each of fiscal years 2002 and 2003, and $6,000,000 for each of fiscal years 2004 and 2005'' for ''$3,000,000 for each of fiscal years 1996 through 2000''.

1996—Subsec. (c). Pub. L. 104–147, §3, substituted ''2 non-Federal dollars for every 1 Federal dollar'' for ''one non-Federal dollar for every Federal dollar during the fiscal years ending September 30, 1985, and September 30, 1986, one and one-half non-Federal dollars for each Federal dollar during the fiscal years ending September 30, 1987, and September 30, 1988, and two non-Federal dollars for each Federal dollar during the fiscal year ending September 30, 1989 and thereafter''.

Subsec. (f)(1). Pub. L. 104–147, §4, substituted ''of $5,000,000 for fiscal year 1996, $7,000,000 for each of fiscal years 1997 and 1998, and $9,000,000 for each of fiscal years 1999 and 2000'' for ''of $10,000,000 for each of the fiscal years ending September 30, 1989, through September 30, 1995,''.

Subsec. (g)(1). Pub. L. 104–147, §5, substituted ''of $3,000,000 for each of fiscal years 1996 through 2000'' for ''of $5,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, and 1995''.

Subsec. (h). Pub. L. 104–147, §6, added subsec. (h).

1990—Subsec. (a). Pub. L. 101–397, §1(b), substituted ''Federated States of Micronesia'' for ''Trust Territory of the Pacific Islands''.

Subsec. (b). Pub. L. 101–397, §1(c), inserted ''promoting'' after ''for the purpose of'' in last sentence.

Subsec. (b)(1). Pub. L. 101–397, §1(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''plan, conduct, or otherwise arrange for competent research with respect to water resources, including investigations and experiments of either a basic or practical nature, or both; promote the dissemination and application of the results of these efforts; and provide for the training of scientists and engineers through such research, investigations, and experiments, and''.

Subsec. (c). Pub. L. 101–397, §1(e), substituted for period at end ''and thereafter, such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program.''

Subsec. (e). Pub. L. 101–397, §1(f), amended subsec. (e) generally, substituting provisions directing that evaluation be conducted at least once every 5 years for provisions directing evaluation within two years after establishment of institute and at least once every four years thereafter and striking out provisions relating to composition and function of evaluation team and setting forth criteria for determination.

Subsec. (f)(1). Pub. L. 101–397, §1(g), substituted ''September 30, 1989, through September 30, 1995,'' for ''September 30, 1985, through September 30, 1989''.

Subsec. (f)(2). Pub. L. 101–397, §1(h), substituted reference to subsec. (g) of this section for reference to section 10305 of this title.

Subsec. (g). Pub. L. 101–397, §1(m), added subsec. (g).

CONTRACTS OR COOPERATIVE AGREEMENTS WITH NATIONAL LABORATORIES

Section 2 of Pub. L. 101–397 provided that:

''(a) The Secretary of the Interior, in consultation with the Secretary of Agriculture and the Adminis-

trator of the Environmental Protection Agency, is authorized to enter into contracts or cooperative agreements, as the Secretary deems appropriate, with national laboratories (including Los Alamos National Laboratory) to carry out water resources research, development, and demonstration projects within the authorities of Public Law 98–242 [42 U.S.C. 10301 et seq.] (including the effects of potential climate changes on surface and ground water quality and quantity and the elimination of contamination of ground water aquifers).

''(b) The water resources research authorized in this section shall be undertaken under such rules and regulations as the Secretary deems appropriate and shall be carried out in close consultation and collaboration with the institutes established pursuant to Public Law 98–242 [42 U.S.C. 10301 et seq.], to the extent such research work affects the State in which the institute exists, and to the extent such institute agrees to consult and collaborate.

''(c) For the purposes of carrying out this section, there is authorized to be appropriated to the Secretary of the Interior the sum of $10,000,000 for each of the fiscal years 1991 through 1995.''

§ 10304. Research concerning water resource-related problems deemed to be in national interest

(a) Grants; matching funds

(1) In addition to the grants authorized by section 10303 of this title, the Secretary is authorized to make grants, on a dollar-for-dollar matching basis, to the institutes established under such section, as well as other qualified educational institutions, private foundations, private firms, individuals, and agencies of local or State government for research concerning any aspect of a water resource-related problem which the Secretary may deem to be in the national interest. Such grants shall be made with such advice and review by peer or other expert groups of appropriate interdisciplinary composition as the Secretary deems appropriate on the basis of the merits of the project and the need for the knowledge such project is expected to produce upon completion.

(2) Research funded under this section should to the extent possible utilize the best qualified graduate students so the Nation profits from the education and training benefits resulting from the use of the latest in technological developments in solving water problems.

(b) Applications for grants

Each application for a grant under this section shall state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the importance of the project to the Nation as well as to the region and State concerned, its relation to other research projects previously or currently being pursued, and the extent to which it will provide an opportunity for the training of water resources scientists.

(c) Authorization of appropriations

There is authorized to be appropriated to the Secretary the sum of $10,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1985, through September 30, 1995, such sums to remain available until expended.

(Pub. L. 98–242, title I, § 105, Mar. 22, 1984, 98 Stat. 100; Pub. L. 101–397, § 1(i), (j), Sept. 28, 1990, 104 Stat. 853.)

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101–397, § 1(i), struck out par. (3) which read as follows: ''In cases where the Secretary determines, in accordance with criteria established by him, that research under this section is of a basic nature which would not otherwise be undertaken, the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1) of this subsection.''

Subsec. (c). Pub. L. 101–397, § 1(j), substituted ''$10,000,000'' for ''$20,000,000'' and ''1995'' for ''1989''.

§ 10305. Development of water-related technology

(a) Grants; matching funds

(1) The Secretary shall make grants in addition to those authorized under sections 10303 and 10304 of this title for technology development concerning any aspect of water resources including water-related technology which the Secretary may deem to be of State, regional, or national importance. Activities funded under this section may be carried out by educational institutions, private firms, foundations, individuals, or agencies of State or local government. Care shall be taken to protect proprietary information of private individuals or firms associated with the technology.

(2) The Secretary may establish any condition for the matching of funds by the recipient of any grant or contract under this section which the Secretary considers to be in the best interest of the Nation considering the information transfer and technology needs of the Nation. However, in the case of institutes established by section 10303 of this title no match greater than that required under section 10303 of this title may be required.

(b) Applications for grants

Each application for a grant under this section shall state the nature of the project to be undertaken, the qualifications of the personnel who will direct and conduct it, facilities of the organization performing any technology development, the importance of the project to the Nation, region, and State concerned, and the potential benefit to be accrued.

(c) Authorization of appropriations

There is authorized to be appropriated to the Secretary the sum of $6,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1990, through September 30, 1995; such sums to remain available until expended.

(Pub. L. 98–242, title I, § 106, Mar. 22, 1984, 98 Stat. 100; Pub. L. 101–397, § 1(n), Sept. 28, 1990, 104 Stat. 853.)

AMENDMENTS

1990—Pub. L. 101–397, in amending section generally, in subsec. (a)(1) struck out provision directing that grant be made on basis of merit and feasibility of project, in subsec. (a)(2) inserted provisions relating to match in the case of institutes established by section 10303 of this title, and in subsec. (c) substituted provisions authorizing $6,000,000 appropriation for fiscal years 1990 through 1995, for provisions authorizing the same sum for fiscal years 1985 through 1989, and struck

out provisions authorizing obligation of funds under this section and par. (1) and (2) designations.

§ 10306. Administrative costs

From the sums appropriated pursuant to this chapter, not more than 7.5 per centum shall be utilized for administrative costs.

(Pub. L. 98–242, title I, § 107, Mar. 22, 1984, 98 Stat. 101; Pub. L. 109–471, § 2(f), Jan. 11, 2007, 120 Stat. 3553.)

AMENDMENTS

2007—Pub. L. 109–471 substituted ''7.5'' for ''15''.

§ 10307. Types of research and development

The type of research and development to be undertaken under the authority of sections 10304 and 10305 of this title and to be encouraged by the institutes established under section 10303 of this title shall include the following:

(1) Aspects of the hydrologic cycle;

(2) Supply and demand for water;

(3) Demineralization of saline and other impaired waters;

(4) Conservation and best use of available supplies of water and methods of increasing such supplies;

(5) Water reuse;

(6) Depletion, contamination, and degradation of groundwater supplies;

(7) Improvements in the productivity of water when used for agricultural, municipal, and commercial purposes;

(8) The economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water quality and quantity problems;

(9) Scientific information dissemination activities, including identifying, assembling, and interpreting the results of scientific and engineering research on water resources problems; and

(10) Providing means for improved communication of research results, having due regard for the varying conditions and needs for the respective States and regions.

(Pub. L. 98–242, title I, § 108, Mar. 22, 1984, 98 Stat. 101; Pub. L. 101–397, § 1(k), (*l*), Sept. 28, 1990, 104 Stat. 853.)

AMENDMENTS

1990—Par. (6). Pub. L. 101–397, § 1(k), which directed that '', contamination,'' be inserted after ''depletion'', was executed by making the insertion after ''Depletion'' to reflect the probable intent of Congress.

Par. (8). Pub. L. 101–397, § 1(*l*), inserted ''quality and quantity'' after ''water''.

§ 10308. Patent policy

Notwithstanding any other provision of law, the Secretary shall be governed by the provisions of sections 5908 (except subsections (*l*) and (n)) and 5909 of this title with respect to patent policy and to the definition of title to and licensing of inventions made or conceived in the course of work performed, or under any contract or grant made, pursuant to this chapter. Subject to such patent policy, all research or development contracted for, sponsored, cosponsored, or authorized under authority of this chapter shall be provided in such manner that all information, data, and know-how, regardless of their nature or mediums, resulting from such research and development shall (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be usefully available for practice by the general public.

(Pub. L. 98–242, title I, § 109, Mar. 22, 1984, 98 Stat. 101.)

§ 10309. New spending authority; amounts provided in advance

Any new spending authority described in subsection (c)(2)(A) or (B) of section 651[1] of title 2 which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriations Acts.

(Pub. L. 98–242, title I, § 111, Mar. 22, 1984, 98 Stat. 101.)

REFERENCES IN TEXT

Section 651 of title 2, referred to in text, was amended by Pub. L. 105–33, title X, § 10116(a)(3), (5), Aug. 5, 1997, 111 Stat. 691, by striking out subsec. (c) and redesignating former subsec. (d) as (c).

CHAPTER 109A—MEMBRANE PROCESSES RESEARCH

Sec.
10341. Findings.
10342. Research program.
10343. Goals of research program.
10344. Coordination with other research.
10345. Authorization of appropriations.

§ 10341. Findings

The Congress finds that—

(1) there is an increasing threat of impairment to the quantity and quality of the Nation's water resources due to, among other things, growing national needs, recurring drought in the Western States, point and nonpoint source pollution, and saltwater intrusion into existing groundwater supplies;

(2) many communities in the United States have water supplies containing high salinity levels or contaminants which pose health risks;

(3) the Nation needs to develop economical processes to treat existing water supplies that are contaminated;

(4) it is necessary to provide for research into new techniques to reclaim waste water and to convert saline and other contaminated waters to a quality suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(5) there is very little Federal funding being applied to basic research in the field of treatment of contaminated water through membrane processes; and

(6) the treatment of contaminated water through membrane processes will solve a wide variety of water treatment problems, including compliance with the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and the

[1] See References in Text note below.

Safe Drinking Water Act [42 U.S.C. 300f et seq.].

(Pub. L. 102–490, § 2, Oct. 24, 1992, 106 Stat. 3142.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in par. (6), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in par. (6), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

SHORT TITLE

Section 1 of Pub. L. 102–490 provided that: ''This Act [enacting this chapter] may be cited as the 'Membrane Processes Research Act of 1992'.''

§ 10342. Research program

The Director of the National Science Foundation shall establish a basic research program on membranes and membrane processes. Such program may be carried out through awarding grants, entering into contracts or cooperative agreements, or direct research.

(Pub. L. 102–490, § 3, Oct. 24, 1992, 106 Stat. 3142.)

§ 10343. Goals of research program

The goals of the research program established under section 10342 of this title shall be—

(1) the development of membranes resistant to degradation, bacterial or otherwise, thereby extending the life of such membranes;

(2) the development of membranes useful for the efficient and cost effective treatment of contaminated water; and

(3) the development of innovative technologies for membrane processes.

(Pub. L. 102–490, § 4, Oct. 24, 1992, 106 Stat. 3142.)

§ 10344. Coordination with other research

The research program established under section 10342 of this title shall be carried out in coordination with any other related Federal research efforts.

(Pub. L. 102–490, § 5, Oct. 24, 1992, 106 Stat. 3143.)

§ 10345. Authorization of appropriations

There are authorized to be appropriated to the Director of the National Science Foundation, from sums otherwise authorized to be appropriated, $2,500,000 for fiscal year 1993, for carrying out this chapter.

(Pub. L. 102–490, § 6, Oct. 24, 1992, 106 Stat. 3143.)

CHAPTER 110—FAMILY VIOLENCE PREVENTION AND SERVICES

Sec.
10401. Declaration of purpose.
10402. State grants authorized.
10403. Allotment of funds.
10404. Secretarial responsibilities.
10405. Evaluation.
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10418. Demonstration grants for community initiatives.
10419. Transitional housing assistance.
10420. Safe havens for children.
10421. Definitions.

§ 10401. Declaration of purpose

It is the purpose of this chapter to—

(1) assist States in efforts to increase public awareness about and prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents; and

(2) provide for technical assistance and training relating to family violence programs to States, local public agencies (including law enforcement agencies, courts, legal, social service, and health care professionals), nonprofit private organizations, and other persons seeking such assistance.

(Pub. L. 98–457, title III, § 302, Oct. 9, 1984, 98 Stat. 1757; Pub. L. 102–295, title III, § 302, May 28, 1992, 106 Stat. 201; Pub. L. 108–36, title IV, § 415(1), June 25, 2003, 117 Stat. 830.)

AMENDMENTS

2003—Par. (1). Pub. L. 108–36 substituted ''assist'' for ''demonstrate the effectiveness of assisting''.

1992—Par. (1). Pub. L. 102–295, § 302(1)(A), which directed the substitution of ''assist'' for ''demonstration the effectiveness of assisting'', could not be executed because those words did not appear in text. See 2003 Amendment note above.

Pub. L. 102–295, § 302(1)(B), substituted ''to increase public awareness about and prevent'' for ''to prevent''.

Par. (2). Pub. L. 102–295, § 302(2), inserted '', courts, legal, social service, and health care professionals'' after ''enforcement agencies''.

SHORT TITLE

Section 301 of title III of Pub. L. 98–457 provided that: ''This title [enacting this chapter] may be cited as the 'Family Violence Prevention and Services Act'.''

STUDY OF TRAINING NEEDS OF HEALTH PROFESSIONALS

Pub. L. 105–392, title IV, § 407(b), Nov. 13, 1998, 112 Stat. 3589, provided that: ''The Secretary of Health and Human Services shall request that the Institute of Medicine conduct a study concerning the training needs of health professionals with respect to the detection and referral of victims of family or acquaintance violence. Not later than 2 years after the date of enactment of this Act [Nov. 13, 1998], the Institute of Medicine shall prepare and submit to Congress a report concerning the study conducted under this subsection.''

§ 10402. State grants authorized

(a) Authority of Secretary; application; requirements; approval

(1) In order to assist in supporting the establishment, maintenance, and expansion of pro-

grams and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents, the Secretary is authorized, in accordance with the provisions of this chapter, to make grants to States.

(2) No grant may be made under this subsection unless the chief executive officer of the State seeking such grant submits an application to the Secretary at such time and in such manner as the Secretary may reasonably require. Each such application shall—

(A) provide that funds provided under this subsection will be distributed in grants to local public agencies and nonprofit private organizations (including religious and charitable organizations, and voluntary associations) for programs and projects within such State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents;

(B) provide, with respect to funds provided to a State under this subsection for any fiscal year, that—

(i) not more than 5 percent of such funds will be used for State administrative costs; and

(ii) in the distribution of funds by the State under this subsection, the State will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by nonprofit private organizations, the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, advocacy, and self-help services to victims and their children.[1]

(C) set forth procedures designed to involve State domestic violence coalitions, knowledgeable individuals, and interested organizations and assure an equitable distribution of grants and grant funds within the State and between urban and rural areas within such State and a plan to address the needs of underserved populations, as defined in section 3796gg–2 of this title;[2]

(D) specify the State agency to be designated as responsible for the administration of programs and activities relating to family violence which are carried out by the State under this chapter and for coordination of related programs within the State;

(E) provide documentation that procedures have been developed, and implemented including copies of the policies and procedure, to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this chapter and provide assurances that the address or location of any shelter-facility assisted under this chapter will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public;

(F) provide documentation to the Secretary that the State has a law or procedure that has been implemented for the eviction of an abusing spouse from a share household; and

(G) meet such requirements as the Secretary reasonably determines are necessary to carry out the purposes and provisions of this chapter.

(3) The Secretary shall approve any application that meets the requirements of this subsection, and the Secretary shall not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove and after a 6-month period providing an opportunity for correction of any deficiencies. The Secretary shall provide such notice within 45 days of the date of the application if any of the provisions of paragraph (2) have not been satisfied in such application. If the State has not corrected the deficiencies in such application within the 6-month period following the receipt of the Secretary's notice of intention to disapprove, the Secretary shall withhold payment of any grant funds to such State until the date that is 30 days prior to the end of the fiscal year for which such grant funds are appropriated or until such time as the State provides documentation that the deficiencies have been corrected, whichever occurs first. State Domestic Violence Coalitions shall be permitted to participate in determining whether a grantee is in compliance with paragraph (2), except that no funds made available to State Domestic Violence Coalitions under section 10410 of this title shall be used to challenge a determination as to whether a grantee is in compliance with, or to seek the enforcement of, the eligibility requirements of such paragraph.

(4) Upon completion of the activities funded by a grant under this subpart,[2] the State grantee shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this subpart.[2] A section of this performance report shall be completed by each grantee or subgrantee that performed the direct services contemplated in the application certifying performance of direct services under the grant. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report or if the funds are expended for purposes other than those set forth under this subpart,[2] after following the procedures set forth in paragraph (3). Federal funds may be used only to supplement, not supplant, State funds.

(5) Upon completion of the activities funded by a grant under this chapter, the State shall submit to the Secretary a report that contains a description of the activities carried out under paragraph (2)(B)(i).

(b) Indian tribes and tribal organizations; application

(1) The Secretary, from amounts appropriated to carry out this section, shall make available not less than 10 percent of such amounts to make grants to Indian tribes, tribal organizations[3] and nonprofit private organizations approved by an Indian Tribe[4] for the operation of

[1] So in original. The period probably should be a semicolon.

[2] See References in Text note below.

[3] So in original. Probably should be followed by a comma.

[4] So in original. Probably should not be capitalized.

a family violence shelter on a Reservation[4] for projects designed to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

(2) No grant may be made under this subsection unless an application is made to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems essential to carry out the purposes and provisions of this chapter. Such application shall comply, as applicable, with the provisions of clauses (C) (with respect only to involving knowledgeable individuals and organizations), (D), (E) and (F) of subsection (a)(2) of this section. No entity eligible to submit an application under paragraph (1) shall be prohibited from making an application during any fiscal year for which funds are available because such entity has not previously applied or received funding under this section.

(3) In the case of a project for which the initial application for a demonstration grant under this subsection is made on or after May 28, 1992, the terms ''Indian tribe'' and ''tribal organization'', for purposes of this subsection, have the meaning given such terms in section 450b of title 25.

(c) Programs for children who witness domestic violence

The Secretary shall use funds provided under section 10409(a)(2) of this title, for a fiscal year described in section 10409(a)(2) of this title, to award grants for demonstration programs that provide—

(1) multisystem interventions and services (either directly or by referral) for children who witness domestic violence; and

(2) training (either directly or by referral) for agencies, providers, and other entities who work with such children.

(d) Direct payments to victims or dependents

No funds provided through demonstration grants made under this section may be used as direct payment to any victim of family violence or to any dependent of such victim.

(e) Income eligibility standards

No income eligibility standard may be imposed upon individuals with respect to eligibility for assistance or services supported with funds appropriated to carry out this chapter.

(f) Grants to entities other than States; local share

No grant may be made under this section to any entity other than a State or an Indian Tribe[4] unless the entity provides for the following non-Federal matching local share as a proportion of the total amount of funds provided under this chapter to the project involved: with respect to an entity operating an existing program under this chapter, not less than 20 percent, and with respect to an entity intending to operate a new program under this chapter, not less than 35 percent. The local share required under this subsection may be in cash or in-kind. The local share may not include any Federal funds provided under any authority other than this chapter.

(g) Shelter and related assistance

The Secretary shall assure that not less than 70 percent of the funds distributed under subsection (a) or (b) of this section shall be distributed to entities for the purpose of providing immediate shelter and related assistance to victims of family violence and their dependents as defined in section 10421 of this title. Not less than 25 percent of the funds distributed under subsection (a) or (b) of this section shall be distributed for the purpose of providing related assistance as defined under section 10421(5)(A) of this title.

(Pub. L. 98–457, title III, § 303, Oct. 9, 1984, 98 Stat. 1757; Pub. L. 100–294, title III, § 302, Apr. 25, 1988, 102 Stat. 124; Pub. L. 102–295, title III, §§ 303–309(a), 310, 311(a), May 28, 1992, 106 Stat. 201–203; Pub. L. 103–322, title IV, § 40271, Sept. 13, 1994, 108 Stat. 1937; Pub. L. 104–235, title II, § 201, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 108–36, title IV, §§ 401, 415(2), (3), June 25, 2003, 117 Stat. 825, 830.)

REFERENCES IN TEXT

Section 3796gg–2 of this title, referred to in subsec. (a)(2)(C), was in the original ''section 2007 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–2)'', meaning section 2007 of Pub. L. 90–351, and was translated as reading section 2008 of Pub. L. 90–351, which defined ''underserved populations'', to reflect the probable intent of Congress. Section 2008 of Pub. L. 90–351 was subsequently repealed and a new section 2008 enacted, which does not define ''underserved populations''. However, such term is defined in section 13925 of this title.

This subpart, referred to in subsec. (a)(4), is unidentifiable in the original because title III of Pub. L. 98–457 does not contain subparts.

CODIFICATION

May 28, 1992, referred to in subsec. (b)(3), was in the original ''the date of the enactment of the Child Abuse Programs, Adoption Opportunities, and Family Violence Prevention Amendments Act of 1992'', which was translated as meaning the date of enactment of Pub. L. 102–295, known as the Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992, which enacted subsec. (b)(3), to reflect the probable intent of Congress.

AMENDMENTS

2003—Subsec. (a)(2)(C). Pub. L. 108–36, § 415(2)(A)(i), substituted ''State domestic violence coalitions, knowledgeable individuals, and interested organizations'' for ''State domestic violence coalitions knowledgeable individuals and interested organizations''.

Pub. L. 108–36, § 401(a), substituted ''underserved populations, as defined in section 3796gg–2 of this title;'' for ''underserved populations, including populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation;''.

Subsec. (a)(2)(F). Pub. L. 108–36, § 415(2)(A)(ii), inserted ''and'' at end.

Subsec. (a)(4). Pub. L. 108–36, § 415(2)(B), realigned margins.

Subsec. (a)(5). Pub. L. 108–36, § 401(b), added par. (5).

Subsecs. (c) to (f). Pub. L. 108–36, § 401(c), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 108–36, § 415(3), substituted ''section 10421'' for ''section 10408(4)'' in first sentence and ''section 10421(5)(A)'' for ''section 10408(5)(A)'' in second sentence.

Pub. L. 108–36, § 401(c)(1), redesignated subsec. (f) as (g).

1996—Subsec. (e). Pub. L. 104–235 substituted ''following non-Federal matching local share'' for ''following local share'' and ''with respect to an entity operating an existing program under this chapter, not less than 20

percent, and with respect to an entity intending to operate a new program under this chapter, not less than 35 percent'' for ''20 percent in the first year such project receives a grant under this chapter, 35 percent in the second such year, and 50 percent in the third such year and in any such year thereafter. Except in the case of a public entity, not less than 25 percent of the local share of such agency or organization shall be raised from private sources''.

1994—Subsec. (a)(2)(C). Pub. L. 103–322, § 40271(a), inserted ''and a plan to address the needs of underserved populations, including populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation'' after ''such State''.

Subsec. (a)(4). Pub. L. 103–322, § 40271(b), added par. (4).

1992—Subsec. (a)(1). Pub. L. 102–295, § 303(1), substituted ''grants'' for ''demonstration grants''.

Subsec. (a)(2). Pub. L. 102–295, § 303(2)(A), in introductory provisions substituted ''grant'' for ''demonstration grant'' after ''No''.

Subsec. (a)(2)(A). Pub. L. 102–295, § 303(2)(B), which directed the substitution of ''grant'' for ''demonstration grant'' was executed by substituting ''grants'' for ''demonstration grants'', to reflect the probable intent of Congress.

Subsec. (a)(2)(B)(ii). Pub. L. 102–295, § 303(2)(C), substituted ''the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, advocacy, and self-help services to victims and their children.'' for ''particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, alcohol and drug abuse treatment, and self-help services to abusers and victims;''.

Subsec. (a)(2)(C). Pub. L. 102–295, § 304, inserted ''State domestic violence coalitions'' after ''involve''.

Subsec. (a)(2)(E). Pub. L. 102–295, § 305, substituted ''documentation that procedures have been developed, and implemented including copies of the policies and procedure,'' for ''assurances that procedures will be developed''.

Subsec. (a)(2)(F). Pub. L. 102–295, § 306, amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''provide assurances that, within one year after receipt of funds under this subsection, the State will, provide assurances to the Secretary that the State has or has under consideration a procedure for the eviction of an abusing spouse from a shared residence; and''.

Subsec. (a)(3). Pub. L. 102–295, § 307, inserted ''a 6-month period providing an'' before ''opportunity'' and inserted at end ''The Secretary shall provide such notice within 45 days of the date of the application if any of the provisions of paragraph (2) have not been satisfied in such application. If the State has not corrected the deficiencies in such application within the 6-month period following the receipt of the Secretary's notice of intention to disapprove, the Secretary shall withhold payment of any grant funds to such State until the date that is 30 days prior to the end of the fiscal year for which such grant funds are appropriated or until such time as the State provides documentation that the deficiencies have been corrected, whichever occurs first. State Domestic Violence Coalitions shall be permitted to participate in determining whether a grantee is in compliance with paragraph (2), except that no funds made available to State Domestic Violence Coalitions under section 10410 of this title shall be used to challenge a determination as to whether a grantee is in compliance with, or to seek the enforcement of, the eligibility requirements of such paragraph.''

Subsec. (b)(1). Pub. L. 102–295, § 308(1), substituted ''The Secretary, from amounts appropriated to carry out this section, shall make available not less than 10 percent of such amounts to make grants to Indian tribes, tribal organizations and nonprofit private organizations approved by an Indian Tribe for the operation of a family violence shelter on a Reservation'' for ''The Secretary is authorized to make demonstration grants to Indian tribes and tribal organizations''.

Subsec. (b)(2). Pub. L. 102–295, § 308(2), substituted ''grant'' for ''demonstration grant'' and ''(E) and (F)'' for ''and (E)'' and inserted at end ''No entity eligible to submit an application under paragraph (1) shall be prohibited from making an application during any fiscal year for which funds are available because such entity has not previously applied or received funding under this section.''

Subsec. (b)(3). Pub. L. 102–295, § 308(3), added par. (3).

Subsec. (c). Pub. L. 102–295, § 309(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''No demonstration grant may be made under this section in any fiscal year to any single entity (other than to a State) for an amount in excess of $50,000, and the total amount of such grants to any such single entity may not exceed $150,000.''

Subsec. (d). Pub. L. 102–295, § 309(a)(2), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 102–295, §§ 309(a)(2), 310, redesignated subsec. (f) as (e) and substituted ''No grant'' for ''No demonstration grant'', ''State or an Indian Tribe'' for ''State'', ''20 percent'' for ''35 percent'', ''35 percent'' for ''55 percent'', ''and 50 percent in the third such year and in any such year thereafter'' for ''and 65 percent in the third such year'', and ''25 percent'' for ''50 percent''. Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Pub. L. 102–295, §§ 309(a)(2), 311(a), redesignated subsec. (g) as (f), substituted ''70 percent'' for ''60 percent'', and inserted before period ''as defined in section 10408(4) of this title. Not less than 25 percent of the funds distributed under subsection (a) or (b) of this section shall be distributed for the purpose of providing related assistance as defined under section 10408(5)(A) of this title''. Former subsec. (f) redesignated (e).

1988—Subsec. (c). Pub. L. 100–294 struck out provision that a single entity not be awarded demonstration grants under this section for a total period in excess of three fiscal years.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 309(b) of Pub. L. 102–295 provided that: ''The amendments made by subsection (a) [amending this section] are effective in the case of amounts appropriated for fiscal year 1992 and subsequent fiscal years.''

§ 10403. Allotment of funds

(a) Proportionality of allotment; minimum allotment

From the sums appropriated under section 10409 of this title and available for grants to States under this subsection for any fiscal year—

(1) Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than ⅛ of 1 percent of the amounts available for grants under section 10402(a) of this title for the fiscal year for which the allotment is made; and

(2) each State shall be allotted for payment in a grant authorized under section 10402(a) of this title, $600,000, with the remaining funds to be allotted to each State in an amount that bears the same ratio to such remaining funds as the population of such State bears to the population of all States.

(b) Determination of population of States

For the purpose of this section, the population of each State, and the total population of all the States, shall be determined by the Secretary on the basis of the most recent census data avail-

able to the Secretary, and the Secretary shall use for such purpose, if available, the annual interim current census data produced by the Secretary of Commerce pursuant to section 181 of title 13.

(c) Ratable reduction of amounts; increase on availability of additional funds

If the sums appropriated under section 10409 of this title for any fiscal year and available for grants to States authorized under section 10402(a) of this title are not sufficient to pay in full the total amounts which all States are entitled to receive under such section for such fiscal year, then the maximum amounts which all States are entitled to receive under such section for such fiscal year shall be ratably reduced. In the event that additional funds become available for making such grants for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(d) Reallotment; continued availability of funds

(1) If, at the end of the sixth month of any fiscal year for which sums are appropriated under section 10409 of this title, the amount allotted to a State has not been made available to such State in grants under section 10402(a) of this title because of the failure of such State to meet the requirements for a grant, then the Secretary shall reallot such amount to States which meet such requirements.

(2) Funds made available by the Secretary through reallotment under paragraph (1) shall remain available for expenditure until the end of the fiscal year following the fiscal year in which such funds become available for reallotment.

(e) Exclusion from definition of "State"

In subsection (a)(2) of this section, the term ''State'' does not include any jurisdiction specified in subsection (a)(1) of this section.

(Pub. L. 98–457, title III, § 304, Oct. 9, 1984, 98 Stat. 1759; Pub. L. 102–295, title III, § 312, May 28, 1992, 106 Stat. 204; Pub. L. 104–208, div. A, title I, § 101(e) [title II, § 213], Sept. 30, 1996, 110 Stat. 3009–233, 3009–254; Pub. L. 104–235, title II, § 202, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 106–386, div. B, title II, § 1202(b), Oct. 28, 2000, 114 Stat. 1505.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–386, § 1202(b)(1), substituted ''and available for grants to States under this subsection for any fiscal year—'' and pars. (1) and (2) for ''for grants to States for any fiscal year, each State shall be allotted for payment in a grant authorized under section 10402(a) of this title an amount which bears the same ratio to such sums as the population of such State bears to the population of all States, except that—

''(1) each State shall be allotted not less than 1 percent of the amounts available for grants under section 10402(a) of this title for the fiscal year for which the allotment is made, or $400,000, whichever is the lessor amount; and

''(2) Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands shall each be allotted not less than one-eighth of 1 percent of the amounts available for grants under section 10402(a) of this title for the fiscal year for which the allotment is made.

For the purpose of the exception contained in clause (1) of the preceding sentence only, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.''

Subsec. (c). Pub. L. 106–386, § 1202(b)(2), in first sentence, inserted ''and available'' before ''for grants''.

Subsec. (e). Pub. L. 106–386, § 1202(b)(3), added subsec. (e).

1996—Subsec. (a)(1). Pub. L. 104–208 and Pub. L. 104–235 amended par. (1) identically, substituting ''$400,000'' for ''$200,000''.

1992—Subsec. (a)(1). Pub. L. 102–295 struck out ''whichever is the greater of the following amounts: one-half of'' before ''1 percent'' and substituted ''$200,000, whichever is the lessor amount'' for ''$50,000''.

§ 10404. Secretarial responsibilities

(a) The Secretary shall appoint 1 or more employees of the Department of Health and Human Services to carry out the provisions of this chapter, including carrying out evaluation and monitoring under this chapter. Any individual appointed under this subsection shall, prior to such appointment, have had expertise in the field of family violence prevention and services.

(b) The Secretary shall—

(1) coordinate all programs within the Department of Health and Human Services, and seek to coordinate all other Federal programs, which involve the prevention of incidents of family violence and the provision of assistance for victims and potential victims of family violence and their dependents, and ensure that such activities as they relate to elderly persons are coordinated with the Administration on Aging and the National Institute on Aging within the Department of Health and Human Services;

(2)(A) provide for research into the most effective prevention, identification, and treatment thereof (such as research into (i) the effectiveness of reducing repeated incidents of family violence through a variety of sentencing alternatives, such as incarceration, fines, and counseling programs, individually or in combination, and through the use of civil protection orders removing the abuser from the family household, (ii) the necessity and impact of a mandatory reporting requirement relating to incidents of family violence, particularly abuse of elderly persons)[1], (iii) the effectiveness of providing safety and support to maternal and child victims of family violence as a way to eliminate the abuse experienced by children in such situations, (iv) identification of intervention approaches to child abuse prevention services which appear to be successful in preventing child abuse where both mother and child are abused, (v) effective and appropriate treatment services for children where both mother and child are abused, and (vi) the individual and situational factors leading to the end of violent and abusive behavior by persons who commit acts of family violence, including such factors as history of previous violence and the legal and service interventions received, and (B) make a complete study and investigation (in consultation with the National Institute on Aging) of the national incidence of abuse, neglect, and ex-

[1] So in original. The closing parenthesis probably should follow ''interventions received''.

ploitation of elderly persons, including a determination of the extent to which incidents of such abuse, neglect, and exploitation are increasing in number or severity; and

(3) provide for the training of personnel and provide technical assistance in the conduct of programs for the prevention and treatment of family violence.

(Pub. L. 98–457, title III, § 305, Oct. 9, 1984, 98 Stat. 1760; Pub. L. 102–295, title III, § 313, May 28, 1992, 106 Stat. 204; Pub. L. 108–36, title IV, §§ 402, 415(4), June 25, 2003, 117 Stat. 825, 830.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–36, § 402, substituted ''1 or more employees'' for ''an employee'', ''of this chapter, including carrying out evaluation and monitoring under this chapter'' for ''of this chapter'', and ''Any individual'' for ''The individual''.

Subsec. (b)(2)(A). Pub. L. 108–36, § 415(4), substituted ''provide for research into'' for ''provide for research, and into''.

1992—Subsec. (b)(2)(A). Pub. L. 102–295 struck out ''into the causes of family violence'' after ''provide for research'', inserted ''most effective'' before ''prevention'', and added cls. (iii) to (vi).

§ 10405. Evaluation

Every 2 years, the Secretary shall review, evaluate, and report to the appropriate Committees of the Congress, as to the effectiveness of the programs administered and operated pursuant to this chapter, particularly in relation to repeated incidents of family violence. Such report shall also include a summary of the documentation provided to the Secretary under section 10402(a)(2)(B) through 10402(a)(2)(F) of this title.

(Pub. L. 98–457, title III, § 306, Oct. 9, 1984, 98 Stat. 1760; Pub. L. 102–295, title III, § 314, May 28, 1992, 106 Stat. 204; Pub. L. 108–36, title IV, § 403, June 25, 2003, 117 Stat. 825.)

AMENDMENTS

2003—Pub. L. 108–36 substituted ''Every 2 years,'' for ''Not later than two years after the date on which funds are obligated under section 10402(a) of this title for the first time after October 9, 1984, and every two years thereafter,''.

1992—Pub. L. 102–295 inserted ''and every two years thereafter,'' and substituted ''documentation'' for ''assurances'' and ''10402(a)(2)(B) through 10402(a)(2)(F)'' for ''10402(a)(2)(F)''.

§ 10406. Discrimination prohibited

(a) Recipients of Federal financial assistance; types of discrimination prohibited

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this part[1] are considered to be programs and activities receiving Federal financial assistance.

(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part with funds made available under this chapter. Nothing in this chapter shall require any such program or activity to include any individual in any program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or programmatic factor reasonably necessary to the normal operation of that particular program or activity. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 602 of the Civil Rights Act of 1964 [42 U.S.C. 2000d–1]. Section 603 of such Act [42 U.S.C. 2000d–2] shall apply with respect to any action taken by the Secretary to enforce such sentence. This paragraph shall not be construed as affecting any other legal remedy.

(b) Notification and request to secure compliance; referral to Attorney General or other action by Secretary

Whenever the Secretary finds that a State or other entity that has received financial assistance under this chapter has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request such officer to secure compliance. If, within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], sections 504 and 505 of the Rehabilitation Act of 1973 [29 U.S.C. 794, 794a], or title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], as may be applicable, or

(3) take such other action as may be provided by law.

(c) Civil action by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(Pub. L. 98–457, title III, § 307, Oct. 9, 1984, 98 Stat. 1761.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1), (b)(2), is title III of Pub. L. 94–135, Nov.

[1] See References in Text note below.

28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsecs. (a)(1) and (b)(2), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1), (b)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of this title. For complete classification of this Act to the Code, see note set out under section 2000a of this title and Tables.

This part, referred to in subsec. (a)(1), probably was intended to be a reference to this title, meaning title III of Pub. L. 98–457 which enacted this chapter, because title III was not divided into parts and because similar references to programs or activities funded in whole or in part with funds made available, referred to ''this title''.

§ 10407. Information and technical assistance centers

(a) Purpose and grants

(1) Purpose

It is the purpose of this section to provide resource information, training, and technical assistance to Federal, State, and Indian tribal agencies, as well as to local domestic violence programs and to other professionals who provide services to victims of domestic violence.

(2) Grants

From the amounts appropriated under this chapter, the Secretary shall award grants to private nonprofit organizations for the establishment and maintenance of one national resource center (as provided for in subsection (b) of this section) and not to exceed seven special issue resource centers (as provided for in subsection (c) of this section) focusing on one or more issues of concern to domestic violence victims.

(b) National resource center

The national resource center established under subsection (a)(2) of this section—

(1) shall offer resource, policy, collaboration, and training assistance to Federal, State, and local government agencies, to domestic violence service providers, and to other professionals and interested parties on issues pertaining to domestic violence, including issues relating to children who witness domestic violence; and

(2) shall maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics, and analyses of the information and statistics, relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance.

(c) Special issue resource centers

The special issue resource centers established under subsection (a)(2) of this section shall provide information, training and technical assistance to State and local domestic violence service providers, and shall specialize in at least one of the following areas of domestic violence service, prevention, or law:

(1) Criminal justice response to domestic violence, including court-mandated abuser treatment.

(2) Improving the response of Child Protective Service agencies to battered mothers of abused children.

(3) Child custody issues in domestic violence cases.

(4) The use of the self-defense plea by domestic violence victims.

(5) Improving interdisciplinary health care responses and access to health care resources for victims of domestic violence.

(6) Improving access to and the quality of legal representation for victims of domestic violence in civil litigation, including the issuance and enforcement of protection orders.

(7) Providing technical assistance and training to State domestic violence coalitions.

(d) Eligibility

To be eligible to receive a grant under this section an entity shall be a private nonprofit organization that—

(1) focuses primarily on domestic violence;

(2) provides documentation to the Secretary demonstrating experience working directly on issues of domestic violence, particularly in the specific subject area for which it is applying;

(3) include on its advisory boards representatives from domestic violence programs in the region who are geographically and culturally diverse; and

(4) demonstrate the strong support of domestic violence advocates from across the country and the region for their designation as the national or a special issue resource center.

(e) Reporting

Not later than 6 months after receiving a grant under this section, a grantee shall prepare and submit a report to the Secretary that evaluates the effectiveness of the use of amounts received under such grant by such grantee and containing such additional information as the Secretary may prescribe.

(f) "Indian tribal agency" defined

For purposes of this section, the term ''Indian tribal agency'' means an Indian tribe or tribal organization, as defined in section 450b of title 25.

(Pub. L. 98–457, title III, § 308, Oct. 9, 1984, 98 Stat. 1761; Pub. L. 102–295, title III, § 315, May 28, 1992, 106 Stat. 204; Pub. L. 103–322, title IV, § 40272(b), Sept. 13, 1994, 108 Stat. 1937; Pub. L. 108–36, title IV, § 404, June 25, 2003, 117 Stat. 826.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–36, § 404(1), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: ''The national resource center established under subsection (a)(2) of this section shall offer resource, policy and training assistance to Federal, State, and local government agencies, to domestic violence service providers, and to other professionals and interested parties on issues pertaining to domestic

violence, and shall maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance.''

Subsec. (g). Pub. L. 108–36, § 404(2), struck out heading and text of subsec. (g). Text read as follows: ''Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations.''

1994—Subsec. (a)(2). Pub. L. 103–322, § 40272(b)(1), substituted ''seven'' for ''six'' before ''special issue resource centers''.

Subsec. (c)(6). Pub. L. 103–322, § 40272(b)(2)(A), inserted before period at end '', including the issuance and enforcement of protection orders''.

Subsec. (c)(7). Pub. L. 103–322, § 40272(b)(2)(B), added par. (7).

1992—Pub. L. 102–295 amended section generally, substituting provisions relating to information and technical assistance centers for provisions relating to operation of national information and research clearinghouse on prevention of family violence.

§ 10408. Transferred

CODIFICATION

Section, Pub. L. 98–457, title III, § 309, Oct. 9, 1984, 98 Stat. 1762; Pub. L. 102–295, title III, § 311(b), May 28, 1992, 106 Stat. 203; Pub. L. 103–322, title IV, § 40272(a), Sept. 13, 1994, 108 Stat. 1937; Pub. L. 108–36, title IV, § 405, June 25, 2003, 117 Stat. 826, which related to definitions, was renumbered section 320 of Pub. L. 98–457 by Pub. L. 108–36, title IV, § 415(5), June 25, 2003, 117 Stat. 830, and transferred to section 10421 of this title.

§ 10409. Authorization of appropriations

(a) In general

(1) Authorization

There are authorized to be appropriated to carry out sections 10402 through 10410 of this title, $175,000,000 for each of fiscal years 2004 through 2008.

(2) Projects to address needs of children who witness domestic violence

For a fiscal year in which the amounts appropriated under paragraph (1) exceed $130,000,000, the Secretary shall reserve and make available a portion of the excess to carry out section 10402(c) of this title.

(b) Section 10402(a) and (b)

Of the amounts appropriated under subsection (a) of this section for each fiscal year (and not reserved under subsection (a)(2) of this section), not less than 70 percent shall be used for making grants under subsection 10402(a) of this title, and not less than 10 percent shall be used for the purpose of carrying out section 10402(b) of this title.

(c) Section 10407

Of the amounts appropriated under subsection (a) of this section for each fiscal year (and not reserved under subsection (a)(2) of this section), 5 percent shall be used by the Secretary for making grants under section 10407 of this title.

(d) Grants for State coalitions

Of the amounts appropriated under subsection (a) of this section for each fiscal year (and not reserved under subsection (a)(2) of this section), not less than 10 percent of such amounts shall be used by the Secretary for making grants under section 10410 of this title.

(e) Non-supplanting requirement

Federal funds made available to a State under this chapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide services and activities that promote the purposes of this chapter.

(Pub. L. 98–457, title III, § 310, Oct. 9, 1984, 98 Stat. 1763; Pub. L. 100–294, title III, § 301, Apr. 25, 1988, 102 Stat. 124; Pub. L. 102–295, title III, § 316, May 28, 1992, 106 Stat. 206; Pub. L. 103–322, title IV, § 40241, Sept. 13, 1994, 108 Stat. 1934; Pub. L. 104–235, title II, § 203, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 106–386, div. B, title II, § 1202(a), Oct. 28, 2000, 114 Stat. 1505; Pub. L. 108–36, title IV, § 406(a), (b), June 25, 2003, 117 Stat. 827.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–36, § 406(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out this chapter $175,000,000 for each of fiscal years 2001 through 2005.''

Subsecs. (b) to (d). Pub. L. 108–36, § 406(b), inserted ''(and not reserved under subsection (a)(2) of this section)'' after ''each fiscal year''.

2000—Subsec. (a). Pub. L. 106–386 reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out this chapter—

''(1) $50,000,000 for fiscal year 1996;

''(2) $60,000,000 for fiscal year 1997;

''(3) $70,000,000 for fiscal year 1998;

''(4) $72,500,000 for fiscal year 1999; and

''(5) $72,500,000 for fiscal year 2000.''

1996—Subsec. (b). Pub. L. 104–235, § 203(1), substituted ''70 percent'' for ''80 percent''.

Subsecs. (d), (e). Pub. L. 104–235, § 203(2), added subsecs. (d) and (e).

1994—Subsec. (a). Pub. L. 103–322 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out the provisions of sections 10402 through 10408 of this title and section 10413 of this title, $60,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995.''

1992—Pub. L. 102–295 amended section generally. Prior to amendment, section read as follows:

''(a) There are authorized to be appropriated to carry out the provisions of this chapter $11,000,000 for fiscal year 1985, $26,000,000 for each of the fiscal years 1986 and 1987, $26,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991.

''(b) Of the sums appropriated under subsection (a) of this section for any fiscal year, not less than 85 percent shall be used by the Secretary for making grants under section 10402 of this title.

''(c) The Secretary shall ensure that funds appropriated pursuant to authorizations in this chapter shall remain available until expended for the purposes for which they were appropriated.''

1988—Subsec. (a). Pub. L. 100–294, § 301(a), substituted ''1985,'' for ''1985 and'' and inserted '', $26,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991'' after ''1987'' before period at end.

Subsec. (c). Pub. L. 100–294, § 301(b), added subsec. (c).

§ 10410. Grants for State domestic violence coalitions

(a) In general

The Secretary shall award grants for the funding of State domestic violence coalitions. Such coalitions shall further the purposes of domestic violence intervention and prevention through activities, including—

(1) working with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including—

(A) training and technical assistance for local programs and professionals working with victims of domestic violence;

(B) planning and conducting State needs assessments and planning for comprehensive services;

(C) serving as an information clearinghouse and resource center for the State; and

(D) collaborating with other governmental systems which affect battered women;

(2) working with judicial and law enforcement agencies to encourage appropriate responses to domestic violence cases and examine issues including—

(A) the inappropriateness of mutual protection orders;

(B) the prohibition of mediation when domestic violence is involved;

(C) the use of mandatory arrests of accused offenders;

(D) the discouragement of dual arrests;

(E) the adoption of aggressive and vertical prosecution policies and procedures;

(F) the use of mandatory requirements for presentence investigations;

(G) the length of time taken to prosecute cases or reach plea agreements;

(H) the use of plea agreements;

(I) the consistency of sentencing, including comparisons of domestic violence crimes with other violent crimes;

(J) the restitution of victims;

(K) the use of training and technical assistance to law enforcement, judges, court officers and other criminal justice professionals;

(L) the reporting practices of, and significance to be accorded to, prior convictions (both felony and misdemeanor) and protection orders;

(M) the use of interstate extradition in cases of domestic violence crimes;

(N) the use of statewide and regional planning; and

(O) any other matters as the Secretary and the State domestic violence coalitions believe merit investigations;

(3) work with family law judges, criminal court judges, Child Protective Services agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases as well as cases where domestic violence and child abuse are both present, including—

(A) the inappropriateness of mutual protection orders;

(B) the prohibition of mediation where domestic violence is involved;

(C) the inappropriate use of marital or conjoint counseling in domestic violence cases;

(D) the use of training and technical assistance for family law judges, criminal court judges, and court personnel;

(E) the presumption of custody to domestic violence victims;

(F) the use of comprehensive protection orders to grant fullest protections possible to victims of domestic violence, including temporary custody support and maintenance;

(G) the development by Child Protective Service of supportive responses that enable victims to protect their children;

(H) the implementation of supervised visitations or denial of visitation to protect against danger to victims or their children; and

(I) the possibility of permitting domestic violence victims to remove children from the State when the safety of the children or the victim is at risk;

(4) conduct public education campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence, including information aimed at underserved racial, ethnic or language-minority populations; and

(5) participate in planning and monitoring of the distribution of grants and grant funds to their State under section 10402(a) of this title.

(b) Eligibility

To be eligible for a grant under this section, an entity shall be a statewide nonprofit State domestic violence coalition meeting the following conditions:

(1) The membership of the coalition includes representatives from a majority of the programs for victims of domestic violence in the State.

(2) The board membership of the coalition is representative of such programs.

(3) The purpose of the coalition is to provide services, community education, and technical assistance to such programs to establish and maintain shelter and related services for victims of domestic violence and their children.

(4) In the application submitted by the coalition for the grant, the coalition provides assurances satisfactory to the Secretary that the coalition—

(A) has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial entities in the preparation of the application; and

(B) will actively seek and encourage the participation of such entities in the activities carried out with the grant.

(c) Allotment of funds

From amounts appropriated under this section for each fiscal year, the Secretary shall allot to each State, the District of Columbia, the Commonwealth of Puerto Rico, and the combined

U.S. Territories an amount equal to 1/53 of the amount appropriated for such fiscal year. For purposes of this section, the term ''combined U.S. Territories'' means Guam, American Samoa, the U.S. Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands and shall not receive less than 1.5 percent of the funds appropriated for each fiscal year.

(d) Prohibition on lobbying

No funds made available to entities under this section shall be used, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by Congress, or by any State or local legislative body, or State proposals by initiative petition, except that the representatives of the entity may testify or make other appropriate communication—

(1) when formally requested to do so by a legislative body, a committee, or a member thereof; or

(2) in connection with legislation or appropriations directly affecting the activities of the entity.

(e) Reporting

Each State domestic violence coalition receiving amounts under this section shall submit a report to the Secretary describing the coordination, training and technical assistance and public education services performed with such amounts and evaluating the effectiveness of those services.

(f) Definition

For purposes of this section, a State domestic violence coalition may include representatives of Indian tribes and tribal organizations, as defined in section 450b of title 25.

(g) Funding

Of the amount appropriated under section 10409(a) of this title for a fiscal year (and not reserved under section 10409(a)(2) of this title), not less than 10 percent of such amount shall be made available to award grants under this section.

(Pub. L. 98–457, title III, § 311, Oct. 9, 1984, 98 Stat. 1763; Pub. L. 100–294, title III, § 303(b), Apr. 25, 1988, 102 Stat. 125; Pub. L. 102–295, title III, § 317, May 28, 1992, 106 Stat. 206; Pub. L. 103–322, title IV, § 40272(c), Sept. 13, 1994, 108 Stat. 1938; Pub. L. 108–36, title IV, §§ 406(c), 407, 415(6), June 25, 2003, 117 Stat. 827, 830.)

AMENDMENTS

2003—Subsec. (a)(2)(K). Pub. L. 108–36, § 415(6)(A), substituted ''other criminal justice professionals;'' for ''other criminal justice professionals,;''.

Subsec. (a)(3). Pub. L. 108–36, § 415(6)(B)(i), substituted ''family law judges,'' for ''family law judges,,'' in introductory provisions.

Subsec. (a)(3)(D). Pub. L. 108–36, § 415(6)(B)(ii), inserted '', criminal court judges,'' after ''family law judges''.

Subsec. (a)(3)(H). Pub. L. 108–36, § 415(6)(B)(iii), substituted ''supervised visitations or denial of visitation to protect against danger to victims or their children'' for ''supervised visitations that do not endanger victims and their children''.

Subsec. (g). Pub. L. 108–36, § 406(c), substituted ''Funding'' for ''Authorization of appropriations'' in heading and amended text generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to be used to award grants under this section $8,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995.''

Subsec. (h). Pub. L. 108–36, § 407, struck out heading and text. Text read as follows: ''Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations implementing this section.''

1994—Subsec. (a)(1). Pub. L. 103–322, § 40272(c)(2), added par. (1). Former par. (1) redesignated (2).

Subsec. (a)(2). Pub. L. 103–322, § 40272(c)(1), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (a)(2)(K). Pub. L. 103–322, § 40272(c)(3), substituted '', judges, court officers and other criminal justice professionals,'' for ''and court officials and other professionals''.

Subsec. (a)(3). Pub. L. 103–322, § 40272(c)(1), (4)(A), redesignated par. (2) as (3) and inserted '', criminal court judges,'' after ''family law judges,'' in introductory provisions. Former par. (3) redesignated (4).

Subsec. (a)(3)(F). Pub. L. 103–322, § 40272(c)(4)(B), substituted ''temporary custody support'' for ''temporary support''.

Subsec. (a)(3)(H). Pub. L. 103–322, § 40272(c)(4)(C), which directed the substitution of ''supervised visitations or denial of visitation to protect against danger to victims or their children'' for ''supervised visitations that do not endanger victims and their children,'', could not be executed because those words did not appear in text. See 2003 Amendment note above.

Subsec. (a)(4). Pub. L. 103–322, § 40272(c)(1), (5), redesignated par. (3) as (4) and inserted before semicolon '', including information aimed at underserved racial, ethnic or language-minority populations''. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 103–322, § 40272(c)(1), redesignated par. (4) as (5).

1992—Pub. L. 102–295 amended section generally, substituting provisions relating to grants for State domestic violence coalitions for provisions relating to law enforcement training and technical assistance grants and contracts.

1988—Subsec. (b)(2). Pub. L. 100–294 added par. (2).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 10411. Repealed. Pub. L. 100–294, title III, § 303(a), Apr. 25, 1988, 102 Stat. 124

Section, Pub. L. 98–457, title III, § 312, Oct. 9, 1984, 98 Stat. 1763, related to authority of Secretary to carry out provisions of this chapter, competitive awarding of grants and contracts, and delegation of authority and transfer of funds to Attorney General. See sections 10412(a) and 10410(b), (c) of this title.

§ 10412. Authority of Secretary

(a) In general

In order to carry out the provisions of this chapter, the Secretary is authorized to—

(1) appoint and fix the compensation of such personnel as are necessary;

(2) procure, to the extent authorized by section 3109 of title 5, such temporary and intermittent services of experts and consultants as are necessary;

(3) make grants to public and nonprofit private entities or enter into contracts with public or private entities; and

(4) prescribe such regulations as are reasonably necessary in order to carry out the purposes and provisions of this chapter.

Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing sections 10402, 10407, and 10414 of this title. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations implementing such sections.

(b) Construction with State and local law

Nothing in this chapter shall be construed to supersede the application of State or local requirements for the reporting of incidents of suspected child abuse to the appropriate State authorities.

(c) Funding for evaluation, monitoring, and other administrative costs

Of the amount appropriated under section 10409(a) of this title for each fiscal year (and not reserved under section 10409(a)(2) of this title), not more than 2.5 percent shall be used by the Secretary for evaluation, monitoring, and other administrative costs under this chapter.

(Pub. L. 98–457, title III, § 312, Oct. 9, 1984, 98 Stat. 1764; Pub. L. 102–295, title III, § 318, May 28, 1992, 106 Stat. 208; Pub. L. 108–36, title IV, § 408, June 25, 2003, 117 Stat. 827.)

CODIFICATION

Another section 312 of Pub. L. 98–457, which was classified to section 10411 of this title, was repealed by section 303(a) of Pub. L. 100–294.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–36 added subsec. (c).

1992—Subsec. (a). Pub. L. 102–295 inserted at end ''Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing sections 10402, 10407, and 10414 of this title. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations implementing such sections.''

§ 10413. Repealed. Pub. L. 108–36, title IV, § 409, June 25, 2003, 117 Stat. 827

Section, Pub. L. 98–457, title III, § 313, as added Pub. L. 100–294, title III, § 303(c), Apr. 25, 1988, 102 Stat. 125; amended Pub. L. 102–295, title III, § 319, May 28, 1992, 106 Stat. 209, related to family member abuse information and documentation project.

§ 10414. Grants for public information campaigns

(a) In general

The Secretary may make grants to public or private nonprofit entities to provide public information campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.

(b) Application

No grant, contract, or cooperative agreement shall be made or entered into under this section unless an application that meets the requirements of subsection (c) of this section has been approved by the Secretary.

(c) Requirements

An application submitted under subsection (b) of this section shall—

(1) provide such agreements, assurances, and information, be in such form and be submitted in such manner as the Secretary shall prescribe through notice in the Federal Register, including a description of how the proposed public information campaign will target the population at risk, including pregnant women;

(2) include a complete description of the plan of the application for the development of a public information campaign;

(3) identify the specific audiences that will be educated, including communities and groups with the highest prevalence of domestic violence;

(4) identify the media to be used in the campaign and the geographic distribution of the campaign;

(5) describe plans to test market a development plan with a relevant population group and in a relevant geographic area and give assurance that effectiveness criteria will be implemented prior to the completion of the final plan that will include an evaluation component to measure the overall effectiveness of the campaign;

(6) describe the kind, amount, distribution, and timing of informational messages and such other information as the Secretary may require, with assurances that media organizations and other groups with which such messages are placed will not lower the current frequency of public service announcements; and

(7) contain such other information as the Secretary may require.

(d) Use

A grant, contract, or agreement made or entered into under this section shall be used for the development of a public information campaign that may include public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other mode of conveying information that the Secretary determines to be appropriate.

(e) Criteria

The criteria for awarding grants shall ensure that an applicant—

(1) will conduct activities that educate communities and groups at greatest risk;

(2) has a record of high quality campaigns of a comparable type; and

(3) has a record of high quality campaigns that educate the population groups identified as most at risk.

(f) Inclusion of representatives of Indians

For purposes of this section, the term ''public or private nonprofit entity'' includes an ''Indian tribe'' or ''tribal organization'', as defined in section 450b of title 25.

(Pub. L. 98–457, title III, § 314, as added Pub. L. 102–295, title III, § 320, May 28, 1992, 106 Stat. 209.)

FEDERAL EMPLOYEE DOMESTIC VIOLENCE AWARENESS CAMPAIGN

Memorandum of President of the United States, Oct. 2, 1995, 60 F.R. 52821, provided:

Memorandum for Heads of Executive Departments and Agencies

Domestic violence is not a private, family dispute that affects only the people involved. Domestic vio-

lence is violent criminal activity that affects us all, regardless of race, income, or age, in every community in this country. It means higher health care costs, increased absenteeism, and declining productivity. It destroys families, relationships, and lives. More importantly, it tears at the moral fabric of who we are and undermines the very institution that has been the cornerstone of our country: the family.

In passing the Violence Against Women Act [probably means the Violence Against Women Act of 1994, title IV of Pub. L. 103–322, see Tables for classification] as part of the Violent Crime Control Act (''VCCA'') [probably means the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, see Tables for classification] last year, the Congress recognized the seriousness of the problem of domestic violence. This new law combines tough new penalties with programs to prosecute offenders and help women victims. In the last year, every State has received a down payment of $426,000 in grants to help train prosecutors, police, and service providers in combatting the problem of domestic violence. Moreover, because of the VCCA, every State will now ensure that women who have been assaulted will not have to pay for their medical examinations resulting from rape and other acts of violence.

Throughout October, National Domestic Violence Awareness Month, business, labor, law enforcement, public health, and civic organizations will be working to increase our understanding of this problem and create solutions that can save lives. I believe the Federal Government has a responsibility to be a leader in this effort.

Today, I am directing that executive departments and agencies institute employee awareness campaigns on domestic violence. Within the next 6 months, you should implement a program to promote Federal employee awareness of the problem of domestic violence and the programs and resources that are available for victims. I support and encourage the initial plans made by the Justice Department, which include the production of a resource manual and a poster, and the scheduling of a Violence Against Women Information Fair on October 30, 1995. This fair will include speakers, artwork, and exhibits.

We have a responsibility to assist all victims of domestic violence and their families trapped in a cycle of violence with no sense of where to turn. Often, victims will not report their circumstances to the public, but they may turn to coworkers for help. Thus, by providing information to all Federal workers on the programs available, we can make a contribution to the effort to protect women from abuse and reduce the level of violence in America.

The Director of the Office Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 10415. Repealed. Pub. L. 108–36, title IV, § 410, June 25, 2003, 117 Stat. 827

Section, Pub. L. 98–457, title III, § 315, as added Pub. L. 102–295, title III, § 321, May 28, 1992, 106 Stat. 210, related to model State leadership grants for domestic violence intervention.

§ 10416. National domestic violence hotline and Internet grant

(a) In general

The Secretary may award 1 or more grants to private, nonprofit entities—

(1) to provide for the establishment and operation of a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence; or

(2) to provide for the establishment and operation of a highly secure Internet website to provide that information and assistance to those victims.

(b) Duration

A grant under this section may extend over a period of not more than 5 years.

(c) Annual approval

The provision of payments under a grant awarded under this section shall be subject to annual approval by the Secretary and subject to the availability of appropriations for each fiscal year to make the payments.

(d) Hotline activities

An entity that receives a grant under this section for activities described, in whole or in part, in subsection (a)(1) of this section shall use funds made available through the grant to establish and operate a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence. In establishing and operating the hotline, the entity shall—

(1) contract with a carrier for the use of a toll-free telephone line;

(2) employ, train (including technology training), and supervise personnel to answer incoming calls and provide counseling and referral services to callers on a 24-hour-a-day basis;

(3) assemble and maintain a current database of information relating to services for victims of domestic violence to which callers may be referred throughout the United States, including information on the availability of shelters that serve battered women; and

(4) publicize the hotline to potential users throughout the United States.

(e) Secure website activities

(1) In general

An entity that receives a grant under this section for activities described, in whole or in part, in subsection (a)(2) of this section shall use funds made available through the grant to provide grants for startup and operational costs associated with establishing and operating a highly secure Internet website.

(2) Availability

The website shall be available to the entity operating the hotline and domestic violence shelters.

(3) Information

The website shall provide accurate information that describes—

(A) the services available to victims of domestic violence, including health care and mental health services, social services, transportation, services for children (including children who witness domestic violence), and other relevant services; and

(B) the domestic violence shelters available, and services provided by the shelters.

(4) Rule of construction

Nothing in this chapter shall be construed to require any shelter or service provider, whether public or private, to be linked to the website or to provide information to the recipient of the grant described in paragraph (1) or to the website.

(f) Application

The Secretary may not award a grant under this section unless the Secretary approves an application for such grant. To be approved by the Secretary under this subsection an application shall—

(1) contain such agreements, assurances, and information, be in such form, and be submitted in such manner, as the Secretary shall prescribe through notice in the Federal Register;

(2) in the case of an application for a grant to carry out activities described in subsection (a)(1) of this section, include a complete description of the applicant's plan for the operation of a national domestic violence hotline, including descriptions of—

(A) the training program for hotline personnel, including technology training to ensure that all persons affiliated with the hotline are able to effectively operate any technological systems used by the hotline;

(B) the hiring criteria for hotline personnel;

(C) the methods for the creation, maintenance, and updating of a resource database;

(D) a plan for publicizing the availability of the hotline;

(E) a plan for providing service to non-English speaking callers, including service through hotline personnel who speak Spanish; and

(F) a plan for facilitating access to the hotline by persons with hearing impairments;

(3) in the case of an application for a grant to carry out activities described in subsection (a)(2) of this section—

(A) include a complete description of the applicant's plan for the development, operation, maintenance, and updating of information and resources of the website;

(B) include a certification that the applicant will implement a high level security system to ensure the confidentiality of the website, taking into consideration the safety of domestic violence victims; and

(C) include an assurance that, after the third year of the website project, the recipient of the grant will develop a plan to secure other public or private funding resources to ensure the continued operation and maintenance of the website;

(4) demonstrate that the applicant has recognized expertise in the area of domestic violence and a record of high quality service to victims of domestic violence, including a demonstration of support from advocacy groups;

(5) demonstrate that the applicant has a commitment to diversity, and to the provision of services to ethnic, racial, and non-English speaking minorities, in addition to older individuals and individuals with disabilities; and

(6) contain such other information as the Secretary may require.

(g) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section $3,500,000 for each of fiscal years 2004 through 2008.

(2) Conditions on appropriations

Notwithstanding paragraph (1), the Secretary may make available a portion of the amounts appropriated under paragraph (1) to award grants under subsection (a)(2) of this section only for any fiscal year for which the amounts appropriated under paragraph (1) exceed $3,000,000.

(3) Availability

Funds authorized to be appropriated under paragraph (1) shall remain available until expended.

(Pub. L. 98–457, title III, § 316, as added Pub. L. 103–322, title IV, § 40211, Sept. 13, 1994, 108 Stat. 1925; amended Pub. L. 106–386, div. B, title II, § 1204, Oct. 28, 2000, 114 Stat. 1507; Pub. L. 108–36, title IV, § 411, June 25, 2003, 117 Stat. 827; Pub. L. 109–162, title II, § 206, Jan. 5, 2006, 119 Stat. 3002.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(4), was in the original ''this Act'' and was translated as reading ''this title'', meaning title III of Pub. L. 98–457, to reflect the probable intent of Congress.

AMENDMENTS

2006—Subsec. (d)(2). Pub. L. 109–162, § 206(1), which directed insertion of ''(including technology training)'' after ''train;'', was executed by making the insertion after ''train'', to reflect the probable intent of Congress.

Subsec. (f)(2)(A). Pub. L. 109–162, § 206(2), inserted '', including technology training to ensure that all persons affiliated with the hotline are able to effectively operate any technological systems used by the hotline'' after ''hotline personnel''.

Subsec. (g)(2). Pub. L. 109–162, § 206(3), substituted ''may'' for ''shall''.

2003—Pub. L. 108–36 amended section generally, substituting provisions relating to a national toll-free telephone hotline and a highly secure Internet website to provide information and assistance to victims of domestic violence for provisions relating to a national domestic violence hotline.

2000—Subsec. (f)(1). Pub. L. 106–386 added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''There are authorized to be appropriated to carry out this section—

''(A) $1,000,000 for fiscal year 1995;

''(B) $400,000 for fiscal year 1996;

''(C) $400,000 for fiscal year 1997;

''(D) $400,000 for fiscal year 1998;

''(E) $400,000 for fiscal year 1999; and

''(F) $400,000 for fiscal year 2000.''

§ 10417. Repealed. Pub. L. 108–36, title IV, § 412, June 25, 2003, 117 Stat. 829

Section, Pub. L. 98–457, title III, § 317, as added Pub. L. 103–322, title IV, § 40251, Sept. 13, 1994, 108 Stat. 1935, related to programs for education of young people about domestic violence and violence among intimate partners.

§ 10418. Demonstration grants for community initiatives

(a) In general

The Secretary shall provide grants to nonprofit private organizations to establish projects in local communities involving many sectors of each community to coordinate intervention and prevention of domestic violence.

(b) Eligibility

To be eligible for a grant under this section, an entity—

(1) shall be a nonprofit organization organized for the purpose of coordinating community projects for the intervention in and prevention of domestic violence; and

(2) shall include representatives of pertinent sectors of the local community, which may include—

(A) health care providers;

(B) the education community;

(C) the religious community;

(D) the justice system;

(E) domestic violence program advocates;

(F) human service entities such as State child services divisions;

(G) business and civic leaders; and

(H) other pertinent sectors.

(c) Applications

An organization that desires to receive a grant under this section shall submit to the Secretary an application, in such form and in such manner as the Secretary shall prescribe through notice in the Federal Register, that—

(1) demonstrates that the applicant will serve a community leadership function, bringing together opinion leaders from each sector of the community to develop a coordinated community consensus opposing domestic violence;

(2) demonstrates a community action component to improve and expand current intervention and prevention strategies through increased communication and coordination among all affected sectors;

(3) includes a complete description of the applicant's plan for the establishment and operation of the community project, including a description of—

(A) the method for identification and selection of an administrative committee made up of persons knowledgeable in domestic violence to oversee the project, hire staff, assure compliance with the project outline, and secure annual evaluation of the project;

(B) the method for identification and selection of project staff and a project evaluator;

(C) the method for identification and selection of a project council consisting of representatives of the community sectors listed in subsection (b)(2) of this section;

(D) the method for identification and selection of a steering committee consisting of representatives of the various community sectors who will chair subcommittees of the project council focusing on each of the sectors; and

(E) a plan for developing outreach and public education campaigns regarding domestic violence; and

(4) contains such other information, agreements, and assurances as the Secretary may require.

(d) Term

A grant provided under this section may extend over a period of not more than 3 fiscal years.

(e) Conditions on payment

Payments under a grant under this section shall be subject to—

(1) annual approval by the Secretary; and

(2) availability of appropriations.

(f) Geographical dispersion

The Secretary shall award grants under this section to organizations in communities geographically dispersed throughout the country.

(g) Use of grant monies

(1) In general

A grant made under subsection (a) of this section shall be used to establish and operate a community project to coordinate intervention and prevention of domestic violence.

(2) Requirements

In establishing and operating a project, a nonprofit private organization shall—

(A) establish protocols to improve and expand domestic violence intervention and prevention strategies among all affected sectors;

(B) develop action plans to direct responses within each community sector that are in conjunction with development in all other sectors; and

(C) provide for periodic evaluation of the project with a written report and analysis to assist application of this concept in other communities.

(h) Authorization of appropriations

There is authorized to be appropriated to carry out this section $6,000,000 for each of fiscal years 2004 through 2008.

(Pub. L. 98–457, title III, § 318, as added Pub. L. 103–322, title IV, § 40261, Sept. 13, 1994, 108 Stat. 1935; amended Pub. L. 105–392, title IV, § 407(a), Nov. 13, 1998, 112 Stat. 3589; Pub. L. 106–386, div. B, title IV, § 1403, Oct. 28, 2000, 114 Stat. 1514; Pub. L. 108–36, title IV, § 413, June 25, 2003, 117 Stat. 830.)

AMENDMENTS

2003—Subsec. (h). Pub. L. 108–36, § 413(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out this section $6,000,000 for each of fiscal years 2001 through 2005.''

Subsec. (i). Pub. L. 108–36, § 413(b), struck out heading and text. Text read as follows: ''Not later than 60 days after September 13, 1994, the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after September 13, 1994, the Secretary shall publish final regulations implementing this section.''

2000—Subsec. (h). Pub. L. 106–386 added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows: ''There are authorized to be appropriated to carry out this section—

''(1) $4,000,000 for fiscal year 1996; and

''(2) $6,000,000 for for each of the fiscal years 1997 through 2002.''

1998—Subsec. (h)(2). Pub. L. 105–392 substituted ''for each of the fiscal years 1997 through 2002'' for ''fiscal year 1997''.

§ 10419. Transitional housing assistance

(a) In general

The Secretary shall award grants under this section to carry out programs to provide assistance to individuals, and their dependents—

(1) who are homeless or in need of transitional housing or other housing assistance, as

a result of fleeing a situation of domestic violence; and

(2) for whom emergency shelter services are unavailable or insufficient.

(b) Assistance described

Assistance provided under this section may include—

(1) short-term housing assistance, including rental or utilities payments assistance and assistance with related expenses, such as payment of security deposits and other costs incidental to relocation to transitional housing, in cases in which assistance described in this paragraph is necessary to prevent homelessness because an individual or dependent is fleeing a situation of domestic violence; and

(2) support services designed to enable an individual or dependent who is fleeing a situation of domestic violence to locate and secure permanent housing, and to integrate the individual or dependent into a community, such as transportation, counseling, child care services, case management, employment counseling, and other assistance.

(c) Term of assistance

(1) In general

Subject to paragraph (2), an individual or dependent assisted under this section may not receive assistance under this section for a total of more than 12 months.

(2) Waiver

The recipient of a grant under this section may waive the restrictions of paragraph (1) for up to an additional 6-month period with respect to any individual (and dependents of the individual) who has made a good-faith effort to acquire permanent housing and has been unable to acquire the housing.

(d) Reports

(1) Report to Secretary

(A) In general

An entity that receives a grant under this section shall annually prepare and submit to the Secretary a report describing the number of individuals and dependents assisted, and the types of housing assistance and support services provided, under this section.

(B) Contents

Each report shall include information on—

(i) the purpose and amount of housing assistance provided to each individual or dependent assisted under this section;

(ii) the number of months each individual or dependent received the assistance;

(iii) the number of individuals and dependents who were eligible to receive the assistance, and to whom the entity could not provide the assistance solely due to a lack of available housing; and

(iv) the type of support services provided to each individual or dependent assisted under this section.

(2) Report to Congress

The Secretary shall annually prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that contains a compilation of the information contained in reports submitted under paragraph (1).

(e) Evaluation, monitoring, and administration

Of the amount appropriated under subsection (f) of this section for each fiscal year, not more than 1 percent shall be used by the Secretary for evaluation, monitoring, and administrative costs under this section.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 2003 through 2008.

(Pub. L. 98–457, title III, § 319, as added Pub. L. 106–386, div. B, title II, § 1203, Oct. 28, 2000, 114 Stat. 1506; amended Pub. L. 108–36, title IV, § 414, June 25, 2003, 117 Stat. 830.)

AMENDMENTS

2003—Subsec. (f). Pub. L. 108–36 substituted ''each of fiscal years 2003 through 2008'' for ''fiscal year 2001''.

§ 10420. Safe havens for children

(a) In general

The Attorney General, through the Director of the Office on Violence Against Women, may award grants to States, units of local government, and Indian tribal governments that propose to enter into or expand the scope of existing contracts and cooperative agreements with public or private nonprofit entities[1]

(1) to provide supervised visitation and safe visitation exchange of children by and between parents in situations involving domestic violence, dating violence, child abuse, sexual assault, or stalking;

(2) to protect children from the trauma of witnessing domestic or dating violence or experiencing abduction, injury, or death during parent and child visitation exchanges;

(3) to protect parents or caretakers who are victims of domestic and dating violence from experiencing further violence, abuse, and threats during child visitation exchanges; and

(4) to protect children from the trauma of experiencing sexual assault or other forms of physical assault or abuse during parent and child visitation and visitation exchanges.

(b) Considerations

In awarding grants under subsection (a) of this section, the Attorney General shall take into account—

(1) the number of families to be served by the proposed visitation programs and services;

(2) the extent to which the proposed supervised visitation programs and services serve underserved populations (as defined in section 3796gg–2[2] of this title);

(3) with respect to an applicant for a contract or cooperative agreement, the extent to which the applicant demonstrates cooperation and collaboration with nonprofit, nongovernmental entities in the local community served, including the State or tribal domestic

[1] So in original. Probably should be followed by a dash.

[2] See References in Text note below.

violence coalition, State or tribal sexual assault coalition, local shelters, and programs for domestic violence and sexual assault victims; and

(4) the extent to which the applicant demonstrates coordination and collaboration with State and local court systems, including mechanisms for communication and referral.

(c) Applicant requirements

The Attorney General shall award grants for contracts and cooperative agreements to applicants that—

(1) demonstrate expertise in the area of family violence, including the areas of domestic violence or sexual assault, as appropriate;

(2) ensure that any fees charged to individuals for use of programs and services are based on the income of those individuals, unless otherwise provided by court order;

(3) demonstrate that adequate security measures, including adequate facilities, procedures, and personnel capable of preventing violence, are in place for the operation of supervised visitation programs and services or safe visitation exchange; and

(4) prescribe standards by which the supervised visitation or safe visitation exchange will occur.

(d) Reporting

(1) In general

Not later than 1 month after the end of each even-numbered fiscal year, the Attorney General shall submit to Congress a report that includes information concerning—

(A) the number of—

(i) individuals served and the number of individuals turned away from visitation programs and services and safe visitation exchange (categorized by State);

(ii) the number of individuals from underserved populations served and turned away from services; and

(iii) the type of problems that underlie the need for supervised visitation or safe visitation exchange, such as domestic violence, child abuse, sexual assault, other physical abuse, or a combination of such factors;

(B) the numbers of supervised visitations or safe visitation exchanges ordered under this section during custody determinations under a separation or divorce decree or protection order, through child protection services or other social services agencies, or by any other order of a civil, criminal, juvenile, or family court;

(C) the process by which children or abused partners are protected during visitations, temporary custody transfers, and other activities for which supervised visitation is established under this section;

(D) safety and security problems occurring during the reporting period during supervised visitation under this section, including the number of parental abduction cases; and

(E) the number of parental abduction cases in a judicial district using supervised visitation programs and services under this section, both as identified in criminal prosecution and custody violations.

(2) Guidelines

The Attorney General shall establish guidelines for the collection and reporting of data under this subsection.

(e) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section, $20,000,000 for each of fiscal years 2007 through 2011. Funds appropriated under this section shall remain available until expended.

(2) Use of funds

Of the amounts appropriated to carry out this section for each fiscal year, the Attorney General shall—

(A) use not more than 3 percent for evaluation, monitoring, site visits, grantee conferences, and other administrative costs associated with conducting activities under this section; and

(B) set aside not more than 8 percent for technical assistance and training to be provided by organizations having nationally recognized expertise in the design of safe and secure supervised visitation programs and visitation exchange of children in situations involving domestic violence, dating violence, sexual assault, or stalking.

(f) Allotment for Indian tribes

(1) In general

Not less than 10 percent of the total amount available under this section for each fiscal year shall be available for grants under the program authorized by section 3796gg–10 of this title.

(2) Applicability of part[3]

The requirements of this section shall not apply to funds allocated for the program described in paragraph (1).

(Pub. L. 106–386, div. B, title III, § 1301, Oct. 28, 2000, 114 Stat. 1509; Pub. L. 109–162, § 3(b)(2), title III, § 306, title IX, § 906(d), formerly § 906(e), title XI, § 1135(b), Jan. 5, 2006, 119 Stat. 2971, 3016, 3081, 3109, renumbered § 906(d), Pub. L. 109–271, § 7(b)(2)(B), Aug. 12, 2006, 120 Stat. 764; Pub. L. 109–271, §§ 2(d), 7(d)(2), 8(b), Aug. 12, 2006, 120 Stat. 752, 766.)

REFERENCES IN TEXT

Section 3796gg–2 of this title, referred to in subsec. (b)(2), was subsequently repealed and a new section 3796gg–2 enacted which does not define ''underserved populations''. However, such term is defined in section 13925 of this title.

CODIFICATION

Section was enacted as part of the Violence Against Women Act of 2000 and also as part of the Victims of Trafficking and Violence Protection Act of 2000, and not as part of the Family Violence Prevention and Services Act which comprises this chapter.

Section 306(1) of Pub. L. 109–162, which directed in part that section 1301 of the Victims of Trafficking and Violence Protection Act of 2000 be amended by striking the section catchline and inserting ''10402'' as the section number in the amended section catchline, was exe-

[3] So in original. Probably should be ''section''.

cuted to this section by inserting ''1301'' as the section number in the original, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Pub. L. 109–162, § 306(1), substituted ''Safe havens for children'' for ''Safe havens for children pilot program'' in section catchline. See Codification note above.

Subsec. (a). Pub. L. 109–162, § 306(2)(C)–(E), inserted par. (1) designation before ''to provide'', substituted semicolon for period at end, and added pars. (2) to (4).

Pub. L. 109–162, § 306(2)(A), (B), inserted '', through the Director of the Office on Violence Against Women,'' after ''Attorney General'' and ''dating violence,'' after ''domestic violence,''.

Subsec. (d)(1). Pub. L. 109–162, § 1135(b), which directed an amendment identical to that made by Pub. L. 109–162, § 3(b)(2), was repealed by Pub. L. 109–271, §§ 2(d) and 8(b).

Pub. L. 109–162, § 3(b)(2), substituted ''Not later than 1 month after the end of each even-numbered fiscal year,'' for ''Not later than 1 year after the last day of the first fiscal year commencing on or after October 28, 2000, and not later than 180 days after the last day of each fiscal year thereafter,'' in introductory provisions.

Subsec. (e). Pub. L. 109–162, § 306(3), added subsec. (e) and struck out former subsec. (e). Text read as follows: ''There is authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 2001 and 2002.''

Subsec. (e)(2). Pub. L. 109–271, § 7(d)(2)(A), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''set aside not less than 7 percent for grants to Indian tribal governments or tribal organizations;''.

Subsec. (f). Pub. L. 109–271, § 7(d)(2)(B), added subsec. (f) and struck out former subsec. (f) which read as follows: ''Not less than 10 percent of the total amount available under this section for each fiscal year shall be available for grants under the program authorized in section 3796gg–10 of this title. The requirements of this subsection shall not apply to funds allocated for such program.''

Pub. L. 109–162, § 906(d), formerly § 906(e), as renumbered by Pub. L. 109–271, § 7(b)(2)(B), added subsec. (f) and struck out former subsec. (f). Text read as follows: ''Not less than 5 percent of the total amount made available for each fiscal year to carry out this section shall be available for grants to Indian tribal governments.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by sections 306 and 906(d) of Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

DEFINITIONS

For definitions of terms used in this section, see section 1002 of Pub. L. 106–386, as amended, set out as a note under section 3796gg–2 of this title.

§ 10421. Definitions

As used in this chapter:

(1) The term ''family violence'' means any act or threatened act of violence, including any forceful detention of an individual, which—

(A) results or threatens to result in physical injury; and

(B) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

(2) The terms ''Indian tribe'' and ''tribal organization'' have the same meanings given such terms in subsections (b) and (c), respectively, of section 450b[1] of title 25.

(3) The terms[2] ''Secretary'' means the Secretary of Health and Human Services.

(4) The terms[2] ''shelter'' means the provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

(5) The term ''related assistance'' means the provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. The term ''related assistance'' shall include—

(A) prevention services such as outreach and prevention services for victims and their children, assistance to children who witness domestic violence, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including services promoting nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school-age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(B) counseling with respect to family violence, counseling or other supportive services provided by peers individually or in groups, and referral to community social services;

(C) transportation, technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health care services;

(D) legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(E) children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims, and children who witness domestic violence.

(6) The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and, except as otherwise provided, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(Pub. L. 98–457, title III, § 320, formerly § 309, Oct. 9, 1984, 98 Stat. 1762; Pub. L. 102–295, title III,

[1] See References in Text note below.

[2] So in original. Probably should be ''term''.

§ 311(b), May 28, 1992, 106 Stat. 203; Pub. L. 103–322, title IV, § 40272(a), Sept. 13, 1994, 108 Stat. 1937; renumbered § 320 and amended Pub. L. 108–36, title IV, §§ 405, 415(5), June 25, 2003, 117 Stat. 826, 830.)

REFERENCES IN TEXT

Section 450b of title 25, referred to in par. (2), has been amended, and subsecs. (b) and (c) of section 450b no longer define the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in that section.

CODIFICATION

Section was classified to section 10408 of this title prior to renumbering by Pub. L. 108–36.

AMENDMENTS

2003—Par. (5). Pub. L. 108–36, § 405, inserted second sentence and struck out former second sentence which read as follows: ''Related assistance shall include—

''(A) prevention services such as outreach and prevention services for victims and their children, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

''(B) counseling with respect to family violence, counseling or other supportive services by peers individually or in groups, and referral to community social services;

''(C) transportation, technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

''(D) legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

''(E) children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims.''

1994—Par. (5)(B). Pub. L. 103–322 inserted ''or other supportive services'' before ''by peers''.

1992—Par. (5). Pub. L. 102–295 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The term 'related assistance'—

''(A) includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate health-care services (including alcohol and drug abuse treatment), and

''(B) may include food, clothing, child care, transportation, and emergency services (but not reimbursement for any health-care services) for victims of family violence and their dependents.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CHAPTER 111—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

Sec.
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§ 10501. Application for assistance

(a) State as applicant

In the event that a law enforcement emergency exists throughout a State or a part of a State, a State (on behalf of itself or another appropriate unit of government) may submit an application under this section for Federal law enforcement assistance.

(b) Execution of application; period for action of Attorney General on application

An application for assistance under this section shall be submitted in writing by the chief executive officer of a State to the Attorney General, in a form prescribed by rules issued by the Attorney General. The Attorney General shall, after consultation with the Assistant Attorney General for the Office of Justice Programs and appropriate members of the Federal law enforcement community, approve or disapprove such application not later than 10 days after receiving such application.

(c) Criteria

Federal law enforcement assistance may be provided if such assistance is necessary to provide an adequate response to a law enforcement emergency. In determining whether to approve or disapprove an application for assistance under this section, the Attorney General shall consider—

(1) the nature and extent of such emergency throughout a State or in any part of a State,

(2) the situation or extraordinary circumstances which produced such emergency,

(3) the availability of State and local criminal justice resources to resolve the problem,

(4) the cost associated with the increased Federal presence,

(5) the need to avoid unnecessary Federal involvement and intervention in matters primarily of State and local concern, and

(6) any assistance which the State or other appropriate unit of government has received, or could receive, under any provision of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3701 et seq.].

(Pub. L. 98–473, title II, § 609M, Oct. 12, 1984, 98 Stat. 2103; Pub. L. 109–162, title XI, § 1113, Jan. 5, 2006, 119 Stat. 3103.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(6), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended, title I of which is classified principally to chapter 46 (§ 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–162 substituted ''the Assistant Attorney General for the Office of Justice Pro-

grams'' for ''the Director of the Office of Justice Assistance''.

EFFECTIVE DATE

Chapter effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as a note under section 3711 of this title.

§ 10502. Definitions

For purposes of this chapter—

(1) the term ''Federal law enforcement assistance'' means funds, equipment, training, intelligence information, and personnel,

(2) the term ''Federal law enforcement community'' means the heads of the following departments or agencies:

(A) the Federal Bureau of Investigation,

(B) the Drug Enforcement Administration,

(C) the Criminal Division of the Department of Justice,

(D) the Internal Revenue Service,

(E) the Customs Service,

(F) the Immigration and Naturalization Service,

(G) the United States Marshals Service,

(H) the National Park Service,

(I) the United States Postal Service,

(J) the Secret Service,

(K) the Coast Guard,

(L) the National Security Division of the Department of Justice,

(M) the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, and

(N) other Federal agencies with specific statutory authority to investigate violations of Federal criminal laws,

(3) the term ''law enforcement emergency'' means an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which State and local resources are inadequate to protect the lives and property of citizens or to enforce the criminal law, except that such term does not include—

(A) the perceived need for planning or other activities related to crowd control for general public safety projects, or

(B) a situation requiring the enforcement of laws associated with scheduled public events, including political conventions and sports events, and

(4) the term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

(Pub. L. 98–473, title II, § 609N, Oct. 12, 1984, 98 Stat. 2104; Pub. L. 107–296, title XI, § 1112(*o*), Nov. 25, 2002, 116 Stat. 2278; Pub. L. 109–177, title V, § 506(a)(11), Mar. 9, 2006, 120 Stat. 248.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this subdivision'' probably meaning subtitle B (that probably should have been designated ''subdivision'' B) of division I of chapter VI of title II of Pub. L. 98–473, which enacted this chapter.

AMENDMENTS

2006—Par. (2)(L) to (N). Pub. L. 109–177 added subpar. (L) and redesignated former subpars. (L) and (M) as (M) and (N), respectively.

2002—Par. (2)(L). Pub. L. 107–296 substituted ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice'' for ''Bureau of Alcohol, Tobacco, and Firearms''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 10503. Limitation on authority

(a) Federal investigations

Nothing in this chapter authorizes the use of Federal law enforcement personnel to investigate violations of criminal law other than violations with respect to which investigation is authorized by other provisions of law.

(b) Federal supervision

Nothing in this chapter shall be construed to authorize the Attorney General or the Federal law enforcement community to exercise any direction, supervision, or control over any police force or other criminal justice agency of an applicant for Federal law enforcement assistance.

(c) Racial balance in criminal justice agencies

Nothing in this chapter shall be construed to authorize the Attorney General or the Federal law enforcement community—

(1) to condition the availability or amount of Federal law enforcement assistance upon

the adoption by an applicant for such assistance of, or

(2) to deny or discontinue such assistance upon the failure of such applicant to adopt,

a percentage ratio, quota system, or other program to achieve racial balance in any criminal justice agency of such applicant.

(d) Federal supplantation of State funds

No funds provided under this chapter may be used to supplant State or local funds that would otherwise be made available for such purposes.

(e) Other authorities unaffected

Nothing in this chapter shall be construed to limit any authority to provide emergency assistance otherwise provided by law.

(Pub. L. 98–473, title II, § 609O, Oct. 12, 1984, 98 Stat. 2105.)

§ 10504. Prohibition of discrimination

(a) Federally assisted emergency assistance activities

No person in any State shall, on the ground of race, color, religion, national origin, or sex, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any activity for which Federal law enforcement assistance is provided under this chapter.

(b) Provisions of section 3789d(c)(3) and (4) of this title applicable to violations

Paragraph (3) and paragraph (4) of section 3789d(c) of this title shall apply with respect to a violation of subsection (a) of this section, except that the terms ''this section'' and ''paragraph (1)'', as such terms appear in such paragraphs, shall be deemed to be references to subsection (a) of this section, and a reference to the Office of Justice Programs in such paragraphs shall be deemed to be a reference to the Attorney General.

(Pub. L. 98–473, title II, § 609P, Oct. 12, 1984, 98 Stat. 2105.)

§ 10505. Confidentiality of information

Section 3789g of this title shall apply with respect to—

(1) information furnished under this chapter,

(2) criminal history information collected, stored, or disseminated with the support of Federal law enforcement assistance provided under this chapter, and

(3) criminal intelligence systems operating with the support of Federal law enforcement assistance provided under this chapter,

except that the terms ''this chapter'' and ''this section'', as such terms appear in such section 3789g of this title, shall be deemed to be references to this chapter and this section, respectively, and a reference to the Office of Justice Programs in such section 3789g shall be deemed to be a reference to the Attorney General.

(Pub. L. 98–473, title II, § 609Q, Oct. 12, 1984, 98 Stat. 2105.)

§ 10506. Prohibition of land acquisition

No funds provided under this chapter shall be used for land acquisition.

(Pub. L. 98–473, title II, § 609R, Oct. 12, 1984, 98 Stat. 2106.)

§ 10507. Repayment

(a) Violation of conditions; amount

If Federal law enforcement assistance provided under this chapter is used by the recipient of such assistance in violation of section 10504[1] of this title or for any purpose other than the purpose for which it is provided, then such recipient shall promptly repay to the Attorney General an amount equal to the value of such assistance.

(b) Civil action

The Attorney General may bring a civil action in an appropriate United States district court to recover any amount required to be repaid under subsection (a) of this section.

(Pub. L. 98–473, title II, § 609S, Oct. 12, 1984, 98 Stat. 2106.)

REFERENCES IN TEXT

Section 10504 of this title, referred to in subsec. (a), was in the original a reference to ''section 554'', and was translated as if it had been a reference to section 609P of Pub. L. 98–473, which is classified to section 10504 of this title to reflect the probable intent of Congress as manifested in earlier versions of Emergency Federal Law Enforcement Assistance provisions introduced in the Congress. Pub. L. 98–473 does not contain a section 554.

§ 10508. Recordkeeping requirement

(a) Each recipient of Federal law enforcement assistance provided under this chapter shall keep such records as the Attorney General may prescribe to facilitate an effective audit.

(b) The Attorney General and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of recipients of Federal law enforcement assistance provided under this chapter which, in the opinion of the Attorney General or the Comptroller General, are related to the receipt or use of such assistance.

(Pub. L. 98–473, title II, § 609T, Oct. 12, 1984, 98 Stat. 2106.)

§ 10509. Repealed. Pub. L. 105–362, title X, § 1001(a), Nov. 10, 1998, 112 Stat. 3291

Section, Pub. L. 98–473, title II, § 609U, Oct. 12, 1984, 98 Stat. 2106, related to Attorney General's annual report to Congress and the President on emergency Federal law enforcement assistance.

§ 10510. Bureau of Justice Assistance

The Director of the Bureau of Justice Assistance may assist the Attorney General in providing Federal law enforcement assistance under this chapter and in coordinating the activities authorized under this chapter.

(Pub. L. 98–473, title II, § 609V, Oct. 12, 1984, 98 Stat. 2106.)

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumer-

[1] See References in Text note below.

ated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

§ 10511. Limitation on civil justice matters

Federal law enforcement assistance provided under this chapter may not be used with respect to civil justice matters except to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters.

(Pub. L. 98–473, title II, § 609W, Oct. 12, 1984, 98 Stat. 2106.)

§ 10512. Issuance of rules

The Attorney General, after consultation with appropriate members of the law enforcement community and with State and local officials, shall issue rules to carry out this chapter.

(Pub. L. 98–473, title II, § 609X, Oct. 12, 1984, 98 Stat. 2107.)

§ 10513. Authorization of appropriations

(a) Assistance in form of funds

There is authorized to be appropriated $20,000,000 for each fiscal year ending after September 30, 1984, to provide under this chapter Federal law enforcement assistance in the form of funds.

(b) Assistance other than funds

There are authorized to be appropriated for each fiscal year ending after September 30, 1984, such sums as may be necessary to provide under this chapter Federal law enforcement assistance other than funds.

(Pub. L. 98–473, title II, § 609Y, Oct. 12, 1984, 98 Stat. 2107.)

CHAPTER 112—VICTIM COMPENSATION AND ASSISTANCE

Sec.
10601. Crime Victims Fund.
10602. Crime victim compensation.
10603. Crime victim assistance.
10603a. Child abuse prevention and treatment grants.
10603b. Compensation and assistance to victims of terrorism or mass violence.
10603c. Compensation to victims of international terrorism.
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10605. Establishment of Office for Victims of Crime.
10606. Repealed.
10607. Services to victims.
10608. Closed circuit televised court proceedings for victims of crime.

§ 10601. Crime Victims Fund

(a) Establishment

There is created in the Treasury a separate account to be known as the Crime Victims Fund (hereinafter in this chapter referred to as the ''Fund'').

(b) Fines deposited in Fund; penalties; forfeited appearance bonds

Except as limited by subsection (c) of this section, there shall be deposited in the Fund—

(1) all fines that are collected from persons convicted of offenses against the United States except—

(A) fines available for use by the Secretary of the Treasury pursuant to—

(i) section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)); and

(ii) section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)); and

(B) fines to be paid into—

(i) the railroad unemployment insurance account pursuant to the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.);

(ii) the Postal Service Fund pursuant to sections 2601(a)(2) and 2003 of title 39 and for the purposes set forth in section 404(a)(7) of title 39;

(iii) the navigable waters revolving fund pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); and

(iv) county public school funds pursuant to section 3613 of title 18;

(2) penalty assessments collected under section 3013 of title 18; [1]

(3) the proceeds of forfeited appearance bonds, bail bonds, and collateral collected under section 3146 of title 18;

(4) any money ordered to be paid into the Fund under section 3671(c)(2) of title 18; and

(5) any gifts, bequests, or donations to the Fund from private entities or individuals, which the Director is hereby authorized to accept for deposit into the Fund, except that the Director is not hereby authorized to accept any such gift, bequest, or donation that—

(A) attaches conditions inconsistent with applicable laws or regulations; or

(B) is conditioned upon or would require the expenditure of appropriated funds that are not available to the Office for Victims of Crime.

(c) Retention of sums in Fund; availability for expenditure without fiscal year limitation

Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this chapter for grants under this chapter without fiscal year limitation. Notwithstanding subsection (d)(5) of this section, all sums deposited in the Fund in any fiscal year that are not made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation.

(d) Availability for judicial branch administrative costs; grant program percentages

The Fund shall be available as follows:

(1) Repealed. Pub. L. 105–119, title I, § 109(a)(1), Nov. 26, 1997, 111 Stat. 2457.

(2)(A) Except as provided in subparagraph (B), the first $10,000,000 deposited in the Fund shall be available for grants under section 10603a of this title.

(B)(i) For any fiscal year for which the amount deposited in the Fund is greater than the amount deposited in the Fund for fiscal

[1] See References in Text note below.

year 1998, the $10,000,000 referred to in subparagraph (A) plus an amount equal to 50 percent of the increase in the amount from fiscal year 1998 shall be available for grants under section 10603a of this title.

(ii) Amounts available under this subparagraph for any fiscal year shall not exceed $20,000,000.

(3) Of the sums remaining in the Fund in any particular fiscal year after compliance with paragraph (2), such sums as may be necessary shall be available for the United States Attorneys Offices and the Federal Bureau of Investigation to improve services for the benefit of crime victims in the Federal criminal justice system, and for a Victim Notification System.

(4) Of the remaining amount to be distributed from the Fund in a particular fiscal year—

(A) 47.5 percent shall be available for grants under section 10602 of this title;

(B) 47.5 percent shall be available for grants under section 10603(a) of this title; and

(C) 5 percent shall be available for grants under section 10603(c) of this title.

(5)(A) In addition to the amounts distributed under paragraphs (2), (3), and (4), the Director may set aside up to $50,000,000 from the amounts transferred to the Fund in response to the airplane hijackings and terrorist acts that occurred on September 11, 2001, as an antiterrorism emergency reserve. The Director may replenish any amounts obligated from such reserve in subsequent fiscal years by setting aside up to 5 percent of the amounts remaining in the Fund in any fiscal year after distributing amounts under paragraphs (2), (3) and (4). Such reserve shall not exceed $50,000,000.

(B) The antiterrorism emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 10603b of this title and to provide compensation to victims of international terrorism under section 10603c of this title.

(C) Amounts in the antiterrorism emergency reserve established pursuant to subparagraph (A) may be carried over from fiscal year to fiscal year. Notwithstanding subsection (c) of this section and section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (and any similar limitation on Fund obligations in any future Act, unless the same should expressly refer to this section), any such amounts carried over shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund.

(e) Amounts awarded and unspent

Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 3 succeeding fiscal years, at the end of which period, any remaining unobligated sums shall be available for deposit into the emergency reserve fund referred to in subsection (d)(5) of this section at the discretion of the Director. Any remaining unobligated sums shall be returned to the Fund.

(f) "Offenses against the United States" as excluding

As used in this section, the term ''offenses against the United States'' does not include—

(1) a criminal violation of the Uniform Code of Military Justice (10 U.S.C. 801 et seq.);

(2) an offense against the laws of the District of Columbia; and

(3) an offense triable by an Indian tribal court or Court of Indian Offenses.

(g) Grants for Indian tribes; child abuse cases

(1) The Attorney General shall use 15 percent of the funds available under subsection (d)(2) of this section to make grants for the purpose of assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve—

(A) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

(B) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

(2) The Attorney General may use 5 percent of the funds available under subsection (d)(2) of this section (prior to distribution) for grants to Indian tribes to establish child victim assistance programs, as appropriate.

(3) As used in this subsection, the term ''tribe''[2] has the meaning given that term in section 450b(b)[3] of title 25.

(Pub. L. 98–473, title II, § 1402, Oct. 12, 1984, 98 Stat. 2170; Pub. L. 99–401, title I, § 102(b)(1), (2), Aug. 27, 1986, 100 Stat. 904; Pub. L. 99–646, § 82, Nov. 10, 1986, 100 Stat. 3619; Pub. L. 100–690, title VII, §§ 7121, 7124, Nov. 18, 1988, 102 Stat. 4419, 4422; Pub. L. 101–647, title V, § 504, Nov. 29, 1990, 104 Stat. 4822; Pub. L. 102–572, title X, § 1001, Oct. 29, 1992, 106 Stat. 4520; Pub. L. 103–121, title I, § 110(a), Oct. 27, 1993, 107 Stat. 1164; Pub. L. 103–322, title XXIII, § 230201, title XXXIII, § 330025(a), Sept. 13, 1994, 108 Stat. 2079, 2151; Pub. L. 104–132, title II, §§ 232(b), (c)(1), 236, Apr. 24, 1996, 110 Stat. 1243, 1244, 1247; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 112], Sept. 30, 1996, 110 Stat. 3009, 3009–21; Pub. L. 105–119, title I, § 109(a), Nov. 26, 1997, 111 Stat. 2457; Pub. L. 106–113, div. B, § 1000(a)(1) [title I, § 119], Nov. 29, 1999, 113 Stat. 1535, 1501A–22; Pub. L. 106–177, title I, § 104(a), Mar. 10, 2000, 114 Stat. 36; Pub. L. 106–386, div. C, § 2003(b), (c)(2), (d), Oct. 28, 2000, 114 Stat. 1544, 1546; Pub. L. 106–553, § 1(a)(2) [title I, § 113, formerly § 114], Dec. 21, 2000, 114 Stat. 2762, 2762A–68, renumbered Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–179; Pub. L. 107–56, title VI, § 621(a)–(d), Oct. 26, 2001, 115 Stat. 370, 371; Pub. L. 107–77, title I, § 111, Nov. 28, 2001, 115 Stat. 765; Pub. L. 109–162, title XI, § 1132, Jan. 5, 2006, 119 Stat. 3107; Pub. L. 109–435, title I, § 102(b), Dec. 20, 2006, 120 Stat. 3200.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(1)(B)(i), is act June 25, 1938, ch. 680, 52

[2] So in original. Probably should be ''‘Indian tribe’''.

[3] See References in Text note below.

Stat. 1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

Section 3613 of title 18, referred to in subsec. (b)(1)(B)(iv), was repealed effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), by Pub. L. 98–473, title II, §§ 212(a)(2), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2031, as amended.

Section 3671(c)(2) of title 18, referred to in subsec. (b)(4), was renumbered section 3681(c)(2) by Pub. L. 99–646, § 41(a), Nov. 10, 1986, 100 Stat. 3600.

Section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001, referred to in subsec. (d)(5)(C), is section 1(a)(2) [title VI, § 619] of Pub. L. 106–553, which was formerly set out as a note below.

The Uniform Code of Military Justice, referred to in subsec. (f)(1), is classified generally to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

Section 450b of title 25, referred to in subsec. (g)(3), has been amended, and subsec. (b) of section 450b no longer defines the term ''Indian tribe''. However, such term is defined elsewhere in that section.

AMENDMENTS

2006—Subsec. (b)(1)(B)(ii). Pub. L. 109–435 substituted ''404(a)(7)'' for ''404(a)(8)''.

Subsec. (b)(5). Pub. L. 109–162, § 1132(1), struck out period at end and inserted '', which the Director is hereby authorized to accept for deposit into the Fund, except that the Director is not hereby authorized to accept any such gift, bequest, or donation that—'' and subpars. (A) and (B).

Subsec. (d)(5)(A). Pub. L. 109–162, § 1132(2), substituted ''obligated'' for ''expended''.

Subsec. (g)(1). Pub. L. 109–162, § 1132(3)(A), struck out '', acting through the Director,'' after ''Attorney General''.

Subsec. (g)(2), (3). Pub. L. 109–162, § 1132(3)(B), (C), added par. (2) and redesignated former par. (2) as (3).

2001—Subsec. (b)(5). Pub. L. 107–56, § 621(a), added par. (5).

Subsec. (c). Pub. L. 107–77, § 111(b), amended heading and text of subsec. (c) to read as it did the day before enactment of amendment by Pub. L. 107–56. Text, as amended generally by Pub. L. 107–56, read as follows:

''(1) Subject to the availability of money in the Fund, in each fiscal year, beginning with fiscal year 2003, the Director shall distribute not less than 90 percent nor more than 110 percent of the amount distributed from the Fund in the previous fiscal year, except the Director may distribute up to 120 percent of the amount distributed in the previous fiscal year in any fiscal year that the total amount available in the Fund is more than 2 times the amount distributed in the previous fiscal year.

''(2) In each fiscal year, the Director shall distribute amounts from the Fund in accordance with subsection (d) of this section. All sums not distributed during a fiscal year shall remain in reserve in the Fund to be distributed during a subsequent fiscal year. Notwithstanding any other provision of law, all sums deposited in the Fund that are not distributed shall remain in reserve in the Fund for obligation in future fiscal years, without fiscal year limitation.''

Pub. L. 107–56, § 621(b), amended heading and text of subsec. (c) generally.

Subsec. (d)(3). Pub. L. 107–77, § 111(a), inserted before period at end '', and for a Victim Notification System''.

Subsec. (d)(4). Pub. L. 107–56, § 621(c), substituted ''to be distributed from'' for ''deposited in'' in introductory provisions, ''47.5 percent'' for ''48.5 percent'' in subpars. (A) and (B), and ''5 percent'' for ''3 percent'' in subpar. (C).

Subsec. (d)(5). Pub. L. 107–56, § 621(d), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

''(5)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 10602(a)(1) of this title, the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed $100,000,000.

''(B) The emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 10603b of this title, to provide compensation to victims of international terrorism under the program under section 10603c of this title, and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 10602 and 10603 of this title in years in which supplemental grants are needed.''

2000—Subsec. (c). Pub. L. 106–386, § 2003(d), which directed insertion of ''Notwithstanding subsection (d)(5) of this section, all sums deposited in the Fund in any fiscal year that are not made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation.'' at the end of section 1402(c) of the Victims of Crime Act 1984, was executed by making the insertion at the end of subsec. (c) of this section, which is section 1402 of the Victims of Crime Act of 1984, to reflect the probable intent of Congress.

Subsec. (d)(2). Pub. L. 106–177 designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), the first $10,000,000'' for ''The first $10,000,000'', and added subpar. (B).

Subsec. (d)(3). Pub. L. 106–553, as renumbered by Pub. L. 106–554, inserted ''and the Federal Bureau of Investigation'' after ''United States Attorneys Offices''.

Subsec. (d)(5)(A). Pub. L. 106–386, § 2003(b)(1), substituted ''$100,000,000'' for ''$50,000,000''.

Subsec. (d)(5)(B). Pub. L. 106–386, § 2003(c)(2), inserted '', to provide compensation to victims of international terrorism under the program under section 10603c of this title,'' after ''section 10603b of this title''.

Subsec. (e). Pub. L. 106–386, § 2003(b)(2), substituted ''shall be available for deposit into the emergency reserve fund referred to in subsection (d)(5) of this section at the discretion of the Director. Any remaining unobligated sums'' for ''in excess of $500,000 shall be returned to the Treasury. Any remaining unobligated sums in an amount less than $500,000''.

1999—Subsec. (d)(3) to (5). Pub. L. 106–113 added par. (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and struck out former par. (5) which read as follows: ''The Director may set aside up to $500,000 of the reserve fund described in paragraph (4) to make supplemental grants to United States Attorneys Offices to provide necessary assistance to victims of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, to facilitate observation of and/or participation by such victims in trial proceedings arising therefrom, including, without limitation, provision of lodging and travel assistance, and to pay such other, related expenses determined to be necessary by the Director.''

1997—Subsec. (d)(1). Pub. L. 105–119, § 109(a)(1), struck out par. (1) which read as follows: ''The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18.''

Subsec. (d)(2). Pub. L. 105–119, § 109(a)(2), substituted ''The first'' for ''the next''.

1996—Subsec. (c). Pub. L. 104–132, § 232(c)(1)(A), substituted ''under this chapter'' for ''under this subsection''.

Subsec. (d)(3)(B). Pub. L. 104–132, § 236, substituted ''section 10603(a) of this title'' for ''section 10603a of this title''.

Subsec. (d)(4). Pub. L. 104–132, § 232(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Director may retain any portion of the Fund that was deposited during a fiscal year that is in excess of 110 percent of the total amount deposited in

the Fund during the preceding fiscal year as a reserve for use in a year in which the Fund falls below the amount available in the previous year. Such reserve may not exceed $20,000,000.''

Subsec. (d)(5). Pub. L. 104–208 added par. (5).

Subsec. (e). Pub. L. 104–208 substituted ''3 succeeding fiscal years'' for ''2 succeeding fiscal years''.

Pub. L. 104–132, § 232(c)(1)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) Except as provided in paragraph (2), any sums awarded as part of a grant under this chapter that remain unspent at the end of a fiscal year in which such grant is made may be expended for the purpose for which such grant is made at any time during the next succeeding fiscal year, at the end of which year any remaining unobligated sums shall be returned to the general fund of the Treasury.

''(2) For the purposes of the application of paragraph (1) to any grant under this chapter with respect to fiscal year 1985, there shall be substituted in such paragraph 'two succeeding fiscal years' for 'succeeding fiscal year' and 'which period' for 'which year'.''

1994—Subsec. (d)(2). Pub. L. 103–322, § 230201(a)(1), added par. (2) and struck out former par. (2) which read as follows: ''Of the next $100,000,000 deposited in the Fund in a particular fiscal year—

''(A) 49.5 percent shall be available for grants under section 10602 of this title;

''(B) 45 percent shall be available for grants under section 10603(a) of this title;

''(C) 1 percent shall be available for grants under section 10603(c) of this title; and

''(D) 4.5 percent shall be available for grants as provided in section 10603a of this title.''

Subsec. (d)(3). Pub. L. 103–322, § 330025(a), which directed amendment of par. (3) by substituting ''section 10603a'' for ''section 10603(a)'' was executed to subpar. (B).

Pub. L. 103–322, § 230201(a)(2), added par. (3) and struck out former par. (3) which read as follows: ''The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 10603a of this title.''

Subsec. (d)(4). Pub. L. 103–322, § 230201(a)(3), added par. (4) and struck out former par. (4) which read as follows: ''The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 10603(a) of this title.''

Subsec. (d)(5). Pub. L. 103–322, § 230201(a)(4), struck out par. (5) which read as follows: ''Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under paragraphs (1) through (4) shall be available as follows:

''(A) 47.5 percent shall be available for grants under section 10602 of this title.

''(B) 47.5 percent shall be available for grants under section 10603(a) of this title.

''(C) 5 percent shall be available for grants under section 10603(c) of this title.''

Subsec. (g)(1). Pub. L. 103–322, § 230201(b), substituted ''subsection (d)(2)'' for ''subsection (d)(2)(D)''.

1993—Subsec. (d)(2)(C), (D). Pub. L. 103–121, § 110(a)(1), added subpars. (C) and (D).

Subsec. (d)(3). Pub. L. 103–121, § 110(a)(2), substituted ''section 10603a of this title'' for ''section 10603(a) of this title''.

Subsec. (g)(1). Pub. L. 103–121, § 110(a)(3), substituted ''subsection (d)(2)(D)'' for ''subsection (d)(2)(A)(iv)''.

1992—Subsec. (c). Pub. L. 102–572, § 1001(1), added subsec. (c) and struck out former subsec. (c) which read as follows:

''(1)(A) If the total deposited in the Fund during a particular fiscal year reaches the ceiling sum described in subparagraph (B), the excess over the ceiling sum shall not be part of the Fund. The first $2,200,000 of such excess shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18 and the remaining excess shall be deposited in the general fund of the Treasury.

''(B) The ceiling sum referred to in subparagraph (A) is—

''(i) $125,000,000 through fiscal year 1990; and

''(ii) $150,000,000 thereafter through fiscal year 1994.

''(2) No deposits shall be made in the Fund after September 30, 1994.''

Subsec. (d). Pub. L. 102–572, § 1001(2), added subsec. (d) and struck out former subsec. (d) which read as follows:

''(1) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.

''(2) The Fund shall be available as follows:

''(A) Of the first $100,000,000 deposited in the Fund in a particular fiscal year—

''(i) 49.5 percent shall be available for grants under section 10602 of this title;

''(ii) 45 percent shall be available for grants under section 10603(a) of this title;

''(iii) 1 percent shall be available for grants under section 10603(c) of this title; and

''(iv) 4.5 percent shall be available for grants as provided in section 10603a of this title.

''(B) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants as provided in section 10603a of this title.

''(C) Any deposits in the Fund in a particular fiscal year in excess of $105,500,000, but not in excess of $110,000,000, shall be available for grants under section 10603(a) of this title.

''(D) Any deposits in the Fund in a particular fiscal year in excess of $110,000,000 shall be available as follows:

''(i) 47.5 percent shall be available for grants under section 10602 of this title;

''(ii) 47.5 percent shall be available for grants under section 10603(a) of this title; and

''(iii) 5 percent shall be available for grants under section 10603(c)(1)(B) of this title.''

1990—Subsec. (c)(1)(B)(i). Pub. L. 101–647 substituted ''1990'' for ''1991''.

1988—Subsec. (c). Pub. L. 100–690, § 7121(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) If the total deposited in the Fund during a particular fiscal year reaches the sum of $110 million, the excess over that sum shall be deposited in the general fund of the Treasury and shall not be a part of the Fund.

''(2) No deposits shall be made in the Fund after September 30, 1988.''

Subsec. (d)(2)(C). Pub. L. 100–690, § 7121(b)(2), inserted '', but not in excess of $110,000,000,'' after ''$105,500,000''.

Subsec. (d)(2)(D). Pub. L. 100–690, § 7121(b)(1), added subpar. (D).

Subsec. (g). Pub. L. 100–690, § 7124, added subsec. (g).

1986—Subsec. (c)(1). Pub. L. 99–401, § 102(b)(1), substituted ''$110 million'' for ''$100 million''.

Subsec. (d)(2). Pub. L. 99–401, § 102(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Fifty percent of the total deposited in the Fund during a particular fiscal year shall be available for grants under section 10602 of this title and fifty percent shall be available for grants under section 10603 of this title.''

Subsec. (e). Pub. L. 99–646 designated existing provision as par. (1), substituted ''Except as provided in paragraph (2), any'' for ''Any'', and added par. (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7129 of Pub. L. 100–690, as amended by Pub. L. 101–647, title V, § 505, Nov. 29, 1990, 104 Stat. 4822, provided that: ''The amendments made by this chapter [probably means this subtitle, subtitle D (§§ 7121–7130) of

title VII of Pub. L. 100–690, enacting section 10605 of this title, amending this section and sections 10602 to 10604 of this title, and enacting provisions set out as a note under this section] shall not apply with respect to a State compensation program that was an eligible State crime victim compensation program on the date of the enactment of this Act [Nov. 18, 1988] until October 1, 1991.''

EFFECTIVE DATE

Section 1409 of chapter XIV of title II of Pub. L. 98–473 provided that:

''(a) Except as provided in subsection (b), this chapter [see Short Title note below] and the amendments made by this chapter shall take effect thirty days after the date of enactment of this joint resolution [Oct. 12, 1984].

''(b) Sections 1402, 1403, 1404, and 1407 of this chapter [enacting this chapter] shall take effect on October 1, 1984.''

SHORT TITLE OF 1996 AMENDMENT

Section 231 of title II of Pub. L. 104–132 provided that: ''This subtitle [subtitle C (§§ 231–236) of title II of Pub. L. 104–132, enacting sections 10603b and 10608 of this title, amending this section and sections 10602 and 10603 of this title, and enacting provisions set out as notes under section 10602 of this title] may be cited as the 'Justice for Victims of Terrorism Act of 1996'.''

SHORT TITLE OF 1990 AMENDMENT

Section 501 of title V of Pub. L. 101–647 provided that: ''This title [enacting sections 10606 and 10607 of this title, amending this section, enacting provisions set out as a note under section 10606 of this title, and amending provisions set out as a note under this section] may be cited as the 'Victims' Rights and Restitution Act of 1990'.''

SHORT TITLE

Section 1401 of chapter XIV (§§ 1401–1411) of title II of Pub. L. 98–473 provided that: ''This chapter [enacting this chapter and sections 3013, 3671 and 3672 of Title 18, Crimes and Criminal Procedure, and amending sections 3150a, 4207, and 4215 of Title 18 and provisions set out as a note under section 1512 of Title 18] may be cited as the 'Victims of Crime Act of 1984'.''

VICTIMS OF SEPTEMBER 11, 2001

Pub. L. 107–56, title VI, § 621(e), Oct. 26, 2001, 115 Stat. 371, provided that: ''Amounts transferred to the Crime Victims Fund for use in responding to the airplane hijackings and terrorist acts (including any related search, rescue, relief, assistance, or other similar activities) that occurred on September 11, 2001, shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund, notwithstanding—

''(1) section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 [section 1(a)(2) [title VI, § 619] of Pub. L. 106–553, formerly set out as a note below], and any similar limitation on Fund obligations in such Act for Fiscal Year 2002 [see Pub. L. 107–77, title VI, § 619, Nov. 28, 2001, 115 Stat. 802, set out as a note below]; and

''(2) subsections (c) and (d) of section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601).''

LIMITATION ON AMOUNTS AVAILABLE FOR OBLIGATION

Pub. L. 109–108, title VI, § 612, Nov. 22, 2005, 119 Stat. 2336, provided that: ''Notwithstanding any other provision of law, amounts deposited or available in the Fund established under 42 U.S.C. 10601 in any fiscal year in excess of $625,000,000 shall not be available for obligation until the following fiscal year.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. B, title VI, § 616, Dec. 8, 2004, 118 Stat. 2915.

Pub. L. 108–199, div. B, title VI, § 618, Jan. 23, 2004, 118 Stat. 95.

Pub. L. 108–7, div. B, title VI, § 617, Feb. 20, 2003, 117 Stat. 102.

Pub. L. 107–77, title VI, § 619, Nov. 28, 2001, 115 Stat. 802.

Pub. L. 106–553, § 1(a)(2) [title VI, § 619], Dec. 21, 2000, 114 Stat. 2762, 2762A–107.

Pub. L. 106–113, div. B, § 1000(a)(1) [title VI, § 620], Nov. 29, 1999, 113 Stat. 1535, 1501A–55.

INTERACTION WITH ANY CAP

Pub. L. 106–177, title I, § 104(b), Mar. 10, 2000, 114 Stat. 36, provided that: ''Subsection (a) [amending this section] shall be implemented so that any increase in funding provided thereby shall operate notwithstanding any dollar limitation on the availability of the Crime Victims Fund established under the Victims of Crime Act of 1984 [42 U.S.C. 10601 et seq.].''

TRANSFER OF CERTAIN UNOBLIGATED FUNDS

Section 109(b) of Pub. L. 105–119 provided that: ''Any unobligated sums hitherto available to the judicial branch pursuant to the paragraph repealed by subsection (a) [former 42 U.S.C. 10601(d)(1)] shall be deemed to be deposits into the Crime Victims Fund as of the effective date hereof [Nov. 26, 1997] and may be used by the Director of the Office for Victims of Crime to improve services for the benefit of crime victims, including the processing and tracking of criminal monetary penalties and related litigation activities, in the Federal criminal justice system.''

RETROACTIVE TRANSFER TO FUND

Section 7130 of Pub. L. 100–690 provided that: ''An amount equivalent to those sums which would have been placed in the Fund under section 1402(b) of the Victims of Crime Act [subsec. (b) of this section], but for the effect of section 1402(c)(2) of such Act, is hereby transferred to the Fund from any sums not appropriated from the general treasury.''

§ 10602. Crime victim compensation

(a) Authority of Director; grants

(1) Except as provided in paragraph (2), the Director shall make an annual grant from the Fund to an eligible crime victim compensation program of 40 percent in fiscal year 2002 and of 60 percent in subsequent fiscal years of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. Except as provided in paragraph (3), a grant under this section shall be used by such program only for awards of compensation.

(2) If the sums available in the Fund for grants under this section are insufficient to provide grants of 40 percent in fiscal year 2002 and of 60 percent in subsequent fiscal years as provided in paragraph (1), the Director shall make, from the sums available, a grant to each eligible crime victim compensation program so that all such programs receive the same percentage of the amounts awarded by such program during the preceding fiscal year, other than amounts awarded for property damage.

(3) Not more than 5 percent of a grant made under this section may be used for training purposes and the administration of the State crime victim compensation program receiving the grant.

(b) Eligible crime victim compensation programs

A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if—

(1) such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for—

(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) funeral expenses attributable to a death resulting from a compensable crime;

(2) such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

(3) such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

(4) such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

(5) such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

(6) such program provides compensation to residents of the State who are victims of crimes occurring outside the State if—

(A) the crimes would be compensable crimes had they occurred inside that State; and

(B) the places the crimes occurred in are States not having eligible crime victim compensation programs;

(7) such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender;

(8) such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense; and

(9) such program provides such other information and assurances related to the purposes of this section as the Director may reasonably require.

(c) Exclusion from income, resources, and assets for purposes of means tests

Notwithstanding any other law (other than title IV of Public Law 107–42), for the purpose of any maximum allowed income, resource, or asset eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance), any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income, resources, or assets of the applicant, nor shall that amount reduce the amount of the assistance available to the applicant from Federal, State, or local government programs using Federal funds, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.

(d) Definitions

As used in this section—

(1) the term ''property damage'' does not include damage to prosthetic devices, eyeglasses or other corrective lenses, or dental devices;

(2) the term ''medical expenses'' includes, to the extent provided under the eligible crime victim compensation program, expenses for eyeglasses or other corrective lenses, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term ''compensable crime'' means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, and includes crimes, whose victims suffer death or personal injury, that are described in section 247 of title 18, driving while intoxicated, and domestic violence; and

(4) the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other possession or territory of the United States.

(e) Relationship to certain Federal programs

Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, including the program established under title IV of Public Law 107–42, or a federally financed State or local program, would otherwise pay,—[1]

(1) such crime victim compensation program shall not pay that compensation; and

(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.

(Pub. L. 98–473, title II, § 1403, Oct. 12, 1984, 98 Stat. 2171; Pub. L. 100–690, title VII, §§ 7123(b)(1)–(3), 7125, 7126, Nov. 18, 1988, 102 Stat. 4421–4423; Pub. L. 103–322, title XXIII, §§ 230202, 230203, title XXXIII, § 330025(b), Sept. 13, 1994, 108 Stat. 2079, 2151; Pub. L. 104–132, title II, §§ 233(a), (b), 234(a)(1), (b), Apr. 24, 1996, 110 Stat. 1244, 1245; Pub. L. 104–155, § 5, July 3, 1996, 110 Stat. 1394; Pub. L. 107–56, title VI, § 622(a)–(e)(1), Oct. 26, 2001, 115 Stat. 371, 372; Pub. L. 109–162, title XI, § 1133(a), Jan. 5, 2006, 119 Stat. 3108.)

REFERENCES IN TEXT

Title IV of Public Law 107–42, referred to in subsecs. (c) and (e), is set out as a note under section 40101 of Title 49, Transportation.

AMENDMENTS

2006—Subsec. (a)(3). Pub. L. 109–162 inserted ''training purposes and'' after ''may be used for''.

[1] So in original. The comma probably should not appear.

2001—Subsec. (a)(1), (2). Pub. L. 107–56, § 622(a), inserted ''in fiscal year 2002 and of 60 percent in subsequent fiscal years'' after ''40 percent''.

Subsec. (b)(6)(B). Pub. L. 107–56, § 622(b), which directed striking out ''are outside the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or'', was executed by striking out ''are outside of the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or'' after ''the places the crimes occurred in'' to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 107–56, § 622(c), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ''Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.''

Subsec. (d)(3). Pub. L. 107–56, § 622(d)(1), struck out ''crimes involving terrorism,'' after ''section 247 of title 18,''.

Subsec. (d)(4). Pub. L. 107–56, § 622(d)(2), inserted ''the United States Virgin Islands,'' after ''the Commonwealth of Puerto Rico,''.

Subsec. (e). Pub. L. 107–56, § 622(e)(1), inserted ''including the program established under title IV of Public Law 107–42,'' after ''Federal program,'' in introductory provisions.

1996—Subsec. (b)(6)(B). Pub. L. 104–132, § 233(b), inserted ''are outside of the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or'' before ''are States not having''.

Subsec. (b)(8), (9). Pub. L. 104–132, § 234(a)(1), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c). Pub. L. 104–132, § 234(b), added subsec. (c).

Subsec. (d)(3). Pub. L. 104–155 inserted ''crimes, whose victims suffer death or personal injury, that are described in section 247 of title 18,'' after ''includes''.

Pub. L. 104–132, § 233(a), substituted ''crimes involving terrorism, driving while intoxicated,'' for ''driving while intoxicated''.

1994—Subsec. (a)(1). Pub. L. 103–322, § 230203(a), substituted ''Except as provided in paragraph (3), a grant'' for ''A grant'' in last sentence.

Subsec. (a)(3). Pub. L. 103–322, § 230203(b), added par. (3).

Subsec. (b)(1). Pub. L. 103–322, § 330025(b), inserted before semicolon at end ''for—'' and subpars. (A) to (C).

Subsec. (e). Pub. L. 103–322, § 230202, added subsec. (e).

1988—Subsec. (a). Pub. L. 100–690, §§ 7123(b)(1), (2), 7125(b), substituted ''Director'' for ''Attorney General'' and ''40 percent'' for ''35 percent'' in pars. (1) and (2).

Subsec. (b)(1). Pub. L. 100–690, § 7125(c)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''such program is operated by a State and offers compensation to victims of crime and survivors of victims of crime for—

''(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

''(B) loss of wages attributable to a physical injury resulting from a compensable crime; and

''(C) funeral expenses attributable to a death resulting from a compensable crime;''.

Subsec. (b)(5). Pub. L. 100–690, § 7125(d), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''such program provides compensation to victims of crimes occurring within such State that would be compensable crimes, but for the fact that such crimes are subject to Federal jurisdiction, on the same basis that such program provides compensation to victims of compensable crimes; and''.

Subsec. (b)(6), (7). Pub. L. 100–690, § 7125(a)(1), added pars. (6) and (7). Former par. (6) redesignated (8).

Subsec. (b)(8). Pub. L. 100–690, §§ 7123(b)(3), 7125(a)(2), redesignated par. (6) as (8) and substituted ''Director'' for ''Attorney General''.

Subsec. (c). Pub. L. 100–690, § 7125(e), struck out subsec. (c) which read as follows: ''A State crime victim compensation program in effect on the date grants may first be made under this section shall be deemed an eligible crime victim compensation program for the purposes of this section until the day after the close of the first regular session of the legislature of that State that begins after such date.''

Subsec. (d)(1). Pub. L. 100–690, § 7126(a), inserted reference to eyeglasses or other corrective lenses.

Subsec. (d)(2). Pub. L. 100–690, § 7126(b), inserted reference to eyeglasses or other corrective lenses and inserted comma after ''prosthetic devices''.

Subsec. (d)(3). Pub. L. 100–690, § 7125(c)(2), inserted reference to driving while intoxicated and domestic violence.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 233(d) of Pub. L. 104–132, as amended by Pub. L. 105–119, title I, § 120, Nov. 26, 1997, 111 Stat. 2468, provided that: ''This section [amending this section] and the amendments made by this section shall take effect October 1, 1999.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100–690, as amended, set out as a note under section 10601 of this title.

APPLICATION OF AMENDMENT BY SECTION 234(a)(1) OF PUB. L. 104–132

Section 234(a)(2) of Pub. L. 104–132 provided that: ''Section 1403(b)(8) of the Victims of Crime Act of 1984 [42 U.S.C. 10602(b)(8)], as added by paragraph (1) of this section, shall not be applied to deny victims compensation to any person until the date on which the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, issues a written determination that a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer Federal victim compensation programs that are sufficient to ensure that victim compensation is not denied to any person except as authorized by law.''

§ 10603. Crime victim assistance

(a) Grant authority of Director; chief executive of States; amount; insufficient funds

(1) Subject to the availability of money in the Fund, the Director shall make an annual grant from any portion of the Fund made available by section 10601(d)(2)[1] of this title for the purpose of grants under this subsection, or for the purpose of grants under section 10602 of this title but not used for that purpose, to the chief executive of each State for the financial support of eligible crime victim assistance programs.

(2) Such chief executive shall—

(A) certify that priority shall be given to eligible crime victim assistance programs pro-

[1] See References in Text note below.

viding assistance to victims of sexual assault, spousal abuse, or child abuse;

(B) certify that funds shall be made available for grants to programs which serve previously underserved populations of victims of violent crime. The Director, after consultation with State and local officials and representatives from private organizations, shall issue guidelines to implement this section that provide flexibility to the States in determining the populations of victims of violent crimes that may be underserved in their respective States;

(C) certify that funds awarded to eligible crime victim assistance programs will not be used to supplant State and local funds otherwise available for crime victim assistance; and

(D) provide such other information and assurances related to the purposes of this section as the Director may reasonably require.

(3) The amounts of grants under paragraph (1) shall be—

(A) the base amount to each State; and

(B) that portion of the then remaining available money to each State that results from a distribution among the States on the basis of each State's population in relation to the population of all States.

(4) If the amount available for grants under paragraph (1) is insufficient to provide the base amount to each State, the funds available shall be distributed equally among the States.

(5) As used in this subsection, the term ''base amount'' means—

(A) except as provided in subparagraph (B), $500,000; and

(B) for the territories of the Northern Mariana Islands, Guam, American Samoa, and the Republic of Palau, $200,000, with the Republic of Palau's share governed by the Compact of Free Association between the United States and the Republic of Palau.

(6) An agency of the Federal Government performing local law enforcement functions in and on behalf of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any other territory or possession of the United States may qualify as an eligible crime victim assistance program for the purpose of grants under this subsection, or for the purpose of grants under subsection (c)(1) of this section.

(b) Eligibility of program; factors; limitation on expending of sums

(1) A victim assistance program is an eligible crime victim assistance program for the purposes of this section if such program—

(A) is operated by a public agency or a nonprofit organization, or a combination of such agencies or organizations or of both such agencies and organizations, and provides services to victims of crime;

(B) demonstrates—

(i) a record of providing effective services to victims of crime and financial support from sources other than the Fund; or

(ii) substantial financial support from sources other than the Fund;

(C) utilizes volunteers in providing such services, unless and to the extent the chief executive determines that compelling reasons exist to waive this requirement;

(D) promotes within the community served coordinated public and private efforts to aid crime victims;

(E) assists potential recipients in seeking crime victim compensation benefits; and

(F) does not discriminate against victims because they disagree with the way the State is prosecuting the criminal case.

(2) Except as provided in paragraph (3), an eligible crime victim assistance program shall expend sums received under subsection (a) of this section only for providing services to victims of crime.

(3) Not more than 5 percent of sums received under subsection (a) of this section may be used for training purposes and the administration of the State crime victim assistance program receiving such sums.

(c) Grants: purposes; distribution; duties of Director; reimbursement by Director

(1) The Director shall make grants—

(A) for demonstration projects, program evaluation, compliance efforts, and training and technical assistance services to eligible crime victim assistance programs;

(B) for the financial support of services to victims of Federal crime by eligible crime victim assistance programs; and

(C) for nonprofit neighborhood and community-based victim service organizations and coalitions to improve outreach and services to victims of crime.

(2) Of the amount available for grants under this subsection—

(A) not less than 50 percent shall be used for grants under paragraphs (1)(A) and (1)(C);

(B) not more than 50 percent shall be used for grants under paragraph (1)(B); and

(C) not more than $10,000 shall be used for any single grant under paragraph (1)(C).

(3) The Director shall—

(A) be responsible for monitoring compliance with guidelines for fair treatment of crime victims and witnesses issued under section 6 of the Victim and Witness Protection Act of 1982 (Public Law 97–291) [18 U.S.C. 1512 note];

(B) consult with the heads of Federal law enforcement agencies that have responsibilities affecting victims of Federal crimes;

(C) coordinate victim services provided by the Federal Government with victim services offered by other public agencies and nonprofit organizations;

(D) perform such other functions related to the purposes of this title[2] as the Director deems appropriate; and

(E) use funds made available to the Director under this subsection—

(i) for fellowships and clinical internships; and

(ii) to carry out programs of training and special workshops for the presentation and dissemination of information resulting from demonstrations, surveys, and special projects.

[2] See References in Text note below.

(4) The Director may reimburse other instrumentalities of the Federal Government and contract for the performance of functions authorized under this subsection.

(d) Definitions

As used in this section—

(1) the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other territory or possession of the United States; and

(2) the term ''services to victims of crime'' includes—

(A) crises intervention services;

(B) providing, in an emergency, transportation to court, short-term child care services, and temporary housing and security measures;

(C) assistance in participating in criminal justice proceedings; and

(D) payment of all reasonable costs for a forensic medical examination of a crime victim, to the extent that such costs are otherwise not reimbursed or paid;

(3) the term ''services to victims of Federal crime'' means services to victims of crime with respect to Federal crime, and includes—

(A) training of law enforcement personnel in the delivery of services to victims of Federal crime;

(B) preparation, publication, and distribution of informational materials—

(i) setting forth services offered to victims of crime; and

(ii) concerning services to victims of Federal crime for use by Federal law enforcement personnel; and

(C) salaries of personnel who provide services to victims of crime, to the extent that such personnel provide such services;

(4) the term ''crises intervention services'' means counseling to provide emotional support in crises arising from the occurrence of crime; and

(5) the term ''chief executive'' includes a person designated by a chief executive to perform the functions of the chief executive under this section.

(Pub. L. 98–473, title II, § 1404, Oct. 12, 1984, 98 Stat. 2172; Pub. L. 99–401, title I, § 102(b)(4), (5), Aug. 27, 1986, 100 Stat. 905; Pub. L. 99–646, § 71, Nov. 10, 1986, 100 Stat. 3617; Pub. L. 100–690, title VII, §§ 7122, 7123(b)(4)–(9), 7127, 7128, title IX, § 9306(a), Nov. 18, 1988, 102 Stat. 4420, 4421, 4423, 4537; Pub. L. 103–317, title I, § 112, Aug. 26, 1994, 108 Stat. 1736; Pub. L. 103–322, title XXIII, §§ 230204, 230205, 230208, Sept. 13, 1994, 108 Stat. 2080; Pub. L. 104–132, title II, § 232(c)(2), Apr. 24, 1996, 110 Stat. 1244; Pub. L. 107–56, title VI, § 623, Oct. 26, 2001, 115 Stat. 372; Pub. L. 109–162, title XI, §§ 1131, 1133(b), Jan. 5, 2006, 119 Stat. 3107, 3108.)

REFERENCES IN TEXT

Section 10601(d)(2) of this title, referred to in subsec. (a)(1), was repealed and a new section 10601(d)(2) was added by Pub. L. 103–322, title XXIII, § 230201(a)(1), Sept. 13, 1994, 108 Stat. 2079. The new section 10601(d)(2) does not contain provisions relating to availability of Fund money for grants under this section or section 10602 of this title. See section 10601(d)(4) of this title.

This title, referred to in subsec. (c)(3)(D), means title II of Pub. L. 98–473, Oct. 12, 1984, 98 Stat. 1976, known as the Comprehensive Crime Control Act of 1984. For complete classification of title II to the Code, see Short Title of 1984 Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–162, § 1133(b), inserted ''training purposes and'' after ''may be used for''.

Subsec. (c)(1). Pub. L. 109–162, § 1131(1)(A), struck out comma after ''Director'' in introductory provisions.

Subsec. (c)(1)(C). Pub. L. 109–162, § 1131(1)(B)–(D), added subpar. (C).

Subsec. (c)(2)(A). Pub. L. 109–162, § 1131(2)(A)(i), substituted ''paragraphs (1)(A) and (1)(C)'' for ''paragraph (1)(A)''.

Subsec. (c)(2)(C). Pub. L. 109–162, § 1131(2)(A)(ii)–(2)(C), added subpar. (C).

2001—Subsec. (a)(6). Pub. L. 107–56, § 623(a), added par. (6).

Subsec. (b)(1)(F). Pub. L. 107–56, § 623(b), added subpar. (F).

Subsec. (c)(1)(A). Pub. L. 107–56, § 623(c), inserted '', program evaluation, compliance efforts,'' after ''demonstration projects''.

Subsec. (c)(2)(A). Pub. L. 107–56, § 623(d)(1), substituted ''not less than 50 percent'' for ''not more than 50 percent''.

Subsec. (c)(2)(B). Pub. L. 107–56, § 623(d)(2), substituted ''not more than 50 percent'' for ''not less than 50 percent''.

Subsec. (c)(3)(E). Pub. L. 107–56, § 623(e), added subpar. (E).

1996—Subsec. (a)(5). Pub. L. 104–132 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''As used in this subsection, the term 'base amount' means—

''(A) $150,000 for fiscal years 1989 through 1991; and

''(B) $200,000 thereafter.''

1994—Subsec. (a)(5)(B). Pub. L. 103–322, § 230208, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''$200,000 thereafter through fiscal year 1995.''

Pub. L. 103–317 substituted ''1995'' for ''1994''.

Subsec. (b)(2). Pub. L. 103–322, § 230205(a), substituted ''Except as provided in paragraph (3), an eligible'' for ''An eligible''.

Subsec. (b)(3). Pub. L. 103–322, § 230205(b), added par. (3).

Subsec. (c)(1)(A). Pub. L. 103–322, § 230204, inserted ''demonstration projects and'' before ''training''.

1988—Subsec. (a)(1). Pub. L. 100–690, § 7123(b)(4), substituted ''Director'' for ''Attorney General''.

Subsec. (a)(2)(B). Pub. L. 100–690, § 7122(1), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (a)(2)(C). Pub. L. 100–690, § 7122(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (a)(2)(D). Pub. L. 100–690, § 7123(b)(5), which directed substitution of ''Director'' for ''Attorney General'' in subpar. (C), was executed by making substitution in subpar. (D) to reflect the probable intent of Congress and the intervening redesignation of subpar. (C) as (D), see below.

Pub. L. 100–690, § 7122(2), redesignated subpar. (C) as (D).

Subsec. (a)(3) to (5). Pub. L. 100–690, § 7128, substituted ''the base amount'' for ''$100,000'' in pars. (3)(A) and (4) and added par. (5).

Subsec. (c)(1). Pub. L. 100–690, § 7123(b)(6), substituted ''Director'' for ''Attorney General, acting through the Assistant Attorney General for the Office of Justice Programs''.

Subsec. (c)(3). Pub. L. 100–690, § 7123(b)(7), (8), substituted ''Director'' for ''Assistant Attorney General for the Office of Justice Programs'' in introductory provisions and ''Director deems appropriate'' for ''Attorney General may assign'' in subpar. (D).

Subsec. (c)(4). Pub. L. 100–690, § 7123(b)(9), substituted ''Director'' for ''Attorney General''.

Subsec. (d)(1). Pub. L. 100–690, § 9306(a), struck out '', except for the purposes of paragraphs (3)(A) and (4) of subsection (a) of this section,'' before ''any other territory''.

Pub. L. 100–690, § 7127, inserted reference to the United States Virgin Islands.

1986—Subsec. (a)(1). Pub. L. 99–401, § 102(b)(5), substituted ''made available by section 10601(d)(2) of this title for the purpose of grants under this subsection, or for the purpose of grants under section 10602 of this title but not used for that purpose'' for ''not used for grants under section 10602 of this title with respect to a particular fiscal year, and after any deduction under subsection (c) of this section''.

Subsec. (c)(1), (2). Pub. L. 99–401, § 102(b)(4), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) The Attorney General may in any fiscal year deduct from amounts available under this section an amount not to exceed 5 percent of the amount in the Fund, and may expend the amount so deducted to provide services to victims of Federal crimes by the Department of Justice, or reimburse other instrumentalities of the Federal Government otherwise authorized to provide such services.

''(2) The Attorney General shall appoint or designate an official of the Department of Justice to be the Federal Crime Victim Assistance Administrator (hereinafter in this chapter referred to as the 'Federal Administrator') to exercise the responsibilities of the Attorney General under this subsection.''

Subsec. (c)(2)(A). Pub. L. 99–646, § 71(1), substituted ''not more than'' for ''not less than''.

Subsec. (c)(2)(B). Pub. L. 99–646, § 71(2), substituted ''not less than'' for ''not more than''.

Subsec. (c)(3). Pub. L. 99–401, § 102(b)(4), substituted ''The Assistant Attorney General for the Office of Justice Programs shall'' for ''The Federal Administrator shall''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 7122, 7123(b)(4)–(9), 7127, and 7128 of Pub. L. 100–690 not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100–690, as amended, set out as a note under section 10601 of this title.

§ 10603a. Child abuse prevention and treatment grants

Amounts made available by section 10601(d)(2) of this title for the purposes of this section shall be obligated and expended by the Secretary of Health and Human Services for grants under section 5106c[1] of this title. Any portion of an amount which is not obligated by the Secretary by the end of the fiscal year in which funds are made available for allocation, shall be reallocated for award under section 10603(a) of this title, except that with respect to funds deposited during fiscal year 1986 and made available for obligation during fiscal year 1987, any unobligated portion of such amount shall remain available for obligation until September 30, 1988.

(Pub. L. 98–473, title II, § 1404A, as added Pub. L. 99–401, title I, § 102(b)(3), Aug. 27, 1986, 100 Stat. 905; amended Pub. L. 103–121, title I, § 110(b), Oct. 27, 1993, 107 Stat. 1164; Pub. L. 104–235, title I, § 113(b), Oct. 3, 1996, 110 Stat. 3079.)

REFERENCES IN TEXT

Section 5106c of this title, referred to in text, was in the original ''section 109 of the Child Abuse Prevention and Treatment Act'', meaning section 109 of Pub. L. 93–247, and was translated as reading section 107 of that act to reflect the probable intent of Congress and the renumbering of section 109 as section 107 by section 113(a)(1)(B) of Pub. L. 104–235, title I, Oct. 3, 1996, 110 Stat. 3079.

AMENDMENTS

1996—Pub. L. 104–235 substituted ''section 10601(d)(2) of this title'' for ''section 10601(d)(2)(D) and (d)(3) of this title.'' and ''section 5106c'' for ''section 5103(d)''.

1993—Pub. L. 103–121 substituted ''section 10601(d)(2)(D) and (d)(3) of this title.'' for ''section 10601(d)(2) of this title''.

§ 10603b. Compensation and assistance to victims of terrorism or mass violence

(a) Victims of acts of terrorism outside the United States

(1) In general

The Director may make supplemental grants as provided in 10601(d)(5)[1] of this title to States, victim service organizations, and public agencies (including Federal, State, or local governments) and nongovernmental organizations that provide assistance to victims of crime, which shall be used to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, and ongoing assistance, including during any investigation or prosecution, to victims of terrorist acts or mass violence occurring outside the United States.

(2) Victim defined

In this subsection, the term ''victim''—

(A) means a person who is a national of the United States or an officer or employee of the United States Government who is injured or killed as a result of a terrorist act or mass violence occurring outside the United States; and

(B) in the case of a person described in subparagraph (A) who is less than 18 years of age, incompetent, incapacitated, or deceased, includes a family member or legal guardian of that person.

(3) Rule of construction

Nothing in this subsection shall be construed to allow the Director to make grants to any foreign power (as defined by section 1801(a) of title 50) or to any domestic or foreign organization operated for the purpose of engaging in any significant political or lobbying activities.

(b) Victims of terrorism within the United States

The Director may make supplemental grants as provided in section 10601(d)(5) of this title to States for eligible crime victim compensation and assistance programs, and to victim service organizations, public agencies (including Federal, State, or local governments) and nongovernmental organizations that provide assistance to victims of crime, which shall be used to provide emergency relief, including crisis response efforts, assistance, compensation, training and technical assistance, and ongoing assistance, including during any investigation or

[1] See References in Text note below.

[1] So in original. Probably should be preceded by ''section''.

prosecution, to victims of terrorist acts or mass violence occurring within the United States.

(Pub. L. 98–473, title II, § 1404B, as added Pub. L. 104–132, title II, § 232(a), Apr. 24, 1996, 110 Stat. 1243; amended Pub. L. 106–386, div. C, § 2003(a)(1), (4), Oct. 28, 2000, 114 Stat. 1543, 1544; Pub. L. 107–56, title VI, § 624(a), (b), Oct. 26, 2001, 115 Stat. 373.)

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–56, § 624(b), struck out ''who are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986'' before period at end.

Subsec. (b). Pub. L. 107–56, § 624(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The Director may make supplemental grants as provided in section 10601(d)(5) of this title to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney's Offices for use in coordination with State victim compensation and assistance efforts in providing emergency relief.''

2000—Subsec. (a). Pub. L. 106–386, § 2003(a)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Director may make supplemental grants as provided in section 10603(a) of this title to States to provide compensation and assistance to the residents of such States who, while outside of the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.''

Subsec. (b). Pub. L. 106–386, § 2003(a)(4), substituted ''10601(d)(5) of this title'' for ''10603(d)(4)(B) of this title''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–386, div. C, § 2003(a)(2), Oct. 28, 2000, 114 Stat. 1544, provided that: ''The amendment made by this subsection [amending this section] shall apply to any terrorist act or mass violence occurring on or after December 21, 1988, with respect to which an investigation or prosecution was ongoing after April 24, 1996.''

ADMINISTRATIVE GUIDELINES

Pub. L. 106–386, div. C, § 2003(a)(3), Oct. 28, 2000, 114 Stat. 1544, provided that: ''Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2000], the Director shall establish guidelines under section 1407(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10604(a)) to specify the categories of organizations and agencies to which the Director may make grants under this subsection [amending this section and enacting provisions set out as a note under this section].''

§ 10603c. Compensation to victims of international terrorism

(a) Definitions

In this section:

(1) International terrorism

The term ''international terrorism'' has the meaning given the term in section 2331 of title 18.

(2) National of the United States

The term ''national of the United States'' has the meaning given the term in section 1101(a) of title 8.

(3) Victim

(A) In general

The term ''victim'' means a person who—

(i) suffered direct physical or emotional injury or death as a result of international terrorism occurring on or after December 21, 1988 with respect to which an investigation or prosecution was ongoing after April 24, 1996; and

(ii) as of the date on which the international terrorism occurred, was a national of the United States or an officer or employee of the United States Government.

(B) Incompetent, incapacitated, or deceased victims

In the case of a victim who is less than 18 years of age, incompetent, incapacitated, or deceased, a family member or legal guardian of the victim may receive the compensation under this section on behalf of the victim.

(C) Exception

Notwithstanding any other provision of this section, in no event shall an individual who is criminally culpable for the terrorist act or mass violence receive any compensation under this section, either directly or on behalf of a victim.

(b) Award of compensation

The Director may use the emergency reserve referred to in section 10601(d)(5)(A) of this title to carry out a program to compensate victims of acts of international terrorism that occur outside the United States for expenses associated with that victimization. The amount of compensation awarded to a victim under this subsection shall be reduced by any amount that the victim received in connection with the same act of international terrorism under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(c) Annual report

The Director shall annually submit to Congress a report on the status and activities of the program under this section, which report shall include—

(1) an explanation of the procedures for filing and processing of applications for compensation;

(2) a description of the procedures and policies instituted to promote public awareness about the program;

(3) a complete statistical analysis of the victims assisted under the program, including—

(A) the number of applications for compensation submitted;

(B) the number of applications approved and the amount of each award;

(C) the number of applications denied and the reasons for the denial;

(D) the average length of time to process an application for compensation; and

(E) the number of applications for compensation pending and the estimated future liability of the program; and

(4) an analysis of future program needs and suggested program improvements.

(Pub. L. 98–473, title II, § 1404C, as added Pub. L. 106–386, div. C, § 2003(c)(1), Oct. 28, 2000, 114 Stat. 1544; amended Pub. L. 107–56, title VI, § 624(c), Oct. 26, 2001, 115 Stat. 373.)

REFERENCES IN TEXT

The Omnibus Diplomatic Security and Antiterrorism Act of 1986, referred to in subsec. (b), is Pub. L. 99–399, Aug. 27, 1986, 100 Stat. 853, as amended. Title VIII of the Act, known as the ''Victims of Terrorism Compensation Act'', enacted sections 5569 and 5570 of Title 5, Government Organization and Employees, sections 1051, 1095, and 2181 to 2185 of Title 10, Armed Forces, and sections 559 and 1013 of Title 37, Pay and Allowances of the Uniformed Services, amended section 6325 of Title 5, and enacted provisions set out as notes under section 5569 of Title 5, sections 1051, 1095, and 2181 of Title 10, and section 559 of Title 37. For complete classification of title VIII to the Code, see Short Title of 1986 Amendment note set out under section 5569 of Title 5 and Tables.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–56 inserted at end ''The amount of compensation awarded to a victim under this subsection shall be reduced by any amount that the victim received in connection with the same act of international terrorism under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.''

§ 10603d. Crime victims legal assistance grants

(a) In general

The Director may make grants as provided in section 10603(c)(1)(A) of this title to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public and private entities, to develop, establish, and maintain programs for the enforcement of crime victims' rights as provided in law.

(b) Prohibition

Grant amounts under this section may not be used to bring a cause of action for damages.

(c) False Claims Act

Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31 (commonly known as the ''False Claims Act'') may be used for grants under this section, subject to appropriation.

(Pub. L. 98–473, title II, § 1404D, as added Pub. L. 108–405, title I, § 103(a), Oct. 30, 2004, 118 Stat. 2264.)

§ 10603e. Crime victims notification grants

(a) In general

The Director may make grants as provided in section 10603(c)(1)(A) of this title to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public or private entities, to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments relating to the criminal proceedings at issue in a timely and efficient manner, provided that the jurisdiction has laws substantially equivalent to the provisions of chapter 237 of title 18.

(b) Integration of systems

Systems developed and implemented under this section may be integrated with existing case management systems operated by the recipient of the grant.

(c) Authorization of appropriations

In addition to funds made available under section 10601(d) of this title, there are authorized to be appropriated to carry out this section—

(1) $5,000,000 for fiscal year 2005; and

(2) $5,000,000 for each of the fiscal years 2006, 2007, 2008, and 2009.

(d) False Claims Act

Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31 (commonly known as the ''False Claims Act'') may be used for grants under this section, subject to appropriation.

(Pub. L. 98–473, title II, § 1404E, as added Pub. L. 108–405, title I, § 103(c), Oct. 30, 2004, 118 Stat. 2265.)

§ 10604. Administrative provisions

(a) Authority of Director to establish rules and regulations

The Director may establish such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Director under this chapter.

(b) Recordkeeping

Each recipient of sums under this chapter shall keep such records as the Director shall prescribe, including records that fully disclose the amount and disposition by such recipient of such sums, the total cost of the undertaking for which such sums are used, and that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(c) Access of Director to books and records for purpose of audit and examination

The Director shall have access, for purpose of audit and examination, to any books, documents, papers, and records of the recipient of sums under this chapter that, in the opinion of the Director, may be related to the expenditure of funds received under this chapter.

(d) Revealing research or statistical information; prohibition; immunity from legal proceedings; permission; admission of information as evidence

Except as otherwise provided by Federal law, no officer or employee of the Federal Government, and no recipient of sums under this chapter, shall use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this chapter. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding.

(e) Discrimination prohibited

No person shall on the ground of race, color, religion, national origin, handicap, or sex be ex-

cluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this chapter.

(f) Failure to comply with provisions; notice and hearing; power of Director

If, after reasonable notice and opportunity for a hearing on the record, the Director finds that a State has failed to comply substantially with any provision of this chapter or a rule, regulation, guideline, or procedure issued under this chapter, or an application submitted in accordance with this chapter or the provisions of any other applicable law, the Director shall—

(1) terminate payments to such State;

(2) suspend payments to such State until the Director is satisfied that such noncompliance has ended; or

(3) take such other action as the Director deems appropriate.

(g) Report

The Director shall, on December 31, 1990, and on June 30 every two years thereafter, report to the President and to the Congress on the revenue derived from each source described in section 10601 of this title and on the effectiveness of the activities supported under this chapter. The Director may include in such report recommendations for legislation to improve this chapter.

(h) Maintenance of effort

Each entity receiving sums made available under this chapter for administrative purposes shall certify that such sums will not be used to supplant State or local funds, but will be used to increase the amount of such funds that would, in the absence of Federal funds, be made available for these purposes.

(Pub. L. 98–473, title II, § 1407, Oct. 12, 1984, 98 Stat. 2176; Pub. L. 99–646, § 48, Nov. 10, 1986, 100 Stat. 3605; Pub. L. 100–690, title VII, § 7123(b)(10)–(14), Nov. 18, 1988, 102 Stat. 4421, 4422; Pub. L. 103–322, title XXIII, §§ 230206, 230207, Sept. 13, 1994, 108 Stat. 2080; Pub. L. 104–294, title VI, § 604(b)(9), Oct. 11, 1996, 110 Stat. 3507.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (h), was in the original ''this Act'', and was translated as reading ''this chapter'', meaning chapter XIV of title II of Pub. L. 98–473, to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (g). Pub. L. 104–294 amended directory language of Pub. L. 103–322, § 230207. See 1994 Amendment note below.

1994—Subsec. (g). Pub. L. 103–322, § 230207, as amended by Pub. L. 104–294, substituted ''and on June 30 every two years thereafter'' for ''and on December 31 every 2 years thereafter''.

Subsec. (h). Pub. L. 103–322, § 230206, added subsec. (h).

1988—Subsec. (a). Pub. L. 100–690, § 7123(b)(10), substituted ''Director'' for ''Attorney General'' in two places and ''under this chapter'' for ''under this chapter and may delegate to any officer or employee of the Department of Justice any such function as the Attorney General deems appropriate''.

Subsec. (b). Pub. L. 100–690, § 7123(b)(11), substituted ''Director'' for ''Attorney General''.

Subsec. (c). Pub. L. 100–690, § 7123(b)(12), which directed substitution of ''Director'' for ''Attorney General or any duly authorized representative of the Attorney General'', was executed by making substitution in two places.

Subsec. (f). Pub. L. 100–690, § 7123(b)(13), substituted ''Director'' for ''Attorney General'' two places in introductory provisions and in pars. (2) and (3).

Subsec. (g). Pub. L. 100–690, § 7123(b)(14), substituted ''Director'' for ''Attorney General'' in two places and ''on December 31, 1990, and on December 31 every 2 years thereafter'' for ''no later than December 31, 1987''.

1986—Subsecs. (g), (h). Pub. L. 99–646 redesignated subsec. (h) as (g) and substituted ''1402'', which was translated as ''section 10601 of this title'' for ''1302'', which had been editorially translated as ''section 10601 of this title'', thereby requiring no change in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100–690, as amended, set out as a note under section 10601 of this title.

REPORTS ON AMOUNTS RECEIVED AND DISTRIBUTED FROM FINES FOR VIOLATIONS OF TRADE SECRETS PROVISIONS

Section 101(c) of Pub. L. 104–294 provided that: ''Not later than 2 years and 4 years after the date of the enactment of this Act [Oct. 11, 1996], the Attorney General shall report to Congress on the amounts received and distributed from fines for offenses under this chapter [probably means chapter 90 of title 18, added by section 101(a) of Pub. L. 104–294] deposited in the Crime Victims Fund established by section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601).''

§ 10605. Establishment of Office for Victims of Crime

(a) Office established within Department of Justice

There is established within the Department of Justice an Office for Victims of Crime (hereinafter in this chapter referred to as the ''Office'').

(b) Appointment of Director; authority; restrictions

The Office shall be headed by a Director (referred to in this chapter as the ''Director''), who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Attorney General through the Assistant Attorney General for the Office of Justice Programs and shall have final authority for all grants, cooperative agreements, and contracts awarded by the Office. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under this chapter.[1]

(c) Duties of Director

The Director shall have the following duties:

(1) Administering funds made available by section 10601 of this title.

[1] See References in Text note below.

(2) Providing funds to eligible States pursuant to sections 10602 and 10603 of this title.

(3) Establishing programs in accordance with section 10603(c) of this title on terms and conditions determined by the Director to be consistent with that subsection.

(4) Cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in activities related to crime victims.

(5) Such other functions as the Attorney General may delegate.

(Pub. L. 98–473, title II, § 1411, as added Pub. L. 100–690, title VII, § 7123(a), Nov. 18, 1988, 102 Stat. 4420.)

REFERENCES IN TEXT

This chapter, the last place it appears in subsec. (b), was in the original ''this part'', which has been translated as reading in the original ''this chapter'' meaning chapter XIV of title II of Pub. L. 98–473 to reflect the probable intent of Congress because chapter XIV of title II of Pub. L. 98–473 which comprises this chapter, does not contain parts.

EFFECTIVE DATE

Section not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100–690, as amended, set out as an Effective Date of 1988 Amendment note under section 10601 of this title.

§ 10606. Repealed. Pub. L. 108–405, title I, § 102(c), Oct. 30, 2004, 118 Stat. 2264

Section, Pub. L. 101–647, title V, § 502, Nov. 29, 1990, 104 Stat. 4820, related to rights of crime victims. See section 3771 of Title 18, Crimes and Criminal Procedure.

§ 10607. Services to victims

(a) Designation of responsible officials

The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) of this section at each stage of a criminal case.

(b) Identification of victims

At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall—

(1) identify the victim or victims of a crime;

(2) inform the victims of their right to receive, on request, the services described in subsection (c) of this section; and

(3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c) of this section.

(c) Description of services

(1) A responsible official shall—

(A) inform a victim of the place where the victim may receive emergency medical and social services;

(B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and[1] manner in which such relief may be obtained;

(C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and

(D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

(A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(B) the arrest of a suspected offender;

(C) the filing of charges against a suspected offender;

(D) the scheduling of each court proceeding that the witness is either required to attend or, under section 10606(b)(4)[2] of this title, is entitled to attend;

(E) the release or detention status of an offender or suspected offender;

(F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and

(G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

(5) After trial, a responsible official shall provide a victim the earliest possible notice of—

(A) the scheduling of a parole hearing for the offender;

(B) the escape, work release, furlough, or any other form of release from custody of the offender; and

(C) the death of the offender, if the offender dies while in custody.

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV,

[1] So in original. Probably should be followed by ''the''.

[2] See References in Text note below.

gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c) of this section.

(e) Definitions

For the purposes of this section—

(1) the term ''responsible official'' means a person designated pursuant to subsection (a) of this section to perform the functions of a responsible official under that section; and

(2) the term ''victim'' means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

(i) a spouse;

(ii) a legal guardian;

(iii) a parent;

(iv) a child;

(v) a sibling;

(vi) another family member; or

(vii) another person designated by the court.

(Pub. L. 101–647, title V, § 503, Nov. 29, 1990, 104 Stat. 4820; Pub. L. 103–322, title IV, § 40503(a), Sept. 13, 1994, 108 Stat. 1946.)

REFERENCES IN TEXT

Section 10606(b)(4) of this title, referred to in subsec. (c)(3)(D), was in the original ''section 1102(b)(4)'', meaning section 1102(b)(4) of Pub. L. 101–647, which has been translated as reading section 502(b)(4) of Pub. L. 101–647 to reflect the probable intent of Congress because Pub. L. 101–647 does not contain a section 1102 and section 502(b)(4) relates to the right of crime victims to be present at public court proceedings. Section 10606 of this title was subsequently repealed by Pub. L. 108–405, title I, § 102(c), Oct. 30, 2004, 118 Stat. 2264.

CODIFICATION

Section enacted as part of the Victims' Rights and Restitution Act of 1990 and also as part of the Crime Control Act of 1990, and not as part of the Victims of Crime Act of 1984 which comprises this chapter.

AMENDMENTS

1994—Subsec. (c)(7). Pub. L. 103–322 inserted at end ''The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.''

§ 10608. Closed circuit televised court proceedings for victims of crime

(a) In general

Notwithstanding any provision of the Federal Rules of Criminal Procedure to the contrary, in order to permit victims of crime to watch criminal trial proceedings in cases where the venue of the trial is changed—

(1) out of the State in which the case was initially brought; and

(2) more than 350 miles from the location in which those proceedings originally would have taken place;

the trial court shall order closed circuit televising of the proceedings to that location, for viewing by such persons the court determines have a compelling interest in doing so and are otherwise unable to do so by reason of the inconvenience and expense caused by the change of venue.

(b) Limited access

(1) Generally

No other person, other than official court and security personnel, or other persons specifically designated by the court, shall be permitted to view the closed circuit televising of the proceedings.

(2) Exception

The court shall not designate a person under paragraph (1) if the presiding judge at the trial determines that testimony by that person would be materially affected if that person heard other testimony at the trial.

(c) Restrictions

(1) The signal transmitted pursuant to subsection (a) of this section shall be under the control of the court at all times and shall only be transmitted subject to the terms and conditions imposed by the court.

(2) No public broadcast or dissemination shall be made of the signal transmitted pursuant to subsection (a) of this section. In the event any tapes are produced in carrying out subsection (a) of this section, such tapes shall be the property of the court and kept under seal.

(3) Any violations of this subsection, or any rule or order made pursuant to this section, shall be punishable as contempt of court as described in section 402 of title 18.

(d) Donations

The Administrative Office of the United States Courts may accept donations to enable the courts to carry out subsection (a) of this section.

(e) Construction

(1)[1] Nothing in this section shall be construed—

[1] So in original. No par. (2) has been enacted.

(i) to create in favor of any person a cause of action against the United States or any officer or employees thereof, or

(ii) to provide any person with a defense in any action in which application of this section is made.

(f) "State" defined

As used in this section, the term ''State'' means any State, the District of Columbia, or any possession or territory of the United States.

(g) Rules

The Judicial Conference of the United States, pursuant to its rule making authority under section 331 of title 28, may promulgate and issue rules, or amend existing rules, to effectuate the policy addressed by this section. Upon the implementation of such rules, this section shall cease to be effective.

(h) Effective date

This section shall only apply to cases filed after January 1, 1995.

(Pub. L. 104–132, title II, § 235, Apr. 24, 1996, 110 Stat. 1246.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

This section was enacted as part of the Justice for Victims of Terrorism Act of 1996, and also as part of the Antiterrorism and Effective Death Penalty Act of 1996, and not as part of the Victims of Crime Act of 1984 which comprises this chapter.

CHAPTER 113—STATE JUSTICE INSTITUTE

Sec.
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§ 10701. Definitions

As used in this chapter, the term—

(1) ''Board'' means the Board of Directors of the Institute;

(2) ''Director'' means the Executive Director of the Institute;

(3) ''Governor'' means the Chief Executive Officer of a State;

(4) ''Institute'' means the State Justice Institute;

(5) ''recipient'' means any grantee, contractor, or recipient of financial assistance under this chapter;

(6) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(7) ''Supreme Court'' means the highest appellate court within a State unless, for the purposes of this chapter, a constitutionally or legislatively established judicial council acts in place of that court; and

(8) ''domestic violence'' means—

(A) any action that constitutes—

(i) attempting to cause or intentionally, knowingly, or recklessly causing bodily injury or physical illness;

(ii) rape, sexual assault, or causing involuntary deviate sexual intercourse;

(iii) placing by physical menace another in fear of imminent serious bodily injury; or

(iv) the infliction of false imprisonment;

if such action is taken by one of 2 spouses, former spouses, or sexual or intimate partners against the other spouse, former spouse, or partner and the 2 of whom share biological parenthood of, have adopted, are legal custodians of, or are stepparents of a minor child; or

(B) physically or sexually abusing such minor child if such abuse is inflicted by either of such spouses, former spouses, or partners.

(Pub. L. 98–620, title II, § 202, Nov. 8, 1984, 98 Stat. 3336; Pub. L. 102–528, § 1, Oct. 27, 1992, 106 Stat. 3461.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'' meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note below and Tables.

AMENDMENTS

1992—Par. (8). Pub. L. 102–528 added par. (8).

EFFECTIVE DATE

Section 216 of title II of Pub. L. 98–620 provided that: ''The provisions of this title [enacting this chapter and amending section 620 of Title 28, Judiciary and Judicial Procedure] shall take effect on October 1, 1985.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–372, § 1, Oct. 25, 2004, 118 Stat. 1754, provided that: ''This Act [amending sections 3793, 10703, 10704, and 10713 of this title] may be cited as the 'State Justice Institute Reauthorization Act of 2004'.''

SHORT TITLE

Section 201 of title II of Pub. L. 98–620 provided that: ''This title [enacting this chapter and amending section 620 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'State Justice Institute Act of 1984'.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 10702. Establishment of Institute; duties

(a) Establishment; purpose; incorporation; powers

There is established a private nonprofit corporation which shall be known as the State Jus-

tice Institute. The purpose of the Institute shall be to further the development and adoption of improved judicial administration in State courts in the United States. The Institute may be incorporated in any State pursuant to section 10703(a)(6) of this title. To the extent consistent with the provisions of this chapter, the Institute may exercise the powers conferred upon a nonprofit corporation by the laws of the State in which it is incorporated.

(b) Duties

The Institute shall—

(1) direct a national program of assistance designed to assure each person ready access to a fair and effective system of justice by providing funds to—

(A) State courts;

(B) national organizations which support and are supported by State courts; and

(C) any other nonprofit organization that will support and achieve the purposes of this chapter;

(2) foster coordination and cooperation with the Federal judiciary in areas of mutual concern;

(3) promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

(4) encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

(c) Duplication of functions; responsibility of State agencies

The Institute shall not duplicate functions adequately performed by existing nonprofit organizations and shall promote, on the part of agencies of State judicial administration, responsibility for the success and effectiveness of State court improvement programs supported by Federal funding.

(d) Maintenance of offices in State of incorporation; agent for receipt of service of process

The Institute shall maintain its principal offices in the State in which it is incorporated and shall maintain therein a designated agent to accept service of process for the Institute. Notice to or service upon the agent shall be deemed notice to or service upon the Institute.

(e) Tax status of Institute and programs assisted thereby

The Institute, and any program assisted by the Institute, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of title 26 and as an organization described in section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26. If such treatments are conferred in accordance with the provisions of title 26, the Institute, and programs assisted by the Institute, shall be subject to all provisions of title 26 relevant to the conduct of organizations exempt from taxation.

(f) Rules, regulations, etc.; notice and comment

The Institute shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, guidelines, and instructions under this chapter, and it shall publish in the Federal Register all rules, regulations, guidelines, and instructions.

(Pub. L. 98–620, title II, § 203, Nov. 8, 1984, 98 Stat. 3336; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–690, title VII, § 7321(b)(1), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100–702, title VI, § 601, Nov. 19, 1988, 102 Stat. 4652; Pub. L. 102–528, § 3(1), Oct. 27, 1992, 106 Stat. 3462.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–528 struck out at end ''The publication of a substantive rule shall not be made less than thirty days before the effective date of such rule, except as otherwise provided by the Institute for good cause found and published with the rule.''

1988—Subsec. (f). Pub. L. 100–690 and Pub. L. 100–702 made substantially identical amendments, striking out '', at least thirty days prior to their effective date,'' after ''Federal Register'' and inserting sentence at end relating to publication of a substantive rule.

1986—Subsec. (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

BATTERED WOMEN'S TESTIMONY

Pub. L. 102–527, Oct. 27, 1992, 106 Stat. 3459, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Battered Women's Testimony Act of 1992'.

''SEC. 2. AUTHORITY OF STATE JUSTICE INSTITUTE.

''The State Justice Institute shall—

''(1) collect nationwide and analyze information regarding—

''(A) the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, and

''(B) sources of, and methods to obtain, funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants,

''(2) develop training materials to assist—

''(A) battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use such expert testimony in appropriate cases, particularly appropriate cases involving indigent women defendants, and

''(B) individuals with expertise in the experiences of battered women to develop skills appropriate to providing such expert testimony, and

''(3) disseminate such information and such training materials, and provide related technical assistance, to battered women, such operators, such advocates, such attorneys, and such individuals.

''SEC. 3. ADMINISTRATIVE PROVISIONS.

''For purposes of this Act—

''(1) subsections (d) and (e) of section 206 of the State Justice Institute Act of 1984 [42 U.S.C. 10705(d), (e)], and

''(2) subsections (a) and (b) of section 207 of such Act [42 U.S.C. 10706(a), (b)],

shall apply in the same manner as such subsections apply with respect to grants and contracts made under such Act [42 U.S.C. 10701 et seq.].

''SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated $600,000 to carry out this Act.''

§ 10703. Board of Directors

(a) Appointment and membership

(1) The Institute shall be supervised by a Board of Directors, consisting of eleven voting

members to be appointed by the President, by and with the advice and consent of the Senate. The Board shall have both judicial and nonjudicial members, and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the administration of justice.

(2) The Board shall consist of—

(A) six judges, to be appointed in the manner provided in paragraph (3);

(B) one State court administrator, to be appointed in the manner provided in paragraph (3); and

(C) four members from the public sector, no more than two of whom shall be of the same political party, to be appointed in the manner provided in paragraph (4).

(3) The President shall appoint six judges and one State court administrator from a list of candidates submitted to the President by the Conference of Chief Justices. The Conference of Chief Justices shall submit a list of at least fourteen individuals, including judges and State court administrators, whom the Conference considers best qualified to serve on the Board. Whenever the term of any of the members of the Board described in subparagraphs (A) and (B) terminates and that member is not to be reappointed to a new term, and whenever a vacancy otherwise occurs among those members, the President shall appoint a new member from a list of three qualified individuals submitted to the President by the Conference of Chief Justices. The President may reject any list of individuals submitted by the Conference under this paragraph and, if such a list is so rejected, the President shall request the Conference to submit to him another list of qualified individuals. Prior to consulting with or submitting a list to the President, the Conference of Chief Justices shall obtain and consider the recommendations of all interested organizations and individuals concerned with the administration of justice and the objectives of this chapter.

(4) In addition to those members appointed under paragraph (3), the President shall appoint four members from the public sector to serve on the Board.

(5) The President shall make the initial appointments of members of the Board under this subsection within ninety days after October 1, 1985. In the case of any other appointment of a member, the President shall make the appointment not later than ninety days after the previous term expires or the vacancy occurs, as the case may be. The Conference of Chief Justices shall submit lists of candidates under paragraph (3) in a timely manner so that the appointments can be made within the time periods specified in this paragraph.

(6) The initial members of the Board of Directors shall be the incorporators of the Institute and shall determine the State in which the Institute is to be incorporated.

(b) Term of office

(1) Except as provided in paragraph (2), the term of each voting member of the Board shall be three years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified.

(2) Five of the members first appointed by the President shall serve for a term of two years. Any member appointed to serve an unexpired term which has arisen by virtue of the death, disability, retirement, or resignation of a member shall be appointed only for such unexpired term, but shall be eligible for reappointment.

(3) The term of initial members shall commence from the date of the first meeting of the Board, and the term of each member other than an initial member shall commence from the date of termination of the preceding term.

(c) Reappointment

No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(d) Compensation; reimbursement for expenses

Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(e) Status of members of Board as officers and employees of United States

The members of the Board shall not, by reason of such membership, be considered officers or employees of the United States.

(f) Voting rights of Board members; quorum; action of Board on concurrence of majority

Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the membership present and voting.

(g) Chairman; initial selection and term of office; subsequent annual election

The Board shall select from among the voting members of the Board a chairman, the first of whom shall serve for a term of three years. Thereafter, the Board shall annually elect a chairman from among its voting members.

(h) Grounds for removal of members

A member of the Board may be removed by a vote of seven members for malfeasance in office, persistent neglect of, or inability to discharge duties, or for any offense involving moral turpitude, but for no other cause.

(i) Quarterly meetings of Board; special meetings

Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the chairman, acting at his own discretion or pursuant to the petition of any seven members.

(j) Open meetings

All meetings of the Board, any executive committee of the Board (on any occasion on which that committee has been delegated the authority to act on behalf of the Board), and any council established in connection with this chapter, shall be open and subject to the requirements and provisions of section 552b of title 5 relating to open meetings.

(k) Duties and functions of Board

In its direction and supervision of the activities of the Institute, the Board shall—

(1) establish policies and develop such programs for the Institute that will further the achievement of its purpose and performance of its functions;

(2) establish policy and funding priorities and issue rules, regulations, guidelines, and instructions pursuant to such priorities;

(3) appoint and fix the duties of the Executive Director of the Institute, who shall serve at the pleasure of the Board and shall be a nonvoting ex officio member of the Board;

(4) present to other Government departments, agencies, and instrumentalities whose programs or activities relate to the administration of justice in the State judiciaries of the United States, the recommendations of the Institute for the improvement of such programs or activities;

(5) consider and recommend to both public and private agencies aspects of the operation of the State courts of the United States considered worthy of special study; and

(6) award grants and enter into cooperative agreements or contracts pursuant to section 10705(a) of this title.

(Pub. L. 98–620, title II, § 204, Nov. 8, 1984, 98 Stat. 3337; Pub. L. 102–572, title VIII, § 803(a), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 108–372, § 3(c), Oct. 25, 2004, 118 Stat. 1754.)

AMENDMENTS

2004—Subsec. (j). Pub. L. 108–372 inserted ''(on any occasion on which that committee has been delegated the authority to act on behalf of the Board)'' after ''executive committee of the Board''.

1992—Subsec. (a)(3). Pub. L. 102–572 substituted ''Conference'' for ''conference'' after ''whom the'' in second sentence.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 804 of title VIII of Pub. L. 102–572 provided that: ''The provisions of this title [amending this section and sections 10705 and 10713 of this title] shall take effect on the date of the enactment of this Act [Oct. 29, 1992].''

§ 10704. Officers and employees

(a) Duties of Director; appointment and removal of employees; political tests or qualifications prohibited

(1) The Director, subject to general policies established by the Board, shall supervise the activities of persons employed by the Institute and may appoint and remove such employees as he determines necessary to carry out the purposes of the Institute. The Director shall be responsible for the executive and administrative operations of the Institute, and shall perform such duties as are delegated to such Director by the Board and the Institute.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Institute, or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this chapter.

(b) Compensation

Officers and employees of the Institute shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5.

(c) Status of Institute as department, agency, or instrumentality of Federal Government; authority of Office of Management and Budget

(1) Except as otherwise specifically provided in this chapter, the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.

(2) This chapter does not limit the authority of the Office of Management and Budget to review and submit comments upon the Institute's annual budget request at the time it is transmitted to the Congress.

(3) The Institute may purchase goods and services from the General Services Administration in order to carry out its functions.

(d) Status of officers and employees of Institute as officers and employees of United States

(1) Except as provided in paragraph (2), officers and employees of the Institute shall not be considered officers or employees of the United States.

(2) Officers and employees of the Institute shall be considered officers and employees of the United States solely for the purposes of the following provisions of title 5: Subchapter I of chapter 81 (relating to compensation for work injuries); chapters 83 and 84 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance), notwithstanding section 8914 of such title. The Institute shall make contributions under the provisions referred to in this subsection at the same rates applicable to agencies of the Federal Government.

(e) Freedom of information requirements

The Institute and its officers and employees shall be subject to the provisions of section 552 of title 5 relating to freedom of information.

(Pub. L. 98–620, title II, § 205, Nov. 8, 1984, 98 Stat. 3339; Pub. L. 100–690, title VII, § 7321(b)(2), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100–702, title VI, § 602, Nov. 19, 1988, 102 Stat. 4653; Pub. L. 108–372, § 3(a), (b), Oct. 25, 2004, 118 Stat. 1754.)

AMENDMENTS

2004—Subsec. (c)(3). Pub. L. 108–372, § 3(a), added par. (3).

Subsec. (d)(2). Pub. L. 108–372, § 3(b), inserted '', notwithstanding section 8914 of such title'' after ''(relating to health insurance)''.

1988—Subsec. (d)(2). Pub. L. 100–690 and Pub. L. 100–702 amended par. (2) identically, substituting ''chapters 83 and 84'' for ''chapter 83''.

§ 10705. Grants and contracts

(a) Authority of Institute; purposes of grants

The Institute is authorized to award grants and enter into cooperative agreements or contracts, in a manner consistent with subsection (b) of this section, in order to—

(1) conduct research, demonstrations, or special projects pertaining to the purposes described in this chapter, and provide technical assistance and training in support of tests, demonstrations, and special projects;

(2) serve as a clearinghouse and information center, where not otherwise adequately pro-

vided, for the preparation, publication, and dissemination of information regarding State judicial systems;

(3) participate in joint projects with other agencies, including the Federal Judicial Center, with respect to the purposes of this chapter;

(4) evaluate, when appropriate, the programs and projects carried out under this chapter to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have met or failed to meet the purposes and policies of this chapter;

(5) encourage and assist in the furtherance of judicial education;

(6) encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

(7) be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

(b) Priority in making awards; alternative recipients; approval of applications; receipt and administration of funds; accountability

The Institute is empowered to award grants and enter into cooperative agreements or contracts as follows:

(1) The Institute may award grants to or enter into cooperative agreements or contracts with—

(A) State and local courts and their agencies;

(B) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments; and

(C) national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

(2) The Institute may, if the objective can better be served thereby, award grants to or enter into cooperative agreements or contracts with—

(A) other nonprofit organizations with expertise in judicial administration;

(B) institutions of higher education;

(C) individuals, partnerships, firms, or corporations; and

(D) private agencies with expertise in judicial administration.

(3) Upon application by an appropriate State or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of State or local government other than a court.

(4) The Institute may enter into contracts with Federal agencies to carry out the purposes of this chapter.

(5) Each application for funding by a State or local court shall be approved, consistent with State law, by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts.

(c) Permissible uses of funds

Funds available pursuant to grants, cooperative agreements, or contracts awarded under this section may be used—

(1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) to support education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

(3) to conduct research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;

(4) to support studies of the appropriateness of[1] efficacy of court organization and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;

(5) to support State court planning and budgeting staffs and to provide technical assistance in resource allocation and service forecasting techniques;

(6) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(7) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

(8) to conduct studies of the causes of trial and appellate court delay in resolving cases, and to establish and evaluate experimental programs for reducing case processing time;

(9) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve the functioning of such judges and courts;

(10) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with the operation of such rules, procedures, devices, and standards, to devise alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and to test the utility of those alternative approaches;

(11) to support studies of the outcomes of cases in selected subject matter areas to identify instances in which the substance of justice meted out by the courts diverges from

[1] So in original. Probably should be ''and''.

public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives;

(12) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(13) to test and evaluate experimental approaches to providing increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens;

(14) conduct[2] not more than 5 projects at an aggregate cost of not to exceed $600,000—

(A) to investigate, and carry out research regarding State judicial decisions relating to child custody litigation involving domestic violence;

(B) to develop training curricula to assist State courts to develop an understanding of, and appropriate responses to, child custody litigation involving domestic violence; and

(C) to disseminate the results of the investigation and research carried out under subparagraph (A), and the curricula developed under subparagraph (B), to State courts; and

(15) to carry out such other programs, consistent with the purposes of this chapter, as may be deemed appropriate by the Institute.

(d) Matching fund requirements

The Institute shall incorporate in any grant, cooperative agreement, or contract awarded under this section in which a State or local court (or other unit of State or local government) is the recipient, the requirement that the recipient provide a match, from private or public sources, not less than 50 per centum of the total cost of such grant, cooperative agreement, or contract, except that such requirement may be waived in exceptionally rare circumstances upon the approval of the chief justice of the highest court of the State and a majority of the Board of Directors.

(e) Compliance monitoring and evaluation by Institute

The Institute shall monitor and evaluate, or provide for independent evaluations of, programs supported in whole or in part under this chapter to ensure that the provisions of this chapter, the bylaws of the Institute, and the applicable rules, regulations, and guidelines promulgated pursuant to this chapter, are carried out.

(f) Independent study of financial and technical assistance programs

The Institute shall provide for an independent study of the financial and technical assistance programs under this chapter.

(Pub. L. 98–620, title II, § 206, Nov. 8, 1984, 98 Stat. 3340; Pub. L. 100–690, title VII, § 7321(b)(3), (4), Nov. 18, 1988, 102 Stat. 4466, 4467; Pub. L. 100–702, title VI, §§ 603, 604, Nov. 19, 1988, 102 Stat. 4653; Pub. L. 102–528, §§ 2, 3(2), Oct. 27, 1992, 106 Stat. 3461, 3462; Pub. L. 102–572, title VIII, §§ 802, 803(b), Oct. 29, 1992, 106 Stat. 4515, 4516.)

[2] So in original. Probably should be ''to conduct''.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–572, § 802(1), substituted ''may award grants to or enter into cooperative agreements or contracts'' for ''shall give priority to grants, cooperative agreements, or contracts'' in introductory provisions and substituted semicolon for comma in subpar. (A).

Subsec. (b)(2). Pub. L. 102–572, § 802(2), inserted ''to'' after ''award grants''.

Subsec. (b)(3). Pub. L. 102–572, § 802(3), added par. (3) and struck out former par. (3) which read as follows: ''Upon application by an appropriate Federal, State, or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of Federal, State, or local government other than a court.''

Subsec. (b)(4), (5). Pub. L. 102–572, § 802(4), (5), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c)(3). Pub. L. 102–528, § 3(2), struck out ''judicial and'' before ''nonjudicial'' the second place appearing.

Subsec. (c)(4) to (6). Pub. L. 102–528, § 3(2)(B), (C), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively. Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 102–572, § 803(b), substituted ''affect'' for ''effect''.

Pub. L. 102–528, § 3(2)(B), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (c)(8) to (12). Pub. L. 102–528, § 3(2)(B), redesignated pars. (7) to (11) as (8) to (12), respectively. Former par. (12) redesignated (13).

Subsec. (c)(13). Pub. L. 102–528, § 3(2)(B), redesignated par. (12) as (13). Former par. (13) redesignated (14).

Pub. L. 102–528, § 2, added par. (13) and redesignated former par. (13) as (14).

Subsec. (c)(14). Pub. L. 102–528, § 3(2)(B), redesignated par. (13) as (14). Former par. (14) redesignated (15).

Pub. L. 102–528, § 2, redesignated par. (13) as (14).

Subsec. (c)(15). Pub. L. 102–528, § 3(2)(B), redesignated par. (14) as (15).

1988—Subsec. (c)(3). Pub. L. 100–702, § 603(1), inserted ''judicial and'' before ''nonjudicial''.

Pub. L. 100–690, § 7321(b)(3)(A), inserted ''judicial and'' before ''nonjudicial''.

Subsec. (c)(4) to (15). Pub. L. 100–702, § 603(2), (3), which directed the striking out of par. (4) and redesignation of pars. (5) to (15) as (4) to (14), respectively, was executed by striking out par. (4) and redesignating pars. (5) to (14) as (4) to (13), respectively, in view of the intervening redesignation of pars. (5) to (15) as (4) to (14), respectively, by Pub. L. 100–690, § 7321(b)(3)(C). See below. Prior to amendment, par. (4) read as follows: ''to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;''.

Pub. L. 100–690, § 7321(b)(3)(B), (C), redesignated pars. (5) to (15) as (4) to (14), respectively, and struck out former par. (4) which read as follows: ''to assist State and local courts in meeting requirements of Federal law applicable to recipients of Federal funds;''.

Subsec. (d). Pub. L. 100–702, § 604, which directed the substitution of ''court (or other unit of State or local government)'' for ''judicial system'', could not be executed due to prior amendment by Pub. L. 100–690, § 7321(b)(4). See below.

Pub. L. 100–690, § 7321(b)(4), substituted ''court (or other unit of State or local government)'' for ''judicial system''.

§ 10706. Limitations on grants and contracts

(a) Duties of Institute

With respect to grants made and contracts or cooperative agreements entered into under this chapter, the Institute shall—

(1) ensure that no funds made available to recipients by the Institute shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation or constitutional amendment by the Congress of the United States, or by any State or local legislative body, or any State proposal by initiative petition, or of any referendum, unless a governmental agency, legislative body, a committee, or a member thereof—

(A) requests personnel of the recipients to testify, draft, or review measures or to make representations to such agency, body, committee, or member; or

(B) is considering a measure directly affecting the activities under this chapter of the recipient or the Institute; and

(2) ensure all personnel engaged in grant, cooperative agreement or contract assistance activities supported in whole or part by the Institute refrain, while so engaged, from any partisan political activity.

(b) Use of funds for training programs for advocacy of nonjudicial public policies or encouraging nonjudicial political activities

No funds made available by the Institute under this chapter, either by grant, cooperative agreement, or contract, may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

(c) Authority coextensive with appropriation Acts

The authorization to enter into cooperative agreements, contracts or any other obligation under this chapter shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

(d) Prohibited uses of funds

To ensure that funds made available under this chapter are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used—

(1) to supplant State or local funds currently supporting a program or activity; or

(2) to construct court facilities or structures, except to remodel existing facilities to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program.

(Pub. L. 98–620, title II, § 207, Nov. 8, 1984, 98 Stat. 3342; Pub. L. 100–702, title VI, § 605, Nov. 19, 1988, 102 Stat. 4653.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', except in subsec. (d) where it was in the original ''this Act'', meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 336, known as the State Justice Institute Act of 1984, which enacted this chapter and amended section 620 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Short Title note set out under section 17101 of this title and Tables.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100–702 struck out par. (3) which read as follows: ''ensure that each recipient that files with the Institute a timely application for refunding is provided interim funding necessary to maintain its current level of activities until—

''(A) the application for refunding has been approved and funds pursuant thereto received; or

''(B) the application for refunding has been finally denied in accordance with section 10708 of this title.''

§ 10707. Restrictions on activities of the Institute

(a) Litigation; interference with independence of State judiciary; funding of State judicial system activities other than pursuant to this chapter; legislative lobbying

The Institute shall not—

(1) participate in litigation unless the Institute or a recipient of the Institute is a party, and shall not participate on behalf of any client other than itself;

(2) interfere with the independent nature of any State judicial system or allow financial assistance to be used for the funding of regular judicial and administrative activities of any State judicial system other than pursuant to the terms of any grant, cooperative agreement, or contract with the Institute, consistent with the requirements of this chapter; or

(3) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that personnel of the Institute may testify or make other appropriate communication—

(A) when formally requested to do so by a legislative body, committee, or a member thereof;

(B) in connection with legislation or appropriations directly affecting the activities of the Institute; or

(C) in connection with legislation or appropriations dealing with improvements in the State judiciary, consistent with the provisions of this chapter.

(b) Issuance of shares of stock; declaration of dividends; compensation for services; reimbursement for expenses; political activities

(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Institute shall enure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Institute nor any recipient shall contribute or make available Institute funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) The Institute shall not contribute or make available Institute funds or program personnel

or equipment for use in advocating or opposing any ballot measure, initiative, or referendum.

(c) Identification of Institute with political activities

Officers and employees of the Institute or of recipients shall not at any time intentionally identify the Institute or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

(Pub. L. 98–620, title II, § 208, Nov. 8, 1984, 98 Stat. 3343.)

§ 10708. Administrative provisions

(a) The Institute shall prescribe procedures to ensure that financial assistance under this chapter shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this chapter has been given reasonable notice and opportunity to show cause why such actions should not be taken.

(b) Except as provided by Federal law other than this chapter, no officer or employee of the Institute, and no recipient of assistance under this chapter, may use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained in accordance with this chapter. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

(Pub. L. 98–620, title II, § 209, Nov. 8, 1984, 98 Stat. 3344; Pub. L. 100–702, title VI, § 606, Nov. 19, 1988, 102 Stat. 4653.)

AMENDMENTS

1988—Pub. L. 100–702 substituted ''Administrative provisions'' for ''Special procedures'' in section catchline, and amended text generally, changing structure of section from a single unlettered paragraph to one consisting of subsecs. (a) and (b).

§ 10709. Presidential coordination

The President may, to the extent not inconsistent with any other applicable law, direct that appropriate support functions of the Federal Government may be made available to the Institute in carrying out its functions under this chapter.

(Pub. L. 98–620, title II, § 210, Nov. 8, 1984, 98 Stat. 3344.)

§ 10710. Records and reports

(a) Reports

The Institute is authorized to require such reports as it deems necessary from any recipient with respect to activities carried out pursuant to this chapter.

(b) Records

The Institute is authorized to prescribe the keeping of records with respect to funds provided by any grant, cooperative agreement, or contract under this chapter and shall have access to such records at all reasonable times for the purpose of ensuring compliance with such grant, cooperative agreement, or contract or the terms and conditions upon which financial assistance was provided.

(c) Submission of copies of reports to recipients; maintenance in principal office of Institute; availability for public inspection; furnishing of copies to interested parties

Copies of all reports pertinent to the evaluation, inspection, or monitoring of any recipient shall be submitted on a timely basis to such recipient, and shall be maintained in the principal office of the Institute for a period of at least five years after such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish.

(d) Funds accounted for and reported as receipts and disbursements separate and distinct from Federal funds

Non-Federal funds received by the Institute, and funds received for projects funded in part by the Institute or by any recipient from a source other than the Institute, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

(Pub. L. 98–620, title II, § 211, Nov. 8, 1984, 98 Stat. 3344.)

§ 10711. Audits

(a) Time and place of audits; standards; availability of books, accounts, facilities, etc., to auditors; filing of report and availability for public inspection

(1) The accounts of the Institute shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Institute are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audits shall be made available to the person or persons conducting the audits. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the Government Accountability Office and shall be available for public inspection during business hours at the principal office of the Institute.

(b) Additional audits; requirements; reports and recommendations to Congress and Attorney General

(1) In addition to the annual audit, the financial transactions of the Institute for any fiscal year during which Federal funds are available to finance any portion of its operations may be au-

dited by the Government Accountability Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Institute are normally kept. The representatives of the Government Accountability Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audit. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Institute shall remain in the possession and custody of the Institute throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the Government Accountability Office may require the retention of such books, accounts, financial records, reports, files, and other papers or property for a longer period under section 3523(c) of title 31.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the Attorney General, together with such recommendations with respect thereto as the Comptroller General deems advisable.

(c) Annual audits by Institute or recipients; reports; submission of copies to Comptroller General; inspection of books, accounts, etc.; availability of audit reports for public inspection

(1) The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Institute.

(2) The Institute shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, person, or entity, which relate to the disposition or use of funds received from the Institute. Such audit reports shall be available for public inspection during regular business hours, at the principal office of the Institute.

(Pub. L. 98–620, title II, § 212, Nov. 8, 1984, 98 Stat. 3345; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsecs. (a)(3), (b)(1), (2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' wherever appearing.

§ 10712. Report by Attorney General

Not later than October 1, 2002, the Attorney General, in consultation with the Federal Judicial Center, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the effectiveness of the Institute in carrying out the duties specified in section 10702(b) of this title. Such report shall include an assessment of the cost effectiveness of the program as a whole and, to the extent practicable, of individual grants, an assessment of whether the restrictions and limitations specified in sections 10706 and 10707 of this title have been respected, and such recommendations as the Attorney General, in consultation with the Federal Judicial Center, deems appropriate.

(Pub. L. 98–620, title II, § 213, Nov. 8, 1984, 98 Stat. 3346; Pub. L. 107–179, § 1, May 20, 2002, 116 Stat. 580.)

AMENDMENTS

2002—Pub. L. 107–179 substituted ''Not later than October 1, 2002'' for ''On October 1, 1987''.

§ 10713. Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this chapter, $7,000,000 for each of fiscal years 2005, 2006, 2007, and 2008. Amounts appropriated for each such year are to remain available until expended.

(Pub. L. 98–620, title II, § 215, Nov. 8, 1984, 98 Stat. 3346; Pub. L. 100–690, title VII, § 7321(a), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100–702, title VI, § 607, Nov. 19, 1988, 102 Stat. 4654; Pub. L. 101–162, title V, Nov. 21, 1989, 103 Stat. 1028; Pub. L. 102–572, title VIII, § 801, Oct. 29, 1992, 106 Stat. 4515; Pub. L. 108–372, § 2, Oct. 25, 2004, 118 Stat. 1754.)

AMENDMENTS

2004—Pub. L. 108–372 amended section generally, inserting section catchline and substituting provisions authorizing appropriations for fiscal years 2005 to 2008 for provisions authorizing appropriations for fiscal years 1993 to 1996.

1992—Pub. L. 102–572 amended section generally. Prior to amendment, section authorized appropriations of $15,000,000 for each of fiscal years 1989, 1990, 1991, and 1992.

1989—Pub. L. 101–162 repealed Pub. L. 100–702, § 607, and provided that Pub. L. 100–690, § 7321(a), is revived, see 1988 Amendment notes below.

1988—Pub. L. 100–702 amended section generally, substituting appropriations authorization of $15,000,000 for fiscal years 1989 and 1990, such amounts to remain available until expended for authorization of $15,000,000 for fiscal years 1989, 1990, 1991, and 1992.

Pub. L. 100–690 amended section generally, substituting appropriations authorization of $15,000,000 for fiscal years 1989 through 1992 for authorization of $13,000,000 for fiscal year 1986 and $15,000,000 for fiscal years 1987 and 1988.

CHAPTER 114—PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS

SUBCHAPTER I—PROTECTION AND ADVOCACY SYSTEMS

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SUBCHAPTER I—PROTECTION AND ADVOCACY SYSTEMS

PART A—ESTABLISHMENT OF SYSTEMS

§ 10801. Congressional findings and statement of purpose

(a) The Congress finds that—

(1) individuals with mental illness are vulnerable to abuse and serious injury;

(2) family members of individuals with mental illness play a crucial role in being advocates for the rights of individuals with mental illness where the individuals are minors, the individuals are legally competent and choose to involve the family members, and the individuals are legally incompetent and the legal guardians, conservators, or other legal representatives are members of the family;

(3) individuals with mental illness are subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning; and

(4) State systems for monitoring compliance with respect to the rights of individuals with mental illness vary widely and are frequently inadequate.

(b) The purposes of this chapter are—

(1) to ensure that the rights of individuals with mental illness are protected; and

(2) to assist States to establish and operate a protection and advocacy system for individuals with mental illness which will—

(A) protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes; and

(B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

(Pub. L. 99–319, title I, § 101, May 23, 1986, 100 Stat. 478; Pub. L. 102–173, §§ 3, 10(2), Nov. 27, 1991, 105 Stat. 1217, 1219.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 99–319, May 23, 1986, 100 Stat. 478, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–173, § 10(2), substituted ''individuals with mental illness'' for ''mentally ill individuals'' in three places.

Subsec. (a)(2) to (4). Pub. L. 102–173, § 3, added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (b). Pub. L. 102–173, § 10(2), substituted ''individuals with mental illness'' for ''mentally ill individuals'' in three places.

SHORT TITLE OF 1991 AMENDMENT

Section 1 of Pub. L. 102–173 provided that: ''This Act [amending this section and sections 10802 to 10807, 10821, 10824, 10826, 10827, 10841, and 10851 of this title] may be cited as the 'Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–509, § 1, Oct. 20, 1988, 102 Stat. 2543, provided that: ''This Act [amending sections 10802, 10804 to 10806, 10821, 10822, 10825, and 10827 of this title and enacting a provision set out as a note under section 10827 of this title] may be cited as the 'Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988'.''

SHORT TITLE

Pub. L. 99–319, § 1, May 23, 1986, 100 Stat. 478, as amended by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, provided that: ''This Act [enacting this chapter and section 247a of this title and enacting provisions set out as a note below] may be cited as the 'Protection and Advocacy for Individuals with Mental Illness Act'.''

SUPERSEDURE OF BALANCED BUDGET PROVISIONS

Section 402 of Pub. L. 99–319 provided that: ''This Act [see Short Title note above] shall not be construed as superseding any of the balanced budget provisions set forth in section 3(7) of the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 622(7)].''

§ 10802. Definitions

For purposes of this subchapter:

(1) The term ''abuse'' means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to a[1] individual with mental illness, and includes acts such as—

(A) the rape or sexual assault of a[1] individual with mental illness;

(B) the striking of a[1] individual with mental illness;

(C) the use of excessive force when placing a[1] individual with mental illness in bodily restraints; and

(D) the use of bodily or chemical restraints on a[1] individual with mental illness which is not in compliance with Federal and State laws and regulations.

(2) The term ''eligible system'' means the system established in a State to protect and advocate the rights of persons with developmental disabilities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.].

(3) The term ''facilities'' may include, but need not be limited to, hospitals, nursing homes, community facilities for individuals with mental illness, board and care homes, homeless shelters, and jails and prisons.

(4) The term ''individual with mental illness'' means, except as provided in section 10804(d) of this title, an individual—

[1] So in original. Probably should be ''an''.

(A) who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State; and

(B)(i)(I) who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such inpatient or resident are unknown;

(II) who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or''; [2]

(III) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense; or

(ii) who satisfies the requirements of subparagraph (A) and lives in a community setting, including their own home.

(5) The term ''neglect'' means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to a [1] individual with mental illness or which placed a [1] individual with mental illness at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a [1] individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to a [1] individual with mental illness, or the failure to provide a safe environment for a [1] individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.

(6) The term ''Secretary'' means the Secretary of Health and Human Services.

(7) The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(8) The term ''American Indian consortium'' means a consortium established under part C of the Developmental Disabilities Assistance and Bill of Rights Act [3] (42 U.S.C. 6042 et seq.).

(Pub. L. 99–319, title I, § 102, May 23, 1986, 100 Stat. 478; Pub. L. 100–509, § 3, Oct. 20, 1988, 102 Stat. 2543; Pub. L. 102–173, §§ 4, 10(1), Nov. 27, 1991, 105 Stat. 1217, 1219; Pub. L. 106–310, div. B, title XXXII, § 3206(b), Oct. 17, 2000, 114 Stat. 1194; Pub. L. 106–402, title IV, § 401(b)(13)(A), Oct. 30, 2000, 114 Stat. 1739.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in par. (2), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§ 15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in par. (8), is title I of Pub. L. 88–164, as added by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, as amended, which was repealed by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. Part C of the Act was classified generally to subchapter III (§ 6041 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Par. (2). Pub. L. 106–402 substituted ''subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000'' for ''part C of the Developmental Disabilities Assistance and Bill of Rights Act''.

Par. (4). Pub. L. 106–310, § 3206(b)(1)(A), inserted '', except as provided in section 10804(d) of this title,'' after ''means'' in introductory provisions.

Par. (4)(B). Pub. L. 106–310, § 3206(b)(1)(B), designated existing provisions as cl. (i), redesignated former cls. (i) to (iii) as subcls. (I) to (III), respectively, of cl. (i), and added cl. (ii).

Par. (8). Pub. L. 106–310, § 3206(b)(2), added par. (8).

1991—Par. (1). Pub. L. 102–173, § 10(1), substituted ''individual with mental illness'' for ''mentally ill individual'' wherever appearing.

Pars. (3) to (7). Pub. L. 102–173 added par. (3), redesignated former pars. (3) to (6) as (4) to (7), respectively, and substituted ''individual with mental illness'' for ''mentally ill individual'' wherever appearing in pars. (4) and (5).

1988—Par. (1). Pub. L. 100–509, § 3(1), inserted ''or death'' after ''caused, injury''.

Par. (3)(B). Pub. L. 100–509, § 3(2), designated existing provisions as cl. (i), substituted '', even if the whereabouts of such inpatient or resident are unknown;'' for period at end, and added cls. (ii) and (iii).

Par. (4). Pub. L. 100–509, § 3(3), inserted ''or death'' after ''injury'' in two places and inserted before period at end '', including the failure to maintain adequate numbers of appropriately trained staff''.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 10803. Allotments

The Secretary shall make allotments under this subchapter to eligible systems to establish and administer systems—

(1) which meet the requirements of section 10805 of this title; and

(2) which are designed to—

(A) protect and advocate the rights of individuals with mental illness; and

(B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

(Pub. L. 99–319, title I, § 103, May 23, 1986, 100 Stat. 479; Pub. L. 102–173, § 10(2), Nov. 27, 1991, 105 Stat. 1219.)

AMENDMENTS

1991—Par. (2). Pub. L. 102–173 substituted ''individuals with mental illness'' for ''mentally ill individuals'' in two places.

§ 10804. Use of allotments

(a) Contracts

(1) An eligible system may use its allotment under this subchapter to enter into contracts with State agencies and nonprofit organizations which operate throughout the State. In order to be eligible for a contract under this paragraph—

[2] So in original.

[3] See References in Text note below.

(A) such an agency shall be independent of any agency which provides treatment or services (other than advocacy services) to individuals with mental illness; and

(B) such an agency or organization shall have the capacity to protect and advocate the rights of individuals with mental illness.

(2) In carrying out paragraph (1), an eligible system should consider entering into contracts with organizations including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which,[1] provide protection or advocacy services to individuals with mental illness.

(b) Obligation of allotments; technical assistance and training

(1) If an eligible system is a public entity, the government of the State in which the system is located may not require the system to obligate more than 5 percent of its allotment under this subchapter in any fiscal year for administrative expenses.

(2) An eligible system may not use more than 10 percent of any allotment under this subchapter for any fiscal year for the costs of providing technical assistance and training to carry out this subchapter.

(c) Representation of individuals with mental illness

An eligible system may use its allotment under this subchapter to provide representation to individuals with mental illness in Federal facilities who request representation by the eligible system. Representatives of such individuals from such system shall be accorded all the rights and authority accorded to other representatives of residents of such facilities pursuant to State law and other Federal laws.

(d) Definition for purposes of representation of individuals with mental illness; priority

The definition of ''individual with a mental illness'' contained in section 10802(4)(B)(iii) of this title shall apply, and thus an eligible system may use its allotment under this subchapter to provide representation to such individuals, only if the total allotment under this subchapter for any fiscal year is $30,000,000 or more, and in such case, an eligible system must give priority to representing persons with mental illness as defined in subparagraphs (A) and (B)(i) of section 10802(4) of this title.

(Pub. L. 99–319, title I, § 104, May 23, 1986, 100 Stat. 479; Pub. L. 100–509, § 7(a), (b)(1), Oct. 20, 1988, 102 Stat. 2544; Pub. L. 102–173, §§ 5, 10(2), Nov. 27, 1991, 105 Stat. 1217, 1219; Pub. L. 106–310, div. B, title XXXII, § 3206(c), Oct. 17, 2000, 114 Stat. 1194.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–310 added subsec. (d).

1991—Subsec. (a). Pub. L. 102–173, § 10(2), substituted ''individuals with mental illness'' for ''mentally ill individuals'' in three places.

Subsec. (c). Pub. L. 102–173, § 5, added subsec. (c).

1988—Subsec. (a)(2). Pub. L. 100–509, § 7(a), substituted ''including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which'' for ''which, on May 23, 1986''.

Subsec. (b)(2). Pub. L. 100–509, § 7(b)(1), substituted ''10'' for ''5''.

[1] So in original. The comma probably should not appear.

§ 10805. System requirements

(a) Authority; independent status; access to facilities and records; advisory council; annual report; grievance procedure

A system established in a State under section 10803 of this title to protect and advocate the rights of individuals with mental illness shall—

(1) have the authority to—

(A) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(B) pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State; and

(C) pursue administrative, legal, and other remedies on behalf of an individual who—

(i) was a[1] individual with mental illness; and

(ii) is a resident of the State,

but only with respect to matters which occur within 90 days after the date of the discharge of such individual from a facility providing care or treatment;

(2) be independent of any agency in the State which provides treatment or services (other than advocacy services) to individuals with mental illness;

(3) have access to facilities in the State providing care or treatment;

(4) in accordance with section 10806 of this title, have access to all records of—

(A) any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

(B) any individual (including an individual who has died or whose whereabouts are unknown)—

(i) who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access;

(ii) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(iii) with respect to whom a complaint has been received by the system or with respect to whom as a result of monitoring or other activities (either of which result from a complaint or other evidence) there is probable cause to believe that such individual has been subject to abuse or neglect; and

(C) any individual with a mental illness, who has a legal guardian, conservator, or

[1] So in original. Probably should be ''an''.

other legal representative, with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy, whenever—

(i) such representative has been contacted by such system upon receipt of the name and address of such representative;

(ii) such system has offered assistance to such representative to resolve the situation; and

(iii) such representative has failed or refused to act on behalf of the individual;

(5) have an arrangement with the Secretary and the agency of the State which administers the State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the furnishing of the information required by subsection (b) of this section;

(6) establish an advisory council—

(A) which will advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with mental illness;

(B) which shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiving mental health services, and family members of such individuals, and at least 60 percent the membership of which shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals; and

(C) which shall be chaired by an individual who has received or is receiving mental health services or who is a family member of such an individual;

(7) on January 1, 1987, and January 1 of each succeeding year, prepare and transmit to the Secretary and the head of the State mental health agency of the State in which the system is located a report describing the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;

(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system;

(9) establish a grievance procedure for clients or prospective clients of the system to assure that individuals with mental illness have full access to the services of the system and for individuals who have received or are receiving mental health services, family members of such individuals with mental illness, or representatives of such individuals or family members to assure that the eligible system is operating in compliance with the provisions of this subchapter and subchapter III of this chapter; and

(10) not use allotments provided to a system in a manner inconsistent with section 14404 of this title.

(b) Annual survey report; plan of corrections

The Secretary and the agency of a State which administers its State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall provide the eligible system of the State with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] with respect to any facility rendering care or treatment to individuals with mental illness in the State in which such system is located. A report or plan shall be made available within 30 days after the completion of the report or plan.

(c) Governing authority

(1)(A) Each system established in a State, through allotments received under section 10803 of this title, to protect and advocate the rights of individuals with mental illness shall have a governing authority.

(B) In States in which the governing authority is organized as a private non-profit entity with a multi-member governing board, or a public system with a multi-member governing board, such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of—

(i) members (to be selected no later than October 1, 1990) who broadly represent or are knowledgeable about the needs of the clients served by the system; and

(ii) in the case of a governing authority organized as a private non-profit entity, members who broadly represent or are knowledgeable about the needs of the clients served by the system including the chairperson of the advisory council of such system.

As used in this subparagraph, the term ''members who broadly represent or are knowledgeable about the needs of the clients served by the system'' shall be construed to include individuals who have received or are receiving mental health services and family members of such individuals.

(2) The governing authority established under paragraph (1) shall—

(A) be responsible for the planning, design, implementation, and functioning of the system; and

(B) consistent with subparagraph (A), jointly develop the annual priorities of the system with the advisory council.

(Pub. L. 99–319, title I, § 105, May 23, 1986, 100 Stat. 480; Pub. L. 100–509, §§ 4–6(a), 7(c), Oct. 20, 1988, 102 Stat. 2543–2545; Pub. L. 102–173, §§ 6, 10, Nov. 27, 1991, 105 Stat. 1218, 1219; Pub. L. 105–12, § 9(m), Apr. 30, 1997, 111 Stat. 28.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(5) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1997—Subsec. (a)(10). Pub. L. 105–12 added par. (10).

1991—Subsec. (a). Pub. L. 102–173, § 10, substituted ''individual with mental illness'' for ''mentally ill individ-

ual'' and ''individuals with mental illness'' for ''mentally ill individuals'' wherever appearing.

Subsec. (a)(4). Pub. L. 102–173, § 6(a), inserted ''as a result of monitoring or other activities (either of which result from a complaint or other evidence)'' before ''there is'' in subpar. (B)(iii) and added subpar. (C).

Subsec. (a)(6). Pub. L. 102–173, § 6(b), substituted ''60 percent'' for ''one-half'' in subpar. (B) and added subpar. (C).

Subsec. (a)(9). Pub. L. 102–173, § 6(c), inserted before period at end ''and for individuals who have received or are receiving mental health services, family members of such individuals with mental illness, or representatives of such individuals or family members to assure that the eligible system is operating in compliance with the provisions of this subchapter and subchapter III of this chapter''.

Subsec. (b). Pub. L. 102–173, § 10(2), substituted ''individuals with mental illness'' for ''mentally ill individuals''.

Subsec. (c)(1). Pub. L. 102–173, §§ 6(d), 10(2), substituted ''individuals with mental illness'' for ''mentally ill individuals'' in subpar. (A) and inserted at end of subpar. (B) ''As used in this subparagraph, the term 'members who broadly represent or are knowledgeable about the needs of the clients served by the system' shall be construed to include individuals who have received or are receiving mental health services and family members of such individuals.''

1988—Subsec. (a)(4)(B). Pub. L. 100–509, § 6(a), inserted ''(including an individual who has died or whose whereabouts are unknown)'' after ''any individual''.

Subsec. (a)(6). Pub. L. 100–509, § 4(1), substituted ''an advisory council'' for ''a board''.

Subsec. (a)(7). Pub. L. 100–509, § 5, substituted '', including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;'' for period at end.

Subsec. (a)(8), (9). Pub. L. 100–509, § 7(c), added pars. (8) and (9).

Subsec. (c). Pub. L. 100–509, § 4(2), added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

§ 10806. Access to records

(a) An eligible system which, pursuant to section 10805(a)(4) of this title, has access to records which, under Federal or State law, are required to be maintained in a confidential manner by a provider of mental health services, shall, except as provided in subsection (b) of this section, maintain the confidentiality of such records to the same extent as is required of the provider of such services.

(b)(1) Except as provided in paragraph (2), an eligible system which has access to records pursuant to section 10805(a)(4) of this title may not disclose information from such records to the individual who is the subject of the information if the mental health professional responsible for supervising the provision of mental health services to such individual has provided the system with a written determination that disclosure of such information to such individual would be detrimental to such individual's health.

(2)(A) If disclosure of information has been denied under paragraph (1) to an individual—

(i) such individual;

(ii) the legal guardian, conservator, or other legal representative of such individual; or

(iii) an eligible system, acting on behalf of an individual described in subparagraph (B),

may select another mental health professional to review such information and to determine if disclosure of such information would be detrimental to such individual's health. If such mental health professional determines, based on professional judgment, that disclosure of such information would not be detrimental to the health of such individual, the system may disclose such information to such individual.

(B) An eligible system may select a mental health professional under subparagraph (A)(iii) on behalf of—

(i) an individual whose legal guardian is the State; or

(ii) an individual who has a legal guardian, conservator, or other legal representative other than the State if such guardian, conservator, or representative does not, within a reasonable time after such individual is denied access to information under paragraph (1), select a mental health professional under subparagraph (A) to review such information.

(C) If the laws of a State prohibit an eligible system from obtaining access to the records of individuals with mental illness in accordance with section 10805(a)(4) of this title and this section, section 10805(a)(4) of this title and this section shall not apply to such system before—

(i) the date such system is no longer subject to such a prohibition; or

(ii) the expiration of the 2-year period beginning on May 23, 1986,

whichever occurs first.

(3)(A) As used in this section, the term ''records'' includes reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

(B) An eligible system shall have access to the type of records described in subparagraph (A) in accordance with the provisions of subsection (a) of this section and paragraphs (1) and (2) of subsection (b) of this section.

(Pub. L. 99–319, title I, § 106, May 23, 1986, 100 Stat. 481; Pub. L. 100–509, § 6(b), Oct. 20, 1988, 102 Stat. 2544; Pub. L. 102–173, § 10(2), Nov. 27, 1991, 105 Stat. 1219.)

AMENDMENTS

1991—Subsec. (b)(2)(C). Pub. L. 102–173 substituted ''individuals with mental illness'' for ''mentally ill individuals''.

1988—Subsec. (b)(3). Pub. L. 100–509 added par. (3).

§ 10807. Legal actions

(a) Prior to instituting any legal action in a Federal or State court on behalf of a[1] individual

[1] So in original. Probably should be ''an''.

with mental illness, an eligible system, or a State agency or nonprofit organization which entered into a contract with an eligible system under section 10804(a) of this title, shall exhaust in a timely manner all administrative remedies where appropriate. If, in pursuing administrative remedies, the system, agency, or organization determines that any matter with respect to such individual will not be resolved within a reasonable time, the system, agency, or organization may pursue alternative remedies, including the initiation of a legal action.

(b) Subsection (a) of this section does not apply to any legal action instituted to prevent or eliminate imminent serious harm to a[1] individual with mental illness.

(Pub. L. 99–319, title I, § 107, May 23, 1986, 100 Stat. 482; Pub. L. 102–173, § 10(1), Nov. 27, 1991, 105 Stat. 1219.)

AMENDMENTS

1991—Pub. L. 102–173 substituted ''individual with mental illness'' for ''mentally ill individual'' in subsecs. (a) and (b).

PART B—ADMINISTRATIVE PROVISIONS

§ 10821. Applications

(a) Submission for allotment; contents

No allotment may be made under this subchapter to an eligible system unless an application therefor is submitted to the Secretary. Each such application shall contain—

(1) assurances that amounts paid to such system from an allotment under this subchapter will be used to supplement and not to supplant the level of non-Federal funds available in the State in which such system is established to protect and advocate the rights of individuals with mental illness;

(2) assurances that such system will have a staff which is trained or being trained to provide advocacy services to individuals with mental illness and to work with family members of clients served by the system where the individuals with mental illness are minors, legally competent and do not object, and legally incompetent and the legal guardians, conservators, or other legal representatives are family members;

(3) assurances that such system, and any State agency or nonprofit organization with which such system may enter into a contract under section 10804(a) of this title, will not, in the case of any individual who has a legal guardian, conservator, or representative other than the State, take actions which are duplicative of actions taken on behalf of such individual by such guardian, conservator, or representative unless such guardian, conservator, or representative requests the assistance of such system; and

(4) such other information as the Secretary may by regulation prescribe.

(b) Satisfaction of requirements regarding trained staff

The assurance required under subsection (a)(2) of this section regarding trained staff may be satisfied through the provision of training by individuals who have received or are receiving mental health services and family members of such individuals.

(c) Duration of applications and assurances

Applications submitted under this section shall remain in effect for a 4-year period, and the assurances required under this section shall be for the same 4-year period.

(Pub. L. 99–319, title I, § 111, May 23, 1986, 100 Stat. 482; Pub. L. 100–509, § 7(d), Oct. 20, 1988, 102 Stat. 2545; Pub. L. 102–173, §§ 7, 10(2), Nov. 27, 1991, 105 Stat. 1218, 1219; Pub. L. 102–321, title I, § 163(c)(3)(A), July 10, 1992, 106 Stat. 377.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–321 substituted ''4-year'' for ''3-year'' in two places.

1991—Subsec. (a)(1). Pub. L. 102–173, § 10(2), substituted ''individuals with mental illness'' for ''mentally ill individuals''.

Subsec. (a)(2). Pub. L. 102–173, §§ 7(1), 10(2), substituted ''individuals with mental illness'' for ''mentally ill individuals'' and inserted before semicolon at end ''and to work with family members of clients served by the system where the individuals with mental illness are minors, legally competent and do not object, and legally incompetent and the legal guardians, conservators, or other legal representatives are family members''.

Subsecs. (b), (c). Pub. L. 102–173, § 7(2), (3) added subsec. (b) and redesignated former subsec. (b) as (c).

1988—Pub. L. 100–509 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 10822. Allotment formula and reallotments

(a)(1)(A) Except as provided in paragraph (2) and subject to the availability of appropriations under section 10827 of this title, the Secretary shall make allotments under section 10803 of this title from amounts appropriated under section 10827 of this title for a fiscal year to eligible systems on the basis of a formula prescribed by the Secretary which is based equally—

(i) on the population of each State in which there is an eligible system; and

(ii) on the population of each such State weighted by its relative per capita income.

(B) For purposes of subparagraph (A)(ii), the term ''relative per capita income'' means the quotient of the per capita income of the United States and the per capita income of the State, except that if the State is Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the Virgin Islands, the quotient shall be considered to be one.

(2)(A) The minimum amount of the allotment of an eligible system shall be the product (rounded to the nearest $100) of the appropriate base amount determined under subparagraph (B) and the factor specified in subparagraph (C).

(B) For purposes of subparagraph (A), the appropriate base amount—

(i) for American Samoa, Guam, the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana

Islands, the Republic of Palau, and the Virgin Islands, is $139,300; and

(ii) for any other State, is $260,000.

(C) The factor specified in this subparagraph is the ratio of the amount appropriated under section 10827 of this title for the fiscal year for which the allotment is being made to the amount appropriated under such section for fiscal year 1995.

(D) If the total amount appropriated for a fiscal year is at least $25,000,000, the Secretary shall make an allotment in accordance with subparagraph (A) to the eligible system serving the American Indian consortium.

(b)(1) To the extent that all the amounts appropriated under section 10827 of this title for a fiscal year are not allotted to eligible systems because—

(A) one or more eligible systems have not submitted an application for an allotment for such fiscal year; or

(B) one or more eligible systems have notified the Secretary that they do not intend to use the full amount of their allotment,

the amount which is not so allotted shall be reallotted among the remaining eligible systems.

(2) The amount of an allotment to an eligible system for a fiscal year which the Secretary determines will not be required by the system during the period for which it is available shall be available for reallotment by the Secretary to other eligible systems with respect to which such a determination has not been made.

(3) The Secretary shall make reallotments under paragraphs (1) and (2) on such date or dates as the Secretary may fix (but not earlier than 30 days after the Secretary has published notice of the intention of the Secretary to make such reallotment in the Federal Register). A reallotment to an eligible system shall be made in proportion to the original allotment of such system for such fiscal year, but with such proportionate amount for such system being reduced to the extent it exceeds the sum the Secretary estimates such system needs and will be able to use during such period. The total of such reductions shall be similarly reallotted among eligible systems whose proportionate amounts were not so reduced. Any amount so reallotted to an eligible system for a fiscal year shall be deemed to be a part of its allotment under subsection (a) of this section for such fiscal year.

(Pub. L. 99–319, title I, § 112, May 23, 1986, 100 Stat. 483; Pub. L. 100–509, § 7(e), Oct. 20, 1988, 102 Stat. 2545; Pub. L. 106–310, div. B, title XXXII, § 3206(d), (e), Oct. 17, 2000, 114 Stat. 1194, 1195.)

AMENDMENTS

2000—Subsec. (a)(1)(B). Pub. L. 106–310, § 3206(e)(1), substituted ''Marshall Islands, the Federated States of Micronesia, the Republic of Palau'' for ''Trust Territory of the Pacific Islands''.

Subsec. (a)(2). Pub. L. 106–310, § 3206(d), amended par. (2) generally. Prior to amendment, par. (2) specified minimum amounts of allotments to eligible systems of each State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands based on whether the total amount appropriated in a fiscal year was at least $13,000,000 or less than $13,000,000.

Subsec. (a)(3). Pub. L. 106–310, § 3206(e)(2), struck out par. (3) which read as follows: ''In any case in which the total amount appropriated under section 10827 of this title for a fiscal year exceeds the total amount appropriated under such section, as in effect on October 19, 1988, for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29, the Secretary shall increase each of the allotments under clauses (i)(II) and (ii)(II) of subparagraph (A) and clauses (i) and (ii) of subparagraph (B) of paragraph (2) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

''(A) the total amount appropriated under section 10827 of this title for the fiscal year for which the increase in minimum allotment is made, minus;

''(B) the total amount appropriated under section 10827 of this title for the immediately preceding fiscal year,

bears to the total amount appropriated under section 10827 of this title for such preceding fiscal year.''

1988—Subsec. (a)(2). Pub. L. 100–509, § 7(e)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Notwithstanding paragraph (1) and subject to the availability of appropriations under section 10827 of this title—

''(A) the amount of the allotment of the eligible system of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall not be less than $125,000; and

''(B) the amount of the allotment of the eligible system of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall not be less than $67,000.''

Subsec. (a)(3). Pub. L. 100–509, § 7(e)(2), added par. (3).

§ 10823. Payments under allotments

For each fiscal year, the Secretary shall make payments to each eligible system from its allotment under this subchapter. Any amount paid to an eligible system for a fiscal year and remaining unobligated at the end of such year shall remain available to such system for the next fiscal year for the purposes for which it was made.

(Pub. L. 99–319, title I, § 113, May 23, 1986, 100 Stat. 484.)

§ 10824. Reports by Secretary

(a) The Secretary shall include in each report required under section 15005 of this title a separate statement which contains—

(1) a description of the activities, accomplishments, and expenditures of systems to protect and advocate the rights of individuals with mental illness supported with payments from allotments under this subchapter, including—

(A) a specification of the total number of individuals with mental illness served by such systems;

(B) a description of the types of activities undertaken by such systems;

(C) a description of the types of facilities providing care or treatment with respect to which such activities are undertaken;

(D) a description of the manner in which such activities are initiated; and

(E) a description of the accomplishments resulting from such activities;

(2) a description of—

(A) systems to protect and advocate the rights of individuals with mental illness supported with payments from allotments under this subchapter;

(B) activities conducted by States to protect and advocate such rights;

(C) mechanisms established by residential facilities for individuals with mental illness to protect and advocate such rights; and

(D) the coordination among such systems, activities, and mechanisms;

(3) a specification of the number of systems established with allotments under this subchapter and of whether each such system was established by a public or nonprofit private entity; and

(4) recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of needs for such activities and services which have not been met by systems established under this subchapter.

(b) In preparing each statement required by subsection (a) of this section, the Secretary shall use and include information submitted to the Secretary in the reports required under section 10805(a)(7) of this title.

(Pub. L. 99–319, title I, § 114, May 23, 1986, 100 Stat. 484; Pub. L. 102–173, § 10(2), Nov. 27, 1991, 105 Stat. 1219; Pub. L. 106–402, title IV, § 401(b)(13)(B), Oct. 30, 2000, 114 Stat. 1739.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–402 substituted ''section 15005 of this title'' for ''section 6006(c) of this title'' in introductory provisions.

1991—Subsec. (a). Pub. L. 102–173 substituted ''individuals with mental illness'' for ''mentally ill individuals'' wherever appearing.

§ 10825. Technical assistance

The Secretary shall use not more than 2 percent of the amounts appropriated under section 10827 of this title to provide technical assistance to eligible systems with respect to activities carried out under this subchapter, consistent with requests by such systems for such assistance.

(Pub. L. 99–319, title I, § 115, May 23, 1986, 100 Stat. 484; Pub. L. 100–509, § 7(b)(2), Oct. 20, 1988, 102 Stat. 2545.)

AMENDMENTS

1988—Pub. L. 100–509 amended section generally. Prior to amendment, section read as follows: ''The Secretary shall provide technical assistance to eligible systems with respect to activities carried out under this subchapter.''

§ 10826. Administration

(a) In general

The Secretary shall carry out this subchapter through the Administrator of the Substance Abuse and Mental Health Services Administration.

(b) Regulations

Not later than 6 months after November 27, 1991, the Secretary shall promulgate final regulations to carry out this subchapter and subchapter III of this chapter.

(Pub. L. 99–319, title I, § 116, May 23, 1986, 100 Stat. 485; Pub. L. 102–173, § 9, Nov. 27, 1991, 105 Stat. 1219; Pub. L. 102–321, title I, § 163(c)(3)(B), July 10, 1992, 106 Stat. 377.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321 substituted ''the Substance Abuse and Mental Health Services Administration'' for ''the Alcohol, Drug Abuse, and Mental Health Administration''.

1991—Pub. L. 102–173 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, see section 801(c) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 10827. Authorization of appropriations

There are authorized to be appropriated for allotments under this subchapter, $19,500,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 2003.

(Pub. L. 99–319, title I, § 117, May 23, 1986, 100 Stat. 485; Pub. L. 100–509, § 7(f), Oct. 20, 1988, 102 Stat. 2546; Pub. L. 102–173, § 8, Nov. 27, 1991, 105 Stat. 1219; Pub. L. 106–310, div. B, title XXXII, § 3206(f), Oct. 17, 2000, 114 Stat. 1195.)

AMENDMENTS

2000—Pub. L. 106–310 substituted ''2003'' for ''1995''.

1991—Pub. L. 102–173 amended section generally. Prior to amendment, section read as follows: ''For allotments under this subchapter, there are authorized to be appropriated $14,300,000 for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991.''

1988—Pub. L. 100–509 amended section generally. Prior to amendment, section read as follows: ''For allotments under this subchapter, there are authorized to be appropriated $10,000,000 for fiscal year 1986, $10,500,000 for fiscal year 1987, and $11,025,000 for fiscal year 1988.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8 of Pub. L. 100–509 provided that:

''(a) IN GENERAL.—The amendments made by this Act [amending sections 10802, 10804 to 10806, 10821, 10822, and 10825 of this title], other than the amendment made by section 7(f) [amending this section], shall become effective on the date of the enactment of this Act [Oct. 20, 1988].

''(b) AUTHORIZATION OF APPROPRIATIONS.—The amendment made by section 7(f) [amending this section] shall become effective on October 1, 1988.''

SUBCHAPTER II—RESTATEMENT OF BILL OF RIGHTS FOR MENTAL HEALTH PATIENTS

§ 10841. Restatement of bill of rights

It is the sense of the Congress that, as previously stated in title V of the Mental Health Systems Act [42 U.S.C. 9501 et seq.], each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require, and that in making such review and revision, States should take into account the recommendations of the President's Commission on Mental Health and the following:

(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:

(A) The right to appropriate treatment and related services in a setting and under conditions that—

(i) are the most supportive of such person's personal liberty; and

(ii) restrict such liberty only to the extent necessary consistent with such person's treatment needs, applicable requirements of law, and applicable judicial orders.

(B) The right to an individualized, written, treatment or service plan (such plan to be developed promptly after admission of such person), the right to treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs, and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

(C) The right to ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand, of—

(i) such person's general mental condition and, if such program or facility has provided a physical examination, such person's general physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, and types of providers of mental health services.

(D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person's informed, voluntary, written consent to such mode or course of treatment, except treatment—

(i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.

(E) The right not to participate in experimentation in the absence of such person's informed, voluntary, written consent, the right to appropriate protections in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks, and the right and opportunity to revoke such consent.

(F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(G) The right to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such person with regard to personal needs.

(H) The right to confidentiality of such person's records.

(I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to—

(i) information in such records provided by a third party under assurance that such information shall remain confidential; and

(ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in such material to such person.

(J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails, and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited, and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

(K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.

(L) The right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely, and impartial grievance procedure provided for or by the program or facility.

(M) Notwithstanding subparagraph (J), the right of access to (including the opportuni-

ties and facilities for private communication with) any available—

(i) rights protection service within the program or facility;

(ii) rights protection service within the State mental health system designed to be available to such person;

(iii) system established under subchapter I of this chapter to protect and advocate the rights of individuals with mental illness; and

(iv) qualified advocate;

for the purpose of receiving assistance to understand, exercise, and protect the rights described in this section and in other provisions of law.

(N) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(O) The right to referral as appropriate to other providers of mental health services upon discharge.

(2)(A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.

(B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

(3)(A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.

(B) Nothing in this section should—

(i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;

(ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;

(iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by withholding consent to proposed treatment; or

(iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(C) In order to assist a person admitted to a program or facility in the exercise or protection of such person's rights, such person's attorney or legal representatives should have reasonable access to—

(i) such person;

(ii) the areas of the program or facility where such person has received treatment, resided, or had access; and

(iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treatment, and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all persons admitted to such program or facility. Each such notice should conform to the format and content for such notices, and should be posted in all appropriate locations.

(4)(A) In the case of a person adjudicated by a court of competent jurisdiction as being incompetent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guardian or representative for the purpose of exercising such right or such authorization.

(B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under State law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.

(C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.

(Pub. L. 99–319, title II, § 201, May 23, 1986, 100 Stat. 485; Pub. L. 102–173, § 10(2), Nov. 27, 1991, 105 Stat. 1219.)

REFERENCES IN TEXT

The Mental Health Systems Act, referred to in introductory text, is Pub. L. 96–398, Oct. 7, 1980, 94 Stat. 1564, as amended. Title V of the Mental Health Systems Act is classified generally to subchapter IV (§ 9501 et seq.) of chapter 102 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

AMENDMENTS

1991—Par. (1)(M)(iii). Pub. L. 102–173 substituted ''individuals with mental illness'' for ''mentally ill individuals''.

SUBCHAPTER III—CONSTRUCTION

§ 10851. Construction of subchapters I and II; "individual with mental illness" defined

(a) Subchapters I and II of this chapter shall not be construed as establishing any new rights for individuals with mental illness.

(b) For purposes of this section, the term ''individual with mental illness'' has the same meaning as in section 10802(3)[1] of this title.

(Pub. L. 99–319, title III, § 301, May 23, 1986, 100 Stat. 489; Pub. L. 102–173, § 10, Nov. 27, 1991, 105 Stat. 1219.)

REFERENCES IN TEXT

Section 10802(3) of this title, referred to in subsec. (b), was redesignated section 10802(4) of this title by Pub. L. 102–173, § 4(1), Nov. 27, 1991, 105 Stat. 1217.

AMENDMENTS

1991—Pub. L. 102–173, substituted ''individuals with mental illness'' for ''mentally ill individuals'' in subsec. (a) and ''individual with mental illness'' for ''mentally ill individual'' in subsec. (b).

CHAPTER 115—CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP ASSISTANCE PROGRAM

Sec.
10901. Authority of Secretary to make grants.
10902. Application for grants.
10903. Definitions.
10904. Annual report by States; contents; manner of payments pursuant to grants.
10905. Authorization of appropriations.

§ 10901. Authority of Secretary to make grants

The Secretary is authorized to make a grant for any fiscal year to any State receiving a grant under title XX of the Social Security Act [42 U.S.C. 1397 et seq.] for such fiscal year to enable such State to award scholarships to eligible individuals within the State who are candidates for the Child Development Associate credential.

(Pub. L. 99–425, title VI, § 602, Sept. 30, 1986, 100 Stat. 976.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XX of the Social Security Act is classified principally to subchapter XX (§ 1397 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

EFFECTIVE DATE

Chapter effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

SHORT TITLE

Section 601 of title VI of Pub. L. 99–425 provided that: ''This title [enacting this chapter] may be cited as the 'Child Development Associate Scholarship Assistance Act of 1985'.''

§ 10902. Application for grants

(a) Application required

A State desiring to participate in the grant program established by this chapter shall submit an application to the Secretary in such form as the Secretary may require.

(b) Contents of applications

A State's application shall contain appropriate assurances that—

(1) scholarship assistance made available with funds provided under this chapter will be awarded—

(A) only to eligible individuals;

(B) on the basis of the financial need of such individuals; and

(C) in amounts sufficient to cover the cost of application, assessment, and credentialing (including, at the option of the State, any training necessary for credentialing) for the Child Development Associate credential for such individuals;

(2) not more than 35 percent of the funds received under this chapter by a State may be used to provide scholarship assistance under paragraph (1) to cover the cost of training described in paragraph (1)(C); and

(3) not more than 10 percent of the funds received by the State under this chapter will be used for the costs of administering the program established in such State to award such assistance.

(c) Equitable distribution

In making grants under this chapter, the Secretary shall—

(1) distribute such grants equitably among States; and

(2) ensure that the needs of rural and urban areas are appropriately addressed.

(Pub. L. 99–425, title VI, § 603, Sept. 30, 1986, 100 Stat. 976; Pub. L. 101–501, title V, § 501, Nov. 3, 1990, 104 Stat. 1256.)

AMENDMENTS

1990—Subsec. (b)(1)(C). Pub. L. 101–501, § 501(a), (b)(1), inserted ''(including, at the option of the State, any training necessary for credentialing)'' after ''credentialing'' and struck out ''and'' at end.

Subsec. (b)(2), (3). Pub. L. 101–501, § 501(b)(2), (3), added par. (2) and redesignated former par. (2) as (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

§ 10903. Definitions

For purposes of this chapter—

(1) the term ''eligible individual'' means a candidate for the Child Development Associate credential whose income does not exceed the[1] 130 percent of the lower living standard income level,[2] by more than 50 percent;

(2) the term ''lower living standard income level'' means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary of Labor and based on the most recent lower living family budget issued by the Secretary of Labor;

(3) the term ''Secretary'' means the Secretary of Health and Human Services; and

(4) the term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau.

(Pub. L. 99–425, title VI, § 604, Sept. 30, 1986, 100 Stat. 976; Pub. L. 101–501, title V, § 502, Nov. 3, 1990, 104 Stat. 1256.)

[1] See References in Text note below.

[1] So in original. The word ''the'' probably should not appear.

[2] So in original. The comma probably should not appear.

AMENDMENTS

1990—Par. (1). Pub. L. 101–501, § 502(1), substituted ''130 percent of the lower living standard income level'' for ''poverty line, as defined in section 9902(2) of this title''.

Pars. (2) to (4). Pub. L. 101–501, § 502(2), (3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

§ 10904. Annual report by States; contents; manner of payments pursuant to grants

(a) Reporting

Each State receiving grants under this chapter shall annually submit to the Secretary information on the number of eligible individuals assisted under the grant program, and their positions and salaries before and after receiving the Child Development Associate credential.

(b) Payments

Payments pursuant to grants made under this chapter may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(Pub. L. 99–425, title VI, § 605, Sept. 30, 1986, 100 Stat. 977.)

§ 10905. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter such sums as may be necessary for fiscal year 1995.

(Pub. L. 99–425, title VI, § 606, Sept. 30, 1986, 100 Stat. 977; Pub. L. 101–501, title V, § 503, Nov. 3, 1990, 104 Stat. 1256; Pub. L. 103–252, title I, § 124, May 18, 1994, 108 Stat. 650.)

AMENDMENTS

1994—Pub. L. 103–252 substituted ''to carry out this chapter such sums as may be necessary for fiscal year 1995'' for ''$1,500,000 for fiscal year 1990, $3,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994 for carrying out this chapter''.

1990—Pub. L. 101–501 substituted ''are authorized'' for ''is authorized'', inserted '', $3,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994'' after ''1990'', and directed the substitution of ''fiscal year'' for ''each of the fiscal years 1987, 1988, and 1989, and'', which was executed by making the substitution for ''each of the fiscal years 1987, 1988, 1989, and'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

CHAPTER 116—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

SUBCHAPTER I—EMERGENCY PLANNING AND NOTIFICATION

Sec.
11001. Establishment of State commissions, planning districts, and local committees.
11002. Substances and facilities covered and notification.
11003. Comprehensive emergency response plans.
11004. Emergency notification.
11005. Emergency training and review of emergency systems.

SUBCHAPTER II—REPORTING REQUIREMENTS

11021. Material safety data sheets.
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SUBCHAPTER I—EMERGENCY PLANNING AND NOTIFICATION

§ 11001. Establishment of State commissions, planning districts, and local committees

(a) Establishment of State emergency response commissions

Not later than six months after October 17, 1986, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) of this section and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) Establishment of emergency planning districts

Not later than nine months after October 17, 1986, the State emergency response commission

shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subchapter are within such emergency planning district.

(c) Establishment of local emergency planning committees

Not later than 30 days after designation of emergency planning districts or 10 months after October 17, 1986, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subchapter. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) Revisions

A State emergency response commission may revise its designations and appointments under subsections (b) and (c) of this section as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

(Pub. L. 99–499, title III, § 301, Oct. 17, 1986, 100 Stat. 1729.)

EFFECTIVE DATE

Chapter effective Oct. 17, 1986, see section 4 of Pub. L. 99–499, set out as an Effective Date of 1986 Amendment note under section 9601 of this title.

SHORT TITLE

Section 300(a) of title III of Pub. L. 99–499 provided that: ''This title [enacting this chapter] may be cited as the 'Emergency Planning and Community Right-To-Know Act of 1986'.''

EXECUTIVE ORDER NO. 12856

Ex. Ord. No. 12856, Aug. 3, 1993, 58 F.R. 41981, which provided for Federal compliance with right-to-know laws and pollution prevention requirements, was revoked by Ex. Ord. No. 13148, § 901, Apr. 21, 2000, 65 F.R. 24604, set out as a note under section 4321 of this title.

§ 11002. Substances and facilities covered and notification

(a) Substances covered

(1) In general

A substance is subject to the requirements of this subchapter if the substance is on the list published under paragraph (2).

(2) List of extremely hazardous substances

Within 30 days after October 17, 1986, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the ''Chemical Emergency Preparedness Program Interim Guidance''.

(3) Thresholds

(A) At the time the list referred to in paragraph (2) is published the Administrator shall—

(i) publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after October 17, 1986, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) Revisions

The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the term ''toxicity'' shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) Facilities covered

(1) Except as provided in section 11004 of this title, a facility is subject to the requirements of this subchapter if a substance on the list referred to in subsection (a) of this section is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subchapter, if such designation is made after public

notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) Emergency planning notification

Not later than seven months after October 17, 1986, the owner or operator of each facility subject to the requirements of this subchapter by reason of subsection (b)(1) of this section shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subchapter. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) of this section first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subchapter.

(d) Notification of Administrator

The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subchapter by notifying the Administrator of—

(1) each notification received from a facility under subsection (c) of this section, and

(2) each facility designated by the Governor or State emergency response commission under subsection (b)(2) of this section.

(Pub. L. 99–499, title III, § 302, Oct. 17, 1986, 100 Stat. 1730.)

§ 11003. Comprehensive emergency response plans

(a) Plan required

Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after October 17, 1986. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) Resources

Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) Plan provisions

Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subchapter that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 11002(a) of this title, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subchapter, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 11004 of this title).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) Providing of information

For each facility subject to the requirements of this subchapter:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after October 17, 1986, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) Review by State emergency response commission

After completion of an emergency plan under subsection (a) of this section for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of

each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) Guidance documents

The national response team, as established pursuant to the National Contingency Plan as established under section 9605 of this title, shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after October 17, 1986.

(g) Review of plans by regional response teams

The regional response teams, as established pursuant to the National Contingency Plan as established under section 9605 of this title, may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.

(Pub. L. 99–499, title III, § 303, Oct. 17, 1986, 100 Stat. 1731.)

§ 11004. Emergency notification

(a) Types of releases

(1) 11002(a) substance which requires CERCLA notice

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9603(a)] (hereafter in this section referred to as ''CERCLA'') (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section.

(2) Other 11002(a) substance

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA [42 U.S.C. 9603(a)], the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section, but only if the release—

(A) is not a federally permitted release as defined in section 101(10) of CERCLA [42 U.S.C. 9601(10)],

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner which would require notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)].

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b) of this section.

(3) Non-11002(a) substance which requires CERCLA notice

If a release of a substance which is not on the list referred to in section 11002(a) of this title occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)], the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)], the owner or operator shall provide notice as described in subsection (b) of this section.

(B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)]—

(i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA [42 U.S.C. 9603(a)].

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b) of this section.

(4) Exempted releases

This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) Notification

(1) Recipients of notice

Notice required under subsection (a) of this section shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 11001(c) of this title, for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) Contents

Notice required under subsection (a) of this section shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A) The chemical name or identity of any substance involved in the release.

(B) An indication of whether the substance is on the list referred to in section 11002(a) of this title.

(C) An estimate of the quantity of any such substance that was released into the environment.

(D) The time and duration of the release.

(E) The medium or media into which the release occurred.

(F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H) The name and telephone number of the person or persons to be contacted for further information.

(c) Followup emergency notice

As soon as practicable after a release which requires notice under subsection (a) of this section, such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b) of this section, and including additional information with respect to—

(1) actions taken to respond to and contain the release,

(2) any known or anticipated acute or chronic health risks associated with the release, and

(3) where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) Transportation exemption not applicable

The exemption provided in section 11047 of this title (relating to transportation) does not apply to this section.

(Pub. L. 99–499, title III, § 304, Oct. 17, 1986, 100 Stat. 1733.)

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and CERCLA, referred to in subsec. (a)(1), (3), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

§ 11005. Emergency training and review of emergency systems

(a) Emergency training

(1) Programs

Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) State and local program support

There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, $5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) Other programs

Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) Review of emergency systems

(1) Review

The Administrator shall initiate, not later than 30 days after October 17, 1986, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 11002(a) of this title for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after October 17, 1986, and issue a final report of findings and recommendations to the Congress not later than 18 months after October 17, 1986. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) Report

The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard posed by each release, (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating

perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) Recommendations

The report required by this subsection shall also include the Administrator's recommendations for—

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

(Pub. L. 99–499, title III, § 305, Oct. 17, 1986, 100 Stat. 1735.)

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER II—REPORTING REQUIREMENTS

§ 11021. Material safety data sheets

(a) Basic requirement

(1) Submission of MSDS or list

The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) Contents of list

(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) Treatment of mixtures

An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Availability of MSDS on request

(1) To local emergency planning committee

If an owner or operator of a facility submits a list of chemicals under subsection (a)(1) of this section, the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) To public

A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 11044 of this title. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 11044 of this title.

(d) Initial submission and updating

(1) The initial material safety data sheet or list required under this section with respect to a

hazardous chemical shall be provided before the later of—

(A) 12 months after October 17, 1986, or

(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a) of this section, a revised sheet shall be provided to such person.

(e) "Hazardous chemical" defined

For purposes of this section, the term ''hazardous chemical'' has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

(Pub. L. 99–499, title III, § 311, Oct. 17, 1986, 100 Stat. 1736.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsecs. (a)(1), (2)(A)(i), (B) and (d)(1)(B), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

§ 11022. Emergency and hazardous chemical inventory forms

(a) Basic requirement

(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (hereafter in this chapter referred to as an ''inventory form'') to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) The inventory form containing tier I information (as described in subsection (d)(1) of this section) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2) of this section) to the recipients described in paragraph (1).

(3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.

(B) Providing information on the inventory form on the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Hazardous chemicals covered

A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 11021 of this title.

(d) Contents of form

(1) Tier I information

(A) Aggregate information by category

An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act.

(B) Required information

The information referred to in subparagraph (A) is the following:

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

(iii) The general location of hazardous chemicals in each category.

(C) Modifications

For purposes of reporting information under this paragraph, the Administrator may—

(i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) Tier II information

An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e) of this section:

(A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 11044 of this title.

(e) Availability of tier II information

(1) Availability to State commissions, local committees, and fire departments

Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d) of this section, to the person making the request. Any such request shall be with respect to a specific facility.

(2) Availability to other State and local officials

A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) Availability to public

(A) In general

Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) Automatic provision of information to public

Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section 11044 of this title. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 11044 of this title to the person making the request.

(C) Discretionary provision of information to public

In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section 11044 of this title to the person.

(D) Response in 45 days

A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(f) Fire department access

Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) Format of forms

The Administrator shall publish a uniform format for inventory forms within three months after October 17, 1986. If the Administrator does

not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

(Pub. L. 99–499, title III, § 312, Oct. 17, 1986, 100 Stat. 1738.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsecs. (a)(1) and (d)(1)(A), (C)(i), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

§ 11023. Toxic chemical release forms

(a) Basic requirement

The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) of this section for each toxic chemical listed under subsection (c) of this section that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) of this section during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) Covered owners and operators of facilities

(1) In general

(A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a release form is required under this section.

(B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C) For purposes of this section—

(i) The term ''manufacture'' means to produce, prepare, import, or compound a toxic chemical.

(ii) The term ''process'' means the preparation of a toxic chemical, after its manufacture, for distribution in commerce—

(I) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemical, or

(II) as part of an article containing the toxic chemical.

(2) Discretionary application to additional facilities

The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) of this section if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) Toxic chemicals covered

The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99–169 of the Senate Committee on Environment and Public Works, titled ''Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986'' [42 U.S.C. 11023] (including any revised version of the list as may be made pursuant to subsection (d) or (e) of this section).

(d) Revisions by Administrator

(1) In general

The Administrator may by rule add or delete a chemical from the list described in subsection (c) of this section at any time.

(2) Additions

A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in

subsection (c) of this section on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) Deletions

A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) Effective date

Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calender[1] year shall take effect beginning with the calendar year following such next calendar year.

(e) Petitions

(1) In general

Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2) of this section. Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3) of this section.

(B) Publish an explanation of why the petition is denied.

(2) Governor petitions

A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2) of this section. In the case of such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator—

(A) initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2) of this section, or

(B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) of this section for adding a chemical to the list.

(f) Threshold for reporting

(1) Toxic chemical threshold amount

The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical manufactured or processed at a facility—

(i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) Revisions

The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) Form

(1) Information required

Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall—

(A) provide for the name and location of, and principal business activities at, the facility;

(B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

(C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.

(ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii) For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

(2) Use of available data

In order to provide the information required under this section, the owner or operator of a

[1] So in original. Probably should be ''calendar''.

facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) Use of release form

The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 11044(a) of this title, to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) Modifications in reporting frequency

(1) In general

The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

(A) All toxic chemical release forms required under this section.

(B) A class of toxic chemicals or a category of facilities.

(C) A specific toxic chemical.

(D) A specific facility.

(2) Requirements

A modification may be made under paragraph (1) only if the Administrator—

(A) makes a finding that the modification is consistent with the provisions of subsection (h) of this section, based on—

(i) experience from previously submitted toxic chemical release forms, and

(ii) determinations made under paragraph (3), and

(B) the finding is made by a rulemaking in accordance with section 553 of title 5.

(3) Determinations

The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

(B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-year review

Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

(5) Notification to Congress

The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

(6) Judicial review

In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

(7) Applicability

A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) Effective date

Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(j) EPA management of data

The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) Report

Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

(1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.

(3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(*l*) Mass balance study

(1) In general

The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after October 17, 1986.

(2) Purposes

The purposes of the study are as follows:

(A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B) To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this chapter.

(C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) Information collection

(A) The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after October 17, 1986 initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.

(B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) Mass balance definition

For purposes of this subsection, the term ''mass balance'' means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct.

(Pub. L. 99–499, title III, § 313, Oct. 17, 1986, 100 Stat. 1741.)

EXPEDITING COMMUNITY RIGHT-TO-KNOW INITIATIVES

Memorandum of President of the United States, Aug. 8, 1995, 60 F.R. 41791, provided:

Memorandum for the Administrator of the Environmental Protection Agency and the Heads of Executive Departments and Agencies

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) (''EPCRA'') and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) provide an innovative approach to protecting public health and the environment by ensuring that communities are informed about the toxic chemicals being released into the air, land, and water by manufacturing facilities. I am committed to the effective implementation of this law, because Community Right-to-Know protections provide a basic informational tool to encourage informed community-based environmental decision making and provide a strong incentive for businesses to find their own ways of preventing pollution.

The laws provide the Environmental Protection Agency with substantial authority to add to the Toxics Release Inventory under EPCRA: (1) new chemicals; (2) new classes of industrial facilities; and (3) additional types of information concerning toxic chemical use at facilities. Community Right-to-Know should be enhanced wherever possible as appropriate. EPA currently is engaged in an on-going process to address potential facility expansion and the collection of use information. I am committed to a full and open process on the policy issues posed by EPA's exercise of these authorities.

So that consideration of these issues can be fully accomplished during this Administration, I am directing the Administrator of the Environmental Protection Agency, in consultation with the Office of Management and Budget and appropriate Federal agencies with applicable technical and functional expertise, as necessary, to take the following actions:

(a) Continuation on an expedited basis of the public notice and comment rulemaking proceedings to consider whether, as appropriate and consistent with section 313(b) of EPCRA, 42 U.S.C. 11023(b), to add to the list of Standard Industrial Classification (''SIC'') Code designations of 20 through 39 (as in effect on July 1, 1985). For SIC Code designations, see ''Standard Industrial Classification Manual'' published by the Office of Management and Budget. EPA shall complete the rulemaking process on an accelerated schedule.

(b) Development and implementation of an expedited, open, and transparent process for consideration of reporting under EPCRA on information on the use of toxic chemicals at facilities, including information on mass balance, materials accounting, or other chemical use date [data], pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A). EPA shall report on the progress of this effort by October 1, 1995, with a goal of obtaining sufficient information to be able to make informed judgments concerning implementation of any appropriate program.

These actions should continue unless specifically prohibited by law. The head of each executive department or agency shall assist the Environmental Protection Agency in implementing this directive as quickly as possible.

This directive is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any person.

The Director of the Office of Management and Budget is authorized and directed to publish this Memorandum in the Federal Register.

WILLIAM J. CLINTON.

SUBCHAPTER III—GENERAL PROVISIONS

§ 11041. Relationship to other law

(a) In general

Nothing in this chapter shall—

(1) preempt any State or local law,

(2) except as provided in subsection (b) of this section, otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or

(3) affect or modify in any way the obligations or liabilities of any person under other Federal law.

(b) Effect on MSDS requirements

Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 11021 of this title. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

(Pub. L. 99–499, title III, § 321, Oct. 17, 1986, 100 Stat. 1747.)

§ 11042. Trade secrets

(a) Authority to withhold information

(1) General authority

(A) With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 11003(d)(2), 11003(d)(3), 11021, 11022, or 11023 of this title to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c) of this section, if the person complies with paragraph (2).

(B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).

(2) Requirements

(A) A person is entitled to withhold information under paragraph (1) if such person—

(i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b) of this section,

(ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b) of this section, including a specific description of why such factors apply, and

(iii) submits to the Administrator a copy of such submittal, and the information withheld from such submittal.

(B) In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may—

(i) designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and

(ii) submit such designated information separately from other information submitted under this subsection.

(3) Limitation

The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c) of this section, is not a trade secret.

(b) Trade secret factors

No person required to provide information under this chapter may claim that the information is entitled to protection as a trade secret under subsection (a) of this section unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(c) Trade secret regulations

As soon as practicable after October 17, 1986, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4) of this section, such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in United Steelworkers of America, AFL–CIO–CLC v. Thorne G. Auchter.

(d) Petition for review

(1) In general

Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(2) Initial review

Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) of this section and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) Finding of sufficient assertions

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimaint[1] may seek judicial review of the determination.

(4) Finding of insufficient assertions

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C) If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(e) Exception for information provided to health professionals

Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 11043 of this title.

(f) Providing information to Administrator; availability to public

Any information submitted to the Administrator under subsection (a)(2) of this section or subsection (d)(3) of this section (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter.

(g) Information provided to State

Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) of this section and subsection (d)(3) of this section.

(h) Information on adverse effects

(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 11001 of this title shall identify the adverse health effects associated with

[1] So in original. Probably should be "claimant".

the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 11023(j) of this title and is provided to any person requesting information about such toxic chemical.

(i) Information provided to Congress

Notwithstanding any limitatio[2] contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

(Pub. L. 99–499, title III, § 322, Oct. 17, 1986, 100 Stat. 1747.)

§ 11043. Provision of information to health professionals, doctors, and nurses

(a) Diagnosis or treatment by health professional

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d) of this section. The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual,

(2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

(b) Medical emergency

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

(1) a medical emergency exists,

(2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and

(3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) of this section and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) Preventive measures by local health professionals

(1) Provision of information

An owner or operator of a facility subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a local government employee or a person under contract with the local government, and

(B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d) of this section.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

(2) Written statement of need

The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

[2] So in original. Probably should be ''limitation''.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) Confidentiality agreement

Any person obtaining information under subsection (a) or (c) of this section shall, in accordance with such subsection (a) or (c) of this section, be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) Regulations

As soon as practicable after October 17, 1986, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection[1] (a) and (c) of this section and the confidentiality agreement under subsection (d) of this section.

(Pub. L. 99–499, title III, § 323, Oct. 17, 1986, 100 Stat. 1750.)

§ 11044. Public availability of plans, data sheets, forms, and followup notices

(a) Availability to public

Each emergency response plan, material safety data sheet, list described in section 11021(a)(2) of this title, inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 11042 of this title, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 11022 of this title, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 11022(d)(2) of this title to be contained in an inventory form as tier II information.

(b) Notice of public availability

Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a) of this section.

(Pub. L. 99–499, title III, § 324, Oct. 17, 1986, 100 Stat. 1752.)

§ 11045. Enforcement

(a) Civil penalties for emergency planning

The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 11002(b)(2) of this title) to comply with section 11002(c) of this title and section 11003(d) of this title. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(b) Civil, administrative, and criminal penalties for emergency notification

(1) Class I administrative penalty

(A) A civil penalty of not more than $25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title.

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) Class II administrative penalty

A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 2615 of title 15. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

(3) Judicial assessment

The Administrator may bring an action in the United States District[1] court for the ap-

[1] So in original. Probably should be ''subsections''.

[1] So in original. Probably should not be capitalized.

propriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation, the amount of such penalty may be not more than $75,000 for each day during which the violation continues.

(4) Criminal penalties

Any person who knowingly and willfully fails to provide notice in accordance with section 11004 of this title shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).

(c) Civil and administrative penalties for reporting requirements

(1) Any person (other than a governmental entity) who violates any requirement of section 11022 or 11023 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation.

(2) Any person (other than a governmental entity) who violates any requirement of section 11021 or 11043(b) of this title, and any person who fails to furnish to the Administrator information required under section 11042(a)(2) of this title shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

(4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) Civil, administrative, and criminal penalties with respect to trade secrets

(1) Civil and administrative penalty for frivolous claims

If the Administrator determines—

(A)(i) under section 11042(d)(4) of this title that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 11042(d)(3)(A) of this title, that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous,

the trade secret claimant is liable for a penalty of $25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) Criminal penalty for disclosure of trade secret information

Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 11042 of this title shall, upon conviction, be subject to a fine of not more than $20,000 or to imprisonment not to exceed one year, or both.

(e) Special enforcement provisions for section 11043

Whenever any facility owner or operator required to provide information under section 11043 of this title to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 11043 of this title.

(f) Procedures for administrative penalties

(1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 99–499, title III, § 325, Oct. 17, 1986, 100 Stat. 1753.)

§ 11046. Civil actions

(a) Authority to bring civil actions

(1) Citizen suits

Except as provided in subsection (e) of this section, any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 11004(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Complete and submit an inventory form under section 11022(a) of this title containing tier I information as described in section 11022(d)(1) of this title unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(iv) Complete and submit a toxic chemical release form under section 11023(a) of this title.

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 11022(g) of this title.

(ii) Respond to a petition to add or delete a chemical under section 11023(e)(1) of this title within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 11023(g)[1] of this title.

(iv) Establish a computer database in accordance with section 11023(j) of this title.

(v) Promulgate trade secret regulations under section 11042(c) of this title.

(vi) Render a decision in response to a petition under section 11042(d) of this title within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 11044(a) of this title.

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 11022(e)(3) of this title within 120 days after the date of receipt of the request.

(2) State or local suits

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 11002(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Make available information requested under section 11021(c) of this title.

(iv) Complete and submit an inventory form under section 11022(a) of this title containing tier I information unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 11003(d) of this title or for failure to submit tier II information under section 11022(e)(1) of this title.

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 11042(g) of this title.

(b) Venue

(1) Any action under subsection (a) of this section against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) of this section against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a) of this section against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) of this section against the Administrator to order the Administrator to perform the act or duty concerned.

(d) Notice

(1) No action may be commenced under subsection (a)(1)(A) of this section prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) of this section prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) Limitation

No action may be commenced under subsection (a) of this section against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Other rights

Nothing in this section shall restrict or expand any right which any person (or class of per-

[1] So in original. Probably should be preceded by ''section''.

sons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) Intervention

(1) By the United States

In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) By persons

In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

(Pub. L. 99–499, title III, § 326, Oct. 17, 1986, 100 Stat. 1755.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1613, as amended, known as the Superfund Amendments and Reauthorization Act of 1986. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 11047. Exemption

Except as provided in section 11004 of this title, this chapter does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas.

(Pub. L. 99–499, title III, § 327, Oct. 17, 1986, 100 Stat. 1757.)

§ 11048. Regulations

The Administrator may prescribe such regulations as may be necessary to carry out this chapter.

(Pub. L. 99–499, title III, § 328, Oct. 17, 1986, 100 Stat. 1757.)

§ 11049. Definitions

For purposes of this chapter—

(1) Administrator

The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) Environment

The term ''environment'' includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) Extremely hazardous substance

The term ''extremely hazardous substance'' means a substance on the list described in section 11002(a)(2) of this title.

(4) Facility

The term ''facility'' means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 11004 of this title, the term includes motor vehicles, rolling stock, and aircraft.

(5) Hazardous chemical

The term ''hazardous chemical'' has the meaning given such term by section 11021(e) of this title.

(6) Material safety data sheet

The term ''material safety data sheet'' means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) Person

The term ''person'' means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) Release

The term ''release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) State

The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) Toxic chemical

The term ''toxic chemical'' means a substance on the list described in section 11023(c) of this title.

(Pub. L. 99–499, title III, § 329, Oct. 17, 1986, 100 Stat. 1757.)

§ 11050. Authorization of appropriations

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this chapter.

(Pub. L. 99–499, title III, § 330, Oct. 17, 1986, 100 Stat. 1758.)

CHAPTER 117—ENCOURAGING GOOD FAITH PROFESSIONAL REVIEW ACTIVITIES

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§ 11101. Findings

The Congress finds the following:

(1) The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual State.

(2) There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.

(3) This nationwide problem can be remedied through effective professional peer review.

(4) The threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discourages physicians from participating in effective professional peer review.

(5) There is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review.

(Pub. L. 99–660, title IV, § 402, Nov. 14, 1986, 100 Stat. 3784.)

SHORT TITLE

Section 401 of title IV of Pub. L. 99–660 provided that: ''This title [enacting this chapter and provisions set out as a note under section 11111 of this title] may be cited as the 'Health Care Quality Improvement Act of 1986'.''

SUBCHAPTER I—PROMOTION OF PROFESSIONAL REVIEW ACTIVITIES

§ 11111. Professional review

(a) In general

(1) Limitation on damages for professional review actions

If a professional review action (as defined in section 11151(9) of this title) of a professional review body meets all the standards specified in section 11112(a) of this title, except as provided in subsection (b) of this section—

(A) the professional review body,

(B) any person acting as a member or staff to the body,

(C) any person under a contract or other formal agreement with the body, and

(D) any person who participates with or assists the body with respect to the action,

shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action. The preceding sentence shall not apply to damages under any law of the United States or any State relating to the civil rights of any person or persons, including the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. and the Civil Rights Acts, 42 U.S.C. 1981, et seq. Nothing in this paragraph shall prevent the United States or any Attorney General of a State from bringing an action, including an action under section 15c of title 15, where such an action is otherwise authorized.

(2) Protection for those providing information to professional review bodies

Notwithstanding any other provision of law, no person (whether as a witness or otherwise) providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew that such information was false.

(b) Exception

If the Secretary has reason to believe that a health care entity has failed to report information in accordance with section 11133(a) of this title, the Secretary shall conduct an investigation. If, after providing notice of noncompliance, an opportunity to correct the noncompliance, and an opportunity for a hearing, the Secretary determines that a health care entity has failed substantially to report information in accordance with section 11133(a) of this title, the Secretary shall publish the name of the entity in the Federal Register. The protections of subsection (a)(1) of this section shall not apply to an entity the name of which is published in the Federal Register under the previous sentence with respect to professional review actions of the entity commenced during the 3-year period beginning 30 days after the date of publication of the name.

(c) Treatment under State laws

(1) Professional review actions taken on or after October 14, 1989

Except as provided in paragraph (2), subsection (a) of this section shall apply to State laws in a State only for professional review actions commenced on or after October 14, 1989.

(2) Exceptions

(A) State early opt-in

Subsection (a) of this section shall apply to State laws in a State for actions commenced before October 14, 1989, if the State by legislation elects such treatment.

(B) Effective date of election

An election under State law is not effective, for purposes of,[1] for actions commenced before the effective date of the State law, which may not be earlier than the date of the enactment of that law.

(Pub. L. 99–660, title IV, § 411, Nov. 14, 1986, 100 Stat. 3784; Pub. L. 100–177, title IV, § 402(c), as added Pub. L. 101–239, title VI, § 6103(e)(6)(A), Dec. 19, 1989, 103 Stat. 2208.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§ 2000a et seq.) of chapter 21 of this title. Title VII of this Act relates to equal employment opportunities, and is classified generally to subchapter VI (§ 2000e et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Civil Rights Acts, referred to in subsec. (a)(1), are classified generally to chapter 21 (§ 1981 et seq.) of this title.

AMENDMENTS

1989—Subsec. (c)(2)(B), (C). Pub. L. 101–239 added Pub. L. 100–177, § 402(c), see 1987 Amendment note below.

1987—Subsec. (c)(2)(B), (C). Pub. L. 100–177, § 402(c), as added by Pub. L. 101–239, redesignated subpar. (C) as (B), struck out ''subparagraphs (A) and (B)'' after ''for purposes of'', and struck out former subpar. (B) which read as follows: ''Subsection (a) of this section shall not apply to State laws in a State for actions commenced on or after October 14, 1989, if the State by legislation elects such treatment.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–177 effective Nov. 14, 1986, see section 402(d) of Pub. L. 100–177, as renumbered and amended, set out as a note under section 11137 of this title.

EFFECTIVE DATE

Section 416 of Pub. L. 99–660 provided that: ''This part [part A (§§ 411–416) of title IV of Pub. L. 99–660, enacting this subchapter] shall apply to professional review actions commenced on or after the date of the enactment of this Act [Nov. 14, 1986].''

§ 11112. Standards for professional review actions

(a) In general

For purposes of the protection set forth in section 11111(a) of this title, a professional review action must be taken—

(1) in the reasonable belief that the action was in the furtherance of quality health care,

(2) after a reasonable effort to obtain the facts of the matter,

(3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and

(4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 11111(a) of this title unless the presumption is rebutted by a preponderance of the evidence.

(b) Adequate notice and hearing

A health care entity is deemed to have met the adequate notice and hearing requirement of subsection (a)(3) of this section with respect to a physician if the following conditions are met (or are waived voluntarily by the physician):

(1) Notice of proposed action

The physician has been given notice stating—

(A)(i) that a professional review action has been proposed to be taken against the physician,

(ii) reasons for the proposed action,

(B)(i) that the physician has the right to request a hearing on the proposed action,

(ii) any time limit (of not less than 30 days) within which to request such a hearing, and

(C) a summary of the rights in the hearing under paragraph (3).

(2) Notice of hearing

If a hearing is requested on a timely basis under paragraph (1)(B), the physician involved must be given notice stating—

(A) the place, time, and date, of the hearing, which date shall not be less than 30 days after the date of the notice, and

(B) a list of the witnesses (if any) expected to testify at the hearing on behalf of the professional review body.

(3) Conduct of hearing and notice

If a hearing is requested on a timely basis under paragraph (1)(B)—

(A) subject to subparagraph (B), the hearing shall be held (as determined by the health care entity)—

(i) before an arbitrator mutually acceptable to the physician and the health care entity,

(ii) before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved, or

(iii) before a panel of individuals who are appointed by the entity and are not in direct economic competition with the physician involved;

(B) the right to the hearing may be forfeited if the physician fails, without good cause, to appear;

(C) in the hearing the physician involved has the right—

(i) to representation by an attorney or other person of the physician's choice,

(ii) to have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof,

(iii) to call, examine, and cross-examine witnesses,

(iv) to present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law, and

(v) to submit a written statement at the close of the hearing; and

[1] So in original. Probably should be ''for purposes of subparagraph (A),''.

(D) upon completion of the hearing, the physician involved has the right—

(i) to receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and

(ii) to receive a written decision of the health care entity, including a statement of the basis for the decision.

A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute failure to meet the standards of subsection (a)(3) of this section.

(c) Adequate procedures in investigations or health emergencies

For purposes of section 11111(a) of this title, nothing in this section shall be construed as—

(1) requiring the procedures referred to in subsection (a)(3) of this section—

(A) where there is no adverse professional review action taken, or

(B) in the case of a suspension or restriction of clinical privileges, for a period of not longer than 14 days, during which an investigation is being conducted to determine the need for a professional review action; or

(2) precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

(Pub. L. 99–660, title IV, § 412, Nov. 14, 1986, 100 Stat. 3785.)

§ 11113. Payment of reasonable attorneys' fees and costs in defense of suit

In any suit brought against a defendant, to the extent that a defendant has met the standards set forth under section 11112(a) of this title and the defendant substantially prevails, the court shall, at the conclusion of the action, award to a substantially prevailing party defending against any such claim the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive or declaratory relief.

(Pub. L. 99–660, title IV, § 413, Nov. 14, 1986, 100 Stat. 3787.)

§ 11114. Guidelines of Secretary

The Secretary may establish, after notice and opportunity for comment, such voluntary guidelines as may assist the professional review bodies in meeting the standards described in section 11112(a) of this title.

(Pub. L. 99–660, title IV, § 414, Nov. 14, 1986, 100 Stat. 3787.)

§ 11115. Construction

(a) In general

Except as specifically provided in this subchapter, nothing in this subchapter shall be construed as changing the liabilities or immunities under law or as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this subchapter.

(b) Scope of clinical privileges

Nothing in this subchapter shall be construed as requiring health care entities to provide clinical privileges to any or all classes or types of physicians or other licensed health care practitioners.

(c) Treatment of nurses and other practitioners

Nothing in this subchapter shall be construed as affecting, or modifying any provision of Federal or State law, with respect to activities of professional review bodies regarding nurses, other licensed health care practitioners, or other health professionals who are not physicians.

(d) Treatment of patient malpractice claims

Nothing in this chapter shall be construed as affecting in any manner the rights and remedies afforded patients under any provision of Federal or State law to seek redress for any harm or injury suffered as a result of negligent treatment or care by any physician, health care practitioner, or health care entity, or as limiting any defenses or immunities available to any physician, health care practitioner, or health care entity.

(Pub. L. 99–660, title IV, § 415, Nov. 14, 1986, 100 Stat. 3787; Pub. L. 100–177, title IV, § 402(c), as added Pub. L. 101–239, title VI, § 6103(e)(6)(A), Dec. 19, 1989, 103 Stat. 2208.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239 added Pub. L. 100–177, § 402(c), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–177, § 402(c), as added by Pub. L. 101–239, inserted before period at end ''or as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this subchapter''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–177 effective Nov. 14, 1986, see section 402(d) of Pub. L. 100–177, as renumbered and amended, set out as a note under section 11137 of this title.

SUBCHAPTER II—REPORTING OF INFORMATION

§ 11131. Requiring reports on medical malpractice payments

(a) In general

Each entity (including an insurance company) which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim shall report, in accordance with section 11134 of this title, information respecting the payment and circumstances thereof.

(b) Information to be reported

The information to be reported under subsection (a) of this section includes—

(1) the name of any physician or licensed health care practitioner for whose benefit the payment is made,

(2) the amount of the payment,

(3) the name (if known) of any hospital with which the physician or practitioner is affiliated or associated,

(4) a description of the acts or omissions and injuries or illnesses upon which the action or claim was based, and

(5) such other information as the Secretary determines is required for appropriate interpretation of information reported under this section.

(c) Sanctions for failure to report

Any entity that fails to report information on a payment required to be reported under this section shall be subject to a civil money penalty of not more than $10,000 for each such payment involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(d) Report on treatment of small payments

The Secretary shall study and report to Congress, not later than two years after November 14, 1986, on whether information respecting small payments should continue to be required to be reported under subsection (a) of this section and whether information respecting all claims made concerning a medical malpractice action should be required to be reported under such subsection.

(Pub. L. 99–660, title IV, § 421, Nov. 14, 1986, 100 Stat. 3788.)

§ 11132. Reporting of sanctions taken by Boards of Medical Examiners

(a) In general

(1) Actions subject to reporting

Each Board of Medical Examiners—

(A) which revokes or suspends (or otherwise restricts) a physician's license or censures, reprimands, or places on probation a physician, for reasons relating to the physician's professional competence or professional conduct, or

(B) to which a physician's license is surrendered,

shall report, in accordance with section 11134 of this title, the information described in paragraph (2).

(2) Information to be reported

The information to be reported under paragraph (1) is—

(A) the name of the physician involved,

(B) a description of the acts or omissions or other reasons (if known) for the revocation, suspension, or surrender of license, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) Failure to report

If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (a) of this section, the Secretary shall designate another qualified entity for the reporting of information under section 11133 of this title.

(Pub. L. 99–660, title IV, § 422, Nov. 14, 1986, 100 Stat. 3789.)

§ 11133. Reporting of certain professional review actions taken by health care entities

(a) Reporting by health care entities

(1) On physicians

Each health care entity which—

(A) takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days;

(B) accepts the surrender of clinical privileges of a physician—

(i) while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct, or

(ii) in return for not conducting such an investigation or proceeding; or

(C) in the case of such an entity which is a professional society, takes a professional review action which adversely affects the membership of a physician in the society,

shall report to the Board of Medical Examiners, in accordance with section 11134(a) of this title, the information described in paragraph (3).

(2) Permissive reporting on other licensed health care practitioners

A health care entity may report to the Board of Medical Examiners, in accordance with section 11134(a) of this title, the information described in paragraph (3) in the case of a licensed health care practitioner who is not a physician, if the entity would be required to report such information under paragraph (1) with respect to the practitioner if the practitioner were a physician.

(3) Information to be reported

The information to be reported under this subsection is—

(A) the name of the physician or practitioner involved,

(B) a description of the acts or omissions or other reasons for the action or, if known, for the surrender, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) Reporting by Board of Medical Examiners

Each Board of Medical Examiners shall report, in accordance with section 11134 of this title, the information reported to it under subsection (a) of this section and known instances of a health care entity's failure to report information under subsection (a)(1) of this section.

(c) Sanctions

(1) Health care entities

A health care entity that fails substantially to meet the requirement of subsection (a)(1) of

this section shall lose the protections of section 11111(a)(1) of this title if the Secretary publishes the name of the entity under section 11111(b) of this title.

(2) Board of Medical Examiners

If, after notice of noncompliance and providing an opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (b) of this section, the Secretary shall designate another qualified entity for the reporting of information under subsection (b) of this section.

(d) References to Board of Medical Examiners

Any reference in this subchapter to a Board of Medical Examiners includes, in the case of a Board in a State that fails to meet the reporting requirements of section 11132(a) of this title or subsection (b) of this section, a reference to such other qualified entity as the Secretary designates.

(Pub. L. 99–660, title IV, § 423, Nov. 14, 1986, 100 Stat. 3789.)

§ 11134. Form of reporting

(a) Timing and form

The information required to be reported under sections 11131, 11132(a), and 11133 of this title shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date (not later than one year after November 14, 1986) specified by the Secretary.

(b) To whom reported

The information required to be reported under sections 11131, 11132(a), and 11133(b) of this title shall be reported to the Secretary, or, in the Secretary's discretion, to an appropriate private or public agency which has made suitable arrangements with the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of the information under this subchapter.

(c) Reporting to State licensing boards

(1) Malpractice payments

Information required to be reported under section 11131 of this title shall also be reported to the appropriate State licensing board (or boards) in the State in which the medical malpractice claim arose.

(2) Reporting to other licensing boards

Information required to be reported under section 11133(b) of this title shall also be reported to the appropriate State licensing board in the State in which the health care entity is located if it is not otherwise reported to such board under subsection (b) of this section.

(Pub. L. 99–660, title IV, § 424, Nov. 14, 1986, 100 Stat. 3790.)

§ 11135. Duty of hospitals to obtain information

(a) In general

It is the duty of each hospital to request from the Secretary (or the agency designated under section 11134(b) of this title), on and after the date information is first required to be reported under section 11134(a) of this title)—[1]

(1) at the time a physician or licensed health care practitioner applies to be on the medical staff (courtesy or otherwise) of, or for clinical privileges at, the hospital, information reported under this subchapter concerning the physician or practitioner, and

(2) once every 2 years information reported under this subchapter concerning any physician or such practitioner who is on the medical staff (courtesy or otherwise) of, or has been granted clinical privileges at, the hospital.

A hospital may request such information at other times.

(b) Failure to obtain information

With respect to a medical malpractice action, a hospital which does not request information respecting a physician or practitioner as required under subsection (a) of this section is presumed to have knowledge of any information reported under this subchapter to the Secretary with respect to the physician or practitioner.

(c) Reliance on information provided

Each hospital may rely upon information provided to the hospital under this chapter and shall not be held liable for such reliance in the absence of the hospital's knowledge that the information provided was false.

(Pub. L. 99–660, title IV, § 425, Nov. 14, 1986, 100 Stat. 3790.)

§ 11136. Disclosure and correction of information

With respect to the information reported to the Secretary (or the agency designated under section 11134(b) of this title) under this subchapter respecting a physician or other licensed health care practitioner, the Secretary shall, by regulation, provide for—

(1) disclosure of the information, upon request, to the physician or practitioner, and

(2) procedures in the case of disputed accuracy of the information.

(Pub. L. 99–660, title IV, § 426, Nov. 14, 1986, 100 Stat. 3791.)

§ 11137. Miscellaneous provisions

(a) Providing licensing boards and other health care entities with access to information

The Secretary (or the agency designated under section 11134(b) of this title) shall, upon request, provide information reported under this subchapter with respect to a physician or other licensed health care practitioner to State licensing boards, to hospitals, and to other health care entities (including health maintenance organizations) that have entered (or may be entering) into an employment or affiliation relationship with the physician or practitioner or to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff.

[1] So in original. The closing parenthesis probably should not appear.

(b) Confidentiality of information

(1) In general

Information reported under this subchapter is considered confidential and shall not be disclosed (other than to the physician or practitioner involved) except with respect to professional review activity, as necessary to carry out subsections (b) and (c) of section 11135 of this title (as specified in regulations by the Secretary), or in accordance with regulations of the Secretary promulgated pursuant to subsection (a) of this section. Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure. Information reported under this subchapter that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 11134(b) of this title), on application by any person, shall prepare such information in such form and shall disclose such information in such form.

(2) Penalty for violations

Any person who violates paragraph (1) shall be subject to a civil money penalty of not more than $10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(3) Use of information

Subject to paragraph (1), information provided under section 11135 of this title and subsection (a) of this section is intended to be used solely with respect to activities in the furtherance of the quality of health care.

(4) Fees

The Secretary may establish or approve reasonable fees for the disclosure of information under this section or section 11136 of this title. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary (or, in the Secretary's discretion, to the agency designated under section 11134(b) of this title) to cover such costs.

(c) Relief from liability for reporting

No person or entity (including the agency designated under section 11134(b) of this title) shall be held liable in any civil action with respect to any report made under this subchapter (including information provided under subsection (a) of this section[1] without knowledge of the falsity of the information contained in the report.

(d) Interpretation of information

In interpreting information reported under this subchapter, a payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

[1] So in original. Probably should be followed by a closing parenthesis.

(Pub. L. 99–660, title IV, § 427, Nov. 14, 1986, 100 Stat. 3791; Pub. L. 100–177, title IV, § 402(a), (b), Dec. 1, 1987, 101 Stat. 1007.)

AMENDMENTS

1987—Subsec. (b)(1). Pub. L. 100–177, § 402(a)(1), substituted "as necessary to carry out subsections (b) and (c) of section 11135 of this title (as specified in regulations by the Secretary)" for "with respect to medical malpractice actions" and inserted at end "Information reported under this subchapter that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 11134(b) of this title), on application by any person, shall prepare such information in such form and shall disclose such information in such form."

Subsec. (b)(4). Pub. L. 100–177, § 402(b), added par. (4).

Subsec. (c). Pub. L. 100–177, § 402(a)(2), inserted "(including the agency designated under section 11134(b) of this title)" after "entity" and "(including information provided under subsection (a) of this section" after "subchapter".

EFFECTIVE DATE OF 1987 AMENDMENT

Section 402(d), formerly section 402(c), of Pub. L. 100–177, as renumbered and amended by Pub. L. 101–239, title VI, § 6103(e)(6), Dec. 19, 1989, 103 Stat. 2208, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a) and (c) [amending this section and sections 1111 and 1115 of this title] shall become effective on November 14, 1986.

"(2) FEES.—The amendment made by subsection (b) [amending this section] shall become effective on the date of enactment of this Act [Dec. 1, 1987]."

SUBCHAPTER III—DEFINITIONS AND REPORTS

§ 11151. Definitions

In this chapter:

(1) The term "adversely affecting" includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in a health care entity.

(2) The term "Board of Medical Examiners" includes a body comparable to such a Board (as determined by the State) with responsibility for the licensing of physicians and also includes a subdivision of such a Board or body.

(3) The term "clinical privileges" includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

(4)(A) The term "health care entity" means—

(i) a hospital that is licensed to provide health care services by the State in which it is located,

(ii) an entity (including a health maintenance organization or group medical practice) that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary), and

(iii) subject to subparagraph (B), a professional society (or committee thereof) of physicians or other licensed health care practi-

tioners that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary).

(B) The term ''health care entity'' does not include a professional society (or committee thereof) if, within the previous 5 years, the society has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of licensed health care practitioners.

(5) The term ''hospital'' means an entity described in paragraphs (1) and (7) of section 1395x(e) of this title.

(6) The terms ''licensed health care practitioner'' and ''practitioner'' mean, with respect to a State, an individual (other than a physician) who is licensed or otherwise authorized by the State to provide health care services.

(7) The term ''medical malpractice action or claim'' means a written claim or demand for payment based on a health care provider's furnishing (or failure to furnish) health care services, and includes the filing of a cause of action, based on the law of tort, brought in any court of any State or the United States seeking monetary damages.

(8) The term ''physician'' means a doctor of medicine or osteopathy or a doctor of dental surgery or medical dentistry legally authorized to practice medicine and surgery or dentistry by a State (or any individual who, without authority holds himself or herself out to be so authorized).

(9) The term ''professional review action'' means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may affect) adversely the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. In this chapter, an action is not considered to be based on the competence or professional conduct of a physician if the action is primarily based on—

(A) the physician's association, or lack of association, with a professional society or association,

(B) the physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business,

(C) the physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis,

(D) a physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional, or

(E) any other matter that does not relate to the competence or professional conduct of a physician.

(10) The term ''professional review activity'' means an activity of a health care entity with respect to an individual physician—

(A) to determine whether the physician may have clinical privileges with respect to, or membership in, the entity,

(B) to determine the scope or conditions of such privileges or membership, or

(C) to change or modify such privileges or membership.

(11) The term ''professional review body'' means a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

(12) The term ''Secretary'' means the Secretary of Health and Human Services.

(13) The term ''State'' means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(14) The term ''State licensing board'' means, with respect to a physician or health care provider in a State, the agency of the State which is primarily responsible for the licensing of the physician or provider to furnish health care services.

(Pub. L. 99–660, title IV, § 431, Nov. 14, 1986, 100 Stat. 3792.)

§ 11152. Reports and memoranda of understanding

(a) Annual reports to Congress

The Secretary shall report to Congress, annually during the three years after November 14, 1986, on the implementation of this chapter.

(b) Memoranda of understanding

The Secretary of Health and Human Services shall seek to enter into memoranda of understanding with the Secretary of Defense and the Administrator of Veterans' Affairs to apply the provisions of subchapter II of this chapter to hospitals and other facilities and health care providers under the jurisdiction of the Secretary or Administrator, respectively. The Secretary shall report to Congress, not later than two years after November 14, 1986, on any such memoranda and on the cooperation among such officials in establishing such memoranda.

(c) Memorandum of understanding with Drug Enforcement Administration

The Secretary of Health and Human Services shall seek to enter into a memorandum of understanding with the Administrator of Drug Enforcement relating to providing for the reporting by the Administrator to the Secretary of information respecting physicians and other practitioners whose registration to dispense controlled substances has been suspended or revoked under section 824 of title 21. The Secretary shall report to Congress, not later than two years after November 14, 1986, on any such memorandum and on the cooperation between

the Secretary and the Administrator in establishing such a memorandum.

(Pub. L. 99–660, title IV, § 432, Nov. 14, 1986, 100 Stat. 3794.)

CHANGE OF NAME

Reference to Administrator of Veterans' Affairs deemed to refer to Secretary of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

CHAPTER 118—ALZHEIMER'S DISEASE AND RELATED DEMENTIAS RESEARCH

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SUBCHAPTER I—GENERAL PROVISIONS

§ 11201. Findings

The Congress finds that—

(1) best estimates indicate that between 2,000,000 and 3,000,000 Americans presently have Alzheimer's disease or related dementias;

(2) estimates of the number of individuals afflicted with Alzheimer's disease and related dementias are unreliable because current diagnostic procedures lack accuracy and sensitivity and because there is a need for epidemiological data on incidence and prevalence of such disease and dementias;

(3) studies estimate that between one-half and two-thirds of patients in nursing homes meet the clinical and mental status criteria for dementia;

(4) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between $38,000,000,000 and $42,000,000,000 per year solely for direct costs;

(5) progress in the neurosciences and behavioral sciences has demonstrated the interdependence and mutual reinforcement of basic science, clinical research, and services research for Alzheimer's disease and related dementias;

(6) programs initiated as part of the Decade of the Brain are likely to provide significant progress in understanding the fundamental mechanisms underlying the causes of, and treatments for, Alzheimer's disease and related dementias;

(7) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias, and more progress can be expected in the near future, there is little likelihood of a breakthrough in the immediate future that would eliminate or substantially reduce—

(A) the number of individuals with the disease and dementias; or

(B) the difficulties of caring for the individuals;

(8) the responsibility for care of individuals with Alzheimer's disease and related dementias falls primarily on their families, and the care is financially and emotionally devastating;

(9) attempts to reduce the emotional and financial burden of caring for dementia patients is impeded by a lack of knowledge about such patients, how to care for such patients, the costs associated with such care, the effectiveness of various modes of care, the quality and type of care necessary at various stages of the disease, and other appropriate services that are needed to provide quality care;

(10) the results of the little research that has been undertaken concerning dementia has been inadequate or the results have not been widely disseminated;

(11) more knowledge is needed concerning—

(A) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias;

(B) the development of methods for early diagnosis, functional assessment, and psychological evaluation of individuals with Alzheimer's disease for the purpose of monitoring the course of the disease and developing strategies for improving the quality of life for such individuals;

(C) the understanding of the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design, delivery, staffing, and mix of

such services and the coordination of such services with other services, and with respect to the relationship of formal to informal support services;

(D) the understanding of optimal methods to combine formal support services provided by health care professionals with informal support services provided by family, friends, and neighbors of individuals with Alzheimer's disease, and the identification of ways family caregivers can be sustained through interventions to reduce psychological and social problems and physical problems induced by stress;

(E) existing data that are relevant to Alzheimer's disease and related dementias; and

(F) the costs incurred in caring for individuals with Alzheimer's disease and related dementias;

(12) it is imperative to provide appropriate coordination of the efforts of the Federal Government in the provision of services for individuals with Alzheimer's disease and related dementias;

(13) it is important to increase the understanding of Alzheimer's disease and related dementias by the diverse range of personnel involved in the care of individuals with such disease and dementias; and

(14) it is imperative that the Social Security Administration be provided information pertaining to Alzheimer's disease and related dementias, particularly for personnel in such Administration involved in the establishment and updating of criteria for determining whether an individual is under a disability for purposes of titles II and XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.].

(Pub. L. 99–660, title IX, § 902, Nov. 14, 1986, 100 Stat. 3802; Pub. L. 102–507, § 4, Oct. 24, 1992, 106 Stat. 3281.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (14), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Act are classified generally to subchapters II (§ 401 et seq.) and XVI (§ 1381 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1992—Pars. (4) to (14). Pub. L. 102–507 added pars. (4) to (8), redesignated former pars. (7) to (12) as (9) to (14), respectively, and struck out former pars. (4) to (6) which read as follows:

''(4) the care for individuals with Alzheimer's disease and related dementias falls primarily on their families, and such care is very often financially and emotionally devastating;

''(5) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between $38,000,000,000 and $42,000,000,000 per year solely for direct costs;

''(6) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias and more progress can be expected in the near future, there is little likelihood of a breakthrough in the foreseeable future which would eliminate or substantially reduce the number of individuals with such disease and dementias or the difficulties of caring for such individuals;''.

SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102–507 provided that: ''This Act [enacting section 11261 of this title, amending this section and sections 285e–5, 11211, 11212, 11221, 11223, 11251, 11253, 11263, 11292, and 11294 of this title, repealing section 11261 of this title, and amending provisions set out as a note under this section] may be cited as the 'Alzheimer's Disease Research, Training, and Education Amendments of 1992'.''

SHORT TITLE

Section 901 of title IX of Pub. L. 99–660, as amended by Pub. L. 102–507, § 2(a), Oct. 24, 1992, 106 Stat. 3281, provided that: ''This title [enacting this chapter] may be cited as the 'Alzheimer's Disease and Related Dementias Research Act of 1992'.''

SUBCHAPTER II—COUNCIL ON ALZHEIMER'S DISEASE

§§ 11211, 11212. Repealed. Pub. L. 105–362, title VI, § 601(a)(2)(E), Nov. 10, 1998, 112 Stat. 3286

Section 11211, Pub. L. 99–660, title IX, § 911, Nov. 14, 1986, 100 Stat. 3804; Pub. L. 102–54, § 13(q)(14)(A), June 13, 1991, 105 Stat. 282; Pub. L. 102–507, § 5(2)[(a)], Oct. 24, 1992, 106 Stat. 3282; Pub. L. 103–171, § 3(b)(3), Dec. 2, 1993, 107 Stat. 1991, related to establishment of Council on Alzheimer's Disease in the Department of Health and Human Services.

Section 11212, Pub. L. 99–660, title IX, § 912, Nov. 14, 1986, 100 Stat. 3804; Pub. L. 100–607, title I, § 142(c)(1)(E), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102–507, § 5(b), Oct. 24, 1992, 106 Stat. 3282, related to functions of Council on Alzheimer's Disease.

SUBCHAPTER III—ADVISORY PANEL ON ALZHEIMER'S DISEASE

§ 11221. Establishment of Panel

(a) Composition; nonvoting ex officio members

There is established in the Department the Advisory Panel on Alzheimer's Disease (hereinafter referred to as the ''Panel''). The Panel shall be composed of—

(1) 15 voting members appointed by the Director of the Office of Technology Assessment, of which—

(A) 3 shall be individuals who are biomedical research scientists with demonstrated achievements in biomedical research relating to Alzheimer's disease, including at least one individual who is a researcher at a center supported under section 285e–2 of this title;

(B) 3 shall be individuals with demonstrated achievements in research relevant to services for the care of individuals with Alzheimer's disease and related dementias;

(C) 3 shall be individuals who are providers of services, or administrators of organizations which provide services, for individuals with Alzheimer's disease and related dementias and their families;

(D) 3 shall be individuals who are experts in the financing of health care services and long-term care services, including one individual who is a representative of private health care services insurers; and

(E) 3 shall be representatives of national voluntary organizations which are concerned with the problems of individuals with Alzheimer's disease and related dementias and their families; and

(2) the Chairman of the Council, the Director of the National Institute on Aging, the Director of the National Institute of Mental Health, the Assistant Administrator of the Agency for Healthcare Research and Quality, and the Assistant Secretary for Aging, who shall be nonvoting ex officio members.

(b) Appointment of members

The Director of the Office of Technology Assessment shall appoint members to the Panel under subsection (a)(1) of this section within 90 days after November 14, 1986.

(c) Chairman

The Secretary shall appoint a Chairman of the Panel from among the members appointed under subsection (a)(1) of this section.

(d) Term of office; vacancy

(1)(A) Except as provided in subparagraph (B), members of the Panel appointed under subsection (a)(1) of this section shall each serve for a term of 3 years.

(B) Of the members appointed under subsection (a)(1) of this section that are serving on the Panel on the day before October 24, 1992—

(i) five shall serve for a term that expires on October 24, 1992;

(ii) five shall serve for a term that expires 1 year after October 24, 1992; and

(iii) five shall serve for a term that expires 2 years after October 24, 1992.

(2) A vacancy on the Panel shall be filled in the same manner as the original appointment was made, and not later than 90 days after the date on which the vacancy first arises. A vacancy on the Panel shall not affect the powers of the Panel.

(e) Quorum; establishment of subcommittees

A majority of the members of the Panel appointed under subsection (a)(1) of this section shall constitute a quorum, but a lesser number may hold hearings. The Panel may establish such subcommittees as the Panel considers appropriate.

(f) Meetings

The Panel shall meet at the call of the Chairman, but not less than once per year.

(g) Executive Secretary; administrative staff and support

The Executive Secretary of the Council shall serve as Executive Secretary of the Panel. The Secretary shall provide the Panel with such additional administrative staff and support as may be necessary to enable the Panel to carry out its functions.

(h) Compensation; travel expenses

Each member of the Panel appointed under subsection (a)(1) of this section shall receive compensation at a rate at the daily equivalent of the maximum rate specified for GS–15 of the General Schedule under section 5332 of title 5 for each day, including travel time, that such member is engaged in duties as a member of the Panel. While away from their homes or regular places of business in the performance of duties as a member of the Panel, members of the Panel appointed under subsection (a)(1) of this section shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under section 5702 of title 5.

(i) Abolishment of Panel; termination

Notwithstanding section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) on September 30, 1996, the Panel shall be abolished and all programs established under this subchapter shall terminate.

(Pub. L. 99–660, title IX, § 921, Nov. 14, 1986, 100 Stat. 3806; Pub. L. 102–507, § 6(a), Oct. 24, 1992, 106 Stat. 3283; Pub. L. 103–171, § 3(b)(3), Dec. 2, 1993, 107 Stat. 1991; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (i), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

October 24, 1992, referred to in subsec. (d)(1)(B), was in the original ''the date of the enactment of this subsection'' and ''such date'', which were translated as meaning the date of enactment of Pub. L. 102–507, which amended subsec. (d) generally, to reflect the probable intent of Congress.

AMENDMENTS

1999—Subsec. (a)(2). Pub. L. 106–129 substituted ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research''.

1993—Subsec. (a)(2). Pub. L. 103–171, which directed the substitution of ''Assistant Secretary for Aging'' for ''Commissioner on Aging'' in section 921(a)(2) of the Alzheimer's Disease and Related Dementias Services Research Act of 1986, was executed to this section, which is section 921 of the Alzheimer's Disease and Related Dementias Research Act of 1992, to reflect the probable intent of Congress, and the change in the Short Title of that Act. See section 901 of Pub. L. 99–660, as amended, set out as a Short Title note under section 11201 of this title.

1992—Subsec. (a)(2). Pub. L. 102–507, § 6(a)(1), substituted ''the Administrator of the Agency for Health Care Policy and Research'' for ''the Director of the National Center for Health Services Research and Health Care Technology Assessment''.

Subsec. (d). Pub. L. 102–507, § 6(a)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Members of the Panel shall serve for the life of the Panel. A vacancy on the Panel shall be filled in the same manner as the original appointment was made. A vacancy on the Panel shall not affect its powers.''

Subsec. (f). Pub. L. 102–507, § 6(a)(3), substituted ''once'' for ''twice''.

Subsec. (h). Pub. L. 102–507, § 6(a)(4), substituted ''at the daily equivalent of the maximum rate specified for GS–15 of the General Schedule under section 5332 of title 5'' for ''of $100 per day''.

Subsec. (i). Pub. L. 102–507, § 6(a)(5), added subsec. (i).

§ 11222. Functions of Panel

(a) The Panel shall assist the Secretary and the Council in the identification of priorities and emerging issues with respect to Alzheimer's disease and related dementias and the care of individuals with such disease and dementias. The Panel shall advise the Secretary and the Council with respect to the identification of—

(1) emerging issues in, and promising areas of, biomedical research relating to Alzheimer's disease and related dementias;

(2) emerging issues in, and promising areas of, research relating to services for individuals with Alzheimer's disease and related dementias and their families;

(3) emerging issues and promising initiatives in home and community based services, and systems of such services, for individuals with Alzheimer's disease and related dementias and their families; and

(4) emerging issues in, and innovative financing mechanisms for, payment for health care services and social services for individuals with Alzheimer's disease and related dementias and their families, particularly financing mechanisms in the private sector.

(b) The Panel shall prepare and transmit to the Congress, the Secretary, and the Council, and make available to the public, an annual report. Such report shall contain such recommendations as the Panel considers appropriate for administrative and legislative actions to improve services for individuals with Alzheimer's disease and related dementias and their families and to provide for promising biomedical research relating to Alzheimer's disease and related dementias.

(Pub. L. 99–660, title IX, § 922, Nov. 14, 1986, 100 Stat. 3807.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the transmittal to Congress of an annual report, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 99 of House Document No. 103–7.

§ 11223. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for each of the fiscal years 1992 through 1996.

(Pub. L. 99–660, title IX, § 923, Nov. 14, 1986, 100 Stat. 3807; Pub. L. 102–507, § 6(b), Oct. 24, 1992, 106 Stat. 3283.)

AMENDMENTS

1992—Pub. L. 102–507 amended section generally. Prior to amendment, section read as follows: ''To carry out this subchapter, there are authorized to be appropriated $100,000 for each of the fiscal years 1988 through 1991.''

SUBCHAPTER IV—RESEARCH RELATING TO SERVICES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS AND THEIR FAMILIES

AMENDMENTS

1988—Pub. L. 100–607, title I, § 142(c)(1)(B), (D), (2)(C), Nov. 4, 1988, 102 Stat. 3057, redesignated former subchapter V as IV and struck out heading for subchapter IV ''AWARDS FOR LEADERSHIP AND EXCELLENCE IN ALZHEIMER'S DISEASE AND RELATED DEMENTIAS'', consisting of sections 11231 and 11232, and struck out heading for part 1 ''RESPONSIBILITIES OF NATIONAL INSTITUTE ON AGING'', consisting of sections 11241 to 11243.

§ 11231. Transferred

Section, Pub. L. 99–660, title IX, § 931, Nov. 14, 1986, 100 Stat. 3807, which provided for awards for biomedical research on Alzheimer's disease and related dementias, was redesignated section 445B of the Public Health Service Act by Pub. L. 100–607, title I, § 142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e–4 of this title.

§ 11232. Repealed. Pub. L. 100–607, title I, § 142(c)(1)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99–660, title IX, § 932, Nov. 14, 1986, 100 Stat. 3808, authorized appropriations for fiscal years 1988 through 1991 to carry out program of awards for research on Alzheimer's disease and related dementias.

§§ 11241, 11242. Transferred

Section 11241, Pub. L. 99–660, title IX, § 941, Nov. 14, 1986, 100 Stat. 3808, which provided for Director of National Institute on Aging to conduct, or make grants for conduct of, research on services for individuals with Alzheimer's disease and related dementias and their families, was redesignated section 445C of the Public Health Service Act by Pub. L. 100–607, title I, § 142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e–5 of this title.

Section 11242, Pub. L. 99–660, title IX, § 942, Nov. 14, 1986, 100 Stat. 3809, which provided for Director to disseminate results of such research to professional entities and the public, was redesignated section 445D of the Public Health Service Act by Pub. L. 100–607, title I, § 142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e–6 of this title.

§ 11243. Repealed. Pub. L. 100–607, title I, § 142(c)(2)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99–660, title IX, § 943, Nov. 14, 1986, 100 Stat. 3809, authorized appropriations for fiscal years 1988 through 1991 to carry out programs of National Institute on Aging in research on services for individuals with Alzheimer's disease and related dementias and their families.

PART 1—RESPONSIBILITIES OF NATIONAL INSTITUTE OF MENTAL HEALTH

AMENDMENTS

1988—Pub. L. 100–607, title I, § 142(c)(2)(C), (D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 2 as 1 and struck out former part 1 heading ''RESPONSIBILITIES OF NATIONAL INSTITUTE ON AGING''.

§ 11251. Research program and plan

(a) Grants for research

The Director of the National Institute of Mental Health shall conduct, or make grants for the conduct of, research relevant to appropriate services and specialized care for individuals with Alzheimer's disease and related dementias and their families.

(b) Preparation of plan; contents; revision

The Director of the National Institute of Mental Health shall—

(1) ensure that the research conducted under subsection (a) of this section includes research concerning—

(A) mental health services and treatment modalities relevant to the mental, behavioral, and psychological problems associated with Alzheimer's disease and related dementias;

(B) the most effective methods for providing comprehensive multidimensional assessments to obtain information about the current functioning of, and needs for the care

of, individuals with Alzheimer's disease and related dementias;

(C) the optimal range, types, and cost-effectiveness of services and specialized care for individuals with Alzheimer's disease and related dementias and for their families, in community and residential settings (including home care, day care, and respite care), and in institutional settings, particularly with respect to—

(i) the design of the services and care;

(ii) appropriate staffing for the provision of the services and care;

(iii) the timing of the services and care during the progression of the disease or dementias; and

(iv) the appropriate mix and coordination of the services and specialized care;

(D) the efficacy of various special care units in the United States for individuals with Alzheimer's disease, including an assessment of the costs incurred in operating such units, the evaluation of best practices for the development of appropriate standards to be used by such units, and the measurement of patient outcomes in such units;

(E) methods to combine formal support services provided by health care professionals for individuals with Alzheimer's disease and related dementias with informal support services provided for such individuals by their families, friends, and neighbors, including services such as day care services, respite care services, home care services, nursing home services, and other residential services and care, and an evaluation of the services actually used for such individuals and the sources of payment for such services;

(F) methods to sustain family members who provide care for individuals with Alzheimer's disease and related dementias through interventions to reduce psychological and social problems and physical problems induced by stress; and

(G) improved methods to deliver services for individuals with Alzheimer's disease and related dementias and their families, including services such as outreach services, comprehensive assessment and care management services, outpatient treatment services, home care services, respite care services, adult day care services, partial hospitalization services, nursing home services, and other residential services and care; and

(2) ensure that the research is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and dementia, including centers supported under section 285e–2 of this title, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(Pub. L. 99–660, title IX, § 931, formerly § 944, Nov. 14, 1986, 100 Stat. 3809; renumbered § 931, Pub. L. 100–607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102–507, § 7(a)(1), (2), Oct. 24, 1992, 106 Stat. 3284.)

PRIOR PROVISIONS

A prior section 931 of Pub. L. 99–660, which was classified to section 11231 of this title, was redesignated section 445B of the Public Health Service Act by section 142(a) of Pub. L. 100–607, and is classified to section 285e–4 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–507, § 7(a)(1)(B), inserted ''and specialized care'' after ''services''.

Subsec. (b). Pub. L. 102–507, § 7(a)(2), designated par. (1) as entire subsec. and redesignated former par. (1)(A) as par. (1), former par. (1)(A)(i) to (vii) as par. (1)(A) to (G), respectively, former par. (1)(A)(iii)(I) to (IV) as par. (1)(C)(i) to (iv), respectively, and former par. (1)(B) as par. (2).

Subsec. (b)(1). Pub. L. 102–507, § 7(a)(1)(C)(i), substituted ''The Director of the National Institute of Mental Health shall'' for ''Within 6 months after November 14, 1986, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a) of this section. The plan shall'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 102–507, § 7(a)(1)(C)(ii)(I), substituted ''ensure that the research conducted under subsection (a) of this section includes'' for ''provide for'' in introductory provisions.

Subsec. (b)(1)(A)(iii). Pub. L. 102–507, § 7(a)(1)(C)(ii)(II), added cl. (iii) and struck out former cl. (iii) which read as follows: ''the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design of such services, appropriate staffing for the provision of such services, the timing of such services during the progression of such disease or dementias, and the appropriate mix and coordination of such services;''.

Subsec. (b)(1)(A)(iv). Pub. L. 102–507, § 7(a)(1)(C)(ii)(III), inserted ''the evaluation of best practices for the development of'' before ''appropriate''.

Subsec. (b)(1)(A)(v), (vii). Pub. L. 102–507, § 7(a)(1)(C)(ii)(IV), substituted ''nursing home services, and other residential services and care'' for ''and nursing home services''.

Subsec. (b)(1)(B). Pub. L. 102–507, § 7(a)(1)(C)(iii), substituted ''the research'' for ''research carried out under the plan''.

Subsec. (b)(2). Pub. L. 102–507, § 7(a)(1)(A), struck out par. (2) which read as follows: ''Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.''

Subsec. (c). Pub. L. 102–507, § 7(a)(1)(A), struck out subsec. (c) which read as follows: ''In preparing and revising the plan required by subsection (b) of this section, the Director of the National Institute of Mental Health shall consult with the Chairman of the Council and the heads of agencies within the Department.''

§ 11252. Dissemination

The Director of the National Institute of Mental Health shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99–660, title IX, § 932, formerly § 945, Nov. 14, 1986, 100 Stat. 3810; renumbered § 932, Pub. L.

100–607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

PRIOR PROVISIONS

A prior section 932 of Pub. L. 99–660 was classified to section 11232 of this title prior to repeal by section 142(c)(1)(A) of Pub. L. 100–607.

§ 11253. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 1992 through 1996.

(Pub. L. 99–660, title IX, § 933, formerly § 946, Nov. 14, 1986, 100 Stat. 3810; renumbered § 933, Pub. L. 100–607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102–507, § 7(a)(3), Oct. 24, 1992, 106 Stat. 3284.)

AMENDMENTS

1992—Pub. L. 102–507 amended section generally. Prior to amendment, section read as follows: ''To carry out this part, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991.''

PART 2—RESPONSIBILITIES OF AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

AMENDMENTS

1999—Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670 substituted ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research'' in part heading.

1992—Pub. L. 102–507, § 7(b)(1)(A), Oct. 24, 1992, 106 Stat. 3285, substituted ''AGENCY FOR HEALTH CARE POLICY AND RESEARCH'' for ''NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT'' in part heading.

1988—Pub. L. 100–607, title I, § 142(c)(2)(D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 3 as 2. Former part 2 redesignated 1.

§ 11261. Research program

(a) Grants for research

The Director of the Agency for Healthcare Research and Quality shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and for their families.

(b) Research subjects

The Director of the Agency for Healthcare Research and Quality shall ensure that research conducted under subsection (a) of this section shall include research—

(1) concerning improving the organization, delivery, and financing of services for individuals with Alzheimer's disease and related dementias and for their families, including research on—

(A) the design, staffing, and operation of special care units for the individuals in institutional settings, as well as individuals in institutional settings,[1] as well as individuals in home care, day care, and respite care; and

(B) the exploration and enhancement of services such as home care, day care, and respite care, that provide alternatives to institutional care;

(2) concerning the costs incurred by individuals with Alzheimer's disease and related dementias and by their families in obtaining services, particularly services that are essential to the individuals and that are not generally required by other patients under long-term care programs;

(3) concerning the costs, cost-effectiveness, and effectiveness of various interventions to provide services for individuals with Alzheimer's disease and related dementias and for their families;

(4) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning the role of physicians in caring for persons with Alzheimer's disease and related dementias and for their families, including the role of a physician in connecting such persons with appropriate health care and supportive services, including those supported through State and area agencies on aging designated under section 3025(a)(1) and (2)(A) of this title; and

(5) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning legal and ethical issues, including issues associated with special care units, facing individuals with Alzheimer's disease and related dementias and facing their families.

(Pub. L. 99–660, title IX, § 934, as added Pub. L. 102–507, § 7(b)(1)(B), Oct. 24, 1992, 106 Stat. 3285; amended Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

PRIOR PROVISIONS

A prior section 11261, Pub. L. 99–660, title IX, § 934, formerly § 947, Nov. 14, 1986, 100 Stat. 3811; renumbered § 934, Pub. L. 100–607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102–54, § 13(q)(14)(B), June 13, 1991, 105 Stat. 282, related to research relevant to appropriate services for individuals with Alzheimer's disease and related dementias, prior to repeal by Pub. L. 102–507, § 7(b)(1)(B).

AMENDMENTS

1999—Subsecs. (a), (b). Pub. L. 106–129 substituted ''Director of the Agency for Healthcare Research and Quality'' for ''Administrator of the Agency for Health Care Policy and Research''.

§ 11262. Dissemination

The Director of the National Center for Health Services Research and Health Care Technology Assessment shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99–660, title IX, § 935, formerly § 948, Nov. 14, 1986, 100 Stat. 3812; renumbered § 935, Pub. L. 100–607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

§ 11263. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 1992 through 1996.

(Pub. L. 99–660, title IX, § 936, formerly § 949, Nov. 14, 1986, 100 Stat. 3812; renumbered § 936, Pub. L.

[1] So in original. The words ''as well as individuals in institutional settings,'' probably should not appear.

100–607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102–507, § 7(b)(2), Oct. 24, 1992, 106 Stat. 3286.)

AMENDMENTS

1992—Pub. L. 102–507 amended section generally. Prior to amendment, section read as follows: ''To carry out this part, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991.''

PART 3—RESPONSIBILITIES OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES

AMENDMENTS

2003—Pub. L. 108–173, title IX, § 900(e)(5)(A), Dec. 8, 2003, 117 Stat. 2373, amended heading generally. Prior to amendment, heading read as follows: ''Responsibilities of Health Care Financing Administration''.

1988—Pub. L. 100–607, title I, § 142(c)(2)(D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 4 as 3. Former part 3 redesignated 2.

§ 11271. Research program and plan

(a) Grants for research

The Administrator of the Centers for Medicare & Medicaid Services shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b) Preparation of plan; contents; revision

(1) Within 6 months after November 14, 1986, the Administrator of the Centers for Medicare & Medicaid Services shall prepare and transmit to the Chairman of the Council a plan for research to be conducted under (a)[1] of this section. The plan shall—

(A) provide for a determination of the types of services required by individuals with Alzheimer's disease and related dementias and their families to allow such individuals to remain living at home or in a community-based setting;

(B) provide for a determination of the costs of providing needed services to individuals with Alzheimer's disease and related dementias and their families, including the expenditures for institutional, home, and community-based services and the source of payment for such expenditures;

(C) provide for an assessment of the adequacy of benefits provided through the Medicare and Medicaid programs and through private health insurance for needed services for individuals with Alzheimer's disease and related dementias and their families; and

(D) provide for a determination of the costs to the Medicare and Medicaid programs and to private health insurers (if available) of providing covered benefits to individuals with Alzheimer's disease and related dementias and their families.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Administrator of the Centers for Medicare & Medicaid Services shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Administrator considers appropriate.

[1] So in original. Probably should be preceded by ''subsection''.

(c) Consultation for preparation and revision of plan

In preparing and revising the plan required by subsection (b) of this section, the Administrator of the Centers for Medicare & Medicaid Services shall consult with the Chairman of the Council and the heads of agencies within the Department.

(Pub. L. 99–660, title IX, § 937, formerly § 949A, Nov. 14, 1986, 100 Stat. 3812; renumbered § 937, Pub. L. 100–607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; amended Pub. L. 108–173, title IX, § 900(e)(5)(B), Dec. 8, 2003, 117 Stat. 2373.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, § 900(e)(5)(B)(i), substituted ''Centers for Medicare & Medicaid Services'' for ''National Health Care Financing Administration''.

Subsec. (b)(1). Pub. L. 108–173, § 900(e)(5)(B)(ii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in introductory provisions.

Subsecs. (b)(2), (c). Pub. L. 108–173, § 900(e)(5)(B)(iii), (iv), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

§ 11272. Dissemination

The Administrator of the Centers for Medicare & Medicaid Services shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99–660, title IX, § 938, formerly § 949B, Nov. 14, 1986, 100 Stat. 3812; renumbered § 938, Pub. L. 100–607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; amended Pub. L. 108–173, title IX, § 900(e)(5)(C), Dec. 8, 2003, 117 Stat. 2373.)

AMENDMENTS

2003—Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

§ 11273. Authorization of appropriations

To carry out this part, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991.

(Pub. L. 99–660, title IX, § 939, formerly § 949C, Nov. 14, 1986, 100 Stat. 3813; renumbered § 939, Pub. L. 100–607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

§§ 11281, 11282. Transferred

Section 11281, Pub. L. 99–660, title IX, § 951, Nov. 14, 1986, 100 Stat. 3813, which provided for establishment of Clearinghouse on Alzheimer's Disease, was renumbered section 445E of the Public Health Service Act by Pub. L. 100–607, title I, § 142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e–7 of this title.

Section 11282, Pub. L. 99–660, title IX, § 952, Nov. 14, 1986, 100 Stat. 3813, which provided for dissemination project to be conducted by national organization representing individuals with Alzheimer's disease and related dementias, was renumbered section 445F of the Public Health Service Act by Pub. L. 100–607, title I, § 142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e–8 of this title.

§ 11283. Repealed. Pub. L. 100–607, title I, § 142(c)(1)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99–660, title IX, § 953, Nov. 14, 1986, 100 Stat. 3814, authorized appropriations for fiscal years

1988 through 1991 to carry out program of dissemination of information on Alzheimer's disease.

SUBCHAPTER V—EDUCATIONAL ACTIVITIES

AMENDMENTS

1988—Pub. L. 100–607, title I, §142(c)(1)(C), (D), Nov. 4, 1988, 102 Stat. 3057, redesignated subchapter VII as V, struck out heading for subchapter VI ''DISSEMINATION'', consisting of sections 11281 to 11283 of this title, and redesignated former subchapter V as IV.

§ 11291. Providing information for personnel of Social Security Administration

(a) The Secretary shall develop a mechanism to ensure the prompt provision of the most current information concerning Alzheimer's disease and related dementias to the Commissioner of Social Security, particularly information which will increase the understanding of personnel of the Social Security Administration concerning such disease and dementias.

(b) The Commissioner of Social Security shall ensure that information received under subsection (a) of this section is provided to personnel of the Social Security Administration, particularly personnel involved in the process of determining, for purposes of titles II and XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], whether an individual is under a disability.

(Pub. L. 99–660, title IX, §961, Nov. 14, 1986, 100 Stat. 3814.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Social Security Act are classified generally to subchapters II (§401 et seq.) and XVI (§1381 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 11292. Education of public, individuals with Alzheimer's disease and their families, and health and long-term care providers

(a) Training models grants

(1) Grants

The Director of the National Institute on Aging may award grants to eligible entities to assist the entities in developing and evaluating model training programs—

(A) for—

(i) health care professionals, including mental health professionals;

(ii) health care paraprofessionals;

(iii) personnel, including information and referral, case management, and in-home services personnel (including personnel receiving support under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.)), providing supportive services to the elderly and the families of the elderly;

(iv) family caregivers providing care and treatment for individuals with Alzheimer's disease and related disorders; and

(v) personnel of local organizations (including community groups, business and labor groups, and religious, educational, and charitable organizations) that have traditionally not been involved in planning and developing long-term care services; and

(B) with attention to such variables as—

(i) curricula development for training and continuing education programs;

(ii) care setting; and

(iii) intervention technique.

(2) Eligible entity

To be eligible to receive grants under this subsection, an entity shall be—

(A) an educational institution providing training and education in medicine, psychology, nursing, social work, gerontology, or health care administration;

(B) an educational institution providing preparatory training and education of personnel for nursing homes, hospitals, and home or community settings; or

(C) an Alzheimer's Disease Research Center described in section 285e–2(a) of this title.

(b) Educational grants

The Director of the National Institute on Aging is authorized to make grants to public and nonprofit private entities to assist such entities in establishing programs, for educating health care providers and the families of individuals with Alzheimer's disease or related disorders, regarding—

(1) caring for individuals with such diseases or disorders; and

(2) the availability in the community of public and private sources of assistance, including financial assistance, for caring for such individuals.

(c) Award of grants

In awarding grants under this section, the Director of the National Institute on Aging shall—

(1) award the grants on the basis of merit;

(2) award the grants in a manner that will ensure access to the programs described in subsections (a) and (b) of this section by rural, minority, and underserved populations throughout the country; and

(3) ensure that the grants are distributed among the principal geographic regions of the United States.

(d) Application

To be eligible to receive a grant under this section, an entity shall submit an application to the Director of the National Institute on Aging at such time, in such manner, and containing or accompanied by such information, as the Director may reasonably require, including, at a minimum, an assurance that the entity will coordinate programs provided under this section with the State agency designated under section 305(a)(1) of the Older Americans Act of 1965 [42 U.S.C. 3025(a)(1)], in the State in which the entity will provide such programs.

(e) Coordination

The Director of the National Institute on Aging shall coordinate the award of grants under this section with the heads of other appropriate agencies, including the Commissioner of the Administration on Aging.

(Pub. L. 99–660, title IX, § 962, Nov. 14, 1986, 100 Stat. 3814; Pub. L. 102–507, § 8(a), Oct. 24, 1992, 106 Stat. 3286.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (a)(1)(A)(iii), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–507 amended section generally. Prior to amendment, section read as follows: ''The Director of the National Institute on Aging, through centers supported under section 285e–2 of this title, professional associations, and continuing education programs, shall conduct education and information dissemination activities concerning the special problems of individuals with Alzheimer's disease and their families. Such activities shall be designed to enhance the understanding of such problems by individuals who provide care for individuals with Alzheimer's disease and related dementias, including physicians, nurses, psychologists, social workers, occupational therapists, nursing home administrators, nurses, and health care aides.''

§ 11293. Education programs for safety and transportation personnel

The Director of the National Institute on Aging, through centers supported under section 285e–2 of this title, training academies, and continuing education programs, shall conduct education and information dissemination activities concerning Alzheimer's disease and related dementias for personnel involved in ensuring the public safety and providing public transportation. Such activities shall be designed to enhance the ability of such personnel to respond appropriately to individuals with Alzheimer's disease and related dementias whom such personnel may encounter in the course of their employment.

(Pub. L. 99–660, title IX, § 963, Nov. 14, 1986, 100 Stat. 3815.)

§ 11294. Authorization of appropriations

(a) To carry out sections 11291 and 11293 of this title, there are authorized to be appropriated $1,000,000 for each of the fiscal years 1988 through 1991.

(b) There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992 through 1996, to carry out section 11292 of this title.

(Pub. L. 99–660, title IX, § 964, Nov. 14, 1986, 100 Stat. 3815; Pub. L. 102–507, § 8(b), Oct. 24, 1992, 106 Stat. 3287.)

AMENDMENTS

1992—Pub. L. 102–507 designated existing provisions as subsec. (a), substituted ''sections 11291 and 11293 of this title'' for ''this subchapter'', and added subsec. (b).

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SUBCHAPTER I—GENERAL PROVISIONS

§ 11301. Findings and purpose

(a) Findings

The Congress finds that—

(1) the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans;

(2) the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless;

(3) the causes of homelessness are many and complex, and homeless individuals have diverse needs;

(4) there is no single, simple solution to the problem of homelessness because of the different subpopulations of the homeless, the different causes of and reasons for homelessness, and the different needs of homeless individuals;

(5) due to the record increase in homelessness, States, units of local government, and private voluntary organizations have been unable to meet the basic human needs of all the homeless and, in the absence of greater Federal assistance, will be unable to protect the lives and safety of all the homeless in need of assistance; and

(6) the Federal Government has a clear responsibility and an existing capacity to fulfill a more effective and responsible role to meet the basic human needs and to engender respect for the human dignity of the homeless.

(b) Purpose

It is the purpose of this chapter—

(1) to establish the United States Interagency Council on Homelessness;

(2) to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless of the Nation; and

(3) to provide funds for programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans.

(Pub. L. 100–77, title I, § 102, July 22, 1987, 101 Stat. 484; Pub. L. 108–199, div. G, title II, § 216(2), Jan. 23, 2004, 118 Stat. 394.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–199 substituted ''the United States Interagency Council on Homelessness'' for ''an Interagency Council on the Homeless''.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–110, title X, § 1031, Jan. 8, 2002, 115 Stat. 1989, provided that: ''This part [part C (§§ 1031–1034) of title X of Pub. L. 107–110, enacting sections 11431 to 11435 of this title and provisions set out as a note below and amending provisions set out as a note below] may be cited as the 'McKinney-Vento Homeless Education Assistance Improvements Act of 2001'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–421, § 1, Oct. 25, 1994, 108 Stat. 4346, provided that: ''This Act [amending section 11411 of this title and enacting and amending provisions set out as notes under section 2687 of Title 10, Armed Forces] may cited as the 'Base Closure Community Redevelopment and Homeless Assistance Act of 1994'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–120, § 1, Oct. 27, 1993, 107 Stat. 1144, provided that: ''This Act [amending sections 1490*o* and 12724 of this title and sections 1701z–11, 1721, and 1735f–9 of Title 12, Banks and Banking, enacting provisions set out as notes under this section and sections 1437f, 1490*o*, and 9816 of this title, and amending a provision set out as a note under section 1437f of this title] may be cited as the 'HUD Demonstration Act of 1993'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–550, title XIV, § 1401, Oct. 28, 1992, 106 Stat. 4012, provided that: ''This title [enacting sections 11381 to 11389, 11391 to 11399, 11403e–4, 11404, 11405 to 11405b, 11406 to 11406b, 11407 to 11407b, 11408, and 11408a of this title, transferring sections 11404c to 11404e of this title to sections 11403e–1 to 11403e–3 of this title, respectively, amending sections 11318, 11319, 11346, 11352, 11374, 11375, 11377, 11401, 11403a, 11403c to 11403e, 11403g, 11403h, 11404a, and 11404b of this title, repealing sections 11381 to 11388, 11391 to 11394, 11404, 11405 to 11405c, and 11406 to 11406c of this title, enacting provisions set out as notes preceding section 11361 and under sections 11361, 11381, and 11411 of this title, amending provisions set out as a note under this section, and repealing provisions set out as notes under sections 11361, 11391, and 11399 of this title] may be cited as the 'Stewart B. McKinney Homeless Housing Assistance Amendments Act of 1992'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–645, § 1(a), Nov. 29, 1990, 104 Stat. 4673, provided that: ''This Act [enacting sections 5118 to 5118e, 11434a, 11465, 11466, and 11481 to 11489 of this title and section 1703a of Title 29, Labor, amending sections 256, 290bb–2, 290cc–21 to 290cc–35, 11302, 11312, 11318, 11319, 11332, 11352, 11411, 11421, 11431 to 11435, 11443, 11449, 11450, 11463, and 11464 of this title, enacting provisions set out as notes under this section, sections 5118, 11332, 11411, and 11463 of this title, and section 141 of Title 13, Census, and amending provisions set out as a note under section 290aa–3 of this title] may be cited as the 'Stewart B. McKinney Homeless Assistance Amendments Act of 1990'.''

Pub. L. 101–645, title VI, § 601, Nov. 29, 1990, 104 Stat. 4734, provided that: ''This title [enacting sections 5118 to 5118e, 11434a, 11465, 11466, and 11481 to 11489 of this title and section 1703a of Title 29, Labor, amending sections 11302, 11421, 11431 to 11435, 11443, 11449, 11450, 11463, and 11464 of this title, and enacting provisions set out as notes under sections 5118 and 11463 of this title] may be cited as the 'Stewart B. McKinney Homeless Assistance Amendments Act of 1990'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–628, § 1(a), Nov. 7, 1988, 102 Stat. 3224, provided that: ''This Act [enacting sections 3544, 11320, and 11402 of this title and sections 1583, 1791 to 1791j of Title 29, Labor, amending sections 254e, 256, 290bb–2, 290cc–21, 290cc–28, 290cc–29, 290cc–35, 290cc–36, 290dd, 290ee, 290ee–1, 503, 504, 602, 1437d, 1437f, 1437n, 1437*o*, 1437r, 1472, 1480, 1484 to 1486, 1490*o*, 3002, 3015, 3021, 3025 to 3027, 3031, 3035a, 3056e, 4013, 4121, 4822, 5302, 5304, 5306, 5318, 8103, 11304, 11313, 11318, 11319, 11352, 11361, 11373 to 11375, 11377, 11382 to 11385, 11387, 11388, 11392, 11394, 11401, 11411, 11421, 11432, 11433, 11435, 11447, 11449, 11462 to 11464, and 11501 of this title, sections 1454, 1701x, 1701z–11, 1709, 1710, 1715z–1a, 1715z–12, 1715z–20, 1717, 2805, and 2806 of Title 12, Banks and Banking, sections 1701 and 1719 of Title 15, Commerce and Trade, and sections 49, 49a, 49b, 49d to 49j, 49*l*, 49*l*–1, 1502, 1504, 1505, 1514, 1516, 1531, and 1602 of Title 29, enacting provisions set out as notes under this section and sections 256, 1437d, 1437f, 1472, 11303, 11374, 11381, 11383, 11384, 11392, 11401, and 11501 of this title, sections 1710 and 1715z–1a of Title 12, section 2661 of Title 15, and section 1501 of Title 29, and amending provisions set out as notes under sections 290aa–3, 1472, 1490m, and 4822 of this title, sections 1701z–6, 1709, 1715*l*, and 2802 of Title 12, and section 49 of Title 29] may be cited as the 'Stewart B. McKinney Homeless Assistance Amendments Act of 1988'.''

SHORT TITLE

Section 101(a) of Pub. L. 100–77, as amended by Pub. L. 106–400, § 1, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107–110, title X, § 1034(a), Jan. 8, 2002, 115 Stat. 2006; Pub. L. 107–116, title VI, § 634(a), Jan. 10, 2002, 115 Stat. 2228, provided that: ''This Act [enacting this chapter and sections 256 and 290cc–21 to 290cc–36 of this title, amending sections 254e, 290bb–1a, 290bb–2, and 5302 of this title, sections 2012, 2014, 2020, and 2025 of Title 7, Agriculture, sections 1205 and 1207a of Title 20, Education, sections 1503 and 1551 of Title 29, Labor, and section 484 of former Title 40, Public Buildings, Property, and Works, repealing section 256a of this title, enacting provisions set out as notes under this section and section 290aa–3 of this title and sections 2012, 2014, and 2020 of Title 7, and amending provisions set out as notes under section 612c of Title 7 and section 1721 of Title 29] may be cited as the 'McKinney-Vento Homeless Assistance Act'.''

[Pub. L. 107–110, title X, § 1034(b), Jan. 8, 2002, 115 Stat. 2007, provided that: ''The amendment made by subsection (a) [amending section 1 of Pub. L. 106–400, which amended section 101(a) of Pub. L. 100–77 set out above] shall be deemed to be effective on the date of enactment of Public Law 106–400.'']

[Pub. L. 107–116, title VI, § 634(b), Jan. 10, 2002, 115 Stat. 2228, provided that: ''The amendment made by subsection (a) of this section [which directed the amendment of section 101(a) of Pub. L. 100–77, set out above] is deemed to have taken effect immediately after the enactment of Public Law 106–400 [which was approved Oct. 30, 2000] (114 Stat. 1675).'']

REGULATIONS

Pub. L. 100–628, title IV, § 485, Nov. 7, 1988, 102 Stat. 3239, provided that: ''Not later than 60 days after the date of the enactment of this Act [Nov. 7, 1988], the Secretary of Housing and Urban Development or other Federal entity involved shall by notice establish such requirements as may be necessary to carry out the amendments made by titles I through IV [see Tables for classification] and by section 501(2)(B) [amending section 11411 of this title]. The Secretary or other Federal entity involved shall issue regulations based on the notice not later than 12 months after the date of the enactment of this Act.''

REFERENCES TO STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT

Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: ''Any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the 'McKinney-Vento Homeless Assistance Act'.''

INNOVATIVE HOMELESS INITIATIVES DEMONSTRATION PROGRAM

Pub. L. 103–120, § 2, Oct. 27, 1993, 107 Stat. 1144, as amended by Pub. L. 104–330, title V, § 506(b), Oct. 26, 1996, 110 Stat. 4045, directed Secretary of Housing and Urban Development, through cooperative efforts in partnership with other levels of government and the private sector, including nonprofit organizations, foundations, and communities, to demonstrate methods of undertaking comprehensive strategies for assisting homeless individuals and families (including homeless individuals who have AIDS or who are infected with HIV), through a variety of activities, including the coordination of efforts and the filling of gaps in available services and resources, directed Secretary to provide comprehensive homeless demonstration grants and innovative project funding, and provided for submission of reports and authorization of appropriations, prior to repeal by Pub. L. 103–120, § 2(g), Oct. 27, 1993, 107 Stat. 1148.

STRATEGY TO ELIMINATE UNFIT TRANSIENT FACILITIES

Pub. L. 101–625, title VIII, § 825, Nov. 28, 1990, 104 Stat. 4356, as amended by Pub. L. 102–550, title XIV, § 1412, Oct. 28, 1992, 106 Stat. 4039, directed Secretary of Housing and Urban Development, not more than 9 months after Oct. 28, 1992, to identify the States and units of general local government using unfit transient facilities as housing for homeless families with children and develop and publish in the Federal Register a strategy to eliminate such use by July 1, 1994, and in developing such strategy, to consult with the Secretary of the Department of Health and Human Services, the Administrator of the Federal Emergency Management Agency, other appropriate Federal officials, appropriate States and units of general local government, major organizations representing homeless persons and other experts.

REPORT ON EFFECT OF RENT CONTROL ON HOMELESSNESS

Pub. L. 100–628, title IV, § 483, Nov. 7, 1988, 102 Stat. 3238, directed Secretary of Housing and Urban Development, within 12 months after Nov. 7, 1988, to submit to Congress a report evaluating the impact of local housing rent controls and regulations on rate of homelessness, and on the development, supply, availability, and affordability of housing, in major cities in the United States, with report to include additional specified information.

REQUIREMENT OF CERTAIN STUDY WITH RESPECT TO HOMELESSNESS

Section 603 of Pub. L. 100–77 directed Secretary of Health and Human Services, not later than 18 months after July 22, 1987, to complete a study with respect to determining extent to which mental health deinstitutionalization policies of States are contributing to problem of homelessness, and submit to Congress the findings made as a result of such study, including any recommendations with respect to administrative and legislative initiatives that could reduce the number of chronically mentally ill individuals who are homeless.

§ 11302. General definition of homeless individual

(a) In general

For purposes of this chapter, the term ''homeless'' or ''homeless individual or homeless person''[1] includes—

(1) an individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) an individual who has a primary nighttime residence that is—

(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) an institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(b) Income eligibility

(1) In general

A homeless individual shall be eligible for assistance under any program provided by this chapter, only if the individual complies with the income eligibility requirements otherwise applicable to such program.

(2) Exception

Notwithstanding paragraph (1), a homeless individual shall be eligible for assistance under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].

(c) Exclusion

For purposes of this chapter, the term ''homeless'' or ''homeless individual'' does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(Pub. L. 100–77, title I, § 103, July 22, 1987, 101 Stat. 485; Pub. L. 101–625, title VIII, § 822, Nov. 28, 1990, 104 Stat. 4355; Pub. L. 101–645, title VI, § 602, Nov. 29, 1990, 104 Stat. 4734; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(41), (f)(32)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–427, 2681–434.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (b)(2), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(32)], struck out ''the Job Training Partnership Act or'' after ''assistance under''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(41)], substituted ''the Job Training Partnership Act or title I of

[1] So in original. Probably should be '' 'homeless individual' or 'homeless person' ''.

the Workforce Investment Act of 1998'' for ''the Job Training Partnership Act''.

1990—Subsec. (a). Pub. L. 101–625 inserted ''or homeless person'' after ''homeless individual'' in introductory provisions.

Subsec. (b). Pub. L. 101–645 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''A homeless individual shall be eligible for assistance under any program provided by this chapter, or by the amendments made by this Act, only if the individual complies with the income eligibility requirements otherwise applicable to such program.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(41)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(32)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

§ 11303. Funding availability and limitations

(a) Calculation

The amounts authorized in this chapter shall be in addition to any amount appropriated for the programs involved before July 22, 1987.

(b) Availability until expended

Any amount appropriated under an authorization in this chapter shall remain available until expended.

(c) Limitation

Appropriations pursuant to the authorizations in this chapter shall be made in accordance with the provisions of the Congressional Budget and Impoundment Control Act of 1974, which prohibits the consideration of any bill that would cause the deficit to exceed the levels established by the Balanced Budget and Emergency Deficit Control Act of 1985, such that it shall not increase the deficit of the Federal Government for fiscal year 1987.

(Pub. L. 100–77, title I, § 104, July 22, 1987, 101 Stat. 485.)

REFERENCES IN TEXT

The Congressional Budget and Impoundment Control Act of 1974, referred to in subsec. (c), is Pub. L. 93–344, July 12, 1974, 88 Stat. 297, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (c), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, amended section 911 of this title, sections 602, 622, 631 to 642, and 651 to 653 of Title 2, and sections 1104 to 1106, and 1109 of Title 31, Money and Finance, repealed section 661 of Title 2, enacted provisions set out as notes under section 911 of this title and section 900 of Title 2, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

BUDGET COMPLIANCE

Pub. L. 100–628, title I, § 101, Nov. 7, 1988, 102 Stat. 3227, provided that:

''(a) IN GENERAL.—This Act and the amendments made by this Act [see Short Title of 1988 Amendment note set out under section 11301 of this title] may not be construed to provide for new budget authority, budget outlays, or new entitlement authority, for fiscal year 1989 or 1990 in excess of the appropriate aggregate levels established by the concurrent resolution on the budget for such fiscal year for the programs authorized by this Act and the amendments made by this Act.

''(b) DEFINITIONS.—For purposes of this section, the terms 'budget authority', 'budget outlays', 'concurrent resolution on the budget', and 'entitlement authority' have the meanings given such terms in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622).''

§ 11304. Evaluation by Comptroller General

The Comptroller General of the United States may evaluate the disbursement and use of the amounts made available by appropriation Acts under the authorizations in subchapters III and IV of this chapter.

(Pub. L. 100–77, title I, § 105, July 22, 1987, 101 Stat. 486; Pub. L. 100–628, title I, § 102(a), (b)(1), Nov. 7, 1988, 102 Stat. 3227; Pub. L. 104–316, title I, § 122(t), Oct. 19, 1996, 110 Stat. 3838.)

AMENDMENTS

1996—Pub. L. 104–316 substituted ''may'' for ''shall annually'' and struck out '', and submit to the Congress an annual summary of the status of each program authorized under this chapter'' before period at end.

1988—Pub. L. 100–628 substituted ''Annual program summary'' for ''Audits'' in section catchline and, in text, substituted ''shall annually evaluate'' for ''shall evaluate'' and ''submit to the Congress an annual summary of the status of each program authorized under this chapter'' for ''submit a report to the Congress setting forth the findings of such evaluation, upon the expiration of the 4-month and 12-month periods beginning on July 22, 1987''.

SUBCHAPTER II—UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS

AMENDMENTS

2004—Pub. L. 108–199, div. G, title II, § 216(3), Jan. 23, 2004, 118 Stat. 394, substituted ''UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS'' for ''INTERAGENCY COUNCIL ON THE HOMELESS'' in subchapter heading.

§ 11311. Establishment

There is established in the executive branch an independent establishment to be known as the United States Interagency Council on Homelessness.

(Pub. L. 100–77, title II, § 201, July 22, 1987, 101 Stat. 486; Pub. L. 108–199, div. G, title II, § 216(4), Jan. 23, 2004, 118 Stat. 394.)

AMENDMENTS

2004—Pub. L. 108–199 substituted ''United States Interagency Council on Homelessness'' for ''Interagency Council on the Homeless''.

§ 11312. Membership

(a) Members

The Council shall be composed of the following members:

(1) The Secretary of Agriculture, or the designee of the Secretary.

(2) The Secretary of Commerce, or the designee of the Secretary.

(3) The Secretary of Defense, or the designee of the Secretary.

(4) The Secretary of Education, or the designee of the Secretary.

(5) The Secretary of Energy, or the designee of the Secretary.

(6) The Secretary of Health and Human Services, or the designee of the Secretary.

(7) The Secretary of Housing and Urban Development, or the designee of the Secretary.

(8) The Secretary of the Interior, or the designee of the Secretary.

(9) The Secretary of Labor, or the designee of the Secretary.

(10) The Secretary of Transportation, or the designee of the Secretary.

(11) The Secretary of Veterans Affairs, or the designee of the Secretary.

(12) The Chief Executive Officer of the Corporation for National and Community Service, or the designee of the Chief Executive Officer.

(13) The Administrator of the Federal Emergency Management Agency, or the designee of the Administrator.

(14) The Administrator of General Services, or the designee of the Administrator.

(15) The Postmaster General of the United States, or the designee of the Postmaster General.

(16) The heads of such other Federal agencies as the Council considers appropriate, or their designees.

(b) Chairperson

The Council shall elect a Chairperson and a Vice Chairperson from among its members. The positions of Chairperson and Vice Chairperson shall rotate among its members on an annual basis.

(c) Meetings

The Council shall meet at the call of its Chairperson or a majority of its members, but not less often than annually.

(d) Prohibition of additional pay

Members of the Council shall receive no additional pay, allowances, or benefits by reason of their service on the Council.

(Pub. L. 100–77, title II, § 202, July 22, 1987, 101 Stat. 486; Pub. L. 101–645, title I, § 101, Nov. 29, 1990, 104 Stat. 4674; Pub. L. 103–82, title IV, § 405(m), Sept. 21, 1993, 107 Stat. 922; Pub. L. 106–377, § 1(a)(1) [title II, § 231(1)], Oct. 27, 2000, 114 Stat. 1441, 1441A–31; Pub. L. 107–95, § 11, Dec. 21, 2001, 115 Stat. 920; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–95 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The Council shall meet at the call of its Chairperson or a majority of its members. The first meeting of the Council shall be held not later than 30 days after July 22, 1987.''

2000—Subsec. (b). Pub. L. 106–377 inserted at end ''The positions of Chairperson and Vice Chairperson shall rotate among its members on an annual basis.''

1993—Subsec. (a)(12). Pub. L. 103–82 added par. (12) and struck out former par. (12) which read as follows: ''The Director of the ACTION Agency, or the designee of the Director.''

1990—Subsec. (a)(11) to (15). Pub. L. 101–645 added par. (11), redesignated former pars. (11) to (14) as (12) to (15), respectively, and struck out former par. (15) which read as follows: ''The Administrator of Veterans' Affairs, or the designee of the Administrator.''

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' and ''Administrator'' substituted for ''Director of the Federal Emergency Management Agency'' and ''Director'', respectively, in subsec. (a)(13) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 11313. Functions

(a) Duties

The Council shall—

(1) review all Federal activities and programs to assist homeless individuals;

(2) take such actions as may be necessary to reduce duplication among programs and activities by Federal agencies to assist homeless individuals;

(3) monitor, evaluate, and recommend improvements in programs and activities to assist homeless individuals conducted by Federal agencies, State and local governments, and private voluntary organizations;

(4) provide professional and technical assistance (by at least 2, but in no case more than 5, regional coordinators employed by the Council, each having responsibility for interaction and coordination of the activities of the Council within the 10 standard Federal regions) to States, local governments, and other public and private nonprofit organizations, in order to enable such governments and organizations to—

(A) interpret regulations and assist in the application process for Federal assistance, including grants;

(B) provide assistance on the ways in which Federal programs, other than those authorized under this chapter, may best be coordinated to complement the objectives of this chapter;

(C) develop recommendations and program ideas based on regional specific issues in serving the homeless population; and

(D) establish a schedule for biennial regional workshops to be held by the Council

in each of the 10 standard Federal regions to further carry out and provide the assistance described in subparagraphs (A), (B), and (C) and other appropriate assistance as necessary, of which—

(i) not less than 5 such workshops shall be held by September 30, 1989; and

(ii) at least 1 such workshop shall be held in each of the 10 Federal regions every 2 years, beginning on September 30, 1988;

(5) collect and disseminate information relating to homeless individuals;

(6) prepare the annual reports required in subsection (c)(2) of this section; and

(7) prepare and distribute to States (including State contact persons), local governments, and other public and private nonprofit organizations, a bimonthly bulletin that describes the Federal resources available to them to assist the homeless, including current information regarding application deadlines and appropriate persons to contact in each Federal agency providing the resources.

(b) Authority

In carrying out subsection (a) of this section, the Council may—

(1) arrange Federal, regional, State, and local conferences for the purpose of developing and coordinating effective programs and activities to assist homeless individuals; and

(2) publish a newsletter concerning Federal, State, and local programs that are effectively meeting the needs of homeless individuals.

(c) Reports

(1) Within 90 days after July 22, 1987, and annually thereafter, the head of each Federal agency that is a member of the Council shall prepare and transmit to the Congress and the Council a report that describes—

(A) each program to assist homeless individuals administered by such agency and the number of homeless individuals served by such program;

(B) impediments, including any statutory and regulatory restrictions, to the use by homeless individuals of each such program and to obtaining services or benefits under each such program; and

(C) efforts made by such agency to increase the opportunities for homeless individuals to obtain shelter, food, and supportive services.

(2) The Council shall prepare and transmit to the President and the Congress an annual report that—

(A) assesses the nature and extent of the problems relating to homelessness and the needs of homeless individuals;

(B) provides a comprehensive and detailed description of the activities and accomplishments of the Federal Government in resolving the problems and meeting the needs assessed pursuant to subparagraph (A);

(C) describes the accomplishments and activities of the Council, in working with Federal, State, and local agencies and public and private organizations in order to provide assistance to homeless individuals;

(D) assesses the level of Federal assistance necessary to adequately resolve the problems and meet the needs assessed pursuant to subparagraph (A); and

(E) specifies any recommendations of the Council for appropriate and necessary legislative and administrative actions to resolve such problems and meet such needs.

(d) Notification of other Federal agencies

If, in monitoring and evaluating programs and activities to assist homeless individuals conducted by other Federal agencies, the Council determines that any significant problem, abuse, or deficiency exists in the administration of the program or activity of any Federal agency, the Council shall submit a notice of the determination of the Council to the Inspector General of the Federal agency (or the head of the Federal agency, in the case of a Federal agency that has no Inspector General).

(e) Program timetables

Not later than 90 days after November 7, 1988, the head of each Federal agency that is a member of the Council and responsible for administering a program under this chapter shall provide to the Council a timetable regarding program funding availability and application deadlines. The Council shall furnish such information to each State (including the State contact person).

(Pub. L. 100–77, title II, § 203, July 22, 1987, 101 Stat. 487; Pub. L. 100–628, title II, §§ 201–203, Nov. 7, 1988, 102 Stat. 3227, 3228.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(4)(B) and (e), was in the original ''this Act'', meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the Stewart B. McKinney Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

1988—Subsec. (a)(4). Pub. L. 100–628, § 202(1), substituted ''(by at least 2, but in no case more than 5, regional coordinators employed by the Council, each having responsibility for interaction and coordination of the activities of the Council within the 10 standard Federal regions)'' for '', through personnel employed by the Council in each of the 10 standard Federal regions,'' in introductory provisions.

Subsec. (a)(4)(A) to (D). Pub. L. 100–628, § 202(2), added subpars. (A) to (D) and struck out former subpars. (A) and (B) which read as follows:

''(A) effectively coordinate and maximize resources of existing programs and activities to assist homeless individuals; and

''(B) develop new and innovative programs and activities to assist homeless individuals;''.

Subsec. (a)(7). Pub. L. 100–628, § 201, added par. (7).

Subsec. (e). Pub. L. 100–628, § 203, added subsec. (e).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to transmittal to Congress of annual report, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 5th item on page 175 of House Document No. 103–7.

PERSONNEL FROM FEDERAL DEPARTMENTS AND AGENCIES

Pub. L. 102–389, title III, Oct. 6, 1992, 106 Stat. 1608, provided in part: ''That the Council shall carry out its duties in the 10 standard Federal regions under section

203(a)(4) of such Act [42 U.S.C. 11313(a)(4)] only through detail, on a non-reimbursable basis, of employees of the departments and agencies represented on the Council pursuant to section 202(a) of such Act [42 U.S.C. 11312(a)].'' Similar provisions were contained in the following prior appropriations acts:

Pub. L. 102–139, title III, Oct. 28, 1991, 105 Stat. 769.
Pub. L. 101–507, title III, Nov. 5, 1990, 104 Stat. 1377.
Pub. L. 101–144, title III, Nov. 9, 1989, 103 Stat. 861.
Pub. L. 100–404, title I, Aug. 19, 1988, 102 Stat. 1017.

NONIMPLEMENTATION OF SUBSECTION (a)(4)

Pub. L. 100–202, § 101(f) [title I], Dec. 22, 1987, 101 Stat. 1329–187, 1329–191, provided: ''That the provision in section 203(a)(4) of such Act [Pub. L. 100–77, 42 U.S.C. 11313(a)(4)] that relates to employment of personnel in the regions shall not be implemented.''

EXECUTIVE ORDER NO. 12848

Ex. Ord. No. 12848, May 19, 1993, 58 F.R. 29517, required Federal member agencies acting through the Interagency Council on the Homeless to develop a single coordinated Federal plan for breaking the cycle of existing homelessness and for preventing future homelessness and to submit the plan to the President no later than 9 months after May 19, 1993.

§ 11314. Director and staff

(a) Director

The Council shall appoint an Executive Director, who shall be compensated at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5. The Council shall appoint an Executive Director at the first meeting of the Council held under section 11312(c) of this title.

(b) Additional personnel

With the approval of the Council, the Executive Director of the Council may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Council.

(c) Details from other agencies

Upon request of the Council, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this subchapter. Upon request of the Council, the Secretary of Health and Human Services shall detail, on a reimbursable basis, any of the personnel of the Department of Health and Human Services who have served the Federal Task Force on the Homeless of the Department to assist the Council in carrying out its duties under this subchapter.

(d) Administrative support

The Secretary of Housing and Urban Development shall provide the Council with such administrative and support services as are necessary to ensure that the Council carries out its functions under this subchapter in an efficient and expeditious manner.

(e) Experts and consultants

With the approval of the Council, the Executive Director of the Council may procure temporary and intermittent services under section 3109(b) of title 5.

(Pub. L. 100–77, title II, § 204, July 22, 1987, 101 Stat. 488.)

§ 11315. Powers

(a) Meetings

For the purpose of carrying out this subchapter, the Council may hold such meetings, and sit and act at such times and places, as the Council considers appropriate.

(b) Delegation

Any member or employee of the Council may, if authorized by the Council, take any action that the Council is authorized to take in this subchapter.

(c) Information

The Council may secure directly from any Federal agency such information as may be necessary to enable the Council to carry out this subchapter. Upon request of the Chairperson of the Council, the head of such agency shall furnish such information to the Council.

(d) Donations

The Council may accept, use, and dispose of gifts or donations of services or property.

(e) Mails

The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(Pub. L. 100–77, title II, § 205, July 22, 1987, 101 Stat. 488.)

§ 11316. Transfer of functions

(a) Transfers from HHS Task Force

The Council shall be the successor to the Federal Task Force on the Homeless of the Department of Health and Human Services. The property, records, and undistributed program funds of the Task Force shall be transferred to the Council.

(b) Termination of HHS Task Force

The Secretary of Health and Human Services shall terminate the Federal Task Force on the Homeless of the Department of Health and Human Services as soon as practicable following the first meeting of the Council.

(Pub. L. 100–77, title II, § 206, July 22, 1987, 101 Stat. 489.)

§ 11317. Definitions

For purposes of this subchapter:

(1) The term ''Council'' means the United States Interagency Council on Homelessness established in section 11311 of this title.

(2) The term ''Federal agency'' has the meaning given the term ''agency'' in section 551(1) of title 5.

(Pub. L. 100–77, title II, § 207, July 22, 1987, 101 Stat. 489; Pub. L. 108–199, div. G, title II, § 216(4), Jan. 23, 2004, 118 Stat. 394.)

AMENDMENTS

2004—Par. (1). Pub. L. 108–199 substituted ''United States Interagency Council on Homelessness'' for ''Interagency Council on the Homeless''.

§ 11318. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $1,500,000 for fiscal year 1993 and $1,563,000 for fiscal year 1994.

(Pub. L. 100–77, title II, § 208, July 22, 1987, 101 Stat. 489; Pub. L. 100–628, title II, § 204, Nov. 7, 1988, 102 Stat. 3228; Pub. L. 101–645, title I, § 102, Nov. 29, 1990, 104 Stat. 4674; Pub. L. 102–550, title XIV, § 1421, Oct. 28, 1992, 106 Stat. 4043.)

AMENDMENTS

1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated to carry out this subchapter $1,200,000 for fiscal year 1991 and $1,300,000 for fiscal year 1992.''

1990—Pub. L. 101–645 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated to carry out this subchapter $1,100,000 for fiscal year 1989 and $1,200,000 for fiscal year 1990.''

1988—Pub. L. 100–628 amended section generally, substituting ''$1,100,000 for fiscal year 1989 and $1,200,000 for fiscal year 1990'' for ''$200,000 for fiscal year 1987 and $2,500,000 for fiscal year 1988''.

§ 11319. Termination

The Council shall cease to exist, and the requirements of this subchapter shall terminate, on October 1, 2006.

(Pub. L. 100–77, title II, § 209, July 22, 1987, 101 Stat. 489; Pub. L. 100–628, title II, § 205, Nov. 7, 1988, 102 Stat. 3228; Pub. L. 101–402, § 2, Oct. 1, 1990, 104 Stat. 866; Pub. L. 101–645, title I, § 103, Nov. 29, 1990, 104 Stat. 4675; Pub. L. 102–550, title XIV, § 1422, Oct. 28, 1992, 106 Stat. 4043; Pub. L. 106–377, § 1(a)(1) [title II, § 231(2)], Oct. 27, 2000, 114 Stat. 1441, 1441A–31; Pub. L. 109–115, div. A, title VI, Nov. 30, 2005, 119 Stat. 2490.)

AMENDMENTS

2005—Pub. L. 109–115 substituted ''2006'' for ''2005''.

2000—Pub. L. 106–377 substituted ''2005'' for ''1994''.

1992—Pub. L. 102–550 substituted ''October 1, 1994'' for ''October 1, 1992''.

1990—Pub. L. 101–645 substituted ''October 1, 1992'' for ''October 31, 1990''.

Pub. L. 101–402 substituted ''October 31, 1990'' for ''October 1, 1990''.

1988—Pub. L. 100–628 substituted ''on October 1, 1990'' for ''upon the expiration of the 3-year period beginning on July 22, 1987''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–402 deemed to have taken effect as if enacted Sept. 29, 1990, see section 1(a) of Pub. L. 101–494, set out as an Effective Date of Temporary Extension of Emergency Low Income Housing Preservation Act of 1987 and Correction of Any Repeal note under section 1715*l* of Title 12, Banks and Banking.

TEMPORARY EXTENSION OF COUNCIL

Pub. L. 101–494, § 3, Oct. 31, 1990, 104 Stat. 1185, as amended by Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that:

''(a) EXTENSION.—If upon enactment of this Act [Oct. 31, 1990], section 209 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11319) provides for the termination of the Interagency Council on the Homeless on October 31, 1990, then notwithstanding such section, the Interagency Council on the Homeless shall cease to exist, and the requirements of title II of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11311 et seq.] shall terminate, on November 30, 1990.

''(b) LIMITATIONS.—If upon enactment of this Act [Oct. 31, 1990] such section 209 provides for termination of the Council (referred to in subsection (a)) on a date other than October 31, 1990, this section shall not apply. This section shall not apply with respect to any amendment to section 209 of the McKinney-Vento Homeless Assistance Act made after the date of the enactment of this Act.''

§ 11320. Encouragement of State involvement

(a) State contact persons

Each State shall designate an individual to serve as a State contact person for the purpose of receiving and disseminating information and communications received from the Council, including the bimonthly bulletin described in section 11313(a)(7) of this title.

(b) State interagency councils and lead agencies

Each State is encouraged to establish a State interagency council on the homeless or designate a lead agency for the State for the purpose of assuming primary responsibility for coordinating and interacting with the Council and State and local agencies as necessary.

(Pub. L. 100–77, title II, § 210, as added Pub. L. 100–628, title II, § 206(a), Nov. 7, 1988, 102 Stat. 3229.)

SUBCHAPTER III—FEDERAL EMERGENCY MANAGEMENT FOOD AND SHELTER PROGRAM

PART A—ADMINISTRATIVE PROVISIONS

§ 11331. Emergency Food and Shelter Program National Board

(a) Establishment

There is established to carry out the provisions of this subchapter the Emergency Food and Shelter Program National Board. The Administrator of the Federal Emergency Management Agency shall constitute the National Board in accordance with subsection (b) of this section in administering the program under this subchapter.

(b) Members

The National Board shall consist of the Director and 6 members appointed by the Director. The initial members of the National Board shall be appointed by the Director not later than 30 days after July 22, 1987. Each such member shall be appointed from among individuals nominated by 1 of the following organizations:

(1) The United Way of America.

(2) The Salvation Army.

(3) The National Council of Churches of Christ in the U.S.A.

(4) Catholic Charities U.S.A.

(5) The Council of Jewish Federations, Inc.

(6) The American Red Cross.

(c) Chairperson

The Director shall be the Chairperson of the National Board.

(d) Other activities

Except as otherwise specifically provided in this subchapter, the National Board shall establish its own procedures and policies for the conduct of its affairs.

(e) Transfers from previous national board

Upon the appointment of members to the National Board under subsection (b) of this section—

(1) the national board constituted under the emergency food and shelter program estab-

lished pursuant to section 101(g) of Public Law 99–500 or Public Law 99–591 shall cease to exist; and

(2) the personnel, property, records, and undistributed program funds of such national board shall be transferred to the National Board.

(Pub. L. 100–77, title III, § 301, July 22, 1987, 101 Stat. 489; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

The emergency food and shelter program established pursuant to section 101(g) of Public Law 99–500 or Public Law 99–591, referred to in subsec. (e)(1), means the emergency food and shelter program authorized by title II of H.R. 5313 [Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1987], as incorporated by reference by section 101(g) of Pub. L. 99–500, Oct. 18, 1986, 100 Stat. 1783–242, and Pub. L. 99–591, Oct. 30, 1986, 100 Stat. 3341–242, which is not classified to the Code.

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (a) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 11332. Local boards

(a) Establishment

Each locality designated by the National Board shall constitute a local board for the purpose of determining how program funds allotted to the locality will be distributed. The local board shall consist, to the extent practicable, of representatives of the same organizations as the National Board, except that the mayor or other appropriate heads of government will replace the Federal members, and except that each local board administering program funds for a locality within which is located a reservation (as such term is defined in section 1452(d) of title 25,[1] or a portion thereof, shall include a board member who is a member of an Indian tribe (as such term is defined in section 5302(a)(17) of this title.[1] The chairperson of the local board shall be elected by a majority of the members of the local board. Local boards are encouraged to expand participation of other private nonprofit organizations on the local board.

(b) Responsibilities

Each local board shall—

(1) determine which private nonprofit organizations or public organizations of the local government in the individual locality shall receive grants to act as service providers;

(2) monitor recipient service providers for program compliance;

(3) reallocate funds among service providers;

(4) ensure proper reporting; and

(5) coordinate with other Federal, State, and local government assistance programs available in the locality.

(Pub. L. 100–77, title III, § 302, July 22, 1987, 101 Stat. 490; Pub. L. 101–645, title II, § 202(a), Nov. 29, 1990, 104 Stat. 4675.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–645 inserted before period at end of second sentence ‘‘, and except that each local board administering program funds for a locality within which is located a reservation (as such term is defined in section 1452(d) of title 25, or a portion thereof, shall include a board member who is a member of an Indian tribe (as such term is defined in section 5302(a)(17) of this title''.

IMPLEMENTATION OF 1990 AMENDMENT

Section 202(b) of Pub. L. 101–645 provided that: ''Each local board under the Emergency Food and Shelter Program whose membership shall include a member of an Indian tribe by reason of the amendment made by subsection (a) [amending this section] shall comply with the requirement made by such amendment not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Nov. 29, 1990].''

§ 11333. Role of Federal Emergency Management Agency

(a) In general

The Director shall provide the National Board with administrative support and act as Federal liaison to the National Board.

(b) Specific support activities

The Director shall—

(1) make available to the National Board, upon request, the services of the legal counsel and Inspector General of the Federal Emergency Management Agency;

(2) assign clerical personnel to the National Board on a temporary basis; and

(3) conduct audits of the National Board annually and at such other times as may be appropriate.

(Pub. L. 100–77, title III, § 303, July 22, 1987, 101 Stat. 490.)

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal

[1] So in original. A closing parenthesis probably should precede the punctuation.

Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 11334. Records and audit of National Board and recipients of assistance

(a) Annual independent audit of National Board

(1) The accounts of the National Board shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the National Board are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the National Board and necessary to facilitate the audits shall be made available to the person or persons conducting the audits, and full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(2) The report of each such independent audit shall be included in the annual report required in section 11335 of this title. Such report shall set forth the scope of the audit and include such statements as are necessary to present fairly the assets and liabilities of the National Board, surplus or deficit, with an analysis of the changes during the year, supplemented in reasonable detail by a statement of the income and expenses of the National Board during the year, and a statement of the application of funds, together with the opinion of the independent auditor of such statements.

(b) Access to records of recipients of assistance

(1) Each recipient of assistance under this subchapter shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The National Board, or any of its duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subchapter.

(c) Authority of Comptroller General

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access to any books, documents, papers, and records of the National Board and recipients for such purpose.

(Pub. L. 100–77, title III, § 304, July 22, 1987, 101 Stat. 491.)

§ 11335. Annual report

The National Board shall transmit to the Congress an annual report covering each year in which it conducts activities with funds made available under this subchapter.

(Pub. L. 100–77, title III, § 305, July 22, 1987, 101 Stat. 491.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under this section is listed in the 4th item on page 169), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

PART B—EMERGENCY FOOD AND SHELTER GRANTS

§ 11341. Grants by Director

Not later than 30 days following the date on which appropriations become available to carry out this part, the Director shall award a grant for the full amount that the Congress appropriates for the program under this part to the National Board for the purpose of providing emergency food and shelter to needy individuals through private nonprofit organizations and local governments in accordance with section 11343 of this title.

(Pub. L. 100–77, title III, § 311, July 22, 1987, 101 Stat. 492.)

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 11342. Retention of interest earned

Interest accrued on the balance of any grant to the National Board shall be available to the National Board for reallocation, and total administrative costs shall be determined based on total amount of funds available, including interest and any private contributions that are made to the National Board.

(Pub. L. 100–77, title III, § 312, July 22, 1987, 101 Stat. 492.)

§ 11343. Purposes of grants

(a) Eligible activities

Grants to the National Board may be used—

(1) to supplement and expand ongoing efforts to provide shelter, food, and supportive services for homeless individuals with sensitivity to the transition from temporary shelter to permanent homes, and attention to the special needs of homeless individuals with mental and physical disabilities and illnesses, and to facilitate access for homeless individuals to other sources of services and benefits;

(2) to strengthen efforts to create more effective and innovative local programs by providing funding for them; and

(3) to conduct minimum rehabilitation of existing mass shelter or mass feeding facilities, but only to the extent necessary to make facilities safe, sanitary, and bring them into compliance with local building codes.

(b) Limitations on activities

(1) The National Board may only provide funding provided under this part for—

(A) programs undertaken by private nonprofit organizations and local governments; and

(B) programs that are consistent with the purposes of this subchapter.

(2) The National Board may not carry out programs directly.

(Pub. L. 100–77, title III, § 313, July 22, 1987, 101 Stat. 492.)

§ 11344. Limitation on certain costs

Not more than 5 percent of the total amount appropriated for the emergency food and shelter program for each fiscal year may be expended for the costs of administration.

(Pub. L. 100–77, title III, § 314, July 22, 1987, 101 Stat. 492.)

§ 11345. Disbursement of funds

Any amount made available by appropriation Acts under this subchapter shall be disbursed by the National Board before the expiration of the 3-month period beginning on the date on which such amount becomes available.

(Pub. L. 100–77, title III, § 315, July 22, 1987, 101 Stat. 492.)

§ 11346. Program guidelines

(a) Guidelines

The National Board shall establish written guidelines for carrying out the program under this part, including—

(1) methods for identifying localities with the highest need for emergency food and shelter assistance;

(2) methods for determining the amount and distribution to such localities;

(3) eligible program costs, including maximum flexibility in meeting currently existing needs;

(4) guidelines specifying the responsibilities and reporting requirements of the National Board, its recipients, and service providers;

(5) guidelines requiring each private nonprofit organization and local government carrying out a local emergency food and shelter program with amounts provided under this part, to the maximum extent practicable, to involve homeless individuals and families, through employment, volunteer services, or otherwise, in providing emergency food and shelter and in otherwise carrying out the local program; and

(6) guidelines requiring each private nonprofit organization and local government carrying out a local emergency food and shelter program with amounts provided under this part to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy making entity of the organization or governmental agency to the extent that such entity considers and makes policies and decisions regarding the local program of the organization or locality; except that such guidelines may grant waivers to applicants unable to meet such requirement if the organization or government agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(b) Publication

Guidelines established under subsection (a) of this section shall be published annually, and whenever modified, in the Federal Register. The National Board shall not be subject to the procedural rulemaking requirements of subchapter II of chapter 5 of title 5.

(Pub. L. 100–77, title III, § 316, July 22, 1987, 101 Stat. 493; Pub. L. 102–550, title XIV, § 1432, Oct. 28, 1992, 106 Stat. 4043.)

AMENDMENTS

1992—Subsec. (a)(5), (6). Pub. L. 102–550 added pars. (5) and (6).

PART C—GENERAL PROVISIONS

§ 11351. Definitions

For purposes of this subchapter:

(1) The term ''Director'' means the Administrator of the Federal Emergency Management Agency.

(2) The term ''emergency shelter'' means a facility all or a part of which is used or designed to be used to provide temporary housing.

(3) The term ''local government'' means a unit of general purpose local government.

(4) The term ''locality'' means the geographical area within the jurisdiction of a local government.

(5) The term ''National Board'' means the Emergency Food and Shelter Program National Board.

(6) The term ''private nonprofit organization'' means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Director; and

(D) that practices nondiscrimination in the provision of assistance.

(7) The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 100–77, title III, § 321, July 22, 1987, 101 Stat. 493; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in par. (1) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11352. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $180,000,000 for fiscal year 1993 and $187,560,000 for fiscal year 1994.

(Pub. L. 100–77, title III, § 322, July 22, 1987, 101 Stat. 493; Pub. L. 100–628, title III, § 302, Nov. 7, 1988, 102 Stat. 3229; Pub. L. 101–645, title II, § 201, Nov. 29, 1990, 104 Stat. 4675; Pub. L. 102–550, title XIV, § 1431, Oct. 28, 1992, 106 Stat. 4043.)

AMENDMENTS

1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated to carry out this subchapter $150,000,000 for each of fiscal years 1991 and 1992.''

1990—Pub. L. 101–645 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated to carry out this subchapter $129,000,000 for fiscal year 1989 and $134,000,000 for fiscal year 1990.''

1988—Pub. L. 100–628 amended section generally, substituting ''$129,000,000 for fiscal year 1989 and $134,000,000 for fiscal year 1990'' for ''$15,000,000 for fiscal year 1987 and $124,000,000 for fiscal year 1988''.

SUBCHAPTER IV—HOUSING ASSISTANCE

CODIFICATION

Pub. L. 101–625, title VIII, §§ 821, 823, Nov. 28, 1990, 104 Stat. 4331, 4355, which provided for the amendment of this subchapter generally and provided for implementation, transition, and a prospective effective date for the amendment, was repealed by Pub. L. 102–550, title XIV, § 1410, Oct. 28, 1992, 106 Stat. 4038, which provided that: ''The Cranston-Gonzalez National Affordable Housing Act is amended by striking sections 821 and 823 (42 U.S.C. 11361 note). The amendment made by such section 821 of such Act shall not take effect.''

PART A—COMPREHENSIVE HOMELESS ASSISTANCE PLAN

§ 11361. Housing affordability strategy

Assistance may be made under this subchapter only if the grantee certifies that it is following—

(1) a current housing affordability strategy which has been approved by the Secretary in accordance with section 12705 of this title, or

(2) a comprehensive homeless assistance plan which was approved by the Secretary during the 180-day period beginning on November 28, 1990, or during such longer period as may be prescribed by the Secretary in any case for good cause.

(Pub. L. 100–77, title IV, § 401, July 22, 1987, 101 Stat. 494; Pub. L. 100–628, title IV, §§ 401–404, Nov. 7, 1988, 102 Stat. 3230, 3231; Pub. L. 101–625, title VIII, §§ 831, 832(e)(3), 836(a), Nov. 28, 1990, 104 Stat. 4357, 4360, 4366.)

AMENDMENTS

1990—Pub. L. 101–625, § 836(a), amended section generally, substituting present provisions for provisions requiring the annual submission of a comprehensive homeless assistance plan with requirements for contents of the plan, review of the plan, performance reviews under the plan, publication by notice, applications for assistance, coordination with State agencies, and consultation with other private and public groups and entities regarding the plan.

Subsec. (a). Pub. L. 101–625, § 831(b)(1), inserted at end ''Assistance authorized by this subchapter may be provided to any Indian tribe that is eligible to receive a grant under the emergency shelter grants program in any fiscal year, but only if the tribe submits biennially to the Secretary of Housing and Urban Development a comprehensive homeless assistance plan under this section.''

Subsec. (a)(1). Pub. L. 101–625, § 831(c)(2)(A), substituted ''biennially'' for ''annually''.

Subsec. (b)(2). Pub. L. 101–625, § 831(c)(2)(B), substituted '', services, and programs'' for ''and services''.

Subsec. (b)(3). Pub. L. 101–625, § 831(c)(2)(C), substituted '', services, and programs'' for ''and services'' in cl. (A), struck out ''and'' before ''(B)'', and added cls. (C) to (F).

Subsec. (b)(5). Pub. L. 101–625, § 831(b)(2), inserted ''Indian tribe,'' after ''State,''.

Subsec. (b)(7), (8). Pub. L. 101–625, § 831(a), added pars. (7) and (8).

Subsec. (b)(9). Pub. L. 101–625, § 832(e)(3), added par. (9).

Subsecs. (c)(1), (d). Pub. L. 101–625, § 831(b)(3), (4), inserted ''Indian tribe,'' after ''State,'' wherever appearing.

Subsec. (g). Pub. L. 101–625, § 831(b)(5), inserted ''(or tribal agency or contact)'' after ''State contact person'', ''(or tribe)'' before comma, and ''(or tribal agency or contact person)'' after ''or contact person''.

Subsec. (h). Pub. L. 101–625, § 831(c)(1), added subsec. (h).

1988—Subsec. (a)(1). Pub. L. 100–628, § 401(a), inserted ''annually'' after ''submits''.

Subsec. (a)(2), (3). Pub. L. 100–628, § 401(b), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b)(3). Pub. L. 100–628, § 402(1), inserted ''facilities and'' before ''services'' and struck out ''and'' at end.

Subsec. (b)(4). Pub. L. 100–628, § 402(2), inserted ''facilities and'' before ''services'' and substituted a semicolon for period at end.

Subsec. (b)(5), (6). Pub. L. 100–628, § 402(3), added pars. (5) and (6).

Subsec. (d)(3). Pub. L. 100–628, § 403, inserted before period at end ''or to respond to recommendations made in accordance with paragraph (2) that are received at least 60 days prior to the beginning of the fiscal year''.

Subsec. (g). Pub. L. 100–628, § 404, added subsec. (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 836(b) of Pub. L. 101–625 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1991.''

EVALUATION OF PROGRAMS

Pub. L. 102–550, title XIV, § 1409, Oct. 28, 1992, 106 Stat. 4038, as amended by Pub. L. 105–362, title VII, § 701(c), Nov. 10, 1998, 112 Stat. 3287; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: ''The Secretary of Housing and Urban Development shall conduct a comprehensive review and evaluation of the effectiveness of each program under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.]. In conducting the review, the Secretary shall examine procedures of the Department in carrying out such programs, the procedures of recipients of assistance under such programs in carrying out such programs, and the effects and benefits of such programs; shall survey homeless individuals and families assisted under each program in various jurisdictions receiving assistance under each program; shall determine whether such programs are fulfilling the purposes for which they were established; and shall evaluate the usefulness and effectiveness of such programs.''

HOMELESS HOUSING ACT OF 1986

Pub. L. 99–500, § 101(g) [H.R. 5313, title V], Oct. 18, 1986, 100 Stat. 1783–242, and Pub. L. 99–591, § 101(g) [H.R. 5313, title V], Oct. 30, 1986, 100 Stat. 3341–242; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–202, § 106, Dec. 22, 1987, 101 Stat. 1329–433, provided that title V of H.R. 5315 be cited as the ''Homeless Housing Act of 1986'', established a transitional housing demonstration program and directed Secretary of Housing and Urban Development to submit to Congress, not later than 3 months after the end of fiscal year 1987, an interim report summarizing activities under this program during such fiscal year and, not later than 6 months after the end of fiscal year 1988, a final report summarizing such activities, established an emergency shelter grants program to make grants to States, units of local government, and private nonprofit organizations providing assistance to the homeless, and appropriated $15,000,000 for fiscal year 1987, to remain available until expended, to carry out both programs.

§ 11362. Discharge coordination policy

The Secretary may not provide a grant under this subchapter for any governmental entity serving as an applicant unless the applicant agrees to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons.

(Pub. L. 100–77, title IV, § 402, as added Pub. L. 106–377, § 1(a)(1) [title II, § 229(a)], Oct. 27, 2000, 114 Stat. 1441, 1441A–30.)

PART B—EMERGENCY SHELTER GRANTS PROGRAM

§ 11371. Definitions

For purposes of this part:

(1) The term ''local government'' means a unit of general purpose local government.

(2) The term ''locality'' means the geographical area within the jurisdiction of a local government.

(3) The term ''metropolitan city'' has the meaning given such term in section 5302 of this title.

(4) The term ''operating costs'' means expenses incurred by a recipient operating a facility assisted under this part with respect to—

(A) the administration, maintenance, repair, and security of such housing; and

(B) utilities, fuels, furnishings, and equipment for such housing.

(5) The term ''private nonprofit organization'' means a secular or religious organization described in section 501(c) of title 26 that is exempt from taxation under subtitle A of title 26, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance.

(6) The term ''recipient'' means any governmental or private nonprofit entity that is approved by the Secretary as to financial responsibility.

(7) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(8) The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(9) The term ''urban county'' has the meaning given such term in section 5302 of this title.

(Pub. L. 100–77, title IV, § 411, July 22, 1987, 101 Stat. 495; Pub. L. 101–625, title VIII, § 832(f)(1), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104–330, title V, § 506(a)(1), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Par. (10). Pub. L. 104–330 struck out par. (10) which read as follows: ''The term 'Indian tribe' has the meaning given such term in section 5302(a)(17) of this title.''

1990—Par. (10). Pub. L. 101–625 added par. (10).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Section 506(c) of Pub. L. 104–330, as amended by Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: ''The amendments under subsections (a) [amending this section and sections 11372 to 11376, 11382, 11401, 11403g, and 11408 of this title] and (b) [amending provisions formerly set out as a note under section 11301 of this title] shall apply with respect to amounts made available for

assistance under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.] and section 2 of the HUD Demonstration Act of 1993 [Pub. L. 103–120, former 42 U.S.C. 11301 note], respectively, for fiscal year 1998 and fiscal years thereafter.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11372. Grant assistance

The Secretary of Housing and Urban Development shall, to the extent of amounts approved in appropriation Acts under section 11377 of this title, make grants to States and local governments (and to private nonprofit organizations providing assistance to homeless individuals, in the case of grants made with reallocated amounts) in order to carry out activities described in section 11374 of this title.

(Pub. L. 100–77, title IV, § 412, July 22, 1987, 101 Stat. 496; Pub. L. 101–625, title VIII, § 832(f)(2), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104–330, title V, § 506(a)(2), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Pub. L. 104–330 struck out '', and for Indian tribes,'' after ''local governments''.

1990—Pub. L. 101–625 substituted ''States and local governments, and for Indian tribes,'' for ''States and local governments''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

§ 11373. Allocation and distribution of assistance

(a) In general

The Secretary shall allocate assistance under this part to metropolitan cities, urban counties, and States (for distribution to local governments and private nonprofit organizations in the States) in a manner that ensures that the percentage of the total amount available under this part for any fiscal year that is allocated to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 5306 of this title for such prior fiscal year that is allocated to such State, metropolitan city, or urban county.

(b) Minimum allocation requirement

If, under the allocation provisions applicable under this part, any metropolitan city or urban county would receive a grant of less than 0.05 percent of the amounts appropriated to carry out this part for any fiscal year, such amount shall instead be reallocated to the State, except that any city that is located in a State that does not have counties as local governments, that has a population greater than 40,000 but less than 50,000 as used in determining the fiscal year 1987 community development block grant program allocation, and that was allocated in excess of $1,000,000 in community development block grant funds in fiscal year 1987, shall receive directly the amount allocated to such city under subsection (a) of this section.

(c) Distributions to nonprofit organizations

Any local government receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals. Any State receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, if the local government for the locality in which the project is located certifies that it approves of the project.

(d) Reallocation of funds

(1) The Secretary shall, not less than twice during each fiscal year, reallocate any assistance provided under this part that is unused or returned or that becomes available under subsection (b) of this section.

(2) If a city or county eligible for a grant under subsection (a) of this section fails to obtain approval of its comprehensive plan during the 90-day period following the date funds authorized by this part first become available for allocation during any fiscal year, the amount that the city or county would have received shall be available to the State in which the city or county is located if the State has obtained approval of its comprehensive plan. Any amounts that cannot be allocated to a State under the preceding sentence shall be reallocated to other States, counties, and cities that demonstrate extraordinary need or large numbers of homeless individuals, as determined by the Secretary.

(3) If a State fails to obtain approval of its comprehensive plan during the 90-day period following the date funds authorized by this part first become available for allocation during any fiscal year, the amount that the State would have received shall be reallocated to other States and to cities and counties as applicable, that demonstrate extraordinary need or large numbers of homeless individuals, as determined by the Secretary.

(e) Allocations to territories

In addition to the other allocations required in this section, the Secretary shall (for amounts appropriated after July 22, 1987) allocate assistance under this part to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, in accordance with an allocation formula established by the Secretary.

(Pub. L. 100–77, title IV, § 413, July 22, 1987, 101 Stat. 496; Pub. L. 100–628, title IV, § 421, Nov. 7, 1988, 102 Stat. 3231; Pub. L. 101–625, title VIII, § 832(f)(3)–(5), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104–330, title V, § 506(a)(3), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–330, § 506(a)(3)(A), struck out '', and to Indian tribes,'' after ''in the States)'' and

'', or for Indian tribes'' after ''or urban county'' in two places.

Subsec. (c). Pub. L. 104–330, § 506(a)(3)(B), struck out ''or Indian tribe'' after ''Any local government''.

Subsec. (d)(3). Pub. L. 104–330, § 506(a)(3)(C)(ii), struck out '', or other Indian tribes,'' after ''cities and counties''.

Pub. L. 104–330, § 506(a)(3)(C)(i), which directed amendment of par. (3) by striking '', or Indian tribe'' each place it appeared, was executed by striking ''or Indian tribe'' after ''State'' in two places to reflect the probable intent of Congress.

1990—Subsec. (a). Pub. L. 101–625, § 832(f)(3), inserted '', and to Indian tribes,'' after ''States)'' and '', or for Indian tribes'' after ''urban county'' in two places.

Subsec. (c). Pub. L. 101–625, § 832(f)(4), inserted ''or Indian tribe'' after ''local government''.

Subsec. (d)(3). Pub. L. 101–625, § 832(f)(5), inserted ''or Indian tribe'' after ''State'' in two places and '', or other Indian tribes, as applicable,'' after ''counties''.

1988—Subsec. (a). Pub. L. 100–628, § 421(a), inserted ''and private nonprofit organizations'' after ''local governments''.

Subsec. (c). Pub. L. 100–628, § 421(b), inserted at end ''Any State receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, if the local government for the locality in which the project is located certifies that it approves of the project.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11374. Eligible activities

(a) In general

Assistance provided under this part may be used for the following activities relating to emergency shelter for homeless individuals:

(1) The renovation, major rehabilitation, or conversion of buildings to be used as emergency shelters.

(2) The provision of essential services, including services concerned with employment, health, drug abuse, or education, if—

(A) such services have not been provided by the local government during any part of the immediately preceding 12-month period, or the use of assistance under this part would complement those services; and

(B) not more than 30 percent of the aggregate amount of all assistance to a State or local government under this part is used for activities under this paragraph.

(3) Maintenance, operation, insurance, utilities, and furnishings, except that not more than 10 percent of the amount of any grant received under this part may be used for costs of staff.

(4) Efforts to prevent homelessness, such as financial assistance to families who have received eviction notices or notices of termination of utility services if—

(A) the inability of the family to make the required payments is due to a sudden reduction in income;

(B) the assistance is necessary to avoid the eviction or termination of services;

(C) there is a reasonable prospect that the family will be able to resume payments within a reasonable period of time; and

(D) the assistance will not supplant funding for preexisting homelessness prevention activities from other sources.

Activities that are eligible for assistance under this paragraph shall include assistance to very low-income families who are discharged from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions). Not more than 30 percent of the aggregate amount of all assistance to a State or local government under this part may be used for activities under this paragraph.

(b) Waiver authority

The Secretary may waive the 20 percent limitation on the use of assistance for essential services contained in subsection (a)(2)(B) of this section, if the local government receiving the assistance demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources.

(Pub. L. 100–77, title IV, § 414, July 22, 1987, 101 Stat. 497; Pub. L. 100–628, title IV, §§ 422, 423(a), Nov. 7, 1988, 102 Stat. 3231; Pub. L. 101–625, title VIII, § 832(c), (d), (f)(6), Nov. 28, 1990, 104 Stat. 4360, 4361; Pub. L. 102–550, title XIV, § 1402(e), Oct. 28, 1992, 106 Stat. 4013; Pub. L. 104–330, title V, § 506(a)(4), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 106–377, § 1(a)(1) [title II, § 229(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–31.)

AMENDMENTS

2000—Subsec. (a)(4). Pub. L. 106–377 inserted comma after ''homelessness'' in introductory provisions and substituted ''Activities that are eligible for assistance under this paragraph shall include assistance to very low-income families who are discharged from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions). Not'' for ''Not'' in concluding provisions.

1996—Subsec. (a)(2). Pub. L. 104–330 struck out ''or Indian tribe'' after ''local government'' in subpar. (A) and substituted ''or local government'' for '', local government, or Indian tribe'' in subpar. (B).

Subsec. (a)(4). Pub. L. 104–330 substituted ''or local government'' for '', local government, or Indian tribe'' in concluding provisions.

1992—Subsec. (a)(3). Pub. L. 102–550 struck out ''(other than staff)'' after ''operation'' and inserted before period at end '', except that not more than 10 percent of the amount of any grant received under this part may be used for costs of staff''.

1990—Subsec. (a)(2)(A). Pub. L. 101–625, § 832(f)(6)(A), inserted ''or Indian tribe'' after ''local government''.

Subsec. (a)(2)(B). Pub. L. 101–625, § 832(c), (f)(6)(B), substituted ''30 percent'' for ''20 percent'' and '', local government, or Indian tribe'' for ''or local government''.

Subsec. (a)(4). Pub. L. 101–625, § 832(d), substituted sentence at end for ''Activities under this paragraph shall be treated as 'essential services' for the purpose of paragraph (2)(B).''

1988—Subsec. (a)(2)(A). Pub. L. 100–628, § 422(b), inserted before semicolon ", or the use of assistance under this part would complement those services".

Subsec. (a)(2)(B). Pub. L. 100–628, § 422(a), substituted "20" for "15" and "the aggregate amount of all assistance to a State or" for "the amount of any assistance to a".

Subsec. (a)(4). Pub. L. 100–628, § 423(a), added par. (4).

Subsec. (b). Pub. L. 100–628, § 422(a)(1), substituted "20" for "15".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

REPORT BY COMPTROLLER GENERAL

Section 423(b) of Pub. L. 100–628 provided that: "The Comptroller General of the United States shall conduct a study and report to the Congress not later than 1 year after the date of the enactment of this Act [Nov. 7, 1988] on various programs to prevent homelessness implemented by grantees, with particular focus on the different methods employed by grantees to determine eligibility for homelessness prevention assistance and restrictions or limitations, if any, imposed under such programs. Such report shall include—

"(1) an examination of other homelessness prevention programs, including other Federal programs and State and local programs; and

"(2) recommendations for such legislation as the Comptroller General determines appropriate, including recommendations on how to prevent homelessness as a result of mortgage foreclosures."

§ 11375. Responsibilities of recipients

(a) Matching amounts

(1) Except as provided in paragraph (2), each recipient under this part shall be required to supplement the assistance provided under this part with an equal amount of funds from sources other than this part. Each recipient shall certify to the Secretary its compliance with this paragraph, and shall include with such certification a description of the sources and amounts of such supplemental funds.

(2) Each recipient under this part that is a State shall be required to supplement the assistance provided under this part with an amount of funds from sources other than this part equal to the difference between the amount received under this part and $100,000. If the amount received by the State is $100,000 or less, the State may not be required to supplement the assistance provided under this part.

(3) In calculating the amount of supplemental funds provided by a recipient under this part, a recipient may include the value of any donated material or building, the value of any lease on a building, any salary paid to staff to carry out the program of the recipient, and the value of the time and services contributed by volunteers to carry out the program of the recipient at a rate determined by the Secretary.

(b) Administration of assistance

Each recipient shall act as the fiscal agent of the Secretary with respect to assistance provided to such recipient.

(c) Certifications on use of assistance

Each recipient shall certify to the Secretary that—

(1) it will—

(A) in the case of assistance involving major rehabilitation or conversion, maintain any building for which assistance is used under this part as a shelter for homeless individuals and families for not less than a 10-year period;

(B) in the case of assistance involving rehabilitation (other than major rehabilitation or conversion), maintain any building for which assistance is used under this part as a shelter for homeless individuals and families for not less than a 3-year period; or

(C) in the case of assistance involving solely activities described in paragraphs (2) and (3) of section 11374(a) of this title, provide services or shelter to homeless individuals and families for the period during which such assistance is provided, without regard to a particular site or structure as long as the same general population is served;

(2) any renovation carried out with assistance under this part shall be sufficient to ensure that the building involved is safe and sanitary;

(3) it will assist homeless individuals in obtaining—

(A) appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(B) other Federal, State, local, and private assistance available for such individuals;

(4) in the case of a recipient that is a State, it will obtain any matching amounts required under subsection (a) of this section in a manner so that local governments, agencies, and local nonprofit organizations receiving assistance from the grant that are least capable of providing the recipient State with such matching amounts receive the benefit of the $100,000 subtrahend under subsection (a)(2) of this section;

(5) it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under this part and that the address or location of any family violence shelter project assisted under this part will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public;

(6) activities undertaken by the recipient with assistance under this part are consistent with any housing strategy submitted by the grantee in accordance with section 12705 of this title; and

(7) to the maximum extent practicable, it will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this part, in providing services assisted under this part, and in providing services for occupants of facilities assisted under this part.

(d) Participation of homeless individuals

The Secretary shall, by regulation, require each recipient that is not a State to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy-making entity of such recipient, to the extent that such entity considers and makes policies and decisions regarding any facility, services, or other assistance of the recipient assisted under this part. The Secretary may grant waivers to recipients unable to meet the requirement under the preceding sentence if the recipient agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(e) Termination of assistance

If an individual or family who receives assistance under this part from a recipient violates program requirements, the recipient may terminate assistance in accordance with a formal process established by the recipient that recognizes the rights of individuals affected, which may include a hearing.

(Pub. L. 100–77, title IV, § 415, July 22, 1987, 101 Stat. 497; Pub. L. 100–628, title IV, § 424, Nov. 7, 1988, 102 Stat. 3232; Pub. L. 101–625, title VIII, § 832(e)(1), (2), (h), Nov. 28, 1990, 104 Stat. 4360, 4362; Pub. L. 102–550, title XIV, § 1402(b)–(d), Oct. 28, 1992, 106 Stat. 4012, 4013; Pub. L. 104–330, title V, § 506(a)(5), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Subsec. (c)(4). Pub. L. 104–330 struck out ''Indian tribes,'' after ''local governments,''.

1992—Subsec. (c). Pub. L. 102–550, § 1402(b), in par. (1), substituted a semicolon for period at end, in par. (3), struck out ''and'' at end, in par. (4), inserted ''it will'' after ''State,'' and struck out ''and'' at end, in par. (5), inserted ''it will'' before ''develop'' and substituted a semicolon for period at end, redesignated par. (4), relating to consistency of activities undertaken with assistance under this part, as (6) and substituted ''; and'' for period at end, and added par. (7).

Subsec. (d). Pub. L. 102–550, § 1402(c), added subsec. (d).

Subsec. (e). Pub. L. 102–550, § 1402(d), added subsec. (e).

1990—Subsec. (a)(1). Pub. L. 101–625, § 832(e)(1)(A), substituted ''Except as provided in paragraph (2), each'' for ''Each''.

Subsec. (a)(2), (3). Pub. L. 101–625, § 832(e)(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c)(2), (3). Pub. L. 101–625, § 832(e)(2)(A), (B), (h)(1), (2), amended subsec. (c) identically, striking ''and'' at end of par. (2) and substituting ''; and'' for period at end of par. (3).

Subsec. (c)(4). Pub. L. 101–625, § 832(h)(3), added (after par. (5)) par. (4) relating to consistency of activities undertaken with assistance under this part.

Pub. L. 101–625, § 832(e)(2)(C), added par. (4) relating to matching funds obtained by State recipients of assistance under this part.

Subsec. (c)(5). Pub. L. 101–625, § 832(e)(2)(C), added par. (5).

1988—Subsec. (c)(1). Pub. L. 100–628 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''it will maintain any building for which assistance is used under this part as a shelter for homeless individuals for not less than a 3-year period or for not less than a 10-year period if such assistance is used for the major rehabilitation or conversion of such building;''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

§ 11376. Administrative provisions

(a) Regulations

Not later than 60 days after July 22, 1987, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue requirements based on the initial notice before the expiration of the 12-month period following July 22, 1987. Prior to the issuance of such requirements in final form, the requirements established by the Secretary implementing the provisions of the emergency shelter grants program under the provisions made effective by section 101(g) of Public Law 99–500 or Public Law 99–591 shall govern the emergency shelter grants program under this part.

(b) Initial allocation of assistance

Not later than the expiration of the 60-day period following the date of enactment of a law providing appropriations to carry out this part, the Secretary shall notify each State, metropolitan city, and urban county that is to receive a direct grant of its allocation of assistance under this part. Such assistance shall be allocated and may be used notwithstanding any failure of the Secretary to issue requirements under subsection (a) of this section.

(c) Minimum standards of habitability

The Secretary shall prescribe such minimum standards of habitability as the Secretary determines to be appropriate to ensure that emergency shelters assisted under this section are environments that provide appropriate privacy, safety, and sanitary and other health-related conditions for homeless persons and families. Grantees are authorized to establish standards of habitability in addition to those prescribed by the Secretary.

(Pub. L. 100–77, title IV, § 416, July 22, 1987, 101 Stat. 498; Pub. L. 101–625, title VIII, § 832(f)(7), (g), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104–330, title V, § 506(a)(6), Oct. 26, 1996, 110 Stat. 4044.)

REFERENCES IN TEXT

The emergency shelter grants program under the provisions made effective by section 101(g) of Public Law 99–500 or Public Law 99–591, referred to in subsec. (a), means the emergency shelter grants program authorized by title V of H.R. 5313 [Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1987], as incorporated by reference by section 101(g) of Pub. L. 99–500 and 99–591, and enacted into law by section 106 of Pub. L. 100–202, which is set out as a note under section 11361 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–330 struck out ''Indian tribe,'' after ''State,''.

1990—Subsec. (b). Pub. L. 101–625, § 832(f)(7), inserted ''Indian tribe,'' after ''State,''.

Subsec. (c). Pub. L. 101–625, § 832(g), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107

of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

§ 11377. Authorization of appropriations

There are authorized to be appropriated to carry out this part $138,000,000 for fiscal year 1993 and $143,796,000 for fiscal year 1994.

(Pub. L. 100–77, title IV, § 417, July 22, 1987, 101 Stat. 498; Pub. L. 100–628, title IV, § 425, Nov. 7, 1988, 102 Stat. 3232; Pub. L. 101–625, title VIII, § 832(a), Nov. 28, 1990, 104 Stat. 4359; Pub. L. 102–550, title XIV, § 1402(a), Oct. 28, 1992, 106 Stat. 4012.)

AMENDMENTS

1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated to carry out this part $125,000,000 for fiscal year 1991 and $138,000,000 for fiscal year 1992.''

1990—Pub. L. 101–625, which directed the general amendment of the ''first sentence'' of this section, was executed by making the substitution for the only sentence of this section which read: ''There are authorized to be appropriated to carry out this part $120,000,000 for fiscal year 1989 and $125,000,000 for fiscal year 1990.''

1988—Pub. L. 100–628 amended section generally. Prior to amendment, section read as follows: ''In addition to other amounts authorized by law, there are authorized to be appropriated for the emergency shelter grants program $100,000,000 for fiscal year 1987 and $120,000,000 for fiscal year 1988.''

§ 11378. Administrative costs

A recipient may use up to 5 percent of any annual grant received under this part for administrative purposes. A recipient State shall share the amount available for administrative purposes pursuant to the preceding sentence with local governments funded by the State.

(Pub. L. 100–77, title IV, § 418, as added Pub. L. 101–625, title VIII, § 832(b)(1), Nov. 28, 1990, 104 Stat. 4359.)

PART C—SUPPORTIVE HOUSING PROGRAM

§ 11381. Purpose

The purpose of the program under this part is to promote the development of supportive housing and supportive services, including innovative approaches to assist homeless persons in the transition from homelessness, and to promote the provision of supportive housing to homeless persons to enable them to live as independently as possible.

(Pub. L. 100–77, title IV, § 421, as added Pub. L. 102–550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4013.)

PRIOR PROVISIONS

A prior section 11381, Pub. L. 100–77, title IV, § 421, July 22, 1987, 101 Stat. 498, related to establishment of a supportive housing demonstration program, prior to repeal by Pub. L. 102–550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4013.

TRANSITIONAL PROVISION

Section 1403(b) of Pub. L. 102–550, as amended by Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: ''Notwithstanding the amendment made by subsection (a) [adding part C and repealing former parts C and D of this subchapter], before the date of the effectiveness of the regulations issued under section 427 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11387] (as amended by subsection (a) of this section) the Secretary may make grants under the provisions of subtitles C and D of [title IV of] the McKinney-Vento Homeless Assistance Act [former parts C and D of this subchapter], as in effect immediately before the enactment of this Act [Oct. 28, 1992]. Any grants made before such effective date shall be subject to the provisions of such subtitles.''

DEMONSTRATION PROJECTS TO REDUCE NUMBER OF HOMELESS FAMILIES IN WELFARE HOTELS

Pub. L. 100–628, title IX, § 903, Nov. 7, 1988, 102 Stat. 3258, as amended by Pub. L. 104–193, title I, § 110(g), Aug. 22, 1996, 110 Stat. 2171, authorized Secretary of Health and Human Services to carry out 2 or 3 demonstration projects to provide housing in transitional facilities for homeless families who are recipients of assistance under a State program funded by part A of subchapter IV of chapter 7 of this title and who reside in commercial or similar transient facilities and authorized appropriations of not more than $20,000,000 for the grants for fiscal year 1990.

§ 11382. Definitions

For purposes of this part:

(1) The term ''applicant'' means a State, metropolitan city, urban county, governmental entity, private nonprofit organization, or community mental health association that is a public nonprofit organization, that is eligible to receive assistance under this part and submits an application under section 11386(a) of this title.

(2) The term ''disability'' means—

(A) a disability as defined in section 423 of this title,

(B) to be determined to have, pursuant to regulations issued by the Secretary, a physical, mental, or emotional impairment which (i) is expected to be of long-continued and indefinite duration, (ii) substantially impedes an individual's ability to live independently, and (iii) of such a nature that such ability could be improved by more suitable housing conditions,

(C) a developmental disability as defined in section 15002 of this title, or

(D) the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agency for acquired immunodeficiency syndrome.

Subparagraph (D) shall not be construed to limit eligibility under subparagraphs (A) through (C) or the provisions referred to in subparagraphs (A) through (C).

(3) Repealed. Pub. L. 104–330, title V, § 506(a)(7)(B), Oct. 26, 1996, 110 Stat. 4044.

(4) The term ''metropolitan city'' has the meaning given the term in section 5302 of this title.

(5) The term ''operating costs'' means expenses incurred by a recipient operating supportive housing under this part with respect to—

(A) the administration, maintenance, repair, and security of such housing;

(B) utilities, fuel, furnishings, and equipment for such housing; and

(C) the conducting of the assessment under section 11386(c)(2) of this title.

(6) The term ''outpatient health services'' means outpatient health care, outpatient mental health services, outpatient substance abuse services, and case management.

(7) The term ''private nonprofit organization'' means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

(D) that practices nondiscrimination in the provision of assistance.

(8) The term ''project'' means a structure or structures (or a portion of such structure or structures) that is acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which the Secretary provides technical assistance or annual payments for operating costs under this part, or supportive services.

(9) The term ''recipient'' means any governmental or nonprofit entity that receives assistance under this part.

(10) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(11) The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Palau.

(12) The term ''supportive housing'' means a project that meets the requirements of section 11384 of this title.

(13) The term ''supportive services'' means services under section 11385 of this title.

(14) The term ''urban county'' has the meaning given the term in section 5302 of this title.

(Pub. L. 100–77, title IV, § 422, as added Pub. L. 102–550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4014; amended Pub. L. 104–330, title V, § 506(a)(7), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 106–402, title IV, § 401(b)(14), Oct. 30, 2000, 114 Stat. 1740.)

PRIOR PROVISIONS

A prior section 11382, Pub. L. 100–77, title IV, § 422, July 22, 1987, 101 Stat. 499; Pub. L. 100–242, title V, § 570(i)(1), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 100–628, title IV, §§ 441(a), 442(a), (b)(1), 443, 444, Nov. 7, 1988, 102 Stat. 3232, 3233; Pub. L. 101–625, title VIII, § 833(b), (k)(1), Nov. 28, 1990, 104 Stat. 4362, 4364, defined terms for purposes of the supportive housing demonstration program, prior to repeal by Pub. L. 102–550, § 1403(a).

AMENDMENTS

2000—Par. (2)(C). Pub. L. 106–402, which directed amendment of section 422(2)(C) of the Stewart B. McKinney Homeless Assistance Act by substituting ''as defined in section 15002 of this title, or'' for ''as defined in section 6001 of this title, or'', was executed to par. (2)(C) of this section, which is section 422 of the McKinney-Vento Homeless Assistance Act, to reflect the probable intent of Congress.

1996—Par. (1). Pub. L. 104–330, § 506(a)(7)(A), struck out ''Indian tribe,'' after ''a State''.

Par. (3). Pub. L. 104–330, § 506(a)(7)(B), struck out par. (3) which read as follows: ''The term 'Indian tribe' has the meaning given the term in section 5302(a) of this title.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

§ 11383. Eligible activities

(a) In general

The Secretary may provide any project with one or more of the following types of assistance under this part:

(1) Acquisition and rehabilitation

A grant, in an amount not to exceed $200,000, for the acquisition, rehabilitation, or acquisition and rehabilitation, of an existing structure (including a small commercial property or office space) to provide supportive housing other than emergency shelter or to provide supportive services; except that the Secretary may increase the dollar limitation under this sentence to not more than $400,000 for areas that the Secretary finds have high acquisition and rehabilitation costs. The repayment of any outstanding debt owed on a loan made to purchase an existing structure shall be considered to be a cost of acquisition eligible for a grant under this paragraph if the structure was not used as supportive housing, or to provide supportive services, before the receipt of assistance.

(2) New construction

A grant, in an amount not to exceed $400,000, for new construction of a structure to provide supportive housing.

(3) Leasing

A grant for leasing of an existing structure or structures, or portions thereof, to provide supportive housing or supportive services during the period covered by the application. Grant recipients may reapply for such assistance as needed to continue the use of such structure for purposes of this part.

(4) Operating costs

Annual payments for operating costs of housing assisted under this part, not to exceed 75 percent of the annual operating costs of such housing. Grant recipients may reapply for such assistance as needed to continue the use of the housing for purposes of this part.

(5) Supportive services

A grant for costs of supportive services provided to homeless individuals. Any recipient, including program recipients under this subchapter before October 28, 1992, may reapply for such assistance or for the renewal of such assistance to continue services funded under prior grants or to provide other services.

(6) Technical assistance

Technical assistance in carrying out the purposes of this part.

(7) Management information system

A grant for the costs of implementing and operating management information systems for purposes of collecting unduplicated counts of homeless people and analyzing patterns of use of assistance funded under this chapter.

(8) Confidentiality

(A) Victim service providers

In the course of awarding grants or implementing programs under this section, the Secretary shall instruct any victim service provider that is a recipient or subgrantee not to disclose for purposes of a Homeless Management Information System personally identifying information about any client. The Secretary may, after public notice and comment, require or ask such recipients and subgrantees to disclose for purposes of a Homeless Management Information System non-personally identifying data that has been de-identified, encrypted, or otherwise encoded. Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this paragraph for victims of domestic violence, dating violence, sexual assault, or stalking.

(B) Definitions

(i) Personally identifying information or personal information

The term ''personally identifying information'' or ''personal information'' means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including—

(I) a first and last name;

(II) a home or other physical address;

(III) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

(IV) a social security number; and

(V) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information would serve to identify any individual.

(ii) Victim service provider

The term ''victim service provider'' means a nonprofit, nongovernmental organization including rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking.

(b) Use restrictions

(1) Acquisition, rehabilitation, and new construction

Projects assisted under subsection (a)(1) or (2) of this section shall be operated for not less than 20 years for the purpose specified in the application.

(2) Other assistance

Projects assisted under subsection (a)(3), (4), (5), or (6) of this section (but not under subsection (a)(1) or (2) of this section) shall be operated for the purposes specified in the application for the duration of the period covered by the grant.

(3) Conversion

If the Secretary determines that a project is no longer needed for use as supportive housing and approves the use of the project for the direct benefit of low-income persons pursuant to a request for such use by the recipient operating the project, the Secretary may authorize the recipient to convert the project to such use.

(c) Repayment of assistance and prevention of undue benefits

(1) Repayment

The Secretary shall require recipients to repay 100 percent of any assistance received under subsection (a)(1) or (2) of this section if the project ceases to be used as supportive housing within 10 years after the project is placed in service. If such project is used as supportive housing for more than 10 years, the Secretary shall reduce the percentage of the amount required to be repaid by 10 percentage points for each year in excess of 10 that the project is used as supportive housing.

(2) Prevention of undue benefits

Except as provided in paragraph (3), upon any sale or other disposition of a project assisted under subsection (a)(1) or (2) of this section occurring before the expiration of the 20-year period beginning on the date that the project is placed in service, the recipient shall comply with such terms and conditions as the Secretary may prescribe to prevent the recipient from unduly benefiting from such sale or disposition.

(3) Exception

A recipient shall not be required to comply with the terms and conditions prescribed under paragraphs (1) and (2) if the sale or disposition of the project results in the use of the project for the direct benefit of very low-income persons or if all of the proceeds are used to provide supportive housing meeting the requirements of this part.

(Pub. L. 100–77, title IV, § 423, as added Pub. L. 102–550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4015; amended Pub. L. 106–377, § 1(a)(1) [title II, § 226], Oct. 27, 2000, 114 Stat. 1441, 1441A–30; Pub. L. 109–162, title VI, § 605(1), Jan. 5, 2006, 119 Stat. 3041; Pub. L. 109–271, § 5(b), Aug. 12, 2006, 120 Stat. 759.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(7), was in the original ''this Act'', meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

PRIOR PROVISIONS

A prior section 11383, Pub. L. 100–77, title IV, § 423, July 22, 1987, 101 Stat. 501; Pub. L. 100–628, title IV, §§ 441(b), (c), 445(a), 446–448(a), 449, Nov. 7, 1988, 102 Stat. 3233, 3234; Pub. L. 101–625, title VIII, § 833(c)–(e), (g), Nov. 28, 1990, 104 Stat. 4362, 4363, outlined types of as-

sistance provided under the supportive housing demonstration program, prior to repeal by Pub. L. 102–550, § 1403(a).

AMENDMENTS

2006—Subsec. (a)(8). Pub. L. 109–162, which directed the addition of par. (8) to subsec. (a) of section 423 of the Stewart B. McKinney Homeless Assistance Act, was executed by adding par. (8) to subsec. (a) of this section, which is section 423 of the McKinney-Vento Homeless Assistance Act, to reflect the probable intent of Congress.

Subsec. (a)(8)(A). Pub. L. 109–271, § 5(b)(1), which directed amendment of section 423(a)(8) of the Stewart B. McKinney Homeless Assistance Act by substituting ''section'' for ''subsection'', was executed to subsec. (a)(8) of this section, which is section 423 of the McKinney-Vento Homeless Assistance Act, to reflect the probable intent of Congress.

Subsec. (a)(8)(B)(ii). Pub. L. 109–271, § 5(b)(2), which directed amendment of section 423(a)(8)(B)(ii) of the Stewart B. McKinney Homeless Assistance Act by striking out ''or 'victim service providers' '' after '' 'victim service provider' '', was executed to subsec. (a)(8)(B)(ii) of this section, which is section 423 of the McKinney-Vento Homeless Assistance Act, to reflect the probable intent of Congress.

2000—Subsec. (a)(7). Pub. L. 106–377 added par. (7).

§ 11384. Supportive housing

(a) In general

Housing providing supportive services for homeless individuals shall be considered supportive housing for purposes of this part if—

(1) the housing is safe and sanitary and meets any applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located; and

(2) the housing—

(A) is transitional housing;

(B) is permanent housing for homeless persons with disabilities; or

(C) is, or is part of, a particularly innovative project for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals and families.

(b) Transitional housing

For purposes of this section, the term ''transitional housing'' means housing, the purpose of which is to facilitate the movement of homeless individuals and families to permanent housing within 24 months or such longer period as the Secretary determines necessary. The Secretary may deny assistance for housing based on a violation of this subsection only if the Secretary determines that a substantial number of homeless individuals or families have remained in the housing longer than such period.

(c) Permanent housing for homeless persons with disabilities

For purposes of this section, the term ''permanent housing for homeless persons with disabilities'' means community-based housing for homeless persons with disabilities that provides long-term housing and supportive services for not more than—

(1) 8 such persons in a single structure or contiguous structures;

(2) 16 such persons, but only if not more than 20 percent of the units in a structure are designated for such persons; or

(3) more than 16 persons if the applicant demonstrates that local market conditions dictate the development of a large project and such development will achieve the neighborhood integration objectives of the program within the context of the affected community.

(d) Single room occupancy dwellings

A project may provide supportive housing or supportive services in dwelling units that do not contain bathrooms or kitchen facilities and are appropriate for use as supportive housing or in projects containing some or all such dwelling units.

(Pub. L. 100–77, title IV, § 424, as added Pub. L. 102–550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4016.)

PRIOR PROVISIONS

A prior section 11384, Pub. L. 100–77, title IV, § 424, July 22, 1987, 101 Stat. 501; Pub. L. 100–628, title IV, §§ 442(b)(2), 448(b), 450(a)(1), (b), 451, Nov. 7, 1988, 102 Stat. 3233–3235; Pub. L. 101–625, title VIII, § 833(f), (h)–(j), (k)(2), Nov. 28, 1990, 104 Stat. 4363–4365, provided for applications, selection criteria, and other program requirements for assistance under the supportive housing demonstration program, prior to repeal by Pub. L. 102–550, § 1403(a).

§ 11385. Supportive services

(a) In general

To the extent practicable, each project shall provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants.

(b) Requirements

Supportive services provided in connection with a project shall address the special needs of individuals (such as homeless persons with disabilities and homeless families with children) intended to be served by a project.

(c) Services

Supportive services may include such activities as (A) establishing and operating a child care services program for homeless families, (B) establishing and operating an employment assistance program, (C) providing outpatient health services, food, and case management, (D) providing assistance in obtaining permanent housing, employment counseling, and nutritional counseling, (E) providing security arrangements necessary for the protection of residents of supportive housing and for homeless persons using the housing or project, (F) providing assistance in obtaining other Federal, State, and local assistance available for such residents (including mental health benefits, employment counseling, and medical assistance, but not including major medical equipment), and (G) providing other appropriate services.

(d) Provision of services

Services provided pursuant to this section may be provided directly by the recipient or by contract with other public or private service providers. Such services may be provided to homeless individuals who do not reside in supportive housing.

(e) Coordination with Secretary of Health and Human Services

(1) Approval

Promptly upon receipt of any application for assistance under this part that includes the

provision of outpatient health services, the Secretary of Housing and Urban Development shall consult with the Secretary of Health and Human Services with respect to the proposed outpatient health services. If, within 45 days of such consultation, the Secretary of Health and Human Services determines that the proposal for delivery of the outpatient health services does not meet guidelines for determining the appropriateness of such proposed services, the Secretary of Housing and Urban Development may require resubmission of the application, and the Secretary of Housing and Urban Development may not approve such portion of the application unless and until such portion has been resubmitted in a form that the Secretary of Health and Human Services determines meets such guidelines.

(2) Guidelines

The Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall jointly establish guidelines for determining the appropriateness of proposed outpatient health services under this section. Such guidelines shall include any provisions necessary to enable the Secretary of Housing and Urban Development to meet the time limits under this part for the final selection of applications for assistance.

(Pub. L. 100–77, title IV, § 425, as added Pub. L. 102–550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4017.)

PRIOR PROVISIONS

A prior section 11385, Pub. L. 100–77, title IV, § 425, July 22, 1987, 101 Stat. 503; Pub. L. 100–628, title IV, § 452, Nov. 7, 1988, 102 Stat. 3235; Pub. L. 101–625, title VIII, § 833(k)(3), Nov. 28, 1990, 104 Stat. 4365, required recipients of assistance under supportive housing demonstration program to obtain an equal amount of funding from non-Federal sources, prior to repeal by Pub. L. 102–550, § 1403(a).

§ 11386. Program requirements

(a) Applications

(1) Form and procedure

Applications for assistance under this part shall be submitted by applicants in the form and in accordance with the procedures established by the Secretary. The Secretary may not give preference or priority to any application on the basis that the application was submitted by any particular type of applicant entity.

(2) Contents

The Secretary shall require that applications contain at a minimum—

(A) a description of the proposed project, including the activities to be undertaken;

(B) a description of the size and characteristics of the population that would occupy the supportive housing assisted under this part;

(C) a description of the public and private resources that are expected to be made available for the project;

(D) in the case of projects assisted under section 11383(a)(1) or (2) of this title, assurances satisfactory to the Secretary that the project will be operated for not less than 20 years for the purpose specified in the application;

(E) in the case of projects assisted under this subchapter that do not receive assistance under such sections, annual assurances during the period specified in the application that the project will be operated for the purpose specified in the application for such period;

(F) a certification from the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title for the State or unit of general local government within which the project is located that the proposed project is consistent with the approved housing strategy of such State or unit of general local government; and

(G) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(3) Site control

The Secretary shall require that each application include reasonable assurances that the applicant will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance, unless the application proposes providing supportive housing assisted under section 11383(a)(3) of this title or housing that will eventually be owned or controlled by the families and individuals served. An applicant may obtain ownership or control of a suitable site different from the site specified in the application. If any recipient fails to obtain ownership or control of the site within 12 months after notification of an award for grant assistance, the grant shall be recaptured and reallocated under this part.

(b) Selection criteria

The Secretary shall select applicants approved by the Secretary as to financial responsibility to receive assistance under this part by a national competition based on criteria established by the Secretary, which shall include—

(1) the ability of the applicant to develop and operate a project;

(2) the innovative quality of the proposal in providing a project;

(3) the need for the type of project proposed by the applicant in the area to be served;

(4) the extent to which the amount of assistance to be provided under this part will be supplemented with resources from other public and private sources;

(5) the cost-effectiveness of the proposed project;

(6) the extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable; and

(7) such other factors as the Secretary determines to be appropriate to carry out this part in an effective and efficient manner.

(c) Required agreements

The Secretary may not provide assistance for any project under this part unless the applicant agrees—

(1) to operate the proposed project in accordance with the provisions of this part;

(2) to conduct an ongoing assessment of the supportive services required by homeless individuals served by the project and the availability of such services to such individuals;

(3) to provide such residential supervision as the Secretary determines is necessary to facilitate the adequate provision of supportive services to the residents and users of the project;

(4) to monitor and report to the Secretary on the progress of the project;

(5) to develop and implement procedures to ensure (A) the confidentiality of records pertaining to any individual provided family violence prevention or treatment services through any project assisted under this part, and (B) that the address or location of any family violence shelter project assisted under this part will not be made public, except with written authorization of the person or persons responsible for the operation of such project;

(6) to the maximum extent practicable, to involve homeless individuals and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project assisted under this part and in providing supportive services for the project; and

(7) to comply with such other terms and conditions as the Secretary may establish to carry out this part in an effective and efficient manner.

(d) Occupancy charge

Each homeless individual or family residing in a project providing supportive housing may be required to pay an occupancy charge in an amount determined by the recipient providing the project, which may not exceed the amount determined under section 1437a(a) of this title. Occupancy charges paid may be reserved, in whole or in part, to assist residents in moving to permanent housing.

(e) Matching funding

Each recipient shall be required to supplement the amount of assistance provided under paragraphs (1) and (2) of section 11383(a) of this title with an equal amount of funds from sources other than this part.

(f) Flood protection standards

Flood protection standards applicable to housing acquired, rehabilitated, constructed, or assisted under this part shall be no more restrictive than the standards applicable under Executive Order No. 11988 (May 24, 1977) to the other programs under this subchapter.

(g) Participation of homeless individuals

The Secretary shall, by regulation, require each recipient to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. The Secretary may grant waivers to applicants unable to meet the requirement under the preceding sentence if the applicant agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(h) Limitation on use of funds

No assistance received under this part (or any State or local government funds used to supplement such assistance) may be used to replace other State or local funds previously used, or designated for use, to assist homeless persons.

(i) Limitation on administrative expenses

No recipient may use more than 5 percent of a grant received under this part for administrative purposes.

(j) Termination of assistance

If an individual or family who receives assistance under this part (not including residents of an emergency shelter) from a recipient violates program requirements, the recipient may terminate assistance in accordance with a formal process established by the recipient that recognizes the rights of individuals receiving such assistance to due process of law, which may include a hearing.

(Pub. L. 100–77, title IV, § 426, as added Pub. L. 102–550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4018.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (a)(2)(G), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(2)(G), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(2)(G), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

Executive Order No. 11988, referred to in subsec. (f), is set out as a note under section 4321 of this title.

PRIOR PROVISIONS

A prior section 11386, Pub. L. 100–77, title IV, § 426, July 22, 1987, 101 Stat. 503, related to establishment of guidelines for purposes of a supportive housing demonstration program, prior to repeal by Pub. L. 102–550, § 1403(a).

§ 11387. Regulations

Not later than the expiration of the 90-day period beginning on October 28, 1992, the Secretary

shall issue interim regulations to carry out this part, which shall take effect upon issuance. The Secretary shall issue final regulations to carry out this part after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5 (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be issued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance.

(Pub. L. 100–77, title IV, § 427, as added Pub. L. 102–550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4021.)

PRIOR PROVISIONS

A prior section 11387, Pub. L. 100–77, title IV, § 427, July 22, 1987, 101 Stat. 504; Pub. L. 100–628, title IV, § 453, Nov. 7, 1988, 102 Stat. 3236, provided for reports to Congress summarizing the activities carried out under the supportive housing demonstration program, prior to repeal by Pub. L. 102–550, § 1403(a).

§ 11388. Reports to Congress

The Secretary shall submit a report to the Congress annually, summarizing the activities carried out under this part and setting forth the findings, conclusions, and recommendations of the Secretary as a result of the activities. The report shall be submitted not later than 4 months after the end of each fiscal year (except that, in the case of fiscal year 1993, the report shall be submitted not later than 6 months after the end of the fiscal year).

(Pub. L. 100–77, title IV, § 428, as added Pub. L. 102–550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4021.)

PRIOR PROVISIONS

A prior section 11388, Pub. L. 100–77, title IV, § 428, July 22, 1987, 101 Stat. 504; Pub. L. 100–628, title IV, §§ 454, 455, Nov. 7, 1988, 102 Stat. 3236; Pub. L. 101–625, title VIII, § 833(a), Nov. 28, 1990, 104 Stat. 4362, authorized appropriations for the supportive housing demonstration program, prior to repeal by Pub. L. 102–550, § 1403(a).

§ 11389. Authorization of appropriations

(a) Authorization of appropriations

There are authorized to be appropriated to carry out this part $204,000,000 for fiscal year 1993 and $212,568,000 for fiscal year 1994.

(b) Set-asides

Of any amounts appropriated to carry out this part—

(1) not less than 25 percent shall be allocated to projects designed primarily to serve homeless families with children;

(2) not less than 25 percent shall be allocated to projects designed primarily to serve homeless persons with disabilities; and

(3) not less than 10 percent shall be allocated for use only for providing supportive services under sections 11383(a)(5) and 11385 of this title, not provided in conjunction with supportive housing.

(c) Reallocations

If, following the receipt of applications for the final funding round under this part for any fiscal year, any amount set aside for assistance pursuant to subsection (b) of this section will not be required to fund the approvable applications submitted for such assistance, the Secretary shall reallocate such amount for other assistance pursuant to this part.

(Pub. L. 100–77, title IV, § 429, as added Pub. L. 102–550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4021.)

PART D—SAFE HAVENS FOR HOMELESS INDIVIDUALS DEMONSTRATION PROGRAM

§ 11391. Establishment of demonstration

(a) In general

The Secretary may make grants to applicants to demonstrate the desirability and feasibility of providing very low-cost housing, to be known as safe havens, to homeless persons who, at the time, are unwilling or unable to participate in mental health treatment programs or to receive other supportive services.

(b) Purposes

The demonstration program carried out under this part shall demonstrate—

(1) whether and on what basis eligible persons choose to reside in safe havens;

(2) the extent to which, after a period of residence in a safe haven, residents are willing to participate in mental health treatment programs, substance abuse treatment, or other treatment programs and to move toward a more traditional form of permanent housing and the availability in the community of such permanent housing and treatment programs;

(3) whether safe havens are cost-effective in comparison with other alternatives for eligible persons; and

(4) the various ways in which safe havens may be used to provide accommodations and low-demand services and referrals for eligible persons.

(Pub. L. 100–77, title IV, § 431, as added Pub. L. 102–550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4022.)

PRIOR PROVISIONS

A prior section 11391, Pub. L. 100–77, title IV, § 431, July 22, 1987, 101 Stat. 504; Pub. L. 100–242, title V, § 570(i)(2), Feb. 5, 1988, 101 Stat. 1950, provided definitions for a program of supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102–550, § 1403(a).

§ 11392. Definitions

For purposes of this part:

(1) Applicant

The term ''applicant'' means a nonprofit corporation, public nonprofit organization, State, or unit of general local government.

(2) Eligible person

The term ''eligible person'' means an individual who—

(A) is seriously mentally ill and resides primarily in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, which may include occasional residence in an emergency shelter; and

(B) is currently unwilling or unable to participate in mental health or substance abuse treatment programs or to receive other supportive services.

Such term does not include a person whose sole impairment is substance abuse.

(3) Facility

The term ''facility'' means a structure or a clearly identifiable portion of a structure that is assisted under this part.

(4) Low-demand services and referrals

The term ''low-demand services and referrals'' means the provision of health care, mental health, substance abuse, and other supportive services and referrals for services in a noncoercive manner, which may include medication management, education, counseling, job training, and assistance in obtaining entitlement benefits and in obtaining other supportive services including mental health treatment and substance abuse treatment.

(5) Nonprofit organization

The term ''nonprofit organization'' means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

(D) that practices nondiscrimination in the provision of assistance.

(6) Operating costs

The term ''operating costs'' means expenses incurred by a recipient operating a safe haven under this part with respect to—

(A) the operation of the facility, including the cost of 24-hour management, and maintenance, repair, and security;

(B) utilities, fuel, furnishings, and equipment for such housing; and

(C) other reasonable costs necessary to the operation of the facility, which may include appropriate outreach and drop-in services.

(7) Recipient

The term ''recipient'' means an applicant that receives assistance under this part.

(8) Safe haven

The term ''safe haven'' means a facility—

(A) that provides 24-hour residence for eligible persons who may reside for an unspecified duration;

(B) that provides private or semiprivate accommodations;

(C) that may provide for the common use of kitchen facilities, dining rooms, and bathrooms;

(D) that may provide supportive services to eligible persons who are not residents on a drop-in basis; and

(E) in which overnight occupancy is limited to no more than 25 persons.

(9) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(10) Seriously mentally ill

The term ''seriously mentally ill'' means having a severe and persistent mental or emotional impairment that seriously limits a person's ability to live independently.

(11) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Palau.

(12) Unit of general local government

The term ''unit of general local government'' has the meaning given the term in section 5302(a) of this title.

(Pub. L. 100–77, title IV, § 432, as added Pub. L. 102–550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4022.)

PRIOR PROVISIONS

A prior section 11392, Pub. L. 100–77, title IV, § 432, July 22, 1987, 101 Stat. 505; Pub. L. 100–628, title IV, §§ 461–463(a), Nov. 7, 1988, 102 Stat. 3236, 3237; Pub. L. 101–625, title VIII, § 834(b)–(d), Nov. 28, 1990, 104 Stat. 4365, 4366, provided for supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102–550, § 1403(a).

§ 11393. Program assistance

(a) In general

(1) Eligible activities

The Secretary may provide assistance with respect to a program under this part for the following activities:

(A) The construction of a structure for use in providing a safe haven or the acquisition, rehabilitation, or acquisition and rehabilitation of an existing structure for use in providing a safe haven.

(B) The leasing of an existing structure for use in providing a safe haven.

(C) To cover the operating costs of a safe haven.

(D) To cover the costs of administering a safe haven program, not to exceed 10 percent of the amounts made available for activities under subparagraphs (A) through (C).

(E) Outreach activities designed to inform eligible persons about and attract them to a safe haven program.

(F) The provision of low-demand services and referrals for residents of a safe haven, except that grants under this part may not be used to cover more than 50 percent of the cost of such services and referrals.

(G) Other activities that further the purposes of this part, including the modification of an existing facility to use a portion of the facility to provide with a safe haven.

(2) Period of assistance

Assistance may be provided to any safe haven program for activities under subparagraphs (B) through (F) of paragraph (1) for a period of not more than 5 years, except that the Secretary may, upon application by the recipient, provide assistance for an additional period of time, not to exceed 5 years, subject to—

(A) the determination of the Secretary that the performance of the recipient under this part is satisfactory; and

(B) the availability of appropriations for such purpose.

(3) Limit on amount

The total amount of assistance provided to any recipient under this subsection may not exceed $400,000 in any 5-year period.

(b) Matching funding

(1) In general

Each recipient shall supplement a grant provided under this part with an equal amount of funds from sources other than this part. Each recipient shall certify to the Secretary that it has complied with this paragraph, and shall include with the certification a description of the sources and amounts of such supplemental funds.

(2) Calculation of amounts

In calculating the amount of supplemental funds required under paragraph (1), a recipient may include any funds derived from another source, the value of any lease on a building, any salary paid to staff to carry out the program of the recipient, and the value of the time and services contributed by volunteers, at a rate determined by the Secretary, to carry out the program of the recipient.

(Pub. L. 100–77, title IV, § 433, as added Pub. L. 102–550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4024.)

PRIOR PROVISIONS

A prior section 11393, Pub. L. 100–77, title IV, § 433, July 22, 1987, 101 Stat. 507, related to establishment of regulations for program to provide supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102–550, § 1403(a).

§ 11394. Program requirements

(a) Applications

Applications for assistance under this part shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish, and such applications shall contain at a minimum—

(1) a description of the proposed facility;

(2) a description of the number and characteristics of the eligible persons expected to occupy the safe haven;

(3) a plan for identifying and selecting eligible persons to participate;

(4) a program plan, containing a description of the method—

(A) of operation of the facility, including staffing plans and facility rules;

(B) by which the applicant will secure supportive services for residents of the safe haven;

(C) by which the applicant will monitor the willingness of residents to engage in treatment programs and other supportive services;

(D) by which access to supportive services will be secured for residents willing to use them;

(E) by which access to permanent housing with appropriate services, such as the Shelter Plus Care program under part F of this subchapter, will be sought after residents are stabilized; and

(F) by which the applicant will conduct outreach activities to facilitate the entrance of eligible persons into the safe haven;

(5) a plan to ensure that adequate security precautions are taken to make the facility safe for the residents;

(6) an estimate of program costs;

(7) a description of the resources that are expected to be made available in accordance with section 11393(b) of this title;

(8) assurances satisfactory to the Secretary that the facility will have 24-hour, on-site management, if practicable;

(9) assurances satisfactory to the Secretary that the facility will be operated for the purpose specified in the application for each year in which assistance is provided under this part;

(10) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title for the State or unit of general local government within which the facility is located that the proposed activities are consistent with the approved housing strategy for such jurisdiction;

(11) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing;

(12) a plan for program evaluation based on information that is collected on a periodic basis regarding the characteristics of the residents, including their movement in and out of the safe haven, their willingness to use low-demand services and referrals, the availability and quality of services used, and the movement of residents toward a more traditional form of permanent housing after a period of residency in the safe haven; and

(13) such other information as the Secretary may require.

(b) Site control

The Secretary shall require that an applicant furnish reasonable assurances that the applicant will have control of a site for the proposed facility not later than 1 year after notification of an award of assistance under this part. If an applicant fails to obtain control of the site within this period, the grant shall be recaptured by the Secretary and reallocated for use under this part.

(c) Selection criteria

The Secretary shall establish selection criteria for selecting applicants to receive assistance under this part pursuant to a national competition, which shall include—

(1) the extent to which the applicant demonstrates the ability to develop and operate a safe haven;

(2) the extent to which there is a need for a safe haven in the jurisdiction in which the facility will be located;

(3) the extent to which the program would link eligible persons to permanent housing and supportive services after stabilization in a safe haven;

(4) the cost-effectiveness of the proposed program;

(5) providing for geographical diversity among applicants selected to receive assistance;

(6) the extent to which the safe haven would meet the need of the eligible persons proposed to be served by the safe haven; and

(7) such other factors as the Secretary determines to be appropriate for purposes of carrying out the program established under this part in an effective and efficient manner.

(d) Required agreements

The Secretary may not provide assistance under this part for any safe haven program unless the applicant agrees—

(1) to develop and operate the proposed facility as a safe haven in accordance with the provisions of this part;

(2) to ensure that the facility meets any standards of habitability established by the Secretary;

(3) to provide low-demand services and referrals for the residents of the safe haven;

(4) to prohibit the use of illegal drugs and alcohol in the facility;

(5) to ensure that adequate security precautions are taken to make the facility safe for the residents;

(6) not to establish limitations on the duration of residency;

(7) not to require participation in low-demand services and referrals as a condition of occupancy;

(8) to monitor and report to the Secretary on progress in carrying out the safe haven program;

(9) to the maximum extent practicable, to involve eligible persons, through employment, volunteer services, or otherwise, in renovating, maintaining, and operating facilities assisted under this part and in providing services assisted under this part;

(10) to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of such recipient (in accordance with regulations that the Secretary shall issue), to the extent that such entity considers and makes policies and decisions regarding any facility or services assisted under this part, or to otherwise provide for the consultation and participation of such an individual in considering and making such policies and decisions; and

(11) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the program established under this part in an effective and efficient manner.

The Secretary may waive the applicability of the requirement under paragraph (10) for an applicant that is unable to meet such requirement, if the applicant agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(Pub. L. 100–77, title IV, § 434, as added Pub. L. 102–550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4025.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (a)(11), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(11), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(11), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

PRIOR PROVISIONS

A prior section 11394, Pub. L. 100–77, title IV, § 434, July 22, 1987, 101 Stat. 508; Pub. L. 100–628, title IV, § 464, Nov. 7, 1988, 102 Stat. 3237; Pub. L. 101–625, title VIII, § 834(a), Nov. 28, 1990, 104 Stat. 4365, authorized appropriations for supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102–550, § 1403(a).

§ 11395. Occupancy charge

Each eligible person who resides in a facility assisted under this part shall pay an occupancy charge in an amount determined by the recipient, but not to exceed the amount determined under section 1437a(a) of this title. The occupancy charge may be phased in or reduced based on the type of living accommodations provided. The recipient may waive occupancy charges for limited periods of time for residents unwilling or unable to pay them. Occupancy charges paid may be reserved to assist residents in moving to a more traditional form of permanent housing.

(Pub. L. 100–77, title IV, § 435, as added Pub. L. 102–550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4027.)

§ 11396. Termination of assistance

If an eligible person who resides in a safe haven or who receives low-demand services or referrals endangers the safety, welfare, or health of other residents, or repeatedly violates a condition of occupancy contained in the rules for the safe haven (as set forth in the application submitted under this part), the recipient may terminate such residency or assistance in accordance with a formal process established by the rules for the safe haven, which may include a hearing.

(Pub. L. 100–77, title IV, § 436, as added Pub. L. 102–550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4027.)

§ 11397. Evaluation and report

The Secretary shall conduct an evaluation of the safe haven demonstration program under this part and shall submit a report to the Congress, not later than December 31, 1994, which

shall set forth the findings of the Secretary as a result of the evaluation.

(Pub. L. 100–77, title IV, § 437, as added Pub. L. 102–550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4027.)

§ 11398. Regulations

(a) In general

The Secretary shall, by notice published in the Federal Register, establish such requirements as may be necessary to carry out the amendments made by this part.

(b) Consultation

In establishing requirements to carry out the provisions of this part, and in considering applications under this part, the Secretary shall consult with officials of the appropriate agencies of the Department of Health and Human Services and with representative provider and public interest groups.

(c) Eligibility for SSI and medicaid

(1) Supplemental security income

All provisions of the Supplemental Security Income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and of State programs in supplementation thereof shall apply to participants in the safe havens demonstration program under this part, except that no individual living in a safe haven shall—

(A) be considered an inmate of a public institution (as provided in section 1611(e)(1)(A) of such Act [42 U.S.C. 1382(e)(1)(A)]); or

(B) have benefits under such title XVI [42 U.S.C. 1381 et seq.] reduced or terminated because of the receipt of support and maintenance (as provided in section 1612(a)(2)(A) of such Act [42 U.S.C. 1382a(a)(2)(A)]), to the extent such support and maintenance is received as a result of participation in the safe havens demonstration program.

(2) Medicaid

A safe haven shall not be considered a hospital, nursing facility, institution for mental disease as defined under section 1905(i) of the Social Security Act [42 U.S.C. 1396d(i)], or any other inpatient facility, for purposes of the program under title XIX of such Act [42 U.S.C. 1396 et seq.], and individuals shall not be denied eligibility for medicaid because of residency in such residence.

(Pub. L. 100–77, title IV, § 438, as added Pub. L. 102–550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4027.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI and XIX of the Act are classified generally to subchapters XVI (§ 1381 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 11399. Authorization of appropriations

There are authorized to be appropriated to carry out this part $62,000,000 for fiscal year 1993 and $64,604,000 for fiscal year 1994.

(Pub. L. 100–77, title IV, § 439, as added Pub. L. 102–550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4028.)

PART E—MISCELLANEOUS PROVISIONS

§ 11401. Section 1437f assistance for single room occupancy dwellings

(a) Increase in budget authority

The budget authority available under section 1437c(c) of this title for assistance under section 1437f(e)(2)[1] of this title is authorized to be increased by $105,000,000 on or after October 1, 1992, and by $109,410,000 on or after October 1, 1993.

(b) Use of funds

The amounts made available under this section shall be used only in connection with the moderate rehabilitation of housing described in section 1437f(n)[1] of this title for occupancy by homeless individuals, except that amounts made available under this section may be used in connection with the moderate rehabilitation of efficiency units if the building owner agrees to pay the additional cost of rehabilitating and operating such units.,[2] and except that the Secretary may provide amounts available under this section to private nonprofit organizations that submit applications for such assistance that are approved by the Secretary.

(c) Allocation

The amounts made available under this section shall be allocated by the Secretary of Housing and Urban Development on the basis of a national competition to the applicants that best demonstrate a need for the assistance under this section and the ability to undertake and carry out a program to be assisted under this section. To be considered for assistance under this section, an applicant shall submit to the Secretary of Housing and Urban Development a written proposal containing—

(1) a description of the size and characteristics of the population within the applicant's jurisdiction that would occupy single room occupancy dwellings;

(2) a listing of additional commitments from public and private sources that the applicant might be able to provide in connection with the program;

(3) an inventory of suitable housing stock to be rehabilitated with such assistance;

(4) a description of the interest that has been expressed by builders, developers, and others (including profit and nonprofit organizations) in participating in the program; and

(5) assurances satisfactory to the Secretary that the applicant, to the maximum extent practicable, will involve homeless individuals and families, through employment, volunteer services, or otherwise, in rehabilitating and operating facilities assisted under this section and in providing services for occupants of such facilities.

No single city or urban county shall be eligible to receive more than 10 percent of the assistance made available under this section.

[1] See References in Text note below.

[2] So in original. The period before the comma probably should not appear.

(d) Fire and safety improvements

Each contract for housing assistance payments entered into with the authority provided under this section shall require the installation of a sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as may be required by State or local law. For purposes of this subsection, the term ''major spaces'' means hallways, large common areas, and other areas specified in local fire, building, or safety codes.

(e) Cost limitation

(1) The total cost of rehabilitation that may be compensated for in a contract for housing assistance payments entered into with the authority provided under this section shall not exceed $14,000 per unit, plus the expenditures required by subsection (d) of this section.

(2) The Secretary of Housing and Urban Development shall increase the limitation contained in paragraph (1) by an amount the Secretary determines is reasonable and necessary to accommodate special local conditions, including—

(A) high construction costs; or

(B) stringent fire or building codes.

(3) The Secretary of Housing and Urban Development shall increase the limitation in paragraph (1) on October 1 of each year by an amount necessary to take into account increases in construction costs during the previous 12-month period.

(f) Contract requirements

Each contract for annual contributions entered into with a[3] approved applicant to obligate the authority made available under this section shall—

(1) commit the Secretary of Housing and Urban Development to make such authority available to the approved applicant for an aggregate period of 10 years, and require that any amendments increasing such authority shall be available for the remainder of such 10-year period;

(2) provide the Secretary of Housing and Urban Development with the option to renew the contract for an additional period of 10 years, subject to the availability of appropriations; and

(3) provide that, notwithstanding any other provision of law, first priority for occupancy of housing rehabilitated under this section shall be given to homeless individuals.

(g) Repealed. Pub. L. 104–330, title V, § 506(a)(8)(A), Oct. 26, 1996, 110 Stat. 4044

(h) Participation of homeless individuals

The Secretary shall, by regulation, require each approved applicant receiving assistance under this section that is not a public housing agency to provide for the participation of not less than one homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of such applicant, to the extent that such entity considers and makes policies and decisions regarding the rehabilitation of any housing with assistance under this section. The Secretary may grant waivers to approved applicants unable to meet the requirements under the preceding sentence if the applicant agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(i) Termination of assistance

If an individual or family who receives assistance under this section violates program requirements, the recipient of amounts made available under this section may terminate assistance in accordance with a formal process established by the recipient that recognizes the rights of individuals receiving such assistance to due process of law.

(j) Definitions

For purposes of this section—

(1) the term ''applicant'' means a public housing agency, or private nonprofit organization that applies for assistance under this section; and

(2) the term ''private nonprofit organization'' means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

(D) that practices nondiscrimination in the provision of assistance.

(Pub. L. 100–77, title IV, § 441, July 22, 1987, 101 Stat. 508; Pub. L. 100–628, title IV, § 481(a)–(d)(1), Nov. 7, 1988, 102 Stat. 3237, 3238; Pub. L. 101–625, title VIII, § 835, Nov. 28, 1990, 104 Stat. 4366; Pub. L. 102–550, title XIV, § 1405(a)–(d), Oct. 28, 1992, 106 Stat. 4028, 4029; Pub. L. 104–330, title V, § 506(a)(8), Oct. 26, 1996, 110 Stat. 4044.)

REFERENCES IN TEXT

Section 1437f(e)(2) of this title, referred to in subsec. (a), was repealed effective Oct. 1, 1991, but to remain in effect with respect to single room occupancy dwellings as authorized by this subchapter, see section 12839(b) of this title.

Section 1437f(n) of this title, referred to in subsec. (b), was repealed by Pub. L. 105–276, title V, § 550(a)(7), Oct. 21, 1998, 112 Stat. 2609.

AMENDMENTS

1996—Subsec. (g). Pub. L. 104–330, § 506(a)(8)(A), struck out heading and text of subsec. (g). Text read as follows: ''Amounts made available for assistance under this section shall be available through contracts between the Secretary and Indian housing authorities, and the provisions of this section regarding public housing authorities shall include and apply to Indian housing authorities.''

Subsec. (h). Pub. L. 104–330, § 506(a)(8)(B), struck out ''or Indian housing authority'' after ''public housing agency''.

Subsec. (j)(1). Pub. L. 104–330, § 506(a)(8)(C), struck out '', Indian housing authority'' after ''public housing agency''.

1992—Subsec. (a). Pub. L. 102–550, § 1405(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The budget authority available under section 1437c(c) of this title for assistance under section 1437f(e)(2) of this title is authorized to be increased by

[3] So in original. Probably should be ''an''.

$79,000,000 on or after October 1, 1990, and by $82,400,000 on or after October 1, 1991.''

Subsec. (b). Pub. L. 102–550, § 1405(b)(1), inserted before period at end '', and except that the Secretary may provide amounts available under this section to private nonprofit organizations that submit applications for such assistance that are approved by the Secretary''.

Subsec. (c)(5). Pub. L. 102–550, § 1405(c), added par. (5).

Subsec. (f). Pub. L. 102–550, § 1405(b)(2), substituted ''approved applicant'' for ''public housing agency'' in introductory provisions and par. (1).

Subsecs. (h), (i). Pub. L. 102–550, § 1405(d), added subsecs. (h) and (i).

Subsec. (j). Pub. L. 102–550, § 1405(b)(3), added subsec. (j).

1990—Subsec. (a). Pub. L. 101–625, § 835(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The budget authority available under section 1437c(c) of this title for assistance under section 1437f(e)(2) of this title is authorized to be increased by $50,000,000 on or after October 1, 1988, and by $50,000,000 on or after October 1, 1989.''

Subsec. (g). Pub. L. 101–625, § 835(b), added subsec. (g).

1988—Subsec. (a). Pub. L. 100–628, § 481(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The budget authority available under section 1437c(c) of this title for assistance under section 1437f(e)(2) of this title is authorized to be increased by $35,000,000 on or after October 1, 1986, and by $35,000,000 on or after October 1, 1987.''

Subsec. (b). Pub. L. 100–628, § 481(b), inserted before period at end '', except that amounts made available under this section may be used in connection with the moderate rehabilitation of efficiency units if the building owner agrees to pay the additional cost of rehabilitating and operating such units.''

Subsec. (d). Pub. L. 100–628, § 481(c), inserted sentence defining ''major spaces''.

Subsec. (e)(3). Pub. L. 100–628, § 481(d)(1), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 481(d)(2) of Pub. L. 100–628 provided that: ''The first increase under the amendment made by paragraph (1) [amending this section] shall be effective with respect to assistance provided on or after October 1, 1988.''

§ 11402. Environmental review

For purposes of environmental review, assistance and projects under this subchapter shall be treated as assistance for special projects that are subject to section 3547 of this title, and shall be subject to the regulations issued by the Secretary to implement such section.

(Pub. L. 100–77, title IV, § 443, as added Pub. L. 100–628, title IV, § 482(a), Nov. 7, 1988, 102 Stat. 3238; amended Pub. L. 106–377, § 1(a)(1) [title II, § 208], Oct. 27, 2000, 114 Stat. 1441, 1441A–25.)

AMENDMENTS

2000—Pub. L. 106–377 amended section catchline and text generally. Prior to amendment, text read as follows: ''The provisions of, and regulations and procedures applicable under, section 5304(g) of this title shall apply to assistance and projects under this subchapter.''

PART F—SHELTER PLUS CARE PROGRAM

SUBPART I—GENERAL REQUIREMENTS

§ 11403. Purpose

The purpose of the program authorized under this part is to provide rental housing assistance, in connection with supportive services funded from sources other than this part, to homeless persons with disabilities (primarily persons who are seriously mentally ill, have chronic problems with alcohol, drugs, or both, or have acquired immunodeficiency syndrome and related diseases) and the families of such persons.

(Pub. L. 100–77, title IV, § 451, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367.)

ESTABLISHMENT OF REQUIREMENTS BY NOTICE; ISSUANCE OF REGULATIONS

Section 837(b) of Pub. L. 101–625, as amended by Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: ''Not later than 180 days after the date funds authorized under section 459 of the McKinney-Vento Homeless Assistance Act [section 11403h of this title], as amended by this section, first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of subtitle F of that Act [this part]. Such requirements shall be subject to section 553 of title 5, United States Code. The Secretary shall issue regulations based on the initial notice before the expiration of the eight-month period following the date of the notice. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period following the date of the notice. In developing program guidelines and regulations to implement such subtitle, the Secretary of Housing and Urban Development may consult with the Secretary of Health and Human Services with respect to supportive services aspects of this subtitle [subtitle C (§§ 821–841) of title VIII of Pub. L. 101–625, see Tables for classification].''

§ 11403a. Rental housing assistance

(a) In general

The Secretary is authorized, in accordance with the provisions of this subpart, to provide rental housing assistance under subparts II, III, IV, and V of this part.

(b) Funding limitations

To the maximum extent practicable, the Secretary shall reserve not less than 50 percent of all funds provided under this part for homeless individuals who are seriously mentally ill or have chronic problems with alcohol, drugs, or both.

(Pub. L. 100–77, title IV, § 452, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367; amended Pub. L. 102–550, title XIV, § 1406(g)(2), Oct. 28, 1992, 106 Stat. 4034.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 substituted ''IV, and V'' for ''and IV''.

§ 11403b. Supportive services requirements

(a) Matching funding

(1) In general

Each recipient shall be required to supplement the assistance provided under this part

with an equal amount of funds for supportive services from sources other than this part. Each recipient shall certify to the Secretary its compliance with this paragraph, and shall include with the certification a description of the sources and amounts of such supplemental funds.

(2) Determination of matching amounts

In calculating the amount of supplemental funds provided under this part, a recipient may include the value of any lease on a building, any salary paid to staff to carry out the program of the recipient, and the value of the time and services contributed by volunteers to carry out the program of the recipient at a rate determined by the Secretary.

(b) Recapture

If the supportive services and funding for the supportive services required by this section are not provided, the Secretary may recapture any unexpended housing assistance.

(Pub. L. 100–77, title IV, § 453, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367.)

§ 11403c. Applications

(a) In general

An application for rental housing assistance under this part shall be submitted by an applicant in such forms and in accordance with such procedures as the Secretary shall establish.

(b) Minimum contents

The Secretary shall require that an application identify the need for the assistance in the community to be served and shall contain at a minimum—

(1) a request for housing assistance under subpart II, III, IV, or V of this part, or a combination, specifying the number of units requested and the amount of necessary budget authority;

(2) a description of the size and characteristics of the population of eligible persons;

(3) an identification of the need for the program in the community to be served;

(4) the identity of the proposed service provider or providers (which may be, or include, the applicant) and a statement of the qualifications of the provider or providers;

(5) a description of the supportive services that the applicant proposes to assure will be available for eligible persons;

(6) a description of the resources that are expected to be made available to provide the supportive services required by section 11403b of this title;

(7) a description of the mechanisms for developing a housing and supportive services plan for each person and for monitoring each person's progress in meeting that plan;

(8) reasonable assurances satisfactory to the Secretary that the supportive services will be provided for the full term of the housing assistance under subpart II, III, IV, or V of this part, or a combination; and a certification from the applicant that it will fund the supportive services itself if the planned resources do not become available for any reason;

(9) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the unit of general local government within which housing assistance under this part will be provided;

(10) a plan for—

(A) in the case of rental housing assistance under subpart II,[1] or III of this part, providing housing assistance;

(B) identifying and selecting eligible persons to participate, including a proposed definition of the term ''chronic problems with alcohol, other drugs, or both'';

(C) coordinating the provision of housing assistance and supportive services;

(D) ensuring that the service providers are providing supportive services adequate to meet the needs of the persons served;

(E) obtaining participation of eligible persons who have previously not been assisted under programs designed to assist the homeless or have been considered not capable of participation in these programs; this plan shall specifically address how homeless persons, as defined in section 11302(a)(2)(C) of this title, (and the families of such persons) will be brought into the program;

(11) in the case of housing assistance under subpart V of this part, identification of the specific structures that the recipient is proposing for assistance; and

(12) in the case of housing assistance under subpart IV of this part, identification of the nonprofit entity that will be the owner or lessor of the property, and identification of the specific structures in which the nonprofit entity proposes to house eligible persons.

(Pub. L. 100–77, title IV, § 454, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367; amended Pub. L. 102–550, title XIV, § 1406(g)(3), Oct. 28, 1992, 106 Stat. 4034.)

AMENDMENTS

1992—Subsec. (b)(1), (8). Pub. L. 102–550, § 1406(g)(3)(A), (B), substituted ''IV, or V'' for ''or IV''.

Subsec. (b)(10)(A). Pub. L. 102–550, § 1406(g)(3)(C), inserted '', or III'' after ''subpart II''.

Subsec. (b)(11). Pub. L. 102–550, § 1406(g)(3)(D), substituted ''subpart V of this part'' for ''subpart III of this part'' and ''proposing for assistance'' for ''proposing for rehabilitation and assistance''.

§ 11403d. Selection criteria

(a) In general

The Secretary shall establish selection criteria for a national competition for assistance under this part, which shall include—

(1) the ability of the applicant to develop and operate the proposed assisted housing and supportive services program, taking into account the quality of any ongoing program of the applicant;

(2) geographic diversity among the projects to be assisted;

(3) the need for a program providing housing assistance and supportive services for eligible persons in the area to be served;

[1] So in original. The comma probably should not appear.

(4) the quality of the proposed program for providing supportive services and housing assistance;

(5) the extent to which the proposed funding for the supportive services is or will be available;

(6) the extent to which the project would meet the needs of the homeless persons proposed to be served by the program;

(7) the extent to which the program integrates program recipients into the community served by the program;

(8) the cost-effectiveness of the proposed program; and

(9) such other factors as the Secretary specifies in regulations to be appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(b) Funding limitation

No more than 10 percent of the assistance made available under this part for any fiscal year may be used for programs located within any one unit of general local government.

(c) Participation of homeless individuals

The Secretary shall, by regulation, require each recipient to provide for the consultation and participation of not less than one homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any housing assisted under this part or services for such housing. The Secretary may grant waivers to recipients unable to meet the requirement under the preceding sentence if the recipient agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(Pub. L. 100–77, title IV, § 455, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4369; amended Pub. L. 102–550, title XIV, § 1406(b), Oct. 28, 1992, 106 Stat. 4030.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–550 added subsec. (c).

§ 11403e. Required agreements

The Secretary may not approve assistance under this part unless the applicant agrees—

(1) to operate the proposed program in accordance with the provisions of this part;

(2) to conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;

(3) to assure the adequate provision of supportive services to the participants in the program;

(4) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the program in an effective and efficient manner; and

(5) to the maximum extent practicable, to involve homeless individuals and families, through employment volunteer services, or otherwise, in constructing or rehabilitating housing assisted under this part and in providing services required under this part.

(Pub. L. 100–77, title IV, § 456, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4369; amended Pub. L. 102–550, title XIV, § 1406(c), Oct. 28, 1992, 106 Stat. 4030.)

AMENDMENTS

1992—Par. (5). Pub. L. 102–550 added par. (5).

§ 11403e–1. Housing standards and rent reasonableness

(a) Standards required

The Secretary shall require that—

(1) before any assistance may be provided to or on behalf of the person, each unit shall be inspected by the applicant directly or by another entity, including the local public housing agency, to determine that the unit meets the housing quality standards under section 1437f of this title and that the occupancy charge for the dwelling unit is reasonable; and

(2) the recipient shall make at least annual inspections of each unit during the contract term.

(b) Prohibition

No assistance may be provided for a dwelling unit (1) for which the occupancy charge is not reasonable, or (2) which fails to meet the housing standards, unless the owner promptly corrects the deficiency and the recipient verifies the correction.

(Pub. L. 100–77, title IV, § 457, formerly § 464, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371; renumbered § 457 and amended Pub. L. 102–550, title XIV, § 1406(e)(4), Oct. 28, 1992, 106 Stat. 4031.)

CODIFICATION

Section was formerly classified to section 11404c of this title prior to renumbering by Pub. L. 102–550.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–550 struck out ''(or if no such agency exists in the applicable area, an entity selected by the Secretary)'' after ''public housing agency''.

§ 11403e–2. Tenant rent

Each tenant shall pay as rent an amount determined in accordance with the provisions of section 1437a(a)(1) of this title.

(Pub. L. 100–77, title IV, § 458, formerly § 465, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372; renumbered § 458, Pub. L. 102–550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031.)

CODIFICATION

Section was formerly classified to section 11404d of this title prior to renumbering by Pub. L. 102–550.

§ 11403e–3. Administrative fees

From amounts made available under appropriations Acts, the Secretary shall make amounts available to pay the entity administering the housing assistance an administrative fee in an amount determined appropriate by the Secretary for the costs of administering the housing assistance.

(Pub. L. 100–77, title IV, § 459, formerly § 466, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28,

1990, 104 Stat. 4372; renumbered § 459, Pub. L. 102–550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031.)

CODIFICATION

Section was formerly classified to section 11404e of this title prior to renumbering by Pub. L. 102–550.

§ 11403e–4. Occupancy

(a) Occupancy agreement

The occupancy agreement between a tenant and an owner of a dwelling unit assisted under this part shall be for at least one month.

(b) Vacancy payments

If an eligible person vacates a dwelling unit assisted under this part before the expiration of the occupancy agreement, no assistance payment may be made with respect to the unit after the month that follows the month during which the unit was vacated, unless it is occupied by another eligible person.

(Pub. L. 100–77, title IV, § 460, as added Pub. L. 102–550, title XIV, § 1406(e)(6), Oct. 28, 1992, 106 Stat. 4031.)

§ 11403f. Termination of assistance

(a) Authority

If an eligible individual who receives assistance under this part violates program requirements, the recipient may terminate assistance in accordance with the process established pursuant to subsection (b) of this section.

(b) Procedure

In terminating assistance under this section, the recipient shall provide a formal process that recognizes the rights of individuals receiving such assistance to due process of law.

(Pub. L. 100–77, title IV, § 461, formerly § 457, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4369; renumbered § 461, Pub. L. 102–550, title XIV, § 1406(e)(1), Oct. 28, 1992, 106 Stat. 4031.)

PRIOR PROVISIONS

A prior section 461 of Pub. L. 100–77 was classified to section 11404 of this title prior to repeal by Pub. L. 102–550.

§ 11403g. Definitions

For purposes of this part:

(1) The term ''acquired immunodeficiency syndrome and related diseases'' has the meaning given such term in section 12902 of this title.

(2) The term ''applicant'' means a State, unit of general local government or public housing agency.

(3) The term ''eligible person'' means a homeless person with disabilities (primarily persons who are seriously mentally ill, have chronic problems with alcohol, drugs, or both, or have acquired immunodeficiency syndrome and related diseases) and the family of such a person.

(4) Repealed. Pub. L. 104–330, title V, § 506(a)(9)(B), Oct. 26, 1996, 110 Stat. 4045.

(5) The term ''nonprofit organization'' has the meaning given such term by section 12704 of this title, and includes community mental health centers established as public nonprofit organizations.

(6) The term ''person with disabilities'' has the same meaning given the term in section 8013 of this title.

(7) The term ''public housing agency'' has the meaning given such term in section 1437a(b)(6) of this title.

(8) The term ''recipient'' means an applicant approved for participation in the program authorized under this part.

(9) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(10) The term ''seriously mentally ill'' means having a severe and persistent mental or emotional impairment that seriously limits a person's ability to live independently.

(11) The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(12) The term ''supportive services'' means assistance that the Secretary determines (A) addresses the special needs of eligible persons; and (B) provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health services, substance and alcohol abuse services, child care services, case management services, counseling, supervision, education, job training, and other services essential for achieving and maintaining independent living. Inpatient acute hospital care shall not qualify as a supportive service.

(13) The term ''unit of general local government'' has the meaning given such term in section 5302 of this title.

(Pub. L. 100–77, title IV, § 462, formerly § 458, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4369; renumbered § 462 and amended Pub. L. 102–550, title XIV, § 1406(e)(2), Oct. 28, 1992, 106 Stat. 4031; Pub. L. 104–330, title V, § 506(a)(9), Oct. 26, 1996, 110 Stat. 4045.)

PRIOR PROVISIONS

A prior section 462 of Pub. L. 100–77 was renumbered section 472 and is classified to section 11404a of this title.

AMENDMENTS

1996—Par. (2). Pub. L. 104–330, § 506(a)(9)(A), struck out '', Indian tribe,'' after ''local government''.

Par. (4). Pub. L. 104–330, § 506(a)(9)(B), struck out par. (4) which read as follows: ''The term 'Indian tribe' has the meaning given such term in section 5302 of this title.''

1992—Par. (2). Pub. L. 102–550, § 1406(e)(2)(A), added par. (2) and struck out former par. (2) which read as follows: ''The term 'applicant' means—

''(A) in the case of rental housing assistance under subparts II and IV of this part, a State, unit of general local government, or Indian tribe; and

''(B) in the case of single room occupancy housing under the section 8 moderate rehabilitation program under subpart III of this part (i) a State, unit of general local government, or Indian tribe (that shall be responsible for assuring the provision of supportive services and the overall administration of the program), and (ii) a public housing agency (that shall be

primarily responsible for administering the housing assistance under subpart III of this part).''

Par. (5). Pub. L. 102–550, § 1406(e)(2)(B), inserted before period at end '', and includes community mental health centers established as public nonprofit organizations''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11403h. Authorization of appropriations

(a) In general

For purposes of the housing programs under this part, there are authorized to be appropriated $266,550,000 for fiscal year 1993 and $277,745,100 for fiscal year 1994. Of any amount appropriated in any fiscal year to carry out this part—

(1) not less than 10 percent shall be available only for carrying out subpart II of this part;

(2) not less than 10 percent shall be available only for carrying out subpart III of this part;

(3) not less than 10 percent shall be available only for carrying out subpart IV of this part; and

(4) not less than 10 percent shall be available only for carrying out subpart V of this part.

(b) Availability

Sums appropriated under this section shall remain available until expended.

(Pub. L. 100–77, title IV, § 463, formerly § 459, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4370; renumbered § 463 and amended Pub. L. 102–550, title XIV, § 1406(a), (e)(3), Oct. 28, 1992, 106 Stat. 4029, 4031.)

PRIOR PROVISIONS

A prior section 463 of Pub. L. 100–77 was renumbered section 473 and is classified to section 11404b of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, § 1406(a)(1), added subsec. (a) and struck out former subsec. (a) which authorized appropriations for subpart II of this part for fiscal years 1991 and 1992.

Subsecs. (b) to (d). Pub. L. 102–550, § 1406(a)(2), (3), redesignated subsec. (d) as (b) and struck out former subsec. (b) which increased budget authority for the program under subpart III of this part for fiscal years 1991 and 1992 and former subsec. (c) which authorized appropriations for subpart IV of this part for fiscal years 1991 and 1992.

TRANSITIONAL PROVISIONS; AVAILABILITY OF APPROPRIATIONS

Section 837(c) of Pub. L. 101–625, as amended by Pub. L. 102–27, title II, Apr. 10, 1991, 105 Stat. 151, provided that amounts appropriated for use under part D of this subchapter as it existed before Nov. 28, 1990, were to be available for use under this part.

SUBPART II—TENANT-BASED RENTAL ASSISTANCE

§ 11404. Authority

The Secretary may use amounts made available under section 11403h of this title to provide tenant-based rental housing assistance for eligible persons in accordance with this subpart.

(Pub. L. 100–77, title IV, § 471, as added Pub. L. 102–550, title XIV, § 1406(d)(3), Oct. 28, 1992, 106 Stat. 4030.)

PRIOR PROVISIONS

A prior section 11404, Pub. L. 100–77, title IV, § 461, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371, authorized use of appropriations for provision of rental housing assistance to homeless in accordance with shelter plus care program, prior to repeal by Pub. L. 102–550, title XIV, § 1406(d)(3), Oct. 28, 1992, 106 Stat. 4030.

A prior section 471 of Pub. L. 100–77 was classified to section 11405 of this title prior to repeal by Pub. L. 102–550.

§ 11404a. Housing assistance

An eligible person on behalf of whom assistance is provided under this subpart shall select the unit in which such person will live using rental assistance under this subpart; except that where necessary to assure that the provision of supportive services to persons is feasible, a recipient may require that a person participating in the program live (1) in a particular structure or unit for up to the first year of participation, and (2) within a particular geographic area for the full period of participation or the period remaining after the period referred to in paragraph[1] (1).

(Pub. L. 100–77, title IV, § 472, formerly § 462, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371; renumbered § 472 and amended Pub. L. 102–550, title XIV, § 1406(d)(4), Oct. 28, 1992, 106 Stat. 4031.)

PRIOR PROVISIONS

A prior section 472 of Pub. L. 100–77 was classified to section 11405a of this title prior to repeal by Pub. L. 102–550.

AMENDMENTS

1992—Pub. L. 102–550 substituted ''An eligible person on behalf of whom assistance is provided under this subpart shall select the unit in which such person will live using rental assistance under this subpart; except that where'' for ''Where''.

§ 11404b. Amount of assistance

The contract with a recipient for assistance under this subpart shall be for a term of 5 years. Each contract shall provide that the recipient shall receive aggregate amounts not to exceed the appropriate existing housing fair market rent limitation under section 1437f(c) of this title in effect at the time the application is approved. At the option of the recipient and subject to the availability of such amounts, the recipient may receive in any year (1) up to 25 percent of such amounts or (2) such higher percentage as the Secretary may approve upon a demonstration satisfactory to the Secretary that

[1] So in original. Probably should be ''clause''.

the recipient has entered into firm financial commitments to ensure that the housing assistance described in the application will be provided for the full term of the contract. Any amounts not needed for a year may be used to increase the amount available in subsequent years.

(Pub. L. 100–77, title IV, § 473, formerly § 463, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371; renumbered § 473 and amended Pub. L. 102–550, title XIV, § 1406(d)(5), Oct. 28, 1992, 106 Stat. 4031.)

PRIOR PROVISIONS

A prior section 473 of Pub. L. 100–77 was classified to section 11405b of this title prior to repeal by Pub. L. 102–550.

AMENDMENTS

1992—Pub. L. 102–550 struck out at end ''Each recipient shall ensure that the assistance provided by the Secretary, and any amounts provided from other sources, are managed so that the housing assistance described in the application is provided for the full term of the assistance.''

§§ 11404c to 11404e. Transferred

CODIFICATION

Section 11404c, Pub. L. 100–77, title IV, § 464, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371, which provided for housing standards and rent reasonableness, was renumbered section 457 of Pub. L. 100–77 and amended by Pub. L. 102–550, title XIV, § 1406(e)(4), Oct. 28, 1992, 106 Stat. 4031, and transferred to section 11403e–1 of this title.

Section 11404d, Pub. L. 100–77, title IV, § 465, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, which provided for payment of rent by tenants, was renumbered section 458 of Pub. L. 100–77 by Pub. L. 102–550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031, and transferred to section 11403e–2 of this title.

Section 11404e, Pub. L. 100–77, title IV, § 466, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, which provided for payment of administrative fees, was renumbered section 459 of Pub. L. 100–77 by Pub. L. 102–550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031, and transferred to section 11403e–3 of this title.

SUBPART III—PROJECT-BASED RENTAL ASSISTANCE

§ 11405. Authority

The Secretary may use amounts made available under section 11403h of this title to provide project-based rental housing assistance for eligible persons in accordance with this subpart.

(Pub. L. 100–77, title IV, § 476, as added Pub. L. 102–550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11405, Pub. L. 100–77, title IV, § 471, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, authorized use of appropriations in connection with moderate rehabilitation of single room occupancy housing, prior to repeal by Pub. L. 102–550, § 1406(d)(2).

§ 11405a. Housing assistance

Assistance under this subpart shall be provided pursuant to a contract between the recipient and an owner of an existing structure. The contract shall provide that rental assistance payments shall be made to the owner and that the units in the structure shall be occupied by eligible persons for not less than the term of the contract.

(Pub. L. 100–77, title IV, § 477, as added Pub. L. 102–550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11405a, Pub. L. 100–77, title IV, § 472, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, related to fire and safety improvements in connection with contracts for housing assistance payments, prior to repeal by Pub. L. 102–550, § 1406(d)(2).

§ 11405b. Term of contract and amount of assistance

(a) Term of contract

Each contract with a recipient for assistance under this subpart shall be for a term of 5 years, and the owner shall have an option to renew the assistance for an additional 5-year term, subject to the availability of amounts provided in appropriation Acts; except that if an expenditure of at least $3,000 for each unit (including its prorated share of work on common areas or systems) is required to make the structure decent, safe, and sanitary, and the owner agrees to carry out the rehabilitation with resources other than assistance under this part within 12 months of notification of grant approval, the contract shall be for a term of 10 years.

(b) Amount of assistance

Each contract shall provide that the recipient shall receive aggregate amounts not to exceed the appropriate existing housing fair market rental under section 1437f(c)(1) of this title in effect at the time the application is approved. Any amounts not needed for a year may be used to increase the amount available in subsequent years.

(Pub. L. 100–77, title IV, § 478, as added Pub. L. 102–550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

Prior sections 11405b and 11405c were repealed by Pub. L. 102–550, title XIV, § 1406(d)(2), Oct. 28, 1992, 106 Stat. 4030.

Section 11405b, Pub. L. 100–77, title IV, § 473, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, listed provisions to be contained in contracts entered into by Secretary with public housing agencies under shelter plus care program.

Section 11405c, Pub. L. 100–77, title IV, § 474, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, related to term of occupancy agreements and issuance of vacancy payments under shelter plus care program.

SUBPART IV—SPONSOR-BASED RENTAL ASSISTANCE

§ 11406. Authority

The Secretary may use amounts made available under section 11403h of this title to provide sponsor-based rental assistance for eligible persons in accordance with this subpart.

(Pub. L. 100–77, title IV, § 481, as added Pub. L. 102–550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11406, Pub. L. 100–77, title IV, § 481, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, authorized use of appropriations in connection with provision of rental housing assistance under section 1701q of Title 12, Banks and Banking, prior to repeal by Pub. L. 102–550, § 1406(d)(2).

§ 11406a. Housing assistance

Assistance under this subpart shall be provided pursuant to a contract between the recipient and a private nonprofit sponsor that owns or leases dwelling units. The contract shall provide that rental assistance payments shall be made to the sponsor and that such assisted units shall be occupied by eligible persons.

(Pub. L. 100–77, title IV, § 482, as added Pub. L. 102–550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11406a, Pub. L. 100–77, title IV, § 482, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, related to amount of rental housing assistance to be provided under shelter plus care program in connection with section 1701q of Title 12, Banks and Banking, prior to repeal by Pub. L. 102–550, § 1406(d)(2).

§ 11406b. Term of contract and amount of assistance

(a) Term of contract

The contract with a recipient of assistance under this subpart shall be for a term of 5 years.

(b) Amount of assistance

Each contract shall provide that the recipient shall receive aggregate amounts not to exceed the appropriate existing housing fair market rental under section 1437f(c)(1) of this title in effect at the time the application is approved. Any amounts not needed for a year may be used to increase the amount available in subsequent years.

(Pub. L. 100–77, title IV, § 483, as added Pub. L. 102–550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4033.)

PRIOR PROVISIONS

Prior sections 11406b and 11406c were repealed by Pub. L. 102–550, title XIV, § 1406(d)(2), Oct. 28, 1992, 106 Stat. 4030.

Section 11406b, Pub. L. 100–77, title IV, § 483, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, required that certain housing standards be maintained and reasonable rent be charged prior to provision of rental housing assistance under shelter plus care program.

Section 11406c, Pub. L. 100–77, title IV, § 484, as added Pub. L. 101–625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, related to payment of administrative fees to nonprofit entities for costs of administering rental housing assistance under shelter plus care program.

SUBPART V—SECTION 1437f MODERATE REHABILITATION ASSISTANCE FOR SINGLE-ROOM OCCUPANCY DWELLINGS

§ 11407. Authority

The Secretary may use amounts made available under section 11403h of this title in connection with the moderate rehabilitation of single room occupancy housing described in section 1437f(n)[1] of this title for occupancy by eligible persons in accordance with this subpart. Amounts available under section 11403h of this title may be used in connection with the moderate rehabilitation of efficiency units if the building owner agrees to pay the additional cost of rehabilitating and operating the efficiency units.

(Pub. L. 100–77, title IV, § 486, as added Pub. L. 102–550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4033.)

REFERENCES IN TEXT

Section 1437f(n) of this title, referred to in text, was repealed by Pub. L. 105–276, title V, § 550(a)(7), Oct. 21, 1998, 112 Stat. 2609.

§ 11407a. Fire and safety improvements

Each contract for housing assistance payments entered into under this subpart shall require the installation of a sprinkler system that protects all major spaces, hard-wired smoke detectors, and any other fire safety improvements as may be required by State or local law. For purposes of this section, the term ''major spaces'' means hallways, large common areas, and other areas specified in local fire, building, or safety codes.

(Pub. L. 100–77, title IV, § 487, as added Pub. L. 102–550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4033.)

§ 11407b. Contract requirements

Each contract for annual contributions entered into by the Secretary with a public housing agency to obligate the authority made available under section 11403h of this title for use under this subpart shall—

(1) commit the Secretary to make the authority available to the public housing agency for an aggregate period of 10 years, and require that any amendments increasing the authority shall be available for the remainder of such 10-year period;

(2) provide the Secretary with the option to renew the contract for an additional period of 10 years, subject to the availability of authority; and

(3) provide that, notwithstanding any other provision of law, first priority for occupancy of housing rehabilitated under this subpart shall be given to homeless persons.

(Pub. L. 100–77, title IV, § 488, as added Pub. L. 102–550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4033.)

PART G—RURAL HOMELESS HOUSING ASSISTANCE

§ 11408. Rural homelessness grant program

(a) Establishment

The Secretary of Housing and Urban Development shall establish and carry out a rural homelessness grant program. In carrying out the program, the Secretary may award grants to eligible organizations in order to pay for the Federal share of the cost of—

(1) assisting programs providing direct emergency assistance to homeless individuals and families;

[1] See References in Text note below.

(2) providing homelessness prevention assistance to individuals and families at risk of becoming homeless; and

(3) assisting individuals and families in obtaining access to permanent housing and supportive services.

(b) Use of funds

(1) In general

An eligible organization may use a grant awarded under subsection (a) of this section to provide, in rural areas—

(A) rent, mortgage, or utility assistance after 2 months of nonpayment in order to prevent eviction, foreclosure, or loss of utility service;

(B) security deposits, rent for the first month of residence at a new location, and relocation assistance;

(C) short-term emergency lodging in motels or shelters, either directly or through vouchers;

(D) transitional housing;

(E) rehabilitation and repairs such as insulation, window repair, door repair, roof repair, and repairs that are necessary to make premises habitable;

(F) development of comprehensive and coordinated support services that use and supplement, as needed, community networks of services, including—

(i) outreach services to reach eligible recipients;

(ii) case management;

(iii) housing counseling;

(iv) budgeting;

(v) job training and placement;

(vi) primary health care;

(vii) mental health services;

(viii) substance abuse treatment;

(ix) child care;

(x) transportation;

(xi) emergency food and clothing;

(xii) family violence services;

(xiii) education services;

(xiv) moving services;

(xv) entitlement assistance; and

(xvi) referrals to veterans services and legal services; and

(G) costs associated with making use of Federal inventory property programs to house homeless families, including the program established under subchapter V of this chapter and the Single Family Property Disposition Program established pursuant to section 1710(g) of title 12.

(2) Capacity building activities

Not more than 20 percent of the funds appropriated under subsection (*l*)(1) of this section for a fiscal year may be used by eligible organizations for capacity building activities, including payment of operating costs and staff retention.

(c) Award of grants

(1) Communities with populations of less than 10,000

(A) Set aside

In awarding grants under subsection (a) of this section for a fiscal year, the Secretary shall make available not less than 50 percent of the funds appropriated under subsection (*l*)(1) of this section for the fiscal year for grants to eligible organizations serving communities that have populations of less than 10,000.

(B) Priority within set aside

In awarding grants in accordance with subparagraph (A), the Secretary shall give priority to eligible organizations serving communities with populations of less than 5,000.

(2) Communities without significant Federal assistance

In awarding grants under subsection (a) of this section, including grants awarded in accordance with paragraph (1), the Secretary shall give priority to eligible organizations serving communities not currently receiving significant Federal assistance under this chapter.

(3) State limit

In awarding grants under subsection (a) of this section for a fiscal year, the Secretary shall not award to eligible organizations within a State an aggregate sum of more than 10 percent of the funds appropriated under subsection (*l*)(1) of this section, for the fiscal year.

(d) Application

In order to be eligible to receive a grant under subsection (a) of this section, an organization shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The application shall include, at a minimum—

(1) a description of the target population and geographic area to be served;

(2) a description of the types of assistance to be provided;

(3) an assurance that the assistance to be provided is closely related to the identified needs of the target population;

(4) a description of the existing assistance available to the target population, including Federal, State, and local programs, and a description of the manner in which the organization will coordinate with and expand existing assistance or provide assistance not available in the immediate area;

(5) an agreement by the organization that the organization will collect data on the projects conducted by the organization, including assistance provided, number and characteristics of persons served, and causes of homelessness for persons served; and

(6) an agreement by the organization that, to the maximum extent practicable, the organization will involve homeless individuals and families through employment, volunteer services, and otherwise, in providing, operating, and rehabilitating housing assisted under this section and in providing services assisted under this section and services for occupants of housing assisted under this section.

(e) Eligible organizations

Organizations eligible to receive a grant under subsection (a) of this section shall include private nonprofit entities and county and local governments.

(f) Federal share

(1) In general

The Federal share of the costs of providing assistance under this section shall be 75 percent.

(2) Non-Federal share

The non-Federal share of the cost of providing the assistance shall be in cash or in kind, fairly evaluated, including plant, equipment, staff services, or services delivered by volunteers.

(g) Participation of homeless individuals

The Secretary shall, by regulation, require each eligible organization receiving a grant under this section to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy making entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any housing, services, or other assistance of the eligible organization receiving the grant under this section. The Secretary may grant waivers to recipients unable to meet the requirement under the preceding sentence if the recipient agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(h) Evaluation

(1) In general

The Secretary shall conduct an evaluation of the program to—

(A) determine the effectiveness of the program in providing housing and other assistance to homeless persons in the area served; and

(B) determine the types of assistance needed to address homelessness in rural areas.

(2) Report

The Secretary shall submit to Congress, not later than 18 months after the date on which the Secretary first makes grants under the program, the evaluation of the program conducted under paragraph (1), including recommendations for any Federal administrative or legislative changes that may be necessary to improve the ability of rural communities to prevent and respond to homelessness.

(i) Technical assistance

The Secretary shall provide technical assistance to eligible organizations in developing programs in accordance with this section, and in gaining access to other Federal resources that may be used to assist homeless persons in rural areas. Such assistance may be provided through regional workshops, and may be provided directly or through grants to, or contracts with, nongovernmental entities.

(j) Termination of assistance

If an individual or family who receives assistance under this section violates requirements of the assistance program provided by the organization receiving a grant under this section, the organization may terminate assistance in accordance with a formal process established by the organization that recognizes the rights of individuals receiving such assistance to due process of law, which may include a hearing.

(k) Definitions

For purposes of this section:

(1) Program

The term ''program'' means the rural homelessness grant program established under this section.

(2) Rural area; rural community

The terms ''rural area'' and ''rural community'' mean—

(A) any area or community, respectively, no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget; or

(B) any area or community, respectively, that is—

(i) within an area designated as a metropolitan statistical area or considered as part of a metropolitan statistical area; and

(ii) located in a rural census tract.

(3) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(*l*) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section $30,000,000 for fiscal year 1993 and $31,260,000 for fiscal year 1994.

(2) Availability

Any amount paid to a grant recipient for a fiscal year that remains unobligated at the end of the year shall remain available to the recipient for the purposes for which the payment was made for the next fiscal year. The Secretary shall take such action as may be necessary to recover any amount not obligated by the recipient at the end of the second fiscal year, and shall redistribute the amount to another eligible organization.

(Pub. L. 100–77, title IV, § 491, as added Pub. L. 102–550, title XIV, § 1408, Oct. 28, 1992, 106 Stat. 4035; amended Pub. L. 104–330, title V, § 506(a)(10), Oct. 26, 1996, 110 Stat. 4045.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(2), was in the original ''this Act'', meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–330 struck out '', Indian tribes (as such term is defined in section 5302(a) of this title),'' after ''nonprofit entities''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

§ 11408a. Use of FMHA inventory for transitional housing for homeless persons and for turnkey housing

(a) In general

The Secretary of Agriculture (in this section referred to as the ''Secretary'') shall, on a priority basis, lease or sell program and nonprogram inventory properties held by the Secretary under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.]—

(1) to provide transitional housing; and

(2) to provide turnkey housing for tenants of such transitional housing and for eligible families.

(b) Priority

The priority uses of inventory property under this section shall not have a higher priority than—

(1) the disposition of such property by sale to eligible families; or

(2) the disposition of such property by transfer for use as rental housing by eligible families.

(c) Transitional housing

(1) Leases authorized

The Secretary shall lease inventory properties to public agencies and nonprofit organizations to provide transitional housing for homeless families and individuals and to provide such agencies the option to provide turnkey housing opportunities for homeless persons and other inadequately housed families.

(2) Rental to eligible families

A public agency or nonprofit organization may rent housing leased to it under paragraph (1) to a family for up to 10 years and may, during that period, assist the tenant in obtaining a loan and credit assistance under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.] to purchase the housing from the Secretary.

(d) Lease procedures

(1) Identification of property

Upon receipt by the Secretary of written notification from a public agency or nonprofit organization that it proposes to lease a property for the purpose of providing transitional housing or for the purpose of providing transitional housing and turnkey housing opportunities, the Secretary shall—

(A) withdraw the property from the market for not more than 30 days for the purpose of negotiations under subparagraph (B);

(B) negotiate a lease agreement with the organization or agency; and

(C) if a lease is agreed to, commence the repairs necessary to make the property meet standards for decent, safe, and sanitary housing.

(2) Lease terms

A lease of inventory property under this section shall—

(A) be for a period of not more than 10 years;

(B) provide for the payment of $1 for the 10-year lease; and

(C) provide the nonprofit organization or public agency—

(i) the right to use the property for transitional housing; and

(ii) the option to arrange for the sale of the property to an eligible purchaser.

(e) Purchase procedures

(1) Identification of property

Upon receipt by the Secretary of written notification from a public agency or nonprofit organization that it proposes to purchase a property for the purpose of providing transitional housing or for the purpose of providing transitional housing and turnkey housing opportunities, the Secretary shall—

(A) withdraw the property from the market for not more than 30 days for the purpose of negotiations under subparagraph (B);

(B) negotiate a purchase agreement with the organization or agency; and

(C) if a purchase agreement is agreed to, commence the repairs necessary to make the property meet standards for decent, safe, and sanitary housing.

(2) Purchase terms

A purchase of inventory property under this section shall provide for a purchase price equal to not more than the fair market value of the property minus 10 percent.

(f) Employment of homeless individuals

A public agency or nonprofit organization may lease or purchase property under this section only if the agency or organization, to the maximum extent practicable, involves homeless individuals and families, through employment, volunteer services, or otherwise, in maintaining, operating, and renovating any properties leased or acquired under this section and in providing any services for occupants of properties assisted under this section.

(g) Participation of homeless individuals

(1) In general

The Secretary shall, by regulation, require each public agency and nonprofit organization leasing or purchasing property under this section to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy making entity of such agency or organization, to the extent that such organization or applicant considers and makes policies and decisions regarding any property acquired under this section.

(2) Waiver

The Secretary may grant a waiver to a public agency or nonprofit organization that is unable to meet the requirement of paragraph (1), if the agency or organization agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(h) Budget compliance

The authority provided to the Secretary under this section shall be effective only to the extent approved in advance in appropriations Acts.

(Pub. L. 100–77, title IV, § 592[492], as added Pub. L. 102–550, title XIV, § 1414, Oct. 28, 1992, 106 Stat. 4041.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsecs. (a) and (c)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

SUBCHAPTER V—IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY

§ 11411. Use of unutilized and underutilized public buildings and real property to assist the homeless

(a) Identification of suitable property

The Secretary of Housing and Urban Development shall, on a quarterly basis, request information from each landholding agency regarding Federal public buildings and other Federal real properties (including fixtures) that are excess property or surplus property or that are described as unutilized or underutilized in surveys by the heads of landholding agencies under section 524(a)(2) and (3) of title 40. No later than 25 days after receiving a request from the Secretary, the head of each landholding agency shall transmit such information to the Secretary. No later than 30 days after receiving such information, the Secretary shall identify which of those buildings and other properties are suitable for use to assist the homeless.

(b) Availability of property

(1) The Secretary shall promptly notify each Federal agency with respect to any property of that agency that the Secretary has identified under subsection (a) of this section. No later than 45 days after receipt of such a notice, the head of the appropriate landholding agency shall transmit to the Secretary the agency's response to property identifications contained in such notification, which shall include—

(A) in the case of unutilized or underutilized property—

(i) a statement of intention to determine the property excess to the agency's needs;

(ii) a statement of intention to make the property available for use to assist the homeless; or

(iii) a statement of the reasons (including a full explanation of the need) the property cannot be determined excess to the agency's needs or made available for use to assist the homeless; and

(B) in the case of excess property—

(i) a statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(ii) a statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(2)(A) All properties identified by the Secretary under subsection (a) of this section shall be available for application—

(i) in the case of property other than surplus property, for use to assist the homeless in accordance with the provisions of this section; and

(ii) in the case of surplus property, for use to assist the homeless either in accordance with this section or as a public health use in accordance with section 550(a)–(d) of title 40.

(3) The Secretary shall maintain a written public record of—

(A) the identification of buildings and other properties by the Secretary under this subsection and the reasons for such identifications; and

(B) the responses of landholding agencies to such identifications.

(c) Publication of properties

(1)(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1) of this section, the Secretary shall publish in the Federal Register—

(i) a list of all properties reviewed by the Secretary under subsection (a) of this section; and

(ii) a list of all properties that are available under subsection (b)(2) of this section for application for use to assist the homeless.

(B) Each publication of properties shall include a description and the location of each property (including the address and zip code) and the current classification of each property as unutilized, underutilized, excess property, or surplus property.

(C) The Secretary shall make available to the public upon request all information in the possession of the Department of Housing and Urban Development (other than valuation information), regardless of format, about all properties reviewed and not identified as being suitable for use to assist the homeless, including the reasons such properties were not so identified.

(D) The Secretary shall publish separately, on an annual basis, all properties identified as being suitable for use to assist the homeless, but reported to be unavailable, and the reasons such properties were unavailable.

(2)(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1) of this section, the Secretary shall transmit a copy of the list of available properties published under paragraph (1)(A)(ii) to the United States Interagency Council on Homelessness. The Council shall immediately distribute to all State and regional homeless coordinators area-relevant portions of the list.

(B) The Secretary, the Administrator, and the Secretary of Health and Human Services shall make such efforts as are necessary to ensure the widest possible dissemination of the information on such list.

(C) The Secretary shall establish a toll-free number to provide the public with specific information about properties on such list.

(3) The Secretary shall make available to the public upon request all information (other than valuation information) regardless of format in the possession of the Department of Housing and Urban Development about the properties published under paragraph (1)(A), including environmental assessment data. The Secretary shall maintain a current list of agency contacts for

making referrals of inquiries for information about specific properties.

(4)(A) On December 31 of each year, the head of each landholding agency shall report to the Secretary the current availability status and the current classification of each property controlled by the agency, that—

(i) was included in a list published in that year by the Secretary under paragraph (1)(A)(ii); and

(ii) remains available for application for use to assist the homeless or has become available for application during that year.

(B) No later than February 15 each year, the Secretary shall publish in the Federal Register a list of all properties reported under subparagraph (A) for the preceding year and the current classification of the properties.

(C) For purposes of subparagraph (A), property shall not be considered to remain available for application for use to assist the homeless after the 60-day holding period provided under subsection (d) of this section if—

(i) an application for or written expression of interest in the property is made under any law for use of the property for any purpose; or

(ii) the Administrator receives a bona fide offer to purchase the property or advertises for the sale of the property by public auction.

(d) Holding period

(1) Properties published under subsection (c)(1)(A)(ii) of this section as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of such publication.

(2) If written notice of intent to apply for such a property for use to assist the homeless is received by the Secretary of Health and Human Services within the 60-day period described under paragraph (1), such property may not be made available for any other purpose until the date the Secretary of Health and Human Services or other appropriate landholding agency has completed action on the application submitted under subsection (e) of this section with respect to that written notice of intent.

(3) Property that is reviewed by the Secretary under subsection (a) of this section and that is not identified by the Secretary as being suitable for use to assist the homeless may not be made available for any other purpose for 20 days after the determination of unsuitability to allow for review of the determination at the request of the representative of the homeless. The Secretary shall disseminate immediately this information to the regional offices of the Department of Housing and Urban Development and to the United States Interagency Council on Homelessness.

(4)(A) Written notice of intent to apply for a property published under subsection (c)(1)(A)(ii) of this section may be filed at any time after the 60-day period described in paragraph (1) has expired. In such case, an application submitted pursuant to the notice may be approved for disposal for use to assist the homeless only if the property remains available for application for use to assist the homeless. If the property remains available, the use to assist the homeless shall be given priority of consideration over other competing disposal opportunities under sections 541–555 of title 40, except as provided in subsection (f)(3)(A) of this section.

(B) Surplus property for which an application has been approved shall be assigned promptly to the Secretary of Health and Human Services for disposition in accordance with and subject to subsection (f) of this section.

(e) Application for property

(1) A representative of the homeless may submit an application to the Secretary of Health and Human Services for any property that is published under subsection (c)(1)(A)(ii) of this section as available for application for use to assist the homeless.

(2) No later than 90 days after the submission of written notice of intent to apply for a property, an applicant shall submit a complete application to the Secretary of Health and Human Services. The Secretary of Health and Human Services shall, with the concurrence of the appropriate landholding agency, grant reasonable extensions.

(3) No later than 25 days after receipt of a completed application, the Secretary of Health and Human Services shall review, make all determinations, and complete all actions on the application. The Secretary of Health and Human Services shall maintain a written public record of all actions taken in response to an application.

(f) Making property available to representatives of homeless

(1) Subject to the provisions of this subsection, property for which the Secretary of Health and Human Services has approved an application under subsection (e) of this section shall be made promptly available by permit or lease, or by deed as a public health use under section 550(a)–(d) of title 40, to the representative of the homeless that submitted the application.

(2) Unutilized or underutilized property that is the subject of an agency's statement of intention under subsection (b)(1)(A)(ii) of this section shall be made promptly available by the appropriate landholding agency to the approved applicant by lease or permit for a term of not less than 1 year, unless the applicant requests a shorter term.

(3)(A) In disposing of surplus property by deed or lease under sections 541–555 of title 40, the Administrator and the Secretary of Health and Human Services shall give priority of consideration to uses to assist the homeless, unless the Administrator or the Secretary of Health and Human Services determines that a competing request for the property under section 550 of title 40 is so meritorious and compelling as to outweigh the needs of the homeless.

(B) Whenever the Administrator or the Secretary of Health and Human Services makes a determination under subparagraph (A), the Administrator or the Secretary of Health and Human Services shall transmit to the appropriate committees of the Congress an explanatory statement detailing the need satisfied by conveyance of the surplus property and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) For any property made available by lease to a representative of the homeless before November 29, 1990, the Secretary of Health and Human Services may, upon written request by the representative, convey such property by deed to the representative in accordance with, and subject to the requirements of, section 550 of title 40. The lease term shall not be affected if a deed is not granted.

(g) Records

The Secretary shall maintain a written public record of—

(1) the reasons for determinations of the Secretary under this section that property is suitable or unsuitable for use to assist the homeless; and

(2) the responses of landholding agencies under subsection (b)(1) of this section.

(h) Applicability to property under base closure process

(1) The provisions of this section shall not apply to buildings and property at military installations that are approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) For provisions relating to the use to assist the homeless of buildings and property located at certain military installations approved for closure under such Act, or under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note), before October 25, 1994, see section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

(i) Definitions

For purposes of this section—

(1) the term ''Administrator'' means the Administrator of General Services;

(2) each of the terms ''excess property'' and ''surplus property'' has the meaning given that term under section 102 of title 40;

(3) the term ''landholding agency'' means a Federal department or agency with statutory authority to control real property;

(4) the term ''representative of the homeless'' means a State or local government agency, or private nonprofit organization, which provides services to the homeless; and

(5) the term ''Secretary'' means the Secretary of Housing and Urban Development, except as otherwise provided.

(Pub. L. 100–77, title V, § 501, July 22, 1987, 101 Stat. 509; Pub. L. 100–628, title V, § 501, Nov. 7, 1988, 102 Stat. 3240; Pub. L. 101–645, title IV, § 401(a), Nov. 29, 1990, 104 Stat. 4719; Pub. L. 102–484, div. B, title XXVIII, § 2824, Oct. 23, 1992, 106 Stat. 2608; Pub. L. 103–421, § 2(d), Oct. 25, 1994, 108 Stat. 4352; Pub. L. 108–199, div. G, title II, § 216(4), Jan. 23, 2004, 118 Stat. 394.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (h), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, as amended, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

Title II of the Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (h)(2), is title II of Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2627, as amended, which is set out as a note under section 2687 of Title 10. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

Section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994, referred to in subsec. (h)(2), is section 2(e) of Pub. L. 103–421, which is set out as a note under section 2687 of Title 10.

CODIFICATION

In subsec. (a), ''section 524(a)(2) and (3) of title 40'' substituted for ''section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2))'', in subsecs.(b)(2)(A)(ii) and (f)(1), ''section 550(a)–(d) of title 40'' substituted for ''paragraphs (1) and (4) of section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1) and (4))'', in subsecs. (d)(4)(A) and (f)(3)(A), ''sections 541–555 of title 40'' substituted for ''section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484)'', in subsec. (f)(3)(A), ''section 550 of title 40'' substituted for ''section 203(k) of such Act'', meaning the Federal Property and Administrative Services Act of 1949, in subsec. (f)(4), ''section 550 of title 40'' substituted for ''section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k))'', and, in subsec. (i)(2), ''section 102 of title 40'' substituted for ''section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2004—Subsecs. (c)(2)(A), (d)(3). Pub. L. 108–199 substituted ''United States Interagency Council on Homelessness'' for ''Interagency Council on the Homeless''.

1994—Subsecs. (h), (i). Pub. L. 103–421 added subsec. (h) and redesignated former subsec. (h) as (i).

1992—Subsec. (c)(4)(C). Pub. L. 102–484, § 2824(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of subparagraph (A), property shall be considered to remain available for application for use to assist the homeless if, subsequent to the 60-day holding period provided under subsection (d) of this section—

''(i) no application or written expression of interest has been made under any law for use of the property for any purpose; and

''(ii) the Administrator has not received a bona fide offer to purchase the property or advertised for the sale of the property by public auction.''

Subsec. (f)(2). Pub. L. 102–484, § 2824(b), inserted ''or'' after ''Unutilized''.

1990—Pub. L. 101–645 amended section generally, substituting present provisions consisting of subsecs. (a) to (h) for former provisions consisting of subsecs. (a) to (e).

1988—Pub. L. 100–628, § 501(1), substituted ''unutilized and underutilized'' for ''underutilized'' in section catchline.

Subsec. (a). Pub. L. 100–628, § 501(2), substituted ''unutilized or underutilized'' for ''underutilized'' in heading and text and inserted '', within 2 months after collecting such information,'' before ''shall identify'' in text.

Subsec. (b)(1). Pub. L. 100–628, § 501(3)(A), inserted ''or to make the property available, on an interim basis, for use as facilities to assist the homeless'' after ''agency's need''.

Subsec. (b)(2). Pub. L. 100–628, § 501(3)(B), inserted before period at end ''or made available on an interim basis for use as facilities to assist the homeless''.

Subsec. (d). Pub. L. 100–628, § 501(4)(A), struck out ''by lease'' after ''property'' in heading.

Subsec. (d)(1). Pub. L. 100–628, § 501(4)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Federal buildings or property may be made available under this section only through the use of leases for at least 1 year. Ownership of the buildings and property shall not be transferred from the Federal Government.''

Subsec. (d)(2). Pub. L. 100–628, § 501(4)(C), substituted ''With respect to property identified under subsection (a) which has been designated as surplus property,'' for ''To permit leases of surplus Federal buildings and other real property under this section,''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 401(b) of Pub. L. 101–645 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective 90 days after the date of the enactment of this Act [Nov. 29, 1990].''

REGULATIONS

Section 401(d) of Pub. L. 101–645 provided that: ''No later than 90 days after the date of the enactment of this Act [Nov. 29, 1990], the Administrator of General Services, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development shall promulgate regulations implementing this section and the amendment made by this section [amending this section and enacting provisions set out as notes under this section].''

CONSULTATION AND REPORT REGARDING USE OF NATIONAL GUARD FACILITIES AS OVERNIGHT SHELTERS FOR HOMELESS INDIVIDUALS

Pub. L. 102–550, title XIV, § 1411, Oct. 28, 1992, 106 Stat. 4039, provided that:

''(a) USE OF AVAILABLE SPACE AT NATIONAL GUARD FACILITIES.—The Secretary of Housing and Urban Development shall consult with the chief executive officers of the States and the Secretary of Defense to determine the availability of space at National Guard facilities for use by homeless organizations in providing overnight shelter for homeless persons and families. The Secretary of Housing and Urban Development shall determine the availability of only such space that can be used for shelter purposes during periods it is not actively being used for National Guard purposes. The Secretary of Housing and Urban Development shall also determine the availability of incidental services at such facilities, including utilities, bedding, security, transportation, renovation of facilities, minor repairs undertaken specifically to make available space in a facility suitable for use as an overnight shelter for homeless individuals, and property liability insurance.

''(b) LIMITATIONS.—In consultations under this section, the Secretary of Housing and Urban Development shall determine—

''(1) the number and capacity of such facilities that may be made available for shelters for homeless persons and families without adversely affecting the military or emergency service preparedness of the State or the United States; and

''(2) whether any available space is suitable for use as an overnight shelter for homeless individuals or can, with minor repairs, be made suitable for that use.

''(c) REPORT.—The Secretary of Housing and Urban Development shall submit to the Congress, not later than the expiration of the 1-year period beginning on the date of the enactment of this Act [Oct. 28, 1992], a report regarding the consultations and determinations made by the Secretary under this section. The report shall include any recommendations of the Secretary regarding the need for, and feasibility of, using National Guard facilities for homeless shelters and any recommendations of the Secretary for administrative or legislative action to provide for such use.''

UNUTILIZED AND UNDERUTILIZED PROPERTY FOR PURPOSES OF 1990 AMENDMENT

Section 401(c) of Pub. L. 101–645, as amended by Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: ''For purposes of section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411) (as amended by this Act) the terms 'unutilized' and 'underutilized' when used to describe property have the same meaning such terms had before the date of the enactment of this Act [Nov. 29, 1990] under such section 501.''

§ 11412. Making surplus personal property available to nonprofit agencies

(a) Omitted

(b) Requirement for notification

Within 90 days after July 22, 1987, the Administrator of General Services shall require each State agency administering a State plan under section 549(a)–(e) of title 40 to make generally available information about surplus personal property which may be used in the provision of food, shelter, or other services to homeless individuals.

(c) Costs

Surplus personal property identified pursuant to this section shall be made available to providers of assistance to homeless individuals by a State agency distributing such property at (1) a nominal cost to such organization or (2) at no cost when the Administrator agrees to reimburse the State agency for the costs of care and handling of such property.

(Pub. L. 100–77, title V, § 502, July 22, 1987, 101 Stat. 510.)

CODIFICATION

Section is comprised of section 502 of Pub. L. 100–77. Subsec. (a) of section 502 amended section 203(j)(3)(B) of the Federal Property and Administrative Services Act of 1949, which was classified to section 484(j)(3)(B) of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as section 549(c)(3)(B) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

In subsec (b), ''section 549(a)–(e) of title 40'' substituted for ''203(j) of the Federal Property and Administrative Services Act of 1949'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

SUBCHAPTER VI—EDUCATION AND TRAINING

PART A—ADULT EDUCATION FOR HOMELESS

§ 11421. Repealed. Pub. L. 105–220, title I, § 199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section, Pub. L. 100–77, title VII, § 701, as added Pub. L. 103–382, title III, § 322, Oct. 20, 1994, 108 Stat. 3956, related to State literacy initiatives.

A prior section 11421, Pub. L. 100–77, title VII, § 702, July 22, 1987, 101 Stat. 525; Pub. L. 100–297, title VI, § 6001, Apr. 28, 1988, 102 Stat. 423; Pub. L. 100–628, title VII, § 701, Nov. 7, 1988, 102 Stat. 3244; Pub. L. 101–645, title VI, § 611, Nov. 29, 1990, 104 Stat. 4734, related to State literacy initiatives, prior to the general amendment of this part by Pub. L. 103–382.

EFFECTIVE DATE OF REPEAL

Pub. L. 105–220, title I, § 199(c)(2)(A), Aug. 7, 1998, 112 Stat. 1059, provided that: ''The repeal made by subsection (b)(1) [repealing sections 11421, 11461 to 11466, 11471, and 11472 of this title] shall take effect on July 1, 1999.''

PART B—EDUCATION FOR HOMELESS CHILDREN AND YOUTHS

§ 11431. Statement of policy

The following is the policy of the Congress:

(1) Each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.

(2) In any State that has a compulsory residency requirement as a component of the State's compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths, the State will review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths.

(3) Homelessness alone is not sufficient reason to separate students from the mainstream school environment.

(4) Homeless children and youths should have access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging State student academic achievement standards to which all students are held.

(Pub. L. 100–77, title VII, § 721, as added Pub. L. 107–110, title X, § 1032, Jan. 8, 2002, 115 Stat. 1989.)

PRIOR PROVISIONS

A prior section 11431, Pub. L. 100–77, title VII, § 721, as added Pub. L. 103–382, title III, § 323, Oct. 20, 1994, 108 Stat. 3957, stated policy of Congress, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11431, Pub. L. 100–77, title VII, § 721, July 22, 1987, 101 Stat. 525; Pub. L. 101–645, title VI, § 612(a), Nov. 29, 1990, 104 Stat. 4735, stated policy of Congress, prior to the general amendment of this part by Pub. L. 103–382.

EFFECTIVE DATE

Part effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§ 11432. Grants for State and local activities for the education of homeless children and youths

(a) General authority

The Secretary is authorized to make grants to States in accordance with the provisions of this section to enable such States to carry out the activities described in subsections (d) through (g) of this section.

(b) Application

No State may receive a grant under this section unless the State educational agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(c) Allocation and reservations

(1) Allocation

(A) Subject to subparagraph (B), the Secretary is authorized to allot to each State an amount that bears the same ratio to the amount appropriated for such year under section 11435 of this title that remains after the Secretary reserves funds under paragraph (2) and uses funds to carry out section 11434(d) and (h) of this title, as the amount allocated under section 1122 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6332] to the State for that year bears to the total amount allocated under section 1122 of such Act to all States for that year, except that no State shall receive less than the greater of—

(i) $150,000;

(ii) one-fourth of 1 percent of the amount appropriated under section 11435 of this title for that year; or

(iii) the amount such State received under this section for fiscal year 2001.

(B) If there are insufficient funds in a fiscal year to allot to each State the minimum amount under subparagraph (A), the Secretary shall ratably reduce the allotments to all States based on the proportionate share that each State received under this subsection for the preceding fiscal year.

(2) Reservations

(A) The Secretary is authorized to reserve 0.1 percent of the amount appropriated for each fiscal year under section 11435 of this title to be allocated by the Secretary among the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, according to their respective need for assistance under this part, as determined by the Secretary.

(B)(i) The Secretary shall transfer 1 percent of the amount appropriated for each fiscal year under section 11435 of this title to the Department of the Interior for programs for Indian students served by schools funded by the Secretary of the Interior, as determined under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), that are consistent with the purposes of the programs described in this part.

(ii) The Secretary and the Secretary of the Interior shall enter into an agreement, consistent with the requirements of this part, for the distribution and use of the funds described in clause (i) under terms that the Secretary determines best meet the purposes of the programs described in this part. Such agreement shall set forth the plans of the Secretary of the Interior for the use of the amounts transferred, including appropriate goals, objectives, and milestones.

(3) State defined

For purposes of this subsection, the term ''State'' does not include the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(d) Activities

Grants under this section shall be used for the following:

(1) To carry out the policies set forth in section 11431 of this title in the State.

(2) To provide activities for, and services to, homeless children, including preschool-aged homeless children, and youths that enable such children and youths to enroll in, attend, and succeed in school, or, if appropriate, in preschool programs.

(3) To establish or designate an Office of Coordinator for Education of Homeless Children and Youths in the State educational agency in accordance with subsection (f) of this section.

(4) To prepare and carry out the State plan described in subsection (g) of this section.

(5) To develop and implement professional development programs for school personnel to heighten their awareness of, and capacity to respond to, specific problems in the education of homeless children and youths.

(e) State and local subgrants

(1) Minimum disbursements by States

From the sums made available each year to carry out this part, the State educational agency shall distribute not less than 75 percent in subgrants to local educational agencies for the purposes of carrying out section 11433 of this title, except that States funded at the minimum level set forth in subsection (c)(1) of this section shall distribute not less than 50 percent in subgrants to local educational agencies for the purposes of carrying out section 11433 of this title.

(2) Use by State educational agency

A State educational agency may use funds made available for State use under this part to conduct activities under subsection (f) of this section directly or through grants or contracts.

(3) Prohibition on segregating homeless students

(A) In general

Except as provided in subparagraph (B) and section 11433(a)(2)(B)(ii) of this title, in providing a free public education to a homeless child or youth, no State receiving funds under this part shall segregate such child or youth in a separate school, or in a separate program within a school, based on such child's or youth's status as homeless.

(B) Exception

Notwithstanding subparagraph (A), paragraphs (1)(J)(i) and (3) of subsection (g) of this section, section 11433(a)(2) of this title, and any other provision of this part relating to the placement of homeless children or youths in schools, a State that has a separate school for homeless children or youths that was operated in fiscal year 2000 in a covered county shall be eligible to receive funds under this part for programs carried out in such school if—

(i) the school meets the requirements of subparagraph (C);

(ii) any local educational agency serving a school that the homeless children and youths enrolled in the separate school are eligible to attend meets the requirements of subparagraph (E); and

(iii) the State is otherwise eligible to receive funds under this part.

(C) School requirements

For the State to be eligible under subparagraph (B) to receive funds under this part, the school described in such subparagraph shall—

(i) provide written notice, at the time any child or youth seeks enrollment in such school, and at least twice annually while the child or youth is enrolled in such school, to the parent or guardian of the child or youth (or, in the case of an unaccompanied youth, the youth) that—

(I) shall be signed by the parent or guardian (or, in the case of an unaccompanied youth, the youth);

(II) sets forth the general rights provided under this part;

(III) specifically states—

(aa) the choice of schools homeless children and youths are eligible to attend, as provided in subsection (g)(3)(A) of this section;

(bb) that no homeless child or youth is required to attend a separate school for homeless children or youths;

(cc) that homeless children and youths shall be provided comparable services described in subsection (g)(4) of this section, including transportation services, educational services, and meals through school meals programs; and

(dd) that homeless children and youths should not be stigmatized by school personnel; and

(IV) provides contact information for the local liaison for homeless children and youths and the State Coordinator for Education of Homeless Children and Youths;

(ii)(I) provide assistance to the parent or guardian of each homeless child or youth (or, in the case of an unaccompanied youth, the youth) to exercise the right to attend the parent's or guardian's (or youth's) choice of schools, as provided in subsection (g)(3)(A) of this section; and

(II) coordinate with the local educational agency with jurisdiction for the school selected by the parent or guardian (or youth), to provide transportation and other necessary services;

(iii) ensure that the parent or guardian (or, in the case of an unaccompanied youth, the youth) shall receive the information required by this subparagraph in a manner and form understandable to such parent or guardian (or youth), including, if necessary and to the extent feasible, in the native language of such parent or guardian (or youth); and

(iv) demonstrate in the school's application for funds under this part that such school—

(I) is complying with clauses (i) and (ii); and

(II) is meeting (as of the date of submission of the application) the same

Federal and State standards, regulations, and mandates as other public schools in the State (such as complying with sections 1111 and 1116 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311, 6316] and providing a full range of education and related services, including services applicable to students with disabilities).

(D) School ineligibility

A separate school described in subparagraph (B) that fails to meet the standards, regulations, and mandates described in subparagraph (C)(iv)(II) shall not be eligible to receive funds under this part for programs carried out in such school after the first date of such failure.

(E) Local educational agency requirements

For the State to be eligible to receive the funds described in subparagraph (B), the local educational agency described in subparagraph (B)(ii) shall—

(i) implement a coordinated system for ensuring that homeless children and youths—

(I) are advised of the choice of schools provided in subsection (g)(3)(A) of this section;

(II) are immediately enrolled, in accordance with subsection (g)(3)(C) of this section, in the school selected under subsection (g)(3)(A) of this section; and

(III) are promptly provided necessary services described in subsection (g)(4) of this section, including transportation, to allow homeless children and youths to exercise their choices of schools under subsection (g)(3)(A) of this section;

(ii) document that written notice has been provided—

(I) in accordance with subparagraph (C)(i) for each child or youth enrolled in a separate school under subparagraph (B); and

(II) in accordance with subsection (g)(6)(A)(v) of this section;

(iii) prohibit schools within the agency's jurisdiction from referring homeless children or youths to, or requiring homeless children and youths to enroll in or attend, a separate school described in subparagraph (B);

(iv) identify and remove any barriers that exist in schools within the agency's jurisdiction that may have contributed to the creation or existence of separate schools described in subparagraph (B); and

(v) not use funds received under this part to establish—

(I) new or additional separate schools for homeless children or youths; or

(II) new or additional sites for separate schools for homeless children or youths, other than the sites occupied by the schools described in subparagraph (B) in fiscal year 2000.

(F) Report

(i) Preparation

The Secretary shall prepare a report on the separate schools and local educational agencies described in subparagraph (B) that receive funds under this part in accordance with this paragraph. The report shall contain, at a minimum, information on—

(I) compliance with all requirements of this paragraph;

(II) barriers to school access in the school districts served by the local educational agencies; and

(III) the progress the separate schools are making in integrating homeless children and youths into the mainstream school environment, including the average length of student enrollment in such schools.

(ii) Compliance with information requests

For purposes of enabling the Secretary to prepare the report, the separate schools and local educational agencies shall cooperate with the Secretary and the State Coordinator for Education of Homeless Children and Youths established in the State under subsection (d)(3) of this section, and shall comply with any requests for information by the Secretary and State Coordinator for such State.

(iii) Submission

Not later than 2 years after January 8, 2002, the Secretary shall submit the report described in clause (i) to—

(I) the President;

(II) the Committee on Education and the Workforce of the House of Representatives; and

(III) the Committee on Health, Education, Labor, and Pensions of the Senate.

(G) Definition

For purposes of this paragraph, the term ''covered county'' means—

(i) San Joaquin County, California;

(ii) Orange County, California;

(iii) San Diego County, California; and

(iv) Maricopa County, Arizona.

(f) Functions of the Office of Coordinator

The Coordinator for Education of Homeless Children and Youths established in each State shall—

(1) gather reliable, valid, and comprehensive information on the nature and extent of the problems homeless children and youths have in gaining access to public preschool programs and to public elementary schools and secondary schools, the difficulties in identifying the special needs of such children and youths, any progress made by the State educational agency and local educational agencies in the State in addressing such problems and difficulties, and the success of the programs under this part in allowing homeless children and youths to enroll in, attend, and succeed in, school;

(2) develop and carry out the State plan described in subsection (g) of this section;

(3) collect and transmit to the Secretary, at such time and in such manner as the Secretary may require, a report containing such information as the Secretary determines is

necessary to assess the educational needs of homeless children and youths within the State;

(4) facilitate coordination between the State educational agency, the State social services agency, and other agencies (including agencies providing mental health services) to provide services to homeless children, including preschool-aged homeless children, and youths, and to families of such children and youths;

(5) in order to improve the provision of comprehensive education and related services to homeless children and youths and their families, coordinate and collaborate with—

(A) educators, including child development and preschool program personnel;

(B) providers of services to homeless and runaway children and youths and homeless families (including domestic violence agencies, shelter operators, transitional housing facilities, runaway and homeless youth centers, and transitional living programs for homeless youths);

(C) local educational agency liaisons designated under subsection (g)(1)(J)(ii) of this section for homeless children and youths; and

(D) community organizations and groups representing homeless children and youths and their families; and

(6) provide technical assistance to local educational agencies in coordination with local educational agency liaisons designated under subsection (g)(1)(J)(ii) of this section, to ensure that local educational agencies comply with the requirements of subsection (e)(3) of this section and paragraphs (3) through (7) of subsection (g) of this section.

(g) State plan

(1) In general

Each State shall submit to the Secretary a plan to provide for the education of homeless children and youths within the State. Such plan shall include the following:

(A) A description of how such children and youths are (or will be) given the opportunity to meet the same challenging State academic achievement standards all students are expected to meet.

(B) A description of the procedures the State educational agency will use to identify such children and youths in the State and to assess their special needs.

(C) A description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youths.

(D) A description of programs for school personnel (including principals, attendance officers, teachers, enrollment personnel, and pupil services personnel) to heighten the awareness of such personnel of the specific needs of runaway and homeless youths.

(E) A description of procedures that ensure that homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local food programs.

(F) A description of procedures that ensure that—

(i) homeless children have equal access to the same public preschool programs, administered by the State agency, as provided to other children in the State;

(ii) homeless youths and youths separated from the public schools are identified and accorded equal access to appropriate secondary education and support services; and

(iii) homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local before- and after-school care programs.

(G) Strategies to address problems identified in the report provided to the Secretary under subsection (f)(3) of this section.

(H) Strategies to address other problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays that are caused by—

(i) immunization and medical records requirements;

(ii) residency requirements;

(iii) lack of birth certificates, school records, or other documentation;

(iv) guardianship issues; or

(v) uniform or dress code requirements.

(I) A demonstration that the State educational agency and local educational agencies in the State have developed, and shall review and revise, policies to remove barriers to the enrollment and retention of homeless children and youths in schools in the State.

(J) Assurances that—

(i) the State educational agency and local educational agencies in the State will adopt policies and practices to ensure that homeless children and youths are not stigmatized or segregated on the basis of their status as homeless;

(ii) local educational agencies will designate an appropriate staff person, who may also be a coordinator for other Federal programs, as a local educational agency liaison for homeless children and youths, to carry out the duties described in paragraph (6)(A); and

(iii) the State and its local educational agencies will adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin, as determined in paragraph (3)(A), in accordance with the following, as applicable:

(I) If the homeless child or youth continues to live in the area served by the local educational agency in which the school of origin is located, the child's or youth's transportation to and from the school of origin shall be provided or arranged by the local educational agency in which the school of origin is located.

(II) If the homeless child's or youth's living arrangements in the area served by the local educational agency of origin

terminate and the child or youth, though continuing his or her education in the school of origin, begins living in an area served by another local educational agency, the local educational agency of origin and the local educational agency in which the homeless child or youth is living shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the school of origin. If the local educational agencies are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally.

(2) Compliance

(A) In general

Each plan adopted under this subsection shall also describe how the State will ensure that local educational agencies in the State will comply with the requirements of paragraphs (3) through (7).

(B) Coordination

Such plan shall indicate what technical assistance the State will furnish to local educational agencies and how compliance efforts will be coordinated with the local educational agency liaisons designated under paragraph (1)(J)(ii).

(3) Local educational agency requirements

(A) In general

The local educational agency serving each child or youth to be assisted under this part shall, according to the child's or youth's best interest—

(i) continue the child's or youth's education in the school of origin for the duration of homelessness—

(I) in any case in which a family becomes homeless between academic years or during an academic year; or

(II) for the remainder of the academic year, if the child or youth becomes permanently housed during an academic year; or

(ii) enroll the child or youth in any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.

(B) Best interest

In determining the best interest of the child or youth under subparagraph (A), the local educational agency shall—

(i) to the extent feasible, keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child's or youth's parent or guardian;

(ii) provide a written explanation, including a statement regarding the right to appeal under subparagraph (E), to the homeless child's or youth's parent or guardian, if the local educational agency sends such child or youth to a school other than the school of origin or a school requested by the parent or guardian; and

(iii) in the case of an unaccompanied youth, ensure that the homeless liaison designated under paragraph (1)(J)(ii) assists in placement or enrollment decisions under this subparagraph, considers the views of such unaccompanied youth, and provides notice to such youth of the right to appeal under subparagraph (E).

(C) Enrollment

(i) The school selected in accordance with this paragraph shall immediately enroll the homeless child or youth, even if the child or youth is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation.

(ii) The enrolling school shall immediately contact the school last attended by the child or youth to obtain relevant academic and other records.

(iii) If the child or youth needs to obtain immunizations, or immunization or medical records, the enrolling school shall immediately refer the parent or guardian of the child or youth to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall assist in obtaining necessary immunizations, or immunization or medical records, in accordance with subparagraph (D).

(D) Records

Any record ordinarily kept by the school, including immunization or medical records, academic records, birth certificates, guardianship records, and evaluations for special services or programs, regarding each homeless child or youth shall be maintained—

(i) so that the records are available, in a timely fashion, when a child or youth enters a new school or school district; and

(ii) in a manner consistent with section 1232g of title 20.

(E) Enrollment disputes

If a dispute arises over school selection or enrollment in a school—

(i) the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute;

(ii) the parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision;

(iii) the child, youth, parent, or guardian shall be referred to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall carry out the dispute resolution process as described in paragraph (1)(C) as expeditiously as possible after receiving notice of the dispute; and

(iv) in the case of an unaccompanied youth, the homeless liaison shall ensure that the youth is immediately enrolled in school pending resolution of the dispute.

(F) Placement choice

The choice regarding placement shall be made regardless of whether the child or

youth lives with the homeless parents or has been temporarily placed elsewhere.

(G) School of origin defined

In this paragraph, the term ''school of origin'' means the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

(H) Contact information

Nothing in this part shall prohibit a local educational agency from requiring a parent or guardian of a homeless child to submit contact information.

(4) Comparable services

Each homeless child or youth to be assisted under this part shall be provided services comparable to services offered to other students in the school selected under paragraph (3), including the following:

(A) Transportation services.

(B) Educational services for which the child or youth meets the eligibility criteria, such as services provided under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or similar State or local programs, educational programs for children with disabilities, and educational programs for students with limited English proficiency.

(C) Programs in vocational and technical education.

(D) Programs for gifted and talented students.

(E) School nutrition programs.

(5) Coordination

(A) In general

Each local educational agency serving homeless children and youths that receives assistance under this part shall coordinate—

(i) the provision of services under this part with local social services agencies and other agencies or programs providing services to homeless children and youths and their families, including services and programs funded under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); and

(ii) with other local educational agencies on interdistrict issues, such as transportation or transfer of school records.

(B) Housing assistance

If applicable, each State educational agency and local educational agency that receives assistance under this part shall coordinate with State and local housing agencies responsible for developing the comprehensive housing affordability strategy described in section 12705 of this title to minimize educational disruption for children and youths who become homeless.

(C) Coordination purpose

The coordination required under subparagraphs (A) and (B) shall be designed to—

(i) ensure that homeless children and youths have access and reasonable proximity to available education and related support services; and

(ii) raise the awareness of school personnel and service providers of the effects of short-term stays in a shelter and other challenges associated with homelessness.

(6) Local educational agency liaison

(A) Duties

Each local educational agency liaison for homeless children and youths, designated under paragraph (1)(J)(ii), shall ensure that—

(i) homeless children and youths are identified by school personnel and through coordination activities with other entities and agencies;

(ii) homeless children and youths enroll in, and have a full and equal opportunity to succeed in, schools of that local educational agency;

(iii) homeless families, children, and youths receive educational services for which such families, children, and youths are eligible, including Head Start and Even Start programs and preschool programs administered by the local educational agency, and referrals to health care services, dental services, mental health services, and other appropriate services;

(iv) the parents or guardians of homeless children and youths are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;

(v) public notice of the educational rights of homeless children and youths is disseminated where such children and youths receive services under this chapter, such as schools, family shelters, and soup kitchens;

(vi) enrollment disputes are mediated in accordance with paragraph (3)(E); and

(vii) the parent or guardian of a homeless child or youth, and any unaccompanied youth, is fully informed of all transportation services, including transportation to the school of origin, as described in paragraph (1)(J)(iii), and is assisted in accessing transportation to the school that is selected under paragraph (3)(A).

(B) Notice

State coordinators established under subsection (d)(3) of this section and local educational agencies shall inform school personnel, service providers, and advocates working with homeless families of the duties of the local educational agency liaisons.

(C) Local and State coordination

Local educational agency liaisons for homeless children and youths shall, as a part of their duties, coordinate and collaborate with State coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youths.

(7) Review and revisions

(A) In general

Each State educational agency and local educational agency that receives assistance under this part shall review and revise any policies that may act as barriers to the enrollment of homeless children and youths in schools that are selected under paragraph (3).

(B) Consideration

In reviewing and revising such policies, consideration shall be given to issues concerning transportation, immunization, residency, birth certificates, school records and other documentation, and guardianship.

(C) Special attention

Special attention shall be given to ensuring the enrollment and attendance of homeless children and youths who are not currently attending school.

(Pub. L. 100–77, title VII, § 722, as added Pub. L. 107–110, title X, § 1032, Jan. 8, 2002, 115 Stat. 1990.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(2)(B)(i), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (g)(4)(B), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Runaway and Homeless Youth Act, referred to in subsec. (g)(5)(A)(i), is title III of Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1129, which is classified generally to subchapter III (§ 5701 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

This chapter, referred to in subsec. (g)(6)(A)(v), was in the original ''this Act'', meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

PRIOR PROVISIONS

A prior section 11432, Pub. L. 100–77, title VII, § 722, as added Pub. L. 103–382, title III, § 323, Oct. 20, 1994, 108 Stat. 3957, related to grants for State and local activities for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11432, Pub. L. 100–77, title VII, § 722, July 22, 1987, 101 Stat. 525; Pub. L. 100–628, title VII, § 702(a), Nov. 7, 1988, 102 Stat. 3245; Pub. L. 101–645, title VI, § 612(b), Nov. 29, 1990, 104 Stat. 4735, related to grants for State and local activities for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 103–382.

§ 11433. Local educational agency subgrants for the education of homeless children and youths

(a) General authority

(1) In general

The State educational agency shall, in accordance with section 11432(e) of this title, and from amounts made available to such agency under section 11435 of this title, make subgrants to local educational agencies for the purpose of facilitating the enrollment, attendance, and success in school of homeless children and youths.

(2) Services

(A) In general

Services under paragraph (1)—

(i) may be provided through programs on school grounds or at other facilities;

(ii) shall, to the maximum extent practicable, be provided through existing programs and mechanisms that integrate homeless children and youths with nonhomeless children and youths; and

(iii) shall be designed to expand or improve services provided as part of a school's regular academic program, but not to replace such services provided under such program.

(B) Services on school grounds

If services under paragraph (1) are provided on school grounds, schools—

(i) may use funds under this part to provide the same services to other children and youths who are determined by the local educational agency to be at risk of failing in, or dropping out of, school, subject to the requirements of clause (ii); and

(ii) except as otherwise provided in section 11432(e)(3)(B) of this title, shall not provide services in settings within a school that segregate homeless children and youths from other children and youths, except as necessary for short periods of time—

(I) for health and safety emergencies; or

(II) to provide temporary, special, and supplementary services to meet the unique needs of homeless children and youths.

(3) Requirement

Services provided under this section shall not replace the regular academic program and shall be designed to expand upon or improve services provided as part of the school's regular academic program.

(b) Application

A local educational agency that desires to receive a subgrant under this section shall submit an application to the State educational agency at such time, in such manner, and containing or accompanied by such information as the State educational agency may reasonably require. Such application shall include the following:

(1) An assessment of the educational and related needs of homeless children and youths in the area served by such agency (which may be undertaken as part of needs assessments for other disadvantaged groups).

(2) A description of the services and programs for which assistance is sought to address the needs identified in paragraph (1).

(3) An assurance that the local educational agency's combined fiscal effort per student, or the aggregate expenditures of that agency and

the State with respect to the provision of free public education by such agency for the fiscal year preceding the fiscal year for which the determination is made, was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second fiscal year preceding the fiscal year for which the determination is made.

(4) An assurance that the applicant complies with, or will use requested funds to comply with, paragraphs (3) through (7) of section 11432(g) of this title.

(5) A description of policies and procedures, consistent with section 11432(e)(3) of this title, that the agency will implement to ensure that activities carried out by the agency will not isolate or stigmatize homeless children and youths.

(c) Awards

(1) In general

The State educational agency shall, in accordance with the requirements of this part and from amounts made available to it under section 11435 of this title, make competitive subgrants to local educational agencies that submit applications under subsection (b) of this section. Such subgrants shall be awarded on the basis of the need of such agencies for assistance under this part and the quality of the applications submitted.

(2) Need

In determining need under paragraph (1), the State educational agency may consider the number of homeless children and youths enrolled in preschool, elementary, and secondary schools within the area served by the local educational agency, and shall consider the needs of such children and youths and the ability of the local educational agency to meet such needs. The State educational agency may also consider the following:

(A) The extent to which the proposed use of funds will facilitate the enrollment, retention, and educational success of homeless children and youths.

(B) The extent to which the application—

(i) reflects coordination with other local and State agencies that serve homeless children and youths; and

(ii) describes how the applicant will meet the requirements of section 11432(g)(3) of this title.

(C) The extent to which the applicant exhibits in the application and in current practice a commitment to education for all homeless children and youths.

(D) Such other criteria as the State agency determines appropriate.

(3) Quality

In determining the quality of applications under paragraph (1), the State educational agency shall consider the following:

(A) The applicant's needs assessment under subsection (b)(1) of this section and the likelihood that the program presented in the application will meet such needs.

(B) The types, intensity, and coordination of the services to be provided under the program.

(C) The involvement of parents or guardians of homeless children or youths in the education of their children.

(D) The extent to which homeless children and youths will be integrated within the regular education program.

(E) The quality of the applicant's evaluation plan for the program.

(F) The extent to which services provided under this part will be coordinated with other services available to homeless children and youths and their families.

(G) Such other measures as the State educational agency considers indicative of a high-quality program, such as the extent to which the local educational agency will provide case management or related services to unaccompanied youths.

(4) Duration of grants

Grants awarded under this section shall be for terms not to exceed 3 years.

(d) Authorized activities

A local educational agency may use funds awarded under this section for activities that carry out the purpose of this part, including the following:

(1) The provision of tutoring, supplemental instruction, and enriched educational services that are linked to the achievement of the same challenging State academic content standards and challenging State student academic achievement standards the State establishes for other children and youths.

(2) The provision of expedited evaluations of the strengths and needs of homeless children and youths, including needs and eligibility for programs and services (such as educational programs for gifted and talented students, children with disabilities, and students with limited English proficiency, services provided under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or similar State or local programs, programs in vocational and technical education, and school nutrition programs).

(3) Professional development and other activities for educators and pupil services personnel that are designed to heighten the understanding and sensitivity of such personnel to the needs of homeless children and youths, the rights of such children and youths under this part, and the specific educational needs of runaway and homeless youths.

(4) The provision of referral services to homeless children and youths for medical, dental, mental, and other health services.

(5) The provision of assistance to defray the excess cost of transportation for students under section 11432(g)(4)(A) of this title, not otherwise provided through Federal, State, or local funding, where necessary to enable students to attend the school selected under section 11432(g)(3) of this title.

(6) The provision of developmentally appropriate early childhood education programs, not otherwise provided through Federal, State, or local funding, for preschool-aged homeless children.

(7) The provision of services and assistance to attract, engage, and retain homeless chil-

dren and youths, and unaccompanied youths, in public school programs and services provided to nonhomeless children and youths.

(8) The provision for homeless children and youths of before- and after-school, mentoring, and summer programs in which a teacher or other qualified individual provides tutoring, homework assistance, and supervision of educational activities.

(9) If necessary, the payment of fees and other costs associated with tracking, obtaining, and transferring records necessary to enroll homeless children and youths in school, including birth certificates, immunization or medical records, academic records, guardianship records, and evaluations for special programs or services.

(10) The provision of education and training to the parents of homeless children and youths about the rights of, and resources available to, such children and youths.

(11) The development of coordination between schools and agencies providing services to homeless children and youths, as described in section 11432(g)(5) of this title.

(12) The provision of pupil services (including violence prevention counseling) and referrals for such services.

(13) Activities to address the particular needs of homeless children and youths that may arise from domestic violence.

(14) The adaptation of space and purchase of supplies for any nonschool facilities made available under subsection (a)(2) of this section to provide services under this subsection.

(15) The provision of school supplies, including those supplies to be distributed at shelters or temporary housing facilities, or other appropriate locations.

(16) The provision of other extraordinary or emergency assistance needed to enable homeless children and youths to attend school.

(Pub. L. 100–77, title VII, § 723, as added Pub. L. 107–110, title X, § 1032, Jan. 8, 2002, 115 Stat. 2001.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(2), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 11433, Pub. L. 100–77, title VII, § 723, as added Pub. L. 103–382, title III, § 323, Oct. 20, 1994, 108 Stat. 3962, related to local educational agency grants for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11433, Pub. L. 100–77, title VII, § 723, July 22, 1987, 101 Stat. 527; Pub. L. 100–628, title VII, § 702(b), Nov. 7, 1988, 102 Stat. 3245; Pub. L. 101–645, title VI, § 612(c), Nov. 29, 1990, 104 Stat. 4739, related to local educational agency grants for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 103–382.

§ 11434. Secretarial responsibilities

(a) Review of State plans

In reviewing the State plan submitted by a State educational agency under section 11432(g) of this title, the Secretary shall use a peer review process and shall evaluate whether State laws, policies, and practices described in such plan adequately address the problems of homeless children and youths relating to access to education and placement as described in such plan.

(b) Technical assistance

The Secretary shall provide support and technical assistance to a State educational agency to assist such agency in carrying out its responsibilities under this part, if requested by the State educational agency.

(c) Notice

The Secretary shall, before the next school year that begins after January 8, 2002, create and disseminate nationwide a public notice of the educational rights of homeless children and youths and disseminate such notice to other Federal agencies, programs, and grantees, including Head Start grantees, Health Care for the Homeless grantees, Emergency Food and Shelter grantees, and homeless assistance programs administered by the Department of Housing and Urban Development.

(d) Evaluation and dissemination

The Secretary shall conduct evaluation and dissemination activities of programs designed to meet the educational needs of homeless elementary and secondary school students, and may use funds appropriated under section 11435 of this title to conduct such activities.

(e) Submission and distribution

The Secretary shall require applications for grants under this part to be submitted to the Secretary not later than the expiration of the 60-day period beginning on the date that funds are available for purposes of making such grants and shall make such grants not later than the expiration of the 120-day period beginning on such date.

(f) Determination by Secretary

The Secretary, based on the information received from the States and information gathered by the Secretary under subsection (h) of this section, shall determine the extent to which State educational agencies are ensuring that each homeless child and homeless youth has access to a free appropriate public education, as described in section 11431(1) of this title.

(g) Guidelines

The Secretary shall develop, issue, and publish in the Federal Register, not later than 60 days after January 8, 2002, school enrollment guidelines for States with respect to homeless children and youths. The guidelines shall describe—

(1) successful ways in which a State may assist local educational agencies to immediately enroll homeless children and youths in school; and

(2) how a State can review the State's requirements regarding immunization and medical or school records and make such revisions to the requirements as are appropriate and necessary in order to enroll homeless children and youths in school immediately.

(h) Information

(1) In general

From funds appropriated under section 11435 of this title, the Secretary shall, directly or through grants, contracts, or cooperative agreements, periodically collect and disseminate data and information regarding—

(A) the number and location of homeless children and youths;

(B) the education and related services such children and youths receive;

(C) the extent to which the needs of homeless children and youths are being met; and

(D) such other data and information as the Secretary determines to be necessary and relevant to carry out this part.

(2) Coordination

The Secretary shall coordinate such collection and dissemination with other agencies and entities that receive assistance and administer programs under this part.

(i) Report

Not later than 4 years after January 8, 2002, the Secretary shall prepare and submit to the President and the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the status of education of homeless children and youths, which shall include information on—

(1) the education of homeless children and youths; and

(2) the actions of the Secretary and the effectiveness of the programs supported under this part.

(Pub. L. 100–77, title VII, § 724, as added Pub. L. 107–110, title X, § 1032, Jan. 8, 2002, 115 Stat. 2004.)

PRIOR PROVISIONS

A prior section 11434, Pub. L. 100–77, title VII, § 724, as added Pub. L. 103–382, title III, § 323, Oct. 20, 1994, 108 Stat. 3964, related to Secretarial responsibilities, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11434, Pub. L. 100–77, title VII, § 724, July 22, 1987, 101 Stat. 528; Pub. L. 101–645, title VI, § 612(d), Nov. 29, 1990, 104 Stat. 4742, related to national responsibilities, prior to the general amendment of this part by Pub. L. 103–382.

§ 11434a. Definitions

For purposes of this part:

(1) The terms ''enroll'' and ''enrollment'' include attending classes and participating fully in school activities.

(2) The term ''homeless children and youths''—

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302(a)(2)(C) of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

(3) The terms ''local educational agency'' and ''State educational agency'' have the meanings given such terms in section 7801 of title 20.

(4) The term ''Secretary'' means the Secretary of Education.

(5) The term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) The term ''unaccompanied youth'' includes a youth not in the physical custody of a parent or guardian.

(Pub. L. 100–77, title VII, § 725, as added Pub. L. 107–110, title X, § 1032, Jan. 8, 2002, 115 Stat. 2005.)

PRIOR PROVISIONS

A prior section 11434a, Pub. L. 100–77, title VII, § 725, as added Pub. L. 103–382, title III, § 323, Oct. 20, 1994, 108 Stat. 3965, defined terms, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11434a, Pub. L. 100–77, title VII, § 725, as added Pub. L. 101–645, title VI, § 613(2), Nov. 29, 1990, 104 Stat. 4743, related to reports by Comptroller General, prior to the general amendment of this part by Pub. L. 103–382.

A prior section 725 of Pub. L. 100–77 was renumbered section 726 and was classified to section 11435 of this title, prior to the general amendment of this part by Pub. L. 103–382.

§ 11435. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $70,000,000 for fiscal year 2002 and such sums as may be necessary for each of fiscal years 2003 through 2007.

(Pub. L. 100–77, title VII, § 726, as added Pub. L. 107–110, title X, § 1032, Jan. 8, 2002, 115 Stat. 2006.)

PRIOR PROVISIONS

A prior section 11435, Pub. L. 100–77, title VII, § 726, as added Pub. L. 103–382, title III, § 323, Oct. 20, 1994, 108 Stat. 3965, authorized appropriations, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11435, Pub. L. 100–77, title VII, § 726, formerly § 725, July 22, 1987, 101 Stat. 528; Pub. L. 100–628, title VII, § 702(c), Nov. 7, 1988, 102 Stat. 3245; renumbered § 726, Pub. L. 101–645, title VI, § 613(1), Nov. 29, 1990, 104 Stat. 4743, defined terms used in this part, prior to the general amendment of this part by Pub. L. 103–382.

PART C—JOB TRAINING FOR HOMELESS

§§ 11441 to 11447. Repealed. Pub. L. 105–220, title I, § 199(a)(5), Aug. 7, 1998, 112 Stat. 1059

Section 11441, Pub. L. 100–77, title VII, § 731, July 22, 1987, 101 Stat. 528, authorized demonstration program for homeless individuals.

Section 11442, Pub. L. 100–77, title VII, § 732, July 22, 1987, 101 Stat. 528, related to State coordination with demonstration grant recipients.

Section 11443, Pub. L. 100–77, title VII, § 733, July 22, 1987, 101 Stat. 529; Pub. L. 101–645, title VI, § 621(a), Nov. 29, 1990, 104 Stat. 4743, related to application for grants.

Section 11444, Pub. L. 100–77, title VII, § 734, July 22, 1987, 101 Stat. 529, related to authorized activities.

Section 11445, Pub. L. 100–77, title VII, § 735, July 22, 1987, 101 Stat. 529, related to payments, Federal share, and limitations.

Section 11446, Pub. L. 100–77, title VII, § 736, July 22, 1987, 101 Stat. 530, related to evaluation of projects.

Section 11447, Pub. L. 100–77, title VII, § 737, July 22, 1987, 101 Stat. 530; Pub. L. 100–628, title VII, § 703(a), Nov. 7, 1988, 102 Stat. 3246, defined terms.

§ 11448. Repealed. Pub. L. 107–95, § 5(e)(4), Dec. 21, 2001, 115 Stat. 918

Section, Pub. L. 100–77, title VII, § 738, July 22, 1987, 101 Stat. 530; Pub. L. 102–590, § 11(a), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 104–110, title I, § 102(d)(1), Feb. 13, 1996, 110 Stat. 769; Pub. L. 104–275, title VI, § 601(b), Oct. 9, 1996, 110 Stat. 3344; Pub. L. 105–114, title II, § 203(c)(1), Nov. 21, 1997, 111 Stat. 2288, related to programs to expedite the reintegration of homeless veterans into the labor force.

§§ 11449, 11450. Repealed. Pub. L. 105–220, title I, § 199(a)(5), Aug. 7, 1998, 112 Stat. 1059

Section 11449, Pub. L. 100–77, title VII, § 739, July 22, 1987, 101 Stat. 531; Pub. L. 100–628, title VII, § 703(b), (c), Nov. 7, 1988, 102 Stat. 3246; Pub. L. 101–165, title IX, § 9119(a), Nov. 21, 1989, 103 Stat. 1157; Pub. L. 101–645, title VI, § 621(b), Nov. 29, 1990, 104 Stat. 4744; Pub. L. 102–590, § 11(b)(1), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 103–239, title VII, § 701(a), May 4, 1994, 108 Stat. 605, authorized appropriations.

Section 11450, Pub. L. 100–77, title VII, § 741, July 22, 1987, 101 Stat. 532; Pub. L. 101–645, title VI, § 621(c), Nov. 29, 1990, 104 Stat. 4744; Pub. L. 102–590, § 11(b)(2), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 103–239, title VII, § 701(b), May 4, 1994, 108 Stat. 606; Pub. L. 104–110, title I, § 102(d)(2), Feb. 13, 1996, 110 Stat. 769; Pub. L. 105–114, title II, § 203(c)(2), Nov. 21, 1997, 111 Stat. 2288, provided for termination of this part on Dec. 31, 1999.

PART D—EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

§§ 11461 to 11466. Repealed. Pub. L. 105–220, title I, § 199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section 11461, Pub. L. 100–77, title VII, § 751, July 22, 1987, 101 Stat. 532, established emergency community services homeless grant program.

Section 11462, Pub. L. 100–77, title VII, § 752, July 22, 1987, 101 Stat. 532; Pub. L. 100–628, title VII, § 704(a), Nov. 7, 1988, 102 Stat. 3246, related to allocation of grants.

Section 11463, Pub. L. 100–77, title VII, § 753, July 22, 1987, 101 Stat. 532; Pub. L. 100–628, title VII, § 704(b), (c), Nov. 7, 1988, 102 Stat. 3246; Pub. L. 101–645, title VI, § 631(a), (b), Nov. 29, 1990, 104 Stat. 4746, related to program requirements.

Section 11464, Pub. L. 100–77, title VII, § 754, July 22, 1987, 101 Stat. 533; Pub. L. 100–628, title VII, § 704(d), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 101–645, title VI, § 631(c), Nov. 29, 1990, 104 Stat. 4746; Pub. L. 103–252, title II, § 206, May 18, 1994, 108 Stat. 656, authorized appropriations.

Section 11465, Pub. L. 100–77, title VII, § 755, as added Pub. L. 101–645, title VI, § 641, Nov. 29, 1990, 104 Stat. 4746, related to evaluation of services provided to homeless individuals.

Section 11466, Pub. L. 100–77, title VII, § 756, as added Pub. L. 101–645, title VI, § 641, Nov. 29, 1990, 104 Stat. 4747, required report by General Accounting Office.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1999, see section 199(c)(2)(A) of Pub. L. 105–220, set out as a note under section 11421 of this title.

PART E—MISCELLANEOUS PROVISIONS

§§ 11471, 11472. Repealed. Pub. L. 105–220, title I, § 199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section 11471, Pub. L. 100–77, title VII, § 761, July 22, 1987, 101 Stat. 533, authorized grant for study of causes of youth homelessness.

Section 11472, Pub. L. 100–77, title VII, § 762, July 22, 1987, 101 Stat. 533, related to set-asides for Native Americans.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1999, see section 199(c)(2)(A) of Pub. L. 105–220, set out as a note under section 11421 of this title.

PART F—FAMILY SUPPORT CENTERS

§§ 11481 to 11489. Repealed. Pub. L. 104–235, title I, § 142(b), Oct. 3, 1996, 110 Stat. 3089

Section 11481, Pub. L. 100–77, title VII, § 771, as added Pub. L. 101–645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4747, related to definitions for this part.

Section 11482, Pub. L. 100–77, title VII, § 772, as added Pub. L. 101–645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4749; amended Pub. L. 103–382, title III, § 370(a), Oct. 20, 1994, 108 Stat. 3976, related to general grants for demonstration programs to encourage provision of supportive services to low-income individuals and families.

Section 11483, Pub. L. 100–77, title VII, § 773, as added Pub. L. 101–645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4752, related to requirement that family support grant recipients were to use not more than 7 percent of such grant to improve the retention and effectiveness of staff and volunteers.

Section 11484, Pub. L. 100–77, title VII, § 774, as added Pub. L. 101–645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4752; amended Pub. L. 103–382, title III, § 370(d), Oct. 20, 1994, 108 Stat. 3977, related to family case managers.

Section 11485, Pub. L. 100–77, title VII, § 775, as added Pub. L. 101–645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4752, related to Gateway programs.

Section 11486, Pub. L. 100–77, title VII, § 776, as added Pub. L. 101–645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4754, related to evaluation of programs and entities that received assistance under this subchapter.

Section 11487, Pub. L. 100–77, title VII, § 777, as added Pub. L. 101–645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4754; amended Pub. L. 103–382, title III, § 370(b), Oct. 20, 1994, 108 Stat. 3977, related to submission of reports to Congress by the Secretary.

Section 11488, Pub. L. 100–77, title VII, § 778, as added Pub. L. 101–645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4755, provided that nothing in this part was to be construed to modify Federal selection preferences described in section 1437d of this title or authorized policies and procedures of governmental housing authorities operating under annual assistance contracts pursuant to section 1437 et seq. of this title with respect to admissions, tenant selection and evictions.

Section 11489, Pub. L. 100–77, title VII, § 779, as added Pub. L. 101–645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4755; amended Pub. L. 103–382, title III, § 370(c), Oct. 20, 1994, 108 Stat. 3977, authorized appropriations to carry out this part.

CHAPTER 120—ENTERPRISE ZONE DEVELOPMENT

Sec.
11501. Designation of enterprise zones.
11502. Evaluation and reporting requirements.
11503. Interaction with other Federal programs.
11504. Waiver or modification of housing and community development rules in enterprise zones.
11505. Coordination with CDBG and UDAG programs.

§ 11501. Designation of enterprise zones

(a) Designation of zones

(1) "Enterprise zone" defined

For purposes of this section, the term ''enterprise zone'' means any area that—

(A) is nominated by one or more local governments and the State or States in which it is located for designation as an enterprise zone (in this section referred to as a ''nominated area''); and

(B) the Secretary of Housing and Urban Development designates as an enterprise zone, after consultation with—

(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury, the Director of the Office of Management and Budget, and the Administrator of the Small Business Administration; and

(ii) in the case of an area on an Indian reservation, the Secretary of the Interior.

(2) Number of designations

(A) In general

The Secretary of Housing and Urban Development may designate not more than 100 nominated areas as enterprise zones.

(B) Minimum designation in rural areas

Of the areas designated under subparagraph (A), not less than ⅓ shall be areas that—

(i) are within a local government jurisdiction or jurisdictions with a population of less than 50,000 (as determined under the most recent census data available);

(ii) are outside of a metropolitan statistical area (as designated by the Director of the Office of Management and Budget); or

(iii) that are determined by the Secretary, after consultation with the Secretary of Commerce, to be rural areas.

(3) Areas designated based solely on degree of poverty

(A) In general

Except as provided in subparagraph (B), the Secretary shall designate (i) the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C) and (D) of subsection (c)(3) of this section, and the 1 criterion set forth in subparagraph (E)(i) or (E)(ii) of subsection (c)(3) of this section that gives an area a higher ranking; and (ii) for areas described in paragraph (2)(B), the nominated areas with the highest ranking with respect to the 1 criterion set forth in subparagraph (C), (D), (E)(i), or (E)(ii) of subsection (c)(3) of this section that gives an area a higher ranking. For purposes of the preceding sentence, an area shall be ranked within each such criterion on the basis of the amount by which the area exceeds such criterion, with the area that exceeds such criterion by the greatest amount given the highest ranking.

(B) Exception where inadequate course of action, etc.

An area shall not be designated under subparagraph (A) if the Secretary determines that the course of action with respect to such area is inadequate.

(C) Separate application to rural and other areas

Subparagraph (A) shall be applied separately with respect to areas described in paragraph (2)(B) and to other areas.

(4) Limitation on designations

(A) Publication of regulations

Before designating any area as an enterprise zone, the Secretary shall prescribe by regulation not later than 4 months following February 5, 1988, after consultation with the officials described in paragraph (1)(B)—

(i) the procedures for nominating an area under paragraph (1)(A);

(ii) the parameters relating to the size and population characteristics of an enterprise zone; and

(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d) of this section.

(B) Time limitations

The Secretary shall designate nominated areas as enterprise zones only during the 24-month period beginning on the 1st day of the 1st month following the month in which the date of the enactment of the Housing and Community Development Act of 1992 occurs.

(C) Procedural rules

The Secretary shall not make any designation under paragraph (1) unless—

(i) the local governments and the State in which the nominated area is located have the authority—

(I) to nominate such area for designation as an enterprise zone;

(II) to make the State and local commitments under subsection (d) of this section; and

(III) to provide assurances satisfactory to the Secretary that such commitments will be fulfilled;

(ii) a nomination therefor is submitted in such a manner and in such form, and contains such information, as the Secretary shall by regulation prescribe;

(iii) the Secretary determines that any information furnished is reasonably accurate; and

(iv) the State and local governments certify that no portion of the area nominated is already included in an enterprise zone or in an area otherwise nominated to be an enterprise zone.

(5) Nomination process for Indian reservations

In the case of a nominated area on an Indian reservation, the reservation governing body

(as determined by the Secretary of the Interior) shall be deemed to be both the State and local governments with respect to such area.

(b) Period for which designation is in effect

(1) In general

Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

(A) December 31 of the 24th calendar year following the calendar year in which such date occurs;

(B) the termination date designated by the State and local governments as provided for in their nomination pursuant to subsection (a)(4)(C)(ii) of this section; or

(C) the date the Secretary revokes such designation under paragraph (2).

(2) Revocation of designation

The Secretary, after consultation with the officials described in subsection (a)(1)(B) of this section and a hearing on the record involving officials of the State or local government involved, may revoke the designation of an area if the Secretary determines that the local government or the State in which it is located is not complying substantially with the State and local commitments pursuant to subsection (d) of this section.

(c) Area and eligibility requirements

(1) In general

The Secretary may make a designation of any nominated area under subsection (a)(1) of this section only if it meets the requirements of paragraphs (2) and (3).

(2) Area requirements

A nominated area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of the local government;

(B) the boundary of the area is continuous; and

(C) the area—

(i) has a population, as determined by the most recent census data available, of not less than—

(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(2)(B)(i) of this section) is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or

(II) 1,000 in any other case; or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(3) Eligibility requirements

For purposes of paragraph (1), a nominated area meets the requirements of this paragraph if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that—

(A) the area is one of pervasive poverty, unemployment, and general distress;

(B) the area is located wholly within the jurisdiction of a local government that is eligible for Federal assistance under section 5318 of this title, as in effect on October 28, 1992;

(C) the unemployment rate, as determined by the appropriate available data, was not less than 1.5 times the national unemployment rate for that period;

(D) the poverty rate (as determined by the most recent census data available) for each populous census tract (or where not tracted, the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas) within the area was not less than 20 percent for the period to which such data relate; and

(E) the area meets at least one of the following criteria:

(i) Not less than 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the local government (determined in the same manner as under section 5318 of this title).

(ii) The population of the area decreased by 20 percent or more between 1970 and 1980 (as determined from the most recent census available).

(4) Eligibility requirements for rural areas

For purposes of paragraph (1), a nominated area that is a rural area described in subsection (a)(2)(B) of this section meets the requirements of paragraph (3) if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that the area meets—

(A) the criteria set forth in subparagraphs (A) and (B) of paragraph (3); and

(B) not less than one of the criteria set forth in the other subparagraphs of paragraph (3).

(d) Required State and local commitments

(1) In general

No nominated area shall be designated as an enterprise zone unless the local government and the State in which it is located agree in writing that, during any period during which the area is an enterprise zone, such governments will follow a specified course of action designated to reduce the various burdens borne by employers or employees in such area. A course of action shall not be treated as meeting the requirements of this paragraph unless the course of action include provisions described in not less than 4 of the subparagraphs of paragraph (2).

(2) Course of action

The course of action under paragraph (1) may be implemented by both such governments and private nongovernmental entities, may be funded from proceeds of any program administered by the Secretary of Housing and Urban Development or of any program administered by the Secretary of Agriculture under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], and may include, but is not limited to—

(A) a reduction of tax rates or fees applying within the enterprise zone;

(B) an increase in the level of public services, or in the efficiency of the delivery of public services, within the enterprise zone;

(C) actions to reduce, remove, simplify, or streamline paperwork requirements within the enterprise zone;

(D) involvement in the program by public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents of the nominated area;

(E) the giving of special preference to contractors owned and operated by members of any minority; and

(F) the gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

(3) Recognition of past efforts

In evaluating courses of action agreed to by any State or local government, the Secretary shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.

(4) Prohibition of assistance for business relocations

(A) In general

The course of action implemented under paragraph (1) may not include any action to assist—

(i) any establishment relocating from one area to another area; or

(ii) any subcontractor whose purpose is to divest, or whose economic success is dependent upon divesting, any other contractor or subcontractor of any contract customarily performed by such other contractor or subcontractor.

(B) Exception

The limitations established in subparagraph (A) shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary if the Secretary—

(i) finds that the establishment of the new branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where the existing business entity conducts business operations; and

(ii) has no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

(e) Definitions

For purposes of this section:

(1) Government

If more than one government seeks to nominate an area as an enterprise zone, any reference to, or requirement of, this section shall apply to all such governments.

(2) Local government

The term ''local government'' means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State;

(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary; and

(C) the District of Columbia.

(3) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(4) State

The term ''State'' includes Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other possession of the United States.

(Pub. L. 100–242, title VII, § 701, Feb. 5, 1988, 101 Stat. 1957; Pub. L. 100–628, title X, § 1090(a), (b), Nov. 7, 1988, 102 Stat. 3283; Pub. L. 102–550, title VIII, § 834(a), Oct. 28, 1992, 106 Stat. 3855.)

REFERENCES IN TEXT

The date of the enactment of the Housing and Community Development Act of 1992, referred to in subsec. (a)(4)(B), is the date of enactment of Pub. L. 102–550, which was approved Oct. 28, 1992.

The Housing Act of 1949, referred to in subsec. (d)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(4)(B). Pub. L. 102–550, § 834(a)(1), substituted ''the date of the enactment of the Housing and Community Development Act of 1992 occurs'' for ''the effective date of the regulations described in subparagraph (A) occurs''.

Subsec. (c)(3)(B). Pub. L. 102–550, § 834(a)(2), substituted ''October 28, 1992'' for ''February 5, 1988''.

1988—Subsec. (a)(2)(B). Pub. L. 100–628, § 1090(b), substituted ''under subparagraph (A)'' for ''under clause (i)'' in introductory provisions.

Subsec. (a)(3)(A). Pub. L. 100–628, § 1090(a), amended first sentence generally. Prior to amendment, first sentence read as follows: ''Except as provided in subparagraph (B), the Secretary shall designate the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C), (D), and (E) of subsection (c)(3) of this section.''

REGULATIONS

Section 1090(c) of Pub. L. 100–628 provided that: ''Not later than 30 days after the date of the enactment of this Act [Nov. 7, 1988], the Secretary of Housing and Urban Development shall revise the regulations issued by the Secretary to carry out title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501 et seq.) by issuing a final regulation, effective upon the date of publication, that carries out the amendments made by this section [amending this section].''

§ 11502. Evaluation and reporting requirements

Not later than the close of the 4th calendar year after the year in which the Secretary of Housing and Urban Development first designates

areas as enterprise zones pursuant to the amendments made by section 834 of the Housing and Community Development Act of 1992, and at the close of each 4th calendar year thereafter, the Secretary shall prepare and submit to the Congress a report on the effects of such designation in accomplishing the purposes of this chapter.

(Pub. L. 100–242, title VII, § 702, Feb. 5, 1988, 101 Stat. 1961; Pub. L. 102–550, title VIII, § 834(b), Oct. 28, 1992, 106 Stat. 3855.)

REFERENCES IN TEXT

Section 834 of the Housing and Community Development Act of 1992, referred to in text, is section 834 of Pub. L. 102–550, which amended this section and section 11501 of this title.

AMENDMENTS

1992—Pub. L. 102–550 inserted ''pursuant to the amendments made by section 834 of the Housing and Community Development Act of 1992'' after ''zones''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to quadriennial submittal of report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 106 of House Document No. 103–7.

§ 11503. Interaction with other Federal programs

(a) Coordination with relocation assistance

The designation of an enterprise zone under section 11501 of this title shall not—

(1) constitute approval of a Federal or federally assisted program or project (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.)); or

(2) entitle any person displaced from real property located in such zone to any rights or any benefits under such Act.

(b) Enterprise zones treated as labor surplus areas

Any area that is designated as an enterprise zone under section 11501 of this title shall be treated for all purposes under Federal law as a labor surplus area.

(Pub. L. 100–242, title VII, § 703, Feb. 5, 1988, 101 Stat. 1961.)

REFERENCES IN TEXT

The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, referred to in subsec. (a), probably means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (§ 4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

§ 11504. Waiver or modification of housing and community development rules in enterprise zones

(a) In general

Upon the written request of the governments that designated and approved an area that has been designated as an enterprise zone under section 11501 of this title, the Secretary of Housing and Urban Development (or, with respect to any rule issued under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], the Secretary of Agriculture) may, in order to further the job creation, community development, or economic revitalization objectives of the zone, waive or modify all or part of any rule that the Secretary has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within the zone.

(b) Limitation

No provision of this section may be construed to authorize the Secretary to waive or modify any rule adopted to carry out a statute or Executive order that prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, marital status, national origin, age, or handicap.

(c) Submission of requests

A request under subsection (a) of this section shall specify the rule or rules to be waived or modified and the change proposed, and shall briefly describe why the change would promote the achievement of the job creation, community development, or economic revitalization objectives of the enterprise zone. If a request is made to the Secretary of Agriculture, the requesting governments shall send a copy of the request to the Secretary of Housing and Urban Development at the time the request is made.

(d) Consideration of requests

In considering a request, the Secretary shall weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization within the enterprise zone against the effect the change is likely to have on the underlying purposes of applicable statutes in the geographic area that would be affected by the change. The Secretary shall approve the request whenever the Secretary finds, in the discretion of the Secretary, that the public interest that the proposed change would serve in furthering such job creation, community development or economic revitalization outweighs the public interest that continuation of the rule unchanged would serve in furthering such underlying purposes. The Secretary shall not approve any request to waive or modify a rule if that waiver or modification would—

(1) directly violate a statutory requirement; or

(2) be likely to present a significant risk to the public health, including environmental health or safety.

(e) Notice of disapproval

If a request is disapproved, the Secretary shall inform the requesting governments in writing of the reasons therefor and shall, to the maximum extent possible, work with such governments to develop an alternative, consistent with the standards contained in subsection (d) of this section.

(f) Period for determination

The Secretary shall discharge the responsibilities of the Secretary under this section in an expeditious manner, and shall make a determination on requests not later than 90 days after their receipt.

(g) Applicable procedures

A waiver or modification of a rule under subsection (a) of this section shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of title 5. To facilitate reaching a decision on any requested waiver or modification, the Secretary may seek the views of interested parties and, if the views are to be sought, determine how they should be obtained and to what extent, if any, they should be taken into account in considering the request. The Secretary shall publish a notice in the Federal Register stating any waiver or modification of a rule under this section.

(h) Effect of subsequent amendment of rules

In the event that the Secretary proposes to amend a rule for which a waiver or modification under this section is in effect, the Secretary shall not change the waiver or modification to impose additional requirements unless the Secretary determines, consistent with standards contained in subsection (d) of this section, that such action is necessary.

(i) Expiration of waivers and modifications

No waiver or modification of a rule under this section shall remain in effect for a longer period than the period for which the enterprise zone designation remains in effect for the area in which the waiver or modification applies.

(j) Definitions

For purposes of this section:

(1) Rule

The term ''rule'' means—

(A) any rule as defined in section 551(4) of title 5; or

(B) any rulemaking conducted on the record after opportunity for an agency hearing pursuant to sections 556 and 557 of title 5.

(2) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development or, with respect to any rule issued under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], the Secretary of Agriculture.

(Pub. L. 100–242, title VII, § 704, Feb. 5, 1988, 101 Stat. 1962.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsecs. (a) and (j)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

§ 11505. Coordination with CDBG and UDAG programs

It is the policy of the Congress that amounts provided under the community development block grant and urban development action grant programs under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] shall not be reduced in any fiscal year in which the provisions of this chapter are in effect.

(Pub. L. 100–242, title VII, § 706, Feb. 5, 1988, 101 Stat. 1964.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in text, is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CHAPTER 121—INTERNATIONAL CHILD ABDUCTION REMEDIES

Sec.
11601. Findings and declarations.
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11604. Provisional remedies.
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11606. United States Central Authority.
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§ 11601. Findings and declarations

(a) Findings

The Congress makes the following findings:

(1) The international abduction or wrongful retention of children is harmful to their well-being.

(2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.

(3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.

(4) The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.

(b) Declarations

The Congress makes the following declarations:

(1) It is the purpose of this chapter to establish procedures for the implementation of the Convention in the United States.

(2) The provisions of this chapter are in addition to and not in lieu of the provisions of the Convention.

(3) In enacting this chapter the Congress recognizes—

(A) the international character of the Convention; and

(B) the need for uniform international interpretation of the Convention.

(4) The Convention and this chapter empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.

(Pub. L. 100–300, § 2, Apr. 29, 1988, 102 Stat. 437.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'' meaning Pub. L. 100–300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–370, § 1, Oct. 25, 2004, 118 Stat. 1750, provided that: ''This Act [amending section 11606 of this title] may be cited as the 'Prevention of Child Abduction Partnership Act'.''

SHORT TITLE

Section 1 of Pub. L. 100–300 provided that: ''This Act [enacting this chapter and amending section 663 of this title] may be cited as the 'International Child Abduction Remedies Act'.''

§ 11602. Definitions

For the purposes of this chapter—

(1) the term ''applicant'' means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;

(2) the term ''Convention'' means the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980;

(3) the term ''Parent Locator Service'' means the service established by the Secretary of Health and Human Services under section 653 of this title;

(4) the term ''petitioner'' means any person who, in accordance with this chapter, files a petition in court seeking relief under the Convention;

(5) the term ''person'' includes any individual, institution, or other legal entity or body;

(6) the term ''respondent'' means any person against whose interests a petition is filed in court, in accordance with this chapter, which seeks relief under the Convention;

(7) the term ''rights of access'' means visitation rights;

(8) the term ''State'' means any of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term ''United States Central Authority'' means the agency of the Federal Government designated by the President under section 11606(a) of this title.

(Pub. L. 100–300, § 3, Apr. 29, 1988, 102 Stat. 437.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' meaning Pub. L. 100–300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note under section 11601 of this title and Tables.

§ 11603. Judicial remedies

(a) Jurisdiction of courts

The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention.

(b) Petitions

Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.

(c) Notice

Notice of an action brought under subsection (b) of this section shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.

(d) Determination of case

The court in which an action is brought under subsection (b) of this section shall decide the case in accordance with the Convention.

(e) Burdens of proof

(1) A petitioner in an action brought under subsection (b) of this section shall establish by a preponderance of the evidence—

(A) in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the meaning of the Convention; and

(B) in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights.

(2) In the case of an action for the return of a child, a respondent who opposes the return of the child has the burden of establishing—

(A) by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; and

(B) by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies.

(f) Application of Convention

For purposes of any action brought under this chapter—

(1) the term ''authorities'', as used in article 15 of the Convention to refer to the authorities of the state of the habitual residence of a child, includes courts and appropriate government agencies;

(2) the terms ''wrongful removal or retention'' and ''wrongfully removed or retained'', as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child; and

(3) the term ''commencement of proceedings'', as used in article 12 of the Convention,

means, with respect to the return of a child located in the United States, the filing of a petition in accordance with subsection (b) of this section.

(g) Full faith and credit

Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this chapter.

(h) Remedies under Convention not exclusive

The remedies established by the Convention and this chapter shall be in addition to remedies available under other laws or international agreements.

(Pub. L. 100–300, § 4, Apr. 29, 1988, 102 Stat. 438.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (f) to (h), was in the original ''this Act'' meaning Pub. L. 100–300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note under section 11601 of this title and Tables.

§ 11604. Provisional remedies

(a) Authority of courts

In furtherance of the objectives of article 7(b) and other provisions of the Convention, and subject to the provisions of subsection (b) of this section, any court exercising jurisdiction of an action brought under section 11603(b) of this title may take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the child's further removal or concealment before the final disposition of the petition.

(b) Limitation on authority

No court exercising jurisdiction of an action brought under section 11603(b) of this title may, under subsection (a) of this section, order a child removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

(Pub. L. 100–300, § 5, Apr. 29, 1988, 102 Stat. 439.)

§ 11605. Admissibility of documents

With respect to any application to the United States Central Authority, or any petition to a court under section 11603 of this title, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

(Pub. L. 100–300, § 6, Apr. 29, 1988, 102 Stat. 439.)

§ 11606. United States Central Authority

(a) Designation

The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.

(b) Functions

The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this chapter.

(c) Regulatory authority

The United States Central Authority is authorized to issue such regulations as may be necessary to carry out its functions under the Convention and this chapter.

(d) Obtaining information from Parent Locator Service

The United States Central Authority may, to the extent authorized by the Social Security Act [42 U.S.C. 301 et seq.], obtain information from the Parent Locator Service.

(e) Grant authority

The United States Central Authority is authorized to make grants to, or enter into contracts or agreements with, any individual, corporation, other Federal, State, or local agency, or private entity or organization in the United States for purposes of accomplishing its responsibilities under the Convention and this chapter.

(f) Limited liability of private entities acting under the direction of the United States Central Authority

(1) Limitation on liability

Except as provided in paragraphs (2) and (3), a private entity or organization that receives a grant from or enters into a contract or agreement with the United States Central Authority under subsection (e) of this section for purposes of assisting the United States Central Authority in carrying out its responsibilities and functions under the Convention and this chapter, including any director, officer, employee, or agent of such entity or organization, shall not be liable in any civil action sounding in tort for damages directly related to the performance of such responsibilities and functions as defined by the regulations issued under subsection (c) of this section that are in effect on October 1, 2004.

(2) Exception for intentional, reckless, or other misconduct

The limitation on liability under paragraph (1) shall not apply in any action in which the plaintiff proves that the private entity, organization, officer, employee, or agent described in paragraph (1), as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this chapter.

(3) Exception for ordinary business activities

The limitation on liability under paragraph (1) shall not apply to any alleged act or omission related to an ordinary business activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.

(Pub. L. 100–300, § 7, Apr. 29, 1988, 102 Stat. 439; Pub. L. 105–277, div. G, title XXII, § 2213, Oct. 21, 1998, 112 Stat. 2681–812; Pub. L. 108–370, § 2, Oct. 25, 2004, 118 Stat. 1750.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

This chapter, referred to in subsecs. (b), (c), (e), and (f), was in the original ''this Act'' meaning Pub. L. 100–300, Apr. 29, 1988, 102 Stat. 437, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 11601 of this title and Tables.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–370 added subsec. (f).
1998—Subsec. (e). Pub. L. 105–277 added subsec. (e).

EX. ORD. NO. 12648. IMPLEMENTATION OF CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Ex. Ord. No. 12648, Aug. 11, 1988, 53 F.R. 30637, provided:

The United States of America deposited its instrument of ratification of the Hague Convention on the Civil Aspects of International Child Abduction (''Convention'') on April 29, 1988. The Convention entered into force for the United States on July 1, 1988. Article 6 of the Convention imposes upon Contracting States an obligation to designate a ''Central Authority'' for the purpose of discharging certain specified functions.

In order that the Government of the United States of America may give full and complete effect to the Convention, and pursuant to section 7 of the International Child Abduction Remedies Act, Public Law No. 100–300 (1988) [42 U.S.C. 11606], it is expedient and necessary that I designate a Central Authority within the Executive branch of said Government:

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of Title 3 of the United States Code and section 7 of the International Child Abduction Remedies Act, it is ordered as follows:

SECTION 1. *Designation of Central Authority*. The Department of State is hereby designated as the Central Authority of the United States for purposes of the Hague Convention on the Civil Aspects of International Child Abduction. The Secretary of State is hereby authorized and empowered, in accordance with such regulations as he may prescribe, to perform all lawful acts that may be necessary and proper in order to execute the functions of the Central Authority in a timely and efficient manner.

RONALD REAGAN.

§ 11607. Costs and fees

(a) Administrative costs

No department, agency, or instrumentality of the Federal Government or of any State or local government may impose on an applicant any fee in relation to the administrative processing of applications submitted under the Convention.

(b) Costs incurred in civil actions

(1) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions, and travel costs for the return of the child involved and any accompanying persons, except as provided in paragraphs (2) and (3).

(2) Subject to paragraph (3), legal fees or court costs incurred in connection with an action brought under section 11603 of this title shall be borne by the petitioner unless they are covered by payments from Federal, State, or local legal assistance or other programs.

(3) Any court ordering the return of a child pursuant to an action brought under section 11603 of this title shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

(Pub. L. 100–300, § 8, Apr. 29, 1988, 102 Stat. 440.)

§ 11608. Collection, maintenance, and dissemination of information

(a) In general

In performing its functions under the Convention, the United States Central Authority may, under such conditions as the Central Authority prescribes by regulation, but subject to subsection (c) of this section, receive from or transmit to any department, agency, or instrumentality of the Federal Government or of any State or foreign government, and receive from or transmit to any applicant, petitioner, or respondent, information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child, except that the United States Central Authority—

(1) may receive such information from a Federal or State department, agency, or instrumentality only pursuant to applicable Federal and State statutes; and

(2) may transmit any information received under this subsection notwithstanding any provision of law other than this chapter.

(b) Requests for information

Requests for information under this section shall be submitted in such manner and form as the United States Central Authority may prescribe by regulation and shall be accompanied or supported by such documents as the United States Central Authority may require.

(c) Responsibility of government entities

Whenever any department, agency, or instrumentality of the United States or of any State receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under subsection (a) of this section, the head of such department, agency, or instrumentality shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality in order to determine whether the information requested is contained in any such files or records. If such search discloses the information requested, the head of such department, agency, or instrumentality shall immediately transmit such information to the United States Central Authority, except that any such information the disclosure of which—

(1) would adversely affect the national security interests of the United States or the law enforcement interests of the United States or of any State; or

(2) would be prohibited by section 9 of title 13;

shall not be transmitted to the Central Authority. The head of such department, agency, or instrumentality shall, immediately upon comple-

tion of the requested search, notify the Central Authority of the results of the search, and whether an exception set forth in paragraph (1) or (2) applies. In the event that the United States Central Authority receives information and the appropriate Federal or State department, agency, or instrumentality thereafter notifies the Central Authority that an exception set forth in paragraph (1) or (2) applies to that information, the Central Authority may not disclose that information under subsection (a) of this section.

(d) Information available from Parent Locator Service

To the extent that information which the United States Central Authority is authorized to obtain under the provisions of subsection (c) of this section can be obtained through the Parent Locator Service, the United States Central Authority shall first seek to obtain such information from the Parent Locator Service, before requesting such information directly under the provisions of subsection (c) of this section.

(e) Recordkeeping

The United States Central Authority shall maintain appropriate records concerning its activities and the disposition of cases brought to its attention.

(Pub. L. 100–300, § 9, Apr. 29, 1988, 102 Stat. 440.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original ''this Act'' meaning Pub. L. 100–300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note under section 11601 of this title and Tables.

§ 11608a. Office of Children's Issues

(a) Director requirements

The Secretary of State shall fill the position of Director of the Office of Children's Issues of the Department of State (in this section referred to as the ''Office'') with an individual of senior rank who can ensure long-term continuity in the management and policy matters of the Office and has a strong background in consular affairs.

(b) Case officer staffing

Effective April 1, 2000, there shall be assigned to the Office of Children's Issues of the Department of State a sufficient number of case officers to ensure that the average caseload for each officer does not exceed 75.

(c) Embassy contact

The Secretary of State shall designate in each United States diplomatic mission an employee who shall serve as the point of contact for matters relating to international abductions of children by parents. The Director of the Office shall regularly inform the designated employee of children of United States citizens abducted by parents to that country.

(d) Reports to parents

(1) In general

Except as provided in paragraph (2), beginning 6 months after November 29, 1999, and at least once every 6 months thereafter, the Secretary of State shall report to each parent who has requested assistance regarding an abducted child overseas. Each such report shall include information on the current status of the abducted child's case and the efforts by the Department of State to resolve the case.

(2) Exception

The requirement in paragraph (1) shall not apply in a case of an abducted child if—

(A) the case has been closed and the Secretary of State has reported the reason the case was closed to the parent who requested assistance; or

(B) the parent seeking assistance requests that such reports not be provided.

(Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title II, § 201], Nov. 29, 1999, 113 Stat. 1536, 1501A–419).

CODIFICATION

Section was enacted as part of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, and not as part of the International Child Abduction Remedies Act which comprises this chapter.

§ 11609. Interagency coordinating group

The Secretary of State, the Secretary of Health and Human Services, and the Attorney General shall designate Federal employees and may, from time to time, designate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice on its implementation to the United States Central Authority and other Federal agencies. This group shall meet from time to time at the request of the United States Central Authority. The agency in which the United States Central Authority is located is authorized to reimburse such private citizens for travel and other expenses incurred in participating at meetings of the interagency coordinating group at rates not to exceed those authorized under subchapter I of chapter 57 of title 5 for employees of agencies.

(Pub. L. 100–300, § 10, Apr. 29, 1988, 102 Stat. 441.)

§ 11610. Authorization of appropriations

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of the Convention and this chapter.

(Pub. L. 100–300, § 12, Apr. 29, 1988, 102 Stat. 442.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' meaning Pub. L. 100–300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note under section 11601 of this title and Tables.

§ 11611. Report on compliance with the Hague Convention on International Child Abduction

(a) In general

Beginning 6 months after October 21, 1998, and every 12 months thereafter, the Secretary of State shall submit a report to the appropriate

congressional committees on the compliance with the provisions of the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, by the signatory countries of the Convention. Each such report shall include the following information:

(1) The number of applications for the return of children submitted by applicants in the United States to the Central Authority for the United States that remain unresolved more than 18 months after the date of filing.

(2) A list of the countries to which children in unresolved applications described in paragraph (1) are alleged to have been abducted, are being wrongfully retained in violation of United States court orders, or which have failed to comply with any of their obligations under such convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States.

(3) A list of the countries that have demonstrated a pattern of noncompliance with the obligations of the Convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States to the Central Authority for the United States.

(4) Detailed information on each unresolved case described in paragraph (1) and on actions taken by the Department of State to resolve each such case, including the specific actions taken by the United States chief of mission in the country to which the child is alleged to have been abducted.

(5) Information on efforts by the Department of State to encourage other countries to become signatories of the Convention.

(6) A list of the countries that are parties to the Convention in which, during the reporting period, parents who have been left-behind in the United States have not been able to secure prompt enforcement of a final return or access order under a Hague proceeding, of a United States custody, access, or visitation order, or of an access or visitation order by authorities in the country concerned, due to the absence of a prompt and effective method for enforcement of civil court orders, the absence of a doctrine of comity, or other factors.

(7) A description of the efforts of the Secretary of State to encourage the parties to the Convention to facilitate the work of nongovernmental organizations within their countries that assist parents seeking the return of children under the Convention.

(b) Definition

In this section, the term ''Central Authority for the United States'' has the meaning given the term in Article 6 of the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(Pub. L. 105–277, div. G, title XXVIII, § 2803, Oct. 21, 1998, 112 Stat. 2681–846; Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title II, § 202], Nov. 29, 1999, 113 Stat. 1536, 1501A–420; Pub. L. 107–228, div. A, title II, § 212, Sept. 30, 2002, 116 Stat. 1365.)

CODIFICATION

Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999, and also as part of the Foreign Affairs Reform and Restructuring Act of 1998 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the International Child Abduction Remedies Act which comprises this chapter.

Section was formerly set out as a note under section 11601 of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–228 struck out ''during the period ending September 30, 2001'' after ''every 12 months thereafter'' in introductory provisions.

1999—Subsec. (a). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(1)], substituted ''2001,'' for ''1999,'' in first sentence of introductory provisions.

Subsec. (a)(1). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(2)], substituted ''applicants in the United States'' for ''United States citizens''.

Subsec. (a)(2). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(3)], substituted ''abducted, are being wrongfully retained in violation of United States court orders, or which have failed to comply with any of their obligations under such convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States'' for ''abducted''.

Subsec. (a)(3). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(4)], substituted ''children, access to children, or both,'' for ''children'' and ''applicants in the United States'' for ''United States citizens''.

Subsec. (a)(4). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(5)], inserted '', including the specific actions taken by the United States chief of mission in the country to which the child is alleged to have been abducted'' before period at end.

Subsec. (a)(6), (7). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(6)], added pars. (6) and (7).

CHAPTER 122—NATIVE HAWAIIAN HEALTH CARE

Sec.
11701. Findings.
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§ 11701. Findings

The Congress finds that:

(1) Native Hawaiians comprise a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago whose society was organized as a Nation prior to the arrival of the first nonindigenous people in 1778.

(2) The Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.

(3) The constitution and statutes of the State of Hawaii:

(A) acknowledge the distinct land rights of Native Hawaiian people as beneficiaries of the public lands trust; and

(B) reaffirm and protect the unique right of the Native Hawaiian people to practice and perpetuate their cultural and religious customs, beliefs, practices, and language.

(4) At the time of the arrival of the first non-indigenous people in Hawaii in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistence social system based on communal land tenure with a sophisticated language, culture, and religion.

(5) A unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii.

(6) Throughout the 19th century and until 1893, the United States: (A) recognized the independence of the Hawaiian Nation; (B) extended full and complete diplomatic recognition to the Hawaiian Government; and (C) entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875 and 1887.

(7) In the year 1893, the United States Minister assigned to the sovereign and independent Kingdom of Hawaii, John L. Stevens, conspired with a small group of non-Hawaiian residents of the Kingdom, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaii.

(8) In pursuance of that conspiracy, the United States Minister and the naval representative of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian Nation in support of the overthrow of the indigenous and lawful Government of Hawaii and the United States Minister thereupon extended diplomatic recognition of a provisional government formed by the conspirators without the consent of the native people of Hawaii or the lawful Government of Hawaii in violation of treaties between the two nations and of international law.

(9) In a message to Congress on December 18, 1893, then President Grover Cleveland reported fully and accurately on these illegal actions, and acknowledged that by these acts, described by the President as acts of war, the government of a peaceful and friendly people was overthrown, and the President concluded that a ''substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people required that we should endeavor to repair''.

(10) Queen Lili'uokalani, the lawful monarch of Hawaii, and the Hawaiian Patriotic League, representing the aboriginal citizens of Hawaii, promptly petitioned the United States for redress of these wrongs and for restoration of the indigenous government of the Hawaiian nation, but this petition was not acted upon.

(11) In 1898, the United States annexed Hawaii through the Newlands Resolution without the consent of or compensation to the indigenous people of Hawaii or their sovereign government who were thereby denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, their lands and ocean resources.

(12) Through the Newlands Resolution and the 1900 Organic Act, the United States Congress received 1.75 million acres of lands formerly owned by the Crown and Government of the Hawaiian Kingdom and exempted the lands from then existing public land laws of the United States by mandating that the revenue and proceeds from these lands be ''used solely for the benefit of the inhabitants of the Hawaiian Islands for education and other public purposes'', thereby establishing a special trust relationship between the United States and the inhabitants of Hawaii.

(13) In 1921, Congress enacted the Hawaiian Homes Commission Act, 1920 which designated 200,000 acres of the ceded public lands for exclusive homesteading by Native Hawaiians, thereby affirming the trust relationship between the United States and the Native Hawaiians, as expressed by then Secretary of the Interior Franklin K. Lane who was cited in the Committee Report of the United States House of Representatives Committee on Territories as stating, ''One thing that impressed me . . . was the fact that the natives of the islands who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty.''.

(14) In 1938, the United States Congress again acknowledged the unique status of the Hawaiian people by including in the Act of June 20, 1938 (52 Stat. 781 et seq.), a provision to lease lands within the extension to Native Hawaiians and to permit fishing in the area ''only by native Hawaiian residents of said area or of adjacent villages and by visitors under their guidance''.

(15) Under the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii but reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the exclusive power to enforce the trust, including the power to approve land exchanges, and legislative amendments affecting the rights of beneficiaries under such Act.

(16) Under the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for administration over portions of the ceded public lands trust not retained by the United States to the State of Hawaii but reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the legal responsibility of the State for the betterment of the conditions of Native Hawaiians under section 5(f) of the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (73 Stat. 4, 6).

(17) The authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of Alaska and Hawaii.

(18) In furtherance of the trust responsibility for the betterment of the conditions of Native

Hawaiians, the United States has established a program for the provision of comprehensive health promotion and disease prevention services to maintain and improve the health status of the Hawaiian people.

(19) This historical and unique legal relationship has been consistently recognized and affirmed by the Congress through the enactment of Federal laws which extend to the Hawaiian people the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities, including the Native American Programs Act of 1974 [42 U.S.C. 2991 et seq.]; the American Indian Religious Freedom Act [42 U.S.C. 1996, 1996a]; the National Museum of the American Indian Act [20 U.S.C. 80q et seq.]; and the Native American Graves Protection and Repatriation Act [25 U.S.C. 3001 et seq.].

(20) The United States has also recognized and reaffirmed the trust relationship to the Hawaiian people through legislation which authorizes the provision of services to Native Hawaiians, specifically, the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, the Veterans' Benefits and Services Act of 1988, the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], the Native Hawaiian Health Care Act of 1988, the Health Professions Reauthorization Act of 1988, the Nursing Shortage Reduction and Education Extension Act of 1988, the Handicapped Programs Technical Amendments Act of 1988, the Indian Health Care Amendments of 1988, and the Disadvantaged Minority Health Improvement Act of 1990.

(21) The United States has also affirmed the historical and unique legal relationship to the Hawaiian people by authorizing the provision of services to Native Hawaiians to address problems of alcohol and drug abuse under the Anti-Drug Abuse Act of 1986.

(22) Despite such services, the unmet health needs of the Native Hawaiian people are severe and the health status of Native Hawaiians continues to be far below that of the general population of the United States.

(Pub. L. 100–579, § 2, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100–690, title II, § 2302, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

REFERENCES IN TEXT

The Newlands Resolution, referred to in pars. (11) and (12), is act July 7, 1898, No. 55, 30 Stat. 750. For complete classification of this act to the Code, see Tables.

The 1900 Organic Act, referred to in par. (12), probably means the Hawaiian Organic Act, act Apr. 30, 1900, ch. 339, 31 Stat. 141, as amended, which was classified principally to chapter 3 (§ 491 et seq.) of Title 48, Territories and Insular Possessions, and was omitted from the Code. For complete classification of this Act to the Code, see Tables.

The Hawaiian Homes Commission Act, 1920, referred to in par. (13), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48 and was omitted from the Code.

Act of June 20, 1938, referred to in par. (14), is act June 20, 1938, ch. 530, 52 Stat. 781, which is classified to sections 391b, 391b–1, 392b, 392c, 396, and 396a of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

An Act to provide for the admission of the State of Hawaii into the Union, referred to in pars. (15) and (16), is Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, as amended, popularly known as the Hawaii Statehood Admissions Act, which is set out as a note preceding former section 491 of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Tables.

The Native American Programs Act of 1974, referred to in par. (19), is title VIII of Pub. L. 88–452, as added by Pub. L. 93–644, § 11, Jan. 4, 1975, 88 Stat. 2324, which is classified generally to subchapter VIII (§ 2991 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see section 2991 of this title and Tables.

The American Indian Religious Freedom Act, referred to in par. (19), is Pub. L. 95–341, Aug. 11, 1978, 92 Stat. 469, as amended, which is classified to sections 1996 and 1996a of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1996 of this title and Tables.

The National Museum of the American Indian Act, referred to in par. (19), is Pub. L. 101–185, Nov. 28, 1989, 103 Stat. 1336, which is classified generally to subchapter XIII (§ 80q et seq.) of chapter 3 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 80q of Title 20 and Tables.

The Native American Graves Protection and Repatriation Act, referred to in par. (19), is Pub. L. 101–601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§ 3001 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 25 and Tables.

The Older Americans Act of 1965, referred to in par. (20), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, referred to in par. (20), is Pub. L. 100–146, Oct. 29, 1987, 101 Stat. 840, as amended. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 6000 of this title and Tables.

The Veterans' Benefits and Services Act of 1988, referred to in par. (20), is Pub. L. 100–322, May 20, 1988, 102 Stat. 487, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 101 of Title 38, Veterans' Benefits, and Tables.

The Rehabilitation Act of 1973, referred to in par. (20), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Native Hawaiian Health Care Act of 1988, referred to in par. (20), was Pub. L. 100–579, Oct. 31, 1988, 102 Stat. 2916, and subtitle D of title II of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4222, which were classified generally to this chapter prior to being amended generally and renamed the Native Hawaiian Health Care Improvement Act by Pub. L. 102–396. For complete classification of this Act to the Code, see Tables.

The Health Professions Reauthorization Act of 1988, referred to in par. (20), is title VI of Pub. L. 100–607, Nov. 4, 1988, 102 Stat. 3122, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 201 of this title and Tables.

The Nursing Shortage Reduction and Education Extension Act of 1988, referred to in par. (20), is title VII of Pub. L. 100–607, Nov. 4, 1988, 102 Stat. 3153. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 201 of this title and Tables.

The Handicapped Programs Technical Amendments Act of 1988, referred to in par. (20), is Pub. L. 100–630,

Nov. 7, 1988, 102 Stat. 3289. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1400 of Title 20, Education, and Tables.

The Indian Health Care Amendments of 1988, referred to in par. (20), is Pub. L. 100–713, Nov. 23, 1988, 102 Stat. 4784. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1601 of Title 25, Indians, and Tables.

The Disadvantaged Minority Health Improvement Act of 1990, referred to in par. (20), is Pub. L. 101–527, Nov. 6, 1990, 104 Stat. 2311. For complete classification of this Act to the Code, see Short Title of 1990 Amendments note set out under section 201 of this title and Tables.

The Anti-Drug Abuse Act of 1986, referred to in par. (21), is Pub. L. 99–570, Oct. 27, 1986, 100 Stat. 3207, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 801 of Title 21, Food and Drugs, and Tables.

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally substituting pars. (1) to (22) for former pars. (1) to (3) which set forth findings of Congress.

SHORT TITLE

Section 1 of Pub. L. 100–579, and section 2301 of subtitle D of title II of Pub. L. 100–690, as amended by Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948, provided that: ''This Act [enacting this chapter and repealing section 1621d of Title 25, Indians] may be cited as the 'Native Hawaiian Health Care Improvement Act'.''

§ 11702. Declaration of policy

(a) Congress

The Congress hereby declares that it is the policy of the United States in fulfillment of its special responsibilities and legal obligations to the indigenous people of Hawaii resulting from the unique and historical relationship between the United States and the Government of the indigenous people of Hawaii—

(1) to raise the health status of Native Hawaiians to the highest possible health level; and

(2) to provide existing Native Hawaiian health care programs with all resources necessary to effectuate this policy.

(b) Intent of Congress

It is the intent of the Congress that the Nation meet the following health objectives with respect to Native Hawaiians by the year 2000:

(1) Reduce coronary heart disease deaths to no more than 100 per 100,000.

(2) Reduce stroke deaths to no more than 20 per 100,000.

(3) Increase control of high blood pressure to at least 50 percent of people with high blood pressure.

(4) Reduce blood cholesterol to an average of no more than 200 mg/dl.

(5) Slow the rise in lung cancer deaths to achieve a rate of no more than 42 per 100,000.

(6) Reduce breast cancer deaths to no more than 20.6 per 100,000 women.

(7) Increase Pap tests every 1 to 3 years to at least 85 percent of women age 18 and older.

(8) Increase fecal occult blood testing every 1 to 2 years to at least 50 percent of people age 50 and older.

(9) Reduce diabetes-related deaths to no more than 34 per 100,000.

(10) Reduce the most severe complications of diabetes as follows:

(A) end-stage renal disease to no more than 1.4 in 1,000;

(B) blindness to no more than 1.4 in 1,000;

(C) lower extremity amputation to no more than 4.9 in 1,000;

(D) perinatal mortality to no more than 2 percent; and

(E) major congenital malformations to no more than 4 percent.

(11) Reduce infant mortality to no more than 7 deaths per 1,000 live births.

(12) Reduce low birth weight to no more than 5 percent of live births.

(13) Increase first trimester prenatal care to at least 90 percent of live births.

(14) Reduce teenage pregnancies to no more than 50 per 1,000 girls age 17 and younger.

(15) Reduce unintended pregnancies to no more than 30 percent of pregnancies.

(16) Increase to at least 60 percent the proportion of primary care providers who provide age-appropriate preconception care and counseling.

(17) Increase years of healthy life to at least 65 years.

(18) Eliminate financial barriers to clinical preventive services.

(19) Increase childhood immunization levels to at least 90 percent of 2-year-olds.

(20) Reduce the prevalence of dental caries to no more than 35 percent of children by age 8.

(21) Reduce untreated dental caries so that the proportion of children with untreated caries (in permanent or primary teeth) is no more than 20 percent among children age 6 through 8 and no more than 15 percent among adolescents age 15.

(22) Reduce edentulism to no more than 20 percent in people age 65 and older.

(23) Increase moderate daily physical activity to at least 30 percent of the population.

(24) Reduce sedentary lifestyles to no more than 15 percent of the population.

(25) Reduce overweight to a prevalence of no more than 20 percent of the population.

(26) Reduce dietary fat intake to an average of 30 percent of calories or less.

(27) Increase to at least 75 percent the proportion of primary care providers who provide nutrition assessment and counseling or referral to qualified nutritionists or dieticians.

(28) Reduce cigarette smoking prevalence to no more than 15 percent of adults.

(29) Reduce initiation of smoking to no more than 15 percent by age 20.

(30) Reduce alcohol-related motor vehicle crash deaths to no more than 8.5 per 100,000 adjusted for age.

(31) Reduce alcohol use by school children age 12 to 17 to less than 13 percent.

(32) Reduce marijuana use by youth age 18 to 25 to less than 8 percent.

(33) Reduce cocaine use by youth aged[1] 18 to 25 to less than 3 percent.

(34) Confine HIV infection to no more than 800 per 100,000.

(35) Reduce gonorrhea infections to no more than 225 per 100,000.

(36) Reduce syphilis infections to no more that 10 per 100,000.

(37) Reduce significant hearing impairment to a prevalance[2] of no more than 82 per 1,000.

(38) Reduce acute middle ear infections among children age 4 and younger, as measured by days of restricted activity or school absenteeism, to no more than 105 days per 100 children.

(39) Reduce indigenous cases of vaccine-preventable diseases as follows:

(A) Diphtheria among individuals age 25 and younger to 0;

(B) Tetanus among individuals age 25 and younger to 0;

(C) Polio (wild-type virus) to 0;

(D) Measles to 0;

(E) Rubella to 0;

(F) Congenital Rubella Syndrome to 0;

(G) Mumps to 500; and

(H) Pertussis to 1,000; and[3]

(40) Reduce significant visual impairment to a prevalence of no more than 30 per 1,000.

(c) Report

The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 11710 of this title, a report on the progress made in each area toward meeting each of the objectives described in subsection (b) of this section.

(Pub. L. 100–579, § 3, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100–690, title II, § 2303, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to comprehensive health care master plan for Native Hawaiians.

§ 11703. Comprehensive health care master plan for Native Hawaiians

(a) Development

The Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of coordinating, implementing and updating a Native Hawaiian comprehensive health care master plan designed to promote comprehensive health promotion and disease prevention services and to maintain and improve the health status of Native Hawaiians. The master plan shall be based upon an assessment of the health care status and health care needs of Native Hawaiians. To the extent practicable, assessments made as of the date of such grant or contract shall be used by Papa Ola Lokahi, except that any such assessment shall be updated as appropriate.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out subsection (a) of this section.

(Pub. L. 100–579, § 4, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100–690, title II, § 2304, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to Native Hawaiian health centers.

§ 11704. Functions of Papa Ola Lokahi

(a) Responsibility

Papa Ola Lokahi shall be responsible for the—

(1) coordination, implementation, and updating, as appropriate, of the comprehensive health care master plan developed pursuant to section 11703 of this title;

(2) training for the persons described in section 11705(c)(1)(B) of this title;

(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services; and

(4) the development of an action plan outlining the contributions that each member organization of Papa Ola Lokahi will make in carrying out the policy of this chapter.

(b) Special project funds

Papa Ola Lokahi is authorized to receive special project funds that may be appropriated for the purpose of research on the health status of Native Hawaiians or for the purpose of addressing the health care needs of Native Hawaiians.

(c) Clearinghouse

Papa Ola Lokahi shall serve as a clearinghouse for:

(1) the collection and maintenance of data associated with the health status of Native Hawaiians;

[1] So in original. Probably should be ''age''.

[2] So in original. Probably should be ''prevalence''.

[3] So in original. The ''; and'' probably should be a period.

(2) the identification and research into diseases affecting Native Hawaiians;

(3) the availability of Native Hawaiian project funds, research projects and publications;

(4) the collaboration of research in the area of Native Hawaiian health; and

(5) the timely dissemination of information pertinent to the Native Hawaiian health care systems.

(d) Coordination of programs and services

Papa Ola Lokahi shall, to the maximum extent possible, coordinate and assist the health care programs and services provided to Native Hawaiians.

(e) Technical support

Papa Ola Lokahi shall act as a statewide infrastructure to provide technical support and coordination of training and technical assistance to the Native Hawaiian health care systems.

(f) Relationships with other agencies

Papa Ola Lokahi is authorized to enter into agreements or memoranda of understanding with relevant agencies or organizations that are capable of providing resources or services to the Native Hawaiian health care systems.

(Pub. L. 100–579, § 5, Oct. 31, 1988, 102 Stat. 2919; Pub. L. 100–690, title II, § 2305, Nov. 18, 1988, 102 Stat. 4225; Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to administrative grant for Papa Ola Lokahi.

§ 11705. Native Hawaiian health care systems

(a) Comprehensive health promotion, disease prevention, and primary health services

(1)(A) The Secretary, in consultation with Papa Ola Lokahi, may make grants to, or enter into contracts with, any qualified entity for the purpose of providing comprehensive health promotion and disease prevention services as well as primary health services to Native Hawaiians.

(B) In making grants and entering into contracts under this paragraph, the Secretary shall give preference to Native Hawaiian health care systems and Native Hawaiian organizations and, to the extent feasible, health promotion and disease prevention services shall be performed through Native Hawaiian health care systems.

(2) In addition to paragraph (1), the Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of planning Native Hawaiian health care systems to serve the health needs of Native Hawaiian communities on each of the islands of O'ahu, Moloka'i, Maui, Hawai'i, Lana'i, Kaua'i, and Ni'ihau in the State of Hawaii.

(b) Qualified entity

An entity is a qualified entity for purposes of subsection (a)(1) of this section if the entity is a Native Hawaiian health care system.

(c) Services to be provided

(1) Each recipient of funds under subsection (a)(1) of this section shall provide the following services:

(A) outreach services to inform Native Hawaiians of the availability of health services;

(B) education in health promotion and disease prevention of the Native Hawaiian population by, wherever possible, Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators;

(C) services of physicians, physicians' assistants, nurse practitioners or other health professionals;

(D) immunizations;

(E) prevention and control of diabetes, high blood pressure, and otitis media;

(F) pregnancy and infant care; and

(G) improvement of nutrition.

(2) In addition to the mandatory services under paragraph (1), the following services may be provided pursuant to subsection (a)(1) of this section:

(A) identification, treatment, control, and reduction of the incidence of preventable illnesses and conditions endemic to Native Hawaiians;

(B) collection of data related to the prevention of diseases and illnesses among Native Hawaiians; and

(C) services within the meaning of the terms ''health promotion'', ''disease prevention'', and ''primary health services'', as such terms are defined in section 11711 of this title, which are not specifically referred to in paragraph (1) of this subsection.

(3) The health care services referred to in paragraphs (1) and (2) which are provided under grants or contracts under subsection (a)(1) of this section may be provided by traditional Native Hawaiian healers.

(d) Limitation of number of entities

During a fiscal year, the Secretary under this chapter may make a grant to, or hold a contract with, not more than 5 Native Hawaiian health care systems.

(e) Matching funds

(1) The Secretary may not make a grant or provide funds pursuant to a contract under subsection (a)(1) of this section to a Native Hawaiian health care system—

(A) in an amount exceeding 83.3 percent of the costs of providing health services under the grant or contract; and

(B) unless the Native Hawaiian health care system agrees that the Native Hawaiian health care system or the State of Hawaii will make available, directly or through donations

to the Native Hawaiian health care system, non-Federal contributions toward such costs in an amount equal to not less than $1 (in cash or in kind under paragraph (2)) for each $5 of Federal funds provided in such grant or contract.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions.

(3) The Secretary may waive the requirement established in paragraph (1) if—

(A) the Native Hawaiian health care system involved is a nonprofit private entity described in subsection (b) of this section; and

(B) the Secretary, in consultation with Papa Ola Lokahi, determines that it is not feasible for the Native Hawaiian health care system to comply with such requirement.

(f) Restriction on use of grant and contract funds

The Secretary may not make a grant to, or enter into a contract with, any entity under subsection (a)(1) of this section unless the entity agrees that, amounts received pursuant to such subsection will not, directly or through contract, be expended—

(1) for any purpose other than the purposes described in subsection (c) of this section;

(2) to provide inpatient services;

(3) to make cash payments to intended recipients of health services; or

(4) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

(g) Limitation on charges for services

The Secretary may not make a grant, or enter into a contract with, any entity under subsection (a)(1) of this section unless the entity agrees that, whether health services are provided directly or through contract—

(1) health services under the grant or contract will be provided without regard to ability to pay for the health services; and

(2) the entity will impose a charge for the delivery of health services, and such charge—

(A) will be made according to a schedule of charges that is made available to the public, and

(B) will be adjusted to reflect the income of the individual involved.

(h) Authorization of appropriations

(1) There are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 2001 to carry out subsection (a)(1) of this section.

(2) There are authorized to be appropriated such sums as may be necessary to carry out subsection (a)(2) of this section.

(Pub. L. 100–579, § 6, Oct. 31, 1988, 102 Stat. 2919; Pub. L. 100–690, title II, § 2306, Nov. 18, 1988, 102 Stat. 4226; Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to administration of grants and contracts.

§ 11706. Administrative grant for Papa Ola Lokahi

(a) In general

In addition to any other grant or contract under this chapter, the Secretary may make grants to, or enter into contracts with, Papa Ola Lokahi for—

(1) coordination, implementation, and updating (as appropriate) of the comprehensive health care master plan developed pursuant to section 11703 of this title;

(2) training for the persons described in section 11705(c)(1)(B) of this title;

(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services;

(4) the development of an action plan outlining the contributions that each member organization of Papa Ola Lokahi will make in carrying out the policy of this chapter;

(5) a clearinghouse function for—

(A) the collection and maintenance of data associated with the health status of Native Hawaiians;

(B) the identification and research into diseases affecting Native Hawaiians; and

(C) the availability of Native Hawaiian project funds, research projects and publications;

(6) the coordination of the health care programs and services provided to Native Hawaiians; and

(7) the administration of special project funds.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 2001 to carry out subsection (a) of this section.

(Pub. L. 100–579, § 7, Oct. 31, 1988, 102 Stat. 2921; Pub. L. 100–690, title II, § 2307, Nov. 18, 1988, 102 Stat. 4227; Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to assignment of personnel.

§ 11707. Administration of grants and contracts

(a) Terms and conditions

The Secretary shall include in any grant made or contract entered into under this chapter such terms and conditions as the Secretary considers necessary or appropriate to ensure that the objectives of such grant or contract are achieved.

(b) Periodic review

The Secretary shall periodically evaluate the performance of, and compliance with, grants and contracts under this chapter.

(c) Administrative requirements

The Secretary may not make a grant or enter into a contract under this chapter with an entity unless the entity—

(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant or contract;

(2) agrees to ensure the confidentiality of records maintained on individuals receiving health services under the grant or contract;

(3) with respect to providing health services to any population of Native Hawaiians, a substantial portion of which has a limited ability to speak the English language—

(A) has developed and has the ability to carry out a reasonable plan to provide health services under the grant or contract through individuals who are able to communicate with the population involved in the language and cultural context that is most appropriate; and

(B) has designated at least one individual, fluent in both English and the appropriate language, to assist in carrying out the plan;

(4) with respect to health services that are covered in the plan of the State of Hawaii approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]—

(A) if the entity will provide under the grant or contract any such health services directly—

(i) the entity has entered into a participation agreement under such plans; and

(ii) the entity is qualified to receive payments under such plan; and

(B) if the entity will provide under the grant or contract any such health services through a contract with an organization—

(i) the organization has entered into a participation agreement under such plan; and

(ii) the organization is qualified to receive payments under such plan; and

(5) agrees to submit to the Secretary and to Papa Ola Lokahi an annual report that describes the utilization and costs of health services provided under the grant or contract (including the average cost of health services per user) and that provides such other information as the Secretary determines to be appropriate.

(d) Contract evaluation

(1) If, as a result of evaluations conducted by the Secretary, the Secretary determines that an entity has not complied with or satisfactorily performed a contract entered into under section 11705 of this title, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such entity and is authorized to enter into a contract under section 11705 of this title with another entity referred to in section 11705(b) of this title that provides services to the same population of Native Hawaiians which is served by the entity whose contract is not renewed by reason of this subsection.

(2) In determining whether to renew a contract entered into with an entity under this chapter, the Secretary shall consider the results of the evaluation under this section.

(3) All contracts entered into by the Secretary under this chapter shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and may be exempted from the provisions of sections 3131 and 3133 of title 40.

(4) Payments made under any contract entered into under this chapter may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this chapter.

(e) Limitation on use of funds for administrative expenses

Except for grants and contracts under section 11706 of this title, the Secretary may not grant to, or enter into a contract with, an entity under this chapter unless the entity agrees that the entity will not expend more than 10 percent of amounts received pursuant to this chapter for the purpose of administering the grant or contract.

(f) Report

(1) For each fiscal year during which an entity receives or expends funds pursuant to a grant or contract under this chapter, such entity shall submit to the Secretary and to Papa Ola Lokahi a quarterly report on—

(A) activities conducted by the entity under the grant or contract;

(B) the amounts and purposes for which Federal funds were expended; and

(C) such other information as the Secretary may request.

(2) The reports and records of any entity which concern any grant or contract under this chapter shall be subject to audit by the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General of the United States.

(g) Annual private audit

The Secretary shall allow as a cost of any grant made or contract entered into under this

chapter the cost of an annual private audit conducted by a certified public accountant.

(Pub. L. 100–579, § 8, Oct. 31, 1988, 102 Stat. 2921; Pub. L. 100–690, title II, § 2308, Nov. 18, 1988, 102 Stat. 4228; Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In subsec. (d)(3), ''sections 3131 and 3133 of title 40'' substituted for ''the Act of August 24, 1935 (40 U.S.C. 270a et seq.)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section defined terms for purposes of this chapter.

§ 11708. Assignment of personnel

(a) In general

The Secretary is authorized to enter into an agreement with any entity under which the Secretary is authorized to assign personnel of the Department of Health and Human Services with expertise identified by such entity to such entity on detail for the purposes of providing comprehensive health promotion and disease prevention services to Native Hawaiians.

(b) Applicable Federal personnel provisions

Any assignment of personnel made by the Secretary under any agreement entered into under the authority of subsection (a) of this section shall be treated as an assignment of Federal personnel to a local government that is made in accordance with subchapter VI of chapter 33 of title 5.

(Pub. L. 100–579, § 9, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100–690, title II, § 2309, Nov. 18, 1988, 102 Stat. 4229; Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to rule of construction.

§ 11709. Native Hawaiian health scholarships

(a) Eligibility

Subject to the availability of funds appropriated under the authority of subsection (c) of this section, the Secretary shall provide funds through a direct grant or a cooperative agreement to Papa Ola Lokahi for the purpose of providing scholarship assistance to students who—

(1) meet the requirements of paragraphs (1), (3), and (4) of section 254*l*(b) of this title, and

(2) are Native Hawaiians.

(b) Terms and conditions

(1) The scholarship assistance provided under subsection (a) of this section shall be provided under the same terms and subject to the same conditions, regulations, and rules that apply to scholarship assistance provided under section 254*l* of this title, provided that—

(A) the provision of scholarships in each type of health care profession training shall correspond to the need for each type of health care professional identified in the Native Hawaiian comprehensive health care master plan implemented under section 11703 of this title to serve the Native Hawaiian health care systems, as identified by Papa Ola Lokahi;

(B) the primary health services covered under the scholarship assistance program under this section shall be the services included under the definition of that term under section 11711(8) of this title;

(C) to the maximum extent practicable, the Secretary shall select scholarship recipients from a list of eligible applicants submitted by the Papa Ola Lokahi;

(D) the obligated service requirement for each scholarship recipient shall be fulfilled through the full-time clinical or nonclinical practice of the health profession of the scholarship recipient, in an order of priority that would provide for practice—

(i) first, in any one of the five Native Hawaiian health care systems; and

(ii) second, in—

(I) a health professional shortage area or medically underserved area located in the State of Hawaii; or

(II) a geographic area or facility that is—

(aa) located in the State of Hawaii; and

(bb) has a designation that is similar to a designation described in subclause (I) made by the Secretary, acting through the Public Health Service;

(E) the provision of counseling, retention and other support services shall not be limited to scholarship recipients, but shall also include recipients of other scholarship and financial aid programs enrolled in appropriate health professions training programs,[1]

(F) the obligated service of a scholarship recipient shall not be performed by the recipient through membership in the National Health Service Corps; and

(G) the requirements of sections 254d through 254k of this title, section 254m of this title, other than subsection (b)(5) of that sec-

[1] So in original. The comma probably should be a semicolon.

tion, and section 254n of this title applicable to scholarship assistance provided under section 254*l* of this title shall not apply to the scholarship assistance provided under subsection (a) of this section.

(2) The Native Hawaiian Health Scholarship program shall not be administered by or through the Indian Health Service.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 2001 for the purpose of funding the scholarship assistance provided under subsection (a) of this section.

(Pub. L. 100–579, § 10, as added Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948; amended Pub. L. 105–256, § 12, Oct. 14, 1998, 112 Stat. 1899; Pub. L. 107–116, title V, § 514(a), Jan. 10, 2002, 115 Stat. 2219.)

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 11709, Pub. L. 100–579, § 11, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100–690, title II, § 2311, Nov. 18, 1988, 102 Stat. 4229, which related to compliance with Budget Act, was amended generally by Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948, and transferred to section 11710 of this title.

A prior section 10 of Pub. L. 100–579 repealed section 1621d of Title 25, Indians.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–116, § 514(a)(1), substituted ''Papa Ola Lokahi'' for ''Kamehameha School/Bishop Estate'' in introductory provisions.

Subsec. (b)(1)(C). Pub. L. 107–116, § 514(a)(2), which directed the substitution of ''Papa Ola Lokahi'' for ''Kamehameha School/Bishop Estate'', was executed by making the substitution for ''Kamehameha Schools/Bishop Estate'' to reflect the probable intent of Congress.

1998—Subsec. (a)(1). Pub. L. 105–256, § 12(a), which directed amendment of subsec. (a)(1) by substituting ''meet the requirements of paragraphs (1), (3), and (4) of section 254*l*(b) of this title'' for ''meet the requirements of section 254*l* of this title'', was executed by making the substitution for ''meet the requirements of section 254b of this title'', to reflect the probable intent of Congress.

Subsec. (b)(1)(A). Pub. L. 105–256, § 12(b)(1), inserted ''identified in the Native Hawaiian comprehensive health care master plan implemented under section 11703 of this title'' after ''health care professional''.

Subsec. (b)(1)(B). Pub. L. 105–256, § 12(b)(2), (3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(1)(C). Pub. L. 105–256, § 12(b)(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (b)(1)(D). Pub. L. 105–256, § 12(b)(4), added subpar. (D) and struck out former subpar. (D) which read as follows: ''the obligated service requirement for each scholarship recipient shall be fulfilled through service, in order of priority, in (i) any one of the five Native Hawaiian health care systems, or (ii) health professions shortage areas, medically underserved areas, or geographic areas or facilities similarly designated by the United States Public Health Service in the State of Hawaii; and''.

Pub. L. 105–256, § 12(b)(2), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (b)(1)(E). Pub. L. 105–256, § 12(b)(2), redesignated subpar. (D) as (E).

Subsec. (b)(1)(F), (G). Pub. L. 105–256, § 12(b)(5), (6), added subpars. (F) and (G).

§ 11710. Report

The President shall, at the time the budget is submitted under section 1105 of title 31, for each fiscal year transmit to the Congress a report on the progress made in meeting the objectives of this chapter, including a review of programs established or assisted pursuant to this chapter and an assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Native Hawaiians, and ensure a health status for Native Hawaiians, which are at a parity with the health services available to, and the health status of, the general population.

(Pub. L. 100–579, § 11, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100–690, title II, § 2311, Nov. 18, 1988, 102 Stat. 4229; Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Section was formerly classified to section 11709 of this title prior to the general amendment of this chapter by Pub. L. 102–396.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections.

PRIOR PROVISIONS

A prior section 11710, Pub. L. 100–579, § 12, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100–690, title II, § 2312, Nov. 18, 1988, 102 Stat. 4230, which related to severability, was amended generally by Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948, and transferred to section 11711 of this title.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to compliance with Budget Act.

§ 11711. Definitions

For purposes of this chapter:

(1) Disease prevention

The term ''disease prevention'' includes—

(A) immunizations,

(B) control of high blood pressure,

(C) control of sexually transmittable diseases,

(D) prevention and control of diabetes,

(E) control of toxic agents,

(F) occupational safety and health,

(G) accident prevention,

(H) fluoridation of water,

(I) control of infectious agents, and

(J) provision of mental health care.

(2) Health promotion

The term ''health promotion'' includes—

(A) pregnancy and infant care, including prevention of fetal alcohol syndrome,

(B) cessation of tobacco smoking,

(C) reduction in the misuse of alcohol and drugs,

(D) improvement of nutrition,

(E) improvement in physical fitness,

(F) family planning, and

(G) control of stress.

(3) Native Hawaiian

The term ''Native Hawaiian'' means any individual who is—

(A) a citizen of the United States, and

(B) a descendant of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—

(i) genealogical records,

(ii) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

(iii) birth records of the State of Hawaii.

(4) Native Hawaiian health center

The term ''Native Hawaiian health center'' means an entity—

(A) which is organized under the laws of the State of Hawaii,

(B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,

(C) which is a public or nonprofit private entity, and

(D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

(5) Native Hawaiian organization

The term ''Native Hawaiian organization'' means any organization—

(A) which serves the interests of Native Hawaiians,

(B) which is—

(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs (or portions of programs) authorized under this chapter for the benefit of Native Hawaiians, and

(ii) certified by Papa Ola Lokahi as having the qualifications and capacity to provide the services, and meet the requirements, under the contract the organization enters into with, or grant the organization receives from, the Secretary under this chapter,

(C) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services, and

(D) which is a public or nonprofit private entity.

(6) Native Hawaiian health care system

The term ''Native Hawaiian health care system'' means an entity—

(A) which is organized under the laws of the State of Hawaii,

(B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,

(C) which is a public or nonprofit private entity,

(D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health care services,

(E) which may be composed of as many Native Hawaiian health centers as necessary to meet the health care needs of each island's Native Hawaiians, and

(F) which is—

(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs, or portions of programs, authorized by this chapter for the benefit of Native Hawaiians, and

(ii) certified by Papa Ola Lokahi as having the qualifications and the capacity to provide the services and meet the requirements under the contract the Native Hawaiian health care system enters into with the Secretary or the grant the Native Hawaiian health care system receives from the Secretary pursuant to this chapter.

(7) Papa Ola Lokahi

(A) The term ''Papa Ola Lokahi'' means an organization composed of—

(i) E Ola Mau;

(ii) the Office of Hawaiian Affairs of the State of Hawaii;

(iii) Alu Like Inc.;

(iv) the University of Hawaii;

(v) the Office of Hawaiian Health of the Hawaii State Department of Health;

(vi) Ho'ola Lahui Hawaii, or a health care system serving the islands of Kaua'i and Ni'ihau, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of those islands;

(vii) Ke Ola Mamo, or a health care system serving the island of O'ahu, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island;

(viii) Na Pu'uwai or a health care system serving the islands of Moloka'i and Lana'i, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of those islands;

(ix) Hui No Ke Ola Pono, or a health care system serving the island of Maui, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island;

(x) Hui Malama Ola Ha'Oiwi or a health care system serving the island of Hawaii, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island; and

(xi) such other member organizations as the Board of Papa Ola Lokahi may admit from time to time, based upon satisfactory demonstration of a record of contribution to the health and well-being of Native Hawaiians, and upon satisfactory development of a mission statement in relation to this chap-

ter, including clearly defined goals and objectives, a 5-year action plan outlining the contributions that each organization will make in carrying out the policy of this chapter, and an estimated budget.

(B) Such term does not include any such organization identified in subparagraph (A) if the Secretary determines that such organization has not developed a mission statement with clearly defined goals and objectives for the contributions the organization will make to the Native Hawaiian health care systems, and an action plan for carrying out those goals and objectives.

(8) Primary health services

The term ''primary health services'' means—

(A) services of physicians, physicians' assistants, nurse practitioners, and other health professionals;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular health centers.

(9) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(10) Traditional Native Hawaiian healer

The term ''traditional Native Hawaiian healer'' means a practitioner—

(A) who—

(i) is of Hawaiian ancestry, and

(ii) has the knowledge, skills, and experience in direct personal health care of individuals, and

(B) whose knowledge, skills, and experience are based on demonstrated learning of Native Hawaiian healing practices acquired by—

(i) direct practical association with Native Hawaiian elders, and

(ii) oral traditions transmitted from generation to generation.

(Pub. L. 100–579, § 12, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100–690, title II, § 2312, Nov. 18, 1988, 102 Stat. 4230; Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Section was formerly classified to section 11710 of this title prior to the general amendment of this chapter by Pub. L. 102–396.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to severability.

§ 11712. Rule of construction

Nothing in this chapter shall be construed to restrict the authority of the State of Hawaii to license health practitioners.

(Pub. L. 100–579, § 13, as added Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

§ 11713. Compliance with Budget Act

Any new spending authority (described in subsection (c)(2)(A) or (B) of section 651[1] of title 2) which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 100–579, § 15, as added Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

REFERENCES IN TEXT

Section 651 of title 2, referred to in text, was amended by Pub. L. 105–33, title X, § 10116(a)(3), Aug. 5, 1997, 111 Stat. 691, by striking out subsec. (c) and redesignating former subsec. (d) as (c).

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

§ 11714. Severability

If any provision of this chapter, or the application of any such provision to any person or circumstances is held to be invalid, the remainder of this chapter, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(Pub. L. 100–579, § 16, as added Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on ''September 12, 1992'', has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

[1] See References in Text note below.

CHAPTER 123—DRUG ABUSE EDUCATION AND PREVENTION

SUBCHAPTER I—DRUG EDUCATION AND PREVENTION RELATING TO YOUTH GANGS

Sec.
11801. Establishment of drug abuse education and prevention program relating to youth gangs.
11802. Application for grants and contracts.
11803. Approval of applications.
11804. Coordination with juvenile justice programs.
11805. Authorization of appropriations.
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SUBCHAPTER II—PROGRAM FOR RUNAWAY AND HOMELESS YOUTH

11821. Establishment of program.
11822. Annual report.
11823. Authorization of appropriations.
11824. Applications.
11825. Review of applications.

SUBCHAPTER III—COMMUNITY PROGRAM

11841. Community youth activity program.
11842. Evaluation of drug abuse education and prevention efforts.

SUBCHAPTER IV—MISCELLANEOUS

11851. Definitions.

SUBCHAPTER I—DRUG EDUCATION AND PREVENTION RELATING TO YOUTH GANGS

§ 11801. Establishment of drug abuse education and prevention program relating to youth gangs

The Secretary of Health and Human Services, through the Administration on Children, Youth, and Families, shall make grants to, and enter into contracts with, public and nonprofit private agencies (including agencies described in paragraph (7)(A) acting jointly), organizations (including community based organizations with demonstrated experience in this field), institutions, and individuals, to carry out projects and activities—

(1) to prevent and to reduce the participation of youth in the activities of gangs that engage in illicit drug-related activities,

(2) to promote the involvement of youth in lawful activities in communities in which such gangs commit drug-related crimes,

(3) to prevent the abuse of drugs by youth, to educate youth about such abuse, and to refer for treatment and rehabilitation members of such gangs who abuse drugs,

(4) to support activities of local police departments and other local law enforcement agencies to conduct educational outreach activities in communities in which gangs commit drug-related crimes,

(5) to inform gang members and their families of the availability of treatment and rehabilitation services for drug abuse,

(6) to facilitate Federal and State cooperation with local school officials to assist youth who are likely to participate in gangs that commit drug-related crimes,

(7) to facilitate coordination and cooperation among—

(A) local education, juvenile justice, employment and social service agencies, and

(B) drug abuse referral, treatment, and rehabilitation programs,

for the purpose of preventing or reducing the participation of youth in activities of gangs that commit drug-related crimes, and

(8) to provide technical assistance to eligible organizations in planning and implementing drug abuse education, prevention, rehabilitation, and referral programs for youth who are members of gangs that commit drug-related crimes.

(Pub. L. 100–690, title III, § 3501, Nov. 18, 1988, 102 Stat. 4254; Pub. L. 102–132, § 1(a), Oct. 18, 1991, 105 Stat. 630.)

AMENDMENTS

1991—Pub. L. 102–132 inserted ''(including agencies described in paragraph (7)(A) acting jointly)'' after ''agencies'' in introductory provisions.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 3 of Pub. L. 102–132 provided that: ''This Act [enacting section 11806 of this title and amending this section and sections 11805 and 11823 of this title] shall take effect on October 1, 1991.''

§ 11802. Application for grants and contracts

(a) Submission of applications

Any agency, organization, institution, or individual desiring to receive a grant, or to enter into a contract, under section 11801 of this title shall submit to the Secretary an application at such time, in such manner, and containing or accompanied by such information as the Secretary may require by rule.

(b) Contents of application

Each application for assistance under this subchapter shall—

(1) set forth a project or activity for carrying out one or more of the purposes specified in section 11801 of this title and specifically identify each such purpose such project or activity is designed to carry out,

(2) provide that such project or activity shall be administered by or under the supervision of the applicant,

(3) provide for the proper and efficient administration of such project or activity,

(4) provide for regular evaluation of the operation of such project or activity,

(5) provide that regular reports on such project or activity shall be submitted to the Secretary, and

(6) provide such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter.

(Pub. L. 100–690, title III, § 3502, Nov. 18, 1988, 102 Stat. 4254.)

§ 11803. Approval of applications

In selecting among applications submitted under section 11802(a) of this title, the Secretary shall give priority to applicants who propose to carry out projects and activities—

(1) for the purposes specified in section 11801 of this title in geographical areas in which frequent and severe drug-related crimes are committed by gangs whose membership is composed primarily of youth, and

(2) that the applicant demonstrates have the broad support of community based organizations in such geographical areas.

(Pub. L. 100–690, title III, § 3503, Nov. 18, 1988, 102 Stat. 4255; Pub. L. 101–204, title X, § 1001(a), Dec. 7, 1989, 103 Stat. 1826.)

AMENDMENTS

1989—Par. (2). Pub. L. 101–204 substituted ''have'' for ''that it has''.

§ 11804. Coordination with juvenile justice programs

The Secretary shall coordinate the program established by section 11801 of this title with the programs and activities carried out under the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5601 et seq.] and with the programs and activities of the Attorney General, to ensure that all such programs and activities are complementary and not duplicative.

(Pub. L. 100–690, title III, § 3504, Nov. 18, 1988, 102 Stat. 4255.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in text, is Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended, which is classified principally to chapter 72 (§ 5601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

§ 11805. Authorization of appropriations

To carry out this subchapter, there are authorized to be appropriated $16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994.

(Pub. L. 100–690, title III, § 3505, Nov. 18, 1988, 102 Stat. 4255; Pub. L. 102–132, § 1(b), Oct. 18, 1991, 105 Stat. 630.)

AMENDMENTS

1991—Pub. L. 102–132 substituted ''$16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994'' for ''$15,000,000 for the fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–132 effective Oct. 1, 1991, see section 3 of Pub. L. 102–132, set out as a note under section 11801 of this title.

§ 11806. Annual report

Not later than 180 days after the end of each fiscal year, the Secretary shall submit, to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report describing—

(1) the types of projects and activities for which grants and contracts were made under this subchapter for such fiscal year,

(2) the number and characteristics of the youth and families served by such projects and activities, and

(3) each of such projects and activities the Secretary considers to be exemplary.

(Pub. L. 100–690, title III, § 3506, as added Pub. L. 102–132, § 1(c), Oct. 18, 1991, 105 Stat. 630.)

EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 3 of Pub. L. 102–132, set out as an Effective Date of 1991 Amendment note under section 11801 of this title.

SUBCHAPTER II—PROGRAM FOR RUNAWAY AND HOMELESS YOUTH

§ 11821. Establishment of program

(a) Program aims

The Secretary shall make grants to public and private nonprofit agencies, organizations, and institutions to carry out research, demonstration, and services projects designed—

(1) to provide individual, family, and group counseling to runaway youth and their families and to homeless youth for the purpose of preventing or reducing the illicit use of drugs by such youth,

(2) to develop and support peer counseling programs for runaway and homeless youth related to the illicit use of drugs,

(3) to develop and support community education activities related to illicit use of drugs by runaway and homeless youth, including outreach to youth individually,

(4) to provide to runaway and homeless youth in rural areas assistance (including the development of community support groups) related to the illicit use of drugs,

(5) to provide to individuals involved in providing services to runaway and homeless youth, information and training regarding issues related to the illicit use of drugs by runaway and homeless youth,

(6) to support research on the illicit drug use by runaway and homeless youth, and the effects on such youth of drug abuse by family members, and any correlation between such use and attempts at suicide, and

(7) to improve the availability and coordination of local services related to drug abuse, for runaway and homeless youth.

(b) Priority

In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to agencies and organizations that have experience in providing services to runaway and homeless youth.

(c) Limitation

Grants under this section may be made for a period not to exceed 3 years.

(Pub. L. 100–690, title III, § 3511, Nov. 18, 1988, 102 Stat. 4255.)

§ 11822. Annual report

Not later than 180 days after the end of a fiscal year for which funds are appropriated to carry out this subchapter, the Secretary shall submit to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate a report that contains—

(1) a description of the types of projects and activities for which grants were made under this subchapter for such fiscal year,

(2) a description of the number and characteristics of the youth and families served by such projects and activities, and

(3) a description of exemplary projects and activities for which grants were made under this subchapter for such fiscal year.

(Pub. L. 100–690, title III, § 3512, Nov. 18, 1988, 102 Stat. 4256.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under this section is listed as the 12th item on page 92), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 11823. Authorization of appropriations

To carry out this subchapter, there are authorized to be appropriated $16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994.

(Pub. L. 100–690, title III, § 3513, Nov. 18, 1988, 102 Stat. 4256; Pub. L. 102–132, § 2, Oct. 18, 1991, 105 Stat. 630.)

AMENDMENTS

1991—Pub. L. 102–132 amended section generally. Prior to amendment, section read as follows:

''(a) AUTHORIZATION.—Subject to subsection (b) of this section, to carry out this subchapter, there are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

''(b) LIMITATION.—No funds are authorized to be appropriated for a fiscal year to carry out this subchapter unless the aggregate amount appropriated to carry out title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5701–5751) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–132 effective Oct. 1, 1991, see section 3 of Pub. L. 102–132, set out as a note under section 11801 of this title.

§ 11824. Applications

(a) Submission of application

Any State, unit of local government (or combination of units of local government), agency, organization, institution, or individual desiring to receive a grant, or enter into a contract, under this subchapter shall submit an application at such time, in such manner, and containing or accompanied by such information as may be prescribed by the Federal officer who is authorized to make such grant or enter into such contract (hereinafter in this subchapter referred to as the ''appropriate Federal officer'').

(b) Contents of application

In accordance with guidelines established by the appropriate Federal officer, each application for assistance under this subchapter shall—

(1) set forth a project or activity for carrying out one or more of the purposes for which such grant or contract is authorized to be made and expressly identify each such purpose such project or activity is designed to carry out,

(2) provide that such project or activity shall be administered by or under the supervision of the applicant,

(3) provide for the proper and efficient administration of such project or activity,

(4) provide for regular evaluation of such project or activity,

(5) provide that regular reports on such project or activity shall be sent to the appropriate Federal officer, and

(6) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter.

(Pub. L. 100–690, title III, § 3514, Nov. 18, 1988, 102 Stat. 4256.)

§ 11825. Review of applications

(a) Consideration of factors

In reviewing applications submitted under this subchapter, the appropriate Federal officer shall consider—

(1) the relative cost and effectiveness of the proposed project or activity in carrying out purposes for which the requested grant or contract is authorized to be made,

(2) the extent to which such project or activity will incorporate new or innovative techniques,

(3) the increase in capacity of the State or the public or nonprofit private agency, organization, institution, or individual involved to provide services to address the illicit use of drugs by runaway and homeless youth,

(4) the extent to which such project or activity serves communities which have high rates of illicit drug use by juveniles (including runaway and homeless youth),

(5) the extent to which such project or activity will provide services in geographical areas where similar services are unavailable or in short supply, and

(6) the extent to which such project or activity will increase the level of services, or coordinate other services, in the community available to eligible youth.

(b) Competitive process

(1) Applications submitted under this subchapter shall be selected for approval through a competitive process to be established by rule by the appropriate Federal officer. As part of such a process, such officer shall publish a notice in the Federal Register—

(A) announcing the availability of funds to carry out this subchapter,

(B) stating the general criteria applicable to the selection of applicants to receive such funds, and

(C) describing the procedures applicable to submitting and reviewing applications for such funds.

(2) As part of such process, each application referred to in subsection (a) of this section shall be subject to peer review by individuals (excluding officers and employees of the Department of Justice and the Department of Health and Human Services) who have expertise in the subject matter related to the project or activity proposed in such application.

(c) Expedited review

The appropriate Federal officer shall expedite the consideration of an application referred to

in subsection (a) of this section if the applicant demonstrates, to the satisfaction of the[1] such officer, that the failure to expedite such consideration would prevent the effective implementation of the project or activity set forth in such application.

(Pub. L. 100–690, title III, § 3515, Nov. 18, 1988, 102 Stat. 4257; Pub. L. 101–204, title X, § 1001(b), Dec. 7, 1989, 103 Stat. 1826.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(1)(A), was in the original ''this part'' and was translated as reading ''this chapter'' to reflect the probable intent of Congress because subtitle B of title III of Pub. L. 100–690, which comprises subchapters I to III of this chapter, does not contain parts.

AMENDMENTS

1989—Subsec. (b)(1)(B). Pub. L. 101–204, § 1001(b)(1)(A), inserted ''stating'' before ''the general criteria''.

Subsec. (b)(1)(C). Pub. L. 101–204, § 1001(b)(1)(B), substituted ''describing'' for ''a description of''.

Subsec. (c). Pub. L. 101–204, § 1001(b)(2), substituted ''such officer'' for ''Administrator''.

SUBCHAPTER III—COMMUNITY PROGRAM

§ 11841. Community youth activity program

(a) Block grant program

The Secretary of Health and Human Services shall make grants to eligible States to enable such States to carry out the activities described in subsection (e) of this section.

(b) Application

(1) In general

To be eligible to receive a grant under this section, a State, acting on its own behalf or on behalf of a person, shall submit to the Secretary an application that contains such information and is in such form as may be required by the Secretary.

(2) Demonstration of need

In the application submitted under paragraph (1), the State shall demonstrate a need for the activities described in subsection (e) of this section and provide a description of those activities and projects that will receive financial assistance from a grant made under this section to the State.

(c) Amount of grant

(1) Minimum amount

Each State that submits for a fiscal year an application under subsection (b) of this section that meets the requirements of the Secretary shall, subject to the availability of appropriations, receive a grant in an amount determined in accordance with paragraph (3).

(2) Programs of national significance

Of amounts appropriated or otherwise available to carry out this section for any fiscal year, the Secretary shall reserve 5 percent to be provided for activities and projects of national significance or projects expected to have a significant impact in preventing the abuse of drugs by youth.

(3) Specified appropriations

(A) In general

Of the aggregate amount appropriated under subsection (g) of this section for any fiscal year and after reserving the amount required by paragraph (2), the Secretary shall—

(i) allot—

(I) 25 percent equally among the eligible States if such amount is less than $40,000,000; or

(II) $250,000 to each eligible State if such amount equals or exceeds $40,000,000;

(ii) allot one-half of 1 percent of such amount on the basis of need among Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(iii) set aside the remainder to be disbursed as described in subparagraph (B).

For purposes of this subparagraph, the term ''State'' does not include Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(B) Remainder

Amounts referred to in subparagraph (A)(iii) shall be used by the Secretary to make grants, on a competitive basis and taking into consideration with respect to the States—

(i) the highest proportions of school-aged youth are[1] at risk of drug abuse;

(ii) if a tangible need has been identified by the State involved; and

(iii) if the State involved has proposed the funding of additional projects targeted at the areas of highest need;

to carry out the activities and projects that are consistent with the activities described in subsection (e)(1) of this section. The activities and projects for which such grants are made shall be selected by the Secretary from among proposed activities and projects submitted to the Secretary by the States. Such grants shall be made to the States for redistribution to the persons on whose behalf the State submitted an application under subsection (b) of this section.

(d) Priority

In making grants under this section, the Secretary shall give priority to—

(1) projects aimed at youth who are not in school or who are at risk of dropping out of school;

(2) projects that seek to reinvolve dropouts in educational programs, involve youth community-based activities, develop training or employment opportunities for dropouts, or provide youth with alternatives to drug abuse;

(3) projects to provide after-school, vacation, and weekend activities designed to give youth opportunities to actively participate in a vari-

[1] So in original. The word ''the'' probably should not appear.

[1] So in original. Probably should be ''who are''.

ety of activities, including youth sports programs;

(4) activities and projects that are consistent with activities and projects described in subsection (e)(1) of this section and that include participation by the business community;

(5) projects that provide outreach to individuals of all ages who are at high risk of involvement with drug abuse;

(6) projects targeted to communities with the most serious drug abuse problems to enable such communities to develop programs that coordinate Federal, State, and local efforts to develop comprehensive, long-term, community-wide prevention and education strategies;

(7) projects that seek to involve youth who are members of gangs or who may join a gang, in—

(A) educational programs;

(B) community-based activities;

(C) training or employment opportunities; or

(D) other alternatives to gang involvement;

(8) programs for unsupervised children before and after school, including—

(A) education and instruction consistent with title IV of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7101 et seq.];

(B) athletic activities;

(C) creative activities; and

(D) other programs designed to reduce the risk of drug abuse; and

(9) projects that seek to inform youth regarding the existence and operation of the projects referred to in paragraph (7).

(e) Activities and projects

Financial assistance may be provided with a grant received under subsection (a)[2] under this section by a State as follows:

(1) Community services and partnerships

Such assistance may be provided for community services and partnerships designed to develop community activities targeted at drug abuse prevention through education, training, and recreation projects. Such services may be provided by, and such partnerships may be entered into with—

(A) local educational agencies;

(B) law enforcement agencies;

(C) community-based organizations;

(D) community action agencies;

(E) local or State recreational departments; or

(F) business organizations; and

in consultation with local and State health departments and with community health or mental health centers when appropriate. Such assistance may be provided to any entity described in subparagraphs (A) through (F), either individually or in partnerships. Applications for such assistance shall include a description of the method to be used to evaluate the impact the particular service or partnership is designed to have on the drug abuse problem within the community.

(2) Other activities and projects

Such assistance may be provided to carry out projects or activities that are consistent with the activities and projects described in paragraph (1).

(f) Project evaluations

The Secretary shall provide for the evaluation of activities and projects conducted with financial assistance received under this section. Applications for grants under this section shall include a description of the method to be used in evaluating the impact such activities and programs have on the drug abuse problem within the communities in which such activities and projects are carried out.

(g) Authorization of appropriations

To carry out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1989, $55,000,000 for fiscal year 1990, $60,000,000 for fiscal year 1991, $66,550,000 for fiscal year 1992, and $73,205,000 for fiscal year 1993.

(Pub. L. 100–690, title III, § 3521, Nov. 18, 1988, 102 Stat. 4258; Pub. L. 101–93, § 4(1), Aug. 16, 1989, 103 Stat. 611; Pub. L. 101–226, § 23, Dec. 12, 1989, 103 Stat. 1941; Pub. L. 103–382, title III, § 394(b), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 105–285, title II, § 202(d), Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(8)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally. Title IV of the Act is classified generally to subchapter IV (§ 7101 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105–285 struck out ‘‘, such as activities authorized by section 9910(a)(2)(F) of this title,’’ after ‘‘national significance’’.

1994—Subsec. (d)(8)(A). Pub. L. 103–382 substituted ‘‘title IV of the Elementary and Secondary Education Act of 1965’’ for ‘‘the Drug-Free Schools and Communities Act of 1986’’.

1989—Subsec. (b)(2). Pub. L. 101–93, § 4(1)(A), substituted ‘‘subsection (e)’’ for ‘‘subsections (c)(3)(B) and (e)’’.

Subsec. (c)(3)(A). Pub. L. 101–93, § 4(1)(B), substituted ‘‘subsection (g)’’ for ‘‘subsection (h)’’.

Subsec. (d). Pub. L. 101–226, which directed amendment of section 3521(d) of the National Narcotics Leadership Act of 1988 by adding par. (8) and redesignating former par. (8) as (9), was executed to section 3521(d) of Pub. L. 100–690, the Anti-Drug Abuse Act of 1988, as the probable intent of Congress. Subtitle A (§§ 1001–1012) of title I of Pub. L. 100–690 is the National Narcotics Leadership Act of 1988.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[2] So in original. Words ‘‘under subsection (a)’’ probably should not appear.

§ 11842. Evaluation of drug abuse education and prevention efforts

(a) Method

The Secretary of Health and Human Services shall develop and conduct a structured evaluation of the different approaches utilized across the Nation to reduce drug abuse.

(b) Grants

The Secretary of Health and Human Services may make grants to or enter into contracts with appropriate entities for the purpose of conducting the evaluations required by subsection (a) of this section.

(c) Time of reports

The Secretary shall submit a report based on the evaluations prepared under subsection (a) of this section not later than 1 year after November 18, 1988, and another report based on such evaluations not later than 3 years after November 18, 1988. A third report based on such evaluations shall be submitted by the Secretary not later than January 1, 1994.

(d) Authorization of appropriations

To carry out this section, there are authorized to be appropriated $12,000,000 in fiscal year 1989, and $15,000,000 for each of the fiscal years 1990 through 1993.

(Pub. L. 100–690, title III, § 3522, Nov. 18, 1988, 102 Stat. 4260; Pub. L. 101–93, § 4(2), Aug. 16, 1989, 103 Stat. 611; Pub. L. 101–204, title X, § 1001(c)(1), Dec. 7, 1989, 103 Stat. 1826.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–93 and Pub. L. 101–204, § 1001(c)(1)(A)(ii), made identical amendments, striking out ''(as defined in section 11851(6) of this title)'' after ''drug abuse''.

Pub. L. 101–204, § 1001(c)(1)(A)(i), struck out '', acting through the Administrator,'' before ''shall develop''.

Subsec. (b). Pub. L. 101–204, § 1001(c)(1)(B), substituted ''Secretary of Health and Human Services'' for ''Administrator''.

SUBCHAPTER IV—MISCELLANEOUS

§ 11851. Definitions

Unless otherwise defined by an Act amended by this title,[1] for purposes of this title[1] and the amendments made by this title—[1]

(1) the term ''community based'' has the meaning given it in section 5603(1) of this title,

(2) the term ''controlled substance'' has the meaning given it in section 802(6) of title 21,

(3) the term ''controlled substance analogue'' has the meaning given it in section 802(32) of title 21,

(4) the term ''drug'' means—

(A) a beverage containing alcohol,

(B) a controlled substance, or

(C) a controlled substance analogue,

(5) the term ''Director'' means the Chief Executive Officer of the Corporation for National and Community Service,

(6) the term ''illicit'' means unlawful or injurious,

(7) the term ''institution of higher education'' has the meaning given it in section 1001 of title 20,

(8) the term ''public agency'' has the meaning given it in section 5603(11) of this title,

(9) the term ''Secretary'' means—

(A) the Secretary of Education for purposes of subtitle A (other than section 3201),

(B) the Secretary of Agriculture for purposes of the amendments made by section 3201, and

(C) the Secretary of Health and Human Services for purposes of subtitle B,

(10) the term ''State'' has the meaning given it in section 5603(7) of this title,

(11) the term ''treatment'' has the meaning given it in section 5603(15) of this title, and

(12) the term ''unit of general local government'' has the meaning given it in section 5603(8)[1] of this title.

(Pub. L. 100–690, title III, § 3601, Nov. 18, 1988, 102 Stat. 4260; Pub. L. 101–204, title X, § 1001(c)(2), Dec. 7, 1989, 103 Stat. 1827; Pub. L. 103–82, title IV, § 405(n), Sept. 21, 1993, 107 Stat. 922; Pub. L. 105–244, title I, § 102(a)(13)(J), Oct. 7, 1998, 112 Stat. 1621.)

REFERENCES IN TEXT

This title, referred to in introductory provisions, means title III of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4244, which enacted this chapter and sections 3156–1, 3201, and 3227 of Title 20, Education, and amended sections 1786, 4994, and 5081 of this title and sections 3156a, 3181, 3191 to 3195, 3197, 3212, and 3222 of Title 20. For complete classification of title III to the Code, see Tables.

Subtitle A (other than section 3201), referred to in par. (9)(A), is subtitle A (§§ 3101–3402) of title III of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4245, which enacted former sections 3156–1, 3201, and 3227 of Title 20, and amended sections 4994 and 5081 of this title and former sections 3156a, 3181, 3191 to 3195, 3197, 3212, and 3222 of Title 20. For complete classification of subtitle A to the Code, see Tables.

Section 3201, referred to in par. (9)(A), (B), is section 3201 of Pub. L. 100–690, title III, Nov. 18, 1988, 102 Stat. 4246, which amended section 1786 of this title.

Subtitle B, referred to in par. (9)(C), is subtitle B (§§ 3501–3522) of title III of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4254, which enacted subchapters I to III of this chapter. For complete classification of subtitle B to the Code, see Tables.

Section 5603(8) of this title, referred to in par. (12), was subsequently amended, and no longer defines ''unit of general local government''. However, it now defines ''unit of local government''.

AMENDMENTS

1998—Par. (7). Pub. L. 105–244 substituted ''section 1001'' for ''section 1141(a)''.

1993—Par. (5). Pub. L. 103–82 added par. (5) and struck out former par. (5) which read as follows: ''the term 'Director' means the Director of the ACTION Agency,''.

1989—Pub. L. 101–204 redesignated pars. (2) to (13) as (1) to (12), respectively, and struck out former par. (1) which read as follows: ''the term 'Administrator' means the Administrator of the Office of Juvenile Justice and Delinquency Prevention,''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note

[1] See References in Text note below.

under section 8332 of Title 5, Government Organization and Employees.

CHAPTER 124—PUBLIC HOUSING DRUG ELIMINATION

SUBCHAPTER I—PUBLIC AND ASSISTED HOUSING DRUG ELIMINATION

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SUBCHAPTER II—DRUG-FREE PUBLIC HOUSING

11921. Statement of purpose.
11922. Clearinghouse on drug abuse in public housing.
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SUBCHAPTER I—PUBLIC AND ASSISTED HOUSING DRUG ELIMINATION

§ 11901. Congressional findings

The Congress finds that—

(1) the Federal Government has a duty to provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs;

(2) public and other federally assisted low-income housing in many areas suffers from rampant drug-related or violent crime;

(3) drug dealers are increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants;

(4) the increase in drug-related and violent crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment that requires substantial government expenditures;

(5) local law enforcement authorities often lack the resources to deal with the drug problem in public and other federally assisted low-income housing, particularly in light of the recent reductions in Federal aid to cities;

(6) the Federal Government should provide support for effective safety and security measures to combat drug-related and violent crime, primarily in and around public housing projects with severe crime problems;

(7) closer cooperation should be encouraged between public and assisted housing managers, local law enforcement agencies, and residents in developing and implementing anti-crime programs; and

(8) anti-crime strategies should be improved through the expansion of community-oriented policing initiatives.

(Pub. L. 100–690, title V, § 5122, Nov. 18, 1988, 102 Stat. 4301; Pub. L. 101–625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4245; Pub. L. 105–276, title V, § 586(b), Oct. 21, 1998, 112 Stat. 2646.)

AMENDMENTS

1998—Par. (2). Pub. L. 105–276, § 586(b)(1), inserted ''or violent'' after ''drug-related''.

Par. (4). Pub. L. 105–276, § 586(b)(2)(A), inserted ''and violent'' after ''drug-related''.

Pars. (6) to (8). Pub. L. 105–276, § 586(b)(2)(B), (3), (4), added pars. (6) to (8).

1990—Pub. L. 101–625 amended section generally. Prior to amendment, section read as follows: ''The Congress finds that—

''(1) the Federal Government has a duty to provide public housing that is decent, safe, and free from illegal drugs;

''(2) public housing projects in many areas suffer from rampant drug-related crime;

''(3) drug dealers are increasingly imposing a reign of terror on public housing tenants;

''(4) the increase in drug-related crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment that requires substantial government expenditures; and

''(5) local law enforcement authorities often lack the resources to deal with the drug problem in public housing, particularly in light of the recent reductions in Federal aid to cities.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 586(a), Oct. 21, 1998, 112 Stat. 2646, provided that: ''This section [enacting sections 11906 to 11908 of this title, amending this section and sections 11902, 11903, 11904, and 11905 of this title, and repealing sections 11906 to 11909 of this title] may be cited as the 'Public and Assisted Housing Drug Elimination Program Amendments of 1998'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–227, title X, § 1051, Mar. 31, 1994, 108 Stat. 274, provided that: ''This part [part D (§§ 1051–1053) of title X of Pub. L. 103–227, amending section 11903a of this title] may be cited as the 'Midnight Basketball League Training and Partnership Act'.''

SHORT TITLE

Section 5121 of Pub. L. 100–690, as amended by Pub. L. 101–625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4245, provided that: ''This chapter [chapter 2 (§§ 5121–5130) of subtitle C of title V of Pub. L. 100–690, enacting this subchapter] may be cited as the 'Public and Assisted Housing Drug Elimination Act of 1990'.''

Section 5141 of Pub. L. 100–690 provided that: ''This chapter [chapter 3 (§§ 5141–5146) of subtitle C of title V of Pub. L. 100–690, enacting subchapter II of this chapter] may be cited as the 'Drug-Free Public Housing Act of 1988'.''

§ 11902. Authority to make grants

(a) In general

The Secretary of Housing and Urban Development, in accordance with the provisions of this subchapter, may make grants to public housing agencies, public housing resident management corporations that are principally managing, as determined by the Secretary, public housing projects owned by public housing agencies, recipients of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], Indian tribes[1]

[1] So in original. Probably should be followed by a comma.

and private, for-profit and nonprofit owners of federally assisted low-income housing for use in eliminating drug-related and violent crime.

(b) Consortia

Subject to terms and conditions established by the Secretary, public housing agencies may form consortia for purposes of applying for grants under this subchapter.

(Pub. L. 100–690, title V, § 5123, Nov. 18, 1988, 102 Stat. 4301; Pub. L. 101–625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4246; Pub. L. 102–550, title I, § 161(d)(1), Oct. 28, 1992, 106 Stat. 3719; Pub. L. 104–330, title VII, § 704(1), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105–276, title II, § 220(1), title V, § 586(c), Oct. 21, 1998, 112 Stat. 2488, 2647.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (a), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

AMENDMENTS

1998—Pub. L. 105–276, § 586(c), designated existing provisions as subsec. (a), inserted heading, substituted ''recipients of assistance under the Native American Housing Assistance and Self-Determination Act of 1996'' for ''tribally designated housing entities'', inserted ''and violent'' after ''drug-related'', and added subsec. (b).

Pub. L. 105–276, § 220(1), inserted ''Indian tribes'' before ''and private''.

1996—Pub. L. 104–330 struck out ''(including Indian Housing Authorities)'' after ''grants to public housing agencies'' and inserted ''tribally designated housing entities,'' before ''and private''.

1992—Pub. L. 102–550 inserted '', public housing resident management corporations that are principally managing, as determined by the Secretary, public housing projects owned by public housing agencies,'' after ''Authorities)''.

1990—Pub. L. 101–625 amended section generally. Prior to amendment, section read as follows: ''The Secretary of Housing and Urban Development, in accordance with the provisions of this subchapter, may make grants to public housing agencies (including Indian housing authorities) for use in eliminating drug-related crime in public housing projects.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 11903. Eligible activities

(a) Public and assisted housing

Grants under this subchapter may be used in public housing or other federally assisted low-income housing projects for—

(1) the employment of security personnel;

(2) reimbursement of local law enforcement agencies for additional security and protective services;

(3) physical improvements which are specifically designed to enhance security;

(4) the employment of one or more individuals—

(A) to investigate drug-related or violent crime in and around the real property comprising any public or other federally assisted low-income housing project; and

(B) to provide evidence relating to such crime in any administrative or judicial proceeding;

(5) the provision of training, communications equipment, and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials;

(6) programs designed to reduce use of drugs in and around public or other federally assisted low-income housing projects, including drug-abuse prevention, intervention, referral, and treatment programs;

(7) where a public housing agency, an Indian tribe, or recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.] receives a grant, providing funding to nonprofit resident management corporations and resident councils to develop security and drug abuse prevention programs involving site residents; and

(8) sports programs and sports activities that serve primarily youths from public or other federally assisted low-income housing projects and are operated in conjunction with, or in furtherance of, an organized program or plan designed to reduce or eliminate drugs and drug-related problems in and around such projects.

(b) Other PHA-owned housing

Notwithstanding any other provision of this subchapter, grants under this subchapter may be used to eliminate drug-related crime in and around housing owned by public housing agencies that is not public housing assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and is not otherwise federally assisted, for the activities described in paragraphs (1) through (7) of subsection (a) of this section, but only if—

(1) the housing is located in a high intensity drug trafficking area designated pursuant to section 1504[1] of title 21; and

(2) the public housing agency owning the housing demonstrates, to the satisfaction of the Secretary, that drug-related or violent activity in or around the housing has a detrimental effect on or about the real property comprising any public or other federally assisted low-income housing.

(Pub. L. 100–690, title V, § 5124, Nov. 18, 1988, 102 Stat. 4301; Pub. L. 101–625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4246; Pub. L. 102–550, title I, § 161(c), (d)(2), Oct. 28, 1992, 106 Stat. 3718, 3719; Pub. L. 104–330, title VII, § 704(2), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105–276, title II, § 220(2), title V, § 586(d), Oct. 21, 1998, 112 Stat. 2488, 2647.)

[1] See References in Text note below.

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (a)(7), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The United States Housing Act of 1937, referred to in subsec. (b), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Section 1504 of title 21, referred to in subsec. (b)(1), was repealed by Pub. L. 100–690, title I, § 1009, Nov. 18, 1988, 102 Stat. 4188, as amended.

AMENDMENTS

1998—Subsec. (a)(4)(A). Pub. L. 105–276, § 586(d)(1)(A), substituted ''drug-related or violent crime in and around'' for ''drug-related crime on or about''.

Subsec. (a)(7). Pub. L. 105–276, § 586(d)(1)(C)(i), substituted ''recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996'' for ''tribally designated housing entity''.

Pub. L. 105–276, § 220(2), inserted '', an Indian tribe,'' after ''public housing agency''.

Subsec. (a)(8). Pub. L. 105–276, § 586(d)(1)(B), (C)(ii), (8)[(D)], added par. (8).

Subsec. (b). Pub. L. 105–276, § 586(d)(2)(A), substituted ''drug-related crime in and around'' for ''drug-related crime in'' in introductory provisions.

Subsec. (b)(2). Pub. L. 105–276, § 586(d)(2)(B), substituted ''drug-related or violent activity in or around'' for ''drug-related activity at''.

1996—Subsec. (a)(7). Pub. L. 104–330 inserted ''or tribally designated housing entity'' after ''public housing agency'' and struck out ''public housing'' after ''nonprofit''.

1992—Pub. L. 102–550 designated existing provisions as subsec. (a), inserted heading, inserted ''where a public housing agency receives a grant,'' in par. (7), and added subsec. (b).

1990—Pub. L. 101–625 amended section generally. Prior to amendment, section read as follows: ''A public housing agency may use a grant under this subchapter for—

''(1) the employment of security personnel in public housing projects;

''(2) reimbursement of local law enforcement agencies for additional security and protective services for public housing projects;

''(3) physical improvements in public housing projects which are specifically designed to enhance security;

''(4) the employment of 1 or more individuals—

''(A) to investigate drug-related crime on or about the real property comprising any public housing project; and

''(B) to provide evidence relating to any such crime in any administrative or judicial proceeding;

''(5) the provision of training, communications equipment, and other related equipment for use by voluntary public housing tenant patrols acting in cooperation with local law enforcement officials;

''(6) innovative programs designed to reduce use of drugs in and around public housing projects; and

''(7) providing funding to nonprofit public housing resident management corporation and tenant councils to develop security and drug abuse prevention programs involving site residents.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 11903a. Repealed. Pub. L. 105–276, title V, § 582(a)(13), Oct. 21, 1998, 112 Stat. 2644

Section, Pub. L. 101–625, title V, § 520, Nov. 28, 1990, 104 Stat. 4202; Pub. L. 102–389, title II, Oct. 6, 1992, 106 Stat. 1587; Pub. L. 102–550, title I, § 126(b), Oct. 28, 1992, 106 Stat. 3710; Pub. L. 103–227, title X, §§ 1052, 1053, Mar. 31, 1994, 108 Stat. 274, 280; Pub. L. 104–330, title V, § 501(d)(2), Oct. 26, 1996, 110 Stat. 4043, authorized grants for public and assisted housing youth sports programs.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement repeal before such date, and with savings provision, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 11904. Applications

(a) In general

To receive a grant under this subchapter, a public housing agency, a public housing resident management corporation, an Indian tribe[1] a recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], or an owner of federally assisted low-income housing shall submit an application to the Secretary, at such time, in such manner, and accompanied by such additional information as the Secretary may reasonably require. Such application shall include a plan for addressing the problem of drug-related or violent crime in and around of[2] the housing administered or owned by the applicant for which the application is being submitted, which plan shall be coordinated with and may be included in the public housing agency plan submitted to the Secretary pursuant to section 1437c–1 of this title.

(b) One-year renewable grants

(1) In general

An eligible applicant that is a public housing agency may apply for a 1-year grant under this subchapter that, subject to the availability of appropriated amounts, shall be renewed annually for a period of not more than 4 additional years, except that such renewal shall be contingent upon the Secretary finding, upon an annual or more frequent review, that the grantee agency is performing under the terms of the grant and applicable laws in a satisfactory manner and meets such other requirements as the Secretary may prescribe. The Secretary may adjust the amount of any grant received or renewed under this paragraph to take into account increases or decreases in amounts appropriated for these purposes or such other factors as the Secretary determines to be appropriate.

[1] So in original. Probably should be followed by a comma.

[2] So in original.

(2) Eligibility and preference

The Secretary may not provide assistance under this subchapter to an applicant that is a public housing agency unless—

(A) the agency will use the grants to continue or expand activities eligible for assistance under this subchapter, as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, in which case the Secretary shall provide preference to such applicant; except that preference under this subparagraph shall not preclude selection by the Secretary of other meritorious applications that address urgent or serious crime problems nor be construed to require continuation of activities determined by the Secretary to be unworthy of continuation; or

(B) the agency is in the class established under paragraph (3).

(3) PHAs having urgent or serious crime problems

The Secretary shall, by regulations issued after notice and opportunity for public comment, set forth criteria for establishing a class of public housing agencies that have urgent or serious crime problems. The Secretary may reserve a portion of the amount appropriated to carry out this subchapter in each fiscal year only for grants for public housing agencies in such class, except that any amounts from such portion reserved that are not obligated to agencies in the class shall be made available only for agencies that are subject to a preference under paragraph (2)(A).

(4) Inapplicability to federally assisted low-income housing

The provisions of this subsection shall not apply to federally assisted low-income housing.

(c) Criteria

The Secretary shall approve applications under subsection (b) of this section that are not subject to a preference under subsection (b)(2)(A) of this section on the basis of thresholds or criteria such as—

(1) the extent of the drug-related or violent crime problem in and around the public or federally assisted low-income housing project or projects proposed for assistance;

(2) the quality of the plan to address the crime problem in the public or federally assisted low-income housing project or projects proposed for assistance, including the extent to which the plan includes initiatives that can be sustained over a period of several years;

(3) the capability of the applicant to carry out the plan; and

(4) the extent to which tenants, the local government and the local community support and participate in the design and implementation of the activities proposed to be funded under the application.

(d) Federally assisted low-income housing

In addition to the selection criteria specified in subsection (c) of this section, the Secretary may establish other criteria for the evaluation of applications submitted by owners of federally assisted low-income housing, except that such additional criteria shall be designed only to reflect—

(1) relevant differences between the financial resources and other characteristics of public housing authorities and owners of federally assisted low-income housing, or

(2) relevant differences between the problem of drug-related or violent crime in public housing and the problem of drug-related or violent crime in federally assisted low-income housing.

(e) High intensity drug trafficking areas

In evaluating the extent of the drug-related crime problem pursuant to subsection (c) of this section, the Secretary may consider whether housing projects proposed for assistance are located in a high intensity drug trafficking area designated pursuant to section 1504[3] of title 21.

(Pub. L. 100–690, title V, § 5125, Nov. 18, 1988, 102 Stat. 4302; Pub. L. 101–625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4246; Pub. L. 102–550, title I, § 161(d)(3), Oct. 28, 1992, 106 Stat. 3719; Pub. L. 104–330, title VII, § 704(3), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105–276, title II, § 220(3), title V, § 586(e), Oct. 21, 1998, 112 Stat. 2488, 2647.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (a), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (b)(2)(A), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

Section 1504 of title 21, referred to in subsec. (e), was repealed by Pub. L. 100–690, title I, § 1009, Nov. 18, 1988, 102 Stat. 4188, as amended.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–276, § 586(e)(1), substituted ''recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996'' for ''tribally designated housing entity'' in first sentence and ''or violent crime in and around'' for ''crime on the premises'' in second sentence, and inserted before period at end '', which plan shall be coordinated with and may be included in the public housing agency plan submitted to the Secretary pursuant to section 1437c–1 of this title''.

Pub. L. 105–276, § 220(3), inserted ''an Indian tribe'' after ''resident management corporation,''.

Subsec. (b). Pub. L. 105–276, § 586(e)(5), (6), added subsec. (b) and redesignated former subsec. (b) as (c).

Pub. L. 105–276, § 586(e)(2)(A), inserted introductory provisions and struck out former introductory provisions which read as follows: ''Except as provided by subsections (c) and (d) of this section the Secretary shall approve applications under this subchapter based exclusively on—''.

Subsec. (b)(1). Pub. L. 105–276, § 586(e)(2)(B), substituted ''or violent crime problem in and around'' for ''crime problem in''.

Subsec. (c). Pub. L. 105–276, § 586(e)(5), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 105–276, § 586(e)(3)(A), substituted ''subsection (c)'' for ''subsection (b)'' in introductory provisions.

[3] See References in Text note below.

Subsec. (c)(2). Pub. L. 105–276, § 586(e)(3)(B), inserted ''or violent'' after ''drug-related'' in two places.

Subsec. (d). Pub. L. 105–276, § 586(e)(5), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 105–276, § 586(e)(4), substituted ''subsection (c)'' for ''subsection (b)''.

Subsec. (e). Pub. L. 105–276, § 586(e)(5), redesignated subsec. (d) as (e).

1996—Subsec. (a). Pub. L. 104–330 inserted ''a tribally designated housing entity,'' after ''resident management corporation,''.

1992—Subsec. (a). Pub. L. 102–550 inserted '', a public housing resident management corporation,'' after ''public housing agency'' in first sentence.

1990—Pub. L. 101–625 amended section generally, substituting present provisions for provisions relating generally to applications for grants under this subchapter and to criteria for approval of such applications.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 11905. Definitions

For the purposes of this subchapter:

(1) Controlled substance

The term ''controlled substance'' has the meaning given such term in section 802 of title 21.

(2) Drug-related crime

The term ''drug-related crime'' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance.

(3) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(4) Federally assisted low-income housing

The term ''federally assisted low-income housing'' means housing assisted under—

(A) section 1715*l*(d)(3), section 1715*l*(d)(4), or 1715z–1 of title 12;

(B) section 1701s of title 12; or

(C) section 1437f of this title.

(5) Recipient

The term ''recipient'', when used in reference to the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], has the meaning given such term in section 4 of such Act [25 U.S.C. 4103].

(6) Indian tribe

The term ''Indian tribe'' has the meaning given the term in section 4(12) of the Native American Housing Assistance and Self Determination Act of 1996, 25 U.S.C. 4103(12).

(Pub. L. 100–690, title V, § 5126, Nov. 18, 1988, 102 Stat. 4302; Pub. L. 101–625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4247; Pub. L. 104–330, title VII, § 704(4), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105–276, title II, § 220(4), title V, § 586(f), Oct. 21, 1998, 112 Stat. 2488, 2649; Pub. L. 106–74, title II, § 227(a), as added Pub. L. 106–113, div. A, title I, § 175(d), Nov. 29, 1999, 113 Stat. 1534.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in par. (5), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

AMENDMENTS

1999—Par. (4)(D). Pub. L. 106–74, § 227(a), as added by Pub. L. 106–113, struck out subpar. (D) which read as follows: ''the Native American Housing Assistance and Self-Determination Act.''

1998—Par. (5). Pub. L. 105–276, § 586(f), added par. (5) and struck out heading and text of former par. (5). Text read as follows: ''The term 'tribally designated housing entity' has the meaning given such term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996.''

Par. (6). Pub. L. 105–276, § 220(4), added par. (6).

1996—Par. (4)(D). Pub. L. 104–330, § 704(4)(A), added subpar. (D).

Par. (5). Pub. L. 104–330, § 704(4)(B), added par. (5).

1990—Pub. L. 101–625 amended section generally, adding provisions defining ''Federally assisted low-income housing''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–74, title II, § 227(b), as added by Pub. L. 106–113, div. A, title I, § 175(d), Nov. 29, 1999, 113 Stat. 1534, provided that: ''The amendments made by subsection (a) [amending this section] shall be construed to have taken effect on October 21, 1998.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 11906. Reports

(a) Grantee reports

The Secretary shall require grantees under this subchapter to provide periodic reports that include the obligation and expenditure of grant funds, the progress made by the grantee in implementing the plan described in section 11904(a) of this title, and any change in the incidence of drug-related crime in projects assisted under this subchapter.

(b) HUD reports

The Secretary shall submit a report to the Congress not later than 18 months after October 21, 1998, describing the system used to distribute funding to grantees under this section, which shall include descriptions of—

(1) the methodology used to distribute amounts made available under this subchapter

among public housing agencies, including provisions used to provide for renewals of ongoing programs funded under this subchapter; and

(2) actions taken by the Secretary to ensure that amounts made available under this subchapter are not used to fund baseline local government services, as described in section 11907(b) of this title.

(c) Notice of funding awards

The Secretary shall cause to be published in the Federal Register notice of all grant awards made pursuant to this subchapter, which shall identify the grantees and the amount of the grants. Such notice shall be published not less frequently than annually.

(Pub. L. 100–690, title V, § 5127, as added Pub. L. 105–276, title V, § 586(g), Oct. 21, 1998, 112 Stat. 2649.)

PRIOR PROVISIONS

A prior section 11906, Pub. L. 100–690, title V, § 5127, Nov. 18, 1988, 102 Stat. 4303; Pub. L. 101–625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4248, related to implementation of this subchapter, prior to repeal by Pub. L. 105–276, title V, §§ 503, 586(g), Oct. 21, 1998, 112 Stat. 2521, 2649, effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, except to extent otherwise provided, and with savings provision.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date, except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 11907. Monitoring

(a) In general

The Secretary shall audit and monitor the programs funded under this subchapter to ensure that assistance provided under this subchapter is administered in accordance with the provisions of this subchapter.

(b) Prohibition of funding baseline services

(1) In general

Amounts provided under this subchapter may not be used to reimburse or support any local law enforcement agency or unit of general local government for the provision of services that are included in the baseline of services required to be provided by any such entity pursuant to a local cooperation agreement under section 1437c(e)(2) of this title or any provision of an annual contributions contract for payments in lieu of taxation pursuant to section 1437d(d) of this title.

(2) Description

Each public housing agency that receives grant amounts under this subchapter shall describe, in the report under section 11906(a) of this title, such baseline of services for the unit of general local government in which the jurisdiction of the agency is located.

(c) Enforcement

The Secretary shall provide for the effective enforcement of this section, which may include the use of on-site monitoring, independent public audit requirements, certification by local law enforcement or local government officials regarding the performance of baseline services referred to in subsection (b) of this section, and entering into agreements with the Attorney General to achieve compliance, and verification of compliance, with the provisions of this subchapter.

(Pub. L. 100–690, title V, § 5128, as added Pub. L. 105–276, title V, § 586(g), Oct. 21, 1998, 112 Stat. 2649.)

PRIOR PROVISIONS

A prior section 11907, Pub. L. 100–690, title V, § 5128, Nov. 18, 1988, 102 Stat. 4303; Pub. L. 101–625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4248, related to provision of periodic reports by grantees, prior to repeal by Pub. L. 105–276, title V, §§ 503, 586(g), Oct. 21, 1998, 112 Stat. 2521, 2649, effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, except to extent otherwise provided, and with savings provision.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date, except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

REVIEW OF DRUG ELIMINATION PROGRAM CONTRACTS

Pub. L. 105–276, title V, § 587, Oct. 21, 1998, 112 Stat. 2650, provided that:

''(a) REQUIREMENT.—The Secretary of Housing and Urban Development shall investigate all security contracts awarded by grantees under the Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11901 et seq.) that are public housing agencies that own or operate more than 4,500 public housing dwelling units—

''(1) to determine whether the contractors under such contracts have complied with all laws and regulations regarding prohibition of discrimination in hiring practices;

''(2) to determine whether such contracts were awarded in accordance with the applicable laws and regulations regarding the award of such contracts;

''(3) to determine how many such contracts were awarded under emergency contracting procedures; and

''(4) to evaluate the effectiveness of the contracts.

''(b) REPORT.—Not later than 180 days after the date of the enactment of this Act [Oct. 21, 1998], the Secretary shall complete the investigation required under subsection (a) and submit a report to the Congress regarding the findings under the investigation. With respect to each such contract, the report shall (1) state whether the contract was made and is operating, or was not made or is not operating, in full compliance with applicable laws and regulations, and (2) for each contract that the Secretary determines is in such compliance issue a certification of such compliance by the Secretary of Housing and Urban Development.

''(c) ACTIONS.—For each contract that is described in the report under subsection (b) as not made or not operating in full compliance with applicable laws and regulations, the Secretary of Housing and Urban Development shall promptly take any actions available under law or regulation that are necessary—

''(1) to bring such contract into compliance; or

''(2) to terminate the contract.

''(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

§ 11908. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subchapter $310,000,000 for fiscal year 1999, and such sums as may be necessary for fiscal years 2000, 2001, 2002, and 2003.

(b) Set-aside for federally assisted low-income housing

Of any amounts made available in any fiscal year to carry out this subchapter not more than 6.25 percent shall be available for grants for federally assisted low-income housing.

(c) Set-aside for technical assistance and program oversight

Of any amounts appropriated in any fiscal year to carry out this subchapter, amounts shall be available to the extent provided in appropriations Acts to provide training, technical assistance, contract expertise, program oversight, program assessment, execution, and other assistance for or on behalf of public housing agencies, recipients of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], resident organizations, and officials and employees of the Department (including training and the cost of necessary travel for participants in such training, by or to officials and employees of the Department and of public housing agencies, and to residents and to other eligible grantees). Assistance and other activities carried out using amounts made available under this subsection may be provided directly or indirectly by grants, contracts, or cooperative agreements.

(Pub. L. 100–690, title V, § 5129, as added Pub. L. 105–276, title V, § 586(g), Oct. 21, 1998, 112 Stat. 2650.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (c), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 11908, Pub. L. 100–690, title V, § 5129, Nov. 18, 1988, 102 Stat. 4303; Pub. L. 101–625, title V, §§ 520(k), 581(a), Nov. 28, 1990, 104 Stat. 4205, 4248, related to auditing and monitoring of programs funded under this subchapter, prior to repeal by Pub. L. 105–276, title V, §§ 503, 586(g), Oct. 21, 1998, 112 Stat. 2521, 2649, effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, except to extent otherwise provided, and with savings provision.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date, except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 11909. Repealed. Pub. L. 105–276, title V, § 586(g), Oct. 21, 1998, 112 Stat. 2649

A prior section 11909, Pub. L. 100–690, title V, § 5130, as added Pub. L. 101–625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4248; amended Pub. L. 102–550, title I, §§ 126(a), 161(a), (b), Oct. 28, 1992, 106 Stat. 3710, 3718, authorized appropriations to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, and with savings provision, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

SUBCHAPTER II—DRUG-FREE PUBLIC HOUSING

§ 11921. Statement of purpose

The purpose of this subchapter is to reaffirm the principle that decent affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require better coordination and training in drug prevention programs among the public officials and agencies responsible for administering the public housing programs of the Nation.

(Pub. L. 100–690, title V, § 5142, Nov. 18, 1988, 102 Stat. 4303.)

§ 11922. Clearinghouse on drug abuse in public housing

(a) Establishment

The Secretary of Housing and Urban Development shall establish, in the Office of Public Housing in the Department of Housing and Urban Development, a clearinghouse to receive, collect, process, and assemble information regarding the abuse of controlled substances in public housing projects.

(b) Functions

The clearinghouse established under subsection (a) of this section shall—

(1) respond to inquiries by members of the public requesting assistance in investigating, studying, and working on the problem of the abuse of controlled substances; and

(2) receive, collect, process, assemble, and provide information on programs, authorities, institutions, and agencies, that may further assist members of the public requesting information from the clearinghouse.

(Pub. L. 100–690, title V, § 5143, Nov. 18, 1988, 102 Stat. 4303.)

§ 11923. Regional training program on drug abuse in public housing

(a) Establishment

The Secretary shall establish a regional training program for the training of public housing officials, to better prepare and educate the officials to confront the widespread abuse of controlled substances in the communities in which the officials work.

(b) Operation

The regional training program established under subsection (a) of this section shall be conducted within 12 months after November 18, 1988, by a national training unit established by the Secretary.

(Pub. L. 100–690, title V, § 5144, Nov. 18, 1988, 102 Stat. 4303.)

§ 11924. Definitions

For purposes of this subchapter:

(1) Controlled substance

The term ''controlled substance'' has the meaning given such term in section 802 of title 21.

(2) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(Pub. L. 100–690, title V, § 5145, Nov. 18, 1988, 102 Stat. 4304.)

§ 11925. Regulations

Not later than 6 months after November 18, 1988, the Secretary shall issue any regulations necessary to carry out this subchapter.

(Pub. L. 100–690, title V, § 5146, Nov. 18, 1988, 102 Stat. 4304.)

CHAPTER 125—RENEWABLE ENERGY AND ENERGY EFFICIENCY TECHNOLOGY COMPETITIVENESS

Sec.
12001. Finding, purpose, and general authority.
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12003. National goals and multi-year funding for Federal wind, photovoltaics, and solar thermal programs.
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§ 12001. Finding, purpose, and general authority

(a) Finding

The Congress finds that it is in the national security and economic interest of the United States to foster greater efficiency in the use of available energy supplies and greater use of renewable energy technologies.

(b) Purpose

It is the purpose of this chapter to authorize the Secretary of Energy, acting in accordance with section 13541 of this title, to pursue an aggressive national program of research, development, demonstration, and commercial application of renewable energy and energy efficiency technologies in order to ensure a stable and secure future energy supply by—

(1) achieving as soon as practicable cost competitive use of those technologies without need of Federal financial incentives;

(2) establishing long-term Federal research goals and multiyear funding levels;

(3) directing the Secretary to undertake initiatives to improve the ability of the private sector to commercialize in the near term renewable energy and energy efficiency technologies; and

(4) fostering collaborative efforts involving the private sector through government support of a program of demonstration and commercial application projects.

(c) General authority

The Secretary, acting in accordance with section 13541 of this title, is authorized and directed to—

(1) pursue a program of research, development, demonstration, and commercial application with the private sector, to achieve the purpose of this chapter, including the goals established under section 12003 of this title; and

(2) undertake demonstration and commercial application projects as provided in section 12005 of this title.

(Pub. L. 101–218, § 2, Dec. 11, 1989, 103 Stat. 1859; Pub. L. 102–486, title XII, § 1202(d)(1)–(3), Oct. 24, 1992, 106 Stat. 2959, 2960.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c)(1), was in the original ''this Act'', meaning Pub. L. 101–218, Dec. 11, 1989, 103 Stat. 1859, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–486, § 1202(d)(1), substituted ''section 13541 of this title'' for ''authority contained in the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901–5920) and other law applicable to the Secretary'' and ''demonstration, and commercial application'' for ''and demonstration''.

Subsec. (b)(4). Pub. L. 102–486, § 1202(d)(2), substituted ''efforts'' for ''research and development efforts'' and ''demonstration and commercial application projects'' for ''joint ventures''.

Subsec. (c). Pub. L. 102–486, § 1202(d)(3), substituted ''section 13541 of this title, is authorized and directed to—'' and pars. (1) and (2) for ''the authority contained in the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901–5920) and other law applicable to the Secretary—

''(1) is authorized and directed to—

''(A) pursue a program of research, development, and demonstration, including the use of joint ventures with the private sector, to achieve the purpose of this chapter, including the goals established under section 12003 of this title; and

''(B) undertake joint ventures as provided in section 12005 of this title; and

''(2) is authorized to undertake, from time to time, joint ventures in technology areas other than those set forth in section 12005(c) of this title, subject to the conditions set forth in section 12005(b) of this title.''

SHORT TITLE

Section 1 of Pub. L. 101–218 provided: ''That this Act [enacting this chapter and amending sections 6276 and 8243 of this title, section 2857 of Title 10, Armed Forces, and section 2194 of Title 22, Foreign Relations and Intercourse] may be referred to as the 'Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989'.''

§ 12002. Definitions

As used in this chapter—

(1) the term ''invention'' means an invention or discovery that is patented or for which a patent may be obtained under title 35, or any novel variety of plant that is protected or for which plant variety protection may be obtained under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.) and that is conceived or reduced to practice as a result of work under an agreement entered into under this chapter;

(2) the term ''non-Federal person'' means an entity located in the United States, the controlling interest (as defined by the Secretary) of which is held by persons of the United States, including—

(A) a for-profit business;

(B) a private foundation;

(C) a nonprofit organization such as a university;

(D) a trade or professional society; and

(E) a unit of State or local government;

(3) the term ''Secretary'' means the Secretary of Energy;

(4) the term ''small business'', with respect to a participant in any demonstration and commercial application project under this chapter, means a private firm that does not exceed the numerical size standard promulgated by the Small Business Administration under section 632(a) of title 15 for the Standard Industrial Classification (SIC) code designated by the Secretary of Energy as the primary business activity to be undertaken in the demonstration and commercial application project;

(5) the term ''source reduction'' means any practice which—

(A) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment, including fugitive emissions, prior to recycling, treatment, or disposal; and

(B) reduces the hazards to the public health and the environment associated with the release of such substances, pollutants, or contaminants,

including equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, and inventory control, but not including any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service;[1]

(6) the term ''United States'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

(Pub. L. 101–218, § 3, Dec. 11, 1989, 103 Stat. 1859; Pub. L. 102–486, title XII, § 1202(d)(4), Oct. 24, 1992, 106 Stat. 2960.)

REFERENCES IN TEXT

The Plant Variety Protection Act, referred to in par. (1), is Pub. L. 91–577, Dec. 24, 1970, 84 Stat. 1542, as amended, which is classified principally to chapter 57 (§ 2321 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2321 of Title 7 and Tables.

[1] So in original. Probably should be ''; and''.

AMENDMENTS

1992—Pars. (2) to (5). Pub. L. 102–486 redesignated pars. (3) to (5) as (2) to (4), respectively, in par. (4) substituted ''any demonstration and commercial application project'' for ''any joint venture'' and ''in the demonstration and commercial application project;'' for ''in the venture; and'', added par. (5), and struck out former par. (2) which read as follows: '' 'joint venture' means any agreement entered into under this chapter by the Secretary with more than one or a consortium of non-Federal persons (including a joint venture under the National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.)) for cost-shared research, development, or demonstration of technologies, but does not include procurement contracts, grant agreements, or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31;''.

§ 12003. National goals and multi-year funding for Federal wind, photovoltaics, and solar thermal programs

(a) National goals

The following are declared to be the national goals for the wind, photovoltaics, and solar thermal energy programs being carried out by the Secretary:

(1) Wind

(A) In general, the goals for the Wind Energy Research Program include improving design methodologies and developing more reliable and efficient wind turbines to increase the cost competitiveness of wind energy. Research efforts shall emphasize—

(i) activities that address near-term technical problems and assist private sector exploitation of market opportunities of the wind energy industry;

(ii) developing technologies such as advanced airfoils and variable speed generators to increase wind turbine output and reduce maintenance costs by decreasing structural stress and fatigue;

(iii) increasing the basic knowledge of aerodynamics, structural dynamics, fatigue, and electrical systems interactions as applied to wind energy technology; and

(iv) improving the compatibility of electricity produced from wind farms with conventional utility needs.

(B) Specific goals for the Wind Energy Research Program shall be to—

(i) reduce average wind energy costs to 3 to 5 cents per kilowatt hour by 1995;

(ii) reduce capital costs of new wind energy systems to $500 to $750 per kilowatt of installed capacity by 1995;

(iii) reduce operation and maintenance costs for wind energy systems to less than one cent per kilowatt hour by 1995; and

(iv) increase capacity factors for new wind energy systems to 25 to 35 percent by 1995.

(2) Photovoltaics

(A) In general, the goals of the Photovoltaic Energy Systems Program shall include improving the reliability and conversion efficiencies of and lowering the costs of photovoltaic conversion. Research efforts shall emphasize advancements in the performance, stability, and durability of photovoltaic materials.

(B) Specific goals of the Photovoltaic Energy Systems Program shall be to—

(i) improve operational reliability of photovoltaic modules to 30 years by 1995;

(ii) increase photovoltaic conversion efficiencies by 20 percent by 1995;

(iii) decrease new photovoltaic module direct manufacturing costs to $800 per kilowatt by 1995; and

(iv) increase cost efficiency of photovoltaic power production to 10 cents per kilowatt hour by 1995.

(3) Solar thermal

(A) In general, the goal of the Solar Thermal Energy Systems Program shall be to advance research and development to a point where solar thermal technology is cost-competitive with conventional energy sources, and to promote the integration of this technology into the production of industrial process heat and the conventional utility network. Research and development shall emphasize development of a thermal storage technology to provide capacity for shifting power to periods of demand when full insolation is not available; improvement in receivers, energy conversion devices, and innovative concentrators using stretch membranes, lenses, and other materials; and exploration of advanced manufacturing techniques.

(B) Specific goals of the Solar Thermal Energy Systems Program shall be to—

(i) reduce solar thermal costs for industrial process heat to $9.00 per million Btu by 1995; and

(ii) reduce average solar thermal costs for electricity to 4 to 5 cents per kilowatt hour by 1995.

(4) Alcohol from biomass

(A) In general, the goal of the Alcohol From Biomass Program shall be to advance research and development to a point where alcohol from biomass technology is cost-competitive with conventional hydrocarbon transportation fuels, and to promote the integration of this technology into the transportation fuel sector of the economy.

(B)(i) Specific goals for producing ethanol from biomass shall be to—

(I) reduce the cost of alcohol to 70 cents per gallon;

(II) improve the overall biomass carbohydrate conversion efficiency to 91 percent;

(III) reduce the capital cost component of the cost of alcohol to 23 cents per gallon; and

(IV) reduce the operating and maintenance component of the cost of alcohol to 47 cents per gallon.

(ii) Specific goals for producing methanol from biomass shall be to—

(I) reduce the cost of alcohol to 47 cents per gallon; and

(II) reduce the capital component of the cost of alcohol to 16 cents per gallon.

(5) Other technologies

The Secretary shall submit to the Congress, as part of the first report submitted under section 12006 of this title, recommendations for specific cost goals and other pertinent goals for 1995 for Department of Energy research, development, and demonstration programs in Biofuels Energy Systems, Biodiesel Energy Systems, Hydrogen Energy Systems, Solar Buildings Energy Systems, Ocean Energy Systems, Geothermal Energy Systems, Low-Head Hydro, and Energy Storage Systems.

(b) Amended goals

Whenever the Secretary determines that any of the goals established under this section is no longer appropriate, the Secretary shall notify Congress, as part of a report submitted under section 12006 of this title, of the reason for the determination and provide an amended goal that is consistent with the purpose stated in section 12001(b) of this title.

(c) Authorizations

There are authorized to be appropriated to the Secretary for the following renewable energy research, development, and demonstration programs: the Wind Energy Research Program, the Photovoltaic Energy Systems Program, the Solar Thermal Energy Systems Program, the Biofuels Energy Systems Program, the Hydrogen Energy Systems Program, the Solar Buildings Energy Systems Program, the Ocean Energy Systems Program, and the Geothermal Energy Systems Program—

(1) not to exceed $113,000,000 for fiscal year 1991, of which—

(A) not to exceed $39,000,000 shall be available for the Photovoltaic Energy Systems Program;

(B) not to exceed $19,000,000 shall be available for the Geothermal Energy Systems Program; and

(C) not to exceed $4,000,000 shall be available for the Hydrogen Energy Systems Program; and

(2) not to exceed $121,000,000 for fiscal year 1992, of which—

(A) not to exceed $40,000,000 shall be available for the Photovoltaic Energy Systems Program;

(B) not to exceed $20,500,000 shall be available for the Geothermal Energy Systems Program; and

(C) not to exceed $5,000,000 shall be available for the Hydrogen Energy Systems Program.

Each of the President's annual budget requests submitted to Congress after December 11, 1989, shall include as separate line items each of the categories of renewable energy programs described in this subsection.

(Pub. L. 101–218, § 4, Dec. 11, 1989, 103 Stat. 1860; Pub. L. 102–486, title XII, § 1202(b), title XXI, § 2125(1)–(3), Oct. 24, 1992, 106 Stat. 2958, 3085.)

AMENDMENTS

1992—Subsec. (a)(4), (5). Pub. L. 102–486, § 1202(b)(1), added par. (4), redesignated former par. (4) as (5), and inserted ''Biodiesel Energy Systems,'' after ''Biofuels Energy Systems,''.

Subsec. (c)(3). Pub. L. 102–486, § 2125(1)–(3), struck out par. (3) which read as follows: ''not to exceed $124,000,000 for fiscal year 1993, of which—

''(A) not to exceed $40,000,000 shall be available for the Photovoltaic Energy Systems Program;

''(B) not to exceed $23,000,000 shall be available for the Geothermal Energy Systems Program; and

''(C) not to exceed $6,000,000 shall be available for the Hydrogen Energy Systems Program.''

§ 12004. Energy efficiency authorizations

There are authorized to be appropriated to the Secretary for the following energy efficiency research, development, and demonstration programs: transportation, industrial, buildings and community systems, multi-sector, and policy and management—

(1) not to exceed $201,100,000 for fiscal year 1991, of which—

(A) not to exceed $68,300,000 shall be available for the transportation program; and

(B) not to exceed $53,500,000 shall be available for the industrial program; and

(2) not to exceed $210,600,000 for fiscal year 1992, of which—

(A) not to exceed $71,000,000 shall be available for the transportation program; and

(B) not to exceed $54,700,000 shall be available for the industrial program.

(Pub. L. 101–218, § 5, Dec. 11, 1989, 103 Stat. 1862; Pub. L. 102–486, title XXI, § 2125(4)–(6), Oct. 24, 1992, 106 Stat. 3085.)

AMENDMENTS

1992—Par. (3). Pub. L. 102–486 struck out par. (3) which read as follows: ''not to exceed $225,000,000 for fiscal year 1993, of which—

''(A) not to exceed $73,900,000 shall be available for the transportation program; and

''(B) not to exceed $56,900,000 shall be available for the industrial program.''

§ 12005. Demonstration and commercial application projects

(a) Purpose

The purpose of this section is to direct the Secretary to further the commercialization of renewable energy and energy efficiency technologies through a five-year program.

(b) Demonstration and commercial application projects

(1) Establishment

(A) The Secretary shall solicit proposals for demonstration and commercial application projects for renewable energy and energy efficiency technologies pursuant to subsection (c) of this section. Such projects may include projects for—

(i) the production and sale of electricity, thermal energy, or other forms of energy using a renewable energy technology;

(ii) increasing the efficiency of energy use; and

(iii) improvements in, or expansion of, facilities for the manufacture of renewable energy or energy efficiency technologies.

(B) REQUIREMENTS.—Each project selected under this section shall include at least one for-profit business. Activities supported under this section shall be performed in the United States. Each project under this section shall require the manufacture and reproduction substantially within the United States for commercial sale of any invention or product that may result from the project.

(2) Forms of financial assistance

(A) In supporting projects selected under subsection (c) of this section, the Secretary may choose from among the forms of agreements described in section 13541 of this title.

(B) In supporting projects selected under subsection (c) of this section, the Secretary may also enter into agreements with private lenders to pay a portion of the interest on loans made for such projects.

(3) Cost sharing

Cost sharing for projects under this section shall be conducted according to the procedures described in section 13542(b) and (c) of this title.

(4) Advisory Committee

(A) The Secretary shall establish an Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies (in this chapter referred to as the ''Advisory Committee'') to advise the Secretary on the development of the solicitation and evaluation criteria for projects under this section, and on otherwise carrying out his responsibilities under this section. The Secretary shall appoint members to the Advisory Committee, including at least one member representing—

(i) the Secretary of Commerce;

(ii) the National Laboratories of the Department of Energy;

(iii) the Solar Energy Research Institute;

(iv) the Electric Power Research Institute;

(v) the Gas Research Institute;

(vi) the National Institute of Building Sciences;

(vii) the National Institute of Standards and Technology;

(viii) associations of firms in the major renewable energy manufacturing industries; and

(ix) associations of firms in the major energy efficiency manufacturing industries.

Nothing in this subparagraph shall be construed to require the Secretary to reestablish the Advisory Committee in place under this subsection as of October 24, 1992, or to perform again any duties performed by such advisory committee before October 24, 1992.

(B) Not later than 18 months after October 24, 1992, the Advisory Committee shall provide the Secretary with a report assessing the implementation of the program under this section, including specific recommendations for improvements or changes to the program and solicitation process. The Secretary shall transmit such report and, if any, the Secretary's recommendations to the Congress.

(c) Selection of projects

(1) Solicitation

(A) Not later than 9 months after October 24, 1992, the Secretary shall solicit proposals for projects under this section. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this section.

(B) A solicitation for proposals under this paragraph shall establish a closing date for re-

ceipt of proposals. The Secretary may, if necessary, extend the closing date for receipt of proposals for a period not to exceed 90 days.

(C) Each solicitation under this paragraph shall include a description of the criteria, developed by the Secretary, according to which proposals will be evaluated. In developing such criteria, the Secretary shall consider—

(i) the need for Federal involvement to commercialize the technology or speed commercialization of the technology;

(ii) the potential for the technology to have significant market penetration;

(iii) the potential energy efficiency gains or energy supply contributions of the technology;

(iv) potential environmental improvements associated with the technology;

(v) the export potential of the technology;

(vi) the likelihood that the proposal is technically sufficient to achieve the objective of the solicitation;

(vii) the degree to which non-Federal financial participation is involved in the proposal;

(viii) the business and financial history of the proposer or proposers; and

(ix) any other factor the Secretary considers appropriate.

(2) Project technologies

Projects under this section may include the following technologies:

(A) Conversion of cellulosic biomass to liquid fuels.

(B) Ethanol and ethanol byproduct processes.

(C) Direct combustion or gasification of biomass.

(D) Biofuels energy systems.

(E) Photovoltaics, including utility scale and remote applications.

(F) Solar thermal, including solar water heating.

(G) Wind energy.

(H) High temperature and low temperature geothermal energy.

(I) Fuel cells, including transportation and stationary applications.

(J) Nondefense high-temperature superconducting electricity technology.

(K) Source reduction technology.

(L) Factory-made housing.

(M) Advanced district cooling.

(3) Project selection

The Secretary shall, within 120 days after the closing date established under paragraph (1)(B), select proposals to receive financial assistance under this section. In selecting proposals under this paragraph, the Secretary shall—

(A) consider each proposal's ability to meet the criteria developed pursuant to paragraph (1)(C); and

(B) attempt to achieve technological and geographic diversity.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section $50,000,000 for fiscal year 1994.

(Pub. L. 101–218, § 6, Dec. 11, 1989, 103 Stat. 1863; Pub. L. 102–486, title XII, § 1202(a), Oct. 24, 1992, 106 Stat. 2956.)

AMENDMENTS

1992—Pub. L. 102–486 amended section generally, substituting provisions relating to demonstration and commercial application projects for renewable energy and energy efficiency technologies for provisions relating to use of joint ventures to further commercialization of renewable energy and energy efficiency technologies.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 12006. Reports

(a) Report by Secretary

One year after December 11, 1989, and annually thereafter, the Secretary shall report to Congress on the programs and projects supported under this chapter and the progress being made toward accomplishing the goals and purposes set forth in this chapter.

(b) National renewable energy and energy efficiency management plan

(1) The Secretary, in consultation with the Advisory Committee, shall prepare a three-year management plan to be administered and carried out by the Secretary in the conduct of activities under this chapter.

(2) After opportunity for public comment and consideration, as appropriate, of such comment, the Secretary shall publish the plan.

(3) In addition to describing the Secretary's intentions for administering this chapter, the plan shall include a comprehensive strategy for assisting the private sector—

(A) in commercializing the renewable energy and energy efficiency technologies developed under this chapter; and

(B) in meeting competition from foreign suppliers of products derived from renewable energy and energy efficiency technologies.

(4) The plan shall address the role of federally-assisted research, development, and demonstration in the achievement of applicable national policy goals of the National Energy Policy Plan required under section 7321 of this title and the plan developed under section 5905 of this title.

(5) In addition, the Plan[1] shall—

(A) contain a detailed assessment of program needs, objectives, and priorities for each of the programs authorized under section 12005 of this title;

(B) use a uniform prioritization methodology to facilitate cost-benefit analyses of proposals in various program areas;

[1] So in original. Probably should not be capitalized.

(C) establish milestones for setting forth specific technology transfer activities under each program area;

(D) include annual and five-year cost estimates for individual programs under this chapter; and

(E) identify program areas for which funding levels have been changed from the previous year's Plan.[1]

(6) Within one year after October 24, 1992, the Secretary shall submit a revised management plan under this section to Congress. Thereafter, the Secretary shall submit a management plan every three years at the time of submittal of the President's annual budget submission to the Congress.

(c) Report on options

As part of the first report submitted under subsection (a) of this section, the Secretary shall submit to Congress a report analyzing options available to the Secretary under existing law to assist the private sector with the timely commercialization of wind, photovoltaic, solar thermal, biofuels, hydrogen, solar buildings, ocean, geothermal, low-head hydro, and energy storage renewable energy technologies and energy efficiency technologies through emphasis on development and demonstration assistance to specific technologies in the research, development, and demonstration programs of the Department of Energy that are near commercial application.

(Pub. L. 101–218, § 9, Dec. 11, 1989, 103 Stat. 1868; Pub. L. 102–486, title XII, § 1202(c), (d)(5), title XXIII, § 2303(b), Oct. 24, 1992, 106 Stat. 2959, 2960, 3093.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486, § 1202(d)(5), substituted ''and projects'' for '', projects, and joint ventures''.

Subsec. (b)(1). Pub. L. 102–486, § 1202(c)(1), inserted ''three-year'' before ''management plan''.

Subsec. (b)(4). Pub. L. 102–486, § 2303(b), inserted before period at end ''and the plan developed under section 5905 of this title''.

Subsec. (b)(5), (6). Pub. L. 102–486, § 1202(c)(2), added pars. (5) and (6) and struck out former par. (5) which read as follows: ''The plan shall accompany the President's annual budget submission to the Congress.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsecs. (a) and (b) of this section are listed as the 20th item on page 84 and the 19th item on page 86), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 12007. No antitrust immunity or defenses

Nothing in this chapter shall be deemed to convey to any person, partnership, corporation, or other entity immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust law. As used in this section, ''antitrust laws'' means those Acts set forth in section 12 of title 15.

(Pub. L. 101–218, § 10, Dec. 11, 1989, 103 Stat. 1869.)

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§ 12101. Findings and purpose

(a) Findings

The Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

(Pub. L. 101–336, § 2, July 26, 1990, 104 Stat. 328.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 101–336 provided that: ''This Act [enacting this chapter and section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending section 706 of Title 29, Labor, and sections 152, 221, and 611 of Title 47, and enacting provisions set out as notes under sections 12111, 12131, 12141, 12161, and 12181 of this title] may be cited as the 'Americans with Disabilities Act of 1990'.''

STUDY BY GENERAL ACCOUNTING OFFICE OF EXISTING DISABILITY-RELATED EMPLOYMENT INCENTIVES

Pub. L. 106–170, title III, § 303(a), Dec. 17, 1999, 113 Stat. 1903, provided that, as soon as practicable after Dec. 17, 1999, the Comptroller General was to undertake a study to assess existing tax credits and other disability-related employment incentives under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and other Federal laws, specifically addressing the extent to which such credits and other incentives would encourage employers to hire and retain individuals with disabilities; and that, not later than 3 years after Dec. 17, 1999, the Comptroller General was to transmit to the appropriate congressional committees a written report presenting the results of the study and any appropriate recommendations for legislative or administrative changes.

§ 12102. Definitions

As used in this chapter:

(1) Auxiliary aids and services

The term ''auxiliary aids and services'' includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually deliv-

ered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability

The term ''disability'' means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 101–336, § 3, July 26, 1990, 104 Stat. 329.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER I—EMPLOYMENT

§ 12111. Definitions

As used in this subchapter:

(1) Commission

The term ''Commission'' means the Equal Employment Opportunity Commission established by section 2000e–4 of this title.

(2) Covered entity

The term ''covered entity'' means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat

The term ''direct threat'' means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee

The term ''employee'' means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer

(A) In general

The term ''employer'' means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term ''employer'' does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general

The term ''illegal use of drugs'' means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term ''drug'' means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc.

The terms ''person'', ''labor organization'', ''employment agency'', ''commerce'', and ''industry affecting commerce'', shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual with a disability

The term ''qualified individual with a disability'' means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term ''reasonable accommodation'' may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

The term ''undue hardship'' means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

(Pub. L. 101–336, title I, § 101, July 26, 1990, 104 Stat. 330; Pub. L. 102–166, title I, § 109(a), Nov. 21, 1991, 105 Stat. 1077.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in par. (5)(A), is 24 months after July 26, 1990, see section 108 of Pub. L. 101–336, set out as an Effective Date note below.

The Controlled Substances Act, referred to in par. (6)(A), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

This chapter, referred to in par. (10)(B)(i), was in the original ''this Act'', meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

AMENDMENTS

1991—Par. (4). Pub. L. 102–166 inserted at end ''With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102–166, set out as a note under section 2000e of this title.

EFFECTIVE DATE

Section 108 of title I of Pub. L. 101–336 provided that: ''This title [enacting this subchapter] shall become effective 24 months after the date of enactment [July 26, 1990].''

§ 12112. Discrimination

(a) General rule

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a) of this section, the term ''discriminate'' includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control,

of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

(Pub. L. 101–336, title I, § 102, July 26, 1990, 104 Stat. 331; Pub. L. 102–166, title I, § 109(b)(2), Nov. 21, 1991, 105 Stat. 1077.)

AMENDMENTS

1991—Subsecs. (c), (d). Pub. L. 102–166 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102–166, set out as a note under section 2000e of this title.

§ 12113. Defenses

(a) In general

It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards

The term ''qualification standards'' may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious entities

(1) In general

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(d) List of infectious and communicable diseases

(1) In general

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall—

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissability[1] to the general public.

Such list shall be updated annually.

(2) Applications

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissability[1] published by the Secretary of Health and Human Services.

(Pub. L. 101–336, title I, § 103, July 26, 1990, 104 Stat. 333.)

[1] So in original. Probably should be ''transmissibility''.

§ 12114. Illegal use of drugs and alcohol

(a) Qualified individual with a disability

For purposes of this subchapter, the term ''qualified individual with a disability'' shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of covered entity

A covered entity—

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that—

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that

apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing

(1) In general

For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction

Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees

Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c) of this section.

(Pub. L. 101–336, title I, § 104, July 26, 1990, 104 Stat. 334.)

REFERENCES IN TEXT

The Drug-Free Workplace Act of 1988, referred to in subsec. (c)(3), is subtitle D (§§ 5151–5160) of title V of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4304, which is classified generally to chapter 10 (§ 701 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 41 and Tables.

§ 12115. Posting notices

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e–10 of this title.

(Pub. L. 101–336, title I, § 105, July 26, 1990, 104 Stat. 336.)

§ 12116. Regulations

Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5.

(Pub. L. 101–336, title I, § 106, July 26, 1990, 104 Stat. 336.)

§ 12117. Enforcement

(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e–4, 2000e–5, 2000e–6, 2000e–8, and 2000e–9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

(Pub. L. 101–336, title I, § 107, July 26, 1990, 104 Stat. 336.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

SUBCHAPTER II—PUBLIC SERVICES

PART A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

§ 12131. Definitions

As used in this subchapter:

(1) Public entity

The term ''public entity'' means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4)[1] of title 49).

(2) Qualified individual with a disability

The term ''qualified individual with a disability'' means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

(Pub. L. 101–336, title II, § 201, July 26, 1990, 104 Stat. 337.)

REFERENCES IN TEXT

Section 24102 of title 49, referred to in par. (1)(C), was subsequently amended, and section 24102(4) no longer defines ''commuter authority''. However, such term is defined elsewhere in that section.

CODIFICATION

In par. (1)(C), ''section 24102(4) of title 49'' substituted for ''section 103(8) of the Rail Passenger Service Act'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

EFFECTIVE DATE

Section 205 of Pub. L. 101–336 provided that:

''(a) GENERAL RULE.—Except as provided in subsection (b), this subtitle [subtitle A (§§ 201–205) of title II of Pub. L. 101–336, enacting this part] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

''(b) EXCEPTION.—Section 204 [section 12134 of this title] shall become effective on the date of enactment of this Act.''

EX. ORD. NO. 13217. COMMUNITY-BASED ALTERNATIVES FOR INDIVIDUALS WITH DISABILITIES

Ex. Ord. No. 13217, June 18, 2001, 66 F.R. 33155, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to place qualified individuals with disabilities in community settings whenever appropriate, it is hereby ordered as follows:

SECTION 1. *Policy*. This order is issued consistent with the following findings and principles:

(a) The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of Americans.

(b) The United States seeks to ensure that America's community-based programs effectively foster independence and participation in the community for Americans with disabilities.

(c) Unjustified isolation or segregation of qualified individuals with disabilities through institutionalization is a form of disability-based discrimination prohibited by Title II of the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 [12131] *et seq*. States must avoid disability-based discrimination unless doing so would fundamentally alter the nature of the service, program, or activity provided by the State.

(d) In *Olmstead v. L.C.*, 527 U.S. 581 (1999) (the ''*Olmstead* decision''), the Supreme Court construed Title II of the ADA [42 U.S.C. 12131 et seq.] to require States to place qualified individuals with mental disabilities in community settings, rather than in institutions, whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the State can reasonably accommodate the placement, taking into account the resources available to the State and the needs of others with disabilities.

(e) The Federal Government must assist States and localities to implement swiftly the *Olmstead* decision, so as to help ensure that all Americans have the opportunity to live close to their families and friends, to live more independently, to engage in productive employment, and to participate in community life.

SEC. 2. *Swift Implementation of the Olmstead Decision: Agency Responsibilities*. (a) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall work cooperatively to ensure that the *Olmstead* decision is implemented in a timely manner. Specifically, the designated agencies should work with States to help them assess their compliance with the *Olmstead* decision and the ADA [42 U.S.C. 12101 et seq.] in providing services to qualified individuals with disabilities in community-based settings, as long as such services are appropriate to the needs of those individuals. These agencies should provide technical guidance and work cooperatively with States to achieve the goals of Title II of the ADA [42 U.S.C. 12131 et seq.], particularly where States have chosen to develop comprehensive, effectively working plans to provide services to qualified individuals with disabilities in the most integrated settings. These agencies should also ensure that existing Federal resources are used in the most effective manner to support the goals of the ADA. The Secretary of Health and Human Services shall take the lead in coordinating these efforts.

(b) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall evaluate the policies, programs, statutes, and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities. The review shall focus on identifying affected populations, improving the flow of information about supports in the community, and removing barriers that impede opportunities for community placement. The review should ensure the involvement of consumers, advocacy organizations, providers, and relevant agency representatives. Each agency head should report to the President, through the Secretary of Health and Human Services, with the results of their evaluation within 120 days.

(c) The Attorney General and the Secretary of Health and Human Services shall fully enforce Title II of the ADA, including investigating and resolving complaints filed on behalf of individuals who allege that they have been the victims of unjustified institutionalization. Whenever possible, the Department of Justice and the Department of Health and Human Services should work cooperatively with States to resolve these complaints, and should use alternative dispute resolution to bring these complaints to a quick and constructive resolution.

(d) The agency actions directed by this order shall be done consistent with this Administration's budget.

SEC. 3. *Judicial Review*. Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall,

[1] See References in Text note below.

by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

(Pub. L. 101–336, title II, § 202, July 26, 1990, 104 Stat. 337.)

§ 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

(Pub. L. 101–336, title II, § 203, July 26, 1990, 104 Stat. 337.)

§ 12134. Regulations

(a) In general

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) Relationship to other regulations

Except for ''program accessibility, existing facilities'', and ''communications'', regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to ''program accessibility, existing facilities'', and ''communications'', such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) Standards

Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

(Pub. L. 101–336, title II, § 204, July 26, 1990, 104 Stat. 337.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

EFFECTIVE DATE

Section effective July 26, 1990, see section 205(b) of Pub. L. 101–336, set out as a note under section 12131 of this title.

PART B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

SUBPART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

§ 12141. Definitions

As used in this subpart:

(1) Demand responsive system

The term ''demand responsive system'' means any system of providing designated public transportation which is not a fixed route system.

(2) Designated public transportation

The term ''designated public transportation'' means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 12161 of this title)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) Fixed route system

The term ''fixed route system'' means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) Operates

The term ''operates'', as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) Public school transportation

The term ''public school transportation'' means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) Secretary

The term ''Secretary'' means the Secretary of Transportation.

(Pub. L. 101–336, title II, § 221, July 26, 1990, 104 Stat. 338.)

EFFECTIVE DATE

Section 231 of Pub. L. 101–336 provided that:

''(a) GENERAL RULE.—Except as provided in subsection (b), this part [part I (§§ 221–231) of subtitle B of title II of Pub. L. 101–336, enacting this subpart] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

''(b) EXCEPTION.—Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 [sections 12142, 12143(b) to (f), 12144, 12145, 12147(b), 12148(b), and 12149 of this title] shall become effective on the date of enactment of this Act.''

§ 12142. Public entities operating fixed route systems

(a) Purchase and lease of new vehicles

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease a new

bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following July 26, 1990, and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) Purchase and lease of used vehicles

Subject to subsection (c)(1) of this section, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease, after the 30th day following July 26, 1990, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Remanufactured vehicles

(1) General rule

Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system—

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following July 26, 1990; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended;

unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Exception for historic vehicles

(A) General rule

If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) Vehicles of historic character defined by regulations

For purposes of this paragraph and section 12148(b) of this title, a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

(Pub. L. 101–336, title II, § 222, July 26, 1990, 104 Stat. 339.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101–336, set out as a note under section 12141 of this title.

§ 12143. Paratransit as a complement to fixed route service

(a) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) Issuance of regulations

Not later than 1 year after July 26, 1990, the Secretary shall issue final regulations to carry out this section.

(c) Required contents of regulations

(1) Eligible recipients of service

The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section—

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) Service area

The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) Service criteria

Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) Undue financial burden limitation

The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) Additional services

The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) Public participation

The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) Plans

The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after July 26, 1990, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) Provision of services by others

The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) Other provisions

The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) Review of plan

(1) General rule

The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) Disapproval

If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) Modification of disapproved plan

Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) "Discrimination" defined

As used in subsection (a) of this section, the term ''discrimination'' includes—

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7) of this section;

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3) of this section;

(3) submission to the Secretary of a modified plan under subsection (d)(3) of this section which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation serv-

ices in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) Statutory construction

Nothing in this section shall be construed as preventing a public entity—

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

(Pub. L. 101–336, title II, § 223, July 26, 1990, 104 Stat. 340.)

EFFECTIVE DATE

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsecs. (b) to (f) of this section effective July 26, 1990, see section 231 of Pub. L. 101–336, set out as a note under section 12141 of this title.

§ 12144. Public entity operating a demand responsive system

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

(Pub. L. 101–336, title II, § 224, July 26, 1990, 104 Stat. 342.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101–336, set out as a note under section 12141 of this title.

§ 12145. Temporary relief where lifts are unavailable

(a) Granting

With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 12142(a) or 12144 of this title to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) Duration and notice to Congress

Any relief granted under subsection (a) of this section shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) Fraudulent application

If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) of this section was fraudulently applied for, the Secretary shall—

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

(Pub. L. 101–336, title II, § 225, July 26, 1990, 104 Stat. 343.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101–336, set out as a note under section 12141 of this title.

§ 12146. New facilities

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(Pub. L. 101–336, title II, § 226, July 26, 1990, 104 Stat. 343.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 231(a) of Pub. L. 101–336, set out as a note under section 12141 of this title.

§ 12147. Alterations of existing facilities

(a) General rule

With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the

entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Special rule for stations

(1) General rule

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Rapid rail and light rail key stations

(A) Accessibility

Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on July 26, 1990.

(B) Extension for extraordinarily expensive structural changes

The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following July 26, 1990, at least ⅔ of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) Plans and milestones

The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

(Pub. L. 101–336, title II, § 227, July 26, 1990, 104 Stat. 343.)

EFFECTIVE DATE

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsec. (b) of this section effective July 26, 1990, see section 231 of Pub. L. 101–336, set out as a note under section 12141 of this title.

§ 12148. Public transportation programs and activities in existing facilities and one car per train rule

(a) Public transportation programs and activities in existing facilities

(1) In general

With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) Exception

Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 12147(a) of this title (relating to alterations) or section 12147(b) of this title (relating to key stations).

(3) Utilization

Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) One car per train rule

(1) General rule

Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) Historic trains

In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 12142(c)(1) of this title and which do not significantly alter the historic character of such vehicle.

(Pub. L. 101–336, title II, § 228, July 26, 1990, 104 Stat. 344.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (b)(1), probably means the effective date of subsec. (b), which is effective on date of enactment of Pub. L. 101–336, which was approved July 26, 1990. The effective date of subsec. (a) is 18 months after July 26, 1990. See section 231 of Pub. L. 101–336, set out as an Effective Date note under section 12141 of this title.

EFFECTIVE DATE

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsec. (b) of this section effective July 26, 1990, see section 231 of Pub. L. 101–336, set out as a note under section 12141 of this title.

§ 12149. Regulations

(a) In general

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart (other than section 12143 of this title).

(b) Standards

The regulations issued under this section and section 12143 of this title shall include standards applicable to facilities and vehicles covered by this part. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(Pub. L. 101–336, title II, § 229, July 26, 1990, 104 Stat. 345.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101–336, set out as a note under section 12141 of this title.

§ 12150. Interim accessibility requirements

If final regulations have not been issued pursuant to section 12149 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 12146 and 12147 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(Pub. L. 101–336, title II, § 230, July 26, 1990, 104 Stat. 345.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 231(a) of Pub. L. 101–336, set out as a note under section 12141 of this title.

SUBPART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

§ 12161. Definitions

As used in this subpart:

(1) Commuter authority

The term ''commuter authority'' has the meaning given such term in section 24102(4)[1] of title 49.

(2) Commuter rail transportation

The term ''commuter rail transportation'' has the meaning given the term ''commuter rail passenger transportation'' in section 24102(5)[1] of title 49.

(3) Intercity rail transportation

The term ''intercity rail transportation'' means transportation provided by the National Railroad Passenger Corporation.

(4) Rail passenger car

The term ''rail passenger car'' means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) Responsible person

The term ''responsible person'' means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) Station

The term ''station'' means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

(Pub. L. 101–336, title II, § 241, July 26, 1990, 104 Stat. 346; Pub. L. 104–287, § 6(k), Oct. 11, 1996, 110 Stat. 3400.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 24102 of title 49, referred to in pars. (1) and (2), was subsequently amended, and pars. (4) and (5) of section 24102 no longer define ''commuter authority'' and ''commuter rail passenger transportation'', respectively. However, such terms are defined elsewhere in that section.

CODIFICATION

In pars. (1) and (2), ''section 24102(4) of title 49'' substituted for ''section 103(8) of the Rail Passenger Service Act (45 U.S.C. 502(8))'' and ''section 24102(5) of title 49'' substituted for ''section 103(9) of the Rail Passenger Service Act (45 U.S.C. 502(9))'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1996—Par. (2). Pub. L. 104–287 substituted ''commuter rail passenger transportation'' for ''commuter service''.

EFFECTIVE DATE

Section 246 of Pub. L. 101–336 provided that:

''(a) GENERAL RULE.—Except as provided in subsection (b), this part [part II (§§ 241–246) of subtitle B of title II of Pub. L. 101–336, enacting this subpart] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

''(b) EXCEPTION.—Sections 242 and 244 [sections 12162 and 12164 of this title] shall become effective on the date of enactment of this Act.''

§ 12162. Intercity and commuter rail actions considered discriminatory

(a) Intercity rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New intercity cars

(A) General rule

Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Special rule for single-level passenger coaches for individuals who use wheelchairs

Single-level passenger coaches shall be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair,

only to the extent provided in paragraph (3).

(C) Special rule for single-level dining cars for individuals who use wheelchairs

Single-level dining cars shall not be required to—

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) Special rule for bi-level dining cars for individuals who use wheelchairs

Bi-level dining cars shall not be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) Accessibility of single-level coaches

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches—

(i) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after July 26, 1990; and

(ii) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after July 26, 1990.

(B) Location

Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) Limitation

Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) Other accessibility features

Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) Food service

(A) Single-level dining cars

On any train in which a single-level dining car is used to provide food service—

(i) if such single-level dining car was purchased after July 26, 1990, table service in such car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) Bi-level dining cars

On any train in which a bi-level dining car is used to provide food service—

(i) if such train includes a bi-level lounge car purchased after July 26, 1990, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) Commuter rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New commuter rail cars

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Accessibility

For purposes of section 12132 of this title and section 794 of title 29, a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) Used rail cars

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(d) Remanufactured rail cars

(1) Remanufacturing

It shall be considered discrimination for purposes of section 12132 of this title and section

794 of title 29 for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Purchase or lease

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) Stations

(1) New stations

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Existing stations

(A) Failure to make readily accessible

(i) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(ii) Period for compliance

(I) Intercity rail

All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after July 26, 1990.

(II) Commuter rail

Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after July 26, 1990, except that the time limit may be extended by the Secretary of Transportation up to 20 years after July 26, 1990, in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) Designation of key stations

Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) Plans and milestones

The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) Requirement when making alterations

(i) General rule

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) Alterations to a primary function area

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) Required cooperation

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this chapter.

(Pub. L. 101–336, title II, § 242, July 26, 1990, 104 Stat. 347.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 246(b) of Pub. L. 101–336, set out as a note under section 12161 of this title.

§ 12163. Conformance of accessibility standards

Accessibility standards included in regulations issued under this subpart shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 12204(a) of this title.

(Pub. L. 101–336, title II, § 243, July 26, 1990, 104 Stat. 352.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 246(a) of Pub. L. 101–336, set out as a note under section 12161 of this title.

§ 12164. Regulations

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart.

(Pub. L. 101–336, title II, § 244, July 26, 1990, 104 Stat. 352.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 246(b) of Pub. L. 101–336, set out as a note under section 12161 of this title.

§ 12165. Interim accessibility requirements

(a) Stations

If final regulations have not been issued pursuant to section 12164 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 12162(e) of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) Rail passenger cars

If final regulations have not been issued pursuant to section 12164 of this title, a person shall be considered to have complied with the requirements of section 12162(a) through (d) of this title that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this subpart and are in effect at the time such design is substantially completed.

(Pub. L. 101–336, title II, § 245, July 26, 1990, 104 Stat. 352.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 246(a) of Pub. L. 101–336, set out as a note under section 12161 of this title.

SUBCHAPTER III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

§ 12181. Definitions

As used in this subchapter:

(1) Commerce

The term ''commerce'' means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) Commercial facilities

The term ''commercial facilities'' means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 12162 of this title or covered under this subchapter, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968[1] (42 U.S.C. 3601 et seq.).

(3) Demand responsive system

The term ''demand responsive system'' means any system of providing transportation

[1] See References in Text note below.

of individuals by a vehicle, other than a system which is a fixed route system.

(4) Fixed route system

The term ''fixed route system'' means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) Over-the-road bus

The term ''over-the-road bus'' means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) Private entity

The term ''private entity'' means any entity other than a public entity (as defined in section 12131(1) of this title).

(7) Public accommodation

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) Rail and railroad

The terms ''rail'' and ''railroad'' have the meaning given the term ''railroad'' in section 20102(1) of title 49.

(9) Readily achievable

The term ''readily achievable'' means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) Specified public transportation

The term ''specified public transportation'' means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) Vehicle

The term ''vehicle'' does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 12162 of this title or covered under this subchapter.

(Pub. L. 101–336, title III, § 301, July 26, 1990, 104 Stat. 353.)

REFERENCES IN TEXT

The Fair Housing Act of 1968, referred to in par. (2), probably means the Fair Housing Act, title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I of chapter 45 (§ 3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

This chapter, referred to in par. (9)(A), was in the original ''this Act'', meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

CODIFICATION

In par. (8), ''section 20102(1) of title 49'' substituted for ''section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e))'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

EFFECTIVE DATE

Section 310 of title III of Pub. L. 101–336 provided that:

''(a) GENERAL RULE.—Except as provided in subsections (b) and (c), this title [enacting this subchapter] shall become effective 18 months after the date of the enactment of this Act [July 26, 1990].

''(b) CIVIL ACTIONS.—Except for any civil action brought for a violation of section 303 [section 12183 of this title], no civil action shall be brought for any act

or omission described in section 302 [section 12182 of this title] which occurs—

''(1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less; and

''(2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less.

''(c) EXCEPTION.—Sections 302(a) [section 12182(a) of this title] for purposes of section 302(b)(2)(B) and (C) only, 304(a) [section 12184(a) of this title] for purposes of section 304(b)(3) only, 304(b)(3), 305 [section 12185 of this title], and 306 [section 12186 of this title] shall take effect on the date of the enactment of this Act [July 26, 1990].''

§ 12182. Prohibition of discrimination by public accommodations

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(1) General prohibition

(A) Activities

(i) Denial of participation

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit

It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit

It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals

For purposes of clauses (i) through (iii) of this subparagraph, the term ''individual or class of individuals'' refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings

Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods

An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association

It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions

(A) Discrimination

For purposes of subsection (a) of this section, discrimination includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated dif-

ferently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) Fixed route system

(i) Accessibility

It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 12184 of this title to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service

If a private entity which operates a fixed route system and which is not subject to section 12184 of this title purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) Demand responsive system

For purposes of subsection (a) of this section, discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses

(i) Limitation on applicability

Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements

For purposes of subsection (a) of this section, discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) Specific construction

Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term ''direct threat'' means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

(Pub. L. 101–336, title III, § 302, July 26, 1990, 104 Stat. 355.)

REFERENCES IN TEXT

For the effective date of this subparagraph, referred to in subsec. (b)(2)(B), (C)(ii), see section 310 of Pub. L. 101–336, set out as an Effective Date note under section 12181 of this title.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, but with subsec. (a) of this section (for purposes of subsec. (b)(2)(B), (C) only) effective July 26, 1990, and with certain qualifications with respect to bringing of civil actions, see section 310 of Pub. L. 101–336, set out as a note under section 12181 of this title.

§ 12183. New construction and alterations in public accommodations and commercial facilities

(a) Application of term

Except as provided in subsection (b) of this section, as applied to public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes—

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator

Subsection (a) of this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

(Pub. L. 101–336, title III, § 303, July 26, 1990, 104 Stat. 358.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a), (b) of Pub. L. 101–336, set out as a note under section 12181 of this title.

§ 12184. Prohibition of discrimination in specified public transportation services provided by private entities

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) Construction

For purposes of subsection (a) of this section, discrimination includes—

(1) the imposition or application by a[1] entity described in subsection (a) of this section of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of this title;

(B) provide auxiliary aids and services consistent with the requirements of section 12182(b)(2)(A)(iii) of this title; and

(C) remove barriers consistent with the requirements of section 12182(b)(2)(A) of this title and with the requirements of section 12183(a)(2) of this title;

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title; and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

[1] So in original. Probably should be ''an''.

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or antiquated cars

(1) Exception

To the extent that compliance with subsection (b)(2)(C) or (b)(7) of this section would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) Definition

As used in this subsection, the term ''historical or antiquated rail passenger car'' means a rail passenger car—

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

(Pub. L. 101–336, title III, § 304, July 26, 1990, 104 Stat. 359.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (b)(3), (5), see section 310 of Pub. L. 101–336, set out as an Effective Date note under section 12181 of this title.

The effective date of this paragraph, referred to in subsec. (b)(6), is 18 months after July 26, 1990, see section 310(a) of Pub. L. 101–336, set out as an Effective Date note under section 12181 of this title.

The Federal Railroad Safety Act of 1970, referred to in subsec. (c)(1), is title II of Pub. L. 91–458, Oct. 16, 1970, 84 Stat. 971, as amended, which was classified generally to subchapter II (§ 431 et seq.) of chapter 13 of Title 45, Railroads, and was repealed and reenacted in section 5109(c) of Title 5, Government Organization and Employees, section 54a of Title 45, Railroads, chapter 201 and sections 21301, 21302, 21304, 21311, 24902, and 24905 of Title 49, Transportation, and provisions set out as a note under section 20103 of Title 49 by Pub. L. 103–272, §§ 1(e), 4(b)(1), (i), (t), 7(b), July 5, 1994, 108 Stat. 862, 891, 893, 930, 935, 1361, 1365, 1372, 1379, the first section of which enacted subtitles II, III, and V to X of Title 49.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, but with subsec. (a) of this section (for purposes of subsec. (b)(3) only) and subsec. (b)(3) of this section effective July 26, 1990, see section 310(a), (c) of Pub. L. 101–336, set out as a note under section 12181 of this title.

§ 12185. Study

(a) Purposes

The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) Contents

The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 12184(b)(4) and 12186(a)(2) of this title, are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) Advisory committee

In conducting the study required by subsection (a) of this section, the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) Deadline

The study required by subsection (a) of this section, along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be

submitted to the President and Congress within 36 months after July 26, 1990. If the President determines that compliance with the regulations issued pursuant to section 12186(a)(2)(B) of this title on or before the applicable deadlines specified in section 12186(a)(2)(B) of this title will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) Review

In developing the study required by subsection (a) of this section, the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 792 of title 29. The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d) of this section.

(Pub. L. 101–336, title III, § 305, July 26, 1990, 104 Stat. 360.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 310(c) of Pub. L. 101–336, set out as a note under section 12181 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 12186. Regulations

(a) Transportation provisions

(1) General rule

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections[1] 12182(b)(2)(B) and (C) of this title and to carry out section 12184 of this title (other than subsection (b)(4)).

(2) Special rules for providing access to over-the-road buses

(A) Interim requirements

(i) Issuance

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) Effective period

The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) Final requirement

(i) Review of study and interim requirements

The Secretary shall review the study submitted under section 12185 of this title and the regulations issued pursuant to subparagraph (A).

(ii) Issuance

Not later than 1 year after the date of the submission of the study under section 12185 of this title, the Secretary shall issue in an accessible format new regulations to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require, taking into account the purposes of the study under section 12185 of this title and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) Effective period

Subject to section 12185(d) of this title, the regulations issued pursuant to this subparagraph shall take effect—

(I) with respect to small providers of transportation (as defined by the Secretary), 3 years after the date of issuance of final regulations under clause (ii); and

(II) with respect to other providers of transportation, 2 years after the date of issuance of such final regulations.

(C) Limitation on requiring installation of accessible restrooms

The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) Standards

The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 12182(b)(2) and 12184 of this title.

(b) Other provisions

Not later than 1 year after July 26, 1990, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this subchapter not referred to in subsection (a) of this section that include standards applicable to facilities and vehicles covered under section 12182 of this title.

(c) Consistency with ATBCB guidelines

Standards included in regulations issued under subsections (a) and (b) of this section shall be

[1] So in original. Probably should be ''section''.

consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(d) Interim accessibility standards

(1) Facilities

If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 12183 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) Vehicles and rail passenger cars

If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this subchapter, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this subchapter and are in effect at the time such design is substantially completed.

(Pub. L. 101–336, title III, § 306, July 26, 1990, 104 Stat. 361; Pub. L. 104–59, title III, § 341, Nov. 28, 1995, 109 Stat. 608.)

AMENDMENTS

1995—Subsec. (a)(2)(B)(iii). Pub. L. 104–59 substituted ''3 years after the date of issuance of final regulations under clause (ii)'' for ''7 years after July 26, 1990'' in subcl. (I) and ''2 years after the date of issuance of such final regulations'' for ''6 years after July 26, 1990'' in subcl. (II).

EFFECTIVE DATE

Section effective July 26, 1990, see section 310(c) of Pub. L. 101–336, set out as a note under section 12181 of this title.

§ 12187. Exemptions for private clubs and religious organizations

The provisions of this subchapter shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000–a(e)) [42 U.S.C. 2000a et seq.] or to religious organizations or entities controlled by religious organizations, including places of worship.

(Pub. L. 101–336, title III, § 307, July 26, 1990, 104 Stat. 363.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title II of the Act is classified generally to subchapter II (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101–336, set out as a note under section 12181 of this title.

§ 12188. Enforcement

(a) In general

(1) Availability of remedies and procedures

The remedies and procedures set forth in section 2000a–3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

(2) Injunctive relief

In the case of violations of sections 12182(b)(2)(A)(iv) and section[1] 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

(b) Enforcement by Attorney General

(1) Denial of rights

(A) Duty to investigate

(i) In general

The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

(ii) Attorney General certification

On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance

[1] So in original. The word ''section'' probably should not appear.

Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this chapter.

(B) Potential violation

If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or

(ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court

In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) Single violation

For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages

For purposes of subsection (b)(2)(B) of this section, the term ''monetary damages'' and ''such other relief'' does not include punitive damages.

(5) Judicial consideration

In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

(Pub. L. 101–336, title III, § 308, July 26, 1990, 104 Stat. 363.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101–336, set out as a note under section 12181 of this title.

CIVIL ACTIONS FOR VIOLATIONS BY PUBLIC ACCOMMODATIONS

For provisions directing that, except for any civil action brought for a violation of section 12183 of this title, no civil action shall be brought for any act or omission described in section 12182 of this title which occurs (1) during the first six months after the effective date of this subchapter, against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less, and (2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less, see section 310(b) of Pub. L. 101–336, set out as an Effective Date note under section 12181 of this title.

§ 12189. Examinations and courses

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(Pub. L. 101–336, title III, § 309, July 26, 1990, 104 Stat. 365.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101–336, set out as a note under section 12181 of this title.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 12201. Construction

(a) In general

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State

or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I of this chapter, in transportation covered by subchapter II or III of this chapter, or in places of public accommodation covered by subchapter III of this chapter.

(c) Insurance

Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter[1] I and III of this chapter.

(d) Accommodations and services

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(Pub. L. 101–336, title V, § 501, July 26, 1990, 104 Stat. 369.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (a), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended. Title V of the Rehabilitation Act of 1973 is classified generally to subchapter V (§ 790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Title IV of this Act, referred to in subsec. (c), means title IV of Pub. L. 101–336, July 26, 1990, 104 Stat. 366, which enacted section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and amended sections 152, 221, and 611 of Title 47.

§ 12202. State immunity

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in[1] Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

(Pub. L. 101–336, title V, § 502, July 26, 1990, 104 Stat. 370.)

§ 12203. Prohibition against retaliation and coercion

(a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) Remedies and procedures

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.

(Pub. L. 101–336, title V, § 503, July 26, 1990, 104 Stat. 370.)

§ 12204. Regulations by Architectural and Transportation Barriers Compliance Board

(a) Issuance of guidelines

Not later than 9 months after July 26, 1990, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters II and III of this chapter.

(b) Contents of guidelines

The supplemental guidelines issued under subsection (a) of this section shall establish additional requirements, consistent with this chapter, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified historic properties

(1) In general

The supplemental guidelines issued under subsection (a) of this section shall include procedures and requirements for alterations that

[1] So in original. Probably should be ''subchapters''.

[1] So in original. Probably should be ''in a''.

will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) Sites eligible for listing in National Register

With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) Other sites

With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

(Pub. L. 101–336, title V, § 504, July 26, 1990, 104 Stat. 370.)

REFERENCES IN TEXT

The National Historic Preservation Act, referred to in subsec. (c)(2), is Pub. L. 89–665, Oct. 15, 1966, 80 Stat. 915, as amended, which is classified generally to subchapter II (§ 470 et seq.) of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code, see section 470(a) of Title 16 and Tables.

§ 12205. Attorney's fees

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

(Pub. L. 101–336, title V, § 505, July 26, 1990, 104 Stat. 371.)

§ 12206. Technical assistance

(a) Plan for assistance

(1) In general

Not later than 180 days after July 26, 1990, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this chapter, and other Federal agencies, in understanding the responsibility of such entities and agencies under this chapter.

(2) Publication of plan

The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5 (commonly known as the Administrative Procedure Act).

(b) Agency and public assistance

The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a) of this section, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation

(1) Rendering assistance

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapter or subchapters of this chapter for which such agency has responsibility.

(2) Implementation of subchapters

(A) Subchapter I

The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a) of this section, for subchapter I of this chapter.

(B) Subchapter II

(i) Part A

The Attorney General shall implement such plan for assistance for part A of subchapter II of this chapter.

(ii) Part B

The Secretary of Transportation shall implement such plan for assistance for part B of subchapter II of this chapter.

(C) Subchapter III

The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for subchapter III of this chapter, except for section 12184 of this title, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) Title IV

The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this chapter no later than six months after applicable final regulations are published under subchapters I, II, and III of this chapter and title IV.

(d) Grants and contracts

(1) In general

Each Federal agency that has responsibility under subsection (c)(2) of this section for implementing this chapter may make grants or

award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this chapter. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or[1] grants described in this paragraph.

(2) Dissemination of information

Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this chapter and to provide information and technical assistance about techniques for effective compliance with this chapter.

(e) Failure to receive assistance

An employer, public accommodation, or other entity covered under this chapter shall not be excused from compliance with the requirements of this chapter because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

(Pub. L. 101–336, title V, § 506, July 26, 1990, 104 Stat. 371.)

REFERENCES IN TEXT

Title IV, referred to in subsec. (c)(2)(D), (3), means title IV of Pub. L. 101–336, July 26, 1990, 104 Stat. 366, which enacted section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and amended sections 152, 221, and 611 of Title 47.

§ 12207. Federal wilderness areas

(a) Study

The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of report

Not later than 1 year after July 26, 1990, the National Council on Disability shall submit the report required under subsection (a) of this section to Congress.

(c) Specific wilderness access

(1) In general

Congress reaffirms that nothing in the Wilderness Act [16 U.S.C. 1131 et seq.] is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) "Wheelchair" defined

For purposes of paragraph (1), the term ''wheelchair'' means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

(Pub. L. 101–336, title V, § 507, July 26, 1990, 104 Stat. 372.)

REFERENCES IN TEXT

The Wilderness Act, referred to in subsecs. (a) and (c)(1), is Pub. L. 88–577, Sept. 3, 1964, 78 Stat. 890, as amended, which is classified generally to chapter 23 (§ 1131 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1131 of Title 16 and Tables.

§ 12208. Transvestites

For the purposes of this chapter, the term ''disabled'' or ''disability'' shall not apply to an individual solely because that individual is a transvestite.

(Pub. L. 101–336, title V, § 508, July 26, 1990, 104 Stat. 373.)

§ 12209. Instrumentalities of Congress

The Government Accountability Office, the Government Printing Office, and the Library of Congress shall be covered as follows:

(1) In general

The rights and protections under this chapter shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) Establishment of remedies and procedures by instrumentalities

The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1).

(3) Report to Congress

The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) Definition of instrumentalities

For purposes of this section, the term ''instrumentality of the Congress'' means the following:,[1] the Government Accountability Office, the Government Printing Office, and the Library of Congress,.[1]

(5) Enforcement of employment rights

The remedies and procedures set forth in section 2000e–16 of this title shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 12112 through 12114 of this title that are made applicable by this section, except that the authorities of the

[1] So in original. Probably should be ''of''.

[1] So in original. The comma probably should not appear.

Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(6) Enforcement of rights to public services and accommodations

The remedies and procedures set forth in section 2000e–16 of this title shall be available to any qualified person with a disability who is a visitor, guest, or patron of an instrumentality of Congress and who alleges a violation of the rights and protections under sections 12131 through 12150 of this title or section 12182 or 12183 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(7) Construction

Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

(Pub. L. 101–336, title V, § 509, July 26, 1990, 104 Stat. 373; Pub. L. 102–166, title III, § 315, Nov. 21, 1991, 105 Stat. 1095; Pub. L. 104–1, title II, §§ 201(c)(3), 210(g), Jan. 23, 1995, 109 Stat. 8, 16; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The General Accounting Office Personnel Act of 1980, referred to in par. (7), is Pub. L. 96–191, Feb. 15, 1980, 94 Stat. 27, which was classified principally to section 52–1 et seq. of former Title 31, and which was substantially repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, and reenacted by the first section thereof principally in subchapters III (§ 731 et seq.) and IV (§ 751 et seq.) of chapter 7 of Title 31, Money and Finance.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in introductory provisions and in par. (4).

1995—Pub. L. 104–1, § 201(c)(3)(F), amended section catchline generally.

Pub. L. 104–1, § 201(c)(3)(A), struck out subsecs. (a) and (b) which related to coverage of Senate and House of Representatives with respect to bans on employment discrimination and other discriminatory practices against individuals with disabilities.

Pub. L. 104–1, § 201(c)(3)(B), substituted ''The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:'' for subsec. (c) heading and designated subsec. (c) as entire section.

Par. (2). Pub. L. 104–1, § 201(c)(3)(C), struck out at end ''Such remedies and procedures shall apply exclusively, except for the employees who are defined as Senate employees, in section 1201(c)(1) of title 2.''

Par. (4). Pub. L. 104–1, § 201(c)(3)(D), struck out ''the Architect of the Capitol, the Congressional Budget Office'' after ''the following:'', inserted ''and'' before ''the Library of Congress'', and struck out ''the Office of Technology Assessment, and the United States Botanic Garden'' before period at end.

Pub. L. 104–1, § 201(c)(3)(D), which in part directed the substitution of ''the term 'instrumentality of the Congress' means'' for ''the instrumentalities of the Congress include'', was executed by making the substitution for ''instrumentalities of the Congress include'' to reflect the probable intent of Congress.

Par. (5). Pub. L. 104–1, § 201(c)(3)(E), added par. (5). Former par. (5) redesignated (7).

Par. (6). Pub. L. 104–1, § 210(g), which directed amendment of this section by adding par. (6), was executed by adding par. (6) after par. (5) to reflect the probable intent of Congress.

Par. (7). Pub. L. 104–1, § 201(c)(3)(E), redesignated par. (5) as (7).

1991—Subsec. (a)(2). Pub. L. 102–166, § 315(1), redesignated par. (6) as (2) and struck out former par. (2) which read as follows: ''APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to this chapter, the Civil Rights Act of 1990 (S. 2104, 101st Congress), the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.], the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.], and the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall apply with respect to employment by the United States Senate.''

Subsec. (a)(3). Pub. L. 102–166, § 315(1), redesignated par. (7) as (3), substituted ''(2)(A)'' for ''(2) and (6)(A)'' and ''(2)'' for ''(3), (4), (5), (6)(B), and (6)(C)'', and struck out former par. (3) which read as follows: ''INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.''

Subsec. (a)(4), (5). Pub. L. 102–166, § 315(1), struck out pars. (4) and (5) which read as follows:

''(4) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

''(5) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.''

Subsec. (a)(6), (7). Pub. L. 102–166, § 315(1), redesignated pars. (6) and (7) as (2) and (3), respectively.

Subsec. (c)(2). Pub. L. 102–166, § 315(2), inserted '', except for the employees who are defined as Senate employees, in section 1201(c)(1) of title 2'' after ''shall apply exclusively''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by section 201(c)(3) of Pub. L. 104–1 effective 1 year after Jan. 23, 1995, see section 1311(d) of Title 2, The Congress.

Amendment by section 210(g) of Pub. L. 104–1 effective 1 year after transmission to Congress of study under section 1371 of Title 2, see section 1331(h)(2) of Title 2.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

§ 12210. Illegal use of drugs

(a) In general

For purposes of this chapter, the term ''individual with a disability'' does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) Health and other services

Notwithstanding subsection (a) of this section and section 12211(b)(3) of this title, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) "Illegal use of drugs" defined

(1) In general

The term ''illegal use of drugs'' means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) Drugs

The term ''drug'' means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(Pub. L. 101–336, title V, § 510, July 26, 1990, 104 Stat. 375.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (d)(1), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

§ 12211. Definitions

(a) Homosexuality and bisexuality

For purposes of the definition of ''disability'' in section 12102(2) of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

(b) Certain conditions

Under this chapter, the term ''disability'' shall not include—

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

(Pub. L. 101–336, title V, § 511, July 26, 1990, 104 Stat. 376.)

§ 12212. Alternative means of dispute resolution

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter.

(Pub. L. 101–336, title V, § 513, July 26, 1990, 104 Stat. 377.)

§ 12213. Severability

Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter.

(Pub. L. 101–336, title V, § 514, July 26, 1990, 104 Stat. 378.)

CHAPTER 127—COORDINATED SERVICES FOR CHILDREN, YOUTH, AND FAMILIES

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§ 12301. Findings

Congress finds that—

(1) children and youth are inherently the most valuable resource of the United States;

(2) the welfare, protection, healthy development, and positive role of children and youth in society are essential to the United States;

(3) children and youth deserve love, respect, and guidance, as well as good health, shelter, food, education, productive employment opportunities, and preparation for responsible participation in community life;

(4) children and youth have increasing opportunities to participate in the decisions that affect their lives;

(5) the family is the primary caregiver and source of social learning and must be supported and strengthened;

(6) when a family is unable to ensure the satisfaction of basic needs of children and youth it is the responsibility of society to assist such family; and

(7) it is the joint and several responsibility of the Federal Government, each State, and the political subdivisions of each State to assist children and youth to secure, to the maximum extent practicable, equal opportunity to full and free access to—

(A) the best possible physical and mental health;

(B) adequate and safe physical shelter;

(C) a high level of educational opportunity;

(D) effective training, apprenticeships, opportunities for community service, and productive employment and participation in decisions affecting their lives;

(E) a wide range of civic, cultural, and recreational activities that recognize young Americans as resources and promote self-esteem and a stake in the communities of such Americans; and

(F) comprehensive community services that are efficient, coordinated, readily available, and involve families of young individuals.

(Pub. L. 101–501, title IX, § 902, Nov. 3, 1990, 104 Stat. 1262.)

EFFECTIVE DATE

Chapter effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as an Effective Date of 1990 Amendment note under section 8621 of this title.

SHORT TITLE

Section 901 of title IX of Pub. L. 101–501 provided that: ''This title [enacting this chapter] may be cited as the 'Claude Pepper Young Americans Act of 1990'.''

Section 955 of Pub. L. 101–501 provided that: ''This chapter [chapter 3 (§§ 955–960) of subtitle A of title IX of Pub. L. 101–501, enacting part C of subchapter I of this chapter] may be cited as the 'Family Resource Act'.''

Section 981 of Pub. L. 101–501 provided that: ''This subtitle [subtitle B (§§ 981–988) of title IX of Pub. L. 101–501, enacting subchapter II of this chapter] may be cited as the '1993 White House Conference on Children, Youth, and Families'.''

COMMISSION ON CHILD AND FAMILY WELFARE

Pub. L. 102–521, § 5, Oct. 25, 1992, 106 Stat. 3406, provided for establishment, membership, etc., of a Commission on Child and Family Welfare, specified that among other duties the Commission compile information and data on the issues that affect the best interests of children, including domestic issues such as abuse, family relations, services and agencies for children and families, family courts, and juvenile courts, directed Commission to submit to President and Congress an interim report no later than Jan. 1, 1994, and a final report no later than Jan. 1, 1995, containing a detailed statement of the findings and conclusions of the Commission, together with recommendations for such legislation and administrative actions as considered appropriate, and directed that the Commission terminate 90 days after the date it submitted its final report.

§ 12302. Definitions

As used in this chapter:

(1) Commissioner

The term ''Commissioner'' means the Commissioner of the Administration on Children, Youth, and Families, as established under section 12311 of this title.

(2) Council

The term ''Council'' means the Federal Council on Children, Youth, and Families, as established under section 12314(a) of this title.

(3) Nonprofit

The term '''nonprofit'', as applied to any agency, institution, or organization, means an agency, institution, or organization that is, or is owned and operated by, one or more corporations or associations, no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual.

(4) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(5) State

The term ''State'' includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(6) Young individual

The term ''young individual'' means any child or youth from birth to 21 years of age.

(Pub. L. 101–501, title IX, § 903, Nov. 3, 1990, 104 Stat. 1262.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER I—ESTABLISHMENT OF ADMINISTRATION AND AWARDING OF GRANTS FOR PROGRAMS

PART A—ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES

§ 12311. Establishment of Administration on Children, Youth, and Families

(a) In general

There is established within the Department of Health and Human Services an Administration on Children, Youth, and Families.

(b) Commissioner

(1) Establishment

(A) In general

The Administration on Children, Youth, and Families, as established under subsection (a) of this section, shall be headed by a Commissioner on Children, Youth, and Families.

(B) Omitted

(2) Appointment

The President, by and with the advice and consent of the Senate, shall appoint the Commissioner.

(Pub. L. 101–501, title IX, § 915, Nov. 3, 1990, 104 Stat. 1263.)

CODIFICATION

Section is comprised of section 915 of Pub. L. 101–501. Subsec. (b)(1)(B) of section 915 of Pub. L. 101–501 amended section 5316 of Title 5, Government Organization and Employees.

§ 12312. Functions of Commissioner

(a) In general

The Commissioner shall—

(1) serve as the effective and visible advocate for children, youth, and families within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government by maintaining active review and commenting responsibilities, as appropriate, concerning Federal policies affecting young individuals, and the families of young individuals;

(2) collect and disseminate information related to the problems of young individuals and the families of such individuals;

(3) assist the Secretary in appropriate matters pertaining to young individuals, and the families of such individuals;

(4) administer the grants authorized under this subchapter;

(5) develop plans and conduct research in the field of young individuals, and the families of such individuals;

(6) assist, to the maximum extent practicable, in the establishment and implementation of programs designed to meet the needs of young individuals for supportive services including—

(A) health and mental health services;

(B) housing and shelter assistance;

(C) education and training services;

(D) protective services;

(E) foster care;

(F) teen parenting support;

(G) child care;

(H) family support and preservation;

(I) teen pregnancy prevention and counseling;

(J) counseling on the effects of violence in the communities of such individuals and their families;

(K) recreational and volunteer opportunities; and

(L) comprehensive early childhood development;

(7) provide technical assistance and consultation to States and the political subdivisions of such States with respect to programs for young individuals;

(8) prepare, publish, and disseminate educational materials concerning the welfare of young individuals;

(9) gather statistics concerning young individuals, and the families of such individuals, that other Federal agencies are not collecting;

(10) to the maximum extent practicable coordinate activities carried out or assisted by all departments, agencies, and instrumentalities of the Federal Government with respect to the collection, preparation, and dissemination of information relevant to young individuals and the families of such individuals;

(11) stimulate more effective uses of existing resources and available services for young individuals and the families of such individuals;

(12) develop basic policies and set priorities with respect to the development and operation of programs and activities conducted under this chapter;

(13) convene conferences of authorities and officials of organizations, including Federal, State, and local agencies, and nonprofit private organizations, of programs for children, youth and their families for the development and implementation of policies related to the priorities and purposes of this chapter, including topics such as the establishment of a nationwide network of comprehensive, coordinated services and opportunities for such individuals;

(14) conduct periodic evaluations of the programs and activities related to the purposes of this chapter; and

(15) develop, in coordination with other agencies, methods to ensure adequate training for personnel concerning children, youth and families and to ensure the adequate dissemination of such information to appropriate State and community agencies.

(b) Encouragement of volunteerism

In executing the duties and functions of the Administration under this subchapter and in carrying out the programs and activities authorized under this chapter, the Commissioner, in consultation with the Chief Executive Officer of the Corporation for National and Community Service, shall take necessary steps to coordinate with and seek the advice of voluntary agencies and organizations that provide services related to the purposes of this chapter.

(Pub. L. 101–501, title IX, § 916, Nov. 3, 1990, 104 Stat. 1263; Pub. L. 103–82, title IV, § 405(*o*), Sept. 21, 1993, 107 Stat. 922.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–82 substituted ''the Chief Executive Officer of the Corporation for National and Community Service'' for ''the Director of the ACTION Agency''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

§ 12313. Federal agency consultations

(a) In general

The Commissioner shall consult and cooperate with the heads of all appropriate Federal agencies or departments administering programs or services that are substantially related to the purposes of this chapter.

(b) Interagency agreements

To the extent practicable, the Commissioner shall facilitate cooperation through the entering into of interagency agreements.

(Pub. L. 101–501, title IX, § 917, Nov. 3, 1990, 104 Stat. 1265.)

§ 12314. Federal Council on Children, Youth, and Families

(a) Establishment

There is established a Federal Council on Children, Youth, and Families.

(b) Number of members

The Council shall be composed of 18 members to be appointed in accordance with subsection (d) of this section.

(c) Term of membership

Each member of the Council shall serve for a 3-year term without regard to title 5.

(d) Appointment of members

(1) In general

The Council shall be composed of—

(A) six members who posess[1] such skills and qualifications so as to be representative of—

(i) rural and urban populations; and

(ii) national organizations with an interest in young individuals, families, early childhood development, elementary and secondary education, business, labor, minorities, and the general public;

(B) six members who are representatives of public, State or local agencies that serve children, youth and their families and include representatives of child welfare and child mental health agencies; and

(C) six members who are cabinet-level representatives of Federal agencies that have responsibility for programs relating to children, youth and families.

(2) Age of members

At least one of the individuals appointed to the Council under paragraph (1)(A) shall be under the age of 21 at the time of such appointment.

(3) Appointing authority

Of the members of the Council who are appointed under paragraph (1)—

(A) six of the members described under subparagraphs (A) and (B) shall be appointed by the President pro tempore of the Senate on the recommendation of the Majority and Minority Leaders of the Senate;

(B) six of the members described under subparagraphs (A) and (B) shall be appointed by the Speaker of the House of Representatives on the recommendation of the Majority and Minority Leaders of the House of Representatives; and

(C) the members described under subparagraph (C) shall be appointed by the President.

(e) Vacancy

(1) Filling vacancy

A vacancy on the Council shall be filled in the same manner in which the original appointment was made.

(2) Powers of board[2]

A vacancy on the Council shall not affect the powers of the Council.

(3) Term of appointment

A member of the Council who is appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term.

(f) Reappointment

Each member of the Council shall be eligible for reappointment to the Council.

(g) Expiration of term

Each member of the Council may serve after the expiration of the term of membership until the successor of such member has taken office.

(h) Travel expenses

Each member of the Council, while serving on business of the Council away from the home or regular place of business of such member, may be allowed subsistence in the same manner as the expenses authorized by section 5703 of title 5 for individuals in the Government service employed intermittently.

(i) Chairperson

The President shall designate the Secretary of Health and Human Services to serve as the Chairperson of the Council. In the event that the Secretary chooses to designate the functions of Chairperson under this subsection, such designation may only be made to the Commissioner.

(j) Meetings

Not less than once during each 6-month period, the Chairperson of the Council shall call a meeting of the Council.

(k) Duties of Council

The Council shall—

(1) advise and assist the President on matters relating to the special needs of young individuals;

[1] So in original. Probably should be ''possess''.

[2] So in original. Probably should be ''Council''.

(2) review, evaluate, and inventory on a continuing basis Federal policies, programs and other activities affecting young individuals that are conducted or assisted by all Federal departments and agencies for the purpose of appraising the value and the impact of such policies, programs, and activities on the lives of young individuals, and of identifying duplication of services for young individuals and the families of such individuals;

(3) make recommendations to the President, the Secretary, the Commissioner, the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate concerning changes in such policies and programs that can streamline services, reduce duplication of services and encourage the coordination of services provided to young individuals and the families of such individuals at the State and local level;

(4) provide public forums, including public hearings, conferences, workshops, and other meetings, for discussing and publicizing the problems and needs of young individuals and obtaining information relating to such individuals;

(6)[3] identify program regulations, practices, and eligibility requirements that impede coordination and collaboration and make recommendations for their modifications or elimination; and

(7) develop recommendations for creating jointly funded programs, unified assessments, eligibility, and application procedures, and confidentiality protections that facilitate information sharing.

(*l*) Staff

The Chairperson shall appoint staff personnel to assist the Chairperson in carrying out the duties required under subsection (k) of this section.

(m) Information and assistance

The head of each Federal department and agency shall make available to the Chairperson such information and other assistance as the Chairperson may require to carry out the duties required under subsection (k) of this section.

(n) Reports

(1) Submission to the President

In fiscal year 1992 and each fiscal year thereafter, the Chairperson shall prepare and submit—

(A) interim reports as the Chairperson considers to be appropriate; and

(B) an annual report of the findings and recommendations of the Council concerning the matters described in paragraphs (2) and (3) of subsection (k) of this section;

to the President not later than March 31 of each year.

(2) Review and submission to Congress

(A) Comments and recommendations

The President may make comments and recommendations concerning reports submitted under paragraph (1).

(B) Submission to Congress

The President shall submit such comments, recommendations, and reports to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(*o*) Authorization of appropriation

There are authorized to be appropriated to carry out this section $200,000 for each of the fiscal years 1995 through 1998.

(p) Termination

The Council shall terminate on September 30, 1998.

(Pub. L. 101–501, title IX, § 918, Nov. 3, 1990, 104 Stat. 1265; Pub. L. 103–252, title IV, § 402(a), May 18, 1994, 108 Stat. 672.)

AMENDMENTS

1994—Subsec. (k)(6), (7). Pub. L. 103–252, § 402(a)(1), added pars. (6) and (7).

Subsec. (*o*). Pub. L. 103–252, § 402(a)(2), substituted ''1995 through 1998'' for ''1991 through 1994''.

Subsec. (p). Pub. L. 103–252, § 402(a)(3), substituted ''1998'' for ''1995''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (n)(2)(B) of this section is listed as the last item on page 18), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 12315. Administration

(a) Duties of Commissioner

In carrying out this subchapter, the Commissioner is authorized to—

(1) provide consultative services, technical assistance, and short-term training to the independent State bodies;

(2) conduct research and demonstrations;

(3) collect, prepare, publish, and disseminate special educational or informational materials, including reports of the projects for which funds are provided under this subchapter;

(4) provide staff and other technical assistance to the Council;

(5) evaluate the effectiveness of programs authorized under this subchapter and periodically publish analyses of the results of such evaluations; and

[3] So in original. No par. (5) has been enacted.

(6) not later than 180 days after the end of each fiscal year, prepare and submit, to the President and the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on Labor and Human Resources of the Senate, a report concerning the activities carried out under this subchapter and concerning such other activities as the Secretary determines appropriate.

(b) Utilization of services and facilities

(1) In general

Subject to agreements made between the Commissioner and the head of such agency or organization, in carrying out the duties referred to in subsection (a) of this section the Commissioner may utilize the services and facilities of any agency of the Federal Government and of any other public or nonprofit agency or organizations.[1]

(2) Payment

The Commissioner may pay for such services and facilities, in advance or by way of reimbursement, as may be provided in such agreement.

(c) Reservation of funds

Of the aggregate amount appropriated to carry out this chapter in any fiscal year, the Secretary may reserve not more than 10 percent for salaries and expenses of the Administration on Children, Youth, and Families related to the administration of this chapter.

(Pub. L. 101–501, title IX, § 919, Nov. 3, 1990, 104 Stat. 1267.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

PART B—GRANTS FOR STATE AND COMMUNITY PROGRAMS FOR CHILDREN, YOUTH, AND FAMILIES

§ 12331. Purpose

It is the purpose of this part to encourage and assist State and local agencies to coordinate resources, reduce barriers to services, and develop new capacities to ensure that State and community services designed to serve children, youth, and families are more effective and comprehensive.

(Pub. L. 101–501, title IX, § 925, Nov. 3, 1990, 104 Stat. 1268.)

§ 12332. Definitions

As used in this part:

(1) Community referral services

The term ''community referral services'' means services to assist families in obtaining community resources, including health care, mental health care, employability development and job training, and other social services.

(2) Core services

The term ''core services'' means—

(A) educational and support services provided to assist parents in acquiring parenting skills, learning about child development, and responding appropriately to the behavior of their children; and

(B) the early developmental screening of children to assess any needs of such children and to identify specific types of support that may be provided;

(C) outreach services;

(D) community referral services; and

(E) follow up services.

(3) Follow up services

The term ''follow up services'' means services provided to ensure that necessary services are received by families and are effective in meeting their needs.

(4) Independent State body

The term ''independent State body'' means the entity established under section 12336 of this title.

(5) Lead agency

The term ''lead agency'' means an existing State agency, or other public or nonprofit private entity designated by the chief executive officer of the State as the agency responsible for the development and implementation of local family resource and support programs. Such agency shall have demonstrated ability to work with other State and community based agencies, to provide training and technical assistance, and shall also have a commitment to parental participation in the design and administration of family resource and support programs.

(6) Other services

The term ''other services'' and ''other support services'' includes—

(A) child care, early childhood development and intervention programs;

(B) employability development services (including skill training);

(C) educational services, such as scholastic tutoring, literacy training, and General Educational Degree (GED) services;

(D) nutritional education;

(E) life management skills training;

(F) peer counseling and crisis intervention, family violence counseling and referrals for such services;

(G) referral for substance abuse counseling and treatment referral; and

(H) referral for primary health and mental health services.

(7) Outreach services

The term ''outreach services'' means services provided to ensure (through home visits or other methods) that parents are aware of

[1] So in original. Probably should be ''organization.''

and able to participate in family resource and support program activities.

(Pub. L. 101–501, title IX, § 926, Nov. 3, 1990, 104 Stat. 1268.)

§ 12333. Establishment of programs

The Commissioner shall make grants—

(1) in each State under section 12337 of this title to improve State planning and coordination of services, and under section 12338 of this title to expand supportive services, in order to promote the availability of developmental, preventive, and remedial services to children, youth and their families that are designed to ensure—

(A) adequate and safe physical shelter whether in their own homes or, if necessary, in out-of-home programs;

(B) high quality physical and mental health care;

(C) the enhancement of the development of children to ensure that children enter school prepared and ready to learn;

(D) highest quality educational opportunity;

(E) effective training and apprenticeships to increase the likelihood of employment;

(F) opportunities for community service and productive employment, and for participation by children and youth in decisions affecting the lives of such children and youth; and

(G) a wide range of civic, cultural, and recreational activities that recognize young individuals as resources and promote self-esteem and a sense of community; and

(2) to States on a competitive basis under section 12339[1] of this title to establish family resource programs (including family support centers) in order to enhance the ability of families to remain together and to thrive through the provision of community based services that—

(A) promote and build family and parenting skills;

(B) promote and assist families in the use of formal and informal family support services;

(C) create a support network to strengthen and reinforce good parenting; and

(D) are closely linked with, but not duplicative of, other community resources.

(Pub. L. 101–501, title IX, § 927, Nov. 3, 1990, 104 Stat. 1269.)

REFERENCES IN TEXT

Section 12339 of this title, referred to in par. (2), was repealed by Pub. L. 103–252, title IV, § 401(b)(1), May 18, 1994, 108 Stat. 672.

§ 12334. Administration

(a) In general

The Commissioner shall administer programs under this part through the Administration on Children, Youth, and Families.

(b) Technical assistance

In carrying out this part, the Commissioner may request the technical assistance and cooperation of the Secretary of Education, the Secretary of Labor, the Attorney General, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Director of the Office of Community Services, and such other agencies and departments of the Federal Government as may be appropriate.

(Pub. L. 101–501, title IX, § 928, Nov. 3, 1990, 104 Stat. 1269.)

§ 12335. State plan

(a) Submission of plan

The chief executive officer of a State, in order to be eligible for grants from an allotment under section 12337, 12338, or 12339[1] of this title for any fiscal year, shall prepare and submit to the Commissioner a State plan for a 3-year period.

(b) Revisions of plan

Each chief executive officer of a State may make annual revisions of the State plan referred to in subsection (a) of this section.

(c) Content of plan

The chief executive officer of a State shall include within the State plan of that State assurances as required under sections[2] 12337, 12338, or 12339[1] of this title, and a description of the proposed multi-year plans of the State for program development and implementation.

(d) Type of application

A State may apply for funds under one or more of the following categories:

(1) section 12337 of this title;

(2) sections 12337 and 12338 of this title jointly; or

(3) section 12339[1] of this title.

In the case of each category, the State application and plan shall comply only with the requirements of the appropriate section.

(e) Approval of plan

(1) In general

The Commissioner shall approve any State plan under sections 12337 and 12338 of this title that the Commissioner determines meets the requirements of such sections.

(2) Notice and opportunity to correct deficiencies

The Commissioner shall not make a final determination disapproving any State plan, modifying such plan, or declaring a State to be ineligible to receive funds under sections 12337 and 12338 of this title without previously affording such State reasonable notice and opportunity to correct deficiencies in its application.

(Pub. L. 101–501, title IX, § 929, Nov. 3, 1990, 104 Stat. 1270.)

REFERENCES IN TEXT

Section 12339 of this title, referred to in subsecs. (a), (c), and (d)(3), was repealed by Pub. L. 103–252, title IV, § 401(b)(1), May 18, 1994, 108 Stat. 672.

[1] See References in Text note below.

[1] See References in Text note below.

[2] So in original. Probably should be "section".

§ 12336. Independent State body

(a) Designation

A State shall not be eligible to receive a grant from an allotment under section 12337 or 12338 of this title unless—

(1) the chief executive officer of such State designates an independent State body that is composed of—

(A) cabinet level representatives from each agency of such State that has responsibilities for programs affecting young individuals who shall comprise a majority of the independent State body; and

(B) individuals appointed from among—

(i) private nonprofit providers of services to young individuals;

(ii) advocacy and citizens groups concerned with young individuals;

(iii) committees of the legislature of such State that have responsibility for young individuals;

(iv) leaders who are young individuals, including such leaders who are recipients of services provided under this subchapter;

(v) representatives of the business community;

(vi) representatives of employees of providers of services to young individuals;

(vii) representatives of general purpose local government; and

(viii) such staff as shall be necessary to—

(I) develop a State plan to be submitted to the Commissioner for approval under section 12337 of this title;

(II) administer and monitor the State plan within such State;

(III) assist in the coordination of all State activities related to the purpose of the chapter;

(IV) serve as an effective and visible advocate for young individuals by reviewing and commenting on all State plans, budgets, and policies that affect such individuals and the families of such individuals by providing technical assistance to any agency, organization, association, or individual representing the needs of young individuals; and

(2) the independent State body designated under paragraph (1)—

(A) develops a system for the distribution within the State of funds received under sections 12337 and 12338 of this title by the chief executive officer;

(B) submits a description of such system to the Commissioner for review and comment; and

(C) ensures that preference will be given in such distribution of funds to developing or supporting local service delivery systems that—

(i) provide a range of services organized to tailor responses to needs rather than a predetermined array of services;

(ii) are rooted in and part of the communities that such systems are designed to serve as measured by the degree to which public and private community leaders and young individuals participate in the planning of such systems; and

(iii) demonstrate an ability to develop systematic collaboration among service providers on behalf of children, youth and families, including joint planning, joint financing, joint service delivery, common intake and assessment, and other arrangements that promote more effective service systems for such individuals.

(b) Existing entity

The Commissioner may approve a State plan in which the chief executive officer of the State designates as the independent State body an existing State entity that is comprised of the parties described in subsection (a) of this section and that is authorized to conduct the same range of interagency planning and coordination activities.

(Pub. L. 101–501, title IX, § 930, Nov. 3, 1990, 104 Stat. 1270.)

§ 12337. State coordination of services

(a) Authority

The Commissioner shall make grants under this section to States on a formula basis for the purpose of improving the coordination of services provided to children, youth, and families.

(b) Application

To be eligible to receive a grant under this section, the chief executive officer of a State shall prepare and submit to the Commissioner an application containing a plan providing assurances that—

(1) the independent State body is committed to interagency planning that results in statewide policies promoting systematic collaboration among agencies on behalf of young individuals as demonstrated by joint planning, joint financing, joint service delivery, common intake and assessment, and other arrangements that reduce barriers to services and promote more effective local service delivery systems for young individuals;

(2) such plan will be based on needs as identified through an analysis of updated reports (such as ''State of the Child'' reports) prepared by the State, including detailed information gathered by the State, to the extent practicable, on young individuals and the families of such individuals concerning—

(A) age, sex, race, and ethnicity;

(B) the residences of such individuals;

(C) the incidence of homelessness among such individuals;

(D) the composition of families of such individuals;

(E) the economic situations of such individuals;

(F) the incidence of poverty among such individuals;

(G) experiences in the care of such individuals away from home;

(H) the health of such individuals;

(I) violence in the homes or communities of such individuals;

(J) the nature of the attachment of such individuals to school and work;

(K) dropout rates of such individuals from school; and

(L) the character of the communities in which such individuals reside;

(3) the system to be used for the distribution of funds within the State will require that—

(A) each area have an equal opportunity to apply for or receive funds under this part; and

(B) the public be given an opportunity to express views concerning the development and administration of such plan;

(4) the independent State body will provide an inventory of existing public and private services for children, youth and their families and will evaluate the need for supportive services within the State to address the purposes of this chapter and determine the extent to which existing public and private programs meet such need;

(5) the independent State body will make such reports, in such form, and containing such information, as the Commissioner may require;

(6) such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part to the chief executive officer of the State, including any such funds paid to the recipients of a grant or contract;

(7) the independent State body will conduct periodic evaluations of activities and projects carried out pursuant to this section and section 12338 of this title and will report the results and recommendations to the chief executive officer of the State and the State legislature;

(8) the chief executive officer of the State will provide technical assistance or in-service training opportunities for personnel responsible for carrying out the purposes of this section and section 12338 of this title; and

(9) the chief executive officer of each State will provide for the implementation of the requirements of section 12338 of this title, relating to supportive services.

(c) Use of grants to States

Notwithstanding section 12340(g) of this title, the amounts made available to each State under section 12340(a) of this title may be used to make grants to a State to enable such State to pay such percentages as the independent State body of such State determines to be appropriate, of the cost of administering the State plan of such State including—

(1) the costs of the preparation of such plan and the provision of technical assistance to local areas;

(2) the costs of the evaluation of activities carried out under such plan;

(3) the costs of the collection of data and the carrying out of analyses related to the need for supportive services within the State;

(4) the costs of the dissemination of information obtained under paragraph (3); and

(5) the costs of the provision of short-term training to personnel of public or nonprofit private agencies and organizations engaged in the operation of programs authorized by this part.

(e)[1] Supplement not supplant

Amounts received by a State under this section and section 12338 of this title shall be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the purposes for which grants are made under this section and section 12338 of this title. In no event shall such expenditures be used to satisfy the matching requirements of any other Federal program.

(f) Relationship to family resource and support program grants

If a State intends to apply for a grant under section 12339[2] of this title to be used for the same calendar year as the grant under this section, such State shall include in the application for a grant under this section a description of plans for family resource and support programs and for the coordination of the use of all funds received under this part.

(Pub. L. 101–501, title IX, § 931, Nov. 3, 1990, 104 Stat. 1271.)

REFERENCES IN TEXT

Section 12339 of this title, referred to in subsec. (f), was repealed by Pub. L. 103–252, title IV, § 401(b)(1), May 18, 1994, 108 Stat. 672.

§ 12338. Supportive services

(a) Authority

The Commissioner shall carry out a program for making grants to a State, that has designated an independent State body under section 12336 of this title and provided for coordinated services under section 12337 of this title, for distribution by the chief executive officer under a State plan approved under section 12337 of this title to demonstrate successful program approaches to fill service gaps identified through State planning and advocacy efforts for any of the areas specified in paragraph (2).

(b) Eligible services

The services eligible to be provided under subsection (a) of this section are services—

(1) that are designed to facilitate the provision of comprehensive community based services that are efficient, coordinated, and readily available through such activities as case planning, case management, intake and assessment, and information and referral; and

(2) that serve any of the following purposes—

(A) provide adequate and safe physical shelter to young individuals and the families of such individuals, especially in emergency circumstances;

(B) provide transitional living services to young individuals who are homeless;

(C) enable young individuals to attain and maintain physical and mental well-being;

(D) provide health screening to detect or prevent illnesses, or both, that occur most frequently in young individuals as well as better treatment and counseling;

(E) enhance the development of children to ensure that such children enter school prepared and ready to learn;

[1] So in original. No subsec. (d) has been enacted.

[2] See References in Text note below.

(F) promote the highest quality of educational opportunity, especially through drop-out prevention programs, remediation for young individuals who have dropped out of school, and vocational education;

(G) provide effective training apprenticeships and employment opportunities;

(H) promote participation in community service and civic, cultural, and recreational activities that value young individuals as resources and promote self-esteem and a stake in the community;

(I) promote the participation of young individuals in decisions concerning planning and managing the lives of such individuals;

(J) encourage young individuals and the families of such individuals to use any community facilities and services that are available to such individuals;

(K) ensure that young individuals who are unable to live with the biological families of such individuals have a safe place to live until such individuals can return home or move into independent adult life; and

(L) prevent the abuse, neglect, or exploitation of young individuals.

(Pub. L. 101–501, title IX, § 932, Nov. 3, 1990, 104 Stat. 1273.)

§ 12339. Repealed. Pub. L. 103–252, title IV, § 401(b)(1), May 18, 1994, 108 Stat. 672

Section, Pub. L. 101–501, title IX, § 933, Nov. 3, 1990, 104 Stat. 1274, related to grants to States for purpose of implementing family resource and support programs.

§ 12340. Authorization of appropriation and allotment

(a) Administration on Children, Youth, and Families; State coordination; supportive services

(1) Authorization of appropriations

There are authorized to be appropriated to carry out sections 12337 and 12338 of this title such sums as may be necessary for each of the fiscal years 1995 through 1998.

(2) Availability of appropriation

Of the amount appropriated under paragraph (1) for any fiscal year—

(A) not more than 10 percent shall be available to carry out section 12315 of this title; and

(B) not less than 90 percent shall be available to carry out sections 12337 and 12338 of this title.

(3) Allotment formula

Except as provided in paragraph (4), from the amount available under paragraph (2)(B) for each fiscal year, a State shall be allotted an amount that bears the same ratio to the amount appropriated for such fiscal year as the population of the State that is under the age of 21 bears to the population of all States that is under the age of 21.

(4) Exceptions

(A) In general

Except as provided in subparagraph (B) and subject to the availability of appropriations under paragraph (1), no State shall be allotted less than $300,000 under the formula established under paragraph (3).

(B) Limitation on allotment

Notwithstanding subparagraph (A), Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than $75,000 under the formula established under paragraph (2).

(b) Determination of age

The number of individuals under the age of 21 in each State shall be determined by the Commissioner on the basis of the most recent data available to the Commissioner.

(c) Transfer of allotted funds

Whenever the Commissioner determines that—

(1) any amount allotted to a State for a fiscal year under section 12337 or 12338 of this title will not be used by such State for carrying out the purpose for which such allotment was made; or

(2) a State has failed to qualify under the State plan required under section 12335 of this title;

the Commissioner shall make such allotment available for carrying out such purposes to other participating States in a proportional manner based on the relative population of the State of individuals under the age of 21.

(d) Repealed. Pub. L. 103–252, title IV, § 402(b)(2), May 18, 1994, 108 Stat. 673

(e) Limitation

A State shall not use in excess of 10 percent of a grant awarded under section 12338 or 12339[1] of this title for administrative activities at the State level.

(f) Grants for Indians

The Commissioner shall use 1 percent of the amount appropriated under this section for each fiscal year to make allotments to Indian tribes and tribal organizations (such terms having the same meaning given to such terms in section 450b(b) and (c)[1] of title 25) that submit to the Commissioner a plan that meets criteria consistent with the provisions of this part and that comply with other requirements established by the Commissioner.

(g) Limitation

Grants made under this subchapter may be used to pay not more than 80 percent of the cost of—

(1) the preparation, administration, and evaluation of State plans under section 12337 of this title;

(2) the development of comprehensive, efficient, coordinated supportive services under section 12338 of this title; and

(3) the development, expansion, and operation of local family support and resource programs under section 12339[1] of this title.

The remaining 20 percent of such cost shall be paid by the State with funds from non-Federal sources.

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[1] See References in Text note below.

(Pub. L. 101–501, title IX, § 934, Nov. 3, 1990, 104 Stat. 1277; Pub. L. 103–252, title IV, § 402(b), May 18, 1994, 108 Stat. 673.)

REFERENCES IN TEXT

Section 12339 of this title, referred to in subsecs. (e) and (g)(3), was repealed by Pub. L. 103–252, title IV, § 401(b)(1), May 18, 1994, 108 Stat. 672.

Section 450b of title 25, referred to in subsec. (f), has been amended, and subsecs. (b) and (c) of section 450b no longer define the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in that section.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–252, § 402(b)(1), amended par. (1) generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out sections 12315, 12337, and 12338 of this title, $30,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992, 1993, and 1994. Funds appropriated under this paragraph shall remain available for expenditure in the fiscal year succeeding the fiscal year for which such funds are appropriated.''

Subsec. (d). Pub. L. 103–252, § 402(b)(2), struck out heading and text of subsec. (d). Text read as follows: ''There are authorized to be appropriated to carry out section 12339 of this title, $30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PART C—NATIONAL CLEARINGHOUSE

§ 12351. Findings and purpose

(a) Findings

Congress finds that—

(1) fundamental changes in the demographics and economics of family life in the United States over the past 20 years have had a profound effect on children and their parents;

(2) since 1966, the number of women working outside the home has increased by 92 percent and the number of two earner families has increased by over 50 percent;

(3) 61 percent of the children born today will live in a single-parent family before reaching the age of 20, with one out of every three single female heads of households living on income below the Federal poverty level;

(4) one out of every four children under the age of 6 in the United States currently lives below the Federal poverty level;

(5) over the past 10 years, parents have increasingly come together with other parents to organize family resource and support programs that promote healthy child development and increase parental competency, particularly families at risk; and

(6) Federal investment in promoting the development of family resource and support programs will reap long-term benefits for individual families and the nation as a whole.

(b) Purpose

It is the purpose of this part[1] to—

(1) stimulate the development and expansion of family resource and support programs that are prevention oriented;

(2) encourage early intervention of such programs with families to ameliorate problem situations before such situations become crises; and

(3) assist parents in enhancing their children's development to ensure that their children enter school prepared and ready to learn.

(Pub. L. 101–501, title IX, § 956, Nov. 3, 1990, 104 Stat. 1278.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), was in the original ''this Act'', and was translated as reading ''this chapter'', meaning chapter 3 (§§ 955–960) of subtitle A of title IX of Pub. L. 101–501, known as the Family Resources Act, to reflect the probable intent of Congress.

§ 12352. "Family resource and support programs" defined

As used in this part, the term ''family resource and support programs'' means community-based services that offer sustained assistance to families at various stages in their development. Such services shall promote parental competencies and behaviors that will lead to the healthy and positive personal development of parents and children through—

(1) the provision of assistance to build family skills and assist parents in improving their capacities to be supportive and nurturing parents;

(2) the provision of assistance to families to enable such families to use other formal and informal resources and opportunities for assistance that are available within the communities of such families; and

(3) the creation of supportive networks to enhance the childrearing capacity of parents and assist in compensating for the increased social isolation and vulnerability of families.

(Pub. L. 101–501, title IX, § 957, Nov. 3, 1990, 104 Stat. 1278.)

§ 12353. Establishment of National Center on Family Resource and Support Programs

(a) Establishment

The Commissioner shall establish, through grant or contract, a national center for the collection and provision of programmatic information and technical assistance that relates to all types of family resource and support programs, to be known as the ''National Center on Family Resource and Support Programs''.

(b) Functions

The national center established under subsection (a) of this section shall serve as a national information and data clearinghouse, training, technical assistance, and material development source for family resource and support programs. Such center shall—

(1) develop and maintain a system for disseminating information on all types of family resource and support programs and on the state of family resource and support program development, including information concerning the most effective model programs;

[1] See References in Text note below.

(2) develop and sponsor a variety of training institutes and curricula for family resource and support program staff;

(3) identify several programs representing the various types of family resource and support programs to develop technical assistance materials and activities to assist other agencies in establishing family resource and support programs; and

(4) develop State-wide networks of family resource and support programs for the purpose of sharing and disseminating information.

(Pub. L. 101–501, title IX, § 958, Nov. 3, 1990, 104 Stat. 1279; Pub. L. 103–252, title IV, § 403(a), May 18, 1994, 108 Stat. 673.)

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–252 substituted ''several programs'' for ''several model programs''.

§ 12354. Evaluation

The Commissioner shall, through grants or contracts awarded or entered into with independent auditors, conduct evaluations and related activities, of family resource and support programs, including—

(1) evaluations of on-going programs;

(2) process evaluations focusing on implementation strategies; and

(3) the development of simple evaluation models for use by local family resource and support programs.

(Pub. L. 101–501, title IX, § 959, Nov. 3, 1990, 104 Stat. 1279.)

§ 12355. Authorization of appropriations

(a) Establishment of Center

To carry out section 12353 of this title, there are authorized to be appropriated $2,000,000 for each of the fiscal years 1995 through 1998.

(b) Evaluation

To carry out section 12354 of this title, there are authorized to be appropriated $1,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1998.

(Pub. L. 101–501, title IX, § 960, Nov. 3, 1990, 104 Stat. 1279; Pub. L. 103–252, title IV, § 403(b), May 18, 1994, 108 Stat. 673.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–252, § 403(b)(1), substituted ''$2,000,000 for each of the fiscal years 1995 through 1998'' for ''$2,300,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994''.

Subsec. (b). Pub. L. 103–252, § 403(b)(2), substituted ''$1,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1998'' for ''$700,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994''.

SUBCHAPTER II—WHITE HOUSE CONFERENCE ON CHILDREN, YOUTH, AND FAMILIES

§ 12371. Findings

(a) Findings

The Congress finds that—

(1) children and youth are inherently our most valuable resource and their welfare, protection, healthy development, and positive role in society are essential to the Nation;

(2) children and youth deserve love, respect, and guidance, as well as good health, shelter, food, education, productive work, and preparation for responsible participation in community life;

(3) an increasing opportunity for children and youth to participate in the decisions that affect their lives is essential;

(4) the family is the primary caregiver and the source of social learning which must be supported and strengthened, but when families are unable to ensure the satisfaction of the needs of children and youth, it is society's responsibility to assist them;

(5) at a minimum, all children and youth need and deserve access to—

(A) the best possible physical and mental health;

(B) adequate and safe physical shelter;

(C) the highest quality of educational opportunity;

(D) effective training, apprenticeships, opportunities for community service, and productive employment;

(E) the widest range of civic, cultural, and recreational activities which recognize young Americans as resources and promote self-esteem and a stake in their communities;

(F) comprehensive community services which are efficient, coordinated, and readily available; and

(G) genuine participation in decisions concerning the planning and managing of their lives; and

(6) there is a great need for a comprehensive national policy with respect to young individuals, designed to engage Federal, State, and local government agencies, youth organizations, and other voluntary organizations.

(b) Statement of policy

It is the policy of the Congress that the Federal Government should work jointly with the States and their citizens to develop recommendations and plans for action to meet the challenge and needs of young individuals.

(Pub. L. 101–501, title IX, § 982, Nov. 3, 1990, 104 Stat. 1280.)

§ 12372. Authority of President and Secretary; final report

(a) Calling of Conference

The President shall call a White House Conference on Children, Youth, and Families in 1993 in order to develop recommendations for further action in the field of children, youth, and families which will further the policy set forth in section 12371(b) of this title. The Conference shall be planned and conducted under the direction of the Secretary in cooperation with the Commissioner and with the heads of such other Federal departments and agencies as are appropriate. Such assistance may include the assignment of personnel.

(b) Purposes of Conference

The purposes of the Conference shall be—

(1) to increase the public awareness of the value and needs of young individuals;

(2) to examine the well-being of young individuals as well as the problems which they face;

(3) to describe the extent to which young individuals with identified needs do not receive services to meet such needs;

(4) to determine the reasons why young individuals are not receiving needed services; and

(5) to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate to improve the well-being of youth and their families.

(c) Conference participants and delegates

(1) Participants

In order to carry out the purposes of the Conference, the Conference shall bring together—

(A) representatives of Federal, State, and local governments, including representatives of the Government Accountability Office;

(B) professionals who are working in the field of children, youth, and families; and

(C) representatives of the general public, particularly young individuals.

(2) Selection of delegates

The delegates to attend the Conference shall be selected without regard to political affiliation or past partisan activity and shall, to the best of the appointing authority's ability, be representative of the spectrum of thought in the field of children, youth, and families.

(Pub. L. 101–501, title IX, § 983, Nov. 3, 1990, 104 Stat. 1280; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (c)(1)(A). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

§ 12373. Conference administration

(a) Administration

For purposes of carrying out this subchapter, the Secretary shall—

(1) request the cooperation and assistance of the heads of such other Federal departments and agencies as may be appropriate;

(2) furnish all reasonable assistance to State agencies administering programs related to children, youth and families, and to other appropriate organizations, to enable them to organize and conduct conferences in conjunction with the Conference;

(3) prepare and make available for public comment a proposed agenda for the Conference which reflects, to the greatest extent possible, the major issues facing children, youth, and families consistent with subsection (a) of this section;

(4) prepare and make available background materials which the Secretary deems necessary for the use of delegates to the Conference; and

(5) engage such additional personnel as may be necessary to carry out this section without regard to provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) Duties

The Secretary shall, in carrying out the Secretary's responsibilities and functions under this section, ensure that—

(1) the conferences under subsection (a)(2) of this section will be conducted so as to ensure broad participation of young individuals;

(2) the proposed agenda for the Conference under subsection (a)(3) of this section is published in the Federal Register not less than 180 days before the beginning of the Conference and the proposed agenda is open for public comment for a period of not less than 60 days;

(3) the final agenda for the Conference, taking into consideration the comments received under paragraph (2), is published in the Federal Register and transmitted to the chief executive officers of the States not later than 30 days after the close of the public comment period provided for under paragraph (2);

(4) the personnel engaged under subsection (a)(5) of this section shall be fairly balanced in terms of points of views represented and shall be appointed without regard to political affiliation or previous partisan activities;

(5) the recommendations of the Conference are not inappropriately influenced by any appointing authority or by any special interest, but will instead be the result of the independent judgment of the Conference; and

(6) to the extent practicable, current and adequate statistical data (including decennial census data) and other information on the well-being of young individuals in the United States are readily available, in advance of the Conference, to the delegates of the Conference, together with such information as may be necessary to evaluate Federal programs and policies relating to children and youth. In carrying out this subparagraph, the Secretary may make grants to, and enter into contracts with, public agencies and nonprofit private organizations.

(Pub. L. 101–501, title IX, § 984, Nov. 3, 1990, 104 Stat. 1281.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a)(5), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

§ 12374. Conference committees

(a) Advisory committee

The Secretary shall establish an advisory committee to the Conference which shall include representatives from the Federal Council on Children, Youth, and Families, public agencies and nonprofit private organizations as appropriate.

(b) Other committees

The Secretary may establish such other committees, including technical committees, as may be necessary to assist in the planning, conducting, and reviewing of the Conference.

(c) Composition of committees

Each committee established under this section shall be composed of professionals and public members, and shall include individuals from low-income families and from minority groups.

(d) Compensation

Members of any committee established under this section (other than any officers or employees of the Federal Government), while attending conferences or meetings of the committee or otherwise serving at the request of the Secretary, shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not to exceed the daily rate payable for GS–18 of the General Schedule under section 5332 of title 5 (including travel time). While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of such title for persons employed intermittently in Federal Government service.

(Pub. L. 101–501, title IX, § 985, Nov. 3, 1990, 104 Stat. 1282.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 12375. Report of Conference

(a) Proposed report

A proposed report of the Conference which shall include a statement of comprehensive coherent national policy on children, youth, and families together with recommendations for the implementation of such policy, shall be published and submitted to the chief executive officers of the States not later than 180 days following the date on which the Conference is adjourned. The findings and recommendations included in the published proposed report shall be available immediately to the public.

(b) Response to proposed report

The chief executive officers of the States, after reviewing and soliciting recommendations and comments on the proposed report of the Conference, shall submit to the Secretary, not later than 180 days after receiving such report, their views and findings on the recommendations of the Conference.

(c) Final report

Not later than 180 days after submission of the views and comments of the chief executive officers of the States, the Secretary shall—

(1) prepare a final report on the conference, which shall include—

(A) a statement of the policy and recommendations of the Conference;

(B) the views and comments of the chief executive officers of the States; and

(C) the recommendations of the Secretary, after taking into consideration the views and comments of such officers, for administrative and legislative action necessary to implement the recommendations of the Conference; and

(2) publish and transmit such report to the President and the chairman of the Committee on Education and Labor of the House of Representatives and chairman of the Committee on Labor and Human Resources of the Senate.

(Pub. L. 101–501, title IX, § 986, Nov. 3, 1990, 104 Stat. 1282.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

§ 12376. Definitions

For purposes of this subchapter—

(1) the term ''Conference'' means the 1993 White House Conference on Children, Youth, and Families; and

(2) the terms ''child'', ''youth'', and ''young individual'' means[1] an individual who is less than 21 years of age.

(Pub. L. 101–501, title IX, § 987, Nov. 3, 1990, 104 Stat. 1283.)

§ 12377. Authorization of appropriations

(a) Authorization

There are authorized to be appropriated such sums as may be necessary, for each of the fiscal years 1993 and 1994, to carry out this subchapter. Sums appropriated under this subsection shall remain available until the expiration of the 1-year period beginning on the date the Conference is adjourned. New spending authority or authority to enter into contracts as provided in this subchapter shall be effective only to the extent and in such amounts as are provided in advance in appropriations Acts.

(b) Return of unexpended funds

Any funds remaining upon the expiration of the 1-year period referred to in subsection (a) of

[1] So in original. Probably should be ''mean''.

this section shall be returned to the Treasury of the United States and credited as miscellaneous receipts.

(Pub. L. 101–501, title IX, § 988, Nov. 3, 1990, 104 Stat. 1283.)

CHAPTER 128—HYDROGEN RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM

Sec.
12401. Finding, purposes, and definitions.
12402. Report to Congress.
12403. Hydrogen research and development.
12404. Demonstrations.
12405. Technology transfer program.
12406. Coordination and consultation.
12407. Technical panel.
12408. Authorization of appropriations.

§ 12401. Finding, purposes, and definitions

(a) Finding

Congress finds that it is in the national interest to accelerate efforts to develop a domestic capability to economically produce hydrogen in quantities that will make a significant contribution toward reducing the Nation's dependence on conventional fuels.

(b) Purposes

The purposes of this chapter are—

(1) to direct the Secretary of Energy to conduct a research, development, and demonstration program leading to the production, storage, transport, and use of hydrogen for industrial, residential, transportation, and utility applications;

(2) to direct the Secretary to develop a technology assessment and information transfer program among the Federal agencies and aerospace, transportation, energy, and other entities; and

(3) to develop renewable energy resources as a primary source of energy for the production of hydrogen.

(c) Definitions

As used in this chapter, the term:

(1) ''critical technology'' (or ''critical technical issue'') means a technology (or issue) that, in the opinion of the Secretary, requires understanding and development in order to take the next needed step in the development of hydrogen as an economic fuel or storage medium;

(2) ''Department'' means the Department of Energy; and

(3) ''Secretary'' means the Secretary of Energy.

(Pub. L. 101–566, § 102, Nov. 15, 1990, 104 Stat. 2797; Pub. L. 104–271, title I, § 101, Oct. 9, 1996, 110 Stat. 3304.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–271, § 101(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''to direct the Secretary to prepare a comprehensive 5-year comprehensive program management plan that will identify and resolve critical technical issues necessary for the realization of a domestic capability to produce, distribute, and use hydrogen economically within the shortest time practicable;''.

Subsec. (c). Pub. L. 104–271, § 101(b), added par. (2) and redesignated former par. (2) as (3).

SHORT TITLE OF 1996 AMENDMENT

Section 1 of Pub. L. 104–271 provided that: ''This Act [enacting section 7238 of this title, amending this section and sections 12402 to 12405, 12407, 12408, and 13436 of this title, and enacting provisions set out as notes under sections 7238, 12403, and 13436 of this title] may be cited as the 'Hydrogen Future Act of 1996'.''

SHORT TITLE

Section 101 of Pub. L. 101–566 provided that: ''This Act [enacting this chapter] may be referred to as the 'Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990'.''

§ 12402. Report to Congress

(a) Not later than January 1, 1999, the Secretary shall transmit to Congress a detailed report on the status and progress of the programs authorized under this chapter.

(b) A report under subsection (a) of this section shall include, in addition to any views and recommendations of the Secretary—

(1) an analysis of the effectiveness of the programs authorized under this chapter, to be prepared and submitted to the Secretary by the Hydrogen Technical Advisory Panel established under section 12407 of this title; and

(2) recommendations of the Hydrogen Technical Advisory Panel for any improvements in the program that are needed, including recommendations for additional legislation.

(Pub. L. 101–566, § 103, Nov. 15, 1990, 104 Stat. 2797; Pub. L. 104–271, title I, § 102(a), Oct. 9, 1996, 110 Stat. 3304.)

AMENDMENTS

1996—Pub. L. 104–271 amended section generally, substituting provisions requiring report to Congress on chapter programs by Jan. 1, 1999, for provisions regarding preparation and contents of comprehensive 5-year program management plan for research and development activities and comprehensive large-scale hydrogen demonstration plan with respect to section 12404 demonstrations.

§ 12403. Hydrogen research and development

(a) Program

The Secretary shall conduct a hydrogen research and development program relating to production, storage, transportation, and use of hydrogen, with the goal of enabling the private sector to demonstrate the technical feasibility of using hydrogen for industrial, residential, transportation, and utility applications.

(b) Research

In conducting the program authorized by this section, the Secretary shall—

(1) give particular attention to developing an understanding and resolution of critical technical issues preventing the introduction of hydrogen into the marketplace;

(2) initiate or accelerate existing research in critical technical issues that will contribute to the development of more economic hydrogen production and use, including, but not limited to, critical technical issues with respect to production (giving priority to those production techniques that use renewable energy resources as their primary source of energy for hydrogen production), liquefaction, transmission, distribution, storage, and use

(including use of hydrogen in surface transportation); and

(3) survey private sector hydrogen activities and take steps to ensure that research and development activities under this section do not displace or compete with the privately funded hydrogen research and development activities of United States industry.

(c) Innovative energy technologies

The Secretary is authorized to evaluate any reasonable new or improved technology, including basic research on highly innovative energy technologies, that could lead or contribute to the development of economic hydrogen production, storage, and utilization.

(d) Renewable energy systems; hybrid systems

The Secretary is authorized to evaluate any reasonable new or improved technology that could lead or contribute to, or demonstrate the use of, advanced renewable energy systems or hybrid systems for use in isolated communities that currently import diesel fuel as the primary fuel for electric power production.

(e) Information

The Secretary is authorized to arrange for tests and demonstrations and to disseminate to researchers and developers information, data, and other materials necessary to support the research and development activities authorized under this section and other efforts authorized under this chapter, consistent with section 12405 of this title.

(f) Federal funding

The Secretary shall carry out the research and development activities authorized under this section only through the funding of research and development proposals submitted by interested persons according to such procedures as the Secretary may require and evaluate on a competitive basis using peer review. Such funding shall be in the form of a grant agreement, procurement contract, or cooperative agreement (as those terms are used in chapter 63 of title 31).

(g) Non-Federal funding

The Secretary shall not consider a proposal submitted by a person from industry unless the proposal contains a certification that reasonable efforts to obtain non-Federal funding for the entire cost of the project have been made, and that such non-Federal funding could not be reasonably obtained. As appropriate, the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the cost of the development portion of such a proposal.

(h) Prohibition on duplicative efforts

The Secretary shall not carry out any activities under this section that unnecessarily duplicate activities carried out elsewhere by the Federal Government or industry.

(i) Federal funding consistent with the Agreement on Subsidies and Countervailing Measures

The Secretary shall establish, after consultation with other Federal agencies, terms and conditions under which Federal funding will be provided under this chapter that are consistent with the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of title 19.

(Pub. L. 101–566, § 104, Nov. 15, 1990, 104 Stat. 2798; Pub. L. 104–271, title I, § 103(a), Oct. 9, 1996, 110 Stat. 3305.)

AMENDMENTS

1996—Pub. L. 104–271 amended section generally, substituting present provisions for provisions which stated in subsec. (a) the Secretary was to conduct a research and development program for development of a domestic hydrogen fuel production capability; subsec. (b) attention was to be given to research of critical technical issues; subsec. (c) renewable energy priority; subsec. (d) new technologies; and subsec. (e) gathering and dissemination of information to support research and development efforts.

FUEL CELLS

Title II of Pub. L. 104–271 provided that:

''SEC. 201. INTEGRATION OF FUEL CELLS WITH HYDROGEN PRODUCTION SYSTEMS.

''(a) Not later than 180 days after the date of enactment of this section [Oct. 9, 1996], and subject to the availability of appropriations made specifically for this section, the Secretary of Energy shall solicit proposals for projects to prove the feasibility of integrating fuel cells with—

''(1) photovoltaic systems for hydrogen production; or

''(2) systems for hydrogen production from solid waste via gasification or steam reforming.

''(b) Each proposal submitted in response to the solicitation under this section shall be evaluated on a competitive gas is [basis] using peer review. The Secretary is not required to make an award under this section in the absence of a meritorious proposals. [sic]

''(c) The Secretary shall give preference, in making an award under this section, to proposals that—

''(1) are submitted jointly from consortia including academic institutions, industry, State or local governments, and Federal laboratories; and

''(2) reflect proven experience and capability with technologies relevant to the systems described in subsections (a)(1) and (a)(2).

''(d) In the case of a proposal involving development or demonstration, the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the cost of the development or demonstration portion of the proposal.

''(e) The Secretary shall establish, after consultation with other Federal agencies, terms and conditions under which Federal funding will be provided under this title that are consistent with the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreement Act (19 U.S.C. 3511(d)(12)).

''SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated, for activities under this section [title], a total of $50,000,000 for fiscal years 1997 and 1998, to remain available until September 30, 1999.''

§ 12404. Demonstrations

(a) Requirement

The Secretary shall conduct demonstrations of critical technologies, preferably in self-contained locations, so that technical and non-technical parameters can be evaluated to best determine commercial applicability of the technology.

(b) Small-scale demonstrations

Concurrently with activities conducted pursuant to section 12403 of this title, the Secretary

shall conduct small-scale demonstrations of hydrogen technology at self-contained sites.

(c) Non-Federal funding

The Secretary shall require a commitment from non-Federal sources of at least 50 percent of the cost of any demonstration conducted under this section.

(Pub. L. 101–566, § 105, Nov. 15, 1990, 104 Stat. 2799; Pub. L. 104–271, title I, § 104, Oct. 9, 1996, 110 Stat. 3306.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–271 added subsec. (c).

§ 12405. Technology transfer program

(a) Program

The Secretary shall conduct a program designed to accelerate wider application of hydrogen production, storage, utilization, and other technologies available in near term as a result of aerospace experience as well as other research progress by transferring critical technologies to the private sector. The Secretary shall direct the program with the advice and assistance of the Hydrogen Technical Advisory Panel established under section 12407 of this title. The objective in seeking this advice is to increase participation of private industry in the demonstration of near commercial applications through cooperative research and development arrangements, joint ventures or other appropriate arrangements involving the private sector.

(b) Information

The Secretary, in carrying out the program authorized by subsection (a) of this section, shall—

(1) undertake an inventory and assessment of hydrogen technologies and their commercial capability to economically produce, store, or utilize hydrogen in aerospace, transportation, electric utilities, petrochemical, chemical, merchant hydrogen, and other industrial sectors; and

(2) develop a National Aeronautics Space Administration, Department of Energy, and industry information exchange program to improve technology transfer for—

(A) application of aerospace experience by industry;

(B) application of research progress by industry and aerospace;

(C) application of commercial capability of industry by aerospace; and

(D) expression of industrial needs to research organizations.

The information exchange program may consist of workshops, publications, conferences, and a data base for the use by the public and private sectors. The Secretary shall also foster the exchange of generic, nonproprietary information and technology, developed pursuant to this chapter, among industry, academia, and the Federal Government, to help the United States economy attain the economic benefits of this information and technology.

(Pub. L. 101–566, § 106, Nov. 15, 1990, 104 Stat. 2799; Pub. L. 104–271, title I, § 105, Oct. 9, 1996, 110 Stat. 3306.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–271 inserted at end ''The Secretary shall also foster the exchange of generic, nonproprietary information and technology, developed pursuant to this chapter, among industry, academia, and the Federal Government, to help the United States economy attain the economic benefits of this information and technology.''

§ 12406. Coordination and consultation

(a) Secretary's responsibility

The Secretary shall have overall management responsibility for carrying out programs under this chapter. In carrying out such programs, the Secretary, consistent with such overall management responsibility—

(1) shall use the expertise of the National Aeronautics and Space Administration and the Department of Transportation; and

(2) may use the expertise of any other Federal agency in accordance with subsection (b) of this section in carrying out any activities under this chapter,[1] to the extent that the Secretary determines that any such agency has capabilities which would allow such agency to contribute to the purpose of this chapter.

(b) Assistance

The Secretary may, in accordance with subsection (a) of this section, obtain the assistance of any department, agency, or instrumentality of the Executive branch of the Federal Government upon written request, on a reimbursable basis or otherwise and with the consent of such department, agency, or instrumentality. Each such request shall identify the assistance the Secretary deems necessary to carry out any duty under this chapter.

(c) Consultation

The Secretary shall consult with the Administrator of the National Aeronautics and Space Administration, the Administrator of the Environmental Protection Agency, the Secretary of Transportation, and the Hydrogen Technical Advisory Panel established under section 12407 of this title in carrying out his authorities pursuant to this chapter.

(Pub. L. 101–566, § 107, Nov. 15, 1990, 104 Stat. 2800.)

REFERENCES IN TEXT

This chapter, the first time appearing in subsec. (a)(2), was in the original ''this title'', and was translated as reading ''this Act'' meaning Pub. L. 101–566, to reflect the probable intent of Congress, because Pub. L. 101–566 is not divided into titles.

§ 12407. Technical panel

(a) Establishment

There is hereby established the Hydrogen Technical Advisory Panel (the ''technical panel''), to advise the Secretary on the programs under this chapter.

(b) Membership

The technical panel shall be appointed by the Secretary and shall be comprised of such rep-

[1] See References in Text note below.

resentatives from domestic industry, universities, professional societies, Government laboratories, financial, environmental, and other organizations as the Secretary deems appropriate based on his assessment of the technical and other qualifications of such representatives. Appointments to the technical panel shall be made within 90 days after November 15, 1990. The technical panel shall have a chairman, who shall be elected by the members from among their number.

(c) Cooperation

The heads of the departments, agencies, and instrumentalities of the Executive branch of the Federal Government shall cooperate with the technical panel in carrying out the requirements of this section and shall furnish to the technical panel such information as the technical panel deems necessary to carry out this section.

(d) Review

The technical panel shall review and make any necessary recommendations to the Secretary on the following items—

(1) the implementation and conduct of programs under this chapter; and

(2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems.

(e) Support

The Secretary shall provide such staff, funds and other support as may be necessary to enable the technical panel to carry out the functions described in this section.

(Pub. L. 101–566, § 108, Nov. 15, 1990, 104 Stat. 2800; Pub. L. 104–271, title I, § 102(b), Oct. 9, 1996, 110 Stat. 3305.)

AMENDMENTS

1996—Subsec. (d)(3). Pub. L. 104–271 struck out par. (3) which read as follows: ''comments on and recommendations for improvements in the comprehensive 5-year program management plan required under section 12402 of this title.''

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 12408. Authorization of appropriations

There is hereby authorized to be appropriated to carry out the purposes of this chapter (in addition to any amounts made available for such purposes under other Acts)—

(1) $3,000,000 for the fiscal year 1992;
(2) $7,000,000 for the fiscal year 1993;
(3) $10,000,000 for the fiscal year 1994;
(4) $14,500,000 for fiscal year 1996;
(5) $20,000,000 for fiscal year 1997;
(6) $25,000,000 for fiscal year 1998;
(7) $30,000,000 for fiscal year 1999;
(8) $35,000,000 for fiscal year 2000; and
(9) $40,000,000 for fiscal year 2001.

(Pub. L. 101–566, § 109, Nov. 15, 1990, 104 Stat. 2801; Pub. L. 104–271, title I, § 106, Oct. 9, 1996, 110 Stat. 3306.)

AMENDMENTS

1996—Pub. L. 104–271 substituted ''under other Acts'' for ''to other Acts'' in introductory provisions and added pars. (4) to (9).

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§ 12501. Findings and purpose

(a) Findings

The Congress finds the following:

(1) Throughout the United States, there are pressing unmet human, educational, environmental, and public safety needs.

(2) Americans desire to affirm common responsibilities and shared values, and join together in positive experiences, that transcend race, religion, gender, age, disability, region, income, and education.

(3) The rising costs of postsecondary education are putting higher education out of reach for an increasing number of citizens.

(4) Americans of all ages can improve their communities and become better citizens through service to the United States.

(5) Nonprofit organizations, local governments, States, and the Federal Government are already supporting a wide variety of national service programs that deliver needed services in a cost-effective manner.

(6) Residents of low-income communities, especially youth and young adults, can be empowered through their service, and can help provide future community leadership.

(b) Purpose

It is the purpose of this chapter to—

(1) meet the unmet human, educational, environmental, and public safety needs of the United States, without displacing existing workers;

(2) renew the ethic of civic responsibility and the spirit of community throughout the United States;

(3) expand educational opportunity by rewarding individuals who participate in national service with an increased ability to pursue higher education or job training;

(4) encourage citizens of the United States, regardless of age, income, or disability, to engage in full-time or part-time national service;

(5) reinvent government to eliminate duplication, support locally established initiatives, require measurable goals for performance, and offer flexibility in meeting those goals;

(6) expand and strengthen existing service programs with demonstrated experience in providing structured service opportunities with visible benefits to the participants and community;

(7) build on the existing organizational service infrastructure of Federal, State, and local programs and agencies to expand full-time and part-time service opportunities for all citizens; and

(8) provide tangible benefits to the communities in which national service is performed.

(Pub. L. 101–610, § 2, Nov. 16, 1990, 104 Stat. 3129; Pub. L. 103–82, § 2(a), Sept. 21, 1993, 107 Stat. 787.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, substituting provisions relating to findings and purposes for former provisions setting forth the purposes of this chapter.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–117, div. B, § 1301(a), Jan. 10, 2002, 115 Stat. 2339, provided that: ''This section [enacting subchapter III of this chapter] may be cited as the 'Unity in the Spirit of America Act' or the 'USA Act'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–304, § 1, Aug. 23, 1994, 108 Stat. 1565, provided that: ''This Act [amending sections 4953, 5024, 12591, 12602, 12615, 12619, 12622, 12651d, 12653, and 12655n of this title and enacting provisions set out as a note under section 4953 of this title] may be cited as the 'King Holiday and Service Act of 1994'.''

SHORT TITLE OF 1993 AMENDMENT

Section 1(a) of Pub. L. 103–82 provided that: ''This Act [see Tables for classification] may be cited as the 'National and Community Service Trust Act of 1993'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–384, § 1, Oct. 5, 1992, 106 Stat. 1455, provided that: ''This Act [amending sections 12511, 12522, 12523, 12525, 12526, 12541, 12550, 12612, 12614, 12615, 12622, 12639, 12651, and 12681 of this title] may be cited as the 'National and Community Service Technical Amendment Act of 1992'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–10, § 1, Mar. 12, 1991, 105 Stat. 29, provided that: ''This Act [enacting section 12645 of this title, amending sections 5091m, 12511, 12521, 12522, 12524, 12527, 12531, 12542 to 12544, 12548, 12553, 12575, 12576, 12602, 12638, and 12651 of this title, and repealing section 12556 of this title] may be cited as the 'National and Community Service Technical Amendments Act of 1991'.''

SHORT TITLE

Section 1(a) of Pub. L. 101–610 provided that: ''This Act [enacting this chapter, sections 5091 to 5091n of this title, and section 2452a of Title 22, Foreign Relations and Intercourse, amending sections 1018c, 1018e, 1070a–6, 1087vv, 1092, and 1092b of Title 20, Education, and former section 546 of Title 45, Railroads, and enacting provisions set out as notes under this section and section 24301 of Title 49, Transportation] may be cited as the 'National and Community Service Act of 1990'.''

Section 110 of subtitle B (§§ 110–118) of title I of Pub. L. 101–610, which provided that such subtitle (enacting former part B (§§ 12521–12531) of subchapter I of this chapter) be cited as the ''Serve-America: The Community Service, Schools and Service-Learning Act of 1990'', was repealed by Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 825.

Pub. L. 108–45, § 1, July 3, 2003, 117 Stat. 844, provided that: ''This Act [enacting section 12605 of this title] may be cited as the 'Strengthen AmeriCorps Program Act'.''

Section 199 [formerly 120] of subtitle I (§§ 199–199O) [formerly subtitle C (§§ 120–136)] of title I of Pub. L. 101–610, as renumbered by Pub. L. 103–82, title I, § 101(a), Sept. 21, 1993, 107 Stat. 788, provided that: ''This subtitle [enacting division I (formerly part C) of subchapter I of this chapter] may be cited as the 'American Conservation and Youth Service Corps Act of 1990'.''

Section 140 of subtitle D (§§ 140–150) of title I of Pub. L. 101–610, which provided that such subtitle (enacting former part D (§§ 12571–12580) of subchapter I of this chapter) be cited as the ''National and Community Service Act'', was omitted in the general amendment of part D (now division D) by Pub. L. 103–82, title I, § 102(a), Sept. 21, 1993, 107 Stat. 816.

Section 301 of title III of Pub. L. 101–610 provided that: ''This title [enacting subchapter II of this chapter] may be cited as 'The Points of Light Foundation Act'.''

COMPLIANCE WITH BUY AMERICAN ACT

Section 501 of Pub. L. 103–82 provided that: ''No funds appropriated pursuant to this Act [see Tables for classification] (including the amendments made by this Act) may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–10c [41 U.S.C. 10a, 10b, former 10b–1], popularly known as the 'Buy American Act').''

SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE

Section 502 of Pub. L. 103–82 provided that:

''(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or product that may be authorized to be purchased with financial assistance provided under this Act [see Tables for classification] (including the amendments made by this Act), it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

''(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act (including the amendments made by this Act), the Secretary of Education shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress.''

PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA

Section 503 of Pub. L. 103–82 provided that: ''If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a 'Made in America' inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds appropriated to carry out this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.''

EX. ORD. NO. 13254. ESTABLISHING THE USA FREEDOM CORPS

Ex. Ord. No. 13254, Jan. 29, 2002, 67 F.R. 4869, as amended by Ex. Ord. No. 13286, § 6, Feb. 28, 2003, 68 F.R. 10620, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy*. Building on our Nation's rich tradition of citizen service, this Administration's policy is to foster a culture of responsibility, service, and citizenship by promoting, expanding, and enhancing public service opportunities for all Americans and by making these opportunities readily available to citizens from all geographic areas, professions, and walks of life. More specifically, this Administration encourages all Americans to serve their country for the equivalent of at least 2 years (4,000 hours) over their lifetimes. Toward those ends, the executive departments, agencies, and offices constituting the USA Freedom Corps shall coordinate and strengthen Federal and other service opportunities, including opportunities for participation in homeland security preparedness and response, other areas of public and social service, and international service. The executive branch departments, agencies, and offices also will work with State and local governments and private entities to foster and encourage participation in public and social service programs, as appropriate.

SEC. 2. *USA Freedom Corps*. The USA Freedom Corps shall be an interagency initiative, bringing together executive branch departments, agencies, and offices with public service programs and components, including but not limited to programs and components with the following functions:

(i) recruiting, mobilizing, and encouraging all Americans to engage in public service;

(ii) providing concrete opportunities to engage in public service;

(iii) providing the public with access to information about public service opportunities through Federal programs and elsewhere; and

(iv) providing recognition and awards to volunteers and other participants in public service programs.

SEC. 3. *USA Freedom Corps Council*. (a) *Establishment and Mission*. There shall be a USA Freedom Corps Council (Council) chaired by the President and composed of heads of executive branch departments, agencies, and offices, which shall have the following functions:

(i) serving as a forum for Federal officials responsible for public service programs to coordinate and improve public service programs and activities administered by the executive branch;

(ii) working to encourage all Americans to engage in public service, whether through Federal programs or otherwise;

(iii) advising the President and heads of executive branch departments, agencies, and offices concerning the optimization of current Federal programs to enhance public service opportunities;

(iv) coordinating public outreach and publicity of citizen service opportunities provided by Federal programs;

(v) encouraging schools, universities, private public service organizations, and other non-Federal entities to foster and reward public service;

(vi) studying the availability of public service opportunities provided by the Federal Government and elsewhere; and

(vii) tracking progress in participation in public service programs.

(b) *Membership*. In addition to the Chair, the members of the Council shall be the heads of the executive branch departments, agencies, and offices listed below, or their designees, and such other officers of the executive branch as the President may from time to time designate. Every member of the Council or designee shall be a full-time or permanent part-time officer or employee of the Federal Government. Members shall not be compensated for their service on the Council in addition to the salaries they receive as employees or officers of the Federal Government.

(i) Vice President;

(ii) Attorney General;

(iii) Secretary of State;

(iv) Secretary of Health and Human Services;

(v) Secretary of Commerce;

(vi) Secretary of Education;

(vii) Secretary of Veterans Affairs;

(viii) Secretary of Homeland Security;

(ix) Chief Executive Officer of the Corporation for National and Community Service;

(x) Director of the Peace Corps;

(xi) Administrator of the United States Agency for International Development;

(xii) Director of the USA Freedom Corps Office; and

(xiii) Director of the Office of Faith-Based and Community Initiatives.

(c) *Chair*. The President shall be the Chair of the USA Freedom Corps Council, and in his absence, the Vice President shall serve as Chair. The Director of the USA Freedom Corps Office may, at the President's direction, preside over meetings of the Council in the President's and Vice President's absence.

(d) *Honorary Co-Chair*. The President may, from time to time, designate an Honorary Co-Chair or Co-Chairs, who shall serve in an advisory role to the Council and to the President on matters considered by the Council. Any Honorary Co-Chair shall be a full-time or permanent part-time employee or officer of the Federal Government.

(e) *Meetings*. The Council shall meet at the President's direction. The Director of the USA Freedom Corps Office shall be responsible, at the President's direction, for determining the agenda, ensuring that necessary papers are prepared, and recording Council actions and Presidential decisions.

(f) *Responsibilities of Executive Branch Departments, Agencies, and Offices*.

(i) Members of the Council shall remain responsible for overseeing the programs administered by their respective departments, agencies, and offices. Each such department, agency, and office will retain its authority and responsibility to administer those programs according to law;

(ii) Each executive branch department, agency, or office with responsibility for programs relating to the functions and missions of the USA Freedom Corps as described in section 2 of this order shall be responsible for identifying those public service opportunities and coordinating with the USA Freedom Corps Council to ensure that such programs are, if appropriate, publicized and encouraged by the Council; and

(iii) Upon the request of the Chair, and to the extent permitted by law, the heads of executive branch departments and agencies shall provide the Council with relevant information.

SEC. 4. *USA Freedom Corps Office*. (a) *General*. The USA Freedom Corps also shall be supported by a USA Freedom Corps Office (Office), which shall be a component of the White House Office. The USA Freedom Corps Office shall have a Director who shall be appointed by the President. The Director shall be assisted by an appropriate staff within the White House Office.

(b) *Presidential Recognition to Participants in USA Freedom Corps Programs*. In addition to supporting and fa-

cilitating the functions of the Council listed in section 3 of this order, the Office shall support the President in providing recognition to volunteers and other participants in programs and activities relating to the functions and missions of the USA Freedom Corps as described in section 2 of this order.

SEC. 5. *General Provisions*. (a) The White House Office shall provide the Council and Office with such funding and administrative support, to the extent permitted by law and subject to the availability of appropriations, as directed by the Chief of Staff to the President to carry out the provisions of this order.

(b) This order does not alter the existing authorities or roles of executive branch departments, agencies, or offices. Nothing in this order shall supersede any requirement made by or under law.

(c) This order does not create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13317. VOLUNTEERS FOR PROSPERITY

Ex. Ord. No. 13317, Sept. 25, 2003, 68 F.R. 56515, as amended by Ex. Ord. No. 13418, Dec. 14, 2006, 71 F.R. 75647, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to encourage volunteer service by highly skilled Americans to support major initiatives by the United States for promoting health and prosperity around the world, it is hereby ordered as follows:

SECTION 1. (a) *Policy*. A part of USA Freedom Corps, ''Volunteers for Prosperity'' is a call to service to support major U.S. initiatives that promote health and prosperity around the world. Deploying highly skilled volunteers abroad is an efficient way to use our resources consistent with the objectives of the United States Government's global prosperity agenda. United States volunteers will help to achieve the objectives of the global prosperity agenda, including providing clean water to the poor, promoting democratic governance, developing economic freedom, promoting free and open markets, stemming the spread of HIV/AIDS and controlling malaria.

The investment of Federal resources to enable U.S. volunteers to work with nongovernmental and voluntary service organizations overseas is a preferred use of our resources and also will help leverage private sector resources. United States citizens who are skilled professionals and who volunteer, when matched with organizations working on specific U.S. prosperity initiatives overseas, can provide invaluable support for these initiatives and will supplement and complement the traditions and accomplishments of the Peace Corps.

United States prosperity initiatives that can benefit from volunteer service include, but are not limited to, the Emergency Plan for AIDS Relief, the Digital Freedom Initiative, the Water for the Poor Initiative, the Trade for African Development and Enterprise Initiative, the Middle East Partnership Initiative, and the President's Malaria Initiative.

Volunteer service in support of other initiatives, consistent with U.S. foreign policy, shall be considered as well.

(b) *Applicability*. The following agencies are subject to the requirements of this order: the United States Agency for International Development (USAID), the Department of State, the Department of Commerce, the Department of Health and Human Services, and such other Federal agencies as the President may designate in the future.

SEC. 2. *Establishment*. (a) Agencies subject to this order shall each establish within their respective organizations an Office for Volunteers for Prosperity (Office) or, as appropriate, an operating unit within an office.

(b) Each agency subject to this order shall provide its Office or unit with appropriate staff, administrative support, and resources to meet its responsibilities under this order.

(c) Each of these Offices or units shall begin operations no later than 30 days from the date of this order.

(d) Agencies subject to this order shall consider, in evaluating grant applications for assistance activities to be implemented abroad, the applicant's use of highly skilled U.S. volunteers to support U.S. prosperity objectives and initiatives.

SEC. 3. *Purpose*. To the extent permitted by law, the purpose of the Offices will be to promote, expand, and enhance well-defined volunteer service opportunities for highly skilled U.S. professionals who wish to work with nongovernmental and voluntary service organizations around the world in support of major U.S. prosperity initiatives as identified in section 1 of this order. Such promotion, expansion, and enhancement would include actively participating in the design and selection processes for grants within their agencies, tracking the use of U.S. private volunteer organizations by their agencies, and coordinating with White House Offices including the USA Freedom Corps, the Office of National AIDS Policy, and the Office of Faith-Based and Community Initiatives, as appropriate.

SEC. 4. *Funding*. Agencies subject to this order are hereby directed to use their best efforts to use funds available for the U.S. prosperity initiatives listed in section 1 of this order to provide appropriate support to organizations that use highly skilled U.S. volunteers to accomplish the objectives identified in those initiatives.

SEC. 5. *Coordination*. The USAID shall serve as the inter-agency coordinator for the Volunteers for Prosperity initiative. In that capacity, the USAID shall coordinate the activities that fall within the scope of the initiative and report on the progress of the initiative to the USA Freedom Corps Office, within the White House Office. The reports shall be submitted within 180 days after the date of this order and annually thereafter. The USA Freedom Corps Council shall encourage consistency in policies and practices within the agencies subject to this order, as appropriate, for purposes related to the Volunteers for Prosperity initiative.

SEC. 6. *Administration*. The actions directed by this order shall be carried out subject to the availability of appropriations, to the extent permitted by law, and consistent with the agencies' missions.

SEC. 7. *Judicial Review*. This order is intended only to improve the internal management of the executive branch of the Federal Government, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13331. NATIONAL AND COMMUNITY SERVICE PROGRAMS

Ex. Ord. No. 13331, Feb. 27, 2004, 69 F.R. 9911, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the ability of programs authorized under the national service laws to build and reinforce a culture of service, citizenship, and responsibility throughout our Nation, and to institute reforms to improve accountability and efficiency in the administration of those programs, it is hereby ordered as follows:

SECTION 1. *Definitions*. For purposes of this order:

(a) ''National service laws'' means the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*) and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 *et seq.*);

(b) ''National and community service programs'' means those programs authorized under the national service laws;

(c) ''Policies governing programs authorized under the national service laws'' refers to all policies, programs, guidelines, and regulations, including official guidance and internal agency procedures and practices, that are issued by the Corporation for National and Community Service (Corporation) and have significant effects on national and community service programs; and

(d) ''Professional corps programs'' means those programs described in section 122(a)(8) of the National and Community Service Act of 1990 (42 U.S.C. 12572(a)(8)).

SEC. 2. *Fundamental Principles and Policymaking Criteria*. In formulating and implementing policies governing programs authorized under the national service laws, the Corporation shall, to the extent permitted by law, adhere to the following fundamental principles:

(a) National and community service programs should support and encourage greater engagement of Americans in volunteering;

(b) National and community service programs should be more responsive to State and local needs;

(c) National and community service programs should make Federal support more accountable and more effective; and

(d) National and community service programs should expand opportunities for involvement of faith-based and other community organizations.

SEC. 3. *Agency Implementation*. (a) The Chief Executive Officer of the Corporation for National and Community Service (Chief Executive Officer) shall, in coordination with the USA Freedom Corps Council, review and evaluate existing policies governing national and community service programs in order to assess the consistency of such policies with the fundamental principles and policymaking criteria described in section 2 of this order.

(b) The Chief Executive Officer shall ensure that all policies governing national and community service programs issued by the Corporation are consistent with the fundamental principles and policymaking criteria described in section 2 of this order. To that end, the Chief Executive Officer shall, to the extent permitted by law,

(i) amend all such existing policies to ensure that they are consistent with the fundamental principles and policymaking criteria articulated in section 2 of this order; and

(ii) where appropriate, implement new policies that are consistent with and necessary to further the fundamental principles and policymaking criteria set forth in section 2 of this order.

(c) In developing implementation steps, the Chief Executive Officer should address, at a minimum, the following objectives:

(i) National and community service programs should leverage Federal resources to maximize support from the private sector and from State and local governments, with an emphasis on reforms that enhance programmatic flexibility, reduce administrative burdens, and calibrate Federal assistance to the respective needs of recipient organizations;

(ii) National and community service programs should leverage Federal resources to enable the recruitment and effective management of a larger number of volunteers than is currently possible;

(iii) National and community service programs should increase efforts to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations in building and strengthening an infrastructure to support volunteers that meet community needs;

(iv) National and community service programs should adopt performance measures to identify those practices that merit replication and further investment, as well as to ensure accountability;

(v) National and community service programs should, consistent with the principles of Federalism and the constitutional role of the States and Indian tribes, promote innovation, flexibility, and results at all levels of government;

(vi) National and community service programs based in schools should employ tutors who meet required paraprofessional qualifications, and use such practices and methodologies as are required for supplemental educational services;

(vii) National and community service programs should foster a lifetime of citizenship and civic engagement among those who serve;

(viii) National and community service programs should avoid or eliminate practices that displace volunteers who are not supported under the national service laws; and

(ix) Guidelines for the selection of national and community service programs should recognize the importance of professional corps programs in light of the fundamental principles and policymaking criteria set forth in this order.

SEC. 4. *Management Reforms*. (a) The Corporation should implement internal management reforms to strengthen its oversight of national and community service programs through enforcement of performance and compliance standards and other management tools.

(b) Management reforms should include, but should not be limited to, the following:

(i) Institutionalized changes to the budgetary and grant-making processes to ensure that financial commitments remain within available resources;

(ii) Enhanced accounting and management systems that would ensure compliance with fiscal restrictions and provide timely, accurate, and readily available information about enrollment in AmeriCorps and about funding and obligations incurred for all national and community service programs;

(iii) Assurance by the Chief Executive Officer and the Chief Financial Officer in the Corporation's Management Representation Letter that its financial statements, including the Statement of Budgetary Resources, are accurate and reliable; and

(iv) Management reforms that tie employee performance to fiscal responsibility, attainment of management goals, and professional conduct.

SEC. 5. *Report*. Within 180 days after the date of this order, the Chief Executive Officer shall report to the President, through the Assistant to the President and Director of the USA Freedom Corps Office, the actions the Corporation proposes to undertake to accomplish the objectives set forth in this order.

SEC. 6. *Judicial Review*. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

SUBCHAPTER I—NATIONAL AND COMMUNITY SERVICE STATE GRANT PROGRAM

Division A—General Provisions

§ 12511. Definitions

For purposes of this subchapter:

(1) Adult volunteer

The term ''adult volunteer'' means an individual, such as an older adult, an individual with a disability, a parent, or an employee of a business or public or private nonprofit organization, who—

(A) works without financial remuneration in an educational institution to assist students or out-of-school youth; and

(B) is beyond the age of compulsory school attendance in the State in which the educational institution is located.

(2) Approved national service position

The term ''approved national service position'' means a national service position for

which the Corporation has approved the provision of a national service educational award described in section 12603 of this title as one of the benefits to be provided for successful service in the position.

(3) Carry out

The term ''carry out'', when used in connection with a national service program described in section 12572 of this title, means the planning, establishment, operation, expansion, or replication of the program.

(4) Chief Executive Officer

The term ''Chief Executive Officer'', except when used to refer to the chief executive officer of a State, means the Chief Executive Officer of the Corporation appointed under section 12651c of this title.

(5) Community-based agency

The term ''community-based agency'' means a private nonprofit organization (including a church or other religious entity) that—

(A) is representative of a community or a significant segment of a community; and

(B) is engaged in meeting human, educational, environmental, or public safety community needs.

(6) Corporation

The term ''Corporation'' means the Corporation for National and Community Service established under section 12651 of this title.

(7) Economically disadvantaged

The term ''economically disadvantaged'' means, with respect to an individual, an individual who is determined by the Chief Executive Officer to be low-income according to the latest available data from the Department of Commerce.

(8) Elementary school

The term ''elementary school'' has the same meaning given such term in section 7801 of title 20.

(9) Indian

The term ''Indian'' means a person who is a member of an Indian tribe, or is a ''Native'', as defined in section 1602(b) of title 43.

(10) Indian lands

The term ''Indian lands'' means any real property owned by an Indian tribe, any real property held in trust by the United States for an Indian or Indian tribe, and any real property held by an Indian or Indian tribe that is subject to restrictions on alienation imposed by the United States.

(11) Indian tribe

The term ''Indian tribe'' means—

(A) an Indian tribe, band, nation, or other organized group or community, including—

(i) any Native village, as defined in section 1602(c) of title 43, whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act''; 48 Stat. 984, chapter 576; 25 U.S.C 461 et seq.); and

(ii) any Regional Corporation or Village Corporation, as defined in subsection (g) or (j), respectively, of section 1602 of title 43, that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and

(B) any tribal organization controlled, sanctioned, or chartered by an entity described in subparagraph (A).

(12) Individual with a disability

Except as provided in section 12635(a) of this title, the term ''individual with a disability'' has the meaning given the term in section 705(20)(B) of title 29.

(13) Institution of higher education

The term ''institution of higher education'' has the same meaning given such term in section 1001 of title 20.

(14) Local educational agency

The term ''local educational agency'' has the same meaning given such term in section 7801 of title 20.

(15) National service laws

The term ''national service laws'' means this chapter and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(16) Out-of-school youth

The term ''out-of-school youth'' means an individual who—

(A) has not attained the age of 27;

(B) has not completed college or the equivalent thereof; and

(C) is not enrolled in an elementary or secondary school or institution of higher education.

(17) Participant

(A) In general

The term ''participant'' means—

(i) for purposes of division C of this subchapter, an individual in an approved national service position; and

(ii) for purposes of any other provision of this chapter, an individual enrolled in a program that receives assistance under this subchapter.

(B) Rule

A participant shall not be considered to be an employee of the program in which the participant is enrolled.

(18) Partnership program

The term ''partnership program'' means a program through which an adult volunteer, a public or private nonprofit organization, an institution of higher education, or a business assists a local educational agency.

(19) Program

The term ''program'', unless the context otherwise requires, and except when used as part of the term ''academic program'', means a program described in section 12521(a) of this title (other than a program referred to in paragraph (3)(B) of such section), 12542(a), 12561(b)(1), or 12572(a) of this title, or in paragraph (1) or (2) of section 12612(b) of this title, or an activity that could be funded under section 12653, 12653c, or 12653d of this title.

(20) Project

The term ''project'' means an activity, carried out through a program that receives as-

sistance under this subchapter, that results in a specific identifiable service or improvement that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

(21) School-age youth

The term ''school-age youth'' means—

(A) individuals between the ages of 5 and 17, inclusive; and

(B) children with disabilities, as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401), who receive services under part B of such Act [20 U.S.C. 1411 et seq.].

(22) Secondary school

The term ''secondary school'' has the same meaning given such term in section 7801 of title 20.

(23) Service-learning

The term ''service-learning'' means a method—

(A) under which students or participants learn and develop through active participation in thoughtfully organized service that—

(i) is conducted in and meets the needs of a community;

(ii) is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; and

(iii) helps foster civic responsibility; and

(B) that—

(i) is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participants are enrolled; and

(ii) provides structured time for the students or participants to reflect on the service experience.

(24) Service-learning coordinator

The term ''service-learning coordinator'' means an individual who provides services as described in subsection (a)(3) or (b) of section 12521 of this title.

(25) Service sponsor

The term ''service sponsor'' means an organization, or other entity, that has been selected to provide a placement for a participant.

(26) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The term also includes Palau, until such time as the Compact of Free Association is ratified.

(27) State Commission

The term ''State Commission'' means a State Commission on National and Community Service maintained by a State pursuant to section 12638 of this title. Except when used in section 12638 of this title, the term includes an alternative administrative entity for a State approved by the Corporation under such section to act in lieu of a State Commission.

(28) State educational agency

The term ''State educational agency'' has the same meaning given such term in section 7801 of title 20.

(29) Student

The term ''student'' means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full- or part-time basis.

(Pub. L. 101–610, title I, § 101, Nov. 16, 1990, 104 Stat. 3129; Pub. L. 102–10, § 3, Mar. 12, 1991, 105 Stat. 29; Pub. L. 102–384, § 3, Oct. 5, 1992, 106 Stat. 1455; Pub. L. 103–82, title I, § 111(a), Sept. 21, 1993, 107 Stat. 857; Pub. L. 103–382, title III, § 394(h)(1), Oct. 20, 1994, 108 Stat. 4028; Pub. L. 105–220, title IV, § 414(g), Aug. 7, 1998, 112 Stat. 1242; Pub. L. 105–244, title I, § 102(a)(13)(K), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 107–110, title X, § 1076(ff), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 108–446, title III, § 305(m), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in par. (11)(A)(i), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, popularly known as the Indian Reorganization Act, which is classified generally to subchapter V (§ 461 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 461 of Title 25 and Tables.

This chapter, referred to in pars. (15) and (17)(A)(ii), was in the original ''this Act'', meaning Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Domestic Volunteer Service Act of 1973, referred to in par. (15), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§ 4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in par. (21)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part B of the Act is classified generally to subchapter II (§ 1411 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

For ratification of Compact of Free Association with Palau, referred to in par. (26), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

AMENDMENTS

2004—Par. (21)(B). Pub. L. 108–446 substituted ''section 602'' for ''section 602(a)(1)'' and ''1401'' for ''1401(a)(1)''.

2002—Pars. (8), (14), (22), (28). Pub. L. 107–110 substituted ''section 7801 of title 20'' for ''section 8801 of title 20''.

1998—Par. (12). Pub. L. 105–220 substituted ''section 705(20)(B) of title 29'' for ''section 706(8)(B) of title 29''.

Par. (13). Pub. L. 105–244 substituted ''section 1001'' for ''section 1141(a)''.

1994—Par. (8). Pub. L. 103–382, § 394(h)(1)(A), substituted ''section 8801 of title 20'' for ''section 2891(8) of title 20''.

Par. (14). Pub. L. 103–382, § 394(h)(1)(B), substituted ''section 8801 of title 20'' for ''section 2891(12) of title 20''.

Par. (22). Pub. L. 103–382, § 394(h)(1)(C), substituted ''section 8801 of title 20'' for ''section 2891(21) of title 20''.

Par. (28). Pub. L. 103–382, § 394(h)(1)(D), substituted ''section 8801 of title 20'' for ''section 2891(23) of title 20''.

1993—Pub. L. 103–82 amended section generally, substituting provisions consisting of 29 definitions of terms used in this subchapter for former provisions consisting of 30 definitions.

1992—Par. (29). Pub. L. 102–384, § 3(1), added par. (29) and struck out former par. (29) which read as follows: ''The term 'summer program' means a youth corps program authorized under this subchapter that is limited to the months of June, July, and August.''

Par. (30). Pub. L. 102–384, § 3(2), substituted ''living allowances'' for ''stipends''.

1991—Par. (7). Pub. L. 102–10, § 3(1), added par. (7). Former par. (7) redesignated (8).

Par. (8). Pub. L. 102–10, § 3(2), (3), redesignated par. (7) as (8) and inserted ''an Indian or'' before ''Indian tribes'' in two places. Former par. (8) redesignated (9).

Pars. (9) to (13). Pub. L. 102–10, § 3(2), redesignated pars. (8) to (12) as (9) to (13), respectively. Former par. (13) redesignated (14).

Par. (14). Pub. L. 102–10, § 3(2), (4), redesignated par. (13) as (14) and inserted at end ''Participants shall not be considered employees of the program.'' Former par. (14) redesignated (15).

Pars. (15) to (22). Pub. L. 102–10, § 3(2), redesignated pars. (14) to (21) as (15) to (22), respectively. Former par. (22) redesignated (23).

Par. (23). Pub. L. 102–10, § 3(5), which directed the substitution of ''participants'' for ''students or out of school youth'', was executed by making the substitution for ''students or out-of-school youth'' to reflect the probable intent of Congress.

Pub. L. 102–10, § 3(2), redesignated par. (22) as (23). Former par. (23) redesignated (24).

Par. (24). Pub. L. 102–10, § 3(2), (6), redesignated par. (23) as (24) and in heading and text substituted ''participant'' for ''member''. Former par. (24) redesignated (25).

Pars. (25) to (29). Pub. L. 102–10, § 3(2), redesignated pars. (24) to (28) as (25) to (29), respectively. Former par. (29) redesignated (30).

Par. (30). Pub. L. 102–10, § 3(2), (7), redesignated par. (29) as (30) and inserted ''corps'' after ''youth service''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12512. Repealed. Pub. L. 103–82, title I, § 112, Sept. 21, 1993, 107 Stat. 861

Section, Pub. L. 101–610, title I, § 102, Nov. 16, 1990, 104 Stat. 3132, authorized Commission to make grants to carry out programs under parts B, C, D, and E of this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

Division B—School-Based and Community-Based Service-Learning Programs

PRIOR PROVISIONS

This division is comprised of subtitle B, §§ 111–119, of title I of Pub. L. 101–610. A prior part B (§ 12521 et seq.), comprised of subtitle B, §§ 111–118, of title I of Pub. L. 101–610, related to programs for students and out-of-school youth, prior to repeal by Pub. L. 103–82, title I, § 103(a)(2), (b), Sept. 21, 1993, 107 Stat. 825, 837.

PART I—SERVE-AMERICA PROGRAMS

SUBPART A—SCHOOL-BASED PROGRAMS FOR STUDENTS

§ 12521. Authority to assist States and Indian tribes

(a) Use of funds

The Corporation, in consultation with the Secretary of Education, may make grants under section 12524(b)(1) of this title, and allotments under subsections (a) and (b)(2) of section 12524 of this title, to States (through State educational agencies), and to Indian tribes, to pay for the Federal share of—

(1) planning and building the capacity of the States or Indian tribes (which may be accomplished through grants or contracts with qualified organizations) to implement school-based service-learning programs, including—

(A) providing training for teachers, supervisors, personnel from community-based agencies (particularly with regard to the utilization of participants), and trainers, to be conducted by qualified individuals or organizations that have experience with service-learning;

(B) developing service-learning curricula to be integrated into academic programs, including the age-appropriate learning component described in section 12526(d)(2) of this title;

(C) forming local partnerships described in paragraph (2) or (4) to develop school-based service-learning programs in accordance with this subpart;

(D) devising appropriate methods for research and evaluation of the educational value of service-learning and the effect of service-learning activities on communities; and

(E) establishing effective outreach and dissemination of information to ensure the broadest possible involvement of community-based agencies with demonstrated effectiveness in working with school-age youth in their communities;

(2) implementing, operating, or expanding school-based service-learning programs, which may include paying for the cost of the recruitment, training, supervision, placement, salaries, and benefits of service-learning coordinators, through State distribution of Federal funds made available under this subpart to projects operated by local partnerships among—

(A) local educational agencies; and

(B) one or more community partners that—

(i) shall include a public or private nonprofit organization that—

(I) has a demonstrated expertise in the provision of services to meet unmet human, educational, environmental, or public safety needs;

(II) was in existence at least 1 year before the date on which the organization

submitted an application under section 12526 of this title; and

(III) will make projects available for participants, who shall be students; and

(ii) may include a private for-profit business or private elementary or secondary school;

(3) planning of school-based service-learning programs, through State distribution of Federal funds made available under this subpart to local educational agencies, which planning may include paying for the cost of—

(A) the salaries and benefits of service-learning coordinators; or

(B) the recruitment, training, supervision, and placement of service-learning coordinators who are participants in a program under division C of this subchapter or receive a national service educational award under division D of this subchapter,

who will identify the community partners described in paragraph (2)(B) and assist in the design and implementation of a program described in paragraph (2); and

(4) implementing, operating, or expanding school-based service-learning programs involving adult volunteers to utilize service-learning to improve the education of students, through State distribution of Federal funds made available under this part to local partnerships among—

(A) local educational agencies; and

(B) one or more—

(i) public or private nonprofit organizations;

(ii) other educational agencies; or

(iii) private for-profit businesses,

that coordinate and operate projects for participants, who shall be students.

(b) Duties of service-learning coordinator

A service-learning coordinator referred to in paragraph (2) or (3) of subsection (a) of this section shall provide services to a local educational agency by—

(1) providing technical assistance and information to, and facilitating the training of, teachers who want to use service-learning in their classrooms;

(2) assisting local partnerships described in subsection (a) of this section in the planning, development, and execution of service-learning projects; and

(3) carrying out such other duties as the local educational agency may determine to be appropriate.

(c) Related expenses

A partnership, local educational agency, or other qualified organization that receives financial assistance under this subpart may, in carrying out the activities described in subsection (a) of this section, use such assistance to pay for the Federal share of reasonable costs related to the supervision of participants, program administration, transportation, insurance, and evaluations, and for other reasonable expenses related to the activities.

(Pub. L. 101–610, title I, § 111, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 825.)

PRIOR PROVISIONS

A prior section 12521, Pub. L. 101–610, title I, § 111, Nov. 16, 1990, 104 Stat. 3132; Pub. L. 102–10, § 4(2), Mar. 12, 1991, 105 Stat. 30, prescribed general authority of Commission on National and Community Service to make grants for service-learning programs, prior to repeal by Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 825.

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

PURPOSE OF AMENDMENTS TO SERVE-AMERICA PROGRAMS

Section 103(a)(1) of Pub. L. 103–82 provided that: ''The purpose of this subsection [enacting this part] is to improve the Serve-America programs established under part I of subtitle B [of title I] of the National and Community Service Act of 1990 [probably refers to former subpart I (§ 12521 et seq.) of part B of this subchapter], and to enable the Corporation for National and Community Service, and the entities receiving financial assistance under such part, to—

''(A) work with teachers in elementary schools and secondary schools within a community, and with community-based agencies, to create and offer service-learning opportunities for all school-age youth;

''(B) educate teachers, and faculty providing teacher training and retraining, about service-learning, and incorporate service-learning opportunities into classroom teaching to strengthen academic learning;

''(C) coordinate the work of adult volunteers who work with elementary and secondary schools as part of their community service activities; and

''(D) work with employers in the communities to ensure that projects introduce the students to various careers and expose the students to needed further education and training.''

§ 12522. Authority to assist local applicants in nonparticipating States

In any fiscal year in which a State does not submit an application under section 12525 of this title, for an allotment under subsection (a) or (b)(2) of section 12524 of this title, that meets the requirements of section 12525 of this title and such other requirements as the Chief Executive Officer may determine to be appropriate, the Corporation may use the allotment of that State to make direct grants to pay for the Federal share of the cost of—

(1) carrying out the activities described in paragraph (2) or (4) of section 12521(a) of this title, to a local partnership described in such paragraph; or

(2) carrying out the activities described in paragraph (3) of such section, to an agency described in such paragraph,

that is located in the State.

(Pub. L. 101–610, title I, § 111A, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 827.)

PRIOR PROVISIONS

A prior section 12522, Pub. L. 101–610, title I, § 112, Nov. 16, 1990, 104 Stat. 3133; Pub. L. 102–10, § 4(3), Mar. 12, 1991, 105 Stat. 30; Pub. L. 102–384, § 4, Oct. 5, 1992, 106 Stat. 1455, related to allotments, prior to repeal by Pub. L. 103–82, § 103(a)(2).

§ 12523. Authority to assist public or private nonprofit organizations

(a) In general

The Corporation may make grants under section 12524(b)(1) of this title to public or private nonprofit organizations that—

(1) have experience with service-learning;

(2) were in existence at least 1 year before the date on which the organization submitted an application under section 12526(a) of this title; and

(3) meet such other criteria as the Chief Executive Officer may establish.

(b) Use of funds

Such organizations may use grants made under subsection (a) of this section to make grants to partnerships described in paragraph (2) or (4) of section 12521(a) of this title to implement, operate, or expand school-based service-learning programs as described in such section and provide technical assistance and training to appropriate persons.

(Pub. L. 101–610, title I, § 111B, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 827.)

PRIOR PROVISIONS

A prior section 12523, Pub. L. 101–610, title I, § 113, Nov. 16, 1990, 104 Stat. 3134; Pub. L. 102–384, § 4, Oct. 5, 1992, 106 Stat. 1455, related to State grant applications, prior to repeal by Pub. L. 103–82, § 103(a)(2).

§ 12524. Grants and allotments

(a) Indian tribes and territories

Of the amounts appropriated to carry out this subpart for any fiscal year, the Corporation shall reserve an amount of not more than 3 percent for payments to Indian tribes, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, to be allotted in accordance with their respective needs. The Corporation may also make payments from such amount to Palau, in accordance with its needs, until such time as the Compact of Free Association with Palau is ratified.

(b) Grants and allotments through States

The Corporation shall use the remainder of the funds appropriated to carry out this subpart for any fiscal year as follows:

(1) Grants

Except as provided in paragraph (3), from 25 percent of such remainder, the Corporation may make grants, on a competitive basis, to—

(A) States and Indian tribes; or

(B) as described in section 12523 of this title, to grantmaking entities.

(2) Allotments

(A) School-age youth

Except as provided in paragraph (3), from 37.5 percent of such remainder, the Corporation shall allot to each State an amount that bears the same ratio to 37.5 percent of such remainder as the number of school-age youth in the State bears to the total number of school-age youth of all States.

(B) Allocation under Elementary and Secondary Education Act of 1965

Except as provided in paragraph (3), from 37.5 percent of such remainder, the Corporation shall allot to each State an amount that bears the same ratio to 37.5 percent of such remainder as the allocation to the State for the previous fiscal year under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or its successor authority bears to such allocations to all States.

(3) Minimum amount

No State shall receive, under paragraph (2), an allotment that is less than the allotment such State received for fiscal year 1993 under section 12522(b) of this title, as in effect on the day before September 21, 1993. If the amount of funds made available in a fiscal year to carry out paragraph (2) is insufficient to make such allotments, the Corporation shall make available sums from the 25 percent described in paragraph (1) for such fiscal year to make such allotments.

(4) "State" defined

Notwithstanding section 12511(26) of this title, for purposes of this subsection, the term ''State'' means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Reallotment

If the Corporation determines that the allotment of a State or Indian tribe under this section will not be required for a fiscal year because the State or Indian tribe does not submit an application for the allotment under section 12525 of this title that meets the requirements of such section and such other requirements as the Chief Executive Officer may determine to be appropriate, the Corporation shall, after making any grants under section 12522 of this title to a partnership or agency described in such section, make any remainder of such allotment available for reallotment to such other States, and Indian tribes, with approved applications submitted under section 12525 of this title, as the Corporation may determine to be appropriate.

(d) Exception

Notwithstanding subsections (a) and (b) of this section, if less than $20,000,000 is appropriated for any fiscal year to carry out this subpart, the Corporation shall award grants to States and Indian tribes, from the amount so appropriated, on a competitive basis to pay for the Federal share of the activities described in section 12521 of this title.

(Pub. L. 101–610, title I, § 112, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 827; amended Pub. L. 103–382, title III, §§ 391(y), 394(h)(2), Oct. 20, 1994, 108 Stat. 4026, 4028.)

REFERENCES IN TEXT

For ratification of Compact of Free Association with Palau, referred to in subsec. (a), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (b)(2)(B), is Pub. L. 89–10,

Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Section 12522(b) of this title, as in effect on the day before September 21, 1993, referred to in subsec. (b)(3), means former section 12522(b) which was repealed by Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 825.

PRIOR PROVISIONS

A prior section 12524, Pub. L. 101–610, title I, § 114, Nov. 16, 1990, 104 Stat. 3135; Pub. L. 102–10, § 4(4), Mar. 12, 1991, 105 Stat. 30, related to local applications for assistance, prior to repeal by Pub. L. 103–82, § 103(a)(2).

A prior section 112 of Pub. L. 101–610 was classified to section 12522 of this title prior to repeal by Pub. L. 103–82.

AMENDMENTS

1994—Subsec. (b)(2)(B). Pub. L. 103–382, § 394(h)(2), inserted ''or its successor authority'' before ''bears to such''.

Pub. L. 103–382, § 391(y), substituted ''title I of'' for ''chapter 1 of title I of''.

§ 12525. State or tribal applications

(a) Submission

To be eligible to receive a grant under section 12524(b)(1) of this title, an allotment under subsection (a) or (b)(2) of section 12524 of this title, a reallotment under section 12524(c) of this title, or a grant under section 12524(d) of this title, a State, acting through the State educational agency, or an Indian tribe, shall prepare, submit to the Corporation, and obtain approval of, an application at such time and in such manner as the Chief Executive Officer may reasonably require.

(b) Contents

An application that is submitted under subsection (a) of this section with respect to service-learning programs described in section 12521 of this title shall include—

(1) a 3-year strategic plan, or a revision of a previously approved 3-year strategic plan, for promoting service-learning through the programs, which plan shall contain such information as the Chief Executive Officer may reasonably require, including information demonstrating that the programs will be carried out in a manner consistent with the approved strategic plan;

(2) assurances that—

(A) the applicant will keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation; and

(B) the applicant will comply with the nonduplication and nondisplacement requirements of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title; and

(3) such additional information as the Chief Executive Officer may reasonably require.

(Pub. L. 101–610, title I, § 113, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 829.)

PRIOR PROVISIONS

A prior section 12525, Pub. L. 101–610, title I, § 115, Nov. 16, 1990, 104 Stat. 3137; Pub. L. 102–384, § 4, Oct. 5, 1992, 106 Stat. 1455, related to priority applications and private school participation, prior to repeal by Pub. L. 103–82, § 103(a)(2).

A prior section 113 of Pub. L. 101–610 was classified to section 12523 of this title prior to repeal by Pub. L. 103–82.

§ 12526. Local applications

(a) Application to Corporation to make grants for school-based service-learning programs

(1) In general

To be eligible to receive a grant in accordance with section 12523(a) of this title to make grants relating to school-based service-learning programs described in section 12521(a) of this title, a grantmaking entity shall prepare, submit to the Corporation, and obtain approval of, an application.

(2) Submission

Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require. Such application shall include a proposal to assist such programs in more than 1 State.

(b) Direct application to Corporation to carry out school-based service-learning programs in nonparticipating States

To be eligible to receive a grant from the Corporation in the circumstances described in section 12522 of this title to carry out an activity as described in such section, a partnership or agency described in such section shall prepare, submit to the Corporation, and obtain approval of, an application. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(c) Application to State or Indian tribe to receive assistance to carry out school-based service-learning programs

(1) In general

Any—

(A) qualified organization that desires to receive financial assistance under this subpart from a State or Indian tribe for an activity described in section 12521(a)(1) of this title;

(B) partnership described in section 12521(a)(2) of this title that desires to receive such assistance from a State, Indian tribe, or grantmaking entity for an activity described in section 12521(a)(2) of this title;

(C) agency described in section 12521(a)(3) of this title that desires to receive such assistance from a State or Indian tribe for an activity described in such section; or

(D) partnership described in section 12521(a)(4) of this title that desires to receive such assistance from a State or Indian tribe for an activity described in such section,

to be carried out through a service-learning program described in section 12521 of this title, shall prepare, submit to the State educational agency, Indian tribe, or grantmaking entity, and obtain approval of, an application for the program.

(2) Submission

Such application shall be submitted at such time and in such manner, and shall contain

such information, as the agency, tribe, or entity may reasonably require.

(d) Regulations

The Corporation shall by regulation establish standards for the information and assurances required to be contained in an application submitted under subsection (a) or (b) of this section with respect to a service-learning program described in section 12521 of this title, including, at a minimum, assurances that—

(1) prior to the placement of a participant, the entity carrying out the program will consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program, to prevent the displacement and protect the rights of such employees;

(2) the entity carrying out the program will develop an age-appropriate learning component for participants in the program that shall include a chance for participants to analyze and apply their service experiences; and

(3) the entity carrying out the program will comply with the nonduplication and nondisplacement requirements of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title.

(e) Limitation on same project in multiple applications

No applicant shall submit an application under section 12525 of this title or this section, and the Corporation shall reject an application that is submitted under section 12525 of this title or this section, if the application describes a project proposed to be conducted using assistance requested by the applicant and the project is already described in another application pending before the Corporation.

(Pub. L. 101–610, title I, § 114, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 829.)

PRIOR PROVISIONS

A prior section 12526, Pub. L. 101–610, title I, § 116, Nov. 16, 1990, 104 Stat. 3138; Pub. L. 102–384, § 4, Oct. 5, 1992, 106 Stat. 1455, prescribed Federal and local project contributions, prior to repeal by Pub. L. 103–82, § 103(a)(2).

A prior section 114 of Pub. L. 101–610 was classified to section 12524 of this title prior to repeal by Pub. L. 103–82.

§ 12527. Consideration of applications

(a) Criteria for applications

In approving applications for financial assistance under subsection (a), (b), (c), or (d) of section 12524 of this title, the Corporation shall consider such criteria with respect to sustainability, replicability, innovation, and quality of programs under this subpart as the Chief Executive Officer may by regulation specify. In providing assistance under this subpart, a State educational agency, Indian tribe, or grantmaking entity shall consider such criteria.

(b) Priority for local applications

In providing assistance under this subpart, a State educational agency or Indian tribe, or the Corporation if section 12522 or 12523 of this title applies, shall give priority to entities that submit applications under section 12526 of this title with respect to service-learning programs described in section 12521 of this title that—

(1) involve participants in the design and operation of the program;

(2) are in the greatest need of assistance, such as programs targeting low-income areas;

(3) involve—

(A) students from public elementary or secondary schools, and students from private elementary or secondary schools, serving together; or

(B) students of different ages, races, sexes, ethnic groups, disabilities, or economic backgrounds, serving together; or

(4) are integrated into the academic program of the participants.

(c) Rejection of applications

If the Corporation rejects an application submitted by a State under section 12525 of this title for an allotment under section 12524(b)(2) of this title, the Corporation shall promptly notify the State of the reasons for the rejection of the application. The Corporation shall provide the State with a reasonable opportunity to revise and resubmit the application and shall provide technical assistance, if needed, to the State as part of the resubmission process. The Corporation shall promptly reconsider such resubmitted application.

(Pub. L. 101–610, title I, § 115, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 830.)

PRIOR PROVISIONS

A prior section 12527, Pub. L. 101–610, title I, § 117, Nov. 16, 1990, 104 Stat. 3138; Pub. L. 102–10, § 4(5), Mar. 12, 1991, 105 Stat. 30, prescribed authorized uses of funds, prior to repeal by Pub. L. 103–82, § 103(a)(2).

A prior section 115 of Pub. L. 101–610 was classified to section 12525 of this title prior to repeal by Pub. L. 103–82.

§ 12528. Participation of students and teachers from private schools

(a) In general

To the extent consistent with the number of students in the State or Indian tribe or in the school district of the local educational agency involved who are enrolled in private nonprofit elementary and secondary schools, such State, Indian tribe, or agency shall (after consultation with appropriate private school representatives) make provision—

(1) for the inclusion of services and arrangements for the benefit of such students so as to allow for the equitable participation of such students in the programs implemented to carry out the objectives and provide the benefits described in this subpart; and

(2) for the training of the teachers of such students so as to allow for the equitable participation of such teachers in the programs implemented to carry out the objectives and provide the benefits described in this subpart.

(b) Waiver

If a State, Indian tribe, or local educational agency is prohibited by law from providing for

the participation of students or teachers from private nonprofit schools as required by subsection (a) of this section, or if the Corporation determines that a State, Indian tribe, or local educational agency substantially fails or is unwilling to provide for such participation on an equitable basis, the Chief Executive Officer shall waive such requirements and shall arrange for the provision of services to such students and teachers. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with paragraphs (3) and (4) of section 2727(b) of title 20, as in effect on the day preceding October 20, 1994.

(Pub. L. 101–610, title I, § 115A, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 831; amended Pub. L. 103–382, title III, § 394(h)(3), Oct. 20, 1994, 108 Stat. 4028.)

REFERENCES IN TEXT

Section 2727(b) of title 20, referred to in subsec. (b), was in the original ''section 1017(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2727(b))'', Pub. L. 89–10, and was omitted in the general amendment of that Act by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. See section 6311 et seq. of Title 20, Education.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–382 inserted before period at end '', as in effect on the day preceding October 20, 1994''.

§ 12529. Federal, State, and local contributions

(a) Share

(1) In general

The Federal share attributable to this subpart of the cost of carrying out a program for which a grant or allotment is made under this subpart may not exceed—

(A) 90 percent of the total cost of the program for the first year for which the program receives assistance under this subpart;

(B) 80 percent of the total cost of the program for the second year for which the program receives assistance under this subpart;

(C) 70 percent of the total cost of the program for the third year for which the program receives assistance under this subpart; and

(D) 50 percent of the total cost of the program for the fourth year, and for any subsequent year, for which the program receives assistance under this subpart.

(2) Calculation

In providing for the remaining share of the cost of carrying out such a program, each recipient of assistance under this subpart—

(A) shall provide for such share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and

(B) may provide for such share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(b) Waiver

The Chief Executive Officer may waive the requirements of subsection (a) of this section in whole or in part with respect to any such program in any fiscal year if the Corporation determines that such a waiver would be equitable due to a lack of available financial resources at the local level.

(Pub. L. 101–610, title I, § 116, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 832.)

PRIOR PROVISIONS

A prior section 116 of Pub. L. 101–610 was classified to section 12526 of this title prior to repeal by Pub. L. 103–82.

§ 12530. Limitations on uses of funds

(a) Administrative costs

(1) Limitation

Not more than 5 percent of the amount of assistance provided to a State educational agency, Indian tribe, or grantmaking entity that is the original recipient of a grant or allotment under subsection (a), (b), (c), or (d) of section 12524 of this title for a fiscal year may be used to pay for administrative costs incurred by—

(A) the original recipient; or

(B) the entity carrying out the service-learning programs supported with the assistance.

(2) Rules on use

The Chief Executive Officer may by rule prescribe the manner and extent to which—

(A) such assistance may be used to cover administrative costs; and

(B) that portion of the assistance available to cover administrative costs should be distributed between—

(i) the original recipient; and

(ii) the entity carrying out the service-learning programs supported with the assistance.

(b) Capacity-building activities

(1) In general

Except as provided in paragraph (2), not less than 10 percent and not more than 15 percent of the amount of assistance provided to a State educational agency or Indian tribe that is the original recipient of a grant or allotment under subsection (a), (b), (c), or (d) of section 12524 of this title for a fiscal year may be used to build capacity through training, technical assistance, curriculum development, and coordination activities, described in section 12521(a)(1) of this title.

(2) Waiver

The Chief Executive Officer may waive the requirements of paragraph (1) in order to permit an agency or a tribe to use not less than 10 percent and not more than 20 percent of such amount to build capacity as provided in paragraph (1). To be eligible to receive such a waiver such an agency or tribe shall submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(c) Local uses of funds

Funds made available under this subpart may not be used to pay any stipend, allowance, or

other financial support to any student who is a participant under this division, except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this subpart.

(Pub. L. 101–610, title I, § 116A, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 832.)

§ 12531. Definitions

As used in this subpart:

(1) Grantmaking entity

The term ''grantmaking entity'' means an organization described in section 12523(a) of this title.

(2) School-based

The term ''school-based'' means based in an elementary school or a secondary school.

(3) Student

Notwithstanding section 12511(29) of this title, the term ''student'' means an individual who is enrolled in an elementary or secondary school on a full- or part-time basis.

(Pub. L. 101–610, title I, § 116B, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 833.)

PRIOR PROVISIONS

A prior section 12531, Pub. L. 101–610, title I, § 118, Nov. 16, 1990, 104 Stat. 3139; Pub. L. 102–10, § 4(6), Mar. 12, 1991, 105 Stat. 30, related to higher education innovative projects for community service, prior to repeal by Pub. L. 103–82, § 103(b).

SUBPART B—COMMUNITY-BASED SERVICE PROGRAMS FOR SCHOOL-AGE YOUTH

§ 12541. Definitions

As used in this subpart:

(1) Community-based service program

The term ''community-based service program'' means a program described in section 12542(b)(1)(A) of this title.

(2) Grantmaking entity

The term ''grantmaking entity'' means a qualified organization that—

(A) submits an application under section 12544(a) of this title to make grants to qualified organizations;

(B) was in existence at least 1 year before the date on which the organization submitted the application; and

(C) meets such other criteria as the Chief Executive Officer shall establish.

(3) Qualified organization

The term ''qualified organization'' means a public or private nonprofit organization with experience working with school-age youth that meets such criteria as the Chief Executive Officer may establish.

(Pub. L. 101–610, title I, § 117, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 833.)

PRIOR PROVISIONS

A prior section 12541, Pub. L. 101–610, title I, § 121, Nov. 16, 1990, 104 Stat. 3140, as amended, which prescribed general authority of Commission to make grants and transfer funds for youth corps programs, was renumbered section 199A of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), and transferred to section 12655 of this title.

A prior section 117 of Pub. L. 101–610 was classified to section 12527 of this title prior to repeal by Pub. L. 103–82.

§ 12542. General authority

(a) Grants

From the funds appropriated to carry out this subpart for a fiscal year, the Corporation may make grants to State Commissions, grantmaking entities, and qualified organizations to pay for the Federal share of the implementation, operation, expansion, or replication of community-based service programs.

(b) Use of funds

(1) State Commissions and grantmaking entities

A State Commission or grantmaking entity may use a grant made under subsection (a) of this section—

(A) to make a grant to a qualified organization to implement, operate, expand, or replicate a community-based service program that provides for meaningful human, educational, environmental, or public safety service by participants, who shall be school-age youth; or

(B) to provide training and technical assistance to such an organization.

(2) Qualified organizations

A qualified organization, other than a grantmaking entity, may use a grant made under subsection (a) of this section to implement, operate, expand, or replicate a program described in paragraph (1)(A).

(Pub. L. 101–610, title I, § 117A, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 833.)

PRIOR PROVISIONS

A prior section 12542, Pub. L. 101–610, title I, § 122, Nov. 16, 1990, 104 Stat. 3140, as amended, which related to allocation of funds by Commission for conservation and youth corps programs, was renumbered section 199B of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), and transferred to section 12655a of this title.

§ 12543. State applications

(a) In general

To be eligible to receive a grant under section 12542(a) of this title, a State Commission shall prepare, submit to the Corporation, and obtain approval of, an application.

(b) Submission

Such application shall be submitted to the Corporation at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(c) Contents

Such an application shall include, at a minimum, a State plan that contains the information and assurances described in section 12544(d) of this title with respect to each community-based service program proposed to be carried out

through funding distributed by the State Commission under this subpart.

(Pub. L. 101–610, title I, § 117B, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 834.)

PRIOR PROVISIONS

A prior section 12543, Pub. L. 101–610, title I, § 123, Nov. 16, 1990, 104 Stat. 3141, as amended, which related to applications for assistance by States, Indian tribes and other local applicants, was renumbered section 199C of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), and transferred to section 12655b of this title.

§ 12544. Local applications

(a) Application to Corporation to make grants for community-based service programs

To be eligible to receive a grant from the Corporation under section 12542(a) of this title to make grants under section 12542(b)(1) of this title, a grantmaking entity shall prepare, submit to the Corporation, and obtain approval of, an application that proposes a community-based service program to be carried out through grants made to qualified organizations. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(b) Direct application to Corporation to carry out community-based service programs

To be eligible to receive a grant from the Corporation under section 12542(a) of this title to implement, operate, expand, or replicate a community service program, a qualified organization shall prepare, submit to the Corporation, and obtain approval of, an application that proposes a community-based service program to be carried out at multiple sites, or that proposes an innovative community-based service program. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(c) Application to State Commission or grantmaking entity to receive grants to carry out community-based service programs

To be eligible to receive a grant from a State Commission or grantmaking entity under section 12542(b)(1) of this title, a qualified organization shall prepare, submit to the Commission or entity, and obtain approval of, an application. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Commission or entity may reasonably require.

(d) Regulations

The Corporation shall by regulation establish standards for the information and assurances required to be contained in an application submitted under subsection (a) or (b) of this section with respect to a community-based service program, including, at a minimum—

(1) an assurance that the entity carrying out the program proposed by the applicant will comply with the nonduplication and nondisplacement provisions of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title;

(2) an assurance that the entity carrying out the program will, prior to placing a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out that are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement of such employees; and

(3) in the case of an application submitted by a grantmaking entity, information demonstrating that the entity will make grants for a program to—

(A) carry out activities described in section 12542(b)(1) of this title in two or more States, under circumstances in which the activities carried out under such program can be carried out more efficiently through one program than through two or more programs; and

(B) carry out the same activities, such as training activities or activities related to exchanging information on service experiences, through each of the projects assisted through the program.

(e) Limitation on same project in multiple applications

No applicant shall submit an application under section 12543 of this title or this section, and the Corporation shall reject an application that is submitted under section 12543 of this title or this section, if the application describes a project proposed to be conducted using assistance requested by the applicant and the project is already described in another application pending before the Corporation.

(Pub. L. 101–610, title I, § 117C, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 834.)

PRIOR PROVISIONS

A prior section 12544, Pub. L. 101–610, title I, § 124, Nov. 16, 1990, 104 Stat. 3143, as amended, which prescribed appropriate focus for conservation and youth service corps programs, was renumbered section 199D of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), and transferred to section 12655c of this title.

§ 12545. Consideration of applications

(a) Application of criteria

The Corporation shall apply the criteria described in subsection (b) of this section in determining whether to approve an application submitted under section 12543 of this title or under subsection (a) or (b) of section 12544 of this title and to provide assistance under section 12542 of this title to the applicant on the basis of the application.

(b) Assistance criteria

In evaluating such an application with respect to a program under this subpart, the Corporation shall consider the criteria established for national service programs under section 12585(c) of this title.

(c) Application to subgrants

A State Commission or grantmaking entity shall apply the criteria described in subsection (b) of this section in determining whether to approve an application under section 12544(c) of

this title and to make a grant under section 12542(b)(1) of this title to the applicant on the basis of the application.

(Pub. L. 101–610, title I, § 117D, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 835.)

PRIOR PROVISIONS

A prior section 12545, Pub. L. 101–610, title I, § 125, Nov. 16, 1990, 104 Stat. 3144, which related to administration of related programs, was renumbered section 199E of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), and transferred to section 12655d of this title.

§ 12546. Federal, State, and local contributions

(a) Federal share

(1) In general

The Federal share attributable to this subpart of the cost of carrying out a program for which a grant is made under this subpart may not exceed the percentage specified in subparagraph (A), (B), (C), or (D) of section 12529(a)(1) of this title, as appropriate.

(2) Calculation

Each recipient of assistance under this subpart shall comply with section 12529(a)(2) of this title.

(b) Waiver

The Chief Executive Officer may waive the requirements of subsection (a) of this section, in whole or in part, as provided in section 12529(b) of this title.

(Pub. L. 101–610, title I, § 117E, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 836.)

PRIOR PROVISIONS

A prior section 12546, Pub. L. 101–610, title I, § 126, Nov. 16, 1990, 104 Stat. 3144, which related to program activities on public or Indian lands, was renumbered section 199F of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), and transferred to section 12655e of this title.

§ 12547. Limitations on uses of funds

(a) Administrative costs

Not more than 5 percent of the amount of assistance provided to a State Commission, grantmaking entity, or qualified organization that is the original recipient of a grant under section 12542(a) of this title for a fiscal year may be used to pay for administrative costs incurred by—

(1) the original recipient; or

(2) the entity carrying out the community-based service programs supported with the assistance.

(b) Rules on use

The Chief Executive Officer may by rule prescribe the manner and extent to which—

(1) such assistance may be used to cover administrative costs; and

(2) that portion of the assistance available to cover administrative costs should be distributed between—

(A) the original recipient; and

(B) the entity carrying out the community-based service programs supported with the assistance.

(Pub. L. 101–610, title I, § 117F, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 836.)

PRIOR PROVISIONS

A prior section 12547, Pub. L. 101–610, title I, § 127, Nov. 16, 1990, 104 Stat. 3145, which related to training and education services, was renumbered section 199G of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), and transferred to section 12655f of this title.

A prior section 12548, Pub. L. 101–610, title I, § 128, Nov. 16, 1990, 104 Stat. 3146, as amended, which related to amount of award and matching requirement, was renumbered section 199H of Pub. L. 101–610 by Pub. L. 103–82, title I, § 101(a), Sept. 21, 1993, 107 Stat. 788, and transferred to section 12655g of this title, prior to repeal by Pub. L. 103–82, § 101(e)(8)(A).

A prior section 12549, Pub. L. 101–610, title I, § 129, Nov. 16, 1990, 104 Stat. 3146, which related to preference for certain projects, was successively renumbered section 199I, then 199H, of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), (e)(8)(B), and transferred to section 12655h of this title.

A prior section 12550, Pub. L. 101–610, title I, § 130, Nov. 16, 1990, 104 Stat. 3146, as amended, which related to age and citizenship criteria for enrollment, was successively renumbered section 199J, then 199I, of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), (e)(8)(B), and transferred to section 12655i of this title.

SUBPART C—CLEARINGHOUSE

§ 12551. Service-learning clearinghouse

(a) In general

The Corporation shall provide financial assistance, from funds appropriated to carry out division H of this subchapter, to organizations described in subsection (b) of this section to establish a clearinghouse, which shall carry out activities, either directly or by arrangement with another such organization, with respect to information about service-learning.

(b) Public or private nonprofit organizations

Public or private nonprofit organizations that have extensive experience with service-learning, including use of adult volunteers to foster service-learning, shall be eligible to receive assistance under subsection (a) of this section.

(c) Function of clearinghouse

An organization that receives assistance under subsection (a) of this section may—

(1) assist entities carrying out State or local service-learning programs with needs assessments and planning;

(2) conduct research and evaluations concerning service-learning;

(3)(A) provide leadership development and training to State and local service-learning program administrators, supervisors, service sponsors, and participants; and

(B) provide training to persons who can provide the leadership development and training described in subparagraph (A);

(4) facilitate communication among entities carrying out service-learning programs and participants in such programs;

(5) provide information, curriculum materials, and technical assistance relating to planning and operation of service-learning programs, to States and local entities eligible to receive financial assistance under this subchapter;

(6) provide information regarding methods to make service-learning programs accessible to individuals with disabilities;

(7)(A) gather and disseminate information on successful service-learning programs, com-

ponents of such successful programs, innovative youth skills curricula related to service-learning, and service-learning projects; and

(B) coordinate the activities of the Clearinghouse[1] with appropriate entities to avoid duplication of effort;

(8) make recommendations to State and local entities on quality controls to improve the quality of service-learning programs;

(9) assist organizations in recruiting, screening, and placing service-learning coordinators; and

(10) carry out such other activities as the Chief Executive Officer determines to be appropriate.

(Pub. L. 101–610, title I, § 118, as added Pub. L. 103–82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 836.)

PRIOR PROVISIONS

A prior section 12551, Pub. L. 101–610, title I, § 131, Nov. 16, 1990, 104 Stat. 3147, which related to use of volunteers in assisting program projects, was successively renumbered section 199K, then 199J, of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), (e)(8)(B), and transferred to section 12655j of this title.

A prior section 118 of Pub. L. 101–610 was classified to section 12531 of this title prior to repeal by Pub. L. 103–82.

A prior section 12552, Pub. L. 101–610, title I, § 132, Nov. 16, 1990, 104 Stat. 3147, which related to post-service benefits, was renumbered section 199L of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), and transferred to section 12655k of this title, prior to repeal by Pub. L. 103–82, § 101(e)(8)(A).

A prior section 12553, Pub. L. 101–610, title I, § 133, Nov. 16, 1990, 104 Stat. 3147, as amended, which related to living allowance, was successively renumbered section 199M, then 199K, of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), (e)(8)(B), and transferred to section 12655*l* of this title.

A prior section 12554, Pub. L. 101–610, title I, § 134, Nov. 16, 1990, 104 Stat. 3148, which related to joint programs, was successively renumbered section 199N, then 199L, of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), (e)(8)(B), and transferred to section 12655m of this title.

A prior section 12555, Pub. L. 101–610, title I, § 135, Nov. 16, 1990, 104 Stat. 3149, which related to Federal and State employee status, was successively renumbered section 199O, then 199M, of Pub. L. 101–610 by Pub. L. 103–82, § 101(a), (e)(8)(B), and transferred to section 12655n of this title.

A prior section 12556, Pub. L. 101–610, title I, § 136, Nov. 16, 1990, 104 Stat. 3150, directed Commission on National and Community Service to promulgate regulations implementing American Conservation Youth Corps program and established procedures for promulgation, prior to repeal by Pub. L. 102–10, § 5(7), Mar. 12, 1991, 105 Stat. 31.

PART II—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

§ 12561. Higher education innovative programs for community service

(a) Purpose

It is the purpose of this part to expand participation in community service by supporting innovative community service programs carried out through institutions of higher education, acting as civic institutions to meet the human, educational, environmental, or public safety needs of neighboring communities.

(b) General authority

The Corporation, in consultation with the Secretary of Education, is authorized to make grants to, and enter into contracts with, institutions of higher education (including a combination of such institutions), and partnerships comprised of such institutions and of other public or private nonprofit organizations, to pay for the Federal share of the cost of—

(1) enabling such an institution or partnership to create or expand an organized community service program that—

(A) engenders a sense of social responsibility and commitment to the community in which the institution is located; and

(B) provides projects for participants, who shall be students, faculty, administration, or staff of the institution, or residents of the community;

(2) supporting student-initiated and student-designed community service projects through the program;

(3) strengthening the leadership and instructional capacity of teachers at the elementary, secondary, and postsecondary levels, with respect to service-learning, by—

(A) including service-learning as a key component of the preservice teacher education of the institution; and

(B) encouraging the faculty of the institution to use service-learning methods throughout their curriculum;

(4) facilitating the integration of community service carried out under the program into academic curricula, including integration of clinical programs into the curriculum for students in professional schools, so that students can obtain credit for their community service projects;

(5) supplementing the funds available to carry out work-study programs under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.) to support service-learning and community service through the community service program;

(6) strengthening the service infrastructure within institutions of higher education in the United States through the program; and

(7) providing for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize service-learning.

(c) Federal share

(1) Share

(A) In general

The Federal share of the cost of carrying out a community service project for which a grant or contract is awarded under this part may not exceed 50 percent.

(B) Calculation

Each recipient of assistance under this part shall comply with section 12529(a)(2) of this title.

(2) Waiver

The Chief Executive Officer may waive the requirements of paragraph (1), in whole or in

[1] So in original. Probably should not be capitalized.

part, as provided in section 12529(b) of this title.

(d) Application for grant

(1) Submission

To receive a grant or enter into a contract under this part, an institution or partnership described in subsection (b) of this section shall prepare, submit to the Corporation, and obtain approval of, an application at such time, in such manner, and containing such information and assurances as the Corporation may reasonably require. In requesting applications for assistance under this part, the Corporation shall specify such required information and assurances.

(2) Contents

An application submitted under paragraph (1) shall contain, at a minimum—

(A) assurances that—

(i) prior to the placement of a participant, the applicant will consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program, to prevent the displacement and protect the rights of such employees; and

(ii) the applicant will comply with the nonduplication and nondisplacement provisions of section 12637 of this title and grievance procedure requirements of section 12636(f) of this title; and

(B) such other assurances as the Chief Executive Officer may reasonably require.

(e) Priority

(1) In general

In making grants and entering into contracts under subsection (b) of this section, the Corporation shall give priority to applicants that submit applications containing proposals that—

(A) demonstrate the commitment of the institution of higher education, other than by demonstrating the commitment of the students, to supporting the community service projects carried out under the program;

(B) specify the manner in which the institution will promote faculty, administration, and staff participation in the community service projects;

(C) specify the manner in which the institution will provide service to the community through organized programs, including, where appropriate, clinical programs for students in professional schools;

(D) describe any partnership that will participate in the community service projects, such as a partnership comprised of—

(i) the institution;

(ii)(I) a community-based agency;

(II) a local government agency; or

(III) a nonprofit entity that serves or involves school-age youth or older adults; and

(iii) a student organization;

(E) demonstrate community involvement in the development of the proposal;

(F) specify that the institution will use such assistance to strengthen the service infrastructure in institutions of higher education; or

(G) with respect to projects involving delivery of service, specify projects that involve leadership development of school-age youth.

(2) Determination

In giving priority to applicants under paragraph (1), the Corporation shall give increased priority to such an applicant for each characteristic described in subparagraphs (A) through (G) of paragraph (1) that is reflected in the application submitted by the applicant.

(f) National service educational award

A participant in a program funded under this part shall be eligible for the national service educational award described in division D of this subchapter, if the participant served in an approved national service position.

(g) "Student" defined

Notwithstanding section 12511(29) of this title, as used in this part, the term ''student'' means an individual who is enrolled in an institution of higher education on a full- or part-time basis.

(Pub. L. 101–610, title I, § 119, as added Pub. L. 103–82, title I, § 103(b), Sept. 21, 1993, 107 Stat. 837.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (b)(5), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part C of title IV of the Act is classified generally to part C (§ 2751 et seq.) of subchapter I of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20, Education, and Tables.

Division C—National Service Trust Program

PRIOR PROVISIONS

This division is comprised of subtitle C, §§ 121–141, of title I of Pub. L. 101–610. A prior part C (§ 12541 et seq.), comprised of subtitle C, §§ 120–135, of title I of Pub. L. 101–610 was renumbered subtitle I, §§ 199A–199O, of title I of Pub. L. 101–610 by Pub. L. 103–82, title I, § 101(a), Sept. 21, 1993, 107 Stat. 788, and transferred to division I of this subchapter.

PART I—INVESTMENT IN NATIONAL SERVICE

§ 12571. Authority to provide assistance and approved national service positions

(a) Provision of assistance

Subject to the availability of appropriations for this purpose, the Corporation for National and Community Service may make grants to States, subdivisions of States, Indian tribes, public or private nonprofit organizations, and institutions of higher education for the purpose of assisting the recipients of the grants—

(1) to carry out full- or part-time national service programs, including summer programs, described in section 12572(a) of this title; and

(2) to make grants in support of other national service programs described in section 12572(a) of this title that are carried out by other entities.

(b) Agreements with Federal agencies

(1) Agreements authorized

The Corporation may enter into a contract or cooperative agreement with another Federal agency to support a national service program carried out by the agency. The support provided by the Corporation pursuant to the contract or cooperative agreement may include the transfer to the Federal agency of funds available to the Corporation under this division.

(2) Matching funds requirements

A Federal agency receiving assistance under this subsection shall not be required to satisfy the matching funds requirements specified in subsection (e) of this section. However, the supplementation requirements specified in section 12633 of this title shall apply with respect to the Federal national service programs supported with such assistance.

(3) Consultation with State Commissions

A Federal agency receiving assistance under this subsection shall consult with the State Commissions for those States in which projects will be conducted using such assistance in order to ensure that the projects do not duplicate projects conducted by State or local national service programs.

(4) Support for other national service programs

A Federal agency that enters into a contract or cooperative agreement under paragraph (1) shall, in an appropriate case, enter into a contract or cooperative agreement with an entity that is carrying out a national service program in a State that is in existence in the State as of the date of the contract or cooperative agreement and is of high quality, in order to support the national service program.

(c) Provision of approved national service positions

As part of the provision of assistance under subsections (a) and (b) of this section, the Corporation shall—

(1) approve the provision of national service educational awards described in division D of this subchapter for the participants who serve in national service programs carried out using such assistance; and

(2) deposit in the National Service Trust established in section 12601(a) of this title an amount equal to the product of—

(A) the value of a national service educational award under section 12603 of this title; and

(B) the total number of approved national service positions to be provided.

(d) Five percent limitation on administrative costs

(1) Limitation

Not more than 5 percent of the amount of assistance provided to the original recipient of a grant or transfer of assistance under subsection (a) or (b) of this section for a fiscal year may be used to pay for administrative costs incurred by—

(A) the recipient of the assistance; and

(B) national service programs carried out or supported with the assistance.

(2) Rules on use

The Corporation may by rule prescribe the manner and extent to which—

(A) assistance provided under subsection (a) or (b) of this section may be used to cover administrative costs; and

(B) that portion of the assistance available to cover administrative costs should be distributed between—

(i) the original recipient of the grant or transfer of assistance under such subsection; and

(ii) national service programs carried out or supported with the assistance.

(e) Matching funds requirements

(1) Requirements

Except as provided in section 12594 of this title, the Federal share of the cost of carrying out a national service program that receives the assistance under subsection (a) of this section, whether the assistance is provided directly or as a subgrant from the original recipient of the assistance, may not exceed 75 percent of such cost.

(2) Calculation

In providing for the remaining share of the cost of carrying out a national service program, the program—

(A) shall provide for such share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and

(B) may provide for such share through State sources, local sources, or other Federal sources (other than the use of funds made available under the national service laws).

(3) Cost of health care

In providing a payment in cash under paragraph (2)(A) as part of providing for the remaining share of the cost of carrying out a national service program, the program may count not more than 85 percent of the cost of providing a health care policy described in section 12594(d)(2) of this title toward such share.

(4) Waiver

The Corporation may waive in whole or in part the requirements of paragraph (1) with respect to a national service program in any fiscal year if the Corporation determines that such a waiver would be equitable due to a lack of available financial resources at the local level.

(Pub. L. 101–610, title I, § 121, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 788.)

PRIOR PROVISIONS

A prior section 12571, Pub. L. 101–610, title I, § 141, Nov. 16, 1990, 104 Stat. 3150, related to general authority to make grants for national and community service programs, prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [formerly part D of this subchapter] by Pub. L. 103–82, § 102(a).

A prior section 121 of Pub. L. 101–610 was renumbered section 199A, and is classified to section 12655 of this title.

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

§ 12572. Types of national service programs eligible for program assistance

(a) Eligible national service programs

The recipient of a grant under section 12571(a) of this title and each Federal agency receiving assistance under section 12571(b) of this title shall use the assistance, directly or through subgrants to other entities, to carry out full- or part-time national service programs, including summer programs, that address unmet human, educational, environmental, or public safety needs. Subject to subsection (b)(1) of this section, these national service programs may include the following types of national service programs:

(1) A community corps program that meets unmet human, educational, environmental, or public safety needs and promotes greater community unity through the use of organized teams of participants of varied social and economic backgrounds, skill levels, physical and developmental capabilities, ages, ethnic backgrounds, or genders.

(2) A full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service corps (including youth corps programs under division I of this subchapter, the Public Lands Corps established under the Public Lands Corps Act of 1993 [16 U.S.C. 1721 et seq.], the Urban Youth Corps established under section 12656 of this title, and other conservation corps or youth service corps that performs service on Federal or other public lands or on Indian lands or Hawaiian home lands), that—

(A) undertakes meaningful service projects with visible public benefits, including natural resource, urban renovation, or human services projects;

(B) includes as participants youths and young adults between the ages of 16 and 25, inclusive, including out-of-school youths and other disadvantaged youths (such as youths with limited basic skills, youths in foster care who are becoming too old for foster care, youths of limited-English proficiency, homeless youths, and youths who are individuals with disabilities) who are between those ages; and

(C) provides those participants who are youths and young adults with—

(i) crew-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services; and

(ii) the opportunity to develop citizenship values and skills through service to their community and the United States.

(3) A program that provides specialized training to individuals in service-learning and places the individuals after such training in positions, including positions as service-learning coordinators, to facilitate service-learning in programs eligible for funding under part I of division B of this subchapter.

(4) A service program that is targeted at specific unmet human, educational, environmental, or public safety needs and that—

(A) recruits individuals with special skills or provides specialized preservice training to enable participants to be placed individually or in teams in positions in which the participants can meet such unmet needs; and

(B) if consistent with the purposes of the program, brings participants together for additional training and other activities designed to foster civic responsibility, increase the skills of participants, and improve the quality of the service provided.

(5) An individualized placement program that includes regular group activities, such as leadership training and special service projects.

(6) A campus-based program that is designed to provide substantial service in a community during the school term and during summer or other vacation periods through the use of—

(A) students who are attending an institution of higher education, including students participating in a work-study program assisted under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.);

(B) teams composed of such students; or

(C) teams composed of a combination of such students and community residents.

(7) A preprofessional training program in which students enrolled in an institution of higher education—

(A) receive training in specified fields, which may include classes containing service-learning;

(B) perform service related to such training outside the classroom during the school term and during summer or other vacation periods; and

(C) agree to provide service upon graduation to meet unmet human, educational, environmental, or public safety needs related to such training.

(8) A professional corps program that recruits and places qualified participants in positions—

(A) as teachers, nurses and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet educational, human, environmental, or public safety needs in communities with an inadequate number of such professionals;

(B) that may include a salary in excess of the maximum living allowance authorized in subsection (a)(3) of section 12594 of this title, as provided in subsection (c) of such section; and

(C) that are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than any national service educational award under division D of this subchapter) of the participants.

(9) A program in which economically disadvantaged individuals who are between the ages of 16 and 24 years of age, inclusive, are provided with opportunities to perform service

that, while enabling such individuals to obtain the education and employment skills necessary to achieve economic self-sufficiency, will help their communities meet—

(A) the housing needs of low-income families and the homeless; and

(B) the need for community facilities in low-income areas.

(10) A national service entrepreneur program that identifies, recruits, and trains gifted young adults of all backgrounds and assists them in designing solutions to community problems.

(11) An intergenerational program that combines students, out-of-school youths, and older adults as participants to provide needed community services, including an intergenerational component for other national service programs described in this subsection.

(12) A program that is administered by a combination of nonprofit organizations located in a low-income area, provides a broad range of services to residents of such area, is governed by a board composed in significant part of low-income individuals, and is intended to provide opportunities for individuals or teams of individuals to engage in community projects in such area that meet unaddressed community and individual needs, including projects that would—

(A) meet the needs of low-income children and youth aged 18 and younger, such as providing after-school ''safe-places'', including schools, with opportunities for learning and recreation; or

(B) be directed to other important unaddressed needs in such area.

(13) A community service program designed to meet the needs of rural communities, using teams or individual placements to address the development needs of rural communities and to combat rural poverty, including health care, education, and job training.

(14) A program that seeks to eliminate hunger in communities and rural areas through service in projects—

(A) involving food banks, food pantries, and nonprofit organizations that provide food during emergencies;

(B) involving the gleaning of prepared and unprepared food that would otherwise be discarded as unusable so that the usable portion of such food may be donated to food banks, food pantries, and other nonprofit organizations;

(C) seeking to address the long-term causes of hunger through education and the delivery of appropriate services; or

(D) providing training in basic health, nutrition, and life skills necessary to alleviate hunger in communities and rural areas.

(15) Such other national service programs addressing unmet human, educational, environmental, or public safety needs as the Corporation may designate.

(b) Qualification criteria to determine eligibility

(1) Establishment by Corporation

The Corporation shall establish qualification criteria for different types of national service programs for the purpose of determining whether a particular national service program should be considered to be a national service program eligible to receive assistance or approved national service positions under this division.

(2) Consultation

In establishing qualification criteria under paragraph (1), the Corporation shall consult with organizations and individuals with extensive experience in developing and administering effective national service programs or regarding the delivery of human, educational, environmental, or public safety services to communities or persons.

(3) Application to subgrants

The qualification criteria established by the Corporation under paragraph (1) shall also be used by each recipient of assistance under section 12571(a) of this title that uses any portion of the assistance to conduct a grant program to support other national service programs.

(4) Encouragement of intergenerational components of programs

The Corporation shall encourage national service programs eligible to receive assistance or approved national service positions under this division to establish, if consistent with the purposes of the program, an intergenerational component of the program that combines students, out-of-school youths, and older adults as participants to provide services to address unmet human, educational, environmental, or public safety needs.

(c) National service priorities

(1) Establishment

(A) By Corporation

In order to concentrate national efforts on meeting certain unmet human, educational, environmental, or public safety needs and to achieve the other purposes of this chapter, the Corporation shall establish, and after reviewing the strategic plan approved under section 12651b(g)(1) of this title, periodically alter priorities as appropriate regarding the types of national service programs to be assisted under subsection (b) or (d) of section 12581 of this title and the purposes for which such assistance may be used.

(B) By States

Consistent with paragraph (4), States shall establish, and through the national service plan process described in section 12638(e)(1) of this title, periodically alter priorities as appropriate regarding the national service programs to be assisted under section 12581(a)(1) of this title. The State priorities shall be subject to Corporation review as part of the application process under section 12582 of this title.

(2) Notice to applicants

The Corporation shall provide advance notice to potential applicants of any national service priorities to be in effect under this subsection for a fiscal year. The notice shall specifically include—

(A) a description of any alteration made in the priorities since the previous notice; and

(B) a description of the national service programs that are designated by the Corporation under section 12585(d)(2) of this title as eligible for priority consideration in the next competitive distribution of assistance under section 12571(a) of this title.

(3) Regulations

The Corporation shall by regulation establish procedures to ensure the equitable treatment of national service programs that—

(A) receive funding under this division for multiple years; and

(B) would be adversely affected by annual revisions in such national service priorities.

(4) Application to subgrants

Any national service priorities established by the Corporation under this subsection shall also be used by each recipient of funds under section 12571(a) of this title that uses any portion of the assistance to conduct a grant program to support other national service programs.

(Pub. L. 101–610, title I, § 122, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 790.)

REFERENCES IN TEXT

The Public Lands Corps Act of 1993, referred to in subsec. (a)(2), is title II of Pub. L. 91–378, as added Pub. L. 103–82, title I, § 105(6), Sept. 21, 1993, 107 Stat. 848, which is classified generally to subchapter II (§ 1721 et seq.) of chapter 37 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 16 and Tables.

The Higher Education Act of 1965, referred to in subsec. (a)(6)(A), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part C of title IV of the Act is classified generally to part C (§ 2751 et seq.) of subchapter I of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20, Education, and Tables.

This chapter, referred to in subsec. (c)(1), was in the original ''this Act'', meaning Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

PRIOR PROVISIONS

A prior section 12572, Pub. L. 101–610, title I, § 142, Nov. 16, 1990, 104 Stat. 3150, related to criteria and requirements for awarding grants for national and community service programs, prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, § 102(a).

A prior section 122 of Pub. L. 101–610 was renumbered section 199B, and is classified to section 12655a of this title.

§ 12573. Types of national service positions eligible for approval for national service educational awards

The Corporation may approve of any of the following service positions as an approved national service position that includes the national service educational award described in division D of this subchapter as one of the benefits to be provided for successful service in the position:

(1) A position for a participant in a national service program described in section 12572(a) of this title that receives assistance under subsection (a) or (b) of section 12571 of this title.

(2) A position for a participant in a program that—

(A) is carried out by a State, a subdivision of a State, an Indian tribe, a public or private nonprofit organization, an institution of higher education, or a Federal agency; and

(B) would be eligible to receive assistance under section 12571(a) of this title, based on criteria established by the Corporation, but has not applied for such assistance.

(3) A position involving service as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.).

(4) A position facilitating service-learning in a program described in section 12572(a)(3) of this title that is eligible for assistance under part I of division B of this subchapter.

(5) A position for a participant in the Civilian Community Corps under division E of this subchapter.

(6) A position involving service as a crew leader in a youth corps program or a similar position supporting a national service program that receives an approved national service position.

(7) Such other national service positions as the Corporation considers to be appropriate.

(Pub. L. 101–610, title I, § 123, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 794.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in par. (3), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§ 4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 12573, Pub. L. 101–610, title I, § 143, Nov. 16, 1990, 104 Stat. 3152, related to types of national service, prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, § 102(a).

A prior section 123 of Pub. L. 101–610 was renumbered section 199C, and is classified to section 12655b of this title.

§ 12574. Types of program assistance

(a) Planning assistance

The Corporation may provide assistance under section 12571 of this title to a qualified applicant that submits an application under section 12582 of this title for the planning of a national service program. Assistance provided in accordance with this subsection may cover a period of not more than 1 year.

(b) Operational assistance

The Corporation may provide assistance under section 12571 of this title to a qualified applicant that submits an application under section 12582 of this title for the establishment, operation, or expansion of a national service program. Assist-

ance provided in accordance with this subsection may cover a period of not more than 3 years, but may be renewed by the Corporation upon consideration of a new application under section 12582 of this title.

(c) Replication assistance

The Corporation may provide assistance under section 12571 of this title to a qualified applicant that submits an application under section 12582 of this title for the expansion of a proven national service program to another geographical location. Assistance provided in accordance with this subsection may cover a period of not more than 3 years, but may be renewed by the Corporation upon consideration of a new application under section 12582 of this title.

(d) Application to subgrants

The requirements of this section shall apply to any State or other applicant receiving assistance under section 12571 of this title that proposes to conduct a grant program using the assistance to support other national service programs.

(Pub. L. 101–610, title I, § 124, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 794.)

PRIOR PROVISIONS

A prior section 12574, Pub. L. 101–610, title I, § 144, Nov. 16, 1990, 104 Stat. 3152, related to terms of service for national and community service, prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, § 102(a).

A prior section 124 of Pub. L. 101–610 was renumbered section 199D, and is classified to section 12655c of this title.

§ 12575. Training and technical assistance

(a) Training programs

The Corporation may conduct, directly or by grant or contract, appropriate training programs regarding national service in order to—

(1) improve the ability of national service programs assisted under section 12571 of this title to meet human, educational, environmental, or public safety needs in communities—

(A) where services are needed most; and

(B) where programs do not exist, or are too limited to meet community needs, as of the date on which the Corporation makes the grant or enters into the contract;

(2) promote leadership development in such programs;

(3) improve the instructional and programmatic quality of such programs to build an ethic of civic responsibility;

(4) develop the management and budgetary skills of program operators;

(5) provide for or improve the training provided to the participants in such programs; and

(6) encourage national service programs to adhere to risk management procedures, including the training of participants in appropriate risk management practices.

(b) Technical assistance

To the extent appropriate and necessary, the Corporation shall make technical assistance available to States, Indian tribes, labor organizations, organizations operated by young adults, organizations serving economically disadvantaged individuals, and other entities described in section 12571 of this title that desire—

(1) to develop national service programs; or

(2) to apply for assistance under such section or under a grant program conducted using assistance provided under such section.

(Pub. L. 101–610, title I, § 125, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 795.)

PRIOR PROVISIONS

A prior section 12575, Pub. L. 101–610, title I, § 145, Nov. 16, 1990, 104 Stat. 3153; Pub. L. 102–10, § 6(a), Mar. 12, 1991, 105 Stat. 31, related to eligibility for part-time, full-time, and special senior service in national and community service program, prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, § 102(a).

A prior section 125 of Pub. L. 101–610 was renumbered section 199E, and is classified to section 12655d of this title.

§ 12576. Other special assistance

(a) Support for State Commissions

(1) Grants authorized

From amounts appropriated for a fiscal year pursuant to the authorization of appropriation in section 12681(a)(4) of this title, the Corporation may make a grant in an amount between $125,000 and $750,000 to a State to assist the State to establish or operate the State Commission on National and Community Service required to be established by the State under section 12638 of this title.

(2) Limitation on amount of grants

Notwithstanding the amounts specified in paragraph (1), the amount of a grant that may be provided to a State Commission under this subsection, together with other Federal funds available to establish or operate the State Commission, may not exceed—

(A) 85 percent of the total cost to establish or operate the State Commission for the first year for which the State Commission receives assistance under this subsection; and

(B) such smaller percentage of such cost as the Corporation may establish for the second, third, and fourth years of such assistance in order to ensure that the Federal share does not exceed 50 percent of such costs for the fifth year, and any subsequent year, for which the State Commission receives assistance under this subsection.

(b) Disaster service

The Corporation may undertake activities, including activities carried out through part A of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.), to involve in disaster relief efforts youth corps programs described in section 12572(a)(2) of this title and other programs that receive assistance under the national service laws.

(c) Challenge grants for national service programs

(1) Assistance authorized

The Corporation may make challenge grants under this subsection to national service programs that receive assistance under section 12571 of this title.

(2) Selection criteria

The Corporation shall develop criteria for the selection of recipients of challenge grants under this subsection, so as to make the grants widely available to a variety of programs that—

(A) are high-quality national service programs; and

(B) are carried out by entities with demonstrated experience in establishing and implementing projects that provide benefits to participants and communities.

(3) Amount of assistance

A challenge grant under this subsection may provide not more than $1 of assistance under this subsection for each $1 in cash raised by the national service program from private sources in excess of amounts required to be provided by the program to satisfy matching funds requirements under section 12571(e) of this title. The Corporation shall establish a ceiling on the amount of assistance that may be provided to a national service program under this subsection.

(Pub. L. 101–610, title I, §126, as added Pub. L. 103–82, title I, §101(b), Sept. 21, 1993, 107 Stat. 795.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended. Part A of title I of the Act is classified generally to part A (§4951 et seq.) of subchapter I of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

Prior sections 12576 to 12580, which related to national and community service, were omitted in the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, §102(a).

Section 12576, Pub. L. 101–610, title I, §146, Nov. 16, 1990, 104 Stat. 3153; Pub. L. 102–10, §6(b), Mar. 12, 1991, 105 Stat. 31; Pub. L. 102–325, title XV, §1557, July 23, 1992, 106 Stat. 841, related to post-service benefits.

A prior section 126 of Pub. L. 101–610 was renumbered section 199F and is classified to section 12655e of this title.

Section 12577, Pub. L. 101–610, title I, §147, Nov. 16, 1990, 104 Stat. 3154, related to living allowances for participants.

Section 12578, Pub. L. 101–610, title I, §148, Nov. 16, 1990, 104 Stat. 3155, related to training of participants.

Section 12579, Pub. L. 101–610, title I, §149, Nov. 16, 1990, 104 Stat. 3156, related to cooperation between public and private entities.

Section 12580, Pub. L. 101–610, title I, §150, Nov. 16, 1990, 104 Stat. 3156, related to in-service education benefits.

PART II—APPLICATION AND APPROVAL PROCESS

§ 12581. Provision of assistance and approved national service positions by competitive and other means

(a) Allotments of assistance and approved positions to States and Indian tribes

(1) 33⅓ percent allotment of assistance to certain States

Of the funds allocated by the Corporation for provision of assistance under subsections (a) and (b) of section 12571 of this title for a fiscal year, the Corporation shall make a grant under section 12571(a) of this title (and a corresponding allotment of approved national service positions) to each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico that has an application approved by the Corporation under section 12585 of this title. The amount allotted as a grant to each such State under this paragraph for a fiscal year shall be equal to the amount that bears the same ratio to 33⅓ percent of the allocated funds for that fiscal year as the population of the State bears to the total population of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) One percent allotment for certain territories and possessions

Of the funds allocated by the Corporation for provision of assistance under subsections (a) and (b) of section 12571 of this title for a fiscal year, the Corporation shall reserve 1 percent of the allocated funds for grants under section 12571(a) of this title to the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands upon approval of an application by the Corporation under section 12585 of this title. Palau shall also be eligible for a grant under this paragraph from the allotment until such time as the Compact of Free Association with Palau is ratified. The amount allotted as a grant to each such territory or possession under this paragraph for a fiscal year shall be equal to the amount that bears the same ratio to 1 percent of the allocated funds for that fiscal year as the population of the territory or possession bears to the total population of such territories and possessions.

(3) One percent allotment for Indian tribes

Of the funds allocated by the Corporation for provision of assistance under subsections (a) and (b) of section 12571 of this title for a fiscal year, the Corporation shall reserve 1 percent of the allocated funds for grants under section 12571(a) of this title to Indian tribes, to be allotted by the Corporation on a competitive basis in accordance with their respective needs.

(4) Effect of failure to apply

If a State or Indian tribe fails to apply for, or fails to give notice to the Corporation of its intent to apply for, an allotment under this subsection, the Corporation shall use the amount that would have been allotted under this subsection to the State or Indian tribe—

(A) to make grants (and provide approved national service positions in connection with such grants) to other eligible entities under section 12571 of this title that propose to carry out national service programs in the State or on behalf of the Indian tribe; and

(B) after making grants under subparagraph (A), to make a reallotment to other States and Indian tribes with approved applications under section 12582 of this title.

(b) Reservation of approved positions

The Corporation shall ensure that each individual selected during a fiscal year for assignment as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) or as a participant in the Civilian Community Corps Demonstration Program under division E of this subchapter shall receive the national service educational award described in division D of this subchapter if the individual satisfies the eligibility requirements for the award. Funds for approved national service positions required by this paragraph for a fiscal year shall be deducted from the total funding for approved national service positions to be available for distribution under subsections (a) and (d) of this section for that fiscal year.

(c) Reservation for special assistance

From amounts appropriated for a fiscal year pursuant to the authorization of appropriation in section 12681(a)(2) of this title, and subject to the limitation in such section, the Corporation may reserve such amount as the Corporation considers to be appropriate for the purpose of making assistance available under sections 12575 and 12576 of this title. The Corporation may not reserve more than $10,000,000 for a fiscal year for disaster service under subsection (b) of section 12576 of this title or challenge grants under subsection (c) of such section.

(d) Competitive distribution of remaining funds

(1) State competition

Of the funds allocated by the Corporation for provision of assistance under subsections (a) and (b) of section 12571 of this title for a fiscal year, the Corporation shall use not less than 33⅓ percent of the allocated funds to make grants to States on a competitive basis under section 12571(a) of this title.

(2) Federal agencies and other applicants

The Corporation shall distribute on a competitive basis to subdivisions of States, Indian tribes, public or private nonprofit organizations (including labor organizations), institutions of higher education, and Federal agencies the remainder of the funds allocated by the Corporation for provision of assistance under section 12571 of this title for a fiscal year, after operation of paragraph (1) and subsections (a) and (c) of this section.

(3) Limitation on distribution to Federal agencies

The Corporation may not provide more than ⅓ of the funds available for competitive distribution under paragraph (2) for a fiscal year to Federal agencies under section 12571(b) of this title.

(4) Priority limitations

The Corporation may limit the categories of eligible applicants for assistance under paragraph (2) consistent with the priorities established by the Corporation under section 12585(d)(2) of this title.

(5) Reservation of funds for supplemental and outreach grants

(A) Reservation

From amounts appropriated for a fiscal year pursuant to the authorization of appropriation in section 12681(a)(2) of this title, and subject to the limitation in such section, the Chief Executive Officer shall reserve an amount that is not less than 1 percent of such amounts (except that the amount reserved may not exceed $5,000,000), in order to make supplemental grants as provided in subparagraph (B) and outreach grants as provided in subparagraph (C). The amount reserved pursuant to this paragraph shall be available until expended.

(B) Grants to assist entities in placing applicants who are individuals with a disability

(i) In general

The Chief Executive Officer shall make grants from a portion of the funds reserved under subparagraph (A) to entities that—

(I) receive a grant to carry out a national service program under paragraph (1) or (2);

(II) demonstrate that the entity has received a substantial number of applications for placement in the national service program of persons who are individuals with a disability and who require a reasonable accommodation (as defined in section 12111(9) of this title), or auxiliary aids and services (as defined in section 12102(1) of this title), in order to perform national service; and

(III) demonstrate that additional funding would assist the national service program in placing a substantial number of such individuals with a disability as participants in projects carried out through the program.

(ii) Requirements

Funds made available through such a supplemental grant under clause (i) shall be made available for the same purposes, and subject to the same requirements, as funds made available through a grant made under paragraph (1) or (2).

(C) Grants for outreach to individuals with a disability

(i) In general

From the portion of the funds reserved under subparagraph (A) that is not used to make grants under subparagraph (B), the Chief Executive Officer shall make grants to public or private nonprofit organizations to pay for the Federal share described in section 12571(e) of this title of—

(I) providing information about the programs specified in section 12651d(d)(10)[1] of this title to such individuals with a disability who desire to perform national service; and

(II) enabling the individuals to participate in activities carried out through such programs, which may include assisting the placement of the individuals in approved national service positions.

(ii) Application

To be eligible to receive a grant under this subparagraph, an organization described in clause (i) shall submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(e) Application required

The allotment of assistance and approved national service positions to a State or Indian tribe under subsection (a) of this section, and the competitive distribution of assistance under subsection (d) of this section, shall be made by the Corporation only pursuant to an application submitted by a State or other applicant under section 12582 of this title and approved by the Corporation under section 12585 of this title.

(f) Approval of positions subject to available funds

The Corporation may not approve positions as approved national service positions under this division for a fiscal year in excess of the number of such positions for which the Corporation has sufficient available funds in the National Service Trust for that fiscal year, taking into consideration funding needs for national service educational awards under division D of this subchapter based on completed service. If appropriations are insufficient to provide the maximum allowable national service educational awards under division D of this subchapter for all eligible participants, the Corporation is authorized to make necessary and reasonable adjustments to program rules.

(g) Sponsorship of approved national service positions

(1) Sponsorship authorized

The Corporation may enter into agreements with persons or entities who offer to sponsor national service positions for which the person or entity will be responsible for supplying the funds necessary to provide a national service educational award. The distribution of these approved national service positions shall be made pursuant to the agreement, and the creation of these positions shall not be taken into consideration in determining the number of approved national service positions to be available for distribution under this section.

(2) Deposit of contribution

Funds provided pursuant to an agreement under paragraph (1) and any other funds contributed to the Corporation to support the activities of the Corporation under the national service laws shall be deposited in the National Service Trust established in section 12601 of this title until such time as the funds are needed.

(Pub. L. 101–610, title I, § 129, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 796.)

REFERENCES IN TEXT

For ratification of Compact of Free Association with Palau, referred to in subsec. (a)(2), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§ 4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 129 of Pub. L. 101–610 was renumbered section 199H and is classified to section 12655h of this title.

§ 12582. Application for assistance and approved national service positions

(a) Time, manner, and content of application

To be eligible to receive assistance under section 12571 of this title or approved national service positions for participants who serve in the national service programs to be carried out using the assistance, a State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, or Federal agency shall prepare and submit to the Corporation an application at such time, in such manner, and containing such information as the Corporation may reasonably require.

(b) Types of permissible application information

In order to have adequate information upon which to consider an application under section 12585 of this title, the Corporation may require the following information to be provided in an application submitted under subsection (a) of this section:

(1) A description of the national service programs proposed to be carried out directly by the applicant using assistance provided under section 12571 of this title.

(2) A description of the national service programs that are selected by the applicant to receive a grant using assistance requested under section 12571 of this title and a description of the process and criteria by which the programs were selected.

(3) A description of other funding sources to be used, or sought to be used, for the national service programs referred to in paragraphs (1) and (2), and, if the application is submitted for the purpose of seeking a renewal of assistance, a description of the success of the programs in reducing their reliance on Federal funds.

(4) A description of the extent to which the projects to be conducted using the assistance will address unmet human, educational, environmental, or public safety needs and produce a direct benefit for the community in which the projects are performed.

[1] So in original. Section 12651d(d) of this title does not contain a par. (10).

(5) A description of the plan to be used to recruit participants, including youth who are individuals with disabilities and economically disadvantaged young men and women, for the national service programs referred to in paragraphs (1) and (2).

(6) A description of the manner in which the national service programs referred to in paragraphs (1) and (2) build on existing programs, including Federal programs.

(7) A description of the manner in which the national service programs referred to in paragraphs (1) and (2) will involve participants—

(A) in projects that build an ethic of civic responsibility and produce a positive change in the lives of participants through training and participation in meaningful service experiences and opportunities for reflection on such experiences; and

(B) in leadership positions in implementing and evaluating the program.

(8) Measurable goals for the national service programs referred to in paragraphs (1) and (2), and a strategy to achieve such goals, in terms of—

(A) the impact to be made in meeting unmet human, educational, environmental, or public safety needs; and

(B) the service experience to be provided to participants in the programs.

(9) A description of the manner and extent to which the national service programs referred to in paragraphs (1) and (2) conform to the national service priorities established by the Corporation under section 12572(c) of this title.

(10) A description of the past experience of the applicant in operating a comparable program or in conducting a grant program in support of other comparable service programs.

(11) A description of the type and number of proposed service positions in which participants will receive the national service educational award described in division D of this subchapter and a description of the manner in which approved national service positions will be apportioned by the applicant.

(12) A description of the manner and extent to which participants, representatives of the community served, community-based agencies with a demonstrated record of experience in providing services, and labor organizations contributed to the development of the national service programs referred to in paragraphs (1) and (2), including the identity of the individual representing each appropriate labor organization (if any) who was consulted and the nature of the consultation.

(13) Such other information as the Corporation may reasonably require.

(c) Required application information

An application submitted under subsection (a) of this section shall contain the following information:

(1) A description of the jobs or positions into which participants will be placed using the assistance provided under section 12571 of this title, including descriptions of specific tasks to be performed by such participants.

(2) A description of the minimum qualifications that individuals shall meet to become participants in such programs.

(d) Application to receive only approved national service positions

(1) Applicability of subsection

This subsection shall apply in the case of an application in which—

(A) the applicant is not seeking assistance under subsection (a) or (b) of section 12571 of this title, but requests national service educational awards for individuals serving in service positions described in section 12573 of this title; or

(B) the applicant requests national service educational awards for service positions described in section 12573 of this title, but the positions are not positions in a national service program described in section 12572(a) of this title for which assistance may be provided under subsection (a) or (b) of section 12571 of this title.

(2) Special application requirements

For the applications described in paragraph (1), the Corporation shall establish special application requirements in order to determine—

(A) whether the service positions meet unmet human, educational, environmental, or public safety needs and meet the criteria for assistance under this division; and

(B) whether the Corporation should approve the positions as approved national service positions.

(e) Special rule for State applicants

(1) Submission by State Commission

The application of a State for approved national service positions or for a grant under section 12571(a) of this title shall be submitted by the State Commission.

(2) Competitive selection

The application of a State shall contain an assurance that all assistance provided under section 12571(a) of this title to the State will be used to support national service programs that were selected by the State on a competitive basis. In making such competitive selections, the State shall seek to ensure the equitable allocation within the State of assistance and approved national service positions provided under this division to the State taking into consideration such factors as the location of the programs applying to the State, population density, and economic distress.

(3) Assistance to non-State entities

The application of a State shall also contain an assurance that not less than 60 percent of the assistance will be used to make grants in support of national service programs other than national service programs carried out by a State agency. The Corporation may permit a State to deviate from the percentage specified by this subsection if the State has not received a sufficient number of acceptable applications to comply with the percentage.

(f) Special rule for certain applicants

(1) Written concurrence

In the case of a program applicant that proposes to also serve as the service sponsor, the application shall include the written concur-

rence of any local labor organization representing employees of the service sponsor who are engaged in the same or substantially similar work as that proposed to be carried out.

(2) "Program applicant" defined

For purposes of this subsection, the term ''program applicant'' means—

(A) a State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, or Federal agency submitting an application under this section; or

(B) an entity applying for assistance or approved national service positions through a grant program conducted using assistance provided to a State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, or Federal agency under section 12571 of this title.

(g) Limitation on same project in multiple applications

The Corporation shall reject an application submitted under this section if a project proposed to be conducted using assistance requested by the applicant is already described in another application pending before the Corporation.

(Pub. L. 101–610, title I, § 130, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 800.)

PRIOR PROVISIONS

A prior section 130 of Pub. L. 101–610 was renumbered section 199I and is classified to section 12655i of this title.

§ 12583. National service program assistance requirements

(a) Impact on communities

An application submitted under section 12582 of this title shall include an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will—

(1) address unmet human, educational, environmental, or public safety needs through services that provide a direct benefit to the community in which the service is performed; and

(2) comply with the nonduplication and nondisplacement requirements of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title.

(b) Impact on participants

An application submitted under section 12582 of this title shall also include an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will—

(1) provide participants in the national service program with the training, skills, and knowledge necessary for the projects that participants are called upon to perform;

(2) provide support services to participants, such as the provision of appropriate information and support—

(A) to those participants who are completing a term of service and making the transition to other educational and career opportunities; and

(B) to those participants who are school dropouts in order to assist those participants in earning the equivalent of a high school diploma; and

(3) provide, if appropriate, structured opportunities for participants to reflect on their service experiences.

(c) Consultation

An application submitted under section 12582 of this title shall also include an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will—

(1) provide in the design, recruitment, and operation of the program for broad-based input from—

(A) the community served and potential participants in the program; and

(B) community-based agencies with a demonstrated record of experience in providing services and local labor organizations representing employees of service sponsors, if these entities exist in the area to be served by the program;

(2) prior to the placement of participants, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program to ensure compliance with the nondisplacement requirements specified in section 12637 of this title; and

(3) in the case of a program that is not funded through a State, consult with and coordinate activities with the State Commission for the State in which the program operates.

(d) Evaluation and performance goals

(1) In general

An application submitted under section 12582 of this title shall also include an assurance by the applicant that the applicant will—

(A) arrange for an independent evaluation of any national service program carried out using assistance provided to the applicant under section 12571 of this title or, with the approval of the Corporation, conduct an internal evaluation of the program;

(B) apply measurable performance goals and evaluation methods (such as the use of surveys of participants and persons served), which are to be used as part of such evaluation to determine the impact of the program—

(i) on communities and persons served by the projects performed by the program;

(ii) on participants who take part in the projects; and

(iii) in such other areas as the Corporation may require; and

(C) cooperate with any evaluation activities undertaken by the Corporation.

(2) Evaluation

Subject to paragraph (3), the Corporation shall develop evaluation criteria and performance goals applicable to all national service programs carried out with assistance provided under section 12571 of this title.

(3) Alternative evaluation requirements

The Corporation may establish alternative evaluation requirements for national service programs based upon the amount of assistance received under section 12571 of this title or received by a grant made by a recipient of assistance under such section. The determination of whether a national service program is covered by this paragraph shall be made in such manner as the Corporation may prescribe.

(e) Living allowances and other inservice benefits

Except as provided in section 12594(c) of this title, an application submitted under section 12582 of this title shall also include an assurance by the applicant that the applicant will—

(1) ensure the provision of a living allowance and other benefits specified in section 12594 of this title to participants in any national service program carried out by the applicant using assistance provided under section 12571 of this title; and

(2) require that each national service program that receives a grant from the applicant using such assistance will also provide a living allowance and other benefits specified in section 12594 of this title to participants in the program.

(f) Selection of participants from individuals recruited by Corporation or State Commissions

The Corporation may also require an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will select a portion of the participants for the program from among prospective participants recruited by the Corporation or State Commissions under section 12592(d) of this title. The Corporation may specify a minimum percentage of participants to be selected from the national leadership pool established under section 12592(e) of this title and may vary the percentage for different types of national service programs.

(Pub. L. 101–610, title I, § 131, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 803.)

PRIOR PROVISIONS

A prior section 131 of Pub. L. 101–610 was renumbered section 199J and is classified to section 12655j of this title.

§ 12584. Ineligible service categories

(a) In general

Except as provided in subsection (b) of this section, an application submitted to the Corporation under section 12582 of this title shall include an assurance by the applicant that any national service program carried out using assistance provided under section 12571 of this title and any approved national service position provided to an applicant will not be used to perform service that provides a direct benefit to any—

(1) business organized for profit;

(2) labor union;

(3) partisan political organization;

(4) organization engaged in religious activities, unless such service does not involve the use of assistance provided under section 12571 of this title or participants—

(A) to give religious instruction;

(B) to conduct worship services;

(C) to provide instruction as part of a program that includes mandatory religious education or worship;

(D) to construct or operate facilities devoted to religious instruction or worship or to maintain facilities primarily or inherently devoted to religious instruction or worship; or

(E) to engage in any form of proselytization; or

(5) nonprofit organization that fails to comply with the restrictions contained in section 501(c) of title 26, except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative.

(b) Regional Corporation

The requirement of subsection (a) of this section relating to an assurance regarding direct benefits to businesses organized for profit shall not apply with respect to a Regional Corporation, as defined in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g)), that is established in accordance with such Act [43 U.S.C. 1601 et seq.] as a for-profit corporation but that is engaging in nonprofit activities.

(Pub. L. 101–610, title I, § 132, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 805.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (b), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

PRIOR PROVISIONS

A prior section 132 of Pub. L. 101–610 was renumbered section 199L and classified to section 12655k of this title, prior to repeal by Pub. L. 103–82, § 101(e)(8)(A).

§ 12585. Consideration of applications

(a) Corporation consideration of certain criteria

The Corporation shall apply the criteria described in subsections (c) and (d) of this section in determining whether—

(1) to approve an application submitted under section 12582 of this title and provide assistance under section 12571 of this title to the applicant; and

(2) to approve service positions described in the application as national service positions that include the national service educational award described in division D of this subchapter and provide such approved national service positions to the applicant.

(b) Application to subgrants

(1) In general

A State or other entity that uses assistance provided under section 12571(a) of this title to support national service programs selected on a competitive basis to receive a share of the assistance shall use the criteria described in subsections (c) and (d) of this section when considering an application submitted by a national service program to receive a portion of such assistance or an approved national service position.

(2) Contents

The application of the State or other entity under section 12582 of this title shall contain—

(A) a certification that the State or other entity used these criteria in the selection of national service programs to receive assistance;

(B) a description of the jobs or positions into which participants will be placed using such assistance, including descriptions of specific tasks to be performed by such participants; and

(C) a description of the minimum qualifications that individuals shall meet to become participants in such programs.

(c) Assistance criteria

The criteria required to be applied in evaluating applications submitted under section 12582 of this title are as follows:

(1) The quality of the national service program proposed to be carried out directly by the applicant or supported by a grant from the applicant.

(2) The innovative aspects of the national service program, and the feasibility of replicating the program.

(3) The sustainability of the national service program, based on evidence such as the existence—

(A) of strong and broad-based community support for the program; and

(B) of multiple funding sources or private funding for the program.

(4) The quality of the leadership of the national service program, the past performance of the program, and the extent to which the program builds on existing programs.

(5) The extent to which participants of the national service program are recruited from among residents of the communities in which projects are to be conducted, and the extent to which participants and community residents are involved in the design, leadership, and operation of the program.

(6) The extent to which projects would be conducted in the following areas where they are needed most:

(A) Communities designated as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people.

(B) Areas that are environmentally distressed.

(C) Areas adversely affected by Federal actions related to the management of Federal lands that result in significant regional job losses and economic dislocation.

(D) Areas adversely affected by reductions in defense spending or the closure or realignment of military installations.

(E) Areas that have an unemployment rate greater than the national average unemployment for the most recent 12 months for which satisfactory data are available.

(7) In the case of applicants other than States, the extent to which the application is consistent with the application under section 12582 of this title of the State in which the projects would be conducted.

(8) Such other criteria as the Corporation considers to be appropriate.

(d) Other considerations

(1) Geographic diversity

The Corporation shall ensure that recipients of assistance provided under section 12571 of this title are geographically diverse and include projects to be conducted in those urban and rural areas in a State with the highest rates of poverty.

(2) Priorities

The Corporation may designate, under such criteria as may be established by the Corporation, certain national service programs or types of national service programs described in section 12572(a) of this title for priority consideration in the competitive distribution of funds under section 12581(d)(2) of this title. In designating national service programs to receive priority, the Corporation may include—

(A) national service programs carried out by another Federal agency;

(B) national service programs that conform to the national service priorities in effect under section 12572(c) of this title;

(C) innovative national service programs;

(D) national service programs that are well established in one or more States at the time of the application and are proposed to be expanded to additional States using assistance provided under section 12571 of this title;

(E) grant programs in support of other national service programs if the grant programs are to be conducted by nonprofit organizations with a demonstrated and extensive expertise in the provision of services to meet human, educational, environmental, or public safety needs;

(F) professional corps programs described in section 12572(a)(8) of this title; and

(G) programs that—

(i) received funding under part D of this subchapter, as in effect on the day before September 21, 1993;

(ii) the Corporation determines to meet the requirements of sections 12572 (other

than subsection (g)), 12573, and 12578 through 12580 of this title, as in effect on such day, in addition to the requirements of this division; and

(iii) include an evaluation component.

(3) Additional priority

In making a competitive distribution of funds under section 12581(d)(2) of this title, the Corporation may give priority consideration to a national service program that is—

(A) proposed in an application submitted by a State Commission; and

(B) not one of the types of programs described in paragraph (2),

if the State Commission provides an adequate explanation of the reasons why it should not be a priority of such State to carry out any of such types of programs in the State.

(4) Review panel

The Corporation shall—

(A) establish panels of experts for the purpose of securing recommendations on applications submitted under section 12582 of this title for more than $250,000 in assistance, or for national service positions that would require more than $250,000 in national service educational awards; and

(B) consider the opinions of such panels prior to making such determinations.

(e) Emphasis on areas most in need

In making assistance available under section 12571 of this title and in providing approved national service positions under section 12573 of this title, the Corporation shall ensure that not less than 50 percent of the total amount of assistance to be distributed to States under subsections (a) and (d)(1) of section 12581 of this title for a fiscal year is provided to carry out or support national service programs and projects that—

(1) are conducted in any of the areas described in subsection (c)(6) of this section or on Federal or other public lands, to address unmet human, educational, environmental, or public safety needs in such areas or on such lands; and

(2) place a priority on the recruitment of participants who are residents of any of such areas or Federal or other public lands.

(f) Rejection of State applications

(1) Notification of State applicants

If the Corporation rejects an application submitted by a State Commission under section 12582 of this title for funds described in section 12581(a)(1) of this title, the Corporation shall promptly notify the State Commission of the reasons for the rejection of the application.

(2) Resubmission and reconsideration

The Corporation shall provide a State Commission notified under paragraph (1) with a reasonable opportunity to revise and resubmit the application. At the request of the State Commission, the Corporation shall provide technical assistance to the State Commission as part of the resubmission process. The Corporation shall promptly reconsider an application resubmitted under this paragraph.

(3) Reallotment

The amount of any State's allotment under section 12581(a) of this title for a fiscal year that the Corporation determines will not be provided for that fiscal year shall be available for distribution by the Corporation as provided in paragraph (3) of such subsection.

(Pub. L. 101–610, title I, § 133, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 805.)

REFERENCES IN TEXT

Part D of this subchapter and sections 12572, 12573, and 12578 through 12580 of this title, as in effect on the day before September 21, 1993, referred to in subsec. (d)(2)(G), mean former part D of this subchapter and former sections 12572, 12573, and 12578 to 12580 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, title I, § 102(a), Sept. 21, 1993, 107 Stat. 816.

PRIOR PROVISIONS

A prior section 133 of Pub. L. 101–610 was renumbered section 199K and is classified to section 12655*l* of this title.

PART III—NATIONAL SERVICE PARTICIPANTS

§ 12591. Description of participants

(a) In general

For purposes of this division, an individual shall be considered to be a participant in a national service program carried out using assistance provided under section 12571 of this title if the individual—

(1) meets such eligibility requirements, directly related to the tasks to be accomplished, as may be established by the program;

(2) is selected by the program to serve in a position with the program;

(3) will serve in the program for a term of service specified in section 12593 of this title to be performed before, during, or after attendance at an institution of higher education;

(4) is 17 years of age or older at the time the individual begins the term of service;

(5) has received a high school diploma or its equivalent, agrees to obtain a high school diploma or its equivalent (unless this requirement is waived based on an individual education assessment conducted by the program) and the individual did not drop out of an elementary or secondary school to enroll in the program, or is enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 1091 of title 20; and

(6) is a citizen or national of the United States or lawful permanent resident alien of the United States.

(b) Special rules for certain youth programs

An individual shall be considered to be a participant in a youth corps program described in section 12572(a)(2) of this title or a program described in section 12572(a)(9) of this title that is carried out with assistance provided under section 12571(a) of this title if the individual—

(1) satisfies the requirements specified in subsection (a) of this section, except paragraph (4) of such subsection; and

(2) is between the ages of 16 and 25, inclusive, at the time the individual begins the term of service.

(c) Waiver

The Corporation may waive the requirements of subsection (a)(5) of this section with respect to an individual if the program in which the individual seeks to become a participant conducts an independent evaluation demonstrating that the individual is incapable of obtaining a high school diploma or its equivalent.

(Pub. L. 101–610, title I, § 137, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 808; amended Pub. L. 103–304, § 3(b)(3), Aug. 23, 1994, 108 Stat. 1567.)

PRIOR PROVISIONS

A prior section 12591, Pub. L. 101–610, title I, § 155, Nov. 16, 1990, 104 Stat. 3156, related to limitation on grants for innovative and demonstration programs and projects, prior to repeal by Pub. L. 103–82, § 104(a).

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–304 substituted ''subsection (a)(5)'' for ''subsection (a)(5)(A)''.

§ 12592. Selection of national service participants

(a) Selection process

Subject to subsections (b) and (c) of this section and section 12583(f) of this title, the actual recruitment and selection of an individual to serve in a national service program receiving assistance under section 12571 of this title or to fill an approved national service position shall be conducted by the State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, Federal agency, or other entity to which the assistance and approved national service positions are provided.

(b) Nondiscrimination and nonpolitical selection of participants

The recruitment and selection of individuals to serve in national service programs receiving assistance under section 12571 of this title or to fill approved national service positions shall be consistent with the requirements of section 12635 of this title.

(c) Second term

Acceptance into a national service program to serve a second term of service under section 12593 of this title shall only be available to individuals who perform satisfactorily in their first term of service.

(d) Recruitment and placement

The Corporation and each State Commission shall establish a system to recruit individuals who desire to perform national service and to assist the placement of these individuals in approved national service positions, which may include positions available under titles I and II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq. [and 5000 et seq.]). The Corporation and State Commissions shall disseminate information regarding available approved national service positions through cooperation with secondary schools, institutions of higher education, employment service offices, State vocational rehabilitation agencies within the meaning of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) and other State agencies that primarily serve individuals with disabilities, and other appropriate entities, particularly those organizations that provide outreach to disadvantaged youths and youths who are individuals with disabilities.

(e) National leadership pool

(1) Selection and training

From among individuals recruited under subsection (d) of this section, the Corporation may select individuals with significant leadership potential, as determined by the Corporation, to receive special training to enhance their leadership ability. The leadership training shall be provided by the Corporation directly or through a grant or contract.

(2) Emphasis on certain individuals

In selecting individuals to receive leadership training under this subsection, the Corporation shall make special efforts to select individuals who have served—

(A) in the Peace Corps;

(B) as VISTA volunteers;

(C) as participants in national service programs receiving assistance under section 12571 of this title;

(D) as participants in programs receiving assistance under part D of this subchapter, as in effect on the day before September 21, 1993; or

(E) as members of the Armed Forces of the United States and who were honorably discharged from such service.

(3) Assignment

At the request of a program that receives assistance under the national service laws, the Corporation may assign an individual who receives leadership training under paragraph (1) to work with the program in a leadership position and carry out assignments not otherwise performed by regular participants. An individual assigned to a program shall be considered to be a participant of the program.

(f) Evaluation of service

The Corporation shall issue regulations regarding the manner and criteria by which the service of a participant shall be evaluated to determine whether the service is satisfactory and successful for purposes of eligibility for a second term of service or a national service educational award.

(Pub. L. 101–610, title I, § 138, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 809.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsec. (d), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended. Titles I and II of the Act are classified generally to subchapters I (§ 4951 et seq.) and II (§ 5000 et seq.), respectively, of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (d), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16

(§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Part D of this subchapter, as in effect on the day before September 21, 1993, referred to in subsec. (e)(2)(D), means former part D of this subchapter prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, title I, § 102(a), Sept. 21, 1993, 107 Stat. 816.

§ 12593. Terms of service

(a) In general

As a condition of receiving a national service education award under division D of this subchapter, a participant in an approved national service position shall be required to perform full- or part-time national service for at least one term of service specified in subsection (b) of this section.

(b) Term of service

(1) Full-time service

An individual performing full-time national service in an approved national service position shall agree to participate in the program sponsoring the position for not less than 1,700 hours during a period of not less than 9 months and not more than 1 year.

(2) Part-time service

Except as provided in paragraph (3), an individual performing part-time national service in an approved national service position shall agree to participate in the program sponsoring the position for not less than 900 hours during a period of—

(A) not more than 2 years; or

(B) not more than 3 years if the individual is enrolled in an institute[1] of higher education while preforming[2] all or a portion of the service.

(3) Reduction in hours of part-time service

The Corporation may reduce the number of hours required to be served to successfully complete part-time national service to a level determined by the Corporation, except that any reduction in the required term of service shall include a corresponding reduction in the amount of any national service educational award that may be available under division D of this subchapter with regard to that service.

(c) Release from completing term of service

(1) Release authorized

A recipient of assistance under section 12571 of this title or a program sponsoring an approved national service position may release a participant from completing a term of service in the position—

(A) for compelling personal circumstances as demonstrated by the participant; or

(B) for cause.

(2) Effect of release for compelling circumstances

If a participant eligible for release under paragraph (1)(A) is serving in an approved national service position, the recipient of assistance under section 12571 of this title or a program sponsoring an approved national service position may elect—

(A) to grant such release and provide to the participant that portion of the national service educational award corresponding to the portion of the term of service actually completed, as provided in section 12603(c) of this title; or

(B) to permit the participant to temporarily suspend performance of the term of service for a period of up to 2 years (and such additional period as the Corporation may allow for extenuating circumstances) and, upon completion of such period, to allow return to the program with which the individual was serving in order to complete the remainder of the term of service and obtain the entire national service educational award.

(3) Effect of release for cause

A participant released for cause may not receive any portion of the national service educational award.

(Pub. L. 101–610, title I, § 139, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 810.)

§ 12594. Living allowances for national service participants

(a) Provision of living allowance

(1) Living allowance required

Subject to paragraph (3), a national service program carried out using assistance provided under section 12571 of this title shall provide to each participant who participates on a full-time basis in the program a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(2) Limitation on Federal share

The amount of the annual living allowance provided under paragraph (1) that may be paid using assistance provided under section 12571 of this title and using any other Federal funds shall not exceed 85 percent of the total average annual[1] provided to VISTA volunteers under section 4955 of this title.

(3) Maximum living allowance

Except as provided in subsection (c) of this section, the total amount of an annual living allowance that may be provided to a participant in a national service program shall not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(4) Proration of living allowance

The amount provided as a living allowance under this subsection shall be prorated in the case of a participant who is authorized to serve a reduced term of service under section 12593(b)(3) of this title.

(5) Waiver or reduction of living allowance

The Corporation may waive or reduce the requirement of paragraph (1) with respect to

[1] So in original. Probably should be ''institution''.

[2] So in original. Probably should be ''performing''.

[1] So in original. Probably should be followed by ''subsistence allowance''.

such national service program if such program demonstrates that—

(A) such requirement is inconsistent with the objectives of the program; and

(B) the amount of the living allowance that will be provided to each full-time participant is sufficient to meet the necessary costs of living (including food, housing, and transportation) in the area in which the program is located.

(6) Exemption

The requirement of paragraph (1) shall not apply to any program that was in existence on September 21, 1993.

(b) Coverage of certain employment-related taxes

To the extent a national service program that receives assistance under section 12571 of this title is subject, with respect to the participants in the program, to the taxes imposed on an employer under sections 3111 and 3301 of title 26 and taxes imposed on an employer under a workmen's compensation act, the assistance provided to the program under section 12571 of this title shall include an amount sufficient to cover 85 percent of such taxes based upon the lesser of—

(1) the total average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title; and

(2) the annual living allowance established by the program.

(c) Exception from maximum living allowance for certain assistance

A professional corps program described in section 12572(a)(8) of this title that desires to provide a living allowance in excess of the maximum allowance authorized in subsection (a)(3) of this section may still apply for such assistance, except that—

(1) any assistance provided to the applicant under section 12571 of this title may not be used to pay for any portion of the allowance;

(2) the applicant shall apply for such assistance only by submitting an application to the Corporation for assistance on a competitive basis; and

(3) the national service program shall be operated directly by the applicant and shall meet urgent, unmet human, educational, environmental, or public safety needs, as determined by the Corporation.

(d) Health insurance

(1) In general

A State or other recipient of assistance under section 12571 of this title shall provide a basic health care policy for each full-time participant in a national service program carried out or supported using the assistance, if the participant is not otherwise covered by a health care policy. Not more than 85 percent of the cost of a premium shall be provided by the Corporation, with the remaining cost paid by the entity receiving assistance under section 12571 of this title. The Corporation shall establish minimum standards that all plans must meet in order to qualify for payment under this part, any circumstances in which an alternative health care policy may be substituted for the basic health care policy, and mechanisms to prohibit participants from dropping existing coverage.

(2) Option

A State or other recipient of assistance under section 12571 of this title may elect to provide from its own funds a health care policy for participants that does not meet all of the standards established by the Corporation if the fair market value of such policy is equal to or greater than the fair market value of a plan that meets the minimum standards established by the Corporation, and is consistent with other applicable laws.

(e) Child care

(1) Availability

A State or other recipient of assistance under section 12571 of this title shall—

(A) make child care available for children of each full-time participant who needs child care in order to participate in a national service program carried out or supported by the recipient using the assistance; or

(B) provide a child care allowance to each full-time participant in a national service program who needs such assistance in order to participate in the program.

(2) Guidelines

The Corporation shall establish guidelines regarding the circumstances under which child care shall be made available under this subsection and the value of any allowance to be provided.

(f) Individualized support services

A State or other recipient of assistance under section 12571 of this title shall provide reasonable accommodation, including auxiliary aids and services (as defined in section 12102(1) of this title), based on the individualized need of a participant who is a qualified individual with a disability (as defined in section 12111(8) of this title).

(g) Waiver of limitation on Federal share

The Corporation may waive in whole or in part the limitation on the Federal share specified in this section with respect to a particular national service program in any fiscal year if the Corporation determines that such a waiver would be equitable due to a lack of available financial resources at the local level.

(h) Limitation on number of terms of service for federally subsidized living allowance

No national service program may use assistance provided under section 12571 of this title, or any other Federal funds, to provide a living allowance under subsection (a) of this section, a health care policy under subsection (d) of this section, or child care or a child care allowance under subsection (e) of this section, to an individual for a third, or subsequent, term of service described in section 12593(b) of this title by the individual in a national service program carried out under this division.

(Pub. L. 101–610, title I, § 140, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 811.)

PRIOR PROVISIONS

A prior section 140 of Pub. L. 101–610 was set out as a note under section 12501 of this title, prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, § 102(a).

§ 12595. National service educational awards

(a) Eligibility generally

A participant in a national service program carried out using assistance provided to an applicant under section 12571 of this title shall be eligible for the national service educational award described in division D of this subchapter if the participant—

(1) serves in an approved national service position; and

(2) satisfies the eligibility requirements specified in section 12602 of this title with respect to service in that approved national service position.

(b) Special rule for VISTA volunteers

A VISTA volunteer who serves in an approved national service position shall be ineligible for a national service educational award if the VISTA volunteer accepts the stipend authorized under section 4955(a)(1) of this title.

(Pub. L. 101–610, title I, § 141, as added Pub. L. 103–82, title I, § 101(b), Sept. 21, 1993, 107 Stat. 814.)

PRIOR PROVISIONS

A prior section 141 of Pub. L. 101–610 was classified to section 12571 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, § 102(a).

Division D—National Service Trust and Provision of National Service Educational Awards

CODIFICATION

Subtitle D of title I of Pub. L. 101–610, comprising this division, was formerly classified to part D (§ 12571 et seq.) of this subchapter prior to the general amendment by Pub. L. 103–82, § 102(a).

§ 12601. Establishment of the National Service Trust

(a) Establishment

There is established in the Treasury of the United States an account to be known as the National Service Trust. The Trust shall consist of—

(1) from the amounts appropriated to the Corporation and made available to carry out this division pursuant to section 12681(a)(2) of this title, such amounts as the Corporation may designate to be available for the payment of—

(A) national service educational awards; and

(B) interest expenses pursuant to section 12604(e) of this title;

(2) any amounts received by the Corporation as gifts, bequests, devises, or otherwise pursuant to section 12651g(a)(2) of this title; and

(3) the interest on, and proceeds from the sale or redemption of, any obligations held by the Trust.

(b) Investment of Trust

It shall be the duty of the Secretary of the Treasury to invest in full the amounts appropriated to the Trust. Except as otherwise expressly provided in instruments concerning a gift, bequest, devise, or other donation and agreed to by the Corporation, such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired on original issue at the issue price or by purchase of outstanding obligations at the market price. Any obligation acquired by the Trust may be sold by the Secretary at the market price.

(c) Expenditures from Trust

Amounts in the Trust shall be available, to the extent provided for in advance by appropriation, for payments of national service educational awards in accordance with section 12604 of this title.

(d) Reports to Congress on receipts and expenditures

Not later than March 1 of each year, the Corporation shall submit a report to the Congress on the financial status of the Trust during the preceding fiscal year. Such report shall—

(1) specify the amount deposited to the Trust from the most recent appropriation to the Corporation, the amount received by the Corporation as gifts, bequests, devises, or otherwise pursuant to section 12651g(a)(2) of this title during the period covered by the report, and any amounts obtained by the Trust pursuant to subsection (a)(3) of this section;

(2) identify the number of individuals who are currently performing service to qualify, or have qualified, for national service educational awards;

(3) identify the number of individuals whose expectation to receive national service educational awards during the period covered by the report—

(A) has been reduced pursuant to section 12603(c) of this title; or

(B) has lapsed pursuant to section 12602(d) of this title; and

(4) estimate the number of additional approved national service positions that the Corporation will be able to make available under division C of this subchapter on the basis of any accumulated surplus in the Trust above the amount required to provide national service educational awards to individuals identified under paragraph (2), including any amounts available as a result of the circumstances referred to in paragraph (3).

(Pub. L. 101–610, title I, § 145, as added Pub. L. 103–82, title I, § 102(a), Sept. 21, 1993, 107 Stat. 816.)

PRIOR PROVISIONS

A prior section 12601, Pub. L. 101–610, title I, § 156, Nov. 16, 1990, 104 Stat. 3156, related to authority of Commission on National and Community Service to make grants to States or Indian tribes for creation of innovative volunteer and community service programs, prior to repeal by Pub. L. 103–82, § 104(a).

A prior section 145 of Pub. L. 101–610 was classified to section 12575 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, § 102(a).

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

SEGAL AMERICORPS EDUCATION AWARD

Pub. L. 109–234, title VII, § 7014, June 15, 2006, 120 Stat. 484, provided that: ''Any national service educational award described in subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.), made with funds appropriated to, funds transferred to, or interest accumulated in the National Service Trust, shall hereafter be known as a 'Segal AmeriCorps Education Award'.''

§ 12602. Individuals eligible to receive a national service educational award from the Trust

(a) Eligible individuals

An individual shall receive a national service educational award from the National Service Trust if the individual—

(1) successfully completes the required term of service described in subsection (b) of this section in an approved national service position;

(2) was 17 years of age or older at the time the individual began serving in the approved national service position or was an out-of-school youth serving in an approved national service position with a youth corps program described in section 12572(a)(2) of this title or a program described in section 12572(a)(9) of this title;

(3) at the time the individual uses the national service educational award—

(A) has received a high school diploma, or the equivalent of such diploma;

(B) is enrolled at an institution of higher education on the basis of meeting the standard described in paragraph (1) or (2) of subsection (a) of section 1091 of title 20 and meets the requirements of subsection (a) of such section; or

(C) has received a waiver described in section 12591(c) of this title; and

(4) is a citizen or national of the United States or lawful permanent resident alien of the United States.

(b) Term of service

The term of service for an approved national service position shall not be less than the full- or part-time term of service specified in section 12593(b) of this title.

(c) Limitation on number of terms of service for awards

Although an individual may serve more than 2 terms of service described in subsection (b) of this section in an approved national service position, the individual shall receive a national service educational award from the National Service Trust only on the basis of the first and second of such terms of service.

(d) Time for use of educational award

(1) Seven-year requirement

An individual eligible to receive a national service educational award under this section may not use such award after the end of the 7-year period beginning on the date the individual completes the term of service in an approved national service position that is the basis of the award.

(2) Exception

The Corporation may extend the period within which an individual may use a national service educational award if the Corporation determines that the individual—

(A) was unavoidably prevented from using the national service educational award during the original 7-year period; or

(B) performed another term of service in an approved national service position during that period.

(e) Suspension of eligibility for drug-related offenses

(1) In general

An individual who, after qualifying under this section as an eligible individual, has been convicted under any Federal or State law of the possession or sale of a controlled substance shall not be eligible to receive a national service educational award during the period beginning on the date of such conviction and ending after the interval specified in the following table:

If convicted of:	
The possession of a controlled substance:	Ineligibility period is:
1st conviction	1 year
2nd conviction	2 years
3rd conviction	indefinite
The sale of a controlled substance:	
1st conviction	2 years
2nd conviction	indefinite

(2) Rehabilitation

An individual whose eligibility has been suspended under paragraph (1) shall resume eligibility before the end of the period determined under such paragraph if the individual satisfactorily completes a drug rehabilitation program that complies with such criteria as the Corporation shall prescribe for purposes of this paragraph.

(3) First convictions

An individual whose eligibility has been suspended under paragraph (1) and is convicted of a first offense may resume eligibility before the end of the period determined under such paragraph if the individual demonstrates that he or she has enrolled or been accepted for enrollment in a drug rehabilitation program described in paragraph (2).

(4) "Controlled substance" defined

As used in this subsection, the term ''controlled substance'' has the meaning given in section 802(6) of title 21.

(5) Effective date

This subsection shall be effective upon publication by the Corporation in the Federal Register of criteria prescribed under paragraph (2).

(f) Authority to establish demonstration programs

The Corporation may establish by regulation demonstration programs for the creation and evaluation of innovative volunteer and community service programs.

(Pub. L. 101–610, title I, § 146, as added Pub. L. 103–82, title I, § 102(a), Sept. 21, 1993, 107 Stat. 818; amended Pub. L. 103–304, § 3(b)(4), Aug. 23, 1994, 108 Stat. 1567.)

PRIOR PROVISIONS

A prior section 12602, Pub. L. 101–610, title I, § 157, Nov. 16, 1990, 104 Stat. 3156; Pub. L. 102–10, § 7, Mar. 12, 1991, 105 Stat. 31, related to grant applications, awards, and uses, prior to repeal by Pub. L. 103–82, § 104(a).

A prior section 146 of Pub. L. 101–610 was classified to section 12576 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, § 102(a).

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–304 struck out second par. (3) which read as follows: ''has received a high school diploma, or the equivalent of such diploma, at the time the individual uses the national service educational award, unless this requirement has been waived based on an individual education assessment conducted by the program; and''.

§ 12603. Determination of amount of national service educational award

(a) Amount for full-time national service

Except as provided in subsection (c) of this section, an individual described in section 12602(a) of this title who successfully completes a required term of full-time national service in an approved national service position shall receive a national service educational award having a value, for each of not more than 2 of such terms of service, equal to 90 percent of—

(1) one-half of an amount equal to the aggregate basic educational assistance allowance provided in section 3015(b)(1) of title 38 (as in effect on July 28, 1993), for the period referred to in section 3013(a)(1) of such title (as in effect on July 28, 1993), for a member of the Armed Forces who is entitled to such an allowance under section 3011 of such title and whose initial obligated period of active duty is 2 years; less

(2) one-half of the aggregate basic contribution required to be made by the member in section 3011(b) of such title (as in effect on July 28, 1993).

(b) Amount for part-time national service

Except as provided in subsection (c) of this section, an individual described in section 12602(a) of this title who successfully completes a required term of part-time national service in an approved national service position shall receive a national service educational award having a value, for each of not more than 2 of such terms of service, equal to 50 percent of value of the national service educational award determined under subsection (a) of this section.

(c) Award for partial completion of service

If an individual serving in an approved national service position is released in accordance with section 12593(c)(1)(A) of this title from completing the full-time or part-time term of service agreed to by the individual, the Corporation may provide the individual with that portion of the national service educational award approved for the individual that corresponds to the quantity of the term of service actually completed by the individual.

(Pub. L. 101–610, title I, § 147, as added Pub. L. 103–82, title I, § 102(a), Sept. 21, 1993, 107 Stat. 819.)

PRIOR PROVISIONS

A prior section 147 of Pub. L. 101–610 was classified to section 12577 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, § 102(a).

§ 12604. Disbursement of national service educational awards

(a) In general

Amounts in the Trust shall be available—

(1) to repay student loans in accordance with subsection (b) of this section;

(2) to pay all or part of the cost of attendance at an institution of higher education in accordance with subsection (c) of this section;

(3) to pay expenses incurred in participating in an approved school-to-work program in accordance with subsection (d) of this section; and

(4) to pay interest expenses in accordance with regulations prescribed pursuant to subsection (e) of this section.

(b) Use of educational award to repay outstanding student loans

(1) Application by eligible individuals

An eligible individual under section 12602 of this title who desires to apply the national service educational award of the individual to the repayment of qualified student loans shall submit, in a manner prescribed by the Corporation, an application to the Corporation that—

(A) identifies, or permits the Corporation to identify readily, the holder or holders of such loans;

(B) indicates, or permits the Corporation to determine readily, the amounts of principal and interest outstanding on the loans;

(C) specifies, if the outstanding balance is greater than the amount disbursed under paragraph (2), which of the loans the individual prefers to be paid by the Corporation; and

(D) contains or is accompanied by such other information as the Corporation may require.

(2) Disbursement of repayments

Upon receipt of an application from an eligible individual of an application that complies with paragraph (1), the Corporation shall, as promptly as practicable consistent with paragraph (5), disburse the amount of the national service educational award that the eligible individual has earned. Such disbursement shall be made by check or other means that is payable to the holder of the loan and requires the endorsement or other certification by the eligible individual.

(3) Application of disbursed amounts

If the amount disbursed under paragraph (2) is less than the principal and accrued interest on any qualified student loan, such amount shall be applied according to the specified priorities of the individual.

(4) Reports by holders

Any holder receiving a loan payment pursuant to this subsection shall submit to the Corporation such information as the Corporation may require to verify that such payment was applied in accordance with this subsection and any regulations prescribed to carry out this subsection.

(5) Notification of individual

The Corporation upon disbursing the national service educational award, shall notify the individual of the amount paid for each outstanding loan and the date of payment.

(6) Authority to aggregate payments

The Corporation may, by regulation, provide for the aggregation of payments to holders under this subsection.

(7) "Qualified student loans" defined

As used in this subsection, the term ''qualified student loans'' means—

(A) any loan made, insured, or guaranteed pursuant to title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]), other than a loan to a parent of a student pursuant to section 428B of such Act (20 U.S.C. 1078–2); and

(B) any loan made pursuant to title VII or VIII of the Public Health Service Act [42 U.S.C. 292 et seq., 296 et seq.].

(8) "Holder" defined

As used in this subsection, the term ''holder'' with respect to any eligible loan means the original lender or, if the loan is subsequently sold, transferred, or assigned to some other person, and such other person acquires a legally enforceable right to receive payments from the borrower, such other person.

(c) Use of educational awards to pay current educational expenses

(1) Application by eligible individual

An eligible individual under section 12602 of this title who desires to apply the individual's national service educational award to the payment of current full-time or part-time educational expenses shall, on a form prescribed by the Corporation, submit an application to the institution of higher education in which the student will be enrolled that contains such information as the Corporation may require to verify the individual's eligibility.

(2) Submission of requests for payment by institutions

An institution of higher education that receives one or more applications that comply with paragraph (1) shall submit to the Corporation a statement, in a manner prescribed by the Corporation, that—

(A) identifies each eligible individual filing an application under paragraph (1) for a disbursement of the individual's national service educational award under this subsection;

(B) specifies the amounts for which such eligible individuals are, consistent with paragraph (6), qualified for disbursement under this subsection;

(C) certifies that—

(i) the institution of higher education has in effect a program participation agreement under section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094);

(ii) the institution's eligibility to participate in any of the programs under title IV of such Act (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]) has not been limited, suspended, or terminated; and

(iii) individuals using national service educational awards received under this division to pay for educational costs do not comprise more than 15 percent of the total student population of the institution; and

(D) contains such provisions concerning financial compliance as the Corporation may require.

(3) Disbursement of payments

Upon receipt of a statement from an institution of higher education that complies with paragraph (2), the Corporation shall, subject to paragraph (4), disburse the total amount of the national service educational awards for which eligible individuals who have submitted applications to that institution under paragraph (1) are scheduled to receive. Such disbursement shall be made by check or other means that is payable to the institution and requires the endorsement or other certification by the eligible individual.

(4) Multiple disbursements required

The total amount required to be disbursed to an institution of higher education under paragraph (3) for any period of enrollment shall be disbursed by the Corporation in 2 or more installments, none of which exceeds ½ of such total amount. The interval between the first and second such installment shall not be less than ½ of such period of enrollment, except as necessary to permit the second installment to be paid at the beginning of the second semester, quarter, or similar division of such period of enrollment.

(5) Refund rules

The Corporation shall, by regulation, provide for the refund to the Corporation (and the crediting to the national service educational award of an eligible individual) of amounts disbursed to institutions for the benefit of eligible individuals who withdraw or otherwise fail to complete the period of enrollment for which the assistance was provided. Such regulations shall be consistent with the fair and equitable refund policies required of institutions pursuant to section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b). Amounts refunded to the Trust pursuant to this paragraph may be used by the Corporation to fund additional approved national service positions under division C of this subchapter.

(6) Maximum award

The portion of an eligible individual's total available national service educational award

that may be disbursed under this subsection for any period of enrollment shall not exceed the difference between—

(A) the eligible individual's cost of attendance for such period of enrollment, determined in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*); and

(B) the sum of—

(i) the student's estimated financial assistance for such period under part A of title IV of such Act (20 U.S.C. 1070 et seq.); and

(ii) the student's veterans' education benefits, determined in accordance with section 480(c) of such Act (20 U.S.C. 1087vv(c)).

(d) Use of educational award to participate in approved school-to-work programs

The Corporation shall by regulation provide for the payment of national service educational awards to permit eligible individuals to participate in school-to-work programs approved by the Secretaries of Labor and Education.

(e) Interest payments during forbearance on loan repayment

The Corporation shall provide by regulation for the payment on behalf of an eligible individual of interest that accrues during a period for which such individual has obtained forbearance in the repayment of a qualified student loan (as defined in subsection (b)(6)[1] of this section), if the eligible individual successfully completes the individual's required term of service (as determined under section 12602(b) of this title). Such regulations shall be prescribed after consultation with the Secretary of Education.

(f) Exception

With the approval of the Director, an approved national service program funded under section 12571 of this title, may offer participants the option of waiving their right to receive a national service educational award in order to receive an alternative post-service benefit funded by the program entirely with non-Federal funds.

(g) "Institution of higher education" defined

Notwithstanding section 12511 of this title, for purposes of this section the term ''institution of higher education'' has the meaning provided by section 102 of the Higher Education Act of 1965 [20 U.S.C. 1002].

(Pub. L. 101–610, title I, § 148, as added Pub. L. 103–82, title I, § 102(a), Sept. 21, 1993, 107 Stat. 820; amended Pub. L. 105–244, title I, § 102(c)(2), Oct. 7, 1998, 112 Stat. 1622.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsecs. (b)(7)(A) and (c)(2)(C)(ii), (6)(B)(i), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of this title. Part A of title IV of the Act is classified generally to part A (§ 1070 et seq.) of subchapter IV of chapter 28 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

[1] So in original. Probably should be subsection ''(b)(7)''.

The Public Health Service Act, referred to in subsec. (b)(7)(B), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Titles VII and VIII of the Act are classified generally to subchapters V (§ 292 et seq.) and VI (§ 296 et seq.), respectively, of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

PRIOR PROVISIONS

A prior section 148 of Pub. L. 101–610 was classified to section 12578 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, § 102(a).

AMENDMENTS

1998—Subsec. (g). Pub. L. 105–244 substituted ''section 102 of the Higher Education Act of 1965'' for ''section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a))''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

§ 12605. Process of approval of national service positions

(a) Definitions

In this section, the terms ''approved national service position'' and ''Corporation'' have the meanings given the terms in section 101 of the National and Community Service Act of 1990 (42 U.S.C. 12511).

(b) Timing and recording requirements

(1) In general

Notwithstanding subtitles C and D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq., 12601 et seq.), and any other provision of law, in approving a position as an approved national service position, the Corporation—

(A) shall approve the position at the time the Corporation—

(i) enters into an enforceable agreement with an individual participant to serve in a program carried out under subtitle E of title I of that Act (42 U.S.C. 12611 et seq.) or title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.); or

(ii) except as provided in clause (i), awards a grant to (or enters into a contract or cooperative agreement with) an entity to carry out a program for which such a position may be approved under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573); and

(B) shall record as an obligation an estimate of the net present value of the national service educational award associated with the position, based on a formula that takes into consideration historical rates of enrollment in such a program, and of earning and using national service educational awards for such a program.

(2) Formula

In determining the formula described in paragraph (1)(B), the Corporation shall consult with the Director of the Congressional Budget Office.

(3) Certification report

The Chief Executive Officer of the Corporation shall annually prepare and submit to Congress a report that contains a certification that the Corporation is in compliance with the requirements of paragraph (1).

(4) Approval

The requirements of this subsection shall apply to each approved national service position that the Corporation approves—

(A) during fiscal year 2003 (before or after July 3, 2003); and

(B) during any subsequent fiscal year.

(c) Reserve account

(1) Establishment and contents

(A) Establishment

Notwithstanding subtitles C and D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq., 12601 et seq.), and any other provision of law, within the National Service Trust established under section 145 of the National and Community Service Act of 1990 (42 U.S.C. 12601), the Corporation shall establish a reserve account.

(B) Contents

To ensure the availability of adequate funds to support the awards of approved national service positions for each fiscal year, the Corporation shall place in the account—

(i) during fiscal year 2003, a portion of the funds that were appropriated for fiscal year 2003 or a previous fiscal year under section 501(a)(2) (42 U.S.C. 12681(a)(2)), were made available to carry out subtitle C or D of title I of that Act, and remain available; and

(ii) during fiscal year 2004 or a subsequent fiscal year, a portion of the funds that were appropriated for that fiscal year under section 501(a)(2) and were made available to carry out subtitle C or D of title I of that Act.

(2) Obligation

The Corporation shall not obligate the funds in the reserve account until the Corporation—

(A) determines that the funds will not be needed for the payment of national service educational awards associated with previously approved national service positions; or

(B) obligates the funds for the payment of such awards for such previously approved national service positions.

(d) Audits

The accounts of the Corporation relating to the appropriated funds for approved national service positions, and the records demonstrating the manner in which the Corporation has recorded estimates described in subsection (b)(1)(B) of this section as obligations, shall be audited annually by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States in accordance with generally accepted auditing standards. A report containing the results of each such independent audit shall be included in the annual report required by subsection (b)(3) of this section.

(e) Availability of amounts

Except as provided in subsection (c) of this section, all amounts included in the National Service Trust under paragraphs (1), (2), and (3) of section 145(a) of the National and Community Service Act of 1990 (42 U.S.C. 12601(a)) shall be available for payments of national service educational awards under section 148 of that Act (42 U.S.C. 12604).

(Pub. L. 108–45, § 2, July 3, 2003, 117 Stat. 844.)

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsecs. (b)(1) and (c)(1), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended. Subtitles C, D, and E of title I of the Act are classified generally to divisions C (§ 12571 et seq.), D (§ 12601 et seq.), and E (§ 12611 et seq.), respectively, of this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b)(1)(A)(i), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§ 4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

CODIFICATION

Section was enacted as part of the Strengthen AmeriCorps Program Act, and not as part of the National and Community Service Act of 1990 which comprises this chapter.

SHORT TITLE

For short title of Pub. L. 108–45 which enacted this section, as the Strengthen AmeriCorps Program Act, see section 1 of Pub. L. 108–45, set out as a note under section 12501 of this title.

Division E—Civilian Community Corps

CODIFICATION

Subtitle E of title I of Pub. L. 101–610, comprising this division, was formerly classified to part H (§ 12653 et seq.) of this subchapter prior to amendment by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

This division is comprised of subtitle E, §§ 151–166, of title I of Pub. L. 101–610. A prior part E (§ 12591 et seq.), comprised of subtitle E, §§ 155–167, of title I of Pub. L. 101–610, related to innovative and demonstration programs and projects, prior to repeal by Pub. L. 103–82, § 104(a).

§ 12611. Purpose

It is the purpose of this division to authorize the establishment of a Civilian Community Corps to provide a basis for determining—

(1) whether residential service programs administered by the Federal Government can significantly increase the support for national service and community service by the people of the United States;

(2) whether such programs can expand the opportunities for willing young men and women to perform meaningful, direct, and consequential acts of community service in a manner that will enhance their own skills while contributing to their understanding of civic responsibility in the United States;

(3) whether retired members and former members of the Armed Forces of the United States, members and former members of the Armed Forces discharged or released from active duty in connection with reduced Department of Defense spending, members and former members of the Armed Forces discharged or transferred from the Selected Reserve of the Ready Reserve in connection with reduced Department of Defense spending, and other members of the Armed Forces not on active duty and not actively participating in a reserve component of the Armed Forces can provide guidance and training under such programs that contribute meaningfully to the encouragement of national and community service; and

(4) whether domestic national service programs can serve as a substitute for the traditional option of military service in the Armed Forces of the United States which, in times of reductions in the size of the Armed Forces, is a diminishing national service opportunity for young Americans.

(Pub. L. 101–610, title I, § 151, formerly § 195, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2522; renumbered § 151, Pub. L. 103–82, title I, § 104(b), Sept. 21, 1993, 107 Stat. 840.)

CODIFICATION

Section was formerly classified to section 12653 of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 12611, Pub. L. 101–610, title I, § 160, Nov. 16, 1990, 104 Stat. 3157, authorized Commission to make grants to Directors of Peace Corps and ACTION to carry out training and educational benefits demonstration programs, prior to repeal by Pub. L. 103–82, § 104(a).

§ 12612. Establishment of Civilian Community Corps Demonstration Program

(a) In general

The Corporation may establish the Civilian Community Corps Demonstration Program to carry out the purpose of this division.

(b) Program components

Under the Civilian Community Corps Demonstration Program authorized by subsection (a) of this section, the members of a Civilian Community Corps shall receive training and perform service in at least one of the following two program components:

(1) A national service program.

(2) A summer national service program.

(c) Residential programs

Both program components are residential programs. The members of the Corps in each program shall reside with other members of the Corps in Corps housing during the periods of the members' agreed service.

(Pub. L. 101–610, title I, § 152, formerly § 195A, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2523; renumbered § 152 and amended Pub. L. 103–82, title I, § 104(b), title IV, § 402(b)(2), Sept. 21, 1993, 107 Stat. 840, 919.)

CODIFICATION

Section was formerly classified to section 12653a of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 12612, Pub. L. 101–610, title I, § 161, Nov. 16, 1990, 104 Stat. 3157; Pub. L. 102–384, § 7(a), Oct. 5, 1992, 106 Stat. 1456, related to eligibility and selection procedures, prior to repeal by Pub. L. 103–82, § 104(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 402(b)(2), substituted ''Corporation'' for ''Commission on National and Community Service''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(2) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

REPORT AND STUDY REQUIREMENTS

Section 1092(b) of Pub. L. 102–484, as amended by Pub. L. 103–82, title I, § 104(e)(1)(B), (C), title IV, § 402(a)(1), Sept. 21, 1993, 107 Stat. 846, 918, provided that:

''(1) Not later than 180 days after the date on which the Corporation for National and Community Service establishes the Civilian Community Corps Demonstration Program authorized by section 152 of the National and Community Service Act of 1990 [42 U.S.C. 12612] (as added by subsection (a)), the Board of Directors of the Corporation shall prepare and submit to the appropriate committees of Congress a progress report on the implementation of the provisions of subtitle E of title I of such Act [42 U.S.C. 12611 et seq.]. The progress report shall include an assessment of the activities undertaken in establishing and administering Civilian Community Corps camps and an analysis of the level of coordination of Corps activities with activities of other departments or agencies of the Federal Government.

''(2) Not later than 90 days after the end of the one-year period beginning on the first day of the Civilian Community Corps Demonstration Program established pursuant to section 152 of the National and Community Service Act of 1990 (as added by subsection (a)), the Board of Directors of the Corporation for National and Community Service and the Director of the Civilian Community Corps shall prepare and submit to the appropriate committees of Congress a report concerning the desirability and feasibility of establishing the Civilian Community Corps as an independent agency of the Federal Government.''

COORDINATION OF PROGRAMS

Section 1093 of Pub. L. 102–484, as amended by Pub. L. 103–82, title I, § 104(e)(1)(B), title IV, § 402(a)(2), Sept. 21, 1993, 107 Stat. 846, 918, provided that:

''(a) COORDINATED ADMINISTRATION.—To the maximum extent practicable, the Chief of the National Guard Bureau, the Board of Directors and Chief Executive Officer of the Corporation for National and Community Service, and the Director of the Civilian Community Corps shall coordinate the National Guard Youth Opportunities Program established pursuant to section 1091 [of Pub. L. 102–484, 32 U.S.C. 501 note] and the Civilian Community Corps Demonstration Program established pursuant to the authorization contained in section 152 of the National and Community Service Act of 1990 [42 U.S.C. 12612] (as added by section 1092(a)).

''(b) OBJECTIVES.—The officials referred to in subsection (a) shall ensure that—

''(1) the programs referred to in subsection (a) are conducted in such a manner in relationship to each other that the public benefit of those programs is maximized;

''(2) to the maximum extent appropriate to meet the needs of program participants, persons who complete participation in the National Guard Youth Op-

portunities Program and are eligible and apply to participate in the Civilian Community Corps under the Civilian Community Corps Demonstration Program are accepted for participation in that Program; and

''(3) the programs referred to in subsection (a) are conducted simultaneously in competition with each other in the same immediate area of the United States only when the population of eligible participants in that area is sufficient to justify the simultaneous conduct of such programs in that area.''

§ 12613. National service program

(a) In general

Under the national service program component of the Civilian Community Corps Demonstration Program authorized by section 12612(a) of this title, eligible young people shall work in teams on Civilian Community Corps projects.

(b) Eligible participants

A person shall be eligible for selection for the national service program if the person—

(1) is at least 16 and not more than 24 years of age; and

(2) is a high school graduate or has not received a high school diploma or its equivalent.

(c) Diverse backgrounds of participants

In selecting persons for the national service program, the Director shall endeavor to ensure that participants are from economically, geographically, and ethnically diverse backgrounds.

(d) Necessary participants

To the extent practicable, at least 50 percent of the participants in the national service program shall be economically disadvantaged youths.

(e) Period of participation

Persons desiring to participate in the national service program shall enter into an agreement with the Director to participate in the Corps for a period of not less than nine months and not more than one year, as specified by the Director, and may renew the agreement for not more than one additional such period.

(Pub. L. 101–610, title I, § 153, formerly § 195B, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2523; renumbered § 153 and amended Pub. L. 103–82, title I, § 104(b), (e)(2)(A), Sept. 21, 1993, 107 Stat. 840, 846.)

CODIFICATION

Section was formerly classified to section 12653b of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 12613, Pub. L. 101–610, title I, § 162, Nov. 16, 1990, 104 Stat. 3158, related to training program in skills to be employed in Peace Corps or VISTA, prior to repeal by Pub. L. 103–82, § 104(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 104(e)(2)(A), substituted ''section 12612(a)'' for ''section 12653a(a)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12614. Summer national service program

(a) In general

Under the summer national service program of the Civilian Community Corps Demonstration Program authorized by section 12612(a) of this title, a diverse group of youth aged 14 through 18 years who are from urban or rural areas shall work in teams on Civilian Community Corps projects.

(b) Necessary participants

To the extent practicable, at least 50 percent of the participants in the summer national service program shall be economically disadvantaged youths.

(c) Seasonal program

The training and service of Corps members under the summer national service program in each year shall be conducted after April 30 and before October 1 of that year.

(Pub. L. 101–610, title I, § 154, formerly § 195C, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2524; renumbered § 154 and amended Pub. L. 103–82, title I, § 104(b), (e)(2)(B), Sept. 21, 1993, 107 Stat. 840, 847.)

CODIFICATION

Section was formerly classified to section 12653c of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 12614, Pub. L. 101–610, title I, § 163, Nov. 16, 1990, 104 Stat. 3158; Pub. L. 102–384, § 7(b), Oct. 5, 1992, 106 Stat. 1456, related to higher education benefits for those selected for Peace Corps or VISTA demonstration programs, prior to repeal by Pub. L. 103–82, § 104(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 104(e)(2)(B), substituted ''section 12612(a)'' for ''section 12653a(a)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12615. Civilian Community Corps

(a) Director

Upon the establishment of the Civilian Community Corps Demonstration Program, the Civilian Community Corps shall be under the direction of the Director appointed pursuant to section 12619(c)(1) of this title.

(b) Membership in Civilian Community Corps

(1) Participants to be members

Persons selected to participate in the national service program or the summer national service program components of the Program shall become members of the Civilian Community Corps.

(2) Selection of members

The Director or the Director's designee shall select individuals for membership in the Corps.

(3) Application for membership

To be selected to become a Corps member an individual shall submit an application to the

Director or to any other office as the Director may designate, at such time, in such manner, and containing such information as the Director shall require. At a minimum, the application shall contain information about the work experience of the applicant and sufficient information to enable the Director, or the superintendent of the appropriate camp, to determine whether selection of the applicant for membership in the Corps is appropriate.

(c) Organization of Corps into units

(1) Units

The Corps shall be divided into permanent units. Each Corps member shall be assigned to a unit.

(2) Unit leaders

The leader of each unit shall be selected from among persons in the permanent cadre established pursuant to section 12619(c)(2) of this title. The designated leader shall accompany the unit throughout the period of agreed service of the members of the unit.

(d) Camps

(1) Units to be assigned to camps

The units of the Corps shall be grouped together as appropriate in camps for operational, support, and boarding purposes. The Corps camp for a unit shall be in a facility or central location established as the operational headquarters and boarding place for the unit. Corps members may be housed in the camps.

(2) Camp superintendent

There shall be a superintendent for each camp. The superintendent is the head of the camp.

(3) Eligible site for camp

A camp may be located in a facility referred to in section 12622(a)(3) of this title.

(e) Distribution of units and camps

The Director shall ensure that the Corps units and camps are distributed in urban areas and rural areas in various regions throughout the United States.

(f) Standards of conduct

(1) In general

The superintendent of each camp shall establish and enforce standards of conduct to promote proper moral and disciplinary conditions in the camp.

(2) Sanctions

Under procedures prescribed by the Director, the superintendent of a camp may—

(A) transfer a member of the Corps in that camp to another unit or camp if the superintendent determines that the retention of the member in the member's unit or in the superintendent's camp will jeopardize the enforcement of the standards or diminish the opportunities of other Corps members in that unit or camp, as the case may be; or

(B) dismiss a member of the Corps from the Corps if the superintendent determines that retention of the member in the Corps will jeopardize the enforcement of the standards or diminish the opportunities of other Corps members.

(3) Appeals

Under procedures prescribed by the Director, a member of the Corps may appeal to the Director a determination of a camp superintendent to transfer or dismiss the member. The Director shall provide for expeditious disposition of appeals under this paragraph.

(Pub. L. 101–610, title I, § 155, formerly § 195D, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2524; renumbered § 155 and amended Pub. L. 103–82, title I, § 104(b), (e)(2)(C), title IV, § 403(b), Sept. 21, 1993, 107 Stat. 840, 847, 920; Pub. L. 103–304, § 3(b)(5)(A), Aug. 23, 1994, 108 Stat. 1567.)

CODIFICATION

Section was formerly classified to section 12653d of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 12615, Pub. L. 101–610, title I, § 164, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 102–384, § 4, Oct. 5, 1992, 106 Stat. 1455, related to evaluation reports on Peace Corps and VISTA demonstration programs, prior to repeal by Pub. L. 103–82, § 104(a).

A prior section 155 of Pub. L. 101–610 was classified to section 12591 of this title prior to repeal by Pub. L. 103–82.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–304 substituted ''camps'' for ''Corps'' in heading.

1993—Subsec. (a). Pub. L. 103–82, § 403(b), substituted ''Director'' for ''Director of the Civilian Community Corps''.

Pub. L. 103–82, § 104(e)(2)(C)(i), substituted ''section 12619(c)(1)'' for ''section 12653h(c)(1)''.

Subsec. (c)(2). Pub. L. 103–82, § 104(e)(2)(C)(ii), substituted ''section 12619(c)(2)'' for ''section 12653h(c)(2)''.

Subsec. (d)(3). Pub. L. 103–82, § 104(e)(2)(C)(iii), substituted ''section 12622(a)(3)'' for ''section 12653k(a)(3)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(C) of Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12616. Training

(a) Common curriculum

Each member of the Civilian Community Corps shall be provided with between three and six weeks of training that includes a comprehensive service-learning curriculum designed to promote team building, discipline, leadership, work, training, citizenship, and physical conditioning.

(b) Advanced service training

(1) National service program

Members of the Corps participating in the national service program shall receive advanced training in basic, project-specific skills that the members will use in performing their community service projects.

(2) Summer national service program

Members of the Corps participating in the summer national service program shall not receive advanced training referred to in paragraph (1) but, to the extent practicable, may receive other training.

(c) Training personnel

(1) In general

Members of the cadre appointed under section 12619(c)(2) of this title shall provide the training for the members of the Corps, including, as appropriate, advanced service training and ongoing training throughout the members' periods of agreed service.

(2) Coordination with other entities

Members of the cadre may provide the advanced service training referred to in subsection (b)(1) of this section in coordination with vocational or technical schools, other employment and training providers, existing youth service programs, or other qualified individuals.

(d) Facilities

The training may be provided at installations and other facilities of the Department of Defense, and at National Guard facilities, identified under section 12622(a)(3) of this title.

(Pub. L. 101–610, title I, § 156, formerly § 195E, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2525; renumbered § 156 and amended Pub. L. 103–82, title I, § 104(b), (e)(2)(D), Sept. 21, 1993, 107 Stat. 840, 847.)

CODIFICATION

Section was formerly classified to section 12653e of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 156 of Pub. L. 101–610 was classified to section 12601 of this title prior to repeal by Pub. L. 103–82, § 104(a).

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103–82, § 104(e)(2)(D)(i), substituted ''section 12619(c)(2)'' for ''section 12653h(c)(2)''.

Subsec. (d). Pub. L. 103–82, § 104(e)(2)(D)(ii), substituted ''section 12622(a)(3)'' for ''section 12653k(a)(3)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12617. Service projects

(a) Project requirements

The service projects carried out by the Civilian Community Corps shall—

(1) meet an identifiable public need;

(2) emphasize the performance of community service activities that provide meaningful community benefits and opportunities for service learning and skills development;

(3) to the maximum extent practicable, encourage work to be accomplished in teams of diverse individuals working together; and

(4) include continued education and training in various technical fields.

(b) Project proposals

(1) Development of proposals

(A) Specific executive departments

Upon the establishment of the Program, the Secretary of Agriculture, the Secretary of the Interior, and the Secretary of Housing and Urban Development shall develop proposals for Corps projects pursuant to guidance which the Director shall prescribe.

(B) Other sources

Other public and private organizations and agencies, including representatives of local communities in the vicinity of a Corps camp, may develop proposals for projects for a Corps camp. Corps members shall also be encouraged to identify projects for the Corps.

(2) Consultation requirements

The process for developing project proposals under paragraph (1) shall include consultation with the Corporation, representatives of local communities, and persons involved in other youth service programs.

(c) Project selection, organization, and performance

(1) Selection

The superintendent of a Corps camp shall select the projects to be performed by the members of the Corps assigned to the units in that camp. The superintendent shall select projects from among the projects proposed or identified pursuant to subsection (b) of this section.

(2) Innovative local arrangements for project performance

The Director shall encourage camp superintendents to negotiate with representatives of local communities, to the extent practicable, innovative arrangements for the performance of projects. The arrangements may provide for cost-sharing and the provision by the communities of in-kind support and other support.

(Pub. L. 101–610, title I, § 157, formerly § 195F, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2526; renumbered § 157 and amended Pub. L. 103–82, title I, § 104(b), title IV, §§ 402(b)(2), 403(b), Sept. 21, 1993, 107 Stat. 840, 919, 920.)

CODIFICATION

Section was formerly classified to section 12653f of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 157 of Pub. L. 101–610 was classified to section 12602 of this title prior to repeal by Pub. L. 103–82, § 104(a).

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103–82, § 403(b), substituted ''Director'' for ''Director of the Civilian Community Corps''.

Subsec. (b)(2). Pub. L. 103–82, § 402(b)(2), substituted ''Corporation'' for ''Commission on National and Community Service''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(2) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

§ 12618. Authorized benefits for Corps members

(a) In general

The Director shall provide for members of the Civilian Community Corps to receive benefits authorized by this section.

(b) Living allowance

The Director shall provide a living allowance to members of the Corps for the period during which such members are engaged in training or any activity on a Corps project. The Director shall establish the amount of the allowance at any amount not in excess of the amount equal to 100 percent of the poverty line that is applicable to a family of two (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title.[1]

(c) Other authorized benefits

While receiving training or engaging in service projects as members of the Civilian Community Corps, members may be provided the following benefits:

(1) Allowances for travel expenses, personal expenses, and other expenses.

(2) Quarters.

(3) Subsistence.

(4) Transportation.

(5) Equipment.

(6) Clothing.

(7) Recreational services and supplies.

(8) Other services determined by the Director to be consistent with the purposes of the Program.

(d) Supportive services

As the Director determines appropriate, the Director may provide each member of the Corps with health care services, child care services, counseling services, and other supportive services.

(e) Post-service benefits

Upon completion of the agreed period of service with the Corps, a member shall elect to receive the educational assistance under subsection (f) of this section or the cash benefit under subsection (g) of this section.

(f) National service educational awards

A Corps member who successfully completes a period of agreed service in the Corps may receive the national service educational award described in division D of this subchapter if the Corps member—

(1) serves in an approved national service position; and

(2) satisfies the eligibility requirements specified in section 12602 of this title with respect to service in that approved national service position.

(g) Alternative benefit

If a Corps member who successfully completes a period of agreed service in the Corps is ineligible for the national service educational award described in division D of this subchapter, the Director may provide for the provision of a suitable alternative benefit for the Corps member.

(Pub. L. 101–610, title I, § 158, formerly § 195G, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2526; renumbered § 158 and amended Pub. L. 103–82, title I, § 104(b), (g), title IV, § 403(b), Sept. 21, 1993, 107 Stat. 840, 847, 920.)

[1] So in original. A closing parenthesis probably should precede the period.

CODIFICATION

Section was formerly classified to section 12653g of this title prior to renumbering by Pub. L. 103–82, § 104(b).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 403(b), substituted ''Director'' for ''Director of the Civilian Community Corps''.

Subsecs. (f) to (h). Pub. L. 103–82, § 104(g), added subsecs. (f) and (g) and struck out former subsecs. (f) to (h) which related to monetary educational assistance, cash benefit election for Corps members, and other post-service benefits, respectively.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (g) of Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12619. Administrative provisions

(a) Supervision

The Chief Executive Officer shall monitor and supervise the administration of the Civilian Community Corps Demonstration Program authorized to be established under section 12612 of this title. In carrying out this section, the Chief Executive Officer shall—

(1) approve such guidelines, recommended by the Board, for the design, selection of members, and operation of the Civilian Community Corps as the Chief Executive Officer considers appropriate;

(2) evaluate the progress of the Corps in providing a basis for determining the matters set forth in section 12611 of this title; and

(3) carry out any other activities determined appropriate by the Board.

(b) Monitoring and coordination

The Chief Executive Officer shall—

(1) monitor the overall operation of the Civilian Community Corps;

(2) coordinate the activities of the Corps with other youth service programs administered by the Corporation; and

(3) carry out any other activities determined appropriate by the Board.

(c) Staff

(1) Director

(A) Appointment

Upon the establishment of the Program, the Chief Executive Officer shall appoint a Director. The Director may be selected from among retired commissioned officers of the Armed Forces of the United States.

(B) Duties

The Director shall—

(i) design, develop, and administer the Civilian Community Corps programs;

(ii) be responsible for managing the daily operations of the Corps; and

(iii) report to the Chief Executive Officer.

(C) Authority to employ staff

The Director may employ such staff as is necessary to carry out this division. The Director shall, to the maximum extent prac-

ticable, utilize in staff positions personnel who are detailed from departments and agencies of the Federal Government and, to the extent the Director considers appropriate, shall request and accept detail of personnel from such departments and agencies in order to do so.

(2) Permanent cadre

(A) Establishment

The Director shall establish a permanent cadre of supervisors and training instructors for Civilian Community Corps programs.

(B) Appointment

The Director shall appoint the members of the permanent cadre.

(C) Employment considerations

In appointing individuals to cadre positions, the Director shall—

(i) give consideration to retired, discharged, and other inactive members and former members of the Armed Forces recommended under section 12622(a)(2) of this title;

(ii) give consideration to former VISTA, Peace Corps, and youth service program personnel;

(iii) ensure that the cadre is comprised of males and females of diverse ethnic, economic, professional, and geographic backgrounds; and

(iv) consider applicants' experience in other youth service programs.

(D) Community service credit

Service as a member of the cadre shall be considered as a community service opportunity for purposes of section 4403 of the National Defense Authorization Act for Fiscal Year 1993 and as employment with a public service or community service organization for purposes of section 4464 of that Act.

(E) Training

The Director shall provide to members of the permanent cadre appropriate training in youth development techniques and the principles of service learning. All members of the permanent cadre shall be required to participate in the training.

(3) Inapplicability of certain civil service laws

The Director, the members of the permanent cadre, and the other staff personnel shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service. The rates of pay of such persons may be established without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title. In the case of a member of the permanent cadre who was recommended for appointment in accordance with section 12622(a)(2)(A) of this title and is entitled to retired or retainer pay, section 5532[1] of title 5 shall not apply to reduce the member's retired or retainer pay by reason of the member being paid as a member of the cadre.

[1] See References in Text note below.

(4) Voluntary services

Notwithstanding any other provision of law, the Director may accept the voluntary services of individuals. While away from their homes or regular places of business on the business of the Corps, such individuals may be allowed travel expenses, including per diem in lieu of subsistence, in the same amounts and to the same extent, as authorized under section 5703 of title 5 for persons employed intermittently in Federal Government service.

(Pub. L. 101–610, title I, § 159, formerly § 195H, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2528; renumbered § 159 and amended Pub. L. 103–82, title I, § 104(b), (e)(2)(E), title IV, §§ 402(b)(1), 403(a)(1)–(3), (b), Sept. 21, 1993, 107 Stat. 840, 847, 918–920; Pub. L. 103–304, § 3(b)(5)(B), Aug. 23, 1994, 108 Stat. 1567; Pub. L. 103–337, div. A, title VI, § 640, Oct. 5, 1994, 108 Stat. 2791.)

REFERENCES IN TEXT

Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsec. (c)(2)(D), is section 4403 of Pub. L. 102–484 which is set out as a note under section 1293 of Title 10, Armed Forces.

Section 4464 of that Act, referred to in subsec. (c)(2)(D), is section 4464 of Pub. L. 102–484 which is set out as a note under section 1143a of Title 10.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (c)(3), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 5532 of title 5, referred to in subsec. (c)(3), was repealed by Pub. L. 106–65, div. A, title VI, § 651(a)(1), Oct. 5, 1999, 113 Stat. 664.

CODIFICATION

Section was formerly classified to section 12653h of this title prior to renumbering by Pub. L. 103–82, § 104(b).

AMENDMENTS

1994—Subsec. (c)(2)(C)(i). Pub. L. 103–304 substituted "section 12622(a)(2)" for "section section 12622(a)(2)".

Subsec. (c)(3). Pub. L. 103–337 inserted at end "In the case of a member of the permanent cadre who was recommended for appointment in accordance with section 12622(a)(2)(A) of this title and is entitled to retired or retainer pay, section 5532 of title 5 shall not apply to reduce the member's retired or retainer pay by reason of the member being paid as a member of the cadre."

1993—Subsec. (a). Pub. L. 103–82, § 403(a)(1)(A), (B), substituted "Supervision" for "Board" in heading and "The Chief Executive Officer shall monitor" for "The Board shall monitor" and "the Chief Executive Officer shall—" for "the Board shall—" in introductory provisions.

Pub. L. 103–82, § 104(e)(2)(E)(i)(I), substituted "section 12612" for "section 12653a" in introductory provisions.

Subsec. (a)(1). Pub. L. 103–82, § 403(a)(1)(B), (C), substituted "by the Board" for "by the Director" and "as the Chief Executive Officer" for "as the Board".

Subsec. (a)(2). Pub. L. 103–82, § 104(e)(2)(E)(i)(II), substituted "section 12611" for "section 12653".

Subsec. (b). Pub. L. 103–82, § 403(a)(2), substituted "Monitoring and coordination" for "Executive Director" in heading and "The Chief Executive Officer shall" for "The Executive Director of the Commission on National and Community Service shall" in introductory provisions.

Subsec. (b)(2). Pub. L. 103–82, § 402(b)(1), substituted "by the Corporation" for "by the Commission".

Subsec. (c)(1)(A). Pub. L. 103–82, § 403(a)(3)(A), (b), substituted "the Chief Executive Officer shall appoint a Director" for "the Board, in consultation with the Ex-

ecutive Director, shall appoint a Director of the Civilian Community Corps''.

Subsec. (c)(1)(B)(iii). Pub. L. 103–82, § 403(a)(3)(B), substituted ''the Chief Executive Officer'' for ''the Board through the Executive Director''.

Subsec. (c)(2)(C)(i). Pub. L. 103–82, § 104(e)(2)(E)(ii), substituted ''section 12622(a)(2)'' for ''12653k(a)(2)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(E) of Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

§ 12620. Status of Corps members and Corps personnel under Federal law

(a) In general

Except as otherwise provided in this section, members of the Civilian Community Corps shall not, by reason of their status as such members, be considered Federal employees or be subject to the provisions of law relating to Federal employment.

(b) Work-related injuries

(1) In general

For purposes of subchapter I of chapter 81 of title 5 relating to the compensation of Federal employees for work injuries, members of the Corps shall be considered as employees of the United States within the meaning of the term ''employee'', as defined in section 8101 of such title.

(2) Special rule

In the application of the provisions of subchapter I of chapter 81 of title 5 to a person referred to in paragraph (1), the person shall not be considered to be in the performance of duty while absent from the person's assigned post of duty unless the absence is authorized in accordance with procedures prescribed by the Director.

(c) Tort claims procedure

A member of the Corps shall be considered an employee of the United States for purposes of chapter 171 of title 28 relating to tort claims liability and procedure.

(Pub. L. 101–610, title I, § 160, formerly § 195I, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2530; renumbered § 160, Pub. L. 103–82, title I, § 104(b), Sept. 21, 1993, 107 Stat. 840.)

CODIFICATION

Section was formerly classified to section 12653i of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 160 of Pub. L. 101–610 was classified to section 12611 of this title prior to repeal by Pub. L. 103–82, § 104(a).

§ 12621. Contract and grant authority

(a) Programs

The Director may, by contract or grant, provide for any public or private organization to perform any program function under this division.

(b) Equipment and facilities

(1) Federal and National Guard property

The Director shall enter into agreements, as necessary, with the Secretary of Defense, the Governor of a State, territory or commonwealth, or the commanding general of the District of Columbia National Guard, as the case may be, to utilize—

(A) equipment of the Department of Defense and equipment of the National Guard; and

(B) Department of Defense facilities and National Guard facilities identified pursuant to section 12622(a)(3) of this title.

(2) Other property

The Director may enter into contracts or agreements for the use of other equipment or facilities to the extent practicable to train and house members of the Civilian Community Corps and leaders of Corps units.

(Pub. L. 101–610, title I, § 161, formerly § 195J, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2530; renumbered § 161 and amended Pub. L. 103–82, title I, § 104(b), (e)(2)(F), Sept. 21, 1993, 107 Stat. 840, 847.)

CODIFICATION

Section was formerly classified to section 12653j of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 12621, Pub. L. 101–610, title I, § 165, Nov. 16, 1990, 104 Stat. 3159, related to rural youth service demonstration project, prior to repeal by Pub. L. 103–82, § 104(a).

A prior section 161 of Pub. L. 101–610 was classified to section 12612 of this title prior to repeal by Pub. L. 103–82.

AMENDMENTS

1993—Subsec. (b)(1)(B). Pub. L. 103–82, § 104(e)(2)(F), substituted ''section 12622(a)(3)'' for ''section 12653k(a)(3)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12622. Responsibilities of other departments

(a) Secretary of Defense

(1) Liaison office

(A) Establishment

Upon the establishment of the Program, the Secretary of Defense shall establish an office to provide for liaison between the Secretary and the Civilian Community Corps.

(B) Duties

The office shall—

(i) in order to assist in the recruitment of personnel for appointment in the permanent cadre, make available to the Director information in the registry established by section 1143a of title 10; and

(ii) provide other assistance in the coordination of Department of Defense activities with the Corps.

(2) Corps cadre

(A) List of recommended personnel

Upon the establishment of the Program, the Secretary of Defense, in consultation with the liaison office established under paragraph (1) shall develop a list of individuals to be recommended for appointment in the permanent cadre of Corps personnel. Such personnel shall be selected from among members and former members of the Armed Forces referred to in section 12611(3) of this title who are commissioned officers, noncommissioned officers, former commissioned officers, or former noncommissioned officers.

(B) Recommendations regarding grade and pay

The Secretary of Defense shall recommend to the Director an appropriate rate of pay for each person recommended for the cadre pursuant to this paragraph.

(C) Contribution for retired member's pay

If a listed individual receiving retired or retainer pay is appointed to a position in the cadre and the rate of pay for that individual is established at the amount equal to the difference between the active duty pay and allowances which that individual would receive if ordered to active duty and the amount of the individual's retired or retainer pay, the Secretary of Defense shall pay, by transfer to the Corporation from amounts available for pay of active duty members of the Armed Forces, the amount equal to 50 percent of that individual's rate of pay for service in the cadre.

(3) Facilities

Upon the establishment of the Program, the Secretary of Defense shall identify military installations and other facilities of the Department of Defense and, in consultation with the adjutant generals of the State National Guards, National Guard facilities that may be used, in whole or in part, by the Civilian Community Corps for training or housing Corps members. The Secretary of Defense shall carry out this paragraph in consultation with the liaison office established under paragraph (1).

(4) Information regarding Corps

The Secretary of Defense may permit Armed Forces recruiters to inform potential applicants for the Corps regarding service in the Corps as an alternative to service in the Armed Forces.

(b) Secretary of Labor

Upon the establishment of the Program, the Secretary of Labor shall identify and assist in establishing a system for the recruitment of persons to serve as members of the Civilian Community Corps. In carrying out this subsection, the Secretary of Labor may utilize the Employment Service Agency or the Office of Job Training.

(Pub. L. 101–610, title I, § 162, formerly § 195K, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2531; renumbered § 162 and amended Pub. L. 103–82, title I, § 104(b), (e)(2)(G), title IV, § 402(b)(2), Sept. 21, 1993, 107 Stat. 840, 847, 919; Pub. L. 103–304, § 3(b)(5)(C), Aug. 23, 1994, 108 Stat. 1567.)

CODIFICATION

Section was formerly classified to section 12653k of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 12622, Pub. L. 101–610, title I, § 166, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 102–384, § 8, Oct. 5, 1992, 106 Stat. 1456, related to assistance for Head Start programs, prior to repeal by Pub. L. 103–82, § 104(a).

A prior section 162 of Pub. L. 101–610 was classified to section 12613 of this title prior to repeal by Pub. L. 103–82.

AMENDMENTS

1994—Subsec. (a)(1)(B)(i). Pub. L. 103–304, which directed the substitution of ''section 1143a of title 10'' for ''section 4462 of the National Defense Authorization Act for Fiscal Year 1993'' in subsec. (a)(1)(B)(ii) of this section, was executed by making the substitution in subsec. (a)(1)(B)(i) of this section to reflect the probable intent of Congress.

1993—Subsec. (a)(2)(A). Pub. L. 103–82, § 104(e)(2)(G), substituted ''section 12611(3)'' for ''section 12653(3)''.

Subsec. (a)(2)(C). Pub. L. 103–82, § 402(b)(2), substituted ''Corporation'' for ''Commission on National and Community Service''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(G) of Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(2) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

§ 12623. Advisory Board

(a) Establishment and purpose

Upon the establishment of the Program, there shall also be established a Civilian Community Corps Advisory Board to advise the Director concerning the administration of this division and to assist in the development and administration of the Corps.

(b) Membership

The Advisory Board shall be composed of the following members:

(1) The Secretary of Labor.

(2) The Secretary of Defense.

(3) The Secretary of the Interior.

(4) The Secretary of Agriculture.

(5) The Secretary of Education.

(6) The Secretary of Housing and Urban Development.

(7) The Chief of the National Guard Bureau.

(8) Individuals appointed by the Director from among persons who are broadly representative of educational institutions, voluntary organizations, industry, youth, and labor unions.

(9) The Chief Executive Officer.

(c) Inapplicability of termination requirement

Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Board.

(Pub. L. 101–610, title I, § 163, formerly § 195L, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1),

Oct. 23, 1992, 106 Stat. 2532; renumbered § 163 and amended Pub. L. 103–82, title I, § 104(b), title IV, §§ 402(b)(3), 403(b), Sept. 21, 1993, 107 Stat. 840, 919, 920.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (c), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was formerly classified to section 12653*l* of this title prior to renumbering by Pub. L. 103–82.

PRIOR PROVISIONS

A prior section 12623, Pub. L. 101–610, title I, § 167, Nov. 16, 1990, 104 Stat. 3159, related to employer-based retiree volunteer programs, prior to repeal by Pub. L. 103–82, title I, § 104(a), Sept. 21, 1993, 107 Stat. 840.

A prior section 163 of Pub. L. 101–610 was classified to section 12614 of this title prior to repeal by Pub. L. 103–82.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 403(b), substituted ''Director'' for ''Director of the Civilian Community Corps''.

Subsec. (b)(9). Pub. L. 103–82, § 402(b)(3), substituted ''Chief Executive Officer'' for ''Chair of the Commission on National and Community Service''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(3) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

§ 12624. Annual evaluation

Pursuant to the provisions for evaluations conducted under section 12639 of this title, and in particular subsection (g) of such section, the Corporation shall conduct an annual evaluation of the Civilian Community Corps programs authorized under this division.

(Pub. L. 101–610, title I, § 164, formerly § 195M, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2532; renumbered § 164 and amended Pub. L. 103–82, title I, § 104(b), title IV, § 402(b)(2), Sept. 21, 1993, 107 Stat. 840, 919.)

CODIFICATION

Section was formerly classified to section 12653m of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 164 of Pub. L. 101–610 was classified to section 12615 of this title prior to repeal by Pub. L. 103–82, § 104(a).

AMENDMENTS

1993—Pub. L. 103–82, § 402(b)(2), substituted ''Corporation'' for ''Commission on National and Community Service''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(2) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

§ 12625. Funding limitation

The Corporation, in consultation with the Director, shall ensure that no amounts appropriated under section 12681 of this title are utilized to carry out this division.

(Pub. L. 101–610, title I, § 165, formerly § 195N, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2532; renumbered § 165 and amended Pub. L. 103–82, title I, § 104(b), title IV, § 402(b)(1), Sept. 21, 1993, 107 Stat. 840, 918.)

CODIFICATION

Section was formerly classified to section 12653n of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 165 of Pub. L. 101–610 was classified to section 12621 of this title prior to repeal by Pub. L. 103–82, § 104(a).

AMENDMENTS

1993—Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(1) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

§ 12626. Definitions

In this division:

(1) Board

The term ''Board'' means the Board of Directors of the Corporation.

(2) Corps

The terms ''Civilian Community Corps'' and ''Corps'' mean the Civilian Community Corps required under section 12615 of this title as part of the Civilian Community Corps Demonstration Program.

(3) Corps camp

The term ''Corps camp'' means the facility or central location established as the operational headquarters and boarding place for particular Corps units.

(4) Corps members

The term ''Corps members'' means persons receiving training and participating in projects under the Civilian Community Corps Demonstration Program.

(5) Director

The term ''Director'' means the Director of the Civilian Community Corps.

(6) Institution of higher education

The term ''institution of higher education'' has the meaning given that term in section 1001 of title 20.

(7) Program

The terms ''Civilian Community Corps Demonstration Program'' and ''Program'' mean the Civilian Community Corps Demonstration Program established pursuant to section 12612 of this title.

(8) Service learning

The term ''service learning'', with respect to Corps members, means a method—

(A) under which Corps members learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs;

(B) that provides structured time for a Corps member to think, talk, or write about

what the Corps member did and saw during an actual service activity;

(C) that provides Corps members with opportunities to use newly acquired skills and knowledge in real life situations in their own communities; and

(D) that helps to foster the development of a sense of caring for others, good citizenship, and civic responsibility.

(9) Superintendent

The term ''superintendent'', with respect to a Corps camp, means the head of the camp under section 12615(d) of this title.

(10) Unit

The term ''unit'' means a unit of the Corps referred to in section 12615(c) of this title.

(Pub. L. 101–610, title I, § 166, formerly § 195O, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2532; renumbered § 166 and amended Pub. L. 103–82, title I, § 104(b), (e)(2)(H), title IV, §§ 402(b)(2), 403(a)(4), Sept. 21, 1993, 107 Stat. 840, 847, 919; Pub. L. 105–244, title I, § 102(a)(13)(L), Oct. 7, 1998, 112 Stat. 1621.)

CODIFICATION

Section was formerly classified to section 12653*o* of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 166 of Pub. L. 101–610 was classified to section 12622 of this title prior to repeal by Pub. L. 103–82, § 104(a).

AMENDMENTS

1998—Par. (6). Pub. L. 105–244 substituted ''section 1001'' for ''section 1141(a)''.

1993—Par. (1). Pub. L. 103–82, § 402(b)(2), substituted ''Corporation'' for ''Commission on National and Community Service''.

Par. (2). Pub. L. 103–82, § 104(e)(2)(H)(i), substituted ''section 12615'' for ''section 12653d''.

Par. (6). Pub. L. 103–82, § 403(a)(4), which directed amendment of par. (6) of this section by striking par. (6) and redesignating par. (7) of this section as (6) was executed by redesignating par. (7) of this section as (6) and striking out former par. (6) which defined ''Executive Director'' as Executive Director of Commission on National and Community Service, to reflect the probable intent of Congress.

Par. (7). Pub. L. 103–82, § 403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (8) as (7) was executed by redesignating par. (8) of this section as (7), to reflect the probable intent of Congress. Former par. (7) redesignated (6).

Par. (8). Pub. L. 103–82, § 403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (9) as (8) was executed by redesignating par. (9) of this section as (8), to reflect the probable intent of Congress. Former par. (8) redesignated (7).

Pub. L. 103–82, § 104(e)(2)(H)(ii), substituted ''section 12612'' for ''section 12653a''.

Par. (9). Pub. L. 103–82, § 403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (10) as (9) was executed by redesignating par. (10) of this section as (9), to reflect the probable intent of Congress. Former par. (9) redesignated (8).

Par. (10). Pub. L. 103–82, § 403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (11) as (10) was executed by redesignating par. (11) of this section as (10), to reflect the probable intent of Congress. Former par. (10) redesignated (9).

Pub. L. 103–82, § 104(e)(2)(H)(iii), substituted ''section 12615(d)'' for ''section 12653d(d)''.

Par. (11). Pub. L. 103–82, § 403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (11) as (10) was executed by redesignating par. (11) of this section as (10), to reflect the probable intent of Congress.

Pub. L. 103–82, § 104(e)(2)(H)(iv), substituted ''section 12615(c)'' for ''section 12653d(c)''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(H) of Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(2) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

Division F—Administrative Provisions

§ 12631. Family and medical leave

(a) Participants in private, State, and local projects

For purposes of title I of the Family and Medical Leave Act of 1993 [29 U.S.C. 2611 et seq.], if—

(1) a participant has provided service for the period required by section 101(2)(A)(i) (29 U.S.C. 2611(2)(A)(i)), and has met the hours of service requirement of section 101(2)(A)(ii), of such Act with respect to a project; and

(2) the service sponsor of the project is an employer described in section 101(4) of such Act (other than an employing agency within the meaning of subchapter V of chapter 63 of title 5),

the participant shall be considered to be an eligible employee of the service sponsor.

(b) Participants in Federal projects

For purposes of subchapter V of chapter 63 of title 5, if—

(1) a participant has provided service for the period required by section 6381(1)(B) of such title with respect to a project; and

(2) the service sponsor of the project is an employing agency within the meaning of such subchapter,

the participant shall be considered to be an employee of the service sponsor.

(c) Treatment of absence

The period of any absence of a participant from a service position pursuant to title I of the Family and Medical Leave Act of 1993 [29 U.S.C. 2611 et seq.] or subchapter V of chapter 63 of title 5 shall not be counted toward the completion of the term of service of the participant under section 12593 of this title.

(Pub. L. 101–610, title I, § 171, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 103–82, title I, § 113(a), Sept. 21, 1993, 107 Stat. 861.)

REFERENCES IN TEXT

The Family and Medical Leave Act of 1993, referred to in subsecs. (a) and (c), is Pub. L. 103–3, Feb. 5, 1993, 107 Stat. 6. Title I of the Act is classified generally to subchapter I (§ 2611 et seq.) of chapter 28 of Title 29, Labor.

For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 29 and Tables.

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, substituting provisions relating to family and medical leave for provisions relating to limitation on number of grants under this subchapter.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12632. Reports

(a) State reports

(1) In general

Each State receiving assistance under this subchapter shall prepare and submit, to the Corporation, an annual report concerning the use of assistance provided under this subchapter and the status of the national and community service programs that receive assistance under such subchapter in such State.

(2) Local grantees

Each State may require local grantees that receive assistance under this subchapter to supply such information to the State as is necessary to enable the State to complete the report required under paragraph (1), including a comparison of actual accomplishments with the goals established for the program, the number of participants in the program, the number of service hours generated, and the existence of any problems, delays or adverse conditions that have affected or will affect the attainment of program goals.

(3) Report demonstrating compliance

(A) In general

Each State receiving assistance under this subchapter shall include information in the report required under paragraph (1) that demonstrates the compliance of the State with the provisions of this chapter, including section 12637 of this title.

(B) Local grantees

Each State may require local grantees to supply such information to the State as is necessary to enable the State to comply with the requirement of paragraph (1).

(4) Availability of report

Reports submitted under paragraph (1) shall be made available to the public on request.

(b) Report to Congress by Corporation

(1) In general

Not later than 120 days after the end of each fiscal year, the Corporation shall prepare and submit, to the appropriate authorizing and appropriation Committees of Congress, a report concerning the programs that receive assistance under the national service laws.

(2) Content

Reports submitted under paragraph (1) shall contain a summary of the information contained in the State reports submitted under subsection (a) of this section, and shall reflect the findings and actions taken as a result of any evaluation conducted by the Corporation.

(c) Report to Congress by Secretary of Defense

(1) Study

The Secretary of Defense shall annually conduct a study of the effect of the programs carried out under this subchapter on recruitment for the Armed Forces.

(2) Report

The Secretary of Defense shall annually submit a report to the appropriate committees of Congress containing the findings of the study described in paragraph (1) and such recommendations for legislative and administrative reform as the Secretary may determine to be appropriate.

(Pub. L. 101–610, title I, § 172, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 103–82, title I, § 114, title IV, § 402(b)(1), Sept. 21, 1993, 107 Stat. 861, 918.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(3)(A), was in the original ''this Act'', meaning Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended, known as the National and Community Service Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission''.

Subsec. (a)(3)(A). Pub. L. 103–82, § 114(1), substituted ''section 12637'' for ''sections 12637 and 12523(9)''.

Subsec. (b). Pub. L. 103–82, § 114(2)(A), substituted ''Report to Congress by Corporation'' for ''Report to Congress'' in heading.

Subsec. (b)(1). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission''.

Pub. L. 103–82, § 114(2)(B), substituted ''the national service laws'' for ''this subchapter''.

Subsec. (b)(2). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission''.

Subsec. (c). Pub. L. 103–82, § 114(3), added subsec. (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 114 of Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

§ 12633. Supplementation

(a) In general

Assistance provided under this subchapter shall be used to supplement the level of State and local public funds expended for services of the type assisted under this subchapter in the previous fiscal year.

(b) Aggregate expenditure

Subsection (a) of this section shall be satisfied, with respect to a particular program, if the aggregate expenditure for such program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure for such program in the previous fiscal year, excluding the amount of Federal assistance provided and any other amounts used to pay the remainder of the costs of programs assisted under this subchapter.

(Pub. L. 101–610, title I, § 173, Nov. 16, 1990, 104 Stat. 3160.)

§ 12634. Prohibition on use of funds

(a) Prohibited uses

No assistance made available under a grant under this subchapter shall be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(b) Political activity

Assistance provided under this subchapter shall not be used by program participants and program staff to—

(1) assist, promote, or deter union organizing; or

(2) finance, directly or indirectly, any activity designed to influence the outcome of an election to Federal office or the outcome of an election to a State or local public office.

(c) Contracts or collective bargaining agreements

A program that receives assistance under this subchapter shall not impair existing contracts for services or collective bargaining agreements.

(Pub. L. 101–610, title I, § 174, Nov. 16, 1990, 104 Stat. 3160.)

§ 12635. Nondiscrimination

(a) In general

(1) Basis

An individual with responsibility for the operation of a project that receives assistance under this subchapter shall not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or member, or on the basis of disability, if the participant or member is a qualified individual with a disability.

(2) "Qualified individual with a disability" defined

As used in paragraph (1), the term ''qualified individual with a disability'' has the meaning given the term in section 12111(8) of this title.

(b) Federal financial assistance

Any assistance provided under this subchapter shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and shall constitute Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Religious discrimination

(1) In general

Except as provided in paragraph (2), an individual with responsibility for the operation of a project that receives assistance under this subchapter shall not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with funds received under this subchapter.

(2) Exception

Paragraph (1) shall not apply to the employment, with assistance provided under this subchapter, of any member of the staff, of a project that receives assistance under this subchapter, who was employed with the organization operating the project on the date the grant under this subchapter was awarded.

(d) Rules and regulations

The Chief Executive Officer shall promulgate rules and regulations to provide for the enforcement of this section that shall include provisions for summary suspension of assistance for not more than 30 days, on an emergency basis, until notice and an opportunity to be heard can be provided.

(Pub. L. 101–610, title I, § 175, Nov. 16, 1990, 104 Stat. 3161; Pub. L. 103–82, title I, § 115, Sept. 21, 1993, 107 Stat. 862.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (b), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (b), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, making revisions relating to discrimination based on disability, the laws for which assistance under this subchapter constitutes Federal financial assistance, and the responsibility for promulgating regulations.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12636. Notice, hearing, and grievance procedures

(a) In general

(1) Suspension of payments

The Corporation may in accordance with the provisions of this subchapter, suspend or terminate payments under a contract or grant providing assistance under this subchapter, or revoke the designation of positions, related to the grant or contract, as approved national service positions, whenever the Corporation determines there is a material failure to comply with this subchapter or the applicable

terms and conditions of any such grant or contract issued pursuant to this subchapter.

(2) Procedures to ensure assistance

The Corporation shall prescribe procedures to ensure that—

(A) assistance provided under this subchapter shall not be suspended for failure to comply with the applicable terms and conditions of this subchapter except, in emergency situations, a suspension may be granted for 30 days; and

(B) assistance provided under this subchapter shall not be terminated or revoked for failure to comply with applicable terms and conditions of this subchapter unless the recipient of such assistance has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) Hearings

Hearings or other meetings that may be necessary to fulfill the requirements of this section shall be held at locations convenient to the recipient of assistance under this subchapter.

(c) Transcript or recording

A transcript or recording shall be made of a hearing conducted under this section and shall be available for inspection by any individual.

(d) State legislation

Nothing in this subchapter shall be construed to preclude the enactment of State legislation providing for the implementation, consistent with this subchapter, of the programs administered under this subchapter.

(e) Construction

Nothing in this subchapter shall be construed to link performance of service with receipt of Federal student financial assistance, other than assistance provided pursuant to this chapter.

(f) Grievance procedure

(1) In general

A State or local applicant that receives assistance under this subchapter shall establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning projects that receive assistance under this subchapter, including grievances regarding proposed placements of such participants in such projects.

(2) Deadline for grievances

Except for a grievance that alleges fraud or criminal activity, a grievance shall be made not later than 1 year after the date of the alleged occurrence of the event that is the subject of the grievance.

(3) Deadline for hearing and decision

(A) Hearing

A hearing on any grievance conducted under this subsection shall be conducted not later than 30 days after the filing of such grievance.

(B) Decision

A decision on any such grievance shall be made not later than 60 days after the filing of such grievance.

(4) Arbitration

(A) In general

(i) Jointly selected arbitrator

In the event of a decision on a grievance that is adverse to the party who filed such grievance, or 60 days after the filing of such grievance if no decision has been reached, such party shall be permitted to submit such grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

(ii) Appointed arbitrator

If the parties cannot agree on an arbitrator, the Chief Executive Officer shall appoint an arbitrator from a list of qualified arbitrators within 15 days after receiving a request for such appointment from one of the parties to the grievance.

(B) Deadline for proceeding

An arbitration proceeding shall be held not later than 45 days after the request for such arbitration proceeding, or, if the arbitrator is appointed by the Chief Executive Officer in accordance with subparagraph (A)(ii), not later than 30 days after the appointment of such arbitrator.

(C) Deadline for decision

A decision concerning a grievance shall be made not later than 30 days after the date such arbitration proceeding begins.

(D) Cost

(i) In general

Except as provided in clause (ii), the cost of an arbitration proceeding shall be divided evenly between the parties to the arbitration.

(ii) Exception

If a participant, labor organization, or other interested individual described in paragraph (1) prevails under a binding arbitration proceeding, the State or local applicant described in paragraph (1) that is a party to such grievance shall pay the total cost of such proceeding and the attorneys' fees of such participant, labor organization, or individual, as the case may be.

(5) Proposed placement

If a grievance is filed regarding a proposed placement of a participant in a project that receives assistance under this subchapter, such placement shall not be made unless the placement is consistent with the resolution of the grievance pursuant to this subsection.

(6) Remedies

Remedies for a grievance filed under this subsection include—

(A) suspension of payments for assistance under this subchapter;

(B) termination of such payments;

(C) prohibition of the placement described in paragraph (5); and

(D) in a case in which the grievance involves a violation of subsection (a) or (b) of section 12637 of this title and the employer

of the displaced employee is the recipient of assistance under this subchapter—

(i) reinstatement of the displaced employee to the position held by such employee prior to displacement;

(ii) payment of lost wages and benefits of the displaced employee;

(iii) reestablishment of other relevant terms, conditions, and privileges of employment of the displaced employee; and

(iv) such equitable relief as is necessary to correct any violation of subsection (a) or (b) of section 12637 of this title or to make the displaced employee whole.

(7) Enforcement

Suits to enforce arbitration awards under this section may be brought in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy and without regard to the citizenship of the parties.

(Pub. L. 101–610, title I, § 176, Nov. 16, 1990, 104 Stat. 3161; Pub. L. 103–82, title I, § 116, title IV, § 402(b)(1), Sept. 21, 1993, 107 Stat. 863, 918.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission'' in two places.

Pub. L. 103–82, § 116(a)(1), inserted '', or revoke the designation of positions, related to the grant or contract, as approved national service positions,'' after ''assistance under this subchapter''.

Subsec. (a)(2). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 103–82, § 116(a)(2), inserted ''or revoked'' after ''terminated''.

Subsec. (e). Pub. L. 103–82, § 116(b), inserted before period at end '', other than assistance provided pursuant to this chapter''.

Subsec. (f). Pub. L. 103–82, § 116(c), amended subsec. (f) generally, substituting pars. (1) to (6) for former pars. (1) to (6) relating to same subjects and adding par. (7).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 116 of Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

§ 12637. Nonduplication and nondisplacement

(a) Nonduplication

(1) In general

Assistance provided under this subchapter shall be used only for a program that does not duplicate, and is in addition to, an activity otherwise available in the locality of such program.

(2) Private nonprofit entity

Assistance made available under this subchapter shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of subsection (b) of this section are met.

(b) Nondisplacement

(1) In general

An employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving assistance under this subchapter.

(2) Service opportunities

A service opportunity shall not be created under this subchapter that will infringe in any manner on the promotional opportunity of an employed individual.

(3) Limitation on services

(A) Duplication of services

A participant in a program receiving assistance under this subchapter shall not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(B) Supplantation of hiring

A participant in any program receiving assistance under this subchapter shall not perform any services or duties, or engage in activities, that—

(i) will supplant the hiring of employed workers; or

(ii) are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.

(C) Duties formerly performed by another employee

A participant in any program receiving assistance under this subchapter shall not perform services or duties that have been performed by or were assigned to any—

(i) presently employed worker;

(ii) employee who recently resigned or was discharged;

(iii) employee who—

(I) is subject to a reduction in force; or

(II) has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;

(iv) employee who is on leave (terminal, temporary, vacation, emergency, or sick); or

(v) employee who is on strike or who is being locked out.

(c) Labor market information

The Secretary of Labor shall make available to the Corporation and to any program agency under this subchapter such labor market information as is appropriate for use in carrying out the purposes of this subchapter.

(d) Treatment of benefits

Allowances, earnings, and payments to individuals participating in programs that receive assistance under this subchapter shall not be considered to be income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based

on need, other than as provided under the Social Security Act (42 U.S.C. 301 et seq.).

(e) Standards of conduct

Programs that receive assistance under this subchapter shall establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

(Pub. L. 101–610, title I, § 177, Nov. 16, 1990, 104 Stat. 3163; Pub. L. 103–82, title I, § 117, title IV, § 402(b)(1), Sept. 21, 1993, 107 Stat. 864, 918; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(42)(A)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–427.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–277 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: ''Section 142(b) of the Job Training Partnership Act shall apply to the projects conducted under this subchapter as such projects were conducted under the Job Training Partnership Act.''

1993—Subsec. (b)(3)(B). Pub. L. 103–82, § 117(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''A participant in any program receiving assistance under this subchapter shall not perform any services or duties or engage in activities that will supplant the hiring of employed workers.''

Subsec. (b)(3)(C)(iii). Pub. L. 103–82, § 117(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''employee who is subject to a reduction in force;''.

Subsec. (c). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 117 of Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

§ 12638. State Commissions on National and Community Service

(a) Existence required

(1) State Commission

Except as provided in paragraph (2), to be eligible to receive a grant or allotment under division B or C of this subchapter or to receive a distribution of approved national service positions under division C of this subchapter, a State shall maintain a State Commission on National and Community Service that satisfies the requirements of this section.

(2) Alternative administrative entity

The chief executive officer of a State may apply to the Corporation for approval to use an alternative administrative entity to carry out the duties otherwise entrusted to a State Commission under this chapter. The chief executive officer shall ensure that any alternative administrative entity used in lieu of a State Commission provides for the individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) of this section to play a significant policymaking role in carrying out the duties otherwise entrusted to a State Commission, including the submission of applications on behalf of the State under sections 12543 and 12582 of this title.

(b) Appointment and size

Except as provided in subsection (c)(3) of this section, the members of a State Commission for a State shall be appointed by the chief executive officer of the State. A State Commission shall consist of not fewer than 15, and not more than 25, voting members, and any ex officio nonvoting members, as described in paragraph (3) or (4) of subsection (c) of this section.

(c) Composition and membership

(1) Required members

The State Commission for a State shall include as voting members at least one of each of the following individuals:

(A) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth.

(B) An individual with experience in promoting the involvement of older adults in service and voluntarism.

(C) A representative of community-based agencies or community-based organizations within the State.

(D) The head of the State educational agency.

(E) A representative of local governments in the State.

(F) A representative of local labor organizations in the State.

(G) A representative of business.

(H) An individual between the ages of 16 and 25 who is a participant or supervisor in a program.

(I) A representative of a national service program described in section 12572(a) of this title, such as a youth corps program described in section 12572(a)(2) of this title.

(2) Sources of other members

The State Commission for a State may include as voting members the following individuals:

(A) Members selected from among local educators.

(B) Members selected from among experts in the delivery of human, educational, environmental, or public safety services to communities and persons.

(C) Representatives of Indian tribes.

(D) Members selected from among out-of-school youth or other at-risk youth.

(E) Representatives of entities that receive assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(3) Corporation representative

The representative of the Corporation designated under section 12651f(c) of this title for a State shall be an ex officio nonvoting member of the State Commission or alternative administrative entity for that State, unless the State permits the representative to serve as a

voting member of the State Commission or alternative administrative entity.

(4) Ex officio State representatives

The chief executive officer of a State may appoint, as ex officio nonvoting members of the State Commission for the State, representatives selected from among officers and employees of State agencies operating community service, youth service, education, social service, senior service, and job training programs.

(5) Limitation on number of State employees as members

The number of voting members of a State Commission selected under paragraph (1) or (2) who are officers or employees of the State may not exceed 25 percent (reduced to the nearest whole number) of the total membership of the State Commission.

(d) Miscellaneous matters

(1) Membership balance

The chief executive officer of a State shall ensure, to the maximum extent practicable, that the membership of the State Commission for the State is diverse with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50 percent of the voting members of a State Commission, plus one additional member, may be from the same political party.

(2) Terms

Each member of the State Commission for a State shall serve for a term of 3 years, except that the chief executive officer of a State shall initially appoint a portion of the members to terms of 1 year and 2 years.

(3) Vacancies

If a vacancy occurs on a State Commission, a new member shall be appointed by the chief executive officer of the State and serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy shall not affect the power of the remaining members to execute the duties of the State Commission.

(4) Compensation

A member of a State Commission or alternative administrative entity shall not receive any additional compensation by reason of service on the State Commission or alternative administrative entity, except that the State may authorize the reimbursement of travel expenses, including a per diem in lieu of subsistence, in the same manner as other employees serving intermittently in the service of the State.

(5) Chairperson

The voting members of a State Commission shall elect one of the voting members to serve as chairperson of the State Commission.

(6) Limitation on member participation

(A) General limitation

Except as provided in subparagraph (B), a voting member of the State Commission (or of an alternative administrative entity) shall not participate in the administration of the grant program (including any discussion or decision regarding the provision of assistance or approved national service positions, or the continuation, suspension, or termination of such assistance or such positions, to any program or entity) described in subsection (e)(9) of this section if—

(i) a grant application relating to such program is pending before the Commission (or such entity); and

(ii) the application was submitted by a program or entity of which such member is, or in the 1-year period before the submission of such application was, an officer, director, trustee, full-time volunteer, or employee.

(B) Exception

If, as a result of the operation of subparagraph (A), the number of voting members of the Commission (or of such entity) is insufficient to establish a quorum for the purpose of administering such program, then voting members excluded from participation by subparagraph (A) may participate in the administration of such program, notwithstanding the limitation in subparagraph (A), to the extent permitted by regulations issued under section 12651d(b)(11) of this title by the Corporation.

(C) Rule of construction

Subparagraph (A) shall not be construed to limit the authority of any voting member of the Commission (or of such entity) to participate in—

(i) discussion of, and hearing and forums on—

(I) the general duties, policies, and operations of the Commission (or of such entity); or

(II) the general administration of such program; or

(ii) similar general matters relating to the Commission (or such entity).

(e) Duties of a State Commission

The State Commission or alternative administrative entity for a State shall be responsible for the following duties:

(1) Preparation of a national service plan for the State that—

(A) is developed through an open and public process (such as through regional forums, hearings, and other means) that provides for maximum participation and input from national service programs within the State and other interested members of the public;

(B) covers a 3-year period;

(C) is updated annually;

(D) ensures outreach to diverse community-based agencies that serve underrepresented populations, by—

(i) using established networks, and registries, at the State level; or

(ii) establishing such networks and registries; and

(E) contains such information as the State Commission considers to be appropriate or as the Corporation may require.

(2) Preparation of the applications of the State under sections 12543 and 12582 of this title for financial assistance.

(3) Assistance in the preparation of the application of the State educational agency for assistance under section 12525 of this title.

(4) Preparation of the application of the State under section 12582 of this title for the approval of service positions that include the national service educational award described in division D of this subchapter.

(5) Make recommendations to the Corporation with respect to priorities for programs receiving assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(6) Make technical assistance available to enable applicants for assistance under section 12571 of this title—

(A) to plan and implement service programs; and

(B) to apply for assistance under the national service laws using, if appropriate, information and materials available through a clearinghouse established under section 12653a of this title.

(7) Assistance in the provision of health care and child care benefits under section 12594 of this title to participants in national service programs that receive assistance under section 12571 of this title.

(8) Development of a State system for the recruitment and placement of participants in programs that receive assistance under the national service laws and dissemination of information concerning national service programs that receive such assistance or approved national service positions.

(9) Administration of the grant program in support of national service programs that is conducted by the State using assistance provided to the State under section 12571 of this title, including selection, oversight, and evaluation of grant recipients.

(10) Development of projects, training methods, curriculum materials, and other materials and activities related to national service programs that receive assistance directly from the Corporation (to be made available in a case in which such a program requests such a project, method, material, or activity) or from the State using assistance provided under section 12571 of this title, for use by programs that request such projects, methods, materials, and activities.

(f) Activity ineligible for assistance

A State Commission or alternative administrative entity may not directly carry out any national service program that receives assistance under section 12571 of this title.

(g) Delegation

Subject to such requirements as the Corporation may prescribe, a State Commission may delegate nonpolicymaking duties to a State agency or public or private nonprofit organization.

(h) Approval of State Commission or alternative

(1) Submission to Corporation

The chief executive officer for a State shall notify the Corporation of the establishment or designation of the State Commission or use of an alternative administrative entity for the State. The notification shall include a description of—

(A) the composition and membership of the State Commission or alternative administrative entity; and

(B) the authority of the State Commission or alternative administrative entity regarding national service activities carried out by the State.

(2) Approval of alternative administrative entity

Any designation of a State Commission or use of an alternative administrative entity to carry out the duties of a State Commission shall be subject to the approval of the Corporation, which shall not be unreasonably withheld. The Corporation shall approve an alternative administrative entity if such entity provides for individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) of this section to play a significant policymaking role in carrying out the duties otherwise entrusted to a State Commission, including the duties described in paragraphs (1) through (4) of subsection (e) of this section.

(3) Rejection

The Corporation may reject a State Commission if the Corporation determines that the composition, membership, or duties of the State Commission do not comply with the requirements of this section. The Corporation may reject a request to use an alternative administrative entity in lieu of a State Commission if the Corporation determines that the entity does not provide for the individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) of this section to play a significant policymaking role as described in paragraph (2). If the Corporation rejects a State Commission or alternative administrative entity under this paragraph, the Corporation shall promptly notify the State of the reasons for the rejection.

(4) Resubmission and reconsideration

The Corporation shall provide a State notified under paragraph (3) with a reasonable opportunity to revise the rejected State Commission or alternative administrative entity. At the request of the State, the Corporation shall provide technical assistance to the State as part of the revision process. The Corporation shall promptly reconsider any resubmission of a notification under paragraph (1) or application to use an alternative administrative entity under paragraph (2).

(5) Subsequent changes

This subsection shall also apply to any change in the composition or duties of a State Commission or an alternative administrative entity made after approval of the State Commission or the alternative administrative entity.

(6) Rights

An alternative administrative entity approved by the Corporation under this sub-

section shall have the same rights as a State Commission.

(i) Coordination

(1) Coordination with other State agencies

The State Commission or alternative administrative entity for a State shall coordinate the activities of the Commission or entity under this chapter with the activities of other State agencies that administer Federal financial assistance programs under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) or other appropriate Federal financial assistance programs.

(2) Coordination with volunteer service programs

(A) In general

The State Commission or alternative administrative entity for a State shall coordinate functions of the Commission or entity (including recruitment, public awareness, and training activities) with such functions of any division of the Corporation that carries out volunteer service programs in the State.

(B) Agreement

In coordinating functions under this paragraph, such Commission or entity, and such division, may enter into an agreement to—

(i) carry out such a function jointly;

(ii) to[1] assign responsibility for such a function to the Commission or entity; or

(iii) to[1] assign responsibility for such a function to the division.

(C) Information

The State Commission or alternative entity for a State, and the head of any such division, shall exchange information about—

(i) the programs carried out in the State by the Commission, entity, or division, as appropriate; and

(ii) opportunities to coordinate activities.

(j) Liability

(1) Liability of State

Except as provided in paragraph (2)(B), a State shall agree to assume liability with respect to any claim arising out of or resulting from any act or omission by a member of the State Commission or alternative administrative entity of the State, within the scope of the service of the member on the State Commission or alternative administrative entity.

(2) Other claims

(A) In general

A member of the State Commission or alternative administrative entity shall have no personal liability with respect to any claim arising out of or resulting from any act or omission by such person, within the scope of the service of the member on the State Commission or alternative administrative entity.

(B) Limitation

This paragraph shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of such member on the State Commission or alternative administrative entity.

(3) Effect on other law

This subsection shall not be construed—

(A) to affect any other immunities and protections that may be available to such member under applicable law with respect to such service;

(B) to affect any other right or remedy against the State under applicable law, or against any person other than a member of the State Commission or alternative administrative entity; or

(C) to limit or alter in any way the immunities that are available under applicable law for State officials and employees not described in this subsection.

(Pub. L. 101–610, title I, § 178, as added and amended Pub. L. 103–82, title II, § 201(a), title IV, § 405(p)(1), Sept. 21, 1993, 107 Stat. 867, 922.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsecs. (c)(2)(E) and (e)(5), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§ 4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Community Services Block Grant Act, referred to in subsec. (i)(1), is subtitle B (§ 671 et seq.) of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§ 9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

PRIOR PROVISIONS

A prior section 12638, Pub. L. 101–610, title I, § 178, Nov. 16, 1990, 104 Stat. 3164; Pub. L. 102–10, § 8(1), Mar. 12, 1991, 105 Stat. 31, provided that States applying for assistance under this subchapter be encouraged to establish a State Advisory Board for National and Community Service and set out additional provisions for membership and duties of such boards, prior to repeal by Pub. L. 103–82, § 201(a).

AMENDMENTS

1993—Subsec. (i)(2)(A). Pub. L. 103–82, § 405(p)(1), substituted ''the Corporation'' for ''ACTION, or of the Corporation,'' before ''that carries out''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 405(p)(1) of Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 201(c) of Pub. L. 103–82 provided that: ''The amendments made by this section [enacting this section and repealing former section 12638 of this title] shall take effect on October 1, 1993.''

TRANSITIONAL PROVISIONS

Section 201(d) of Pub. L. 103–82 provided that:

''(1) USE OF ALTERNATIVES TO STATE COMMISSION.—If a State does not have a State Commission on National and Community Service that satisfies the requirements specified in section 178 of the National and Community

[1] So in original. The word ''to'' probably should not appear.

Service Act of 1990 [42 U.S.C. 12638], as amended by subsection (a), the Corporation for National and Community Service may authorize the chief executive officer of the State to use an existing agency of the State to perform the duties otherwise reserved to a State Commission under subsection (e) of such section.

''(2) APPLICATION OF SUBSECTION.—This subsection shall apply only during the 27-month period beginning on the date of the enactment of this Act [Sept. 21, 1993].''

§ 12639. Evaluation

(a) In general

The Corporation shall provide, through grants or contracts, for the continuing evaluation of programs that receive assistance under the national service laws, including evaluations that measure the impact of such programs, to determine—

(1) the effectiveness of various program models in achieving stated goals and the costs associated with such;

(2) with respect to the programs authorized under division C of this subchapter, the impact of such programs, in each State in which a program is conducted, on the ability of—

(A) the VISTA and National Senior Volunteer Corps programs (established under the Domestic Volunteer Services[1] Act of 1973 (42 U.S.C. 4950 et seq.));

(B) each regular component of the Armed Forces (as defined in section 101(a)(4) of title 10);

(C) each of the reserve components of the Armed Forces (as described in section 10101 of title 10); and

(D) the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.));

to recruit individuals residing in such State to serve in such program; and

(3) the structure and mechanisms for delivery of services for such programs.

(b) Comparisons

The Corporation shall provide for inclusion in the evaluations required under subsection (a) of this section, where appropriate, comparisons of participants in such programs with individuals who have not participated in such programs.

(c) Conducting evaluations

Evaluations of programs under subsection (a) of this section shall be conducted by individuals who are not directly involved in the administration of such program.

(d) Standards

The Corporation shall develop and publish general standards for the evaluation of program effectiveness in achieving the objectives of the national service laws.

(e) Community participation

In evaluating a program receiving assistance under the national service laws, the Corporation shall consider the opinions of participants and members of the communities where services are delivered concerning the strengths and weaknesses of such program.

(f) Comparison of program models

The Corporation shall evaluate and compare the effectiveness of different program models in meeting the program objectives described in subsection (g) of this section including full- and part-time programs, programs involving different types of national service, programs using different recruitment methods, programs offering alternative voucher or post-service benefit options, and programs utilizing individual placements and teams.

(g) Program objectives

The Corporation shall ensure that programs that receive assistance under division C of this subchapter are evaluated to determine their effectiveness in—

(1) recruiting and enrolling diverse participants in such programs, consistent with the requirements of section 12575[2] of this title, based on economic background, race, ethnicity, age, marital status, education levels, and disability;

(2) promoting the educational achievement of each participant in such programs, based on earning a high school diploma or the equivalent of such diploma and the future enrollment and completion of increasingly higher levels of education;

(3) encouraging each participant to engage in public and community service after completion of the program based on career choices and service in other service programs such as the Volunteers in Service to America Program and National Senior Volunteer Corps programs established under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.), the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)), the military, and part-time volunteer service;

(4) promoting of positive attitudes among each participant regarding the role of such participant in solving community problems based on the view of such participant regarding the personal capacity of such participant to improve the lives of others, the responsibilities of such participant as a citizen and community member, and other factors;

(5) enabling each participant to finance a lesser portion of the higher education of such participant through student loans;

(6) providing services and projects that benefit the community;

(7) supplying additional volunteer assistance to community agencies without overloading such agencies with more volunteers than can effectively be utilized;

(8) providing services and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers or impair the existing contracts of such workers; and

(9) attracting a greater number of citizens to public service, including service in the active and reserve components of the Armed Forces, the National Guard, the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)), and the VISTA and National Senior Volunteer Corps programs established under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

[1] So in original. Probably should be ''Service''.

[2] See References in Text note below.

(h) Obtaining information

(1) In general

In conducting the evaluations required under this section, the Corporation may require each program participant and State or local applicant to provide such information as may be necessary to carry out the requirements of this section.

(2) Confidentiality

(A) In general

The Corporation shall maintain the confidentiality of information acquired under this subsection regarding individual participants.

(B) Disclosure

(i) Consent

The content of any information described in subparagraph (A) may be disclosed with the prior written consent of the individual participant with respect to whom the information is maintained.

(ii) Aggregate information

The Corporation may disclose information about the aggregate characteristics of such participants.

(i) Independent evaluation and report of demographics of national service participants and communities

(1) Independent evaluation

(A) In general

The Corporation shall, on an annual basis, arrange for an independent evaluation of the programs assisted under division C of this subchapter.

(B) Participants

(i) In general

The entity conducting such evaluation shall determine the demographic characteristics of the participants in such programs.

(ii) Characteristics

The entity shall determine, for the year covered by the evaluation, the total number of participants in the programs, and the number of participants within the programs in each State, by sex, age, economic background, education level, ethnic group, disability classification, and geographic region.

(iii) Categories

The Corporation shall determine appropriate categories for analysis of each of the characteristics referred to in clause (ii) for purposes of such an evaluation.

(C) Communities

In conducting the evaluation, the entity shall determine the amount of assistance provided under section 12571 of this title during the year that has been expended for projects conducted under the programs in areas described in section 12585(c)(6) of this title.

(2) Report

The entity conducting the evaluation shall submit a report to the President, Congress, the Corporation, and each State Commission containing the results of the evaluation—

(A) with respect to the evaluation covering the year beginning on September 21, 1993, not later than 18 months after September 21, 1993; and

(B) with respect to the evaluation covering each subsequent year, not later than 18 months after the first day of each such year.

(Pub. L. 101–610, title I, § 179, Nov. 16, 1990, 104 Stat. 3164; Pub. L. 102–384, §§ 4, 9, Oct. 5, 1992, 106 Stat. 1455, 1456; Pub. L. 103–82, title I, § 118, title II, § 203(a)(1)(A), title IV, § 402(b)(1), Sept. 21, 1993, 107 Stat. 865, 891, 918; Pub. L. 103–160, div. A, title XI, § 1182(d)(4), Nov. 30, 1993, 107 Stat. 1773; Pub. L. 104–106, div. A, title XV, § 1501(e)(5), Feb. 10, 1996, 110 Stat. 501.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsecs. (a)(2)(D) and (g)(3), (9), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of that Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Section 12575 of this title, referred to in subsec. (g)(1), was in the original a reference to section 145 of Pub. L. 101–610. Section 145 of Pub. L. 101–610 was omitted in the general amendment of subtitle D of title I of Pub. L. 101–610 [former part D of this subchapter] by Pub. L. 103–82, title I, § 102(a), Sept. 21, 1993, 107 Stat. 816. Pub. L. 103–82 enacted a new section 125 of Pub. L. 101–610, relating to training and technical assistance, and a new section 145, relating to establishment of the National Service Trust, which are classified to sections 12575 and sections 12601, respectively, of this title. Provisions relating to the eligibility of individuals for participation in national service programs are now contained in section 12591 et seq. of this title.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (g)(3), (9), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§ 4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(2)(C). Pub. L. 104–106 substituted ''section 10101 of title 10'' for ''section 216(a) of title 5''.

1993—Subsec. (a). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission'' in introductory provisions.

Pub. L. 103–82, § 203(a)(1)(A), substituted ''the national service laws'' for ''this subchapter'' in introductory provisions.

Subsec. (a)(2). Pub. L. 103–82, § 118(1)(A), substituted ''with respect to the programs authorized under division C of this subchapter'' for ''for purposes of the reports required by subsection (j) of this section'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 103–82, § 118(1)(B), substituted ''National Senior Volunteer Corps programs'' for ''older American volunteer programs''.

Subsec. (a)(2)(B). Pub. L. 103–160 substituted ''section 101(a)(4) of title 10'' for ''section 101(4) of title 10''.

Subsec. (b). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission''.

Subsec. (d). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission''.

Pub. L. 103–82, § 203(a)(1)(A), substituted ''the national service laws'' for ''this subchapter''.

Subsec. (e). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission''.

Pub. L. 103–82, § 203(a)(1)(A), substituted ''the national service laws'' for ''this subchapter''.

Subsec. (f). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission''.

Subsec. (g). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission'' in introductory provisions.

Pub. L. 103–82, § 118(2)(A), substituted ''division C of this subchapter'' for ''part D of this subchapter'' in introductory provisions.

Subsec. (g)(3), (9). Pub. L. 103–82, § 118(2)(B), substituted ''National Senior Volunteer Corps programs'' for ''older American volunteer programs''.

Subsec. (h)(1), (2)(A), (B)(ii). Pub. L. 103–82, § 402(b)(1), substituted ''Corporation'' for ''Commission''.

Subsecs. (i), (j). Pub. L. 103–82, § 118(3), (4), added subsec. (i) and struck out former subsecs. (i) and (j) which related to deadline and report, respectively.

1992—Subsec. (a)(2). Pub. L. 102–384, § 9(1), substituted ''subsection (j)'' for ''subsection (h)''.

Subsec. (d). Pub. L. 102–384, § 4, substituted ''Commission'' for ''Secretary''.

Subsec. (f). Pub. L. 102–384, § 9(2), inserted ''or post-service benefit'' after ''voucher''.

Subsec. (h)(1). Pub. L. 102–384, § 9(3)(A), substituted ''this section'' for ''subsection (g) of this section''.

Subsec. (h)(2). Pub. L. 102–384, § 9(3)(B), added par. (2) and struck out former par. (2) which read as follows: ''The Commission shall keep information acquired under this section confidential.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 118 of Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 203(a)(1)(A) of Pub. L. 103–82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103–82, set out as a note under section 12651 of this title.

Amendment by section 402(b)(1) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

§ 12640. Engagement of participants

A State shall not engage a participant to serve in any program that receives assistance under this subchapter unless and until amounts have been appropriated under section 12681 of this title for the provision of national service educational awards and for the payment of other necessary expenses and costs associated with such participant.

(Pub. L. 101–610, title I, § 180, Nov. 16, 1990, 104 Stat. 3166; Pub. L. 103–82, title I, § 119, Sept. 21, 1993, 107 Stat. 866.)

AMENDMENTS

1993—Pub. L. 103–82 substituted ''national service educational awards'' for ''post-service benefits''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12641. Contingent extension

Section 1226a[1] of title 20 shall apply to this chapter.

(Pub. L. 101–610, title I, § 181, Nov. 16, 1990, 104 Stat. 3166; Pub. L. 103–82, title I, § 120(a), Sept. 21, 1993, 107 Stat. 866.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 1226a of title 20, referred to in text, was in the original a reference to section 414 of the General Education Provisions Act. Section 414 of that Act was renumbered as section 422 by Pub. L. 103–382, title II, § 212(b)(1), Oct. 20, 1994, 108 Stat. 3913, and is classified to section 1226a of Title 20, Education.

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, reenacting subsec. (c) as entire section and striking out former subsecs. (a) and (b) which related to treatment of education and housing benefits and treatment of stipend for living expenses, respectively.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12642. Partnerships with schools

(a) Design of programs

The head of each Federal agency and department shall design and implement a comprehensive strategy to involve employees of such agencies and departments in partnership programs with elementary schools and secondary schools. Such strategy shall include—

(1) a review of existing programs to identify and expand the opportunities for such employees to be adult volunteers in schools and for students and out-of-school youth;

(2) the designation of a senior official in each such agency and department who will be responsible for establishing partnership and youth service programs in each such agency and department and for developing partnership and youth service programs;

(3) the encouragement of employees of such agencies and departments to participate in partnership programs and other service projects;

(4) the annual recognition of outstanding service programs operated by Federal agencies; and

(5) the encouragement of businesses and professional firms to include community service among the factors considered in making hiring, compensation, and promotion decisions.

(b) Report

Not later than 180 days after November 16, 1990, and on a regular basis thereafter, the head of each Federal agency and department shall prepare and submit, to the appropriate Committees of Congress, a report concerning the implementation of this section.

(Pub. L. 101–610, title I, § 182, Nov. 16, 1990, 104 Stat. 3167; Pub. L. 103–82, title I, § 111(b)(1), (2), Sept. 21, 1993, 107 Stat. 860.)

AMENDMENTS

1993—Subsec. (a)(2), (3). Pub. L. 103–82 substituted ''partnership'' for ''adult volunteer and partnership'' wherever appearing.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12643. Rights of access, examination, and copying

(a) Comptroller General

The Comptroller General, or any of the duly authorized representatives of the Comptroller General, shall have access to, and the right to examine and copy, any books, documents, papers, records, and other recorded information in any form—

(1) within the possession or control of the Corporation or any State or local government, Indian tribe, or public or private nonprofit organization receiving assistance directly or indirectly under this chapter; and

(2) that the Comptroller General, or his representative, considers necessary to the performance of an evaluation, audit, or review.

(b) Chief Financial Officer

The Chief Financial Officer of the Corporation shall have access to, and the right to examine and copy, any books, documents, papers, records, and other recorded information in any form—

(1) within the possession or control of the Corporation or any State or local government, Indian tribe, or public or private nonprofit organization receiving assistance directly or indirectly under this chapter; and

(2) that relates to the duties of the Chief Financial Officer.

(Pub. L. 101–610, title I, § 183, Nov. 16, 1990, 104 Stat. 3167; Pub. L. 103–82, title I, § 121(a), Sept. 21, 1993, 107 Stat. 866.)

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, substituting provision relating to rights of access, examination, and copying for provision relating to service as tutors.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12644. Drug-free workplace requirements

All programs receiving grants under this subchapter shall be subject to the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 702 through 707 of title 41.

(Pub. L. 101–610, title I, § 184, Nov. 16, 1990, 104 Stat. 3167.)

§ 12645. Repealed. Pub. L. 103–82, title I, § 122(a), Sept. 21, 1993, 107 Stat. 867

Section, Pub. L. 101–610, title I, § 186, as added Pub. L. 102–10, § 8(2), Mar. 12, 1991, 105 Stat. 31, directed Commission to issue final rules or regulations necessary to implement this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

Division G—Corporation for National and Community Service

§ 12651. Corporation for National and Community Service

There is established a Corporation for National and Community Service that shall administer the programs established under the national service laws. The Corporation shall be a Government corporation, as defined in section 103 of title 5.

(Pub. L. 101–610, title I, § 191, as added and amended Pub. L. 103–82, title II, §§ 202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 873, 891.)

PRIOR PROVISIONS

A prior section 12651, Pub. L. 101–610, title I, § 190, Nov. 16, 1990, 104 Stat. 3168; Pub. L. 102–10, § 9, Mar. 12, 1991, 105 Stat. 31; Pub. L. 102–384, §§ 4, 10, Oct. 5, 1992, 106 Stat. 1455, 1456, provided for establishment of Commission on National and Community Service, prior to the general amendment of subtitle G of title I of Pub. L. 101–610 [former part G of this subchapter] by Pub. L. 103–82, § 202(a).

AMENDMENTS

1993—Pub. L. 103–82, § 203(a)(1)(B), which directed amendment of section 191 of subtitle I of the National and Community Service Act of 1990 by substituting ''the national service laws'' for ''this chapter'', was executed to this section, which is section 191 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 203(d) of Pub. L. 103–82 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), this section [amending this section and sections 12639, 12651b to 12651d, 12651f, and 12651g of this title, repealing sections 5041 and 5042 of this title, and enacting provisions set out below], and the amendments made by this section, shall take effect—

''(A) 18 months after the date of enactment of this Act [Sept. 21, 1993]; or

''(B) on such earlier date as the President shall determine to be appropriate and announce by proclamation published in the Federal Register.

''(2) TRANSITION.—Subsection (c)(10) [set out below] shall take effect on the date of enactment of this Act [Sept. 21, 1993].''

[Section 203, and the amendments made by section 203, of Pub. L. 103–82 became effective Apr. 4, 1994, pursuant to Proc. No. 6662, Apr. 4, 1994, 59 F.R. 16507, set out below.]

EFFECTIVE DATE

Section 202(i) of Pub. L. 103–82 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), or paragraph (2) or (3) of subsection (g) [amending sections 8F and 9 of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, Government Organization and Employees, and enacting provisions set out as notes under sections 8F and 9 of such act], the amendments made by this section [enacting this division and section 8E of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, amending section 5041 of this title, sections 4, 8F, 8G, 9, and 11 of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, sections 9101 and 9105 of Title 31, Money and Finance, section 410 of Title 39, Postal Service, and section 484 of former Title 40, Public Buildings, Property, and Works] shall take effect on October 1, 1993.

''(2) ESTABLISHMENT AND APPOINTMENT AUTHORITIES.—Sections 191, 192, and 193 of the National and Community Service Act of 1990 [42 U.S.C. 12651, 12651a, 12651c], as added by subsection (a), shall take effect on the date of enactment of this Act [Sept. 21, 1993].''

TRANSFER OF FUNCTIONS OF COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Section 202(c) of Pub. L. 103–82 provided that:

''(1) DEFINITIONS.—For purposes of this subsection, unless otherwise provided or indicated by the context,

each term specified in section 203(c)(1) [set out below] shall have the meaning given the term in such section.

''(2) TRANSFER OF FUNCTIONS.—There are transferred to the Corporation the functions that the Board of Directors or Executive Director of the Commission on National and Community Service exercised before the effective date of this subsection (including all related functions of any officer or employee of the Commission).

''(3) APPLICATION.—The provisions of paragraphs (3) through (10) of section 203(c) [set out below] shall apply with respect to the transfer described in paragraph (2), except that—

''(A) for purposes of such application, references to the term 'ACTION Agency' shall be deemed to be references to the Commission on National and Community Service; and

''(B) paragraph (10) of such section shall not preclude the transfer of the members of the Board of Directors of the Commission to the Corporation if, on the effective date of this subsection, the Board of Directors of the Corporation has not been confirmed.''

TRANSFER OF FUNCTIONS FROM ACTION AGENCY

Section 203(c) of Pub. L. 103–82 provided that:

''(1) DEFINITIONS.—For purposes of this subsection, unless otherwise provided or indicated by the context—

''(A) the term 'Chief Executive Officer' means the Chief Executive Officer of the Corporation;

''(B) the term 'Corporation' means the Corporation for National and Community Service, established under section 191 of the National and Community Service Act of 1990 [42 U.S.C. 12651];

''(C) the term 'Federal agency' has the meaning given to the term 'agency' by section 551(1) of title 5, United States Code;

''(D) the term 'function' means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

''(E) the term 'office' includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

''(2) TRANSFER OF FUNCTIONS.—There are transferred to the Corporation the functions that the Director of the ACTION Agency exercised before the effective date of this subsection [see Effective Date of 1993 Amendment note above] (including all related functions of any officer or employee of the ACTION Agency).

''(3) DETERMINATIONS OF CERTAIN FUNCTIONS BY THE OFFICE OF MANAGEMENT AND BUDGET.—If necessary, the Office of Management and Budget shall make any determination of the functions that are transferred under paragraph (2).

''(4) REORGANIZATION.—The Chief Executive Officer is authorized to allocate or reallocate any function transferred under paragraph (2) among the officers of the Corporation.

''(5) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—Except as otherwise provided in this subsection, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this subsection, subject to section 1531 of title 31, United States Code, shall be transferred to the Corporation. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

''(6) INCIDENTAL TRANSFER.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized to make such determinations as may be necessary with regard to the functions transferred by this subsection, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subsection. The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this subsection and for such further measures and dispositions as may be necessary to effectuate the purposes of this subsection.

''(7) EFFECT ON PERSONNEL.—

''(A) IN GENERAL.—Except as otherwise provided by this subsection, the transfer pursuant to this subsection of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall be to positions in the Corporation subject to section 195(a) of the National and Community Service Act of 1990 [42 U.S.C. 12651f(a)], as added by section 202(a) of this Act, and shall not cause any such employee to be separated or reduced in grade or compensation, or to have the benefits of the employee reduced, for 1 year after the date of transfer of such employee under this subsection, and such transfer shall be deemed to be a transfer of functions for purposes of section 3503 of title 5, United States Code.

''(B) EXECUTIVE SCHEDULE POSITIONS.—Except as otherwise provided in this subsection, any person who, on the day preceding the effective date of this subsection [see Effective Date of 1993 Amendment note above], held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Corporation to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

''(C) TERMINATION OF CERTAIN POSITIONS.—Positions whose incumbents are appointed by the President, by and with the advice and consent of the Senate, the functions of which are transferred by this subsection, shall terminate on the effective date of this subsection.

''(8) SAVINGS PROVISIONS.—

''(A) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

''(i) that have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions that are transferred under this subsection; and

''(ii) that are in effect at the time this subsection takes effect [see Effective Date of 1993 Amendment note above], or were final before the effective date of this subsection and are to become effective on or after the effective date of this subsection,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Chief Executive Officer, or other authorized official, a court of competent jurisdiction, or by operation of law.

''(B) PROCEEDINGS NOT AFFECTED.—The provisions of this subsection shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the ACTION Agency at the time this subsection takes effect, with respect to functions transferred by this subsection. Such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this subsection had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official,

by a court of competent jurisdiction, or by operation of law. Nothing in this subparagraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subsection had not been enacted.

''(C) SUITS NOT AFFECTED.—The provisions of this subsection shall not affect suits commenced before the effective date of this subsection, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this subsection had not been enacted.

''(D) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the ACTION Agency, or by or against any individual in the official capacity of such individual as an officer of the ACTION Agency, shall abate by reason of the enactment of this subsection.

''(E) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the ACTION Agency relating to a function transferred under this subsection may be continued by the Corporation with the same effect as if this subsection had not been enacted.

''(9) SEVERABILITY.—If a provision of this subsection or its application to any person or circumstance is held invalid, neither the remainder of this subsection nor the application of the provision to other persons or circumstances shall be affected.

''(10) TRANSITION.—Prior to, or after, any transfer of a function under this subsection, the Chief Executive Officer is authorized to utilize—

''(A) the services of such officers, employees, and other personnel of the ACTION Agency with respect to functions that will be or have been transferred to the Corporation by this subsection; and

''(B) funds appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this subsection.''

CONTINUING PERFORMANCE OF CERTAIN FUNCTIONS BY COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Section 202(d) of Pub. L. 103–82 provided that: ''The individuals who, on the day before the date of enactment of this Act [Sept. 21, 1993], are performing any of the functions required by section 190 of the National and Community Service Act of 1990 (42 U.S.C. 12651), as in effect on such date, to be performed by the members of the Board of Directors of the Commission on National and Community Service may, subject to section 193A of the National and Community Service Act of 1990 [42 U.S.C. 12651d], as added by subsection (a) of this section, continue to perform such functions until the date on which the Board of Directors of the Corporation for National and Community Service conducts the first meeting of the Board. The service of such individuals as members of the Board of Directors of such Commission, and the employment of such individuals as special Government employees, shall terminate on such date.''

BUSINESS PLAN FOR CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Section 204 of Pub. L. 103–82 provided that:

''(a) BUSINESS PLAN REQUIRED.—

''(1) IN GENERAL.—The Corporation for National and Community Service (referred to in this section as the 'Corporation') shall prepare and submit to Congress a business plan. The Corporation may not provide assistance under section 121 of the National and Community Service Act of 1990 [42 U.S.C. 12571] before the twentieth day of continuous session of Congress after the date on which the Corporation submits the business plan to Congress.

''(2) COMPUTATION.—For purposes of the computation of the 20-day period referred to in paragraph (1), continuity of a session of the Congress shall be considered to be broken only by—

''(A) an adjournment of the Congress sine die; and

''(B) the days on which either House is not in session because of an adjournment of more than 3 days to a date certain.

''(b) REQUIRED ELEMENTS OF BUSINESS PLAN.—

''(1) ALLOCATION OF FUNDS.—The business plan shall contain—

''(A) a description of the manner in which the Corporation will allocate funds for programs carried out by the Corporation after October 1, 1993;

''(B) information on the principal offices and officers of the Corporation that will allocate such funds; and

''(C) information that indicates how accountability for such funds can be determined, in terms of the office or officer responsible for such funds.

''(2) INVESTIGATIVE AND AUDIT FUNCTIONS.—The business plan shall include a description of the plans of the Corporation—

''(A) to ensure continuity, during the transition period, and after the transition period, in the investigative and audit functions carried out by the Inspector General of ACTION prior to such period, consistent with the Inspector General Act of 1978 (5 U.S.C. App.); and

''(B) to carry out investigative and audit functions and implement financial management controls regarding programs carried out by the Corporation after October 1, 1993, consistent with the Inspector General Act of 1978, including a specific description of—

''(i) the manner in which the Office of Inspector General shall be established in the Corporation, in accordance with section 194(b) of the National Community Service Act of 1990 [42 U.S.C. 12651e(b)], as added by section 202 of this Act; and

''(ii) the manner in which grants made by the Corporation shall be audited by such Office and the financial management controls that shall apply with regard to such grants and programs.

''(3) ACCOUNTABILITY MEASURES.—The business plan shall include a detailed description of the accountability measures to be established by the Corporation to ensure effective control of all funds for programs carried out by the Corporation after October 1, 1993.

''(4) INFORMATION RESOURCES.—The business plan shall include a description of an information resource management program that will support the program and financial management needs of the Corporation.

''(5) CORPORATION STAFFING AND INTEGRATION OF ACTION.—

''(A) TRANSFERS.—The business plan shall include a report on the progress and plans of the President for transferring the functions, programs, and related personnel of ACTION to the Corporation, and shall include a timetable for the transfer.

''(B) DETAILS AND ASSIGNMENTS.—The report shall specify the number of ACTION employees detailed or assigned to the Corporation, and describe the hiring activity of the Corporation, during the transition period.

''(C) STRUCTURE.—The business plan shall include a description of the organizational structure of the Corporation during the transition period.

''(D) STAFFING.—The business plan shall include a description of—

''(i) measures to ensure adequate staffing during the transition period with respect to programs carried out by the Corporation after October 1, 1993; and

''(ii) the responsibilities and authorities of the Managing Directors and other key personnel of the Corporation.

''(E) SENIOR EXECUTIVE SERVICE.—The business plan shall include—

''(i) an explanation of the number of the employees of the Corporation who will be paid at or above the rate of pay for level 1 of the Senior Ex-

ecutive Service Schedule under section 5382 of title 5, United States Code; and

''(ii) information justifying such pay for such employees.

''(6) DUPLICATION OF FUNCTIONS.—The business plan shall include a description of the measures that the Corporation is taking or will take to minimize duplication of functions in the Corporation caused by the transfer of the functions of the Commission on National and Community Service, and the transfer of the functions of ACTION, to the Corporation. This description shall address functions at both the national and State levels.

''(c) DEFINITION.—The term 'transition period' means the period beginning on October 1, 1993 and ending on the day before the effective date of section 203(c)(2) [see Effective Date of 1993 Amendment note above].''

PROC. NO. 6662. TRANSFER OF FUNCTIONS OF ACTION AGENCY TO CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proc. No. 6662, Apr. 4, 1994, 59 F.R. 16507, provided:

On September 21, 1993, I had the honor of signing into law the National and Community Service Trust Act of 1993 [Pub. L. 103–82, see Tables for classification], which created the Corporation for National and Community Service. The Corporation was designed to involve Americans of all ages and backgrounds in community projects to address many of our Nation's most important needs—from educating our children to ensuring public safety to protecting our environment. It was chartered to foster civic responsibility, strengthening the ties that bind us together as a people, while providing educational opportunity for those who make the commitment to serve.

In the few short months since the Corporation's establishment, enormous progress has been made toward the achievement of these invaluable goals. Final regulations have been published governing the Corporation's new grant programs, grant application packages have been developed, and a national recruitment effort has begun. As a result of intensive outreach efforts, most states have already established State Commissions on National and Community Service, and many local programs, national nonprofit organizations, institutions of higher education, and Federal agencies are eager to participate. Grant competitions have begun for a summer program that will focus on our Nation's public safety concerns, and all community service grant competitions will be completed by this summer. Finally, the Corporation has established the National Civilian Community Corps, which will take advantage of closed and down-sized military bases to launch environmental clean-up and preservation efforts.

The ACTION Agency, provided for by the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.], has worked closely with the Corporation, sharing its many years of experience in engaging Americans in service to their communities. Because the Corporation's initiatives and those programs operated by the ACTION Agency involve similar goals, the National and Community Service Trust Act calls for the merger of ACTION with the Corporation no later than March 22, 1995. To build upon the tremendous accomplishments already achieved by the Corporation, and to facilitate the further development of community service programs across the country, I am pleased to order that the functions of the Director of the ACTION Agency be transferred to the Corporation for National and Community Service.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 203(c)(2) and (d)(1)(B) of the National and Community Service Trust Act of 1993 [set out above], proclaim that all functions of the Director of the ACTION Agency are hereby transferred to the Corporation for National and Community Service, effective April 4, 1994.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of April, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

WILLIAM J. CLINTON.

EX. ORD. NO. 12819. ESTABLISHING PRESIDENTIAL YOUTH AWARD FOR COMMUNITY SERVICE

Ex. Ord. No. 12819, Oct. 28, 1992, 57 F.R. 49369, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 12651 of title 42 of the United States Code [see 42 U.S.C. 12653b], it is hereby ordered as follows:

SECTION 1. A youth award for community service is hereby established. The award shall recognize outstanding voluntary community service contributions made by individuals between the ages of 5 and 22.

SEC. 2. The Director of the White House Office of National Service shall establish the criteria for the award. The criteria shall be based upon participation in voluntary community service activity. The award may be bestowed upon any eligible individual who meets the established criteria.

SEC. 3. The selection process for the award shall be administered by the Commission on National and Community Service and the White House Office of National Service. Such other individuals and entities as the Director of the White House Office of National Service deems appropriate may participate in the selection process.

SEC. 4. The award shall be presented by the President, his designee or designees, or individuals designated by the Director of the White House Office of National Service.

SEC. 5. The name and design of the award shall be approved by the President upon the recommendation of the Director of the White House Office of National Service.

GEORGE BUSH.

EX. ORD. NO. 13285. PRESIDENT'S COUNCIL ON SERVICE AND CIVIC PARTICIPATION

Ex. Ord. No. 13285, Jan. 29, 2003, 68 F.R. 5203, as amended by Ex. Ord. No. 13371, Jan. 27, 2005, 70 F.R. 5041, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to encourage the recognition of volunteer service and civic participation by all Americans, and especially America's youth, it is hereby ordered as follows:

SECTION 1. *The President's Council on Service and Civic Participation.* (a) There is hereby established within the Corporation for National and Community Services [Service] (CNCS) the President's Council on Service and Civic Participation (Council).

(b) The Council shall be composed of up to 25 members, including representatives of America's youth, appointed by the President. Each member shall serve for a term of 2 years and may continue to serve after the expiration of their term until a successor is appointed. The President shall designate one member to serve as Chair and one member to serve as Vice Chair. Subject to the direction of the Chief Executive Officer of the CNCS, the Chair, and in the Chair's absence the Vice Chair, shall convene and preside at the meetings of the Council, determine its agenda, and direct its work.

SEC. 2. *Mission and Functions of the Council.*

(a) The mission and functions of the Council shall be to:

(i) promote volunteer service and civic participation in American society;

(ii) encourage the recognition of outstanding volunteer service through the presentation of the President's Volunteer Service Award by Council members and Certifying Organizations, thereby encouraging more such activity;

(iii) promote the efforts and needs of local non-profits and volunteer organizations, including volunteer centers;

(iv) promote greater public access to information about existing volunteer opportunities, including via the Internet;

(v) assist with the promotion of Federally administered volunteer programs and the link that they have to increasing and strengthening community volunteer service; and

(vi) promote increased and sustained private sector sponsorship of and engagement in volunteer service.

(b) In carrying out its mission, the Council shall:

(i) encourage broad participation in the President's Volunteer Service Award program by qualified individuals and groups, especially students in primary schools, secondary schools, and institutions of higher learning;

(ii) exchange information and ideas with interested individuals and organizations on ways to expand and improve volunteer service and civic participation;

(iii) advise the Chief Executive Officer of the CNCS on broad dissemination, especially among schools and youth organizations, of information regarding recommended practices for the promotion of volunteer service and civic participation, and other relevant educational and promotional materials;

(iv) monitor and advise the Chief Executive Officer of the CNCS on the need for the enhancement of materials disseminated pursuant to subsection 2(b)(iii) of this order; and

(v) make recommendations from time to time to the President, through the Director of the USA Freedom Corps, on ways to encourage greater levels of volunteer service and civic participation by individuals, schools, and organizations.

SEC. 3. *Administration*. (a) Each Federal agency, to the extent permitted by law and subject to the availability of appropriations, shall furnish such information and assistance to the Council as the Council may, with the approval of the Director of the USA Freedom Corps, request.

(b) The members of the Council shall serve without compensation for their work on the Council. Members of the Council who are not officers or employees of the United States may receive travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701–5707).

(c) To the extent permitted by law, the Chief Executive Officer of the CNCS shall furnish the Council with necessary staff, supplies, facilities, and other administrative services and shall pay the expenses of the Council.

(d) The Chief Executive Officer of the CNCS shall appoint an Executive Director to head the staff of the Council.

(e) The Council, with the approval of the Chief Executive Officer of the CNCS, may establish subcommittees of the Council, consisting exclusively of members of the Council, as appropriate to aid the Council in carrying out its mission under this order.

SEC. 4. *General Provisions*. (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the administration of any portion of this order, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Chief Executive Officer of CNCS in accordance with the guidelines and procedures issued by the Administrator of General Services.

(b) Unless further extended by the President, this order shall expire on January 29, 2007.

GEORGE W. BUSH.

§ 12651a. Board of Directors

(a) Composition

(1) In general

There shall be in the Corporation a Board of Directors (referred to in this division as the ''Board'') that shall be composed of—

(A) 15 members, including an individual between the ages of 16 and 25 who—

(i) has served in a school-based or community-based service-learning program; or

(ii) is or was a participant or a supervisor in a program;

to be appointed by the President, by and with the advice and consent of the Senate; and

(B) the ex officio nonvoting members described in paragraph (3).

(2) Qualifications

To the maximum extent practicable, the President shall appoint members—

(A) who have extensive experience in volunteer or service activities, which may include programs funded under one of the national service laws, and in State government;

(B) who represent a broad range of viewpoints;

(C) who are experts in the delivery of human, educational, environmental, or public safety services;

(D) so that the Board shall be diverse according to race, ethnicity, age, gender, and disability characteristics; and

(E) so that no more than 50 percent of the appointed members of the Board, plus 1 additional appointed member, are from a single political party.

(3) Ex officio members

The Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Housing and Urban Development, the Secretary of Defense, the Attorney General, the Director of the Peace Corps, the Administrator of the Environmental Protection Agency, and the Chief Executive Officer shall serve as ex officio nonvoting members of the Board.

(b) Officers

(1) Chairperson

The President shall appoint a member of the Board to serve as the initial Chairperson of the Board. Each subsequent Chairperson shall be elected by the Board from among its members.

(2) Vice Chairperson

The Board shall elect a Vice Chairperson from among its membership.

(3) Other officers

The Board may elect from among its membership such additional officers of the Board as the Board determines to be appropriate.

(c) Terms

Each appointed member of the Board shall serve for a term of 5 years, except that, as designated by the President—

(1) 3 of the members first appointed to the Board shall serve for a term of 1 year;

(2) 3 of the members first appointed to the Board shall serve for a term of 2 years;

(3) 3 of the members first appointed to the Board shall serve for a term of 3 years;

(4) 3 of the members first appointed to the Board shall serve for a term of 4 years; and

(5) 3 of the members first appointed to the Board shall serve for a term of 5 years.

(d) Vacancies

If a vacancy occurs on the Board, a new member shall be appointed by the President, by and with the advice and consent of the Senate, and serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(Pub. L. 101–610, title I, § 192, as added Pub. L. 103–82, title II, § 202(a), Sept. 21, 1993, 107 Stat. 873.)

EFFECTIVE DATE

Section effective Sept. 21, 1993, see section 202(i)(2) of Pub. L. 103–82, set out as a note under section 12651 of this title.

§ 12651b. Authorities and duties of the Board of Directors

(a) Meetings

The Board shall meet not less often than 3 times each year. The Board shall hold additional meetings at the call of the Chairperson of the Board, or if 6 members of the Board request such meetings in writing.

(b) Quorum

A majority of the appointed members of the Board shall constitute a quorum.

(c) Authorities of officers

(1) Chairperson

The Chairperson of the Board may call and conduct meetings of the Board.

(2) Vice Chairperson

The Vice Chairperson of the Board may conduct meetings of the Board in the absence of the Chairperson.

(d) Expenses

While away from their homes or regular places of business on the business of the Board, members of such Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 for persons employed intermittently in the Government service.

(e) Special Government employees

For purposes of the provisions of chapter 11 of part I of title 18, and any other provision of Federal law, a member of the Board (to whom such provisions would not otherwise apply except for this subsection) shall be a special Government employee.

(f) Status of members

(1) Tort claims

For the purposes of the tort claims provisions of chapter 171 of title 28, a member of the Board shall be considered to be a Federal employee.

(2) Other claims

A member of the Board shall have no personal liability under Federal law with respect to any claim arising out of or resulting from any act or omission by such person, within the scope of the service of the member on the Board, in connection with any transaction involving the provision of financial assistance by the Corporation. This paragraph shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of such member on the Board.

(3) Effect on other law

This subsection shall not be construed—

(A) to affect any other immunities and protections that may be available to such member under applicable law with respect to such transactions;

(B) to affect any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than a member of the Board participating in such transactions; or

(C) to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.

(g) Duties

The Board shall—

(1) review and approve the strategic plan described in section 12651d(b)(1) of this title, and annual updates of the plan;

(2) review and approve the proposal described in section 12651d(b)(2)(A) of this title, with respect to the grants, allotments, contracts, financial assistance, payment, and positions referred to in such section;

(3) review and approve the proposal described in section 12651d(b)(3)(A) of this title, regarding the regulations, standards, policies, procedures, programs, and initiatives referred to in such section;

(4) review and approve the evaluation plan described in section 12651d(b)(4)(A) of this title;

(5)(A) review, and advise the Chief Executive Officer regarding, the actions of the Chief Executive Officer with respect to the personnel of the Corporation, and with respect to such standards, policies, procedures, programs, and initiatives as are necessary or appropriate to carry out the national service laws; and

(B) inform the Chief Executive Officer of any aspects of the actions of the Chief Executive Officer that are not in compliance with the annual strategic plan referred to in paragraph (1), the proposals referred to in paragraphs (2) and (3), or the plan referred to in paragraph (4), or are not consistent with the objectives of the national service laws;

(6) receive any report as provided under subsection (b), (c), or (d) of section 8E[1] of the Inspector General Act of 1978;

(7) make recommendations relating to a program of research for the Corporation with respect to national and community service programs, including service-learning programs;

(8) advise the President and the Congress concerning developments in national and com-

[1] See References in Text note below.

munity service that merit the attention of the President and the Congress;

(9) ensure effective dissemination of information regarding the programs and initiatives of the Corporation;

(10) notwithstanding any other provision of law, make grants to or contracts with Federal or other public departments or agencies and private nonprofit organizations for the assignment or referral of volunteers under the provisions of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.] (except as provided in section 108 of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4958]), which may provide that the agency or organization shall pay all or a part of the costs of the program; and

(11) prepare and make recommendations to the Congress and the President for changes in the national service laws resulting from the studies and demonstrations the Chief Executive Officer is required to carry out under section 12651d(b)(10) of this title, which recommendations shall be submitted to the Congress and President not later than September 30, 1995.

(h) Administration

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Board.

(i) Limitation on participation

All employees and officers of the Corporation shall recuse themselves from decisions that would constitute conflicts of interest.

(j) Coordination with other Federal activities

As part of the agenda of meetings of the Board under subsection (a) of this section, the Board shall review projects and programs conducted or funded by the Corporation under the national service laws to improve the coordination between such projects and programs, and the activities of other Federal agencies that deal with the individuals and communities participating in or benefiting from such projects and programs. The ex officio members of the Board specified in section 12651a(a)(3) of this title shall jointly plan, implement, and fund activities in connection with projects and programs conducted under the national service laws to ensure that Federal efforts attempt to address the total needs of participants in such programs and projects, their communities, and the persons and communities the participants serve.

(Pub. L. 101–610, title I, § 192A, as added and amended Pub. L. 103–82, title II, §§ 202(a), 203(a)(1)(B), (2), Sept. 21, 1993, 107 Stat. 875, 891.)

REFERENCES IN TEXT

Section 8E of the Inspector General Act of 1978, referred to in subsec. (g)(6), is section 8E of Pub. L. 95–452, as added by Pub. L. 103–82, title II, § 202(g)(1), Sept. 21, 1993, 107 Stat. 889, which was renumbered section 8F of the Act by Pub. L. 103–204, § 23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5, Government Organization and Employees.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (g)(10), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§ 4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

AMENDMENTS

1993—Subsec. (g)(5)(A), (B). Pub. L. 103–82, § 203(a)(1)(B), which directed amendment of section 192A(g)(5) of subtitle I of the National and Community Service Act of 1990 by substituting ''the national service laws'' for ''this chapter'', was executed to subsec. (g)(5) of this section, which is section 192A of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

Subsec. (g)(9). Pub. L. 103–82, § 203(a)(2)(A), struck out ''and'' at end.

Subsec. (g)(10). Pub. L. 103–82, § 203(a)(2)(C), added par. (10). Former par. (10) redesignated (11).

Pub. L. 103–82, § 203(a)(1)(B), which directed amendment of section 192A(g)(10) of subtitle I of the National and Community Service Act of 1990 by substituting ''the national service laws'' for ''this chapter'', was executed to subsec. (g)(10) of this section, which is section 192A of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

Subsec. (g)(11). Pub. L. 103–82, § 203(a)(2)(B), redesignated par. (10) as (11).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B), (2) of Pub. L. 103–82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103–82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103–82, set out as a note under section 12651 of this title.

§ 12651c. Chief Executive Officer

(a) Appointment

The Corporation shall be headed by an individual who shall serve as Chief Executive Officer of the Corporation, and who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Compensation

The Chief Executive Officer shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

(c) Regulations

The Chief Executive Officer shall prescribe such rules and regulations as are necessary or appropriate to carry out the national service laws.

(Pub. L. 101–610, title I, § 193, as added and amended Pub. L. 103–82, title II, §§ 202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 877, 891.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–82, § 203(a)(1)(B), which directed amendment of section 193(c) of subtitle I of the National and Community Service Act of 1990 by substituting ''the national service laws'' for ''this chapter'', was executed to subsec. (c) of this section, which is section 193 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B) of Pub. L. 103–82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103–82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Sept. 21, 1993, see section 202(i)(2) of Pub. L. 103–82, set out as a note under section 12651 of this title.

§ 12651d. Authorities and duties of the Chief Executive Officer

(a) General powers and duties

The Chief Executive Officer shall be responsible for the exercise of the powers and the discharge of the duties of the Corporation that are not reserved to the Board, and shall have authority and control over all personnel of the Corporation, except as provided in section 8E[1] of the Inspector General Act of 1978.

(b) Duties

In addition to the duties conferred on the Chief Executive Officer under any other provision of the national service laws, the Chief Executive Officer shall—

(1) prepare and submit to the Board a strategic plan every 3 years, and annual updates of the plan, for the Corporation with respect to the major functions and operations of the Corporation;

(2)(A) prepare and submit to the Board a proposal with respect to such grants and allotments, contracts, other financial assistance, and designation of positions as approved national service positions, as are necessary or appropriate to carry out the national service laws; and

(B) after receiving and reviewing an approved proposal under section 12651b(g)(2) of this title, make such grants and allotments, enter into such contracts, award such other financial assistance, make such payments (in lump sum or installments, and in advance or by way of reimbursement, and in the case of financial assistance otherwise authorized under the national service laws, with necessary adjustments on account of overpayments and underpayments), and designate such positions as approved national service positions as are necessary or appropriate to carry out the national service laws;

(3)(A) prepare and submit to the Board a proposal regarding, the regulations established under section 12651f(b)(3)(A) of this title, and such other standards, policies, procedures, programs, and initiatives as are necessary or appropriate to carry out the national service laws; and

(B) after receiving and reviewing an approved proposal under section 12651b(g)(3) of this title—

(i) establish such standards, policies, and procedures as are necessary or appropriate to carry out the national service laws; and

(ii) establish and administer such programs and initiatives as are necessary or appropriate to carry out the national service laws;

(4)(A) prepare and submit to the Board a plan for the evaluation of programs established under the national service laws, in accordance with section 12639 of this title; and

(B) after receiving an approved proposal under section 12651b(g)(4) of this title—

(i) establish measurable performance goals and objectives for such programs, in accordance with section 12639 of this title; and

(ii) provide for periodic evaluation of such programs to assess the manner and extent to which the programs achieve the goals and objectives, in accordance with such section;

(5) consult with appropriate Federal agencies in administering the programs and initiatives;

(6) suspend or terminate payments and positions described in paragraph (2)(B), in accordance with section 12636 of this title;

(7) prepare and submit to the Board an annual report, and such interim reports as may be necessary, describing the major actions of the Chief Executive Officer with respect to the personnel of the Corporation, and with respect to such standards, policies, procedures, programs, and initiatives;

(8) inform the Board of, and provide an explanation to the Board regarding, any substantial differences regarding the implementation of the national service laws between—

(A) the actions of the Chief Executive Officer; and

(B)(i) the strategic plan approved by the Board under section 12651b(g)(1) of this title;

(ii) the proposals approved by the Board under paragraph (2) or (3) of section 12651b(g) of this title; or

(iii) the evaluation plan approved by the Board under section 12651b(g)(4) of this title;

(9) prepare and submit to the appropriate committees of Congress an annual report, and such interim reports as may be necessary, describing—

(A) the services referred to in paragraph (1), and the money and property referred to in paragraph (2), of section 12651g(a) of this title that have been accepted by the Corporation;

(B) the manner in which the Corporation used or disposed of such services, money, and property; and

(C) information on the results achieved by the programs funded under the national service laws during the year preceding the year in which the report is prepared;

(10) provide for studies (including the evaluations described in subsection (f) of this section) and demonstrations that evaluate, and prepare and submit to the Board by June 30, 1995, a report containing recommendations regarding, issues related to—

(A) the administration and organization of programs authorized under the national service laws or under Public Law 91–378 [16 U.S.C. 1701 et seq.] (referred to in this subparagraph as ''service programs''), including—

(i) whether the State and national priorities designed to meet the unmet human, education, environmental, or public safety needs described in section 12572(c)(1) of this title are being addressed by this chapter;

(ii) the manner in which—

(I) educational and other outcomes of both stipended and nonstipended service and service-learning are defined and measured in such service programs; and

(II) such outcomes should be defined and measured in such service programs;

[1] See References in Text note below.

(iii) whether stipended service programs, and service programs providing educational benefits in return for service, should focus on economically disadvantaged individuals or at-risk youth or whether such programs should include a mix of individuals, including individuals from middle- and upper-income families;

(iv) the role and importance of stipends and educational benefits in achieving desired outcomes in the service programs;

(v) the potential for cost savings and coordination of support and oversight services from combining functions performed by ACTION State offices and State Commissions;

(vi) the implications of the results from such studies and demonstrations for authorized funding levels for the service programs; and

(vii) other issues that the Director determines to be relevant to the administration and organization of the service programs; and

(B) the number, potential consolidation, and future organization of national service or domestic volunteer service programs that are authorized under Federal law, including VISTA, service corps assisted under division C of this subchapter and other programs authorized by this chapter, programs administered by the Public Health Service, the Department of Defense, or other Federal agencies, programs regarding teacher corps, and programs regarding work-study and higher education loan forgiveness or forbearance programs authorized by the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) related to community service; and

(11) for purposes of section 12638(d)(6)(B) of this title, issue regulations to waive the disqualification of members of the Board and members of the State Commissions selectively in a random, nondiscretionary manner and only to the extent necessary to establish the quorum involved, including rules that forbid each member of the Board and each voting member of a State Commission to participate in any discussion or decision regarding the provision of assistance or approved national service positions, or the continuation, suspension, or termination of such assistance or such positions, to any program or entity of which such member of the Board or such member of the State Commission is, or in the 1-year period before the submission of the application referred to in such section was, an officer, director, trustee, full-time volunteer, or employee.

(c) Powers

In addition to the authority conferred on the Chief Executive Officer under any other provision of the national service laws, the Chief Executive Officer may—

(1) establish, alter, consolidate, or discontinue such organizational units or components within the Corporation as the Chief Executive Officer considers necessary or appropriate, consistent with Federal law, and shall, to the maximum extent practicable, consolidate such units or components of the divisions of the Corporation described in section 12651e(a)(3) of this title as may be appropriate to enable the two divisions to coordinate common support functions;

(2) with the approval of the President, arrange with and reimburse the heads of other Federal agencies for the performance of any of the provisions of the national service laws;

(3) with their consent, utilize the services and facilities of Federal agencies with or without reimbursement, and, with the consent of any State, or political subdivision of a State, accept and utilize the services and facilities of the agencies of such State or subdivisions without reimbursement;

(4) allocate and expend funds made available under the national service laws;

(5) disseminate, without regard to the provisions of section 3204 of title 39, data and information, in such form as the Chief Executive Officer shall determine to be appropriate to public agencies, private organizations, and the general public;

(6) collect or compromise all obligations to or held by the Chief Executive Officer and all legal or equitable rights accruing to the Chief Executive Officer in connection with the payment of obligations in accordance with chapter 37 of title 31 (commonly known as the ''Federal Claims Collection Act of 1966'');

(7) file a civil action in any court of record of a State having general jurisdiction or in any district court of the United States, with respect to a claim arising under this chapter;

(8) exercise the authorities of the Corporation under section 12651g of this title;

(9) consolidate the reports to Congress required under the national service laws, and the report required under section 9106 of title 31, into a single report, and submit the report to Congress on an annual basis; and

(10) generally perform such functions and take such steps consistent with the objectives and provisions of the national service laws, as the Chief Executive Officer determines to be necessary or appropriate to carry out such provisions.

(d) Delegation

(1) "Function" defined

As used in this subsection, the term ''function'' means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(2) In general

Except as otherwise prohibited by law or provided in the national service laws, the Chief Executive Officer may delegate any function under the national service laws, and authorize such successive redelegations of such function as may be necessary or appropriate. No delegation of a function by the Chief Executive Officer under this subsection or under any other provision of the national service laws shall relieve such Chief Executive Officer of responsibility for the administration of such function.

(3) Function of Board

The Chief Executive Officer may not delegate a function of the Board without the permission of the Board.

(e) Actions

In an action described in subsection (c)(7) of this section—

(1) a district court referred to in such subsection shall have jurisdiction of such a civil action without regard to the amount in controversy;

(2) such an action brought by the Chief Executive Officer shall survive notwithstanding any change in the person occupying the office of Chief Executive Officer or any vacancy in that office;

(3) no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Chief Executive Officer or the Board or property under the control of the Chief Executive Officer or the Board; and

(4) nothing in this section shall be construed to except litigation arising out of activities under this chapter from the application of sections 509, 517, 547, and 2679 of title 28.

(f) Evaluations

(1) Evaluation of living allowance

The Corporation shall arrange for an independent evaluation to determine the levels of living allowances paid in all programs under divisions C and I of this subchapter, individually, by State, and by region. Such evaluation shall determine the effects that such living allowances have had on the ability of individuals to participate in such programs.

(2) Evaluation of success of investment in national service

(A) Evaluation required

The Corporation shall arrange for the independent evaluation of the operation of division C of this subchapter to determine the levels of participation of economically disadvantaged individuals in national service programs carried out or supported using assistance provided under section 12571 of this title.

(B) Period covered by evaluation

The evaluation required by this paragraph shall cover the period beginning on the date the Corporation first makes a grant under section 12571 of this title, and ending on a date that is as close as is practicable to the date specified in subsection (b)(10) of this section.

(C) Income levels of participants

The evaluating entity shall determine the total income of each participant who serves, during the period covered by the evaluation, in a national service program carried out or supported using assistance provided under section 12571 of this title or in an approved national service position. The total income of the participant shall be determined as of the date the participant was first selected to participate in such a program and shall include family total income unless the evaluating entity determines that the participant was independent at the time of selection.

(D) Assistance for distressed areas

The evaluating entity shall also determine the amount of assistance provided under section 12571 of this title during the period covered by the report that has been expended for projects conducted in areas of economic distress described in section 12585(c)(6) of this title.

(E) Definitions

As used in this paragraph:

(i) Independent

The term ''independent'' has the meaning given the term in section 480(d) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(d)).

(ii) Total income

The term ''total income'' has the meaning given the term in section 480(a) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(a)).

(g) Recruitment and public awareness functions

(1) Effort

The Chief Executive Officer shall ensure that the Corporation, in carrying out the recruiting and public awareness functions of the Corporation, shall expend at least the level of effort on recruitment and public awareness activities related to the programs carried out under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.) as ACTION expended on recruitment and public awareness activities related to programs under the Domestic Volunteer Service Act of 1973 during fiscal year 1993.

(2) Personnel

The Chief Executive Officer shall assign or hire, as necessary, such additional national, regional, and State personnel to carry out such recruiting and public awareness functions as may be necessary to ensure that such functions are carried out in a timely and effective manner. The Chief Executive Officer shall give priority in the hiring of such additional personnel to individuals who have formerly served as volunteers in the programs carried out under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.] or similar programs, and to individuals who have specialized experience in the recruitment of volunteers.

(3) Funds

For the first fiscal year after the effective date of this subsection, and for each fiscal year thereafter, for the purpose of carrying out such recruiting and public awareness functions, the Chief Executive Officer shall obligate not less than 1.5 percent of the amounts appropriated for the fiscal year under section 501(a) of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 5081(a)].

(Pub. L. 101–610, title I, § 193A, as added and amended Pub. L. 103–82, title II, §§ 202(a), 203(a)(1)(B), (3), Sept. 21, 1993, 107 Stat. 877, 891; Pub. L. 103–304, § 3(b)(2), Aug. 23, 1994, 108 Stat. 1567.)

REFERENCES IN TEXT

Section 8E of the Inspector General Act of 1978, referred to in subsec. (a), is section 8E of Pub. L. 95–452,

as added by Pub. L. 103–82, title II, § 202(g)(1), Sept. 21, 1993, 107 Stat. 889, which was renumbered section 8F of the Act by Pub. L. 103–204, § 23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5, Government Organization and Employees.

Public Law 91–378, referred to in subsec. (b)(10)(A), is Pub. L. 91–378, Aug. 13, 1970, 84 Stat. 794, as amended, popularly known as the Youth Conservation Corps Act of 1970, which is classified generally to chapter 37 (§ 1701 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 16 and Tables.

This chapter, referred to in subsecs. (b)(10)(A)(i), (B), (c)(7), and (e)(4), was in the original ''this Act'', meaning Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (b)(10)(B), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (g), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§ 4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

For the effective date of this subsection, referred to in subsec. (g)(3), see Effective Date of 1993 Amendment note below.

AMENDMENTS

1994—Subsec. (g). Pub. L. 103–304 made technical amendment to directory language of Pub. L. 103–82, § 203(a)(3). See 1993 Amendment note below.

1993—Subsecs. (b) to (d). Pub. L. 103–82, § 203(a)(1)(B), which directed amendment of section 193A of subtitle I of the National and Community Service Act of 1990 by substituting ''the national service laws'' for ''this chapter'' was executed wherever appearing in the following provisions of this section, which is section 193A of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress: introductory provisions and pars. (2) to (4)(A), (8), and (9)(C) of subsec. (b), introductory provisions and pars. (2), (4), (9), and (10) of subsec. (c), and subsec. (d)(2).

Subsec. (g). Pub. L. 103–82, § 203(a)(3), as amended by Pub. L. 103–304, added subsec. (g).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–304 effective as of Oct. 1, 1993, see section 3(b)(10)(B) of Pub. L. 103–304, set out as a note under section 4953 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B), (3) of Pub. L. 103–82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103–82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103–82, set out as a note under section 12651 of this title.

§ 12651e. Officers

(a) Managing Directors

(1) In general

There shall be in the Corporation 2 Managing Directors, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report to the Chief Executive Officer.

(2) Compensation

The Managing Directors shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(3) Duties

The Corporation shall determine the programs for which the Managing Directors shall have primary responsibility and shall establish the divisions of the Corporation to be headed by the Managing Directors.

(b) Inspector General

(1) Office

There shall be in the Corporation an Office of the Inspector General.

(2) Appointment

The Office shall be headed by an Inspector General, appointed in accordance with the Inspector General Act of 1978 [5 U.S.C. App.].

(3) Compensation

The Inspector General shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(c) Chief Financial Officer

(1) Office

There shall be in the Corporation a Chief Financial Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Compensation

The Chief Financial Officer shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(3) Duties

The Chief Financial Officer shall—

(A) report directly to the Chief Executive Officer regarding financial management matters;

(B) oversee all financial management activities relating to the programs and operations of the Corporation;

(C) develop and maintain an integrated accounting and financial management system for the Corporation, including financial reporting and internal controls;

(D) develop and maintain any joint financial management systems with the Department of Education necessary to carry out the programs of the Corporation; and

(E) direct, manage, and provide policy guidance and oversight of the financial management personnel, activities, and operations of the Corporation.

(d) Assistant Directors for VISTA and National Senior Volunteer Corps

(1) Appointment

One of the Managing Directors appointed under subsection (a) of this section shall, in accordance with applicable provisions of title 5, appoint 4 Assistant Directors who shall report directly to such Managing Director, of which—

(A) 1 Assistant Director shall be responsible for programs carried out under parts A

and B of title I of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4951 et seq., 4971 et seq.] (the Volunteers in Service to America (VISTA) program) and other anti-poverty programs under title I of that Act [42 U.S.C. 4951 et seq.];

(B) 1 Assistant Director shall be responsible for programs carried out under part A of title II of that Act [42 U.S.C. 5001 et seq.] (relating to the Retired Senior Volunteer Program);

(C) 1 Assistant Director shall be responsible for programs carried out under part B of title II of that Act [42 U.S.C. 5011 et seq.] (relating to the Foster Grandparent Program); and

(D) 1 Assistant Director shall be responsible for programs carried out under part C of title II of that Act [42 U.S.C. 5013] (relating to the Senior Companion Program).

(2) Effective date for exercise of authority

Each Assistant Director appointed pursuant to paragraph (1) may exercise the authority assigned to each such Director only after the effective date of section 203(c)(2) of the National and Community Service Trust Act of 1993.

(Pub. L. 101–610, title I, § 194, as added Pub. L. 103–82, title II, § 202(a), Sept. 21, 1993, 107 Stat. 882.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (b)(2), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (d)(1), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§ 4951 et seq.) of chapter 66 of this title. Parts A and B of title I of the Act are classified generally to parts A (§ 4951 et seq.) and B (§ 4971 et seq.), respectively, of subchapter I of chapter 66 of this title. Parts A, B, and C of title II of the Act are classified generally to parts A (§ 5001 et seq.), B (§ 5011 et seq.), and C (§ 5013 et seq.), respectively, of subchapter II of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

Section 203(c)(2) of the National and Community Service Trust Act of 1993, referred to in subsec. (d)(2), is section 203(c)(2) of Pub. L. 103–82, which is set out as a note under section 12651 of this title. For the effective date of section 203(c)(2) of this Act, see section 203(d) of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103–82, set out as a note under section 12651 of this title.

§ 12651f. Employees, consultants, and other personnel

(a) Employees

Except as provided in subsection (b) of this section, section 12651e(d) of this title, and section 8E[1] of the Inspector General Act of 1978, the Chief Executive Officer shall, in accordance with applicable provisions of title 5, appoint and determine the compensation of such employees as the Chief Executive Officer determines to be necessary to carry out the duties of the Corporation.

(b) Alternative personnel system

(1) Authority

The Chief Executive Officer may designate positions in the Corporation as positions to which the Chief Executive Officer may make appointments, and for which the Chief Executive Officer may determine compensation, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, to the extent the Chief Executive Officer determines that such a designation is appropriate and desirable to further the effective operation of the Corporation. The Chief Executive Officer may provide for appointments to such positions to be made on a limited term basis.

(2) Appointment in the competitive service after employment under alternative personnel system

The Director of the Office of Personnel Management may grant competitive status for appointment to the competitive service, under such conditions as the Director may prescribe, to an employee who is appointed under this subsection and who is separated from the Corporation (other than by removal for cause).

(3) Selection and compensation system

(A) Establishment of system

The Chief Executive Officer, after obtaining the approval of the Director of the Office of Personnel Management, shall issue regulations establishing a selection and compensation system for employees of the Corporation appointed under paragraph (1). In issuing such regulations, the Chief Executive Officer shall take into consideration the need for flexibility in such a system.

(B) Application

The Chief Executive Officer shall appoint and determine the compensation of employees in accordance with the selection and compensation system established under subparagraph (A).

(C) Selection

The system established under subparagraph (A) shall provide for the selection of employees—

(i) through a competitive process; and

(ii) on the basis of the qualifications of applicants and the requirements of the positions.

(D) Compensation

The system established under subparagraph (A) shall include a scheme for the classification of positions in the Corporation. The system shall require that the compensation of an employee be determined in part on the basis of the job performance of the employee, and in a manner consistent

[1] See References in Text note below.

with the principles described in section 5301 of title 5. The rate of compensation for each employee compensated under the system shall not exceed the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

(c) Corporation representative in each State

(1) Designation of representative

The Corporation shall designate 1 employee of the Corporation for each State or group of States to serve as the representative of the Corporation in the State or States and to assist the Corporation in carrying out the activities described in the national service laws in the State or States.

(2) Duties

The representative designated under this subsection for a State or group of States shall serve as the liaison between—

(A) the Corporation and the State Commission that is established in the State or States;

(B) the Corporation and any subdivision of a State, Indian tribe, public or private nonprofit organization, or institution of higher education, in the State or States, that is awarded a grant under section 12571 of this title directly from the Corporation; and

(C) after the effective date of section 203(c)(2) of the National and Community Service Trust Act of 1993, the State Commission and the Corporation employee responsible for programs under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.] in the State, if the employee is not the representative described in paragraph (1) for the State.

(3) Member of State Commission

The representative designated under this subsection for a State or group of States shall also serve as a member of the State Commission established in the State or States, as described in section 12638(c)(3) of this title.

(4) Compensation

If the employee designated under paragraph (1) is an employee whose appointment was made pursuant to subsection (b) of this section, the rate of compensation for such employee may not exceed the maximum rate of basic pay payable for GS–13 of the General Schedule under section 5332 of title 5.

(d) Consultants

The Chief Executive Officer may procure the temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5.

(e) Details of personnel

The head of any Federal department or agency may detail on a reimbursable basis, or on a nonreimbursable basis for not to exceed 180 calendar days during any fiscal year, as agreed upon by the Chief Executive Officer and the head of the Federal agency, any of the personnel of that department or agency to the Corporation to assist the Corporation in carrying out the duties of the Corporation under the national service laws. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(f) Advisory committees

(1) Establishment

The Chief Executive Officer, acting upon the recommendation of the Board, may establish advisory committees in the Corporation to advise the Board with respect to national service issues, such as the type of programs to be established or assisted under the national service laws, priorities and criteria for such programs, and methods of conducting outreach for, and evaluation of, such programs.

(2) Composition

Such an advisory committee shall be composed of members appointed by the Chief Executive Officer, with such qualifications as the Chief Executive Officer may specify.

(3) Expenses

Members of such an advisory committee may be allowed travel expenses as described in section 12651b(d) of this title.

(4) Staff

(A) In general

Except as provided in subparagraph (B), the Chief Executive Officer is authorized to appoint and fix the compensation of such staff as the Chief Executive Officer determines to be necessary to carry out the functions of the advisory committee, without regard to—

(i) the provisions of title 5 governing appointments in the competitive service; and

(ii) the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(B) Compensation

If a member of the staff appointed under subparagraph (A) was appointed without regard to the provisions described in clauses (i) and (ii) of subparagraph (A), the rate of compensation for such member may not exceed the maximum rate of basic pay payable for GS–13 of the General Schedule under section 5332 of title 5.

(Pub. L. 101–610, title I, § 195, as added and amended Pub. L. 103–82, title II, §§ 202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 883, 891.)

REFERENCES IN TEXT

Section 8E of the Inspector General Act of 1978, referred to in subsec. (a), is section 8E of Pub. L. 95–452, as added by Pub. L. 103–82, title II, § 202(g)(1), Sept. 21, 1993, 107 Stat. 889, which was renumbered section 8F of the Act by Pub. L. 103–204, § 23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5, Government Organization and Employees.

The provisions of title 5 governing appointments in the competitive service, referred to in subsecs. (b)(1) and (f)(4)(A)(i), are classified generally to section 3301 et seq. of Title 5.

Section 203(c)(2) of the National and Community Service Trust Act of 1993, referred to in subsec. (c)(2)(C), is section 203(c)(2) of Pub. L. 103–82, which is set out as a note under section 12651 of this title. For the effective date of section 203(c)(2) of this Act, see

section 203(d) of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 12651 of this title.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (c)(2)(C), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified generally to chapter 66 (§ 4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 195 of Pub. L. 101–610 was renumbered section 151 by Pub. L. 103–82 and is classified to section 12611 of this title.

AMENDMENTS

1993—Subsecs. (c)(1), (e). Pub. L. 103–82, § 203(a)(1)(B), which directed amendment of section 195(c) and (e) of subtitle I of the National and Community Service Act of 1990 by substituting ''the national service laws'' for ''this chapter'', was executed to subsecs. (c)(1) and (e) of this section, which is section 195 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B) of Pub. L. 103–82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103–82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103–82, set out as a note under section 12651 of this title.

§ 12651g. Administration

(a) Donations

(1) Services

(A) Volunteers

Notwithstanding section 1342 of title 31, the Corporation may solicit and accept the voluntary services of individuals to assist the Corporation in carrying out the duties of the Corporation under the national service laws, and may provide to such individuals the travel expenses described in section 12651b(d) of this title.

(B) Limitation

Such a volunteer shall not be considered to be a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, except that—

(i) for the purposes of the tort claims provisions of chapter 171 of title 28, a volunteer under this division shall be considered to be a Federal employee;

(ii) for the purposes of subchapter I of chapter 81 of title 5 relating to compensation to Federal employees for work injuries, volunteers under this division shall be considered to be employees, as defined in section 8101(1)(B) of title 5 and the provisions of such subchapter shall apply; and

(iii) for purposes of the provisions of chapter 11 of part I of title 18, such a volunteer (to whom such provisions would not otherwise apply except for this subsection) shall be a special Government employee.

(C) Inherently governmental function

(i) In general

Such a volunteer shall not carry out an inherently governmental function.

(ii) Regulations

The Chief Executive Officer shall promulgate regulations to carry out this subparagraph.

(iii) "Inherently governmental function" defined

As used in this subparagraph, the term ''inherently governmental function'' means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of value judgment in making a decision for the Government.

(2) Property

(A) In general

The Corporation may solicit, accept, hold, administer, use, and dispose of, in furtherance of the purposes of the national service laws, donations of any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise. Donations accepted under this subparagraph shall be used as nearly as possible in accordance with the terms, if any, of such donation.

(B) Status of contribution

Any donation accepted under subparagraph (A) shall be considered to be a gift, devise, or bequest to, or for the use of, the United States.

(C) Rules

The Chief Executive Officer shall establish written rules to ensure that the solicitation, acceptance, holding, administration, and use of property described in subparagraph (A)—

(i) will not reflect unfavorably upon the ability of the Corporation, or of any officer or employee of the Corporation, to carry out the responsibilities or official duties of the Corporation in a fair and objective manner; and

(ii) will not compromise the integrity of the programs of the Corporation or any official or employee of the Corporation involved in such programs.

(D) Disposition

Upon completion of the use by the Corporation of any property accepted pursuant to subparagraph (A) (other than money or monetary proceeds from sales of property so accepted), such completion shall be reported to the General Services Administration and such property shall be disposed of in accordance with title II of the Federal Property and Administrative Services Act of 1949.[1]

(3) Volunteer

As used in this subsection, the term ''volunteer'' does not include a participant.

[1] See References in Text note below.

(b) Contracts

Subject to the Federal Property and Administrative Services Act of 1949,[1] the Corporation may enter into contracts, and cooperative and interagency agreements, with Federal and State agencies, private firms, institutions, and individuals to conduct activities necessary to assist the Corporation in carrying out the duties of the Corporation under the national service laws.

(c) Office of Management and Budget

Appropriate circulars of the Office of Management and Budget shall apply to the Corporation.

(Pub. L. 101–610, title I, § 196, as added Pub. L. 103–82, title II, §§ 202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 885, 891.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsecs. (a)(2)(D) and (b), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works. Title II of the Act, which was classified principally to subchapter II (§§ 481, 483, 484, 485, 486, 487 to 490, 491, 492) of chapter 10 and section 758 of former Title 40, was repealed by Pub. L. 107–217, § 6(b), Aug. 21, 2002, 116 Stat. 1304, the first section of which enacted Title 40. For disposition of sections of former Title 40 to revised Title 40, see Table preceding section 101 of Title 40. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1993—Subsecs. (a)(1)(A), (2)(A), (b). Pub. L. 103–82, § 203(a)(1)(B), which directed amendment of section 196(a) and (b) of subtitle I of the National and Community Service Act of 1990 by substituting ''the national service laws'' for ''this chapter'', was executed to subsecs. (a)(1)(A), (2)(A) and (b) of this section, which is section 196 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B) of Pub. L. 103–82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103–82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103–82, set out as a note under section 12651 of this title.

§ 12651h. Corporation State offices

(a) In general

The Chief Executive Officer shall establish and maintain a decentralized field structure that provides for an office of the Corporation for each State. The office for a State shall be located in, or in reasonable proximity to, such State. Only one such office may carry out the duties described in subsection (b) of this section with respect to a State at any particular time. Such State office may be directed by the representative designated under section 12651f(c) of this title.

(b) Duties

Each State office established pursuant to subsection (a) of this section shall—

(1) provide to the State Commissions established under section 12638 of this title technical and other assistance for the development and implementation of national service plans under section 12638(e)(1) of this title;

(2) provide to community-based agencies and other entities within the State technical assistance for the preparation of applications for assistance under the national service laws, utilizing, as appropriate, information and materials provided by the clearinghouses established pursuant to section 12653a of this title;

(3) provide to the State Commission and other entities within the State support and technical assistance necessary to assure the existence of an effective system of recruitment, placement, and training of volunteers within the State;

(4) monitor and evaluate the performance of all programs and projects within the State that receive assistance under the national service laws; and

(5) perform such other duties and functions as may be assigned or delegated by the Chief Executive Officer.

(Pub. L. 101–610, title I, § 196A, as added Pub. L. 103–82, title II, § 202(a), Sept. 21, 1993, 107 Stat. 887.)

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103–82, set out as a note under section 12651 of this title.

Division H—Investment for Quality and Innovation

PRIOR PROVISIONS

This division is comprised of subtitle H, §§ 198–198D, of title I of Pub. L. 101–610. A prior part H (§ 12653 et seq.), comprised of subtitle H, §§ 195–195O, of title I of Pub. L. 101–610, was renumbered subtitle E, §§ 151–166, of title I of Pub. L. 101–610 by Pub. L. 103–82, § 104(b), and transferred to division E (§ 12611 et seq.) of this subchapter.

§ 12653. Additional Corporation activities to support national service

(a) Methods of conducting activities

The Corporation may carry out this section directly (except as provided in subsection (r) of this section) or through grants, contracts, and cooperative agreements with other entities.

(b) Innovation and quality improvement

The Corporation may undertake activities to improve the quality of national service programs, including service-learning programs, and to support innovative and model programs, including—

(1) programs, including programs for rural youth, under division B or C of this subchapter;

(2) employer-based retiree programs;

(3) intergenerational programs;

(4) programs involving individuals with disabilities as participants providing service; and

(5) programs sponsored by Governors.

(c) Summer programs

The Corporation may support service programs intended to be carried out between May 1 and October 1, except that such a program may also include a year-round component.

(d) Community-based agencies

The Corporation may provide training and technical assistance and other assistance to service sponsors and other community-based agencies that provide volunteer placements in order to improve the ability of such agencies to use participants and other volunteers in a manner that results in high-quality service and a positive service experience for the participants and volunteers.

(e) Improve ability to apply for assistance

The Corporation shall provide training and technical assistance, where necessary, to individuals, programs, local labor organizations, State educational agencies, State Commissions, local educational agencies, local governments, community-based agencies, and other entities to enable them to apply for funding under one of the national service laws, to conduct high-quality programs, to evaluate such programs, and for other purposes.

(f) National service fellowships

The Corporation may award national service fellowships.

(g) Conferences and materials

The Corporation may organize and hold conferences, and prepare and publish materials, to disseminate information and promote the sharing of information among programs for the purpose of improving the quality of programs and projects.

(h) Peace Corps and VISTA training

The Corporation may provide training assistance to selected individuals who volunteer to serve in the Peace Corps or a program authorized under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.). The training shall be provided as part of the course of study of the individual at an institution of higher education, shall involve service-learning, and shall cover appropriate skills that the individual will use in the Peace Corps or VISTA.

(i) Promotion and recruitment

The Corporation may conduct a campaign to solicit funds for the National Service Trust and other programs and activities authorized under the national service laws and to promote and recruit participants for programs that receive assistance under the national service laws.

(j) Training

The Corporation may support national and regional participant and supervisor training, including leadership training and training in specific types of service and in building the ethic of civic responsibility.

(k) Research

The Corporation may support research on national service, including service-learning.

(*l*) Intergenerational support

The Corporation may assist programs in developing a service component that combines students, out-of-school youths, and older adults as participants to provide needed community services.

(m) Planning coordination

The Corporation may coordinate community-wide planning among programs and projects.

(n) Youth leadership

The Corporation may support activities to enhance the ability of youth and young adults to play leadership roles in national service.

(*o*) National program identity

The Corporation may support the development and dissemination of materials, including training materials, and arrange for uniforms and insignia, designed to promote unity and shared features among programs that receive assistance under the national service laws.

(p) Service-learning

The Corporation shall support innovative programs and activities that promote service-learning.

(q) National Youth Service Day

(1) Designation

April 19, 1994, and April 18, 1995, are each designated as ''National Youth Service Day''. The President is authorized and directed to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

(2) Federal activities

In order to observe National Youth Service Day at the Federal level, the Corporation may organize and carry out appropriate ceremonies and activities.

(3) Activities

The Corporation may make grants to public or private nonprofit organizations with demonstrated ability to carry out appropriate activities, in order to support such activities on National Youth Service Day.

(r) Assistance for Head Start

The Corporation may make grants to, and enter into contracts and cooperative agreements with, public or nonprofit private agencies and organizations that receive grants or contracts under the Foster Grandparent Program (part B of title II of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 5011 et seq.]), for projects of the type described in section 211(a) of such Act [42 U.S.C. 5011] operating under memoranda of agreement with the Corporation, for the purpose of increasing the number of low-income individuals who provide services under such program to children who participate in Head Start programs under the Head Start Act (42 U.S.C 9831 et seq).

(s) Martin Luther King, Jr., Service Day

(1) Assistance

The Corporation may make grants to eligible entities described in paragraph (2) to pay for the Federal share of the cost of planning and carrying out service opportunities in conjunction with the Federal legal holiday honoring the birthday of Martin Luther King, Jr. Such service opportunities shall consist of activities reflecting the life and teachings of Martin Luther King, Jr., such as cooperation and understanding among racial and ethnic groups, nonviolent conflict resolution, equal economic and educational opportunities, and social justice.

(2) Eligible entities

Any entity otherwise eligible for assistance under the national services laws shall be eligible to receive a grant under this subsection.

(3) Repealed. Pub. L. 105–354, § 2(b), Nov. 3, 1998, 112 Stat. 3244

(4) Federal share

Grants provided under this subsection to an eligible entity to support the planning and carrying out of a service opportunity in conjunction with the Federal legal holiday honoring the birthday of Martin Luther King, Jr., together with all other Federal funds used to plan or carry out the service opportunity, may not exceed 30 percent of the cost of planning and carrying out the service opportunity.

(5) Calculation of entity contributions

In determining the non-Federal share of the costs of planning and carrying out a service opportunity supported by a grant under this subsection, the Corporation shall consider in-kind contributions (including facilities, equipment, and services) made to plan or carry out the service opportunity.

(Pub. L. 101–610, title I, § 198, as added and amended Pub. L. 103–82, title I, § 104(c), title IV, § 405(p)(2), Sept. 21, 1993, 107 Stat. 840, 922; Pub. L. 103–304, § 3(a), (b)(6), Aug. 23, 1994, 108 Stat. 1566, 1568; Pub. L. 105–354, § 2(b), Nov. 3, 1998, 112 Stat. 3244.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsecs. (h) and (r), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I and part B of title II of the Act are classified generally to subchapter I (§ 4951 et seq.) and part B (§ 5011 et seq.) of subchapter II, respectively, of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Head Start Act, referred to in subsec. (r), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

PRIOR PROVISIONS

A prior section 12653, Pub. L. 101–610, title I, § 195, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2522, which stated purpose of Civilian Community Corps, was renumbered section 151 of Pub. L. 101–610 by Pub. L. 103–82, § 104(b), and transferred to section 12611 of this title.

AMENDMENTS

1998—Subsec. (s)(3). Pub. L. 105–354 struck out heading and text of par. (3). Text read as follows: ''In making grants under this subsection, the Corporation shall consult with the Martin Luther King, Jr. Federal Holiday Commission established under section 169j–1 of title 36.''

1994—Subsec. (q)(1). Pub. L. 103–304, § 3(b)(6), substituted ''1995,'' for ''1995''.

Subsec. (s). Pub. L. 103–304, § 3(a), added subsec. (s).

1993—Subsec. (r). Pub. L. 103–82, § 405(p)(2), substituted ''Corporation'' for ''ACTION Agency''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 405(p)(2) of Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

§ 12653a. Clearinghouses

(a) Assistance

The Corporation shall provide assistance to appropriate entities to establish one or more clearinghouses, including the clearinghouse described in section 12551 of this title.

(b) Application

To be eligible to receive assistance under subsection (a) of this section, an entity shall submit an application to the Corporation at such time, in such manner, and containing such information as the Corporation may require.

(c) Function of clearinghouses

An entity that receives assistance under subsection (a) of this section may—

(1) assist entities carrying out State or local community service programs with needs assessments and planning;

(2) conduct research and evaluations concerning community service;

(3)(A) provide leadership development and training to State and local community service program administrators, supervisors, and participants; and

(B) provide training to persons who can provide the leadership development and training described in subparagraph (A);

(4) facilitate communication among entities carrying out community service programs and participants;

(5) provide information, curriculum materials, and technical assistance relating to planning and operation of community service programs, to States and local entities eligible to receive funds under this subchapter;

(6)(A) gather and disseminate information on successful community service programs, components of such successful programs, innovative youth skills curriculum, and community service projects; and

(B) coordinate the activities of the clearinghouse with appropriate entities to avoid duplication of effort;

(7) make recommendations to State and local entities on quality controls to improve the delivery of community service programs and on changes in the programs under this subchapter; and

(8) carry out such other activities as the Chief Executive Officer determines to be appropriate.

(Pub. L. 101–610, title I, § 198A, as added Pub. L. 103–82, title I, § 104(c), Sept. 21, 1993, 107 Stat. 842.)

PRIOR PROVISIONS

A prior section 12653a, Pub. L. 101–610, title I, § 195A, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2523, which provided for establishment of Civilian Community Corps Demonstration Program, was renumbered section 152 of Pub. L. 101–610 by Pub. L. 103–82, § 104(b), and transferred to section 12612 of this title.

§ 12653b. Presidential awards for service

(a) Presidential awards

(1) In general

The President, acting through the Corporation, may make Presidential awards for service to individuals providing significant service, and to outstanding service programs.

(2) Individuals and programs

Notwithstanding section 12511(19) of this title—

(A) an individual receiving an award under this subsection need not be a participant in a program authorized under this chapter; and

(B) a program receiving an award under this subsection need not be a program authorized under this chapter.

(3) Nature of award

In making an award under this section to an individual or program, the President, acting through the Corporation—

(A) is authorized to incur necessary expenses for the honorary recognition of the individual or program; and

(B) is not authorized to make a cash award to such individual or program.

(b) Information

The President, acting through the Corporation, shall ensure that information concerning individuals and programs receiving awards under this section is widely disseminated.

(Pub. L. 101–610, title I, § 198B, as added Pub. L. 103–82, title I, § 104(c), Sept. 21, 1993, 107 Stat. 843.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original ''this Act'', meaning Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

PRIOR PROVISIONS

A prior section 12653b, Pub. L. 101–610, title I, § 195B, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2523, which related to national service program component of Civilian Community Corps Demonstration Program, was renumbered section 153 of Pub. L. 101–610 by Pub. L. 103–82, title I, § 104(b), Sept. 21, 1993, 107 Stat. 840, and transferred to section 12613 of this title.

§ 12653c. Military installation conversion demonstration programs

(a) Purposes

The purposes of this section are to—

(1) provide meaningful service opportunities for economically disadvantaged youth;

(2) fully utilize military installations affected by closures or realignments;

(3) encourage communities affected by such closures or realignments to convert the installations to community use; and

(4) foster a sense of community pride in the youth in the community.

(b) Definitions

As used in this section:

(1) Affected military installation

The term ''affected military installation'' means a military installation being closed or realigned under—

(A) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101–510; 10 U.S.C. 2687 note); and

(B) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(2) Community

The term ''community'' includes a county.

(3) Convert to community use

The term ''convert to community use'', used with respect to an affected military installation, includes—

(A) conversion of the installation or a part of the installation to—

(i) a park;

(ii) a community center;

(iii) a recreational facility; or

(iv) a facility for a Head Start program under the Head Start Act (42 U.S.C. 9831 et seq.); and

(B) carrying out, at the installation, a construction or economic development project that is of substantial benefit, as determined by the Chief Executive Officer, to—

(i) the community in which the installation is located; or

(ii) a community located within such distance of the installation as the Chief Executive Officer may determine by regulation to be appropriate.

(4) Demonstration program

The term ''demonstration program'' means a program described in subsection (c) of this section.

(c) Demonstration programs

(1) Grants

The Corporation may make grants to communities and community-based agencies to pay for the Federal share of establishing and carrying out military installation conversion demonstration programs, to assist in converting to community use affected military installations located—

(A) within the community; or

(B) within such distance from the community as the Chief Executive Officer may by regulation determine to be appropriate.

(2) Duration

In carrying out such a demonstration program, the community or community-based agency may carry out—

(A) a program of not less than 6 months in duration; or

(B) a full-time summer program.

(d) Use of funds

(1) Stipend

A community or community-based agency that receives a grant under subsection (c) of this section to establish and carry out a project through a demonstration program may

use the funds made available through such grant to pay for a portion of a stipend for the participants in the project.

(2) Limitation on amount of stipend

The amount of the stipend provided to a participant under paragraph (1) that may be paid using assistance provided under this section and using any other Federal funds shall not exceed the lesser of—

(A) 85 percent of the total average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title; and

(B) 85 percent of the stipend established by the demonstration program involved.

(e) Participants

(1) Eligibility

A person shall be eligible to be selected as a participant in a project carried out through a demonstration program if the person is—

(A) an economically disadvantaged individual; and

(B)(i) a person described in section 12613(b) of this title;

(ii) a youth described in section 12614(a) of this title; or

(iii) an individual described in section 2884 of title 29.

(2) Participation

Persons desiring to participate in such a project shall enter into an agreement with the service sponsor of the project to participate—

(A) on a full-time or a part-time basis; and

(B) for the duration referred to in subsection (f)(2)(C) of this section.

(f) Application

(1) In general

To be eligible to receive a grant under subsection (c) of this section, a community or community-based agency shall submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(2) Contents

At a minimum, such application shall contain—

(A) a description of the demonstration program proposed to be conducted by the applicant;

(B) a proposal for carrying out the program that describes the manner in which the applicant will—

(i) provide preservice and inservice training, for supervisors and participants, that will be conducted by qualified individuals or qualified organizations;

(ii) conduct an appropriate evaluation of the program; and

(iii) provide for appropriate community involvement in the program;

(C) information indicating the duration of the program; and

(D) an assurance that the applicant will comply with the nonduplication and nondisplacement provisions of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title.

(g) Limitation on grant

In making a grant under subsection (c) of this section with respect to a demonstration program to assist in converting an affected military installation, the Corporation shall not make a grant for more than 25 percent of the total cost of the conversion.

(Pub. L. 101–610, title I, § 198C, as added Pub. L. 103–82, title I, § 104(c), Sept. 21, 1993, 107 Stat. 843; amended Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(42)(B), (f)(33)(A)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–428, 2681–434.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (b)(1)(A), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (b)(1)(B), is Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

The Head Start Act, referred to in subsec. (b)(3)(A)(iv), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

PRIOR PROVISIONS

A prior section 12653c, Pub. L. 101–610, title I, § 195C, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2524, which related to summer national service program of Civilian Community Corps Demonstration Program, was renumbered section 154 of Pub. L. 101–610 by Pub. L. 103–82, § 104(b), and transferred to section 12614 of this title.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(42)(B)(i)], substituted ''a military installation being closed or realigned under—'' and subpars. (A) and (B) for ''a military installation described in section 1662d(e)(1) of title 29''.

Subsec. (e)(1)(B)(iii). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(33)(A)], added cl. (iii) and struck out former cl. (iii) which read as follows: ''an eligible youth described in section 1693 of title 29 or an individual described in section 2884 of title 29.''

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(42)(B)(ii)], added cl. (iii) and struck out former cl. (iii) which read as follows: ''an eligible youth described in section 1693 of title 29.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(42)(B)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(33)(A)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

§ 12653d. Special demonstration project

(a) Special demonstration project for the Yukon-Kuskokwim delta of Alaska

The President may award grants to, and enter into contracts with, organizations to carry out

programs that address significant human needs in the Yukon-Kuskokwim delta region of Alaska.

(b) Application

(1) General requirements

To be eligible to receive a grant or enter into a contract under subsection (a) of this section with respect to a program, an organization shall submit an application to the President at such time, in such manner, and containing such information as the President may require.

(2) Contents

The application submitted by the organization shall, at a minimum—

(A) include information describing the manner in which the program will utilize VISTA volunteers, individuals who have served in the Peace Corps, and other qualified persons, in partnership with the local nonprofit organizations known as the Yukon-Kuskokwim Health Corporation and the Alaska Village Council Presidents;

(B) take into consideration—

(i) the primarily noncash economy of the region; and

(ii) the needs and desires of residents of the local communities in the region; and

(C) include specific strategies, developed in cooperation with the Yupi'k speaking population that resides in such communities, for comprehensive and intensive community development for communities in the Yukon-Kuskokwim delta region.

(Pub. L. 101–610, title I, § 198D, as added Pub. L. 103–82, title I, § 104(c), Sept. 21, 1993, 107 Stat. 845.)

PRIOR PROVISIONS

Prior sections 12653d to 12653*o* relating to Civilian Community Corps were renumbered by Pub. L. 103–82, § 104(b), and transferred as follows:

Section 12653d, Pub. L. 101–610, title I, § 195D, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2524, which related to organization and membership of the Corps, was renumbered section 155 of Pub. L. 101–610 and transferred to section 12615 of this title.

Section 12653e, Pub. L. 101–610, title I, § 195E, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2525, which provided for training of Corps members, was renumbered section 156 of Pub. L. 101–610 and transferred to section 12616 of this title.

Section 12653f, Pub. L. 101–610, title I, § 195F, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2526, which related to service projects carried out by the Corps, was renumbered section 157 of Pub. L. 101–610 and transferred to section 12617 of this title.

Section 12653g, Pub. L. 101–610, title I, § 195G, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2526, which related to authorized benefits for Corps members, was renumbered section 158 of Pub. L. 101–610 and transferred to section 12618 of this title.

Section 12653h, Pub. L. 101–610, title I, § 195H, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2528, which related to administration of the Corps, was renumbered section 159 of Pub. L. 101–610 and transferred to section 12619 of this title.

Section 12653i, Pub. L. 101–610, title I, § 195I, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2530, which related to status of Corps members and Corps personnel under Federal law, was renumbered section 160 of Pub. L. 101–610 and transferred to section 12620 of this title.

Section 12653j, Pub. L. 101–610, title I, § 195J, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2530, which provided for contract and grant authority of Corps Director, was renumbered section 161 of Pub. L. 101–610 and transferred to section 12621 of this title.

Section 12653k, Pub. L. 101–610, title I, § 195K, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2531, which set out other departments' responsibilities to the Corps, was renumbered section 162 of Pub. L. 101–610 and transferred to section 12622 of this title.

Section 12653*l*, Pub. L. 101–610, title I, § 195L, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which related to Advisory Board for the Corps, was renumbered section 163 of Pub. L. 101–610 and transferred to section 12623 of this title.

Section 12653m, Pub. L. 101–610, title I, § 195M, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which provided for annual evaluations of Corps programs, was renumbered section 164 of Pub. L. 101–610 and transferred to section 12624 of this title.

Section 12653n, Pub. L. 101–610, title I, § 195N, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which limited funding for Corps programs, was renumbered section 165 of Pub. L. 101–610 and transferred to section 12625 of this title.

Section 12653*o*, Pub. L. 101–610, title I, § 195O, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which defined terms used in former part H of this subchapter, was renumbered section 166 of Pub. L. 101–610 and transferred to section 12626 of this title.

Division I—American Conservation and Youth Service Corps

CODIFICATION

Subtitle I of title I of Pub. L. 101–610, comprising this division, was formerly classified to part C (§ 12541 et seq.) of this subchapter prior to the general amendment by Pub. L. 103–82, § 101(a).

§ 12655. General authority

The Corporation may make grants to States or local applicants and may transfer funds to the Secretary of Agriculture or to the Secretary of the Interior for the creation or expansion of full-time, part-time, year-round, or summer, youth corps programs[1] To the extent practicable, the Corporation shall apply the provisions of division C of this subchapter in making grants under this section.

(Pub. L. 101–610, title I, § 199A, formerly § 121, Nov. 16, 1990, 104 Stat. 3140; Pub. L. 102–384, § 5, Oct. 5, 1992, 106 Stat. 1455; renumbered § 199A and amended Pub. L. 103–82, title I, § 101(a), (e)(1), (2), Sept. 21, 1993, 107 Stat. 788, 815.)

CODIFICATION

Section was formerly classified to section 12541 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

AMENDMENTS

1993—Pub. L. 103–82, § 101(e)(1), (2), substituted ''Corporation'' for ''Commission'', substituted ''or to the Secretary of the Interior'' for '', to the Secretary of the Interior, or to the Director of ACTION'', struck out ''under section 12512 of this title'' after ''may make grants'', and inserted at end ''To the extent prac-

[1] So in original. Probably should be followed by a period.

ticable, the Corporation shall apply the provisions of division C of this subchapter in making grants under this section.''

1992—Pub. L. 102–384 amended section generally. Prior to amendment, section read as follows: ''The Commission may make grants under section 12512 of this title to States or local applicants, to the Secretary of Agriculture, to the Secretary of the Interior, or to the Director of ACTION for the creation or expansion of full-time or summer youth corps programs.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

SHORT TITLE

For short title of subtitle I of title I of Pub. L. 101–610 which enacted this division, as the American Conservation and Youth Service Corps Act of 1990, see section 199 of Pub. L. 101–610, set out as a note under section 12501 of this title.

§ 12655a. Limitation on purchase of capital equipment

Not to exceed 10 percent of the amount of assistance made available to a program agency under this division shall be used for the purchase of major capital equipment.

(Pub. L. 101–610, title I, § 199B, formerly § 122, Nov. 16, 1990, 104 Stat. 3140; Pub. L. 102–10, § 5(2), Mar. 12, 1991, 105 Stat. 30; renumbered § 199B and amended Pub. L. 103–82, title I, § 101(a), (e)(3), Sept. 21, 1993, 107 Stat. 788, 815.)

CODIFICATION

Section was formerly classified to section 12542 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

AMENDMENTS

1993—Pub. L. 103–82, § 101(e)(3), amended section generally, substituting provisions relating to limitation on purchase of capital equipment for provisions relating to allocation of funds.

1991—Subsec. (e). Pub. L. 102–10 inserted ''service'' after ''youth''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655b. State application

(a) Submission

To be eligible to receive a grant under this division, a State or Indian tribe (or a local applicant if section 12655 of this title applies) shall prepare and submit to the Corporation, an application at such time, in such manner, and containing such information as the Corporation may reasonably require.

(b) General content

An application submitted under subsection (a) of this section shall describe—

(1) any youth corps program proposed to be conducted directly by such applicant with assistance provided under this division; and

(2) any grant program proposed to be conducted by such State with assistance provided under this division for the benefit of entities within such State.

(Pub. L. 101–610, title I, § 199C, formerly § 123, Nov. 16, 1990, 104 Stat. 3141; Pub. L. 102–10, § 5(3), Mar. 12, 1991, 105 Stat. 30; renumbered § 199C and amended Pub. L. 103–82, title I, § 101(a), (e)(1), (4), Sept. 21, 1993, 107 Stat. 788, 815.)

CODIFICATION

Section was formerly classified to section 12543 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 101(e)(1), (4)(A), substituted ''Corporation'' for ''Commission'' in two places and ''section 12655 of this title'' for ''section 12542(b) of this title'' and struck out before period at end '', including the information required under subsection (b) of this section''.

Subsecs. (c), (d). Pub. L. 103–82, § 101(e)(4)(B), struck out subsec. (c) which specified required contents of State applications and subsec. (d) which required State applicants to establish and implement programs to make grants to applicants within the State.

1991—Subsec. (c)(14), (15). Pub. L. 102–10 added par. (14) and redesignated former par. (14) as (15).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655c. Focus of programs

(a) In general

Programs that receive assistance under this division may carry out activities that—

(1) in the case of conservation corps programs, focus on—

(A) conservation, rehabilitation, and the improvement of wildlife habitat, rangelands, parks, and recreational areas;

(B) urban and rural revitalization, historical and cultural site preservation, and reforestation of both urban and rural areas;

(C) fish culture, wildlife habitat maintenance and improvement, and other fishery assistance;

(D) road and trail maintenance and improvement;

(E) erosion, flood, drought, and storm damage assistance and controls;

(F) stream, lake, waterfront harbor, and port improvement;

(G) wetlands protection and pollution control;

(H) insect, disease, rodent, and fire prevention and control;

(I) the improvement of abandoned railroad beds and rights-of-way;

(J) energy conservation projects, renewable resource enhancement, and recovery of biomass;

(K) reclamation and improvement of strip-mined land;

(L) forestry, nursery, and cultural operations; and

(M) making public facilities accessible to individuals with disabilities.

(2) in the case of youth service corps programs, include participant service in—

(A) State, local, and regional governmental agencies;

(B) nursing homes, hospices, senior centers, hospitals, local libraries, parks, rec-

reational facilities, child and adult day care centers, programs serving individuals with disabilities, and schools;

(C) law enforcement agencies,[1] and penal and probation systems;

(D) private nonprofit organizations that primarily focus on social service such as community action agencies;

(E) activities that focus on the rehabilitation or improvement of public facilities, neighborhood improvements, literacy training that benefits educationally disadvantaged individuals, weatherization of and basic repairs to low-income housing including housing occupied by older adults, energy conservation (including solar energy techniques), removal of architectural barriers to access by individuals with disabilities to public facilities, activities that focus on drug and alcohol abuse education, prevention and treatment, and conservation, maintenance, or restoration of natural resources on publicly held lands; and

(F) any other nonpartisan civic activities and services that the Corporation determines to be of a substantial social benefit in meeting unmet human, educational, or environmental needs (particularly needs related to poverty) or in the community where volunteer service is to be performed; or

(3) encompass the focuses and services described in both paragraphs (1) and (2).

(b) Limitation on service

No participant shall perform any specific activity for more than a 6-month period. No participant shall remain enrolled in programs assisted under this division for more than 24 months.

(Pub. L. 101–610, title I, § 199D, formerly § 124, Nov. 16, 1990, 104 Stat. 3143; Pub. L. 102–10, § 5(4), Mar. 12, 1991, 105 Stat. 30; renumbered § 199D and amended Pub. L. 103–82, title I, § 101(a), (e)(1), (5), Sept. 21, 1993, 107 Stat. 788, 815, 816.)

CODIFICATION

Section was formerly classified to section 12544 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

AMENDMENTS

1993—Subsec. (a)(2)(F). Pub. L. 103–82, § 101(e)(1), substituted ''Corporation'' for ''Commission''.

Subsecs. (b), (c). Pub. L. 103–82, § 101(e)(5), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to ineligible service categories.

1991—Subsec. (a)(2). Pub. L. 102–10, § 5(4)(A), substituted ''youth service'' for ''human services'' in introductory provisions.

Subsec. (c). Pub. L. 102–10, § 5(4)(B), substituted ''any specific activity for more than a 6-month period. No participant shall remain enrolled in programs'' for ''services in any project for more than a 6-month period. No participant shall remain enrolled in projects''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

[1] So in original. The comma probably should not appear.

§ 12655d. Related programs

An activity administered under the authority of the Secretary of Health and Human Services, that is operated for the same purpose as a program eligible to be carried out under this division, is encouraged to use services available under this division.

(Pub. L. 101–610, title I, § 199E, formerly § 125, Nov. 16, 1990, 104 Stat. 3144; renumbered § 199E, Pub. L. 103–82, title I, § 101(a), Sept. 21, 1993, 107 Stat. 788.)

CODIFICATION

Section was formerly classified to section 12545 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

§ 12655e. Public lands or Indian lands

(a) Limitation

To be eligible to receive assistance through a grant provided under this division, a program shall carry out activities on public lands or Indian lands, or result in a public benefit.

(b) Review of applications

In reviewing applications submitted under section 12655b of this title that propose programs or projects to be carried out on public lands or Indian lands, the Corporation shall consult with the Secretary of the Interior.

(c) Consistency

A program carried out with assistance provided under this division for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with—

(1) the provisions of law and policies relating to the management and administration of such lands, and all other applicable provisions of law; and

(2) all management, operational, and other plans and documents that govern the administration of such lands.

(d) Participation by other conservation programs

Any land or water conservation program (or any related program) administered in any State under the authority of any Federal program is encouraged to use services available under this part[1] to carry out its program.

(Pub. L. 101–610, title I, § 199F, formerly § 126, Nov. 16, 1990, 104 Stat. 3144; renumbered § 199F and amended Pub. L. 103–82, title I, § 101(a), (e)(1), (6), Sept. 21, 1993, 107 Stat. 788, 815, 816.)

REFERENCES IN TEXT

This part, referred to in subsec. (d), is unidentifiable in the original because subtitle I (§§ 199 to 199O) of title I of Pub. L. 101–610 does not contain parts.

CODIFICATION

Section was formerly classified to section 12546 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–82, § 101(e)(1), (6), substituted ''Corporation'' for ''Commission'' and ''section 12655b of this title'' for ''section 12543 of this title''.

[1] See References in Text note below.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655f. Training and education services

(a) Assessment of skills

Each program agency shall assess the educational level of participants at the time of their entrance into the program, using any available records or simplified assessment means or methodology and shall, where appropriate, refer such participants for testing for specific learning disabilities.

(b) Enhancement of skills

Each program agency shall, through the programs and activities administered under this division, enhance the educational skills of participants.

(c) Provision of pre-service and in-service training and education

(1) Requirement

Each program agency shall use not less than 10 percent of the assistance made available to such agency under this division in each fiscal year to provide pre-service and in-service training and educational materials and services for participants in such a program. Program participants shall be provided with information concerning the benefits to the community that result from the activities undertaken by such participants.

(2) Agreements for academic study

A program agency may enter into arrangements with academic institutions or education providers, including—

(A) local education agencies;
(B) community colleges;
(C) 4-year colleges;
(D) area vocational-technical schools; and
(E) community based organizations;

to evaluate the basic skills of participants and to make academic study available to participants to enable such participants to upgrade literacy skills, to obtain high school diplomas or the equivalent of such diplomas, to obtain college degrees, or to enhance employable skills.

(3) Counseling

Career and educational guidance and counseling shall be provided to a participant during a period of in-service training as described in this subsection. Each graduating participant shall be provided with counseling with respect to additional study, job skills training or employment and shall be provided job placement assistance where appropriate.

(4) Priority for participants without high school diplomas

A program agency shall give priority to participants who have not obtained a high school diploma or the equivalent of such diploma, in providing services under this subsection.

(d) Standards and procedures

(1) Consistency with State and local requirements

Appropriate State and local officials shall certify that standards and procedures with respect to the awarding of academic credit and the certification of educational attainment in programs conducted under subsection (c) of this section are consistent with the requirements of applicable State and local law and regulations.

(2) Academic standards

The standards and procedures described in paragraph (1) shall provide that an individual serving in a program that receives assistance under this division—

(A) who is not a high school graduate, participate in an educational curriculum so that such individual can earn a high school diploma or the equivalent of such diploma; and

(B) may arrange to receive academic credit in recognition of the education and skills obtained from service satisfactorily completed.

(Pub. L. 101–610, title I, § 199G, formerly § 127, Nov. 16, 1990, 104 Stat. 3145; renumbered § 199G, Pub. L. 103–82, title I, § 101(a), Sept. 21, 1993, 107 Stat. 788.)

CODIFICATION

Section was formerly classified to section 12547 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

§ 12655g. Repealed. Pub. L. 103–82, title I, § 101(e)(8)(A), Sept. 21, 1993, 107 Stat. 816

Section, Pub. L. 101–610, title I, § 199H, formerly § 128, Nov. 16, 1990, 104 Stat. 3146; Pub. L. 102–10, § 5(5), Mar. 12, 1991, 105 Stat. 30; renumbered § 199H, Pub. L. 103–82, title I, § 101(a), Sept. 21, 1993, 107 Stat. 788, related to amount of award and matching requirement.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

§ 12655h. Preference for certain projects

(a) In general

In the consideration of applications submitted under section 12655b of this title, the Corporation shall give preference to programs that—

(1) will provide long-term benefits to the public;

(2) will instill a work ethic and a sense of public service in the participants;

(3) will be labor intensive, and involve youth operating in crews;

(4) can be planned and initiated promptly; and

(5) will enhance skills development and educational level and opportunities for the participants.

(b) Special rule

In the consideration of applications under this division the Corporation shall ensure the equitable treatment of both urban and rural areas.

(Pub. L. 101–610, title I, § 199H, formerly § 129, Nov. 16, 1990, 104 Stat. 3146; renumbered § 199I, renumbered § 199H, and amended Pub. L. 103–82, title I, § 101(a), (e)(1), (7), (8)(B), Sept. 21, 1993, 107 Stat. 788, 815, 816.)

CODIFICATION

Section was formerly classified to section 12549 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

PRIOR PROVISIONS

A prior section 199H of Pub. L. 101–610 was classified to section 12655g of this title prior to repeal by Pub. L. 103–82, § 101(e)(8)(A).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 101(e)(1), (7), in introductory provisions, substituted ''Corporation'' for ''Commission'' and ''section 12655b'' for ''section 12543''.

Subsec. (b). Pub. L. 103–82, § 101(e)(1), substituted ''Corporation'' for ''Commission''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655i. Age and citizenship criteria for enrollment

(a) Age and citizenship

Enrollment in programs that receive assistance under this division shall be limited to individuals who, at the time of enrollment, are—

(1) not less than 16 years nor more than 25 years of age, except that summer programs may include individuals not less than 14 years nor more than 21 years of age at the time of the enrollment of such individuals; and

(2) citizens or nationals of the United States or lawful permanent resident aliens of the United States.

(b) Participation of disadvantaged youth

Programs that receive assistance under this division shall ensure that educationally and economically disadvantaged youth, including youth in foster care who are becoming too old for foster care, youth with disabilities, youth with limited English proficiency, youth with limited basic skills or learning disabilities and homeless youth, are offered opportunities to enroll.

(c) Special corps members

Notwithstanding subsection (a)(1) of this section, program agencies may enroll a limited number of special corps members over age 25 so that the corps may draw on their special skills to fulfill the purposes of this chapter. Programs are encouraged to consider senior citizens as special corps members.

(d) Joint projects with senior citizens organizations

Program agencies shall use not more than 2 percent of amounts received under this division to conduct joint projects with senior citizens organizations to enable senior citizens to serve as mentors for youth participants.

(e) Construction

Nothing in subsection (a) of this section shall be construed to prohibit any program agency from limiting enrollment to any age subgroup within the range specified in subsection (a)(1) of this section.

(Pub. L. 101–610, title I, § 199I, formerly § 130, Nov. 16, 1990, 104 Stat. 3146; Pub. L. 102–384, § 6, Oct. 5, 1992, 106 Stat. 1456; renumbered § 199J, renumbered § 199I, Pub. L. 103–82, title I, § 101(a), (e)(8)(B), Sept. 21, 1993, 107 Stat. 788, 816.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this Act'', meaning Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended, known as the National and Community Service Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

CODIFICATION

Section was formerly classified to section 12550 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–384 substituted ''14'' for ''15''.

§ 12655j. Use of volunteers

Program agencies may use volunteer services for purposes of assisting projects carried out under this division and may expend funds made available for those purposes to the agency, including funds made available under this division, to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, recruiting, training, and supervision. The use of volunteer services under this section shall be subject to the condition that such use does not result in the displacement of any participant.

(Pub. L. 101–610, title I, § 199J, formerly § 131, Nov. 16, 1990, 104 Stat. 3147; renumbered § 199K, renumbered § 199J, Pub. L. 103–82, title I, § 101(a), (e)(8)(B), Sept. 21, 1993, 107 Stat. 788, 816.)

CODIFICATION

Section was formerly classified to section 12551 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

§ 12655k. Repealed. Pub. L. 103–82, title I, § 101(e)(8)(A), Sept. 21, 1993, 107 Stat. 816

Section, Pub. L. 101–610, title I, § 199L, formerly § 132, Nov. 16, 1990, 104 Stat. 3147; renumbered § 199L, Pub. L. 103–82, title I, § 101(a), Sept. 21, 1993, 107 Stat. 788, related to post-service benefits.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

§ 12655*l*. Living allowance

(a) Full-time service

(1) Living allowance required

Subject to paragraph (3), each participant in a full-time youth corps program that receives assistance under this division shall receive a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(2) Limitation on Federal share

The amount of the annual living allowance provided under paragraph (1) that may be paid using assistance provided under this division, section 12571 of this title, and any other Federal funds shall not exceed 85 percent of the total average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(3) Maximum living allowance

The total amount of an annual living allowance that may be provided to a participant in

a full-time youth corps program that receives assistance under this division shall not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(4) Waiver or reduction of living allowance

The Corporation may waive or reduce the requirement of paragraph (1) with respect to such national service program if such program demonstrates that—

(A) such requirement is inconsistent with the objectives of the program; and

(B) the amount of the living allowance that will be provided to each full-time participant is sufficient to meet the necessary costs of living (including food, housing, and transportation) in the area in which the program is located.

(5) Exemption

The requirement of paragraph (1) shall not apply to any program that was in existence on September 21, 1993.

(b) Reduction in existing program benefits

(1) In general

Nothing in this section shall be construed to require a program in existence on November 16, 1990, to decrease any stipends, salaries, or living allowances provided to participants under such program so long as the amount of any such stipends, salaries, or living allowances that is in excess of the levels provided for in this section are paid from non-Federal sources.

(2) Fair Labor Standards Act of 1938

For purposes of the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], residential youth corps programs under this division will be considered an organized camp.

(c) Health insurance

In addition to the living allowance provided under subsection (a) of this section, program agencies are encouraged to provide health insurance to each participant in a full-time youth corps program who does not otherwise have access to health insurance.

(d) Facilities, services, and supplies

(1) In general

The program agency may deduct, from amounts provided under subsection (a) of this section to a participant, a reasonable portion of the costs of the rates for any room and board that is provided for such participant at a residential facility. Such deducted funds shall be deposited into rollover accounts that shall be used solely to defray the costs of room and board for participants.

(2) Evaluation

The program agency shall establish the amount of the deductions and rates under paragraph (1) after evaluating the costs of providing such room and board to the participant.

(3) Duties of program agency

A program agency may provide facilities, quarters, and board and shall provide limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, and other appropriate services, supplies, and equipment to each participant.

(4) Other Federal agencies

(A) In general

The Corporation may provide services, facilities, supplies, and equipment, including any surplus food and equipment available from other Federal programs, to any program agency carrying out projects under this division.

(B) Secretary of Defense

Whenever possible, the Corporation shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment.

(5) Health and safety standards

The Corporation and program agencies shall establish standards and enforcement procedures concerning the health and safety of participants for all projects, consistent with Federal, State, and local health and safety standards.

(Pub. L. 101–610, title I, § 199K, formerly § 133, Nov. 16, 1990, 104 Stat. 3147; Pub. L. 102–10, § 5(6), Mar. 12, 1991, 105 Stat. 30; renumbered § 199M, renumbered § 199K, and amended Pub. L. 103–82, title I, § 101(a), (d), (e)(1), (8)(B), Sept. 21, 1993, 107 Stat. 788, 814–816.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (b)(2), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

CODIFICATION

Section was formerly classified to section 12553 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82, § 101(d), added pars. (1) to (5) and struck out former pars. (1) and (2) which read as follows:

''(1) IN GENERAL.—From assistance provided under this part, each participant in a full-time youth corps program that receives assistance under this part shall receive a living allowance of not more than an amount equal to 100 percent of the poverty line for a family of two (as defined in section 9902(2) of this title).

''(2) NON-FEDERAL SOURCES.—Notwithstanding paragraph (1), a program agency may provide participants with additional amounts that are made available from non-Federal sources.''

Subsec. (d)(4)(A), (B), (5). Pub. L. 103–82, § 101(e)(1), substituted ''Corporation'' for ''Commission''.

1991—Subsec. (d)(1). Pub. L. 102–10 substituted ''subsection (a)'' for ''subsections (a) and (c)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655m. Joint programs

(a) Development

The Corporation may develop, in cooperation with the heads of other Federal agencies, regulations designed to permit, where appropriate, joint programs in which activities supported with assistance made available under this division are coordinated with activities supported with assistance made available under programs administered by the heads of such agencies (including title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.]).

(b) Standards

Regulations promulgated under subsection (a) of this section shall establish standards for the approval of joint programs that meet both the purposes of this subchapter and the purposes of such statutes under which assistance is made available to support such projects.

(c) Operation of management agreements

Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(d) Coordination

The Corporation and program agencies carrying out programs under this division shall coordinate the programs with related Federal, State, local, and private activities.

(Pub. L. 101–610, title I, § 199L, formerly § 134, Nov. 16, 1990, 104 Stat. 3148; renumbered § 199N, renumbered § 199L, and amended Pub. L. 103–82, title I, § 101(a), (e)(1), (8)(B), Sept. 21, 1993, 107 Stat. 788, 815, 816; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(42)(C), (f)(33)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–428, 2681–434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

CODIFICATION

Section was formerly classified to section 12554 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

PRIOR PROVISIONS

A prior section 199L of Pub. L. 101–610 was classified to section 12655k of this title prior to repeal by Pub. L. 103–82, § 101(e)(8)(A).

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(33)(B)], struck out ''the Job Training Partnership Act and'' after ''(including''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(42)(C)], substituted ''the Job Training Partnership Act and title I of the Workforce Investment Act of 1998'' for ''the Job Training Partnership Act (29 U.S.C. 1501 et seq.)''.

1993—Subsecs. (a), (d). Pub. L. 103–82, § 101(e)(1), substituted ''Corporation'' for ''Commission''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(42)(C)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(33)(B)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655n. Federal and State employee status

(a) In general

Participants and crew leaders shall be responsible to, or be the responsibility of, the program agency administering the program on which such participants, crew leaders, and volunteers work.

(b) Non-Federal employees

(1) In general

Except as otherwise provided in this subsection, a participant or crew leader in a program that receives assistance under this division shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.

(2) Work-related injury

For purposes of subchapter I of chapter 81 of title 5, relating to the compensation of Federal employees for work injuries, a participant or crew leader serving in a program that receives assistance under this division shall be considered an employee of the United States within the meaning of the term ''employee'' as defined in section 8101 of title 5 and the provision[1] of that subchapter shall apply, except—

(A) the term ''performance of duty'', as used in such subchapter, shall not include an act of a participant or crew leader while absent from the assigned post of duty of such participant or crew leader, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date that the employment of the injured participant or crew leader is terminated.

(3) Tort claims procedure

For purposes of chapter 171 of title 28, relating to tort claims procedure, a participant or crew leaders assigned to a youth corps program for which a grant has been made to the Secretary of Agriculture, Secretary of the Interior, or the Director of ACTION, shall be considered an employee of the United States within the meaning of the term ''employee of the government'' as defined in section 2671 of such title.

(4) Allowance for quarters

For purposes of section 5911 of title 5, relating to allowances for quarters, a participant or crew leader shall be considered an employee of the United States within the meaning of the

[1] So in original. Probably should be ''provisions''.

term ''employee'' as defined in paragraph (3) of subsection (a) of such section.

(c) Availability of appropriation

Contract authority under this division shall be subject to the availability of appropriations. Assistance made available under this division shall only be used for activities that are in addition to those which would otherwise be carried out in the area in the absence of such funds.

(Pub. L. 101–610, title I, § 199M, formerly § 135, Nov. 16, 1990, 104 Stat. 3149; renumbered § 199O, renumbered § 199M, Pub. L. 103–82, title I, § 101(a), (e)(8)(B), Sept. 21, 1993, 107 Stat. 788, 816, as amended Pub. L. 103–304, § 3(b)(1), Aug. 23, 1994, 108 Stat. 1567.)

CODIFICATION

Section was formerly classified to section 12555 of this title prior to renumbering by Pub. L. 103–82, § 101(a).

AMENDMENTS

1994—Pub. L. 103–304 amended directory language of Pub. L. 103–82, § 101(a)(3), which renumbered section 135 of Pub. L. 101–610 as section 199O.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–304 effective as of Oct. 1, 1993, see section 3(b)(10)(B) of Pub. L. 103–304, set out as a note under section 4953 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Director of ACTION Agency (including all related functions of any officer or employee of ACTION Agency) to Corporation for National and Community Service, and effective date of such transfer, see section 203(c), (d) of Pub. L. 103–82, set out as a note under section 12651 of this title.

Division J—Miscellaneous

§ 12656. Urban Youth Corps

(a) Findings

The Congress finds the following:

(1) The rehabilitation, reclamation, and beautification of urban public housing, recreational sites, youth and senior centers, and public roads and public works facilities through the efforts of young people in the United States in an Urban Youth Corps can benefit these youths, while also benefiting their communities, by—

(A) providing them with education and work opportunities;

(B) furthering their understanding and appreciation of the challenges faced by individuals residing in urban communities; and

(C) providing them with a means to pay for higher education or to repay indebtedness they have incurred to obtain higher education.

(2) A significant number of housing units for low-income individuals in urban areas has become substandard and unsafe and the deterioration of urban roadways, mass transit systems, and transportation facilities in the United States have contributed to the blight encountered in many cities in the United States.

(3) As a result, urban housing, public works, and transportation resources are in need of labor intensive rehabilitation, reclamation, and beautification work that has been neglected in the past and cannot be adequately carried out by Federal, State, and local government at existing personnel levels.

(4) Urban youth corps have established a good record of rehabilitating, reclaiming, and beautifying these kinds of resources in a cost-efficient manner, especially when they have worked in partnership with government housing, public works, and transportation authorities and agencies.

(b) Purpose

It is the purpose of this section—

(1) to perform, in a cost-effective manner, appropriate service projects to rehabilitate, reclaim, beautify, and improve public housing and public works and transportation facilities and resources in urban areas suffering from high rates of poverty where work will not be performed by existing employees;

(2) to assist government housing, public works, and transportation authorities and agencies;

(3) to expose young people in the United States to public service while furthering their understanding and appreciation of their community;

(4) to expand educational opportunity for individuals who participate in the Urban Youth Corps established by this section by providing them with an increased ability to pursue post-secondary education or job training; and

(5) to stimulate interest among young people in the United States in lifelong service to their communities and the United States.

(c) Definitions

For purposes of this section:

(1) Appropriate service project

The term ''appropriate service project'' means any project for the rehabilitation, reclamation, or beautification of urban public housing and public works and transportation resources or facilities.

(2) Corps and Urban Youth Corps

The term ''Corps'' and ''Urban Youth Corps'' mean the Urban Youth Corps established under subsection (d)(1) of this section.

(3) Qualified urban youth corps

The term ''qualified urban youth corps'' means any program established by a State or local government or by a nonprofit organization that—

(A) is capable of offering meaningful, full-time, productive work for individuals between the ages of 16 and 25, inclusive, in an urban or public works or transportation setting;

(B) gives participants a mix of work experience, basic and life skills, education, training, and support services; and

(C) provides participants with the opportunity to develop citizenship values and skills through service to their communities and the United States.

(4) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development or the Secretary of Transportation.

(5) State

The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(d) Establishment of Urban Youth Corps

(1) Establishment

There is hereby established in the Department of Housing and Urban Development and the Department of Transportation an Urban Youth Corps. The Corps shall consist of individuals between the ages of 16 and 25, inclusive, who are enrolled as participants in the Corps by the Secretary of Housing and Urban Development and the Secretary of Transportation. To be eligible for enrollment in the Corps, an individual shall satisfy the criteria specified in section 139(b) of the National and Community Service Act of 1990 [42 U.S.C. 12593(b)]. The Secretaries may enroll such individuals in the Corps without regard to the civil service and classification laws, rules, or regulations of the United States. The Secretaries may establish a preference for the enrollment in the Corps of individuals who are economically, physically, or educationally disadvantaged.

(2) Use of qualified urban youth corps

The Secretaries are authorized to enter into contracts and cooperative agreements with any qualified urban youth corps to perform appropriate service projects described in paragraph (3). As part of the Urban Youth Corps established in the Department of Transportation, the Secretary of Transportation may make grants to States (and through States to local governments) for the purpose of establishing, operating, or supporting qualified urban youth corps that will perform appropriate service projects relating to transportation resources or facilities.

(3) Service projects

The Secretaries may each utilize the Corps or any qualified urban youth corps to carry out appropriate service projects that the Secretary involved is authorized to carry out under other authority of law involving public housing projects or public works resources or facilities.

(4) Preference for certain projects

In selecting an appropriate service project to be carried out under this section, the Secretaries shall give a preference to those projects which—

(A) will provide long-term benefits to the public;

(B) will instill in the participant a work ethic and a sense of public service;

(C) will be labor intensive;

(D) can be planned and initiated promptly; and

(E) will provide academic, experiential, or community education opportunities.

(5) Consistency

Each appropriate service project carried out under this section in any public housing project or public works resource or facility shall be consistent with the provisions of law and policies relating to the management and administration of such projects, facilities, or resources, with all other applicable provisions of law, and with all management, operational, and other plans and documents which govern the administration of such projects, facilities, or resources.

(e) Living allowances

The Secretaries shall provide each participant in the Urban Youth Corps with a living allowance in an amount not to exceed the maximum living allowance authorized by section 140(a)(3) of the National and Community Service Act of 1990 [42 U.S.C. 12594(a)(3)] for participants in a national service program assisted under subtitle C of title I of such Act [42 U.S.C. 12571 et seq.].

(f) Terms of service

Each participant in the Urban Youth Corps shall agree to participate in the Corps for a term of service established by the Secretary involved, consistent with the terms of service required under section 139(b) of the National and Community Service Act of 1990 [42 U.S.C. 12593(b)] for participants in a national service program assisted under subtitle C of title I of such Act [42 U.S.C. 12571 et seq.].

(g) Educational awards

(1) Eligibility

Each participant in the Urban Youth Corps shall be eligible for a national service educational award in the manner prescribed in subtitle D of title I of the National and Community Service Act of 1990 [42 U.S.C. 12601 et seq.] if such participant complies with such requirements as may be established under this subtitle by the Secretary involved respecting eligibility for the award. The period during which the award may be used, the purposes for which the award may be used, and the amount of the award shall be determined as provided under such subtitle.

(2) Forbearance in the collection of Stafford loans

For purposes of section 1078 of title 20, in the case of borrowers who are participants in the Urban Youth Corps, upon written request, a lender shall grant a borrower forbearance on such terms as are otherwise consistent with the regulations of the Secretary of Education, during periods in which the borrower is serving as such a participant and eligible for a national service educational award under paragraph (1).

(h) Nondisplacement

The nondisplacement requirements of section 177 of the National and Community Service Act of 1990 [42 U.S.C. 12637] shall be applicable to all activities carried out by the Urban Youth Corps and to all activities carried out under this section by a qualified urban youth corps.

(i) Cost sharing

(1) Projects by qualified urban youth corps

The Secretaries are each authorized to pay not more than 75 percent of the costs of any

appropriate service project carried out pursuant to this section by a qualified urban youth corps. The remaining 25 percent of the costs of such a project may be provided from nonfederal sources in the form of funds, services, facilities, materials, equipment, or any combination of the foregoing.

(2) Donations

The Secretaries are each authorized to accept donations of funds, services, facilities, materials, or equipment for the purposes of operating the Urban Youth Corps and carrying out appropriate service projects by the Corps. However, nothing in this section shall be construed to require any cost sharing for any project carried out directly by the Corps.

(3) Funds available under National and Community Service Act

In order to carry out the Urban Youth Corps or to support qualified urban youth corps under this section, the Secretaries shall be eligible to apply for and receive assistance under section 121(b) of the National and Community Service Act of 1990 [42 U.S.C. 12571(b)].

(Pub. L. 103–82, title I, § 106, Sept. 21, 1993, 107 Stat. 854.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (d)(1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsec. (d)(1), are classified to chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

The National and Community Service Act of 1990, referred to in subsecs. (e), (f), and (g)(1), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended. Subtitles C and D of title I of the Act are classified generally to divisions C (§ 12571 et seq.) and D (§ 12601 et seq.), respectively, of this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

CODIFICATION

Section was enacted as part of the National and Community Service Trust Act of 1993, and not as part of the National and Community Service Act of 1990 which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

SUBCHAPTER II—POINTS OF LIGHT FOUNDATION

§ 12661. Findings and purpose

(a) Findings

Congress finds that—

(1) community service and service to others is an integral part of American tradition;

(2) existing volunteers and volunteer programs should be praised for their efforts in helping and serving others;

(3) the definition of a successful life includes service to others;

(4) individuals should be encouraged to volunteer their time and energies in community service efforts;

(5) if asked to volunteer or participate in community service, most Americans will do so;

(6) institutions should be encouraged to volunteer their resources and energies and should encourage volunteer and community service among their members, employees, affiliates; and

(7) volunteer and community service programs are intended to complement and not replace governmental responsibilities.

(b) Purpose

It is the purpose of this subchapter—

(1) to encourage every American and every American institution to help solve our most critical social problems by volunteering their time, energies and services through community service projects and initiatives;

(2) to identify successful and promising community service projects and initiatives, and to disseminate information concerning such projects and initiatives to other communities in order to promote their adoption nationwide; and

(3) to discover and encourage new leaders and develop individuals and institutions that serve as strong examples of a commitment to serving others and to convince all Americans that a successful life includes serving others.

(Pub. L. 101–610, title III, § 302, Nov. 16, 1990, 104 Stat. 3180.)

SHORT TITLE

For short title of title III of Pub. L. 101–610 which enacted this subchapter, as ''The Points of Light Foundation Act'', see section 301 of Pub. L. 101–610, set out as a note under section 12501 of this title.

§ 12662. Authority

(a) In general

The President, acting through the Corporation, is authorized to designate a private, nonprofit organization (hereinafter referred to in this subchapter as the Foundation) to receive funds pursuant to section 12681(b) of this title in furtherance of activities under section 12661 of this title, upon the determination of the Corporation that such organization is capable of carrying out the undertakings described in section 12661 of this title. Any such designation by the Corporation shall be revocable.

(b) Construction

Nothing in this chapter shall be construed either—

(1) to cause the Foundation to be deemed an agency, establishment, or instrumentality of the United States Government; or

(2) to cause the directors, officers or employees of the Foundation to be deemed officers or employees of the United States.

(Pub. L. 101–610, title III, § 303, Nov. 16, 1990, 104 Stat. 3181; Pub. L. 103–82, title IV, § 402(b)(4), Sept. 21, 1993, 107 Stat. 919.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended, known as the National and Community Service Act of 1990, which is classified

principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–82 substituted ''The President, acting through the Corporation,'' for ''The President'', inserted ''in furtherance of activities under section 12661 of this title'' after ''section 12681(b) of this title'', and substituted ''Corporation'' for ''President'' in two places.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

§ 12663. Grants to Foundation

(a) In general

Funds made available pursuant to sections 12662 and 12681(b) of this title shall be granted to the Foundation by a department or agency in the executive branch of the United States Government designated by the President—

(1) to assist the Foundation in carrying out the undertakings described in section 12661 of this title; and

(2) for the administrative expenses of the Foundation.

(b) Interest earned on accounts

Notwithstanding any other provision of law, the Foundation may hold funds granted to it pursuant to this subchapter in interest-bearing accounts, prior to the disbursement of such funds for purposes specified in subsection (a) of this section, and may retain for such purposes any interest earned on such deposits without returning such interest to the Treasury of the United States and without further appropriation by the Congress.

(Pub. L. 101–610, title III, § 304, Nov. 16, 1990, 104 Stat. 3181.)

§ 12664. Eligibility of Foundation for grants

(a) Compliance

Grants may be made to the Foundation pursuant to this subchapter only if the Foundation agrees to comply with the requirements of this subchapter. If the Foundation fails to comply with the requirements of this subchapter, additional funds shall not be released until the Foundation brings itself into compliance with such requirements.

(b) Activities

The Foundation may use funds provided under this subchapter only for activities and programs consistent with the purposes described in sections 12661 and 12663 of this title.

(c) Limitation

The Foundation shall not issue any shares of stock or declare or pay any dividends.

(d) Compensation

No part of the funds available to the Foundation shall inure to the benefit of any board member, officer, or employee of the Foundation, except as salary or reasonable compensation for services or expenses. Compensation for board members shall be limited to reimbursement for reasonable costs of travel and expenses.

(e) Conflicts of interest

No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation that affects his or her financial interests or the financial interests of any corporation, partnership, entity, or organization in which he or she has a direct or indirect financial interest.

(f) Political activity

The Foundation shall not engage in lobbying or propaganda for the purpose of influencing legislation, and shall not participate or intervene in any political campaign on behalf of any candidate for public office.

(g) Private sector contributions

During the second and third fiscal years in which funds are provided to the Foundation under this subchapter, the Foundation shall raise from private sector donations an amount equal to not less than 25 percent of any funds provided to the Foundation under this subchapter in such fiscal year. Funds shall be released to the Foundation during such fiscal year only to the extent that the matching requirement of the subsection has been met.

(h) Audit of accounts

The accounts of the Foundation shall be audited annually by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States in accordance with generally accepted auditing standards. The reports,[1] of each such independent audit shall be included in the annual report required by subsection (*l*) of this section.

(i) Audits by agencies

In fiscal years in which the Foundation is receiving grants under this subchapter, the accounts of the Foundation may be audited at any time by any agency designated by the President. The Foundation shall keep such records as will facilitate effective audits.

(j) Congressional oversight

In fiscal years in which the Foundation is receiving grants under this subchapter, the Foundation shall be subject to appropriate oversight procedures of Congress.

(k) Duties

The Foundation shall ensure—

(1) that recipients of financial assistance provided by the Foundation under this subchapter, shall keep separate accounts with respect to such assistance and such records as may be reasonably necessary to disclose fully—

(A) the amount and the disposition by such recipient of the assistance received from the Foundation;

(B) the total cost of the project or undertaking in connection with which such assistance is given or used;

(C) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

[1] So in original. The comma probably should not appear.

(D) such other records as will facilitate effective audits; and

(2) that the Foundation, or any of its duly authorized representatives including any agency designated by the President pursuant to subsection (i) of this section shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to assistance provided from funds granted pursuant to this subchapter.

(*l*) Annual reports

The Foundation shall prepare and submit to the President and to the appropriate Committees of Congress an annual report, that shall include a comprehensive and detailed description of the Foundation's operations, activities, financial condition, and accomplishments for the fiscal year preceding the year in which the report is submitted. Such report shall be submitted not later than 3 months after the conclusion of any fiscal year in which the Foundation receives grants under this subchapter.

(Pub. L. 101–610, title III, § 305, Nov. 16, 1990, 104 Stat. 3181.)

SUBCHAPTER III—PROJECTS HONORING VICTIMS OF TERRORIST ATTACKS

§ 12671. Projects

(a) Definition

In this section, the term ''Foundation'' means the Points of Light Foundation funded under section 301,[1] or another nonprofit private organization, that enters into an agreement with the Corporation to carry out this section.

(b) Identification of projects

(1) Estimated number

Not later than March 1, 2002, the Foundation, after obtaining the guidance of the heads of appropriate Federal agencies, such as the Director of the Office of Homeland Security and the Attorney General, shall—

(A) make an estimate of the number of victims killed as a result of the terrorist attacks on September 11, 2001 (referred to in this section as the ''estimated number''); and

(B) compile a list that specifies, for each individual that the Foundation determines to be such a victim, the name of the victim and the State in which the victim resided.

(2) Identified projects

The Foundation may identify approximately the estimated number of community-based national and community service projects that meet the requirements of subsection (d) of this section. The Foundation may name projects in honor of victims described in subsection (b)(1)(A) of this section, after obtaining the permission of an appropriate member of the victim's family and the entity carrying out the project.

(c) Eligible entities

To be eligible to have a project named under this section, the entity carrying out the project shall be a political subdivision of a State, a business, a nonprofit organization (which may be a religious organization), an Indian tribe, or an institution of higher education.

(d) Projects

The Foundation shall name, under this section, projects—

(1) that advance the goals of unity, and improving the quality of life in communities; and

(2) that will be planned, or for which implementation will begin, within a reasonable period after January 10, 2002, as determined by the Foundation.

(e) Website and database

The Foundation shall create and maintain websites and databases, to describe projects named under this section and serve as appropriate vehicles for recognizing the projects.

(Pub. L. 101–610, title IV, § 401, as added Pub. L. 107–117, div. B, § 1301(b), Jan. 10, 2002, 115 Stat. 2339.)

REFERENCES IN TEXT

Section 301, referred to in subsec. (a), is section 301 of Pub. L. 101–610, title III, Nov. 16, 1990, 104 Stat. 3180, which is set out as a note under section 12501 of this title and provides the short title for title III of Pub. L. 101–610, which enacted subchapter II (§ 12661 et seq.) of this chapter, relating to the Points of Light Foundation and its funding.

PRIOR PROVISIONS

A prior section 12671, Pub. L. 101–610, title IV, § 401, Nov. 16, 1990, 104 Stat. 3183, stated sense of Congress concerning State enactment of model Good Samaritan Food Donation Act, prior to repeal by Pub. L. 104–210, § 1(a)(1), Oct. 1, 1996, 110 Stat. 3011.

A prior section 12672, Pub. L. 101–610, title IV, § 402, Nov. 16, 1990, 104 Stat. 3183, which set forth the model Good Samaritan Food Donation Act, was renumbered section 22 of the Child Nutrition Act of 1966 by Pub. L. 104–210, § 1(b), Oct. 1, 1996, 110 Stat. 3012, and is classified to section 1791 of this title.

A prior section 12673, Pub. L. 101–610, title IV, § 403, Nov. 16, 1990, 104 Stat. 3185, provided that model Good Samaritan Food Donation Act was intended only to serve as model law for enactment by States, District of Columbia, Commonwealth of Puerto Rico, and territories and possessions of United States, and that enactment of section 12672 of this title was to have no force or effect in law, prior to repeal by Pub. L. 104–210, § 1(a)(1), Oct. 1, 1996, 110 Stat. 3011.

SUBCHAPTER IV—AUTHORIZATION OF APPROPRIATIONS

§ 12681. Authorization of appropriations

(a) Subchapter I

(1) Division B

(A) In general

There are authorized to be appropriated to provide financial assistance under division B of subchapter I of this chapter, $45,000,000 for fiscal year 1994 and such sums as may be necessary for each of the fiscal years 1995 through 1996.

(B) Programs

Of the amount appropriated under subparagraph (A) for a fiscal year—

(i) not more than 63.75 percent shall be available to provide financial assistance

[1] See References in Text note below.

under subpart A of part I of division B of subchapter I of this chapter;

(ii) not more than 11.25 percent shall be available to provide financial assistance under subpart B of part I of such division; and

(iii) not more than 25 percent shall be available to provide financial assistance under part II of such division.

(2) Divisions C, D, and H

(A) In general

There are authorized to be appropriated to provide financial assistance under divisions C and H of subchapter I of this chapter, to provide national service educational awards under division D of subchapter I of this chapter, and to carry out such audits and evaluations as the Chief Executive Officer or the Inspector General of the Corporation may determine to be necessary, $300,000,000 for fiscal year 1994, $500,000,000 for fiscal year 1995, and $700,000,000 for fiscal year 1996.

(B) Programs

Of the amount appropriated under subparagraph (A) for a fiscal year, up to 15 percent shall be made available to provide financial assistance under section 12575 of this title, under subsections (b) and (c) of section 12576 of this title, and under division H of subchapter I of this chapter.

(3) Division E

There are authorized to be appropriated to provide financial assistance under division E of subchapter I of this chapter, such sums as may be necessary for each of the fiscal years 1995 through 1996.

(4) Administration

(A) In general

There are authorized to be appropriated for the administration of this chapter $40,000,000 for fiscal year 1994, $60,000,000 for fiscal year 1995, and $70,000,000 for fiscal year 1996.

(B) Corporation

Of the amounts appropriated under subparagraph (A) for a fiscal year—

(i) up to 60 percent shall be made available to the Corporation for the administration of this chapter; and

(ii) the remainder shall be available to provide financial assistance under section 12576(a) of this title.

(b) Subchapter II

There are authorized to be appropriated to carry out subchapter II of this chapter $5,000,000 for each of the fiscal years 1994 through 1996.

(c) Availability of appropriations

Funds appropriated under this section shall remain available until expended.

(d) Specification of budget function

The authorizations of appropriations contained in this section shall be considered to be a component of budget function 500 as used by the Office of Management and Budget to cover education, training, employment, and social services, and, as such, shall be considered to be related to the programs of the Departments of Labor, Health and Human Services, and Education for budgetary purposes.

(Pub. L. 101–610, title V, § 501, Nov. 16, 1990, 104 Stat. 3185; Pub. L. 102–384, § 11, Oct. 5, 1992, 106 Stat. 1459; Pub. L. 103–82, title III, § 301(a), Sept. 21, 1993, 107 Stat. 897.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(4), was in the original ''this Act'', meaning Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

1993—Pub. L. 103–82 amended section generally, substituting subsecs. (a) to (d) for former subsecs. (a) and (b) which authorized appropriations to carry out subchapter I for fiscal year 1993 and subchapter II for fiscal years 1991 to 1993.

1992—Subsec. (a)(1). Pub. L. 102–384, § 11(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''There are authorized to be appropriated to carry out subchapter I of this chapter, $56,000,000 for fiscal year 1991, $95,500,000 for fiscal year 1992, and $105,000,000 for fiscal year 1993.''

Subsec. (a)(2). Pub. L. 102–384, § 11(b), substituted ''paragraph (1)(A)'' for ''paragraph (1)'' in introductory provisions, redesignated subpars. (B) to (D) as (A) to (C), respectively, added subpar. (D), and struck out former subpar. (A) which read as follows: ''$2,000,000 shall be made available to carry out part G of subchapter I of this chapter in each such fiscal year;''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 301(b) of Pub. L. 103–82 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1993.''

§ 12682. Actions under national service laws to be subject to availability of appropriations

No action involving the obligation or expenditure of funds may be taken under one of the national service laws (as defined in section 12511(15) of this title) unless and until the Corporation for National and Community Service has sufficient appropriations available at the time such action is taken to satisfy the obligation to be incurred or make the expenditure to be made.

(Pub. L. 103–82, title II, § 205, Sept. 21, 1993, 107 Stat. 897.)

CODIFICATION

Section enacted as part of the National and Community Service Trust Act of 1993, and not as part of the National and Community Service Act of 1990 which comprises this chapter.

CHAPTER 130—NATIONAL AFFORDABLE HOUSING

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12704. Definitions.
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SUBCHAPTER I—GENERAL PROVISIONS AND POLICIES

§ 12701. National housing goal

The Congress affirms the national goal that every American family be able to afford a decent home in a suitable environment.

(Pub. L. 101–625, title I, §101, Nov. 28, 1990, 104 Stat. 4085.)

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–186, title I, §101, Dec. 16, 2003, 117 Stat. 2685, provided that: ''This title [amending part E of sub-

chapter II of this chapter] may be cited as the 'American Dream Downpayment Act'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–569, title I, §101, Dec. 27, 2000, 114 Stat. 2946, provided that: ''This title [amending sections 5307, 12705c, and 12705d of this title] may be cited as the 'Housing Affordability Barrier Removal Act of 2000'.''

SHORT TITLE

Section 1(a) of Pub. L. 101–625 provided that: ''This Act [see Tables for classification] may be cited as the 'Cranston-Gonzalez National Affordable Housing Act'.''

Section 201 of title II of Pub. L. 101–625 provided that: ''This title [enacting subchapter II of this chapter, amending section 1437f of this title, and repealing sections 1437*o* and 1452b of this title, section 1706e of Title 12, Banks and Banking, and provisions set out as a note under section 1715*l* of Title 12] may be cited as the 'HOME Investment Partnerships Act'.''

Section 301 of Pub. L. 101–625 provided that: ''This subtitle [subtitle A (§§301–310) of title III of Pub. L. 101–625, enacting subchapter III of this chapter] may be cited as the 'National Homeownership Trust Act'.''

MILLENNIAL HOUSING COMMISSION

Pub. L. 107–73, title II, Nov. 26, 2001, 115 Stat. 671, provided in part: ''That $1,500,000 shall be for necessary expenses of the Millennial Housing Commission, as authorized by section 206 of Public Law 106–74 [set out below], with the final report due no later than May 30, 2002 and a termination date of August 30, 2002, notwithstanding section 206(f) and (g) of Public Law 106–74''.

Pub. L. 106–74, title II, §206, Oct. 20, 1999, 113 Stat. 1070, as amended by Pub. L. 106–554, §1(a)(4) [div. B, title X, §1001], Dec. 21, 2000, 114 Stat. 2763, 2763A–310, provided that:

''(a) ESTABLISHMENT.—There is hereby established a commission to be known as the Millennial Housing Commission (in this section referred to as the 'Commission').

''(b) STUDY.—The duty of the Commission shall be to conduct a study that examines, analyzes, and explores—

''(1) the importance of housing, particularly affordable housing which includes housing for the elderly, to the infrastructure of the United States;

''(2) the various possible methods for increasing the role of the private sector in providing affordable housing in the United States, including the effectiveness and efficiency of such methods; and

''(3) whether the existing programs of the Department of Housing and Urban Development work in conjunction with one another to provide better housing opportunities for families, neighborhoods, and communities, and how such programs can be improved with respect to such purpose.

''(c) MEMBERSHIP.—

''(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 22 members, appointed not later than January 1, 2000, as follows:

''(A) Two co-chairpersons appointed by—

''(i) one co-chairperson appointed by a committee consisting of the chairmen of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate, and the chairman of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the chairman of the Subcommittee on Housing and Transportation of the Senate; and

''(ii) one co-chairperson appointed by a committee consisting of the ranking minority members of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate, and the ranking minority member of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the ranking minority member of the Subcommittee on Housing and Transportation of the Senate.

''(B) Ten members appointed by the Chairman and Ranking Minority Member of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Minority Member of the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives.

''(C) Ten members appointed by the Chairman and Ranking Minority Member of the Committee on Appropriations of the Senate and the Chairman and Ranking Minority Member of the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(2) QUALIFICATIONS.—Appointees should have proven expertise in directing, assemblying, or applying capital resources from a variety of sources to the successful development of affordable housing or the revitalization of communities, including economic and job development.

''(3) VACANCIES.—Any vacancy on the Commission shall not affect its powers and shall be filled in the manner in which the original appointment was made.

''(4) CHAIRPERSONS.—The members appointed pursuant to paragraph (1)(A) shall serve as co-chairpersons of the Commission.

''(5) PROHIBITION OF PAY.—Members of the Commission shall serve without pay.

''(6) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(7) QUORUM.—A majority of the members of the Commission shall constitute a quorum but a lesser number may hold hearings.

''(8) MEETINGS.—The Commission shall meet at the call of the Chairpersons.

''(d) DIRECTOR AND STAFF.—

''(1) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Chairperson. The Director shall be paid at a rate not to exceed the rate of basic pay payable for level III of the Executive Schedule.

''(2) STAFF.—The Commission may appoint personnel as appropriate. The staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

''(3) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for the General Schedule.

''(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal department or agency may detail, on a non-reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

''(e) POWERS.—

''(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

''(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

''(3) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable

it to carry out this Act. Upon request of the Chairpersons of the Commission, the head of that department or agency shall furnish that information to the Commission.

''(4) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

''(5) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(6) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

''(7) CONTRACT AUTHORITY.—The Commission may contract with and compensate Government and private agencies or persons for services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

''(f) REPORT.—The Commission shall submit to the Committees on Appropriations and Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Committees on Appropriations and Banking, Housing, and Urban Affairs of the Senate a final report not later than March 1, 2002. The report shall contain a detailed statement of the findings and conclusions of the Commission with respect to the study conducted under subsection (b), together with its recommendations for legislation, administrative actions, and any other actions the Commission considers appropriate.

''(g) TERMINATION.—The Commission shall terminate on June 30, 2002. Section 14(a)(2)(B) of the Federal Advisory Committee Act (5 U.S.C. App.; relating to the termination of advisory committees) shall not apply to the Commission.''

COMMISSION ON AFFORDABLE HOUSING AND HEALTH FACILITY NEEDS FOR SENIORS IN THE 21ST CENTURY

Pub. L. 107–73, title II, Nov. 26, 2001, 115 Stat. 671, provided in part: ''That $1,000,000 shall be for necessary expenses of the commission established under section 525 of the Preserving Affordable Housing for Senior Citizens and Families in the 21st Century Act [Pub. L. 106–74, set out below], with the final report due no later than June 30, 2002 and a termination date of September 30, 2002, notwithstanding section 525(f) and (g) of Public Law 106–74''.

Pub. L. 106–74, title V, § 525, Oct. 20, 1999, 113 Stat. 1106, as amended by Pub. L. 106–377, § 1(a)(1) [title II, § 230], Oct. 27, 2000, 114 Stat. 1441, 1441A–31, provided that:

''(a) ESTABLISHMENT.—There is hereby established a commission to be known as the Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century (in this section referred to as the 'Commission'.

''(b) STUDY.—The duty of the Commission shall be to conduct a study that—

''(1) compiles and interprets information regarding the expected increase in the population of persons 62 years of age or older, particularly information regarding distribution of income levels, homeownership and home equity rates, and degree or extent of health and independence of living;

''(2) provides an estimate of the future needs of seniors for affordable housing and assisted living and health care facilities;

''(3) provides a comparison of estimate of such future needs with an estimate of the housing and facilities expected to be provided under existing public programs, and identifies possible actions or initiatives that may assist in providing affordable housing and assisted living and health care facilities to meet such expected needs;

''(4) identifies and analyzes methods of encouraging increased private sector participation, investment, and capital formation in affordable housing and assisted living and health care facilities for seniors through partnerships between public and private entities and other creative strategies;

''(5) analyzes the costs and benefits of comprehensive aging-in-place strategies, taking into consideration physical and mental well-being and the importance of coordination between shelter and supportive services;

''(6) identifies and analyzes methods of promoting a more comprehensive approach to dealing with housing and supportive service issues involved in aging and the multiple governmental agencies involved in such issues, including the Department of Housing and Urban Development and the Department of Health and Human Services; and

''(7) examines how to establish intergenerational learning and care centers and living arrangements, in particular to facilitate appropriate environments for families consisting only of children and a grandparent or grandparents who are the head of the household.

''(c) MEMBERSHIP.—

''(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 14 members, appointed not later than January 1, 2000, as follows:

''(A) Two co-chairpersons, of whom—

''(i) one co-chairperson shall be appointed by a committee consisting of the chairman of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the chairman of the Subcommittee on Housing and Transportation of the Senate, and the chairmen of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate; and

''(ii) one co-chairperson shall be appointed by a committee consisting of the ranking minority member of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the ranking minority member of the Subcommittee on Housing and Transportation of the Senate, and the ranking minority members of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate.

''(B) Six members appointed by the Chairman and Ranking Minority Member of the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Chairman and Ranking Minority Member of the Committee on Appropriations of the House of Representatives.

''(C) Six members appointed by the Chairman and Ranking Minority Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and Ranking Minority Member of the Committee on Appropriations of the Senate.

''(2) QUALIFICATIONS.—Appointees should have proven expertise in directing, assembling, or applying capital resources from a variety of sources to the successful development of affordable housing, assisted living facilities, or health care facilities.

''(3) VACANCIES.—Any vacancy on the Commission shall not affect its powers and shall be filled in the manner in which the original appointment was made.

''(4) CHAIRPERSONS.—The members appointed pursuant to paragraph (1)(A) shall serve as co-chairpersons of the Commission.

''(5) PROHIBITION OF PAY.—Members of the Commission shall serve without pay.

''(6) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(7) QUORUM.—A majority of the members of the Commission shall constitute a quorum but a lesser number may hold hearings.

''(8) MEETINGS.—The Commission shall meet at the call of the Chairpersons.

''(d) DIRECTOR AND STAFF.—

''(1) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Chairperson. The Director shall be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule.

''(2) STAFF.—The Commission may appoint personnel as appropriate. The staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

''(3) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for the General Schedule.

''(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

''(e) POWERS.—

''(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

''(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

''(3) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chairpersons of the Commission, the head of that department or agency shall furnish that information to the Commission.

''(4) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

''(5) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(6) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

''(7) CONTRACT AUTHORITY.—The Commission may contract with and compensate Government and private agencies or persons for services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

''(f) REPORT.—The Commission shall submit to the Committees on Banking and Financial Services [now Committee on Financial Services] and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate, a final report not later than December 31, 2001. The report shall contain a detailed statement of the findings and conclusions of the Commission with respect to the study conducted under subsection (b), together with its recommendations for legislation, administrative actions, and any other actions the Commission considers appropriate.

''(g) TERMINATION.—The Commission shall terminate on June 30, 2002. Section 14(a)(2)(B) of the Federal Advisory Committee Act (5 U.S.C. App.; relating to the termination of advisory committees) shall not apply to the Commission.''

§ 12702. Objective of national housing policy

The objective of national housing policy shall be to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American by strengthening a nationwide partnership of public and private institutions able—

(1) to ensure that every resident of the United States has access to decent shelter or assistance in avoiding homelessness;

(2) to increase the Nation's supply of decent housing that is affordable to low-income and moderate-income families and accessible to job opportunities;

(3) to improve housing opportunities for all residents of the United States, particularly members of disadvantaged minorities, on a nondiscriminatory basis;

(4) to help make neighborhoods safe and livable;

(5) to expand opportunities for homeownership;

(6) to provide every American community with a reliable, readily available supply of mortgage finance at the lowest possible interest rates; and

(7) to encourage tenant empowerment and reduce generational poverty in federally assisted and public housing by improving the means by which self-sufficiency may be achieved.

(Pub. L. 101–625, title I, § 102, Nov. 28, 1990, 104 Stat. 4085.)

§ 12703. Purposes of Cranston-Gonzalez National Affordable Housing Act

The purposes of this Act are—

(1) to help families not owning a home to save for a down payment for the purchase of a home;

(2) to retain wherever feasible as housing affordable to low-income families those dwelling units produced for such purpose with Federal assistance;

(3) to extend and strengthen partnerships among all levels of government and the private sector, including for-profit and nonprofit organizations, in the production and operation of housing affordable to low-income and moderate-income families;

(4) to expand and improve Federal rental assistance for very low-income families; and

(5) to increase the supply of supportive housing, which combines structural features and services needed to enable persons with special needs to live with dignity and independence.

(Pub. L. 101–625, title I, § 103, Nov. 28, 1990, 104 Stat. 4085.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

§ 12704. Definitions

As used in this subchapter and in subchapter II of this chapter:

(1) The term ''unit of general local government'' means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by the Secretary in accordance with section 12746(2) of this title; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this Act.

(2) The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this Act.

(3) The term ''jurisdiction'' means a State or unit of general local government.

(4) The term ''participating jurisdiction'' means any State or unit of general local government that has been so designated in accordance with section 12746 of this title.

(5) The term ''nonprofit organization'' means any private, nonprofit organization (including a State or locally chartered, nonprofit organization) that—

(A) is organized under State or local laws,

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual,

(C) complies with standards of financial accountability acceptable to the Secretary, and

(D) has among its purposes significant activities related to the provision of decent housing that is affordable to low-income and moderate-income persons.

(6) The term ''community housing development organization'' means a nonprofit organization as defined in paragraph (5), that—

(A) has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons;

(B) maintains, through significant representation on the organization's governing board and otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries with regard to decisions on the design, siting, development, and management of affordable housing;

(C) has a demonstrated capacity for carrying out activities assisted under this Act; and

(D) has a history of serving the local community or communities within which housing to be assisted under this Act is to be located.

In the case of an organization serving more than one county, the Secretary may not require that such organization, to be considered a community housing development organization for purposes of this Act, include as members on the organization's governing board low-income persons residing in each county served.

(7) The term ''government-sponsored mortgage finance corporations'' means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Agricultural Mortgage Corporation.

(8) The term ''housing'' includes manufactured housing and manufactured housing lots and elder cottage housing opportunity units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing 1- to 4-family dwellings.

(9) The term ''very low-income families'' means low-income families whose incomes do not exceed 50 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(10) The term ''low-income families'' means families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(11) The term ''families'' has the same meaning given that term by section 1437a of this title.

(12) The term ''security'' has the same meaning as in section 77b of title 15.

(13) The term ''displaced homemaker'' means an individual who—

(A) is an adult;

(B) has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(C) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(14) The term ''first-time homebuyer'' means an individual and his or her spouse who have not owned a home during the 3-year period prior to purchase of a home with assistance under subchapter II of this chapter, except that—

(A) any individual who is a displaced homemaker may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse;

(B) any individual who is a single parent may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse; and

(C) an individual shall not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual owns or owned, as a principal residence during such 3-year period, a dwelling unit whose structure is—

(i) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations, or

(ii) not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

(15) The term ''single parent'' means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(16) The term ''Secretary'' means the Secretary of Housing and Urban Development, unless otherwise specified in this Act.

(17) The term ''substantial rehabilitation'' means the rehabilitation of residential property at an average cost in excess of $25,000 per dwelling unit.

(18) The term ''public housing agency'' has the meaning given the term in section 1437a(b) of this title.

(19) The term ''metropolitan city'' has the meaning given the term in section 5302(a)(4) of this title.

(20) The term ''urban county'' has the meaning given the term in section 5302(a)(6) of this title.

(21) The term ''certification'' means a written assertion, based on supporting evidence, which shall be kept available for inspection by the Secretary, the Inspector General and the public, which assertion shall be deemed to be accurate for purposes of this Act, unless the Secretary determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

(23)[1] The term ''to demonstrate to the Secretary'' means to submit to the Secretary a written assertion together with supporting evidence that, in the determination of the Secretary, supports the accuracy of the assertion.

(24)[2] The term ''insular area'' means any of the following: Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(24)[2] The term ''energy efficient mortgage'' means a mortgage that provides financing incentives for the purchase of energy efficient homes, or that provides financing incentives to make energy efficiency improvements in existing homes by incorporating the cost of such improvements in the mortgage.

(25) The term ''energy efficient mortgage'' means a mortgage that provides financing incentives for the purchase of energy efficient homes, or that provides financing incentives to make energy efficiency improvements in existing homes by incorporating the cost of such improvements in the mortgage.

(Pub. L. 101–625, title I, § 104, Nov. 28, 1990, 104 Stat. 4085; Pub. L. 102–229, title I, Dec. 12, 1991, 105 Stat. 1709; Pub. L. 101–230, § 2, Dec. 12, 1991, 105 Stat. 1720; Pub. L. 102–486, title I, § 105(a), Oct. 24, 1992, 106 Stat. 2792; Pub. L. 102–550, title II, §§ 211(a)(1), 217(a), 218, 219, title IX, § 914(a), Oct. 28, 1992, 106 Stat. 3756, 3760, 3761, 3877; Pub. L. 103–233, title II, § 201, Apr. 11, 1994, 108 Stat. 363.)

REFERENCES IN TEXT

This Act, referred to in pars. (1), (2), (6), (16), and (21), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, as amended, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

1994—Par. (2). Pub. L. 103–233 struck out ''and'' after ''Columbia,'' and inserted before period at end '', or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this Act''.

1992—Par. (1). Pub. L. 102–550, § 211(a)(1), amended this section to read as if amendment made by Pub. L. 102–230, § 2(1), had not been enacted. See 1991 Amendment note below.

Par. (6). Pub. L. 102–550, § 217(a), inserted concluding provisions.

Par. (8). Pub. L. 102–550, § 218, inserted before period at end ''and elder cottage housing opportunity units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing 1- to 4-family dwellings''.

Par. (14)(C). Pub. L. 102–550, § 219, added subpar. (C).

Par. (24). Pub. L. 102–550, § 211(a)(1), amended this section to read as if amendment made by Pub. L. 102–230, § 2(2), had not been enacted. See 1991 Amendment note below.

Pub. L. 102–486 added par. (24) defining ''energy efficient mortgage''.

Par. (25). Pub. L. 102–550, § 914(a), added par. (25).

1991—Par. (1). Pub. L. 102–230, § 2(1), directed the substitution of ''the insular areas'' for ''Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands''. See 1992 Amendment note above.

Pub. L. 102–229 struck out ''Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa,'' after ''of a State;''.

Par. (24). Pub. L. 102–230, § 2(2), directed the addition of a par. (24) to read as follows: ''(24) The term 'insular areas' means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.'' See 1992 Amendment note above.

Pub. L. 102–229 added par. (24) defining ''insular area''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out sub-

[1] So in original. Probably should be ''(22)''.

[2] So in original. Two pars. (24) have been enacted.

chapter II (§ 12721 et seq.) of this chapter after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 211(b) of Pub. L. 102–550 provided that: ''The amendments made by subsection (a) [amending this section and section 12747 of this title] shall apply with respect to fiscal year 1993 and thereafter.''

Section 223 of title II of Pub. L. 102–550 provided that: ''The amendments made by this title [enacting section 12810 of this title and amending this section and sections 12705, 12724, 12742, 12745 to 12748, 12750, 12771, 12773, 12774, 12782, and 12784 of this title] shall apply to unexpended funds allocated under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.] in fiscal year 1992, except as otherwise specifically provided.''

REGULATIONS

Section 222 of title II of Pub. L. 102–550 provided that: ''The Secretary of Housing and Urban Development shall issue any final regulations necessary to implement the provisions of this title [enacting section 12810 of this title, amending this section and sections 12705, 12724, 12742, 12745 to 12748, 12750, 12771, 12773, 12774, 12782, and 12784 of this title, and enacting provisions set out as notes under this section and sections 12746, 12747, and 12750 of this title] and the amendments made by this title not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], except as expressly provided otherwise in this title and the amendments made by this title. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).''

TRANSITION RULE

Section 217(b) of Pub. L. 102–550 provided that: ''For the purposes of determining compliance with the requirements of section 104(6) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12704(6)], the Secretary of Housing and Urban Development may provide an exception for organizations that meet the definition of community housing development organization, except for significant representation of low-income community residents on the board, if such organization fulfills such requirement within 6 months of receiving funds under title II of such Act [42 U.S.C. 12721 et seq.] or September 30, 1993, whichever is sooner.''

§ 12705. State and local housing strategies

(a) In general

The Secretary shall provide assistance directly to a jurisdiction only if—

(1) the jurisdiction submits to the Secretary a comprehensive housing affordability strategy (hereafter in this section referred to as the ''housing strategy'');

(2) the jurisdiction submits annual updates of the housing strategy; and

(3) the housing strategy, and any annual update of such strategy, is approved by the Secretary.

The Secretary shall establish such dates and manner for the submission and approval of housing strategies under this section that the Secretary determines will facilitate orderly program management by jurisdictions and provide for timely investment or other use of funds made available under subchapter II of this chapter and other programs requiring submission of a housing strategy. If the Secretary finds there is good cause, the Secretary may provide reasonable extensions of any deadlines for submission of a jurisdiction's housing strategy.

(b) Contents

A housing strategy submitted under this section shall be in a form that the Secretary determines to be appropriate for the assistance the jurisdiction may be provided and shall—

(1) describe the jurisdiction's estimated housing needs projected for the ensuing 5-year period, and the jurisdiction's need for assistance for very low-income, low-income, and moderate-income families, specifying such needs for different types of tenure and for different categories of residents, such as very low-income, low-income, and moderate-income families, the elderly, persons with disabilities, single persons, large families, residents of nonmetropolitan areas, families who are participating in an organized program to achieve economic independence and self-sufficiency, persons with acquired immunodeficiency syndrome, victims of domestic violence, dating violence, sexual assault, and stalking and other categories of persons residing in or expected to reside in the jurisdiction that the Secretary determines to be appropriate;

(2) describe the nature and extent of homelessness, including rural homelessness, within the jurisdiction, providing an estimate of the special needs of various categories of persons who are homeless or threatened with homelessness, including tabular representation of such information, and a description of the jurisdiction's strategy for (A) helping low-income families avoid becoming homeless; (B) addressing the emergency shelter and transitional housing needs of homeless persons (including a brief inventory of facilities and services that meet such needs within that jurisdiction); and (C) helping homeless persons make the transition to permanent housing and independent living;

(3) describe the significant characteristics of the jurisdiction's housing market, indicating how those characteristics will influence the use of funds made available for rental assistance, production of new units, rehabilitation of old units, or acquisition of existing units;

(4) explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by public policies, particularly by policies of the jurisdiction, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment, and describe the jurisdiction's strategy to remove or ameliorate negative effects, if any, of such policies, except that, if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph, as determined by the Secretary, the unit of gen-

eral local government may submit its assessment submitted to the State to the Secretary and shall be considered to have complied with this paragraph;

(5) explain the institutional structure, including private industry, nonprofit organizations, and public institutions, through which the jurisdiction will carry out its housing strategy, assessing the strengths and gaps in that delivery system and describing what the jurisdiction will do to overcome those gaps;

(6) indicate resources from private and non-Federal public sources that are reasonably expected to be made available to carry out the purposes of this Act, explaining how funds made available will leverage those additional resources and identifying, where the jurisdiction deems it appropriate, publicly owned land or property located within the jurisdiction that may be utilized to carry out the purposes of this Act;

(7) set forth the jurisdiction's plan for investment or other use of housing funds made available under subchapter II of this chapter, the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the Housing and Community Development Act of 1974, and the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11301 et seq.], during the ensuing year or such longer period as the Secretary determines to be appropriate, indicating the general priorities for allocating investment geographically within the jurisdiction and among different activities and housing needs;

(8) describe how the jurisdiction's plan will address the housing needs identified pursuant to subparagraphs[1] (1) and (2), describe the reasons for allocation priorities, and identify any obstacles to addressing underserved needs;

(9) describe the means of cooperation and coordination among the State and any units of general local government in the development, submission, and implementation of their housing strategies;

(10) in the case of a unit of local government, describe the number of public housing units in the jurisdiction, the physical condition of such units, the restoration and revitalization needs of public housing projects within the jurisdiction, the public housing agency's strategy for improving the management and operation of such public housing, and the public housing agency's strategy for improving the living environment of low- and very-low-income families residing in public housing;

(11) describe the manner in which the plan of the jurisdiction will help address the needs of public housing;

(12) in the case of a State, describe the strategy to coordinate the Low-Income Tax Credit with development of housing, including public housing, that is affordable to very low-income and low-income families;

(13) describe the jurisdiction's activities to encourage public housing residents to become more involved in management and participate in homeownership;

(14) describe the standards and procedures according to which the jurisdiction will monitor activities authorized under this Act and ensure long-term compliance with the provisions of this Act;

(15) include a certification that the jurisdiction will affirmatively further fair housing;

(16) include a certification that the jurisdiction has in effect and is following a residential antidisplacement and relocation assistance plan that, in any case of any such displacement in connection with any activity assisted with amounts provided under subchapter II of this chapter, requires the same actions and provides the same rights as required and provided under a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(d)] in the event of displacement in connection with a development project assisted under section 106 or 119 of such Act [42 U.S.C. 5306, 5318];

(17) estimate the number of housing units within the jurisdiction that are occupied by low-income families or very low-income families and that contain lead-based paint hazards, as defined in section 4851b of this title, outline the actions proposed or being taken to evaluate and reduce lead-based paint hazards, and describe how lead-based paint hazard reduction will be integrated into housing policies and programs;

(18) include the number of families to whom the jurisdiction will provide affordable housing as defined in section 12745 of this title using funds made available;

(19) for any housing strategy submitted for fiscal year 1994 or any fiscal year thereafter and taking into consideration factors over which the jurisdiction has control, describe the jurisdiction's goals, programs, and policies for reducing the number of households with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually), and, in consultation with other appropriate public and private agencies, state how the jurisdiction's goals, programs, and policies for producing and preserving affordable housing set forth in the housing strategy will be coordinated with other programs and services for which the jurisdiction is responsible and the extent to which they will reduce (or assist in reducing) the number of households with incomes below the poverty line; and

(20) describe the jurisdictions activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health, and service agencies.

The Secretary may provide for the submission of abbreviated housing strategies by jurisdictions that are not otherwise expected to be participating jurisdictions under subchapter II of this chapter. Such an abbreviated housing strategy shall be appropriate to the types and amounts of assistance the jurisdiction is to receive as determined by the Secretary.

(c) Approval

(1) In general

The Secretary shall review the housing strategy upon receipt. Not later than 60 days

[1] So in original. Probably should be ''paragraphs''.

after receipt by the Secretary, the housing strategy shall be approved unless the Secretary determines before that date that (A) the housing strategy is inconsistent with the purposes of this Act, or (B) the information described in subsection (b) of this section has not been provided in a substantially complete manner. For the purpose of the preceding sentence, the adoption or continuation of a public policy identified pursuant to subsection (b)(4) of this section shall not be a basis for the Secretary's disapproval of a housing strategy. During the 18-month period following November 28, 1990, the Secretary may extend the review period to not longer than 90 days.

(2) Actions in case of disapproval

If the Secretary disapproves the housing strategy, the Secretary shall immediately notify the jurisdiction of such disapproval. Not later than 15 days after the Secretary's disapproval, the Secretary shall inform the jurisdiction in writing of (A) the reasons for disapproval, and (B) actions that the jurisdiction could take to meet the criteria for approval. If the Secretary fails to inform the jurisdiction of the reasons for disapproval within such 15-day period, the housing strategy shall be deemed to have been approved.

(3) Amendments and resubmission

The Secretary shall, for a period of not less than 45 days following the date of first disapproval, permit amendments to, or the resubmission of, any housing strategy that is disapproved. The Secretary shall approve or disapprove a housing strategy not less than 30 days after receipt of such amendments or resubmission.

(d) Coordination of State and local housing strategies

The Secretary may establish such requirements as the Secretary deems appropriate to encourage coordination between and among the housing strategies of a State and any participating jurisdictions within the State, except that a unit of general local government shall not be required to have elements of its housing strategy approved by the State.

(e) Consultation with social service agencies

(1) In general

When preparing a housing strategy for submission under this section, a jurisdiction shall make reasonable efforts to confer with appropriate social service agencies regarding the housing needs of children, elderly persons, persons with disabilities, homeless persons, and other persons served by such agencies.

(2) Lead-based paint hazards

When preparing that portion of a housing strategy required by subsection (b)(16) of this section, a jurisdiction shall consult with State or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead poisoned.

(f) Barrier removal

Not later than 4 months after completion of the final report of the Secretary's Advisory Commission on Regulatory Barriers to Affordable Housing, the Secretary shall submit to the Congress a written report outlining the Secretary's recommendations for legislative and administrative actions to facilitate the removal or modification of excessive, duplicative, or unnecessary regulations or other requirements of Federal, State, or local governments that (1) inflate the costs of or otherwise inhibit the construction, rehabilitation, or management of housing, particularly housing that otherwise could be affordable to low-income and moderate-income families, or (2) contribute to economic or racial discrimination.

(g) Treatment of troubled public housing agencies

(1) Effect of troubled status on CHAS

The comprehensive housing affordability strategy (or any consolidated plan incorporating such strategy) for the State or unit of general local government in which any troubled public housing agency is located shall not be considered to comply with the requirements under this section unless such plan includes a description of the manner in which the State or unit will provide financial or other assistance to such troubled agency in improving its operations to remove such designation.

(2) Definition

For purposes of this subsection, the term ''troubled public housing agency'' means a public housing agency that, upon the effective date of the Quality Housing and Work Responsibility Act of 1998, is designated under section 6(j)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437d(j)(2)] as a troubled public housing agency.

(Pub. L. 101–625, title I, § 105, Nov. 28, 1990, 104 Stat. 4088; Pub. L. 102–550, title II, § 220, title VI, § 681, title X, § 1014, title XII, § 1206, Oct. 28, 1992, 106 Stat. 3761, 3830, 3908, 3940; Pub. L. 105–276, title V, §§ 568, 583, Oct. 21, 1998, 112 Stat. 2634, 2644; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 109–162, title VI, § 604, Jan. 5, 2006, 119 Stat. 3040.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b)(6), (14) and (c)(1), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b)(7), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (b)(7), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (b)(7), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§ 11301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

The effective date of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (g)(2),

probably means the general effective date for title V of Pub. L. 105–276, included in section 503 of Pub. L. 105–276 which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–162 inserted ''victims of domestic violence, dating violence, sexual assault, and stalking'' after ''immunodeficiency syndrome,''.

2000—Subsec. (b)(7). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

1998—Subsec. (b). Pub. L. 105–276, § 583(1), transferred flush provisions relating to abbreviated housing strategies to end of subsection to follow last numbered paragraph.

Subsec. (b)(11) to (15). Pub. L. 105–276, § 583(6), (7), added par. (11) and redesignated former pars. (11) to (14) as (12) to (15), respectively. Former par. (15) redesignated (16).

Subsec. (b)(16). Pub. L. 105–276, § 583(6), redesignated par. (15) as (16). Former par. (16), relating to housing units that contain lead-based paint hazards, redesignated (17), and former par. (16), relating to number of families to whom jurisdiction will provide affordable housing, redesignated (18).

Pub. L. 105–276, § 583(5)(A), substituted ''programs;'' for ''programs.'' in par. (16) relating to housing units that contain lead-based paint hazards.

Pub. L. 105–276, § 583(4)(A), struck out ''and'' at end of par. (16) relating to number of families to whom jurisdiction will provide affordable housing.

Subsec. (b)(17). Pub. L. 105–276, § 583(5)(B), redesignated par. (16), relating to housing units that contain lead-based paint hazards, as (17). Former par. (17), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, redesignated (19), and former par. (17), relating to activities to enhance coordination, redesignated (20).

Subsec. (b)(18). Pub. L. 105–276, § 583(4)(B), redesignated par. (16), relating to number of families to whom jurisdiction will provide affordable housing, as (18).

Subsec. (b)(19). Pub. L. 105–276, § 583(3), redesignated par. (17), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, as (19).

Subsec. (b)(20). Pub. L. 105–276, § 583(2), redesignated par. (17), relating to activities to enhance coordination, as (20).

Subsec. (g). Pub. L. 105–276, § 568, added subsec. (g).

1992—Subsec. (b)(1). Pub. L. 102–550, § 681(1), inserted ''persons with disabilities,'' after ''the elderly,''.

Subsec. (b)(2). Pub. L. 102–550, § 220(a), inserted '', including rural homelessness,'' after ''extent of homelessness'' and ''including tabular representation of such information,'' after ''with homelessness,''.

Subsec. (b)(4). Pub. L. 102–550, § 1206, inserted before semicolon at end '', except that, if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph, as determined by the Secretary, the unit of general local government may submit its assessment submitted to the State to the Secretary and shall be considered to have complied with this paragraph''.

Subsec. (b)(8). Pub. L. 102–550, § 220(c)(2), added par. (8). Former par. (8) redesignated (9).

Subsec. (b)(9) to (13). Pub. L. 102–550, § 220(c)(1), redesignated pars. (8) to (12) as (9) to (13), respectively. Former par. (13) redesignated (14).

Subsec. (b)(14). Pub. L. 102–550, § 220(c)(1), redesignated par. (13) as (14). Former par. (14) redesignated (15).

Pub. L. 102–550, § 220(b)(1), added par. (14) and struck out former par. (14) which read as follows: ''include a certification that the jurisdiction is in compliance with a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (to the extent that such a plan applies to the jurisdiction); and''.

Subsec. (b)(15). Pub. L. 102–550, § 220(c)(1), redesignated par. (14) as (15). Former par. (15) redesignated (16).

Subsec. (b)(16). Pub. L. 102–550, § 1014(3), added par. (16) relating to housing units that contain lead-based paint hazards.

Pub. L. 102–550, § 220(c)(1), redesignated par. (15) as (16). Former par. (16) redesignated (17).

Pub. L. 102–550, § 220(b)(3), added at end par. (16) relating to reducing the number of households within a jurisdiction with incomes below the poverty line.

Subsec. (b)(17). Pub. L. 102–550, § 681(2), which directed amendment of subsec. (b) by adding ''after paragraph (16), as added by the preceding provisions of this Act'', a new par. (17) relating to activities to enhance coordination, was executed by adding that par. (17) after par. (17) (formerly par. (16), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, to reflect the probable intent of Congress.

Pub. L. 102–550, § 220(c)(1), redesignated par. (16), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, as (17).

Subsec. (e). Pub. L. 102–550, § 1014(4), designated existing provisions as par. (1), inserted heading, and added par. (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 220 of Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

§ 12705a. Purposes of Removal of Regulatory Barriers to Affordable Housing Act

The purposes of sections 12705a to 12705d of this title are—

(1) to encourage State and local governments to further identify and remove regulatory barriers to affordable housing (including barriers that are excessive, unnecessary, duplicative, or exclusionary) that significantly increase housing costs and limit the supply of affordable housing; and

(2) to strengthen the connection between Federal housing assistance and State and local efforts to identify and eliminate regulatory barriers.

(Pub. L. 102–550, title XII, § 1202, Oct. 28, 1992, 106 Stat. 3938.)

REFERENCES IN TEXT

Sections 12705a to 12705d of this title, referred to in text, were in the original ''this title'', meaning title XII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3938, known as the Removal of Regulatory Barriers to Affordable Housing Act of 1992, which enacted sections 12705a to 12705d of this title, amended sections 5306 and 12705 of this title, and enacted provisions set out as a note below.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and

also as part of the Housing and Community Development Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

SHORT TITLE

Section 1201 of title XII of Pub. L. 102–550 provided that: ''This title [enacting this section and sections 12705b to 12705d of this title, amending sections 5306 and 12705 of this title, and enacting provisions set out as a note below] may be cited as the 'Removal of Regulatory Barriers to Affordable Housing Act of 1992'.''

REPORT BY SECRETARY

Pub. L. 102–550, title XII, § 1207, Oct. 28, 1992, 106 Stat. 3941, provided that not later than 2 years after Oct. 28, 1992, the Secretary of Housing and Urban Development submit a report to Congress describing any successful State and local strategies for removal of barriers to affordable housing, assessing impact of identified regulatory barriers on housing patterns of minorities, and describing any strategies developed or implemented by Department of Housing and Urban Development for reducing barriers to affordable housing imposed by Federal Government, prior to repeal by Pub. L. 105–362, title VII, § 701(b), Nov. 10, 1998, 112 Stat. 3287.

§ 12705b. Definition of regulatory barriers to affordable housing

For purposes of sections 12705a to 12705d of this title, the terms ''regulatory barriers to affordable housing'' and ''regulatory barriers'' mean any public policies (including policies embodied in statutes, ordinances, regulations, or administrative procedures or processes) required to be identified by a jurisdiction in connection with its comprehensive housing affordability strategy under section 12705(b)(4) of this title. Such terms do not include policies relating to rents imposed on a structure by a jurisdiction or policies that have served to create or preserve, or can be shown to create or preserve, housing for low- and very low-income families, including displacement protections, demolition controls, replacement housing requirements, relocation benefits, housing trust funds, dedicated funding sources, waiver of local property taxes and builder fees, inclusionary zoning, rental zoning overlays, long-term use restrictions, and rights of first refusal.

(Pub. L. 102–550, title XII, § 1203, Oct. 28, 1992, 106 Stat. 3938.)

REFERENCES IN TEXT

Sections 12705a to 12705d of this title, referred to in text, were in the original ''this title'', meaning title XII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3938, known as the Removal of Regulatory Barriers to Affordable Housing Act of 1992, which enacted sections 12705a to 12705d of this title, amended sections 5306 and 12705 of this title, and enacted provisions set out as notes under section 12705a of this title.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and also as part of the Housing and Community Development Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

§ 12705c. Grants for regulatory barrier removal strategies and implementation

(a) Funding

There is authorized to be appropriated for grants under subsections (b) and (c)[1] of this section such sums as may be necessary for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

(b) Grant authority

The Secretary may make grants to States and units of general local government (including consortia of such governments) for the costs of developing and implementing strategies to remove regulatory barriers to affordable housing, including the costs of—

(1) identifying, assessing, and monitoring State and local regulatory barriers;

(2) identifying State and local policies (including laws and regulations) that permit or encourage regulatory barriers;

(3) developing legislation to provide State, local, or regional programs to reduce regulatory barriers and developing a strategy for adoption of such legislation;

(4) developing model State or local standards and ordinances to reduce regulatory barriers and assisting in the adoption and use of the standards and ordinances;

(5) carrying out the simplification and consolidation of administrative procedures and processes constituting regulatory barriers to affordable housing, including the issuance of permits; and

(6) providing technical assistance and information to units of general local government for implementation of legislative and administrative reform programs to remove regulatory barriers to affordable housing.

(c) Repealed. Pub. L. 106–569, title I, § 102(c), Dec. 27, 2000, 114 Stat. 2947

(d) Definitions

For purposes of this section, the terms ''regulatory barriers to affordable housing'' and ''regulatory barriers'' have the meaning given such terms in section 12705b of this title.

(e) Application and selection

The Secretary shall provide for the form and manner of applications for grants under this section, which shall describe how grant amounts will assist the State or unit of general local government in developing and implementing strategies to remove regulatory barriers to affordable housing. The Secretary shall establish criteria for approval of applications under this subsection and such criteria shall require that grant amounts be used in a manner consistent with the strategy contained in the comprehensive housing affordability strategy for the jurisdiction pursuant to section 12705(b)(4) of this title.

(f) Selection of grantees

To the extent amounts are made available to carry out this section, the Secretary shall provide grants on a competitive basis to eligible grantees based on the proposed uses of such amounts, as provided in applications under subsection (e) of this section.

[1] See References in Text note below.

(g) Coordination with clearinghouse

Each State and unit of general local government receiving a grant under this section, shall consult, coordinate, and exchange information with the clearinghouse established under section 12705d of this title.

(h) Reports to Secretary

Each State and unit of general local government receiving a grant under this section shall submit a report to the Secretary, not less than 12 months after receiving the grant, describing any activities carried out with the grant amounts. The report shall contain an assessment of the impact of any regulatory barriers identified by the grantee on the housing patterns of minorities.

(Pub. L. 102–550, title XII, § 1204, Oct. 28, 1992, 106 Stat. 3938; Pub. L. 106–569, title I, § 102(a)–(e), Dec. 27, 2000, 114 Stat. 2946, 2947.)

REFERENCES IN TEXT

Subsection (c) of this section, referred to in subsec. (a), was repealed by Pub. L. 106–569, title I, § 102(c), Dec. 27, 2000, 114 Stat. 2947.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and also as part of the Housing and Community Development Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

Section is comprised of section 1204 of Pub. L. 102–550. Subsection (i) of section 1204 of Pub. L. 102–550 amended section 5306 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–569, § 102(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The amounts set aside under section 5307 of this title for the purpose of this subsection shall be available for grants under subsection (b) and (c) of this section.''

Subsec. (b). Pub. L. 106–569, § 102(b)(1), (2), substituted ''Grant authority'' for ''State grants'' in heading and inserted ''and units of general local government (including consortia of such governments)'' after ''States'' in introductory provisions.

Subsec. (b)(3). Pub. L. 106–569, § 102(b)(3), substituted ''State, local, or regional programs to reduce'' for ''a State program to reduce State and local''.

Subsec. (b)(4). Pub. L. 106–569, § 102(b)(4), inserted ''or local'' after ''State''.

Subsec. (b)(5). Pub. L. 106–569, § 102(b)(5), struck out ''State'' before ''administrative procedures''.

Subsec. (c). Pub. L. 106–569, § 102(c), struck out heading and text of subsec. (c) which related to local grants.

Subsec. (e). Pub. L. 106–569, § 102(d), substituted ''and such criteria shall require that grant amounts be used in a manner consistent with the strategy contained in the comprehensive housing affordability strategy for the jurisdiction pursuant to section 12705(b)(4) of this title'' for ''and for the selection of units of general local government to receive grants under subsection (f)(2) of this section'' before period at end.

Subsec. (f). Pub. L. 106–569, § 102(e), amended heading and text of subsec. (f) generally, substituting provisions relating to selection of grantees for provisions relating to allocation of amounts.

§ 12705d. Regulatory barriers clearinghouse

(a) Establishment

The Secretary of Housing and Urban Development shall establish a clearinghouse to serve as a national repository to receive, collect, process, assemble, and disseminate information regarding—

(1) State and local laws, regulations, and policies affecting the development, maintenance, improvement, availability, or cost of affordable housing (including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on investment in residential property), and the prevalence and effects on affordable housing of such laws, regulations, and policies;

(2) State and local activities, strategies, and plans to remove or ameliorate the negative effects, if any, of such laws, regulations, and policies, including particularly innovative or successful activities, strategies, and plans; and

(3) State and local strategies, activities and plans that promote affordable housing and housing desegregation, including particularly innovative or successful strategies, activities, and plans.

(b) Functions

The clearinghouse established under subsection (a) of this section shall—

(1) respond to inquiries from State and local governments, other organizations, and individuals requesting information regarding State and local laws, regulations, policies, activities, strategies, and plans described in subsection (a) of this section;

(2) provide assistance in identifying, examining, and understanding such laws, regulations, policies, activities, strategies, and plans; and

(3) by making available through a World Wide Web site of the Department, by electronic mail, or otherwise, provide to each housing agency of a unit of general local government that serves an area having a population greater than 100,000, an index of all State and local strategies and plans submitted under subsection (a) of this section to the clearinghouse, which—

(A) shall describe the types of barriers to affordable housing that the strategy or plan was designed to ameliorate or remove; and

(B) shall, not later than 30 days after submission to the clearinghouse of any new strategy or plan, be updated to include the new strategy or plan submitted.

(c) Organization

The clearinghouse under this section shall be established within the Office of Policy Development of the Department of Housing and Urban Development and shall be under the direction of the Assistant Secretary for Policy Development and Research.

(d) Timing

The clearinghouse under this section (as amended by section 103 of the Housing Affordability Barrier Removal Act of 2000) shall be established and commence carrying out the functions of the clearinghouse under this section not later than 1 year after December 27, 2000. The Secretary of Housing and Urban Development may comply with the requirements under this section by reestablishing the clearinghouse that

was originally established to comply with this section and updating and improving such clearinghouse to the extent necessary to comply with the requirements of this section as in effect pursuant to the enactment of such Act.

(Pub. L. 102–550, title XII, § 1205, Oct. 28, 1992, 106 Stat. 3940; Pub. L. 106–569, title I, § 103, Dec. 27, 2000, 114 Stat. 2947.)

REFERENCES IN TEXT

The Housing Affordability Barrier Removal Act of 2000, referred to in subsec. (d), is title I of Pub. L. 106–569, Dec. 27, 2000, 114 Stat. 2946. Section 103 of the Act amended this section. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 12701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and also as part of the Housing and Community Development Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–569, § 103(1)(A), substituted ''serve as a national repository to receive, collect, process, assemble, and disseminate'' for ''receive, collect, process, and assemble'' in introductory provisions.

Subsec. (a)(1). Pub. L. 106–569, § 103(1)(B), substituted ''(including'' for '', including'' and inserted ''), and the prevalence and effects on affordable housing of such laws, regulations, and policies'' before semicolon at end.

Subsec. (a)(2). Pub. L. 106–569, § 103(1)(C), inserted before semicolon '', including particularly innovative or successful activities, strategies, and plans''.

Subsec. (a)(3). Pub. L. 106–569, § 103(1)(D), inserted before period at end '', including particularly innovative or successful strategies, activities, and plans''.

Subsec. (b)(3). Pub. L. 106–569, § 103(2), added par. (3).

Subsecs. (c), (d). Pub. L. 106–569, § 103(3), added subsecs. (c) and (d).

§ 12706. Certification

The Secretary shall, by regulation or otherwise, as deemed by the Secretary to be appropriate, require any application for housing assistance under subchapter II of this chapter, assistance under the Housing and Community Development Act of 1974, or assistance under the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11301 et seq.], to contain or be accompanied by a certification by an appropriate State or local public official that the proposed housing activities are consistent with the housing strategy of the jurisdiction to be served.

(Pub. L. 101–625, title I, § 106, Nov. 28, 1990, 104 Stat. 4091; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in text, is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in text, is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§ 11301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

§ 12707. Citizen participation

(a) In general

Before submitting a housing strategy under this section,[1] a jurisdiction shall—

(1) make available to its citizens, public agencies, and other interested parties information concerning the amount of assistance the jurisdiction expects to receive and the range of investment or other uses of such assistance that the jurisdiction may undertake;

(2) publish a proposed housing strategy in a manner that, in the determination of the Secretary, affords affected citizens, public agencies, and other interested parties a reasonable opportunity to examine its content and to submit comments on the proposed housing strategy;

(3) hold one or more public hearings to obtain the views of citizens, public agencies, and other interested parties on the housing needs of the jurisdiction; and

(4) provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of any assistance the jurisdiction may have received during the preceding 5 years.

(b) Notice and comment

Before submitting any performance report or substantial amendment to a housing strategy under this section,[1] a participating jurisdiction shall provide citizens with reasonable notice of, and opportunity to comment on, such performance report or substantial amendment prior to its submission.

(c) Consideration of comments

A participating jurisdiction shall consider any comments or views of citizens in preparing a final housing strategy, amendment to a housing strategy or performance report for submission. A summary of such comments or views shall be attached when a housing strategy, amendment to a housing strategy or performance report is submitted. The submitted housing strategy, amendment, or report shall be made available to the public.

(d) Regulations

The Secretary shall by regulation establish procedures appropriate and practicable for providing a fair hearing and timely resolution of citizen complaints related to housing strategies or performance reports.

(Pub. L. 101–625, title I, § 107, Nov. 28, 1990, 104 Stat. 4091.)

§ 12708. Compliance

(a) Performance reports

(1) In general

Each participating jurisdiction shall annually review and report, in a form acceptable to

[1] So in original. The words ''this section'' probably should be ''section 12705 of this title''.

the Secretary, on the progress it has made in carrying out its housing strategy, which report shall include an evaluation of the jurisdiction's progress in meeting its goal established in section 12705(b)(15)[1] of this title, and information on the number and types of households served, including the number of very low-income, low-income, and moderate-income persons served and the racial and ethnic status of persons served that will be assisted with funds made available.

(2) Submission

The Secretary shall (A) establish dates for submission of reports under this subsection, and (B) review such reports and make such recommendations as the Secretary deems appropriate to carry out the purposes of this Act.

(3) Failure to report

If a jurisdiction fails to submit a report satisfactory to the Secretary in a timely manner, assistance to the jurisdiction under subchapter II of this chapter or the other programs referred to in section 12706 of this title may be—

(A) suspended until a report satisfactory to the Secretary is submitted; or

(B) withdrawn and reallocated if the Secretary finds, after notice and opportunity for a hearing, that the jurisdiction will not submit a satisfactory report.

(b) Performance review by Secretary

(1) In general

The Secretary shall ensure that activities of each jurisdiction required to submit a housing strategy under section 12705 of this title are reviewed not less frequently than annually. Such review shall include, insofar as practicable, on-site visits by employees of the Department of Housing and Urban Development and shall include an assessment of the jurisdiction's—

(A) management of funds made available under programs administered by the Secretary;

(B) compliance with its housing strategy;

(C) accuracy in the preparation of performance reports under subsection (a) of this section; and

(D) efforts to ensure that housing assisted under programs administered by the Secretary are in compliance with contractual agreements and the requirements of law.

(2) Report by Secretary

The Secretary shall report on the performance review in writing. The Secretary shall give the jurisdiction not less than 30 days to review and comment on the report. After taking into consideration the comments of the jurisdiction, the Secretary may revise the report and shall make the jurisdiction's comments and the report, with any revisions, readily available to the public within 30 days after receipt of the jurisdiction's comments.

(c) Review by courts

The adequacy of information submitted under section 12705(b)(4) of this title shall not be reviewable by any Federal, State, or other court. Review of a housing strategy by any Federal, State, or other court shall be limited to determining whether the process of development and the content of the strategy are in substantial compliance with the requirements of this Act. During the pendency of any action challenging the adequacy of a housing strategy or the action of the Secretary in approving a strategy, the court shall not have the authority to enjoin activities taken by the jurisdiction to implement an approved housing strategy. Any housing assisted during the pendency of such action shall not be subject to any order of the court resulting from such action.

(Pub. L. 101–625, title I, § 108, Nov. 28, 1990, 104 Stat. 4092.)

REFERENCES IN TEXT

Section 12705(b)(15) of this title, referred to in subsec. (a)(1), was redesignated section 12705(b)(16) of this title by Pub. L. 102–550, title II, § 220(c)(1), Oct. 28, 1992, 106 Stat. 3762, and was subsequently redesignated section 12705(b)(18) of this title by Pub. L. 105–276, title V, § 583(4)(A), Oct. 21, 1998, 112 Stat. 2644.

This Act, referred to in subsecs. (a)(2) and (c), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

§ 12709. Energy efficiency standards

(a) Establishment

(1) In general

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall, not later than September 30, 2006, jointly establish, by rule, energy efficiency standards for—

(A) new construction of public and assisted housing and single family and multifamily residential housing (other than manufactured homes) subject to mortgages insured under the National Housing Act [12 U.S.C. 1701 et seq.];

(B) new construction of single family housing (other than manufactured homes) subject to mortgages insured, guaranteed, or made by the Secretary of Agriculture under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.]; and

(C) rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 1437v of this title, where such standards are determined to be cost effective by the Secretary of Housing and Urban Development.

(2) Contents

Such standards shall meet or exceed the requirements of the Council of American Building Officials Model Energy Code, 1992 (hereafter in this section referred to as "CABO Model Energy Code, 1992"), or, in the case of multifamily high rises, the requirements of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1–1989 (hereafter in this section referred to as "ASHRAE Standard 90.1–1989"), and, with respect to rehabilitation and new construction

[1] See References in Text note below.

of public and assisted housing funded by HOPE VI revitalization grants under section 1437v of this title, the 2003 International Energy Conservation Code, and shall be cost-effective with respect to construction and operating costs on a life-cycle cost basis. In developing such standards, the Secretaries shall consult with an advisory task force composed of homebuilders, national, State, and local housing agencies (including public housing agencies), energy agencies, building code organizations and agencies, energy efficiency organizations, utility organizations, low-income housing organizations, and other parties designated by the Secretaries.

(b) Model Energy Code

If the Secretaries have not, by September 30, 2006, established energy efficiency standards under subsection (a) of this section, all new construction of housing specified in such subsection shall meet the requirements of CABO Model Energy Code, 1992, or, in the case of multifamily high rises, the requirements of ASHRAE Standard 90.1–1989, and, with respect to rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 1437v of this title, the 2003 International Energy Conservation Code.

(c) Revisions of Model Energy Code and the International Energy Conservation Code

If the requirements of CABO Model Energy Code, 1992, or, in the case of multifamily high rises, ASHRAE Standard 90.1–1989, or, with respect to rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 1437v of this title, the 2003 International Energy Conservation Code, are revised at any time, the Secretaries shall, not later than 1 year after such revision, amend the standards established under subsection (a) of this section to meet or exceed the requirements of such revised code or standard unless the Secretaries determine that compliance with such revised code or standard would not result in a significant increase in energy efficiency or would not be technologically feasible or economically justified.

(Pub. L. 101–625, title I, § 109, Nov. 28, 1990, 104 Stat. 4093; Pub. L. 102–486, title I, § 101(c)(1), Oct. 24, 1992, 106 Stat. 2786; Pub. L. 109–58, title I, § 153, Aug. 8, 2005, 119 Stat. 649.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a)(1)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The Housing Act of 1949, referred to in subsec. (a)(1)(B), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109–58, § 153(1)(A)(i), substituted ''September 30, 2006'' for ''1 year after October 24, 1992'' in introductory provisions.

Subsec. (a)(1)(C). Pub. L. 109–58, § 153(1)(A)(ii)–(iv), added subpar. (C).

Subsec. (a)(2). Pub. L. 109–58, § 153(1)(B), inserted '', and, with respect to rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 1437v of this title, the 2003 International Energy Conservation Code'' after ''90.1–1989')''.

Subsec. (b). Pub. L. 109–58, § 153(2), substituted ''by September 30, 2006'' for ''within 1 year after October 24, 1992'' and inserted '', and, with respect to rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 1437v of this title, the 2003 International Energy Conservation Code'' before period at end.

Subsec. (c). Pub. L. 109–58, § 153(3), inserted ''and the International Energy Conservation Code'' after ''Model Energy Code'' in heading and '', or, with respect to rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 1437v of this title, the 2003 International Energy Conservation Code'' after ''90.1–1989'' in text.

1992—Pub. L. 102–486 amended section generally. Prior to amendment, section read as follows: ''The Secretary of Housing and Urban Development shall, not later than one year after November 28, 1990, promulgate energy efficiency standards for new construction of public and assisted housing and single-family and multifamily residential housing (other than manufactured homes) subject to mortgages under the National Housing Act. Such standards shall meet or exceed the provisions of the most recent edition of the Model Energy Code of the Council of American Building Officials and shall be cost-effective with respect to construction and operating costs. In developing such standards the Secretary shall consult with an advisory task force composed of homebuilders, national, State, and local housing agencies (including public housing agencies), energy agencies and building code organizations and agencies, energy efficiency organizations, utility organizations, low-income housing organizations, and other parties designated by the Secretary.''

§ 12710. Capacity study

(a) In general

The Secretary shall ensure that the Department of Housing and Urban Development has adequate capacity and resources, including staff and training programs, to carry out its mission and responsibilities to implement the provisions of this Act, including the ability of the Department to carry out the multifamily mortgage insurance program, and the ability to respond to areas identified as ''material weaknesses'' by the Office of the Inspector General in financial audits or other reports.

(b) Report

Not later than 60 days after November 28, 1990, and annually thereafter, the Secretary shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a study detailing the Department's plan to maintain such capacity, together with any recommendations for legislative and administrative action as the Secretary determines to be appropriate.

(Pub. L. 101–625, title I, § 110, Nov. 28, 1990, 104 Stat. 4093; Pub. L. 102–550, title IV, § 407, Oct. 28, 1992, 106 Stat. 3778.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gon-

zalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 struck out ‘‘, and’’ after ‘‘responsibilities’’ and substituted for period at end ‘‘and the ability to respond to areas identified as ‘material weaknesses’ by the Office of the Inspector General in financial audits or other reports.’’

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 12711. Protection of State and local authority

Notwithstanding any other provision of this subchapter or subchapter II of this chapter, the Secretary shall not establish any criteria for allocating or denying funds made available under programs administered by the Secretary based on the adoption, continuation, or discontinuation by a jurisdiction of any public policy, regulation, or law that is (1) adopted, continued, or discontinued in accordance with the jurisdiction’s duly established authority, and (2) not in violation of any Federal law.

(Pub. L. 101–625, title I, § 111, Nov. 28, 1990, 104 Stat. 4093.)

§ 12712. 5-year energy efficiency plan

(a) Establishment

The Secretary of Housing and Urban Development shall establish a plan for activities to be undertaken and policies to be adopted by the Secretary within the 5-year period beginning upon the submission of the plan to the Congress under subsection (d) of this section to provide for, encourage, and improve energy efficiency in newly constructed, rehabilitated, and existing housing. In developing the plan, the Secretary shall consider, as appropriate, any energy assessments under section 944.

(b) Initial plan

The Secretary of Housing and Urban Development shall establish the first plan under this section not later than the expiration of the 1-year period beginning on November 28, 1990.

(c) Updates

The Secretary of Housing and Urban Development shall revise and update the plan under this section not less than once for each 2-year period, the first such 2-year period beginning on the date of the submission of the initial plan under subsection (b) of this section to the Congress (as provided in subsection (d) of this section). Each such update shall revise the plan for the 5-year period beginning upon the submission of the updated plan to the Congress.

(d) Submission to Congress

The Secretary of Housing and Urban Development shall submit the initial plan established under subsection (b) of this section and any updated plans under subsection (c) of this section to the Congress not later than the date by which such plans are to be established or updated under such paragraphs.

(Pub. L. 101–625, title IX, § 945, Nov. 28, 1990, 104 Stat. 4416.)

REFERENCES IN TEXT

Section 944, referred to in subsec. (a), is section 944 of Pub. L. 101–625, which is set out below.

CODIFICATION

Section was enacted as part of title IX of the Cranston-Gonzalez National Affordable Housing Act, and not as part of title I of such Act which comprises this subchapter.

ENERGY EFFICIENT MORTGAGES PILOT PROGRAM

Pub. L. 102–550, title V, § 513, Oct. 28, 1992, 106 Stat. 3786, provided that:

‘‘(a) ESTABLISHMENT OF PILOT PROGRAM.—

‘‘(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development (hereafter referred to as the ‘Secretary’) shall establish an energy efficient mortgage pilot program in 5 States, to promote the purchase of existing energy efficient residential buildings and the installation of cost-effective improvements in existing residential buildings.

‘‘(2) PILOT PROGRAM.—The pilot program established under this subsection shall include the following criteria, where applicable:

‘‘(A) ORIGINATION.—The lender shall originate a housing loan that is insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] in accordance with the applicable requirements.

‘‘(B) APPROVAL.—The mortgagor’s base loan application shall be approved if the mortgagor’s income and credit record is found to be satisfactory.

‘‘(C) COST OF IMPROVEMENTS.—The cost of cost-effective energy efficiency improvements shall not exceed the greater of—

‘‘(i) 5 percent of the property value (not to exceed $8,000); or

‘‘(ii) $4,000.

‘‘(3) AUTHORITY FOR MORTGAGEES.—In granting mortgages under the pilot program established pursuant to this subsection, the Secretary shall grant mortgagees the authority—

‘‘(A) to permit the final loan amount to exceed the loan limits established under title II of the National Housing Act [12 U.S.C. 1707 et seq.] by an amount not to exceed 100 percent of the cost of the cost-effective energy efficiency improvements, if the mortgagor’s request to add the cost of such improvements is received by the mortgagee prior to funding of the base loan;

‘‘(B) to hold in escrow all funds provided to the mortgagor to undertake the energy efficiency improvements until the efficiency improvements are actually installed; and

‘‘(C) to transfer or sell the energy efficient mortgage to the appropriate secondary market agency, after the mortgage is issued, but before the energy efficiency improvements are actually installed.

‘‘(4) PROMOTION OF PILOT PROGRAM.—The Secretary shall encourage participation in the energy efficient mortgage pilot program by—

‘‘(A) making available information to lending agencies and other appropriate authorities regarding the availability and benefits of energy efficient mortgages;

‘‘(B) requiring mortgagees and designated lending authorities to provide written notice of the avail-

ability and benefits of the pilot program to mortgagors applying for financing in those States designated by the Secretary as participating under the pilot program; and

''(C) requiring each applicant for a mortgage insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] in those States participating under the pilot program to sign a statement that such applicant has been informed of the program requirements and understands the benefits of energy efficient mortgages.

''(5) TRAINING PROGRAM.—Not later than 9 months after the date of enactment of this Act [Oct. 28, 1992], the Secretary, in consultation with the Secretary of Energy, shall establish and implement a program for training personnel at relevant lending agencies, real estate companies, and other appropriate organizations regarding the benefits of energy efficient mortgages and the operation of the pilot program under this subsection.

''(6) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall prepare and submit a report to the Congress describing the effectiveness and implementation of the energy efficient mortgage pilot program as described under this subsection, and assessing the potential for expanding the pilot program nationwide.

''(b) EXPANSION OF PROGRAM.—Not later than the expiration of the 2-year period beginning on the date of the implementation of the energy efficient mortgage pilot program under this section, the Secretary of Housing and Urban Development shall expand the pilot program on a nationwide basis and shall expand the program to include new residential housing, unless the Secretary determines that either such expansion would not be practicable in which case the Secretary shall submit to the Congress, before the expiration of such period, a report explaining why either expansion would not be practicable.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'base loan' means any mortgage loan for a residential building eligible for insurance under title II of the National Housing Act [12 U.S.C. 1707 et seq.] or title 38, United States Code, that does not include the cost of cost-effective energy improvements.

''(2) The term 'cost-effective' means, with respect to energy efficiency improvements to a residential building, improvements that result in the total present value cost of the improvements (including any maintenance and repair expenses) being less than the total present value of the energy saved over the useful life of the improvement, when 100 percent of the cost of improvements is added to the base loan. For purposes of this paragraph, savings and cost-effectiveness shall be determined pursuant to a home energy rating report sufficient for purposes of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or by other technically accurate methods.

''(3) The term 'energy efficient mortgage' means a mortgage on a residential building that recognizes the energy savings of a home that has cost-effective energy saving construction or improvements (including solar water heaters, solar-assisted air conditioners and ventilators, super-insulation, and insulating glass and film) and that has the effect of not disqualifying a borrower who, but for the expenditures on energy saving construction or improvements, would otherwise have qualified for a base loan.

''(4) The term 'residential building' means any attached or unattached single family residence.

''(d) RULE OF CONSTRUCTION.—This section may not be construed to affect any other programs of the Secretary of Housing and Urban Development for energy-efficient mortgages. The pilot program carried out under this section shall not replace or result in the termination of such other programs.

''(e) REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.''

Similar provisions were contained in Pub. L. 102–486, title I, § 106, Oct. 24, 1992, 106 Stat. 2792.

ENERGY ASSESSMENT REPORT

Section 944 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to submit a report to Congress, not later than one year after Nov. 28, 1990, assessing any activity undertaken by the Secretary to increase energy efficiency in housing, such report to include an analysis of the Aug. 15, 1990, DOE-HUD program to expand energy efficiency and increase affordability of federally-assisted housing, and provided that in such report Secretary of Housing and Urban Development (in consultation with Secretary of Energy) was to establish, and include a description of, a standard measure by which changes over time in residential energy efficiency could be compared.

UNIFORM MORTGAGE FINANCING PLAN FOR ENERGY EFFICIENCY

Section 946 of Pub. L. 101–625, as amended by Pub. L. 102–486, title I, § 105(b), Oct. 24, 1992, 106 Stat. 2792; Pub. L. 102–550, title IX, § 914(b), Oct. 28, 1992, 106 Stat. 3877, provided that:

''(a) UNIFORM PLAN.—The Secretary of Housing and Urban Development, in consultation with the Secretary of Energy, shall promulgate a uniform plan to make housing more affordable through energy efficient mortgages (as such term is defined in section 104 of this Act [42 U.S.C. 12704]). The plan shall be promulgated not later than 2 years after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990].

''(b) TASK FORCE.—To develop the plan, the Secretary shall form a task force to make recommendation[s] on financing energy efficiency in private mortgages, through the policies of Federal agencies and federally chartered financial institutions, mortgage bankers, homebuilders, real estate brokers, private mortgage insurers, energy suppliers, and nonprofit housing and energy organizations. The task force shall include, but not be limited to, individuals representing the Federal Housing Administration mortgage programs of the Department of Housing and Urban Development, the Farmers Home Administration mortgage loan and insurance programs of Department of Agriculture, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association. The Task Force shall determine whether notifying potential home purchasers of the availability of energy efficient mortgages would promote energy efficiency in residential buildings, and if so, the Task Force shall recommend appropriate notification guidelines, and agencies and organizations referred to in the preceding sentence are authorized to implement such guidelines.''

ENERGY EFFICIENCY DEMONSTRATION

Section 961 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to establish a program to demonstrate various methods of improving the energy efficiency of existing housing, provided for funding, provided that the demonstration determine appropriate design, improvement, and rehabilitation methods and practices for increasing residential energy efficiency in housing already constructed, and directed Secretary, as soon as practicable after Sept. 30, 1991, to submit to Congress a report setting forth the findings and recommendations of the Secretary as a result of the demonstration.

§ 12713. Eligibility under first-time homebuyer programs

(a) Eligibility of displaced homemakers and single parents for Federal assistance for first-time homebuyers

(1) Displaced homemakers

No individual who is a displaced homemaker may be denied eligibility under any Federal program to assist first-time homebuyers on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse.

(2) Single parents

No individual who is a single parent may be denied eligibility under any Federal program to assist first-time homebuyers on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

(b) Definitions

For purposes of this section:

(1) Displaced homemaker

The term ''displaced homemaker'' means an individual who—

(A) is an adult;

(B) has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(C) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) First-time homebuyer

The term ''first-time homebuyer'' means an individual who has never, or has not during a specified period of time, had any present ownership interest in a principal residence.

(3) Single parent

The term ''single parent'' means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(c) Applicability

This section shall apply to any Federal program to assist first-time homebuyers, unless the program is exempted from this section by a statute that amends this subsection or explicitly refers to this subsection.

(Pub. L. 101–625, title IX, § 956, Nov. 28, 1990, 104 Stat. 4421.)

CODIFICATION

Section was enacted as part of title IX of the Cranston-Gonzalez National Affordable Housing Act, and not as part of title I of such Act which comprises this subchapter.

§ 12714. Repealed. Pub. L. 104–99, title IV, § 404(a), Jan. 26, 1996, 110 Stat. 44

Section, Pub. L. 101–625, title IX, § 957, Nov. 28, 1990, 104 Stat. 4422, related to maximum annual limitation on rent increases resulting from employment.

EFFECTIVE DATE OF REPEAL

Section 404(a) of Pub. L. 104–99 provided in part that this section is repealed retroactive to Nov. 28, 1990, and shall be of no effect.

ECONOMIC INDEPENDENCE

Pub. L. 102–550, title IX, § 923, Oct. 28, 1992, 106 Stat. 3884, which provided that Secretary of Housing and Urban Development was to immediately implement section 12714 of this title and that other Federal agencies authorized to assist low-income families were to take similar steps to encourage economic independence and the accumulation of assets, was repealed retroactive to Oct. 28, 1992, by Pub. L. 104–99, title IV, § 404(b), Jan. 26, 1996, 110 Stat. 44, which further provided that section 923 of Pub. L. 102–550 was to be of no effect.

SUBCHAPTER II—INVESTMENT IN AFFORDABLE HOUSING

§ 12721. Findings

The Congress finds that—

(1) the Nation has not made adequate progress toward the goal of national housing policy, as set out in the Housing Act of 1949 [42 U.S.C. 1441 et seq.] and reaffirmed in the Housing and Urban Development Act of 1968, which would provide decent, safe, sanitary, and affordable living environments for all Americans;

(2) the supply of affordable rental housing is diminishing;

(3) the Tax Reform Act of 1986 removed major tax incentives for the production of affordable rental housing;

(4) the living environments of an increasing number of Americans have deteriorated over the past several years as a result of reductions in Federal assistance to low-income and moderate-income families;

(5) many Americans face the possibility of homelessness unless Federal, State, and local governments work together with the private sector to develop and rehabilitate the housing stock of the Nation to provide decent, safe, sanitary, and affordable housing for very low-income and low-income families;

(6) reliable Federal leadership is needed to achieve an adequate supply of affordable housing for all Americans;

(7) to achieve the goal of national housing policy, there is a need to strengthen nationwide a cost-effective community-based housing partnership designed to—

(A) expand the supply of rental housing that is affordable to very low-income and low-income families,

(B) improve homeownership opportunities for low-income families,

(C) carry out comprehensive housing strategies tailored to local housing market conditions, and

(D) protect the Federal, State, and local investment in low-income housing to ensure affordability of the housing for the remaining useful life of the property;

(8) direct assistance to expand the supply of affordable rental housing should be provided in a way that is more cost-effective and targeted than tax incentives;

(9) much of the Nation's housing system works very well and provides a strong base on which national housing policy should build;

(10) an increasing number of States and local governments have been successful in producing cost-effective low-income and moderate-income housing by working in partnership with the private sector, including nonprofit community development corporations, community action agencies, neighborhood housing services corporations, trade unions, groups sponsored by religious organizations, limited equity cooperatives, and other tenant organizations;

(11) during the 1980's, nonprofit community housing development organizations, despite severe obstacles caused by inadequate funding, have played an increasingly important role in the production and rehabilitation of affordable housing in communities across the Nation;

(12) additional financial resources and technical skills must be made available in local communities if the Nation is to mobilize the capacity of the private sector, including nonprofit community housing development organizations, to provide a more adequate supply of decent, safe, and sanitary housing that is affordable to very low-income, low-income, and moderate-income families and meets the need for large family units and other additional units that are available to very low-income families receiving rental assistance payments from Federal, State, and local governments; and

(13) the long-term success of efforts to provide more affordable housing depends upon tenants and homeowners being fiscally responsible and able managers.

(Pub. L. 101–625, title II, § 202, Nov. 28, 1990, 104 Stat. 4094.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in par. (1), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to chapter 8A (§ 1441 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Housing and Urban Development Act of 1968, referred to in par. (1), is Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended. For complete classification of this Act to the Code, see Short Title of 1968 Amendments note set out under section 1701 of Title 12, Banks and Banking, and Tables.

The Tax Reform Act of 1986, referred to in par. (3), is Pub. L. 99–514, Oct. 22, 1986, 100 Stat. 2085, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendments note set out under section 1 of Title 26, Internal Revenue Code, and Tables.

SHORT TITLE

For short title of this subchapter as the "HOME Investment Partnerships Act", see Short Title note set out under section 12701 of this title.

§ 12722. Purposes

The purposes of this subchapter are—

(1) to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income Americans;

(2) to mobilize and strengthen the abilities of States and units of general local government throughout the United States to design and implement strategies for achieving an adequate supply of decent, safe, sanitary, and affordable housing;

(3) to provide participating jurisdictions, on a coordinated basis, with the various forms of Federal housing assistance, including capital investment, mortgage insurance, rental assistance, and other Federal assistance, needed—

(A) to expand the supply of decent, safe, sanitary, and affordable housing;

(B) to make new construction, rehabilitation, substantial rehabilitation, and acquisition of such housing feasible; and

(C) to promote the development of partnerships among the Federal Government, States and units of general local government, private industry, and nonprofit organizations able to utilize effectively all available resources to provide more of such housing;

(4) to make housing more affordable for very low-income and low-income families through the use of tenant-based rental assistance;

(5) to develop and refine, on an ongoing basis, a selection of model programs incorporating the most effective methods for providing decent, safe, sanitary, and affordable housing, and accelerate the application of such methods where appropriate throughout the United States to achieve the prudent and efficient use of funds made available under this subchapter;

(6) to expand the capacity of nonprofit community housing development organizations to develop and manage decent, safe, sanitary, and affordable housing;

(7) to ensure that Federal investment produces housing stock that is available and affordable to low-income families for the property's remaining useful life, is appropriate to the neighborhood surroundings, and, wherever appropriate, is mixed income housing;

(8) to increase the investment of private capital and the use of private sector resources in the provision of decent, safe, sanitary, and affordable housing;

(9) to allocate Federal funds for investment in affordable housing among participating jurisdictions by formula allocation;

(10) to leverage those funds insofar as practicable with State and local matching contributions and private investment;

(11) to establish for each participating jurisdiction a HOME Investment Trust Fund with a line of credit for investment in affordable housing, with repayments back to its HOME Investment Trust Fund being made available for reinvestment by the jurisdiction;

(12) to provide credit enhancement for affordable housing by utilizing the capacities of existing agencies and mortgage finance institutions when most efficient and supplementing their activities when appropriate; and

(13) to assist very low-income and low-income families to obtain the skills and knowledge necessary to become responsible homeowners and tenants.

(Pub. L. 101–625, title II, § 203, Nov. 28, 1990, 104 Stat. 4095.)

§ 12723. Coordinated Federal support for housing strategies

The Secretary shall make assistance under this subchapter available to participating jurisdictions, through the Office of the Assistant Secretary for Housing-FHA Commissioner of the Department of Housing and Urban Development, to the maximum extent practicable, in coordination with mortgage insurance, rental assistance, and other housing assistance appropriate to the efficient and timely completion of activities under this subchapter.

(Pub. L. 101–625, title II, § 204, Nov. 28, 1990, 104 Stat. 4096.)

§ 12724. Authorization

There are authorized to be appropriated to carry out this subchapter $2,086,000,000 for fiscal year 1993, and $2,173,612,000 for fiscal year 1994, of which—

(1) not more than $14,000,000 for fiscal year 1993, and $25,000,000 for fiscal year 1994, shall be for community housing partnership activities authorized under section 12773 of this title; and

(2) not more than $11,000,000 for fiscal year 1993, and $22,000,000 for fiscal year 1994, shall be for activities in support of State and local housing strategies authorized under part C of this subchapter.

(Pub. L. 101–625, title II, § 205, Nov. 28, 1990, 104 Stat. 4096; Pub. L. 102–550, title II, § 201, Oct. 28, 1992, 106 Stat. 3751; Pub. L. 103–120, § 5, Oct. 27, 1993, 107 Stat. 1148.)

AMENDMENTS

1993—Pub. L. 103–120 substituted ''$25,000,000 for fiscal year 1994'' for ''$14,000,000 for fiscal year 1994'' in par. (1) and ''$22,000,000 for fiscal year 1994'' for ''$11,000,000 for fiscal year 1994'' in par. (2).

1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated to carry out this subchapter $1,000,000,000 for fiscal year 1991, and $2,086,000,000 for fiscal year 1992, of which—

''(1) not more than $14,000,000 for fiscal year 1991, and $14,000,000 for fiscal year 1992, shall be for community housing partnership activities authorized under section 12773 of this title; and

''(2) not more than $11,000,000 for fiscal year 1991, and $11,000,000 for fiscal year 1992, shall be for activities in support of State and local housing strategies authorized under part C of this subchapter.''

§ 12725. Notice

The Secretary shall issue regulations to implement the provisions of this subchapter after notice and an opportunity for comment pursuant to section 553 of title 5. Such regulations shall become effective not later than 180 days after November 28, 1990.

(Pub. L. 101–625, title II, § 206, Nov. 28, 1990, 104 Stat. 4096.)

PART A—HOME INVESTMENT PARTNERSHIPS

§ 12741. Authority

The Secretary is authorized to make funds available to participating jurisdictions for investment to increase the number of families served with decent, safe, sanitary, and affordable housing and expand the long-term supply of affordable housing in accordance with provisions of this part.

(Pub. L. 101–625, title II, § 211, Nov. 28, 1990, 104 Stat. 4096.)

§ 12742. Eligible uses of investment

(a) Housing uses

(1) In general

Funds made available under this part may be used by participating jurisdictions to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations, to provide for the payment of reasonable administrative and planning costs, to provide for the payment of operating expenses of community housing development organizations, and to provide tenant-based rental assistance. For the purpose of this part, the term ''affordable housing'' includes permanent housing for disabled homeless persons, transitional housing, and single room occupancy housing.

(2) Preference to rehabilitation

A participating jurisdiction shall give preference to rehabilitation of substandard housing unless the jurisdiction determines that—

(A) such rehabilitation is not the most cost effective way to meet the jurisdiction's need to expand the supply of affordable housing; and

(B) the jurisdiction's housing needs cannot be met through rehabilitation of the available stock.

The Secretary shall not restrict a participating jurisdiction's choice of rehabilitation, substantial rehabilitation, new construction, reconstruction, acquisition, or other eligible housing use unless such restriction is explicitly authorized under section 12753(2) of this title.

(3) Tenant-based rental assistance

(A) In general

A participating jurisdiction may use funds provided under this part for tenant-based rental assistance only if—

(i) the jurisdiction certifies that the use of funds under this part for tenant-based rental assistance is an essential element of the jurisdiction's annual housing strategy for expanding the supply, affordability, and availability of decent, safe, sanitary, and affordable housing, and specifies the local market conditions that lead to the choice of this option; and

(ii) the tenant-based rental assistance is provided in accordance with written tenant selection policies and criteria that are consistent with the purposes of providing

housing to very low- and low-income families and are reasonably related to preference rules established under section 1437d(c)(4)(A)[1] of this title.

(B) Fair share not affected

A jurisdiction's section 8 [42 U.S.C. 1437f] fair share allocation shall be unaffected by the use of assistance under this subchapter.

(C) 24-month contracts

Rental assistance contracts made available with assistance under this subchapter shall be for not more than 24 months, except that assistance to a family may be renewed.

(D) Use of section 1437f assistance

In any case where assistance under section 1437f of this title becomes available to a participating jurisdiction, recipients of rental assistance under this subchapter shall qualify for tenant selection preferences to the same extent as when they received the rental assistance under this subchapter. A rental assistance program under this subchapter shall meet minimum criteria prescribed by the Secretary, such as housing quality standards and standards regarding the reasonableness of the rent.

(E) Security deposit assistance

A jurisdiction using funds provided under this part for tenant-based rental assistance may use such funds to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units. Assistance under this subparagraph does not preclude assistance under any other provision of this paragraph.

(4) Redesignated (3)

(5) Lead-based paint hazards

A participating jurisdiction may use funds provided under this part for the evaluation and reduction of lead-based paint hazards, as defined in section 4851b of this title.

(b) Investments

Participating jurisdictions shall have discretion to invest funds made available under this part as equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies or other forms of assistance that the Secretary has determined to be consistent with the purposes of this subchapter. Each participating jurisdiction shall have the right to establish the terms of assistance.

(c) Administrative costs

In each fiscal year, each participating jurisdiction may use not more than 10 percent of the funds made available under this part to the jurisdiction for such year for any administrative and planning costs of the jurisdiction in carrying out this part, including the costs of the salaries of persons engaged in administering and managing activities assisted with funds made available under this part.

(d) Prohibited uses

Funds made available under this part may not be used to—

(1) defray any administrative cost of a participating jurisdiction that exceed the amount specified under subsection (c) of this section,

(2) provide tenant-based rental assistance for the special purposes of the existing section 8 [42 U.S.C. 1437f] program, including replacing public housing that is demolished or disposed of, preserving federally assisted housing, assisting in the disposition of housing owned or held by the Secretary, preventing displacement from rental rehabilitation projects, or extending or renewing tenant-based assistance under section 1437f of this title,

(3) provide non-Federal matching contributions required under any other Federal program,

(4) provide assistance authorized under section 1437g of this title,

(5) carry out activities authorized under section 1437g(d)(1)[1] of this title, or

(6) provide assistance to eligible low-income housing under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.].

(e) Cost limits

(1) In general

The Secretary shall establish limits on the amount of funds under this part that may be invested on a per unit basis. For multifamily housing, such limits shall not be less than the per unit dollar amount limitations set forth in section 1715*l*(d)(3)(ii) of title 12, as such limitations may be adjusted in accordance therewith, except that for purposes of this subsection the Secretary shall, by regulation, increase the per unit dollar amount limitations in any geographical area by an amount, not to exceed 140 percent, that equals the amount by which the costs of multifamily housing construction in the area exceed the national average of such costs. The limits shall be established on a market-by-market basis, with adjustments made for number of bedrooms, and shall reflect the actual cost of new construction, reconstruction, or rehabilitation of housing that meets applicable State and local housing and building codes and the cost of land, including necessary site improvements. Adjustments shall be made annually to reflect inflation. Separate limits may be set for different eligible activities.

(2) Criteria

In calculating per unit limits, the Secretary shall take into account that assistance under this subchapter is intended to—

(A) provide nonluxury housing with suitable amenities;

(B) operate effectively in all jurisdictions;

(C) facilitate mixed-income housing; and

(D) reflect the costs associated with meeting the special needs of tenants or homeowners that the housing is designed to serve.

(3) Consultation

In calculating cost limits, the Secretary shall consult with organizations that have expertise in the development of affordable housing, including national nonprofit organiza-

[1] See References in Text note below.

tions and national organizations representing private development firms and State and local governments.

(f) Certification of compliance

The requirements of section 3545(d) of this title shall be satisfied by a certification by a participating jurisdiction to the Secretary that the combination of Federal assistance provided to any housing project shall not be any more than is necessary to provide affordable housing.

(g) Limitation on operating assistance

A participating jurisdiction may not use more than 5 percent of its allocation under this part for the payment of operating expenses for community housing development organizations.

(Pub. L. 101–625, title II, § 212, Nov. 28, 1990, 104 Stat. 4097; Pub. L. 102–550, title II, §§ 203(a), 204–207(b), (d), title X, § 1012(e), Oct. 28, 1992, 106 Stat. 3752–3754, 3905; Pub. L. 105–276, title V, § 522(b)(5), Oct. 21, 1998, 112 Stat. 2565.)

REFERENCES IN TEXT

Section 1437d(c)(4)(A) of this title, referred to in subsec. (a)(3)(A)(ii), was in the original ''section 6(c)(4)(A) of the Housing Act of 1937'', and was translated as reading ''section 6(c)(4)(A) of the United States Housing Act of 1937'', act Sept. 1, 1937, ch. 896, to reflect the probable intent of Congress. Section 1437d(c)(4)(A) of this title was redesignated section 1437d(c)(5)(A) of this title by Pub. L. 109–162, title VI, § 607(1), Jan. 5, 2006, 119 Stat. 3048.

Section 1437g(d)(1) of this title, referred to in subsec. (d)(5), was in the original ''section 9(d)(1) of the Housing Act of 1937'', and was translated as reading ''section 9(d)(1) of the United States Housing Act of 1937'', act Sept. 1, 1937, ch. 896, to reflect the probable intent of Congress.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (d)(6), is title II of Pub. L. 100–242, Feb. 5, 1988, 102 Stat. 1877, as amended, which was classified principally as a note under section 1715*l* of Title 12, Banks and Banking. Title II of Pub. L. 100–242, was amended generally by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, and is now known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to chapter 42 (§ 4101 et seq.) of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

AMENDMENTS

1998—Subsec. (d)(5). Pub. L. 105–276 substituted ''section 1437g(d)(1)'' for ''section 1437*l*''.

1992—Subsec. (a)(1). Pub. L. 102–550, § 207(a), inserted ''to provide for the payment of reasonable administrative and planning costs, to provide for the payment of operating expenses of community housing development organizations,'' after ''or organizations,''.

Pub. L. 102–550, § 205, inserted at end ''For the purpose of this part, the term 'affordable housing' includes permanent housing for disabled homeless persons, transitional housing, and single room occupancy housing.''

Subsec. (a)(2). Pub. L. 102–550, § 203(a)(1), struck out ''under paragraph (3) of this subsection or'' after ''authorized'' in concluding provisions.

Subsec. (a)(3). Pub. L. 102–550, § 204(b), added cl. (ii) of par. (3)(A) and struck out former cl. (ii) which read as follows: ''the tenant-based rental assistance is provided to persons from the waiting lists eligible for section 8 assistance in accordance with the applicable preferences.''

Pub. L. 102–550, § 204(a), added subpar. (E).

Pub. L. 102–550, § 203(a)(2), (3), redesignated par. (4) as (3) and struck out former par. (3) which provided for conditions for new construction of housing.

Subsec. (a)(4). Pub. L. 102–550, § 203(a)(3), redesignated par. (4) as (3).

Subsec. (a)(5). Pub. L. 102–550, § 1012(e), added par. (5).

Subsec. (c). Pub. L. 102–550, § 207(b)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 102–550, § 207(b)(1), inserted before comma at end of par. (1) ''that exceed the amount specified under subsection (c) of this section''.

Subsec. (d). Pub. L. 102–550, § 207(b)(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 102–550, § 206, inserted after first sentence of par. (1) ''For multifamily housing, such limits shall not be less than the per unit dollar amount limitations set forth in section 1715*l*(d)(3)(ii) of title 12, as such limitations may be adjusted in accordance therewith, except that for purposes of this subsection the Secretary shall, by regulation, increase the per unit dollar amount limitations in any geographical area by an amount, not to exceed 140 percent, that equals the amount by which the costs of multifamily housing construction in the area exceed the national average of such costs.''

Subsecs. (e), (f). Pub. L. 102–550, § 207(b)(2), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

Subsec. (g). Pub. L. 102–550, § 207(d), added subsec. (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by sections 203–207 of Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

§ 12743. Development of model programs

(a) In general

The Secretary shall—

(1) in cooperation with participating jurisdictions, government-sponsored mortgage finance corporations, nonprofit organizations, the private sector, and other appropriate parties, develop, test, evaluate, refine, and, as necessary, replace a selection of model programs designed to carry out the purposes of this subchapter;

(2) make available to participating jurisdictions alternative model programs, which shall include suggested guidelines, procedures, forms, legal documents and such other elements as the Secretary determines to be appropriate;

(3) assure, insofar as is feasible, the availability of an appropriate variety of model programs designed for local market conditions, housing problems, project characteristics, and managerial capacities as they differ among participating jurisdictions;

(4) negotiate and enter into agreements with agencies of the Federal Government, participating jurisdictions, private financial institutions, government-sponsored mortgage finance corporations, nonprofit organizations, and other entities to provide such services, products, or financing as may be required for the implementation of a model program;

(5) provide detailed information on model programs as requested by participating juris-

dictions, private financial institutions, developers, nonprofit organizations, and other interested parties; and

(6) encourage the use of such model programs to achieve efficiency, economies of scale, and effectiveness in the investment of funds made available under this part through third-party training, printed materials, and such other means of support as the Secretary determines will achieve the purpose of this subchapter.

(b) Adoption of programs

Except as provided in section 12753(2) of this title, each participating jurisdiction shall have the discretion to adopt one or more model programs, adapt one or more model programs to its own requirements, design additional forms of assistance by itself or in cooperation with other participating jurisdictions, and suggest additional model programs for adoption by the Secretary as the participating jurisdiction may deem appropriate, and the Secretary may assist a participating jurisdiction in adopting, adapting, or designing one or more model programs.

(c) Part D programs

The selection of model programs to be made available for adoption or adaptation shall include programs meeting the criteria set forth in part D of this subchapter.

(Pub. L. 101–625, title II, § 213, Nov. 28, 1990, 104 Stat. 4100.)

§ 12744. Income targeting

Each participating jurisdiction shall invest funds made available under this part within each fiscal year so that—

(1) with respect to rental assistance and rental units—

(A) not less than 90 percent of (i) the families receiving such rental assistance are families whose incomes do not exceed 60 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, (except that the Secretary may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later, or (ii) the dwelling units assisted with such funds are occupied by families having such incomes; and

(B) the remainder of (i) the families receiving such rental assistance are households that qualify as low-income families (other than families described in subparagraph (A)) at the time of occupancy or at the time funds are invested, whichever is later, or (ii) the dwelling units assisted with such funds are occupied by such households;

(2) with respect to homeownership assistance, 100 percent of such funds are invested with respect to dwelling units that are occupied by households that qualify as low-income families; and

(3) all such funds are invested with respect to housing that qualifies as affordable housing under section 12745 of this title.

(Pub. L. 101–625, title II, § 214, Nov. 28, 1990, 104 Stat. 4101; Pub. L. 103–233, title II, § 202, Apr. 11, 1994, 108 Stat. 364; Pub. L. 105–276, title V, § 599B(a), Oct. 21, 1998, 112 Stat. 2660.)

AMENDMENTS

1998—Par. (2). Pub. L. 105–276 struck out ''at the time of occupancy or at the time funds are invested, whichever is later'' before ''; and''.

1994—Par. (1)(A). Pub. L. 103–233, § 202(1), substituted ''(i) the families receiving such rental assistance are'' for ''such funds are invested with respect to dwelling units that are occupied by'', '', or'' for '', and'' before cl. (ii), and added cl. (ii).

Par. (1)(B). Pub. L. 103–233, § 202(2), substituted ''(i) the families receiving such rental assistance are'' for ''such funds are invested with respect to dwelling units that are occupied by'' and added cl. (ii).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 599B(c), Oct. 21, 1998, 112 Stat. 2660, provided that: ''The amendments made by this section [amending this section and section 12745 of this title] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

§ 12745. Qualification as affordable housing

(a) Rental housing

(1) Qualification

Housing that is for rental shall qualify as affordable housing under this subchapter only if the housing—

(A) bears rents not greater than the lesser of (i) the existing fair market rent for comparable units in the area as established by the Secretary under section 1437f of this title, or (ii) a rent that does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for number of bedrooms in the unit, except that the Secretary may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes;

(B) has not less than 20 percent of the units (i) occupied by very low-income families who pay as a contribution toward rent (excluding any Federal or State rental subsidy provided on behalf of the family) not more than 30 percent of the family's monthly adjusted income as determined by the Secretary, or (ii) occupied by very low-income families and bearing rents not greater

than the gross rent for rent-restricted residential units as determined under section 42(g)(2) of title 26;

(C) is occupied only by households that qualify as low-income families;

(D) is not refused for leasing to a holder of a voucher or certificate of eligibility under section 1437f of this title because of the status of the prospective tenant as a holder of such voucher or certificate of eligibility;

(E) will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property, as determined by the Secretary, without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this Act, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action (i) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and (ii) is not for the purpose of avoiding low income affordability restrictions, as determined by the Secretary; and

(F) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title.

(2) Adjustment of qualifying rent

The Secretary may adjust the qualifying rent established for a project under subparagraph (A) of paragraph (1), only if the Secretary finds that such adjustment is necessary to support the continued financial viability of the project and only by such amount as the Secretary determines is necessary to maintain continued financial viability of the project.

(3) Increases in tenant income

Housing shall qualify as affordable housing despite a temporary noncompliance with subparagraph (B) or (C) of paragraph (1) if such noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to the Secretary are being taken to ensure that all vacancies are filled in accordance with paragraph (1) until such noncompliance is corrected. Tenants who no longer qualify as low-income families shall pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this Act for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.

(4) Mixed-income project

Housing that accounts for less than 100 percent of the dwelling units in a project shall qualify as affordable housing if such housing meets the criteria of this section.

(5) Mixed-use project

Housing in a project that is designed in part for uses other than residential use shall qualify as affordable housing if such housing meets the criteria of this section.

(6) Waiver of qualifying rent

(A) In general

For the purpose of providing affordable housing appropriate for families described in subparagraph (B), the Secretary may, upon the application of the project owner, waive the applicability of subparagraph (A) of paragraph (1) with respect to a dwelling unit if—

(i) the unit is occupied by such a family, on whose behalf tenant-based assistance is provided under section 1437f of this title;

(ii) the rent for the unit is not greater than the existing fair market rent for comparable units in the area, as established by the Secretary under section 1437f of this title; and

(iii) the Secretary determines that the waiver, together with waivers under this paragraph for other dwelling units in the project, will result in the use of amounts described in clause (iii)[1] in an effective manner that will improve the provision of affordable housing for such families.

(B) Eligible families

A family described in this subparagraph is a family that consists of at least one elderly person (who is the head of household) and one or more of such person's grand[2] children, great grandchildren, great nieces, great nephews, or great great grandchildren (as defined by the Secretary), but does not include any parent of such grandchildren, great grandchildren, great nieces, great nephews, or great great grandchildren. Such term includes any such grandchildren, great grandchildren, great nieces, great nephews, or great great grandchildren who have been legally adopted by such elderly person.

(b) Homeownership

Housing that is for homeownership shall qualify as affordable housing under this subchapter only if the housing—

(1) has an initial purchase price that does not exceed 95 percent of the median purchase price for the area, as determined by the Secretary with such adjustments for differences in structure, including whether the housing is single-family or multifamily, and for new and old housing as the Secretary determines to be appropriate;

(2) is the principal residence of an owner whose family qualifies as a low-income family—

(A) in the case of a contract to purchase existing housing, at the time of purchase;

(B) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; or

[1] So in original.

[2] So in original. Probably should be ''grandchildren''.

(C) in the case of a contract to purchase housing to be constructed, at the time the contract is signed;

(3) is subject to resale restrictions that are established by the participating jurisdiction and determined by the Secretary to be appropriate to—

(A) allow for subsequent purchase of the property only by persons who meet the qualifications specified under paragraph (2), at a price which will—

(i) provide the owner with a fair return on investment, including any improvements, and

(ii) ensure that the housing will remain affordable to a reasonable range of low-income homebuyers; or

(B) recapture the investment provided under this subchapter in order to assist other persons in accordance with the requirements of this subchapter, except where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of the assistance; and

(4) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title.

(Pub. L. 101–625, title II, § 215, Nov. 28, 1990, 104 Stat. 4101; Pub. L. 102–550, title II, §§ 208, 209, Oct. 28, 1992, 106 Stat. 3754; Pub. L. 103–233, title II, § 203, Apr. 11, 1994, 108 Stat. 364; Pub. L. 105–276, title V, § 599B(b), Oct. 21, 1998, 112 Stat. 2660; Pub. L. 106–569, title IX, § 904, Dec. 27, 2000, 114 Stat. 3027.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1)(E), (3), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(6). Pub. L. 106–569 added par. (6).

1998—Subsec. (b)(2). Pub. L. 105–276 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase;''.

1994—Subsec. (b)(3). Pub. L. 103–233, § 203(a), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''is made available for initial purchase only to first-time homebuyers;''.

Subsec. (b)(3)(B). Pub. L. 103–233, § 203(b), substituted ''subchapter'' for ''subsection'' after ''requirements of this''.

Subsec. (b)(4), (5). Pub. L. 103–233, § 203(a)(2), redesignated pars. (4) and (5) as (3) and (4), respectively.

1992—Subsec. (a)(1)(A). Pub. L. 102–550, § 208(a)(1), substituted ''number of bedrooms in the unit'' for ''smaller and larger families''.

Subsec. (a)(1)(E). Pub. L. 102–550, § 208(b), inserted before semicolon '', except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action (i) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and (ii) is not for the purpose of avoiding low income affordability restrictions, as determined by the Secretary''.

Subsec. (a)(3). Pub. L. 102–550, § 208(a)(2), (3), substituted ''the lesser of the amount payable by the tenant under State or local law or'' for ''not less than'' in second sentence and inserted at end ''The preceding sentence shall not apply with respect to funds made available under this Act for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.''

Subsec. (b)(4). Pub. L. 102–550, § 209, added par. (4) and struck out former par. (4) which read as follows: ''is made available for subsequent purchase only—

''(A) to persons who meet the qualifications specified under paragraph (2), and

''(B) at a price consistent with guidelines that are established by the participating jurisdiction and determined by the Secretary to be appropriate—

''(i) to provide the owner with a fair return on investment, including any improvements, and

''(ii) to ensure that the housing will remain affordable to a reasonable range of low income homebuyers; and''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–276 made on, and applicable beginning upon, Oct. 21, 1998, see section 599B(c) of Pub. L. 105–276, set out as a note under section 12744 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

§ 12746. Participation by States and local governments

The Secretary shall designate a State or unit of general local government to be a participating jurisdiction when it complies with procedures that the Secretary shall establish by regulation, which procedures shall only provide for the following:

(1) Allocation

Not later than 20 days after funds to carry out this part become available (or, during the first year after November 28, 1990, not later than 20 days after (A) funds to carry out this part are provided in an appropriations Act, or (B) regulations to implement this part are promulgated, whichever is later), the Secretary shall allocate funds in accordance with section 12747 of this title and promptly notify each jurisdiction receiving a formula allocation of its allocation amount. If a jurisdiction is not already a participating jurisdiction, the Secretary shall inform the jurisdiction in writing how the jurisdiction may become a participating jurisdiction.

(2) Consortia

A consortium of geographically contiguous units of general local government shall be deemed to be a unit of general local govern-

ment for purposes of this subchapter if the Secretary determines that the consortium—

(A) has sufficient authority and administrative capability to carry out the purposes of this subchapter on behalf of its member jurisdictions, and

(B) will, according to a written certification by the State (or States, if the consortium includes jurisdictions in more than one State), direct its activities to alleviation of housing problems within the State or States.

(3) Eligibility

(A) Except as provided in paragraph (10), a jurisdiction receiving a formula allocation under section 12747 of this title shall be eligible to become a participating jurisdiction if its formula allocation is $750,000 or greater, or if the Secretary finds that—

(i) the jurisdiction has a local housing authority and has demonstrated a capacity to carry out provisions of this part, and

(ii) the State has authorized the Secretary to transfer to the jurisdiction a portion of the State's allocation that is equal to or greater than the difference between the jurisdiction's formula allocation and $750,000, or the State or jurisdiction has made available from the State's or jurisdiction's own sources an equal amount for use by the jurisdiction in conformance with the provisions of this part.

(B) If a jurisdiction has met the requirements of subparagraph (A), the jurisdiction's formula allocation for a fiscal year shall subsequently be deemed to equal the sum of the jurisdiction's allocation under section 12747(a)(1) of this title and the amount made available to the jurisdiction under subparagraph (A)(ii).

(4) Notification

If an eligible jurisdiction notifies the Secretary in writing, not later than 30 days after receiving notification under paragraph (1), of its intention to become a participating jurisdiction, the Secretary shall reserve an amount equal to the jurisdiction's allocation (plus any reallocations for which the jurisdiction is eligible under section 12747(d)(1) of this title) pending the jurisdiction's designation as a participating jurisdiction. The Secretary shall reallocate, in accordance with paragraph (6) of this section, any funds reserved under the previous sentence if the Secretary determines that the jurisdiction will not meet the requirements for designation as a participating jurisdiction within a reasonable period of time.

(5) Submission of strategy

Not later than 90 days after providing notification under paragraph (4), an eligible jurisdiction shall submit to the Secretary a comprehensive housing affordability strategy in accordance with section 12705 of this title.

(6) Reallocation

If the Secretary determines that a jurisdiction has failed to meet the requirements of the previous 3 paragraphs or if the Secretary, after providing for amendments and resubmissions in accordance with section 12705(c)(3) of this title, disapproves the jurisdiction's comprehensive housing affordability strategy, the Secretary shall reallocate any funds reserved for the jurisdiction as follows:

(A) State

If a State has failed to meet the requirements, the Secretary shall—

(i) make any funds reserved for the State available by direct reallocation among applications submitted by units of general local government within the State or consortia that include units of general local government within the State, insofar as approvable applications meeting the selection criteria under section 12747(c) of this title are received within 12 months after the funds become available for the direct reallocation, and

(ii) reallocate the remainder by formula in accordance with section 12747(b) of this title.

(B) Local

If a unit of general local government has failed to meet the requirements and is located in a State that is a participating jurisdiction, the Secretary shall reallocate to the State any funds reserved for the locality, with preference going to the provision of affordable housing within the locality.

(C) Direct reallocation

If a unit of general local government has failed to meet the requirements and is located in a State that is not a participating jurisdiction, the Secretary shall—

(i) make any funds reserved for the locality available for use within the State by direct reallocation among units of general local government and community housing development organizations, insofar as approvable applications meeting the selection criteria under section 12747(c) of this title are received within 12 months after the funds become available for the direct reallocation with priority going to applications for affordable housing within the locality, and

(ii) reallocate the remainder in accordance with section 12747(b) of this title.

(D) Certain jurisdictions deemed to be participating jurisdictions

If a State or unit of general local government is meeting the requirements of paragraphs (3), (4), and (5), it shall be deemed to be a participating jurisdiction for purposes of reallocation under this paragraph.

(7) Designation

The Secretary shall designate an eligible jurisdiction to be a participating jurisdiction as soon as its comprehensive housing affordability strategy is approved in accordance with section 12705 of this title.

(8) Continuous designation

Once a State or unit of general local government is designated a participating jurisdiction, it shall remain a participating jurisdiction for subsequent fiscal years, except as pro-

vided in paragraph (9). The provisions of paragraphs (3) through (6) shall not apply to participating jurisdictions.

(9) Revocation

The Secretary may revoke a jurisdiction's designation as a participating jurisdiction if—

(A) the Secretary finds, after reasonable notice and opportunity for hearing, that the jurisdiction is unwilling or unable to carry out the provisions of this subchapter, or

(B) the jurisdiction's allocation falls below $750,000 for 3 consecutive years, below $625,000 for 2 consecutive years, or the jurisdiction does not receive a formula allocation of $500,000 or more in any 1 year, except as provided in paragraph (10).

If a jurisdiction's designation as a participating jurisdiction is revoked, any remaining line of credit in the jurisdiction's HOME Investment Trust Fund established under section 12748 of this title shall be reallocated in accordance with paragraph (6) of this section.

(10) Threshold reduction

If the amount appropriated pursuant to section 12724 of this title for any fiscal year is less than $1,500,000,000, then this section shall be applied during that year—

(A) by substituting ''$500,000'' for ''$750,000'' both places it appears in paragraph (3); and

(B) by substituting ''$500,000'', ''$410,000'', and ''$335,000'' for ''$750,000'', ''$625,000'', and ''$500,000'', respectively, where they appear in paragraph (9).

(Pub. L. 101–625, title II, § 216, Nov. 28, 1990, 104 Stat. 4103; Pub. L. 102–550, title II, § 202(a), Oct. 28, 1992, 106 Stat. 3751.)

AMENDMENTS

1992—Par. (3)(A). Pub. L. 102–550, § 202(a)(1), substituted ''Except as provided in paragraph (10), a jurisdiction'' for ''A jurisdiction''.

Par. (9)(B). Pub. L. 102–550, § 202(a)(2), inserted '', except as provided in paragraph (10)'' after ''in any 1 year''.

Par. (10). Pub. L. 102–550, § 202(a)(3), added par. (10).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

APPLICABILITY OF GRANT THRESHOLDS

Section 202(c) of Pub. L. 102–550 provided that: ''Notwithstanding any other provision of law, the grant thresholds provided for in section 216 [42 U.S.C. 12746], as amended by this section, and the grant thresholds provided for in section 217(b) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12747(b)], as amended by this section, shall apply.''

§ 12747. Allocation of resources

(a) In general

(1) States and units of general local government

After reserving amounts under paragraph (3) for the insular areas, the Secretary shall allocate funds approved in an appropriation Act to carry out this subchapter by formula as provided in subsection (b) of this section. Of the funds made available under the preceding sentence, the Secretary shall initially allocate 60 percent among units of general local government and 40 percent among States.

(2) Repealed. Pub. L. 104–330, title V, § 505(a)(1)(B), Oct. 26, 1996, 110 Stat. 4044

(3)[1] Insular areas

For each fiscal year, of any amounts approved in appropriation Acts to carry out this subchapter, the Secretary shall reserve for grants to the insular areas the greater of (A) $750,000, or (B) 0.2 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution, which shall be contained in a regulation issued by the Secretary.

(b) Formula allocation

(1) In general

(A) Basic formula

The Secretary shall establish in[2] regulation an allocation formula that reflects each jurisdiction's share of total need among eligible jurisdiction[3] for an increased supply of affordable housing for very low-income and low-income families of different size, as identified by objective measures of inadequate housing supply, substandard housing, the number of low-income families in housing likely to be in need of rehabilitation, the costs of producing housing, poverty, and the relative fiscal incapacity of the jurisdiction to carry out housing activities eligible under section 12742 of this title without Federal assistance. Allocation among units of general local government shall take into account the housing needs of metropolitan cities, urban counties, and approved consortia of units of general local government.

(B) Source of data

The data to be used for formula allocation of funds within a fiscal year shall be data obtained from a standard source that are available to the Secretary 90 days prior to the beginning of that fiscal year.

(C) Use of basic formula

The basic formula established under subparagraph (A) shall be used for all formula allocations and reallocations provided for in this part.

(D) Weights

When allocation is made among States, the Secretary shall apply the formula in subparagraph (A) giving 20 percent weight to measures of need for the whole State and 80 percent weight to measures of need among units of general local government that are not receiving an allocation under section 12746(1) of this title.

[1] See 1992 Amendment note below.

[2] So in original. Probably should be ''by''.

[3] So in original. Probably should be ''jurisdictions''.

(E) Adjustments

In developing the basic formula in subparagraph (A), the Secretary shall (i) avoid the allocation of an excessively large share of amounts made available under this part to any one State or unit of general local government, and (ii) take into account the need for a geographic distribution of amounts made available under this part that appropriately reflects the housing need in each region of the Nation.

(F) Consultation

The Secretary shall develop the formula in subparagraph (A) in ongoing consultation with (i) the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate, (ii) the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and (iii) organizations representing States and units of general local government. Not less than 60 days prior to publishing a formula for comment, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a copy of the formula the Secretary intends to propose.

(2) Minimum State allocation

(A) In general

If the formula, when applied to funds approved under this section in appropriations Acts for a fiscal year, would allocate less than $3,000,000 to any State, the allocation for such State shall be $3,000,000, and the increase shall be deducted pro rata from the allocations of other States.

(B) Increased minimum allocation

If no unit of general local government within a State receives an allocation under paragraph (3), the State's allocation shall be increased by $500,000. Priority for use of such increased allocation shall go to the provision of affordable housing within the boundaries of metropolitan cities, urban counties, and approved consortia within the State, based on the need for such funds. The increased allocation to a State under the preceding sentence shall be derived by a pro rata deduction from the allocations to units of general local government in all States, except that such pro rata deduction shall not reduce the allocation of any unit of general local government below $500,000.

(3) Minimum local allocation

The Secretary shall allocate funds available for formula allocation to units of general local government that, as of the end of the previous fiscal year, qualified as metropolitan cities, urban counties, and consortia approved by the Secretary in accordance with section 12746(2) of this title so that, when all such funds are initially allocated by formula, jurisdictions that are allocated an amount of $500,000 or more, and participating jurisdictions (other than consortia that fail to renew the membership of all of their member jurisdictions) that are allocated an amount less than $500,000, shall receive an allocation. Prior to announcing initial allocations, the Secretary shall successively recalculate the allocations to jurisdictions under this subsection so that the maximum number of such jurisdictions can receive initial allocations, except as provided in paragraph (4).

(4) Threshold reduction

If the amount appropriated pursuant to section 12724 of this title for any fiscal year is less than $1,500,000,000, then this section shall be applied during that year by substituting ''$335,000'' for ''$500,000'' where it appears in paragraph (3).

(c) Criteria for direct reallocation

The Secretary shall establish objective criteria for making direct reallocations to any participating jurisdiction and other eligible entities. A jurisdiction shall be eligible for a direct reallocation under this subsection only if the jurisdiction, in a form acceptable to the Secretary, submits an application that demonstrates to the satisfaction of the Secretary that the jurisdiction is engaged, or has made good faith efforts to engage, in cooperative efforts between the State and appropriate participating jurisdictions within the State to develop, coordinate, and implement housing strategies under this subchapter. The Secretary shall by regulation establish objective selection criteria for such direct reallocations, which criteria shall take into account—

(1) the applicant's demonstrated commitment to expand the supply of affordable rental housing, including units developed by public housing agencies, as indicated by the additional number of units of affordable housing made available through production or rehabilitation within the previous 2 years, making adjustment for regional variations in construction and rehabilitation costs and giving special consideration to the number of additional units made available under this subchapter through production or rehabilitation, including units developed by public housing agencies, in relation to the amounts made available under this program;

(2) the applicant's actions that—

(A) direct funds made available under this part to benefit very low-income families, with a range of incomes, in amounts that exceed the income targeting requirements of section 12744 of this title, with extra consideration given for activities that expand the supply of affordable housing for very low-income families whose incomes do not exceed 30 percent of the median family income for the area, as determined by the Secretary;

(B) apply the tenant selection preference categories applicable under section 1437f of this title to the selection of tenants for housing assisted under this part;

(C) provide matching resources in excess of funds required under section 12750 of this title; and

(D) stimulate a high degree of investment and participation in development by the private sector, including nonprofit organizations; and

(3) the degree to which the applicant is pursuing policies that—

(A) make existing housing more affordable;

(B) remove or ameliorate any negative effects that public policies identified by the applicant pursuant to section 12705(b)(4) of this title may have on the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction;

(C) preserve the affordability of privately-owned housing that is vulnerable to conversion, demolition, disinvestment, or abandonment;

(D) increase the supply of housing that is affordable to very low-income and low-income persons, particularly in areas that are accessible to expanding job opportunities; and

(E) remedy the effects of discrimination and improve housing opportunities for disadvantaged minorities.

(d) Reallocations

(1) In general

The Secretary shall make any reallocations periodically throughout each fiscal year so as to ensure that all funds to be reallocated are made available to eligible jurisdictions as soon as possible, consistent with orderly program administration. Jurisdictions eligible for such reallocations shall include participating jurisdictions and jurisdictions meeting the requirements of paragraphs (3), (4), and (5) of section 12746 of this title.

(2) Commitments

The Secretary shall establish procedures according to which participating jurisdictions may make commitments to invest funds made available under this section. Such procedures shall provide for appropriate stages of commitment of funds to a project from initial reservation through binding commitment. Notwithstanding any other provision of this subchapter, funds that the Secretary determines are needed to fulfill binding commitments shall not be available for reallocation.

(3) Limitation

Unless otherwise specified in this part, any reallocation of funds from a State shall be made only among all participating States, and any reallocation of funds from units of general local government shall be made only among all participating units of general local government.

(Pub. L. 101–625, title II, § 217, Nov. 28, 1990, 104 Stat. 4105; Pub. L. 102–229, title I, Dec. 12, 1991, 105 Stat. 1709; Pub. L. 102–230, § 1, Dec. 12, 1991, 105 Stat. 1720; Pub. L. 102–273, § 1, Apr. 21, 1992, 106 Stat. 113; Pub. L. 102–389, title II, Oct. 6, 1992, 106 Stat. 1581; Pub. L. 102–550, title II, §§ 202(b), 203(b), 211(a)(2), Oct. 28, 1992, 106 Stat. 3751, 3752, 3756; Pub. L. 104–330, title V, § 505(a)(1), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 105–65, title II, § 214, Oct. 27, 1997, 111 Stat. 1366.)

AMENDMENTS

1997—Subsec. (b)(3). Pub. L. 105–65, in first sentence, substituted ''jurisdictions that are allocated an amount of $500,000 or more, and participating jurisdictions (other than consortia that fail to renew the membership of all of their member jurisdictions) that are allocated an amount less than $500,000, shall receive an allocation'' for ''only those jurisdictions that are allocated an amount of $500,000 or greater shall receive an allocation''.

1996—Subsec. (a)(1). Pub. L. 104–330, § 505(a)(1)(A), struck out ''reserving amounts under paragraph (2) for Indian tribes and after'' after ''After''.

Subsec. (a)(2). Pub. L. 104–330, § 505(a)(1)(B), struck out heading and text of par. (2). Text read as follows: ''For each fiscal year, of the amount approved in an appropriations Act to carry out this subchapter, the Secretary shall reserve for grants to Indian tribes 1 percent of the amount appropriated under such section. The Secretary shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.''

1992—Subsec. (a)(1). Pub. L. 102–550, § 211(a)(2)(A), added first sentence and struck out former first sentence which read as follows: ''After reserving amounts for Indian tribes as required by paragraph (2) of this subsection and after reserving amounts for the insular areas under paragraph (3), the Secretary shall allocate funds approved in an appropriations Act to carry out this subchapter by formula as provided in subsection (b) of this section.''

Pub. L. 102–389 made identical amendment to those made by Pub. L. 102–229 and Pub. L. 102–230, § 1(1). See 1991 Amendment note below.

Subsec. (a)(3). Pub. L. 102–550, § 211(a)(2)(D), and Pub. L. 102–389 both added new pars. (3) related to insular areas. The text reflects the par. (3) added by Pub. L. 102–550. The par. (3) added by Pub. L. 102–389 read as follows: ''For each fiscal year, of any amounts approved in appropriations Acts to carry out this subchapter, the Secretary shall reserve for grants to the insular areas the greater of (A) $750,000, or (B) 0.2 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.''

Pub. L. 102–550, § 211(a)(2)(C), struck out par. (3), as added by Pub. L. 102–230, § 1(2), which read as follows:

''(A) IN GENERAL.—For each fiscal year, of any amount approved in an appropriations Act to carry out this subchapter, the Secretary shall reserve for grants to the insular areas an amount that reflects—

''(i) their share of the total population of eligible jurisdictions; and

''(ii) any adjustments that the Secretary determines are reasonable in light of available data that are related to factors set forth in subsection (b)(1)(B) of this section.

''(B) SPECIFIC CRITERIA.—The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas in accordance with specific criteria to be set forth in a regulation promulgated by the Secretary after notice and public comment.

''(C) TRANSITIONAL PROVISIONS.—For fiscal year 1992, the reservation for insular areas specified in subparagraph (A) shall be made from any funds which become available for reallocation in accordance with the provisions of section 12746(6)(A) of this title.''

Pub. L. 102–550, § 211(a)(2)(B), struck out par. (3), as added by Pub. L. 102–229, which read as follows: ''For each fiscal year, of any amounts approved in appropriations Acts to carry out this subchapter, the Secretary shall reserve for grants to the insular areas the greater of (A) $750,000, or (B) 0.5 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this

paragraph among the insular areas pursuant to specific criteria for such distribution. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.''

Subsec. (b)(1)(A). Pub. L. 102–550, § 203(b)(1), (6), redesignated subpar. (B) as (A) and struck out former subpar. (A) which provided for a formula for allocation of funds for production of affordable rental housing through new construction or substantial rehabilitation.

Pub. L. 102–273 added cl. (iii) reading as follows: ''Notwithstanding clauses (i) and (ii), any jurisdiction receiving amounts made available under such clause may, at the discretion of the jurisdiction, use such amounts for other eligible uses in accordance with section 12742 of this title if the jurisdiction determines that such use will better meet the housing needs within the jurisdiction. This clause shall be effective only with respect to funds provided under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102–139; 105 Stat. 744), which suspends the requirement of contributions by participating jurisdictions, and shall become ineffective if such requirement is reimposed.''

Subsec. (b)(1)(B), (C). Pub. L. 102–550, § 203(b)(6), redesignated subpars. (C) and (D) as (B) and (C), respectively. Former subpar. (B) redesignated (A).

Subsec. (b)(1)(D). Pub. L. 102–550, § 203(b)(6), redesignated subpar. (E) as (D). Former subpar. (D) redesignated (C).

Pub. L. 102–550, § 203(b)(2), substituted ''The basic formula established under subparagraph (A)'' for ''Except as provided in subparagraph (A), the basic formula established under subparagraph (B)''.

Subsec. (b)(1)(E). Pub. L. 102–550, § 203(b)(6), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Pub. L. 102–550, § 203(b)(3), substituted ''formula in subparagraph (A)'' for ''formulas in subparagraph (B)''.

Subsec. (b)(1)(F). Pub. L. 102–550, § 203(b)(6), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 102–550, § 203(b)(4), substituted ''basic formula in subparagraph (A)'' for ''basic formula in subparagraph (B)'' and struck out at end ''If a jurisdiction receives an allocation under subparagraph (A), the Secretary shall make such adjustments in the jurisdiction's allocation under the formula in subparagraph (B) as may be necessary to ensure that the combined effect of the formulas in subparagraphs (A) and (B) does not reduce the allocation of any jurisdiction below the allocation it would receive if allocations were made according to the formula under subparagraph (B) alone.''

Subsec. (b)(1)(G). Pub. L. 102–550, § 203(b)(6), redesignated subpar. (G) as (F).

Pub. L. 102–550, § 203(b)(5), substituted ''formula in subparagraph (A)'' for ''formulas in subparagraphs (A) and (B)''.

Subsec. (b)(3). Pub. L. 102–550, § 202(b)(1), inserted before period at end '', except as provided in paragraph (4)''.

Subsec. (b)(4). Pub. L. 102–550, § 202(b)(2), added par. (4).

1991—Subsec. (a)(1). Pub. L. 102–229 and Pub. L. 102–230, § 1(1), amended par. (1) identically, inserting before first comma ''and after reserving amounts for the insular areas under paragraph (3)''.

Subsec. (a)(3). Pub. L. 102–229 and Pub. L. 102–230, § 1(2), which were enacted on the same day, both added new pars. (3) relating to insular areas.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Section 505(b) of Pub. L. 104–330 provided that: ''The amendments under subsection (a) [amending this section and section 12838 of this title] shall apply with respect to amounts made available for assistance under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.] for fiscal year 1998 and fiscal years thereafter.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 211(a)(2) of Pub. L. 102–550 applicable with respect to fiscal year 1993 and thereafter, see section 211(b) of Pub. L. 102–550, set out as a note under section 12704 of this title.

Amendment by sections 202(b) and 203(b) of Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

APPLICABILITY OF GRANT THRESHOLDS

Grant thresholds provided for in subsec. (b) of this section as amended by Pub. L. 102–550 to apply notwithstanding any other provision of law, see section 202(c) of Pub. L. 102–550, set out as a note under section 12746 of this title.

EXPEDITED ISSUANCE OF REGULATION

Section 211(a)(3) of Pub. L. 102–550 provided that: ''The regulation referred to in the amendment made by paragraph (2)(D) [amending this section] shall take effect not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulation shall not be subject to the requirements of subsections (b) and (c) of section 553 of title 5, United States Code, or section 7(*o*) of the Department of Housing and Urban Development Act [42 U.S.C. 3535(*o*)].''

§ 12748. HOME Investment Trust Funds

(a) Establishment

The Secretary shall establish for each participating jurisdiction a HOME Investment Trust Fund, which shall be an account (or accounts as provided in section 12749(c) of this title) for use solely to invest in affordable housing within the participating jurisdiction's boundaries or within the boundaries of contiguous jurisdictions in joint projects which serve residents from both jurisdictions in accordance with the provisions of this part.

(b) Line of credit

The Secretary shall establish a line of credit in the HOME Investment Trust Fund of each participating jurisdiction, which line of credit shall include—

(1) funds allocated or reallocated to the participating jurisdiction under section 12747 of this title, and

(2) any payment or repayment made pursuant to section 12749 of this title.

(c) Reductions

A participating jurisdiction's line of credit shall be reduced by—

(1) funds drawn from the HOME Investment Trust Fund by the participating jurisdiction,

(2) funds expiring under subsection (g) of this section, and

(3) any penalties assessed by the Secretary under section 12754[1] of this title.

(d) Certification

A participating jurisdiction may draw funds from its HOME Investment Trust Fund, but not to exceed the remaining line of credit, only after providing certification that the funds shall be used pursuant to the participating jurisdiction's approved housing strategy and in compliance with all requirements of this subchapter. When such certification is received, the Secretary shall immediately disburse such funds in accordance with the form of the assistance determined by the participating jurisdiction.

(e) Investment within 15 days

The participating jurisdiction shall, not later than 15 days after funds are drawn from the jurisdiction's HOME Investment Trust Fund, invest such funds, together with any interest earned thereon, in the affordable housing for which the funds were withdrawn.

(f) No interest or fees

The Secretary shall not charge any interest or levy any other fee with regard to funds in a HOME Investment Trust Fund.

(g) Expiration of right to draw funds

If any funds becoming available to a participating jurisdiction under this subchapter are not placed under binding commitment to affordable housing within 24 months after the last day of the month in which such funds are deposited in the jurisdiction's HOME Investment Trust Fund, the jurisdiction's right to draw such funds from the HOME Investment Trust Fund shall expire. The Secretary shall reduce the line of credit in the participating jurisdiction's HOME Investment Trust Fund by the expiring amount and shall reallocate the funds by formula in accordance with section 12747(d) of this title.

(h) Administrative provision

The Secretary shall keep each participating jurisdiction informed of the status of its HOME Investment Trust Fund, including the status of amounts under various stages of commitment.

(Pub. L. 101–625, title II, § 218, Nov. 28, 1990, 104 Stat. 4109; Pub. L. 102–550, title II, §§ 203(c), 221, Oct. 28, 1992, 106 Stat. 3752, 3762.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, § 221, inserted "or within the boundaries of contiguous jurisdictions in joint projects which serve residents from both jurisdictions" after "boundaries".

Subsec. (g). Pub. L. 102–550, § 203(c), substituted "If" for "Except as provided in section 12747(b)(1)(A)(ii) of this title, if".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

[1] So in original. Probably should be section "12753".

§ 12749. Repayment of investment

(a) In general

Any repayment of funds drawn from a jurisdiction's HOME Investment Trust Fund, and any payment of interest or other return on the investment of such funds, shall be deposited in such jurisdiction's HOME Investment Trust Fund, except that, if the jurisdiction is not a participating jurisdiction when such payment or repayment is made, the amount of such payment or repayment shall be reallocated in accordance with section 12747(d) of this title.

(b) Assurance of repayment

Each participating jurisdiction shall enter into an agreement with the Secretary ensuring that funds invested in affordable housing under this part are repayable when the housing no longer qualifies as affordable housing. Any repayment under the previous sentence shall be for deposit in the HOME Investment Trust Fund of the jurisdiction making the investment; except that if such jurisdiction is not a participating jurisdiction when such repayment is made, the amount of such repayment shall be reallocated in accordance with section 12747(d) of this title.

(c) Availability

The Secretary shall take such actions as are necessary to ensure that any repayments deposited in a HOME Investment Trust Fund in accordance with this section shall be immediately available to the participating jurisdiction for investment subject to the provisions of this part that apply to funds that are allocated under section 12747 of this title. Actions authorized under the preceding sentence may include authorizing the establishment for a participating jurisdiction of a HOME Investment Trust Fund account outside of the Federal Government that, under arrangements satisfactory to the Secretary, shall be used solely to invest in affordable housing within the participating jurisdiction's boundaries in accordance with the provisions of this subchapter. Such accounts shall be established in such a manner that repayments are not receipts or collections of the Federal Government.

(Pub. L. 101–625, title II, § 219, Nov. 28, 1990, 104 Stat. 4110.)

§ 12750. Matching requirements

(a) Contribution

Each participating jurisdiction shall make contributions to housing that qualifies as affordable housing under this subchapter that total, throughout a fiscal year, not less than 25 percent of the funds drawn from the jurisdiction's HOME Investment Trust Fund in such fiscal year. Such contributions shall be in addition to any amounts made available under section 12746(3)(A)(ii) of this title.

(b) Recognition

(1) In general

A contribution shall be recognized for purposes of subsection (a) of this section only if it—

(A) is made with respect to housing that qualifies as affordable housing under section 12745 of this title; or

(B) is made with respect to any portion of a project not less than 50 percent of the units of which qualify as affordable housing under section 12745 of this title.

(2) Administrative expenses

Contributions for administrative expenses may not be recognized for purposes of subsection (a) of this section.

(c) Form

Such contributions may be in the form of—

(1) cash contributions from non-Federal resources, which may not include funds from a grant made under section 5306(b) or section 5306(d) of this title;

(2) the value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that achieves affordability of housing assisted under this subchapter;

(3) the value of land or other real property as appraised according to procedures acceptable to the Secretary;

(4) the value of investment in on-site and off-site infrastructure directly required for affordable housing assisted under this subchapter;

(5) Redesignated (4)

(6) up to—

(A) 50 percent of proceeds from bond financing validly issued by a State or local government, agency or instrumentality thereof, or political subdivision thereof, and repayable with revenues derived from a multifamily affordable housing project financed, and

(B) 25 percent of proceeds from bond financing validly issued by a State or local government, agency or instrumentality thereof, or political subdivision thereof, and repayable with revenues derived from a single-family project financed,

but not more than 25 percent of the contribution required under subsection (a) of this section may be derived from these sources;

(7) the reasonable value of any site-preparation and construction materials and any donated or voluntary labor in connection with the site-preparation for, or construction or rehabilitation of, affordable housing; and

(8) such other contributions to affordable housing as the Secretary considers appropriate.

(d) Reduction of requirement

(1) In general

The Secretary shall reduce the matching requirement under subsection (a) of this section with respect to any funds drawn from a jurisdiction's HOME Investment Trust Fund Account during a fiscal year by—

(A) 50 percent for a jurisdiction that certifies that it is in fiscal distress; and

(B) 100 percent for a jurisdiction that certifies that it is in severe fiscal distress.

(2) Definitions

For purposes of this section—

(A) ''fiscal distress'' means a jurisdiction other than a State that satisfies 1 of the distress criteria set forth in paragraph (3); and

(B) ''severe fiscal distress'' means a jurisdiction other than a State that satisfies both of the distress criteria set forth in paragraph (3).

(3) Distress criteria

For purposes of a jurisdiction other than a State certifying that it is distressed, the following criteria shall apply:

(A) Poverty rate

The average poverty rate in the jurisdiction for the calendar year immediately preceding the year in which its fiscal year begins was equal to or greater than 125 percent of the average national poverty rate during such calendar year (as determined according to information of the Bureau of the Census).

(B) Per capita income

The average per capita income in the jurisdiction for the calendar year immediately preceding the year in which its fiscal year begins was less than 75 percent of the average national per capita income during such calendar year (as determined according to information of the Bureau of the Census).

(4) States

In determining the degree to which a jurisdiction that is a State is distressed, the Secretary shall take into consideration the State's fiscal capacity and expenditure needs as determined by a national organization which compiles the relevant data.

(5) Waiver in disaster areas

If a participating jurisdiction is located in an area in which a declaration of a disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] is in effect for any part of a fiscal year, the Secretary may reduce the matching requirement for that fiscal year under subsection (a) of this section with respect to any funds drawn from a jurisdiction's HOME Investment Trust Fund Account during that fiscal year by up to 100 percent.

(Pub. L. 101–625, title II, § 220, Nov. 28, 1990, 104 Stat. 4111; Pub. L. 102–550, title II, §§ 207(c), 210(a)–(c), Oct. 28, 1992, 106 Stat. 3753, 3755; Pub. L. 103–233, title II, § 204, Apr. 11, 1994, 108 Stat. 364.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (d)(5), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–233 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Each participating jurisdiction shall make contributions to housing that qualifies as affordable housing under this subchapter that total, throughout a fiscal year, not less than—

''(1) 25 percent of the total funds drawn from the jurisdiction's HOME Investment Trust Fund in that fiscal year with respect to rental assistance, housing rehabilitation and substantial rehabilitation; and

''(2) 30 percent of the total funds drawn from the jurisdiction's HOME Investment Trust Fund in that fiscal year with respect to new construction.

Such contributions shall be in addition to any amounts made available under section 12746(3)(A)(ii) of this title.''

1992—Subsec. (a). Pub. L. 102–550, § 210(a)(4), substituted ''housing that qualifies as affordable housing under this subchapter'' for ''affordable housing assisted under this subchapter'' in introductory provisions.

Subsec. (a)(1). Pub. L. 102–550, § 210(a)(1), substituted '', housing rehabilitation and substantial rehabilitation; and'' for ''and housing rehabilitation;''.

Subsec. (a)(2). Pub. L. 102–550, § 210(a)(2), substituted ''30'' for ''33'' and ''new construction.'' for ''substantial rehabilitation; and''.

Subsec. (a)(3). Pub. L. 102–550, § 210(a)(3), struck out par. (3) which read as follows: ''50 percent of the total funds drawn from the jurisdiction's HOME Investment Trust Fund in that fiscal year with respect to new construction.''

Subsec. (b)(2). Pub. L. 102–550, § 207(c)(1), substituted ''may not be recognized for purposes of subsection (a) of this section'' for ''shall be recognized only up to an amount equal to 7 percent of funds provided for investment under this subchapter''.

Subsec. (c)(2). Pub. L. 102–550, § 207(c)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''payment of administrative expenses, as defined by the Secretary, from non-Federal resources, which may include funds from a grant made under section 5306(b) or section 5306(d) of this title;''.

Subsec. (c)(3). Pub. L. 102–550, § 210(b)(1), which directed the striking of ''and'' at end of par. (4), was executed by striking ''and'' at end of par. (3) to reflect the probable intent of Congress and the redesignation of par. (4) as (3). See below.

Pub. L. 102–550, § 207(c)(2)(B), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (c)(4). Pub. L. 102–550, § 210(b)(2), which directed the substitution of a semicolon for the period at end of par. (5), was executed by making the substitution at end of par. (4) to reflect the probable intent of Congress and the redesignation of par. (5) as (4). See below.

Pub. L. 102–550, § 207(c)(2)(B), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (c)(5). Pub. L. 102–550, § 207(c)(2)(B), redesignated par. (5) as (4).

Subsec. (c)(6) to (8). Pub. L. 102–550, § 210(b)(3), added pars. (6) to (8).

Subsec. (d). Pub. L. 102–550, § 210(c), added subsec. (d) and struck out former subsec. (d) which read as follows: ''If a jurisdiction demonstrates to the satisfaction of the Secretary that a reduction of the matching requirement specified in subsection (a) of this section is necessary to permit the jurisdiction to carry out the purposes of this subchapter, the Secretary may reduce the matching requirement during a period not to exceed 3 years after the jurisdiction is first designated as a participating jurisdiction. Such reduction shall be not more than 75 percent in the first year, not more than 50 percent in the second year, and not more than 25 percent in the third year.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 210(d) of Pub. L. 102–550 provided that: ''The amendments made by this section [amending this section] shall apply with respect to fiscal year 1993 and each fiscal year thereafter.''

Amendment by section 207(c) of Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

§ 12751. Private-public partnership

Each participating jurisdiction shall make all reasonable efforts, consistent with the purposes of this subchapter, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in the implementation of the jurisdiction's housing strategy, including participation in the financing, development, rehabilitation and management of affordable housing. Nothing in the previous sentence shall preclude public housing authorities from fully participating in the implementation of a jurisdiction's housing strategy.

(Pub. L. 101–625, title II, § 221, Nov. 28, 1990, 104 Stat. 4112.)

§ 12752. Distribution of assistance

(a) Local

Each participating jurisdiction shall, insofar as is feasible, distribute assistance under this part geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in the jurisdiction's approved housing strategy.

(b) State

Participating States shall be responsible for distributing assistance throughout the State according to the State's assessment of the geographical distribution of the housing need within the State, as identified in the State's approved housing strategy. Participating States shall distribute assistance to rural areas in amounts that take into account the nonmetropolitan share of the State's total population and objective measures of rural housing need, such as poverty and substandard housing, as set forth in the State's housing strategy approved under section 12705 of this title. To the extent the need is within the boundaries of a participating unit of general local government, the State and the unit of general local government shall coordinate activities to address that need.

(Pub. L. 101–625, title II, § 222, Nov. 28, 1990, 104 Stat. 4112.)

§ 12753. Penalties for misuse of funds

If the Secretary finds after reasonable notice and opportunity for hearing that a participating jurisdiction has failed to comply substantially with any provision of this part and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall reduce the line of credit in the participating jurisdiction's HOME Investment Trust Fund by the amount of any expenditures that were not in accordance with the requirements of this subchapter, and the Secretary may—

(1) prevent withdrawals from the participating jurisdiction's HOME Investment Trust Fund for activities affected by such failure to comply;

(2) restrict the participating jurisdiction's activities under this subchapter to activities that conform to one or more model programs made available under section 12743 of this title; or

(3) remove the participating jurisdiction from participation in allocations or reallocations of funds made available under this part.

(Pub. L. 101–625, title II, § 223, Nov. 28, 1990, 104 Stat. 4112.)

§ 12754. Limitation on jurisdictions under court order

(a) In general

Notwithstanding any other provision of this Act, the Secretary shall ensure that funds provided under this part are not employed to carry out housing remedies or to pay fines, penalties, or costs associated with an action in which—

(1) a participating jurisdiction has been adjudicated, by a Federal, State, or local court, to be in violation of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.], or any other Federal, State, or local law promoting fair housing or prohibiting discrimination, or

(2) a settlement has been entered into in any case where claims of such violations have been asserted against a participating jurisdiction, except to the extent permitted by subsection (b) of this section.

(b) Remedial use of funds permitted

In the case of settlement described in subsection (a)(2) of this section, a jurisdiction may use funds provided under this Act to carry out housing remedies with eligible activities.

(Pub. L. 101–625, title II, § 224, Nov. 28, 1990, 104 Stat. 4113.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (a)(1), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

§ 12755. Tenant and participant protections

(a) Lease

The lease between a tenant and an owner of affordable housing assisted under this subchapter for rental shall be for not less than one year, unless by mutual agreement between the tenant and the owner, and shall contain such terms and conditions as the Secretary shall determine to be appropriate.

(b) Termination of tenancy

An owner shall not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted under this subchapter except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

(c) Maintenance and replacement

The owner of rental housing assisted under this subchapter shall maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(d) Tenant selection

The owner of rental housing assisted under this subchapter shall adopt written tenant selection policies and criteria that—

(1) are consistent with the purpose of providing housing for very low-income and low-income families,

(2) are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease,

(3) give reasonable consideration to the housing needs of families that would have a preference under section 1437d(c)(4)(A)[1] of this title, and

(4) provide for (A) the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, and (B) for[2] the prompt notification in writing of any rejected applicant of the grounds for any rejection.

(Pub. L. 101–625, title II, § 225, Nov. 28, 1990, 104 Stat. 4113.)

REFERENCES IN TEXT

Section 1437d(c)(4)(A) of this title, referred to in subsec. (d)(3), was redesignated section 1437d(c)(5)(A) of this title by Pub. L. 109–162, title VI, § 607(1), Jan. 5, 2006, 119 Stat. 3048.

§ 12756. Monitoring of compliance

(a) Enforceable agreements

Each participating jurisdiction, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this subchapter. Such measures shall provide for (1) enforcement of the provisions of this subchapter by the jurisdiction or by the intended beneficiaries, and (2) remedies for the breach of such provisions.

(b) Periodic monitoring

Each participating jurisdiction, not less frequently than annually, shall review the activities of owners of affordable housing assisted under this subchapter for rental to assess compliance with the requirements of this subchapter. Such review shall include on-site inspection to determine compliance with housing codes and other applicable regulations. The results of each review shall be included in the jurisdiction's performance report submitted to the Secretary under section 12708(a) of this title and made available to the public.

[1] See References in Text note below.

[2] So in original. The word "for" probably should not appear.

(c) Special procedures for certain projects

In the case of small-scale or scattered site housing, the Secretary may provide for such streamlined procedures for achieving the purposes of this section as the Secretary determines to be appropriate.

(Pub. L. 101–625, title II, § 226, Nov. 28, 1990, 104 Stat. 4114.)

PART B—COMMUNITY HOUSING PARTNERSHIP

§ 12771. Set-aside for community housing development organizations

(a) In general

For a period of 24 months after funds under part A of this subchapter are made available to a jurisdiction, the jurisdiction shall reserve not less than 15 percent of such funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations. Each participating jurisdiction shall make reasonable efforts to identify community housing development organizations that are capable or can reasonably be expected to become capable of carrying out elements of the jurisdiction's housing strategy and to encourage such community housing development organizations to do so. If during the first 24 months of its participation under this subchapter, a participating jurisdiction is unable to identify a sufficient number of capable community housing development organizations, then up to 20 percent of the funds allocated to that jurisdiction under this section, but not to exceed $150,000, may be made available to carry out activities that develop the capacity of community housing development organizations in that jurisdiction. A participating jurisdiction is authorized to enter into contracts with community housing development organizations to carry out this section.

(b) Recapture and reuse

If any funds reserved under subsection (a) of this section remain uninvested for a period of 24 months, then the Secretary shall deduct such funds from the line of credit in the participating jurisdiction's HOME Investment Trust Fund and make such funds available by direct reallocation (1) to other participating jurisdictions for affordable housing developed, sponsored or owned by community housing development organizations, or (2) to nonprofit intermediary organizations to carry out activities that develop the capacity of community housing development organizations consistent with section 12773 of this title, with preference to community housing development organizations serving the jurisdiction from which the funds were recaptured.

(c) Direct reallocation criteria

Insofar as practicable, direct reallocations under this section shall be made according to the selection criteria established under section 12747(c) of this title.

(Pub. L. 101–625, title II, § 231, Nov. 28, 1990, 104 Stat. 4114; Pub. L. 102–550, title II, § 212(a), (b), Oct. 28, 1992, 106 Stat. 3757.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 substituted ''24'' for ''18'' in first sentence and inserted after second sentence ''If during the first 24 months of its participation under this subchapter, a participating jurisdiction is unable to identify a sufficient number of capable community housing development organizations, then up to 20 percent of the funds allocated to that jurisdiction under this section, but not to exceed $150,000, may be made available to carry out activities that develop the capacity of community housing development organizations in that jurisdiction.''

Subsec. (b). Pub. L. 102–550, § 212(a), substituted ''24'' for ''18''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

§ 12772. Project-specific assistance to community housing development organizations

(a) In general

Amounts reserved under section 12771 of this title may be used for activities eligible under section 12742 of this title and, in amounts not to exceed 10 percent of the amounts so reserved, for other activities specified under this section.

(b) Project-specific technical assistance and site control loans

(1) In general

Amounts reserved under section 12771 of this title may be used to provide technical assistance and site control loans to community housing development organizations in the early stages of site development for an eligible project. Such loans shall not exceed amounts that the jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (2).

(2) Allowable expenses

A loan under this subsection may be provided to cover project expenses necessary to determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control and title clearance.

(3) Repayment

A community housing development organization that receives a loan under this subsection shall repay the loan to the participating jurisdiction's HOME Investment Trust Fund from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in part or in whole, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(c) Project-specific seed money loans

(1) In general

Amounts reserved under section 12771 of this title may be used to provide loans to community housing development organizations to cover preconstruction project costs that the jurisdiction determines to be customary and reasonable, including, but not limited to the costs of obtaining firm construction loan com-

mitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees.

(2) Eligible sponsors

A loan under this subsection may be provided only to a community housing development organization that has, with respect to the project concerned, site control, a preliminary financial commitment, and a capable development team.

(3) Repayment

A community housing development organization that receives a loan under this subsection shall repay the loan to the jurisdiction's HOME Investment Trust Fund from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in whole or in part, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(Pub. L. 101–625, title II, § 232, Nov. 28, 1990, 104 Stat. 4115.)

§ 12773. Housing education and organizational support

(a) In general

The Secretary is authorized to provide education and organizational support assistance, in conjunction with other assistance made available under this part—

(1) to facilitate the education of low-income homeowners and tenants;

(2) to promote the ability of community housing development organizations, including community land trusts, to maintain, rehabilitate and construct housing for low-income and moderate-income families in conformance with the requirements of this subchapter; and

(3) to achieve the purposes under paragraphs (1) and (2) by helping women who reside in low- and moderate-income neighborhoods rehabilitate and construct housing in the neighborhoods.

(b) Eligible activities

Assistance under this section may be used only for the following eligible activities:

(1) Organizational support

Organizational support assistance may be made available to community housing development organizations to cover operational expenses and to cover expenses for training and technical, legal, engineering and other assistance to the board of directors, staff, and members of the community housing development organization.

(2) Housing education

Housing education assistance may be made available to community housing development organizations to cover expenses for providing or administering programs for educating, counseling, or organizing homeowners and tenants who are eligible to receive assistance under other provisions of this subchapter.

(3) Program-wide support of nonprofit development and management

Technical assistance, training, and continuing support may be made available to eligible community housing development organizations for managing and conserving properties developed under this subchapter.

(4) Benevolent loan funds

Technical assistance may be made available to increase the investment of private capital in housing for very low-income families, particularly by encouraging the establishment of benevolent loan funds through which private financial institutions will accept deposits at below-market interest rates and make those funds available at favorable rates to developers of low-income housing and to low-income homebuyers.

(5) Community development banks and credit unions

Technical assistance may be made available to establish privately owned, local community development banks and credit unions to finance affordable housing.

(6) Community land trusts

Organizational support, technical assistance, education, training, and continuing support under this subsection may be made available to community land trusts (as such term is defined in subsection (f) of this section) and to community groups for the establishment of community land trusts.

(7) Facilitating women in homebuilding professions

Technical assistance may be made available to businesses, unions, and organizations involved in construction and rehabilitation of housing in low- and moderate-income areas to assist women residing in the area to obtain jobs involving such activities, which may include facilitating access by such women to, and providing, apprenticeship and other training programs regarding nontraditional skills, recruiting women to participate in such programs, providing continuing support for women at job sites, counseling and educating businesses regarding suitable work environments for women, providing information to such women regarding opportunities for establishing small housing construction and rehabilitation businesses, and providing materials and tools for training such women (in an amount not exceeding 10 percent of any assistance provided under this paragraph). The Secretary shall give priority under this paragraph to providing technical assistance for organizations rehabilitating single family or multifamily housing owned or controlled by the Secretary pursuant to title II of the National Housing Act [12 U.S.C. 1707 et seq.] and which have women members in occupations in which women constitute 25 percent or less of the total number of workers in the occupation (in this section referred to as ''nontraditional occupations'').

(c) Delivery of assistance

The Secretary shall provide this assistance only through contract—

(1) with a nonprofit intermediary organization that, in the determination of the Secretary—

(A) customarily provides, in more than one community, services related to the provision of decent housing that is affordable to low-income and moderate-income persons or the revitalization of deteriorating neighborhoods;

(B) has demonstrated experience in providing a range of assistance (such as financing, technical assistance, construction and property management assistance, capacity building and training) to community housing development organizations or similar organizations that engage in community revitalization;

(C) has demonstrated the ability to provide technical assistance and training for community-based developers of affordable housing;

(D) has described the uses to which such assistance will be put and the intended beneficiaries of the assistance; and

(E) in the case of activities under subsection (b)(7) of this section, is a community-based organization (as such term is defined in section 4 of the Job Training Partnership Act) or public housing agency, which has demonstrated experience in preparing women for apprenticeship training in construction or administering programs for training women for construction or other nontraditional occupations (and such organizations may use assistance for activities under such subsection to employ women in housing construction and rehabilitation activities to the extent that the organization has the capacity to conduct such activities); or

(2) with another organization, if a participating jurisdiction demonstrates that the organization is qualified to carry out eligible activities and that the jurisdiction would not be served in a timely manner by intermediaries specified under paragraph (1).

Contracts under paragraph (2) shall be for activities specified in an application from the participating jurisdiction, which application shall include a certification that the activities are necessary to the effective implementation of the participating jurisdiction's housing strategy.

(d) Limitations

Contracts under this section with any one contractor for a fiscal year may not—

(1) exceed 20 percent of the amount appropriated for this section for such fiscal year; or

(2) provide more than 20 percent of the operating budget (which shall not include funds that are passed through to community housing development organizations) of the contracting organization for any one year.

(e) Single-State contractors

Not less than 40 percent of the funds made available for this section in an appropriations Act in any fiscal year shall be made available for eligible contractors that have worked primarily in one State. The Secretary shall provide assistance under this section, to the extent applications are submitted and approved, to contractors in each of the geographic regions having a regional office of the Department of Housing and Urban Development.

(f) "Community land trust" defined

For purposes of this section, the term ''community land trust'' means a community housing development organization (except that the requirements under subparagraphs (C) and (D) of section 12704(6) of this title shall not apply for purposes of this subsection)—

(1) that is not sponsored by a for-profit organization;

(2) that is established to carry out the activities under paragraph (3);

(3) that—

(A) acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

(B) transfers ownership of any structural improvements located on such leased parcels to the lessees; and

(C) retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity;

(4) whose corporate membership that is open to any adult resident of a particular geographic area specified in the bylaws of the organization; and

(5) whose board of directors—

(A) includes a majority of members who are elected by the corporate membership; and

(B) is composed of equal numbers of (i) lessees pursuant to paragraph (3)(B), (ii) corporate members who are not lessees, and (iii) any other category of persons described in the bylaws of the organization.

(Pub. L. 101–625, title II, § 233, Nov. 28, 1990, 104 Stat. 4116; Pub. L. 102–550, title II, § 213, Oct. 28, 1992, 106 Stat. 3757.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(7), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 4 of the Job Training Partnership Act, referred to in subsec. (c)(1)(E), which was classified to section 1503 of Title 29, Labor, was repealed by Pub. L. 105–220, title I, § 199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–550, § 213(a)(1), inserted '', including community land trusts,'' after ''organizations''.

Subsec. (a)(3). Pub. L. 102–550, § 213(b)(1), added par. (3).

Subsec. (b)(6). Pub. L. 102–550, § 213(a)(2), added par. (6).

Subsec. (b)(7). Pub. L. 102–550, § 213(b)(2), added par. (7).

Subsec. (c)(1)(E). Pub. L. 102–550, § 213(b)(3), added subpar. (E).

Subsec. (e). Pub. L. 102–550, § 213(b)(4), inserted at end ''The Secretary shall provide assistance under this section, to the extent applications are submitted and approved, to contractors in each of the geographic regions having a regional office of the Department of Housing and Urban Development.''

Subsec. (f). Pub. L. 102–550, § 213(a)(3), added subsec. (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

§ 12774. Other requirements

(a) Tenant participation plan

A community housing development organization that receives assistance under this part shall provide a plan for and follow a program of tenant participation in management decisions and shall adhere to a fair lease and grievance procedure approved by the participating jurisdiction.

(b) Limitation on assistance

A community housing development organization may not receive assistance under this subchapter for any fiscal year in an amount that provides more than 50 percent of the organization's total operating budget in the fiscal year or $50,000 annually, whichever is greater.

(c) Adjustments of other assistance

The Secretary shall take account of assistance provided to a project under this part when adjusting other assistance to be provided to the project as required by section 3545(d) of this title.

(Pub. L. 101–625, title II, § 234, Nov. 28, 1990, 104 Stat. 4117; Pub. L. 102–550, title II, § 212(c), Oct. 28, 1992, 106 Stat. 3757.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–550 struck out '', together with other Federal assistance,'' after ''in an amount that'' and inserted before period ''or $50,000 annually, whichever is greater''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

PART C—OTHER SUPPORT FOR STATE AND LOCAL HOUSING STRATEGIES

§ 12781. Authority

The Secretary shall, insofar as is feasible through contract with eligible organizations, develop the capacity of participating jurisdictions, State and local housing finance agencies, nonprofit organizations and for-profit corporations, working in partnership, to identify and meet needs for an increased supply of decent, affordable housing.

(Pub. L. 101–625, title II, § 241, Nov. 28, 1990, 104 Stat. 4117.)

§ 12782. Priorities for capacity development

To carry out section 12781 of this title, the Secretary shall provide assistance under this part to—

(1) facilitate the exchange of information that would help participating jurisdictions carry out the purposes of this subchapter, including information on program design, housing finance, land use controls, and building construction techniques;

(2) improve the ability of States and units of general local government to design and implement comprehensive housing affordability strategies, particularly those States and units of general local government that are relatively inexperienced in the development of affordable housing;

(3) encourage private lenders and for-profit developers of low-income housing to participate in public-private partnerships to achieve the purposes of this subchapter;

(4) improve the ability of States and units of general local government, community housing development organizations, private lenders, and for-profit developers of low-income housing to incorporate energy efficiency into the planning, design, financing, construction, and operation of affordable housing;

(5) facilitate the establishment and efficient operation of employer-assisted housing programs through research, technical assistance and demonstration projects; and

(6) facilitate the establishment and efficient operation of land bank programs, under which title to vacant and abandoned parcels of real estate located in or causing blighted neighborhoods is cleared for use consistent with the purposes of this subchapter.

(Pub. L. 101–625, title II, § 242, Nov. 28, 1990, 104 Stat. 4118; Pub. L. 102–550, title II, § 214(a), Oct. 28, 1992, 106 Stat. 3759.)

AMENDMENTS

1992—Par. (6). Pub. L. 102–550 added par. (6).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

§ 12783. Conditions of contracts

(a) Eligible organizations

The Secretary shall carry out this part insofar as is practicable through contract with—

(1) a participating jurisdiction or agency thereof;

(2) a public purpose organization established pursuant to State or local legislation and responsible to the chief elected official of a participating jurisdiction;

(3) an agency or authority established by two or more participating jurisdictions to

carry out activities consistent with the purposes of this subchapter;

(4) a national or regional nonprofit organization that has a membership comprised predominantly of entities or officials of entities that qualify under paragraph (1), (2), or (3); or

(5) a professional and technical services company or firm that has demonstrated capacity to provide services under this part.

(b) Contract terms

Contracts under this part shall be for not more than 3 years and shall provide not more than 20 percent of the operating budget of the contracting organization in any one year. Within any fiscal year, contracts with any one organization may not be entered into for a total of more than 20 percent of the funds appropriated under this part in that fiscal year.

(Pub. L. 101–625, title II, § 243, Nov. 28, 1990, 104 Stat. 4118.)

§ 12784. Research in housing affordability

The Secretary is authorized to support, through contracts with eligible organizations and otherwise, such research and to publish such reports as will assist in the achievement of the purposes of this subchapter. Activities authorized by the previous sentence may include an ongoing analysis of the impact of public policies at the Federal, State, and local levels, both individually and in the aggregate, on the incentives to expand and maintain the supply of energy-efficient affordable housing in the United States, particularly in areas with severe problems of housing affordability, through the use of cost-saving innovative building technology and construction techniques. For purposes of this section, agencies of the United States, government-sponsored mortgage finance corporations, and qualified research organizations shall be included as eligible organizations in addition to eligible organizations specified under section 12783 of this title.

(Pub. L. 101–625, title II, § 244, Nov. 28, 1990, 104 Stat. 4118; Pub. L. 102–550, title II, § 215, Oct. 28, 1992, 106 Stat. 3759.)

AMENDMENTS

1992—Pub. L. 102–550 inserted before period at end of second sentence ", through the use of cost-saving innovative building technology and construction techniques".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

§ 12785. REACH: asset recycling information dissemination

(a) In general

The Secretary shall make available upon request by any participating jurisdiction a list of eligible properties that are located within the jurisdiction and that are owned or controlled by the Department of Housing and Urban Development to facilitate the purchase, development, or rehabilitation of such properties with assistance made available under this subchapter.

(b) Eligible properties

An eligible property under this section shall—

(1) be an unoccupied single-family or multifamily dwelling, such that acquisition and rehabilitation of the dwelling would not result in the displacement of any residents of the dwelling; and

(2) have an appraised value that does not exceed (A) in the case of a 1- to 4-family dwelling, 95 percent of the median purchase price for the area for such dwellings, as determined by the Secretary, or (B) in the case of a dwelling with more than 4 units, the applicable maximum dollar amount limitation under section 1715*l*(d)(3)(ii) of title 12 for elevator-type structures.

(Pub. L. 101–625, title II, § 245, Nov. 28, 1990, 104 Stat. 4119.)

PART D—SPECIFIED MODEL PROGRAMS

§ 12801. General authority

Among the alternative model programs that the Secretary shall make available for use by participating jurisdictions under the provisions of section 12743 of this title shall be model programs specified in this part. The Secretary shall keep these specified model programs under review and submit to Congress such recommendations for change as the Secretary determines to be appropriate.

(Pub. L. 101–625, title II, § 251, Nov. 28, 1990, 104 Stat. 4119.)

§ 12802. Rental housing production

(a) Repayable advances

(1) In general

The Secretary shall make available a model program under which repayable advances may be made to public and private project sponsors in constructing, acquiring, or substantially rehabilitating projects to be used as affordable rental housing, including limited equity cooperatives and mutual housing.

(2) Maximum amount of advance

An advance under this model program shall not exceed 50 percent of the total costs associated with the construction, acquisition, or substantial rehabilitation of the project, as determined by the participating jurisdiction.

(3) Terms of repayment

(A) Interest payments

(i) In general

Under the model program, advances shall be repaid with interest calculated at a rate of not more than 3 percent per year, as determined by the participating jurisdiction to be appropriate. Interest shall begin to accrue 1 year after the completion of the construction, acquisition, or substantial rehabilitation of the project and shall be payable in annual installments.

(ii) Exception

Interest and any accrued interest shall be payable only from the surplus cash flow

of the project, after a minimum return on equity determined by the participating jurisdiction to be appropriate. As used in the previous sentence, the term ''surplus cash flow'' means the cash flow of the project after the payment of all amounts due under the first mortgage, operating expenses, and required replacement reserves, as determined by the participating jurisdiction.

(B) Additional interest payments

Under the model program, for any year in which the sum of the surplus cash flow of a project and the return on equity exceeds all interest payments due under subparagraph (A), 50 percent of the excess surplus cash flow shall be paid to the participating jurisdiction's HOME Investment Trust Fund as additional interest.

(C) Principal and unpaid interest

The principal amount of an advance under the model program, and any interest remaining unpaid pursuant to subparagraph (A)(ii) shall be repayable when the housing no longer qualifies as affordable housing in accordance with section 12749(b) of this title.

(b) Selection guidelines

(1) In general

The Secretary shall establish guidelines for the selection of projects by participating jurisdictions for assistance under the model program. Such guidelines shall be designed to select projects in areas and for markets demonstrating the greatest need for the production of affordable rental housing.

(2) Specific requirements

The selection guidelines may include—

(A) the extent of the shortage of rental housing in the area that is available to low-income families;

(B) the extent large families with children will be served by the project;

(C) the extent to which the project provides congregate facilities and has available supportive services that will permit elderly or handicapped residents who become frail and are in need of assistance in living to continue to reside in the project;

(D) the extent of very low-income and low-income occupancy in excess of the income targeting requirements in section 12744 of this title;

(E) the extent of the project sponsor's commitment of equity to the project (except that this criterion shall not apply to or affect the selection of applications submitted by public housing agencies and nonprofit entities);

(F) the extent of the project sponsor's commitment of equity to the project in comparison to the value of all public assistance for the project, including assistance under this subchapter, other Federal assistance and financing, and State and local government contributions (except that this criterion shall not apply to or affect the selection of applications submitted by public housing agencies and nonprofit entities);

(G) the extent of non-Federal public or private assistance to the project;

(H) the extent to which the project provides supportive services for persons with disabilities; and

(I) any other factor determined by the Secretary to be appropriate.

(c) Guidelines

The Secretary shall publish guidelines for the model program under this section not later than 180 days after November 28, 1990.

(Pub. L. 101–625, title II, § 252, Nov. 28, 1990, 104 Stat. 4119.)

§ 12803. Rental rehabilitation

(a) In general

The Secretary shall make available a model program to support the rehabilitation of privately owned rental housing located in neighborhoods where the median income does not exceed 80 percent of the area median as determined by the Secretary and where rents can reasonably be expected not to change materially over an extended period of time.

(b) Amount of subsidy

The amount of the rehabilitation subsidy shall be moderate and shall generally not exceed 50 percent of the total costs associated with the rehabilitation of the housing.

(c) Additional restrictions

The guidelines of the model program shall generally comport with the additional protections and restrictions specified under section 1437*o*(c)[1] of this title.

(Pub. L. 101–625, title II, § 253, Nov. 28, 1990, 104 Stat. 4121.)

REFERENCES IN TEXT

Section 1437*o* of this title, referred to in subsec. (c), was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

§ 12804. Rehabilitation loans

(a) In general

The Secretary shall make available a model program to provide direct loans to finance the rehabilitation of low and moderate income single family and multifamily residential properties.

(b) Condition of loans

The Secretary shall establish terms and conditions to ensure that such loans are acceptable risks, taking into consideration the need for rehabilitation, the security for the loan and the ability of the borrower to repay the loan. The Secretary may establish the interest rate for loans under the model program, which shall include special interest rates for loans to borrowers with incomes below 80 percent of the area median income.

(c) Additional restrictions

Guidelines for the model program may require that the property—

(1) be located in an area that contains a substantial number of dwellings in need of rehabilitation;

[1] See References in Text note below.

(2) the property[1] is residential and owner-occupied; and

(3) the property[1] is in need of rehabilitation or concentrated code enforcement within a reasonable time, and the rehabilitation of such property is consistent with a local plan for rehabilitation or code enforcement.

Additional guidelines for the model program shall generally comport with the additional protections and restrictions specified under section 1452b[2] of this title.

(Pub. L. 101–625, title II, § 254, Nov. 28, 1990, 104 Stat. 4121.)

REFERENCES IN TEXT

Section 1452b of this title, referred to in subsec. (c), was repealed by Pub. L. 101–625, title II, § 289(b)(1), Nov. 28, 1990, 104 Stat. 4128, which is classified to section 12839(b)(1) of this title.

§ 12805. Sweat equity model program

(a) In general

The Secretary shall make available a model program to provide grants to public and private nonprofit organizations and community housing development organizations to provide technical and supervisory assistance to low-income and very low-income families, including the homeless, in acquiring, rehabilitating, and constructing housing by the self-help housing method.

(b) Rehabilitation of properties

The program shall target for rehabilitation properties which have been acquired by the Federal, State, or local governments.

(c) Homeownership opportunities through sweat equity

(1) The program shall utilize the skilled or unskilled labor of eligible families in exchange for acquisition of the property.

(2) Training shall be provided to eligible families in building and home maintenance skills.

(d) Rental opportunities through sweat equity

(1) The program shall include rental opportunities for eligible families which will help expand the stock of affordable housing which is most appropriate for the target group.

(2) The use of the tenant's skilled or unskilled labor shall be encouraged in lieu of or as a supplement to rent payments by the tenant.

(e) "Self-help housing" defined

The term ''self-help housing'' means the same as in section 1490c of this title.

(f) Additional restrictions

The guidelines for the model program shall generally comport with the additional protections and restrictions specified under section 1490c of this title.

(Pub. L. 101–625, title II, § 255, Nov. 28, 1990, 104 Stat. 4121.)

ASSISTANCE FOR SELF-HELP HOUSING PROVIDERS

Pub. L. 104–120, § 11, Mar. 28, 1996, 110 Stat. 841, as amended by Pub. L. 105–276, title V, § 599E(a), Oct. 21, 1998, 112 Stat. 2663; Pub. L. 106–569, title II, § 202, Dec. 27, 2000, 114 Stat. 2951; Pub. L. 108–285, § 2, Aug. 2, 2004, 118 Stat. 917, provided that:

''(a) GRANT AUTHORITY.—The Secretary of Housing and Urban Development may, to the extent amounts are available to carry out this section and the requirements of this section are met, make grants for use in accordance with this section to national and regional organizations and consortia that have experience in providing or facilitating self-help housing homeownership opportunities.

''(b) GOALS AND ACCOUNTABILITY.—In making grants under this section, the Secretary shall take such actions as may be necessary to ensure that—

''(1) assistance provided under this section is used to facilitate and encourage innovative homeownership opportunities through the provision of self-help housing, under which the homeowner contributes a significant amount of sweat equity toward the construction of the new dwellings;

''(2) assistance provided under this section for land acquisition and infrastructure development results in the development of not less than 4,000 new dwellings;

''(3) the dwellings constructed in connection with assistance provided under this section are quality dwellings that comply with local building and safety codes and standards and are available at prices below the prevailing market prices;

''(4) the provision of assistance under this section establishes and fosters a partnership between the Federal Government and organizations and consortia, resulting in efficient development of affordable housing with minimal governmental intervention, limited governmental regulation, and significant involvement by private entities;

''(5) activities to develop housing assisted pursuant to this section involve community participation in which volunteers assist in the construction of dwellings; and

''(6) dwellings are developed in connection with assistance under this section on a geographically diverse basis, which includes areas having high housing costs, rural areas, and areas underserved by other homeownership opportunities that are populated by low-income families unable to otherwise afford housing.

If, at any time, the Secretary determines that the goals under this subsection cannot be met by providing assistance in accordance with the terms of this section, the Secretary shall immediately notify the applicable Committees in writing of such determination and any proposed changes for such goals or this section.

''(c) NATIONAL COMPETITION.—The Secretary shall select organizations and consortia referred to in subsection (a) to receive grants through a national competitive process, which the Secretary shall establish.

''(d) USE.—

''(1) PURPOSE.—Amounts from grants made under this section, including any recaptured amounts, shall be used only for eligible expenses in connection with developing new decent, safe, and sanitary nonluxury dwellings in the United States for families and persons who otherwise would be unable to afford to purchase a dwelling.

''(2) ELIGIBLE EXPENSES.—For purposes of paragraph (1), the term 'eligible expenses' means costs only for the following activities:

''(A) LAND ACQUISITION.—Acquiring land (including financing and closing costs), which may include reimbursing an organization, consortium, or affiliate, upon approval of any required environmental review, for nongrant amounts of the organization, consortium, or affiliate advanced before such review to acquire land.

''(B) INFRASTRUCTURE IMPROVEMENT.—Installing, extending, constructing, rehabilitating, or otherwise improving utilities and other infrastructure.

Such term does not include any costs for the rehabilitation, improvement, or construction of dwellings.

''(e) ESTABLISHMENT OF GRANT FUND.—

[1] So in original. The words ''the property'' probably should not appear.

[2] See References in Text note below.

''(1) IN GENERAL.—Any amounts from any grant made under this section shall be deposited by the grantee organization or consortium in a fund that is established by such organization or consortium for such amounts, administered by such organization or consortium, and available for use only for the purposes under subsection (d). Any interest, fees, or other earnings of the fund shall be deposited in the fund and shall be considered grant amounts for purposes of this section.

''(2) ASSISTANCE TO AFFILIATES.—Any organization or consortia that receives a grant under this section may use amounts in the fund established for such organization or consortia pursuant to paragraph (1) for the purposes under subsection (d) by providing assistance from the fund to local affiliates of such organization or consortia.

''(f) REQUIREMENTS FOR ASSISTANCE.—The Secretary may make a grant to an organization or consortium under subsection (a) only pursuant to—

''(1) an expression of interest by such organization or consortia to the Secretary for a grant for such purposes;

''(2) a determination by the Secretary that the organization or consortia has the capability and has obtained financial commitments (or has the capacity to obtain financial commitments) necessary to—

''(A) develop not less than 30 dwellings in connection with the grant amounts; and

''(B) otherwise comply with a grant agreement under subsection (i); and

''(3) a grant agreement entered into under subsection (i).

''[(g) Repealed. Pub. L. 105–276, title V, § 599E(a)(6), Oct. 21, 1998, 112 Stat. 2664.]

''(h) GEOGRAPHICAL DIVERSITY.—In making grants under subsection (a), the Secretary shall ensure that grants are provided and grant amounts are used in a manner that results in national geographic diversity among housing developed using grant amounts under this section.

''(i) GRANT AGREEMENT.—A grant under this section shall be made only pursuant to a grant agreement entered into by the Secretary and the organization or consortia receiving the grant, which shall—

''(1) require such organization or consortia to use grant amounts only as provided in this section;

''(2) provide for the organization or consortia to develop a specific and reasonable number of dwellings using the grant amounts, which number shall be established taking into consideration costs and economic conditions in the areas in which the dwellings will be developed, but in no case shall be less than 30;

''(3) require the organization or consortia to use the grant amounts in a manner that leverages other sources of funding (other than grants under this section), including private or public funds, in developing the dwellings;

''(4) require the organization or consortia to comply with the other provisions of this section;

''(5) provide that the Secretary shall recapture any grant amounts provided to the organization or consortia that are not used within 24 months after such amounts are first disbursed to the organization or consortia, except that such period shall be 36 months in the case of grant amounts from amounts made available for fiscal year 1996 to carry out this section, and in the case of a [sic] grant amounts provided to a local affiliate of the organization or consortia that is developing five or more dwellings in connection with such grant amounts; and

''(6) contain such other terms as the Secretary may require to provide for compliance with subsection (b) and the requirements of this section.

''(j) FULFILLMENT OF GRANT AGREEMENT.—If the Secretary determines that an organization or consortia awarded a grant under this section has not, within 24 months after grant amounts are first made available to the organization or consortia (or, in the case of grant amounts from amounts made available for fiscal year 1996 to carry out this section and grant amounts provided to a local affiliate of the organization or consortia that is developing five or more dwellings in connection with such grant amounts, within 36 months), substantially fulfilled the obligations under the grant agreement, including development of the appropriate number of dwellings under the agreement, the Secretary shall use any such undisbursed amounts remaining from such grant for other grants in accordance with this section.

''(k) RECORDS AND AUDITS.—During the period beginning upon the making of a grant under this section and ending upon close-out of the grant under subsection (*l*)—

''(1) the organization awarded the grant shall keep such records and adopt such administrative practices as the Secretary may require to ensure compliance with the provisions of this section and the grant agreement; and

''(2) the Secretary and the Comptroller General of the United States, and any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the grantee organization or consortia and its affiliates that are pertinent to the grant made under this section.

''(*l*) CLOSE-OUT.—The Secretary shall close out a grant made under this section upon determining that the aggregate amount of any assistance provided from the fund established under subsection (e)(1) by the grantee organization or consortium exceeds the amount of the grant. For purposes of this paragraph, any interest, fees, and other earnings of the fund shall be excluded from the amount of the grant.

''(m) ENVIRONMENTAL REVIEW.—A grant under this section shall be considered to be funds for a special project for purposes of section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 [42 U.S.C. 3547].

''(n) REPORT TO CONGRESS.—Not later than 90 days after close-out of all grants under this section is completed, the Secretary shall submit a report to the applicable Committees describing the grants made under this section, the grantees, the housing developed in connection with the grant amounts, and the purposes for which the grant amounts were used.

''(*o*) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) APPLICABLE COMMITTEES.—The term 'applicable Committees' means the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(2) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

''(3) UNITED STATES.—The term 'United States' includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

''(p) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2001.

''(q) REGULATIONS.—The Secretary shall issue any final regulations necessary to carry out this section not later than 30 days after the date of the enactment of this Act [Mar. 28, 1996]. The regulations shall take effect upon issuance and may not exceed, in length, 5 full pages in the Federal Register.''

[Pub. L. 105–276, title V, § 599E(b), Oct. 21, 1998, 112 Stat. 2664, provided that: ''Notwithstanding the amendments made by subsection (a) [amending section 11 of Pub. L. 104–120, set out above], any grant under section 11 of the Housing Opportunity Program Extension Act of 1996 [Pub. L. 104–120] (42 U.S.C. 12805 note) from amounts appropriated in fiscal year 1998 or any prior fiscal year shall be governed by the provisions of such section 11 as in effect immediately before the enact-

ment of this Act [Oct. 21, 1998], except that the amendments made by paragraphs (8) and (9) of subsection (a) of this section shall apply to such grants.'']

[Pub. L. 105–276, title V, § 599E(c), Oct. 21, 1998, 112 Stat. 2664, provided that: ''This section [amending section 11 of Pub. L. 104–120, set out above, and enacting provisions set out as a note above] shall take effect, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].'']

FUNDING FOR SELF-HELP HOUSING ASSISTANCE, NATIONAL CITIES IN SCHOOLS COMMUNITY DEVELOPMENT PROGRAM, AND CAPACITY BUILDING THROUGH NATIONAL COMMUNITY DEVELOPMENT INITIATIVE

Pub. L. 104–120, § 12, Mar. 28, 1996, 110 Stat. 845, provided that:

''(a) AUTHORITY TO USE ASSISTED HOUSING AMOUNTS.—To the extent and for the purposes specified in subsection (b), the Secretary of Housing and Urban Development may use amounts in the account of the Department of Housing and Urban Development known as the Annual Contributions for Assisted Housing account, but only such amounts which—

''(1) have been appropriated for a fiscal year that occurs before the fiscal year for which the Secretary uses the amounts; and

''(2) have been obligated before becoming available for use under this section.

''(b) FISCAL YEAR 1996.—Of the amounts described in subsection (a), $60,000,000 shall be available to the Secretary of Housing and Urban Development for fiscal year 1996 in the following amounts for the following purposes:

''(1) SELF-HELP HOUSING ASSISTANCE.—$40,000,000 for carrying out section 11 of this Act [set out above].

''(2) NATIONAL CITIES IN SCHOOLS COMMUNITY DEVELOPMENT PROGRAM.—$10,000,000 for carrying out section 930 of the Housing and Community Development Act of 1992 (Public Law 102–550; 106 Stat. 3887).

''(3) CAPACITY BUILDING THROUGH NATIONAL COMMUNITY DEVELOPMENT INITIATIVE.—$10,000,000 for carrying out section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note).''

§ 12806. Home repair services grants for older and disabled homeowners

(a) In general

The Secretary shall make available a model program to provide home repair services for older homeowners and disabled homeowners, including such services as the examination of homes, repair services, and follow-up to ensure the continued effectiveness of the repairs provided.

(b) Eligible recipients

Home repair services shall be provided to homeowners who—

(1) own and reside in the dwellings for which services are provided;

(2) are older or disabled; and

(3) are members of low-income families.

(c) Permitted restrictions

Guidelines for the model program shall require that—

(1) assisted dwelling units be the primary residence of the homeowner for whom services are provided;

(2) preferences be provided for (A) very low-income families, and (B) individuals with intense need characterized by noneconomic factors such as physical and mental disabilities, language barriers, and cultural, social, or geographical isolation caused by racial or ethnic status that restricts the ability of an individual to perform normal daily tasks or that threatens the capacity of the individual to live independently;

(3) any fees charged be based on the income of the individual receiving the home repair services.

(Pub. L. 101–625, title II, § 256, Nov. 28, 1990, 104 Stat. 4122.)

§ 12807. Low-income housing conservation and efficiency grant programs

(a) In general

The Secretary shall make available a model program to provide safe, energy-efficient affordable housing for low-income persons.

(b) Activities

The model program shall provide for—

(1) identification of housing that is—

(A) owned and occupied by low-income families who have received, are currently receiving, or are scheduled to receive assistance under the weatherization assistance for low-income persons program under part A of title IV of the Energy Conservation and Production Act [42 U.S.C. 6861 et seq.] (or a comparable Federal or State program);

(B) in danger of becoming uninhabitable within a 5-year period because of structural weaknesses or problems; and

(C) not sufficiently sound to permit energy conservation improvements without other repair or rehabilitation measures to protect such energy investments;

(2) repairs that will significantly prolong the habitability of units identified under paragraph (1), including roofing, electrical, plumbing, furnace, and foundation repairs or replacement that will prolong the use of the unit as a safe and energy-efficient residence for low-income persons; and

(3) reasonable steps to ensure that any units so repaired will remain occupied by persons or families eligible for assistance under this subchapter.

(Pub. L. 101–625, title II, § 257, Nov. 28, 1990, 104 Stat. 4122.)

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (b)(1)(A), is Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1142, as amended. Part A of title IV of the Act is classified generally to part A (§ 6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

§ 12808. Second mortgage assistance for first-time homebuyers

(a) In general

The Secretary shall make available a model program under which units of general local government provide loans (secured by second mortgages) with deferred payment of interest and principal to first-time homebuyers.

(b) Homeownership counseling

The program under this section shall provide for homeownership counseling to first-time homebuyers assisted, which shall include—

(1) counseling before and after purchase of the property;

(2) assisting first-time homebuyers in identifying the most suitable and affordable properties;

(3) providing homebuyers with financial management assistance;

(4) assisting homebuyers in understanding mortgage transactions and home sales contracts; and

(5) assisting homebuyers with eliminating any credit problems that may prevent the homebuyers from purchasing the property.

(c) Eligibility requirements

Deferred payment loans secured by second mortgages may be provided under the model program under this section if—

(1) the homebuyer assisted is a first-time homebuyer;

(2) the property secured by the second mortgage is a single-family residence and is the principal residence of the homebuyer; and

(3) the principal obligation of the deferred payment loan secured by a second mortgage does not exceed 30 percent of the acquisition price of the residence to the homebuyer.

(d) Payment terms

(1) Period of deferral

The payment of any principal and interest on a loan under this section shall be deferred for not less than the 5-year period beginning on the date of the acquisition of the residence by the homebuyer.

(2) Interest rate

The interest rate on the unpaid balance of a loan under this section shall be at least 4 percent.

(3) Repayment period

A deferred payment loan secured by a second mortgage shall be repayable over the 15-year period beginning at the end of the deferral period.

(e) Security

A deferred payment loan assisted with amount[1] provided under a grant under this section shall be secured by a lien on the property involved, which lien shall be subordinate to the first mortgage on the property.

(Pub. L. 101–625, title II, § 258, Nov. 28, 1990, 104 Stat. 4123.)

§ 12809. Rehabilitation of State and local government in rem properties

(a) In general

The Secretary shall make available a model program under which States and units of general local government may convert in rem properties to provide affordable permanent housing for the homeless by leasing such properties to nonprofit organizations and permitting such organizations to rehabilitate the properties.

(b) Target

The program shall target vacant properties for rehabilitation by nonprofit organizations.

[1] So in original. Probably should be ''amounts''.

(Pub. L. 101–625, title II, § 259, Nov. 28, 1990, 104 Stat. 4124.)

§ 12810. Cost-saving building technologies and construction techniques

(a) In general

The Secretary shall make available a model program to utilize cost-saving building technologies and construction techniques for purposes of providing homeownership and rental opportunities under this subchapter.

(b) Selection criteria

The Secretary shall establish criteria for participating jurisdictions to select projects for assistance under the model program which may include—

(1) the extent to which innovative, cost-saving building and construction technologies are utilized;

(2) the extent to which innovative, cost-saving construction techniques are utilized;

(3) the extent to which units will be made available to low-income families and individuals;

(4) the extent to which non-Federal public or private assistance is utilized; and

(5) any other factor, determined by the Secretary to be appropriate.

(c) Guidelines

The Secretary shall publish guidelines for the model program under this section not later than 180 days after October 28, 1992.

(d) Report

The Secretary shall submit a biennial report to the Congress on the utilization of the model program under this section.

(Pub. L. 101–625, title II, § 260, as added Pub. L. 102–550, title II, § 216, Oct. 28, 1992, 106 Stat. 3760.)

EFFECTIVE DATE

Section applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as an Effective Date of 1992 Amendment note under section 12704 of this title.

PART E—OTHER ASSISTANCE

AMENDMENTS

2003—Pub. L. 108–186, title I, § 102, Dec. 16, 2003, 117 Stat. 2686, amended heading generally. Prior to amendment, heading read ''Mortgage Credit Enhancement''.

§ 12821. Downpayment assistance initiative

(a) Definitions

In this section:

(1) Downpayment assistance

The term ''downpayment assistance'' means assistance to help a family acquire a principal residence.

(2) Home repairs

The term ''home repairs'' means capital improvements or repairs that—

(A) are identified in an appraisal or home inspection completed in conjunction with a home purchase; or

(B) are completed within 1 year of the purchase of a home, and are necessary to bring

the housing into compliance with health and safety housing codes of the unit of general local government in which the housing is located, including the remediation of lead paint or other home health hazards.

(3) Participating jurisdiction

The term ''participating jurisdiction'' means a State or unit of general local government designated under section 12746 of this title.

(4) State

The term ''State'' means any State of the United States and the District of Columbia.

(b) Grant authority

The Secretary may award grants to participating jurisdictions to assist low-income families to achieve homeownership, in accordance with this section.

(c) Eligible activities

(1) In general

(A) Downpayment assistance

Subject to subparagraph (B), grants awarded under this section may be used only for downpayment assistance toward the purchase of single family housing (including 1 to 4 unit family dwelling units, condominium units, cooperative units, and manufactured housing units which are located on land which is owned by the manufactured housing unit owner, owned as a cooperative, or is subject to a leasehold interest with a term equal to at least the term of the mortgage financing on the unit, and manufactured housing lots) by low-income families who are first-time home-buyers.

(B) Home repairs

Not more than 20 percent of the grant funds provided under subsection (d) of this section to a participating jurisdiction may be used to provide assistance to low-income, first-time home-buyers for home repairs.

(2) Limitations

(A) Amount of assistance

The amount of assistance provided to any low-income families under paragraph (1) shall not exceed the greater of—

(i) 6 percent of the purchase price of a single family housing unit; or

(ii) $10,000.

(B) Participation

A participating jurisdiction may not use any amount of a grant awarded under this section to provide funding to an entity or organization that provides downpayment assistance if the activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing.

(d) Formula allocation

(1) In general

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this section to each State that is a participating jurisdiction in an amount equal to a percentage of the total allocation that is equal to the percentage of the national total of low-income households residing in rental housing in the State, as determined on the basis of the most recent census data compiled by the Bureau of the Census.

(2) Participating jurisdictions other than States

(A) In general

Subject to subparagraph (B), for each fiscal year, of the amount allocated to each State under paragraph (1), the Secretary shall further allocate from such amount to each participating jurisdiction located within such State an amount equal to the percentage of the allocation made to the State under paragraph (1) that is equal to the percentage of the State-wide total of low-income households residing in rental housing in such participating jurisdiction, as determined on the basis of the most recent census data compiled by the Bureau of the Census.

(B) Limitation

(i) In general

Direct allocations made under subparagraph (A) shall be made to a local participating jurisdiction only if—

(I) the participating jurisdiction has a total population of 150,000 individuals or more, as determined on the basis of the most recent census data compiled by the Bureau of the Census; or

(II) the participating jurisdiction would receive an allocation of $50,000 or more.

(ii) Reversion

Any allocation that would have otherwise been made to a participating jurisdiction that does not meet the requirements of clause (i) shall revert back to the State in which the participating jurisdiction is located.

(e) Reallocation

If any amounts allocated to a participating jurisdiction under this section become available for reallocation, the amounts shall be reallocated to other participating jurisdictions in accordance with subsection (d) of this section.

(f) Applicability of other provisions

(1) In general

Except as otherwise provided in this section, grants made under this section shall not be subject to the provisions of this subchapter.

(2) Applicable provisions

In addition to the requirements of this section, grants made under this section shall be subject to the provisions of subchapter I of this chapter, sections 12745(b), 12748, 12749, 12751, 12753, 12754, and 12756(a) of part A of this subchapter, and part F of this subchapter.

(3) References

In applying the requirements of part A of this subchapter referred to in paragraph (2)—

(A) any references to funds under part A of this subchapter shall be considered to refer

to amounts made available for assistance under this section; and

(B) any references to funds allocated or reallocated under section 12747 or 12747(d) of this title shall be considered to refer to amounts allocated or reallocated under subsection (d) or (e) of this section, respectively.

(g) Housing strategy

To be eligible to receive a grant under this section in any fiscal year, a participating jurisdiction shall include in its comprehensive housing affordability strategy developed under section 12705 of this title for such fiscal year—

(1) a description of the anticipated use of any grant received under this section;

(2) a plan for conducting targeted outreach to residents and tenants of public housing, trailer parks, and manufactured housing, and to other families assisted by public housing agencies, for the purpose of ensuring that grant amounts provided under this section to a participating jurisdiction are used for downpayment assistance for such residents, tenants, and families; and

(3) a description of the actions to be taken to ensure the suitability of families receiving downpayment assistance under this section to undertake and maintain homeownership.

(h) Report

Not later than June 30, 2006, the Comptroller General of the United States shall submit a report containing a State-by-State analysis of the impact of grants awarded under this section to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

(i) Sunset

The Secretary shall have no authority to make grants under this Act after December 31, 2007.

(j) Relocation assistance and downpayment assistance

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894) [42 U.S.C. 4601 et seq.] shall not apply to downpayment assistance under this section.

(k) Authorization of appropriations

There is authorized to be appropriated to carry out this section $200,000,000 for each of fiscal years 2004 through 2007.

(Pub. L. 101–625, title II, § 271, Nov. 28, 1990, 104 Stat. 4124; Pub. L. 108–186, title I, § 102, Dec. 16, 2003, 117 Stat. 2686.)

REFERENCES IN TEXT

This Act, referred to in subsec. (i), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, as amended, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (j), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (§ 4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

AMENDMENTS

2003—Pub. L. 108–186 amended section generally. Prior to amendment, section required the Comptroller General to carry out a study of ways in which financing for affordable housing may be made available to assist in the most efficient implementation of comprehensive housing affordability strategies of participating jurisdictions and to submit to Congress and the Secretary, not later than one year after Nov. 28, 1990, a report containing any recommendations for legislative or administrative actions needed to improve the availability of mortgage finance for affordable housing.

PART F—GENERAL PROVISIONS

§ 12831. Equal opportunity

(a) Solicitation of contracts

Each participating jurisdiction shall prescribe procedures acceptable to the Secretary to establish and oversee a minority outreach program within each such jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts, entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction.

(b) Report to Congress

Before the end of the 180-day period beginning on the date the first allocation of funds is made under section 12747 of this title, the Secretary shall submit to the Congress a report containing a description of the actions taken by each participating jurisdiction pursuant to subsection (a) of this section and such recommendations for administrative and legislative action as the Secretary may determine to be appropriate to carry out the purposes of such subsection.

(Pub. L. 101–625, title II, § 281, Nov. 28, 1990, 104 Stat. 4125.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

§ 12832. Nondiscrimination

No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of

title 29 shall also apply to any such program or activity. The Secretary may waive this section in connection with the use of funds made available under this subchapter on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

(Pub. L. 101–625, title II, § 282, Nov. 28, 1990, 104 Stat. 4125; Pub. L. 104–204, title II, § 213, Sept. 26, 1996, 110 Stat. 2904.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in text, is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Hawaiian Homes Commission Act, 1920, referred to in text, is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code.

AMENDMENTS

1996—Pub. L. 104–204 inserted at end ''The Secretary may waive this section in connection with the use of funds made available under this subchapter on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).''

§ 12833. Audits by Comptroller General

(a) Audits of HOME Investment Partnerships program

The Comptroller General, when the Comptroller General deems it to be appropriate or when requested by the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Banking, Finance and Urban Affairs of the House of Representatives, shall conduct a full financial audit of the records of the HOME Investment Partnerships program for any fiscal year. The report of the Comptroller General shall be submitted promptly to the Secretary and the Congress and shall be published.

(b) Audits of recipients

The financial transactions of participating jurisdictions and of other recipients of funds provided under this subchapter may, insofar as they relate to funds provided under this subchapter, be audited by the Government Accountability Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the Government Accountability Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(Pub. L. 101–625, title II, § 283, Nov. 28, 1990, 104 Stat. 4125; Pub. L. 103–233, title II, § 205, Apr. 11, 1994, 108 Stat. 364; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in two places.

1994—Pub. L. 103–233, § 205(1), substituted ''Audits by Comptroller General'' for ''Annual audits and accountability'' in section catchline.

Subsec. (a). Pub. L. 103–233, § 205(4), struck out after first sentence ''The initiation of an audit for a fiscal year under the previous sentence shall obviate the requirement for an audit by an independent accounting firm under paragraph (a) for that fiscal year.''

Pub. L. 103–233, § 205(3)(B), (C), redesignated subsec. (b)(1) as (a) and realigned margins.

Pub. L. 103–233, § 205(2), struck out heading and text of subsec. (a). Text read as follows: ''The Secretary, except as provided in paragraph (b)(1), shall contract annually with an independent accounting firm to provide for a full financial audit of the records of the HOME Investment Partnerships program for each fiscal year. Funds available for departmental administration may be used to provide for such audits. Each audit shall be performed as soon as practicable after the close of the fiscal year and in accordance with generally accepted Government auditing standards approved by the Comptroller General of the United States (hereinafter referred to as the 'Comptroller General'), and shall be consistent with the requirements of sections 9105 and 9106 of title 31. The Secretary shall promptly submit the report of the independent accounting firm to the Congress, consistent with the requirements of section 9106 of title 31, and such report shall be published. The requirement for an audit under this section shall be in lieu of the requirement for an audit by the Comptroller General under section 9105(a) of title 31.''

Subsec. (b). Pub. L. 103–233, § 205(3), struck out heading ''AUDITS BY THE COMPTROLLER GENERAL.—'', redesignated subsec. (b)(2) as (b), and realigned margins.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

§ 12834. Uniform recordkeeping and reports to Congress

(a) Uniform requirements

The Secretary shall develop and establish uniform recordkeeping, performance reporting, and auditing requirements for use by participating jurisdictions.

(b) Omitted

(Pub. L. 101–625, title II, § 284, Nov. 28, 1990, 104 Stat. 4126.)

CODIFICATION

Subsec. (b) of this section, which required the Secretary to make an annual report to Congress that summarizes and assesses the results of reports provided under this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money

and Finance. See, also, the 3rd item on page 102 of House Document No. 103–7.

§ 12835. Citizen participation

The Secretary shall ensure that each participating jurisdiction, and each jurisdiction seeking to become a participating jurisdiction, complies with the requirements of section 12707 of this title.

(Pub. L. 101–625, title II, § 285, Nov. 28, 1990, 104 Stat. 4126.)

§ 12836. Labor

(a) In general

Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this part shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141–3144, 3146, and 3147 of title 40, shall be paid to all laborers and mechanics employed in the development of affordable housing involved, and participating jurisdictions shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

(b) Waiver

Subsection (a) of this section shall not apply if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction work.

(Pub. L. 101–625, title II, § 286, Nov. 28, 1990, 104 Stat. 4126.)

CODIFICATION

In subsec. (a), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act (40 U.S.C. 276a—276a–5)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 12837. Interstate agreements

The consent of the Congress is hereby given to any two or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this subchapter as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

(Pub. L. 101–625, title II, § 287, Nov. 28, 1990, 104 Stat. 4127.)

§ 12838. Environmental review

(a) In general

In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this subchapter, and to assure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may under regulations provide for the release of funds for particular projects to jurisdictions or insular areas under this subchapter who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were he to undertake such projects as Federal projects. The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality. The regulations shall provide—

(1) for the monitoring of the environmental reviews performed under this section;

(2) in the discretion of the Secretary, to facilitate training for the performance of such reviews; and

(3) for the suspension or termination of the assumption under this section.

The Secretary's duty under the preceding sentence shall not be construed to limit or reduce any responsibility assumed by a State or unit of general local government with respect to any particular release of funds.

(b) Procedure

The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, at least 15 days prior to such approval and prior to any commitment of funds to such projects[1] the jurisdiction or insular area has submitted to the Secretary a request for such release accompanied by a certification which meets the requirements of subsection (c) of this section. The Secretary's approval of any such certification shall be deemed to satisfy his responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto which are covered by such certification.

(c) Certification

A certification under the procedures authorized by this section shall—

(1) be in a form acceptable to the Secretary,

(2) be executed by the chief executive officer or other officer of the recipient of assistance under this subchapter qualified under regulations of the Secretary,

(3) specify that the recipient of assistance under this subchapter has fully carried out its responsibilities as described under subsection (a) of this section, and

(4) specify that the certifying officer (A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to subsection (a) of this

[1] So in original. Probably should be followed by a comma.

section, and (B) is authorized and consents on behalf of the jurisdiction or insular area and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(d) Assistance to units of general local government from a State

In the case of assistance to units of general local government from a State, the State shall perform those actions of the Secretary described in subsection (b) of this section and the performance of such actions shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of such subsection.

(Pub. L. 101–625, title II, § 288, Nov. 28, 1990, 104 Stat. 4127; Pub. L. 103–233, title II, § 206, Apr. 11, 1994, 108 Stat. 365; Pub. L. 104–330, title V, § 505(a)(2), Oct. 26, 1996, 110 Stat. 4044.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a), (b), and (c)(4), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–330, § 505(a)(2)(A), struck out '', Indian tribes,'' after ''projects to jurisdictions'' in introductory provisions.

Subsecs. (b), (c)(4). Pub. L. 104–330, § 505(a)(2)(B), (C), struck out '', Indian tribe,'' after ''the jurisdiction''.

1994—Subsec. (a). Pub. L. 103–233, § 206(1), substituted ''jurisdictions, Indian tribes, or insular areas'' for ''participating jurisdictions'' and inserted before period at end ''The regulations shall provide—

''(1) for the monitoring of the environmental reviews performed under this section;

''(2) in the discretion of the Secretary, to facilitate training for the performance of such reviews; and

''(3) for the suspension or termination of the assumption under this section.

The Secretary's duty under the preceding sentence shall not be construed to limit or reduce any responsibility assumed by a State or unit of general local government with respect to any particular release of funds.''

Subsec. (b). Pub. L. 103–233, § 206(2), substituted ''jurisdiction, Indian tribe, or insular area'' for ''participating jurisdiction''.

Subsec. (c)(4)(B). Pub. L. 103–233, § 206(3), substituted ''jurisdiction, Indian tribe, or insular area'' for ''participating jurisdiction''.

Subsec. (d). Pub. L. 103–233, § 206(4), substituted ''Assistance to units of general local government from a State'' for ''Assistance to a State'' in heading and ''In the case of assistance to units of general local government from a State'' for ''In the case of assistance to States'' in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 505(b) of Pub. L. 104–330, set out as a note under section 12747 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

§ 12839. Termination of existing housing programs

(a) In general

Except with respect to projects and programs for which binding commitments have been entered into prior to October 1, 1991, no new grants or loans shall be made after October 1, 1991, under—

(1) section 17 of the United States Housing Act of 1937 [42 U.S.C. 1437*o*];

(2) section 312 of the Housing Act of 1964 [42 U.S.C. 1452b];

(3) title VI of the Housing and Community Development Act of 1987;

(4) section 8(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(e)(2)], except for funds allocated under such section for single room occupancy dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.]; and

(5) section 810 of the Housing and Community Development Act of 1974 [12 U.S.C. 1706e].

(b) Repeals

(1) In general

Except as provided in paragraph (2), effective on October 1, 1991, the provisions of law referred to in subsection (a) of this section are repealed.

(2) No effect on SRO program

The provision of law referred to in subsection (a)(4) of this section shall remain in effect with respect to single room occupancy dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.].

(c) Disposition of repayments

Any amounts received on or after October 1, 1991, as repayments or recaptures in connection with the programs referred to in subsection (a) of this section and any other amounts for such programs that remain or become unobligated on or after such date, shall be paid into the general fund of the Treasury.

(Pub. L. 101–625, title II, § 289, Nov. 28, 1990, 104 Stat. 4128; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

Title VI of the Housing and Community Development Act of 1987 [Pub. L. 100–242], referred to in subsec. (a)(3), is set out as a note under section 1715*l* of Title 12, Banks and Banking.

The McKinney-Vento Homeless Assistance Act, referred to in subsecs. (a)(4), (b)(2), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended. Title IV of the Act is classified principally to subchapter IV (§ 11361 et seq.) of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2000—Subsecs. (a)(4), (b)(2). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

§ 12840. Suspension of requirements for disaster areas

For funds designated under this subchapter by a recipient to address the damage in an area for which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170 et seq.], the Secretary may suspend all statutory requirements for purposes of assistance under this subchapter for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and low-income housing affordability.

(Pub. L. 101–625, title II, § 290, as added Pub. L. 103–233, title II, § 208, Apr. 11, 1994, 108 Stat. 366.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended. Title IV of the Act is classified generally to subchapter IV (§ 5170 et seq.) of chapter 68 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

EFFECTIVE DATE

Section applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out this section not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as an Effective Date of 1994 Amendment note under section 5301 of this title.

SUBCHAPTER III—NATIONAL HOMEOWNERSHIP TRUST DEMONSTRATION

§ 12851. National Homeownership Trust

(a) Establishment

There is established the National Homeownership Trust, which shall be in the Department of Housing and Urban Development and shall provide assistance to first-time homebuyers in accordance with this subchapter.

(b) Board of Directors

The Trust shall be governed by a Board of Directors, which shall be composed of—

(1) the Secretary of Housing and Urban Development, who shall be the chairperson of the Board;

(2) the Secretary of the Treasury;

(3) the chairperson of the Board of Directors of the Federal Deposit Insurance Corporation;

(4) the chairperson of the Federal Housing Finance Board;

(5) the chairperson of the Board of Directors of the Federal National Mortgage Association;

(6) the chairperson of the Board of Directors of the Federal Home Loan Mortgage Corporation; and

(7) 1 individual representing consumer interests, who shall be appointed by the President of the United States, by and with the advice and consent of the Senate.

(c) Powers of Trust

The Trust shall have the same powers as the powers given the Government National Mortgage Association in section 1723a(a) of title 12.

(d) Travel and per diem

Members of the Board of Directors shall receive no additional compensation by reason of service on the Board, but shall be allowed travel expenses, including per diem in lieu of subsistence, as provided for employees of the Federal Government or in the same manner as persons employed intermittently in the Government service are allowed under section 5703 of title 5, as appropriate.

(e) Director and staff

(1) Director

The Board of Directors may appoint an executive director of the Trust and fix the compensation of the executive director, which shall be paid from amounts in the National Homeownership Trust Fund.

(2) Staff

Subject to such rules as the Board of Directors may prescribe, the Trust may appoint and hire such staff and provide for offices as may be necessary to carry out its duties. The Trust may fix the compensation of the staff, which shall be paid from amounts in the National Homeownership Trust Fund.

(Pub. L. 101–625, title III, § 302, Nov. 28, 1990, 104 Stat. 4129.)

SHORT TITLE

For short title of this subchapter as the ''National Homeownership Trust Act'', see Short Title note set out under section 12701 of this title.

§ 12852. Assistance for first-time homebuyers

(a) In general

The Trust shall provide assistance payments for first-time homebuyers (including homebuyers buying shares in limited equity cooperatives) in the following manners:

(1) Interest rate buydowns

Assistance payments so that the rate of interest payable on the mortgages by the homebuyers does not exceed 6 percent.

(2) Downpayment assistance

Assistance payments to provide amounts for downpayments (including closing costs and other costs payable at the time of closing) on mortgages for such homebuyers.

(3) Assistance in connection with mortgage revenue bonds financing

Interest rate buydowns and downpayment assistance in the manner provided in subsection (e) of this section.

(4) Second mortgage assistance

Assistance payments to provide loans (secured by second mortgages) with deferred payment of interest and principal; and[1]

(5) Capitalization of revolving loan funds

Grants to public organizations or agencies to establish revolving loan funds to provide homeownership assistance to eligible first-time homebuyers consistent with the requirements of this subchapter. Such grants shall be

[1] So in original. The ''; and'' probably should be a period.

matched by an equal amount of local investment in such revolving loan funds. Any proceeds or repayments from loans made under this paragraph shall be returned to the revolving loan fund established under this paragraph to be used for purposes related to this section.

(b) Eligibility requirements

Assistance payments under this subchapter may be made only to homebuyers and for mortgages meeting the following requirements:

(1) First-time homebuyer

The homebuyer is an individual who—

(A) (and whose spouse) has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the property with respect to which assistance payments are made under this subchapter;

(B) is a displaced homemaker who, except for owning a home with his or her spouse or residing in a home owned by the spouse, meets the requirements of subparagraph (A);

(C) is a single parent who, except for owning a home with his or her spouse or residing in a home owned by the spouse while married, meets the requirements of subparagraph (A); or

(D) meets the requirements of subparagraph (A), (B), or (C), except for owning, as a principal residence, a dwelling unit whose structure is—

(i) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations; or

(ii) not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

(2) Maximum income of homebuyer

The aggregate annual income of the homebuyer and the members of the family of the homebuyer residing with the homebuyer, for the 12-month period preceding the date of the application of the homebuyer for assistance under this subchapter, does not exceed—

(A) 95 percent of the median income for a family of 4 persons (adjusted by family size) in the applicable metropolitan statistical area (or such other area that the Board of Directors determines for areas outside of metropolitan statistical areas); or

(B) 115 percent of such median income (adjusted by family size) in the case of an area that is subject to a high cost area mortgage limit under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

The Board of Directors shall provide for certification of such income for purposes of initial eligibility for assistance payments under this subchapter and shall provide for recertification of homebuyers (and families of homebuyers) so assisted not less than every 2 years thereafter.

(3) Certification

The homebuyer (and spouse, where applicable) shall certify that the homebuyer has made a good faith effort to obtain a market rate mortgage and has been denied because the annual income of the homebuyer and the members of the family of the homebuyer residing with the homebuyer is insufficient.

(4) Principal residence

The property securing the mortgage is a single-family residence or unit in a cooperative and is the principal residence of the homebuyer.

(5) Maximum mortgage amount

The principal obligation of the mortgage does not exceed the principal amount that could be insured with respect to the property under the National Housing Act [12 U.S.C. 1701 et seq.].

(6) Maximum interest rate

The interest payable on the mortgage is established at a fixed rate that does not exceed a maximum rate of interest established by the Trust taking into consideration prevailing interest rates on similar mortgages.

(7) Responsible mortgagee

The mortgage has been made to, and is held by, a mortgagee that is federally insured or that is otherwise approved by the Trust as responsible and able to service the mortgage properly.

(8) Minimum downpayment

For a first-time homebuyer to receive downpayment assistance under subsection (a)(2) of this section, the homebuyer shall have paid not less than 1 percent of the cost of acquisition of the property (excluding any mortgage insurance premium paid at the time the mortgage is insured), as such cost is estimated by the Board of Directors.

(c) Terms of assistance

(1) Security

Assistance payments under this subchapter shall be secured by a lien on the property involved. The lien shall be subordinate to all mortgages existing on the property on the date on which the first assistance payment is made.

(2) Repayment upon sale

Assistance payments under this subchapter shall be repayable from the net proceeds of the sale, without interest, upon the sale of the property for which the assistance payments are made. If the sale results in no net proceeds or the net proceeds are insufficient to repay the amount of the assistance payments in full, the Board of Directors shall release the lien to the extent that the debt secured by the lien remains unpaid.

(3) Repayment upon increased income

If the aggregate annual income of the homebuyer (and family of the homebuyer) assisted under this subchapter exceeds the applicable maximum income allowable under subsection (b)(2) of this section for any 2-year period after such assistance is provided, the Board of Directors may provide for the repayment, on a monthly basis, of all or a portion of such as-

sistance payments, based on the amount of assistance provided and the income of the homebuyer (and family of the homebuyer).

(4) Repayment if property ceases to be principal residence

If the property for which assistance payments are made ceases to be the principal residence of the first-time homebuyer (or the family of the homebuyer), the Board of Directors may provide for the repayment of all or a portion of the assistance payments.

(5) Available assistance

The Trust may make assistance payments under paragraphs (1) and (2) of subsection (a) of this section with respect to a single mortgage of an eligible homebuyer.

(d) Allocation formula

Amounts available in any fiscal year for assistance under this subchapter shall be allocated for homebuyers in each State on the basis of the need of eligible first-time homebuyers in each State for such assistance in comparison with the need of eligible first-time homebuyers for such assistance among all States.

(e) Assistance in connection with housing financed with mortgage revenue bonds

(1) Authority

The Trust shall provide assistance for first-time homebuyers in the form of interest rate buydowns and downpayment assistance under this subsection. Such assistance shall be available only with respect to mortgages for the purchase of residences (A) financed with the proceeds of a qualified mortgage bond (as such term is defined in section 143 of title 26), or (B) for which a credit is allowable under section 25 of title 26.

(2) Eligibility

To be eligible for assistance under this subsection, homebuyers and mortgages shall also meet the requirements under subsection (b) of this section, except that—

(A) the certification under subsection (b)(3) of this section shall not be required for assistance under this subsection;

(B) the provisions of subsection (b)(2) of this section shall not apply to assistance under this section; and

(C) the aggregate income of the homebuyer and the members of the family of the homebuyer residing with the homebuyer, for the 12-month period preceding the date of the application of the homebuyer for assistance under this subsection, shall not exceed 80 percent of the median income for a family of 4 persons (as adjusted for family size) in the applicable metropolitan statistical area.

(3) Limitation of assistance

Notwithstanding subsection (a) of this section, assistance payments for first-time homebuyers under this subsection shall be provided in the following manners:

(A) Interest rate buydowns

Assistance payments to decrease the rate of interest payable on the mortgages by the homebuyers, in an amount not exceeding—

(i) in the first year of the mortgage, 2.0 percent of the total principal obligation of the mortgage;

(ii) in the second year of the mortgage, 1.5 percent of the total principal obligation of the mortgage;

(iii) in the third year of the mortgage, 1.0 percent of the total principal obligation of the mortgage; and

(iv) in the fourth year of the mortgage, 0.5 percent of the total principal obligation of the mortgage.

(B) Downpayment assistance

Assistance payments to provide amounts for downpayments on mortgages by the homebuyers, in an amount not exceeding 2.5 percent of the principal obligation of the mortgage.

(3)[2] Availability

The Trust may make assistance payments under subparagraphs (A) and (B) of paragraph (3) with respect to a single mortgage of a homebuyer.

(Pub. L. 101–625, title III, § 303, Nov. 28, 1990, 104 Stat. 4130; Pub. L. 102–550, title I, § 182(c)–(e), Oct. 28, 1992, 106 Stat. 3737, 3738.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(2)(B), (5), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. Title II of the Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–550, § 182(c)(2), added par. (3).

Subsec. (a)(4), (5). Pub. L. 102–550, § 182(e), added pars. (4) and (5).

Subsec. (b)(1)(D). Pub. L. 102–550, § 182(d), added subpar. (D).

Subsec. (e). Pub. L. 102–550, § 182(c)(1), added subsec. (e).

§ 12853. National Homeownership Trust Fund

(a) Establishment

There is established in the Treasury of the United States a revolving fund, to be known as the National Homeownership Trust Fund.

(b) Assets

The Fund shall consist of—

(1) any amount approved in appropriation Acts under section 12857 of this title for purposes of carrying out this subchapter;

(2) any amount received by the Trust as repayment for payments made under this subchapter; and

(3) any amount received by the Trust under subsection (d) of this section.

(c) Use of amounts

The Fund shall, to the extent approved in appropriations Acts, be available to the Trust for purposes of carrying out this subchapter.

(d) Investment of excess amounts

Any amounts in the Fund determined by the Trust to be in excess of the amounts currently

[2] So in original. Probably should be "(4)".

required to carry out the provisions of this subchapter shall be invested by the Trust in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

(e) Demonstration programs

Using not more than $20,000,000 of any amounts appropriated for the Fund under section 12857 of this title in fiscal year 1991, the Secretary shall carry out demonstration programs for combining housing activities and economic development activities, as follows:

(1) In Milwaukee, Wisconsin, in an amount not to exceed $4,200,000, for development, rehabilitation, and revitalization of 2 vacant structures in a blighted minority neighborhood.

(2) In Washington, District of Columbia, in an amount not to exceed $10,000,000, for nonprofit neighborhood-based groups to acquire and rehabilitate vacant public and private housing for resale or rent to low- and moderate-income families and to the extent of and subject to engage in neighborhood-based economic development activities.

(3) In Philadelphia, Pennsylvania, in an amount not to exceed $1,000,000, for technical assistance and organizational support for a community development corporation that is a city-wide public/private partnership engaged in the provision of technical assistance to neighborhood community development corporations.

(4) In other areas, as the Secretary may determine.

(Pub. L. 101–625, title III, § 304, Nov. 28, 1990, 104 Stat. 4132.)

§ 12854. Definitions

For purposes of this subchapter:

(1) Board of Directors

The term ''Board of Directors'' or ''Board'' means the Board of Directors of the National Homeownership Trust under section 12851(b) of this title.

(2) Displaced homemaker

The term ''displaced homemaker'' means an individual who—

(A) is an adult;

(B) has not worked full-time full-year in the labor force for a number of years, but has during such years, worked primarily without remuneration to care for the home and family; and

(C) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(3) Fund

The term ''Fund'' means the National Homeownership Trust Fund established in section 12853 of this title.

(4) Single parent

The term ''single parent'' means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(5) State

The term ''State'' means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(6) Trust

The term ''Trust'' means the National Homeownership Trust established in section 12851 of this title.

(Pub. L. 101–625, title III, § 305, Nov. 28, 1990, 104 Stat. 4132.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 12855. Regulations

The Board of Directors shall issue any regulations necessary to carry out this subchapter.

(Pub. L. 101–625, title III, § 306, Nov. 28, 1990, 104 Stat. 4133.)

§ 12856. Report

The Board of Directors shall submit to the Congress, not later than the expiration of the 90-day period beginning on the date of the termination of the Trust under section 12859 of this title, a report containing a description of the activities of the Trust and an analysis of the effectiveness of the Trust in assisting first-time homebuyers.

(Pub. L. 101–625, title III, § 307, Nov. 28, 1990, 104 Stat. 4133.)

§ 12857. Authorization of appropriations

There are authorized to be appropriated for assistance payments under this subchapter $520,665,600 for fiscal year 1993 and $542,533,555 for fiscal year 1994, of which such sums as may be necessary shall be available in each such fiscal year for use under section 12852(e) of this title. Any amount appropriated under this section shall be deposited in the Fund and shall remain available until expended, subject to the provisions of section 12858[1] of this title.

(Pub. L. 101–625, title III, § 308, Nov. 28, 1990, 104 Stat. 4133; Pub. L. 102–550, title I, § 182(b), Oct. 28, 1992, 106 Stat. 3736.)

REFERENCES IN TEXT

Section 12858 of this title, referred to in text, was in the original ''section 311'', and was translated as reading ''section 309'', meaning section 309 of Pub. L. 101–625, to reflect the probable intent of Congress, because Pub. L. 101–625 does not contain a section 311.

AMENDMENTS

1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows: ''There are au-

[1] See References in Text note below.

thorized to be appropriated to carry out this subchapter $250,000,000 for fiscal year 1991 and $521,500,000 for fiscal year 1992. Any amount appropriated under this section shall be deposited in the Fund and remain available until expended, subject to the provisions of section 12858 of this title.''

§ 12858. Transition

(a) Authority of Secretary

Upon the termination of the Trust as provided in section 12859 of this title, the Secretary of Housing and Urban Development shall exercise any authority of the Board of Directors and the Trust in accordance with the provisions of this subchapter as may be necessary to provide for the conclusion of the outstanding affairs of the Trust.

(b) Applicability of Trust provisions

Any assistance under this subchapter shall, after termination of the Trust, be subject to the provisions of this subchapter that would have applied to such assistance if the termination had not occurred.

(c) Certification of Fund to Treasury

Upon a determination by the Secretary of Housing and Urban Development that the National Homeownership Trust Fund is no longer necessary, the Secretary shall certify any amounts remaining in the Fund to the Secretary of the Treasury and the Secretary of the Treasury shall deposit into the general fund of the Treasury as miscellaneous receipts any amounts remaining in the Fund.

(Pub. L. 101–625, title III, § 309, Nov. 28, 1990, 104 Stat. 4133.)

§ 12859. Termination

The Trust shall terminate September 30, 1994.

(Pub. L. 101–625, title III, § 310, Nov. 28, 1990, 104 Stat. 4133; Pub. L. 102–550, title I, § 182(a), Oct. 28, 1992, 106 Stat. 3736.)

AMENDMENTS

1992—Pub. L. 102–550 substituted ''September 30, 1994'' for ''on September 30, 1993''.

SUBCHAPTER IV—HOPE FOR HOMEOWNERSHIP OF MULTIFAMILY AND SINGLE FAMILY HOMES

§ 12870. Authorization of appropriations

(a) Fiscal year 1993

There are authorized to be appropriated for grants under this title[1] $855,000,000 for fiscal year 1993, of which—

(1) $285,000,000 shall be available for activities authorized under title III of the United States Housing Act of 1937 [42 U.S.C. 1437aaa et seq.], of which up to $4,500,000 of any amounts appropriated may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this[2] title;

(2) $285,000,000 shall be available for activities authorized under part A of this subchapter, of which up to $3,250,000 of any amounts appropriated may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this[2] part; and

(3) $285,000,000 shall be available for activities under part B of this subchapter, of which up to $2,250,000 of any amounts appropriated may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this[2] part.

Any amount appropriated pursuant to this subsection shall remain available until expended.

(b) Fiscal year 1994

There are authorized to be appropriated for grants under this title[1] $883,641,000 for fiscal year 1994, of which—

(1) $294,547,000 shall be available for activities authorized under title III of the United States Housing Act of 1937 [42 U.S.C. 1437aaa et seq.], up to $4,500,000 of which may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this[2] title;

(2) $294,547,000 shall be available for activities authorized under part A of this subchapter, up to $3,250,000 of which may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this[2] part; and

(3) $294,547,000 shall be available for activities under part B of this subchapter, up to $2,250,000 of which may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this[2] part.

Any amount appropriated pursuant to this subsection shall remain available until expended.

(c) Technical assistance

Technical assistance made available under title III of the United States Housing Act of 1937 [42 U.S.C. 1437aaa et seq.] or part A of this subchapter or part B of this subchapter may include, but shall not be limited to, training, clearinghouse services, the collection, processing and dissemination of program information useful for local and national program management, and provision of seed money. Such technical assistance may be made available directly, or indirectly under contracts and grants, as appropriate. In any fiscal year, no single applicant, potential applicant, or recipient under title III of the United States Housing Act of 1937, or part A of this subchapter or part B of this subchapter may receive technical assistance in an amount exceeding 20 percent of the total amount made available for technical assistance under such title or part for the fiscal year.

(Pub. L. 101–625, title IV, § 402, as added Pub. L. 102–550, title I, § 181(a)(1), Oct. 28, 1992, 106 Stat. 3734; amended Pub. L. 109–281, § 2(d)(3), Sept. 22, 2006, 120 Stat. 1181.)

REFERENCES IN TEXT

This title, referred to in introductory provisions of subsecs. (a) and (b), is title IV of Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4148, known as the Homeownership and Opportunity Through HOPE Act, which enacted

[1] See References in Text note below.

[2] So in original. Probably should be ''such''.

this subchapter and subchapter II–A (§ 1437aaa et seq.) of chapter 8 of this title, amended sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, Banks and Banking, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of title IV to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

The United States Housing Act of 1937, referred to in subsecs. (a)(1), (b)(1), and (c), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653. Title III of the Act is classified generally to subchapter II–A (§ 1437aaa et seq.) of chapter 8 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–281 struck out the second sentence, which read as follows: ''Of the amounts appropriated pursuant to this subsection, up to $40,000,000, but not less than 5 percent, shall be available for activities authorized under part C of this subchapter.''

Subsec. (b). Pub. L. 109–281 struck out the second sentence, which read as follows: ''Of the amounts appropriated pursuant to this subsection, up to $41,680,000, but not less than 5 percent, shall be available for activities authorized under part C of this subchapter.''

GAO AUDIT OF TECHNICAL ASSISTANCE CONTRACTS

Section 181(a)(3) of Pub. L. 102–550 provided that: ''The Comptroller General of the United States shall conduct an audit of all of the technical assistance contracts awarded for fiscal years 1993 and 1994 pursuant to section 402 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12870]. The Comptroller General shall submit a report to the Congress describing the results of such audit not later than September 30, 1994.''

PART A—HOPE FOR HOMEOWNERSHIP OF MULTIFAMILY UNITS

§ 12871. Program authority

(a) In general

The Secretary is authorized to make—

(1) planning grants to enable applicants to develop homeownership programs; and

(2) implementation grants to enable applicants to carry out homeownership programs.

(b) Authority to reserve housing assistance

In connection with a grant under this part, the Secretary may reserve authority to provide assistance under section 1437f of this title to the extent necessary to provide rental assistance for a nonpurchasing tenant who resides in the project on the date the Secretary approves the application for an implementation grant, for use by the tenant in another project.

(Pub. L. 101–625, title IV, § 421, Nov. 28, 1990, 104 Stat. 4162; Pub. L. 102–550, title I, § 181(a)(2)(B)(i), Oct. 28, 1992, 106 Stat. 3735.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), was in the original ''this subtitle'', meaning subtitle B (§§ 421–431) of title IV of Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4162, which enacted this part and amended section 1709 of Title 12, Banks and Banking.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–550 struck out subsec. (c) which read as follows: ''AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for grants under this part $51,000,000 for fiscal year 1991 and $280,000,000 for fiscal year 1992. Any amounts appropriated pursuant to this subsection shall remain available until expended.''

§ 12872. Planning grants

(a) Grants

The Secretary is authorized to make planning grants to applicants for the purpose of developing homeownership programs under this part. The amount of a planning grant under this section may not exceed $200,000, except that the Secretary may for good cause approve a grant in a higher amount.

(b) Eligible activities

Planning grants may be used for activities to develop homeownership programs (which may include programs for cooperative ownership), including—

(1) development of resident management corporations and resident councils;

(2) training and technical assistance of applicants related to the development of a specific homeownership program;

(3) studies of the feasibility of a homeownership program;

(4) inspection for lead-based paint hazards, as required by section 4822(a) of this title;

(5) preliminary architectural and engineering work;

(6) tenant and homebuyer counseling and training;

(7) planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency for homebuyers and homeowners under the homeownership program;

(8) development of security plans; and

(9) preparation of an application for an implementation grant under this part.

(c) Application

(1) Form and procedures

An application for a planning grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for a planning grant, specifying the activities proposed to be carried out, the schedule for completing the activities, the personnel necessary to complete the activities, and the amount of the grant requested;

(B) a description of the applicant and a statement of its qualifications;

(C) identification and description of the eligible property involved, and a description of the composition of the tenants, including family size and income;

(D) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is

located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(E) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall, by regulation, establish selection criteria for a national competition for assistance under this section, which shall include—

(1) the qualifications or potential capabilities of the applicant;

(2) the extent of tenant interest in the development of a homeownership program for the property;

(3) the potential of the applicant for developing a successful and affordable homeownership program and the suitability of the property for homeownership;

(4) national geographic diversity among housing for which applicants are selected to receive assistance; and

(5) such other factors that the Secretary shall require that (in the determination of the Secretary) are appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(Pub. L. 101–625, title IV, § 422, Nov. 28, 1990, 104 Stat. 4162; Pub. L. 102–550, title X, § 1012(i)(1), Oct. 28, 1992, 106 Stat. 3906.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (c)(2)(E), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(E), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(E), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(4) to (9). Pub. L. 102–550 added par. (4) and redesignated former pars. (4) to (8) as (5) to (9), respectively.

§ 12873. Implementation grants

(a) Grants

The Secretary is authorized to make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this part.

(b) Eligible activities

Implementation grants may be used for activities to carry out homeownership programs (including programs for cooperative ownership), including the following activities:

(1) Architectural and engineering work.

(2) Acquisition of the eligible property for the purpose of transferring ownership to eligible families in accordance with a homeownership program that meets the requirements under this part.

(3) Rehabilitation of any property covered by the homeownership program, in accordance with standards established by the Secretary.

(4) Abatement of lead-based paint hazards, as required by section 4822(a) of this title.

(5) Administrative costs of the applicant, which may not exceed 15 percent of the amount of the assistance provided under this section.

(6) Development of resident management corporations and resident management councils, but only if the applicant has not received assistance under section 12872[1] of this title for such activities.

(7) Counseling and training of homebuyers and homeowners under the homeownership program.

(8) Relocation of tenants who elect to move.

(9) Any necessary temporary relocation of tenants during rehabilitation.

(10) Planning for establishment of for- or not-for-profit small businesses by or on behalf of residents, job training, and other activities that promote economic self-sufficiency of homebuyers and homeowners of the property covered by the homeownership program and economic development of the neighborhood.

(11) Funding of operating expenses and replacement reserves of the property covered by the homeownership program.

(12) Legal fees.

(13) Defraying costs for the ongoing training needs of the recipient that are related to developing and carrying out the homeownership program.

(14) Economic development activities that promote economic self-sufficiency of homebuyers, residents, and homeowners under the homeownership program.

(c) Matching funding

(1) In general

Each recipient shall assure that contributions equal to not less than 33 percent of the grant amounts made available under this section, excluding any amounts provided for post-sale operating expense, shall be provided from non-Federal sources to carry out the homeownership program.

(2) Form

Such contributions may be in the form of—

(A) cash contributions from non-Federal resources, which may not include funds from a grant made under section 5306(b) or section 5306(d) of this title;

[1] See References in Text note below.

(B) payment of administrative expenses, as defined by the Secretary, from non-Federal resources, including funds from a grant made under section 5306(b) or section 5306(d) of this title;

(C) the value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this part;

(D) the value of land or other real property as appraised according to procedures acceptable to the Secretary;

(E) the value of investment in on-site and off-site infrastructure required for a homeownership program assisted under this part; or

(F) such other in-kind contributions as the Secretary may approve.

Contributions for administrative expenses shall be recognized only up to an amount equal to 7 percent of the total amount of grants made available under this section.

(d)[2] Application

(1) Form and procedure

An application for an implementation grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for an implementation grant, specifying the amount of the grant requested and its proposed uses;

(B) if applicable, an application for assistance under section 1437f of this title, specifying the proposed uses of such assistance and the period during which the assistance will be needed;

(C) a description of the qualifications and experience of the applicant in providing low-income housing;

(D) a description of the proposed homeownership program, consistent with section 12874[3] of this title and the other requirements of this part, specifying the activities proposed to be carried out and their estimated costs, identifying reasonable schedules for carrying it out, and demonstrating the program will comply with the affordability requirements under section 12874(b)[3] of this title;

(E) identification and description of the property involved, and a description of the composition of the tenants, including family size and income;

(F) a description of and commitment for the resources that are expected to be made available to provide the matching funding required under subsection (c) of this section and of other resources that are expected to be made available in support of the homeownership program;

(G) identification and description of the financing proposed for any (i) rehabilitation and (ii) acquisition (I) of the property, by an entity for transfer to eligible families, and (II) by eligible families of ownership interests in, or shares representing, units in the project;

(H) the proposed sales price, the basis for such price determination, and terms to an entity, if any, that will purchase the property for resale to eligible families;

(I) the proposed sales prices, if any, and terms to eligible families;

(J) any proposed restrictions on the resale of units under a homeownership program;

(K) identification and description of the entity that will operate and manage the property;

(L) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(M) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d)[4] Selection criteria

The Secretary shall establish selection criteria for assistance under this section, which shall include—

(1) the qualifications or potential capabilities of the applicant;

(2) the feasibility of the homeownership program;

(3) the extent of tenant interest in the development of a homeownership program for the property;

(4) the potential for developing an affordable homeownership program and the suitability of the property for homeownership;

(5) national geographic diversity among housing for which applicants are selected to receive assistance;

(6) the extent to which a sufficient supply of affordable rental housing of the type assisted under this title[5] exists in the locality, so that the implementation of the homeownership program will not appreciably reduce the number of such rental units available to residents currently residing in such units or eligible for residency in such units; and

(7) such other factors as the Secretary determines to be appropriate for purposes of carrying out the program established by the[6] part in an effective and efficient manner.

[2] So in original. Two subsecs. (d) have been enacted.

[3] See References in Text note below.

[4] So in original. Two subsecs. (d) have been enacted.

[5] See References in Text note below.

[6] So in original. Probably should be ''this''.

(e) Approval

The Secretary shall notify each applicant, not later than 6 months after the date of the submission of the application, whether the application is approved or not approved. The Secretary may approve the application for an implementation grant with a statement that the application for the section 8 [42 U.S.C. 1437f] assistance for residents of the project not purchasing units is conditionally approved, subject to the availability of appropriations in subsequent fiscal years.

(Pub. L. 101–625, title IV, § 423, Nov. 28, 1990, 104 Stat. 4163; Pub. L. 102–550, title X, § 1012(i)(2), Oct. 28, 1992, 106 Stat. 3906.)

REFERENCES IN TEXT

Section 12872 of this title, referred to in subsec. (b)(6), was in the original ''section 322'' and was translated as reading ''section 422'', meaning section 422 of Pub. L. 101–625, to reflect the probable intent of Congress. Section 322 of Pub. L. 101–625 amended section 1708 of Title 12, Banks and Banking.

Section 12874 of this title and section 12874(b) of this title, referred to in subsec. (d)(2)(D), were in the original ''section 324'' and ''section 324(b)'', respectively, and were translated as reading ''section 424'' and ''section 424(b)'', respectively, meaning section 424 of Pub. L. 101–625, to reflect the probable intent of Congress. Section 324 of Pub. L. 101–625, which proposed an amendment to section 1709 of Title 12, never took effect pursuant to section 351 of Pub. L. 101–625. Such section 324 did not contain a subsec. (b).

The Fair Housing Act, referred to in subsec. (d)(2)(M), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(2)(M), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (d)(2)(M), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

This title, referred to in subsec. (d)(6), means title IV of Pub. L. 101–625, known as the Homeownership and Opportunity Through HOPE Act, and probably should have been ''this subtitle'', meaning subtitle B (§§ 421–431) of title IV of Pub. L. 101–625, which is classified principally to this part. For complete classification of title IV of Pub. L. 101–625 to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(4) to (14). Pub. L. 102–550 added par. (4) and redesignated former pars. (4) to (13) as (5) to (14), respectively.

§ 12874. Homeownership program requirements

(a) In general

A homeownership program under this part shall provide for acquisition by eligible families of ownership interest in, or shares representing, the units in an eligible property under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership), for occupancy by the eligible families.

(b) Affordability

A homeownership program under this part shall provide for the establishment of sales prices (including principal, insurance, taxes, and interest and closing costs) for initial acquisition of the property, and for sales to eligible families, such that the eligible family shall not be required to expend more than 30 percent of the adjusted income of the family per month to complete a sale under the homeownership program.

(c) Plan

A homeownership program under this part shall provide, and include a plan, for—

(1) identifying and selecting eligible families to participate in the homeownership program;

(2) providing relocation assistance to families who elect to move;

(3) ensuring continued affordability by tenants, homebuyers, and homeowners in the property; and

(4) providing ongoing training and counseling for homebuyers and homeowners.

(d) Acquisition and rehabilitation limitation

Acquisition or rehabilitation of a property under a homeownership program under this part may not consist of acquisition or rehabilitation of less than all of the units in the property. The provisions of this subsection may be waived upon a finding by the Secretary that the sale of less than all the buildings in a project is feasible and will not result in a hardship to any tenants of the project who are not included in the homeownership program.

(e) Financing

(1) In general

The application shall identify and describe the proposed financing for (A) any rehabilitation, and (B) acquisition (i) of the project, where applicable, by an entity for transfer to eligible families, and (ii) by eligible families of ownership interests in, or shares representing, units in the project. Financing may include use of the implementation grant, sale for cash, or other sources of financing (subject to applicable requirements), including conventional mortgage loans and mortgage loans insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

(2) Prohibition against pledges

Property transferred under this part shall not be pledged as collateral for debt or otherwise encumbered except when the Secretary determines that—

(A) such encumbrance will not threaten the long-term availability of the property for occupancy by low-income families;

(B) neither the Federal Government nor the public housing agency will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (3);

(C) any debt obligation can be serviced from project income, including operating assistance; and

(D) the proceeds of such encumbrance will be used only to meet housing standards in accordance with subsection (f) of this section or to make such additional capital improvements as the Secretary determines to be consistent with the purposes of this part.

(3) Opportunity to cure

Any lender that provides financing in connection with a homeownership program under this part shall give the public housing agency, resident management corporation, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default.

(f) Housing quality standards

The application shall include a plan ensuring that the unit—

(1) will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in, or shares representing, a unit to an eligible family; and

(2) will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards established by the Secretary for the purpose of this title.[1]

(g) Protection of nonpurchasing families

(1) In general

No tenant residing in a dwelling unit in a property on the date the Secretary approves an application for an implementation grant may be evicted by reason of a homeownership program approved under this part.

(2) Rental assistance

If a tenant decides not to purchase a unit, or is not qualified to do so, the Secretary shall, subject to the availability of appropriations, ensure that rental assistance under section 1437f of this title is available for use by each otherwise qualified tenant in that or another property.

(3) Relocation assistance

The recipient shall also inform each such tenant that if the tenant chooses to move, the recipient will pay relocation assistance in accordance with the approved homeownership program.

(Pub. L. 101–625, title IV, § 424, Nov. 28, 1990, 104 Stat. 4166.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (e)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

This title, referred to in subsec. (f)(2), is title IV of Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4148, known as the Homeownership and Opportunity Through HOPE Act, which enacted this subchapter and subchapter II–A (§ 1437aaa et seq.) of chapter 8 of this title, amended sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of title IV to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

Section 1437f of this title, referred to in subsec. (g)(2), was in the original ''section 8'', and was translated as reading ''section 8 of the United States Housing Act of 1937'' to reflect the probable intent of Congress.

[1] See References in Text note below.

§ 12875. Other program requirements

(a) Preferences

In selecting eligible families for homeownership, the recipient shall give a first preference to otherwise qualified current tenants and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program specified by the Secretary.

(b) Cost limitations

The Secretary may establish cost limitations on eligible activities under this part, subject to the provisions of this part.

(c) Use of proceeds from sales to eligible families

The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary.

(d) Restrictions on resale by homeowners

(1) In general

(A) Transfer permitted

A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

(B) Right to purchase

Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. If such an entity does not have jurisdiction over the unit or elects not to purchase and if the prospective buyer is not a low-income family, the public housing agency or the implementation grant recipient shall have the right to purchase the ownership interest in, or shares representing, the unit for the same amount.

(C) Promissory note required

The homeowner shall execute a promissory note equal to the difference between the market value and the purchase price, payable to the public housing agency or other entity designated in the homeownership plan, together with a mortgage securing the obligation of the note.

(2) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the home-

ownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(A) the contribution to equity paid by the family;

(B) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(C) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of initial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) 6–20 years

In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in paragraph (1)(C).

(4) Use of recaptured funds

Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this subsection shall be paid to the entity that transferred ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary. The remaining 50 percent shall be returned to the Secretary for use under this part, subject to limitations contained in appropriations Acts. Such entity shall keep and make available to the Secretary all records necessary to calculate accurately payments due the Secretary under this subsection.

(e) Third party rights

The requirements under this part regarding quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the grant recipient with respect to actions involving rehabilitation, and against purchasers of property under this subsection or their successors in interest with respect to other actions by affected low-income families, resident management corporations, resident councils, public housing agencies, and any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(f) Dollar limitation on economic development activities

Not more than an aggregate of $250,000 from amounts made available under sections 12872 and 12873 of this title may be used for economic development activities under sections 12872(b)(6) and 12873(b)(9)[1] of this title for any project.

(g) Timely homeownership

Recipients shall transfer ownership of the property to tenants within a specified period of time that the Secretary determines to be reasonable. During the interim period when the property continues to be operated and managed as rental housing, the recipient shall utilize written tenant selection policies and criteria that are approved by the Secretary as consistent with the purpose of improving housing opportunities for low-income families. The recipient shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(h) Records and audit of recipients of assistance

(1) In general

Each recipient shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of assistance received under this part (and any proceeds from financing obtained or sales under subsections (c) and (d) of this section), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(2) Access by Secretary

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(3) Access by Comptroller General

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(i) Certain entities not eligible

Any entity that assumes, as determined by the Secretary, a mortgage covering eligible property in connection with the acquisition of the property from an owner under this section must comply with any low-income affordability restrictions for the remaining term of the mortgage. This requirement shall only apply to an entity, such as a cooperative association, that, as determined by the Secretary, intends to own the housing on a permanent basis.

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[1] See References in Text note below.

(Pub. L. 101–625, title IV, § 425, Nov. 28, 1990, 104 Stat. 4168.)

REFERENCES IN TEXT

Sections 12872(b)(6) and 12873(b)(9) of this title, referred to in subsec. (f), were redesignated sections 12872(b)(7) and 12873(b)(10) of this title, respectively, by Pub. L. 102–550, title X, § 1012(i), Oct. 28, 1992, 106 Stat. 3906.

§ 12876. Definitions

For purposes of this part:

(1) The term ''applicant'' means the following entities that may represent the tenants of the housing:

(A) A resident management corporation established in accordance with the requirements of the Secretary under section 1437r of this title.

(B) A resident council.

(C) A cooperative association.

(D) A public or private nonprofit organization.

(E) A public body (including an agency or instrumentality thereof).

(F) A public housing agency (including an Indian housing authority).

(G) A mutual housing association.

(2) The term ''eligible family'' means a family or individual—

(A) who is a tenant of the eligible property on the date the Secretary approves an implementation grant; or

(B) whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

(3) The term ''eligible property'' means a multifamily rental property, containing 5 or more units, that is—

(A) owned or held by the Secretary;

(B) financed by a loan or mortgage held by the Secretary or insured by the Secretary;

(C) determined by the Secretary to have serious physical or financial problems under the terms of an insurance or loan program administered by the Secretary; or

(D) owned or held by the Secretary of Agriculture, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency, or a State or local government or an agency or instrumentality thereof.

(4) The term ''homeownership program'' means a program for homeownership under this part.

(5) The term ''Indian housing authority'' has the meaning given such term in section 1437a(b)(11)[1] of this title.

(6) The term ''low-income family'' has the meaning given such term in section 1437a(b)(2) of this title.

(7) The term ''public housing agency'' has the meaning given such term in section 1437a(b)(6) of this title.

(8) The term ''recipient'' means an applicant approved to receive a grant under this title[1] or such other entity specified in the approved application that will assume the obligations of the recipient under this part.

(9) The term ''resident council'' means any incorporated nonprofit organization or association that—

(A) is representative of the tenants of the housing;

(B) adopts written procedures providing for the election of officers on a regular basis; and

(C) has a democratically elected governing board, elected by the tenants of the housing.

(10) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(Pub. L. 101–625, title IV, § 426, Nov. 28, 1990, 104 Stat. 4170; Pub. L. 102–550, title I, § 181(d), (e), (h), Oct. 28, 1992, 106 Stat. 3735, 3736.)

REFERENCES IN TEXT

Section 1437a(b)(11) of this title, referred to in par. (5), was repealed by Pub. L. 104–330, title V, § 501(b)(1)(D), Oct. 26, 1996, 110 Stat. 4041, and a new section 1437a(b)(11), defining ''public housing agency plan'', was enacted by Pub. L. 105–276, title V, § 506(4), Oct. 21, 1998, 112 Stat. 2524.

This title, referred to in par. (8), means title IV of Pub. L. 101–625, known as the Homeownership and Opportunity Through HOPE Act, and probably should have been ''this subtitle'', meaning subtitle B (§§ 421–431) of title IV of Pub. L. 101–625, which is classified principally to this part. For complete classification of title IV of Pub. L. 101–625 to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

AMENDMENTS

1992—Par. (1)(G). Pub. L. 102–550, § 181(d), added subpar. (G).

Par. (3)(D). Pub. L. 102–550, § 181(e), (h), inserted ''the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency,'' after ''Corporation,'' and ''or an agency or instrumentality thereof'' before period at end.

§ 12877. Exemption

Eligible property covered by a homeownership program approved under this part shall not be subject to—

(1) the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.], or

(2) the requirements of section 1701z–11 of title 12 applicable to the sale of projects either at foreclosure or after acquisition by the Secretary.

(Pub. L. 101–625, title IV, § 427, Nov. 28, 1990, 104 Stat. 4171.)

REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Homeownership Act of 1990, referred to in par. (1), is title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, which is classified principally to chapter 42 (§ 4101 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

§ 12878. Limitation on selection criteria

In establishing criteria for selecting applicants to receive assistance under this part, the

[1] See References in Text note below.

Secretary may not establish any selection criterion or criteria that grant or deny such assistance to an applicant (or have the effect of granting or denying assistance) based on the implementation, continuation, or discontinuation of any public policy, regulation, or law of any jurisdiction in which the applicant or project is located.

(Pub. L. 101–625, title IV, § 428, Nov. 28, 1990, 104 Stat. 4171.)

§ 12879. Implementation

Not later than the expiration of the 180-day period beginning on the date that funds authorized under this part first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period beginning on the date of the notice.

(Pub. L. 101–625, title IV, § 430, Nov. 28, 1990, 104 Stat. 4172.)

§ 12880. Report

The Secretary shall no later than December 31, 1995, submit to the Congress a report setting forth—

(1) the number, type and cost of eligible properties transferred pursuant to this part;

(2) the income, race, gender, children and other characteristics of families participating (or not participating) in homeownership programs funded under this part;

(3) the amount and type of financial assistance provided under and in conjunction with this part;

(4) the amount of financial assistance provided under this part that was needed to ensure continued affordability and meet future maintenance and repair costs; and

(5) the recommendations of the Secretary for statutory and regulatory improvements to the program.

(Pub. L. 101–625, title IV, § 431, Nov. 28, 1990, 104 Stat. 4172; Pub. L. 104–66, title I, § 1072(a), Dec. 21, 1995, 109 Stat. 721.)

AMENDMENTS

1995—Pub. L. 104–66 in section catchline substituted ''Report'' for ''Annual report'', and in introductory provisions substituted ''The Secretary shall no later than December 31, 1995,'' for ''The Secretary shall annually''.

PART B—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES

§ 12891. Program authority

The Secretary is authorized to make—

(1) planning grants to help applicants develop homeownership programs in accordance with this part; and

(2) implementation grants to enable applicants to carry out homeownership programs in accordance with this part.

(Pub. L. 101–625, title IV, § 441, Nov. 28, 1990, 104 Stat. 4172; Pub. L. 102–550, title I, § 181(a)(2)(B)(ii), Oct. 28, 1992, 106 Stat. 3735.)

AMENDMENTS

1992—Pub. L. 102–550 struck out ''(a) IN GENERAL'' before ''The Secretary is authorized'' and subsec. (b) which read as follows: ''AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under this part $36,000,000 for fiscal year 1991, and $195,000,000 for fiscal year 1992. Any amounts appropriated pursuant to this subsection shall remain available until expended.''

§ 12892. Planning grants

(a) Grants

The Secretary is authorized to make planning grants to applicants for the purpose of developing homeownership programs under this part. The amount of a planning grant under this section may not exceed $200,000, except that the Secretary may for good cause approve a grant in a higher amount.

(b) Eligible activities

Planning grants may be used for activities to develop homeownership programs (which may include programs for cooperative ownership), including—

(1) identifying eligible properties;

(2) training and technical assistance of applicants related to the development of a specific homeownership program;

(3) studies of the feasibility of specific homeownership programs;

(4) inspection for lead-based paint hazards, as required by section 4822(a) of this title;

(5) preliminary architectural and engineering work;

(6) homebuyer counseling and training;

(7) planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency for homebuyers and homeowners under the homeownership program;

(8) development of security plans; and

(9) preparation of an application for an implementation grant under this part.

(c) Application

(1) Form and procedures

An application for a planning grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for a planning grant, specifying the activities proposed to be carried out, the schedule for completing the activities, the personnel necessary to complete the activities, and the amount of the grant requested;

(B) a description of the applicant and a statement of its qualifications;

(C) identification and description of the eligible properties likely to be involved, and a description of the composition of the potential homebuyers and residents of the areas in which such eligible properties are located, including family size and income;

(D) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section

12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(E) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall, by regulation, establish selection criteria for a national competition for assistance under this section, which shall include—

(1) the qualifications or potential capabilities of the applicant;

(2) the extent of interest in the development of a homeownership program;

(3) the potential of the applicant for developing a successful and affordable homeownership program and the availability and suitability of eligible properties in the applicable geographic area with respect to the application;

(4) national geographic diversity among housing for which applicants are selected to receive assistance; and

(5) such other factors that the Secretary shall require that (in the determination of the Secretary) are appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(Pub. L. 101–625, title IV, § 442, Nov. 28, 1990, 104 Stat. 4172; Pub. L. 102–550, title X, § 1012(j)(1), Oct. 28, 1992, 106 Stat. 3906.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (c)(2)(E), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(E), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(E), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(4) to (9). Pub. L. 102–550 added par. (4) and redesignated former pars. (4) to (8) as (5) to (9), respectively.

§ 12893. Implementation grants

(a) Grants

The Secretary is authorized to make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this part.

(b) Eligible activities

Implementation grants may be used for activities to carry out homeownership programs (which may include programs for cooperative ownership), including the following activities:

(1) Architectural and engineering work.

(2) Acquisition of the property for the purpose of transferring ownership to eligible families in accordance with a homeownership program meeting the requirements of this part.

(3) Rehabilitation of the property covered by the homeownership program, in accordance with standards established by the Secretary.

(4) Abatement of lead-based paint hazards, as required by section 4822(a) of this title.

(5) Administrative costs of the applicant, which may not exceed 15 percent of the amount of assistance provided under this section.

(6) Counseling and training of homebuyers and homeowners under the homeownership program.

(7) Relocation of eligible families who elect to move.

(8) Any necessary temporary relocation of homebuyers during rehabilitation.

(9) Legal fees.

(10) Defraying costs for the ongoing training needs of the recipient that are related to developing and carrying out the homeownership program.

(11) Economic development activities that promote economic self-sufficiency of homebuyers and homeowners under the homeownership program.

(c) Matching funding

(1) In general

Each recipient shall assure that contributions equal to not less than 25 percent of the grant amounts under this section are provided from non-Federal sources to carry out the homeownership program.

(2) Form

Such contributions may be in the form of—

(A) cash contributions from non-Federal resources which may not include funds from a grant made under section 5306(b) or section 5306(d) of this title;

(B) payment of administrative expenses, as defined by the Secretary, from non-Federal resources, including funds from a grant made under section 5306(b) or section 5306(d) of this title;

(C) the value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this part;

(D) the value of investment in on-site and off-site infrastructure required for a homeownership program assisted under this part; or

(E) such other in-kind contributions as the Secretary may approve.

Contributions for administrative expenses shall be recognized only up to an amount equal to 7 percent of the total amount of grants made available under this section.

(d) Application

(1) Form and procedure

An application for an implementation grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for an implementation grant, specifying the amount of the grant requested and its proposed uses;

(B) a description of the qualifications and experience of the applicant in providing low-income housing;

(C) a description of the proposed homeownership program, consistent with section 12894 of this title and the other requirements of this part specifying the activities proposed to be carried out and their estimated costs, identifying reasonable schedules for carrying it out, and demonstrating that the program will comply with the affordability requirements under section 12894(b) of this title;

(D) an identification and description of the properties to be acquired under the homeownership program and a description of the composition of potential eligible families, including family size and income;

(E) a description of and commitment for the resources that are expected to be made available to provide the matching funding required under subsection (c) of this section and of other resources that are expected to be made available in support of the homeownership program;

(F) identification and description of the financing proposed for any (i) rehabilitation and (ii) acquisition (I) of the project, where applicable, by an entity for transfer to eligible families, and (II) by eligible families of ownership interests in, or shares representing, units in the project;

(G) the proposed sales prices for the properties, the basis for such price determinations, and terms to an entity, if any, that will purchase that property for resale to eligible families;

(H) the proposed sales prices, if any, and terms to eligible families;

(I) identification and description of the entity that will operate and manage the property;

(J) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(K) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(e) Selection criteria

The Secretary shall establish selection criteria for assistance under this part, which shall include—

(1) the ability of the applicant to develop and carry out the proposed homeownership program, taking into account the qualifications and experience of the applicant and the quality of any related ongoing program of the applicant;

(2) the feasibility of the homeownership program;

(3) the quality and viability of the proposed homeownership program;

(4) the extent to which suitable eligible property is available for use under the program in the area to be served, and the extent to which the types of property expected to be covered by the proposed homeownership program are federally owned;

(5) whether the approved comprehensive housing affordability strategy for the jurisdiction within which the eligible property is located includes the proposed homeownership program as one of the general priorities identified pursuant to section 12705(b)(7) of this title;

(6) national geographic diversity among housing for which applicants are selected to receive assistance; and

(7) the extent to which a sufficient supply of affordable rental housing of the type assisted under this part exists in the locality, so that the implementation of the homeownership program will not appreciably reduce the number of such rental units available to residents currently residing in such units or eligible for residency in such units.

(f) Approval

The Secretary shall notify each applicant, not later than 6 months after the date of the submission of the application, whether the application is approved or not approved.

(Pub. L. 101–625, title IV, § 443, Nov. 28, 1990, 104 Stat. 4174; Pub. L. 102–550, title X, § 1012(j)(2), Oct. 28, 1992, 106 Stat. 3906; Pub. L. 103–233, title II, § 221, Apr. 11, 1994, 108 Stat. 366.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (d)(2)(K), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(2)(K), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as

amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (d)(2)(K), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–233 substituted ''25 percent'' for ''33 percent''.

1992—Subsec. (b)(4) to (11). Pub. L. 102–550 added par. (4) and redesignated former pars. (4) to (10) as (5) to (11), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out subchapter II (§ 12721 et seq.) of this chapter after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

§ 12894. Homeownership program requirements

(a) In general

A homeownership program under this part shall provide for acquisition by eligible families of ownership interests in, or shares representing, units in an eligible property under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership), for occupancy by the eligible families.

(b) Affordability

A homeownership program under this part shall provide for the establishment of sales prices (including principal, insurance, taxes, and interest and closing costs) for initial acquisition of the property, and for sales to eligible families, such that the eligible family shall not be required to expend more than 30 percent of the adjusted income of the family per month to complete a sale under the homeownership program.

(c) Eligible property

A property may not participate in a homeownership program under this part unless all tenants or occupants of the property (at the time of[1] the application for the implementation grant covering the property is filed with the Secretary) participate in the homeownership program.

(d) Plan

A homeownership program under this part shall provide, and include a plan, for—

(1) identifying and selecting eligible families to participate in the homeownership program;

(2) providing relocation assistance to families who elect to move; and

(3) ensuring continued affordability of the property to homebuyers and homeowners.

(e) Housing quality standards

The application shall include a plan ensuring that the unit—

(1) will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in, or shares representing, a unit to an eligible family; and

(2) will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards established by the Secretary for the purpose of this title.[2]

(f) Preference for acquisition of vacant units

Each homeownership program under this part shall provide that, in making vacant units in eligible properties available for acquisition by eligible families, preference shall be given to eligible families who reside in public or Indian housing.

(Pub. L. 101–625, title IV, § 444, Nov. 28, 1990, 104 Stat. 4176; Pub. L. 102–550, title I, § 181(f), Oct. 28, 1992, 106 Stat. 3736.)

REFERENCES IN TEXT

This title, referred to in subsec. (e)(2), is title IV of Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4148, known as the Homeownership and Opportunity Through HOPE Act, which enacted this subchapter and subchapter II–A (§ 1437aaa et seq.) of chapter 8 of this title, amended sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, Banks and Banking, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of title IV to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–550 added subsec. (f).

§ 12895. Other program requirements

(a) Cost limitations

The Secretary may establish cost limitations on eligible activities under this part, subject to the provisions of this part.

(b) Use of proceeds from sales to eligible families

Any entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, may use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary.

(c) Restrictions on resale by homeowners

(1) In general

(A) Transfer permitted

A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

[1] So in original. The word ''of'' probably should not appear.

[2] So in original. See References in Text note below.

(B) Right to purchase

Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. If such an entity does not have jurisdiction over the unit or elects not to purchase and if the prospective buyer is not a low-income family, the public housing agency or the implementation grant recipient shall have the right to purchase the ownership interest in, or shares representing, the unit for the same amount.

(C) Promissory note required

The homeowner shall execute a promissory note equal to the difference between the market value and the purchase price, payable to the public housing agency or other entity designated in the homeownership plan, together with a mortgage securing the obligation of the note.

(2) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the homeownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(A) the contribution to equity paid by the family;

(B) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(C) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of initial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) 6–20 years

In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in paragraph (1)(C).

(4) Use of recaptured funds

Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this subsection shall be paid to the entity that transferred ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary. The remaining 50 percent shall be returned to the Secretary for use under this part, subject to limitations contained in appropriations Acts. Such entity shall keep and make available to the Secretary all records necessary to calculate accurately payments due the Secretary under this subsection.

(d) Third party rights

The requirements under this part regarding quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the grant recipient with respect to actions involving rehabilitation, and against purchasers of property under this subsection or their successors in interest with respect to other actions by affected low-income families, resident management corporations, resident councils, public housing agencies, and any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(e) Protection of nonpurchasing families

No tenant residing in a dwelling unit in a property on the date the Secretary approves an application for an implementation grant may be evicted by reason of a homeownership program approved under this part.

(h)[1] Records and audit of recipients of assistance

(1) In general

Each recipient shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of assistance received under this part (and any proceeds from financing obtained or sales under subsections (b) and (c) of this section), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(2) Access by Secretary

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(3) Access by Comptroller General

The Comptroller General of the United States, or any of the duly authorized rep-

[1] So in original. Probably should be "(f)".

resentatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(Pub. L. 101–625, title IV, § 445, Nov. 28, 1990, 104 Stat. 4177.)

§ 12896. Definitions

For purposes of this part:

(1) The term ''applicant'' means a private nonprofit organization, cooperative association, or a public agency (including an agency or instrumentality thereof) in cooperation with a private nonprofit organization.

(2) The term ''displaced homemaker'' has the same meaning as in section 12704 of this title.

(3) The term ''eligible family'' means a family or individual who—

(A) has an income that does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families; and

(B) is a first-time homebuyer.

(4) The term ''eligible property'' means a single family property, containing no more than four units, that is owned or held by the Secretary, the Secretary of Veterans Affairs, the Secretary of Agriculture, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency, a State or local government (including any in rem property), or a public housing agency or an Indian housing authority (excluding public or Indian housing under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and including properties held by institutions within the jurisdiction of the Resolution Trust Corporation).

(5) The term ''first-time homebuyer'' has the same meaning as in section 12704 of this title.

(6) The term ''homeownership program'' means a program for homeownership under this part.

(7) The term ''Indian housing authority'' has the meaning given such term in section 3(b)(11)[1] of the United States Housing Act of 1937.

(8) The term ''low-income family'' has the meaning given such term in section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)].

(9) The term ''public housing agency'' has the meaning given such term in section 3(b)(6) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(6)].

(10) The term ''recipient'' means an applicant approved to receive a grant under this part or such other entity specified in the approved application that will assume the obligations of the recipient under this part.

(11) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(12) The term ''single parent'' means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(Pub. L. 101–625, title IV, § 446, Nov. 28, 1990, 104 Stat. 4179; Pub. L. 102–550, title I, § 181(g)(2), (h), Oct. 28, 1992, 106 Stat. 3736.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in par. (4), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Section 3(b)(11) of the United States Housing Act of 1937, referred to in par. (7), was classified to section 1437a(b)(11) of this title prior to repeal by Pub. L. 104–330, title V, § 501(b)(1)(D), Oct. 26, 1996, 110 Stat. 4041, and a new section 1437a(b)(11), defining ''public housing agency plan'', was enacted by Pub. L. 105–276, title V, § 506(4), Oct. 21, 1998, 112 Stat. 2524.

AMENDMENTS

1992—Par. (4). Pub. L. 102–550 inserted ''the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency,'' after ''Corporation,'' and substituted ''(excluding public or Indian housing under the United States Housing Act of 1937 and including'' for ''(including scattered site single family properties, and''.

§ 12897. Limitation on selection criteria

In establishing criteria for selecting applicants to receive assistance under this part, the Secretary may not establish any selection criterion or criteria that grant or deny such assistance to an applicant (or have the effect of granting or denying assistance) based on the implementation, continuation, or discontinuation of any public policy, regulation, or law of any jurisdiction in which the applicant or project is located.

(Pub. L. 101–625, title IV, § 447, Nov. 28, 1990, 104 Stat. 4180.)

§ 12898. Implementation

Not later than the expiration of the 180-day period beginning on the date funds authorized under this part first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period beginning on the date of the notice.

(Pub. L. 101–625, title IV, § 448, Nov. 28, 1990, 104 Stat. 4180.)

§ 12898a. Enterprise zone homeownership opportunity grants

(a) Statement of purpose

It is the purpose of this section—

(1) to encourage homeownership by families in the United States who are not otherwise able to afford homeownership;

(2) to encourage the redevelopment of economically depressed areas; and

[1] See References in Text note below.

(3) to provide better housing opportunities in federally approved and equivalent State-approved enterprise zones.

(b) Definitions

For purposes of this section the following definitions shall apply:

(1) Home

The term ''home'' means any 1- to 4-family dwelling. Such term includes any dwelling unit in a condominium project or cooperative project consisting of not more than 4 dwelling units, any town house, and any manufactured home.

(2) Metropolitan statistical area

The term ''metropolitan statistical area'' means a metropolitan statistical area as established by the Office of Management and Budget.

(3) Nonprofit organization

The term ''nonprofit organization'' means a private nonprofit corporation, or other private nonprofit legal entity, that is approved by the Secretary as to financial responsibility.

(4) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(5) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(6) Unit of general local government

The term ''unit of general local government'' means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(c) Assistance to nonprofit organizations

(1) In general

The Secretary may provide assistance to nonprofit organizations to carry out enterprise zone homeownership opportunity programs to promote homeownership in federally approved and equivalent State-approved enterprise zones in accordance with the provisions of this section. Such assistance shall be made in the form of grants.

(2) Applications

Applications for assistance under this section shall be made in such form, and in accordance with such procedures, as the Secretary may prescribe.

(d) Eligible uses of assistance

(1) In general

Any nonprofit organization receiving assistance under this section shall use such assistance to provide loans to families purchasing homes constructed or rehabilitated in accordance with an enterprise zone homeownership opportunity program approved under this section.

(2) Specific requirements

Each loan made to a family under this subsection shall—

(A) be secured by a second mortgage held by the Secretary on the property involved;

(B) be in an amount not exceeding $15,000;

(C) bear no interest; and

(D) be repayable to the Secretary upon the sales, lease, or other transfer of such property.

(e) Program requirements

(1) In general

Assistance provided under this section may be used only in connection with an enterprise zone homeownership opportunity program of construction or rehabilitation of homes.

(2) Family need

Each family purchasing a home under this section shall—

(A) have a family income on the date of such purchase that is not more than the median income for a family of 4 persons (adjusted for family size) in the metropolitan statistical area in which a federally approved or equivalent State-approved enterprise zone is located; and

(B) not have owned a home during the 3-year period preceding such purchase.

(3) Downpayment

Each family purchasing a home under this section shall make a downpayment of not less than 5 percent of the sale price of such home.

(4) Leasing prohibition

No family purchasing a home under this section may lease such home.

(f) Terms and conditions of assistance

(1) Local consultation

No proposed enterprise zone homeownership opportunity program may be approved by the Secretary under this section unless the applicant involved demonstrates to the satisfaction of the Secretary that—

(A) it has consulted with and received the support of residents of the neighborhood in which such program is to be located; and

(B) it has the approval of each unit of general local government in which such program is to be located.

(2) Program schedule

Each applicant for assistance under this section shall submit to the Secretary an estimated schedule for completion of its proposed enterprise zone homeownership opportunity program, which schedule shall have been agreed to by each unit of general local government in which such program is to be located.

(3) Location

All homes constructed or rehabilitated under such program will be located in federally approved or equivalent State-approved enterprise zones.

(4) Sales contracts

Sales contracts entered into under such program will contain provisions requiring repayment of any loan made under this section upon the sale or other transfer of the home involved, unless the Secretary approves a transfer of such home without repayment (in which

case the second mortgage held by the Secretary on such home shall remain in force until such loan is fully repaid).

(g) Program selection criteria

(1) In general

In selecting enterprise zone homeownership opportunity programs for assistance under this section from among eligible programs, the Secretary shall make such selection on the basis of the extent to which—

(A) non-Federal public or private entities will contribute land necessary to make each program feasible;

(B) non-Federal public and private financial or other contributions (including tax abatements, waivers of fees related to development, waivers of construction, development, or zoning requirements, and direct financial contributions) will reduce the cost of home[1] constructed or rehabilitated under each program;

(C) each program will produce the greatest number of units for the least amount of assistance provided under this section, taking into consideration the cost differences among different market areas; and

(D) each program provides for the involvement of local residents in the planning, and construction or rehabilitation, of homes.

(2) Exception

To the extent that non-Federal public entities are prohibited by the law of any State from making any form of contribution described in subparagraph (A) or (B) of paragraph (1), the Secretary shall not consider such form of contribution in evaluating such program.

(h) Regulations

Not later than 180 days after October 28, 1992, the Secretary shall issue final regulations to carry out the provisions of this title.[2] Any such regulations shall be issued in accordance with section 553 of title 5, notwithstanding the provisions of subsection (a)(2) of such section.

(i) Funding

There are authorized to be appropriated to carry out this section $30,000,000 in each of fiscal years 1993 and 1994.

(Pub. L. 102–550, title I, § 186, Oct. 28, 1992, 106 Stat. 3748.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of subtitle C (§§ 441–448) of title IV of Pub. L. 101–625 which comprises this part.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[1] So in original. Probably should be ''homes''.

[2] So in original. Probably should be ''this section.''

PART C—HOPE FOR YOUTH: YOUTHBUILD

§§ 12899 to 12899i. Repealed. Pub. L. 109–281, § 2(e), Sept. 22, 2006, 120 Stat. 1181

Section 12899, Pub. L. 101–625, title IV, § 451, as added Pub. L. 102–550, title I, § 164, Oct. 28, 1992, 106 Stat. 3723, set forth the statement of purpose of this part.

Section 12899a, Pub. L. 101–625, title IV, § 452, as added Pub. L. 102–550, title I, § 164, Oct. 28, 1992, 106 Stat. 3723, authorized the Secretary to make planning and implementation grants.

Section 12899b, Pub. L. 101–625, title IV, § 453, as added Pub. L. 102–550, title I, § 164, Oct. 28, 1992, 106 Stat. 3723, related to planning grants.

Section 12899c, Pub. L. 101–625, title IV, § 454, as added Pub. L. 102–550, title I, § 164, Oct. 28, 1992, 106 Stat. 3725; amended Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(43)(A), (f)(34)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–428, 2681–434, related to implementation grants.

Section 12899d, Pub. L. 101–625, title IV, § 455, as added Pub. L. 102–550, title I, § 164, Oct. 28, 1992, 106 Stat. 3728; amended Pub. L. 105–276, title V, § 514(a)(2)(B), Oct. 21, 1998, 112 Stat. 2547; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, set forth Youthbuild program requirements.

Section 12899e, Pub. L. 101–625, title IV, § 456, as added Pub. L. 102–550, title I, § 164, Oct. 28, 1992, 106 Stat. 3730; amended Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(43)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–428, set forth additional program requirements.

Section 12899f, Pub. L. 101–625, title IV, § 457, as added Pub. L. 102–550, title I, § 164, Oct. 28, 1992, 106 Stat. 3731; amended Pub. L. 103–382, title III, § 394(d), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 105–244, title I, § 102(a)(13)(M), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 109–136, § 5, Dec. 22, 2005, 119 Stat. 2644, defined terms.

Section 12899g, Pub. L. 101–625, title IV, § 458, as added Pub. L. 102–550, title I, § 164, Oct. 28, 1992, 106 Stat. 3733, related to management and technical assistance.

Section 12899h, Pub. L. 101–625, title IV, § 459, as added Pub. L. 102–550, title I, § 164, Oct. 28, 1992, 106 Stat. 3733, related to contracts.

Section 12899h–1, Pub. L. 101–625, title IV, § 460, as added Pub. L. 104–330, title V, § 504(a)(2), Oct. 26, 1996, 110 Stat. 4044; amended Pub. L. 105–276, title V, § 595(e)(15), Oct. 21, 1998, 112 Stat. 2659; Pub. L. 109–136, § 6, Dec. 22, 2005, 119 Stat. 2644, rendered Indian tribes, Indian housing authorities, and other agencies primarily serving Indians or Indian areas ineligible for amounts made available for assistance under this part for fiscal years 1998 through 2005.

Section 12899i, Pub. L. 101–625, title IV, § 461, formerly § 460, as added Pub. L. 102–550, title I, § 164, Oct. 28, 1992, 106 Stat. 3733; renumbered § 461, Pub. L. 104–330, title V, § 504(a)(1), Oct. 26, 1996, 110 Stat. 4043, authorized the Secretary to issue any regulations necessary to carry out this part.

TRANSFER OF FUNCTIONS

All functions which the Secretary of Housing and Urban Development exercised before Sept. 22, 2006, relating to subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12899 et seq.) transferred to the Department of Labor, see section 3(b) of Pub. L. 109–281, set out as a Transfer of Functions and Savings Provisions note under section 2918a of Title 29, Labor.

CHAPTER 131—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Sec.
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12902. Definitions.
12903. General authority.
12904. Eligible activities.
12905. Responsibilities of grantees.
12906. Grants for AIDS housing information and coordination services.

Sec.
12907. AIDS short-term supported housing and services.
12908. Rental assistance.
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§ 12901. Purpose

The purpose of this chapter[1] is to provide States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome and families of such persons.

(Pub. L. 101–625, title VIII, § 852, Nov. 28, 1990, 104 Stat. 4375; Pub. L. 102–550, title VI, § 606(j)(1), Oct. 28, 1992, 106 Stat. 3810.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', and was translated as reading ''this subtitle'', meaning subtitle D (§§ 851–863) of title VIII of Pub. L. 101–625, to reflect the probable intent of Congress.

AMENDMENTS

1992—Pub. L. 102–550 inserted before period at end ''and families of such persons''.

SHORT TITLE

Section 851 of Pub. L. 101–625 provided that: ''This subtitle [subtitle D (§§ 851–863) of title VIII of Pub. L. 101–625, enacting this chapter] may be cited as the 'AIDS Housing Opportunity Act'.''

REGULATIONS

Section 606(k) of Pub. L. 102–550 provided that:

''(1) INTERIM REGULATIONS.—Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development shall submit to the Congress a copy of proposed interim regulations implementing subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12901 et seq.] (as amended by this section). Not later than the expiration of the 45-day period beginning on the date of the enactment of this Act, but not before the expiration of the 15-day period beginning upon the submission of the proposed interim regulations to the Congress, the Secretary shall publish interim regulations implementing such subtitle (as amended), which shall take effect upon publication.

''(2) FINAL REGULATIONS.—Not later than the expiration of the 90-day period beginning upon the publication of interim regulations under paragraph (1), the Secretary shall issue final regulations implementing subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act (as amended by this section) after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment under such section 553 shall be not less than 60 days, and the final regulations shall take effect upon issuance.''

§ 12902. Definitions

For purposes of this chapter:

(1) The term ''acquired immunodeficiency syndrome and related diseases'' means the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.

(2) The term ''applicant'' means a State, a unit of general local government, or a nonprofit organization eligible to receive assistance under this chapter.

(3) The term ''low-income individual'' means any individual or family whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary of Housing and Urban Development, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median income for the area if the Secretary finds that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(4) The term ''grantee'' means a State or unit of general local government receiving grants from the Secretary under this chapter.

(5) The term ''metropolitan statistical area'' means a metropolitan statistical area as established by the Office of Management and Budget. Such term includes the District of Columbia.

(6) The term ''locality'' means the geographical area within the jurisdiction of a local government.

(7) The term ''recipient'' means a grantee or other applicant receiving funds under this chapter.[1]

(8) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(9) The term ''State'' means a State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this chapter.

(10) The term ''unit of general local government'' has the same meaning as in section 12704 of this title.

(11) The term ''city'' has the meaning given the term in section 5302(a) of this title.

(12) The term ''eligible person'' means a person with acquired immunodeficiency syndrome or a related disease and the family of such person.

(13) The term ''nonprofit organization'' means any nonprofit organization (including a State or locally chartered, nonprofit organization) that—

(A) is organized under State or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) complies with standards of financial accountability acceptable to the Secretary; and

(D) has among its purposes significant activities related to providing services or housing to persons with acquired immunodeficiency syndrome or related diseases.

(14) The term ''project sponsor'' means a nonprofit organization or a housing agency of

[1] See References in Text note below.

[1] See References in Text note below.

a State or unit of general local government that contracts with a grantee to receive assistance under this chapter.

(Pub. L. 101–625, title VIII, § 853, Nov. 28, 1990, 104 Stat. 4375; Pub. L. 102–550, title VI, § 606(c), Oct. 28, 1992, 106 Stat. 3807.)

REFERENCES IN TEXT

This chapter, referred to in par. (7), was in the original ''this title'', and was translated as reading ''this subtitle'', meaning subtitle D (§§ 851–863) of title VIII of Pub. L. 101–625, to reflect the probable intent of Congress.

AMENDMENTS

1992—Par. (2). Pub. L. 102–550, § 606(c)(1), substituted ''organization eligible to receive assistance under this chapter'' for ''sponsor receiving assistance from a grantee''.

Par. (5). Pub. L. 102–550, § 606(c)(2), substituted ''term 'metropolitan statistical area' means'' for ''term 'metropolitan area' means''.

Pars. (11) to (14). Pub. L. 102–550, § 606(c)(3), added pars. (11) to (14).

§ 12903. General authority

(a) Grants authorized

The Secretary shall, to the extent of amounts approved in appropriations Acts under section 12912 of this title, make grants to States, units of general local government, and nonprofit organizations.

(b) Implementation of eligible activities

A grantee shall carry out eligible activities under section 12904 of this title through project sponsors. Any grantee that is a State that enters into a contract with a nonprofit organization to carry out eligible activities in a locality shall obtain the approval of the unit of general local government for the locality before entering into the contract.

(c) Allocation of resources

(1) Formula allocation

The Secretary shall allocate 90 percent of the amounts approved in appropriation Acts under section 12912 of this title among States and cities whose most recent comprehensive housing affordability strategy (or abbreviated strategy) has been approved by the Secretary under section 12705 of this title. Such amounts shall be allocated as follows:

(A) 75 percent among—

(i) cities that are the most populous unit of general local government in a metropolitan statistical area having a population greater than 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome; and

(ii) States with more than 1,500 cases of acquired immunodeficiency syndrome outside of metropolitan statistical areas described in clause (i); and

(B) 25 percent among cities that (i) are the most populous unit of general local government in a metropolitan statistical area having a population greater than 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome, and (ii) have a higher than average per capita incidence of acquired immunodeficiency syndrome.

A single city may receive assistance allocated under subparagraph (A) and subparagraph (B). For purposes of allocating amounts under this paragraph for any fiscal year, the number of cases of acquired immunodeficiency syndrome shall be the number of such cases reported to and confirmed by the Director of the Centers for Disease Control of the Public Health Service as of March 31 of the fiscal year immediately preceding the fiscal year for which the amounts are appropriated and to be allocated.

(2) Minimum grant

Subject only to the availability of amounts pursuant to appropriations Acts under section 12912 of this title, for each fiscal year each eligible grantee under paragraph (1) shall receive funding according to its proportionate share of the total, except that each entity shall receive a minimum allocation of $200,000 from subparagraphs (A) and (B) of paragraph (1) combined, and any increase this entails from the formula amount will be deducted from all other allocations exceeding $200,000 on a pro rata basis. If allocation under subparagraph (A) of paragraph (1) would allocate less than $200,000 for any State, the allocation for such State shall be $200,000 and the amount of the increase under this sentence shall be deducted on a pro rata basis from the allocations of the other States, except that a reduction under this subparagraph may not reduce the amount allocated to any eligible entity to less than $200,000.

(3) Nonformula allocation

(A) In general

The Secretary shall allocate 10 percent of the amounts appropriated under section 12912 of this title among—

(i) States and units of general local government that do not qualify for allocation of amounts under paragraph (1); and

(ii) States, units of general local government, and nonprofit organizations, to fund special projects of national significance.

(B) Selection

In selecting projects under this paragraph, the Secretary shall consider (i) relative numbers of acquired immunodeficiency syndrome cases and per capita acquired immunodeficiency syndrome incidence; (ii) housing needs of eligible persons in the community; (iii) extent of local planning and coordination of housing programs for eligible persons; and (iv) the likelihood of the continuation of State and local efforts.

(C) National significance projects

For the purpose of subparagraph (A)(ii), in selecting projects of national significance the Secretary shall consider (i) the need to assess the effectiveness of a particular model for providing supportive housing for eligible persons; (ii) the innovative nature of the proposed activity; and (iii) the potential replicability of the proposed activity in other similar localities or nationally.

(d) Applications

Funds made available under this section shall be allocated among applications submitted by

applicants and approved by the Secretary. Applications for assistance under this section shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish. Such applications shall contain—

(1) a description of the proposed activities;

(2) a description of the size and characteristics of the population that would be served by the proposed activities;

(3) a description of the public and private resources that are expected to be made available in connection with the proposed activities;

(4) assurances satisfactory to the Secretary that any property purchased, leased, rehabilitated, renovated, or converted with assistance under this section shall be operated for not less than 10 years for the purpose specified in the application, except as otherwise specified in this chapter;

(5) evidence in a form acceptable to the Secretary that the proposed activities will meet urgent needs that are not being met by available public and private sources; and

(6) such other information or certifications that the Secretary determines to be necessary to achieve the purposes of this section.

(e) Additional requirement for metropolitan areas

In addition to the other requirements of this section, to be eligible for a grant to a metropolitan area under this section, the major city, urban county, and any city with a population of 50,000 or more in that metropolitan area shall establish or designate a governmental agency or organization for receipt and use of amounts received from a grant under this section and shall submit to the Secretary, together with the application under subsection (d) of this section a proposal for the operation of such agency or organization.

(f) Additional requirement for city formula grantees

In addition to the other requirements of this section, to be eligible for a grant pursuant to subsection (c)(1) of this section, a city shall provide such assurances as the Secretary may require that any grant amounts received will be allocated among eligible activities in a manner that addresses the needs within the metropolitan statistical area in which the city is located, including areas not within the jurisdiction of the city. Any such city shall coordinate with other units of general local government located within the metropolitan statistical area to provide such assurances and comply with the assurances.

(Pub. L. 101–625, title VIII, § 854, Nov. 28, 1990, 104 Stat. 4376; Pub. L. 102–550, title VI, § 606(d), (j)(2), Oct. 28, 1992, 106 Stat. 3807, 3810.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, § 606(d)(1), substituted ", units of general local government, and nonprofit organizations" for "and units of general local government".

Subsec. (b). Pub. L. 102–550, § 606(d)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: "ELIGIBILITY.—A jurisdiction shall be eligible to receive a grant only if it has obtained an approved housing strategy (or an approved abbreviated housing strategy) in accordance with section 12705 of this title. A grantee shall carry out activities authorized under this chapter through contracts with project sponsors, except that a grantee that is a State shall obtain the approval of the unit of general local government for the locality in which a project is to be located prior to entering into such contracts."

Subsec. (c)(1). Pub. L. 102–550, § 606(d)(3), added par. (1) and struck out former par. (1) which read as follows: "IN GENERAL.—90 percent of the amounts approved in appropriations Acts under section 12912 of this title shall be allocated among eligible grantees on the basis of the incidence of acquired immunodeficiency syndrome. Of the amounts made available under the previous sentence, the Secretary shall allocate—

"(A) 75 percent among units of general local government located in metropolitan statistical areas with populations in excess of 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome and States with more than 1,500 cases of acquired immunodeficiency syndrome outside of metropolitan statistical areas described in subparagraph (A), and

"(B) 25 percent among units of general local government in metropolitan statistical areas with populations in excess of 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome, that have a higher than average per capita incidence of acquired immunodeficiency syndrome."

Subsec. (c)(3). Pub. L. 102–550, § 606(d)(4)(A), substituted "Nonformula allocation" for "Noneligible grantees" in heading.

Subsec. (c)(3)(A). Pub. L. 102–550, § 606(d)(4)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: "IN GENERAL.—10 percent of the amounts appropriated under section 12912 of this title shall be distributed to grantees and recipients by the Secretary—

"(i) to meet housing needs in States and localities that do not qualify under paragraph (1), or that do qualify under paragraph (1) but do not have an approved housing strategy under section 12705 of this title, and

"(ii) to fund special projects of national significance."

Subsec. (c)(3)(B), (C). Pub. L. 102–550, § 606(j)(2), substituted "eligible persons" for "persons with acquired immunodeficiency syndrome" wherever appearing.

Subsec. (d). Pub. L. 102–550, § 606(d)(5), substituted "applications submitted by applicants and approved by the Secretary" for "approvable applications submitted by eligible applicants" in first sentence.

Subsec. (e). Pub. L. 102–550, § 606(d)(6), substituted "other requirements of this section" for "requirements of subsection (b) of this section".

Subsec. (f). Pub. L. 102–550, § 606(d)(7), added subsec. (f).

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 12904. Eligible activities

Grants allocated under this chapter shall be available only for approved activities to carry out strategies designed to prevent homelessness among eligible persons. Approved activities shall include activities that—

(1) enable public and nonprofit organizations or agencies to provide housing information to such persons and coordinate efforts to expand housing assistance resources for such persons under section 12906 of this title;

(2) facilitate the development and operation of shelter and services for such persons under section 12907 of this title;

(3) provide rental assistance to such persons under section 12908 of this title;

(4) facilitate (through project-based rental assistance or other means) the moderate rehabilitation of single room occupancy dwellings (SROs) that would be made available only to such persons under section 12909 of this title;

(5) facilitate the development of community residences for eligible persons under section 12910 of this title;

(6) carry out other activities that the Secretary develops in cooperation with eligible States and localities, except that activities developed under this paragraph may be assisted only with amounts provided under section 12903(c)(3) of this title.

The Secretary shall establish standards and guidelines for approved activities. The Secretary shall permit grantees to refine and adapt such standards and guidelines for individual projects, where such refinements and adaptations are made necessary by local circumstances.

(Pub. L. 101–625, title VIII, § 855, Nov. 28, 1990, 104 Stat. 4378; Pub. L. 102–550, title VI, § 606(e), (h)(2), (j)(3), Oct. 28, 1992, 106 Stat. 3808, 3810.)

AMENDMENTS

1992—Pub. L. 102–550, § 606(j)(3)(A), in introductory provisions, substituted ''eligible persons'' for ''such persons with acquired immunodeficiency syndrome''.

Par. (3). Pub. L. 102–550, § 606(h)(2), struck out ''short-term'' after ''provide''.

Par. (5). Pub. L. 102–550, § 606(j)(3)(B), struck out ''with acquired immunodeficiency syndrome'' after ''persons''.

Par. (6). Pub. L. 102–550, § 606(e), inserted before period at end '', except that activities developed under this paragraph may be assisted only with amounts provided under section 12903(c)(3) of this title''.

§ 12905. Responsibilities of grantees

(a) Prohibition of substitution of funds

Amounts received from grants under this chapter may not be used to replace other amounts made available or designated by State or local governments for use for the purposes under this chapter.

(b) Capability

The recipient shall have, in the determination of the grantee or the Secretary, the capacity and capability to effectively administer a grant under this chapter.

(c) Cooperation

The recipient shall agree to cooperate and coordinate in providing assistance under this chapter with the agencies of the relevant State and local governments responsible for services in the area served by the applicant for eligible persons and other public and private organizations and agencies providing services for such eligible persons.

(d) Prohibition of fees

The recipient shall agree that no fee will be charged to any eligible person for any housing or services provided with amounts from a grant under this chapter.

(e) Confidentiality

The recipient shall agree to ensure the confidentiality of the name of any individual assisted with amounts from a grant under this chapter and any other information regarding individuals receiving such assistance.

(f) Financial records

The recipient shall agree to maintain and provide the grantee or the Secretary with financial records sufficient, in the determination of the Secretary, to ensure proper accounting and disbursing of amounts received from a grant under this chapter.

(g) Administrative expenses

(1) Grantees

Notwithstanding any other provision of this chapter, each grantee may use not more than 3 percent of the grant amount for administrative costs relating to administering grant amounts and allocating such amounts to project sponsors.

(2) Project sponsors

Notwithstanding any other provision of this chapter, each project sponsor receiving amounts from grants made under this chapter[1] may use not more than 7 percent of the amounts received for administrative costs relating to carrying out eligible activities under section 12904 of this title, including the costs of staff necessary to carry out eligible activities.

(h) Environmental review

For purposes of environmental review, a grant under this chapter shall be treated as assistance for a special project that is subject to section 3547 of this title, and shall be subject to the regulations issued by the Secretary to implement such section.

(Pub. L. 101–625, title VIII, § 856, Nov. 28, 1990, 104 Stat. 4378; Pub. L. 102–550, title VI, § 606(f), (j)(4), (11)(A), Oct. 28, 1992, 106 Stat. 3809–3811; Pub. L. 106–377, § 1(a)(1) [title II, § 203(c)], Oct. 27, 2000, 114 Stat. 1441, 1441A–24.)

REFERENCES IN TEXT

Under this chapter, referred to in subsec. (g)(2), was in the original ''under this title'', and was translated as reading ''under this subtitle'', meaning under subtitle D (§§ 851–863) of title VIII of Pub. L. 101–625, to reflect the probable intent of Congress.

AMENDMENTS

2000—Subsec. (h). Pub. L. 106–377 added subsec. (h).

1992—Subsec. (c). Pub. L. 102–550, § 606(j)(4), (11)(A), substituted ''eligible persons'' for ''individuals with acquired immunodeficiency syndrome or related diseases'' and ''services for such eligible persons'' for ''services for such individuals''.

Subsec. (d). Pub. L. 102–550, § 606(f)(1), added subsec. (d) and struck out former subsec. (d) which read as follows: ''NO FEE.—The recipient shall agree that no fee will be charged of any low-income individual for any services provided with amounts from a grant under this chapter and that if fees are charged of any other individuals, the fees will be based on the income and resources of the individual.''

Subsec. (g). Pub. L. 102–550, § 606(f)(2), added subsec. (g).

§ 12906. Grants for AIDS housing information and coordination services

Grants under this section may only be used for the following activities:

[1] See References in Text note below.

(1) Housing information services

To provide (or contract to provide) counseling, information, and referral services to assist eligible persons to locate, acquire, finance, and maintain housing and meet their housing needs.

(2) Resource identification

To identify, coordinate, and develop housing assistance resources (including conducting preliminary research and making expenditures necessary to determine the feasibility of specific housing-related initiatives) for eligible persons.

(Pub. L. 101–625, title VIII, § 857, Nov. 28, 1990, 104 Stat. 4379; Pub. L. 102–550, title VI, § 606(j)(11)(B), Oct. 28, 1992, 106 Stat. 3811.)

AMENDMENTS

1992—Pars. (1), (2). Pub. L. 102–550 substituted ''eligible persons'' for ''individuals with acquired immunodeficiency syndrome or related diseases''.

§ 12907. AIDS short-term supported housing and services

(a) Use of grants

Any amounts received from grants under this section may only be used to carry out a program to provide (or contract to provide) assistance to eligible persons who are homeless or in need of housing assistance to prevent homelessness, which may include the following activities:

(1) Short-term supported housing

Purchasing, leasing, renovating, repairing, and converting facilities to provide short-term shelter and services.

(2) Short-term housing payments assistance

Providing rent assistance payments for short-term supported housing and rent, mortgage, and utilities payments to prevent homelessness of the tenant or mortgagor of a dwelling.

(3) Supportive services

Providing supportive services, to eligible persons assisted under paragraphs (1) and (2), including health, mental health, assessment, permanent housing placement, drug and alcohol abuse treatment and counseling, day care, and nutritional services (except that health services under this paragraph may only be provided to individuals with acquired immunodeficiency syndrome or related diseases), and providing technical assistance to eligible persons to provide assistance in gaining access to benefits and services for homeless individuals provided by the Federal Government and State and local governments.

(4) Operation

Providing for the operation of short-term supported housing provided under this section, including the costs of security, operation insurance, utilities, furnishings, equipment, supplies, and other incidental costs.

(5) Administration

Providing staff to carry out the program under this section (subject to the provisions of section 12905(g) of this title).

(b) Program requirements

(1) Minimum use period for structures

(A) In general

Any building or structure assisted with amounts from a grant under this section shall be maintained as a facility to provide short-term supported housing or assistance for eligible persons—

(i) in the case of assistance involving substantial rehabilitation or acquisition of the building, for a period of not less than 10 years; and

(ii) in the case of assistance under paragraph (1), (3), or (4) of subsection (a) of this section, for a period of not less than 3 years.

(B) Waiver

The Secretary may waive the requirement under subparagraph (A) with respect to any building or structure if the organization or agency that received the grant under which the building was assisted demonstrates, to the satisfaction of the Secretary, that—

(i) the structure is no longer needed to provide short-term supported housing or assistance or the continued operation of the structure for such purposes is no longer feasible; and

(ii) the structure will be used to benefit individuals or families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median income for the area if the Secretary finds that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(2) Residency and location limitations on short-term supported housing

(A) Residency

A short-term supported housing facility assisted with amounts from a grant under this section may not provide shelter or housing at any single time for more than 50 families or individuals.

(B) Waiver

The Secretary may, as the Secretary determines appropriate, waive the limitation under subparagraph (A) for any program or short-term supported housing facility.

(3) Term of assistance

(A) Supported housing assistance

A program assisted under this section may not provide residence in a short-term housing facility assisted under this section to any individual for a sum of more than 60 days during any 6-month period.

(B) Housing payments assistance

A program assisted under this section may not provide assistance for rent, mortgage, or utilities payments to any individual for rent, mortgage, or utilities costs accruing over a period of more than 21 weeks of any 52-week period.

(C) Waiver

Notwithstanding subparagraphs (A) and (B), the Secretary may waive the applicability of the requirements under such subparagraphs with respect to any individual for which the project sponsor has made a good faith effort to acquire permanent housing (in accordance with paragraph (4)) and has been unable to do so.

(4) Placement

A program assisted under this section shall provide for any individual who has remained in short-term supported housing assisted under the demonstration program, to the maximum extent practicable, the opportunity for placement in permanent housing or an environment appropriate to the health and social needs of the individual.

(5) Presumption for independent living

In providing assistance under this section in any case in which the residence of an individual is appropriate to the needs of the individual, a program assisted under this section shall, when reasonable, provide for assistance in a manner appropriate to maintain the individual in such residence.

(6) Case management services

A program assisted under this section shall provide each individual assisted under the program with an opportunity, if eligible, to receive case management services available from the appropriate social service agencies.

(Pub. L. 101–625, title VIII, § 858, Nov. 28, 1990, 104 Stat. 4379; Pub. L. 102–550, title VI, § 606(g), (j)(5), (11)(C), Oct. 28, 1992, 106 Stat. 3809–3811.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, § 606(j)(11)(C)(i), substituted ''eligible persons'' for ''individuals with acquired immunodeficiency syndrome or related diseases'' in introductory provisions.

Subsec. (a)(3). Pub. L. 102–550, § 606(g)(1)(A), (j)(5), substituted ''to eligible persons assisted under'' for ''to individuals assisted under'' and inserted before period at end ''(except that health services under this paragraph may only be provided to individuals with acquired immunodeficiency syndrome or related diseases), and providing technical assistance to eligible persons to provide assistance in gaining access to benefits and services for homeless individuals provided by the Federal Government and State and local governments''.

Subsec. (a)(4), (5). Pub. L. 102–550, § 606(g)(1)(B), (C), added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

''(4) MAINTENANCE AND ADMINISTRATION.—Providing for maintenance, administration, security, operation, insurance, utilities, furnishings, equipment, supplies, and other incidental costs relating to any short-term supported housing provided under the demonstration program under this section.

''(5) TECHNICAL ASSISTANCE.—Providing technical assistance to such individuals to provide assistance in gaining access to benefits and services for homeless individuals provided by the Federal Government and State and local governments.''

Subsec. (b)(1)(A). Pub. L. 102–550, § 606(j)(11)(C)(ii), substituted ''eligible persons'' for ''individuals with acquired immunodeficiency syndrome or related diseases'' in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 102–550, § 606(g)(2)(A)(i), (iii), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''LOCATION.—A facility for short-term supported housing assisted with amounts from a grant under this section may not be located in or contiguous to any other facility for emergency or short-term housing that is not limited to use by individuals with acquired immunodeficiency syndrome or related diseases.''

Subsec. (b)(2)(C). Pub. L. 102–550, § 606(g)(2)(A)(ii), (iii), substituted ''limitation under subparagraph (A)'' for ''limitations under subparagraphs (A) and (B)'' and redesignated subpar. (C) as (B).

Subsec. (b)(3)(C). Pub. L. 102–550, § 606(g)(2)(B), added subpar. (C).

§ 12908. Rental assistance

(a) Use of funds

(1) In general

Grants under this section may be used only for assistance to provide rental assistance for low-income eligible persons. Such assistance may be project based or tenant based and shall be provided to the extent practicable in the manner provided for under section 1437f of this title. Grantees shall ensure that the housing provided is decent, safe, and sanitary.

(2) Shared housing arrangements

Grants under this section may be used to assist individuals who elect to reside in shared housing arrangements in the manner provided under section 1437f(p) of this title, except that, notwithstanding such section, assistance under this section may be made available to nonelderly individuals. The Secretary shall issue any standards for shared housing under this paragraph that vary from standards issued under section 1437f(p) of this title only to the extent necessary to provide for circumstances of shared housing arrangements under this paragraph that differ from circumstances of shared housing arrangements for elderly families under section 1437f(p) of this title.

(b) Limitations

A recipient under this section shall comply with the following requirements:

(1) Services

The recipient shall provide for qualified service providers in the area to provide appropriate services to the eligible persons assisted under this section.

(2) Intensive assistance

For any individual with acquired immunodeficiency syndrome or related diseases who requires more care than can be provided in housing assisted under this section, the recipient shall provide for the locating of a care provider who can appropriately care for the individual and referral of the individual to the care provider.

(c) Administrative costs

A project sponsor providing rental assistance under this section may use amounts from any grant received under this section for administrative expenses involved in providing such assistance, subject to the provisions of 12905(g)(2)[1] of this title.

(Pub. L. 101–625, title VIII, § 859, Nov. 28, 1990, 104 Stat. 4381; Pub. L. 102–550, title VI, § 606(h)(1),

[1] So in original. Probably should be preceded by ''section''.

(j)(6), (7), (11)(D), Oct. 28, 1992, 106 Stat. 3810, 3811.)

AMENDMENTS

1992—Pub. L. 102–550, § 606(h)(1)(A), substituted ''Rental assistance'' for ''Short-term rental assistance'' in section catchline.

Subsec. (a)(1). Pub. L. 102–550, § 606(h)(1)(B), (j)(11)(D), struck out ''short-term'' before ''rental assistance'' and substituted ''eligible persons'' for ''individuals with acquired immunodeficiency syndrome or related diseases''.

Subsec. (b)(1). Pub. L. 102–550, § 606(j)(6), substituted ''eligible persons'' for ''individuals''.

Subsec. (b)(2). Pub. L. 102–550, § 606(j)(7), inserted ''with acquired immunodeficiency syndrome or related diseases'' after ''any individual''.

Subsec. (c). Pub. L. 102–550, § 606(h)(1)(C), added subsec. (c).

§ 12909. Single room occupancy dwellings

(a) Use of grants

Grants under this section may be used to provide project-based rental assistance or grants to facilitate the development of single room occupancy dwellings. To the extent practicable, a program under this section shall be carried out in the manner provided for under section 1437f(n)[1] of this title.

(b) Limitation

Recipients under this section shall require the provision to individuals assisted under this section of the following assistance:

(1) Services

Appropriate services provided by qualified service providers in the area.

(2) Intensive assistance

For any individual with acquired immunodeficiency syndrome or related diseases who requires more care than can be provided in housing assisted under this section, locating a care provider who can appropriately care for the individual and referral of the individual to the care provider.

(Pub. L. 101–625, title VIII, § 860, Nov. 28, 1990, 104 Stat. 4381; Pub. L. 102–550, title VI, § 606(j)(7), Oct. 28, 1992, 106 Stat. 3810.)

REFERENCES IN TEXT

Section 1437f(n) of this title, referred to in subsec. (a), was repealed by Pub. L. 105–276, title V, § 550(a)(7), Oct. 21, 1998, 112 Stat. 2609.

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102–550 inserted ''with acquired immunodeficiency syndrome or related diseases'' after ''any individual''.

§ 12910. Grants for community residences and services

(a) Grant authority

The Secretary of Housing and Urban Development may make grants to States and metropolitan areas to develop and operate community residences and provide services for eligible persons.

[1] See References in Text note below.

(b) Community residences and services

(1) Community residences

(A) In general

A community residence under this section shall be a multiunit residence designed for eligible persons for the following purposes:

(i) To provide a lower cost residential alternative to institutional care and to prevent or delay the need for institutional care.

(ii) To provide a permanent or transitional residential setting with appropriate services that enhances the quality of life for individuals who are unable to live independently.

(iii) To prevent homelessness among eligible persons by increasing available suitable housing resources.

(iv) To integrate eligible persons into local communities and provide services to maintain the abilities of such eligible persons to participate as fully as possible in community life.

(B) Rent

Except to the extent that the costs of providing residence are reimbursed or provided by any other assistance from Federal or non-Federal public sources, each resident in a community residence shall pay as rent for a dwelling unit an amount equal to the following:

(i) For low-income individuals, the amount of rent paid under section 3(a) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)) by a low-income family (as the term is defined in section 3(b)(2) of such Act (42 U.S.C. 1437a(b)(2))) for a dwelling unit assisted under such Act [42 U.S.C. 1437 et seq.].

(ii) For any resident that is not a low-income resident, an amount based on a formula, which shall be determined by the Secretary, under which rent is determined by the income and resources of the resident.

(C) Fees

Fees may be charged for any services provided under subsection (c)(2) of this section to residents of a community residence, except that any fees charged shall be based on the income and resources of the resident and the provision of services to any resident of a community residence may not be withheld because of an inability of the resident to pay such fee.

(D) Section 1437f assistance

Assistance made available under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) may be used in conjunction with a community residence under this subsection for tenant-based assistance.

(2) Services

Services provided with a grant under this section shall consist of services appropriate in assisting eligible persons to enhance their quality of life, enable such individuals to more fully participate in community life, and delay

or prevent the placement of such individuals in hospitals or other institutions.

(c) Use of grants

Any amounts received from a grant under this section may be used only as follows:

(1) Community residences

For providing assistance in connection with community residences under subsection (b)(1) of this section for the following activities:

(A) Physical improvements

Construction, acquisition, rehabilitation, conversion, retrofitting, and other physical improvements necessary to make a structure suitable for use as a community residence.

(B) Operating costs

Operating costs for a community residence.

(C) Technical assistance

Technical assistance in establishing and operating a community residence, which may include planning and other predevelopment or preconstruction expenses, and expenses relating to community outreach and educational activities regarding acquired immunodeficiency syndrome and related diseases provided for individuals residing in proximity of eligible persons assisted under this chapter.

(D) In-house services

Services appropriate for individuals residing in a community residence, which may include staff training and recruitment.

(2) Services

For providing services under subsection (b)(2) of this section to any individuals assisted under this chapter.

(3) Administrative expenses

For administrative expenses related to the planning and carrying out activities under this section (subject to the provisions of section 12905(g) of this title).

(d) Limitations on use of grants

(1) Community residences

Any jurisdiction that receives a grant under this section may not use any amounts received under the grant for the purposes under subsection (c)(1) of this section, except for planning and other expenses preliminary to construction or other physical improvement under subsection (c)(1)(A) of this section, unless the jurisdiction certifies to the Secretary, as the Secretary shall require, the following:

(A) Service agreement

That the jurisdiction has entered into a written agreement with service providers qualified to deliver any services included in the proposal under subsection (c) of this section to provide such services to eligible persons assisted by the community residence.

(B) Funding and capability

That the jurisdiction will have sufficient funding for such services and the service providers are qualified to assist eligible persons.

(C) Zoning and building codes

That any construction or physical improvements carried out with amounts received from the grant will comply with any applicable State and local housing codes and licensing requirements in the jurisdiction in which the building or structure is located.

(D) Intensive assistance

That, for any individual with acquired immunodeficiency syndrome or related diseases who resides in a community residence assisted under the grant and who requires more intensive care than can be provided by the community residence, the jurisdiction will locate for and refer the individual to a service provider who can appropriately care for the individual.

(2) Services

Any jurisdiction that receives a grant under this section may use any amounts received under the grant for the purposes under subsection (c)(2) of this section only for the provision of services by service providers qualified to provide such services to eligible persons.

(Pub. L. 101–625, title VIII, § 861, Nov. 28, 1990, 104 Stat. 4382; Pub. L. 102–550, title VI, § 606(i), (j)(8)–(10), (11)(E), Oct. 28, 1992, 106 Stat. 3810, 3811; Pub. L. 105–276, title V, § 550(b), Oct. 21, 1998, 112 Stat. 2609.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (b)(1)(B)(i), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1)(D). Pub. L. 105–276 substituted ''assistance'' for ''certificates or vouchers''.

1992—Subsec. (a). Pub. L. 102–550, § 606(j)(8), substituted ''eligible persons'' for ''persons with acquired immunodeficiency syndrome or related diseases''.

Subsec. (b)(1)(A). Pub. L. 102–550, § 606(j)(11)(E)(i), substituted ''eligible persons'' for ''individuals with acquired immunodeficiency syndrome or related diseases'' in introductory provisions and cl. (iii).

Subsec. (b)(1)(A)(iv). Pub. L. 102–550, § 606(j)(9), (11)(E)(i), substituted ''eligible persons'' for ''individuals with acquired immunodeficiency syndrome or related diseases'' and ''such eligible persons'' for ''such individuals''.

Subsec. (b)(2). Pub. L. 102–550, § 606(j)(11)(E)(i), which directed the substitution of ''eligible persons'' for ''individuals with acquired immunodeficiency syndrome or related diseases'' wherever appearing in subsec. (b), was executed by making the substitution for ''individuals with acquired immunodeficiency syndrome and related diseases'' in par. (2) to reflect the probable intent of Congress.

Subsec. (c)(1)(C). Pub. L. 102–550, § 606(i)(1), inserted before period at end '', and expenses relating to community outreach and educational activities regarding acquired immunodeficiency syndrome and related diseases provided for individuals residing in proximity of eligible persons assisted under this chapter''.

Subsec. (c)(3). Pub. L. 102–550, § 606(i)(2), added par. (3) and struck out former par. (3) which read as follows:

''For administrative expenses related to the planning and execution of activities under this section, except that a jurisdiction that receives a grant under this section may expend not more than 10 percent of the amount received under the grant for such administrative expenses. Administrative expenses under this paragraph may include expenses relating to community outreach and educational activities regarding acquired immunodeficiency syndrome and related diseases, for staff carrying out activities assisted with a grant under this section and for individuals who reside in proximity of individuals assisted under this chapter.''

Subsec. (d). Pub. L. 102–550, § 606(j)(11)(E)(ii), which directed the substitution of ''eligible persons'' for ''individuals with acquired immunodeficiency syndrome or related diseases'' wherever appearing in subsec. (d), was executed by making the substitution for ''individuals with acquired immunodeficiency syndrome and related diseases'' in pars. (1)(B) and (2) to reflect the probable intent of Congress.

Subsec. (d)(1)(A). Pub. L. 102–550, § 606(j)(10)(A), substituted ''eligible persons'' for ''individuals''.

Subsec. (d)(1)(D). Pub. L. 102–550, § 606(j)(10)(B), inserted ''with acquired immunodeficiency syndrome or related diseases'' after ''any individual''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

§ 12911. Report

Any organization or agency that receives a grant under this chapter shall submit to the Secretary, for any fiscal year in which the organization or agency receives a grant under this chapter, a report describing the use of the amounts received, which shall include the number of individuals assisted, the types of assistance provided, and any other information that the Secretary determines to be appropriate.

(Pub. L. 101–625, title VIII, § 862, Nov. 28, 1990, 104 Stat. 4384.)

§ 12912. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter $150,000,000 for fiscal year 1993 and $156,300,000 for fiscal year 1994.

(Pub. L. 101–625, title VIII, § 863, Nov. 28, 1990, 104 Stat. 4384; Pub. L. 102–550, title VI, § 606(b), Oct. 28, 1992, 106 Stat. 3806.)

AMENDMENTS

1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated to carry out this chapter $75,000,000 for fiscal year 1991, and $156,500,000 for fiscal year 1992.''

CHAPTER 132—VICTIMS OF CHILD ABUSE

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13024. Authorization of appropriations.

SUBCHAPTER IV—REPORTING REQUIREMENTS

13031. Child abuse reporting.
13032. Reporting of child pornography by electronic communication service providers.

SUBCHAPTER V—CHILD CARE WORKER EMPLOYEE BACKGROUND CHECKS

13041. Requirement for background checks.

SUBCHAPTER VI—TREATMENT FOR JUVENILE OFFENDERS WHO ARE VICTIMS OF CHILD ABUSE OR NEGLECT

13051 to 13055. Repealed.

SUBCHAPTER I—IMPROVING INVESTIGATION AND PROSECUTION OF CHILD ABUSE CASES

§ 13001. Findings

The Congress finds that—

(1) over 2,000,000 reports of suspected child abuse and neglect are made each year, and drug abuse is associated with a significant portion of these;

(2) the investigation and prosecution of child abuse cases is extremely complex, involving numerous agencies and dozens of personnel;

(3) traditionally, community agencies and professionals have different roles in the prevention, investigation, and intervention process;

(4) in such cases, too often the system does not pay sufficient attention to the needs and welfare of the child victim, aggravating the trauma that the child victim has already experienced;

(5) there is a national need to enhance coordination among community agencies and professionals involved in the intervention system;

(6) multidisciplinary child abuse investigation and prosecution programs have been developed that increase the reporting of child abuse cases, reduce the trauma to the child victim, and increase the successful prosecution of child abuse offenders; and

(7) such programs have proven effective, and with targeted Federal assistance, could be duplicated in many jurisdictions throughout the country.

(Pub. L. 101–647, title II, § 211, Nov. 29, 1990, 104 Stat. 4792; Pub. L. 102–586, § 6(a), Nov. 4, 1992, 106 Stat. 5029.)

AMENDMENTS

1992—Pars. (3) to (7). Pub. L. 102–586 added pars. (3) and (5) and redesignated former pars. (3), (4), and (5) as (4), (6), and (7), respectively.

SHORT TITLE

Section 201 of title II of Pub. L. 101–647 provided that: ''This title [enacting this chapter, sections 3796aa to 3796aa–8 of this title, and sections 403, 2258, and 3509 of Title 18, Crimes and Criminal Procedure, and amending sections 3742, 3782, 3783, 3789, 3793, and 3797 of this title] may be cited as the 'Victims of Child Abuse Act of 1990'.''

§ 13001a. Definitions

For purposes of this subchapter—

(1) the term ''Administrator'' means the agency head designated under section 5611(b) of this title;

(2) the term ''applicant'' means a child protective service, law enforcement, legal, medical and mental health agency or other agency that responds to child abuse cases;

(3) the term ''board'' means the Children's Advocacy Advisory Board established under section 13001b(e) of this title;

(4) the term ''census region'' means 1 of the 4 census regions (northeast, south, midwest, and west) that are designated as census regions by the Bureau of the Census as of November 4, 1992;

(5) the term ''child abuse'' means physical or sexual abuse or neglect of a child;

(6) the term ''Director'' means the Director of the National Center on Child Abuse and Neglect;

(7) the term ''multidisciplinary response to child abuse'' means a response to child abuse that is based on mutually agreed upon procedures among the community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that best meets the needs of child victims and their nonoffending family members;

(8) the term ''nonoffending family member'' means a member of the family of a victim of child abuse other than a member who has been convicted or accused of committing an act of child abuse; and

(9) the term ''regional children's advocacy program'' means the children's advocacy program established under section 13001b(a) of this title.

(Pub. L. 101–647, title II, § 212, as added Pub. L. 102–586, § 6(b)(2), Nov. 4, 1992, 106 Stat. 5029.)

PRIOR PROVISIONS

A prior section 212 of Pub. L. 101–647 was renumbered section 214 and is classified to section 13002 of this title.

§ 13001b. Regional children's advocacy centers

(a) Establishment of regional children's advocacy program

The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime, shall establish a children's advocacy program to—

(1) focus attention on child victims by assisting communities in developing child-focused, community-oriented, facility-based programs designed to improve the resources available to children and families;

(2) provide support for nonoffending family members;

(3) enhance coordination among community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that respond to child abuse cases; and

(4) train physicians and other health care and mental health care professionals in the multidisciplinary approach to child abuse so that trained medical personnel will be available to provide medical support to community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that respond to child abuse cases.

(b) Activities of regional children's advocacy program

(1) Administrator

The Administrator, in coordination with the Director, shall—

(A) establish regional children's advocacy program centers;

(B) fund existing regional centers with expertise in the prevention, judicial handling, and treatment of child abuse and neglect; and

(C) fund the establishment of freestanding facilities in multidisciplinary programs within communities that have yet to establish such facilities,

for the purpose of enabling grant recipients to provide information, services, and technical assistance to aid communities in establishing multidisciplinary programs that respond to child abuse.

(2) Grant recipients

A grant recipient under this section shall—

(A) assist communities—

(i) in developing a comprehensive, multidisciplinary response to child abuse that is designed to meet the needs of child victims and their families;

(ii) in establishing a freestanding facility where interviews of and services for abused children can be provided;

(iii) in preventing or reducing trauma to children caused by multiple contacts with community professionals;

(iv) in providing families with needed services and assisting them in regaining maximum functioning;

(v) in maintaining open communication and case coordination among community professionals and agencies involved in child protection efforts;

(vi) in coordinating and tracking investigative, preventive, prosecutorial, and treatment efforts;

(vii) in obtaining information useful for criminal and civil proceedings;

(viii) in holding offenders accountable through improved prosecution of child abuse cases;

(ix) in enhancing professional skills necessary to effectively respond to cases of child abuse through training; and

(x) in enhancing community understanding of child abuse; and

(B) provide training and technical assistance to local children's advocacy centers in its census region that are grant recipients under section 13002 of this title.

(c) Operation of regional children's advocacy program

(1) Solicitation of proposals

Not later than 1 year after November 4, 1992, the Administrator shall solicit proposals for assistance under this section.

(2) Minimum qualifications

In order for a proposal to be selected, the Administrator may require an applicant to have in existence, at the time the proposal is submitted, 1 or more of the following:

(A) A proven record in conducting activities of the kinds described in subsection (c) of this section.

(B) A facility where children who are victims of sexual or physical abuse and their nonoffending family members can go for the purpose of evaluation, intervention, evidence gathering, and counseling.

(C) Multidisciplinary staff experienced in providing remedial counseling to children and families.

(D) Experience in serving as a center for training and education and as a resource facility.

(E) National expertise in providing technical assistance to communities with respect to the judicial handling of child abuse and neglect.

(3) Proposal requirements

(A) In general

A proposal submitted in response to the solicitation under paragraph (1) shall—

(i) include a single or multiyear management plan that outlines how the applicant will provide information, services, and technical assistance to communities so that communities can establish multidisciplinary programs that respond to child abuse;

(ii) demonstrate the ability of the applicant to operate successfully a multidisciplinary child abuse program or provide training to allow others to do so; and

(iii) state the annual cost of the proposal and a breakdown of those costs.

(B) Content of management plan

A management plan described in paragraph (3)(A) shall—

(i) outline the basic activities expected to be performed;

(ii) describe the entities that will conduct the basic activities;

(iii) establish the period of time over which the basic activities will take place; and

(iv) define the overall program management and direction by—

(I) identifying managerial, organizational, and administrative procedures and responsibilities;

(II) demonstrating how implementation and monitoring of the progress of the children's advocacy program after receipt of funding will be achieved; and

(III) providing sufficient rationale to support the costs of the plan.

(4) Selection of proposals

(A) Competitive basis

Proposals shall be selected under this section on a competitive basis.

(B) Criteria

The Administrator, in coordination with the Director, shall select proposals for funding that—

(i) best result in developing and establishing multidisciplinary programs that respond to child abuse by assisting, training, and teaching community agencies and professionals called upon to respond to child abuse cases;

(ii) assist in resolving problems that may occur during the development, operation, and implementation of a multidisciplinary program that responds to child abuse;

(iii) carry out the objectives developed by the board under subsection (e)(2)(A) of this section;

(iv) to the greatest extent possible and subject to available appropriations, ensure that at least 1 applicant is selected from each of the 4 census regions of the country; and

(v) otherwise best carry out the purposes of this section.

(5) Funding of program

From amounts made available in separate appropriation Acts, the Administrator shall provide to each grant recipient the financial and technical assistance and other incentives that are necessary and appropriate to carry out this section.

(6) Coordination of effort

In order to carry out activities that are in the best interests of abused and neglected children, a grant recipient shall consult with other grant recipients on a regular basis to exchange ideas, share information, and review children's advocacy program activities.

(d) Review

(1) Evaluation of regional children's advocacy program activities

The Administrator, in coordination with the Director, shall regularly monitor and evaluate the activities of grant recipients and shall determine whether each grant recipient has complied with the original proposal and any modifications.

(2) Annual report

A grant recipient shall provide an annual report to the Administrator and the Director that—

(A) describes the progress made in satisfying the purpose of the children's advocacy program; and

(B) states whether changes are needed and are being made to carry out the purpose of the children's advocacy program.

(3) Discontinuation of funding

(A) Failure to implement program activities

If a grant recipient under this section substantially fails in the implementation of the

program activities, the Administrator shall not discontinue funding until reasonable notice and an opportunity for reconsideration is given.

(B) Solicitation of new proposals

Upon discontinuation of funding of a grant recipient under this section, the Administrator shall solicit new proposals in accordance with subsection (c) of this section.

(e) Children's advocacy advisory board

(1) Establishment of board

(A) In general

Not later than 120 days after November 4, 1992, the Administrator and the Director, after consulting with representatives of community agencies that respond to child abuse cases, shall establish a children's advocacy advisory board to provide guidance and oversight in implementing the selection criteria and operation of the regional children's advocacy program.

(B) Membership

(i) The board—

(I) shall be composed of 12 members who are selected by the Administrator, in coordination with the Director, a majority of whom shall be individuals experienced in the child abuse investigation, prosecution, prevention, and intervention systems;

(II) shall include at least 1 member from each of the 4 census regions; and

(III) shall have members appointed for a term not to exceed 3 years.

(ii) Members of the board may be reappointed for successive terms.

(2) Review and recommendations

(A) Objectives

Not later than 180 days after November 4, 1992, and annually thereafter, the board shall develop and submit to the Administrator and the Director objectives for the implementation of the children's advocacy program activities described in subsection (b) of this section.

(B) Review

The board shall annually—

(i) review the solicitation and selection of children's advocacy program proposals and make recommendations concerning how each such activity can be altered so as to better achieve the purposes of this section; and

(ii) review the program activities and management plan of each grant recipient and report its findings and recommendations to the Administrator and the Director.

(3) Rules and regulations

The board shall promulgate such rules and regulations as it deems necessary to carry out its duties under this section.

(f) Reporting

The Attorney General and the Secretary of Health and Human Services shall submit to Congress, by March 1 of each year, a detailed review of the progress of the regional children's advocacy program activities.

(Pub. L. 101–647, title II, § 213, as added Pub. L. 102–586, § 6(b)(2), Nov. 4, 1992, 106 Stat. 5030; amended Pub. L. 108–21, title III, § 381(a), Apr. 30, 2003, 117 Stat. 667.)

PRIOR PROVISIONS

A prior section 213 of Pub. L. 101–647 was renumbered section 214A and is classified to section 13003 of this title.

AMENDMENTS

2003—Subsec. (c)(4). Pub. L. 108–21, § 381(a)(1), struck out ''and'' at end of cl. (ii) of subpar. (B), substituted ''board'' for ''Board'' in cl. (iii) of subpar. (B), and redesignated subpars. (C) and (D) as cls. (iv) and (v), respectively, of subpar. (B).

Subsec. (e)(1)(B)(ii), (2)(A), (3). Pub. L. 108–21, § 381(a)(2), substituted ''board'' for ''Board''.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 13002. Local children's advocacy centers

(a) In general

The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime, shall make grants to develop and implement multidisciplinary child abuse investigation and prosecution programs.

(b) Grant criteria

(1) The Director shall establish the criteria to be used in evaluating applications for grants under this section consistent with sections 5673 and 5676 of this title.

(2) In general, the grant criteria established pursuant to paragraph (1) may require that a program include any of the following elements:

(A) A written agreement between local law enforcement, social service, health, and other related agencies to coordinate child abuse investigation, prosecution, treatment, and counseling services.

(B) An appropriate site for referring, interviewing, treating, and counseling child victims of sexual and serious physical abuse and neglect and nonoffending family members (referred to as the ''counseling center'').

(C) Referral of all sexual and serious physical abuse and neglect cases to the counseling center not later than 24 hours after notification of an incident of abuse.

(D) Joint initial investigative interviews of child victims by personnel from law enforcement, health, and social service agencies.

(E) A requirement that, to the extent practicable, the same agency representative who conducts an initial interview conduct all subsequent interviews.

(F) A requirement that, to the extent practicable, all interviews and meetings with a child victim occur at the counseling center.

(G) Coordination of each step of the investigation process to minimize the number of interviews that a child victim must attend.

(H) Designation of a director for the multidisciplinary program.

(I) Assignment of a volunteer or staff advocate to each child in order to assist the child and, when appropriate, the child's family, throughout each step of judicial proceedings.

(J) Such other criteria as the Director shall establish by regulation.

(c) Distribution of grants

In awarding grants under this section, the Director shall ensure that grants are distributed to both large and small States and to rural, suburban, and urban jurisdictions.

(d) Consultation with regional children's advocacy centers

A grant recipient under this section shall consult from time to time with regional children's advocacy centers in its census region that are grant recipients under section 13001b of this title.

(Pub. L. 101–647, title II, § 214, formerly § 212, Nov. 29, 1990, 104 Stat. 4793; renumbered § 214 and amended Pub. L. 102–586, § 6(b)(1), (c), Nov. 4, 1992, 106 Stat. 5029, 5034; Pub. L. 107–273, div. C, title II, § 12221(b)(1)(A), Nov. 2, 2002, 116 Stat. 1894.)

PRIOR PROVISIONS

A prior section 214 of Pub. L. 101–647 was renumbered section 214B and is classified to section 13004 of this title.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–273 substituted ''sections 5673 and 5676 of this title'' for ''sections 5665a, 5673, and 5676 of this title''.

1992—Pub. L. 102–586, § 6(c)(1), substituted ''Local children's advocacy centers'' for ''Authority of Director to make grants'' in section catchline.

Subsec. (a). Pub. L. 102–586, § 6(c)(2), substituted ''The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime,'' for ''The Director of the Office of Victims of Crime (hereinafter in this subchapter referred to as the 'Director'), in consultation with officials of the Department of Health and Human Services,''.

Subsec. (b)(2)(B). Pub. L. 102–586, § 6(c)(3), inserted ''and nonoffending family members'' after ''neglect''.

Subsec. (d). Pub. L. 102–586, § 6(c)(4), added subsec. (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

§ 13003. Grants for specialized technical assistance and training programs

(a) In general

The Administrator shall make grants to national organizations to provide technical assistance and training to attorneys and others instrumental to the criminal prosecution of child abuse cases in State or Federal courts, for the purpose of improving the quality of criminal prosecution of such cases.

(b) Grantee organizations

An organization to which a grant is made pursuant to subsection (a) of this section shall be one that has, or is affiliated with one that has, broad membership among attorneys who prosecute criminal cases in State courts and has demonstrated experience in providing training and technical assistance for prosecutors.

(c) Grant criteria

(1) The Administrator shall establish the criteria to be used for evaluating applications for grants under this section, consistent with sections 5673 and 5676 of this title.

(2) The grant criteria established pursuant to paragraph (1) shall require that a program provide training and technical assistance that includes information regarding improved child interview techniques, thorough investigative methods, interagency coordination and effective presentation of evidence in court, including the use of alternative courtroom procedures described in this title.[1]

(Pub. L. 101–647, title II, § 214A, formerly § 213, Nov. 29, 1990, 104 Stat. 4793; renumbered § 214A and amended Pub. L. 102–586, § 6(b)(1), (d), Nov. 4, 1992, 106 Stat. 5029, 5034; Pub. L. 107–273, div. C, title II, § 12221(b)(1)(B), Nov. 2, 2002, 116 Stat. 1894.)

REFERENCES IN TEXT

This title, referred to in subsec. (c)(2), means title II of Pub. L. 101–647, known as the Victims of Child Abuse Act of 1990, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 13001 of this title and Tables.

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107–273 substituted ''sections 5673 and 5676 of this title'' for ''sections 5665a, 5673, and 5676 of this title''.

1992—Subsecs. (a), (c)(1). Pub. L. 102–586, § 6(d), substituted ''Administrator'' for ''Director''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

§ 13004. Authorization of appropriations

(a) Sections 13001b and 13002

There are authorized to be appropriated to carry out sections 13001b and 13002 of this title, $15,000,000 for each of fiscal years 2004 and 2005.

(b) Section 13003

There are authorized to be appropriated to carry out section 13003 of this title, $5,000,000 for each of fiscal years 2004 and 2005.

(Pub. L. 101–647, title II, § 214B, formerly § 214, Nov. 29, 1990, 104 Stat. 4794; renumbered § 214B and amended Pub. L. 102–586, § 6(b)(1), (e), Nov. 4, 1992, 106 Stat. 5029, 5034; Pub. L. 104–235, title II, § 232, Oct. 3, 1996, 110 Stat. 3092; Pub. L. 108–21, title III, § 381(b), Apr. 30, 2003, 117 Stat. 667.)

[1] See References in Text note below.

AMENDMENTS

2003—Pub. L. 108–21 amended section generally. Prior to amendment, section authorized appropriations to carry out sections 13001b and 13002 of $15,000,000 for fiscal year 1993 and such sums as necessary in fiscal years 1994 through 2000 and appropriations to carry out section 13003 of $5,000,000 for fiscal year 1993 and such sums as necessary in fiscal years 1994 through 2000.

1996—Subsecs. (a)(2), (b)(2). Pub. L. 104–235 substituted ''1996, and each of the fiscal years 1997 through 2000'' for ''and 1996''.

1992—Pub. L. 102–586, § 6(e), amended section generally. Prior to amendment, section authorized appropriations to carry out this subchapter of $20,000,000 in fiscal year 1991 and such sums as may be necessary in fiscal years 1992 and 1993 and provided that not less than 90 percent was to be used for grants under section 13002 of this title.

SUBCHAPTER II—COURT-APPOINTED SPECIAL ADVOCATE PROGRAM

§ 13011. Findings

The Congress finds that—

(1) Court Appointed Special Advocates, who may serve as guardians ad litem, are trained volunteers appointed by courts to advocate for the best interests of children who are involved in the juvenile and family court system due to abuse or neglect; and

(2) in 2003, Court Appointed Special Advocate volunteers represented 288,000 children, more than 50 percent of the estimated 540,000 children in foster care because of substantiated cases of child abuse or neglect.

(Pub. L. 101–647, title II, § 215, Nov. 29, 1990, 104 Stat. 4794; Pub. L. 109–162, title I, § 112(a), Jan. 5, 2006, 119 Stat. 2985.)

AMENDMENTS

2006—Pars. (1), (2). Pub. L. 109–162 added pars. (1) and (2) and struck out former pars. (1) and (2), which read as follows:

''(1) the National Court-Appointed Special Advocate provides training and technical assistance to a network of 13,000 volunteers in 377 programs operating in 47 States; and

''(2) in 1988, these volunteers represented 40,000 children, representing approximately 15 percent of the estimated 270,000 cases of child abuse and neglect in juvenile and family courts.''

§ 13012. Purpose

The purpose of this subchapter is to ensure that by January 1, 2010, a court-appointed special advocate shall be available to every victim of child abuse or neglect in the United States that needs such an advocate.

(Pub. L. 101–647, title II, § 216, Nov. 29, 1990, 104 Stat. 4794; Pub. L. 103–322, title IV, § 40156(a)(2), Sept. 13, 1994, 108 Stat. 1923; Pub. L. 109–162, title I, § 112(b), Jan. 5, 2006, 119 Stat. 2986.)

AMENDMENTS

2006—Pub. L. 109–162 substituted ''January 1, 2010'' for ''January 1, 1995''.

1994—Pub. L. 103–322 made technical amendment to reference to this subchapter to correct reference to corresponding provision of original act.

§ 13013. Strengthening of court-appointed special advocate program

(a) In general

The Administrator of the Office of Juvenile Justice and Delinquency Prevention shall make grants to initiate, sustain, and expand the court-appointed special advocate program.

(b) Grantee organizations

(1) An organization to which a grant is made pursuant to subsection (a) of this section—

(A) shall be a national organization that has broad membership among court-appointed special advocates and has demonstrated experience in grant administration of court-appointed special advocate programs and in providing training and technical assistance to court-appointed special advocate program; or

(B) may be a local public or not-for-profit agency that has demonstrated the willingness to initiate, sustain, and expand a court-appointed special advocate program.

(2) An organization described in paragraph (1)(A) that receives a grant may be authorized to make subgrants and enter into contracts with public and not-for-profit agencies to initiate, sustain, and expand the court-appointed special advocate program. Should a grant be made to a national organization for this purpose, the Administrator shall specify an amount not exceeding 5 percent that can be used for administrative purposes by the national organization.

(c) Grant criteria

(1) The Administrator shall establish criteria to be used in evaluating applications for grants under this section, consistent with sections 5673 and 5676 of this title.

(2) In general, the grant criteria established pursuant to paragraph (1) shall require that a court-appointed special advocate program provide screening, training, and supervision of court-appointed special advocates in accordance with standards developed by the National Court-Appointed Special Advocate Association. Such criteria may include the requirements that—

(A) a court-appointed special advocate association program have a mission and purpose in keeping with the mission and purpose of the National Court-Appointed Special Advocate Association and that it abide by the National Court-Appointed Special Advocate Association Code of Ethics;

(B) a court-appointed special advocate association program operate with access to legal counsel;

(C) the management and operation of a court-appointed special advocate program assure adequate supervision of court-appointed special advocate volunteers;

(D) a court-appointed special advocate program keep written records on the operation of the program in general and on each applicant, volunteer, and case;

(E) a court-appointed special advocate program have written management and personnel policies and procedures, screening requirements, and training curriculum;

(F) a court-appointed special advocate program not accept volunteers who have been convicted of, have charges pending for, or have in the past been charged with, a felony or misdemeanor involving a sex offense, violent act, child abuse or neglect, or related acts that would pose risks to children or to the court-appointed special advocate program's credibility;

(G) a court-appointed special advocate program have an established procedure to allow the immediate reporting to a court or appropriate agency of a situation in which a court-appointed special advocate volunteer has reason to believe that a child is in imminent danger;

(H) a court-appointed special advocate volunteer be an individual who has been screened and trained by a recognized court-appointed special advocate program and appointed by the court to advocate for children who come into the court system primarily as a result of abuse or neglect; and

(I) a court-appointed special advocate volunteer serve the function of reviewing records, facilitating prompt, thorough review of cases, and interviewing appropriate parties in order to make recommendations on what would be in the best interests of the child.

(3) In awarding grants under this section, the Administrator shall ensure that grants are distributed to localities that have no existing court-appointed special advocate program and to programs in need of expansion.

(d) Background checks

State and local Court Appointed Special Advocate programs are authorized to request fingerprint-based criminal background checks from the Federal Bureau of Investigation's criminal history database for prospective volunteers. The requesting program is responsible for the reasonable costs associated with the Federal records check.

(Pub. L. 101–647, title II, § 217, Nov. 29, 1990, 104 Stat. 4794; Pub. L. 107–273, div. C, title II, § 12221(b)(1)(C), Nov. 2, 2002, 116 Stat. 1894; Pub. L. 109–162, title I, § 112(c), Jan. 5, 2006, 119 Stat. 2986.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162, § 112(c)(1), substituted "to initiate, sustain, and expand" for "to expand".

Subsec. (b)(1). Pub. L. 109–162, § 112(c)(2)(A), substituted "subsection (a) of this section—" for "subsection (a) of this section", inserted subpar. (A) designation before "shall be", and substituted "(B) may be" for "(2) may be" and "to initiate, sustain, and expand" for "to initiate or expand".

Subsec. (b)(2). Pub. L. 109–162, § 112(c)(2)(B), substituted "(1)(A)" for "(1)(a)" and "to initiate, sustain, and expand" for "to initiate and to expand".

Subsec. (d). Pub. L. 109–162, § 112(c)(3), added subsec. (d).

2002—Subsec. (c)(1). Pub. L. 107–273 substituted "sections 5673 and 5676 of this title" for "sections 5665a, 5673, and 5676 of this title".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

§ 13013a. Report

(a) Report required

Not later than December 31, 2006, the Inspector General of the Department of Justice shall submit to Congress a report on the types of activities funded by the National Court-Appointed Special Advocate Association and a comparison of outcomes in cases where court-appointed special advocates are involved and cases where court-appointed special advocates are not involved.

(b) Elements of report

The report submitted under subsection (a) of this section shall include information on the following:

(1) The types of activities the National Court-Appointed Special Advocate Association has funded since 1993.

(2) The outcomes in cases where court-appointed special advocates are involved as compared to cases where court-appointed special advocates are not involved, including—

(A) the length of time a child spends in foster care;

(B) the extent to which there is an increased provision of services;

(C) the percentage of cases permanently closed; and

(D) achievement of the permanent plan for reunification or adoption.

(Pub. L. 101–647, title II, § 218, as added Pub. L. 109–162, title I, § 112(d)(2), Jan. 5, 2006, 119 Stat. 2986.)

PRIOR PROVISIONS

A prior section 218 of Pub. L. 101–647 was renumbered section 219 and is classified to section 13014 of this title.

§ 13014. Authorization of appropriations

(a) Authorization

There is authorized to be appropriated to carry out this subchapter $12,000,000 for each of fiscal years 2007 through 2011.

(b) Limitation

No funds are authorized to be appropriated for a fiscal year to carry out this subchapter unless the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

(c) Prohibition on lobbying

No funds authorized under this subchapter may be used for lobbying activities in contravention of OMB Circular No. A–122.

(Pub. L. 101–647, title II, § 219, formerly § 218, Nov. 29, 1990, 104 Stat. 4796; Pub. L. 103–322, title IV, § 40156(a)(1), Sept. 13, 1994, 108 Stat. 1922; Pub. L. 106–386, div. B, title III, § 1302(a), Oct. 28, 2000, 114 Stat. 1511; renumbered § 219 and amended Pub. L. 109–162, title I, § 112(d)(1), (e), Jan. 5, 2006, 119 Stat. 2986.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (b), is Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended. Title II of the Act is classified principally to subchapter II (§ 5611 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162, § 112(e)(1), added subsec. (a) and struck out heading and text of former

subsec. (a). Text read as follows: ''There is authorized to be appropriated to carry out this subchapter $12,000,000 for each of fiscal years 2001 through 2005.''

Subsec. (c). Pub. L. 109–162, § 112(e)(2), added subsec. (c).

2000—Subsec. (a). Pub. L. 106–386 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''There are authorized to be appropriated to carry out this subchapter—

''(1) $6,000,000 for fiscal year 1996;

''(2) $6,000,000 for fiscal year 1997;

''(3) $7,000,000 for fiscal year 1998;

''(4) $9,000,000 for fiscal year 1999; and

''(5) $10,000,000 for fiscal year 2000.''

1994—Subsec. (a). Pub. L. 103–322 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out this chapter—

''(1) $5,000,000 in fiscal year 1991; and

''(2) such sums as may be necessary to carry out this subchapter in each of fiscal years 1992, 1993, and 1994.''

SUBCHAPTER III—CHILD ABUSE TRAINING PROGRAMS FOR JUDICIAL PERSONNEL AND PRACTITIONERS

§ 13021. Findings and purpose

(a) Findings

The Congress finds that—

(1) a large number of juvenile and family courts are inundated with increasing numbers of cases due to increased reports of abuse and neglect, increasing drug-related maltreatment, and insufficient court resources;

(2) the amendments made to the Social Security Act [42 U.S.C. 301 et seq.] by the Adoption Assistance and Child Welfare Act of 1980 make substantial demands on the courts handling abuse and neglect cases, but provide no assistance to the courts to meet those demands;

(3) the Adoption[1] and Child Welfare Act of 1980 requires courts to—

(A) determine whether the agency made reasonable efforts to prevent foster care placement;

(B) approve voluntary nonjudicial placement; and

(C) provide procedural safeguards for parents when their parent-child relationship is affected;

(4) social welfare agencies press the courts to meet such requirements, yet scarce resources often dictate that courts comply pro forma without undertaking the meaningful judicial inquiry contemplated by Congress in the Adoption[1] and Child Welfare Act of 1980;

(5) compliance with the Adoption[1] and Child Welfare Act of 1980 and overall improvements in the judicial response to abuse and neglect cases can best come about through action by top level court administrators and judges with administrative functions who understand the unique aspects of decisions required in child abuse and neglect cases; and

(6) the Adoption[1] and Child Welfare Act of 1980 provides financial incentives to train welfare agency staff to meet the requirements, but provides no resources to train judges.

[1] So in original. Probably should be ''Adoption Assistance''.

(b) Purpose

The purpose of this subchapter is to provide expanded technical assistance and training to judicial personnel and attorneys, particularly personnel and practitioners in juvenile and family courts, to improve the judicial system's handling of child abuse and neglect cases with specific emphasis on the role of the courts in addressing reasonable efforts that can safely avoid unnecessary and unnecessarily prolonged foster care placement.

(Pub. L. 101–647, title II, § 221, Nov. 29, 1990, 104 Stat. 4796; Pub. L. 103–322, title IV, § 40156(b)(2), Sept. 13, 1994, 108 Stat. 1923.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Adoption Assistance and Child Welfare Act of 1980, referred to in subsec. (a), is Pub. L. 96–272, June 17, 1980, 94 Stat. 500, as amended. For complete classification of this Act to the Code, see Short Title of 1980 Amendments note set out under section 1305 of this title and Tables.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322 made technical amendment to reference to this subchapter to correct reference to corresponding provision of original act.

§ 13022. Grants for juvenile and family court personnel

In order to improve the judicial system's handling of child abuse and neglect cases, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall make grants for the purpose of providing—

(1) technical assistance and training to judicial personnel and attorneys, particularly personnel and practitioners in juvenile and family courts; and

(2) administrative reform in juvenile and family courts.

(Pub. L. 101–647, title II, § 222, Nov. 29, 1990, 104 Stat. 4797.)

§ 13023. Specialized technical assistance and training programs

(a) Grants to develop model programs

(1) The Administrator shall make grants to national organizations to develop 1 or more model technical assistance and training programs to improve the judicial system's handling of child abuse and neglect cases.

(2) An organization to which a grant is made pursuant to paragraph (1) shall be one that has broad membership among juvenile and family court judges and has demonstrated experience in providing training and technical assistance for judges, attorneys, child welfare personnel, and lay child advocates.

(b) Grants to juvenile and family courts

(1) In order to improve the judicial system's handling of child abuse and neglect cases, the Administrator shall make grants to State courts or judicial administrators for programs that provide or contract for, the implementation of—

(A) training and technical assistance to judicial personnel and attorneys in juvenile and family courts; and

(B) administrative reform in juvenile and family courts.

(2) The criteria established for the making of grants pursuant to paragraph (1) shall give priority to programs that improve—

(A) procedures for determining whether child service agencies have made reasonable efforts to prevent placement of children in foster care;

(B) procedures for determining whether child service agencies have, after placement of children in foster care, made reasonable efforts to reunite the family; and

(C) procedures for coordinating information and services among health professionals, social workers, law enforcement professionals, prosecutors, defense attorneys, and juvenile and family court personnel, consistent with subchapter I of this chapter.

(c) Grant criteria

The Administrator shall make grants under subsections (a) and (b) of this section consistent with sections 5666, 5673, and 5676 of this title.

(Pub. L. 101–647, title II, § 223, Nov. 29, 1990, 104 Stat. 4797; Pub. L. 107–273, div. C, title II, § 12221(b)(1)(D), Nov. 2, 2002, 116 Stat. 1894.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–273 substituted ''sections 5666, 5673, and 5676 of this title'' for ''section 5665a, 5673, and 5676 of this title''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107–273, as amended, set out as a note under section 5601 of this title.

§ 13024. Authorization of appropriations

(a) Authorization

There is authorized to be appropriated to carry out this subchapter $2,300,000 for each of fiscal years 2001 through 2005.

(b) Use of funds

Of the amounts appropriated in subsection (a) of this section, not less than 80 percent shall be used for grants under section 13023(b) of this title.

(c) Limitation

No funds are authorized to be appropriated for a fiscal year to carry out this subchapter unless the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

(Pub. L. 101–647, title II, § 224, Nov. 29, 1990, 104 Stat. 4798; Pub. L. 103–322, title IV, § 40156(b)(1), Sept. 13, 1994, 108 Stat. 1923; Pub. L. 106–386, div. B, title III, § 1302(b), Oct. 28, 2000, 114 Stat. 1511.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (c), is Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended. Title II of the Act is classified principally to subchapter II (§ 5611 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–386 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''There are authorized to be appropriated to carry out this subchapter—

''(1) $750,000 for fiscal year 1996;

''(2) $1,000,000 for fiscal year 1997;

''(3) $2,000,000 for fiscal year 1998;

''(4) $2,000,000 for fiscal year 1999; and

''(5) $2,300,000 for fiscal year 2000.''

1994—Subsec. (a). Pub. L. 103–322 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out this chapter—

''(1) $10,000,000 in fiscal year 1991; and

''(2) such sums as may be necessary to carry out this chapter in each of fiscal years 1992, 1993, and 1994.''

SUBCHAPTER IV—REPORTING REQUIREMENTS

§ 13031. Child abuse reporting

(a) In general

A person who, while engaged in a professional capacity or activity described in subsection (b) of this section on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to the agency designated under subsection (d) of this section.

(b) Covered professionals

Persons engaged in the following professions and activities are subject to the requirements of subsection (a) of this section:

(1) Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.

(2) Psychologists, psychiatrists, and mental health professionals.

(3) Social workers, licensed or unlicensed marriage, family, and individual counselors.

(4) Teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials, and school administrators.

(5) Child care workers and administrators.

(6) Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.

(7) Foster parents.

(8) Commercial film and photo processors.

(c) Definitions

For the purposes of this section—

(1) the term ''child abuse'' means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(2) the term ''physical injury'' includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(3) the term ''mental injury'' means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;

(4) the term ''sexual abuse'' includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(5) the term ''sexually explicit conduct'' means actual or simulated—

(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;

(D) lascivious exhibition of the genitals or pubic area of a person or animal; or

(E) sadistic or masochistic abuse;

(6) the term ''exploitation'' means child pornography or child prostitution;

(7) the term ''negligent treatment'' means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(8) the term ''child abuse'' shall not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(d) Agency designated to receive report and action to be taken

For all Federal lands and all federally operated (or contracted) facilities in which children are cared for or reside, the Attorney General shall designate an agency to receive and investigate the reports described in subsection (a) of this section. By formal written agreement, the designated agency may be a non-Federal agency. When such reports are received by social services or health care agencies, and involve allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, there shall be an immediate referral of the report to a law enforcement agency with authority to take emergency action to protect the child. All reports received shall be promptly investigated, and whenever appropriate, investigations shall be conducted jointly by social services and law enforcement personnel, with a view toward avoiding unnecessary multiple interviews with the child.

(e) Reporting form

In every federally operated (or contracted) facility, and on all Federal lands, a standard written reporting form, with instructions, shall be disseminated to all mandated reporter groups. Use of the form shall be encouraged, but its use shall not take the place of the immediate making of oral reports, telephonically or otherwise, when circumstances dictate.

(f) Immunity for good faith reporting and associated actions

All persons who, acting in good faith, make a report by subsection (a) of this section, or otherwise provide information or assistance in connection with a report, investigation, or legal intervention pursuant to a report, shall be immune from civil and criminal liability arising out of such actions. There shall be a presumption that any such persons acted in good faith. If a person is sued because of the person's performance of one of the above functions, and the defendant prevails in the litigation, the court may order that the plaintiff pay the defendant's legal expenses. Immunity shall not be accorded to persons acting in bad faith.

(g) Omitted

(h) Training of prospective reporters

All individuals in the occupations listed in subsection (b)(1) of this section who work on Federal lands, or are employed in federally operated (or contracted) facilities, shall receive periodic training in the obligation to report, as well as in the identification of abused and neglected children.

(Pub. L. 101–647, title II, § 226, Nov. 29, 1990, 104 Stat. 4806.)

CODIFICATION

Section is comprised of section 226 of Pub. L. 101–647. Subsec. (g) of section 226 of Pub. L. 101–647 enacted section 2258 of Title 18, Crimes and Criminal Procedure.

§ 13032. Reporting of child pornography by electronic communication service providers

(a) Definitions

In this section—

(1) the term ''electronic communication service'' has the meaning given the term in section 2510 of title 18; and

(2) the term ''remote computing service'' has the meaning given the term in section 2711 of title 18.

(b) Requirements

(1) DUTY TO REPORT.—Whoever, while engaged in providing an electronic communication service or a remote computing service to the public, through a facility or means of interstate or foreign commerce, obtains knowledge of facts or circumstances from which a violation of section 2251, 2251A, 2252, 2252A, 2252B, or 2260 of title 18, involving child pornography (as defined in section 2256 of that title), or a violation of section 1466A of that title, is apparent, shall, as soon as reasonably possible, make a report of such facts or circumstances to the Cyber Tip Line[1] at the National Center for Missing and Exploited Children, which shall forward that report to a law enforcement agency or agencies designated by the Attorney General.

(2) DESIGNATION OF AGENCIES.—Not later than 180 days after October 30, 1998, the Attorney

[1] So in original. Probably should be ''CyberTipline''.

General shall designate the law enforcement agency or agencies to which a report shall be forwarded under paragraph (1).

(3) In addition to forwarding such reports to those agencies designated in subsection (b)(2) of this section, the National Center for Missing and Exploited Children is authorized to forward any such report to an appropriate official of a state or subdivision of a state for the purpose of enforcing state criminal law.

(4) FAILURE TO REPORT.—A provider of electronic communication services or remote computing services described in paragraph (1) who knowingly and willfully fails to make a report under that paragraph shall be fined—

(A) in the case of an initial failure to make a report, not more than $50,000; and

(B) in the case of any second or subsequent failure to make a report, not more than $100,000.

(c) Civil liability

No provider or user of an electronic communication service or a remote computing service to the public shall be held liable on account of any action taken in good faith to comply with or pursuant to this section.

(d) Limitation of information or material required in report

A report under subsection (b)(1) of this section may include additional information or material developed by an electronic communication service or remote computing service, except that the Federal Government may not require the production of such information or material in that report.

(e) Monitoring not required

Nothing in this section may be construed to require a provider of electronic communication services or remote computing services to engage in the monitoring of any user, subscriber, or customer of that provider, or the content of any communication of any such person.

(f) Conditions of disclosure of information contained within report

(1) In general

No law enforcement agency that receives a report under subsection (b)(1) of this section shall disclose any information contained in that report, except that disclosure of such information may be made—

(A) to an attorney for the government for use in the performance of the official duties of the attorney;

(B) to such officers and employees of the law enforcement agency, as may be necessary in the performance of their investigative and recordkeeping functions;

(C) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law; or

(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.

(2) Definitions

In this subsection, the terms ''attorney for the government'' and ''State'' have the meanings given those terms in Rule 54 of the Federal Rules of Criminal Procedure.

(g) Limitation on liability

(1) In general

Except as provided in paragraphs (2) and (3), the National Center for Missing and Exploited Children, including any of its directors, officers, employees, or agents, is not liable in any civil or criminal action arising from the performance of its CyberTipline responsibilities and functions, as defined by this section, or from its efforts to identify child victims.

(2) Intentional, reckless, or other misconduct

Paragraph (1) does not apply in an action in which a party proves that the National Center for Missing and Exploited Children, or its officer, employee, or agent as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this section.

(3) Ordinary business activities

Paragraph (1) does not apply to an act or omission related to an ordinary business activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.

(Pub. L. 101–647, title II, § 227, as added Pub. L. 105–314, title VI, § 604(a), Oct. 30, 1998, 112 Stat. 2983; amended Pub. L. 106–113, div. B, § 1000(a)(1) [title I, § 121], Nov. 29, 1999, 113 Stat. 1535, 1501A–23; Pub. L. 108–21, title V, § 508(a), Apr. 30, 2003, 117 Stat. 683; Pub. L. 109–248, title I, § 130, July 27, 2006, 120 Stat. 601.)

REFERENCES IN TEXT

Rule 54 of the Federal Rules of Criminal Procedure, referred to in subsec. (f)(2), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

2006—Subsec. (g). Pub. L. 109–248 added subsec. (g).

2003—Subsec. (b)(1). Pub. L. 108–21, § 508(a)(1), inserted ''2252B,'' after ''2252A,'' and ''or a violation of section 1466A of that title,'' after ''of that title),''.

Subsec. (b)(3), (4). Pub. L. 108–21, § 508(a)(4), (5), added par. (3) and redesignated former par. (3) as (4).

Subsec. (c). Pub. L. 108–21, § 508(a)(2), inserted ''or pursuant to'' after ''to comply with''.

Subsec. (f)(1)(D). Pub. L. 108–21, § 508(a)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''as permitted by a court at the request of an attorney for the government, upon a showing that such information may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.''

1999—Subsec. (b)(1). Pub. L. 106–113, § 1000(a)(1) [title I, § 121(a)], inserted ''to the Cyber Tip Line at the National Center for Missing and Exploited Children, which shall forward that report'' after ''such facts or circumstances''.

Subsec. (b)(2). Pub. L. 106–113, § 1000(a)(1) [title I, § 121(b)], substituted ''forwarded'' for ''made''.

SUBCHAPTER V—CHILD CARE WORKER EMPLOYEE BACKGROUND CHECKS

§ 13041. Requirement for background checks

(a) In general

(1) Each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision to children under the age of 18 of child care services shall assure that all existing and newly-hired employees undergo a criminal history background check. All existing staff shall receive such checks not later than May 29, 1991. Except as provided in subsection (b)(3) of this section, no additional staff shall be hired without a check having been completed.

(2) For the purposes of this section, the term ''child care services'' means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

(b) Criminal history check

(1) A background check required by subsection (a) of this section shall be—

(A) based on a set of the employee's fingerprints obtained by a law enforcement officer and on other identifying information;

(B) conducted through the Identification Division of the Federal Bureau of Investigation and through the State criminal history repositories of all States that an employee or prospective employee lists as current and former residences in an employment application; and

(C) initiated through the personnel programs of the applicable Federal agencies.

(2) The results of the background check shall be communicated to the employing agency.

(3) An agency or facility described in subsection (a)(1) of this section may hire a staff person provisionally prior to the completion of a background check if, at all times prior to receipt of the background check during which children are in the care of the person, the person is within the sight and under the supervision of a staff person with respect to whom a background check has been completed.

(c) Applicable criminal histories

Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be ground for denying employment or for dismissal of an employee in any of the positions listed in subsection (a)(2) of this section. In the case of an incident in which an individual has been charged with one of those offenses, when the charge has not yet been disposed of, an employer may suspend an employee from having any contact with children while on the job until the case is resolved. Conviction of a crime other than a sex crime may be considered if it bears on an individual's fitness to have responsibility for the safety and well-being of children.

(d) Employment applications

(1) Employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in any of the positions listed in subsection (a)(1) of this section, shall contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description of the disposition of the arrest or charge. An application shall state that it is being signed under penalty of perjury, with the applicable Federal punishment for perjury stated on the application.

(2) A Federal agency seeking a criminal history record check shall first obtain the signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer's obligation to require a record check as a condition of employment and the employee's right to obtain a copy of the criminal history report made available to the employing Federal agency and the right to challenge the accuracy and completeness of any information contained in the report.

(e) Encouragement of voluntary criminal history checks for others who may have contact with children

Federal agencies and facilities are encouraged to submit identifying information for criminal history checks on volunteers working in any of the positions listed in subsection (a) of this section and on adult household members in places where child care or foster care services are being provided in a home.

(Pub. L. 101–647, title II, § 231, Nov. 29, 1990, 104 Stat. 4808; Pub. L. 102–190, div. A, title X, § 1094(a), Dec. 5, 1991, 105 Stat. 1488.)

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–190, § 1094(a)(1), substituted ''May 29, 1991. Except as provided in subsection (b)(3) of this section, no additional staff'' for ''6 months after November 29, 1990, and no additional staff''.

Subsec. (b)(3). Pub. L. 102–190, § 1094(a)(2), added par. (3).

SUBCHAPTER VI—TREATMENT FOR JUVENILE OFFENDERS WHO ARE VICTIMS OF CHILD ABUSE OR NEGLECT

§§ 13051 to 13055. Repealed. Pub. L. 102–586, § 2(i)(2), Nov. 4, 1992, 106 Stat. 5015

Section 13051, Pub. L. 101–647, title II, § 251, Nov. 29, 1990, 104 Stat. 4814, authorized Administrator to make grants to public and nonprofit private organizations to develop, establish, and support projects for juvenile offenders who are victims of child abuse or neglect.

Section 13052, Pub. L. 101–647, title II, § 252, Nov. 29, 1990, 104 Stat. 4815, related to administrative requirements.

Section 13053, Pub. L. 101–647, title II, § 253, Nov. 29, 1990, 104 Stat. 4815, provided that Administrator in making grants give priority to applicants with experience and not disapprove an application solely because applicant proposes treating or serving juveniles whose offenses were not serious crimes.

Section 13054, Pub. L. 101–647, title II, § 254, Nov. 29, 1990, 104 Stat. 4815, authorized appropriations to carry out this subchapter.

Section 13055, Pub. L. 101–647, title II, § 255, Nov. 29, 1990, 104 Stat. 4815, defined ''Administrator'' and ''juvenile'' for purposes of this subchapter.

EFFECTIVE DATE OF REPEAL

Section 2(i)(2) of Pub. L. 102–586 provided that the repeal by that section is effective Sept. 30, 1993.

CHAPTER 133—POLLUTION PREVENTION

Sec.
13101. Findings and policy.
13102. Definitions.
13103. EPA activities.
13104. Grants to States for State technical assistance programs.
13105. Source Reduction Clearinghouse.
13106. Source reduction and recycling data collection.
13107. EPA report.
13108. Savings provisions.
13109. Authorization of appropriations.

§ 13101. Findings and policy

(a) Findings

The Congress finds that:

(1) The United States of America annually produces millions of tons of pollution and spends tens of billions of dollars per year controlling this pollution.

(2) There are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety.

(3) The opportunities for source reduction are often not realized because existing regulations, and the industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction; existing regulations do not emphasize multimedia management of pollution; and businesses need information and technical assistance to overcome institutional barriers to the adoption of source reduction practices.

(4) Source reduction is fundamentally different and more desirable than waste management and pollution control. The Environmental Protection Agency needs to address the historical lack of attention to source reduction.

(5) As a first step in preventing pollution through source reduction, the Environmental Protection Agency must establish a source reduction program which collects and disseminates information, provides financial assistance to States, and implements the other activities provided for in this chapter.

(b) Policy

The Congress hereby declares it to be the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

(Pub. L. 101–508, title VI, § 6602, Nov. 5, 1990, 104 Stat. 1388–321.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(5), was in the original ''this subtitle'', meaning subtitle F (§§ 6501, 6601–6610) of title VI, Pub. L. 101–508, which is classified generally to this chapter. For complete classification of subtitle F to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 6601 of Pub. L. 101–508 provided that: ''This subtitle [subtitle F (§§ 6501, 6601–6610) of title VI of Pub. L. 101–508, enacting this chapter and section 4370c of this title] may be cited as the 'Pollution Prevention Act of 1990'.''

§ 13102. Definitions

For purposes of this chapter—

(1) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) The term ''Agency'' means the Environmental Protection Agency.

(3) The term ''toxic chemical'' means any substance on the list described in section 11023(c) of this title.

(4) The term ''release'' has the same meaning as provided by section 11049(8) of this title.

(5)(A) The term ''source reduction'' means any practice which—

(i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(B) The term ''source reduction'' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

(6) The term ''multi-media'' means water, air, and land.

(7) The term ''SIC codes'' refers to the 2-digit code numbers used for classification of economic activity in the Standard Industrial Classification Manual.

(Pub. L. 101–508, title VI, § 6603, Nov. 5, 1990, 104 Stat. 1388–321.)

§ 13103. EPA activities

(a) Authorities

The Administrator shall establish in the Agency an office to carry out the functions of the Administrator under this chapter. The office shall

be independent of the Agency's single-medium program offices but shall have the authority to review and advise such offices on their activities to promote a multi-media approach to source reduction. The office shall be under the direction of such officer of the Agency as the Administrator shall designate.

(b) Functions

The Administrator shall develop and implement a strategy to promote source reduction. As part of the strategy, the Administrator shall—

(1) establish standard methods of measurement of source reduction;

(2) ensure that the Agency considers the effect of its existing and proposed programs on source reduction efforts and shall review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction;

(3) coordinate source reduction activities in each Agency Office[1] and coordinate with appropriate offices to promote source reduction practices in other Federal agencies, and generic research and development on techniques and processes which have broad applicability;

(4) develop improved methods of coordinating, streamlining and assuring public access to data collected under Federal environmental statutes;

(5) facilitate the adoption of source reduction techniques by businesses. This strategy shall include the use of the Source Reduction Clearinghouse and State matching grants provided in this chapter to foster the exchange of information regarding source reduction techniques, the dissemination of such information to businesses, and the provision of technical assistance to businesses. The strategy shall also consider the capabilities of various businesses to make use of source reduction techniques;

(6) identify, where appropriate, measurable goals which reflect the policy of this chapter, the tasks necessary to achieve the goals, dates at which the principal tasks are to be accomplished, required resources, organizational responsibilities, and the means by which progress in meeting the goals will be measured;

(8)[2] establish an advisory panel of technical experts comprised of representatives from industry, the States, and public interest groups, to advise the Administrator on ways to improve collection and dissemination of data;

(9) establish a training program on source reduction opportunities, including workshops and guidance documents, for State and Federal permit issuance, enforcement, and inspection officials working within all agency program offices.[3]

(10) identify and make recommendations to Congress to eliminate barriers to source reduction including the use of incentives and disincentives;

(11) identify opportunities to use Federal procurement to encourage source reduction;

(12) develop, test and disseminate model source reduction auditing procedures designed to highlight source reduction opportunities; and

(13) establish an annual award program to recognize a company or companies which operate outstanding or innovative source reduction programs.

(Pub. L. 101–508, title VI, § 6604, Nov. 5, 1990, 104 Stat. 1388–322.)

[1] So in original. Probably should not be capitalized.

[2] So in original. Subsec. (b) enacted without a par. (7).

[3] So in original. The period probably should be a semicolon.

§ 13104. Grants to States for State technical assistance programs

(a) General authority

The Administrator shall make matching grants to States for programs to promote the use of source reduction techniques by businesses.

(b) Criteria

When evaluating the requests for grants under this section, the Administrator shall consider, among other things, whether the proposed State program would accomplish the following:

(1) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to business[1] seeking assistance and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques. Such training may be provided through local engineering schools or any other appropriate means.

(c) Matching funds

Federal funds used in any State program under this section shall provide no more than 50 per centum of the funds made available to a State in each year of that State's participation in the program.

(d) Effectiveness

The Administrator shall establish appropriate means for measuring the effectiveness of the State grants made under this section in promoting the use of source reduction techniques by businesses.

(e) Information

States receiving grants under this section shall make information generated under the grants available to the Administrator.

(Pub. L. 101–508, title VI, § 6605, Nov. 5, 1990, 104 Stat. 1388–323.)

§ 13105. Source Reduction Clearinghouse

(a) Authority

The Administrator shall establish a Source Reduction Clearinghouse to compile information including a computer data base which contains information on management, technical, and operational approaches to source reduction. The Administrator shall use the clearinghouse to—

[1] So in original. Probably should be "businesses".

(1) serve as a center for source reduction technology transfer;

(2) mount active outreach and education programs by the States to further the adoption of source reduction technologies; and

(3) collect and compile information reported by States receiving grants under section 13104 of this title on the operation and success of State source reduction programs.

(b) Public availability

The Administrator shall make available to the public such information on source reduction as is gathered pursuant to this chapter and such other pertinent information and analysis regarding source reduction as may be available to the Administrator. The data base shall permit entry and retrieval of information to any person.

(Pub. L. 101–508, title VI, § 6606, Nov. 5, 1990, 104 Stat. 1388–324.)

§ 13106. Source reduction and recycling data collection

(a) Reporting requirements

Each owner or operator of a facility required to file an annual toxic chemical release form under section 11023 of this title for any toxic chemical shall include with each such annual filing a toxic chemical source reduction and recycling report for the preceeding[1] calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be reported in the annual toxic chemical release form filed by the owner or operator under section 11023(c) of this title. This section shall take effect with the annual report filed under section 11023 of this title for the first full calendar year beginning after November 5, 1990.

(b) Items included in report

The toxic chemical source reduction and recycling report required under subsection (a) of this section shall set forth each of the following on a facility-by-facility basis for each toxic chemical:

(1) The quantity of the chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year for which the report is filed and the percentage change from the previous year. The quantity reported shall not include any amount reported under paragraph (7). When actual measurements of the quantity of a toxic chemical entering the waste streams are not readily available, reasonable estimates should be made based on best engineering judgment.

(2) The amount of the chemical from the facility which is recycled (at the facility or elsewhere) during such calendar year, the percentage change from the previous year, and the process of recycling used.

(3) The source reduction practices used with respect to that chemical during such year at the facility. Such practices shall be reported in accordance with the following categories unless the Administrator finds other categories to be more appropriate.

(A) Equipment, technology, process, or procedure modifications.

(B) Reformulation or redesign of products.

(C) Substitution of raw materials.

(D) Improvement in management, training, inventory control, materials handling, or other general operational phases of industrial facilities.

(4) The amount expected to be reported under paragraph[2] (1) and (2) for the two calendar years immediately following the calendar year for which the report is filed. Such amount shall be expressed as a percentage change from the amount reported in paragraphs (1) and (2).

(5) A ratio of production in the reporting year to production in the previous year. The ratio should be calculated to most closely reflect all activities involving the toxic chemical. In specific industrial classifications subject to this section, where a feedstock or some variable other than production is the primary influence on waste characteristics or volumes, the report may provide an index based on that primary variable for each toxic chemical. The Administrator is encouraged to develop production indexes to accommodate individual industries for use on a voluntary basis.

(6) The techniques which were used to identify source reduction opportunities. Techniques listed should include, but are not limited to, employee recommendations, external and internal audits, participative team management, and material balance audits. Each type of source reduction listed under paragraph (3) should be associated with the techniques or multiples of techniques used to identify the source reduction technique.

(7) The amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action, or other one-time event, and is not associated with production processes during the reporting year.

(8) The amount of the chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year. For the first year of reporting under this subsection, comparison with the previous year is required only to the extent such information is available.

(c) SARA provisions

The provisions of sections 11042, 11045(c), and 11046 of this title shall apply to the reporting requirements of this section in the same manner as to the reports required under section 11023 of this title. The Administrator may modify the form required for purposes of reporting information under section 11023 of this title to the extent he deems necessary to include the additional information required under this section.

(d) Additional optional information

Any person filing a report under this section for any year may include with the report additional information regarding source reduction, recycling, and other pollution control techniques in earlier years.

[1] So in original. Probably should be ''preceding''.

[2] So in original. Probably should be ''paragraphs''.

(e) Availability of data

Subject to section 11042 of this title, the Administrator shall make data collected under this section publicly available in the same manner as the data collected under section 11023 of this title.

(Pub. L. 101–508, title VI, § 6607, Nov. 5, 1990, 104 Stat. 1388–324.)

REFERENCES IN TEXT

SARA, referred to in the heading of subsec. (c), means the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1613, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

§ 13107. EPA report

(a) Biennial reports

The Administrator shall provide Congress with a report within eighteen months after November 5, 1990, and biennially thereafter, containing a detailed description of the actions taken to implement the strategy to promote source reduction developed under section 13103(b)[1] of this title and of the results of such actions. The report shall include an assessment of the effectiveness of the clearinghouse and grant program established under this chapter in promoting the goals of the strategy, and shall evaluate data gaps and data duplication with respect to data collected under Federal environmental statutes.

(b) Subsequent reports

Each biennial report submitted under subsection (a) of this section after the first report shall contain each of the following:

(1) An analysis of the data collected under section 13106 of this title on an industry-by-industry basis for not less than five SIC codes or other categories as the Administrator deems appropriate. The analysis shall begin with those SIC codes or other categories of facilities which generate the largest quantities of toxic chemical waste. The analysis shall include an evaluation of trends in source reduction by industry, firm size, production, or other useful means. Each such subsequent report shall cover five SIC codes or other categories which were not covered in a prior report until all SIC codes or other categories have been covered.

(2) An analysis of the usefulness and validity of the data collected under section 13106 of this title for measuring trends in source reduction and the adoption of source reduction by business.

(3) Identification of regulatory and nonregulatory barriers to source reduction, and of opportunities for using existing regulatory programs, and incentives and disincentives to promote and assist source reduction.

(4) Identification of industries and pollutants that require priority assistance in multimedia source reduction[2]

(5) Recommendations as to incentives needed to encourage investment and research and development in source reduction.

(6) Identification of opportunities and development of priorities for research and development in source reduction methods and techniques.

(7) An evaluation of the cost and technical feasibility, by industry and processes, of source reduction opportunities and current activities and an identification of any industries for which there are significant barriers to source reduction with an analysis of the basis of this identification.

(8) An evaluation of methods of coordinating, streamlining, and improving public access to data collected under Federal environmental statutes.

(9) An evaluation of data gaps and data duplication with respect to data collected under Federal environmental statutes.

In the report following the first biennial report provided for under this subsection, paragraphs (3) through (9) may be included at the discretion of the Administrator.

(Pub. L. 101–508, title VI, § 6608, Nov. 5, 1990, 104 Stat. 1388–326.)

REFERENCES IN TEXT

Section 13103(b) of this title, referred to in subsec. (a), was in the original ''section 4(b)'' and was translated as reading ''section 6604(b)'', meaning section 6604(b) of Pub. L. 101–508, because Pub. L. 101–508 has no section 4 but section 6604(b) of Pub. L. 101–508 relates to development of a strategy to promote source reduction.

§ 13108. Savings provisions

(a) Nothing in this chapter shall be construed to modify or interfere with the implementation of title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.].

(b) Nothing contained in this chapter shall be construed, interpreted or applied to supplant, displace, preempt or otherwise diminish the responsibilities and liabilities under other State or Federal law, whether statutory or common.

(Pub. L. 101–508, title VI, § 6609, Nov. 5, 1990, 104 Stat. 1388–327.)

REFERENCES IN TEXT

Title III of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (a), is title III of Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1728, known as the Emergency Planning and Community Right-To-Know Act of 1986, which is classified generally to chapter 116 (§ 11001 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 11001 of this title and Tables.

§ 13109. Authorization of appropriations

There is authorized to be appropriated to the Administrator $8,000,000 for each of the fiscal years 1991, 1992, and 1993 for functions carried out under this chapter (other than State Grants),[1] and $8,000,000 for each of the fiscal years 1991, 1992, and 1993, for grant programs to States issued pursuant to section 13104 of this title.

(Pub. L. 101–508, title VI, § 6610, Nov. 5, 1990, 104 Stat. 1388–327.)

[1] See References in Text note below.

[2] So in original. Probably should be followed by a period.

[1] So in original. Probably should not be capitalized.

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§ 13201. "Secretary" defined

For purposes of this Act, the term ''Secretary'' means the Secretary of Energy.

(Pub. L. 102–486, § 2, Oct. 24, 1992, 106 Stat. 2782.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 102–486 provided that: ''This Act [see Tables for classification] may be cited as the 'Energy Policy Act of 1992'.''

EX. ORD. NO. 13211. ACTIONS CONCERNING REGULATIONS THAT SIGNIFICANTLY AFFECT ENERGY SUPPLY, DISTRIBUTION, OR USE

Ex. Ord. No. 13211, May 18, 2001, 66 F.R. 28355, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy, it is hereby ordered as follows:

SECTION 1. *Policy*. The Federal Government can significantly affect the supply, distribution, and use of energy. Yet there is often too little information regarding the effects that governmental regulatory action can have on energy. In order to provide more useful energy-related information and hence improve the quality of agency decisionmaking, I am requiring that agencies shall prepare a Statement of Energy Effects when undertaking certain agency actions. As described more fully below, such Statements of Energy Effects shall describe the effects of certain regulatory actions on energy supply, distribution, or use.

SEC. 2. *Preparation of a Statement of Energy Effects*. (a) To the extent permitted by law, agencies shall prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for those matters identified as significant energy actions.

(b) A Statement of Energy Effects shall consist of a detailed statement by the agency responsible for the significant energy action relating to:

(i) any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposal be implemented, and

(ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.

(c) The Administrator of the Office of Information and Regulatory Affairs shall provide guidance to the agencies on the implementation of this order and shall consult with other agencies as appropriate in the implementation of this order.

SEC. 3. *Submission and Publication of Statements*. (a) Agencies shall submit their Statements of Energy Effects to the Administrator of the Office of Information

and Regulatory Affairs, Office of Management and Budget, whenever they present the related submission under Executive Order 12866 of September 30, 1993 [5 U.S.C. 601 note], or any successor order.

(b) Agencies shall publish their Statements of Energy Effects, or a summary thereof, in each related Notice of Proposed Rulemaking and in any resulting Final Rule.

SEC. 4. *Definitions*. For purposes of this order:

(a) ''Regulation'' and ''rule'' have the same meaning as they do in Executive Order 12866 [5 U.S.C. 601 note] or any successor order.

(b) ''Significant energy action'' means any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking:

(1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and

(ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or

(2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

(c) ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

SEC. 5. *Judicial Review*. Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13212. ACTIONS TO EXPEDITE ENERGY-RELATED PROJECTS

Ex. Ord. No. 13212, May 18, 2001, 66 F.R. 28357, as amended by Ex. Ord. No. 13286, §10, Feb. 28, 2003, 68 F.R. 10622; Ex. Ord. No. 13302, §1, May 15, 2003, 68 F.R. 27429, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to take additional steps to expedite the increased supply and availability of energy to our Nation, it is hereby ordered as follows:

SECTION 1. *Policy*. The increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people. In general, it is the policy of this Administration that executive departments and agencies (agencies) shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy and projects that will strengthen pipeline safety.

SEC. 2. *Actions to Expedite Energy-Related Projects*. For energy-related projects (including pipeline safety projects), agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

SEC. 3. *Interagency Task Force*. (a) There is established, within the Department of Energy for administrative purposes, an interagency task force (Task Force) to perform the following functions:

(i) monitor and assist the agencies in their efforts to expedite their reviews of permits or similar actions, as necessary, to accelerate the completion of energy-related projects (including pipeline safety projects), increase energy production and conservation, and improve the transmission of energy;

(ii) monitor and assist agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected; and

(iii) perform the functions of the interagency committee for which section 60133 of title 49, United States Code, provides.

(b)(i) The Task Force shall consist exclusively of the following members:

(A) in the performance of all Task Force functions set out in sections 3(a)(i) and (ii) of this order, the Secretaries of State, the Treasury, Defense, Agriculture, Housing and Urban Development, Commerce, Transportation, the Interior, Labor, Education, Health and Human Services, Energy, and Veterans Affairs, the Attorney General, the Administrator of the Environmental Protection Agency, the Director of Central Intelligence, the Administrator of General Services, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Assistant to the President for Domestic Policy, the Assistant to the President for Economic Policy, and such other heads of agencies as the Chairman of the Council on Environmental Quality may designate; and

(B) in the performance of the functions to which section 3(a)(iii) of this order refers, the officers listed in section 60133(a)(2)(A)–(H) of title 49, United States Code, and such other representatives of Federal agencies with responsibilities relating to pipeline repair projects as the Chairman of the Council on Environmental Quality may designate.

(ii) A member of the Task Force may designate, to perform the Task Force functions of the member, a full-time officer or employee of that member's agency or office.

(c) The Chairman of the Council on Environmental Quality shall chair the Task Force.

(d) Consultation in the implementation of this order with State and local officials and other persons who are not full-time or permanent part-time employees of the Federal Government shall be conducted in a manner that elicits fully the individual views of each official or other person consulted, without deliberations or efforts to achieve consensus on advice or recommendations.

(e) This order shall be implemented in a manner consistent with the President's constitutional authority to supervise the unitary executive branch.

SEC. 4. *Judicial Review*. Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

SUBCHAPTER I—ALTERNATIVE FUELS—GENERAL

§ 13211. Definitions

For purposes of this subchapter, subchapter II of this chapter, and subchapter III of this chapter (unless otherwise specified)—

(1) the term ''Administrator'' means the Administrator of the Environmental Protection Agency;

(2) the term ''alternative fuel'' means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas, including liquid fuels domestically produced from natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid

fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits;

(3) the term ''alternative fueled vehicle'' means a dedicated vehicle or a dual fueled vehicle;

(4) the term ''comparable conventionally fueled motor vehicle'' means a motor vehicle which is, as determined by the Secretary—

(A) commercially available at the time the comparability of the vehicle is being assessed;

(B) powered by an internal combustion engine that utilizes gasoline or diesel fuel as its fuel source; and

(C) provides passenger capacity or payload capacity the same or similar to the alternative fueled vehicle to which it is being compared;

(5) ''covered person'' means a person that owns, operates, leases, or otherwise controls—

(A) a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more; and

(B) at least 50 motor vehicles within the United States;

(6) the term ''dedicated vehicle'' means—

(A) a dedicated automobile, as such term is defined in section 32901(a)(7) of title 49; or

(B) a motor vehicle, other than an automobile, that operates solely on alternative fuel;

(7) the term ''domestic'' means derived from resources within the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States, including the outer Continental Shelf, as such term is defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], or from resources within a Nation with which there is in effect a free trade agreement requiring national treatment for trade;

(8) the term ''dual fueled vehicle'' means—

(A) dual fueled automobile, as such term is defined in section 32901(a)(8) of title 49; or

(B) a motor vehicle, other than an automobile, that is capable of operating on alternative fuel and is capable of operating on gasoline or diesel fuel;

(9) the term ''fleet'' means a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by a governmental entity or other person who owns, operates, leases, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—

(A) motor vehicles held for lease or rental to the general public;

(B) motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;

(C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(D) law enforcement motor vehicles;

(E) emergency motor vehicles, including vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages, as determined by the Secretary;

(F) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;

(G) nonroad vehicles, including farm and construction motor vehicles; or

(H) motor vehicles which under normal operations are garaged at personal residences at night;

(10) the term ''fuel supplier'' means—

(A) any person engaged in the importing, refining, or processing of crude oil to produce motor fuel;

(B) any person engaged in the importation, production, storage, transportation, distribution, or sale of motor fuel; and

(C) any person engaged in generating, transmitting, importing, or selling at wholesale or retail electricity;

(11) the term ''light duty motor vehicle'' means a light duty truck or light duty vehicle, as such terms are defined under section 7550(7) of this title, of less than or equal to 8,500 pounds gross vehicle weight rating;

(12) the term ''motor fuel'' means any substance suitable as a fuel for a motor vehicle;

(13) the term ''motor vehicle'' has the meaning given such term under section 7550(2) of this title; and

(14) the term ''replacement fuel'' means the portion of any motor fuel that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers, or any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

(Pub. L. 102–486, title III, § 301, Oct. 24, 1992, 106 Stat. 2866; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 122], Dec. 21, 2000, 114 Stat. 2763, 2763A–229; Pub. L. 109–58, title VII, § 707, Aug. 8, 2005, 119 Stat. 818.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'' meaning title III of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2866, which enacted this subchapter,

amended section 6374 of this title, and repealed provisions set out as a note under section 6374 of this title.

Subchapter II of this chapter, referred to in text, was in the original ''title IV'' meaning title IV of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2875, which enacted subchapter II of this chapter, amended sections 6374a to 6374c of this title and sections 717, 717a, 2001, 2002, 2006, and 2013 of Title 15, Commerce and Trade, enacted provisions set out as notes under sections 79b and 717 of Title 15, and repealed provisions set out as a note under section 717c of Title 15.

The Outer Continental Shelf Lands Act, referred to in par. (7), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

CODIFICATION

In pars. (6)(A) and (8)(A), ''section 32901(a)(7) of title 49'' substituted for ''section 513(h)(1)(C) of the Motor Vehicle Information and Cost Savings Act'' and ''section 32901(a)(8) of title 49'' substituted for ''section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

2005—Par. (9)(E). Pub. L. 109–58 inserted '', including vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages, as determined by the Secretary'' before semicolon at end.

2000—Par. (2). Pub. L. 106–554 inserted '', including liquid fuels domestically produced from natural gas'' after ''natural gas''.

§ 13212. Minimum Federal fleet requirement

(a) General requirements

(1) The Federal Government shall acquire at least—

(A) 5,000 light duty alternative fueled vehicles in fiscal year 1993;

(B) 7,500 light duty alternative fueled vehicles in fiscal year 1994; and

(C) 10,000 light duty alternative fueled vehicles in fiscal year 1995.

(2) The Secretary shall allocate the acquisitions necessary to meet the requirements under paragraph (1).

(b) Percentage requirements

(1) Of the total number of vehicles acquired by a Federal fleet, at least—

(A) 25 percent in fiscal year 1996;

(B) 33 percent in fiscal year 1997;

(C) 50 percent in fiscal year 1998; and

(D) 75 percent in fiscal year 1999 and thereafter,

shall be alternative fueled vehicles.

(2) The Secretary, in consultation with the Administrator of General Services where appropriate, may permit a Federal fleet to acquire a smaller percentage than is required in paragraph (1), so long as the aggregate percentage acquired by all Federal fleets is at least equal to the required percentage.

(3) For purposes of this subsection, the term ''Federal fleet'' means 20 or more light duty motor vehicles, located in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by or assigned to any Federal executive department, military department, Government corporation, independent establishment, or executive agency, the United States Postal Service, the Congress, the courts of the United States, or the Executive Office of the President. Such term does not include—

(A) motor vehicles held for lease or rental to the general public;

(B) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(C) law enforcement vehicles;

(D) emergency vehicles;

(E) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons; or

(F) nonroad vehicles, including farm and construction vehicles.

(c) Allocation of incremental costs

The General Services Administration and any other Federal agency that procures motor vehicles for distribution to other Federal agencies shall allocate the incremental cost of alternative fueled vehicles over the cost of comparable gasoline vehicles across the entire fleet of motor vehicles distributed by such agency.

(d) Application of requirements

The provisions of section 6374 of this title relating to the Federal acquisition of alternative fueled vehicles shall apply to the acquisition of vehicles pursuant to this section.

(e) Resale

The Administrator of General Services shall take all feasible steps to ensure that all alternative fueled vehicles sold by the Federal Government shall remain alternative fueled vehicles at time of sale.

(f) Authorization of appropriations

There are authorized to be appropriated for carrying out this section, such sums as may be necessary for fiscal years 1993 through 1998, to remain available until expended.

(Pub. L. 102–486, title III, § 303, Oct. 24, 1992, 106 Stat. 2871; Pub. L. 109–58, title VII, § 702, Aug. 8, 2005, 119 Stat. 815.)

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–58 substituted ''shall'' for ''may''.

EXECUTIVE ORDER NO. 12844

Ex. Ord. No. 12844, Apr. 21, 1993, 58 F.R. 21885, as amended by Ex. Ord. No. 12974, § 3(b), Sept. 29, 1995, 60 F.R. 51876, which required the Federal Government to institute a Federal fleet vehicle acquisition program and established the Federal Fleet Conversion Task Force to advise on implementation of the program, was revoked by Ex. Ord. No. 13031, § 9, Dec. 13, 1996, 61 F.R. 66531, formerly set out below.

EXECUTIVE ORDER NO. 13031

Ex. Ord. No. 13031, Dec. 13, 1996, 61 F.R. 66529, which provided that the Federal Government exercise leadership in the use of alternative fueled vehicles, was re-

voked by Ex. Ord. 13149, § 501, Apr. 21, 2000, 65 F.R. 24610, set out below.

EX. ORD. NO. 13149. GREENING THE GOVERNMENT THROUGH FEDERAL FLEET AND TRANSPORTATION EFFICIENCY

Ex. Ord. No. 13149, Apr. 21, 2000, 65 F.R. 24607, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 *et seq.*), the Energy Policy Act of 1992 (Public Law 102–486) [see Tables for classification], section 301 of title 3, United States Code, and the Energy Conservation Reauthorization Act of 1998 (Public Law 105–388) [see Short Title of 1998 Amendment note set out under 42 U.S.C. 6201], it is hereby ordered as follows:

PART 1 PREAMBLE

SECTION 101. *Federal Leadership*. The purpose of this order is to ensure that the Federal Government exercises leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles (AFVs) and alternative fuels. Reduced petroleum use and the displacement of petroleum by alternative fuels will help promote markets for more alternative fuel and fuel efficient vehicles, encourage new technologies, enhance the United States' energy self-sufficiency and security, and ensure a healthier environment through the reduction of greenhouse gases and other pollutants in the atmosphere.

PART 2 GOALS

SEC. 201. *Reduced Petroleum Fuel Consumption*. Each agency operating 20 or more motor vehicles within the United States shall reduce its entire vehicle fleet's annual petroleum consumption by at least 20 percent by the end of FY 2005, compared with FY 1999 petroleum consumption levels.

SEC. 202. *Performance Strategies*. Agencies have numerous options for developing a strategy to meet the petroleum reduction levels established in section 201 of this order. Measures include: the use of alternative fuels in light, medium, and heavy-duty vehicles; the acquisition of vehicles with higher fuel economy, including hybrid vehicles; the substitution of cars for light trucks; an increase in vehicle load factors; a decrease in vehicle miles traveled; and a decrease in fleet size. Each agency will need a strategy that includes most, if not all, of these measures, but can develop a strategy that fits its unique fleet configuration and mission requirements. As part of the strategy, each agency should attempt to accelerate the introduction of vehicles meeting Tier 2 standards. Where feasible, agencies should also consider procurement of innovative vehicles, such as hybrid electric vehicles, capable of large improvements in fuel economy. The strategy should also attempt to minimize costs in achieving the objectives of this order. In developing its strategy, each agency shall include the following:

(a) AFV Acquisition and Use of Alternative Fuels. Each agency shall fulfill the acquisition requirements for AFVs established by section 303 of the Energy Policy Act of 1992 [42 U.S.C. 13212]. Agencies shall use alternative fuels to meet a majority of the fuel requirements of those motor vehicles by the end of FY 2005. Section 402 of this order addresses related issues of alternative fuel infrastructure availability and the ability to track alternative fuel usage data; and

(b) Acquisition of Higher Fuel Economy Vehicles. Agencies shall increase the average EPA fuel economy rating of passenger cars and light trucks acquired by at least 1 mile per gallon (mpg) by the end of FY 2002 and at least 3 mpg by the end of FY 2005 compared to FY 1999 acquisitions.

PART 3 ORGANIZATION AND ACCOUNTABILITY

SEC. 301. *Leadership Responsibilities*. The Office of Management and Budget (OMB), the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the General Services Administration (GSA) shall be responsible for providing leadership to the other Federal agencies in implementing programs to meet the goals of this order. Therefore, they shall perform the following activities:

(a) OMB shall:

(1) designate a senior official to assume the responsibility for coordinating the collection of agency budget and data submissions pursuant to this order;

(2) amend and issue budget guidance to the agencies that requires each agency to identify in its annual budget submission the funding necessary to meet the requirements of this order;

(3) review annual agency budget submissions to determine adequacy in meeting the goal of this order and to balance requests for increased funding to support achievement of the goals against other mission priorities for the agency; and

(4) review agency submissions for the annual report to the Congress, after budget decisions are made.

(b) DOE shall:

(1) issue guidance to agencies, within 90 days of the issuance of this order, on preparation and submission of agency strategies for complying with this order and the collection and annual reporting of data to demonstrate compliance with this order;

(2) review and evaluate agency strategies prior to their submission to OMB;

(3) provide OMB with copies of the agency strategy evaluations;

(4) provide whatever other support OMB requires to facilitate performance of OMB's role;

(5) establish the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and other applicable statutes and policies;

(6) educate personnel from other agencies on the requirements of this order, the data collection and reporting system, best practices for improving fleet fuel efficiency, and methods for successfully acquiring and using AFVs;

(7) review agencies' annual data submissions for accuracy and produce a scorecard of agency and overall Federal compliance with this order and other applicable statutes and policies; and

(8) report to the President annually on compliance with the order, including the scorecard and level of performance in meeting the goals of the agencies' strategies.

(c) EPA shall support DOE and GSA in their efforts to assist the agencies in the accelerated purchase of Tier 2 vehicles.

(d) GSA shall develop and implement strategies that will ease agencies' financial and administrative burdens associated with the acquisition of AFVs, including:

(1) Agencies shall be allowed to replace their conventionally-fueled vehicles with AFVs by making an initial lump-sum payment for the additional acquisition cost of the AFV and shall be allowed to contribute to the higher replacement costs of the AFV incrementally over the term of the lease, and have the option of averaging AFV incremental costs across the agency fleet as provided by the Energy Policy Act of 1992.

(2) Within 120 days of this order, the Administrator of GSA, in consultation with other agencies, shall:

(A) provide a summary of agency AFV acquisition plans to potential AFV manufacturers to assist in their production planning. At least 4 months in advance of agency vehicle ordering cycles, GSA must provide to agencies the best available information on the production plans of AFV manufacturers;

(B) develop, in coordination with DOE and EPA, methods that will help Federal fleet managers to select vehicles to improve fleet fuel efficiency and to meet Tier 2 vehicle standards; and

(C) collaborate with its customer agencies and their procurement staff and officials to discuss and

plan efforts to ensure that the GSA-leased fleet is making progress toward the goals of this order.

SEC. 302. *Designation of Senior Agency Official*. Within 90 days of the date of this order, the head of each agency shall designate a senior official to assume responsibility for the agency's AFV and fleet fuel efficiency programs, and for meeting the requirements of this order. Each senior agency official designated by an agency shall be responsible for:

(a) preparing an agency strategy for meeting the goals of this order, in accordance with guidance issued by DOE;

(b) submitting the agency strategy to DOE within 180 days of the issuance of this order for evaluation and submission to OMB;

(c) implementing the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and reporting the data to DOE;

(d) ensuring the agency's strategy for meeting the goals of this order is incorporated in the annual budget submission to OMB; and

(e) assembling the appropriate team and resources in the agency necessary to attain the goals of this order.

SEC. 303. *Management and Government Performance*. Agencies may use the following management strategies to assist them in meeting the goals of this order:

(a) *Awards*. Agencies may use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations*. Agencies shall, where appropriate, include successful implementation of the provisions of this order in the position descriptions and performance evaluations of agency heads, the senior official, fleet managers, their superiors, and other relevant employees.

SEC. 304. *Applicability*. This order applies to each agency operating 20 or more motor vehicles within the United States. Agency means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

PART 4 IMPLEMENTATION

SEC. 401. *Vehicle Reporting Credits*. When preparing the annual report to DOE and OMB, each agency acquisition of an alternative fuel light-duty vehicle, regardless of geographic placement, shall count as one credit towards fulfilling the AFV acquisition requirements of the Energy Policy Act of 1992. Agencies shall receive one additional credit for each light-duty AFV that exclusively uses an alternative fuel and for each Zero Emission Vehicle of any size. Agencies shall receive three credits for dedicated medium-duty AFVs and four credits for dedicated heavy-duty AFVs. Agencies can also receive one credit for every 450 gallons of pure biodiesel used in diesel vehicles.

SEC. 402. *Infrastructure*. To support the use of alternative fuel in AFVs, agencies should arrange for fueling at commercial facilities that offer alternative fuels for sale to the public.

(a) Agencies should team with State, local, and private entities to support the expansion and use of public access alternative fuel refueling stations;

(b) Agencies should use the authority granted to them in section 304 of the Energy Policy Act of 1992 [42 U.S.C. 13213] to establish nonpublic access alternative fuel infrastructure for fueling Federal AFVs where public fueling is unavailable.

(c) Agencies are encouraged to work with DOE and GSA to resolve alternative fuel usage tracking issues with alternative and petroleum fuel providers.

SEC. 403. *Procurement of Environmentally Preferable Motor Vehicle Products*.

(a) Consistent with Executive Order 13101 [42 U.S.C. 6961 note] and section 6002 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6962, effective 6 months after the date of this order, no Federal agency shall purchase, sell, or arrange for the purchase of virgin petroleum motor vehicle lubricating oils when re-refined motor vehicle lubricating oils are reasonably available and meet the vehicle manufacturer's recommended performance standards.

(b) Consistent with Executive Order 13101 and RCRA section 6962, in acquiring and maintaining motor vehicles, agencies shall acquire and use United States EPA-designated Comprehensive Procurement Guideline items, including but not limited to retread tires, when such products are reasonably available and meet applicable performance standards. In addition, Federal agencies should consider acquiring other recycled content products, such as tires containing a minimum of 5–10 percent post-consumer recovered rubber.

(c) Consistent with Executive Order 13101, Federal agencies are encouraged to use biobased motor vehicle products when such products are reasonably available and meet applicable performance standards.

PART 5 GENERAL PROVISIONS

SEC. 501. *Revocation*. Executive Order 13031 of December 13, 1996, is revoked.

SEC. 502. *Statutory Authority*. Agencies must carry out the provisions of this order to the extent consistent with their statutory authority.

SEC. 503. *Limitations*. This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

SEC. 504. *Independent Agencies*. Independent agencies and agencies excepted from coverage by section 304 are encouraged to comply with the provisions of this order.

SEC. 505. *Government-Owned Contractor-Operated Vehicles*. Agencies must ensure that all Government-owned contractor-operated vehicles comply with all applicable goals and other requirements of this order and that these goals and requirements are incorporated into each contractor's management contract.

SEC. 506. *Exemptions for Military Tactical, Law Enforcement, and Emergency Vehicles*. Department of Defense military tactical vehicles are exempt from this order. Law enforcement, emergency, and any other vehicle class or type determined by OMB, in consultation with DOE, are exempted from this order's requirements for Federal fleet fuel efficiency and alternative fuel vehicle acquisition. Agencies claiming vehicle exemptions must provide information on the number of each class or type of vehicle claimed as exempt as well as an estimate of total fuel consumption of exempt vehicles on an annual basis. Agencies should examine options for increasing fuel efficiency in these exempt vehicles and should report actions taken to increase fuel efficiency in these vehicles or fleets. All information required by this section must be submitted annually under Part 3 of this order.

SEC. 507. *Compliance*. (a) If an agency fails to meet requirements of the Energy Policy Act of 1992 or this order, its report to the DOE and OMB under section 302(c) must include an explanation for such failure and an updated strategy for achieving compliance using the agency's current and requested budgets.

(b) OMB, in consultation with DOE, may modify the compliance requirements for an agency under Part 2 of this order, if the agency is unable to comply with the requirements of that part. An agency requesting modification must show that it has made substantial good faith efforts to comply with that part. The availability and costs of alternative fuels and AFVs can be a factor in OMB's decision to modify the agency's compliance with Part 2 of this order.

SEC. 508. *Definitions*. Terms used in this order shall have the same definitions as those in the Energy Policy Act of 1992 [see 42 U.S.C. 13211] and Executive Order 13101 [42 U.S.C. 6961 note], unless specifically changed in guidance to be issued by DOE under section 301(b) of this order.

WILLIAM J. CLINTON.

§ 13213. Refueling

(a) In general

Federal agencies shall, to the maximum extent practicable, arrange for the fueling of alternative fueled vehicles acquired under section 13212 of this title at commercial fueling facilities that offer alternative fuels for sale to the public. If publicly available fueling facilities are not convenient or accessible to the location of Federal alternative fueled vehicles purchased under section 13212 of this title, Federal agencies are authorized to enter into commercial arrangements for the purposes of fueling Federal alternative fueled vehicles, including, as appropriate, purchase, lease, contract, construction, or other arrangements in which the Federal Government is a participant.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary for fiscal years 1993 through 1998, to remain available until expended.

(Pub. L. 102–486, title III, § 304, Oct. 24, 1992, 106 Stat. 2872.)

§ 13214. Federal agency promotion, education, and coordination

(a) Promotion and education

The Secretary, in cooperation with the Administrator of General Services, shall promote programs and educate officials and employees of Federal agencies on the merits of alternative fueled vehicles. The Secretary, in cooperation with the Administrator of General Services, shall provide and disseminate information to Federal agencies on—

(1) the location of refueling and maintenance facilities available to alternative fueled vehicles in the Federal fleet;

(2) the range and performance capabilities of alternative fueled vehicles;

(3) State and local government and commercial alternative fueled vehicle programs;

(4) Federal alternative fueled vehicle purchases and placements;

(5) the operation and maintenance of alternative fueled vehicles in accordance with the manufacturer's standards and recommendations; and

(6) incentive programs established pursuant to sections 13215 and 13216 of this title.

(b) Assistance in procurement and placement

The Secretary, in cooperation with the Administrator of General Services, shall provide guidance, coordination and technical assistance to Federal agencies in the procurement and geographic location of alternative fueled vehicles purchased through the Administrator of General Services. The procurement and geographic location of such vehicles shall comply with the purchase requirements under section 13212 of this title.

(Pub. L. 102–486, title III, § 305, Oct. 24, 1992, 106 Stat. 2872.)

§ 13215. Agency incentives program

(a) Reduction in rates

To encourage and promote use of alternative fueled vehicles in Federal agencies, the Administrator of General Services may offer a reduction in fees charged to agencies for the lease of alternative fueled vehicles below those fees charged for the lease of comparable conventionally fueled motor vehicles.

(b) Sunset provision

This section shall cease to be effective 3 years after October 24, 1992.

(Pub. L. 102–486, title III, § 306, Oct. 24, 1992, 106 Stat. 2873.)

§ 13216. Recognition and incentive awards program

(a) Awards program

The Administrator of General Services shall establish annual awards program to recognize those Federal employees who demonstrate the strongest commitment to the use of alternative fuels and fuel conservation in Federal motor vehicles.

(b) Criteria

The Administrator of General Services shall provide annual awards to Federal employees who best demonstrate a commitment—

(1) to the success of the Federal alternative fueled vehicle program through—

(A) exemplary promotion of alternative fueled vehicle use within Federal agencies;

(B) proper alternative fueled vehicle care and maintenance;

(C) coordination with Federal, State, and local efforts;

(D) innovative alternative fueled vehicle procurement, refueling, and maintenance arrangements with commercial entities;

(E) making regular requests for alternative fueled vehicles for agency use; and

(F) maintaining a high number of alternative fueled vehicles used relative to comparable conventionally fueled motor vehicles used; and

(2) to fuel efficiency in Federal motor vehicle use through the promotion of such measures as increased use of fuel-efficient vehicles, carpooling, ride-sharing, regular maintenance, and other conservation and awareness measures.

(c) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out this section not more than $35,000 for fiscal year 1994 and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(Pub. L. 102–486, title III, § 307, Oct. 24, 1992, 106 Stat. 2873.)

§ 13217. Measurement of alternative fuel use

The Administrator of General Services shall use such means as may be necessary to measure the percentage of alternative fuel use in dual-fueled vehicles procured by the Administrator of General Services. Not later than one year after

October 24, 1992, the Secretary, in consultation with the Administrator of General Services, shall issue guidelines to Federal agencies for use in measuring the aggregate percentage of alternative fuel use in dual-fueled vehicles in their fleets.

(Pub. L. 102–486, title III, § 308, Oct. 24, 1992, 106 Stat. 2874.)

§ 13218. Reports

(a) Omitted

(b) Compliance report

(1) In general

Not later than February 15, 2006, and annually thereafter for the next 14 years, the head of each Federal agency which is subject to this Act and Executive Order No. 13031 shall prepare, and submit to Congress, a report that—

(A) summarizes the compliance by such Federal agency with the alternative fuel purchasing requirements for Federal fleets under this Act and Executive Order No. 13031; and

(B) includes a plan of compliance that contains specific dates for achieving compliance using reasonable means.

(2) Contents

(A) In general

Each report submitted under paragraph (1) shall include—

(i) any information on any failure to meet statutory requirements or requirements under Executive Order No. 13031;

(ii)(I) any plan of compliance that the agency head is required to submit under Executive Order No. 13031; or

(II) if a plan of compliance referred to in subclause (I) does not contain specific dates by which the Federal agency is to achieve compliance, a revised plan of compliance that contains specific dates for achieving compliance; and

(iii) any related information the agency head is required to submit to the Director of the Office of Management and Budget under Executive Order No. 13031.

(B) Penultimate report

The penultimate report submitted under paragraph (1) shall include an announcement that the report for the next year shall be the final report submitted under paragraph (1).

(3) Public dissemination of report

Each report submitted under paragraph (1) shall be made public, including—

(A) placing such report on a publicly available website on the Internet; and

(B) publishing the availability of the report, including such website address, in the Federal Register.

(Pub. L. 102–486, title III, § 310, Oct. 24, 1992, 106 Stat. 2874; Pub. L. 105–388, § 8(a), Nov. 13, 1998, 112 Stat. 3481; Pub. L. 109–58, title VII, § 705, Aug. 8, 2005, 119 Stat. 817.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 102–486, Oct. 24, 1992, 102 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

Executive Order No. 13031, referred to in subsec. (b)(1), (2)(A), was Ex. Ord. No. 13031, Dec. 13, 1996, 61 F.R. 66529, which was set out as a note under section 13212 of this title prior to revocation by Ex. Ord. No. 13149, § 501, Apr. 21, 2000, 65 F.R. 24610, set out as a note under section 13212 of this title.

CODIFICATION

Subsec. (a) of this section, which required the Administrator of General Services to report biennially to Congress on the General Services Administration's alternative fueled vehicle program under the Energy Policy Act of 1992, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 173 of House Document No. 103–7.

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–58 substituted ''February 15, 2006'' for ''1 year after November 13, 1998'' in introductory provisions.

1998—Pub. L. 105–388 substituted ''Reports'' for ''General Services Administration report'' in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

§ 13219. United States Postal Service

(a) Omitted

(b) Coordination

To the maximum extent practicable, the Postmaster General shall coordinate the Postal Service's alternative fueled vehicle procurement, placement, refueling, and maintenance programs with those at the Federal, State, and local level. The Postmaster General shall communicate, share, and disseminate, on a regular basis, information on such programs with the Secretary, the Administrator of General Services, and heads of appropriate Federal agencies.

(c) Program criteria

The Postmaster General shall consider the following criteria in the procurement and placement of alternative fueled vehicles:

(1) The procurement plans of State and local governments and other public and private institutions.

(2) The current and future availability of refueling and repair facilities.

(3) The reduction in emissions of the Postal fleet.

(4) Whether the vehicle is to be used in a nonattainment area as specified in the Clean Air Act Amendments of 1990.

(5) The operational requirements of the Postal fleet.

(6) The contribution to the reduction in the consumption of oil in the transportation sector.

(Pub. L. 102–486, title III, § 311, Oct. 24, 1992, 106 Stat. 2874.)

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (c)(4), probably means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

CODIFICATION

Subsec. (a) of this section, which required the Postmaster General to biennially submit to Congress a re-

port on the Postal Service's alternative fueled vehicle program, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 15th item on page 194 of House Document No. 103–7.

§ 13220. Biodiesel fuel use credits

(a) Allocation of credits

(1) In general

The Secretary shall allocate one credit under this section to a fleet or covered person for each qualifying volume of the biodiesel component of fuel containing at least 20 percent biodiesel by volume purchased after the date of the enactment of this section, for use by the fleet or covered person in vehicles owned or operated by the fleet or covered person that weigh more than 8,500 pounds gross vehicle weight rating.

(2) Exceptions

No credits shall be allocated under paragraph (1) for a purchase of biodiesel—

(A) for use in alternative fueled vehicles; or

(B) that is required by Federal or State law.

(3) Authority to modify percentage

The Secretary may, by rule, lower the 20 percent biodiesel volume requirement in paragraph (1) for reasons related to cold start, safety, or vehicle function considerations.

(4) Documentation

A fleet or covered person seeking a credit under this section shall provide written documentation to the Secretary supporting the allocation of a credit to such fleet or covered person under paragraph (1).

(b) Use of credits

(1) In general

At the request of a fleet or covered person allocated a credit under subsection (a) of this section, the Secretary shall, for the year in which the purchase of a qualifying volume is made, treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under this subchapter, subchapter II of this chapter, or subchapter III of this chapter.

(2) Limitation

Credits allocated under subsection (a) of this section may not be used to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under this subchapter, subchapter II of this chapter, and subchapter III of this chapter. This paragraph shall not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in section 13251(a)(2)(A) of this title.

(c) Credit not a section 13258 credit

A credit under this section shall not be considered a credit under section 13258 of this title.

(d) Issuance of rule

The Secretary shall, before January 1, 1999, issue a rule establishing procedures for the implementation of this section.

(e) Collection of data

The Secretary shall collect such data as are required to make a determination described in subsection (f)(2)(B) of this section.

(f) Definitions

For purposes of this section—

(1) the term ''biodiesel''—

(A) means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 7545 of this title;

(B) includes biodiesel derived from—

(i) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

(ii) municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater; and

(2) the term ''qualifying volume'' means—

(A) 450 gallons; or

(B) if the Secretary determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of such average annual alternative fuel use.

(Pub. L. 102–486, title III, § 312, as added Pub. L. 105–277, div. A, § 101(a) [title XII, § 1201(a)], Oct. 21, 1998, 112 Stat. 2681, 2681–48; Pub. L. 105–388, § 7(a), Nov. 13, 1998, 112 Stat. 3480; Pub. L. 109–58, title XV, § 1515, Aug. 8, 2005, 119 Stat. 1091.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(1), probably means October 21, 1998, the date of the enactment of this section by Pub. L. 105–277, rather than Nov. 13, 1998, the date of the enactment of this section by Pub. L. 105–388.

CODIFICATION

Pub. L. 105–277 and Pub. L. 105–388 enacted identical sections.

AMENDMENTS

2005—Subsec. (f)(1). Pub. L. 109–58 inserted dash after ''biodiesel'', designated remainder of existing provisions as subpar. (A), and added subpar. (B).

SUBCHAPTER II—ALTERNATIVE FUELS—NON-FEDERAL PROGRAMS

§ 13231. Public information program

The Secretary, in consultation with appropriate Federal agencies and individuals and organizations with practical experience in the production and use of alternative fuels and alternative fueled vehicles, shall, for the purposes of promoting the use of alternative fuels and alternative fueled vehicles, establish a public information program on the benefits and costs of the use of alternative fuels in motor vehicles. Within 18 months after October 24, 1992, the Secretary shall produce and make available an information package for consumers to assist them in choosing among alternative fuels and alternative fueled vehicles. Such information package shall provide relevant and objective information on motor vehicle characteristics and

fuel characteristics as compared to gasoline, on a life cycle basis, including environmental performance, energy efficiency, domestic content, cost, maintenance requirements, reliability, and safety. Such information package shall also include information with respect to the conversion of conventional motor vehicles to alternative fueled vehicles. The Secretary shall include such other information as the Secretary determines is reasonable and necessary to help promote the use of alternative fuels in motor vehicles. Such information package shall be updated annually to reflect the most recent available information.

(Pub. L. 102–486, title IV, § 405, Oct. 24, 1992, 106 Stat. 2880.)

§ 13232. Labeling requirements

(a) Establishment of requirements

The Federal Trade Commission, in consultation with the Secretary, the Administrator of the Environmental Protection Agency, and the Secretary of Transportation, shall, within 18 months after October 24, 1992, issue a notice of proposed rulemaking for a rule to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and alternative fueled vehicles, including requirements for appropriate information with respect to costs and benefits, so as to reasonably enable the consumer to make choices and comparisons. Required labeling under the rule shall be simple and, where appropriate, consolidated with other labels providing information to the consumer. In formulating the rule, the Federal Trade Commission shall give consideration to the problems associated with developing and publishing useful and timely cost and benefit information, taking into account lead time, costs, the frequency of changes in costs and benefits that may occur, and other relevant factors. The Commission shall obtain the views of affected industries, consumer organizations, Federal and State agencies, and others in formulating the rule. A final rule shall be issued within 1 year after the notice of proposed rulemaking is issued. Such rule shall be updated periodically to reflect the most recent available information.

(b) Technical assistance and coordination

The Secretary shall provide technical assistance to the Federal Trade Commission in developing labeling requirements under subsection (a) of this section. The Secretary shall coordinate activities under this section with activities under section 13231 of this title.

(Pub. L. 102–486, title IV, § 406, Oct. 24, 1992, 106 Stat. 2880.)

§ 13233. Data acquisition program

(a) Not later than one year after October 24, 1992, the Secretary, through the Energy Information Administration, and in cooperation with appropriate State, regional, and local authorities, shall establish a data collection program to be conducted in at least 5 geographically and climatically diverse regions of the United States for the purpose of collecting data which would be useful to persons seeking to manufacture, convert, sell, own, or operate alternative fueled vehicles or alternative fueling facilities. Such data shall include—

(1) identification of the number and types of motor vehicle trips made daily and miles driven per trip, including commuting, business, and recreational trips;

(2) the projections of the Secretary as to the most likely combination of alternative fueled vehicle use and other forms of transit, including rail and other forms of mass transit;

(3) cost, performance, environmental, energy, and safety data on alternative fuels and alternative fueled vehicles; and

(4) other appropriate demographic information and consumer preferences.

(b) The Secretary shall consult with interested parties, including other appropriate Federal agencies, manufacturers, public utilities, owners and operators of fleets of light duty motor vehicles, and State or local governmental entities, to determine the types of data to be collected and analyzed under subsection (a) of this section.

(Pub. L. 102–486, title IV, § 407, Oct. 24, 1992, 106 Stat. 2881.)

§ 13234. Federal Energy Regulatory Commission authority to approve recovery of certain expenses in advance

(a) Natural gas motor vehicles

The Federal Energy Regulatory Commission may, under section 717c of title 15, allow recovery of expenses in advance by natural-gas companies for research, development, and demonstration activities by the Gas Research Institute for projects on the use of natural gas, including fuels derived from natural gas, for transportation, and projects on the use of natural gas to control pollutants and to control emissions from the combustion of other fuels, if the Commission finds that the benefits, including environmental benefits, to existing and future ratepayers resulting from such activities exceed all direct costs to existing and future ratepayers. To the maximum extent practicable, through the establishment of cofunding requirements applicable to such projects, the Commission shall ensure that the costs of such activities shall be provided in part, through contributions of cash, personnel, services, equipment, and other resources, by sources other than the recovery of expenses pursuant to this section.

(b) Electric motor vehicles

The Federal Energy Regulatory Commission may, under section 824d of title 16, allow recovery of expenses in advance by electric utilities for research, development, and demonstration activities by the Electric Power Research Institute for projects on electric motor vehicles, if the Commission finds that the benefits, including environmental benefits, to existing and future ratepayers resulting from such activities exceed all direct costs to existing and future ratepayers. To the maximum extent practicable, through the establishment of cofunding requirements applicable to each project, the costs of such activities shall be provided, in part, through contributions of cash, personnel, serv-

ices, equipment, and other resources, by sources other than the recovery of expenses pursuant to this section.

(Pub. L. 102–486, title IV, § 408, Oct. 24, 1992, 106 Stat. 2881.)

CODIFICATION

Section is comprised of section 408 of Pub. L. 102–486. Subsec. (c) of section 408 of Pub. L. 102–486 repealed provisions of title III of Pub. L. 102–104, formerly set out as a note under section 717c of Title 15, Commerce and Trade.

§ 13235. State and local incentives programs

(a) Establishment of program

(1) The Secretary shall, within one year after October 24, 1992, issue regulations establishing guidelines for comprehensive State alternative fuels and alternative fueled vehicle incentives and program plans designed to accelerate the introduction and use of such fuels and vehicles. Such guideline[1] shall address the development, modification, and implementation of such State plans and shall describe those program elements, as described in paragraph (3), to be addressed in such plans.

(2) The Secretary, after consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall invite the Governor of each State to submit to the Secretary a State plan within one year after the effective date of the regulations issued under paragraph (1). Such plan shall include—

(A) provisions designed to result in scheduled progress toward, and achievement of, the goal of introducing substantial numbers of alternative fueled vehicles in such State by the year 2000; and

(B) a detailed description of the requirements, including the estimated cost of implementation, of such plan.

(3) Each proposed State plan, in order to be eligible for Federal assistance under this section, shall describe the manner in which coordination shall be achieved with Federal and local governmental entities in implementing such plan, and shall include an examination of—

(A) exemption from State sales tax or other State or local taxes or surcharges (other than such taxes or surcharges which are dedicated for transportation purposes) with respect to alternative fueled vehicles, alternative fuels, or alternative fueling facilities;

(B) the introduction of alternative fueled vehicles into State-owned or operated motor vehicle fleets;

(C) special parking at public buildings and airport and transportation facilities;

(D) programs of public education to promote the use of alternative fueled vehicles;

(E) the treatment of sales of alternative fuels for use in alternative fueled vehicles;

(F) methods by which State and local governments might facilitate—

(i) the availability of alternative fuels; and

(ii) the ability to recharge electric motor vehicles at public locations;

(G) allowing public utilities to include in rates the incremental cost of—

(i) new alternative fueled vehicles;

(ii) converting conventional vehicles to operate on alternative fuels; and

(iii) installing alternative fuel fueling facilities,

but only to the extent that the inclusion of such costs in rates would not create competitive disadvantages for other market participants, and taking into consideration the effect inclusion of such costs would have on rates, service, and reliability to other utility customers;

(H) such other programs and incentives as the State may describe;

(I) whether accomplishing any of the goals in this subsection would require amendment to State law or regulation, including traffic safety prohibitions;

(J) services provided by municipal, county, and regional transit authorities; and

(K) effects of such plan on programs authorized by the Intermodal Surface Transportation Efficiency Act of 1991 and amendments made by that Act.

(b) Federal assistance to States

(1) Upon request of the Governor of any State with a plan approved under this section, the Secretary may provide to such State—

(A) information and technical assistance, including model State laws and proposed regulations relating to alternative fueled vehicles;

(B) grants of Federal financial assistance for the purpose of assisting such State in the implementation of such plan or any part thereof; and

(C) grants of Federal financial assistance for the acquisition of alternative fueled vehicles.

(2) In determining whether to approve a State plan submitted under subsection (a) of this section, and in determining the amount of Federal financial assistance, if any, to be provided to any State under this subsection, the Secretary shall take into account—

(A) the energy-related and environmental-related impacts, on a life cycle basis, of the introduction and use of alternative fueled vehicles included in the plan compared to conventional motor vehicles;

(B) the number of alternative fueled vehicles likely to be introduced by the year 2000, as a result of successful implementation of the plan; and

(C) such other factors as the Secretary considers appropriate.

(3) The Secretary, in consultation with the Administrator of General Services, shall provide assistance to States in procuring alternative fueled vehicles, including coordination with Federal procurements of such vehicles.

(4) The Secretary may not approve a State plan submitted under subsection (a) of this section unless the State agrees to provide at least 20 percent of the cost of activities for which assistance is provided under paragraph (1).

(c) General provisions

(1) In carrying out this section, the Secretary shall consult with the Secretary of Transpor-

[1] So in original. Probably should be ''guidelines''.

tation on matters relating to transportation and with other appropriate Federal and State departments and agencies.

(2) The Secretary shall report annually to the President and the Congress, and shall furnish copies of such report to the Governor of each State participating in the program, on the operation of the program under this section. Such report shall include—

(A) an estimate of the number of alternative fueled vehicles in use in each State;

(B) the degree of each State's participation in the program;

(C) a description of Federal, State, and local programs undertaken in the various States, whether pursuant to a State plan under this section or not, to provide incentives for introduction of alternative fueled vehicles;

(D) an estimate of the energy and environmental benefits of the program; and

(E) the recommendations of the Secretary, if any, for additional action by the Federal Government.

(d) Definitions

For the purposes of this section, the following definitions apply:

(1) Governor

The term ''Governor'' means the chief executive of a State.

(2) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

(e) Authorization of appropriations

There are authorized to be appropriated for carrying out this section, $10,000,000 for each of the 5 fiscal years beginning after October 24, 1992.

(Pub. L. 102–486, title IV, § 409, Oct. 24, 1992, 106 Stat. 2882.)

REFERENCES IN TEXT

The Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(3)(K), is Pub. L. 102–240, Dec. 18, 1991, 105 Stat. 1914. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 101 of Title 49, Transportation, and Tables.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 86 of House Document No. 103–7.

§ 13236. Alternative fuel bus program

(a) Cooperative agreements and joint ventures

(1) The Secretary of Transportation, in consultation with the Secretary, may enter into cooperative agreements and joint ventures proposed by any municipal, county, or regional transit authority in an urban area with a population over 100,000 (according to latest available census information) to demonstrate the feasibility of commercial application, including safety of specific vehicle design, of using alternative fuels for urban buses and other motor vehicles used for mass transit.

(2) The cooperative agreements and joint ventures under paragraph (1) may include interested or affected private firms willing to provide assistance in cash, or in kind, for any such demonstration.

(3) Federal assistance provided under cooperative agreements and joint ventures entered into under paragraph (1) to demonstrate the feasibility of commercial application of using alternative fuels for urban buses shall be in addition to Federal assistance provided under any other law for such purpose.

(b) Limitations

(1) The Secretary of Transportation may not enter into cooperative agreement or joint venture under subsection (a) of this section with any municipal, county, or regional transit authority, unless such government body agrees to provide 20 percent of the costs of such demonstration.

(2) The Secretary of Transportation may grant such priority under this section to any entity that demonstrates that the use of alternative fuels for transportation would have a significant beneficial effect on the environment.

(c) School buses

The Secretary of Transportation may also provide, in accordance with such rules as he may prescribe, financial assistance to any agency, municipality, or political subdivision in an urban area referred to in subsection (a) of this section, of any State or the District of Columbia for the purpose of meeting the incremental costs of school buses that are dedicated vehicles and used regularly for such transportation during the school term. Such costs may include the purchase and installation of alternative fuel refueling facilities to be used for school bus refueling, and the conversion of school buses to dedicated vehicles. The Secretary of Transportation may provide such assistance directly to a person who is a contractor of such agency, municipality, or political subdivision, upon the request of the agency, municipality, or political subdivision, and who, under such contract, provides for such transportation. Any conversion under this subsection shall comply with the warranty and safety requirements for alternative fuel conversions contained in section 7587[1] of this title.

(d) Authorization of appropriations

There are authorized to be appropriated not more than $30,000,000 for each of the fiscal years 1993, 1994, and 1995 for purposes of this section.

(Pub. L. 102–486, title IV, § 410, Oct. 24, 1992, 106 Stat. 2884.)

REFERENCES IN TEXT

Section 7587 of this title, referred to in subsec. (c), was in the original ''section 247 of the Clean Air Act Amendments of 1990'', Pub. L. 101–549, and was translated as reading ''section 247 of the Clean Air Act'', meaning section 247 of act July 14, 1955, ch. 360, title II,

[1] See References in Text note below.

as added Nov. 15, 1990, Pub. L. 101–549, title II, § 229(a), 104 Stat. 2523, to reflect the probable intent of Congress, because the Clean Air Act Amendments of 1990 does not contain a section 247, and section 247 of the Clean Air Act relates to alternate fuel conversions for vehicles.

§ 13237. Certification of training programs

The Secretary shall ensure that the Federal Government establishes and carries out a program for the certification of training programs for technicians who are responsible for motor vehicle installation of equipment that converts gasoline or diesel-fueled motor vehicles into dedicated vehicles or dual fueled vehicles, and for the maintenance of such converted motor vehicles. A training program shall not be certified under the program established under this section unless it provides technicians with instruction on the proper and safe installation procedures and techniques, adherence to specifications (including original equipment manufacturer specifications), motor vehicle operating procedures, emissions testing, and other appropriate mechanical concerns applicable to these motor vehicle conversions. The Secretary shall ensure that, in the development of the program required under this section, original equipment manufacturers, fuel suppliers, companies that convert conventional vehicles to use alternative fuels, and other affected persons are consulted.

(Pub. L. 102–486, title IV, § 411, Oct. 24, 1992, 106 Stat. 2885.)

§ 13238. Alternative fuel use in nonroad vehicles and engines

(a) Nonroad vehicles and engines

(1) The Secretary shall conduct a study to determine whether the use of alternative fuels in nonroad vehicles and engines would contribute substantially to reduced reliance on imported energy sources. Such study shall be completed, and the results thereof reported to Congress, within 2 years after October 24, 1992.

(2) The study shall assess the potential of nonroad vehicles and engines to run on alternative fuels. Taking into account the nonroad vehicles and engines for which running on alternative fuels is feasible, the study shall assess the potential reduction in reliance on foreign energy sources that could be achieved if such vehicles were to run on alternative fuels.

(3) The report required under paragraph (1) may include the Secretary's recommendations for encouraging or requiring nonroad vehicles and engines which can feasibly be run on alternative fuels, to utilize such alternative fuels.

(b) Definition of nonroad vehicles and engines

Nonroad vehicles and engines, for purposes of this section, shall include nonroad vehicles and engines used for surface transportation or principally for industrial or commercial purposes, vehicles used for rail transportation, vehicles used at airports, vehicles or engines used for marine purposes, and other vehicles or engines at the discretion of the Secretary.

(c) Designation

Upon completion of the study required pursuant to subsection (a) of this section, the Secretary may designate such vehicles and engines as qualifying for loans pursuant to section 13239 of this title.

(Pub. L. 102–486, title IV, § 412, Oct. 24, 1992, 106 Stat. 2886.)

§ 13239. Low interest loan program

(a) Establishment

Within 1 year after October 24, 1992, the Secretary shall establish a program for making low interest loans, giving preference to small businesses that own or operate fleets, for—

(1) the conversion of motor vehicles to operation on alternative fuels;

(2) covering the incremental costs of the purchase of motor vehicles which operate on alternative fuels, when compared with purchase costs of comparable conventionally fueled motor vehicles; or

(3) covering the incremental costs of purchase of non-road vehicles and engines designated by the Secretary pursuant to section 13238(c) of this title.

(b) Loan terms

The Secretary, to the extent practicable, shall establish reasonable terms for loans made under this subsection, with preference given to repayment schedules that enable such loans to be repaid by the borrower from the cost differential between gasoline and the alternative fuel on which the motor vehicle operates.

(c) Criteria

In deciding to whom loans shall be made under this subsection, the Secretary shall consider—

(1) the financial need of the applicant;

(2) the goal of assisting the greatest number of applicants; and

(3) the ability of an applicant to repay the loan, taking into account the fuel cost savings likely to accrue to the applicant.

(d) Priorities

Priority shall be given under this section to fleets where the use of alternative fuels would have a significant beneficial effect on energy security and the environment.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section, $25,000,000 for each of the fiscal years 1993, 1994, and 1995.

(Pub. L. 102–486, title IV, § 414, Oct. 24, 1992, 106 Stat. 2886.)

SUBCHAPTER III—AVAILABILITY AND USE OF REPLACEMENT FUELS, ALTERNATIVE FUELS, AND ALTERNATIVE FUELED PRIVATE VEHICLES

§ 13251. Mandate for alternative fuel providers

(a) In general

(1) The Secretary shall, before January 1, 1994, issue regulations requiring that of the new light duty motor vehicles acquired by a covered person described in paragraph (2), the following percentages shall be alternative fueled vehicles for the following model years:

(A) 30 percent for model year 1996.
(B) 50 percent for model year 1997.
(C) 70 percent for model year 1998.
(D) 90 percent for model year 1999 and thereafter.

(2) For purposes of this section, a person referred to in paragraph (1) is—

(A) a covered person whose principal business is producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity;

(B) a non-Federal covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity; or

(C) a covered person—

(i) who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and

(ii) a substantial portion of whose business is producing alternative fuels.

(3)(A) In the case of a covered person described in paragraph (2) with more than one affiliate, division, or other business unit, only an affiliate, division, or business unit which is substantially engaged in the alternative fuels business (as determined by the Secretary by rule) shall be subject to this subsection.

(B) No covered person or affiliate, division, or other business unit of such person whose principal business is—

(i) transforming alternative fuels into a product that is not an alternative fuel; or

(ii) consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel,

shall be subject to this subsection.

(4) The vehicles purchased pursuant to this section shall be operated solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable.

(5) Regulations issued under paragraph (1) shall provide for the prompt exemption by the Secretary, through a simple and reasonable process, from the requirements of paragraph (1) of any covered person, in whole or in part, if such person demonstrates to the satisfaction of the Secretary that—

(A) alternative fueled vehicles that meet the normal requirements and practices of the principal business of that person are not reasonably available for acquisition; or

(B) alternative fuels that meet the normal requirements and practices of the principal business of that person are not available in the area in which the vehicles are to be operated.

(b) Revisions and extensions

With respect to model years 1997 and thereafter, the Secretary may—

(1) revise the percentage requirements under subsection (a)(1) of this section downward, except that under no circumstances shall the percentage requirement for a model year be less than 20 percent; and

(2) extend the time under subsection (a)(1) of this section for up to 2 model years.

(c) Option for electric utilities

The Secretary shall, within 1 year after October 24, 1992, issue regulations requiring that, in the case of a covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity, the requirements of subsection (a)(1) of this section shall not apply until after December 31, 1997, with respect to electric motor vehicles. Any covered person described in this subsection which plans to acquire electric motor vehicles to comply with the requirements of this section shall so notify the Secretary before January 1, 1996.

(d) Report to Congress

The Secretary shall, before January 1, 1998, submit a report to the Congress providing detailed information on actions taken to carry out this section, and the progress made and problems encountered thereunder.

(Pub. L. 102–486, title V, § 501, Oct. 24, 1992, 106 Stat. 2887.)

§ 13252. Replacement fuel supply and demand program

(a) Establishment of program

The Secretary shall establish a program to promote the development and use in light duty motor vehicles of domestic replacement fuels. Such program shall promote the replacement of petroleum motor fuels with replacement fuels to the maximum extent practicable. Such program shall, to the extent practicable, ensure the availability of those replacement fuels that will have the greatest impact in reducing oil imports, improving the health of our Nation's economy and reducing greenhouse gas emissions.

(b) Development plan and production goals

Under the program established under subsection (a) of this section, the Secretary, before October 1, 1993, in consultation with the Administrator, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, and the heads of other appropriate agencies, shall review appropriate information and—

(1) estimate the domestic and nondomestic production capacity for replacement fuels and alternative fueled vehicles needed to implement this section;

(2) determine the technical and economic feasibility of achieving the goals of producing sufficient replacement fuels to replace, on an energy equivalent basis—

(A) at least 10 percent by the year 2000; and

(B) at least 30 percent by the year 2010,

of the projected consumption of motor fuel in the United States for each such year, with at least one half of such replacement fuels being domestic fuels;

(3) determine the most suitable means and methods of developing and encouraging the production, distribution, and use of replacement fuels and alternative fueled vehicles in a manner that would meet the program goals described in subsection (a) of this section;

(4) identify ways to encourage the development of reliable replacement fuels and alternative fueled vehicle industries in the United States, and the technical, economic, and institutional barriers to such development; and

(5) determine the greenhouse gas emission implications of increasing the use of replace-

ment fuels, including an estimate of the maximum feasible reduction in such emissions from the use of replacement fuels.

The Secretary shall publish in the Federal Register the results of actions taken under this subsection, and provide for an opportunity for public comment.

(Pub. L. 102–486, title V, § 502, Oct. 24, 1992, 106 Stat. 2888.)

§ 13253. Replacement fuel demand estimates and supply information

(a) Estimates

Not later than October 1, 1993, and annually thereafter, the Secretary, in consultation with the Administrator, the Secretary of Transportation, and other appropriate State and Federal officials, shall estimate for the following calendar year—

(1) the number of each type of alternative fueled vehicle likely to be in use in the United States;

(2) the probable geographic distribution of such vehicles;

(3) the amount and distribution of each type of replacement fuel; and

(4) the greenhouse gas emissions likely to result from replacement fuel use.

(b) Information

Beginning on October 1, 1994, the Secretary shall annually require—

(1) fuel suppliers to report to the Secretary on the amount of each type of replacement fuel that such supplier—

(A) has supplied in the previous calendar year; and

(B) plans to supply for the following calendar year;

(2) suppliers of alternative fueled vehicles to report to the Secretary on the number of each type of alternative fueled vehicle that such supplier—

(A) has made available in the previous calendar year; and

(B) plans to make available for the following calendar year; and

(3) such fuel suppliers to provide the Secretary information necessary to determine the greenhouse gas emissions from the replacement fuels used, taking into account the entire fuel cycle.

(c) Protection of information

Information provided to the Secretary under subsection (b) of this section shall be subject to applicable provisions of law protecting the confidentiality of trade secrets and business and financial information, including section 1905 of title 18.

(Pub. L. 102–486, title V, § 503, Oct. 24, 1992, 106 Stat. 2889.)

§ 13254. Modification of goals; additional rulemaking authority

(a) Examination of goals

Within 3 years after October 24, 1992, and periodically thereafter, the Secretary shall examine the goals established under section 13252(b)(2) of this title, in the context of the program goals stated under section 13252(a) of this title, to determine if the goals under section 13252(b)(2) of this title, including the applicable percentage requirements and dates, should be modified under this section. The Secretary shall publish in the Federal Register the results of each examination under this subsection and provide an opportunity for public comment.

(b) Modification of goals

If, after analysis of information obtained in connection with carrying out subsection (a) of this section or section 13252 of this title, or other information, and taking into account the determination of technical and economic feasibility made under section 13252(b)(2) of this title, the Secretary determines that goals described in section 13252(b)(2) of this title, including the percentage requirements or dates, are not achievable, the Secretary, in consultation with appropriate Federal agencies, shall, by rule, establish goals that are achievable, for purposes of this subchapter. The modification of goals under this section may include changing the target dates specified in section 13252(b)(2) of this title.

(c) Additional rulemaking authority

If the Secretary determines that the achievement of goals described in section 13252(b)(2) of this title would result in a significant and correctable failure to meet the program goals described in section 13252(a) of this title, the Secretary shall issue such additional regulations as are necessary to remedy such failure. The Secretary shall have no authority under this Act to mandate the production of alternative fueled vehicles or to specify, as applicable, the models, lines, or types of, or marketing or pricing practices, policies, or strategies for, vehicles subject to this Act. Nothing in this Act shall be construed to give the Secretary authority to mandate marketing or pricing practices, policies, or strategies for alternative fuels or to mandate the production or delivery of such fuels.

(Pub. L. 102–486, title V, § 504, Oct. 24, 1992, 106 Stat. 2890.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

§ 13255. Voluntary supply commitments

The Secretary shall, by January 1, 1994, and thereafter, undertake to obtain voluntary commitments in geographically diverse regions of the United States—

(1) from fuel suppliers to make available to the public replacement fuels, including providing for the construction or availability of related fuel delivery systems;

(2) from owners of 10 or more motor vehicles to acquire and use alternative fueled vehicles and alternative fuels; and

(3) from suppliers of alternative fueled vehicles to make available to the public alter-

native fueled vehicles and to ensure the availability of necessary related services,

in sufficient volume to achieve the goals described in section 13252(b)(2) of this title or as modified under section 13254 of this title, and in order to meet any fleet requirement program established by rule under this subchapter. The Secretary shall periodically report to the Congress on the results of efforts under this section. All voluntary commitments obtained pursuant to this section shall be available to the public, except to the extent provided in applicable provisions of law protecting the confidentiality of trade secrets and business and financial information, including section 1905 of title 18.

(Pub. L. 102–486, title V, § 505, Oct. 24, 1992, 106 Stat. 2890.)

§ 13256. Technical and policy analysis

(a) Requirement

Not later than March 1, 1995, and March 1, 1997, the Secretary shall prepare and transmit to the President and the Congress a technical and policy analysis under this section. The Secretary shall utilize the analytical capability and authorities of the Energy Information Administration and such other offices of the Department of Energy as the Secretary considers appropriate.

(b) Purposes

The technical and policy analysis prepared under this section shall be based on the best available data and information obtainable by the Secretary under section 13253 of this title, or otherwise, and on experience under this subchapter and other provisions of law in the development and use of replacement fuels and alternative fueled vehicles, and shall evaluate—

(1) progress made in achieving the goals described in section 13252(b)(2) of this title, as modified under section 13254 of this title;

(2) the actual and potential role of replacement fuels and alternative fueled vehicles in significantly reducing United States reliance on imported oil to the extent of the goals referred to in paragraph (1); and

(3) the actual and potential availability of various domestic replacement fuels and dedicated vehicles and dual fueled vehicles.

(c) Publication

The Secretary shall publish a proposed version of each analysis under this section in the Federal Register for public comment before transmittal to the President and the Congress. Public comment received in response to such publication shall be preserved for use in rulemaking proceedings under section 13257 of this title.

(Pub. L. 102–486, title V, § 506, Oct. 24, 1992, 106 Stat. 2891.)

§ 13257. Fleet requirement program

(a) Fleet program purchase goals

(1) Except as provided in paragraph (2), the following percentages of new light duty motor vehicles acquired in each model year for a fleet, other than a Federal fleet, State fleet, or fleet owned, operated, leased, or otherwise controlled by a covered person subject to section 13251 of this title, shall be alternative fueled vehicles:

(A) 20 percent of the motor vehicles acquired in model years 1999, 2000, and 2001;

(B) 30 percent of the motor vehicles acquired in model year 2002;

(C) 40 percent of the motor vehicles acquired in model year 2003;

(D) 50 percent of the motor vehicles acquired in model year 2004;

(E) 60 percent of the motor vehicles acquired in model year 2005; and

(F) 70 percent of the motor vehicles acquired in model year 2006 and thereafter.

(2) The Secretary may not establish percentage requirements higher than those described in paragraph (1). The Secretary may, if appropriate, and pursuant to a rule under subsection (b) of this section, establish a lesser percentage requirement for any model year. The Secretary may, by rule, establish a date later than 1998 (or model year 1999) for initiating the fleet requirements under paragraph (1).

(3) The Secretary shall publish an advance notice of proposed rulemaking for the purpose of—

(A) evaluating the progress toward achieving the goals of replacement fuel use described in section 13252(b)(2) of this title, as modified under section 13254 of this title;

(B) identifying the problems associated with achieving those goals;

(C) assessing the adequacy and practicability of those goals; and

(D) considering all actions needed to achieve those goals.

The Secretary shall provide for at least 3 regional hearings on the advance notice of proposed rulemaking, with respect to which official transcripts shall be maintained. The comment period in connection with such advance notice of proposed rulemaking shall be completed within 7 months after publication of the advance notice.

(4) After the completion of such advance notice of proposed rulemaking, the Secretary shall publish in the Federal Register a proposed rule for the rule required under subsection (b) of this section, and shall provide for a public comment period, with hearings, of not less than 90 days.

(b) Early rulemaking

(1) Not earlier than 1 year after October 24, 1992, and after carrying out the requirements of subsection (a) of this section, the Secretary shall initiate a rulemaking to determine whether a fleet requirement program to begin in calendar year 1998 (when model year 1999 begins), or such other later date as he may select pursuant to subsection (a) of this section, is necessary under this section. Such rule, consistent with subsection (a)(1) of this section, shall establish the annual applicable model year percentage. No rule under this subsection may be promulgated after December 15, 1996, and be enforceable. A fleet requirement program shall be considered necessary and a rule therefor shall be promulgated if the Secretary finds that—

(A) the goal of replacement fuel use described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, is not expected to be actually achieved by 2010, or such other date as is established under sec-

tion 13254 of this title, by voluntary means or pursuant to this subchapter or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 13252(b)(2)(A) of this title, as modified under section 13254 of this title;

(B) such goal is practicable and actually achievable within periods specified in section 13252(b)(2) of this title, as modified under section 13254 of this title, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals; and

(C) by 1998 (when model year 1999 begins) or the date specified by the Secretary in such rule for initiating a fleet requirement program—

(i) there exists sufficient evidence to ensure that the fuel and the needed infrastructure, including the supply and deliverability systems, will be installed and located at convenient places in the fleet areas subject to the rule and will be fully operational when the rule is effective to offer a reliable and timely supply of the applicable alternative fuel at reasonable costs (as compared to conventional fuels) to meet the fleet requirement program, as demonstrated through use of the provisions of section 13255(1) of this title regarding voluntary commitments or other adequate, reliable, and convincing forms of agreements, arrangements, or representations that such fuels and infrastructure are in existence or will exist when the rule is effective and will be expanded as the percentages increase annually;

(ii) there will be a sufficient number of new alternative fueled vehicles from original equipment manufacturers that comply with all applicable requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] and chapter 301 of title 49;

(iii) such new vehicles will meet the applicable non-Federal and non-State fleet performance requirements of such fleets (including range, passenger or cargo-carrying capacity, reliability, refueling capability, vehicle mix, and economical operation and maintenance); and

(iv) establishment of a fleet requirement program by rule under this subsection will not result in unfair competitive advantages or disadvantages, or result in undue economic hardship, to the affected fleets.

(2) The Secretary shall not promulgate a rule under this subsection if he is unable to make affirmative findings in the case of each of the subparagraphs under paragraph (1), and each of the clauses under subparagraph (C) of paragraph (1).

(3) If the Secretary does not determine that such program is necessary under this subsection, the provisions of subsection (e) of this section shall apply to the consideration in the future of any fleet requirement program. The record of this rulemaking, including the Secretary's findings, shall be incorporated into a rulemaking under that subsection. If the Secretary determines under this subsection that such program is necessary, the Secretary shall not initiate the later rulemaking under subsection (e) of this section.

(c) Advance notice of proposed rulemaking

Not later than April 1, 1998, the Secretary shall publish an advance notice of proposed rulemaking for the purpose of—

(1) evaluating the progress toward achieving the goals of replacement fuel use described in section 13252(b)(2) of this title, as modified under section 13254 of this title;

(2) identifying the problems associated with achieving those goals;

(3) assessing the adequacy and practicability of those goals; and

(4) considering all actions needed to achieve those goals.

The Secretary shall provide for at least 3 regional hearings on the advance notice of proposed rulemaking, with respect to which official transcripts shall be maintained. The comment period in connection with such advance notice of proposed rulemaking shall be completed within 7 months after publication of the advance notice.

(d) Proposed rule

Before May 1, 1999, the Secretary shall publish in the Federal Register a proposed rule for the rule required under subsection (g) of this section, and shall provide for a public comment period, with hearings, of not less than 90 days.

(e) Determination

(1) Not later than January 1, 2000, the Secretary shall, through the rule required under subsection (g) of this section, determine whether a fleet requirement program is necessary under this section. Such a program shall be considered necessary and a rule therefor shall be promulgated if the Secretary finds that—

(A) the goal of replacement fuel use described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, is not expected to be actually achieved by 2010, or such other date as is established under section 13254 of this title, by voluntary means or pursuant to this subchapter or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 13252(b)(2)(A) of this title, as modified under section 13254 of this title; and

(B) such goal is practicable and actually achievable within periods specified in section 13252(b)(2) of this title, as modified under section 13254 of this title, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals.

(2) The rule under subsection (b) or (g) of this section shall also modify the goal described in section 13252(b)(2)(B) of this title and establish a revised goal pursuant to section 13254 of this title if the Secretary determines, based on the proceeding required under subsection (a) or (c) of this section, that the goal in effect at the time of that proceeding is inadequate or impracticable, and not expected to be achievable. Such

goal as modified and established shall be applicable in making the findings described in paragraph (1). If the Secretary modifies the goal under this paragraph, he may also modify the percentages stated in subsection (a)(1) or (g)(1) of this section and the minimum percentage stated in subsection (a)(2) or (g)(2) of this section shall be not less than 10 percent.

(f) Explanation of determination that fleet requirement program is not necessary

If the Secretary determines, based on findings under subsection (b) or (e) of this section, that a fleet requirement program under this section is not necessary, the Secretary shall—

(1) by December 15, 1996, with respect to a rulemaking under subsection (b) of this section; and

(2) by January 1, 2000, with respect to a rulemaking under subsection (e) of this section,

publish such determination in the Federal Register as a final agency action, including an explanation of the findings on which such determination is made and the basis for the determination.

(g) Fleet requirement program

(1) If the Secretary determines under subsection (e) of this section that a fleet requirement program is necessary, the Secretary shall, by January 1, 2000, by rule require that, except as provided in paragraph (2), of the total number of new light duty motor vehicles acquired for a fleet, other than a Federal fleet, State fleet, or fleet owned, operated, leased, or otherwise controlled by a covered person under section 13251 of this title—

(A) 20 percent of the motor vehicles acquired in model year 2002;

(B) 40 percent of the motor vehicles acquired in model year 2003;

(C) 60 percent of the motor vehicles acquired in model year 2004; and

(D) 70 percent of the motor vehicles acquired in model year 2005 and thereafter,

shall be alternative fueled vehicles.

(2) The Secretary may not establish percentage requirements higher than those described in paragraph (1). The Secretary may, if appropriate, and pursuant to a rule under subsection (g) of this section, establish a lesser percentage requirement for any model year. The Secretary may, by rule, establish a date later than 2002 (when model year 2003 begins) for initiating the fleet requirements under paragraph (1).

(3) Nothing in this subchapter shall be construed as requiring any fleet to acquire alternative fueled vehicles or alternative fuels that do not meet the normal business requirements and practices and needs of that fleet.

(4) A vehicle operating only on gasoline that complies with applicable requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] shall not be considered an alternative fueled vehicle under subsection (b) of this section or this subsection, except that the Secretary, as part of the rule under subsection (b) of this section or this subsection, may determine that such vehicle should be treated as an alternative fueled vehicle for purposes of this section, for fleets subject to part C of title II of the Clean Air Act [42 U.S.C. 7581 et seq.], taking into consideration the impact on energy security and the goals stated in section 13252(a) of this title.

(h) Extension of deadlines

The Secretary may, by notice published in the Federal Register, extend the deadlines established under subsections (e), (f)(2), and (g) of this section for an additional 90 days if the Secretary is unable to meet such deadlines. Such extension shall not be reviewable.

(i) Exemptions

(1) A rule issued under subsection (b), (g), or (*o*) of this section shall provide for the prompt exemption by the Secretary, through a simple and reasonable process, of any fleet from the requirements of subsection (b), (g), or (*o*) of this section, in whole or in part, if it is demonstrated to the satisfaction of the Secretary that—

(A) alternative fueled vehicles that meet the normal requirements and practices of the principal business of the fleet owner are not reasonably available for acquisition;

(B) alternative fuels that meet the normal requirements and practices of the principal business of the fleet owner are not available in the area in which the vehicles are to be operated; or

(C) in the case of State and local government entities, the application of such requirements would pose an unreasonable financial hardship.

(2) In the case of private fleets, if the motor vehicles, when under normal operations, are garaged at personal residences at night, such motor vehicles shall be exempt from the requirements of subsections (b) and (g).

(j) Conversions

Nothing in this subchapter or the amendments made by this subchapter shall require a fleet owner to acquire conversion vehicles.

(k) Inclusion of law enforcement vehicles and urban buses

(1) If the Secretary determines, by rule, that the inclusion of fleets of law enforcement motor vehicles in the fleet requirement program established under subsection (g) of this section would contribute to achieving the goal described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, and the Secretary finds that such inclusion would not hinder the use of the motor vehicles for law enforcement purposes, the Secretary may include such fleets in such program. The Secretary may only initiate one rulemaking under this paragraph.

(2) If the Secretary determines, by rule, that the inclusion of new urban buses, as defined by the Administrator under title II of the Clean Air Act [42 U.S.C. 7521 et seq.], in a fleet requirement program established under subsection (g) of this section would contribute to achieving the goal described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, the Secretary may include such urban buses in such program, if the Secretary finds that such application will be consistent with energy security goals and the needs and objectives of encouraging and facilitating the greater use

of such urban buses by the public, taking into consideration the impact of such application on public transit entities. The Secretary may only initiate one rulemaking under this paragraph.

(3) Rulemakings under paragraph (1) or (2) shall be separate from a rulemaking under subsection (g) of this section, but may not occur unless a rulemaking is carried out under subsection (g) of this section.

(*l*) Consideration of factors

In carrying out this section, the Secretary shall take into consideration energy security, costs, safety, lead time requirements, vehicle miles traveled annually, effect on greenhouse gases, technological feasibility, energy requirements, economic impacts, including impacts on workers and the impact on consumers (including users of the alternative fuel for purposes such as for residences, agriculture, process use, and nonfuel purposes) and fleets, the availability of alternative fuels and alternative fueled vehicles, and other relevant factors.

(m) Consultation and participation of other Federal agencies

In carrying out this section and section 13256 of this title, the Secretary shall consult with the Secretary of Transportation, the Administrator, and other appropriate Federal agencies. The Secretary shall provide for the participation of the Secretary of Transportation and the Administrator in the development and issuance of the rule under this section, including the public process concerning such rule.

(n) Petitions

As part of the rule promulgated either pursuant to subsection (b) or (g) of this section, the Secretary shall establish procedures for any fleet owner or operator or motor vehicle manufacturer to request that the Secretary modify or suspend a fleet requirement program established under either subsection nationally, by region, or in an applicable fleet area because, as demonstrated by the petitioner, the infrastructure or fuel supply or distribution system for an applicable alternative fuel is inadequate to meet the needs of a fleet. In the event that the Secretary determines that a modification or suspension of the fleet requirement program on a regional basis would detract from the nationwide character of any fleet requirement program established by rule or would sufficiently diminish the economies of scale for the production of alternative fueled vehicles or alternative fuels and thereafter the practicability and effectiveness of such program, the Secretary may only modify or suspend the program nationally. The procedures shall include provisions for notice and public hearings. The Secretary shall deny or grant the petition within 180 days after filing.

(*o*) Mandatory State fleet programs

(1) Pursuant to a rule promulgated by the Secretary, beginning in calendar year 1995 (when model year 1996 begins), the following percentages of new light duty motor vehicles acquired annually for State government fleets, including agencies thereof, but not municipal fleets, shall be alternative fueled vehicles:

(A) 10 percent of the motor vehicles acquired in model year 1996;

(B) 15 percent of the motor vehicles acquired in model year 1997;

(C) 25 percent of the motor vehicles acquired in model year 1998;

(D) 50 percent of the motor vehicles acquired in model year 1999;

(E) 75 percent of the motor vehicles acquired in model year 2000 and thereafter.

(2)(A) The Secretary shall within 18 months after October 24, 1992, promulgate a rule providing that a State may submit a plan within 12 months after such promulgation containing a light duty alternative fueled vehicle plan for State fleets to meet the annual percentages established under paragraph (1) for the acquisition of light duty motor vehicles. The plan shall provide for the voluntary conversion or acquisition or combination thereof, beyond any acquisition required by this subchapter, of such motor vehicles by State, local, or private fleets, in numbers greater than or equal to the number of State alternative fueled vehicles required pursuant to paragraph (1).

(B) The plan, if approved by the Secretary, would be in lieu of the State meeting such annual percentages solely through purchases of new State-owned vehicles. All conversions or acquisitions or combinations thereof of any alternative fueled vehicles under the plan must be voluntary and must conform with the requirements of section 247 of the Clean Air Act [42 U.S.C. 7587] and must comply with applicable safety requirements. The Secretary of Transportation shall within 3 years after enactment promulgate rules setting forth safety standards in accordance with chapter 301 of title 49 applicable to all conversions.

(Pub. L. 102–486, title V, § 507, Oct. 24, 1992, 106 Stat. 2891.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (b)(1)(C)(ii), (g)(4), and (k)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. Title II of the Act, known as the National Emission Standards Act, is classified generally to subchapter II (§ 7521 et seq.) of chapter 85 of this title. Part C of title II of the Act is classified generally to part C (§ 7581 et seq.) of chapter 85 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

This subchapter, referred to in subsecs. (b)(1)(A), (e)(1)(A), (g)(3), (j), and (*o*)(2)(A), was in the original ''this title'' meaning title V of Pub. L. 102–486, Oct. 24, 1992, 102 Stat. 2887, which is classified generally to this subchapter.

CODIFICATION

In subsecs. (b)(1)(C)(ii) and (*o*)(2)(B), ''chapter 301 of title 49'' substituted for ''the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.]'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

§ 13258. Credits

(a) In general

The Secretary shall allocate a credit to a fleet or covered person that is required to acquire an alternative fueled vehicle under this subchapter, if that fleet or person acquires an alternative

fueled vehicle in excess of the number that fleet or person is required to acquire under this subchapter or acquires an alternative fueled vehicle before the date that fleet or person is required to acquire an alternative fueled vehicle under such subchapter.

(b) Allocation

In allocating credits under subsection (a) of this section, the Secretary shall allocate one credit for each alternative fueled vehicle the fleet or covered person acquires that exceeds the number of alternative fueled vehicles that fleet or person is required to acquire under this subchapter or that is acquired before the date that fleet or person is required to acquire an alternative fueled vehicle under such subchapter. In the event that a vehicle is acquired before the date otherwise required, the Secretary shall allocate one credit per vehicle for each year the vehicle is acquired before the required date. The credit shall be allocated for the same type vehicle as the excess vehicle or earlier acquired vehicle.

(c) Use of credits

At the request of a fleet or covered person allocated a credit under this section, the Secretary shall treat the credit as the acquisition of one alternative fueled vehicle of the type for which the credit is allocated in the year designated by that fleet or person when determining whether that fleet or person has complied with this subchapter in the year designated. A credit may be counted toward compliance for only one year.

(d) Transferability

A fleet or covered person allocated a credit under this section or to whom a credit is transferred under this section, may transfer freely the credit to another fleet or person who is required to comply with this subchapter. At the request of the fleet or person to whom a credit is transferred, the Secretary shall treat the transferred credit as the acquisition of one alternative fueled vehicle of the type for which the credit is allocated in the year designated by the fleet or person to whom the credit is transferred when determining whether that fleet or person has complied with this subchapter in the year designated. A transferred credit may be counted toward compliance for only one year. In the case of the alternative fuel provider program under section 13251 of this title, a transferred credit may be counted toward compliance only if the requirement of section 13251(a)(4) of this title is met.

(Pub. L. 102–486, title V, § 508, Oct. 24, 1992, 106 Stat. 2897.)

§ 13259. Secretary's recommendations to Congress

(a) Recommendations to require availability or acquisition

If the Secretary determines, under section 13257(f) of this title, that a fleet requirement program under section 13257 of this title is not necessary, the Secretary shall so notify the Congress. If the Secretary so notifies the Congress, the Secretary shall, within 2 years after such notification and by rule, prepare and submit to the Congress recommendations for requirements or incentives for—

(1) fuel suppliers to make available to the public replacement fuels, including providing for the construction or availability of related fuel delivery systems;

(2) suppliers of alternative fueled vehicles to make available to the public alternative fueled vehicles and to ensure the availability of necessary related services; and

(3) motor vehicle drivers to use replacement fuels,

to the extent necessary to achieve such goals of replacement fuel use and to ensure that the availability of alternative fuels and of alternative fueled vehicles are consistent with each other.

(b) Fair and equitable application

In carrying out this section, the Secretary shall recommend the imposition of requirements proportionately on all appropriate fuel suppliers and purchasers of motor fuels and suppliers and purchasers of motor vehicles in a fair and equitable manner.

(Pub. L. 102–486, title V, § 509, Oct. 24, 1992, 106 Stat. 2898.)

§ 13260. Effect on other laws

(a) In general

Nothing in this Act or the amendments made by this Act shall be construed to alter, affect, or modify the provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], or regulations issued thereunder.

(b) Compliance by alternative fueled vehicles

Alternative fueled vehicles, whether dedicated vehicles or dual fueled vehicles, and the alternative fuels for operating such vehicles, shall comply with requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] applicable to such vehicles and fuels.

(Pub. L. 102–486, title V, § 510, Oct. 24, 1992, 106 Stat. 2898.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

§ 13261. Prohibited acts

It shall be unlawful for any person to violate any provision of section 13251, 13253(b), 13257, or 13263a of this title, or any regulation issued under such sections.

(Pub. L. 102–486, title V, § 511, Oct. 24, 1992, 106 Stat. 2899; Pub. L. 109–58, title VII, § 703(b), Aug. 8, 2005, 119 Stat. 816.)

AMENDMENTS

2005—Pub. L. 109–58 substituted ''13257, or 13263a'' for ''or 13257''.

§ 13262. Enforcement

(a) Violation

Whoever violates section 13261 of this title shall be subject to a civil penalty of not more than $5,000 for each violation.

(b) Willful violation

Whoever willfully violates section 13261 of this title shall be fined not more than $10,000 for each violation.

(c) Knowing and willful violation following prior violation and penalty

Any person who knowingly and willfully violates section 13261 of this title after having been subjected to a civil penalty for a prior violation of section 13261 of this title shall be fined not more than $50,000.

(Pub. L. 102–486, title V, § 512, Oct. 24, 1992, 106 Stat. 2899.)

§ 13263. Powers of Secretary

For the purpose of carrying out subchapter I of this chapter, subchapter II of this chapter, this subchapter, and subchapter IV of this chapter, the Secretary, or the duly designated agent of the Secretary, may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary of Transportation is authorized to do under section 32910(a)(1) of title 49.

(Pub. L. 102–486, title V, § 513, Oct. 24, 1992, 106 Stat. 2899.)

REFERENCES IN TEXT

Subchapter I of this chapter, referred to in text, was in the original ''title III'' meaning title III of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2866, which enacted subchapter I of this chapter, amended section 6374 of this title, and repealed provisions set out as a note under section 6374 of this title.

Subchapter II of this chapter, referred to in text, was in the original ''title IV'' meaning title IV of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2875, which enacted subchapter II of this chapter, amended sections 6374a to 6374c of this title and sections 717, 717a, 2001, 2002, 2006, and 2013 of Title 15, Commerce and Trade, enacted provisions set out as notes under sections 79b and 717 of Title 15, and repealed provisions set out as a note under section 717c of Title 15.

CODIFICATION

In text, ''section 32910(a)(1) of title 49'' substituted for ''section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2005(b)(1))'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

§ 13263a. Alternative compliance

(a) Application for waiver

Any covered person subject to section 13251 of this title and any State subject to section 13257(*o*) of this title may petition the Secretary for a waiver of the applicable requirements of section 13251 or 13257(*o*) of this title.

(b) Grant of waiver

The Secretary shall grant a waiver of the requirements of section 13251 or 13257(*o*) of this title on a showing that the fleet owned, operated, leased, or otherwise controlled by the State or covered person—

(1) will achieve a reduction in the annual consumption of petroleum fuels by the fleet equal to—

(A) the reduction in consumption of petroleum that would result from 100 percent cumulative compliance with the fuel use requirements of section 13251 of this title; or

(B) in the case of an entity covered under section 13257(*o*) of this title, a reduction equal to the annual consumption by the State entity of alternative fuels if all of the cumulative alternative fuel vehicles of the State entity given credit under section 13258 of this title were to use alternative fuel 100 percent of the time; and

(2) is in compliance with all applicable vehicle emission standards established by the Administrator of the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.).

(c) Reporting requirement

Not later than December 31 of a model year, any State or covered person granted a waiver under this section for the preceding model year shall submit to the Secretary an annual report that—

(1) certifies the quantity of the petroleum motor fuel reduction of the State or covered person during the preceding model year; and

(2) projects the baseline quantity of the petroleum motor fuel reduction of the State or covered person during the following model year.

(d) Revocation of waiver

If a State or covered person that receives a waiver under this section fails to comply with this section, the Secretary—

(1) shall revoke the waiver; and

(2) may impose on the State or covered person a penalty under section 13262 of this title.

(Pub. L. 102–486, title V, § 514, as added Pub. L. 109–58, title VII, § 703(a)(2), Aug. 8, 2005, 119 Stat. 815.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

PRIOR PROVISIONS

A prior section 514 of Pub. L. 102–486 was renumbered 515 and is classified to section 13264 of this title.

§ 13264. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this subchapter $10,000,000 for each of the fiscal years 1993 through 1997, and such sums as may be necessary for fiscal years 1998 through 2000.

(Pub. L. 102–486, title V, § 515, formerly § 514, Oct. 24, 1992, 106 Stat. 2899; renumbered § 515, Pub. L. 109–58, title VII, § 703(a)(1), Aug. 8, 2005, 119 Stat. 815.)

SUBCHAPTER IV—ELECTRIC MOTOR VEHICLES

§ 13271. Definitions

For the purposes of this subchapter—

(1) the term ''antitrust laws'' means the Acts set forth in section 12 of title 15;

(2) the term ''associated equipment'' means equipment necessary for the regeneration, refueling, or recharging of batteries or other forms of electric energy used to power an electric motor vehicle and, in the case of electric-hybrid vehicles, such term includes nonpetroleum-related equipment necessary for, and solely related to, the demonstration of such vehicles;

(3) the term ''discount payment'' means the amount determined pursuant to section 13283 of this title;

(4) the term ''electric motor vehicle'' means a motor vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, photovoltaic arrays, or other sources of electric current and may include an electric-hybrid vehicle;

(5) the term ''electric-hybrid vehicle'' means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current and also relies on a non-electric source of power;

(6) the term ''eligible metropolitan area'' means any Metropolitan Area (as such term is defined by the Office of Management and Budget pursuant to section 3504 of title 44) with a 1980 population of 250,000 or more that has been designated by a proposer and the Secretary for a demonstration project under this subchapter, except that the Secretary may designate an area with a 1990 population of 50,000 or more as an eligible metropolitan area;

(7) the term ''infrastructure and support systems'' includes support and maintenance services and facilities, electricity delivery mechanisms and methods, regulatory treatment of investment in electric motor vehicles and associated equipment, consumer education programs, safety and health procedures, and battery availability, replacement, recycling, and disposal, that may be required to enable electric utilities, manufacturers, and others to support the operation and maintenance of electric motor vehicles and associated equipment;

(8) the term ''motor vehicle'' has the meaning given such term under section 7550(2) of this title;

(9) the term ''non-Federal person'' means an entity not part of the Federal Government that is either—

(A) organized under the laws of the United States or the laws of a State of the United States; or

(B) a unit of State or local government;

(10) the term ''proposer'' means a non-Federal person that submits a proposal to conduct a demonstration project under this subchapter;

(11) the term ''price differential'' means—

(A) in the case of a purchased electric motor vehicle, the difference between the manufacturer's suggested retail price of such electric motor vehicle and the manufacturer's suggested retail price of a comparable conventionally fueled motor vehicle; and

(B) in the case of a leased electric motor vehicle, the difference between the monthly lease payment of such electric motor vehicle over the life of the lease and the monthly lease payment of a comparable conventionally fueled motor vehicle over the life of the lease; and

(12) the term ''user'' means a person or entity that purchases or leases an electric motor vehicle.

(Pub. L. 102–486, title VI, § 601, Oct. 24, 1992, 106 Stat. 2899.)

PART A—ELECTRIC MOTOR VEHICLE COMMERCIAL DEMONSTRATION PROGRAM

§ 13281. Program and solicitation

(a) Program

The Secretary shall conduct a program to demonstrate electric motor vehicles and the associated equipment of such vehicles, in consultation with the Electric and Hybrid Vehicle Program Site Operators, manufacturers, the electric utility industry, and such other persons as the Secretary considers appropriate. Such program shall be—

(1) designed to accelerate the development and use of electric motor vehicles; and

(2) structured to evaluate the performance of such electric motor vehicles in field operation, including fleet operation, and evaluate the necessary supporting infrastructure.

(b) Solicitation

(1) Not later than 18 months after October 24, 1992, the Secretary shall solicit proposals to demonstrate electric motor vehicles and associated equipment in one or more eligible metropolitan areas. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this part.

(2)(A) Solicitations for proposals under this subsection shall require the proposer to include a description, including the manufacturer or manufacturers of the electric motor vehicles; the proposed users of the electric motor vehicles; the eligible metropolitan area or areas involved; the number of electric motor vehicles to be demonstrated and their type, characteristics, and life-cycle costs; the price differential; the proposed discount payment; the contributions of State or local governments and other persons to the demonstration project; the type of associated equipment to be demonstrated; the domestic content of the electric motor vehicles and associated equipment; and any other information the Secretary considers appropriate.

(B) If the proposal includes a lease arrangement, the proposal shall indicate the terms of such lease arrangement for the electric motor vehicles or associated equipment.

(3) The solicitation for proposals under this subsection shall establish a closing date for re-

ceipt of proposals. The Secretary may, if necessary, extend the closing date for receipt of proposals for a period not to exceed 90 days.

(Pub. L. 102–486, title VI, § 611, Oct. 24, 1992, 106 Stat. 2900.)

§ 13282. Selection of proposals

(a) Selection

(1) The Secretary, in consultation with the Secretary of Transportation, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall, not later than 120 days after the closing date, as established by the Secretary, for receipt of proposals under section 13281 of this title, select at least one, but not more than 10, proposals to receive financial assistance under section 13283 of this title.

(2) The Secretary may select more than 10 proposals under this section, if the Secretary determines that the total amount of available funds is not likely to be otherwise utilized.

(3) Any proposal selected under paragraph (1) must satisfy the limitations set forth in section 13283(c) of this title.

(4) No one project selected under this section shall receive more than 25 percent of the funds authorized under section 13286 of this title.

(5) A demonstration project may not include electric motor vehicles in more than one eligible metropolitan area, unless the total number of electric motor vehicles in that project is equal to, or greater than, 100.

(b) Criteria

In selecting a proposal and in negotiating financial assistance under this section, the Secretary shall consider—

(1) the ability of the manufacturer, directly, indirectly, or in combination with the proposer, to develop, assist in the demonstration of, manufacture, distribute, sell, provide warranties for, service, and ensure the continued availability of parts for, electric motor vehicles in the demonstration project;

(2) the geographic and climatic diversity of the eligible metropolitan area or areas in which the demonstration project is to be undertaken, when considered in combination with other proposals and other selected demonstration projects;

(3) the long-term technical and competitive viability of the electric motor vehicles;

(4) the suitability of the electric motor vehicles for their intended uses;

(5) the environmental effects of the use of the proposed electric motor vehicles;

(6) the price differential and the proposed discount payment;

(7) the extent of involvement of State or local government and other persons in the demonstration project, and whether such involvement will—

(A) permit a reduction of the Federal cost share per vehicle; or

(B) otherwise be used to allow the Federal contribution to be provided for a greater number of electric motor vehicles;

(8) the proportion of domestic content of the electric motor vehicles and associated equipment;

(9) the safety of the electric motor vehicles; and

(10) such other criteria as the Secretary considers appropriate.

(c) Conditions

The Secretary shall require that—

(1) as a part of a demonstration project, the user or users of the electric motor vehicles will provide to the proposer and the manufacturer information regarding the operation, maintenance, performance, and use of the electric motor vehicles for 5 years after the beginning of the demonstration project;

(2) the proposer shall provide to the Secretary such information regarding the operation, maintenance, performance, and use of the electric motor vehicles as the Secretary may request during the period of the demonstration project;

(3) in the case of a demonstration project including automobiles or light duty trucks, the number of electric motor vehicles to be included in the demonstration project shall be no less than 50, except that the Secretary may select a demonstration project with fewer than 50 electric motor vehicles if the Secretary determines that selection of such a proposal will ensure that there is geographic or climatic diversity among the proposals selected and that an adequate demonstration to accelerate the development and use of electric motor vehicles can be undertaken with fewer than 50 electric motor vehicles; and

(4) the procurement practices of the manufacturer do not discriminate against United States producers of vehicle parts.

(Pub. L. 102–486, title VI, § 612, Oct. 24, 1992, 106 Stat. 2901.)

§ 13283. Discount payments

(a) Certification

The Secretary shall provide a discount payment to a proposer of a proposal selected under this part for purposes of reimbursing the proposer for a discount provided to the users if the proposer certifies to the Secretary that—

(1) the electric motor vehicles have been purchased or leased by a user or users in accordance with the requirements of this part; and

(2) the proposer has provided to the user or users a discount payment in accordance with the requirements of this part.

(b) Payment

Not later than 30 days after receipt from the proposer of certification that the Secretary determines satisfies the requirements of subsection (a) of this section, the Secretary shall pay to the proposer the full amount of the discount payment, to the extent provided in advance in appropriations Acts.

(c) Calculations of discount payments

(1) The discount payment shall be no greater than—

(A) the price differential; or

(B) the price of the comparable conventionally fueled motor vehicle.

(2) The purchase price of the electric motor vehicle, less the discount payment and less any ad-

ditional reduction in the purchase price of the electric motor vehicle that may result from contributions provided by other parties, may not be less than the manufacturer's suggested retail price of a comparable conventionally fueled motor vehicle.

(3) The maximum discount payment shall be no greater than $10,000 per electric motor vehicle.

(Pub. L. 102–486, title VI, § 613, Oct. 24, 1992, 106 Stat. 2902.)

§ 13284. Cost-sharing

(a) Requirement

The Secretary shall require at least 50 percent of the costs directly and specifically related to any project under this part to be from non-Federal sources. Such share may be in the form of cash, personnel, services, equipment, and other resources.

(b) Reduction

The Secretary may reduce the amount of costs required to be provided by non-Federal sources under subsection (a) of this section if the Secretary determines that the reduction is necessary and appropriate—

(1) considering the technological risks involved in the project; and

(2) in order to meet the objectives of this part.

(Pub. L. 102–486, title VI, § 614, Oct. 24, 1992, 106 Stat. 2903.)

§ 13285. Reports to Congress

(a) Progress reports

The Secretary shall report annually to Congress on the progress being made, through demonstration projects supported under this part, to accelerate the development and use of electric motor vehicles.

(b) Report on encouraging purchase and use of electric motor vehicles

Within 18 months after October 24, 1992, the Secretary shall submit to the Congress a report on methods for encouraging the purchase and use of electric motor vehicles. Such report shall—

(1) address the potential cost of purchasing and maintaining electric motor vehicles, including the initial cost of the batteries and the cost of replacement batteries;

(2) identify methods for reducing, subsidizing, or sharing such costs; and

(3) include recommendations for legislative and administrative measures to encourage the purchase and use of electric motor vehicles.

(Pub. L. 102–486, title VI, § 615, Oct. 24, 1992, 106 Stat. 2903.)

§ 13286. Authorization of appropriations

There are authorized to be appropriated to the Secretary for purposes of this part $50,000,000 for the 10-year period beginning with the first full fiscal year after October 24, 1992, to remain available until expended.

(Pub. L. 102–486, title VI, § 616, Oct. 24, 1992, 106 Stat. 2903.)

PART B—ELECTRIC MOTOR VEHICLE INFRASTRUCTURE AND SUPPORT SYSTEMS DEVELOPMENT PROGRAM

§ 13291. General authority

(a) Program

The Secretary shall undertake a program with one or more non-Federal persons, including fleet operators, for cost-shared research, development, demonstration, or commercial application of an infrastructure and support systems program.

(b) Eligibility

A non-Federal person shall be eligible to receive financial assistance under this part only if such person demonstrates, to the satisfaction of the Secretary, that the person will conduct a substantial portion of activities under the project in the United States using domestic labor and materials.

(c) Coordination

Activities under this part shall be coordinated with activities under part A of this subchapter.

(Pub. L. 102–486, title VI, § 621, Oct. 24, 1992, 106 Stat. 2904.)

§ 13292. Proposals

(a) Solicitation

Not later than one year after October 24, 1992, the Secretary shall solicit proposals from non-Federal persons, including fleet operators, for projects under this part. Within 240 days after proposals have been solicited, the Secretary shall select proposals.

(b) Criteria

(1) The Secretary shall provide financial assistance to no more than 10 projects under this part, unless the Secretary determines that the total amount of available funds is not likely to be otherwise used.

(2) The proposals selected by the Secretary shall, to the extent practicable, represent geographically and climatically diverse regions of the United States.

(3) The aggregate Federal financial assistance for each project under this part may not exceed $4,000,000.

(c) Projects

The infrastructure and support systems programs for which projects are selected under this part may address—

(1) the ability to service electric motor vehicles and to provide or service associated equipment;

(2) the installation of charging facilities;

(3) rates and cost recovery for electric utilities who invest in infrastructure capital-related expenditures;

(4) the development of safety and health procedures and guidelines related to battery charging, watering, and emissions;

(5) the conduct of information dissemination programs; and

(6) such other subjects as the Secretary considers necessary in order to address the infrastructure and support systems needed to support the development and use of energy stor-

age technologies, including advanced batteries, and the demonstration of electric motor vehicles.

(Pub. L. 102–486, title VI, § 622, Oct. 24, 1992, 106 Stat. 2904.)

§ 13293. Protection of proprietary information

(a) In general

In the case of activities, including joint venture activities, under this subchapter, and in the case of any existing or future activities, including joint venture activities, related primarily to battery technology for electric motor vehicles under other provisions of law, where the knowledge resulting from research and development activities conducted pursuant to such activities, including joint venture activities, is for the benefit of the participants (particularly domestic companies) that provide financial resources to a project under this subchapter, the Secretary, for a period of up to 5 years after the development of information that—

(1) results from research and development activities conducted under this subchapter; and

(2) would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a participant,

shall, notwithstanding any other provision of law, provide appropriate protections against the dissemination of such information to the public, and the provisions of section 1905 of title 18 shall apply to such information. Nothing in this subsection provides protections against the dissemination of such information to Congress.

(b) "Domestic companies" defined

For purposes of subsection (a) of this section, the term ''domestic companies'' means entities which are substantially involved in the United States in the domestic production of motor vehicles for sale in the United States and have a substantial percentage of their production facilities in the United States.

(Pub. L. 102–486, title VI, § 623, Oct. 24, 1992, 106 Stat. 2904.)

§ 13294. Compliance with existing law

Nothing in this subchapter shall be deemed to convey to any person, partnership, corporation, or other entity, immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust law.

(Pub. L. 102–486, title VI, § 624, Oct. 24, 1992, 106 Stat. 2905.)

§ 13295. Repealed. Pub. L. 105–362, title IV, § 401(b), Nov. 10, 1998, 112 Stat. 3282

Section, Pub. L. 102–486, title VI, § 625, Oct. 24, 1992, 106 Stat. 2905, related to electric utility participation study.

§ 13296. Authorization of appropriations

There are authorized to be appropriated to the Secretary for purposes of this part $40,000,000 for the 5-year period beginning with the first full fiscal year after October 24, 1992, to remain available until expended.

(Pub. L. 102–486, title VI, § 626, Oct. 24, 1992, 106 Stat. 2905.)

SUBCHAPTER V—RENEWABLE ENERGY

§ 13311. Purposes

The purposes of this subchapter are to promote—

(1) increases in the production and utilization of energy from renewable energy resources;

(2) further advances of renewable energy technologies; and

(3) exports of United States renewable energy technologies and services.

(Pub. L. 102–486, title XII, § 1201, Oct. 24, 1992, 106 Stat. 2956.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'' meaning title XII of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2956, which enacted this subchapter and amended sections 6276, 12001 to 12003, 12005, and 12006 of this title.

§ 13312. Renewable energy export technology training

(a) Establishment of program

The Secretary, through the Agency for International Development, shall establish a program for the training of individuals from developing countries in the operation and maintenance of renewable energy and energy efficiency technologies in accordance with this section. The Secretary and the Administrator of the Agency for International Development shall, within one year after October 24, 1992, enter into a written agreement to carry out this program.

(b) Purpose

The purpose of the program established under this section shall be to train appropriate persons in the system design, operation, and maintenance of renewable energy and energy efficiency equipment manufactured in the United States, including equipment for water pumping, heating and purification, and the production of electric power in remote areas.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary $6,000,000 for each of the fiscal years 1994, 1995, and 1996, to carry out this section.

(Pub. L. 102–486, title XII, § 1203, Oct. 24, 1992, 106 Stat. 2961.)

§ 13313. Renewable Energy Advancement Awards

(a) Authority

The Secretary shall make Renewable Energy Advancement Awards in recognition of developments that advance the practical application of biomass, geothermal, hydroelectric, photovoltaic, solar thermal, ocean thermal, and wind technologies to consumer, utility, or industrial uses, in accordance with this section. Except as provided in subsection (f) of this section, Renewable Energy Advancement Awards shall include a cash award.

(b) Selection criteria

The Secretary, in consultation with the Advisory Committee on Demonstration and Commer-

cial Application of Renewable Energy and Energy Efficiency Technologies (in this section referred to as the ''Advisory Committee''), under section 12005 of this title, shall develop criteria to be applied in the selection of award recipients under this section. Such criteria shall include the following:

(1) The degree to which the technological development increases the utilization of renewable energy.

(2) The degree to which the development will have a significant impact, by benefitting a large number of people, by reducing the costs of an important industrial process or commercial product or service, or otherwise.

(3) The ingenuity of the development.

(4) Whether the application has significant export potential.

(5) The environmental soundness of the development.

(c) Selection

Beginning in fiscal year 1994, and annually thereafter for a period of 10 years, the Secretary, in consultation with the Advisory Committee, shall select developments described in subsection (a) of this section that are worthy of receiving an award under this section, and shall make such awards.

(d) Eligibility

Awards may be made under this section only to individuals who are United States nationals or permanent resident aliens, or to non-Federal organizations that are organized under the laws of the United States or the laws of a State of the United States.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary $50,000 for each of the fiscal years 1994, 1995, and 1996 for carrying out this section.

(f) Awards made in absence of appropriations

The Secretary shall make honorary awards under this section if sufficient funds are not available for financial awards in any fiscal year.

(Pub. L. 102–486, title XII, § 1204, Oct. 24, 1992, 106 Stat. 2961.)

§ 13314. Study of tax and rate treatment of renewable energy projects

(a) The Secretary, in conjunction with State regulatory commissions, shall undertake a study to determine if conventional taxation and ratemaking procedures result in economic barriers to or incentives for renewable energy power plants compared to conventional power plants.

(b) Within 1 year after October 24, 1992, the Secretary shall submit a report to the Congress on the results of the study undertaken under subsection (a) of this section.

(Pub. L. 102–486, title XII, § 1205, Oct. 24, 1992, 106 Stat. 2962.)

§ 13315. Data system and energy technology evaluation

The Secretary of Commerce, in his or her role as a member of the interagency working group established under section 6276 of this title, shall—

(1) develop a comprehensive data base and information dissemination system, using the National Trade Data Bank and the Commercial Information Management System of the Department of Commerce, that will provide information on the specific energy technology needs of foreign countries, and the technical and economic competitiveness of various renewable energy and energy efficiency products and technologies;

(2) make such information available to industry, Federal and multilateral lending agencies, nongovernmental organizations, host-country and donor-agency officials, and such others as the Secretary of Commerce considers necessary; and

(3) prepare and transmit to the Congress not later than June 1, 1993, and biennially thereafter, a comprehensive report evaluating the full range of energy and environmental technologies necessary to meet the energy needs of foreign countries, including—

(A) information on the specific energy needs of foreign countries;

(B) an inventory of United States technologies and services to meet those needs;

(C) an update on the status of ongoing bilateral and multilateral programs which promote United States exports of renewable energy and energy efficiency products and technologies; and

(D) an evaluation of current programs (and recommendations for future programs) that develop and promote energy efficiency and sustainable use of indigenous renewable energy resources in foreign countries to reduce the generation of greenhouse gases.

(Pub. L. 102–486, title XII, § 1209, Oct. 24, 1992, 106 Stat. 2964.)

§ 13316. Innovative renewable energy technology transfer program

(a) Establishment of program

The Secretary, through the Agency for International Development, and in consultation with the other members of the interagency working group established under section 6276(d) of this title (in this section referred to as the ''interagency working group''), shall establish a renewable energy technology transfer program to carry out the purposes described in subsection (b) of this section. Within 150 days after October 24, 1992, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate Federal agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in ef-

fect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) Purposes of program

The purposes of the technology transfer program under this section are to—

(1) reduce the United States balance of trade deficit through the export of United States renewable energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

(3) encourage the export of United States renewable energy technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from renewable resources;

(4) develop markets for United States renewable energy technologies to be utilized in meeting the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies that have been developed or demonstrated in the United States through publicly or privately funded demonstration programs;

(6) ensure the introduction of United States firms and expertise in foreign countries;

(7) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of renewable energy technology projects in foreign countries;

(8) assist foreign countries in meeting their energy needs through the use of renewable energy in an environmentally acceptable manner, consistent with sustainable development policies; and

(9) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) Identification

Pursuant to the agreements required by subsection (a) of this section, the Secretary, through the Agency for International Development, and after consultation with the interagency working group, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries, and shall identify a list of such projects within 240 days after October 24, 1992, and periodically thereafter.

(d) Financial mechanisms

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects utilizing United States renewable energy technologies, and services related thereto, in developing countries;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-United States funding that is available to the project; and

(B) utilized to assist United States firms in the development of innovative financing packages for renewable energy technology projects that utilize other financial assistance programs available through the Federal Government.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) Solicitations for project proposals

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, within one year after October 24, 1992, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) of this section which propose to utilize a United States renewable energy technology. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE–PS01–90FE62271 Clean Coal Technology IV, as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States renewable energy technology, including services related thereto, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) Assistance to United States firms

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall establish a procedure to provide financial assistance to United States firms under

this section for a project identified under subsection (c) of this section where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) Other program requirements

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the working group, shall—

(1) establish eligibility criteria for host countries;

(2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) Selection of projects

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e) of this section, select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the purposes stated in section 13311(b)[1] of this title;

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology for future application; and

(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet 1 or more of the following criteria:

(A) It will reduce environmental emissions to an extent greater than required by applicable provisions of law.

(B) It will make greater use of indigenous renewable energy resources.

(C) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet one or more of these criteria.

(i) United States-Asia Environmental Partnership

Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(j) Buy America

In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a) of this section, shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(k) Reports to Congress

The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce renewable energy technologies into foreign countries.

(*l*) Definitions

For purposes of this section—

(1) the term ''host country'' means a foreign country which is—

(A) the participant in or the site of the proposed renewable energy technology project; and

(B) either—

(i) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or

(ii) a developing country.

(2) the term ''developing country'' includes, but is not limited to, countries in Central and Eastern Europe or in the independent states of the former Soviet Union.

(m) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out the program required by

[1] So in original. Probably should be section ''13316(b)''.

this section, $100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(Pub. L. 102–486, title XII, § 1211, Oct. 24, 1992, 106 Stat. 2965.)

§ 13317. Renewable energy production incentive

(a) Incentive payments

(1) For electric energy generated and sold by a qualified renewable energy facility during the incentive period, the Secretary shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility.

(2) The amount of such payment made to any such owner or operator shall be as determined under subsection (e) of this section.

(3) Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment.

(4)(A) Subject to subparagraph (B), if there are insufficient appropriations to make full payments for electric production from all qualified renewable energy facilities for a fiscal year, the Secretary shall assign—

(i) 60 percent of appropriated funds for the fiscal year to facilities that use solar, wind, ocean (including tidal, wave, current, and thermal), geothermal, or closed-loop (dedicated energy crops) biomass technologies to generate electricity; and

(ii) 40 percent of appropriated funds for the fiscal year to other projects.

(B) After submitting to Congress an explanation of the reasons for the alteration, the Secretary may alter the percentage requirements of subparagraph (A).

(b) Qualified renewable energy facility

For purposes of this section, a qualified renewable energy facility is a facility which is owned by a not-for-profit electric cooperative, a public utility described in section 115 of title 26, a State, Commonwealth, territory, or possession of the United States, or the District of Columbia, or a political subdivision thereof, an Indian tribal government or subdivision thereof, or a Native Corporation (as defined in section 1602 of title 43), and which generates electric energy for sale in, or affecting, interstate commerce using solar, wind, biomass, landfill gas, livestock methane, ocean (including tidal, wave, current, and thermal), or geothermal energy, except that—

(1) the burning of municipal solid waste shall not be treated as using biomass energy; and

(2) geothermal energy shall not include energy produced from a dry steam geothermal reservoir which has—

(A) no mobile liquid in its natural state;

(B) steam quality of 95 percent water; and

(C) an enthalpy for the total produced fluid greater than or equal to 1200 Btu/lb (British thermal units per pound).

(c) Eligibility window

Payments may be made under this section only for electricity generated from a qualified renewable energy facility first used before October 1, 2016.

(d) Payment period

A qualified renewable energy facility may receive payments under this section for a 10-fiscal year period. Such period shall begin with the fiscal year in which electricity generated from the facility is first eligible for such payments, or in which the Secretary determines that all necessary Federal and State authorizations have been obtained to begin construction of the facility.

(e) Amount of payment

(1) In general

Incentive payments made by the Secretary under this section to the owner or operator of any qualified renewable energy facility shall be based on the number of kilowatt hours of electricity generated by the facility through the use of solar, wind, biomass, landfill gas, livestock methane, ocean (including tidal, wave, current, and thermal), or geothermal energy during the payment period referred to in subsection (d) of this section. For any facility, the amount of such payment shall be 1.5 cents per kilowatt hour, adjusted as provided in paragraph (2).

(2) Adjustments

The amount of the payment made to any person under this subsection as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 1993 in the same manner as provided in the provisions of section 29(d)(2)(B) of title 26,[1] except that in applying such provisions the calendar year 1993 shall be substituted for calendar year 1979.

(f) Sunset

No payment may be made under this section to any facility after September 30, 2026, and no payment may be made under this section to any facility after a payment has been made with respect to such facility for a 10-fiscal year period.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2006 through 2026, to remain available until expended.

(Pub. L. 102–486, title XII, § 1212, Oct. 24, 1992, 106 Stat. 2969; Pub. L. 109–58, title II, § 202, Aug. 8, 2005, 119 Stat. 651.)

REFERENCES IN TEXT

Section 29 of title 26, referred to in subsec. (e)(2), was renumbered section 45K of title 26 by Pub. L. 109–58, title XIII, § 1322(a)(1), Aug. 8, 2005, 119 Stat. 1011.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, § 202(a), designated first, second, and third sentences as pars. (1) to (3), respectively, in par. (3) struck out ''and which satisfies such other requirements as the Secretary deems necessary'' after ''receive such payment'', struck out at end ''Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.'', and added par. (4).

[1] See References in Text note below.

Subsec. (b). Pub. L. 109–58, § 202(b), in introductory provisions, substituted ''a not-for-profit electric cooperative, a public utility described in section 115 of title 26, a State, Commonwealth, territory, or possession of the United States, or the District of Columbia, or a political subdivision thereof, an Indian tribal government or subdivision thereof, or a Native Corporation (as defined in section 1602 of title 43),'' for ''a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision), by any corporation or association which is wholly owned, directly or indirectly, by one or more of the foregoing, or by a nonprofit electrical cooperative'' and inserted ''landfill gas, livestock methane, ocean (including tidal, wave, current, and thermal),'' after ''wind, biomass,''.

Subsec. (c). Pub. L. 109–58, § 202(c), substituted ''before October 1, 2016'' for ''during the 10-fiscal year period beginning with the first full fiscal year occurring after October 24, 1992''.

Subsec. (d). Pub. L. 109–58, § 202(d), inserted '', or in which the Secretary determines that all necessary Federal and State authorizations have been obtained to begin construction of the facility'' after ''eligible for such payments''.

Subsec. (e)(1). Pub. L. 109–58, § 202(e), inserted ''landfill gas, livestock methane, ocean (including tidal, wave, current, and thermal),'' after ''wind, biomass,''.

Subsec. (f). Pub. L. 109–58, § 202(f), substituted ''September 30, 2026'' for ''the expiration of the 20-fiscal year period beginning with the first full fiscal year occurring after October 24, 1992''.

Subsec. (g). Pub. L. 109–58, § 202(g), added subsec. (g) and struck out heading and text of former subsec. (g). Text read as follows: ''There are authorized to be appropriated to the Secretary for fiscal years 1993, 1994, and 1995 such sums as may be necessary to carry out the purposes of this section.''

SUBCHAPTER VI—COAL

PART A—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION

§ 13331. Coal research, development, demonstration, and commercial application programs

(a) Establishment

The Secretary shall, in accordance with section[1] 13541 and 13542 of this title, conduct programs for research, development, demonstration, and commercial application on coal-based technologies. Such research, development, demonstration, and commercial application programs shall include the programs established under this part, and shall have the goals and objectives of—

(1) ensuring a reliable electricity supply;

(2) complying with applicable environmental requirements;

(3) achieving the control of sulfur oxides, oxides of nitrogen, air toxics, solid and liquid wastes, greenhouse gases, or other emissions resulting from coal use or conversion at levels of proficiency greater than or equal to applicable currently available commercial technology;

(4) achieving the cost competitive conversion of coal into energy forms usable in the transportation sector;

(5) demonstrating the conversion of coal to synthetic gaseous, liquid, and solid fuels;

(6) demonstrating, in cooperation with other Federal and State agencies, the use of coal-derived fuels in mobile equipment, with opportunities for industrial cost sharing participation;

(7) ensuring the timely commercial application of cost-effective technologies or energy production processes or systems utilizing coal which achieve—

(A) greater efficiency in the conversion of coal to useful energy when compared to currently available commercial technology for the use of coal; and

(B) the control of emissions from the utilization of coal; and

(8) ensuring the availability for commercial use of such technologies by the year 2010.

(b) Demonstration and commercial application programs

(1) In selecting either a demonstration project or a commercial application project for financial assistance under this part, the Secretary shall seek to ensure that, relative to otherwise comparable commercially available technologies or products, the selected project will meet one or more of the following criteria:

(A) It will reduce environmental emissions to an extent greater than required by applicable provisions of law.

(B) It will increase the overall efficiency of the utilization of coal, including energy conversion efficiency and, where applicable, production of products derived from coal.

(C) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet one or more of these criteria.

(2) In administering demonstration and commercial application programs authorized by this part, the Secretary shall establish accounting and project management controls that will be adequate to control costs.

(3)(A) Not later than 180 days after October 24, 1992, the Secretary shall establish procedures and criteria for the recoupment of the Federal share of each cost shared demonstration and commercial application project authorized pursuant to this part. Such recoupment shall occur within a reasonable period of time following the date of completion of such project, but not later than 20 years following such date, taking into account the effect of recoupment on—

(i) the commercial competitiveness of the entity carrying out the project;

(ii) the profitability of the project; and

(iii) the commercial viability of the coal-based technology utilized.

(B) The Secretary may at any time waive or defer all or some portion of the recoupment requirement as necessary for the commercial viability of the project.

(4) Projects selected by the Secretary under this part for demonstration or commercial application of a technology shall, in the judgment of the Secretary, be capable of enhancing the state of the art for such technology.

[1] So in original. Probably should be ''sections''.

(c) Report

Within 240 days after October 24, 1992, the Secretary shall transmit to the Committee on Energy and Commerce and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate a report which shall include each of the following:

(1) A detailed description of ongoing research, development, demonstration, and commercial application activities regarding coal-based technologies undertaken by the Department of Energy, other Federal or State government departments or agencies and, to the extent such information is publicly available, other public or private organizations in the United States and other countries.

(2) A listing and analysis of current Federal and State government regulatory and financial incentives that could further the goals of the programs established under this part.

(3) Recommendations regarding the manner in which any ongoing coal-based demonstration and commercial application program might be modified and extended in order to ensure the timely demonstrations of advanced coal-based technologies so as to ensure that the goals established under this section are achieved and that such demonstrated technologies are available for commercial use by the year 2010.

(4) Recommendations, if any, regarding the manner in which the cost sharing demonstrations conducted pursuant to the Clean Coal Program established by Public Law 98–473 might be modified and extended in order to ensure the timely demonstration of advanced coal-based technologies.

(5) A detailed plan for conducting the research, development, demonstration, and commercial application programs to achieve the goals and objectives of subsection (a) of this section, which plan shall include a description of—

(A) the program elements and management structure to be utilized;

(B) the technical milestones to be achieved with respect to each of the advanced coal-based technologies included in the plan; and

(C) the dates at which further deadlines for additional cost sharing demonstrations shall be established.

(d) Status reports

Within one year after transmittal of the report described in subsection (c) of this section, and every 2 years thereafter for a period of 6 years, the Secretary shall transmit to the Congress a report that provides a detailed description of the status of development of the advanced coal-based technologies and the research, development, demonstration, and commercial application activities undertaken to carry out the programs required by this part.

(e) Consultation

In carrying out research, development, demonstration, and commercial application activities under this part, the Secretary shall consult with the National Coal Council and other representatives of the public and private sectors as the Secretary considers appropriate.

(Pub. L. 102–486, title XIII, § 1301, Oct. 24, 1992, 106 Stat. 2970.)

REFERENCES IN TEXT

Public Law 98–473, referred to in subsec. (c)(4), is Pub. L. 98–473, Oct. 12, 1984, 98 Stat. 1837, as amended. For complete classification of this Act to the Code, see Tables.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives and Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 13332. Coal-fired diesel engines

The Secretary shall conduct a program of research, development, demonstration, and commercial application for utilizing coal-derived liquid or gaseous fuels, including ultra-clean coal-water slurries, in diesel engines. The program shall address—

(1) required engine retrofit technology;

(2) coal-fuel production technology;

(3) emission control requirements;

(4) the testing of low-Btu highly reactive fuels;

(5) fuel delivery and storage systems requirements; and

(6) other infrastructure required to support commercial deployment.

(Pub. L. 102–486, title XIII, § 1302, Oct. 24, 1992, 106 Stat. 2972.)

§ 13333. Clean coal, waste-to-energy

The Secretary shall establish a program of research, development, demonstration, and commercial application with respect to the use of solid waste combined with coal as a fuel source for clean coal combustion technologies. The program shall address—

(1) the feasibility of cofiring coal and used vehicle tires in fluidized bed combustion units;

(2) the combined gasification of coal and municipal sludge using integrated gasification combined cycle technology;

(3) the creation of fuel pellets combining coal and material reclaimed from solid waste;

(4) the feasibility of cofiring, in fluidized bed combustion units, waste methane from coal mines, including ventilation air, together with coal or coal wastes; and

(5) other sources of waste and coal mixtures in other applications that the Secretary considers appropriate.

(Pub. L. 102–486, title XIII, § 1303, Oct. 24, 1992, 106 Stat. 2972.)

§ 13334. Nonfuel use of coal

(a) Program

The Secretary shall prepare a plan for and carry out a program of research, development,

demonstration, and commercial application with respect to technologies for the nonfuel use of coal, including—

(1) production of coke and other carbon products derived from coal;

(2) production of coal-derived, carbon-based chemical intermediates that are precursors of value-added chemicals and polymers;

(3) production of chemicals from coal-derived synthesis gas;

(4) coal treatment processes, including methodologies such as solvent-extraction techniques that produce low ash, low sulfur, coal-based chemical feedstocks; and

(5) waste utilization, including recovery, processing, and marketing of products derived from sulfur, carbon dioxide, nitrogen, and ash from coal.

(b) Plan contents

The plan described in subsection (a) of this section shall address and evaluate—

(1) the known and potential processes for using coal in the creation of products in the chemical, utility, fuel, and carbon-based materials industries;

(2) the costs, benefits, and economic feasibility of using coal products in the chemical and materials industries, including value-added chemicals, carbon-based products, coke, and waste derived from coal;

(3) the economics of coproduction of products from coal in conjunction with the production of electric power, thermal energy, and fuel;

(4) the economics of the refining of coal and coal byproducts to produce nonfuel products;

(5) the economics of coal utilization in comparison with other feedstocks that might be used for the same purposes;

(6) the steps that can be taken by the public and private sectors to bring about commercialization of technologies developed under the program recommended; and

(7) the past development, current status, and future potential of coal products and processes associated with nonfuel uses of coal.

(Pub. L. 102–486, title XIII, § 1304, Oct. 24, 1992, 106 Stat. 2973.)

§ 13335. Coal refinery program

(a) Program

The Secretary shall conduct a program of research, development, demonstration, and commercial application for coal refining technologies.

(b) Objectives

The program shall include technologies for refining high sulfur coals, low sulfur coals, sub-bituminous coals, and lignites to produce clean-burning transportation fuels, compliance boiler fuels, fuel additives, lubricants, chemical feedstocks, and carbon-based manufactured products, either alone or in conjunction with the generation of electricity or process heat, or the manufacture of a variety of products from coal. The objectives of such program shall be to achieve—

(1) the timely commercial application of technologies, including mild gasification, hydrocracking and other hydropyrolysis processes, and other energy production processes or systems to produce coal-derived fuels and coproducts, which achieve greater efficiency and economy in the conversion of coal to electrical energy and coproducts than currently available technology;

(2) the production of energy, fuels, and products which, on a complete energy system basis, will result in environmental emissions no greater than those produced by existing comparable energy systems utilized for the same purpose;

(3) the capability to produce a range of coal-derived transportation fuels, including oxygenated hydrocarbons, boiler fuels, turbine fuels, and coproducts, which can reduce dependence on imported oil by displacing conventional petroleum in the transportation sector and other sectors of the economy;

(4) reduction in the cost of producing such coal-derived fuels and coproducts;

(5) the control of emissions from the combustion of coal-derived fuels; and

(6) the availability for commercial use of such technologies by the year 2000.

(Pub. L. 102–486, title XIII, § 1305, Oct. 24, 1992, 106 Stat. 2973.)

§ 13336. Coalbed methane recovery

(a) Study of barriers and environmental and safety aspects

The Secretary, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of the Interior, shall conduct a study of—

(1) technical, economic, financial, legal, regulatory, institutional, or other barriers to coalbed methane recovery, and of policy options for eliminating such barriers; and

(2) the environmental and safety aspects of flaring coalbed methane liberated from coal mines.

Within two years after October 24, 1992, the Secretary shall submit a report to the Congress detailing the results of such study.

(b) Information dissemination

Beginning one year after October 24, 1992, the Secretary, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of the Interior, shall disseminate to the public information on state-of-the-art coalbed methane recovery techniques, including information on costs and benefits.

(c) Demonstration and commercial application program

The Secretary, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of the Interior, shall establish a coalbed methane recovery demonstration and commercial application program, which shall emphasize gas enrichment technology. Such program shall address—

(1) gas enrichment technologies for enriching medium-quality methane recovered from coal mines to pipeline quality;

(2) technologies to use mine ventilation air in nearby power generation facilities, includ-

ing gas turbines, internal combustion engines, or other coal fired powerplants;

(3) technologies for cofiring methane recovered from mines, including methane from ventilation systems and degasification systems, together with coal in conventional or clean coal technology boilers; and

(4) other technologies for producing and using methane from coal mines that the Secretary considers appropriate.

(Pub. L. 102–486, title XIII, § 1306, Oct. 24, 1992, 106 Stat. 2974.)

§ 13337. Metallurgical coal development

(a) The Secretary shall establish a research, development, demonstration, and commercial application program on metallurgical coal utilization for the purpose of developing techniques that will lead to the greater and more efficient utilization of the Nation's metallurgical coal resources.

(b) The program referred to in subsection (a) of this section shall include the use of metallurgical coal—

(1) as a boiler fuel for the purpose of generating steam to produce electricity, including blending metallurgical coal with other coals in order to enhance its efficient application as a boiler fuel;

(2) as an ingredient in the manufacturing of steel; and

(3) as a source of pipeline quality coalbed methane.

(Pub. L. 102–486, title XIII, § 1307, Oct. 24, 1992, 106 Stat. 2975.)

§ 13338. Utilization of coal wastes

(a) Coal waste utilization program

The Secretary, in consultation with the Secretary of the Interior, shall establish a research, development, demonstration, and commercial application program on coal waste utilization for the purpose of developing techniques that will lead to the greater and more efficient utilization of coal wastes from mining and processing, other than coal ash.

(b) Use as boiler fuel

The program referred to in subsection (a) of this section shall include projects to facilitate the use of coal wastes from mining and processing as a boiler fuel for the purpose of generating steam to produce electricity.

(Pub. L. 102–486, title XIII, § 1308, Oct. 24, 1992, 106 Stat. 2975.)

§ 13339. Underground coal gasification

(a) Program

The Secretary shall conduct a research, development, demonstration, and commercial application program for underground coal gasification technology for in-situ conversion of coal to a cleaner burning, easily transportable gaseous fuel. The goal and objective of this program shall be to accelerate the development and commercialization of underground coal gasification. In carrying out this program, the Secretary shall give equal consideration to all ranks of coal.

(b) Demonstration projects

As part of the program authorized in subsection (a) of this section, the Secretary may solicit proposals for underground coal gasification technology projects to fulfill the goal and objective of subsection (a) of this section.

(Pub. L. 102–486, title XIII, § 1309, Oct. 24, 1992, 106 Stat. 2975.)

§ 13340. Low-rank coal research and development

The Secretary shall pursue a program of research and development with respect to the technologies needed to expand the use of low-rank coals which take into account the unique properties of lignites and sub-bituminous coals, including, but not limited to, the following areas—

(1) high value-added carbon products;

(2) fuel cell applications;

(3) emissions control and combustion efficiencies;

(4) coal water fuels and underground coal gasification;

(5) distillates; and

(6) any other technologies which will assist in the development of niche markets for lignites and sub-bituminous coals.

(Pub. L. 102–486, title XIII, § 1310, Oct. 24, 1992, 106 Stat. 2975.)

§ 13341. Magnetohydrodynamics

(a) Program

The Secretary shall carry out a research, development, demonstration, and commercial application program in magnetohydrodynamics. The purpose of this program shall be to determine the adequacy of the engineering and design information completed to date under Department of Energy contracts related to magnetohydrodynamics retrofit systems and to determine whether any further Federal investment in this technology is warranted.

(b) Solicitation of proposals

In order to carry out the program authorized in subsection (a) of this section, the Secretary may solicit proposals from the private sector and seek to enter into an agreement with appropriate parties.

(Pub. L. 102–486, title XIII, § 1311, Oct. 24, 1992, 106 Stat. 2976.)

§ 13342. Oil substitution through coal liquefaction

(a) Program direction

The Secretary shall conduct a program of research, development, demonstration, and commercial application for the purpose of developing economically and environmentally acceptable advanced technologies for oil substitution through coal liquefaction.

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

(1) improved resource selection and product quality;

(2) the development of technologies to increase net yield of liquid fuel product per ton of coal;

(3) an increase in overall thermal efficiency; and

(4) a reduction in capital and operating costs through technology improvements.

(c) Proposals

Within 180 days after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(Pub. L. 102–486, title XIII, § 1312, Oct. 24, 1992, 106 Stat. 2976.)

§ 13343. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part $278,139,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994 through 1997.

(Pub. L. 102–486, title XIII, § 1313, Oct. 24, 1992, 106 Stat. 2976.)

PART B—CLEAN COAL TECHNOLOGY PROGRAM

§ 13351. Additional clean coal technology solicitations

(a) Program design

Additional clean coal technology solicitations described in subsection (b) of this section shall be designed to ensure the timely development of cost-effective technologies or energy production processes or systems utilizing coal that achieve greater efficiency in the conversion of coal to useful energy when compared to currently commercially available technology for the use of coal and the control of emissions from the combustion of coal. Such program shall be designed to ensure, to the greatest extent possible, the availability for commercial use of such technologies by the year 2010.

(b) Additional solicitations

In conducting the Clean Coal Program established by Public Law 98–473, the Secretary shall consider the potential benefits of conducting additional solicitations pursuant to such program and, based on the results of that consideration, may carry out such additional solicitations, which shall be similar in scope and percentage of Federal cost sharing as that provided by Public Law 101–121.

(Pub. L. 102–486, title XIII, § 1321, Oct. 24, 1992, 106 Stat. 2976.)

REFERENCES IN TEXT

Public Law 98–473, referred to in subsec. (b), is Pub. L. 98–473, Oct. 12, 1984, 98 Stat. 1837, as amended. For complete classification of this Act to the Code, see Tables.

Public Law 101–121, referred to in subsec. (b), is Pub. L. 101–121, Oct. 23, 1989, 103 Stat. 701, as amended. For complete classification of this Act to the Code, see Tables.

PART C—OTHER COAL PROVISIONS

§ 13361. Clean coal technology export promotion and interagency coordination

(a) Establishment

There shall be established within the Trade Promotion Coordinating Committee (established by the President on May 23, 1990) a Clean Coal Technology Subgroup (in this part referred to as the ''CCT Subgroup'') to focus interagency efforts on clean coal technologies. The CCT Subgroup shall seek to expand the export and use of clean coal technologies, particularly in those countries which can benefit from gains in the efficiency of, and the control of environmental emissions from, coal utilization.

(b) Membership

The CCT Subgroup shall include 1 member from each agency represented on the Energy, Environment, and Infrastructure Working Group of the Trade Promotion Coordinating Committee as of October 24, 1992. The Secretary shall serve as chair of the CCT Subgroup and shall be responsible for ensuring that the functions of the CCT Subgroup are carried out through its member agencies.

(c) Consultation

(1) In carrying out this section, the CCT Subgroup shall consult with representatives from the United States coal industry, representatives of railroads and other transportation industries, organizations representing workers, the electric utility industry, manufacturers of equipment utilizing clean coal technology, members of organizations formed to further the goals of environmental protection or to promote the development and use of clean coal technologies that are developed, manufactured, or controlled by United States firms, and other appropriate interested members of the public.

(2) The CCT Subgroup shall maintain ongoing liaison with other elements of the Trade Promotion Coordinating Committee relating to clean coal technologies or regions where these technologies could be important, including Eastern Europe, Asia, and the Pacific.

(d) Duties

The Secretary, acting through the CCT Subgroup, shall—

(1) facilitate the establishment of technical training for the consideration, planning, construction, and operation of clean coal technologies by end users and international development personnel;

(2) facilitate the establishment of and, where practicable, cause to be established, consistent with the goals and objectives stated in section 13331(a) of this title, within existing departments and agencies—

(A) financial assistance programs (including grants, loan guarantees, and no interest and low interest loans) to support prefeasibility and feasibility studies for projects that will utilize clean coal technologies; and

(B) loan guarantee programs, grants, and no interest and low interest loans designed to facilitate access to capital and credit in order to finance such clean coal technology projects;

(3) develop and ensure the execution of programs, including the establishment of financial incentives, to encourage and support private sector efforts in exports of clean coal technologies that are developed, manufactured, or controlled by United States firms;

(4) encourage the training in, and understanding of, clean coal technologies by rep-

resentatives of foreign companies or countries intending to use coal or clean coal technologies by providing technical or financial support for training programs, workshops, and other educational programs sponsored by United States firms;

(5) educate loan officers and other officers of international lending institutions, commercial and energy attachés of the United States, and such other personnel as the CCT Subgroup considers appropriate, for the purposes of providing information about clean coal technologies to foreign governments or potential project sponsors of clean coal technology projects;

(6) develop policies and practices to be conducted by commercial and energy attachés of the United States, and such other personnel as the CCT Subgroup considers appropriate, in order to promote the exports of clean coal technologies to those countries interested in or intending to utilize coal resources;

(7) augment budgets for trade and development programs supported by Federal agencies for the purpose of financially supporting prefeasibility or feasibility studies for projects in foreign countries that will utilize clean coal technologies;

(8) review ongoing clean coal technology projects and review and advise Federal agencies on the approval of planned clean coal technology projects which are sponsored abroad by any Federal agency to determine whether such projects are consistent with the overall goals and objectives of this section;

(9) coordinate the activities of the appropriate Federal agencies in order to ensure that Federal clean coal technology export promotion policies are implemented in a timely fashion;

(10) work with CCT Subgroup member agencies to develop an overall strategy for promoting clean coal technology exports, including setting goals and allocating specific responsibilities among member agencies, consistent with applicable statutes; and

(11) coordinate with multilateral institutions to ensure that United States technologies are properly represented in their projects.

(e) Data and information

(1) The CCT Subgroup, consistent with other applicable provisions of law, shall ensure the development of a comprehensive data base and information dissemination system, using the National Trade Data Bank and the Commercial Information Management System of the Department of Commerce, relating to the availability of clean coal technologies and the potential need for such technologies, particularly in developing countries and countries making the transition from nonmarket to market economies.

(2) The Secretary, acting through the CCT Subgroup, shall assess and prioritize foreign markets that have the most potential for the export of clean coal technologies that are developed, manufactured, or controlled by United States firms. Such assessment shall include—

(A) an analysis of the financing requirements for clean coal technology projects in foreign countries and whether such projects are dependent upon financial assistance from foreign countries or multilateral institutions;

(B) the availability of other fuel or energy resources that may be available to meet the energy requirements intended to be met by the clean coal technology projects;

(C) the priority of environmental considerations in the selection of such projects;

(D) the technical competence of those entities likely to be involved in the planning and operation of such projects;

(E) an objective comparison of the environmental, energy, and economic performance of each clean coal technology relative to conventional technologies;

(F) a list of United States vendors of clean coal technologies; and

(G) answers to commonly asked questions about clean coal technologies,[1]

The Secretary, acting through the CCT Subgroup, shall make such information available to the House of Representatives and the Senate, and to the appropriate committees of each House of Congress, industry, Federal and international financing organizations, nongovernmental organizations, potential customers abroad, governments of countries where such clean coal technologies might be used, and such others as the CCT Subgroup considers appropriate.

(f) Report

Within 180 days after the Secretary submits the report to the Congress as required by section 409 of Public Law 101–549, the Secretary, acting through the CCT Subgroup, shall provide to the appropriate committees of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a plan which details actions to be taken in order to address those recommendations and findings made in the report submitted pursuant to section 409 of Public Law 101–549. As a part of the plan required by this subsection, the Secretary, acting through the CCT Subgroup, shall specifically address the adequacy of financial assistance available from Federal departments and agencies and international financing organizations to aid in the financing of prefeasibility and feasibility studies and projects that would use a clean coal technology in developing countries and countries making the transition from nonmarket to market economies.

(Pub. L. 102–486, title XIII, § 1331, Oct. 24, 1992, 106 Stat. 2977.)

REFERENCES IN TEXT

This part, referred to in subsec. (a), was in the original ''this subtitle'' meaning subtitle C of title XIII of Pub. L. 102–486, which enacted this part and provisions set out as a note under section 824a–3 of Title 16, Conservation.

Section 409 of Public Law 101–549, referred to in subsec. (f), is section 409 of Pub. L. 101–549, title IV, Nov. 15, 1990, 104 Stat. 2634, which directed the Secretary of Energy, in consultation with the Secretary of Commerce, to submit a report to Congress within one year of November 15, 1990, respecting clean coal technology programs, and which is not classified to the Code.

[1] So in original. The comma probably should be a period.

§ 13362. Innovative clean coal technology transfer program

(a) Establishment of program

The Secretary, through the Agency for International Development, and in consultation with the other members of the CCT Subgroup, shall establish a clean coal technology transfer program to carry out the purposes described in subsection (b) of this section. Within 150 days after October 24, 1992, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate United States agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) Purposes of program

The purposes of the technology transfer program under this section are to—

(1) reduce the United States balance of trade deficit through the export of United States energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

(3) encourage the export of United States technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from coal resources;

(4) develop markets for United States technologies and, where appropriate, United States coal resources to be utilized in meeting the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies that have been developed or demonstrated in the United States through publicly or privately funded demonstration programs;

(6) provide for the accelerated deployment of United States technologies that will serve to introduce into foreign countries United States technologies intended to use coal resources in a more efficient, cost-effective, and environmentally acceptable manner;

(7) serve to ensure the introduction of United States firms and expertise in foreign countries;

(8) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of clean coal technology projects in foreign countries;

(9) assist foreign countries in meeting their energy needs through the use of coal in an environmentally acceptable manner, consistent with sustainable development policies; and

(10) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) Identification

Pursuant to the agreements required by subsection (a) of this section, the Secretary, through the Agency for International Development, and after consultation with the CCT Subgroup, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries, and shall identify a list of such projects within 240 days after October 24, 1992, and periodically thereafter.

(d) Financial mechanisms

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects utilizing United States clean coal technologies, and services related thereto, in developing countries and countries making the transition from nonmarket to market economies;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects, including—

(i) financing the incremental costs of a clean coal technology project attributable only to expenditures to prevent or abate emissions;

(ii) providing the difference between the costs of a conventional energy project in the host country and a comparable project that would utilize a clean coal technology capable of achieving greater efficiency of energy products and improved environmental emissions compared to such conventional project; and

(iii) such other forms of financial assistance as the Secretary, through the Agency for International Development, considers appropriate.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-United States funding that is available to the project; and

(B) utilized to assist United States firms to develop innovative financing packages for clean coal technology projects that seek to utilize other financial assistance programs available through other Federal agencies.

(3) United States obligations under the Arrangement on Guidelines for Officially Sup-

ported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) Solicitations for project proposals

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, within one year after October 24, 1992, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) of this section which propose to utilize a United States technology. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE–PS01–90FE62271 Clean Coal Technology IV as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States clean coal technology, including services related thereto, and, where appropriate, United States coal resources, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) Assistance to United States firms

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the CCT Subgroup, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) of this section where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) Other program requirements

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the CCT Subgroup, shall—

(1) establish eligibility criteria for countries that will host projects;

(2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) Selection of projects

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e) of this section, select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the goals and objectives stated in section 13331(a) of this title;

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology for future application; and

(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet 1 or more of the following criteria:

(A) It will reduce environmental emissions to an extent greater than required by applicable provisions of law.

(B) It will increase the overall efficiency of the utilization of coal, including energy conversion efficiency and, where applicable, production of products derived from coal.

(C) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet one or more of these criteria.

(i) United States-Asia Environmental Partnership

Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(j) Buy America

In carrying out this section, the Secretary, through the Agency for International Develop-

ment, and pursuant to the agreements under subsection (a) of this section, shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(k) Reports to Congress

The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce clean coal technologies into foreign countries.

(*l*) "Host country" defined

For purposes of this section, the term ''host country'' means a foreign country which is—

(1) the participant in or the site of the proposed clean coal technology project; and

(2) either—

(A) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or

(B) a developing country or country with an economy in transition from a nonmarket to a market economy.

(m) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out the program required by this section, $100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(Pub. L. 102–486, title XIII, § 1332, Oct. 24, 1992, 106 Stat. 2979.)

§ 13363. Conventional coal technology transfer

If the Secretary determines that the utilization of a clean coal technology is not practicable for a proposed project and that a United States conventional coal technology would constitute a substantial improvement in efficiency, costs, and environmental performance relative to the technology being used in a developing country or country making the transition from nonmarket to market economies, with significant indigenous coal resources, such technology shall, for purposes of sections 13361 and 13362[1] of this title, be considered a clean coal technology. In the case of combustion technologies, only the retrofit, repowering, or replacement of a conventional technology shall constitute a substantial improvement for purposes of this section. In carrying out this section, the Secretary shall give highest priority to promoting the most environmentally sound and energy efficient technologies.

(Pub. L. 102–486, title XIII, § 1333, Oct. 24, 1992, 106 Stat. 2984.)

REFERENCES IN TEXT

Sections 13361 and 13362 of this title, referred to in text, was in the original ''sections 1321 and 1322'' and was translated as reading ''sections 1331 and 1332'' meaning sections 1331 and 1332 of Pub. L. 102–486, to reflect the probable intent of Congress, because Pub. L. 102–486 does not contain a section 1322 and sections 1331 and 1332 of Pub. L. 102–486 relate to export of clean coal technology.

§ 13364. Study of utilization of coal combustion byproducts

(a) "Coal combustion byproducts" defined

As used in this section, the term ''coal combustion byproducts'' means the residues from the combustion of coal including ash, slag, and flue gas desulfurization materials.

(b) Study and report to Congress

(1) The Secretary shall conduct a detailed and comprehensive study on the institutional, legal, and regulatory barriers to increased utilization of coal combustion byproducts by potential governmental and commercial users. Such study shall identify and investigate barriers found to exist at the Federal, State, or local level, which may have limited or may have the foreseeable effect of limiting the quantities of coal combustion byproducts that are utilized. In conducting this study, the Secretary shall consult with other departments and agencies of the Federal Government, appropriate State and local governments, and the private sector.

(2) Not later than one year after October 24, 1992, the Secretary shall submit a report to the Congress containing the results of the study required by paragraph (1) and the Secretary's recommendations for action to be taken to increase the utilization of coal combustion byproducts. At a minimum, such report shall identify actions that would increase the utilization of coal combustion byproducts in—

(A) bridge and highway construction;

(B) stabilizing wastes;

(C) procurement by departments and agencies of the Federal Government and State and local governments; and

(D) federally funded or federally subsidized procurement by the private sector.

(Pub. L. 102–486, title XIII, § 1334, Oct. 24, 1992, 106 Stat. 2984.)

§ 13365. Coal fuel mixtures

Within one year following October 24, 1992, the Secretary shall submit a report to the Committee on Energy and Commerce and the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on the status of technologies for combining coal with other materials, such as oil or water fuel mixtures. The report shall include—

(1) a technical and economic feasibility assessment of such technologies;

(2) projected developments in such technologies;

[1] See References in Text note below.

(3) an assessment of the market potential of such technologies, including the potential to displace imported crude oil and refined petroleum products;

(4) identification of barriers to commercialization of such technologies; and

(5) recommendations for addressing barriers to commercialization.

(Pub. L. 102–486, title XIII, § 1336, Oct. 24, 1992, 106 Stat. 2985.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives and Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 13366. National clearinghouse

(a) Feasibility

(1) The Secretary shall assess the feasibility of establishing a national clearinghouse for the exchange and dissemination of technical information on technology relating to coal and coal-derived fuels.

(2) In assessing the feasibility, the Secretary shall consider whether such a clearinghouse would be appropriate for purposes of—

(A) collecting information and data on technology relating to coal, and coal-derived fuels, which can be utilized to improve environmental quality and increase energy independence;

(B) disseminating to appropriate individuals, governmental departments, agencies, and instrumentalities, institutions of higher education, and other entities, information and data collected pursuant to this section;

(C) maintaining a library of technology publications and treatises relating to technology information and data collected pursuant to this section;

(D) organizing and conducting seminars for government officials, utilities, coal companies, and other entities or institutions relating to technology using coal and coal-derived fuels that will improve environmental quality and increase energy independence;

(E) gathering information on research grants made for the purpose of improving or enhancing technology relating to the use of coal, and coal-derived fuels, which will improve environmental quality and increase energy independence;

(F) translating into English foreign research papers, articles, seminar proceedings, test results that affect, or could affect, clean coal use technology, and other documents;

(G) encouraging, during the testing of technologies, the use of coal from a variety of domestic sources, and collecting or developing, or both, complete listings of test results using coals from all sources;

(H) establishing and maintaining an index or compilation of research projects relating to clean coal technology carried out throughout the world; and

(I) conducting economic modeling for feasibility of projects.

(b) Authority to establish clearinghouse

Based upon the assessment under subsection (a) of this section, the Secretary may establish a clearinghouse.

(Pub. L. 102–486, title XIII, § 1337, Oct. 24, 1992, 106 Stat. 2985.)

§ 13367. Coal exports

(a) Plan

Within 180 days after October 24, 1992, the Secretary of Commerce, in cooperation with the Secretary and other appropriate Federal agencies, shall submit to the appropriate committees of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a plan for expanding exports of coal mined in the United States.

(b) Plan contents

The plan submitted under subsection (a) of this section shall include—

(1) a description of the location, size, and projected growth in potential export markets for coal mined in the United States;

(2) the identification by country of the foreign trade barriers to the export of coal mined in the United States, including foreign coal production and utilization subsidies, tax treatment, labor practices, tariffs, quotas, and other nontariff barriers;

(3) recommendations and a plan for addressing any such trade barriers;

(4) an evaluation of existing infrastructure in the United States and any new infrastructure requirements in the United States to support an expansion of exports of coal mined in the United States, including ports, vessels, rail lines, and any other supporting infrastructure; and

(5) an assessment of environmental implications of coal exports and the identification of export opportunities for blending coal mined in the United States with coal indigenous to other countries to enhance energy efficiency and environmental performance.

(Pub. L. 102–486, title XIII, § 1338, Oct. 24, 1992, 106 Stat. 2986.)

§ 13368. Ownership of coalbed methane

(a) Federal lands and mineral rights

In the case of any deposit of coalbed methane where the United States is the owner of the surface estate or where the United States has transferred the surface estate but reserved the subsurface mineral estate, the Secretary of the Interior shall administer this section. This section and the definitions contained herein shall be applicable only on lands within Affected States.

(b) Affected States

Not later than 180 days after October 24, 1992, the Secretary of the Interior, with the participa-

tion of the Secretary of Energy, shall publish in the Federal Register a list of Affected States which shall be comprised of States—

(1) in which the Secretary of the Interior, with the participation of the Secretary of Energy, determines that disputes, uncertainty, or litigation exist, regarding the ownership of coalbed methane gas;

(2) in which the Secretary of the Interior, with the participation of the Secretary of Energy, determines that development of significant deposits of coalbed methane gas is being impeded by such existing disputes, uncertainty, or litigation regarding ownership of such coalbed methane;

(3) which do not have in effect a statutory or regulatory procedure or existing case law permitting and encouraging the development of coalbed methane gas within that State; and

(4) which do not have extensive development of coalbed methane gas.

The Secretary of the Interior, with the participation of the Secretary of Energy, shall revise such list of Affected States from time to time. Any Affected State shall be deleted from the list of Affected States upon the receipt by the Secretary of the Interior of a Governor's petition requesting such deletion, a State law requesting such deletion, or a resolution requesting such deletion enacted by the legislative body of the State. A Governor intending to petition the Secretary of the Interior to delete a State from the list of Affected States shall provide the State's legislative body with 6 months notice of such petition during a legislative session. At the end of such 6-month period, the Governor may petition the Secretary of the Interior to delete a State from the list of Affected States, unless during such 6-month period, the State's legislative body has enacted a law or resolution disapproving the Governor's petition. Until the Secretary of the Interior, with the participation of the Secretary of Energy, publishes a different list, the States of West Virginia, Pennsylvania, Kentucky, Ohio, Tennessee, Indiana, and Illinois shall be the Affected States, effective on October 24, 1992. The States of Colorado, Montana, New Mexico, Wyoming, Utah, Virginia, Washington, Mississippi, Louisiana, and Alabama shall not be included on the Secretary of the Interior's list of Affected States or any extension or revision thereof.

(c) Failure to adopt statutory or regulatory procedure

If an Affected State has not placed in effect, by statute or by regulation, a substantial program promoting the permitting, drilling and production of coalbed methane wells (including pooling arrangements) within that State within 3 years after becoming an Affected State, the Secretary of the Interior, with the participation of the Secretary of Energy, shall administer this section and shall promulgate such regulations as are necessary to carry out this section in that State.

(d) Implementation by Secretary of the Interior

In implementing this section, the Secretary of the Interior, with the participation of the Secretary of Energy, shall—

(A) consider existing and future coal mining plans,

(B) preserve the mineability of coal seams, and

(C) provide for the prevention of waste and maximization of recovery of coal and coalbed methane gas in a manner which will protect the rights of all entities owning an interest in such coalbed methane resource.

(e) Spacing

Except where State law in an Affected State contains existing spacing requirements regarding the minimum distance between coalbed methane wells and the minimum distance of a coalbed methane well from a property line, the Secretary of the Interior shall establish such requirements within 90 days after the assertion of jurisdiction pursuant to subsection (c) of this section.

(f) Spacing units

Applications to establish spacing units for the drilling and operation of coalbed methane gas wells may be filed by any entity claiming a coalbed methane ownership interest within a proposed spacing unit. Upon receipt and approval of an application, the Secretary of the Interior shall issue an order establishing the boundaries of the coalbed methane spacing unit. Spacing units shall generally be uniform in size.

(g) Development under pooling arrangement

Following issuance of an order establishing a spacing unit under subsection (f) of this section, and pursuant to an application for pooling filed by the entity claiming a coalbed methane ownership interest and proposing to drill a coalbed methane gas well, the Secretary of the Interior shall hold a hearing to consider the application for pooling and shall, if the criteria of this section are met, issue an order allowing the proposed pooling of acreage within the designated spacing unit for purposes of drilling and production of coalbed methane from the spacing unit. The pooling order shall not be issued before notice or a reasonable and diligent effort to provide notice has been made to each entity which may claim an ownership interest in the coalbed methane gas within such spacing unit and each such entity has been offered an opportunity to appear before the Secretary of the Interior at the hearing. Upon issuance of a pooling order, each owner or claimant of an ownership interest shall be allowed to make one of the following elections:

(1) An election to sell or lease its coalbed methane ownership interest to the unit operator at a rate determined by the Secretary of the Interior as set forth in the pooling order.

(2) An election to become a participating working interest owner by bearing a share of the risks and costs of drilling, completing, equipping, gathering, operating (including all disposal costs), plugging and abandoning the well, and receiving a share of production from the well.

(3) An election to share in the operation of the well as a nonparticipating working interest owner by relinquishing its working interest to participating working interest owners until the proceeds allocable to its share equal

300 percent of the share of such costs allocable to its interest. Thereafter, the nonparticipating working interest owner shall become a participating working interest owner.

The pooling order shall designate a unit operator who shall be authorized to drill and operate the spacing unit. The pooling order shall provide that any entity claiming an ownership interest in the coalbed methane within such spacing unit which does not make an election under the pooling order shall be deemed to have leased its coalbed methane interest to the unit operator under such terms and conditions as the pooling order may provide. No pooling order may be issued under this paragraph for any spacing unit if all entities claiming an ownership interest in the coalbed methane in the spacing unit have entered into a voluntary agreement providing for the drilling and operation of the coalbed methane gas well for the spacing unit.

(h) Escrow account

(1) Each pooling order issued under subsection (g) of this section shall provide for the establishment of an escrow account into which the payment of costs and proceeds attributable to the conflicting interests shall be deposited and held for the interest of the claimants as follows:

(A) Each participating working interest owner, except for the unit operator, shall deposit in the escrow account its proportionate share of the costs allocable to the ownership interest claimed by each such participating working interest owner as set forth in the pooling order issued by the Secretary of the Interior.

(B) The unit operator shall deposit in the escrow account all proceeds attributable to the conflicting interests of lessees, plus all proceeds in excess of ongoing operational expenses (including reasonable overhead costs) attributable to conflicting working interests.

(2) The Secretary of the Interior shall order payment of principal and accrued interest from the escrow account to all legally entitled entities within 30 days of receipt by the Secretary of the Interior of notification of the final legal determination of entitlement or upon agreement of all entities claiming an ownership interest in the coalbed methane gas. Upon such final determination—

(A) each legally entitled participating working interest owner shall receive a proportionate share of the proceeds attributable to the conflicting ownership interest;

(B) each legally entitled nonparticipating working interest owner shall receive a proportionate share of the proceeds attributable to the conflicting ownership interest, less the cost of being carried as a nonparticipating working interest owner (as determined by the election of the entity under the applicable pooling order);

(C) each entity leasing (or deemed to have leased) its coalbed methane ownership interest to the unit operator shall receive a share of the royalty proceeds (as set out in the applicable pooling order) attributable to the conflicting interests of lessees; and

(D) the unit operator shall receive the costs contributed to the escrow account by each legally entitled participating working interest owner.

The Secretary of the Interior shall enact rules and regulations for the administration and protection of funds delivered to the escrow accounts.

(i) Approval of Secretary of the Interior

No entity may drill any well for the production of coalbed methane gas from a coal seam, subject to the provisions of subsection (g) of this section, in an Affected State unless the drilling of such well has been approved by the Secretary of the Interior.

(j) Authorization to stimulate coal seam

(1) No operator of a coalbed methane well may stimulate a coal seam without the written consent of each entity which, at the time that the coalbed methane operator applies for a drilling permit, is operating a coal mine, or has by virtue of his property rights in the coal the ability to operate a coal mine, located within a horizontal or vertical distance from the point of stimulation as established by the Secretary of the Interior pursuant to paragraph (3) of this subsection. In seeking the coal operator's consent, a coalbed methane well operator shall provide the coal operator with necessary information about such stimulation, including relevant information to ensure compliance with coal mine safety laws and rules.

(2) In the absence of a written consent pursuant to paragraph (1) and at the request of a coalbed methane operator, the Secretary of the Interior shall make a determination regarding stimulation of a coal seam. Such request shall include an affidavit which shall—

(A) state that an entity from which consent is required pursuant to paragraph (1) has refused to provide written consent;

(B) set forth in detail the efforts undertaken by the applicant to obtain such written consent;

(C) state the known reasons for the consent not being provided;

(D) set forth the conditions and compensation, if any, offered by the applicant as part of the efforts to obtain consent; and

(E) provide prima facie evidence that the method of stimulation proposed by the coalbed methane operator will not (i) cause unreasonable loss or damage to the coal seam considering all factors, including the prospect, taking into consideration the economics of the coal industry, that coal seams for which no actual or proposed mining plans exist will be mined at some future date, or (ii) violate mine safety requirements. If a denial of consent by a coal operator is based on reasons related to safety, the Secretary of the Interior shall seek the views and recommendations of the appropriate State or Federal coal mine safety agency. Any determination by the Secretary of the Interior shall be in accordance with all applicable Federal and State coal mine safety laws and such views and recommendations. A determination by the Secretary of the Interior approving a method of stimulation may include reasonable conditions including, but not limited to, conditions to mitigate, to the extent practicable,

economic damage to the coal seam. Any determination approving or denying a method of stimulation by the Secretary of the Interior shall be subject to appeal. Interested entities shall be allowed to participate in and comment on proceedings under this paragraph.

(3) The Secretary of the Interior shall by rule establish, for an Affected State, a region thereof, or a multi-State region comprised of Affected States, the boundaries within which a coalbed methane operator shall be required to obtain written consent from a coal operator pursuant to paragraph (1). Such boundaries shall be stated in terms of a horizontal and a vertical distance from the point of stimulation and shall be determined based on an evaluation of the maximum length, height and depth of fracture producible in a coal seam in such Affected State, region thereof, or multi-State region comprised of Affected States.

(4) The consent required under this subsection shall in no way be deemed to impair, abridge, or affect any contractual rights or objections arising out of a coalbed methane gas contract or coalbed methane gas lease in existence as of October 24, 1992,[1] between the coalbed methane operator and the coal operator, and the existence of such lease or contractual agreement and any extensions or renewals of such lease shall be deemed to fully meet the requirements of this section.

(5) Nothing in this subsection precludes either a coal operator or a coalbed methane operator from seeking in the appropriate State forum compensation for the consequences of a determination by the Secretary of the Interior pursuant to paragraph (2).

(k) Notice and objection

(1) The Secretary of the Interior shall not approve the drilling of any coalbed methane well unless the unit operator has notified each entity which is operating, or has the ability, by virtue of his property rights in the coal, to operate, a coal mine in any portion of the coalbed that would be affected by such well within the distances established pursuant to the rules promulgated under subsection (j)(3) of this section. Any notified entity may object to the drilling of such well within 30 days after receipt of a notice. Upon receipt of a timely objection to the drilling of any coalbed methane gas well submitted by a notified entity, the Secretary of the Interior may refuse to approve the drilling of the well based on any of the following:

(A) The proposed activity, due to its proximity to any coal mine opening, shaft, underground workings, or to any proposed extension of the coal mine, would adversely affect any operating, inactive or abandoned coal mine, including any coal mine already surveyed and platted but not yet being operated.

(B) The proposed activity would not conform with a coal operator's development plan for an existing or proposed operation.

(C) There would be an unreasonable interference from the proposed activity with present or future coal mining operations, including the ability to comply with other applicable laws and regulations.

(D) The presence of evidence indicating that the proposed drilling activities would be unsafe, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal.

(E) The proposed activity would unreasonably interfere with the safe recovery of coal, oil and gas.

(2) In the event the Secretary of the Interior does not approve the drilling of a coalbed methane well pursuant to paragraph (1), the Secretary of the Interior shall consider whether such drilling could be approved if the unit operator modifies the proposed activities to take into account any of the following:

(A) The proposed activity could instead be reasonably done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration surface topography.

(B) The proposed activity could instead be moved to a mined-out area, below the coal outcrop or to some other feasible area.

(C) The unit operator agrees to a drilling moratorium of not more than two years in order to permit completion of coal mining operations.

(D) The practicality of locating the proposed spacing unit or well on a uniform pattern with other spacing units or wells.

***(l)* Plugging**

All coalbed methane wells drilled after October 24, 1992, that penetrate coal seams with remaining reserves shall provide for subsequent safe mining through the well in accordance with standards prescribed by the Secretary of the Interior, in consultation with any Federal and State agencies having authority over coal mine safety. Well plugging costs should be allocated in accordance with State law or private contractual arrangement, as the case may be.

(m) Notice and objection by other parties

The Secretary of the Interior shall not approve the drilling of any coalbed methane well unless such well complies with the spacing and other requirements established by the Secretary of the Interior and each of the following:

(1) The unit operator of such well has notified, or has made a reasonable and diligent effort to notify, all entities claiming ownership of coalbed methane to be drained by such well and provided an opportunity to object in accordance with requirements established by the Secretary of the Interior.

(2) Where conflicting interests exist, an order under subsection (g) of this section establishing pooling requirements has been issued.

The notification requirements of this subsection shall be additional to the notification referred to in subsection (k) of this section. The Secretary of the Interior shall establish the conditions under which entities claiming ownership of coalbed methane may object to the drilling of a coalbed methane well.

(n) Venting for safety

Nothing in this section shall be construed to prevent or inhibit the entity which has the right

[1] See Codification note below.

to develop and mine coal in any mine from venting coalbed methane gas to ensure safe mine operations.

(*o*) Other laws

The Secretary of the Interior shall comply with all applicable Federal and State coal mine safety laws and regulations.

(p) Definitions

As used in this section—

(1) The term ''Affected State'' means a State listed by the Secretary of the Interior, with the participation of the Secretary of Energy, under subsection (b) of this section.

(2) The term ''coalbed methane gas'' means occluded natural gas produced (or which may be produced) from coalbeds and rock strata associated therewith.

(3) The term ''unit operator'' means the entity designated in a pooling order to develop a spacing unit by the drilling of one or more wells on the unit.

(4) The term ''nonparticipating working interest owner'' means a gas or oil owner of a tract included in a spacing unit which elects to share in the operation of the well on a carried basis by agreeing to have its proportionate share of the costs allocable to its interest charged against its share of production of the well in accordance with subsection (f)(3) of this section.

(5) The term ''participating working interest owner'' means a gas or oil owner which elects to bear a share of the risks and costs of drilling, completing, equipping, gathering, operating (including any and all disposal costs)[2] plugging, and abandoning a well on a spacing unit and to receive a share of production from the well equal to the proportion which the acreage in the spacing unit it owns or holds under lease bears to the total acreage of the spacing unit.

(6) The term ''coal seam'' means any stratum of coal 20 inches or more in thickness, unless a stratum of less thickness is being commercially worked, or can in the judgment of the Secretary of the Interior forseeably[3] be commercially worked and will require protection if wells are being drilled through it.

(Pub. L. 102–486, title XIII, § 1339, Oct. 24, 1992, 106 Stat. 2986.)

CODIFICATION

October 24, 1992, referred to in subsec. (j)(4), was in the original ''the effective date of this section'', which was translated as meaning the date of enactment of Pub. L. 102–486, which enacted this section.

FEDERAL COALBED METHANE REGULATION

Pub. L. 109–58, title III, § 387, Aug. 8, 2005, 119 Stat. 744, provided that: ''Any State currently on the list of Affected States established under section 1339(b) of the Energy Policy Act of 1992 (42 U.S.C. 13368(b)) shall be removed from the list if, not later than 3 years after the date of enactment of this Act [Aug. 8, 2005], the State takes, or prior to the date of enactment has taken, any of the actions required for removal from the list under such section 1339(b).''

[2] So in original. Probably should be followed by a comma.

[3] So in original. Probably should be ''foreseeably''.

§ 13369. Establishment of data base and study of transportation rates

(a) Data base

The Secretary shall review the information currently collected by the Federal Government and shall determine whether information on transportation rates for rail and pipeline transport of domestic coal, oil, and gas during the period of January 1, 1988, through December 31, 1997, is reasonably available. If he determines that such information is not reasonably available, the Secretary shall establish a data base containing, to the maximum extent practicable, information on all such rates. The confidentiality of contract rates shall be preserved. To obtain data pertaining to rail contract rates, the Secretary shall acquire such data in aggregate form only from the Surface Transportation Board, under terms and conditions that maintain the confidentiality of such rates.

(b) Study

The Energy Information Administration shall determine the extent to which any agency of the Federal Government is studying the rates and distribution patterns of domestic coal, oil, and gas to determine the impact of the Clean Air Act [42 U.S.C. 7401 et seq.] as amended by the Act entitled ''An Act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.'', enacted November 15, 1990 (Public Law 101–549), and other Federal policies on such rates and distribution patterns. If the Energy Information Administration finds that no such study is underway, or that reports of the results of such study will not be available to the Congress providing the information specified in this subsection and subsection (a) of this section by the dates established in subsection (c) of this section, the Energy Information Administration shall initiate such a study.

(c) Reports to Congress

Within one year after October 24, 1992, the Secretary shall report to the Congress on the determination the Energy Information Administration is required to make under subsection (b) of this section. Within three years after October 24, 1992, the Secretary shall submit reports on any data base or study developed under this section. Any such reports shall be updated and resubmitted to the Congress within eight years after October 24, 1992. If the Energy Information Administration has determined pursuant to subsection (b) of this section that another study or studies will provide all or part of the information called for in this section, the Secretary shall transmit the results of that study by the dates established in this subsection, together with his comments.

(d) Consultation with other agencies

The Secretary and the Energy Information Administration shall consult with the Chairmen of the Federal Energy Regulatory Commission and the Surface Transportation Board in implementing this section.

(Pub. L. 102–486, title XIII, § 1340, Oct. 24, 1992, 106 Stat. 2992; Pub. L. 104–88, title III, § 320, Dec. 29, 1995, 109 Stat. 949.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

An Act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes, referred to in subsec. (b), is Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399, popularly known as the Clean Air Act Amendments of 1990. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

AMENDMENTS

1995—Subsecs. (a), (d). Pub. L. 104–88 substituted ''Surface Transportation Board'' for ''Interstate Commerce Commission''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

§ 13370. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part, other than section 13362[1] of this title, such sums as may be necessary for fiscal years 1993 through 1998.

(Pub. L. 102–486, title XIII, § 1341, Oct. 24, 1992, 106 Stat. 2993.)

REFERENCES IN TEXT

Section 13362 of this title, referred to in text, was in the original ''section 1322'' and was translated as reading ''section 1332'' meaning section 1332 of Pub. L. 102–486, to reflect the probable intent of Congress, because Pub. L. 102–486 does not contain a section 1322.

SUBCHAPTER VII—GLOBAL CLIMATE CHANGE

§ 13381. Report

Not later than 2 years after October 24, 1992, the Secretary shall submit a report to the Congress that includes an assessment of—

(1) the feasibility and economic, energy, social, environmental, and competitive implications, including implications for jobs, of stabilizing the generation of greenhouse gases in the United States by the year 2005;

(2) the recommendations made in chapter 9 of the 1991 National Academy of Sciences report entitled ''Policy Implications of Greenhouse Warming'', including an analysis of the benefits and costs of each recommendation;

(3) the extent to which the United States is responding, compared with other countries, to the recommendations made in chapter 9 of the 1991 National Academy of Sciences report;

(4) the feasibility of reducing the generation of greenhouse gases;

(5) the feasibility and economic, energy, social, environmental, and competitive implications, including implications for jobs, of achieving a 20 percent reduction from 1988 levels in the generation of carbon dioxide by the year 2005 as recommended by the 1988 Toronto Scientific World Conference on the Changing Atmosphere;

(6) the potential economic, energy, social, environmental, and competitive implications, including implications for jobs, of implementing the policies necessary to enable the United States to comply with any obligations under the United Nations Framework Convention on Climate Change or subsequent international agreements.

(Pub. L. 102–486, title XVI, § 1601, Oct. 24, 1992, 106 Stat. 2999.)

§ 13382. Least-cost energy strategy

(a) Strategy

The first National Energy Policy Plan (in this subchapter referred to as the ''Plan'') under section 7321 of this title prepared and required to be submitted by the President to Congress after February 1, 1993, and each subsequent such Plan, shall include a least-cost energy strategy prepared by the Secretary. In developing the least-cost energy strategy, the Secretary shall take into consideration the economic, energy, social, environmental, and competitive costs and benefits, including costs and benefits for jobs, of his choices. Such strategy shall also take into account the report required under section 13381 of this title and relevant Federal, State, and local requirements. Such strategy shall be designed to achieve to the maximum extent practicable and at least-cost to the Nation—

(1) the energy production, utilization, and energy conservation priorities of subsection (d) of this section;

(2) the stabilization and eventual reduction in the generation of greenhouse gases;

(3) an increase in the efficiency of the Nation's total energy use by 30 percent over 1988 levels by the year 2010;

(4) an increase in the percentage of energy derived from renewable resources by 75 percent over 1988 levels by the year 2005; and

(5) a reduction in the Nation's oil consumption from the 1990 level of approximately 40 percent of total energy use to 35 percent by the year 2005.

(b) Additional contents

The least-cost energy strategy shall also include—

(1) a comprehensive inventory of available energy and energy efficiency resources and their projected costs, taking into account all costs of production, transportation, distribution, and utilization of such resources, including—

(A) coal, clean coal technologies, coal seam methane, and underground coal gasification;

(B) energy efficiency, including existing technologies for increased efficiency in production, transportation, distribution, and utilization of energy, and other technologies that are anticipated to be available through further research and development; and

(C) other energy resources, such as renewable energy, solar energy, nuclear fission, fusion, geothermal, biomass, fuel cells, hydropower, and natural gas;

[1] See References in Text note below.

(2) a proposed two-year program for ensuring adequate supplies of the energy and energy efficiency resources and technologies described in paragraph (1), and an identification of administrative actions that can be undertaken within existing Federal authority to ensure their adequate supply;

(3) estimates of life-cycle costs for existing energy production facilities;

(4) basecase forecasts of short-term and long-term national energy needs under low and high case assumptions of economic growth; and

(5) an identification of all applicable Federal authorities needed to achieve the purposes of this section, and of any inadequacies in those authorities.

(c) Secretarial consideration

In developing the least-cost energy strategy, the Secretary shall give full consideration to—

(1) the relative costs of each energy and energy efficiency resource based upon a comparison of all direct and quantifiable net costs for the resource over its available life, including the cost of production, transportation, distribution, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply; and

(2) the economic, energy, social, environmental, and competitive consequences resulting from the establishment of any particular order of Federal priority as determined under subsection (d) of this section.

(d) Priorities

The least-cost energy strategy shall identify Federal priorities, including policies that—

(1) implement standards for more efficient use of fossil fuels;

(2) increase the energy efficiency of existing technologies;

(3) encourage technologies, including clean coal technologies, that generate lower levels of greenhouse gases;

(4) promote the use of renewable energy resources, including solar, geothermal, sustainable biomass, hydropower, and wind power;

(5) affect the development and consumption of energy and energy efficiency resources and electricity through tax policy;

(6) encourage investment in energy efficient equipment and technologies; and

(7) encourage the development of energy technologies, such as advanced nuclear fission and nuclear fusion, that produce energy without greenhouse gases as a byproduct, and encourage the deployment of nuclear electric generating capacity.

(e) Assumptions

The Secretary shall include in the least-cost energy strategy an identification of all of the assumptions used in developing the strategy and priorities thereunder, and the reasons for such assumptions.

(f) Preference

When comparing an energy efficiency resource to an energy resource, a higher priority shall be assigned to the energy efficiency resource whenever all direct and quantifiable net costs for the resource over its available life are equal to the estimated cost of the energy resource.

(g) Public review and comment

The Secretary shall provide for a period of public review and comment of the least-cost energy strategy, for a period of at least 30 days, to be completed at least 60 days before the issuance of such strategy. The Secretary shall also provide for public review and comment before the issuance of any update to the least-cost energy strategy required under this section.

(Pub. L. 102–486, title XVI, § 1602, Oct. 24, 1992, 106 Stat. 2999.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original ''this title'' meaning title XVI of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2999, which enacted this subchapter and repealed sections 7361 to 7364 of this title.

§ 13383. Director of Climate Protection

Within 6 months after October 24, 1992, the Secretary shall establish, within the Department of Energy, a Director of Climate Protection (in this section referred to as the ''Director''). The Director shall—

(1) in the absence of the Secretary, serve as the Secretary's representative for interagency and multilateral policy discussions of global climate change, including the activities of the Committee on Earth and Environmental Sciences as established by the Global Change Research Act of 1990 (Public Law 101–606) [15 U.S.C. 2921 et seq.] and the Policy Coordinating Committee Working Group on Climate Change;

(2) monitor, in cooperation with other Federal agencies, domestic and international policies for their effects on the generation of greenhouse gases; and

(3) have the authority to participate in the planning activities of relevant Department of Energy programs.

(Pub. L. 102–486, title XVI, § 1603, Oct. 24, 1992, 106 Stat. 3001.)

REFERENCES IN TEXT

The Global Change Research Act of 1990, referred to in par. (1), is Pub. L. 101–606, Nov. 16, 1990, 104 Stat. 3096, which is classified generally to chapter 56A (§ 2921 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2921 of Title 15 and Tables.

§ 13384. Assessment of alternative policy mechanisms for addressing greenhouse gas emissions

Not later than 18 months after October 24, 1992, the Secretary shall transmit a report to Congress containing a comparative assessment of alternative policy mechanisms for reducing the generation of greenhouse gases. Such assessment shall include a short-run and long-run analysis of the social, economic, energy, environmental, competitive, and agricultural costs and benefits, including costs and benefits for jobs and competition, and the practicality of each of the following policy mechanisms:

(1) Various systems for controlling the generation of greenhouse gases, including caps for the generation of greenhouse gases from major sources and emissions trading programs.

(2) Federal standards for energy efficiency for major sources of greenhouse gases, including efficiency standards for power plants, industrial processes, automobile fuel economy, appliances, and buildings, and for emissions of methane.

(3) Various Federal and voluntary incentives programs.

(Pub. L. 102–486, title XVI, § 1604, Oct. 24, 1992, 106 Stat. 3002.)

§ 13385. National inventory and voluntary reporting of greenhouse gases

(a) National inventory

Not later than one year after October 24, 1992, the Secretary, through the Energy Information Administration, shall develop, based on data available to, and obtained by, the Energy Information Administration, an inventory of the national aggregate emissions of each greenhouse gas for each calendar year of the baseline period of 1987 through 1990. The Administrator of the Energy Information Administration shall annually update and analyze such inventory using available data. This subsection does not provide any new data collection authority.

(b) Voluntary reporting

(1) Issuance of guidelines

Not later than 18 months after October 24, 1992, the Secretary shall, after opportunity for public comment, issue guidelines for the voluntary collection and reporting of information on sources of greenhouse gases. Such guidelines shall establish procedures for the accurate voluntary reporting of information on—

(A) greenhouse gas emissions—

(i) for the baseline period of 1987 through 1990; and

(ii) for subsequent calendar years on an annual basis;

(B) annual reductions of greenhouse gas emissions and carbon fixation achieved through any measures, including fuel switching, forest management practices, tree planting, use of renewable energy, manufacture or use of vehicles with reduced greenhouse gas emissions, appliance efficiency, energy efficiency, methane recovery, cogeneration, chlorofluorocarbon capture and replacement, and power plant heat rate improvement;

(C) reductions in greenhouse gas emissions achieved as a result of—

(i) voluntary reductions;

(ii) plant or facility closings; and

(iii) State or Federal requirements; and

(D) an aggregate calculation of greenhouse gas emissions by each reporting entity.

Such guidelines shall also establish procedures for taking into account the differential radiative activity and atmospheric lifetimes of each greenhouse gas.

(2) Reporting procedures

The Administrator of the Energy Information Administration shall develop forms for voluntary reporting under the guidelines established under paragraph (1), and shall make such forms available to entities wishing to report such information. Persons reporting under this subsection shall certify the accuracy of the information reported.

(3) Confidentiality

Trade secret and commercial or financial information that is privileged or confidential shall be protected as provided in section 552(b)(4) of title 5.

(4) Establishment of data base

Not later than 18 months after October 24, 1992, the Secretary, through the Administrator of the Energy Information Administration, shall establish a data base comprised of information voluntarily reported under this subsection. Such information may be used by the reporting entity to demonstrate achieved reductions of greenhouse gases.

(c) Consultation

In carrying out this section, the Secretary shall consult, as appropriate, with the Administrator of the Environmental Protection Agency.

(Pub. L. 102–486, title XVI, § 1605, Oct. 24, 1992, 106 Stat. 3002.)

§ 13386. Export of domestic energy resource technologies to developing countries

The Secretary, through the Trade Promotion Coordinating Council, shall develop policies and programs to encourage the export and promotion of domestic energy resource technologies, including renewable energy, energy efficiency, and clean coal technologies, to developing countries.

(Pub. L. 102–486, title XVI, § 1607, Oct. 24, 1992, 106 Stat. 3003.)

§ 13387. Innovative environmental technology transfer program

(a) Establishment of program

The Secretary, through the Agency for International Development, and in consultation with the interagency working group established under section 6276(d) of this title (in this section referred to as the ''interagency working group'',[1] shall establish a technology transfer program to carry out the purposes described in subsection (b) of this section. Within 150 days after October 24, 1992, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate Federal agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memoran-

[1] So in original. Probably should be preceded by a closing parenthesis.

dum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) Purposes of program

The purposes of the technology transfer program under this section are to—

(1) reduce the United States balance of trade deficit through the export of United States energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

(3) encourage the export of United States technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from technologies that substantially reduce environmental pollutants, including greenhouse gases;

(4) develop markets for United States technologies, including services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, that meet the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies;

(6) ensure the introduction of United States firms and expertise in foreign countries;

(7) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of technologies or services that substantially reduce environmental pollutants, including greenhouse gases; and

(8) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) Identification

Pursuant to the agreements required by subsection (a) of this section, the Secretary, through the Agency for International Development, and after consultation with the interagency working group, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries that substantially reduce environmental pollutants, including greenhouse gases, and shall identify a list of such projects within 240 days after October 24, 1992, and periodically thereafter.

(d) Financial mechanisms

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects, and services related thereto, that substantially reduce environmental pollutants, including greenhouse gases in foreign countries;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-Federal funding that may be available for the project; and

(B) utilized in conjunction with financial assistance programs available through other Federal agencies.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) Solicitations for project proposals

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, within one year after October 24, 1992, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) of this section which propose to utilize a United States technology or service. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE–PS01–90FE62271 Clean Coal Technology IV, as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States technology, including services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) Assistance to United States firms

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) of this section where solicitations for

the project are being conducted by the host country or by a multilateral lending institution.

(g) Other program requirements

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall—

(1) establish eligibility criteria for countries that will host projects;

(2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) Eligible technologies

Not later than 6 months after October 24, 1992, the Secretary shall prepare a list of eligible technologies and services under this section. In preparing such a list, the Secretary shall consider fuel cell powerplants, aeroderivitive gas turbines and catalytic combustion technologies for aeroderivitive gas turbines, ocean thermal energy conversion technology, anaerobic digester and storage tanks, and other renewable energy and energy efficiency technologies.

(i) Selection of projects

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e) of this section, select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the purposes of this section;

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology or service for future application; and

(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet the following criteria:

(A) It will reduce environmental emissions, including greenhouse gases, to an extent greater than required by applicable provisions of law.

(B) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

(C) It will increase the overall efficiency of energy use.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet these criteria.

(j) United States-Asia Environmental Partnership

Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(k) Buy America

In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a) of this section, shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

***(l)* Report to Congress**

The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce innovative energy technologies, and services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, into foreign countries.

(m) Definitions

For purposes of this section—

(1) the term ''host country'' means a foreign country which is—

(A) the participant in or the site of the proposed innovative energy technology project; and

(B) either—

(i) classified as a country eligible to participate in development assistance pro-

grams of the Agency for International Development pursuant to applicable law or regulation; or

(ii) a developing country; and

(2) the term ''developing country'' includes, but is not limited to, countries in Central and Eastern Europe or in the independent states of the former Soviet Union.

(n) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out the program required by this section, $100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(Pub. L. 102–486, title XVI, § 1608, Oct. 24, 1992, 106 Stat. 3003.)

§ 13388. Global Climate Change Response Fund

(a) Establishment of Fund

The Secretary of the Treasury, in consultation with the Secretary of State, shall establish a Global Climate Change Response Fund to act as a mechanism for United States contributions to assist global efforts in mitigating and adapting to global climate change.

(b) Restrictions on deposits

No deposits shall be made to the Global Climate Change Response Fund until the United States has ratified the United Nations Framework Convention on Climate Change.

(c) Use of Fund

Moneys deposited into the Fund shall be used by the President, to the extent authorized and appropriated under section 2222 of title 22, solely for contributions to a financial mechanism negotiated pursuant to the United Nations Framework Convention on Climate Change, including all protocols or agreements related thereto.

(d) Authorization of appropriations

There are authorized to be appropriated for deposit in the Fund to carry out the purposes of this section, $50,000,000 for fiscal year 1994 and such sums as may be necessary for fiscal years 1995 and 1996.

(Pub. L. 102–486, title XVI, § 1609, Oct. 24, 1992, 106 Stat. 3007.)

§ 13389. Greenhouse gas intensity reducing strategies

(a) Definitions

In this section:

(1) Advisory Committee

The term ''Advisory Committee'' means the Climate Change Technology Advisory Committee established under subsection (f)(1) of this section.

(2) Carbon sequestration

The term ''carbon sequestration'' means the capture of carbon dioxide through terrestrial, geological, biological, or other means, which prevents the release of carbon dioxide into the atmosphere.

(3) Committee

The term ''Committee'' means the Committee on Climate Change Technology established under subsection (b)(1) of this section.

(4) Developing country

The term ''developing country'' has the meaning given the term in section 13387(m) of this title.

(5) Greenhouse gas

The term ''greenhouse gas'' means—

(A) carbon dioxide;

(B) methane;

(C) nitrous oxide;

(D) hydrofluorocarbons;

(E) perfluorocarbons; and

(F) sulfur hexafluoride.

(6) Greenhouse gas intensity

The term ''greenhouse gas intensity'' means the ratio of greenhouse gas emissions to economic output.

(7) National Laboratory

The term ''National Laboratory'' has the meaning given the term in section 15801(3)[1] of this title.

(b) Committee on Climate Change Technology

(1) In general

Not later than 180 days after August 8, 2005, the President shall establish a Committee on Climate Change Technology to—

(A) integrate current Federal climate reports; and

(B) coordinate Federal climate change technology activities and programs carried out in furtherance of the strategy developed under subsection (c)(1) of this section.

(2) Membership

The Committee shall be composed of at least 7 members, including—

(A) the Secretary, who shall chair the Committee;

(B) the Secretary of Commerce;

(C) the Chairman of the Council on Environmental Quality;

(D) the Secretary of Agriculture;

(E) the Administrator of the Environmental Protection Agency;

(F) the Secretary of Transportation;

(G) the Director of the Office of Science and Technology Policy; and

(H) other representatives as may be determined by the President.

(3) Staff

The members of the Committee shall provide such personnel as are necessary to enable the Committee to perform its duties.

(c) National climate change technology policy

(1) In general

Not later than 18 months after August 8, 2005, the Committee shall, based on applicable Federal climate reports, submit to the Secretary and the President a national strategy to promote the deployment and commercialization of greenhouse gas intensity reducing technologies and practices developed through research and development programs conducted by the National Laboratories, other Federal research facilities, institutions of higher education, and the private sector.

[1] See References in Text note below.

(2) Updates

The Committee shall—

(A) at the time of submission of the strategy to the President under paragraph (1), also make the strategy available to the public; and

(B) update the strategy every 5 years, or more frequently as the Committee determines to be necessary.

(d) Climate Change Technology Program

Not later than 180 days after the date on which the Committee is established under subsection (b)(1) of this section, the Secretary, in consultation with the Committee, shall establish within the Department of Energy the Climate Change Technology Program to—

(1) assist the Committee in the interagency coordination of climate change technology research, development, demonstration, and deployment to reduce greenhouse gas intensity; and

(2) carry out the programs authorized under this section.

(e) Technology inventory

(1) In general

The Secretary shall conduct and make public an inventory and evaluation of greenhouse gas intensity reducing technologies that have been developed, or are under development, by the National Laboratories, other Federal research facilities, institutions of higher education, and the private sector to determine which technologies are suitable for commercialization and deployment.

(2) Report

Not later than 180 days after the completion of the inventory under paragraph (1), the Secretary shall submit to Congress a report that includes the results of the completed inventory and any recommendations of the Secretary.

(3) Use

The Secretary shall use the results of the inventory as guidance in the commercialization and deployment of greenhouse gas intensity reducing technologies.

(4) Updated inventory

The Secretary shall—

(A) periodically update the inventory under paragraph (1), including when determined necessary by the Committee; and

(B) make the updated inventory available to the public.

(f) Climate Change Technology Advisory Committee

(1) In general

The Secretary, in consultation with the Committee, may establish under section 7234 of this title a Climate Change Technology Advisory Committee to identify statutory, regulatory, economic, and other barriers to the commercialization and deployment of greenhouse gas intensity reducing technologies and practices in the United States.

(2) Composition

The Advisory Committee shall be composed of the following members, to be appointed by the Secretary, in consultation with the Committee:

(A) 1 representative shall be appointed from each National Laboratory.

(B) 3 members shall be representatives of energy-producing trade organizations.

(C) 3 members shall represent energy-intensive trade organizations.

(D) 3 members shall represent groups that represent end-use energy and other consumers.

(E) 3 members shall be employees of the Federal Government who are experts in energy technology, intellectual property, and tax.

(F) 3 members shall be representatives of institutions of higher education with expertise in energy technology development that are recommended by the National Academy of Engineering.

(3) Report

Not later than 1 year after August 8, 2005, and annually thereafter, the Advisory Committee shall submit to the Committee a report that describes—

(A) the findings of the Advisory Committee; and

(B) any recommendations of the Advisory Committee for the removal or reduction of barriers to commercialization, deployment, and increasing the use of greenhouse gas intensity reducing technologies and practices.

(g) Greenhouse gas intensity reducing technology deployment

(1) In general

Based on the strategy developed under subsection (c)(1) of this section, the technology inventory conducted under subsection (e)(1) of this section, the greenhouse gas intensity reducing technology study report submitted under subsection (e)(2) of this section, and reports under subsection (f)(3) of this section, if any, the Committee shall develop recommendations that would provide for the removal of domestic barriers to the commercialization and deployment of greenhouse gas intensity reducing technologies and practices.

(2) Requirements

In developing the recommendations under paragraph (1), the Committee shall consider in the aggregate—

(A) the cost-effectiveness of the technology;

(B) fiscal and regulatory barriers;

(C) statutory and other barriers; and

(D) intellectual property issues.

(3) Demonstration projects

In developing recommendations under paragraph (1), the Committee may identify the need for climate change technology demonstration projects.

(4) Report

Not later than 18 months after August 8, 2005, the Committee shall submit to the President and Congress a report that—

(A) identifies, based on the report submitted under subsection (f)(3) of this section,

any barriers to, and commercial risks associated with, the deployment of greenhouse gas intensity reducing technologies; and

(B) includes a plan for carrying out demonstration projects.

(5) Updates

The Committee shall—

(A) at the time of submission of the report to Congress under paragraph (4), also make the report available to the public; and

(B) update the report every 5 years, or more frequently as the Committee determines to be necessary.

(h) Procedures for calculating, monitoring, and analyzing greenhouse gas intensity

The Secretary, in collaboration with the Committee and the National Institute of Standards and Technology, and after public notice and opportunity for comment, shall develop standards and best practices for calculating, monitoring, and analyzing greenhouse gas intensity.

(i) Demonstration projects

(1) In general

The Secretary shall, subject to the availability of appropriations, support demonstration projects that—

(A) increase the reduction of the greenhouse gas intensity to levels below that which would be achieved by technologies being used in the United States as of August 8, 2005;

(B) maximize the potential return on Federal investment;

(C) demonstrate distinct roles in public-private partnerships;

(D) produce a large-scale reduction of greenhouse gas intensity if commercialization occurred; and

(E) support a diversified portfolio to mitigate the uncertainty associated with a single technology.

(2) Cost sharing

In supporting a demonstration project under this subsection, the Secretary shall require cost-sharing in accordance with section 16352 of this title.

(3) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(j) Cooperative research and development agreements

In carrying out greenhouse gas intensity reduction research and technology deployment activities under this subtitle,[2] the Secretary may enter into cooperative research and development agreements under section 3710a of title 15.

(Pub. L. 102–486, title XVI, § 1610, as added Pub. L. 109–58, title XVI, § 1601, Aug. 8, 2005, 119 Stat. 1109.)

REFERENCES IN TEXT

Section 15801(3) of this title, referred to in subsec. (a)(7), was in the original ''section 3(3) of the Energy Policy Act of 2005'' and was translated as meaning section 2(3) of that Act to reflect the probable intent of Congress, because the Energy Policy Act of 2005 does not contain a section 3 and section 2(3) defines ''National Laboratory''.

This subtitle, referred to in subsec. (j), appearing in the original, is unidentifiable because title XVI of Pub. L. 102–486, of which this section is a part, does not contain subtitles.

[2] So in original. See References in Text note below.

SUBCHAPTER VIII—REDUCTION OF OIL VULNERABILITY

§ 13401. Goals

It is the goal of the United States in carrying out energy supply and energy conservation research and development—

(1) to strengthen national energy security by reducing dependence on imported oil;

(2) to increase the efficiency of the economy by meeting future needs for energy services at the lowest total cost to the Nation, including environmental costs, giving comparable consideration to technologies that enhance energy supply and technologies that improve the efficiency of energy end uses;

(3) to reduce the air, water, and other environmental impacts (including emissions of greenhouse gases) of energy production, distribution, transportation, and utilization, through the development of an environmentally sustainable energy system;

(4) to maintain the technological competitiveness of the United States and stimulate economic growth through the development of advanced materials and technologies;

(5) to foster international cooperation by developing international markets for domestically produced sustainable energy technologies, and by transferring environmentally sound, advanced energy systems and technologies to developing countries to promote sustainable development;

(6) to consider the comparative environmental and public health impacts of the energy to be produced or saved by the specific activities;

(7) to consider the obstacles inherent in private industry's development of new energy technologies and steps necessary for establishing or maintaining technological leadership in the area of energy and energy efficiency resource technologies; and

(8) to consider the contribution of a given activity to fundamental scientific knowledge.

(Pub. L. 102–486, title XX, § 2001, Oct. 24, 1992, 106 Stat. 3057.)

PART A—OIL AND GAS SUPPLY ENHANCEMENT

§ 13411. Enhanced oil recovery

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on technologies to increase the recoverability of domestic oil resources to—

(1) improve reservoir characterization;

(2) improve analysis and field verification;

(3) field test and demonstrate enhanced oil recovery processes, including advanced processes, in reservoirs the Secretary considers to

be of high priority, ranked primarily on the basis of oil recovery potential and risk of abandonment;

(4) transfer proven recovery technologies to producers and operators of wells, including stripper wells, that would otherwise be likely to be abandoned in the near term due to declining production;

(5) improve enhanced oil recovery process technology for more economic and efficient oil production;

(6) identify and develop new recovery technologies;

(7) study reservoir properties and how they affect oil recovery from porous media;

(8) improve techniques for meeting environmental requirements;

(9) improve data bases of reservoir and environmental conditions; and

(10) lower lifting costs on stripper wells by utilizing advanced renewable energy technologies such as small wind turbines and others.

(b) Program goals

(1) Near-term priorities

The near-term priorities of the program include preserving access to high potential reservoirs, identifying available technologies that can extend the lifetime of wells and of stripper well property, and developing environmental field operations for waste disposal and injection practices.

(2) Mid-term priorities

The mid-term priorities of the program include developing and testing identified but unproven technologies, and transferring those technologies for widespread use.

(3) Long-term priorities

The long-term priorities of the program include developing advanced techniques to recover oil not recoverable by other techniques.

(c) Accelerated program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a plan for carrying out under this section the accelerated field testing of technologies to achieve the priorities stated in subsection (b) of this section. In preparing the plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies, and with the Advisory Board established under section 13522 of this title.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(e) Consultation

In carrying out the provisions of this section, the Secretary shall consult representatives of the oil and gas industry with respect to innovative research and development proposals to improve oil and gas recovery and shall consider relevant technical data from industry and other research and information centers and institutes.

(f) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section, including advanced extraction and process technology, $57,250,000 for fiscal year 1993 and $70,000,000 for fiscal year 1994.

(Pub. L. 102–486, title XX, § 2011, Oct. 24, 1992, 106 Stat. 3057.)

§ 13412. Oil shale

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on oil shale extraction and conversion, including research and development on both eastern and western shales, as provided in this section.

(b) Program goals

The goals of the program established under this section include—

(1) supporting the development of economically competitive and environmentally acceptable technologies to produce domestic supplies of liquid fuels from oil shale;

(2) increasing knowledge of environmentally acceptable oil shale waste disposal technologies and practices;

(3) increasing knowledge of the chemistry and kinetics of oil shale retorting;

(4) increasing understanding of engineering issues concerning the design and scale-up of oil shale extraction and conversion technologies;

(5) improving techniques for oil shale mining systems; and

(6) providing for cooperation with universities and other private sector entities.

(c) Eastern oil shale program

(1) As part of the program authorized by this section, the Secretary shall carry out a program on oil shale that includes applied research, in cooperation with universities and the private sector, on eastern oil shale that may have the potential to decrease United States dependence on energy imports.

(2) As part of the program authorized by this subsection, the Secretary shall consider the potential benefits of including in that program applied research carried out in cooperation with universities and other private sector entities that are, as of October 24, 1992, engaged in research on eastern oil shale retorting and associated processes.

(3) The program carried out under this subsection shall be cost-shared with universities and the private sector to the maximum extent possible.

(d) Western oil shale program

As part of the program authorized by this section, the Secretary shall carry out a program on extracting oil from western oil shales that includes, if appropriate, establishment and utilization of at least one field testing center for the purpose of testing, evaluating, and developing improvements in oil shale technology at the field test level. In establishing such a center, the Secretary shall consider sites with existing oil shale mining and processing infrastructure and facilities. Sixty days prior to establishing any such field testing center, the Secretary shall submit a report to Congress on the center to be established.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section $5,250,000 for fiscal year 1993 and $6,000,000 for fiscal year 1994.

(Pub. L. 102–486, title XX, § 2012, Oct. 24, 1992, 106 Stat. 3058.)

§ 13413. Natural gas supply

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, to increase the recoverable natural gas resource base including, but not limited to—

(1) more intensive recovery of natural gas from discovered conventional resources;

(2) the extraction of natural gas from tight gas sands and devonian shales or other unconventional sources;

(3) surface gasification of coal; and

(4) recovery of methane from biofuels including municipal solid waste.

(b) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(c) Cofiring of natural gas and coal

(1) Program

The Secretary shall establish and carry out a 5-year program, in accordance with sections 13541 and 13542 of this title, on cofiring natural gas with coal in utility and large industrial boilers in order to determine optimal natural gas injection levels for both environmental and operational benefits.

(2) Financial assistance

The Secretary shall enter into agreements with, and provide financial assistance to, appropriate parties for application of cofiring technologies to boilers to demonstrate this technology.

(3) Report to Congress

The Secretary shall, before December 31, 1995, submit to the Congress a report on the progress made in carrying out this subsection.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section and sections 13414 and 13415 of this title, $29,745,000 for fiscal year 1993 and $45,000,000 for fiscal year 1994.

(Pub. L. 102–486, title XX, § 2013, Oct. 24, 1992, 106 Stat. 3059.)

§ 13414. Natural gas end-use technologies

The Secretary shall carry out a 5-year program, in accordance with sections 13541 and 13542 of this title, on new and advanced natural gas utilization technologies including, but not limited to—

(1) stationary source emissions control and efficiency improvements including combustion systems, industrial processes, cogeneration, and waste fuels; and

(2) natural gas storage including increased deliverability from existing gas storage facilities and new capabilities for storage near demand centers, and on-site storage at major energy consuming facilities.

(Pub. L. 102–486, title XX, § 2014, Oct. 24, 1992, 106 Stat. 3060.)

§ 13415. Midcontinent Energy Research Center

(a) Finding

Congress finds that petroleum resources in the midcontinent region of the United States are very large but are being prematurely abandoned.

(b) Purposes

The purposes of this section are to—

(1) improve the efficiency of petroleum recovery;

(2) increase ultimate petroleum recovery; and

(3) delay the abandonment of resources.

(c) Establishment

The Secretary may establish the Midcontinent Energy Research Center (referred to in this section as the ''Center'') to—

(1) conduct research in petroleum geology and engineering focused on improving the recovery of petroleum from existing fields and established plays in the upper midcontinent region of the United States; and

(2) ensure that the results of the research described in paragraph (1) are transferred to users.

(d) Research

(1) In general

In conducting research under this section, the Center shall, to the extent practicable, cooperate with agencies of the Federal Government, the States in the midcontinent region of the United States, and the affected industry.

(2) Programs

Research programs conducted by the Center may include—

(A) data base development and transfer of technology;

(B) reservoir management;

(C) reservoir characterization;

(D) advanced recovery methods; and

(E) development of new technology.

(Pub. L. 102–486, title XX, § 2015, Oct. 24, 1992, 106 Stat. 3060.)

PART B—OIL AND GAS DEMAND REDUCTION AND SUBSTITUTION

§ 13431. General transportation

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on cost effective technologies to reduce the demand for oil in the transportation sector for all motor vehicles, including existing vehicles, through increased energy efficiency and the use of alternative fuels. Such program shall include a broad range of technological approaches, and shall include field demonstrations of sufficient scale and number in operating environments to prove technical and economic viability to meet the goals stated in section 13401 of

this title. Such program shall include the activities required under sections 13432 through 13437 of this title, and ongoing activities of a similar nature at the Department of Energy.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan to guide activities under this part. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, utilities, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies.

(c) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(d) "Alternative fuels" defined

For purposes of this part, the term ''alternative fuels'' includes natural gas, liquefied petroleum gas, hydrogen, fuels other than alcohol that are derived from biological materials, and any fuel the content of which is at least 85 percent by volume methanol, ethanol, or other alcohol.

(e) Authorization of appropriations

(1) There are authorized to be appropriated to the Secretary for carrying out this part, including all transportation sector energy conservation research and development (other than activities under section 13435 of this title) and all transportation sector biofuels energy systems under solar energy, $119,144,000 for fiscal year 1993 and $160,000,000 for fiscal year 1994.

(2) There are authorized to be appropriated to the Secretary for carrying out section 13435 of this title—

(A) $60,300,000 for fiscal year 1993;
(B) $75,000,000 for fiscal year 1994;
(C) $80,000,000 for fiscal year 1995;
(D) $80,000,000 for fiscal year 1996;
(E) $90,000,000 for fiscal year 1997; and
(F) $100,000,000 for fiscal year 1998.

(Pub. L. 102–486, title XX, § 2021, Oct. 24, 1992, 106 Stat. 3061.)

§ 13432. Advanced automotive fuel economy

(a) Program direction

The Secretary shall conduct a program, in accordance with sections 13541 and 13542 of this title, to supplement ongoing research activities of a similar nature at the Department of Energy, to accelerate the near-term and mid-term development of advanced technologies to improve the fuel economy of light-duty passenger vehicles powered by a piston engine, and hybrid vehicles powered by a combination of piston engine and electric motor.

(b) Program goal

The goal of the program established under subsection (a) of this section shall be to stimulate the development of emerging technologies with the potential to achieve significant improvements in fuel economy while reducing emissions of air pollutants.

(c) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section, making a special effort to involve small businesses in the program.

(Pub. L. 102–486, title XX, § 2022, Oct. 24, 1992, 106 Stat. 3061.)

§ 13433. Alternative fuel vehicle program

(a) Program direction

The Secretary shall carry out a program, in accordance with sections 13541 and 13542 of this title, on techniques related to improving natural gas and other alternative fuel vehicle technology, including—

(1) fuel injection;
(2) carburetion;
(3) manifolding;
(4) combustion;
(5) power optimization;
(6) efficiency;
(7) lubricants and detergents;
(8) engine durability;
(9) ignition, including fuel additives to assist ignition;
(10) multifuel engines;
(11) emissions control, including catalysts;
(12) novel gas compression concepts;
(13) advanced storage systems;
(14) advanced gaseous fueling technologies; and
(15) the incorporation of advanced materials in these areas.

(b) Cooperative agreements and assistance

The Secretary may enter into cooperative agreements with, and provide financial assistance to, public or private entities willing to provide 50 percent of the costs of a program to perform activities under subsection (a) of this section.

(c) Definitions

For purposes of this section—

(1) the term ''alternative fuel vehicle'' means a motor vehicle that operates on alternative fuels; and

(2) the term ''motor vehicle'' includes any automobile, truck, bus, van, or other on-road or off-road motor vehicle, including a boat.

(Pub. L. 102–486, title XX, § 2023, Oct. 24, 1992, 106 Stat. 3062.)

§ 13434. Biofuels user facility

(a) The Secretary shall establish a biofuels user facility to expedite industry adoption of biofuels technologies, including production of alcohol fuels from biomass.

(b) The Secretary, through such universities and colleges as the Secretary determines are qualified, shall establish a program, in accordance with sections 13541 and 13542 of this title, with respect to the production and use of diesel fuels from vegetable oils or animal fats. The program shall investigate—

(1) the economic feasibility of production of oilseed crops for biofuels purposes; and

(2) the establishment of a mobile small-scale oilseed pressing and esterification unit and a stationary small-scale commercial oilseed pressing and esterification unit.

(Pub. L. 102–486, title XX, § 2024, Oct. 24, 1992, 106 Stat. 3062.)

§ 13435. Electric motor vehicles and associated equipment research and development

(a) General

The Secretary shall conduct, pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901–5920), a research and development program on electric motor vehicles and associated equipment. Such program shall be conducted in cooperation with the electric utility industry, and automobile industry, battery manufacturers, and such other persons as the Secretary considers appropriate.

(b) Comprehensive plan

(1) The Secretary shall prepare a comprehensive 5-year program plan for carrying out the purposes of this section. Such comprehensive plan shall be updated biennially for a period of not less than 10 years after October 24, 1992.

(2) The comprehensive plan under paragraph (1) shall be prepared in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Secretary of Commerce, the heads of other appropriate Federal agencies, representatives of the electric utility industry, electric motor vehicle manufacturers, the United States automobile industry, and such other persons as the Secretary considers appropriate.

(3) The comprehensive plan shall include—

(A) a prioritization of research areas critical to the commercialization of electric motor vehicles, including advanced battery technology;

(B) the program elements, management structure, and activities, including program responsibilities, of Federal agencies;

(C) the program strategies, including technical milestones to be achieved toward specific goals during each fiscal year of the comprehensive plan for all major activities and projects;

(D) the estimated costs of individual program elements, including estimated costs for each of the fiscal years of the comprehensive plan for each of the participating Federal agencies;

(E) a description of the methods of technology transfer;

(F) a proposal for participation by non-Federal entities in the implementation of the comprehensive plan; and

(G) such other information as the Secretary considers appropriate.

(4) Not later than 180 days after October 24, 1992, the Secretary shall transmit the comprehensive plan to the Congress. Biennial updates shall be submitted to the Congress.

(c) Cooperative agreements

The Secretary, consistent with the comprehensive plan under subsection (b) of this section, may enter into cooperative agreements to conduct research and development projects with industry in such areas of technology development as—

(1) high efficiency electric power trains, including advanced motors, motor controllers, and hybrid power trains for electric motor vehicle range improvement;

(2) light-weight structures for electric motor vehicle weight reduction;

(3) advanced batteries with high energy density and power density, and improved range or recharging cycles for a given unit weight, for electric motor vehicle application;

(4) hybrid power trains incorporating an electric motor and recyclable battery charged by an onboard liquid fuel engine, designed to significantly improve fuel economies while maintaining acceleration characteristics comparable to a conventionally fueled vehicle;

(5) batteries and fuel cells for electric-hybrid vehicle application;

(6) fuel cells and fuel cell systems for primary electric motor vehicle power sources; and

(7) photovoltaics for use with electric motor vehicles.

(d) Solicitation of proposals

(1) Within one year after October 24, 1992, the Secretary shall solicit proposals for cooperative agreements for research and development under subsection (c) of this section.

(2) Thereafter, the Secretary may solicit additional proposals for cooperative agreements under subsection (c) of this section if, in the judgment of the Secretary, such cooperative agreements could contribute to the development of electric motor vehicles and associated equipment.

(e) Cost-sharing

(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any cooperative agreement under this section, other than a cooperative agreement under subsection (j) of this section, to be from non-Federal sources. Such share may be in the form of cash, personnel, services, equipment, and other resources.

(2) The Secretary may reduce the amount of costs required to be provided by non-Federal sources under paragraph (1), if the Secretary determines that the reduction is necessary and appropriate—

(A) considering the technological risks involved in the project; and

(B) in order to meet the objectives of this section.

(f) Deployment

(1) The Secretary shall conduct a program designed to accelerate deployment of advanced battery technologies for use with electric motor vehicles.

(2) In carrying out the program authorized by this subsection, the Secretary shall—

(A) undertake an inventory and assessment of advanced battery technologies and electric motor vehicle technologies and the commercial capability of such technologies; and

(B) develop a Federal industry information exchange program to improve the deployment or use of such technologies, which may consist of workshops, publications, conferences, and a data base for use by the public and private sectors.

(g) Domestic parts manufacturers

In carrying out this section, the Secretary, in consultation with the Secretary of Commerce, shall issue regulations to ensure that the pro-

curement practices of participating electric motor vehicle and associated equipment manufacturers do not discriminate against the United States manufacturers of vehicle parts.

(h) Hold harmless

Nothing in this section shall be construed to alter, affect, modify, or change any activities or agreements initiated prior to October 24, 1992, with domestic motor vehicle manufacturers through joint venture or consortium agreements regarding batteries for electric motor vehicles.

(i) Consultation

The Secretary shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Transportation in carrying out this section.

(j) Fuel cells for transportation

(1) The Secretary shall develop and implement a comprehensive program of research, development, and demonstration of fuel cells and related systems for transportation applications through the establishment of one or more cooperative programs among industry, government, and research institutions to develop and demonstrate the use of fuel cells as the primary power source for private and mass transit vehicles and other mobile applications.

(2) Research, development, and demonstration activities under this subsection shall be designed to incorporate one or more of the following priorities:

(A) The potential for near-term to mid-term commercialization.

(B) The ability of the systems to use a variety of renewable and nonfossil fuels.

(C) Emission reduction and energy conservation potential.

(D) The potential to utilize fuel cells and fuel cell systems developed under Department of Defense and National Aeronautics and Space Administration programs.

(E) The potential to take maximum practical advantage of advances made in electric motor vehicle research, stationary source fuel cell research, and other research activities authorized by this subchapter.

(3)(A) Research, development, and demonstration projects selected by the Secretary under this subsection shall apply to—

(i) passenger vehicles;

(ii) vans and utility vehicles;

(iii) light rail systems and locomotives;

(iv) trucks, including long-haul trucks, dump trucks, and garbage trucks;

(v) passenger buses;

(vi) non-chlorofluorocarbon mobile refrigeration systems;

(vii) marine vessels, including recreational marine engines; or

(viii) mobile engines and power generation, including recreational generators, and industrial and construction equipment.

(B) The Secretary shall establish programs to undertake research, development, and demonstration activities for the applications listed in clauses (i) through (viii) of subparagraph (A) in each of fiscal years 1993, 1994, 1995, and 1996, based on the priorities established in paragraph (2), so that by the end of the period, research, development, and demonstration activities are under way for the applications under each such clause. The initiatives authorized and implemented pursuant to this subsection shall be in addition to any other fuel cell programs authorized in existing law.

(k) Definitions

For purposes of this section—

(1) the term ''advanced battery technology'' means electrochemical storage devices and systems, including fuel cells, and associated technology necessary to charge, discharge, recharge, or regenerate such devices, for use as a source of power for an electric motor vehicle and any other associated equipment;

(2) the term ''associated equipment'' means equipment necessary for the regeneration, refueling, or recharging of batteries or other forms of electric energy used to power an electric motor vehicle and, in the case of electric-hybrid vehicles, such term includes nonpetroleum-related equipment necessary for, and solely related to, the demonstration of such vehicles;

(3) the term ''electric motor vehicle'' means a motor vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, photovoltaic arrays, or other sources of electric current and may include an electric-hybrid vehicle; and

(4) the term ''electric-hybrid vehicle'' means vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electric current and also relies on a nonelectric source of power that also operates on or is capable of operating on a nonelectrical source of power.

(Pub. L. 102–486, title XX, § 2025, Oct. 24, 1992, 106 Stat. 3063; Pub. L. 105–362, title IV, § 402(a), Nov. 10, 1998, 112 Stat. 3283.)

REFERENCES IN TEXT

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (a), is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–362, § 402(a)(1), substituted ''biennially'' for ''annually'' in second sentence.

Subsec. (b)(4). Pub. L. 105–362, § 402(a)(2), substituted ''Biennial updates'' for ''Annual updates'' in second sentence.

§ 13436. Repealed. Pub. L. 104–271, title I, § 103(b)(2), Oct. 9, 1996, 110 Stat. 3306

Section, Pub. L. 102–486, title XX, § 2026, Oct. 24, 1992, 106 Stat. 3066; Pub. L. 104–271, title I, § 103(b)(1), Oct. 9, 1996, 110 Stat. 3306, related to a 5-year program on renewable hydrogen energy systems.

EFFECTIVE DATE OF REPEAL

Pub. L. 104–271, title I, § 103(b)(2), Oct. 9, 1996, 110 Stat. 3306, provided that the repeal made by section 103(b)(2) is effective Oct. 1, 1998.

§ 13437. Advanced diesel emissions program

(a) Program direction

The Secretary shall initiate a 5-year program, in accordance with sections 13541 and 13542 of this title, on diesel engine combustion and engine systems, related advanced materials, and fuels and lubricants to reduce emissions oxides of nitrogen and particulates. Activities conducted under this program shall supplement activities of a similar nature at the Department of Energy. Such program shall include field demonstrations of sufficient scale and number in operating environments to prove technical and economic viability to meet the goal stated in subsection (b) of this section.

(b) Program goal

The goal of the program established under subsection (a) of this section shall be to accelerate the ability of United States diesel manufacturers to meet current and future oxides of nitrogen and particulate emissions requirements.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies, shall prepare and submit to the Congress a 5-year program plan to guide the activities under this section. Such plan shall be included as part of the plan required by section 13431(b) of this title.

(d) Solicitation of proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities consistent with the 5-year program plan.

(Pub. L. 102–486, title XX, § 2027, Oct. 24, 1992, 106 Stat. 3066.)

§ 13438. Telecommuting study

(a) Study

The Secretary, in consultation with the Secretary of Transportation, shall conduct a study of the potential costs and benefits to the energy and transportation sectors of telecommuting. The study shall include—

(1) an estimation of the amount and type of reduction of commuting by form of transportation type and numbers of commuters;

(2) an estimation of the potential number of lives saved;

(3) an estimation of the reduction in environmental pollution, in consultation with the Environmental Protection Agency;

(4) an estimation of the amount and type of reduction of energy use and savings by form of transportation type; and

(5) an estimation of the social impact of widespread use of telecommuting.

(b) Report to Congress

This study shall be completed no more than one hundred and eighty days after October 24, 1992. A report, summarizing the results of the study, shall be transmitted to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate no more than sixty days after completion of this study.

(Pub. L. 102–486, title XX, § 2028, Oct. 24, 1992, 106 Stat. 3067.)

SUBCHAPTER IX—ENERGY AND ENVIRONMENT

PART A—IMPROVED ENERGY EFFICIENCY

§ 13451. General improved energy efficiency

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on cost effective technologies to improve energy efficiency and increase the use of renewable energy in the buildings, industrial, and utility sectors. Such program shall include a broad range of technological approaches, and shall include field demonstrations of sufficient scale and number to prove technical and economic viability to meet the goals stated in section 13401 of this title. Such program shall include the activities required under sections 13452, 13453, 13454, 13455, 13456, and 13457 of this title and section 2106[1] and ongoing activities of a similar nature at the Department of Energy. Such program shall also include the activities conducted pursuant to the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 (Public Law 100–680) [15 U.S.C. 5101 et seq.] and the Department of Energy Metal Casting Competitiveness Research Act of 1990 (Public Law 101–425) [15 U.S.C. 5301 et seq.].

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

(1) in the buildings sector—

(A) to accelerate the development of technologies that will increase energy efficiency;

(B) to increase the use of renewable energy; and

(C) to reduce environmental impacts;

(2) in the industrial sector—

(A) to accelerate the development of technologies that will increase energy efficiency in order to improve productivity;

(B) to increase the use of renewable energy; and

(C) to reduce environmental impacts; and

(3) in the utility sector—

(A) to accelerate the development of technologies that will increase energy efficiency; and

(B) to increase the use of integrated resource planning.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan to guide activities under this part. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, utilities, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies.

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[1] See References in Text note below.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part, including all building, industry, and utility sectors energy conservation research and development, and inventions and innovation under energy conservation technical and financial assistance, $178,250,000 for fiscal year 1993 and $275,000,000 for fiscal year 1994.

(Pub. L. 102–486, title XXI, § 2101, Oct. 24, 1992, 106 Stat. 3067.)

REFERENCES IN TEXT

Section 2106, referred to in subsec. (a), means section 2106 of Pub. L. 102–486, which amended sections 5103, 5107, 5108, 5110, and 5307 of Title 15, Commerce and Trade.

The Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988, referred to in subsec. (a), is Pub. L. 100–680, Nov. 17, 1988, 102 Stat. 4073, as amended, which is classified generally to chapter 77 (§ 5101 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of Title 15 and Tables.

The Department of Energy Metal Casting Competitiveness Research Act of 1990, referred to in subsec. (a), is Pub. L. 101–425, Oct. 15, 1990, 104 Stat. 915, as amended, which is classified generally to chapter 79 (§ 5301 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 15 and Tables.

This part, referred to in subsecs. (c) and (e), was in the original ''this subtitle'' meaning subtitle A of title XXI of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 3067, which enacted this part and amended sections 5103, 5107, 5108, 5110, and 5307 of Title 15.

DISTRICT HEATING AND COOLING PROGRAMS

Pub. L. 102–486, title I, § 172, Oct. 24, 1992, 106 Stat. 2865, as amended by Pub. L. 109–58, title II, § 206(b), Aug. 8, 2005, 119 Stat. 655, provided that:

''(a) IN GENERAL.—The Secretary, in consultation with appropriate industry organizations, shall conduct a study to—

''(1) assess existing district heating and cooling technologies to determine cost-effectiveness, technical performance, energy efficiency, and environmental impacts as compared to alternative methods for heating and cooling buildings;

''(2) estimate the economic value of benefits that may result from implementation of district heating and cooling systems but that are not currently recognized, such as reduced emissions of air pollutants, local economic development, and energy security;

''(3) evaluate the cost-effectiveness, including the economic value referred to in paragraph (2), of cogenerated district heating and cooling technologies compared to other alternatives for generating or conserving electricity;

''(4) assess and make recommendations for reducing institutional and other constraints on the implementation of district heating and cooling systems; and

''(5) evaluate the use of renewable energy systems (as such term is defined in section 415(c) of the Energy Conservation and Production Act (42 U.S.C. 6865(c))) in residential buildings.

''(b) REPORT.—Not later than 2 years after the date of the enactment of the Energy Policy Act of 2005 [Aug. 8, 2005], the Secretary shall transmit to the Congress a report containing the findings, conclusions and recommendations, if any, of the Secretary for carrying out Federal, State, and local programs as a result of the study conducted under subsection (a).''

STUDY AND REPORT ON VIBRATION REDUCTION TECHNOLOGIES

Pub. L. 102–486, title I, § 173, Oct. 24, 1992, 106 Stat. 2865, as amended by Pub. L. 105–362, title IV, § 401(c), Nov. 10, 1998, 112 Stat. 3282, provided that:

''(a) IN GENERAL.—The Secretary shall, in consultation with the appropriate industry representatives, conduct a study to assess the cost-effectiveness, technical performance, energy efficiency, and environmental impacts of active noise and vibration cancellation technologies that use fast adapting algorithms.

''(b) PROCEDURE.—In carrying out such study, the Secretary shall—

''(1) estimate the potential for conserving energy and the economic and environmental benefits that may result from implementing active noise and vibration abatement technologies in demand side management; and

''(2) evaluate the cost-effectiveness of active noise and vibration cancellation technologies as compared to other alternatives for reducing noise and vibration.

''(c) DEMONSTRATION.—The Secretary may, based on the findings and conclusions of the study carried out under this section, conduct at least one project designed to demonstrate the commercial application of active noise and vibration cancellation technologies using fast adapting algorithms in products or equipment with a significant potential for increased energy efficiency.''

§ 13452. Natural gas and electric heating and cooling technologies

(a) Program direction

(1) The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on energy efficient natural gas and electric heating and cooling technologies for residential and commercial buildings.

(2) The natural gas heating and cooling program shall include activities on—

(A) thermally activated heat pumps, including absorption heat pumps and engine-driven heat pumps; and

(B) other advanced natural gas technologies, including fuel cells for residential and commercial applications.

(3) The electric heating and cooling program shall focus on—

(A) advanced heat pumps;

(B) thermal storage; and

(C) advanced electric HVAC (heating, ventilating, and air conditioning) and refrigeration systems that utilize replacements for chlorofluorocarbons.

(b) Proposals

Within 180 days after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(Pub. L. 102–486, title XXI, § 2102, Oct. 24, 1992, 106 Stat. 3068.)

§ 13453. Pulp and paper

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on advanced pulp and paper technologies. Such program shall include activities on energy generation technologies, boilers, combustion processes, pulping processes (excluding

de-inking), chemical recovery, causticizing, source reduction processes, and other related technologies that can improve the energy efficiency of, and reduce the adverse environmental impacts of, pulp and papermaking operations. This section does not authorize projects involving the combustion of waste paper, other than gasification.

(b) Proposals

Within 180 days after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(Pub. L. 102–486, title XXI, § 2103, Oct. 24, 1992, 106 Stat. 3069.)

§ 13454. Advanced buildings for 2005

(a) Program direction

The Secretary shall initiate a 5-year program, in accordance with sections 13541 and 13542 of this title, to increase building energy efficiency, while maintaining affordability, by the year 2005. Such program shall include activities on—

(1) building design, design methods, and construction techniques;

(2) building materials, including recycled materials, and components;

(3) on-site energy supply conversion systems such as photovoltaics;

(4) automated energy management systems;

(5) methods of evaluating performance; and

(6) insulation products manufactured with nonozone depleting materials.

(b) Proposals

(1) Solicitation

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(2) Contents of proposals

Proposals submitted under this subsection shall include and be judged upon—

(A) evidence of knowledge of current building practices in the United States and in other countries;

(B) an explanation of how the proposal will encourage the commercialization of the technologies resulting from activities in subsection (a) of this section;

(C) evidence of consideration of collaboration with Department of Energy national laboratories;

(D) evidence of collaboration with relevant industry or other groups or organizations; and

(E) a demonstration of the ability of the proposers to undertake and complete the project proposed.

(Pub. L. 102–486, title XXI, § 2104, Oct. 24, 1992, 106 Stat. 3069.)

§ 13455. Electric drives

(a) Program

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, to increase the efficiency of electric drive technologies, including adjustable speed drives, high speed motors, and high efficiency motors.

(b) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for projects under this section.

(Pub. L. 102–486, title XXI, § 2105, Oct. 24, 1992, 106 Stat. 3070.)

§ 13456. Improving efficiency in energy-intensive industries

(a) Secretarial action

The Secretary, in accordance with sections 13541 and 13542 of this title, shall—

(1) pursue a research, development, demonstration and commercial application program intended to improve energy efficiency and productivity in energy-intensive industries and industrial processes; and

(2) undertake joint ventures to encourage the commercialization of technologies developed under paragraph (1).

(b) Joint ventures

(1) The Secretary shall—

(A) conduct a competitive solicitation for proposals from private firms and investors for such joint ventures under subsection (a)(2) of this section; and

(B) provide financial assistance to at least five such joint ventures.

(2) The purpose of the joint ventures shall be to design, test, and demonstrate changes to industrial processes that will result in improved energy efficiency and productivity. The joint ventures may also demonstrate other improvements of benefit to such industries so long as demonstration of energy efficiency improvements is the principal objective of the joint venture.

(3) In evaluating proposals for financial assistance and joint ventures under this section, the Secretary shall consider—

(A) whether the activities conducted under this section improve the quality and energy efficiency of industries or industrial processes;

(B) the regional distribution of the energy-intensive industries and industrial processes; and

(C) whether the proposed joint venture project would be located in the region which has the energy-intensive industry and industrial processes that would benefit from the project.

(Pub. L. 102–486, title XXI, § 2107, Oct. 24, 1992, 106 Stat. 3070.)

§ 13457. Energy efficient environmental program

(a) Program direction

The Secretary, in consultation with the Administrator of the Environmental Protection Agency, is authorized to continue to carry out a 5-year program to improve the energy efficiency and cost effectiveness of pollution prevention technologies and processes, including source reduction and waste minimization technologies and processes. The purposes of this section shall be to—

(1) apply a systems approach to minimizing adverse environmental effects of industrial

production in the most cost effective and energy efficient manner; and

(2) incorporate consideration of the entire materials and energy cycle with the goal of minimizing adverse environmental impacts.

(b) Identification of opportunities

Within 9 months after October 24, 1992, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall identify opportunities for the demonstration of energy efficient pollution prevention technologies and processes.

(c) Report

Within 1 year after October 24, 1992, the Secretary shall submit a report to Congress evaluating the opportunities identified under subsection (b) of this section. Such report shall include—

(1) an assessment of the technologies available to increase productivity and simultaneously reduce the consumption of energy and material resources and the production of wastes;

(2) an assessment of the current use of such technologies by industry in the United States;

(3) the status of any such technologies currently being developed, together with projected schedules of their commercial availability;

(4) the energy savings resulting from the use of such technologies;

(5) the environmental benefits of such technologies;

(6) the costs of such technologies;

(7) an evaluation of any existing Federal or State regulatory disincentives for the employment of such technologies; and

(8) an evaluation of any other barriers to the use of such technologies.

In preparing the report required by this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency, any other Federal, State, or local official the Secretary considers necessary, representatives of appropriate industries, members of organizations formed to further the goals of environmental protection or energy efficiency, and other appropriate interested members of the public, as determined by the Secretary.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall solicit proposals for activities under this section. Proposals selected under this subsection shall demonstrate—

(1) technical viability and cost effectiveness; and

(2) procedures for technology transfer and information outreach during and after completion of the project.

(Pub. L. 102–486, title XXI, § 2108, Oct. 24, 1992, 106 Stat. 3071.)

§ 13458. Energy efficient lighting and building centers

(a) Purpose

The purpose of this section is to encourage energy efficiency in buildings through the establishment of regional centers to promote energy efficient lighting, heating and cooling, and building design.

(b) Grants for establishment

Not later than 18 months after October 24, 1992, the Secretary shall make grants to nonprofit institutions, or to consortiums that may include nonprofit institutions, State and local governments, universities, and utilities, to establish or enhance one regional building energy efficiency center (hereafter in this section referred to as a ''regional center'') in each of the 10 regions served by a Department of Energy regional support office.

(c) Permitted activities

Each regional center established under this section may—

(1) provide information, training, and technical assistance to building professionals such as architects, designers, engineers, contractors, and building code officials, on building energy efficiency methods and technologies, including lighting, heating and cooling, and passive solar;

(2) operate an outreach program to inform such building professionals of the benefits and opportunities of energy efficiency, and of the services of the center;

(3) provide displays demonstrating building energy efficiency methods and technologies, such as lighting, windows, and heating and cooling equipment;

(4) coordinate its activities and programs with other institutions within the region, such as State and local governments, utilities, and educational institutions, in order to support their efforts to promote building energy efficiency;

(5) serve as a clearinghouse to ensure that information about new building energy efficiency technologies, including case studies of successful applications, is disseminated to end-users in the region;

(6) study the building energy needs of the region and make available region-specific energy efficiency information to facilitate the adoption of cost-effective energy efficiency improvements;

(7) assist educational institutions in establishing building energy efficiency engineering and technical programs and curricula; and

(8) evaluate the performance of the center in promoting building energy efficiency.

(d) Application

Any nonprofit institution or consortium interested in receiving a grant under this section shall submit to the Secretary an application in such form and containing such information as the Secretary may require. A lighting or building energy center in existence on October 24, 1992, which is owned and operated by a nonprofit institution or a consortium as described in subsection (b) of this section shall be eligible for a grant under this section.

(e) Selection criteria

The Secretary shall select recipients of grants under this section on the basis of the following criteria:

(1) The capability of the grant recipient to establish a board of directors for the regional center composed of representatives from utilities, State and local governments, building trade and professional organizations, manufacturers, and nonprofit energy and environmental organizations.

(2) The demonstrated or potential resources available to the grant recipient for carrying out this subsection.

(3) The demonstrated or potential ability of the grant recipient to promote building energy efficiency by carrying out the activities specified in subsection (c) of this section.

(4) The activities which the grant recipient proposes to carry out under the grant.

(f) Requirement of matching funds

(1) Federal share

The Federal share of a grant under this section shall be no more than 50 percent of the costs of establishing, and no more than 25 percent of the cost of operating the regional center.

(2) Non-Federal contributions

No grant may be made under this section in any fiscal year unless the recipient of such grant enters into such agreements with the Secretary as the Secretary may require to ensure that such recipient will provide the necessary non-Federal contributions. Such non-Federal contributions may be provided by utilities, State and local governments, nonprofit institutions, foundations, corporations, and other non-Federal entities.

(g) Task force

The Secretary shall establish a task force to—

(1) advise the Secretary on activities to be carried out by grant recipients;

(2) review and evaluate programs carried out by grant recipients; and

(3) make recommendations regarding the building energy efficiency center grant program.

(h) Membership terms and administration of task force

(1) In general

The task force shall be composed of approximately 20 members, appointed by the Secretary, with expertise in the area of building energy efficiency, including representatives from—

(A) State or local energy offices;

(B) utilities;

(C) building construction trade or professional associations;

(D) architecture, engineering or professional associations;

(E) building component or equipment manufacturers;

(F) from[1] national laboratories;

(G) building code officials or professional associations; and

(H) nonprofit energy or environmental organizations.

(2) Geographic representation

The Secretary shall ensure that there is broad geographical representation among task force members.

(3) Terms

Members shall be appointed for a term of 3 years. A vacancy in the task force shall be filled in the manner in which the original appointment was made.

(4) Pay

Members shall serve without pay. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(5) Chairperson

The Chairperson and Vice Chairperson of the task force shall be elected by the members.

(6) Meetings

The task force shall meet biannually and at the call of the Chairperson.

(7) Inapplicability of termination date

Section 14 of the Federal Advisory Committee Act shall not apply to the task force.

(i) Omitted

(j) Authorization of appropriations

There is authorized to be appropriated for purposes of carrying out this section, to remain available until expended, not more than $10,000,000 for each of fiscal years 1994, 1995, and 1996.

(Pub. L. 102–486, title I, § 103, Oct. 24, 1992, 106 Stat. 2789.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (h)(7), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Subsec. (i) of this section, which required the Secretary to transmit annually to Congress a report on the activities of regional centers established under this section, including the degree to which matching funds are being leveraged from private sources to establish and operate such centers, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 6th item on page 88 of House Document No. 103–7.

Section was enacted as part of title I of the Energy Policy Act, and not as part of title XXI of that Act which comprises this subchapter.

PART B—ELECTRICITY GENERATION AND USE

§ 13471. Renewable energy

(a) Program direction

The Secretary shall conduct a comprehensive 5-year program, in accordance with sections 13541 and 13542 of this title, to provide cost-effective options for the generation of electricity from renewable energy sources for grid and nongrid application, including field demonstrations of sufficient scale and number in operating environments to prove technical and economic feasibility for providing cost effective generation and for meeting the goal stated in section 13401(3) of this title and section 13382(a)(4) of this title.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress

[1] So in original. The word ''from'' probably should not appear.

a 5-year program plan to guide the activities under this section. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section, including all solar energy programs (other than activities under section 13431 of this title), geothermal systems, electric energy systems, and energy storage systems, $208,975,000 for fiscal year 1993 and $275,000,000 for fiscal year 1994.

(Pub. L. 102–486, title XXI, § 2111, Oct. 24, 1992, 106 Stat. 3072.)

§ 13472. High efficiency heat engines

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, to improve the efficiency of heat engines. Such program shall—

(1) include field demonstrations of sufficient scale and number so as to demonstrate technical and economic feasibility;

(2) incorporate materials that increase engine efficiency; and

(3) cover advanced engine designs for electric and industrial power generation for a range of small-, mid-, and large-scale applications, including—

(A) mechanically recuperated gas turbines;

(B) intercooled gas turbines with steam injection or recuperation;

(C) gas turbines utilizing reformed fuels or hydrogen; and

(D) high efficiency, simple cycle gas turbines.

(b) Program goal

The goal of the program established under subsection (a) of this section shall be to develop heat engines that can achieve over 50 percent efficiency in the mid-term.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan, to be included in the plan required under section 13451(c) of this title, to guide the activities under this section. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including the Environmental Protection Agency and national laboratories, and professional and technical societies.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary to be derived from sums authorized under section 13451(e) of this title.

(Pub. L. 102–486, title XXI, § 2112, Oct. 24, 1992, 106 Stat. 3072.)

§ 13473. Civilian nuclear waste

(a) Study

The Secretary shall conduct a study of the potential for minimizing the volume and toxic lifetime of nuclear waste, including an analysis of the viability of existing technologies and an assessment of the extent of research and development required for new technologies.

(b) Program

Based on the results of the study required under subsection (a) of this section, the Secretary shall prepare and submit to Congress a 5-year program plan for carrying out a program of research and development on new technologies for minimizing the volume and toxic lifetime of, and thereby mitigating hazards associated with, nuclear waste.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section $4,700,000 for fiscal year 1993 and such sums as may be necessary for fiscal year 1994.

(Pub. L. 102–486, title XXI, § 2113, Oct. 24, 1992, 106 Stat. 3073.)

§ 13474. Fusion energy

(a) Program

The Secretary shall conduct a fusion energy 5-year program, in accordance with sections 13541 and 13542 of this title, that by the year 2010 will result in a technology demonstration which verifies the practicability of commercial electric power production.

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

(1) a broad based fusion energy program;

(2) United States participation in the Engineering Design Activity of the International Thermonuclear Experimental Reactor (ITER) program and in the related research and technology development efforts;

(3) the development of technology for fusion power and industrial participation in the development of such technology;

(4) the design and construction of a major new machine for fusion research and technology development consistent with paragraphs (2) and (3); and

(5) research and development for Inertial Confinement Fusion Energy and development of a Heavy Ion Inertial Confinement Fusion experiment.

(c) Management plan

(1) Within 180 days after October 24, 1992, the Secretary shall prepare a comprehensive management plan for the fusion energy program. The plan shall include specific program objectives, milestones and schedules for technology development, and cost estimates and program management resource requirements.

(2) The plan shall also include a description of—

(A) United States participation in the Engineering Design Activity of ITER, including industrial participation;

(B) potential United States participation in the construction and operation of an ITER facility; and

(C) the requirements needed to build and test an inertial fusion energy reactor for the purpose of power production.

(3) As part of the plan required under paragraph (1), the Secretary shall evaluate the status of international fusion programs and evaluate whether the Federal Government should initiate efforts to strengthen existing international cooperative agreements in fusion energy or enter into new cooperative agreements to accomplish the purposes of this section.

(4) The plan shall also evaluate the extent to which university or private sector participation is appropriate or necessary in order to carry out the purposes of this section.

(5) The President shall include in the budget submitted to the Congress each year under section 1105 of title 31 a report prepared by the Secretary describing the progress made in meeting the program objectives, milestones, and schedules established in the management plan. Each such report shall also describe the organization of the program, the personnel assigned and funds committed to the program, and expenditures made in carrying out the program objectives. The report shall be submitted with the plan required under section 13523 of this title.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section $339,710,000 for fiscal year 1993 and $380,000,000 for fiscal year 1994.

(Pub. L. 102–486, title XXI, § 2114, Oct. 24, 1992, 106 Stat. 3073; Pub. L. 104–66, title I, § 1052(i), Dec. 21, 1995, 109 Stat. 719.)

AMENDMENTS

1995—Subsec. (c)(5). Pub. L. 104–66 inserted first sentence and struck out former first sentence which read as follows: ''Within 1 year after October 24, 1992, and every 2 years thereafter, the Secretary shall issue a report describing the progress made in meeting the program objectives, milestones, and schedules established in the management plan.''

§ 13475. Fuel cells

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on efficient and environmentally benign power generation using fuel cells. The program may include activities on molten carbonate, solid oxide, including tubular, monolithic, and planar technologies, and advanced concepts.

(b) Program goal

The goal of the program established under subsection (a) of this section is the development of cost-effective, efficient, and environmentally benign fuel cell systems which will operate on fossil fuels in multiple end use sectors.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section $51,555,000 for fiscal year 1993 and $56,000,000 for fiscal year 1994.

(Pub. L. 102–486, title XXI, § 2115, Oct. 24, 1992, 106 Stat. 3074.)

§ 13476. Environmental restoration and waste management program

(a) Authorization of appropriations

There are authorized to be appropriated to the Secretary for fiscal year 1993 $70,000,000 for the Fast Flux Test Facility to maintain the operational status of the reactor, such sums to be derived from amounts appropriated to the Secretary for the environmental restoration and waste management program.

(b) Long-term missions

The Secretary shall aggressively pursue the development and implementation of long-term missions for the Fast Flux Test Facility. Within 6 months after October 24, 1992, the Secretary shall submit to the Congress a report on the progress made in carrying out this subsection.

(Pub. L. 102–486, title XXI, § 2116, Oct. 24, 1992, 106 Stat. 3075.)

§ 13477. High-temperature superconductivity program

(a) Program

The Secretary shall carry out a 5-year program, in accordance with sections 13541 and 13542 of this title, on high-temperature superconducting electric power equipment technologies. Elements of the program shall include, but are not limited to—

(1) activities that address the development of high-temperature superconducting materials that have increased electrical current capacity, which shall be the emphasis of the program for the near-term;

(2) the development of prototypes, where appropriate, of the major elements of a superconducting electric power system such as motors, generators, transmission lines, transformers, and magnetic energy storage systems;

(3) activities that will improve the efficiency of materials performance of higher temperatures and at all magnetic field orientations;

(4) development of prototypes based on high-temperature superconducting wire, that operate at the highest temperature possible, and refrigeration systems using cryogenics such as nitrogen;

(5) activities that will assist the private sector with designs for more efficient electric power generation and delivery systems which are cost competitive with conventional energy systems; and

(6) development of prototypes that have application in both the commercial and defense sectors.

The Secretary is also encouraged to expedite government, laboratory, industry, and university collaborative agreements under existing mechanisms at the Department of Energy in coordination with other Federal agencies.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section

$21,900,000 for fiscal year 1993 and such sums as may be necessary for subsequent fiscal years, to be derived from sums authorized under section 13471(c) of this title.

(Pub. L. 102–486, title XXI, § 2117, Oct. 24, 1992, 106 Stat. 3075.)

§ 13478. Electric and magnetic fields research and public information dissemination program

(a) Program

The Secretary shall, in accordance with this section (including the agenda developed under subsection (d)(1)(A) of this section) and within 2 months after October 24, 1992, establish a comprehensive program to—

(1) determine whether or not exposure to electric and magnetic fields produced by the generation, transmission, and use of electric energy affects human health;

(2) carry out research, development, and demonstration with respect to technologies to mitigate any adverse human health effects; and

(3) provide for dissemination of information described in subsection (b)(1) of this section to the public.

(b) Contents

The program shall provide for—

(1) collection, compilation, publication, and dissemination of scientifically valid information on—

(A) possible human health effects of electric and magnetic fields;

(B) the types and extent of human exposure to electric and magnetic fields in various occupational and residential settings;

(C) technologies to measure and characterize electric and magnetic fields; and

(D) methods to assess and manage exposure to electric and magnetic fields;

(2)(A) research on mechanisms by which electric and magnetic fields interact with biological systems; and

(B) epidemiological research on the possible human health effects of electric and magnetic fields; and

(3) research, development, and demonstration with respect to—

(A) technologies to improve the measurement and characterization of electric and magnetic fields; and

(B) techniques to assess and manage exposure to electric and magnetic fields.

(c) Role of Director

(1) Role of Director

The Secretary of Health and Human Services, acting through the Director, shall have sole responsibility under the program for research on possible human health effects of electric and magnetic fields. The Director may delegate this responsibility to the extent the Director determines appropriate.

(2) Agreement

Within 6 months after October 24, 1992, the Secretary shall enter into an agreement with the Secretary of Health and Human Services to carry out, through the Director, the information activities under subsection (b)(1)(A) of this section and the research under subsection (b)(2) of this section.

(3) Actions of Director

The actions of the Director in carrying out research and information responsibilities under this section shall not be subject to approval by the Secretary.

(4) Transfer of funds

The Secretary is authorized, subject to appropriations Acts, to transfer funds to the Director to carry out the Director's responsibilities under paragraph (2).

(5) Report

The Director shall report, by June 1, 1995, and by March 31, 1998, and as appropriate, to the Interagency Committee established under subsection (d) of this section and to Congress the findings and conclusions of the Director on the extent to which exposure to electric and magnetic fields produced by the generation, transmission, or use of electric energy affects human health.

(d) Interagency Committee

(1) The President shall, within 2 months after October 24, 1992, establish the Electric and Magnetic Fields Interagency Committee to—

(A) develop within 8 months after October 24, 1992, a comprehensive agenda for conducting research, development, and demonstration under the program, with particular emphasis on electric and magnetic fields of the 60 hertz frequency;

(B) develop recommendations, within 8 months after October 24, 1992, for guidelines for the coordination of activities of Federal agencies engaged in research on human health effects of electric and magnetic fields that ensure that such research advances the agenda under subparagraph (A) and is not unnecessarily duplicative of other research activities;

(C) develop recommendations, within 8 months after October 24, 1992, for mechanisms for communication of the results of the program to the public, including recommendations on the scope and nature of the information to be disseminated; and

(D) monitor, review and periodically evaluate the program.

(2)(A) The Interagency Committee shall be composed of 9 members with 1 member to be appointed from each of the following:

(i) The Department of Energy.

(ii) The National Institute of Environmental Health Sciences.

(iii) The Environmental Protection Agency.

(iv) The Department of Defense.

(v) The Occupational Safety and Health Administration.

(vi) The National Institute of Standards and Technology.

(vii) The Department of Transportation.

(viii) The Rural Electrification Administration.

(ix) The Federal Energy Regulatory Commission.

(B) The Interagency Committee shall elect a chairperson from among its members who shall

be responsible for ensuring that the duties of the Interagency Committee are carried out.

(C) Agencies that have members on the Interagency Committee shall provide appropriate staff to carry out the duties of the Interagency Committee.

(e) Advisory Committee

(1) Not later than 2 months after October 24, 1992, the Secretary of Health and Human Services and the Secretary shall establish the National Electric and Magnetic Fields Advisory Committee in accordance with the Federal Advisory Committee Act [5 U.S.C. App.] and this section.

(2) The Advisory Committee shall make recommendations to the Interagency Committee with respect to the duties of the Interagency Committee under subsection (d)(1) of this section and advise the Secretary and the Director with respect to the design and implementation of the program, including preparation of solicitations for proposals to conduct research under the program.

(3) The Advisory Committee shall be composed of 10 members, chosen from among experts in possible human health effects of electric and magnetic fields, experts in the measurement and characterization of electric and magnetic fields, experts in the assessment and management of electric and magnetic fields, State regulatory agencies, State health agencies, electric utilities, electric equipment manufacturers, labor unions and the public. Five members shall be chosen by the Secretary of Health and Human Services in consultation with the Director, and 5 members shall be chosen by the Secretary.

(4) The Advisory Committee shall elect a chairperson from among its members who shall be responsible for ensuring that the duties of the Advisory Committee are carried out.

(5) The Advisory Committee shall terminate not later than December 31, 1998.

(f) Financial assistance

(1) The Secretary and the Director may provide financial assistance and enter into contracts to conduct activities under the program.

(2) The Secretary shall solicit contributions from non-Federal sources to offset at least 50 percent of the total funding for all activities under the program. The Secretary shall adopt procedures, including a mechanism for collecting contributions, that ensures that no contributor of non-Federal funds may influence the program.

(3) The Secretary may not obligate funds under this section in any fiscal year unless funds received from non-Federal sources under paragraph (2) are available to offset at least 50 percent of the appropriations made under subsection (j) of this section for such fiscal year.

(4) SOLICITATION AND SELECTION OF PROPOSALS.—

(A) IN GENERAL.—Within 15 months after October 24, 1992, and as often thereafter as appropriate, the Secretary and the Director shall, in consultation with the Interagency Committee, solicit and select proposals to conduct activities under the program.

(B) CONSULTATION WITH ADVISORY COMMITTEE.—In preparing solicitations for proposals to conduct activities, the Secretary and the Director shall consult with the Advisory Committee.

(C) PEER REVIEW PANELS.—Before a proposal to conduct activities under the program may be selected by the Secretary or the Director, such proposal must be submitted to, and evaluated by, at least one scientific and technical peer review panel.

(g) Reports

(1) Report upon completion of activity

Any person who conducts activities under the program shall, upon completion of the activity, submit to the National Academy of Sciences, the Interagency Committee, and the Advisory Committee a report summarizing the activities and results thereof.

(2) Report to Interagency Committee and Advisory Committee

The Secretary shall enter into appropriate arrangements with the National Academy of Sciences under which the Academy shall periodically submit to the Interagency Committee and the Advisory Committee a report that evaluates the research activities under the program. The report shall include recommendations to promote the effective transfer of information derived from such research projects, including the transfer to representatives of State regulatory agencies, State health agencies, electric utilities, electrical equipment manufacturers, labor unions, and the public. The Secretary shall be responsible for expenses incurred by the Academy in connection with the preparation of such reports.

(3) Report to Congress

The Interagency Committee, in consultation with the Advisory Committee, shall submit to the Secretary and the Congress—

(A) not later than December 31, 1995, a report summarizing the progress of the research program established under this subsection; and

(B) not later than September 30, 1998, a final report stating the Committee's findings and conclusions on the effects, if any, of electric and magnetic fields on human health and remedial actions, if any, that may be needed to minimize any such health effects.

(h) Conflicts of interest

The Secretary and the Director shall include conflict of interest provisions in any grant or other funding provided, or contract entered into, under the research program established under this section including provisions—

(1) that require any person conducting a project under such program to disclose any other source of funding received by the person to conduct other related projects, including funding received from consulting on issues relating to electric and magnetic fields; and

(2) that prohibit a person who has been awarded a grant or contract under this program from receiving compensation beyond expenses for testifying in a court of law as an expert on the specific research the person is conducting under such grant or contract.

(i) Definitions

For purposes of this section:

(1) The term ''Advisory Committee'' means the National Electric and Magnetic Fields Advisory Committee established under subsection (e) of this section.

(2) The term ''Interagency Committee'' means the Electric and Magnetic Fields Interagency Committee established under subsection (d) of this section.

(3) The term ''Director'' means the Director of the National Institute of Environmental Health Sciences.

(4) The term ''program'' means the electric and magnetic fields research and public information dissemination program established in subsection (a) of this section.

(5) The term ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other commonwealth, territory, or possession of the United States.

(j) Authorization of appropriations

(1) General authorization

There are authorized to be appropriated to the Secretary a total of $46,000,000 for the period encompassing fiscal years 1993 through 1998 to carry out the provisions of this section, except that not more than $1,000,000 may be expended in any such fiscal year for activities under subsection (b)(1) of this section. Any amounts appropriated pursuant to this paragraph shall remain available until expended.

(2) Restrictions on use of funds

(A) Administrative expenses of certain funding recipients

Of the total funds provided to any institution under this section, the amount of such funds that may be used for the administrative indirect costs of the institution may not exceed 26 percent of the modified direct costs of the project.

(B) Administrative expenses of the Secretary and the Director

Of the total amount of funds made available under this section for any fiscal year, not more than 10 percent of such funds may be used for authorized administrative expenses of the Secretary and the Director in carrying out this section.

(C) Construction and rehabilitation of facilities and equipment

Funds made available under this section may not be used for the construction or rehabilitation of facilities or fixed equipment.

(k) Sense of Congress

It is the sense of the Congress that remedial action taken by the Government on electric and magnetic fields, if and as necessary, should be based on, and consistent with, scientifically valid research such as the results and findings of the research authorized by this Act.

(*l*) Sunset provision

All authority under this section shall expire on December 31, 1998.

(Pub. L. 102–486, title XXI, § 2118, Oct. 24, 1992, 106 Stat. 3075; Pub. L. 105–23, § 1, July 3, 1997, 111 Stat. 237.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

This Act, referred to in subsec. (k), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

AMENDMENTS

1997—Subsecs. (c)(5), (e)(5), (g)(3)(B). Pub. L. 105–23, § 1(1), substituted ''1998'' for ''1997''.

Subsec. (j)(1). Pub. L. 105–23 substituted ''$46,000,000'' for ''$65,000,000'' and ''1998'' for ''1997''.

Subsec. (*l*). Pub. L. 105–23, § 1(1), substituted ''1998'' for ''1997''.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 13479. Spark M. Matsunaga Renewable Energy and Ocean Technology Center

(a) Findings

The Congress finds that—

(1) the late Spark M. Matsunaga, United States Senator from Hawaii, was a longstanding champion of research and development of renewable energy, particularly wind and ocean energy, photovoltaics, and hydrogen fuels;

(2) it was Senator Matsunaga's vision that renewable energy could provide a sustained source of non-polluting energy and that such forms of alternative energy might ultimately be employed in the production of liquid hydrogen as a transportation fuel and energy storage medium available as an energy export;

(3) Senator Matsunaga also believed that research on other aspects of renewable energy and ocean resources, such as advanced materials, could be crucial to full development of energy storage and conversion systems; and

(4) Keahole Point, Hawaii is particularly well-suited as a site to conduct renewable energy and associated marine research.

(b) Purpose

It is the purpose of this section to establish the facilities and equipment located at Keahole Point, Hawaii as a cooperative research and development facility, to be known as the Spark M. Matsunaga Renewable Energy and Ocean Technology Center.

(c) Establishment

The facilities and equipment located at Keahole Point, Hawaii are established as the Spark M. Matsunaga Renewable Energy and Ocean Technology Center (in this section referred to as the ''Center'').

(d) Administration

(1) Not later than 180 days after October 24, 1992, the Secretary may authorize a cooperative agreement with a qualified research institution to administer the Center.

(2) For the purpose of paragraph (1), a qualified research institution is a research institution located in the State of Hawaii that has demonstrated competence and will be the lead organization in the State in renewable energy and ocean technologies.

(e) Activities

The Center may carry out research, development, educational, and technology transfer activities on—

(1) renewable energy;

(2) energy storage, including the production of hydrogen from renewable energy;

(3) materials applications related to energy and marine environments;

(4) other environmental and ocean research concepts, including sea ranching and global climate change; and

(5) such other matters as the Secretary may direct.

(f) Matching funds

To be eligible for Federal funds under this section, the Center must provide funding in cash or in kind from non-Federal sources for each amount provided by the Secretary.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary, to be derived from sums authorized under section 13471(c) of this title.

(Pub. L. 102–486, title XXI, § 2119, Oct. 24, 1992, 106 Stat. 3080.)

PART C—ADVANCED NUCLEAR REACTORS

§ 13491. Purposes and definitions

(a) Purposes

The purposes of this part are—

(1) to require the Secretary to carry out civilian nuclear programs in a way that will lead toward the commercial availability of advanced nuclear reactor technologies; and

(2) to authorize such activities to further the timely availability of advanced nuclear reactor technologies, including technologies that utilize standardized designs or exhibit passive safety features.

(b) Definitions

For purposes of this part—

(1) the term ''advanced nuclear reactor technologies'' means—

(A) advanced light water reactors that may be commercially available in the near-term, including but not limited to mid-sized reactors with passive safety features for the generation of commercial electric power from nuclear fission; and

(B) other advanced nuclear reactor technologies that may require prototype demonstration prior to commercial availability in the mid- or long-term, including but not limited to high-temperature, gas-cooled reactors and liquid metal reactors, for the generation of commercial electric power from nuclear fission;

(2) the term ''Commission'' means the Nuclear Regulatory Commission;

(3) the term ''standardized design'' means a design for a nuclear power plant that may be utilized for a multiple number of units or a multiple number of sites; and

(4) the term ''certification'' means approval by the Commission of a standardized design.

(Pub. L. 102–486, title XXI, § 2121, Oct. 24, 1992, 106 Stat. 3081.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'' meaning subtitle C of title XXI of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 3081, which enacted this part and amended sections 12003 and 12004 of this title.

§ 13492. Program, goals, and plan

(a) Program direction

The Secretary shall conduct a program to encourage the deployment of advanced nuclear reactor technologies that to the maximum extent practicable—

(1) are cost effective in comparison to alternative sources of commercial electric power of comparable availability and reliability, taking into consideration life cycle environmental costs;

(2) facilitate the design, licensing, construction, and operation of a nuclear powerplant using a standardized design;

(3) exhibit enhanced safety features; and

(4) incorporate features that advance the objectives of the Nuclear Non-Proliferation Act of 1978 [22 U.S.C. 3201 et seq.].

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

(1) for the near-term—

(A) to facilitate the completion, by September 30, 1996, for certification by the Commission, of standardized advanced light water reactor technology designs that the Secretary determines have the characteristics described in subsection (a)(1) through (4) of this section;

(B) to facilitate the completion of submissions, by September 30, 1996, for preliminary design approvals by the Commission of standardized designs for the modular high-temperature gas-cooled reactor technology and the liquid metal reactor technology; and

(C) to evaluate by September 30, 1996, actinide burn technology to determine if it can reduce the volume of long-lived fission by-products;

(2) for the mid-term—

(A) to facilitate increased efficiency of enhanced safety, advanced light water reactors to produce electric power at the lowest cost to the customer;

(B) to develop advanced reactor concepts that are passively safe and environmentally acceptable; and

(C) to complete necessary research and development on high-temperature gas-cooled reactor technology and liquid metal reactor technology to support the selection, by September 30, 1998, of one or both of those technologies as appropriate for prototype demonstration; and

(3) for the long-term, to complete research and development and demonstration to support the design of advanced reactor technologies capable of providing electric power to a utility grid as soon as practicable but no later than the year 2010.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan to guide the activities under this section. The program plan shall include schedule milestones, Federal funding requirements, and non-Federal cost sharing requirements. In preparing the program plan, the Secretary shall take into consideration—

(1) the need for, and the potential for future adoption by electric utilities or other entities of, advanced nuclear reactor technologies that are available, under development, or have the potential for being developed, for the generation of energy from nuclear fission;

(2) how the Federal Government, acting through the Secretary, can be effective in ensuring the availability of such technologies when they are needed;

(3) how the Federal Government can most effectively cooperate with the private sector in the accomplishment of the goals set forth in subsection (b) of this section; and

(4) potential alternative funding sources for carrying out this section.

In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies. The Secretary shall update the program plan annually and submit such update to Congress. Each such update shall describe any activities that are behind schedule, any funding shortfalls, and any other circumstances that might affect the ability of the Secretary to meet the goals set forth in subsection (b) of this section.

(Pub. L. 102–486, title XXI, § 2122, Oct. 24, 1992, 106 Stat. 3082.)

REFERENCES IN TEXT

The Nuclear Non-Proliferation Act of 1978, referred to in subsec. (a)(4), is Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, as amended, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

§ 13493. Commercialization of advanced light water reactor technology

(a) Certification of designs

In order to achieve the goal of certification of completed standardized designs by the Commission by 1996 as set forth in section 13492(b) of this title, the Secretary shall conduct a 5-year program of technical and financial assistance to encourage the development and submission for certification of advanced light water reactor designs which, in the judgment of the Secretary, can be certified by the Commission by no later than the end of fiscal year 1996.

(b) First-of-a-kind engineering

(1) Establishment of program

The Secretary shall conduct a program of Federal financial and technical assistance for the first-of-a-kind engineering design of standardized commercial nuclear powerplants which are included, as of October 24, 1992, in the Department of Energy's program for certification of advanced light water reactor designs.

(2) Selection criteria

In order to be eligible for assistance under this subsection, an entity shall certify to the satisfaction of the Secretary that—

(A) the entity, or its members, are bona fide entities engaged in the design, engineering, manufacture, construction, or operation of nuclear reactors;

(B) the entity, or its members, have the financial resources necessary for, and fully intend to pursue the design, engineering, manufacture, construction, and operation in the United States of nuclear power plants[1] through completion of construction and into operation;

(C) the design proposed is scheduled for certification by the Commission under the Department of Energy's program for certification of light water reactor designs; and

(D) at least 50 percent of the funding for the project shall be obtained from non-Federal sources, and a substantial portion of that non-Federal funding shall be obtained from utilities or entities whose primary purpose is the production of electrical power for public consumption.

(3) Program documents

The Secretary shall prepare and submit to the Congress a program document for each design selected under this subsection, specifying goals and objectives, major milestones for achieving those goals and objectives, and the work products to be provided to the Secretary or made available for inspection.

(4) Funding limitations

(A) Before entering into an agreement with an entity under this subsection, the Secretary shall establish a cost ceiling for the contribution of the Federal Government for the project, and shall report such cost ceiling to the Congress.

(B) No entity shall receive assistance under this subsection for a period greater than 4 years.

(C) The aggregate funding provided by the Secretary for projects under this subsection shall not exceed $100,000,000 for the period encompassing fiscal years 1993 through 1997.

(Pub. L. 102–486, title XXI, § 2123, Oct. 24, 1992, 106 Stat. 3083.)

CODIFICATION

Subsec. (b)(5) of this section, which required the Secretary to submit annually to Congress a status report on each project receiving assistance under subsec. (b), terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note

[1] So in original. Probably should be "powerplants".

under section 1113 of Title 31, Money and Finance. See, also, the last item on page 85 of House Document No. 103–7.

§ 13494. Prototype demonstration of advanced nuclear reactor technology

(a) Solicitation of proposals

Within 3 years after October 24, 1992, the Secretary shall solicit proposals for carrying out the preliminary engineering design of not more than 2 prototype advanced nuclear reactor technologies developed by the Department of Energy, other than advanced light water reactor technologies, necessary to support a decision on whether to recommend construction of a prototype demonstration reactor with the characteristics described in section 13493(a) of this title. Proposals submitted under this subsection shall be for modular design concepts of sufficient size to address requirements related to the certification of a standardized design.

(b) Recommendation to Congress

(1) Not later than September 30, 1998, the Secretary shall submit to Congress recommendations on whether to build one or more prototype demonstration reactors under this section. Such recommendations shall—

(A) specify a preferred technology or technologies;

(B) include detailed information on milestones for construction and operation;

(C) include an estimate of the funding requirements; and

(D) specify the extent and type of non-Federal financial support anticipated.

In developing the recommendations under this paragraph, the Secretary shall provide for public notice and an opportunity for comment, and shall solicit the views of the Commission and other parties with technical expertise the Secretary considers useful in the development of such recommendations.

(2) The prototype demonstration program under this section shall be carried out to the maximum extent practicable with private sector funding. At least 50 percent of the funding for such program shall be non-Federal funding. The extent of non-Federal cost sharing proposed for any demonstration project shall be a criterion for the selection of the project.

(c) Selection of technology

Any technology selected by the Secretary for recommendation for prototype demonstration under this section shall to the maximum extent possible exhibit the characteristics set forth in section 13493(a) of this title.

(Pub. L. 102–486, title XXI, § 2124, Oct. 24, 1992, 106 Stat. 3084.)

§ 13495. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part $212,804,000 for fiscal year 1993 and such sums as may be necessary for fiscal year 1994. Amounts authorized or otherwise made available for program direction, space reactor power systems, advanced radioisotope power systems, and the space exploration initiative under nuclear energy research and development shall be in addition to the amounts authorized in the preceding sentence.

(Pub. L. 102–486, title XXI, § 2126, Oct. 24, 1992, 106 Stat. 3085.)

SUBCHAPTER X—ENERGY AND ECONOMIC GROWTH

§ 13501. National Advanced Materials Program

(a) Program direction

The Secretary shall establish a 5-year National Advanced Materials Program, in accordance with sections 13541 and 13542 of this title. Such program shall foster the commercialization of techniques for processing, synthesizing, fabricating, and manufacturing advanced materials and associated components. At a minimum, the Program shall expedite the private sector deployment of advanced materials for use in high performance energy efficient and renewable energy technologies in the industrial, transportation, and buildings sectors that can foster economic growth and competitiveness. The Program shall include field demonstrations of sufficient scale and number to prove technical and economic feasibility.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Department of Energy national laboratories, and professional and technical societies, shall prepare and submit to the Congress a 5-year program plan to guide activities under this section. The Secretary shall biennially update and resubmit the program plan to Congress.

(c) Proposals

(1) Solicitation

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities consistent with the 5-year program plan. Such proposals may be submitted by one or more parties.

(2) Contents of proposals

Proposals submitted under this subsection shall include—

(A) an explanation of how the proposal will expedite the commercialization of advanced materials in energy efficiency or renewable energy in the near-term to mid-term;

(B) evidence of consideration of whether the unique capabilities of Department of Energy national laboratories warrants collaboration with such laboratories, and the extent of such collaboration proposed;

(C) a description of the extent to which the proposal includes collaboration with relevant industry or other groups or organizations; and

(D) evidence of the ability of the proposers to undertake and complete the proposed project.

(d) General Services Administration demonstration program

The Secretary, in consultation with the Administrator of General Services, shall establish a program to expedite the use, in goods and

services acquired by the General Services Administration, of advanced materials technologies. Such program shall include a demonstration of the use of advanced materials technologies as may be necessary to establish technical and economic feasibility. The Secretary shall transfer funds to the General Services Administration for carrying out this subsection.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary, to be derived for energy efficient applications from section 13451(e) of this title and for renewable applications from section 13471(c) of this title, including Department of Energy national laboratory participation in proposals submitted under subsection (c) of this section, and including transferring funds to the General Services Administration.

(Pub. L. 102–486, title XXII, § 2201, Oct. 24, 1992, 106 Stat. 3085.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the biennial resubmittal of the program plan to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 1st item on page 86 of House Document No. 103–7.

§ 13502. National Advanced Manufacturing Technologies Program

(a) Program direction

The Secretary shall establish a 5-year National Advanced Manufacturing Technologies Program, in accordance with sections 13541 and 13542 of this title. Such program shall foster the commercialization of advanced manufacturing technologies to improve energy efficiency and productivity in manufacturing. At a minimum, the Program shall expedite the private sector deployment of advanced manufacturing technologies to improve productivity, quality, and control in manufacturing processes that can foster economic growth, energy efficiency, and competitiveness. The program[1] shall include field demonstrations of sufficient scale and number to prove technical and economic feasibility.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Department of Energy national laboratories, and professional and technical societies, shall prepare and submit to the Congress a 5-year program plan to guide activities under this section. The Secretary shall biennially update and resubmit the program plan to Congress.

(c) Proposals

(1) Solicitation

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities consistent with the 5-year program plan. Such proposals may be submitted by one or more parties.

(2) Contents of proposals

Proposals submitted under this subsection shall include—

(A) an explanation of how the proposal will expedite the commercialization of advanced manufacturing technologies to improve energy efficiency in the building, industry, and transportation sectors;

(B) evidence of consideration of whether the unique capabilities of Department of Energy national laboratories warrants collaboration with such laboratories, and the extent of such collaboration proposed;

(C) a description of the extent to which the proposal includes collaboration with relevant industry or other groups or organizations; and

(D) evidence of the ability of the proposers to undertake and complete the proposed project.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary, to be derived from sums authorized under section 13451(e) of this title, including Department of Energy national laboratory participation in proposals submitted under subsection (c) of this section.

(Pub. L. 102–486, title XXII, § 2202, Oct. 24, 1992, 106 Stat. 3086.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the biennial resubmittal of the program plan to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 2nd item on page 86 of House Document No. 103–7.

§ 13503. Supporting research and technical analysis

(a) Basic energy sciences

(1) Program direction

The Secretary shall continue to support a vigorous program of basic energy sciences to provide basic research support for the development of energy technologies. Such program shall focus on the efficient production and use of energy, and the expansion of our knowledge of materials, chemistry, geology, and other related areas of advancing technology development.

(2) User facilities

(A) As part of the program referred to in paragraph (1), the Secretary shall carry out planning, construction, and operation of user facilities to provide special scientific and research capabilities, including technical expertise and support as appropriate, to serve the research needs of our Nation's universities, industry, private laboratories, Federal laboratories, and others. Research institutions or individuals from other nations shall be accommodated at such user facilities in cases where reciprocal accommodations are provided to United States research institutions and individuals or where the Secretary considers such accommodation to be in the national interest.

(B) The construction of the Advanced Photon Source at the Argonne National Laboratory is hereby authorized.

[1] So in original. Probably should be capitalized.

(C) The Secretary shall not change the user fee practice in effect as of October 1, 1991, with respect to user facilities unless the Secretary notifies Congress 90 days before the effective date of any change.

(D) The Secretary shall expedite the design for construction of the Advanced Neutron Source at the Oak Ridge National Laboratory, in order to provide critical research capabilities in support of our national research initiatives for advanced materials and biotechnology, as well as a broad range of research. Such action shall be consistent with the Basic Energy Sciences Advisory Committee's Technical Evaluation of accelerator and reactor neutron source technologies. Within 90 days after October 24, 1992, the Secretary shall submit to the Congress a plan for such design, including a schedule for construction.

(3) Cost sharing

The Secretary shall not require cost sharing for research and development pursuant to this subsection, except—

(A) as otherwise provided for in cooperative research and development agreements or other agreements entered into under existing law;

(B) for fees for user facilities, as determined by the Secretary; or

(C) in the case of specific projects, where the Secretary determines that the benefits of such research and development accrue to a specific industry or group of industries, in which case cost sharing under section 13542 of this title shall apply.

(b) University and science education

(1) The Secretary shall support programs for improvements and upgrading of university research reactors and associated instrumentation and equipment. Within 1 year after October 24, 1992, the Secretary shall submit to the Congress a report on the condition and status of university research reactors, which includes a 5-year plan for upgrading and improving such facilities, instrumentation capabilities, and related equipment.

(2) The Secretary shall develop a method to evaluate the effectiveness of science and mathematics education programs provided by the Department of Energy and its laboratories, including specific evaluation criteria.

(3)(A)(i) The Director of the Office of Science shall operate an Experimental Program to Stimulate Competitive Research (in this paragraph referred to as ''EPSCoR'') as part of the Department of Energy's University and Science Education Programs.

(ii) The objectives of EPSCoR shall be—

(I) to enhance the competitiveness of the peer-review process within academic institutions in eligible States; and

(II) to increase the probability of long-term growth of competitive funding to investigators at institutions from eligible States.

(iii) In order to carry out the objectives stated in clause (ii), EPSCoR shall provide for activities which may include (but not be limited to) competitive research awards and graduate traineeships.

(iv) EPSCoR shall assist those States that—

(I) historically have received relatively little Federal research and development funding; and

(II) have demonstrated a commitment to develop their research bases and improve science and engineering research and education programs at their universities and colleges.

(B) For purposes of this paragraph, the term ''eligible States'' means States that received a Department-EPSCoR planning or traineeship grant in fiscal year 1991 or fiscal year 1992.

(C) No more than $5,000,000 of the funds appropriated to EPSCoR in any fiscal year, through fiscal year 1997, are authorized to be appropriated for graduate traineeships.

(c) Technology transfer

The Secretary shall support technology transfer activities conducted by the National Laboratories. Within 1 year after October 24, 1992, the Secretary shall submit to the Congress a report on the adequacy of funding for such activities, along with a proposal recommending ways to reduce the length of time required to consummate cooperative research and development agreements.

(d) Facilities support for multiprogram energy laboratories

(1) Facility policy

The Secretary shall develop and implement a least cost strategy for correcting facility problems, closing unneeded facilities, making facility modifications, and building new facilities at multiprogram energy laboratories.

(2) Facility plan

Within 1 year after October 24, 1992, the Secretary shall prepare and submit to the Congress a comprehensive plan for conducting future facility maintenance, making repairs, modifications, and new additions, and constructing new facilities at multiprogram energy laboratories. Such plan shall provide for facilities work in accordance with the following priorities, listed in descending order of priority:

(A) Providing for the safety and health of employees, visitors, and the general public with regard to correcting existing structural, mechanical, electrical, and environmental deficiencies.

(B) Providing for the repair and rehabilitation of existing facilities to keep them in use and prevent deterioration.

(C) Providing engineering design and construction services for those facilities which require modification or additions in order to meet the needs of new or expanded programs.

Such plan shall include plans for new facilities and facility modifications which will be required to meet the Department of Energy's changing missions of the twenty-first century, including schedules and estimates for implementation, and including a section outlining long-term funding requirements consistent with anticipated budgets and annual authorization of appropriations. Such plan shall address the coordination of modernization and

consolidation of facilities in order to meet changing mission requirements, and shall provide for annual reports to Congress on accomplishments, conformance to schedules, commitments, and expenditures.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for Supporting Research and Technical Analysis, including Basic Energy Sciences, Energy Research Analysis, University and Science Education, Technology Transfer, Advisory and Oversight Program Direction, and Facilities Support for Multiprogram Energy Laboratories, $966,804,000 for fiscal year 1993 and such sums as may be necessary for fiscal year 1994.

(Pub. L. 102–486, title XXII, § 2203, Oct. 24, 1992, 106 Stat. 3087; Pub. L. 105–245, title III, § 309(b)(2)(F), Oct. 7, 1998, 112 Stat. 1853.)

AMENDMENTS

1998—Subsec. (b)(3)(A)(i). Pub. L. 105–245 substituted ''Office of Science'' for ''Office of Energy Research''.

§ 13504. Math and science education program

(a) Program

The Secretary shall enter into contracts with existing qualified entities to conduct science and mathematics education programs that supplement the Special Programs for Students from Disadvantaged Backgrounds carried out by the Secretary of Education under sections 1070d through 1070d–1d of title 20.[1]

(b) Purpose

(1) The purpose of the programs shall be to provide support to Federal, State, and private programs designed to promote the participation of low-income and first generation college students as defined in section 1070d of title 20[1] in post-secondary science and mathematics education.

(2) Support activities may include—

(A) the development of educational materials;

(B) the training of teachers and counselors;

(C) the establishment of student internships;

(D) the development of seminars on mathematics and science;

(E) tutoring in mathematics and science;

(F) academic counseling;

(G) the development of opportunities for research; and

(H) such other activities that may promote the participation of low-income and first generation college students in post-secondary science and mathematics education.

(c) Support

(1) In carrying out the purpose of this section, the entities may provide support under subsection (b)(2) of this section to—

(A) low-income and first generation college students; and

(B) institutions of higher education, public and private agencies and organizations, and secondary and middle schools that principally benefit low-income students.

(2) The qualified entities shall, to the extent practicable, coordinate support activities under this section with the Secretary of Education and the Secretary.

(d) Cooperation with qualified entities

The Secretary shall cooperate with qualified entities and, to the extent practicable, make available to the entities such personnel, facilities, and other resources of the Department of Energy as may be necessary to carry out the duties of the entities.

(e) Report

Not later than October 1 of each year, the entities shall report to the Secretary, the Secretary of Education, and the Congress on—

(1) progress made to promote the participation of low-income and first generation college students in post-secondary science and mathematics education by—

(A) the qualified entities;

(B) other mathematics and science education programs of the Department of Energy; and

(C) the Special Programs for Students from Disadvantaged Backgrounds of the Department of Education; and

(2) recommendations for such additional actions as may be needed to promote the participation of low-income students in post-secondary science and mathematics education.

(f) Effect on existing programs

The programs in this section shall supplement and be developed in cooperation with the current mathematics and science education programs of the Department of Energy and the Department of Education but shall not supplant them.

(g) "Qualified entity" defined

For purposes of this section, the term ''qualified entity'' means a nonprofit corporation, association, or institution that has demonstrated special knowledge of, and experience with, the education of low-income and first generation college students and whose primary mission is the operation of national programs that focus on low-income students and provide training and other services to educators.

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary, to be derived from section 13503(e) of this title and the Environmental Restoration and Waste Management program, to carry out the purposes of this section.

(Pub. L. 102–486, title XXII, § 2204, Oct. 24, 1992, 106 Stat. 3089.)

REFERENCES IN TEXT

Sections 1070d through 1070d–1d of title 20, referred to in subsec. (a), and section 1070d of title 20, referred to in subsec. (b)(1), were repealed by Pub. L. 102–325, title IV, § 402(a)(1), July 23, 1992, 106 Stat. 482.

§ 13505. Integration of research and development

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Department of Energy national lab-

[1] See References in Text note below.

oratories, and professional and technical societies, shall prepare and submit to Congress a 5-year program plan for improving the integration of basic energy research programs with other energy programs within the Department of Energy. Such program plan shall include—

(1) an evaluation of current procedures and mechanisms used to achieve such integration;

(2) an assessment of the role that the Department of Energy national laboratories play in such integration;

(3) an identification and evaluation of models that could enhance such integration;

(4) an identification and evaluation of new programs, mechanisms, and related policy options that could improve the integrating process, including—

(A) set aside funding for matching or leveraging basic and applied programs;

(B) more formal linkages; and

(C) program coordination;

(5) recommendations for expanded research and development and new technology areas; and

(6) budget estimates for activities under this section.

(Pub. L. 102–486, title XXII, § 2205, Oct. 24, 1992, 106 Stat. 3091.)

§ 13506. Definitions

For purposes of this subchapter—

(1) the term ''advanced manufacturing technology'' means processes, equipment, techniques, practices, and capabilities that are applied for the purpose of—

(A) improving the productivity, quality, or energy efficiency of the design, development, testing, or manufacture of a product; or

(B) expanding the technical capability to design, develop, test, or manufacture a product that is fundamentally different in character from existing products and that will result in improved energy efficiency;

(2) the term ''advanced materials'' means materials that are processed, synthesized, fabricated, and manufactured to develop high performance properties that exceed the corresponding properties of conventional materials for structural, electronic, magnetic, or photonic applications, or for joining, welding, bonding, or packaging components into complex assemblies, including—

(A) advanced monolithic materials such as metals, ceramics, and polymers;

(B) advanced composite materials such as metal matrix (including intermetallics), polymer matrix, ceramic matrix, continuous fiber ceramic composite, and carbon matrix composites; and

(C) advanced electronic, magnetic, and photonic materials, including superconducting, semiconductor, electrooptic, magnetooptic, thin-film, and special purpose coating materials used in technologies for energy efficiency, renewable energy, or electric power applications; and

(3) the term ''United States'' means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and any other territory or possession of the United States.

(Pub. L. 102–486, title XXII, § 2206, Oct. 24, 1992, 106 Stat. 3091.)

SUBCHAPTER XI—POLICY AND ADMINISTRATIVE PROVISIONS

§ 13521. Policy on major construction projects

(a) Report and management plan

The Secretary shall submit to the Congress a report and management plan for any major construction project involving $100,000,000 or more, prior to the expenditure of those funds.

(b) Congressional review

Expenditure of funds for a project described in subsection (a) of this section may be made after a period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days prior to a day certain) has passed after receipt of the report and management plan by Congress.

(Pub. L. 102–486, title XXIII, § 2301, Oct. 24, 1992, 106 Stat. 3092.)

§ 13522. Energy Research, Development, Demonstration, and Commercial Application Advisory Board

(a) Establishment

The Secretary shall establish an Energy Research, Development, Demonstration, and Commercial Application Advisory Board (hereafter in this section referred to as the ''Advisory Board'').

(b) Responsibilities

The Advisory Board shall provide impartial technical advice to the Secretary to assist in the development of energy research, development, demonstration, and commercial application plans and reports under sections 5905 and 5914[1] of this title, under section 7321 of this title, and as otherwise provided in subchapters VIII through XI of this chapter. The Advisory Board shall also periodically review such plans and reports and their implementation in relation to the goals stated in section 13401 of this title, and report the results of such review to the Secretary and the Congress. Such report shall be included as part of the report required under section 5914[1] of this title.

(c) Use of existing advisory board

The Secretary may use an existing advisory board to carry out the responsibilities described in subsection (b) of this section.

(Pub. L. 102–486, title XXIII, § 2302, Oct. 24, 1992, 106 Stat. 3092.)

REFERENCES IN TEXT

Subchapters VIII through XI of this chapter, referred to in subsec. (b), was in the original ''titles XX through XXIII of this Act'', meaning titles XX through XXIII of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 3057–3092, which

[1] See References in Text note below.

enacted subchapters VIII through XI of this chapter and amended sections 5103, 5107, 5108, 5110, 5307, 5905, 12003, 12004, and 12006 of this title.

Section 5914 of this title, referred to in subsec. (b), was omitted from the Code.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 13523. Management plan

(a) Plan preparation

The Secretary, in consultation with the Advisory Board established under section 13522 of this title, shall prepare a management plan for the conduct of research, development, demonstration, and commercial application of energy technologies that is consistent with the goals stated in section 13401 of this title.

(b) Contents of plan

The management plan under subsection (a) of this section shall provide for—

(1) investigation of promising energy and energy efficiency resource technologies that have been identified as potentially significant future contributors to national energy security;

(2) development of energy and energy efficiency resource technologies that have the potential to reduce energy supply vulnerability, and to minimize adverse impacts on the environment, the global climate, and the economy; and

(3) creation of opportunities for export of energy and energy efficiency resource technologies from the United States that can enhance the Nation's competitiveness.

(c) Energy technology inventory and status report

As part of the management plan, the Secretary, with the advice of the Advisory Board established under section 13522 of this title, shall develop an inventory and status report of technologies to enhance energy supply and to improve the efficiency of energy end uses. The inventory and status report shall include fossil, renewable, nuclear, and energy conservation technologies which have not yet achieved the status of fully reliable and cost-competitive commercial availability, but which the Secretary projects may become available with additional research, development, and demonstration. The inventory and status report shall provide, for each technology—

(1) an assessment of its—

(A) degree of technological maturity; and

(B) principal research, development, and demonstration issues, including—

(i) the barriers posed by capital, operating, and maintenance costs;

(ii) technical performance; and

(iii) potential environmental impacts;

(2) the projected time frame for commercial availability, specifying at a minimum whether the technology will be commercially available in the near-term, mid-term, or long-term, whether there are too many uncertainties to project availability, or whether it is unlikely that the technology will ever be commercial; and

(3) a projection of the future cost-competitiveness of the technology in comparison with alternative technologies to provide the same energy service.

(d) Public comment

The Secretary shall publish the proposed management plan for a written public comment period of at least 90 days. The Secretary shall consider such comments and include a summary thereof in the management plan.

(e) Plan submission

Within one year after October 24, 1992, the Secretary shall submit the first management plan under this section to Congress. Thereafter, the Secretary shall submit a revised management plan biennially, at the time of submittal of the President's annual budget submission to the Congress.

(Pub. L. 102–486, title XXIII, § 2304, Oct. 24, 1992, 106 Stat. 3093.)

§ 13524. Costs related to decommissioning and storage and disposal of nuclear waste

(a) Award of contracts

(1) Prime contractors

In awarding contracts to perform nuclear hot cell services, the Secretary, in evaluating bids for such contracts, shall exclude from consideration costs related to the decommissioning of nuclear facilities or the storage and disposal of nuclear waste, if—

(A) one or more of the parties bidding to perform such services is a United States company that is subject to such costs; and

(B) one or more of the parties bidding to perform such services is a foreign company that is not subject to comparable costs.

(2) Subcontractors

Any person awarded a contract subject to the restrictions described in paragraph (1) who subcontracts with a person to perform the services described in such paragraph shall be subject to the same restrictions in evaluating bids among potential subcontractors, as the Secretary was subject to in evaluating bids among prime contractors.

(b) Issuance of regulations

The Secretary shall issue regulations not later than 90 days after October 24, 1992, to carry out the requirements of subsection (a) of this section.

(c) Definitions

As used in this section—

(1) the term ''costs related to decommissioning of nuclear facilities'' means any cost associated with the compliance with regulatory requirements governing the decommissioning of nuclear facilities licensed by the Nuclear Regulatory Commission;

(2) the term ''costs related to storage and disposal of nuclear waste'' means any costs, whether required by regulation or incurred as a matter of prudent business practice, associated with the storage or disposal of nuclear waste;

(3) the term ''nuclear hot cell services'' means services related to the examination of, or performance of various operations on, nuclear fuel rods, control assemblies, or other components that are emitting large quantities of ionizing radiation; and

(4) the term ''nuclear waste'' means any radioactive waste material subject to regulation by the Nuclear Regulatory Commission or the Department of Energy.

(Pub. L. 102–486, title XXIII, § 2305, Oct. 24, 1992, 106 Stat. 3094.)

§ 13525. Limits on participation by companies

A company shall be eligible to receive financial assistance under subchapters VIII through XI of this chapter only if—

(1) the Secretary finds that the company's participation in any program under such subchapters would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; an agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

(2) either—

(A) the company is a United States-owned company; or

(B) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(Pub. L. 102–486, title XXIII, § 2306, Oct. 24, 1992, 106 Stat. 3095.)

REFERENCES IN TEXT

Subchapters VIII through XI of this chapter, referred to in text, was in the original ''titles XX through XXIII of this Act'', meaning titles XX through XXIII of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 3057–3092, which enacted subchapters VIII through XI of this chapter and amended sections 5103, 5107, 5108, 5110, 5307, 5905, 12003, 12004, and 12006 of this title.

This Act, referred to in par. (2)(B), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

§ 13526. Uncosted obligations

(a) Report

Along with the submission of each of the President's annual budget requests to Congress, the Secretary shall submit to Congress a report which—

(1) identifies the amount of Department of Energy funds that were, as of the end of the previous fiscal year—

(A) committed uncosted obligations; and

(B) uncommitted uncosted obligations;

(2) specifically describes the purposes for which all such funds are intended; and

(3) explains the effect that information contained in the report has had on the annual budget request for the Department of Energy being simultaneously submitted.

(b) Definitions

Within 90 days after October 24, 1992, the Secretary shall submit a report to the Congress containing definitions of the terms ''uncosted obligation'', ''committed uncosted obligation'', and ''uncommitted uncosted obligation'' for purposes of reports to be submitted under subsection (a) of this section.

(Pub. L. 102–486, title XXIII, § 2307, Oct. 24, 1992, 106 Stat. 3096.)

SUBCHAPTER XII—MISCELLANEOUS

PART A—GENERAL PROVISIONS

§ 13541. Research, development, demonstration, and commercial application activities

(a) Research, development, and demonstration

(1) Except as otherwise provided in this Act, research, development, and demonstration activities under this Act may be carried out under the procedures of the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901–5920), the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or any other Act under which the Secretary is authorized to carry out such activities, but only to the extent the Secretary is authorized to carry out such activities under each such Act. An objective of any demonstration program under this Act shall be to determine the technical and commercial feasibility of energy technologies.

(2) Except as otherwise provided in this Act, in carrying out research, development, and demonstration programs and activities under this Act, the Secretary may use, to the extent authorized under applicable provisions of law, contracts, cooperative agreements, cooperative research and development agreements under the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grants, joint ventures, and any other form of agreement available to the Secretary.

(b) Commercial application

Except as otherwise provided in this Act, in carrying out commercial application programs and commercial application activities under

this Act, the Secretary may use, to the extent authorized under applicable provisions of law, contracts, cooperative agreements, cooperative research and development agreements under the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grants, joint ventures, and any other form of agreement available to the Secretary. An objective of any commercial application program under this Act shall be to accelerate the transition of technologies from the research and development stage.

(c) "Joint venture" defined

For purposes of this section, the term ''joint venture'' has the meaning given the term ''joint research and development venture'' under section 4301(a)(6) and (b) of title 15, except that such term may apply under this section to research, development, demonstration, and commercial application joint ventures.

(d) Protection of information

Section 12(c)(7) of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710a(c)(7)], relating to the protection of information, shall apply to research, development, demonstration, and commercial application programs and activities under this Act.

(e) Guidelines and procedures

The Secretary shall provide guidelines and procedures for the transition, where appropriate, of energy technologies from research through development and demonstration under subsection (a) of this section to commercial application under subsection (b) of this section. Nothing in this section shall preclude the Secretary from—

(1) entering into a contract, cooperative agreement, cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grant, joint venture, or any other form of agreement available to the Secretary under this section that relates to research, development, demonstration, and commercial application; or

(2) extending a contract, cooperative agreement, cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980, grant, joint venture, or any other form of agreement available to the Secretary that relates to research, development, and demonstration to cover commercial application.

(f) Application of section

This section shall not apply to any contract, cooperative agreement, cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grant, joint venture, or any other form of agreement available to the Secretary that is in effect as of October 24, 1992.

(Pub. L. 102–486, title XXX, § 3001, Oct. 24, 1992, 106 Stat. 3126.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (b), and (d), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The Federal Nonnuclear Research and Development Act of 1974, referred to in subsec. (a)(1), probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (a)(1), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsecs. (a)(2), (b), (e)(1), (2), and (f), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§ 3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

§ 13542. Cost sharing

(a) Research and development

Except as otherwise provided in this Act, for research and development programs carried out under this Act, the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of the project. The Secretary may reduce or eliminate the non-Federal requirement under this subsection if the Secretary determines that the research and development is of a basic or fundamental nature.

(b) Demonstration and commercial application

Except as otherwise provided in this Act, the Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration or commercial application project under this Act to be provided from non-Federal sources. The Secretary may reduce the non-Federal requirement under this subsection if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this Act.

(c) Calculation of amount

In calculating the amount of the non-Federal commitment under paragraph (1) or (2), the Secretary shall include cash, personnel, services, equipment, and other resources.

(d) Tennessee Valley Authority

Funds derived by the Tennessee Valley Authority from its power program may be used for all or part of any cost sharing requirements under this section, except to the extent that such funds are provided by annual appropriation Acts.

(Pub. L. 102–486, title XXX, § 3002, Oct. 24, 1992, 106 Stat. 3127.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

PART B—OTHER MISCELLANEOUS PROVISIONS

§ 13551. Repealed. Pub. L. 104–182, title III, § 301, Aug. 6, 1996, 110 Stat. 1683

Section, Pub. L. 102–486, title XXX, § 3013, Oct. 24, 1992, 106 Stat. 3128, related to geothermal heat pumps.

§ 13552. Use of energy futures for fuel purchases

(a) Fuel study

The Secretary shall conduct a study—

(1) to ascertain if the use of energy futures and options contracts could provide cost-effective protection for Government entities (including Government purchases for military purposes and for the Strategic Petroleum Reserve) and consumer cooperatives (or any organization whose purpose is to purchase fuel in bulk) from unanticipated surges in the price of fuel; and

(2) to ascertain how such Government entities or consumer cooperatives may be educated in the prudent use of energy futures and options contracts to maximize their purchasing effectiveness, protect themselves against unanticipated surges in the price of fuel, and minimize fuel costs.

(b) Pilot program

The Secretary shall conduct a pilot program, commencing not later than 30 days after the transmission of the study required in subsection (b)[1] of this section, to educate such governmental entities, consumer cooperatives, or other organizations on the prudent and cost-effective use of energy futures and options contracts to increase their protection against unanticipated surges in the price of fuel and thereby increase the efficiency of their fuel purchase or assistance programs.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 102–486, title XXX, § 3014, Oct. 24, 1992, 106 Stat. 3128; Pub. L. 105–362, title IV, § 401(f), Nov. 10, 1998, 112 Stat. 3282.)

REFERENCES IN TEXT

Subsection (b) of this section, referred to in subsec. (b), was repealed and subsec. (c) of this section was redesignated (b) by Pub. L. 105–362, title IV, § 401(f), Nov. 10, 1998, 112 Stat. 3282. See 1998 Amendment note below.

AMENDMENTS

1998—Subsecs. (b) to (d). Pub. L. 105–362 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out heading and text of former subsec. (b). Text read as follows: ''The Secretary, no later than 12 months after October 24, 1992, shall transmit the study required in this section to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.''

§ 13553. Energy subsidy study

(a) In general

The Secretary shall contract with the National Academy of Sciences to conduct a study of energy subsidies that—

(1) are in effect on October 24, 1992; or

(2) have been in effect prior to October 24, 1992.

(b) Report to Congress

Not later than 18 months after October 24, 1992, the Secretary shall transmit to the Congress,[1] the results of such study to be accompanied by recommendations for legislation, if any.

(c) Contents

(1) In general

The study shall identify and quantify the direct and indirect subsidies and other legal and institutional factors that influence decisions in the marketplace concerning fuels and energy technologies.

(2) Topics for examination

The study shall examine—

(A) fuel and technology choices that are—

(i) available on October 24, 1992; or

(ii) reasonably foreseeable on October 24, 1992;

(B) production subsidies for the extraction of raw materials;

(C) subsidies encouraging investment in large capital projects;

(D) indemnification;

(E) fuel cycle subsidies, including waste disposal;

(F) government research and development support; and

(G) other relevant incentives and disincentives.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $500,000 for each of the fiscal years 1993 and 1994.

(Pub. L. 102–486, title XXX, § 3015, Oct. 24, 1992, 106 Stat. 3129.)

§ 13554. Tar sands

(a) Policy

It is the policy of the United States to promote the development and production, by all means consistent with sound engineering, economic, and environmental practices, of deposits of tar sands.

(b) "Tar sands" defined

(1) For purposes of this section, the term ''tar sands'' means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either—

(A) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise; or

(B) contains a hydrocarbonaceous material and is produced by mining or quarrying.

(2) Nothing in this section is intended or shall be construed to affect in any way the definition of the term tar sands under any other provision of Federal law.

(c) Study

The Secretary, in consultation with the Secretary of the Interior, shall submit a study to

[1] See References in Text note below.

[1] So in original. The comma probably should not appear.

the House of Representatives and the Committee on Energy and Natural Resources of the Senate within one year after October 24, 1992. Such study shall identify and evaluate the development potential of sources of tar sands in the United States. The study shall also identify and evaluate processes for extracting oil from the identified tar sand sources, including existing tar sands waste tailings, and evaluate the environmental benefits of, and the potential for coproduction of minerals and metals from, such processes.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 and 1994 to carry out this section.

(Pub. L. 102–486, title XXX, § 3016, Oct. 24, 1992, 106 Stat. 3129.)

§ 13555. Consultative Commission on Western Hemisphere Energy and Environment

(a) Findings

The Congress finds that—

(1) there is growing mutual economic interdependence among the countries of the Western Hemisphere;

(2) energy and environmental issues are intrinsically linked and must be considered together when formulating policy on the broader issue of sustainable economic development for the Western Hemisphere as a whole;

(3) when developing their respective energy infrastructures, countries in the Western Hemisphere must consider existing and emerging environmental constraints, and do so in a way that results in sustainable long-term economic growth;

(4) the coordination of respective national energy and environmental policies of the governments of the Western Hemisphere could be substantially improved through regular consultation among these countries;

(5) the development, production and consumption of energy can affect environmental quality, and the environmental consequences of energy-related activities are not confined within national boundaries, but are regional and global in scope;

(6) although the Western Hemisphere is richly endowed with indigenous energy resources, an insufficient energy supply would severely constrain future opportunities for sustainable economic development and growth in each of these member countries; and

(7) the energy markets of the United States are linked with those in other countries of the Western Hemisphere and the world.

(b) "Commission" defined

For purposes of this section, the term ''Commission'' means the Consultative Commission on Western Hemisphere Energy and Environment.

(c) Negotiations

The President is authorized to direct the United States representative to the Organization of American States to initiate negotiations with the Organization of American States for the establishment of a Consultative Commission on Western Hemisphere Energy and Environment under the auspices of the Organization of American States.

(d) The Commission

In the course of the negotiations, the following shall be pursued:

(1) Objectives

The objectives of the Commission shall be—

(A) to evaluate from the viewpoint of the Western Hemisphere as a whole the energy and environmental situations, trends, and policies of the countries of the participating governments necessary to support sustainable economic development;

(B) to recommend to the participating governments actions, policies, and institutional arrangements that will enhance cooperation and policy coordination among their respective countries in the future development and use of indigenous energy resources and technologies, and in the future development and implementation of measures to protect the environment of the Western Hemisphere; and

(C) to recommend to the participating governments actions and policies that will enhance energy and environmental cooperation and coordination among the countries of the Western Hemisphere and the world.

(2) Composition of Commission

The Commission shall include representatives of—

(A) the respective foreign energy and environmental ministries or departments of the participating governments;

(B) the parliamentary or legislative bodies with legislative responsibilities for energy and environmental matters; and

(C) other governmental and non-governmental observers appointed by the heads of each participating government on the basis of their experience and expertise.

(3) Secretariat

A small secretariat shall be chosen by the participating governments for their expertise in the areas of energy and the environment.

(4) Sunset provision

The Commission's authority—

(A) shall terminate five years from the date of the agreement under which it was created; and

(B) may be extended for a five-year term at the expiration of the previous term by agreement of the participating governments.

(e) Report

The President shall, within one year after October 24, 1992, report to the Committee on Energy and Commerce and the Committee on Foreign Affairs of the House of Representatives, and to the Committee on Energy and Natural Resources and the Committee on Foreign Relations of the Senate, on the progress toward the establishment of the Commission and achievement of the purposes of this section.

(Pub. L. 102–486, title XXX, § 3020, Oct. 24, 1992, 106 Stat. 3131.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on

Commerce of House of Representatives and Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 13556. Disadvantaged business enterprises

(a) General rule

To the extent practicable, the head of each agency shall provide that the obligation of not less than 10 percent of the total combined amounts obligated for contracts and subcontracts by each agency under this Act and amendments made by this Act pursuant to competitive procedures within the meaning of either the Federal Property and Administrative Services Act of 1949[1] (41 U.S.C. 251 et seq.), or chapter 137 of title 10, shall be expended either with—

(1) small business concerns controlled by socially and economically disadvantaged individuals or women;

(2) historically Black colleges and universities;

(3) colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans; or

(4) qualified HUBZone small business concerns.

(b) Definitions

For purposes of this section, the following definitions shall apply:

(1) The term ''small business concern'' has the meaning such term has under section 632 of title 15. However, for purposes of contracts and subcontracts requiring engineering services the applicable size standard shall be that established for military and aerospace equipment and military weapons.

(2) The term ''socially and economically disadvantaged individuals'' has the meaning such term has under section 637(d) of title 15 and relevant subcontracting regulations promulgated pursuant thereto.

(3) The term ''qualified HUBZone small business concern'' has the meaning given that term in section 632(p) of title 15.

(Pub. L. 102–486, title XXX, § 3021, Oct. 24, 1992, 106 Stat. 3133; Pub. L. 105–135, title VI, § 604(g), Dec. 2, 1997, 111 Stat. 2634.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1997—Subsec. (a)(4). Pub. L. 105–135, § 604(g)(1), added par. (4).

Subsec. (b)(3). Pub. L. 105–135, § 604(g)(2), added par. (3).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of Title 15, Commerce and Trade.

§ 13557. Sense of Congress on risk assessments

It is the sense of Congress that Federal agencies conducting assessments of risks to human health and the environment from energy technology, production, transport, transmission, distribution, storage, use, or conservation activities shall use sound and objective scientific practices in assessing such risks, shall consider the best available science (including peer reviewed studies), and shall include a description of the weight of the scientific evidence concerning such risks.

(Pub. L. 102–486, title XXX, § 3022, as added Pub. L. 109–58, title XIV, § 1401, Aug. 8, 2005, 119 Stat. 1061.)

SUBCHAPTER XIII—CLEAN AIR COAL PROGRAM

§ 13571. Purposes

The purposes of this subchapter are to—

(1) promote national energy policy and energy security, diversity, and economic competitiveness benefits that result from the increased use of coal;

(2) mitigate financial risks, reduce the cost of clean coal generation, and increase the marketplace acceptance of clean coal generation and pollution control equipment and processes; and

(3) facilitate the environmental performance of clean coal generation.

(Pub. L. 102–486, title XXXI, § 3101, as added Pub. L. 109–58, title IV, § 421(a), Aug. 8, 2005, 119 Stat. 757.)

§ 13572. Authorization of program

(a) In general

The Secretary shall carry out a program of financial assistance to—

(1) facilitate the production and generation of coal-based power, through the deployment of clean coal electric generating equipment and processes that, compared to equipment or processes that are in operation on a full scale—

(A) improve—

(i) energy efficiency; or

(ii) environmental performance consistent with relevant Federal and State clean air requirements, including those promulgated under the Clean Air Act (42 U.S.C. 7401 et seq.); and

[1] See References in Text note below.

(B) are not yet cost competitive; and

(2) facilitate the utilization of existing coal-based electricity generation plants through projects that—

(A) deploy advanced air pollution control equipment and processes; and

(B) are designed to voluntarily enhance environmental performance above current applicable obligations under the Clean Air Act and State implementation efforts pursuant to such Act.

(b) Financial criteria

As determined by the Secretary for a particular project, financial assistance under this subchapter shall be in the form of—

(1) cost-sharing of an appropriate percentage of the total project cost, not to exceed 50 percent as calculated under section 16352 of this title; or

(2) financial assistance, including grants, cooperative agreements, or loans as authorized under this Act or other statutory authority of the Secretary.

(Pub. L. 102–486, title XXXI, § 3102, as added Pub. L. 109–58, title IV, § 421(a), Aug. 8, 2005, 119 Stat. 757.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(1)(A)(ii), (2)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

This Act, referred to in subsec. (b)(2), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

§ 13573. Generation projects

(a) Eligible projects

Projects supported under section 13572(a)(1) of this title may include—

(1) equipment or processes previously supported by a Department of Energy program;

(2) advanced combustion equipment and processes that the Secretary determines will be cost-effective and could substantially contribute to meeting environmental or energy needs, including gasification, gasification fuel cells, gasification coproduction, oxidation combustion techniques, ultra-supercritical boilers, and chemical looping; and

(3) hybrid gasification/combustion systems, including systems integrating fuel cells with gasification or combustion units.

(b) Criteria

The Secretary shall establish criteria for the selection of generation projects under section 13572(a)(1) of this title. The Secretary may modify the criteria as appropriate to reflect improvements in equipment, except that the criteria shall not be modified to be less stringent. The selection criteria shall include—

(1) prioritization of projects whose installation is likely to result in significant air quality improvements in nonattainment air quality areas;

(2) prioritization of projects whose installation is likely to result in lower emission rates of pollution;

(3) prioritization of projects that result in the repowering or replacement of older, less efficient units;

(4) documented broad interest in the procurement of the equipment and utilization of the processes used in the projects by owners or operators of facilities for electricity generation;

(5) equipment and processes beginning in 2006 through 2011 that are projected to achieve a thermal efficiency of—

(A) 40 percent for coal of more than 9,000 Btu per pound based on higher heating values;

(B) 38 percent for coal of 7,000 to 9,000 Btu per pound passed on higher heating values; and

(C) 36 percent for coal of less than 7,000 Btu per pound based on higher heating values;

except that energy used for coproduction or cogeneration shall not be counted in calculating the thermal efficiency under this paragraph; and

(6) equipment and processes beginning in 2012 and 2013 that are projected to achieve a thermal efficiency of—

(A) 45 percent for coal of more than 9,000 Btu per pound based on higher heating values;

(B) 44 percent for coal of 7,000 to 9,000 Btu per pound passed on higher heating values; and

(C) 40 percent for coal of less than 7,000 Btu per pound based on higher heating values;

except that energy used for coproduction or cogeneration shall not be counted in calculating the thermal efficiency under this paragraph.

(c) Program balance and priority

In carrying out the program under section 13572(a)(1) of this title, the Secretary shall ensure, to the extent practicable, that—

(1) between 25 percent and 75 percent of the projects supported are for the sole purpose of electrical generation; and

(2) priority is given to projects that use electrical generation equipment and processes that have been developed and demonstrated and applied in actual production of electricity, but are not yet cost-competitive, and that achieve greater efficiency and environmental performance.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out section 13572(a)(1) of this title—

(1) $250,000,000 for fiscal year 2007;

(2) $350,000,000 for fiscal year 2008;

(3) $400,000,000 for each of fiscal years 2009 through 2012; and

(4) $300,000,000 for fiscal year 2013.

(e) Applicability

No technology, or level of emission reduction, shall be treated as adequately demonstrated for purpose[1] of section 7411 of this title, achievable

[1] So in original. Probably should be ''purposes''.

for purposes of section 7479 of this title, or achievable in practice for purposes of section 7501 of this title solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under section 13572(a)(1) of this title.

(Pub. L. 102–486, title XXXI, § 3103, as added Pub. L. 109–58, title IV, § 421(a), Aug. 8, 2005, 119 Stat. 758.)

§ 13574. Air quality enhancement program

(a) Eligible projects

Projects supported under section 13572(a)(2) of this title shall—

(1) utilize technologies that meet relevant Federal and State clean air requirements applicable to the unit or facility, including being adequately demonstrated for purposes of section 7411 of this title, achievable for purposes of section 7479 of this title, or achievable in practice for purposes of section 7501 of this title; or

(2) utilize equipment or processes that exceed relevant Federal or State clean air requirements applicable to the unit or facilities included in the projects by achieving greater efficiency or environmental performance.

(b) Priority in project selection

In making an award under section 13572(a)(2) of this title, the Secretary shall give priority to—

(1) projects whose installation is likely to result in significant air quality improvements in nonattainment air quality areas or substantially reduce the emission level of criteria pollutants and mercury air emissions;

(2) projects for pollution control that result in the mitigation or collection of more than 1 pollutant; and

(3) projects designed to allow the use of the waste byproducts or other byproducts of the equipment.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out section 13572(a)(2) of this title—

(1) $300,000,000 for fiscal year 2007;
(2) $100,000,000 for fiscal year 2008;
(3) $40,000,000 for fiscal year 2009;
(4) $30,000,000 for fiscal year 2010; and
(5) $30,000,000 for fiscal year 2011.

(d) Applicability

No technology, or level of emission reduction under subsection (a)(2) of this section shall be treated as adequately demonstrated for purpose of Section[1] 7411 of this title, achievable for purposes of section 7479 of this title, or achievable in practice for purposes of section 7501 of this title solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under section 13572(a)(2) of this title.

(Pub. L. 102–486, title XXXI, § 3104, as added Pub. L. 109–58, title IV, § 421(a), Aug. 8, 2005, 119 Stat. 759.)

[1] So in original. Probably should be ''purposes of section''.

CHAPTER 135—RESIDENCY AND SERVICE REQUIREMENTS IN FEDERALLY ASSISTED HOUSING

SUBCHAPTER I—STANDARDS AND OBLIGATIONS OF RESIDENCY IN FEDERALLY ASSISTED HOUSING

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13602. Compliance with criteria for occupancy as requirement for tenancy.
13603. Establishment of criteria for occupancy.
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SUBCHAPTER II—AUTHORITY TO PROVIDE PREFERENCES FOR ELDERLY RESIDENTS AND UNITS FOR DISABLED RESIDENTS IN CERTAIN SECTION 8 ASSISTED HOUSING

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SUBCHAPTER I—STANDARDS AND OBLIGATIONS OF RESIDENCY IN FEDERALLY ASSISTED HOUSING

§ 13601. Compliance by owners as condition of Federal assistance

The Secretary of Housing and Urban Development shall require owners of federally assisted housing (as such term is defined in section 13641(2) of this title), as a condition of receiving housing assistance for such housing, to comply with the procedures and requirements established under this subchapter.

(Pub. L. 102–550, title VI, § 641, Oct. 28, 1992, 106 Stat. 3820.)

EFFECTIVE DATE

Chapter applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

§ 13602. Compliance with criteria for occupancy as requirement for tenancy

In selecting tenants for occupancy of units in federally assisted housing, an owner of such housing shall utilize the criteria for occupancy in federally assisted housing established by the Secretary, by regulation, under section 13603 of this title. If an owner determines that an applicant for occupancy in the housing does not meet such criteria, the owner may deny such applicant occupancy.

(Pub. L. 102–550, title VI, § 642, Oct. 28, 1992, 106 Stat. 3821.)

§ 13603. Establishment of criteria for occupancy

(a) Task force

(1) Establishment

To assist the Secretary in establishing reasonable criteria for occupancy in federally assisted housing, the Secretary shall establish a task force to review all rules, policy statements, handbooks, technical assistance memoranda, and other relevant documents issued by the Department of Housing and Urban Development on the standards and obligations governing residency in federally assisted housing and make recommendations to the Secretary for the establishment of such criteria for occupancy.

(2) Members

The Secretary shall appoint members to the task force, which shall include individuals representing the interests of owners, managers, and tenants of federally assisted housing, public housing agencies, owner and tenant advocacy organizations, persons with disabilities and disabled families, organizations assisting homeless individuals, and social service, mental health, and other nonprofit servicer providers who serve federally assisted housing.

(3) Compensation

Members of the task force shall not receive compensation for serving on the task force.

(4) Duties

The task force shall—

(A) review all existing standards, regulations, and guidelines governing occupancy and tenant selection policies in federally assisted housing;

(B) review all existing standards, regulations, and guidelines governing lease provisions and other rules of occupancy for federally assisted housing;

(C) determine whether the standards, regulations, and guidelines reviewed under subparagraphs (A) and (B) provide sufficient guidance to owners and managers of federally assisted housing to—

(i) develop procedures for preselection inquiries sufficient to determine the capacity of applicants to comply with reasonable lease terms and conditions of occupancy;

(ii) utilize leases that prohibit behavior which endangers the health or safety of other tenants or violates the rights of other tenants to peaceful enjoyment of the premises;

(iii) assess the need to provide, and appropriate measures for providing, reasonable accommodations required under the Fair Housing Act [42 U.S.C. 3601 et seq.] and section 794 of title 29 for persons with various types of disabilities; and

(iv) comply with civil rights laws and regulations;

(D) propose criteria for occupancy in federally assisted housing, standards for the reasonable performance and behavior of tenants of federally assisted housing, compliance standards consistent with the reasonable accommodation of the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.] and section 794 of title 29, standards for compliance with other civil rights laws, and procedures for the eviction of tenants not complying with such standards consistent with sections 1437d and 1437f of this title; and

(E) report to the Congress and the Secretary of Housing and Urban Development pursuant to paragraph (7).

(5) Procedure

In carrying out its duties, the task force shall hold public hearings and receive written comments for a period of not less than 60 days.

(6) Support

The Secretary of Housing and Urban Development shall cooperate fully with the task force and shall provide support staff and office space to assist the task force in carrying out its duties.

(7) Reports

Not later than 3 months after October 28, 1992, the task force shall submit to the Secretary and the Congress a preliminary report describing its initial actions. Not later than 6 months after October 28, 1992, the task force shall submit a report to the Secretary and the Congress, which shall include—

(A) a description of its findings; and

(B) recommendations to revise such standards, regulations, and guidelines to provide accurate and complete guidance to owners and managers of federally assisted housing as determined necessary under paragraph (4).

(b) Rulemaking

(1) Authority

The Secretary shall, by regulation, establish criteria for selection of tenants for occupancy in federally assisted housing and lease provisions for such housing.

(2) Standards

The criteria shall provide sufficient guidance to owners and managers of federally assisted housing to enable them to (A) select tenants capable of complying with reasonable lease terms, (B) utilize leases prohibiting behavior which endangers the health or safety of others or violates the right of other tenants to peaceful enjoyment of the premises, (C) comply with legal requirements to make reasonable accommodations for persons with disabilities, and (D) comply with civil rights laws. The criteria shall be consistent with the re-

quirements under subsections (k) and (*l*) of section 1437d of this title and section 1437f(d)(1) of this title and any similar contract and lease requirements for federally assisted housing. In establishing the criteria, the Secretary shall take into consideration the report of the task force under subsection (a)(7) of this section.

(3) Procedure

Not later than 90 days after the submission of the final report under subsection (a)(7) of this section, the Secretary shall issue a notice of proposed rulemaking of the regulations under this subsection providing for notice and opportunity for public comment regarding the regulations, pursuant to the provisions of section 553 of title 5 (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment under such section 553 shall not be less than 60 days. The Secretary shall issue final regulations under this subsection not later than the expiration of the 60-day period beginning upon the conclusion of the comment period, which shall take effect upon issuance.

(Pub. L. 102–550, title VI, § 643, Oct. 28, 1992, 106 Stat. 3821.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (a)(4)(C)(iii), (D), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The civil rights laws, referred to in subsecs. (a)(4)(C)(iv), (D) and (b)(2)(D), are classified generally to chapter 21 (§ 1981 et seq.) of this title.

§ 13604. Assisted applications

(a) Authority

The Secretary shall provide that any individual or family applying for occupancy in federally assisted housing may include in the application for the housing the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization, and that the owner shall treat such information as confidential.

(b) Maintenance of information

The Secretary shall require the owner of any federally assisted housing receiving an application including such information to maintain such information for any applicants who become tenants of the housing, for the purposes of facilitating contact by the owner with such person or organization to assist in providing any services or special care for the tenant and assist in resolving any relevant tenancy issues arising during the tenancy of such tenant.

(c) Limitations

An owner of federally assisted housing may not require any individual or family applying for occupancy in the housing to provide the information described in subsection (a) of this section.

(Pub. L. 102–550, title VI, § 644, Oct. 28, 1992, 106 Stat. 3823.)

SUBCHAPTER II—AUTHORITY TO PROVIDE PREFERENCES FOR ELDERLY RESIDENTS AND UNITS FOR DISABLED RESIDENTS IN CERTAIN SECTION 8 ASSISTED HOUSING

§ 13611. Authority

Notwithstanding any other provision of law, an owner of a covered section 8 housing project (as such term is defined in section 13619 of this title) designed primarily for occupancy by elderly families may, in selecting tenants for units in the project that become available for occupancy, give preference to elderly families who have applied for occupancy in the housing, subject to the requirements of this subchapter.

(Pub. L. 102–550, title VI, § 651, Oct. 28, 1992, 106 Stat. 3823.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this subtitle'', meaning subtitle D of title VI of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3823, which enacted this subchapter and amended section 1437f of this title.

§ 13612. Reservation of units for disabled families

(a) Requirement

Notwithstanding any other provision of law, for any project for which an owner gives preference in occupancy to elderly families pursuant to section 13611 of this title, such owner shall (subject to sections 13613, 13614, and 13615 of this title) reserve units in the project for occupancy only by disabled families who are not elderly or near-elderly families (and who have applied for occupancy in the housing) in the number determined under subsection (b) of this section.

(b) Number of units

Each owner required to reserve units in a project for occupancy under subsection (a) of this section shall reserve a number of units in the project that is not less than the lesser of—

(1) the number of units equivalent to the higher of—

(A) the percentage of units in the project that were occupied by such disabled families upon October 28, 1992; or

(B) the percentage of units in the project that were occupied by such families upon January 1, 1992; or

(2) 10 percent of the number of units in the project.

(Pub. L. 102–550, title VI, § 652, Oct. 28, 1992, 106 Stat. 3823.)

§ 13613. Secondary preferences

(a) Insufficient elderly families

If an owner of a covered section 8 housing project in which elderly families are given a preference for occupancy pursuant to section 13611 of this title determines (in accordance with regulations established by the Secretary) that there are insufficient numbers of elderly families who have applied for occupancy in the housing to fill all the units in the project not reserved under section 13612 of this title, the owner may give preference for occupancy of

such units to disabled families who are near-elderly families and have applied for occupancy in the housing.

(b) Insufficient non-elderly disabled families

If an owner of a covered section 8 housing project in which elderly families are given a preference for occupancy pursuant to section 13611 of this title determines (in accordance with regulations established by the Secretary) that there are insufficient numbers of disabled families who are not elderly or near-elderly families and have applied for occupancy in the housing to fill all the units in the project reserved under section 13612 of this title, the owner may give preference for occupancy of units so reserved to disabled families who are near-elderly families and have applied for occupancy in the housing.

(Pub. L. 102–550, title VI, § 653, Oct. 28, 1992, 106 Stat. 3824.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

§ 13614. General availability of units

If an owner of a covered section 8 housing project in which disabled families who are near-elderly families are given a preference for occupancy pursuant to subsection (a) or (b) of section 13613 of this title determines (in accordance with regulations established by the Secretary) that there are an insufficient number of such families to fill all the units in the project for which the preference is applicable, the owner shall make such units generally available for occupancy by families who have applied, and are eligible, for occupancy in the housing, without regard to the preferences established pursuant to this subchapter.

(Pub. L. 102–550, title VI, § 654, Oct. 28, 1992, 106 Stat. 3824.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

§ 13615. Preference within groups

Among disabled families qualifying for occupancy in units reserved under section 13612 of this title, and among elderly families and near-elderly families qualifying for preference for occupancy pursuant to section 13611 or 13613 of this title, preference for occupancy in units that are assisted under section 1437f of this title shall be given to disabled families according to any preferences established under any system established under section 1437f(d)(1)(A) of this title by the public housing agency.

(Pub. L. 102–550, title VI, § 655, Oct. 28, 1992, 106 Stat. 3824; Pub. L. 104–99, title IV, § 402(d)(6)(C), Jan. 26, 1996, 110 Stat. 43; Pub. L. 105–276, title V, § 514(b)(2)(B), Oct. 21, 1998, 112 Stat. 2548.)

AMENDMENTS

1998—Pub. L. 105–276 substituted ''shall be given to disabled families according to any preferences established under any system established under section 1437f(d)(1)(A) of this title by the public housing agency.'' for ''shall be given to disabled families according to the preferences for occupancy referred to in section 1437f(d)(1)(A)(i) of this title and the first sentence of section 1437f(*o*)(3)(B) of this title, to elderly families according to such preferences, and to near-elderly families according to such preferences, respectively.''

1996—Pub. L. 104–99, § 402(d)(6)(C), (f), temporarily substituted ''any preferences'' for ''the preferences for occupancy referred to in section 1437f(d)(1)(A)(i) of this title and the first sentence of section 1437f(*o*)(3)(B) of this title, to elderly families according to such preferences, and to near-elderly families according to such preferences, respectively''. See Effective and Termination Dates of 1996 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENT

Amendment by Pub. L. 104–99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of this title.

§ 13616. Prohibition of evictions

Any tenant who, except for reservation of a percentage of the units of a project pursuant to section 13612 of this title or any preference for occupancy established pursuant to this subchapter, is lawfully residing in a dwelling unit in a covered section 8 housing project, may not be evicted or otherwise required to vacate such unit because of the reservation or preferences or because of any action taken by the Secretary of Housing and Urban Development or the owner of the project pursuant to this subchapter.

(Pub. L. 102–550, title VI, § 656, Oct. 28, 1992, 106 Stat. 3824.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

§ 13617. Treatment of covered section 8 housing not subject to elderly preference

If an owner of any covered section 8 housing project designed primarily for occupancy by elderly families does not give preference in occupancy to elderly families as authorized in this subchapter, then elderly families (as such term was defined in section 1437a of this title before October 28, 1992) shall be eligible for occupancy in such housing to the same extent that such families were eligible before October 28, 1992.

(Pub. L. 102–550, title VI, § 657, Oct. 28, 1992, 106 Stat. 3825.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

§ 13618. Treatment of other federally assisted housing

(a) Restricted occupancy

An owner of any federally assisted project (or portion of a project) as described in subparagraphs (D), (E), and (F) of section 13641(2) of this title that was designed for occupancy by elderly families may continue to restrict occupancy in such project (or portion) to elderly families in accordance with the rules, standards, and agreements governing occupancy in such housing in effect at the time of the development of the housing.

(b) Prohibition of evictions

Any tenant who is lawfully residing in a dwelling unit in a housing project described in subsection (a) of this section may not be evicted or otherwise required to vacate such unit because of any reservation or preferences under this subchapter or because of any action taken by the Secretary of Housing and Urban Development or the owner of the project pursuant to this subchapter.

(Pub. L. 102–550, title VI, § 658, Oct. 28, 1992, 106 Stat. 3825.)

§ 13619. "Covered section 8 housing" defined

For purposes of this subchapter, the term ''covered section 8 housing'' means housing described in section 13641(2)(G) of this title that was originally designed for occupancy by elderly families.

(Pub. L. 102–550, title VI, § 659, Oct. 28, 1992, 106 Stat. 3825.)

§ 13620. Study

The Secretary of Housing and Urban Development shall conduct a study to determine the extent to which Federal housing programs serve elderly families, disabled families, and families with children, in relation to the need of such families who are eligible for assistance under such programs. The Secretary shall submit a report to the Congress describing the study and the findings of the study not later than the expiration of the 1-year period beginning on October 28, 1992.

(Pub. L. 102–550, title VI, § 661, Oct. 28, 1992, 106 Stat. 3825.)

SUBCHAPTER III—SERVICE COORDINATORS FOR ELDERLY AND DISABLED RESIDENTS OF FEDERALLY ASSISTED HOUSING

§ 13631. Requirement to provide service coordinators

(a) In general

To the extent that amounts are made available for providing service coordinators under this section, the Secretary shall require owners of covered federally assisted housing projects (as such term is defined in subsection (d) of this section) receiving such amounts to provide for employing or otherwise retaining the services of one or more individuals to coordinate the provision of supportive services for elderly and disabled families residing in the projects (in this section referred to as a ''service coordinator''). No such elderly or disabled family may be required to accept services.

(b) Responsibilities

Each service coordinator of a covered federally assisted housing project provided pursuant to this subtitle[1] or the amendments made by this subtitle—[1]

(1) shall consult with the owner of the housing, tenants, any tenant organizations, any resident management organizations, service providers, and any other appropriate persons, to identify the particular needs and characteristics of elderly and disabled families who reside in the project and any supportive services related to such needs and characteristics;

(2) shall manage and coordinate the provision of such services for residents of the project;

(3) may provide training to tenants of the project in the obligations of tenancy or coordinate such training;

(4) shall meet the minimum qualifications and standards required under section 8011(d)(4) of this title; and

(5) may carry out other appropriate activities for residents of the project.

(c) Included services

Supportive services referred to under subsection (b)(1) of this section may include health-related services, mental health services, services for nonmedical counseling, meals, transportation, personal care, bathing, toileting, housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable State laws), case management, personal emergency response, education and outreach regarding telemarketing fraud in accordance with the standards issued under subsection (f) of this section, and other appropriate services. The services may be provided through any agency of the Federal Government or any other public or private department, agency, or organization.

(d) Covered federally assisted housing

For purposes of this subtitle,[1] the term ''covered federally assisted housing'' means housing that is federally assisted housing (as such term is defined in section 13641(2) of this title), except that such term does not include housing described in subparagraphs (C) and (D) of such section.

(e) Services for low-income elderly or disabled families residing in vicinity of certain projects

To the extent only that this section applies to service coordinators for covered federally assisted housing described in subparagraphs (B), (C), (D), (E), (F), and (G) of section 13641(2) of this title, any reference in this section to elderly or disabled residents of a project shall be construed to include low-income elderly or disabled families living in the vicinity of such project.

(f) Protection against telemarketing fraud

(1) In general

The Secretary, in coordination with the Secretary of Health and Human Services, shall establish standards for service coordinators in federally assisted housing who are providing education and outreach to elderly persons residing in such housing regarding telemarketing fraud. The standards shall be designed to ensure that such education and outreach informs such elderly persons of the dangers of telemarketing fraud and facilitates the investigation and prosecution of telemarketers engaging in fraud against such residents.

[1] See References in Text note below.

(2) Contents

The standards established under this subsection shall require that any such education and outreach be provided in a manner that—

(A) informs such residents of—

(i) the prevalence of telemarketing fraud targeted against elderly persons;

(ii) how telemarketing fraud works;

(iii) how to identify telemarketing fraud;

(iv) how to protect themselves against telemarketing fraud, including an explanation of the dangers of providing bank account, credit card, or other financial or personal information over the telephone to unsolicited callers;

(v) how to report suspected attempts at telemarketing fraud; and

(vi) their consumer protection rights under Federal law;

(B) provides such other information as the Secretary considers necessary to protect such residents against fraudulent telemarketing; and

(C) disseminates the information provided by appropriate means, and in determining such appropriate means, the Secretary shall consider on-site presentations at federally assisted housing, public service announcements, a printed manual or pamphlet, an Internet website, and telephone outreach to residents whose names appear on ''mooch lists'' confiscated from fraudulent telemarketers.

(Pub. L. 102–550, title VI, § 671, Oct. 28, 1992, 106 Stat. 3826; Pub. L. 106–569, title VIII, § 851(b), (c)(2), Dec. 27, 2000, 114 Stat. 3024.)

REFERENCES IN TEXT

This subtitle, referred to in subsecs. (b) and (d), means subtitle E of title VI of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3826, which enacted this subchapter, amended sections 1437f, 1437g, and 8011 of this title and section 1701q of Title 12, Banks and Banking, and enacted provisions set out as a note under section 1701q of Title 12.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–569, § 851(b)(1), in first sentence, substituted ''for providing service coordinators under this section,'' for ''to carry out this subtitle pursuant to the amendments made by this subtitle,''.

Subsec. (c). Pub. L. 106–569, § 851(c)(2)(A), in first sentence, inserted ''education and outreach regarding telemarketing fraud in accordance with the standards issued under subsection (f) of this section,'' after ''response,''.

Subsec. (d). Pub. L. 106–569, § 851(b)(2), inserted closing parenthesis after ''section 13641(2) of this title''.

Subsec. (e). Pub. L. 106–569, § 851(b)(3), added subsec. (e).

Subsec. (f). Pub. L. 106–569, § 851(c)(2)(B), added subsec. (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by title VIII of Pub. L. 106–569 effective Dec. 27, 2000, unless effectiveness or applicability upon another date certain is specifically provided for, with provisions relating to effect of regulatory authority, see section 803 of Pub. L. 106–569, set out as a note under section 1701q of Title 12, Banks and Banking.

§ 13632. Grants for costs of providing service coordinators in certain federally assisted housing

(a) Authority

The Secretary may make grants under this section to owners of federally assisted housing projects described in subparagraphs (B), (C), (D), (E), (F), and (G) of section 13641(2) of this title. Any grant amounts shall be used for the costs of employing or otherwise retaining the services of one or more service coordinators under section 13631 of this title to coordinate the provision of any services within the project for residents of the project who are elderly families and disabled families (as such terms are defined in section 13641 of this title). A service coordinator funded with a grant under this section for a project may provide services to low-income elderly or disabled families living in the vicinity of such project.

(b) Application and selection

The Secretary shall provide for the form and manner of applications for grants under this section and for selection of applicants to receive such grants.

(c) Eligible project expense

For any federally assisted housing project described in subparagraph (B), (C), (D), (E), (F), or (G) of section 13641(2) of this title that does not receive a grant under this section, the cost of employing or otherwise retaining the services of one or more service coordinators under section 13631 of this title and not more than 15 percent of the cost of providing services to the residents of the project shall be considered an eligible project expense, but only to the extent that amounts are available from project rent and other income for such costs.

(Pub. L. 102–550, title VI, § 676, Oct. 28, 1992, 106 Stat. 3828; Pub. L. 106–569, title VIII, § 851(a), Dec. 27, 2000, 114 Stat. 3023.)

AMENDMENTS

2000—Pub. L. 106–569, § 851(a)(1), substituted ''certain federally assisted housing'' for ''multifamily housing assisted under National Housing Act'' in section catchline.

Subsec. (a). Pub. L. 106–569, § 851(a)(2), substituted ''subparagraphs (B), (C), (D), (E), (F), and (G) of section 13641(2) of this title'' for ''subparagraphs (E) and (F) of section 13641(2) of this title'', made technical amendment to reference in original act which appears in text as reference to section 13631 of this title, and inserted at end ''A service coordinator funded with a grant under this section for a project may provide services to low-income elderly or disabled families living in the vicinity of such project.''

Subsec. (c). Pub. L. 106–569, § 851(a)(4), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: ''There are authorized to be appropriated for fiscal years 1993 and 1994 such sums as may be necessary for grants under this section.''

Subsec. (d). Pub. L. 106–569, § 851(a)(4), redesignated subsec. (d) as (c).

Pub. L. 106–569, § 851(a)(3), substituted ''subparagraph (B), (C), (D), (E), (F), or (G) of section 13641(2) of this title'' for ''subparagraph (E) or (F) of section 13641(2) of this title'' and made technical amendment to reference in original act which appears in text as reference to section 13631 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by title VIII of Pub. L. 106–569 effective Dec. 27, 2000, unless effectiveness or applicability upon another date certain is specifically provided for, with provisions relating to effect of regulatory authority, see section 803 of Pub. L. 106–569, set out as a note under section 1701q of Title 12, Banks and Banking.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 13641. Definitions

For purposes of this title:[1]

(1) Elderly, disabled, and near-elderly families

The terms ''elderly family'', ''disabled family'', and ''near-elderly family'' have the meanings given the terms under section 3(b)(3) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(3)].

(2) Federally assisted housing

The terms ''federally assisted housing'' and ''project'' mean—

(A) a public housing project (as such term is defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]);

(B) housing for which project-based assistance is provided under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

(C) housing that is assisted under section 1701q of title 12;

(D) housing that is assisted under section 1701q of title 12, as such section existed before November 28, 1990;

(E) housing financed by a loan or mortgage insured under section 1715*l*(d)(3) of title 12 that bears interest at a rate determined under the proviso of section 1715*l*(d)(5) of title 12;

(F) housing insured, assisted, or held by the Secretary or a State or State agency under section 1715z–1 of title 12; and

(G) housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)], as in effect before October 1, 1983, that is assisted under a contract for assistance under such section.

(3) Housing assistance

The term ''housing assistance'' means, with respect to federally assisted housing, the grant, contribution, capital advance, loan, mortgage insurance, or other assistance provided for the housing under the provisions of law referred to in paragraph (2). The term also includes any related assistance provided for the housing by the Secretary, including any rental assistance for low-income occupants.

(4) Owner

The term ''owner'' means, with respect to federally assisted housing, the entity or private person, including a cooperative or public housing agency, that has the legal right to lease or sublease dwelling units in such housing.

(5) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

[1] See References in Text note below.

(Pub. L. 102–550, title VI, § 683, Oct. 28, 1992, 106 Stat. 3831.)

REFERENCES IN TEXT

This title, referred to in text, is title VI of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3802, which enacted this chapter, amended sections 1437a, 1437c to 1437g, 1437*l*, 1437*o*, 1438, 8011 to 8013, 12705, 12901 to 12910, and 12912 of this title and section 1701q of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1437a, 8011, and 12901 of this title and section 1701q of Title 12, and amended provisions set out as a note under section 1701q of Title 12. For complete classification of this title to the Code, see Short Title of 1992 Amendment note set out under section 5301 of this title and Tables.

§ 13642. Applicability

Except as otherwise provided in subtitles B through F of this title and the amendments made by such subtitles, such subtitles and the amendments made by such subtitles shall apply upon the expiration of the 6-month period beginning on October 28, 1992.

(Pub. L. 102–550, title VI, § 684, Oct. 28, 1992, 106 Stat. 3832.)

REFERENCES IN TEXT

Subtitles B through F of this title, referred to in text, mean subtitles B to F of title VI of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3812–3830, which enacted this chapter, amended sections 1437a, 1437c to 1437g, 1437*l*, 1437*o*, 1438, 8011, 8013, and 12705 of this title and section 1701q of Title 12, Banks and Banking, and enacted provisions set out as notes under section 1437a of this title and section 1701q of Title 12.

§ 13643. Regulations

The Secretary shall issue regulations necessary to carry out subtitles B through F of this title and the amendments made by such subtitles not later than the expiration of the 6-month period beginning on October 28, 1992. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5 (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

(Pub. L. 102–550, title VI, § 685, Oct. 28, 1992, 106 Stat. 3832.)

REFERENCES IN TEXT

Subtitles B through F of this title, referred to in text, mean subtitles B to F of title VI of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3812–3830, which enacted this chapter, amended sections 1437a, 1437c to 1437g, 1437*l*, 1437*o*, 1438, 8011, 8013, and 12705 of this title and section 1701q of Title 12, Banks and Banking, and enacted provisions set out as notes under section 1437a of this title and section 1701q of Title 12.

SUBCHAPTER V—SAFETY AND SECURITY IN PUBLIC AND ASSISTED HOUSING

§ 13661. Screening of applicants for federally assisted housing

(a) Ineligibility because of eviction for drug crimes

Any tenant evicted from federally assisted housing by reason of drug-related criminal activity (as such term is defined in section 1437a(b) of this title) shall not be eligible for federally

assisted housing during the 3-year period beginning on the date of such eviction, unless the evicted tenant successfully completes a rehabilitation program approved by the public housing agency (which shall include a waiver of this subsection if the circumstances leading to eviction no longer exist).

(b) Ineligibility of illegal drug users and alcohol abusers

(1) In general

Notwithstanding any other provision of law, a public housing agency or an owner of federally assisted housing, as determined by the Secretary, shall establish standards that prohibit admission to the program or admission to federally assisted housing for any household with a member—

(A) who the public housing agency or owner determines is illegally using a controlled substance; or

(B) with respect to whom the public housing agency or owner determines that it has reasonable cause to believe that such household member's illegal use (or pattern of illegal use) of a controlled substance, or abuse (or pattern of abuse) of alcohol, may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) Consideration of rehabilitation

In determining whether, pursuant to paragraph (1)(B), to deny admission to the program or federally assisted housing to any household based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, a public housing agency or an owner may consider whether such household member—

(A) has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable);

(B) has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable); or

(C) is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable).

(c) Authority to deny admission to criminal offenders

Except as provided in subsections (a) and (b) of this section and in addition to any other authority to screen applicants, in selecting among applicants for admission to the program or to federally assisted housing, if the public housing agency or owner of such housing (as applicable) determines that an applicant or any member of the applicant's household is or was, during a reasonable time preceding the date when the applicant household would otherwise be selected for admission, engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees, the public housing agency or owner may—

(1) deny such applicant admission to the program or to federally assisted housing; and

(2) after the expiration of the reasonable period beginning upon such activity, require the applicant, as a condition of admission to the program or to federally assisted housing, to submit to the public housing agency or owner evidence sufficient (as the Secretary shall by regulation provide) to ensure that the individual or individuals in the applicant's household who engaged in criminal activity for which denial was made under paragraph (1) have not engaged in any criminal activity during such reasonable period.

(Pub. L. 105–276, title V, § 576, Oct. 21, 1998, 112 Stat. 2639.)

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of subtitles C to F of title VI of Pub. L. 102–550 which comprise this chapter.

Section is comprised of section 576 of Pub. L. 105–276. Subsec. (d) of section 576 of Pub. L. 105–276 amended sections 1437d and 1437n of this title.

EFFECTIVE DATE

Subchapter effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement any provision of subchapter before such date, except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 13662. Termination of tenancy and assistance for illegal drug users and alcohol abusers in federally assisted housing

(a) In general

Notwithstanding any other provision of law, a public housing agency or an owner of federally assisted housing (as applicable), shall establish standards or lease provisions for continued assistance or occupancy in federally assisted housing that allow the agency or owner (as applicable) to terminate the tenancy or assistance for any household with a member—

(1) who the public housing agency or owner determines is illegally using a controlled substance; or

(2) whose illegal use (or pattern of illegal use) of a controlled substance, or whose abuse (or pattern of abuse) of alcohol, is determined by the public housing agency or owner to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(b) Consideration of rehabilitation

In determining whether, pursuant to subsection (a)(2) of this section, to terminate tenancy or assistance to any household based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, a public housing agency or an owner may consider whether such household member—

(1) has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable);

(2) has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable); or

(3) is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable).

(Pub. L. 105–276, title V, § 577, Oct. 21, 1998, 112 Stat. 2640.)

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of subtitles C to F of title VI of Pub. L. 102–550 which comprise this chapter.

§ 13663. Ineligibility of dangerous sex offenders for admission to public housing

(a) In general

Notwithstanding any other provision of law, an owner of federally assisted housing shall prohibit admission to such housing for any household that includes any individual who is subject to a lifetime registration requirement under a State sex offender registration program.

(b) Obtaining information

As provided in regulations issued by the Secretary to carry out this section—

(1) a public housing agency shall carry out criminal history background checks on applicants for federally assisted housing and make further inquiry with State and local agencies as necessary to determine whether an applicant for federally assisted housing is subject to a lifetime registration requirement under a State sex offender registration program; and

(2) State and local agencies responsible for the collection or maintenance of criminal history record information or information on persons required to register as sex offenders shall comply with requests of public housing agencies for information pursuant to this section.

(c) Requests by owners for PHAs to obtain information

A public housing agency may take any action under subsection (b) of this section regarding applicants for, or tenants of, federally assisted housing other than federally assisted housing described in subparagraph (A) or (B) of section 13664(a)(2) of this title, but only if the housing is located within the jurisdiction of the agency and the owner of such housing has requested that the agency take such action on behalf of the owner. Upon such a request by the owner, the agency shall take the action requested under subsection (b) of this section. The agency may not make any information obtained pursuant to the action under subsection (b) of this section available to the owner but shall perform determinations for the owner regarding screening, lease enforcement, and eviction based on criteria supplied by the owner.

(d) Opportunity to dispute

Before an adverse action is taken with respect to an applicant for federally assisted housing on the basis that an individual is subject to a lifetime registration requirement under a State sex offender registration program, the public housing agency obtaining the record shall provide the tenant or applicant with a copy of the registration information and an opportunity to dispute the accuracy and relevance of that information.

(e) Fee

A public housing agency may be charged a reasonable fee for taking actions under subsection (b) of this section. In the case of a public housing agency taking actions on behalf of another owner of federally assisted housing pursuant to subsection (c) of this section, the agency may pass such fee on to the owner making the request and may charge an additional reasonable fee for making the request on behalf of the owner.

(f) Records management

Each public housing agency shall establish and implement a system of records management that ensures that any criminal record or information regarding a lifetime registration requirement under a State sex offender registration program that is obtained under this section by the public housing agency is—

(1) maintained confidentially;

(2) not misused or improperly disseminated; and

(3) destroyed, once the purpose for which the record was requested has been accomplished.

(Pub. L. 105–276, title V, § 578, Oct. 21, 1998, 112 Stat. 2641.)

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of subtitles C to F of title VI of Pub. L. 102–550 which comprise this chapter.

§ 13664. Definitions

(a)[1] Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Drug-related criminal activity

The term ''drug-related criminal activity'' has the meaning given the term in section 1437a(b) of this title.

(2) Federally assisted housing

The term ''federally assisted housing'' means a dwelling unit—

(A) in public housing (as such term is defined in section 1437a(b) of this title);

(B) assisted with tenant-based assistance under section 1437f of this title;

(C) in housing that is provided project-based assistance under section 1437f of this title, including new construction and substantial rehabilitation projects;

(D) in housing that is assisted under section 1701q of title 12 (as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act);

(E) in housing that is assisted under section 1701q of title 12, as such section existed before the enactment of the Cranston-Gon-

[1] So in original. No subsec. (b) has been enacted.

zalez National Affordable Housing Act [November 28, 1990];

(F) in housing that is assisted under section 8013 of this title;

(G) in housing financed by a loan or mortgage insured under section 1715*l*(d)(3) of title 12 that bears interest at a rate determined under the proviso of section 1715*l*(d)(5) of title 12;

(H) in housing insured, assisted, or held by the Secretary or a State or State agency under section 1715z–1 of title 12; or

(I) in housing assisted under section 1484 or 1485 of this title.

(3) Owner

The term ''owner'' means, with respect to federally assisted housing, the entity or private person (including a cooperative or public housing agency) that has the legal right to lease or sublease dwelling units in such housing.

(Pub. L. 105–276, title V, § 579, Oct. 21, 1998, 112 Stat. 2642.)

REFERENCES IN TEXT

Section 801 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (a)(2)(D), is section 801 of Pub. L. 101–625.

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of subtitles C to F of title VI of Pub. L. 102–550 which comprise this chapter.

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Unless otherwise provided, for purposes of this part—

(1) the term ''indeterminate sentencing'' means a system by which—

(A) the court may impose a sentence of a range defined by statute; and

(B) an administrative agency, generally the parole board, or the court, controls release within the statutory range;

(2) the term ''part 1 violent crime'' means murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports; and

(3) the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 103–322, title II, § 20101, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–15; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13701, Pub. L. 103–322, title II, § 20101, Sept. 13, 1994, 108 Stat. 1815, related to grants for correctional facilities prior to the general amendment of this part by Pub. L. 104–134.

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–248, title VI, § 611, July 27, 2006, 120 Stat. 632, provided that: ''This subtitle [subtitle B (§§ 611–617) of title VI of Pub. L. 109–248, amending provisions set out as a note under section 13751 of this title] may be cited as the 'National Police Athletic League Youth Enrichment Reauthorization Act of 2006'.''

Pub. L. 109–162, § 1, Jan. 5, 2006, 119 Stat. 2960, as amended Pub. L. 109–271, § 1(a), Aug. 12, 2006, 120 Stat. 750, provided that:

''(a) IN GENERAL.—This Act [see Tables for classification] may be cited as the 'Violence Against Women and Department of Justice Reauthorization Act of 2005'.

''(b) SEPARATE SHORT TITLES.—Section 3 and titles I through IX of this Act [see Tables for classification] may be cited as the 'Violence Against Women Reauthorization Act of 2005'. Title XI of this Act [see Tables for classification] may be cited as the 'Department of Justice Appropriations Authorization Act of 2005'.''

Pub. L. 109–162, title X, § 1001, Jan. 5, 2006, 119 Stat. 3084, provided that: ''This title [amending sections 14132, 14135, and 14135a of this title and sections 3142 and 3297 of Title 18, Crimes and Criminal Procedure] may be cited as the 'DNA Fingerprint Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–405, § 1(a), Oct. 30, 2004, 118 Stat. 2260, provided that: ''This Act [enacting sections 10603d, 10603e, 14136 to 14136e, and 14163 to 14163e of this title and chapters 228A and 237 and section 3297 of Title 18, Crimes and Criminal Procedure, amending sections 3793, 3796gg to 3796gg–6, 3797k, 3797m, 14132, 14133, 14135, 14135a, and 14135e of this title, section 1565 of Title 10, Armed Forces, and section 2513 of Title 28, Judiciary and Judicial Procedure, repealing section 10606 of this title, and enacting provisions set out as notes under this section and sections 3796gg–1 and 14136 of this title, sections 3297, 3600, and 3771 of Title 18, and section 531 of Title 28] may be cited as the 'Justice for All Act of 2004'.''

Pub. L. 108–405, title II, § 201, Oct. 30, 2004, 118 Stat. 2266, provided that: ''This title [enacting section 3297 of Title 18, Crimes and Criminal Procedure, amending sections 3796gg–6, 14132, 14133, 14135, 14135a, and 14135e of this title and section 1565 of Title 10, Armed Forces, and enacting provisions set out as notes under section 3297 of Title 18 and section 531 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Debbie Smith Act of 2004'.''

Pub. L. 108–405, title III, § 301, Oct. 30, 2004, 118 Stat. 2272, provided that: ''This title [enacting sections 14136 to 14136d of this title, amending sections 3793, 3796gg to 3796gg–5, 3797k, 3797m, 14132, and 14135e of this title, and enacting provisions set out as a note under section 3796gg–1 of this title] may be cited as the 'DNA Sexual Assault Justice Act of 2004'.''

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–560, § 1, Dec. 21, 2000, 114 Stat. 2784, provided that: ''This Act [enacting sections 13726 to 13726c of this title] may be cited as the 'Interstate Transportation of Dangerous Criminals Act of 2000' or 'Jeanna's Act'.''

Pub. L. 106–546, § 1, Dec. 19, 2000, 114 Stat. 2726, provided that: ''This Act [enacting sections 14135 to 14135e of this title and section 1565 of Title 10, Armed Forces, amending sections 3753, 3796kk–2, 14132, and 14133 of this title and sections 3563, 3583, and 4209 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under section 14135 of this title and section 1565 of Title 10, and amending provisions set out as a note

under section 531 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'DNA Analysis Backlog Elimination Act of 2000'.''

Pub. L. 106–386, div. B, § 1001, Oct. 28, 2000, 114 Stat. 1491, provided that: ''This division [see Tables for classification] may be cited as the 'Violence Against Women Act of 2000'.''

Pub. L. 106–297, § 1, Oct. 13, 2000, 114 Stat. 1045, provided that: ''This Act [amending section 13704 of this title] may be cited as the 'Death in Custody Reporting Act of 2000'.''

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104–236, § 1, Oct. 3, 1996, 110 Stat. 3093, provided that: ''This Act [enacting sections 14072 and 14073 of this title, amending section 14071 of this title, and enacting provisions set out as notes under section 14071 of this title] may be cited as the 'Pam Lychner Sexual Offender Tracking and Identification Act of 1996'.''

Pub. L. 104–145, § 1, May 17, 1996, 110 Stat. 1345, provided that: ''This Act [amending section 14071 of this title] may be cited as 'Megan's Law'.''

SHORT TITLE

Pub. L. 103–322, § 1, Sept. 13, 1994, 108 Stat. 1796, provided that: ''This Act [see Tables for classification] may be cited as the 'Violent Crime Control and Law Enforcement Act of 1994'.''

Pub. L. 103–322, title III, § 31101, Sept. 13, 1994, 108 Stat. 1882, provided that: ''This subtitle [subtitle K (§§ 31101–31133) of title III of Pub. L. 103–322, enacting part G (§ 13821 et seq.) of subchapter II of this chapter] may be cited as the 'National Community Economic Partnership Act of 1994'.''

Pub. L. 103–322, title III, § 31901, Sept. 13, 1994, 108 Stat. 1892, provided that: ''This subtitle [subtitle S (§§ 31901–31922) of title III of Pub. L. 103–322, enacting part I (§ 13881 et seq.) of subchapter II of this chapter] may be cited as the 'Family Unity Demonstration Project Act'.''

Pub. L. 103–322, title IV, § 40001, Sept. 13, 1994, 108 Stat. 1902, provided that: ''This title [see Tables for classification] may be cited as the 'Violence Against Women Act of 1994'.''

Pub. L. 103–322, title IV, § 40101, Sept. 13, 1994, 108 Stat. 1903, provided that: ''This subtitle [subtitle A (§§ 40101–40156) of title IV of Pub. L. 103–322, enacting part A (§ 13931 et seq.) of subchapter III of this chapter, sections 300w–10, 3796gg to 3796gg–5, and 5712d of this title, section 1a–7a of Title 16, Conservation, and sections 2247, 2248, and 2259 of Title 18, Crimes and Criminal Procedure, amending sections 3793, 3796aa–1 to 3796aa–3, 3796aa–5, 3796aa–6, 3797, 13012, 13014, 13021, and 13024 of this title, section 460*l*–8 of Title 16, and Rule 412 of the Federal Rules of Evidence, repealing sections 3796aa–4 and 3796aa–7 of this title, and enacting provisions set out as notes under sections 994 and 2074 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Safe Streets for Women Act of 1994'.''

Pub. L. 103–322, title IV, § 40201, Sept. 13, 1994, 108 Stat. 1925, provided that: ''This title [probably should be ''subtitle'', meaning subtitle B (§§ 40201–40295) of title IV of Pub. L. 103–322, enacting part B (§ 13951 et seq.) of subchapter III of this chapter, sections 3796hh to 3796hh–4 and 10416 to 10418 of this title, and sections 2261 to 2266 of Title 18, Crimes and Criminal Procedure, and amending sections 3782, 3783, 3793, 3797, 10402, and 10407 to 10410 of this title] may be cited as the 'Safe Homes for Women Act of 1994'.''

Pub. L. 103–322, title IV, § 40301, Sept. 13, 1994, 108 Stat. 1941, provided that: ''This subtitle [subtitle C (§§ 40301–40304) of title IV of Pub. L. 103–322, enacting part C (§ 13981) of subchapter III of this chapter and amending section 1988 of this title and section 1445 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Civil Rights Remedies for Gender-Motivated Violence Act'.''

Pub. L. 103–322, title IV, § 40401, Sept. 13, 1994, 108 Stat. 1942, provided that: ''This subtitle [subtitle D (§§ 40401–40422) of title IV of Pub. L. 103–322, enacting part D (§ 13991 et seq.) of subchapter III of this chapter] may be cited as the 'Equal Justice for Women in the Courts Act of 1994'.''

Pub. L. 103–322, title IV, § 41001, as added by Pub. L. 109–162, title I, § 105(a), Jan. 5, 2006, 119 Stat. 2979, provided that: ''This subtitle [subtitle J (§§ 41001–41006) of title IV of Pub. L. 103–322, enacting part I (§ 14043 et seq.) of subchapter III of this chapter] may be cited as the 'Violence Against Women Act Court Training and Improvements Act of 2005'.''

Pub. L. 103–322, title XX, § 200101, Sept. 13, 1994, 108 Stat. 2049, provided that: ''This subtitle [subtitle A (§§ 200101–200113) of title XX of Pub. L. 103–322, enacting part A (§ 14091 et seq.) of subchapter VIII of this chapter] may be cited as the 'Police Corps Act'.''

Pub. L. 103–322, title XX, § 200201, Sept. 13, 1994, 108 Stat. 2057, provided that: ''This subtitle [subtitle B (§§ 200201–200210) of title XX of Pub. L. 103–322, enacting part B (§ 14111 et seq.) of subchapter VIII of this chapter] may be cited as the 'Law Enforcement Scholarships and Recruitment Act'.''

Pub. L. 103–322, title XXI, § 210301, Sept. 13, 1994, 108 Stat. 2065, provided that: ''This subtitle [subtitle C (§§ 210301–210306) of title XXI of Pub. L. 103–322, enacting part A (§ 14131 et seq.) of subchapter IX of this chapter and sections 3796kk to 3796kk–6 of this title, amending sections 3751, 3753, 3793, and 3797 of this title, and enacting provisions set out as a note under section 3751 of this title] may be cited as the 'DNA Identification Act of 1994'.''

Pub. L. 103–322, title XXII, § 220001, Sept. 13, 1994, 108 Stat. 2074, provided that: ''This title [enacting subchapter X (§ 14171) of this chapter and section 511A of Title 18, Crimes and Criminal Procedure, and amending section 511 of Title 18] may be cited as the 'Motor Vehicle Theft Prevention Act'.''

§ 13702. Authorization of grants

(a) In general

The Attorney General shall provide Violent Offender Incarceration grants under section 13703 of this title and Truth-in-Sentencing Incentive grants under section 13704 of this title to eligible States—

(1) to build or expand correctional facilities to increase the bed capacity for the confinement of persons convicted of a part 1 violent crime or adjudicated delinquent for an act which if committed by an adult, would be a part 1 violent crime;

(2) to build or expand temporary or permanent correctional facilities, including facilities on military bases, prison barges, and boot camps, for the confinement of convicted nonviolent offenders and criminal aliens, for the purpose of freeing suitable existing prison space for the confinement of persons convicted of a part 1 violent crime; and

(3) to build or expand jails.

(b) Regional compacts

(1) In general

Subject to paragraph (2), States may enter into regional compacts to carry out this part. Such compacts shall be treated as States under this part.

(2) Requirement

To be recognized as a regional compact for eligibility for a grant under section 13703 or 13704 of this title, each member State must be eligible individually.

(3) Limitation on receipt of funds

No State may receive a grant under this part both individually and as part of a compact.

(c) Applicability

Notwithstanding the eligibility requirements of section 13704 of this title, a State that certifies to the Attorney General that, as of April 26, 1996, such State has enacted legislation in reliance on this part, as enacted on September 13, 1994, and would in fact qualify under those provisions, shall be eligible to receive a grant for fiscal year 1996 as though such State qualifies under section 13704 of this title.

(Pub. L. 103–322, title II, § 20102, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–15; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13702, Pub. L. 103–322, title II, § 20102, Sept. 13, 1994, 108 Stat. 1816, related to Truth in Sentencing Incentive Grants prior to the general amendment of this part by Pub. L. 104–134.

§ 13703. Violent offender incarceration grants

(a) Eligibility for minimum grant

To be eligible to receive a minimum grant under this section, a State shall submit an application to the Attorney General that provides assurances that the State has implemented, or will implement, correctional policies and programs, including truth-in-sentencing laws that ensure that violent offenders serve a substantial portion of the sentences imposed, that are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders, and that the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public.

(b) Additional amount for increased percentage of persons sentenced and time served

A State that received a grant under subsection (a) of this section is eligible to receive additional grant amounts if such State demonstrates that the State has, since 1993—

(1) increased the percentage of persons arrested for a part 1 violent crime sentenced to prison; or

(2) increased the average prison time actually served or the average percent of sentence served by persons convicted of a part 1 violent crime.

Receipt of grant amounts under this subsection does not preclude eligibility for a grant under subsection (c) of this section.

(c) Additional amount for increased rate of incarceration and percentage of sentence served

A State that received a grant under subsection (a) of this section is eligible to receive additional grant amounts if such State demonstrates that the State has—

(1) since 1993, increased the percentage of persons arrested for a part 1 violent crime sentenced to prison, and has increased the average percent of sentence served by persons convicted of a part 1 violent crime; or

(2) has increased by 10 percent or more over the most recent 3-year period the number of new court commitments to prison of persons convicted of part 1 violent crimes.

Receipt of grant amounts under this subsection does not preclude eligibility for a grant under subsection (b) of this section.

(Pub. L. 103–322, title II, § 20103, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–16; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13703, Pub. L. 103–322, title II, § 20103, Sept. 13, 1994, 108 Stat. 1817, related to Violent Offender Incarceration Grants prior to the general amendment of this part by Pub. L. 104–134.

CONTROLLED SUBSTANCE TESTING AND INTERVENTION; AVAILABILITY OF FUNDS

Pub. L. 104–208, div. A, title I, § 101(a) [title I], Sept. 30, 1996, 110 Stat. 3009, 3009–14, provided in part: ''That beginning in fiscal year 1999, and thereafter, no funds shall be available to make grants to a State pursuant to section 20103 or section 20104 of the Violent Crime Control and Law Enforcement Act of 1994 [42 U.S.C. 13703, 13704] unless no later than September 1, 1998, such State has implemented a program of controlled substance testing and intervention for appropriate categories of convicted offenders during periods of incarceration and criminal justice supervision, with sanctions including denial or revocation of release for positive controlled substance tests, consistent with guidelines issued by the Attorney General''.

§ 13704. Truth-in-sentencing incentive grants

(a) Eligibility

To be eligible to receive a grant award under this section, a State shall submit an application to the Attorney General that demonstrates that—

(1)(A) such State has implemented truth-in-sentencing laws that—

(i) require persons convicted of a part 1 violent crime to serve not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior); or

(ii) result in persons convicted of a part 1 violent crime serving on average not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior);

(B) such State has truth-in-sentencing laws that have been enacted, but not yet implemented, that require such State, not later than 3 years after such State submits an application to the Attorney General, to provide that persons convicted of a part 1 violent crime serve not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior); or

(C) in the case of a State that on April 26, 1996, practices indeterminate sentencing with regard to any part 1 violent crime—

(i) persons convicted of a part 1 violent crime on average serve not less than 85 percent of the prison term established under the State's sentencing and release guidelines; or

(ii) persons convicted of a part 1 violent crime on average serve not less than 85 percent of the maximum prison term allowed

under the sentence imposed by the court (not counting time not actually served such as administrative or statutory incentives for good behavior); and

(2) such State has provided assurances that it will follow guidelines established by the Attorney General in reporting, on a quarterly basis, information regarding the death of any person who is in the process of arrest, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, or other local or State correctional facility (including any juvenile facility) that, at a minimum, includes—

(A) the name, gender, race, ethnicity, and age of the deceased;

(B) the date, time, and location of death; and

(C) a brief description of the circumstances surrounding the death.

(b) Exception

Notwithstanding subsection (a) of this section, a State may provide that the Governor of the State may allow for the earlier release of—

(1) a geriatric prisoner; or

(2) a prisoner whose medical condition precludes the prisoner from posing a threat to the public, but only after a public hearing in which representatives of the public and the prisoner's victims have had an opportunity to be heard regarding a proposed release.

(Pub. L. 103–322, title II, § 20104, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–16; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; amended Pub. L. 106–297, § 2, Oct. 13, 2000, 114 Stat. 1045.)

PRIOR PROVISIONS

A prior section 13704, Pub. L. 103–322, title II, § 20104, Sept. 13, 1994, 108 Stat. 1818, related to Federal share matching requirement prior to the general amendment of this part by Pub. L. 104–134.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–297 redesignated par. (1) as subpar. (A) and former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated par. (2) as subpar. (B), redesignated par. (3) as subpar. (C) and former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added par. (2).

§ 13705. Special rules

(a) Sharing of funds with counties and other units of local government

(1) Reservation

Each State shall reserve not more than 15 percent of the amount of funds allocated in a fiscal year pursuant to section 13706 of this title for counties and units of local government to construct, develop, expand, modify, or improve jails and other correctional facilities.

(2) Factors for determination of amount

To determine the amount of funds to be reserved under this subsection, a State shall consider the burden placed on a county or unit of local government that results from the implementation of policies adopted by the State to carry out section 13703 or 13704 of this title.

(b) Use of truth-in-sentencing and violent offender incarceration grants

Funds provided under section 13703 or 13704 of this title may be applied to the cost of—

(1) altering existing correctional facilities to provide separate facilities for juveniles under the jurisdiction of an adult criminal court who are detained or are serving sentences in adult prisons or jails;

(2) providing correctional staff who are responsible for supervising juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court with orientation and ongoing training regarding the unique needs of such offenders; and

(3) providing ombudsmen to monitor the treatment of juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court in adult facilities, consistent with guidelines issued by the Assistant Attorney General.

(c) Funds for juvenile offenders

Notwithstanding any other provision of this part, if a State, or unit of local government located in a State that otherwise meets the requirements of section 13703 or 13704 of this title, certifies to the Attorney General that exigent circumstances exist that require the State to expend funds to build or expand facilities to confine juvenile offenders other than juvenile offenders adjudicated delinquent for an act which, if committed by an adult, would be a part 1 violent crime, the State may use funds received under this part to build or expand juvenile correctional facilities or pretrial detention facilities for juvenile offenders.

(d) Private facilities

A State may use funds received under this part for the privatization of facilities to carry out the purposes of section 13702 of this title.

(e) "Part 1 violent crime" defined

For purposes of this part, "part 1 violent crime" means a part 1 violent crime as defined in section 13701(3)[1] of this title, or a crime in a reasonably comparable class of serious violent crimes as approved by the Attorney General.

(Pub. L. 103–322, title II, § 20105, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–17; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; amended Pub. L. 105–277, div. E, § 3, Oct. 21, 1998, 112 Stat. 2681–760; Pub. L. 107–273, div. A, title III, § 307, Nov. 2, 2002, 116 Stat. 1783.)

PRIOR PROVISIONS

A prior section 13705, Pub. L. 103–322, title II, § 20105, Sept. 13, 1994, 108 Stat. 1818, related to rules and regulations prior to the general amendment of this part by Pub. L. 104–134.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–273 substituted "Use of truth-in-sentencing and violent offender incarceration grants" for "Additional requirements" in heading and amended text generally, substituting provisions relating to use of funds for juveniles in adult prisons or under the jurisdiction of an adult criminal court for

[1] So in original. Probably should be section "13701(2)".

provisions relating to additional requirements for grant eligibility.

1998—Subsec. (b). Pub. L. 105–277 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''To be eligible to receive a grant under section 13703 or 13704 of this title, a State shall provide assurances to the Attorney General that the State has implemented or will implement not later than 18 months after April 26, 1996, policies that provide for the recognition of the rights and needs of crime victims.''

§ 13706. Formula for grants

(a) Allocation of violent offender incarceration grants under section 13703

(1) Formula allocation

85 percent of the amount available for grants under section 13703 of this title for any fiscal year shall be allocated as follows (except that a State may not receive more than 9 percent of the total amount of funds made available under this paragraph):

(A) 0.75 percent shall be allocated to each State that meets the requirements of section 13703(a) of this title, except that the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, if eligible under section 13703(a) of this title, shall each be allocated 0.05 percent.

(B) The amount remaining after application of subparagraph (A) shall be allocated to each State that meets the requirements of section 13703(b) of this title, in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, bears to the average annual number of part 1 violent crimes reported by all States that meet the requirements of section 13703(b) of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made.

(2) Additional allocation

15 percent of the amount available for grants under section 13703 of this title for any fiscal year shall be allocated to each State that meets the requirements of section 13703(c) of this title as follows:

(A) 3.0 percent shall be allocated to each State that meets the requirements of section 13703(c) of this title, except that the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, if eligible under such subsection, shall each be allocated 0.03 percent.

(B) The amount remaining after application of subparagraph (A) shall be allocated to each State that meets the requirements of section 13703(c) of this title, in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, bears to the average annual number of part 1 violent crimes reported by all States that meet the requirements of section 13702(c) of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made.

(b) Allocation of truth-in-sentencing grants under section 13704

The amounts available for grants for section 13704 of this title shall be allocated to each State that meets the requirements of section 13704 of this title in the ratio that the average annual number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made bears to the average annual number of part 1 violent crimes reported by States that meet the requirements of section 13704 of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, except that a State may not receive more than 25 percent of the total amount available for such grants.

(c) Unavailable data

If data regarding part 1 violent crimes in any State is substantially inaccurate or is unavailable for the 3 years preceding the year in which the determination is made, the Attorney General shall utilize the best available comparable data regarding the number of violent crimes for the previous year for the State for the purposes of allocation of funds under this part.

(d) Regional compacts

In determining the amount of funds that States organized as a regional compact may receive, the Attorney General shall first apply the formula in either subsection (a) or (b) and (c) of this section to each member State of the compact. The States organized as a regional compact may receive the sum of the amounts so determined.

(Pub. L. 103–322, title II, § 20106, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–18; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13706, Pub. L. 103–322, title II, § 20106, Sept. 13, 1994, 108 Stat. 1818, related to technical assistance and training prior to the general amendment of this part by Pub. L. 104–134.

§ 13707. Accountability

(a) Fiscal requirements

A State that receives funds under this part shall use accounting, audit, and fiscal procedures that conform to guidelines prescribed by the Attorney General, and shall ensure that any funds used to carry out the programs under section 13702(a) of this title shall represent the best value for the State governments at the lowest possible cost and employ the best available technology.

(b) Administrative provisions

The administrative provisions of sections 3782 and 3783 of this title shall apply to the Attorney General under this part in the same manner that such provisions apply to the officials listed in such sections.

(Pub. L. 103–322, title II, § 20107, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–19; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13707, Pub. L. 103–322, title II, § 20107, Sept. 13, 1994, 108 Stat. 1818, related to evaluation of programs prior to the general amendment of this part by Pub. L. 104–134.

§ 13708. Authorization of appropriations

(a) In general

(1) Authorizations

There are authorized to be appropriated to carry out this part—

(A) $997,500,000 for fiscal year 1996;

(B) $1,330,000,000 for fiscal year 1997;

(C) $2,527,000,000 for fiscal year 1998;

(D) $2,660,000,000 for fiscal year 1999; and

(E) $2,753,100,000 for fiscal year 2000.

(2) Distribution

(A) In general

Of the amounts remaining after the allocation of funds for the purposes set forth under sections 13710, 13711, and 13709 of this title, the Attorney General shall, from amounts authorized to be appropriated under paragraph (1) for each fiscal year, distribute 50 percent for incarceration grants under section 13703 of this title, and 50 percent for incentive grants under section 13704 of this title.

(B) Distribution of minimum amounts

The Attorney General shall distribute minimum amounts allocated for section 13703(a) of this title to an eligible State not later than 30 days after receiving an application that demonstrates that such State qualifies for a Violent Offender Incarceration grant under section 13703 of this title or a Truth-in-Sentencing Incentive grant under section 13704 of this title.

(b) Limitations on funds

(1) Uses of funds

Except as provided in section[1] 13710 and 13711 of this title, funds made available pursuant to this section shall be used only to carry out the purposes described in section 13702(a) of this title.

(2) Nonsupplanting requirement

Funds made available pursuant to this section shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources.

(3) Administrative costs

Not more than 3 percent of the funds that remain available after carrying out sections 13709, 13710, and 13711 of this title shall be available to the Attorney General for purposes of—

(A) administration;

(B) research and evaluation, including assessment of the effect on public safety and other effects of the expansion of correctional capacity and sentencing reforms implemented pursuant to this part;

(C) technical assistance relating to the use of grant funds, and development and implementation of sentencing reforms implemented pursuant to this part; and

(D) data collection and improvement of information systems relating to the confinement of violent offenders and other sentencing and correctional matters.

(4) Carryover of appropriations

Funds appropriated pursuant to this section during any fiscal year shall remain available until expended.

(5) Matching funds

The Federal share of a grant received under this part may not exceed 90 percent of the costs of a proposal as described in an application approved under this part.

(Pub. L. 103–322, title II, § 20108, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–19; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13708, Pub. L. 103–322, title II, § 20108, Sept. 13, 1994, 108 Stat. 1818, defined terms in this part prior to the general amendment of this part by Pub. L. 104–134.

§ 13709. Payments for incarceration on tribal lands

(a) Reservation of funds

Notwithstanding any other provision of this part other than section 13708(a)(2) of this title, from amounts appropriated to carry out sections 13703 and 13704 of this title, the Attorney General shall reserve, to carry out this section—

(1) 0.3 percent in each of fiscal years 1996 and 1997; and

(2) 0.2 percent in each of fiscal years 1998, 1999, and 2000.

(b) Grants to Indian tribes

From the amounts reserved under subsection (a) of this section, the Attorney General may make grants to Indian tribes for the purposes of constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

(c) Applications

To be eligible to receive a grant under this section, an Indian tribe shall submit to the Attorney General an application in such form and containing such information as the Attorney General may by regulation require.

(Pub. L. 103–322, title II, § 20109, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–20; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13709, Pub. L. 103–322, title II, § 20109, Sept. 13, 1994, 108 Stat. 1818, authorized appropriations to carry out this part prior to the general amendment of this part by Pub. L. 104–134.

§ 13710. Payments to eligible States for incarceration of criminal aliens

(a) In general

The Attorney General shall make a payment to each State which is eligible under section

[1] So in original. Probably should be ''sections''.

1252(j)[1] of title 8 in such amount as is determined under section 1252(j)[1] of title 8, and for which payment is not made to such State for such fiscal year under such section.

(b) Authorization of appropriations

Notwithstanding any other provision of this part, there are authorized to be appropriated to carry out this section from amounts authorized under section 13708 of this title, an amount which when added to amounts appropriated to carry out section 1252(j)[1] of title 8 for fiscal year 1996 equals $500,000,000 and for each of the fiscal years 1997 through 2000 does not exceed $650,000,000.

(c) Administration

The amounts appropriated to carry out this section shall be reserved from the total amount appropriated for each fiscal year and shall be added to the other funds appropriated to carry out section 1252(j)[1] of title 8 and administered under such section.

(d) Report to Congress

Not later than May 15, 1999, the Attorney General shall submit a report to the Congress which contains the recommendation of the Attorney General concerning the extension of the program under this section.

(Pub. L. 103–322, title II, § 20110, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

REFERENCES IN TEXT

Section 1252(j) of title 8, referred to in subsecs. (a) to (c), was redesignated section 1231(i) of title 8 by Pub. L. 104–208, div. C, title III, § 306(a)(1), Sept. 30, 1996, 110 Stat. 3009–607.

§ 13711. Support of Federal prisoners in non-Federal institutions

(a) In general

The Attorney General may make payments to States and units of local government for the purposes authorized in section 4013 of title 18.

(b) Authorization of appropriations

Notwithstanding any other provision of this part other than section 13708(a)(2) of this title, there are authorized to be appropriated from amounts authorized under section 13708 of this title for each of fiscal years 1996 through 2000 such sums as may be necessary to carry out this section.

(Pub. L. 103–322, title II, § 20111, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

§ 13712. Report by Attorney General

Beginning on October 1, 1996, and each subsequent July 1 thereafter, the Attorney General shall report to the Congress on the implementation of this part, including a report on the eligibility of the States under sections 13703 and 13704 of this title, and the distribution and use of funds under this part.

(Pub. L. 103–322, title II, § 20112, as added Pub. L. 104–134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–21; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

§ 13713. Aimee's Law

(a) Short title

This section may be cited as ''Aimee's Law''.

(b) Definitions

Pursuant to regulations promulgated by the Attorney General hereunder, in this section:

(1) Dangerous sexual offense

The term ''dangerous sexual offense'' means any offense under State law for conduct that would constitute an offense under chapter 109A of title 18 had the conduct occurred in the special maritime and territorial jurisdiction of the United States or in a Federal prison.

(2) Murder

The term ''murder'' has the meaning given the term in part I of the Uniform Crime Reports of the Federal Bureau of Investigation.

(3) Rape

The term ''rape'' has the meaning given the term in part I of the Uniform Crime Reports of the Federal Bureau of Investigation.

(c) Penalty

(1) Single State

Pursuant to regulations promulgated by the Attorney General hereunder, in any case in which a criminal-records-reporting State convicts an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for any one of those offenses in a State described in paragraph (3), it may, under subsection (d) of this section, apply to the Attorney General for $10,000, for its related apprehension and prosecution costs, and $22,500 per year (up to a maximum of 5 years), for its related incarceration costs with both amounts for costs adjusted annually for the rate of inflation.

(2) Multiple States

Pursuant to regulations promulgated by the Attorney General hereunder, in any case in which a criminal-records-reporting State convicts an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for any one or more of those offenses in more than one other State described in paragraph (3), it may, under subsection (d) of this section, apply to the Attorney General for $10,000, for its related apprehension and prosecution costs, and $22,500 per year (up to a maximum of 5 years), for its related incarceration costs with both amounts for costs adjusted annually for the rate of inflation.

(3) State described

Pursuant to regulations promulgated by the Attorney General hereunder, a State is described in this paragraph unless—

(A) the term of imprisonment imposed by the State on the individual described in paragraph (1) or (2), as applicable, was not less than the average term of imprisonment imposed for that offense in all States; or

[1] See References in Text note below.

(B) with respect to the individual described in paragraph (1) or (2), as applicable, the individual had served not less than 85 percent of the term of imprisonment to which that individual was sentenced for the prior offense.

For purposes of subparagraph (B), in a State that has indeterminate sentencing, the term of imprisonment to which that individual was sentenced for the prior offense shall be based on the lower of the range of sentences.

(d) State applications

In order to receive an amount under subsection (c) of this section, the chief executive of a State shall submit to the Attorney General an application, in such form and containing such information as the Attorney General may reasonably require, which shall include a certification that the State has convicted an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for one of those offenses in another State.

(e) Source of funds

(1) In general

Pursuant to regulations promulgated by the Attorney General hereunder, any amount under subsection (c) of this section shall be derived by reducing the amount of Federal law enforcement assistance funds received by the State pursuant to section 3755 of this title that convicted such individual of the prior offense before the distribution of the funds to the State. No amount described under this section shall be subject to section 3335(b) or 6503(d) of title 31 [1]

(2) Payment schedule

The Attorney General, in consultation with the chief executive of the State that convicted such individual of the prior offense, shall establish a payment schedule.

(f) Construction

Nothing in this section may be construed to diminish or otherwise affect any court ordered restitution.

(g) Exception

Pursuant to regulations promulgated by the Attorney General hereunder, this section does not apply if the individual convicted of murder, rape, or a dangerous sexual offense has been released from prison upon the reversal of a conviction for an offense described in subsection (c) of this section and subsequently been convicted for an offense described in subsection (c) of this section.

(h) Report

The Attorney General shall—

(1) conduct a study evaluating the implementation of this section; and

(2) not later than October 1, 2006, submit to Congress a report on the results of that study.

(i) Collection of recidivism data

(1) In general

Beginning with calendar year 2002, and each calendar year thereafter, the Attorney General shall collect and maintain information relating to, with respect to each State (where practicable)—

(A) the number of convictions during that calendar year for—

(i) any dangerous sexual offense;

(ii) rape; and

(iii) murder; and

(B) the number of convictions described in subparagraph (A) that constitute second or subsequent convictions of the defendant of an offense described in that subparagraph.

(2) Report

The Attorney General shall submit to Congress—

(A) a report, by not later than 6 months after January 5, 2006, that provides national estimates of the nature and extent of recidivism (with an emphasis on interstate recidivism) by State inmates convicted of murder, rape, and dangerous sexual offenses;

(B) a report, by not later than October 1, 2007, and October 1 of each year thereafter, that provides statistical analysis and criminal history profiles of interstate recidivists identified in any State applications under this section; and

(C) reports, at regular intervals not to exceed every five years, that include the information described in paragraph (1).

(j) Effective date

This section shall take effect on January 1, 2002.

(Pub. L. 106–386, div. C, § 2001, Oct. 28, 2000, 114 Stat. 1539; Pub. L. 109–162, title XI, § 1170, Jan. 5, 2006, 119 Stat. 3122; Pub. L. 109–271, § 8(m), Aug. 12, 2006, 120 Stat. 767.)

CODIFICATION

January 5, 2006, referred to in subsec. (i)(2)(A), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 109–162, which enacted subsec. (i)(2) of this section, to reflect the probable intent of Congress.

Section was enacted as Aimee's Law and also as part of the Victims of Trafficking and Violence Protection Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–162, § 1170(1), substituted ''Pursuant to regulations promulgated by the Attorney General hereunder, in this section'' for ''In this section'' in introductory provisions.

Subsec. (c)(1). Pub. L. 109–162, § 1170(1), (2), substituted ''Pursuant to regulations promulgated by the Attorney General hereunder, in any case'' for ''In any case'', ''a criminal-records-reporting State'' for ''a State'' the first place appearing, and ''(3), it may, under subsection (d) of this section, apply to the Attorney General for $10,000, for its related apprehension and prosecution costs, and $22,500 per year (up to a maximum of 5 years), for its related incarceration costs with both amounts for costs adjusted annually for the rate of inflation'' for ''(3), the Attorney General shall transfer an amount equal to the costs of incarceration, prosecution, and apprehension of that individual, from Federal law enforcement assistance funds that have been allocated to but not distributed to the State that convicted the individual of the prior offense, to the State account that collects Federal law enforcement assistance funds

[1] So in original. Probably should be followed by a period.

of the State that convicted that individual of the subsequent offense''.

Subsec. (c)(2). Pub. L. 109–162, § 1170(1), (2), substituted ''Pursuant to regulations promulgated by the Attorney General hereunder, in any case'' for ''In any case'', ''a criminal-records-reporting State'' for ''a State'', and ''(3), it may, under subsection (d) of this section, apply to the Attorney General for $10,000, for its related apprehension and prosecution costs, and $22,500 per year (up to a maximum of 5 years), for its related incarceration costs with both amounts for costs adjusted annually for the rate of inflation'' for ''(3), the Attorney General shall transfer an amount equal to the costs of incarceration, prosecution, and apprehension of that individual, from Federal law enforcement assistance funds that have been allocated to but not distributed to each State that convicted such individual of the prior offense, to the State account that collects Federal law enforcement assistance funds of the State that convicted that individual of the subsequent offense''.

Subsec. (c)(3). Pub. L. 109–162, § 1170(1), (3)(A), substituted ''Pursuant to regulations promulgated by the Attorney General hereunder, a State'' for ''A State'' and ''unless'' for ''if'' in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 109–162, § 1170(3)(B)(iii), (C), inserted ''not'' before ''less'' and struck out ''convicted by the State is'' after ''as applicable, was''.

Pub. L. 109–162, § 1170(3)(B)(ii), which directed amendment of par. (3) by striking ''individuals convicted of the offense for which,'' was executed by striking ''individuals convicted of the offense for which'' after ''imposed by the State on'' to reflect the probable intent of Congress, because there was no comma after ''which''.

Pub. L. 109–162, § 1170(3)(B)(i), which directed that ''average'' be struck out, was executed by striking out ''average'' the first place appearing, after ''(A) the'', to reflect the probable intent of Congress.

Subsec. (c)(3)(B). Pub. L. 109–162, § 1170(3)(C), inserted ''not'' before ''less''.

Subsec. (d). Pub. L. 109–162, § 1170(4), struck out ''transferred'' after ''receive an amount''.

Subsec. (e)(1). Pub. L. 109–271 substituted ''section 3755'' for ''section 3756''.

Pub. L. 109–162, § 1170(1), (4), (5), substituted ''Pursuant to regulations promulgated by the Attorney General hereunder, any amount'' for ''Any amount transferred'', inserted ''pursuant to section 3756 of this title'' before ''that convicted'', inserted ''No amount described under this section shall be subject to section 3335(b) or 6503(d) of title 31'' at end, and struck out former last sentence which read as follows: ''The Attorney General shall provide the State with an opportunity to select the specific Federal law enforcement assistance funds to be so reduced (other than Federal crime victim assistance funds).''

Subsec. (g). Pub. L. 109–162, § 1170(1), substituted ''Pursuant to regulations promulgated by the Attorney General hereunder, this section does not apply'' for ''This section does not apply''.

Subsec. (i)(1). Pub. L. 109–162, § 1170(6), substituted ''State (where practicable)'' for ''State'' in introductory provisions.

Subsec. (i)(2). Pub. L. 109–162, § 1170(7), added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''Not later than March 1, 2003, and on March 1 of each year thereafter, the Attorney General shall submit to Congress a report, which shall include—

''(A) the information collected under paragraph (1) with respect to each State during the preceding calendar year; and

''(B) the percentage of cases in each State in which an individual convicted of an offense described in paragraph (1)(A) was previously convicted of another such offense in another State during the preceding calendar year.''

PART B—MISCELLANEOUS PROVISIONS

§ 13721. Task force on prison construction standardization and techniques

(a) Task force

The Director of the National Institute of Corrections shall, subject to availability of appropriations, establish a task force composed of Federal, State, and local officials expert in prison construction, and of at least an equal number of engineers, architects, and construction experts from the private sector with expertise in prison design and construction, including the use of cost-cutting construction standardization techniques and cost-cutting new building materials and technologies.

(b) Cooperation

The task force shall work in close cooperation and communication with other State and local officials responsible for prison construction in their localities.

(c) Performance requirements

The task force shall work to—

(1) establish and recommend standardized construction plans and techniques for prison and prison component construction; and

(2) evaluate and recommend new construction technologies, techniques, and materials,

to reduce prison construction costs at the Federal, State, and local levels and make such construction more efficient.

(d) Dissemination

The task force shall disseminate information described in subsection (c) of this section to State and local officials involved in prison construction, through written reports and meetings.

(e) Promotion and evaluation

The task force shall—

(1) work to promote the implementation of cost-saving efforts at the Federal, State, and local levels;

(2) evaluate and advise on the results and effectiveness of such cost-saving efforts as adopted, broadly disseminating information on the results; and

(3) to the extent feasible, certify the effectiveness of the cost-savings efforts.

(Pub. L. 103–322, title II, § 20406, Sept. 13, 1994, 108 Stat. 1826.)

§ 13722. Efficiency in law enforcement and corrections

(a) In general

In the administration of each grant program funded by appropriations authorized by this Act or by an amendment made by this Act, the Attorney General shall encourage—

(1) innovative methods for the low-cost construction of facilities to be constructed, converted, or expanded and the low-cost operation of such facilities and the reduction of administrative costs and overhead expenses; and

(2) the use of surplus Federal property.

(b) Assessment of construction components and designs

The Attorney General may make an assessment of the cost efficiency and utility of using

modular, prefabricated, precast, and pre-engineered construction components and designs for housing nonviolent criminals.

(Pub. L. 103–322, title II, § 20407, Sept. 13, 1994, 108 Stat. 1826.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 13723. Congressional approval of any expansion at Lorton and congressional hearings on future needs

(a) Congressional approval

Notwithstanding any other provision of law, the existing prison facilities and complex at the District of Columbia Corrections Facility at Lorton, Virginia, shall not be expanded unless such expansion has been approved by the Congress under the authority provided to Congress in section 446 of the District of Columbia Home Rule Act.

(b) Senate hearings

The Senate directs the Subcommittee on the District of Columbia of the Committee on Appropriations of the Senate to conduct hearings regarding expansion of the prison complex in Lorton, Virginia, prior to any approval granted pursuant to subsection (a) of this section. The subcommittee shall permit interested parties, including appropriate officials from the County of Fairfax, Virginia, to testify at such hearings.

(c) "Expanded" and "expansion" defined

For purposes of this section, the terms ''expanded'' and ''expansion'' mean any alteration of the physical structure of the prison complex that is made to increase the number of inmates incarcerated at the prison.

(Pub. L. 103–322, title II, § 20410, Sept. 13, 1994, 108 Stat. 1828; Pub. L. 105–33, title XI, § 11717(b), Aug. 5, 1997, 111 Stat. 786.)

REFERENCES IN TEXT

Section 446 of the District of Columbia Home Rule Act, referred to in subsec. (a), is section 446 of Pub. L. 93–198, title IV, Dec. 24, 1973, 87 Stat. 801, as amended, which is not classified to the Code.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33 substituted ''District of Columbia Home Rule Act'' for ''District of Columbia Self-Government and Governmental Reorganization Act''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L. 105–33, see section 11721 of Pub. L. 105–33, set out as a note under section 4246 of Title 18, Crimes and Criminal Procedure.

§ 13724. Conversion of closed military installations into Federal prison facilities

(a) Study of suitable bases

The Secretary of Defense and the Attorney General shall jointly conduct a study of all military installations selected before September 13, 1994, to be closed pursuant to a base closure law for the purpose of evaluating the suitability of any of these installations, or portions of these installations, for conversion into Federal prison facilities. As part of the study, the Secretary and the Attorney General shall identify the military installations so evaluated that are most suitable for conversion into Federal prison facilities.

(b) Suitability for conversion

In evaluating the suitability of a military installation for conversion into a Federal prison facility, the Secretary of Defense and the Attorney General shall consider the estimated cost to convert the installation into a prison facility and such other factors as the Secretary and the Attorney General consider to be appropriate.

(c) Time for study

The study required by subsection (a) of this section shall be completed not later than the date that is 180 days after September 13, 1994.

(d) Construction of Federal prisons

(1) In general

In determining where to locate any new Federal prison facility, and in accordance with the Department of Justice's duty to review and identify a use for any portion of an installation closed pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) and the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510), the Attorney General shall—

(A) consider whether using any portion of a military installation closed or scheduled to be closed in the region pursuant to a base closure law provides a cost-effective alternative to the purchase of real property or construction of new prison facilities;

(B) consider whether such use is consistent with a reutilization and redevelopment plan; and

(C) give consideration to any installation located in a rural area the closure of which will have a substantial adverse impact on the economy of the local communities and on the ability of the communities to sustain an economic recovery from such closure.

(2) Consent

With regard to paragraph (1)(B), consent must be obtained from the local re-use authority for the military installation, recognized and funded by the Secretary of Defense, before the Attorney General may proceed with plans for the design or construction of a prison at the installation.

(3) Report on basis of decision

Before proceeding with plans for the design or construction of a Federal prison, the Attorney General shall submit to Congress a report explaining the basis of the decision on where to locate the new prison facility.

(4) Report on cost-effectiveness

If the Attorney General decides not to utilize any portion of a closed military installa-

tion or an installation scheduled to be closed for locating a prison, the report shall include an analysis of why installations in the region, the use of which as a prison would be consistent with a reutilization and redevelopment plan, does not provide a cost-effective alternative to the purchase of real property or construction of new prison facilities.

(e) "Base closure law" defined

In this section, ''base closure law'' means—

(1) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note); and

(2) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(Pub. L. 103–322, title II, § 20413, Sept. 13, 1994, 108 Stat. 1829.)

REFERENCES IN TEXT

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsecs. (d)(1) and (e)(2), is Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

The Defense Base Closure and Realignment Act of 1990, referred to in subsecs. (d)(1) and (e)(1), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, which is set out as a note under section 2687 of Title 10. For complete classification of this Act to the Code, see Tables.

§ 13725. Correctional job training and placement

(a) Purpose

It is the purpose of this section to encourage and support job training programs, and job placement programs, that provide services to incarcerated persons or ex-offenders.

(b) Definitions

As used in this section:

(1) Correctional institution

The term ''correctional institution'' means any prison, jail, reformatory, work farm, detention center, or halfway house, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

(2) Correctional job training or placement program

The term ''correctional job training or placement program'' means an activity that provides job training or job placement services to incarcerated persons or ex-offenders, or that assists incarcerated persons or ex-offenders in obtaining such services.

(3) Ex-offender

The term ''ex-offender'' means any individual who has been sentenced to a term of probation by a Federal or State court, or who has been released from a Federal, State, or local correctional institution.

(4) Incarcerated person

The term ''incarcerated person'' means any individual incarcerated in a Federal or State correctional institution who is charged with or convicted of any criminal offense.

(c) Establishment of Office

(1) In general

The Attorney General shall establish within the Department of Justice an Office of Correctional Job Training and Placement. The Office shall be headed by a Director, who shall be appointed by the Attorney General.

(2) Timing

The Attorney General shall carry out this subsection not later than 6 months after September 13, 1994.

(d) Functions of Office

The Attorney General, acting through the Director of the Office of Correctional Job Training and Placement, in consultation with the Secretary of Labor, shall—

(1) assist in coordinating the activities of the Federal Bonding Program of the Department of Labor, the activities of the Department of Labor related to the certification of eligibility for targeted jobs credits under section 51 of title 26 with respect to ex-offenders, and any other correctional job training or placement program of the Department of Justice or Department of Labor;

(2) provide technical assistance to State and local employment and training agencies that—

(A) receive financial assistance under this Act; or

(B) receive financial assistance through other programs carried out by the Department of Justice or Department of Labor, for activities related to the development of employability;

(3) prepare and implement the use of special staff training materials, and methods, for developing the staff competencies needed by State and local agencies to assist incarcerated persons and ex-offenders in gaining marketable occupational skills and job placement;

(4) prepare and submit to Congress an annual report on the activities of the Office of Correctional Job Training and Placement, and the status of correctional job training or placement programs in the United States;

(5) cooperate with other Federal agencies carrying out correctional job training or placement programs to ensure coordination of such programs throughout the United States;

(6) consult with, and provide outreach to—

(A) State job training coordinating councils, administrative entities, and private industry councils, with respect to programs carried out under this Act; and

(B) other State and local officials, with respect to other employment or training programs carried out by the Department of Justice or Department of Labor;

(7) collect from States information on the training accomplishments and employment outcomes of a sample of incarcerated persons and ex-offenders who were served by employment or training programs carried out, or that receive financial assistance through programs carried out, by the Department of Justice or Department of Labor; and

(8)(A) collect from States and local governments information on the development and implementation of correctional job training or placement programs; and

(B) disseminate such information, as appropriate.

(Pub. L. 103–322, title II, § 20418, Sept. 13, 1994, 108 Stat. 1835.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(2)(A), (6)(A), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 13726. Findings

Congress finds the following:

(1) Increasingly, States are turning to private prisoner transport companies as an alternative to their own personnel or the United States Marshals Service when transporting violent prisoners.

(2) The transport process can last for days if not weeks, as violent prisoners are dropped off and picked up at a network of hubs across the country.

(3) Escapes by violent prisoners during transport by private prisoner transport companies have occurred.

(4) Oversight by the Attorney General is required to address these problems.

(5) While most governmental entities may prefer to use, and will continue to use, fully trained and sworn law enforcement officers when transporting violent prisoners, fiscal or logistical concerns may make the use of highly specialized private prisoner transport companies an option. Nothing in sections 13726 to 13726c of this title should be construed to mean that governmental entities should contract with private prisoner transport companies to move violent prisoners; however when a government entity opts to use a private prisoner transport company to move violent prisoners, then the company should be subject to regulation in order to enhance public safety.

(Pub. L. 106–560, § 2, Dec. 21, 2000, 114 Stat. 2784.)

REFERENCES IN TEXT

Sections 13726 to 13726c of this title, referred to in par. (5), was in the original ''this Act'', meaning Pub. L. 106–560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, which enacted this section and sections 13726a to 13726c of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 13726a. Definitions

In sections 13726 to 13726c of this title:

(1) Crime of violence

The term ''crime of violence'' has the same meaning as in section 924(c)(3) of title 18.

(2) Private prisoner transport company

The term ''private prisoner transport company'' means any entity, other than the United States, a State, or an inferior political subdivision of a State, which engages in the business of the transporting for compensation, individuals committed to the custody of any State or of an inferior political subdivision of a State, or any attempt thereof.

(3) Violent prisoner

The term ''violent prisoner'' means any individual in the custody of a State or an inferior political subdivision of a State who has previously been convicted of or is currently charged with a crime of violence or any similar statute of a State or the inferior political subdivisions of a State, or any attempt thereof.

(Pub. L. 106–560, § 3, Dec. 21, 2000, 114 Stat. 2784.)

REFERENCES IN TEXT

Sections 13726 to 13726c of this title, referred to in text, was in the original ''this Act'', meaning Pub. L. 106–560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, which enacted this section and sections 13726, 13726b, and 13726c of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 13726b. Federal regulation of prisoner transport companies

(a) In general

Not later than 180 days after December 21, 2000, the Attorney General, in consultation with the American Correctional Association and the private prisoner transport industry, shall promulgate regulations relating to the transportation of violent prisoners in or affecting interstate commerce.

(b) Standards and requirements

The regulations shall include the following:

(1) Minimum standards for background checks and preemployment drug testing for potential employees, including requiring criminal background checks, to disqualify persons with a felony conviction or domestic violence conviction as defined by section 921 of title 18 for eligibility for employment. Preemployment drug testing will be in accordance with applicable State laws.

(2) Minimum standards for the length and type of training that employees must undergo before they can transport prisoners not to exceed 100 hours of preservice training focusing on the transportation of prisoners. Training shall be in the areas of use of restraints, searches, use of force, including use of appropriate weapons and firearms, CPR, map reading, and defensive driving.

(3) Restrictions on the number of hours that employees can be on duty during a given time

period. Such restriction shall not be more stringent than current applicable rules and regulations concerning hours of service promulgated under the Federal Motor Vehicle Safety Act.[1]

(4) Minimum standards for the number of personnel that must supervise violent prisoners. Such standards shall provide the transport entity with appropriate discretion, and, absent more restrictive requirements contracted for by the procuring government entity, shall not exceed a requirement of 1 agent for every 6 violent prisoners.

(5) Minimum standards for employee uniforms and identification that require wearing of a uniform with a badge or insignia identifying the employee as a transportation officer.

(6) Standards establishing categories of violent prisoners required to wear brightly colored clothing clearly identifying them as prisoners, when appropriate.

(7) Minimum requirements for the restraints that must be used when transporting violent prisoners, to include leg shackles and double-locked handcuffs, when appropriate.

(8) A requirement that when transporting violent prisoners, private prisoner transport companies notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction.

(9) A requirement that in the event of an escape by a violent prisoner, private prisoner transport company officials shall immediately notify appropriate law enforcement officials in the jurisdiction where the escape occurs, and the governmental entity that contracted with the private prisoner transport company for the transport of the escaped violent prisoner.

(10) Minimum standards for the safety of violent prisoners in accordance with applicable Federal and State law.

(c) Federal standards

Except for the requirements of subsection (b)(6) of this section, the regulations promulgated under sections 13726 to 13726c of this title shall not provide stricter standards with respect to private prisoner transport companies than are applicable, without exception, to the United States Marshals Service, Federal Bureau of Prisons, and the Immigration and Naturalization Service when transporting violent prisoners under comparable circumstances.

(Pub. L. 106–560, § 4, Dec. 21, 2000, 114 Stat. 2785.)

REFERENCES IN TEXT

No act with the title Federal Motor Vehicle Safety Act, referred to in subsec. (b)(3), has been enacted. Provisions authorizing the Secretary of Transportation to prescribe requirements relating to hours of service of employees of a motor carrier are contained in chapter 315 (§ 31501 et seq.) of Title 49, Transportation.

Sections 13726 to 13726c of this title, referred to in subsec. (c), was in the original ''this Act'', meaning Pub. L. 106–560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, which enacted this section and sections 13726, 13726a, and 13726c of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

[1] See References in Text note below.

§ 13726c. Enforcement

Any person who is found in violation of the regulations established by sections 13726 to 13726c of this title shall—

(1) be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each violation and, in addition, to the United States for the costs of prosecution; and

(2) make restitution to any entity of the United States, of a State, or of an inferior political subdivision of a State, which expends funds for the purpose of apprehending any violent prisoner who escapes from a prisoner transport company as the result, in whole or in part, of a violation of regulations promulgated pursuant to section 13726b(a) of this title.

(Pub. L. 106–560, § 5, Dec. 21, 2000, 114 Stat. 2786.)

REFERENCES IN TEXT

Sections 13726 to 13726c of this title, referred to in text, was in the original ''this Act'', meaning Pub. L. 106–560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, which enacted this section and sections 13726 to 13726b of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SUBCHAPTER II—CRIME PREVENTION

PART A—OUNCE OF PREVENTION COUNCIL

§ 13741. Ounce of Prevention Council

(a) Establishment

(1) In general

There is established an Ounce of Prevention Council (referred to in this subchapter as the ''Council''), the members of which—

(A) shall include the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Agriculture, the Secretary of the Treasury, the Secretary of the Interior, and the Director of the Office of National Drug Control Policy; and

(B) may include other officials of the executive branch as directed by the President.

(2) Chair

The President shall designate the Chair of the Council from among its members (referred to in this subchapter as the ''Chair'').

(3) Staff

The Council may employ any necessary staff to carry out its functions, and may delegate any of its functions or powers to a member or members of the Council.

(b) Program coordination

For any program authorized under the Violent Crime Control and Law Enforcement Act of 1994, the Ounce of Prevention Council Chair, only at the request of the Council member with jurisdiction over that program, may coordinate that program, in whole or in part, through the Council.

(c) Administrative responsibilities and powers

In addition to the program coordination provided in subsection (b) of this section, the Council shall be responsible for such functions as coordinated planning, development of a comprehensive crime prevention program catalogue, provision of assistance to communities and community-based organizations seeking information regarding crime prevention programs and integrated program service delivery, and development of strategies for program integration and grant simplification. The Council shall have the authority to audit the expenditure of funds received by grantees under programs administered by or coordinated through the Council. In consultation with the Council, the Chair may issue regulations and guidelines to carry out this part and programs administered by or coordinated through the Council.

(Pub. L. 103–322, title III, § 30101, Sept. 13, 1994, 108 Stat. 1836.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a)(1), (2), was in the original ''this title'', meaning title III of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1836, which enacted this subchapter, sections 3796ff to 3796ff–4 of this title, and sections 6701 to 6720 of Title 31, Money and Finance, amended sections 3791, 3793, and 3797 of this title, sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation, and section 3621 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 13701 of this title and sections 6701 and 6702 of Title 31. For complete classification of title III to the Code, see Tables.

The Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (b), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 13742. Ounce of prevention grant program

(a) In general

The Council may make grants for—

(1) summer and after-school (including weekend and holiday) education and recreation programs;

(2) mentoring, tutoring, and other programs involving participation by adult role models (such as D.A.R.E. America);

(3) programs assisting and promoting employability and job placement; and

(4) prevention and treatment programs to reduce substance abuse, child abuse, and adolescent pregnancy, including outreach programs for at-risk families.

(b) Applicants

Applicants may be Indian tribal governments, cities, counties, or other municipalities, school boards, colleges and universities, private nonprofit entities, or consortia of eligible applicants. Applicants must show that a planning process has occurred that has involved organizations, institutions, and residents of target areas, including young people, and that there has been cooperation between neighborhood-based entities, municipality-wide bodies, and local private-sector representatives. Applicants must demonstrate the substantial involvement of neighborhood-based entities in the carrying out of the proposed activities. Proposals must demonstrate that a broad base of collaboration and coordination will occur in the implementation of the proposed activities, involving cooperation among youth-serving organizations, schools, health and social service providers, employers, law enforcement professionals, local government, and residents of target areas, including young people. Applications shall be geographically based in particular neighborhoods or sections of municipalities or particular segments of rural areas, and applications shall demonstrate how programs will serve substantial proportions of children and youth resident in the target area with activities designed to have substantial impact on their lives.

(c) Priority

In making such grants, the Council shall give preference to coalitions consisting of a broad spectrum of community-based and social service organizations that have a coordinated team approach to reducing gang membership and the effects of substance abuse, and providing alternatives to at-risk youth.

(d) Federal share

(1) In general

The Federal share of a grant made under this part[1] may not exceed 75 percent of the total costs of the projects described in the applications submitted under subsection (b) of this section for the fiscal year for which the projects receive assistance under this subchapter.

(2) Waiver

The Council may waive the 25 percent matching requirement under paragraph (1) upon making a determination that a waiver is equitable in view of the financial circumstances affecting the ability of the applicant to meet that requirement.

(3) Non-Federal share

The non-Federal share of such costs may be in cash or in kind, fairly evaluated, including plant, equipment, and services.

(4) Nonsupplanting requirement

Funds made available under this subchapter to a governmental entity shall not be used to

[1] See References in Text note below.

supplant State or local funds, or in the case of Indian tribal governments, funds supplied by the Bureau of Indian Affairs, but shall be used to increase the amount of funds that would, in the absence of Federal funds received under this subchapter, be made available from State or local sources, or in the case of Indian tribal governments, from funds supplied by the Bureau of Indian Affairs.

(5) Evaluation

The Council shall conduct a thorough evaluation of the programs assisted under this subchapter.

(Pub. L. 103–322, title III, § 30102, Sept. 13, 1994, 108 Stat. 1837.)

REFERENCES IN TEXT

This part, referred to in subsec. (d)(1), appearing in the original is unidentifiable because subtitle A of title III of Pub. L. 103–322 does not contain parts.

This subchapter, referred to in subsec. (d)(1), (4), (5), was in the original ''this title'', meaning title III of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1836, which enacted this subchapter, sections 3796ff to 3796ff–4 of this title, and sections 6701 to 6720 of Title 31, Money and Finance, amended sections 3791, 3793, and 3797 of this title, sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation, and section 3621 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 13701 of this title and sections 6701 and 6702 of Title 31. For complete classification of title III to the Code, see Tables.

§ 13743. "Indian tribe" defined

In this part, ''Indian tribe'' means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.),[1] that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 103–322, title III, § 30103, Sept. 13, 1994, 108 Stat. 1838.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in text, is Pub. L. 92–203, § 2, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 13744. Authorization of appropriations

There are authorized to be appropriated to carry out this part—

(1) $1,500,000 for fiscal year 1995;
(2) $14,700,000 for fiscal year 1996;
(3) $18,000,000 for fiscal year 1997;
(4) $18,000,000 for fiscal year 1998;
(5) $18,900,000 for fiscal year 1999; and
(6) $18,900,000 for fiscal year 2000.

(Pub. L. 103–322, title III, § 30104, Sept. 13, 1994, 108 Stat. 1838.)

[1] So in original. A closing parenthesis probably should precede the comma.

PART B—LOCAL CRIME PREVENTION BLOCK GRANT PROGRAM

§§ 13751 to 13758. Repealed. Pub. L. 109–162, title XI, § 1154(b)(1), Jan. 5, 2006, 119 Stat. 3113

Section 13751, Pub. L. 103–322, title III, § 30201, Sept. 13, 1994, 108 Stat. 1838, related to payments to local governments.

Section 13752, Pub. L. 103–322, title III, § 30202, Sept. 13, 1994, 108 Stat. 1841, authorized appropriations.

Section 13753, Pub. L. 103–322, title III, § 30203, Sept. 13, 1994, 108 Stat. 1841; Pub. L. 104–316, title I, § 122(u), Oct. 19, 1996, 110 Stat. 3838, related to qualification for payment.

Section 13754, Pub. L. 103–322, title III, § 30204, Sept. 13, 1994, 108 Stat. 1842, related to allocation and distribution of funds.

Section 13755, Pub. L. 103–322, title III, § 30205, Sept. 13, 1994, 108 Stat. 1843, related to utilization of funds to contract with the private sector.

Section 13756, Pub. L. 103–322, title III, § 30206, Sept. 13, 1994, 108 Stat. 1843, related to public participation.

Section 13757, Pub. L. 103–322, title III, § 30207, Sept. 13, 1994, 108 Stat. 1844, related to application of administrative provisions.

Section 13758, Pub. L. 103–322, title III, § 30208, Sept. 13, 1994, 108 Stat. 1844, defined terms for purposes of this part.

YOUTH VIOLENCE REDUCTION DEMONSTRATION PROJECTS

Pub. L. 109–162, title XI, § 1199, Jan. 5, 2006, 119 Stat. 3132, provided that:

''(a) ESTABLISHMENT OF YOUTH VIOLENCE REDUCTION DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—The Attorney General shall make up to 5 grants for the purpose of carrying out Youth Violence Demonstration Projects to reduce juvenile and young adult violence, homicides, and recidivism among high-risk populations.

''(2) ELIGIBLE ENTITIES.—An entity is eligible for a grant under paragraph (1) if it is a unit of local government or a combination of local governments established by agreement for purposes of undertaking a demonstration project.

''(b) SELECTION OF GRANT RECIPIENTS.—

''(1) AWARDS.—The Attorney General shall award grants for Youth Violence Reduction Demonstration Projects on a competitive basis.

''(2) AMOUNT OF AWARDS.—No single grant award made under subsection (a) shall exceed $15,000,000 per fiscal year.

''(3) APPLICATION.—An application for a grant under paragraph (1) shall be submitted to the Attorney General in such a form, and containing such information and assurances, as the Attorney General may require, and at a minimum shall propose—

''(A) a program strategy targeting areas with the highest incidence of youth violence and homicides;

''(B) outcome measures and specific objective indicia of performance to assess the effectiveness of the program; and

''(C) a plan for evaluation by an independent third party.

''(4) DISTRIBUTION.—In making grants under this section, the Attorney General shall ensure the following:

''(A) No less than 1 recipient is a city with a population exceeding 1,000,000 and an increase of at least 30 percent in the aggregated juvenile and young adult homicide victimization rate during calendar year 2005 as compared to calendar year 2004.

''(B) No less than one recipient is a nonmetropolitan county or group of counties with per capita arrest rates of juveniles and young adults for serious violent offenses that exceed the national average for nonmetropolitan counties by at least 5 percent.

''(5) CRITERIA.—In making grants under this section, the Attorney General shall give preference to

entities operating programs that meet the following criteria:

''(A) A program focusing on—

''(i) reducing youth violence and homicides, with an emphasis on juvenile and young adult probationers and other juveniles and young adults who have had or are likely to have contact with the juvenile justice system;

''(ii) fostering positive relationships between program participants and supportive adults in the community; and

''(iii) accessing comprehensive supports for program participants through coordinated community referral networks, including job opportunities, educational programs, counseling services, substance abuse programs, recreational opportunities, and other services.

''(B) A program goal of almost daily contacts with and supervision of participating juveniles and young adults through small caseloads and a coordinated team approach among case managers drawn from the community, probation officers, and police officers.

''(C) The use of existing structures, local government agencies, and nonprofit organizations to operate the program.

''(D) Inclusion in program staff of individuals who live or have lived in the community in which the program operates; have personal experiences or cultural competency that build credibility in relationships with program participants; and will serve as a case manager, intermediary, and mentor.

''(E) Fieldwork and neighborhood outreach in communities where the young violent offenders live, including support of the program from local public and private organizations and community members.

''(F) Imposition of graduated probation sanctions to deter violent and criminal behavior.

''(G) A record of program operation and effectiveness evaluation over a period of at least five years prior to the date of enactment of this Act [Jan. 5, 2006].

''(H) A program structure that can serve as a model for other communities in addressing the problem of youth violence and juvenile and young adult recidivism.

''(c) AUTHORIZED ACTIVITIES.—Amounts paid to an eligible entity under a grant award may be used for the following activities:

''(1) Designing and enhancing program activities.

''(2) Employing and training personnel.

''(3) Purchasing or leasing equipment.

''(4) Providing services and training to program participants and their families.

''(5) Supporting related law enforcement and probation activities, including personnel costs.

''(6) Establishing and maintaining a system of program records.

''(7) Acquiring, constructing, expanding, renovating, or operating facilities to support the program.

''(8) Evaluating program effectiveness.

''(9) Undertaking other activities determined by the Attorney General as consistent with the purposes and requirements of the demonstration program.

''(d) EVALUATION AND REPORTS.—

''(1) INDEPENDENT EVALUATION.—The Attorney General may use up to $500,000 of funds appropriated annually under this such section to—

''(A) prepare and implement a design for interim and overall evaluations of performance and progress of the funded demonstration projects;

''(B) provide training and technical assistance to grant recipients; and

''(C) disseminate broadly the information generated and lessons learned from the operation of the demonstration projects.

''(2) REPORTS TO CONGRESS.—Not later than 120 days after the last day of each fiscal year for which 1 or more demonstration grants are awarded, the Attorney General shall submit to Congress a report which shall include—

''(A) a summary of the activities carried out with such grants;

''(B) an assessment by the Attorney General of the program carried out; and

''(C) such other information as the Attorney General considers appropriate.

''(e) FEDERAL SHARE.—

''(1) IN GENERAL.—The Federal share of a grant awarded under this Act [see Short Title of 2006 Amendment note set out under section 13701 of this title] shall not exceed 90 percent of the total program costs.

''(2) NON-FEDERAL SHARE.—The non-Federal share of such cost may be provided in cash or in-kind.

''(f) DEFINITIONS.—In this section:

''(1) UNIT OF LOCAL GOVERNMENT.—The term 'unit of local government' means a county, township, city, or political subdivision of a county, township, or city, that is a unit of local government as determined by the Secretary of Commerce for general statistical purposes.

''(2) JUVENILE.—The term 'juvenile' means an individual who is 17 years of age or younger.

''(3) YOUNG ADULT.—The term 'young adult' means an individual who is 18 through 24 years of age.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 2007 and such sums as may be necessary for each of fiscal years 2008 through 2009, to remain available until expended.''

NATIONAL POLICE ATHLETIC/ACTIVITIES LEAGUE YOUTH ENRICHMENT

Pub. L. 106–367, Oct. 27, 2000, 114 Stat. 1412, as amended by Pub. L. 109–248, title VI, §§ 612–617, July 27, 2006, 120 Stat. 632, 633, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'National Police Athletic/Activities League Youth Enrichment Act of 2000'.

''SEC. 2. FINDINGS.

''Congress makes the following findings:

''(1) The goals of the Police Athletic/Activities League are to—

''(A) increase the academic success of youth participants in PAL programs;

''(B) promote a safe, healthy environment for youth under the supervision of law enforcement personnel where mutual trust and respect can be built;

''(C) develop life enhancing character and leadership skills in young people;

''(D) increase school attendance by providing alternatives to suspensions and expulsions;

''(E) reduce the juvenile crime rate in participating designated communities and the number of police calls involving juveniles during nonschool hours;

''(F) provide youths with alternatives to drugs, alcohol, tobacco, and gang activity;

''(G) create positive communications and interaction between youth and law enforcement personnel; and

''(H) prepare youth for the workplace.

''(2) The Police Athletic/Activities League, during its 90-year history as a national organization, has proven to be a positive force in the communities it serves.

''(3) The Police Athletic/Activities League is a network of 1,700 facilities serving over 3,000 communities. There are 350 PAL chapters throughout the United States, the Virgin Islands, and the Commonwealth of Puerto Rico, serving 2,000,000 youth, ages 5 to 18, nationwide.

''(4) Based on PAL chapter demographics, approximately 85 percent of the youths who benefit from PAL programs live in inner cities and urban areas.

''(5) PAL chapters are locally operated, volunteer-driven organizations. Although most PAL chapters are sponsored by a law enforcement agency, PAL chapters rarely receive direct funding from law enforcement agencies and are dependent in large part on support from the private sector, such as individuals, business leaders, corporations, and foundations. PAL chapters have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement.

''(6) Today's youth face far greater risks than did their parents and grandparents. Law enforcement statistics demonstrate that youth between the ages of 12 and 18 are at risk of committing violent acts and being victims of violent acts between the hours of 3 p.m. and 8 p.m.

''(7) Greater numbers of students are dropping out of school and failing in school, even though the consequences of academic failure are more dire in 2005 than ever before.

''(8) Many distressed areas in the United States are still underserved by PAL chapters.

''SEC. 3. PURPOSE.

''The purpose of this Act is to provide adequate resources in the form of—

''(1) assistance for the 342 established PAL chapters to increase of services to the communities they are serving;

''(2) seed money for the establishment of 250 (50 per year over a 5-year period) additional local PAL chapters in public housing projects and other distressed areas, including distressed areas with a majority population of Native Americans, by not later than fiscal year 2010; and

''(3) support of an annual gathering of PAL chapters and designated youth leaders from such chapters to participate in a 3-day conference that addresses national and local issues impacting the youth of America and includes educational sessions to advance character and leadership skills.

''SEC. 4. DEFINITIONS.

''In this Act:

''(1) ASSISTANT ATTORNEY GENERAL.—The term 'Assistant Attorney General' means the Assistant Attorney General for the Office of Justice Programs of the Department of Justice.

''(2) DISTRESSED AREA.—The term 'distressed area' means an urban, suburban, or rural area with a high percentage of high-risk youth, as defined in section 509A of the Public Health Service Act (42 U.S.C. 290aa–8(f)) [now 42 U.S.C. 290bb–23(g)].

''(3) PAL CHAPTER.—The term 'PAL chapter' means a chapter of a Police or Sheriff's Athletic/Activities League.

''(4) POLICE ATHLETIC/ACTIVITIES LEAGUE.—The term 'Police Athletic/Activities League' means the private, nonprofit, national representative organization for 320 Police or Sheriff's Athletic/Activities Leagues throughout the United States (including the Virgin Islands and the Commonwealth of Puerto Rico).

''(5) PUBLIC HOUSING; PROJECT.—The terms 'public housing' and 'project' have the meanings given those terms in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

''SEC. 5. GRANTS AUTHORIZED.

''(a) IN GENERAL.—Subject to appropriations, for each of fiscal years 2006 through 2010, the Assistant Attorney General shall award a grant to the Police Athletic/Activities League for the purpose of establishing PAL chapters to serve public housing projects and other distressed areas, and expanding existing PAL chapters to serve additional youths.

''(b) APPLICATION.—

''(1) SUBMISSION.—In order to be eligible to receive a grant under this section, the Police Athletic/Activities League shall submit to the Assistant Attorney General an application, which shall include—

''(A) a long-term strategy to establish 250 additional PAL chapters and detailed summary of those areas in which new PAL chapters will be established, or in which existing chapters will be expanded to serve additional youths, during the next fiscal year;

''(B) a plan to ensure that there are a total of not fewer than 500 PAL chapters in operation before January 1, 2010;

''(C) a certification that there will be appropriate coordination with those communities where new PAL chapters will be located; and

''(D) an explanation of the manner in which new PAL chapters will operate without additional, direct Federal financial assistance once assistance under this Act is discontinued.

''(2) REVIEW.—The Assistant Attorney General shall review and take action on an application submitted under paragraph (1) not later than 120 days after the date of such submission.

''SEC. 6. USE OF FUNDS.

''(a) IN GENERAL.—

''(1) ASSISTANCE FOR NEW AND EXPANDED CHAPTERS.—Amounts made available under a grant awarded under this Act shall be used by the Police Athletic/Activities League to provide funding for the establishment of PAL chapters serving public housing projects and other distressed areas, or the expansion of existing PAL chapters.

''(2) PROGRAM REQUIREMENTS.—Each new or expanded PAL chapter assisted under paragraph (1) shall carry out not less than two programs during nonschool hours, of which—

''(A) not less than one program shall provide—

''(i) mentoring assistance;

''(ii) academic assistance;

''(iii) recreational and athletic activities;

''(iv) technology training; or

''(v) character development and leadership training; and

''(B) any remaining programs shall provide—

''(i) drug, alcohol, and gang prevention activities;

''(ii) health and nutrition counseling;

''(iii) cultural and social programs;

''(iv) conflict resolution training, anger management, and peer pressure training;

''(v) job skill preparation activities; or

''(vi) Youth Police Athletic/Activities League Conferences or Youth Forums.

''(b) ADDITIONAL REQUIREMENTS.—In carrying out the programs under subsection (a), a PAL chapter shall, to the maximum extent practicable—

''(1) use volunteers from businesses, academic communities, social organizations, and law enforcement organizations to serve as mentors or to assist in other ways;

''(2) ensure that youth in the local community participate in designing the after-school activities;

''(3) develop creative methods of conducting outreach to youth in the community;

''(4) request donations of computer equipment and other materials and equipment; and

''(5) work with State and local park and recreation agencies so that activities funded with amounts made available under a grant under this Act will not duplicate activities funded from other sources in the community served.

''SEC. 7. REPORTS.

''(a) REPORT TO ASSISTANT ATTORNEY GENERAL.—For each fiscal year for which a grant is awarded under this Act, the Police Athletic/Activities League shall submit to the Assistant Attorney General a report on the use of amounts made available under the grant.

''(b) REPORT TO CONGRESS.—Not later than May 1 of each fiscal year for which amounts are made available to carry out this Act, the Assistant Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that details the progress made under this Act in establishing and expanding PAL chapters in public housing

projects and other distressed areas, and the effectiveness of the PAL programs in reducing drug abuse, school dropouts, and juvenile crime.

''SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act $16,000,000 for each of fiscal years 2006 through 2010.

''(b) FUNDING FOR PROGRAM ADMINISTRATION.—Of the amount made available to carry out this Act in each fiscal year—

''(1) not less than 2 percent shall be used for research and evaluation of the grant program under this Act;

''(2) not less than 1 percent shall be used for technical assistance related to the use of amounts made available under grants awarded under this Act; and

''(3) not less than 1 percent shall be used for the management and administration of the grant program under this Act, except that the total amount made available under this paragraph for administration of that program shall not exceed 6 percent.''

[Pub. L. 109–248, title VI, §612(3)(B), July 27, 2006, 120 Stat. 632, which directed amendment of section 2(3) of Pub. L. 106–367, set out above, by substituting ''2,000,000 youth'' for ''1,500,000 youth'', was executed by making the substitution for ''1,500,000 youths'', to reflect the probable intent of Congress.]

KIDS 2000 CRIME PREVENTION AND COMPUTER EDUCATION INITIATIVE

Pub. L. 106–313, title I, §112, Oct. 17, 2000, 114 Stat. 1260, provided that:

''(a) SHORT TITLE.—This section may be cited as the 'Kids 2000 Act'.

''(b) FINDINGS.—Congress makes the following findings:

''(1) There is an increasing epidemic of juvenile crime throughout the United States.

''(2) It is well documented that the majority of juvenile crimes take place during after-school hours.

''(3) Knowledge of technology is becoming increasingly necessary for children in school and out of school.

''(4) The Boys and Girls Clubs of America have 2,700 clubs throughout all 50 States, serving over 3,000,000 boys and girls primarily from at-risk communities.

''(5) The Boys and Girls Clubs of America have the physical structures in place for immediate implementation of an after-school technology program.

''(6) Building technology centers and providing integrated content and full-time staffing at those centers in the Boys and Girls Clubs of America nationwide will help foster education, job training, and an alternative to crime for at-risk youth.

''(7) Partnerships between the public sector and the private sector are an effective way of providing after-school technology programs in the Boys and Girls Clubs of America.

''(8) PowerUp: Bridging the Digital Divide is an entity comprised of more than a dozen nonprofit organizations, major corporations, and Federal agencies that have joined together to launch a major new initiative to help ensure that America's underserved young people acquire the skills, experiences, and resources they need to succeed in the digital age.

''(9) Bringing PowerUp into the Boys and Girls Clubs of America will be an effective way to ensure that our youth have a safe, crime-free environment in which to learn the technological skills they need to close the divide between young people who have access to computer-based information and technology-related skills and those who do not.

''(c) AFTER-SCHOOL TECHNOLOGY GRANTS TO THE BOYS AND GIRLS CLUBS OF AMERICA.—

''(1) PURPOSES.—The Attorney General shall make grants to the Boys and Girls Clubs of America for the purpose of funding effective after-school technology programs, such as PowerUp, in order to provide—

''(A) constructive technology-focused activities that are part of a comprehensive program to provide access to technology and technology training to youth during after-school hours, weekends, and school vacations;

''(B) supervised activities in safe environments for youth; and

''(C) full-time staffing with teachers, tutors, and other qualified personnel.

''(2) SUBAWARDS.—The Boys and Girls Clubs of America shall make subawards to local boys and girls clubs authorizing expenditures associated with providing technology programs such as PowerUp, including the hiring of teachers and other personnel, procurement of goods and services, including computer equipment, or such other purposes as are approved by the Attorney General.

''(d) APPLICATIONS.—

''(1) ELIGIBILITY.—In order to be eligible to receive a grant under this section, an applicant for a subaward (specified in subsection (c)(2)) shall submit an application to the Boys and Girls Clubs of America, in such form and containing such information as the Attorney General may reasonably require.

''(2) APPLICATION REQUIREMENTS.—Each application submitted in accordance with paragraph (1) shall include—

''(A) a request for a subgrant to be used for the purposes of this section;

''(B) a description of the communities to be served by the grant, including the nature of juvenile crime, violence, and drug use in the communities;

''(C) written assurances that Federal funds received under this section will be used to supplement and not supplant, non-Federal funds that would otherwise be available for activities funded under this section;

''(D) written assurances that all activities funded under this section will be supervised by qualified adults;

''(E) a plan for assuring that program activities will take place in a secure environment that is free of crime and drugs;

''(F) a plan outlining the utilization of content-based programs such as PowerUp, and the provision of trained adult personnel to supervise the after-school technology training; and

''(G) any additional statistical or financial information that the Boys and Girls Clubs of America may reasonably require.

''(e) GRANT AWARDS.—In awarding subgrants under this section, the Boys and Girls Clubs of America shall consider—

''(1) the ability of the applicant to provide the intended services;

''(2) the history and establishment of the applicant in providing youth activities; and

''(3) the extent to which services will be provided in crime-prone areas and technologically underserved populations, and efforts to achieve an equitable geographic distribution of the grant awards.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated $20,000,000 for each of the fiscal years 2001 through 2006 to carry out this section.

''(2) SOURCE OF FUNDS.—Funds to carry out this section may be derived from the Violent Crime Reduction Trust Fund.

''(3) CONTINUED AVAILABILITY.—Amounts made available under this subsection shall remain available until expended.''

ESTABLISHMENT OF BOYS AND GIRLS CLUBS

Pub. L. 104–294, title IV, §401, Oct. 11, 1996, 110 Stat. 3496, as amended by Pub. L. 105–133, §1, Dec. 2, 1997, 111 Stat. 2568; Pub. L. 107–273, div. B, title I, §1101, Nov. 2, 2002, 116 Stat. 1791; Pub. L. 108–344, §1, Oct. 18, 2004, 118 Stat. 1376, provided that:

''(a) FINDINGS AND PURPOSE.—

''(1) FINDINGS.—The Congress finds that—

''(A) the Boys and Girls Clubs of America, chartered by an Act of Congress on December 10, 1991

[Pub. L. 102–199, see Tables for classification], during its 90-year history as a national organization, has proven itself as a positive force in the communities it serves;

''(B) there are 1,810 Boys and Girls Clubs facilities throughout the United States, Puerto Rico, and the United States Virgin Islands, serving 2,420,000 youths nationwide;

''(C) 71 percent of the young people who benefit from Boys and Girls Clubs programs live in our inner cities and urban areas;

''(D) Boys and Girls Clubs are locally run and have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement;

''(E) Boys and Girls Clubs are located in 289 public housing sites across the Nation;

''(F) public housing projects in which there is an active Boys and Girls Club have experienced a 25 percent reduction in the presence of crack cocaine, a 22 percent reduction in overall drug activity, and a 13 percent reduction in juvenile crime;

''(G) these results have been achieved in the face of national trends in which overall drug use by youth has increased 105 percent since 1992 and 10.9 percent of the Nation's young people use drugs on a monthly basis; and

''(H) many public housing projects and other distressed areas are still underserved by Boys and Girls Clubs.

''(2) PURPOSE.—The purpose of this section is to provide adequate resources in the form of seed money for the Boys and Girls Clubs of America to establish 1,500 additional local clubs where needed, with particular emphasis placed on establishing clubs in public housing projects and distressed areas, and to ensure that there are a total of not less than 5,000 Boys and Girls Clubs of America facilities in operation not later than December 31, 2010, serving not less than 5,000,000 young people.

''(b) DEFINITIONS.—For purposes of this section—

''(1) the terms 'public housing' and 'project' have the same meanings as in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]; and

''(2) the term 'distressed area' means an urban, suburban, rural area, or Indian reservation with a population of high risk youth as defined in section 517 of the Public Health Service Act (42 U.S.C. 290bb–23) of sufficient size to warrant the establishment of a Boys and Girls Club.

''(c) ESTABLISHMENT.—

''(1) IN GENERAL.—For each of the fiscal years 2006, 2007, 2008, 2009, and 2010, the Director of the Bureau of Justice Assistance of the Department of Justice shall make a grant to the Boys and Girls Clubs of America for the purpose of establishing and extending Boys and Girls Clubs facilities where needed, with particular emphasis placed on establishing clubs in and extending services to public housing projects and distressed areas.

''(2) APPLICATIONS.—The Attorney General shall accept an application for a grant under this subsection if submitted by the Boys and Girls Clubs of America, and approve or deny the grant not later than 90 days after the date on which the application is submitted, if the application—

''(A) includes a long-term strategy to establish 1,500 additional Boys and Girls Clubs and detailed summary of those areas in which new facilities will be established, or in which existing facilities will be expanded to serve additional youths, during the next fiscal year;

''(B) includes a plan to ensure that there are a total of not less than 5,000 Boys and Girls Clubs of America facilities in operation before January 1, 2010;

''(C) certifies that there will be appropriate coordination with those communities where clubs will be located; and

''(D) explains the manner in which new facilities will operate without additional, direct Federal financial assistance to the Boys and Girls Clubs once assistance under this subsection is discontinued.

''(d) REPORT.—Not later than May 1 of each fiscal year for which amounts are made available to carry out this Act [see Tables for classification], the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that details the progress made under this Act in establishing Boys and Girls Clubs in public housing projects and other distressed areas, and the effectiveness of the programs in reducing drug abuse and juvenile crime.

''(e) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

''(A) $80,000,000 for fiscal year 2006;

''(B) $85,000,000 for fiscal year 2007;

''(C) $90,000,000 for fiscal year 2008;

''(D) $95,000,000 for fiscal year 2009; and

''(E) $100,000,000 for fiscal year 2010.

''[(2) Repealed. Pub. L. 107–273, div. B, title I, §1101(3), Nov. 2, 2002, 116 Stat. 1791.]

''(f) ROLE MODEL GRANTS.—Of amounts made available under subsection (e) for any fiscal year—

''(1) not more than 5 percent may be used to provide a grant to the Boys and Girls Clubs of America for administrative, travel, and other costs associated with a national role-model speaking tour program; and

''(2) no amount may be used to compensate speakers other than to reimburse speakers for reasonable travel and accommodation costs associated with the program described in paragraph (1).''

[Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, §108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.]

PART C—MODEL INTENSIVE GRANT PROGRAMS

§ 13771. Grant authorization

(a) Establishment

(1) In general

The Attorney General may award grants to not more than 15 chronic high intensive crime areas to develop comprehensive model crime prevention programs that—

(A) involve and utilize a broad spectrum of community resources, including nonprofit community organizations, law enforcement organizations, and appropriate State and Federal agencies, including the State educational agencies;

(B) attempt to relieve conditions that encourage crime; and

(C) provide meaningful and lasting alternatives to involvement in crime.

(2) Consultation with the Ounce of Prevention Council

The Attorney General may consult with the Ounce of Prevention Council in awarding grants under paragraph (1).

(b) Priority

In awarding grants under subsection (a) of this section, the Attorney General shall give priority to proposals that—

(1) are innovative in approach to the prevention of crime in a specific area;

(2) vary in approach to ensure that comparisons of different models may be made; and

(3) coordinate crime prevention programs funded under this program with other existing Federal programs to address the overall needs of communities that benefit from grants received under this subchapter.

(Pub. L. 103–322, title III, § 30301, Sept. 13, 1994, 108 Stat. 1844.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(3), was in the original ''this title'', meaning title III of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1836, which enacted this subchapter, sections 3796ff to 3796ff–4 of this title, and sections 6701 to 6720 of Title 31, Money and Finance, amended sections 3791, 3793, and 3797 of this title, sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation, and section 3621 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 13701 of this title and sections 6701 and 6702 of Title 31. For complete classification of title III to the Code, see Tables.

§ 13772. Uses of funds

(a) In general

Funds awarded under this part may be used only for purposes described in an approved application. The intent of grants under this part is to fund intensively comprehensive crime prevention programs in chronic high intensive crime areas.

(b) Guidelines

The Attorney General shall issue and publish in the Federal Register guidelines that describe suggested purposes for which funds under approved programs may be used.

(c) Equitable distribution of funds

In disbursing funds under this part, the Attorney General shall ensure the distribution of awards equitably on a geographic basis, including urban and rural areas of varying population and geographic size.

(Pub. L. 103–322, title III, § 30302, Sept. 13, 1994, 108 Stat. 1845.)

§ 13773. Program requirements

(a) Description

An applicant shall include a description of the distinctive factors that contribute to chronic violent crime within the area proposed to be served by the grant. Such factors may include lack of alternative activities and programs for youth, deterioration or lack of public facilities, inadequate public services such as public transportation, street lighting, community-based substance abuse treatment facilities, or employment services offices, and inadequate police or public safety services, equipment, or facilities.

(b) Comprehensive plan

An applicant shall include a comprehensive, community-based plan to attack intensively the principal factors identified in subsection (a) of this section. Such plans shall describe the specific purposes for which funds are proposed to be used and how each purpose will address specific factors. The plan also shall specify how local nonprofit organizations, government agencies, private businesses, citizens groups, volunteer organizations, and interested citizens will cooperate in carrying out the purposes of the grant.

(c) Evaluation

An applicant shall include an evaluation plan by which the success of the plan will be measured, including the articulation of specific, objective indicia of performance, how the indicia will be evaluated, and a projected timetable for carrying out the evaluation.

(Pub. L. 103–322, title III, § 30303, Sept. 13, 1994, 108 Stat. 1845.)

§ 13774. Applications

To request a grant under this part the chief local elected official of an area shall—

(1) prepare and submit to the Attorney General an application in such form, at such time, and in accordance with such procedures, as the Attorney General shall establish; and

(2) provide an assurance that funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for programs funded under this part.

(Pub. L. 103–322, title III, § 30304, Sept. 13, 1994, 108 Stat. 1845.)

§ 13775. Reports

Not later than December 31, 1998, the Attorney General shall prepare and submit to the Committees on the Judiciary of the House and Senate an evaluation of the model programs developed under this part and make recommendations regarding the implementation of a national crime prevention program.

(Pub. L. 103–322, title III, § 30305, Sept. 13, 1994, 108 Stat. 1846.)

§ 13776. Definitions

In this part—

''chief local elected official'' means an official designated under regulations issued by the Attorney General. The criteria used by the Attorney General in promulgating such regulations shall ensure administrative efficiency and accountability in the expenditure of funds and execution of funded projects under this part.

''chronic high intensity crime area'' means an area meeting criteria adopted by the Attorney General by regulation that, at a minimum, define areas with—

(A) consistently high rates of violent crime as reported in the Federal Bureau of Investigation's ''Uniform Crime Reports'', and

(B) chronically high rates of poverty as determined by the Bureau of the Census.

''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 103–322, title III, § 30306, Sept. 13, 1994, 108 Stat. 1846.)

§ 13777. Authorization of appropriations

There are authorized to be appropriated to carry out this part—

(1) $100,000,000 for fiscal year 1996;
(2) $125,100,000 for fiscal year 1997;
(3) $125,100,000 for fiscal year 1998;
(4) $125,100,000 for fiscal year 1999; and
(5) $150,200,000 for fiscal year 2000.

(Pub. L. 103–322, title III, § 30307, Sept. 13, 1994, 108 Stat. 1846.)

PART D—FAMILY AND COMMUNITY ENDEAVOR SCHOOLS GRANT PROGRAM

§ 13791. Community schools youth services and supervision grant program

(a) Short title

This section may be cited as the ''Community Schools Youth Services and Supervision Grant Program Act of 1994''.

(b) Definitions

In this section—

''child'' means a person who is not younger than 5 and not older than 18 years old.

''community-based organization'' means a private, locally initiated, community-based organization that—

(A) is a nonprofit organization, as defined in section 5603(23) of this title; and

(B) is operated by a consortium of service providers, consisting of representatives of 5 or more of the following categories of persons:

(i) Residents of the community.

(ii) Business and civic leaders actively involved in providing employment and business development opportunities in the community.

(iii) Educators.

(iv) Religious organizations (which shall not provide any sectarian instruction or sectarian worship in connection with an activity funded under this subchapter).

(v) Law enforcement agencies.

(vi) Public housing agencies.

(vii) Other public agencies.

(viii) Other interested parties.

''eligible community'' means an area identified pursuant to subsection (e) of this section.

''Indian tribe'' means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''poverty line'' means the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title[1] applicable to a family of the size involved.

''public school'' means a public elementary school, as defined in section 1001(i)[2] of title 20, and a public secondary school, as defined in section 1001(d)[2] of title 20.

''Secretary'' means the Secretary of Health and Human Services, in consultation and coordination with the Attorney General.

''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(c) Program authority

(1) In general

(A) Allocations for States and Indian country

For any fiscal year in which the sums appropriated to carry out this section equal or exceed $20,000,000, from the sums appropriated to carry out this subsection, the Secretary shall allocate, for grants under subparagraph (B) to community-based organizations in each State, an amount bearing the same ratio to such sums as the number of children in the State who are from families with incomes below the poverty line bears to the number of children in all States who are from families with incomes below the poverty line. In view of the extraordinary need for assistance in Indian country, an appropriate amount of funds available under this part shall be made available for such grants in Indian country.

(B) Grants to community-based organizations from allocations

For such a fiscal year, the Secretary may award grants from the appropriate State or Indian country allocation determined under subparagraph (A) on a competitive basis to eligible community-based organizations to pay for the Federal share of assisting eligible communities to develop and carry out programs in accordance with this section.

(C) Reallocation

If, at the end of such a fiscal year, the Secretary determines that funds allocated for community-based organizations in a State or Indian country under subparagraph (B) remain unobligated, the Secretary may use such funds to award grants to eligible community-based organizations in another State or Indian country to pay for such Federal share. In awarding such grants, the Secretary shall consider the need to maintain geographic diversity among the recipients of such grants. Amounts made available through such grants shall remain available until expended.

(2) Other fiscal years

For any fiscal year in which the sums appropriated to carry out this section are less than $20,000,000, the Secretary may award grants on a competitive basis to eligible community-based organizations to pay for the Federal share of assisting eligible communities to develop and carry out programs in accordance with this section.

(3) Administrative costs

The Secretary may use not more than 3 percent of the funds appropriated to carry out this section in any fiscal year for administrative costs.

(d) Program requirements

(1) Location

A community-based organization that receives a grant under this section to assist in

[1] So in original. Probably should be followed by a closing parenthesis.

[2] See References in Text note below.

carrying out such a program shall ensure that the program is carried out—

(A) when appropriate, in the facilities of a public school during nonschool hours; or

(B) in another appropriate local facility in a State or Indian country, such as a college or university, a local or State park or recreation center, church, or military base, that is—

(i) in a location that is easily accessible to children in the community; and

(ii) in compliance with all applicable local ordinances.

(2) Use of funds

Such community-based organization—

(A) shall use funds made available through the grant to provide, to children in the eligible community, services and activities that—

(i)[3] shall include supervised sports programs, and extracurricular and academic programs, that are offered—

(I) after school and on weekends and holidays, during the school year; and

(II) as daily full-day programs (to the extent available resources permit) or as part-day programs, during the summer months;

(B) in providing such extracurricular and academic programs, shall provide programs such as curriculum-based supervised educational, work force preparation, entrepreneurship, cultural, health programs, social activities, arts and crafts programs, dance programs, tutorial and mentoring programs, and other related activities;

(C) may use—

(i) such funds for minor renovation of facilities that are in existence prior to the operation of the program and that are necessary for the operation of the program for which the organization receives the grant, purchase of sporting and recreational equipment and supplies, reasonable costs for the transportation of participants in the program, hiring of staff, provision of meals for such participants, provision of health services consisting of an initial basic physical examination, provision of first aid and nutrition guidance, family counselling, parental training, and substance abuse treatment where appropriate; and

(ii) not more than 5 percent of such funds to pay for the administrative costs of the program; and

(D) may not use such funds to provide sectarian worship or sectarian instruction.

(e) Eligible community identification

(1) Identification

To be eligible to receive a grant under this section, a community-based organization shall identify an eligible community to be assisted under this section.

(2) Criteria

Such eligible community shall be an area that meets such criteria with respect to significant poverty and significant juvenile delinquency, and such additional criteria, as the Secretary may by regulation require.

(f) Applications

(1) Application required

To be eligible to receive a grant under this section, a community-based organization shall submit an application to the Secretary at such time, in such manner, and accompanied by such information, as the Secretary may reasonably require, and obtain approval of such application.

(2) Contents of application

Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities and services to be provided through the program for which the grant is sought;

(B) contain an assurance that the community-based organization will spend grant funds received under this section in a manner that the community-based organization determines will best accomplish the objectives of this section;

(C) contain a comprehensive plan for the program that is designed to achieve identifiable goals for children in the eligible community;

(D) set forth measurable goals and outcomes for the program that—

(i) will—

(I) where appropriate, make a public school the focal point of the eligible community; or

(II) make a local facility described in subsection (d)(1)(B) of this section such a focal point; and

(ii) may include reducing the percentage of children in the eligible community that enter the juvenile justice system, increasing the graduation rates, school attendance, and academic success of children in the eligible community, and improving the skills of program participants;

(E) provide evidence of support for accomplishing such goals and outcomes from—

(i) community leaders;

(ii) businesses;

(iii) local educational agencies;

(iv) local officials;

(v) State officials;

(vi) Indian tribal government officials; and

(vii) other organizations that the community-based organization determines to be appropriate;

(F) contain an assurance that the community-based organization will use grant funds received under this section to provide children in the eligible community with activities and services that shall include supervised sports programs, and extracurricular and academic programs, in accordance with subparagraphs (A) and (B) of subsection (d)(2) of this section;

(G) contain a list of the activities and services that will be offered through the program for which the grant is sought and spon-

[3] So in original. No cl. (ii) has been enacted.

sored by private nonprofit organizations, individuals, and groups serving the eligible community, including—

(i) extracurricular and academic programs, such as programs described in subsection (d)(2)(B) of this section; and

(ii) activities that address specific needs in the community;

(H) demonstrate the manner in which the community-based organization will make use of the resources, expertise, and commitment of private entities in carrying out the program for which the grant is sought;

(I) include an estimate of the number of children in the eligible community expected to be served pursuant to the program;

(J) include a description of charitable private resources, and all other resources, that will be made available to achieve the goals of the program;

(K) contain an assurance that the community-based organization will use competitive procedures when purchasing, contracting, or otherwise providing for goods, activities, or services to carry out programs under this section;

(L) contain an assurance that the program will maintain a staff-to-participant ratio (including volunteers) that is appropriate to the activity or services provided by the program;

(M) contain an assurance that the program will maintain an average attendance rate of not less than 75 percent of the participants enrolled in the program, or will enroll additional participants in the program;

(N) contain an assurance that the community-based organization will comply with any evaluation under subsection (m)[4] of this section, any research effort authorized under Federal law, and any investigation by the Secretary;

(O) contain an assurance that the community-based organization shall prepare and submit to the Secretary an annual report regarding any program conducted under this section;

(P) contain an assurance that the program for which the grant is sought will, to the maximum extent possible, incorporate services that are provided solely through non-Federal private or nonprofit sources; and

(Q) contain an assurance that the community-based organization will maintain separate accounting records for the program.

(3) Priority

In awarding grants to carry out programs under this section, the Secretary shall give priority to community-based organizations who submit applications that demonstrate the greatest effort in generating local support for the programs.

(g) Eligibility of participants

(1) In general

To the extent possible, each child who resides in an eligible community shall be eligible to participate in a program carried out in such community that receives assistance under this section.

(2) Eligibility

To be eligible to participate in a program that receives assistance under this section, a child shall provide the express written approval of a parent or guardian, and shall submit an official application and agree to the terms and conditions of participation in the program.

(3) Nondiscrimination

In selecting children to participate in a program that receives assistance under this section, a community-based organization shall not discriminate on the basis of race, color, religion, sex, national origin, or disability.

(h) Peer review panel

(1) Establishment

The Secretary may establish a peer review panel that shall be comprised of individuals with demonstrated experience in designing and implementing community-based programs.

(2) Composition

A peer review panel shall include at least 1 representative from each of the following:

(A) A community-based organization.

(B) A local government.

(C) A school district.

(D) The private sector.

(E) A charitable organization.

(F) A representative of the United States Olympic Committee, at the option of the Secretary.

(3) Functions

A peer review panel shall conduct the initial review of all grant applications received by the Secretary under subsection (f) of this section, make recommendations to the Secretary regarding—

(A) grant funding under this section; and

(B) a design for the evaluation of programs assisted under this section.

(i) Investigations and inspections

The Secretary may conduct such investigations and inspections as may be necessary to ensure compliance with the provisions of this section.

(j) Payments; Federal share; non-Federal share

(1) Payments

The Secretary shall, subject to the availability of appropriations, pay to each community-based organization having an application approved under subsection (f) of this section the Federal share of the costs of developing and carrying out programs described in subsection (c) of this section.

(2) Federal share

The Federal share of such costs shall be no more than—

(A) 75 percent for each of fiscal years 1995 and 1996;

(B) 70 percent for fiscal year 1997; and

(C) 60 percent for fiscal year 1998 and thereafter.

[4] So in original. Probably should be subsection ''(k)''.

(3) Non-Federal share

(A) In general

The non-Federal share of such costs may be in cash or in kind, fairly evaluated, including plant, equipment, and services (including the services described in subsection (f)(2)(P) of this section), and funds appropriated by the Congress for the activity of any agency of an Indian tribal government or the Bureau of Indian Affairs on any Indian lands may be used to provide the non-Federal share of the costs of programs or projects funded under this part.

(B) Special rule

At least 15 percent of the non-Federal share of such costs shall be provided from private or nonprofit sources.

(k) Evaluation

The Secretary shall conduct a thorough evaluation of the programs assisted under this section, which shall include an assessment of—

(1) the number of children participating in each program assisted under this section;

(2) the academic achievement of such children;

(3) school attendance and graduation rates of such children; and

(4) the number of such children being processed by the juvenile justice system.

(Pub. L. 103–322, title III, § 30401, Sept. 13, 1994, 108 Stat. 1846; Pub. L. 105–244, title I, § 102(a)(13)(N), Oct. 7, 1998, 112 Stat. 1621.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original ''this title'', meaning title III of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1836, which enacted this subchapter, sections 3796ff to 3796ff–4 of this title, and sections 6701 to 6720 of Title 31, Money and Finance, amended sections 3791, 3793, and 3797 of this title, sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation, and section 3621 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 13701 of this title and sections 6701 and 6702 of Title 31. For complete classification of title III to the Code, see Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (b), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 1001 of title 20, referred to in subsec. (b), does not have a subsec. (d) or (i) and does not define ''elementary school'' or ''secondary school''. However, such terms are defined in section 1003 of Title 20, Education.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–244 substituted ''section 1001(i)'' for ''section 1141(i)'' and ''section 1001(d)'' for ''section 1141(d)'' in definition for ''public school''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

§ 13792. Repealed. Pub. L. 105–277, div. A, § 101(f) [title VIII, § 301(d)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–410

Section, Pub. L. 103–322, title III, § 30402, Sept. 13, 1994, 108 Stat. 1852, related to family and community endeavor schools grant program.

§ 13793. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this part—

(1) $37,000,000 for fiscal year 1995;

(2) $103,500,000 for fiscal year 1996;

(3) $121,500,000 for fiscal year 1997;

(4) $153,000,000 for fiscal year 1998;

(5) $193,500,000 for fiscal year 1999; and

(6) $201,500,000 for fiscal year 2000.

(b) Programs

Of the amounts appropriated under subsection (a) of this section for any fiscal year—

(1) 70 percent shall be made available to carry out section 13791 of this title; and

(2) 30 percent shall be made available to carry out section 13792[1] of this title.

(Pub. L. 103–322, title III, § 30403, Sept. 13, 1994, 108 Stat. 1855.)

REFERENCES IN TEXT

Section 13792 of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 105–277, div. A, § 101(f) [title VIII, § 301(d)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–410.

PART E—ASSISTANCE FOR DELINQUENT AND AT-RISK YOUTH

§§ 13801, 13802. Repealed. Pub. L. 109–162, title XI, § 1154(b)(2), Jan. 5, 2006, 119 Stat. 3113

Section 13801, Pub. L. 103–322, title III, § 30701, Sept. 13, 1994, 108 Stat. 1855, provided grant authority to the Attorney General to support the development and operation of projects to provide residential services to delinquent and at-risk youth.

Section 13802, Pub. L. 103–322, title III, § 30702, Sept. 13, 1994, 108 Stat. 1856, authorized appropriations.

PART F—POLICE RECRUITMENT

§ 13811. Grant authority

(a) Grants

(1) In general

The Attorney General may make grants to qualified community organizations to assist in meeting the costs of qualified programs which are designed to recruit and retain applicants to police departments.

(2) Consultation with the Ounce of Prevention Council

The Attorney General may consult with the Ounce of Prevention Council in making grants under paragraph (1).

(b) Qualified community organizations

An organization is a qualified community organization which is eligible to receive a grant under subsection (a) of this section if the organization—

(1) is a nonprofit organization; and

[1] See References in Text note below.

(2) has training and experience in—

(A) working with a police department and with teachers, counselors, and similar personnel,

(B) providing services to the community in which the organization is located,

(C) developing and managing services and techniques to recruit individuals to become members of a police department and to assist such individuals in meeting the membership requirements of police departments,

(D) developing and managing services and techniques to assist in the retention of applicants to police departments, and

(E) developing other programs that contribute to the community.

(c) Qualified programs

A program is a qualified program for which a grant may be made under subsection (a) of this section if the program is designed to recruit and train individuals from underrepresented neighborhoods and localities and if—

(1) the overall design of the program is to recruit and retain applicants to a police department;

(2) the program provides recruiting services which include tutorial programs to enable individuals to meet police force academic requirements and to pass entrance examinations;

(3) the program provides counseling to applicants to police departments who may encounter problems throughout the application process; and

(4) the program provides retention services to assist in retaining individuals to stay in the application process of a police department.

(d) Applications

To qualify for a grant under subsection (a) of this section, a qualified organization shall submit an application to the Attorney General in such form as the Attorney General may prescribe. Such application shall—

(1) include documentation from the applicant showing—

(A) the need for the grant;

(B) the intended use of grant funds;

(C) expected results from the use of grant funds; and

(D) demographic characteristics of the population to be served, including age, disability, race, ethnicity, and languages used; and

(2) contain assurances satisfactory to the Attorney General that the program for which a grant is made will meet the applicable requirements of the program guidelines prescribed by the Attorney General under subsection (i) of this section.

(e) Action by Attorney General

Not later than 60 days after the date that an application for a grant under subsection (a) of this section is received, the Attorney General shall consult with the police department which will be involved with the applicant and shall—

(1) approve the application and disburse the grant funds applied for; or

(2) disapprove the application and inform the applicant that the application is not approved and provide the applicant with the reasons for the disapproval.

(f) Grant disbursement

The Attorney General shall disburse funds under a grant under subsection (a) of this section in accordance with regulations of the Attorney General which shall ensure—

(1) priority is given to applications for areas and organizations with the greatest showing of need;

(2) that grant funds are equitably distributed on a geographic basis; and

(3) the needs of underserved populations are recognized and addressed.

(g) Grant period

A grant under subsection (a) of this section shall be made for a period not longer than 3 years.

(h) Grantee reporting

(1) For each year of a grant period for a grant under subsection (a) of this section, the recipient of the grant shall file a performance report with the Attorney General explaining the activities carried out with the funds received and assessing the effectiveness of such activities in meeting the purpose of the recipient's qualified program.

(2) If there was more than one recipient of a grant, each recipient shall file such report.

(3) The Attorney General shall suspend the funding of a grant, pending compliance, if the recipient of the grant does not file the report required by this subsection or uses the grant for a purpose not authorized by this section.

(i) Guidelines

The Attorney General shall, by regulation, prescribe guidelines on content and results for programs receiving a grant under subsection (a) of this section. Such guidelines shall be designed to establish programs which will be effective in training individuals to enter instructional programs for police departments and shall include requirements for—

(1) individuals providing recruiting services;

(2) individuals providing tutorials and other academic assistance programs;

(3) individuals providing retention services; and

(4) the content and duration of recruitment, retention, and counseling programs and the means and devices used to publicize such programs.

(Pub. L. 103–322, title III, § 30801, Sept. 13, 1994, 108 Stat. 1857.)

§ 13812. Authorization of appropriations

There are authorized to be appropriated for grants under section 13811 of this title—

(1) $2,000,000 for fiscal year 1996;

(2) $4,000,000 for fiscal year 1997;

(3) $5,000,000 for fiscal year 1998;

(4) $6,000,000 for fiscal year 1999; and

(5) $7,000,000 for fiscal year 2000.

(Pub. L. 103–322, title III, § 30802, Sept. 13, 1994, 108 Stat. 1858.)

PART G—NATIONAL COMMUNITY ECONOMIC PARTNERSHIP

SUBPART 1—COMMUNITY ECONOMIC PARTNERSHIP INVESTMENT FUNDS

§ 13821. Purpose

It is the purpose of this subpart to increase private investment in distressed local communities and to build and expand the capacity of local institutions to better serve the economic needs of local residents through the provision of financial and technical assistance to community development corporations.

(Pub. L. 103–322, title III, § 31111, Sept. 13, 1994, 108 Stat. 1882.)

SHORT TITLE

For short title of this part as the ''National Community Economic Partnership Act of 1994'', see section 31101 of Pub. L. 103–322, set out as a note under section 13701 of this title.

§ 13822. Provision of assistance

(a) Authority

The Secretary of Health and Human Services (referred to in this part as the ''Secretary'') may, in accordance with this subpart, provide nonrefundable lines of credit to community development corporations for the establishment, maintenance or expansion of revolving loan funds to be utilized to finance projects intended to provide business and employment opportunities for low-income, unemployed, or underemployed individuals and to improve the quality of life in urban and rural areas.

(b) Revolving loan funds

(1) Competitive assessment of applications

In providing assistance under subsection (a) of this section, the Secretary shall establish and implement a competitive process for the solicitation and consideration of applications from eligible entities for lines of credit for the capitalization of revolving funds.

(2) Eligible entities

To be eligible to receive a line of credit under this subpart an applicant shall—

(A) be a community development corporation;

(B) prepare and submit an application to the Secretary that shall include a strategic investment plan that identifies and describes the economic characteristics of the target area to be served, the types of business to be assisted and the impact of such assistance on low-income, underemployed, and unemployed individuals in the target area;

(C) demonstrate previous experience in the development of low-income housing or community or business development projects in a low-income community and provide a record of achievement with respect to such projects; and

(D) have secured one or more commitments from local sources for contributions (either in cash or in kind, letters of credit or letters of commitment) in an amount that is at least equal to the amount requested in the application submitted under subparagraph (B).

(3) Exception

Notwithstanding the provisions of paragraph (2)(D), the Secretary may reduce local contributions to not less than 25 percent of the amount of the line of credit requested by the community development corporation if the Secretary determines such to be appropriate in accordance with section 13826 of this title.

(Pub. L. 103–322, title III, § 31112, Sept. 13, 1994, 108 Stat. 1882.)

§ 13823. Approval of applications

(a) In general

In evaluating applications submitted under section 13822(b)(2)(B) of this title, the Secretary shall ensure that—

(1) the residents of the target area to be served (as identified under the strategic development plan) would have an income that is less than the median income for the area (as determined by the Secretary);

(2) the applicant community development corporation possesses the technical and managerial capability necessary to administer a revolving loan fund and has past experience in the development and management of housing, community and economic development programs;

(3) the applicant community development corporation has provided sufficient evidence of the existence of good working relationships with—

(A) local businesses and financial institutions, as well as with the community the corporation proposes to serve; and

(B) local and regional job training programs;

(4) the applicant community development corporation will target job opportunities that arise from revolving loan fund investments under this subpart so that 75 percent of the jobs retained or created under such investments are provided to—

(A) individuals with—

(i) incomes that do not exceed the Federal poverty line; or

(ii) incomes that do not exceed 80 percent of the median income of the area;

(B) individuals who are unemployed or underemployed;

(C) individuals who are participating or have participated in job training programs authorized under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or the Family Support Act of 1988 (Public Law 100–485);

(D) individuals whose jobs may be retained as a result of the provision of financing available under this subpart; or

(E) individuals who have historically been underrepresented in the local economy; and

(5) a representative cross section of applicants are approved, including large and small community development corporations, urban and rural community development corporations and community development corporations representing diverse populations.

(b) Priority

In determining which application to approve under this subpart the Secretary shall give priority to those applicants proposing to serve a target area—

(1) with a median income that does not exceed 80 percent of the median for the area (as determined by the Secretary); and

(2) with a high rate of unemployment, as determined by the Secretary or in which the population loss is at least 7 percent from April 1, 1980, to April 1, 1990, as reported by the Bureau of the Census.

(Pub. L. 103–322, title III, § 31113, Sept. 13, 1994, 108 Stat. 1883; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(44), (f)(35)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–428, 2681–434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(4)(C), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Family Support Act of 1988, referred to in subsec. (a)(4)(C), is Pub. L. 100–485, Oct. 13, 1988, 102 Stat. 2343, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 1305 of this title and Tables.

AMENDMENTS

1998—Subsec. (a)(4)(C). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(35)], struck out ''the Job Training Partnership Act or'' after ''authorized under''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(44)], substituted ''authorized under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998'' for ''authorized under the Job Training Partnership Act (29 U.S.C. 1501 et seq.)''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(44)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(35)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

§ 13824. Availability of lines of credit and use

(a) Approval of application

The Secretary shall provide a community development corporation that has an application approved under section 13823 of this title with a line of credit in an amount determined appropriate by the Secretary, subject to the limitations contained in subsection (b) of this section.

(b) Limitations on availability of amounts

(1) Maximum amount

The Secretary shall not provide in excess of $2,000,000 in lines of credit under this subpart to a single applicant.

(2) Period of availability

A line of credit provided under this subpart shall remain available over a period of time established by the Secretary, but in no event shall any such period of time be in excess of 3 years from the date on which such line of credit is made available.

(3) Exception

Notwithstanding paragraphs (1) and (2), if a recipient of a line of credit under this subpart has made full and productive use of such line of credit, can demonstrate the need and demand for additional assistance, and can meet the requirements of section 13822(b)(2) of this title, the amount of such line of credit may be increased by not more than $1,500,000.

(c) Amounts drawn from line of credit

Amounts drawn from each line of credit under this subpart shall be used solely for the purposes described in section 13821 of this title and shall only be drawn down as needed to provide loans, investments, or to defray administrative costs related to the establishment of a revolving loan fund.

(d) Use of revolving loan funds

Revolving loan funds established with lines of credit provided under this subpart may be used to provide technical assistance to private business enterprises and to provide financial assistance in the form of loans, loan guarantees, interest reduction assistance, equity shares, and other such forms of assistance to business enterprises in target areas and who are in compliance with section 13823(a)(4) of this title.

(Pub. L. 103–322, title III, § 31114, Sept. 13, 1994, 108 Stat. 1884.)

§ 13825. Limitations on use of funds

(a) Matching requirement

Not to exceed 50 percent of the total amount to be invested by an entity under this subpart may be derived from funds made available from a line of credit under this subpart.

(b) Technical assistance and administration

Not to exceed 10 percent of the amounts available from a line of credit under this subpart shall be used for the provision of training or technical assistance and for the planning, development, and management of economic development projects. Community development corporations shall be encouraged by the Secretary to seek technical assistance from other community development corporations, with expertise in the planning, development and management of economic development projects. The Secretary shall assist in the identification and facilitation of such technical assistance.

(c) Local and private sector contributions

To receive funds available under a line of credit provided under this subpart, an entity, using procedures established by the Secretary, shall demonstrate to the community development corporation that such entity agrees to provide local and private sector contributions in accordance with section 13822(b)(2)(D) of this title, will participate with such community development corporation in a loan, guarantee or investment program for a designated business enterprise, and that the total financial commitment to be provided by such entity is at least equal to the amount to be drawn from the line of credit.

(d) Use of proceeds from investments

Proceeds derived from investments made using funds made available under this subpart may be

used only for the purposes described in section 13821 of this title and shall be reinvested in the community in which they were generated.

(Pub. L. 103–322, title III, § 31115, Sept. 13, 1994, 108 Stat. 1884.)

§ 13826. Program priority for special emphasis programs

(a) In general

The Secretary shall give priority in providing lines of credit under this subpart to community development corporations that propose to undertake economic development activities in distressed communities that target women, Native Americans, at risk youth, farmworkers, population-losing communities, very low-income communities, single mothers, veterans, and refugees; or that expand employee ownership of private enterprises and small businesses, and to programs providing loans of not more than $35,000 to very small business enterprises.

(b) Reservation of funds

Not less than 5 percent of the amounts made available under section 13822(a)(2)(A)[1] of this title may be reserved to carry out the activities described in subsection (a) of this section.

(Pub. L. 103–322, title III, § 31116, Sept. 13, 1994, 108 Stat. 1885.)

SUBPART 2—EMERGING COMMUNITY DEVELOPMENT CORPORATIONS

§ 13841. Community development corporation improvement grants

(a) Purpose

It is the purpose of this section to provide assistance to community development corporations to upgrade the management and operating capacity of such corporations and to enhance the resources available to enable such corporations to increase their community economic development activities.

(b) Skill enhancement grants

(1) In general

The Secretary shall award grants to community development corporations to enable such corporations to attain or enhance the business management and development skills of the individuals that manage such corporations to enable such corporations to seek the public and private resources necessary to develop community economic development projects.

(2) Use of funds

A recipient of a grant under paragraph (1) may use amounts received under such grant—

(A) to acquire training and technical assistance from agencies or institutions that have extensive experience in the development and management of low-income community economic development projects; or

(B) to acquire such assistance from other highly successful community development corporations.

[1] So in original. Probably should be section ''13852(b)(1)''.

(c) Operating grants

(1) In general

The Secretary shall award grants to community development corporations to enable such corporations to support an administrative capacity for the planning, development, and management of low-income community economic development projects.

(2) Use of funds

A recipient of a grant under paragraph (1) may use amounts received under such grant—

(A) to conduct evaluations of the feasibility of potential low-income community economic development projects that address identified needs in the low-income community and that conform to those projects and activities permitted under subpart 1;[1]

(B) to develop a business plan related to such a potential project; or

(C) to mobilize resources to be contributed to a planned low-income community economic development project or strategy.

(d) Applications

A community development corporation that desires to receive a grant under this section shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(e) Amount available for community development corporation

Amounts provided under this section to a community development corporation shall not exceed $75,000 per year. Such corporations may apply for grants under this section for up to 3 consecutive years, except that such corporations shall be required to submit a new application for each grant for which such corporation desires to receive and compete on the basis of such applications in the selection process.

(Pub. L. 103–322, title III, § 31121, Sept. 13, 1994, 108 Stat. 1885.)

REFERENCES IN TEXT

Subpart 1, referred to in subsec. (c)(2)(A), was in the original ''subtitle A'', and was translated as reading ''chapter 1'', meaning chapter 1 of subtitle K of title III of Pub. L. 103–322, to reflect the probable intent of Congress.

§ 13842. Emerging community development corporation revolving loan funds

(a) Authority

The Secretary may award grants to emerging community development corporations to enable such corporations to establish, maintain or expand revolving loan funds, to make or guarantee loans, or to make capital investments in new or expanding local businesses.

(b) Eligibility

To be eligible to receive a grant under subsection (a) of this section, an entity shall—

(1) be a community development corporation;

(2) have completed not less than one nor more than two community economic develop-

[1] See References in Text note below.

ment projects or related projects that improve or provide job and employment opportunities to low-income individuals;

(3) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a strategic investment plan that identifies and describes the economic characteristics of the target area to be served, the types of business to be assisted using amounts received under the grant and the impact of such assistance on low-income individuals; and

(4) have secured one or more commitments from local sources for contributions (either in cash or in kind, letters of credit, or letters of commitment) in an amount that is equal to at least 10 percent of the amounts requested in the application submitted under paragraph (2).[1]

(c) Use of revolving loan fund

(1) In general

A revolving loan fund established or maintained with amounts received under this section may be utilized to provide financial and technical assistance, loans, loan guarantees or investments to private business enterprises to—

(A) finance projects intended to provide business and employment opportunities for low-income individuals and to improve the quality of life in urban and rural areas; and

(B) build and expand the capacity of emerging community development corporations and serve the economic needs of local residents.

(2) Technical assistance

The Secretary shall encourage emerging community development corporations that receive grants under this section to seek technical assistance from established community development corporations, with expertise in the planning, development and management of economic development projects and shall facilitate the receipt of such assistance.

(3) Limitation

Not to exceed 10 percent of the amounts received under this section by a grantee shall be used for training, technical assistance and administrative purposes.

(d) Use of proceeds from investments

Proceeds derived from investments made with amounts provided under this section may be utilized only for the purposes described in this part and shall be reinvested in the community in which they were generated.

(e) Amounts available

Amounts provided under this section to a community development corporation shall not exceed $500,000 per year.

(Pub. L. 103–322, title III, § 31122, Sept. 13, 1994, 108 Stat. 1886.)

SUBPART 3—MISCELLANEOUS PROVISIONS

§ 13851. Definitions

As used in this part:

(1) Community development corporation

The term ''community development corporation'' means a private, nonprofit corporation whose board of directors is comprised of business, civic and community leaders, and whose principal purpose includes the provision of low-income housing or community economic development projects that primarily benefit low-income individuals and communities.

(2) Local and private sector contribution

The term ''local and private sector contribution'' means the funds available at the local level (by private financial institutions, State and local governments) or by any private philanthropic organization and private, nonprofit organizations that will be committed and used solely for the purpose of financing private business enterprises in conjunction with amounts provided under this part.

(3) Population-losing community

The term ''population-losing community'' means any county in which the net population loss is at least 7 percent from April 1, 1980 to April 1, 1990, as reported by the Bureau of the Census.

(4) Private business enterprise

The term ''private business enterprise'' means any business enterprise that is engaged in the manufacture of a product, provision of a service, construction or development of a facility, or that is involved in some other commercial, manufacturing or industrial activity, and that agrees to target job opportunities stemming from investments authorized under this part to certain individuals.

(5) Target area

The term ''target area'' means any area defined in an application for assistance under this part that has a population whose income does not exceed the median for the area within which the target area is located.

(6) Very low-income community

The term ''very low-income community'' means a community in which the median income of the residents of such community does not exceed 50 percent of the median income of the area.

(Pub. L. 103–322, title III, § 31131, Sept. 13, 1994, 108 Stat. 1887.)

§ 13852. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out subparts 1 and 2—

(1) $45,000,000 for fiscal year 1996;

(2) $72,000,000 for fiscal year 1997;

(3) $76,500,000 for fiscal year 1998; and

(4) $76,500,000 for fiscal year 1999.

(b) Earmarks

Of the aggregate amount appropriated under subsection (a) of this section for each fiscal year—

(1) 60 percent shall be available to carry out subpart 1; and

(2) 40 percent shall be available to carry out subpart 2.

[1] So in original. Probably should be paragraph ''(3)''.

(c) Amounts

Amounts appropriated under subsection (a) of this section shall remain available for expenditure without fiscal year limitation.

(Pub. L. 103–322, title III, § 31132, Sept. 13, 1994, 108 Stat. 1888.)

§ 13853. Prohibition

None of the funds authorized under this part shall be used to finance the construction of housing.

(Pub. L. 103–322, title III, § 31133, Sept. 13, 1994, 108 Stat. 1888.)

PART H—COMMUNITY-BASED JUSTICE GRANTS FOR PROSECUTORS

§ 13861. Grant authorization

(a) In general

The Attorney General may make grants to State, Indian tribal, or local prosecutors for the purpose of supporting the creation or expansion of community-based justice programs.

(b) Consultation

The Attorney General may consult with the Ounce of Prevention Council in making grants under subsection (a) of this section.

(Pub. L. 103–322, title III, § 31701, Sept. 13, 1994, 108 Stat. 1890.)

§ 13862. Use of funds

Grants made by the Attorney General under this section shall be used—

(1) to fund programs that require the cooperation and coordination of prosecutors, school officials, police, probation officers, youth and social service professionals, and community members in the effort to reduce the incidence of, and increase the successful identification and speed of prosecution of, young violent offenders;

(2) to fund programs in which prosecutors focus on the offender, not simply the specific offense, and impose individualized sanctions, designed to deter that offender from further antisocial conduct, and impose increasingly serious sanctions on a young offender who continues to commit offenses;

(3) to fund programs that coordinate criminal justice resources with educational, social service, and community resources to develop and deliver violence prevention programs, including mediation and other conflict resolution methods, treatment, counseling, educational, and recreational programs that create alternatives to criminal activity; and

(4) in rural States (as defined in section 3796bb(b) of this title), to fund cooperative efforts between State and local prosecutors, victim advocacy and assistance groups, social and community service providers, and law enforcement agencies to investigate and prosecute child abuse cases, treat youthful victims of child abuse, and work in cooperation with the community to develop education and prevention strategies directed toward the issues with which such entities are concerned.

(Pub. L. 103–322, title III, § 31702, Sept. 13, 1994, 108 Stat. 1890.)

§ 13863. Applications

(a) Eligibility

In order to be eligible to receive a grant under this part[1] for any fiscal year, a State, Indian tribal, or local prosecutor, in conjunction with the chief executive officer of the jurisdiction in which the program will be placed, shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

(b) Requirements

Each applicant shall include—

(1) a request for funds for the purposes described in section 13862 of this title;

(2) a description of the communities to be served by the grant, including the nature of the youth crime, youth violence, and child abuse problems within such communities;

(3) assurances that Federal funds received under this part[1] shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this section; and

(4) statistical information in such form and containing such information that the Attorney General may require.

(c) Comprehensive plan

Each applicant shall include a comprehensive plan that shall contain—

(1) a description of the youth violence or child abuse crime problem;

(2) an action plan outlining how the applicant will achieve the purposes as described in section 13862 of this title;

(3) a description of the resources available in the community to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources; and

(4) a description of how the requested grant will be used to fill gaps.

(Pub. L. 103–322, title III, § 31703, Sept. 13, 1994, 108 Stat. 1891.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (b)(3), appearing in the original is unidentifiable because subtitle Q of title III of Pub. L. 103–322 does not contain parts.

§ 13864. Allocation of funds; limitations on grants

(a) Administrative cost limitation

The Attorney General shall use not more than 5 percent of the funds available under this program for the purposes of administration and technical assistance.

(b) Renewal of grants

A grant under this part[1] may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant under this part,[1] subject to the availability of funds, if—

(1) the Attorney General determines that the funds made available to the recipient during

[1] See References in Text note below.

[1] See References in Text note below.

the previous years were used in a manner required under the approved application; and

(2) the Attorney General determines that an additional grant is necessary to implement the community prosecution program described in the comprehensive plan required by section 13863 of this title.

(Pub. L. 103–322, title III, § 31704, Sept. 13, 1994, 108 Stat. 1891.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), appearing in the original is unidentifiable because subtitle Q of title III of Pub. L. 103–322 does not contain parts.

§ 13865. Award of grants

The Attorney General shall consider the following facts in awarding grants:

(1) Demonstrated need and evidence of the ability to provide the services described in the plan required under section 13863 of this title.

(2) The Attorney General shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

(Pub. L. 103–322, title III, § 31705, Sept. 13, 1994, 108 Stat. 1891.)

§ 13866. Reports

(a) Report to Attorney General

State and local prosecutors that receive funds under this part shall submit to the Attorney General a report not later than March 1 of each year that describes progress achieved in carrying out the plan described under section 13863(c) of this title.

(b) Report to Congress

The Attorney General shall submit to the Congress a report by October 1 of each year in which grants are made available under this part which shall contain a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants, and an evaluation of programs established under this part.

(Pub. L. 103–322, title III, § 31706, Sept. 13, 1994, 108 Stat. 1892.)

§ 13867. Authorization of appropriations

There are authorized to be appropriated to carry out this part—

(1) $7,000,000 for fiscal year 1996;

(2) $10,000,000 for fiscal year 1997;

(3) $10,000,000 for fiscal year 1998;

(4) $11,000,000 for fiscal year 1999; and

(5) $12,000,000 for fiscal year 2000.

(Pub. L. 103–322, title III, § 31707, Sept. 13, 1994, 108 Stat. 1892.)

§ 13868. Definitions

In this part—

''Indian tribe'' means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

''young violent offenders'' means individuals, ages 7 through 22, who have committed crimes of violence, weapons offenses, drug distribution, hate crimes and civil rights violations, and offenses against personal property of another.

(Pub. L. 103–322, title III, § 31708, Sept. 13, 1994, 108 Stat. 1892.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in text, is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

PART I—FAMILY UNITY DEMONSTRATION PROJECT

§ 13881. Purpose

The purpose of this part is to evaluate the effectiveness of certain demonstration projects in helping to—

(1) alleviate the harm to children and primary caretaker parents caused by separation due to the incarceration of the parents;

(2) reduce recidivism rates of prisoners by encouraging strong and supportive family relationships; and

(3) explore the cost effectiveness of community correctional facilities.

(Pub. L. 103–322, title III, § 31902, Sept. 13, 1994, 108 Stat. 1892.)

SHORT TITLE

For short title of this part as the ''Family Unity Demonstration Project Act'', see section 31901 of Pub. L. 103–322, set out as a note under section 13701 of this title.

§ 13882. Definitions

In this part—

''child'' means a person who is less than 7 years of age.

''community correctional facility'' means a residential facility that—

(A) is used only for eligible offenders and their children under 7 years of age;

(B) is not within the confines of a jail or prison;

(C) houses no more than 50 prisoners in addition to their children; and

(D) provides to inmates and their children—

(i) a safe, stable, environment for children;

(ii) pediatric and adult medical care consistent with medical standards for correctional facilities;

(iii) programs to improve the stability of the parent-child relationship, including educating parents regarding—

(I) child development; and

(II) household management;

(iv) alcoholism and drug addiction treatment for prisoners; and

(v) programs and support services to help inmates—

(I) to improve and maintain mental and physical health, including access to counseling;

(II) to obtain adequate housing upon release from State incarceration;

(III) to obtain suitable education, employment, or training for employment; and

(IV) to obtain suitable child care.

''eligible offender'' means a primary caretaker parent who—

(A) has been sentenced to a term of imprisonment of not more than 7 years or is awaiting sentencing for a conviction punishable by such a term of imprisonment; and

(B) has not engaged in conduct that—

(i) knowingly resulted in death or serious bodily injury;

(ii) is a felony for a crime of violence against a person; or

(iii) constitutes child neglect or mental, physical, or sexual abuse of a child.

''primary caretaker parent'' means—

(A) a parent who has consistently assumed responsibility for the housing, health, and safety of a child prior to incarceration; or

(B) a woman who has given birth to a child after or while awaiting her sentencing hearing and who expresses a willingness to assume responsibility for the housing, health, and safety of that child,

a parent who, in the best interest of a child, has arranged for the temporary care of the child in the home of a relative or other responsible adult shall not for that reason be excluded from the category ''primary caretaker''.

''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 103–322, title III, § 31903, Sept. 13, 1994, 108 Stat. 1893.)

§ 13883. Authorization of appropriations

(a) Authorization

There are authorized to be appropriated to carry out this part—

(1) $3,600,000 for fiscal year 1996;

(2) $3,600,000 for fiscal year 1997;

(3) $3,600,000 for fiscal year 1998;

(4) $3,600,000 for fiscal year 1999; and

(5) $5,400,000 for fiscal year 2000.

(b) Availability of appropriations

Of the amount appropriated under subsection (a) of this section for any fiscal year—

(1) 90 percent shall be available to carry out subpart 1; and

(2) 10 percent shall be available to carry out subpart 2.

(Pub. L. 103–322, title III, § 31904, Sept. 13, 1994, 108 Stat. 1894.)

SUBPART 1—GRANTS TO STATES

§ 13891. Authority to make grants

(a) General authority

The Attorney General may make grants, on a competitive basis, to States to carry out in accordance with this part family unity demonstration projects that enable eligible offenders to live in community correctional facilities with their children.

(b) Preferences

For the purpose of making grants under subsection (a) of this section, the Attorney General shall give preference to a State that includes in the application required by section 13892 of this title assurances that if the State receives a grant—

(1) both the State corrections agency and the State health and human services agency will participate substantially in, and cooperate closely in all aspects of, the development and operation of the family unity demonstration project for which such a grant is requested;

(2) boards made up of community members, including residents, local businesses, corrections officials, former prisoners, child development professionals, educators, and maternal and child health professionals will be established to advise the State regarding the operation of such project;

(3) the State has in effect a policy that provides for the placement of all prisoners, whenever possible, in correctional facilities for which they qualify that are located closest to their respective family homes;

(4) unless the Attorney General determines that a longer timeline is appropriate in a particular case, the State will implement the project not later than 180 days after receiving a grant under subsection (a) of this section and will expend all of the grant during a 1-year period;

(5) the State has the capacity to continue implementing a community correctional facility beyond the funding period to ensure the continuity of the work;

(6) unless the Attorney General determines that a different process for selecting participants in a project is desirable, the State will—

(A) give written notice to a prisoner, not later than 30 days after the State first receives a grant under subsection (a) of this section or 30 days after the prisoner is sentenced to a term of imprisonment of not more than 7 years (whichever is later), of the proposed or current operation of the project;

(B) accept at any time at which the project is in operation an application by a prisoner to participate in the project if, at the time of application, the remainder of the prisoner's sentence exceeds 180 days;

(C) review applications by prisoners in the sequence in which the State receives such applications; and

(D) not more than 50 days after reviewing such applications approve or disapprove the application; and

(7) for the purposes of selecting eligible offenders to participate in such project, the

State has authorized State courts to sentence an eligible offender directly to a community correctional facility, provided that the court gives assurances that the offender would have otherwise served a term of imprisonment.

(c) Selection of grantees

The Attorney General shall make grants under subsection (a) of this section on a competitive basis, based on such criteria as the Attorney General shall issue by rule and taking into account the preferences described in subsection (b) of this section.

(Pub. L. 103–322, title III, § 31911, Sept. 13, 1994, 108 Stat. 1894.)

§ 13892. Eligibility to receive grants

To be eligible to receive a grant under section 13891 of this title, a State shall submit to the Attorney General an application at such time, in such form, and containing such information as the Attorney General reasonably may require by rule.

(Pub. L. 103–322, title III, § 31912, Sept. 13, 1994, 108 Stat. 1895.)

§ 13893. Report

(a) In general

A State that receives a grant under this subpart[1] shall, not later than 90 days after the 1-year period in which the grant is required to be expended, submit a report to the Attorney General regarding the family unity demonstration project for which the grant was expended.

(b) Contents

A report under subsection (a) of this section shall—

(1) state the number of prisoners who submitted applications to participate in the project and the number of prisoners who were placed in community correctional facilities;

(2) state, with respect to prisoners placed in the project, the number of prisoners who are returned to that jurisdiction and custody and the reasons for such return;

(3) describe the nature and scope of educational and training activities provided to prisoners participating in the project;

(4) state the number, and describe the scope of, contracts made with public and nonprofit private community-based organizations to carry out such project; and

(5) evaluate the effectiveness of the project in accomplishing the purposes described in section 13881 of this title.

(Pub. L. 103–322, title III, § 31913, Sept. 13, 1994, 108 Stat. 1895.)

REFERENCES IN TEXT

This subpart, referred to in subsec. (a), was in the original ''this title'' and was translated as reading ''this chapter'', meaning chapter 1 of subtitle S of title III of Pub. L. 103–322, to reflect the probable intent of Congress.

[1] See References in Text note below.

SUBPART 2—FAMILY UNITY DEMONSTRATION PROJECT FOR FEDERAL PRISONERS

§ 13901. Authority of Attorney General

(a) In general

With the funds available to carry out this part for the benefit of Federal prisoners, the Attorney General, acting through the Director of the Bureau of Prisons, shall select eligible prisoners to live in community correctional facilities with their children.

(b) General contracting authority

In implementing this part,[1] the Attorney General may enter into contracts with appropriate public or private agencies to provide housing, sustenance, services, and supervision of inmates eligible for placement in community correctional facilities under this part.[1]

(c) Use of State facilities

At the discretion of the Attorney General, Federal participants may be placed in State projects as defined in subpart 1. For such participants, the Attorney General shall, with funds available under section 13883(b)(2) of this title, reimburse the State for all project costs related to the Federal participant's placement, including administrative costs.

(Pub. L. 103–322, title III, § 31921, Sept. 13, 1994, 108 Stat. 1896.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), was in the original ''this title'' and was translated as reading ''this subtitle'', meaning subtitle S of title III of Pub. L. 103–322, to reflect the probable intent of Congress.

§ 13902. Requirements

For the purpose of placing Federal participants in a family unity demonstration project under section 13901 of this title, the Attorney General shall consult with the Secretary of Health and Human Services regarding the development and operation of the project.

(Pub. L. 103–322, title III, § 31922, Sept. 13, 1994, 108 Stat. 1896.)

PART J—PREVENTION, DIAGNOSIS, AND TREATMENT OF TUBERCULOSIS IN CORRECTIONAL INSTITUTIONS

§ 13911. Prevention, diagnosis, and treatment of tuberculosis in correctional institutions

(a) Guidelines

The Attorney General, in consultation with the Secretary of Health and Human Services and the Director of the National Institute of Corrections, shall develop and disseminate to appropriate entities, including State, Indian tribal, and local correctional institutions and the Immigration and Naturalization Service, guidelines for the prevention, diagnosis, treatment, and followup care of tuberculosis among inmates of correctional institutions and persons held in holding facilities operated by or under contract with the Immigration and Naturalization Service.

[1] See References in Text note below.

(b) Compliance

The Attorney General shall ensure that prisons in the Federal prison system and holding facilities operated by or under contract with the Immigration and Naturalization Service comply with the guidelines described in subsection (a) of this section.

(c) Grants

(1) In general

The Attorney General shall make grants to State, Indian tribal, and local correction authorities and public health authorities to assist in establishing and operating programs for the prevention, diagnosis, treatment, and followup care of tuberculosis among inmates of correctional institutions.

(2) Federal share

The Federal share of funding of a program funded with a grant under paragraph (1) shall not exceed 50 percent.

(3) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(A) $700,000 for fiscal year 1996;
(B) $1,000,000 for fiscal year 1997;
(C) $1,000,000 for fiscal year 1998;
(D) $1,100,000 for fiscal year 1999; and
(E) $1,200,000 for fiscal year 2000.

(d) Definitions

In this section—

''Indian tribe'' means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.),[1] that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(Pub. L. 103–322, title III, § 32201, Sept. 13, 1994, 108 Stat. 1901.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (d), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

[1] So in original. A closing parenthesis probably should precede the comma.

PART K—GANG RESISTANCE EDUCATION AND TRAINING

§ 13921. Gang Resistance Education and Training projects

(a) Establishment of projects

(1) In general

The Attorney General shall establish not less than 50 Gang Resistance Education and Training (GREAT) projects, to be located in communities across the country, in addition to the number of projects currently funded.

(2) Selection of communities

Communities identified for such GREAT projects shall be selected by the Attorney General on the basis of gang-related activity in that particular community.

(3) Amount of assistance per project; allocation

The Attorney General shall make available not less than $800,000 per project, subject to the availability of appropriations, and such funds shall be allocated—

(A) 50 percent to the affected State and local law enforcement and prevention organizations participating in such projects; and

(B) 50 percent to the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice for salaries, expenses, and associated administrative costs for operating and overseeing such projects.

(b) Authorization of appropriations

There is authorized to be appropriated to carry out this section—

(1) $20,000,000 for fiscal year 2006;
(2) $20,000,000 for fiscal year 2007;
(3) $20,000,000 for fiscal year 2008;
(4) $20,000,000 for fiscal year 2009; and
(5) $20,000,000 for fiscal year 2010.

(Pub. L. 103–322, title III, § 32401, Sept. 13, 1994, 108 Stat. 1902; Pub. L. 107–296, title XI, § 1112(p), Nov. 25, 2002, 116 Stat. 2278; Pub. L. 109–162, title XI, § 1188, Jan. 5, 2006, 119 Stat. 3128.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–162, which directed the amendment of section 32401(b) of the Violent Crime Control Act of 1994 by adding pars. (1) to (5) and striking out former pars. (1) to (6), was executed by making the amendments to this section, which is section 32401(b) of the Violent Crime Control and Law Enforcement Act of 1994, to reflect the probable intent of Congress. Former pars. (1) to (6) authorized appropriations for fiscal years 1995 through 2000.

2002—Subsec. (a). Pub. L. 107–296, § 1112(p)(1), substituted ''Attorney General'' for ''Secretary of the Treasury'' wherever appearing.

Subsec. (a)(3)(B). Pub. L. 107–296, § 1112(p)(2), substituted ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice'' for ''Bureau of Alcohol, Tobacco and Firearms''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

SUBCHAPTER III—VIOLENCE AGAINST WOMEN

§ 13925. Definitions and grant provisions

(a) Definitions

In this subchapter:

(1) Courts

The term ''courts'' means any civil or criminal, tribal, and Alaska Native Village, Federal, State, local or territorial court having jurisdiction to address domestic violence, dating violence, sexual assault or stalking, including immigration, family, juvenile, and dependency courts, and the judicial officers serving in those courts, including judges, magistrate judges, commissioners, justices of the peace, or any other person with decision-making authority.

(2) Child abuse and neglect

The term ''child abuse and neglect'' means any recent act or failure to act on the part of a parent or caregiver with intent to cause death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm. This definition shall not be construed to mean that failure to leave an abusive relationship, in the absence of other action constituting abuse or neglect, is itself abuse or neglect.

(3) Community-based organization

The term ''community-based organization'' means an organization that—

(A) focuses primarily on domestic violence, dating violence, sexual assault, or stalking;

(B) has established a specialized culturally specific program that addresses domestic violence, dating violence, sexual assault, or stalking;

(C) has a primary focus on underserved populations (and includes representatives of these populations) and domestic violence, dating violence, sexual assault, or stalking; or

(D) obtains expertise, or shows demonstrated capacity to work effectively, on domestic violence, dating violence, sexual assault, and stalking through collaboration.

(4) Child maltreatment

The term ''child maltreatment'' means the physical or psychological abuse or neglect of a child or youth, including sexual assault and abuse.

(5) Court-based and court-related personnel

The term ''court-based'' and ''court-related personnel'' mean persons working in the court, whether paid or volunteer, including—

(A) clerks, special masters, domestic relations officers, administrators, mediators, custody evaluators, guardians ad litem, lawyers, negotiators, probation, parole, interpreters, victim assistants, victim advocates, and judicial, administrative, or any other professionals or personnel similarly involved in the legal process;

(B) court security personnel;

(C) personnel working in related, supplementary offices or programs (such as child support enforcement); and

(D) any other court-based or community-based personnel having responsibilities or authority to address domestic violence, dating violence, sexual assault, or stalking in the court system.

(6) Domestic violence

The term ''domestic violence'' includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

(7) Dating partner

The term ''dating partner'' refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, and where the existence of such a relationship shall be determined based on a consideration of—

(A) the length of the relationship;

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

(8) Dating violence

The term ''dating violence'' means violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.

(9) Elder abuse

The term ''elder abuse'' means any action against a person who is 50 years of age or older that constitutes the willful—

(A) infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or

(B) deprivation by a person, including a caregiver, of goods or services with intent to cause physical harm, mental anguish, or mental illness.

(10) Indian

The term ''Indian'' means a member of an Indian tribe.

(11) Indian country

The term ''Indian country'' has the same meaning given such term in section 1151 of title 18.

(12) Indian housing

The term ''Indian housing'' means housing assistance described in the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq., as amended).

(13) Indian tribe

The term ''Indian tribe'' means a tribe, band, pueblo, nation, or other organized group

or community of Indians, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(14) Indian law enforcement

The term ''Indian law enforcement'' means the departments or individuals under the direction of the Indian tribe that maintain public order.

(15) Law enforcement

The term ''law enforcement'' means a public agency charged with policing functions, including any of its component bureaus (such as governmental victim services programs), including those referred to in section 2802 of title 25.

(16) Legal assistance

The term ''legal assistance'' includes assistance to adult and youth victims of domestic violence, dating violence, sexual assault, and stalking in—

(A) family, tribal, territorial, immigration, employment, administrative agency, housing matters, campus administrative or protection or stay away order proceedings, and other similar matters; and

(B) criminal justice investigations, prosecutions and post-trial matters (including sentencing, parole, and probation) that impact the victim's safety and privacy.

(17) Linguistically and culturally specific services

The term ''linguistically and culturally specific services'' means community-based services that offer full linguistic access and culturally specific services and resources, including outreach, collaboration, and support mechanisms primarily directed toward underserved communities.

(18) Personally identifying information or personal information

The term ''personally identifying information'' or ''personal information'' means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including—

(A) a first and last name;

(B) a home or other physical address;

(C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

(D) a social security number; and

(E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of subparagraphs (A) through (D), would serve to identify any individual.

(19) Prosecution

The term ''prosecution'' means any public agency charged with direct responsibility for prosecuting criminal offenders, including such agency's component bureaus (such as governmental victim services programs).

(20) Protection order or restraining order

The term ''protection order'' or ''restraining order'' includes—

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence or contact or communication with or physical proximity to, another person, including any temporary or final orders issued by civil or criminal courts whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies, or relief issued as part of a protection order, restraining order, or stay away injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, dating violence, sexual assault, or stalking.

(21) Rural area and rural community

The term ''rural area'' and ''rural community'' mean—

(A) any area or community, respectively, no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget; or

(B) any area or community, respectively, that is—

(i) within an area designated as a metropolitan statistical area or considered as part of a metropolitan statistical area; and

(ii) located in a rural census tract.

(22) Rural State

The term ''rural State'' means a State that has a population density of 52 or fewer persons per square mile or a State in which the largest county has fewer than 150,000 people, based on the most recent decennial census.

(23) Sexual assault

The term ''sexual assault'' means any conduct proscribed by chapter 109A of title 18, whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States or in a Federal prison and includes both assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim.

(24) Stalking

The term ''stalking'' means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) fear for his or her safety or the safety of others; or

(B) suffer substantial emotional distress.

(25) State

The term ''State'' means each of the several States and the District of Columbia, and ex-

cept as otherwise provided, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands.

(26) State domestic violence coalition

The term ''State domestic violence coalition'' means a program determined by the Administration for Children and Families under the Family Violence Prevention and Services Act (42 U.S.C. 10410(b)).

(27) State sexual assault coalition

The term ''State sexual assault coalition'' means a program determined by the Center for Injury Prevention and Control of the Centers for Disease Control and Prevention under the Public Health Service Act (42 U.S.C. 280b et seq.).

(28) Territorial domestic violence or sexual assault coalition

The term ''territorial domestic violence or sexual assault coalition'' means a program addressing domestic or sexual violence that is—

(A) an established nonprofit, nongovernmental territorial coalition addressing domestic violence or sexual assault within the territory; or

(B) a nongovernmental organization with a demonstrated history of addressing domestic violence or sexual assault within the territory that proposes to incorporate as a nonprofit, nongovernmental territorial coalition.

(29) Tribal coalition

The term ''tribal coalition'' means—

(A) an established nonprofit, nongovernmental tribal coalition addressing domestic violence and sexual assault against American Indian or Alaskan Native women; or

(B) individuals or organizations that propose to incorporate as nonprofit, nongovernmental tribal coalitions to address domestic violence and sexual assault against American Indian or Alaska Native women.

(30) Tribal government

The term ''tribal government'' means—

(A) the governing body of an Indian tribe; or

(B) a tribe, band, pueblo, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(31) Tribal nonprofit organization

The term ''tribal nonprofit organization'' means—

(A) a victim services provider that has as its primary purpose to assist Native victims of domestic violence, dating violence, sexual assault, or stalking; and

(B) staff and leadership of the organization must include persons with a demonstrated history of assisting American Indian or Alaska Native victims of domestic violence, dating violence, sexual assault, or stalking.

(32) Tribal organization

The term ''tribal organization'' means—

(A) the governing body of any Indian tribe;

(B) any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body of a tribe or tribes to be served, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; or

(C) any tribal nonprofit organization.

(33) Underserved populations

The term ''underserved populations'' includes populations underserved because of geographic location, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services, as appropriate.

(34) Victim advocate

The term ''victim advocate'' means a person, whether paid or serving as a volunteer, who provides services to victims of domestic violence, sexual assault, stalking, or dating violence under the auspices or supervision of a victim services program.

(35) Victim assistant

The term ''victim assistant'' means a person, whether paid or serving as a volunteer, who provides services to victims of domestic violence, sexual assault, stalking, or dating violence under the auspices or supervision of a court or a law enforcement or prosecution agency.

(36) Victim services or victim service provider

The term ''victim services'' or ''victim service provider'' means a nonprofit, nongovernmental organization that assists domestic violence, dating violence, sexual assault, or stalking victims, including rape crisis centers, domestic violence shelters, faith-based organizations, and other organizations, with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(37) Youth

The term ''youth'' means teen and young adult victims of domestic violence, dating violence, sexual assault, or stalking.

(b) Grant conditions

(1) Match

No matching funds shall be required for any grant or subgrant made under this Act for—

(A) any tribe, territory, or victim service provider; or

(B) any other entity, including a State, that—

(i) petitions for a waiver of any match condition imposed by the Attorney Gen-

eral or the Secretaries of Health and Human Services or Housing and Urban Development; and

(ii) whose petition for waiver is determined by the Attorney General or the Secretaries of Health and Human Services or Housing and Urban Development to have adequately demonstrated the financial need of the petitioning entity.

(2) Nondisclosure of confidential or private information

(A) In general

In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this subchapter shall protect the confidentiality and privacy of persons receiving services.

(B) Nondisclosure

Subject to subparagraphs (C) and (D), grantees and subgrantees shall not—

(i) disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs; or

(ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of persons with disabilities, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

(C) Release

If release of information described in subparagraph (B) is compelled by statutory or court mandate—

(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and

(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

(D) Information sharing

Grantees and subgrantees may share—

(i) nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements;

(ii) court-generated information and law-enforcement generated information contained in secure, governmental registries for protection order enforcement purposes; and

(iii) law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

(E) Oversight

Nothing in this paragraph shall prevent the Attorney General from disclosing grant activities authorized in this Act to the chairman and ranking members of the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate exercising Congressional oversight authority. All disclosures shall protect confidentiality and omit personally identifying information, including location information about individuals.

(3) Approved activities

In carrying out the activities under this subchapter, grantees and subgrantees may collaborate with and provide information to Federal, State, local, tribal, and territorial public officials and agencies to develop and implement policies to reduce or eliminate domestic violence, dating violence, sexual assault, and stalking.

(4) Non-supplantation

Any Federal funds received under this subchapter shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities under this subchapter.

(5) Use of funds

Funds authorized and appropriated under this subchapter may be used only for the specific purposes described in this subchapter and shall remain available until expended.

(6) Reports

An entity receiving a grant under this subchapter shall submit to the disbursing agency a report detailing the activities undertaken with the grant funds, including and providing additional information as the agency shall require.

(7) Evaluation

Federal agencies disbursing funds under this subchapter shall set aside up to 3 percent of such funds in order to conduct—

(A) evaluations of specific programs or projects funded by the disbursing agency under this subchapter or related research; or

(B) evaluations of promising practices or problems emerging in the field or related research, in order to inform the agency or agencies as to which programs or projects are likely to be effective or responsive to needs in the field.

(8) Nonexclusivity

Nothing in this subchapter shall be construed to prohibit male victims of domestic violence, dating violence, sexual assault, and stalking from receiving benefits and services under this subchapter.

(9) Prohibition on tort litigation

Funds appropriated for the grant program under this subchapter may not be used to fund civil representation in a lawsuit based on a tort claim. This paragraph should not be construed as a prohibition on providing assistance to obtain restitution in a protection order or criminal case.

(10) Prohibition on lobbying

Any funds appropriated for the grant program shall be subject to the prohibition in section 1913 of title 18, relating to lobbying with appropriated moneys.

(11) Technical assistance

Of the total amounts appropriated under this subchapter, not less than 3 percent and up to 8 percent, unless otherwise noted, shall be available for providing training and technical assistance relating to the purposes of this subchapter to improve the capacity of the grantees, subgrantees, and other entities. If there is a demonstrated history that the Office on Violence Against Women has previously set aside amounts greater than 8 percent for technical assistance and training relating to grant programs authorized under this subchapter, the Office has the authority to continue setting aside amounts greater than 8 percent.

(Pub. L. 103–322, title IV, § 40002, as added Pub. L. 109–162, § 3(a), Jan. 5, 2006, 119 Stat. 2964; amended Pub. L. 109–271, §§ 1(d)–(f), 2(e), Aug. 12, 2006, 120 Stat. 751, 752.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title IV of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1902, as amended, known as the Violence Against Women Act of 1994. For complete classification of title IV to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (a)(12), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (a)(13), (30)(B), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Family Violence Prevention and Services Act, referred to in subsec. (a)(26), is title III of Pub. L. 98–457, Oct. 9, 1984, 98 Stat. 1757, as amended, which is classified generally to chapter 110 (§ 10401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10401 of this title and Tables.

The Public Health Service Act, referred to in subsec. (a)(27), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

This Act, referred to in subsec. (b)(1), (2)(E), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–271, § 1(e)(1), substituted ''Alaska Native'' for ''Alaskan''.

Subsec. (a)(23). Pub. L. 109–271, § 1(d), substituted ''proscribed'' for ''prescribed''.

Subsec. (a)(31) to (37). Pub. L. 109–271, § 1(e)(2), (3), added par. (31) and redesignated former pars. (31) to (36) as (32) to (37), respectively.

Subsec. (b)(1). Pub. L. 109–271, § 1(f), added par. (1) and struck out former par. (1) which read as follows: ''No matching funds shall be required for a grant or subgrant made under this subchapter for any tribe, territory, victim service provider, or any entity that the Attorney General determines has adequately demonstrated financial need.''

Subsec. (b)(11). Pub. L. 109–271, § 2(e), inserted ''Of the total amounts appropriated under this subchapter, not less than 3 percent and up to 8 percent, unless otherwise noted, shall be available for providing training and technical assistance relating to the purposes of this subchapter to improve the capacity of the grantees, subgrantees, and other entities.'' before ''If there is a demonstrated history''.

FINDINGS

Pub. L. 109–162, title II, § 201, Jan. 5, 2006, 119 Stat. 2993, provided that: ''Congress finds the following:

''(1) Nearly ⅓ of American women report physical or sexual abuse by a husband or boyfriend at some point in their lives.

''(2) According to the National Crime Victimization Survey, 248,000 Americans 12 years of age and older were raped or sexually assaulted in 2002.

''(3) Rape and sexual assault in the United States is estimated to cost $127,000,000,000 per year, including—

''(A) lost productivity;

''(B) medical and mental health care;

''(C) police and fire services;

''(D) social services;

''(E) loss of and damage to property; and

''(F) reduced quality of life.

''(4) Nonreporting of sexual assault in rural areas is a particular problem because of the high rate of non-stranger sexual assault.

''(5) Geographic isolation often compounds the problems facing sexual assault victims. The lack of anonymity and accessible support services can limit opportunities for justice for victims.

''(6) Domestic elder abuse is primarily family abuse. The National Elder Abuse Incidence Study found that the perpetrator was a family member in 90 percent of cases.

''(7) Barriers for older victims leaving abusive relationships include—

''(A) the inability to support themselves;

''(B) poor health that increases their dependence on the abuser;

''(C) fear of being placed in a nursing home; and

''(D) ineffective responses by domestic abuse programs and law enforcement.

''(8) Disabled women comprise another vulnerable population with unmet needs. Women with disabilities are more likely to be the victims of abuse and violence than women without disabilities because of their increased physical, economic, social, or psychological dependence on others.

''(9) Many women with disabilities also fail to report the abuse, since they are dependent on their abusers and fear being abandoned or institutionalized.

''(10) Of the 598 battered women's programs surveyed—

''(A) only 35 percent of these programs offered disability awareness training for their staff; and

''(B) only 16 percent dedicated a staff member to provide services to women with disabilities.

''(11) Problems of domestic violence are exacerbated for immigrants when spouses control the immigration status of their family members, and abusers use threats of refusal to file immigration papers and threats to deport spouses and children as powerful tools to prevent battered immigrant women from seeking help, trapping battered immigrant women in violent homes because of fear of deportation.

''(12) Battered immigrant women who attempt to flee abusive relationships may not have access to bilingual shelters or bilingual professionals, and face restrictions on public or financial assistance. They may also lack assistance of a certified interpreter in court, when reporting complaints to the police or a

9–1–1 operator, or even in acquiring information about their rights and the legal system.

''(13) More than 500 men and women call the National Domestic Violence Hotline every day to get immediate, informed, and confidential assistance to help deal with family violence.

''(14) The National Domestic Violence Hotline service is available, toll-free, 24 hours a day and 7 days a week, with bilingual staff, access to translators in 150 languages, and a TTY line for the hearing-impaired.

''(15) With access to over 5,000 shelters and service providers across the United States, Puerto Rico, and the United States Virgin Islands, the National Domestic Violence Hotline provides crisis intervention and immediately connects callers with sources of help in their local community.

''(16) Approximately 60 percent of the callers indicate that calling the Hotline is their first attempt to address a domestic violence situation and that they have not called the police or any other support services.

''(17) Between 2000 and 2003, there was a 27 percent increase in call volume at the National Domestic Violence Hotline.

''(18) Improving technology infrastructure at the National Domestic Violence Hotline and training advocates, volunteers, and other staff on upgraded technology will drastically increase the Hotline's ability to answer more calls quickly and effectively.''

Pub. L. 109–162, title III, § 301, Jan. 5, 2006, 119 Stat. 3003, provided that: ''Congress finds the following:

''(1) Youth, under the age of 18, account for 67 percent of all sexual assault victimizations reported to law enforcement officials.

''(2) The Department of Justice consistently finds that young women between the ages of 16 and 24 experience the highest rate of non-fatal intimate partner violence.

''(3) In 1 year, over 4,000 incidents of rape or sexual assault occurred in public schools across the country.

''(4) Young people experience particular obstacles to seeking help. They often do not have access to money, transportation, or shelter services. They must overcome issues such as distrust of adults, lack of knowledge about available resources, or pressure from peers and parents.

''(5) A needs assessment on teen relationship abuse for the State of California, funded by the California Department of Health Services, identified a desire for confidentiality and confusion about the law as 2 of the most significant barriers to young victims of domestic and dating violence seeking help.

''(6) Only one State specifically allows for minors to petition the court for protection orders.

''(7) Many youth are involved in dating relationships, and these relationships can include the same kind of domestic violence and dating violence seen in the adult population. In fact, more than 40 percent of all incidents of domestic violence involve people who are not married.

''(8) 40 percent of girls ages 14 to 17 report knowing someone their age who has been hit or beaten by a boyfriend, and 13 percent of college women report being stalked.

''(9) Of college women who said they had been the victims of rape or attempted rape, 12.8 percent of completed rapes, 35 percent of attempted rapes, and 22.9 percent of threatened rapes took place on a date. Almost 60 percent of the completed rapes that occurred on campus took place in the victim's residence.

''(10) According to a 3-year study of student-athletes at 10 Division I universities, male athletes made up only 3.3 percent of the general male university population, but they accounted for 19 percent of the students reported for sexual assault and 35 percent of domestic violence perpetrators.''

PART A—SAFE STREETS FOR WOMEN

SUBPART 1—SAFETY FOR WOMEN IN PUBLIC TRANSIT

§ 13931. Grants for capital improvements to prevent crime in public transportation

(a) General purpose

There is authorized to be appropriated not to exceed $10,000,000, for the Secretary of Transportation (referred to in this section as the ''Secretary'') to make capital grants for the prevention of crime and to increase security in existing and future public transportation systems. None of the provisions of this Act may be construed to prohibit the financing of projects under this section where law enforcement responsibilities are vested in a local public body other than the grant applicant.

(b) Grants for lighting, camera surveillance, and security phones

(1) From the sums authorized for expenditure under this section for crime prevention, the Secretary is authorized to make grants and loans to States and local public bodies or agencies for the purpose of increasing the safety of public transportation by—

(A) increasing lighting within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

(B) increasing camera surveillance of areas within and adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

(C) providing emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages; or

(D) any other project intended to increase the security and safety of existing or planned public transportation systems.

(2) From the sums authorized under this section, at least 75 percent shall be expended on projects of the type described in subsection (b)(1)(A) and (B) of this section.

(c) Reporting

All grants under this section are contingent upon the filing of a report with the Secretary and the Department of Justice, Office of Victims of Crime, showing crime rates in or adjacent to public transportation before, and for a 1-year period after, the capital improvement. Statistics shall be compiled on the basis of the type of crime, sex, race, ethnicity, language, and relationship of victim to the offender.

(d) Increased Federal share

Notwithstanding any other provision of law, the Federal share under this section for each capital improvement project that enhances the safety and security of public transportation systems and that is not required by law (including any other provision of this Act) shall be 90 percent of the net project cost of the project.

(e) Special grants for projects to study increasing security for women

From the sums authorized under this section, the Secretary shall provide grants and loans for

the purpose of studying ways to reduce violent crimes against women in public transit through better design or operation of public transit systems.

(f) General requirements

All grants or loans provided under this section shall be subject to the same terms, conditions, requirements, and provisions applicable to grants and loans as specified in section 5321 of title 49.

(Pub. L. 103–322, title IV, § 40131, Sept. 13, 1994, 108 Stat. 1916.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (d), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

SUBPART 2—ASSISTANCE TO VICTIMS OF SEXUAL ASSAULT

§ 13941. Training programs

(a) In general

The Attorney General, after consultation with victim advocates and individuals who have expertise in treating sex offenders, shall establish criteria and develop training programs to assist probation and parole officers and other personnel who work with released sex offenders in the areas of—

(1) case management;
(2) supervision; and
(3) relapse prevention.

(b) Training programs

The Attorney General shall ensure, to the extent practicable, that training programs developed under subsection (a) of this section are available in geographically diverse locations throughout the country.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2007 through 2011.

(Pub. L. 103–322, title IV, § 40152, Sept. 13, 1994, 108 Stat. 1920; Pub. L. 109–162, title I, § 108, title XI, § 1167, Jan. 5, 2006, 119 Stat. 2984, 3121; Pub. L. 109–271, § 2(a), (b), Aug. 12, 2006, 120 Stat. 751, 752.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–271, § 2(b), which directed amendment of section 1167 of the Violence Against Women Act of 2005, Pub. L. 109–162, by substituting ''2007 through 2011'' for ''2006 through 2010'', was executed to subsec. (c) of this section, which is section 40152 of the Violence Against Women Act of 1994, as amended by section 1167 of Pub. L. 109–162, to reflect the probable intent of Congress. See below.

Pub. L. 109–162, § 1167, added subsec. (c) and struck out heading and text of former subsec. (c) which authorized appropriations to carry out this section for fiscal years 1996 and 1997.

Pub. L. 109–162, § 108, which directed the striking of subsec. (c) and the insertion of a new subsec. (c), authorizing appropriations to carry out this section for fiscal years 2007 through 2011, was repealed by Pub. L. 109–271, § 2(a).

§ 13942. Confidentiality of communications between sexual assault or domestic violence victims and their counselors

(a) Study and development of model legislation

The Attorney General shall—

(1) study and evaluate the manner in which the States have taken measures to protect the confidentiality of communications between sexual assault or domestic violence victims and their therapists or trained counselors;

(2) develop model legislation that will provide the maximum protection possible for the confidentiality of such communications, within any applicable constitutional limits, taking into account the following factors:

(A) the danger that counseling programs for victims of sexual assault and domestic violence will be unable to achieve their goal of helping victims recover from the trauma associated with these crimes if there is no assurance that the records of the counseling sessions will be kept confidential;

(B) consideration of the appropriateness of an absolute privilege for communications between victims of sexual assault or domestic violence and their therapists or trained counselors, in light of the likelihood that such an absolute privilege will provide the maximum guarantee of confidentiality but also in light of the possibility that such an absolute privilege may be held to violate the rights of criminal defendants under the Federal or State constitutions by denying them the opportunity to obtain exculpatory evidence and present it at trial; and

(C) consideration of what limitations on the disclosure of confidential communications between victims of these crimes and their counselors, short of an absolute privilege, are most likely to ensure that the counseling programs will not be undermined, and specifically whether no such disclosure should be allowed unless, at a minimum, there has been a particularized showing by a criminal defendant of a compelling need for records of such communications, and adequate procedural safeguards are in place to prevent unnecessary or damaging disclosures; and

(3) prepare and disseminate to State authorities the findings made and model legislation developed as a result of the study and evaluation.

(b) Report and recommendations

Not later than the date that is 1 year after September 13, 1994, the Attorney General shall report to the Congress—

(1) the findings of the study and the model legislation required by this section; and

(2) recommendations based on the findings on the need for and appropriateness of further action by the Federal Government.

(c) Review of Federal evidentiary rules

The Judicial Conference of the United States shall evaluate and report to Congress its views on whether the Federal Rules of Evidence should be amended, and if so, how they should be amended, to guarantee that the confidentiality

of communications between sexual assault victims and their therapists or trained counselors will be adequately protected in Federal court proceedings.

(Pub. L. 103–322, title IV, § 40153, Sept. 13, 1994, 108 Stat. 1921.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 13943. Information programs

The Attorney General shall compile information regarding sex offender treatment programs and ensure that information regarding community treatment programs in the community into which a convicted sex offender is released is made available to each person serving a sentence of imprisonment in a Federal penal or correctional institution for a commission of an offense under chapter 109A of title 18 or for the commission of a similar offense, including halfway houses and psychiatric institutions.

(Pub. L. 103–322, title IV, § 40154, Sept. 13, 1994, 108 Stat. 1922.)

PART B—SAFE HOMES FOR WOMEN

SUBPART 1—CONFIDENTIALITY FOR ABUSED PERSONS

§ 13951. Confidentiality of abused person's address

(a) Regulations

Not later than 90 days after September 13, 1994, the United States Postal Service shall promulgate regulations to secure the confidentiality of domestic violence shelters and abused persons' addresses.

(b) Requirements

The regulations under subsection (a) of this section shall require—

(1) in the case of an individual, the presentation to an appropriate postal official of a valid, outstanding protection order; and

(2) in the case of a domestic violence shelter, the presentation to an appropriate postal authority of proof from a State domestic violence coalition that meets the requirements of section 10410 of this title verifying that the organization is a domestic violence shelter.

(c) Disclosure for certain purposes

The regulations under subsection (a) of this section shall not prohibit the disclosure of addresses to State or Federal agencies for legitimate law enforcement or other governmental purposes.

(d) Existing compilations

Compilations of addresses existing at the time at which order is presented to an appropriate postal official shall be excluded from the scope of the regulations under subsection (a) of this section.

(Pub. L. 103–322, title IV, § 40281, Sept. 13, 1994, 108 Stat. 1938.)

SUBPART 2—DATA AND RESEARCH

§ 13961. Research agenda

(a) Request for contract

The Attorney General shall request the National Academy of Sciences, through its National Research Council, to enter into a contract to develop a research agenda to increase the understanding and control of violence against women, including rape and domestic violence. In furtherance of the contract, the National Academy shall convene a panel of nationally recognized experts on violence against women, in the fields of law, medicine, criminal justice, and direct services to victims and experts on domestic violence in diverse, ethnic, social, and language minority communities and the social sciences. In setting the agenda, the Academy shall focus primarily on preventive, educative, social, and legal strategies, including addressing the needs of underserved populations.

(b) Declination of request

If the National Academy of Sciences declines to conduct the study and develop a research agenda, it shall recommend a nonprofit private entity that is qualified to conduct such a study. In that case, the Attorney General shall carry out subsection (a) of this section through the nonprofit private entity recommended by the Academy. In either case, whether the study is conducted by the National Academy of Sciences or by the nonprofit group it recommends, the funds for the contract shall be made available from sums appropriated for the conduct of research by the National Institute of Justice.

(c) Report

The Attorney General shall ensure that no later than 1 year after September 13, 1994, the study required under subsection (a) of this section is completed and a report describing the findings made is submitted to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(Pub. L. 103–322, title IV, § 40291, Sept. 13, 1994, 108 Stat. 1939.)

DEVELOPMENT OF RESEARCH AGENDA IDENTIFIED BY THE VIOLENCE AGAINST WOMEN ACT OF 1994

Pub. L. 106–386, div. B, title IV, § 1404, Oct. 28, 2000, 114 Stat. 1514, provided that:

''(a) IN GENERAL.—The Attorney General shall—

''(1) direct the National Institute of Justice, in consultation and coordination with the Bureau of Justice Statistics and the National Academy of Sciences, through its National Research Council, to develop a research agenda based on the recommendations contained in the report entitled 'Understanding Violence Against Women' of the National Academy of Sciences; and

''(2) not later than 1 year after the date of the enactment of this Act [Oct. 28, 2000], in consultation with the Secretary of the Department of Health and Human Services, submit to Congress a report which shall include—

''(A) a description of the research agenda developed under paragraph (1) and a plan to implement that agenda; and

''(B) recommendations for priorities in carrying out that agenda to most effectively advance knowledge about and means by which to prevent or reduce violence against women.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.''

§ 13962. State databases

(a) In general

The Attorney General shall study and report to the States and to Congress on how the States may collect centralized databases on the incidence of sexual and domestic violence offenses within a State.

(b) Consultation

In conducting its study, the Attorney General shall consult persons expert in the collection of criminal justice data, State statistical administrators, law enforcement personnel, and nonprofit nongovernmental agencies that provide direct services to victims of domestic violence. The final report shall set forth the views of the persons consulted on the recommendations.

(c) Report

The Attorney General shall ensure that no later than 1 year after September 13, 1994, the study required under subsection (a) of this section is completed and a report describing the findings made is submitted to the Committees on the Judiciary of the Senate and the House of Representatives.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $200,000 for fiscal year 1996.

(Pub. L. 103–322, title IV, § 40292, Sept. 13, 1994, 108 Stat. 1939.)

§ 13963. Number and cost of injuries

(a) Study

The Secretary of Health and Human Services, acting through the Centers for Disease Control Injury Control Division, shall conduct a study to obtain a national projection of the incidence of injuries resulting from domestic violence, the cost of injuries to health care facilities, and recommend health care strategies for reducing the incidence and cost of such injuries.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this section—$100,000 for fiscal year 1996.

(Pub. L. 103–322, title IV, § 40293, Sept. 13, 1994, 108 Stat. 1940.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

SUBPART 3—RURAL DOMESTIC VIOLENCE AND CHILD ABUSE ENFORCEMENT

§ 13971. Rural domestic violence, dating violence, sexual assault, stalking, and child abuse enforcement assistance

(a) Purposes

The purposes of this section are—

(1) to identify, assess, and appropriately respond to child, youth, and adult victims of domestic violence, sexual assault, dating violence, and stalking in rural communities, by encouraging collaboration among—

(A) domestic violence, dating violence, sexual assault, and stalking victim service providers;

(B) law enforcement agencies;

(C) prosecutors;

(D) courts;

(E) other criminal justice service providers;

(F) human and community service providers;

(G) educational institutions; and

(H) health care providers;

(2) to establish and expand nonprofit, nongovernmental, State, tribal, territorial, and local government victim services in rural communities to child, youth, and adult victims; and

(3) to increase the safety and well-being of women and children in rural communities, by—

(A) dealing directly and immediately with domestic violence, sexual assault, dating violence, and stalking occurring in rural communities; and

(B) creating and implementing strategies to increase awareness and prevent domestic violence, sexual assault, dating violence, and stalking.

(b) Grants authorized

The Attorney General, acting through the Director of the Office on Violence Against Women (referred to in this section as the ''Director''), may award grants to States, Indian tribes, local governments, and nonprofit, public or private entities, including tribal nonprofit organizations, to carry out programs serving rural areas or rural communities that address domestic violence, dating violence, sexual assault, and stalking by—

(1) implementing, expanding, and establishing cooperative efforts and projects among law enforcement officers, prosecutors, victim advocacy groups, and other related parties to investigate and prosecute incidents of domestic violence, dating violence, sexual assault, and stalking;

(2) providing treatment, counseling, advocacy, and other long- and short-term assistance to adult and minor victims of domestic violence, dating violence, sexual assault, and stalking in rural communities, including assistance in immigration matters; and

(3) working in cooperation with the community to develop education and prevention strategies directed toward such issues.

(c) Use of funds

Funds appropriated pursuant to this section shall be used only for specific programs and activities expressly described in subsection (a) of this section.

(d) Allotments and priorities

(1) Allotment for Indian tribes

(A) In general

Not less than 10 percent of the total amount available under this section for each

fiscal year shall be available for grants under the program authorized by section 3796gg–10 of this title.

(B) Applicability of part [1]

The requirements of this section shall not apply to funds allocated for the program described in subparagraph (A).

(2) Allotment for sexual assault

(A) In general

Not less than 25 percent of the total amount appropriated in a fiscal year under this section shall fund services that meaningfully address sexual assault in rural communities, however at such time as the amounts appropriated reach the amount of $45,000,000, the percentage allocated shall rise to 30 percent of the total amount appropriated, at such time as the amounts appropriated reach the amount of $50,000,000, the percentage allocated shall rise to 35 percent of the total amount appropriated, and at such time as the amounts appropriated reach the amount of $55,000,000, the percentage allocated shall rise to 40 percent of the amounts appropriated.

(B) Multiple purpose applications

Nothing in this section shall prohibit any applicant from applying for funding to address sexual assault, domestic violence, stalking, or dating violence in the same application.

(3) Allotment for technical assistance

Of the amounts appropriated for each fiscal year to carry out this section, not more than 8 percent may be used by the Director for technical assistance costs. Of the amounts appropriated in this subsection, no less than 25 percent of such amounts shall be available to a nonprofit, nongovernmental organization or organizations whose focus and expertise is in addressing sexual assault to provide technical assistance to sexual assault grantees.

(4) Underserved populations

In awarding grants under this section, the Director shall give priority to the needs of underserved populations.

(5) Allocation of funds for rural States

Not less than 75 percent of the total amount made available for each fiscal year to carry out this section shall be allocated to eligible entities located in rural States.

(e) Authorization of appropriations

(1) In general

There are authorized to be appropriated $55,000,000 for each of the fiscal years 2007 through 2011 to carry out this section.

(2) Additional funding

In addition to funds received through a grant under subsection (b) of this section, a law enforcement agency may use funds received through a grant under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.) to accomplish the objectives of this section.

[1] So in original. Probably should be ''section''.

(Pub. L. 103–322, title IV, § 40295, Sept. 13, 1994, 108 Stat. 1940; Pub. L. 106–386, div. B, title I, §§ 1105, 1109(d), title V, § 1512(c), Oct. 28, 2000, 114 Stat. 1497, 1503, 1533; Pub. L. 109–162, title II, § 203, title IX, § 906(d), Jan. 5, 2006, 119 Stat. 2998, 3081; Pub. L. 109–271, § 7(b)(1), (2)(A), Aug. 12, 2006, 120 Stat. 764.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (e)(2), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. Part Q of title I of the Act is classified generally to subchapter XII–E (§ 3796dd et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

AMENDMENTS

2006—Pub. L. 109–162, § 203, amended section generally, substituting provisions relating to rural domestic violence, dating violence, sexual assault, stalking, and child abuse enforcement assistance for provisions relating to rural domestic violence and child abuse enforcement assistance.

Subsec. (c)(3). Pub. L. 109–162, § 906(d), which directed the amendment of subsec. (c) by striking par. (3) and inserting a new par. (3) which read ''Not less than 10 percent of the total amount available under this section for each fiscal year shall be available for grants under the program authorized in section 3796gg–10 of this title. The requirements of this paragraph shall not apply to funds allocated for such program.'', was repealed by Pub. L. 109–271, § 7(b)(2)(A).

Subsec. (d)(1). Pub. L. 109–271, § 7(b)(1), added par. (1) and struck out former par. (1) which read as follows: ''Not less than 10 percent of the total amount made available for each fiscal year to carry out this section shall be allocated for grants to Indian tribes or tribal organizations.''

2000—Subsec. (a)(1). Pub. L. 106–386, § 1109(d)(1), inserted ''and dating violence (as defined in section 3796gg–2 of this title)'' after ''domestic violence''.

Subsec. (a)(2). Pub. L. 106–386, § 1512(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''to provide treatment and counseling to victims of domestic violence and dating violence (as defined in section 3796gg–2 of this title) and child abuse; and''.

Pub. L. 106–386, § 1109(d)(2), inserted ''and dating violence (as defined in section 3796gg–2 of this title)'' after ''domestic violence''.

Subsec. (c)(1). Pub. L. 106–386, § 1105(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''There are authorized to be appropriated to carry out this section—

''(A) $7,000,000 for fiscal year 1996;

''(B) $8,000,000 for fiscal year 1997; and

''(C) $15,000,000 for fiscal year 1998.''

Subsec. (c)(3). Pub. L. 106–386, § 1105(2), added par. (3).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

SUBPART 3A—RESEARCH ON EFFECTIVE INTERVENTIONS TO ADDRESS VIOLENCE AGAINST WOMEN

CODIFICATION

This subpart was, in the original, chapter 11 of subtitle B of title IV of Pub. L. 103–322, and has been designated as subpart 3a of this part for purposes of codification. Another chapter 11 of subtitle B of title IV of Pub. L. 103–322 was designated subpart 4 of this part.

§ 13973. Research on effective interventions in the health care setting

(a) Purpose

The Secretary, acting through the Director of the Centers for Disease Control and Prevention

and the Director of the Agency for Healthcare Research and Quality, shall award grants and contracts to fund research on effective interventions in the health care setting that prevent domestic violence, dating violence, and sexual assault across the lifespan and that prevent the health effects of such violence and improve the safety and health of individuals who are currently being victimized.

(b) Use of funds

Research conducted with amounts received under a grant or contract under this section shall include the following:

(1) With respect to the authority of the Centers for Disease Control and Prevention—

(A) research on the effects of domestic violence, dating violence, sexual assault, and childhood exposure to domestic, dating, or sexual violence, on health behaviors, health conditions, and the health status of individuals, families, and populations;

(B) research and testing of best messages and strategies to mobilize public and health care provider action concerning the prevention of domestic, dating, or sexual violence; and

(C) measure the comparative effectiveness and outcomes of efforts under this Act to reduce violence and increase women's safety.

(2) With respect to the authority of the Agency for Healthcare Research and Quality—

(A) research on the impact on the health care system, health care utilization, health care costs, and health status of domestic violence, dating violence, and childhood exposure to domestic and dating violence, sexual violence and stalking and childhood exposure; and

(B) research on effective interventions within primary care and emergency health care settings and with health care settings that include clinical partnerships within community domestic violence providers for adults and children exposed to domestic or dating violence.

(c) Use of data

Research funded under this section shall be utilized by eligible entities under section 280g–4[1] of this title.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $5,000,000 for each of fiscal years 2007 through 2011.

(Pub. L. 103–322, title IV, § 40297, as added Pub. L. 109–162, title V, § 505, Jan. 5, 2006, 119 Stat. 3029.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1)(C), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

Section 280g–4 of this title, referred to in subsec. (c), was in the original "section 399O of the Public Health Service Act", and was translated as referring to the section 399O of the Public Health Service Act added by Pub. L. 109–162, § 504, to reflect the probable intent of Congress. Another section 399O of the Public Health Service Act is classified to section 280g–3 of this title.

SUBPART 4—TRANSITIONAL HOUSING ASSISTANCE GRANTS FOR CHILD VICTIMS OF DOMESTIC VIOLENCE, STALKING, OR SEXUAL ASSAULT

CODIFICATION

This subpart was, in the original, chapter 11 of subtitle B of title IV of Pub. L. 103–322, and has been designated as subpart 4 of this part for purposes of codification. Another chapter 11 of subtitle B of title IV of Pub. L. 103–322 was designated subpart 3a of this part.

§ 13975. Transitional housing assistance grants for child victims of domestic violence, stalking, or sexual assault

(a) In general

The Attorney General, acting in consultation with the Director of the Violence Against Women Office of the Department of Justice, the Department of Housing and Urban Development, and the Department of Health and Human Services, shall award grants under this section to States, units of local government, Indian tribes, and other organizations, including domestic violence and sexual assault victim service providers, domestic violence and sexual assault coalitions, other nonprofit, nongovernmental organizations, or community-based and culturally specific organizations, that have a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking (referred to in this section as the "recipient") to carry out programs to provide assistance to minors, adults, and their dependents—

(1) who are homeless, or in need of transitional housing or other housing assistance, as a result of fleeing a situation of domestic violence, dating violence, sexual assault, or stalking; and

(2) for whom emergency shelter services or other crisis intervention services are unavailable or insufficient.

(b) Grants

Grants awarded under this section may be used for programs that provide—

(1) transitional housing, including funding for the operating expenses of newly developed or existing transitional housing.[1]

(2) short-term housing assistance, including rental or utilities payments assistance and assistance with related expenses such as payment of security deposits and other costs incidental to relocation to transitional housing for persons described in subsection (a) of this section; and

(3) support services designed to enable a minor, an adult, or a dependent of such minor or adult, who is fleeing a situation of domestic violence, dating violence, sexual assault, or stalking to—

(A) locate and secure permanent housing; and

(B) integrate into a community by providing that minor, adult, or dependent with services, such as transportation, counseling, child care services, case management, em-

[1] See References in Text note below.

[1] So in original. The period probably should be a semicolon.

ployment counseling, and other assistance. Participation in the support services shall be voluntary. Receipt of the benefits of the housing assistance described in paragraph (2) shall not be conditioned upon the participation of the youth, adults, or their dependents in any or all of the support services offered them.

(c) Duration

(1) In general

Except as provided in paragraph (2), a minor, an adult, or a dependent, who receives assistance under this section shall receive that assistance for not more than 24 months.

(2) Waiver

The recipient of a grant under this section may waive the restriction under paragraph (1) for not more than an additional 6 month period with respect to any minor, adult, or dependent, who—

(A) has made a good-faith effort to acquire permanent housing; and

(B) has been unable to acquire permanent housing.

(d) Application

(1) In general

Each eligible entity desiring a grant under this section shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may reasonably require.

(2) Contents

Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities for which assistance under this section is sought;

(B) provide assurances that any supportive services offered to participants in programs developed under subsection (b)(3) of this section are voluntary and that refusal to receive such services shall not be grounds for termination from the program or eviction from the victim's housing; and

(C) provide such additional assurances as the Attorney General determines to be essential to ensure compliance with the requirements of this section.

(3) Application

Nothing in this subsection shall be construed to require—

(A) victims to participate in the criminal justice system in order to receive services; or

(B) domestic violence advocates to breach client confidentiality.

(e) Report to the Attorney General

(1) In general

A recipient of a grant under this section shall annually prepare and submit to the Attorney General a report describing—

(A) the number of minors, adults, and dependents assisted under this section; and

(B) the types of housing assistance and support services provided under this section.

(2) Contents

Each report prepared and submitted pursuant to paragraph (1) shall include information regarding—

(A) the purpose and amount of housing assistance provided to each minor, adult, or dependent, assisted under this section and the reason for that assistance;

(B) the number of months each minor, adult, or dependent, received assistance under this section;

(C) the number of minors, adults, and dependents who—

(i) were eligible to receive assistance under this section; and

(ii) were not provided with assistance under this section solely due to a lack of available housing;

(D) the type of support services provided to each minor, adult, or dependent, assisted under this section; and

(E) the client population served and the number of individuals requesting services that the transitional housing program is unable to serve as a result of a lack of resources.

(f) Report to Congress

(1) Reporting requirement

The Attorney General, with the Director of the Violence Against Women Office, shall prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that contains a compilation of the information contained in the report submitted under subsection (e) of this section not later than 1 month after the end of each even-numbered fiscal year.

(2) Availability of report

In order to coordinate efforts to assist the victims of domestic violence, the Attorney General, in coordination with the Director of the Violence Against Women Office, shall transmit a copy of the report submitted under paragraph (1) to—

(A) the Office of Community Planning and Development at the United States Department of Housing and Urban Development; and

(B) the Office of Women's Health at the United States Department of Health and Human Services.

(g) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section $40,000,000 for each of the fiscal years 2007 through 2011.

(2) Limitations

Of the amount made available to carry out this section in any fiscal year, up to 5 percent may be used by the Attorney General for evaluation, monitoring, technical assistance, salaries and administrative expenses.

(3) Minimum amount

(A) In general

Except as provided in subparagraph (B), unless all eligible applications submitted by any States, units of local government, Indian tribes, or organizations within a State for a grant under this section have been

funded, that State, together with the grantees within the State (other than Indian tribes), shall be allocated in each fiscal year, not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.

(B) Exception

The United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated not less than 0.25 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.

(C) Underserved populations

(i) INDIAN TRIBES.—

(I) IN GENERAL.—Not less than 10 percent of the total amount available under this section for each fiscal year shall be available for grants under the program authorized by section 3796gg–10 of this title.

(II) APPLICABILITY OF PART.—[2]The requirements of this section shall not apply to funds allocated for the program described in subclause (I).

(ii) Priority shall be given to projects developed under subsection (b) of this section that primarily serve underserved populations.

(Pub. L. 103–322, title IV, § 40299, as added Pub. L. 108–21, title VI, § 611, Apr. 30, 2003, 117 Stat. 693; Pub. L. 109–162, § 3(b)(4), title VI, § 602(a), title IX, § 906(e), formerly § 906(f), title XI, § 1135(e), Jan. 5, 2006, 119 Stat. 2971, 3038, 3081, 3109, renumbered § 906(e), Pub. L. 109–271, § 7(b)(2)(B), Aug. 12, 2006, 120 Stat. 764; amended Pub. L. 109–271, §§ 2(d), 7(c)(1), 8(b), Aug. 12, 2006, 120 Stat. 752, 764–766.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162, § 602(a)(1)(A), (B), in introductory provisions, inserted ''the Department of Housing and Urban Development, and the Department of Health and Human Services,'' after ''Department of Justice,'' and '', including domestic violence and sexual assault victim service providers, domestic violence and sexual assault coalitions, other nonprofit, nongovernmental organizations, or community-based and culturally specific organizations, that have a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking'' after ''other organizations''.

Subsec. (a)(1). Pub. L. 109–162, § 602(a)(1)(C), inserted '', dating violence, sexual assault, or stalking'' after ''domestic violence''.

Subsec. (b)(1). Pub. L. 109–162, § 602(a)(2)(C), added par. (1). Former par. (1) redesignated (2).

Subsec. (b)(2). Pub. L. 109–162, § 602(a)(2)(A), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 109–162, § 602(a)(2)(A), (B), redesignated par. (2) as (3) and inserted '', dating violence, sexual assault, or stalking'' after ''violence'' in introductory provisions.

Subsec. (b)(3)(B). Pub. L. 109–162, § 602(a)(2)(D), inserted ''Participation in the support services shall be voluntary. Receipt of the benefits of the housing assistance described in paragraph (2) shall not be conditioned upon the participation of the youth, adults, or their dependents in any or all of the support services offered them.'' at end.

Subsec. (c)(1). Pub. L. 109–162, § 602(a)(3), substituted ''24 months'' for ''18 months''.

Subsec. (d)(2)(B), (C). Pub. L. 109–162, § 602(a)(4), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e)(2)(A). Pub. L. 109–162, § 602(a)(5)(A), inserted ''purpose and'' before ''amount''.

Subsec. (e)(2)(E). Pub. L. 109–162, § 602(a)(5)(B)–(D), added subpar. (E).

Subsec. (f)(1). Pub. L. 109–162, § 1135(e), which directed an amendment substantially identical to that made by Pub. L. 109–162, § 3(b)(4), was repealed by Pub. L. 109–271, §§ 2(d) and 8(b).

Pub. L. 109–162, § 3(b)(4), substituted ''shall prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that contains a compilation of the information contained in the report submitted under subsection (e) of this section not later than 1 month after the end of each even-numbered fiscal year.'' for ''shall annually prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that contains a compilation of the information contained in the report submitted under subsection (e) of this section.''

Subsec. (g)(1). Pub. L. 109–162, § 602(a)(6)(A)–(C), substituted ''$40,000,000'' for ''$30,000,000'', ''2007'' for ''2004'', and ''2011'' for ''2008''.

Subsec. (g)(2). Pub. L. 109–162, § 602(a)(6)(D), (E), substituted ''up to 5 percent'' for ''not more than 3 percent'' and inserted ''evaluation, monitoring, technical assistance,'' before ''salaries''.

Subsec. (g)(3)(C). Pub. L. 109–162, § 602(a)(6)(F), added subpar. (C).

Subsec. (g)(3)(C)(i). Pub. L. 109–271, § 7(c)(1)(A), added cl. (i) and struck out former cl. (i) which read as follows: ''A minimum of 7 percent of the total amount appropriated in any fiscal year shall be allocated to tribal organizations serving adult and youth victims of domestic violence, dating violence, sexual assault, or stalking, and their dependents.''

Subsec. (g)(4). Pub. L. 109–271, § 7(c)(1)(B), struck out par. (4) which read as follows: ''Not less than 10 percent of the total amount available under this section for each fiscal year shall be available for grants under the program authorized in section 3796gg–10 of this title. The requirements of this paragraph shall not apply to funds allocated for such program.''

Pub. L. 109–162, § 906(e), formerly § 906(f), as renumbered by Pub. L. 109–271, § 7(b)(2)(B), added par. (4).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by sections 602(a) and 906(e) of Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

PART C—CIVIL RIGHTS FOR WOMEN

§ 13981. Civil rights

(a) Purpose

Pursuant to the affirmative power of Congress to enact this part under section 5 of the Fourteenth Amendment to the Constitution, as well as under section 8 of Article I of the Constitution, it is the purpose of this part to protect the civil rights of victims of gender motivated violence and to promote public safety, health, and activities affecting interstate commerce by establishing a Federal civil rights cause of action for victims of crimes of violence motivated by gender.

(b) Right to be free from crimes of violence

All persons within the United States shall have the right to be free from crimes of violence motivated by gender (as defined in subsection (d) of this section).

(c) Cause of action

A person (including a person who acts under color of any statute, ordinance, regulation, cus-

[2] So in original. Probably should be ''section''.

tom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) of this section shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.

(d) Definitions

For purposes of this section—

(1) the term ''crime of violence motivated by gender'' means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender; and

(2) the term ''crime of violence'' means—[1]

(A) an act or series of acts that would constitute a felony against the person or that would constitute a felony against property if the conduct presents a serious risk of physical injury to another, and that would come within the meaning of State or Federal offenses described in section 16 of title 18, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States; and

(B) includes an act or series of acts that would constitute a felony described in subparagraph (A) but for the relationship between the person who takes such action and the individual against whom such action is taken.

(e) Limitation and procedures

(1) Limitation

Nothing in this section entitles a person to a cause of action under subsection (c) of this section for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by a preponderance of the evidence, to be motivated by gender (within the meaning of subsection (d) of this section).

(2) No prior criminal action

Nothing in this section requires a prior criminal complaint, prosecution, or conviction to establish the elements of a cause of action under subsection (c) of this section.

(3) Concurrent jurisdiction

The Federal and State courts shall have concurrent jurisdiction over actions brought pursuant to this part.

(4) Supplemental jurisdiction

Neither section 1367 of title 28 nor subsection (c) of this section shall be construed, by reason of a claim arising under such subsection, to confer on the courts of the United States jurisdiction over any State law claim seeking the establishment of a divorce, alimony, equitable distribution of marital property, or child custody decree.

(Pub. L. 103–322, title IV, § 40302, Sept. 13, 1994, 108 Stat. 1941.)

[1] So in original. The word ''means'' probably should appear after ''(A)'' below.

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (e)(3), was in the original ''this subtitle'', meaning subtitle C of title IV of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1941, which enacted this part, amended section 1988 of this title and section 1445 of Title 28, Judiciary and Judicial Procedure, and enacted provisions set out as a note under section 13701 of this title. For complete classification of this subtitle to the Code, see Short Title note set out under section 13701 of this title and Tables.

CODIFICATION

Section is comprised of section 40302 of Pub. L. 103–322. Subsec. (e)(5) of section 40302 of Pub. L. 103–322 amended section 1445 of Title 28, Judiciary and Judicial Procedure.

SHORT TITLE

For short title of this part as the ''Civil Rights Remedies for Gender-Motivated Violence Act'', see section 40301 of Pub. L. 103–322, set out as a note under section 13701 of this title.

CONSTITUTIONALITY

For decision holding this section unconstitutional, see *United States v. Morrison*, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000).

PART D—EQUAL JUSTICE FOR WOMEN IN COURTS

SUBPART 1—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN STATE COURTS

§ 13991. Grants authorized

The State Justice Institute may award grants for the purpose of developing, testing, presenting, and disseminating model programs to be used by States (as defined in section 10701 of this title) in training judges and court personnel in the laws of the States and by Indian tribes in training tribal judges and court personnel in the laws of the tribes on rape, sexual assault, domestic violence, dating violence, and other crimes of violence motivated by the victim's gender. Nothing shall preclude the attendance of tribal judges and court personnel at programs funded under this section for States to train judges and court personnel on the laws of the States.

(Pub. L. 103–322, title IV, § 40411, Sept. 13, 1994, 108 Stat. 1942; Pub. L. 106–386, div. B, title IV, § 1406(c)(2), (d)(1), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Pub. L. 106–386 inserted ''dating violence,'' after ''domestic violence,'' and ''Nothing shall preclude the attendance of tribal judges and court personnel at programs funded under this section for States to train judges and court personnel on the laws of the States.'' at end.

SHORT TITLE

For short title of this part as the ''Equal Justice for Women in the Courts Act of 1994'', see section 40401 of Pub. L. 103–322, set out as a note under section 13701 of this title.

§ 13992. Training provided by grants

Training provided pursuant to grants made under this part may include current information, existing studies, or current data on—

(1) the nature and incidence of rape and sexual assault by strangers and nonstrangers, marital rape, and incest;

(2) the underreporting of rape, sexual assault, and child sexual abuse;

(3) the physical, psychological, and economic impact of rape and sexual assault on the victim, the costs to society, and the implications for sentencing;

(4) the psychology of sex offenders, their high rate of recidivism, and the implications for sentencing;

(5) the historical evolution of laws and attitudes on rape and sexual assault;

(6) sex stereotyping of female and male victims of rape and sexual assault, racial stereotyping of rape victims and defendants, and the impact of such stereotypes on credibility of witnesses, sentencing, and other aspects of the administration of justice;

(7) application of rape shield laws and other limits on introduction of evidence that may subject victims to improper sex stereotyping and harassment in both rape and nonrape cases, including the need for sua sponte judicial intervention in inappropriate cross-examination;

(8) the use of expert witness testimony on rape trauma syndrome, child sexual abuse accommodation syndrome, post-traumatic stress syndrome, and similar issues;

(9) the legitimate reasons why victims of rape, sexual assault, and incest may refuse to testify against a defendant;

(10) the nature and incidence of domestic violence and dating violence (as defined in section 3796gg–2[1] of this title);

(11) the physical, psychological, and economic impact of domestic violence and dating violence on the victim, the costs to society, and the implications for court procedures and sentencing;

(12) the psychology and self-presentation of batterers and victims and the implications for court proceedings and credibility of witnesses;

(13) sex stereotyping of female and male victims of domestic violence and dating violence, myths about presence or absence of domestic violence and dating violence in certain racial, ethnic, religious, or socioeconomic groups, and their impact on the administration of justice;

(14) historical evolution of laws and attitudes on domestic violence;

(15) proper and improper interpretations of the defenses of self-defense and provocation, and the use of expert witness testimony on battered woman syndrome;

(16) the likelihood of retaliation, recidivism, and escalation of violence by batterers, and the potential impact of incarceration and other meaningful sanctions for acts of domestic violence including violations of orders of protection;

(17) economic, psychological, social and institutional reasons for victims' inability to leave the batterer, to report domestic violence or dating violence or to follow through on complaints, including the influence of lack of support from police, judges, and court personnel, and the legitimate reasons why victims of domestic violence or dating violence may refuse to testify against a defendant;

(18) the need for orders of protection, and the implications of mutual orders of protection, dual arrest policies, and mediation in domestic violence and dating violence cases;

(19) recognition of and response to gender-motivated crimes of violence other than rape, sexual assault and domestic violence, such as mass or serial murder motivated by the gender of the victims;

(20) the issues raised by domestic violence in determining custody and visitation, including how to protect the safety of the child and of a parent who is not a predominant aggressor of domestic violence, the legitimate reasons parents may report domestic violence, the ways domestic violence may relate to an abuser's desire to seek custody, and evaluating expert testimony in custody and visitation determinations involving domestic violence;

(21) the issues raised by child sexual assault in determining custody and visitation, including how to protect the safety of the child, the legitimate reasons parents may report child sexual assault, and evaluating expert testimony in custody and visitation determinations involving child sexual assault, including the current scientifically-accepted and empirically valid research on child sexual assault;[2]

(22) the extent to which addressing domestic violence and victim safety contributes to the efficient administration of justice;[3]

(Pub. L. 103–322, title IV, § 40412, Sept. 13, 1994, 108 Stat. 1943; Pub. L. 106–386, div. B, title IV, § 1406(a)(1), (d)(2), Oct. 28, 2000, 114 Stat. 1515, 1517.)

REFERENCES IN TEXT

Section 3796gg–2 of this title, referred to in par. (10), was subsequently repealed and a new section 3796gg–2 enacted which does not define the terms ''domestic violence'' or ''dating violence''. However, such terms are defined in section 13925 of this title.

AMENDMENTS

2000—Par. (10). Pub. L. 106–386, § 1406(d)(2)(A), inserted ''and dating violence (as defined in section 3796gg–2 of this title)'' before the semicolon.

Par. (11). Pub. L. 106–386, § 1406(d)(2)(B), inserted ''and dating violence'' after ''domestic violence''.

Par. (13). Pub. L. 106–386, § 1406(d)(2)(C), inserted ''and dating violence'' after ''domestic violence'' in two places.

Par. (17). Pub. L. 106–386, § 1406(d)(2)(D), inserted ''or dating violence'' after ''domestic violence'' in two places.

Par. (18). Pub. L. 106–386, § 1406(d)(2)(E), inserted ''and dating violence'' after ''domestic violence''.

Pars. (20) to (22). Pub. L. 106–386, § 1406(a)(1), added pars. (20) to (22).

§ 13993. Cooperation in developing programs in making grants under this part

The State Justice Institute shall ensure that model programs carried out pursuant to grants made under this part are developed with the participation of law enforcement officials, public and private nonprofit victim advocates, including national, State, tribal, and local domestic violence and sexual assault programs and coali-

[1] See References in Text note below.

[2] So in original. Probably should be followed by ''and''.

[3] So in original. The semicolon probably should be a period.

tions, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts.

(Pub. L. 103–322, title IV, § 40413, Sept. 13, 1994, 108 Stat. 1944; Pub. L. 106–386, div. B, title IV, § 1406(c)(1), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Pub. L. 106–386 inserted ", including national, State, tribal, and local domestic violence and sexual assault programs and coalitions" after "victim advocates".

§ 13994. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subpart $600,000 for fiscal year 1996 and $1,500,000 for each of the fiscal years 2001 through 2005.

(b) Model programs

Of amounts appropriated under this section, the State Justice Institute shall expend not less than 40 percent on model programs regarding domestic violence and not less than 40 percent on model programs regarding rape and sexual assault.

(c) State Justice Institute

The State Justice Institute may use up to 5 percent of the funds appropriated under this section for annually compiling and broadly disseminating (including through electronic publication) information about the use of funds and about the projects funded under this section, including any evaluations of the projects and information to enable the replication and adoption of the projects.

(Pub. L. 103–322, title IV, § 40414, Sept. 13, 1994, 108 Stat. 1944; Pub. L. 106–386, div. B, title IV, § 1406(a)(2), (c)(3), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–386, § 1406(a)(2), inserted "and $1,500,000 for each of the fiscal years 2001 through 2005" after "1996".

Subsec. (c). Pub. L. 106–386, § 1406(c)(3), added subsec. (c).

SUBPART 2—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN FEDERAL COURTS

§ 14001. Authorization of circuit studies; education and training grants

(a) Studies

In order to gain a better understanding of the nature and the extent of gender bias in the Federal courts, the circuit judicial councils are encouraged to conduct studies of the instances, if any, of gender bias in their respective circuits and to implement recommended reforms.

(b) Matters for examination

The studies under subsection (a) of this section may include an examination of the effects of gender on—

(1) the treatment of litigants, witnesses, attorneys, jurors, and judges in the courts, including before magistrate and bankruptcy judges;

(2) the interpretation and application of the law, both civil and criminal;

(3) treatment of defendants in criminal cases;

(4) treatment of victims of violent crimes in judicial proceedings;

(5) sentencing;

(6) sentencing alternatives and the nature of supervision of probation and parole;

(7) appointments to committees of the Judicial Conference and the courts;

(8) case management and court sponsored alternative dispute resolution programs;

(9) the selection, retention, promotion, and treatment of employees;

(10) appointment of arbitrators, experts, and special masters;

(11) the admissibility of the victim's past sexual history in civil and criminal cases; and

(12) the aspects of the topics listed in section 13992 of this title that pertain to issues within the jurisdiction of the Federal courts.

(c) Clearinghouse

The Administrative Office of the United States Courts shall act as a clearinghouse to disseminate any reports and materials issued by the gender bias task forces under subsection (a) of this section and to respond to requests for such reports and materials. The gender bias task forces shall provide the Administrative Office of the Courts of the United States[1] with their reports and related material.

(d) Continuing education and training programs

The Federal Judicial Center, in carrying out section 620(b)(3) of title 28, shall include in the educational programs it prepares, including the training programs for newly appointed judges, information on the aspects of the topics listed in section 13992 of this title that pertain to issues within the jurisdiction of the Federal courts, and shall prepare materials necessary to implement this subsection.

(Pub. L. 103–322, title IV, § 40421, Sept. 13, 1994, 108 Stat. 1944; Pub. L. 106–386, div. B, title IV, § 1406(b)(1), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–386 amended heading and text of subsec. (d) generally, substituting provisions relating to continuing education and training programs for provisions relating to model programs.

§ 14002. Authorization of appropriations

There are authorized to be appropriated—

(1) to the Salaries and Expenses Account of the Courts of Appeals, District Courts, and other Judicial Services to carry out section 14001(a) of this title $500,000 for fiscal year 1996;

(2) to the Federal Judicial Center to carry out section 14001(d) of this title $100,000 for fiscal year 1996 and $500,000 for each of the fiscal years 2001 through 2005; and

(3) to the Administrative Office of the United States Courts to carry out section 14001(c) of this title $100,000 for fiscal year 1996.

(Pub. L. 103–322, title IV, § 40422, Sept. 13, 1994, 108 Stat. 1945; Pub. L. 106–386, div. B, title IV, § 1406(b)(2), Oct. 28, 2000, 114 Stat. 1516.)

[1] So in original. Probably should be "Administrative Office of the United States Courts".

AMENDMENTS

2000—Par. (2). Pub. L. 106–386 inserted ''and $500,000 for each of the fiscal years 2001 through 2005'' after ''1996''.

PART E—VIOLENCE AGAINST WOMEN ACT IMPROVEMENTS

§ 14011. Payment of cost of testing for sexually transmitted diseases

(a) Omitted

(b) Limited testing of defendants

(1) Court order

The victim of an offense of the type referred to in subsection (a)[1] of this section may obtain an order in the district court of the United States for the district in which charges are brought against the defendant charged with the offense, after notice to the defendant and an opportunity to be heard, requiring that the defendant be tested for the presence of the etiologic agent for acquired immune deficiency syndrome, and that the results of the test be communicated to the victim and the defendant. Any test result of the defendant given to the victim or the defendant must be accompanied by appropriate counseling.

(2) Showing required

To obtain an order under paragraph (1), the victim must demonstrate that—

(A) the defendant has been charged with the offense in a State or Federal court, and if the defendant has been arrested without a warrant, a probable cause determination has been made;

(B) the test for the etiologic agent for acquired immune deficiency syndrome is requested by the victim after appropriate counseling; and

(C) the test would provide information necessary for the health of the victim of the alleged offense and the court determines that the alleged conduct of the defendant created a risk of transmission, as determined by the Centers for Disease Control, of the etiologic agent for acquired immune deficiency syndrome to the victim.

(3) Follow-up testing

The court may order follow-up tests and counseling under paragraph (1) if the initial test was negative. Such follow-up tests and counseling shall be performed at the request of the victim on dates that occur six months and twelve months following the initial test.

(4) Termination of testing requirements

An order for follow-up testing under paragraph (3) shall be terminated if the person obtains an acquittal on, or dismissal of, all charges of the type referred to in subsection (a)[1] of this section.

(5) Confidentiality of test

The results of any test ordered under this subsection shall be disclosed only to the victim or, where the court deems appropriate, to the parent or legal guardian of the victim, and to the person tested. The victim may disclose the test results only to any medical professional, counselor, family member or sexual partner(s) the victim may have had since the attack. Any such individual to whom the test results are disclosed by the victim shall maintain the confidentiality of such information.

(6) Disclosure of test results

The court shall issue an order to prohibit the disclosure by the victim of the results of any test performed under this subsection to anyone other than those mentioned in paragraph (5). The contents of the court proceedings and test results pursuant to this section shall be sealed. The results of such test performed on the defendant under this section shall not be used as evidence in any criminal trial.

(7) Contempt for disclosure

Any person who discloses the results of a test in violation of this subsection may be held in contempt of court.

(c) Penalties for intentional transmission of HIV

Not later than 6 months after September 13, 1994, the United States Sentencing Commission shall conduct a study and prepare and submit to the committees[2] on the Judiciary of the Senate and the House of Representatives a report concerning recommendations for the revision of sentencing guidelines that relate to offenses in which an HIV infected individual engages in sexual activity if the individual knows that he or she is infected with HIV and intends, through such sexual activity, to expose another to HIV.

(Pub. L. 103–322, title IV, § 40503, Sept. 13, 1994, 108 Stat. 1946; Pub. L. 104–294, title VI, § 604(b)(1), Oct. 11, 1996, 110 Stat. 3506.)

CODIFICATION

Section is comprised of section 40503 of Pub. L. 103–322. Subsec. (a) of section 40503 of Pub. L. 103–322 amended section 10607 of this title. Subsec. (c) of section 40503 of Pub. L. 103–322 also enacted provisions listed in a table relating to sentencing guidelines set out under section 994 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104–294 substituted ''paragraph (1)'' for ''paragraph (b)(1)''.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

§ 14012. National baseline study on campus sexual assault

(a) Study

The Attorney General, in consultation with the Secretary of Education, shall provide for a national baseline study to examine the scope of

[1] See Codification note below.

[2] So in original. Probably should be capitalized.

the problem of campus sexual assaults and the effectiveness of institutional and legal policies in addressing such crimes and protecting victims. The Attorney General may utilize the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime in carrying out this section.

(b) Report

Based on the study required by subsection (a) of this section and data collected under the Student Right-To-Know and Campus Security Act (20 U.S.C. 1001 note; Public Law 101–542) and amendments made by that Act, the Attorney General shall prepare a report including an analysis of—

(1) the number of reported allegations and estimated number of unreported allegations of campus sexual assaults, and to whom the allegations are reported (including authorities of the educational institution, sexual assault victim service entities, and local criminal authorities);

(2) the number of campus sexual assault allegations reported to authorities of educational institutions which are reported to criminal authorities;

(3) the number of campus sexual assault allegations that result in criminal prosecution in comparison with the number of non-campus sexual assault allegations that result in criminal prosecution;

(4) Federal and State laws or regulations pertaining specifically to campus sexual assaults;

(5) the adequacy of policies and practices of educational institutions in addressing campus sexual assaults and protecting victims, including consideration of—

(A) the security measures in effect at educational institutions, such as utilization of campus police and security guards, control over access to grounds and buildings, supervision of student activities and student living arrangements, control over the consumption of alcohol by students, lighting, and the availability of escort services;

(B) the articulation and communication to students of the institution's policies concerning sexual assaults;

(C) policies and practices that may prevent or discourage the reporting of campus sexual assaults to local criminal authorities, or that may otherwise obstruct justice or interfere with the prosecution of perpetrators of campus sexual assaults;

(D) the nature and availability of victim services for victims of campus sexual assaults;

(E) the ability of educational institutions' disciplinary processes to address allegations of sexual assault adequately and fairly;

(F) measures that are taken to ensure that victims are free of unwanted contact with alleged assailants, and disciplinary sanctions that are imposed when a sexual assault is determined to have occurred; and

(G) the grounds on which educational institutions are subject to lawsuits based on campus sexual assaults, the resolution of these cases, and measures that can be taken to avoid the likelihood of lawsuits and civil liability;

(6) in conjunction with the report produced by the Department of Education in coordination with institutions of education under the Student Right-To-Know and Campus Security Act (20 U.S.C. 1001 note; Public Law 101–542) and amendments made by that Act, an assessment of the policies and practices of educational institutions that are of greatest effectiveness in addressing campus sexual assaults and protecting victims, including policies and practices relating to the particular issues described in paragraph (5); and

(7) any recommendations the Attorney General may have for reforms to address campus sexual assaults and protect victims more effectively, and any other matters that the Attorney General deems relevant to the subject of the study and report required by this section.

(c) Submission of report

The report required by subsection (b) of this section shall be submitted to the Congress no later than September 1, 1996.

(d) "Campus sexual assaults" defined

For purposes of this section, ''campus sexual assaults'' includes sexual assaults occurring at institutions of postsecondary education and sexual assaults committed against or by students or employees of such institutions.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out the study required by this section—$200,000 for fiscal year 1996.

(Pub. L. 103–322, title IV, § 40506, Sept. 13, 1994, 108 Stat. 1948.)

REFERENCES IN TEXT

The Student Right-To-Know and Campus Security Act, referred to in subsec. (b), is Pub. L. 101–542, Nov. 8, 1990, 104 Stat. 2381, as amended, which amended sections 1085, 1092, 1094, and 1232g of Title 20, Education, and enacted provisions set out as notes under sections 1001 and 1092 of Title 20. For complete classification of this Act to the Code, see Short Title of 1990 Amendments note set out under section 1001 of Title 20 and Tables.

§ 14013. Report on battered women's syndrome

(a) Report

Not less than 1 year after September 13, 1994, the Attorney General and the Secretary of Health and Human Services shall transmit to the House Committee on Energy and Commerce, the Senate Committee on Labor and Human Resources, and the Committees on the Judiciary of the Senate and the House of Representatives a report on the medical and psychological basis of ''battered women's syndrome'' and on the extent to which evidence of the syndrome has been considered in criminal trials.

(b) Components

The report under subsection (a) of this section shall include—

(1) medical and psychological testimony on the validity of battered women's syndrome as a psychological condition;

(2) a compilation of State, tribal, and Federal court cases in which evidence of battered women's syndrome was offered in criminal trials; and

(3) an assessment by State, tribal, and Federal judges, prosecutors, and defense attorneys of the effects that evidence of battered women's syndrome may have in criminal trials.

(Pub. L. 103–322, title IV, § 40507, Sept. 13, 1994, 108 Stat. 1949.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

§ 14014. Report on confidentiality of addresses for victims of domestic violence

(a) Report

The Attorney General shall conduct a study of the means by which abusive spouses may obtain information concerning the addresses or locations of estranged or former spouses, notwithstanding the desire of the victims to have such information withheld to avoid further exposure to abuse. Based on the study, the Attorney General shall transmit a report to Congress including—

(1) the findings of the study concerning the means by which information concerning the addresses or locations of abused spouses may be obtained by abusers; and

(2) analysis of the feasibility of creating effective means of protecting the confidentiality of information concerning the addresses and locations of abused spouses to protect such persons from exposure to further abuse while preserving access to such information for legitimate purposes.

(b) Use of components

The Attorney General may use the National Institute of Justice and the Office for Victims of Crime in carrying out this section.

(Pub. L. 103–322, title IV, § 40508, Sept. 13, 1994, 108 Stat. 1950.)

§ 14015. Report on recordkeeping relating to domestic violence

Not later than 1 year after September 13, 1994, the Attorney General shall complete a study of, and shall submit to Congress a report and recommendations on, problems of recordkeeping of criminal complaints involving domestic violence. The study and report shall examine—

(1) the efforts that have been made by the Department of Justice, including the Federal Bureau of Investigation, to collect statistics on domestic violence; and

(2) the feasibility of requiring that the relationship between an offender and victim be reported in Federal records of crimes of aggravated assault, rape, and other violent crimes.

(Pub. L. 103–322, title IV, § 40509, Sept. 13, 1994, 108 Stat. 1950.)

§ 14016. Enforcement of statutory rape laws

(a) Sense of Senate

It is the sense of the Senate that States and local jurisdictions should aggressively enforce statutory rape laws.

(b) Justice Department program on statutory rape

Not later than January 1, 1997, the Attorney General shall establish and implement a program that—

(1) studies the linkage between statutory rape and teenage pregnancy, particularly by predatory older men committing repeat offenses; and

(2) educates State and local criminal law enforcement officials on the prevention and prosecution of statutory rape, focusing in particular on the commission of statutory rape by predatory older men committing repeat offenses, and any links to teenage pregnancy.

(c) Violence against women initiative

The Attorney General shall ensure that the Department of Justice's Violence Against Women initiative addresses the issue of statutory rape, particularly the commission of statutory rape by predatory older men committing repeat offenses.

(Pub. L. 104–193, title IX, § 906, Aug. 22, 1996, 110 Stat. 2349.)

CODIFICATION

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

PART F—NATIONAL STALKER AND DOMESTIC VIOLENCE REDUCTION

§ 14031. Grant program

(a) In general

The Attorney General is authorized to provide grants to States and units of local government to improve and implement processes for entering data regarding stalking and domestic violence into local, State, and national crime information databases.

(b) Eligibility

To be eligible to receive a grant under subsection (a) of this section, a State or unit of local government shall certify that it has or intends to establish a program that enters into the National Crime Information Center records of—

(1) warrants for the arrest of persons violating protection orders intended to protect victims from stalking or domestic violence;

(2) arrests or convictions of persons violating protection[1] or domestic violence; and

[1] So in original. Probably should be followed by "orders intended to protect victims from stalking".

(3) protection orders for the protection of persons from stalking or domestic violence.

(Pub. L. 103–322, title IV, § 40602, Sept. 13, 1994, 108 Stat. 1951; Pub. L. 106–386, div. B, title I, § 1106(b), Oct. 28, 2000, 114 Stat. 1497.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–386 inserted ''and implement'' after ''improve''.

§ 14032. Authorization of appropriations

There is authorized to be appropriated to carry out this part $3,000,000 for each of fiscal years 2007 through 2011.

(Pub. L. 103–322, title IV, § 40603, Sept. 13, 1994, 108 Stat. 1951; Pub. L. 106–386, div. B, title I, § 1106(a), Oct. 28, 2000, 114 Stat. 1497; Pub. L. 109–162, title I, § 109, Jan. 5, 2006, 119 Stat. 2984.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle F of title IV of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1950, which enacted this part, amended section 534 of Title 28, Judiciary and Judicial Procedure, and enacted provisions set out as a note under section 534 of Title 28.

AMENDMENTS

2006—Pub. L. 109–162, § 109(2), which directed substitution of ''2011'' for ''2006'', was executed by substituting ''2011'' for ''2005'' to reflect the probable intent of Congress, because ''2006'' does not appear in text.

Pub. L. 109–162, § 109(1), substituted ''2007'' for ''2001''.

2000—Pub. L. 106–386 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out this part—

''(1) $1,500,000 for fiscal year 1996;

''(2) $1,750,000 for fiscal year 1997; and

''(3) $2,750,000 for fiscal year 1998.''

§ 14033. Application requirements

An application for a grant under this part shall be submitted in such form and manner, and contain such information, as the Attorney General may prescribe. In addition, applications shall include documentation showing—

(1) the need for grant funds and that State or local funding, as the case may be, does not already cover these operations;

(2) intended use of the grant funds, including a plan of action to increase record input; and

(3) an estimate of expected results from the use of the grant funds.

(Pub. L. 103–322, title IV, § 40604, Sept. 13, 1994, 108 Stat. 1951.)

§ 14034. Disbursement

Not later than 90 days after the receipt of an application under this part, the Attorney General shall either provide grant funds or shall inform the applicant why grant funds are not being provided.

(Pub. L. 103–322, title IV, § 40605, Sept. 13, 1994, 108 Stat. 1952.)

§ 14035. Technical assistance, training, and evaluations

The Attorney General may provide technical assistance and training in furtherance of the purposes of this part, and may provide for the evaluation of programs that receive funds under this part, in addition to any evaluation requirements that the Attorney General may prescribe for grantees. The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, or through contracts or other arrangements with other entities.

(Pub. L. 103–322, title IV, § 40606, Sept. 13, 1994, 108 Stat. 1952.)

§ 14036. Training programs for judges

The State Justice Institute, after consultation with nationally recognized nonprofit organizations with expertise in stalking and domestic violence cases, shall conduct training programs for State (as defined in section 10701[1] of this title) and Indian tribal judges to ensure that a judge issuing an order in a stalking or domestic violence case has all available criminal history and other information, whether from State or Federal sources.

(Pub. L. 103–322, title IV, § 40607, Sept. 13, 1994, 108 Stat. 1952.)

REFERENCES IN TEXT

Section 10701 of this title, referred to in text, was in the original ''section 202 of the State Justice Institute Authorization Act of 1984'', and was translated as reading ''section 202 of the State Justice Institute Act of 1984'', which is section 202 of Pub. L. 98–620, to reflect the probable intent of Congress.

§ 14037. Recommendations on intrastate communication

The State Justice Institute, after consultation with nationally recognized nonprofit associations with expertise in data sharing among criminal justice agencies and familiarity with the issues raised in stalking and domestic violence cases, shall recommend proposals regarding how State courts may increase intrastate communication between civil and criminal courts.

(Pub. L. 103–322, title IV, § 40608, Sept. 13, 1994, 108 Stat. 1952.)

§ 14038. Inclusion in National Incident-Based Reporting System

Not later than 2 years after September 13, 1994, the Attorney General, in accordance with the States, shall compile data regarding domestic violence and intimidation (including stalking) as part of the National Incident-Based Reporting System (NIBRS).

(Pub. L. 103–322, title IV, § 40609, Sept. 13, 1994, 108 Stat. 1952.)

§ 14039. Report to Congress

Each even-numbered fiscal year, the Attorney General shall submit to the Congress a biennial report that provides information concerning the incidence of stalking and domestic violence, and evaluates the effectiveness of State antistalking efforts and legislation.

[1] See References in Text note below.

(Pub. L. 103–322, title IV, § 40610, Sept. 13, 1994, 108 Stat. 1952; Pub. L. 109–162, § 3(b)(1), title XI, § 1135(a), Jan. 5, 2006, 119 Stat. 2971, 3108; Pub. L. 109–271, §§ 2(d), 8(b), Aug. 12, 2006, 120 Stat. 752, 766.)

AMENDMENTS

2006—Pub. L. 109–162, § 1135(a), which directed an amendment substantially identical to that directed by Pub. L. 109–162, § 3(b)(1), was repealed by Pub. L. 109–271.

Pub. L. 109–162, § 3(b)(1), which directed the substitution of ''Each even-numbered fiscal year, the Attorney General shall submit to the Congress a biennial report that provides'' for ''The Attorney General shall submit to the Congress an annual report, beginning 1 year after September 13, 1994, that provides'', was executed by making the substitution for ''The Attorney General shall submit to the Congress an annual report, beginning one year after September 13, 1994, that provides'', to reflect the probable intent of Congress.

REPORT RELATING TO STALKING LAWS

Pub. L. 105–119, title I, § 115(b)(2), Nov. 26, 1997, 111 Stat. 2467, provided that: ''The Attorney General shall include in an annual report under section 40610 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14039) information concerning existing or proposed State laws and penalties for stalking crimes against children.''

§ 14040. Definitions

As used in this part—

(1) the term ''national crime information databases'' refers to the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

(2) the term ''protection order'' includes an injunction or any other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(Pub. L. 103–322, title IV, § 40611, Sept. 13, 1994, 108 Stat. 1952.)

PART G—ELDER ABUSE, NEGLECT, AND EXPLOITATION, INCLUDING DOMESTIC VIOLENCE AND SEXUAL ASSAULT AGAINST OLDER OR DISABLED INDIVIDUALS

CODIFICATION

This part was, in the original, subtitle H of title IV of Pub. L. 103–322, as added by Pub. L. 106–386, and has been redesignated as part G of this subchapter for purposes of codification.

§ 14041. Definitions

In this part:

(1) In general

The terms ''elder abuse, neglect, and exploitation'', and ''older individual'' have the meanings given the terms in section 3002 of this title.

(2) Domestic violence

The term ''domestic violence'' has the meaning given such term by section 3796gg–2[1] of this title.

(3) Sexual assault

The term ''sexual assault'' has the meaning given the term in section 3796gg–2[1] of this title.

(Pub. L. 103–322, title IV, § 40801, as added Pub. L. 106–386, div. B, title II, § 1209(a), Oct. 28, 2000, 114 Stat. 1508.)

REFERENCES IN TEXT

Section 3796gg–2 of this title, referred to in pars. (2) and (3), was subsequently repealed and a new section 3796gg–2 enacted which does not define the terms ''domestic violence'' or ''sexual assault''. However, such terms are defined in section 13925 of this title.

§ 14041a. Enhanced training and services to end violence against and abuse of women later in life

(a) Grants authorized

The Attorney General, through the Director of the Office on Violence Against Women, may award grants, which may be used for—

(1) training programs to assist law enforcement, prosecutors, governmental agencies, victim assistants, and relevant officers of Federal, State, tribal, territorial, and local courts in recognizing, addressing, investigating, and prosecuting instances of elder abuse, neglect, and exploitation, including domestic violence, dating violence, sexual assault, or stalking against victims who are 50 years of age or older;

(2) providing or enhancing services for victims of elder abuse, neglect, and exploitation, including domestic violence, dating violence, sexual assault, or stalking, who are 50 years of age or older;

(3) creating or supporting multidisciplinary collaborative community responses to victims of elder abuse, neglect, and exploitation, including domestic violence, dating violence, sexual assault, and stalking, who are 50 years of age or older; and

(4) conducting cross-training for victim service organizations, governmental agencies, courts, law enforcement, and nonprofit, nongovernmental organizations serving victims of elder abuse, neglect, and exploitation, including domestic violence, dating violence, sexual assault, and stalking, who are 50 years of age or older.

(b) Eligible entities

An entity shall be eligible to receive a grant under this section if the entity is—

(1) a State;

(2) a unit of local government;

(3) an Indian tribal government or tribal organization; or

(4) a nonprofit and nongovernmental victim services organization with demonstrated experience in assisting elderly women or demonstrated experience in addressing domestic violence, dating violence, sexual assault, and stalking.

[1] See References in Text note below.

(c) Underserved populations

In awarding grants under this section, the Director shall ensure that services are culturally and linguistically relevant and that the needs of underserved populations are being addressed.

(Pub. L. 103–322, title IV, § 40802, as added Pub. L. 106–386, div. B, title II, § 1209(a), Oct. 28, 2000, 114 Stat. 1509; amended Pub. L. 109–162, title II, § 205(a), Jan. 5, 2006, 119 Stat. 3002.)

AMENDMENTS

2006—Pub. L. 109–162 amended section catchline and text generally. Prior to amendment, text read as follows: ''The Attorney General may make grants for training programs to assist law enforcement officers, prosecutors, and relevant officers of Federal, State, tribal, and local courts in recognizing, addressing, investigating, and prosecuting instances of elder abuse, neglect, and exploitation and violence against individuals with disabilities, including domestic violence and sexual assault, against older or disabled individuals.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

§ 14041b. Authorization of appropriations

There are authorized to be appropriated to carry out this part $10,000,000 for each of the fiscal years 2007 through 2011.

(Pub. L. 103–322, title IV, § 40803, as added Pub. L. 106–386, div. B, title II, § 1209(a), Oct. 28, 2000, 114 Stat. 1509; amended Pub. L. 109–162, title II, § 205(b), Jan. 5, 2006, 119 Stat. 3002.)

AMENDMENTS

2006—Pub. L. 109–162 substituted ''$10,000,000 for each of the fiscal years 2007 through 2011'' for ''$5,000,000 for each of fiscal years 2001 through 2005''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as a note under section 3793 of this title.

PART H—DOMESTIC VIOLENCE TASK FORCE

CODIFICATION

This part was, in the original, subtitle I of title IV of Pub. L. 103–322, as added by Pub. L. 106–386, and has been redesignated as part H of this subchapter for purposes of codification.

§ 14042. Task force

(a) Establish

The Attorney General, in consultation with national nonprofit, nongovernmental organizations whose primary expertise is in domestic violence, shall establish a task force to coordinate research on domestic violence and to report to Congress on any overlapping or duplication of efforts on domestic violence issues. The task force shall be comprised of representatives from all Federal agencies that fund such research.

(b) Uses of funds

Funds appropriated under this section shall be used to—

(1) develop a coordinated strategy to strengthen research focused on domestic violence education, prevention, and intervention strategies;

(2) track and report all Federal research and expenditures on domestic violence; and

(3) identify gaps and duplication of efforts in domestic violence research and governmental expenditures on domestic violence issues.

(c) Report

The Task Force shall report to Congress annually on its work under subsection (b) of this section.

(d) Definition

For purposes of this section, the term ''domestic violence'' has the meaning given such term by section 3796gg–2[1] of this title.

(e) Authorization of Appropriations

There is authorized to be appropriated to carry out this section $500,000 for each of fiscal years 2001 through 2004.

(Pub. L. 103–322, title IV, § 40901, as added Pub. L. 106–386, div. B, title IV, § 1407, Oct. 28, 2000, 114 Stat. 1517.)

REFERENCES IN TEXT

Section 3796gg–2 of this title, referred to in subsec. (d), was subsequently repealed and a new section 3796gg–2 enacted which does not define ''domestic violence''. However, such term is defined in section 13925 of this title.

STUDY OF STATE LAWS REGARDING INSURANCE DISCRIMINATION AGAINST VICTIMS OF VIOLENCE AGAINST WOMEN

Pub. L. 106–386, div. B, title II, § 1206, Oct. 28, 2000, 114 Stat. 1507, directed the Attorney General to conduct a national study to identify State laws that address insurance discrimination against victims of domestic violence and sexual assault and to submit to Congress a report and recommendations based on that study not later than 1 year after Oct. 28, 2000.

STUDY OF WORKPLACE EFFECTS FROM VIOLENCE AGAINST WOMEN

Pub. L. 106–386, div. B, title II, § 1207, Oct. 28, 2000, 114 Stat. 1507, directed the Attorney General to conduct a national survey of programs to assist employers and employees on appropriate responses in the workplace to victims of domestic violence, stalking, or sexual assault, and not later than 18 months after Oct. 28, 2000, to submit to Congress a report and recommendations based on that survey.

STUDY OF UNEMPLOYMENT COMPENSATION FOR VICTIMS OF VIOLENCE AGAINST WOMEN

Pub. L. 106–386, div. B, title II, § 1208, Oct. 28, 2000, 114 Stat. 1508, directed the Secretary of Labor, in consultation with the Attorney General, to conduct a national study to identify the impact of State unemployment compensation laws on victims of domestic violence when the victim's separation from employment is a direct result of the domestic violence and to submit to Congress a report and recommendations based on that study not later than 1 year after Oct. 28, 2000.

PART I—VIOLENCE AGAINST WOMEN ACT COURT TRAINING AND IMPROVEMENTS

CODIFICATION

This part was, in the original, subtitle J of title IV of Pub. L. 103–322, as added by Pub. L. 109–162, and has been redesignated as part I of this subchapter for purposes of codification.

[1] See References in Text note below.

§ 14043. Purpose

The purpose of this part is to enable the Attorney General, though[1] the Director of the Office on Violence Against Women, to award grants to improve court responses to adult and youth domestic violence, dating violence, sexual assault, and stalking to be used for—

(1) improved internal civil and criminal court functions, responses, practices, and procedures;

(2) education for court-based and court-related personnel on issues relating to victims' needs, including safety, security, privacy, confidentiality, and economic independence, as well as information about perpetrator behavior and best practices for holding perpetrators accountable;

(3) collaboration and training with Federal, State, tribal, territorial, and local public agencies and officials and nonprofit, nongovernmental organizations to improve implementation and enforcement of relevant Federal, State, tribal, territorial, and local law;

(4) enabling courts or court-based or court-related programs to develop new or enhance current—

(A) court infrastructure (such as specialized courts, dockets, intake centers, or interpreter services);

(B) community-based initiatives within the court system (such as court watch programs, victim assistants, or community-based supplementary services);

(C) offender management, monitoring, and accountability programs;

(D) safe and confidential information-storage and -sharing databases within and between court systems;

(E) education and outreach programs to improve community access, including enhanced access for underserved populations; and

(F) other projects likely to improve court responses to domestic violence, dating violence, sexual assault, and stalking; and

(5) providing technical assistance to Federal, State, tribal, territorial, or local courts wishing to improve their practices and procedures or to develop new programs.

(Pub. L. 103–322, title IV, § 41002, as added Pub. L. 109–162, title I, § 105(a), Jan. 5, 2006, 119 Stat. 2979.)

SHORT TITLE

For short title of this part as the ''Violence Against Women Act Court Training and Improvements Act of 2005'', see section 41001 of Pub. L. 103–322, set out as a note under section 13701 of this title.

§ 14043a. Grant requirements

Grants awarded under this part shall be subject to the following conditions:

(1) Eligible grantees

Eligible grantees may include—

(A) Federal, State, tribal, territorial, or local courts or court-based programs; and

(B) national, State, tribal, territorial, or local private, nonprofit organizations with demonstrated expertise in developing and providing judicial education about domestic violence, dating violence, sexual assault, or stalking.

(2) Conditions of eligibility

To be eligible for a grant under this section, applicants shall certify in writing that—

(A) any courts or court-based personnel working directly with or making decisions about adult or youth parties experiencing domestic violence, dating violence, sexual assault, and stalking have completed or will complete education about domestic violence, dating violence, sexual assault, and stalking;

(B) any education program developed under section 14043 of this title has been or will be developed with significant input from and in collaboration with a national, tribal, State, territorial, or local victim services provider or coalition; and

(C) the grantee's internal organizational policies, procedures, or rules do not require mediation or counseling between offenders and victims physically together in cases where domestic violence, dating violence, sexual assault, or stalking is an issue.

(Pub. L. 103–322, title IV, § 41003, as added Pub. L. 109–162, title I, § 105(a), Jan. 5, 2006, 119 Stat. 2980.)

§ 14043a–1. National education curricula

(a) In general

The Attorney General, through the Director of the Office on Violence Against Women, shall fund efforts to develop a national education curriculum for use by State and national judicial educators to ensure that all courts and court personnel have access to information about relevant Federal, State, territorial, or local law, promising practices, procedures, and policies regarding court responses to adult and youth domestic violence, dating violence, sexual assault, and stalking.

(b) Eligible entities

Any curricula developed under this section—

(1) shall be developed by an entity or entities having demonstrated expertise in developing judicial education curricula on issues relating to domestic violence, dating violence, sexual assault, and stalking; or

(2) if the primary grantee does not have demonstrated expertise with such issues, shall be developed by the primary grantee in partnership with an organization having such expertise.

(Pub. L. 103–322, title IV, § 41004, as added Pub. L. 109–162, title I, § 105(a), Jan. 5, 2006, 119 Stat. 2980.)

§ 14043a–2. Tribal curricula

(a) In general

The Attorney General, through the Office on Violence Against Women, shall fund efforts to develop education curricula for tribal court judges to ensure that all tribal courts have relevant information about promising practices,

[1] So in original. Probably should be ''through''.

procedures, policies, and law regarding tribal court responses to adult and youth domestic violence, dating violence, sexual assault, and stalking.

(b) Eligible entities

Any curricula developed under this section—

(1) shall be developed by a tribal organization having demonstrated expertise in developing judicial education curricula on issues relating to domestic violence, dating violence, sexual assault, and stalking; or

(2) if the primary grantee does not have such expertise, the curricula shall be developed by the primary grantee through partnership with organizations having such expertise.

(Pub. L. 103–322, title IV, § 41005, as added Pub. L. 109–162, title I, § 105(a), Jan. 5, 2006, 119 Stat. 2981.)

§ 14043a–3. Authorization of appropriations

(a) In general

There is authorized to be appropriated to carry out this part $5,000,000 for each of fiscal years 2007 to 2011.

(b) Availability

Funds appropriated under this section shall remain available until expended and may only be used for the specific programs and activities described in this part.

(c) Set aside

(1) In general

Not less than 10 percent of the total amount available under this section for each fiscal year shall be available for grants under the program authorized by section 3796gg–10 of this title.

(2) Applicability of part [1]

The requirements of this section shall not apply to funds allocated for the program described in paragraph (1).

(Pub. L. 103–322, title IV, § 41006, as added Pub. L. 109–162, title I, § 105(a), Jan. 5, 2006, 119 Stat. 2981; amended Pub. L. 109–271, § 7(c)(2), Aug. 12, 2006, 120 Stat. 765.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–271 added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: ''Of the amounts made available under this subsection in each fiscal year, not less than 10 percent shall be used for grants for tribal courts, tribal court-related programs, and tribal nonprofits.''

PART J—PRIVACY PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL VIOLENCE, AND STALKING

CODIFICATION

This part was, in the original, subtitle K of title IV of Pub. L. 103–322, as added by Pub. L. 109–162, and has been redesignated as part J of this subchapter for purposes of codification.

§ 14043b. Grants to protect the privacy and confidentiality of victims of domestic violence, dating violence, sexual assault, and stalking

The Attorney General, through the Director of the Office on Violence Against Women, may award grants under this part to States, Indian tribes, territories, or local agencies or nonprofit, nongovernmental organizations to ensure that personally identifying information of adult, youth, and child victims of domestic violence, sexual violence, stalking, and dating violence shall not be released or disclosed to the detriment of such victimized persons.

(Pub. L. 103–322, title IV, § 41101, as added Pub. L. 109–162, title I, § 107, Jan. 5, 2006, 119 Stat. 2983.)

§ 14043b–1. Purpose areas

Grants made under this part may be used—

(1) to develop or improve protocols, procedures, and policies for the purpose of preventing the release of personally identifying information of victims (such as developing alternative identifiers);

(2) to defray the costs of modifying or improving existing databases, registries, and victim notification systems to ensure that personally identifying information of victims is protected from release, unauthorized information sharing and disclosure;

(3) to develop confidential opt out systems that will enable victims of violence to make a single request to keep personally identifying information out of multiple databases, victim notification systems, and registries; or

(4) to develop safe uses of technology (such as notice requirements regarding electronic surveillance by government entities), to protect against abuses of technology (such as electronic or GPS stalking), or providing training for law enforcement on high tech electronic crimes of domestic violence, dating violence, sexual assault, and stalking.

(Pub. L. 103–322, title IV, § 41102, as added Pub. L. 109–162, title I, § 107, Jan. 5, 2006, 119 Stat. 2983.)

§ 14043b–2. Eligible entities

Entities eligible for grants under this part include—

(1) jurisdictions or agencies within jurisdictions having authority or responsibility for developing or maintaining public databases, registries or victim notification systems;

(2) nonprofit nongovernmental victim advocacy organizations having expertise regarding confidentiality, privacy, and information technology and how these issues are likely to impact the safety of victims;

(3) States or State agencies;

(4) local governments or agencies;

(5) Indian tribal governments or tribal organizations;

(6) territorial governments, agencies, or organizations; or

(7) nonprofit nongovernmental victim advocacy organizations, including statewide domestic violence and sexual assault coalitions.

(Pub. L. 103–322, title IV, § 41103, as added Pub. L. 109–162, title I, § 107, Jan. 5, 2006, 119 Stat. 2983.)

§ 14043b–3. Grant conditions

Applicants described in paragraph (1) and paragraphs (3) through (6) shall demonstrate that they have entered into a significant partnership with a State, tribal, territorial, or local

[1] So in original. Probably should be ''section''.

victim service or advocacy organization or condition in order to develop safe, confidential, and effective protocols, procedures, policies, and systems for protecting personally identifying information of victims.

(Pub. L. 103–322, title IV, § 41104, as added Pub. L. 109–162, title I, § 107, Jan. 5, 2006, 119 Stat. 2984.)

REFERENCES IN TEXT

Paragraph (1) and paragraphs (3) through (6), referred to in text, probably mean paragraphs (1) and (3) through (6) of section 14043b–2 of this title.

§ 14043b–4. Authorization of appropriations

(a) In general

There is authorized to be appropriated to carry out this part $5,000,000 for each of fiscal years 2007 through 2011.

(b) Tribal allocation

Of the amount made available under this section in each fiscal year, 10 percent shall be used for grants to Indian tribes for programs that assist victims of domestic violence, dating violence, stalking, and sexual assault.

(c) Technical assistance and training

Of the amount made available under this section in each fiscal year, not less than 5 percent shall be used for grants to organizations that have expertise in confidentiality, privacy, and technology issues impacting victims of domestic violence, dating violence, sexual assault, and stalking to provide technical assistance and training to grantees and non-grantees on how to improve safety, privacy, confidentiality, and technology to protect victimized persons.

(Pub. L. 103–322, title IV, § 41105, as added Pub. L. 109–162, title I, § 107, Jan. 5, 2006, 119 Stat. 2984.)

PART K—SERVICES, EDUCATION, PROTECTION AND JUSTICE FOR YOUNG VICTIMS OF VIOLENCE

CODIFICATION

This part was, in the original, subtitle L of title IV of Pub. L. 103–322, as added by Pub. L. 109–162, and has been redesignated as part K of this subchapter for purposes of codification.

§ 14043c. Services to advocate for and respond to youth

(a) Grants authorized

The Attorney General, in consultation with the Department of Health and Human Services, shall award grants to eligible entities to conduct programs to serve youth victims of domestic violence, dating violence, sexual assault, and stalking. Amounts appropriated under this section may only be used for programs and activities described under subsection (c) of this section.

(b) Eligible grantees

To be eligible to receive a grant under this section, an entity shall be—

(1) a nonprofit, nongovernmental entity, the primary purpose of which is to provide services to teen and young adult victims of domestic violence, dating violence, sexual assault, or stalking;

(2) a community-based organization specializing in intervention or violence prevention services for youth;

(3) an Indian Tribe or tribal organization providing services primarily to tribal youth or tribal victims of domestic violence, dating violence, sexual assault or stalking; or

(4) a nonprofit, nongovernmental entity providing services for runaway or homeless youth affected by domestic or sexual abuse.

(c) Use of funds

(1) In general

An entity that receives a grant under this section shall use amounts provided under the grant to design or replicate, and implement, programs and services, using domestic violence, dating violence, sexual assault, and stalking intervention models to respond to the needs of youth who are victims of domestic violence, dating violence, sexual assault or stalking.

(2) Types of programs

Such a program—

(A) shall provide direct counseling and advocacy for youth and young adults, who have experienced domestic violence, dating violence, sexual assault or stalking;

(B) shall include linguistically, culturally, and community relevant services for underserved populations or linkages to existing services in the community tailored to the needs of underserved populations;

(C) may include mental health services for youth and young adults who have experienced domestic violence, dating violence, sexual assault, or stalking;

(D) may include legal advocacy efforts on behalf of youth and young adults with respect to domestic violence, dating violence, sexual assault or stalking;

(E) may work with public officials and agencies to develop and implement policies, rules, and procedures in order to reduce or eliminate domestic violence, dating violence, sexual assault, and stalking against youth and young adults; and

(F) may use not more than 25 percent of the grant funds to provide additional services and resources for youth, including childcare, transportation, educational support, and respite care.

(d) Awards basis

(1) Grants to Indian tribes

Not less than 7 percent of funds appropriated under this section in any year shall be available for grants to Indian Tribes or tribal organizations.

(2) Administration

The Attorney General shall not use more than 2.5 percent of funds appropriated under this section in any year for administration, monitoring, and evaluation of grants made available under this section.

(3) Technical assistance

Not less than 5 percent of funds appropriated under this section in any year shall be available to provide technical assistance for programs funded under this section.

(e) Term

The Attorney General shall make the grants under this section for a period of 3 fiscal years.

(f) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $15,000,000 for each of fiscal years 2007 through 2011.

(Pub. L. 103–322, title IV, § 41201, as added Pub. L. 109–162, title III, § 303, Jan. 5, 2006, 119 Stat. 3004.)

§ 14043c–1. Access to justice for youth

(a) Purpose

It is the purpose of this section to encourage cross training and collaboration between the courts, domestic violence and sexual assault service providers, youth organizations and service providers, violence prevention programs, and law enforcement agencies, so that communities can establish and implement policies, procedures, and practices to protect and more comprehensively and effectively serve young victims of dating violence, domestic violence, sexual assault, and stalking who are between the ages of 12 and 24, and to engage, where necessary, other entities addressing the safety, health, mental health, social service, housing, and economic needs of young victims of domestic violence, dating violence, sexual assault, and stalking, including community-based supports such as schools, local health centers, community action groups, and neighborhood coalitions.

(b) Grant authority

(1) In general

The Attorney General, through the Director of the Office on Violence Against Women (in this section referred to as the ''Director''), shall make grants to eligible entities to carry out the purposes of this section.

(2) Grant periods

Grants shall be awarded under this section for a period of 2 fiscal years.

(3) Eligible entities

To be eligible for a grant under this section, a grant applicant shall establish a collaboration that—

(A) shall include a victim service provider that has a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking and the effect that those forms of abuse have on young people;

(B) shall include a court or law enforcement agency partner; and

(C) may include—

(i) batterer intervention programs or sex offender treatment programs with specialized knowledge and experience working with youth offenders;

(ii) community-based youth organizations that deal specifically with the concerns and problems faced by youth, including programs that target teen parents and underserved communities;

(iii) schools or school-based programs designed to provide prevention or intervention services to youth experiencing problems;

(iv) faith-based entities that deal with the concerns and problems faced by youth;

(v) healthcare entities eligible for reimbursement under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], including providers that target the special needs of youth;

(vi) education programs on HIV and other sexually transmitted diseases that are designed to target teens;

(vii) Indian Health Service, tribal child protective services, the Bureau of Indian Affairs, or the Federal Bureau of Investigations;[1] or

(viii) law enforcement agencies of the Bureau of Indian Affairs providing tribal law enforcement.

(c) Uses of funds

An entity that receives a grant under this section shall use the funds made available through the grant for cross-training and collaborative efforts—

(1) addressing domestic violence, dating violence, sexual assault, and stalking, assessing and analyzing currently available services for youth and young adult victims, determining relevant barriers to such services in a particular locality, and developing a community protocol to address such problems collaboratively;

(2) to establish and enhance linkages and collaboration between—

(A) domestic violence and sexual assault service providers; and

(B) where applicable, law enforcement agencies, courts, Federal agencies, and other entities addressing the safety, health, mental health, social service, housing, and economic needs of young victims of abuse, including community-based supports such as schools, local health centers, community action groups, and neighborhood coalitions—

(i) to respond effectively and comprehensively to the varying needs of young victims of abuse;

(ii) to include linguistically, culturally, and community relevant services for underserved populations or linkages to existing services in the community tailored to the needs of underserved populations; and

(iii) to include where appropriate legal assistance, referral services, and parental support;

(3) to educate the staff of courts, domestic violence and sexual assault service providers, and, as applicable, the staff of law enforcement agencies, Indian child welfare agencies, youth organizations, schools, healthcare providers, and other community prevention and intervention programs to responsibly address youth victims and perpetrators of domestic violence, dating violence, sexual assault, and stalking;

(4) to identify, assess, and respond appropriately to dating violence, domestic violence, sexual assault, or stalking against teens and young adults and meet the needs of young victims of violence; and

(5) to provide appropriate resources in juvenile court matters to respond to dating violence, domestic violence, sexual assault, and stalking and ensure necessary services dealing

[1] So in original. Probably should be ''Investigation;''.

with the health and mental health of victims are available.

(d) Grant applications

To be eligible for a grant under this section, the entities that are members of the applicant collaboration described in subsection (b)(3) of this section shall jointly submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

(e) Priority

In awarding grants under this section, the Director shall give priority to entities that have submitted applications in partnership with community organizations and service providers that work primarily with youth, especially teens, and who have demonstrated a commitment to coalition building and cooperative problem solving in dealing with problems of dating violence, domestic violence, sexual assault, and stalking in teen populations.

(f) Distribution

In awarding grants under this section—

(1) not less than 10 percent of funds appropriated under this section in any year shall be available to Indian tribal governments to establish and maintain collaborations involving the appropriate tribal justice and social services departments or domestic violence or sexual assault service providers, the purpose of which is to provide culturally appropriate services to American Indian women or youth;

(2) the Director shall not use more than 2.5 percent of funds appropriated under this section in any year for monitoring and evaluation of grants made available under this section;

(3) the Attorney General of the United States shall not use more than 2.5 percent of funds appropriated under this section in any year for administration of grants made available under this section; and

(4) up to 8 percent of funds appropriated under this section in any year shall be available to provide technical assistance for programs funded under this section.

(g) Dissemination of information

Not later than 12 months after the end of the grant period under this section, the Director shall prepare, submit to Congress, and make widely available, including through electronic means, summaries that contain information on—

(1) the activities implemented by the recipients of the grants awarded under this section; and

(2) related initiatives undertaken by the Director to promote attention to dating violence, domestic violence, sexual assault, and stalking and their impact on young victims by—

(A) the staffs of courts;

(B) domestic violence, dating violence, sexual assault, and stalking victim service providers; and

(C) law enforcement agencies and community organizations.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $5,000,000 in each of fiscal years 2007 through 2011.

(Pub. L. 103–322, title IV, § 41202, as added Pub. L. 109–162, title III, § 303, Jan. 5, 2006, 119 Stat. 3005.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3)(C)(v), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 14043c–2. Grants for training and collaboration on the intersection between domestic violence and child maltreatment

(a) Purpose

The purpose of this section is to support efforts by child welfare agencies, domestic violence or dating violence victim services providers, courts, law enforcement, and other related professionals and community organizations to develop collaborative responses and services and provide cross-training to enhance community responses to families where there is both child maltreatment and domestic violence.

(b) Grants authorized

The Secretary of the Department of Health and Human Services (in this section referred to as the ''Secretary''), through the Family and Youth Services Bureau, and in consultation with the Office on Violence Against Women, shall award grants on a competitive basis to eligible entities for the purposes and in the manner described in this section.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2007 through 2011. Funds appropriated under this section shall remain available until expended. Of the amounts appropriated to carry out this section for each fiscal year, the Secretary shall—

(1) use not more than 3 percent for evaluation, monitoring, site visits, grantee conferences, and other administrative costs associated with conducting activities under this section;

(2) set aside not more than 7 percent for grants to Indian tribes to develop programs addressing child maltreatment and domestic violence or dating violence that are operated by, or in partnership with, a tribal organization; and

(3) set aside up to 8 percent for technical assistance and training to be provided by organizations having demonstrated expertise in developing collaborative community and system responses to families in which there is both child maltreatment and domestic violence or dating violence, which technical assistance and training may be offered to jurisdictions in the process of developing community responses to families in which children are exposed to child maltreatment and domestic violence or dating violence, whether or not they are receiving funds under this section.

(d) Underserved populations

In awarding grants under this section, the Secretary shall consider the needs of underserved populations.

(e) Grant awards

The Secretary shall award grants under this section for periods of not more than 2 fiscal years.

(f) Uses of funds

Entities receiving grants under this section shall use amounts provided to develop collaborative responses and services and provide cross-training to enhance community responses to families where there is both child maltreatment and domestic violence or dating violence. Amounts distributed under this section may only be used for programs and activities described in subsection (g) of this section.

(g) Programs and activities

The programs and activities developed under this section shall—

(1) encourage cross training, education, service development, and collaboration among child welfare agencies, domestic violence victim service providers, and courts, law enforcement agencies, community-based programs, and other entities, in order to ensure that such entities have the capacity to and will identify, assess, and respond appropriately to—

(A) domestic violence or dating violence in homes where children are present and may be exposed to the violence;

(B) domestic violence or dating violence in child protection cases; and

(C) the needs of both the child and non-abusing parent;

(2) establish and implement policies, procedures, programs, and practices for child welfare agencies, domestic violence victim service providers, courts, law enforcement agencies, and other entities, that are consistent with the principles of protecting and increasing the immediate and long-term safety and well being of children and non-abusing parents and caretakers;

(3) increase cooperation and enhance linkages between child welfare agencies, domestic violence victim service providers, courts, law enforcement agencies, and other entities to provide more comprehensive community-based services (including health, mental health, social service, housing, and neighborhood resources) to protect and to serve both child and adult victims;

(4) identify, assess, and respond appropriately to domestic violence or dating violence in child protection cases and to child maltreatment when it co-occurs with domestic violence or dating violence;

(5) analyze and change policies, procedures, and protocols that contribute to overrepresentation of certain populations in the court and child welfare system; and

(6) provide appropriate referrals to community-based programs and resources, such as health and mental health services, shelter and housing assistance for adult and youth victims and their children, legal assistance and advocacy for adult and youth victims, assistance for parents to help their children cope with the impact of exposure to domestic violence or dating violence and child maltreatment, appropriate intervention and treatment for adult perpetrators of domestic violence or dating violence whose children are the subjects of child protection cases, programs providing support and assistance to underserved populations, and other necessary supportive services.

(h) Grantee requirements

(1) Applications

Under this section, an entity shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, consistent with the requirements described herein. The application shall—

(A) ensure that communities impacted by these systems or organizations are adequately represented in the development of the application, the programs and activities to be undertaken, and that they have a significant role in evaluating the success of the project;

(B) describe how the training and collaboration activities will enhance or ensure the safety and economic security of families where both child maltreatment and domestic violence or dating violence occurs by providing appropriate resources, protection, and support to the victimized parents of such children and to the children themselves; and

(C) outline methods and means participating entities will use to ensure that all services are provided in a developmentally, linguistically and culturally competent manner and will utilize community-based supports and resources.

(2) Eligible entities

To be eligible for a grant under this section, an entity shall be a collaboration that—

(A) shall include a State or local child welfare agency or Indian Tribe;

(B) shall include a domestic violence or dating violence victim service provider;

(C) shall include a law enforcement agency or Bureau of Indian Affairs providing tribal law enforcement;

(D) may include a court; and

(E) may include any other such agencies or private nonprofit organizations and faith-based organizations, including community-based organizations, with the capacity to provide effective help to the child and adult victims served by the collaboration.

(Pub. L. 103–322, title IV, § 41203, as added Pub. L. 109–162, title III, § 303, Jan. 5, 2006, 119 Stat. 3008.)

§ 14043c–3. Grants to combat domestic violence, dating violence, sexual assault, and stalking in middle and high schools

(a) Short title

This section may be cited as the ''Supporting Teens through Education and Protection Act of 2005'' or the ''STEP Act''.

(b) Grants authorized

The Attorney General, through the Director of the Office on Violence Against Women, is authorized to award grants to middle schools and high schools that work with domestic violence

and sexual assault experts to enable the schools—

(1) to provide training to school administrators, faculty, counselors, coaches, healthcare providers, security personnel, and other staff on the needs and concerns of students who experience domestic violence, dating violence, sexual assault, or stalking, and the impact of such violence on students;

(2) to develop and implement policies in middle and high schools regarding appropriate, safe responses to, and identification and referral procedures for, students who are experiencing or perpetrating domestic violence, dating violence, sexual assault, or stalking, including procedures for handling the requirements of court protective orders issued to or against students or school personnel, in a manner that ensures the safety of the victim and holds the perpetrator accountable;

(3) to provide support services for students and school personnel, such as a resource person who is either on-site or on-call, and who is an expert described in subsections (i)(2) and (i)(3) of this section, for the purpose of developing and strengthening effective prevention and intervention strategies for students and school personnel experiencing domestic violence, dating violence, sexual assault or stalking;

(4) to provide developmentally appropriate educational programming to students regarding domestic violence, dating violence, sexual assault, and stalking, and the impact of experiencing domestic violence, dating violence, sexual assault, and stalking on children and youth by adapting existing curricula activities to the relevant student population;

(5) to work with existing mentoring programs and develop strong mentoring programs for students, including student athletes, to help them understand and recognize violence and violent behavior, how to prevent it and how to appropriately address their feelings; and

(6) to conduct evaluations to assess the impact of programs and policies assisted under this section in order to enhance the development of the programs.

(c) Award basis

The Director shall award grants and contracts under this section on a competitive basis.

(d) Policy dissemination

The Director shall disseminate to middle and high schools any existing Department of Justice, Department of Health and Human Services, and Department of Education policy guidance and curricula regarding the prevention of domestic violence, dating violence, sexual assault, and stalking, and the impact of the violence on children and youth.

(e) Nondisclosure of confidential or private information

In order to ensure the safety of adult, youth, and minor victims of domestic violence, dating violence, sexual assault, or stalking and their families, grantees and subgrantees shall protect the confidentiality and privacy of persons receiving services. Grantees and subgrantees pursuant to this section shall not disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs. Grantees and subgrantees shall not reveal individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of unemancipated minor, the minor and the parent or guardian, except that consent for release may not be given by the abuser of the minor or of the other parent of the minor) about whom information is sought, whether for this program or any other Tribal, Federal, State or Territorial grant program. If release of such information is compelled by statutory or court mandate, grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information. If such personally identifying information is or will be revealed, grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information. Grantees may share non-personally identifying data in the aggregate regarding services to their clients and non-personally identifying demographic information in order to comply with Tribal, Federal, State or Territorial reporting, evaluation, or data collection requirements. Grantees and subgrantees may share court-generated information contained in secure, governmental registries for protection order enforcement purposes.

(f) Grant term and allocation

(1) Term

The Director shall make the grants under this section for a period of 3 fiscal years.

(2) Allocation

Not more than 15 percent of the funds available to a grantee in a given year shall be used for the purposes described in subsection (b)(4), (b)(5), and (b)(6) of this section.

(g) Distribution

(1) In general

Not less than 5 percent of funds appropriated under subsection (*l*) of this section in any year shall be available for grants to tribal schools, schools on tribal lands or schools whose student population is more than 25 percent Native American.

(2) Administration

The Director shall not use more than 5 percent of funds appropriated under subsection (*l*) of this section in any year for administration, monitoring and evaluation of grants made available under this section.

(3) Training, technical assistance, and data collection

Not less than 5 percent of funds appropriated under subsection (*l*) of this section in any year shall be available to provide training, technical assistance, and data collection for programs funded under this section.

(h) Application

To be eligible to be awarded a grant or contract under this section for any fiscal year, a

middle or secondary school, in consultation with an expert as described in subsections (i)(2) and (i)(3) of this section, shall submit an application to the Director at such time and in such manner as the Director shall prescribe.

(i) Eligible entities

To be eligible to receive a grant under this section, an entity shall be a partnership that—

(1) shall include a public, charter, tribal, or nationally accredited private middle or high school, a school administered by the Department of Defense under 10 U.S.C. 2164 or 20 U.S.C. 921, a group of schools, or a school district;

(2) shall include a domestic violence victim service provider that has a history of working on domestic violence and the impact that domestic violence and dating violence have on children and youth;

(3) shall include a sexual assault victim service provider, such as a rape crisis center, program serving tribal victims of sexual assault, or coalition or other nonprofit nongovernmental organization carrying out a community-based sexual assault program, that has a history of effective work concerning sexual assault and the impact that sexual assault has on children and youth; and

(4) may include a law enforcement agency, the State, Tribal, Territorial or local court, nonprofit nongovernmental organizations and service providers addressing sexual harassment, bullying or gang-related violence in schools, and any other such agencies or nonprofit nongovernmental organizations with the capacity to provide effective assistance to the adult, youth, and minor victims served by the partnership.

(j) Priority

In awarding grants under this section, the Director shall give priority to entities that have submitted applications in partnership with relevant courts or law enforcement agencies.

(k) Reporting and dissemination of information

(1) Reporting

Each of the entities that are members of the applicant partnership described in subsection (i) of this section, that receive a grant under this section shall jointly prepare and submit to the Director every 18 months a report detailing the activities that the entities have undertaken under the grant and such additional information as the Director shall require.

(2) Dissemination of information

Within 9 months of the completion of the first full grant cycle, the Director shall publicly disseminate, including through electronic means, model policies and procedures developed and implemented in middle and high schools by the grantees, including information on the impact the policies have had on their respective schools and communities.

(*l*) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section, $5,000,000 for each of fiscal years 2007 through 2011.

(2) Availability

Funds appropriated under paragraph (1) shall remain available until expended.

(Pub. L. 103–322, title IV, § 41204, as added Pub. L. 109–162, title III, § 303, Jan. 5, 2006, 119 Stat. 3010; amended Pub. L. 109–271, § 4(a), Aug. 12, 2006, 120 Stat. 758.)

AMENDMENTS

2006—Subsec. (f)(2). Pub. L. 109–271 substituted ''(b)(4)'' for ''(b)(4)(D)''.

PART L—STRENGTHENING AMERICA'S FAMILIES BY PREVENTING VIOLENCE AGAINST WOMEN AND CHILDREN

CODIFICATION

This part was, in the original, subtitle M of title IV of Pub. L. 103–322, as added by Pub. L. 109–162, and has been redesignated as part L of this subchapter for purposes of codification.

§ 14043d. Findings

Congress finds that—

(1) the former United States Advisory Board on Child Abuse suggests that domestic violence may be the single major precursor to child abuse and neglect fatalities in this country;

(2) studies suggest that as many as 10,000,000 children witness domestic violence every year;

(3) studies suggest that among children and teenagers, recent exposure to violence in the home was a significant factor in predicting a child's violent behavior;

(4) a study by the Nurse-Family Partnership found that children whose parents did not participate in home visitation programs that provided coaching in parenting skills, advice and support, were almost 5 times more likely to be abused in their first 2 years of life;

(5) a child's exposure to domestic violence seems to pose the greatest independent risk for being the victim of any act of partner violence as an adult;

(6) children exposed to domestic violence are more likely to believe that using violence is an effective means of getting one's needs met and managing conflict in close relationships;

(7) children exposed to abusive parenting, harsh or erratic discipline, or domestic violence are at increased risk for juvenile crime; and

(8) in a national survey of more than 6,000 American families, 50 percent of men who frequently assaulted their wives also frequently abused their children.

(Pub. L. 103–322, title IV, § 41301, as added Pub. L. 109–162, title IV, § 401, Jan. 5, 2006, 119 Stat. 3017.)

§ 14043d–1. Purpose

The purpose of this part is to—

(1) prevent crimes involving violence against women, children, and youth;

(2) increase the resources and services available to prevent violence against women, children, and youth;

(3) reduce the impact of exposure to violence in the lives of children and youth so that the intergenerational cycle of violence is interrupted;

(4) develop and implement education and services programs to prevent children in vulnerable families from becoming victims or perpetrators of domestic violence, dating violence, sexual assault, or stalking;

(5) promote programs to ensure that children and youth receive the assistance they need to end the cycle of violence and develop mutually respectful, nonviolent relationships; and

(6) encourage collaboration among community-based organizations and governmental agencies serving children and youth, providers of health and mental health services and providers of domestic violence, dating violence, sexual assault, and stalking victim services to prevent violence against women and children.

(Pub. L. 103–322, title IV, § 41302, as added Pub. L. 109–162, title IV, § 401, Jan. 5, 2006, 119 Stat. 3018.)

§ 14043d–2. Grants to assist children and youth exposed to violence

(a) Grants authorized

(1) In general

The Attorney General, acting through the Director of the Office on Violence Against Women, and in collaboration with the Department of Health and Human Services, is authorized to award grants on a competitive basis to eligible entities for the purpose of mitigating the effects of domestic violence, dating violence, sexual assault, and stalking on children exposed to such violence, and reducing the risk of future victimization or perpetration of domestic violence, dating violence, sexual assault, and stalking.

(2) Term

The Director shall make grants under this section for a period of 2 fiscal years.

(3) Award basis

The Director shall award grants—

(A) considering the needs of underserved populations;

(B) awarding not less than 10 percent of such amounts to Indian tribes for the funding of tribal projects from the amounts made available under this section for a fiscal year;

(C) awarding up to 8 percent for the funding of technical assistance programs from the amounts made available under this section for a fiscal year; and

(D) awarding not less than 66 percent to programs described in subsection (c)(1) of this section from the amounts made available under this section for a fiscal year.

(b) Authorization of appropriations

There is authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2007 through 2011.

(c) Use of funds

The funds appropriated under this section shall be used for—

(1) programs that provide services for children exposed to domestic violence, dating violence, sexual assault, or stalking, which may include direct counseling, advocacy, or mentoring, and must include support for the nonabusing parent or the child's caretaker; or

(2) training, coordination, and advocacy for programs that serve children and youth (such as Head Start, child care, and after-school programs) on how to safely and confidentially identify children and families experiencing domestic violence and properly refer them to programs that can provide direct services to the family and children, and coordination with other domestic violence or other programs serving children exposed to domestic violence, dating violence, sexual assault, or stalking that can provide the training and direct services referenced in this subsection.

(d) Eligible entities

To be eligible to receive a grant under this section, an entity shall be a—[1]

(1) a victim service provider, tribal nonprofit organization or community-based organization that has a documented history of effective work concerning children or youth exposed to domestic violence, dating violence, sexual assault, or stalking, including programs that provide culturally specific services, Head Start, childcare, faith-based organizations, after school programs, and health and mental health providers; or

(2) a State, territorial, or tribal, or local unit of government agency that is partnered with an organization described in paragraph (1).

(e) Grantee requirements

Under this section, an entity shall—

(1) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

(2) at a minimum, describe in the application the policies and procedures that the entity has or will adopt to—

(A) enhance or ensure the safety and security of children who have been or are being exposed to violence and their nonabusing parent, enhance or ensure the safety and security of children and their nonabusing parent in homes already experiencing domestic violence, dating violence, sexual assault, or stalking; and

(B) ensure linguistically, culturally, and community relevant services for underserved communities.

(Pub. L. 103–322, title IV, § 41303, as added Pub. L. 109–162, title IV, § 401, Jan. 5, 2006, 119 Stat. 3018.)

§ 14043d–3. Development of curricula and pilot programs for home visitation projects

(a) Grants authorized

(1) In general

The Attorney General, acting through the Director of the Office on Violence Against Women, and in collaboration with the Department of Health and Human Services, shall award grants on a competitive basis to home visitation programs, in collaboration with victim service providers, for the purposes of de-

[1] So in original. The article probably should not appear.

veloping and implementing model policies and procedures to train home visitation service providers on addressing domestic violence, dating violence, sexual assault, and stalking in families experiencing violence, or at risk of violence, to reduce the impact of that violence on children, maintain safety, improve parenting skills, and break intergenerational cycles of violence.

(2) Term

The Director shall make the grants under this section for a period of 2 fiscal years.

(3) Award basis

The Director shall—

(A) consider the needs of underserved populations;

(B) award not less than 7 percent of such amounts for the funding of tribal projects from the amounts made available under this section for a fiscal year; and

(C) award up to 8 percent for the funding of technical assistance programs from the amounts made available under this section for a fiscal year.

(b) Authorization of appropriations

There is authorized to be appropriated to carry out this section $7,000,000 for each of fiscal years 2007 through 2011.

(c) Eligible entities

To be eligible to receive a grant under this section, an entity shall be a national, Federal, State, local, territorial, or tribal—

(1) home visitation program that provides services to pregnant women and to young children and their parent or primary caregiver that are provided in the permanent or temporary residence or in other familiar surroundings of the individual or family receiving such services; or

(2) victim services organization or agency in collaboration with an organization or organizations listed in paragraph (1).

(d) Grantee requirements

Under this section, an entity shall—

(1) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

(2) describe in the application the policies and procedures that the entity has or will adopt to—

(A) enhance or ensure the safety and security of children and their nonabusing parent in homes already experiencing domestic violence, dating violence, sexual assault, or stalking;

(B) ensure linguistically, culturally, and community relevant services for underserved communities;

(C) ensure the adequate training by domestic violence, dating violence, sexual assault or stalking victim service providers of home visitation grantee program staff to—

(i) safely screen for and/or recognize domestic violence, dating violence, sexual assault, and stalking;

(ii) understand the impact of domestic violence or sexual assault on children and protective actions taken by a nonabusing parent or caretaker in response to violence against anyone in the household; and

(iii) link new parents with existing community resources in communities where resources exist; and

(D) ensure that relevant State and local domestic violence, dating violence, sexual assault, and stalking victim service providers and coalitions are aware of the efforts of organizations receiving grants under this section, and are included as training partners, where possible.

(Pub. L. 103–322, title IV, § 41304, as added Pub. L. 109–162, title IV, § 401, Jan. 5, 2006, 119 Stat. 3020.)

§ 14043d–4. Engaging men and youth in preventing domestic violence, dating violence, sexual assault, and stalking

(a) Grants authorized

(1) In general

The Attorney General, acting through the Director of the Office on Violence Against Women, and in collaboration with the Department of Health and Human Services, shall award grants on a competitive basis to eligible entities for the purpose of developing or enhancing programs related to engaging men and youth in preventing domestic violence, dating violence, sexual assault, and stalking by helping them to develop mutually respectful, nonviolent relationships.

(2) Term

The Director shall make grants under this section for a period of 2 fiscal years.

(3) Award basis

The Director shall award grants—

(A) considering the needs of underserved populations;

(B) awarding not less than 10 percent of such amounts for the funding of Indian tribes from the amounts made available under this section for a fiscal year; and

(C) awarding up to 8 percent for the funding of technical assistance for grantees and non-grantees working in this area from the amounts made available under this section for a fiscal year.

(b) Authorization of appropriations

There is authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 2007 through 2011.

(c) Use of funds

(1) Programs

The funds appropriated under this section shall be used by eligible entities—

(A) to develop or enhance community-based programs, including gender-specific programs in accordance with applicable laws that—

(i) encourage children and youth to pursue nonviolent relationships and reduce their risk of becoming victims or perpetrators of domestic violence, dating violence, sexual assault, or stalking; and

(ii) that[1] include at a minimum—

[1] So in original. The word ''that'' probably should not appear.

(I) information on domestic violence, dating violence, sexual assault, stalking, or child sexual abuse and how they affect children and youth; and

(II) strategies to help participants be as safe as possible; or

(B) to create public education campaigns and community organizing to encourage men and boys to work as allies with women and girls to prevent violence against women and girls conducted by entities that have experience in conducting public education campaigns that address domestic violence, dating violence, sexual assault, or stalking.

(2) Media limits

No more than 40 percent of funds received by a grantee under this section may be used to create and distribute media materials.

(d) Eligible entities

(1) Relationships

Eligible entities under subsection (c)(1)(A) of this section are—

(A) nonprofit, nongovernmental domestic violence, dating violence, sexual assault, or stalking victim service providers or coalitions;

(B) community-based child or youth services organizations with demonstrated experience and expertise in addressing the needs and concerns of young people;

(C) a State, territorial, tribal, or unit of local governmental entity that is partnered with an organization described in subparagraph (A) or (B); or

(D) a program that provides culturally specific services.

(2) Awareness campaign

Eligible entities under subsection (c)(1)(B) of this section are—

(A) nonprofit, nongovernmental organizations or coalitions that have a documented history of creating and administering effective public education campaigns addressing the prevention of domestic violence, dating violence, sexual assault or stalking; or

(B) a State, territorial, tribal, or unit of local governmental entity that is partnered with an organization described in subparagraph (A).

(e) Grantee requirements

Under this section, an entity shall—

(1) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

(2) eligible entities pursuant to subsection (c)(1)(A) of this section shall describe in the application the policies and procedures that the entity has or will adopt to—

(A) enhance or ensure the safety and security of children and youth already experiencing domestic violence, dating violence, sexual assault, or stalking in their lives;

(B) ensure linguistically, culturally, and community relevant services for underserved communities;

(C) inform participants about laws, services, and resources in the community, and make referrals as appropriate; and

(D) ensure that State and local domestic violence, dating violence, sexual assault, and stalking victim service providers and coalitions are aware of the efforts of organizations receiving grants under this section.

(Pub. L. 103–322, title IV, § 41305, as added Pub. L. 109–162, title IV, § 401, Jan. 5, 2006, 119 Stat. 3021.)

PART M—ADDRESSING THE HOUSING NEEDS OF VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

CODIFICATION

This part was, in the original, subtitle N of title IV of Pub. L. 103–322, as added by Pub. L. 109–162, and has been redesignated as part M of this subchapter for purposes of codification.

§ 14043e. Findings

Congress finds that:

(1) There is a strong link between domestic violence and homelessness. Among cities surveyed, 44 percent identified domestic violence as a primary cause of homelessness.

(2) Ninety-two percent of homeless women have experienced severe physical or sexual abuse at some point in their lives. Of all homeless women and children, 60 percent had been abused by age 12, and 63 percent have been victims of intimate partner violence as adults.

(3) Women and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.

(4) A recent survey of legal service providers around the country found that these providers have responded to almost 150 documented eviction cases in the last year alone where the tenant was evicted because of the domestic violence crimes committed against her. In addition, nearly 100 clients were denied housing because of their status as victims of domestic violence.

(5) Women who leave their abusers frequently lack adequate emergency shelter options. The lack of adequate emergency options for victims presents a serious threat to their safety and the safety of their children. Requests for emergency shelter by homeless women with children increased by 78 percent of United States cities surveyed in 2004. In the same year, 32 percent of the requests for shelter by homeless families went unmet due to the lack of available emergency shelter beds.

(6) The average stay at an emergency shelter is 60 days, while the average length of time it takes a homeless family to secure housing is 6 to 10 months.

(7) Victims of domestic violence often return to abusive partners because they cannot find long-term housing.

(8) There are not enough Federal housing rent vouchers available to accommodate the number of people in need of long-term housing. Some people remain on the waiting list for Federal housing rent vouchers for years, while some lists are closed.

(9) Transitional housing resources and services provide an essential continuum between emergency shelter provision and independent

living. A majority of women in transitional housing programs stated that had these programs not existed, they would have likely gone back to abusive partners.

(10) Because abusers frequently manipulate finances in an effort to control their partners, victims often lack steady income, credit history, landlord references, and a current address, all of which are necessary to obtain long-term permanent housing.

(11) Victims of domestic violence in rural areas face additional barriers, challenges, and unique circumstances, such as geographical isolation, poverty, lack of public transportation systems, shortages of health care providers, under-insurance or lack of health insurance, difficulty ensuring confidentiality in small communities, and decreased access to many resources (such as advanced education, job opportunities, and adequate childcare).

(12) Congress and the Secretary of Housing and Urban Development have recognized in recent years that families experiencing domestic violence have unique needs that should be addressed by those administering the Federal housing programs.

(Pub. L. 103–322, title IV, § 41401, as added Pub. L. 109–162, title VI, § 601, Jan. 5, 2006, 119 Stat. 3030.)

§ 14043e–1. Purpose

The purpose of this part is to reduce domestic violence, dating violence, sexual assault, and stalking, and to prevent homelessness by—

(1) protecting the safety of victims of domestic violence, dating violence, sexual assault, and stalking who reside in homeless shelters, public housing, assisted housing, tribally designated housing, or other emergency, transitional, permanent, or affordable housing, and ensuring that such victims have meaningful access to the criminal justice system without jeopardizing such housing;

(2) creating long-term housing solutions that develop communities and provide sustainable living solutions for victims of domestic violence, dating violence, sexual assault, and stalking;

(3) building collaborations among victim service providers, homeless service providers, housing providers, and housing agencies to provide appropriate services, interventions, and training to address the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking; and

(4) enabling public and assisted housing agencies, tribally designated housing entities, private landlords, property management companies, and other housing providers and agencies to respond appropriately to domestic violence, dating violence, sexual assault, and stalking, while maintaining a safe environment for all housing residents.

(Pub. L. 103–322, title IV, § 41402, as added Pub. L. 109–162, title VI, § 601, Jan. 5, 2006, 119 Stat. 3031.)

§ 14043e–2. Definitions

For purposes of this part—

(1) the term ''assisted housing'' means housing assisted—

(A) under sections[1] 1715e, 1715k, 1715*l*(d)(3), 1715*l*(d)(4), 1715n(e), 1715v, or 1715z–1 of title 12;

(B) under section 1701s of title 12;

(C) under section 1701q of title 12;

(D) under section 811 of the Cranston-Gonzales[2] National Affordable Housing Act (42 U.S.C. 8013);

(E) under title II of the Cranston-Gonzales[2] National Affordable Housing Act [42 U.S.C. 12721 et seq.];

(F) under subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12901 et seq.);

(G) under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); or

(H) under section 1437f of this title;

(2) the term ''continuum of care'' means a community plan developed to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and achieve maximum self-sufficiency;

(3) the term ''low-income housing assistance voucher'' means housing assistance described in section 1437f of this title;

(4) the term ''public housing'' means housing described in section 1437a(b)(1) of this title;

(5) the term ''public housing agency'' means an agency described in section 1437a(b)(6) of this title;

(6) the terms ''homeless'', ''homeless individual'', and ''homeless person''—

(A) mean an individual who lacks a fixed, regular, and adequate nighttime residence; and

(B) includes—

(i) an individual who—

(I) is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

(II) is living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;

(III) is living in an emergency or transitional shelter;

(IV) is abandoned in a hospital; or

(V) is awaiting foster care placement;

(ii) an individual who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; or

(iii) migratory children (as defined in section 6399 of title 20) who qualify as homeless under this section because the children are living in circumstances described in this paragraph;

(7) the term ''homeless service provider'' means a nonprofit, nongovernmental homeless service provider, such as a homeless shelter, a homeless service or advocacy program, a tribal organization serving homeless individuals, or coalition or other nonprofit, nongovernmental organization carrying out a community-based homeless or housing program that

[1] So in original. Probably should be ''section''.

[2] So in original. Probably should be ''Cranston-Gonzalez''.

has a documented history of effective work concerning homelessness;

(8) the term ''tribally designated housing'' means housing assistance described in the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); and

(9) the term ''tribally designated housing entity'' means a housing entity described in the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(21));[3]

(Pub. L. 103–322, title IV, § 41403, as added Pub. L. 109–162, title VI, § 601, Jan. 5, 2006, 119 Stat. 3031.)

REFERENCES IN TEXT

The Cranston-Gonzalez National Affordable Housing Act, referred to in par. (1)(E), (F), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, as amended. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of this title. Subtitle D of title VIII of the Act, known as the AIDS Housing Opportunity Act, is classified generally to chapter 131 (§ 12901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Housing and Community Development Act of 1974, referred to in par. (1)(G), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Act is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in pars. (8) and (9), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

§ 14043e–3. Collaborative grants to increase the long-term stability of victims

(a) Grants authorized

(1) In general

The Secretary of Health and Human Services, acting through the Administration for Children and Families, in partnership with the Secretary of Housing and Urban Development, shall award grants, contracts, or cooperative agreements for a period of not less than 2 years to eligible entities to develop long-term sustainability and self-sufficiency options for adult and youth victims of domestic violence, dating violence, sexual assault, and stalking who are currently homeless or at risk for becoming homeless.

(2) Amount

The Secretary of Health and Human Services shall award funds in amounts—

(A) not less than $25,000 per year; and

(B) not more than $1,000,000 per year.

(b) Eligible entities

To be eligible to receive funds under this section, an entity shall demonstrate that it is a coalition or partnership, applying jointly, that—

(1) shall include a domestic violence victim service provider;

(2) shall include—

(A) a homeless service provider;

(B) a nonprofit, nongovernmental community housing development organization or a Department of Agriculture rural housing service program; or

(C) in the absence of a homeless service provider on tribal lands or nonprofit, nongovernmental community housing development organization on tribal lands, a tribally designated housing entity or tribal housing consortium;

(3) may include a dating violence, sexual assault, or stalking victim service provider;

(4) may include housing developers, housing corporations, State housing finance agencies, other housing agencies, and associations representing landlords;

(5) may include a public housing agency or tribally designated housing entity;

(6) may include tenant organizations in public or tribally designated housing, as well as nonprofit, nongovernmental tenant organizations;

(7) may include other nonprofit, nongovernmental organizations participating in the Department of Housing and Urban Development's Continuum of Care process;

(8) may include a State, tribal, territorial, or local government or government agency; and

(9) may include any other agencies or nonprofit, nongovernmental organizations with the capacity to provide effective help to adult and youth victims of domestic violence, dating violence, sexual assault, or stalking.

(c) Application

Each eligible entity seeking funds under this section shall submit an application to the Secretary of Health and Human Services at such time, in such manner, and containing such information as the Secretary of Health and Human Services may require.

(d) Use of funds

Funds awarded to eligible entities under subsection (a) of this section shall be used to design or replicate and implement new activities, services, and programs to increase the stability and self-sufficiency of, and create partnerships to develop long-term housing options for adult and youth victims of domestic violence, dating violence, sexual assault, or stalking, and their dependents, who are currently homeless or at risk of becoming homeless. Such activities, services, or programs—

(1) shall develop sustainable long-term living solutions in the community by—

(A) coordinating efforts and resources among the various groups and organizations comprised in the entity to access existing private and public funding;

(B) assisting with the placement of individuals and families in long-term housing; and

(C) providing services to help individuals or families find and maintain long-term housing, including financial assistance and support services;

(2) may develop partnerships with individuals, organizations, corporations, or other en-

[3] So in original. The semicolon probably should be a period.

tities that provide capital costs for the purchase, preconstruction, construction, renovation, repair, or conversion of affordable housing units;

(3) may use funds for the administrative expenses related to the continuing operation, upkeep, maintenance, and use of housing described in paragraph (2); and

(4) may provide to the community information about housing and housing programs, and the process to locate and obtain long-term housing.

(e) Limitation

Funds provided under paragraph[1] (a) shall not be used for construction, modernization or renovation.

(f) Underserved populations and priorities

In awarding grants under this section, the Secretary of Health and Human Services shall—

(1) give priority to linguistically and culturally specific services;

(2) give priority to applications from entities that include a sexual assault service provider as described in subsection (b)(3) of this section; and

(3) award a minimum of 15 percent of the funds appropriated under this section in any fiscal year to tribal organizations.

(g) Definitions

For purposes of this section:

(1) Affordable housing

The term ''affordable housing'' means housing that complies with the conditions set forth in section 12745 of this title.

(2) Long-term housing

The term ''long-term housing'' means housing that is sustainable, accessible, affordable, and safe for the foreseeable future and is—

(A) rented or owned by the individual;

(B) subsidized by a voucher or other program which is not time-limited and is available for as long as the individual meets the eligibility requirements for the voucher or program; or

(C) provided directly by a program, agency, or organization and is not time-limited and is available for as long as the individual meets the eligibility requirements for the program, agency, or organization.

(h) Evaluation, monitoring, administration, and technical assistance

For purposes of this section—

(1) up to 5 percent of the funds appropriated under subsection (i) of this section for each fiscal year may be used by the Secretary of Health and Human Services for evaluation, monitoring, and administration costs under this section; and

(2) up to 8 percent of the funds appropriated under subsection (i) of this section for each fiscal year may be used to provide technical assistance to grantees under this section.

(i) Authorization of appropriations

There are authorized to be appropriated $10,000,000 for each of fiscal years 2007 through 2011 to carry out the provisions of this section.

[1] So in original. Probably should be ''subsection''.

(Pub. L. 103–322, title IV, § 41404, as added Pub. L. 109–162, title VI, § 601, Jan. 5, 2006, 119 Stat. 3033; amended Pub. L. 109–271, § 5(a), Aug. 12, 2006, 120 Stat. 759.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–271, § 5(a)(1), substituted ''for Children'' for ''of Children''.

Subsec. (d). Pub. L. 109–271, § 5(a)(2), struck out ''(1) IN GENERAL.—'' before ''Funds awarded to'', inserted ''Such activities, services, or programs—'' after ''becoming homeless.'', substituted ''(1)'' for ''(2) ACTIVITIES, SERVICES, PROGRAMS.—Such activities, services, or programs described in paragraph (1)'', redesignated pars. (3) to (5) as (2) to (4), respectively, and substituted ''paragraph (2)'' for ''paragraph (3)'' in par. (3), as so redesignated.

§ 14043e–4. Grants to combat violence against women in public and assisted housing

(a) Purpose

It is the purpose of this section to assist eligible grantees in responding appropriately to domestic violence, dating violence, sexual assault, and stalking so that the status of being a victim of such a crime is not a reason for the denial or loss of housing. Such assistance shall be accomplished through—

(1) education and training of eligible entities;

(2) development and implementation of appropriate housing policies and practices;

(3) enhancement of collaboration with victim service providers and tenant organizations; and

(4) reduction of the number of victims of such crimes who are evicted or denied housing because of crimes and lease violations committed or directly caused by the perpetrators of such crimes.

(b) Grants authorized

(1) In general

The Attorney General, acting through the Director of the Violence Against Women Office of the Department of Justice (''Director''), and in consultation with the Secretary of Housing and Urban Development (''Secretary''), and the Secretary of Health and Human Services, acting through the Administration for Children, Youth and Families (''ACYF''), shall award grants and contracts for not less than 2 years to eligible grantees to promote the full and equal access to and use of housing by adult and youth victims of domestic violence, dating violence, sexual assault, and stalking.

(2) Amounts

Not less than 15 percent of the funds appropriated to carry out this section shall be available for grants to tribally designated housing entities.

(3) Award basis

The Attorney General shall award grants and contracts under this section on a competitive basis.

(4) Limitation

Appropriated funds may only be used for the purposes described in subsection (f) of this section.

(c) Eligible grantees

(1) In general

Eligible grantees are—

(A) public housing agencies;

(B) principally managed public housing resident management corporations, as determined by the Secretary;

(C) public housing projects owned by public housing agencies;

(D) tribally designated housing entities; and

(E) private, for-profit, and nonprofit owners or managers of assisted housing.

(2) Submission required for all grantees

To receive assistance under this section, an eligible grantee shall certify that—

(A) its policies and practices do not prohibit or limit a resident's right to summon police or other emergency assistance in response to domestic violence, dating violence, sexual assault, or stalking;

(B) programs and services are developed that give a preference in admission to adult and youth victims of such violence, consistent with local housing needs, and applicable law and the Secretary's instructions;

(C) it does not discriminate against any person—

(i) because that person is or is perceived to be, or has a family or household member who is or is perceived to be, a victim of such violence; or

(ii) because of the actions or threatened actions of the individual who the victim, as certified in subsection (e) of this section, states has committed or threatened to commit acts of such violence against the victim, or against the victim's family or household member;

(D) plans are developed that establish meaningful consultation and coordination with local victim service providers, tenant organizations, linguistically and culturally specific service providers, State domestic violence and sexual assault coalitions, and, where they exist, tribal domestic violence and sexual assault coalitions; and

(E) its policies and practices will be in compliance with those described in this paragraph within the later of 1 year or a period selected by the Attorney General in consultation with the Secretary and ACYF.

(d) Application

Each eligible entity seeking a grant under this section shall submit an application to the Attorney General at such a time, in such a manner, and containing such information as the Attorney General may require.

(e) Certification

(1) In general

A public housing agency, tribally designated housing entity, or assisted housing provider receiving funds under this section may request that an individual claiming relief under this section certify that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking. The individual shall provide a copy of such certification to the public housing agency, tribally designated housing entity, or assisted housing provider within a reasonable period of time after the agency or authority requests such certification.

(2) Contents

An individual may satisfy the certification requirement of paragraph (1) by—

(A) providing the public housing agency, tribally designated housing entity, or assisted housing provider with documentation, signed by an employee, agent, or volunteer of a victim service provider, an attorney, a member of the clergy, a medical professional, or any other professional from whom the victim has sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse; or

(B) producing a Federal, State, tribal, territorial, or local police or court record.

(3) Limitation

Nothing in this subsection shall be construed to require any housing agency, assisted housing provider, tribally designated housing entity, owner, or manager to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, sexual assault, or stalking, in order to receive any of the benefits provided in this section. A housing agency, assisted housing provider, tribally designated housing entity, owner, or manager may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.

(4) Confidentiality

(A) In general

All information provided to any housing agency, assisted housing provider, tribally designated housing entity, owner, or manager pursuant to paragraph (1), including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, shall be retained in confidence by such agency, and shall neither be entered into any shared database, nor provided to any related housing agency, assisted housing provider, tribally designated housing entity, owner, or manager, except to the extent that disclosure is—

(i) requested or consented to by the individual in writing; or

(ii) otherwise required by applicable law.

(B) Notification

Public housing agencies must provide notice to tenants of their rights under this section, including their right to confidentiality and the limits thereof, and to owners and managers of their rights and obligations under this section.

(f) Use of funds

Grants and contracts awarded pursuant to subsection (a) of this section shall provide to eligible entities personnel, training, and technical assistance to develop and implement policies, practices, and procedures, making physical improvements or changes, and developing or enhancing collaborations for the purposes of—

(1) enabling victims of domestic violence, dating violence, sexual assault, and stalking with otherwise disqualifying rental, credit, or criminal histories to be eligible to obtain housing or housing assistance, if such victims would otherwise qualify for housing or housing assistance and can provide documented evidence that demonstrates the causal connection between such violence or abuse and the victims' negative histories;

(2) permitting applicants for housing or housing assistance to provide incomplete rental and employment histories, otherwise required as a condition of admission or assistance, if the victim believes that providing such rental and employment history would endanger the victim's or the victim children's safety;

(3) protecting victims' confidentiality, including protection of victims' personally identifying information, address, or rental history;

(4) assisting victims who need to leave a public housing, tribally designated housing, or assisted housing unit quickly to protect their safety, including those who are seeking transfer to a new public housing unit, tribally designated housing unit, or assisted housing unit, whether in the same or a different neighborhood or jurisdiction;

(5) enabling the public housing agency, tribally designated housing entity, or assisted housing provider, or the victim, to remove, consistent with applicable State law, the perpetrator of domestic violence, dating violence, sexual assault, or stalking without evicting, removing, or otherwise penalizing the victim;

(6) enabling the public housing agency, tribally designated housing entity, or assisted housing provider, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up;

(7) developing and implementing more effective security policies, protocols, and services;

(8) allotting not more than 15 percent of funds awarded under the grant to make modest physical improvements to enhance safety;

(9) training personnel to more effectively identify and respond to victims of domestic violence, dating violence, sexual assault, and stalking; and

(10) effectively providing notice to applicants and residents of the above housing policies, practices, and procedures.

(g) Authorization of appropriations

There are authorized to be appropriated $10,000,000 for each of fiscal years 2007 through 2011 to carry out the provisions of this section.

(h) Technical assistance

Up to 12 percent of the amount appropriated under subsection (g) of this section for each fiscal year shall be used by the Attorney General for technical assistance costs under this section.

(Pub. L. 103–322, title IV, § 41405, as added Pub. L. 109–162, title VI, § 601, Jan. 5, 2006, 119 Stat. 3035.)

PART N—NATIONAL RESOURCE CENTER

CODIFICATION

Pub. L. 109–162, title VII, § 701, Jan. 5, 2006, 119 Stat. 3052, which directed that subtitle N of the Violence Against Women Act of 1994 (part M of this subchapter) be amended by adding at the end a subtitle O consisting of section 41501 (42 U.S.C. 14043f), is reflected in the Code by setting out subtitle O as a separate part N (this part) and not as included in part M, as the probable intent of Congress.

§ 14043f. Grant for national resource center on workplace responses to assist victims of domestic and sexual violence

(a) Authority

The Attorney General, acting through the Director of the Office on Violence Against Women, may award a grant to an eligible nonprofit nongovernmental entity or tribal organization, in order to provide for the establishment and operation of a national resource center on workplace responses to assist victims of domestic and sexual violence. The resource center shall provide information and assistance to employers and labor organizations to aid in their efforts to develop and implement responses to such violence.

(b) Applications

To be eligible to receive a grant under this section, an entity or organization shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may require, including—

(1) information that demonstrates that the entity or organization has nationally recognized expertise in the area of domestic or sexual violence;

(2) a plan to maximize, to the extent practicable, outreach to employers (including private companies and public entities such as public institutions of higher education and State and local governments) and labor organizations described in subsection (a) of this section concerning developing and implementing workplace responses to assist victims of domestic or sexual violence; and

(3) a plan for developing materials and training for materials for employers that address the needs of employees in cases of domestic violence, dating violence, sexual assault, and stalking impacting the workplace, including the needs of underserved communities.

(c) Use of grant amount

(1) In general

An entity or organization that receives a grant under this section may use the funds made available through the grant for staff salaries, travel expenses, equipment, printing, and other reasonable expenses necessary to develop, maintain, and disseminate to employers and labor organizations described in subsection (a) of this section, information and assistance concerning workplace responses to assist victims of domestic or sexual violence.

(2) Responses

Responses referred to in paragraph (1) may include—

(A) providing training to promote a better understanding of workplace assistance to victims of domestic or sexual violence;

(B) providing conferences and other educational opportunities; and

(C) developing protocols and model workplace policies.

(d) Liability

The compliance or noncompliance of any employer or labor organization with any protocol or policy developed by an entity or organization under this section shall not serve as a basis for liability in tort, express or implied contract, or by any other means. No protocol or policy developed by an entity or organization under this section shall be referenced or enforced as a workplace safety standard by any Federal, State, or other governmental agency.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2007 through 2011.

(f) Availability of grant funds

Funds appropriated under this section shall remain available until expended.

(Pub. L. 103–322, title IV, § 41501, as added Pub. L. 109–162, title VII, § 701, Jan. 5, 2006, 119 Stat. 3052.)

PART N–1—SEXUAL ASSAULT SERVICES

§ 14043g. Sexual assault services program

(a) Purposes

The purposes of this section are—

(1) to assist States, Indian tribes, and territories in providing intervention, advocacy, accompaniment, support services, and related assistance for—

(A) adult, youth, and child victims of sexual assault;

(B) family and household members of such victims; and

(C) those collaterally affected by the victimization, except for the perpetrator of such victimization; and

(2) to provide for technical assistance and training relating to sexual assault to—

(A) Federal, State, tribal, territorial and local governments, law enforcement agencies, and courts;

(B) professionals working in legal, social service, and health care settings;

(C) nonprofit organizations;

(D) faith-based organizations; and

(E) other individuals and organizations seeking such assistance.

(b) Grants to States and territories

(1) Grants authorized

The Attorney General shall award grants to States and territories to support the establishment, maintenance, and expansion of rape crisis centers and other programs and projects to assist those victimized by sexual assault.

(2) Allocation and use of funds

(A) Administrative costs

Not more than 5 percent of the grant funds received by a State or territory governmental agency under this subsection for any fiscal year may be used for administrative costs.

(B) Grant funds

Any funds received by a State or territory under this subsection that are not used for administrative costs shall be used to provide grants to rape crisis centers and other nonprofit, nongovernmental organizations for programs and activities within such State or territory that provide direct intervention and related assistance.

(C) Intervention and related assistance

Intervention and related assistance under subparagraph (B) may include—

(i) 24-hour hotline services providing crisis intervention services and referral;

(ii) accompaniment and advocacy through medical, criminal justice, and social support systems, including medical facilities, police, and court proceedings;

(iii) crisis intervention, short-term individual and group support services, and comprehensive service coordination and supervision to assist sexual assault victims and family or household members;

(iv) information and referral to assist the sexual assault victim and family or household members;

(v) community-based, linguistically and culturally specific services and support mechanisms, including outreach activities for underserved communities; and

(vi) the development and distribution of materials on issues related to the services described in clauses (i) through (v).

(3) Application

(A) In general

Each eligible entity desiring a grant under this subsection shall submit an application to the Attorney General at such time and in such manner as the Attorney General may reasonably require.

(B) Contents

Each application submitted under subparagraph (A) shall—

(i) set forth procedures designed to ensure meaningful involvement of the State or territorial sexual assault coalition and representatives from underserved communities in the development of the application and the implementation of the plans;

(ii) set forth procedures designed to ensure an equitable distribution of grants and grant funds within the State or territory and between urban and rural areas within such State or territory;

(iii) identify the State or territorial agency that is responsible for the administration of programs and activities; and

(iv) meet other such requirements as the Attorney General reasonably determines are necessary to carry out the purposes and provisions of this section.

(4) Minimum amount

The Attorney General shall allocate to each State not less than 1.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United States Virgin Islands, American Samoa, Guam, the District of Columbia, Puer-

to Rico, and the Commonwealth of the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriations. The remaining funds shall be allotted to each State and each territory in an amount that bears the same ratio to such remaining funds as the population of such State and such territory bears to the population of all the States and the territories. The District of Columbia shall be treated as a territory for purposes of calculating its allocation under the preceding formula.

(c) Grants for culturally specific programs addressing sexual assault

(1) Grants authorized

The Attorney General shall award grants to eligible entities to support the establishment, maintenance, and expansion of culturally specific intervention and related assistance for victims of sexual assault.

(2) Eligible entities

To be eligible to receive a grant under this section, an entity shall—

(A) be a private nonprofit organization that focuses primarily on culturally specific communities;

(B) must have documented organizational experience in the area of sexual assault intervention or have entered into a partnership with an organization having such expertise;

(C) have expertise in the development of community-based, linguistically and culturally specific outreach and intervention services relevant for the specific communities to whom assistance would be provided or have the capacity to link to existing services in the community tailored to the needs of culturally specific populations; and

(D) have an advisory board or steering committee and staffing which is reflective of the targeted culturally specific community.

(3) Award basis

The Attorney General shall award grants under this section on a competitive basis.

(4) Distribution

(A) The Attorney General shall not use more than 2.5 percent of funds appropriated under this subsection in any year for administration, monitoring, and evaluation of grants made available under this subsection.

(B) Up to 5 percent of funds appropriated under this subsection in any year shall be available for technical assistance by a national, nonprofit, nongovernmental organization or organizations whose primary focus and expertise is in addressing sexual assault within underserved culturally specific populations.

(5) Term

The Attorney General shall make grants under this section for a period of no less than 2 fiscal years.

(6) Reporting

Each entity receiving a grant under this subsection shall submit a report to the Attorney General that describes the activities carried out with such grant funds.

(d) Grants to State, territorial, and tribal sexual assault coalitions

(1) Grants authorized

(A) In general

The Attorney General shall award grants to State, territorial, and tribal sexual assault coalitions to assist in supporting the establishment, maintenance, and expansion of such coalitions.

(B) Minimum amount

Not less than 10 percent of the total amount appropriated to carry out this section shall be used for grants under subparagraph (A).

(C) Eligible applicants

Each of the State, territorial, and tribal sexual assault coalitions.

(2) Use of funds

Grant funds received under this subsection may be used to—

(A) work with local sexual assault programs and other providers of direct services to encourage appropriate responses to sexual assault within the State, territory, or tribe;

(B) work with judicial and law enforcement agencies to encourage appropriate responses to sexual assault cases;

(C) work with courts, child protective services agencies, and children's advocates to develop appropriate responses to child custody and visitation issues when sexual assault has been determined to be a factor;

(D) design and conduct public education campaigns;

(E) plan and monitor the distribution of grants and grant funds to their State, territory, or tribe; or

(F) collaborate with and inform Federal, State, or local public officials and agencies to develop and implement policies to reduce or eliminate sexual assault.

(3) Allocation and use of funds

From amounts appropriated for grants under this subsection for each fiscal year—

(A) not less than 10 percent of the funds shall be available for grants to tribal sexual assault coalitions; and

(B) the remaining funds shall be available for grants to State and territorial coalitions, and the Attorney General shall allocate an amount equal to 1/56 of the amounts so appropriated to each of those State and territorial coalitions.

(4) Application

Each eligible entity desiring a grant under this subsection shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General determines to be essential to carry out the purposes of this section.

(5) First-time applicants

No entity shall be prohibited from submitting an application under this subsection during any fiscal year for which funds are available under this subsection because such entity has not previously applied or received funding under this subsection.

(e) Grants to tribes

(1) Grants authorized

The Attorney General may award grants to Indian tribes, tribal organizations, and nonprofit tribal organizations for the operation of sexual assault programs or projects in Indian tribal lands and Alaska Native villages to support the establishment, maintenance, and expansion of programs and projects to assist those victimized by sexual assault.

(2) Allocation and use of funds

(A) Administrative costs

Not more than 5 percent of the grant funds received by an Indian tribe, tribal organization, and nonprofit tribal organization under this subsection for any fiscal year may be used for administrative costs.

(B) Grant funds

Any funds received under this subsection that are not used for administrative costs shall be used to provide grants to tribal organizations and nonprofit tribal organizations for programs and activities within Indian country and Alaskan native villages that provide direct intervention and related assistance.

(f) Authorization of appropriations

(1) In general

There are authorized to be appropriated $50,000,000 to remain available until expended for each of the fiscal years 2007 through 2011 to carry out the provisions of this section.

(2) Allocations

Of the total amounts appropriated for each fiscal year to carry out this section—

(A) not more than 2.5 percent shall be used by the Attorney General for evaluation, monitoring, and other administrative costs under this section;

(B) not more than 2.5 percent shall be used for the provision of technical assistance to grantees and subgrantees under this section;

(C) not less than 65 percent shall be used for grants to States and territories under subsection (b);

(D) not less than 10 percent shall be used for making grants to State, territorial, and tribal sexual assault coalitions under subsection (d);

(E) not less than 10 percent shall be used for grants to tribes under subsection (e); and

(F) not less than 10 percent shall be used for grants for culturally specific programs addressing sexual assault under subsection (c).

(Pub. L. 103–322, title IV, § 41601, as added Pub. L. 109–271, § 3(b), Aug. 12, 2006, 120 Stat. 754.)

PART O—COMBATTING DOMESTIC TRAFFICKING IN PERSONS

§ 14044. Prevention of domestic trafficking in persons

(a) Program to reduce trafficking in persons and demand for commercial sex acts in the United States

(1) Comprehensive research and statistical review and analysis of incidents of trafficking in persons and commercial sex acts

(A) In general

The Attorney General shall use available data from State and local authorities as well as research data to carry out a biennial comprehensive research and statistical review and analysis of severe forms of trafficking in persons, and a biennial comprehensive research and statistical review and analysis of sex trafficking and unlawful commercial sex acts in the United States, and shall submit to Congress separate biennial reports on the findings.

(B) Contents

The research and statistical review and analysis under this paragraph shall consist of two separate studies, utilizing the same statistical data where appropriate, as follows:

(i) The first study shall address severe forms of trafficking in persons in the United States and shall include, but need not be limited to—

(I) the estimated number and demographic characteristics of persons engaged in acts of severe forms of trafficking in persons; and

(II) the number of investigations, arrests, prosecutions, and incarcerations of persons engaged in acts of severe forms of trafficking in persons by States and their political subdivisions.

(ii) The second study shall address sex trafficking and unlawful commercial sex acts in the United States and shall include, but need not be limited to—

(I) the estimated number and demographic characteristics of persons engaged in sex trafficking and commercial sex acts, including purchasers of commercial sex acts;

(II) the estimated value in dollars of the commercial sex economy, including the estimated average annual personal income derived from acts of sex trafficking;

(III) the number of investigations, arrests, prosecutions, and incarcerations of persons engaged in sex trafficking and unlawful commercial sex acts, including purchasers of commercial sex acts, by States and their political subdivisions; and

(IV) a description of the differences in the enforcement of laws relating to unlawful commercial sex acts across the United States.

(2) Trafficking conference

(A) In general

The Attorney General, in consultation and cooperation with the Secretary of Health and Human Services, shall conduct an annual conference in each of the fiscal years 2006, 2007, and 2008, and thereafter conduct a biennial conference, addressing severe forms of trafficking in persons and commercial sex acts that occur, in whole or in part, within the territorial jurisdiction of the United States. At each such conference, the Attorney General, or his designee, shall—

(i) announce and evaluate the findings contained in the research and statistical reviews carried out under paragraph (1);

(ii) disseminate best methods and practices for enforcement of laws prohibiting acts of severe forms of trafficking in persons and other laws related to acts of trafficking in persons, including, but not limited to, best methods and practices for training State and local law enforcement personnel on the enforcement of such laws;

(iii) disseminate best methods and practices for training State and local law enforcement personnel on the enforcement of laws prohibiting sex trafficking and commercial sex acts, including, but not limited to, best methods for investigating and prosecuting exploiters and persons who solicit or purchase an unlawful commercial sex act; and

(iv) disseminate best methods and practices for training State and local law enforcement personnel on collaborating with social service providers and relevant nongovernmental organizations and establishing trust of persons subjected to commercial sex acts or severe forms of trafficking in persons.

(B) Participation

Each annual conference conducted under this paragraph shall involve the participation of persons with expertise or professional responsibilities with relevance to trafficking in persons, including, but not limited to—

(i) Federal Government officials, including law enforcement and prosecutorial officials;

(ii) State and local government officials, including law enforcement and prosecutorial officials;

(iii) persons who have been subjected to severe forms of trafficking in persons or commercial sex acts;

(iv) medical personnel;

(v) social service providers and relevant nongovernmental organizations; and

(vi) academic experts.

(C) Reports

The Attorney General and the Secretary of Health and Human Services shall prepare and post on the respective Internet Web sites of the Department of Justice and the Department of Health and Human Services reports on the findings and best practices identified and disseminated at the conference described in this paragraph.

(b) Omitted

(c) Authorization of appropriations

There are authorized to be appropriated—

(1) $2,500,000 for each of the fiscal years 2006 and 2007 to carry out the activities described in subsection (a)(1)(B)(i) of this section and $2,500,000 for each of the fiscal years 2006 and 2007 to carry out the activities described in subsection (a)(1)(B)(ii) of this section; and

(2) $1,000,000 for each of the fiscal years 2006 through 2007 to carry out the activities described in subsection (a)(2) of this section.

(Pub. L. 109–164, title II, § 201, Jan. 10, 2006, 119 Stat. 3567.)

CODIFICATION

Section is comprised of section 201 of Pub. L. 109–164. Subsec. (b) of section 201 of Pub. L. 109–164 amended section 7104 of Title 22, Foreign Relations and Intercourse.

Section was enacted as part of the Trafficking Victims Protection Reauthorization Act of 2005, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14044a. Establishment of grant program to develop, expand, and strengthen assistance programs for certain persons subject to trafficking

(a) Grant program

The Secretary of Health and Human Services may make grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victims' service organizations to establish, develop, expand, and strengthen assistance programs for United States citizens or aliens admitted for permanent residence who are the subject of sex trafficking or severe forms of trafficking in persons that occurs, in whole or in part, within the territorial jurisdiction of the United States.

(b) Selection factor

In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to applicants with experience in the delivery of services to persons who have been subjected to sexual abuse or commercial sexual exploitation and to applicants who would employ survivors of sexual abuse or commercial sexual exploitation as a part of their proposed project.

(c) Limitation on Federal share

The Federal share of a grant made under this section may not exceed 75 percent of the total costs of the projects described in the application submitted.

(d) Authorization of appropriations

There are authorized to be appropriated $10,000,000 for each of the fiscal years 2006 and 2007 to carry out the activities described in this section.

(Pub. L. 109–164, title II, § 202, Jan. 10, 2006, 119 Stat. 3569.)

CODIFICATION

Section was enacted as part of the Trafficking Victims Protection Reauthorization Act of 2005, and not as

part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14044b. Protection of juvenile victims of trafficking in persons

(a) Establishment of pilot program

Not later than 180 days after January 10, 2006, the Secretary of Health and Human Services shall establish and carry out a pilot program to establish residential treatment facilities in the United States for juveniles subjected to trafficking.

(b) Purposes

The purposes of the pilot program established pursuant to subsection (a) of this section are to—

(1) provide benefits and services to juveniles subjected to trafficking, including shelter, psychological counseling, and assistance in developing independent living skills;

(2) assess the benefits of providing residential treatment facilities for juveniles subjected to trafficking, as well as the most efficient and cost-effective means of providing such facilities; and

(3) assess the need for and feasibility of establishing additional residential treatment facilities for juveniles subjected to trafficking.

(c) Selection of sites

The Secretary of Health and Human Services shall select three sites at which to operate the pilot program established pursuant to subsection (a) of this section.

(d) Form of assistance

In order to carry out the responsibilities of this section, the Secretary of Health and Human Services shall enter into contracts with, or make grants to, organizations that—

(1) have relevant expertise in the delivery of services to juveniles who have been subjected to sexual abuse or commercial sexual exploitation; or

(2) have entered into partnerships with organizations that have expertise as described in paragraph (1) for the purpose of implementing the contracts or grants.

(e) Report

Not later than one year after the date on which the first pilot program is established pursuant to subsection (a) of this section, the Secretary of Health and Human Services shall submit to Congress a report on the implementation of this section.

(f) Definition

In this section, the term ''juvenile subjected to trafficking'' means a United States citizen, or alien admitted for permanent residence, who is the subject of sex trafficking or severe forms of trafficking in persons that occurs, in whole or in part, within the territorial jurisdiction of the United States and who has not attained 18 years of age at the time the person is identified as having been the subject of sex trafficking or severe forms of trafficking in persons.

(g) Authorization of appropriations

There are authorized to be appropriated to the Secretary of Health and Human Services to carry out this section $5,000,000 for each of the fiscal years 2006 and 2007.

(Pub. L. 109–164, title II, § 203, Jan. 10, 2006, 119 Stat. 3570.)

CODIFICATION

Section was enacted as part of the Trafficking Victims Protection Reauthorization Act of 2005, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14044c. Enhancing State and local efforts to combat trafficking in persons

(a) Establishment of grant program for law enforcement

(1) In general

The Attorney General may make grants to States and local law enforcement agencies to establish, develop, expand, or strengthen programs—

(A) to investigate and prosecute acts of severe forms of trafficking in persons, and related offenses, which involve United States citizens, or aliens admitted for permanent residence, and that occur, in whole or in part, within the territorial jurisdiction of the United States;

(B) to investigate and prosecute persons who engage in the purchase of commercial sex acts;

(C) to educate persons charged with, or convicted of, purchasing or attempting to purchase commercial sex acts; and

(D) to educate and train law enforcement personnel in how to establish trust of persons subjected to trafficking and encourage cooperation with prosecution efforts.

(2) Definition

In this subsection, the term ''related offenses'' includes violations of tax laws, transacting in illegally derived proceeds, money laundering, racketeering, and other violations of criminal laws committed in connection with an act of sex trafficking or a severe form of trafficking in persons.

(b) Multi-disciplinary approach required

Grants under subsection (a) of this section may be made only for programs in which the State or local law enforcement agency works collaboratively with social service providers and relevant nongovernmental organizations, including organizations with experience in the delivery of services to persons who are the subject of trafficking in persons.

(c) Limitation on Federal share

The Federal share of a grant made under this section may not exceed 75 percent of the total costs of the projects described in the application submitted.

(d) Authorization of appropriations

There are authorized to be appropriated to the Attorney General to carry out this section $25,000,000 for each of the fiscal years 2006 and 2007.

(Pub. L. 109–164, title II, § 204, Jan. 10, 2006, 119 Stat. 3571.)

CODIFICATION

Section was enacted as part of the Trafficking Victims Protection Reauthorization Act of 2005, and not as

part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14044d. Senior Policy Operating Group

Each Federal department or agency involved in grant activities related to combatting trafficking or providing services to persons subjected to trafficking inside the United States shall, as the department or agency determines appropriate, apprise the Senior Policy Operating Group established by section 105(f) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7103(f)), under the procedures established by the Senior Policy Operating Group, of such activities of the department or agency to ensure that the activities are consistent with the purposes of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 et seq.).

(Pub. L. 109–164, title II, § 206, Jan. 10, 2006, 119 Stat. 3571.)

REFERENCES IN TEXT

The Trafficking Victims Protection Act of 2000, referred to in text, is div. A of Pub. L. 106–386, Oct. 28, 2000, 114 Stat. 1466, which is classified principally to chapter 78 (§ 7101 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 22 and Tables.

CODIFICATION

Section was enacted as part of the Trafficking Victims Protection Reauthorization Act of 2005, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14044e. Definitions

In this part:

(1) Severe forms of trafficking in persons

The term ''severe forms of trafficking in persons'' has the meaning given the term in section 7102(8) of title 22.

(2) Sex trafficking

The term ''sex trafficking'' has the meaning given the term in section 7102(9) of title 22.

(3) Commercial sex act

The term ''commercial sex act'' has the meaning given the term in section 7102(3) of title 22.

(Pub. L. 109–164, title II, § 207, Jan. 10, 2006, 119 Stat. 3572.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 109–164, Jan. 10, 2006, 119 Stat. 3567, which enacted sections 14044 to 14044e of this title and amended sections 7103 and 7104 of Title 22, Foreign Relations and Intercourse. For complete classification of title II to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Trafficking Victims Protection Reauthorization Act of 2005, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14044f. Grants for law enforcement training programs

(a) Definitions

In this section:

(1) Act of trafficking

The term ''act of trafficking'' means an act or practice described in paragraph (8) of section 7102 of title 22.

(2) Eligible entity

The term ''eligible entity'' means a State or a local government.

(3) State

The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and any other territory or possession of the United States.

(4) Victim of trafficking

The term ''victim of trafficking'' means a person subjected to an act of trafficking.

(b) Grants authorized

The Attorney General may award grants to eligible entities to provide training to State and local law enforcement personnel to identify and protect victims of trafficking.

(c) Use of funds

A grant awarded under this section shall be used to—

(1) train law enforcement personnel to identify and protect victims of trafficking, including training such personnel to utilize Federal, State, or local resources to assist victims of trafficking;

(2) train law enforcement or State or local prosecutors to identify, investigate, or prosecute acts of trafficking; or

(3) train law enforcement or State or local prosecutors to utilize laws that prohibit acts of trafficking and to assist in the development of State and local laws to prohibit acts of trafficking.

(d) Restrictions

(1) Administrative expenses

An eligible entity that receives a grant under this section may use not more than 5 percent of the total amount of such grant for administrative expenses.

(2) Nonexclusivity

Nothing in this section may be construed to restrict the ability of an eligible entity to apply for or obtain funding from any other source to carry out the training described in subsection (c) of this section.

(e) Authorization of appropriations

There are authorized to be appropriated $10,000,000 for each of the fiscal years 2007 through 2011 to carry out the provisions of this section.

(Pub. L. 109–162, title I, § 111, Jan. 5, 2006, 119 Stat. 2984.)

CODIFICATION

Section was enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

PART P—MISCELLANEOUS AUTHORITIES

§ 14045. Grants for outreach to underserved populations

(a) Grants authorized

(1) In general

From amounts made available to carry out this section, the Attorney General, acting through the Director of the Office on Violence Against Women, shall award grants to eligible entities described in subsection (b) of this section to carry out local, regional, or national public information campaigns focused on addressing adult, youth, or minor domestic violence, dating violence, sexual assault, stalking, or trafficking within tribal and underserved populations and immigrant communities, including information on services available to victims and ways to prevent or reduce domestic violence, dating violence, sexual assault, and stalking.

(2) Term

The Attorney General shall award grants under this section for a period of 1 fiscal year.

(b) Eligible entities

Eligible entities under this section are—

(1) nonprofit, nongovernmental organizations or coalitions that represent the targeted tribal and underserved populations or immigrant community that—

(A) have a documented history of creating and administering effective public awareness campaigns addressing domestic violence, dating violence, sexual assault, and stalking; or

(B) work in partnership with an organization that has a documented history of creating and administering effective public awareness campaigns addressing domestic violence, dating violence, sexual assault, and stalking; or

(2) a governmental entity that demonstrates a partnership with organizations described in paragraph (1).

(c) Allocation of funds

Of the amounts appropriated for grants under this section—

(1) not more than 20 percent shall be used for national model campaign materials targeted to specific tribal and underserved populations or immigrant community, including American Indian tribes and Alaskan native villages for the purposes of research, testing, message development, and preparation of materials; and

(2) the balance shall be used for not less than 10 State, regional, territorial, tribal, or local campaigns targeting specific communities with information and materials developed through the national campaign or, if appropriate, new materials to reach an underserved population or a particularly isolated community.

(d) Use of funds

Funds appropriated under this section shall be used to conduct a public information campaign and build the capacity and develop leadership of racial, ethnic populations, or immigrant community members to address domestic violence, dating violence, sexual assault, and stalking.

(e) Application

An eligible entity desiring a grant under this section shall submit an application to the Director of the Office on Violence Against Women at such time, in such form, and in such manner as the Director may prescribe.

(f) Criteria

In awarding grants under this section, the Attorney General shall ensure—

(1) reasonable distribution among eligible grantees representing various underserved and immigrant communities;

(2) reasonable distribution among State, regional, territorial, tribal, and local campaigns; and

(3) that not more than 8 percent of the total amount appropriated under this section for each fiscal year is set aside for training, technical assistance, and data collection.

(g) Reports

Each eligible entity receiving a grant under this section shall submit to the Director of the Office of Violence Against Women a report that describes the activities carried out with grant funds.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section $2,000,000 for each of fiscal years 2007 through 2011.

(i) Definitions and grant conditions

In this section the definitions and grant conditions in section 13925 of this title shall apply.

(Pub. L. 109–162, title I, § 120, Jan. 5, 2006, 119 Stat. 2990; Pub. L. 109–271, §§ 1(c)(2), 2(h), Aug. 12, 2006, 120 Stat. 750, 752.)

CODIFICATION

Section was enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

AMENDMENTS

2006—Subsec. (g). Pub. L. 109–271, § 2(h), struck out ‘‘, every 18 months,’’ after ‘‘Office of Violence Against Women’’.

Subsec. (i). Pub. L. 109–271, § 1(c)(2), added subsec. (i).

§ 14045a. Enhancing culturally and linguistically specific services for victims of domestic violence, dating violence, sexual assault, and stalking

(a) Establishment

(1) In general

Of the amounts appropriated under certain grant programs identified in paragraph (a)(2) of this Section,[1] the Attorney General, through the Director of the Violence Against Women Office (referred to in this section as the ‘‘Director’’), shall take 5 percent of such appropriated amounts and combine them to establish a new grant program to enhance cul-

[1] So in original. Probably should not be capitalized.

turally and linguistically specific services for victims of domestic violence, dating violence, sexual assault, and stalking. Grants made under this new program shall be administered by the Director. The requirements of the grant programs identified in paragraph (2) shall not apply to this new grant program.

(2) Programs covered

The programs covered by paragraph (1) are the programs carried out under the following provisions:

(A) Section 3796hh[2] of this title, Grants to Encourage Arrest Policies.

(B) Section 3796gg–6 of this title, Legal Assistance for Victims.

(C) Section 13971 of this title, Rural Domestic Violence and Child Abuser Enforcement Assistance.

(D) Section _____[3] of the Violence Against Women Act of 1994 (42 U.S.C. _____[3]), Older Battered Women.

(E) Section _____[3] of the Violence Against Women Act of 2000 (42 U.S.C. _____[3]), Disabled Women Program.[3]

(b) Purpose of program and grants

(1) General program purpose

The purpose of the program required by this section is to promote:

(A) The maintenance and replication of existing successful services in domestic violence, dating violence, sexual assault, and stalking community-based programs providing culturally and linguistically specific services and other resources.

(B) The development of innovative culturally and linguistically specific strategies and projects to enhance access to services and resources for victims of domestic violence, dating violence, sexual assault, and stalking who face obstacles to using more traditional services and resources.

(2) Purposes for which grants may be used

The Director shall make grants to community-based programs for the purpose of enhancing culturally and linguistically specific services for victims of domestic violence, dating violence, sexual assault, and stalking. Grants under the program shall support community-based efforts to address distinctive cultural and linguistic responses to domestic violence, dating violence, sexual assault, and stalking, including—

(A) working with State and local governments and social service agencies to develop and enhance effective strategies to provide culturally and linguistically specific services to victims of domestic violence, dating violence, sexual assault, and stalking;

(B) increasing communities' capacity to provide culturally and linguistically specific resources and support for victims of domestic violence, dating violence, sexual assault, and stalking crimes and their families;

(C) strengthening criminal justice interventions, by providing training for law enforcement, prosecution, courts, probation, and correctional facilities on culturally and linguistically specific responses to domestic violence, dating violence, sexual assault, and stalking;

(D) enhancing traditional services to victims of domestic violence, dating violence, sexual assault, and stalking through the leadership of culturally and linguistically specific programs offering services to victims of domestic violence, dating violence, sexual assault, and stalking;

(E) working in cooperation with the community to develop education and prevention strategies highlighting culturally and linguistically specific issues and resources regarding victims of domestic violence, dating violence, sexual assault, and stalking;

(F) providing culturally and linguistically specific programs for children exposed to domestic violence, dating violence, sexual assault, and stalking;

(G) providing culturally and linguistically specific resources and services that address the safety, economic, housing, and workplace needs of victims of domestic violence, dating violence, sexual assault, or stalking, including emergency assistance; or

(H) examining the dynamics of culture and its impact on victimization and healing.

(3) Technical assistance and training

The Director shall provide technical assistance and training to grantees of this and other programs under this Act regarding the development and provision of effective culturally and linguistically specific community-based services by entering into cooperative agreements or contracts with an organization or organizations having a demonstrated expertise in and whose primary purpose is addressing the development and provision of culturally and linguistically specific community-based services to victims of domestic violence, dating violence, sexual assault, and stalking.

(c) Eligible entities

Eligible entities for grants under this Section[1] include—

(1) community-based programs whose primary purpose is providing culturally and linguistically specific services to victims of domestic violence, dating violence, sexual assault, and stalking; and

(2) community-based programs whose primary purpose is providing culturally and linguistically specific services who can partner with a program having demonstrated expertise in serving victims of domestic violence, dating violence, sexual assault, and stalking.

(d) Reporting

The Director shall issue a biennial report on the distribution of funding under this section, the progress made in replicating and supporting increased services to victims of domestic violence, dating violence, sexual assault, and stalking who face obstacles to using more traditional services and resources, and the types of culturally and linguistically accessible programs, strategies, technical assistance, and training developed or enhanced through this program.

[2] See References in Text note below.

[3] So in original.

(e) Grant period

The Director shall award grants for a 2-year period, with a possible extension of another 2 years to implement projects under the grant.

(f) Evaluation

The Director shall award a contract or cooperative agreement to evaluate programs under this section to an entity with the demonstrated expertise in and primary goal of providing enhanced cultural and linguistic access to services and resources for victims of domestic violence, dating violence, sexual assault, and stalking who face obstacles to using more traditional services and resources.

(g) Non-exclusivity

Nothing in this Section[1] shall be interpreted to exclude linguistic and culturally specific community-based programs from applying to other grant programs authorized under this Act.

(h) Definitions and grant conditions

In this section the definitions and grant conditions in section 13925 of this title shall apply.

(Pub. L. 109–162, title I, § 121, Jan. 5, 2006, 119 Stat. 2991; Pub. L. 109–271, §§ 1(c)(3), 2(k), Aug. 12, 2006, 120 Stat. 751, 753.)

REFERENCES IN TEXT

Section 3796hh of this title, referred to in subsec. (a)(2)(A), was in the original ''Section 2101 (42 U.S.C. 3796hh)'', which was translated as meaning ''Section 2101 of the Omnibus Crime Control and Safe Streets Act of 1968'', to reflect the probable intent of Congress.

This Act, referred to in subsecs. (b)(3) and (g), is Pub. L. 109–162, Jan. 5, 2006, 119 Stat. 2960, known as the Violence Against Women and Department of Justice Reauthorization Act of 2005. For complete classification of this Act to the Code, see Short Title of 2006 Amendment note set out under section 13701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–271, § 2(k)(1), inserted ''The requirements of the grant programs identified in paragraph (2) shall not apply to this new grant program.'' at end.

Subsec. (b)(2). Pub. L. 109–271, § 2(k)(2), which directed substituting '', including—'' and subpars. (A) to (H) for the period, was executed by making the substitution for the period at the end to reflect the probable intent of Congress.

Subsec. (h). Pub. L. 109–271, § 1(c)(3), added subsec. (h).

EFFECTIVE DATE

Section not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3793 of this title.

§ 14045b. Grants to combat violent crimes on campuses

(a) Grants authorized

(1) In general

The Attorney General is authorized to make grants to institutions of higher education, for use by such institutions or consortia consisting of campus personnel, student organizations, campus administrators, security personnel, and regional crisis centers affiliated with the institution, to develop and strengthen effective security and investigation strategies to combat domestic violence, dating violence, sexual assault, and stalking on campuses, and to develop and strengthen victim services in cases involving such crimes against women on campuses, which may include partnerships with local criminal justice authorities and community-based victim services agencies.

(2) Award basis

The Attorney General shall award grants and contracts under this section on a competitive basis for a period of 3 years. The Attorney General, through the Director of the Office on Violence Against Women, shall award the grants in amounts of not more than $500,000 for individual institutions of higher education and not more than $1,000,000 for consortia of such institutions.

(3) Equitable participation

The Attorney General shall make every effort to ensure—

(A) the equitable participation of private and public institutions of higher education in the activities assisted under this section;

(B) the equitable geographic distribution of grants under this section among the various regions of the United States; and

(C) the equitable distribution of grants under this section to tribal colleges and universities and traditionally black colleges and universities.

(b) Use of grant funds

Grant funds awarded under this section may be used for the following purposes:

(1) To provide personnel, training, technical assistance, data collection, and other equipment with respect to the increased apprehension, investigation, and adjudication of persons committing domestic violence, dating violence, sexual assault, and stalking on campus.

(2) To develop and implement campus policies, protocols, and services that more effectively identify and respond to the crimes of domestic violence, dating violence, sexual assault and stalking, and to train campus administrators, campus security personnel, and personnel serving on campus disciplinary or judicial boards on such policies, protocols, and services. Within 90 days after January 5, 2006, the Attorney General shall issue and make available minimum standards of training relating to domestic violence, dating violence, sexual assault, and stalking on campus, for all campus security personnel and personnel serving on campus disciplinary or judicial boards.

(3) To implement and operate education programs for the prevention of domestic violence, dating violence, sexual assault, and stalking.

(4) To develop, enlarge, or strengthen victim services programs on the campuses of the institutions involved, including programs providing legal, medical, or psychological counseling, for victims of domestic violence, dating

violence, sexual assault, and stalking, and to improve delivery of victim assistance on campus. To the extent practicable, such an institution shall collaborate with any entities carrying out nonprofit and other victim services programs, including domestic violence, dating violence, sexual assault, and stalking victim services programs in the community in which the institution is located. If appropriate victim services programs are not available in the community or are not accessible to students, the institution shall, to the extent practicable, provide a victim services program on campus or create a victim services program in collaboration with a community-based organization. The institution shall use not less than 20 percent of the funds made available through the grant for a victim services program provided in accordance with this paragraph.

(5) To create, disseminate, or otherwise provide assistance and information about victims' options on and off campus to bring disciplinary or other legal action, including assistance to victims in immigration matters.

(6) To develop, install, or expand data collection and communication systems, including computerized systems, linking campus security to the local law enforcement for the purpose of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions with respect to the crimes of domestic violence, dating violence, sexual assault, and stalking on campus.

(7) To provide capital improvements (including improved lighting and communications facilities but not including the construction of buildings) on campuses to address the crimes of domestic violence, dating violence, sexual assault, and stalking.

(8) To support improved coordination among campus administrators, campus security personnel, and local law enforcement to reduce domestic violence, dating violence, sexual assault, and stalking on campus.

(c) Applications

(1) In general

In order to be eligible to be awarded a grant under this section for any fiscal year, an institution of higher education shall submit an application to the Attorney General at such time and in such manner as the Attorney General shall prescribe.

(2) Contents

Each application submitted under paragraph (1) shall—

(A) describe the need for grant funds and the plan for implementation for any of the purposes described in subsection (b) of this section;

(B) include proof that the institution of higher education collaborated with any nonprofit, nongovernmental entities carrying out other victim services programs, including domestic violence, dating violence, sexual assault, and stalking victim services programs in the community in which the institution is located;

(C) describe the characteristics of the population being served, including type of campus, demographics of the population, and number of students;

(D) provide measurable goals and expected results from the use of the grant funds;

(E) provide assurances that the Federal funds made available under this section shall be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds, be made available by the institution for the purposes described in subsection (b) of this section; and

(F) include such other information and assurances as the Attorney General reasonably determines to be necessary.

(3) Compliance with campus crime reporting required

No institution of higher education shall be eligible for a grant under this section unless such institution is in compliance with the requirements of section 1092(f) of title 20. Up to $200,000 of the total amount of grant funds appropriated under this section for fiscal years 2007 through 2011 may be used to provide technical assistance in complying with the mandatory reporting requirements of section 1092(f) of title 20.

(d) General terms and conditions

(1) Nonmonetary assistance

In addition to the assistance provided under this section, the Attorney General may request any Federal agency to use the agency's authorities and the resources granted to the agency under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of campus security, and investigation and victim service efforts.

(2) Grantee reporting

(A) Annual report

Each institution of higher education receiving a grant under this section shall submit a performance report to the Attorney General. The Attorney General shall suspend funding under this section for an institution of higher education if the institution fails to submit such a report.

(B) Final report

Upon completion of the grant period under this section, the institution shall file a performance report with the Attorney General and the Secretary of Education explaining the activities carried out under this section together with an assessment of the effectiveness of those activities in achieving the purposes described in subsection (b) of this section.

(3) Report to Congress

Not later than 180 days after the end of the fiscal year for which grants are awarded under this section, the Attorney General shall submit to Congress a report that includes—

(A) the number of grants, and the amount of funds, distributed under this section;

(B) a summary of the purposes for which the grants were provided and an evaluation of the progress made under the grant;

(C) a statistical summary of the persons served, detailing the nature of victimization, and providing data on age, sex, race, ethnicity, language, disability, relationship to offender, geographic distribution, and type of campus; and

(D) an evaluation of the effectiveness of programs funded under this part.[1]

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $12,000,000 for fiscal year 2007 and $15,000,000 for each of fiscal years 2008 through 2011.

(f) Omitted

(g) Definitions and grant conditions

In this section the definitions and grant conditions in section 13925 of this title shall apply.

(Pub. L. 109–162, title III, § 304, Jan. 5, 2006, 119 Stat. 3013; Pub. L. 109–271, §§ 1(c)(1), 4(b), (d), Aug. 12, 2006, 120 Stat. 750, 758.)

REFERENCES IN TEXT

This part, referred to in subsec. (d)(3)(D), appearing in the original is unidentifiable because title III of Pub. L. 109–162 does not contain parts.

CODIFICATION

Section is comprised of section 304 of Pub. L. 109–162. Subsec. (f) of section 304 of Pub. L. 109–162 repealed section 1152 of Title 20, Education.

Section was enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109–271, § 4(b), inserted first sentence and struck out former first sentence which read as follows: ''To train campus administrators, campus security personnel, and personnel serving on campus disciplinary or judicial boards to develop and implement campus policies, protocols, and services that more effectively identify and respond to the crimes of domestic violence, dating violence, sexual assault, and stalking.''

Subsec. (d)(2)(A). Pub. L. 109–271, § 4(d), struck out ''biennial'' before ''performance report''.

Subsec. (g). Pub. L. 109–271, § 1(c)(1), added subsec. (g).

EFFECTIVE DATE

Section not effective until the beginning of fiscal year 2007, see section 4 of Pub. L. 109–162, set out as an Effective Date of 2006 Amendment note under section 3793 of this title.

§ 14045c. Public awareness campaign

(a) In general

The Attorney General, acting through the Office on Violence Against Women],[1] shall make grants to States for carrying out a campaign to increase public awareness of issues regarding domestic violence against pregnant women.

(b) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2006 through 2010.

[1] See References in Text note below.

[1] So in original. Bracket probably should not appear.

(Pub. L. 109–162, title IV, § 403, Jan. 5, 2006, 119 Stat. 3023.)

CODIFICATION

Section was enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14045d. Consultation

(a) In general

The Attorney General shall conduct annual consultations with Indian tribal governments concerning the Federal administration of tribal funds and programs established under this Act, the Violence Against Women Act of 1994 (title IV of Public Law 103–322; 108 Stat. 1902) and the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491).

(b) Recommendations

During consultations under subsection (a) of this section, the Secretary of the Department of Health and Human Services and the Attorney General shall solicit recommendations from Indian tribes concerning—

(1) administering tribal funds and programs;

(2) enhancing the safety of Indian women from domestic violence, dating violence, sexual assault, and stalking; and

(3) strengthening the Federal response to such violent crimes.

(Pub. L. 109–162, title IX, § 903, Jan. 5, 2006, 119 Stat. 3078.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 109–162, Jan. 5, 2006, 119 Stat. 2960, known as the Violence Against Women and Department of Justice Reauthorization Act of 2005. For complete classification of this Act to the Code, see Short Title of 2006 Amendment note set out under section 13701 of this title and Tables.

The Violence Against Women Act of 1994, referred to in subsec. (a), is title IV of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1902, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Violence Against Women Act of 2000, referred to in subsec. (a), is div. B of Pub. L. 106–386, Oct. 28, 2000, 114 Stat. 1491, as amended. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 13701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SUBCHAPTER IV—DRUG CONTROL

§ 14051. Increased penalties for drug-dealing in "drug-free" zones

Pursuant to its authority under section 994 of title 28, the United States Sentencing Commission shall amend its sentencing guidelines to provide an appropriate enhancement for a defendant convicted of violating section 860 of title 21.

(Pub. L. 103–322, title IX, § 90102, Sept. 13, 1994, 108 Stat. 1987.)

CODIFICATION

Section is comprised of section 90102 of Pub. L. 103–322 which is also listed in a table relating to sentencing guidelines set out under section 994 of Title 28, Judiciary and Judicial Procedure.

§ 14052. Enhanced penalties for illegal drug use in Federal prisons and for smuggling drugs into Federal prisons

(a) Declaration of policy

It is the policy of the Federal Government that the use or distribution of illegal drugs in the Nation's Federal prisons will not be tolerated and that such crimes shall be prosecuted to the fullest extent of the law.

(b) Sentencing guidelines

Pursuant to its authority under section 994 of title 28, the United States Sentencing Commission shall amend its sentencing guidelines to appropriately enhance the penalty for a person convicted of an offense—

(1) under section 844 of title 21 involving simple possession of a controlled substance within a Federal prison or other Federal detention facility; or

(2) under section 841(b) of title 21 involving the smuggling of a controlled substance into a Federal prison or other Federal detention facility or the distribution or intended distribution of a controlled substance within a Federal prison or other Federal detention facility.

(c) No probation

Notwithstanding any other law, the court shall not sentence a person convicted of an offense described in subsection (b) of this section to probation.

(Pub. L. 103–322, title IX, § 90103, Sept. 13, 1994, 108 Stat. 1987.)

CODIFICATION

Section is comprised of section 90103 of Pub. L. 103–322. Subsec. (b) of section 90103 of Pub. L. 103–322 is also listed in a table relating to sentencing guidelines set out under section 994 of Title 28, Judiciary and Judicial Procedure.

§ 14053. Violent crime and drug emergency areas

(a) Definitions

In this section—

''major violent crime or drug-related emergency'' means an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(b) Declaration of violent crime and drug emergency areas

If a major violent crime or drug-related emergency exists throughout a State or a part of a State, the President may declare the State or part of a State to be a violent crime or drug emergency area and may take appropriate actions authorized by this section.

(c) Procedure

(1) In general

A request for a declaration designating an area to be a violent crime or drug emergency area shall be made, in writing, by the chief executive officer of a State or local government, respectively (or in the case of the District of Columbia, the mayor), and shall be forwarded to the Attorney General in such form as the Attorney General may by regulation require. One or more cities, counties, States, or the District of Columbia may submit a joint request for designation as a major violent crime or drug emergency area under this subsection.

(2) Finding

A request made under paragraph (1) shall be based on a written finding that the major violent crime or drug-related emergency is of such severity and magnitude that Federal assistance is necessary to ensure an effective response to save lives and to protect property and public health and safety.

(d) Irrelevancy of population density

The President shall not limit declarations made under this section to highly populated centers of violent crime or drug trafficking, drug smuggling, or drug use, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

(e) Requirements

As part of a request for a declaration under this section, and as a prerequisite to Federal violent crime or drug emergency assistance under this section, the chief executive officer of a State or local government shall—

(1) take appropriate action under State or local law and furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the major violent crime- or drug-related emergency;

(2) submit a detailed plan outlining that government's short- and long-term plans to respond to the violent crime or drug emergency, specifying the types and levels of Federal assistance requested and including explicit goals (including quantitative goals) and timetables; and

(3) specify how Federal assistance provided under this section is intended to achieve those goals.

(f) Review period

The Attorney General shall review a request submitted pursuant to this section, and the President shall decide whether to declare a violent crime or drug emergency area, within 30 days after receiving the request.

(g) Federal assistance

The President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal

law (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

(2) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

(h) Duration of Federal assistance

(1) In general

Federal assistance under this section shall not be provided to a violent crime or drug emergency area for more than 1 year.

(2) Extension

The chief executive officer of a jurisdiction may apply to the President for an extension of assistance beyond 1 year. The President may extend the provision of Federal assistance for not more than an additional 180 days.

(i) Regulations

Not later than 120 days after September 13, 1994, the Attorney General shall issue regulations to implement this section.

(j) No effect on existing authority

Nothing in this section shall diminish or detract from existing authority possessed by the President or Attorney General.

(Pub. L. 103–322, title IX, § 90107, Sept. 13, 1994, 108 Stat. 1988.)

SUBCHAPTER V—CRIMINAL STREET GANGS

§ 14061. Juvenile anti-drug and anti-gang grants in federally assisted low-income housing

Grants authorized in this Act to reduce or prevent juvenile drug and gang-related activity in ''public housing'' may be used for such purposes in federally assisted, low-income housing.

(Pub. L. 103–322, title XV, § 150007, Sept. 13, 1994, 108 Stat. 2035.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 14062. Gang investigation coordination and information collection

(a) Coordination

The Attorney General (or the Attorney General's designee), in consultation with the Secretary of the Treasury (or the Secretary's designee), shall develop a national strategy to coordinate gang-related investigations by Federal law enforcement agencies.

(b) Data collection

The Director of the Federal Bureau of Investigation shall acquire and collect information on incidents of gang violence for inclusion in an annual uniform crime report.

(c) Report

The Attorney General shall prepare a report on national gang violence outlining the strategy developed under subsection (a) of this section to be submitted to the President and Congress by January 1, 1996.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $1,000,000 for fiscal year 1996.

(Pub. L. 103–322, title XV, § 150008, Sept. 13, 1994, 108 Stat. 2036.)

SUBCHAPTER VI—CRIMES AGAINST CHILDREN

§ 14071. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program

(a) In general

(1) State guidelines

The Attorney General shall establish guidelines for State programs that require—

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address for the time period specified in subparagraph (A) of subsection (b)(6) of this section; and

(B) a person who is a sexually violent predator to register a current address for the time period specified in subparagraph (B) of subsection (b)(6) of this section.

(2) Determination of sexually violent predator status; waiver; alternative measures

(A) In general

A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies.

(B) Waiver

The Attorney General may waive the requirements of subparagraph (A) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

(C) Alternative measures

The Attorney General may also approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.

(3) Definitions

For purposes of this section:

(A) The term ''criminal offense against a victim who is a minor'' means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:

(i) kidnapping of a minor, except by a parent;

(ii) false imprisonment of a minor, except by a parent;

(iii) criminal sexual conduct toward a minor;

(iv) solicitation of a minor to engage in sexual conduct;

(v) use of a minor in a sexual performance;

(vi) solicitation of a minor to practice prostitution;

(vii) any conduct that by its nature is a sexual offense against a minor;

(viii) production or distribution of child pornography, as described in section 2251, 2252, or 2252A of title 18; or

(ix) an attempt to commit an offense described in any of clauses (i) through (vii), if the State—

(I) makes such an attempt a criminal offense; and

(II) chooses to include such an offense in those which are criminal offenses against a victim who is a minor for the purposes of this section.

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

(B) The term ''sexually violent offense'' means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18 or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of title 18 or as described in the State criminal code).

(C) The term ''sexually violent predator'' means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(D) The term ''mental abnormality'' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(E) The term ''predatory'' means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(F) The term ''employed, carries on a vocation'' includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(G) The term ''student'' means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.

(b) Registration requirement upon release, parole, supervised release, or probation

An approved State registration program established under this section shall contain the following elements:

(1) Duties of responsible officials

(A) If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, the court, or another responsible officer or official, shall—

(i) inform the person of the duty to register and obtain the information required for such registration;

(ii) inform the person that if the person changes residence address, the person shall report the change of address as provided by State law;

(iii) inform the person that if the person changes residence to another State, the person shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student;

(iv) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(v) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1) of this section, the State prison officer, the court, or another responsible officer or official, as the case may be, shall obtain the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

(2) Transfer of information to State and FBI; participation in national sex offender registry

(A) State reporting

State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

(B) National reporting

A State shall participate in the national database established under section 14072(b) of this title in accordance with guidelines issued by the Attorney General, including

transmission of current address information and other information on registrants to the extent provided by the guidelines.

(3) Verification

(A) For a person required to register under subparagraph (A) of subsection (a)(1) of this section, State procedures shall provide for verification of address at least annually.

(B) The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1) of this section, except that such person must verify the registration every 90 days after the date of the initial release or commencement of parole.

(4) Notification of local law enforcement agencies of changes in address

A change of address by a person required to register under this section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system.

(5) Registration for change of address to another State

A person who has been convicted of an offense which requires registration under this section and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration.

(6) Length of registration

A person required to register under subsection (a)(1) of this section shall continue to comply with this section, except during ensuing periods of incarceration, until—

(A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or

(B) for the life of that person if that person—

(i) has 1 or more prior convictions for an offense described in subsection (a)(1)(A) of this section; or

(ii) has been convicted of an aggravated offense described in subsection (a)(1)(A) of this section; or

(iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2) of this section.

(7) Registration of out-of-State offenders, Federal offenders, persons sentenced by courts martial, and offenders crossing State borders

As provided in guidelines issued by the Attorney General, each State shall include in its registration program residents who were convicted in another State and shall ensure that procedures are in place to accept registration information from—

(A) residents who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and

(B) nonresident offenders who have crossed into another State in order to work or attend school.

(c) Registration of offender crossing State border

Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student.

(d) Penalty

A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

(e) Release of information

(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

(2) The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released. The release of information under this paragraph shall include the maintenance of an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous.

(f) Immunity for good faith conduct

Law enforcement agencies, employees of law enforcement agencies and independent contractors acting at the direction of such agencies, and State officials shall be immune from liability for good faith conduct under this section.

(g) Compliance

(1) Compliance date

Each State shall have not more than 3 years from September 13, 1994, in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.

(2) Ineligibility for funds

(A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756[1] of this title.

(B) REALLOCATION OF FUNDS.—Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

(h) Fingerprints

Each requirement to register under this section shall be deemed to also require the submission of a set of fingerprints of the person re-

[1] See References in Text note below.

quired to register, obtained in accordance with regulations prescribed by the Attorney General under section 14072(h) of this title.

(i) Grants to States for costs of compliance

(1) Program authorized

(A) In general

The Director of the Bureau of Justice Assistance (in this subsection referred to as the ''Director'') shall carry out a program, which shall be known as the ''Sex Offender Management Assistance Program'' (in this subsection referred to as the ''SOMA program''), under which the Director shall award a grant to each eligible State to offset costs directly associated with complying with this section.

(B) Uses of funds

Each grant awarded under this subsection shall be—

(i) distributed directly to the State for distribution to State and local entities; and

(ii) used for training, salaries, equipment, materials, and other costs directly associated with complying with this section.

(2) Eligibility

(A) Application

To be eligible to receive a grant under this subsection, the chief executive of a State shall, on an annual basis, submit to the Director an application (in such form and containing such information as the Director may reasonably require) assuring that—

(i) the State complies with (or made a good faith effort to comply with) this section; and

(ii) where applicable, the State has penalties comparable to or greater than Federal penalties for crimes listed in this section, except that the Director may waive the requirement of this clause if a State demonstrates an overriding need for assistance under this subsection.

(B) Regulations

(i) In general

Not later than 90 days after October 30, 1998, the Director shall promulgate regulations to implement this subsection (including the information that must be included and the requirements that the States must meet) in submitting the applications required under this subsection. In allocating funds under this subsection, the Director may consider the annual number of sex offenders registered in each eligible State's monitoring and notification programs.

(ii) Certain training programs

Prior to implementing this subsection, the Director shall study the feasibility of incorporating into the SOMA program the activities of any technical assistance or training program established as a result of section 13941 of this title. In a case in which incorporating such activities into the SOMA program will eliminate duplication of efforts or administrative costs, the Director shall take administrative actions, as allowable, and make recommendations to Congress to incorporate such activities into the SOMA program prior to implementing the SOMA program.

(3) Authorization of appropriations

There is authorized to be appropriated for each of the fiscal years 2004 through 2007 such sums as may be necessary to carry out the provisions of section 3796dd(d)(10) of this title, as added by the PROTECT Act.[1]

(j) Notice of enrollment at or employment by institutions of higher education

(1) Notice by offenders

(A) In general

In addition to any other requirements of this section, any person who is required to register in a State shall provide notice as required under State law—

(i) of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student; and

(ii) of each change in enrollment or employment status of such person at an institution of higher education in that State.

(B) Change in status

A change in status under subparagraph (A)(ii) shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated information is promptly made available to a law enforcement agency having jurisdiction where such institution is located and entered into the appropriate State records or data system.

(2) State reporting

State procedures shall ensure that the registration information collected under paragraph (1)—

(A) is promptly made available to a law enforcement agency having jurisdiction where such institution is located; and

(B) entered into the appropriate State records or data system.

(3) Request

Nothing in this subsection shall require an educational institution to request such information from any State.

(Pub. L. 103–322, title XVII, § 170101, Sept. 13, 1994, 108 Stat. 2038; Pub. L. 104–145, § 2, May 17, 1996, 110 Stat. 1345; Pub. L. 104–236, §§ 3–7, Oct. 3, 1996, 110 Stat. 3096, 3097; Pub. L. 105–119, title I, § 115(a)(1)–(5), Nov. 26, 1997, 111 Stat. 2461–2463; Pub. L. 105–314, title VI, § 607(a), Oct. 30, 1998, 112 Stat. 2985; Pub. L. 106–386, div. B, title VI, § 1601(b)(1), Oct. 28, 2000, 114 Stat. 1537; Pub. L. 108–21, title VI, §§ 604(a), 605(a), 606, Apr. 30, 2003, 117 Stat. 688; Pub. L. 109–162, title XI, § 1153(b), Jan. 5, 2006, 119 Stat. 3113.)

REPEAL OF SECTION

Pub. L. 109–248, title I, § 129, July 27, 2006, 120 Stat. 600, provided that, effective before the later of 3 years after July 27, 2006, or 1 year

after the date on which the software described in section 16923 of this title is available, this section is repealed.

REFERENCES IN TEXT

Section 3756 of this title, referred to in subsec. (g)(2)(A), was repealed and a new section 3756 enacted by Pub. L. 109–162, title XI, §1111(a)(1), (2)(C), Jan. 5, 2006, 119 Stat. 3094, 3100. Provisions relating to allocations to States are contained in section 3755 of this title. See section 3750(b)(2) of this title.

Section 3796dd(d)(10) of this title, as added by the PROTECT Act, referred to in subsec. (i)(3), means section 3796dd(d)(10) of this title, as added by Pub. L. 108–21, which was redesignated section 3796dd(b)(15) by Pub. L. 109–162, title XI, §1163(a)(3)(B), Jan. 5, 2006, 119 Stat. 3119.

AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109–162 substituted ''for the time period specified in'' for ''unless such requirement is terminated under''.

2003—Pub. L. 108–21, §605(a)(1), substituted ''Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program'' for ''Establishment of Program'' in section catchline.

Subsec. (a)(3)(A)(viii), (ix). Pub. L. 108–21, §605(a)(2), added cl. (viii) and redesignated former cl. (viii) as (ix).

Subsec. (e)(2). Pub. L. 108–21, §604(a), inserted at end ''The release of information under this paragraph shall include the maintenance of an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous.''

Subsec. (i)(3). Pub. L. 108–21, §606, amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''There is authorized to be appropriated to carry out this subsection, $25,000,000 for each of fiscal years 1999 and 2000.''

2000—Subsec. (j). Pub. L. 106–386 added subsec. (j).

1998—Subsecs. (g), (h). Pub. L. 105–314, §607(a)(1), which directed the amendment of this section by redesignating the second subsection designated as subsection (g) as subsection (h), was executed by redesignating subsec. (g), relating to fingerprints, as (h) to reflect the probable intent of Congress.

Subsec. (i). Pub. L. 105–314, §607(a)(2), added subsec. (i).

1997—Subsec. (a)(1)(A), (B). Pub. L. 105–119, §115(a)(1)(A), struck out ''with a designated State law enforcement agency'' after ''current address''.

Subsec. (a)(2). Pub. L. 105–119, §115(a)(1)(B), added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''A determination that a person is a sexually violent predator and a determination that a person is no longer a sexually violent predator shall be made by the sentencing court after receiving a report by a State board composed of experts in the field of the behavior and treatment of sexual offenders, victim rights advocates, and representatives from law enforcement agencies.''

Subsec. (a)(3)(A). Pub. L. 105–119, §115(a)(1)(C)(i), substituted ''in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:'' for ''that consists of—'' in introductory provisions.

Subsec. (a)(3)(B). Pub. L. 105–119, §115(a)(1)(C)(ii), substituted ''in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by'' for ''that consists of''.

Subsec. (a)(3)(F), (G). Pub. L. 105–119, §115(a)(1)(D), added subpars. (F) and (G).

Subsec. (b)(1). Pub. L. 105–119, §115(a)(2)(A)(i), substituted ''Duties of responsible officials'' for ''Duty of State prison official or court'' in heading.

Subsec. (b)(1)(A). Pub. L. 105–119, §115(a)(2)(A)(ii)(I), substituted ''the court, or another responsible officer or official'' for ''or in the case of probation, the court'' in introductory provisions.

Subsec. (b)(1)(A)(ii). Pub. L. 105–119, §115(a)(2)(A)(ii)(II), substituted ''report the change of address as provided by State law'' for ''give the new address to a designated State law enforcement agency in writing within 10 days''.

Subsec. (b)(1)(A)(iii). Pub. L. 105–119, §115(a)(2)(A)(ii)(III), substituted ''shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student'' for ''shall register the new address with the law enforcement agency with whom the person last registered, and the person is also required to register with a designated law enforcement agency in the new State not later than 10 days after establishing residence in the new State, if the new State has a registration requirement''.

Subsec. (b)(1)(B). Pub. L. 105–119, §115(a)(2)(A)(iii), substituted '', the court, or another responsible officer or official'' for ''or the court''.

Subsec. (b)(2). Pub. L. 105–119, §115(a)(2)(B), added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit all information described in paragraph (1) to the Federal Bureau of Investigation for inclusion in the FBI database described in section 14072 of this title.''

Subsec. (b)(3)(A). Pub. L. 105–119, §115(a)(2)(C)(i), in introductory provisions, substituted ''State procedures shall provide for verification of address at least annually.'' for ''on each anniversary of the person's initial registration date during the period in which the person is required to register under this section the following applies:''.

Subsec. (b)(3)(A)(i) to (iv). Pub. L. 105–119, §115(a)(2)(C)(ii), which directed the amendment of par. (3)(A) by striking out cls. (i) through (v), was executed by striking out cls. (i) through (iv) to reflect the probable intent of Congress because no cl. (v) had been enacted. Prior to amendment, cls. (i) through (iv) read as follows:

''(i) The designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person.

''(ii) The person shall mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form.

''(iii) The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency. The person shall include with the verification form, fingerprints and a photograph of that person.

''(iv) If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed the residence address.''

Subsec. (b)(4). Pub. L. 105–119, §115(a)(2)(D), substituted ''section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system'' for ''section reported to the designated State law enforcement agency shall be immediately reported to the appropriate law enforcement agency having jurisdiction where the person is residing. The designated law enforcement agency shall, if the person changes residence to another State, notify the law enforcement agency

with which the person must register in the new State, if the new State has a registration requirement''.

Subsec. (b)(5). Pub. L. 105–119, §115(a)(2)(E), substituted ''and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration'' for ''shall register the new address with a designated law enforcement agency in another State to which the person moves not later than 10 days after such person establishes residence in the new State, if the new State has a registration requirement''.

Subsec. (b)(7). Pub. L. 105–119, §115(a)(2)(F), added par. (7).

Subsec. (c). Pub. L. 105–119, §115(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–119, §115(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105–119, §115(a)(3), (4), redesignated subsec. (d) as (e) and in par. (2) substituted ''The State or any agency authorized by the State'' for ''The designated State law enforcement agency and any local law enforcement agency authorized by the State agency''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105–119, §115(a)(3), (5), redesignated subsec. (e) as (f) and substituted ''and independent contractors acting at the direction of such agencies, and State officials'' for '', and State officials''. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105–119, §115(a)(3), redesignated subsec. (f), relating to compliance, as (g).

1996—Subsec. (a)(2). Pub. L. 104–236, §4, inserted before period at end '', victim rights advocates, and representatives from law enforcement agencies''.

Subsec. (b)(2). Pub. L. 104–236, §7, amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation.''

Subsec. (b)(3)(A)(iii). Pub. L. 104–236, §6, inserted at end ''The person shall include with the verification form, fingerprints and a photograph of that person.''

Subsec. (b)(6). Pub. L. 104–236, §3, amended heading and text of par. (6) generally. Prior to amendment, text read as follows:

''(A) A person required to register under subparagraph (A) of subsection (a)(1) of this section shall continue to comply with this section until 10 years have elapsed since the person was released from prison, placed on parole, supervised release, or probation.

''(B) The requirement of a person to register under subparagraph (B) of subsection (a)(1) of this section shall terminate upon a determination, made in accordance with paragraph (2) of subsection (a) of this section, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.''

Subsec. (d). Pub. L. 104–145 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: ''The information collected under a State registration program shall be treated as private data expect that—

''(1) such information may be disclosed to law enforcement agencies for law enforcement purposes;

''(2) such information may be disclosed to government agencies conducting confidential background checks; and

''(3) the designated State law enforcement agency and any local law enforcement agency authorized by the State agency may release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.''

Subsec. (g). Pub. L. 104–236, §5, added subsec. (g).

EFFECTIVE DATE OF REPEAL

Pub. L. 109–248, title I, §129(b), July 27, 2006, 120 Stat. 601, provided that: ''Notwithstanding any other provision of this Act [see Tables for classification], this section [repealing this section and sections 14072 and 14073 of this title] shall take effect on the date of the deadline determined in accordance with section 124(a) [42 U.S.C. 16924(a)].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–21, title VI, §604(b), Apr. 30, 2003, 117 Stat. 688, provided that: ''Each State shall implement the amendment made by this section [amending this section] within 3 years after the date of enactment of this Act [Apr. 30, 2003], except that the Attorney General may grant an additional 2 years to a State that is making a good faith effort to implement the amendment made by this section.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–386, div. B, title VI, §1601(b)(2), Oct. 28, 2000, 114 Stat. 1537, provided that: ''The amendment made by this subsection [amending this section] shall take effect 2 years after the date of the enactment of this Act [Oct. 28, 2000].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 115(c) of Pub. L. 105–119 provided that: ''This section [amending this section, section 14072 of this title, and sections 3521, 3563, 3583, 4042, and 4209 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under section 14039 of this title and section 951 of Title 10, Armed Forces, and amending provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Nov. 26, 1997], except that—

''(1) subparagraphs (A), (B), and (C) of subsection (a)(8) [amending sections 3563, 3583, 4042, and 4209 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 951 of Title 10, Armed Forces] shall take effect 1 year after the date of the enactment of this Act; and

''(2) States shall have 3 years from such date of enactment to implement amendments made by this Act [probably should be ''this section''] which impose new requirements under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act [42 U.S.C. 14071 et seq.], and the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement these amendments.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 10 of Pub. L. 104–236, as amended by Pub. L. 105–119, title I, §115(a)(7), Nov. 26, 1997, 111 Stat. 2464, provided that:

''(a) IN GENERAL.—This Act [enacting sections 14072 and 14073 of this title, amending this section, and enacting provisions set out as notes under this section and section 13701 of this title] and the amendments made by this Act shall become effective 1 year after the date of enactment of this Act [Oct. 3, 1996].

''(b) COMPLIANCE BY STATES.—Each State shall implement the amendments made by sections 3, 4, 5, 6, and 7 of this Act [amending this section] not later than 3 years after the date of enactment of this Act, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement such amendments.

''(c) INELIGIBILITY FOR FUNDS.—

''(1) A State that fails to implement the program as described in sections 3, 4, 5, 6, and 7 of this Act [amending this section] shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 ([former] 42 U.S.C. 3756).

''(2) Any funds that are not allocated for failure to comply with section 3, 4, 5, 6, or 7 of this Act shall be reallocated to States that comply with these sections.

''(d) EFFECTIVE DATE.—States shall be allowed the time specified in subsection (b) to establish minimally sufficient sexual offender registration programs for purposes of the amendments made by section 2 [enacting section 14072 of this title]. Subsections (c) and (k) of section 170102 of the Violent Crime Control and Law Enforcement Act of 1994 [42 U.S.C. 14072(c), (k)], and any requirement to issue related regulations, shall take effect at the conclusion of the time provided under this subsection for the establishment of minimally sufficient sexual offender registration programs.''

REGULATIONS

Section 9 of Pub. L. 104–236 provided that: ''Not later than 1 year after the date of enactment of this Act [Oct. 3, 1996], the Attorney General shall issue regulations to carry out this Act [see Effective Date of 1996 Amendment note above] and the amendments made by this Act.''

SEVERABILITY

Section 11 of Pub. L. 104–236 provided that: ''If any provision of this Act [see Effective Date of 1996 Amendment note above], an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.''

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of this title.

SIMPLIFICATION OF COMPLIANCE DEADLINES UNDER SEX-OFFENDER REGISTRATION LAWS

Pub. L. 109–162, title XI, § 1153(a), Jan. 5, 2006, 119 Stat. 3113, provided that: ''A State shall not be treated, for purposes of any provision of law, as having failed to comply with section 170101 (42 U.S.C. 14071) or 170102 (42 U.S.C. 14072) of the Violent Crime Control and Law Enforcement Act of 1994 until 36 months after the date of the enactment of this Act [Jan. 5, 2006], except that the Attorney General may grant an additional 24 months to a State that is making good faith efforts to comply with such sections.''

NATIONAL INTERNET SITE

Pub. L. 108–21, title VI, § 604(c), Apr. 30, 2003, 117 Stat. 688, provided that: ''The Crimes Against Children Section of the Criminal Division of the Department of Justice shall create a national Internet site that links all State Internet sites established pursuant to this section [amending this section and enacting provisions set out as a note under this section].''

STUDY OF SEX OFFENDER MANAGEMENT ASSISTANCE PROGRAM

Pub. L. 105–314, title VI, § 607(b), Oct. 30, 1998, 112 Stat. 2986, provided that: ''Not later than March 1, 2000, the Director shall conduct a study to assess the efficacy of the Sex Offender Management Assistance Program under section 170101(i) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(i)), as added by this section, and submit recommendations to Congress.''

STUDY OF HOTLINES

Pub. L. 105–314, title IX, § 902, Oct. 30, 1998, 112 Stat. 2991, provided that:

''(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Oct. 30, 1998], the Attorney General shall conduct a study in accordance with subsection (b) and submit to Congress a report on the results of that study.

''(b) CONTENTS OF STUDY.—The study under this section shall include an examination of—

''(1) existing State programs for informing the public about the presence of sexual predators released from prison, as required in section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071), including the use of CD-ROMs, Internet databases, and Sexual Offender Identification Hotlines, such as those used in the State of California; and

''(2) the feasibility of establishing a national hotline for parents to access a Federal Bureau of Investigation database that tracks the location of convicted sexual predators established under section 170102 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14072) and, in determining that feasibility, the Attorney General shall examine issues including the cost, necessary changes to Federal and State laws necessitated by the creation of such a hotline, consistency with Federal and State case law pertaining to community notification, and the need for, and accuracy and reliability of, the information available through such a hotline.''

§ 14072. FBI database

(a) Definitions

For purposes of this section—

(1) the term ''FBI'' means the Federal Bureau of Investigation;

(2) the terms ''criminal offense against a victim who is a minor'', ''sexually violent offense'', ''sexually violent predator'', ''mental abnormality'', ''predatory'', ''employed, carries on a vocation'', and ''student'' have the same meanings as in section 14071(a)(3) of this title; and

(3) the term ''minimally sufficient sexual offender registration program'' means any State sexual offender registration program that—

(A) requires the registration of each offender who is convicted of an offense in a range of offenses specified by State law which is comparable to or exceeds that described in subparagraph (A) or (B) of section 14071(a)(1) of this title;

(B) participates in the national database established under subsection (b) of this section in conformity with guidelines issued by the Attorney General;

(C) provides for verification of address at least annually;[1]

(D) requires that each person who is required to register under subparagraph (A) shall do so for a period of not less than 10 years beginning on the date that such person was released from prison or placed on parole, supervised release, or probation.

(b) Establishment

The Attorney General shall establish a national database at the Federal Bureau of Inves-

[1] So in original. Probably should be followed by ''and''.

tigation to track the whereabouts and movement of—

(1) each person who has been convicted of a criminal offense against a victim who is a minor;

(2) each person who has been convicted of a sexually violent offense; and

(3) each person who is a sexually violent predator.

(c) Registration requirement

Each person described in subsection (b) of this section who resides in a State that has not established a minimally sufficient sexual offender registration program shall register a current address, fingerprints of that person, and a current photograph of that person with the FBI for inclusion in the database established under subsection (b) of this section for the time period specified under subsection (d) of this section.

(d) Length of registration

A person described in subsection (b) of this section who is required to register under subsection (c) of this section shall, except during ensuing periods of incarceration, continue to comply with this section—

(1) until 10 years after the date on which the person was released from prison or placed on parole, supervised release, or probation; or

(2) for the life of the person, if that person—

(A) has 2 or more convictions for an offense described in subsection (b) of this section;

(B) has been convicted of aggravated sexual abuse, as defined in section 2241 of title 18 or in a comparable provision of State law; or

(C) has been determined to be a sexually violent predator.

(e) Verification

(1) Persons convicted of an offense against a minor or a sexually violent offense

In the case of a person required to register under subsection (c) of this section, the FBI shall, during the period in which the person is required to register under subsection (d) of this section, verify the person's address in accordance with guidelines that shall be promulgated by the Attorney General. Such guidelines shall ensure that address verification is accomplished with respect to these individuals and shall require the submission of fingerprints and photographs of the individual.

(2) Sexually violent predators

Paragraph (1) shall apply to a person described in subsection (b)(3) of this section, except that such person must verify the registration once every 90 days after the date of the initial release or commencement of parole of that person.

(f) Community notification

(1) In general

Subject to paragraph (2), the FBI may release relevant information concerning a person required to register under subsection (c) of this section that is necessary to protect the public.

(2) Identity of victim

In no case shall the FBI release the identity of any victim of an offense that requires registration by the offender with the FBI.

(g) Notification of FBI of changes in residence

(1) Establishment of new residence

For purposes of this section, a person shall be deemed to have established a new residence during any period in which that person resides for not less than 10 days.

(2) Persons required to register with the FBI

Each establishment of a new residence, including the initial establishment of a residence immediately following release from prison, or placement on parole, supervised release, or probation, by a person required to register under subsection (c) of this section shall be reported to the FBI not later than 10 days after that person establishes a new residence.

(3) Individual registration requirement

A person required to register under subsection (c) of this section or under a State sexual offender offender[2] registration program, including a program established under section 14071 of this title, who changes address to a State other than the State in which the person resided at the time of the immediately preceding registration shall, not later than 10 days after that person establishes a new residence, register a current address, fingerprints, and photograph of that person, for inclusion in the appropriate database, with—

(A) the FBI; and

(B) the State in which the new residence is established.

(4) State registration requirement

Any time any State agency in a State with a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, is notified of a change of address by a person required to register under such program within or outside of such State, the State shall notify—

(A) the law enforcement officials of the jurisdiction to which, and the jurisdiction from which, the person has relocated; and

(B) the FBI.

(5) Verification

(A) Notification of local law enforcement officials

The FBI shall ensure that State and local law enforcement officials of the jurisdiction from which, and the State and local law enforcement officials of the jurisdiction to which, a person required to register under subsection (c) of this section relocates are notified of the new residence of such person.

(B) Notification of FBI

A State agency receiving notification under this subsection shall notify the FBI of the new residence of the offender.

[2] So in original.

(C) Verification

(i) State agencies

If a State agency cannot verify the address of or locate a person required to register with a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, the State shall immediately notify the FBI.

(ii) FBI

If the FBI cannot verify the address of or locate a person required to register under subsection (c) of this section or if the FBI receives notification from a State under clause (i), the FBI shall—

(I) classify the person as being in violation of the registration requirements of the national database; and

(II) add the name of the person to the National Crime Information Center Wanted person file and create a wanted persons record: *Provided*, That an arrest warrant which meets the requirements for entry into the file is issued in connection with the violation.

(h) Fingerprints

(1) FBI registration

For each person required to register under subsection (c) of this section, fingerprints shall be obtained and verified by the FBI or a local law enforcement official pursuant to regulations issued by the Attorney General.

(2) State registration systems

In a State that has a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, fingerprints required to be registered with the FBI under this section shall be obtained and verified in accordance with State requirements. The State agency responsible for registration shall ensure that the fingerprints and all other information required to be registered is registered with the FBI.

(i) Penalty

A person who is—

(1) required to register under paragraph (1), (2), or (3) of subsection (g) of this section and knowingly fails to comply with this section;

(2) required to register under a sexual offender registration program in the person's State of residence and knowingly fails to register in any other State in which the person is employed, carries on a vocation, or is a student;

(3) described in section 4042(c)(4) of title 18, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation; or

(4) sentenced by a court martial for conduct in a category specified by the Secretary of Defense under section 115(a)(8)(C) of title I of Public Law 105–119, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation, shall, in the case of a first offense under this subsection, be imprisoned for not more than 1 year and, in the case of a second or subsequent offense under this subsection, be imprisoned for not more than 10 years.

(j) Release of information

The information collected by the FBI under this section shall be disclosed by the FBI—

(1) to Federal, State, and local criminal justice agencies for—

(A) law enforcement purposes; and

(B) community notification in accordance with section 14071(d)(3)[3] of this title; and

(2) to Federal, State, and local governmental agencies responsible for conducting employment-related background checks under section 5119a of this title.

(k) Notification upon release

Any State not having established a program described in subsection (a)(3) of this section must—

(1) upon release from prison, or placement on parole, supervised release, or probation, notify each offender who is convicted of an offense described in subparagraph (A) or (B) of section 14071(a)(1) of this title of their duty to register with the FBI; and

(2) notify the FBI of the release of each offender who is convicted of an offense described in subparagraph (A) or (B) of section 14071(a)(1) of this title.

(Pub. L. 103–322, title XVII, § 170102, as added Pub. L. 104–236, § 2(a), Oct. 3, 1996, 110 Stat. 3093; amended Pub. L. 105–119, title I, § 115(a)(6), Nov. 26, 1997, 111 Stat. 2463; Pub. L. 105–277, div. A, § 101(b) [title I, § 123], Oct. 21, 1998, 112 Stat. 2681–50, 2681–72.)

REPEAL OF SECTION

Pub. L. 109–248, title I, § 129, July 27, 2006, 120 Stat. 600, provided that, effective before the later of 3 years after July 27, 2006, or 1 year after the date on which the software described in section 16923 of this title is available, this section is repealed.

REFERENCES IN TEXT

Section 115(a)(8)(C) of title I of Public Law 105–119, referred to in subsec. (i)(4), is set out as a note under section 951 of Title 10, Armed Forces.

Section 14071(d)(3) of this title, referred to in subsec. (j)(1)(B), was redesignated section 14071(e)(3) of this title by Pub. L. 105–119, title I, § 115(a)(3), Nov. 26, 1997, 111 Stat. 2463.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–277, § 101(b) [title I, § 123(1)], struck out "or" after "'employed,".

Subsec. (g)(3). Pub. L. 105–277, § 101(b) [title I, § 123(2)], substituted "State sexual offender" for "minimally sufficient" in introductory provisions.

Subsec. (i). Pub. L. 105–277, § 101(b) [title I, § 123(3)], amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: "A person required to register under paragraph (1), (2), or (3) of subsection (g) of this section or pursuant to section 14071(b)(7) of this title who knowingly fails to comply with this section shall—

"(1) in the case of a first offense—

[3] See References in Text note below.

''(A) if the person has been convicted of 1 offense described in subsection (b) of this section, be fined not more than $100,000; or

''(B) if the person has been convicted of more than 1 offense described in subsection (b) of this section, be imprisoned for up to 1 year and fined not more than $100,000; or

''(2) in the case of a second or subsequent offense, be imprisoned for up to 10 years and fined not more than $100,000.''

1997—Subsec. (a)(2). Pub. L. 105–119, § 115(a)(6)(A), substituted ''‘predatory’, ‘employed, or carries on a vocation’, and ‘student’'' for ''and ‘predatory’''.

Subsec. (a)(3)(A). Pub. L. 105–119, § 115(a)(6)(B)(i), inserted ''in a range of offenses specified by State law which is comparable to or exceeds that'' before ''described''.

Subsec. (a)(3)(B). Pub. L. 105–119, § 115(a)(6)(B)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''requires that all information gathered under such program be transmitted to the FBI in accordance with subsection (g) of this section;''.

Subsec. (a)(3)(C). Pub. L. 105–119, § 115(a)(6)(B)(iii), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''meets the requirements for verification under section 14071(b)(3) of this title; and''.

Subsec. (i). Pub. L. 105–119, § 115(a)(6)(C), inserted ''or pursuant to section 14071(b)(7) of this title'' after ''subsection (g) of this section'' in introductory provisions.

EFFECTIVE DATE OF REPEAL

Repeal of section effective before the later of 3 years after July 27, 2006, or 1 year after the date on which the software described in section 16923 of this title is available, see section 129(b) of Pub. L. 109–248, set out as a note under section 14071 of this title.

EFFECTIVE DATE

For effective date of section, see section 10 of Pub. L. 104–236, as amended, set out as an Effective Date of 1996 Amendment note under section 14071 of this title.

§ 14073. Immunity for good faith conduct

State and Federal law enforcement agencies, employees of State and Federal law enforcement agencies, and State and Federal officials shall be immune from liability for good faith conduct under section 14072[1] of this title.

(Pub. L. 104–236, § 8, Oct. 3, 1996, 110 Stat. 3097.)

REPEAL OF SECTION

Pub. L. 109–248, title I, § 129, July 27, 2006, 120 Stat. 600, provided that, effective before the later of 3 years after July 27, 2006, or 1 year after the date on which the software described in section 16923 of this title is available, this section is repealed.

REFERENCES IN TEXT

Section 14072 of this title, referred to in text, was in the original ''section 170102'', which was translated as meaning section 170102 of Pub. L. 103–322, as added by Pub. L. 104–236, to reflect the probable intent of Congress. Pub. L. 104–236, which enacted this section, contains no section 170102.

CODIFICATION

Section was enacted as part of the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

EFFECTIVE DATE OF REPEAL

Repeal of section effective before the later of 3 years after July 27, 2006, or 1 year after the date on which the software described in section 16923 of this title is available, see section 129(b) of Pub. L. 109–248, set out as a note under section 14071 of this title.

EFFECTIVE DATE

Section effective one year after Oct. 3, 1996, see section 10(a) of Pub. L. 104–236, set out as an Effective Date of 1996 Amendment note under section 14071 of this title.

SUBCHAPTER VII—RURAL CRIME

§ 14081. Rural Crime and Drug Enforcement Task Forces

(a) Establishment

The Attorney General, in consultation with the Governors, mayors, and chief executive officers of State and local law enforcement agencies, may establish a Rural Crime and Drug Enforcement Task Force in judicial districts that encompass significant rural lands. Assets seized as a result of investigations initiated by a Rural Crime and Drug Enforcement Task Force and forfeited under Federal law shall be used, consistent with the guidelines on equitable sharing established by the Attorney General and of the Secretary of the Treasury, primarily to enhance the operations of the task force and its participating State and local law enforcement agencies.

(b) Task force membership

The Task Forces[1] established under subsection (a) of this section shall be carried out under policies and procedures established by the Attorney General. The Attorney General may deputize State and local law enforcement officers and may cross-designate up to 100 Federal law enforcement officers, when necessary to undertake investigations pursuant to section 873(a) of title 21 or offenses punishable by a term of imprisonment of 10 years or more under title 18. The task forces—

(1) shall include representatives from—

(A) State and local law enforcement agencies;

(B) the office of the United States Attorney for the judicial district; and

(C) the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the United States Marshals Service; and

(2) may include representatives of other Federal law enforcement agencies, such as the United States Customs Service, United States Park Police, United States Forest Service, Bureau of Alcohol, Tobacco, and Firearms, and Bureau of Land Management.

(Pub. L. 103–322, title XVIII, § 180102, Sept. 13, 1994, 108 Stat. 2045.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department

[1] See References in Text note below.

[1] So in original. Probably should not be capitalized.

of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, including the related functions of the Secretary of the Treasury, to the Department of Justice, see section 531(c) of Title 6, Domestic Security, and section 599A(c)(1) of Title 28, Judiciary and Judicial Procedure.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 14082. Rural drug enforcement training

(a) Specialized training for rural officers

The Director of the Federal Law Enforcement Training Center shall develop a specialized course of instruction devoted to training law enforcement officers from rural agencies in the investigation of drug trafficking and related crimes.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out subsection (a) of this section—

(1) $1,000,000 for fiscal year 1996;
(2) $1,000,000 for fiscal year 1997;
(3) $1,000,000 for fiscal year 1998;
(4) $1,000,000 for fiscal year 1999; and
(5) $1,000,000 for fiscal year 2000.

(Pub. L. 103–322, title XVIII, § 180103, Sept. 13, 1994, 108 Stat. 2046.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Law Enforcement Training Center of the Department of the Treasury to the Secretary of Homeland Security, and for treatment of related references, see sections 203(4), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 14083. More agents for Drug Enforcement Administration

There are authorized to be appropriated for the hiring of additional Drug Enforcement Administration agents—

(1) $12,000,000 for fiscal year 1996;
(2) $20,000,000 for fiscal year 1997;
(3) $30,000,000 for fiscal year 1998;
(4) $40,000,000 for fiscal year 1999; and
(5) $48,000,000 for fiscal year 2000.

(Pub. L. 103–322, title XVIII, § 180104, Sept. 13, 1994, 108 Stat. 2046.)

SUBCHAPTER VIII—POLICE CORPS AND LAW ENFORCEMENT OFFICERS TRAINING AND EDUCATION

PART A—POLICE CORPS

§ 14091. Purposes

The purposes of this part are to—

(1) address violent crime by increasing the number of police with advanced education and training on community patrol; and

(2) provide educational assistance to law enforcement personnel and to students who possess a sincere interest in public service in the form of law enforcement.

(Pub. L. 103–322, title XX, § 200102, Sept. 13, 1994, 108 Stat. 2049.)

SHORT TITLE

For short title of this part as the ''Police Corps Act'', see section 200101 of Pub. L. 103–322, set out as a note under section 13701 of this title.

§ 14092. Definitions

In this part—

''academic year'' means a traditional academic year beginning in August or September and ending in the following May or June.

''dependent child'' means a natural or adopted child or stepchild of a law enforcement officer who at the time of the officer's death—

(A) was no more than 21 years old; or

(B) if older than 21 years, was in fact dependent on the child's parents for at least one-half of the child's support (excluding educational expenses), as determined by the Director.

''Director'' means the Director of the Office of the Police Corps and Law Enforcement Education appointed under section 14093[1] of this title.

''educational expenses'' means expenses that are directly attributable to a course of education leading to the award of either a baccalaureate or graduate degree in a course of study which, in the judgment of the State or local police force to which the participant will be assigned, includes appropriate preparation for police service including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses.

''institution of higher education'' has the meaning stated in the first sentence of section 1001 of title 20.

''participant'' means a participant in the Police Corps program selected pursuant to section 14095[2] of this title.

''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

''State Police Corps program'' means a State police corps program that meets the requirements of section 14099 of this title.

(Pub. L. 103–322, title XX, § 200103, Sept. 13, 1994, 108 Stat. 2049; Pub. L. 104–134, title I, § 101[(a)] [title I, § 121], Apr. 26, 1996, 110 Stat. 1321, 1321–22; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–244, title I, § 102(a)(13)(O), Oct. 7, 1998, 112 Stat. 1621.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–244 substituted ''section 1001'' for ''section 1141(a)'' in par. defining ''institution of higher education''.

1996—Pub. L. 104–134 amended generally par. defining ''education expenses''. Prior to amendment, par. read

[1] So in original. Section 14093 of this title does not provide for the appointment of a Director.

[2] So in original. Probably should be section ''14096''.

as follows: ''‘educational expenses’ means expenses that are directly attributable to—

''(A) a course of education leading to the award of the baccalaureate degree in legal- or criminal justice-related studies; or

''(B) a course of graduate study legal or criminal justice studies following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

§ 14093. Establishment of Office of the Police Corps and Law Enforcement Education

There is established in the Department of Justice, under the general authority of the Attorney General, an Office of the Police Corps and Law Enforcement Education.

(Pub. L. 103–322, title XX, § 200104, Sept. 13, 1994, 108 Stat. 2050.)

§ 14094. Designation of lead agency and submission of State plan

(a) Lead agency

A State that desires to participate in the Police Corps program under this part shall designate a lead agency that will be responsible for—

(1) submitting to the Director a State plan described in subsection (b) of this section; and

(2) administering the program in the State.

(b) State plans

A State plan shall—

(1) contain assurances that the lead agency shall work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement interagency agreements designed to carry out the program;

(2) contain assurances that the State shall advertise the assistance available under this part;

(3) contain assurances that the State shall screen and select law enforcement personnel for participation in the program; and

(4) meet the requirements of section 14099 of this title.

(Pub. L. 103–322, title XX, § 200105, Sept. 13, 1994, 108 Stat. 2050.)

§ 14095. Scholarship assistance

(a) Scholarships authorized

(1) The Director may award scholarships to participants who agree to work in a State or local police force in accordance with agreements entered into pursuant to subsection (d) of this section.

(2)(A) Except as provided in subparagraph (B), each scholarship payment made under this section for each academic year shall not exceed—

(i) $10,000; or

(ii) the cost of the educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed $13,333.

(C) The total amount of scholarship assistance received by any one student under this section shall not exceed $40,000.

(3) Recipients of scholarship assistance under this section shall continue to receive such scholarship payments only during such periods as the Director finds that the recipient is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending.

(4)(A) The Director shall make scholarship payments under this section directly to the institution of higher education that the student is attending.

(B) Each institution of higher education receiving a payment on behalf of a participant pursuant to subparagraph (A) shall remit to such student any funds in excess of the costs of tuition, fees, and room and board payable to the institution.

(b) Reimbursement authorized

(1) The Director may make payments to a participant to reimburse such participant for the costs of educational expenses if the student agrees to work in a State or local police force in accordance with the agreement entered into pursuant to subsection (d) of this section.

(2)(A) Each payment made pursuant to paragraph (1) for each academic year of study shall not exceed—

(i) $10,000; or

(ii) the cost of educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed $13,333.

(C) The total amount of payments made pursuant to subparagraph (A) to any 1 student shall not exceed $40,000.

(c) Use of scholarship

Scholarships awarded under this subsection[1] shall only be used to attend a 4-year institution of higher education, except that—

(1) scholarships may be used for graduate and professional study; and

(2) if a participant has enrolled in the program upon or after transfer to a 4-year institution of higher education, the Director may reimburse the participant for the participant's prior educational expenses.

(d) Agreement

(1)(A) Each participant receiving a scholarship or a payment under this section shall enter into an agreement with the Director.

(B) An agreement under subparagraph (A) shall contain assurances that the participant shall—

[1] So in original. Probably should be ''section''.

(i) after successful completion of a baccalaureate program and training as prescribed in section 14097 of this title, work for 4 years in a State or local police force without there having arisen sufficient cause for the participant's dismissal under the rules applicable to members of the police force of which the participant is a member;

(ii) complete satisfactorily—

(I) an educational course of study and receipt of a baccalaureate degree (in the case of undergraduate study) or the reward of credit to the participant for having completed one or more graduate courses (in the case of graduate study); and

(II) Police Corps training and certification by the Director that the participant has met such performance standards as may be established pursuant to section 14097 of this title; and

(iii) repay all of the scholarship or payment received plus interest at the rate of 10 percent if the conditions of clauses (i) and (ii) are not complied with.

(2)(A) A recipient of a scholarship or payment under this section shall not be considered to be in violation of the agreement entered into pursuant to paragraph (1) if the recipient—

(i) dies; or

(ii) becomes permanently and totally disabled as established by the sworn affidavit of a qualified physician.

(B) If a scholarship recipient is unable to comply with the repayment provision set forth in paragraph (1)(B)(ii)[2] because of a physical or emotional disability or for good cause as determined by the Director, the Director may substitute community service in a form prescribed by the Director for the required repayment.

(C) The Director shall expeditiously seek repayment from a participant who violates an agreement described in paragraph (1).

(e) Dependent child

A dependent child of a law enforcement officer—

(1) who is a member of a State or local police force or is a Federal criminal investigator or uniformed police officer,

(2) who is not a participant in the Police Corps program, but

(3) who serves in a State for which the Director has approved a Police Corps plan, and

(4) who is killed in the course of performing police duties,

shall be entitled to the scholarship assistance authorized in this section for any course of study in any accredited institution of higher education. Such dependent child shall not incur any repayment obligation in exchange for the scholarship assistance provided in this section.

(f) Application

Each participant desiring a scholarship or payment under this section shall submit an application as prescribed by the Director in such manner and accompanied by such information as the Director may reasonably require.

[2] So in original. Probably should be paragraph ''(1)(B)(iii)''.

(Pub. L. 103–322, title XX, § 200106, Sept. 13, 1994, 108 Stat. 2050; Pub. L. 107–273, div. C, title I, § 11006(1), Nov. 2, 2002, 116 Stat. 1817.)

AMENDMENTS

2002—Subsecs. (a)(2), (b)(2). Pub. L. 107–273 substituted ''$10,000'' for ''$7,500'' in subpar. (A)(i), ''$13,333'' for ''$10,000'' in subpar. (B), and ''$40,000'' for ''$30,000'' in subpar. (C).

§ 14096. Selection of participants

(a) In general

Participants in State Police Corps programs shall be selected on a competitive basis by each State under regulations prescribed by the Director.

(b) Selection criteria and qualifications

(1) In order to participate in a State Police Corps program, a participant shall—

(A) be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(B) meet the requirements for admission as a trainee of the State or local police force to which the participant will be assigned pursuant to section 14099(5) of this title, including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the State or local police shall not disqualify the applicant if the applicant will be of sufficient age upon completing an undergraduate course of study;

(C) possess the necessary mental and physical capabilities and emotional characteristics to discharge effectively the duties of a law enforcement officer;

(D) be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(E) in the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree and will then accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State;

(F) in the case of a participant desiring to undertake or continue graduate study, agree in writing that the participant will accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State before undertaking or continuing graduate study;

(G) contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve for 4 years as an officer in the State police or in a local police department, if an appointment is offered; and

(H) except as provided in paragraph (2), be without previous law enforcement experience.

(2)(A) Until the date that is 5 years after September 13, 1994, up to 10 percent of the applicants accepted into the Police Corps program may be persons who—

(i) have had some law enforcement experience; and

(ii) have demonstrated special leadership potential and dedication to law enforcement.

(B)(i) The prior period of law enforcement of a participant selected pursuant to subparagraph

(A) shall not be counted toward satisfaction of the participant's 4-year service obligation under section 14098 of this title, and such a participant shall be subject to the same benefits and obligations under this part as other participants, including those stated in section[1] (b)(1)(E) and (F) of this section.

(ii) Clause (i) shall not be construed to preclude counting a participant's previous period of law enforcement experience for purposes other than satisfaction of the requirements of section 14098 of this title, such as for purposes of determining such a participant's pay and other benefits, rank, and tenure.

(3) It is the intent of this part that there shall be no more than 20,000 participants in each graduating class. The Director shall approve State plans providing in the aggregate for such enrollment of applicants as shall assure, as nearly as possible, annual graduating classes of 20,000. In a year in which applications are received in a number greater than that which will produce, in the judgment of the Director, a graduating class of more than 20,000, the Director shall, in deciding which applications to grant, give preference to those who will be participating in State plans that provide law enforcement personnel to areas of greatest need.

(c) Recruitment of minorities

Each State participating in the Police Corps program shall make special efforts to seek and recruit applicants from among members of all racial, ethnic or gender groups. This subsection does not authorize an exception from the competitive standards for admission established pursuant to subsections (a) and (b) of this section.

(d) Enrollment of applicant

(1) An applicant shall be accepted into a State Police Corps program on the condition that the applicant will be matriculated in, or accepted for admission at, a 4-year institution of higher education—

(A) as a full-time student in an undergraduate program; or

(B) for purposes of taking a graduate course.

(2) If the applicant is not matriculated or accepted as set forth in paragraph (1), the applicant's acceptance in the program shall be revoked.

(e) Leave of absence

(1) A participant in a State Police Corps program who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) due to temporary physical or emotional disability shall be granted such leave of absence by the State.

(2) A participant who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) for any reason other than those listed in paragraph (1) may be granted such leave of absence by the State.

(3) A participant who requests a leave of absence from educational study or training for a period not to exceed 30 months to serve on an official church mission may be granted such leave of absence.

(f) Admission of applicants

An applicant may be admitted into a State Police Corps program either before commencement of or during the applicant's course of educational study.

(Pub. L. 103–322, title XX, § 200107, Sept. 13, 1994, 108 Stat. 2052.)

§ 14097. Police Corps training

(a) In general

(1) The Director shall establish programs of training for Police Corps participants. Such programs may be carried out at up to 3 training centers established for this purpose and administered by the Director, or by contracting with existing State training facilities. The Director shall contract with a State training facility upon request of such facility if the Director determines that such facility offers a course of training substantially equivalent to the Police Corps training program described in this part.

(2) The Director may enter into contracts with individuals, institutions of learning, and government agencies (including State and local police forces) to obtain the services of persons qualified to participate in and contribute to the training process.

(3) The Director may enter into agreements with agencies of the Federal Government to utilize on a reimbursable basis space in Federal buildings and other resources.

(4) The Director may authorize such expenditures as are necessary for the effective maintenance of the training centers, including purchases of supplies, uniforms, and educational materials, and the provision of subsistence, quarters, and medical care to participants.

(b) Training sessions

A participant in a State Police Corps program shall attend up to 24 weeks, but no less than 16 weeks, of training at a training center. The Director may approve training conducted in not more than 3 separate sessions.

(c) Further training

The Police Corps training authorized in this section is intended to serve as basic law enforcement training but not to exclude further training of participants by the State and local authorities to which they will be assigned. Each State plan approved by the Director under section 14099[1] of this title shall include assurances that following completion of a participant's course of education each participant shall receive appropriate additional training by the State or local authority to which the participant is assigned. The time spent by a participant in such additional training, but not the time spent in Police Corps training, shall be counted toward fulfillment of the participant's 4-year service obligation.

(d) Course of training

The training sessions at training centers established under this section shall be designed to

[1] So in original. Probably should be ''subsection''.

[1] See References in Text note below.

provide basic law enforcement training, including vigorous physical and mental training to teach participants self-discipline and organizational loyalty and to impart knowledge and understanding of legal processes and law enforcement.

(e) Evaluation of participants

A participant shall be evaluated during training for mental, physical, and emotional fitness, and shall be required to meet performance standards prescribed by the Director at the conclusion of each training session in order to remain in the Police Corps program.

(f) Stipend

The Director shall pay participants in training sessions a stipend of $400 a week during training.

(Pub. L. 103–322, title XX, § 200108, Sept. 13, 1994, 108 Stat. 2054; Pub. L. 105–277, div. C, title I, § 138(a), Oct. 21, 1998, 112 Stat. 2681–597; Pub. L. 107–273, div. C, title I, § 11006(2), Nov. 2, 2002, 116 Stat. 1817.)

REFERENCES IN TEXT

Section 14099 of this title, referred to in subsec. (c), was in the original ''section 10'', and was translated as reading ''section 200110'', meaning section 200110 of Pub. L. 103–322, to reflect the probable intent of Congress, because Pub. L. 103–322 does not contain a section 10, and section 14099 of this title relates to requirements for State Police Corps plans.

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–273 substituted ''$400'' for ''$250''.

1998—Subsec. (b). Pub. L. 105–277, § 138(a)(1), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: ''A participant in a State Police Corps program shall attend two 8-week training sessions at a training center, one during the summer following completion of sophomore year and one during the summer following completion of junior year. If a participant enters the program after sophomore year, the participant shall complete 16 weeks of training at times determined by the Director.''

Subsec. (c). Pub. L. 105–277, § 138(a)(2), substituted ''The Police Corps'' for ''The 16 weeks of Police Corps''.

§ 14098. Service obligation

(a) Swearing in

Upon satisfactory completion of the participant's course of education and training program established in section 14097 of this title and meeting the requirements of the police force to which the participant is assigned, a participant shall be sworn in as a member of the police force to which the participant is assigned pursuant to the State Police Corps plan, and shall serve for 4 years as a member of that police force.

(b) Rights and responsibilities

A participant shall have all of the rights and responsibilities of and shall be subject to all rules and regulations applicable to other members of the police force of which the participant is a member, including those contained in applicable agreements with labor organizations and those provided by State and local law.

(c) Discipline

If the police force of which the participant is a member subjects the participant to discipline such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 14095 of this title, the Director may, upon a showing of good cause, permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 14095(d)(1)(B)(iii) of this title shall not apply.

(d) Layoffs

If the police force of which the participant is a member lays off the participant such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 14095 of this title, the Director may permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 14095(d)(1)(B)(iii) of this title shall not apply.

(Pub. L. 103–322, title XX, § 200109, Sept. 13, 1994, 108 Stat. 2055.)

§ 14099. State plan requirements

A State Police Corps plan shall—

(1) provide for the screening and selection of participants in accordance with the criteria set out in section 14096 of this title;

(2) state procedures governing the assignment of participants in the Police Corps program to State and local police forces (except with permission of the Director, no more than 25 percent of all the participants assigned in each year by each State to be assigned to a statewide police force or forces);

(3) provide that participants shall be assigned to those geographic areas in which—

(A) there is the greatest need for additional law enforcement personnel; and

(B) the participants will be used most effectively;

(4) provide that to the extent consistent with paragraph (3), a participant shall be assigned to an area near the participant's home or such other place as the participant may request;

(5) provide that to the extent feasible, a participant's assignment shall be made at the time the participant is accepted into the program, subject to change—

(A) prior to commencement of a participant's fourth year of undergraduate study, under such circumstances as the plan may specify; and

(B) from commencement of a participant's fourth year of undergraduate study until completion of 4 years of police service by participant, only for compelling reasons or to meet the needs of the State Police Corps program and only with the consent of the participant;

(6) provide that no participant shall be assigned to serve with a local police force—

(A) whose size has declined by more than 5 percent since June 21, 1989; or

(B) which has members who have been laid off but not retired;

(7) provide that participants shall be placed and to the extent feasible kept on community and preventive patrol;

(8) ensure that participants will receive effective training and leadership;

(9) provide that the State may decline to offer a participant an appointment following completion of Federal training, or may remove a participant from the Police Corps program at any time, only for good cause (including failure to make satisfactory progress in a course of educational study) and after following reasonable review procedures stated in the plan; and

(10) provide that a participant shall, while serving as a member of a police force, be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other police officers of the same rank and tenure in the police force of which the participant is a member.

(Pub. L. 103–322, title XX, § 200110, Sept. 13, 1994, 108 Stat. 2056; Pub. L. 107–273, div. C, title I, § 11006(3), Nov. 2, 2002, 116 Stat. 1817.)

AMENDMENTS

2002—Par. (2). Pub. L. 107–273 substituted ''except with permission of the Director, no more than 25 percent'' for ''no more than 10 percent''.

§ 14100. Repealed. Pub. L. 107–273, div. C, title I, § 11006(4), Nov. 2, 2002, 116 Stat. 1817

Section, Pub. L. 103–322, title XX, § 200111, Sept. 13, 1994, 108 Stat. 2056, provided assistance to States and localities employing Police Corps officers.

§ 14101. Authorization of appropriations

There are authorized to be appropriated to carry out this part $50,000,000 for fiscal year 1999, $70,000,000 for fiscal year 2000, $90,000,000 for fiscal year 2001, and $90,000,000 for each of fiscal years 2002 through 2005.

(Pub. L. 103–322, title XX, § 200112, Sept. 13, 1994, 108 Stat. 2057; Pub. L. 105–277, div. C, title I, § 138(b), Oct. 21, 1998, 112 Stat. 2681–597; Pub. L. 107–273, div. C, title I, § 11006(5), Nov. 2, 2002, 116 Stat. 1817.)

AMENDMENTS

2002—Pub. L. 107–273 substituted ''each of fiscal years 2002 through 2005'' for ''fiscal year 2002''.

1998—Pub. L. 105–277 substituted ''$50,000,000 for fiscal year 1999, $70,000,000 for fiscal year 2000, $90,000,000 for fiscal year 2001, and $90,000,000 for fiscal year 2002'' for ''$20,000 for each of the fiscal years 1996 through 2000''.

§ 14102. Reports to Congress

(a) In general

Not later than April 1 of each year, the Director shall submit a report to the Attorney General, the President, the Speaker of the House of Representatives, and the President of the Senate.

(b) Contents

A report under subsection (a) of this section shall—

(1) state the number of current and past participants in the Police Corps program, broken down according to the levels of educational study in which they are engaged and years of service they have served on police forces (including service following completion of the 4-year service obligation);

(2) describe the geographic, racial, and gender dispersion of participants in the Police Corps program; and

(3) describe the progress of the Police Corps program and make recommendations for changes in the program.

(Pub. L. 103–322, title XX, § 200113, Sept. 13, 1994, 108 Stat. 2057.)

PART B—LAW ENFORCEMENT SCHOLARSHIP PROGRAM

§ 14111. Definitions

In this part—

''Director'' means the Director of the Office of the Police Corps and Law Enforcement Education appointed under section 14093[1] of this title.

''educational expenses'' means expenses that are directly attributable to—

(A) a course of education leading to the award of an associate degree;

(B) a course of education leading to the award of a baccalaureate degree; or

(C) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, and related expenses.

''institution of higher education'' has the meaning stated in the first sentence of section 1001 of title 20.

''law enforcement position'' means employment as an officer in a State or local police force, or correctional institution.

''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 103–322, title XX, § 200202, Sept. 13, 1994, 108 Stat. 2057; Pub. L. 105–244, title I, § 102(a)(13)(P), Oct. 7, 1998, 112 Stat. 1621.)

AMENDMENTS

1998—Pub. L. 105–244 substituted ''section 1001'' for ''section 1141(a)'' in par. defining ''institution of higher education''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

SHORT TITLE

For short title of this part as the ''Law Enforcement Scholarships and Recruitment Act'', see section 200201 of Pub. L. 103–322, set out as a note under section 13701 of this title.

§ 14112. Allotment

From amounts appropriated under section 14119 of this title, the Director shall allot—

(1) 80 percent of such amounts to States on the basis of the number of law enforcement of-

[1] So in original. Section 14093 of this title does not provide for the appointment of a Director.

ficers in each State compared to the number of law enforcement officers in all States; and

(2) 20 percent of such amounts to States on the basis of the shortage of law enforcement personnel and the need for assistance under this part in the State compared to the shortage of law enforcement personnel and the need for assistance under this part in all States.

(Pub. L. 103–322, title XX, § 200203, Sept. 13, 1994, 108 Stat. 2058.)

§ 14113. Establishment of program

(a) Use of allotment

(1) In general

A State that receives an allotment pursuant to section 14112 of this title shall use the allotment to pay the Federal share of the costs of—

(A) awarding scholarships to in-service law enforcement personnel to enable such personnel to seek further education; and

(B) providing—

(i) full-time employment in summer; or

(ii) part-time (not to exceed 20 hours per week) employment for a period not to exceed 1 year.

(2) Employment

The employment described in paragraph (1)(B)—

(A) shall be provided by State and local law enforcement agencies for students who are juniors or seniors in high school or are enrolled in an institution of higher education and who demonstrate an interest in undertaking a career in law enforcement;

(B) shall not be in a law enforcement position; and

(C) shall consist of performing meaningful tasks that inform students of the nature of the tasks performed by law enforcement agencies.

(b) Payments; Federal share; non-Federal share

(1) Payments

Subject to the availability of appropriations, the Director shall pay to each State that receives an allotment under section 14112 of this title the Federal share of the cost of the activities described in the application submitted pursuant to section 14116[1] of this title.

(2) Federal share

The Federal share shall not exceed 60 percent.

(3) Non-Federal share

The non-Federal share of the cost of scholarships and student employment provided under this part shall be supplied from sources other than the Federal Government.

(c) Responsibilities of Director

The Director shall be responsible for the administration of the programs conducted pursuant to this part and shall, in consultation with the Assistant Secretary for Postsecondary Education, issue rules to implement this part.

(d) Administrative expenses

A State that receives an allotment under section 14112 of this title may reserve not more than 8 percent of the allotment for administrative expenses.

(e) Special rule

A State that receives an allotment under section 14112 of this title shall ensure that each scholarship recipient under this part be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other law enforcement personnel of the same rank and tenure in the office of which the scholarship recipient is a member.

(f) Supplementation of funding

Funds received under this part shall only be used to supplement, and not to supplant, Federal, State, or local efforts for recruitment and education of law enforcement personnel.

(Pub. L. 103–322, title XX, § 200204, Sept. 13, 1994, 108 Stat. 2058.)

REFERENCES IN TEXT

Section 14116 of this title, referred to in subsec. (b)(1), was in the original ''section 200203'', and was translated as reading ''section 200207'', meaning section 200207 of Pub. L. 103–322, to reflect the probable intent of Congress, because section 200203 of Pub. L. 103–322, which is classified to section 14112 of this title, does not provide for submission of applications, and section 14116 does so provide.

§ 14114. Scholarships

(a) Period of award

Scholarships awarded under this part shall be for a period of 1 academic year.

(b) Use of scholarships

Each individual awarded a scholarship under this part may use the scholarship for educational expenses at an institution of higher education.

(Pub. L. 103–322, title XX, § 200205, Sept. 13, 1994, 108 Stat. 2059.)

§ 14115. Eligibility

(a) Scholarships

A person shall be eligible to receive a scholarship under this part if the person has been employed in law enforcement for the 2-year period immediately preceding the date on which assistance is sought.

(b) Ineligibility for student employment

A person who has been employed as a law enforcement officer is ineligible to participate in a student employment program carried out under this part.

(Pub. L. 103–322, title XX, § 200206, Sept. 13, 1994, 108 Stat. 2059.)

§ 14116. State application

(a) In general

Each State desiring an allotment under section 14112 of this title shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may reasonably require.

(b) Contents

An application under subsection (a) of this section shall—

[1] See References in Text note below.

(1) describe the scholarship program and the student employment program for which assistance under this part is sought;

(2) contain assurances that the lead agency will work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement interagency agreements designed to carry out this part;

(3) contain assurances that the State will advertise the scholarship assistance and student employment it will provide under this part and that the State will use such programs to enhance recruitment efforts;

(4) contain assurances that the State will screen and select law enforcement personnel for participation in the scholarship program under this part;

(5) contain assurances that under such student employment program the State will screen and select, for participation in such program, students who have an interest in undertaking a career in law enforcement;

(6) contain assurances that under such scholarship program the State will make scholarship payments to institutions of higher education on behalf of persons who receive scholarships under this part;

(7) with respect to such student employment program, identify—

(A) the employment tasks that students will be assigned to perform;

(B) the compensation that students will be paid to perform such tasks; and

(C) the training that students will receive as part of their participation in the program;

(8) identify model curriculum and existing programs designed to meet the educational and professional needs of law enforcement personnel; and

(9) contain assurances that the State will promote cooperative agreements with educational and law enforcement agencies to enhance law enforcement personnel recruitment efforts in institutions of higher education.

(Pub. L. 103–322, title XX, § 200207, Sept. 13, 1994, 108 Stat. 2059.)

§ 14117. Local application

(a) In general

A person who desires a scholarship or employment under this part shall submit an application to the State at such time, in such manner, and accompanied by such information as the State may reasonably require.

(b) Contents

An application under subsection (a) of this section shall describe—

(1) the academic courses for which a scholarship is sought; or

(2) the location and duration of employment that is sought.

(c) Priority

In awarding scholarships and providing student employment under this part, each State shall give priority to applications from persons who are—

(1) members of racial, ethnic, or gender groups whose representation in the law enforcement agencies within the State is substantially less than in the population eligible for employment in law enforcement in the State;

(2) pursuing an undergraduate degree; and

(3) not receiving financial assistance under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.].

(Pub. L. 103–322, title XX, § 200208, Sept. 13, 1994, 108 Stat. 2060.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (c)(3), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

§ 14118. Scholarship agreement

(a) In general

A person who receives a scholarship under this part shall enter into an agreement with the Director.

(b) Contents

An agreement described in subsection (a) of this section shall—

(1) provide assurances that the scholarship recipient will work in a law enforcement position in the State that awarded the scholarship in accordance with the service obligation described in subsection (c) of this section after completion of the scholarship recipient's academic courses leading to an associate, bachelor, or graduate degree;

(2) provide assurances that the scholarship recipient will repay the entire scholarship in accordance with such terms and conditions as the Director shall prescribe if the requirements of the agreement are not complied with, unless the scholarship recipient—

(A) dies;

(B) becomes physically or emotionally disabled, as established by the sworn affidavit of a qualified physician; or

(C) has been discharged in bankruptcy; and

(3) set forth the terms and conditions under which the scholarship recipient may seek employment in the field of law enforcement in a State other than the State that awarded the scholarship.

(c) Service obligation

(1) In general

Except as provided in paragraph (2), a person who receives a scholarship under this part shall work in a law enforcement position in the State that awarded the scholarship for a period of 1 month for each credit hour for which funds are received under the scholarship.

(2) Special rule

For purposes of satisfying the requirement of paragraph (1), a scholarship recipient shall work in a law enforcement position in the

State that awarded the scholarship for not less than 6 months but shall not be required to work in such a position for more than 2 years.

(Pub. L. 103–322, title XX, § 200209, Sept. 13, 1994, 108 Stat. 2060.)

§ 14119. Authorization of appropriations

(a) General authorization of appropriations

There are authorized to be appropriated to carry out this part—

(1) $20,000,000 for fiscal year 1996;
(2) $20,000,000 for fiscal year 1997;
(3) $20,000,000 for fiscal year 1998;
(4) $20,000,000 for fiscal year 1999; and
(5) $20,000,000 for fiscal year 2000.

(b) Uses of funds

Of the funds appropriated under subsection (a) of this section for a fiscal year—

(1) 80 percent shall be available to provide scholarships described in section 14113(a)(1)(A) of this title; and

(2) 20 percent shall be available to provide employment described in sections 14113(a)(1)(B) and 14113(a)(2) of this title.

(Pub. L. 103–322, title XX, § 200210, Sept. 13, 1994, 108 Stat. 2061.)

SUBCHAPTER IX—STATE AND LOCAL LAW ENFORCEMENT

PART A—DNA IDENTIFICATION

§ 14131. Quality assurance and proficiency testing standards

(a) Publication of quality assurance and proficiency testing standards

(1)(A) Not later than 180 days after September 13, 1994, the Director of the Federal Bureau of Investigation shall appoint an advisory board on DNA quality assurance methods from among nominations proposed by the head of the National Academy of Sciences and professional societies of crime laboratory officials.

(B) The advisory board shall include as members scientists from State, local, and private forensic laboratories, molecular geneticists and population geneticists not affiliated with a forensic laboratory, and a representative from the National Institute of Standards and Technology.

(C) The advisory board shall develop, and if appropriate, periodically revise, recommended standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(2) The Director of the Federal Bureau of Investigation, after taking into consideration such recommended standards, shall issue (and revise from time to time) standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(3) The standards described in paragraphs (1) and (2) shall specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

(4) Until such time as the advisory board has made recommendations to the Director of the Federal Bureau of Investigation and the Director has acted upon those recommendations, the quality assurance guidelines adopted by the technical working group on DNA analysis methods shall be deemed the Director's standards for purposes of this section.

(b) Administration of advisory board

(1) For administrative purposes, the advisory board appointed under subsection (a) of this section shall be considered an advisory board to the Director of the Federal Bureau of Investigation.

(2) Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the advisory board appointed under subsection (a) of this section.

(3) The DNA advisory board established under this section shall be separate and distinct from any other advisory board administered by the FBI, and is to be administered separately.

(4) The board shall cease to exist on the date 5 years after the initial appointments are made to the board, unless the existence of the board is extended by the Director of the Federal Bureau of Investigation.

(c) Proficiency testing program

(1) Not later than 1 year after the effective date of this Act,[1] the Director of the National Institute of Justice shall certify to the Committees on the Judiciary of the House and Senate that—

(A) the Institute has entered into a contract with, or made a grant to, an appropriate entity for establishing, or has taken other appropriate action to ensure that there is established, not later than 2 years after September 13, 1994, a blind external proficiency testing program for DNA analyses, which shall be available to public and private laboratories performing forensic DNA analyses;

(B) a blind external proficiency testing program for DNA analyses is already readily available to public and private laboratories performing forensic DNA analyses; or

(C) it is not feasible to have blind external testing for DNA forensic analyses.

(2) As used in this subsection, the term ''blind external proficiency test'' means a test that is presented to a forensic laboratory through a second agency and appears to the analysts to involve routine evidence.

(3) Notwithstanding any other provision of law, the Attorney General shall make available to the Director of the National Institute of Justice during the first fiscal year in which funds are distributed under this subtitle up to $250,000 from the funds available under part X of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3796kk et seq.] to carry out this subsection.

(Pub. L. 103–322, title XXI, § 210303, Sept. 13, 1994, 108 Stat. 2068.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (b)(2), is section 14 of Pub. L.

[1] See References in Text note below.

92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

The effective date of this Act, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 103–322, which was approved Sept. 13, 1994.

This subtitle, referred to in subsec. (c)(3), is subtitle C (§§ 210301–210306) of title XXI of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 2065, known as the DNA Identification Act of 1994, which enacted this part and sections 3796kk to 3796kk–6 of this title, amended former sections 3751 and 3753 of this title and sections 3793 and 3797 of this title, and enacted provisions set out as notes under former section 3751 of this title and section 13701 of this title. For complete classification of this subtitle to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(3), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. Part X of title I of the Act is classified generally to subchapter XII–L (§ 3796kk et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

§ 14132. Index to facilitate law enforcement exchange of DNA identification information

(a) Establishment of index

The Director of the Federal Bureau of Investigation may establish an index of—

(1) DNA identification records of—

(A) persons convicted of crimes;

(B) persons who have been charged in an indictment or information with a crime; and

(C) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the National DNA Index System;

(2) analyses of DNA samples recovered from crime scenes;

(3) analyses of DNA samples recovered from unidentified human remains; and

(4) analyses of DNA samples voluntarily contributed from relatives of missing persons.

(b) Information

The index described in subsection (a) of this section shall include only information on DNA identification records and DNA analyses that are—

(1) based on analyses performed by or on behalf of a criminal justice agency (or the Secretary of Defense in accordance with section 1565 of title 10) in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 14131 of this title;

(2) prepared by laboratories that—

(A) not later than 2 years after October 30, 2004, have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and

(B) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; and

(3) maintained by Federal, State, and local criminal justice agencies (or the Secretary of Defense in accordance with section 1565 of title 10) pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;

(C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

(D) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) Failure to comply

Access to the index established by this section is subject to cancellation if the quality control and privacy requirements described in subsection (b) of this section are not met.

(d) Expungement of records

(1) By Director

(A) The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) of this section the DNA analysis of a person included in the index—

(i) on the basis of conviction for a qualifying Federal offense or a qualifying District of Columbia offense (as determined under sections 14135a and 14135b of this title, respectively), if the Director receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned; or

(ii) on the basis of an arrest under the authority of the United States, if the Attorney General receives, for each charge against the person on the basis of which the analysis was or could have been included in the index, a certified copy of a final court order establishing that such charge has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable time period.

(B) For purposes of subparagraph (A), the term ''qualifying offense'' means any of the following offenses:

(i) A qualifying Federal offense, as determined under section 14135a of this title.

(ii) A qualifying District of Columbia offense, as determined under section 14135b of this title.

(iii) A qualifying military offense, as determined under section 1565 of title 10.

(C) For purposes of subparagraph (A), a court order is not ''final'' if time remains for an appeal or application for discretionary review with respect to the order.

(2) By States

(A) As a condition of access to the index described in subsection (a) of this section, a State shall promptly expunge from that index

the DNA analysis of a person included in the index by that State if—

(i) the responsible agency or official of that State receives, for each conviction of the person of an offense on the basis of which that analysis was or could have been included in the index, a certified copy of a final court order establishing that such conviction has been overturned; or

(ii) the person has not been convicted of an offense on the basis of which that analysis was or could have been included in the index, and the responsible agency or official of that State receives, for each charge against the person on the basis of which the analysis was or could have been included in the index, a certified copy of a final court order establishing that such charge has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable time period.

(B) For purposes of subparagraph (A), a court order is not ''final'' if time remains for an appeal or application for discretionary review with respect to the order.

(Pub. L. 103–322, title XXI, § 210304, Sept. 13, 1994, 108 Stat. 2069; Pub. L. 106–113, div. B, § 1000(a)(1) [title I, § 120], Nov. 29, 1999, 113 Stat. 1535, 1501A–23; Pub. L. 106–546, § 6(b), Dec. 19, 2000, 114 Stat. 2733; Pub. L. 108–405, title II, § 203(a), (d), title III, § 302, Oct. 30, 2004, 118 Stat. 2269, 2270, 2272; Pub. L. 109–162, title X, § 1002, Jan. 5, 2006, 119 Stat. 3084.)

AMENDMENTS

2006—Subsec. (a)(1)(C). Pub. L. 109–162, § 1002(1), struck out ''DNA profiles from arrestees who have not been charged in an indictment or information with a crime, and'' after ''provided that''.

Subsec. (d)(1)(A). Pub. L. 109–162, § 1002(2), added subpar. (A) and struck out former subpar. (A), which read as follows: ''The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) of this section the DNA analysis of a person included in the index on the basis of a qualifying Federal offense or a qualifying District of Columbia offense (as determined under sections 14135a and 14135b of this title, respectively) if the Director receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.''

Subsec. (d)(2)(A)(ii). Pub. L. 109–162, § 1002(3), substituted ''the responsible agency or official of that State receives, for each charge against the person on the basis of which the analysis was or could have been included in the index, a certified copy of a final court order establishing that such charge has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable time period.'' for ''all charges for which the analysis was or could have been included in the index have been dismissed or resulted in acquittal.''

Subsec. (e). Pub. L. 109–162, § 1002(4), struck out heading and text of subsec. (e). Prior to amendment, text related to authority for keyboard searches.

2004—Subsec. (a)(1). Pub. L. 108–405, § 203(a)(1), substituted ''of—'' for ''of persons convicted of crimes;'' and added subpars (A) to (C).

Subsec. (b)(2). Pub. L. 108–405, § 302, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''prepared by laboratories, and DNA analysts, that undergo semiannual external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 14131 of this title; and''.

Subsec. (d)(2)(A). Pub. L. 108–405, § 203(a)(2)(B), (C), which directed that subsection (d)(2) be amended by substituting ''; or'' for period at end and by adding cl. (ii) at end, was executed by making the amendment to subpar. (A) of subsec. (d)(2) to reflect the probable intent of Congress.

Pub. L. 108–405, § 203(a)(2)(A), substituted ''if—'' for ''if'' and inserted cl. (i) designation before ''the responsible agency''.

Subsec. (e). Pub. L. 108–405, § 203(d), added subsec. (e).

2000—Subsec. (b)(1). Pub. L. 106–546, § 6(b)(1), inserted ''(or the Secretary of Defense in accordance with section 1565 of title 10)'' after ''criminal justice agency''.

Subsec. (b)(2). Pub. L. 106–546, § 6(b)(2), substituted ''semiannual'' for '', at regular intervals of not to exceed 180 days,''.

Subsec. (b)(3). Pub. L. 106–546, § 6(b)(3), inserted ''(or the Secretary of Defense in accordance with section 1565 of title 10)'' after ''criminal justice agencies'' in introductory provisions.

Subsec. (d). Pub. L. 106–546, § 6(b)(4), added subsec. (d).

1999—Subsec. (a)(4). Pub. L. 106–113 added par. (4).

§ 14133. Federal Bureau of Investigation

(a) Proficiency testing requirements

(1) Generally

(A) Personnel at the Federal Bureau of Investigation who perform DNA analyses shall undergo semiannual external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 14131 of this title.

(B) Within 1 year after September 13, 1994, the Director of the Federal Bureau of Investigation shall arrange for periodic blind external tests to determine the proficiency of DNA analysis performed at the Federal Bureau of Investigation laboratory.

(C) In this paragraph, ''blind external test'' means a test that is presented to the laboratory through a second agency and appears to the analysts to involve routine evidence.

(2) Report

For 5 years after September 13, 1994, the Director of the Federal Bureau of Investigation shall submit to the Committees on the Judiciary of the House and Senate an annual report on the results of each of the tests described in paragraph (1).

(b) Privacy protection standards

(1) Generally

Except as provided in paragraph (2), the results of DNA tests performed for a Federal law enforcement agency for law enforcement purposes may be disclosed only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) in judicial proceedings, if otherwise admissible pursuant to applicable statues[1] or rules; and

(C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged.

(2) Exception

If personally identifiable information is removed, test results may be disclosed for a population statistics database, for identification

[1] So in original. Probably should be ''statutes''.

research and protocol development purposes, or for quality control purposes.

(c) Criminal penalty

(1) A person who—

(A) by virtue of employment or official position, has possession of, or access to, individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency; and

(B) knowingly discloses such information in any manner to any person or agency not authorized to receive it,

shall be fined not more than $100,000.

(2) A person who, without authorization, knowingly obtains DNA samples or individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency shall be fined not more than $250,000, or imprisoned for a period of not more than one year, or both.

(Pub. L. 103–322, title XXI, § 210305, Sept. 13, 1994, 108 Stat. 2070; Pub. L. 106–546, § 8(c), Dec. 19, 2000, 114 Stat. 2735; Pub. L. 108–405, title II, § 203(e)(1), Oct. 30, 2004, 118 Stat. 2270.)

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–405 substituted ''$250,000, or imprisoned for a period of not more than one year, or both'' for ''$100,000''.

2000—Subsec. (a)(1)(A). Pub. L. 106–546 substituted ''semiannual'' for '', at regular intervals of not to exceed 180 days,''.

§ 14134. Authorization of appropriations

There are authorized to be appropriated to the Federal Bureau of Investigation to carry out sections 14131, 14132, and 14133 of this title—

(1) $5,500,000 for fiscal year 1996;

(2) $8,000,000 for fiscal year 1997;

(3) $8,000,000 for fiscal year 1998;

(4) $2,500,000 for fiscal year 1999; and

(5) $1,000,000 for fiscal year 2000.

(Pub. L. 103–322, title XXI, § 210306, Sept. 13, 1994, 108 Stat. 2071.)

§ 14135. The Debbie Smith DNA Backlog Grant Program

(a) Authorization of grants

The Attorney General may make grants to eligible States or units of local government for use by the State or unit of local government for the following purposes:

(1) To carry out, for inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, DNA analyses of samples collected under applicable legal authority.

(2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes, including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect.

(3) To increase the capacity of laboratories owned by the State or by units of local government to carry out DNA analyses of samples specified in paragraph (1) or (2).

(4) To collect DNA samples specified in paragraph (1).

(5) To ensure that DNA testing and analysis of samples from crimes, including sexual assault and other serious violent crimes, are carried out in a timely manner.

(b) Eligibility

For a State or unit of local government to be eligible to receive a grant under this section, the chief executive officer of the State or unit of local government shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. The application shall, as required by the Attorney General—

(1) provide assurances that the State or unit of local government has implemented, or will implement not later than 120 days after the date of such application, a comprehensive plan for the expeditious DNA analysis of samples in accordance with this section;

(2) include a certification that each DNA analysis carried out under the plan shall be maintained pursuant to the privacy requirements described in section 14132(b)(3) of this title;

(3) include a certification that the State or unit of local government has determined, by statute, rule, or regulation, those offenses under State law that shall be treated for purposes of this section as qualifying State offenses;

(4) specify the allocation that the State or unit of local government shall make, in using grant amounts to carry out DNA analyses of samples, as between samples specified in subsection (a)(1) of this section and samples specified in subsection (a)(2) of this section;

(5) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(3) of this section;

(6) if submitted by a unit of local government, certify that the unit of local government has taken, or is taking, all necessary steps to ensure that it is eligible to include, directly or through a State law enforcement agency, all analyses of samples for which it has requested funding in the Combined DNA Index System; and

(7) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(4) of this section.

(c) Formula for distribution of grants

(1) In general

The Attorney General shall distribute grant amounts, and establish appropriate grant conditions under this section, in conformity with a formula or formulas that are designed to effectuate a distribution of funds among eligible States and units of local government that—

(A) maximizes the effective utilization of DNA technology to solve crimes and protect public safety; and

(B) allocates grants among eligible entities fairly and efficiently to address jurisdictions in which significant backlogs exist, by considering—

(i) the number of offender and casework samples awaiting DNA analysis in a jurisdiction;

(ii) the population in the jurisdiction; and

(iii) the number of part 1 violent crimes in the jurisdiction.

(2) Minimum amount

The Attorney General shall allocate to each State not less than 0.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriation.

(3) Limitation

Grant amounts distributed under paragraph (1) shall be awarded to conduct DNA analyses of samples from casework or from victims of crime under subsection (a)(2) of this section in accordance with the following limitations:

(A) For fiscal year 2005, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.

(B) For fiscal year 2006, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.

(C) For fiscal year 2007, not less than 45 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.

(D) For fiscal year 2008, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.

(E) For fiscal year 2009, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.

(d) Analysis of samples

(1) In general

A plan pursuant to subsection (b)(1) of this section shall require that, except as provided in paragraph (3), each DNA analysis be carried out in a laboratory that satisfies quality assurance standards and is—

(A) operated by the State or a unit of local government; or

(B) operated by a private entity pursuant to a contract with the State or a unit of local government.

(2) Quality assurance standards

(A) The Director of the Federal Bureau of Investigation shall maintain and make available to States and units of local government a description of quality assurance protocols and practices that the Director considers adequate to assure the quality of a forensic laboratory.

(B) For purposes of this section, a laboratory satisfies quality assurance standards if the laboratory satisfies the quality control requirements described in paragraphs (1) and (2) of section 14132(b) of this title.

(3) Use of vouchers or contracts for certain purposes

(A) In general

A grant for the purposes specified in paragraph (1), (2), or (5) of subsection (a) of this section may be made in the form of a voucher or contract for laboratory services, even if the laboratory makes a reasonable profit for the services.

(B) Redemption

A voucher or contract under subparagraph (A) may be redeemed at a laboratory operated on a nonprofit or for-profit basis, by a private entity that satisfies quality assurance standards and has been approved by the Attorney General.

(C) Payments

The Attorney General may use amounts authorized under subsection (j) of this section to make payments to a laboratory described under subparagraph (B).

(e) Restrictions on use of funds

(1) Nonsupplanting

Funds made available pursuant to this section shall not be used to supplant State or local government funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State or local government sources for the purposes of this Act.

(2) Administrative costs

A State or unit of local government may not use more than 3 percent of the funds it receives from this section for administrative expenses.

(f) Reports to the Attorney General

Each State or unit of local government which receives a grant under this section shall submit to the Attorney General, for each year in which funds from a grant received under this section is expended, a report at such time and in such manner as the Attorney General may reasonably require, which contains—

(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application; and

(2) such other information as the Attorney General may require.

(g) Reports to Congress

Not later than 90 days after the end of each fiscal year for which grants are made under this section, the Attorney General shall submit to the Congress a report that includes—

(1) the aggregate amount of grants made under this section to each State or unit of local government for such fiscal year;

(2) a summary of the information provided by States or units of local government receiving grants under this section; and

(3) a description of the priorities and plan for awarding grants among eligible States and units of local government, and how such plan will ensure the effective use of DNA technology to solve crimes and protect public safety.

(h) Expenditure records

(1) In general

Each State or unit of local government which receives a grant under this section shall keep records as the Attorney General may re-

quire to facilitate an effective audit of the receipt and use of grant funds received under this section.

(2) Access

Each State or unit of local government which receives a grant under this section shall make available, for the purpose of audit and examination, such records as are related to the receipt or use of any such grant.

(i) Definition

For purposes of this section, the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(j) Authorization of appropriations

Amounts are authorized to be appropriated to the Attorney General for grants under subsection (a) of this section as follows:

(1) $151,000,000 for fiscal year 2005;
(2) $151,000,000 for fiscal year 2006;
(3) $151,000,000 for fiscal year 2007;
(4) $151,000,000 for fiscal year 2008; and
(5) $151,000,000 for fiscal year 2009.

(k) Use of funds for accreditation and audits

The Attorney General may distribute not more than 1 percent of the grant amounts under subsection (j) of this section—

(1) to States or units of local government to defray the costs incurred by laboratories operated by each such State or unit of local government in preparing for accreditation or reaccreditation;

(2) in the form of additional grants to States, units of local government, or nonprofit professional organizations of persons actively involved in forensic science and nationally recognized within the forensic science community—

(A) to defray the costs of external audits of laboratories operated by such State or unit of local government, which participates in the National DNA Index System, to determine whether the laboratory is in compliance with quality assurance standards;

(B) to assess compliance with any plans submitted to the National Institute of Justice, which detail the use of funds received by States or units of local government under this Act; and

(C) to support future capacity building efforts; and

(3) in the form of additional grants to nonprofit professional associations actively involved in forensic science and nationally recognized within the forensic science community to defray the costs of training persons who conduct external audits of laboratories operated by States and units of local government and which participate in the National DNA Index System.

(*l*) Use of funds for other forensic sciences

The Attorney General may award a grant under this section to a State or unit of local government to alleviate a backlog of cases with respect to a forensic science other than DNA analysis if the State or unit of local government—

(1) certifies to the Attorney General that in such State or unit—

(A) all of the purposes set forth in subsection (a) of this section have been met;

(B) a significant backlog of casework is not waiting for DNA analysis; and

(C) there is no need for significant laboratory equipment, supplies, or additional personnel for timely DNA processing of casework or offender samples; and

(2) demonstrates to the Attorney General that such State or unit requires assistance in alleviating a backlog of cases involving a forensic science other than DNA analysis.

(m) External audits and remedial efforts

In the event that a laboratory operated by a State or unit of local government which has received funds under this Act has undergone an external audit conducted to determine whether the laboratory is in compliance with standards established by the Director of the Federal Bureau of Investigation, and, as a result of such audit, identifies measures to remedy deficiencies with respect to the compliance by the laboratory with such standards, the State or unit of local government shall implement any such remediation as soon as practicable.

(Pub. L. 106–546, § 2, Dec. 19, 2000, 114 Stat. 2726; Pub. L. 108–405, title II, §§ 202, 206, Oct. 30, 2004, 118 Stat. 2266, 2272; Pub. L. 109–162, title X, § 1003, Jan. 5, 2006, 119 Stat. 3085.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (e)(1), (k)(2)(B), and (m), is Pub. L. 106–546, Dec. 19, 2000, 114 Stat. 2726, known as the DNA Analysis Backlog Elimination Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 13701 of this title and Tables.

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–162 substituted ''collected under applicable legal authority'' for ''taken from individuals convicted of a qualifying State offense (as determined under subsection (b)(3) of this section)''.

2004—Pub. L. 108–405, § 202(a)(1), substituted ''The Debbie Smith DNA Backlog Grant Program'' for ''Authorization of grants'' in section catchline.

Subsec. (a). Pub. L. 108–405, § 202(a)(2)(A), in introductory provisions, inserted ''or units of local government'' after ''eligible States'' and ''or unit of local government'' after ''State''.

Subsec. (a)(2). Pub. L. 108–405, § 202(a)(2)(B), inserted '', including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect'' before period at end.

Subsec. (a)(3). Pub. L. 108–405, § 202(a)(2)(C), (b)(1)(A), struck out ''within the State'' after ''local government'' and inserted ''(1) or'' before ''(2)''.

Subsec. (a)(4), (5). Pub. L. 108–405, § 202(b)(1)(B), added pars. (4) and (5).

Subsec. (b). Pub. L. 108–405, § 202(a)(3)(A), in introductory provisions, inserted ''or unit of local government'' after ''State'' in two places and '', as required by the Attorney General'' after ''application shall''.

Subsec. (b)(1). Pub. L. 108–405, § 202(a)(3)(B), inserted ''or unit of local government'' after ''State''.

Subsec. (b)(3). Pub. L. 108–405, § 202(a)(3)(C), inserted ''or unit of local government'' after ''that the State''.

Subsec. (b)(4). Pub. L. 108–405, § 202(a)(3)(D), inserted ''or unit of local government'' after ''State'' and struck out ''and'' at end.

Subsec. (b)(5). Pub. L. 108–405, § 202(a)(3)(E), inserted ''or unit of local government'' after ''State'' and substituted semicolon for period at end.

Subsec. (b)(6). Pub. L. 108–405, § 202(a)(3)(F), added par. (6).

Subsec. (b)(7). Pub. L. 108–405, § 202(b)(2), added par. (7).

Subsec. (c). Pub. L. 108–405, § 202(b)(3), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''A State that proposes to allocate grant amounts under paragraph (4) or (5) of subsection (b) of this section for the purposes specified in paragraph (2) or (3) of subsection (a) of this section shall use such allocated amounts to conduct or facilitate DNA analyses of those samples that relate to crimes in connection with which there are no suspects.''

Subsec. (d)(1). Pub. L. 108–405, § 202(a)(4)(A), substituted ''A plan pursuant to subsection (b)(1) of this section'' for ''The plan'' in introductory provisions and struck out ''within the State'' after ''local government'' in subpars. (A) and (B).

Subsec. (d)(2)(A). Pub. L. 108–405, § 202(a)(4)(B), inserted ''and units of local government'' after ''States''.

Subsec. (d)(3). Pub. L. 108–405, § 206, amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''A grant for the purposes specified in paragraph (1) or (2) of subsection (a) of this section may be made in the form of a voucher for laboratory services, which may be redeemed at a laboratory operated by a private entity approved by the Attorney General that satisfies quality assurance standards. The Attorney General may make payment to such a laboratory for the analysis of DNA samples using amounts authorized for those purposes under subsection (j) of this section.''

Subsec. (e)(1). Pub. L. 108–405, § 202(a)(5)(A), inserted ''or local government'' after ''State'' in two places.

Subsec. (e)(2). Pub. L. 108–405, § 202(a)(5)(B), inserted ''or unit of local government'' after ''State''.

Subsec. (f). Pub. L. 108–405, § 202(a)(6), inserted ''or unit of local government'' after ''State'' in introductory provisions.

Subsec. (g)(1). Pub. L. 108–405, § 202(a)(7)(A), inserted ''or unit of local government'' after ''State''.

Subsec. (g)(2). Pub. L. 108–405, § 202(a)(7)(B), inserted ''or units of local government'' after ''States''.

Subsec. (g)(3). Pub. L. 108–405, § 202(b)(4), added par. (3).

Subsec. (h). Pub. L. 108–405, § 202(a)(8), inserted ''or unit of local government'' after ''State'' in pars. (1) and (2).

Subsec. (j)(1) to (5). Pub. L. 108–405, § 202(b)(5), substituted pars. (1) to (5) for former pars. (1) and (2) which read as follows:

''(1) For grants for the purposes specified in paragraph (1) of such subsection—

''(A) $15,000,000 for fiscal year 2001;

''(B) $15,000,000 for fiscal year 2002; and

''(C) $15,000,000 for fiscal year 2003.

''(2) For grants for the purposes specified in paragraphs (2) and (3) of such subsection—

''(A) $25,000,000 for fiscal year 2001;

''(B) $50,000,000 for fiscal year 2002;

''(C) $25,000,000 for fiscal year 2003; and

''(D) $25,000,000 for fiscal year 2004.''

Subsec. (k) to (m). Pub. L. 108–405, § 202(b)(6), added subsecs. (k) to (m).

SENSE OF CONGRESS REGARDING THE OBLIGATION OF GRANTEE STATES TO ENSURE ACCESS TO POST-CONVICTION DNA TESTING AND COMPETENT COUNSEL IN CAPITAL CASES

Pub. L. 106–561, § 4, Dec. 21, 2000, 114 Stat. 2791, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) over the past decade, deoxyribonucleic acid testing (referred to in this section as 'DNA testing') has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene;

''(2) because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant;

''(3) in other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact;

''(4) DNA testing was not widely available in cases tried prior to 1994;

''(5) new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce, resulting in some cases of convicted inmates being exonerated by new DNA tests after earlier tests had failed to produce definitive results;

''(6) DNA testing can and has resulted in the post-conviction exoneration of more than 75 innocent men and women, including some under sentence of death;

''(7) in more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the apprehension of the actual perpetrator;

''(8) experience has shown that it is not unduly burdensome to make DNA testing available to inmates in appropriate cases;

''(9) under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence;

''(10) the National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude such testing, and notwithstanding the inability of an inmate to pay for the testing;

''(11) only a few States have adopted post-conviction DNA testing procedures;

''(12) States have received millions of dollars in DNA-related grants, and more funding is needed to improve State forensic facilities and to reduce the nationwide backlog of DNA samples from convicted offenders and crime scenes that need to be tested or retested using upgraded methods;

''(13) States that accept such financial assistance should not deny the promise of truth and justice for both sides of our adversarial system that DNA testing offers;

''(14) post-conviction DNA testing and other post-conviction investigative techniques have shown that innocent people have been sentenced to death in this country;

''(15) a constitutional error in capital cases is incompetent defense lawyers who fail to present important evidence that the defendant may have been innocent or does not deserve to be sentenced to death; and

''(16) providing quality representation to defendants facing loss of liberty or life is essential to fundamental due process and the speedy final resolution of judicial proceedings.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) Congress should condition forensic science-related grants to a State or State forensic facility on the State's agreement to ensure post-conviction DNA testing in appropriate cases; and

''(2) Congress should work with the States to improve the quality of legal representation in capital cases through the establishment of standards that

will assure the timely appointment of competent counsel with adequate resources to represent defendants in capital cases at each stage of the proceedings.''

Pub. L. 106–546, § 11, Dec. 19, 2000, 114 Stat. 2735, enacted provisions substantially identical to those enacted by Pub. L. 106–561, § 4, set out above.

§ 14135a. Collection and use of DNA identification information from certain Federal offenders

(a) Collection of DNA samples

(1) From individuals in custody

(A) The Attorney General may, as prescribed by the Attorney General in regulation, collect DNA samples from individuals who are arrested, facing charges, or convicted or from non-United States persons who are detained under the authority of the United States. The Attorney General may delegate this function within the Department of Justice as provided in section 510 of title 28 and may also authorize and direct any other agency of the United States that arrests or detains individuals or supervises individuals facing charges to carry out any function and exercise any power of the Attorney General under this section.

(B) The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d) of this section) or a qualifying military offense, as determined under section 1565 of title 10.

(2) From individuals on release, parole, or probation

The probation office responsible for the supervision under Federal law of an individual on probation, parole, or supervised release shall collect a DNA sample from each such individual who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d) of this section) or a qualifying military offense, as determined under section 1565 of title 10.

(3) Individuals already in CODIS

For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as ''CODIS'') of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, or if a DNA sample has been collected from that individual under section 1565 of title 10, the Attorney General, the Director of the Bureau of Prisons, or the probation office responsible (as applicable) may (but need not) collect a DNA sample from that individual.

(4) Collection procedures

(A) The Attorney General, the Director of the Bureau of Prisons, or the probation office responsible (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Attorney General, the Director of the Bureau of Prisons, or the probation office, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

(5) Criminal penalty

An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be—

(A) guilty of a class A misdemeanor; and

(B) punished in accordance with title 18.

(b) Analysis and use of samples

The Attorney General, the Director of the Bureau of Prisons, or the probation office responsible (as applicable) shall furnish each DNA sample collected under subsection (a) of this section to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS.

(c) Definitions

In this section:

(1) The term ''DNA sample'' means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term ''DNA analysis'' means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) Qualifying Federal offenses

The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

(1) Any felony.

(2) Any offense under chapter 109A of title 18.

(3) Any crime of violence (as that term is defined in section 16 of title 18).

(4) Any attempt or conspiracy to commit any of the offenses in paragraphs (1) through (3).

(e) Regulations

(1) In general

Except as provided in paragraph (2), this section shall be carried out under regulations prescribed by the Attorney General.

(2) Probation officers

The Director of the Administrative Office of the United States Courts shall make available model procedures for the activities of probation officers in carrying out this section.

(f) Commencement of collection

Collection of DNA samples under subsection (a) of this section shall, subject to the availability of appropriations, commence not later than the date that is 180 days after December 19, 2000.

(Pub. L. 106–546, § 3, Dec. 19, 2000, 114 Stat. 2728; Pub. L. 107–56, title V, § 503, Oct. 26, 2001, 115 Stat. 364; Pub. L. 108–405, title II, § 203(b), Oct. 30, 2004, 118 Stat. 2270; Pub. L. 109–162, title X, § 1004(a), Jan. 5, 2006, 119 Stat. 3085; Pub. L. 109–248, title I, § 155, July 27, 2006, 120 Stat. 611.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–162, § 1004(a)(1), added subpar. (A) and designated existing provisions as subpar. (B).

Subsec. (a)(1)(A). Pub. L. 109–248 substituted ''arrested, facing charges, or convicted'' for ''arrested''.

Subsec. (a)(3), (4). Pub. L. 109–162, § 1004(a)(1)(B), substituted ''Attorney General, the Director of the Bureau of Prisons,'' for ''Director of the Bureau of Prisons'' in par. (3) and subpars. (A) and (B) of par. (4).

Subsec. (b). Pub. L. 109–162, § 1004(a)(2), substituted ''Attorney General, the Director of the Bureau of Prisons,'' for ''Director of the Bureau of Prisons''.

2004—Subsec. (d). Pub. L. 108–405 reenacted heading without change and amended text generally, substituting pars. (1) to (4) for former pars. (1) and (2) with multiple subpars. listing specific offenses.

2001—Subsec. (d)(2). Pub. L. 107–56 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The initial determination of qualifying Federal offenses shall be made not later than 120 days after December 19, 2000.''

§ 14135b. Collection and use of DNA identification information from certain District of Columbia offenders

(a) Collection of DNA samples

(1) From individuals in custody

The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d) of this section).

(2) From individuals on release, parole, or probation

The Director of the Court Services and Offender Supervision Agency for the District of Columbia shall collect a DNA sample from each individual under the supervision of the Agency who is on supervised release, parole, or probation who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d) of this section).

(3) Individuals already in CODIS

For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as ''CODIS'') of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, the Director of the Bureau of Prisons or Agency (as applicable) may (but need not) collect a DNA sample from that individual.

(4) Collection procedures

(A) The Director of the Bureau of Prisons or Agency (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Director of the Bureau of Prisons or Agency, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

(5) Criminal penalty

An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be—

(A) guilty of a class A misdemeanor; and

(B) punished in accordance with title 18.

(b) Analysis and use of samples

The Director of the Bureau of Prisons or Agency (as applicable) shall furnish each DNA sample collected under subsection (a) of this section to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS.

(c) Definitions

In this section:

(1) The term ''DNA sample'' means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term ''DNA analysis'' means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) Qualifying District of Columbia offenses

The government of the District of Columbia may determine those offenses under the District of Columbia Code that shall be treated for purposes of this section as qualifying District of Columbia offenses.

(e) Commencement of collection

Collection of DNA samples under subsection (a) of this section shall, subject to the availability of appropriations, commence not later than the date that is 180 days after December 19, 2000.

(f) Authorization of appropriations

There are authorized to be appropriated to the Court Services and Offender Supervision Agency for the District of Columbia to carry out this section such sums as may be necessary for each of fiscal years 2001 through 2005.

(Pub. L. 106–546, § 4, Dec. 19, 2000, 114 Stat. 2730.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14135c. Conditions of release generally

If the collection of a DNA sample from an individual on probation, parole, or supervised release is authorized pursuant to section 14135a or 14135b of this title or section 1565 of title 10, the individual shall cooperate in the collection of a DNA sample as a condition of that probation, parole, or supervised release.

(Pub. L. 106–546, § 7(d), Dec. 19, 2000, 114 Stat. 2734.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14135d. Authorization of appropriations

There are authorized to be appropriated to the Attorney General to carry out this Act (including to reimburse the Federal judiciary for any reasonable costs incurred in implementing such

Act, as determined by the Attorney General) such sums as may be necessary.

(Pub. L. 106–546, § 9, Dec. 19, 2000, 114 Stat. 2735.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 106–546, Dec. 19, 2000, 114 Stat. 2726, known as the DNA Analysis Backlog Elimination Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 13701 of this title and Tables.

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14135e. Privacy protection standards

(a) In general

Except as provided in subsection (b) of this section, any sample collected under, or any result of any analysis carried out under, section 14135, 14135a, or 14135b of this title may be used only for a purpose specified in such section.

(b) Permissive uses

A sample or result described in subsection (a) of this section may be disclosed under the circumstances under which disclosure of information included in the Combined DNA Index System is allowed, as specified in subparagraphs (A) through (D) of section 14132(b)(3) of this title.

(c) Criminal penalty

A person who knowingly discloses a sample or result described in subsection (a) of this section in any manner to any person not authorized to receive it, or obtains or uses, without authorization, such sample or result, shall be fined not more than $250,000, or imprisoned for a period of not more than one year. Each instance of disclosure, obtaining, or use shall constitute a separate offense under this subsection.

(Pub. L. 106–546, § 10, Dec. 19, 2000, 114 Stat. 2735; Pub. L. 108–405, title II, § 203(e)(2), title III, § 309, Oct. 30, 2004, 118 Stat. 2271, 2275.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–405, § 309, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''A person who knowingly—

''(1) discloses a sample or result described in subsection (a) of this section in any manner to any person not authorized to receive it; or

''(2) obtains, without authorization, a sample or result described in subsection (a) of this section,

shall be fined not more than $250,000, or imprisoned for a period of not more than one year, or both.''

Pub. L. 108–405, § 203(e)(2), substituted ''$250,000, or imprisoned for a period of not more than one year, or both'' for ''$100,000'' in concluding provisions.

§ 14136. DNA training and education for law enforcement, correctional personnel, and court officers

(a) In general

The Attorney General shall make grants to provide training, technical assistance, education, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by—

(1) law enforcement personnel, including police officers and other first responders, evidence technicians, investigators, and others who collect or examine evidence of crime;

(2) court officers, including State and local prosecutors, defense lawyers, and judges;

(3) forensic science professionals; and

(4) corrections personnel, including prison and jail personnel, and probation, parole, and other officers involved in supervision.

(b) Authorization of appropriations

There are authorized to be appropriated $12,500,000 for each of fiscal years 2005 through 2009 to carry out this section.

(Pub. L. 108–405, title III, § 303, Oct. 30, 2004, 118 Stat. 2273.)

CODIFICATION

Section was enacted as part of the DNA Sexual Assault Justice Act of 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

INCENTIVE GRANTS TO STATES TO ENSURE CONSIDERATION OF CLAIMS OF ACTUAL INNOCENCE

Pub. L. 108–405, title IV, § 413, Oct. 30, 2004, 118 Stat. 2285, provided that: ''For each of fiscal years 2005 through 2009, all funds appropriated to carry out sections 303, 305, 308, and 412 [sections 14136, 14136b, 14136d, and 14136e of this title] shall be reserved for grants to eligible entities that—

''(1) meet the requirements under section 303, 305, 308, or 412, as appropriate; and

''(2) demonstrate that the State in which the eligible entity operates—

''(A) provides post-conviction DNA testing of specified evidence—

''(i) under a State statute enacted before the date of enactment of this Act [Oct. 30, 2004] (or extended or renewed after such date), to persons convicted after trial and under a sentence of imprisonment or death for a State felony offense, in a manner that ensures a reasonable process for resolving claims of actual innocence; or

''(ii) under a State statute enacted after the date of enactment of this Act, or under a State rule, regulation, or practice, to persons under a sentence of imprisonment or death for a State felony offense, in a manner comparable to section 3600(a) of title 18, United States Code (provided that the State statute, rule, regulation, or practice may make post-conviction DNA testing available in cases in which such testing is not required by such section), and if the results of such testing exclude the applicant, permits the applicant to apply for post-conviction relief, notwithstanding any provision of law that would otherwise bar such application as untimely; and

''(B) preserves biological evidence secured in relation to the investigation or prosecution of a State offense—

''(i) under a State statute or a State or local rule, regulation, or practice, enacted or adopted before the date of enactment of this Act (or extended or renewed after such date), in a manner that ensures that reasonable measures are taken by all jurisdictions within the State to preserve such evidence; or

''(ii) under a State statute or a State or local rule, regulation, or practice, enacted or adopted after the date of enactment of this Act, in a manner comparable to section 3600A of title 18, United States Code, if—

''(I) all jurisdictions within the State comply with this requirement; and

''(II) such jurisdictions may preserve such evidence for longer than the period of time that such evidence would be required to be preserved under such section 3600A.''

§ 14136a. Sexual assault forensic exam program grants

(a) In general

The Attorney General shall make grants to eligible entities to provide training, technical assistance, education, equipment, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by medical personnel and other personnel, including doctors, medical examiners, coroners, nurses, victim service providers, and other professionals involved in treating victims of sexual assault and sexual assault examination programs, including SANE (Sexual Assault Nurse Examiner), SAFE (Sexual Assault Forensic Examiner), and SART (Sexual Assault Response Team).

(b) Eligible entity

For purposes of this section, the term ''eligible entity'' includes—

(1) States;

(2) units of local government; and

(3) sexual assault examination programs, including—

(A) sexual assault nurse examiner (SANE) programs;

(B) sexual assault forensic examiner (SAFE) programs;

(C) sexual assault response team (SART) programs;

(D) State sexual assault coalitions;

(E) medical personnel, including doctors, medical examiners, coroners, and nurses, involved in treating victims of sexual assault; and

(F) victim service providers involved in treating victims of sexual assault.

(c) Authorization of appropriations

There are authorized to be appropriated $30,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

(Pub. L. 108–405, title III, § 304, Oct. 30, 2004, 118 Stat. 2273.)

CODIFICATION

Section was enacted as part of the DNA Sexual Assault Justice Act of 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14136b. DNA research and development

(a) Improving DNA technology

The Attorney General shall make grants for research and development to improve forensic DNA technology, including increasing the identification accuracy and efficiency of DNA analysis, decreasing time and expense, and increasing portability.

(b) Demonstration projects

The Attorney General shall make grants to appropriate entities under which research is carried out through demonstration projects involving coordinated training and commitment of resources to law enforcement agencies and key criminal justice participants to demonstrate and evaluate the use of forensic DNA technology in conjunction with other forensic tools. The demonstration projects shall include scientific evaluation of the public safety benefits, improvements to law enforcement operations, and cost-effectiveness of increased collection and use of DNA evidence.

(c) Authorization of appropriations

There are authorized to be appropriated $15,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

(Pub. L. 108–405, title III, § 305, Oct. 30, 2004, 118 Stat. 2273.)

CODIFICATION

Section was enacted as part of the DNA Sexual Assault Justice Act of 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14136c. National Forensic Science Commission

(a) Appointment

The Attorney General shall appoint a National Forensic Science Commission (in this section referred to as the ''Commission''), composed of persons experienced in criminal justice issues, including persons from the forensic science and criminal justice communities, to carry out the responsibilities under subsection (b) of this section.

(b) Responsibilities

The Commission shall—

(1) assess the present and future resource needs of the forensic science community;

(2) make recommendations to the Attorney General for maximizing the use of forensic technologies and techniques to solve crimes and protect the public;

(3) identify potential scientific advances that may assist law enforcement in using forensic technologies and techniques to protect the public;

(4) make recommendations to the Attorney General for programs that will increase the number of qualified forensic scientists available to work in public crime laboratories;

(5) disseminate, through the National Institute of Justice, best practices concerning the collection and analyses of forensic evidence to help ensure quality and consistency in the use of forensic technologies and techniques to solve crimes and protect the public;

(6) examine additional issues pertaining to forensic science as requested by the Attorney General;

(7) examine Federal, State, and local privacy protection statutes, regulations, and practices relating to access to, or use of, stored DNA samples or DNA analyses, to determine whether such protections are sufficient;

(8) make specific recommendations to the Attorney General, as necessary, to enhance the protections described in paragraph (7) to ensure—

(A) the appropriate use and dissemination of DNA information;

(B) the accuracy, security, and confidentiality of DNA information;

(C) the timely removal and destruction of obsolete, expunged, or inaccurate DNA information; and

(D) that any other necessary measures are taken to protect privacy; and

(9) provide a forum for the exchange and dissemination of ideas and information in furtherance of the objectives described in paragraphs (1) through (8).

(c) Personnel; procedures

The Attorney General shall—

(1) designate the Chair of the Commission from among its members;

(2) designate any necessary staff to assist in carrying out the functions of the Commission; and

(3) establish procedures and guidelines for the operations of the Commission.

(d) Authorization of appropriations

There are authorized to be appropriated $500,000 for each of fiscal years 2005 through 2009 to carry out this section.

(Pub. L. 108–405, title III, § 306, Oct. 30, 2004, 118 Stat. 2274.)

CODIFICATION

Section was enacted as part of the DNA Sexual Assault Justice Act of 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14136d. DNA identification of missing persons

(a) In general

The Attorney General shall make grants to promote the use of forensic DNA technology to identify missing persons and unidentified human remains.

(b) Requirement

Each State or unit of local government that receives funding under this section shall be required to submit the DNA profiles of such missing persons and unidentified human remains to the National Missing Persons DNA Database of the Federal Bureau of Investigation.

(c) Authorization of appropriations

There are authorized to be appropriated $2,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

(Pub. L. 108–405, title III, § 308, Oct. 30, 2004, 118 Stat. 2275.)

CODIFICATION

Section was enacted as part of the DNA Sexual Assault Justice Act of 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14136e. Kirk Bloodsworth Post-Conviction DNA Testing Grant Program

(a) In general

The Attorney General shall establish the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program to award grants to States to help defray the costs of post-conviction DNA testing.

(b) Authorization of appropriations

There are authorized to be appropriated $5,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

(c) State defined

For purposes of this section, the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 108–405, title IV, § 412, Oct. 30, 2004, 118 Stat. 2284.)

CODIFICATION

Section was enacted as part of the Innocence Protection Act 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

PART B—POLICE PATTERN OR PRACTICE

§ 14141. Cause of action

(a) Unlawful conduct

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Civil action by Attorney General

Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1)[1] has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

(Pub. L. 103–322, title XXI, § 210401, Sept. 13, 1994, 108 Stat. 2071.)

§ 14142. Data on use of excessive force

(a) Attorney General to collect

The Attorney General shall, through appropriate means, acquire data about the use of excessive force by law enforcement officers.

(b) Limitation on use of data

Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of the victim or any law enforcement officer.

(c) Annual summary

The Attorney General shall publish an annual summary of the data acquired under this section.

[1] So in original. Probably should be ''subsection (a) of this section''.

(Pub. L. 103–322, title XXI, § 210402, Sept. 13, 1994, 108 Stat. 2071.)

PART C—IMPROVED TRAINING AND TECHNICAL AUTOMATION

§ 14151. Repealed. Pub. L. 109–162, title XI, § 1154(b)(3), Jan. 5, 2006, 119 Stat. 3113

Section, Pub. L. 103–322, title XXI, § 210501, Sept. 13, 1994, 108 Stat. 2072, related to grants for the purposes of improving criminal justice agency efficiency through computerized automation and technological improvements, directed the expansion and improvement of training and investigative assistance, authorized appropriations, and defined terms.

PART D—OTHER STATE AND LOCAL AID

§ 14161. Repealed. Pub. L. 109–162, title XI, § 1154(b)(4), Jan. 5, 2006, 119 Stat. 3113

Section, Pub. L. 103–322, title XXI, § 210602, Sept. 13, 1994, 108 Stat. 2073, related to federal assistance to ease increased burdens on State court systems and authorized appropriations.

PART E—IMPROVING THE QUALITY OF REPRESENTATION IN STATE CAPITAL CASES

§ 14163. Capital representation improvement grants

(a) In general

The Attorney General shall award grants to States for the purpose of improving the quality of legal representation provided to indigent defendants in State capital cases.

(b) Defined term

In this section, the term ''legal representation'' means legal counsel and investigative, expert, and other services necessary for competent representation.

(c) Use of funds

Grants awarded under subsection (a) of this section—

(1) shall be used to establish, implement, or improve an effective system for providing competent legal representation to—

(A) indigents charged with an offense subject to capital punishment;

(B) indigents who have been sentenced to death and who seek appellate or collateral relief in State court; and

(C) indigents who have been sentenced to death and who seek review in the Supreme Court of the United States; and

(2) shall not be used to fund, directly or indirectly, representation in specific capital cases.

(d) Apportionment of funds

(1) In general

Of the funds awarded under subsection (a) of this section—

(A) not less than 75 percent shall be used to carry out the purpose described in subsection (c)(1)(A) of this section; and

(B) not more than 25 percent shall be used to carry out the purpose described in subsection (c)(1)(B) of this section.

(2) Waiver

The Attorney General may waive the requirement under this subsection for good cause shown.

(e) Effective system

As used in subsection (c)(1) of this section, an effective system for providing competent legal representation is a system that—

(1) invests the responsibility for appointing qualified attorneys to represent indigents in capital cases—

(A) in a public defender program that relies on staff attorneys, members of the private bar, or both, to provide representation in capital cases;

(B) in an entity established by statute or by the highest State court with jurisdiction in criminal cases, which is composed of individuals with demonstrated knowledge and expertise in capital cases, except for individuals currently employed as prosecutors; or

(C) pursuant to a statutory procedure enacted before October 30, 2004, under which the trial judge is required to appoint qualified attorneys from a roster maintained by a State or regional selection committee or similar entity; and

(2) requires the program described in paragraph (1)(A), the entity described in paragraph (1)(B), or an appropriate entity designated pursuant to the statutory procedure described in paragraph (1)(C), as applicable, to—

(A) establish qualifications for attorneys who may be appointed to represent indigents in capital cases;

(B) establish and maintain a roster of qualified attorneys;

(C) except in the case of a selection committee or similar entity described in paragraph (1)(C), assign 2 attorneys from the roster to represent an indigent in a capital case, or provide the trial judge a list of not more than 2 pairs of attorneys from the roster, from which 1 pair shall be assigned, provided that, in any case in which the State elects not to seek the death penalty, a court may find, subject to any requirement of State law, that a second attorney need not remain assigned to represent the indigent to ensure competent representation;

(D) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases;

(E)(i) monitor the performance of attorneys who are appointed and their attendance at training programs; and

(ii) remove from the roster attorneys who—

(I) fail to deliver effective representation or engage in unethical conduct;

(II) fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs; or

(III) during the past 5 years, have been sanctioned by a bar association or court for ethical misconduct relating to the attorney's conduct as defense counsel in a criminal case in Federal or State court; and

(F) ensure funding for the cost of competent legal representation by the defense team and outside experts selected by counsel, who shall be compensated—

(i) in the case of a State that employs a statutory procedure described in paragraph (1)(C), in accordance with the requirements of that statutory procedure; and

(ii) in all other cases, as follows:

(I) Attorneys employed by a public defender program shall be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.

(II) Appointed attorneys shall be compensated for actual time and service, computed on an hourly basis and at a reasonable hourly rate in light of the qualifications and experience of the attorney and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases.

(III) Non-attorney members of the defense team, including investigators, mitigation specialists, and experts, shall be compensated at a rate that reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.

(IV) Attorney and non-attorney members of the defense team shall be reimbursed for reasonable incidental expenses.

(Pub. L. 108–405, title IV, § 421, Oct. 30, 2004, 118 Stat. 2286.)

CODIFICATION

Section was enacted as part of the Innocence Protection Act 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14163a. Capital prosecution improvement grants

(a) In general

The Attorney General shall award grants to States for the purpose of enhancing the ability of prosecutors to effectively represent the public in State capital cases.

(b) Use of funds

(1) Permitted uses

Grants awarded under subsection (a) of this section shall be used for one or more of the following:

(A) To design and implement training programs for State and local prosecutors to ensure effective representation in State capital cases.

(B) To develop and implement appropriate standards and qualifications for State and local prosecutors who litigate State capital cases.

(C) To assess the performance of State and local prosecutors who litigate State capital cases, provided that such assessment shall not include participation by the assessor in the trial of any specific capital case.

(D) To identify and implement any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases.

(E) To establish a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate.

(F) To provide support and assistance to the families of murder victims.

(2) Prohibited use

Grants awarded under subsection (a) of this section shall not be used to fund, directly or indirectly, the prosecution of specific capital cases.

(Pub. L. 108–405, title IV, § 422, Oct. 30, 2004, 118 Stat. 2288.)

CODIFICATION

Section was enacted as part of the Innocence Protection Act 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14163b. Applications

(a) In general

The Attorney General shall establish a process through which a State may apply for a grant under this part.

(b) Application

(1) In general

A State desiring a grant under this part shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may reasonably require.

(2) Contents

Each application submitted under paragraph (1) shall contain—

(A) a certification by an appropriate officer of the State that the State authorizes capital punishment under its laws and conducts, or will conduct, prosecutions in which capital punishment is sought;

(B) a description of the communities to be served by the grant, including the nature of existing capital defender services and capital prosecution programs within such communities;

(C) a long-term statewide strategy and detailed implementation plan that—

(i) reflects consultation with the judiciary, the organized bar, and State and local prosecutor and defender organizations; and

(ii) establishes as a priority improvement in the quality of trial-level representation of indigents charged with capital crimes and trial-level prosecution of capital crimes;

(D) in the case of a State that employs a statutory procedure described in section 14163(e)(1)(C) of this title, a certification by an appropriate officer of the State that the State is in substantial compliance with the requirements of the applicable State statute; and

(E) assurances that Federal funds received under this part shall be—

(i) used to supplement and not supplant non-Federal funds that would otherwise be

available for activities funded under this part; and

(ii) allocated in accordance with section 14163e(b) of this title.

(Pub. L. 108–405, title IV, § 423, Oct. 30, 2004, 118 Stat. 2288.)

CODIFICATION

Section was enacted as part of the Innocence Protection Act 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14163c. State reports

(a) In general

Each State receiving funds under this part shall submit an annual report to the Attorney General that—

(1) identifies the activities carried out with such funds; and

(2) explains how each activity complies with the terms and conditions of the grant.

(b) Capital representation improvement grants

With respect to the funds provided under section 14163 of this title, a report under subsection (a) of this section shall include—

(1) an accounting of all amounts expended;

(2) an explanation of the means by which the State—

(A) invests the responsibility for identifying and appointing qualified attorneys to represent indigents in capital cases in a program described in section 14163(e)(1)(A) of this title, an entity described in section 14163(e)(1)(B) of this title, or a selection committee or similar entity described in section 14163(e)(1)(C) of this title; and

(B) requires such program, entity, or selection committee or similar entity, or other appropriate entity designated pursuant to the statutory procedure described in section 14163(e)(1)(C) of this title, to—

(i) establish qualifications for attorneys who may be appointed to represent indigents in capital cases in accordance with section 14163(e)(2)(A) of this title;

(ii) establish and maintain a roster of qualified attorneys in accordance with section 14163(e)(2)(B) of this title;

(iii) assign attorneys from the roster in accordance with section 14163(e)(2)(C) of this title;

(iv) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases in accordance with section 14163(e)(2)(D) of this title;

(v) monitor the performance and training program attendance of appointed attorneys, and remove from the roster attorneys who fail to deliver effective representation or fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs, in accordance with section 14163(e)(2)(E) of this title; and

(vi) ensure funding for the cost of competent legal representation by the defense team and outside experts selected by counsel, in accordance with section 14163(e)(2)(F) of this title, including a statement setting forth—

(I) if the State employs a public defender program under section 14163(e)(1)(A) of this title, the salaries received by the attorneys employed by such program and the salaries received by attorneys in the prosecutor's office in the jurisdiction;

(II) if the State employs appointed attorneys under section 14163(e)(1)(B) of this title, the hourly fees received by such attorneys for actual time and service and the basis on which the hourly rate was calculated;

(III) the amounts paid to non-attorney members of the defense team, and the basis on which such amounts were determined; and

(IV) the amounts for which attorney and non-attorney members of the defense team were reimbursed for reasonable incidental expenses;

(3) in the case of a State that employs a statutory procedure described in section 14163(e)(1)(C) of this title, an assessment of the extent to which the State is in compliance with the requirements of the applicable State statute; and

(4) a statement confirming that the funds have not been used to fund representation in specific capital cases or to supplant non-Federal funds.

(c) Capital prosecution improvement grants

With respect to the funds provided under section 14163a of this title, a report under subsection (a) of this section shall include—

(1) an accounting of all amounts expended;

(2) a description of the means by which the State has—

(A) designed and established training programs for State and local prosecutors to ensure effective representation in State capital cases in accordance with section 14163a(b)(1)(A) of this title;

(B) developed and implemented appropriate standards and qualifications for State and local prosecutors who litigate State capital cases in accordance with section 14163a(b)(1)(B) of this title;

(C) assessed the performance of State and local prosecutors who litigate State capital cases in accordance with section 14163a(b)(1)(C) of this title;

(D) identified and implemented any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases in accordance with section 14163a(b)(1)(D) of this title;

(E) established a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate in accordance with section 14163a(b)(1)(E) of this title; and

(F) provided support and assistance to the families of murder victims; and

(3) a statement confirming that the funds have not been used to fund the prosecution of specific capital cases or to supplant non-Federal funds.

(d) Public disclosure of annual State reports

The annual reports to the Attorney General submitted by any State under this section shall be made available to the public.

(Pub. L. 108–405, title IV, § 424, Oct. 30, 2004, 118 Stat. 2289.)

CODIFICATION

Section was enacted as part of the Innocence Protection Act 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14163d. Evaluations by Inspector General and administrative remedies

(a) Evaluation by Inspector General

(1) In general

As soon as practicable after the end of the first fiscal year for which a State receives funds under a grant made under this part, the Inspector General of the Department of Justice (in this section referred to as the ''Inspector General'') shall—

(A) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report evaluating the compliance by the State with the terms and conditions of the grant; and

(B) if the Inspector General concludes that the State is not in compliance with the terms and conditions of the grant, specify any deficiencies and make recommendations to the Attorney General for corrective action.

(2) Priority

In conducting evaluations under this subsection, the Inspector General shall give priority to States that the Inspector General determines, based on information submitted by the State and other comments provided by any other person, to be at the highest risk of noncompliance.

(3) Determination for statutory procedure States

For each State that employs a statutory procedure described in section 14163(e)(1)(C) of this title, the Inspector General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, not later than the end of the first fiscal year for which such State receives funds, a determination as to whether the State is in substantial compliance with the requirements of the applicable State statute.

(4) Comments from public

The Inspector General shall receive and consider comments from any member of the public regarding any State's compliance with the terms and conditions of a grant made under this part. To facilitate the receipt of such comments, the Inspector General shall maintain on its website a form that any member of the public may submit, either electronically or otherwise, providing comments. The Inspector General shall give appropriate consideration to all such public comments in reviewing reports submitted under section 14163c of this title or in establishing the priority for conducting evaluations under this section.

(b) Administrative review

(1) Comment

Upon the submission of a report under subsection (a)(1) of this section or a determination under subsection (a)(3) of this section, the Attorney General shall provide the State with an opportunity to comment regarding the findings and conclusions of the report or the determination.

(2) Corrective action plan

If the Attorney General, after reviewing a report under subsection (a)(1) of this section or a determination under subsection (a)(3) of this section, determines that a State is not in compliance with the terms and conditions of the grant, the Attorney General shall consult with the appropriate State authorities to enter into a plan for corrective action. If the State does not agree to a plan for corrective action that has been approved by the Attorney General within 90 days after the submission of the report under subsection (a)(1) of this section or the determination under subsection (a)(3) of this section, the Attorney General shall, within 30 days, issue guidance to the State regarding corrective action to bring the State into compliance.

(3) Report to Congress

Not later than 90 days after the earlier of the implementation of a corrective action plan or the issuance of guidance under paragraph (2), the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate as to whether the State has taken corrective action and is in compliance with the terms and conditions of the grant.

(c) Penalties for noncompliance

If the State fails to take the prescribed corrective action under subsection (b) of this section and is not in compliance with the terms and conditions of the grant, the Attorney General shall discontinue all further funding under sections 14163 and 14163a of this title and require the State to return the funds granted under such sections for that fiscal year. Nothing in this paragraph shall prevent a State which has been subject to penalties for noncompliance from reapplying for a grant under this part in another fiscal year.

(d) Periodic reports

During the grant period, the Inspector General shall periodically review the compliance of each State with the terms and conditions of the grant.

(e) Administrative costs

Not less than 2.5 percent of the funds appropriated to carry out this part for each of fiscal

years 2005 through 2009 shall be made available to the Inspector General for purposes of carrying out this section. Such sums shall remain available until expended.

(f) Special rule for "statutory procedure" States not in substantial compliance with statutory procedures

(1) In general

In the case of a State that employs a statutory procedure described in section 14163(e)(1)(C) of this title, if the Inspector General submits a determination under subsection (a)(3) of this section that the State is not in substantial compliance with the requirements of the applicable State statute, then for the period beginning with the date on which that determination was submitted and ending on the date on which the Inspector General determines that the State is in substantial compliance with the requirements of that statute, the funds awarded under this part shall be allocated solely for the uses described in section 14163 of this title.

(2) Rule of construction

The requirements of this subsection apply in addition to, and not instead of, the other requirements of this section.

(Pub. L. 108–405, title IV, § 425, Oct. 30, 2004, 118 Stat. 2291.)

CODIFICATION

Section was enacted as part of the Innocence Protection Act 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14163e. Authorization of appropriations

(a) Authorization for grants

There are authorized to be appropriated $75,000,000 for each of fiscal years 2005 through 2009 to carry out this part.

(b) Restriction on use of funds to ensure equal allocation

Each State receiving a grant under this part shall allocate the funds equally between the uses described in section 14163 of this title and the uses described in section 14163a of this title, except as provided in section 14163d(f) of this title.

(Pub. L. 108–405, title IV, § 426, Oct. 30, 2004, 118 Stat. 2292.)

CODIFICATION

Section was enacted as part of the Innocence Protection Act 2004 and also as part of the Justice for All Act of 2004, and not as part of Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SUBCHAPTER X—MOTOR VEHICLE THEFT PREVENTION

§ 14171. Motor vehicle theft prevention program

(a) In general

Not later than 180 days after September 13, 1994, the Attorney General shall develop, in cooperation with the States, a national voluntary motor vehicle theft prevention program (in this section referred to as the ''program'') under which—

(1) the owner of a motor vehicle may voluntarily sign a consent form with a participating State or locality in which the motor vehicle owner—

(A) states that the vehicle is not normally operated under certain specified conditions; and

(B) agrees to—

(i) display program decals or devices on the owner's vehicle; and

(ii) permit law enforcement officials in any State to stop the motor vehicle and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner, if the vehicle is being operated under the specified conditions; and

(2) participating States and localities authorize law enforcement officials in the State or locality to stop motor vehicles displaying program decals or devices under specified conditions and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner.

(b) Uniform decal or device designs

(1) In general

The motor vehicle theft prevention program developed pursuant to this section shall include a uniform design or designs for decals or other devices to be displayed by motor vehicles participating in the program.

(2) Type of design

The uniform design shall—

(A) be highly visible; and

(B) explicitly state that the motor vehicle to which it is affixed may be stopped under the specified conditions without additional grounds for establishing a reasonable suspicion that the vehicle is being operated unlawfully.

(c) Voluntary consent form

The voluntary consent form used to enroll in the program shall—

(1) clearly state that participation in the program is voluntary;

(2) clearly explain that participation in the program means that, if the participating vehicle is being operated under the specified conditions, law enforcement officials may stop the vehicle and take reasonable steps to determine whether it is being operated by or with the consent of the owner, even if the law enforcement officials have no other basis for believing that the vehicle is being operated unlawfully;

(3) include an express statement that the vehicle is not normally operated under the specified conditions and that the operation of the vehicle under those conditions would provide sufficient grounds for a prudent law enforcement officer to reasonably believe that the vehicle was not being operated by or with the consent of the owner; and

(4) include any additional information that the Attorney General may reasonably require.

(d) Specified conditions under which stops may be authorized

(1) In general

The Attorney General shall promulgate rules establishing the conditions under which participating motor vehicles may be authorized to be stopped under this section. These conditions may not be based on race, creed, color, national origin, gender, or age. These conditions may include—

(A) the operation of the vehicle during certain hours of the day; or

(B) the operation of the vehicle under other circumstances that would provide a sufficient basis for establishing a reasonable suspicion that the vehicle was not being operated by the owner, or with the consent of the owner.

(2) More than one set of conditions

The Attorney General may establish more than one set of conditions under which participating motor vehicles may be stopped. If more than one set of conditions is established, a separate consent form and a separate design for program decals or devices shall be established for each set of conditions. The Attorney General may choose to satisfy the requirement of a separate design for program decals or devices under this paragraph by the use of a design color that is clearly distinguishable from other design colors.

(3) No new conditions without consent

After the program has begun, the conditions under which a vehicle may be stopped if affixed with a certain decal or device design may not be expanded without the consent of the owner.

(4) Limited participation by States and localities

A State or locality need not authorize the stopping of motor vehicles under all sets of conditions specified under the program in order to participate in the program.

(e) Motor vehicles for hire

(1) Notification to lessees

Any person who is in the business of renting or leasing motor vehicles and who rents or leases a motor vehicle on which a program decal or device is affixed shall, prior to transferring possession of the vehicle, notify the person to whom the motor vehicle is rented or leased about the program.

(2) Type of notice

The notice required by this subsection shall—

(A) be in writing;

(B) be in a prominent format to be determined by the Attorney General; and

(C) explain the possibility that if the motor vehicle is operated under the specified conditions, the vehicle may be stopped by law enforcement officials even if the officials have no other basis for believing that the vehicle is being operated unlawfully.

(3) Fine for failure to provide notice

Failure to provide proper notice under this subsection shall be punishable by a fine not to exceed $5,000.

(f) Notification of police

As a condition of participating in the program, a State or locality must agree to take reasonable steps to ensure that law enforcement officials throughout the State or locality are familiar with the program, and with the conditions under which motor vehicles may be stopped under the program.

(g) Regulations

The Attorney General shall promulgate regulations to implement this section.

(h) Authorization of appropriations

There are authorized to carry out this section.[1]

(1) $1,500,000 for fiscal year 1996;

(2) $1,700,000 for fiscal year 1997; and

(3) $1,800,000 for fiscal year 1998.

(Pub. L. 103–322, title XXII, § 220002, Sept. 13, 1994, 108 Stat. 2074.)

SHORT TITLE

For short title of this subchapter as the ''Motor Vehicle Theft Prevention Act'', see section 220001 of Pub. L. 103–322, set out as a note under section 13701 of this title.

SUBCHAPTER XI—PROTECTIONS FOR THE ELDERLY

§ 14181. Missing Alzheimer's Disease Patient Alert Program

(a) Grant

The Attorney General shall, subject to the availability of appropriations, award a grant to an eligible organization to assist the organization in paying for the costs of planning, designing, establishing, and operating a Missing Alzheimer's Disease Patient Alert Program, which shall be a locally based, proactive program to protect and locate missing patients with Alzheimer's disease and related dementias.

(b) Application

To be eligible to receive a grant under subsection (a) of this section, an organization shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may require, including, at a minimum, an assurance that the organization will obtain and use assistance from private nonprofit organizations to support the program.

(c) Eligible organization

The Attorney General shall award the grant described in subsection (a) of this section to a national voluntary organization that has a direct link to patients, and families of patients, with Alzheimer's disease and related dementias.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) $900,000 for fiscal year 1996;

(2) $900,000 for fiscal year 1997; and

(3) $900,000 for fiscal year 1998.

(Pub. L. 103–322, title XXIV, § 240001, Sept. 13, 1994, 108 Stat. 2080.)

[1] So in original. The period probably should be a dash.

SUBCHAPTER XII—PRESIDENTIAL SUMMIT ON VIOLENCE AND NATIONAL COMMISSION ON CRIME PREVENTION AND CONTROL

§ 14191. Presidential summit

Congress calls on the President to convene a national summit on violence in America prior to convening the Commission established under this subchapter.

(Pub. L. 103–322, title XXVII, § 270001, Sept. 13, 1994, 108 Stat. 2089.)

§ 14192. Establishment; committees and task forces; representation

(a) Establishment and appointment of members

There is established a commission to be known as the ''National Commission on Crime Control and Prevention''. The Commission shall be composed of 28 members appointed as follows:

(1) 10 persons by the President, not more than 6 of whom shall be of the same major political party.

(2) 9 persons by the President pro tempore of the Senate, 5 of whom shall be appointed on the recommendation of the Majority Leader of the Senate and the chairman of the Committee on the Judiciary of the Senate, and 4 of whom shall be appointed on the recommendation of the Minority Leader of the Senate and the ranking minority member of the Committee on the Judiciary of the Senate.

(3) 9 persons appointed by the Speaker of the House of Representatives, in consultation with the chairman of the Committee on the Judiciary of the House of Representatives, and 4 of whom shall be appointed on the recommendation of the Minority Leader of the House of Representatives, in consultation with the ranking member of the Committee on the Judiciary.

(b) Committees and task forces

The Commission shall establish committees or task forces from among its members for the examination of specific subject areas and the carrying out of other functions or responsibilities of the Commission, including committees or task forces for the examination of the subject areas of crime and violence generally, the causes of the demand for drugs, violence in schools, and violence against women, as described in subsections (b) through (e) of section 14194 of this title.

(c) Representation

(1) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of crime and violence generally, with education, training, expertise, or experience in such areas as law enforcement, law, sociology, psychology, social work, and ethnography and urban poverty (including health care, housing, education, and employment).

(2) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of the causes of the demand for drugs, with education, training, expertise, or experience in such areas as addiction, biomedicine, sociology, psychology, law, and ethnography and urban poverty (including health care, housing, education, and employment).

(3) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of violence in schools, with education, training, expertise, or experience in such areas as law enforcement, education, school governance policy and teaching, law, sociology, psychology, and ethnography and urban poverty (including health care, housing, education, and employment).

(4) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of violence against women, as survivors of violence, or as persons with education, training, expertise, or experience in such areas as law enforcement, law, judicial administration, prosecution, defense, victim services or advocacy in sexual assault or domestic violence cases (including medical services and counseling), and protection of victims' rights.

(Pub. L. 103–322, title XXVII, § 270002, Sept. 13, 1994, 108 Stat. 2089.)

§ 14193. Purposes

The purposes of the Commission are as follows:

(1) To develop a comprehensive proposal for preventing and controlling crime and violence in the United States, including cost estimates for implementing any recommendations made by the Commission.

(2) To bring attention to successful models and programs in crime prevention and crime control.

(3) To reach out beyond the traditional criminal justice community for ideas for controlling and preventing crime.

(4) To recommend improvements in the coordination of local, State, Federal, and international crime control and prevention efforts, including efforts relating to crime near international borders.

(5) To make a comprehensive study of the economic and social factors leading to or contributing to crime and violence, including the causes of illicit drug use and other substance

abuse, and to develop specific proposals for legislative and administrative actions to reduce crime and violence and the factors that contribute to it.

(6) To recommend means of utilizing criminal justice resources as effectively as possible, including targeting finite correctional facility space to the most serious and violent offenders, and considering increased use of intermediate sanctions for offenders who can be dealt with adequately by such means.

(7) To examine distinctive crime problems and the impact of crime on members of minority groups, Indians living on reservations, and other groups defined by race, ethnicity, religion, age, disability, or other characteristics, and to recommend specific responses to the distinctive crime problems of such groups.

(8) To examine the problem of sexual assaults, domestic violence, and other criminal and unlawful acts that particularly affect women, and to recommend Federal, State, and local strategies for more effectively preventing and punishing such crimes and acts.

(9) To examine the treatment of victims in Federal, State, and local criminal justice systems, and to develop recommendations to enhance and protect the rights of victims.

(10) To examine the ability of Federal, State, and local criminal justice systems to administer criminal law and criminal sanctions impartially without discrimination on the basis of race, ethnicity, religion, gender, or other legally proscribed grounds, and to make recommendations for correcting any deficiencies in the impartial administration of justice on these grounds.

(11) To examine the nature, scope, causes, and complexities of violence in schools and to recommend a comprehensive response to that problem.

(Pub. L. 103–322, title XXVII, § 270003, Sept. 13, 1994, 108 Stat. 2091.)

§ 14194. Responsibilities of Commission

(a) In general

The responsibilities of the Commission shall include such study and consultation as may be necessary or appropriate to carry out the purposes set forth in section 14193 of this title, including the specific measures described in subsections (b) through (e) of this section in relation to the subject areas addressed in those subsections.

(b) Crime and violence generally

In addressing the subject of crime and violence generally, the activities of the Commission shall include the following:

(1) Reviewing the effectiveness of traditional criminal justice approaches in preventing and controlling crime and violence.

(2) Examining the impact that changes in Federal and State law have had in controlling crime and violence.

(3) Examining the impact of changes in Federal immigration laws and policies and increased development and growth along United States international borders on crime and violence in the United States, particularly among the Nation's youth.

(4) Examining the problem of youth gangs and providing recommendations as to how to reduce youth involvement in violent crime.

(5) Examining the extent to which the use of dangerous weapons in the commission of crime has contributed to violence and murder in the United States.

(6) Convening field hearings in various regions of the country to receive testimony from a cross section of criminal justice professionals, business leaders, elected officials, medical doctors, and other persons who wish to participate.

(7) Reviewing all segments of the Nation's criminal justice systems, including the law enforcement, prosecution, defense, judicial, and corrections components in developing the crime control and prevention proposal.

(c) Causes of demand for drugs

In addressing the subject of the causes of the demand for drugs, the activities of the Commission shall include the following:

(1) Examining the root causes of illicit drug use and abuse in the United States, including by compiling existing research regarding those root causes, and including consideration of the following factors:

(A) The characteristics of potential illicit drug users and abusers or drug traffickers, including age and social, economic, and educational backgrounds.

(B) Environmental factors that contribute to illicit drug use and abuse, including the correlation between unemployment, poverty, and homelessness and drug experimentation and abuse.

(C) The effects of substance use and abuse by a relative or friend in contributing to the likelihood and desire of an individual to experiment with illicit drugs.

(D) Aspects of, and changes in cultural values, attitudes and traditions that contribute to illicit drug use and abuse.

(E) The physiological and psychological factors that contribute to the desire for illicit drugs.

(2) Evaluating Federal, State, and local laws and policies on the prevention of drug abuse, control of unlawful production, distribution and use of controlled substances, and the efficacy of sentencing policies with regard to those laws.

(3) Analyzing the allocation of resources among interdiction of controlled substances entering the United States, enforcement of Federal laws relating to the unlawful production, distribution, and use of controlled substances, education with regard to and the prevention of the unlawful use of controlled substances, and treatment and rehabilitation of drug abusers.

(4) Analyzing current treatment and rehabilitation methods and making recommendations for improvements.

(5) Identifying any existing gaps in drug abuse policy that result from the lack of attention to the root causes of drug abuse.

(6) Assessing the needs of government at all levels for resources and policies for reducing the overall desire of individuals to experiment with and abuse illicit drugs.

(7) Making recommendations regarding necessary improvements in policies for reducing the use of illicit drugs in the United States.

(d) Violence in schools

In addressing the subject of violence in schools, the activities of the Commission shall include the following:

(1) Defining the causes of violence in schools.

(2) Defining the scope of the national problem of violence in schools.

(3) Providing statistics and data on the problem of violence in schools on a State-by-State basis.

(4) Investigating the problem of youth gangs and their relation to violence in schools and providing recommendations on how to reduce youth involvement in violent crime in schools.

(5) Examining the extent to which dangerous weapons have contributed to violence and murder in schools.

(6) Exploring the extent to which the school environment has contributed to violence in schools.

(7) Reviewing the effectiveness of current approaches in preventing violence in schools.

(e) Violence against women

In addressing the subject of sexual assault, domestic violence, and other criminal and unlawful acts that particularly affect women, the activities of the Commission shall include the following:

(1) Evaluating the adequacy of, and making recommendations regarding, current law enforcement efforts at the Federal, State, and local levels to reduce the incidence of such crimes and acts, and to punish those responsible for such crimes and acts.

(2) Evaluating the adequacy of, and making recommendations regarding, the responsiveness of prosecutors and courts to such crimes and acts.

(3) Evaluating the adequacy of rules of evidence, practice, and procedure to ensure the effective prosecution and conviction of perpetrators of such crimes and acts and to protect victims of such crimes and acts from abuse in legal proceedings, making recommendations, where necessary, to improve those rules.

(4) Evaluating the adequacy of pretrial release, sentencing, incarceration, and post-conviction release in relation to such crimes and acts.

(5) Evaluating the adequacy of, and making recommendations regarding, the adequacy of Federal and State laws on sexual assault and the need for a more uniform statutory response to sex offenses, including sexual assaults and other sex offenses committed by offenders who are known or related by blood or marriage to the victim.

(6) Evaluating the adequacy of, and making recommendations regarding, the adequacy of Federal and State laws on domestic violence and the need for a more uniform statutory response to domestic violence.

(7) Evaluating the adequacy of, and making recommendations regarding, the adequacy of current education, prevention, and protective services for victims of such crimes and acts.

(8) Assessing the issuance, formulation, and enforcement of protective orders, whether or not related to a criminal proceeding, and making recommendations for their more effective use in domestic violence and stalking cases.

(9) Assessing the problem of stalking and recommending effective means of response to the problem.

(10) Evaluating the adequacy of, and making recommendations regarding, programs for public awareness and public dissemination of information to prevent such crimes and acts.

(11) Evaluating the treatment of victims of such crimes and acts in Federal, State, and local criminal justice systems, and making recommendations designed to improve such treatment.

(Pub. L. 103–322, title XXVII, § 270004, Sept. 13, 1994, 108 Stat. 2092.)

§ 14195. Administrative matters

(a) Chair

The President shall designate a member of the Commission to chair the Commission.

(b) No additional pay or benefits; per diem

Members of the Commission shall receive no pay or benefits by reason of their service on the Commission, but shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5.

(c) Vacancies

Vacancies on the Commission shall be filled in the same manner as initial appointments.

(d) Meetings open to public

The Commission shall be considered to be an agency for the purposes of section 552b of title 5 relating to the requirement that meetings of Federal agencies be open to the public.

(Pub. L. 103–322, title XXVII, § 270005, Sept. 13, 1994, 108 Stat. 2094.)

§ 14196. Staff and support services

(a) Director

With the approval of the Commission, the chairperson shall appoint a staff director for the Commission.

(b) Staff

With the approval of the Commission, the staff director may appoint and fix the compensation of staff personnel for the Commission.

(c) Civil service laws

The staff of the Commission shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service. Staff compensation may be set without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, but in no event shall any such personnel be compensated at a rate greater than the rate of basic pay for level ES–4 of the Senior Executive Service Schedule under section 5382 of that title. The staff director shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule.

(d) Consultants

With the approval of the Commission, the staff director may procure temporary and intermittent services under section 3109(b) of title 5.

(e) Staff of Federal agencies

Upon the request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, personnel of that agency to the Commission to assist in carrying out its duties.

(f) Physical facilities

The Administrator of the General Service Administration shall provide suitable office space for the operation of the Commission. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for proper functioning.

(Pub. L. 103–322, title XXVII, § 270006, Sept. 13, 1994, 108 Stat. 2094.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (c), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Level V of the Executive Schedule, referred to in subsec. (c), is set out in section 5316 of Title 5.

§ 14197. Powers

(a) Hearings

For the purposes of carrying out this subchapter, the Commission may conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths before the Commission.

(b) Delegation

Any committee, task force, member, or agent, of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take under this subchapter.

(c) Access to information

The Commission may request directly from any Federal agency or entity in the executive or legislative branch such information as is needed to carry out its functions.

(d) Mail

The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(Pub. L. 103–322, title XXVII, § 270007, Sept. 13, 1994, 108 Stat. 2095.)

§ 14198. Report; termination

Not later than 2 years after the date on which the Commission is fully constituted under section 14191 of this title, the Commission shall submit a detailed report to the Congress and the President containing its findings and recommendations. The Commission shall terminate 30 days after the submission of its report.

(Pub. L. 103–322, title XXVII, § 270008, Sept. 13, 1994, 108 Stat. 2095.)

§ 14199. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter—

(1)[1] $1,000,000 for fiscal year 1996.

(Pub. L. 103–322, title XXVII, § 270009, Sept. 13, 1994, 108 Stat. 2095.)

SUBCHAPTER XIII—VIOLENT CRIME REDUCTION TRUST FUND

§ 14211. Creation of Violent Crime Reduction Trust Fund

(a) Violent Crime Reduction Trust Fund

There is established a separate account in the Treasury, known as the ''Violent Crime Reduction Trust Fund'' (referred to in this section as the ''Fund'') into which shall be transferred, in accordance with subsection (b) of this section, savings realized from implementation of section 5 of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 3101 note; Public Law 103–226).

(b) Transfers into Fund

On the first day of the following fiscal years (or as soon thereafter as possible for fiscal year 1995), the following amounts shall be transferred from the general fund to the Fund—

(1) for fiscal year 1995, $2,423,000,000;
(2) for fiscal year 1996, $4,287,000,000;
(3) for fiscal year 1997, $5,000,000,000;
(4) for fiscal year 1998, $5,500,000,000;
(5) for fiscal year 1999, $6,500,000,000; and
(6) for fiscal year 2000, $6,500,000,000.

(c) Appropriations from Fund

(1) Amounts in the Fund may be appropriated exclusively for the purposes authorized in this Act and for those expenses authorized by any Act enacted before this Act that are expressly qualified for expenditure from the Fund.

(2) Amounts appropriated under paragraph (1) and outlays flowing from such appropriations shall not be taken into account for purposes of any budget enforcement procedures under the Balanced Budget and Emergency Deficit Control Act of 1985 except section 251A[1] of that Act as added by subsection (g), or for purposes of section 665d(b)[1] of title 2. Amounts of new budget authority and outlays under paragraph (1) that are included in concurrent resolutions on the budget shall not be taken into account for purposes of sections 665(b), 665e(b), and 665e(c) of title 2,[1] or for purposes of section 24 of House Concurrent Resolution 218 (One Hundred Third Congress).

(Pub. L. 103–322, title XXXI, § 310001(a)–(c), Sept. 13, 1994, 108 Stat. 2102, 2103.)

REFERENCES IN TEXT

This section, referred to in subsec. (a), is section 310001 of Pub. L. 103–322, which enacted this section and section 901a of Title 2, The Congress, and amended sections 665a and 904 of Title 2 and sections 1105 and 1321 of Title 31, Money and Finance.

This Act, referred to in subsec. (c)(1), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (c)(2), is title II of

[1] So in original. No par. (2) has been enacted.

[1] See References in Text note below.

Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended section 911 of this title, sections 602, 622, 631 to 642, and 651 to 653 of Title 2, and sections 1104 to 1106, and 1109 of Title 31, Money and Finance, repealed section 661 of Title 2, enacted provisions set out as notes under section 911 of this title and section 900 of Title 2, and amended provisions set out as a note under section 621 of Title 2. Section 251A of the Act was classified to section 901a of Title 2 and was repealed by Pub. L. 105–33, title X, § 10204(a)(1), Aug. 5, 1997, 111 Stat. 702. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

Sections 665, 665d, and 665e of title 2, referred to in subsec. (c)(2), were repealed by Pub. L. 105–33, title X, § 10118(a), Aug. 5, 1997, 111 Stat. 695.

House Concurrent Resolution 218, referred to in subsec. (c)(2), is H. Con. Res. 218, May 12, 1994, 108 Stat. 5075, which is not classified to the Code.

§ 14212. Repealed. Pub. L. 105–33, title X, § 10204(b), Aug. 5, 1997, 111 Stat. 702

Section, Pub. L. 103–322, title XXXI, § 310002, Sept. 13, 1994, 108 Stat. 2105, related to conforming reduction in discretionary spending limits.

§ 14213. Extension of authorizations of appropriations for fiscal years for which full amount authorized is not appropriated

If, in making an appropriation under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a certain purpose for a certain fiscal year in a certain amount, the Congress makes an appropriation for that purpose for that fiscal year in a lesser amount, that provision or amendment shall be considered to authorize the making of appropriations for that purpose for later fiscal years in an amount equal to the difference between the amount authorized to be appropriated and the amount that has been appropriated.

(Pub. L. 103–322, title XXXI, § 310003, Sept. 13, 1994, 108 Stat. 2105.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 14214. Flexibility in making of appropriations

(a) Federal law enforcement

In the making of appropriations under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a Federal law enforcement program for a certain fiscal year in a certain amount out of the Violent Crime Reduction Trust Fund, not to exceed 10 percent of that amount is authorized to be appropriated for that fiscal year for any other Federal law enforcement program for which appropriations are authorized by any other Federal law enforcement provision of this Act or amendment made by this Act. The aggregate reduction in the authorization for any particular Federal law enforcement program may not exceed 10 percent of the total amount authorized to be appropriated from the Violent Crime Reduction Trust Fund for that program in this Act or amendment made by this Act.

(b) State and local law enforcement

In the making of appropriations under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a State and local law enforcement program for a certain fiscal year in a certain amount out of the Violent Crime Reduction Trust Fund, not to exceed 10 percent of that amount is authorized to be appropriated for that fiscal year for any other State and local law enforcement program for which appropriations are authorized by any other State and local law enforcement provision of this Act or amendment made by this Act. The aggregate reduction in the authorization for any particular State and local law enforcement program may not exceed 10 percent of the total amount authorized to be appropriated from the Violent Crime Reduction Trust Fund for that program in this Act or amendment made by this Act.

(c) Prevention

In the making of appropriations under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a prevention program for a certain fiscal year in a certain amount out of the Violent Crime Reduction Trust Fund, not to exceed 10 percent of that amount is authorized to be appropriated for that fiscal year for any other prevention program for which appropriations are authorized by any other prevention provision of this Act or amendment made by this Act. The aggregate reduction in the authorization for any particular prevention program may not exceed 10 percent of the total amount authorized to be appropriated from the Violent Crime Reduction Trust Fund for that program in this Act or amendment made by this Act.

(d) Definitions

In this section—''Federal law enforcement program'' means a program authorized in any of the following sections:

(1) section 190001(a);[1]
(2) section 190001(b);[1]
(3) section 190001(c);[1]
(4) section 190001(d);[1]
(5) section 190001(e);[1]
(6) section 320925;[2]
(7) section 14062 of this title;
(8) section 14171 of this title;
(9) section 130002;[1]
(10) section 130005;[1]
(11) section 130006;[1]
(12) section 130007;[1]
(13) section 250005;[1]
(14) sections 14131–14134 of this title;
(15) section 14083 of this title; and
(16) section 14199 of this title.

''State and local law enforcement program'' means a program authorized in any of the following sections:

(1) sections 10001–10003;[1]
(2) section 210201;[1]
(3) section 210603;[1]
(4) section 180101;[1]

[1] See References in Text note below.

[2] So in original. Pub. L. 103–322 does not contain a section 320925.

(5) section 14082 of this title;
(6) sections 13861–13868 of this title;
(7) section 14161[1] of this title;
(8) sections 13811–13812 of this title;
(9) section 210302;[1]
(10) section 14151[1] of this title;
(11) section 210101;
(12) section 320930;[3]
(13) sections 13701–13709 of this title;
(14) section 20301;[1]
(15) section 13911 of this title; and
(16) section 20201.[1]

''prevention program'' means a program authorized in any of the following sections:
(1) section 50001;[1]
(2) sections 13741–13744 of this title;
(3) sections 13751–13758[1] of this title;
(4) sections 13771–13777 of this title;
(5) sections 13791–13793 of this title;
(6) sections 13801–13802[1] of this title;
(7) chapter 67 of title 31;
(8) section 31101[1] and sections 13821–13853 of this title;
(9) sections 31501–31505;[1]
(10) section 31901[1] and sections 13881–13902 of this title;
(11) section 32001;[1]
(12) section 32101;[1]
(13) section 13921 of this title;
(14) section 40114;[1]
(15) section 40121;[1]
(16) section 300w–10[1] of this title;
(17) section 13941 of this title;
(18) section 5712d[1] of this title;
(19) section 40156;[1]
(20) section 10416 of this title;
(21) section 40231;[1]
(22) section 40241;[1]
(23) section 10417[1] of this title;
(24) section 10418 of this title;
(25) section 13962 of this title;
(26) section 13963 of this title;
(27) section 13971 of this title;
(28) sections 13991–13994 of this title;
(29) sections 14001–14002 of this title;
(30) section 14012 of this title;
(31) section 40601[1] and sections 14031–14040 of this title; and
(32) section 14181[1] of this title.

(Pub. L. 103–322, title XXXI, § 310004, Sept. 13, 1994, 108 Stat. 2106.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) to (c), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

Section 190001, referred to in subsec. (d), is section 190001 of Pub. L. 103–322, 108 Stat. 2048, which is not classified to the Code.

Section 130002, referred to in subsec. (d), is section 130002 of Pub. L. 103–322, 108 Stat. 2023, which is set out as a note under section 1226 of Title 8, Aliens and Nationality.

Section 130005, referred to in subsec. (d), is section 130005 of Pub. L. 103–322, 108 Stat. 2028, which amended section 1158 of Title 8 and enacted provisions set out as a note under section 1158 of Title 8.

Section 130006, referred to in subsec. (d), is section 130006 of Pub. L. 103–322, 108 Stat. 2028, which is set out as a note under section 1101 of Title 8.

Section 130007, referred to in subsec. (d), is section 130007 of Pub. L. 103–322, 108 Stat. 2029, which is set out as a note under section 1228 of Title 8.

Section 250005, referred to in subsec. (d), is section 230005 of Pub. L. 103–322, 108 Stat. 2086, which is not classified to the Code.

Sections 10001–10003, referred to in subsec. (d), are sections 10001–10003 of Pub. L. 103–322, 108 Stat. 1807, which enacted subchapter XII–E (§ 3796dd et seq.) of chapter 46 of this title, amended sections 3793 and 3797 of this title, and enacted provisions set out as notes under sections 3711 and 3796dd of this title.

Section 210201, referred to in subsec. (d), is section 210201 of Pub. L. 103–322, 108 Stat. 2062, which enacted subchapter XII–K (§ 3796jj et seq.) of chapter 46 of this title and amended sections 3793 and 3797 of this title.

Section 210603, referred to in subsec. (d), is section 210603 of Pub. L. 103–322, 108 Stat. 2074, which enacted provisions set out as a note under section 922 of Title 18, Crimes and Criminal Procedure, and amended provisions set out as notes under section 922 of Title 18.

Section 180101, referred to in subsec. (d), is section 180101 of Pub. L. 103–322, 108 Stat. 2045, which amended sections 3793 and 3796bb of this title.

Section 14161 of this title, referred to in subsec. (d), was repealed by Pub. L. 109–162, title XI, § 1154(b)(4), Jan. 5, 2006, 119 Stat. 3113.

Section 210302, referred to in subsec. (d), is section 210302 of Pub. L. 103–322, 108 Stat. 2065, which enacted subchapter XII–L (§ 3796kk et seq.) of chapter 46 of this title, amended former sections 3751 and 3753 of this title and sections 3793 and 3797 of this title, and enacted provisions set out as a note under former section 3751 of this title.

Section 14151 of this title, referred to in subsec. (d), was repealed by Pub. L. 109–162, title XI, § 1154(b)(3), Jan. 5, 2006, 119 Stat. 3113.

Section 210101, referred to in subsec. (d), is section 210101 of Pub. L. 103–322, 108 Stat. 2061, which is not classified to the Code.

Section 20301, referred to in subsec. (d), is section 20301 of Pub. L. 103–322, 108 Stat. 1823, which amended section 1252 of Title 8, Aliens and Nationality, and enacted provisions set out as notes under sections 1231 and 1252 of Title 8.

Section 20201, referred to in subsec. (d), is section 20201 of Pub. L. 103–322, 108 Stat. 1819, which enacted subchapter XII–F (§ 3796ee et seq.) of chapter 46 of this title and amended sections 3791, 3793, and 3797 of this title.

Section 50001, referred to in subsec. (d), is section 50001 of Pub. L. 103–322, 108 Stat. 1955, which enacted former subchapter XII–J (§ 3796ii et seq.) of chapter 46 of this title and amended sections 3793 and 3797 of this title.

Sections 13751–13758 of this title, referred to in subsec. (d), were repealed by Pub. L. 109–162, title XI, § 1154(b)(1), Jan. 5, 2006, 119 Stat. 3113.

Sections 13801–13802 of this title, referred to in subsec. (d), were repealed by Pub. L. 109–162, title XI, § 1154(b)(2), Jan. 5, 2006, 119 Stat. 3113.

Section 31101, referred to in subsec. (d), is section 31101 of Pub. L. 103–322, 108 Stat. 1882, which is set out as a note under section 13701 of this title.

Sections 31501–31505, referred to in subsec. (d), are sections 31501–31505 of Pub. L. 103–322, 108 Stat. 1888, 1889, which amended sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation.

Section 31901, referred to in subsec. (d), is section 31901 of Pub. L. 103–322, 108 Stat. 1892, which enacted provisions set out as a note under section 13701 of this title.

Section 32001, referred to in subsec. (d), is section 32001 of Pub. L. 103–322, 108 Stat. 1896, which amended section 3621 of Title 18, Crimes and Criminal Procedure.

Section 32101, referred to in subsec. (d), is section 32101 of Pub. L. 103–322, 108 Stat. 1898, which enacted

[3] So in original. Pub. L. 103–322 does not contain a section 320930.

subchapter XII–G (§ 3796ff et seq.) of chapter 46 of this title and amended sections 3791, 3793, and 3797 of this title.

Section 40114, referred to in subsec. (d), is section 40114 of Pub. L. 103–322, 108 Stat. 1910, which is not classified to the Code.

Section 40121, referred to in subsec. (d), is section 40121 of Pub. L. 103–322, 108 Stat. 1910, which enacted subchapter XII–H (§ 3796gg et seq.) of chapter 46 of this title and amended sections 3793 and 3797 of this title.

Section 300w–10 of this title, referred to in subsec. (d), was repealed by Pub. L. 106–386, div. B, title IV, § 1401(b), Oct. 28, 2000, 114 Stat. 1513.

Section 5712d of this title, referred to in subsec. (d), was repealed by Pub. L. 109–162, title XI, § 1172(b), Jan. 5, 2006, 119 Stat. 3123.

Section 40156, referred to in subsec. (d), is section 40156 of Pub. L. 103–322, 108 Stat. 1922, which amended sections 3793, 3796aa–1 to 3796aa–3, 3796aa–5, 3796aa–6, 13012, 13014, 13021, and 13024 of this title and repealed sections 3796aa–4 and 3796aa–7 of this title.

Section 40231, referred to in subsec. (d), is section 40231 of Pub. L. 103–322, 108 Stat. 1932, which enacted subchapter XII–I (§ 3796hh et seq.) of chapter 46 of this title and amended sections 3782, 3783, 3793, and 3797 of this title.

Section 40241, referred to in subsec. (d), is section 40241 of Pub. L. 103–322, 108 Stat. 1934, which amended section 10409 of this title.

Section 10417 of this title, referred to in subsec. (d), was repealed by Pub. L. 108–36, title IV, § 412, June 25, 2003, 117 Stat. 829.

Section 40601, referred to in subsec. (d), is section 40601 of Pub. L. 103–322, 108 Stat. 1950, which amended section 534 of Title 28, Judiciary and Judicial Procedure, and enacted provisions set out as a note under section 534 of Title 28.

Section 14181 of this title, referred to in subsec. (d), was in the original ''section 24001'' and was translated as reading ''section 240001'', meaning section 240001 of Pub. L. 103–322, to reflect the probable intent of Congress, because Pub. L. 103–322 does not contain a section 24001.

SUBCHAPTER XIV—MISCELLANEOUS

§ 14221. Task force relating to introduction of nonindigenous species

(1) In general

The Attorney General is authorized to convene a law enforcement task force in Hawaii to facilitate the prosecution of violations of Federal laws, and laws of the State of Hawaii, relating to the wrongful conveyance, sale, or introduction of nonindigenous plant and animal species.

(2) Membership

(A) The task force shall be composed of representatives of—

(i) the Office of the United States Attorney for the District of Hawaii;

(ii) the United States Customs Service;

(iii) the Animal and Plant Health Inspection Service;

(iv) the Fish and Wildlife Service;

(v) the National Park Service;

(vi) the United States Forest Service;

(vii) the Military Customs Inspection Office of the Department of Defense;

(viii) the United States Postal Service;

(ix) the office of the Attorney General of the State of Hawaii;

(x) the Hawaii Department of Agriculture;

(xi) the Hawaii Department of Land and Natural Resources; and

(xii) such other individuals as the Attorney General deems appropriate.

(B) The Attorney General shall, to the extent practicable, select individuals to serve on the task force who have experience with the enforcement of laws relating to the wrongful conveyance, sale, or introduction of nonindigenous plant and animal species.

(3) Duties

The task force shall—

(A) facilitate the prosecution of violations of Federal and State laws relating to the conveyance, sale, or introduction of nonindigenous plant and animal species into Hawaii; and

(B) make recommendations on ways to strengthen Federal and State laws and law enforcement strategies designed to prevent the introduction of nonindigenous plant and animal species.

(4) Report

The task force shall report to the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, and to the Committee on the Judiciary and Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on the Judiciary, Committee on Agriculture, and Committee on Merchant Marine and Fisheries of the House of Representatives on—

(A) the progress of its enforcement efforts; and

(B) the adequacy of existing Federal laws and laws of the State of Hawaii that relate to the introduction of nonindigenous plant and animal species.

Thereafter, the task force shall make such reports as the task force deems appropriate.

(5) Consultation

The task force shall consult with Hawaii agricultural interests and representatives of Hawaii conservation organizations about methods of preventing the wrongful conveyance, sale, or introduction of nonindigenous plant and animal species into Hawaii.

(Pub. L. 103–322, title XXXII, § 320108(a), Sept. 13, 1994, 108 Stat. 2111.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 14222. Coordination of substance abuse treatment and prevention programs

The Attorney General shall consult with the Secretary of the Department of Health and

Human Services in establishing and carrying out the substance abuse treatment and prevention components of the programs authorized under this Act, to assure coordination of programs, eliminate duplication of efforts and enhance the effectiveness of such services.

(Pub. L. 103–322, title XXXII, § 320401, Sept. 13, 1994, 108 Stat. 2114.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 14223. Edward Byrne Memorial Formula Grant Program

Nothing in this Act shall be construed to prohibit or exclude the expenditure of appropriations to grant recipients that would have been or are eligible to receive grants under subpart 1 of part E of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3751 et seq.].

(Pub. L. 103–322, title XXXII, § 320919, Sept. 13, 1994, 108 Stat. 2130.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in text, is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. The reference to subpart 1 of part E of the Act probably means subpart 1 of part E of title I of the Act which is classified generally to part A (§ 3750 et seq.) of subchapter V of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

CHAPTER 137—MANAGEMENT OF RECHARGEABLE BATTERIES AND BATTERIES CONTAINING MERCURY

SUBCHAPTER I—GENERALLY

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SUBCHAPTER II—RECYCLING OF RECHARGEABLE BATTERIES

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SUBCHAPTER III—MANAGEMENT OF BATTERIES CONTAINING MERCURY

14331. Purpose.
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SUBCHAPTER I—GENERALLY

§ 14301. Findings

The Congress finds that—

(1) it is in the public interest to—

(A) phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and other regulated batteries; and

(B) educate the public concerning the collection, recycling, and proper disposal of such batteries;

(2) uniform national labeling requirements for regulated batteries, rechargeable consumer products, and product packaging will significantly benefit programs for regulated battery collection and recycling or proper disposal; and

(3) it is in the public interest to encourage persons who use rechargeable batteries to participate in collection for recycling of used nickel-cadmium, small sealed lead-acid, and other regulated batteries.

(Pub. L. 104–142, § 2, May 13, 1996, 110 Stat. 1329.)

SHORT TITLE

Section 1 of Pub. L. 104–142 provided that: ''This Act [enacting this chapter] may be cited as the 'Mercury-Containing and Rechargeable Battery Management Act'.''

Section 101 of title I of Pub. L. 104–142 provided that: ''This title [enacting subchapter II of this chapter] may be cited as the 'Rechargeable Battery Recycling Act'.''

Section 201 of title II of Pub. L. 104–142 provided that: ''This title [enacting subchapter III of this chapter] may be cited as the 'Mercury-Containing Battery Management Act'.''

§ 14302. Definitions

For purposes of this chapter:

(1) Administrator

The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) Button cell

The term ''button cell'' means a button- or coin-shaped battery.

(3) Easily removable

The term ''easily removable'', with respect to a battery, means detachable or removable at the end of the life of the battery—

(A) from a consumer product by a consumer with the use of common household tools; or

(B) by a retailer of replacements for a battery used as the principal electrical power source for a vehicle.

(4) Mercuric-oxide battery

The term ''mercuric-oxide battery'' means a battery that uses a mercuric-oxide electrode.

(5) Rechargeable battery

The term ''rechargeable battery''—

(A) means 1 or more voltaic or galvanic cells, electrically connected to produce electric energy, that is designed to be recharged for repeated uses; and

(B) includes any type of enclosed device or sealed container consisting of 1 or more such cells, including what is commonly called a battery pack (and in the case of a battery pack, for the purposes of the requirements of easy removability and labeling under section 14322 of this title, means the battery pack as a whole rather than each component individually); but

(C) does not include—

(i) a lead-acid battery used to start an internal combustion engine or as the principal electrical power source for a vehicle, such as an automobile, a truck, construction equipment, a motorcycle, a garden tractor, a golf cart, a wheelchair, or a boat;

(ii) a lead-acid battery used for load leveling or for storage of electricity generated by an alternative energy source, such as a solar cell or wind-driven generator;

(iii) a battery used as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily; or

(iv) a rechargeable alkaline battery.

(6) Rechargeable consumer product

The term ''rechargeable consumer product''—

(A) means a product that, when sold at retail, includes a regulated battery as a primary energy supply, and that is primarily intended for personal or household use; but

(B) does not include a product that only uses a battery solely as a source of backup power for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.

(7) Regulated battery

The term ''regulated battery'' means a rechargeable battery that—

(A) contains a cadmium or a lead electrode or any combination of cadmium and lead electrodes; or

(B) contains other electrode chemistries and is the subject of a determination by the Administrator under section 14322(d) of this title.

(8) Remanufactured product

The term ''remanufactured product'' means a rechargeable consumer product that has been altered by the replacement of parts, repackaged, or repaired after initial sale by the original manufacturer.

(Pub. L. 104–142, § 3, May 13, 1996, 110 Stat. 1329.)

§ 14303. Information dissemination

The Administrator shall, in consultation with representatives of rechargeable battery manufacturers, rechargeable consumer product manufacturers, and retailers, establish a program to provide information to the public concerning the proper handling and disposal of used regulated batteries and rechargeable consumer products with nonremovable batteries.

(Pub. L. 104–142, § 4, May 13, 1996, 110 Stat. 1330.)

§ 14304. Enforcement

(a) Civil penalty

When on the basis of any information the Administrator determines that a person has violated, or is in violation of, any requirement of this chapter (except a requirement of section 14323 of this title) the Administrator—

(1) in the case of any violation, may issue an order assessing a civil penalty of not more than $10,000 for each violation, or requiring compliance immediately or within a reasonable specified time period, or both; or

(2) in the case of any violation or failure to comply with an order issued under this section, may commence a civil action in the United States district court in the district in which the violation occurred or in the district in which the violator resides for appropriate relief, including a temporary or permanent injunction.

(b) Contents of order

An order under subsection (a)(1) of this section shall state with reasonable specificity the nature of the violation.

(c) Considerations

In assessing a civil penalty under subsection (a)(1) of this section, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(d) Finality of order; request for hearing

An order under subsection (a)(1) of this section shall become final unless, not later than 30 days after the order is served, a person named in the order requests a hearing on the record.

(e) Hearing

On receiving a request under subsection (d) of this section, the Administrator shall promptly conduct a hearing on the record.

(f) Subpoena power

In connection with any hearing on the record under this section, the Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, and documents.

(g) Continued violation after expiration of period for compliance

If a violator fails to take corrective action within the time specified in an order under subsection (a)(1) of this section, the Administrator may assess a civil penalty of not more than $10,000 for the continued noncompliance with the order.

(h) Savings provision

The Administrator may not take any enforcement action against a person for selling, offering for sale, or offering for promotional purposes to the ultimate consumer a battery or product covered by this chapter that was—

(1) purchased ready for sale to the ultimate consumer; and

(2) sold, offered for sale, or offered for promotional purposes without modification.

The preceding sentence shall not apply to a person—

(A) who is the importer of a battery covered by this chapter, and

(B) who has knowledge of the chemical contents of the battery

when such chemical contents make the sale, offering for sale, or offering for promotional purposes of such battery unlawful under subchapter III of this chapter.

(Pub. L. 104–142, § 5, May 13, 1996, 110 Stat. 1331.)

§ 14305. Information gathering and access

(a) Records and reports

A person who is required to carry out the objectives of this chapter, including—

(1) a regulated battery manufacturer;

(2) a rechargeable consumer product manufacturer;

(3) a mercury-containing battery manufacturer; and

(4) an authorized agent of a person described in paragraph (1), (2), or (3),

shall establish and maintain such records and report such information as the Administrator may by regulation reasonably require to carry out the objectives of this chapter.

(b) Access and copying

The Administrator or the Administrator's authorized representative, on presentation of credentials of the Administrator, may at reasonable times have access to and copy any records required to be maintained under subsection (a) of this section.

(c) Confidentiality

The Administrator shall maintain the confidentiality of documents and records that contain proprietary information.

(Pub. L. 104–142, § 6, May 13, 1996, 110 Stat. 1332.)

§ 14306. State authority

Nothing in this chapter shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is identical to a standard or requirement established or promulgated under this chapter. Except as provided in sections 14322(e) and 14323 of this title, nothing in this chapter shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is more stringent than a standard or requirement established or promulgated under this chapter.

(Pub. L. 104–142, § 7, May 13, 1996, 110 Stat. 1332.)

§ 14307. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter.

(Pub. L. 104–142, § 8, May 13, 1996, 110 Stat. 1332.)

SUBCHAPTER II—RECYCLING OF RECHARGEABLE BATTERIES

§ 14321. Purpose

The purpose of this subchapter is to facilitate the efficient recycling or proper disposal of used nickel-cadmium rechargeable batteries, used small sealed lead-acid rechargeable batteries, other regulated batteries, and such rechargeable batteries in used consumer products, by—

(1) providing for uniform labeling requirements and streamlined regulatory requirements for regulated battery collection programs; and

(2) encouraging voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries.

(Pub. L. 104–142, title I, § 102, May 13, 1996, 110 Stat. 1332.)

§ 14322. Rechargeable consumer products and labeling

(a) Prohibition

(1) In general

No person shall sell for use in the United States a regulated battery that is ready for retail sale or a rechargeable consumer product that is ready for retail sale, if such battery or product was manufactured on or after the date 12 months after May 13, 1996, unless the labeling requirements of subsection (b) of this section are met and, in the case of a regulated battery, the regulated battery—

(A) is easily removable from the rechargeable consumer product; or

(B) is sold separately.

(2) Application

Paragraph (1) does not apply to any of the following:

(A) The sale of a remanufactured product unit unless paragraph (1) applied to the sale of the unit when originally manufactured.

(B) The sale of a product unit intended for export purposes only.

(b) Labeling

Each regulated battery or rechargeable consumer product without an easily removable battery manufactured on or after the date that is 1 year after May 13, 1996, whether produced domestically or imported shall bear the following labels:

(1) 3 chasing arrows or a comparable recycling symbol.

(2)(A) On each regulated battery which is a nickel-cadmium battery, the chemical name or the abbreviation ''Ni-Cd'' and the phrase ''BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.''.

(B) On each regulated battery which is a lead-acid battery, ''Pb'' or the words ''LEAD'', ''RETURN'', and ''RECYCLE'' and if the regulated battery is sealed, the phrase ''BATTERY MUST BE RECYCLED.''.

(3) On each rechargeable consumer product containing a regulated battery that is not easily removable, the phrase ''CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.'' or ''CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.'', as applicable.

(4) On the packaging of each rechargeable consumer product, and the packaging of each

regulated battery sold separately from such a product, unless the required label is clearly visible through the packaging, the phrase ''CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.'' or ''CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.'', as applicable.

(c) Existing or alternative labeling

(1) Initial period

For a period of 2 years after May 13, 1996, regulated batteries, rechargeable consumer products containing regulated batteries, and rechargeable consumer product packages that are labeled in substantial compliance with subsection (b) of this section shall be deemed to comply with the labeling requirements of subsection (b) of this section.

(2) Certification

(A) In general

On application by persons subject to the labeling requirements of subsection (b) of this section or the labeling requirements promulgated by the Administrator under subsection (d) of this section, the Administrator shall certify that a different label meets the requirements of subsection (b) or (d) of this section, respectively, if the different label—

(i) conveys the same information as the label required under subsection (b) or (d) of this section, respectively; or

(ii) conforms with a recognized international standard that is consistent with the overall purposes of this subchapter.

(B) Constructive certification

Failure of the Administrator to object to an application under subparagraph (A) on the ground that a different label does not meet either of the conditions described in subparagraph (A)(i) or (ii) within 120 days after the date on which the application is made shall constitute certification for the purposes of this chapter.

(d) Rulemaking authority of Administrator

(1) In general

If the Administrator determines that other rechargeable batteries having electrode chemistries different from regulated batteries are toxic and may cause substantial harm to human health and the environment if discarded into the solid waste stream for land disposal or incineration, the Administrator may, with the advice and counsel of State regulatory authorities and manufacturers of rechargeable batteries and rechargeable consumer products, and after public comment—

(A) promulgate labeling requirements for the batteries with different electrode chemistries, rechargeable consumer products containing such batteries that are not easily removable batteries, and packaging for the batteries and products; and

(B) promulgate requirements for easy removability of regulated batteries from rechargeable consumer products designed to contain such batteries.

(2) Substantial similarity

The regulations promulgated under paragraph (1) shall be substantially similar to the requirements set forth in subsections (a) and (b) of this section.

(e) Uniformity

After the effective dates of a requirement set forth in subsection (a), (b), or (c) of this section or a regulation promulgated by the Administrator under subsection (d) of this section, no Federal agency, State, or political subdivision of a State may enforce any easy removability or environmental labeling requirement for a rechargeable battery or rechargeable consumer product that is not identical to the requirement or regulation.

(f) Exemptions

(1) In general

With respect to any rechargeable consumer product, any person may submit an application to the Administrator for an exemption from the requirements of subsection (a) of this section in accordance with the procedures under paragraph (2). The application shall include the following information:

(A) A statement of the specific basis for the request for the exemption.

(B) The name, business address, and telephone number of the applicant.

(2) Granting of exemption

Not later than 60 days after receipt of an application under paragraph (1), the Administrator shall approve or deny the application. On approval of the application the Administrator shall grant an exemption to the applicant. The exemption shall be issued for a period of time that the Administrator determines to be appropriate, except that the period shall not exceed 2 years. The Administrator shall grant an exemption on the basis of evidence supplied to the Administrator that the manufacturer has been unable to commence manufacturing the rechargeable consumer product in compliance with the requirements of this section and with an equivalent level of product performance without the product—

(A) posing a threat to human health, safety, or the environment; or

(B) violating requirements for approvals from governmental agencies or widely recognized private standard-setting organizations (including Underwriters Laboratories).

(3) Renewal of exemption

A person granted an exemption under paragraph (2) may apply for a renewal of the exemption in accordance with the requirements and procedures described in paragraphs (1) and (2). The Administrator may grant a renewal of such an exemption for a period of not more than 2 years after the date of the granting of the renewal.

(Pub. L. 104–142, title I, § 103, May 13, 1996, 110 Stat. 1332.)

§ 14323. Requirements

(a) Batteries subject to certain regulations

The collection, storage, or transportation of used rechargeable batteries, batteries described

in section 14302(5)(C) of this title or in subchapter III of this chapter, and used rechargeable consumer products containing rechargeable batteries that are not easily removable rechargeable batteries, shall, notwithstanding any law of a State or political subdivision thereof governing such collection, storage, or transportation, be regulated under applicable provisions of the regulations promulgated by the Environmental Protection Agency at 60 Fed. Reg. 25492 (May 11, 1995), as effective on May 11, 1995, except as provided in paragraph (2) of subsection (b) of this section and except that—

(1) the requirements of 40 CFR 260.20, 260.40, and 260.41 and the equivalent requirements of an approved State program shall not apply, and

(2) this section shall not apply to any lead acid battery managed under 40 CFR 266 subpart G or the equivalent requirements of an approved State program.

(b) Enforcement under Solid Waste Disposal Act

(1) Any person who fails to comply with the requirements imposed by subsection (a) of this section may be subject to enforcement under applicable provisions of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(2) States may implement and enforce the requirements of subsection (a) of this section if the Administrator finds that—

(A) the State has adopted requirements that are identical to those referred to in subsection (a) of this section governing the collection, storage, or transportation of batteries referred to in subsection (a) of this section; and

(B) the State provides for enforcement of such requirements.

(Pub. L. 104–142, title I, § 104, May 13, 1996, 110 Stat. 1335.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

SUBCHAPTER III—MANAGEMENT OF BATTERIES CONTAINING MERCURY

§ 14331. Purpose

The purpose of this subchapter is to phase out the use of batteries containing mercury.

(Pub. L. 104–142, title II, § 202, May 13, 1996, 110 Stat. 1336.)

§ 14332. Limitations on sale of alkaline-manganese batteries containing mercury

No person shall sell, offer for sale, or offer for promotional purposes any alkaline-manganese battery manufactured on or after May 13, 1996, with a mercury content that was intentionally introduced (as distinguished from mercury that may be incidentally present in other materials), except that the limitation on mercury content in alkaline-manganese button cells shall be 25 milligrams of mercury per button cell.

(Pub. L. 104–142, title II, § 203, May 13, 1996, 110 Stat. 1336.)

§ 14333. Limitations on sale of zinc-carbon batteries containing mercury

No person shall sell, offer for sale, or offer for promotional purposes any zinc-carbon battery manufactured on or after May 13, 1996, that contains mercury that was intentionally introduced as described in section 14332 of this title.

(Pub. L. 104–142, title II, § 204, May 13, 1996, 110 Stat. 1336.)

§ 14334. Limitations on sale of button cell mercuric-oxide batteries

No person shall sell, offer for sale, or offer for promotional purposes any button cell mercuric-oxide battery for use in the United States on or after May 13, 1996.

(Pub. L. 104–142, title II, § 205, May 13, 1996, 110 Stat. 1336.)

§ 14335. Limitations on sale of other mercuric-oxide batteries

(a) Prohibition

On or after May 13, 1996, no person shall sell, offer for sale, or offer for promotional purposes a mercuric-oxide battery for use in the United States unless the battery manufacturer, or the importer of such a battery—

(1) identifies a collection site in the United States that has all required Federal, State, and local government approvals, to which persons may send used mercuric-oxide batteries for recycling or proper disposal;

(2) informs each of its purchasers of mercuric-oxide batteries of the collection site identified under paragraph (1); and

(3) informs each of its purchasers of mercuric-oxide batteries of a telephone number that the purchaser may call to get information about sending mercuric-oxide batteries for recycling or proper disposal.

(b) Application of section

This section does not apply to a sale or offer of a mercuric-oxide button cell battery.

(Pub. L. 104–142, title II, § 206, May 13, 1996, 110 Stat. 1336.)

§ 14336. New product or use

On petition of a person that proposes a new use for a battery technology described in this subchapter or the use of a battery described in this subchapter in a new product, the Administrator may exempt from this subchapter the new use of the technology or the use of such a battery in the new product on the condition, if appropriate, that there exist reasonable safeguards to ensure that the resulting battery or product without an easily removable battery will not be disposed of in an incinerator, composting facility, or landfill (other than a facility regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.)).

(Pub. L. 104–142, title II, § 207, May 13, 1996, 110 Stat. 1336.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in text, is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as

amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CHAPTER 138—ASSISTED SUICIDE FUNDING RESTRICTION

Sec.
14401. Findings and purpose.
14402. Restriction on use of Federal funds under health care programs.
14403. Restriction on use of Federal funds under certain grant programs.
14404. Restriction on use of Federal funds by advocacy programs.
14405. Restriction on use of other Federal funds.
14406. Clarification with respect to advance directives.
14407. Application to District of Columbia.
14408. Relation to other laws.

§ 14401. Findings and purpose

(a) Findings

Congress finds the following:

(1) The Federal Government provides financial support for the provision of and payment for health care services, as well as for advocacy activities to protect the rights of individuals.

(2) Assisted suicide, euthanasia, and mercy killing have been criminal offenses throughout the United States and, under current law, it would be unlawful to provide services in support of such illegal activities.

(3) Because of recent legal developments, it may become lawful in areas of the United States to furnish services in support of such activities.

(4) Congress is not providing Federal financial assistance in support of assisted suicide, euthanasia, and mercy killing and intends that Federal funds not be used to promote such activities.

(b) Purpose

It is the principal purpose of this chapter to continue current Federal policy by providing explicitly that Federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual.

(Pub. L. 105–12, § 2, Apr. 30, 1997, 111 Stat. 23.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, known as the Assisted Suicide Funding Restriction Act of 1997. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Section 11 of Pub. L. 105–12 provided that:

''(a) IN GENERAL.—The provisions of this Act [see Short Title note below] (and the amendments made by this Act) take effect upon its enactment [Apr. 30, 1997] and apply, subject to subsection (b), to Federal payments made pursuant to obligations incurred after the date of the enactment of this Act for items and services provided on or after such date.

''(b) APPLICATION TO CONTRACTS.—Such provisions shall apply with respect to contracts entered into, renewed, or extended after the date of the enactment of this Act [Apr. 30, 1997] and shall also apply to a contract entered into before such date to the extent permitted under such contract.''

SHORT TITLE

Section 1(a) of Pub. L. 105–12 provided that: ''This Act [enacting this chapter, section 238*o* of this title, section 1621x of Title 25, Indians, and section 1707 of Title 38, Veterans' Benefits, amending sections 295, 701, 1395y, 1395cc, 1396a, 1396b, 1397d, 2996f, 6022, 6042, 6062, 6082, and 10805 of this title, section 8902 of Title 5, Government Organization and Employees, section 1073 of Title 10, Armed Forces, section 4005 of Title 18, Crimes and Criminal Procedure, section 2504 of Title 22, Foreign Relations and Intercourse, and section 794e of Title 29, Labor, and enacting provisions set out as notes under this section and section 295 of this title] may be cited as the 'Assisted Suicide Funding Restriction Act of 1997'.''

CONSTRUCTION OF CONFORMING AMENDMENTS

Section 9(p) of Pub. L. 105–12 provided that: ''The fact that a law is not amended under this section [enacting section 238*o* of this title, section 1621x of Title 25, Indians, and section 1707 of Title 38, Veterans' Benefits, amending sections 701, 1395y, 1395cc, 1396a, 1396b, 1397d, 2996f, 6022, 6042, 6062, 6082, and 10805 of this title, section 8902 of Title 5, Government Organization and Employees, section 1073 of Title 10, Armed Forces, section 4005 of Title 18, Crimes and Criminal Procedure, section 2504 of Title 22, Foreign Relations and Intercourse, and section 794e of Title 29, Labor] shall not be construed as indicating that the provisions of this Act [see Short Title note above] do not apply to such a law.''

§ 14402. Restriction on use of Federal funds under health care programs

(a) Restriction on Federal funding of health care services

Subject to subsection (b) of this section, no funds appropriated by Congress for the purpose of paying (directly or indirectly) for the provision of health care services may be used—

(1) to provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing;

(2) to pay (directly, through payment of Federal financial participation or other matching payment, or otherwise) for such an item or service, including payment of expenses relating to such an item or service; or

(3) to pay (in whole or in part) for health benefit coverage that includes any coverage of such an item or service or of any expenses relating to such an item or service.

(b) Construction and treatment of certain services

Nothing in subsection (a) of this section, or in any other provision of this chapter (or in any amendment made by this chapter), shall be construed to apply to or to affect any limitation relating to—

(1) the withholding or withdrawing of medical treatment or medical care;

(2) the withholding or withdrawing of nutrition or hydration;

(3) abortion; or

(4) the use of an item, good, benefit, or service furnished for the purpose of alleviating

pain or discomfort, even if such use may increase the risk of death, so long as such item, good, benefit, or service is not also furnished for the purpose of causing, or the purpose of assisting in causing, death, for any reason.

(c) Limitation on Federal facilities and employees

Subject to subsection (b) of this section, with respect to health care items and services furnished—

(1) by or in a health care facility owned or operated by the Federal government, or

(2) by any physician or other individual employed by the Federal government to provide health care services within the scope of the physician's or individual's employment,

no such item or service may be furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(d) List of programs to which restrictions apply

(1) Federal health care funding programs

Subsection (a) of this section applies to funds appropriated under or to carry out the following:

(A) Medicare program

Title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(B) Medicaid program

Title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(C) Title XX social services block grant

Title XX of the Social Security Act [42 U.S.C. 1397 et seq.].

(D) Maternal and child health block grant program

Title V of the Social Security Act [42 U.S.C. 701 et seq.].

(E) Public Health Service Act

The Public Health Service Act [42 U.S.C. 201 et seq.].

(F) Indian Health Care Improvement Act

The Indian Health Care Improvement Act [25 U.S.C. 1601 et seq.].

(G) Federal employees health benefits program

Chapter 89 of title 5.

(H) Military health care system (including Tricare and CHAMPUS programs)

Chapter 55 of title 10.

(I) Veterans medical care

Chapter 17 of title 38.

(J) Health services for Peace Corps volunteers

Section 2504(e) of title 22.

(K) Medical services for Federal prisoners

Section 4005(a) of title 18.

(2) Federal facilities and personnel

The provisions of subsection (c) of this section apply to facilities and personnel of the following:

(A) Military health care system

The Department of Defense operating under chapter 55 of title 10.

(B) Veterans medical care

The Veterans Health Administration of the Department of Veterans Affairs.

(C) Public Health Service

The Public Health Service.

(3) Nonexclusive list

Nothing in this subsection shall be construed as limiting the application of subsection (a) of this section to the programs specified in paragraph (1) or the application of subsection (c) of this section to the facilities and personnel specified in paragraph (2).

(Pub. L. 105–12, § 3, Apr. 30, 1997, 111 Stat. 23.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(1)(A)–(D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XVIII, XIX, and XX of the Act are classified generally to subchapters V (§ 701 et seq.), XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.), respectively, of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Public Health Service Act, referred to in subsec. (d)(1)(E), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (d)(1)(F), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§ 1601 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

§ 14403. Restriction on use of Federal funds under certain grant programs

Subject to section 14402(b) of this title (relating to construction and treatment of certain services), no funds appropriated by Congress to carry out subtitle B, D, or E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15021 et seq., 15061 et seq., 15081 et seq.] may be used to support or fund any program or service which has a purpose of assisting in procuring any item, benefit, or service furnished for the purpose of causing, or the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(Pub. L. 105–12, § 4, Apr. 30, 1997, 111 Stat. 25; Pub. L. 106–402, title IV, § 401(b)(15)(A), Oct. 30, 2000, 114 Stat. 1740.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in text, is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitles B, D, and E of the Act probably mean subtitles B, D, and E of title I of the Act, which are classified generally to parts B [§ 15021 et seq.], D [§ 15061 et seq.], and E [§ 15081 et seq.], respectively, of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106–402, § 401(b)(15)(A)(i), substituted "Restriction on use of Federal funds under certain

grant programs'' for ''Restriction on use of Federal funds under certain grant programs under the Developmental Disabilities Assistance and Bill of Rights Act'' in section catchline.

Pub. L. 106–402, § 401(b)(15)(A)(ii), substituted ''subtitle B, D, or E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000'' for ''part B, D, or E of the Developmental Disabilities Assistance and Bill of Rights Act''.

§ 14404. Restriction on use of Federal funds by advocacy programs

(a) In general

Subject to section 14402(b) of this title (relating to construction and treatment of certain services), no funds appropriated by Congress may be used to assist in, to support, or to fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of—

(1) securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;

(2) compelling any person, institution, governmental entity[1] to provide or fund any item, benefit, program, or service for such purpose; or

(3) asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

(b) List of programs to which restrictions apply

(1) In general

Subsection (a) of this section applies to funds appropriated under or to carry out the following:

(A) Protection and advocacy systems under the Developmental Disabilities Assistance and Bill of Rights Act of 2000

Subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.].

(B) Protection and advocacy systems under the Protection and Advocacy for Mentally Ill Individuals Act

The Protection and Advocacy for Mentally Ill Individuals Act of 1986[2] [42 U.S.C. 10801 et seq.].

(C) Protection and advocacy systems under the Rehabilitation Act of 1973

Section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e).

(D) Ombudsman programs under the Older Americans Act of 1965

Ombudsman programs under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.].

(E) Legal assistance

Legal assistance programs under the Legal Services Corporation Act [42 U.S.C. 2996 et seq.].

(2) Nonexclusive list

Nothing in this subsection shall be construed as limiting the application of subsection (a) of this section to the programs specified in paragraph (1).

(Pub. L. 105–12, § 5, Apr. 30, 1997, 111 Stat. 25; Pub. L. 106–402, title IV, § 401(b)(15)(B), Oct. 30, 2000, 114 Stat. 1740.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (b)(1)(A), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§ 15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (b)(1)(B), was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

The Older Americans Act of 1965, referred to in subsec. (b)(1)(D), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Legal Services Corporation Act, referred to in subsec. (b)(1)(E), is title X of Pub. L. 88–452, as added by Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 378, as amended, which is classified generally to subchapter X (§ 2996 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2000—Subsec. (b)(1)(A). Pub. L. 106–402 added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: ''Part C of the Developmental Disabilities Assistance and Bill of Rights Act.''

§ 14405. Restriction on use of other Federal funds

(a) In general

Subject to section 14402(b) of this title (relating to construction and treatment of certain services) and subsection (b) of this section, no funds appropriated by the Congress shall be used to provide, procure, furnish, or fund any item, good, benefit, activity, or service, furnished or performed for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.

(b) Nonduplication

Subsection (a) of this section shall not apply to funds to which section 14402, 14403, or 14404 of this title applies, except that subsection (a) of this section, rather than section 14402 of this title, shall apply to funds appropriated to carry out title 10 (other than chapter 55), title 18 (other than section 4005(a)), and chapter 37 of title 28.

(Pub. L. 105–12, § 6, Apr. 30, 1997, 111 Stat. 25.)

§ 14406. Clarification with respect to advance directives

Subject to section 14402(b) of this title (relating to construction and treatment of certain

[1] So in original. Probably should be ''or governmental entity''.

[2] See References in Text note below.

services), sections 1395cc(f) and 1396a(w) of this title shall not be construed—

(1) to require any provider or organization, or any employee of such a provider or organization, to inform or counsel any individual regarding any right to obtain an item or service furnished for the purpose of causing, or the purpose of assisting in causing, the death of the individual, such as by assisted suicide, euthanasia, or mercy killing; or

(2) to apply to or to affect any requirement with respect to a portion of an advance directive that directs the purposeful causing of, or the purposeful assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(Pub. L. 105–12, § 7, Apr. 30, 1997, 111 Stat. 26.)

§ 14407. Application to District of Columbia

For purposes of this chapter, the term ''funds appropriated by Congress'' includes funds appropriated to the District of Columbia pursuant to an authorization of appropriations under title V of the District of Columbia Home Rule Act and the term ''Federal government'' includes the government of the District of Columbia.

(Pub. L. 105–12, § 8, Apr. 30, 1997, 111 Stat. 26; Pub. L. 105–33, title XI, § 11717(b), Aug. 5, 1997, 111 Stat. 786.)

REFERENCES IN TEXT

The District of Columbia Home Rule Act, referred to in text, is Pub. L. 93–198, Dec. 24, 1973, 87 Stat. 774, as amended. Title V of the Act was classified to the District of Columbia Code prior to repeal by Pub. L. 105–33, title XI, § 11601, Aug. 5, 1997, 111 Stat. 777.

AMENDMENTS

1997—Pub. L. 105–33 substituted ''District of Columbia Home Rule Act'' for ''District of Columbia Self-Government and Governmental Reorganization Act''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L. 105–33, see section 11721 of Pub. L. 105–33, set out as a note under section 4246 of Title 18, Crimes and Criminal Procedure.

§ 14408. Relation to other laws

The provisions of this chapter supersede other Federal laws (including laws enacted after April 30, 1997) except to the extent such laws specifically supersede the provisions of this chapter.

(Pub. L. 105–12, § 10, Apr. 30, 1997, 111 Stat. 29.)

CHAPTER 139—VOLUNTEER PROTECTION

Sec.
14501. Findings and purpose.
14502. Preemption and election of State nonapplicability.
14503. Limitation on liability for volunteers.
14504. Liability for noneconomic loss.
14505. Definitions.

§ 14501. Findings and purpose

(a) Findings

The Congress finds and declares that—

(1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;

(2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;

(5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;

(6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and

(7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because—

(A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;

(B) the citizens of the United States depend on, and the Federal Government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers;

(C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and

(D)(i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights; and

(ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

(b) Purpose

The purpose of this chapter is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to

volunteers serving nonprofit organizations and governmental entities.

(Pub. L. 105–19, § 2, June 18, 1997, 111 Stat. 218.)

EFFECTIVE DATE

Section 7 of Pub. L. 105–19 provided that:

''(a) IN GENERAL.—This Act [enacting this chapter] shall take effect 90 days after the date of enactment of this Act [June 18, 1997].

''(b) APPLICATION.—This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act but only if the harm that is the subject of the claim or the conduct that caused such harm occurred after such effective date.''

SHORT TITLE

Section 1 of Pub. L. 105–19 provided that: ''This Act [enacting this chapter] may be cited as the 'Volunteer Protection Act of 1997'.''

§ 14502. Preemption and election of State nonapplicability

(a) Preemption

This chapter preempts the laws of any State to the extent that such laws are inconsistent with this chapter, except that this chapter shall not preempt any State law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.

(b) Election of State regarding nonapplicability

This chapter shall not apply to any civil action in a State court against a volunteer in which all parties are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this chapter shall not apply, as of a date certain, to such civil action in the State; and

(3) containing no other provisions.

(Pub. L. 105–19, § 3, June 18, 1997, 111 Stat. 219.)

§ 14503. Limitation on liability for volunteers

(a) Liability protection for volunteers

Except as provided in subsections (b) and (d) of this section, no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—

(1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;

(2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;

(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

(4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

(A) possess an operator's license; or

(B) maintain insurance.

(b) Concerning responsibility of volunteers to organizations and entities

Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) No effect on liability of organization or entity

Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.

(d) Exceptions to volunteer liability protection

If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers.

(2) A State law that makes the organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees.

(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

(4) A State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

(e) Limitation on punitive damages based on actions of volunteers

(1) General rule

Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

(2) Construction

Paragraph (1) does not create a cause of action for punitive damages and does not pre-

empt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.

(f) Exceptions to limitations on liability

(1) In general

The limitations on the liability of a volunteer under this chapter shall not apply to any misconduct that—

(A) constitutes a crime of violence (as that term is defined in section 16 of title 18) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(B) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(C) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;

(D) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

(E) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

(2) Rule of construction

Nothing in this subsection shall be construed to effect subsection (a)(3) or (e) of this section.

(Pub. L. 105–19, § 4, June 18, 1997, 111 Stat. 219.)

REFERENCES IN TEXT

The Hate Crime Statistics Act, referred to in subsec. (f)(1)(B), is Pub. L. 101–275, Apr. 23, 1990, 104 Stat. 140, which is set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure.

§ 14504. Liability for noneconomic loss

(a) General rule

In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity, the liability of the volunteer for noneconomic loss shall be determined in accordance with subsection (b) of this section.

(b) Amount of liability

(1) In general

Each defendant who is a volunteer, shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) Percentage of responsibility

For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.

(Pub. L. 105–19, § 5, June 18, 1997, 111 Stat. 221.)

§ 14505. Definitions

For purposes of this chapter:

(1) Economic loss

The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) Harm

The term ''harm'' includes physical, nonphysical, economic, and noneconomic losses.

(3) Noneconomic losses

The term ''noneconomic losses'' means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(4) Nonprofit organization

The term ''nonprofit organization'' means—

(A) any organization which is described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note); or

(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(5) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) Volunteer

The term ''volunteer'' means an individual performing services for a nonprofit organization or a governmental entity who does not receive—

(A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or

(B) any other thing of value in lieu of compensation,

in excess of $500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

(Pub. L. 105–19, § 6, June 18, 1997, 111 Stat. 221.)

REFERENCES IN TEXT

The Hate Crime Statistics Act, referred to in par. (4), is Pub. L. 101–275, Apr. 23, 1990, 104 Stat. 140, which is set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 140—CRIMINAL JUSTICE IDENTIFICATION, INFORMATION, AND COMMUNICATION

SUBCHAPTER I—CRIME IDENTIFICATION TECHNOLOGY

Sec.
14601. State grant program for criminal justice identification, information, and communication.

SUBCHAPTER II—EXCHANGE OF CRIMINAL HISTORY RECORDS FOR NONCRIMINAL JUSTICE PURPOSES

14611. Findings.
14612. Definitions.
14613. Enactment and consent of the United States.
14614. Effect on other laws.
14615. Enforcement and implementation.
14616. National Crime Prevention and Privacy Compact.

SUBCHAPTER I—CRIME IDENTIFICATION TECHNOLOGY

§ 14601. State grant program for criminal justice identification, information, and communication

(a) In general

Subject to the availability of amounts provided in advance in appropriations Acts, the Office of Justice Programs relying principally on the expertise of the Bureau of Justice Statistics shall make a grant to each State, in a manner consistent with the national criminal history improvement program, which shall be used by the State, in conjunction with units of local government, State and local courts, other States, or combinations thereof, to establish or upgrade an integrated approach to develop information and identification technologies and systems to—

(1) upgrade criminal history and criminal justice record systems, including systems operated by law enforcement agencies and courts;

(2) improve criminal justice identification;

(3) promote compatibility and integration of national, State, and local systems for—

(A) criminal justice purposes;

(B) firearms eligibility determinations;

(C) identification of sexual offenders;

(D) identification of domestic violence offenders; and

(E) background checks for other authorized purposes unrelated to criminal justice; and

(4) capture information for statistical and research purposes to improve the administration of criminal justice.

(b) Use of grant amounts

Grants under this section may be used for programs to establish, develop, update, or upgrade—

(1) State centralized, automated, adult and juvenile criminal history record information systems, including arrest and disposition reporting;

(2) automated fingerprint identification systems that are compatible with standards established by the National Institute of Standards and Technology and interoperable with the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation;

(3) finger imaging, live scan, and other automated systems to digitize fingerprints and to communicate prints in a manner that is compatible with standards established by the National Institute of Standards and Technology and interoperable with systems operated by States and by the Federal Bureau of Investigation;

(4) programs and systems to facilitate full participation in the Interstate Identification Index of the National Crime Information Center;

(5) systems to facilitate full participation in any compact relating to the Interstate Identification Index of the National Crime Information Center;

(6) systems to facilitate full participation in the national instant criminal background check system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) for firearms eligibility determinations;

(7) integrated criminal justice information systems to manage and communicate criminal justice information among law enforcement agencies, courts, prosecutors, and corrections agencies;

(8) noncriminal history record information systems relevant to firearms eligibility determinations for availability and accessibility to the national instant criminal background check system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note);

(9) court-based criminal justice information systems that promote—

(A) reporting of dispositions to central State repositories and to the Federal Bureau of Investigation; and

(B) compatibility with, and integration of, court systems with other criminal justice information systems;

(10) ballistics identification and information programs that are compatible and integrated with the National Integrated Ballistics Network (NIBN);

(11) the capabilities of forensic science programs and medical examiner programs related to the administration of criminal justice, including programs leading to accreditation or certification of individuals or departments, agencies, or laboratories, and programs relating to the identification and analysis of deoxyribonucleic acid;

(12) sexual offender identification and registration systems;

(13) domestic violence offender identification and information systems;

(14) programs for fingerprint-supported background checks capability for noncriminal

justice purposes, including youth service employees and volunteers and other individuals in positions of responsibility, if authorized by Federal or State law and administered by a government agency;

(15) criminal justice information systems with a capacity to provide statistical and research products including incident-based reporting systems that are compatible with the National Incident-Based Reporting System (NIBRS) and uniform crime reports;

(16) multiagency, multijurisdictional communications systems among the States to share routine and emergency information among Federal, State, and local law enforcement agencies;

(17) the capability of the criminal justice system to deliver timely, accurate, and complete criminal history record information to child welfare agencies, organizations, and programs that are engaged in the assessment of risk and other activities related to the protection of children, including protection against child sexual abuse, and placement of children in foster care; and

(18) notwithstanding subsection (c) of this section, antiterrorism purposes as they relate to any other uses under this section or for other antiterrorism programs.

(c) Assurances

(1) In general

To be eligible to receive a grant under this section, a State shall provide assurances to the Attorney General that the State has the capability to contribute pertinent information to the national instant criminal background check system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note).

(2) Information sharing

Such assurances shall include a provision that ensures that a statewide strategy for information sharing systems is underway, or will be initiated, to improve the functioning of the criminal justice system, with an emphasis on integration of all criminal justice components, law enforcement, courts, prosecution, corrections, and probation and parole. The strategy shall be prepared after consultation with State and local officials with emphasis on the recommendation of officials whose duty it is to oversee, plan, and implement integrated information technology systems, and shall contain—

(A) a definition and analysis of ''integration'' in the State and localities developing integrated information sharing systems;

(B) an assessment of the criminal justice resources being devoted to information technology;

(C) Federal, State, regional, and local information technology coordination requirements;

(D) an assurance that the individuals who developed the grant application took into consideration the needs of all branches of the State Government and specifically sought the advice of the chief of the highest court of the State with respect to the application;

(E) State and local resource needs;

(F) the establishment of statewide priorities for planning and implementation of information technology systems; and

(G) a plan for coordinating the programs funded under this subchapter with other federally funded information technology programs, including directly funded local programs such as the Edward Byrne Justice Assistance Grant Program and the M.O.R.E. program established pursuant to part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3796dd et seq.].

(d) Matching funds

The Federal share of a grant received under this subchapter may not exceed 90 percent of the costs of a program or proposal funded under this subchapter unless the Attorney General waives, wholly or in part, the requirements of this subsection.

(e) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section $250,000,000 for each of fiscal years 2002 through 2007.

(2) Limitations

Of the amount made available to carry out this section in any fiscal year—

(A) not more than 3 percent may be used by the Attorney General for salaries and administrative expenses;

(B) not more than 5 percent may be used for technical assistance, training and evaluations, and studies commissioned by Bureau of Justice Statistics of the Department of Justice (through discretionary grants or otherwise) in furtherance of the purposes of this section; and

(C) the Attorney General shall ensure the amounts are distributed on an equitable geographic basis.

(f) Grants to Indian tribes

Notwithstanding any other provision of this section, the Attorney General may use amounts made available under this section to make grants to Indian tribes for use in accordance with this section.

(Pub. L. 105–251, title I, § 102, Oct. 9, 1998, 112 Stat. 1871; Pub. L. 106–177, title I, § 102, Mar. 10, 2000, 114 Stat. 35; Pub. L. 106–561, § 2(c)(4), Dec. 21, 2000, 114 Stat. 2791; Pub. L. 107–56, title X, § 1015, Oct. 26, 2001, 115 Stat. 400; Pub. L. 109–162, title XI, § 1111(c)(1), Jan. 5, 2006, 119 Stat. 3101.)

REFERENCES IN TEXT

Section 103(b) of the Brady Handgun Violence Prevention Act, referred to in subsecs. (b)(6), (8) and (c)(1), is section 103(b) of Pub. L. 103–159, as amended, which is set out as a note under section 922 of Title 18, Crimes and Criminal Procedure.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(2)(G), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. Part Q of title I of the Act is classified generally to subchapter XII–E (§ 3796dd et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

AMENDMENTS

2006—Subsec. (c)(2)(G). Pub. L. 109–162 substituted ''such as the Edward Byrne Justice Assistance Grant

Program and the M.O.R.E. program'' for ''such as the Local Law Enforcement Block Grant program (described under the heading 'Violent Crime Reduction Programs, State and Local Law Enforcement Assistance' of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105–119)) and the M.O.R.E. program''.

2001—Subsec. (b)(18). Pub. L. 107–56, § 1015(1), added par. (18).

Subsec. (e)(1). Pub. L. 107–56, § 1015(2), substituted ''this section $250,000,000 for each of fiscal years 2002 through 2007'' for ''this section $250,000,000 for each of fiscal years 1999 through 2003''.

2000—Subsec. (b)(17). Pub. L. 106–177 added par. (17).

Subsec. (e)(2)(B) to (D). Pub. L. 106–561 inserted ''and'' after semicolon in subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: ''not less than 20 percent shall be used by the Attorney General for the purposes described in paragraph (11) of subsection (b) of this section; and''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 3750 of this title.

SHORT TITLE

Pub. L. 105–251, title I, § 101, Oct. 9, 1998, 112 Stat. 1871, provided that: ''This title [enacting this subchapter] may be cited as the 'Crime Identification Technology Act of 1998'.''

Pub. L. 105–251, title II, § 201, Oct. 9, 1998, 112 Stat. 1874, provided that: ''This title [enacting subchapter II of this chapter, amending sections 5119a and 5119b of this title, and enacting provisions set out as a note under section 5101 of this title] may be cited as the 'National Criminal History Access and Child Protection Act'.''

Pub. L. 105–251, title II, § 211, Oct. 9, 1998, 112 Stat. 1874, provided that: ''This subtitle [subtitle A (§§ 211–217) of title II of Pub. L. 105–251, enacting subchapter II of this chapter] may be cited as the 'National Crime Prevention and Privacy Compact Act of 1998'.''

SUBCHAPTER II—EXCHANGE OF CRIMINAL HISTORY RECORDS FOR NONCRIMINAL JUSTICE PURPOSES

§ 14611. Findings

Congress finds that—

(1) both the Federal Bureau of Investigation and State criminal history record repositories maintain fingerprint-based criminal history records;

(2) these criminal history records are shared and exchanged for criminal justice purposes through a Federal-State program known as the Interstate Identification Index System;

(3) although these records are also exchanged for legally authorized, noncriminal justice uses, such as governmental licensing and employment background checks, the purposes for and procedures by which they are exchanged vary widely from State to State;

(4) an interstate and Federal-State compact is necessary to facilitate authorized interstate criminal history record exchanges for noncriminal justice purposes on a uniform basis, while permitting each State to effectuate its own dissemination policy within its own borders; and

(5) such a compact will allow Federal and State records to be provided expeditiously to governmental and nongovernmental agencies that use such records in accordance with pertinent Federal and State law, while simultaneously enhancing the accuracy of the records and safeguarding the information contained therein from unauthorized disclosure or use.

(Pub. L. 105–251, title II, § 212, Oct. 9, 1998, 112 Stat. 1874.)

§ 14612. Definitions

In this subchapter:

(1) Attorney General

The term ''Attorney General'' means the Attorney General of the United States.

(2) Compact

The term ''Compact'' means the National Crime Prevention and Privacy Compact set forth in section 14616 of this title.

(3) Council

The term ''Council'' means the Compact Council established under Article VI of the Compact.

(4) FBI

The term ''FBI'' means the Federal Bureau of Investigation.

(5) Party State

The term ''Party State'' means a State that has ratified the Compact.

(6) State

The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 105–251, title II, § 213, Oct. 9, 1998, 112 Stat. 1874.)

§ 14613. Enactment and consent of the United States

The National Crime Prevention and Privacy Compact, as set forth in section 14616 of this title, is enacted into law and entered into by the Federal Government. The consent of Congress is given to States to enter into the Compact.

(Pub. L. 105–251, title II, § 214, Oct. 9, 1998, 112 Stat. 1875.)

§ 14614. Effect on other laws

(a) Privacy Act of 1974

Nothing in the Compact shall affect the obligations and responsibilities of the FBI under section 552a of title 5 (commonly known as the ''Privacy Act of 1974'').

(b) Access to certain records not affected

Nothing in the Compact shall interfere in any manner with—

(1) access, direct or otherwise, to records pursuant to—

(A) section 9101 of title 5;

(B) the National Child Protection Act [42 U.S.C. 5119 et seq.];

(C) the Brady Handgun Violence Prevention Act (Public Law 103–159; 107 Stat. 1536);

(D) the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322;

108 Stat. 2074) or any amendment made by that Act;

(E) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); or

(F) the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); or

(2) any direct access to Federal criminal history records authorized by law.

(c) Authority of FBI under Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973

Nothing in the Compact shall be construed to affect the authority of the FBI under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92–544 (86 Stat. 1115)).

(d) Federal Advisory Committee Act

The Council shall not be considered to be a Federal advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) Members of Council not Federal officers or employees

Members of the Council (other than a member from the FBI or any at-large member who may be a Federal official or employee) shall not, by virtue of such membership, be deemed—

(1) to be, for any purpose other than to effect the Compact, officers or employees of the United States (as defined in sections 2104 and 2105 of title 5); or

(2) to become entitled by reason of Council membership to any compensation or benefit payable or made available by the Federal Government to its officers or employees.

(Pub. L. 105–251, title II, § 215, Oct. 9, 1998, 112 Stat. 1875.)

REFERENCES IN TEXT

The Privacy Act of 1974, referred to in subsec. (a), is Pub. L. 93–579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

The National Child Protection Act, referred to in subsec. (b)(1)(B), probably means the National Child Protection Act of 1993, Pub. L. 103–209, Dec. 20, 1993, 107 Stat. 2490, as amended, which is classified principally to subchapter VI (§ 5119 et seq.) of chapter 67 of this title. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 5101 of this title and Tables.

The Brady Handgun Violence Prevention Act, referred to in subsec. (b)(1)(C), is title I of Pub. L. 103–159, Nov. 30, 1993, 107 Stat. 1536, which enacted section 925A of Title 18, Crimes and Criminal Procedure, amended former section 3759 of this title and sections 921, 922, and 924 of Title 18, and enacted provisions set out as notes under sections 921 and 922 of Title 18. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 921 of Title 18 and Tables.

The Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (b)(1)(D), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b)(1)(E), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (b)(1)(F), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973, referred to in subsec. (c), is Pub. L. 92–544, Oct. 25, 1972, 86 Stat. 1109, as amended. For complete classification of this Act to the Code, see Tables.

The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 14615. Enforcement and implementation

All departments, agencies, officers, and employees of the United States shall enforce the Compact and cooperate with one another and with all Party States in enforcing the Compact and effectuating its purposes. For the Federal Government, the Attorney General shall make such rules, prescribe such instructions, and take such other actions as may be necessary to carry out the Compact and this subchapter.

(Pub. L. 105–251, title II, § 216, Oct. 9, 1998, 112 Stat. 1875.)

§ 14616. National Crime Prevention and Privacy Compact

The Contracting Parties agree to the following:

OVERVIEW

(a) In general

This Compact organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records for noncriminal justice purposes authorized by Federal or State law, such as background checks for governmental licensing and employment.

(b) Obligations of parties

Under this Compact, the FBI and the Party States agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the Federal Government and to Party States for authorized purposes. The FBI shall also manage the Federal data facilities that provide a significant part of the infrastructure for the system.

ARTICLE I—DEFINITIONS

In this Compact:

(1) Attorney General

The term ''Attorney General'' means the Attorney General of the United States.

(2) Compact officer

The term ''Compact officer'' means—

(A) with respect to the Federal Government, an official so designated by the Director of the FBI; and

(B) with respect to a Party State, the chief administrator of the State's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) Council

The term ''Council'' means the Compact Council established under Article VI.

(4) Criminal history records

The term ''criminal history records''—

(A) means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(B) does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

(5) Criminal history record repository

The term ''criminal history record repository'' means the State agency designated by the Governor or other appropriate executive official or the legislature of a State to perform centralized recordkeeping functions for criminal history records and services in the State.

(6) Criminal justice

The term ''criminal justice'' includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) Criminal justice agency

The term ''criminal justice agency''—

(A) means—

(i) courts; and

(ii) a governmental agency or any subunit thereof that—

(I) performs the administration of criminal justice pursuant to a statute or Executive order; and

(II) allocates a substantial part of its annual budget to the administration of criminal justice; and

(B) includes Federal and State inspectors general offices.

(8) Criminal justice services

The term ''criminal justice services'' means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) Criterion offense

The term ''criterion offense'' means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

(10) Direct access

The term ''direct access'' means access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(11) Executive order

The term ''Executive order'' means an order of the President of the United States or the chief executive officer of a State that has the force of law and that is promulgated in accordance with applicable law.

(12) FBI

The term ''FBI'' means the Federal Bureau of Investigation.

(13) Interstate Identification System

The term ''Interstate Identification Index System'' or ''III System''—

(A) means the cooperative Federal-State system for the exchange of criminal history records; and

(B) includes the National Identification Index, the National Fingerprint File and, to the extent of their participation in such system, the criminal history record repositories of the States and the FBI.

(14) National Fingerprint File

The term ''National Fingerprint File'' means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(15) National Identification Index

The term ''National Identification Index'' means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(16) National indices

The term ''National indices'' means the National Identification Index and the National Fingerprint File.

(17) Nonparty State

The term ''Nonparty State'' means a State that has not ratified this Compact.

(18) Noncriminal justice purposes

The term ''noncriminal justice purposes'' means uses of criminal history records for purposes authorized by Federal or State law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(19) Party State

The term ''Party State'' means a State that has ratified this Compact.

(20) Positive identification

The term ''positive identification'' means a determination, based upon a comparison of fingerprints or other equally reliable biomet-

ric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) Sealed record information

The term ''sealed record information'' means—

(A) with respect to adults, that portion of a record that is—

(i) not available for criminal justice uses;

(ii) not supported by fingerprints or other accepted means of positive identification; or

(iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a Federal or State statute that requires action on a sealing petition filed by a particular record subject; and

(B) with respect to juveniles, whatever each State determines is a sealed record under its own law and procedure.

(22) State

The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE II—PURPOSES

The purposes of this Compact are to—

(1) provide a legal framework for the establishment of a cooperative Federal-State system for the interstate and Federal-State exchange of criminal history records for noncriminal justice uses;

(2) require the FBI to permit use of the National Identification Index and the National Fingerprint File by each Party State, and to provide, in a timely fashion, Federal and State criminal history records to requesting States, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(3) require Party States to provide information and records for the National Identification Index and the National Fingerprint File and to provide criminal history records, in a timely fashion, to criminal history record repositories of other States and the Federal Government for noncriminal justice purposes, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(4) provide for the establishment of a Council to monitor III System operations and to prescribe system rules and procedures for the effective and proper operation of the III System for noncriminal justice purposes; and

(5) require the FBI and each Party State to adhere to III System standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

ARTICLE III—RESPONSIBILITIES OF COMPACT PARTIES

(a) FBI responsibilities

The Director of the FBI shall—

(1) appoint an FBI Compact officer who shall—

(A) administer this Compact within the Department of Justice and among Federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);

(B) ensure that Compact provisions and rules, procedures, and standards prescribed by the Council under Article VI are complied with by the Department of Justice and the Federal agencies and other agencies and organizations referred to in Article III(1)(A); and

(C) regulate the use of records received by means of the III System from Party States when such records are supplied by the FBI directly to other Federal agencies;

(2) provide to Federal agencies and to State criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including—

(A) information from Nonparty States; and

(B) information from Party States that is available from the FBI through the III System, but is not available from the Party State through the III System;

(3) provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) modify or enter into user agreements with Nonparty State criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) State responsibilities

Each Party State shall—

(1) appoint a Compact officer who shall—

(A) administer this Compact within that State;

(B) ensure that Compact provisions and rules, procedures, and standards established by the Council under Article VI are complied with in the State; and

(C) regulate the in-State use of records received by means of the III System from the FBI or from other Party States;

(2) establish and maintain a criminal history record repository, which shall provide—

(A) information and records for the National Identification Index and the National Fingerprint File; and

(B) the State's III System-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) participate in the National Fingerprint File; and

(4) provide and maintain telecommunications links and related equipment necessary to support the services set forth in this Compact.

(c) Compliance with III System standards

In carrying out their responsibilities under this Compact, the FBI and each Party State shall comply with III System rules, procedures, and standards duly established by the Council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation.

(d) Maintenance of record services

(1) Use of the III System for noncriminal justice purposes authorized in this Compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(2) Administration of Compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this Compact.

ARTICLE IV—AUTHORIZED RECORD DISCLOSURES

(a) State criminal history record repositories

To the extent authorized by section 552a of title 5, United States Code (commonly known as the ''Privacy Act of 1974''), the FBI shall provide on request criminal history records (excluding sealed records) to State criminal history record repositories for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General and that authorizes national indices checks.

(b) Criminal justice agencies and other governmental or nongovernmental agencies

The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the ''Privacy Act of 1974''), and State criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General, that authorizes national indices checks.

(c) Procedures

Any record obtained under this Compact may be used only for the official purposes for which the record was requested. Each Compact officer shall establish procedures, consistent with this Compact, and with rules, procedures, and standards established by the Council under Article VI, which procedures shall protect the accuracy and privacy of the records, and shall—

(1) ensure that records obtained under this Compact are used only by authorized officials for authorized purposes;

(2) require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate ''no record'' response is communicated to the requesting official.

ARTICLE V—RECORD REQUEST PROCEDURES

(a) Positive identification

Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Submission of State requests

Each request for a criminal history record check utilizing the national indices made under any approved State statute shall be submitted through that State's criminal history record repository. A State criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another State criminal history record repository or the FBI.

(c) Submission of Federal requests

Each request for criminal history record checks utilizing the national indices made under Federal authority shall be submitted through the FBI or, if the State criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the State in which such request originated. Direct access to the National Identification Index by entities other than the FBI and State criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) Fees

A State criminal history record repository or the FBI—

(1) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) Additional search

(1) If a State criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a State criminal history record repository under paragraph (1), the FBI positively identifies the subject as having a III System-indexed record or records—

(A) the FBI shall so advise the State criminal history record repository; and

(B) the State criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other State criminal history record repositories.

ARTICLE VI—ESTABLISHMENT OF COMPACT COUNCIL

(a) Establishment

(1) In general

There is established a council to be known as the ''Compact Council'', which shall have the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

(2) Organization

The Council shall—

(A) continue in existence as long as this Compact remains in effect;

(B) be located, for administrative purposes, within the FBI; and

(C) be organized and hold its first meeting as soon as practicable after the effective date of this Compact.

(b) Membership

The Council shall be composed of 15 members, each of whom shall be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a 2-year term, who shall be selected from among the Compact officers of Party States based on the recommendation of the Compact officers of all Party States, except that, in the absence of the requisite number of Compact officers available to serve, the chief administrators of the criminal history record repositories of Nonparty States shall be eligible to serve on an interim basis.

(2) Two at-large members, nominated by the Director of the FBI, each of whom shall serve a 3-year term, of whom—

(A) 1 shall be a representative of the criminal justice agencies of the Federal Government and may not be an employee of the FBI; and

(B) 1 shall be a representative of the noncriminal justice agencies of the Federal Government.

(3) Two at-large members, nominated by the Chairman of the Council, once the Chairman is elected pursuant to Article VI(c), each of whom shall serve a 3-year term, of whom—

(A) 1 shall be a representative of State or local criminal justice agencies; and

(B) 1 shall be a representative of State or local noncriminal justice agencies.

(4) One member, who shall serve a 3-year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One member, nominated by the Director of the FBI, who shall serve a 3-year term, and who shall be an employee of the FBI.

(c) Chairman and Vice Chairman

(1) In general

From its membership, the Council shall elect a Chairman and a Vice Chairman of the Council, respectively. Both the Chairman and Vice Chairman of the Council—

(A) shall be a Compact officer, unless there is no Compact officer on the Council who is willing to serve, in which case the Chairman may be an at-large member; and

(B) shall serve a 2-year term and may be reelected to only 1 additional 2-year term.

(2) Duties of Vice Chairman

The Vice Chairman of the Council shall serve as the Chairman of the Council in the absence of the Chairman.

(d) Meetings

(1) In general

The Council shall meet at least once each year at the call of the Chairman. Each meeting of the Council shall be open to the public. The Council shall provide prior public notice in the Federal Register of each meeting of the Council, including the matters to be addressed at such meeting.

(2) Quorum

A majority of the Council or any committee of the Council shall constitute a quorum of the Council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) Rules, procedures, and standards

The Council shall make available for public inspection and copying at the Council office within the FBI, and shall publish in the Federal Register, any rules, procedures, or standards established by the Council.

(f) Assistance from FBI

The Council may request from the FBI such reports, studies, statistics, or other information or materials as the Council determines to be necessary to enable the Council to perform its duties under this Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) Committees

The Chairman may establish committees as necessary to carry out this Compact and may prescribe their membership, responsibilities, and duration.

ARTICLE VII—RATIFICATION OF COMPACT

This Compact shall take effect upon being entered into by 2 or more States as between those States and the Federal Government. Upon subsequent entering into this Compact by additional States, it shall become effective among those States and the Federal Government and each Party State that has previously ratified it. When ratified, this Compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing State.

ARTICLE VIII—MISCELLANEOUS PROVISIONS

(a) Relation of Compact to certain FBI activities

Administration of this Compact shall not interfere with the management and control of the Director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory

policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) No authority for nonappropriated expenditures

Nothing in this Compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) Relating to Public Law 92–544

Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and authorities of any State, whether a Party State or a Nonparty State, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92–544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the Council under Article VI(a), regarding the use and dissemination of criminal history records and information.

ARTICLE IX—RENUNCIATION

(a) In general

This Compact shall bind each Party State until renounced by the Party State.

(b) Effect

Any renunciation of this Compact by a Party State shall—

(1) be effected in the same manner by which the Party State ratified this Compact; and

(2) become effective 180 days after written notice of renunciation is provided by the Party State to each other Party State and to the Federal Government.

ARTICLE X—SEVERABILITY

The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating State, or to the Constitution of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this Compact is held contrary to the constitution of any Party State, all other portions of this Compact shall remain in full force and effect as to the remaining Party States and in full force and effect as to the Party State affected, as to all other provisions.

ARTICLE XI—ADJUDICATION OF DISPUTES

(a) In general

The Council shall—

(1) have initial authority to make determinations with respect to any dispute regarding—

(A) interpretation of this Compact;

(B) any rule or standard established by the Council pursuant to Article V; and

(C) any dispute or controversy between any parties to this Compact; and

(2) hold a hearing concerning any dispute described in paragraph (1) at a regularly scheduled meeting of the Council and only render a decision based upon a majority vote of the members of the Council. Such decision shall be published pursuant to the requirements of Article VI(e).

(b) Duties of FBI

The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the Council holds a hearing on such matters.

(c) Right of appeal

The FBI or a Party State may appeal any decision of the Council to the Attorney General, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this Compact. Any suit arising under this Compact and initiated in a State court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.

(Pub. L. 105–251, title II, § 217, Oct. 9, 1998, 112 Stat. 1876.)

REFERENCES IN TEXT

The Privacy Act of 1974, referred to in Article IV(a), (b), is Pub. L. 93–579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

The Federal Advisory Committee Act, referred to in Article VIII(a), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973, referred to in Article VIII(c), is Pub. L. 92–544, Oct. 25, 1972, 86 Stat. 1109, as amended. For complete classification of this Act to the Code, see Tables.

CHAPTER 140A—JENNIFER'S LAW

Sec.
14661. Program authorized.
14662. Eligibility.
14663. Uses of funds.
14664. Authorization of appropriations.
14665. Grants for the assistance of organizations to find missing adults.

§ 14661. Program authorized

The Attorney General is authorized to provide grant awards to States to enable States to improve the reporting of unidentified and missing persons.

(Pub. L. 106–177, title II, § 202, Mar. 10, 2000, 114 Stat. 36.)

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–468, § 1, Nov. 9, 2000, 114 Stat. 2027, provided that: "This Act [enacting section 14665 of this title and provisions set out as a note under section 14665 of this title] may be cited as 'Kristen's Act'."

SHORT TITLE

Pub. L. 106–177, title II, § 201, Mar. 10, 2000, 114 Stat. 36, provided that: "This title [enacting this chapter] may be cited as 'Jennifer's Law'."

§ 14662. Eligibility

(a) Application

To be eligible to receive a grant award under this chapter, a State shall submit an application at such time and in such form as the Attorney General may reasonably require.

(b) Contents

Each such application shall include assurances that the State shall, to the greatest extent possible—

(1) report to the National Crime Information Center and when possible, to law enforcement authorities throughout the State regarding every deceased unidentified person, regardless of age, found in the State's jurisdiction;

(2) enter a complete profile of such unidentified person in compliance with the guidelines established by the Department of Justice for the National Crime Information Center Missing and Unidentified Persons File, including dental records, DNA records, x-rays, and fingerprints, if available;

(3) enter the National Crime Information Center number or other appropriate number assigned to the unidentified person on the death certificate of each such unidentified person; and

(4) retain all such records pertaining to unidentified persons until a person is identified.

(Pub. L. 106–177, title II, § 203, Mar. 10, 2000, 114 Stat. 36.)

§ 14663. Uses of funds

A State that receives a grant award under this chapter may use such funds received to establish or expand programs developed to improve the reporting of unidentified persons in accordance with the assurances provided in the application submitted pursuant to section 14662(b) of this title.

(Pub. L. 106–177, title II, § 204, Mar. 10, 2000, 114 Stat. 36.)

§ 14664. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter $2,000,000 for each of fiscal years 2000, 2001, and 2002.

(Pub. L. 106–177, title II, § 205, Mar. 10, 2000, 114 Stat. 37.)

§ 14665. Grants for the assistance of organizations to find missing adults

(a) In general

The Attorney General may make grants to public agencies or nonprofit private organizations, or combinations thereof, for programs—

(1) to assist law enforcement and families in locating missing adults;

(2) to maintain a national, interconnected database for the purpose of tracking missing adults who are determined by law enforcement to be endangered due to age, diminished mental capacity, or the circumstances of disappearance, when foul play is suspected or circumstances are unknown;

(3) to maintain statistical information of adults reported as missing;

(4) to provide informational resources and referrals to families of missing adults;

(5) to assist in public notification and victim advocacy related to missing adults; and

(6) to establish and maintain a national clearinghouse for missing adults.

(b) Regulations

The Attorney General may make such rules and regulations as may be necessary to carry out this Act.

(Pub. L. 106–468, § 2, Nov. 9, 2000, 114 Stat. 2027.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 106–468, Nov. 9, 2000, 114 Stat. 2027, known as Kristen's Act, which enacted this section and provisions set out as notes under this section and section 14661 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of Kristen's Act, and not as part of Jennifer's Law which comprises this chapter.

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 106–468, § 3, Nov. 9, 2000, 114 Stat. 2028, provided that: ''There are authorized to be appropriated to carry out this Act [enacting this section and provisions set out as a note under section 14661 of this title] $1,000,000 each year for fiscal years 2001 through 2004.''

CHAPTER 141—COMMERCIAL SPACE OPPORTUNITIES AND TRANSPORTATION SERVICES

Sec.
14701. Definitions.

SUBCHAPTER I—PROMOTION OF COMMERCIAL SPACE OPPORTUNITIES

14711. Commercialization of Space Station.
14712. Promotion of United States Global Positioning System standards.
14713. Acquisition of space science data.
14714. Administration of commercial space centers.
14715. Sources of Earth Science data.

SUBCHAPTER II—FEDERAL ACQUISITION OF SPACE TRANSPORTATION SERVICES

14731. Requirement to procure commercial space transportation services.
14732. Acquisition of commercial space transportation services.
14733. Shuttle privatization.
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SUBCHAPTER III—COMMERCIAL REUSABLE IN-SPACE TRANSPORTATION

14751. Findings.
14752. Loan guarantees for production of commercial reusable in-space transportation.
14753. Definitions.

§ 14701. Definitions

For purposes of this Act—

(1) the term ''Administrator'' means the Administrator of the National Aeronautics and Space Administration;

(2) the term ''commercial provider'' means any person providing space transportation services or other space-related activities, primary control of which is held by persons other than Federal, State, local, and foreign governments;

(3) the term ''payload'' means anything that a person undertakes to transport to, from, or within outer space, or in suborbital trajectory, by means of a space transportation vehicle, but does not include the space transportation vehicle itself except for its components which are specifically designed or adapted for that payload;

(4) the term ''space-related activities'' includes research and development, manufacturing, processing, service, and other associated and support activities;

(5) the term ''space transportation services'' means the preparation of a space transportation vehicle and its payloads for transportation to, from, or within outer space, or in suborbital trajectory, and the conduct of transporting a payload to, from, or within outer space, or in suborbital trajectory;

(6) the term ''space transportation vehicle'' means any vehicle constructed for the purpose of operating in, or transporting a payload to, from, or within, outer space, or in suborbital trajectory, and includes any component of such vehicle not specifically designed or adapted for a payload;

(7) the term ''State'' means each of the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States; and

(8) the term ''United States commercial provider'' means a commercial provider, organized under the laws of the United States or of a State, which is—

(A) more than 50 percent owned by United States nationals; or

(B) a subsidiary of a foreign company and the Secretary of Transportation finds that—

(i) such subsidiary has in the past evidenced a substantial commitment to the United States market through—

(I) investments in the United States in long-term research, development, and manufacturing (including the manufacture of major components and subassemblies); and

(II) significant contributions to employment in the United States; and

(ii) the country or countries in which such foreign company is incorporated or organized, and, if appropriate, in which it principally conducts its business, affords reciprocal treatment to companies described in subparagraph (A) comparable to that afforded to such foreign company's subsidiary in the United States, as evidenced by—

(I) providing comparable opportunities for companies described in subparagraph (A) to participate in Government sponsored research and development similar to that authorized under this Act;

(II) providing no barriers, to companies described in subparagraph (A) with respect to local investment opportunities, that are not provided to foreign companies in the United States; and

(III) providing adequate and effective protection for the intellectual property rights of companies described in subparagraph (A).

(Pub. L. 105–303, § 2, Oct. 28, 1998, 112 Stat. 2843.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 105–303, Oct. 28, 1998, 112 Stat. 2843, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 105–303, § 1(a), Oct. 28, 1998, 112 Stat. 2843, provided that: ''This Act [enacting this section, subchapters I and II of this chapter, and sections 70120 and 70121 of Title 49, Transportation, amending sections 2465c and 2465f of this title, sections 5621, 5622, and 5803 of Title 15, Commerce and Trade, and sections 70101 to 70106, 70108 to 70113, 70115, 70117, and 70119 of Title 49, repealing sections 2465b, 2465d, and 2465e of this title, and enacting provisions set out as a note under section 70105 of Title 49] may be cited as the 'Commercial Space Act of 1998'.''

Pub. L. 107–248, title IX, § 901, Oct. 23, 2002, 116 Stat. 1573, provided that: ''This title [enacting subchapter III of this chapter] may be cited as the 'Commercial Reusable In-Space Transportation Act of 2002'.''

SUBCHAPTER I—PROMOTION OF COMMERCIAL SPACE OPPORTUNITIES

§ 14711. Commercialization of Space Station

(a) Policy

The Congress declares that a priority goal of constructing the International Space Station is the economic development of Earth orbital space. The Congress further declares that free and competitive markets create the most efficient conditions for promoting economic development, and should therefore govern the economic development of Earth orbital space. The Congress further declares that the use of free market principles in operating, servicing, allocating the use of, and adding capabilities to the Space Station, and the resulting fullest possible engagement of commercial providers and participation of commercial users, will reduce Space Station operational costs for all partners and the Federal Government's share of the United States burden to fund operations.

(b) Reports

(1) The Administrator shall deliver to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, within 90 days after October 28, 1998, a study that identifies and examines—

(A) the opportunities for commercial providers to play a role in International Space Station activities, including operation, use, servicing, and augmentation;

(B) the potential cost savings to be derived from commercial providers playing a role in each of these activities;

(C) which of the opportunities described in subparagraph (A) the Administrator plans to make available to commercial providers in fiscal years 1999 and 2000;

(D) the specific policies and initiatives the Administrator is advancing to encourage and facilitate these commercial opportunities; and

(E) the revenues and cost reimbursements to the Federal Government from commercial users of the Space Station.

(2) The Administrator shall deliver to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, within 180 days after October 28, 1998, an independently conducted market study that examines and evaluates potential industry interest in providing commercial goods and services for the operation, servicing, and augmentation of the International Space Station, and in the commercial use of the International Space Station. This study shall also include updates to the cost savings and revenue estimates made in the study described in paragraph (1) based on the external market assessment.

(3) The Administrator shall deliver to the Congress, no later than the submission of the President's annual budget request for fiscal year 2000, a report detailing how many proposals (whether solicited or not) the National Aeronautics and Space Administration received during calendar years 1997 and 1998 regarding commercial operation, servicing, utilization, or augmentation of the International Space Station, broken down by each of these four categories, and specifying how many agreements the National Aeronautics and Space Administration has entered into in response to these proposals, also broken down by these four categories.

(4) Each of the studies and reports required by paragraphs (1), (2), and (3) shall include consideration of the potential role of State governments as brokers in promoting commercial participation in the International Space Station program.

(Pub. L. 105–303, title I, § 101, Oct. 28, 1998, 112 Stat. 2845.)

SPACE STATION COMMERCIAL DEVELOPMENT DEMONSTRATION PROGRAM

Pub. L. 106–74, title IV, § 434, Oct. 20, 1999, 113 Stat. 1097, as amended by Pub. L. 106–391, title II, § 204, Oct. 30, 2000, 114 Stat. 1590, provided that:

''(a) PURPOSE.—The purpose of this section is to establish a demonstration regarding the commercial feasibility and economic viability of private sector business operations involving the International Space Station and its related infrastructure. The goal will be furthered by the early use of the International Space Station by United States commercial entities committing private capital to commercial enterprises on the International Space Station. In conjunction with this demonstration program, the National Aeronautics and Space Administration (NASA) shall establish and publish a price policy designed to eliminate price uncertainty for those planning to utilize the International Space Station and its related facilities for United States commercial use.

''(b) USE OF RECEIPTS FOR COMMERCIAL USE.—Any receipts collected by NASA from the commercial use of the International Space Station shall first be used to offset any costs incurred by NASA in support of the United States commercial use of the International Space Station. Any receipts collected in excess of the costs identified pursuant to the prior sentence may be retained by NASA for use without fiscal year limitation in promoting the commercial use of the International Space Station.

''(c) REPORT.—NASA shall submit an annual report to the Congress that identifies all receipts that are collected under this section, the use of the receipts and the status of the demonstration. NASA shall submit a final report on the status of the demonstration, including any recommendation for expansion, within 120 days of the completion of the assembly of the International Space Station or the end of fiscal year 2002, whichever is earlier.

''(d) DEFINITIONS.—As used in this section, the term 'United States commercial use' means private commercial projects that are designed to benefit the United States through the sales of goods or services or the creation of jobs, or both.

''(e) TERMINATION.—The demonstration program established under this section shall apply to United States commercial use agreements that are entered into prior to the date of the completion of the International Space Station or the end of fiscal year 2002, whichever is earlier.''

§ 14712. Promotion of United States Global Positioning System standards

(a) Finding

The Congress finds that the Global Positioning System, including satellites, signal equipment, ground stations, data links, and associated command and control facilities, has become an essential element in civil, scientific, and military space development because of the emergence of a United States commercial industry which provides Global Positioning System equipment and related services.

(b) International cooperation

In order to support and sustain the Global Positioning System in a manner that will most effectively contribute to the national security, public safety, scientific, and economic interests of the United States, the Congress encourages the President to—

(1) ensure the operation of the Global Positioning System on a continuous worldwide basis free of direct user fees;

(2) enter into international agreements that promote cooperation with foreign governments and international organizations to—

(A) establish the Global Positioning System and its augmentations as an acceptable international standard; and

(B) eliminate any foreign barriers to applications of the Global Positioning System worldwide; and

(3) provide clear direction and adequate resources to the Assistant Secretary of Commerce for Communications and Information so that on an international basis the Assistant Secretary can—

(A) achieve and sustain efficient management of the electromagnetic spectrum used by the Global Positioning System; and

(B) protect that spectrum from disruption and interference.

(Pub. L. 105–303, title I, § 104, Oct. 28, 1998, 112 Stat. 2852.)

§ 14713. Acquisition of space science data

(a) Acquisition from commercial providers

The Administrator shall, to the extent possible and while satisfying the scientific or educational requirements of the National Aeronautics and Space Administration, and where appropriate, of other Federal agencies and scientific researchers, acquire, where cost effective, space science data from a commercial provider.

(b) Treatment of space science data as commercial item under acquisition laws

Acquisitions of space science data by the Administrator shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10). For purposes of such law and regulations, space science data shall be considered to be a commercial item. Nothing in this subsection shall be construed to preclude the United States from acquiring, through contracts with commercial providers, sufficient rights in data to meet the needs of the scientific and educational community or the needs of other government activities.

(c) Definition

For purposes of this section, the term ''space science data'' includes scientific data concerning—

(1) the elemental and mineralogical resources of the moon, asteroids, planets and their moons, and comets;

(2) microgravity acceleration; and

(3) solar storm monitoring.

(d) Safety standards

Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(e) Limitation

This section does not authorize the National Aeronautics and Space Administration to provide financial assistance for the development of commercial systems for the collection of space science data.

(Pub. L. 105–303, title I, § 105, Oct. 28, 1998, 112 Stat. 2852.)

§ 14714. Administration of commercial space centers

The Administrator shall administer the Commercial Space Center program in a coordinated manner from National Aeronautics and Space Administration headquarters in Washington, D.C.

(Pub. L. 105–303, title I, § 106, Oct. 28, 1998, 112 Stat. 2853.)

§ 14715. Sources of Earth Science data

(a) Acquisition

The Administrator shall, to the extent possible and while satisfying the scientific or educational requirements of the National Aeronautics and Space Administration, and where appropriate, of other Federal agencies and scientific researchers, acquire, where cost-effective, space-based and airborne Earth remote sensing data, services, distribution, and applications from a commercial provider.

(b) Treatment as commercial item under acquisition laws

Acquisitions by the Administrator of the data, services, distribution, and applications referred to in subsection (a) of this section shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10). For purposes of such law and regulations, such data, services, distribution, and applications shall be considered to be a commercial item. Nothing in this subsection shall be construed to preclude the United States from acquiring, through contracts with commercial providers, sufficient rights in data to meet the needs of the scientific and educational community or the needs of other government activities.

(c) Study

(1) The Administrator shall conduct a study to determine the extent to which the baseline scientific requirements of Earth Science can be met by commercial providers, and how the National Aeronautics and Space Administration will meet such requirements which cannot be met by commercial providers.

(2) The study conducted under this subsection shall—

(A) make recommendations to promote the availability of information from the National Aeronautics and Space Administration to commercial providers to enable commercial providers to better meet the baseline scientific requirements of Earth Science;

(B) make recommendations to promote the dissemination to commercial providers of information on advanced technology research and development performed by or for the National Aeronautics and Space Administration; and

(C) identify policy, regulatory, and legislative barriers to the implementation of the recommendations made under this subsection.

(3) The results of the study conducted under this subsection shall be transmitted to the Congress within 6 months after October 28, 1998.

(d) Safety standards

Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(e) Administration and execution

This section shall be carried out as part of the Commercial Remote Sensing Program at the Stennis Space Center.

(Pub. L. 105–303, title I, § 107, Oct. 28, 1998, 112 Stat. 2853.)

CODIFICATION

Section is comprised of section 107 of Pub. L. 105–303. Subsec. (f) of section 107 of Pub. L. 105–303 amended sections 5621 and 5622 of Title 15, Commerce and Trade.

SUBCHAPTER II—FEDERAL ACQUISITION OF SPACE TRANSPORTATION SERVICES

§ 14731. Requirement to procure commercial space transportation services

(a) In general

Except as otherwise provided in this section, the Federal Government shall acquire space transportation services from United States commercial providers whenever such services are required in the course of its activities. To the maximum extent practicable, the Federal Government shall plan missions to accommodate the space transportation services capabilities of United States commercial providers.

(b) Exceptions

The Federal Government shall not be required to acquire space transportation services under

subsection (a) of this section if, on a case-by-case basis, the Administrator or, in the case of a national security issue, the Secretary of the Air Force, determines that—

(1) a payload requires the unique capabilities of the Space Shuttle;

(2) cost effective space transportation services that meet specific mission requirements would not be reasonably available from United States commercial providers when required;

(3) the use of space transportation services from United States commercial providers poses an unacceptable risk of loss of a unique scientific opportunity;

(4) the use of space transportation services from United States commercial providers is inconsistent with national security objectives;

(5) the use of space transportation services from United States commercial providers is inconsistent with international agreements for international collaborative efforts relating to science and technology;

(6) it is more cost effective to transport a payload in conjunction with a test or demonstration of a space transportation vehicle owned by the Federal Government; or

(7) a payload can make use of the available cargo space on a Space Shuttle mission as a secondary payload, and such payload is consistent with the requirements of research, development, demonstration, scientific, commercial, and educational programs authorized by the Administrator.

Nothing in this section shall prevent the Administrator from planning or negotiating agreements with foreign entities for the launch of Federal Government payloads for international collaborative efforts relating to science and technology.

(c) Delayed effect

Subsection (a) of this section shall not apply to space transportation services and space transportation vehicles acquired or owned by the Federal Government before October 28, 1998, or with respect to which a contract for such acquisition or ownership has been entered into before October 28, 1998.

(d) Historical purposes

This section shall not be construed to prohibit the Federal Government from acquiring, owning, or maintaining space transportation vehicles solely for historical display purposes.

(Pub. L. 105–303, title II, § 201, Oct. 28, 1998, 112 Stat. 2854.)

§ 14732. Acquisition of commercial space transportation services

(a) Treatment of commercial space transportation services as commercial item under acquisition laws

Acquisitions of space transportation services by the Federal Government shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10). For purposes of such law and regulations, space transportation services shall be considered to be a commercial item.

(b) Safety standards

Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(Pub. L. 105–303, title II, § 202, Oct. 28, 1998, 112 Stat. 2855.)

§ 14733. Shuttle privatization

(a) Policy and preparation

The Administrator shall prepare for an orderly transition from the Federal operation, or Federal management of contracted operation, of space transportation systems to the Federal purchase of commercial space transportation services for all nonemergency space transportation requirements for transportation to and from Earth orbit, including human, cargo, and mixed payloads. In those preparations, the Administrator shall take into account the need for short-term economies, as well as the goal of restoring the National Aeronautics and Space Administration's research focus and its mandate to promote the fullest possible commercial use of space. As part of those preparations, the Administrator shall plan for the potential privatization of the Space Shuttle program. Such plan shall keep safety and cost effectiveness as high priorities. Nothing in this section shall prohibit the National Aeronautics and Space Administration from studying, designing, developing, or funding upgrades or modifications essential to the safe and economical operation of the Space Shuttle fleet.

(b) Feasibility study

The Administrator shall conduct a study of the feasibility of implementing the recommendation of the Independent Shuttle Management Review Team that the National Aeronautics and Space Administration transition toward the privatization of the Space Shuttle. The study shall identify, discuss, and, where possible, present options for resolving, the major policy and legal issues that must be addressed before the Space Shuttle is privatized, including—

(1) whether the Federal Government or the Space Shuttle contractor should own the Space Shuttle orbiters and ground facilities;

(2) whether the Federal Government should indemnify the contractor for any third party liability arising from Space Shuttle operations, and, if so, under what terms and conditions;

(3) whether payloads other than National Aeronautics and Space Administration payloads should be allowed to be launched on the Space Shuttle, how missions will be prioritized, and who will decide which mission flies and when;

(4) whether commercial payloads should be allowed to be launched on the Space Shuttle and whether any classes of payloads should be made ineligible for launch consideration;

(5) whether National Aeronautics and Space Administration and other Federal Government payloads should have priority over non-Federal payloads in the Space Shuttle launch assignments, and what policies should be developed to prioritize among payloads generally;

(6) whether the public interest requires that certain Space Shuttle functions continue to be performed by the Federal Government; and

(7) how much cost savings, if any, will be generated by privatization of the Space Shuttle.

(c) Report to Congress

Within 60 days after October 28, 1998, the National Aeronautics and Space Administration shall complete the study required under subsection (b) of this section and shall submit a report on the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives.

(Pub. L. 105–303, title II, § 204, Oct. 28, 1998, 112 Stat. 2856.)

§ 14734. Use of excess intercontinental ballistic missiles

(a) In general

The Federal Government shall not—

(1) convert any missile described in subsection (c) of this section to a space transportation vehicle configuration; or

(2) transfer ownership of any such missile to another person, except as provided in subsection (b) of this section.

(b) Authorized Federal uses

(1) A missile described in subsection (c) of this section may be converted for use as a space transportation vehicle by the Federal Government if, except as provided in paragraph (2) and at least 30 days before such conversion, the agency seeking to use the missile as a space transportation vehicle transmits to the Committee on Armed Services and the Committee on Science of the House of Representatives, and to the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, a certification that the use of such missile—

(A) would result in cost savings to the Federal Government when compared to the cost of acquiring space transportation services from United States commercial providers;

(B) meets all mission requirements of the agency, including performance, schedule, and risk requirements;

(C) is consistent with international obligations of the United States; and

(D) is approved by the Secretary of Defense or his designee.

(2) The requirement under paragraph (1) that the certification described in that paragraph must be transmitted at least 30 days before conversion of the missile shall not apply if the Secretary of Defense determines that compliance with that requirement would be inconsistent with meeting immediate national security requirements.

(c) Missiles referred to

The missiles referred to in this section are missiles owned by the United States that—

(1) were formerly used by the Department of Defense for national defense purposes as intercontinental ballistic missiles; and

(2) have been declared excess to United States national defense needs and are in compliance with international obligations of the United States.

(Pub. L. 105–303, title II, § 205, Oct. 28, 1998, 112 Stat. 2857; Pub. L. 106–65, div. A, title X, § 1067(21), Oct. 5, 1999, 113 Stat. 775.)

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–65 substituted ''transmits to the Committee on Armed Services'' for ''transmits to the Committee on National Security'' in introductory provisions.

§ 14735. National launch capability study

(a) Findings

Congress finds that a robust satellite and launch industry in the United States serves the interest of the United States by—

(1) contributing to the economy of the United States;

(2) strengthening employment, technological, and scientific interests of the United States; and

(3) serving the foreign policy and national security interests of the United States.

(b) Definitions

In this section:

(1) Secretary

The term ''Secretary'' means the Secretary of Defense.

(2) Total potential national mission model

The term ''total potential national mission model'' means a model that—

(A) is determined by the Secretary, in consultation with the Administrator, to assess the total potential space missions to be conducted in the United States during a specified period of time; and

(B) includes all launches in the United States (including launches conducted on or off a Federal range).

(c) Report

(1) In general

Not later than 180 days after October 28, 1998, the Secretary shall, in consultation with the Administrator and appropriate representatives of the satellite and launch industry and the governments of States and political subdivisions thereof—

(A) prepare a report that meets the requirements of this subsection; and

(B) submit that report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives.

(2) Requirements for report

The report prepared under this subsection shall—

(A) identify the total potential national mission model for the period beginning on the date of the report and ending on December 31, 2007;

(B) identify the resources that are necessary or available to carry out the total potential national mission model described in subparagraph (A), including—

(i) launch property and services of the Department of Defense, the National Aeronautics and Space Administration, and non-Federal facilities; and

(ii) the ability to support commercial launch-on-demand on short notification, taking into account Federal requirements, at launch sites or test ranges in the United States;

(C) identify each deficiency in the resources referred to in subparagraph (B); and

(D) with respect to the deficiencies identified under subparagraph (C), include estimates of the level of funding necessary to address those deficiencies for the period described in subparagraph (A).

(d) Recommendations

Based on the reports under subsection (c) of this section, the Secretary, after consultation with the Secretary of Transportation, the Secretary of Commerce, and representatives from interested private sector entities, States, and local governments, shall—

(1) identify opportunities for investment by non-Federal entities (including States and political subdivisions thereof and private sector entities) to assist the Federal Government in providing launch capabilities for the commercial space industry in the United States;

(2) identify one or more methods by which, if sufficient resources referred to in subsection (c)(2)(D) of this section are not available to the Department of Defense and the National Aeronautics and Space Administration, the control of the launch property and launch services of the Department of Defense and the National Aeronautics and Space Administration may be transferred from the Department of Defense and the National Aeronautics and Space Administration to—

(A) one or more other Federal agencies;

(B) one or more States (or subdivisions thereof);

(C) one or more private sector entities; or

(D) any combination of the entities described in subparagraphs (A) through (C); and

(3) identify the technical, structural, and legal impediments associated with making launch sites or test ranges in the United States viable and competitive.

(Pub. L. 105–303, title II, § 206, Oct. 28, 1998, 112 Stat. 2857.)

SUBCHAPTER III—COMMERCIAL REUSABLE IN-SPACE TRANSPORTATION

CODIFICATION

This subchapter was enacted as part of the Commercial Reusable In-Space Transportation Act of 2002, and also as part of the Department of Defense Appropriations Act, 2003, and not as part of the Commercial Space Act of 1998, which comprises subchapters I and II of this chapter.

§ 14751. Findings

Congress makes the following findings:

(1) It is in the national interest to encourage the production of cost-effective, in-space transportation systems, which would be built and operated by the private sector on a commercial basis.

(2) The use of reusable in-space transportation systems will enhance performance levels of in-space operations, enhance efficient and safe disposal of satellites at the end of their useful lives, and increase the capability and reliability of existing ground-to-space launch vehicles.

(3) Commercial reusable in-space transportation systems will enhance the economic well-being and national security of the United States by reducing space operations costs for commercial and national space programs and by adding new space capabilities to space operations.

(4) Commercial reusable in-space transportation systems will provide new cost-effective space capabilities (including orbital transfers from low altitude orbits to high altitude orbits and return, the correction of erroneous satellite orbits, and the recovery, refurbishment, and refueling of satellites) and the provision of upper stage functions to increase ground-to-orbit launch vehicle payloads to geostationary and other high energy orbits.

(5) Commercial reusable in-space transportation systems can enhance and enable the space exploration of the United States by providing lower cost trajectory injection from earth orbit, transit trajectory control, and planet arrival deceleration to support potential National Aeronautics and Space Administration missions to Mars, Pluto, and other planets.

(6) Satellites stranded in erroneous earth orbit due to deficiencies in their launch represent substantial economic loss to the United States and present substantial concerns for the current backlog of national space assets.

(7) Commercial reusable in-space transportation systems can provide new options for alternative planning approaches and risk management to enhance the mission assurance of national space assets.

(8) Commercial reusable in-space transportation systems developed by the private sector can provide in-space transportation services to the National Aeronautics and Space Administration, the Department of Defense, the National Reconnaissance Office, and other agencies without the need for the United States to bear the cost of production of such systems.

(9) The availability of loan guarantees, with the cost of credit risk to the United States paid by the private-sector, is an effective means by which the United States can help qualifying private-sector companies secure otherwise unattainable private financing for the production of commercial reusable in-space transportation systems, while at the same time minimizing Government commitment and involvement in the development of such systems.

(Pub. L. 107–248, title IX, § 902, Oct. 23, 2002, 116 Stat. 1573.)

SHORT TITLE

For short title of this subchapter as the ''Commercial Reusable In-Space Transportation Act of 2002'', see section 901 of Pub. L. 107–248, set out as a note under section 14701 of this title.

§ 14752. Loan guarantees for production of commercial reusable in-space transportation

(a) Authority to make loan guarantees

The Secretary may guarantee loans made to eligible United States commercial providers for purposes of producing commercial reusable in-space transportation services or systems.

(b) Eligible United States commercial providers

The Secretary shall prescribe requirements for the eligibility of United States commercial providers for loan guarantees under this section. Such requirements shall ensure that eligible providers are financially capable of undertaking a loan guaranteed under this section.

(c) Limitation on loans guaranteed

The Secretary may not guarantee a loan for a United States commercial provider under this section unless the Secretary determines that credit would not otherwise be reasonably available at the time of the guarantee for the commercial reusable in-space transportation service or system to be produced utilizing the proceeds of the loan.

(d) Credit subsidy

(1) Collection required

The Secretary shall collect from each United States commercial provider receiving a loan guarantee under this section an amount equal to the amount, as determined by the Secretary, to cover the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990 [2 U.S.C. 661a(5)], of the loan guarantee.

(2) Periodic disbursements

In the case of a loan guarantee in which proceeds of the loan are disbursed over time, the Secretary shall collect the amount required under this subsection on a pro rata basis, as determined by the Secretary, at the time of each disbursement.

(e) Other terms and conditions

(1) Prohibition on subordination

A loan guaranteed under this section may not be subordinated to another debt contracted by the United States commercial provider concerned, or to any other claims against such provider.

(2) Restriction on income

A loan guaranteed under this section may not—

(A) provide income which is excluded from gross income for purposes of chapter 1 of title 26; or

(B) provide significant collateral or security, as determined by the Secretary, for other obligations the income from which is so excluded.

(3) Treatment of guarantee

The guarantee of a loan under this section shall be conclusive evidence of the following:

(A) That the guarantee has been properly obtained.

(B) That the loan qualifies for the guarantee.

(C) That, but for fraud or material misrepresentation by the holder of the loan, the guarantee is valid, legal, and enforceable.

(4) Other terms and conditions

The Secretary may establish any other terms and conditions for a guarantee of a loan under this section, as the Secretary considers appropriate to protect the financial interests of the United States.

(f) Enforcement of rights

(1) In general

The Attorney General may take any action the Attorney General considers appropriate to enforce any right accruing to the United States under a loan guarantee under this section.

(2) Forbearance

The Attorney General may, with the approval of the parties concerned, forebear[1] from enforcing any right of the United States under a loan guaranteed under this section for the benefit of a United States commercial provider if such forbearance will not result in any cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990 [2 U.S.C. 661a(5)], to the United States.

(3) Utilization of property

Notwithstanding any other provision of law and subject to the terms of a loan guaranteed under this section, upon the default of a United States commercial provider under the loan, the Secretary may, at the election of the Secretary—

(A) assume control of the physical asset financed by the loan; and

(B) complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell the physical asset.

(g) Credit instruments

(1) Authority to issue instruments

Notwithstanding any other provision of law, the Secretary may, subject to such terms and conditions as the Secretary considers appropriate, issue credit instruments to United States commercial providers of in-space transportation services or system[2], with the aggregate cost (as determined under the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)) of such instruments not to exceed $1,500,000,000, but only to the extent that new budget authority to cover such costs is provided in subsequent appropriations Acts or authority is otherwise provided in subsequent appropriations Acts.

(2) Credit subsidy

The Secretary shall provide a credit subsidy for any credit instrument issued under this subsection in accordance with the provisions of the Federal Credit Reform Act of 1990.

(3) Construction

The eligibility of a United States commercial provider of in-space transportation services or systems for a credit instrument under this subsection is in addition to any eligibility of such provider for a loan guarantee under other provisions of this section.

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[1] So in original. Probably should be ''forbear''.

[2] So in original. Probably should be ''systems''.

(Pub. L. 107–248, title IX, § 903, Oct. 23, 2002, 116 Stat. 1574.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (g)(1), (2), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, as amended, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

SHORT TITLE

For short title of this subchapter, as the ''Commercial Reusable In-Space Transportation Act of 2002'', see section 901 of Pub. L. 107–248, set out as a note under section 14701 of this title.

§ 14753. Definitions

In this subchapter:

(1) Secretary

The term ''Secretary'' means the Secretary of Defense.

(2) Commercial provider

The term ''commercial provider'' means any person or entity providing commercial reusable in-orbit space transportation services or systems, primary control of which is held by persons other than the Federal Government, a State or local government, or a foreign government.

(3) In-space transportation services

The term ''in-space transportation services'' means operations and activities involved in the direct transportation or attempted transportation of a payload or object from one orbit to another by means of an in-space transportation vehicle.

(4) In-space transportation system

The term ''in-space transportation system'' means the space and ground elements, including in-space transportation vehicles and support space systems, and ground administration and control facilities and associated equipment, necessary for the provision of in-space transportation services.

(5) In-space transportation vehicle

The term ''in-space transportation vehicle'' means a vehicle designed—

(A) to be based and operated in space;

(B) to transport various payloads or objects from one orbit to another orbit; and

(C) to be reusable and refueled in space.

(6) United States commercial provider

The term ''United States commercial provider'' means any commercial provider organized under the laws of the United States that is more than 50 percent owned by United States nationals.

(Pub. L. 107–248, title IX, § 904, Oct. 23, 2002, 116 Stat. 1576.)

CHAPTER 142—POISON CONTROL CENTER ENHANCEMENT AND AWARENESS

§§ 14801 to 14805. Repealed. Pub. L. 108–194, § 4, Dec. 19, 2003, 117 Stat. 2891

Section 14801, Pub. L. 106–174, § 2, Feb. 25, 2000, 114 Stat. 18, related to congressional findings regarding poison control centers. See provisions set out as a note under section 300d–71 of this title.

Section 14802, Pub. L. 106–174, § 3, Feb. 25, 2000, 114 Stat. 18, defined ''Secretary''.

Section 14803, Pub. L. 106–174, § 4, Feb. 25, 2000, 114 Stat. 18, established a national toll-free number to be used to access regional poison control centers. See section 300d–71 of this title.

Section 14804, Pub. L. 106–174, § 5, Feb. 25, 2000, 114 Stat. 19, established a nationwide media campaign to educate the public and health care providers about poison prevention and the availability of poison control resources in local communities. See section 300d–72 of this title.

Section 14805, Pub. L. 106–174, § 6, Feb. 25, 2000, 114 Stat. 19, related to the award of grants to certified regional poison control centers. See section 300d–73 of this title.

SHORT TITLE

Pub. L. 106–174, § 1, Feb. 25, 2000, 114 Stat. 18, which provided that Pub. L. 106–174, enacting this chapter, could be cited as the ''Poison Control Center Enhancement and Awareness Act'', was repealed by Pub. L. 108–194, § 4, Dec. 19, 2003, 117 Stat. 2891.

CHAPTER 143—INTERCOUNTRY ADOPTIONS

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§ 14901. Findings and purposes

(a) Findings

Congress recognizes—

(1) the international character of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague on May 29, 1993); and

(2) the need for uniform interpretation and implementation of the Convention in the United States and abroad,

and therefore finds that enactment of a Federal law governing adoptions and prospective adoptions subject to the Convention involving United States residents is essential.

(b) Purposes

The purposes of this chapter are—

(1) to provide for implementation by the United States of the Convention;

(2) to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children's best interests; and

(3) to improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States.

(Pub. L. 106–279, § 2, Oct. 6, 2000, 114 Stat. 825.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 106–279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATES; TRANSITION RULE

Pub. L. 106–279, title V, § 505, Oct. 6, 2000, 114 Stat. 844, provided that:

''(a) EFFECTIVE DATES.—

''(1) PROVISIONS EFFECTIVE UPON ENACTMENT.—Sections 2, 3, 101 through 103, 202 through 205, 401(a), 403, 503, and 505(a) [enacting this section and sections 14902, 14911 to 14913, 14922 to 14924, 14941(a), 14943, and 14953 of this title and amending section 622 of this title] shall take effect on the date of the enactment of this Act [Oct. 6, 2000].

''(2) PROVISIONS EFFECTIVE UPON THE ENTRY INTO FORCE OF THE CONVENTION.—Subject to subsection (b), the provisions of this Act not specified in paragraph (1) [enacting sections 14914, 14921, 14931, 14932, 14941(b), (c), 14942, 14944, 14951, 14952, and 14954 of this title, amending sections 1101 and 1154 of Title 8, Aliens and Nationality, and enacting provisions set out as notes under this section] shall take effect upon the entry into force of the Convention for the United States pursuant to Article 46(2)(a) of the Convention.

''(b) TRANSITION RULE.—The Convention and this Act [see Short Title note below] shall not apply—

''(1) in the case of a child immigrating to the United States, if the application for advance processing of an orphan petition or petition to classify an orphan as an immediate relative for the child is filed before the effective date described in subsection (a)(2); or

''(2) in the case of a child emigrating from the United States, if the prospective adoptive parents of the child initiated the adoption process in their country of residence with the filing of an appropriate application before the effective date described in subsection (a)(2).''

SHORT TITLE

Pub. L. 106–279, § 1(a), Oct. 6, 2000, 114 Stat. 825, provided that: ''This Act [enacting this chapter and amending section 622 of this title and sections 1101 and 1154 of Title 8, Aliens and Nationality] may be cited as the 'Intercountry Adoption Act of 2000'.''

§ 14902. Definitions

As used in this chapter:

(1) Accredited agency

The term ''accredited agency'' means an agency accredited under subchapter II of this chapter to provide adoption services in the United States in cases subject to the Convention.

(2) Accrediting entity

The term ''accrediting entity'' means an entity designated under section 14922(a) of this title to accredit agencies and approve persons under subchapter II of this chapter.

(3) Adoption service

The term ''adoption service'' means—

(A) identifying a child for adoption and arranging an adoption;

(B) securing necessary consent to termination of parental rights and to adoption;

(C) performing a background study on a child or a home study on a prospective adoptive parent, and reporting on such a study;

(D) making determinations of the best interests of a child and the appropriateness of adoptive placement for the child;

(E) post-placement monitoring of a case until final adoption; and

(F) where made necessary by disruption before final adoption, assuming custody and providing child care or any other social service pending an alternative placement.

The term ''providing'', with respect to an adoption service, includes facilitating the provision of the service.

(4) Agency

The term ''agency'' means any person other than an individual.

(5) Approved person

The term ''approved person'' means a person approved under subchapter II of this chapter to provide adoption services in the United States in cases subject to the Convention.

(6) Attorney General

Except as used in section 14944 of this title, the term ''Attorney General'' means the Attorney General, acting through the Commissioner of Immigration and Naturalization.

(7) Central authority

The term ''central authority'' means the entity designated as such by any Convention country under Article 6(1) of the Convention.

(8) Central authority function

The term ''central authority function'' means any duty required to be carried out by a central authority under the Convention.

(9) Convention

The term ''Convention'' means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993.

(10) Convention adoption

The term ''Convention adoption'' means an adoption of a child resident in a foreign coun-

try party to the Convention by a United States citizen, or an adoption of a child resident in the United States by an individual residing in another Convention country.

(11) Convention record

The term ''Convention record'' means any item, collection, or grouping of information contained in an electronic or physical document, an electronic collection of data, a photograph, an audio or video tape, or any other information storage medium of any type whatever that contains information about a specific past, current, or prospective Convention adoption (regardless of whether the adoption was made final) that has been preserved in accordance with section 14941(a) of this title by the Secretary of State or the Attorney General.

(12) Convention country

The term ''Convention country'' means a country party to the Convention.

(13) Other Convention country

The term ''other Convention country'' means a Convention country other than the United States.

(14) Person

The term ''person'' shall have the meaning provided in section 1 of title 1 and shall not include any agency of government or tribal government entity.

(15) Person with an ownership or control interest

The term ''person with an ownership or control interest'' has the meaning given such term in section 1320a–3(a)(3) of this title.

(16) Secretary

The term ''Secretary'' means the Secretary of State.

(17) State

The term ''State'' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(Pub. L. 106–279, § 3, Oct. 6, 2000, 114 Stat. 826.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in pars. (1), (2), and (5), was in the original ''title II'', meaning title II of Pub. L. 106–279, Oct. 6, 2000, 114 Stat. 830, which enacted subchapter II of this chapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

SUBCHAPTER I—UNITED STATES CENTRAL AUTHORITY

§ 14911. Designation of central authority

(a) In general

For purposes of the Convention and this chapter—

(1) the Department of State shall serve as the central authority of the United States; and

(2) the Secretary shall serve as the head of the central authority of the United States.

(b) Performance of central authority functions

(1) Except as otherwise provided in this chapter, the Secretary shall be responsible for the performance of all central authority functions for the United States under the Convention and this chapter.

(2) All personnel of the Department of State performing core central authority functions in a professional capacity in the Office of Children's Issues shall have a strong background in consular affairs, personal experience in international adoptions, or professional experience in international adoptions or child services.

(c) Authority to issue regulations

Except as otherwise provided in this chapter, the Secretary may prescribe such regulations as may be necessary to carry out central authority functions on behalf of the United States.

(Pub. L. 106–279, title I, § 101, Oct. 6, 2000, 114 Stat. 827.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(1), and (c), was in the original ''this Act'', meaning Pub. L. 106–279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14912. Responsibilities of the Secretary of State

(a) Liaison responsibilities

The Secretary shall have responsibility for—

(1) liaison with the central authorities of other Convention countries; and

(2) the coordination of activities under the Convention by persons subject to the jurisdiction of the United States.

(b) Information exchange

The Secretary shall be responsible for—

(1) providing the central authorities of other Convention countries with information concerning—

(A) accredited agencies and approved persons, agencies and persons whose accreditation or approval has been suspended or canceled, and agencies and persons who have been temporarily or permanently debarred from accreditation or approval;

(B) Federal and State laws relevant to implementing the Convention; and

(C) any other matters necessary and appropriate for implementation of the Convention;

(2) not later than the date of the entry into force of the Convention for the United States (pursuant to Article 46(2)(a) of the Convention) and at least once during each subsequent calendar year, providing to the central authority of all other Convention countries a notice requesting the central authority of each such country to specify any requirements of such country regarding adoption, including restrictions on the eligibility of persons to adopt, with respect to which information on the prospective adoptive parent or parents in the United States would be relevant;

(3) making responses to notices under paragraph (2) available to—

(A) accredited agencies and approved persons; and

(B) other persons or entities performing home studies under section 14921(b)(1) of this title;

(4) ensuring the provision of a background report (home study) on prospective adoptive parent or parents (pursuant to the requirements of section 14923(b)(1)(A)(ii) of this title), through the central authority of each child's country of origin, to the court having jurisdiction over the adoption (or, in the case of a child emigrating to the United States for the purpose of adoption, to the competent authority in the child's country of origin with responsibility for approving the child's emigration) in adequate time to be considered prior to the granting of such adoption or approval;

(5) providing Federal agencies, State courts, and accredited agencies and approved persons with an identification of Convention countries and persons authorized to perform functions under the Convention in each such country; and

(6) facilitating the transmittal of other appropriate information to, and among, central authorities, Federal and State agencies (including State courts), and accredited agencies and approved persons.

(c) Accreditation and approval responsibilities

The Secretary shall carry out the functions prescribed by the Convention with respect to the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the Convention as provided in subchapter II of this chapter. Such functions may not be delegated to any other Federal agency.

(d) Additional responsibilities

The Secretary—

(1) shall monitor individual Convention adoption cases involving United States citizens; and

(2) may facilitate interactions between such citizens and officials of other Convention countries on matters relating to the Convention in any case in which an accredited agency or approved person is unwilling or unable to provide such facilitation.

(e) Establishment of registry

The Secretary and the Attorney General shall jointly establish a case registry of all adoptions involving immigration of children into the United States and emigration of children from the United States, regardless of whether the adoption occurs under the Convention. Such registry shall permit tracking of pending cases and retrieval of information on both pending and closed cases.

(f) Methods of performing responsibilities

The Secretary may—

(1) authorize public or private entities to perform appropriate central authority functions for which the Secretary is responsible, pursuant to regulations or under agreements published in the Federal Register; and

(2) carry out central authority functions through grants to, or contracts with, any individual or public or private entity, except as may be otherwise specifically provided in this chapter.

(Pub. L. 106–279, title I, § 102, Oct. 6, 2000, 114 Stat. 828.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in subsec. (c), was in the original ''title II'', meaning title II of Pub. L. 106–279, Oct. 6, 2000, 114 Stat. 830, which enacted subchapter II of this chapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14913. Responsibilities of the Attorney General

In addition to such other responsibilities as are specifically conferred upon the Attorney General by this chapter, the central authority functions specified in Article 14 of the Convention (relating to the filing of applications by prospective adoptive parents to the central authority of their country of residence) shall be performed by the Attorney General.

(Pub. L. 106–279, title I, § 103, Oct. 6, 2000, 114 Stat. 829.)

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14914. Annual report on intercountry adoptions

(a) Reports required

Beginning 1 year after the date of the entry into force of the Convention for the United States and each year thereafter, the Secretary, in consultation with the Attorney General and other appropriate agencies, shall submit a report describing the activities of the central authority of the United States under this chapter during the preceding year to the Committee on International Relations, the Committee on Ways and Means, and the Committee on the Judiciary of the House of Representatives and the Committee on Foreign Relations, the Committee on Finance, and the Committee on the Judiciary of the Senate.

(b) Report elements

Each report under subsection (a) of this section shall set forth with respect to the year concerned, the following:

(1) The number of intercountry adoptions involving immigration to the United States, regardless of whether the adoption occurred under the Convention, including the country from which each child emigrated, the State to which each child immigrated, and the country in which the adoption was finalized.

(2) The number of intercountry adoptions involving emigration from the United States, regardless of whether the adoption occurred under the Convention, including the country to which each child immigrated and the State from which each child emigrated.

(3) The number of Convention placements for adoption in the United States that were disrupted, including the country from which the child emigrated, the age of the child, the date of the placement for adoption, the reasons for the disruption, the resolution of the disruption, the agencies that handled the placement for adoption, and the plans for the child, and in addition, any information regarding disruption or dissolution of adoptions of children from other countries received pursuant to section 622(b)(12) of this title.

(4) The average time required for completion of a Convention adoption, set forth by country from which the child emigrated.

(5) The current list of agencies accredited and persons approved under this chapter to provide adoption services.

(6) The names of the agencies and persons temporarily or permanently debarred under this chapter, and the reasons for the debarment.

(7) The range of adoption fees charged in connection with Convention adoptions involving immigration to the United States and the median of such fees set forth by the country of origin.

(8) The range of fees charged for accreditation of agencies and the approval of persons in the United States engaged in providing adoption services under the Convention.

(Pub. L. 106–279, title I, § 104, Oct. 6, 2000, 114 Stat. 829; Pub. L. 109–288, § 6(f)(9), Sept. 28, 2006, 120 Stat. 1248.)

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–288 substituted ''622(b)(12)'' for ''622(b)(14)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under parts B and E of subchapter IV of chapter 7 of this title for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SUBCHAPTER II—PROVISIONS RELATING TO ACCREDITATION AND APPROVAL

§ 14921. Accreditation or approval required in order to provide adoption services in cases subject to the Convention

(a) In general

Except as otherwise provided in this subchapter, no person may offer or provide adoption services in connection with a Convention adoption in the United States unless that person—

(1) is accredited or approved in accordance with this subchapter; or

(2) is providing such services through or under the supervision and responsibility of an accredited agency or approved person.

(b) Exceptions

Subsection (a) of this section shall not apply to the following:

(1) Background studies and home studies

The performance of a background study on a child or a home study on a prospective adoptive parent, or any report on any such study by a social work professional or organization who is not providing any other adoption service in the case, if the background or home study is approved by an accredited agency.

(2) Child welfare services

The provision of a child welfare service by a person who is not providing any other adoption service in the case.

(3) Legal services

The provision of legal services by a person who is not providing any adoption service in the case.

(4) Prospective adoptive parents acting on own behalf

The conduct of a prospective adoptive parent on his or her own behalf in the case, to the extent not prohibited by the law of the State in which the prospective adoptive parent resides.

(Pub. L. 106–279, title II, § 201, Oct. 6, 2000, 114 Stat. 830.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original ''this title'', meaning title II of Pub. L. 106–279, Oct. 6, 2000, 114 Stat. 830, which enacted this subchapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14922. Process for accreditation and approval; role of accrediting entities

(a) Designation of accrediting entities

(1) In general

The Secretary shall enter into agreements with one or more qualified entities under

which such entities will perform the duties described in subsection (b) of this section in accordance with the Convention, this subchapter, and the regulations prescribed under section 14923 of this title, and upon entering into each such agreement shall designate the qualified entity as an accrediting entity.

(2) Qualified entities

In paragraph (1), the term ''qualified entity'' means—

(A) a nonprofit private entity that has expertise in developing and administering standards for entities providing child welfare services and that meets such other criteria as the Secretary may by regulation establish; or

(B) a public entity (other than a Federal entity), including an agency or instrumentality of State government having responsibility for licensing adoption agencies, that—

(i) has expertise in developing and administering standards for entities providing child welfare services;

(ii) accredits only agencies located in the State in which the public entity is located; and

(iii) meets such other criteria as the Secretary may by regulation establish.

(b) Duties of accrediting entities

The duties described in this subsection are the following:

(1) Accreditation and approval

Accreditation of agencies, and approval of persons, to provide adoption services in the United States in cases subject to the Convention.

(2) Oversight

Ongoing monitoring of the compliance of accredited agencies and approved persons with applicable requirements, including review of complaints against such agencies and persons in accordance with procedures established by the accrediting entity and approved by the Secretary.

(3) Enforcement

Taking of adverse actions (including requiring corrective action, imposing sanctions, and refusing to renew, suspending, or canceling accreditation or approval) for noncompliance with applicable requirements, and notifying the agency or person against whom adverse actions are taken of the deficiencies necessitating the adverse action.

(4) Data, records, and reports

Collection of data, maintenance of records, and reporting to the Secretary, the United States central authority, State courts, and other entities (including on persons and agencies granted or denied approval or accreditation), to the extent and in the manner that the Secretary requires.

(c) Remedies for adverse action by accrediting entity

(1) Correction of deficiency

An agency or person who is the subject of an adverse action by an accrediting entity may re-apply for accreditation or approval (or petition for termination of the adverse action) on demonstrating to the satisfaction of the accrediting entity that the deficiencies necessitating the adverse action have been corrected.

(2) No other administrative review

An adverse action by an accrediting entity shall not be subject to administrative review.

(3) Judicial review

An agency or person who is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located or the person resides to set aside the adverse action. The court shall review the adverse action in accordance with section 706 of title 5, and for purposes of such review the accrediting entity shall be considered an agency within the meaning of section 701 of such title.

(d) Fees

The amount of fees assessed by accrediting entities for the costs of accreditation shall be subject to approval by the Secretary. Such fees may not exceed the costs of accreditation. In reviewing the level of such fees, the Secretary shall consider the relative size of, the geographic location of, and the number of Convention adoption cases managed by the agencies or persons subject to accreditation or approval by the accrediting entity.

(Pub. L. 106–279, title II, § 202, Oct. 6, 2000, 114 Stat. 831.)

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14923. Standards and procedures for providing accreditation or approval

(a) In general

(1) Promulgation of regulations

The Secretary, shall, by regulation, prescribe the standards and procedures to be used by accrediting entities for the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the Convention.

(2) Consideration of views

In developing such regulations, the Secretary shall consider any standards or procedures developed or proposed by, and the views of, individuals and entities with interest and expertise in international adoptions and family social services, including public and private entities with experience in licensing and accrediting adoption agencies.

(3) Applicability of notice and comment rules

Subsections (b), (c), and (d) of section 553 of title 5 shall apply in the development and issuance of regulations under this section.

(b) Minimum requirements

(1) Accreditation

The standards prescribed under subsection (a) of this section shall include the require-

ment that accreditation of an agency may not be provided or continued under this subchapter unless the agency meets the following requirements:

(A) Specific requirements

(i) The agency provides prospective adoptive parents of a child in a prospective Convention adoption a copy of the medical records of the child (which, to the fullest extent practicable, shall include an English-language translation of such records) on a date which is not later than the earlier of the date that is 2 weeks before: (I) the adoption; or (II) the date on which the prospective parents travel to a foreign country to complete all procedures in such country relating to the adoption.

(ii) The agency ensures that a thorough background report (home study) on the prospective adoptive parent or parents has been completed in accordance with the Convention and with applicable Federal and State requirements and transmitted to the Attorney General with respect to each Convention adoption. Each such report shall include a criminal background check and a full and complete statement of all facts relevant to the eligibility of the prospective adopting parent or parents to adopt a child under any requirements specified by the central authority of the child's country of origin under section 14912(b)(3) of this title, including, in the case of a child emigrating to the United States for the purpose of adoption, the requirements of the child's country of origin applicable to adoptions taking place in such country. For purposes of this clause, the term ''background report (home study)'' includes any supplemental statement submitted by the agency to the Attorney General for the purpose of providing information relevant to any requirements specified by the child's country of origin.

(iii) The agency provides prospective adoptive parents with a training program that includes counseling and guidance for the purpose of promoting a successful intercountry adoption before such parents travel to adopt the child or the child is placed with such parents for adoption.

(iv) The agency employs personnel providing intercountry adoption services on a fee for service basis rather than on a contingent fee basis.

(v) The agency discloses fully its policies and practices, the disruption rates of its placements for intercountry adoption, and all fees charged by such agency for intercountry adoption.

(B) Capacity to provide adoption services

The agency has, directly or through arrangements with other persons, a sufficient number of appropriately trained and qualified personnel, sufficient financial resources, appropriate organizational structure, and appropriate procedures to enable the agency to provide, in accordance with this chapter, all adoption services in cases subject to the Convention.

(C) Use of social service professionals

The agency has established procedures designed to ensure that social service functions requiring the application of clinical skills and judgment are performed only by professionals with appropriate qualifications and credentials.

(D) Records, reports, and information matters

The agency is capable of—

(i) maintaining such records and making such reports as may be required by the Secretary, the United States central authority, and the accrediting entity that accredits the agency;

(ii) cooperating with reviews, inspections, and audits;

(iii) safeguarding sensitive individual information; and

(iv) complying with other requirements concerning information management necessary to ensure compliance with the Convention, this chapter, and any other applicable law.

(E) Liability insurance

The agency agrees to have in force adequate liability insurance for professional negligence and any other insurance that the Secretary considers appropriate.

(F) Compliance with applicable rules

The agency has established adequate measures to comply (and to ensure compliance of their agents and clients) with the Convention, this chapter, and any other applicable law.

(G) Nonprofit organization with state license to provide adoption services

The agency is a private nonprofit organization licensed to provide adoption services in at least one State.

(2) Approval

The standards prescribed under subsection (a) of this section shall include the requirement that a person shall not be approved under this subchapter unless the person is a private for-profit entity that meets the requirements of subparagraphs (A) through (F) of paragraph (1) of this subsection.

(3) Renewal of accreditation or approval

The standards prescribed under subsection (a) of this section shall provide that the accreditation of an agency or approval of a person under this subchapter shall be for a period of not less than 3 years and not more than 5 years, and may be renewed on a showing that the agency or person meets the requirements applicable to original accreditation or approval under this subchapter.

(c) Temporary registration of community based agencies

(1) One-year registration period for medium community based agencies

For a 1-year period after the entry into force of the Convention and notwithstanding subsection (b) of this section, the Secretary may provide, in regulations issued pursuant to sub-

section (a) of this section, that an agency may register with the Secretary and be accredited to provide adoption services in the United States in cases subject to the Convention during such period if the agency has provided adoption services in fewer than 100 intercountry adoptions in the preceding calendar year and meets the criteria described in paragraph (3).

(2) Two-year registration period for small community-based agencies

For a 2-year period after the entry into force of the Convention and notwithstanding subsection (b) of this section, the Secretary may provide, in regulations issued pursuant to subsection (a) of this section, that an agency may register with the Secretary and be accredited to provide adoption services in the United States in cases subject to the Convention during such period if the agency has provided adoption services in fewer than 50 intercountry adoptions in the preceding calendar year and meets the criteria described in paragraph (3).

(3) Criteria for registration

Agencies registered under this subsection shall meet the following criteria:

(A) The agency is licensed in the State in which it is located and is a nonprofit agency.

(B) The agency has been providing adoption services in connection with intercountry adoptions for at least 3 years.

(C) The agency has demonstrated that it will be able to provide the United States Government with all information related to the elements described in section 14914(b) of this title and provides such information.

(D) The agency has initiated the process of becoming accredited under the provisions of this chapter and is actively taking steps to become an accredited agency.

(E) The agency has not been found to be involved in any improper conduct relating to intercountry adoptions.

(Pub. L. 106–279, title II, § 203, Oct. 6, 2000, 114 Stat. 832.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1)(B), (D)(iv), (F) and (c)(3)(D) was in the original ''this Act'', meaning Pub. L. 106–279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14924. Secretarial oversight of accreditation and approval

(a) Oversight of accrediting entities

The Secretary shall—

(1) monitor the performance by each accrediting entity of its duties under section 14922 of this title and its compliance with the requirements of the Convention, this chapter, other applicable laws, and implementing regulations under this chapter; and

(2) suspend or cancel the designation of an accrediting entity found to be substantially out of compliance with the Convention, this chapter, other applicable laws, or implementing regulations under this chapter.

(b) Suspension or cancellation of accreditation or approval

(1) Secretary's authority

The Secretary shall suspend or cancel the accreditation or approval granted by an accrediting entity to an agency or person pursuant to section 14922 of this title when the Secretary finds that—

(A) the agency or person is substantially out of compliance with applicable requirements; and

(B) the accrediting entity has failed or refused, after consultation with the Secretary, to take appropriate enforcement action.

(2) Correction of deficiency

At any time when the Secretary is satisfied that the deficiencies on the basis of which an adverse action is taken under paragraph (1) have been corrected, the Secretary shall—

(A) notify the accrediting entity that the deficiencies have been corrected; and

(B)(i) in the case of a suspension, terminate the suspension; or

(ii) in the case of a cancellation, notify the agency or person that the agency or person may re-apply to the accrediting entity for accreditation or approval.

(c) Debarment

(1) Secretary's authority

On the initiative of the Secretary, or on request of an accrediting entity, the Secretary may temporarily or permanently debar an agency from accreditation or a person from approval under this subchapter, but only if—

(A) there is substantial evidence that the agency or person is out of compliance with applicable requirements; and

(B) there has been a pattern of serious, willful, or grossly negligent failures to comply or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned.

(2) Period of debarment

The Secretary's debarment order shall state whether the debarment is temporary or permanent. If the debarment is temporary, the Secretary shall specify a date, not earlier than 3 years after the date of the order, on or after which the agency or person may apply to the Secretary for withdrawal of the debarment.

(3) Effect of debarment

An accrediting entity may take into account the circumstances of the debarment of an agency or person that has been debarred pursuant to this subsection in considering any subsequent application of the agency or person, or of any other entity in which the agency or person has an ownership or control interest, for accreditation or approval under this subchapter.

(d) Judicial review

A person (other than a prospective adoptive parent), an agency, or an accrediting entity who

is the subject of a final action of suspension, cancellation, or debarment by the Secretary under this subchapter may petition the United States District Court for the District of Columbia or the United States district court in the judicial district in which the person resides or the agency or accrediting entity is located to set aside the action. The court shall review the action in accordance with section 706 of title 5.

(e) Failure to ensure a full and complete home study

(1) In general

Willful, grossly negligent, or repeated failure to ensure the completion and transmission of a background report (home study) that fully complies with the requirements of section 14923(b)(1)(A)(ii) of this title shall constitute substantial noncompliance with applicable requirements.

(2) Regulations

Regulations promulgated under section 14923 of this title shall provide for—

(A) frequent and careful monitoring of compliance by agencies and approved persons with the requirements of section 14923(b)(A)(ii)[1] of this title; and

(B) consultation between the Secretary and the accrediting entity where an agency or person has engaged in substantial noncompliance with the requirements of section 14923(b)(A)(ii)[1] of this title, unless the accrediting entity has taken appropriate corrective action and the noncompliance has not recurred.

(3) Repeated failures to comply

Repeated serious, willful, or grossly negligent failures to comply with the requirements of section 14923(b)(1)(A)(ii) of this title by an agency or person after consultation between Secretary and the accrediting entity with respect to previous noncompliance by such agency or person shall constitute a pattern of serious, willful, or grossly negligent failures to comply under subsection (c)(1)(B) of this section.

(4) Failure to comply with certain requirements

A failure to comply with the requirements of section 14923(b)(1)(A)(ii) of this title shall constitute a serious failure to comply under subsection (c)(1)(B) of this section unless it is shown by clear and convincing evidence that such noncompliance had neither the purpose nor the effect of determining the outcome of a decision or proceeding by a court or other competent authority in the United States or the child's country of origin.

(Pub. L. 106–279, title II, § 204, Oct. 6, 2000, 114 Stat. 835.)

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

[1] So in original. Probably should be section "14923(b)(1)(A)(ii)".

SUBCHAPTER III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

§ 14931. Adoptions of children immigrating to the United States

(a) Legal effect of certificates issued by the Secretary of State

(1) Issuance of certificates by the Secretary of State

The Secretary of State shall, with respect to each Convention adoption, issue a certificate to the adoptive citizen parent domiciled in the United States that the adoption has been granted or, in the case of a prospective adoptive citizen parent, that legal custody of the child has been granted to the citizen parent for purposes of emigration and adoption, pursuant to the Convention and this chapter, if the Secretary of State—

(A) receives appropriate notification from the central authority of such child's country of origin; and

(B) has verified that the requirements of the Convention and this chapter have been met with respect to the adoption.

(2) Legal effect of certificates

If appended to an original adoption decree, the certificate described in paragraph (1) shall be treated by Federal and State agencies, courts, and other public and private persons and entities as conclusive evidence of the facts certified therein and shall constitute the certification required by section 1154(d)(2) of title 8.

(b) Legal effect of Convention adoption finalized in another Convention country

A final adoption in another Convention country, certified by the Secretary of State pursuant to subsection (a) of this section or section 14932(c) of this title, shall be recognized as a final valid adoption for purposes of all Federal, State, and local laws of the United States.

(c) Condition on finalization of Convention adoption by State court

In the case of a child who has entered the United States from another Convention country for the purpose of adoption, an order declaring the adoption final shall not be entered unless the Secretary of State has issued the certificate provided for in subsection (a) of this section with respect to the adoption.

(Pub. L. 106–279, title III, § 301, Oct. 6, 2000, 114 Stat. 837.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original "this Act", meaning Pub. L. 106–279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106–279, set

out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14932. Adoptions of children emigrating from the United States

(a) Duties of accredited agency or approved person

In the case of a Convention adoption involving the emigration of a child residing in the United States to a foreign country, the accredited agency or approved person providing adoption services, or the prospective adoptive parent or parents acting on their own behalf (if permitted by the laws of such other Convention country in which they reside and the laws of the State in which the child resides), shall do the following:

(1) Ensure that, in accordance with the Convention—

(A) a background study on the child is completed;

(B) the accredited agency or approved person—

(i) has made reasonable efforts to actively recruit and make a diligent search for prospective adoptive parents to adopt the child in the United States; and

(ii) despite such efforts, has not been able to place the child for adoption in the United States in a timely manner; and

(C) a determination is made that placement with the prospective adoptive parent or parents is in the best interests of the child.

(2) Furnish to the State court with jurisdiction over the case—

(A) documentation of the matters described in paragraph (1);

(B) a background report (home study) on the prospective adoptive parent or parents (including a criminal background check) prepared in accordance with the laws of the receiving country; and

(C) a declaration by the central authority (or other competent authority) of such other Convention country—

(i) that the child will be permitted to enter and reside permanently, or on the same basis as the adopting parent, in the receiving country; and

(ii) that the central authority (or other competent authority) of such other Convention country consents to the adoption, if such consent is necessary under the laws of such country for the adoption to become final.

(3) Furnish to the United States central authority—

(A) official copies of State court orders certifying the final adoption or grant of custody for the purpose of adoption;

(B) the information and documents described in paragraph (2), to the extent required by the United States central authority; and

(C) any other information concerning the case required by the United States central authority to perform the functions specified in subsection (c) of this section or otherwise to carry out the duties of the United States central authority under the Convention.

(b) Conditions on State court orders

An order declaring an adoption to be final or granting custody for the purpose of adoption in a case described in subsection (a) of this section shall not be entered unless the court—

(1) has received and verified to the extent the court may find necessary—

(A) the material described in subsection (a)(2) of this section; and

(B) satisfactory evidence that the requirements of Articles 4 and 15 through 21 of the Convention have been met; and

(2) has determined that the adoptive placement is in the best interests of the child.

(c) Duties of the Secretary of State

In a case described in subsection (a) of this section, the Secretary, on receipt and verification as necessary of the material and information described in subsection (a)(3) of this section, shall issue, as applicable, an official certification that the child has been adopted or a declaration that custody for purposes of adoption has been granted, in accordance with the Convention and this chapter.

(d) Filing with registry regarding non-Convention adoptions

Accredited agencies, approved persons, and other persons, including governmental authorities, providing adoption services in an intercountry adoption not subject to the Convention that involves the emigration of a child from the United States shall file information required by regulations jointly issued by the Attorney General and the Secretary of State for purposes of implementing section 14912(e) of this title.

(Pub. L. 106–279, title III, § 303, Oct. 6, 2000, 114 Stat. 839.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SUBCHAPTER IV—ADMINISTRATION AND ENFORCEMENT

§ 14941. Access to Convention records

(a) Preservation of Convention records

(1) In general

Not later than 180 days after October 6, 2000, the Secretary, in consultation with the Attorney General, shall issue regulations that establish procedures and requirements in accordance with the Convention and this section for the preservation of Convention records.

(2) Applicability of notice and comment rules

Subsections (b), (c), and (d) of section 553 of title 5 shall apply in the development and issuance of regulations under this section.

(b) Access to Convention records

(1) Prohibition

Except as provided in paragraph (2), the Secretary or the Attorney General may disclose a

Convention record, and access to such a record may be provided in whole or in part, only if such record is maintained under the authority of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] and disclosure of, or access to, such record is permitted or required by applicable Federal law.

(2) Exception for administration of the Convention

A Convention record may be disclosed, and access to such a record may be provided, in whole or in part, among the Secretary, the Attorney General, central authorities, accredited agencies, and approved persons, only to the extent necessary to administer the Convention or this chapter.

(3) Penalties for unlawful disclosure

Unlawful disclosure of all or part of a Convention record shall be punishable in accordance with applicable Federal law.

(c) Access to non-Convention records

Disclosure of, access to, and penalties for unlawful disclosure of, adoption records that are not Convention records, including records of adoption proceedings conducted in the United States, shall be governed by applicable State law.

(Pub. L. 106–279, title IV, § 401, Oct. 6, 2000, 114 Stat. 841.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

This chapter, referred to in subsec. (b)(2), was in the original ''this Act'', meaning Pub. L. 106–279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Subsec. (a) of this section effective Oct. 6, 2000, and subsecs. (b) and (c) of this section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505 of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14942. Documents of other Convention countries

Documents originating in any other Convention country and related to a Convention adoption case shall require no authentication in order to be admissible in any Federal, State, or local court in the United States, unless a specific and supported claim is made that the documents are false, have been altered, or are otherwise unreliable.

(Pub. L. 106–279, title IV, § 402, Oct. 6, 2000, 114 Stat. 841.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14943. Authorization of appropriations; collection of fees

(a) Authorization of appropriations

(1) In general

There are authorized to be appropriated such sums as may be necessary to agencies of the Federal Government implementing the Convention and the provisions of this chapter.

(2) Availability of funds

Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(b) Assessment of fees

(1) The Secretary may charge a fee for new or enhanced services that will be undertaken by the Department of State to meet the requirements of this chapter with respect to intercountry adoptions under the Convention and comparable services with respect to other intercountry adoptions. Such fee shall be prescribed by regulation and shall not exceed the cost of such services.

(2) Fees collected under paragraph (1) shall be retained and deposited as an offsetting collection to any Department of State appropriation to recover the costs of providing such services. Such fees shall remain available for obligation until expended.

(c) Restriction

No funds collected under the authority of this section may be made available to an accrediting entity to carry out the purposes of this chapter.

(Pub. L. 106–279, title IV, § 403, Oct. 6, 2000, 114 Stat. 841; Pub. L. 107–228, div. A, title II, § 211(a), Sept. 30, 2002, 116 Stat. 1365.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–228, § 211(a)(1), inserted ''Such fees shall remain available for obligation until expended.'' at end.

Subsec. (b)(3). Pub. L. 107–228, § 211(a)(2), struck out par. (3) which read as follows: ''Fees authorized under this section shall be available for obligation only to the extent and in the amount provided in advance in appropriations Acts.''

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14944. Enforcement

(a) Civil penalties

Any person who—

(1) violates section 14921 of this title;

(2) makes a false or fraudulent statement, or misrepresentation, with respect to a material fact, or offers, gives, solicits, or accepts inducement by way of compensation, intended to influence or affect in the United States or a foreign country—

(A) a decision by an accrediting entity with respect to the accreditation of an agen-

cy or approval of a person under subchapter II of this chapter;

(B) the relinquishment of parental rights or the giving of parental consent relating to the adoption of a child in a case subject to the Convention; or

(C) a decision or action of any entity performing a central authority function; or

(3) engages another person as an agent, whether in the United States or in a foreign country, who in the course of that agency takes any of the actions described in paragraph (1) or (2),

shall be subject, in addition to any other penalty that may be prescribed by law, to a civil money penalty of not more than $50,000 for a first violation, and not more than $100,000 for each succeeding violation.

(b) Civil enforcement

(1) Authority of Attorney General

The Attorney General may bring a civil action to enforce subsection (a) of this section against any person in any United States district court.

(2) Factors to be considered in imposing penalties

In imposing penalties the court shall consider the gravity of the violation, the degree of culpability of the defendant, and any history of prior violations by the defendant.

(c) Criminal penalties

Whoever knowingly and willfully violates paragraph (1) or (2) of subsection (a) of this section shall be subject to a fine of not more than $250,000, imprisonment for not more than 5 years, or both.

(Pub. L. 106–279, title IV, § 404, Oct. 6, 2000, 114 Stat. 842.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in subsec. (a)(2)(A), was in the original ''title II'', meaning title II of Pub. L. 106–279, Oct. 6, 2000, 114 Stat. 830, which enacted subchapter II of this chapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SUBCHAPTER V—GENERAL PROVISIONS

§ 14951. Recognition of Convention adoptions

Subject to Article 24 of the Convention, adoptions concluded between two other Convention countries that meet the requirements of Article 23 of the Convention and that became final before the date of entry into force of the Convention for the United States shall be recognized thereafter in the United States and given full effect. Such recognition shall include the specific effects described in Article 26 of the Convention.

(Pub. L. 106–279, title V, § 501, Oct. 6, 2000, 114 Stat. 843.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14952. Special rules for certain cases

(a) Authority to establish alternative procedures for adoption of children by relatives

To the extent consistent with the Convention, the Secretary may establish by regulation alternative procedures for the adoption of children by individuals related to them by blood, marriage, or adoption, in cases subject to the Convention.

(b) Waiver authority

(1) In general

Notwithstanding any other provision of this chapter, to the extent consistent with the Convention, the Secretary may, on a case-by-case basis, waive applicable requirements of this chapter or regulations issued under this chapter, in the interests of justice or to prevent grave physical harm to the child.

(2) Nondelegation

The authority provided by paragraph (1) may not be delegated.

(Pub. L. 106–279, title V, § 502, Oct. 6, 2000, 114 Stat. 843.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original ''this Act'', meaning Pub. L. 106–279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14953. Relationship to other laws

(a) Preemption of inconsistent State law

The Convention and this chapter shall not be construed to preempt any provision of the law of any State or political subdivision thereof, or prevent a State or political subdivision thereof from enacting any provision of law with respect to the subject matter of the Convention or this chapter, except to the extent that such provision of State law is inconsistent with the Convention or this chapter, and then only to the extent of the inconsistency.

(b) Applicability of the Indian Child Welfare Act

The Convention and this chapter shall not be construed to affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

(c) Relationship to other laws

Sections 3506(c), 3507, and 3512 of title 44 shall not apply to information collection for purposes

of sections 14914, 14922(b)(4), and 14932(d) of this title or for use as a Convention record as defined in this chapter.

(Pub. L. 106–279, title V, § 503, Oct. 6, 2000, 114 Stat. 843.)

REFERENCES IN TEXT

The Indian Child Welfare Act of 1978, referred to in subsec. (b), is Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§ 1901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 25 and Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14954. No private right of action

The Convention and this chapter shall not be construed to create a private right of action to seek administrative or judicial relief, except to the extent expressly provided in this chapter.

(Pub. L. 106–279, title V, § 504, Oct. 6, 2000, 114 Stat. 843.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

CHAPTER 144—DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS

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SUBCHAPTER I—PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

PART A—GENERAL PROVISIONS

§ 15001. Findings, purposes, and policy

(a) Findings

Congress finds that—

(1) disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to live independently, to exert control and choice over their own lives, and to fully participate in and contribute to their communities through full integration and inclusion in the economic, political, social, cultural, and educational mainstream of United States society;

(2) in 1999, there were between 3,200,000 and 4,500,000 individuals with developmental disabilities in the United States, and recent studies indicate that individuals with developmental disabilities comprise between 1.2 and 1.65 percent of the United States population;

(3) individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;

(4) individuals with developmental disabilities often encounter discrimination in the provision of critical services, such as services in the areas of emphasis (as defined in section 15002 of this title);

(5) individuals with developmental disabilities are at greater risk than the general population of abuse, neglect, financial and sexual exploitation, and the violation of their legal and human rights;

(6) a substantial portion of individuals with developmental disabilities and their families do not have access to appropriate support and services, including access to assistive technology, from generic and specialized service systems, and remain unserved or underserved;

(7) individuals with developmental disabilities often require lifelong community services, individualized supports, and other forms of assistance, that are most effective when provided in a coordinated manner;

(8) there is a need to ensure that services, supports, and other assistance are provided in a culturally competent manner, that ensures that individuals from racial and ethnic minority backgrounds are fully included in all activities provided under this subchapter;

(9) family members, friends, and members of the community can play an important role in enhancing the lives of individuals with developmental disabilities, especially when the family members, friends, and community members are provided with the necessary community services, individualized supports, and other forms of assistance;

(10) current research indicates that 88 percent of individuals with developmental disabilities live with their families or in their own households;

(11) many service delivery systems and communities are not prepared to meet the impending needs of the 479,862 adults with developmental disabilities who are living at home with parents who are 60 years old or older and who serve as the primary caregivers of the adults;

(12) in almost every State, individuals with developmental disabilities are waiting for appropriate services in their communities, in the areas of emphasis;

(13) the public needs to be made more aware of the capabilities and competencies of individuals with developmental disabilities, particularly in cases in which the individuals are provided with necessary services, supports, and other assistance;

(14) as increasing numbers of individuals with developmental disabilities are living, learning, working, and participating in all aspects of community life, there is an increasing need for a well trained workforce that is able to provide the services, supports, and other forms of direct assistance required to enable the individuals to carry out those activities;

(15) there needs to be greater effort to recruit individuals from minority backgrounds into professions serving individuals with developmental disabilities and their families;

(16) the goals of the Nation properly include a goal of providing individuals with developmental disabilities with the information, skills, opportunities, and support to—

(A) make informed choices and decisions about their lives;

(B) live in homes and communities in which such individuals can exercise their full rights and responsibilities as citizens;

(C) pursue meaningful and productive lives;

(D) contribute to their families, communities, and States, and the Nation;

(E) have interdependent friendships and relationships with other persons;

(F) live free of abuse, neglect, financial and sexual exploitation, and violations of their legal and human rights; and

(G) achieve full integration and inclusion in society, in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of each individual; and

(17) as the Nation, States, and communities maintain and expand community living options for individuals with developmental disabilities, there is a need to evaluate the access to those options by individuals with developmental disabilities and the effects of those options on individuals with developmental disabilities.

(b) Purpose

The purpose of this subchapter is to assure that individuals with developmental disabilities and their families participate in the design of and have access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life, through culturally competent programs authorized under this subchapter, including specifically—

(1) State Councils on Developmental Disabilities in each State to engage in advocacy, capacity building, and systemic change activities that—

(A) are consistent with the purpose described in this subsection and the policy described in subsection (c) of this section; and

(B) contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system that includes needed community services, individualized supports, and other forms of assistance that promote self-determination for individuals with developmental disabilities and their families;

(2) protection and advocacy systems in each State to protect the legal and human rights of individuals with developmental disabilities;

(3) University Centers for Excellence in Developmental Disabilities Education, Research, and Service—

(A) to provide interdisciplinary pre-service preparation and continuing education of students and fellows, which may include the preparation and continuing education of leadership, direct service, clinical, or other personnel to strengthen and increase the capacity of States and communities to achieve the purpose of this subchapter;

(B) to provide community services—

(i) that provide training and technical assistance for individuals with developmental disabilities, their families, professionals, paraprofessionals, policymakers, students, and other members of the community; and

(ii) that may provide services, supports, and assistance for the persons described in clause (i) through demonstration and model activities;

(C) to conduct research, which may include basic or applied research, evaluation, and the analysis of public policy in areas that affect or could affect, either positively or negatively, individuals with developmental disabilities and their families; and

(D) to disseminate information related to activities undertaken to address the purpose of this subchapter, especially dissemination of information that demonstrates that the network authorized under this part is a national and international resource that includes specific substantive areas of expertise that may be accessed and applied in diverse settings and circumstances; and

(4) funding for—

(A) national initiatives to collect necessary data on issues that are directly or indirectly relevant to the lives of individuals with developmental disabilities;

(B) technical assistance to entities who engage in or intend to engage in activities consistent with the purpose described in this subsection or the policy described in subsection (c) of this section; and

(C) other nationally significant activities.

(c) Policy

It is the policy of the United States that all programs, projects, and activities receiving assistance under this subchapter shall be carried out in a manner consistent with the principles that—

(1) individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of self-determination, independence, productivity, and integration and inclusion in all facets of community life, but often require the provision of community services, individualized supports, and other forms of assistance;

(2) individuals with developmental disabilities and their families have competencies, capabilities, and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of such individuals;

(3) individuals with developmental disabilities and their families are the primary decisionmakers regarding the services and supports such individuals and their families receive, including regarding choosing where the individuals live from available options, and play decisionmaking roles in policies and programs that affect the lives of such individuals and their families;

(4) services, supports, and other assistance should be provided in a manner that demonstrates respect for individual dignity, personal preferences, and cultural differences;

(5) specific efforts must be made to ensure that individuals with developmental disabilities from racial and ethnic minority backgrounds and their families enjoy increased and meaningful opportunities to access and use community services, individualized supports, and other forms of assistance available to other individuals with developmental disabilities and their families;

(6) recruitment efforts in disciplines related to developmental disabilities relating to preservice training, community training, practice, administration, and policymaking must focus on bringing larger numbers of racial and ethnic minorities into the disciplines in order to provide appropriate skills, knowledge, role models, and sufficient personnel to address the growing needs of an increasingly diverse population;

(7) with education and support, communities can be accessible to and responsive to the needs of individuals with developmental disabilities and their families and are enriched by full and active participation in community activities, and contributions, by individuals with developmental disabilities and their families;

(8) individuals with developmental disabilities have access to opportunities and the necessary support to be included in community life, have interdependent relationships, live in homes and communities, and make contributions to their families, communities, and States, and the Nation;

(9) efforts undertaken to maintain or expand community-based living options for individuals with disabilities should be monitored in order to determine and report to appropriate individuals and entities the extent of access by individuals with developmental disabilities to those options and the extent of compliance by entities providing those options with quality assurance standards;

(10) families of children with developmental disabilities need to have access to and use of safe and appropriate child care and before-school and after-school programs, in the most integrated settings, in order to enrich the participation of the children in community life;

(11) individuals with developmental disabilities need to have access to and use of public transportation, in order to be independent and directly contribute to and participate in all facets of community life; and

(12) individuals with developmental disabilities need to have access to and use of recreational, leisure, and social opportunities in the most integrated settings, in order to enrich their participation in community life.

(Pub. L. 106–402, title I, § 101, Oct. 30, 2000, 114 Stat. 1678.)

SHORT TITLE

Pub. L. 106–402, § 1(a), Oct. 30, 2000, 114 Stat. 1677, provided that: ''This Act [see Tables for classification] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act of 2000'.''

Pub. L. 106–402, title II, § 201, Oct. 30, 2000, 114 Stat. 1728, provided that: ''This title [enacting subchapter II of this chapter] may be cited as the 'Families of Children With Disabilities Support Act of 2000'.''

SPECIAL OLYMPICS SPORT AND EMPOWERMENT

Pub. L. 108–406, Oct. 30, 2004, 118 Stat. 2294, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Special Olympics Sport and Empowerment Act of 2004'.

''SEC. 2. FINDINGS AND PURPOSE.

''(a) FINDINGS.—Congress finds the following:

''(1) Special Olympics celebrates the possibilities of a world where everybody matters, everybody counts, every person has value, and every person has worth.

''(2) The Government and the people of the United States recognize the dignity and value the giftedness of children and adults with an intellectual disability.

''(3) The Government and the people of the United States are determined to end the isolation and stigmatization of people with an intellectual disability.

''(4) For more than 36 years, Special Olympics has encouraged skill, sharing, courage, and joy through year-round sports training and athletic competition for children and adults with intellectual disabilities.

''(5) Special Olympics provides year-round sports training and competitive opportunities to 1,500,000 athletes with intellectual disabilities in 26 sports and plans to expand the joy of participation through sport to hundreds of thousands of people with intellectual disabilities within the United States and worldwide over the next 5 years.

''(6) Special Olympics has demonstrated its ability to provide a major positive effect on the quality of life of people with intellectual disabilities, improving their health and physical well-being, building their confidence and self-esteem, and giving them a voice to become active and productive members of their communities.

''(7) In society as a whole, Special Olympics has become a vehicle and platform for breaking down artificial barriers, improving public health, changing negative attitudes in education, and helping athletes overcome the prejudice that people with intellectual disabilities face in too many places.

''(8) The Government of the United States enthusiastically supports Special Olympics, recognizes its importance in improving the lives of people with intellectual disabilities, and recognizes Special Olympics as a valued and important component of the global community.

''(b) PURPOSE.—The purposes of this Act are to—

''(1) provide support to Special Olympics to increase athlete participation in and public awareness about the Special Olympics movement;

''(2) dispel negative stereotypes about people with intellectual disabilities;

''(3) build athletic and family involvement through sport; and

''(4) promote the extraordinary gifts of people with intellectual disabilities.

''SEC. 3. ASSISTANCE FOR SPECIAL OLYMPICS.

''(a) EDUCATION ACTIVITIES.—The Secretary of Education may award grants to, or enter into contracts or cooperative agreements with, Special Olympics to carry out the following:

''(1) Activities to promote the expansion of Special Olympics, including activities to increase the participation of individuals with intellectual disabilities within the United States.

''(2) The design and implementation of Special Olympics education programs, including character education and volunteer programs that support the purposes of this Act, that can be integrated into classroom instruction and are consistent with academic content standards.

''(b) INTERNATIONAL ACTIVITIES.—The Secretary of State may award grants to, or enter into contracts or cooperative agreements with, Special Olympics to carry out the following:

''(1) Activities to increase the participation of individuals with intellectual disabilities in Special Olympics outside of the United States.

''(2) Activities to improve the awareness outside of the United States of the abilities and unique contributions that individuals with intellectual disabilities can make to society.

''(c) HEALTHY ATHLETES.—

''(1) IN GENERAL.—The Secretary of Health and Human Services may award grants to, or enter into contracts or cooperative agreements with, Special Olympics for the implementation of on-site health assessments, screening for health problems, health education, data collection, and referrals to direct health care services.

''(2) COORDINATION.—Activities under paragraph (1) shall be coordinated with private health providers, existing authorized programs of State and local jurisdictions, or the Department of Health and Human Services, as applicable.

''(d) LIMITATION.—Amounts appropriated to carry out this section shall not be used for direct treatment of diseases, medical conditions, or mental health conditions. Nothing in the preceding sentence shall be construed to limit the use of non-Federal funds by Special Olympics.

''SEC. 4. APPLICATION AND ANNUAL REPORT.

''(a) APPLICATION.—

''(1) IN GENERAL.—To be eligible for a grant, contract, or cooperative agreement under subsection (a), (b), or (c) of section 3, Special Olympics shall submit an application at such time, in such manner, and containing such information as the Secretary of Education, Secretary of State, or Secretary of Health and Human Services, as applicable, may require.

''(2) CONTENT.—At a minimum, an application under this subsection shall contain the following:

''(A) ACTIVITIES.—A description of activities to be carried out with the grant, contract, or cooperative agreement.

''(B) MEASURABLE GOALS.—Information on specific measurable goals and objectives to be achieved through activities carried out with the grant, contract, or cooperative agreement.

''(b) ANNUAL REPORT.—

''(1) IN GENERAL.—As a condition on receipt of any funds under subsection (a), (b), or (c) of section 3, Special Olympics shall agree to submit an annual report at such time, in such manner, and containing such information as the Secretary of Education, Secretary of State, or Secretary of Health and Human Services, as applicable, may require.

''(2) CONTENT.—At a minimum, each annual report under this subsection shall describe the degree to which progress has been made toward meeting the goals and objectives described in the applications submitted under subsection (a).

''SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated—

''(1) for grants, contracts, or cooperative agreements under section 3(a), $5,500,000 for fiscal year 2005, and such sums as may be necessary for each of the 4 succeeding fiscal years;

''(2) for grants, contracts, or cooperative agreements under section 3(b), $3,500,000 for fiscal year 2005, and such sums as may be necessary for each of the 4 succeeding fiscal years; and

''(3) for grants, contracts, or cooperative agreements under section 3(c), $6,000,000 for each of fiscal years 2005 through 2009.''

EX. ORD. NO. 12994. PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Ex. Ord. No. 12994, Mar. 21, 1996, 61 F.R. 13047, as amended by Ex. Ord. No. 13309, July 25, 2003, 68 F.R. 44851, provided:

The President's Committee on Mental Retardation, established by Executive Order No. 11280 [former 42 U.S.C. note prec. 2661] on May 11, 1966, as superseded by Executive Order No. 11776 on March 28, 1974, has organized national planning, stimulated development of plans, policies and programs, and advanced the concept of community participation in the field of intellectual disabilities.

National goals have been established to:

(1) promote full participation of people with intellectual disabilities in their communities;

(2) provide all necessary supports to people with intellectual disabilities and their families for such participation;

(3) reduce the occurrence and severity of intellectual disabilities by one-half by the year 2010;

(4) assure the full citizenship rights of all people with intellectual disabilities, including those rights secured by such landmark statutes as the Americans with Disabilities Act of 1990, Public Law 101–336 (42 U.S.C. 12101 *et seq.*);

(5) recognize the right of all people with intellectual disabilities to self-determination and autonomy, to be treated in a nondiscriminatory manner, and to exercise meaningful choice, with whatever supports are necessary to effectuate these rights;

(6) recognize the right of all people with intellectual disabilities to enjoy a quality of life that promotes independence, self-determination, and participation as productive members of society; and

(7) promote the widest possible dissemination of information on models, programs, and services in the field of intellectual disabilities.

The achievement of these goals will require the most effective possible use of public and private resources.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

SECTION 1. *Committee Continued and Responsibilities Expanded*. The President's Committee on Mental Retardation, with expanded membership and expanded responsibilities, and renamed the President's Committee for People with Intellectual Disabilities (the ''Committee''), is hereby continued in operation.

SEC. 2. *Composition of Committee*. (a) The Committee shall be composed of the following members:

(1) The Secretary of Health and Human Services;

(2) The Secretary of Education;

(3) The Attorney General;

(4) The Secretary of Labor;

(5) The Secretary of Housing and Urban Development;

(6) The Secretary of Commerce;

(7) The Secretary of Transportation;

(8) The Secretary of the Interior;

(9) The Secretary of Homeland Security;

(10) The Chief Executive Officer of the Corporation for National and Community Service (formerly ACTION);

(11) The Commissioner of Social Security;

(12) The Chair of the Equal Employment Opportunity Commission;

(13) The Chairperson of the National Council on Disability;

(10)[sic] No more than 21 other members who shall be appointed to the Committee by the President. These citizen members shall consist of individuals who represent a broad spectrum of perspectives, experience, and expertise on intellectual disabilities, and shall include self-advocates with intellectual disabilities and members of families with a child or adult with intellectual disabilities, and persons employed in either the public or the private sector. Except as the President may from time to time otherwise direct, appointees under this paragraph shall have two-year terms, except that an appointment made to fill a vacancy occurring before the expiration of a term shall be made for the balance of the unexpired term.

(b) The President shall designate the Chair of the Committee from the 21 citizen members. The Chair shall advise and counsel the Committee and represent the Committee on appropriate occasions.

SEC. 3. *Functions of the Committee*. (a) The Committee shall provide such advice and assistance in the area of intellectual disabilities as the President or Secretary of Health and Human Services may request, and particularly shall advise with respect to the following areas:

(1) evaluating and monitoring the national efforts to establish appropriate policies and supports for people with intellectual disabilities;

(2) providing suggestions for improvement in the delivery of intellectual disabilities services, including preventive services, the promulgation of effective and humane policies, and the provision of necessary supports;

(3) identifying the extent to which various Federal and State programs achieve the national goals in intellectual disabilities described in the preamble to this order and have a positive impact on the lives of people with intellectual disabilities;

(4) facilitating liaison among Federal, State, and local governments, foundations, nonprofit organizations, other private organizations, and citizens concerning intellectual disabilities;

(5) developing and disseminating such information as will tend to reduce the incidence and severity of intellectual disabilities; and

(6) promoting the concept of community participation and development of community supports for citizens with intellectual disabilities.

(b) The Committee shall make an annual report, through the Secretary of Health and Human Services, to the President concerning intellectual disabilities. Such additional reports may be made as the President may require or as the Committee may deem appropriate.

SEC. 4. *Cooperation by Other Agencies*. To assist the Committee in providing advice to the President, Federal departments and agencies requested to do so by the Committee shall designate liaison officers to the Committee. Such officers shall, on request by the Committee, and to the extent permitted by law, provide the Committee with information on department and agency programs that do contribute to or could contribute to achievement of the President's goals in the field of intellectual disabilities.

SEC. 5. *Administration*. (a) The Department of Health and Human Services shall, to the extent permitted by law, provide the Committee with necessary staff, administrative services, and facilities and funding.

(b) Each member of the Committee, except any member who receives other compensation from the United States Government, may receive compensation for each day he or she is engaged in the work of the Committee, as authorized by law (5 U.S.C. 3109), and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701–5707), for persons employed intermittently in the Government service. Committee members with disabilities may be compensated for attendant expenses, consistent with Government procedures and practices.

(c) The Secretary of Health and Human Services shall perform such other functions with respect to the Committee as may be required by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), except that of reporting to the Congress.

SEC. 6. *Construction*. Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency, to the authority of the Committee or as abrogating or restricting any such function in any manner.

SEC. 7. *Superseded Authority*. Executive Order No. 11776 is hereby superseded.

EXTENSION OF TERM OF PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Term of the President's Committee on Mental Retardation extended until Dec. 31, 1982, by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1993, by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1999, by Ex. Ord. No. 13062, § 1(k), Sept. 29, 1997, 62 F.R. 51755, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

EX. ORD. NO. 13309. AMENDMENTS TO EXECUTIVE ORDER 12994, AND RENAMING THE PRESIDENT'S COMMITTEE ON MENTAL RETARDATION AS THE PRESIDENT'S COMMITTEE FOR PEOPLE WITH INTELLECTUAL DISABILITIES

Ex. Ord. No. 13309, July 25, 2003, 68 F.R. 44851, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to change the name of the "President's Committee on Mental Retardation" to the "President's Committee for People with Intellectual Disabilities" (the "Committee") and expand the membership of the Committee, it is hereby ordered as follows:

SECTION 1. The President's Committee on Mental Retardation is hereby renamed the President's Committee for People with Intellectual Disabilities.

[SECS. 2 to 4. Amended Ex. Ord. No. 12994, set out above.]

SEC. 5. The Committee is continued until September 30, 2005.

GEORGE W. BUSH.

EXTENSION OF TERM OF PRESIDENT'S COMMITTEE FOR PEOPLE WITH INTELLECTUAL DISABILITIES

Term of the President's Committee for People with Intellectual Disabilities extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 15002. Definitions

In this subchapter:

(1) American Indian Consortium

The term "American Indian Consortium" means any confederation of 2 or more recognized American Indian tribes, created through the official action of each participating tribe, that has a combined total resident population of 150,000 enrolled tribal members and a contiguous territory of Indian lands in 2 or more States.

(2) Areas of emphasis

The term "areas of emphasis" means the areas related to quality assurance activities, education activities and early intervention activities, child care-related activities, health-related activities, employment-related activities, housing-related activities, transportation-related activities, recreation-related activities, and other services available or offered to individuals in a community, including formal and informal community supports, that affect their quality of life.

(3) Assistive technology device

The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with developmental disabilities.

(4) Assistive technology service

The term "assistive technology service" means any service that directly assists an individual with a developmental disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) conducting an evaluation of the needs of an individual with a developmental disability, including a functional evaluation of the individual in the individual's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of an assistive technology device by an individual with a developmental disability;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing an assistive technology device;

(D) coordinating and using another therapy, intervention, or service with an assistive technology device, such as a therapy, intervention, or service associated with an education or rehabilitation plan or program;

(E) providing training or technical assistance for an individual with a developmental disability, or, where appropriate, a family member, guardian, advocate, or authorized representative of an individual with a developmental disability; and

(F) providing training or technical assistance for professionals (including individuals providing education and rehabilitation serv-

ices), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of, an individual with developmental disabilities.

(5) Center

The term ''Center'' means a University Center for Excellence in Developmental Disabilities Education, Research, and Service established under part D of this subchapter.

(6) Child care-related activities

The term ''child care-related activities'' means advocacy, capacity building, and systemic change activities that result in families of children with developmental disabilities having access to and use of child care services, including before-school, after-school, and out-of-school services, in their communities.

(7) Culturally competent

The term ''culturally competent'', used with respect to services, supports, or other assistance, means services, supports, or other assistance that is conducted or provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language, and behaviors of individuals who are receiving the services, supports, or other assistance, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program involved.

(8) Developmental disability

(A) In general

The term ''developmental disability'' means a severe, chronic disability of an individual that—

(i) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) is manifested before the individual attains age 22;

(iii) is likely to continue indefinitely;

(iv) results in substantial functional limitations in 3 or more of the following areas of major life activity:

(I) Self-care.

(II) Receptive and expressive language.

(III) Learning.

(IV) Mobility.

(V) Self-direction.

(VI) Capacity for independent living.

(VII) Economic self-sufficiency; and

(v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(B) Infants and young children

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

(9) Early intervention activities

The term ''early intervention activities'' means advocacy, capacity building, and systemic change activities provided to individuals described in paragraph (8)(B) and their families to enhance—

(A) the development of the individuals to maximize their potential; and

(B) the capacity of families to meet the special needs of the individuals.

(10) Education activities

The term ''education activities'' means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities being able to access appropriate supports and modifications when necessary, to maximize their educational potential, to benefit from lifelong educational activities, and to be integrated and included in all facets of student life.

(11) Employment-related activities

The term ''employment-related activities'' means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities acquiring, retaining, or advancing in paid employment, including supported employment or self-employment, in integrated settings in a community.

(12) Family support services

(A) In general

The term ''family support services'' means services, supports, and other assistance, provided to families with members who have developmental disabilities, that are designed to—

(i) strengthen the family's role as primary caregiver;

(ii) prevent inappropriate out-of-the-home placement of the members and maintain family unity; and

(iii) reunite families with members who have been placed out of the home whenever possible.

(B) Specific services

Such term includes respite care, provision of rehabilitation technology and assistive technology, personal assistance services, parent training and counseling, support for families headed by aging caregivers, vehicular and home modifications, and assistance with extraordinary expenses, associated with the needs of individuals with developmental disabilities.

(13) Health-related activities

The term ''health-related activities'' means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of coordinated health, dental, mental health, and other human and social services, including prevention activities, in their communities.

(14) Housing-related activities

The term ''housing-related activities'' means advocacy, capacity building, and sys-

temic change activities that result in individuals with developmental disabilities having access to and use of housing and housing supports and services in their communities, including assistance related to renting, owning, or modifying an apartment or home.

(15) Inclusion

The term ''inclusion'', used with respect to individuals with developmental disabilities, means the acceptance and encouragement of the presence and participation of individuals with developmental disabilities, by individuals without disabilities, in social, educational, work, and community activities, that enables individuals with developmental disabilities to—

(A) have friendships and relationships with individuals and families of their own choice;

(B) live in homes close to community resources, with regular contact with individuals without disabilities in their communities;

(C) enjoy full access to and active participation in the same community activities and types of employment as individuals without disabilities; and

(D) take full advantage of their integration into the same community resources as individuals without disabilities, living, learning, working, and enjoying life in regular contact with individuals without disabilities.

(16) Individualized supports

The term ''individualized supports'' means supports that—

(A) enable an individual with a developmental disability to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life;

(B) are designed to—

(i) enable such individual to control such individual's environment, permitting the most independent life possible;

(ii) prevent placement into a more restrictive living arrangement than is necessary; and

(iii) enable such individual to live, learn, work, and enjoy life in the community; and

(C) include—

(i) early intervention services;

(ii) respite care;

(iii) personal assistance services;

(iv) family support services;

(v) supported employment services;

(vi) support services for families headed by aging caregivers of individuals with developmental disabilities; and

(vii) provision of rehabilitation technology and assistive technology, and assistive technology services.

(17) Integration

The term ''integration'', used with respect to individuals with developmental disabilities, means exercising the equal right of individuals with developmental disabilities to access and use the same community resources as are used by and available to other individuals.

(18) Not-for-profit

The term ''not-for-profit'', used with respect to an agency, institution, or organization, means an agency, institution, or organization that is owned or operated by 1 or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(19) Personal assistance services

The term ''personal assistance services'' means a range of services, provided by 1 or more individuals, designed to assist an individual with a disability to perform daily activities, including activities on or off a job that such individual would typically perform if such individual did not have a disability. Such services shall be designed to increase such individual's control in life and ability to perform everyday activities, including activities on or off a job.

(20) Prevention activities

The term ''prevention activities'' means activities that address the causes of developmental disabilities and the exacerbation of functional limitation, such as activities that—

(A) eliminate or reduce the factors that cause or predispose individuals to developmental disabilities or that increase the prevalence of developmental disabilities;

(B) increase the early identification of problems to eliminate circumstances that create or increase functional limitations; and

(C) mitigate against the effects of developmental disabilities throughout the lifespan of an individual.

(21) Productivity

The term ''productivity'' means—

(A) engagement in income-producing work that is measured by increased income, improved employment status, or job advancement; or

(B) engagement in work that contributes to a household or community.

(22) Protection and advocacy system

The term ''protection and advocacy system'' means a protection and advocacy system established in accordance with section 15043 of this title.

(23) Quality assurance activities

The term ''quality assurance activities'' means advocacy, capacity building, and systemic change activities that result in improved consumer- and family-centered quality assurance and that result in systems of quality assurance and consumer protection that—

(A) include monitoring of services, supports, and assistance provided to an individual with developmental disabilities that ensures that the individual—

(i) will not experience abuse, neglect, sexual or financial exploitation, or violation of legal or human rights; and

(ii) will not be subject to the inappropriate use of restraints or seclusion;

(B) include training in leadership, self-advocacy, and self-determination for individ-

uals with developmental disabilities, their families, and their guardians to ensure that those individuals—

(i) will not experience abuse, neglect, sexual or financial exploitation, or violation of legal or human rights; and

(ii) will not be subject to the inappropriate use of restraints or seclusion; or

(C) include activities related to interagency coordination and systems integration that result in improved and enhanced services, supports, and other assistance that contribute to and protect the self-determination, independence, productivity, and integration and inclusion in all facets of community life, of individuals with developmental disabilities.

(24) Recreation-related activities

The term ''recreation-related activities'' means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of recreational, leisure, and social activities, in their communities.

(25) Rehabilitation technology

The term ''rehabilitation technology'' means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with developmental disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. Such term includes rehabilitation engineering, and the provision of assistive technology devices and assistive technology services.

(26) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(27) Self-determination activities

The term ''self-determination activities'' means activities that result in individuals with developmental disabilities, with appropriate assistance, having—

(A) the ability and opportunity to communicate and make personal decisions;

(B) the ability and opportunity to communicate choices and exercise control over the type and intensity of services, supports, and other assistance the individuals receive;

(C) the authority to control resources to obtain needed services, supports, and other assistance;

(D) opportunities to participate in, and contribute to, their communities; and

(E) support, including financial support, to advocate for themselves and others, to develop leadership skills, through training in self-advocacy, to participate in coalitions, to educate policymakers, and to play a role in the development of public policies that affect individuals with developmental disabilities.

(28) State

The term ''State'', except as otherwise provided, includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(29) State Council on Developmental Disabilities

The term ''State Council on Developmental Disabilities'' means a Council established under section 15025 of this title.

(30) Supported employment services

The term ''supported employment services'' means services that enable individuals with developmental disabilities to perform competitive work in integrated work settings, in the case of individuals with developmental disabilities—

(A)(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of significant disabilities; and

(B) who, because of the nature and severity of their disabilities, need intensive supported employment services or extended services in order to perform such work.

(31) Transportation-related activities

The term ''transportation-related activities'' means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of transportation.

(32) Unserved and underserved

The term ''unserved and underserved'' includes populations such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, individuals from underserved geographic areas (rural or urban), and specific groups of individuals within the population of individuals with developmental disabilities, including individuals who require assistive technology in order to participate in and contribute to community life.

(Pub. L. 106–402, title I, § 102, Oct. 30, 2000, 114 Stat. 1682.)

§ 15003. Records and audits

(a) Records

Each recipient of assistance under this subchapter shall keep such records as the Secretary shall prescribe, including—

(1) records that fully disclose—

(A) the amount and disposition by such recipient of the assistance;

(B) the total cost of the project or undertaking in connection with which such assistance is given or used; and

(C) the amount of that portion of the cost of the project or undertaking that is supplied by other sources; and

(2) such other records as will facilitate an effective audit.

(b) Access

The Secretary and the Comptroller General of the United States, or any of their duly author-

ized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of assistance under this subchapter that are pertinent to such assistance.

(Pub. L. 106–402, title I, § 103, Oct. 30, 2000, 114 Stat. 1688.)

§ 15004. Responsibilities of the Secretary

(a) Program accountability

(1) In general

In order to monitor entities that received funds under this chapter to carry out activities under parts B, C, and D of this subchapter and determine the extent to which the entities have been responsive to the purpose of this subchapter and have taken actions consistent with the policy described in section 15001(c) of this title, the Secretary shall develop and implement an accountability process as described in this subsection, with respect to activities conducted after October 1, 2001.

(2) Areas of emphasis

The Secretary shall develop a process for identifying and reporting (pursuant to section 15005 of this title) on progress achieved through advocacy, capacity building, and systemic change activities, undertaken by the entities described in paragraph (1), that resulted in individuals with developmental disabilities and their families participating in the design of and having access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life. Specifically, the Secretary shall develop a process for identifying and reporting on progress achieved, through advocacy, capacity building, and systemic change activities, by the entities in the areas of emphasis.

(3) Indicators of progress

(A) In general

In identifying progress made by the entities described in paragraph (1) in the areas of emphasis, the Secretary, in consultation with the Commissioner of the Administration on Developmental Disabilities and the entities, shall develop indicators for each area of emphasis.

(B) Proposed indicators

Not later than 180 days after October 30, 2000, the Secretary shall develop and publish in the Federal Register for public comment proposed indicators of progress for monitoring how entities described in paragraph (1) have addressed the areas of emphasis described in paragraph (2) in a manner that is responsive to the purpose of this subchapter and consistent with the policy described in section 15001(c) of this title.

(C) Final indicators

Not later than October 1, 2001, the Secretary shall revise the proposed indicators of progress, to the extent necessary based on public comment, and publish final indicators of progress in the Federal Register.

(D) Specific measures

At a minimum, the indicators of progress shall be used to describe and measure—

(i) the satisfaction of individuals with developmental disabilities with the advocacy, capacity building, and systemic change activities provided under parts B, C, and D of this subchapter;

(ii) the extent to which the advocacy, capacity building, and systemic change activities provided through parts B, C, and D of this subchapter result in improvements in—

(I) the ability of individuals with developmental disabilities to make choices and exert control over the type, intensity, and timing of services, supports, and assistance that the individuals have used;

(II) the ability of individuals with developmental disabilities to participate in the full range of community life with persons of the individuals' choice; and

(III) the ability of individuals with developmental disabilities to access services, supports, and assistance in a manner that ensures that such an individual is free from abuse, neglect, sexual and financial exploitation, violation of legal and human rights, and the inappropriate use of restraints and seclusion; and

(iii) the extent to which the entities described in paragraph (1) collaborate with each other to achieve the purpose of this subchapter and the policy described in section 15001(c) of this title.

(4) Time line for compliance with indicators of progress

The Secretary shall require entities described in paragraph (1) to meet the indicators of progress described in paragraph (3). For fiscal year 2002 and each year thereafter, the Secretary shall apply the indicators in monitoring entities described in paragraph (1), with respect to activities conducted after October 1, 2001.

(b) Time line for regulations

Except as otherwise expressly provided in this subchapter, the Secretary, not later than 1 year after October 30, 2000, shall promulgate such regulations as may be required for the implementation of this subchapter.

(c) Interagency committee

(1) In general

The Secretary shall maintain the interagency committee authorized in section 6007 of this title as in effect on the day before October 30, 2000, except as otherwise provided in this subsection.

(2) Composition

The interagency committee shall be composed of representatives of—

(A) the Administration on Developmental Disabilities, the Administration on Children, Youth, and Families, the Administration on Aging, and the Health Resources and Services Administration, of the Department of Health and Human Services; and

(B) such other Federal departments and agencies as the Secretary of Health and Human Services considers to be appropriate.

(3) Duties

Such interagency committee shall meet regularly to coordinate and plan activities conducted by Federal departments and agencies for individuals with developmental disabilities.

(4) Meetings

Each meeting of the interagency committee (except for any meetings of any subcommittees of the committee) shall be open to the public. Notice of each meeting, and a statement of the agenda for the meeting, shall be published in the Federal Register not later than 14 days before the date on which the meeting is to occur.

(Pub. L. 106–402, title I, § 104, Oct. 30, 2000, 114 Stat. 1688.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original ''this Act'', meaning Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

Section 6007 of this title, referred to in subsec. (c)(1), was repealed by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737.

§ 15005. Reports of the Secretary

At least once every 2 years, the Secretary, using information submitted in the reports and information required under parts B, C, D, and E of this subchapter, shall prepare and submit to the President, Congress, and the National Council on Disability, a report that describes the goals and outcomes of programs supported under parts B, C, D, and E of this subchapter. In preparing the report, the Secretary shall provide—

(1) meaningful examples of how the councils, protection and advocacy systems, centers, and entities funded under parts B, C, D, and E of this subchapter, respectively—

(A) have undertaken coordinated activities with each other;

(B) have enhanced the ability of individuals with developmental disabilities and their families to participate in the design of and have access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life;

(C) have brought about advocacy, capacity building, and systemic change activities (including policy reform), and other actions on behalf of individuals with developmental disabilities and their families, including individuals who are traditionally unserved or underserved, particularly individuals who are members of ethnic and racial minority groups and individuals from underserved geographic areas; and

(D) have brought about advocacy, capacity building, and systemic change activities that affect individuals with disabilities other than individuals with developmental disabilities;

(2) information on the extent to which programs authorized under this subchapter have addressed—

(A) protecting individuals with developmental disabilities from abuse, neglect, sexual and financial exploitation, and violations of legal and human rights, so that those individuals are at no greater risk of harm than other persons in the general population; and

(B) reports of deaths of and serious injuries to individuals with developmental disabilities; and

(3) a summary of any incidents of noncompliance of the programs authorized under this subchapter with the provisions of this subchapter, and corrections made or actions taken to obtain compliance.

(Pub. L. 106–402, title I, § 105, Oct. 30, 2000, 114 Stat. 1690.)

§ 15006. State control of operations

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any programs, services, and supports for individuals with developmental disabilities with respect to which any funds have been or may be expended under this subchapter.

(Pub. L. 106–402, title I, § 106, Oct. 30, 2000, 114 Stat. 1691.)

§ 15007. Employment of individuals with disabilities

As a condition of providing assistance under this subchapter, the Secretary shall require that each recipient of such assistance take affirmative action to employ and advance in employment qualified individuals with disabilities on the same terms and conditions required with respect to the employment of such individuals under the provisions of title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), that govern employment.

(Pub. L. 106–402, title I, § 107, Oct. 30, 2000, 114 Stat. 1691.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in text, is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended. Title V of the Act is classified generally to subchapter V (§ 790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Americans with Disabilities Act of 1990, referred to in text, is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§ 12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

§ 15008. Construction

Nothing in this subchapter shall be construed to preclude an entity funded under this sub-

chapter from engaging in advocacy, capacity building, and systemic change activities for individuals with developmental disabilities that may also have a positive impact on individuals with other disabilities.

(Pub. L. 106–402, title I, § 108, Oct. 30, 2000, 114 Stat. 1692.)

§ 15009. Rights of individuals with developmental disabilities

(a) In general

Congress makes the following findings respecting the rights of individuals with developmental disabilities:

(1) Individuals with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities, consistent with section 15001(c) of this title.

(2) The treatment, services, and habitation[1] for an individual with developmental disabilities should be designed to maximize the potential of the individual and should be provided in the setting that is least restrictive of the individual's personal liberty.

(3) The Federal Government and the States both have an obligation to ensure that public funds are provided only to institutional programs, residential programs, and other community programs, including educational programs in which individuals with developmental disabilities participate, that—

(A) provide treatment, services, and habilitation that are appropriate to the needs of such individuals; and

(B) meet minimum standards relating to—

(i) provision of care that is free of abuse, neglect, sexual and financial exploitation, and violations of legal and human rights and that subjects individuals with developmental disabilities to no greater risk of harm than others in the general population;

(ii) provision to such individuals of appropriate and sufficient medical and dental services;

(iii) prohibition of the use of physical restraint and seclusion for such an individual unless absolutely necessary to ensure the immediate physical safety of the individual or others, and prohibition of the use of such restraint and seclusion as a punishment or as a substitute for a habilitation program;

(iv) prohibition of the excessive use of chemical restraints on such individuals and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such individuals; and

(v) provision for close relatives or guardians of such individuals to visit the individuals without prior notice.

(4) All programs for individuals with developmental disabilities should meet standards—

(A) that are designed to assure the most favorable possible outcome for those served; and

(B)(i) in the case of residential programs serving individuals in need of comprehensive health-related, habilitative, assistive technology or rehabilitative services, that are at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded, promulgated in regulations of the Secretary on June 3, 1988, as appropriate, taking into account the size of the institutions and the service delivery arrangements of the facilities of the programs;

(ii) in the case of other residential programs for individuals with developmental disabilities, that assure that—

(I) care is appropriate to the needs of the individuals being served by such programs;

(II) the individuals admitted to facilities of such programs are individuals whose needs can be met through services provided by such facilities; and

(III) the facilities of such programs provide for the humane care of the residents of the facilities, are sanitary, and protect their rights; and

(iii) in the case of nonresidential programs, that assure that the care provided by such programs is appropriate to the individuals served by the programs.

(b) Clarification

The rights of individuals with developmental disabilities described in findings made in this section shall be considered to be in addition to any constitutional or other rights otherwise afforded to all individuals.

(Pub. L. 106–402, title I, § 109, Oct. 30, 2000, 114 Stat. 1692.)

PART B—FEDERAL ASSISTANCE TO STATE COUNCILS ON DEVELOPMENTAL DISABILITIES

§ 15021. Purpose

The purpose of this part is to provide for allotments to support State Councils on Developmental Disabilities (referred to individually in this part as a ''Council'') in each State to—

(1) engage in advocacy, capacity building, and systemic change activities that are consistent with the purpose described in section 15001(b) of this title and the policy described in section 15001(c) of this title; and

(2) contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that enable individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life.

(Pub. L. 106–402, title I, § 121, Oct. 30, 2000, 114 Stat. 1693.)

§ 15022. State allotments

(a) Allotments

(1) In general

(A) Authority

For each fiscal year, the Secretary shall, in accordance with regulations and this

[1] So in original. Probably should be ''habilitation''.

paragraph, allot the sums appropriated for such year under section 15029 of this title among the States on the basis of—

(i) the population;

(ii) the extent of need for services for individuals with developmental disabilities; and

(iii) the financial need,

of the respective States.

(B) Use of funds

Sums allotted to the States under this section shall be used to pay for the Federal share of the cost of carrying out projects in accordance with State plans approved under section 15024 of this title for the provision under such plans of services for individuals with developmental disabilities.

(2) Adjustments

The Secretary may make adjustments in the amounts of State allotments based on clauses (i), (ii), and (iii) of paragraph (1)(A) not more often than annually. The Secretary shall notify each State of any adjustment made under this paragraph and the percentage of the total sums appropriated under section 15029 of this title that the adjusted allotment represents not later than 6 months before the beginning of the fiscal year in which such adjustment is to take effect.

(3) Minimum allotment for appropriations less than or equal to $70,000,000

(A) In general

Except as provided in paragraph (4), for any fiscal year the allotment under this section—

(i) to each of American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands may not be less than $210,000; and

(ii) to any State not described in clause (i) may not be less than $400,000, the amount received by the State for the previous year, or the amount of Federal appropriations received in fiscal year 2000, 2001, or 2002, whichever is greater.

(B) Reduction of allotment

Notwithstanding subparagraph (A), if the aggregate of the amounts to be allotted to the States pursuant to subparagraph (A) for any fiscal year exceeds the total amount appropriated under section 15029 of this title for such fiscal year, the amount to be allotted to each State for such fiscal year shall be proportionately reduced.

(4) Minimum allotment for appropriations in excess of $70,000,000

(A) In general

In any case in which the total amount appropriated under section 15029 of this title for a fiscal year is more than $70,000,000, the allotment under this section for such fiscal year—

(i) to each of American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands may not be less than $220,000; and

(ii) to any State not described in clause (i) may not be less than $450,000, the amount received by the State for the previous year, or the amount of Federal appropriations received in fiscal year 2000, 2001, or 2002, whichever is greater.

(B) Reduction of allotment

The requirements of paragraph (3)(B) shall apply with respect to amounts to be allotted to States under subparagraph (A), in the same manner and to the same extent as such requirements apply with respect to amounts to be allotted to States under paragraph (3)(A).

(5) State supports, services, and other activities

In determining, for purposes of paragraph (1)(A)(ii), the extent of need in any State for services for individuals with developmental disabilities, the Secretary shall take into account the scope and extent of the services, supports, and assistance described, pursuant to section 15024(c)(3)(A) of this title, in the State plan of the State.

(6) Increase in allotments

In any year in which the total amount appropriated under section 15029 of this title for a fiscal year exceeds the total amount appropriated under such section (or a corresponding provision) for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase), the Secretary shall increase each of the minimum allotments described in paragraphs (3) and (4). The Secretary shall increase each minimum allotment by an amount that bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph (or a corresponding provision) for prior fiscal years) as the amount that is equal to the difference between—

(A) the total amount appropriated under section 15029 of this title for the fiscal year for which the increase in the minimum allotment is being made; minus

(B) the total amount appropriated under section 15029 of this title (or a corresponding provision) for the immediately preceding fiscal year,

bears to the total amount appropriated under section 15029 of this title (or a corresponding provision) for such preceding fiscal year.

(b) Unobligated funds

Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

(c) Obligation of funds

For the purposes of this part, State Interagency Agreements are considered valid obligations for the purpose of obligating Federal funds allotted to the State under this part.

(d) Cooperative efforts between States

If a State plan approved in accordance with section 15024 of this title provides for coopera-

tive or joint effort between or among States or agencies, public or private, in more than 1 State, portions of funds allotted to 1 or more States described in this subsection may be combined in accordance with the agreements between the States or agencies involved.

(e) Reallotments

(1) In general

If the Secretary determines that an amount of an allotment to a State for a period (of a fiscal year or longer) will not be required by the State during the period for the purpose for which the allotment was made, the Secretary may reallot the amount.

(2) Timing

The Secretary may make such a reallotment from time to time, on such date as the Secretary may fix, but not earlier than 30 days after the Secretary has published notice of the intention of the Secretary to make the reallotment in the Federal Register.

(3) Amounts

The Secretary shall reallot the amount to other States with respect to which the Secretary has not made that determination. The Secretary shall reallot the amount in proportion to the original allotments of the other States for such fiscal year, but shall reduce such proportionate amount for any of the other States to the extent the proportionate amount exceeds the sum that the Secretary estimates the State needs and will be able to use during such period.

(4) Reallotment of reductions

The Secretary shall similarly reallot the total of the reductions among the States whose proportionate amounts were not so reduced.

(5) Treatment

Any amount reallotted to a State under this subsection for a fiscal year shall be deemed to be a part of the allotment of the State under subsection (a) of this section for such fiscal year.

(Pub. L. 106–402, title I, § 122, Oct. 30, 2000, 114 Stat. 1693; Pub. L. 108–154, § 3(a), Dec. 3, 2003, 117 Stat. 1934.)

AMENDMENTS

2003—Subsec. (a)(3)(A)(ii), (4)(A)(ii). Pub. L. 108–154 inserted before period at end ", the amount received by the State for the previous year, or the amount of Federal appropriations received in fiscal year 2000, 2001, or 2002, whichever is greater".

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–154, § 3(b), Dec. 3, 2003, 117 Stat. 1934, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2003 and apply to allotments beginning in fiscal year 2004."

§ 15023. Payments to the States for planning, administration, and services

(a) State plan expenditures

From each State's allotments for a fiscal year under section 15022 of this title, the Secretary shall pay to the State the Federal share of the cost, other than the cost for construction, incurred during such year for activities carried out under the State plan approved under section 15024 of this title. The Secretary shall make such payments from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend for the cost under the State plan. The Secretary shall make such adjustments as may be necessary to the payments on account of previously made underpayments or overpayments under this section.

(b) Designated State agency expenditures

The Secretary may make payments to a State for the portion described in section 15024(c)(5)(B)(vi) of this title in advance or by way of reimbursement, and in such installments as the Secretary may determine.

(Pub. L. 106–402, title I, § 123, Oct. 30, 2000, 114 Stat. 1696.)

§ 15024. State plan

(a) In general

Any State desiring to receive assistance under this part shall submit to the Secretary, and obtain approval of, a 5-year strategic State plan under this section.

(b) Planning cycle

The plan described in subsection (a) of this section shall be updated as appropriate during the 5-year period.

(c) State plan requirements

In order to be approved by the Secretary under this section, a State plan shall meet each of the following requirements:

(1) State Council

The plan shall provide for the establishment and maintenance of a Council in accordance with section 15025 of this title and describe the membership of such Council.

(2) Designated State agency

The plan shall identify the agency or office within the State designated to support the Council in accordance with this section and section 15025(d) of this title (referred to in this part as a "designated State agency").

(3) Comprehensive review and analysis

The plan shall describe the results of a comprehensive review and analysis of the extent to which services, supports, and other assistance are available to individuals with developmental disabilities and their families, and the extent of unmet needs for services, supports, and other assistance for those individuals and their families, in the State. The results of the comprehensive review and analysis shall include—

(A) a description of the services, supports, and other assistance being provided to individuals with developmental disabilities and their families under other federally assisted State programs, plans, and policies under which the State operates and in which individuals with developmental disabilities are or may be eligible to participate, including particularly programs relating to the areas of emphasis, including—

(i) medical assistance, maternal and child health care, services for children with special health care needs, children's mental health services, comprehensive health and mental health services, and institutional care options;

(ii) job training, job placement, worksite accommodation, and vocational rehabilitation, and other work assistance programs; and

(iii) social, child welfare, aging, independent living, and rehabilitation and assistive technology services, and such other services as the Secretary may specify;

(B) a description of the extent to which agencies operating such other federally assisted State programs, including activities authorized under section 3003 or 3004 of title 29, pursue interagency initiatives to improve and enhance community services, individualized supports, and other forms of assistance for individuals with developmental disabilities;

(C) an analysis of the extent to which community services and opportunities related to the areas of emphasis directly benefit individuals with developmental disabilities, especially with regard to their ability to access and use services provided in their communities, to participate in opportunities, activities, and events offered in their communities, and to contribute to community life, identifying particularly—

(i) the degree of support for individuals with developmental disabilities that are attributable to either physical impairment, mental impairment, or a combination of physical and mental impairments;

(ii) criteria for eligibility for services, including specialized services and special adaptation of generic services provided by agencies within the State, that may exclude individuals with developmental disabilities from receiving services described in this clause;

(iii) the barriers that impede full participation of members of unserved and underserved groups of individuals with developmental disabilities and their families;

(iv) the availability of assistive technology, assistive technology services, or rehabilitation technology, or information about assistive technology, assistive technology services, or rehabilitation technology to individuals with developmental disabilities;

(v) the numbers of individuals with developmental disabilities on waiting lists for services described in this subparagraph;

(vi) a description of the adequacy of current resources and projected availability of future resources to fund services described in this subparagraph;

(vii) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are in facilities receive (based in part on each independent review (pursuant to section 1396a(a)(30)(C) of this title) of an Intermediate Care Facility (Mental Retardation) within the State, which the State shall provide to the Council not later than 30 days after the availability of the review); and

(viii) to the extent that information is available, a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are served through home and community-based waivers (authorized under section 1396n(c) of this title) receive;

(D) a description of how entities funded under parts C and D of this subchapter, through interagency agreements or other mechanisms, collaborated with the entity funded under this part in the State, each other, and other entities to contribute to the achievement of the purpose of this part; and

(E) the rationale for the goals related to advocacy, capacity building, and systemic change to be undertaken by the Council to contribute to the achievement of the purpose of this part.

(4) Plan goals

The plan shall focus on Council efforts to bring about the purpose of this part, by—

(A) specifying 5-year goals, as developed through data driven strategic planning, for advocacy, capacity building, and systemic change related to the areas of emphasis, to be undertaken by the Council, that—

(i) are derived from the unmet needs of individuals with developmental disabilities and their families identified under paragraph (3); and

(ii) include a goal, for each year of the grant, to—

(I) establish or strengthen a program for the direct funding of a State self-advocacy organization led by individuals with developmental disabilities;

(II) support opportunities for individuals with developmental disabilities who are considered leaders to provide leadership training to individuals with developmental disabilities who may become leaders; and

(III) support and expand participation of individuals with developmental disabilities in cross-disability and culturally diverse leadership coalitions; and

(B) for each year of the grant, describing—

(i) the goals to be achieved through the grant, which, beginning in fiscal year 2002, shall be consistent with applicable indicators of progress described in section 15004(a)(3) of this title;

(ii) the strategies to be used in achieving each goal; and

(iii) the method to be used to determine if each goal has been achieved.

(5) Assurances

(A) In general

The plan shall contain or be supported by assurances and information described in subparagraphs (B) through (N) that are satisfactory to the Secretary.

(B) Use of funds

With respect to the funds paid to the State under section 15022 of this title, the plan shall provide assurances that—

(i) not less than 70 percent of such funds will be expended for activities related to the goals described in paragraph (4);

(ii) such funds will contribute to the achievement of the purpose of this part in various political subdivisions of the State;

(iii) such funds will be used to supplement, and not supplant, the non-Federal funds that would otherwise be made available for the purposes for which the funds paid under section 15022 of this title are provided;

(iv) such funds will be used to complement and augment rather than duplicate or replace services for individuals with developmental disabilities and their families who are eligible for Federal assistance under other State programs;

(v) part of such funds will be made available by the State to public or private entities;

(vi) at the request of any State, a portion of such funds provided to such State under this part for any fiscal year shall be available to pay up to ½ (or the entire amount if the Council is the designated State agency) of the expenditures found to be necessary by the Secretary for the proper and efficient exercise of the functions of the designated State agency, except that not more than 5 percent of such funds provided to such State for any fiscal year, or $50,000, whichever is less, shall be made available for total expenditures for such purpose by the designated State agency; and

(vii) not more than 20 percent of such funds will be allocated to the designated State agency for service demonstrations by such agency that—

(I) contribute to the achievement of the purpose of this part; and

(II) are explicitly authorized by the Council.

(C) State financial participation

The plan shall provide assurances that there will be reasonable State financial participation in the cost of carrying out the plan.

(D) Conflict of interest

The plan shall provide an assurance that no member of such Council will cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.

(E) Urban and rural poverty areas

The plan shall provide assurances that special financial and technical assistance will be given to organizations that provide community services, individualized supports, and other forms of assistance to individuals with developmental disabilities who live in areas designated as urban or rural poverty areas.

(F) Program accessibility standards

The plan shall provide assurances that programs, projects, and activities funded under the plan, and the buildings in which such programs, projects, and activities are operated, will meet standards prescribed by the Secretary in regulations and all applicable Federal and State accessibility standards, including accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), section 794d of title 29, and the Fair Housing Act (42 U.S.C. 3601 et seq.).

(G) Individualized services

The plan shall provide assurances that any direct services provided to individuals with developmental disabilities and funded under the plan will be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of such individual.

(H) Human rights

The plan shall provide assurances that the human rights of the individuals with developmental disabilities (especially individuals without familial protection) who are receiving services under programs assisted under this part will be protected consistent with section 15009 of this title (relating to rights of individuals with developmental disabilities).

(I) Minority participation

The plan shall provide assurances that the State has taken affirmative steps to assure that participation in programs funded under this part is geographically representative of the State, and reflects the diversity of the State with respect to race and ethnicity.

(J) Employee protections

The plan shall provide assurances that fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) will be provided to protect the interests of employees affected by actions taken under the plan to provide community living activities, including arrangements designed to preserve employee rights and benefits and provide training and retraining of such employees where necessary, and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

(K) Staff assignments

The plan shall provide assurances that the staff and other personnel of the Council, while working for the Council, will be responsible solely for assisting the Council in carrying out the duties of the Council under this part and will not be assigned duties by the designated State agency, or any other agency, office, or entity of the State.

(L) Noninterference

The plan shall provide assurances that the designated State agency, and any other agency, office, or entity of the State, will not interfere with the advocacy, capacity building, and systemic change activities,

budget, personnel, State plan development, or plan implementation of the Council, except that the designated State agency shall have the authority necessary to carry out the responsibilities described in section 15025(d)(3) of this title.

(M) State quality assurance

The plan shall provide assurances that the Council will participate in the planning, design or redesign, and monitoring of State quality assurance systems that affect individuals with developmental disabilities.

(N) Other assurances

The plan shall contain such additional information and assurances as the Secretary may find necessary to carry out the provisions (including the purpose) of this part.

(d) Public input and review, submission, and approval

(1) Public input and review

The plan shall be based on public input. The Council shall make the plan available for public review and comment, after providing appropriate and sufficient notice in accessible formats of the opportunity for such review and comment. The Council shall revise the plan to take into account and respond to significant comments.

(2) Consultation with the designated State agency

Before the plan is submitted to the Secretary, the Council shall consult with the designated State agency to ensure that the State plan is consistent with State law and to obtain appropriate State plan assurances.

(3) Plan approval

The Secretary shall approve any State plan and, as appropriate, amendments of such plan that comply with the provisions of subsections (a), (b), and (c) of this section and this subsection. The Secretary may take final action to disapprove a State plan after providing reasonable notice and an opportunity for a hearing to the State.

(Pub. L. 106–402, title I, § 124, Oct. 30, 2000, 114 Stat. 1696; Pub. L. 108–364, § 3(a)(1), Oct. 25, 2004, 118 Stat. 1736.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (c)(5)(F), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§ 12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Fair Housing Act, referred to in subsec. (c)(5)(F), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

2004—Subsec. (c)(3)(B). Pub. L. 108–364 substituted ''section 3003 or 3004 of title 29'' for ''section 3011 or 3012 of title 29''.

§ 15025. State Councils on Developmental Disabilities and designated State agencies

(a) In general

Each State that receives assistance under this part shall establish and maintain a Council to undertake advocacy, capacity building, and systemic change activities (consistent with subsections (b) and (c) of section 15001 of this title) that contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that contribute to the achievement of the purpose of this part. The Council shall have the authority to fulfill the responsibilities described in subsection (c) of this section.

(b) Council membership

(1) Council appointments

(A) In general

The members of the Council of a State shall be appointed by the Governor of the State from among the residents of that State.

(B) Recommendations

The Governor shall select members of the Council, at the discretion of the Governor, after soliciting recommendations from organizations representing a broad range of individuals with developmental disabilities and individuals interested in individuals with developmental disabilities, including the non-State agency members of the Council. The Council may, at the initiative of the Council, or on the request of the Governor, coordinate Council and public input to the Governor regarding all recommendations.

(C) Representation

The membership of the Council shall be geographically representative of the State and reflect the diversity of the State with respect to race and ethnicity.

(2) Membership rotation

The Governor shall make appropriate provisions to rotate the membership of the Council. Such provisions shall allow members to continue to serve on the Council until such members' successors are appointed. The Council shall notify the Governor regarding membership requirements of the Council, and shall notify the Governor when vacancies on the Council remain unfilled for a significant period of time.

(3) Representation of individuals with developmental disabilities

Not less than 60 percent of the membership of each Council shall consist of individuals who are—

(A)(i) individuals with developmental disabilities;

(ii) parents or guardians of children with developmental disabilities; or

(iii) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves; and

(B) not employees of a State agency that receives funds or provides services under

this part, and who are not managing employees (as defined in section 1126(b) of the Social Security Act (42 U.S.C. 1320a–5(b)) of any other entity that receives funds or provides services under this part.

(4) Representation of agencies and organizations

(A) In general

Each Council shall include—

(i) representatives of relevant State entities, including—

(I) State entities that administer funds provided under Federal laws related to individuals with disabilities, including the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), and titles V and XIX of the Social Security Act (42 U.S.C. 701 et seq. and 1396 et seq.);

(II) Centers in the State; and

(III) the State protection and advocacy system; and

(ii) representatives, at all times, of local and nongovernmental agencies, and private nonprofit groups concerned with services for individuals with developmental disabilities in the State in which such agencies and groups are located.

(B) Authority and limitations

The representatives described in subparagraph (A) shall—

(i) have sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program such representatives represent; and

(ii) recuse themselves from any discussion of grants or contracts for which such representatives' departments, agencies, or programs are grantees, contractors, or applicants and comply with the conflict of interest assurance requirement under section 15024(c)(5)(D) of this title.

(5) Composition of membership with developmental disabilities

Of the members of the Council described in paragraph (3)—

(A) ⅓ shall be individuals with developmental disabilities described in paragraph (3)(A)(i);

(B) ⅓ shall be parents or guardians of children with developmental disabilities described in paragraph (3)(A)(ii), or immediate relatives or guardians of adults with developmental disabilities described in paragraph (3)(A)(iii); and

(C) ⅓ shall be a combination of individuals described in paragraph (3)(A).

(6) Institutionalized individuals

(A) In general

Of the members of the Council described in paragraph (5), at least 1 shall be an immediate relative or guardian of an individual with a developmental disability who resides or previously resided in an institution or shall be an individual with a developmental disability who resides or previously resided in an institution.

(B) Limitation

Subparagraph (A) shall not apply with respect to a State if such an individual does not reside in that State.

(c) Council responsibilities

(1) In general

A Council, through Council members, staff, consultants, contractors, or subgrantees, shall have the responsibilities described in paragraphs (2) through (10).

(2) Advocacy, capacity building, and systemic change activities

The Council shall serve as an advocate for individuals with developmental disabilities and conduct or support programs, projects, and activities that carry out the purpose of this part.

(3) Examination of goals

At the end of each grant year, each Council shall—

(A) determine the extent to which each goal of the Council was achieved for that year;

(B) determine to the extent that each goal was not achieved, the factors that impeded the achievement;

(C) determine needs that require amendment of the 5-year strategic State plan required under section 15024 of this title;

(D) separately determine the information on the self-advocacy goal described in section 15024(c)(4)(A)(ii) of this title; and

(E) determine customer satisfaction with Council supported or conducted activities.

(4) State plan development

The Council shall develop the State plan and submit the State plan to the Secretary after consultation with the designated State agency under the State plan. Such consultation shall be solely for the purposes of obtaining State assurances and ensuring consistency of the plan with State law.

(5) State plan implementation

(A) In general

The Council shall implement the State plan by conducting and supporting advocacy, capacity building, and systemic change activities such as those described in subparagraphs (B) through (L).

(B) Outreach

The Council may support and conduct outreach activities to identify individuals with developmental disabilities and their families who otherwise might not come to the attention of the Council and assist and enable the individuals and families to obtain services, individualized supports, and other forms of assistance, including access to special adaptation of generic community services or specialized services.

(C) Training

The Council may support and conduct training for persons who are individuals with

developmental disabilities, their families, and personnel (including professionals, paraprofessionals, students, volunteers, and other community members) to enable such persons to obtain access to, or to provide, community services, individualized supports, and other forms of assistance, including special adaptation of generic community services or specialized services for individuals with developmental disabilities and their families. To the extent that the Council supports or conducts training activities under this subparagraph, such activities shall contribute to the achievement of the purpose of this part.

(D) Technical assistance

The Council may support and conduct technical assistance activities to assist public and private entities to contribute to the achievement of the purpose of this part.

(E) Supporting and educating communities

The Council may support and conduct activities to assist neighborhoods and communities to respond positively to individuals with developmental disabilities and their families—

(i) by encouraging local networks to provide informal and formal supports;

(ii) through education; and

(iii) by enabling neighborhoods and communities to offer such individuals and their families access to and use of services, resources, and opportunities.

(F) Interagency collaboration and coordination

The Council may support and conduct activities to promote interagency collaboration and coordination to better serve, support, assist, or advocate for individuals with developmental disabilities and their families.

(G) Coordination with related councils, committees, and programs

The Council may support and conduct activities to enhance coordination of services with—

(i) other councils, entities, or committees, authorized by Federal or State law, concerning individuals with disabilities (such as the State interagency coordinating council established under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), the State Rehabilitation Council and the Statewide Independent Living Council established under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the State mental health planning council established under subtitle B[1] of title XIX of the Public Health Service Act [42 U.S.C. 300x et seq.], and the activities authorized under section 3003 or 3004 of title 29, and entities carrying out other similar councils, entities, or committees);

(ii) parent training and information centers under part D of the Individuals with Disabilities Education Act (20 U.S.C. 1451 et seq.) and other entities carrying out federally funded projects that assist parents of children with disabilities; and

(iii) other groups interested in advocacy, capacity building, and systemic change activities to benefit individuals with disabilities.

(H) Barrier elimination, systems design and redesign

The Council may support and conduct activities to eliminate barriers to access and use of community services by individuals with developmental disabilities, enhance systems design and redesign, and enhance citizen participation to address issues identified in the State plan.

(I) Coalition development and citizen participation

The Council may support and conduct activities to educate the public about the capabilities, preferences, and needs of individuals with developmental disabilities and their families and to develop and support coalitions that support the policy agenda of the Council, including training in self-advocacy, education of policymakers, and citizen leadership skills.

(J) Informing policymakers

The Council may support and conduct activities to provide information to policymakers by supporting and conducting studies and analyses, gathering information, and developing and disseminating model policies and procedures, information, approaches, strategies, findings, conclusions, and recommendations. The Council may provide the information directly to Federal, State, and local policymakers, including Congress, the Federal executive branch, the Governors, State legislatures, and State agencies, in order to increase the ability of such policymakers to offer opportunities and to enhance or adapt generic services to meet the needs of, or provide specialized services to, individuals with developmental disabilities and their families.

(K) Demonstration of new approaches to services and supports

(i) In general

The Council may support and conduct, on a time-limited basis, activities to demonstrate new approaches to serving individuals with developmental disabilities that are a part of an overall strategy for systemic change. The strategy may involve the education of policymakers and the public about how to deliver effectively, to individuals with developmental disabilities and their families, services, supports, and assistance that contribute to the achievement of the purpose of this part.

(ii) Sources of funding

The Council may carry out this subparagraph by supporting and conducting demonstration activities through sources of funding other than funding provided under

[1] See References in Text note below.

this part, and by assisting entities conducting demonstration activities to develop strategies for securing funding from other sources.

(L) Other activities

The Council may support and conduct other advocacy, capacity building, and systemic change activities to promote the development of a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that contribute to the achievement of the purpose of this part.

(6) Review of designated State agency

The Council shall periodically review the designated State agency and activities carried out under this part by the designated State agency and make any recommendations for change to the Governor.

(7) Reports

Beginning in fiscal year 2002, the Council shall annually prepare and transmit to the Secretary a report. Each report shall be in a form prescribed by the Secretary by regulation under section 15004(b) of this title. Each report shall contain information about the progress made by the Council in achieving the goals of the Council (as specified in section 15024(c)(4) of this title), including—

(A) a description of the extent to which the goals were achieved;

(B) a description of the strategies that contributed to achieving the goals;

(C) to the extent to which the goals were not achieved, a description of factors that impeded the achievement;

(D) separate information on the self-advocacy goal described in section 15024(c)(4)(A)(ii) of this title;

(E)(i) as appropriate, an update on the results of the comprehensive review and analysis described in section 15024(c)(3) of this title; and

(ii) information on consumer satisfaction with Council supported or conducted activities;

(F)(i) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities in Intermediate Care Facilities (Mental Retardation) receive; and

(ii) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities served through home and community-based waivers (authorized under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) receive;

(G) an accounting of the manner in which funds paid to the State under this part for a fiscal year were expended;

(H) a description of—

(i) resources made available to carry out activities to assist individuals with developmental disabilities that are directly attributable to Council actions; and

(ii) resources made available for such activities that are undertaken by the Council in collaboration with other entities; and

(I) a description of the method by which the Council will widely disseminate the annual report to affected constituencies and the general public and will assure that the report is available in accessible formats.

(8) Budget

Each Council shall prepare, approve, and implement a budget using amounts paid to the State under this part to fund and implement all programs, projects, and activities carried out under this part, including—

(A)(i) conducting such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council; and

(ii) as determined in Council policy—

(I) reimbursing members of the Council for reasonable and necessary expenses (including expenses for child care and personal assistance services) for attending Council meetings and performing Council duties;

(II) paying a stipend to a member of the Council, if such member is not employed or must forfeit wages from other employment, to attend Council meetings and perform other Council duties;

(III) supporting Council member and staff travel to authorized training and technical assistance activities including in-service training and leadership development activities; and

(IV) carrying out appropriate subcontracting activities;

(B) hiring and maintaining such numbers and types of staff (qualified by training and experience) and obtaining the services of such professional, consulting, technical, and clerical staff (qualified by training and experience), consistent with State law, as the Council determines to be necessary to carry out the functions of the Council under this part, except that such State shall not apply hiring freezes, reductions in force, prohibitions on travel, or other policies to the staff of the Council, to the extent that such policies would impact the staff or functions funded with Federal funds, or would prevent the Council from carrying out the functions of the Council under this part; and

(C) directing the expenditure of funds for grants, contracts, interagency agreements that are binding contracts, and other activities authorized by the State plan approved under section 15024 of this title.

(9) Staff hiring and supervision

The Council shall, consistent with State law, recruit and hire a Director of the Council, should the position of Director become vacant, and supervise and annually evaluate the Director. The Director shall hire, supervise, and annually evaluate the staff of the Council. Council recruitment, hiring, and dismissal of staff shall be conducted in a manner consistent with Federal and State nondiscrimination laws. Dismissal of personnel shall be conducted in a manner consistent with State law and personnel policies.

(10) Staff assignments

The staff of the Council, while working for the Council, shall be responsible solely for assisting the Council in carrying out the duties of the Council under this part and shall not be assigned duties by the designated State agency or any other agency or entity of the State.

(11) Construction

Nothing in this subchapter shall be construed to authorize a Council to direct, control, or exercise any policymaking authority or administrative authority over any program assisted under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) or the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(d) Designated State agency

(1) In general

Each State that receives assistance under this part shall designate a State agency that shall, on behalf of the State, provide support to the Council. After April 6, 1994, any designation of a State agency under this paragraph shall be made in accordance with the requirements of this subsection.

(2) Designation

(A) Type of agency

Except as provided in this subsection, the designated State agency shall be—

(i) the Council if such Council may be the designated State agency under the laws of the State;

(ii) a State agency that does not provide or pay for services for individuals with developmental disabilities; or

(iii) a State office, including the immediate office of the Governor of the State or a State planning office.

(B) Conditions for continuation of State service agency designation

(i) Designation before April 6, 1994

If a State agency that provides or pays for services for individuals with developmental disabilities was a designated State agency for purposes of part B of the Developmental Disabilities Assistance and Bill of Rights Act on April 6, 1994, and the Governor of the State (or the legislature, where appropriate and in accordance with State law) determines prior to June 30, 1994, not to change the designation of such agency, such agency may continue to be a designated State agency for purposes of this part.

(ii) Criteria for continued designation

The determination, at the discretion of the Governor (or the legislature, as the case may be), shall be made after—

(I) the Governor has considered the comments and recommendations of the general public and a majority of the non-State agency members of the Council with respect to the designation of such State agency; and

(II) the Governor (or the legislature, as the case may be) has made an independent assessment that the designation of such agency will not interfere with the budget, personnel, priorities, or other action of the Council, and the ability of the Council to serve as an independent advocate for individuals with developmental disabilities.

(C) Review of designation

The Council may request a review of and change in the designation of the designated State agency by the Governor (or the legislature, as the case may be). The Council shall provide documentation concerning the reason the Council desires a change to be made and make a recommendation to the Governor (or the legislature, as the case may be) regarding a preferred designated State agency.

(D) Appeal of designation

After the review is completed under subparagraph (C), a majority of the non-State agency members of the Council may appeal to the Secretary for a review of and change in the designation of the designated State agency if the ability of the Council to serve as an independent advocate is not assured because of the actions or inactions of the designated State agency.

(3) Responsibilities

(A) In general

The designated State agency shall, on behalf of the State, have the responsibilities described in subparagraphs (B) through (G).

(B) Support services

The designated State agency shall provide required assurances and support services as requested by and negotiated with the Council.

(C) Fiscal responsibilities

The designated State agency shall—

(i) receive, account for, and disburse funds under this part based on the State plan required in section 15024 of this title; and

(ii) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, funds paid to the State under this part.

(D) Records, access, and financial reports

The designated State agency shall keep and provide access to such records as the Secretary and the Council may determine to be necessary. The designated State agency, if other than the Council, shall provide timely financial reports at the request of the Council regarding the status of expenditures, obligations, and liquidation by the agency or the Council, and the use of the Federal and non-Federal shares described in section 15026 of this title, by the agency or the Council.

(E) Non-Federal share

The designated State agency, if other than the Council, shall provide the required non-Federal share described in section 15026(c) of this title.

(F) Assurances

The designated State agency shall assist the Council in obtaining the appropriate State plan assurances and in ensuring that the plan is consistent with State law.

(G) Memorandum of understanding

On the request of the Council, the designated State agency shall enter into a memorandum of understanding with the Council delineating the roles and responsibilities of the designated State agency.

(4) Use of funds for designated State agency responsibilities

(A) Condition for Federal funding

(i) In general

The Secretary shall provide amounts to a State under section 15024(c)(5)(B)(vi) of this title for a fiscal year only if the State expends an amount from State sources for carrying out the responsibilities of the designated State agency under paragraph (3) for the fiscal year that is not less than the total amount the State expended from such sources for carrying out similar responsibilities for the previous fiscal year.

(ii) Exception

Clause (i) shall not apply in a year in which the Council is the designated State agency.

(B) Support services provided by other agencies

With the agreement of the designated State agency, the Council may use or contract with agencies other than the designated State agency to perform the functions of the designated State agency.

(Pub. L. 106–402, title I, § 125, Oct. 30, 2000, 114 Stat. 1701; Pub. L. 108–364, § 3(a)(2), Oct. 25, 2004, 118 Stat. 1736; Pub. L. 108–446, title III, § 305(n)(1), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsecs. (b)(4)(A)(i)(I) and (c)(5)(G)(i), (11), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (b)(4)(A)(i)(I) and (c)(5)(G)(i), (ii), (11), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20. Part D of the Act is classified generally to subchapter IV (§ 1450 et seq.) of chapter 33 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Older Americans Act of 1965, referred to in subsec. (b)(4)(A)(i)(I), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Social Security Act, referred to in subsec. (b)(4)(A)(i)(I), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V and XIX of the Act are classified generally to subchapters V (§ 701 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Public Health Service Act, referred to in subsec. (c)(5)(G)(i), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. The reference to subtitle B of title XIX of the Act probably means part B of title XIX of the Act which is classified generally to part B (§ 300x et seq.) of subchapter XVII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (d)(2)(B)(i), is title I of Pub. L. 88–164, as added by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, as amended, which was repealed by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. Part B of the Act was classified generally to subchapter II (§ 6021 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2004—Subsec. (c)(5)(G)(i). Pub. L. 108–446 substituted ''part C'' for ''subtitle C''.

Pub. L. 108–364 substituted ''section 3003 or 3004 of title 29'' for ''section 3011 or 3012 of title 29''.

§ 15026. Federal and non-Federal share

(a) Aggregate cost

(1) In general

Except as provided in paragraphs (2) and (3), the Federal share of the cost of all projects in a State supported by an allotment to the State under this part may not be more than 75 percent of the aggregate necessary cost of such projects, as determined by the Secretary.

(2) Urban or rural poverty areas

In the case of projects whose activities or products target individuals with developmental disabilities who live in urban or rural poverty areas, as determined by the Secretary, the Federal share of the cost of all such projects may not be more than 90 percent of the aggregate necessary cost of such projects, as determined by the Secretary.

(3) State plan activities

In the case of projects undertaken by the Council or Council staff to implement State plan activities, the Federal share of the cost of all such projects may be not more than 100 percent of the aggregate necessary cost of such activities.

(b) Nonduplication

In determining the amount of any State's Federal share of the cost of such projects incurred by such State under a State plan approved under section 15024 of this title, the Secretary shall not consider—

(1) any portion of such cost that is financed by Federal funds provided under any provision of law other than section 15022 of this title; and

(2) the amount of any non-Federal funds required to be expended as a condition of receipt of the Federal funds described in paragraph (1).

(c) Non-Federal share

(1) In-kind contributions

The non-Federal share of the cost of any project supported by an allotment under this

part may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

(2) Contributions of political subdivisions and public or private entities

(A) In general

Contributions to projects by a political subdivision of a State or by a public or private entity under an agreement with the State shall, subject to such limitations and conditions as the Secretary may by regulation prescribe under section 15004(b) of this title, be considered to be contributions by such State, in the case of a project supported under this part.

(B) State contributions

State contributions, including contributions by the designated State agency to provide support services to the Council pursuant to section 15025(d)(4) of this title, may be counted as part of such State's non-Federal share of the cost of projects supported under this part.

(3) Variations of the non-Federal share

The non-Federal share required of each recipient of a grant from a Council under this part may vary.

(Pub. L. 106–402, title I, § 126, Oct. 30, 2000, 114 Stat. 1710.)

§ 15027. Withholding of payments for planning, administration, and services

Whenever the Secretary, after providing reasonable notice and an opportunity for a hearing to the Council and the designated State agency, finds that—

(1) the Council or agency has failed to comply substantially with any of the provisions required by section 15024 of this title to be included in the State plan, particularly provisions required by paragraphs (4)(A) and (5)(B)(vii) of section 15024(c) of this title, or with any of the provisions required by section 15025(b)(3) of this title; or

(2) the Council or agency has failed to comply substantially with any regulations of the Secretary that are applicable to this part,

the Secretary shall notify such Council and agency that the Secretary will not make further payments to the State under section 15022 of this title (or, in the discretion of the Secretary, that further payments to the State under section 15022 of this title for activities for which there is such failure), until the Secretary is satisfied that there will no longer be such failure. Until the Secretary is so satisfied, the Secretary shall make no further payments to the State under section 15022 of this title, or shall limit further payments under section 15022 of this title to such State to activities for which there is no such failure.

(Pub. L. 106–402, title I, § 127, Oct. 30, 2000, 114 Stat. 1711.)

§ 15028. Appeals by States

(a) Appeal

If any State is dissatisfied with the Secretary's action under section 15024(d)(3) or 15027 of this title, such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court not later than 60 days after such action.

(b) Filing

The clerk of the court shall transmit promptly a copy of the petition to the Secretary, or any officer designated by the Secretary for that purpose. The Secretary shall file promptly with the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of the petition, the court shall have jurisdiction to affirm the action of the Secretary or to set the action aside, in whole or in part, temporarily or permanently. Until the filing of the record, the Secretary may modify or set aside the order of the Secretary relating to the action.

(d) Findings and remand

The findings of the Secretary about the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case involved to the Secretary for further proceedings to take further evidence. On remand, the Secretary may make new or modified findings of fact and may modify the previous action of the Secretary, and shall file with the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(e) Finality

The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(f) Effect

The commencement of proceedings under this section shall not, unless so specifically ordered by a court, operate as a stay of the Secretary's action.

(Pub. L. 106–402, title I, § 128, Oct. 30, 2000, 114 Stat. 1711.)

§ 15029. Authorization of appropriations

(a) Funding for State allotments

Except as described in subsection (b) of this section, there are authorized to be appropriated for allotments under section 15022 of this title $76,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(b) Reservation for technical assistance

(1) Lower appropriation years

For any fiscal year for which the amount appropriated under subsection (a) of this section is less than $76,000,000, the Secretary shall reserve funds in accordance with section 15083(c) of this title to provide technical assistance to entities funded under this part.

(2) Higher appropriation years

For any fiscal year for which the amount appropriated under subsection (a) of this section

is not less than $76,000,000, the Secretary shall reserve not less than $300,000 and not more than 1 percent of the amount appropriated under subsection (a) of this section to provide technical assistance to entities funded under this part.

(Pub. L. 106–402, title I, § 129, Oct. 30, 2000, 114 Stat. 1712.)

PART C—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

§ 15041. Purpose

The purpose of this part is to provide for allotments to support a protection and advocacy system (referred to in this part as a ''system'') in each State to protect the legal and human rights of individuals with developmental disabilities in accordance with this part.

(Pub. L. 106–402, title I, § 141, Oct. 30, 2000, 114 Stat. 1712.)

§ 15042. Allotments and payments

(a) Allotments

(1) In general

To assist States in meeting the requirements of section 15043(a) of this title, the Secretary shall allot to the States the amounts appropriated under section 15045 of this title and not reserved under paragraph (6). Allotments and reallotments of such sums shall be made on the same basis as the allotments and reallotments are made under subsections (a)(1)(A) and (e) of section 15022 of this title, except as provided in paragraph (2).

(2) Minimum allotments

In any case in which—

(A) the total amount appropriated under section 15045 of this title for a fiscal year is not less than $20,000,000, the allotment under paragraph (1) for such fiscal year—

(i) to each of American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands may not be less than $107,000; and

(ii) to any State not described in clause (i) may not be less than $200,000; or

(B) the total amount appropriated under section 15045 of this title for a fiscal year is less than $20,000,000, the allotment under paragraph (1) for such fiscal year—

(i) to each of American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands may not be less than $80,000; and

(ii) to any State not described in clause (i) may not be less than $150,000.

(3) Reduction of allotment

Notwithstanding paragraphs (1) and (2), if the aggregate of the amounts to be allotted to the States pursuant to such paragraphs for any fiscal year exceeds the total amount appropriated for such allotments under section 15045 of this title for such fiscal year, the amount to be allotted to each State for such fiscal year shall be proportionately reduced.

(4) Increase in allotments

In any year in which the total amount appropriated under section 15045 of this title for a fiscal year exceeds the total amount appropriated under such section (or a corresponding provision) for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase), the Secretary shall increase each of the minimum allotments described in subparagraphs (A) and (B) of paragraph (2). The Secretary shall increase each minimum allotment by an amount that bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph (or a corresponding provision) for prior fiscal years) as the amount that is equal to the difference between—

(A) the total amount appropriated under section 15045 of this title for the fiscal year for which the increase in the minimum allotment is being made; minus

(B) the total amount appropriated under section 15045 of this title (or a corresponding provision) for the immediately preceding fiscal year,

bears to the total amount appropriated under section 15045 of this title (or a corresponding provision) for such preceding fiscal year.

(5) Monitoring the administration of the system

In a State in which the system is housed in a State agency, the State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under section 15043(a) of this title.

(6) Technical assistance and American Indian consortium

In any case in which the total amount appropriated under section 15045 of this title for a fiscal year is more than $24,500,000, the Secretary shall—

(A) use not more than 2 percent of the amount appropriated to provide technical assistance to eligible systems with respect to activities carried out under this part (consistent with requests by such systems for such assistance for the year); and

(B) provide a grant in accordance with section 15043(b) of this title, and in an amount described in paragraph (2)(A)(i), to an American Indian consortium to provide protection and advocacy services.

(b) Payment to systems

Notwithstanding any other provision of law, the Secretary shall pay directly to any system in a State that complies with the provisions of this part the amount of the allotment made for the State under this section, unless the system specifies otherwise.

(c) Unobligated funds

Any amount paid to a system under this part for a fiscal year and remaining unobligated at the end of such year shall remain available to such system for the next fiscal year, for the purposes for which such amount was paid.

(Pub. L. 106–402, title I, § 142, Oct. 30, 2000, 114 Stat. 1712.)

§ 15043. System required

(a) System required

In order for a State to receive an allotment under part B of this subchapter or this part—

(1) the State shall have in effect a system to protect and advocate the rights of individuals with developmental disabilities;

(2) such system shall—

(A) have the authority to—

(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of ethnic and racial minority groups; and

(ii) provide information on and referral to programs and services addressing the needs of individuals with developmental disabilities;

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(C) on an annual basis, develop, submit to the Secretary, and take action with regard to goals (each of which is related to 1 or more areas of emphasis) and priorities, developed through data driven strategic planning, for the system's activities;

(D) on an annual basis, provide to the public, including individuals with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairment, and their representatives, and as appropriate, non-State agency representatives of the State Councils on Developmental Disabilities, and Centers, in the State, an opportunity to comment on—

(i) the goals and priorities established by the system and the rationale for the establishment of such goals; and

(ii) the activities of the system, including the coordination of services with the entities carrying out advocacy programs under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), and the Protection and Advocacy for Mentally Ill Individuals Act of 1986[1] (42 U.S.C. 10801 et seq.), and with entities carrying out other related programs, including the parent training and information centers funded under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and activities authorized under section 3003 or 3004 of title 29;

(E) establish a grievance procedure for clients or prospective clients of the system to ensure that individuals with developmental disabilities have full access to services of the system;

(F) not be administered by the State Council on Developmental Disabilities;

(G) be independent of any agency that provides treatment, services, or habilitation to individuals with developmental disabilities;

(H) have access at reasonable times to any individual with a developmental disability in a location in which services, supports, and other assistance are provided to such an individual, in order to carry out the purpose of this part;

(I) have access to all records of—

(i) any individual with a developmental disability who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

(ii) any individual with a developmental disability, in a situation in which—

(I) the individual, by reason of such individual's mental or physical condition, is unable to authorize the system to have such access;

(II) the individual does not have a legal guardian, conservator, or other legal representative, or the legal guardian of the individual is the State; and

(III) a complaint has been received by the system about the individual with regard to the status or treatment of the individual or, as a result of monitoring or other activities, there is probable cause to believe that such individual has been subject to abuse or neglect; and

(iii) any individual with a developmental disability, in a situation in which—

(I) the individual has a legal guardian, conservator, or other legal representative;

(II) a complaint has been received by the system about the individual with regard to the status or treatment of the individual or, as a result of monitoring or other activities, there is probable cause to believe that such individual has been subject to abuse or neglect;

(III) such representative has been contacted by such system, upon receipt of the name and address of such representative;

(IV) such system has offered assistance to such representative to resolve the situation; and

(V) such representative has failed or refused to act on behalf of the individual;

(J)(i) have access to the records of individuals described in subparagraphs (B) and (I), and other records that are relevant to conducting an investigation, under the circumstances described in those subparagraphs, not later than 3 business days after the system makes a written request for the records involved; and

(ii) have immediate access, not later than 24 hours after the system makes such a request, to the records without consent from another party, in a situation in which services, supports, and other assistance are pro-

[1] See References in Text note below.

vided to an individual with a developmental disability—

(I) if the system determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy; or

(II) in any case of death of an individual with a developmental disability;

(K) hire and maintain sufficient numbers and types of staff (qualified by training and experience) to carry out such system's functions, except that the State involved shall not apply hiring freezes, reductions in force, prohibitions on travel, or other policies to the staff of the system, to the extent that such policies would impact the staff or functions of the system funded with Federal funds or would prevent the system from carrying out the functions of the system under this part;

(L) have the authority to educate policymakers; and

(M) provide assurances to the Secretary that funds allotted to the State under section 15042 of this title will be used to supplement, and not supplant, the non-Federal funds that would otherwise be made available for the purposes for which the allotted funds are provided;

(3) to the extent that information is available, the State shall provide to the system—

(A) a copy of each independent review, pursuant to section 1396a(a)(30)(C) of this title, of an Intermediate Care Facility (Mental Retardation) within the State, not later than 30 days after the availability of such a review; and

(B) information about the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are served through home and community-based waivers (authorized under section 1396n(c) of this title) receive; and

(4) the agency implementing the system shall not be redesignated unless—

(A) there is good cause for the redesignation;

(B) the State has given the agency notice of the intention to make such redesignation, including notice regarding the good cause for such redesignation, and given the agency an opportunity to respond to the assertion that good cause has been shown;

(C) the State has given timely notice and an opportunity for public comment in an accessible format to individuals with developmental disabilities or their representatives; and

(D) the system has an opportunity to appeal the redesignation to the Secretary, on the basis that the redesignation was not for good cause.

(b) American Indian consortium

Upon application to the Secretary, an American Indian consortium established to provide protection and advocacy services under this part, shall receive funding pursuant to section 15042(a)(6) of this title to provide the services. Such consortium shall be considered to be a system for purposes of this part and shall coordinate the services with other systems serving the same geographic area. The tribal council that designates the consortium shall carry out the responsibilities and exercise the authorities specified for a State in this part, with regard to the consortium.

(c) Record

In this section, the term ''record'' includes—

(1) a report prepared or received by any staff at any location at which services, supports, or other assistance is provided to individuals with developmental disabilities;

(2) a report prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury, or death occurring at such location, that describes such incidents and the steps taken to investigate such incidents; and

(3) a discharge planning record.

(Pub. L. 106–402, title I, § 143, Oct. 30, 2000, 114 Stat. 1714; Pub. L. 108–364, § 3(a)(3), Oct. 25, 2004, 118 Stat. 1736.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (a)(2)(D)(ii), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Older Americans Act of 1965, referred to in subsec. (a)(2)(D)(ii), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (a)(2)(D)(ii), was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (a)(2)(D)(ii), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2004—Subsec. (a)(2)(D)(ii). Pub. L. 108–364 substituted ''section 3003 or 3004 of title 29'' for ''section 3011 or 3012 of title 29''.

§ 15044. Administration

(a) Governing board

In a State in which the system described in section 15043 of this title is organized as a private nonprofit entity with a multimember governing board, or a public system with a multimember governing board, such governing board shall be selected according to the policies and procedures of the system, except that—

(1)(A) the governing board shall be composed of members who broadly represent or are knowledgeable about the needs of the individuals served by the system;

(B) a majority of the members of the board shall be—

(i) individuals with disabilities, including individuals with developmental disabilities, who are eligible for services, or have received or are receiving services through the system; or

(ii) parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i); and

(C) the board may include a representative of the State Council on Developmental Disabilities, the Centers in the State, and the self-advocacy organization described in section 15024(c)(4)(A)(ii)(I) of this title;

(2) not more than ⅓ of the members of the governing board may be appointed by the chief executive officer of the State involved, in the case of any State in which such officer has the authority to appoint members of the board;

(3) the membership of the governing board shall be subject to term limits set by the system to ensure rotating membership;

(4) any vacancy in the board shall be filled not later than 60 days after the date on which the vacancy occurs; and

(5) in a State in which the system is organized as a public system without a multimember governing or advisory board, the system shall establish an advisory council—

(A) that shall advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with developmental disabilities; and

(B) on which a majority of the members shall be—

(i) individuals with developmental disabilities who are eligible for services, or have received or are receiving services, through the system; or

(ii) parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i).

(b) Legal action

(1) In general

Nothing in this subchapter shall preclude a system from bringing a suit on behalf of individuals with developmental disabilities against a State, or an agency or instrumentality of a State.

(2) Use of amounts from judgment

An amount received pursuant to a suit described in paragraph (1) through a court judgment may only be used by the system to further the purpose of this part and shall not be used to augment payments to legal contractors or to award personal bonuses.

(3) Limitation

The system shall use assistance provided under this part in a manner consistent with section 14404 of this title.

(c) Disclosure of information

For purposes of any periodic audit, report, or evaluation required under this part, the Secretary shall not require an entity carrying out a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

(d) Public notice of Federal onsite review

The Secretary shall provide advance public notice of any Federal programmatic or administrative onsite review of a system conducted under this part and solicit public comment on the system through such notice. The Secretary shall prepare an onsite visit report containing the results of such review, which shall be distributed to the Governor of the State and to other interested public and private parties. The comments received in response to the public comment solicitation notice shall be included in the onsite visit report.

(e) Reports

Beginning in fiscal year 2002, each system established in a State pursuant to this part shall annually prepare and transmit to the Secretary a report that describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year, including a description of the system's goals, the extent to which the goals were achieved, barriers to their achievement, the process used to obtain public input, the nature of such input, and how such input was used.

(Pub. L. 106–402, title I, § 144, Oct. 30, 2000, 114 Stat. 1717.)

§ 15045. Authorization of appropriations

For allotments under section 15042 of this title, there are authorized to be appropriated $32,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(Pub. L. 106–402, title I, § 145, Oct. 30, 2000, 114 Stat. 1718.)

PART D—NATIONAL NETWORK OF UNIVERSITY CENTERS FOR EXCELLENCE IN DEVELOPMENTAL DISABILITIES EDUCATION, RESEARCH, AND SERVICE

§ 15061. Grant authority

(a) National network

From appropriations authorized under section 15066(a)(1) of this title, the Secretary shall make 5-year grants to entities in each State designated as University Centers for Excellence in Developmental Disabilities Education, Research, and Service to carry out activities described in section 15063(a) of this title.

(b) National training initiatives

From appropriations authorized under section 15066(a)(1) of this title and reserved under section 15066(a)(2) of this title, the Secretary shall make grants to Centers to carry out activities described in section 15063(b) of this title.

(c) Technical assistance

From appropriations authorized under section 15066(a)(1) of this title and reserved under section 15066(a)(3) of this title (or from funds reserved under section 15083 of this title, as appropriate), the Secretary shall enter into 1 or more cooperative agreements or contracts for the purpose of providing technical assistance described in section 15063(c) of this title.

(Pub. L. 106–402, title I, § 151, Oct. 30, 2000, 114 Stat. 1719.)

§ 15062. Grant awards

(a) Existing Centers

(1) In general

In awarding and distributing grant funds under section 15061(a)of this title for a fiscal year, the Secretary, subject to the availability of appropriations and the condition specified in subsection (d) of this section, shall award and distribute grant funds in equal amounts of $500,000 (adjusted in accordance with subsection (b) of this section), to each Center that existed during the preceding fiscal year and that meets the requirements of this part, prior to making grants under subsection (c) or (d) of this section.

(2) Reduction of award

Notwithstanding paragraph (1), if the aggregate of the funds to be awarded to the Centers pursuant to paragraph (1) for any fiscal year exceeds the total amount appropriated under section 15066 of this title for such fiscal year, the amount to be awarded to each Center for such fiscal year shall be proportionately reduced.

(b) Adjustments

Subject to the availability of appropriations, for any fiscal year following a year in which each Center described in subsection (a) of this section received a grant award of not less than $500,000 under subsection (a) of this section (adjusted in accordance with this subsection), the Secretary shall adjust the awards to take into account the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase), prior to making grants under subsection (c) or (d) of this section.

(c) National training initiatives on critical and emerging needs

Subject to the availability of appropriations, for any fiscal year in which each Center described in subsection (a) of this section receives a grant award of not less than $500,000, under subsection (a) of this section (adjusted in accordance with subsection (b) of this section), after making the grant awards, the Secretary shall make grants under section 15061(b) of this title to Centers to pay for the Federal share of the cost of training initiatives related to the unmet needs of individuals with developmental disabilities and their families, as described in section 15063(b) of this title.

(d) Additional grants

For any fiscal year in which each Center described in subsection (a) of this section receives a grant award of not less than $500,000 under subsection (a) of this section (adjusted in accordance with subsection (b) of this section), after making the grant awards, the Secretary may make grants under section 15061(a) of this title for activities described in section 15063(a) of this title to additional Centers, or additional grants to Centers, for States or populations that are unserved or underserved by Centers due to such factors as—

(1) population;

(2) a high concentration of rural or urban areas; or

(3) a high concentration of unserved or underserved populations.

(Pub. L. 106–402, title I, § 152, Oct. 30, 2000, 114 Stat. 1719.)

§ 15063. Purpose and scope of activities

(a) National network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service

(1) In general

In order to provide leadership in, advise Federal, State, and community policymakers about, and promote opportunities for individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life, the Secretary shall award grants to eligible entities designated as Centers in each State to pay for the Federal share of the cost of the administration and operation of the Centers. The Centers shall be interdisciplinary education, research, and public service units of universities (as defined by the Secretary) or public or not-for-profit entities associated with universities that engage in core functions, described in paragraph (2), addressing, directly or indirectly, 1 or more of the areas of emphasis.

(2) Core functions

The core functions referred to in paragraph (1) shall include the following:

(A) Provision of interdisciplinary pre-service preparation and continuing education of students and fellows, which may include the preparation and continuing education of leadership, direct service, clinical, or other personnel to strengthen and increase the capacity of States and communities to achieve the purpose of this subchapter.

(B) Provision of community services—

(i) that provide training or technical assistance for individuals with developmental disabilities, their families, professionals, paraprofessionals, policymakers, students, and other members of the community; and

(ii) that may provide services, supports, and assistance for the persons described in clause (i) through demonstration and model activities.

(C) Conduct of research, which may include basic or applied research, evaluation, and the analysis of public policy in areas that affect or could affect, either positively or negatively, individuals with developmental disabilities and their families.

(D) Dissemination of information related to activities undertaken to address the purpose of this subchapter, especially dissemination of information that demonstrates that the network authorized under this part is a national and international resource that includes specific substantive areas of expertise that may be accessed and applied in diverse settings and circumstances.

(b) National training initiatives on critical and emerging needs

(1) Supplemental grants

After consultation with relevant, informed sources, including individuals with developmental disabilities and their families, the Secretary shall award, under section 15061(b) of this title, supplemental grants to Centers to pay for the Federal share of the cost of training initiatives related to the unmet needs of individuals with developmental disabilities and their families. The Secretary shall make the grants on a competitive basis, and for periods of not more than 5 years.

(2) Establishment of consultation process by the Secretary

Not later than 1 year after October 30, 2000, the Secretary shall establish a consultation process that, on an ongoing basis, allows the Secretary to identify and address, through supplemental grants authorized under paragraph (1), training initiatives related to the unmet needs of individuals with developmental disabilities and their families.

(c) Technical assistance

In order to strengthen and support the national network of Centers, the Secretary may enter into 1 or more cooperative agreements or contracts to—

(1) assist in national and international dissemination of specific information from multiple Centers and, in appropriate cases, other entities whose work affects the lives of individuals with developmental disabilities;

(2) compile, analyze, and disseminate state-of-the-art training, research, and demonstration results policies, and practices from multiple Centers and, in appropriate cases, other entities whose work affects the lives of persons with developmental disabilities;

(3) convene experts from multiple Centers to discuss and make recommendations with regard to national emerging needs of individuals with developmental disabilities;

(4)(A) develop portals that link users with every Center's website; and

(B) facilitate electronic information sharing using state-of-the-art Internet technologies such as real-time online discussions, multipoint video conferencing, and web-based audio/video broadcasts, on emerging topics that impact individuals with disabilities and their families;

(5) serve as a research-based resource for Federal and State policymakers on information concerning and issues impacting individuals with developmental disabilities and entities that assist or serve those individuals; or

(6) undertake any other functions that the Secretary determines to be appropriate;

to promote the viability and use of the resources and expertise of the Centers nationally and internationally.

(Pub. L. 106–402, title I, § 153, Oct. 30, 2000, 114 Stat. 1720.)

§ 15064. Applications

(a) Applications for core Center grants

(1) In general

To be eligible to receive a grant under section 15061(a) of this title for a Center, an entity shall submit to the Secretary, and obtain approval of, an application at such time, in such manner, and containing such information, as the Secretary may require.

(2) Application contents

Each application described in paragraph (1) shall describe a 5-year plan, including a projected goal related to 1 or more areas of emphasis for each of the core functions described in section 15063(a) of this title.

(3) Assurances

The application shall be approved by the Secretary only if the application contains or is supported by reasonable assurances that the entity designated as the Center will—

(A) meet regulatory standards as established by the Secretary for Centers;

(B) address the projected goals, and carry out goal-related activities, based on data driven strategic planning and in a manner consistent with the objectives of this part, that—

(i) are developed in collaboration with the consumer advisory committee established pursuant to subparagraph (E);

(ii) are consistent with, and to the extent feasible complement and further, the Council goals contained in the State plan submitted under section 15024 of this title and the system goals established under section 15043 of this title; and

(iii) will be reviewed and revised annually as necessary to address emerging trends and needs;

(C) use the funds made available through the grant to supplement, and not supplant, the funds that would otherwise be made available for activities described in section 15063(a) of this title;

(D) protect, consistent with the policy specified in section 15001(c) of this title (relating to rights of individuals with developmental disabilities), the legal and human rights of all individuals with developmental disabilities (especially those individuals under State guardianship) who are involved in activities carried out under programs assisted under this part;

(E) establish a consumer advisory committee—

(i) of which a majority of the members shall be individuals with developmental disabilities and family members of such individuals;

(ii) that is comprised of—

(I) individuals with developmental disabilities and related disabilities;

(II) family members of individuals with developmental disabilities;

(III) a representative of the State protection and advocacy system;

(IV) a representative of the State Council on Developmental Disabilities;

(V) a representative of a self-advocacy organization described in section 15024(c)(4)(A)(ii)(I) of this title; and

(VI) representatives of organizations that may include parent training and information centers assisted under section 1471 or 1472 of title 20, entities carrying out activities authorized under section 3003 or 3004 of title 29, relevant State agencies, and other community groups concerned with the welfare of individuals with developmental disabilities and their families;

(iii) that reflects the racial and ethnic diversity of the State; and

(iv) that shall—

(I) consult with the Director of the Center regarding the development of the 5-year plan, and shall participate in an annual review of, and comment on, the progress of the Center in meeting the projected goals contained in the plan, and shall make recommendations to the Director of the Center regarding any proposed revisions of the plan that might be necessary; and

(II) meet as often as necessary to carry out the role of the committee, but at a minimum twice during each grant year;

(F) to the extent possible, utilize the infrastructure and resources obtained through funds made available under the grant to leverage additional public and private funds to successfully achieve the projected goals developed in the 5-year plan;

(G)(i) have a director with appropriate academic credentials, demonstrated leadership, expertise regarding developmental disabilities, significant experience in managing grants and contracts, and the ability to leverage public and private funds; and

(ii) allocate adequate staff time to carry out activities related to each of the core functions described in section 15063(a) of this title; and

(H) educate, and disseminate information related to the purpose of this subchapter to, the legislature of the State in which the Center is located, and to Members of Congress from such State.

(b) Supplemental grant applications pertaining to national training initiatives in critical and emerging needs

To be eligible to receive a supplemental grant under section 15061(b) of this title, a Center may submit a supplemental application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, pursuant to the terms and conditions set by the Secretary consistent with section 15063(b) of this title.

(c) Peer review

(1) In general

The Secretary shall require that all applications submitted under this part be subject to technical and qualitative review by peer review groups established under paragraph (2). The Secretary may approve an application under this part only if such application has been recommended by a peer review group that has conducted the peer review required under this paragraph. In conducting the review, the group may conduct onsite visits or inspections of related activities as necessary.

(2) Establishment of peer review groups

(A) In general

The Secretary, acting through the Commissioner of the Administration on Developmental Disabilities, may, notwithstanding—

(i) the provisions of title 5 concerning appointments to the competitive service; and

(ii) the provisions of chapter 51, and subchapter III of chapter 53 of title 5 concerning classification and General Schedule pay rates;

establish such peer review groups and appoint and set the rates of pay of members of such groups.

(B) Composition

Each peer review group shall include such individuals with disabilities and parents, guardians, or advocates of or for individuals with developmental disabilities, as are necessary to carry out this subsection.

(3) Waivers of approval

The Secretary may waive the provisions of paragraph (1) with respect to review and approval of an application if the Secretary determines that exceptional circumstances warrant such a waiver.

(d) Federal share

(1) In general

The Federal share of the cost of administration or operation of a Center, or the cost of carrying out a training initiative, supported by a grant made under this part may not be more than 75 percent of the necessary cost of such project, as determined by the Secretary.

(2) Urban or rural poverty areas

In the case of a project whose activities or products target individuals with developmental disabilities who live in an urban or rural poverty area, as determined by the Secretary, the Federal share of the cost of the project may not be more than 90 percent of the necessary costs of the project, as determined by the Secretary.

(3) Grant expenditures

For the purpose of determining the Federal share with respect to the project, expenditures on that project by a political subdivision of a State or by a public or private entity shall, subject to such limitations and conditions as the Secretary may by regulation prescribe under section 15004(b) of this title, be considered to be expenditures made by a Center under this part.

(e) Annual report

Each Center shall annually prepare and transmit to the Secretary a report containing—

(1) information on progress made in achieving the projected goals of the Center for the previous year, including—

(A) the extent to which the goals were achieved;

(B) a description of the strategies that contributed to achieving the goals;

(C) to the extent to which the goals were not achieved, a description of factors that impeded the achievement; and

(D) an accounting of the manner in which funds paid to the Center under this part for a fiscal year were expended;

(2) information on proposed revisions to the goals; and

(3) a description of successful efforts to leverage funds, other than funds made available under this part, to pursue goals consistent with this part.

(Pub. L. 106–402, title I, § 154, Oct. 30, 2000, 114 Stat. 1722; Pub. L. 108–364, § 3(a)(4), Oct. 25, 2004, 118 Stat. 1737; Pub. L. 108–446, title III, § 305(n)(2), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

Provisions of title 5 governing appointments in competitive service, referred to in subsec. (c)(2)(A)(i), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (a)(3)(E)(ii)(VI). Pub. L. 108–446 substituted ''section 1471 or 1472 of title 20'' for ''section 1482 or 1483 of title 20''.

Pub. L. 108–364 substituted ''section 3003 or 3004 of title 29'' for ''section 3011 or 3012 of title 29''.

§ 15065. Definition

In this part, the term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.

(Pub. L. 106–402, title I, § 155, Oct. 30, 2000, 114 Stat. 1725.)

§ 15066. Authorization of appropriations

(a) Authorization and reservations

(1) Authorization

There are authorized to be appropriated to carry out this part (other than section 15063(c)(4) of this title) $30,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(2) Reservation for training initiatives

From any amount appropriated for a fiscal year under paragraph (1) and remaining after each Center described in section 15062(a) of this title has received a grant award of not less than $500,000, as described in section 15062 of this title, the Secretary shall reserve funds for the training initiatives authorized under section 15063(b) of this title.

(3) Reservation for technical assistance

(A) Years before appropriation trigger

For any covered year, the Secretary shall reserve funds in accordance with section 15083(c) of this title to fund technical assistance activities under section 15063(c) of this title (other than section 15063(c)(4) of this title).

(B) Years after appropriation trigger

For any fiscal year that is not a covered year, the Secretary shall reserve not less than $300,000 and not more than 2 percent of the amount appropriated under paragraph (1) to fund technical assistance activities under section 15063(c) of this title (other than section 15063(c)(4) of this title).

(C) Covered year

In this paragraph, the term ''covered year'' means a fiscal year prior to the first fiscal year for which the amount appropriated under paragraph (1) is not less than $20,000,000.

(b) Limitation

The Secretary may not use, for peer review or other activities directly related to peer review conducted under this part—

(1) for fiscal year 2001, more than $300,000 of the funds made available under subsection (a) of this section; and

(2) for any succeeding fiscal year, more than the amount of funds used for the peer review and related activities in fiscal year 2001, adjusted to take into account the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase).

(Pub. L. 106–402, title I, § 156, Oct. 30, 2000, 114 Stat. 1725.)

PART E—PROJECTS OF NATIONAL SIGNIFICANCE

§ 15081. Purpose

The purpose of this part is to provide grants, contracts, or cooperative agreements for projects of national significance that—

(1) create opportunities for individuals with developmental disabilities to directly and fully contribute to, and participate in, all facets of community life; and

(2) support the development of national and State policies that reinforce and promote, with the support of families, guardians, advocates, and communities, of individuals with developmental disabilities, the self-determination, independence, productivity, and integration and inclusion in all facets of community life of such individuals through—

(A) family support activities;

(B) data collection and analysis;

(C) technical assistance to entities funded under parts B and D of this subchapter, subject to the limitations described in sections 15029(b), 15066(a)(3), and 15083(c) of this title; and

(D) other projects of sufficient size and scope that hold promise to expand or improve opportunities for such individuals, including—

(i) projects that provide technical assistance for the development of information and referral systems;

(ii) projects that provide technical assistance to self-advocacy organizations of individuals with developmental disabilities;

(iii) projects that provide education for policymakers;

(iv) Federal interagency initiatives;

(v) projects that enhance the participation of racial and ethnic minorities in public and private sector initiatives in developmental disabilities;

(vi) projects that provide aid to transition youth with developmental disabilities from school to adult life, especially in finding employment and postsecondary education opportunities and in upgrading and changing any assistive technology devices that may be needed as a youth matures;

(vii) initiatives that address the development of community quality assurance systems and the training related to the development, implementation, and evaluation of such systems, including training of individuals with developmental disabilities and their families;

(viii) initiatives that address the needs of aging individuals with developmental disabilities and aging caregivers of adults with developmental disabilities in the community;

(ix) initiatives that create greater access to and use of generic services systems, community organizations, and associations, and initiatives that assist in community economic development;

(x) initiatives that create access to increased living options;

(xi) initiatives that address the challenging behaviors of individuals with developmental disabilities, including initiatives that promote positive alternatives to the use of restraints and seclusion; and

(xii) initiatives that address other areas of emerging need.

(Pub. L. 106–402, title I, § 161, Oct. 30, 2000, 114 Stat. 1725.)

§ 15082. Grant authority

(a) In general

The Secretary shall award grants, contracts, or cooperative agreements to public or private nonprofit entities for projects of national significance relating to individuals with developmental disabilities to carry out activities described in section 15081(2) of this title.

(b) Federal interagency initiatives

(1) In general

(A) Authority

The Secretary may—

(i) enter into agreements with Federal agencies to jointly carry out activities described in section 15081(2) of this title or to jointly carry out activities of common interest related to the objectives of such section; and

(ii) transfer to such agencies for such purposes funds appropriated under this part, and receive and use funds from such agencies for such purposes.

(B) Relation to program purposes

Funds transferred or received pursuant to this paragraph shall be used only in accordance with statutes authorizing the appropriation of such funds. Such funds shall be made available through grants, contracts, or cooperative agreements only to recipients eligible to receive such funds under such statutes.

(C) Procedures and criteria

If the Secretary enters into an agreement under this subsection for the administration of a jointly funded project—

(i) the agreement shall specify which agency's procedures shall be used to award grants, contracts, or cooperative agreements and to administer such awards;

(ii) the participating agencies may develop a single set of criteria for the jointly funded project, and may require applicants to submit a single application for joint review by such agencies; and

(iii) unless the heads of the participating agencies develop joint eligibility requirements, an applicant for an award for the project shall meet the eligibility requirements of each program involved.

(2) Limitation

The Secretary may not construe the provisions of this subsection to take precedence over a limitation on joint funding contained in an applicable statute.

(Pub. L. 106–402, title I, § 162, Oct. 30, 2000, 114 Stat. 1727.)

§ 15083. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out the projects specified in this section $16,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 through 2007.

(b) Use of funds

(1) Grants, contracts, and agreements

Except as provided in paragraph (2), the amount appropriated under subsection (a) of this section for each fiscal year shall be used to award grants, or enter into contracts, cooperative agreements, or other agreements, under section 15082 of this title.

(2) Administrative costs

Not more than 1 percent of the amount appropriated under subsection (a) of this section for each fiscal year may be used to provide for the administrative costs (other than compensation of Federal employees) of the Administration on Developmental Disabilities for administering this part and parts B, C, and D of this subchapter, including monitoring the performance of and providing technical assistance to, entities that receive funds under this subchapter.

(c) Technical assistance for Councils and Centers

(1) In general

For each covered year, the Secretary shall expend, to provide technical assistance for entities funded under part B or D of this subchapter, an amount from funds appropriated under subsection (a) of this section that is not less than the amount the Secretary expended

on technical assistance for entities funded under that part (or a corresponding provision) in the previous fiscal year.

(2) Covered year

In this subsection, the term ''covered year'' means—

(A) in the case of an expenditure for entities funded under part B of this subchapter, a fiscal year for which the amount appropriated under section 15029(a) of this title is less than $76,000,000; and

(B) in the case of an expenditure for entities funded under part D of this subchapter, a fiscal year prior to the first fiscal year for which the amount appropriated under section 15066(a)(1) of this title is not less than $20,000,000.

(3) References

References in this subsection to part D of this subchapter shall not be considered to include section 15063(c)(4) of this title.

(d) Technical assistance on electronic information sharing

In addition to any funds reserved under subsection (c) of this section, the Secretary shall reserve $100,000 from the amount appropriated under subsection (a) of this section for each fiscal year to carry out section 15063(c)(4) of this title.

(e) Limitation

For any fiscal year for which the amount appropriated under subsection (a) of this section is not less than $10,000,000, not more than 50 percent of such amount shall be used for activities carried out under section 15081(2)(A) of this title.

(Pub. L. 106–402, title I, § 163, Oct. 30, 2000, 114 Stat. 1727.)

SUBCHAPTER II—FAMILY SUPPORT

§ 15091. Findings, purposes, and policy

(a) Findings

Congress makes the following findings:

(1) It is in the best interest of our Nation to preserve, strengthen, and maintain the family.

(2) Families of children with disabilities provide support, care, and training to their children that can save States millions of dollars. Without the efforts of family caregivers, many persons with disabilities would receive care through State-supported out-of-home placements.

(3) Most families of children with disabilities, especially families in unserved and underserved populations, do not have access to family-centered and family-directed services to support such families in their efforts to care for such children at home.

(4) Medical advances and improved health care have increased the life span of many people with disabilities, and the combination of the longer life spans and the aging of family caregivers places a continually increasing demand on the finite service delivery systems of the States.

(5) In 1996, 49 States provided family support initiatives in response to the needs of families of children with disabilities. Such initiatives included the provision of cash subsidies, respite care, and other forms of support. There is a need in each State, however, to strengthen, expand, and coordinate the activities of a system of family support services for families of children with disabilities that is easily accessible, avoids duplication, uses resources efficiently, and prevents gaps in services to families in all areas of the State.

(6) The goals of the Nation properly include the goal of providing to families of children with disabilities the family support services necessary—

(A) to support the family;

(B) to enable families of children with disabilities to nurture and enjoy their children at home;

(C) to enable families of children with disabilities to make informed choices and decisions regarding the nature of supports, resources, services, and other assistance made available to such families; and

(D) to support family caregivers of adults with disabilities.

(b) Purposes

The purposes of this subchapter are—

(1) to promote and strengthen the implementation of comprehensive State systems of family support services, for families with children with disabilities, that are family-centered and family-directed, and that provide families with the greatest possible decisionmaking authority and control regarding the nature and use of services and support;

(2) to promote leadership by families in planning, policy development, implementation, and evaluation of family support services for families of children with disabilities;

(3) to promote and develop interagency coordination and collaboration between agencies responsible for providing the services; and

(4) to increase the availability of, funding for, access to, and provision of family support services for families of children with disabilities.

(c) Policy

It is the policy of the United States that all programs, projects, and activities funded under this subchapter shall be family-centered and family-directed, and shall be provided in a manner consistent with the goal of providing families of children with disabilities with the support the families need to raise their children at home.

(Pub. L. 106–402, title II, § 202, Oct. 30, 2000, 114 Stat. 1728.)

SHORT TITLE

For short title of this subchapter as the ''Families of Children With Disabilities Support Act of 2000'', see section 201 of Pub. L. 106–402, set out as a note under section 15001 of this title.

§ 15092. Definitions and special rule

(a) Definitions

In this subchapter:

(1) Child with a disability

The term ''child with a disability'' means an individual who—

(A) has a significant physical or mental impairment, as defined pursuant to State policy to the extent that such policy is established without regard to type of disability; or

(B) is an infant or a young child from birth through age 8 and has a substantial developmental delay or specific congenital or acquired condition that presents a high probability of resulting in a disability if services are not provided to the infant or child.

(2) Family

(A) In general

Subject to subparagraph (B), for purposes of the application of this subchapter in a State, the term ''family'' has the meaning given the term by the State.

(B) Exclusion of employees

The term does not include an employee who, acting in a paid employment capacity, provides services to a child with a disability in an out-of-home setting such as a hospital, nursing home, personal care home, board and care home, group home, or other facility.

(3) Family support for families of children with disabilities

The term ''family support for families of children with disabilities'' means supports, resources, services, and other assistance provided to families of children with disabilities pursuant to State policy that are designed to—

(A) support families in the efforts of such families to raise their children with disabilities in the home;

(B) strengthen the role of the family as primary caregiver for such children;

(C) prevent involuntary out-of-the-home placement of such children and maintain family unity; and

(D) reunite families with children with disabilities who have been placed out of the home, whenever possible.

(4) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(5) State

The term ''State'' means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(6) Systems change activities

The term ''systems change activities'' means efforts that result in laws, regulations, policies, practices, or organizational structures—

(A) that are family-centered and family-directed;

(B) that facilitate and increase access to, provision of, and funding for, family support services for families of children with disabilities; and

(C) that otherwise accomplish the purposes of this subchapter.

(b) Special rule

References in this subchapter to a child with a disability shall be considered to include references to an individual who is not younger than age 18 who—

(1) has a significant impairment described in subsection (a)(1)(A) of this section; and

(2) is residing with and receiving assistance from a family member.

(Pub. L. 106–402, title II, § 203, Oct. 30, 2000, 114 Stat. 1729.)

§ 15093. Grants to States

(a) In general

The Secretary shall make grants to States on a competitive basis, in accordance with the provisions of this subchapter, to support systems change activities designed to assist States to develop and implement, or expand and enhance, a statewide system of family support services for families of children with disabilities that accomplishes the purposes of this subchapter.

(b) Award period and grant limitation

No grant shall be awarded under this section for a period of more than 3 years. No State shall be eligible for more than 1 grant under this section.

(c) Amount of grants

(1) Grants to States

(A) Federal matching share

From amounts appropriated under section 15101(a) of this title, the Secretary shall pay to each State that has an application approved under section 15094 of this title, for each year of the grant period, an amount that is—

(i) equal to not more than 75 percent of the cost of the systems change activities to be carried out by the State; and

(ii) not less than $100,000 and not more than $500,000.

(B) Non-Federal share

The non-Federal share of the cost of the systems change activities may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(2) Calculation of amounts

The Secretary shall calculate a grant amount described in paragraph (1) on the basis of—

(A) the amounts available for making grants under this section; and

(B) the child population of the State concerned.

(d) Priority for previously participating States

For the second and third fiscal years for which amounts are appropriated to carry out this section, the Secretary, in providing payments under this section, shall give priority to States that received payments under this section during the preceding fiscal year.

(e) Priorities for distribution

To the extent practicable, the Secretary shall award grants to States under this section in a manner that—

(1) is geographically equitable;

(2) distributes the grants among States that have differing levels of development of statewide systems of family support services for families of children with disabilities; and

(3) distributes the grants among States that attempt to meet the needs of unserved and underserved populations, such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, and individuals from underserved geographic areas (rural or urban).

(Pub. L. 106–402, title II, § 204, Oct. 30, 2000, 114 Stat. 1730.)

§ 15094. Application

To be eligible to receive a grant under this subchapter, a State shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require, including information about the designation of a lead entity, a description of available State resources, and assurances that systems change activities will be family-centered and family-directed.

(Pub. L. 106–402, title II, § 205, Oct. 30, 2000, 114 Stat. 1731.)

§ 15095. Designation of the lead entity

(a) Designation

The Chief Executive Officer of a State that desires to receive a grant under section 15093 of this title, shall designate the office or entity (referred to in this subchapter as the ''lead entity'') responsible for—

(1) submitting the application described in section 15094 of this title on behalf of the State;

(2) administering and supervising the use of the amounts made available under the grant;

(3) coordinating efforts related to and supervising the preparation of the application;

(4) coordinating the planning, development, implementation (or expansion and enhancement), and evaluation of a statewide system of family support services for families of children with disabilities among public agencies and between public agencies and private agencies, including coordinating efforts related to entering into interagency agreements;

(5) coordinating efforts related to the participation by families of children with disabilities in activities carried out under a grant made under this subchapter; and

(6) submitting the report described in section 15097 of this title on behalf of the State.

(b) Qualifications

In designating the lead entity, the Chief Executive Officer may designate—

(1) an office of the Chief Executive Officer;

(2) a commission appointed by the Chief Executive Officer;

(3) a public agency;

(4) a council established under Federal or State law; or

(5) another appropriate office, agency, or entity.

(Pub. L. 106–402, title II, § 206, Oct. 30, 2000, 114 Stat. 1731.)

§ 15096. Authorized activities

(a) In general

A State that receives a grant under section 15093 of this title shall use the funds made available through the grant to carry out systems change activities that accomplish the purposes of this subchapter.

(b) Special rule

In carrying out activities authorized under this subchapter, a State shall ensure that such activities address the needs of families of children with disabilities from unserved or underserved populations.

(Pub. L. 106–402, title II, § 207, Oct. 30, 2000, 114 Stat. 1732.)

§ 15097. Reporting

A State that receives a grant under this subchapter shall prepare and submit to the Secretary, at the end of the grant period, a report containing the results of State efforts to develop and implement, or expand and enhance, a statewide system of family support services for families of children with disabilities.

(Pub. L. 106–402, title II, § 208, Oct. 30, 2000, 114 Stat. 1732.)

§ 15098. Technical assistance

(a) In general

The Secretary shall enter into contracts or cooperative agreements with appropriate public or private agencies and organizations, including institutions of higher education, with documented experience, expertise, and capacity, for the purpose of providing technical assistance and information with respect to the development and implementation, or expansion and enhancement, of a statewide system of family support services for families of children with disabilities.

(b) Purpose

An agency or organization that provides technical assistance and information under this section in a State that receives a grant under this subchapter shall provide the technical assistance and information to the lead entity of the State, family members of children with disabilities, organizations, service providers, and policymakers involved with children with disabilities and their families. Such an agency or organization may also provide technical assistance and information to a State that does not receive a grant under this subchapter.

(c) Reports to the Secretary

An entity providing technical assistance and information under this section shall prepare and submit to the Secretary periodic reports regarding Federal policies and procedures identified within the States that facilitate or impede the delivery of family support services to families of children with disabilities. The report shall include recommendations to the Secretary regarding the delivery of services, coordination with other programs, and integration of the policies

described in section 15091 of this title in Federal law, other than this subchapter.

(Pub. L. 106–402, title II, § 209, Oct. 30, 2000, 114 Stat. 1732.)

§ 15099. Evaluation

(a) In general

The Secretary shall conduct a national evaluation of the program of grants to States authorized by this subchapter.

(b) Purpose

(1) In general

The Secretary shall conduct the evaluation under subsection (a) of this section to assess the status and effects of State efforts to develop and implement, or expand and enhance, statewide systems of family support services for families of children with disabilities in a manner consistent with the provisions of this subchapter. In particular, the Secretary shall assess the impact of such efforts on families of children with disabilities, and recommend amendments to this subchapter that are necessary to assist States to accomplish fully the purposes of this subchapter.

(2) Information systems

The Secretary shall work with the States to develop an information system designed to compile and report, from information provided by the States, qualitative and quantitative descriptions of the impact of the program of grants to States authorized by this subchapter on—

(A) families of children with disabilities, including families from unserved and underserved populations;

(B) access to and funding for family support services for families of children with disabilities;

(C) interagency coordination and collaboration between agencies responsible for providing the services; and

(D) the involvement of families of children with disabilities at all levels of the statewide systems.

(c) Report to Congress

Not later than 2½ years after October 30, 2000, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the results of the evaluation conducted under this section.

(Pub. L. 106–402, title II, § 210, Oct. 30, 2000, 114 Stat. 1733.)

§ 15100. Projects of national significance

(a) Study by the Secretary

The Secretary shall review Federal programs to determine the extent to which such programs facilitate or impede access to, provision of, and funding for family support services for families of children with disabilities, consistent with the policies described in section 15091 of this title.

(b) Projects of national significance

The Secretary shall make grants or enter into contracts for projects of national significance to support the development of national and State policies and practices related to the development and implementation, or expansion and enhancement, of family-centered and family-directed systems of family support services for families of children with disabilities.

(Pub. L. 106–402, title II, § 211, Oct. 30, 2000, 114 Stat. 1733.)

§ 15101. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for each of fiscal years 2001 through 2007.

(b) Reservation

(1) In general

The Secretary shall reserve for each fiscal year 10 percent, or $400,000 (whichever is greater), of the amount appropriated pursuant to subsection (a) of this section to carry out—

(A) section 15098 of this title (relating to the provision of technical assistance and information to States); and

(B) section 15099 of this title (relating to the conduct of evaluations).

(2) Special rule

For each year that the amount appropriated pursuant to subsection (a) of this section is $10,000,000 or greater, the Secretary may reserve 5 percent of such amount to carry out section 15100 of this title.

(Pub. L. 106–402, title II, § 212, Oct. 30, 2000, 114 Stat. 1734.)

SUBCHAPTER III—PROGRAM FOR DIRECT SUPPORT WORKERS WHO ASSIST INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

§ 15111. Findings

Congress finds that—

(1) direct support workers, especially young adults, have played essential roles in providing the support needed by individuals with developmental disabilities and expanding community options for those individuals;

(2) 4 factors have contributed to a decrease in the available pool of direct support workers, specifically—

(A) the small population of individuals who are age 18 through 25, an age group that has been attracted to direct support work in the past;

(B) the rapid expansion of the service sector, which attracts individuals who previously would have elected to pursue employment as direct support workers;

(C) the failure of wages in the human services sector to keep pace with wages in other service sectors; and

(D) the lack of quality training and career advancement opportunities available to direct support workers; and

(3) individuals with developmental disabilities benefit from assistance from direct support workers who are well trained, and benefit from receiving services from professionals who have spent time as direct support workers.

(Pub. L. 106–402, title III, § 301, Oct. 30, 2000, 114 Stat. 1734.)

§ 15112. Definitions

In this subchapter:

(1) Developmental disability

The term ''developmental disability'' has the meaning given the term in section 15002 of this title.

(2) Institution of higher education

The term ''institution of higher education'' has the meaning given the term in section 1141[1] of title 20.

(3) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(Pub. L. 106–402, title III, § 302, Oct. 30, 2000, 114 Stat. 1734.)

REFERENCES IN TEXT

Section 1141 of title 20, referred to in par. (2), was repealed by Pub. L. 105–244, § 3, title I, § 101(b), title VII, § 702, Oct. 7, 1998, 112 Stat. 1585, 1616, 1803, effective Oct. 1, 1998. However, the term ''institution of higher education'' is defined in section 1001 of Title 20, Education.

§ 15113. Reaching up scholarship program

(a) Program authorization

The Secretary may award grants to eligible entities, on a competitive basis, to enable the entities to carry out scholarship programs by providing vouchers for postsecondary education to direct support workers who assist individuals with developmental disabilities residing in diverse settings. The Secretary shall award the grants to pay for the Federal share of the cost of providing the vouchers.

(b) Eligible entity

To be eligible to receive a grant under this section, an entity shall be—

(1) an institution of higher education;

(2) a State agency; or

(3) a consortium of such institutions or agencies.

(c) Application requirements

To be eligible to receive a grant under this section, an eligible entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of—

(1) the basis for awarding the vouchers;

(2) the number of individuals to receive the vouchers; and

(3) the amount of funds that will be made available by the eligible entity to pay for the non-Federal share of the cost of providing the vouchers.

(d) Selection criteria

In awarding a grant under this section for a scholarship program, the Secretary shall give priority to an entity submitting an application that—

(1) specifies that individuals who receive vouchers through the program will be individuals—

(A) who are direct support workers who assist individuals with developmental disabilities residing in diverse settings, while pursuing postsecondary education; and

(B) each of whom verifies, prior to receiving the voucher, that the worker has completed 250 hours as a direct support worker in the past 90 days;

(2) states that the vouchers that will be provided through the program will be in amounts of not more than $2,000 per year;

(3) provides an assurance that the eligible entity (or another specified entity that is not a voucher recipient) will contribute the non-Federal share of the cost of providing the vouchers; and

(4) meets such other conditions as the Secretary may specify.

(e) Federal share

The Federal share of the cost of providing the vouchers shall be not more than 80 percent.

(Pub. L. 106–402, title III, § 303, Oct. 30, 2000, 114 Stat. 1735.)

§ 15114. Staff development curriculum authorization

(a) Funding

(1) In general

The Secretary shall award funding, on a competitive basis, through a grant, cooperative agreement, or contract, to a public or private entity or a combination of such entities, for the development, evaluation, and dissemination of a staff development curriculum, and related guidelines, for computer-assisted, competency-based, multimedia, interactive instruction, relating to service as a direct support worker.

(2) Participants

The curriculum shall be developed for individuals who—

(A) seek to become direct support workers who assist individuals with developmental disabilities or are such direct support workers; and

(B) seek to upgrade their skills and competencies related to being a direct support worker.

(b) Application requirements

To be eligible to receive an award under this section, an entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a comprehensive analysis of the content of direct support roles;

(2) information identifying an advisory group that—

(A) is comprised of individuals with experience and expertise with regard to the support provided by direct support workers, and effective ways to provide the support, for individuals with developmental disabilities in diverse settings; and

(B) will advise the entity throughout the development, evaluation, and dissemination of the staff development curriculum and guidelines;

[1] See References in Text note below.

(3) information describing how the entity will—

(A) develop, field test, and validate a staff development curriculum that—

(i) relates to the appropriate reading level for direct service workers who assist individuals with disabilities;

(ii) allows for multiple levels of instruction;

(iii) provides instruction appropriate for direct support workers who work in diverse settings; and

(iv) is consistent with subsections (b) and (c) of section 15001 of this title and section 15009 of this title;

(B) develop, field test, and validate guidelines for the organizations that use the curriculum that provide for—

(i) providing necessary technical and instructional support to trainers and mentors for the participants;

(ii) ensuring easy access to and use of such curriculum by workers that choose to participate in using, and agencies that choose to use, the curriculum;

(iii) evaluating the proficiency of the participants with respect to the content of the curriculum;

(iv) providing necessary support to the participants to assure that the participants have access to, and proficiency in using, a computer in order to participate in the development, testing, and validation process;

(v) providing necessary technical and instructional support to trainers and mentors for the participants in conjunction with the development, testing, and validation process;

(vi) addressing the satisfaction of participants, individuals with developmental disabilities and their families, providers of services for such individuals and families, and other relevant entities with the curriculum; and

(vii) developing methods to maintain a record of the instruction completed, and the content mastered, by each participant under the curriculum; and

(C) nationally disseminate the curriculum and guidelines, including dissemination through—

(i) parent training and information centers funded under part D of the Individuals with Disabilities Education Act (20 U.S.C. 1451 et seq.);

(ii) community-based organizations of and for individuals with developmental disabilities and their families;

(iii) entities funded under subchapter I of this chapter;

(iv) centers for independent living;

(v) State educational agencies and local educational agencies;

(vi) entities operating appropriate medical facilities;

(vii) postsecondary education entities; and

(viii) other appropriate entities; and

(4) such other information as the Secretary may require.

(Pub. L. 106–402, title III, § 304, Oct. 30, 2000, 114 Stat. 1735.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(3)(C)(i), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part D of the Act is classified generally to subchapter IV (§ 1450 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

§ 15115. Authorization of appropriations

(a) Scholarships

There are authorized to be appropriated to carry out section 15113 of this title $800,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(b) Staff development curriculum

There are authorized to be appropriated to carry out section 15114 of this title $800,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 and 2003.

(Pub. L. 106–402, title III, § 305, Oct. 30, 2000, 114 Stat. 1737.)

CHAPTER 145—PUBLIC SAFETY OFFICER MEDAL OF VALOR AND TRIBUTES

Sec.
15201. Authorization of Medal.
15202. Medal of Valor Board.
15203. Board personnel matters.
15204. Definitions.
15205. Authorization of appropriations.
15206. National Medal of Valor Office.
15207. Consultation requirement.
15208. Law enforcement tribute acts.

§ 15201. Authorization of Medal

After September 1, 2001, the President may award, and present in the name of Congress, a Medal of Valor of appropriate design, with ribbons and appurtenances, to a public safety officer who is cited by the Attorney General, upon the recommendation of the Medal of Valor Review Board, for extraordinary valor above and beyond the call of duty. The Public Safety Medal of Valor shall be the highest national award for valor by a public safety officer.

(Pub. L. 107–12, § 2, May 30, 2001, 115 Stat. 20.)

SHORT TITLE

Pub. L. 107–12, § 1, May 30, 2001, 115 Stat. 20, provided that: ''This Act [enacting this chapter and amending section 2214 of Title 15, Commerce and Trade] may be cited as the 'Public Safety Officer Medal of Valor Act of 2001'.''

§ 15202. Medal of Valor Board

(a) Establishment of Board

There is established a Medal of Valor Review Board (hereinafter in this chapter referred to as the ''Board''), which shall be composed of 11 members appointed in accordance with subsection (b) of this section and shall conduct its business in accordance with this chapter.

(b) Membership

(1) Members

The members of the Board shall be individuals with knowledge or expertise, whether by

experience or training, in the field of public safety, of which—

(A) two shall be appointed by the majority leader of the Senate;

(B) two shall be appointed by the minority leader of the Senate;

(C) two shall be appointed by the Speaker of the House of Representatives;

(D) two shall be appointed by the minority leader of the House of Representatives; and

(E) three shall be appointed by the President, including one with experience in firefighting, one with experience in law enforcement, and one with experience in emergency services.

(2) Term

The term of a Board member shall be 4 years.

(3) Vacancies

Any vacancy in the membership of the Board shall not affect the powers of the Board and shall be filled in the same manner as the original appointment.

(4) Operation of the Board

(A) Chairman

The Chairman of the Board shall be elected by the members of the Board from among the members of the Board.

(B) Meetings

The Board shall conduct its first meeting not later than 90 days after the appointment of the last member appointed of the initial group of members appointed to the Board. Thereafter, the Board shall meet at the call of the Chairman of the Board. The Board shall meet not less often than twice each year.

(C) Voting and rules

A majority of the members shall constitute a quorum to conduct business, but the Board may establish a lesser quorum for conducting hearings scheduled by the Board. The Board may establish by majority vote any other rules for the conduct of the Board's business, if such rules are not inconsistent with this chapter or other applicable law.

(c) Duties

The Board shall select candidates as recipients of the Medal of Valor from among those applications received by the National Medal of Valor Office. Not more often than once each year, the Board shall present to the Attorney General the name or names of those it recommends as Medal of Valor recipients. In a given year, the Board shall not be required to select any recipients but may not select more than 5 individuals, or groups of individuals, as recipients. The Attorney General may in extraordinary cases increase the number of recipients in a given year. The Board shall set an annual timetable for fulfilling its duties under this chapter.

(d) Hearings

(1) In general

The Board may hold such hearings, sit and act at such times and places, administer such oaths, take such testimony, and receive such evidence as the Board considers advisable to carry out its duties.

(2) Witness expenses

Witnesses requested to appear before the Board may be paid the same fees as are paid to witnesses under section 1821 of title 28. The per diem and mileage allowances for witnesses shall be paid from funds appropriated to the Board.

(e) Information from Federal agencies

The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out its duties. Upon the request of the Board, the head of such department or agency may furnish such information to the Board.

(f) Information to be kept confidential

The Board shall not disclose any information which may compromise an ongoing law enforcement investigation or is otherwise required by law to be kept confidential.

(Pub. L. 107–12, § 3, May 30, 2001, 115 Stat. 20; Pub. L. 109–162, title XI, § 1112, Jan. 5, 2006, 119 Stat. 3103.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(4)(C), and (c), was in the original ''this Act'', meaning Pub. L. 107–12, May. 30, 2001, 115 Stat. 20, which enacted this chapter and amended section 2214 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 15201 of this title and Tables.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–162 substituted ''more than 5 individuals, or groups of individuals, as recipients'' for ''more than 5 recipients''.

§ 15203. Board personnel matters

(a) Compensation of members

(1) Except as provided in paragraph (2), each member of the Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Board.

(2) All members of the Board who serve as officers or employees of the United States, a State, or a local government, shall serve without compensation in addition to that received for those services.

(b) Travel expenses

The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of service for the Board.

(Pub. L. 107–12, § 4, May 30, 2001, 115 Stat. 21.)

§ 15204. Definitions

In this chapter:

(1) Public safety officer

The term ''public safety officer'' means a person serving a public agency, with or with-

out compensation, as a firefighter, law enforcement officer, or emergency services officer, as determined by the Attorney General. For the purposes of this paragraph, the term ''law enforcement officer'' includes a person who is a corrections or court officer or a civil defense officer.

(2) State

The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 107–12, § 5, May 30, 2001, 115 Stat. 22.)

§ 15205. Authorization of appropriations

There are authorized to be appropriated to the Attorney General such sums as may be necessary to carry out this chapter.

(Pub. L. 107–12, § 6, May 30, 2001, 115 Stat. 22.)

§ 15206. National Medal of Valor Office

There is established within the Department of Justice a National Medal of Valor Office. The Office shall provide staff support to the Board to establish criteria and procedures for the submission of recommendations of nominees for the Medal of Valor and for the final design of the Medal of Valor.

(Pub. L. 107–12, § 7, May 30, 2001, 115 Stat. 22.)

§ 15207. Consultation requirement

The Board shall consult with the Institute of Heraldry within the Department of Defense regarding the design and artistry of the Medal of Valor. The Board may also consider suggestions received by the Department of Justice regarding the design of the medal, including those made by persons not employed by the Department.

(Pub. L. 107–12, § 9, May 30, 2001, 115 Stat. 22.)

§ 15208. Law enforcement tribute acts

(a) Short title

This section may be cited as the ''Law Enforcement Tribute Act''.

(b) Findings

Congress finds the following:

(1) The well-being of all citizens of the United States is preserved and enhanced as a direct result of the vigilance and dedication of law enforcement and public safety personnel.

(2) More than 700,000 law enforcement officers, both men and women, at great risk to their personal safety, serve their fellow citizens as guardians of peace.

(3) Nationwide, 51 law enforcement officers were killed in the line of duty in 2000, according to statistics released by the Federal Bureau of Investigation. This number is an increase of 9 from the 1999 total of 42.

(4) In 1999, 112 firefighters died while on duty, an increase of 21 deaths from the previous year.

(5) Every year, 1 in 9 peace officers is assaulted, 1 in 25 is injured, and 1 in 4,400 is killed in the line of duty.

(6) In addition, recent statistics indicate that 83 officers were accidentally killed in the performance of their duties in 2000, an increase of 18 from the 65 accidental deaths in 1999.

(7) A permanent tribute is a powerful means of honoring the men and women who have served our Nation with distinction. However, many law enforcement and public safety agencies lack the resources to honor their fallen colleagues.

(c) Program authorized

From amounts made available to carry out this section, the Attorney General may make grants to States, units of local government, and Indian tribes to carry out programs to honor, through permanent tributes, men and women of the United States who were killed or disabled while serving as law enforcement or public safety officers.

(d) Uses of funds

Grants awarded under this section shall be distributed directly to the State, unit of local government, or Indian tribe, and shall be used for the purposes specified in subsection (c) of this section.

(e) $150,000 limitation

A grant under this section may not exceed $150,000 to any single recipient.

(f) Matching funds

(1) The Federal portion of the costs of a program provided by a grant under this section may not exceed 50 percent.

(2) Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement or public safety functions on any Indian lands may be used to provide the non-Federal share of a matching requirement funded under this subsection.

(g) Applications

To request a grant under this section, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may require.

(h) Annual report to Congress

Not later than November 30 of each year, the Attorney General shall submit a report to the Congress regarding the activities carried out under this section. Each such report shall include, for the preceding fiscal year, the number of grants funded under this section, the amount of funds provided under those grants, and the activities for which those funds were used.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2002 through 2009.

(Pub. L. 107–273, div. C, title I, § 11001, Nov. 2, 2002, 116 Stat. 1815; Pub. L. 109–162, title XI, § 1185, Jan. 5, 2006, 119 Stat. 3127.)

CODIFICATION

Section was enacted as the Law Enforcement Tribute Act, and also as part of the 21st Century Department of

Justice Appropriations Authorization Act, and not as part of the Public Safety Officer Medal of Valor Act of 2001 which comprises this chapter.

AMENDMENTS

2006—Subsec. (i). Pub. L. 109–162 substituted ''2009'' for ''2006''.

CHAPTER 146—ELECTION ADMINISTRATION IMPROVEMENT

SUBCHAPTER I—PAYMENTS TO STATES FOR ELECTION ADMINISTRATION IMPROVEMENTS AND REPLACEMENT OF PUNCH CARD AND LEVER VOTING MACHINES

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§ 15301. Payments to States for activities to improve administration of elections

(a) In general

Not later than 45 days after October 29, 2002, the Administrator of General Services (in this subchapter referred to as the ''Administrator'') shall establish a program under which the Administrator shall make a payment to each State in which the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official, notifies the Administrator not later than 6 months after October 29, 2002, that the State intends to use the payment in accordance with this section.

(b) Use of payment

(1) In general

A State shall use the funds provided under a payment made under this section to carry out one or more of the following activities:

(A) Complying with the requirements under subchapter III of this chapter.

(B) Improving the administration of elections for Federal office.

(C) Educating voters concerning voting procedures, voting rights, and voting technology.

(D) Training election officials, poll workers, and election volunteers.

(E) Developing the State plan for requirements payments to be submitted under subpart 1 of part D of subchapter II of this chapter.

(F) Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.

(G) Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing nonvisual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.

(H) Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

(2) Limitation

A State may not use the funds provided under a payment made under this section—

(A) to pay costs associated with any litigation, except to the extent that such costs otherwise constitute permitted uses of a payment under this section; or

(B) for the payment of any judgment.

(c) Use of funds to be consistent with other laws and requirements

In order to receive a payment under the program under this section, the State shall provide the Administrator with certifications that—

(1) the State will use the funds provided under the payment in a manner that is consistent with each of the laws described in section 15545 of this title, as such laws relate to the provisions of this chapter; and

(2) the proposed uses of the funds are not inconsistent with the requirements of subchapter III of this chapter.

(d) Amount of payment

(1) In general

Subject to section 15303(b) of this title, the amount of payment made to a State under this section shall be the minimum payment amount described in paragraph (2) plus the voting age population proportion amount described in paragraph (3).

(2) Minimum payment amount

The minimum payment amount described in this paragraph is—

(A) in the case of any of the several States or the District of Columbia, one-half of 1 percent of the aggregate amount made available for payments under this section; and

(B) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, one-tenth of 1 percent of such aggregate amount.

(3) Voting age population proportion amount

The voting age population proportion amount described in this paragraph is the product of—

(A) the aggregate amount made available for payments under this section minus the total of all of the minimum payment amounts determined under paragraph (2); and

(B) the voting age population proportion for the State (as defined in paragraph (4)).

(4) Voting age population proportion defined

The term ''voting age population proportion'' means, with respect to a State, the amount equal to the quotient of—

(A) the voting age population of the State (as reported in the most recent decennial census); and

(B) the total voting age population of all States (as reported in the most recent decennial census).

(Pub. L. 107–252, title I, § 101, Oct. 29, 2002, 116 Stat. 1668.)

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in subsecs. (b)(1)(A) and (c)(2), was in the original ''title III'', meaning title III of Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1704, which enacted subchapter III of this chapter and amended section 405 of this title. For complete classification of title III to the Code, see Tables.

This chapter, referred to in subsec. (c)(1), was in the original ''this Act'', meaning Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 107–252, § 1(a), Oct. 29, 2002, 116 Stat. 1666, provided that: ''This Act [enacting this chapter and chapter 1526 of Title 36, Patriotic And National Observances, Ceremonies, and Organizations, amending sections 405, 1973ff, 1973ff–1, 1973ff–3, 1973gg–6, and 1973gg–7 of this title, section 438 of Title 2, The Congress, sections 3132 and 7323 of Title 5, Government Organization and Employees, section 8G of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, and section 1566 of Title 10, Armed Forces, and enacting provisions set out as notes under sections 1973ff–1 and 1973ff–3 of this title and section 8G of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5] may be cited as the 'Help America Vote Act of 2002'.''

§ 15302. Replacement of punch card or lever voting machines

(a) Establishment of program

(1) In general

Not later than 45 days after October 29, 2002, the Administrator shall establish a program under which the Administrator shall make a payment to each State eligible under subsection (b) of this section in which a precinct within that State used a punch card voting system or a lever voting system to administer the regularly scheduled general election for Federal office held in November 2000 (in this section referred to as a ''qualifying precinct'').

(2) Use of funds

A State shall use the funds provided under a payment under this section (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in qualifying precincts within that State with a voting system (by purchase, lease, or such other arrangement as may be appropriate) that—

(A) does not use punch cards or levers;

(B) is not inconsistent with the requirements of the laws described in section 15545 of this title; and

(C) meets the requirements of section 15481 of this title.

(3) Deadline

(A) In general

Except as provided in subparagraph (B), a State receiving a payment under the program under this section shall ensure that all of the punch card voting systems or lever voting systems in the qualifying precincts within that State have been replaced in time for the regularly scheduled general election for Federal office to be held in November 2004.

(B) Waiver

If a State certifies to the Administrator not later than January 1, 2004, that the State will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, the State shall ensure that all of the punch card voting systems or lever voting systems in the qualifying precincts within that State will be replaced in time for the first election for Federal office held after January 1, 2006.

(b) Eligibility

(1) In general

A State is eligible to receive a payment under the program under this section if it submits to the Administrator a notice not later than the date that is 6 months after October 29, 2002 (in such form as the Administrator may require) that contains—

(A) certifications that the State will use the payment (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in the qualifying precincts within the State by the deadline described in subsection (a)(3) of this section;

(B) certifications that the State will continue to comply with the laws described in section 15545 of this title;

(C) certifications that the replacement voting systems will meet the requirements of section 15481 of this title; and

(D) such other information and certifications as the Administrator may require which are necessary for the administration of the program.

(2) Compliance of states that require changes to State law

In the case of a State that requires State legislation to carry out an activity covered by any certification submitted under this subsection, the State shall be permitted to make the certification notwithstanding that the legislation has not been enacted at the time the certification is submitted and such State shall submit an additional certification once such legislation is enacted.

(c) Amount of payment

(1) In general

Subject to paragraph (2) and section 15303(b) of this title, the amount of payment made to a State under the program under this section shall be equal to the product of—

(A) the number of the qualifying precincts within the State; and

(B) $4,000.

(2) Reduction

If the amount of funds appropriated pursuant to the authority of section 15304(a)(2) of this title is insufficient to ensure that each

State receives the amount of payment calculated under paragraph (1), the Administrator shall reduce the amount specified in paragraph (1)(B) to ensure that the entire amount appropriated under such section is distributed to the States.

(d) Repayment of funds for failure to meet deadlines

(1) In general

If a State receiving funds under the program under this section fails to meet the deadline applicable to the State under subsection (a)(3) of this section, the State shall pay to the Administrator an amount equal to the noncompliant precinct percentage of the amount of the funds provided to the State under the program.

(2) Noncompliant precinct percentage defined

In this subsection, the term ''noncompliant precinct percentage'' means, with respect to a State, the amount (expressed as a percentage) equal to the quotient of—

(A) the number of qualifying precincts within the State for which the State failed to meet the applicable deadline; and

(B) the total number of qualifying precincts in the State.

(e) Punch card voting system defined

For purposes of this section, a ''punch card voting system'' includes any of the following voting systems:

(1) C.E.S.
(2) Datavote.
(3) PBC Counter.
(4) Pollstar.
(5) Punch Card.
(6) Vote Recorder.
(7) Votomatic.

(Pub. L. 107–252, title I, § 102, Oct. 29, 2002, 116 Stat. 1670.)

§ 15303. Guaranteed minimum payment amount

(a) In general

In addition to any other payments made under this subchapter, the Administrator shall make a payment to each State to which a payment is made under either section 15301 or 15302 of this title and with respect to which the aggregate amount paid under such sections is less than $5,000,000 in an amount equal to the difference between the aggregate amount paid to the State under sections 15301 and 15302 of this title and $5,000,000. In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands, the previous sentence shall be applied as if each reference to ''$5,000,000'' were a reference to ''$1,000,000''.

(b) Pro rata reductions

The Administrator shall make such pro rata reductions to the amounts described in sections 15301(d) and 15302(c) of this title as are necessary to comply with the requirements of subsection (a) of this section.

(Pub. L. 107–252, title I, § 103, Oct. 29, 2002, 116 Stat. 1672.)

§ 15304. Authorization of appropriations

(a) In general

There are authorized to be appropriated for payments under this subchapter $650,000,000, of which—

(1) 50 percent shall be for payments under section 15301 of this title; and

(2) 50 percent shall be for payments under section 15302 of this title.

(b) Continuing availability of funds after appropriation

Any payment made to a State under this subchapter shall be available to the State without fiscal year limitation (subject to subsection (c)(2)(B) of this section).

(c) Use of returned funds and funds remaining unexpended for requirements payments

(1) In general

The amounts described in paragraph (2) shall be transferred to the Election Assistance Commission (established under subchapter II of this chapter) and used by the Commission to make requirements payments under subpart 1 of part D of subchapter II of this chapter.

(2) Amounts described

The amounts referred to in this paragraph are as follows:

(A) Any amounts paid to the Administrator by a State under section 15302(d)(1) of this title.

(B) Any amounts appropriated for payments under this subchapter which remain unobligated as of September 1, 2003.

(d) Deposit of amounts in State election fund

When a State has established an election fund described in section 15404(b) of this title, the State shall ensure that any funds provided to the State under this subchapter are deposited and maintained in such fund.

(e) Authorization of appropriations for Administrator

In addition to the amounts authorized under subsection (a) of this section, there are authorized to be appropriated to the Administrator such sums as may be necessary to administer the programs under this subchapter.

(Pub. L. 107–252, title I, § 104, Oct. 29, 2002, 116 Stat. 1672.)

§ 15305. Administration of programs

In administering the programs under this subchapter, the Administrator shall take such actions as the Administrator considers appropriate to expedite the payment of funds to States.

(Pub. L. 107–252, title I, § 105, Oct. 29, 2002, 116 Stat. 1673.)

§ 15306. Effective date

The Administrator shall implement the programs established under this subchapter in a manner that ensures that the Administrator is able to make payments under the program not later than the expiration of the 45-day period which begins on October 29, 2002.

(Pub. L. 107–252, title I, § 106, Oct. 29, 2002, 116 Stat. 1673.)

SUBCHAPTER II—COMMISSION

PART A—ESTABLISHMENT AND GENERAL ORGANIZATION

SUBPART 1—ELECTION ASSISTANCE COMMISSION

§ 15321. Establishment

There is hereby established as an independent entity the Election Assistance Commission (hereafter in this subchapter referred to as the ''Commission''), consisting of the members appointed under this subpart. Additionally, there is established the Election Assistance Commission Standards Board (including the Executive Board of such Board) and the Election Assistance Commission Board of Advisors under subpart 2 of this part (hereafter in this subpart referred to as the ''Standards Board'' and the ''Board of Advisors'', respectively) and the Technical Guidelines Development Committee under subpart 3 of this part.

(Pub. L. 107–252, title II, § 201, Oct. 29, 2002, 116 Stat. 1673.)

§ 15322. Duties

The Commission shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections by—

(1) carrying out the duties described in subpart 3 of this part (relating to the adoption of voluntary voting system guidelines), including the maintenance of a clearinghouse of information on the experiences of State and local governments in implementing the guidelines and in operating voting systems in general;

(2) carrying out the duties described in part B of this subchapter (relating to the testing, certification, decertification, and recertification of voting system hardware and software);

(3) carrying out the duties described in part C of this subchapter (relating to conducting studies and carrying out other activities to promote the effective administration of Federal elections);

(4) carrying out the duties described in part D of this subchapter (relating to election assistance), and providing information and training on the management of the payments and grants provided under such part;

(5) carrying out the duties described in part B of subchapter III of this chapter (relating to the adoption of voluntary guidance); and

(6) developing and carrying out the Help America Vote College Program under subchapter V of this chapter.

(Pub. L. 107–252, title II, § 202, Oct. 29, 2002, 116 Stat. 1673.)

§ 15323. Membership and appointment

(a) Membership

(1) In general

The Commission shall have four members appointed by the President, by and with the advice and consent of the Senate.

(2) Recommendations

Before the initial appointment of the members of the Commission and before the appointment of any individual to fill a vacancy on the Commission, the Majority Leader of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives shall each submit to the President a candidate recommendation with respect to each vacancy on the Commission affiliated with the political party of the Member of Congress involved.

(3) Qualifications

Each member of the Commission shall have experience with or expertise in election administration or the study of elections.

(4) Date of appointment

The appointments of the members of the Commission shall be made not later than 120 days after October 29, 2002.

(b) Term of service

(1) In general

Except as provided in paragraphs (2) and (3), members shall serve for a term of 4 years and may be reappointed for not more than one additional term.

(2) Terms of initial appointees

As designated by the President at the time of nomination, of the members first appointed—

(A) two of the members (not more than one of whom may be affiliated with the same political party) shall be appointed for a term of 2 years; and

(B) two of the members (not more than one of whom may be affiliated with the same political party) shall be appointed for a term of 4 years.

(3) Vacancies

(A) In general

A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) Expired terms

A member of the Commission shall serve on the Commission after the expiration of the member's term until the successor of such member has taken office as a member of the Commission.

(C) Unexpired terms

An individual appointed to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(c) Chair and vice chair

(1) In general

The Commission shall select a chair and vice chair from among its members for a term of 1 year, except that the chair and vice chair may not be affiliated with the same political party.

(2) Number of terms

A member of the Commission may serve as the chairperson and vice chairperson for only

1 term each during the term of office to which such member is appointed.

(d) Compensation

(1) In general

Each member of the Commission shall be compensated at the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5.

(2) Other activities

No member appointed to the Commission under subsection (a) of this section may engage in any other business, vocation, or employment while serving as a member of the Commission and shall terminate or liquidate such business, vocation, or employment before sitting as a member of the Commission.

(Pub. L. 107–252, title II, § 203, Oct. 29, 2002, 116 Stat. 1674.)

§ 15324. Staff

(a) Executive Director, General Counsel, and other staff

(1) Executive Director

The Commission shall have an Executive Director, who shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5.

(2) Term of service for Executive Director

The Executive Director shall serve for a term of 4 years. An Executive Director may serve for a longer period only if reappointed for an additional term or terms by a vote of the Commission.

(3) Procedure for appointment

(A) In general

When a vacancy exists in the position of the Executive Director, the Standards Board and the Board of Advisors shall each appoint a search committee to recommend at least three nominees for the position.

(B) Requiring consideration of nominees

Except as provided in subparagraph (C), the Commission shall consider the nominees recommended by the Standards Board and the Board of Advisors in appointing the Executive Director.

(C) Interim service of General Counsel

If a vacancy exists in the position of the Executive Director, the General Counsel of the Commission shall serve as the acting Executive Director until the Commission appoints a new Executive Director in accordance with this paragraph.

(D) Special rules for interim Executive Director

(i) Convening of search committees

The Standards Board and the Board of Advisors shall each appoint a search committee and recommend nominees for the position of Executive Director in accordance with subparagraph (A) as soon as practicable after the appointment of their members.

(ii) Interim initial appointment

Notwithstanding subparagraph (B), the Commission may appoint an individual to serve as an interim Executive Director prior to the recommendation of nominees for the position by the Standards Board or the Board of Advisors, except that such individual's term of service may not exceed 6 months. Nothing in the previous sentence may be construed to prohibit the individual serving as the interim Executive Director from serving any additional term.

(4) General Counsel

The Commission shall have a General Counsel, who shall be appointed by the Commission and who shall serve under the Executive Director. The General Counsel shall serve for a term of 4 years, and may serve for a longer period only if reappointed for an additional term or terms by a vote of the Commission.

(5) Other staff

Subject to rules prescribed by the Commission, the Executive Director may appoint and fix the pay of such additional personnel as the Executive Director considers appropriate.

(6) Applicability of certain civil service laws

The Executive Director, General Counsel, and staff of the Commission may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for level V of the Executive Schedule under section 5316 of that title.

(b) Experts and consultants

Subject to rules prescribed by the Commission, the Executive Director may procure temporary and intermittent services under section 3109(b) of title 5 by a vote of the Commission.

(c) Staff of Federal agencies

Upon request of the Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this chapter.

(d) Arranging for assistance for Board of Advisors and Standards Board

At the request of the Board of Advisors or the Standards Board, the Commission may enter into such arrangements as the Commission considers appropriate to make personnel available to assist the Boards with carrying out their duties under this subchapter (including contracts with private individuals for providing temporary personnel services or the temporary detailing of personnel of the Commission).

(e) Consultation with Board of Advisors and Standards Board on certain matters

In preparing the program goals, long-term plans, mission statements, and related matters for the Commission, the Executive Director and staff of the Commission shall consult with the Board of Advisors and the Standards Board.

(Pub. L. 107–252, title II, § 204, Oct. 29, 2002, 116 Stat. 1675.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a)(6), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

This chapter, referred to in subsec. (c), was in the original ''this Act'', meaning Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

§ 15325. Powers

(a) Hearings and sessions

The Commission may hold such hearings for the purpose of carrying out this chapter, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this chapter. The Commission may administer oaths and affirmations to witnesses appearing before the Commission.

(b) Information from Federal agencies

The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this chapter. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) Postal services

The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) Administrative support services

Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services that are necessary to enable the Commission to carry out its duties under this chapter.

(e) Contracts

The Commission may contract with and compensate persons and Federal agencies for supplies and services without regard to section 5 of title 41.

(Pub. L. 107–252, title II, § 205, Oct. 29, 2002, 116 Stat. 1677.)

§ 15326. Dissemination of information

In carrying out its duties, the Commission shall, on an ongoing basis, disseminate to the public (through the Internet, published reports, and such other methods as the Commission considers appropriate) in a manner that is consistent with the requirements of chapter 19 of title 44 information on the activities carried out under this chapter.

(Pub. L. 107–252, title II, § 206, Oct. 29, 2002, 116 Stat. 1677.)

§ 15327. Annual report

Not later than January 31 of each year (beginning with 2004), the Commission shall submit a report to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate detailing its activities during the fiscal year which ended on September 30 of the previous calendar year, and shall include in the report the following information:

(1) A detailed description of activities conducted with respect to each program carried out by the Commission under this chapter, including information on each grant or other payment made under such programs.

(2) A copy of each report submitted to the Commission by a recipient of such grants or payments which is required under such a program, including reports submitted by States receiving requirements payments under subpart 1 of part D of this subchapter, and each other report submitted to the Commission under this chapter.

(3) Information on the voluntary voting system guidelines adopted or modified by the Commission under subpart 3 of this part and information on the voluntary guidance adopted under part B of subchapter III of this chapter.

(4) All votes taken by the Commission.

(5) Such other information and recommendations as the Commission considers appropriate.

(Pub. L. 107–252, title II, § 207, Oct. 29, 2002, 116 Stat. 1677.)

§ 15328. Requiring majority approval for actions

Any action which the Commission is authorized to carry out under this chapter may be carried out only with the approval of at least three of its members.

(Pub. L. 107–252, title II, § 208, Oct. 29, 2002, 116 Stat. 1678.)

§ 15329. Limitation on rulemaking authority

The Commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under section 1973gg–7(a) of this title.

(Pub. L. 107–252, title II, § 209, Oct. 29, 2002, 116 Stat. 1678.)

§ 15330. Authorization of appropriations

In addition to the amounts authorized for payments and grants under this subchapter and the amounts authorized to be appropriated for the program under section 15523 of this title, there are authorized to be appropriated for each of the fiscal years 2003 through 2005 such sums as may be necessary (but not to exceed $10,000,000 for each such year) for the Commission to carry out this subchapter.

(Pub. L. 107–252, title II, § 210, Oct. 29, 2002, 116 Stat. 1678.)

SUBPART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

§ 15341. Establishment

There are hereby established the Election Assistance Commission Standards Board (hereafter

in this subchapter referred to as the ''Standards Board'') and the Election Assistance Commission Board of Advisors (hereafter in this subchapter referred to as the ''Board of Advisors'').

(Pub. L. 107–252, title II, § 211, Oct. 29, 2002, 116 Stat. 1678.)

§ 15342. Duties

The Standards Board and the Board of Advisors shall each, in accordance with the procedures described in subpart 3 of this part, review the voluntary voting system guidelines under such subpart, the voluntary guidance under subchapter III of this chapter, and the best practices recommendations contained in the report submitted under section 15382(b) of this title.

(Pub. L. 107–252, title II, § 212, Oct. 29, 2002, 116 Stat. 1678.)

§ 15343. Membership of Standards Board

(a) Composition

(1) In general

Subject to certification by the chair of the Federal Election Commission under subsection (b) of this section, the Standards Board shall be composed of 110 members as follows:

(A) Fifty-five shall be State election officials selected by the chief State election official of each State.

(B) Fifty-five shall be local election officials selected in accordance with paragraph (2).

(2) List of local election officials

Each State's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select (under a process supervised by the chief election official of the State) a representative local election official from the State for purposes of paragraph (1)(B). In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official for purposes of such paragraph, except that under such a procedure the individual selected may not be a member of the same political party as the chief election official.

(3) Requiring mix of political parties represented

The two members of the Standards Board who represent the same State may not be members of the same political party.

(b) Procedures for notice and certification of appointment

(1) Notice to chair of Federal Election Commission

Not later than 90 days after October 29, 2002, the chief State election official of the State shall transmit a notice to the chair of the Federal Election Commission containing—

(A) the name of the State election official who agrees to serve on the Standards Board under this subchapter; and

(B) the name of the representative local election official from the State selected under subsection (a)(2) of this section who agrees to serve on the Standards Board under this subchapter.

(2) Certification

Upon receiving a notice from a State under paragraph (1), the chair of the Federal Election Commission shall publish a certification that the selected State election official and the representative local election official are appointed as members of the Standards Board under this subchapter.

(3) Effect of failure to provide notice

If a State does not transmit a notice to the chair of the Federal Election Commission under paragraph (1) within the deadline described in such paragraph, no representative from the State may participate in the selection of the initial Executive Board under subsection (c) of this section.

(4) Role of Commission

Upon the appointment of the members of the Election Assistance Commission, the Election Assistance Commission shall carry out the duties of the Federal Election Commission under this subsection.

(c) Executive Board

(1) In general

Not later than 60 days after the last day on which the appointment of any of its members may be certified under subsection (b) of this section, the Standards Board shall select nine of its members to serve as the Executive Board of the Standards Board, of whom—

(A) not more than five may be State election officials;

(B) not more than five may be local election officials; and

(C) not more than five may be members of the same political party.

(2) Terms

Except as provided in paragraph (3), members of the Executive Board of the Standards Board shall serve for a term of 2 years and may not serve for more than 3 consecutive terms.

(3) Staggering of initial terms

Of the members first selected to serve on the Executive Board of the Standards Board—

(A) three shall serve for 1 term;

(B) three shall serve for 2 consecutive terms; and

(C) three shall serve for 3 consecutive terms,

as determined by lot at the time the members are first appointed.

(4) Duties

In addition to any other duties assigned under this subchapter, the Executive Board of the Standards Board may carry out such duties of the Standards Board as the Standards Board may delegate.

(Pub. L. 107–252, title II, § 213, Oct. 29, 2002, 116 Stat. 1678.)

§ 15344. Membership of Board of Advisors

(a) In general

The Board of Advisors shall be composed of 37 members appointed as follows:

(1) Two members appointed by the National Governors Association.

(2) Two members appointed by the National Conference of State Legislatures.

(3) Two members appointed by the National Association of Secretaries of State.

(4) Two members appointed by the National Association of State Election Directors.

(5) Two members appointed by the National Association of Counties.

(6) Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]

(7) Two members appointed by the United States Conference of Mayors.

(8) Two members appointed by the Election Center.

(9) Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]

(10) Two members appointed by the United States Commission on Civil Rights.

(11) Two members appointed by the Architectural and Transportation Barrier[3] Compliance Board under section 792 of title 29.

(12) The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.

(13) The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.

(14) The director of the Federal Voting Assistance Program of the Department of Defense.

(15) Four members representing professionals in the field of science and technology, of whom—

(A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and

(B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.

(16) Eight members representing voter interests, of whom—

(A) four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and

(B) four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b) Manner of appointments

Appointments shall be made to the Board of Advisors under subsection (a) of this section in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c) Term of service; vacancy

Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d) Chair

The Board of Advisors shall elect a Chair from among its members.

(Pub. L. 107–252, title II, § 214, Oct. 29, 2002, 116 Stat. 1680.)

§ 15345. Powers of Boards; no compensation for service

(a) Hearings and sessions

(1) In general

To the extent that funds are made available by the Commission, the Standards Board (acting through the Executive Board) and the Board of Advisors may each hold such hearings for the purpose of carrying out this chapter, sit and act at such times and places, take such testimony, and receive such evidence as each such Board considers advisable to carry out this subchapter, except that the Boards may not issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence.

(2) Meetings

The Standards Board and the Board of Advisors shall each hold a meeting of its members—

(A) not less frequently than once every year for purposes of voting on the voluntary voting system guidelines referred to it under section 15362 of this title;

(B) in the case of the Standards Board, not less frequently than once every 2 years for purposes of selecting the Executive Board; and

(C) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with this subchapter.

(b) Information from Federal agencies

The Standards Board and the Board of Advisors may each secure directly from any Federal department or agency such information as the Board considers necessary to carry out this chapter. Upon request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the head of such department or agency shall furnish such information to the Board.

(c) Postal services

The Standards Board and the Board of Advisors may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government.

(d) Administrative support services

Upon the request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the Administrator of the General Services Administration shall provide to the Board, on a reimbursable

[1] So in original. Probably should be "National Association of County Recorders, Election Officials and Clerks."

[2] So in original. Probably should be "International Association of Clerks, Recorders, Election Officials and Treasurers."

[3] So in original. Probably should be "Barriers".

[4] So in original. Probably means the Public Integrity Section of the Criminal Division of the Department of Justice.

basis, the administrative support services that are necessary to enable the Board to carry out its duties under this subchapter.

(e) No compensation for service

Members of the Standards Board and members of the Board of Advisors shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Board.

(Pub. L. 107–252, title II, § 215, Oct. 29, 2002, 116 Stat. 1681.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (b), was in the original ''this Act'', meaning Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

§ 15346. Status of Boards and members for purposes of claims against Board

(a) In general

The provisions of chapters 161 and 171 of title 28 shall apply with respect to the liability of the Standards Board, the Board of Advisors, and their members for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the Board.

(b) Exception for criminal acts and other willful conduct

Subsection (a) of this section may not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of a member of the Standards Board or the Board of Advisors.

(Pub. L. 107–252, title II, § 216, Oct. 29, 2002, 116 Stat. 1681.)

SUBPART 3—TECHNICAL GUIDELINES DEVELOPMENT COMMITTEE

§ 15361. Technical Guidelines Development Committee

(a) Establishment

There is hereby established the Technical Guidelines Development Committee (hereafter in this subpart referred to as the ''Development Committee'').

(b) Duties

(1) In general

The Development Committee shall assist the Executive Director of the Commission in the development of the voluntary voting system guidelines.

(2) Deadline for initial set of recommendations

The Development Committee shall provide its first set of recommendations under this section to the Executive Director of the Commission not later than 9 months after all of its members have been appointed.

(c) Membership

(1) In general

The Development Committee shall be composed of the Director of the National Institute of Standards and Technology (who shall serve as its chair), together with a group of 14 other individuals appointed jointly by the Commission and the Director of the National Institute of Standards and Technology, consisting of the following:

(A) An equal number of each of the following:

(i) Members of the Standards Board.

(ii) Members of the Board of Advisors.

(iii) Members of the Architectural and Transportation Barrier Compliance Board under section 792 of title 29.

(B) A representative of the American National Standards Institute.

(C) A representative of the Institute of Electrical and Electronics Engineers.

(D) Two representatives of the National Association of State Election Directors selected by such Association who are not members of the Standards Board or Board of Advisors, and who are not of the same political party.

(E) Other individuals with technical and scientific expertise relating to voting systems and voting equipment.

(2) Quorum

A majority of the members of the Development Committee shall constitute a quorum, except that the Development Committee may not conduct any business prior to the appointment of all of its members.

(d) No compensation for service

Members of the Development Committee shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Development Committee.

(e) Technical support from National Institute of Standards and Technology

(1) In general

At the request of the Development Committee, the Director of the National Institute of Standards and Technology shall provide the Development Committee with technical support necessary for the Development Committee to carry out its duties under this part.

(2) Technical support

The technical support provided under paragraph (1) shall include intramural research and development in areas to support the development of the voluntary voting system guidelines under this subpart, including—

(A) the security of computers, computer networks, and computer data storage used in voting systems, including the computerized list required under section 15483(a) of this title;

(B) methods to detect and prevent fraud;

(C) the protection of voter privacy;

(D) the role of human factors in the design and application of voting systems, including assistive technologies for individuals with disabilities (including blindness) and varying levels of literacy; and

(E) remote access voting, including voting through the Internet.

(3) No private sector intellectual property rights in guidelines

No private sector individual or entity shall obtain any intellectual property rights to any guideline or the contents of any guideline (or any modification to any guideline) adopted by the Commission under this chapter.

(f) Publication of recommendations in Federal Register

At the time the Commission adopts any voluntary voting system guideline pursuant to section 15362 of this title, the Development Committee shall cause to have published in the Federal Register the recommendations it provided under this section to the Executive Director of the Commission concerning the guideline adopted.

(Pub. L. 107–252, title II, § 221, Oct. 29, 2002, 116 Stat. 1682.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(3), was in the original ''this Act'', meaning Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

§ 15362. Process for adoption

(a) General requirement for notice and comment

Consistent with the requirements of this section, the final adoption of the voluntary voting system guidelines (or modification of such a guideline) shall be carried out by the Commission in a manner that provides for each of the following:

(1) Publication of notice of the proposed guidelines in the Federal Register.

(2) An opportunity for public comment on the proposed guidelines.

(3) An opportunity for a public hearing on the record.

(4) Publication of the final guidelines in the Federal Register.

(b) Consideration of recommendations of Development Committee; submission of proposed guidelines to Board of Advisors and Standards Board

(1) Consideration of recommendations of Development Committee

In developing the voluntary voting system guidelines and modifications of such guidelines under this section, the Executive Director of the Commission shall take into consideration the recommendations provided by the Technical Guidelines Development Committee under section 15361 of this title.

(2) Board of Advisors

The Executive Director of the Commission shall submit the guidelines proposed to be adopted under this subpart (or any modifications to such guidelines) to the Board of Advisors.

(3) Standards Board

The Executive Director of the Commission shall submit the guidelines proposed to be adopted under this subpart (or any modifications to such guidelines) to the Executive Board of the Standards Board, which shall review the guidelines (or modifications) and forward its recommendations to the Standards Board.

(c) Review

Upon receipt of voluntary voting system guidelines described in subsection (b) of this section (or a modification of such guidelines) from the Executive Director of the Commission, the Board of Advisors and the Standards Board shall each review and submit comments and recommendations regarding the guideline (or modification) to the Commission.

(d) Final adoption

(1) In general

A voluntary voting system guideline described in subsection (b) of this section (or modification of such a guideline) shall not be considered to be finally adopted by the Commission unless the Commission votes to approve the final adoption of the guideline (or modification), taking into consideration the comments and recommendations submitted by the Board of Advisors and the Standards Board under subsection (c) of this section.

(2) Minimum period for consideration of comments and recommendations

The Commission may not vote on the final adoption of a guideline described in subsection (b) of this section (or modification of such a guideline) until the expiration of the 90-day period which begins on the date the Executive Director of the Commission submits the proposed guideline (or modification) to the Board of Advisors and the Standards Board under subsection (b) of this section.

(e) Special rule for initial set of guidelines

Notwithstanding any other provision of this subpart, the most recent set of voting system standards adopted by the Federal Election Commission prior to October 29, 2002, shall be deemed to have been adopted by the Commission as of October 29, 2002, as the first set of voluntary voting system guidelines adopted under this subpart.

(Pub. L. 107–252, title II, § 222, Oct. 29, 2002, 116 Stat. 1683.)

PART B—TESTING, CERTIFICATION, DECERTIFICATION, AND RECERTIFICATION OF VOTING SYSTEM HARDWARE AND SOFTWARE

§ 15371. Certification and testing of voting systems

(a) Certification and testing

(1) In general

The Commission shall provide for the testing, certification, decertification, and recer-

tification of voting system hardware and software by accredited laboratories.

(2) Optional use by States

At the option of a State, the State may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section.

(b) Laboratory accreditation

(1) Recommendations by National Institute of Standards and Technology

Not later than 6 months after the Commission first adopts voluntary voting system guidelines under subpart 3 of part A of this subchapter, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section.

(2) Approval by Commission

(A) In general

The Commission shall vote on the accreditation of any laboratory under this section, taking into consideration the list submitted under paragraph (1), and no laboratory may be accredited for purposes of this section unless its accreditation is approved by a vote of the Commission.

(B) Accreditation of laboratories not on Director list

The Commission shall publish an explanation for the accreditation of any laboratory not included on the list submitted by the Director of the National Institute of Standards and Technology under paragraph (1).

(c) Continuing review by National Institute of Standards and Technology

(1) In general

In cooperation with the Commission and in consultation with the Standards Board and the Board of Advisors, the Director of the National Institute of Standards and Technology shall monitor and review, on an ongoing basis, the performance of the laboratories accredited by the Commission under this section, and shall make such recommendations to the Commission as it considers appropriate with respect to the continuing accreditation of such laboratories, including recommendations to revoke the accreditation of any such laboratory.

(2) Approval by Commission required for revocation

The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission.

(d) Transition

Until such time as the Commission provides for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories under this section, the accreditation of laboratories and the procedure for the testing, certification, decertification, and recertification of voting system hardware and software used as of October 29, 2002, shall remain in effect.

(Pub. L. 107–252, title II, § 231, Oct. 29, 2002, 116 Stat. 1684.)

PART C—STUDIES AND OTHER ACTIVITIES TO PROMOTE EFFECTIVE ADMINISTRATION OF FEDERAL ELECTIONS

§ 15381. Periodic studies of election administration issues

(a) In general

On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b) of this section, with the goal of promoting methods of voting and administering elections which—

(1) will be the most convenient, accessible, and easy to use for voters, including members of the uniformed services and overseas voters, individuals with disabilities, including the blind and visually impaired, and voters with limited proficiency in the English language;

(2) will yield the most accurate, secure, and expeditious system for voting and tabulating election results;

(3) will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and

(4) will be efficient and cost-effective for use.

(b) Election administration issues described

For purposes of subsection (a) of this section, the election administration issues described in this subsection are as follows:

(1) Methods and mechanisms of election technology and voting systems used in voting and counting votes in elections for Federal office, including the over-vote and under-vote notification capabilities of such technology and systems.

(2) Ballot designs for elections for Federal office.

(3) Methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites), and ensuring that registered voters appear on the voter registration list at the appropriate polling site.

(4) Methods of conducting provisional voting.

(5) Methods of ensuring the accessibility of voting, registration, polling places, and voting equipment to all voters, including individuals with disabilities (including the blind and visually impaired), Native American or Alaska Native citizens, and voters with limited proficiency in the English language.

(6) Nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office.

(7) Identifying, deterring, and investigating methods of voter intimidation.

(8) Methods of recruiting, training, and improving the performance of poll workers.

(9) Methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections.

(10) The feasibility and advisability of conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time and establishing—

(A) a legal public holiday under section 6103 of title 5 as the date on which general elections for Federal office are held;

(B) the Tuesday next after the 1st Monday in November, in every even numbered year, as a legal public holiday under such section;

(C) a date other than the Tuesday next after the 1st Monday in November, in every even numbered year as the date on which general elections for Federal office are held; and

(D) any date described in subparagraph (C) as a legal public holiday under such section.

(11) Federal and State laws governing the eligibility of persons to vote.

(12) Ways that the Federal Government can best assist State and local authorities to improve the administration of elections for Federal office and what levels of funding would be necessary to provide such assistance.

(13)(A) The laws and procedures used by each State that govern—

(i) recounts of ballots cast in elections for Federal office;

(ii) contests of determinations regarding whether votes are counted in such elections; and

(iii) standards that define what will constitute a vote on each type of voting equipment used in the State to conduct elections for Federal office.

(B) The best practices (as identified by the Commission) that are used by States with respect to the recounts and contests described in clause (i).

(C) Whether or not there is a need for more consistency among State recount and contest procedures used with respect to elections for Federal office.

(14) The technical feasibility of providing voting materials in eight or more languages for voters who speak those languages and who have limited English proficiency.

(15) Matters particularly relevant to voting and administering elections in rural and urban areas.

(16) Methods of voter registration for members of the uniformed services and overseas voters, and methods of ensuring that such voters receive timely ballots that will be properly and expeditiously handled and counted.

(17) The best methods for establishing voting system performance benchmarks, expressed as a percentage of residual vote in the Federal contest at the top of the ballot.

(18) Broadcasting practices that may result in the broadcast of false information concerning the location or time of operation of a polling place.

(19) Such other matters as the Commission determines are appropriate.

(c) Reports

The Commission shall submit to the President and to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate a report on each study conducted under subsection (a) of this section together with such recommendations for administrative and legislative action as the Commission determines is appropriate.

(Pub. L. 107–252, title II, § 241, Oct. 29, 2002, 116 Stat. 1686.)

§ 15382. Study, report, and recommendations on best practices for facilitating military and overseas voting

(a) Study

(1) In general

The Commission, in consultation with the Secretary of Defense, shall conduct a study on the best practices for facilitating voting by absent uniformed services voters (as defined in section 1973ff–6(1) of this title) and overseas voters (as defined in section 1973ff–6(5) of this title).

(2) Issues considered

In conducting the study under paragraph (1) the Commission shall consider the following issues:

(A) The rights of residence of uniformed services voters absent due to military orders.

(B) The rights of absent uniformed services voters and overseas voters to register to vote and cast absentee ballots, including the right of such voters to cast a secret ballot.

(C) The rights of absent uniformed services voters and overseas voters to submit absentee ballot applications early during an election year.

(D) The appropriate preelection deadline for mailing absentee ballots to absent uniformed services voters and overseas voters.

(E) The appropriate minimum period between the mailing of absentee ballots to absent uniformed services voters and overseas voters and the deadline for receipt of such ballots.

(F) The timely transmission of balloting materials to absent uniformed services voters and overseas voters.

(G) Security and privacy concerns in the transmission, receipt, and processing of ballots from absent uniformed services voters and overseas voters, including the need to protect against fraud.

(H) The use of a single application by absent uniformed services voters and overseas voters for absentee ballots for all Federal elections occurring during a year.

(I) The use of a single application for voter registration and absentee ballots by absent

uniformed services voters and overseas voters.

(J) The use of facsimile machines and electronic means of transmission of absentee ballot applications and absentee ballots to absent uniformed services voters and overseas voters.

(K) Other issues related to the rights of absent uniformed services voters and overseas voters to participate in elections.

(b) Report and recommendations

Not later than the date that is 18 months after October 29, 2002, the Commission shall submit to the President and Congress a report on the study conducted under subsection (a)(1) of this section together with recommendations identifying the best practices used with respect to the issues considered under subsection (a)(2) of this section.

(Pub. L. 107–252, title II, § 242, Oct. 29, 2002, 116 Stat. 1688.)

§ 15383. Report on human factor research

Not later than 1 year after October 29, 2002, the Commission, in consultation with the Director of the National Institute of Standards and Technology, shall submit a report to Congress which assesses the areas of human factor research, including usability engineering and human-computer and human-machine interaction, which feasibly could be applied to voting products and systems design to ensure the usability and accuracy of voting products and systems, including methods to improve access for individuals with disabilities (including blindness) and individuals with limited proficiency in the English language and to reduce voter error and the number of spoiled ballots in elections.

(Pub. L. 107–252, title II, § 243, Oct. 29, 2002, 116 Stat. 1688.)

§ 15384. Study and report on voters who register by mail and use of Social Security information

(a) Registration by mail

(1) Study

(A) In general

The Commission shall conduct a study of the impact of section 15483(b) of this title on voters who register by mail.

(B) Specific issues studied

The study conducted under subparagraph (A) shall include—

(i) an examination of the impact of section 15483(b) of this title on first time mail registrant voters who vote in person, including the impact of such section on voter registration;

(ii) an examination of the impact of such section on the accuracy of voter rolls, including preventing ineligible names from being placed on voter rolls and ensuring that all eligible names are placed on voter rolls; and

(iii) an analysis of the impact of such section on existing State practices, such as the use of signature verification or attestation procedures to verify the identity of voters in elections for Federal office, and an analysis of other changes that may be made to improve the voter registration process, such as verification or additional information on the registration card.

(2) Report

Not later than 18 months after the date on which section 15483(b)(2) of this title takes effect, the Commission shall submit a report to the President and Congress on the study conducted under paragraph (1)(A) together with such recommendations for administrative and legislative action as the Commission determines is appropriate.

(b) Use of Social Security information

Not later than 18 months after the date on which section 15483(a)(5) of this title takes effect, the Commission, in consultation with the Commissioner of Social Security, shall study and report to Congress on the feasibility and advisability of using Social Security identification numbers or other information compiled by the Social Security Administration to establish voter registration or other election law eligibility or identification requirements, including the matching of relevant information specific to an individual voter, the impact of such use on national security issues, and whether adequate safeguards or waiver procedures exist to protect the privacy of an individual voter.

(Pub. L. 107–252, title II, § 244, Oct. 29, 2002, 116 Stat. 1689.)

REFERENCES IN TEXT

For the effective dates of subsecs. (a)(5) and (b)(2) of section 15483 of this title, referred to in subsecs. (a)(2) and (b), see section 15483(d) of this title.

§ 15385. Study and report on electronic voting and the electoral process

(a) Study

(1) In general

The Commission shall conduct a thorough study of issues and challenges, specifically to include the potential for election fraud, presented by incorporating communications and Internet technologies in the Federal, State, and local electoral process.

(2) Issues to be studied

The Commission may include in the study conducted under paragraph (1) an examination of—

(A) the appropriate security measures required and minimum standards for certification of systems or technologies in order to minimize the potential for fraud in voting or in the registration of qualified citizens to register and vote;

(B) the possible methods, such as Internet or other communications technologies, that may be utilized in the electoral process, including the use of those technologies to register voters and enable citizens to vote online, and recommendations concerning statutes and rules to be adopted in order to implement an online or Internet system in the electoral process;

(C) the impact that new communications or Internet technology systems for use in the electoral process could have on voter participation rates, voter education, public accessibility, potential external influences during the elections process, voter privacy and anonymity, and other issues related to the conduct and administration of elections;

(D) whether other aspects of the electoral process, such as public availability of candidate information and citizen communication with candidates, could benefit from the increased use of online or Internet technologies;

(E) the requirements for authorization of collection, storage, and processing of electronically generated and transmitted digital messages to permit any eligible person to register to vote or vote in an election, including applying for and casting an absentee ballot;

(F) the implementation cost of an online or Internet voting or voter registration system and the costs of elections after implementation (including a comparison of total cost savings for the administration of the electoral process by using Internet technologies or systems);

(G) identification of current and foreseeable online and Internet technologies for use in the registration of voters, for voting, or for the purpose of reducing election fraud, currently available or in use by election authorities;

(H) the means by which to ensure and achieve equity of access to online or Internet voting or voter registration systems and address the fairness of such systems to all citizens; and

(I) the impact of technology on the speed, timeliness, and accuracy of vote counts in Federal, State, and local elections.

(b) Report

(1) Submission

Not later than 20 months after October 29, 2002, the Commission shall transmit to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate a report on the results of the study conducted under subsection (a) of this section, including such legislative recommendations or model State laws as are required to address the findings of the Commission.

(2) Internet posting

In addition to the dissemination requirements under chapter 19 of title 44, the Election Administration Commission shall post the report transmitted under paragraph (1) on an Internet website.

(Pub. L. 107–252, title II, § 245, Oct. 29, 2002, 116 Stat. 1690.)

§ 15386. Study and report on free absentee ballot postage

(a) Study on the establishment of a free absentee ballot postage program

(1) In general

The Commission, in consultation with the Postal Service, shall conduct a study on the feasibility and advisability of the establishment of a program under which the Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots submitted by voters in general elections for Federal office (other than balloting materials mailed under section 3406 of title 39) that does not apply with respect to the postage required to send the absentee ballots to voters.

(2) Public survey

As part of the study conducted under paragraph (1), the Commission shall conduct a survey of potential beneficiaries under the program described in such paragraph, including the elderly and disabled, and shall take into account the results of such survey in determining the feasibility and advisability of establishing such a program.

(b) Report

(1) Submission

Not later than the date that is 1 year after October 29, 2002, the Commission shall submit to Congress a report on the study conducted under subsection (a)(1) of this section together with recommendations for such legislative and administrative action as the Commission determines appropriate.

(2) Costs

The report submitted under paragraph (1) shall contain an estimate of the costs of establishing the program described in subsection (a)(1) of this section.

(3) Implementation

The report submitted under paragraph (1) shall contain an analysis of the feasibility of implementing the program described in subsection (a)(1) of this section with respect to the absentee ballots to be submitted in the general election for Federal office held in 2004.

(4) Recommendations regarding the elderly and disabled

The report submitted under paragraph (1) shall—

(A) include recommendations on ways that program described in subsection (a)(1) of this section would target elderly individuals and individuals with disabilities; and

(B) identify methods to increase the number of such individuals who vote in elections for Federal office.

(c) Postal Service defined

The term ''Postal Service'' means the United States Postal Service established under section 201 of title 39.

(Pub. L. 107–252, title II, § 246, Oct. 29, 2002, 116 Stat. 1691.)

§ 15387. Consultation with Standards Board and Board of Advisors

The Commission shall carry out its duties under this part in consultation with the Standards Board and the Board of Advisors.

(Pub. L. 107–252, title II, § 247, Oct. 29, 2002, 116 Stat. 1692.)

PART D—ELECTION ASSISTANCE

SUBPART 1—REQUIREMENTS PAYMENTS

§ 15401. Requirements payments

(a) In general

The Commission shall make a requirements payment each year in an amount determined under section 15402 of this title to each State which meets the conditions described in section 15403 of this title for the year.

(b) Use of funds

(1) In general

Except as provided in paragraph (2), a State receiving a requirements payment shall use the payment only to meet the requirements of subchapter III of this chapter.

(2) Other activities

A State may use a requirements payment to carry out other activities to improve the administration of elections for Federal office if the State certifies to the Commission that—

(A) the State has implemented the requirements of subchapter III of this chapter; or

(B) the amount expended with respect to such other activities does not exceed an amount equal to the minimum payment amount applicable to the State under section 15402(c) of this title.

(c) Retroactive payments

(1) In general

Notwithstanding any other provision of this part, including the maintenance of effort requirements of section 15404(a)(7) of this title, a State may use a requirements payment as a reimbursement for costs incurred in obtaining voting equipment which meets the requirements of section 15481 of this title if the State obtains the equipment after the regularly scheduled general election for Federal office held in November 2000.

(2) Special rule regarding multiyear contracts

A State may use a requirements payment for any costs for voting equipment which meets the requirements of section 15481 of this title that, pursuant to a multiyear contract, were incurred on or after January 1, 2001, except that the amount that the State is otherwise required to contribute under the maintenance of effort requirements of section 15404(a)(7) of this title shall be increased by the amount of the payment made with respect to such multiyear contract.

(d) Adoption of Commission guidelines and guidance not required to receive payment

Nothing in this subpart may be construed to require a State to implement any of the voluntary voting system guidelines or any of the voluntary guidance adopted by the Commission with respect to any matter as a condition for receiving a requirements payment.

(e) Schedule of payments

As soon as practicable after the initial appointment of all members of the Commission (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Commission shall make requirements payments to States under this subpart.

(f) Limitation

A State may not use any portion of a requirements payment—

(1) to pay costs associated with any litigation, except to the extent that such costs otherwise constitute permitted uses of a requirements payment under this subpart; or

(2) for the payment of any judgment.

(Pub. L. 107–252, title II, § 251, Oct. 29, 2002, 116 Stat. 1692.)

§ 15402. Allocation of funds

(a) In general

Subject to subsection (c) of this section, the amount of a requirements payment made to a State for a year shall be equal to the product of—

(1) the total amount appropriated for requirements payments for the year pursuant to the authorization under section 15407 of this title; and

(2) the State allocation percentage for the State (as determined under subsection (b) of this section).

(b) State allocation percentage defined

The ''State allocation percentage'' for a State is the amount (expressed as a percentage) equal to the quotient of—

(1) the voting age population of the State (as reported in the most recent decennial census); and

(2) the total voting age population of all States (as reported in the most recent decennial census).

(c) Minimum amount of payment

The amount of a requirements payment made to a State for a year may not be less than—

(1) in the case of any of the several States or the District of Columbia, one-half of 1 percent of the total amount appropriated for requirements payments for the year under section 15407 of this title; or

(2) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, one-tenth of 1 percent of such total amount.

(d) Pro rata reductions

The Administrator[1] shall make such pro rata reductions to the allocations determined under subsection (a) of this section as are necessary to comply with the requirements of subsection (c) of this section.

(e) Continuing availability of funds after appropriation

A requirements payment made to a State under this subpart shall be available to the State without fiscal year limitation.

(Pub. L. 107–252, title II, § 252, Oct. 29, 2002, 116 Stat. 1693.)

[1] So in original. Probably should be ''Commission''.

§ 15403. Condition for receipt of funds

(a) In general

A State is eligible to receive a requirements payment for a fiscal year if the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official, has filed with the Commission a statement certifying that the State is in compliance with the requirements referred to in subsection (b) of this section. A State may meet the requirement of the previous sentence by filing with the Commission a statement which reads as follows: ''_____ hereby certifies that it is in compliance with the requirements referred to in section 253(b) of the Help America Vote Act of 2002.'' (with the blank to be filled in with the name of the State involved).

(b) State plan requirement; certification of compliance with applicable laws and requirements

The requirements referred to in this subsection are as follows:

(1) The State has filed with the Commission a State plan covering the fiscal year which the State certifies—

(A) contains each of the elements described in section 15404 of this title with respect to the fiscal year;

(B) is developed in accordance with section 15405 of this title; and

(C) meets the public notice and comment requirements of section 15406 of this title.

(2) The State has filed with the Commission a plan for the implementation of the uniform, nondiscriminatory administrative complaint procedures required under section 15512 of this title (or has included such a plan in the State plan filed under paragraph (1)), and has such procedures in place for purposes of meeting the requirements of such section. If the State does not include such an implementation plan in the State plan filed under paragraph (1), the requirements of sections 15405(b) and 15406 of this title shall apply to the implementation plan in the same manner as such requirements apply to the State plan.

(3) The State is in compliance with each of the laws described in section 15545 of this title, as such laws apply with respect to this chapter.

(4) To the extent that any portion of the requirements payment is used for activities other than meeting the requirements of subchapter III of this chapter—

(A) the State's proposed uses of the requirements payment are not inconsistent with the requirements of subchapter III of this chapter; and

(B) the use of the funds under this paragraph is consistent with the requirements of section 15401(b) of this title.

(5) The State has appropriated funds for carrying out the activities for which the requirements payment is made in an amount equal to 5 percent of the total amount to be spent for such activities (taking into account the requirements payment and the amount spent by the State) and, in the case of a State that uses a requirements payment as a reimbursement under section 15401(c)(2) of this title, an additional amount equal to the amount of such reimbursement.

(c) Methods of compliance left to discretion of State

The specific choices on the methods of complying with the elements of a State plan shall be left to the discretion of the State.

(d) Timing for filing of certification

A State may not file a statement of certification under subsection (a) of this section until the expiration of the 45-day period (or, in the case of a fiscal year other than the first fiscal year for which a requirements payment is made to the State under this part, the 30-day period) which begins on the date the State plan under this part is published in the Federal Register pursuant to section 15405(b) of this title.

(e) Chief State election official defined

In this part, the ''chief State election official'' of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–8) to be responsible for coordination of the State's responsibilities under such Act.

(Pub. L. 107–252, title II, § 253, Oct. 29, 2002, 116 Stat. 1693.)

REFERENCES IN TEXT

Section 253(b) of the Help America Vote Act of 2002, referred to in subsec. (a), is classified to subsec. (b) of this section.

The National Voter Registration Act of 1993, referred to in subsec. (e), is Pub. L. 103–31, May 20, 1993, 107 Stat. 77, as amended, which is classified principally to subchapter I–H (§ 1973gg et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

§ 15404. State plan

(a) In general

The State plan shall contain a description of each of the following:

(1) How the State will use the requirements payment to meet the requirements of subchapter III of this chapter, and, if applicable under section 15401(a)(2) of this title, to carry out other activities to improve the administration of elections.

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of subchapter III of this chapter.

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 15481 of this title.

(5) How the State will establish a fund described in subsection (b) of this section for purposes of administering the State's activities under this subpart, including information on fund management.

(6) The State's proposed budget for activities under this subpart, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) the costs of the activities required to be carried out to meet the requirements of subchapter III of this chapter;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 15512 of this title.

(10) If the State received any payment under subchapter I of this chapter, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

(11) How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 15405 of this title in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 15406 of this title in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

(12) In the case of a State with a State plan in effect under this part during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

(13) A description of the committee which participated in the development of the State plan in accordance with section 15405 of this title and the procedures followed by the committee under such section and section 15406 of this title.

(b) Requirements for election fund

(1) Election fund described

For purposes of subsection (a)(5) of this section, a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this subpart.

(B) The requirements payment made to the State under this subpart.

(C) Such other amounts as may be appropriated under law.

(D) Interest earned on deposits of the fund.

(2) Use of fund

Amounts in the fund shall be used by the State exclusively to carry out the activities for which the requirements payment is made to the State under this subpart.

(3) Treatment of States that require changes to State law

In the case of a State that requires State legislation to establish the fund described in this subsection, the Commission shall defer disbursement of the requirements payment to such State until such time as legislation establishing the fund is enacted.

(c) Protection against actions based on information in plan

(1) In general

No action may be brought under this chapter against a State or other jurisdiction on the basis of any information contained in the State plan filed under this subpart.

(2) Exception for criminal acts

Paragraph (1) may not be construed to limit the liability of a State or other jurisdiction for criminal acts or omissions.

(Pub. L. 107–252, title II, § 254, Oct. 29, 2002, 116 Stat. 1694.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), was in the original ''this Act'', meaning Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

§ 15405. Process for development and filing of plan; publication by Commission

(a) In general

The chief State election official shall develop the State plan under this part through a com-

mittee of appropriate individuals, including the chief election officials of the two most populous jurisdictions within the States, other local election officials, stake holders (including representatives of groups of individuals with disabilities), and other citizens, appointed for such purpose by the chief State election official.

(b) Publication of plan by Commission

After receiving the State plan of a State under this part, the Commission shall cause to have the plan published in the Federal Register.

(Pub. L. 107–252, title II, § 255, Oct. 29, 2002, 116 Stat. 1697.)

§ 15406. Requirement for public notice and comment

For purposes of section 15401(a)(1)(C)[1] of this title, a State plan meets the public notice and comment requirements of this section if—

(1) not later than 30 days prior to the submission of the plan, the State made a preliminary version of the plan available for public inspection and comment;

(2) the State publishes notice that the preliminary version of the plan is so available; and

(3) the State took the public comments made regarding the preliminary version of the plan into account in preparing the plan which was filed with the Commission.

(Pub. L. 107–252, title II, § 256, Oct. 29, 2002, 116 Stat. 1697.)

REFERENCES IN TEXT

Section 15401(a)(1)(C) of this title, referred to in text, probably should be a reference to section 15403(b)(1)(C) of this title because there is no subsec. (a)(1)(C) in section 15401 and subsec. (b)(1)(C) of section 15403 relates to public notice and comment requirements of section 15406 of this title.

§ 15407. Authorization of appropriations

(a) In general

In addition to amounts transferred under section 15304(c) of this title, there are authorized to be appropriated for requirements payments under this subpart the following amounts:

(1) For fiscal year 2003, $1,400,000,000.

(2) For fiscal year 2004, $1,000,000,000.

(3) For fiscal year 2005, $600,000,000.

(b) Availability

Any amounts appropriated pursuant to the authority of subsection (a) of this section shall remain available without fiscal year limitation until expended.

(Pub. L. 107–252, title II, § 257, Oct. 29, 2002, 116 Stat. 1697.)

§ 15408. Reports

Not later than 6 months after the end of each fiscal year for which a State received a requirements payment under this subpart, the State shall submit a report to the Commission on the activities conducted with the funds provided during the year, and shall include in the report—

(1) a list of expenditures made with respect to each category of activities described in section 15401(b) of this title;

(2) the number and type of articles of voting equipment obtained with the funds; and

(3) an analysis and description of the activities funded under this subpart to meet the requirements of this chapter and an analysis and description of how such activities conform to the State plan under section 15404 of this title.

(Pub. L. 107–252, title II, § 258, Oct. 29, 2002, 116 Stat. 1697.)

SUBPART 2—PAYMENTS TO STATES AND UNITS OF LOCAL GOVERNMENT TO ASSURE ACCESS FOR INDIVIDUALS WITH DISABILITIES

§ 15421. Payments to States and units of local government to assure access for individuals with disabilities

(a) In general

The Secretary of Health and Human Services shall make a payment to each eligible State and each eligible unit of local government (as described in section 15423 of this title).

(b) Use of funds

An eligible State and eligible unit of local government shall use the payment received under this subpart for—

(1) making polling places, including the path of travel, entrances, exits, and voting areas of each polling facility, accessible to individuals with disabilities, including the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters; and

(2) providing individuals with disabilities and the other individuals described in paragraph (1) with information about the accessibility of polling places, including outreach programs to inform the individuals about the availability of accessible polling places and training election officials, poll workers, and election volunteers on how best to promote the access and participation of individuals with disabilities in elections for Federal office.

(c) Schedule of payments

As soon as practicable after October 29, 2002 (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Secretary shall make payments under this subpart.

(Pub. L. 107–252, title II, § 261, Oct. 29, 2002, 116 Stat. 1698.)

§ 15422. Amount of payment

(a) In general

The amount of a payment made to an eligible State or an eligible unit of local government for a year under this subpart shall be determined by the Secretary.

(b) Continuing availability of funds after appropriation

A payment made to an eligible State or eligible unit of local government under this subpart shall be available without fiscal year limitation.

[1] See References in Text note below.

(Pub. L. 107–252, title II, § 262, Oct. 29, 2002, 116 Stat. 1698.)

§ 15423. Requirements for eligibility

(a) Application

Each State or unit of local government that desires to receive a payment under this subpart for a fiscal year shall submit an application for the payment to the Secretary at such time and in such manner and containing such information as the Secretary shall require.

(b) Contents of application

Each application submitted under subsection (a) of this section shall—

(1) describe the activities for which assistance under this section is sought; and

(2) provide such additional information and certifications as the Secretary determines to be essential to ensure compliance with the requirements of this subpart.

(c) Protection against actions based on information in application

(1) In general

No action may be brought under this chapter against a State or unit of local government on the basis of any information contained in the application submitted under subsection (a) of this section.

(2) Exception for criminal acts

Paragraph (1) may not be construed to limit the liability of a State or unit of local government for criminal acts or omissions.

(Pub. L. 107–252, title II, § 263, Oct. 29, 2002, 116 Stat. 1698.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), was in the original ''this Act'', meaning Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

§ 15424. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out the provisions of this subpart the following amounts:

(1) For fiscal year 2003, $50,000,000.

(2) For fiscal year 2004, $25,000,000.

(3) For fiscal year 2005, $25,000,000.

(b) Availability

Any amounts appropriated pursuant to the authority of subsection (a) of this section shall remain available without fiscal year limitation until expended.

(Pub. L. 107–252, title II, § 264, Oct. 29, 2002, 116 Stat. 1699.)

§ 15425. Reports

(a) Reports by recipients

Not later than the[1] 6 months after the end of each fiscal year for which an eligible State or eligible unit of local government received a payment under this subpart, the State or unit shall submit a report to the Secretary on the activities conducted with the funds provided during the year, and shall include in the report a list of expenditures made with respect to each category of activities described in section 15421(b) of this title.

(b) Report by Secretary to Committees

With respect to each fiscal year for which the Secretary makes payments under this subpart, the Secretary shall submit a report on the activities carried out under this subpart to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate.

(Pub. L. 107–252, title II, § 265, Oct. 29, 2002, 116 Stat. 1699.)

SUBPART 3—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

§ 15441. Grants for research on voting technology improvements

(a) In general

The Commission shall make grants to assist entities in carrying out research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

(b) Eligibility

An entity is eligible to receive a grant under this subpart if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) certifications that the research and development funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities, including the blind and visually impaired, the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965 [42 U.S.C. 1973 et seq.]); and

(2) such other information and certifications as the Commission may require.

(c) Applicability of regulations governing patent rights in inventions made with Federal assistance

Any invention made by the recipient of a grant under this subpart using funds provided under this subpart shall be subject to chapter 18 of title 35 (relating to patent rights in inventions made with Federal assistance).

(d) Recommendation of topics for research

(1) In general

The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the ''Director'') shall submit to the Commission an annual list of the Director's suggestions for issues which may be the subject of research funded with grants awarded under this subpart during the year.

[1] So in original.

(2) Review of grant applications received by Commission

The Commission shall submit each application it receives for a grant under this subpart to the Director, who shall review the application and provide the Commission with such comments as the Director considers appropriate.

(3) Monitoring and adjustment of grant activities at request of Commission

After the Commission has awarded a grant under this subpart, the Commission may request that the Director monitor the grant, and (to the extent permitted under the terms of the grant as awarded) the Director may recommend to the Commission that the recipient of the grant modify and adjust the activities carried out under the grant.

(4) Evaluation of grants at request of Commission

(A) In general

In the case of a grant for which the Commission submits the application to the Director under paragraph (2) or requests that the Director monitor the grant under paragraph (3), the Director shall prepare and submit to the Commission an evaluation of the grant and the activities carried out under the grant.

(B) Inclusion in reports

The Commission shall include the evaluations submitted under subparagraph (A) for a year in the report submitted for the year under section 15327 of this title.

(e) Provision of information on projects

The Commission may provide to the Technical Guidelines Development Committee under subpart 3 of part A of this subchapter such information regarding the activities funded under this subpart as the Commission deems necessary to assist the Committee in carrying out its duties.

(Pub. L. 107–252, title II, § 271, Oct. 29, 2002, 116 Stat. 1699.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89–110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I–A (§ 1973 et seq.), I–B (§ 1973aa et seq.), and I–C (§ 1973bb et seq.) of chapter 20 of this title . For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

§ 15442. Report

(a) In general

Each entity which receives a grant under this subpart shall submit to the Commission a report describing the activities carried out with the funds provided under the grant.

(b) Deadline

An entity shall submit a report required under subsection (a) of this section not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

(Pub. L. 107–252, title II, § 272, Oct. 29, 2002, 116 Stat. 1700.)

§ 15443. Authorization of appropriations

(a) In general

There are authorized to be appropriated for grants under this subpart $20,000,000 for fiscal year 2003.

(b) Availability of funds

Amounts appropriated pursuant to the authorization under this section shall remain available, without fiscal year limitation, until expended.

(Pub. L. 107–252, title II, § 273, Oct. 29, 2002, 116 Stat. 1700.)

SUBPART 4—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

§ 15451. Pilot program

(a) In general

The Commission shall make grants to carry out pilot programs under which new technologies in voting systems and equipment are tested and implemented on a trial basis so that the results of such tests and trials are reported to Congress.

(b) Eligibility

An entity is eligible to receive a grant under this subpart if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) certifications that the pilot programs funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities, including the blind and visually impaired, the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965 [42 U.S.C. 1973 et seq.] and the requirements of this chapter); and

(2) such other information and certifications as the Commission may require.

(c) Recommendation of topics for pilot programs

(1) In general

The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the ''Director'') shall submit to the Commission an annual list of the Director's suggestions for issues which may be the subject of pilot programs funded with grants awarded under this subpart during the year.

(2) Review of grant applications received by Commission

The Commission shall submit each application it receives for a grant under this subpart to the Director, who shall review the application and provide the Commission with such comments as the Director considers appropriate.

(3) Monitoring and adjustment of grant activities at request of Commission

After the Commission has awarded a grant under this subpart, the Commission may re-

quest that the Director monitor the grant, and (to the extent permitted under the terms of the grant as awarded) the Director may recommend to the Commission that the recipient of the grant modify and adjust the activities carried out under the grant.

(4) Evaluation of grants at request of Commission

(A) In general

In the case of a grant for which the Commission submits the application to the Director under paragraph (2) or requests that the Director monitor the grant under paragraph (3), the Director shall prepare and submit to the Commission an evaluation of the grant and the activities carried out under the grant.

(B) Inclusion in reports

The Commission shall include the evaluations submitted under subparagraph (A) for a year in the report submitted for the year under section 15327 of this title.

(d) Provision of information on projects

The Commission may provide to the Technical Guidelines Development Committee under subpart 3 of part A of this subchapter such information regarding the activities funded under this subpart as the Commission deems necessary to assist the Committee in carrying out its duties.

(Pub. L. 107–252, title II, § 281, Oct. 29, 2002, 116 Stat. 1701.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89–110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I–A (§ 1973 et seq.), I–B (§ 1973aa et seq.), and I–C (§ 1973bb et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

This chapter, referred to in subsec. (b)(1), was in the original ''this Act'', meaning Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

§ 15452. Report

(a) In general

Each entity which receives a grant under this subpart shall submit to the Commission a report describing the activities carried out with the funds provided under the grant.

(b) Deadline

An entity shall submit a report required under subsection (a) of this section not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

(Pub. L. 107–252, title II, § 282, Oct. 29, 2002, 116 Stat. 1702.)

§ 15453. Authorization of appropriations

(a) In general

There are authorized to be appropriated for grants under this subpart $10,000,000 for fiscal year 2003.

(b) Availability of funds

Amounts appropriated pursuant to the authorization under this section shall remain available, without fiscal year limitation, until expended.

(Pub. L. 107–252, title II, § 283, Oct. 29, 2002, 116 Stat. 1702.)

SUBPART 5—PROTECTION AND ADVOCACY SYSTEMS

§ 15461. Payments for protection and advocacy systems

(a) In general

In addition to any other payments made under this part, the Secretary of Health and Human Services shall pay the protection and advocacy system (as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)) of each State to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places. In providing such services, protection and advocacy systems shall have the same general authorities as they are afforded under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

(b) Minimum grant amount

The minimum amount of each grant to a protection and advocacy system shall be determined and allocated as set forth in subsections (c)(3), (c)(4), (c)(5), (e), and (g) of section 794e of title 29, except that the amount of the grants to systems referred to in subsections (c)(3)(B) and (c)(4)(B) of that section shall be not less than $70,000 and $35,000, respectively.

(c) Training and technical assistance program

(1) In general

Not later than 90 days after the date on which the initial appropriation of funds for a fiscal year is made pursuant to the authorization under section 15462 of this title, the Secretary shall set aside 7 percent of the amount appropriated under such section and use such portion to make payments to eligible entities to provide training and technical assistance with respect to the activities carried out under this section.

(2) Use of funds

A recipient of a payment under this subsection may use the payment to support training in the use of voting systems and technologies, and to demonstrate and evaluate the use of such systems and technologies, by individuals with disabilities (including blindness) in order to assess the availability and use of such systems and technologies for such individuals. At least one of the recipients under this subsection shall use the payment to provide training and technical assistance for nonvisual access.

(3) Eligibility

An entity is eligible to receive a payment under this subsection if the entity—

(A) is a public or private nonprofit entity with demonstrated experience in voting issues for individuals with disabilities;

(B) is governed by a board with respect to which the majority of its members are individuals with disabilities or family members of such individuals or individuals who are blind; and

(C) submits to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(Pub. L. 107–252, title II, § 291, Oct. 29, 2002, 116 Stat. 1702.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (a), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of title I of the Act is classified generally to part C (§ 15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

§ 15462. Authorization of appropriations

(a) In general

In addition to any other amounts authorized to be appropriated under this part, there are authorized to be appropriated $10,000,000 for each of the fiscal years 2003, 2004, 2005, and 2006, and for each subsequent fiscal year such sums as may be necessary, for the purpose of making payments under section 15461(a) of this title; except that none of the funds provided by this subsection shall be used to initiate or otherwise participate in any litigation related to election-related disability access, notwithstanding the general authorities that the protection and advocacy systems are otherwise afforded under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

(b) Availability

Any amounts appropriated pursuant to the authority of this section shall remain available until expended.

(Pub. L. 107–252, title II, § 292, Oct. 29, 2002, 116 Stat. 1703.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (a), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of title I of the Act is classified generally to part C (§ 15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

SUBPART 6—NATIONAL STUDENT AND PARENT MOCK ELECTION

§ 15471. National Student and Parent Mock Election

(a) In general

The Election Assistance Commission is authorized to award grants to the National Student and Parent Mock Election, a national nonprofit, nonpartisan organization that works to promote voter participation in American elections to enable it to carry out voter education activities for students and their parents. Such activities may—

(1) include simulated national elections at least 5 days before the actual election that permit participation by students and parents from each of the 50 States in the United States, its territories, the District of Columbia, and United States schools overseas; and

(2) consist of—

(A) school forums and local cable call-in shows on the national issues to be voted upon in an ''issues forum'';

(B) speeches and debates before students and parents by local candidates or stand-ins for such candidates;

(C) quiz team competitions, mock press conferences, and speech writing competitions;

(D) weekly meetings to follow the course of the campaign; or

(E) school and neighborhood campaigns to increase voter turnout, including newsletters, posters, telephone chains, and transportation.

(b) Requirement

The National Student and Parent Mock Election shall present awards to outstanding student and parent mock election projects.

(Pub. L. 107–252, title II, § 295, Oct. 29, 2002, 116 Stat. 1703.)

§ 15472. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this part $200,000 for fiscal year 2003 and such sums as may be necessary for each of the 6 succeeding fiscal years.

(Pub. L. 107–252, title II, § 296, Oct. 29, 2002, 116 Stat. 1704.)

SUBCHAPTER III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

PART A—REQUIREMENTS

§ 15481. Voting systems standards

(a) Requirements

Each voting system used in an election for Federal office shall meet the following requirements:

(1) In general

(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall—

(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office—

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by—

(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and

(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

(2) Audit capacity

(A) In general

The voting system shall produce a record with an audit capacity for such system.

(B) Manual audit capacity

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

(3) Accessibility for individuals with disabilities

The voting system shall—

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;

(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

(C) if purchased with funds made available under subchapter II of this chapter on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).

(4) Alternative language accessibility

The voting system shall provide alternative language accessibility pursuant to the requirements of section 1973aa–1a of this title.

(5) Error rates

The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on October 29, 2002.

(6) Uniform definition of what constitutes a vote

Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

(b) Voting system defined

In this section, the term ''voting system'' means—

(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used—

(A) to define ballots;

(B) to cast and count votes;

(C) to report or display election results; and

(D) to maintain and produce any audit trail information; and

(2) the practices and associated documentation used—

(A) to identify system components and versions of such components;

(B) to test the system during its development and maintenance;

(C) to maintain records of system errors and defects;

(D) to determine specific system changes to be made to a system after the initial qualification of the system; and

(E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

(c) Construction

(1) In general

Nothing in this section shall be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000 from using the same type of system after the effective date of this section, so long as the system meets or is modified to meet the requirements of this section.

(2) Protection of paper ballot voting systems

For purposes of subsection (a)(1)(A)(i) of this section, the term ''verify'' may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.

(d) Effective date

Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

(Pub. L. 107–252, title III, § 301, Oct. 29, 2002, 116 Stat. 1704.)

§ 15482. Provisional voting and voting information requirements

(a) Provisional voting requirements

If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is—

(A) a registered voter in the jurisdiction in which the individual desires to vote; and

(B) eligible to vote in that election.

(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).

(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.

(5)(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

States described in section 1973gg–2(b) of this title may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(b) Voting information requirements

(1) Public posting on election day

The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

(2) Voting information defined

In this section, the term ''voting information'' means—

(A) a sample version of the ballot that will be used for that election;

(B) information regarding the date of the election and the hours during which polling places will be open;

(C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;

(D) instructions for mail-in registrants and first-time voters under section 15483(b) of this title;

(E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(c) Voters who vote after the polls close

Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a) of this section. Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) Effective date for provisional voting and voting information

Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

(Pub. L. 107–252, title III, § 302, Oct. 29, 2002, 116 Stat. 1706.)

§ 15483. Computerized statewide voter registration list requirements and requirements for voters who register by mail

(a) Computerized statewide voter registration list requirements

(1) Implementation

(A) In general

Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uni-

form and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the ''computerized list''), and includes the following:

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.

(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

(iv) The computerized list shall be coordinated with other agency databases within the State.

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(B) Exception

The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after October 29, 2002, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

(2) Computerized list maintenance

(A) In general

The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg–6).

(ii) For purposes of removing names of ineligible voters from the official list of eligible voters—

(I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg–6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status; and

(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg–6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death.

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–2(b)), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

(B) Conduct

The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that—

(i) the name of each registered voter appears in the computerized list;

(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) duplicate names are eliminated from the computerized list.

(3) Technological security of computerized list

The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(4) Minimum standard for accuracy of State voter registration records

The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(5) Verification of voter registration information

(A) Requiring provision of certain information by applicants

(i) In general

Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes—

(I) in the case of an applicant who has been issued a current and valid driver's

license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

(ii) Special rule for applicants without driver's license or social security number

If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) Determination of validity of numbers provided

The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) Requirements for State officials

(i) Sharing information in databases

The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) Agreements with Commissioner of Social Security

The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 405(r)(8) of this title (as added by subparagraph (C)).

(C) Omitted

(D) Special rule for certain States

In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

(b) Requirements for voters who register by mail

(1) In general

Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–4(c)) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if—

(A) the individual registered to vote in a jurisdiction by mail; and

(B)(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a) of this section.

(2) Requirements

(A) In general

An individual meets the requirements of this paragraph if the individual—

(i) in the case of an individual who votes in person—

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot—

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B) Fail-safe voting

(i) In person

An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 15482(a) of this title.

(ii) By mail

An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 15482(a) of this title.

(3) Inapplicability

Paragraph (1) shall not apply in the case of a person—

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–4) and submits as part of such registration either—

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–4) and submits with such registration either—

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) who is—

(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.];

(ii) provided the right to vote otherwise than in person under section 1973ee–1(b)(2)(B)(ii) of this title; or

(iii) entitled to vote otherwise than in person under any other Federal law.

(4) Contents of mail-in registration form

(A) In general

The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–4) shall include the following:

(i) The question ''Are you a citizen of the United States of America?'' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question ''Will you be 18 years of age on or before election day?'' and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement ''If you checked 'no' in response to either of these questions, do not complete this form.''.

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

(B) Incomplete forms

If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

(5) Construction

Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) before October 29, 2002, to comply with such a provision after October 29, 2002.

(c) Permitted use of last 4 digits of social security numbers

The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) of this section shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note).

(d) Effective date

(1) Computerized statewide voter registration list requirements

(A) In general

Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) of this section on and after January 1, 2004.

(B) Waiver

If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to ''January 1, 2004'' were a reference to ''January 1, 2006''.

(2) Requirement for voters who register by mail

(A) In general

Each State and jurisdiction shall be required to comply with the requirements of subsection (b) of this section on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

(B) Applicability with respect to individuals

The provisions of subsection (b) of this section shall apply to any individual who registers to vote on or after January 1, 2003.

(Pub. L. 107–252, title III, § 303, Oct. 29, 2002, 116 Stat. 1708.)

REFERENCES IN TEXT

The National Voter Registration Act of 1993, referred to in subsecs. (a)(2)(A)(i), (4)(A) and (b)(5), is Pub. L. 103–31, May 20, 1993, 107 Stat. 77, as amended, which is classified principally to subchapter I–H (§ 1973gg et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

Section 7 of the Privacy Act of 1974, referred to in subsecs. (a)(5)(D) and (c), is section 7 of Pub. L. 93–579, which is set out as a note under section 552a of Title 5, Government Organization and Employees.

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (b)(3)(C)(i), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, as amended, which is classified principally to subchapter I–G (§ 1973ff et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

CODIFICATION

Section is comprised of section 303 of Pub. L. 107–252. Subsec. (a)(5)(C) of section 303 of Pub. L. 107–252 amended section 405 of this title.

§ 15484. Minimum requirements

The requirements established by this subchapter are minimum requirements and nothing

in this subchapter shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this subchapter so long as such State requirements are not inconsistent with the Federal requirements under this subchapter or any law described in section 15545 of this title.

(Pub. L. 107–252, title III, § 304, Oct. 29, 2002, 116 Stat. 1714.)

§ 15485. Methods of implementation left to discretion of State

The specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State.

(Pub. L. 107–252, title III, § 305, Oct. 29, 2002, 116 Stat. 1714.)

PART B—VOLUNTARY GUIDANCE

§ 15501. Adoption of voluntary guidance by Commission

(a) In general

To assist States in meeting the requirements of part A of this subchapter, the Commission shall adopt voluntary guidance consistent with such requirements in accordance with the procedures described in section 15502 of this title.

(b) Deadlines

The Commission shall adopt the recommendations under this section not later than—

(1) in the case of the recommendations with respect to section 15481 of this title, January 1, 2004;

(2) in the case of the recommendations with respect to section 15482 of this title, October 1, 2003; and

(3) in the case of the recommendations with respect to section 15483 of this title, October 1, 2003.

(c) Quadrennial update

The Commission shall review and update recommendations adopted with respect to section 15481 of this title no less frequently than once every 4 years.

(Pub. L. 107–252, title III, § 311, Oct. 29, 2002, 116 Stat. 1715.)

§ 15502. Process for adoption

The adoption of the voluntary guidance under this part shall be carried out by the Commission in a manner that provides for each of the following:

(1) Publication of notice of the proposed recommendations in the Federal Register.

(2) An opportunity for public comment on the proposed recommendations.

(3) An opportunity for a public hearing on the record.

(4) Publication of the final recommendations in the Federal Register.

(Pub. L. 107–252, title III, § 312, Oct. 29, 2002, 116 Stat. 1715.)

SUBCHAPTER IV—ENFORCEMENT

§ 15511. Actions by the Attorney General for declaratory and injunctive relief

The Attorney General may bring a civil action against any State or jurisdiction in an appropriate United States District Court for such declaratory and injunctive relief (including a temporary restraining order, a permanent or temporary injunction, or other order) as may be necessary to carry out the uniform and nondiscriminatory election technology and administration requirements under sections 15481, 15482, and 15483 of this title.

(Pub. L. 107–252, title IV, § 401, Oct. 29, 2002, 116 Stat. 1715.)

§ 15512. Establishment of State-based administrative complaint procedures to remedy grievances

(a) Establishment of State-based administrative complaint procedures to remedy grievances

(1) Establishment of procedures as condition of receiving funds

If a State receives any payment under a program under this chapter, the State shall be required to establish and maintain State-based administrative complaint procedures which meet the requirements of paragraph (2).

(2) Requirements for procedures

The requirements of this paragraph are as follows:

(A) The procedures shall be uniform and nondiscriminatory.

(B) Under the procedures, any person who believes that there is a violation of any provision of subchapter III of this chapter (including a violation which has occurred, is occurring, or is about to occur) may file a complaint.

(C) Any complaint filed under the procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint.

(D) The State may consolidate complaints filed under subparagraph (B).

(E) At the request of the complainant, there shall be a hearing on the record.

(F) If, under the procedures, the State determines that there is a violation of any provision of subchapter III of this chapter, the State shall provide the appropriate remedy.

(G) If, under the procedures, the State determines that there is no violation, the State shall dismiss the complaint and publish the results of the procedures.

(H) The State shall make a final determination with respect to a complaint prior to the expiration of the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

(I) If the State fails to meet the deadline applicable under subparagraph (H), the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint pro-

cedures established under this section shall be made available for use under the alternative dispute resolution procedures.

(b) Requiring Attorney General approval of compliance plan for States not receiving funds

(1) In general

Not later than January 1, 2004, each nonparticipating State shall elect—

(A) to certify to the Commission that the State meets the requirements of subsection (a) of this section in the same manner as a State receiving a payment under this chapter; or

(B) to submit a compliance plan to the Attorney General which provides detailed information on the steps the State will take to ensure that it meets the requirements of subchapter III of this chapter.

(2) States without approved plan deemed out of compliance

A nonparticipating State (other than a State which makes the election described in paragraph (1)(A)) shall be deemed to not meet the requirements of subchapter III of this chapter if the Attorney General has not approved a compliance plan submitted by the State under this subsection.

(3) Nonparticipating State defined

In this section, a ''nonparticipating State'' is a State which, during 2003, does not notify any office which is responsible for making payments to States under any program under this chapter of its intent to participate in, and receive funds under, the program.

(Pub. L. 107–252, title IV, § 402, Oct. 29, 2002, 116 Stat. 1715.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (b)(1)(A), (3), was in the original ''this Act'', meaning Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

SUBCHAPTER V—HELP AMERICA VOTE COLLEGE PROGRAM

§ 15521. Establishment of program

(a) In general

Not later than 1 year after the appointment of its members, the Election Assistance Commission shall develop a program to be known as the ''Help America Vote College Program'' (hereafter in this subchapter referred to as the ''Program'').

(b) Purposes of Program

The purpose of the Program shall be—

(1) to encourage students enrolled at institutions of higher education (including community colleges) to assist State and local governments in the administration of elections by serving as nonpartisan poll workers or assistants; and

(2) to encourage State and local governments to use the services of the students participating in the Program.

(Pub. L. 107–252, title V, § 501, Oct. 29, 2002, 116 Stat. 1717.)

§ 15522. Activities under Program

(a) In general

In carrying out the Program, the Commission (in consultation with the chief election official of each State) shall develop materials, sponsor seminars and workshops, engage in advertising targeted at students, make grants, and take such other actions as it considers appropriate to meet the purposes described in section 15521(b) of this title.

(b) Requirements for grant recipients

In making grants under the Program, the Commission shall ensure that the funds provided are spent for projects and activities which are carried out without partisan bias or without promoting any particular point of view regarding any issue, and that each recipient is governed in a balanced manner which does not reflect any partisan bias.

(c) Coordination with institutions of higher education

The Commission shall encourage institutions of higher education (including community colleges) to participate in the Program, and shall make all necessary materials and other assistance (including materials and assistance to enable the institution to hold workshops and poll worker training sessions) available without charge to any institution which desires to participate in the Program.

(Pub. L. 107–252, title V, § 502, Oct. 29, 2002, 116 Stat. 1717.)

§ 15523. Authorization of appropriations

In addition to any funds authorized to be appropriated to the Commission under section 15330 of this title, there are authorized to be appropriated to carry out this subchapter—

(1) $5,000,000 for fiscal year 2003; and

(2) such sums as may be necessary for each succeeding fiscal year.

(Pub. L. 107–252, title V, § 503, Oct. 29, 2002, 116 Stat. 1717.)

SUBCHAPTER VI—TRANSFER TO COMMISSION OF FUNCTIONS UNDER CERTAIN LAWS

§ 15531. Transfer of functions of Office of Election Administration of Federal Election Commission

There are transferred to the Election Assistance Commission established under section 15321 of this title all functions which the Office of Election Administration, established within the Federal Election Commission, exercised before October 29, 2002.

(Pub. L. 107–252, title VIII, § 801(a), Oct. 29, 2002, 116 Stat. 1725.)

§ 15532. Transfer of functions

There are transferred to the Election Assistance Commission established under section 15321 of this title all functions which the Federal Election Commission exercised under section 1973gg–7(a) of this title before October 29, 2002.

(Pub. L. 107–252, title VIII, § 802(a), Oct. 29, 2002, 116 Stat. 1726.)

§ 15533. Transfer of property, records, and personnel

(a) Property and records

The contracts, liabilities, records, property, and other assets and interests of, or made available in connection with, the offices and functions of the Federal Election Commission which are transferred by this subchapter are transferred to the Election Assistance Commission for appropriate allocation.

(b) Personnel

(1) In general

The personnel employed in connection with the offices and functions of the Federal Election Commission which are transferred by this subchapter are transferred to the Election Assistance Commission.

(2) Effect

Any full-time or part-time personnel employed in permanent positions shall not be separated or reduced in grade or compensation because of the transfer under this subsection during the 1-year period beginning on October 29, 2002.

(Pub. L. 107–252, title VIII, § 803, Oct. 29, 2002, 116 Stat. 1726.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this subtitle'', meaning subtitle A (§§ 801–804) of title VIII of Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1725, which enacted this subchapter and amended section 1973gg–7 of this title and section 438 of Title 2, The Congress. For complete classification of subtitle A to the Code, see Tables.

§ 15534. Effective date; transition

(a) Effective date

This subchapter and the amendments made by this subchapter shall take effect upon the appointment of all members of the Election Assistance Commission under section 15323 of this title.

(b) Transition

With the consent of the entity involved, the Election Assistance Commission is authorized to utilize the services of such officers, employees, and other personnel of the entities from which functions have been transferred to the Election Assistance Commission under this subchapter or the amendments made by this subchapter for such period of time as may reasonably be needed to facilitate the orderly transfer of such functions.

(c) No effect on authorities of Office of Election Administration prior to appointment of members of Commission

During the period which begins on October 29, 2002, and ends on the effective date described in subsection (a) of this section, the Office of Election Administration of the Federal Election Commission shall continue to have the authority to carry out any of the functions (including the development of voluntary standards for voting systems and procedures for the certification of voting systems) which it has the authority to carry out as of October 29, 2002.

(Pub. L. 107–252, title VIII, § 804, Oct. 29, 2002, 116 Stat. 1726.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (b), was in the original ''this title'', meaning title VIII of Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1725, which enacted this subchapter, amended section 1973gg–7 of this title, section 438 of Title 2, The Congress, sections 3132 and 7323 of Title 5, Government Organization and Employees, and section 8G of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, and enacted provisions set out as a note under section 8G of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5. For complete classification of title VIII to the Code, see Tables.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§ 15541. State defined

In this chapter, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

(Pub. L. 107–252, title IX, § 901, Oct. 29, 2002, 116 Stat. 1727.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

§ 15542. Audits and repayment of funds

(a) Recordkeeping requirement

Each recipient of a grant or other payment made under this chapter shall keep such records with respect to the payment as are consistent with sound accounting principles, including records which fully disclose the amount and disposition by such recipient of funds, the total cost of the project or undertaking for which such funds are used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Audits and examinations

(1) Audits and examinations

Except as provided in paragraph (5), each office making a grant or other payment under this chapter, or any duly authorized representative of such office, may audit or examine any recipient of the grant or payment and shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient which in the opinion of the entity may be related or pertinent to the grant or payment.

(2) Recipients of assistance subject to provisions of section

The provisions of this section shall apply to all recipients of grants or other payments under this chapter, whether by direct grant, cooperative agreement, or contract under this chapter or by subgrant or subcontract from primary grantees or contractors under this chapter.

(3) Mandatory audit

In addition to audits conducted pursuant to paragraph (1), all funds provided under this chapter shall be subject to mandatory audit by the Comptroller General at least once during the lifetime of the program involved. For purposes of an audit under this paragraph, the Comptroller General shall have access to books, documents, papers, and records of recipients of funds in the same manner as the office making the grant or payment involved has access to such books, documents, papers, and records under paragraph (1).

(4) Special rule for payments by General Services Administration

With respect to any grant or payment made under this chapter by the Administrator of General Services, the Election Assistance Commission shall be deemed to be the office making the grant or payment for purposes of this section.

(5) Special rule

In the case of grants or payments made under section 15401 of this title, audits and examinations conducted under paragraph (1) shall be performed on a regular basis (as determined by the Commission).

(6) Special rules for audits by the Commission

In addition to the audits described in paragraph (1), the Election Assistance Commission may conduct a special audit or special examination of a recipient described in paragraph (1) upon a vote of the Commission.

(c) Recoupment of funds

If the Comptroller General determines as a result of an audit conducted under subsection (b) of this section that—

(1) a recipient of funds under this chapter is not in compliance with each of the requirements of the program under which the funds are provided; or

(2) an excess payment has been made to the recipient under the program,

the recipient shall pay to the office which made the grant or payment involved a portion of the funds provided which reflects the proportion of the requirements with which the recipient is not in compliance, or the extent to which the payment is in excess, under the program involved.

(Pub. L. 107–252, title IX, § 902, Oct. 29, 2002, 116 Stat. 1727.)

§ 15543. Review and report on adequacy of existing electoral fraud statutes and penalties

(a) Review

The Attorney General shall conduct a review of existing criminal statutes concerning election offenses to determine—

(1) whether additional statutory offenses are needed to secure the use of the Internet for election purposes; and

(2) whether existing penalties provide adequate punishment and deterrence with respect to such offenses.

(b) Report

The Attorney General shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives, the Committee on Rules and Administration of the Senate, and the Committee on House Administration of the House of Representatives on the review conducted under subsection (a) of this section together with such recommendations for legislative and administrative action as the Attorney General determines appropriate.

(Pub. L. 107–252, title IX, § 904, Oct. 29, 2002, 116 Stat. 1729.)

§ 15544. Other criminal penalties

(a) Conspiracy to deprive voters of a fair election

Any individual who knowingly and willfully gives false information in registering or voting in violation of section 1973i(c) of this title, or conspires with another to violate such section, shall be fined or imprisoned, or both, in accordance with such section.

(b) False information in registering and voting

Any individual who knowingly commits fraud or knowingly makes a false statement with respect to the naturalization, citizenry, or alien registry of such individual in violation of section 1015 of title 18 shall be fined or imprisoned, or both, in accordance with such section.

(Pub. L. 107–252, title IX, § 905, Oct. 29, 2002, 116 Stat. 1729.)

§ 15545. No effect on other laws

(a) In general

Except as specifically provided in section 15483(b) of this title with regard to the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), nothing in this chapter may be construed to authorize or require conduct prohibited under any of the following laws, or to supersede, restrict, or limit the application of such laws:

(1) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(2) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.).

(3) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).

(4) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).

(5) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(6) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(b) No effect on preclearance or other requirements under Voting Rights Act

The approval by the Administrator or the Commission of a payment or grant application under subchapter I or subchapter II of this chapter, or any other action taken by the Commission or a State under such subchapter, shall not be considered to have any effect on requirements for preclearance under section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c) or any other requirements of such Act [42 U.S.C. 1973 et seq.].

(Pub. L. 107–252, title IX, § 906, Oct. 29, 2002, 116 Stat. 1729.)

REFERENCES IN TEXT

The National Voter Registration Act of 1993, referred to in subsec. (a), is Pub. L. 103–31, May 20, 1993, 107 Stat.

77, as amended, which is classified principally to subchapter I–H (§ 1973gg et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

The Voting Rights Act of 1965, referred to in subsecs. (a)(1) and (b), is Pub. L. 89–110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I–A (§ 1973 et seq.), I–B (§ 1973aa et seq.), and I–C (§ 1973bb et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

The Voting Accessibility for the Elderly and Handicapped Act, referred to in subsec. (a)(2), is Pub. L. 98–435, Sept. 28, 1984, 98 Stat. 1678, as amended, which is classified generally to subchapter I–F (§ 1973ee et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (a)(3), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, as amended, which is classified principally to subchapter I–G (§ 1973ff et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (a)(5), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§ 12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (a)(6), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

CHAPTER 147—PRISON RAPE ELIMINATION

Sec.
15601. Findings.
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15603. National prison rape statistics, data, and research.
15604. Prison rape prevention and prosecution.
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15606. National Prison Rape Elimination Commission.
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§ 15601. Findings

Congress makes the following findings:

(1) 2,100,146 persons were incarcerated in the United States at the end of 2001: 1,324,465 in Federal and State prisons and 631,240 in county and local jails. In 1999, there were more than 10,000,000 separate admissions to and discharges from prisons and jails.

(2) Insufficient research has been conducted and insufficient data reported on the extent of prison rape. However, experts have conservatively estimated that at least 13 percent of the inmates in the United States have been sexually assaulted in prison. Many inmates have suffered repeated assaults. Under this estimate, nearly 200,000 inmates now incarcerated have been or will be the victims of prison rape. The total number of inmates who have been sexually assaulted in the past 20 years likely exceeds 1,000,000.

(3) Inmates with mental illness are at increased risk of sexual victimization. America's jails and prisons house more mentally ill individuals than all of the Nation's psychiatric hospitals combined. As many as 16 percent of inmates in State prisons and jails, and 7 percent of Federal inmates, suffer from mental illness.

(4) Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities—often within the first 48 hours of incarceration.

(5) Most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults.

(6) Prison rape often goes unreported, and inmate victims often receive inadequate treatment for the severe physical and psychological effects of sexual assault—if they receive treatment at all.

(7) HIV and AIDS are major public health problems within America's correctional facilities. In 2000, 25,088 inmates in Federal and State prisons were known to be infected with HIV/AIDS. In 2000, HIV/AIDS accounted for more than 6 percent of all deaths in Federal and State prisons. Infection rates for other sexually transmitted diseases, tuberculosis, and hepatitis B and C are also far greater for prisoners than for the American population as a whole. Prison rape undermines the public health by contributing to the spread of these diseases, and often giving a potential death sentence to its victims.

(8) Prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released—as 600,000 inmates are each year.

(9) The frequently interracial character of prison sexual assaults significantly exacerbates interracial tensions, both within prison and, upon release of perpetrators and victims from prison, in the community at large.

(10) Prison rape increases the level of homicides and other violence against inmates and staff, and the risk of insurrections and riots.

(11) Victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community and maintain stable employment upon their release from prison. They are thus more likely to become homeless and/or require government assistance.

(12) Members of the public and government officials are largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.

(13) The high incidence of sexual assault within prisons involves actual and potential violations of the United States Constitution. In Farmer v. Brennan, 511 U.S. 825 (1994), the Supreme Court ruled that deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Eighth Amendment rights of State and local prisoners are protected through the Due Process Clause of the Fourteenth Amendment. Pursuant to the power of

Congress under Section Five of the Fourteenth Amendment, Congress may take action to enforce those rights in States where officials have demonstrated such indifference. States that do not take basic steps to abate prison rape by adopting standards that do not generate significant additional expenditures demonstrate such indifference. Therefore, such States are not entitled to the same level of Federal benefits as other States.

(14) The high incidence of prison rape undermines the effectiveness and efficiency of United States Government expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment and homelessness. The effectiveness and efficiency of these federally funded grant programs are compromised by the failure of State officials to adopt policies and procedures that reduce the incidence of prison rape in that the high incidence of prison rape—

(A) increases the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;

(B) increases the levels of violence, directed at inmates and at staff, within prisons;

(C) increases health care expenditures, both inside and outside of prison systems, and reduces the effectiveness of disease prevention programs by substantially increasing the incidence and spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases;

(D) increases mental health care expenditures, both inside and outside of prison systems, by substantially increasing the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates;

(E) increases the risks of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape; and

(F) increases the level of interracial tensions and strife within prisons and, upon release of perpetrators and victims, in the community at large.

(15) The high incidence of prison rape has a significant effect on interstate commerce because it increases substantially—

(A) the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;

(B) the incidence and spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases, contributing to increased health and medical expenditures throughout the Nation;

(C) the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates, contributing to increased health and medical expenditures throughout the Nation; and

(D) the risk of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape.

(Pub. L. 108–79, § 2, Sept. 4, 2003, 117 Stat. 972.)

SHORT TITLE

Pub. L. 108–79, § 1(a), Sept. 4, 2003, 117 Stat. 972, provided that: ''This Act [enacting this chapter] may be cited as the 'Prison Rape Elimination Act of 2003'.''

§ 15602. Purposes

The purposes of this chapter are to—

(1) establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States;

(2) make the prevention of prison rape a top priority in each prison system;

(3) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape;

(4) increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;

(5) standardize the definitions used for collecting data on the incidence of prison rape;

(6) increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape;

(7) protect the Eighth Amendment rights of Federal, State, and local prisoners;

(8) increase the efficiency and effectiveness of Federal expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness; and

(9) reduce the costs that prison rape imposes on interstate commerce.

(Pub. L. 108–79, § 3, Sept. 4, 2003, 117 Stat. 974.)

§ 15603. National prison rape statistics, data, and research

(a) Annual comprehensive statistical review

(1) In general

The Bureau of Justice Statistics of the Department of Justice (in this section referred to as the ''Bureau'') shall carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape. The statistical review and analysis shall include, but not be limited to the identification of the common characteristics of—

(A) both victims and perpetrators of prison rape; and

(B) prisons and prison systems with a high incidence of prison rape.

(2) Considerations

In carrying out paragraph (1), the Bureau shall consider—

(A) how rape should be defined for the purposes of the statistical review and analysis;

(B) how the Bureau should collect information about staff-on-inmate sexual assault;

(C) how the Bureau should collect information beyond inmate self-reports of prison rape;

(D) how the Bureau should adjust the data in order to account for differences among prisons as required by subsection (c)(3);

(E) the categorization of prisons as required by subsection (c)(4); and

(F) whether a preliminary study of prison rape should be conducted to inform the methodology of the comprehensive statistical review.

(3) Solicitation of views

The Bureau of Justice Statistics shall solicit views from representatives of the following: State departments of correction; county and municipal jails; juvenile correctional facilities; former inmates; victim advocates; researchers; and other experts in the area of sexual assault.

(4) Sampling techniques

The review and analysis under paragraph (1) shall be based on a random sample, or other scientifically appropriate sample, of not less than 10 percent of all Federal, State, and county prisons, and a representative sample of municipal prisons. The selection shall include at least one prison from each State. The selection of facilities for sampling shall be made at the latest practicable date prior to conducting the surveys and shall not be disclosed to any facility or prison system official prior to the time period studied in the survey. Selection of a facility for sampling during any year shall not preclude its selection for sampling in any subsequent year.

(5) Surveys

In carrying out the review and analysis under paragraph (1), the Bureau shall, in addition to such other methods as the Bureau considers appropriate, use surveys and other statistical studies of current and former inmates from a sample of Federal, State, county, and municipal prisons. The Bureau shall ensure the confidentiality of each survey participant, except as authorized in paragraph (7).

(6) Participation in survey

Federal, State, or local officials or facility administrators that receive a request from the Bureau under subsection (a)(4) or (5) will be required to participate in the national survey and provide access to any inmates under their legal custody.

(7) Reporting on child abuse and neglect

Nothing in section 3735 or 3789g of this title or any other provision of law, including paragraph (5), shall prevent the Bureau (including its agents), in carrying out the review and analysis under paragraph (1), from reporting to the designated public officials such information (and only such information) regarding child abuse or child neglect with respect to which the statutes or regulations of a State (or a political subdivision thereof) require prompt reporting.

(b) Review Panel on Prison Rape

(1) Establishment

To assist the Bureau in carrying out the review and analysis under subsection (a), there is established, within the Department of Justice, the Review Panel on Prison Rape (in this section referred to as the ''Panel'').

(2) Membership

(A) Composition

The Panel shall be composed of 3 members, each of whom shall be appointed by the Attorney General, in consultation with the Secretary of Health and Human Services.

(B) Qualifications

Members of the Panel shall be selected from among individuals with knowledge or expertise in matters to be studied by the Panel.

(3) Public hearings

(A) In general

The duty of the Panel shall be to carry out, for each calendar year, public hearings concerning the operation of the three prisons with the highest incidence of prison rape and the two prisons with the lowest incidence of prison rape in each category of facilities identified under subsection (c)(4). The Panel shall hold a separate hearing regarding the three Federal or State prisons with the highest incidence of prison rape. The purpose of these hearings shall be to collect evidence to aid in the identification of common characteristics of both victims and perpetrators of prison rape, and the identification of common characteristics of prisons and prison systems with a high incidence of prison rape, and the identification of common characteristics of prisons and prison systems that appear to have been successful in deterring prison rape.

(B) Testimony at hearings

(i) Public officials

In carrying out the hearings required under subparagraph (A), the Panel shall request the public testimony of Federal, State, and local officials (and organizations that represent such officials), including the warden or director of each prison, who bears responsibility for the prevention, detection, and punishment of prison rape at each entity, and the head of the prison system encompassing such prison.

(ii) Victims

The Panel may request the testimony of prison rape victims, organizations representing such victims, and other appropriate individuals and organizations.

(C) Subpoenas

(i) Issuance

The Panel may issue subpoenas for the attendance of witnesses and the production of written or other matter.

(ii) Enforcement

In the case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(c) Reports

(1) In general

Not later than June 30 of each year, the Attorney General shall submit a report on the

activities of the Bureau and the Review Panel, with respect to prison rape, for the preceding calendar year to—

(A) Congress; and

(B) the Secretary of Health and Human Services.

(2) Contents

The report required under paragraph (1) shall include—

(A) with respect to the effects of prison rape, statistical, sociological, and psychological data;

(B) with respect to the incidence of prison rape—

(i) statistical data aggregated at the Federal, State, prison system, and prison levels;

(ii) a listing of those institutions in the representative sample, separated into each category identified under subsection (c)(4) and ranked according to the incidence of prison rape in each institution; and

(iii) an identification of those institutions in the representative sample that appear to have been successful in deterring prison rape; and

(C) a listing of any prisons in the representative sample that did not cooperate with the survey conducted pursuant to this section.

(3) Data adjustments

In preparing the information specified in paragraph (2), the Attorney General shall use established statistical methods to adjust the data as necessary to account for differences among institutions in the representative sample, which are not related to the detection, prevention, reduction and punishment of prison rape, or which are outside the control of the State, prison, or prison system, in order to provide an accurate comparison among prisons. Such differences may include the mission, security level, size, and jurisdiction under which the prison operates. For each such adjustment made, the Attorney General shall identify and explain such adjustment in the report.

(4) Categorization of prisons

The report shall divide the prisons surveyed into three categories. One category shall be composed of all Federal and State prisons. The other two categories shall be defined by the Attorney General in order to compare similar institutions.

(d) Contracts and grants

In carrying out its duties under this section, the Attorney General may—

(1) provide grants for research through the National Institute of Justice; and

(2) contract with or provide grants to any other entity the Attorney General deems appropriate.

(e) Authorization of appropriations

There are authorized to be appropriated $15,000,000 for each of fiscal years 2004 through 2010 to carry out this section.

(Pub. L. 108–79, § 4, Sept. 4, 2003, 117 Stat. 975; Pub. L. 109–108, title I, § 113(a), Nov. 22, 2005, 119 Stat. 2305.)

AMENDMENTS

2005—Subsec. (a)(5). Pub. L. 109–108, § 113(a)(1), inserted ‘‘, except as authorized in paragraph (7)’’ before period at end.

Subsec. (a)(7). Pub. L. 109–108, § 113(a)(2), added par. (7).

§ 15604. Prison rape prevention and prosecution

(a) Information and assistance

(1) National clearinghouse

There is established within the National Institute of Corrections a national clearinghouse for the provision of information and assistance to Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

(2) Training and education

The National Institute of Corrections shall conduct periodic training and education programs for Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

(b) Reports

(1) In general

Not later than September 30 of each year, the National Institute of Corrections shall submit a report to Congress and the Secretary of Health and Human Services. This report shall be available to the Director of the Bureau of Justice Statistics.

(2) Contents

The report required under paragraph (1) shall summarize the activities of the Department of Justice regarding prison rape abatement for the preceding calendar year.

(c) Authorization of appropriations

There are authorized to be appropriated $5,000,000 for each of fiscal years 2004 through 2010 to carry out this section.

(Pub. L. 108–79, § 5, Sept. 4, 2003, 117 Stat. 978.)

§ 15605. Grants to protect inmates and safeguard communities

(a) Grants authorized

From amounts made available for grants under this section, the Attorney General shall make grants to States to assist those States in ensuring that budgetary circumstances (such as reduced State and local spending on prisons) do not compromise efforts to protect inmates (particularly from prison rape) and to safeguard the communities to which inmates return. The purpose of grants under this section shall be to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape.

(b) Use of grant amounts

Amounts received by a grantee under this section may be used by the grantee, directly or through subgrants, only for one or more of the following activities:

(1) Protecting inmates

Protecting inmates by—

(A) undertaking efforts to more effectively prevent prison rape;

(B) investigating incidents of prison rape; or

(C) prosecuting incidents of prison rape.

(2) Safeguarding communities

Safeguarding communities by—

(A) making available, to officials of State and local governments who are considering reductions to prison budgets, training and technical assistance in successful methods for moderating the growth of prison populations without compromising public safety, including successful methods used by other jurisdictions;

(B) developing and utilizing analyses of prison populations and risk assessment instruments that will improve State and local governments' understanding of risks to the community regarding release of inmates in the prison population;

(C) preparing maps demonstrating the concentration, on a community-by-community basis, of inmates who have been released, to facilitate the efficient and effective—

(i) deployment of law enforcement resources (including probation and parole resources); and

(ii) delivery of services (such as job training and substance abuse treatment) to those released inmates;

(D) promoting collaborative efforts, among officials of State and local governments and leaders of appropriate communities, to understand and address the effects on a community of the presence of a disproportionate number of released inmates in that community; or

(E) developing policies and programs that reduce spending on prisons by effectively reducing rates of parole and probation revocation without compromising public safety.

(c) Grant requirements

(1) Period

A grant under this section shall be made for a period of not more than 2 years.

(2) Maximum

The amount of a grant under this section may not exceed $1,000,000.

(3) Matching

The Federal share of a grant under this section may not exceed 50 percent of the total costs of the project described in the application submitted under subsection (d) for the fiscal year for which the grant was made under this section.

(d) Applications

(1) In general

To request a grant under this section, the chief executive of a State shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may require.

(2) Contents

Each application required by paragraph (1) shall—

(A) include the certification of the chief executive that the State receiving such grant—

(i) has adopted all national prison rape standards that, as of the date on which the application was submitted, have been promulgated under this chapter; and

(ii) will consider adopting all national prison rape standards that are promulgated under this chapter after such date;

(B) specify with particularity the preventative, prosecutorial, or administrative activities to be undertaken by the State with the amounts received under the grant; and

(C) in the case of an application for a grant for one or more activities specified in paragraph (2) of subsection (b)—

(i) review the extent of the budgetary circumstances affecting the State generally and describe how those circumstances relate to the State's prisons;

(ii) describe the rate of growth of the State's prison population over the preceding 10 years and explain why the State may have difficulty sustaining that rate of growth; and

(iii) explain the extent to which officials (including law enforcement officials) of State and local governments and victims of crime will be consulted regarding decisions whether, or how, to moderate the growth of the State's prison population.

(e) Reports by grantee

(1) In general

The Attorney General shall require each grantee to submit, not later than 90 days after the end of the period for which the grant was made under this section, a report on the activities carried out under the grant. The report shall identify and describe those activities and shall contain an evaluation of the effect of those activities on—

(A) the number of incidents of prison rape, and the grantee's response to such incidents; and

(B) the safety of the prisons, and the safety of the communities in which released inmates are present.

(2) Dissemination

The Attorney General shall ensure that each report submitted under paragraph (1) is made available under the national clearinghouse established under section 15604 of this title.

(f) State defined

In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(g) Authorization of appropriations

(1) In general

There are authorized to be appropriated for grants under this section $40,000,000 for each of fiscal years 2004 through 2010.

(2) Limitation

Of amounts made available for grants under this section, not less than 50 percent shall be available only for activities specified in paragraph (1) of subsection (b).

(Pub. L. 108–79, § 6, Sept. 4, 2003, 117 Stat. 978.)

§ 15606. National Prison Rape Elimination Commission

(a) Establishment

There is established a commission to be known as the National Prison Rape Elimination Commission (in this section referred to as the ''Commission'').

(b) Members

(1) In general

The Commission shall be composed of 9 members, of whom—

(A) 3 shall be appointed by the President;

(B) 2 shall be appointed by the Speaker of the House of Representatives, unless the Speaker is of the same party as the President, in which case 1 shall be appointed by the Speaker of the House of Representatives and 1 shall be appointed by the minority leader of the House of Representatives;

(C) 1 shall be appointed by the minority leader of the House of Representatives (in addition to any appointment made under subparagraph (B));

(D) 2 shall be appointed by the majority leader of the Senate, unless the majority leader is of the same party as the President, in which case 1 shall be appointed by the majority leader of the Senate and 1 shall be appointed by the minority leader of the Senate; and

(E) 1 member appointed by the minority leader of the Senate (in addition to any appointment made under subparagraph (D)).

(2) Persons eligible

Each member of the Commission shall be an individual who has knowledge or expertise in matters to be studied by the Commission.

(3) Consultation required

The President, the Speaker and minority leader of the House of Representatives, and the majority leader and minority leader of the Senate shall consult with one another prior to the appointment of the members of the Commission to achieve, to the maximum extent possible, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.

(4) Term

Each member shall be appointed for the life of the Commission.

(5) Time for initial appointments

The appointment of the members shall be made not later than 60 days after September 4, 2003.

(6) Vacancies

A vacancy in the Commission shall be filled in the manner in which the original appointment was made, and shall be made not later than 60 days after the date on which the vacancy occurred.

(c) Operation

(1) Chairperson

Not later than 15 days after appointments of all the members are made, the President shall appoint a chairperson for the Commission from among its members.

(2) Meetings

The Commission shall meet at the call of the chairperson. The initial meeting of the Commission shall take place not later than 30 days after the initial appointment of the members is completed.

(3) Quorum

A majority of the members of the Commission shall constitute a quorum to conduct business, but the Commission may establish a lesser quorum for conducting hearings scheduled by the Commission.

(4) Rules

The Commission may establish by majority vote any other rules for the conduct of Commission business, if such rules are not inconsistent with this chapter or other applicable law.

(d) Comprehensive study of the impacts of prison rape

(1) In general

The Commission shall carry out a comprehensive legal and factual study of the penalogical, physical, mental, medical, social, and economic impacts of prison rape in the United States on—

(A) Federal, State, and local governments; and

(B) communities and social institutions generally, including individuals, families, and businesses within such communities and social institutions.

(2) Matters included

The study under paragraph (1) shall include—

(A) a review of existing Federal, State, and local government policies and practices with respect to the prevention, detection, and punishment of prison rape;

(B) an assessment of the relationship between prison rape and prison conditions, and of existing monitoring, regulatory, and enforcement practices that are intended to address any such relationship;

(C) an assessment of pathological or social causes of prison rape;

(D) an assessment of the extent to which the incidence of prison rape contributes to the spread of sexually transmitted diseases and to the transmission of HIV;

(E) an assessment of the characteristics of inmates most likely to commit prison rape and the effectiveness of various types of treatment or programs to reduce such likelihood;

(F) an assessment of the characteristics of inmates most likely to be victims of prison rape and the effectiveness of various types of treatment or programs to reduce such likelihood;

(G) an assessment of the impacts of prison rape on individuals, families, social institutions and the economy generally, including an assessment of the extent to which the incidence of prison rape contributes to recidivism and to increased incidence of sexual assault;

(H) an examination of the feasibility and cost of conducting surveillance, undercover

activities, or both, to reduce the incidence of prison rape;

(I) an assessment of the safety and security of prison facilities and the relationship of prison facility construction and design to the incidence of prison rape;

(J) an assessment of the feasibility and cost of any particular proposals for prison reform;

(K) an identification of the need for additional scientific and social science research on the prevalence of prison rape in Federal, State, and local prisons;

(L) an assessment of the general relationship between prison rape and prison violence;

(M) an assessment of the relationship between prison rape and levels of training, supervision, and discipline of prison staff; and

(N) an assessment of existing Federal and State systems for reporting incidents of prison rape, including an assessment of whether existing systems provide an adequate assurance of confidentiality, impartiality and the absence of reprisal.

(3) Report

(A) Distribution

Not later than 3 years after the date of the initial meeting of the Commission, the Commission shall submit a report on the study carried out under this subsection to—

(i) the President;

(ii) the Congress;

(iii) the Attorney General;

(iv) the Secretary of Health and Human Services;

(v) the Director of the Federal Bureau of Prisons;

(vi) the chief executive of each State; and

(vii) the head of the department of corrections of each State.

(B) Contents

The report under subparagraph (A) shall include—

(i) the findings and conclusions of the Commission;

(ii) recommended national standards for reducing prison rape;

(iii) recommended protocols for preserving evidence and treating victims of prison rape; and

(iv) a summary of the materials relied on by the Commission in the preparation of the report.

(e) Recommendations

(1) In general

In conjunction with the report submitted under subsection (d)(3), the Commission shall provide the Attorney General and the Secretary of Health and Human Services with recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.

(2) Matters included

The information provided under paragraph (1) shall include recommended national standards relating to—

(A) the classification and assignment of prisoners, using proven standardized instruments and protocols, in a manner that limits the occurrence of prison rape;

(B) the investigation and resolution of rape complaints by responsible prison authorities, local and State police, and Federal and State prosecution authorities;

(C) the preservation of physical and testimonial evidence for use in an investigation of the circumstances relating to the rape;

(D) acute-term trauma care for rape victims, including standards relating to—

(i) the manner and extent of physical examination and treatment to be provided to any rape victim; and

(ii) the manner and extent of any psychological examination, psychiatric care, medication, and mental health counseling to be provided to any rape victim;

(E) referrals for long-term continuity of care for rape victims;

(F) educational and medical testing measures for reducing the incidence of HIV transmission due to prison rape;

(G) post-rape prophylactic medical measures for reducing the incidence of transmission of sexual diseases;

(H) the training of correctional staff sufficient to ensure that they understand and appreciate the significance of prison rape and the necessity of its eradication;

(I) the timely and comprehensive investigation of staff sexual misconduct involving rape or other sexual assault on inmates;

(J) ensuring the confidentiality of prison rape complaints and protecting inmates who make complaints of prison rape;

(K) creating a system for reporting incidents of prison rape that will ensure the confidentiality of prison rape complaints, protect inmates who make prison rape complaints from retaliation, and assure the impartial resolution of prison rape complaints;

(L) data collection and reporting of—

(i) prison rape;

(ii) prison staff sexual misconduct; and

(iii) the resolution of prison rape complaints by prison officials and Federal, State, and local investigation and prosecution authorities; and

(M) such other matters as may reasonably be related to the detection, prevention, reduction, and punishment of prison rape.

(3) Limitation

The Commission shall not propose a recommended standard that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.

(f) Consultation with accreditation organizations

In developing recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape, the Commission shall consider any standards that have already been developed, or are being developed simultaneously to the deliberations of the Commission. The Commission shall consult with accreditation organizations responsible for the

accreditation of Federal, State, local or private prisons, that have developed or are currently developing standards related to prison rape. The Commission will also consult with national associations representing the corrections profession that have developed or are currently developing standards related to prison rape.

(g) Hearings

(1) In general

The Commission shall hold public hearings. The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out its duties under this section.

(2) Witness expenses

Witnesses requested to appear before the Commission shall be paid the same fees as are paid to witnesses under section 1821 of title 28. The per diem and mileage allowances for witnesses shall be paid from funds appropriated to the Commission.

(h) Information from Federal or State agencies

The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out its duties under this section. The Commission may request the head of any State or local department or agency to furnish such information to the Commission.

(i) Personnel matters

(1) Travel expenses

The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of service for the Commission.

(2) Detail of Federal employees

With the affirmative vote of ⅔ of the Commission, any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privileges.

(3) Procurement of temporary and intermittent services

Upon the request of the Commission, the Attorney General shall provide reasonable and appropriate office space, supplies, and administrative assistance.

(j) Contracts for research

(1) National Institute of Justice

With a ⅔ affirmative vote, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out its duties under this chapter. The National Institute of Justice shall contract with the researchers and experts selected by the Commission to provide funding in exchange for their services.

(2) Other organizations

Nothing in this subsection shall be construed to limit the ability of the Commission to enter into contracts with other entities or organizations for research necessary to carry out the duties of the Commission under this section.

(k) Subpoenas

(1) Issuance

The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter.

(2) Enforcement

In the case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(3) Confidentiality of documentary evidence

Documents provided to the Commission pursuant to a subpoena issued under this subsection shall not be released publicly without the affirmative vote of ⅔ of the Commission.

(*l*) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(m) Termination

The Commission shall terminate on the date that is 60 days after the date on which the Commission submits the reports required by this section.

(n) Exemption

The Commission shall be exempt from the Federal Advisory Committee Act.

(Pub. L. 108–79, § 7, Sept. 4, 2003, 117 Stat. 980; Pub. L. 108–447, div. B, title I, § 123(1), Dec. 8, 2004, 118 Stat. 2871; Pub. L. 109–108, title I, § 113(b), Nov. 22, 2005, 119 Stat. 2305; Pub. L. 109–162, title XI, § 1181, Jan. 5, 2006, 119 Stat. 3126.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (n), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2006—Subsec. (d)(3)(A). Pub. L. 109–162 made amendment identical to that made by Pub. L. 109–108. See 2005 Amendment note below.

2005—Subsec. (d)(3)(A). Pub. L. 109–108 substituted ''3 years'' for ''2 years''.

2004—Pub. L. 108–447 substituted ''Elimination'' for ''Reduction'' in section catchline and in text of subsec. (a).

§ 15607. Adoption and effect of national standards

(a) Publication of proposed standards

(1) Final rule

Not later than 1 year after receiving the report specified in section 15606(d)(3) of this title, the Attorney General shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape.

(2) Independent judgment

The standards referred to in paragraph (1) shall be based upon the independent judgment

of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission under section 15606(e) of this title, and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.

(3) Limitation

The Attorney General shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities. The Attorney General may, however, provide a list of improvements for consideration by correctional facilities.

(4) Transmission to States

Within 90 days of publishing the final rule under paragraph (1), the Attorney General shall transmit the national standards adopted under such paragraph to the chief executive of each State, the head of the department of corrections of each State, and to the appropriate authorities in those units of local government who oversee operations in one or more prisons.

(b) Applicability to Federal Bureau of Prisons

The national standards referred to in subsection (a) shall apply to the Federal Bureau of Prisons immediately upon adoption of the final rule under subsection (a)(4).

(c) Eligibility for Federal funds

(1) Covered programs

(A) In general

For purposes of this subsection, a grant program is covered by this subsection if, and only if—

(i) the program is carried out by or under the authority of the Attorney General; and

(ii) the program may provide amounts to States for prison purposes.

(B) List

For each fiscal year, the Attorney General shall prepare a list identifying each program that meets the criteria of subparagraph (A) and provide that list to each State.

(2) Adoption of national standards

For each fiscal year, any amount that a State would otherwise receive for prison purposes for that fiscal year under a grant program covered by this subsection shall be reduced by 5 percent, unless the chief executive of the State submits to the Attorney General—

(A) a certification that the State has adopted, and is in full compliance with, the national standards described in subsection (a); or

(B) an assurance that not less than 5 percent of such amount shall be used only for the purpose of enabling the State to adopt, and achieve full compliance with, those national standards, so as to ensure that a certification under subparagraph (A) may be submitted in future years.

(3) Report on noncompliance

Not later than September 30 of each year, the Attorney General shall publish a report listing each grantee that is not in compliance with the national standards adopted pursuant to subsection (a).

(4) Cooperation with survey

For each fiscal year, any amount that a State receives for that fiscal year under a grant program covered by this subsection shall not be used for prison purposes (and shall be returned to the grant program if no other authorized use is available), unless the chief executive of the State submits to the Attorney General a certification that neither the State, nor any political subdivision or unit of local government within the State, is listed in a report issued by the Attorney General pursuant to section 15603(c)(2)(C) of this title.

(5) Redistribution of amounts

Amounts under a grant program not granted by reason of a reduction under paragraph (2), or returned by reason of the prohibition in paragraph (4), shall be granted to one or more entities not subject to such reduction or such prohibition, subject to the other laws governing that program.

(6) Implementation

The Attorney General shall establish procedures to implement this subsection, including procedures for effectively applying this subsection to discretionary grant programs.

(7) Effective date

(A) Requirement of adoption of standards

The first grants to which paragraph (2) applies are grants for the second fiscal year beginning after the date on which the national standards under subsection (a) are finalized.

(B) Requirement for cooperation

The first grants to which paragraph (4) applies are grants for the fiscal year beginning after September 4, 2003.

(Pub. L. 108–79, § 8, Sept. 4, 2003, 117 Stat. 985.)

§ 15608. Requirement that accreditation organizations adopt accreditation standards

(a) Eligibility for Federal grants

Notwithstanding any other provision of law, an organization responsible for the accreditation of Federal, State, local, or private prisons, jails, or other penal facilities may not receive any new Federal grants during any period in which such organization fails to meet any of the requirements of subsection (b).

(b) Requirements

To be eligible to receive Federal grants, an accreditation organization referred to in subsection (a) must meet the following requirements:

(1) At all times after 90 days after September 4, 2003, the organization shall have in effect, for each facility that it is responsible for accrediting, accreditation standards for the detection, prevention, reduction, and punishment of prison rape.

(2) At all times after 1 year after the date of the adoption of the final rule under section 15607(a)(4) of this title, the organization shall, in addition to any other such standards that it

may promulgate relevant to the detection, prevention, reduction, and punishment of prison rape, adopt accreditation standards consistent with the national standards adopted pursuant to such final rule.

(Pub. L. 108–79, § 9, Sept. 4, 2003, 117 Stat. 987.)

§ 15609. Definitions

In this chapter, the following definitions shall apply:

(1) Carnal knowledge

The term ''carnal knowledge'' means contact between the penis and the vulva or the penis and the anus, including penetration of any sort, however slight.

(2) Inmate

The term ''inmate'' means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(3) Jail

The term ''jail'' means a confinement facility of a Federal, State, or local law enforcement agency to hold—

(A) persons pending adjudication of criminal charges; or

(B) persons committed to confinement after adjudication of criminal charges for sentences of 1 year or less.

(4) HIV

The term ''HIV'' means the human immunodeficiency virus.

(5) Oral sodomy

The term ''oral sodomy'' means contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.

(6) Police lockup

The term ''police lockup'' means a temporary holding facility of a Federal, State, or local law enforcement agency to hold—

(A) inmates pending bail or transport to jail;

(B) inebriates until ready for release; or

(C) juveniles pending parental custody or shelter placement.

(7) Prison

The term ''prison'' means any confinement facility of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such government, and includes—

(A) any local jail or police lockup; and

(B) any juvenile facility used for the custody or care of juvenile inmates.

(8) Prison rape

The term ''prison rape'' includes the rape of an inmate in the actual or constructive control of prison officials.

(9) Rape

The term ''rape'' means—

(A) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person's will;

(B) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person not forcibly or against the person's will, where the victim is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity; or

(C) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury.

(10) Sexual assault with an object

The term ''sexual assault with an object'' means the use of any hand, finger, object, or other instrument to penetrate, however slightly, the genital or anal opening of the body of another person.

(11) Sexual fondling

The term ''sexual fondling'' means the touching of the private body parts of another person (including the genitalia, anus, groin, breast, inner thigh, or buttocks) for the purpose of sexual gratification.

(12) Exclusions

The terms and conditions described in paragraphs (9) and (10) shall not apply to—

(A) custodial or medical personnel gathering physical evidence, or engaged in other legitimate medical treatment, in the course of investigating prison rape;

(B) the use of a health care provider's hands or fingers or the use of medical devices in the course of appropriate medical treatment unrelated to prison rape; or

(C) the use of a health care provider's hands or fingers and the use of instruments to perform body cavity searches in order to maintain security and safety within the prison or detention facility, provided that the search is conducted in a manner consistent with constitutional requirements.

(Pub. L. 108–79, § 10, Sept. 4, 2003, 117 Stat. 987.)

CHAPTER 148—WINDSTORM IMPACT REDUCTION

Sec.
15701. Findings.
15702. Definitions.
15703. National Windstorm Impact Reduction Program.
15704. National Advisory Committee on Windstorm Impact Reduction.
15705. Savings clause.
15706. Authorization of appropriations.
15707. Coordination.

§ 15701. Findings

The Congress finds the following:

(1) Hurricanes, tropical storms, tornadoes, and thunderstorms can cause significant loss of life, injury, destruction of property, and economic and social disruption. All States and regions are vulnerable to these hazards.

(2) The United States currently sustains several billion dollars in economic damages each year due to these windstorms. In recent dec-

ades, rapid development and population growth in high-risk areas has greatly increased overall vulnerability to windstorms.

(3) Improved windstorm impact reduction measures have the potential to reduce these losses through—

(A) cost-effective and affordable design and construction methods and practices;

(B) effective mitigation programs at the local, State, and national level;

(C) improved data collection and analysis and impact prediction methodologies;

(D) engineering research on improving new structures and retrofitting existing ones to better withstand windstorms, atmospheric-related research to better understand the behavior and impact of windstorms on the built environment, and subsequent application of those research results; and

(E) public education and outreach.

(4) There is an appropriate role for the Federal Government in supporting windstorm impact reduction. An effective Federal program in windstorm impact reduction will require interagency coordination, and input from individuals, academia, the private sector, and other interested non-Federal entities.

(Pub. L. 108–360, title II, § 202, Oct. 25, 2004, 118 Stat. 1675.)

SHORT TITLE

Pub. L. 108–360, title II, § 201, Oct. 25, 2004, 118 Stat. 1675, provided that: ''This Act [probably should be 'this title', enacting this chapter and amending section 1885d of this title] may be cited as the 'National Windstorm Impact Reduction Act of 2004'.''

§ 15702. Definitions

In this chapter:

(1) Director

The term ''Director'' means the Director of the Office of Science and Technology Policy.

(2) Program

The term ''Program'' means the National Windstorm Impact Reduction Program established by section 15703(a) of this title.

(3) State

The term ''State'' means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(4) Windstorm

The term ''windstorm'' means any storm with a damaging or destructive wind component, such as a hurricane, tropical storm, tornado, or thunderstorm.

(Pub. L. 108–360, title II, § 203, Oct. 25, 2004, 118 Stat. 1676.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 108–360, Oct. 25, 2004, 118 Stat. 1675, which is classified generally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 15701 of this title and Tables.

§ 15703. National Windstorm Impact Reduction Program

(a) Establishment

There is established the National Windstorm Impact Reduction Program.

(b) Objective

The objective of the Program is the achievement of major measurable reductions in losses of life and property from windstorms. The objective is to be achieved through a coordinated Federal effort, in cooperation with other levels of government, academia, and the private sector, aimed at improving the understanding of windstorms and their impacts and developing and encouraging implementation of cost-effective mitigation measures to reduce those impacts.

(c) Interagency Working Group

Not later than 90 days after October 25, 2004, the Director shall establish an Interagency Working Group consisting of representatives of the National Science Foundation, the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology, the Federal Emergency Management Agency, and other Federal agencies as appropriate. The Director shall designate an agency to serve as Chair of the Working Group and be responsible for the planning, management, and coordination of the Program, including budget coordination. Specific agency roles and responsibilities under the Program shall be defined in the implementation plan required under subsection (e). General agency responsibilities shall include the following:

(1) The National Institute of Standards and Technology shall support research and development to improve building codes and standards and practices for design and construction of buildings, structures, and lifelines.

(2) The National Science Foundation shall support research in engineering and the atmospheric sciences to improve the understanding of the behavior of windstorms and their impact on buildings, structures, and lifelines.

(3) The National Oceanic and Atmospheric Administration shall support atmospheric sciences research to improve the understanding of the behavior of windstorms and their impact on buildings, structures, and lifelines.

(4) The Federal Emergency Management Agency shall support the development of risk assessment tools and effective mitigation techniques, windstorm-related data collection and analysis, public outreach, information dissemination, and implementation of mitigation measures consistent with the Agency's all-hazards approach.

(d) Program components

(1) In general

The Program shall consist of three primary mitigation components: improved understanding of windstorms, windstorm impact assessment, and windstorm impact reduction. The components shall be implemented through activities such as data collection and analysis, risk assessment, outreach, technology transfer, and research and development. To the ex-

tent practicable, research activities authorized under this chapter shall be peer-reviewed, and the components shall be designed to be complementary to, and avoid duplication of, other public and private hazard reduction efforts.

(2) Understanding of windstorms

Activities to enhance the understanding of windstorms shall include research to improve knowledge of and data collection on the impact of severe wind on buildings, structures, and infrastructure.

(3) Windstorm impact assessment

Activities to improve windstorm impact assessment shall include—

(A) development of mechanisms for collecting and inventorying information on the performance of buildings, structures, and infrastructure in windstorms and improved collection of pertinent information from sources, including the design and construction industry, insurance companies, and building officials;

(B) research, development, and technology transfer to improve loss estimation and risk assessment systems; and

(C) research, development, and technology transfer to improve simulation and computational modeling of windstorm impacts.

(4) Windstorm impact reduction

Activities to reduce windstorm impacts shall include—

(A) development of improved outreach and implementation mechanisms to translate existing information and research findings into cost-effective and affordable practices for design and construction professionals, and State and local officials;

(B) development of cost-effective and affordable windstorm-resistant systems, structures, and materials for use in new construction and retrofit of existing construction; and

(C) outreach and information dissemination related to cost-effective and affordable construction techniques, loss estimation and risk assessment methodologies, and other pertinent information regarding windstorm phenomena to Federal, State, and local officials, the construction industry, and the general public.

(e) Implementation plan

Not later than 1 year after October 25, 2004, the Interagency Working Group shall develop and transmit to the Congress an implementation plan for achieving the objectives of the Program. The plan shall include—

(1) an assessment of past and current public and private efforts to reduce windstorm impacts, including a comprehensive review and analysis of windstorm mitigation activities supported by the Federal Government;

(2) a description of plans for technology transfer and coordination with natural hazard mitigation activities supported by the Federal Government;

(3) a statement of strategic goals and priorities for each Program component area;

(4) a description of how the Program will achieve such goals, including detailed responsibilities for each agency; and

(5) a description of plans for cooperation and coordination with interested public and private sector entities in each program component area.

(f) Biennial report

The Interagency Working Group shall, on a biennial basis, and not later than 180 days after the end of the preceding 2 fiscal years, transmit a report to the Congress describing the status of the windstorm impact reduction program, including progress achieved during the preceding two fiscal years. Each such report shall include any recommendations for legislative and other action the Interagency Working Group considers necessary and appropriate. In developing the biennial report, the Interagency Working Group shall consider the recommendations of the Advisory Committee established under section 15704 of this title.

(Pub. L. 108–360, title II, § 204, Oct. 25, 2004, 118 Stat. 1676.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(1), was in the original ''this title'', meaning title II of Pub. L. 108–360, Oct. 25, 2004, 118 Stat. 1675, which is classified generally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 15701 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

§ 15704. National Advisory Committee on Windstorm Impact Reduction

(a) Establishment

The Director shall establish a National Advisory Committee on Windstorm Impact Reduction, consisting of not less than 11 and not more than 15 non-Federal members representing a broad cross section of interests such as the research, technology transfer, design and construction, and financial communities; materials and systems suppliers; State, county, and local governments; the insurance industry; and other representatives as designated by the Director.

(b) Assessment

The Advisory Committee shall assess—

(1) trends and developments in the science and engineering of windstorm impact reduction;

(2) the effectiveness of the Program in carrying out the activities under section 15703(d) of this title;

(3) the need to revise the Program; and

(4) the management, coordination, implementation, and activities of the Program.

(c) Biennial report

At least once every two years, the Advisory Committee shall report to Congress and the

Interagency Working Group on the assessment carried out under subsection (b).

(d) Sunset exemption

Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee established under this section.

(Pub. L. 108–360, title II, § 205, Oct. 25, 2004, 118 Stat. 1678.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 15705. Savings clause

Nothing in this chapter supersedes any provision of the National Manufactured Housing Construction and Safety Standards Act of 1974 [42 U.S.C. 5401 et seq.]. No design, construction method, practice, technology, material, mitigation methodology, or hazard reduction measure of any kind developed under this chapter shall be required for a home certified under section 616 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5415), pursuant to standards issued under such Act, without being subject to the consensus development process and rulemaking procedures of that Act.

(Pub. L. 108–360, title II, § 206, Oct. 25, 2004, 118 Stat. 1679.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 108–360, Oct. 25, 2004, 118 Stat. 1675, which is classified generally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 15701 of this title and Tables.

The National Manufactured Housing Construction and Safety Standards Act of 1974, referred to in text, is title VI of Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 700, as amended, which is classified generally to chapter 70 (§ 5401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5401 of this title and Tables.

§ 15706. Authorization of appropriations

(a) Federal Emergency Management Agency

There are authorized to be appropriated to the Federal Emergency Management Agency for carrying out this chapter—

(1) $8,700,000 for fiscal year 2006;
(2) $9,400,000 for fiscal year 2007; and
(3) $9,400,000 for fiscal year 2008.

(b) National Science Foundation

There are authorized to be appropriated to the National Science Foundation for carrying out this chapter—

(1) $8,700,000 for fiscal year 2006;
(2) $9,400,000 for fiscal year 2007; and
(3) $9,400,000 for fiscal year 2008.

(c) National Institute of Standards and Technology

There are authorized to be appropriated to the National Institute of Standards and Technology for carrying out this chapter—

(1) $3,000,000 for fiscal year 2006;
(2) $4,000,000 for fiscal year 2007; and
(3) $4,000,000 for fiscal year 2008.

(d) National Oceanic and Atmospheric Administration

There are authorized to be appropriated to the National Oceanic and Atmospheric Administration for carrying out this chapter—

(1) $2,100,000 for fiscal year 2006;
(2) $2,200,000 for fiscal year 2007; and
(3) $2,200,000 for fiscal year 2008.

(Pub. L. 108–360, title II, § 207, Oct. 25, 2004, 118 Stat. 1679.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 108–360, Oct. 25, 2004, 118 Stat. 1675, which is classified generally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 15701 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

§ 15707. Coordination

The Secretary of Commerce, the Director of the National Institute of Standards and Technology, the Director of the Office of Science and Technology Policy and the heads of other Federal departments and agencies carrying out activities under this chapter and the statutes amended by this chapter shall work together to ensure that research, technologies, and response techniques are shared among the programs authorized in this chapter in order to coordinate the Nation's efforts to reduce vulnerability to the hazards described in this chapter.

(Pub. L. 108–360, title II, § 209, Oct. 25, 2004, 118 Stat. 1680.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 108–360, Oct. 25, 2004, 118 Stat. 1675, which is classified generally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 15701 of this title and Tables.

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§ 15801. Definitions

Except as otherwise provided, in this Act:

(1) Department

The term ''Department'' means the Department of Energy.

(2) Institution of higher education

(A) In general

The term ''institution of higher education'' has the meaning given the term in section 1001(a) of title 20.

(B) Inclusion

The term ''institution of higher education'' includes an organization that—

(i) is organized, and at all times thereafter operated, exclusively for the benefit of, to perform the functions of, or to carry out the functions of one or more organizations referred to in subparagraph (A); and

(ii) is operated, supervised, or controlled by or in connection with one or more of those organizations.

(3) National Laboratory

The term ''National Laboratory'' means any of the following laboratories owned by the Department:

(A) Ames Laboratory.

(B) Argonne National Laboratory.

(C) Brookhaven National Laboratory.

(D) Fermi National Accelerator Laboratory.

(E) Idaho National Laboratory.

(F) Lawrence Berkeley National Laboratory.

(G) Lawrence Livermore National Laboratory.

(H) Los Alamos National Laboratory.

(I) National Energy Technology Laboratory.

(J) National Renewable Energy Laboratory.

(K) Oak Ridge National Laboratory.

(L) Pacific Northwest National Laboratory.

(M) Princeton Plasma Physics Laboratory.

(N) Sandia National Laboratories.

(O) Savannah River National Laboratory.

(P) Stanford Linear Accelerator Center.

(Q) Thomas Jefferson National Accelerator Facility.

(4) Secretary

The term ''Secretary'' means the Secretary of Energy.

(5) Small business concern

The term ''small business concern'' has the meaning given the term in section 632 of title 15.

(Pub. L. 109–58, § 2, Aug. 8, 2005, 119 Stat. 604.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–375, § 1, Dec. 1, 2006, 120 Stat. 2656, provided that: ''This Act [amending section 15855 of this title] may be cited as the 'Sierra National Forest Land Exchange Act of 2006'.''

SHORT TITLE

Pub. L. 109–58, § 1(a), Aug. 8, 2005, 119 Stat. 594, provided that: ''This Act [see Tables for classification] may be cited as the 'Energy Policy Act of 2005'.''

Pub. L. 109–58, title IV, § 431, Aug. 8, 2005, 119 Stat. 760, provided that: ''This subtitle [subtitle D (§§ 431–438) of title IV of Pub. L. 109–58, enacting part C (§ 15991) of subchapter IV of this chapter, amending sections 201, 202a, 203, and 207 of Title 30, Mineral Lands and Mining, and enacting provisions set out as a note under section 201 of Title 30] may be cited as the 'Coal Leasing Amendments Act of 2005'.''

Pub. L. 109–58, title V, § 501, Aug. 8, 2005, 119 Stat. 763, provided that: ''This title [enacting subchapter V of this chapter, section 7144e of this title, and chapter 37 (§ 3501 et seq.) of Title 25, Indians, amending section 5315 of Title 5, Government Organization and Employees, and section 4132 of Title 25, and enacting provisions set out as a note under section 3501 of Title 25] may be cited as the 'Indian Tribal Energy Development and Self-Determination Act of 2005'.''

Pub. L. 109–58, title VIII, § 801, Aug. 8, 2005, 119 Stat. 844, provided that: ''This title [enacting subchapter VIII of this chapter] may be cited as the 'Spark M. Matsunaga Hydrogen Act of 2005'.''

Pub. L. 109–58, title IX, § 901, Aug. 8, 2005, 119 Stat. 856, provided that: ''This title [enacting subchapter IX of this chapter, amending sections 8101 and 8102 of Title 7, Agriculture, and section 5523 of Title 15, Commerce and Trade, enacting provisions set out as notes under section 8102 of Title 7 and section 2001 of Title 30, Mineral Lands and Mining, amending provisions set out as notes under section 8101 of Title 7, and section 1902 of Title 30 may be cited as the 'Energy Research, Development, Demonstration, and Commercial Application Act of 2005'.''

Pub. L. 109–58, title XII, § 1201, Aug. 8, 2005, 119 Stat. 941, provided that: ''This title [enacting subchapter XII of this chapter and sections 824j–1 and 824*o* to 824w of Title 16, Conservation, amending sections 796, 824, 824a–3, 824b, 824e, 824j, 824m, 825e, 825f, 825*l* to 825*o*, 825*o*–1, 2621, 2622, 2625, 2634, and 2642 of Title 16, repealing chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and sections 824n and 825q of Title 16, and enacting provisions set out as notes under section 16451 of this title and sections 824b, 824*o*, 824q, and 2642 of Title 16] may be cited as the 'Electricity Modernization Act of 2005'.''

Pub. L. 109–58, title XII, § 1261, Aug. 8, 2005, 119 Stat. 972, provided that: ''This subtitle [subtitle F (§§ 1261–1277) of title XII of Pub.L. 109–58, enacting part D (§ 16451 et seq.) of subchapter XII of this chapter, amending sections 824 and 824m of Title 16, Conservation, repealing chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacting provisions set out as a note under section 16451 of this title] may be cited as the 'Public Utility Holding Company Act of 2005'.''

SUBCHAPTER I—ENERGY EFFICIENCY

PART A—FEDERAL PROGRAMS

§ 15811. Voluntary commitments to reduce industrial energy intensity

(a) Definition of energy intensity

In this section, the term ''energy intensity'' means the primary energy consumed for each unit of physical output in an industrial process.

(b) Voluntary agreements

The Secretary may enter into voluntary agreements with one or more persons in industrial sectors that consume significant quantities of primary energy for each unit of physical output to reduce the energy intensity of the production activities of the persons.

(c) Goal

Voluntary agreements under this section shall have as a goal the reduction of energy intensity by not less than 2.5 percent each year during the period of calendar years 2007 through 2016.

(d) Recognition

The Secretary, in cooperation with other appropriate Federal agencies, shall develop mechanisms to recognize and publicize the achievements of participants in voluntary agreements under this section.

(e) Technical assistance

A person that enters into an agreement under this section and continues to make a good faith effort to achieve the energy efficiency goals specified in the agreement shall be eligible to receive from the Secretary a grant or technical assistance, as appropriate, to assist in the achievement of those goals.

(f) Report

Not later than each of June 30, 2012, and June 30, 2017, the Secretary shall submit to Congress a report that—

(1) evaluates the success of the voluntary agreements under this section; and

(2) provides independent verification of a sample of the energy savings estimates provided by participating firms.

(Pub. L. 109–58, title I, § 106, Aug. 8, 2005, 119 Stat. 611.)

§ 15812. Advanced Building Efficiency Testbed

(a) Establishment

The Secretary, in consultation with the Administrator of General Services, shall establish an Advanced Building Efficiency Testbed program for the development, testing, and demonstration of advanced engineering systems, components, and materials to enable innovations in building technologies. The program shall evaluate efficiency concepts for government and industry buildings, and demonstrate the ability of next generation buildings to support individual and organizational productivity and health (including by improving indoor air quality) as well as flexibility and technological change to improve environmental sustainability. Such program shall complement and not duplicate existing national programs.

(b) Participants

The program established under subsection (a) shall be led by a university with the ability to combine the expertise from numerous academic fields including, at a minimum, intelligent workplaces and advanced building systems and engineering, electrical and computer engineering, computer science, architecture, urban design, and environmental and mechanical engineering. Such university shall partner with other universities and entities who have established programs and the capability of advancing innovative building efficiency technologies.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this section $6,000,000 for each of the fiscal years 2006 through 2008, to remain available until expended. For any fiscal year in which funds are expended under this section, the Secretary shall provide one-third of the total amount to the lead university described in subsection (b), and provide the remaining two-thirds to the other participants referred to in subsection (b) on an equal basis.

(Pub. L. 109–58, title I, § 107, Aug. 8, 2005, 119 Stat. 612.)

§ 15813. Enhancing energy efficiency in management of Federal lands

(a) Sense of the Congress

It is the sense of the Congress that Federal agencies should enhance the use of energy efficient technologies in the management of natural resources.

(b) Energy efficient buildings

To the extent practicable, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture shall seek to incorporate energy efficient technologies in public and administrative buildings associated with management of the National Park System, National Wildlife Refuge System, National Forest System, National Marine Sanctuaries System, and other public lands and resources managed by the Secretaries.

(c) Energy efficient vehicles

To the extent practicable, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture shall seek to use energy efficient motor vehicles, including vehicles equipped with biodiesel or hybrid engine technologies, in the management of the National Park System, National Wildlife Refuge System, National Forest System, National Marine Sanctuaries System, and other public lands and resources managed by the Secretaries.

(Pub. L. 109–58, title I, § 111, Aug. 8, 2005, 119 Stat. 615.)

PART B—ENERGY ASSISTANCE AND STATE PROGRAMS

§ 15821. Energy efficient appliance rebate programs

(a) Definitions

In this section:

(1) Eligible State

The term ''eligible State'' means a State that meets the requirements of subsection (b).

(2) Energy Star program

The term ''Energy Star program'' means the program established by section 6294a of this title.

(3) Residential Energy Star product

The term ''residential Energy Star product'' means a product for a residence that is rated for energy efficiency under the Energy Star program.

(4) State energy office

The term ''State energy office'' means the State agency responsible for developing State energy conservation plans under section 6322 of this title.

(5) State program

The term ''State program'' means a State energy efficient appliance rebate program described in subsection (b)(1).

(b) Eligible States

A State shall be eligible to receive an allocation under subsection (c) if the State—

(1) establishes (or has established) a State energy efficient appliance rebate program to provide rebates to residential consumers for the purchase of residential Energy Star products to replace used appliances of the same type;

(2) submits an application for the allocation at such time, in such form, and containing such information as the Secretary may require; and

(3) provides assurances satisfactory to the Secretary that the State will use the allocation to supplement, but not supplant, funds made available to carry out the State program.

(c) Amount of allocations

(1) In general

Subject to paragraph (2), for each fiscal year, the Secretary shall allocate to the State energy office of each eligible State to carry out subsection (d) an amount equal to the product obtained by multiplying the amount made available under subsection (f) for the fis-

cal year by the ratio that the population of the State in the most recent calendar year for which data are available bears to the total population of all eligible States in that calendar year.

(2) Minimum allocations

For each fiscal year, the amounts allocated under this subsection shall be adjusted proportionately so that no eligible State is allocated a sum that is less than an amount determined by the Secretary.

(d) Use of allocated funds

The allocation to a State energy office under subsection (c) may be used to pay up to 50 percent of the cost of establishing and carrying out a State program.

(e) Issuance of rebates

Rebates may be provided to residential consumers that meet the requirements of the State program. The amount of a rebate shall be determined by the State energy office, taking into consideration—

(1) the amount of the allocation to the State energy office under subsection (c);

(2) the amount of any Federal or State tax incentive available for the purchase of the residential Energy Star product; and

(3) the difference between the cost of the residential Energy Star product and the cost of an appliance that is not a residential Energy Star product, but is of the same type as, and is the nearest capacity, performance, and other relevant characteristics (as determined by the State energy office) to, the residential Energy Star product.

(f) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this section $50,000,000 for each of the fiscal years 2006 through 2010.

(Pub. L. 109–58, title I, § 124, Aug. 8, 2005, 119 Stat. 617.)

§ 15822. Energy efficient public buildings

(a) Grants

The Secretary may make grants to the State agency responsible for developing State energy conservation plans under section 6322 of this title, or, if no such agency exists, a State agency designated by the Governor of the State, to assist units of local government in the State in improving the energy efficiency of public buildings and facilities—

(1) through construction of new energy efficient public buildings that use at least 30 percent less energy than a comparable public building constructed in compliance with standards prescribed in the most recent version of the International Energy Conservation Code, or a similar State code intended to achieve substantially equivalent efficiency levels; or

(2) through renovation of existing public buildings to achieve reductions in energy use of at least 30 percent as compared to the baseline energy use in such buildings prior to renovation, assuming a 3-year, weather-normalized average for calculating such baseline.

(b) Administration

State energy offices receiving grants under this section shall—

(1) maintain such records and evidence of compliance as the Secretary may require; and

(2) develop and distribute information and materials and conduct programs to provide technical services and assistance to encourage planning, financing, and design of energy efficient public buildings by units of local government.

(c) Authorization of appropriations

For the purposes of this section, there are authorized to be appropriated to the Secretary $30,000,000 for each of fiscal years 2006 through 2010. Not more than 10 percent of appropriated funds shall be used for administration.

(Pub. L. 109–58, title I, § 125, Aug. 8, 2005, 119 Stat. 618.)

§ 15823. Low income community energy efficiency pilot program

(a) Grants

The Secretary is authorized to make grants to units of local government, private, non-profit community development organizations, and Indian tribe economic development entities to improve energy efficiency; identify and develop alternative, renewable, and distributed energy supplies; and increase energy conservation in low income rural and urban communities.

(b) Purpose of grants

The Secretary may make grants on a competitive basis for—

(1) investments that develop alternative, renewable, and distributed energy supplies;

(2) energy efficiency projects and energy conservation programs;

(3) studies and other activities that improve energy efficiency in low income rural and urban communities;

(4) planning and development assistance for increasing the energy efficiency of buildings and facilities; and

(5) technical and financial assistance to local government and private entities on developing new renewable and distributed sources of power or combined heat and power generation.

(c) Definition

For purposes of this section, the term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) Authorization of appropriations

For the purposes of this section there are authorized to be appropriated to the Secretary $20,000,000 for each of fiscal years 2006 through 2008.

(Pub. L. 109–58, title I, § 126, Aug. 8, 2005, 119 Stat. 618.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 15824. State Technologies Advancement Collaborative

(a) In general

The Secretary, in cooperation with the States, shall establish a cooperative program for research, development, demonstration, and deployment of technologies in which there is a common Federal and State energy efficiency, renewable energy, and fossil energy interest, to be known as the ''State Technologies Advancement Collaborative'' (referred to in this section as the ''Collaborative'').

(b) Duties

The Collaborative shall—

(1) leverage Federal and State funding through cost-shared activity;

(2) reduce redundancies in Federal and State funding; and

(3) create multistate projects to be awarded through a competitive process.

(c) Administration

The Collaborative shall be administered through an agreement between the Department and appropriate State-based organizations.

(d) Funding sources

Funding for the Collaborative may be provided from—

(1) amounts specifically appropriated for the Collaborative; or

(2) amounts that may be allocated from other appropriations without changing the purpose for which the amounts are appropriated.

(e) Authorization of appropriations

There are authorized to carry out this section such sums as are necessary for each of fiscal years 2006 through 2010.

(Pub. L. 109–58, title I, § 127, Aug. 8, 2005, 119 Stat. 619.)

PART C—ENERGY EFFICIENT PRODUCTS

§ 15831. Public energy education program

(a) In general

Not later than 180 days after August 8, 2005, the Secretary shall convene an organizational conference for the purpose of establishing an ongoing, self-sustaining national public energy education program.

(b) Participants

The Secretary shall invite to participate in the conference individuals and entities representing all aspects of energy production and distribution, including—

(1) industrial firms;

(2) professional societies;

(3) educational organizations;

(4) trade associations; and

(5) governmental agencies.

(c) Purpose, scope, and structure

(1) Purpose

The purpose of the conference shall be to establish an ongoing, self-sustaining national public energy education program to examine and recognize interrelationships between energy sources in all forms, including—

(A) conservation and energy efficiency;

(B) the role of energy use in the economy; and

(C) the impact of energy use on the environment.

(2) Scope and structure

Taking into consideration the purpose described in paragraph (1), the participants in the conference invited under subsection (b) shall design the scope and structure of the program described in subsection (a).

(d) Technical assistance

The Secretary shall provide technical assistance and other guidance necessary to carry out the program described in subsection (a).

(e) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section.

(Pub. L. 109–58, title I, § 133, Aug. 8, 2005, 119 Stat. 622.)

§ 15832. Energy efficiency public information initiative

(a) In general

The Secretary shall carry out a comprehensive national program, including advertising and media awareness, to inform consumers about—

(1) the need to reduce energy consumption during the 4-year period beginning on August 8, 2005;

(2) the benefits to consumers of reducing consumption of electricity, natural gas, and petroleum, particularly during peak use periods;

(3) the importance of low energy costs to economic growth and preserving manufacturing jobs in the United States; and

(4) practical, cost-effective measures that consumers can take to reduce consumption of electricity, natural gas, and gasoline, including—

(A) maintaining and repairing heating and cooling ducts and equipment;

(B) weatherizing homes and buildings;

(C) purchasing energy efficient products; and

(D) proper tire maintenance.

(b) Cooperation

The program carried out under subsection (a) shall—

(1) include collaborative efforts with State and local government officials and the private sector; and

(2) incorporate, to the maximum extent practicable, successful State and local public education programs.

(c) Report

Not later than July 1, 2009, the Secretary shall submit to Congress a report describing the effectiveness of the program under this section.

(d) Termination of authority

The program carried out under this section shall terminate on December 31, 2010.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $90,000,000 for each of fiscal years 2006 through 2010.

(Pub. L. 109–58, title I, § 134, Aug. 8, 2005, 119 Stat. 623.)

§ 15833. Energy efficiency pilot program

(a) In general

The Secretary shall establish a pilot program under which the Secretary provides financial assistance to at least 3, but not more than 7, States to carry out pilot projects in the States for—

(1) planning and adopting statewide programs that encourage, for each year in which the pilot project is carried out—

(A) energy efficiency; and

(B) reduction of consumption of electricity or natural gas in the State by at least 0.75 percent, as compared to a baseline determined by the Secretary for the period preceding the implementation of the program; or

(2) for any State that has adopted a statewide program as of August 8, 2005, activities that reduce energy consumption in the State by expanding and improving the program.

(b) Verification

A State that receives financial assistance under subsection (a)(1) shall submit to the Secretary independent verification of any energy savings achieved through the statewide program.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2006 through 2010, to remain available until expended.

(Pub. L. 109–58, title I, § 140, Aug. 8, 2005, 119 Stat. 647.)

§ 15834. Report on failure to comply with deadlines for new or revised energy conservation standards

(a) Initial report

The Secretary shall submit a report to Congress regarding each new or revised energy conservation or water use standard which the Secretary has failed to issue in conformance with the deadlines established in the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.]. Such report shall state the reasons why the Secretary has failed to comply with the deadline for issuances of the new or revised standard and set forth the Secretary's plan for expeditiously prescribing such new or revised standard. The Secretary's initial report shall be submitted not later than 6 months following August 8, 2005, and subsequent reports shall be submitted whenever the Secretary determines that additional deadlines for issuance of new or revised standards have been missed.

(b) Implementation report

Every 6 months following the submission of a report under subsection (a) until the adoption of a new or revised standard described in such report, the Secretary shall submit to the Congress an implementation report describing the Secretary's progress in implementing the Secretary's plan or the issuance of the new or revised standard.

(Pub. L. 109–58, title I, § 141, Aug. 8, 2005, 119 Stat. 648.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

PART D—PUBLIC HOUSING

§ 15841. Energy-efficient appliances

In purchasing appliances, a public housing agency shall purchase energy-efficient appliances that are Energy Star products or FEMP-designated products, as such terms are defined in section 8259b of this title, unless the purchase of energy-efficient appliances is not cost-effective to the agency.

(Pub. L. 109–58, title I, § 152, Aug. 8, 2005, 119 Stat. 649.)

§ 15842. Energy strategy for HUD

The Secretary of Housing and Urban Development shall develop and implement an integrated strategy to reduce utility expenses through cost-effective energy conservation and efficiency measures and energy efficient design and construction of public and assisted housing. The energy strategy shall include the development of energy reduction goals and incentives for public housing agencies. The Secretary shall submit a report to Congress, not later than 1 year after August 8, 2005, on the energy strategy and the actions taken by the Department of Housing and Urban Development to monitor the energy usage of public housing agencies and shall submit an update every 2 years thereafter on progress in implementing the strategy.

(Pub. L. 109–58, title I, § 154, Aug. 8, 2005, 119 Stat. 650.)

SUBCHAPTER II—RENEWABLE ENERGY

PART A—GENERAL PROVISIONS

§ 15851. Assessment of renewable energy resources

(a) Resource assessment

Not later than 6 months after August 8, 2005, and each year thereafter, the Secretary shall review the available assessments of renewable energy resources within the United States, including solar, wind, biomass, ocean (including tidal, wave, current, and thermal), geothermal, and hydroelectric energy resources, and undertake new assessments as necessary, taking into account changes in market conditions, available technologies, and other relevant factors.

(b) Contents of reports

Not later than 1 year after August 8, 2005, and each year thereafter, the Secretary shall publish a report based on the assessment under subsection (a). The report shall contain—

(1) a detailed inventory describing the available amount and characteristics of the renewable energy resources; and

(2) such other information as the Secretary believes would be useful in developing such renewable energy resources, including descriptions of surrounding terrain, population and load centers, nearby energy infrastructure, location of energy and water resources, and available estimates of the costs needed to develop each resource, together with an identification of any barriers to providing adequate transmission for remote sources of renewable energy resources to current and emerging markets, recommendations for removing or addressing such barriers, and ways to provide access to the grid that do not unfairly disadvantage renewable or other energy producers.

(c) Authorization of appropriations

For the purposes of this section, there are authorized to be appropriated to the Secretary $10,000,000 for each of fiscal years 2006 through 2010.

(Pub. L. 109–58, title II, § 201, Aug. 8, 2005, 119 Stat. 650.)

§ 15852. Federal purchase requirement

(a) Requirement

The President, acting through the Secretary, shall seek to ensure that, to the extent economically feasible and technically practicable, of the total amount of electric energy the Federal Government consumes during any fiscal year, the following amounts shall be renewable energy:

(1) Not less than 3 percent in fiscal years 2007 through 2009.

(2) Not less than 5 percent in fiscal years 2010 through 2012.

(3) Not less than 7.5 percent in fiscal year 2013 and each fiscal year thereafter.

(b) Definitions

In this section:

(1) Biomass

The term ''biomass'' means any lignin waste material that is segregated from other waste materials and is determined to be nonhazardous by the Administrator of the Environmental Protection Agency and any solid, nonhazardous, cellulosic material that is derived from—

(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush, or nonmerchantable material;

(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled;

(C) agriculture wastes, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues, and livestock waste nutrients; or

(D) a plant that is grown exclusively as a fuel for the production of electricity.

(2) Renewable energy

The term ''renewable energy'' means electric energy generated from solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

(c) Calculation

For purposes of determining compliance with the requirement of this section, the amount of renewable energy shall be doubled if—

(1) the renewable energy is produced and used on-site at a Federal facility;

(2) the renewable energy is produced on Federal lands and used at a Federal facility; or

(3) the renewable energy is produced on Indian land as defined in title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) and used at a Federal facility.

(d) Report

Not later than April 15, 2007, and every 2 years thereafter, the Secretary shall provide a report to Congress on the progress of the Federal Government in meeting the goals established by this section.

(Pub. L. 109–58, title II, § 203, Aug. 8, 2005, 119 Stat. 652.)

REFERENCES IN TEXT

The Energy Policy Act of 1992, referred to in subsec. (c)(3), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, as amended. Title XXVI of the Act is classified generally to chapter 37 (§ 3501 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

§ 15853. Rebate program

(1) Establishment

The Secretary shall establish a program providing rebates for consumers for expenditures made for the installation of a renewable energy system in connection with a dwelling unit or small business.

(2) Amount of rebate

Rebates provided under the program established under paragraph (1) shall be in an amount not to exceed the lesser of—

(A) 25 percent of the expenditures described in paragraph (1) made by the consumer; or

(B) $3,000.

(3) Definition

For purposes of this section, the term ''renewable energy system'' has the meaning given that term in section 6865(c)(6)(A) of this title.

(4) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section, to remain available until expended—

(A) $150,000,000 for fiscal year 2006;
(B) $150,000,000 for fiscal year 2007;
(C) $200,000,000 for fiscal year 2008;
(D) $250,000,000 for fiscal year 2009; and
(E) $250,000,000 for fiscal year 2010.

(Pub. L. 109–58, title II, § 206(c), Aug. 8, 2005, 119 Stat. 655.)

§ 15854. Sugar Cane Ethanol Program

(a) Definition of program

In this section, the term ''program'' means the Sugar Cane Ethanol Program established by subsection (b).

(b) Establishment

There is established within the Environmental Protection Agency a program to be known as the ''Sugar Cane Ethanol Program''.

(c) Project

(1) In general

Subject to the availability of appropriations under subsection (d), in carrying out the program, the Administrator of the Environmental Protection Agency shall establish a project that is—

(A) carried out in multiple States—

(i) in each of which is produced cane sugar that is eligible for loans under section 7272 of title 7, or a similar subsequent authority; and

(ii) at the option of each such State, that have an incentive program that requires the use of ethanol in the State; and

(B) designed to study the production of ethanol from cane sugar, sugarcane, and sugarcane byproducts.

(2) Requirements

A project described in paragraph (1) shall—

(A) be limited to sugar producers and the production of ethanol in the States of Florida, Louisiana, Texas, and Hawaii, divided equally among the States, to demonstrate that the process may be applicable to cane sugar, sugarcane, and sugarcane byproducts;

(B) include information on the ways in which the scale of production may be replicated once the sugar cane industry has located sites for, and constructed, ethanol production facilities; and

(C) not last more than 3 years.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section $36,000,000, to remain available until expended.

(Pub. L. 109–58, title II, § 208, Aug. 8, 2005, 119 Stat. 656.)

§ 15855. Grants to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, and other commercial purposes

(a) Definitions

In this section:

(1) Biomass

The term ''biomass'' means nonmerchantable materials or precommercial thinnings that are byproducts of preventive treatments, such as trees, wood, brush, thinnings, chips, and slash, that are removed—

(A) to reduce hazardous fuels;

(B) to reduce or contain disease or insect infestation; or

(C) to restore forest health.

(2) Indian tribe

The term ''Indian tribe'' has the meaning given the term in section 450b(e) of title 25.

(3) Nonmerchantable

For purposes of subsection (b), the term ''nonmerchantable'' means that portion of the byproducts of preventive treatments that would not otherwise be used for higher value products.

(4) Person

The term ''person'' includes—

(A) an individual;

(B) a community (as determined by the Secretary concerned);

(C) an Indian tribe;

(D) a small business or a corporation that is incorporated in the United States; and

(E) a nonprofit organization.

(5) Preferred community

The term ''preferred community'' means—

(A) any Indian tribe;

(B) any town, township, municipality, or other similar unit of local government (as determined by the Secretary concerned) that—

(i) has a population of not more than 50,000 individuals; and

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near Federal or Indian land, the condition of which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation; or

(C) any county that—

(i) is not contained within a metropolitan statistical area; and

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near Federal or Indian land, the condition of which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation.

(6) Secretary concerned

The term ''Secretary concerned'' means the Secretary of Agriculture or the Secretary of the Interior.

(b) Biomass commercial use grant program

(1) In general

The Secretary concerned may make grants to any person in a preferred community that owns or operates a facility that uses biomass as a raw material to produce electric energy, sensible heat, or transportation fuels to offset the costs incurred to purchase biomass for use by such facility.

(2) Grant amounts

A grant under this subsection may not exceed $20 per green ton of biomass delivered.

(3) Monitoring of grant recipient activities

As a condition of a grant under this subsection, the grant recipient shall keep such records as the Secretary concerned may require to fully and correctly disclose the use of the grant funds and all transactions involved in the purchase of biomass. Upon notice by a representative of the Secretary concerned, the grant recipient shall afford the representative reasonable access to the facility that purchases or uses biomass and an opportunity to examine the inventory and records of the facility.

(c) Improved biomass use grant program

(1) In general

The Secretary concerned may make grants to persons to offset the cost of projects to develop or research opportunities to improve the use of, or add value to, biomass. In making such grants, the Secretary concerned shall give preference to persons in preferred communities.

(2) Selection

The Secretary concerned shall select a grant recipient under paragraph (1) after giving consideration to—

(A) the anticipated public benefits of the project, including the potential to develop thermal or electric energy resources or affordable energy;

(B) opportunities for the creation or expansion of small businesses and micro-businesses;

(C) the potential for new job creation;

(D) the potential for the project to improve efficiency or develop cleaner technologies for biomass utilization; and

(E) the potential for the project to reduce the hazardous fuels from the areas in greatest need of treatment.

(3) Grant amount

A grant under this subsection may not exceed $500,000.

(d) Authorization of appropriations

There are authorized to be appropriated $50,000,000 for fiscal year 2006 and $35,000,000 for each of fiscal years 2007 through 2016 to carry out this section.

(e) Report

Not later than October 1, 2010, the Secretary of Agriculture, in consultation with the Secretary of the Interior, shall submit to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Resources, the Committee on Energy and Commerce, and the Committee on Agriculture of the House of Representatives, a report describing the results of the grant programs authorized by this section. The report shall include the following:

(1) An identification of the size, type, and use of biomass by persons that receive grants under this section.

(2) The distance between the land from which the biomass was removed and the facility that used the biomass.

(3) The economic impacts, particularly new job creation, resulting from the grants to and operation of the eligible operations.

(Pub. L. 109–58, title II, § 210, Aug. 8, 2005, 119 Stat. 658; Pub. L. 109–375, § 6, Dec. 1, 2006, 120 Stat. 2658.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–375 substituted ''$50,000,000 for fiscal year 2006 and $35,000,000 for each of fiscal years 2007 through 2016'' for ''$50,000,000 for each of the fiscal years 2006 through 2016''.

PART B—GEOTHERMAL ENERGY

§ 15871. Coordination of geothermal leasing and permitting on Federal lands

(a) In general

Not later than 180 days after August 8, 2005, the Secretary of the Interior and the Secretary of Agriculture shall enter into and submit to Congress a memorandum of understanding in accordance with this section, the Geothermal Steam Act of 1970 (as amended by this Act) [30 U.S.C. 1001 et seq.], and other applicable laws, regarding coordination of leasing and permitting for geothermal development of public lands and National Forest System lands under their respective jurisdictions.

(b) Lease and permit applications

The memorandum of understanding shall—

(1) establish an administrative procedure for processing geothermal lease applications, including lines of authority, steps in application processing, and time limits for application procession;

(2) establish a 5-year program for geothermal leasing of lands in the National Forest System, and a process for updating that program every 5 years; and

(3) establish a program for reducing the backlog of geothermal lease application pending on January 1, 2005, by 90 percent within the 5-year period beginning on August 8, 2005, including, as necessary, by issuing leases, rejecting lease applications for failure to comply with the provisions of the regulations under which they were filed, or determining that an original applicant (or the applicant's assigns, heirs, or estate) is no longer interested in pursuing the lease application.

(c) Data retrieval system

The memorandum of understanding shall establish a joint data retrieval system that is capable of tracking lease and permit applications and providing to the applicant information as to their status within the Departments of the Interior and Agriculture, including an estimate of the time required for administrative action.

(Pub. L. 109–58, title II, § 225, Aug. 8, 2005, 119 Stat. 665.)

REFERENCES IN TEXT

The Geothermal Steam Act of 1970, referred to in subsec. (a), is Pub. L. 91–581, Dec. 24, 1970, 84 Stat. 1566, as amended, which is classified principally to chapter 23 (§ 1001 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 30 and Tables.

This Act, referred to in subsec. (a), is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and

enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 15872. Assessment of geothermal energy potential

Not later than 3 years after August 8, 2005, and thereafter as the availability of data and developments in technology warrants, the Secretary of the Interior, acting through the Director of the United States Geological Survey and in cooperation with the States, shall—

(1) update the Assessment of Geothermal Resources made during 1978; and

(2) submit to Congress the updated assessment.

(Pub. L. 109–58, title II, § 226, Aug. 8, 2005, 119 Stat. 665.)

§ 15873. Deposit and use of geothermal lease revenues for 5 fiscal years

(a) Deposit of geothermal resources leases

Notwithstanding any other provision of law, amounts received by the United States in the first 5 fiscal years beginning after August 8, 2005, as rentals, royalties, and other payments required under leases under the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], excluding funds required to be paid to State and county governments, shall be deposited into a separate account in the Treasury.

(b) Use of deposits

Amounts deposited under subsection (a) shall be available to the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, to implement the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.] and this Act.

(c) Transfer of funds

For the purposes of coordination and processing of geothermal leases and geothermal use authorizations on Federal land the Secretary of the Interior may authorize the expenditure or transfer of such funds as are necessary to the Forest Service.

(Pub. L. 109–58, title II, § 234, Aug. 8, 2005, 119 Stat. 671.)

REFERENCES IN TEXT

The Geothermal Steam Act of 1970, referred to in subsecs. (a) and (b), is Pub. L. 91–581, Dec. 24, 1970, 84 Stat. 1566, as amended, which is classified principally to chapter 23 (§ 1001 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 30 and Tables.

This Act, referred to in subsec. (b), is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 15874. Intermountain West Geothermal Consortium

(a) Participation authorized

The Secretary, acting through the Idaho National Laboratory, may participate in a consortium described in subsection (b) to address science and science policy issues surrounding the expanded discovery and use of geothermal energy, including from geothermal resources on public lands.

(b) Members

The consortium referred to in subsection (a) shall—

(1) be known as the ''Intermountain West Geothermal Consortium'';

(2) be a regional consortium of institutions and government agencies that focuses on building collaborative efforts among the universities in the State of Idaho, other regional universities, State agencies, and the Idaho National Laboratory;

(3) include Boise State University, the University of Idaho (including the Idaho Water Resources Research Institute), the Oregon Institute of Technology, the Desert Research Institute with the University and Community College System of Nevada, and the Energy and Geoscience Institute at the University of Utah;

(4) be hosted and managed by Boise State University; and

(5) have a director appointed by Boise State University, and associate directors appointed by each participating institution.

(c) Financial assistance

The Secretary, acting through the Idaho National Laboratory and subject to the availability of appropriations, will provide financial assistance to Boise State University for expenditure under contracts with members of the consortium to carry out the activities of the consortium.

(Pub. L. 109–58, title II, § 237, Aug. 8, 2005, 119 Stat. 673.)

PART C—HYDROELECTRIC

§ 15881. Hydroelectric production incentives

(a) Incentive payments

For electric energy generated and sold by a qualified hydroelectric facility during the incentive period, the Secretary shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility. The amount of such payment made to any such owner or operator shall be as determined under subsection (e) of this section. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment and which satisfies such other requirements as the Secretary deems necessary. Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.

(b) Definitions

For purposes of this section:

(1) Qualified hydroelectric facility

The term ''qualified hydroelectric facility'' means a turbine or other generating device owned or solely operated by a non-Federal entity which generates hydroelectric energy for

sale and which is added to an existing dam or conduit.

(2) Existing dam or conduit

The term ''existing dam or conduit'' means any dam or conduit the construction of which was completed before August 8, 2005, and which does not require any construction or enlargement of impoundment or diversion structures (other than repair or reconstruction) in connection with the installation of a turbine or other generating device.

(3) Conduit

The term ''conduit'' has the same meaning as when used in section 823a(a)(2) of title 16.

The terms defined in this subsection shall apply without regard to the hydroelectric kilowatt capacity of the facility concerned, without regard to whether the facility uses a dam owned by a governmental or nongovernmental entity, and without regard to whether the facility begins operation on or after August 8, 2005.

(c) Eligibility window

Payments may be made under this section only for electric energy generated from a qualified hydroelectric facility which begins operation during the period of 10 fiscal years beginning with the first full fiscal year occurring after August 8, 2005.

(d) Incentive period

A qualified hydroelectric facility may receive payments under this section for a period of 10 fiscal years (referred to in this section as the ''incentive period''). Such period shall begin with the fiscal year in which electric energy generated from the facility is first eligible for such payments.

(e) Amount of payment

(1) In general

Payments made by the Secretary under this section to the owner or operator of a qualified hydroelectric facility shall be based on the number of kilowatt hours of hydroelectric energy generated by the facility during the incentive period. For any such facility, the amount of such payment shall be 1.8 cents per kilowatt hour (adjusted as provided in paragraph (2)), subject to the availability of appropriations under subsection (g), except that no facility may receive more than $750,000 in 1 calendar year.

(2) Adjustments

The amount of the payment made to any person under this section as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 2005 in the same manner as provided in the provisions of section 29(d)(2)(B)[1] of title 26, except that in applying such provisions the calendar year 2005 shall be substituted for calendar year 1979.

(f) Sunset

No payment may be made under this section to any qualified hydroelectric facility after the expiration of the period of 20 fiscal years beginning with the first full fiscal year occurring after August 8, 2005, and no payment may be made under this section to any such facility after a payment has been made with respect to such facility for a period of 10 fiscal years.

(g) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out the purposes of this section $10,000,000 for each of the fiscal years 2006 through 2015.

(Pub. L. 109–58, title II, § 242, Aug. 8, 2005, 119 Stat. 677.)

REFERENCES IN TEXT

Section 29 of title 26, referred to in subsec. (e)(2), was renumbered section 45K of title 26 by Pub. L. 109–58, title XIII, § 1322(a)(1), Aug. 8, 2005, 119 Stat. 1011.

§ 15882. Hydroelectric efficiency improvement

(a) Incentive payments

The Secretary shall make incentive payments to the owners or operators of hydroelectric facilities at existing dams to be used to make capital improvements in the facilities that are directly related to improving the efficiency of such facilities by at least 3 percent.

(b) Limitations

Incentive payments under this section shall not exceed 10 percent of the costs of the capital improvement concerned and not more than 1 payment may be made with respect to improvements at a single facility. No payment in excess of $750,000 may be made with respect to improvements at a single facility.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section not more than $10,000,000 for each of the fiscal years 2006 through 2015.

(Pub. L. 109–58, title II, § 243, Aug. 8, 2005, 119 Stat. 678.)

PART D—INSULAR ENERGY

§ 15891. Projects enhancing insular energy independence

(a) Project feasibility studies

(1) In general

On a request described in paragraph (2), the Secretary shall conduct a feasibility study of a project to implement a strategy or project identified in the plans submitted to Congress pursuant to section 1492 of title 48 as having the potential to—

(A) significantly reduce the dependence of an insular area on imported fossil fuels; or

(B) provide needed distributed generation to an insular area.

(2) Request

The Secretary shall conduct a feasibility study under paragraph (1) on—

(A) the request of an electric utility located in an insular area that commits to fund at least 10 percent of the cost of the study; and

(B) if the electric utility is located in the Federated States of Micronesia, the Repub-

[1] See Reference in Text note below.

lic of the Marshall Islands, or the Republic of Palau, written support for that request by the President or the Ambassador of the affected freely associated state.

(3) Consultation

The Secretary shall consult with regional utility organizations in—

(A) conducting feasibility studies under paragraph (1); and

(B) determining the feasibility of potential projects.

(4) Feasibility

For the purpose of a feasibility study under paragraph (1), a project shall be determined to be feasible if the project would significantly reduce the dependence of an insular area on imported fossil fuels, or provide needed distributed generation to an insular area, at a reasonable cost.

(b) Implementation

(1) In general

On a determination by the Secretary (in consultation with the Secretary of the Interior) that a project is feasible under subsection (a) and a commitment by an electric utility to operate and maintain the project, the Secretary may provide such technical and financial assistance as the Secretary determines is appropriate for the implementation of the project.

(2) Regional utility organizations

In providing assistance under paragraph (1), the Secretary shall consider providing the assistance through regional utility organizations.

(c) Authorization of appropriations

(1) In general

There are authorized to be appropriated to the Secretary—

(A) $500,000 for each fiscal year for project feasibility studies under subsection (a); and

(B) $4,000,000 for each fiscal year for project implementation under subsection (b).

(2) Limitation of funds received by insular areas

No insular area may receive, during any 3-year period, more than 20 percent of the total funds made available during that 3-year period under subparagraphs (A) and (B) of paragraph (1) unless the Secretary determines that providing funding in excess of that percentage best advances existing opportunities to meet the objectives of this section.

(Pub. L. 109–58, title II, § 252, Aug. 8, 2005, 119 Stat. 682.)

SUBCHAPTER III—OIL AND GAS

PART A—PRODUCTION INCENTIVES

§ 15901. Definition of Secretary

In this part, the term ''Secretary'' means the Secretary of the Interior.

(Pub. L. 109–58, title III, § 341, Aug. 8, 2005, 119 Stat. 697.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle E (§§ 341–357) of title III of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 697, which enacted this part, amended sections 6504, 6506a, 6507, and 6508 of this title, sections 184 and 226 of Title 30, Mineral Lands and Mining, and section 1337 of Title 43, Public Lands, and enacted provisions set out as a note under section 226 of Title 30. For complete classification of subtitle E to the Code, see Tables.

§ 15902. Program on oil and gas royalties in-kind

(a) Applicability of section

Notwithstanding any other provision of law, this section applies to all royalty in-kind accepted by the Secretary on or after August 8, 2005, under any Federal oil or gas lease or permit under—

(1) section 192 of title 30;

(2) section 1353 of title 43; or

(3) any other Federal law governing leasing of Federal land for oil and gas development.

(b) Terms and conditions

All royalty accruing to the United States shall, on the demand of the Secretary, be paid in-kind. If the Secretary makes such a demand, the following provisions apply to the payment:

(1) Satisfaction of royalty obligation

Delivery by, or on behalf of, the lessee of the royalty amount and quality due under the lease satisfies royalty obligation of the lessee for the amount delivered, except that transportation and processing reimbursements paid to, or deductions claimed by, the lessee shall be subject to review and audit.

(2) Marketable condition

(A) Definition of marketable condition

In this paragraph, the term ''in marketable condition'' means sufficiently free from impurities and otherwise in a condition that the royalty production will be accepted by a purchaser under a sales contract typical of the field or area in which the royalty production was produced.

(B) Requirement

Royalty production shall be placed in marketable condition by the lessee at no cost to the United States.

(3) Disposition by the Secretary

The Secretary may—

(A) sell or otherwise dispose of any royalty production taken in-kind (other than oil or gas transferred under section 1353(a)(3) of title 43[1] for not less than the market price; and

(B) transport or process (or both) any royalty production taken in-kind.

(4) Retention by the Secretary

The Secretary may, notwithstanding section 3302 of title 31, retain and use a portion of the revenues from the sale of oil and gas taken in-kind that otherwise would be deposited to miscellaneous receipts, without regard to fiscal year limitation, or may use oil or gas received

[1] So in original. Probably should be followed by a closing parenthesis.

as royalty taken in-kind (referred to in this paragraph as ''royalty production'') to pay the cost of—

(A) transporting the royalty production;

(B) processing the royalty production;

(C) disposing of the royalty production; or

(D) any combination of transporting, processing, and disposing of the royalty production.

(5) Limitation

(A) In general

Except as provided in subparagraph (B), the Secretary may not use revenues from the sale of oil and gas taken in-kind to pay for personnel, travel, or other administrative costs of the Federal Government.

(B) Exception

Notwithstanding subparagraph (A), the Secretary may use a portion of the revenues from royalty in-kind sales, without fiscal year limitation, to pay salaries and other administrative costs directly related to the royalty in-kind program.

(c) Reimbursement of cost

If the lessee, pursuant to an agreement with the United States or as provided in the lease, processes the royalty gas or delivers the royalty oil or gas at a point not on or adjacent to the lease area, the Secretary shall—

(1) reimburse the lessee for the reasonable costs of transportation (not including gathering) from the lease to the point of delivery or for processing costs; or

(2) allow the lessee to deduct the transportation or processing costs in reporting and paying royalties in-value for other Federal oil and gas leases.

(d) Benefit to the United States required

The Secretary may receive oil or gas royalties in-kind only if the Secretary determines that receiving royalties in-kind provides benefits to the United States that are greater than or equal to the benefits that are likely to have been received had royalties been taken in-value.

(e) Reports

(1) In general

Not later than September 30, 2006, the Secretary shall submit to Congress a report that addresses—

(A) actions taken to develop business processes and automated systems to fully support the royalty-in-kind capability to be used in tandem with the royalty-in-value approach in managing Federal oil and gas revenue; and

(B) future royalty-in-kind businesses operation plans and objectives.

(2) Reports on oil or gas royalties taken in-kind

For each of fiscal years 2006 through 2015 in which the United States takes oil or gas royalties in-kind from production in any State or from the outer Continental Shelf, excluding royalties taken in-kind and sold to refineries under subsection (h), the Secretary shall submit to Congress a report that describes—

(A) the 1 or more methodologies used by the Secretary to determine compliance with subsection (d), including the performance standard for comparing amounts received by the United States derived from royalties in-kind to amounts likely to have been received had royalties been taken in-value;

(B) an explanation of the evaluation that led the Secretary to take royalties in-kind from a lease or group of leases, including the expected revenue effect of taking royalties in-kind;

(C) actual amounts received by the United States derived from taking royalties in-kind and costs and savings incurred by the United States associated with taking royalties in-kind, including administrative savings and any new or increased administrative costs; and

(D) an evaluation of other relevant public benefits or detriments associated with taking royalties in-kind.

(f) Deduction of expenses

(1) In general

Before making payments under section 191 of title 30 or section 1337(g) of title 43 of revenues derived from the sale of royalty production taken in-kind from a lease, the Secretary shall deduct amounts paid or deducted under subsections (b)(4) and (c) and deposit the amount of the deductions in the miscellaneous receipts of the Treasury.

(2) Accounting for deductions

When the Secretary allows the lessee to deduct transportation or processing costs under subsection (c), the Secretary may not reduce any payments to recipients of revenues derived from any other Federal oil and gas lease as a consequence of that deduction.

(g) Consultation with States

The Secretary—

(1) shall consult with a State before conducting a royalty in-kind program under this part within the State;

(2) may delegate management of any portion of the Federal royalty in-kind program to the State except as otherwise prohibited by Federal law; and

(3) shall consult annually with any State from which Federal oil or gas royalty is being taken in-kind to ensure, to the maximum extent practicable, that the royalty in-kind program provides revenues to the State greater than or equal to the revenues likely to have been received had royalties been taken in-value.

(h) Small refineries

(1) Preference

If the Secretary finds that sufficient supplies of crude oil are not available in the open market to refineries that do not have their own source of supply for crude oil, the Secretary may grant preference to those refineries in the sale of any royalty oil accruing or reserved to the United States under Federal oil and gas leases issued under any mineral leasing law, for processing or use in those refineries at private sale at not less than the market price.

(2) Proration among refineries in production area

In disposing of oil under this subsection, the Secretary may, at the discretion of the Secretary, prorate the oil among refineries described in paragraph (1) in the area in which the oil is produced.

(i) Disposition to Federal agencies

(1) Onshore royalty

Any royalty oil or gas taken by the Secretary in-kind from onshore oil and gas leases may be sold at not less than the market price to any Federal agency.

(2) Offshore royalty

Any royalty oil or gas taken in-kind from a Federal oil or gas lease on the outer Continental Shelf may be disposed of only under section 1353 of title 43.

(j) Federal low-income energy assistance programs

(1) Preference

In disposing of royalty oil or gas taken in-kind under this section, the Secretary may grant a preference to any person, including any Federal or State agency, for the purpose of providing additional resources to any Federal low-income energy assistance program.

(2) Report

Not later than 3 years after August 8, 2005, the Secretary shall submit a report to Congress—

(A) assessing the effectiveness of granting preferences specified in paragraph (1); and

(B) providing a specific recommendation on the continuation of authority to grant preferences.

(Pub. L. 109–58, title III, § 342, Aug. 8, 2005, 119 Stat. 697.)

REFERENCES IN TEXT

This part, referred to in subsec. (g)(1), was in the original ''this subtitle'', meaning subtitle E (§§ 341–357) of title III of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 697, which enacted this part, amended sections 6504, 6506a, 6507, and 6508 of this title, sections 184 and 226 of Title 30, Mineral Lands and Mining, and section 1337 of Title 43, Public Lands, and enacted provisions set out as a note under section 226 of Title 30. For complete classification of subtitle E to the Code, see Tables.

§ 15903. Marginal property production incentives

(a) Definition of marginal property

Until such time as the Secretary issues regulations under subsection (e) that prescribe a different definition, in this section, the term ''marginal property'' means an onshore unit, communitization agreement, or lease not within a unit or communitization agreement, that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90,000,000 British thermal units of gas per well per day calculated based on the average over the 3 most recent production months, including only wells that produce on more than half of the days during those 3 production months.

(b) Conditions for reduction of royalty rate

Until such time as the Secretary issues regulations under subsection (e) that prescribe different standards or requirements, the Secretary shall reduce the royalty rate on—

(1) oil production from marginal properties as prescribed in subsection (c) if the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, is, on average, less than $15 per barrel (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days; and

(2) gas production from marginal properties as prescribed in subsection (c) if the spot price of natural gas delivered at Henry Hub, Louisiana, is, on average, less than $2.00 per million British thermal units (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days.

(c) Reduced royalty rate

(1) In general

When a marginal property meets the conditions specified in subsection (b), the royalty rate shall be the lesser of—

(A) 5 percent; or

(B) the applicable rate under any other statutory or regulatory royalty relief provision that applies to the affected production.

(2) Period of effectiveness

The reduced royalty rate under this subsection shall be effective beginning on the first day of the production month following the date on which the applicable condition specified in subsection (b) is met.

(d) Termination of reduced royalty rate

A royalty rate prescribed in subsection (c)(1) shall terminate—

(1) with respect to oil production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, on average, exceeds $15 per barrel (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days; or

(B) the property no longer qualifies as a marginal property; and

(2) with respect to gas production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of natural gas delivered at Henry Hub, Louisiana, on average, exceeds $2.00 per million British thermal units (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days; or

(B) the property no longer qualifies as a marginal property.

(e) Regulations prescribing different relief

(1) Discretionary regulations

The Secretary may by regulation prescribe different parameters, standards, and require-

ments for, and a different degree or extent of, royalty relief for marginal properties in lieu of those prescribed in subsections (a) through (d).

(2) Mandatory regulations

Unless a determination is made under paragraph (3), not later than 18 months after August 8, 2005, the Secretary shall by regulation—

(A) prescribe standards and requirements for, and the extent of royalty relief for, marginal properties for oil and gas leases on the outer Continental Shelf; and

(B) define what constitutes a marginal property on the outer Continental Shelf for purposes of this section.

(3) Report

To the extent the Secretary determines that it is not practicable to issue the regulations referred to in paragraph (2), the Secretary shall provide a report to Congress explaining such determination by not later than 18 months after August 8, 2005.

(4) Considerations

In issuing regulations under this subsection, the Secretary may consider—

(A) oil and gas prices and market trends;

(B) production costs;

(C) abandonment costs;

(D) Federal and State tax provisions and the effects of those provisions on production economics;

(E) other royalty relief programs;

(F) regional differences in average wellhead prices;

(G) national energy security issues; and

(H) other relevant matters, as determined by the Secretary.

(f) Savings provision

Nothing in this section prevents a lessee from receiving royalty relief or a royalty reduction pursuant to any other law (including a regulation) that provides more relief than the amounts provided by this section.

(Pub. L. 109–58, title III, § 343, Aug. 8, 2005, 119 Stat. 700.)

§ 15904. Incentives for natural gas production from deep wells in the shallow waters of the Gulf of Mexico

(a) Royalty incentive regulations for ultra deep gas wells

(1) In general

Not later than 180 days after August 8, 2005, in addition to any other regulations that may provide royalty incentives for natural gas produced from deep wells on oil and gas leases issued pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), the Secretary shall issue regulations granting royalty relief suspension volumes of not less than 35 billion cubic feet with respect to the production of natural gas from ultra deep wells on leases issued in shallow waters less than 400 meters deep located in the Gulf of Mexico wholly west of 87 degrees, 30 minutes west longitude. Regulations issued under this subsection shall be retroactive to the date that the notice of proposed rulemaking is published in the Federal Register.

(2) Suspension volumes

The Secretary may grant suspension volumes of not less than 35 billion cubic feet in any case in which—

(A) the ultra deep well is a sidetrack; or

(B) the lease has previously produced from wells with a perforated interval the top of which is at least 15,000 feet true vertical depth below the datum at mean sea level.

(3) Definitions

In this subsection:

(A) Ultra deep well

The term ''ultra deep well'' means a well drilled with a perforated interval, the top of which is at least 20,000 true vertical depth below the datum at mean sea level.

(B) Sidetrack

(i) In general

The term ''sidetrack'' means a well resulting from drilling an additional hole to a new objective bottom-hole location by leaving a previously drilled hole.

(ii) Inclusion

The term ''sidetrack'' includes—

(I) drilling a well from a platform slot reclaimed from a previously drilled well;

(II) re-entering and deepening a previously drilled well; and

(III) a bypass from a sidetrack, including drilling around material blocking a hole or drilling to straighten a crooked hole.

(b) Royalty incentive regulations for deep gas wells

Not later than 180 days after August 8, 2005, in addition to any other regulations that may provide royalty incentives for natural gas produced from deep wells on oil and gas leases issued pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), the Secretary shall issue regulations granting royalty relief suspension volumes with respect to production of natural gas from deep wells on leases issued in waters more than 200 meters but less than 400 meters deep located in the Gulf of Mexico wholly west of 87 degrees, 30 minutes west longitude. The suspension volumes for deep wells within 200 to 400 meters of water depth shall be calculated using the same methodology used to calculate the suspension volumes for deep wells in the shallower waters of the Gulf of Mexico, and in no case shall the suspension volumes for deep wells within 200 to 400 meters of water depth be lower than those for deep wells in shallower waters. Regulations issued under this subsection shall be retroactive to the date that the notice of proposed rulemaking is published in the Federal Register.

(c) Limitations

The Secretary may place limitations on the royalty relief granted under this section based on market price. The royalty relief granted under this section shall not apply to a lease for which deep water royalty relief is available.

(Pub. L. 109–58, title III, § 344, Aug. 8, 2005, 119 Stat. 702.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsecs. (a)(1) and (b), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

§ 15905. Royalty relief for deep water production

(a) In general

Subject to subsections (b) and (c), for each tract located in water depths of greater than 400 meters in the Western and Central Planning Area of the Gulf of Mexico (including the portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude), any oil or gas lease sale under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) occurring during the 5-year period beginning on August 8, 2005, shall use the bidding system authorized under section 8(a)(1)(H) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)(1)(H)).

(b) Suspension of royalties

The suspension of royalties under subsection (a) shall be established at a volume of not less than—

(1) 5,000,000 barrels of oil equivalent for each lease in water depths of 400 to 800 meters;

(2) 9,000,000 barrels of oil equivalent for each lease in water depths of 800 to 1,600 meters;

(3) 12,000,000 barrels of oil equivalent for each lease in water depths of 1,600 to 2,000 meters; and

(4) 16,000,000 barrels of oil equivalent for each lease in water depths greater than 2,000 meters.

(c) Limitation

The Secretary may place limitations on royalty relief granted under this section based on market price.

(Pub. L. 109–58, title III, § 345, Aug. 8, 2005, 119 Stat. 703.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (a), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

§ 15906. North Slope Science Initiative

(a) Establishment

(1) In general

The Secretary of the Interior shall establish a long-term initiative to be known as the ''North Slope Science Initiative'' (referred to in this section as the ''Initiative'').

(2) Purpose

The purpose of the Initiative shall be to implement efforts to coordinate collection of scientific data that will provide a better understanding of the terrestrial, aquatic, and marine ecosystems of the North Slope of Alaska.

(b) Objectives

To ensure that the Initiative is conducted through a comprehensive science strategy and implementation plan, the Initiative shall, at a minimum—

(1) identify and prioritize information needs for inventory, monitoring, and research activities to address the individual and cumulative effects of past, ongoing, and anticipated development activities and environmental change on the North Slope;

(2) develop an understanding of information needs for regulatory and land management agencies, local governments, and the public;

(3) focus on prioritization of pressing natural resource management and ecosystem information needs, coordination, and cooperation among agencies and organizations;

(4) coordinate ongoing and future inventory, monitoring, and research activities to minimize duplication of effort, share financial resources and expertise, and assure the collection of quality information;

(5) identify priority needs not addressed by agency science programs in effect on August 8, 2005, and develop a funding strategy to meet those needs;

(6) provide a consistent approach to high caliber science, including inventory, monitoring, and research;

(7) maintain and improve public and agency access to—

(A) accumulated and ongoing research; and

(B) contemporary and traditional local knowledge; and

(8) ensure through appropriate peer review that the science conducted by participating agencies and organizations is of the highest technical quality.

(c) Membership

(1) In general

To ensure comprehensive collection of scientific data, in carrying out the Initiative, the Secretary shall consult and coordinate with Federal, State, and local agencies that have responsibilities for land and resource management across the North Slope.

(2) Cooperative agreements

The Secretary shall enter into cooperative agreements with the State of Alaska, the North Slope Borough, the Arctic Slope Regional Corporation, and other Federal agencies as appropriate to coordinate efforts, share resources, and fund projects under this section.

(d) Science technical advisory panel

(1) In general

The Initiative shall include a panel to provide advice on proposed inventory, monitoring, and research functions.

(2) Membership

The panel described in paragraph (1) shall consist of a representative group of not more than 15 scientists and technical experts from

diverse professions and interests, including the oil and gas industry, subsistence users, Native Alaskan entities, conservation organizations, wildlife management organizations, and academia, as determined by the Secretary.

(e) Reports

Not later than 3 years after August 8, 2005, and each year thereafter, the Secretary shall publish a report that describes the studies and findings of the Initiative.

(f) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section.

(Pub. L. 109–58, title III, § 348, Aug. 8, 2005, 119 Stat. 708.)

§ 15907. Orphaned, abandoned, or idled wells on Federal land

(a) In general

The Secretary, in cooperation with the Secretary of Agriculture, shall establish a program not later than 1 year after August 8, 2005, to remediate, reclaim, and close orphaned, abandoned, or idled oil and gas wells located on land administered by the land management agencies within the Department of the Interior and the Department of Agriculture.

(b) Activities

The program under subsection (a) shall—

(1) include a means of ranking orphaned, abandoned, or idled wells sites for priority in remediation, reclamation, and closure, based on public health and safety, potential environmental harm, and other land use priorities;

(2) provide for identification and recovery of the costs of remediation, reclamation, and closure from persons or other entities currently providing a bond or other financial assurance required under State or Federal law for an oil or gas well that is orphaned, abandoned, or idled; and

(3) provide for recovery from the persons or entities identified under paragraph (2), or their sureties or guarantors, of the costs of remediation, reclamation, and closure of such wells.

(c) Cooperation and consultations

In carrying out the program under subsection (a), the Secretary shall—

(1) work cooperatively with the Secretary of Agriculture and the States within which Federal land is located; and

(2) consult with the Secretary of Energy and the Interstate Oil and Gas Compact Commission.

(d) Plan

Not later than 1 year after August 8, 2005, the Secretary, in cooperation with the Secretary of Agriculture, shall submit to Congress a plan for carrying out the program under subsection (a).

(e) Idled well

For the purposes of this section, a well is idled if—

(1) the well has been nonoperational for at least 7 years; and

(2) there is no anticipated beneficial use for the well.

(f) Federal reimbursement for orphaned well reclamation pilot program

(1) Reimbursement for remediating, reclaiming, and closing wells on land subject to a new lease

The Secretary shall carry out a pilot program under which, in issuing a new oil and gas lease on federally owned land on which 1 or more orphaned wells are located, the Secretary—

(A) may require, other than as a condition of the lease, that the lessee remediate, reclaim, and close in accordance with standards established by the Secretary, all orphaned wells on the land leased; and

(B) shall develop a program to reimburse a lessee, through a royalty credit against the Federal share of royalties owed or other means, for the reasonable actual costs of remediating, reclaiming, and closing the orphaned wells pursuant to that requirement.

(2) Reimbursement for reclaiming orphaned wells on other land

In carrying out this subsection, the Secretary—

(A) may authorize any lessee under an oil and gas lease on federally owned land to reclaim in accordance with the Secretary's standards—

(i) an orphaned well on unleased federally owned land; or

(ii) an orphaned well located on an existing lease on federally owned land for the reclamation of which the lessee is not legally responsible; and

(B) shall develop a program to provide reimbursement of 100 percent of the reasonable actual costs of remediating, reclaiming, and closing the orphaned well, through credits against the Federal share of royalties or other means.

(3) Regulations

The Secretary may issue such regulations as are appropriate to carry out this subsection.

(g) Technical assistance program for non-Federal land

(1) In general

The Secretary of Energy shall establish a program to provide technical and financial assistance to oil and gas producing States to facilitate State efforts over a 10-year period to ensure a practical and economical remedy for environmental problems caused by orphaned or abandoned oil and gas exploration or production well sites on State or private land.

(2) Assistance

The Secretary of Energy shall work with the States, through the Interstate Oil and Gas Compact Commission, to assist the States in quantifying and mitigating environmental risks of onshore orphaned or abandoned oil or gas wells on State and private land.

(3) Activities

The program under paragraph (1) shall include—

(A) mechanisms to facilitate identification, if feasible, of the persons currently pro-

viding a bond or other form of financial assurance required under State or Federal law for an oil or gas well that is orphaned or abandoned;

(B) criteria for ranking orphaned or abandoned well sites based on factors such as public health and safety, potential environmental harm, and other land use priorities;

(C) information and training programs on best practices for remediation of different types of sites; and

(D) funding of State mitigation efforts on a cost-shared basis.

(h) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 2006 through 2010.

(2) Use

Of the amounts authorized under paragraph (1), $5,000,000 are authorized for each fiscal year for activities under subsection (f).

(Pub. L. 109–58, title III, § 349, Aug. 8, 2005, 119 Stat. 709.)

§ 15908. Preservation of geological and geophysical data

(a) Short title

This section may be cited as the ''National Geological and Geophysical Data Preservation Program Act of 2005''.

(b) Program

The Secretary shall carry out a National Geological and Geophysical Data Preservation Program in accordance with this section—

(1) to archive geologic, geophysical, and engineering data, maps, well logs, and samples;

(2) to provide a national catalog of such archival material; and

(3) to provide technical and financial assistance related to the archival material.

(c) Plan

Not later than 1 year after August 8, 2005, the Secretary shall submit to Congress a plan for the implementation of the Program.

(d) Data archive system

(1) Establishment

The Secretary shall establish, as a component of the Program, a data archive system to provide for the storage, preservation, and archiving of subsurface, surface, geological, geophysical, and engineering data and samples. The Secretary, in consultation with the Advisory Committee, shall develop guidelines relating to the data archive system, including the types of data and samples to be preserved.

(2) System components

The system shall be comprised of State agencies that elect to be part of the system and agencies within the Department of the Interior that maintain geological and geophysical data and samples that are designated by the Secretary in accordance with this subsection. The Program shall provide for the storage of data and samples through data repositories operated by such agencies.

(3) Limitation of designation

The Secretary may not designate a State agency as a component of the data archive system unless that agency is the agency that acts as the geological survey in the State.

(4) Data from Federal land

The data archive system shall provide for the archiving of relevant subsurface data and samples obtained from Federal land—

(A) in the most appropriate repository designated under paragraph (2), with preference being given to archiving data in the State in which the data were collected; and

(B) consistent with all applicable law and requirements relating to confidentiality and proprietary data.

(e) National catalog

(1) In general

As soon as practicable after August 8, 2005, the Secretary shall develop and maintain, as a component of the Program, a national catalog that identifies—

(A) data and samples available in the data archive system established under subsection (d);

(B) the repository for particular material in the system; and

(C) the means of accessing the material.

(2) Availability

The Secretary shall make the national catalog accessible to the public on the site of the Survey on the Internet, consistent with all applicable requirements related to confidentiality and proprietary data.

(f) Advisory Committee

(1) In general

The Advisory Committee shall advise the Secretary on planning and implementation of the Program.

(2) New duties

In addition to its duties under the National Geologic Mapping Act of 1992 (43 U.S.C. 31a et seq.), the Advisory Committee shall perform the following duties:

(A) Advise the Secretary on developing guidelines and procedures for providing assistance for facilities under subsection (g)(1).

(B) Review and critique the draft implementation plan prepared by the Secretary under subsection (c).

(C) Identify useful studies of data archived under the Program that will advance understanding of the Nation's energy and mineral resources, geologic hazards, and engineering geology.

(D) Review the progress of the Program in archiving significant data and preventing the loss of such data, and the scientific progress of the studies funded under the Program.

(E) Include in the annual report to the Secretary required under section 5(b)(3) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d(b)(3)) an evaluation of the progress of the Program toward fulfilling the purposes of the Program under subsection (b).

(g) Financial assistance

(1) Archive facilities

Subject to the availability of appropriations, the Secretary shall provide financial assistance to a State agency that is designated under subsection (d)(2) for providing facilities to archive energy material.

(2) Studies

Subject to the availability of appropriations, the Secretary shall provide financial assistance to any State agency designated under subsection (d)(2) for studies and technical assistance activities that enhance understanding, interpretation, and use of materials archived in the data archive system established under subsection (d).

(3) Federal share

The Federal share of the cost of an activity carried out with assistance under this subsection shall be not more than 50 percent of the total cost of the activity.

(4) Private contributions

The Secretary shall apply to the non-Federal share of the cost of an activity carried out with assistance under this subsection the value of private contributions of property and services used for that activity.

(h) Report

The Secretary shall include in each report under section 8 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31g)—

(1) a description of the status of the Program;

(2) an evaluation of the progress achieved in developing the Program during the period covered by the report; and

(3) any recommendations for legislative or other action the Secretary considers necessary and appropriate to fulfill the purposes of the Program under subsection (b).

(i) Maintenance of State effort

It is the intent of Congress that the States not use this section as an opportunity to reduce State resources applied to the activities that are the subject of the Program.

(j) Definitions

In this section:

(1) Advisory Committee

The term ''Advisory Committee'' means the advisory committee established under section 5 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d).

(2) Program

The term ''Program'' means the National Geological and Geophysical Data Preservation Program carried out under this section.

(3) Secretary

The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the United States Geological Survey.

(4) Survey

The term ''Survey'' means the United States Geological Survey.

(k) Authorization of appropriations

There are authorized to be appropriated to carry out this section $30,000,000 for each of fiscal years 2006 through 2010.

(Pub. L. 109–58, title III, § 351, Aug. 8, 2005, 119 Stat. 711.)

REFERENCES IN TEXT

The National Geologic Mapping Act of 1992, referred to in subsec. (f)(2), is Pub. L. 102–285, May 18, 1992, 106 Stat. 166, as amended, which is classified principally to sections 31a to 31h of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 31a of Title 43 and Tables.

§ 15909. Gas hydrate production incentive

(a) Purpose

The purpose of this section is to promote natural gas production from the natural gas hydrate resources on the outer Continental Shelf and Federal lands in Alaska by providing royalty incentives.

(b) Suspension of royalties

(1) In general

The Secretary may grant royalty relief in accordance with this section for natural gas produced from gas hydrate resources under an eligible lease.

(2) Eligible leases

A lease shall be an eligible lease for purposes of this section if—

(A) it is issued under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), or is an oil and gas lease issued for onshore Federal lands in Alaska;

(B) it is issued prior to January 1, 2016; and

(C) production under the lease of natural gas from gas hydrate resources commences prior to January 1, 2018.

(3) Amount of relief

The Secretary shall conduct a rulemaking and grant royalty relief under this section as a suspension volume if the Secretary determines that such royalty relief would encourage production of natural gas from gas hydrate resources from an eligible lease. The maximum suspension volume shall be 30 billion cubic feet of natural gas per lease. Such relief shall be in addition to any other royalty relief under any other provision applicable to the lease that does not specifically grant a gas hydrate production incentive. Such royalty suspension volume shall be applied to any eligible production occurring on or after the date of publication of the advanced notice of proposed rulemaking.

(4) Limitation

The Secretary may place limitations on royalty relief granted under this section based on market price.

(c) Application

This section shall apply to any eligible lease issued before, on, or after August 8, 2005.

(d) Rulemakings

(1) Requirement

The Secretary shall publish the advanced notice of proposed rulemaking within 180 days

after August 8, 2005, and complete the rulemaking implementing this section within 365 days after August 8, 2005.

(2) Gas hydrate resources defined

Such regulations shall define the term ''gas hydrate resources'' to include both the natural gas content of gas hydrates within the hydrate stability zone and free natural gas trapped by and beneath the hydrate stability zone.

(e) Review

Not later than 365 days after August 8, 2005, the Secretary, in consultation with the Secretary of Energy, shall carry out a review of, and submit to Congress a report on, further opportunities to enhance production of natural gas from gas hydrate resources on the outer Continental Shelf and on Federal lands in Alaska through the provision of other production incentives or through technical or financial assistance.

(Pub. L. 109–58, title III, § 353, Aug. 8, 2005, 119 Stat. 714.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (b)(2)(A), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

§ 15910. Enhanced oil and natural gas production through carbon dioxide injection

(a) Production incentive

(1) Findings

Congress finds the following:

(A) Approximately two-thirds of the original oil in place in the United States remains unproduced.

(B) Enhanced oil and natural gas production from the sequestering of carbon dioxide and other appropriate gases has the potential to increase oil and natural gas production.

(C) Capturing and productively using carbon dioxide would help reduce the carbon intensity of the economy.

(2) Purpose

The purpose of this section is—

(A) to promote the capturing, transportation, and injection of produced carbon dioxide, natural carbon dioxide, and other appropriate gases or other matter for sequestration into oil and gas fields; and

(B) to promote oil and natural gas production from the outer Continental Shelf and onshore Federal lands under lease by providing royalty incentives to use enhanced recovery techniques using injection of the substances referred to in subparagraph (A).

(b) Suspension of royalties

(1) In general

If the Secretary determines that reduction of the royalty under a Federal oil and gas lease that is an eligible lease is in the public interest and promotes the purposes of this section, the Secretary shall undertake a rulemaking to provide for such reduction for an eligible lease.

(2) Rulemakings

The Secretary shall publish the advanced notice of proposed rulemaking within 180 days after August 8, 2005, and complete the rulemaking implementing this section within 365 days after August 8, 2005.

(3) Eligible leases

A lease shall be an eligible lease for purposes of this section if—

(A) it is a lease for production of oil and gas from the outer Continental Shelf or Federal onshore lands;

(B) the injection of the substances referred to in subsection (a)(2)(A) will be used as an enhanced recovery technique on such lease; and

(C) the Secretary determines that the lease contains oil or gas that would not likely be produced without the royalty reduction provided under this section.

(4) Amount of relief

The rulemaking shall provide for a suspension volume, which shall not exceed 5,000,000 barrels of oil equivalent for each eligible lease. Such suspension volume shall be applied to any production from an eligible lease occurring on or after the date of publication of any advanced notice of proposed rulemaking under this subsection.

(5) Limitation

The Secretary may place limitations on the royalty reduction granted under this section based on market price.

(6) Application

This section shall apply to any eligible lease issued before, on, or after August 8, 2005.

(c) Demonstration program

(1) Establishment

(A) In general

The Secretary of Energy shall establish a competitive grant program to provide grants to producers of oil and gas to carry out projects to inject carbon dioxide for the purpose of enhancing recovery of oil or natural gas while increasing the sequestration of carbon dioxide.

(B) Projects

The demonstration program shall provide for—

(i) not more than 10 projects in the Willistin Basin in North Dakota and Montana; and

(ii) 1 project in the Cook Inlet Basin in Alaska.

(2) Requirements

(A) In general

The Secretary of Energy shall issue requirements relating to applications for grants under paragraph (1).

(B) Rulemaking

The issuance of requirements under subparagraph (A) shall not require a rulemaking.

(C) Minimum requirements

At a minimum, the Secretary shall require under subparagraph (A) that an application for a grant include—

(i) a description of the project proposed in the application;

(ii) an estimate of the production increase and the duration of the production increase from the project, as compared to conventional recovery techniques, including water flooding;

(iii) an estimate of the carbon dioxide sequestered by project, over the life of the project;

(iv) a plan to collect and disseminate data relating to each project to be funded by the grant;

(v) a description of the means by which the project will be sustainable without Federal assistance after the completion of the term of the grant;

(vi) a complete description of the costs of the project, including acquisition, construction, operation, and maintenance costs over the expected life of the project;

(vii) a description of which costs of the project will be supported by Federal assistance under this section; and

(viii) a description of any secondary or tertiary recovery efforts in the field and the efficacy of water flood recovery techniques used.

(3) Partners

An applicant for a grant under paragraph (1) may carry out a project under a pilot program in partnership with 1 or more other public or private entities.

(4) Selection criteria

In evaluating applications under this subsection, the Secretary of Energy shall—

(A) consider the previous experience with similar projects of each applicant; and

(B) give priority consideration to applications that—

(i) are most likely to maximize production of oil and gas in a cost-effective manner;

(ii) sequester significant quantities of carbon dioxide from anthropogenic sources;

(iii) demonstrate the greatest commitment on the part of the applicant to ensure funding for the proposed project and the greatest likelihood that the project will be maintained or expanded after Federal assistance under this section is completed; and

(iv) minimize any adverse environmental effects from the project.

(5) Demonstration program requirements

(A) Maximum amount

The Secretary of Energy shall not provide more than $3,000,000 in Federal assistance under this subsection to any applicant.

(B) Cost sharing

The Secretary of Energy shall require cost-sharing under this subsection in accordance with section 16352 of this title.

(C) Period of grants

(i) In general

A project funded by a grant under this subsection shall begin construction not later than 2 years after the date of provision of the grant, but in any case not later than December 31, 2010.

(ii) Term

The Secretary shall not provide grant funds to any applicant under this subsection for a period of more than 5 years.

(6) Transfer of information and knowledge

The Secretary of Energy shall establish mechanisms to ensure that the information and knowledge gained by participants in the program under this subsection are transferred among other participants and interested persons, including other applicants that submitted applications for a grant under this subsection.

(7) Schedule

(A) Publication

Not later than 180 days after August 8, 2005, the Secretary of Energy shall publish in the Federal Register, and elsewhere, as appropriate, a request for applications to carry out projects under this subsection.

(B) Date for applications

An application for a grant under this subsection shall be submitted not later than 180 days after the date of publication of the request under subparagraph (A).

(C) Selection

After the date by which applications for grants are required to be submitted under subparagraph (B), the Secretary of Energy, in a timely manner, shall select, after peer review and based on the criteria under paragraph (4), those projects to be awarded a grant under this subsection.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section.

(Pub. L. 109–58, title III, § 354, Aug. 8, 2005, 119 Stat. 715.)

§ 15911. Denali Commission

(a) Definition of Commission

In this section, the term ''Commission'' means the Denali Commission established by the Denali Commission Act of 1998 (42 U.S.C. 3121 note; Public Law 105–277).

(b) Energy programs

The Commission shall use amounts made available under subsection (d) to carry out energy programs, including—

(1) energy generation and development, including—

(A) fuel cells, hydroelectric, solar, wind, wave, and tidal energy; and

(B) alternative energy sources;

(2) the construction of energy transmission, including interties;

(3) the replacement and cleanup of fuel tanks;

(4) the construction of fuel transportation networks and related facilities;

(5) power cost equalization programs; and

(6) projects using coal as a fuel, including coal gasification projects.

(c) Open meetings

(1) In general

Except as provided in paragraph (2), a meeting of the Commission shall be open to the public if—

(A) the Commission members take action on behalf of the Commission; or

(B) the deliberations of the Commission determine, or result in the joint conduct or disposition of, official Commission business.

(2) Exceptions

Paragraph (1) shall not apply to any portion of a Commission meeting for which the Commission, in public session, votes to close the meeting for the reasons described in paragraph (2), (4), (5), or (6) of subsection (c) of section 552b of title 5.

(3) Public notice

(A) In general

At least 1 week before a meeting of the Commission, the Commission shall make a public announcement of the meeting that describes—

(i) the time, place, and subject matter of the meeting;

(ii) whether the meeting is to be open or closed to the public; and

(iii) the name and telephone number of an appropriate person to respond to requests for information about the meeting.

(B) Additional notice

The Commission shall make a public announcement of any change to the information made available under subparagraph (A) at the earliest practicable time.

(4) Minutes

The Commission shall keep, and make available to the public, a transcript, electronic recording, or minutes from each Commission meeting, except for portions of the meeting closed under paragraph (2).

(d) Authorization of appropriations

There is authorized to be appropriated to the Commission not more than $55,000,000 for each of fiscal years 2006 through 2015 to carry out subsection (b).

(Pub. L. 109–58, title III, § 356, Aug. 8, 2005, 119 Stat. 719.)

REFERENCES IN TEXT

The Denali Commission Act of 1998, referred to in subsec. (a), is title III of Pub. L. 105–277, div. C, Oct. 21, 1998, 112 Stat. 2681–637, which is set out as a note under section 3121 of this title. For complete classification of this Act to the Code, see Tables.

§ 15912. Comprehensive inventory of OCS oil and natural gas resources

(a) In general

The Secretary shall conduct an inventory and analysis of oil and natural gas resources beneath all of the waters of the United States Outer Continental Shelf (''OCS''). The inventory and analysis shall—

(1) use available data on oil and gas resources in areas offshore of Mexico and Canada that will provide information on trends of oil and gas accumulation in areas of the OCS;

(2) use any available technology, except drilling, but including 3–D seismic technology to obtain accurate resource estimates;

(3) analyze how resource estimates in OCS areas have changed over time in regards to gathering geological and geophysical data, initial exploration, or full field development, including areas such as the deepwater and subsalt areas in the Gulf of Mexico;

(4) estimate the effect that understated oil and gas resource inventories have on domestic energy investments; and

(5) identify and explain how legislative, regulatory, and administrative programs or processes restrict or impede the development of identified resources and the extent that they affect domestic supply, such as moratoria, lease terms and conditions, operational stipulations and requirements, approval delays by the Federal Government and coastal States, and local zoning restrictions for onshore processing facilities and pipeline landings.

(b) Reports

The Secretary shall submit a report to Congress on the inventory of estimates and the analysis of restrictions or impediments, together with any recommendations, within 6 months of August 8, 2005. The report shall be publicly available and updated at least every 5 years.

(Pub. L. 109–58, title III, § 357, Aug. 8, 2005, 119 Stat. 720.)

PART B—ACCESS TO FEDERAL LANDS

§ 15921. Management of Federal oil and gas leasing programs

(a) Timely action on leases and permits

(1) Secretary of the Interior

To ensure timely action on oil and gas leases and applications for permits to drill on land otherwise available for leasing, the Secretary of the Interior (referred to in this section as the ''Secretary'') shall—

(A) ensure expeditious compliance with section 4332(2)(C) of this title and any other applicable environmental and cultural resources laws;

(B) improve consultation and coordination with the States and the public; and

(C) improve the collection, storage, and retrieval of information relating to the oil and gas leasing activities.

(2) Secretary of Agriculture

To ensure timely action on oil and gas lease applications for permits to drill on land otherwise available for leasing, the Secretary of Agriculture shall—

(A) ensure expeditious compliance with all applicable environmental and cultural resources laws; and

(B) improve the collection, storage, and retrieval of information relating to the oil and gas leasing activities.

(b) Best management practices

(1) In general

Not later than 18 months after August 8, 2005, the Secretary shall develop and implement best management practices to—

(A) improve the administration of the onshore oil and gas leasing program under the Mineral Leasing Act (30 U.S.C. 181 et seq.); and

(B) ensure timely action on oil and gas leases and applications for permits to drill on land otherwise available for leasing.

(2) Considerations

In developing the best management practices under paragraph (1), the Secretary shall consider any recommendations from the review under section 361.[1]

(3) Regulations

Not later than 180 days after the development of the best management practices under paragraph (1), the Secretary shall publish, for public comment, proposed regulations that set forth specific timeframes for processing leases and applications in accordance with the best management practices, including deadlines for—

(A) approving or disapproving—

(i) resource management plans and related documents;

(ii) lease applications;

(iii) applications for permits to drill; and

(iv) surface use plans; and

(B) related administrative appeals.

(c) Improved enforcement

The Secretary and the Secretary of Agriculture shall improve inspection and enforcement of oil and gas activities, including enforcement of terms and conditions in permits to drill on land under the jurisdiction of the Secretary and the Secretary of Agriculture, respectively.

(d) Authorization of appropriations

In addition to amounts made available to carry out activities relating to oil and gas leasing on public land administered by the Secretary and National Forest System land administered by the Secretary of Agriculture, there are authorized to be appropriated for each of fiscal years 2006 through 2010—

(1) to the Secretary, acting through the Director of the Bureau of Land Management—

(A) $40,000,000 to carry out subsections (a)(1) and (b); and

(B) $20,000,000 to carry out subsection (c);

(2) to the Secretary, acting through the Director of the United States Fish and Wildlife Service, $5,000,000 to carry out subsection (a)(1); and

(3) to the Secretary of Agriculture, acting through the Chief of the Forest Service, $5,000,000 to carry out subsections (a)(2) and (c).

[1] See References in Text note below.

(Pub. L. 109–58, title III, § 362, Aug. 8, 2005, 119 Stat. 721.)

REFERENCES IN TEXT

The Mineral Leasing Act, referred to in subsec. (b)(1)(A), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

Section 361, referred to in subsec. (b)(2), is section 361 of Pub. L. 109–58, title III, Aug. 8, 2005, 119 Stat. 720, which is not classified to the Code.

§ 15922. Consultation regarding oil and gas leasing on public land

(a) In general

Not later than 180 days after August 8, 2005, the Secretary of the Interior and the Secretary of Agriculture shall enter into a memorandum of understanding regarding oil and gas leasing on—

(1) public land under the jurisdiction of the Secretary of the Interior; and

(2) National Forest System land under the jurisdiction of the Secretary of Agriculture.

(b) Contents

The memorandum of understanding shall include provisions that—

(1) establish administrative procedures and lines of authority that ensure timely processing of—

(A) oil and gas lease applications;

(B) surface use plans of operation, including steps for processing surface use plans; and

(C) applications for permits to drill consistent with applicable timelines;

(2) eliminate duplication of effort by providing for coordination of planning and environmental compliance efforts;

(3) ensure that lease stipulations are—

(A) applied consistently;

(B) coordinated between agencies; and

(C) only as restrictive as necessary to protect the resource for which the stipulations are applied;

(4) establish a joint data retrieval system that is capable of—

(A) tracking applications and formal requests made in accordance with procedures of the Federal onshore oil and gas leasing program; and

(B) providing information regarding the status of the applications and requests within the Department of the Interior and the Department of Agriculture; and

(5) establish a joint geographic information system mapping system for use in—

(A) tracking surface resource values to aid in resource management; and

(B) processing surface use plans of operation and applications for permits to drill.

(Pub. L. 109–58, title III, § 363, Aug. 8, 2005, 119 Stat. 722.)

§ 15923. Methodology

The Secretary of the Interior shall use the same assessment methodology across all geo-

logical provinces, areas, and regions in preparing and issuing national geological assessments to ensure accurate comparisons of geological resources.

(Pub. L. 109–58, title III, § 364(b), Aug. 8, 2005, 119 Stat. 723.)

§ 15924. Pilot project to improve Federal permit coordination

(a) Establishment

The Secretary of the Interior (referred to in this section as the ''Secretary'') shall establish a Federal Permit Streamlining Pilot Project (referred to in this section as the ''Pilot Project'').

(b) Memorandum of understanding

(1) In general

Not later than 90 days after August 8, 2005, the Secretary shall enter into a memorandum of understanding for purposes of this section with—

(A) the Secretary of Agriculture;

(B) the Administrator of the Environmental Protection Agency; and

(C) the Chief of Engineers.

(2) State participation

The Secretary may request that the Governors of Wyoming, Montana, Colorado, Utah, and New Mexico be signatories to the memorandum of understanding.

(c) Designation of qualified staff

(1) In general

Not later than 30 days after the date of the signing of the memorandum of understanding under subsection (b), all Federal signatory parties shall, if appropriate, assign to each of the field offices identified in subsection (d) an employee who has expertise in the regulatory issues relating to the office in which the employee is employed, including, as applicable, particular expertise in—

(A) the consultations and the preparation of biological opinions under section 1536 of title 16;

(B) permits under section 1344 of title 33;

(C) regulatory matters under the Clean Air Act (42 U.S.C. 7401 et seq.);

(D) planning under the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.); and

(E) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Duties

Each employee assigned under paragraph (1) shall—

(A) not later than 90 days after the date of assignment, report to the Bureau of Land Management Field Managers in the office to which the employee is assigned;

(B) be responsible for all issues relating to the jurisdiction of the home office or agency of the employee; and

(C) participate as part of the team of personnel working on proposed energy projects, planning, and environmental analyses.

(d) Field offices

The following Bureau of Land Management Field Offices shall serve as the Pilot Project offices:

(1) Rawlins, Wyoming.

(2) Buffalo, Wyoming.

(3) Miles City, Montana.

(4) Farmington, New Mexico.

(5) Carlsbad, New Mexico.

(6) Grand Junction/Glenwood Springs, Colorado.

(7) Vernal, Utah.

(e) Reports

Not later than 3 years after August 8, 2005, the Secretary shall submit to Congress a report that—

(1) outlines the results of the Pilot Project to date; and

(2) makes a recommendation to the President regarding whether the Pilot Project should be implemented throughout the United States.

(f) Additional personnel

The Secretary shall assign to each field office identified in subsection (d) any additional personnel that are necessary to ensure the effective implementation of—

(1) the Pilot Project; and

(2) other programs administered by the field offices, including inspection and enforcement relating to energy development on Federal land, in accordance with the multiple use mandate of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(g) Omitted

(h) Transfer of funds

For the purposes of coordination and processing of oil and gas use authorizations on Federal land under the administration of the Pilot Project offices identified in subsection (d), the Secretary may authorize the expenditure or transfer of such funds as are necessary to—

(1) the United States Fish and Wildlife Service;

(2) the Bureau of Indian Affairs;

(3) the Forest Service;

(4) the Environmental Protection Agency;

(5) the Corps of Engineers; and

(6) the States of Wyoming, Montana, Colorado, Utah, and New Mexico.

(i) Fees

During the period in which the Pilot Project is authorized, the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations.

(j) Savings provision

Nothing in this section affects—

(1) the operation of any Federal or State law; or

(2) any delegation of authority made by the head of a Federal agency whose employees are participating in the Pilot Project.

(Pub. L. 109–58, title III, § 365, Aug. 8, 2005, 119 Stat. 723.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (c)(1)(C), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The National Forest Management Act of 1976, referred to in subsec. (c)(1)(D), is Pub. L. 94–588, Oct. 22, 1976, 90 Stat. 2949, as amended, which enacted sections 472a, 521b, 1600, and 1611 to 1614 of Title 16, Conservation, amended sections 500, 515, 516, 518, 576b, and 1601 to 1610 of Title 16, repealed sections 476, 513, and 514 of Title 16, and enacted provisions set out as notes under sections 476, 513, 528, 594–2, and 1600 of Title 16. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 1600 of Title 16 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(1)(E), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The Federal Land Policy and Management Act of 1976, referred to in subsec. (f)(2), is Pub. L. 94–579, Oct. 21, 1976, 90 Stat. 2743, as amended, which is classified principally to chapter 35 (§ 1701 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

CODIFICATION

Section is comprised of section 365 of Pub. L. 109–58. Subsec. (g) of section 365 of Pub. L. 109–58 amended section 191 of Title 30, Mineral Lands and Mining.

§ 15925. Fair market value determinations for linear rights-of-way across public lands and national forests

(a) Update of fee schedule

Not later than 1 year after August 8, 2005—

(1) the Secretary of the Interior shall update section 2806.20 of title 43, Code of Federal Regulations, as in effect on August 8, 2005, to revise the per acre rental fee zone value schedule by State, county, and type of linear right-of-way use to reflect current values of land in each zone; and

(2) the Secretary of Agriculture shall make the same revision for linear rights-of-way granted, issued, or renewed under title V of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.) on National Forest System land.

(b) Fair market value rental determination for linear rights-of-way

The fair market value rent of a linear right-of-way across public lands or National Forest System lands issued under section 504 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764) or section 185 of title 30 shall be determined in accordance with subpart 2806 of title 43, Code of Federal Regulations, as in effect on August 8, 2005 (including the annual or periodic updates specified in the regulations), and as updated in accordance with subsection (a).

(Pub. L. 109–58, title III, § 367, Aug. 8, 2005, 119 Stat. 726.)

REFERENCES IN TEXT

The Federal Land Policy and Management Act of 1976, referred to in subsec. (a)(2), is Pub. L. 94–579, Oct. 21, 1976, 90 Stat. 2743, as amended. Title V of the Act is classified generally to subchapter V (§ 1761 et seq.) of chapter 35 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

§ 15926. Energy right-of-way corridors on Federal land

(a) Western States

Not later than 2 years after August 8, 2005, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior (in this section referred to collectively as ''the Secretaries''), in consultation with the Federal Energy Regulatory Commission, States, tribal or local units of governments as appropriate, affected utility industries, and other interested persons, shall consult with each other and shall—

(1) designate, under their respective authorities, corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal land in the eleven contiguous Western States (as defined in section 1702(*o*) of title 43;[1]

(2) perform any environmental reviews that may be required to complete the designation of such corridors; and

(3) incorporate the designated corridors into the relevant agency land use and resource management plans or equivalent plans.

(b) Other States

Not later than 4 years after August 8, 2005, the Secretaries, in consultation with the Federal Energy Regulatory Commission, affected utility industries, and other interested persons, shall jointly—

(1) identify corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal land in States other than those described in subsection (a); and

(2) schedule prompt action to identify, designate, and incorporate the corridors into the applicable land use plans.

(c) Ongoing responsibilities

The Secretaries, in consultation with the Federal Energy Regulatory Commission, affected utility industries, and other interested parties, shall establish procedures under their respective authorities that—

(1) ensure that additional corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal land are promptly identified and designated as necessary; and

(2) expedite applications to construct or modify oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities within such corridors, taking into account prior analyses and environmental reviews undertaken during the designation of such corridors.

(d) Considerations

In carrying out this section, the Secretaries shall take into account the need for upgraded

[1] So in original. A closing parenthesis probably should follow ''title 43''.

and new electricity transmission and distribution facilities to—

(1) improve reliability;

(2) relieve congestion; and

(3) enhance the capability of the national grid to deliver electricity.

(e) Specifications of corridor

A corridor designated under this section shall, at a minimum, specify the centerline, width, and compatible uses of the corridor.

(Pub. L. 109–58, title III, § 368, Aug. 8, 2005, 119 Stat. 727.)

§ 15927. Oil shale, tar sands, and other strategic unconventional fuels

(a) Short title

This section may be cited as the ''Oil Shale, Tar Sands, and Other Strategic Unconventional Fuels Act of 2005''.

(b) Declaration of policy

Congress declares that it is the policy of the United States that—

(1) United States oil shale, tar sands, and other unconventional fuels are strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports;

(2) the development of oil shale, tar sands, and other strategic unconventional fuels, for research and commercial development, should be conducted in an environmentally sound manner, using practices that minimize impacts; and

(3) development of those strategic unconventional fuels should occur, with an emphasis on sustainability, to benefit the United States while taking into account affected States and communities.

(c) Leasing program for research and development of oil shale and tar sands

In accordance with section 241 of title 30 and any other applicable law, except as provided in this section, not later than 180 days after August 8, 2005, from land otherwise available for leasing, the Secretary of the Interior (referred to in this section as the ''Secretary'') shall make available for leasing such land as the Secretary considers to be necessary to conduct research and development activities with respect to technologies for the recovery of liquid fuels from oil shale and tar sands resources on public lands. Prospective public lands within each of the States of Colorado, Utah, and Wyoming shall be made available for such research and development leasing.

(d) Programmatic environmental impact statement and commercial leasing program for oil shale and tar sands

(1) Programmatic environmental impact statement

Not later than 18 months after August 8, 2005, in accordance with section 4332(2)(C) of this title, the Secretary shall complete a programmatic environmental impact statement for a commercial leasing program for oil shale and tar sands resources on public lands, with an emphasis on the most geologically prospective lands within each of the States of Colorado, Utah, and Wyoming.

(2) Final regulation

Not later than 6 months after the completion of the programmatic environmental impact statement under this subsection, the Secretary shall publish a final regulation establishing such program.

(e) Commencement of commercial leasing of oil shale and tar sands

Not later than 180 days after publication of the final regulation required by subsection (d), the Secretary shall consult with the Governors of States with significant oil shale and tar sands resources on public lands, representatives of local governments in such States, interested Indian tribes, and other interested persons, to determine the level of support and interest in the States in the development of tar sands and oil shale resources. If the Secretary finds sufficient support and interest exists in a State, the Secretary may conduct a lease sale in that State under the commercial leasing program regulations. Evidence of interest in a lease sale under this subsection shall include, but not be limited to, appropriate areas nominated for leasing by potential lessees and other interested parties.

(f) Diligent development requirements

The Secretary shall, by regulation, designate work requirements and milestones to ensure the diligent development of the lease.

(g) Initial report by the Secretary of the Interior

Within 90 days after August 8, 2005, the Secretary of the Interior shall report to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on—

(1) the interim actions necessary to—

(A) develop the program, complete the programmatic environmental impact statement, and promulgate the final regulation as required by subsection (d); and

(B) conduct the first lease sales under the program as required by subsection (e); and

(2) a schedule to complete such actions within the time limits mandated by this section.

(h) Task Force

(1) Establishment

The Secretary of Energy, in cooperation with the Secretary of the Interior and the Secretary of Defense, shall establish a task force to develop a program to coordinate and accelerate the commercial development of strategic unconventional fuels, including but not limited to oil shale and tar sands resources within the United States, in an integrated manner.

(2) Composition

The Task Force shall be composed of—

(A) the Secretary of Energy (or the designee of the Secretary);

(B) the Secretary of the Interior (or the designee of the Secretary of the Interior);

(C) the Secretary of Defense (or the designee of the Secretary of Defense);

(D) the Governors of affected States; and

(E) representatives of local governments in affected areas.

(3) Recommendations

The Task Force shall make such recommendations regarding promoting the development of the strategic unconventional fuels resources within the United States as it may deem appropriate.

(4) Partnerships

The Task Force shall make recommendations with respect to initiating a partnership with the Province of Alberta, Canada, for purposes of sharing information relating to the development and production of oil from tar sands, and similar partnerships with other nations that contain significant oil shale resources.

(5) Reports

(A) Initial report

Not later than 180 days after August 8, 2005, the Task Force shall submit to the President and Congress a report that describes the analysis and recommendations of the Task Force.

(B) Subsequent reports

The Secretary shall provide an annual report describing the progress in developing the strategic unconventional fuels resources within the United States for each of the 5 years following submission of the report provided for in subparagraph (A).

(i) Office of Petroleum Reserves

(1) In general

The Office of Petroleum Reserves of the Department of Energy shall—

(A) coordinate the creation and implementation of a commercial strategic fuel development program for the United States;

(B) evaluate the strategic importance of unconventional sources of strategic fuels to the security of the United States;

(C) promote and coordinate Federal Government actions that facilitate the development of strategic fuels in order to effectively address the energy supply needs of the United States;

(D) identify, assess, and recommend appropriate actions of the Federal Government required to assist in the development and manufacturing of strategic fuels; and

(E) coordinate and facilitate appropriate relationships between private industry and the Federal Government to promote sufficient and timely private investment to commercialize strategic fuels for domestic and military use.

(2) Consultation and coordination

The Office of Petroleum Reserves shall work closely with the Task Force and coordinate its staff support.

(3) Annual reports

Not later than 180 days after August 8, 2005, and annually thereafter, the Secretary shall submit to Congress a report that describes the activities of the Office of Petroleum Reserves carried out under this subsection.

(j) Omitted

(k) Interagency coordination and expeditious review of permitting process

(1) Department of the Interior as lead agency

Upon written request of a prospective applicant for Federal authorization to develop a proposed oil shale or tar sands project, the Department of the Interior shall act as the lead Federal agency for the purposes of coordinating all applicable Federal authorizations and environmental reviews. To the maximum extent practicable under applicable Federal law, the Secretary shall coordinate this Federal authorization and review process with any Indian tribes and State and local agencies responsible for conducting any separate permitting and environmental reviews.

(2) Implementing regulations

Not later than 6 months after August 8, 2005, the Secretary shall issue any regulations necessary to implement this subsection.

***(l)* Cost-shared demonstration technologies**

(1) Identification

The Secretary of Energy shall identify technologies for the development of oil shale and tar sands that—

(A) are ready for demonstration at a commercially-representative scale; and

(B) have a high probability of leading to commercial production.

(2) Assistance

For each technology identified under paragraph (1), the Secretary of Energy may provide—

(A) technical assistance;

(B) assistance in meeting environmental and regulatory requirements; and

(C) cost-sharing assistance.

(m) National oil shale and tar sands assessment

(1) Assessment

(A) In general

The Secretary shall carry out a national assessment of oil shale and tar sands resources for the purposes of evaluating and mapping oil shale and tar sands deposits, in the geographic areas described in subparagraph (B). In conducting such an assessment, the Secretary shall make use of the extensive geological assessment work for oil shale and tar sands already conducted by the United States Geological Survey.

(B) Geographic areas

The geographic areas referred to in subparagraph (A), listed in the order in which the Secretary shall assign priority, are—

(i) the Green River Region of the States of Colorado, Utah, and Wyoming;

(ii) the Devonian oil shales and other hydrocarbon-bearing rocks having the nomenclature of ''shale'' located east of the Mississippi River; and

(iii) any remaining area in the central and western United States (including the State of Alaska) that contains oil shale and tar sands, as determined by the Secretary.

(2) Use of State surveys and universities

In carrying out the assessment under paragraph (1), the Secretary may request assistance from any State-administered geological survey or university.

(n) Land exchanges

(1) In general

To facilitate the recovery of oil shale and tar sands, especially in areas where Federal, State, and private lands are intermingled, the Secretary shall consider the use of land exchanges where appropriate and feasible to consolidate land ownership and mineral interests into manageable areas.

(2) Identification and priority of public lands

The Secretary shall identify public lands containing deposits of oil shale or tar sands within the Green River, Piceance Creek, Uintah, and Washakie geologic basins, and shall give priority to implementing land exchanges within those basins. The Secretary shall consider the geology of the respective basin in determining the optimum size of the lands to be consolidated.

(3) Compliance with section 1716 of title 43

A land exchange undertaken in furtherance of this subsection shall be implemented in accordance with section 1716 of title 43.

(*o*) Royalty rates for leases

The Secretary shall establish royalties, fees, rentals, bonus, or other payments for leases under this section that shall—

(1) encourage development of the oil shale and tar sands resource; and

(2) ensure a fair return to the United States.

(p) Heavy oil technical and economic assessment

The Secretary of Energy shall update the 1987 technical and economic assessment of domestic heavy oil resources that was prepared by the Interstate Oil and Gas Compact Commission. Such an update should include all of North America and cover all unconventional oil, including heavy oil, tar sands (oil sands), and oil shale.

(q) Omitted

(r) State water rights

Nothing in this section preempts or affects any State water law or interstate compact relating to water.

(s) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section.

(Pub. L. 109–58, title III, § 369, Aug. 8, 2005, 119 Stat. 728.)

CODIFICATION

Section is comprised of section 369 of Pub. L. 109–58. Subsecs. (j) and (q) of section 369 of Pub. L. 109–58 enacted section 2398a of Title 10, Armed Forces, and amended the table of sections for chapter 141 of Title 10 and sections 226 and 241 of Title 30, Mineral Lands and Mining.

§ 15928. Consultation regarding energy rights-of-way on public land

(a) Memorandum of understanding

(1) In general

Not later than 6 months after August 8, 2005, the Secretary of Energy, in consultation with the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Defense with respect to lands under their respective jurisdictions, shall enter into a memorandum of understanding to coordinate all applicable Federal authorizations and environmental reviews relating to a proposed or existing utility facility. To the maximum extent practicable under applicable law, the Secretary of Energy shall, to ensure timely review and permit decisions, coordinate such authorizations and reviews with any Indian tribes, multi-State entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the affected utility facility.

(2) Contents

The memorandum of understanding shall include provisions that—

(A) establish—

(i) a unified right-of-way application form; and

(ii) an administrative procedure for processing right-of-way applications, including lines of authority, steps in application processing, and timeframes for application processing;

(B) provide for coordination of planning relating to the granting of the rights-of-way;

(C) provide for an agreement among the affected Federal agencies to prepare a single environmental review document to be used as the basis for all Federal authorization decisions; and

(D) provide for coordination of use of right-of-way stipulations to achieve consistency.

(b) Natural gas pipelines

(1) In general

With respect to permitting activities for interstate natural gas pipelines, the May 2002 document entitled ''Interagency Agreement On Early Coordination Of Required Environmental And Historic Preservation Reviews Conducted In Conjunction With The Issuance Of Authorizations To Construct And Operate Interstate Natural Gas Pipelines Certificated By The Federal Energy Regulatory Commission'' shall constitute compliance with subsection (a).

(2) Report

(A) In general

Not later than 1 year after August 8, 2005, and every 2 years thereafter, agencies that are signatories to the document referred to in paragraph (1) shall transmit to Congress a report on how the agencies under the jurisdiction of the Secretaries are incorporating and implementing the provisions of the document referred to in paragraph (1).

(B) Contents

The report shall address—

(i) efforts to implement the provisions of the document referred to in paragraph (1);

(ii) whether the efforts have had a streamlining effect;

(iii) further improvements to the permitting process of the agency; and

(iv) recommendations for inclusion of State and tribal governments in a coordinated permitting process.

(c) Definition of utility facility

In this section, the term ''utility facility'' means any privately, publicly, or cooperatively owned line, facility, or system—

(1) for the transportation of—

(A) oil, natural gas, synthetic liquid fuel, or gaseous fuel;

(B) any refined product produced from oil, natural gas, synthetic liquid fuel, or gaseous fuel; or

(C) products in support of the production of material referred to in subparagraph (A) or (B);

(2) for storage and terminal facilities in connection with the production of material referred to in paragraph (1); or

(3) for the generation, transmission, and distribution of electric energy.

(Pub. L. 109–58, title III, § 372, Aug. 8, 2005, 119 Stat. 734.)

PART C—MISCELLANEOUS

§ 15941. Great Lakes oil and gas drilling ban

No Federal or State permit or lease shall be issued for new oil and gas slant, directional, or offshore drilling in or under one or more of the Great Lakes.

(Pub. L. 109–58, title III, § 386, Aug. 8, 2005, 119 Stat. 744.)

§ 15942. NEPA review

(a) NEPA review

Action by the Secretary of the Interior in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands, with respect to any of the activities described in subsection (b) shall be subject to a rebuttable presumption that the use of a categorical exclusion under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] (NEPA) would apply if the activity is conducted pursuant to the Mineral Leasing Act [30 U.S.C. 181 et seq.] for the purpose of exploration or development of oil or gas.

(b) Activities described

The activities referred to in subsection (a) are the following:

(1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.

(2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.

(3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.

(4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.

(5) Maintenance of a minor activity, other than any construction or major renovation or a building or facility.

(Pub. L. 109–58, title III, § 390, Aug. 8, 2005, 119 Stat. 747.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The Mineral Leasing Act, referred to in subsec. (a), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

PART D—REFINERY REVITALIZATION

§ 15951. Findings and definitions

(a) Findings

Congress finds that—

(1) it serves the national interest to increase petroleum refining capacity for gasoline, heating oil, diesel fuel, jet fuel, kerosene, and petrochemical feedstocks wherever located within the United States, to bring more supply to the markets for the use of the American people;

(2) United States demand for refined petroleum products currently exceeds the country's petroleum refining capacity to produce such products;

(3) this excess demand has been met with increased imports;

(4) due to lack of capacity, refined petroleum product imports are expected to grow from 7.9 percent to 10.7 percent of total refined product by 2025;

(5) refiners are still subject to significant environmental and other regulations and face several new requirements under the Clean Air Act (42 U.S.C. 7401 et seq.) over the next decade; and

(6) better coordination of Federal and State regulatory reviews may help facilitate siting and construction of new refineries to meet the demand in the United States for refined products.

(b) Definitions

In this part:

(1) Administrator

The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) State

The term ''State'' means—

(A) a State;

(B) the Commonwealth of Puerto Rico; and

(C) any other territory or possession of the United States.

(Pub. L. 109–58, title III, § 391, Aug. 8, 2005, 119 Stat. 748.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(5), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

§ 15952. Federal-State regulatory coordination and assistance

(a) In general

At the request of the Governor of a State, the Administrator may enter into a refinery permitting cooperative agreement with the State, under which each party to the agreement identifies steps, including timelines, that it will take to streamline the consideration of Federal and State environmental permits for a new refinery.

(b) Authority under agreement

The Administrator shall be authorized to—

(1) accept from a refiner a consolidated application for all permits required from the Environmental Protection Agency, to the extent consistent with other applicable law;

(2) enter into memoranda of agreement with other Federal agencies to coordinate consideration of refinery applications and permits among Federal agencies; and

(3) enter into memoranda of agreement with a State, under which Federal and State review of refinery permit applications will be coordinated and concurrently considered, to the extent practicable.

(c) State assistance

The Administrator is authorized to provide financial assistance to State governments to facilitate the hiring of additional personnel with expertise in fields relevant to consideration of refinery permits.

(d) Other assistance

The Administrator is authorized to provide technical, legal, or other assistance to State governments to facilitate their review of applications to build new refineries.

(Pub. L. 109–58, title III, § 392, Aug. 8, 2005, 119 Stat. 749.)

SUBCHAPTER IV—COAL

PART A—CLEAN COAL POWER INITIATIVE

§ 15961. Authorization of appropriations

(a) Clean coal power initiative

There are authorized to be appropriated to the Secretary to carry out the activities authorized by this part $200,000,000 for each of fiscal years 2006 through 2014, to remain available until expended.

(b) Report

The Secretary shall submit to Congress the report required by this subsection not later than March 31, 2007. The report shall include, with respect to subsection (a), a plan containing—

(1) a detailed assessment of whether the aggregate funding levels provided under subsection (a) are the appropriate funding levels for that program;

(2) a detailed description of how proposals will be solicited and evaluated, including a list of all activities expected to be undertaken;

(3) a detailed list of technical milestones for each coal and related technology that will be pursued; and

(4) a detailed description of how the program will avoid problems enumerated in Government Accountability Office reports on the Clean Coal Technology Program, including problems that have resulted in unspent funds and projects that failed either financially or scientifically.

(Pub. L. 109–58, title IV, § 401, Aug. 8, 2005, 119 Stat. 749.)

§ 15962. Project criteria

(a) In general

To be eligible to receive assistance under this part, a project shall advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in commercial service or have been demonstrated on a scale that the Secretary determines is sufficient to demonstrate that commercial service is viable as of August 8, 2005.

(b) Technical criteria for clean coal power initiative

(1) Gasification projects

(A) In general

In allocating the funds made available under section 15961(a) of this title, the Secretary shall ensure that at least 70 percent of the funds are used only to fund projects on coal-based gasification technologies, including—

(i) gasification combined cycle;

(ii) gasification fuel cells and turbine combined cycle;

(iii) gasification coproduction;

(iv) hybrid gasification and combustion; and

(v) other advanced coal based technologies capable of producing a concentrated stream of carbon dioxide.

(B) Technical milestones

(i) Periodic determination

(I) In general

The Secretary shall periodically set technical milestones specifying the emission and thermal efficiency levels that coal gasification projects under this part shall be designed, and reasonably expected, to achieve.

(II) Prescriptive milestones

The technical milestones shall become more prescriptive during the period of the clean coal power initiative.

(ii) 2020 goals

The Secretary shall establish the periodic milestones so as to achieve by the year 2020 coal gasification projects able—

(I) to remove at least 99 percent of sulfur dioxide;

(II) to emit not more than .05 lbs of NO_x per million Btu;

(III) to achieve at least 95 percent reductions in mercury emissions; and

(IV) to achieve a thermal efficiency of at least—

(aa) 50 percent for coal of more than 9,000 Btu;

(bb) 48 percent for coal of 7,000 to 9,000 Btu; and

(cc) 46 percent for coal of less than 7,000 Btu.

(2) Other projects

(A) Allocation of funds

The Secretary shall ensure that up to 30 percent of the funds made available under section 15961(a) of this title are used to fund projects other than those described in paragraph (1).

(B) Technical milestones

(i) Periodic determination

(I) In general

The Secretary shall periodically establish technical milestones specifying the emission and thermal efficiency levels that projects funded under this paragraph shall be designed, and reasonably expected, to achieve.

(II) Prescriptive milestones

The technical milestones shall become more prescriptive during the period of the clean coal power initiative.

(ii) 2020 goals

The Secretary shall set the periodic milestones so as to achieve by the year 2020 projects able—

(I) to remove at least 97 percent of sulfur dioxide;

(II) to emit no more than .08 lbs of NO_x per million Btu;

(III) to achieve at least 90 percent reductions in mercury emissions; and

(IV) to achieve a thermal efficiency of at least—

(aa) 43 percent for coal of more than 9,000 Btu;

(bb) 41 percent for coal of 7,000 to 9,000 Btu; and

(cc) 39 percent for coal of less than 7,000 Btu.

(3) Consultation

Before setting the technical milestones under paragraphs (1)(B) and (2)(B), the Secretary shall consult with—

(A) the Administrator of the Environmental Protection Agency; and

(B) interested entities, including—

(i) coal producers;

(ii) industries using coal;

(iii) organizations that promote coal or advanced coal technologies;

(iv) environmental organizations;

(v) organizations representing workers; and

(vi) organizations representing consumers.

(4) Existing units

In the case of projects at units in existence on August 8, 2005, in lieu of the thermal efficiency requirements described in paragraphs (1)(B)(ii)(IV) and (2)(B)(ii)(IV), the milestones shall be designed to achieve an overall thermal design efficiency improvement, compared to the efficiency of the unit as operated, of not less than—

(A) 7 percent for coal of more than 9,000 Btu;

(B) 6 percent for coal of 7,000 to 9,000 Btu; or

(C) 4 percent for coal of less than 7,000 Btu.

(5) Administration

(A) Elevation of site

In evaluating project proposals to achieve thermal efficiency levels established under paragraphs (1)(B)(i) and (2)(B)(i) and in determining progress towards thermal efficiency milestones under paragraphs (1)(B)(ii)(IV), (2)(B)(ii)(IV), and (4), the Secretary shall take into account and make adjustments for the elevation of the site at which a project is proposed to be constructed.

(B) Applicability of milestones

In applying the thermal efficiency milestones under paragraphs (1)(B)(ii)(IV), (2)(B)(ii)(IV), and (4) to projects that separate and capture at least 50 percent of the potential emissions of carbon dioxide by a facility, the energy used for separation and capture of carbon dioxide shall not be counted in calculating the thermal efficiency.

(C) Permitted uses

In carrying out this section, the Secretary may give priority to projects that include, as part of the project—

(i) the separation or capture of carbon dioxide; or

(ii) the reduction of the demand for natural gas if deployed.

(c) Financial criteria

The Secretary shall not provide financial assistance under this part for a project unless the recipient documents to the satisfaction of the Secretary that—

(1) the recipient is financially responsible;

(2) the recipient will provide sufficient information to the Secretary to enable the Secretary to ensure that the funds are spent efficiently and effectively; and

(3) a market exists for the technology being demonstrated or applied, as evidenced by statements of interest in writing from potential purchasers of the technology.

(d) Financial assistance

The Secretary shall provide financial assistance to projects that, as determined by the Secretary—

(1) meet the requirements of subsections (a), (b), and (c); and

(2) are likely—

(A) to achieve overall cost reductions in the use of coal to generate useful forms of energy or chemical feedstocks;

(B) to improve the competitiveness of coal among various forms of energy in order to maintain a diversity of fuel choices in the United States to meet electricity generation requirements; and

(C) to demonstrate methods and equipment that are applicable to 25 percent of the electricity generating facilities, using various types of coal, that use coal as the primary feedstock as of August 8, 2005.

(e) Cost-sharing

In carrying out this part, the Secretary shall require cost sharing in accordance with section 16352 of this title.

(f) Scheduled completion of selected projects

(1) In general

In selecting a project for financial assistance under this section, the Secretary shall establish a reasonable period of time during which the owner or operator of the project shall complete the construction or demonstration phase of the project, as the Secretary determines to be appropriate.

(2) Condition of financial assistance

The Secretary shall require as a condition of receipt of any financial assistance under this part that the recipient of the assistance enter into an agreement with the Secretary not to request an extension of the time period established for the project by the Secretary under paragraph (1).

(3) Extension of time period

(A) In general

Subject to subparagraph (B), the Secretary may extend the time period established under paragraph (1) if the Secretary determines, in the sole discretion of the Secretary, that the owner or operator of the project cannot complete the construction or demonstration phase of the project within the time period due to circumstances beyond the control of the owner or operator.

(B) Limitation

The Secretary shall not extend a time period under subparagraph (A) by more than 4 years.

(g) Fee title

The Secretary may vest fee title or other property interests acquired under cost-share clean coal power initiative agreements under this part in any entity, including the United States.

(h) Data protection

For a period not exceeding 5 years after completion of the operations phase of a cooperative agreement, the Secretary may provide appropriate protections (including exemptions from subchapter II of chapter 5 of title 5) against the dissemination of information that—

(1) results from demonstration activities carried out under the clean coal power initiative program; and

(2) would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from and first produced by a non-Federal party participating in a clean coal power initiative project.

(i) Applicability

No technology, or level of emission reduction, solely by reason of the use of the technology, or the achievement of the emission reduction, by 1 or more facilities receiving assistance under this Act, shall be considered to be—

(1) adequately demonstrated for purposes of section 7411 of this title;

(2) achievable for purposes of section 7479 of this title; or

(3) achievable in practice for purposes of section 7501 of this title.

(Pub. L. 109–58, title IV, § 402, Aug. 8, 2005, 119 Stat. 750.)

REFERENCES IN TEXT

This Act, referred to in subsec. (i), is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 15963. Report

Not later than 1 year after August 8, 2005, and once every 2 years thereafter through 2014, the Secretary, in consultation with other appropriate Federal agencies, shall submit to Congress a report describing—

(1) the technical milestones set forth in section 15962 of this title and how those milestones ensure progress toward meeting the requirements of subsections (b)(1)(B) and (b)(2) of section 15962 of this title; and

(2) the status of projects funded under this part.

(Pub. L. 109–58, title IV, § 403, Aug. 8, 2005, 119 Stat. 753.)

§ 15964. Clean coal centers of excellence

(a) In general

As part of the clean coal power initiative, the Secretary shall award competitive, merit-based grants to institutions of higher education for the establishment of centers of excellence for energy systems of the future.

(b) Basis for grants

The Secretary shall award grants under this section to institutions of higher education that show the greatest potential for advancing new clean coal technologies.

(Pub. L. 109–58, title IV, § 404, Aug. 8, 2005, 119 Stat. 753.)

PART B—CLEAN POWER PROJECTS

§ 15971. Integrated coal/renewable energy system

(a) In general

Subject to the availability of appropriations, the Secretary may provide loan guarantees for a project to produce energy from coal of less than 7,000 Btu/lb. using appropriate advanced integrated gasification combined cycle technology, including repowering of existing facilities, that—

(1) is combined with wind and other renewable sources;

(2) minimizes and offers the potential to sequester carbon dioxide emissions; and

(3) provides a ready source of hydrogen for near-site fuel cell demonstrations.

(b) Requirements

The facility—

(1) may be built in stages;

(2) shall have a combined output of at least 200 megawatts at successively more competitive rates; and

(3) shall be located in the Upper Great Plains.

(c) Technical criteria

Technical criteria described in section 15962(b) of this title shall apply to the facility.

(d) Investment tax credits

(1) In general

The loan guarantees provided under this section do not preclude the facility from receiving an allocation for investment tax credits under section 48A of title 26.

(2) Other funding

Use of the investment tax credit described in paragraph (1) does not prohibit the use of other clean coal program funding.

(Pub. L. 109–58, title IV, § 411, Aug. 8, 2005, 119 Stat. 754.)

§ 15972. Loan to place Alaska clean coal technology facility in service

(a) Definitions

In this section:

(1) Borrower

The term ''borrower'' means the owner of the clean coal technology plant.

(2) Clean coal technology plant

The term ''clean coal technology plant'' means the plant located near Healy, Alaska, constructed under Department cooperative agreement number DE–FC–22–91PC90544.

(3) Cost of a direct loan

The term ''cost of a direct loan'' has the meaning given the term in section 661a(5)(B) of title 2.

(b) Authorization

Subject to subsection (c), the Secretary shall use amounts made available under subsection (e) to provide the cost of a direct loan to the borrower for purposes of placing the clean coal technology plant into reliable operation for the generation of electricity.

(c) Requirements

(1) Maximum loan amount

The amount of the direct loan provided under subsection (b) shall not exceed $80,000,000.

(2) Determinations by Secretary

Before providing the direct loan to the borrower under subsection (b), the Secretary shall determine that—

(A) the plan of the borrower for placing the clean coal technology plant in reliable operation has a reasonable prospect of success;

(B) the amount of the loan (when combined with amounts available to the borrower from other sources) will be sufficient to carry out the project; and

(C) there is a reasonable prospect that the borrower will repay the principal and interest on the loan.

(3) Interest; term

The direct loan provided under subsection (b) shall bear interest at a rate and for a term that the Secretary determines appropriate, after consultation with the Secretary of the Treasury, taking into account the needs and capacities of the borrower and the prevailing rate of interest for similar loans made by public and private lenders.

(4) Additional terms and conditions

The Secretary may require any other terms and conditions that the Secretary determines to be appropriate.

(d) Use of payments

The Secretary shall retain any payments of principal and interest on the direct loan provided under subsection (b) to support energy research and development activities, to remain available until expended, subject to any other conditions in an applicable appropriations Act.

(e) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to provide the cost of a direct loan under subsection (b).

(Pub. L. 109–58, title IV, § 412, Aug. 8, 2005, 119 Stat. 754.)

§ 15973. Western integrated coal gasification demonstration project

(a) In general

Subject to the availability of appropriations, the Secretary shall carry out a project to demonstrate production of energy from coal mined in the western United States using integrated gasification combined cycle technology (referred to in this section as the ''demonstration project'').

(b) Components

The demonstration project—

(1) may include repowering of existing facilities;

(2) shall be designed to demonstrate the ability to use coal with an energy content of not more than 9,000 Btu/lb.; and

(3) shall be capable of removing and sequestering carbon dioxide emissions.

(c) All types of western coals

Notwithstanding the foregoing, and to the extent economically feasible, the demonstration project shall also be designed to demonstrate the ability to use a variety of types of coal (including subbituminous and bituminous coal with an energy content of up to 13,000 Btu/lb.) mined in the western United States.

(d) Location

The demonstration project shall be located in a western State at an altitude of greater than 4,000 feet above sea level.

(e) Cost sharing

The Federal share of the cost of the demonstration project shall be determined in accordance with section 16352 of this title.

(f) Loan guarantees

Notwithstanding subchapter XIII of this chapter, the demonstration project shall not be eligible for Federal loan guarantees.

(Pub. L. 109–58, title IV, § 413, Aug. 8, 2005, 119 Stat. 755.)

REFERENCES IN TEXT

Subchapter XIII of this chapter, referred to in subsec. (f), was in the original ''title XIV'', meaning title XIV of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 1061, which enacted subchapter XIII of this chapter and section 13557 of this title. For complete classification of title XIV to the Code, see Tables.

§ 15974. Coal gasification

The Secretary is authorized to provide loan guarantees for a project to produce energy from a plant using integrated gasification combined cycle technology of at least 400 megawatts in capacity that produces power at competitive rates in deregulated energy generation markets and that does not receive any subsidy (direct or indirect) from ratepayers.

(Pub. L. 109–58, title IV, § 414, Aug. 8, 2005, 119 Stat. 755.)

§ 15975. Petroleum coke gasification

The Secretary is authorized to provide loan guarantees for at least 5 petroleum coke gasification projects.

(Pub. L. 109–58, title IV, § 415, Aug. 8, 2005, 119 Stat. 756.)

§ 15976. Electron scrubbing demonstration

The Secretary shall use $5,000,000 from amounts appropriated to initiate, through the Chicago Operations Office, a project to demonstrate the viability of high-energy electron scrubbing technology on commercial-scale electrical generation using high-sulfur coal.

(Pub. L. 109–58, title IV, § 416, Aug. 8, 2005, 119 Stat. 756.)

§ 15977. Department of Energy transportation fuels from Illinois basin coal

(a) In general

The Secretary shall carry out a program to evaluate the commercial and technical viability of advanced technologies for the production of Fischer-Tropsch transportation fuels, and other transportation fuels, manufactured from Illinois basin coal, including the capital modification of existing facilities and the construction of testing facilities under subsection (b).

(b) Facilities

For the purpose of evaluating the commercial and technical viability of different processes for producing Fischer-Tropsch transportation fuels, and other transportation fuels, from Illinois basin coal, the Secretary shall support the use and capital modification of existing facilities and the construction of new facilities at—

(1) Southern Illinois University Coal Research Center;

(2) University of Kentucky Center for Applied Energy Research; and

(3) Energy Center at Purdue University.

(c) Gasification products test center

In conjunction with the activities described in subsections (a) and (b), the Secretary shall construct a test center to evaluate and confirm liquid and gas products from syngas catalysis in order that the system has an output of at least 500 gallons of Fischer-Tropsch transportation fuel per day in a 24-hour operation.

(d) Milestones

(1) Selection of processes

Not later than 180 days after August 8, 2005, the Secretary shall select processes for evaluating the commercial and technical viability of different processes of producing Fischer-Tropsch transportation fuels, and other transportation fuels, from Illinois basin coal.

(2) Agreements

Not later than 1 year after August 8, 2005, the Secretary shall offer to enter into agreements—

(A) to carry out the activities described in this section, at the facilities described in subsection (b); and

(B) for the capital modifications or construction of the facilities at the locations described in subsection (b).

(3) Evaluations

Not later than 3 years after August 8, 2005, the Secretary shall begin, at the facilities described in subsection (b), evaluation of the technical and commercial viability of different processes of producing Fischer-Tropsch transportation fuels, and other transportation fuels, from Illinois basin coal.

(4) Construction of facilities

(A) In general

The Secretary shall construct the facilities described in subsection (b) at the lowest cost practicable.

(B) Grants or agreements

The Secretary may make grants or enter into agreements or contracts with the institutions of higher education described in subsection (b).

(e) Cost sharing

The cost of making grants under this section shall be shared in accordance with section 16352 of this title.

(f) Authorization of appropriations

There is authorized to be appropriated to carry out this section $85,000,000 for the period of fiscal years 2006 through 2010.

(Pub. L. 109–58, title IV, § 417, Aug. 8, 2005, 119 Stat. 756.)

PART C—FEDERAL COAL LEASES

§ 15991. Inventory requirement

(a) Review of assessments

(1) In general

The Secretary of the Interior, in consultation with the Secretary of Agriculture and the

Secretary, shall review coal assessments and other available data to identify—

(A) Federal lands with coal resources that are available for development;

(B) the extent and nature of any restrictions on the development of coal resources on Federal lands identified under paragraph (1); and

(C) with respect to areas of such lands for which sufficient data exists, resources of compliant coal and supercompliant coal.

(2) Definitions

For purposes of this subsection—

(A) the term ''compliant coal'' means coal that contains not less than 1.0 and not more than 1.2 pounds of sulfur dioxide per million Btu; and

(B) the term ''supercompliant coal'' means coal that contains less than 1.0 pounds of sulfur dioxide per million Btu.

(b) Completion and updating of the inventory

The Secretary—

(1) shall complete the inventory under subsection (a) by not later than 2 years after August 8, 2005; and

(2) shall update the inventory as the availability of data and developments in technology warrant.

(c) Report

The Secretary shall submit to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate and make publicly available—

(1) a report containing the inventory under this section, by not later than 2 years after the effective date of this section; and

(2) each update of such inventory.

(Pub. L. 109–58, title IV, § 437, Aug. 8, 2005, 119 Stat. 762.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 109–58, which enacted this section.

SHORT TITLE

For short title of subtitle D of title IV of Pub. L. 109–58, which enacted this part, as the ''Coal Leasing Amendments Act of 2005'', see section 431 of Pub. L. 109–58, set out as a note under section 15801 of this title.

SUBCHAPTER V—INDIAN ENERGY

§ 16001. Energy efficiency in federally assisted housing

The Secretary of Housing and Urban Development shall promote energy conservation in housing that is located on Indian land and assisted with Federal resources through—

(1) the use of energy-efficient technologies and innovations (including the procurement of energy-efficient refrigerators and other appliances);

(2) the promotion of shared savings contracts; and

(3) the use and implementation of such other similar technologies and innovations as the Secretary of Housing and Urban Development considers to be appropriate.

(Pub. L. 109–58, title V, § 506(a), Aug. 8, 2005, 119 Stat. 779.)

SHORT TITLE

For short title of title V of Pub. L. 109–58, which enacted this subchapter, as the ''Indian Tribal Energy Development and Self-Determination Act of 2005'', see section 501 of Pub. L. 109–58, set out as a note under section 15801 of this title.

SUBCHAPTER VI—NUCLEAR MATTERS

PART A—GENERAL NUCLEAR MATTERS

§ 16011. Demonstration hydrogen production at existing nuclear power plants

(a) Demonstration projects

The Secretary shall provide for the establishment of 2 projects in geographic areas that are regionally and climatically diverse to demonstrate the commercial production of hydrogen at existing nuclear power plants.

(b) Economic analysis

Prior to making an award under subsection (a), the Secretary shall determine whether the use of existing nuclear power plants is a cost-effective means of producing hydrogen.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for the purposes of carrying out this section not more than $100,000,000.

(Pub. L. 109–58, title VI, § 634, Aug. 8, 2005, 119 Stat. 790.)

§ 16012. Prohibition on assumption by United States Government of liability for certain foreign incidents

(a) In general

Notwithstanding any other provision of law, no officer of the United States or of any department, agency, or instrumentality of the United States Government may enter into any contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government, for nuclear incidents occurring in connection with the design, construction, or operation of a production facility or utilization facility in any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 2371(a) of title 22, section 2405(j)(1) of title 50, Appendix, or section 2780(d) of title 22 to have repeatedly provided support for acts of international terrorism). This section shall not apply to nuclear incidents occurring as a result of missions, carried out under the direction of the Secretary, the Secretary of Defense, or the Secretary of State, that are necessary to safely secure, store, transport, or remove nuclear materials for nuclear safety or nonproliferation purposes.

(b) Definitions

The terms used in this section shall have the same meaning as those terms have under section 2014 of this title, unless otherwise expressly provided in this section.

(Pub. L. 109–58, title VI, § 635, Aug. 8, 2005, 119 Stat. 790.)

§ 16013. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subtitle and the amendments made by this subtitle.

(Pub. L. 109–58, title VI, § 636, Aug. 8, 2005, 119 Stat. 791.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle B (§§ 621–639) of title VI of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 782, which enacted this part and sections 2015b, 2210c, and 5853 of this title, amended sections 2133, 2135, 2158, 2160d, 2201, 2210a, 2214, 2297h–8, and 5851 of this title, repealed section 2213 of this title, and enacted provisions set out as notes under sections 2158 and 2214 of this title. For complete classification of this subtitle to the Code, see Tables.

§ 16014. Standby support for certain nuclear plant delays

(a) Definitions

In this section:

(1) Advanced nuclear facility

The term ''advanced nuclear facility'' means any nuclear facility the reactor design for which is approved after December 31, 1993, by the Commission (and such design or a substantially similar design of comparable capacity was not approved on or before that date).

(2) Combined license

The term ''combined license'' means a combined construction and operating license for an advanced nuclear facility issued by the Commission.

(3) Commission

The term ''Commission'' means the Nuclear Regulatory Commission.

(4) Sponsor

The term ''sponsor'' means a person who has applied for or been granted a combined license.

(b) Contract authority

(1) In general

The Secretary may enter into contracts under this section with sponsors of an advanced nuclear facility that cover a total of 6 reactors, with the 6 reactors consisting of not more than 3 different reactor designs, in accordance with paragraph (2).

(2) Requirement for contracts

(A) Definition of loan cost

In this paragraph, the term ''loan cost'' has the meaning given the term ''cost of a loan guarantee'' under section 661a(5)(C) of title 2.

(B) Establishment of accounts

There is established in the Department 2 separate accounts, which shall be known as the—

(i) ''Standby Support Program Account''; and

(ii) ''Standby Support Grant Account''.

(C) Requirement

The Secretary shall not enter into a contract under this section unless the Secretary deposits—

(i) in the Standby Support Program Account established under subparagraph (B), funds appropriated to the Secretary in advance of the contract or a combination of appropriated funds and loan guarantee fees that are in an amount sufficient to cover the loan costs described in subsection (d)(5)(A); and

(ii) in the Standby Support Grant Account established under subparagraph (B), funds appropriated to the Secretary in advance of the contract, paid to the Secretary by the sponsor of the advanced nuclear facility, or a combination of appropriations and payments that are in an amount sufficient[1] cover the costs described in subparagraphs (B), (C), and (D) of subsection (d)(5).

(c) Covered delays

(1) Inclusions

Under each contract authorized by this section, the Secretary shall pay the costs specified in subsection (d), using funds appropriated or collected for the covered costs, if full power operation of the advanced nuclear facility is delayed by—

(A) the failure of the Commission to comply with schedules for review and approval of inspections, tests, analyses, and acceptance criteria established under the combined license or the conduct of preoperational hearings by the Commission for the advanced nuclear facility; or

(B) litigation that delays the commencement of full-power operations of the advanced nuclear facility.

(2) Exclusions

The Secretary may not enter into any contract under this section that would obligate the Secretary to pay any costs resulting from—

(A) the failure of the sponsor to take any action required by law or regulation;

(B) events within the control of the sponsor; or

(C) normal business risks.

(d) Covered costs

(1) In general

Subject to paragraphs (2), (3), and (4), the costs that shall be paid by the Secretary pursuant to a contract entered into under this section are the costs that result from a delay covered by the contract.

(2) Initial 2 reactors

In the case of the first 2 reactors that receive combined licenses and on which construction is commenced, the Secretary shall pay—

[1] So in original. Probably should be followed by ''to''.

(A) 100 percent of the covered costs of delay; but

(B) not more than $500,000,000 per contract.

(3) Subsequent 4 reactors

In the case of the next 4 reactors that receive a combined license and on which construction is commenced, the Secretary shall pay—

(A) 50 percent of the covered costs of delay that occur after the initial 180-day period of covered delay; but

(B) not more than $250,000,000 per contract.

(4) Conditions on payment of certain covered costs

(A) In general

The obligation of the Secretary to pay the covered costs described in subparagraph (B) of paragraph (5) is subject to the Secretary receiving from appropriations or payments from other non-Federal sources amounts sufficient to pay the covered costs.

(B) Non-Federal sources

The Secretary may receive and accept payments from any non-Federal source, which shall be made available without further appropriation for the payment of the covered costs.

(5) Types of covered costs

Subject to paragraphs (2), (3), and (4), the contract entered into under this section for an advanced nuclear facility shall include as covered costs those costs that result from a delay during construction and in gaining approval for fuel loading and full-power operation, including—

(A) principal or interest on any debt obligation of an advanced nuclear facility owned by a non-Federal entity; and

(B) the incremental difference between—

(i) the fair market price of power purchased to meet the contractual supply agreements that would have been met by the advanced nuclear facility but for the delay; and

(ii) the contractual price of power from the advanced nuclear facility subject to the delay.

(e) Requirements

Any contract between a sponsor and the Secretary covering an advanced nuclear facility under this section shall require the sponsor to use due diligence to shorten, and to end, the delay covered by the contract.

(f) Reports

For each advanced nuclear facility that is covered by a contract under this section, the Commission shall submit to Congress and the Secretary quarterly reports summarizing the status of licensing actions associated with the advanced nuclear facility.

(g) Regulations

(1) In general

Subject to paragraphs (2) and (3), the Secretary shall issue such regulations as are necessary to carry out this section.

(2) Interim final rulemaking

Not later than 270 days after August 8, 2005, the Secretary shall issue for public comment an interim final rule regulating contracts authorized by this section.

(3) Notice of final rulemaking

Not later than 1 year after August 8, 2005, the Secretary shall issue a notice of final rulemaking regulating the contracts.

(h) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section.

(Pub. L. 109–58, title VI, § 638, Aug. 8, 2005, 119 Stat. 791.)

PART B—NEXT GENERATION NUCLEAR PLANT PROJECT

§ 16021. Project establishment

(a) Establishment

The Secretary shall establish a project to be known as the ''Next Generation Nuclear Plant Project'' (referred to in this part as the ''Project'').

(b) Content

The Project shall consist of the research, development, design, construction, and operation of a prototype plant, including a nuclear reactor that—

(1) is based on research and development activities supported by the Generation IV Nuclear Energy Systems Initiative under section 16272(d)[1] of this title; and

(2) shall be used—

(A) to generate electricity;

(B) to produce hydrogen; or

(C) both to generate electricity and to produce hydrogen.

(Pub. L. 109–58, title VI, § 641, Aug. 8, 2005, 119 Stat. 794.)

REFERENCES IN TEXT

Section 16272(d) of this title, referred to in subsec. (b)(1), was in the original a reference to section 942(d) of Pub. L. 109–58, which is classified to section 16251(d) of this title but was translated as meaning section 952(d) of Pub. L. 109–58 to reflect the probable intent of Congress, because section 952(d) relates to Generation IV Nuclear Energy Systems Initiative and section 942(d) relates to limitations on production incentives for cellulosic biofuels.

§ 16022. Project management

(a) Departmental management

(1) In general

The Project shall be managed in the Department by the Office of Nuclear Energy, Science, and Technology.

(2) Generation IV Nuclear Energy Systems program

The Secretary may combine the Project with the Generation IV Nuclear Energy Systems Initiative.

(3) Existing DOE project management expertise

The Secretary may utilize capabilities for review of construction projects for advanced

[1] See References in Text note below.

scientific facilities within the Office of Science to track the progress of the Project.

(b) Laboratory management

(1) Lead Laboratory

The Idaho National Laboratory shall be the lead National Laboratory for the Project and shall collaborate with other National Laboratories, institutions of higher education, other research institutes, industrial researchers, and international researchers to carry out the Project.

(2) Industrial partnerships

(A) In general

The Idaho National Laboratory shall organize a consortium of appropriate industrial partners that will carry out cost-shared research, development, design, and construction activities, and operate research facilities, on behalf of the Project.

(B) Cost-sharing

Activities of industrial partners funded by the Project shall be cost-shared in accordance with section 16352 of this title.

(C) Preference

Preference in determining the final structure of the consortium or any partnerships under this part shall be given to a structure (including designating as a lead industrial partner an entity incorporated in the United States) that retains United States technological leadership in the Project while maximizing cost sharing opportunities and minimizing Federal funding responsibilities.

(3) Prototype plant siting

The prototype nuclear reactor and associated plant shall be sited at the Idaho National Laboratory in Idaho.

(4) Reactor test capabilities

The Project shall use, if appropriate, reactor test capabilities at the Idaho National Laboratory.

(5) Other Laboratory capabilities

The Project may use, if appropriate, facilities at other National Laboratories.

(Pub. L. 109–58, title VI, § 642, Aug. 8, 2005, 119 Stat. 795.)

§ 16023. Project organization

(a) Major project elements

The Project shall consist of the following major program elements:

(1) High-temperature hydrogen production technology development and validation.

(2) Energy conversion technology development and validation.

(3) Nuclear fuel development, characterization, and qualification.

(4) Materials selection, development, testing, and qualification.

(5) Reactor and balance-of-plant design, engineering, safety analysis, and qualification.

(b) Project phases

The Project shall be conducted in the following phases:

(1) First project phase

A first project phase shall be conducted to—

(A) select and validate the appropriate technology under subsection (a)(1);

(B) carry out enabling research, development, and demonstration activities on technologies and components under paragraphs (2) through (4) of subsection (a);

(C) determine whether it is appropriate to combine electricity generation and hydrogen production in a single prototype nuclear reactor and plant; and

(D) carry out initial design activities for a prototype nuclear reactor and plant, including development of design methods and safety analytical methods and studies under subsection (a)(5).

(2) Second project phase

A second project phase shall be conducted to—

(A) continue appropriate activities under paragraphs (1) through (5) of subsection (a);

(B) develop, through a competitive process, a final design for the prototype nuclear reactor and plant;

(C) apply for licenses to construct and operate the prototype nuclear reactor from the Nuclear Regulatory Commission; and

(D) construct and start up operations of the prototype nuclear reactor and its associated hydrogen or electricity production facilities.

(c) Project requirements

(1) In general

The Secretary shall ensure that the Project is structured so as to maximize the technical interchange and transfer of technologies and ideas into the Project from other sources of relevant expertise, including—

(A) the nuclear power industry, including nuclear powerplant construction firms, particularly with respect to issues associated with plant design, construction, and operational and safety issues;

(B) the chemical processing industry, particularly with respect to issues relating to—

(i) the use of process energy for production of hydrogen; and

(ii) the integration of technologies developed by the Project into chemical processing environments; and

(C) international efforts in areas related to the Project, particularly with respect to hydrogen production technologies.

(2) International collaboration

(A) In general

The Secretary shall seek international cooperation, participation, and financial contributions for the Project.

(B) Assistance from international partners

The Secretary, through the Idaho National Laboratory, may contract for assistance from specialists or facilities from member countries of the Generation IV International Forum, the Russian Federation, or other international partners if the specialists or facilities provide access to cost-effective and relevant skills or test capabilities.

(C) Partner nations

The Project may involve demonstration of selected project objectives in a partner country.

(D) Generation IV International Forum

The Secretary shall ensure that international activities of the Project are coordinated with the Generation IV International Forum.

(3) Review by Nuclear Energy Research Advisory Committee

(A) In general

The Nuclear Energy Research Advisory Committee of the Department (referred to in this paragraph as the ''NERAC'') shall—

(i) review all program plans for the Project and all progress under the Project on an ongoing basis; and

(ii) ensure that important scientific, technical, safety, and program management issues receive attention in the Project and by the Secretary.

(B) Additional expertise

The NERAC shall supplement the expertise of the NERAC or appoint subpanels to incorporate into the review by the NERAC the relevant sources of expertise described under paragraph (1).

(C) Initial review

Not later than 180 days after August 8, 2005, the NERAC shall—

(i) review existing program plans for the Project in light of the recommendations of the document entitled ''Design Features and Technology Uncertainties for the Next Generation Nuclear Plant,'' dated June 30, 2004; and

(ii) address any recommendations of the document not incorporated in program plans for the Project.

(D) First project phase review

On a determination by the Secretary that the appropriate activities under the first project phase under subsection (b)(1) are nearly complete, the Secretary shall request the NERAC to conduct a comprehensive review of the Project and to report to the Secretary the recommendation of the NERAC concerning whether the Project is ready to proceed to the second project phase under subsection (b)(2).

(E) Transmittal of reports to Congress

Not later than 60 days after receiving any report from the NERAC related to the Project, the Secretary shall submit to the appropriate committees of the Senate and the House of Representatives a copy of the report, along with any additional views of the Secretary that the Secretary may consider appropriate.

(Pub. L. 109–58, title VI, § 643, Aug. 8, 2005, 119 Stat. 795.)

§ 16024. Nuclear Regulatory Commission

(a) In general

In accordance with section 5842 of this title, the Nuclear Regulatory Commission shall have licensing and regulatory authority for any reactor authorized under this part.

(b) Licensing strategy

Not later than 3 years after August 8, 2005, the Secretary and the Chairman of the Nuclear Regulatory Commission shall jointly submit to the appropriate committees of the Senate and the House of Representatives a licensing strategy for the prototype nuclear reactor, including—

(1) a description of ways in which current licensing requirements relating to light-water reactors need to be adapted for the types of prototype nuclear reactor being considered by the Project;

(2) a description of analytical tools that the Nuclear Regulatory Commission will have to develop to independently verify designs and performance characteristics of components, equipment, systems, or structures associated with the prototype nuclear reactor;

(3) other research or development activities that may be required on the part of the Nuclear Regulatory Commission in order to review a license application for the prototype nuclear reactor; and

(4) an estimate of the budgetary requirements associated with the licensing strategy.

(c) Ongoing interaction

The Secretary shall seek the active participation of the Nuclear Regulatory Commission throughout the duration of the Project to—

(1) avoid design decisions that will compromise adequate safety margins in the design of the reactor or impair the accessibility of nuclear safety-related components of the prototype reactor for inspection and maintenance;

(2) develop tools to facilitate inspection and maintenance needed for safety purposes; and

(3) develop risk-based criteria for any future commercial development of a similar reactor architectures.

(Pub. L. 109–58, title VI, § 644, Aug. 8, 2005, 119 Stat. 797.)

§ 16025. Project timelines and authorization of appropriations

(a) Target date to complete the first project phase

Not later than September 30, 2011, the Secretary shall—

(1) select the technology to be used by the Project for high-temperature hydrogen production and the initial design parameters for the prototype nuclear plant; or

(2) submit to Congress a report establishing an alternative date for making the selection.

(b) Design competition for second project phase

(1) In general

The Secretary, acting through the Idaho National Laboratory, shall fund not more than 4 teams for not more than 2 years to develop detailed proposals for competitive evaluation and selection of a single proposal for a final design of the prototype nuclear reactor.

(2) Systems integration

The Secretary may structure Project activities in the second project phase to use the lead

industrial partner of the competitively selected design under paragraph (1) in a systems integration role for final design and construction of the Project.

(c) Target date to complete project construction

Not later than September 30, 2021, the Secretary shall—

(1) complete construction and begin operations of the prototype nuclear reactor and associated energy or hydrogen facilities; or

(2) submit to Congress a report establishing an alternative date for completion.

(d) Authorization of appropriations

There is authorized to be appropriated to the Secretary for research and construction activities under this part (including for transfer to the Nuclear Regulatory Commission for activities under section 16024 of this title as appropriate)—

(1) $1,250,000,000 for the period of fiscal years 2006 through 2015; and

(2) such sums as are necessary for each of fiscal years 2016 through 2021.

(Pub. L. 109–58, title VI, § 645, Aug. 8, 2005, 119 Stat. 798.)

PART C—NUCLEAR SECURITY

§ 16041. Nuclear facility and materials security

(a) In general

(1), (2) Omitted

(3) Federal security coordinators

(A) Regional offices

Not later than 18 months after August 8, 2005, the Nuclear Regulatory Commission (referred to in this section as the ''Commission'') shall assign a Federal security coordinator, under the employment of the Commission, to each region of the Commission.

(B) Responsibilities

The Federal security coordinator shall be responsible for—

(i) communicating with the Commission and other Federal, State, and local authorities concerning threats, including threats against such classes of facilities as the Commission determines to be appropriate;

(ii) monitoring such classes of facilities as the Commission determines to be appropriate to ensure that they maintain security consistent with the security plan in accordance with the appropriate threat level; and

(iii) assisting in the coordination of security measures among the private security forces at such classes of facilities as the Commission determines to be appropriate and Federal, State, and local authorities, as appropriate.

(b) Backup power for certain emergency notification systems

For any licensed nuclear power plants located where there is a permanent population, as determined by the 2000 decennial census, in excess of 15,000,000 within a 50-mile radius of the power plant, not later than 18 months after August 8, 2005, the Commission shall require that backup power to be available for the emergency notification system of the power plant, including the emergency siren warning system, if the alternating current supply within the 10-mile emergency planning zone of the power plant is lost.

(c), (d) Omitted

(e) Final regulations; waivers

(1) to (3) Omitted

(4) Final regulations

(A) Regulations

(i) In general

Not later than 18 months after August 8, 2005, the Commission, after consultation with States and other stakeholders, shall issue final regulations establishing such requirements as the Commission determines to be necessary to carry out this section and the amendments made by this section.

(ii) Inclusions

The regulations shall include a definition of the term ''discrete source'' for purposes of paragraphs (3) and (4) of section 2014(e) of this title.

(B) Cooperation

In promulgating regulations under paragraph (1),[1] the Commission shall, to the maximum extent practicable—

(i) cooperate with States; and

(ii) use model State standards in existence on August 8, 2005.

(C) Transition plan

(i) Definition of byproduct material

In this paragraph, the term ''byproduct material'' has the meaning given the term in paragraphs (3) and (4) of section 2014(e) of this title.

(ii) Preparation and publication

To facilitate an orderly transition of regulatory authority with respect to byproduct material, the Commission, in issuing regulations under subparagraph (A), shall prepare and publish a transition plan for—

(I) States that have not, before the date on which the plan is published, entered into an agreement with the Commission under section 2021(b) of this title; and

(II) States that have entered into an agreement with the Commission under that section before the date on which the plan is published.

(iii) Inclusions

The transition plan under clause (ii) shall include—

(I) a description of the conditions under which a State may exercise authority over byproduct material; and

(II) a statement of the Commission that any agreement covering byproduct

[1] So in original. Probably should be ''subparagraph (A),''.

material, as defined in paragraph (1) or (2) of section 2014(e) of this title, entered into between the Commission and a State under section 2021(b) of this title before the date of publication of the transition plan shall be considered to include byproduct material, as defined in paragraph (3) or (4) of section 2014(e) of this title, if the Governor of the State certifies to the Commission on the date of publication of the transition plan that—

(aa) the State has a program for licensing byproduct material, as defined in paragraph (3) or (4) of section 2014(e) of this title, that is adequate to protect the public health and safety, as determined by the Commission; and

(bb) the State intends to continue to implement the regulatory responsibility of the State with respect to the byproduct material.

(D) Availability of radiopharmaceuticals

In promulgating regulations under subparagraph (A), the Commission shall consider the impact on the availability of radiopharmaceuticals to—

(i) physicians; and

(ii) patients the medical treatment of which relies on radiopharmaceuticals.

(5) Waivers

(A) In general

Except as provided in subparagraph (B), the Commission may grant a waiver to any entity of any requirement under this section or an amendment made by this section with respect to a matter relating to byproduct material (as defined in paragraphs (3) and (4) of section 2014(e) of this title) if the Commission determines that the waiver is in accordance with the protection of the public health and safety and the promotion of the common defense and security.

(B) Exceptions

(i) In general

The Commission may not grant a waiver under subparagraph (A) with respect to—

(I) any requirement under the amendments made by subsection (c)(1);

(II) a matter relating to an importation into, or exportation from, the United States for a period ending after the date that is 1 year after August 8, 2005; or

(III) any other matter for a period ending after the date that is 4 years after August 8, 2005.

(ii) Waivers to States

The Commission shall terminate any waiver granted to a State under subparagraph (A) if the Commission determines that—

(I) the State has entered into an agreement with the Commission under section 2021(b) of this title;

(II) the agreement described in subclause (I) covers byproduct material (as described in paragraph (3) or (4) of section 2014(e) of this title); and

(III) the program of the State for licensing such byproduct material is adequate to protect the public health and safety.

(C) Publication

The Commission shall publish in the Federal Register a notice of any waiver granted under this subsection.

(Pub. L. 109–58, title VI, § 651, Aug. 8, 2005, 119 Stat. 799.)

REFERENCES IN TEXT

For references to ''the amendments made by this section'', ''an amendment made by this section'', and ''the amendments made by subsection (c)(1)'', appearing in subsecs. (e)(4)(A)(i), (e)(5)(A), and (e)(5)(B)(i)(I), respectively, see Codification note below.

CODIFICATION

Section is comprised of section 651 of Pub. L. 109–58. Subsec. (a)(1), (2) of section 651 of Pub. L. 109–58 enacted sections 2210d and 2210e of this title, subsec. (c)(1) of section 651 of Pub. L. 109–58 amended section 2051 of this title, subsecs. (c)(2) to (5) and (d) of section 651 of Pub. L. 109–58 enacted sections 2210f to 2210h and 2015c of this title, and subsec. (e)(1) to (3) of section 651 of Pub. L. 109–58 amended sections 2014, 2021, 2021b, and 2111 of this title.

§ 16042. Department of Homeland Security consultation

Before issuing a license for a utilization facility, the Nuclear Regulatory Commission shall consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack.

(Pub. L. 109–58, title VI, § 657, Aug. 8, 2005, 119 Stat. 814.)

SUBCHAPTER VII—VEHICLES AND FUELS

PART A—EXISTING PROGRAMS

§ 16051. Joint flexible fuel/hybrid vehicle commercialization initiative

(a) Definitions

In this section:

(1) Eligible entity

The term ''eligible entity'' means—

(A) a for-profit corporation;

(B) a nonprofit corporation; or

(C) an institution of higher education.

(2) Program

The term ''program'' means a program established under subsection (b).

(b) Establishment

The Secretary shall establish a program to improve technologies for the commercialization of—

(1) a combination hybrid/flexible fuel vehicle; or

(2) a plug-in hybrid/flexible fuel vehicle.

(c) Grants

In carrying out the program, the Secretary shall provide grants that give preference to proposals that—

(1) achieve the greatest reduction in miles per gallon of petroleum fuel consumption;

(2) achieve not less than 250 miles per gallon of petroleum fuel consumption; and

(3) have the greatest potential of commercialization to the general public within 5 years.

(d) Verification

Not later than 90 days after August 8, 2005, the Secretary shall publish in the Federal Register procedures to verify—

(1) the hybrid/flexible fuel vehicle technologies to be demonstrated; and

(2) that grants are administered in accordance with this section.

(e) Report

Not later than 260 days after August 8, 2005, and annually thereafter, the Secretary shall submit to Congress a report that—

(1) identifies the grant recipients;

(2) describes the technologies to be funded under the program;

(3) assesses the feasibility of the technologies described in paragraph (2) in meeting the goals described in subsection (c);

(4) identifies applications submitted for the program that were not funded; and

(5) makes recommendations for Federal legislation to achieve commercialization of the technology demonstrated.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section, to remain available until expended—

(1) $3,000,000 for fiscal year 2006;

(2) $7,000,000 for fiscal year 2007;

(3) $10,000,000 for fiscal year 2008; and

(4) $20,000,000 for fiscal year 2009.

(Pub. L. 109–58, title VII, § 706, Aug. 8, 2005, 119 Stat. 817.)

PART B—HYBRID VEHICLES, ADVANCED VEHICLES, AND FUEL CELL BUSES

SUBPART 1—HYBRID VEHICLES

§ 16061. Hybrid vehicles

The Secretary shall accelerate efforts directed toward the improvement of batteries and other rechargeable energy storage systems, power electronics, hybrid systems integration, and other technologies for use in hybrid vehicles.

(Pub. L. 109–58, title VII, § 711, Aug. 8, 2005, 119 Stat. 818.)

§ 16062. Efficient hybrid and advanced diesel vehicles

(a) Program

The Secretary shall establish a program to encourage domestic production and sales of efficient hybrid and advanced diesel vehicles. The program shall include grants to automobile manufacturers to encourage domestic production of efficient hybrid and advanced diesel vehicles.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary for each of the fiscal years 2006 through 2015.

(Pub. L. 109–58, title VII, § 712, Aug. 8, 2005, 119 Stat. 818.)

SUBPART 2—ADVANCED VEHICLES

§ 16071. Pilot program

(a) Establishment

The Secretary, in consultation with the Secretary of Transportation, shall establish a competitive grant pilot program (referred to in this subpart as the ''pilot program''), to be administered through the Clean Cities Program of the Department, to provide not more than 30 geographically dispersed project grants to State governments, local governments, or metropolitan transportation authorities to carry out a project or projects for the purposes described in subsection (b).

(b) Grant purposes

A grant under this section may be used for the following purposes:

(1) The acquisition of alternative fueled vehicles or fuel cell vehicles, including—

(A) passenger vehicles (including neighborhood electric vehicles); and

(B) motorized 2-wheel bicycles or other vehicles for use by law enforcement personnel or other State or local government or metropolitan transportation authority employees.

(2) The acquisition of alternative fueled vehicles, hybrid vehicles, or fuel cell vehicles, including—

(A) buses used for public transportation or transportation to and from schools;

(B) delivery vehicles for goods or services; and

(C) ground support vehicles at public airports (including vehicles to carry baggage or push or pull airplanes toward or away from terminal gates).

(3) The acquisition of ultra-low sulfur diesel vehicles.

(4) Installation or acquisition of infrastructure necessary to directly support an alternative fueled vehicle, fuel cell vehicle, or hybrid vehicle project funded by the grant, including fueling and other support equipment.

(5) Operation and maintenance of vehicles, infrastructure, and equipment acquired as part of a project funded by the grant.

(c) Applications

(1) Requirements

(A) In general

The Secretary shall issue requirements for applying for grants under the pilot program.

(B) Minimum requirements

At a minimum, the Secretary shall require that an application for a grant—

(i) be submitted by the head of a State or local government or a metropolitan transportation authority, or any combination thereof, and a registered participant in the Clean Cities Program of the Department; and

(ii) include—

(I) a description of the project proposed in the application, including how

the project meets the requirements of this subpart;

(II) an estimate of the ridership or degree of use of the project;

(III) an estimate of the air pollution emissions reduced and fossil fuel displaced as a result of the project, and a plan to collect and disseminate environmental data, related to the project to be funded under the grant, over the life of the project;

(IV) a description of how the project will be sustainable without Federal assistance after the completion of the term of the grant;

(V) a complete description of the costs of the project, including acquisition, construction, operation, and maintenance costs over the expected life of the project;

(VI) a description of which costs of the project will be supported by Federal assistance under this subpart; and

(VII) documentation to the satisfaction of the Secretary that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the project, and a commitment by the applicant to use such fuel in carrying out the project.

(2) Partners

An applicant under paragraph (1) may carry out a project under the pilot program in partnership with public and private entities.

(d) Selection criteria

In evaluating applications under the pilot program, the Secretary shall—

(1) consider each applicant's previous experience with similar projects; and

(2) give priority consideration to applications that—

(A) are most likely to maximize protection of the environment;

(B) demonstrate the greatest commitment on the part of the applicant to ensure funding for the proposed project and the greatest likelihood that the project will be maintained or expanded after Federal assistance under this subpart is completed; and

(C) exceed the minimum requirements of subsection (c)(1)(B)(ii).

(e) Pilot project requirements

(1) Maximum amount

The Secretary shall not provide more than $15,000,000 in Federal assistance under the pilot program to any applicant.

(2) Cost sharing

The Secretary shall not provide more than 50 percent of the cost, incurred during the period of the grant, of any project under the pilot program.

(3) Maximum period of grants

The Secretary shall not fund any applicant under the pilot program for more than 5 years.

(4) Deployment and distribution

The Secretary shall seek to the maximum extent practicable to ensure a broad geographic distribution of project sites.

(5) Transfer of information and knowledge

The Secretary shall establish mechanisms to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(f) Schedule

(1) Publication

Not later than 90 days after August 8, 2005, the Secretary shall publish in the Federal Register, Commerce Business Daily, and elsewhere as appropriate, a request for applications to undertake projects under the pilot program. Applications shall be due not later than 180 days after the date of publication of the notice.

(2) Selection

Not later than 180 days after the date by which applications for grants are due, the Secretary shall select by competitive, peer reviewed proposal, all applications for projects to be awarded a grant under the pilot program.

(g) Definitions

For purposes of carrying out the pilot program, the Secretary shall issue regulations defining any term, as the Secretary determines to be necessary.

(Pub. L. 109–58, title VII, § 721, Aug. 8, 2005, 119 Stat. 818.)

§ 16072. Reports to Congress

(a) Initial report

Not later than 60 days after the date on which grants are awarded under this subpart, the Secretary shall submit to Congress a report containing—

(1) an identification of the grant recipients and a description of the projects to be funded;

(2) an identification of other applicants that submitted applications for the pilot program; and

(3) a description of the mechanisms used by the Secretary to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(b) Evaluation

Not later than 3 years after August 8, 2005, and annually thereafter until the pilot program ends, the Secretary shall submit to Congress a report containing an evaluation of the effectiveness of the pilot program, including—

(1) an assessment of the benefits to the environment derived from the projects included in the pilot program; and

(2) an estimate of the potential benefits to the environment to be derived from widespread application of alternative fueled vehicles and ultra-low sulfur diesel vehicles.

(Pub. L. 109–58, title VII, § 722, Aug. 8, 2005, 119 Stat. 820.)

§ 16073. Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this subpart $200,000,000, to remain available until expended.

(Pub. L. 109–58, title VII, § 723, Aug. 8, 2005, 119 Stat. 821.)

SUBPART 3—FUEL CELL BUSES

§ 16081. Fuel cell transit bus demonstration

(a) In general

The Secretary, in consultation with the Secretary of Transportation, shall establish a transit bus demonstration program to make competitive, merit-based awards for 5-year projects to demonstrate not more than 25 fuel cell transit buses (and necessary infrastructure) in 5 geographically dispersed localities.

(b) Preference

In selecting projects under this section, the Secretary shall give preference to projects that are most likely to mitigate congestion and improve air quality.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this section $10,000,000 for each of fiscal years 2006 through 2010.

(Pub. L. 109–58, title VII, § 731, Aug. 8, 2005, 119 Stat. 821.)

PART C—CLEAN SCHOOL BUSES

§ 16091. Clean school bus program [1]

(a) Definitions

In this section:

(1) Administrator

The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) Alternative fuel

The term ''alternative fuel'' means—

(A) liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, or propane;

(B) methanol or ethanol at no less than 85 percent by volume; or

(C) biodiesel conforming with standards published by the American Society for Testing and Materials as of August 8, 2005.

(3) Clean school bus

The term ''clean school bus'' means a school bus with a gross vehicle weight of greater than 14,000 pounds that—

(A) is powered by a heavy duty engine; and

(B) is operated solely on an alternative fuel or ultra-low sulfur diesel fuel.

(4) Eligible recipient

(A) In general

Subject to subparagraph (B), the term ''eligible recipient'' means—

(i) 1 or more local or State governmental entities responsible for—

(I) providing school bus service to 1 or more public school systems; or

(II) the purchase of school buses;

(ii) 1 or more contracting entities that provide school bus service to 1 or more public school systems; or

(iii) a nonprofit school transportation association.

(B) Special requirements

In the case of eligible recipients identified under clauses (ii) and (iii),[2] the Administrator shall establish timely and appropriate requirements for notice and may establish timely and appropriate requirements for approval by the public school systems that would be served by buses purchased or retrofit using grant funds made available under this section.

(5) Retrofit technology

The term ''retrofit technology'' means a particulate filter or other emissions control equipment that is verified or certified by the Administrator or the California Air Resources Board as an effective emission reduction technology when installed on an existing school bus.

(6) Ultra-low sulfur diesel fuel

The term ''ultra-low sulfur diesel fuel'' means diesel fuel that contains sulfur at not more than 15 parts per million.

(b) Program for retrofit or replacement of certain existing school buses with clean school buses

(1) Establishment

(A) In general

The Administrator, in consultation with the Secretary and other appropriate Federal departments and agencies, shall establish a program for awarding grants on a competitive basis to eligible recipients for the replacement, or retrofit (including repowering, aftertreatment, and remanufactured engines) of, certain existing school buses.

(B) Balancing

In awarding grants under this section, the Administrator shall, to the maximum extent practicable, achieve an appropriate balance between awarding grants—

(i) to replace school buses; and

(ii) to install retrofit technologies.

(2) Priority of grant applications

(A) Replacement

In the case of grant applications to replace school buses, the Administrator shall give priority to applicants that propose to replace school buses manufactured before model year 1977.

(B) Retrofitting

In the case of grant applications to retrofit school buses, the Administrator shall give priority to applicants that propose to retrofit school buses manufactured in or after model year 1991.

[1] This section is substantially identical to section 16091a of this title.

[2] So in original. Probably means clauses (ii) and (iii) of subparagraph (A).

(3) Use of school bus fleet

(A) In general

All school buses acquired or retrofitted with funds provided under this section shall be operated as part of the school bus fleet for which the grant was made for not less than 5 years.

(B) Maintenance, operation, and fueling

New school buses and retrofit technology shall be maintained, operated, and fueled according to manufacturer recommendations or State requirements.

(4) Retrofit grants

The Administrator may award grants for up to 100 percent of the retrofit technologies and installation costs.

(5) Replacement grants

(A) Eligibility for 50 percent grants

The Administrator may award grants for replacement of school buses in the amount of up to one-half of the acquisition costs (including fueling infrastructure) for—

(i) clean school buses with engines manufactured in model year 2005 or 2006 that emit not more than—

(I) 1.8 grams per brake horsepower-hour of non-methane hydrocarbons and oxides of nitrogen; and

(II) .01 grams per brake horsepower-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007, 2008, or 2009 that satisfy regulatory requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter to be applicable for school buses manufactured in model year 2010.

(B) Eligibility for 25 percent grants

The Administrator may award grants for replacement of school buses in the amount of up to one-fourth of the acquisition costs (including fueling infrastructure) for—

(i) clean school buses with engines manufactured in model year 2005 or 2006 that emit not more than—

(I) 2.5 grams per brake horsepower-hour of non-methane hydrocarbons and oxides of nitrogen; and

(II) .01 grams per brake horsepower-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007 or thereafter that satisfy regulatory requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter from school buses manufactured in that model year.

(6) Ultra-low sulfur diesel fuel

(A)[3] In general

In the case of a grant recipient receiving a grant for the acquisition of ultra-low sulfur diesel fuel school buses with engines manufactured in model year 2005 or 2006, the grant recipient shall provide, to the satisfaction of the Administrator—

(i) documentation that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the purposes of the grant; and

(ii) a commitment by the applicant to use that fuel in carrying out the purposes of the grant.

(7) Deployment and distribution

The Administrator shall, to the maximum extent practicable—

(A) achieve nationwide deployment of clean school buses through the program under this section; and

(B) ensure a broad geographic distribution of grant awards, with no State receiving more than 10 percent of the grant funding made available under this section during a fiscal year.

(8) Annual report

(A)[3] In general

Not later than January 31 of each year, the Administrator shall submit to Congress a report that—

(i) evaluates the implementation of this section; and

(ii) describes—

(I) the total number of grant applications received;

(II) the number and types of alternative fuel school buses, ultra-low sulfur diesel fuel school buses, and retrofitted buses requested in grant applications;

(III) grants awarded and the criteria used to select the grant recipients;

(IV) certified engine emission levels of all buses purchased or retrofitted under this section;

(V) an evaluation of the in-use emission level of buses purchased or retrofitted under this section; and

(VI) any other information the Administrator considers appropriate.

(c) Education

(1) In general

Not later than 90 days after August 8, 2005, the Administrator shall develop an education outreach program to promote and explain the grant program.

(2) Coordination with stakeholders

The outreach program shall be designed and conducted in conjunction with national school bus transportation associations and other stakeholders.

(3) Components

The outreach program shall—

(A) inform potential grant recipients on the process of applying for grants;

(B) describe the available technologies and the benefits of the technologies;

(C) explain the benefits of participating in the grant program; and

(D) include, as appropriate, information from the annual report required under subsection (b)(8).

(d) Authorization of appropriations

There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

[3] So in original. No subpar. (B) was enacted.

(1) $55,000,000 for each of fiscal years 2006 and 2007; and

(2) such sums as are necessary for each of fiscal years 2008, 2009, and 2010.

(Pub. L. 109–58, title VII, § 741, Aug. 8, 2005, 119 Stat. 821.)

§ 16091a. Clean school bus program [1]

(a) Definitions

In this section, the following definitions apply:

(1) Administrator

The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) Alternative fuel

The term ''alternative fuel'' means—

(A) liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, or propane;

(B) methanol or ethanol at no less than 85 percent by volume; or

(C) biodiesel conforming with standards published by the American Society for Testing and Materials as of August 10, 2005.

(3) Clean school bus

The term ''clean school bus'' means a school bus with a gross vehicle weight of greater than 14,000 pounds that—

(A) is powered by a heavy duty engine; and

(B) is operated solely on an alternative fuel or ultra-low sulfur diesel fuel.

(4) Eligible recipient

(A) In general

Subject to subparagraph (B), the term ''eligible recipient'' means—

(i) one or more local or State governmental entities responsible for providing school bus service to one or more public school systems or the purchase of school buses;

(ii) one or more contracting entities that provide school bus service to one or more public school systems; or

(iii) a nonprofit school transportation association.

(B) Special requirements

In the case of eligible recipients identified under clauses (ii) and (iii) of subparagraph (A), the Administrator shall establish timely and appropriate requirements for notice and may establish timely and appropriate requirements for approval by the public school systems that would be served by buses purchased or retrofit using grant funds made available under this section.

(5) Retrofit technology

The term ''retrofit technology'' means a particulate filter or other emissions control equipment that is verified or certified by the Administrator or the California Air Resources Board as an effective emission reduction technology when installed on an existing school bus.

(6) Secretary

The term ''Secretary'' means the Secretary of Energy.

(7) Ultra-low sulfur diesel fuel

The term ''ultra-low sulfur diesel fuel'' means diesel fuel that contains sulfur at not more than 15 parts per million.

(b) Program for retrofit or replacement of certain existing school buses with clean school buses

(1) Establishment

(A) In general

The Administrator, in consultation with the Secretary and other appropriate Federal departments and agencies, shall establish a program for awarding grants on a competitive basis to eligible recipients for the replacement of, retrofit (including repowering, aftertreatment, and remanufactured engines) of, or purchase of alternative fuels for, certain existing school buses. The awarding of grants for the purchase of alternative fuels should be consistent with the historic funding levels of the program for such purchase.

(B) Balancing

In awarding grants under this section, the Administrator shall achieve, to the maximum extent practicable, achieve [2] an appropriate balance between awarding grants—

(i) to replace school buses;

(ii) to install retrofit technologies; and

(iii) to purchase and use alternative fuel.

(2) Priority of grant applications

(A) Replacement

In the case of grant applications to replace school buses, the Administrator shall give priority to applicants that propose to replace school buses manufactured before model year 1977.

(B) Retrofitting

In the case of grant applications to retrofit school buses, the Administrator shall give priority to applicants that propose to retrofit school buses manufactured in or after model year 1991.

(3) Use of school bus fleet

(A) In general

All school buses acquired or retrofitted with funds provided under this section shall be operated as part of the school bus fleet for which the grant was made for not less than 5 years.

(B) Maintenance, operation, and fueling

New school buses and retrofit technology shall be maintained, operated, and fueled according to manufacturer recommendations or State requirements.

(4) Retrofit grants

The Administrator may award grants under this section for up to 100 percent of the retrofit technologies and installation costs.

[1] This section is substantially identical to section 16091 of this title.

[2] So in original. The word ''achieve'' probably should not appear.

(5) Replacement grants

(A) Eligibility for 50 percent grants

The Administrator may award grants under this section for replacement of school buses in the amount of up to one-half of the acquisition costs (including fueling infrastructure) for—

(i) clean school buses with engines manufactured in model year 2005 or 2006 that emit not more than—

(I) 1.8 grams per brake horsepower-hour of non-methane hydrocarbons and oxides of nitrogen; and

(II) .01 grams per brake horsepower-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007, 2008, or 2009 that satisfy regulatory requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter to be applicable for school buses manufactured in model year 2010.

(B) Eligibility for 25 percent grants

The Administrator may award grants under this section for replacement of school buses in the amount of up to one-fourth of the acquisition costs (including fueling infrastructure) for—

(i) clean school buses with engines manufactured in model year 2005 or 2006 that emit not more than—

(I) 2.5 grams per brake horsepower-hour of non-methane hydrocarbons and oxides of nitrogen; and

(II) .01 grams per brake horsepower-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007 or thereafter that satisfy regulatory requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter from school buses manufactured in that model year.

(6) Ultra-low sulfur diesel fuel

(A)[3] In general

In the case of a grant recipient receiving a grant for the acquisition of ultra-low sulfur diesel fuel school buses with engines manufactured in model year 2005 or 2006, the grant recipient shall provide, to the satisfaction of the Administrator—

(i) documentation that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the purposes of the grant; and

(ii) a commitment by the applicant to use that fuel in carrying out the purposes of the grant.

(7) Deployment and distribution

The Administrator, to the maximum extent practicable, shall—

(A) achieve nationwide deployment of clean school buses through the program under this section; and

(B) ensure a broad geographic distribution of grant awards, with no State receiving more than 10 percent of the grant funding made available under this section during a fiscal year.

(8) Annual report

(A)[3] In general

Not later than January 31 of each year, the Administrator shall submit to Congress a report that—

(i) evaluates the implementation of this section; and

(ii) describes—

(I) the total number of grant applications received;

(II) the number and types of alternative fuel school buses, ultra-low sulfur diesel fuel school buses, and retrofitted buses requested in grant applications;

(III) grants awarded and the criteria used to select the grant recipients;

(IV) certified engine emission levels of all buses purchased or retrofitted under this section;

(V) an evaluation of the in-use emission level of buses purchased or retrofitted under this section; and

(VI) any other information the Administrator considers appropriate.

(c) Education

(1) In general

Not later than 90 days after August 10, 2005, the Administrator shall develop an education outreach program to promote and explain the grant program.

(2) Coordination with stakeholders

The outreach program shall be designed and conducted in conjunction with national school bus transportation associations and other stakeholders.

(3) Components

The outreach program shall—

(A) inform potential grant recipients on the process of applying for grants;

(B) describe the available technologies and the benefits of the technologies;

(C) explain the benefits of participating in the grant program; and

(D) include, as appropriate, information from the annual report required under subsection (b)(8).

(d) Authorization of appropriations

There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

(1) $55,000,000 for each of fiscal years 2006 and 2007; and

(2) such sums as are necessary for each of fiscal years 2008, 2009, and 2010.

(Pub. L. 109–59, title VI, § 6015, Aug. 10, 2005, 119 Stat. 1884.)

CODIFICATION

Section was enacted as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users or the SAFETEA–LU, and not as part of the Energy Policy Act of 2005 which comprises this chapter.

[3] So in original. No subpar. (B) was enacted.

§ 16092. Diesel truck retrofit and fleet modernization program

(a) Establishment

The Administrator, in consultation with the Secretary, shall establish a program for awarding grants on a competitive basis to public agencies and entities for fleet modernization programs including installation of retrofit technologies for diesel trucks.

(b) Eligible recipients

A grant shall be awarded under this section only to a State or local government or an agency or instrumentality of a State or local government or of two or more State or local governments who will allocate funds, with preference to ports and other major hauling operations.

(c) Awards

(1) In general

The Administrator shall seek, to the maximum extent practicable, to ensure a broad geographic distribution of grants under this section.

(2) Preferences

In making awards of grants under this section, the Administrator shall give preference to proposals that—

(A) will achieve the greatest reductions in emissions of nonmethane hydrocarbons, oxides of nitrogen, and/or particulate matter per proposal or per truck; or

(B) involve the use of Environmental Protection Agency or California Air Resources Board verified emissions control retrofit technology on diesel trucks that operate solely on ultra-low sulfur diesel fuel after September 2006.

(d) Conditions of grant

A grant shall be provided under this section on the conditions that—

(1) trucks which are replacing scrapped trucks and on which retrofit emissions-control technology are to be demonstrated—

(A) will operate on ultra-low sulfur diesel fuel where such fuel is reasonably available or required for sale by State or local law or regulation;

(B) were manufactured in model year 1998 and before; and

(C) will be used for the transportation of cargo goods especially in port areas or used in goods movement and major hauling operations;

(2) grant funds will be used for the purchase of emission control retrofit technology, including State taxes and contract fees; and

(3) grant recipients will provide at least 50 percent of the total cost of the retrofit, including the purchase of emission control retrofit technology and all necessary labor for installation of the retrofit, from any source other than this section.

(e) Verification

Not later than 90 days after August 8, 2005, the Administrator shall publish in the Federal Register procedures to—

(1) make grants pursuant to this section;

(2) verify that trucks powered by ultra-low sulfur diesel fuel on which retrofit emissions-control technology are to be demonstrated will operate on diesel fuel containing not more than 15 parts per million of sulfur after September 2006; and

(3) verify that grants are administered in accordance with this section.

(f) Authorization of appropriations

There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended the following sums:

(1) $20,000,000 for fiscal year 2006.

(2) $35,000,000 for fiscal year 2007.

(3) $45,000,000 for fiscal year 2008.

(4) Such sums as are necessary for each of fiscal years 2009 and 2010.

(Pub. L. 109–58, title VII, § 742, Aug. 8, 2005, 119 Stat. 824.)

§ 16093. Fuel cell school buses

(a) Establishment

The Secretary shall establish a program for entering into cooperative agreements—

(1) with private sector fuel cell bus developers for the development of fuel cell-powered school buses; and

(2) subsequently, with not less than 2 units of local government using natural gas-powered school buses and such private sector fuel cell bus developers to demonstrate the use of fuel cell-powered school buses.

(b) Cost sharing

The non-Federal contribution for activities funded under this section shall be not less than—

(1) 20 percent for fuel infrastructure development activities; and

(2) 50 percent for demonstration activities and for development activities not described in paragraph (1).

(c) Reports to Congress

Not later than 3 years after August 8, 2005, the Secretary shall transmit to Congress a report that—

(1) evaluates the process of converting natural gas infrastructure to accommodate fuel cell-powered school buses; and

(2) assesses the results of the development and demonstration program under this section.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this section $25,000,000 for the period of fiscal years 2006 through 2009.

(Pub. L. 109–58, title VII, § 743, Aug. 8, 2005, 119 Stat. 826.)

PART D—MISCELLANEOUS

§ 16101. Railroad efficiency

(a) Establishment

The Secretary shall (in cooperation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency)

establish a cost-shared, public-private research partnership involving the Federal Government, railroad carriers, locomotive manufacturers and equipment suppliers, and the Association of American Railroads, to develop and demonstrate railroad locomotive technologies that increase fuel economy, reduce emissions, and lower costs of operation.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this section—

(1) $15,000,000 for fiscal year 2006;

(2) $20,000,000 for fiscal year 2007; and

(3) $30,000,000 for fiscal year 2008.

(Pub. L. 109–58, title VII, § 751, Aug. 8, 2005, 119 Stat. 826.)

§ 16102. Diesel fueled vehicles

(a) Definition of tier 2 emission standards

In this section, the term ''tier 2 emission standards'' means the motor vehicle emission standards that apply to passenger cars, light trucks, and larger passenger vehicles manufactured after the 2003 model year, as issued on February 10, 2000, by the Administrator of the Environmental Protection Agency under sections 7521 and 7545 of this title.

(b) Diesel combustion and after-treatment technologies

The Secretary shall accelerate efforts to improve diesel combustion and after-treatment technologies for use in diesel fueled motor vehicles.

(c) Goals

The Secretary shall carry out subsection (b) with a view toward achieving the following goals:

(1) Developing and demonstrating diesel technologies that, not later than 2010, meet the following standards:

(A) Tier 2 emission standards.

(B) The heavy-duty emissions standards of 2007 that are applicable to heavy-duty vehicles under regulations issued by the Administrator of the Environmental Protection Agency as of August 8, 2005.

(2) Developing the next generation of low-emission, high efficiency diesel engine technologies, including homogeneous charge compression ignition technology.

(Pub. L. 109–58, title VII, § 754, Aug. 8, 2005, 119 Stat. 828.)

§ 16103. Conserve by Bicycling Program

(a) Definitions

In this section:

(1) Program

The term ''program'' means the Conserve by Bicycling Program established by subsection (b).

(2) Secretary

The term ''Secretary'' means the Secretary of Transportation.

(b) Establishment

There is established within the Department of Transportation a program to be known as the ''Conserve by Bicycling Program''.

(c) Projects

(1) In general

In carrying out the program, the Secretary shall establish not more than 10 pilot projects that are—

(A) dispersed geographically throughout the United States; and

(B) designed to conserve energy resources by encouraging the use of bicycles in place of motor vehicles.

(2) Requirements

A pilot project described in paragraph (1) shall—

(A) use education and marketing to convert motor vehicle trips to bicycle trips;

(B) document project results and energy savings (in estimated units of energy conserved);

(C) facilitate partnerships among interested parties in at least 2 of the fields of—

(i) transportation;

(ii) law enforcement;

(iii) education;

(iv) public health;

(v) environment; and

(vi) energy;

(D) maximize bicycle facility investments;

(E) demonstrate methods that may be used in other regions of the United States; and

(F) facilitate the continuation of ongoing programs that are sustained by local resources.

(3) Cost sharing

At least 20 percent of the cost of each pilot project described in paragraph (1) shall be provided from non-Federal sources.

(d) Energy and bicycling research study

(1) In general

Not later than 2 years after August 8, 2005, the Secretary shall enter into a contract with the National Academy of Sciences for, and the National Academy of Sciences shall conduct and submit to Congress a report on, a study on the feasibility of converting motor vehicle trips to bicycle trips.

(2) Components

The study shall—

(A) document the results or progress of the pilot projects under subsection (c);

(B) determine the type and duration of motor vehicle trips that people in the United States may feasibly make by bicycle, taking into consideration factors such as—

(i) weather;

(ii) land use and traffic patterns;

(iii) the carrying capacity of bicycles; and

(iv) bicycle infrastructure;

(C) determine any energy savings that would result from the conversion of motor vehicle trips to bicycle trips;

(D) include a cost-benefit analysis of bicycle infrastructure investments; and

(E) include a description of any factors that would encourage more motor vehicle trips to be replaced with bicycle trips.

(e) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this section $6,200,000, to remain available until expended, of which—

(1) $5,150,000 shall be used to carry out pilot projects described in subsection (c);

(2) $300,000 shall be used by the Secretary to coordinate, publicize, and disseminate the results of the program; and

(3) $750,000 shall be used to carry out subsection (d).

(Pub. L. 109–58, title VII, § 755, Aug. 8, 2005, 119 Stat. 828.)

§ 16104. Reduction of engine idling

(a) Definitions

In this section:

(1) Administrator

The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) Advanced truck stop electrification system

The term ''advanced truck stop electrification system'' means a stationary system that delivers heat, air conditioning, electricity, or communications, and is capable of providing verifiable and auditable evidence of use of those services, to a heavy-duty vehicle and any occupants of the heavy-duty vehicle with or without relying on components mounted onboard the heavy-duty vehicle for delivery of those services.

(3) Auxiliary power unit

The term ''auxiliary power unit'' means an integrated system that—

(A) provides heat, air conditioning, engine warming, or electricity to components on a heavy-duty vehicle; and

(B) is certified by the Administrator under part 89 of title 40, Code of Federal Regulations (or any successor regulation), as meeting applicable emission standards.

(4) Heavy-duty vehicle

The term ''heavy-duty vehicle'' means a vehicle that—

(A) has a gross vehicle weight rating greater than 8,500 pounds; and

(B) is powered by a diesel engine.

(5) Idle reduction technology

The term ''idle reduction technology'' means an advanced truck stop electrification system, auxiliary power unit, or other technology that—

(A) is used to reduce long-duration idling; and

(B) allows for the main drive engine or auxiliary refrigeration engine to be shut down.

(6) Energy conservation technology

the[1] term ''energy conservation technology'' means any device, system of devices, or equipment that improves the fuel economy.

(7) Long-duration idling

(A) In general

The term ''long-duration idling'' means the operation of a main drive engine or auxiliary refrigeration engine, for a period greater than 15 consecutive minutes, at a time at which the main drive engine is not engaged in gear.

(B) Exclusions

The term ''long-duration idling'' does not include the operation of a main drive engine or auxiliary refrigeration engine during a routine stoppage associated with traffic movement or congestion.

(b) Idle reduction technology benefits, programs, and studies

(1) In general

Not later than 90 days after August 8, 2005, the Administrator shall—

(A)(i) commence a review of the mobile source air emission models of the Environmental Protection Agency used under the Clean Air Act (42 U.S.C. 7401 et seq.) to determine whether the models accurately reflect the emissions resulting from long-duration idling of heavy-duty vehicles and other vehicles and engines; and

(ii) update those models as the Administrator determines to be appropriate; and

(B)(i) commence a review of the emission reductions achieved by the use of idle reduction technology; and

(ii) complete such revisions of the regulations and guidance of the Environmental Protection Agency as the Administrator determines to be appropriate.

(2) Deadline for completion

Not later than 180 days after August 8, 2005, the Administrator shall—

(A) complete the reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1); and

(B) prepare and make publicly available one or more reports on the results of the reviews.

(3) Discretionary inclusions

The reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1) and the reports under paragraph (2)(B) may address the potential fuel savings resulting from use of idle reduction technology.

(4) Idle reduction and energy conservation deployment program

(A) Establishment

(i) In general

Not later than 90 days after August 8, 2005, the Administrator, in consultation with the Secretary of Transportation shall, through the Environmental Protection Agency's SmartWay Transport Partnership, establish a program to support deployment of idle reduction and energy conservation technologies.

(ii) Priority

The Administrator shall give priority to the deployment of idle reduction and energy conservation technologies based on the costs and beneficial effects on air quality and ability to lessen the emission of criteria air pollutants.

[1] So in original. Probably should be capitalized.

(B) Funding

(i) Authorization of appropriations

There are authorized to be appropriated to the Administrator to carry out subparagraph (A) for the purpose of reducing extended idling from heavy-duty vehicles $19,500,000 for fiscal year 2006, $30,000,000 for fiscal year 2007, and $45,000,000 for fiscal year 2008.

(ii) Locomotives

There are authorized to be appropriated to the administrator to carry out subparagraph (A) for the purpose of reducing extended idling from locomotives $10,000,000 for fiscal year 2006, $15,000,000 for fiscal year 2007, and $20,000,000 for fiscal year 2008.

(iii) Cost sharing

Subject to clause (iv), the Administrator shall require at least 50 percent of the costs directly and specifically related to any project under this section to be provided from non-Federal sources.

(iv) Necessary and appropriate reductions

The Administrator may reduce the non-Federal requirement under clause (iii) if the Administrator determines that the reduction is necessary and appropriate to meet the objectives of this section.

(5) Idling location study

(A) In general

Not later than 90 days after August 8, 2005, the Administrator, in consultation with the Secretary of Transportation, shall commence a study to analyze all locations at which heavy-duty vehicles stop for long-duration idling, including—

(i) truck stops;

(ii) rest areas;

(iii) border crossings;

(iv) ports;

(v) transfer facilities; and

(vi) private terminals.

(B) Deadline for completion

Not later than 180 days after August 8, 2005, the Administrator shall—

(i) complete the study under subparagraph (A); and

(ii) prepare and make publicly available one or more reports of the results of the study.

(c) Omitted

(d) Report

Not later than 60 days after the date on which funds are initially awarded under this section, and on an annual basis thereafter, the Administrator shall submit to Congress a report containing—

(1) an identification of the grant recipients, a description of the projects to be funded and the amount of funding provided; and

(2) an identification of all other applicants that submitted applications under the program.

(Pub. L. 109–58, title VII, § 756, Aug. 8, 2005, 119 Stat. 829.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(1)(A)(i), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

CODIFICATION

Section is comprised of section 756 of Pub. L. 109–58. Subsec. (c) of section 756 of Pub. L. 109–58 amended section 127 of Title 23, Highways.

§ 16105. Biodiesel engine testing program

(a) In general

Not later that[1] 180 days after August 8, 2005, the Secretary shall initiate a partnership with diesel engine, diesel fuel injection system, and diesel vehicle manufacturers and diesel and biodiesel fuel providers, to include biodiesel testing in advanced diesel engine and fuel system technology.

(b) Scope

The program shall provide for testing to determine the impact of biodiesel from different sources on current and future emission control technologies, with emphasis on—

(1) the impact of biodiesel on emissions warranty, in-use liability, and antitampering provisions;

(2) the impact of long-term use of biodiesel on engine operations;

(3) the options for optimizing these technologies for both emissions and performance when switching between biodiesel and diesel fuel; and

(4) the impact of using biodiesel in these fueling systems and engines when used as a blend with 2006 Environmental Protection Agency-mandated diesel fuel containing a maximum of 15-parts-per-million sulfur content.

(c) Report

Not later than 2 years after August 8, 2005, the Secretary shall provide an interim report to Congress on the findings of the program, including a comprehensive analysis of impacts from biodiesel on engine operation for both existing and expected future diesel technologies, and recommendations for ensuring optimal emissions reductions and engine performance with biodiesel.

(d) Authorization of appropriations

There are authorized to be appropriated $5,000,000 for each of fiscal years 2006 through 2010 to carry out this section.

(e) Definition

For purposes of this section, the term ''biodiesel'' means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 7545 of this title and that meets the American Society for Testing and Materials D6751–02a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

[1] So in original. Probably should be ''than''.

(Pub. L. 109–58, title VII, § 757, Aug. 8, 2005, 119 Stat. 832.)

§ 16106. Ultra-efficient engine technology for aircraft

(a) Ultra-efficient engine technology partnership

The Secretary shall enter into a cooperative agreement with the National Aeronautics and Space Administration for the development of ultra-efficient engine technology for aircraft.

(b) Performance objective

The Secretary shall establish the following performance objectives for the program set forth in subsection (a):

(1) A fuel efficiency increase of at least 10 percent.

(2) A reduction in the impact of landing and takeoff nitrogen oxides emissions on local air quality of 70 percent.

(3) Exploring advanced concepts, alternate propulsion, and power configurations, including hybrid fuel cell powered systems.

(4) Exploring the use of alternate fuel in conventional or nonconventional turbine-based systems.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section $50,000,000 for each of the fiscal years 2006, 2007, 2008, 2009, and 2010.

(Pub. L. 109–58, title VII, § 758, Aug. 8, 2005, 119 Stat. 833.)

PART E—FEDERAL AND STATE PROCUREMENT

§ 16121. Definitions

In this part:

(1) Fuel cell

The term ''fuel cell'' means a device that directly converts the chemical energy of a fuel and an oxidant into electricity by electrochemical processes occurring at separate electrodes in the device.

(2) Light-duty or heavy-duty vehicle fleet

The term ''light-duty or heavy-duty vehicle fleet'' does not include any vehicle designed or procured for combat or combat-related missions.

(3) Stationary; portable

The terms ''stationary'' and ''portable'', when used in reference to a fuel cell, include—

(A) continuous electric power; and

(B) backup electric power.

(4) Task Force

The term ''Task Force'' means the Hydrogen and Fuel Cell Technical Task Force established under section 16155 of this title.

(5) Technical Advisory Committee

The term ''Technical Advisory Committee'' means the independent Technical Advisory Committee selected under section 16156 of this title.

(Pub. L. 109–58, title VII, § 781, Aug. 8, 2005, 119 Stat. 835.)

§ 16122. Federal and State procurement of fuel cell vehicles and hydrogen energy systems

(a) Purposes

The purposes of this section are—

(1) to stimulate acceptance by the market of fuel cell vehicles and hydrogen energy systems;

(2) to support development of technologies relating to fuel cell vehicles, public refueling stations, and hydrogen energy systems; and

(3) to require the Federal government,[1] which is the largest single user of energy in the United States, to adopt those technologies as soon as practicable after the technologies are developed, in conjunction with private industry partners.

(b) Federal leases and purchases

(1) Requirement

(A) In general

Not later than January 1, 2010, the head of any Federal agency that uses a light-duty or heavy-duty vehicle fleet shall lease or purchase fuel cell vehicles and hydrogen energy systems to meet any applicable energy savings goal described in subsection (c).

(B) Learning demonstration vehicles

The Secretary may lease or purchase appropriate vehicles developed under subsections (a)(10) and (b)(1)(A) of section 16157 of this title to meet the requirement in subparagraph (A).

(2) Costs of leases and purchases

(A) In general

The Secretary, in cooperation with the Task Force and the Technical Advisory Committee, shall pay to Federal agencies (or share the cost under interagency agreements) the difference in cost between—

(i) the cost to the agencies of leasing or purchasing fuel cell vehicles and hydrogen energy systems under paragraph (1); and

(ii) the cost to the agencies of a feasible alternative to leasing or purchasing fuel cell vehicles and hydrogen energy systems, as determined by the Secretary.

(B) Competitive costs and management structures

In carrying out subparagraph (A), the Secretary, in consultation with the agency, may use the General Services Administration or any commercial vendor to ensure—

(i) a cost-effective purchase of a fuel cell vehicle or hydrogen energy system; or

(ii) a cost-effective management structure of the lease of a fuel cell vehicle or hydrogen energy system.

(3) Exception

(A) In general

If the Secretary determines that the head of an agency described in paragraph (1) cannot find an appropriately efficient and reliable fuel cell vehicle or hydrogen energy system in accordance with paragraph (1), that

[1] So in original. Probably should be capitalized.

agency shall be excepted from compliance with paragraph (1).

(B) Consideration

In making a determination under subparagraph (A), the Secretary shall consider—

(i) the needs of the agency; and

(ii) an evaluation performed by—

(I) the Task Force; or

(II) the Technical Advisory Committee.

(c) Energy savings goals

(1) In general

(A) Regulations

Not later than December 31, 2006, the Secretary shall—

(i) in cooperation with the Task Force, promulgate regulations for the period of 2008 through 2010 that extend and augment energy savings goals for each Federal agency, in accordance with any Executive order issued after March 2000; and

(ii) promulgate regulations to expand the minimum Federal fleet requirement and credit allowances for fuel cell vehicle systems under section 13212 of this title.

(B) Review, evaluation, and new regulations

Not later than December 31, 2010, the Secretary shall—

(i) review the regulations promulgated under subparagraph (A);

(ii) evaluate any progress made toward achieving energy savings by Federal agencies; and

(iii) promulgate new regulations for the period of 2011 through 2015 to achieve additional energy savings by Federal agencies relating to technical and cost-performance standards.

(2) Offsetting energy savings goals

An agency that leases or purchases a fuel cell vehicle or hydrogen energy system in accordance with subsection (b)(1) may use that lease or purchase to count toward an energy savings goal of the agency.

(d) Cooperative program with State agencies

(1) In general

The Secretary may establish a cooperative program with State agencies managing motor vehicle fleets to encourage purchase of fuel cell vehicles by the agencies.

(2) Incentives

In carrying out the cooperative program, the Secretary may offer incentive payments to a State agency to assist with the cost of planning, differential purchases, and administration.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section—

(1) $15,000,000 for fiscal year 2008;

(2) $25,000,000 for fiscal year 2009;

(3) $65,000,000 for fiscal year 2010; and

(4) such sums as are necessary for each of fiscal years 2011 through 2015.

(Pub. L. 109–58, title VII, § 782, Aug. 8, 2005, 119 Stat. 835.)

§ 16123. Federal procurement of stationary, portable, and micro fuel cells

(a) Purposes

The purposes of this section are—

(1) to stimulate acceptance by the market of stationary, portable, and micro fuel cells; and

(2) to support development of technologies relating to stationary, portable, and micro fuel cells.

(b) Federal leases and purchases

(1) In general

Not later than January 1, 2006, the head of any Federal agency that uses electrical power from stationary, portable, or microportable devices shall lease or purchase a stationary, portable, or micro fuel cell to meet any applicable energy savings goal described in subsection (c).

(2) Costs of leases and purchases

(A) In general

The Secretary, in cooperation with the Task Force and the Technical Advisory Committee, shall pay the cost to Federal agencies (or share the cost under interagency agreements) of leasing or purchasing stationary, portable, and micro fuel cells under paragraph (1).

(B) Competitive costs and management structures

In carrying out subparagraph (A), the Secretary, in consultation with the agency, may use the General Services Administration or any commercial vendor to ensure—

(i) a cost-effective purchase of a stationary, portable, or micro fuel cell; or

(ii) a cost-effective management structure of the lease of a stationary, portable, or micro fuel cell.

(3) Exception

(A) In general

If the Secretary determines that the head of an agency described in paragraph (1) cannot find an appropriately efficient and reliable stationary, portable, or micro fuel cell in accordance with paragraph (1), that agency shall be excepted from compliance with paragraph (1).

(B) Consideration

In making a determination under subparagraph (A), the Secretary shall consider—

(i) the needs of the agency; and

(ii) an evaluation performed by—

(I) the Task Force; or

(II) the Technical Advisory Committee of the Task Force.

(c) Energy savings goals

An agency that leases or purchases a stationary, portable, or micro fuel cell in accordance with subsection (b)(1) may use that lease or purchase to count toward an energy savings goal described in section 16157 of this title that is applicable to the agency.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section—

(1) $20,000,000 for fiscal year 2006;
(2) $50,000,000 for fiscal year 2007;
(3) $75,000,000 for fiscal year 2008;
(4) $100,000,000 for fiscal year 2009;
(5) $100,000,000 for fiscal year 2010; and
(6) such sums as are necessary for each of fiscal years 2011 through 2015.

(Pub. L. 109–58, title VII, § 783, Aug. 8, 2005, 119 Stat. 837.)

PART F—DIESEL EMISSIONS REDUCTION

§ 16131. Definitions

In this part:

(1) Administrator

The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) Certified engine configuration

The term ''certified engine configuration'' means a new, rebuilt, or remanufactured engine configuration—

(A) that has been certified or verified by—
(i) the Administrator; or
(ii) the California Air Resources Board;

(B) that meets or is rebuilt or remanufactured to a more stringent set of engine emission standards, as determined by the Administrator; and

(C) in the case of a certified engine configuration involving the replacement of an existing engine or vehicle, an engine configuration that replaced an engine that was—
(i) removed from the vehicle; and
(ii) returned to the supplier for remanufacturing to a more stringent set of engine emissions standards or for scrappage.

(3) Eligible entity

The term ''eligible entity'' means—

(A) a regional, State, local, or tribal agency or port authority with jurisdiction over transportation or air quality; and

(B) a nonprofit organization or institution that—
(i) represents or provides pollution reduction or educational services to persons or organizations that own or operate diesel fleets; or
(ii) has, as its principal purpose, the promotion of transportation or air quality.

(4) Emerging technology

The term ''emerging technology'' means a technology that is not certified or verified by the Administrator or the California Air Resources Board but for which an approvable application and test plan has been submitted for verification to the Administrator or the California Air Resources Board.

(5) Fleet

The term ''fleet'' means one or more diesel vehicles or mobile or stationary diesel engines.

(6) Heavy-duty truck

The term ''heavy-duty truck'' has the meaning given the term ''heavy duty vehicle'' in section 7521 of this title.

(7) Medium-duty truck

The term ''medium-duty truck'' has such meaning as shall be determined by the Administrator, by regulation.

(8) Verified technology

The term ''verified technology'' means a pollution control technology, including a retrofit technology, advanced truckstop electrification system, or auxiliary power unit, that has been verified by—
(A) the Administrator; or
(B) the California Air Resources Board.

(Pub. L. 109–58, title VII, § 791, Aug. 8, 2005, 119 Stat. 838.)

§ 16132. National grant and loan programs

(a) In general

The Administrator shall use 70 percent of the funds made available to carry out this part for each fiscal year to provide grants and low-cost revolving loans, as determined by the Administrator, on a competitive basis, to eligible entities to achieve significant reductions in diesel emissions in terms of—
(1) tons of pollution produced; and
(2) diesel emissions exposure, particularly from fleets operating in areas designated by the Administrator as poor air quality areas.

(b) Distribution

(1) In general

The Administrator shall distribute funds made available for a fiscal year under this part in accordance with this section.

(2) Fleets

The Administrator shall provide not less than 50 percent of funds available for a fiscal year under this section to eligible entities for the benefit of public fleets.

(3) Engine configurations and technologies

(A) Certified engine configurations and verified technologies

The Administrator shall provide not less than 90 percent of funds available for a fiscal year under this section to eligible entities for projects using—
(i) a certified engine configuration; or
(ii) a verified technology.

(B) Emerging technologies

(i) In general

The Administrator shall provide not more than 10 percent of funds available for a fiscal year under this section to eligible entities for the development and commercialization of emerging technologies.

(ii) Application and test plan

To receive funds under clause (i), a manufacturer, in consultation with an eligible entity, shall submit for verification to the Administrator or the California Air Resources Board a test plan for the emerging technology, together with the application under subsection (c).

(c) Applications

(1) In general

To receive a grant or loan under this section, an eligible entity shall submit to the Ad-

ministrator an application at a time, in a manner, and including such information as the Administrator may require.

(2) Inclusions

An application under this subsection shall include—

(A) a description of the air quality of the area served by the eligible entity;

(B) the quantity of air pollution produced by the diesel fleets in the area served by the eligible entity;

(C) a description of the project proposed by the eligible entity, including—

(i) any certified engine configuration, verified technology, or emerging technology to be used or funded by the eligible entity; and

(ii) the means by which the project will achieve a significant reduction in diesel emissions;

(D) an evaluation (using methodology approved by the Administrator or the National Academy of Sciences) of the quantifiable and unquantifiable benefits of the emissions reductions of the proposed project;

(E) an estimate of the cost of the proposed project;

(F) a description of the age and expected lifetime control of the equipment used or funded by the eligible entity;

(G) a description of the diesel fuel available in the areas to be served by the eligible entity, including the sulfur content of the fuel; and

(H) provisions for the monitoring and verification of the project.

(3) Priority

In providing a grant or loan under this section, the Administrator shall give priority to proposed projects that, as determined by the Administrator—

(A) maximize public health benefits;

(B) are the most cost-effective;

(C) serve areas—

(i) with the highest population density;

(ii) that are poor air quality areas, including areas identified by the Administrator as—

(I) in nonattainment or maintenance of national ambient air quality standards for a criteria pollutant;

(II) Federal Class I areas; or

(III) areas with toxic air pollutant concerns;

(iii) that receive a disproportionate quantity of air pollution from a[1] diesel fleets, including truckstops, ports, rail yards, terminals, and distribution centers; or

(iv) that use a community-based multistakeholder collaborative process to reduce toxic emissions;

(D) include a certified engine configuration, verified technology, or emerging technology that has a long expected useful life;

(E) will maximize the useful life of any certified engine configuration, verified technology, or emerging technology used or funded by the eligible entity;

(F) conserve diesel fuel; and

(G) use diesel fuel with a sulfur content of less than or equal to 15 parts per million, as the Administrator determines to be appropriate.

(d) Use of funds

(1) In general

An eligible entity may use a grant or loan provided under this section to fund the costs of—

(A) a retrofit technology (including any incremental costs of a repowered or new diesel engine) that significantly reduces emissions through development and implementation of a certified engine configuration, verified technology, or emerging technology for—

(i) a bus;

(ii) a medium-duty truck or a heavy-duty truck;

(iii) a marine engine;

(iv) a locomotive; or

(v) a nonroad engine or vehicle used in—

(I) construction;

(II) handling of cargo (including at a port or airport);

(III) agriculture;

(IV) mining; or

(V) energy production; or

(B) programs or projects to reduce long-duration idling using verified technology involving a vehicle or equipment described in subparagraph (A).

(2) Regulatory programs

(A) In general

Notwithstanding paragraph (1), no grant or loan provided under this section shall be used to fund the costs of emissions reductions that are mandated under Federal, State or local law.

(B) Mandated

For purposes of subparagraph (A), voluntary or elective emission reduction measures shall not be considered ''mandated'', regardless of whether the reductions are included in the State implementation plan of a State.

(Pub. L. 109–58, title VII, § 792, Aug. 8, 2005, 119 Stat. 839.)

§ 16133. State grant and loan programs

(a) In general

Subject to the availability of adequate appropriations, the Administrator shall use 30 percent of the funds made available for a fiscal year under this part to support grant and loan programs administered by States that are designed to achieve significant reductions in diesel emissions.

(b) Applications

The Administrator shall—

(1) provide to States guidance for use in applying for grant or loan funds under this section, including information regarding—

(A) the process and forms for applications;

[1] So in original. The word ''a'' probably should not appear.

(B) permissible uses of funds received; and

(C) the cost-effectiveness of various emission reduction technologies eligible to be carried out using funds provided under this section; and

(2) establish, for applications described in paragraph (1)—

(A) an annual deadline for submission of the applications;

(B) a process by which the Administrator shall approve or disapprove each application; and

(C) a streamlined process by which a State may renew an application described in paragraph (1) for subsequent fiscal years.

(c) Allocation of funds

(1) In general

For each fiscal year, the Administrator shall allocate among States for which applications are approved by the Administrator under subsection (b)(2)(B) funds made available to carry out this section for the fiscal year.

(2) Allocation

Using not more than 20 percent of the funds made available to carry out this part for a fiscal year, the Administrator shall provide to each State described in paragraph (1) for the fiscal year an allocation of funds that is equal to—

(A) if each of the 50 States qualifies for an allocation, an amount equal to 2 percent of the funds made available to carry out this section; or

(B) if fewer than 50 States qualifies[1] for an allocation, an amount equal to the amount described in subparagraph (A), plus an additional amount equal to the product obtained by multiplying—

(i) the proportion that—

(I) the population of the State; bears to

(II) the population of all States described in paragraph (1); by

(ii) the amount of funds remaining after each State described in paragraph (1) receives the 2-percent allocation under this paragraph.

(3) State matching incentive

(A) In general

If a State agrees to match the allocation provided to the State under paragraph (2) for a fiscal year, the Administrator shall provide to the State for the fiscal year an additional amount equal to 50 percent of the allocation of the State under paragraph (2).

(B) Requirements

A State—

(i) may not use funds received under this part to pay a matching share required under this subsection; and

(ii) shall not be required to provide a matching share for any additional amount received under subparagraph (A).

(4) Unclaimed funds

Any funds that are not claimed by a State for a fiscal year under this subsection shall be used to carry out section 16132 of this title.

[1] So in original. Probably should be ''qualify''.

(d) Administration

(1) In general

Subject to paragraphs (2) and (3) and, to the extent practicable, the priority areas listed in section 16132(c)(3) of this title, a State shall use any funds provided under this section to develop and implement such grant and low-cost revolving loan programs in the State as are appropriate to meet State needs and goals relating to the reduction of diesel emissions.

(2) Apportionment of funds

The Governor of a State that receives funding under this section may determine the portion of funds to be provided as grants or loans.

(3) Use of funds

A grant or loan provided under this section may be used for a project relating to—

(A) a certified engine configuration; or

(B) a verified technology.

(Pub. L. 109–58, title VII, § 793, Aug. 8, 2005, 119 Stat. 841.)

§ 16134. Evaluation and report

(a) In general

Not later than 1 year after the date on which funds are made available under this part, and biennially thereafter, the Administrator shall submit to Congress a report evaluating the implementation of the programs under this part.

(b) Inclusions

The report shall include a description of—

(1) the total number of grant applications received;

(2) each grant or loan made under this part, including the amount of the grant or loan;

(3) each project for which a grant or loan is provided under this part, including the criteria used to select the grant or loan recipients;

(4) the actual and estimated air quality and diesel fuel conservation benefits, cost-effectiveness, and cost-benefits of the grant and loan programs under this part;

(5) the problems encountered by projects for which a grant or loan is provided under this part; and

(6) any other information the Administrator considers to be appropriate.

(Pub. L. 109–58, title VII, § 794, Aug. 8, 2005, 119 Stat. 843.)

§ 16135. Outreach and incentives

(a) Definition of eligible technology

In this section, the term ''eligible technology'' means—

(1) a verified technology; or

(2) an emerging technology.

(b) Technology transfer program

(1) In general

The Administrator shall establish a program under which the Administrator—

(A) informs stakeholders of the benefits of eligible technologies; and

(B) develops nonfinancial incentives to promote the use of eligible technologies.

(2) Eligible stakeholders

Eligible stakeholders under this section include—

(A) equipment owners and operators;

(B) emission and pollution control technology manufacturers;

(C) engine and equipment manufacturers;

(D) State and local officials responsible for air quality management;

(E) community organizations; and

(F) public health, educational, and environmental organizations.

(c) State implementation plans

The Administrator shall develop appropriate guidance to provide credit to a State for emission reductions in the State created by the use of eligible technologies through a State implementation plan under section 7410 of this title.

(d) International markets

The Administrator, in coordination with the Department of Commerce and industry stakeholders, shall inform foreign countries with air quality problems of the potential of technology developed or used in the United States to provide emission reductions in those countries.

(Pub. L. 109–58, title VII, § 795, Aug. 8, 2005, 119 Stat. 843.)

§ 16136. Effect of part

Nothing in this part affects any authority under the Clean Air Act (42 U.S.C. 7401 et seq.) in existence on the day before August 8, 2005.

(Pub. L. 109–58, title VII, § 796, Aug. 8, 2005, 119 Stat. 844.)

REFERENCES IN TEXT

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

§ 16137. Authorization of appropriations

There is authorized to be appropriated to carry out this part $200,000,000 for each of fiscal years 2007 through 2011, to remain available until expended.

(Pub. L. 109–58, title VII, § 797, Aug. 8, 2005, 119 Stat. 844.)

SUBCHAPTER VIII—HYDROGEN

§ 16151. Purposes

The purposes of this subchapter are—

(1) to enable and promote comprehensive development, demonstration, and commercialization of hydrogen and fuel cell technology in partnership with industry;

(2) to make critical public investments in building strong links to private industry, institutions of higher education, National Laboratories, and research institutions to expand innovation and industrial growth;

(3) to build a mature hydrogen economy that creates fuel diversity in the massive transportation sector of the United States;

(4) to sharply decrease the dependency of the United States on imported oil, eliminate most emissions from the transportation sector, and greatly enhance our energy security; and

(5) to create, strengthen, and protect a sustainable national energy economy.

(Pub. L. 109–58, title VIII, § 802, Aug. 8, 2005, 119 Stat. 844.)

SHORT TITLE

For short title of title VIII of Pub. L. 109–58, which enacted this subchapter, as the ''Spark M. Matsunaga Hydrogen Act of 2005'', see section 801 of Pub. L. 109–58, set out as a note under section 15801 of this title.

§ 16152. Definitions

In this subchapter:

(1) Fuel cell

The term ''fuel cell'' means a device that directly converts the chemical energy of a fuel, which is supplied from an external source, and an oxidant into electricity by electrochemical processes occurring at separate electrodes in the device.

(2) Heavy-duty vehicle

The term ''heavy-duty vehicle'' means a motor vehicle that—

(A) is rated at more than 8,500 pounds gross vehicle weight;

(B) has a curb weight of more than 6,000 pounds; or

(C) has a basic vehicle frontal area in excess of 45 square feet.

(3) Infrastructure

The term ''infrastructure'' means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen (except for onboard storage).

(4) Light-duty vehicle

The term ''light-duty vehicle'' means a motor vehicle that is rated at 8,500 or less pounds gross vehicle weight.

(5) Stationary; portable

The terms ''stationary'' and ''portable'', when used in reference to a fuel cell, include—

(A) continuous electric power; and

(B) backup electric power.

(6) Task Force

The term ''Task Force'' means the Hydrogen and Fuel Cell Technical Task Force established under section 16155 of this title.

(7) Technical Advisory Committee

The term ''Technical Advisory Committee'' means the independent Technical Advisory Committee established under section 16156 of this title.

(Pub. L. 109–58, title VIII, § 803, Aug. 8, 2005, 119 Stat. 844.)

§ 16153. Plan

Not later than 6 months after August 8, 2005, the Secretary shall transmit to Congress a coordinated plan for the programs described in this suchapter and any other programs of the Department that are directly related to fuel cells or hydrogen. The plan shall describe, at a minimum—

(1) the agenda for the next 5 years for the programs authorized under this subchapter, including the agenda for each activity enumerated in section 16154(e) of this title;

(2) the types of entities that will carry out the activities under this subchapter and what role each entity is expected to play;

(3) the milestones that will be used to evaluate the programs for the next 5 years;

(4) the most significant technical and nontechnical hurdles that stand in the way of achieving the goals described in section 16154 of this title, and how the programs will address those hurdles; and

(5) the policy assumptions that are implicit in the plan, including any assumptions that would affect the sources of hydrogen or the marketability of hydrogen-related products.

(Pub. L. 109–58, title VIII, § 804, Aug. 8, 2005, 119 Stat. 845.)

§ 16154. Programs

(a) In general

The Secretary, in consultation with other Federal agencies and the private sector, shall conduct a research and development program on technologies relating to the production, purification, distribution, storage, and use of hydrogen energy, fuel cells, and related infrastructure.

(b) Goal

The goal of the program shall be to demonstrate and commercialize the use of hydrogen for transportation (in light-duty vehicles and heavy-duty vehicles), utility, industrial, commercial, and residential applications.

(c) Focus

In carrying out activities under this section, the Secretary shall focus on factors that are common to the development of hydrogen infrastructure and the supply of vehicle and electric power for critical consumer and commercial applications, and that achieve continuous technical evolution and cost reduction, particularly for hydrogen production, the supply of hydrogen, storage of hydrogen, and end uses of hydrogen that—

(1) steadily increase production, distribution, and end use efficiency and reduce lifecycle emissions;

(2) resolve critical problems relating to catalysts, membranes, storage, lightweight materials, electronic controls, manufacturability, and other problems that emerge from the program;

(3) enhance sources of renewable fuels and biofuels for hydrogen production; and

(4) enable widespread use of distributed electricity generation and storage.

(d) Public education and research

In carrying out this section, the Secretary shall support enhanced public education and research conducted at institutions of higher education in fundamental sciences, application design, and systems concepts (including education and research relating to materials, subsystems, manufacturability, maintenance, and safety) relating to hydrogen and fuel cells.

(e) Activities

The Secretary, in partnership with the private sector, shall conduct programs to address—

(1) production of hydrogen from diverse energy sources, including—

(A) fossil fuels, which may include carbon capture and sequestration;

(B) hydrogen-carrier fuels (including ethanol and methanol);

(C) renewable energy resources, including biomass; and

(D) nuclear energy;

(2) use of hydrogen for commercial, industrial, and residential electric power generation;

(3) safe delivery of hydrogen or hydrogen-carrier fuels, including—

(A) transmission by pipeline and other distribution methods; and

(B) convenient and economic refueling of vehicles either at central refueling stations or through distributed onsite generation;

(4) advanced vehicle technologies, including—

(A) engine and emission control systems;

(B) energy storage, electric propulsion, and hybrid systems;

(C) automotive materials; and

(D) other advanced vehicle technologies;

(5) storage of hydrogen or hydrogen-carrier fuels, including development of materials for safe and economic storage in gaseous, liquid, or solid form at refueling facilities and onboard vehicles;

(6) development of safe, durable, affordable, and efficient fuel cells, including fuel-flexible fuel cell power systems, improved manufacturing processes, high-temperature membranes, cost-effective fuel processing for natural gas, fuel cell stack and system reliability, low temperature operation, and cold start capability; and

(7) the ability of domestic automobile manufacturers to manufacture commercially available competitive hybrid vehicle technologies in the United States.

(f) Program goals

(1) Vehicles

For vehicles, the goals of the program are—

(A) to enable a commitment by automakers no later than year 2015 to offer safe, affordable, and technically viable hydrogen fuel cell vehicles in the mass consumer market; and

(B) to enable production, delivery, and acceptance by consumers of model year 2020 hydrogen fuel cell and other hydrogen-powered vehicles that will have, when compared to light duty vehicles in model year 2005—

(i) fuel economy that is substantially higher;

(ii) substantially lower emissions of air pollutants; and

(iii) equivalent or improved vehicle fuel system crash integrity and occupant protection.

(2) Hydrogen energy and energy infrastructure

For hydrogen energy and energy infrastructure, the goals of the program are to enable a

commitment not later than 2015 that will lead to infrastructure by 2020 that will provide—

(A) safe and convenient refueling;

(B) improved overall efficiency;

(C) widespread availability of hydrogen from domestic energy sources through—

(i) production, with consideration of emissions levels;

(ii) delivery, including transmission by pipeline and other distribution methods for hydrogen; and

(iii) storage, including storage in surface transportation vehicles;

(D) hydrogen for fuel cells, internal combustion engines, and other energy conversion devices for portable, stationary, micro, critical needs facilities, and transportation applications; and

(E) other technologies consistent with the Department's plan.

(3) Fuel cells

The goals for fuel cells and their portable, stationary, and transportation applications are to enable—

(A) safe, economical, and environmentally sound hydrogen fuel cells;

(B) fuel cells for light duty and other vehicles; and

(C) other technologies consistent with the Department's plan.

(g) Funding

(1) In general

The Secretary shall carry out the programs under this section using a competitive, merit-based review process and consistent with the generally applicable Federal laws and regulations governing awards of financial assistance, contracts, or other agreements.

(2) Research centers

Activities under this section may be carried out by funding nationally recognized university-based or Federal laboratory research centers.

(h) Hydrogen supply

There are authorized to be appropriated to carry out projects and activities relating to hydrogen production, storage, distribution and dispensing, transport, education and coordination, and technology transfer under this section—

(1) $160,000,000 for fiscal year 2006;

(2) $200,000,000 for fiscal year 2007;

(3) $220,000,000 for fiscal year 2008;

(4) $230,000,000 for fiscal year 2009;

(5) $250,000,000 for fiscal year 2010; and

(6) such sums as are necessary for each of fiscal years 2011 through 2020.

(i) Fuel cell technologies

There are authorized to be appropriated to carry out projects and activities relating to fuel cell technologies under this section—

(1) $150,000,000 for fiscal year 2006;

(2) $160,000,000 for fiscal year 2007;

(3) $170,000,000 for fiscal year 2008;

(4) $180,000,000 for fiscal year 2009;

(5) $200,000,000 for fiscal year 2010; and

(6) such sums as are necessary for each of fiscal years 2011 through 2020.

(Pub. L. 109–58, title VIII, § 805, Aug. 8, 2005, 119 Stat. 845.)

§ 16155. Hydrogen and Fuel Cell Technical Task Force

(a) Establishment

Not later than 120 days after August 8, 2005, the President shall establish an interagency task force chaired by the Secretary with representatives from each of the following:

(1) The Office of Science and Technology Policy within the Executive Office of the President.

(2) The Department of Transportation.

(3) The Department of Defense.

(4) The Department of Commerce (including the National Institute of Standards and Technology).

(5) The Department of State.

(6) The Environmental Protection Agency.

(7) The National Aeronautics and Space Administration.

(8) Other Federal agencies as the Secretary determines appropriate.

(b) Duties

(1) Planning

The Task Force shall work toward—

(A) a safe, economical, and environmentally sound fuel infrastructure for hydrogen and hydrogen-carrier fuels, including an infrastructure that supports buses and other fleet transportation;

(B) fuel cells in government and other applications, including portable, stationary, and transportation applications;

(C) distributed power generation, including the generation of combined heat, power, and clean fuels including hydrogen;

(D) uniform hydrogen codes, standards, and safety protocols; and

(E) vehicle hydrogen fuel system integrity safety performance.

(2) Activities

The Task Force may organize workshops and conferences, may issue publications, and may create databases to carry out its duties. The Task Force shall—

(A) foster the exchange of generic, nonproprietary information and technology among industry, academia, and government;

(B) develop and maintain an inventory and assessment of hydrogen, fuel cells, and other advanced technologies, including the commercial capability of each technology for the economic and environmentally safe production, distribution, delivery, storage, and use of hydrogen;

(C) integrate technical and other information made available as a result of the programs and activities under this subchapter;

(D) promote the marketplace introduction of infrastructure for hydrogen fuel vehicles; and

(E) conduct an education program to provide hydrogen and fuel cell information to potential end-users.

(c) Agency cooperation

The heads of all agencies, including those whose agencies are not represented on the Task

Force, shall cooperate with and furnish information to the Task Force, the Technical Advisory Committee, and the Department.

(Pub. L. 109–58, title VIII, § 806, Aug. 8, 2005, 119 Stat. 848.)

§ 16156. Technical Advisory Committee

(a) Establishment

The Hydrogen Technical and Fuel Cell Advisory Committee is established to advise the Secretary on the programs and activities under this subchapter.

(b) Membership

(1) Members

The Technical Advisory Committee shall be comprised of not fewer than 12 nor more than 25 members. The members shall be appointed by the Secretary to represent domestic industry, academia, professional societies, government agencies, Federal laboratories, previous advisory panels, and financial, environmental, and other appropriate organizations based on the Department's assessment of the technical and other qualifications of Technical Advisory Committee members and the needs of the Technical Advisory Committee.

(2) Terms

The term of a member of the Technical Advisory Committee shall not be more than 3 years. The Secretary may appoint members of the Technical Advisory Committee in a manner that allows the terms of the members serving at any time to expire at spaced intervals so as to ensure continuity in the functioning of the Technical Advisory Committee. A member of the Technical Advisory Committee whose term is expiring may be reappointed.

(3) Chairperson

The Technical Advisory Committee shall have a chairperson, who shall be elected by the members from among their number.

(c) Review

The Technical Advisory Committee shall review and make recommendations to the Secretary on—

(1) the implementation of programs and activities under this subchapter;

(2) the safety, economical, and environmental consequences of technologies for the production, distribution, delivery, storage, or use of hydrogen energy and fuel cells; and

(3) the plan under section 16153 of this title.

(d) Response

(1) Consideration of recommendations

The Secretary shall consider, but need not adopt, any recommendations of the Technical Advisory Committee under subsection (c).

(2) Biennial report

The Secretary shall transmit a biennial report to Congress describing any recommendations made by the Technical Advisory Committee since the previous report. The report shall include a description of how the Secretary has implemented or plans to implement the recommendations, or an explanation of the reasons that a recommendation will not be implemented. The report shall be transmitted along with the President's budget proposal.

(e) Support

The Secretary shall provide resources necessary in the judgment of the Secretary for the Technical Advisory Committee to carry out its responsibilities under this subchapter.

(Pub. L. 109–58, title VIII, § 807, Aug. 8, 2005, 119 Stat. 849.)

§ 16157. Demonstration

(a) In general

In carrying out the programs under this section, the Secretary shall fund a limited number of demonstration projects, consistent with this subchapter and a determination of the maturity, cost-effectiveness, and environmental impacts of technologies supporting each project. In selecting projects under this subsection, the Secretary shall, to the extent practicable and in the public interest, select projects that—

(1) involve using hydrogen and related products at existing facilities or installations, such as existing office buildings, military bases, vehicle fleet centers, transit bus authorities, or units of the National Park System;

(2) depend on reliable power from hydrogen to carry out essential activities;

(3) lead to the replication of hydrogen technologies and draw such technologies into the marketplace;

(4) include vehicle, portable, and stationary demonstrations of fuel cell and hydrogen-based energy technologies;

(5) address the interdependency of demand for hydrogen fuel cell applications and hydrogen fuel infrastructure;

(6) raise awareness of hydrogen technology among the public;

(7) facilitate identification of an optimum technology among competing alternatives;

(8) address distributed generation using renewable sources;

(9) carry out demonstrations of evolving hydrogen and fuel cell technologies in national parks, remote island areas, and on Indian tribal land, as selected by the Secretary;

(10) carry out a program to demonstrate developmental hydrogen and fuel cell systems for mobile, portable, and stationary uses, using improved versions of the learning demonstrations program concept of the Department including demonstrations involving—

(A) light-duty vehicles;

(B) heavy-duty vehicles;

(C) fleet vehicles;

(D) specialty industrial and farm vehicles; and

(E) commercial and residential portable, continuous, and backup electric power generation;

(11) in accordance with any code or standards developed in a region, fund prototype, pilot fleet, and infrastructure regional hydrogen supply corridors along the interstate highway system in varied climates across the United States; and

(12) fund demonstration programs that explore the use of hydrogen blends, hybrid hydrogen, and hydrogen reformed from renewable agricultural fuels, including the use of hydrogen in hybrid electric, heavier duty, and advanced internal combustion-powered vehicles.

The Secretary shall give preference to projects which address multiple elements contained in paragraphs (1) through (12).

(b) System demonstrations

(1)[1] In general

As a component of the demonstration program under this section, the Secretary shall provide grants, on a cost share basis as appropriate, to eligible entities (as determined by the Secretary) for use in—

(A) devising system design concepts that provide for the use of advanced composite vehicles in programs under section 16122 of this title that—

(i) have as a primary goal the reduction of drive energy requirements;

(ii) after 2010, add another research and development phase, as defined in subsection (c), including the vehicle and infrastructure partnerships developed under the learning demonstrations program concept of the Department; and

(iii) are managed through an enhanced FreedomCAR program within the Department that encourages involvement in cost-shared projects by manufacturers and governments; and

(B) designing a local distributed energy system that—

(i) incorporates renewable hydrogen production, off-grid electricity production, and fleet applications in industrial or commercial service;

(ii) integrates energy or applications described in clause (i), such as stationary, portable, micro, and mobile fuel cells, into a high-density commercial or residential building complex or agricultural community; and

(iii) is managed in cooperation with industry, State, tribal, and local governments, agricultural organizations, and nonprofit generators and distributors of electricity.

(c) Identification of new program requirements

In carrying out the demonstrations under subsection (a), the Secretary, in consultation with the Task Force and the Technical Advisory Committee, shall—

(1) after 2008 for stationary and portable applications, and after 2010 for vehicles, identify new requirements that refine technological concepts, planning, and applications; and

(2) during the second phase of the learning demonstrations under subsection (b)(1)(A)(ii), redesign subsequent program work to incorporate those requirements.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) $185,000,000 for fiscal year 2006;
(2) $200,000,000 for fiscal year 2007;
(3) $250,000,000 for fiscal year 2008;
(4) $300,000,000 for fiscal year 2009;
(5) $375,000,000 for fiscal year 2010; and
(6) such sums as are necessary for each of fiscal years 2011 through 2020.

(Pub. L. 109–58, title VIII, § 808, Aug. 8, 2005, 119 Stat. 850.)

§ 16158. Codes and standards

(a) In general

The Secretary, in cooperation with the Task Force, shall provide grants to, or offer to enter into contracts with, such professional organizations, public service organizations, and government agencies as the Secretary determines appropriate to support timely and extensive development of safety codes and standards relating to fuel cell vehicles, hydrogen energy systems, and stationary, portable, and micro fuel cells.

(b) Educational efforts

The Secretary shall support educational efforts by organizations and agencies described in subsection (a) to share information, including information relating to best practices, among those organizations and agencies.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) $4,000,000 for fiscal year 2006;
(2) $7,000,000 for fiscal year 2007;
(3) $8,000,000 for fiscal year 2008;
(4) $10,000,000 for fiscal year 2009;
(5) $9,000,000 for fiscal year 2010; and
(6) such sums as are necessary for each of fiscal years 2011 through 2020.

(Pub. L. 109–58, title VIII, § 809, Aug. 8, 2005, 119 Stat. 851.)

§ 16159. Disclosure

Section 13293 of this title shall apply to any project carried out through a grant, cooperative agreement, or contract under this subchapter.

(Pub. L. 109–58, title VIII, § 810, Aug. 8, 2005, 119 Stat. 852.)

§ 16160. Reports

(a) Secretary

Subject to subsection (c), not later than 2 years after August 8, 2005, and triennially thereafter, the Secretary shall submit to Congress a report describing—

(1) activities carried out by the Department under this subchapter,[1] for hydrogen and fuel cell technology;

(2) measures the Secretary has taken during the preceding 3 years to support the transition of primary industry (or a related industry) to a fully commercialized hydrogen economy;

(3) any change made to the strategy relating to hydrogen and fuel cell technology to reflect the results of a learning demonstrations;

(4) progress, including progress in infrastructure, made toward achieving the goal of producing and deploying not less than—

[1] So in original. No par. (2) has been enacted.

[1] So in original. The comma probably should not appear.

(A) 100,000 hydrogen-fueled vehicles in the United States by 2010; and

(B) 2,500,000 hydrogen-fueled vehicles in the United States by 2020;

(5) progress made toward achieving the goal of supplying hydrogen at a sufficient number of fueling stations in the United States by 2010 including by integrating—

(A) hydrogen activities; and

(B) associated targets and timetables for the development of hydrogen technologies;

(6) any problem relating to the design, execution, or funding of a program under this subchapter;

(7) progress made toward and goals achieved in carrying out this subchapter and updates to the developmental roadmap, including the results of the reviews conducted by the National Academy of Sciences under subsection (b) for the fiscal years covered by the report; and

(8) any updates to strategic plans that are necessary to meet the goals described in paragraph (4).

(b) External review

The Secretary shall enter into an arrangement with the National Academy of Sciences under which the Academy will review the programs under sections 16154 and 16157 of this title every fourth year following August 8, 2005. The Academy's review shall include the program priorities and technical milestones, and evaluate the progress toward achieving them. The first review shall be completed not later than 5 years after August 8, 2005. Not later than 45 days after receiving the review, the Secretary shall transmit the review to Congress along with a plan to implement the review's recommendations or an explanation for the reasons that a recommendation will not be implemented.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section $1,500,000 for each of fiscal years 2006 through 2020.

(Pub. L. 109–58, title VIII, § 811, Aug. 8, 2005, 119 Stat. 852.)

§ 16161. Solar and wind technologies

(a) Solar energy technologies

The Secretary shall—

(1) prepare a detailed roadmap for carrying out the provisions in this subchapter related to solar energy technologies and for implementing the recommendations related to solar energy technologies that are included in the report transmitted under subsection (e);

(2) provide for the establishment of 5 projects in geographic areas that are regionally and climatically diverse to demonstrate the production of hydrogen at solar energy facilities, including one demonstration project at a National Laboratory or institution of higher education;

(3) establish a program—

(A) to develop optimized concentrating solar power devices that may be used for the production of both electricity and hydrogen; and

(B) to evaluate the use of thermochemical cycles for hydrogen production at the temperatures attainable with concentrating solar power devices;

(4) coordinate with activities sponsored by the Department's Office of Nuclear Energy, Science, and Technology on high-temperature materials, thermochemical cycles, and economic issues related to solar energy;

(5) provide for the construction and operation of new concentrating solar power devices or solar power cogeneration facilities that produce hydrogen either concurrently with, or independently of, the production of electricity;

(6) support existing facilities and programs of study related to concentrating solar power devices; and

(7) establish a program—

(A) to develop methods that use electricity from photovoltaic devices for the onsite production of hydrogen, such that no intermediate transmission or distribution infrastructure is required or used and future demand growth may be accommodated;

(B) to evaluate the economics of small-scale electrolysis for hydrogen production; and

(C) to study the potential of modular photovoltaic devices for the development of a hydrogen infrastructure, the security implications of a hydrogen infrastructure, and the benefits potentially derived from a hydrogen infrastructure.

(b) Wind energy technologies

The Secretary shall—

(1) prepare a detailed roadmap for carrying out the provisions in this subchapter related to wind energy technologies and for implementing the recommendations related to wind energy technologies that are included in the report transmitted under subsection (e); and

(2) provide for the establishment of 5 projects in geographic areas that are regionally and climatically diverse to demonstrate the production of hydrogen at existing wind energy facilities, including one demonstration project at a National Laboratory or institution of higher education.

(c) Program support

The Secretary shall support programs at institutions of higher education for the development of solar energy technologies and wind energy technologies for the production of hydrogen. The programs supported under this subsection shall—

(1) enhance fellowship and faculty assistance programs;

(2) provide support for fundamental research;

(3) encourage collaborative research among industry, National Laboratories, and institutions of higher education;

(4) support communication and outreach; and

(5) to the greatest extent possible—

(A) be located in geographic areas that are regionally and climatically diverse; and

(B) be located at part B institutions, minority institutions, and institutions of higher education located in States participating

in the Experimental Program to Stimulate Competitive Research of the Department.

(d) Institutions of higher education and National Laboratory interactions

In conjunction with the programs supported under this section, the Secretary shall develop sabbatical, fellowship, and visiting scientist programs to encourage National Laboratories and institutions of higher education to share and exchange personnel.

(e) Report

The Secretary shall transmit to the Congress not later than 120 days after August 8, 2005, a report containing detailed summaries of the roadmaps prepared under subsections (a)(1) and (b)(1), descriptions of the Secretary's progress in establishing the projects and other programs required under this section, and recommendations for promoting the availability of advanced solar and wind energy technologies for the production of hydrogen.

(f) Definitions

For purposes of this section—

(1) the term ''concentrating solar power devices'' means devices that concentrate the power of the sun by reflection or refraction to improve the efficiency of a photovoltaic or thermal generation process;

(2) the term ''minority institution'' has the meaning given to that term in section 1067k of title 20;

(3) the term ''part B institution'' has the meaning given to that term in section 1061 of title 20; and

(4) the term ''photovoltaic devices'' means devices that convert light directly into electricity through a solid-state, semiconductor process.

(g) Authorization of appropriations

There is authorized to be appropriated such sums as are necessary for carrying out the activities under this section for each of fiscal years 2006 through 2020.

(Pub. L. 109–58, title VIII, § 812, Aug. 8, 2005, 119 Stat. 853.)

§ 16162. Technology transfer

In carrying out this subchapter, the Secretary shall carry out programs that—

(1) provide for the transfer of critical hydrogen and fuel cell technologies to the private sector;

(2) accelerate wider application of those technologies in the global market;

(3) foster the exchange of generic, nonproprietary information; and

(4) assess technical and commercial viability of technologies relating to the production, distribution, storage, and use of hydrogen energy and fuel cells.

(Pub. L. 109–58, title VIII, § 813, Aug. 8, 2005, 119 Stat. 855.)

§ 16163. Miscellaneous provisions

(a) Representation

The Secretary may represent the United States interests with respect to activities and programs under this subchapter, in coordination with the Department of Transportation, the National Institute of Standards and Technology, and other relevant Federal agencies, before governments and nongovernmental organizations including—

(1) other Federal, State, regional, and local governments and their representatives;

(2) industry and its representatives, including members of the energy and transportation industries; and

(3) in consultation with the Department of State, foreign governments and their representatives including international organizations.

(b) Regulatory authority

Nothing in this subchapter shall be construed to alter the regulatory authority of the Department.

(Pub. L. 109–58, title VIII, § 814, Aug. 8, 2005, 119 Stat. 855.)

§ 16164. Cost sharing

The costs of carrying out projects and activities under this subchapter shall be shared in accordance with section 16352 of this title.

(Pub. L. 109–58, title VIII, § 815, Aug. 8, 2005, 119 Stat. 855.)

§ 16165. Savings clause

Nothing in this subchapter shall be construed to affect the authority of the Secretary of Transportation that may exist prior to August 8, 2005, with respect to—

(1) research into, and regulation of, hydrogen-powered vehicles fuel systems integrity, standards, and safety under subtitle VI of title 49;

(2) regulation of hazardous materials transportation under chapter 51 of title 49;

(3) regulation of pipeline safety under chapter 601 of title 49;

(4) encouragement and promotion of research, development, and deployment activities relating to advanced vehicle technologies under section 5506 of title 49;

(5) regulation of motor vehicle safety under chapter 301 of title 49;

(6) automobile fuel economy under chapter 329 of title 49; or

(7) representation of the interests of the United States with respect to the activities and programs under the authority of title 49.

(Pub. L. 109–58, title VIII, § 816, Aug. 8, 2005, 119 Stat. 855.)

SUBCHAPTER IX—RESEARCH AND DEVELOPMENT

§ 16181. Goals

(a) In general

In order to achieve the purposes of this subchapter, the Secretary shall conduct a balanced set of programs of energy research, development, demonstration, and commercial application with the general goals of—

(1) increasing the efficiency of all energy intensive sectors through conservation and improved technologies;

(2) promoting diversity of energy supply;

(3) decreasing the dependence of the United States on foreign energy supplies;

(4) improving the energy security of the United States; and

(5) decreasing the environmental impact of energy-related activities.

(b) Goals

The Secretary shall publish measurable cost and performance-based goals, comparable over time, with each annual budget submission in at least the following areas:

(1) Energy efficiency for buildings, energy-consuming industries, and vehicles.

(2) Electric energy generation (including distributed generation), transmission, and storage.

(3) Renewable energy technologies, including wind power, photovoltaics, solar thermal systems, geothermal energy, hydrogen-fueled systems, biomass-based systems, biofuels, and hydropower.

(4) Fossil energy, including power generation, onshore and offshore oil and gas resource recovery, and transportation fuels.

(5) Nuclear energy, including programs for existing and advanced reactors, and education of future specialists.

(c) Public comment

The Secretary shall provide mechanisms for input on the annually published goals from industry, institutions of higher education, and other public sources.

(d) Effect of goals

Nothing in subsection (a) or the annually published goals creates any new authority for any Federal agency, or may be used by any Federal agency, to support the establishment of regulatory standards or regulatory requirements.

(Pub. L. 109–58, title IX, § 902, Aug. 8, 2005, 119 Stat. 856.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original ''this title'', meaning title IX of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 856, which enacted this subchapter, amended sections 8101 and 8102 of Title 7, Agriculture, and section 5523 of Title 15, Commerce and Trade, enacted provisions set out as notes under section 15801 of this title, section 8102 of Title 7, and section 2001 of Title 30, Mineral Lands and Mining, and amended provisions set out as notes under section 8101 of Title 7 and section 1902 of Title 30. For complete classification of title IX to the Code, see Short Title note set out under section 15801 of this title and Tables.

SHORT TITLE

For short title of title IX of Pub. L. 109–58, which enacted this subchapter, as the ''Energy Research, Development, Demonstration, and Commercial Application Act of 2005'', see section 431 of Pub. L. 109–58, set out as a note under section 15801 of this title.

§ 16182. Definitions

In this subchapter:

(1) Departmental mission

The term ''departmental mission'' means any of the functions vested in the Secretary by the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) or other law.

(2) Hispanic-serving institution

The term ''Hispanic-serving institution'' has the meaning given the term in section 1101a(a) of title 20.

(3) Nonmilitary energy laboratory

The term ''nonmilitary energy laboratory'' means a National Laboratory other than a National Laboratory listed in subparagraph (G), (H), or (N) of section 15801(3) of this title.

(4) Part B institution

The term ''part B institution'' has the meaning given the term in section 1061 of title 20.

(5) Single-purpose research facility

The term ''single-purpose research facility'' means—

(A) any of the primarily single-purpose entities owned by the Department; or

(B) any other organization of the Department designated by the Secretary.

(6) University

The term ''university'' has the meaning given the term ''institution of higher education'' in section 1001 of title 20.

(Pub. L. 109–58, title IX, § 903, Aug. 8, 2005, 119 Stat. 856.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title IX of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 856, which enacted this subchapter, amended sections 8101 and 8102 of Title 7, Agriculture, and section 5523 of Title 15, Commerce and Trade, enacted provisions set out as notes under section 15801 of this title, section 8102 of Title 7, and section 2001 of Title 30, Mineral Lands and Mining, and amended provisions set out as notes under section 8101 of Title 7 and section 1902 of Title 30. For complete classification of title IX to the Code, see Short Title note set out under section 15801 of this title and Tables.

The Department of Energy Organization Act, referred to in par. (1), is Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, which is classified principally to chapter 84 (§ 7101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

PART A—ENERGY EFFICIENCY

§ 16191. Energy efficiency

(a) In general

(1) Objectives

The Secretary shall conduct programs of energy efficiency research, development, demonstration, and commercial application, including activities described in this part. Such programs shall take into consideration the following objectives:

(A) Increasing the energy efficiency of vehicles, buildings, and industrial processes.

(B) Reducing the demand of the United States for energy, especially energy from foreign sources.

(C) Reducing the cost of energy and making the economy more efficient and competitive.

(D) Improving the energy security of the United States.

(E) Reducing the environmental impact of energy-related activities.

(2) Programs

Programs under this part shall include research, development, demonstration, and commercial application of—

(A) advanced, cost-effective technologies to improve the energy efficiency and environmental performance of vehicles, including—

(i) hybrid and electric propulsion systems;

(ii) plug-in hybrid systems;

(iii) advanced combustion engines;

(iv) weight and drag reduction technologies;

(v) whole-vehicle design optimization; and

(vi) advanced drive trains;

(B) cost-effective technologies, for new construction and retrofit, to improve the energy efficiency and environmental performance of buildings, using a whole-buildings approach, including onsite renewable energy generation;

(C) advanced technologies to improve the energy efficiency, environmental performance, and process efficiency of energy-intensive and waste-intensive industries; and

(D) advanced control devices to improve the energy efficiency of electric motors, including those used in industrial processes, heating, ventilation, and cooling.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out energy efficiency and conservation research, development, demonstration, and commercial application activities, including activities authorized under this part—

(1) $783,000,000 for fiscal year 2007;

(2) $865,000,000 for fiscal year 2008; and

(3) $952,000,000 for fiscal year 2009.

(c) Allocations

From amounts authorized under subsection (b), the following sums are authorized:

(1) For activities under section 16192 of this title, $50,000,000 for each of fiscal years 2007 through 2009.

(2) For activities under section 16195 of this title, $7,000,000 for each of fiscal years 2007 through 2009.

(3) For activities under subsection (a)(2)(A)—

(A) $200,000,000 for fiscal year 2007;

(B) $270,000,000 for fiscal year 2008; and

(C) $310,000,000 for fiscal year 2009.

(4) For activities under subsection (a)(2)(D), $2,000,000 for each of fiscal years 2007 and 2008.

(d) Extended authorization

There are authorized to be appropriated to the Secretary to carry out section 16192 of this title $50,000,000 for each of fiscal years 2010 through 2013.

(e) Limitations

None of the funds authorized to be appropriated under this section may be used for—

(1) the issuance or implementation of energy efficiency regulations;

(2) the weatherization program established under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.);

(3) a State energy conservation plan established under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.); or

(4) a Federal energy management measure carried out under part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.).

(Pub. L. 109–58, title IX, § 911, Aug. 8, 2005, 119 Stat. 857.)

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (e)(2), is Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1125, as amended. Part A of title IV of the Act is classified generally to part A (§ 6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (e)(3), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended. Part D of title III of the Act is classified generally to part B (§ 6321 et seq.) of subchapter III of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

The National Energy Conservation Policy Act, referred to in subsec. (e)(4), is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, as amended. Part 3 of title V of the Act is classified generally to part B (§ 8251 et seq.) of subchapter III of chapter 91 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

§ 16192. Next Generation Lighting Initiative

(a) Definitions

In this section:

(1) Advanced solid-state lighting

The term ''advanced solid-state lighting'' means a semiconducting device package and delivery system that produces white light using externally applied voltage.

(2) Industry Alliance

The term ''Industry Alliance'' means an entity selected by the Secretary under subsection (d).

(3) Initiative

The term ''Initiative'' means the Next Generation Lighting Initiative carried out under this section.

(4) Research

The term ''research'' includes research on the technologies, materials, and manufacturing processes required for white light emitting diodes.

(5) White light emitting diode

The term ''white light emitting diode'' means a semiconducting package, using either organic or inorganic materials, that produces white light using externally applied voltage.

(b) Initiative

The Secretary shall carry out a Next Generation Lighting Initiative in accordance with this section to support research, development, demonstration, and commercial application activities related to advanced solid-state lighting

technologies based on white light emitting diodes.

(c) Objectives

The objectives of the Initiative shall be to develop advanced solid-state organic and inorganic lighting technologies based on white light emitting diodes that, compared to incandescent and fluorescent lighting technologies, are longer lasting, are more energy-efficient and cost-competitive, and have less environmental impact.

(d) Industry Alliance

Not later than 90 days after August 8, 2005, the Secretary shall competitively select an Industry Alliance to represent participants who are private, for-profit firms, open to large and small businesses, that, as a group, are broadly representative of United States solid-state lighting research, development, infrastructure, and manufacturing expertise as a whole.

(e) Research

(1) Grants

The Secretary shall carry out the research activities of the Initiative through competitively awarded grants to—

(A) researchers, including Industry Alliance participants;

(B) small businesses;

(C) National Laboratories; and

(D) institutions of higher education.

(2) Industry alliance

The Secretary shall annually solicit from the Industry Alliance—

(A) comments to identify solid-state lighting technology needs;

(B) an assessment of the progress of the research activities of the Initiative; and

(C) assistance in annually updating solid-state lighting technology roadmaps.

(3) Availability to public

The information and roadmaps under paragraph (2) shall be available to the public.

(f) Development, demonstration, and commercial application

(1) In general

The Secretary shall carry out a development, demonstration, and commercial application program for the Initiative through competitively selected awards.

(2) Preference

In making the awards, the Secretary may give preference to participants in the Industry Alliance.

(g) Cost sharing

In carrying out this section, the Secretary shall require cost sharing in accordance with section 16352 of this title.

(h) Intellectual property

The Secretary may require (in accordance with section 202(a)(ii) of title 35, section 2182 of this title, and section 5908 of this title) that for any new invention developed under subsection (e)—

(1) that the Industry Alliance participants who are active participants in research, development, and demonstration activities related to the advanced solid-state lighting technologies that are covered by this section shall be granted the first option to negotiate with the invention owner, at least in the field of solid-state lighting, nonexclusive licenses and royalties on terms that are reasonable under the circumstances;

(2)(A) that, for 1 year after a United States patent is issued for the invention, the patent holder shall not negotiate any license or royalty with any entity that is not a participant in the Industry Alliance described in paragraph (1); and

(B) that, during the year described in subparagraph (A), the patent holder shall negotiate nonexclusive licenses and royalties in good faith with any interested participant in the Industry Alliance described in paragraph (1); and

(3) such other terms as the Secretary determines are required to promote accelerated commercialization of inventions made under the Initiative.

(i) National Academy review

The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct periodic reviews of the Initiative.

(Pub. L. 109–58, title IX, § 912, Aug. 8, 2005, 119 Stat. 858.)

§ 16193. National Building Performance Initiative

(a) Interagency group

(1) In general

Not later than 90 days after August 8, 2005, the Director of the Office of Science and Technology Policy shall establish an interagency group to develop, in coordination with the advisory committee established under subsection (e), a National Building Performance Initiative (referred to in this section as the ''Initiative'').

(2) Cochairs

The interagency group shall be co-chaired by appropriate officials of the Department and the Department of Commerce, who shall jointly arrange for the provision of necessary administrative support to the group.

(b) Integration of efforts

The Initiative shall integrate Federal, State, and voluntary private sector efforts to reduce the costs of construction, operation, maintenance, and renovation of commercial, industrial, institutional, and residential buildings.

(c) Plan

(1) In general

Not later than 1 year after August 8, 2005, the interagency group shall submit to Congress a plan for carrying out the appropriate Federal role in the Initiative.

(2) Inclusions

The plan shall include—

(A) research, development, demonstration, and commercial application of energy technology systems and materials for new construction and retrofit relating to the build-

ing envelope and building system components;

(B) research, development, demonstration, and commercial application of energy technology and infrastructure enabling the energy efficient, automated operation of buildings and building equipment; and

(C) the collection, analysis, and dissemination of research results and other pertinent information on enhancing building performance to industry, government entities, and the public.

(d) Department of Energy role

Within the Federal portion of the Initiative, the Department shall be the lead agency for all aspects of building performance related to use and conservation of energy.

(e) Advisory committee

The Director of the Office of Science and Technology Policy shall establish an advisory committee to—

(1) analyze and provide recommendations on potential private sector roles and participation in the Initiative; and

(2) review and provide recommendations on the plan described in subsection (c).

(f) Administration

Nothing in this section provides any Federal agency with new authority to regulate building performance.

(Pub. L. 109–58, title IX, § 913, Aug. 8, 2005, 119 Stat. 860.)

§ 16194. Building standards

(a) Definition of high performance building

In this section, the term ''high performance building'' means a building that integrates and optimizes all major high-performance building attributes, including energy efficiency, durability, life-cycle performance, and occupant productivity.

(b) Assessment

Not later than 120 days after August 8, 2005, the Secretary shall enter into an agreement with the National Institute of Building Sciences to—

(1) conduct an assessment (in cooperation with industry, standards development organizations, and other entities, as appropriate) of whether the current voluntary consensus standards and rating systems for high performance buildings are consistent with the current technological state of the art, including relevant results from the research, development and demonstration activities of the Department;

(2) determine if additional research is required, based on the findings of the assessment; and

(3) recommend steps for the Secretary to accelerate the development of voluntary consensus-based standards for high performance buildings that are based on the findings of the assessment.

(c) Grant and technical assistance program

Consistent with subsection (b) and section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), the Secretary shall establish a grant and technical assistance program to support the development of voluntary consensus-based standards for high performance buildings.

(Pub. L. 109–58, title IX, § 914, Aug. 8, 2005, 119 Stat. 861.)

REFERENCES IN TEXT

Section 12(d) of the National Technology Transfer and Advancement Act of 1995, referred to in subsec. (c), is section 12(d) of Pub. L. 104–113, as amended, which is set out as a note under section 272 of Title 15, Commerce and Trade.

§ 16195. Secondary electric vehicle battery use program

(a) Definitions

In this section:

(1) Battery

The term ''battery'' means an energy storage device that previously has been used to provide motive power in a vehicle powered in whole or in part by electricity.

(2) Associated equipment

The term ''associated equipment'' means equipment located where the batteries will be used that is necessary to enable the use of the energy stored in the batteries.

(b) Program

(1) In general

The Secretary shall establish and conduct a program of research, development, demonstration, and commercial application of energy technology for the secondary use of batteries, if the Secretary finds that there are sufficient numbers of batteries to support the program.

(2) Administration

The program shall be—

(A) designed to demonstrate the use of batteries in secondary applications, including utility and commercial power storage and power quality;

(B) structured to evaluate the performance, including useful service life and costs, of such batteries in field operations, and the necessary supporting infrastructure, including reuse and disposal of batteries; and

(C) coordinated with ongoing secondary battery use programs at the National Laboratories and in industry.

(c) Solicitation

(1) In general

Not later than 180 days after August 8, 2005, the Secretary shall solicit proposals to demonstrate the secondary use of batteries and associated equipment and supporting infrastructure in geographic locations throughout the United States.

(2) Additional solicitations

The Secretary may make additional solicitations for proposals if the Secretary determines that the solicitations are necessary to carry out this section.

(d) Selection of proposals

(1) In general

Not later than 90 days after the closing date established by the Secretary for receipt of pro-

posals under subsection (c), the Secretary shall select up to five proposals that may receive financial assistance under this section once the Department receives appropriated funds to carry out this section.

(2) Factors

In selecting proposals, the Secretary shall consider—

(A) the diversity of battery type;

(B) geographic and climatic diversity; and

(C) life-cycle environmental effects of the approaches.

(3) Limitation

No one project selected under this section shall receive more than 25 percent of the funds made available to carry out the program under this section.

(4) Non-Federal involvement

In selecting proposals, the Secretary shall consider the extent of involvement of State or local government and other persons in each demonstration project to optimize use of Federal resources.

(5) Other criteria

In selecting proposals, the Secretary may consider such other criteria as the Secretary considers appropriate.

(e) Conditions

In carrying out this section, the Secretary shall require that—

(1) relevant information be provided to—

(A) the Department;

(B) the users of the batteries;

(C) the proposers of a project under this section; and

(D) the battery manufacturers; and

(2) the costs of carrying out projects and activities under this section are shared in accordance with section 16352 of this title.

(Pub. L. 109–58, title IX, § 915, Aug. 8, 2005, 119 Stat. 861.)

§ 16196. Energy Efficiency Science Initiative

(a) Establishment

The Secretary shall establish an Energy Efficiency Science Initiative to be managed by the Assistant Secretary in the Department with responsibility for energy conservation under section 7133(a)(9) of this title, in consultation with the Director of the Office of Science, for grants to be competitively awarded and subject to peer review for research relating to energy efficiency.

(b) Report

The Secretary shall submit to Congress, along with the annual budget request of the President submitted to Congress, a report on the activities of the Energy Efficiency Science Initiative, including a description of the process used to award the funds and an explanation of how the research relates to energy efficiency.

(Pub. L. 109–58, title IX, § 916, Aug. 8, 2005, 119 Stat. 862.)

§ 16197. Advanced Energy Efficiency Technology Transfer Centers

(a) Grants

Not later than 18 months after August 8, 2005, the Secretary shall make grants to nonprofit institutions, State and local governments, or universities (or consortia thereof), to establish a geographically dispersed network of Advanced Energy Efficiency Technology Transfer Centers, to be located in areas the Secretary determines have the greatest need of the services of such Centers. In establishing the network, the Secretary shall consider the special needs and opportunities for increased energy efficiency for manufactured and site-built housing.

(b) Activities

(1) In general

Each Center shall operate a program to encourage demonstration and commercial application of advanced energy methods and technologies through education and outreach to building and industrial professionals, and to other individuals and organizations with an interest in efficient energy use.

(2) Advisory panel

Each Center shall establish an advisory panel to advise the Center on how best to accomplish the activities under paragraph (1).

(c) Application

A person seeking a grant under this section shall submit to the Secretary an application in such form and containing such information as the Secretary may require. The Secretary may award a grant under this section to an entity already in existence if the entity is otherwise eligible under this section.

(d) Selection criteria

The Secretary shall award grants under this section on the basis of the following criteria, at a minimum:

(1) The ability of the applicant to carry out the activities described in subsection (b)(1).

(2) The extent to which the applicant will coordinate the activities of the Center with other entities, such as State and local governments, utilities, and educational and research institutions.

(e) Cost-sharing

In carrying out this section, the Secretary shall require cost-sharing in accordance with the requirements of section 16352 of this title for commercial application activities.

(f) Advisory committee

The Secretary shall establish an advisory committee to advise the Secretary on the establishment of Centers under this section. The advisory committee shall be composed of individuals with expertise in the area of advanced energy methods and technologies, including at least one representative from—

(1) State or local energy offices;

(2) energy professionals;

(3) trade or professional associations;

(4) architects, engineers, or construction professionals;

(5) manufacturers;

(6) the research community; and

(7) nonprofit energy or environmental organizations.

(g) Definitions

For purposes of this section:

(1) Advanced energy methods and technologies

The term ''advanced energy methods and technologies'' means all methods and technologies that promote energy efficiency and conservation, including distributed generation technologies, and life-cycle analysis of energy use.

(2) Center

The term ''Center'' means an Advanced Energy Technology Transfer Center established pursuant to this section.

(3) Distributed generation

The term ''distributed generation'' means an electric power generation facility that is designed to serve retail electric consumers at or near the facility site.

(h) Authorization of appropriations

In addition to amounts otherwise authorized to be appropriated in section 16191 of this title, there are authorized to be appropriated for the program under this section such sums as may be appropriated.

(Pub. L. 109–58, title IX, § 917, Aug. 8, 2005, 119 Stat. 863.)

PART B—DISTRIBUTED ENERGY AND ELECTRIC ENERGY SYSTEMS

§ 16211. Distributed energy and electric energy systems

(a) In general

The Secretary shall carry out programs of research, development, demonstration, and commercial application on distributed energy resources and systems reliability and efficiency, to improve the reliability and efficiency of distributed energy resources and systems, integrating advanced energy technologies with grid connectivity, including activities described in this part. The programs shall address advanced energy technologies and systems and advanced grid reliability technologies.

(b) Authorization of appropriations

(1) Distributed energy and electric energy systems activities

There are authorized to be appropriated to the Secretary to carry out distributed energy and electric energy systems activities, including activities authorized under this part—

(A) $240,000,000 for fiscal year 2007;

(B) $255,000,000 for fiscal year 2008; and

(C) $273,000,000 for fiscal year 2009.

(2) Power delivery research initiative

There are authorized to be appropriated to the Secretary to carry out the Power Delivery Research Initiative under subsection[1] 16215(e) of this title such sums as may be necessary for each of fiscal years 2007 through 2009.

(c) Micro-cogeneration energy technology

From amounts authorized under subsection (b), $20,000,000 for each of fiscal years 2007 and 2008 shall be available to carry out activities under section 16213 of this title.

(d) High-voltage transmission lines

From amounts authorized under subsection (b), $2,000,000 for fiscal year 2007 shall be available to carry out activities under section 16215(g) of this title.

(Pub. L. 109–58, title IX, § 921, Aug. 8, 2005, 119 Stat. 864.)

§ 16212. High power density industry program

(a) In general

The Secretary shall establish a comprehensive research, development, demonstration, and commercial application to improve the energy efficiency of high power density facilities, including data centers, server farms, and telecommunications facilities.

(b) Technologies

The program shall consider technologies that provide significant improvement in thermal controls, metering, load management, peak load reduction, or the efficient cooling of electronics.

(Pub. L. 109–58, title IX, § 922, Aug. 8, 2005, 119 Stat. 864.)

§ 16213. Micro-cogeneration energy technology

(a) In general

The Secretary shall make competitive, merit-based grants to consortia for the development of micro-cogeneration energy technology.

(b) Uses

The consortia shall explore—

(1) the use of small-scale combined heat and power in residential heating appliances;

(2) the use of excess power to operate other appliances within the residence; and

(3) the supply of excess generated power to the power grid.

(Pub. L. 109–58, title IX, § 923, Aug. 8, 2005, 119 Stat. 865.)

§ 16214. Distributed energy technology demonstration programs

(a) Coordinating consortia program

The Secretary may provide financial assistance to coordinating consortia of interdisciplinary participants for demonstrations designed to accelerate the use of distributed energy technologies (such as fuel cells, microturbines, reciprocating engines, thermally activated technologies, and combined heat and power systems) in high-energy intensive commercial applications.

(b) Small-scale portable power program

(1) In general

The Secretary shall—

(A) establish a research, development, and demonstration program to develop working models of small scale portable power devices; and

(B) to the fullest extent practicable, identify and utilize the resources of universities that have shown expertise with respect to advanced portable power devices for either civilian or military use.

(2) Organization

The universities identified and utilized under paragraph (1)(B) are authorized to estab-

[1] So in original. Probably should be ''section''.

lish an organization to promote small scale portable power devices.

(3) Definition

For purposes of this subsection, the term ''small scale portable power device'' means a field-deployable portable mechanical or electromechanical device that can be used for applications such as communications, computation, mobility enhancement, weapons systems, optical devices, cooling, sensors, medical devices, and active biological agent detection systems.

(Pub. L. 109–58, title IX, § 924, Aug. 8, 2005, 119 Stat. 865.)

§ 16215. Electric transmission and distribution programs

(a) Program

The Secretary shall establish a comprehensive research, development, and demonstration program to ensure the reliability, efficiency, and environmental integrity of electrical transmission and distribution systems, which shall include—

(1) advanced energy delivery technologies, energy storage technologies, materials, and systems, giving priority to new transmission technologies, including composite conductor materials and other technologies that enhance reliability, operational flexibility, or power-carrying capability;

(2) advanced grid reliability and efficiency technology development;

(3) technologies contributing to significant load reductions;

(4) advanced metering, load management, and control technologies;

(5) technologies to enhance existing grid components;

(6) the development and use of high-temperature superconductors to—

(A) enhance the reliability, operational flexibility, or power-carrying capability of electric transmission or distribution systems; or

(B) increase the efficiency of electric energy generation, transmission, distribution, or storage systems;

(7) integration of power systems, including systems to deliver high-quality electric power, electric power reliability, and combined heat and power;

(8) supply of electricity to the power grid by small scale, distributed and residential-based power generators;

(9) the development and use of advanced grid design, operation, and planning tools;

(10) any other infrastructure technologies, as appropriate; and

(11) technology transfer and education.

(b) Program plan

(1) In general

Not later than 1 year after August 8, 2005, the Secretary, in consultation with other appropriate Federal agencies, shall prepare and submit to Congress a 5-year program plan to guide activities under this section.

(2) Consultation

In preparing the program plan, the Secretary shall consult with—

(A) utilities;

(B) energy service providers;

(C) manufacturers;

(D) institutions of higher education;

(E) other appropriate State and local agencies;

(F) environmental organizations;

(G) professional and technical societies; and

(H) any other persons the Secretary considers appropriate.

(c) Implementation

The Secretary shall consider implementing the program under this section using a consortium of participants from industry, institutions of higher education, and National Laboratories.

(d) Report

Not later than 2 years after the submission of the plan under subsection (b), the Secretary shall submit to Congress a report—

(1) describing the progress made under this section; and

(2) identifying any additional resources needed to continue the development and commercial application of transmission and distribution of infrastructure technologies.

(e) Power delivery research initiative

(1) In general

The Secretary shall establish a research, development, and demonstration initiative specifically focused on power delivery using components incorporating high temperature superconductivity.

(2) Goals

The goals of the Initiative shall be—

(A) to establish world-class facilities to develop high temperature superconductivity power applications in partnership with manufacturers and utilities;

(B) to provide technical leadership for establishing reliability for high temperature superconductivity power applications, including suitable modeling and analysis;

(C) to facilitate the commercial transition toward direct current power transmission, storage, and use for high power systems using high temperature superconductivity; and

(D) to facilitate the integration of very low impedance high temperature superconducting wires and cables in existing electric networks to improve system performance, power flow control, and reliability.

(3) Inclusions

The Initiative shall include—

(A) feasibility analysis, planning, research, and design to construct demonstrations of superconducting links in high power, direct current, and controllable alternating current transmission systems;

(B) public-private partnerships to demonstrate deployment of high temperature superconducting cable into testbeds simulating a realistic transmission grid and under varying transmission conditions, including actual grid insertions; and

(C) testbeds developed in cooperation with National Laboratories, industries, and institutions of higher education to—

(i) demonstrate those technologies;

(ii) prepare the technologies for commercial introduction; and

(iii) address cost or performance roadblocks to successful commercial use.

(f) Transmission and distribution grid planning and operations initiative

(1) In general

The Secretary shall establish a research, development, and demonstration initiative specifically focused on tools needed to plan, operate, and expand the transmission and distribution grids in the presence of competitive market mechanisms for energy, load demand, customer response, and ancillary services.

(2) Goals

The goals of the Initiative shall be—

(A)(i) to develop and use a geographically distributed center, consisting of institutions of higher education, and National Laboratories, with expertise and facilities to develop the underlying theory and software for power system application; and

(ii) to ensure commercial development in partnership with software vendors and utilities;

(B) to provide technical leadership in engineering and economic analysis for the reliability and efficiency of power systems planning and operations in the presence of competitive markets for electricity;

(C) to model, simulate, and experiment with new market mechanisms and operating practices to understand and optimize those new methods before actual use; and

(D) to provide technical support and technology transfer to electric utilities and other participants in the domestic electric industry and marketplace.

(g) High-voltage transmission lines

As part of the program described in subsection (a), the Secretary shall award a grant to a university research program to design and test, in consultation with the Tennessee Valley Authority, state-of-the-art optimization techniques for power flow through existing high voltage transmission lines.

(Pub. L. 109–58, title IX, § 925, Aug. 8, 2005, 119 Stat. 865.)

PART C—RENEWABLE ENERGY

§ 16231. Renewable energy

(a) In general

(1) Objectives

The Secretary shall conduct programs of renewable energy research, development, demonstration, and commercial application, including activities described in this part. Such programs shall take into consideration the following objectives:

(A) Increasing the conversion efficiency of all forms of renewable energy through improved technologies.

(B) Decreasing the cost of renewable energy generation and delivery.

(C) Promoting the diversity of the energy supply.

(D) Decreasing the dependence of the United States on foreign energy supplies.

(E) Improving United States energy security.

(F) Decreasing the environmental impact of energy-related activities.

(G) Increasing the export of renewable generation equipment from the United States.

(2) Programs

(A) Solar energy

The Secretary shall conduct a program of research, development, demonstration, and commercial application for solar energy, including—

(i) photovoltaics;

(ii) solar hot water and solar space heating;

(iii) concentrating solar power;

(iv) lighting systems that integrate sunlight and electrical lighting in complement to each other in common lighting fixtures for the purpose of improving energy efficiency;

(v) manufacturability of low cost, high quality solar systems; and

(vi) development of products that can be easily integrated into new and existing buildings.

(B) Wind energy

The Secretary shall conduct a program of research, development, demonstration, and commercial application for wind energy, including—

(i) low speed wind energy;

(ii) offshore wind energy;

(iii) testing and verification (including construction and operation of a research and testing facility capable of testing wind turbines); and

(iv) distributed wind energy generation.

(C) Geothermal

The Secretary shall conduct a program of research, development, demonstration, and commercial application for geothermal energy. The program shall focus on developing improved technologies for reducing the costs of geothermal energy installations, including technologies for—

(i) improving detection of geothermal resources;

(ii) decreasing drilling costs;

(iii) decreasing maintenance costs through improved materials;

(iv) increasing the potential for other revenue sources, such as mineral production; and

(v) increasing the understanding of reservoir life cycle and management.

(D) Hydropower

The Secretary shall conduct a program of research, development, demonstration, and commercial application for cost competitive technologies that enable the development of new and incremental hydropower capacity, adding to the diversity of the energy supply of the United States, including:

(i) Fish-friendly large turbines.

(ii) Advanced technologies to enhance environmental performance and yield greater energy efficiencies.

(E) Miscellaneous projects

The Secretary shall conduct research, development, demonstration, and commercial application programs for—

(i) ocean energy, including wave energy;

(ii) the combined use of renewable energy technologies with one another and with other energy technologies, including the combined use of wind power and coal gasification technologies;

(iii) renewable energy technologies for cogeneration of hydrogen and electricity; and

(iv) kinetic hydro turbines.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out renewable energy research, development, demonstration, and commercial application activities, including activities authorized under this part—

(1) $632,000,000 for fiscal year 2007;

(2) $743,000,000 for fiscal year 2008; and

(3) $852,000,000 for fiscal year 2009.

(c) Bioenergy

From the amounts authorized under subsection (b), there are authorized to be appropriated to carry out section 16232 of this title—

(1) $213,000,000 for fiscal year 2007, of which $100,000,000 shall be for section 16232(d) of this title;

(2) $251,000,000 for fiscal year 2008, of which $125,000,000 shall be for section 16232(d) of this title; and

(3) $274,000,000 for fiscal year 2009, of which $150,000,000 shall be for section 16232(d) of this title.

(d) Solar power

From amounts authorized under subsection (b), there is authorized to be appropriated to carry out activities under subsection (a)(2)(A)—

(1) $140,000,000 for fiscal year 2007, of which $40,000,000 shall be for activities under section 16235 of this title;

(2) $200,000,000 for fiscal year 2008, of which $50,000,000 shall be for activities under section 16235 of this title; and

(3) $250,000,000 for fiscal year 2009, of which $50,000,000 shall be for activities under section 16235 of this title.

(e) Administration

Of the funds authorized under subsection (c), not less than $5,000,000 for each fiscal year shall be made available for grants to—

(1) part B institutions;

(2) Tribal Colleges or Universities (as defined in section 1059c(b) of title 20); and

(3) Hispanic-serving institutions.

(f) Rural demonstration projects

In carrying out this section, the Secretary, in consultation with the Secretary of Agriculture, shall demonstrate the use of renewable energy technologies to assist in delivering electricity to rural and remote locations including —

(1) advanced wind power technology, including combined use with coal gasification;

(2) biomass; and

(3) geothermal energy systems.

(g) Analysis and evaluation

(1) In general

The Secretary shall conduct analysis and evaluation in support of the renewable energy programs under this part. These activities shall be used to guide budget and program decisions, and shall include—

(A) economic and technical analysis of renewable energy potential, including resource assessment;

(B) analysis of past program performance, both in terms of technical advances and in market introduction of renewable energy; and

(C) any other analysis or evaluation that the Secretary considers appropriate.

(2) Funding

The Secretary may designate up to 1 percent of the funds appropriated for carrying out this part for analysis and evaluation activities under this subsection.

(Pub. L. 109–58, title IX, § 931, Aug. 8, 2005, 119 Stat. 868.)

§ 16232. Bioenergy program

(a) Definitions

In this section:

(1) Biomass

The term ''biomass'' means—

(A) any organic material grown for the purpose of being converted to energy;

(B) any organic byproduct of agriculture (including wastes from food production and processing) that can be converted into energy; or

(C) any waste material that can be converted to energy, is segregated from other waste materials, and is derived from—

(i) any of the following forest-related resources: mill residues, precommercial thinnings, slash, brush, or otherwise nonmerchantable material; or

(ii) wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of municipal solid waste, or paper that is commonly recycled.

(2) Lignocellulosic feedstock

The term ''lignocellulosic feedstock'' means any portion of a plant or coproduct from conversion, including crops, trees, forest residues, and agricultural residues not specifically grown for food, including from barley grain, grapeseed, rice bran, rice hulls, rice straw, soybean matter, and sugarcane bagasse.

(b) Program

The Secretary shall conduct a program of research, development, demonstration, and commercial application for bioenergy, including—

(1) biopower energy systems;

(2) biofuels;

(3) bioproducts;

(4) integrated biorefineries that may produce biopower, biofuels, and bioproducts;

(5) cross-cutting research and development in feedstocks; and

(6) economic analysis.

(c) Biofuels and bioproducts

The goals of the biofuels and bioproducts programs shall be to develop, in partnership with industry and institutions of higher education—

(1) advanced biochemical and thermochemical conversion technologies capable of making fuels from lignocellulosic feedstocks that are price-competitive with gasoline or diesel in either internal combustion engines or fuel cell-powered vehicles;

(2) advanced biotechnology processes capable of making biofuels and bioproducts with emphasis on development of biorefinery technologies using enzyme-based processing systems;

(3) advanced biotechnology processes capable of increasing energy production from lignocellulosic feedstocks, with emphasis on reducing the dependence of industry on fossil fuels in manufacturing facilities; and

(4) other advanced processes that will enable the development of cost-effective bioproducts, including biofuels.

(d) Integrated biorefinery demonstration projects

(1) In general

The Secretary shall carry out a program to demonstrate the commercial application of integrated biorefineries. The Secretary shall ensure geographical distribution of biorefinery demonstrations under this subsection. The Secretary shall not provide more than $100,000,000 under this subsection for any single biorefinery demonstration. In making awards under this subsection, the Secretary shall encourage—

(A) the demonstration of a wide variety of lignocellulosic feedstocks;

(B) the commercial application of biomass technologies for a variety of uses, including—

(i) liquid transportation fuels;

(ii) high-value biobased chemicals;

(iii) substitutes for petroleum-based feedstocks and products; and

(iv) energy in the form of electricity or useful heat; and

(C) the demonstration of the collection and treatment of a variety of biomass feedstocks.

(2) Proposals

Not later than 6 months after August 8, 2005, the Secretary shall solicit proposals for demonstration of advanced biorefineries. The Secretary shall select only proposals that—

(A) demonstrate that the project will be able to operate profitably without direct Federal subsidy after initial construction costs are paid; and

(B) enable the biorefinery to be easily replicated.

(e) University biodiesel program

The Secretary shall establish a demonstration program to determine the feasibility of the operation of diesel electric power generators, using biodiesel fuels with ratings as high as B100, at electric generation facilities owned by institutions of higher education. The program shall examine—

(1) heat rates of diesel fuels with large quantities of cellulosic content;

(2) the reliability of operation of various fuel blends;

(3) performance in cold or freezing weather;

(4) stability of fuel after extended storage; and

(5) other criteria, as determined by the Secretary.

(Pub. L. 109–58, title IX, § 932, Aug. 8, 2005, 119 Stat. 870.)

§ 16233. Low-cost renewable hydrogen and infrastructure for vehicle propulsion

The Secretary shall—

(1) establish a research, development, and demonstration program to determine the feasibility of using hydrogen propulsion in lightweight vehicles and the integration of the associated hydrogen production infrastructure using off-the-shelf components; and

(2) identify universities and institutions that—

(A) have expertise in researching and testing vehicles fueled by hydrogen, methane, and other fuels;

(B) have expertise in integrating off-the-shelf components to minimize cost; and

(C) within 2 years can test a vehicle based on an existing commercially available platform with a curb weight of not less than 2,000 pounds before modifications, that—

(i) operates solely on hydrogen;

(ii) qualifies as a light-duty passenger vehicle; and

(iii) uses hydrogen produced from water using only solar energy.

(Pub. L. 109–58, title IX, § 933, Aug. 8, 2005, 119 Stat. 872.)

§ 16234. Concentrating solar power research program

(a) In general

The Secretary shall conduct a program of research and development to evaluate the potential for concentrating solar power for hydrogen production, including cogeneration approaches for both hydrogen and electricity.

(b) Administration

The program shall take advantage of existing facilities to the extent practicable and shall include—

(1) development of optimized technologies that are common to both electricity and hydrogen production;

(2) evaluation of thermochemical cycles for hydrogen production at the temperatures attainable with concentrating solar power;

(3) evaluation of materials issues for the thermochemical cycles described in paragraph (2);

(4) cogeneration of solar thermal electric power and photo-synthetic-based hydrogen production;

(5) system architectures and economics studies; and

(6) coordination with activities under the Next Generation Nuclear Plant Project established under part B of subchapter VI on high temperature materials, thermochemical cycles, and economic issues.

(c) Assessment

In carrying out the program under this section, the Secretary shall—

(1) assess conflicting guidance on the economic potential of concentrating solar power for electricity production received from the National Research Council in the report entitled ''Renewable Power Pathways: A Review of the U.S. Department of Energy's Renewable Energy Programs'' and dated 2000 and subsequent reviews of that report funded by the Department; and

(2) provide an assessment of the potential impact of technology used to concentrate solar power for electricity before, or concurrent with, submission of the budget for fiscal year 2008.

(d) Report

Not later than 5 years after August 8, 2005, the Secretary shall provide to Congress a report on the economic and technical potential for electricity or hydrogen production, with or without cogeneration, with concentrating solar power, including the economic and technical feasibility of potential construction of a pilot demonstration facility suitable for commercial production of electricity or hydrogen from concentrating solar power.

(Pub. L. 109–58, title IX, § 934, Aug. 8, 2005, 119 Stat. 872.)

§ 16235. Renewable energy in public buildings

(a) Demonstration and technology transfer program

The Secretary shall establish a program for the demonstration of innovative technologies for solar and other renewable energy sources in buildings owned or operated by a State or local government, and for the dissemination of information resulting from such demonstration to interested parties.

(b) Limit on Federal funding

Notwithstanding section 16352 of this title, the Secretary shall provide under this section no more than 40 percent of the incremental costs of the solar or other renewable energy source project funded.

(c) Requirements

As part of the application for awards under this section, the Secretary shall require all applicants—

(1) to demonstrate a continuing commitment to the use of solar and other renewable energy sources in buildings they own or operate; and

(2) to state how they expect any award to further their transition to the significant use of renewable energy.

(Pub. L. 109–58, title IX, § 935, Aug. 8, 2005, 119 Stat. 873.)

PART D—AGRICULTURAL BIOMASS RESEARCH AND DEVELOPMENT PROGRAMS

§ 16251. Production incentives for cellulosic biofuels

(a) Purpose

The purpose of this section is to—

(1) accelerate deployment and commercialization of biofuels;

(2) deliver the first 1,000,000,000 gallons in annual cellulosic biofuels production by 2015;

(3) ensure biofuels produced after 2015 are cost competitive with gasoline and diesel; and

(4) ensure that small feedstock producers and rural small businesses are full participants in the development of the cellulosic biofuels industry.

(b) Definitions

In this section:

(1) Cellulosic biofuels

The term ''cellulosic biofuels'' means any fuel that is produced from cellulosic feedstocks.

(2) Eligible entity

The term ''eligible entity'' means a producer of fuel from cellulosic biofuels the production facility of which—

(A) is located in the United States;

(B) meets all applicable Federal and State permitting requirements; and

(C) meets any financial criteria established by the Secretary.

(c) Program

(1) Establishment

The Secretary, in consultation with the Secretary of Agriculture, the Secretary of Defense, and the Administrator of the Environmental Protection Agency, shall establish an incentive program for the production of cellulosic biofuels.

(2) Basis of incentives

Under the program, the Secretary shall award production incentives on a per gallon basis of cellulosic biofuels from eligible entities, through—

(A) set payments per gallon of cellulosic biofuels produced in an amount determined by the Secretary, until initiation of the first reverse auction; and

(B) reverse auction thereafter.

(3) First reverse auction

The first reverse auction shall be held on the earlier of—

(A) not later than 1 year after the first year of annual production in the United States of 100,000,000 gallons of cellulosic biofuels, as determined by the Secretary; or

(B) not later than 3 years after August 8, 2005.

(4) Reverse auction procedure

(A) In general

On initiation of the first reverse auction, and each year thereafter until the earlier of the first year of annual production in the United States of 1,000,000,000 gallons of cel-

lulosic biofuels, as determined by the Secretary, or 10 years after August 8, 2005, the Secretary shall conduct a reverse auction at which—

(i) the Secretary shall solicit bids from eligible entities;

(ii) eligible entities shall submit—

(I) a desired level of production incentive on a per gallon basis; and

(II) an estimated annual production amount in gallons; and

(iii) the Secretary shall issue awards for the production amount submitted, beginning with the eligible entity submitting the bid for the lowest level of production incentive on a per gallon basis and meeting such other criteria as are established by the Secretary, until the amount of funds available for the reverse auction is committed.

(B) Amount of incentive received

An eligible entity selected by the Secretary through a reverse auction shall receive the amount of performance incentive requested in the auction for each gallon produced and sold by the entity during the first 6 years of operation.

(C) Commencement of production of cellulosic biofuels

As a condition of the receipt of an award under this section, an eligible entity shall enter into an agreement with the Secretary under which the eligible entity agrees to begin production of cellulosic biofuels not later than 3 years after the date of the reverse auction in which the eligible entity participates.

(d) Limitations

Awards under this section shall be limited to—

(1) a per gallon amount determined by the Secretary during the first 4 years of the program;

(2) a declining per gallon cap over the remaining lifetime of the program, to be established by the Secretary so that cellulosic biofuels produced after the first year of annual cellulosic biofuels production in the United States in excess of 1,000,000,000 gallons are cost competitive with gasoline and diesel;

(3) not more than 25 percent of the funds committed within each reverse auction to any 1 project;

(4) not more than $100,000,000 in any 1 year; and

(5) not more than $1,000,000,000 over the lifetime of the program.

(e) Priority

In selecting a project under the program, the Secretary shall give priority to projects that—

(1) demonstrate outstanding potential for local and regional economic development;

(2) include agricultural producers or cooperatives of agricultural producers as equity partners in the ventures; and

(3) have a strategic agreement in place to fairly reward feedstock suppliers.

(f) Authorizations of appropriations

There is authorized to be appropriated to carry out this section $250,000,000.

(Pub. L. 109–58, title IX, § 942, Aug. 8, 2005, 119 Stat. 878.)

§ 16252. Education

(1) In general

The Architect of the Capitol shall establish in the Capitol Complex a program of public education regarding use by the Architect of the Capitol of biobased products.

(2) Purposes

The purposes of the program shall be—

(A) to establish the Capitol Complex as a showcase for the existence and benefits of biobased products; and

(B) to provide access to further information on biobased products to occupants and visitors.

(Pub. L. 109–58, title IX, § 943(c), Aug. 8, 2005, 119 Stat. 881.)

§ 16253. Small business bioproduct marketing and certification grants

(a) In general

Using amounts made available under subsection (g), the Secretary of Agriculture (referred to in this section as the ''Secretary'') shall make available on a competitive basis grants to eligible entities described in subsection (b) for the biobased product marketing and certification purposes described in subsection (c).

(b) Eligible entities

(1) In general

An entity eligible for a grant under this section is any manufacturer of biobased products that—

(A) proposes to use the grant for the biobased product marketing and certification purposes described in subsection (c); and

(B) has not previously received a grant under this section.

(2) Preference

In making grants under this section, the Secretary shall provide a preference to an eligible entity that has fewer than 50 employees.

(c) Biobased product marketing and certification grant purposes

A grant made under this section shall be used—

(1) to provide working capital for marketing of biobased products; and

(2) to provide for the certification of biobased products to—

(A) qualify for the label described in section 8102(h)(1) of title 7; or

(B) meet other biobased standards determined appropriate by the Secretary.

(d) Matching funds

(1) In general

Grant recipients shall provide matching non-Federal funds equal to the amount of the grant received.

(2) Expenditure

Matching funds shall be expended in advance of grant funding, so that for every dollar of

grant that is advanced, an equal amount of matching funds shall have been funded prior to submitting the request for reimbursement.

(e) Amount

A grant made under this section shall not exceed $100,000.

(f) Administration

The Secretary shall establish such administrative requirements for grants under this section, including requirements for applications for the grants, as the Secretary considers appropriate.

(g) Authorizations of appropriations

There are authorized to be appropriated to make grants under this section—

(1) $1,000,000 for fiscal year 2006; and

(2) such sums as are necessary for each of fiscal years 2007 through 2015.

(Pub. L. 109–58, title IX, § 944, Aug. 8, 2005, 119 Stat. 881.)

§ 16254. Regional bioeconomy development grants

(a) In general

Using amounts made available under subsection (g), the Secretary of Agriculture (referred to in this section as the ''Secretary'') shall make available on a competitive basis grants to eligible entities described in subsection (b) for the purposes described in subsection (c).

(b) Eligible entities

An entity eligible for a grant under this section is any regional bioeconomy development association, agricultural or energy trade association, or Land Grant institution that—

(1) proposes to use the grant for the purposes described in subsection (c); and

(2) has not previously received a grant under this section.

(c) Regional bioeconomy development association grant purposes

A grant made under this section shall be used to support and promote the growth and development of the bioeconomy within the region served by the eligible entity, through coordination, education, outreach, and other endeavors by the eligible entity.

(d) Matching funds

(1) In general

Grant recipients shall provide matching non-Federal funds equal to the amount of the grant received.

(2) Expenditure

Matching funds shall be expended in advance of grant funding, so that for every dollar of grant that is advanced, an equal amount of matching funds shall have been funded prior to submitting the request for reimbursement.

(e) Administration

The Secretary shall establish such administrative requirements for grants under this section, including requirements for applications for the grants, as the Secretary considers appropriate.

(f) Amount

A grant made under this section shall not exceed $500,000.

(g) Authorizations of appropriations

There are authorized to be appropriated to make grants under this section—

(1) $1,000,000 for fiscal year 2006; and

(2) such sums as are necessary for each of fiscal years 2007 through 2015.

(Pub. L. 109–58, title IX, § 945, Aug. 8, 2005, 119 Stat. 882.)

§ 16255. Preprocessing and harvesting demonstration grants

(a) In general

The Secretary of Agriculture (referred to in this section as the ''Secretary'') shall make grants available on a competitive basis to enterprises owned by agricultural producers, for the purposes of demonstrating cost-effective, cellulosic biomass innovations in—

(1) preprocessing of feedstocks, including cleaning, separating and sorting, mixing or blending, and chemical or biochemical treatments, to add value and lower the cost of feedstock processing at a biorefinery; or

(2) 1-pass or other efficient, multiple crop harvesting techniques.

(b) Limitations on grants

(1) Number of grants

Not more than 5 demonstration projects per fiscal year shall be funded under this section.

(2) Non-Federal cost share

The non-Federal cost share of a project under this section shall be not less than 20 percent, as determined by the Secretary.

(c) Condition of grant

To be eligible for a grant for a project under this section, a recipient of a grant or a participating entity shall agree to use the material harvested under the project—

(1) to produce ethanol; or

(2) for another energy purpose, such as the generation of heat or electricity.

(d) Authorization for appropriations

There is authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2006 through 2010.

(Pub. L. 109–58, title IX, § 946, Aug. 8, 2005, 119 Stat. 883.)

§ 16256. Education and outreach

(a) In general

The Secretary of Agriculture shall establish, within the Department of Agriculture or through an independent contracting entity, a program of education and outreach on biobased fuels and biobased products consisting of—

(1) training and technical assistance programs for feedstock producers to promote producer ownership, investment, and participation in the operation of processing facilities; and

(2) public education and outreach to familiarize consumers with the biobased fuels and biobased products.

(b) Authorization of appropriations

There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2006 through 2010.

(Pub. L. 109–58, title IX, § 947, Aug. 8, 2005, 119 Stat. 883.)

PART E—NUCLEAR ENERGY

§ 16271. Nuclear energy

(a) In general

The Secretary shall conduct programs of civilian nuclear energy research, development, demonstration, and commercial application, including activities described in this part. Programs under this part shall take into consideration the following objectives:

(1) Enhancing nuclear power's viability as part of the United States energy portfolio.

(2) Providing the technical means to reduce the likelihood of nuclear proliferation.

(3) Maintaining a cadre of nuclear scientists and engineers.

(4) Maintaining National Laboratory and university nuclear programs, including their infrastructure.

(5) Supporting both individual researchers and multidisciplinary teams of researchers to pioneer new approaches in nuclear energy, science, and technology.

(6) Developing, planning, constructing, acquiring, and operating special equipment and facilities for the use of researchers.

(7) Supporting technology transfer and other appropriate activities to assist the nuclear energy industry, and other users of nuclear science and engineering, including activities addressing reliability, availability, productivity, component aging, safety, and security of nuclear power plants.

(8) Reducing the environmental impact of nuclear energy-related activities.

(b) Authorization of appropriations for core programs

There are authorized to be appropriated to the Secretary to carry out nuclear energy research, development, demonstration, and commercial application activities, including activities authorized under this part, other than those described in subsection (c)—

(1) $330,000,000 for fiscal year 2007;

(2) $355,000,000 for fiscal year 2008; and

(3) $495,000,000 for fiscal year 2009.

(c) Nuclear infrastructure and facilities

There are authorized to be appropriated to the Secretary to carry out activities under section 16275 of this title—

(1) $135,000,000 for fiscal year 2007;

(2) $140,000,000 for fiscal year 2008; and

(3) $145,000,000 for fiscal year 2009.

(d) Allocations

From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 16273 of this title—

(A) $150,000,000 for fiscal year 2007;

(B) $155,000,000 for fiscal year 2008; and

(C) $275,000,000 for fiscal year 2009.

(2) For activities under section 16274 of this title—

(A) $43,600,000 for fiscal year 2007;

(B) $50,100,000 for fiscal year 2008; and

(C) $56,000,000 for fiscal year 2009.

(3) For activities under section 16277 of this title, $6,000,000 for each of fiscal years 2007 through 2009.

(e) Limitation

None of the funds authorized under this section may be used to decommission the Fast Flux Test Facility.

(Pub. L. 109–58, title IX, § 951, Aug. 8, 2005, 119 Stat. 884.)

§ 16272. Nuclear energy research programs

(a) Nuclear Energy Research Initiative

The Secretary shall carry out a Nuclear Energy Research Initiative for research and development related to nuclear energy.

(b) Nuclear Energy Systems Support Program

The Secretary shall carry out a Nuclear Energy Systems Support Program to support research and development activities addressing reliability, availability, productivity, component aging, safety, and security of existing nuclear power plants.

(c) Nuclear Power 2010 Program

(1) In general

The Secretary shall carry out a Nuclear Power 2010 Program, consistent with recommendations of the Nuclear Energy Research Advisory Committee of the Department in the report entitled ''A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010'' and dated October 2001.

(2) Administration

The Program shall include—

(A) use of the expertise and capabilities of industry, institutions of higher education, and National Laboratories in evaluation of advanced nuclear fuel cycles and fuels testing;

(B) consideration of a variety of reactor designs suitable for both developed and developing nations;

(C) participation of international collaborators in research, development, and design efforts, as appropriate; and

(D) encouragement for participation by institutions of higher education and industry.

(d) Generation IV Nuclear Energy Systems Initiative

(1) In general

The Secretary shall carry out a Generation IV Nuclear Energy Systems Initiative to develop an overall technology plan for and to support research and development necessary to make an informed technical decision about the most promising candidates for eventual commercial application.

(2) Administration

In conducting the Initiative, the Secretary shall examine advanced proliferation-resistant and passively safe reactor designs, including designs that—

(A) are economically competitive with other electric power generation plants;

(B) have higher efficiency, lower cost, and improved safety compared to reactors in operation on August 8, 2005;

(C) use fuels that are proliferation resistant and have substantially reduced production of high-level waste per unit of output; and

(D) use improved instrumentation.

(e) Reactor production of hydrogen

The Secretary shall carry out research to examine designs for high-temperature reactors capable of producing large-scale quantities of hydrogen.

(Pub. L. 109–58, title IX, § 952, Aug. 8, 2005, 119 Stat. 885.)

§ 16273. Advanced fuel cycle initiative

(a) In general

The Secretary, acting through the Director of the Office of Nuclear Energy, Science and Technology, shall conduct an advanced fuel recycling technology research, development, and demonstration program (referred to in this section as the ''program'') to evaluate proliferation-resistant fuel recycling and transmutation technologies that minimize environmental and public health and safety impacts as an alternative to aqueous reprocessing technologies deployed as of August 8, 2005, in support of evaluation of alternative national strategies for spent nuclear fuel and the Generation IV advanced reactor concepts.

(b) Annual review

The program shall be subject to annual review by the Nuclear Energy Research Advisory Committee of the Department or other independent entity, as appropriate.

(c) International cooperation

In carrying out the program, the Secretary is encouraged to seek opportunities to enhance the progress of the program through international cooperation.

(d) Reports

The Secretary shall submit, as part of the annual budget submission of the Department, a report on the activities of the program.

(Pub. L. 109–58, title IX, § 953, Aug. 8, 2005, 119 Stat. 886.)

§ 16274. University nuclear science and engineering support

(a) In general

The Secretary shall conduct a program to invest in human resources and infrastructure in the nuclear sciences and related fields, including health physics, nuclear engineering, and radiochemistry, consistent with missions of the Department related to civilian nuclear research, development, demonstration, and commercial application.

(b) Requirements

In carrying out the program under this section, the Secretary shall—

(1) conduct a graduate and undergraduate fellowship program to attract new and talented students, which may include fellowships for students to spend time at National Laboratories in the areas of nuclear science, engineering, and health physics with a member of the National Laboratory staff acting as a mentor;

(2) conduct a junior faculty research initiation grant program to assist universities in recruiting and retaining new faculty in the nuclear sciences and engineering by awarding grants to junior faculty for research on issues related to nuclear energy engineering and science;

(3) support fundamental nuclear sciences, engineering, and health physics research through a nuclear engineering education and research program;

(4) encourage collaborative nuclear research among industry, National Laboratories, and universities; and

(5) support communication and outreach related to nuclear science, engineering, and health physics.

(c) University-National Laboratory interactions

The Secretary shall conduct—

(1) a fellowship program for professors at universities to spend sabbaticals at National Laboratories in the areas of nuclear science and technology; and

(2) a visiting scientist program in which National Laboratory staff can spend time in academic nuclear science and engineering departments.

(d) Strengthening university research and training reactors and associated infrastructure

In carrying out the program under this section, the Secretary may support—

(1) converting research reactors from high-enrichment fuels to low-enrichment fuels and upgrading operational instrumentation;

(2) consortia of universities to broaden access to university research reactors;

(3) student training programs, in collaboration with the United States nuclear industry, in relicensing and upgrading reactors, including through the provision of technical assistance; and

(4) reactor improvements as part of a taking into consideration effort that emphasizes research, training, and education, including through the Innovations in Nuclear Infrastructure and Education Program or any similar program.

(e) Operations and maintenance

Funding for a project provided under this section may be used for a portion of the operating and maintenance costs of a research reactor at a university used in the project.

(f) Definition

In this section, the term ''junior faculty'' means a faculty member who was awarded a doctorate less than 10 years before receipt of an award from the grant program described in subsection (b)(2).

(Pub. L. 109–58, title IX, § 954, Aug. 8, 2005, 119 Stat. 886.)

§ 16275. Department of Energy civilian nuclear infrastructure and facilities

(a) In general

The Secretary shall operate and maintain infrastructure and facilities to support the nu-

clear energy research, development, demonstration, and commercial application programs, including radiological facilities management, isotope production, and facilities management.

(b) Duties

In carrying out this section, the Secretary shall—

(1) develop an inventory of nuclear science and engineering facilities, equipment, expertise, and other assets at all of the National Laboratories;

(2) develop a prioritized list of nuclear science and engineering plant and equipment improvements needed at each of the National Laboratories;

(3) consider the available facilities and expertise at all National Laboratories and emphasize investments which complement rather than duplicate capabilities; and

(4) develop a timeline and a proposed budget for the completion of deferred maintenance on plant and equipment, with the goal of ensuring that Department programs under this part will be generally recognized to be among the best in the world.

(c) Plan

The Secretary shall develop a comprehensive plan for the facilities at the Idaho National Laboratory, especially taking into account the resources available at other National Laboratories. In developing the plan, the Secretary shall—

(1) evaluate the facilities planning processes utilized by other physical science and engineering research and development institutions, both in the United States and abroad, that are generally recognized as being among the best in the world, and consider how those processes might be adapted toward developing such facilities plan;

(2) avoid duplicating, moving, or transferring nuclear science and engineering facilities, equipment, expertise, and other assets that currently exist at other National Laboratories;

(3) consider the establishment of a national transuranic analytic chemistry laboratory as a user facility at the Idaho National Laboratory;

(4) include a plan to develop, if feasible, the Advanced Test Reactor and Test Reactor Area into a user facility that is more readily accessible to academic and industrial researchers;

(5) consider the establishment of a fast neutron source as a user facility;

(6) consider the establishment of new hot cells and the configuration of hot cells most likely to advance research, development, demonstration, and commercial application in nuclear science and engineering, especially in the context of the condition and availability of these facilities elsewhere in the National Laboratories; and

(7) include a timeline and a proposed budget for the completion of deferred maintenance on plant and equipment.

(d) Transmittal to Congress

Not later than 1 year after August 8, 2005, the Secretary shall transmit the plan under subsection (c) to Congress.

(Pub. L. 109–58, title IX, § 955, Aug. 8, 2005, 119 Stat. 887.)

§ 16276. Security of nuclear facilities

The Secretary, acting through the Director of the Office of Nuclear Energy, Science and Technology, shall conduct a research and development program on cost-effective technologies for increasing—

(1) the safety of nuclear facilities from natural phenomena; and

(2) the security of nuclear facilities from deliberate attacks.

(Pub. L. 109–58, title IX, § 956, Aug. 8, 2005, 119 Stat. 888.)

§ 16277. Alternatives to industrial radioactive sources

(a) Survey

(1) In general

Not later than August 1, 2006, the Secretary shall submit to Congress the results of a survey of industrial applications of large radioactive sources.

(2) Administration

The survey shall—

(A) consider well-logging sources as one class of industrial sources;

(B) include information on current domestic and international Department, Department of Defense, State Department, and commercial programs to manage and dispose of radioactive sources; and

(C) analyze available disposal options for currently deployed or future sources and, if deficiencies are noted for either deployed or future sources, recommend legislative options that Congress may consider to remedy identified deficiencies.

(b) Plan

(1) In general

In conjunction with the survey conducted under subsection (a), the Secretary shall establish a research and development program to develop alternatives to sources described in subsection (a) that reduce safety, environmental, or proliferation risks to either workers using the sources or the public.

(2) Accelerators

Miniaturized particle accelerators for well-logging or other industrial applications and portable accelerators for production of short-lived radioactive materials at an industrial site shall be considered as part of the research and development efforts.

(3) Report

Not later than August 1, 2006, the Secretary shall submit to Congress a report describing the details of the program plan.

(Pub. L. 109–58, title IX, § 957, Aug. 8, 2005, 119 Stat. 888.)

PART F—FOSSIL ENERGY

§ 16291. Fossil energy

(a) In general

The Secretary shall carry out research, development, demonstration, and commercial appli-

cation programs in fossil energy, including activities under this part, with the goal of improving the efficiency, effectiveness, and environmental performance of fossil energy production, upgrading, conversion, and consumption. Such programs take into consideration the following objectives:

(1) Increasing the energy conversion efficiency of all forms of fossil energy through improved technologies.

(2) Decreasing the cost of all fossil energy production, generation, and delivery.

(3) Promoting diversity of energy supply.

(4) Decreasing the dependence of the United States on foreign energy supplies.

(5) Improving United States energy security.

(6) Decreasing the environmental impact of energy-related activities.

(7) Increasing the export of fossil energy-related equipment, technology, and services from the United States.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out fossil energy research, development, demonstration, and commercial application activities, including activities authorized under this part—

(1) $611,000,000 for fiscal year 2007;

(2) $626,000,000 for fiscal year 2008; and

(3) $641,000,000 for fiscal year 2009.

(c) Allocations

From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 16292 of this title—

(A) $367,000,000 for fiscal year 2007;

(B) $376,000,000 for fiscal year 2008; and

(C) $394,000,000 for fiscal year 2009.

(2) For activities under section 16294 of this title—

(A) $20,000,000 for fiscal year 2007;

(B) $25,000,000 for fiscal year 2008; and

(C) $30,000,000 for fiscal year 2009.

(3) For activities under section 16296 of this title—

(A) $1,500,000 for fiscal year 2007; and

(B) $450,000 for each of fiscal years 2008 and 2009.

(4) For the Office of Arctic Energy under section 7144d of this title $25,000,000 for each of fiscal years 2007 through 2009.

(d) Extended authorization

There are authorized to be appropriated to the Secretary for the Office of Arctic Energy established under section 7144d of this title $25,000,000 for each of fiscal years 2010 through 2012.

(e) Limitations

(1) Uses

None of the funds authorized under this section may be used for Fossil Energy Environmental Restoration or Import/Export Authorization.

(2) Institutions of higher education

Of the funds authorized under subsection (c)(2), not less than 20 percent of the funds appropriated for each fiscal year shall be dedicated to research and development carried out at institutions of higher education.

(Pub. L. 109–58, title IX, § 961, Aug. 8, 2005, 119 Stat. 889.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (b), was in the original ''this subtitle'', meaning subtitle F (§§ 961–968) of title IX of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 889, which enacted this part and provisions set out as notes under section 2001 of Title 30, Mineral Lands and Mining, and amended provisions set out as a note under section 1902 of Title 30. For complete classification of subtitle F to the Code, see Tables.

§ 16292. Coal and related technologies program

(a) In general

In addition to the programs authorized under subchapter IV, the Secretary shall conduct a program of technology research, development, demonstration, and commercial application for coal and power systems, including programs to facilitate production and generation of coal-based power through—

(1) innovations for existing plants (including mercury removal);

(2) gasification systems;

(3) advanced combustion systems;

(4) turbines for synthesis gas derived from coal;

(5) carbon capture and sequestration research and development;

(6) coal-derived chemicals and transportation fuels;

(7) liquid fuels derived from low rank coal water slurry;

(8) solid fuels and feedstocks;

(9) advanced coal-related research;

(10) advanced separation technologies; and

(11) fuel cells for the operation of synthesis gas derived from coal.

(b) Cost and performance goals

(1) In general

In carrying out programs authorized by this section, during each of calendar years 2008, 2010, 2012, and 2016, and during each fiscal year beginning after September 30, 2021, the Secretary shall identify cost and performance goals for coal-based technologies that would permit the continued cost-competitive use of coal for the production of electricity, chemical feedstocks, and transportation fuels.

(2) Administration

In establishing the cost and performance goals, the Secretary shall—

(A) consider activities and studies undertaken as of August 8, 2005, by industry in cooperation with the Department in support of the identification of the goals;

(B) consult with interested entities, including—

(i) coal producers;

(ii) industries using coal;

(iii) organizations that promote coal and advanced coal technologies;

(iv) environmental organizations;

(v) organizations representing workers; and

(vi) organizations representing consumers;

(C) not later than 120 days after August 8, 2005, publish in the Federal Register proposed draft cost and performance goals for public comments; and

(D) not later than 180 days after August 8, 2005, and every 4 years thereafter, submit to Congress a report describing the final cost and performance goals for the technologies that includes—

(i) a list of technical milestones; and

(ii) an explanation of how programs authorized in this section will not duplicate the activities authorized under the Clean Coal Power Initiative authorized under subchapter IV.

(c) Powder River Basin and Fort Union lignite coal mercury removal

(1) In general

In addition to the programs authorized by subsection (a), the Secretary shall establish a program to test and develop technologies to control and remove mercury emissions from subbituminous coal mined in the Powder River Basin, and Fort Union lignite coals, that are used for the generation of electricity.

(2) Efficacy of mercury removal technology

In carrying out the program under paragraph (1), the Secretary shall examine the efficacy of mercury removal technologies on coals described in that paragraph that are blended with other types of coal.

(d) Fuel cells

(1) In general

The Secretary shall conduct a program of research, development, demonstration, and commercial application on fuel cells for low-cost, high-efficiency, fuel-flexible, modular power systems.

(2) Demonstrations

The demonstrations referred to in paragraph (1) shall include solid oxide fuel cell technology for commercial, residential, and transportation applications, and distributed generation systems, using improved manufacturing production and processes.

(Pub. L. 109–58, title IX, § 962, Aug. 8, 2005, 119 Stat. 890.)

REFERENCES IN TEXT

Subchapter IV, referred to in subsecs. (a) and (b)(2)(D)(ii), was in the original ''title IV'', meaning title IV of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 749, which enacted subchapter IV of this chapter and subchapter XIII (§ 13571 et seq.) of chapter 134 of this title, amended sections 201, 202a, 203, and 207 of Title 30, Mineral Lands and Mining, and enacted provisions set out as notes under section 15801 of this title and section 201 of Title 30. For complete classification of title IV to the Code, see Tables.

§ 16293. Carbon capture research and development program

(a) In general

The Secretary shall carry out a 10-year carbon capture research and development program to develop carbon dioxide capture technologies on combustion-based systems for use—

(1) in new coal utilization facilities; and

(2) on the fleet of coal-based units in existence on August 8, 2005.

(b) Objectives

The objectives of the program under subsection (a) shall be—

(1) to develop carbon dioxide capture technologies, including adsorption and absorption techniques and chemical processes, to remove the carbon dioxide from gas streams containing carbon dioxide potentially amenable to sequestration;

(2) to develop technologies that would directly produce concentrated streams of carbon dioxide potentially amenable to sequestration;

(3) to increase the efficiency of the overall system to reduce the quantity of carbon dioxide emissions released from the system per megawatt generated; and

(4) in accordance with the carbon dioxide capture program, to promote a robust carbon sequestration program and continue the work of the Department, in conjunction with the private sector, through regional carbon sequestration partnerships.

(c) Authorization of appropriations

From amounts authorized under section 16291(b) of this title, the following sums are authorized for activities described in subsection (a)(2):

(1) $25,000,000 for fiscal year 2006;

(2) $30,000,000 for fiscal year 2007; and

(3) $35,000,000 for fiscal year 2008.

(Pub. L. 109–58, title IX, § 963, Aug. 8, 2005, 119 Stat. 891.)

§ 16294. Research and development for coal mining technologies

(a) Establishment

The Secretary shall carry out a program for research and development on coal mining technologies.

(b) Cooperation

In carrying out the program, the Secretary shall cooperate with appropriate Federal agencies, coal producers, trade associations, equipment manufacturers, institutions of higher education with mining engineering departments, and other relevant entities.

(c) Program

The research and development activities carried out under this section shall—

(1) be guided by the mining research and development priorities identified by the Mining Industry of the Future Program and in the recommendations from relevant reports of the National Academy of Sciences on mining technologies;

(2) include activities exploring minimization of contaminants in mined coal that contribute to environmental concerns including development and demonstration of electromagnetic wave imaging ahead of mining operations;

(3) develop and demonstrate coal bed electromagnetic wave imaging, spectroscopic reservoir analysis technology, and techniques for horizontal drilling in order to—

(A) identify areas of high coal gas content;

(B) increase methane recovery efficiency;

(C) prevent spoilage of domestic coal reserves; and

(D) minimize water disposal associated with methane extraction; and

(4) expand mining research capabilities at institutions of higher education.

(Pub. L. 109–58, title IX, § 964, Aug. 8, 2005, 119 Stat. 892.)

§ 16295. Oil and gas research programs

(a) In general

The Secretary shall conduct a program of research, development, demonstration, and commercial application of oil and gas, including—

(1) exploration and production;

(2) gas hydrates;

(3) reservoir life and extension;

(4) transportation and distribution infrastructure;

(5) ultraclean fuels;

(6) heavy oil, oil shale, and tar sands; and

(7) related environmental research.

(b) Objectives

The objectives of this program shall include advancing the science and technology available to domestic petroleum producers, particularly independent operators, to minimize the economic dislocation caused by the decline of domestic supplies of oil and natural gas resources.

(c) Natural gas and oil deposits report

Not later than 2 years after August 8, 2005, and every 2 years thereafter, the Secretary of the Interior, in consultation with other appropriate Federal agencies, shall submit to Congress a report on the latest estimates of natural gas and oil reserves, reserves growth, and undiscovered resources in Federal and State waters off the coast of Louisiana, Texas, Alabama, and Mississippi.

(d) Integrated clean power and energy research

(1) Establishment of center

The Secretary shall establish a national center or consortium of excellence in clean energy and power generation, using the resources of the Clean Power and Energy Research Consortium in existence on August 8, 2005, to address the critical dependence of the United States on energy and the need to reduce emissions.

(2) Focus areas

The center or consortium shall conduct a program of research, development, demonstration, and commercial application on integrating the following 6 focus areas:

(A) Efficiency and reliability of gas turbines for power generation.

(B) Reduction in emissions from power generation.

(C) Promotion of energy conservation issues.

(D) Effectively using alternative fuels and renewable energy.

(E) Development of advanced materials technology for oil and gas exploration and use in harsh environments.

(F) Education on energy and power generation issues.

(Pub. L. 109–58, title IX, § 965, Aug. 8, 2005, 119 Stat. 892.)

§ 16296. Low-volume oil and gas reservoir research program

(a) Definition of GIS

In this section, the term ''GIS'' means geographic information systems technology that facilitates the organization and management of data with a geographic component.

(b) Program

The Secretary shall establish a program of research, development, demonstration, and commercial application to maximize the productive capacity of marginal wells and reservoirs.

(c) Data collection

Under the program, the Secretary shall collect data on—

(1) the status and location of marginal wells and oil and gas reservoirs;

(2) the production capacity of marginal wells and oil and gas reservoirs;

(3) the location of low-pressure gathering facilities and pipelines; and

(4) the quantity of natural gas vented or flared in association with crude oil production.

(d) Analysis

Under the program, the Secretary shall—

(1) estimate the remaining producible reserves based on variable pipeline pressures; and

(2) recommend measures that will enable the continued production of those resources.

(e) Study

(1) In general

The Secretary may award a grant to an organization of States that contain significant numbers of marginal oil and natural gas wells to conduct an annual study of low-volume natural gas reservoirs.

(2) Organization with no GIS capabilities

If an organization receiving a grant under paragraph (1) does not have GIS capabilities, the organization shall contract with an institution of higher education with GIS capabilities.

(3) State geologists

The organization receiving a grant under paragraph (1) shall collaborate with the State geologist of each State being studied.

(f) Public information

The Secretary may use the data collected and analyzed under this section to produce maps and literature to disseminate to States to promote conservation of natural gas reserves.

(Pub. L. 109–58, title IX, § 966, Aug. 8, 2005, 119 Stat. 893.)

§ 16297. Complex Well Technology Testing Facility

The Secretary, in coordination with industry leaders in extended research drilling technology,

shall establish a Complex Well Technology Testing Facility at the Rocky Mountain Oilfield Testing Center to increase the range of extended drilling technologies.

(Pub. L. 109–58, title IX, § 967, Aug. 8, 2005, 119 Stat. 894.)

PART G—SCIENCE

§ 16311. Science

(a) In general

The Secretary shall conduct, through the Office of Science, programs of research, development, demonstration, and commercial application in high energy physics, nuclear physics, biological and environmental research, basic energy sciences, advanced scientific computing research, and fusion energy sciences, including activities described in this part. The programs shall include support for facilities and infrastructure, education, outreach, information, analysis, and coordination activities.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out research, development, demonstration, and commercial application activities of the Office of Science, including activities authorized under this part (including the amounts authorized under the amendment made by section 976(b)[1] and including basic energy sciences, advanced scientific and computing research, biological and environmental research, fusion energy sciences, high energy physics, nuclear physics, research analysis, and infrastructure support)—

(1) $4,153,000,000 for fiscal year 2007;
(2) $4,586,000,000 for fiscal year 2008; and
(3) $5,200,000,000 for fiscal year 2009.

(c) Allocations

From amounts authorized under subsection (b), the following sums are authorized:

(1) For activities under the Fusion Energy Sciences program (including activities under section 16312 of this title)—

(A) $355,500,000 for fiscal year 2007;
(B) $369,500,000 for fiscal year 2008;
(C) $384,800,000 for fiscal year 2009; and
(D) in addition to the amounts authorized under subparagraphs (A), (B), and (C), such sums as may be necessary for ITER construction, consistent with the limitations of section 16312(c)(5) of this title.

(2) For activities under the catalysis research program under section 16313 of this title—

(A) $36,500,000 for fiscal year 2007;
(B) $38,200,000 for fiscal year 2008; and
(C) such sums as may be necessary for fiscal year 2009.

(3) For activities under the Systems Biology Program under section 16317 of this title such sums as may be necessary for each of fiscal years 2007 through 2009.

(4) For activities under the Energy and Water Supplies program under section 16319 of this title, $30,000,000 for each of fiscal years 2007 through 2009.

(5) For the energy research fellowships programs under section 16324 of this title, $40,000,000 for each of fiscal years 2007 through 2009.

(6) For the advanced scientific computing activities under section 976—[1]

(A) $270,000,000 for fiscal year 2007;
(B) $350,000,000 for fiscal year 2008; and
(C) $375,000,000 for fiscal year 2009.

(7) For the science and engineering education pilot program under section 16323 of this title—

(A) $4,000,000 for each of fiscal years 2007 and 2008; and
(B) $8,000,000 for fiscal year 2009.

(d) Integrated bioenergy research and development

In addition to amounts otherwise authorized by this section, there are authorized to be appropriated to the Secretary for integrated bioenergy research and development programs, projects, and activities, $49,000,000 for each of the fiscal years 2005 through 2009. Activities funded under this subsection shall be coordinated with ongoing related programs of other Federal agencies, including the Plant Genome Program of the National Science Foundation. Of the funds authorized under this subsection, at least $5,000,000 for each fiscal year shall be for training and education targeted to minority and socially disadvantaged farmers and ranchers.

(Pub. L. 109–58, title IX, § 971, Aug. 8, 2005, 119 Stat. 898.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (b), was in the original ''this subtitle'', meaning subtitle G (§§ 971–984A) of title IX of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 898, which enacted this part and amended section 5523 of Title 15, Commerce and Trade. For complete classification of subtitle G to the Code, see Tables.

Section 976, referred to in subsecs. (b) and (c)(6), is section 976 of Pub. L. 109–58. Subsection (a) of section 976 is classified to section 16316 of this title and subsection (b) of section 976 amended section 5523 of Title 15, Commerce and Trade.

§ 16312. Fusion energy sciences program

(a) Declaration of policy

It shall be the policy of the United States to conduct research, development, demonstration, and commercial applications to provide for the scientific, engineering, and commercial infrastructure necessary to ensure that the United States is competitive with other countries in providing fusion energy for its own needs and the needs of other countries, including by demonstrating electric power or hydrogen production for the United States energy grid using fusion energy at the earliest date.

(b) Planning

(1) In general

Not later than 180 days after August 8, 2005, the Secretary shall submit to Congress a plan (with proposed cost estimates, budgets, and lists of potential international partners) for the implementation of the policy described in subsection (a) in a manner that ensures that—

(A) existing fusion research facilities are more fully used;

[1] See References in Text note below.

(B) fusion science, technology, theory, advanced computation, modeling, and simulation are strengthened;

(C) new magnetic and inertial fusion research and development facilities are selected based on scientific innovation and cost effectiveness, and the potential of the facilities to advance the goal of practical fusion energy at the earliest date practicable;

(D) facilities that are selected are funded at a cost-effective rate;

(E) communication of scientific results and methods between the fusion energy science community and the broader scientific and technology communities is improved;

(F) inertial confinement fusion facilities are used to the extent practicable for the purpose of inertial fusion energy research and development;

(G) attractive alternative inertial and magnetic fusion energy approaches are more fully explored; and

(H) to the extent practicable, the recommendations of the Fusion Energy Sciences Advisory Committee in the report on workforce planning, dated March 2004, are carried out, including periodic reassessment of program needs.

(2) Costs and schedules

The plan shall also address the status of and, to the extent practicable, costs and schedules for—

(A) the design and implementation of international or national facilities for the testing of fusion materials; and

(B) the design and implementation of international or national facilities for the testing and development of key fusion technologies.

(c) United States participation in ITER

(1) Definitions

In this subsection:

(A) Construction

(i) In general

The term ''construction'' means—

(I) the physical construction of the ITER facility; and

(II) the physical construction, purchase, or manufacture of equipment or components that are specifically designed for the ITER facility.

(ii) Exclusions

The term ''construction'' does not include the design of the facility, equipment, or components.

(B) ITER

The term ''ITER'' means the international burning plasma fusion research project in which the President announced United States participation on January 30, 2003, or any similar international project.

(2) Participation

The United States may participate in the ITER only in accordance with this subsection.

(3) Agreement

(A) In general

The Secretary may negotiate an agreement for United States participation in the ITER.

(B) Contents

Any agreement for United States participation in the ITER shall, at a minimum—

(i) clearly define the United States financial contribution to construction and operating costs, as well as any other costs associated with a project;

(ii) ensure that the share of high-technology components of the ITER manufactured in the United States is at least proportionate to the United States financial contribution to the ITER;

(iii) ensure that the United States will not be financially responsible for cost overruns in components manufactured in other ITER participating countries;

(iv) guarantee the United States full access to all data generated by the ITER;

(v) enable United States researchers to propose and carry out an equitable share of the experiments at the ITER;

(vi) provide the United States with a role in all collective decisionmaking related to the ITER; and

(vii) describe the process for discontinuing or decommissioning the ITER and any United States role in that process.

(4) Plan

(A) Development

The Secretary, in consultation with the Fusion Energy Sciences Advisory Committee, shall develop a plan for the participation of United States scientists in the ITER that shall include—

(i) the United States research agenda for the ITER;

(ii) methods to evaluate whether the ITER is promoting progress toward making fusion a reliable and affordable source of power; and

(iii) a description of how work at the ITER will relate to other elements of the United States fusion program.

(B) Review

The Secretary shall request a review of the plan by the National Academy of Sciences.

(5) Limitation

No Federal funds shall be expended for the construction of the ITER until the Secretary has submitted to Congress—

(A) the agreement negotiated in accordance with paragraph (3) and 120 days have elapsed since that submission;

(B) a report describing the management structure of the ITER and providing a fixed dollar estimate of the cost of United States participation in the construction of the ITER, and 120 days have elapsed since that submission;

(C) a report describing how United States participation in the ITER will be funded without reducing funding for other programs

in the Office of Science (including other fusion programs), and 60 days have elapsed since that submission; and

(D) the plan required by paragraph (4) (but not the National Academy of Sciences review of that plan), and 60 days have elapsed since that submission.

(6) Alternative to ITER

(A) In general

If at any time during the negotiations on the ITER, the Secretary determines that construction and operation of the ITER is unlikely or infeasible, the Secretary shall submit to Congress, along with the budget request of the President submitted to Congress for the following fiscal year, a plan for implementing a domestic burning plasma experiment such as the Fusion Ignition Research Experiment, including costs and schedules for the plan.

(B) Administration

The Secretary shall—

(i) refine the plan in full consultation with the Fusion Energy Sciences Advisory Committee; and

(ii) transmit the plan to the National Academy of Sciences for review.

(Pub. L. 109–58, title IX, § 972, Aug. 8, 2005, 119 Stat. 899.)

§ 16313. Catalysis research program

(a) Establishment

The Secretary, acting through the Office of Science, shall support a program of research and development in catalysis science consistent with the statutory authorities of the Department related to research and development.

(b) Components

The program shall include efforts to—

(1) enable catalyst design using combinations of experimental and mechanistic methodologies coupled with computational modeling of catalytic reactions at the molecular level;

(2) develop techniques for high throughput synthesis, assay, and characterization at nanometer and subnanometer scales in-situ under actual operating conditions;

(3) synthesize catalysts with specific site architectures;

(4) conduct research on the use of precious metals for catalysis; and

(5) translate molecular understanding to the design of catalytic compounds.

(c) Duties of the Office of Science

In carrying out the program, the Director of the Office of Science shall—

(1) support both individual investigators and multidisciplinary teams of investigators to pioneer new approaches in catalytic design;

(2) develop, plan, construct, acquire, share, or operate special equipment or facilities for the use of investigators in collaboration with national user facilities, such as nanoscience and engineering centers;

(3) support technology transfer activities to benefit industry and other users of catalysis science and engineering; and

(4) coordinate research and development activities with industry and other Federal agencies.

(d) Assessment

Not later than 3 years after August 8, 2005, the Secretary shall enter into an arrangement with the National Academy of Sciences to—

(1) review the catalysis program to measure—

(A) gains made in the fundamental science of catalysis; and

(B) progress towards developing new fuels for energy production and material fabrication processes; and

(2) submit to Congress a report describing the results of the review.

(Pub. L. 109–58, title IX, § 973, Aug. 8, 2005, 119 Stat. 902.)

§ 16314. Hydrogen

(a) In general

The Secretary shall conduct a program of fundamental research and development in support of programs authorized under subchapter VIII.

(b) Methods

The program shall include support for methods of generating hydrogen without the use of natural gas.

(Pub. L. 109–58, title IX, § 974, Aug. 8, 2005, 119 Stat. 903.)

§ 16315. Solid state lighting

The Secretary shall conduct a program of fundamental research on solid state lighting in support of the Next Generation Lighting Initiative carried out under section 16192 of this title.

(Pub. L. 109–58, title IX, § 975, Aug. 8, 2005, 119 Stat. 903.)

§ 16316. Advanced scientific computing research and development program

(1) In general

The Secretary shall conduct an advanced scientific computing research and development program that includes activities related to applied mathematics and activities authorized by the Department of Energy High-End Computing Revitalization Act of 2004 (15 U.S.C. 5541 et seq.).

(2) Goal

The Secretary shall carry out the program with the goal of supporting departmental missions, and providing the high-performance computational, networking, advanced visualization technologies, and workforce resources, that are required for world leadership in science.

(Pub. L. 109–58, title IX, § 976(a), Aug. 8, 2005, 119 Stat. 903.)

REFERENCES IN TEXT

The Department of Energy High-End Computing Revitalization Act of 2004, referred to in par. (1), is Pub. L. 108–423, Nov. 30, 2004, 118 Stat. 2400, which is classified principally to subchapter III (§ 5541 et seq.) of chapter 81 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of Title 15 and Tables.

§ 16317. Systems biology program

(a) Program

(1) Establishment

The Secretary shall establish a research, development, and demonstration program in microbial and plant systems biology, protein science, and computational biology to support the energy, national security, and environmental missions of the Department.

(2) Grants

The program shall support individual researchers and multidisciplinary teams of researchers through competitive, merit-reviewed grants.

(3) Consultation

In carrying out the program, the Secretary shall consult with other Federal agencies that conduct genetic and protein research.

(b) Goals

The program shall have the goal of developing technologies and methods based on the biological functions of genomes, microbes, and plants that—

(1) can facilitate the production of fuels, including hydrogen;

(2) convert carbon dioxide to organic carbon;

(3) detoxify soils and water, including at facilities of the Department, contaminated with heavy metals and radiological materials; and

(4) address other Department missions as identified by the Secretary.

(c) Plan

(1) Development of plan

Not later than 1 year after August 8, 2005, the Secretary shall prepare and transmit to Congress a research plan describing how the program authorized pursuant to this section will be undertaken to accomplish the program goals established in subsection (b).

(2) Review of plan

The Secretary shall contract with the National Academy of Sciences to review the research plan developed under this subsection. The Secretary shall transmit the review to Congress not later than 18 months after transmittal of the research plan under paragraph (1), along with the Secretary's response to the recommendations contained in the review.

(d) User facilities and ancillary equipment

Within the funds authorized to be appropriated pursuant to this part, amounts shall be available for projects to develop, plan, construct, acquire, or operate special equipment, instrumentation, or facilities, including user facilities at National Laboratories, for researchers conducting research, development, demonstration, and commercial application in systems biology and proteomics and associated biological disciplines.

(e) Prohibition on biomedical and human cell and human subject research

(1) No biomedical research

In carrying out the program under this section, the Secretary shall not conduct biomedical research.

(2) Limitations

Nothing in this section shall authorize the Secretary to conduct any research or demonstrations—

(A) on human cells or human subjects; or

(B) designed to have direct application with respect to human cells or human subjects.

(Pub. L. 109–58, title IX, § 977, Aug. 8, 2005, 119 Stat. 903.)

REFERENCES IN TEXT

This part, referred to in subsec. (d), was in the original ''this subtitle'', meaning subtitle G (§§ 971–984A) of title IX of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 898, which enacted this part and amended section 5523 of Title 15, Commerce and Trade. For complete classification of subtitle G to the Code, see Tables.

§ 16318. Fission and fusion energy materials research program

(a) In general

Along with the budget request of the President submitted to Congress for fiscal year 2007, the Secretary shall establish a research and development program on material science issues presented by advanced fission reactors and the fusion energy program of the Department.

(b) Administration

In carrying out the program, the Secretary shall develop—

(1) a catalog of material properties required for applications described in subsection (a);

(2) theoretical models for materials possessing the required properties;

(3) benchmark models against existing data; and

(4) a roadmap to guide further research and development in the area covered by the program.

(Pub. L. 109–58, title IX, § 978, Aug. 8, 2005, 119 Stat. 904.)

§ 16319. Energy and water supplies

(a) In general

The Secretary shall carry out a program of research, development, demonstration, and commercial application to—

(1) address energy-related issues associated with provision of adequate water supplies, optimal management, and efficient use of water;

(2) address water-related issues associated with the provision of adequate supplies, optimal management, and efficient use of energy; and

(3) assess the effectiveness of existing programs within the Department and other Federal agencies to address these energy and water related issues.

(b) Program elements

The program under this section shall include—

(1) arsenic treatment;

(2) desalination; and

(3) planning, analysis, and modeling of energy and water supply and demand.

(c) Collaboration

In carrying out this section, the Secretary shall consult with the Administrator of the En-

vironmental Protection Agency, the Secretary of the Interior, the Chief Engineer of the Army Corps of Engineers, the Secretary of Commerce, the Secretary of Defense, and other Federal agencies as appropriate.

(d) Facilities

The Secretary may utilize all existing facilities within the Department and may design and construct additional facilities as needed to carry out the purposes of this program.

(e) Advisory committee

The Secretary shall establish or utilize an advisory committee to provide independent advice and review of the program.

(f) Reports

Not later than 2 years after August 8, 2005, the Secretary shall submit to Congress a report on the assessment described in subsection (b) and recommendations for future actions.

(Pub. L. 109–58, title IX, § 979, Aug. 8, 2005, 119 Stat. 905.)

§ 16320. Spallation Neutron Source

(a) Definitions

In this section:

(1) SING

The term ''SING'' means the Spallation Neutron Source Instruments Next Generation major item of equipment.

(2) SNS power upgrade

The term ''SNS power upgrade'' means the Spallation Neutron Source power upgrade described in the 20-year facilities plan of the Office of Science of the Department.

(3) SNS second target station

The term ''SNS second target station'' means the Spallation Neutron Source second target station described in the 20-year facilities plan of the Office of Science of the Department.

(4) Spallation Neutron Source Facility

The terms ''Spallation Neutron Source Facility'' and ''Facility'' mean the completed Spallation Neutron Source scientific user facility located at Oak Ridge National Laboratory, Oak Ridge, Tennessee.

(5) Spallation Neutron Source Project

The terms ''Spallation Neutron Source Project'' and ''Project'' means Department Project 99–E–334, Oak Ridge National Laboratory, Oak Ridge, Tennessee.

(b) Spallation Neutron Source Project

(1) In general

The Secretary shall submit to Congress, as part of the annual budget request of the President submitted to Congress, a report on progress on the Spallation Neutron Source Project.

(2) Contents

The report shall include for the Project—

(A) a description of the achievement of milestones;

(B) a comparison of actual costs to estimated costs; and

(C) any changes in estimated Project costs or schedule.

(c) Spallation Neutron Source Facility plan

(1) In general

The Secretary shall develop an operational plan for the Spallation Neutron Source Facility that ensures that the Facility is employed to the full capability of the Facility in support of the study of advanced materials, nanoscience, and other missions of the Office of Science of the Department.

(2) Plan

The operational plan shall—

(A) include a plan for the operation of an effective scientific user program that—

(i) is based on peer review of proposals submitted for use of the Facility;

(ii) includes scientific and technical support to ensure that external users, including researchers based at institutions of higher education, are able to make full use of a variety of high quality scientific instruments; and

(iii) phases in systems upgrades to ensure that the Facility remains at the forefront of international scientific endeavors in the field of the Facility throughout the operating life of the Facility;

(B) include an ongoing program to develop new instruments that builds on the high performance neutron source and that allows neutron scattering techniques to be applied to a growing range of scientific problems and disciplines; and

(C) address the status of and, to the maximum extent practicable, costs and schedules for—

(i) full user mode operations of the Facility;

(ii) instrumentation built at the Facility during the operating phase through full use of the experimental hall, including the SING;

(iii) the SNS power upgrade; and

(iv) the SNS second target station.

(d) Authorization of appropriations

(1) Spallation Neutron Source Project

There is authorized to be appropriated to carry out the Spallation Neutron Source Project for the lifetime of the Project $1,411,700,000 for total project costs, of which—

(A) $1,192,700,000 shall be used for the costs of construction; and

(B) $219,000,000 shall be used for other Project costs.

(2) Spallation Neutron Source Facility

(A) In general

Except as provided in subparagraph (B), there is authorized to be appropriated for the Spallation Neutron Source Facility for—

(i) the SING, $75,000,000 for each of fiscal year 2007 through 2009; and

(ii) the SNS power upgrade, $160,000,000, to remain available until expended.

(B) Insufficient stockpiles of heavy water

If stockpiles of heavy water of the Department are insufficient to meet the needs of

the Facility, there is authorized to be appropriated for the Facility $12,000,000 for fiscal year 2007.

(Pub. L. 109–58, title IX, § 980, Aug. 8, 2005, 119 Stat. 905.)

§ 16321. Rare Isotope Accelerator

(a) Establishment

The Secretary shall construct and operate a Rare Isotope Accelerator. The Secretary shall commence construction no later than September 30, 2008.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section. The Secretary shall not spend more than $1,100,000,000 in Federal funds for all activities associated with the Rare Isotope Accelerator, prior to operation of the Accelerator.

(Pub. L. 109–58, title IX, § 981, Aug. 8, 2005, 119 Stat. 907.)

§ 16322. Office of Scientific and Technical Information

The Secretary, through the Office of Scientific and Technical Information, shall maintain within the Department publicly available collections of scientific and technical information resulting from research, development, demonstration, and commercial applications activities supported by the Department.

(Pub. L. 109–58, title IX, § 982, Aug. 8, 2005, 119 Stat. 907.)

§ 16323. Science and engineering education pilot program

(a) Establishment of pilot program

The Secretary shall award a grant to a Southeastern United States consortium of major research universities that currently advances science and education by partnering with National Laboratories, to establish a regional pilot program of its SEEK–16 program for enhancing scientific, technological, engineering, and mathematical literacy, creativity, and decision-making. The consortium shall include leading research universities, one or more universities that train substantial numbers of elementary and secondary school teachers, and (where appropriate) National Laboratories.

(b) Program elements

The regional pilot program shall include—

(1) expanding strategic, formal partnerships among universities with strength in research, universities that train substantial numbers of elementary and secondary school teachers, and the private sector;

(2) combining Department expertise with one or more National Aeronautics and Space Administration Educator Resource Centers;

(3) developing programs to permit current and future teachers to participate in ongoing research projects at National Laboratories and research universities and to adapt lessons learned to the classroom;

(4) designing and implementing course work;

(5) designing and implementing a strategy for measuring and assessing progress under the program; and

(6) developing models for transferring knowledge gained under the pilot program to other institutions and areas of the United States.

(c) Categorization

A grant under this section shall be considered an authorized activity under section 7381b of this title.

(d) Report

No later than 2 years after the award of the grant, the Secretary shall transmit to Congress a report outlining lessons learned and, if determined appropriate by the Secretary, containing a plan for expanding the program throughout the United States.

(Pub. L. 109–58, title IX, § 983, Aug. 8, 2005, 119 Stat. 907.)

§ 16324. Energy research fellowships

(a) Postdoctoral fellowship program

The Secretary shall establish a program under which the Secretary provides fellowships to encourage outstanding young scientists and engineers to pursue postdoctoral research appointments in energy research and development at institutions of higher education of their choice.

(b) Senior research fellowships

(1) In general

The Secretary shall establish a program under which the Secretary provides fellowships to allow outstanding senior researchers and their research groups in energy research and development to explore research and development topics of their choosing for a period of not less than 3 years, to be determined by the Secretary.

(2) Consideration

In providing a fellowship under the program described in paragraph (1), the Secretary shall consider—

(A) the past scientific or technical accomplishment of a senior researcher; and

(B) the potential for continued accomplishment by the researcher during the period of the fellowship.

(Pub. L. 109–58, title IX, § 984, Aug. 8, 2005, 119 Stat. 908.)

§ 16325. Science and Technology Scholarship Program

(a) In general

The Secretary is authorized to establish a Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Department and National Laboratories.

(b) Service requirement

The Secretary may require that an individual receiving a scholarship under this section serve as a full-time employee of the Department or a National Laboratory for a fixed period in return for receiving the scholarship.

(Pub. L. 109–58, title IX, § 984A, Aug. 8, 2005, 119 Stat. 908.)

PART H—INTERNATIONAL COOPERATION

§ 16341. Western Hemisphere energy cooperation

(a) Program

The Secretary shall carry out a program to promote cooperation on energy issues with countries of the Western Hemisphere.

(b) Activities

Under the program, the Secretary shall fund activities to work with countries of the Western Hemisphere to—

(1) increase the production of energy supplies;

(2) improve energy efficiency; and

(3) assist in the development and transfer of energy supply and efficiency technologies that would have a beneficial impact on world energy markets.

(c) Participation by institutions of higher education

To the extent practicable, the Secretary shall carry out the program under this section with the participation of institutions of higher education so as to take advantage of the acceptance of institutions of higher education by countries of the Western Hemisphere as sources of unbiased technical and policy expertise when assisting the Secretary in—

(1) evaluating new technologies;

(2) resolving technical issues;

(3) working with those countries in the development of new policies; and

(4) training policymakers, particularly in the case of institutions of higher education that involve the participation of minority students, such as—

(A) Hispanic-serving institutions; and

(B) part B institutions.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) $10,000,000 for fiscal year 2007;

(2) $13,000,000 for fiscal year 2008; and

(3) $16,000,000 for fiscal year 2009.

(Pub. L. 109–58, title IX, § 985, Aug. 8, 2005, 119 Stat. 908.)

§ 16342. International energy training

(a) In general

The Secretary, in consultation with the Secretary of Commerce, the Secretary of the Interior, and Secretary of State, and the Federal Energy Regulatory Commission, shall coordinate training and outreach efforts for international commercial energy markets in countries with developing and restructuring economies.

(b) Components

The training and outreach efforts referred to in subsection (a) may include—

(1) production-related fiscal regimes;

(2) grid and network issues;

(3) energy user and demand side response;

(4) international trade of energy; and

(5) international transportation of energy.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section $1,500,000 for each of fiscal years 2007 through 2010.

(Pub. L. 109–58, title IX, § 986A, Aug. 8, 2005, 119 Stat. 910.)

PART I—RESEARCH ADMINISTRATION AND OPERATIONS

§ 16351. Availability of funds

Funds authorized to be appropriated to the Department under this Act or an amendment made by this Act shall remain available until expended.

(Pub. L. 109–58, title IX, § 987, Aug. 8, 2005, 119 Stat. 910.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 16352. Cost sharing

(a) Applicability

Notwithstanding any other provision of law, in carrying out a research, development, demonstration, or commercial application program or activity that is initiated after August 8, 2005, the Secretary shall require cost-sharing in accordance with this section.

(b) Research and development

(1) In general

Except as provided in paragraphs (2) and (3) and subsection (f), the Secretary shall require not less than 20 percent of the cost of a research or development activity described in subsection (a) to be provided by a non-Federal source.

(2) Exclusion

Paragraph (1) shall not apply to a research or development activity described in subsection (a) that is of a basic or fundamental nature, as determined by the appropriate officer of the Department.

(3) Reduction

The Secretary may reduce or eliminate the requirement of paragraph (1) for a research and development activity of an applied nature if the Secretary determines that the reduction is necessary and appropriate.

(c) Demonstration and commercial application

(1) In general

Except as provided in paragraph (2) and subsection (f), the Secretary shall require that not less than 50 percent of the cost of a demonstration or commercial application activity described in subsection (a) to[1] be provided by a non-Federal source.

(2) Reduction of non-Federal share

The Secretary may reduce the non-Federal share required under paragraph (1) if the Sec-

[1] So in original. The word ''to'' probably should not appear.

retary determines the reduction to be necessary and appropriate, taking into consideration any technological risk relating to the activity.

(d) Calculation of amount

In calculating the amount of a non-Federal contribution under this section, the Secretary—

(1) may include allowable costs in accordance with the applicable cost principles, including—

(A) cash;

(B) personnel costs;

(C) the value of a service, other resource, or third party in-kind contribution determined in accordance with the applicable circular of the Office of Management and Budget;

(D) indirect costs or facilities and administrative costs; or

(E) any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act); and

(2) shall not include—

(A) revenues or royalties from the prospective operation of an activity beyond the time considered in the award;

(B) proceeds from the prospective sale of an asset of an activity; or

(C) other appropriated Federal funds.

(e) Repayment of Federal share

The Secretary shall not require repayment of the Federal share of a cost-shared activity under this section as a condition of making an award.

(f) Exclusions

This section shall not apply to—

(1) a cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.);

(2) a fee charged for the use of a Department facility; or

(3) an award under—

(A) the small business innovation research program under section 638 of title 15; or

(B) the small business technology transfer program under that section.

(Pub. L. 109–58, title IX, § 988, Aug. 8, 2005, 119 Stat. 910.)

REFERENCES IN TEXT

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (f)(1), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§ 3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

§ 16353. Merit review of proposals

(a) Awards

Awards of funds authorized under this Act or an amendment made by this Act shall be made only after an impartial review of the scientific and technical merit of the proposals for the awards has been carried out by or for the Department.

(b) Competition

Competitive awards under this Act shall involve competitions open to all qualified entities within one or more of the following categories:

(1) Institutions of higher education.

(2) National Laboratories.

(3) Nonprofit and for-profit private entities.

(4) State and local governments.

(5) Consortia of entities described in paragraphs (1) through (4).

(c) Sense of Congress

It is the sense of Congress that research, development, demonstration, and commercial application activities carried out by the Department should be awarded using competitive procedures, to the maximum extent practicable.

(Pub. L. 109–58, title IX, § 989, Aug. 8, 2005, 119 Stat. 911.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 16354. External technical review of departmental programs

(a) National energy research and development advisory boards

(1) Establishment

The Secretary shall establish one or more advisory boards to review research, development, demonstration, and commercial application programs of the Department in energy efficiency, renewable energy, nuclear energy, and fossil energy.

(2) Alternatives

The Secretary may—

(A) designate an existing advisory board within the Department to fulfill the responsibilities of an advisory board under this section; and

(B) enter into appropriate arrangements with the National Academy of Sciences to establish such an advisory board.

(b) Use of existing committees

The Secretary shall continue to use the scientific program advisory committees chartered under the Federal Advisory Committee Act (5 U.S.C. App.) by the Office of Science to oversee research and development programs under that Office.

(c) Membership

Each advisory board under this section shall consist of persons with appropriate expertise representing a diverse range of interests.

(d) Meetings and goals

(1) Meetings

Each advisory board under this section shall meet at least semiannually to review and advise on the progress made by the respective one or more research, development, demonstration, and commercial application programs.

(2) Goals

The advisory board shall review the measurable cost and performance-based goals for the programs as established under section 16181 of this title, and the progress on meeting the goals.

(e) Periodic reviews and assessments

(1) In general

The Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct periodic reviews and assessments of—

(A) the research, development, demonstration, and commercial application programs authorized by this Act and amendments made by this Act;

(B) the measurable cost and performance-based goals for the programs as established under section 16181 of this title, if any; and

(C) the progress on meeting the goals.

(2) Timing

The reviews and assessments shall be conducted every 5 years or more often as the Secretary considers necessary.

(3) Reports

The Secretary shall submit to Congress reports describing the results of all the reviews and assessments.

(Pub. L. 109–58, title IX, § 990, Aug. 8, 2005, 119 Stat. 912.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

This Act, referred to in subsec. (e)(1)(A), is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 16355. National Laboratory designation

After August 8, 2005, the Secretary shall not designate a facility that is not listed in section 15801(3) of this title as a National Laboratory.

(Pub. L. 109–58, title IX, § 991, Aug. 8, 2005, 119 Stat. 913.)

§ 16356. Report on equal employment opportunity practices

Not later than 12 months after August 8, 2005, and biennially thereafter, the Secretary shall transmit to Congress a report on the equal employment opportunity practices at National Laboratories. Such report shall include—

(1) a thorough review of each National Laboratory contractor's equal employment opportunity policies, including promotion to management and professional positions and pay raises;

(2) a statistical report on complaints and their disposition in the National Laboratories;

(3) a description of how equal employment opportunity practices at the National Laboratories are treated in the contract and in calculating award fees for each contractor;

(4) a summary of disciplinary actions and their disposition by either the Department or the relevant contractors for each National Laboratory;

(5) a summary of outreach efforts to attract women and minorities to the National Laboratories;

(6) a summary of efforts to retain women and minorities in the National Laboratories; and

(7) a summary of collaboration efforts with the Office of Federal Contract Compliance Programs to improve equal employment opportunity practices at the National Laboratories.

(Pub. L. 109–58, title IX, § 992, Aug. 8, 2005, 119 Stat. 913.)

§ 16357. Strategy and plan for science and energy facilities and infrastructure

(a) Facility and infrastructure policy

(1) In general

The Secretary shall develop and implement a strategy for facilities and infrastructure supported primarily from the Office of Science, the Office of Energy Efficiency and Renewable Energy, the Office of Fossil Energy, or the Office of Nuclear Energy, Science and Technology Programs at all National Laboratories and single-purpose research facilities.

(2) Strategy

The strategy shall provide cost-effective means for—

(A) maintaining existing facilities and infrastructure;

(B) closing unneeded facilities;

(C) making facility modifications; and

(D) building new facilities.

(b) Report

(1) In general

The Secretary shall prepare and submit, along with the budget request of the President submitted to Congress for fiscal year 2008, a report describing the strategy developed under subsection (a).

(2) Contents

For each National Laboratory and single-purpose research facility that is primarily used for science and energy research, the report shall contain—

(A) the current priority list of proposed facilities and infrastructure projects, including cost and schedule requirements;

(B) a current 10-year plan that demonstrates the reconfiguration of its facilities and infrastructure to meet its missions and to address its long-term operational costs and return on investment;

(C) the total current budget for all facilities and infrastructure funding; and

(D) the current status of each facility and infrastructure project compared to the original baseline cost, schedule, and scope.

(Pub. L. 109–58, title IX, § 993, Aug. 8, 2005, 119 Stat. 913.)

§ 16358. Strategic research portfolio analysis and coordination plan

(a) In general

The Secretary shall periodically review all of the science and technology activities of the Department in a strategic framework that takes into account both the frontiers of science to which the Department can contribute and the national needs relevant to the Department's statutory missions.

(b) Coordination analysis and plan

As part of the review under subsection (a), the Secretary shall develop a coordination plan to improve coordination and collaboration in research, development, demonstration, and commercial application activities across Department organizational boundaries.

(c) Plan contents

The plan shall describe—

(1) cross-cutting scientific and technical issues and research questions that span more than one program or major office of the Department;

(2) how the applied technology programs of the Department are coordinating their activities, and addressing those questions;

(3) ways in which the technical interchange within the Department, particularly between the Office of Science and the applied technology programs, can be enhanced, including ways in which the research agendas of the Office of Science and the applied programs can interact and assist each other;

(4) a description of how the Secretary will ensure that the Department's overall research agenda include, in addition to fundamental, curiosity-driven research, fundamental research related to topics of concern to the applied programs, and applications in Departmental technology programs of research results generated by fundamental, curiosity-driven research.

(d) Plan transmittal

Not later than 12 months after August 8, 2005, and every 4 years thereafter, the Secretary shall transmit to Congress the results of the review under subsection (a) and the coordination plan under subsection (b).

(Pub. L. 109–58, title IX, § 994, Aug. 8, 2005, 119 Stat. 914.)

§ 16359. Competitive award of management contracts

None of the funds authorized to be appropriated to the Secretary by this subchapter may be used to award a management and operating contract for a National Laboratory (excluding those named in subparagraphs (G), (H), (N), and (O) of section 15801(3) of this title), unless such contract is competitively awarded, or the Secretary grants, on a case-by-case basis, a waiver. The Secretary may not delegate the authority to grant such a waiver and shall submit to Congress a report notifying it of the waiver, and setting forth the reasons for the waiver, at least 60 days prior to the date of the award of such contract.

(Pub. L. 109–58, title IX, § 995, Aug. 8, 2005, 119 Stat. 914.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title IX of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 856, which enacted this subchapter, amended sections 8101 and 8102 of Title 7, Agriculture, and section 5523 of Title 15, Commerce and Trade, enacted provisions set out as notes under section 15801 of this title, section 8102 of Title 7, and section 2001 of Title 30, Mineral Lands and Mining, and amended provisions set out as notes under section 8101 of Title 7 and section 1902 of Title 30. For complete classification of title IX to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 16360. Western Michigan demonstration project

The Administrator of the Environmental Protection Agency, in consultation with the State of Michigan and affected local officials, shall conduct a demonstration project to address the effect of transported ozone and ozone precursors in Southwestern Michigan. The demonstration program shall address projected nonattainment areas in Southwestern Michigan that include counties with design values for ozone of less than .095 based on years 2000 to 2002 or the most current 3-year period of air quality data. The Administrator shall assess any difficulties such areas may experience in meeting the 8-hour national ambient air quality standard for ozone due to the effect of transported ozone or ozone precursors into the areas. The Administrator shall work with State and local officials to determine the extent of ozone and ozone precursor transport, to assess alternatives to achieve compliance with the 8-hour standard apart from local controls, and to determine the timeframe in which such compliance could take place. The Administrator shall complete this demonstration project no later than 2 years after August 8, 2005, and shall not impose any requirement or sanction under the Clean Air Act (42 U.S.C. 7401 et seq.) that might otherwise apply during the pendency of the demonstration project.

(Pub. L. 109–58, title IX, § 996, Aug. 8, 2005, 119 Stat. 915.)

REFERENCES IN TEXT

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

§ 16361. Arctic Engineering Research Center

(a) In general

The Secretary of Transportation, in consultation with the Secretary and the United States Arctic Research Commission, shall provide annual grants to a university located adjacent to the Arctic Energy Office of the Department of Energy, to establish and operate a university research center to be headquartered in Fairbanks and to be known as the ''Arctic Engineering Research Center'' (referred to in this section as the ''Center'').

(b) Purpose

The purpose of the Center shall be to conduct research on, and develop improved methods of,

construction and use of materials to improve the overall performance of roads, bridges, residential, commercial, and industrial structures, and other infrastructure in the Arctic region, with an emphasis on developing—

(1) new construction techniques for roads, bridges, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure that are capable of withstanding the Arctic environment and using limited energy resources as efficiently as practicable;

(2) technologies and procedures for increasing road, bridge, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure safety, reliability, and integrity in the Arctic region;

(3) new materials and improving the performance and energy efficiency of existing materials for the construction of roads, bridges, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure in the Arctic region; and

(4) recommendations for new local, regional, and State permitting and building codes to ensure transportation and building safety and efficient energy use when constructing, using, and occupying such infrastructure in the Arctic region.

(c) Objectives

The Center shall carry out—

(1) basic and applied research in the subjects described in subsection (b), the products of which shall be judged by peers or other experts in the field to advance the body of knowledge in road, bridge, rail, and infrastructure engineering in the Arctic region; and

(2) an ongoing program of technology transfer that makes research results available to potential users in a form that can be implemented.

(d) Amount of grant

For each of fiscal years 2006 through 2011, the Secretary shall provide a grant in the amount of $3,000,000 to the institution specified in subsection (a) to carry out this section.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2006 through 2011.

(Pub. L. 109–58, title IX, § 997, Aug. 8, 2005, 119 Stat. 915.)

§ 16362. Barrow Geophysical Research Facility

(a) Establishment

The Secretary of Commerce, in consultation with the Secretaries of Energy and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency, shall establish a joint research facility in Barrow, Alaska, to be known as the ''Barrow Geophysical Research Facility'', to support scientific research activities in the Arctic.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretaries of Commerce, Energy, and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency for the planning, design, construction, and support of the Barrow Geophysical Research Facility, $61,000,000.

(Pub. L. 109–58, title IX, § 998, Aug. 8, 2005, 119 Stat. 916.)

PART J—ULTRA-DEEPWATER AND UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES

§ 16371. Program authority

(a) In general

The Secretary shall carry out a program under this part of research, development, demonstration, and commercial application of technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production, including addressing the technology challenges for small producers, safe operations, and environmental mitigation (including reduction of greenhouse gas emissions and sequestration of carbon).

(b) Program elements

The program under this part shall address the following areas, including improving safety and minimizing environmental impacts of activities within each area:

(1) Ultra-deepwater architecture and technology, including drilling to formations in the Outer Continental Shelf to depths greater than 15,000 feet.

(2) Unconventional natural gas and other petroleum resource exploration and production technology.

(3) The technology challenges of small producers.

(4) Complementary research performed by the National Energy Technology Laboratory for the Department.

(c) Limitation on location of field activities

Field activities under the program under this part shall be carried out only—

(1) in—

(A) areas in the territorial waters of the United States not under any Outer Continental Shelf moratorium as of September 30, 2002;

(B) areas onshore in the United States on public land administered by the Secretary of the Interior available for oil and gas leasing, where consistent with applicable law and land use plans; and

(C) areas onshore in the United States on State or private land, subject to applicable law; and

(2) with the approval of the appropriate Federal or State land management agency or private land owner.

(d) Activities at the National Energy Technology Laboratory

The Secretary, through the National Energy Technology Laboratory, shall carry out a program of research and other activities complementary to and supportive of the research programs under subsection (b).

(e) Consultation with Secretary of the Interior

In carrying out this part, the Secretary shall consult regularly with the Secretary of the Interior.

(Pub. L. 109–58, title IX, § 999A, Aug. 8, 2005, 119 Stat. 916.)

§ 16372. Ultra-deepwater and unconventional onshore natural gas and other petroleum research and development program

(a) In general

The Secretary shall carry out the activities under section 16371 of this title, to maximize the value of natural gas and other petroleum resources of the United States, by increasing the supply of such resources, through reducing the cost and increasing the efficiency of exploration for and production of such resources, while improving safety and minimizing environmental impacts.

(b) Role of the Secretary

The Secretary shall have ultimate responsibility for, and oversight of, all aspects of the program under this section.

(c) Role of the program consortium

(1) In general

The Secretary shall contract with a corporation that is structured as a consortium to administer the programmatic activities outlined in this part.[1] The program consortium shall—

(A) administer the program pursuant to subsection (f)(3), utilizing program administration funds only;

(B) issue research project solicitations upon approval of the Secretary or the Secretary's designee;

(C) make project awards to research performers upon approval of the Secretary or the Secretary's designee;

(D) disburse research funds to research performers awarded under subsection (f) as directed by the Secretary in accordance with the annual plan under subsection (e); and

(E) carry out other activities assigned to the program consortium by this section.

(2) Limitation

The Secretary may not assign any activities to the program consortium except as specifically authorized under this section.

(3) Conflict of interest

(A) Procedures

The Secretary shall establish procedures—

(i) to ensure that each board member, officer, or employee of the program consortium who is in a decisionmaking capacity under subsection (f)(3) shall disclose to the Secretary any financial interests in, or financial relationships with, applicants for or recipients of awards under this section, including those of his or her spouse or minor child, unless such relationships or interests would be considered to be remote or inconsequential; and

(ii) to require any board member, officer, or employee with a financial relationship or interest disclosed under clause (i) to recuse himself or herself from any oversight under subsection (f)(4) with respect to such applicant or recipient.

(B) Failure to comply

The Secretary may disqualify an application or revoke an award under this section if a board member, officer, or employee has failed to comply with procedures required under subparagraph (A)(ii).

(d) Selection of the program consortium

(1) In general

The Secretary shall select the program consortium through an open, competitive process.

(2) Members

The program consortium may include corporations, trade associations, institutions of higher education, National Laboratories, or other research institutions. After submitting a proposal under paragraph (4), the program consortium may not add members without the consent of the Secretary.

(3) Requirement of section 501(c)(3) status

The Secretary shall not select a consortium under this section unless such consortium is an organization described in section 501(c)(3) of title 26 and exempt from tax under such section 501(a) of such title.

(4) Schedule

Not later than 90 days after August 8, 2005, the Secretary shall solicit proposals from eligible consortia to perform the duties in subsection (c)(1), which shall be submitted not later than 180 days after August 8, 2005. The Secretary shall select the program consortium not later than 270 days after August 8, 2005.

(5) Application

Applicants shall submit a proposal including such information as the Secretary may require. At a minimum, each proposal shall—

(A) list all members of the consortium;

(B) fully describe the structure of the consortium, including any provisions relating to intellectual property; and

(C) describe how the applicant would carry out the activities of the program consortium under this section.

(6) Eligibility

To be eligible to be selected as the program consortium, an applicant must be an entity whose members have collectively demonstrated capabilities and experience in planning and managing research, development, demonstration, and commercial application programs for ultra-deepwater and unconventional natural gas or other petroleum exploration or production.

(7) Focus areas for awards

(A) Ultra-deepwater resources

Awards from allocations under section 16378(d)(1) of this title shall focus on the development and demonstration of individual exploration and production technologies as well as integrated systems technologies including new architectures for production in ultra-deepwater.

[1] See References in Text note below.

(B) Unconventional resources

Awards from allocations under section 16378(d)(2) of this title shall focus on areas including advanced coalbed methane, deep drilling, natural gas production from tight sands, natural gas production from gas shales, stranded gas, innovative exploration and production techniques, enhanced recovery techniques, and environmental mitigation of unconventional natural gas and other petroleum resources exploration and production.

(C) Small producers

Awards from allocations under section 16378(d)(3) of this title shall be made to consortia consisting of small producers or organized primarily for the benefit of small producers, and shall focus on areas including complex geology involving rapid changes in the type and quality of the oil and gas reservoirs across the reservoir; low reservoir pressure; unconventional natural gas reservoirs in coalbeds, deep reservoirs, tight sands, or shales; and unconventional oil reservoirs in tar sands and oil shales.

(e) Annual plan

(1) In general

The program under this section shall be carried out pursuant to an annual plan prepared by the Secretary in accordance with paragraph (2).

(2) Development

(A) Solicitation of recommendations

Before drafting an annual plan under this subsection, the Secretary shall solicit specific written recommendations from the program consortium for each element to be addressed in the plan, including those described in paragraph (4). The program consortium shall submit its recommendations in the form of a draft annual plan.

(B) Submission of recommendations; other comment

The Secretary shall submit the recommendations of the program consortium under subparagraph (A) to the Ultra-Deepwater Advisory Committee established under section 16374(a) of this title and to the Unconventional Resources Technology Advisory Committee established under section 16374(b) of this title, and such Advisory Committees shall provide to the Secretary written comments by a date determined by the Secretary. The Secretary may also solicit comments from any other experts.

(C) Consultation

The Secretary shall consult regularly with the program consortium throughout the preparation of the annual plan.

(3) Publication

The Secretary shall transmit to Congress and publish in the Federal Register the annual plan, along with any written comments received under paragraph (2)(A) and (B).

(4) Contents

The annual plan shall describe the ongoing and prospective activities of the program under this section and shall include—

(A) a list of any solicitations for awards to carry out research, development, demonstration, or commercial application activities, including the topics for such work, who would be eligible to apply, selection criteria, and the duration of awards; and

(B) a description of the activities expected of the program consortium to carry out subsection (f)(3).

(5) Estimates of increased royalty receipts

The Secretary, in consultation with the Secretary of the Interior, shall provide an annual report to Congress with the President's budget on the estimated cumulative increase in Federal royalty receipts (if any) resulting from the implementation of this part. The initial report under this paragraph shall be submitted in the first President's budget following the completion of the first annual plan required under this subsection.

(f) Awards

(1) In general

Upon approval of the Secretary the program consortium shall make awards to research performers to carry out research, development, demonstration, and commercial application activities under the program under this section. The program consortium shall not be eligible to receive such awards, but provided that conflict of interest procedures in subsection (c)(3) are followed, entities who are members of the program consortium are not precluded from receiving research awards as either individual research performers or as research performers who are members of a research collaboration.

(2) Proposals

Upon approval of the Secretary the program consortium shall solicit proposals for awards under this subsection in such manner and at such time as the Secretary may prescribe, in consultation with the program consortium.

(3) Oversight

(A) In general

The program consortium shall oversee the implementation of awards under this subsection, consistent with the annual plan under subsection (e), including disbursing funds and monitoring activities carried out under such awards for compliance with the terms and conditions of the awards.

(B) Effect

Nothing in subparagraph (A) shall limit the authority or responsibility of the Secretary to oversee awards, or limit the authority of the Secretary to review or revoke awards.

(g) Administrative costs

(1) In general

To compensate the program consortium for carrying out its activities under this section, the Secretary shall provide to the program consortium funds sufficient to administer the program. This compensation may include a management fee consistent with Department of Energy contracting practices and procedures.

(2) Advance

The Secretary shall advance funds to the program consortium upon selection of the consortium, which shall be deducted from amounts to be provided under paragraph (1).

(h) Audit

The Secretary shall retain an independent auditor, which shall include a review by the General Accountability Office, to determine the extent to which funds provided to the program consortium, and funds provided under awards made under subsection (f), have been expended in a manner consistent with the purposes and requirements of this part. The auditor shall transmit a report (including any review by the General Accountability Office) annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

(i) Activities by the United States Geological Survey

The Secretary of the Interior, through the United States Geological Survey, shall, where appropriate, carry out programs of long-term research to complement the programs under this section.

(j) Program review and oversight

The National Energy Technology Laboratory, on behalf of the Secretary, shall (1) issue a competitive solicitation for the program consortium, (2) evaluate, select, and award a contract or other agreement to a qualified program consortium, and (3) have primary review and oversight responsibility for the program consortium, including review and approval of research awards proposed to be made by the program consortium, to ensure that its activities are consistent with the purposes and requirements described in this part. Up to 5 percent of program funds allocated under paragraphs (1) through (3) of section 16378(d) of this title may be used for this purpose, including program direction and the establishment of a site office if determined to be necessary to carry out the purposes of this subsection.

(Pub. L. 109–58, title IX, § 999B, Aug. 8, 2005, 119 Stat. 917.)

REFERENCES IN TEXT

This part, referred to in subsec. (c)(1), was in the original ''this chapter'', and was translated as meaning ''this subtitle'', which is subtitle J (§§ 999A to 999H) of title IX of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 916, which enacted this part, to reflect the probable intent of Congress.

§ 16373. Additional requirements for awards

(a) Demonstration projects

An application for an award under this part for a demonstration project shall describe with specificity the intended commercial use of the technology to be demonstrated.

(b) Flexibility in locating demonstration projects

Subject to the limitation in section 16371(c) of this title, a demonstration project under this part relating to an ultra-deepwater technology or an ultra-deepwater architecture may be conducted in deepwater depths.

(c) Intellectual property agreements

If an award under this part is made to a consortium (other than the program consortium), the consortium shall provide to the Secretary a signed contract agreed to by all members of the consortium describing the rights of each member to intellectual property used or developed under the award.

(d) Technology transfer

Two and one-half percent of the amount of each award made under this part shall be designated for technology transfer and outreach activities under this part.

(e) Cost sharing reduction for independent producers

In applying the cost sharing requirements under section 16352 of this title to an award under this part the Secretary may reduce or eliminate the non-Federal requirement if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project.

(f) Information sharing

All results of the research administered by the program consortium shall be made available to the public consistent with Department policy and practice on information sharing and intellectual property agreements.

(Pub. L. 109–58, title IX, § 999C, Aug. 8, 2005, 119 Stat. 921.)

§ 16374. Advisory committees

(a) Ultra-Deepwater Advisory Committee

(1) Establishment

Not later than 270 days after August 8, 2005, the Secretary shall establish an advisory committee to be known as the Ultra-Deepwater Advisory Committee.

(2) Membership

The Advisory Committee under this subsection shall be composed of members appointed by the Secretary, including—

(A) individuals with extensive research experience or operational knowledge of offshore natural gas and other petroleum exploration and production;

(B) individuals broadly representative of the affected interests in ultra-deepwater natural gas and other petroleum production, including interests in environmental protection and safe operations;

(C) no individuals who are Federal employees; and

(D) no individuals who are board members, officers, or employees of the program consortium.

(3) Duties

The Advisory Committee under this subsection shall—

(A) advise the Secretary on the development and implementation of programs under this part related to ultra-deepwater natural gas and other petroleum resources; and

(B) carry out section 16372(e)(2)(B) of this title.

(4) Compensation

A member of the Advisory Committee under this subsection shall serve without compensa-

tion but shall receive travel expenses in accordance with applicable provisions under subchapter I of chapter 57 of title 5.

(b) Unconventional Resources Technology Advisory Committee

(1) Establishment

Not later than 270 days after August 8, 2005, the Secretary shall establish an advisory committee to be known as the Unconventional Resources Technology Advisory Committee.

(2) Membership

The Secretary shall endeavor to have a balanced representation of members on the Advisory Committee to reflect the breadth of geographic areas of potential gas supply. The Advisory Committee under this subsection shall be composed of members appointed by the Secretary, including—

(A) a majority of members who are employees or representatives of independent producers of natural gas and other petroleum, including small producers;

(B) individuals with extensive research experience or operational knowledge of unconventional natural gas and other petroleum resource exploration and production;

(C) individuals broadly representative of the affected interests in unconventional natural gas and other petroleum resource exploration and production, including interests in environmental protection and safe operations;

(D) individuals with expertise in the various geographic areas of potential supply of unconventional onshore natural gas and other petroleum in the United States;

(E) no individuals who are Federal employees; and

(F) no individuals who are board members, officers, or employees of the program consortium.

(3) Duties

The Advisory Committee under this subsection shall—

(A) advise the Secretary on the development and implementation of activities under this part related to unconventional natural gas and other petroleum resources; and

(B) carry out section 16372(e)(2)(B) of this title.

(4) Compensation

A member of the Advisory Committee under this subsection shall serve without compensation but shall receive travel expenses in accordance with applicable provisions under subchapter I of chapter 57 of title 5.

(c) Prohibition

No advisory committee established under this section shall make recommendations on funding awards to particular consortia or other entities, or for specific projects.

(Pub. L. 109–58, title IX, § 999D, Aug. 8, 2005, 119 Stat. 922.)

§ 16375. Limits on participation

An entity shall be eligible to receive an award under this part only if the Secretary finds—

(1) that the entity's participation in the program under this part would be in the economic interest of the United States; and

(2) that either—

(A) the entity is a United States-owned entity organized under the laws of the United States; or

(B) the entity is organized under the laws of the United States and has a parent entity organized under the laws of a country that affords—

(i) to United States-owned entities opportunities, comparable to those afforded to any other entity, to participate in any cooperative research venture similar to those authorized under this part;

(ii) to United States-owned entities local investment opportunities comparable to those afforded to any other entity; and

(iii) adequate and effective protection for the intellectual property rights of United States-owned entities.

(Pub. L. 109–58, title IX, § 999E, Aug. 8, 2005, 119 Stat. 923.)

§ 16376. Sunset

The authority provided by this part shall terminate on September 30, 2014.

(Pub. L. 109–58, title IX, § 999F, Aug. 8, 2005, 119 Stat. 923.)

§ 16377. Definitions

In this part:

(1) Deepwater

The term ''deepwater'' means a water depth that is greater than 200 but less than 1,500 meters.

(2) Independent producer of oil or gas

(A) In general

The term ''independent producer of oil or gas'' means any person that produces oil or gas other than a person to whom subsection (c) of section 613A of title 26 does not apply by reason of paragraph (2) (relating to certain retailers) or paragraph (4) (relating to certain refiners) of section 613A(d) of such title.

(B) Rules for applying paragraphs (2) and (4) of section 613A(d)

For purposes of subparagraph (A), paragraphs (2) and (4) of section 613A(d) of title 26 shall be applied by substituting ''calendar year'' for ''taxable year'' each place it appears in such paragraphs.

(3) Program administration funds

The term ''program administration funds'' means funds used by the program consortium to administer the program under this part, but not to exceed 10 percent of the total funds allocated under paragraphs (1) through (3) of section 16378(d) of this title.

(4) Program consortium

The term ''program consortium'' means the consortium selected under section 16372(d) of this title.

(5) Program research funds

The term ''program research funds'' means funds awarded to research performers by the

program consortium consistent with the annual plan.

(6) Remote or inconsequential

The term ''remote or inconsequential'' has the meaning given that term in regulations issued by the Office of Government Ethics under section 208(b)(2) of title 18.

(7) Small producer

The term ''small producer'' means an entity organized under the laws of the United States with production levels of less than 1,000 barrels per day of oil equivalent.

(8) Ultra-deepwater

The term ''ultra-deepwater'' means a water depth that is equal to or greater than 1,500 meters.

(9) Ultra-deepwater architecture

The term ''ultra-deepwater architecture'' means the integration of technologies for the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

(10) Ultra-deepwater technology

The term ''ultra-deepwater technology'' means a discrete technology that is specially suited to address one or more challenges associated with the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

(11) Unconventional natural gas and other petroleum resource

The term ''unconventional natural gas and other petroleum resource'' means natural gas and other petroleum resource located onshore in an economically inaccessible geological formation, including resources of small producers.

(Pub. L. 109–58, title IX, § 999G, Aug. 8, 2005, 119 Stat. 923.)

§ 16378. Funding

(a) Oil and gas lease income

For each of fiscal years 2007 through 2017, from any Federal royalties, rents, and bonuses derived from Federal onshore and offshore oil and gas leases issued under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and the Mineral Leasing Act (30 U.S.C. 181 et seq.) which are deposited in the Treasury, and after distribution of any such funds as described in subsection (c), $50,000,000 shall be deposited into the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund (in this section referred to as the ''Fund''). For purposes of this section, the term ''royalties'' excludes proceeds from the sale of royalty production taken in kind and royalty production that is transferred under section 27(a)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(a)(3)).

(b) Obligational authority

Monies in the Fund shall be available to the Secretary for obligation under this part without fiscal year limitation, to remain available until expended.

(c) Prior distributions

The distributions described in subsection (a) are those required by law—

(1) to States and to the Reclamation Fund under the Mineral Leasing Act (30 U.S.C. 191(a)); and

(2) to other funds receiving monies from Federal oil and gas leasing programs, including—

(A) any recipients pursuant to section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g));

(B) the Land and Water Conservation Fund, pursuant to section 460*l*–5(c) of title 16;

(C) the Historic Preservation Fund, pursuant to section 470h of title 16; and

(D) the coastal impact assistance program established under section 31 of the Outer Continental Shelf Lands Act [43 U.S.C. 1356a].

(d) Allocation

Amounts obligated from the Fund under subsection (a)(1) in each fiscal year shall be allocated as follows:

(1) 35 percent shall be for activities under section 16371(b)(1) of this title.

(2) 32.5 percent shall be for activities under section 16371(b)(2) of this title.

(3) 7.5 percent shall be for activities under section 16371(b)(3) of this title.

(4) 25 percent shall be for complementary research under section 16371(b)(4) of this title and other activities under section 16371(b) of this title to include program direction funds, overall program oversight, contract management, and the establishment and operation of a technical committee to ensure that in-house research activities funded under section 16371(b)(4) of this title are technically complementary to, and not duplicative of, research conducted under paragraphs (1), (2), and (3) of section 16371(b) of this title.

(e) Authorization of appropriations

In addition to other amounts that are made available to carry out this section, there is authorized to be appropriated to carry out this section $100,000,000 for each of fiscal years 2007 through 2016.

(f) Fund

There is hereby established in the Treasury of the United States a separate fund to be known as the ''Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund''.

(Pub. L. 109–58, title IX, § 999H, Aug. 8, 2005, 119 Stat. 924.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (a), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

The Mineral Leasing Act, referred to in subsecs. (a) and (c)(1), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A

(§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

SUBCHAPTER X—DEPARTMENT OF ENERGY MANAGEMENT

§ 16391. Improved technology transfer of energy technologies

(a) Technology Transfer Coordinator

The Secretary shall appoint a Technology Transfer Coordinator to be the principal advisor to the Secretary on all matters relating to technology transfer and commercialization.

(b) Qualifications

The Coordinator shall be an individual who, by reason of professional background and experience, is specially qualified to advise the Secretary on matters pertaining to technology transfer at the Department.

(c) Duties of the Coordinator

The Coordinator shall oversee—

(1) the activities of the Technology Transfer Working Group established under subsection (d);

(2) the expenditure of funds allocated for technology transfer within the Department;

(3) the activities of each technology partnership ombudsman appointed under section 7261c of this title; and

(4) efforts to engage private sector entities, including venture capital companies.

(d) Technology Transfer Working Group

The Secretary shall establish a Technology Transfer Working Group, which shall consist of representatives of the National Laboratories and single-purpose research facilities, to—

(1) coordinate technology transfer activities occurring at National Laboratories and single-purpose research facilities;

(2) exchange information about technology transfer practices, including alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters; and

(3) develop and disseminate to the public and prospective technology partners information about opportunities and procedures for technology transfer with the Department, including opportunities and procedures related to alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters.

(e) Technology Commercialization Fund

The Secretary shall establish an Energy Technology Commercialization Fund, using 0.9 percent of the amount made available to the Department for applied energy research, development, demonstration, and commercial application for each fiscal year, to be used to provide matching funds with private partners to promote promising energy technologies for commercial purposes.

(f) Technology transfer responsibility

Nothing in this section affects the technology transfer responsibilities of Federal employees under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

(g) Planning and reporting

(1) In general

Not later than 180 days after August 8, 2005, the Secretary shall submit to Congress a technology transfer execution plan.

(2) Updates

Each year after the submission of the plan under paragraph (1), the Secretary shall submit to Congress an updated execution plan and reports that describe progress toward meeting goals set forth in the execution plan and the funds expended under subsection (e).

(Pub. L. 109–58, title X, § 1001, Aug. 8, 2005, 119 Stat. 926.)

REFERENCES IN TEXT

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (f), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§ 3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

§ 16392. Technology Infrastructure Program

(a) Definitions

In this section:

(1) Program

The term ''Program'' means the Technology Infrastructure Program established under subsection (b).

(2) Technology cluster

The term ''technology cluster'' means a concentration of technology-related business concerns, institutions of higher education, or nonprofit institutions, that reinforce each other's performance in the areas of technology development through formal or informal relationships.

(3) Technology-related business concern

The term ''technology-related business concern'' means a for-profit corporation, company, association, firm, partnership, or small business concern that—

(A) conducts scientific or engineering research;

(B) develops new technologies;

(C) manufactures products based on new technologies; or

(D) performs technological services.

(b) Establishment

The Secretary shall establish a Technology Infrastructure Program in accordance with this section.

(c) Purpose

The purpose of the Program shall be to improve the ability of National Laboratories and single-purpose research facilities to support departmental missions by—

(1) stimulating the development of technology clusters that can support departmental missions at the National Laboratories or single-purpose research facilities;

(2) improving the ability of National Laboratories and single-purpose research facilities to leverage and benefit from commercial re-

search, technology, products, processes, and services; and

(3) encouraging the exchange of scientific and technological expertise between—

(A) National Laboratories or single-purpose research facilities; and

(B) entities that can support departmental missions at the National Laboratories or single-purpose research facilities, such as—

(i) institutions of higher education;

(ii) technology-related business concerns;

(iii) nonprofit institutions; and

(iv) agencies of State, tribal, or local governments.

(d) Projects

The Secretary shall authorize the director of each National Laboratory or single-purpose research facility to implement the Program at the National Laboratory or facility through one or more projects that meet the requirements of subsections (e) and (f).

(e) Program requirements

(1) In general

Each project funded under this section shall meet the requirements of this subsection.

(2) Entities

Each project shall include at least one of each of the following entities:

(A) A business.

(B) An institution of higher education.

(C) A nonprofit institution.

(D) An agency of a State, local, or tribal government.

(3) Cost-sharing

(A) In general

The costs of carrying out projects under this section shall be shared in accordance with section 16352 of this title.

(B) Sources

The calculation of costs paid by the non-Federal sources for a project shall include cash, personnel, services, equipment, and other resources expended on the project after the commencement of the project.

(C) Research and development expenses

Independent research and development expenses of Government contractors that qualify for reimbursement under section 31.205–18(e) of title 48, Code of Federal Regulations, issued pursuant to section 421(c)(1) of title 41, may be credited towards costs paid by non-Federal sources to a project, if the expenses meet the other requirements of this section.

(4) Competitive selection

A project under this section shall be competitively selected using procedures determined by the Secretary.

(5) Accounting

Any participant that receives funds under this section may use generally accepted accounting principles for maintaining accounts, books, and records relating to the project.

(6) Duration

No Federal funds shall be made available under this section for a construction project or for any project with a duration of more than 5 years.

(f) Selection criteria

(1) Departmental missions

The Secretary shall allocate funds under this section only if the Director of the National Laboratory or single-purpose research facility managing the project determines that the project is likely to improve the ability of the National Laboratory or single-purpose research facility to achieve technical success in meeting departmental missions.

(2) Other criteria

In selecting a project to receive Federal funds, the Secretary shall consider—

(A) the potential of the project to promote the development of a commercially sustainable technology cluster following the period of investment by the Department, which will derive most of the demand for its products or services from the private sector, and which will support departmental missions at the participating National Laboratory or single-purpose research facility;

(B) the potential of the project to promote the use of commercial research, technology, products, processes, and services by the participating National Laboratory or single-purpose research facility to achieve its mission or the commercial development of technological innovations made at the participating National Laboratory or single-purpose research facility;

(C) the extent to which the project involves a wide variety and number of institutions of higher education, nonprofit institutions, and technology-related business concerns that can support the missions of the participating National Laboratory or single-purpose research facility and that will make substantive contributions to achieving the goals of the project;

(D) the extent to which the project focuses on promoting the development of technology-related business concerns that are small businesses or involves such small businesses substantively in the project; and

(E) such other criteria as the Secretary determines to be appropriate.

(g) Allocation

In allocating funds for projects approved under this section, the Secretary shall provide—

(1) the Federal share of the project costs; and

(2) additional funds to the National Laboratory or single-purpose research facility managing the project to permit the National Laboratory or single-purpose research facility to carry out activities relating to the project, and to coordinate the activities with the project.

(h) Report to Congress

Not later than July 1, 2008, the Secretary shall submit to Congress a report on whether the Program should be continued and, if so, how the program should be managed.

(i) Authorization of appropriations

There are authorized to be appropriated to the Secretary for activities under this section

$10,000,000 for each of fiscal years 2006 through 2008.

(Pub. L. 109–58, title X, § 1002, Aug. 8, 2005, 119 Stat. 927.)

§ 16393. Small business advocacy and assistance

(a) Small business advocate

The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to designate a small business advocate to—

(1) increase the participation of small business concerns, including socially and economically disadvantaged small business concerns (as defined in section 637(a)(4) of title 15), in procurement, collaborative research, technology licensing, and technology transfer activities conducted by the National Laboratory or single-purpose research facility;

(2) report to the Director of the National Laboratory or single-purpose research facility on the actual participation of small business concerns in procurement and collaborative research along with recommendations, if appropriate, on how to improve participation;

(3) make available to small business concerns training, mentoring, and information on how to participate in procurement and collaborative research activities;

(4) increase the awareness inside the National Laboratory or single-purpose research facility of the capabilities and opportunities presented by small business concerns; and

(5) establish guidelines for the program under subsection (b) and report on the effectiveness of the program to the Director of the National Laboratory or single-purpose research facility.

(b) Establishment of small business assistance program

The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to establish a program to provide small business concerns with—

(1) assistance directed at making the small business concerns more effective and efficient subcontractors or suppliers to the National Laboratory or single-purpose research facilities; or

(2) general technical assistance, the cost of which shall not exceed $10,000 per instance of assistance, to improve the products or services of the small business concern.

(c) Use of funds

None of the funds expended under subsection (b) may be used for direct grants to small business concerns.

(d) Authorization of appropriations

There is authorized to be appropriated to the Secretary for activities under this section $5,000,000 for each of fiscal years 2006 through 2008.

(Pub. L. 109–58, title X, § 1003, Aug. 8, 2005, 119 Stat. 929.)

§ 16394. Outreach

The Secretary shall ensure that each program authorized by this Act or an amendment made by this Act includes an outreach component to provide information, as appropriate, to manufacturers, consumers, engineers, architects, builders, energy service companies, institutions of higher education, facility planners and managers, State and local governments, and other entities.

(Pub. L. 109–58, title X, § 1004, Aug. 8, 2005, 119 Stat. 930.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 16395. Relationship to other laws

Except as otherwise provided in this Act or an amendment made by this Act, the Secretary shall carry out the research, development, demonstration, and commercial application programs, projects, and activities authorized by this Act or an amendment made by this Act in accordance with the applicable provisions of—

(1) the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(2) the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.);

(3) the Energy Policy Act of 1992 (42 U.S.C. 13201 et seq.);

(4) the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.);

(5) chapter 18 of title 35 (commonly known as the ''Bayh-Dole Act''); and

(6) any other Act under which the Secretary is authorized to carry out the programs, projects, and activities.

(Pub. L. 109–58, title X, § 1005, Aug. 8, 2005, 119 Stat. 930.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

The Atomic Energy Act of 1954, referred to in par. (1), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in par. (2), is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

The Energy Policy Act of 1992, referred to in par. (3), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in par. (4), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified gen-

erally to chapter 63 (§ 3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

§ 16396. Prizes for achievement in grand challenges of science and technology

(a) Authority

The Secretary may carry out a program to award cash prizes in recognition of breakthrough achievements in research, development, demonstration, and commercial application that have the potential for application to the performance of the mission of the Department.

(b) Competition requirements

The program under subsection (a) may include prizes for the achievement of goals articulated by the Secretary in a specific area through a widely advertised solicitation of submission of results for research, development, demonstration, or commercial application projects.

(c) Prizes for processes and technologies to reduce dependence on imported oil

The Secretary, in cooperation with the Freedom Prize Foundation, shall support a program of awarding prizes, to be known as Freedom Prizes, to encourage and recognize the development and deployment of processes and technologies that serve to reduce the dependence of the United States on imported oil.

(d) Relationship to other authority

The program under subsection (a) may be carried out in conjunction with or in addition to the exercise of any other authority of the Secretary to acquire, support, or stimulate research, development, demonstration, or commercial application projects.

(e) Authorization of appropriations

There are authorized to be appropriated—

(1) $10,000,000 to carry out the program under subsection (a); and

(2) $5,000,000 to carry out the program under subsection (c).

(Pub. L. 109–58, title X, § 1008, Aug. 8, 2005, 119 Stat. 933.)

SUBCHAPTER XI—PERSONNEL AND TRAINING

§ 16411. Workforce trends and traineeship grants

(a) Definitions

In this section:

(1) Energy technology industry

The term ''energy technology industry'' includes—

(A) a renewable energy industry;

(B) a company that develops or commercializes a device to increase energy efficiency;

(C) the oil and gas industry;

(D) the nuclear power industry;

(E) the coal industry;

(F) the electric utility industry; and

(G) any other industrial sector, as the Secretary determines to be appropriate.

(2) Skilled technical personnel

The term ''skilled technical personnel'' means—

(A) journey- and apprentice-level workers who are enrolled in, or have completed, a federally-recognized or State-recognized apprenticeship program; and

(B) other skilled workers in energy technology industries, as determined by the Secretary.

(b) Workforce trends

(1) Monitoring

The Secretary, in consultation with, and using data collected by, the Secretary of Labor, shall monitor trends in the workforce of—

(A) skilled technical personnel that support energy technology industries; and

(B) electric power and transmission engineers.

(2) Report on trends

Not later than 1 year after August 8, 2005, the Secretary shall submit to Congress a report on current trends under paragraph (1), with recommendations (as appropriate) to meet the future labor requirements for the energy technology industries.

(3) Report on shortage

As soon as practicable after the date on which the Secretary identifies or predicts a significant national shortage of skilled technical personnel in one or more energy technology industries, the Secretary shall submit to Congress a report describing the shortage.

(c) Traineeship grants for skilled technical personnel

The Secretary, in consultation with the Secretary of Labor, may establish programs in the appropriate offices of the Department under which the Secretary provides grants to enhance training (including distance learning) for any workforce category for which a shortage is identified or predicted under subsection (b)(2).

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2006 through 2008.

(Pub. L. 109–58, title XI, § 1101, Aug. 8, 2005, 119 Stat. 937.)

§ 16412. Training guidelines for nonnuclear electric energy industry personnel

(a) In general

The Secretary of Labor, in consultation with the Secretary and in conjunction with the electric industry and recognized employee representatives, shall develop model personnel training guidelines to support the reliability and safety of the nonnuclear electric system.

(b) Requirements

The training guidelines under subsection (a) shall, at a minimum—

(1) include training requirements for workers engaged in the construction, operation, inspection, or maintenance of nonnuclear electric generation, transmission, or distribution systems, including requirements relating to—

(A) competency;

(B) certification; and

(C) assessment, including—

(i) initial and continuous evaluation of workers;

(ii) recertification procedures; and

(iii) methods for examining or testing the qualification of an individual who performs a covered task; and

(2) consolidate training guidelines in existence on the date on which the guidelines under subsection (a) are developed relating to the construction, operation, maintenance, and inspection of nonnuclear electric generation, transmission, and distribution facilities, such as guidelines established by the National Electric Safety Code and other industry consensus standards.

(Pub. L. 109–58, title XI, § 1103, Aug. 8, 2005, 119 Stat. 939.)

§ 16413. National Center for Energy Management and Building Technologies

The Secretary shall support the ongoing activities of and explore opportunities for expansion of the National Center for Energy Management and Building Technologies to carry out research, education, and training activities to facilitate the improvement of energy efficiency, indoor environmental quality, and security of industrial, commercial, residential, and public buildings.

(Pub. L. 109–58, title XI, § 1104, Aug. 8, 2005, 119 Stat. 939.)

§ 16414. National Power Plant Operations Technology and Educational Center

(a) Establishment

The Secretary shall support the establishment of a National Power Plant Operations Technology and Education Center (referred to in this section as the ''Center''), to address the need for training and educating certified operators and technicians for the electric power industry.

(b) Location of Center

The Secretary shall support the establishment of the Center at an institution of higher education that has—

(1) expertise in providing degree programs in electric power generation, transmission, and distribution technologies;

(2) expertise in providing onsite and Internet-based training; and

(3) demonstrated responsiveness to workforce and training requirements in the electric power industry.

(c) Training and continuing education

(1) In general

The Center shall provide training and continuing education in electric power generation, transmission, and distribution technologies and operations.

(2) Location

The Center shall carry out training and education activities under paragraph (1)—

(A) at the Center; and

(B) through Internet-based information technologies that allow for learning at remote sites.

(Pub. L. 109–58, title XI, § 1106, Aug. 8, 2005, 119 Stat. 940.)

SUBCHAPTER XII—ELECTRICITY

PART A—TRANSMISSION INFRASTRUCTURE MODERNIZATION

§ 16421. Third-party finance

(a) Existing facilities

The Secretary, acting through the Administrator of the Western Area Power Administration (hereinafter in this section referred to as ''WAPA''), or through the Administrator of the Southwestern Power Administration (hereinafter in this section referred to as ''SWPA''), or both, may design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning, an electric power transmission facility and related facilities (''Project'') needed to upgrade existing transmission facilities owned by SWPA or WAPA if the Secretary, in consultation with the applicable Administrator, determines that the proposed Project—

(1)(A) is located in a national interest electric transmission corridor designated under section 216(a) of the Federal Power Act [16 U.S.C. 824p(a)] and will reduce congestion of electric transmission in interstate commerce; or

(B) is necessary to accommodate an actual or projected increase in demand for electric transmission capacity;

(2) is consistent with—

(A) transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Transmission Organization (as defined in the Federal Power Act [16 U.S.C. 791a et seq.]), if any, or approved regional reliability organization; and

(B) efficient and reliable operation of the transmission grid; and

(3) would be operated in conformance with prudent utility practice.

(b) New facilities

The Secretary, acting through WAPA or SWPA, or both, may design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning, a new electric power transmission facility and related facilities (''Project'') located within any State in which WAPA or SWPA operates if the Secretary, in consultation with the applicable Administrator, determines that the proposed Project—

(1)(A) is located in an area designated under section 216(a) of the Federal Power Act [16 U.S.C. 824p(a)] and will reduce congestion of electric transmission in interstate commerce; or

(B) is necessary to accommodate an actual or projected increase in demand for electric transmission capacity;

(2) is consistent with—

(A) transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Transmission Organiza-

tion (as defined in the Federal Power Act [16 U.S.C. 791a et seq.]) if any, or approved regional reliability organization; and

(B) efficient and reliable operation of the transmission grid;

(3) will be operated in conformance with prudent utility practice;

(4) will be operated by, or in conformance with the rules of, the appropriate (A) Transmission Organization, if any, or (B) if such an organization does not exist, regional reliability organization; and

(5) will not duplicate the functions of existing transmission facilities or proposed facilities which are the subject of ongoing or approved siting and related permitting proceedings.

(c) Other funds

(1) In general

In carrying out a Project under subsection (a) or (b), the Secretary may accept and use funds contributed by another entity for the purpose of carrying out the Project.

(2) Availability

The contributed funds shall be available for expenditure for the purpose of carrying out the Project—

(A) without fiscal year limitation; and

(B) as if the funds had been appropriated specifically for that Project.

(3) Allocation of costs

In carrying out a Project under subsection (a) or (b), any costs of the Project not paid for by contributions from another entity shall be collected through rates charged to customers using the new transmission capability provided by the Project and allocated equitably among these project beneficiaries using the new transmission capability.

(d) Relationship to other laws

Nothing in this section affects any requirement of—

(1) any Federal environmental law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) any Federal or State law relating to the siting of energy facilities; or

(3) any existing authorizing statutes.

(e) Savings clause

Nothing in this section shall constrain or restrict an Administrator in the utilization of other authority delegated to the Administrator of WAPA or SWPA.

(f) Secretarial determinations

Any determination made pursuant to subsections[1] (a) or (b) shall be based on findings by the Secretary using the best available data.

(g) Maximum funding amount

The Secretary shall not accept and use more than $100,000,000 under subsection (c)(1) for the period encompassing fiscal years 2006 through 2015.

(Pub. L. 109–58, title XII, § 1222, Aug. 8, 2005, 119 Stat. 952.)

[1] So in original. Probably should be singular.

REFERENCES IN TEXT

The Federal Power Act, referred to in subsecs. (a)(2)(A) and (b)(2)(A), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (d)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

SHORT TITLE

For short title of title XII of Pub. L. 109–58, which enacted this subchapter, as the ''Electricity Modernization Act of 2005'', see section 1201 of Pub. L. 109–58, set out as a note under section 15801 of this title.

§ 16422. Advanced transmission technologies

(a) Definition of advanced transmission technology

In this section, the term ''advanced transmission technology'' means a technology that increases the capacity, efficiency, or reliability of an existing or new transmission facility, including—

(1) high-temperature lines (including superconducting cables);

(2) underground cables;

(3) advanced conductor technology (including advanced composite conductors, high-temperature low-sag conductors, and fiber optic temperature sensing conductors);

(4) high-capacity ceramic electric wire, connectors, and insulators;

(5) optimized transmission line configurations (including multiple phased transmission lines);

(6) modular equipment;

(7) wireless power transmission;

(8) ultra-high voltage lines;

(9) high-voltage DC technology;

(10) flexible AC transmission systems;

(11) energy storage devices (including pumped hydro, compressed air, superconducting magnetic energy storage, flywheels, and batteries);

(12) controllable load;

(13) distributed generation (including PV, fuel cells, and microturbines);

(14) enhanced power device monitoring;

(15) direct system state sensors;

(16) fiber optic technologies;

(17) power electronics and related software (including real time monitoring and analytical software);

(18) mobile transformers and mobile substations; and

(19) any other technologies the Commission considers appropriate.

(b) Authority

In carrying out the Federal Power Act (16 U.S.C. 791a et seq.) and the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.), the Commission shall encourage, as appropriate, the deployment of advanced transmission technologies.

(Pub. L. 109–58, title XII, § 1223, Aug. 8, 2005, 119 Stat. 953.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (b), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (b), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

§ 16423. Advanced Power System Technology Incentive Program

(a) Program

The Secretary is authorized to establish an Advanced Power System Technology Incentive Program to support the deployment of certain advanced power system technologies and to improve and protect certain critical governmental, industrial, and commercial processes. Funds provided under this section shall be used by the Secretary to make incentive payments to eligible owners or operators of advanced power system technologies to increase power generation through enhanced operational, economic, and environmental performance. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application establishing an applicant as either—

(1) a qualifying advanced power system technology facility; or

(2) a qualifying security and assured power facility.

(b) Incentives

Subject to availability of funds, a payment of 1.8 cents per kilowatt-hour shall be paid to the owner or operator of a qualifying advanced power system technology facility under this section for electricity generated at such facility. An additional 0.7 cents per kilowatt-hour shall be paid to the owner or operator of a qualifying security and assured power facility for electricity generated at such facility. Any facility qualifying under this section shall be eligible for an incentive payment for up to, but not more than, the first 10,000,000 kilowatt-hours produced in any fiscal year.

(c) Eligibility

For purposes of this section:

(1) Qualifying advanced power system technology facility

The term ''qualifying advanced power system technology facility'' means a facility using an advanced fuel cell, turbine, or hybrid power system or power storage system to generate or store electric energy.

(2) Qualifying security and assured power facility

The term ''qualifying security and assured power facility'' means a qualifying advanced power system technology facility determined by the Secretary, in consultation with the Secretary of Homeland Security, to be in critical need of secure, reliable, rapidly available, high-quality power for critical governmental, industrial, or commercial applications.

(d) Authorization

There are authorized to be appropriated to the Secretary for the purposes of this section, $10,000,000 for each of the fiscal years 2006 through 2012.

(Pub. L. 109–58, title XII, § 1224, Aug. 8, 2005, 119 Stat. 954.)

PART B—TRANSMISSION OPERATION IMPROVEMENTS

§ 16431. Federal utility participation in transmission organizations

(a) Definitions

In this section:

(1) Appropriate Federal regulatory authority

The term ''appropriate Federal regulatory authority'' means—

(A) in the case of a Federal power marketing agency, the Secretary, except that the Secretary may designate the Administrator of a Federal power marketing agency to act as the appropriate Federal regulatory authority with respect to the transmission system of the Federal power marketing agency; and

(B) in the case of the Tennessee Valley Authority, the Board of Directors of the Tennessee Valley Authority.

(2) Federal power marketing agency

The term ''Federal power marketing agency'' has the meaning given the term in section 796 of title 16.

(3) Federal utility

The term ''Federal utility'' means—

(A) a Federal power marketing agency; or

(B) the Tennessee Valley Authority.

(4) Transmission Organization

The term ''Transmission Organization'' has the meaning given the term in section 796 of title 16.

(5) Transmission system

The term ''transmission system'' means an electric transmission facility owned, leased, or contracted for by the United States and operated by a Federal utility.

(b) Transfer

The appropriate Federal regulatory authority may enter into a contract, agreement, or other arrangement transferring control and use of all or part of the transmission system of a Federal utility to a Transmission Organization.

(c) Contents

The contract, agreement, or arrangement shall include—

(1) performance standards for operation and use of the transmission system that the head of the Federal utility determines are necessary or appropriate, including standards that ensure—

(A) recovery of all of the costs and expenses of the Federal utility related to the transmission facilities that are the subject of the contract, agreement, or other arrangement;

(B) consistency with existing contracts and third-party financing arrangements; and

(C) consistency with the statutory authorities, obligations, and limitations of the Federal utility;

(2) provisions for monitoring and oversight by the Federal utility of the Transmission Organization's terms and conditions of the contract, agreement, or other arrangement, including a provision for the resolution of disputes through arbitration or other means with the Transmission Organization or with other participants, notwithstanding the obligations and limitations of any other law regarding arbitration; and

(3) a provision that allows the Federal utility to withdraw from the Transmission Organization and terminate the contract, agreement, or other arrangement in accordance with its terms.

(d) Commission

Neither this section, actions taken pursuant to this section, nor any other transaction of a Federal utility participating in a Transmission Organization shall confer on the Commission jurisdiction or authority over—

(1) the electric generation assets, electric capacity, or energy of the Federal utility that the Federal utility is authorized by law to market; or

(2) the power sales activities of the Federal utility.

(e) Existing statutory and other obligations

(1) System operation requirements

No statutory provision requiring or authorizing a Federal utility to transmit electric power or to construct, operate, or maintain the transmission system of the Federal utility prohibits a transfer of control and use of the transmission system pursuant to, and subject to, the requirements of this section.

(2) Other obligations

This subsection does not—

(A) suspend, or exempt any Federal utility from, any provision of Federal law in effect on August 8, 2005, including any requirement or direction relating to the use of the transmission system of the Federal utility, environmental protection, fish and wildlife protection, flood control, navigation, water delivery, or recreation; or

(B) authorize abrogation of any contract or treaty obligation.

(Pub. L. 109–58, title XII, § 1232, Aug. 8, 2005, 119 Stat. 956.)

CODIFICATION

Section is comprised of section 1232 of Pub. L. 109–58. Subsec. (e)(3) of section 1232 of Pub. L. 109–58 repealed section 824n of Title 16, Conservation.

§ 16432. Study on the benefits of economic dispatch

(a) Study

The Secretary, in coordination and consultation with the States, shall conduct a study on—

(1) the procedures currently used by electric utilities to perform economic dispatch;

(2) identifying possible revisions to those procedures to improve the ability of nonutility generation resources to offer their output for sale for the purpose of inclusion in economic dispatch; and

(3) the potential benefits to residential, commercial, and industrial electricity consumers nationally and in each State if economic dispatch procedures were revised to improve the ability of nonutility generation resources to offer their output for inclusion in economic dispatch.

(b) Definition

The term ''economic dispatch'' when used in this section means the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities.

(c) Report to Congress and the States

Not later than 90 days after August 8, 2005, and on a yearly basis following, the Secretary shall submit a report to Congress and the States on the results of the study conducted under subsection (a), including recommendations to Congress and the States for any suggested legislative or regulatory changes.

(Pub. L. 109–58, title XII, § 1234, Aug. 8, 2005, 119 Stat. 960.)

PART C—TRANSMISSION RATE REFORM

§ 16441. Funding new interconnection and transmission upgrades

The Commission may approve a participant funding plan that allocates costs related to transmission upgrades or new generator interconnection, without regard to whether an applicant is a member of a Commission-approved Transmission Organization, if the plan results in rates that—

(1) are just and reasonable;

(2) are not unduly discriminatory or preferential; and

(3) are otherwise consistent with sections 824d and 824e of title 16.

(Pub. L. 109–58, title XII, § 1242, Aug. 8, 2005, 119 Stat. 962.)

PART D—REPEAL OF PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§ 16451. Definitions

For purposes of this part:

(1) Affiliate

The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) Associate company

The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) Commission

The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) Company

The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) Electric utility company

The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) Exempt wholesale generator and foreign utility company

The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 79z–5a and 79z–5b of title 15, as those sections existed on the day before the effective date of this part.

(7) Gas utility company

The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) Holding company

(A) In general

The term ''holding company'' means—

(i) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and

(ii) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this part upon holding companies.

(B) Exclusions

The term ''holding company'' shall not include—

(i) a bank, savings association, or trust company, or their operating subsidiaries that own, control, or hold, with the power to vote, public utility or public utility holding company securities so long as the securities are—

(I) held as collateral for a loan;

(II) held in the ordinary course of business as a fiduciary; or

(III) acquired solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years; or

(ii) a broker or dealer that owns, controls, or holds with the power to vote public utility or public utility holding company securities so long as the securities are—

(I) not beneficially owned by the broker or dealer and are subject to any voting instructions which may be given by customers or their assigns; or

(II) acquired within 12 months in the ordinary course of business as a broker, dealer, or underwriter with the bona fide intention of effecting distribution of the specific securities so acquired.

(9) Holding company system

The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) Jurisdictional rates

The term ''jurisdictional rates'' means rates accepted or established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) Natural gas company

The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) Person

The term ''person'' means an individual or company.

(13) Public utility

The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) Public-utility company

The term ''public-utility company'' means an electric utility company or a gas utility company.

(15) State commission

The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) Subsidiary company

The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, di-

rectly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this part upon subsidiary companies of holding companies.

(17) Voting security

The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

(Pub. L. 109–58, title XII, § 1262, Aug. 8, 2005, 119 Stat. 972.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle F (§§ 1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under this section and section 15801 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

For the effective date of this part, referred to in par. (6), see Effective Date note set out below.

EFFECTIVE DATE

Pub. L. 109–58, title XII, § 1274, Aug. 8, 2005, 119 Stat. 977, provided that:

''(a) IN GENERAL.—Except for section 1272 [42 U.S.C. 16460] (relating to implementation), this subtitle [subtitle F (§§ 1261 to 1277) of title XII of Pub. L. 109–58, enacting this part, amending sections 824 and 824m of Title 16, Conservation, repealing chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacting provisions set out as a note under section 15801 of this title] shall take effect 6 months after the date of enactment of this subtitle [Aug. 8, 2005].

''(b) COMPLIANCE WITH CERTAIN RULES.—If the [Federal Energy Regulatory] Commission approves and makes effective any final rulemaking modifying the standards of conduct governing entities that own, operate, or control facilities for transmission of electricity in interstate commerce or transportation of natural gas in interstate commerce prior to the effective date of this subtitle, any action taken by a public-utility company or utility holding company to comply with the requirements of such rulemaking shall not subject such public-utility company or utility holding company to any regulatory requirement applicable to a holding company under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.).''

SHORT TITLE

For short title of subtitle F of title XII of Pub. L. 109–58, which enacted this part, as the ''Public Utility Holding Company Act of 2005'', see section 1261 of Pub. L. 109–58, set out as a note under section 15801 of this title.

§ 16452. Federal access to books and records

(a) In general

Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) Affiliate companies

Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) Holding company systems

The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) Confidentiality

No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

(Pub. L. 109–58, title XII, § 1264, Aug. 8, 2005, 119 Stat. 974.)

§ 16453. State access to books and records

(a) In general

Upon the written request of a State commission having jurisdiction to regulate a public-utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public-utility company, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission determines are relevant to costs incurred by such public-utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) Limitation

Subsection (a) does not apply to any person that is a holding company solely by reason of ownership of one or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(c) Confidentiality of information

The production of books, accounts, memoranda, and other records under subsection (a) shall be subject to such terms and conditions as may be necessary and appropriate to safeguard

against unwarranted disclosure to the public of any trade secrets or sensitive commercial information.

(d) Effect on State law

Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, and other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, and other records under any other Federal law, contract, or otherwise.

(e) Court jurisdiction

Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

(Pub. L. 109–58, title XII, § 1265, Aug. 8, 2005, 119 Stat. 975.)

REFERENCES IN TEXT

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (b), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

§ 16454. Exemption authority

(a) Rulemaking

Not later than 90 days after the effective date of this part, the Commission shall issue a final rule to exempt from the requirements of section 16452 of this title (relating to Federal access to books and records) any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.);

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) Other authority

The Commission shall exempt a person or transaction from the requirements of section 16452 of this title (relating to Federal access to books and records) if, upon application or upon the motion of the Commission—

(1) the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or

(2) the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

(Pub. L. 109–58, title XII, § 1266, Aug. 8, 2005, 119 Stat. 975.)

REFERENCES IN TEXT

For the effective date of this part, referred to in subsec. (a), see Effective Date note set out under section 16451 of this title.

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (a)(1), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

§ 16455. Affiliate transactions

(a) Commission authority unaffected

Nothing in this part shall limit the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) to require that jurisdictional rates are just and reasonable, including the ability to deny or approve the pass through of costs, the prevention of cross-subsidization, and the issuance of such rules and regulations as are necessary or appropriate for the protection of utility consumers.

(b) Recovery of costs

Nothing in this part shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public-utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public-utility company from an associate company.

(Pub. L. 109–58, title XII, § 1267, Aug. 8, 2005, 119 Stat. 976.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle F (§§ 1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

The Federal Power Act, referred to in subsec. (a), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

§ 16456. Applicability

Except as otherwise specifically provided in this part, no provision of this part shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), (3), or (4) acting as such in the course of his or her official duty.

(Pub. L. 109–58, title XII, § 1268, Aug. 8, 2005, 119 Stat. 976.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle F (§§ 1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 16457. Effect on other regulations

Nothing in this part precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

(Pub. L. 109–58, title XII, § 1269, Aug. 8, 2005, 119 Stat. 976.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle F (§§ 1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 16458. Enforcement

The Commission shall have the same powers as set forth in sections 825e through 825p of title 16 to enforce the provisions of this part.

(Pub. L. 109–58, title XII, § 1270, Aug. 8, 2005, 119 Stat. 976.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle F (§§ 1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 16459. Savings provisions

(a) In general

Nothing in this part, or otherwise in the Public Utility Holding Company Act of 1935, or rules, regulations, or orders thereunder, prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on August 8, 2005, if that person continues to comply with the terms (other than an expiration date or termination date) of any such authorization, whether by rule or by order.

(b) Effect on other Commission authority

Nothing in this part limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

(c) Tax treatment

Tax treatment under section 1081[1] of title 26 as a result of transactions ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) shall not be affected in any manner due to the repeal of that Act and the enactment of the Public Utility Holding Company Act of 2005 [42 U.S.C. 16451 et seq.].

(Pub. L. 109–58, title XII, § 1271, Aug. 8, 2005, 119 Stat. 976.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle F (§§ 1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, known as the Public Utility Holding Company Act of 2005, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

The Public Utility Holding Company Act of 1935, referred to in subsecs. (a) and (c), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 803, as amended, which was classified generally to chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 109–58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974. For complete classification of this Act to the Code, see Tables.

The Federal Power Act, referred to in subsec. (b), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsec. (b), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

Section 1081 of title 26, referred to in subsec. (c), was repealed by Pub. L. 109–135, title IV, § 402(a)(1), Dec. 21, 2005, 119 Stat. 2610.

The Public Utility Holding Company Act of 2005, referred to in subsec. (c), is subtitle F (§§ 1261–1277) of title XII of Pub. L. 109–58. See note for this part above.

§ 16460. Implementation

Not later than 4 months after August 8, 2005, the Commission shall—

(1) issue such regulations as may be necessary or appropriate to implement this part (other than section 16453 of this title, relating to State access to books and records); and

(2) submit to Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this part and the amendments made by this part.

(Pub. L. 109–58, title XII, § 1272, Aug. 8, 2005, 119 Stat. 977.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle F (§§ 1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 16461. Transfer of resources

All books and records that relate primarily to the functions transferred to the Commission under this part shall be transferred from the Securities and Exchange Commission to the Commission.

(Pub. L. 109–58, title XII, § 1273, Aug. 8, 2005, 119 Stat. 977.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle F (§§ 1261–1277) of title

[1] See References in Text note below.

XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

§ 16462. Service allocation

(a) Definition of public utility

In this section, the term ''public utility'' has the meaning given the term in section 824(e) of title 16.

(b) FERC review

In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system or a State commission having jurisdiction over the public utility, the Commission, after the effective date of this part, shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company.

(c) Effect on Federal and State law

Nothing in this section shall affect the authority of the Commission or a State commission under other applicable law.

(d) Rules

Not later than 4 months after August 8, 2005, the Commission shall issue rules (which rules shall be effective no earlier than the effective date of this part) to exempt from the requirements of this section any company in a holding company system whose public utility operations are confined substantially to a single State and any other class of transactions that the Commission finds is not relevant to the jurisdictional rates of a public utility.

(Pub. L. 109–58, title XII, § 1275, Aug. 8, 2005, 119 Stat. 977.)

REFERENCES IN TEXT

For the effective date of this part, referred to in subsecs. (b) and (d), see Effective Date note set out under section 16451 of this title.

§ 16463. Authorization of appropriations

There are authorized to be appropriated such funds as may be necessary to carry out this part.

(Pub. L. 109–58, title XII, § 1276, Aug. 8, 2005, 119 Stat. 978.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle F (§§ 1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

PART E—MARKET TRANSPARENCY, ENFORCEMENT, AND CONSUMER PROTECTION

§ 16471. Consumer privacy and unfair trade practices

(a) Privacy

The Federal Trade Commission may issue rules protecting the privacy of electric consumers from the disclosure of consumer information obtained in connection with the sale or delivery of electric energy to electric consumers.

(b) Slamming

The Federal Trade Commission may issue rules prohibiting the change of selection of an electric utility except with the informed consent of the electric consumer or if approved by the appropriate State regulatory authority.

(c) Cramming

The Federal Trade Commission may issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

(d) Rulemaking

The Federal Trade Commission shall proceed in accordance with section 553 of title 5 when prescribing a rule under this section.

(e) State authority

If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

(f) Definitions

For purposes of this section:

(1) State regulatory authority

The term ''State regulatory authority'' has the meaning given that term in section 796(21) of title 16.

(2) Electric consumer and electric utility

The terms ''electric consumer'' and ''electric utility'' have the meanings given those terms in section 2602 of title 16.

(Pub. L. 109–58, title XII, § 1287, Aug. 8, 2005, 119 Stat. 981.)

PART F—DEFINITIONS

§ 16481. Commission defined

In this subchapter, the term ''Commission'' means the Federal Energy Regulatory Commission.

(Pub. L. 109–58, title XII, § 1291(a), Aug. 8, 2005, 119 Stat. 984.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 941, which enacted this subchapter and sections 824j–1 and 824*o* to 824w of Title 16, Conservation, amended sections 796, 824, 824a–3, 824b, 824e, 824j, 824m, 825e, 825f, 825*l* to 825*o*, 825*o*–1, 2621, 2622, 2625, 2634, and 2642 of Title 16, repealed chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, and sections 824n and 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title and

sections 824b, 824*o*, 824q, and 2642 of Title 16. For complete classification of title XII to the Code, see Short Title note set out under section 15801 of this title and Tables.

SUBCHAPTER XIII—MISCELLANEOUS

§ 16491. Energy production incentives

(a) In general

A State may provide to any entity—

(1) a credit against any tax or fee owed to the State under a State law, or

(2) any other tax incentive,

determined by the State to be appropriate, in the amount calculated under and in accordance with a formula determined by the State, for production described in subsection (b) in the State by the entity that receives such credit or such incentive.

(b) Eligible entities

Subsection (a) shall apply with respect to the production in the State of electricity from coal mined in the State and used in a facility, if such production meets all applicable Federal and State laws and if such facility uses scrubbers or other forms of clean coal technology.

(c) Effect on interstate commerce

Any action taken by a State in accordance with this section with respect to a tax or fee payable, or incentive applicable, for any period beginning after August 8, 2005, shall—

(1) be considered to be a reasonable regulation of commerce; and

(2) not be considered to impose an undue burden on interstate commerce or to otherwise impair, restrain, or discriminate, against interstate commerce.

(Pub. L. 109–58, title XIV, § 1402, Aug. 8, 2005, 119 Stat. 1061.)

§ 16492. Regulation of certain oil used in transformers

Notwithstanding any other provision of law, or rule promulgated by the Environmental Protection Agency, vegetable oil made from soybeans and used in electric transformers as thermal insulation shall not be regulated as an oil identified under section 2720(a)(1)(B) of title 33.

(Pub. L. 109–58, title XIV, § 1403, Aug. 8, 2005, 119 Stat. 1061.)

§ 16493. National Priority Project Designation

(a) Designation of National Priority Projects

(1) In general

There is established the National Priority Project Designation (referred to in this section as the ''Designation''), which shall be evidenced by a medal bearing the inscription ''National Priority Project''.

(2) Design and materials

The medal shall be of such design and materials and bear such additional inscriptions as the President may prescribe.

(b) Making and presentation of Designation

(1) In general

The President, on the basis of recommendations made by the Secretary, shall annually designate organizations that have—

(A) advanced the field of renewable energy technology and contributed to North American energy independence; and

(B) been certified by the Secretary under subsection (e).

(2) Presentation

The President shall designate projects with such ceremonies as the President may prescribe.

(3) Use of Designation

An organization that receives a Designation under this section may publicize the Designation of the organization as a National Priority Project in advertising.

(4) Categories in which the Designation may be given

Separate Designations shall be made to qualifying projects in each of the following categories:

(A) Wind and biomass energy generation projects.

(B) Photovoltaic and fuel cell energy generation projects.

(C) Energy efficient building and renewable energy projects.

(D) First-in-Class projects.

(c) Selection criteria

(1) In general

Certification and selection of the projects to receive the Designation shall be based on criteria established under this subsection.

(2) Wind, biomass, and building projects

In the case of a wind, biomass, or building project, the project shall demonstrate that the project will install not less than 30 megawatts of renewable energy generation capacity.

(3) Solar photovoltaic and fuel cell projects

In the case of a solar photovoltaic or fuel cell project, the project shall demonstrate that the project will install not less than 3 megawatts of renewable energy generation capacity.

(4) Energy efficient building and renewable energy projects

In the case of an energy efficient building or renewable energy project, in addition to meeting the criteria established under paragraph (2), each building project shall demonstrate that the project will—

(A) comply with third-party certification standards for high-performance, sustainable buildings;

(B) use whole-building integration of energy efficiency and environmental performance design and technology, including advanced building controls;

(C) use renewable energy for at least 50 percent of the energy consumption of the project;

(D) comply with applicable Energy Star standards; and

(E) include at least 5,000,000 square feet of enclosed space.

(5) First-in-Class use

Notwithstanding paragraphs (2) through (4), a new building project may qualify under this

section if the Secretary determines that the project—

(A) represents a First-In-Class use of renewable energy; or

(B) otherwise establishes a new paradigm of building integrated renewable energy use or energy efficiency.

(d) Application

(1) Initial applications

No later than 120 days after August 8, 2005, and annually thereafter, the Secretary shall publish in the Federal Register an invitation and guidelines for submitting applications, consistent with this section.

(2) Contents

The application shall describe the project, or planned project, and the plans to meet the criteria established under subsection (c).

(e) Certification

(1) In general

Not later than 60 days after the application period described in subsection (d), and annually thereafter, the Secretary shall certify projects that are reasonably expected to meet the criteria established under subsection (c).

(2) Certified projects

The Secretary shall designate personnel of the Department to work with persons carrying out each certified project and ensure that the personnel—

(A) provide each certified project with guidance in meeting the criteria established under subsection (c);

(B) identify programs of the Department, including National Laboratories and Technology Centers, that will assist each project in meeting the criteria established under subsection (c); and

(C) ensure that knowledge and transfer of the most current technology between the applicable resources of the Federal Government (including the National Laboratories and Technology Centers, the Department, and the Environmental Protection Agency) and the certified projects is being facilitated to accelerate commercialization of work developed through those resources.

(f) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2006 through 2010.

(Pub. L. 109–58, title XIV, § 1405, Aug. 8, 2005, 119 Stat. 1062.)

§ 16494. Oxygen-fuel

(a) Program

The Secretary shall establish a program on oxygen-fuel systems. If feasible, the program shall include renovation of at least one existing large unit and one existing small unit, and construction of one new large unit and one new small unit.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section—

(1) $100,000,000 for fiscal year 2006;

(2) $100,000,000 for fiscal year 2007; and

(3) $100,000,000 for fiscal year 2008.

(c) Definitions

For purposes of this section—

(1) the term ''large unit'' means a unit with a generating capacity of 100 megawatts or more;

(2) the term ''oxygen-fuel systems'' means systems that utilize fuel efficiency benefits of oil, gas, coal, and biomass combustion using substantially pure oxygen, with high flame temperatures and the exclusion of air from the boiler, in industrial or electric utility steam generating units; and

(3) the term ''small unit'' means a unit with a generating capacity in the 10–50 megawatt range.

(Pub. L. 109–58, title XIV, § 1407, Aug. 8, 2005, 119 Stat. 1064.)

SUBCHAPTER XIV—ETHANOL AND MOTOR FUELS

§ 16501. Commercial byproducts from municipal solid waste and cellulosic biomass loan guarantee program

(a) Definition of municipal solid waste

In this section, the term ''municipal solid waste'' has the meaning given the term ''solid waste'' in section 6903 of this title.

(b) Establishment of program

The Secretary shall establish a program to provide guarantees of loans by private institutions for the construction of facilities for the processing and conversion of municipal solid waste and cellulosic biomass into fuel ethanol and other commercial byproducts.

(c) Requirements

The Secretary may provide a loan guarantee under subsection (b) to an applicant if—

(1) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in subsection (b);

(2) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(3) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(d) Criteria

In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(1) meet all applicable Federal and State permitting requirements;

(2) are most likely to be successful; and

(3) are located in local markets that have the greatest need for the facility because of—

(A) the limited availability of land for waste disposal;

(B) the availability of sufficient quantities of cellulosic biomass; or

(C) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

(e) Maturity

A loan guaranteed under subsection (b) shall have a maturity of not more than 20 years.

(f) Terms and conditions

The loan agreement for a loan guaranteed under subsection (b) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

(g) Assurance of repayment

The Secretary shall require that an applicant for a loan guarantee under subsection (b) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

(h) Guarantee fee

The recipient of a loan guarantee under subsection (b) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(i) Full faith and credit

The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest. The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(j) Reports

Until each guaranteed loan under this section has been repaid in full, the Secretary shall annually submit to Congress a report on the activities of the Secretary under this section.

(k) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section.

(*l*) Termination of authority

The authority of the Secretary to issue a loan guarantee under subsection (b) terminates on the date that is 10 years after August 8, 2005.

(Pub. L. 109–58, title XV, § 1510, Aug. 8, 2005, 119 Stat. 1085.)

§ 16502. Advanced Biofuel Technologies Program

(a) In general

Subject to the availability of appropriations under subsection (d), the Administrator of the Environmental Protection Agency shall, in consultation with the Secretary of Agriculture and the Biomass Research and Development Technical Advisory Committee established under section 8605 of title 7, establish a program, to be known as the ''Advanced Biofuel Technologies Program'', to demonstrate advanced technologies for the production of alternative transportation fuels.

(b) Priority

In carrying out the program under subsection (a), the Administrator shall give priority to projects that enhance the geographical diversity of alternative fuels production and utilize feedstocks that represent 10 percent or less of ethanol or biodiesel fuel production in the United States during the previous fiscal year.

(c) Demonstration projects

(1) In general

As part of the program under subsection (a), the Administrator shall fund demonstration projects—

(A) to develop not less than 4 different conversion technologies for producing cellulosic biomass ethanol; and

(B) to develop not less than 5 technologies for coproducing value-added bioproducts (such as fertilizers, herbicides, and pesticides) resulting from the production of biodiesel fuel.

(2) Administration

Demonstration projects under this subsection shall be—

(A) conducted based on a merit-reviewed, competitive process; and

(B) subject to the cost-sharing requirements of section 16352 of this title.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $110,000,000 for each of fiscal years 2005 through 2009.

(Pub. L. 109–58, title XV, § 1514, Aug. 8, 2005, 119 Stat. 1090.)

§ 16503. Sugar ethanol loan guarantee program

(a) In general

Funds may be provided for the cost (as defined in section 661a of title 2) of loan guarantees issued under title XIV[1] to carry out commercial demonstration projects for ethanol derived from sugarcane, bagasse, and other sugarcane byproducts.

(b) Demonstration projects

The Secretary may issue loan guarantees under this section to projects to demonstrate commercially the feasibility and viability of producing ethanol using sugarcane, sugarcane bagasse, and other sugarcane byproducts as a feedstock.

(c) Requirements

An applicant for a loan guarantee under this section may provide assurances, satisfactory to the Secretary, that—

(1) the project design has been validated through the operation of a continuous process facility;

(2) the project has been subject to a full technical review;

(3) the project, with the loan guarantee, is economically viable; and

(4) there is a reasonable assurance of repayment of the guaranteed loan.

(d) Limitations

(1) Maximum guarantee

Except as provided in paragraph (2), a loan guarantee under this section—

[1] See References in Text note below.

(A) may be issued for up to 80 percent of the estimated cost of a project; but

(B) shall not exceed $50,000,000 for any 1 project.

(2) Additional guarantees

(A) In general

The Secretary may issue additional loan guarantees for a project to cover—

(i) up to 80 percent of the excess of actual project costs; but

(ii) not to exceed 15 percent of the amount of the original loan guarantee.

(B) Principal and interest

Subject to subparagraph (A), the Secretary shall guarantee 100 percent of the principal and interest of a loan guarantee made under subparagraph (A).

(Pub. L. 109–58, title XV, § 1516, Aug. 8, 2005, 119 Stat. 1091.)

REFERENCES IN TEXT

Title XIV, referred to in subsec. (a), is title XIV of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 1061, which enacted subchapter XIII of this chapter and section 13557 of this title.

SUBCHAPTER XV—INCENTIVES FOR INNOVATIVE TECHNOLOGIES

§ 16511. Definitions

In this subchapter:

(1) Commercial technology

(A) In general

The term ''commercial technology'' means a technology in general use in the commercial marketplace.

(B) Inclusions

The term ''commercial technology'' does not include a technology solely by use of the technology in a demonstration project funded by the Department.

(2) Cost

The term ''cost'' has the meaning given the term ''cost of a loan guarantee'' within the meaning of section 661a(5)(C) of title 2.

(3) Eligible project

The term ''eligible project'' means a project described in section 16513 of this title.

(4) Guarantee

(A) In general

The term ''guarantee'' has the meaning given the term ''loan guarantee'' in section 661a of title 2.

(B) Inclusion

The term ''guarantee'' includes a loan guarantee commitment (as defined in section 661a of title 2).

(5) Obligation

The term ''obligation'' means the loan or other debt obligation that is guaranteed under this section.

(Pub. L. 109–58, title XVII, § 1701, Aug. 8, 2005, 119 Stat. 1117.)

§ 16512. Terms and conditions

(a) In general

Except for division C of Public Law 108–324 [15 U.S.C. 720 et seq.], the Secretary shall make guarantees under this or any other Act for projects on such terms and conditions as the Secretary determines, after consultation with the Secretary of the Treasury, only in accordance with this section.

(b) Specific appropriation or contribution

No guarantee shall be made unless—

(1) an appropriation for the cost has been made; or

(2) the Secretary has received from the borrower a payment in full for the cost of the obligation and deposited the payment into the Treasury.

(c) Amount

Unless otherwise provided by law, a guarantee by the Secretary shall not exceed an amount equal to 80 percent of the project cost of the facility that is the subject of the guarantee, as estimated at the time at which the guarantee is issued.

(d) Repayment

(1) In general

No guarantee shall be made unless the Secretary determines that there is reasonable prospect of repayment of the principal and interest on the obligation by the borrower.

(2) Amount

No guarantee shall be made unless the Secretary determines that the amount of the obligation (when combined with amounts available to the borrower from other sources) will be sufficient to carry out the project.

(3) Subordination

The obligation shall be subject to the condition that the obligation is not subordinate to other financing.

(e) Interest rate

An obligation shall bear interest at a rate that does not exceed a level that the Secretary determines appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks.

(f) Term

The term of an obligation shall require full repayment over a period not to exceed the lesser of—

(1) 30 years; or

(2) 90 percent of the projected useful life of the physical asset to be financed by the obligation (as determined by the Secretary).

(g) Defaults

(1) Payment by Secretary

(A) In general

If a borrower defaults on the obligation (as defined in regulations promulgated by the Secretary and specified in the guarantee contract), the holder of the guarantee shall have the right to demand payment of the unpaid amount from the Secretary.

(B) Payment required

Within such period as may be specified in the guarantee or related agreements, the

Secretary shall pay to the holder of the guarantee the unpaid interest on, and unpaid principal of the obligation as to which the borrower has defaulted, unless the Secretary finds that there was no default by the borrower in the payment of interest or principal or that the default has been remedied.

(C) Forbearance

Nothing in this subsection precludes any forbearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the obligation and approved by the Secretary.

(2) Subrogation

(A) In general

If the Secretary makes a payment under paragraph (1), the Secretary shall be subrogated to the rights of the recipient of the payment as specified in the guarantee or related agreements including, where appropriate, the authority (notwithstanding any other provision of law) to—

(i) complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements; or

(ii) permit the borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the project if the Secretary determines this to be in the public interest.

(B) Superiority of rights

The rights of the Secretary, with respect to any property acquired pursuant to a guarantee or related agreements, shall be superior to the rights of any other person with respect to the property.

(C) Terms and conditions

A guarantee agreement shall include such detailed terms and conditions as the Secretary determines appropriate to—

(i) protect the interests of the United States in the case of default; and

(ii) have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project.

(3) Payment of principal and interest by Secretary

With respect to any obligation guaranteed under this section, the Secretary may enter into a contract to pay, and pay, holders of the obligation, for and on behalf of the borrower, from funds appropriated for that purpose, the principal and interest payments which become due and payable on the unpaid balance of the obligation if the Secretary finds that—

(A)(i) the borrower is unable to meet the payments and is not in default;

(ii) it is in the public interest to permit the borrower to continue to pursue the purposes of the project; and

(iii) the probable net benefit to the Federal Government in paying the principal and interest will be greater than that which would result in the event of a default;

(B) the amount of the payment that the Secretary is authorized to pay shall be no greater than the amount of principal and interest that the borrower is obligated to pay under the agreement being guaranteed; and

(C) the borrower agrees to reimburse the Secretary for the payment (including interest) on terms and conditions that are satisfactory to the Secretary.

(4) Action by Attorney General

(A) Notification

If the borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default.

(B) Recovery

On notification, the Attorney General shall take such action as is appropriate to recover the unpaid principal and interest due from—

(i) such assets of the defaulting borrower as are associated with the obligation; or

(ii) any other security pledged to secure the obligation.

(h) Fees

(1) In general

The Secretary shall charge and collect fees for guarantees in amounts the Secretary determines are sufficient to cover applicable administrative expenses.

(2) Availability

Fees collected under this subsection shall—

(A) be deposited by the Secretary into the Treasury; and

(B) remain available until expended, subject to such other conditions as are contained in annual appropriations Acts.

(i) Records; audits

(1) In general

A recipient of a guarantee shall keep such records and other pertinent documents as the Secretary shall prescribe by regulation, including such records as the Secretary may require to facilitate an effective audit.

(2) Access

The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access, for the purpose of audit, to the records and other pertinent documents.

(j) Full faith and credit

The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

(Pub. L. 109–58, title XVII, § 1702, Aug. 8, 2005, 119 Stat. 1117.)

REFERENCES IN TEXT

Division C of Public Law 108–324, referred to in subsec. (a), is division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, as amended, known as the Alaska Natural Gas Pipeline Act, which is classified principally to chapter 15D (§ 720 et seq.) of Title 15, Commerce and Trade. For complete classification of division C to the Code, see Short Title note set out under section 720 of Title 15 and Tables.

§ 16513. Eligible projects

(a) In general

The Secretary may make guarantees under this section only for projects that—

(1) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and

(2) employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.

(b) Categories

Projects from the following categories shall be eligible for a guarantee under this section:

(1) Renewable energy systems.

(2) Advanced fossil energy technology (including coal gasification meeting the criteria in subsection (d)).

(3) Hydrogen fuel cell technology for residential, industrial, or transportation applications.

(4) Advanced nuclear energy facilities.

(5) Carbon capture and sequestration practices and technologies, including agricultural and forestry practices that store and sequester carbon.

(6) Efficient electrical generation, transmission, and distribution technologies.

(7) Efficient end-use energy technologies.

(8) Production facilities for fuel efficient vehicles, including hybrid and advanced diesel vehicles.

(9) Pollution control equipment.

(10) Refineries, meaning facilities at which crude oil is refined into gasoline.

(c) Gasification projects

The Secretary may make guarantees for the following gasification projects:

(1) Integrated gasification combined cycle projects

Integrated gasification combined cycle plants meeting the emission levels under subsection (d), including—

(A) projects for the generation of electricity—

(i) for which, during the term of the guarantee—

(I) coal, biomass, petroleum coke, or a combination of coal, biomass, and petroleum coke will account for at least 65 percent of annual heat input; and

(II) electricity will account for at least 65 percent of net useful annual energy output;

(ii) that have a design that is determined by the Secretary to be capable of accommodating the equipment likely to be necessary to capture the carbon dioxide that would otherwise be emitted in flue gas from the plant;

(iii) that have an assured revenue stream that covers project capital and operating costs (including servicing all debt obligations covered by the guarantee) that is approved by the Secretary and the relevant State public utility commission; and

(iv) on which construction commences not later than the date that is 3 years after the date of the issuance of the guarantee;

(B) a project to produce energy from coal (of not more than 13,000 Btu/lb and mined in the western United States) using appropriate advanced integrated gasification combined cycle technology that minimizes and offers the potential to sequester carbon dioxide emissions and that—

(i) may include repowering of existing facilities;

(ii) may be built in stages;

(iii) shall have a combined output of at least 100 megawatts;

(iv) shall be located in a western State at an altitude greater than 4,000 feet; and

(v) shall demonstrate the ability to use coal with an energy content of not more than 9,000 Btu/lb;

(C) a project located in a taconite-producing region of the United States that is entitled under the law of the State in which the plant is located to enter into a long-term contract approved by a State public utility commission to sell at least 450 megawatts of output to a utility;

(D) facilities that—

(i) generate one or more hydrogen-rich and carbon monoxide-rich product streams from the gasification of coal or coal waste; and

(ii) use those streams to facilitate the production of ultra clean premium fuels through the Fischer-Tropsch process; and

(E) a project to produce energy and clean fuels, using appropriate coal liquefaction technology, from Western bituminous or subbituminous coal, that—

(i) is owned by a State government; and

(ii) may include tribal and private coal resources.

(2) Industrial gasification projects

Facilities that gasify coal, biomass, or petroleum coke in any combination to produce synthesis gas for use as a fuel or feedstock and for which electricity accounts for less than 65 percent of the useful energy output of the facility.

(3) Petroleum coke gasification projects

The Secretary is encouraged to make loan guarantees under this subchapter available for petroleum coke gasification projects.

(4) Liquefaction project

Notwithstanding any other provision of law, funds awarded under the Department of Energy's Clean Coal Power Initiative for Fischer-Tropsch coal-to-oil liquefaction projects may be used to finance the cost of loan guarantees for projects awarded such funds.

(d) Emission levels

In addition to any other applicable Federal or State emission limitation requirements, a project shall attain at least—

(1) total sulfur dioxide emissions in flue gas from the project that do not exceed 0.05 lb/MMBtu;

(2) a 90-percent removal rate (including any fuel pretreatment) of mercury from the coal-derived gas, and any other fuel, combusted by the project;

(3) total nitrogen oxide emissions in the flue gas from the project that do not exceed 0.08 lb/MMBtu; and

(4) total particulate emissions in the flue gas from the project that do not exceed 0.01 lb/MMBtu.

(e) Qualification of facilities receiving tax credits

A project that receives tax credits for clean coal technology shall not be disqualified from receiving a guarantee under this subchapter.

(Pub. L. 109–58, title XVII, § 1703, Aug. 8, 2005, 119 Stat. 1120; Pub. L. 109–168, § 1(b)(1), Jan. 10, 2006, 119 Stat. 3580.)

AMENDMENTS

2006—Subsec. (c)(4). Pub. L. 109–168 substituted ''Department of Energy's Clean Coal Power Initiative for Fischer-Tropsch'' for ''clean coal power initiative under part A of subchapter IV for''.

§ 16514. Authorization of appropriations

(a) In general

There are authorized to be appropriated such sums as are necessary to provide the cost of guarantees under this subchapter.

(b) Use of other appropriated funds

The Department may use amounts awarded under the Clean Coal Power Initiative to carry out the project described in section 16513(c)(1)(C) of this title, on the request of the recipient of such award, for a loan guarantee, to the extent that the amounts have not yet been disbursed to, or have been repaid by, the recipient.

(Pub. L. 109–58, title XVII, § 1704, Aug. 8, 2005, 119 Stat. 1122; Pub. L. 109–168, § 1(b)(2), Jan. 10, 2006, 119 Stat. 3580.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–168 substituted ''Clean Coal Power Initiative'' for ''clean coal power initiative under part A of subchapter IV''.

SUBCHAPTER XVI—STUDIES

§ 16521. Report on energy integration with Latin America

The Secretary shall submit an annual report to the Committee on Energy and Commerce of the United States House of Representatives and to the Committee on Energy and Natural Resources of the Senate concerning the status of energy export development in Latin America and efforts by the Secretary and other departments and agencies of the United States to promote energy integration with Latin America. The report shall contain a detailed analysis of the status of energy export development in Mexico and a description of all significant efforts by the Secretary and other departments and agencies to promote a constructive relationship with Mexico regarding the development of that nation's energy capacity. In particular this report shall outline efforts the Secretary and other departments and agencies have made to ensure that regulatory approval and oversight of United States/Mexico border projects that result in the expansion of Mexican energy capacity are effectively coordinated across departments and with the Mexican government.

(Pub. L. 109–58, title XVIII, § 1807, Aug. 8, 2005, 119 Stat. 1124.)

§ 16522. Low-volume gas reservoir study

(a) Study

The Secretary shall make a grant to an organization of oil and gas producing States, specifically those containing significant numbers of marginal oil and natural gas wells, for conducting an annual study of low-volume natural gas reservoirs. Such organization shall work with the State geologist of each State being studied.

(b) Contents

The studies under this section shall—

(1) determine the status and location of marginal wells and gas reservoirs;

(2) gather the production information of these marginal wells and reservoirs;

(3) estimate the remaining producible reserves based on variable pipeline pressures;

(4) locate low-pressure gathering facilities and pipelines;

(5) recommend incentives which will enable the continued production of these resources;

(6) produce maps and literature to disseminate to States to promote conservation of natural gas reserves; and

(7) evaluate the amount of natural gas that is being wasted through the practice of venting or flaring of natural gas produced in association with crude oil well production.

(c) Data analysis

Data development and analysis under this section shall be performed by an institution of higher education with GIS capabilities. If the organization receiving the grant under subsection (a) does not have GIS capabilities, such organization shall contract with one or more entities with—

(1) technological capabilities and resources to perform advanced image processing, GIS programming, and data analysis; and

(2) the ability to—

(A) process remotely sensed imagery with high spatial resolution;

(B) deploy global positioning systems;

(C) process and synthesize existing, variable-format gas well, pipeline, gathering facility, and reservoir data;

(D) create and query GIS databases with infrastructure location and attribute information;

(E) write computer programs to customize relevant GIS software;

(F) generate maps, charts, and graphs which summarize findings from data research for presentation to different audiences; and

(G) deliver data in a variety of formats, including Internet Map Server for query and display, desktop computer display, and access through handheld personal digital assistants.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section—

(1) $1,500,000 for fiscal year 2006; and

(2) $450,000 for each of the fiscal years 2007 through 2010.

(e) Definitions

For purposes of this section, the term ''GIS'' means geographic information systems tech-

nology that facilitates the organization and management of data with a geographic component.

(Pub. L. 109–58, title XVIII, § 1808, Aug. 8, 2005, 119 Stat. 1124.)

§ 16523. Alaska natural gas pipeline

Not later than 180 days after August 8, 2005, and every 180 days thereafter until the Alaska natural gas pipeline commences operation, the Federal Energy Regulatory Commission shall submit to Congress a report describing—

(1) the progress made in licensing and constructing the pipeline; and

(2) any issue impeding that progress.

(Pub. L. 109–58, title XVIII, § 1810, Aug. 8, 2005, 119 Stat. 1126.)

§ 16524. Study on the benefits of economic dispatch

(a) Study

The Secretary, in coordination and consultation with the States, shall conduct a study on—

(1) the procedures currently used by electric utilities to perform economic dispatch;

(2) identifying possible revisions to those procedures to improve the ability of nonutility generation resources to offer their output for sale for the purpose of inclusion in economic dispatch; and

(3) the potential benefits to residential, commercial, and industrial electricity consumers nationally and in each state[1] if economic dispatch procedures were revised to improve the ability of nonutility generation resources to offer their output for inclusion in economic dispatch.

(b) Definition

The term ''economic dispatch'' when used in this section means the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities.

(c) Report to Congress and the States

Not later than 90 days after August 8, 2005, and on a yearly basis following, the Secretary shall submit a report to Congress and the States on the results of the study conducted under subsection (a), including recommendations to Congress and the States for any suggested legislative or regulatory changes.

(Pub. L. 109–58, title XVIII, § 1832, Aug. 8, 2005, 119 Stat. 1138.)

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§ 16601. Definitions

In this chapter:

(1) Administrator

The term ''Administrator'' means the Administrator of the National Aeronautics and Space Administration.

(2) ISS

The term ''ISS'' means the International Space Station.

(3) NASA

The term ''NASA'' means the National Aeronautics and Space Administration.

(Pub. L. 109–155, § 2, Dec. 30, 2005, 119 Stat. 2897.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 109–155, Dec. 30, 2005, 119 Stat. 2895, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Pub. L. 109–155, § 1(a), Dec. 30, 2005, 119 Stat. 2895, provided that: ''This Act [enacting this chapter and sections 2459f–1, 2459k, and 2459*l* of this title, amending sections 2451, 2458c, 2459f, 2459g, 2473b, and 2477 of this title and section 9809 of Title 5, Government Organization and Employees, repealing section 2473e of this title, and amending provisions set out as notes under section 2451 of this title and section 47508 of Title 49, Transportation] may be cited as the 'National Aeronautics and Space Administration Authorization Act of 2005'.''

SUBCHAPTER I—GENERAL PRINCIPLES AND REPORTS

§ 16611. Responsibilities, policies, and plans

(a) General responsibilities

(1) Programs

The Administrator shall ensure that NASA carries out a balanced set of programs that shall include, at a minimum, programs in—

(A) human space flight, in accordance with subsection (b);

(B) aeronautics research and development; and

(C) scientific research, which shall include, at a minimum—

(i) robotic missions to study the Moon and other planets and their moons, and to deepen understanding of astronomy, astrophysics, and other areas of science that can be productively studied from space;

(ii) earth science research and research on the Sun-Earth connection through the development and operation of research satellites and other means;

(iii) support of university research in space science, earth science, and microgravity science; and

(iv) research on microgravity, including research that is not directly related to human exploration.

(2) Consultation and coordination

In carrying out the programs of NASA, the Administrator shall—

(A) consult and coordinate to the extent appropriate with other relevant Federal agencies, including through the National Science and Technology Council;

(B) work closely with the private sector, including by—

(i) encouraging the work of entrepreneurs who are seeking to develop new means to launch satellites, crew, or cargo;

(ii) contracting with the private sector for crew and cargo services, including to the International Space Station, to the extent practicable;

(iii) using commercially available products (including software) and services to the extent practicable to support all NASA activities; and

(iv) encouraging commercial use and development of space to the greatest extent practicable; and

(C) involve other nations to the extent appropriate.

(b) Vision for space exploration

(1) In general

The Administrator shall establish a program to develop a sustained human presence on the Moon, including a robust precursor program, to promote exploration, science, commerce, and United States preeminence in space, and as a stepping-stone to future exploration of

Mars and other destinations. The Administrator is further authorized to develop and conduct appropriate international collaborations in pursuit of these goals.

(2) Milestones

The Administrator shall manage human space flight programs to strive to achieve the following milestones (in conformity with section 16763 of this title)—

(A) Returning Americans to the Moon no later than 2020.

(B) Launching the Crew Exploration Vehicle as close to 2010 as possible.

(C) Increasing knowledge of the impacts of long duration stays in space on the human body using the most appropriate facilities available, including the ISS.

(D) Enabling humans to land on and return from Mars and other destinations on a timetable that is technically and fiscally possible.

(c) Aeronautics

(1) In general

The President of the United States, through an official the President shall designate, and in consultation with appropriate Federal agencies, shall develop a national policy to guide the aeronautics research and development programs of the United States through 2020. The policy shall include national goals for aeronautics research and development and shall describe the role and responsibilities of each Federal agency that will carry out the policy. The development of the policy shall utilize external studies that have been conducted on the state of United States aeronautics and aviation research and development and have suggested policies to ensure continued competitiveness.

(2) Content

(A) At a minimum, the national aeronautics research and development policy shall describe for NASA—

(i) the priority areas of research for aeronautics through fiscal year 2011;

(ii) the basis on which and the process by which priorities for ensuing fiscal years will be selected;

(iii) the facilities and personnel needed to carry out the aeronautics program through fiscal year 2011; and

(iv) the budget assumptions on which the policy is based, which for fiscal years 2007 and 2008 shall be the authorized level for aeronautics provided in subchapter II of this chapter.

(B) The policy shall be based on the premises that—

(i) the Federal Government has an established interest in conducting research and development programs for improving the usefulness, performance, speed, safety, and efficiency of aeronautical vehicles, as described in section 2451(d)(2) of this title; and

(ii) the Federal Government has an established interest in conducting research and development programs that help preserve the role of the United States as a global leader in aeronautical technologies and in their application, as described in section 2451(d)(5) of this title.

(3) Considerations

In developing the national aeronautics research and development policy, the President shall consider the following issues, which shall be discussed in the transmittal under paragraph (5):

(A) The extent to which NASA should focus on long-term, high-risk research or more incremental research, and the expected impact of that decision on the United States economy, and the ability to achieve environmental and other public goals related to aeronautics.

(B) The extent to which NASA should address military and commercial needs.

(C) How NASA will coordinate its aeronautics program with other Federal agencies.

(D) The extent to which NASA will conduct research in-house, fund university research, and collaborate on industry research, and the expected impact of that mix of funding on the supply of United States workers for the aeronautics industry.

(E) The extent to which the priority areas of research listed pursuant to paragraph (2)(A) should include the activities authorized by subchapter IV of this chapter, the discussion of which shall include a priority ranking of all of the activities authorized in subchapter IV and an explanation for that ranking.

(4) Consultation

In the development of the national aeronautics research and development policy, the President shall consult widely with academic and industry experts and with other Federal agencies. The Administrator may enter into an arrangement with the National Academy of Sciences to help develop the policy.

(5) Schedule

(A) Not later than 1 year after December 30, 2005, the President shall transmit the national aeronautics research and development policy to the Committee on Appropriations of the House of Representatives, the Committee on Appropriations of the Senate, the Committee on Science of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(B) Not later than 60 days after the transmittal of the policy under subparagraph (A), the Administrator shall transmit to the Committee on Appropriations of the House of Representatives, the Committee on Appropriations of the Senate, the Committee on Science of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate a report describing how NASA will carry out the policy.

(C) At the time the President's fiscal year 2007 budget is transmitted to the Congress, the Administrator shall transmit to the Committee on Appropriations of the House of Representatives, the Committee on Appropriations of the Senate, the Committee on Science

of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate a report on the proposed NASA aeronautics budget describing—

(i) the rationale for the budget levels and activities in the proposed fiscal year 2007 NASA aeronautics budget;

(ii) the extent to which the program directions proposed for fiscal year 2007 are likely to be consistent with the national policy being prepared under this section; and

(iii) the extent to which the proposed programs for fiscal year 2007 are consistent with past reports and current studies of the National Academy of Sciences, and other relevant reports and studies.

(d) Science

(1) In general

The Administrator shall develop a plan to guide the science programs of NASA through 2016.

(2) Content

At a minimum, the plan developed under paragraph (1) shall be designed to ensure that NASA has a rich and vigorous set of science activities, and shall describe—

(A) the missions NASA will initiate, design, develop, launch, or operate in space science and earth science through fiscal year 2016, including launch dates;

(B) a priority ranking of all of the missions listed under subparagraph (A), and the rationale for the ranking; and

(C) the budget assumptions on which the policy is based, which for fiscal years 2007 and 2008 shall be consistent with the authorizations provided in subchapter II of this chapter.

(3) Considerations

In developing the science plan under this subsection, the Administrator shall consider the following issues, which shall be discussed in the transmittal under paragraph (6):

(A) What the most important scientific questions in space science and earth science are.

(B) How to best benefit from the relationship between NASA's space and earth science activities and those of other Federal agencies.

(C) Whether the Magnetospheric Multiscale Mission, SIM-Planet Quest, and missions under the Future Explorers Programs can be expedited to meet previous schedules.

(D) Whether any NASA Earth observing missions that have been delayed or cancelled can be restored.

(E) How to ensure the long-term vitality of Earth observation programs at NASA, including their satellite, science, and data system components.

(F) Whether current and currently planned Earth observation missions should be supplemented or replaced with new satellite architectures and instruments that enable global coverage, and all-weather, day and night imaging of the Earth's surface features.

(G) How to integrate NASA earth science missions with the Global Earth Observing System of Systems.

(4) Consultation

In developing the plan under this subsection, the Administrator shall draw on decadal surveys and other reports in planetary science, astronomy, solar and space physics, earth science, and any other relevant fields developed by the National Academy of Sciences. The Administrator shall also consult widely with academic and industry experts and with other Federal agencies.

(5) Hubble Space Telescope

The plan developed under this subsection shall address plans for a human mission to repair the Hubble Space Telescope consistent with section 16652 of this title.

(6) Schedule

The Administrator shall transmit the plan developed under this subsection to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 1 year after December 30, 2005. The Administrator shall make available to those committees any study done by a nongovernmental entity that was used in the development of the plan.

(e) Facilities

(1) In general

The Administrator shall develop a plan for managing NASA's facilities through fiscal year 2015. The plan shall be consistent with the policies and plans developed pursuant to this section.

(2) Content

At a minimum, the plan developed under paragraph (1) shall describe—

(A) any new facilities NASA intends to acquire, whether through construction, purchase, or lease, and the expected dates for doing so;

(B) any facilities NASA intends to significantly modify, refurbish, or upgrade, and the expected dates for doing so;

(C) any facilities NASA intends to close, and the expected dates for doing so;

(D) any transactions NASA intends to conduct to sell, lease, or otherwise transfer the ownership of a facility, and the expected dates for doing so;

(E) how each of the actions described in subparagraphs (A), (B), (C), and (D) will enhance the ability of NASA to carry out its programs;

(F) the expected costs or savings expected from each of the actions described in subparagraphs (A), (B), (C), and (D);

(G) the priority order of the actions described in subparagraphs (A), (B), (C), and (D);

(H) the budget assumptions of the plan, which for fiscal years 2007 and 2008 shall be consistent with the authorizations provided in subchapter II of this chapter, including the funding levels for maintenance and repairs; and

(I) how facilities were evaluated in developing the plan.

(3) Schedule

The Administrator shall transmit the plan developed under this subsection to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than the date on which the President submits the proposed budget for the Federal Government for fiscal year 2008 to the Congress.

(f) Workforce

(1) In general

The Administrator shall develop a human capital strategy to ensure that NASA has a workforce of the appropriate size and with the appropriate skills to carry out the programs of NASA, consistent with the policies and plans developed pursuant to this section. Under the strategy, NASA shall utilize current personnel, to the maximum extent feasible, in implementing the vision for space exploration and NASA's other programs. The strategy shall cover the period through fiscal year 2011.

(2) Content

The strategy developed under paragraph (1) shall describe, at a minimum—

(A) any categories of employees NASA intends to reduce, the expected size and timing of those reductions, the methods NASA intends to use to make the reductions, and the reasons NASA no longer needs those employees;

(B) any categories of employees NASA intends to increase, the expected size and timing of those increases, the methods NASA intends to use to recruit the additional employees, and the reasons NASA needs those employees;

(C) the steps NASA will use to retain needed employees; and

(D) the budget assumptions of the strategy, which for fiscal years 2007 and 2008 shall be consistent with the authorizations provided in subchapter II of this chapter, and any expected additional costs or savings from the strategy by fiscal year.

(3) Schedule

The Administrator shall transmit the strategy developed under this subsection to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 60 days after the date on which the President submits the proposed budget for the Federal Government for fiscal year 2007 to the Congress. At least 60 days before transmitting the strategy, NASA shall provide a draft of the strategy to its Federal employee unions for a 30-day consultation period after which NASA shall respond in writing to any written concerns provided by the unions.

(4) Limitation

NASA may not implement any Reduction in Force or other involuntary separations (except for cause) prior to March 16, 2007.

(g) Center management

(1) In general

The Administrator shall conduct a study to determine whether any of NASA's centers should be operated by or with the private sector by converting a center to a Federally Funded Research and Development Center or through any other mechanism.

(2) Content

The study conducted under paragraph (1) shall, at a minimum—

(A) make a recommendation for the operation of each center and provide reasons for that recommendation; and

(B) describe the advantages and disadvantages of each mode of operation considered in the study.

(3) Considerations

In conducting the study, the Administrator shall take into consideration the experiences of other relevant Federal agencies in operating laboratories and centers, and any reports that have reviewed the mode of operation of those laboratories and centers, as well as any reports that have reviewed NASA's centers.

(4) Schedule

The Administrator shall transmit the study conducted under this subsection to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than May 31, 2006.

(h) Budgets

(1) Categories

The proposed budget for NASA submitted by the President for each fiscal year shall be accompanied by documents showing—

(A) by program—

(i) the budget for space operations, including the ISS and the Space Shuttle;

(ii) the budget for exploration systems;

(iii) the budget for aeronautics;

(iv) the budget for space science;

(v) the budget for earth science;

(vi) the budget for microgravity science;

(vii) the budget for education;

(viii) the budget for safety oversight; and

(ix) the budget for public relations;

(B) the budget for technology transfer programs;

(C) the budget for the Integrated Enterprise Management Program, by individual element;

(D) the budget for the Independent Technical Authority, both total and by center;

(E) the total budget for the prize program under section 2459f–1[1] of this title, and the administrative budget for that program; and

(F) the comparable figures for at least the 2 previous fiscal years for each item in the proposed budget.

(2) Sense of Congress regarding evaluation criteria for budget requests

It is the sense of the Congress that each budget of the United States submitted to the

[1] See References in Text note below.

Congress after December 30, 2005, should be evaluated for compliance with the findings and priorities established by this chapter and the amendments made by this chapter.

(i) Additional budget information

NASA shall make available, upon request from the Committee on Science of the House of Representatives or the Committee on Commerce, Science, and Transportation of the Senate—

(1) information on corporate and center general and administrative costs and service pool costs, including—

(A) the total amount of funds being allocated for those purposes for any fiscal year for which the President has submitted an annual budget request to Congress;

(B) the amount of funds being allocated for those purposes for each center, for headquarters, and for each directorate; and

(C) the major activities included in each cost category; and

(2) the figures on the amount of unobligated funds and unexpended funds, by appropriations account—

(A) that remained at the end of the fiscal year prior to the fiscal year in which the budget is being presented that were carried over into the fiscal year in which the budget is being presented;

(B) that are estimated will remain at the end of the fiscal year in which the budget is being presented that are proposed to be carried over into the fiscal year for which the budget is being presented; and

(C) that are estimated will remain at the end of the fiscal year for which the budget is being presented.

(j) NASA aeronautics test facilities and simulators

(1) Review

The Director of the Office of Science and Technology Policy shall commission an independent review of the Nation's long-term strategic needs for aeronautics test facilities and shall submit the review to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. The review shall include an evaluation of the facility needs described pursuant to subsection (c)(2)(A)(iii). The review shall take into consideration the results of the study conducted pursuant to the instructions on page 582 of the conference report (H. Rept. 108–767) to accompany the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (P.L. 108–375).

(2) Limitation

The Administrator shall not close or mothball any aeronautics test facilities identified in the 2003 independent assessment by the RAND Corporation titled ''Wind Tunnel and Propulsion Test Facilities: An Assessment of NASA's Capabilities to Serve National Needs'' as being part of the minimum set of those facilities necessary to retain and manage to serve national needs, or any aeronautics simulators, that were in use as of January 1, 2004, with the exception of the already closed 16-foot transonic tunnel, until—

(A) the review conducted under paragraph (1) has been transmitted to the Congress; and

(B) 60 days after the Administrator has transmitted to the Committee on Appropriations and the Committee on Science of the House of Representatives and the Committee on Appropriations and the Committee on Commerce, Science, and Transportation of the Senate a written certification that the proposed closure will not have an adverse impact on NASA's ability to execute the national policy developed under subsection (c) and to achieve the goals described in that policy.

Subparagraph (B) shall cease to be effective five years after the date the study required by this section has been transmitted to the Congress.

(Pub. L. 109–155, title I, § 101, Dec. 30, 2005, 119 Stat. 2897.)

REFERENCES IN TEXT

Subchapter II, referred to in subsecs. (c)(2)(A)(iv), (d)(2)(C), (e)(2)(H), and (f)(2)(D), was in the original a reference to title II of Pub. L. 109–155, Dec. 30, 2005, 119 Stat. 2915, which enacted subchapter II of this chapter and amended section 2459f of this title and provisions set out as a note under section 2451 of this title. For complete classification of title II to the Code, see Tables.

Section 2459f–1 of this title, referred to in subsec. (h)(1)(E), was in the original ''section 104'', meaning section 104 of Pub. L. 109–155 which was translated as reading section 314 of the National Aeronautics and Space Act of 1958 which was enacted by section 104 and is classified to section 2459f–1 of this title, to reflect the probable intent of Congress.

This chapter, referred to in subsec. (h)(2), was in the original ''this Act'', meaning Pub. L. 109–155, Dec. 30, 2005, 119 Stat. 2895, which enacted this chapter and sections 2459f–1, 2459k, and 2459*l* of this title, amended sections 2451, 2458c, 2459f, 2459g, 2473b, and 2477 of this title and section 9809 of Title 5, Government Organization and Employees, repealed section 2473e of this title, enacted provisions set out as a note under section 11601 of this title, and amended provisions set out as notes under section 2451 of this title and section 47508 of Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 16601 of this title and Tables.

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, referred to in subsec. (j)(1), is Pub. L. 108–375, Oct. 28, 2004, 118 Stat. 1811. For complete classification of this Act to the Code, see Tables.

DEVELOPMENT OF NATIONAL AERONAUTICS POLICY

Pub. L. 109–108, title VI, § 628, Nov. 22, 2005, 119 Stat. 2342, provided that:

''(a) IN GENERAL.—The President of the United States through his designee the Administrator of the National Aeronautics and Space Administration and in consultation with other Federal agencies shall develop a national aeronautics policy to guide the aeronautics programs of the Administration through 2020.

''(b) CONTENT.—At a minimum, the national aeronautics policy shall describe—

''(1) the priority areas of research for aeronautics through fiscal year 2011;

''(2) the basis on which and the process by which priorities for ensuing fiscal years will be selected;

''(3) the facilities and personnel needed to carry out the program through fiscal year 2011; and

''(4) the budget assumptions on which the national aeronautics policy is based.

''(c) CONSIDERATIONS.—In developing the national aeronautics policy, the President shall consider the following questions, which shall be discussed in the policy statement—

''(1) the extent to which NASA should focus on long-term, high-risk research or more incremental research or both and the expected impact on the U.S. aircraft and airline industries of those decisions;

''(2) the extent to which NASA should address military and commercial needs;

''(3) how NASA will coordinate its aeronautics program with other Federal agencies; and

''(4) the extent to which NASA will fund university research and the expected impact of that funding on the supply of U.S. workers for the aeronautics industry.

''(d) CONSULTATION.—In developing the national aeronautics policy, the Administrator shall consult widely with academic and industry experts and with other Federal agencies. The Administrator may enter into an arrangement with the National Academy of Sciences to help develop the national aeronautics policy.

''(e) SCHEDULE.—The Administrator shall submit the new national aeronautics policy to the House and Senate Committees on Appropriations and to the House Committee on Science and the Senate Committee on Commerce, Science, and Transportation within one year of enactment of this Act [Nov. 22, 2005]. The Administrator shall make available to the Congress any study done by a non-governmental entity that was used in the development of the national aeronautics policy.''

EX. ORD. NO. 13419. NATIONAL AERONAUTICS RESEARCH AND DEVELOPMENT

Ex. Ord. No. 13419, Dec. 20, 2006, 71 F.R. 77565, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 204 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, as amended (42 U.S.C. 6613), section 101(c) of the National Aeronautics and Space Administration Authorization Act of 2005 (Public Law 109–155), and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *National Aeronautics Research and Development Policy*. Continued progress in aeronautics, the science of flight, is essential to America's economic success and the protection of America's security interests at home and around the globe. Accordingly, it shall be the policy of the United States to facilitate progress in aeronautics research and development (R&D) through appropriate funding and activities of the Federal Government, in cooperation with State, territorial, tribal, local, and foreign governments, international organizations, academic and research institutions, private organizations, and other entities, as appropriate. The Federal Government shall only undertake roles in supporting aeronautics R&D that are not more appropriately performed by the private sector. The National Aeronautics Research and Development Policy prepared by the National Science and Technology Council should, to the extent consistent with this order and its implementation, guide the aeronautics R&D programs of the United States through 2020.

SEC. 2. *Functions of the Director of the Office of Science and Technology Policy*. To implement the policy set forth in section 1 of this order, the Director of the Office of Science and Technology Policy (the ''Director'') shall:

(a) review the funding and activities of the Federal Government relating to aeronautics R&D;

(b) recommend to the President, the Director of the Office of Management and Budget, and the heads of executive departments and agencies, as appropriate, such actions with respect to funding and activities of the Federal Government relating to aeronautics R&D as may be necessary to

(i) advance United States technological leadership in aeronautics;

(ii) support innovative research leading to significant advances in aeronautical concepts, technologies, and capabilities;

(iii) pursue and develop advanced aeronautics concepts and technologies, including those for advanced aircraft systems and air transportation management systems, to benefit America's security and effective and efficient national airspace management;

(iv) maintain and advance United States aeronautics research, development, test and evaluation infrastructure to provide effective experimental and computational capabilities in support of aeronautics R&D;

(v) facilitate the educational development of the future aeronautics workforce as needed to further Federal Government interests;

(vi) enhance coordination and communication among executive departments and agencies to maximize the effectiveness of Federal Government R&D resources; and

(vii) ensure appropriate Federal Government coordination with State, territorial, tribal, local, and foreign governments, international organizations, academic and research institutions, private organizations, and other entities.

SEC. 3. *Implementation of National Aeronautics Research and Development Policy*. To implement the policy set forth in section 1 of this order, the Director shall:

(a) develop and, not later than 1 year after the date of this order, submit for approval by the President a plan for national aeronautics R&D and for related infrastructure, (the ''plan''), and thereafter submit, not less often than biennially, to the President for approval any changes to the plan;

(b) monitor and report to the President as appropriate on the implementation of the approved plan;

(c) ensure that executive departments and agencies conducting aeronautics R&D:

(i) obtain and exchange information and advice, as appropriate, from organizations and individuals outside the Federal Government in support of Federal Government planning and performance of aeronautics R&D;

(ii) develop and implement, as appropriate, measures for improving dissemination of R&D results and facilitating technology transition from R&D to applications; and

(iii) identify and promote innovative policies and approaches that complement and enhance Federal Government aeronautics R&D investment; and

(d) report to the President on the results of the efforts of executive departments and agencies to implement paragraphs (c)(i) through (iii) of this section.

SEC. 4. *General Provisions*. (a) In implementing this order, the Director shall:

(i) obtain as appropriate the assistance of the National Science and Technology Council in the performance of the Director's functions under this order, consistent with Executive Order 12881 of November 23, 1993, as amended;

(ii) coordinate as appropriate with the Director of the Office of Management and Budget; and

(iii) obtain information and advice from all sources as appropriate, including individuals associated with academic and research institutions and private organizations.

(b) The functions of the President under subsection (c) of section 101 of the National Aeronautics and Space Administration Authorization Act of 2005, except the function of designation, are assigned to the Director of the Office of Science and Technology Policy. In performing these assigned functions, the Director shall, as appropriate, consult the Administrator of the National Aeronautics and Space Administration, the Secretary of Defense, the Secretary of Transportation, the Director of the Office of Management and Budget, and other heads of executive departments and agencies as appropriate. The Director also shall ensure that all actions taken in the performance of such functions are consistent with the authority set forth in subsections (a) through (d) of section 6 of Executive Order 13346 of July 8, 2004.

(c) This order shall be implemented in a manner consistent with: (i) applicable law, including section 102A(i) of the National Security Act of 1947, as amended (50 U.S.C. 403–1(i)), and subject to the availability of appropriations; and

(ii) statutory authority of the principal officers of executive departments and agencies as the heads of their respective departments and agencies.

(d) This order shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(e) This order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

§ 16612. Reports

(a) National awareness campaign

(1) In general

The Administrator shall implement, beginning not later than May 1, 2006, a national awareness campaign through various media, including print, radio, television, and the Internet, to articulate missions, publicize recent accomplishments, and facilitate efforts to encourage young Americans to enter the fields of science, mathematics, and engineering to help maintain United States leadership in those fields.

(2) Reports

(A) Not later than April 1, 2006, the Administrator shall transmit a plan to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the activities that will be undertaken as part of the national awareness campaign required by paragraph (1) and the expected cost of those activities. NASA may undertake activities as part of the national awareness campaign prior to the transmittal of the plan required by this subparagraph, but the plan shall include a description of any activities undertaken prior to the transmittal and the estimated cost of those activities.

(B) Not later than three years after December 30, 2005, the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an assessment of the impact of the national awareness campaign.

(b) Budget information

Not later than April 30, 2006, the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing—

(1) the expected cost of the Crew Exploration Vehicle through fiscal year 2020, based on the public specifications for that development contract; and

(2) the expected budgets for each fiscal year through 2020 for human spaceflight, aeronautics, space science, and earth science—

(A) first assuming inflationary growth for the budget of NASA as a whole and including costs for the Crew Exploration Vehicle as projected under paragraph (1); and

(B) then assuming inflationary growth for the budget of NASA as a whole and including at least two cost estimates for the Crew Exploration Vehicle that are higher than those projected under paragraph (1), based on NASA's past experience with cost increases for similar programs, along with a description of the reasons for selecting the cost estimates used for the calculations under this subparagraph and the confidence level for each of the cost estimates used in this section.

(c) Space communications plan

(1) Plan

The Administrator shall develop a plan, in consultation with relevant Federal agencies, for updating NASA's space communications architecture for both low-Earth orbital operations and deep space exploration so that it is capable of meeting NASA's needs over the next 20 years. The plan shall include life-cycle cost estimates, milestones, estimated performance capabilities, and 5-year funding profiles. The plan shall also include an estimate of the amounts of any reimbursements NASA is likely to receive from other Federal agencies during the expected life of the upgrades described in the plan. At a minimum, the plan shall include a description of the following:

(A) Projected Deep Space Network requirements for the next 20 years, including those in support of human space exploration missions.

(B) Upgrades needed to support Deep Space Network requirements.

(C) Cost estimates for the maintenance of existing Deep Space Network capabilities.

(D) Cost estimates and schedules for the upgrades described in subparagraph (B).

(E) Projected Tracking and Data Relay Satellite System requirements for the next 20 years, including those in support of other relevant Federal agencies.

(F) Cost and schedule estimates to maintain and upgrade the Tracking and Data Relay Satellite System to meet projected requirements.

(2) Consultations

The Administrator shall consult with other relevant Federal agencies in developing the plan under this subsection.

(3) Schedule

The Administrator shall transmit the plan under this subsection to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than February 17, 2007.

(d) Joint Dark Energy Mission

The Administrator and the Director of the Department of Energy Office of Science shall jointly transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, not later than July 15, 2006, a report on plans for a Joint Dark Energy Mission. The re-

port shall include the amount of funds each agency intends to expend on the Joint Dark Energy Mission for each of the fiscal years 2007 through 2011, and any specific milestones for the development and launch of the Mission.

(e) Office of Science and Technology Policy

(1) Study

As part of ongoing efforts to coordinate research and development across the Federal agencies, the Director of the Office of Science and Technology Policy shall conduct a study to determine—

(A) if any research and development programs of NASA are unnecessarily duplicating aspects of programs of other Federal agencies; and

(B) if any research and development programs of NASA are neglecting any topics of national interest that are related to the mission of NASA.

(2) Report

Not later than one year after December 30, 2005, the Director of the Office of Science and Technology Policy shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that—

(A) describes the results of the study under paragraph (1);

(B) lists the research and development programs of Federal agencies other than NASA that were reviewed as part of the study, which shall include any program supporting research and development in an area related to the programs of NASA, and the most recent budget figures for those programs of other agencies;

(C) recommends any changes to the research and development programs of NASA that should be made in response to the findings of the study required by paragraph (1); and

(D) describes mechanisms the Office of Science and Technology Policy will use to ensure adequate coordination between NASA and Federal agencies that operate related programs.

(3) Contract

The Director of the Office of Science and Technology Policy may contract with a nongovernmental entity to conduct the study required by paragraph (1).

(Pub. L. 109–155, title I, § 102, Dec. 30, 2005, 119 Stat. 2905.)

§ 16613. Baselines and cost controls

(a) Conditions for development

(1) In general

NASA shall not enter into a contract for the development of a major program unless the Administrator determines that—

(A) the technical, cost, and schedule risks of the program are clearly identified and the program has developed a plan to manage those risks;

(B) the technologies required for the program have been demonstrated in a relevant laboratory or test environment; and

(C) the program complies with all relevant policies, regulations, and directives of NASA.

(2) Report

The Administrator shall transmit a report describing the basis for the determination required under paragraph (1) to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate at least 30 days before entering into a contract for development under a major program.

(3) Nondelegation

The Administrator may not delegate the determination requirement under this subsection, except in cases in which the Administrator has a conflict of interest.

(b) Major Program Annual Reports

(1) Requirement

Annually, at the same time as the President's annual budget submission to the Congress, the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that includes the information required by this section for each major program for which NASA proposes to expend funds in the subsequent fiscal year. Reports under this paragraph shall be known as Major Program Annual Reports.

(2) Baseline Report

The first Major Program Annual Report for each major program shall include a Baseline Report that shall, at a minimum, include—

(A) the purposes of the program and key technical characteristics necessary to fulfill those purposes;

(B) an estimate of the life-cycle cost for the program, with a detailed breakout of the development cost, program reserves, and an estimate of the annual costs until development is completed;

(C) the schedule for development, including key program milestones;

(D) the plan for mitigating technical, cost, and schedule risks identified in accordance with subsection (a)(1)(A); and

(E) the name of the person responsible for making notifications under subsection (c), who shall be an individual whose primary responsibility is overseeing the program.

(3) Information updates

For major programs for which a Baseline Report has been submitted, each subsequent Major Program Annual Report shall describe any changes to the information that had been provided in the Baseline Report, and the reasons for those changes.

(c) Notification

(1) Requirement

The individual identified under subsection (b)(2)(E) shall immediately notify the Administrator any time that individual has reasonable cause to believe that, for the major program for which he or she is responsible—

(A) the development cost of the program is likely to exceed the estimate provided in the Baseline Report of the program by 15 percent or more; or

(B) a milestone of the program is likely to be delayed by 6 months or more from the date provided for it in the Baseline Report of the program.

(2) Reasons

Not later than 30 days after the notification required under paragraph (1), the individual identified under subsection (b)(2)(E) shall transmit to the Administrator a written notification explaining the reasons for the change in the cost or milestone of the program for which notification was provided under paragraph (1).

(3) Notification of Congress

Not later than 15 days after the Administrator receives a written notification under paragraph (2), the Administrator shall transmit the notification to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(d) Fifteen percent threshold

Not later than 30 days after receiving a written notification under subsection (c)(2), the Administrator shall determine whether the development cost of the program is likely to exceed the estimate provided in the Baseline Report of the program by 15 percent or more, or whether a milestone is likely to be delayed by 6 months or more. If the determination is affirmative, the Administrator shall—

(1) transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, not later than 15 days after making the determination, a report that includes—

(A) a description of the increase in cost or delay in schedule and a detailed explanation for the increase or delay;

(B) a description of actions taken or proposed to be taken in response to the cost increase or delay; and

(C) a description of any impacts the cost increase or schedule delay, or the actions described under subparagraph (B), will have on any other program within NASA; and

(2) if the Administrator intends to continue with the program, promptly initiate an analysis of the program, which shall include, at a minimum—

(A) the projected cost and schedule for completing the program if current requirements of the program are not modified;

(B) the projected cost and the schedule for completing the program after instituting the actions described under paragraph (1)(B); and

(C) a description of, and the projected cost and schedule for, a broad range of alternatives to the program.

NASA shall complete an analysis initiated under paragraph (2) not later than 6 months after the Administrator makes a determination under this subsection. The Administrator shall transmit the analysis to the Committee on Science of the House of Representatives and Committee[1] on Commerce, Science, and Transportation of the Senate not later than 30 days after its completion.

(e) Thirty percent threshold

If the Administrator determines under subsection (d) that the development cost of a program will exceed the estimate provided in the Baseline Report of the program by more than 30 percent, then, beginning 18 months after the date the Administrator transmits a report under subsection (d)(1), the Administrator shall not expend any additional funds on the program, other than termination costs, unless the Congress has subsequently authorized continuation of the program by law. An appropriation for the specific program enacted subsequent to a report being transmitted shall be considered an authorization for purposes of this subsection. If the program is continued, the Administrator shall submit a new Baseline Report for the program no later than 90 days after the date of enactment of the Act under which Congress has authorized continuation of the program.

(f) Definitions

For the purposes of this section—

(1) the term ''development'' means the phase of a program following the formulation phase and beginning with the approval to proceed to implementation, as defined in NASA's Procedural Requirements 7120.5c, dated March 22, 2005;

(2) the term ''development cost'' means the total of all costs, including construction of facilities and civil servant costs, from the period beginning with the approval to proceed to implementation through the achievement of operational readiness, without regard to funding source or management control, for the life of the program;

(3) the term ''life-cycle cost'' means the total of the direct, indirect, recurring, and nonrecurring costs, including the construction of facilities and civil servant costs, and other related expenses incurred or estimated to be incurred in the design, development, verification, production, operation, maintenance, support, and retirement of a program over its planned lifespan, without regard to funding source or management control; and

(4) the term ''major program'' means an activity approved to proceed to implementation that has an estimated life-cycle cost of more than $250,000,000.

(Pub. L. 109–155, title I, § 103, Dec. 30, 2005, 119 Stat. 2907.)

§ 16614. Foreign launch vehicles

(a) Accord with Space Transportation Policy

NASA shall not launch a payload on a foreign launch vehicle except in accordance with the Space Transportation Policy announced by the President on December 21, 2004. This subsection shall not be construed to prevent the President from waiving the Space Transportation Policy.

[1] So in original. Probably should be preceded by ''the''.

(b) Interagency coordination

NASA shall not launch a payload on a foreign launch vehicle unless NASA commenced the interagency coordination required by the Space Transportation Policy announced by the President on December 21, 2004, at least 90 days before entering into a development contract for the payload.

(c) Application

This section shall not apply to any payload for which development has begun prior to December 30, 2005, including the James Webb Space Telescope.

(Pub. L. 109–155, title I, § 105, Dec. 30, 2005, 119 Stat. 2912.)

§ 16615. Lessons learned and best practices

(a) In general

The Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an implementation plan describing NASA's approach for obtaining, implementing, and sharing lessons learned and best practices for its major programs and projects not later than 180 days after December 30, 2005. The implementation plan shall be updated and maintained to ensure that it is current and consistent with the burgeoning culture of learning and safety that is emerging at NASA.

(b) Required content

The implementation plan shall contain at a minimum the lessons learned and best practices requirements for NASA, the organizations or positions responsible for enforcement of the requirements, the reporting structure, and the objective performance measures indicating the effectiveness of the activity.

(c) Incentives

The Administrator shall provide incentives to encourage sharing and implementation of lessons learned and best practices by employees, projects, and programs, as well as penalties for programs and projects that are determined not to have demonstrated use of those resources.

(Pub. L. 109–155, title I, § 107, Dec. 30, 2005, 119 Stat. 2912.)

§ 16616. Commercialization plan

(a) In general

The Administrator, in consultation with other relevant agencies, shall develop a commercialization plan to support the human missions to the Moon and Mars, to support low-Earth orbit activities and earth science missions and applications, and to transfer science research and technology to society. The plan shall identify opportunities for the private sector to participate in the future missions and activities, including opportunities for partnership between NASA and the private sector in conducting research and the development of technologies and services. The plan shall include provisions for developing and funding sustained university and industry partnerships to conduct commercial research and technology development, to proactively translate results of space research to Earth benefits, to advance United States economic interests, and to support the vision for exploration. The plan shall also emphasize the utilization by NASA of advancements made by the private sector in space launch and orbital hardware, and shall include opportunities for innovative collaborations between NASA and the private sector under existing authorities of NASA for reimbursable and nonreimbursable agreements under the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.).

(b) Report

Not later than 180 days after December 30, 2005, the Administrator shall submit a copy of the plan to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(Pub. L. 109–155, title I, § 108, Dec. 30, 2005, 119 Stat. 2913.)

REFERENCES IN TEXT

The National Aeronautics and Space Act of 1958, referred to in subsec. (a), is Pub. L. 85–568, July 29, 1958, 72 Stat. 426, as amended, which is classified principally to chapter 26 (§ 2451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

§ 16617. Study on the feasibility of use of ground source heat pumps

(a) In general

The Administrator shall conduct a feasibility study on the use of ground source heat pumps in future NASA facilities or substantial renovation of existing NASA facilities involving the installation of heating, ventilating, and air conditioning systems. Not later than 1 year after December 30, 2005, the Administrator shall transmit the study to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(b) Contents

The study shall examine—

(1) the life-cycle costs, including maintenance costs, of the operation of such heat pumps compared to generally available heating, cooling, and water heating equipment;

(2) barriers to installation, such as availability and suitability of terrain; and

(3) such other issues as the Administrator considers appropriate.

(c) Definition

In this section, the term ''ground source heat pump'' means an electric-powered system that uses the Earth's relatively constant temperature to provide heating, cooling, or hot water.

(Pub. L. 109–155, title I, § 109, Dec. 30, 2005, 119 Stat. 2913.)

§ 16618. Whistleblower protection

(a) In general

Not later than 1 year after December 30, 2005, the Administrator shall transmit to the Com-

mittee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan describing steps to be taken by NASA to protect from retaliation NASA employees who raise concerns about substantial and specific dangers to public health and safety or about substantial and specific factors that could threaten the success of a mission. The plan shall be designed to ensure that NASA employees have the full protection required by law. The Administrator shall implement the plan not more than 1 year after its transmittal.

(b) Goal

The Administrator shall ensure that the plan describes a system that will protect employees who wish to raise or have raised concerns described in subsection (a).

(c) Plan

At a minimum, the plan shall include, consistent with Federal law—

(1) a reporting structure that ensures that the officials who are the subject of a whistleblower's complaint will not learn the identity of the whistleblower;

(2) a single point to which all complaints can be made without fear of retribution;

(3) procedures to enable the whistleblower to track the status of the case;

(4) activities to educate employees about their rights as whistleblowers and how they are protected by law;

(5) activities to educate employees about their obligations to report concerns and their accountability before and after receiving the results of the investigations into their concerns; and

(6) activities to educate all appropriate NASA Human Resources professionals, and all NASA managers and supervisors, regarding personnel laws, rules, and regulations.

(d) Report

Not later than February 15 of each year beginning with the year after December 30, 2005, the Administrator shall transmit a report to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the concerns described in subsection (a) that were raised during the previous fiscal year. At a minimum, the report shall provide—

(1) the number of concerns that were raised, divided into the categories of safety and health, mission assurance, and mismanagement, and the disposition of those concerns, including whether any employee was disciplined as a result of a concern having been raised; and

(2) any recommendations for reforms to further prevent retribution against employees who raise concerns.

(Pub. L. 109–155, title I, § 110, Dec. 30, 2005, 119 Stat. 2914.)

SUBCHAPTER II—AUTHORIZATION OF APPROPRIATIONS

§ 16631. Fiscal year 2007

There are authorized to be appropriated to NASA for fiscal year 2007, $17,932,000,000, as follows:

(1) For Science, Aeronautics, and Education (including amounts for construction of facilities), $7,136,800,000, of which $962,000,000 shall be for Aeronautics.

(2) For Exploration Systems and Space Operations (including amounts for construction of facilities), $10,761,700,000, of which $6,618,600,000 shall be for Space Operations.

(3) For the Office of Inspector General, $33,500,000.

(Pub. L. 109–155, title II, § 202, Dec. 30, 2005, 119 Stat. 2915.)

§ 16632. Fiscal year 2008

There are authorized to be appropriated to NASA for fiscal year 2008, $18,686,300,000 as follows:

(1) For Science, Aeronautics, and Education (including amounts for construction of facilities), $7,747,800,000, of which $990,000,000 shall be for Aeronautics.

(2) For Exploration Systems and Space Operations (including amounts for construction of facilities), $10,903,900,000, of which $6,546,600,000 shall be for Space Operations.

(3) For the Office of Inspector General, $34,600,000.

(Pub. L. 109–155, title II, § 203, Dec. 30, 2005, 119 Stat. 2915.)

§ 16633. ISS research

Beginning with fiscal year 2006, the Administrator shall allocate at least 15 percent of the funds budgeted for ISS research to ground-based, free-flyer, and ISS life and microgravity science research that is not directly related to supporting the human exploration program, consistent with section 16655 of this title.

(Pub. L. 109–155, title II, § 204, Dec. 30, 2005, 119 Stat. 2916.)

§ 16634. Test facilities

(a) Charges

The Administrator shall establish a policy of charging users of NASA's test facilities for the costs associated with their tests at a level that is competitive with alternative test facilities. The Administrator shall not implement a policy of seeking full cost recovery for a facility until at least 30 days after transmitting a notice to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(b) Funding account

In planning and budgeting, the Administrator shall establish a funding account that shall be used for all test facilities. The account shall be sufficient to maintain the viability of test facilities during periods of low utilization.

(Pub. L. 109–155, title II, § 205, Dec. 30, 2005, 119 Stat. 2916.)

§ 16635. Official representation fund

Amounts appropriated pursuant to this chapter may be used, but not to exceed a total of $70,000 in any fiscal year, for official reception and representation expenses.

(Pub. L. 109–155, title II, § 206, Dec. 30, 2005, 119 Stat. 2916.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 109–155, Dec. 30, 2005, 119 Stat. 2895, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 16601 of this title and Tables.

§ 16636. ISS cost cap

(a) Report

The Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report providing the current expected development costs of the ISS and describing any changes to those costs that have occurred because of the grounding of the Space Shuttle after the loss of the Space Shuttle Columbia and because of the implementation of full-cost accounting.

(b) Repeal

Thirty days after the transmittal of the report described in subsection (a), section 202 of the National Aeronautics and Space Administration Act of 2000 (42 U.S.C. 2451 note)[1] is repealed.

(Pub. L. 109–155, title II, § 207, Dec. 30, 2005, 119 Stat. 2916.)

REFERENCES IN TEXT

Section 202 of the National Aeronautics and Space Administration Act of 2000, referred to in subsec. (b), means section 202 of the National Aeronautics and Space Administration Authorization Act of 2000, Pub. L. 106–391, which was set out in a note under section 2451 of this title prior to being repealed by subsec. (b), effective thirty days after Dec. 1, 2006, the date of the transmittal referred to in subsec. (b).

SUBCHAPTER III—SCIENCE

PART A—GENERAL PROVISIONS

§ 16651. Performance assessments

(a) In general

The performance of each division in the Science directorate of NASA shall be reviewed and assessed by the National Academy of Sciences at 5-year intervals.

(b) Timing

Beginning with the first fiscal year following December 30, 2005, the Administrator shall select at least one division for review under this section. The Administrator shall select divisions so that all disciplines will have received their first review within six fiscal years of December 30, 2005.

(c) Reports

Not later than March 1 of each year, beginning with the first fiscal year after December 30, 2005, the Administrator shall transmit a report to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

(1) setting forth in detail the results of any external review under subsection (a);

(2) setting forth in detail actions taken by NASA in response to any external review; and

(3) including a summary of findings and recommendations from any other relevant external reviews of NASA's science mission priorities and programs.

(Pub. L. 109–155, title III, § 301, Dec. 30, 2005, 119 Stat. 2916.)

§ 16652. Status on Hubble Space Telescope servicing mission

It is the sense of the Congress that the Hubble Space Telescope is an extraordinary instrument that has provided, and should continue to provide, answers to profound scientific questions. In accordance with the recommendations of the National Academy of Sciences study titled ''Assessment of Options for Extending the Life of the Hubble Space Telescope'', all appropriate efforts should be expended to complete the Space Shuttle servicing mission. Upon successful completion of the planned return-to-flight schedule of the Space Shuttle, the Administrator shall determine the schedule for a Space Shuttle servicing mission to the Hubble Space Telescope, unless such a mission would compromise astronaut safety. Not later than 60 days after the landing of the second Space Shuttle mission for return-to-flight certification, the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a status report on plans for a Hubble Space Telescope servicing mission.

(Pub. L. 109–155, title III, § 302, Dec. 30, 2005, 119 Stat. 2917.)

§ 16653. Independent assessment of Landsat-NPOESS integrated mission

(a) Assessment

In view of the importance of ensuring continuity of Landsat data and in view of the challenges facing the National Polar-Orbiting Operational Environmental Satellite System program, the Administrator shall seek an independent assessment of the costs as well as the technical, cost, and schedule risks associated with incorporating the Landsat instrument on the first National Polar-Orbiting Operational Environmental Satellite System spacecraft compared with undertaking various alternatives, including a dedicated Landsat data ''gap-filler'' mission followed by the incorporation of the Landsat instrument on the second National Polar-Orbiting Operational Environmental Satellite System spacecraft. The assessment shall also include an evaluation of the budgetary requirements of each of the options under consideration.

(b) Report

(1) Deadline

The Administrator shall transmit the independent assessment to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 180 days after the date of enactment of this chapter unless, prior to that date, NASA cancels plans to fly the Landsat instrument on

[1] See References in Text note below.

the first National Polar-Orbiting Operational Environmental Satellite System spacecraft.

(2) Cancellation

If NASA cancels such plans, the Administrator shall—

(A) not later than 7 days after a cancellation decision, inform the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, in writing, of the cancellation; and

(B) not later than 90 days after the transmittal of the cancellation notice, transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan for undertaking a dedicated gap-filler mission or alternative means for ensuring the continuity of Landsat data, which shall include consideration of a low-cost constellation of small satellites.

(Pub. L. 109–155, title III, § 303, Dec. 30, 2005, 119 Stat. 2917.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (b)(1), is the date of enactment of Pub. L. 109–155, which was approved Dec. 30, 2005.

§ 16654. Assessment of science mission extensions

(a) Assessment

The Administrator shall carry out biennial reviews within each of the Science divisions to assess the cost and benefits of extending the date of the termination of data collection for those missions that have exceeded their planned mission lifetime. In addition—

(1) not later than 60 days after December 30, 2005, the Administrator shall carry out such an assessment for at least the following missions: FAST, TIMED, Cluster, Wind, Geotail, Polar, TRACE, Ulysses, and Voyager; and

(2) for those missions that have an operational component, the National Oceanic and Atmospheric Administration or any other affected agency shall be consulted and the potential benefits of instruments on missions that are beyond their planned mission lifetime taken into account.

(b) Report

Not later than 30 days after completing each assessment required by subsection (a)(1), the Administrator shall transmit a report on the assessment to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(Pub. L. 109–155, title III, § 304, Dec. 30, 2005, 119 Stat. 2918.)

§ 16655. Microgravity research

The Administrator shall—

(1) transmit the report required by section 16766 of this title;

(2) ensure the capacity to support ground-based research leading to space-based basic and applied scientific research in a variety of disciplines with potential direct national benefits and applications that can be advanced significantly from the uniqueness of microgravity and the space environment; and

(3) carry out, to the maximum extent practicable, basic, applied, and commercial ISS research in fields such as molecular crystal growth, animal research, basic fluid physics, combustion research, cellular biotechnology, low-temperature physics, and cellular research at a level that will sustain the existing United States scientific expertise and research capability in microgravity research.

(Pub. L. 109–155, title III, § 305, Dec. 30, 2005, 119 Stat. 2918.)

§ 16656. Coordination with the National Oceanic and Atmospheric Administration

(a) Joint Working Group

The Administrator and the Administrator of the National Oceanic and Atmospheric Administration shall appoint a Joint Working Group, which shall review and monitor missions of the two agencies to ensure maximum coordination in the design, operation, and transition of missions where appropriate. The Joint Working Group shall also prepare the plans required by subsection (c).

(b) Coordination report

Not later than February 15 of each year, beginning with the first fiscal year after December 30, 2005, the Administrator and the Administrator of the National Oceanic and Atmospheric Administration shall jointly transmit a report to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on how the earth science programs of the National Oceanic and Atmospheric Administration and NASA will be coordinated during the fiscal year following the fiscal year in which the report is transmitted.

(c) Coordination of transition planning and reporting

The Administrator, in conjunction with the Administrator of the National Oceanic and Atmospheric Administration and in consultation with other relevant agencies, shall evaluate relevant NASA science missions for their potential operational capabilities and shall prepare transition plans for the existing and future Earth observing systems found to have potential operational capabilities.

(d) Limitation

The Administrator shall not transfer any NASA earth science mission or Earth observing system to the National Oceanic and Atmospheric Administration until the plan required under subsection (c) has been approved by the Administrator and the Administrator of the National Oceanic and Atmospheric Administration and until financial resources have been identified to support the transition or transfer in the President's budget request for the National Oceanic and Atmospheric Administration.

(Pub. L. 109–155, title III, § 306, Dec. 30, 2005, 119 Stat. 2919.)

§ 16657. Review and report on Headquarters Earth-Sun System Applied Sciences Program

(a) Review

The Administrator shall review the policies, processes, and procedures in the planning and management of applications research and development implemented in calendar years 2001 to 2005 within the Headquarters Earth-Sun System Applied Sciences Program and former Earth Science Applications Program. This review shall include—

(1) the program planning and analysis process used to formulate applied science research and development requirements, priorities, and solicitation schedules, including changes to the process within the period under review, and the effects of such planning on the quality and clarity of applied sciences research announcements;

(2) the peer review process including, but not limited to—

(A) membership selection, determination of qualifications, and use of NASA and non-NASA reviewers;

(B) management of conflicts of interest, including reviewers funded by the program with a significant consulting or contractual relationship with NASA, and individuals who both review proposals and participate in the submission of proposals under the same solicitation announcement; and

(C) compensation of non-NASA proposal reviewers;

(3) the process for assigning or allocating applied research to NASA researchers and to non-NASA researchers; and

(4) alternative models for NASA planning and management of applied science and applications research, including an evaluation of the relevance for NASA of—

(A) National Institutes of Health intramural and extramural research program structure, peer review process, management of conflicts of interests, compensation of reviewers, and the effects of compensation on reviewer efficiency and quality;

(B) Department of Agriculture Cooperative State Research Education and Extension Service program and structure, peer review process, management of conflicts of interest, compensation of reviewers, and the effects of compensation on reviewer efficiency and quality;

(C) National Institutes of Health and Department of Agriculture best practices in the planning, selection, and management of applied sciences research and development; and

(D) any other relevant models.

(b) Report

Not later than 1 year after December 30, 2005, the Administrator shall transmit a report to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the results of the review conducted under subsection (a). The report shall include a plan to ensure that the peer review process is transparent and selects proposals in a manner that instills public and stakeholder confidence.

(Pub. L. 109–155, title III, § 307, Dec. 30, 2005, 119 Stat. 2919.)

PART B—REMOTE SENSING

§ 16671. Definitions

In this part—

(1) the term ''geospatial information'' means knowledge of the nature and distribution of physical and cultural features on the landscape based on analysis of data from airborne or spaceborne platforms or other types and sources of data;

(2) the term ''high resolution'' means resolution better than five meters; and

(3) the term ''institution of higher education'' has the meaning given that term in section 1001(a) of title 20.

(Pub. L. 109–155, title III, § 311, Dec. 30, 2005, 119 Stat. 2920.)

§ 16672. General responsibilities

The Administrator shall—

(1) develop a sustained relationship with the United States commercial remote sensing industry and, consistent with applicable policies and law, to the maximum practicable, rely on their services; and

(2) in conjunction with United States industry and universities, research, develop, and demonstrate prototype earth science applications to enhance Federal, State, local, and tribal governments' use of government and commercial remote sensing data, technologies, and other sources of geospatial information for improved decision support to address their needs.

(Pub. L. 109–155, title III, § 312, Dec. 30, 2005, 119 Stat. 2920.)

§ 16673. Pilot projects to encourage public sector applications

(a) In general

The Administrator shall establish a program of grants for competitively awarded pilot projects to explore the integrated use of sources of remote sensing and other geospatial information to address State, local, regional, and tribal agency needs.

(b) Preferred projects

In awarding grants under this section, the Administrator shall give preference to projects that—

(1) make use of commercial data sets, including high resolution commercial satellite imagery and derived satellite data products, existing public data sets where commercial data sets are not available or applicable, or the fusion of such data sets;

(2) integrate multiple sources of geospatial information, such as geographic information system data, satellite-provided positioning data, and remotely sensed data, in innovative ways;

(3) include funds or in-kind contributions from non-Federal sources;

(4) involve the participation of commercial entities that process raw or lightly processed

data, often merging that data with other geospatial information, to create data products that have significant value added to the original data; and

(5) taken together demonstrate as diverse a set of public sector applications as possible.

(c) Opportunities

In carrying out this section, the Administrator shall seek opportunities to assist—

(1) in the development of commercial applications potentially available from the remote sensing industry; and

(2) State, local, regional, and tribal agencies in applying remote sensing and other geospatial information technologies for growth management.

(d) Duration

Assistance for a pilot project under subsection (a) shall be provided for a period not to exceed 3 years.

(e) Report

Each recipient of a grant under subsection (a) shall transmit a report to the Administrator on the results of the pilot project within 180 days of the completion of that project.

(f) Workshop

Each recipient of a grant under subsection (a) shall, not later than 180 days after the completion of the pilot project, conduct at least one workshop for potential users to disseminate the lessons learned from the pilot project as widely as feasible.

(g) Regulations

The Administrator shall issue regulations establishing application, selection, and implementation procedures for pilot projects, and guidelines for reports and workshops required by this section.

(Pub. L. 109–155, title III, § 313, Dec. 30, 2005, 119 Stat. 2921.)

§ 16674. Program evaluation

(a) Advisory committee

The Administrator shall establish an advisory committee, consisting of individuals with appropriate expertise in State, local, regional, and tribal agencies, the university research community, and the remote sensing and other geospatial information industries, to monitor the program established under section 16673 of this title. The advisory committee shall consult with the Federal Geographic Data Committee and other appropriate industry representatives and organizations. Notwithstanding section 14 of the Federal Advisory Committee Act, the advisory committee established under this subsection shall remain in effect until the termination of the program under section 16673 of this title.

(b) Effectiveness evaluation

Not later than December 31, 2009, the Administrator shall transmit to the Congress an evaluation of the effectiveness of the program established under section 16673 of this title in exploring and promoting the integrated use of sources of remote sensing and other geospatial information to address State, local, regional, and tribal agency needs. Such evaluation shall have been conducted by an independent entity.

(Pub. L. 109–155, title III, § 314, Dec. 30, 2005, 119 Stat. 2921.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (a), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 16675. Data availability

The Administrator shall ensure that the results of each of the pilot projects completed under section 16673 of this title shall be retrievable through an electronic, Internet-accessible database.

(Pub. L. 109–155, title III, § 315, Dec. 30, 2005, 119 Stat. 2922.)

§ 16676. Education

The Administrator shall establish an educational outreach program to increase awareness at institutions of higher education and State, local, regional, and tribal agencies of the potential applications of remote sensing and other geospatial information and awareness of the need for geospatial workforce development.

(Pub. L. 109–155, title III, § 316, Dec. 30, 2005, 119 Stat. 2922.)

PART C—GEORGE E. BROWN, JR. NEAR-EARTH OBJECT SURVEY

§ 16691. George E. Brown, Jr. Near-Earth Object Survey

(a) Short title

This section may be cited as the ''George E. Brown, Jr. Near-Earth Object Survey Act''.

(b) Findings

The Congress makes the following findings:

(1) Near-Earth objects pose a serious and credible threat to humankind, as many scientists believe that a major asteroid or comet was responsible for the mass extinction of the majority of the Earth's species, including the dinosaurs, nearly 65,000,000 years ago.

(2) Similar objects have struck the Earth or passed through the Earth's atmosphere several times in the Earth's history and pose a similar threat in the future.

(3) Several such near-Earth objects have only been discovered within days of the objects' closest approach to Earth, and recent discoveries of such large objects indicate that many large near-Earth objects remain undiscovered.

(4) The efforts taken to date by NASA for detecting and characterizing the hazards of near-Earth objects are not sufficient to fully determine the threat posed by such objects to cause widespread destruction and loss of life.

(c) Definitions

For purposes of this section the term ''near-Earth object'' means an asteroid or comet with a perihelion distance of less than 1.3 Astronomical Units from the Sun.

(d) Near-Earth Object Survey

(1) Survey program

The Administrator shall plan, develop, and implement a Near-Earth Object Survey program to detect, track, catalogue, and characterize the physical characteristics of near-Earth objects equal to or greater than 140 meters in diameter in order to assess the threat of such near-Earth objects to the Earth. It shall be the goal of the Survey program to achieve 90 percent completion of its near-Earth object catalogue (based on statistically predicted populations of near-Earth objects) within 15 years after December 30, 2005.

(2) Omitted

(3) Fifth-year report

The Administrator shall transmit to the Congress, not later than February 28 of the fifth year after December 30, 2005, a report that provides the following:

(A) A summary of all activities taken pursuant to paragraph (1) since December 30, 2005.

(B) A summary of expenditures for all activities pursuant to paragraph (1) since December 30, 2005.

(4) Initial report

The Administrator shall transmit to Congress not later than 1 year after December 30, 2005, an initial report that provides the following:

(A) An analysis of possible alternatives that NASA may employ to carry out the Survey program, including ground-based and space-based alternatives with technical descriptions.

(B) A recommended option and proposed budget to carry out the Survey program pursuant to the recommended option.

(C) Analysis of possible alternatives that NASA could employ to divert an object on a likely collision course with Earth.

(Pub. L. 109–155, title III, § 321, Dec. 30, 2005, 119 Stat. 2922.)

CODIFICATION

Section is comprised of section 321 of Pub. L. 109–155. Subsec. (d)(2) of section 321 of Pub. L. 109–155 amended section 2451 of this title.

SUBCHAPTER IV—AERONAUTICS

§ 16701. Definition

For purposes of this subchapter, the term ''institution of higher education'' has the meaning given that term by section 1001 of title 20.

(Pub. L. 109–155, title IV, § 401, Dec. 30, 2005, 119 Stat. 2923.)

PART A—GOVERNMENTAL INTEREST IN AERONAUTICS RESEARCH AND DEVELOPMENT

§ 16711. Governmental interest

Congress reaffirms the national commitment to aeronautics research made in the National Aeronautics and Space Act of 1958 [42 U.S.C. 2451 et seq.]. Aeronautics research and development remains a core mission of NASA. NASA is the lead agency for civil aeronautics research. Further, the government of the United States shall promote aeronautics research and development that will expand the capacity, ensure the safety, and increase the efficiency of the Nation's air transportation system, promote the security of the Nation, protect the environment, and retain the leadership of the United States in global aviation.

(Pub. L. 109–155, title IV, § 411, Dec. 30, 2005, 119 Stat. 2923.)

REFERENCES IN TEXT

The National Aeronautics and Space Act of 1958, referred to in text, is Pub. L. 85–568, July 29, 1958, 72 Stat. 426, as amended, which is classified principally to chapter 26 (§ 2451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

PART B—HIGH PRIORITY AERONAUTICS RESEARCH AND DEVELOPMENT PROGRAMS

§ 16721. Fundamental research program

(a) Objective

In order to ensure that the Nation maintains needed capabilities in fundamental areas of aeronautics research, the Administrator shall establish a program of long-term fundamental research in aeronautical sciences and technologies that is not tied to specific development projects.

(b) Operation

The Administrator shall conduct the program under this section, in part by awarding grants to institutions of higher education. The Administrator shall encourage the participation of institutions of higher education located in States that participate in the Experimental Program to Stimulate Competitive Research. All grants to institutions of higher education under this section shall be awarded through merit review.

(c) Assessment

The Administrator shall enter into an arrangement with the National Research Council for an assessment of the Nation's future requirements for fundamental aeronautics research and whether the Nation will have a skilled research workforce and research facilities commensurate with those requirements. The assessment shall include an identification of any projected gaps, and recommendations for what steps should be taken by the Federal Government to eliminate those gaps.

(d) Report

The Administrator shall transmit the assessment, along with NASA's response to the assessment, to Congress not later than 2 years after December 30, 2005.

(Pub. L. 109–155, title IV, § 421, Dec. 30, 2005, 119 Stat. 2924.)

§ 16722. Research and technology programs

(a) Environmental aircraft research and development

The Administrator may establish an initiative with the objective of developing, and dem-

onstrating in a relevant environment, technologies to enable the following commercial aircraft performance characteristics:

(1) Noise

Noise levels on takeoff and on airport approach and landing that do not exceed ambient noise levels in the absence of flight operations in the vicinity of airports from which such commercial aircraft would normally operate.

(2) Energy consumption

Twenty-five percent reduction in the energy required for medium- to long-range flights, compared to aircraft in commercial service as of December 30, 2005.

(3) Emissions

Nitrogen oxides on take-off and landing that are significantly reduced, without adversely affecting hydrocarbons and smoke, relative to aircraft in commercial service as of December 30, 2005.

(b) Supersonic transport research and development

The Administrator may establish an initiative with the objective of developing and demonstrating, in a relevant environment, airframe and propulsion technologies to enable efficient, economical overland flight of supersonic civil transport aircraft with no significant impact on the environment.

(c) Rotorcraft and other runway-independent air vehicles

The Administrator may establish a rotorcraft and other runway-independent air vehicles initiative with the objective of developing and demonstrating improved safety, noise, and environmental impact in a relevant environment.

(d) Hypersonics research

The Administrator may establish a hypersonics research program with the objective of exploring the science and technology of hypersonic flight using air-breathing propulsion concepts, through a mix of theoretical work, basic and applied research, and development of flight research demonstration vehicles. The program may also include the transition to the hypersonic range of Mach 3 to Mach 5.

(e) Revolutionary aeronautical concepts

The Administrator may establish a research program which covers a unique range of subsonic, fixed wing vehicles and propulsion concepts. This research is intended to push technology barriers beyond current subsonic technology. Propulsion concepts include advanced materials, morphing engines, hybrid engines, and fuel cells.

(f) Fuel cell-powered aircraft research

(1) Objective

The Administrator may establish a fuel-cell powered aircraft research program whose objective shall be to develop and test concepts to enable a hydrogen fuel cell-powered aircraft that would have no hydrocarbon or nitrogen oxide emissions into the environment.

(2) Approach

The Administrator may establish a program of competitively awarded grants available to teams of researchers that may include the participation of individuals from universities, industry, and government for the conduct of this research.

(g) Mars aircraft research

(1) Objective

The Administrator may establish a Mars Aircraft project whose objective shall be to develop and test concepts for an uncrewed aircraft that could operate for sustained periods in the atmosphere of Mars.

(2) Approach

The Administrator may establish a program of competitively awarded grants available to teams of researchers that may include the participation of individuals from universities, industry, and government for the conduct of this research.

(Pub. L. 109–155, title IV, § 422, Dec. 30, 2005, 119 Stat. 2924.)

§ 16723. Airspace Systems Research

(a) Objective

The Airspace Systems Research program shall pursue research and development to enable revolutionary improvements to and modernization of the National Airspace System, as well as to enable the introduction of new systems for vehicles that can take advantage of an improved, modern air transportation system.

(b) Alignment

Not later than 1 year after December 30, 2005, the Administrator shall align the projects of the Airspace Systems Research program so that they directly support the objectives of the Joint Planning and Development Office's Next Generation Air Transportation System Integrated Plan.

(Pub. L. 109–155, title IV, § 423, Dec. 30, 2005, 119 Stat. 2925.)

§ 16724. Aviation Safety and Security Research

(a) Objective

The Aviation Safety and Security Research program shall pursue research and development activities that directly address the safety and security needs of the National Airspace System and the aircraft that fly in it. The program shall develop prevention, intervention, and mitigation technologies aimed at causal, contributory, or circumstantial factors of aviation accidents.

(b) Alignment

Not later than 1 year after December 30, 2005, the Administrator shall align the projects of the Aviation Safety and Security Research program so that they directly support the objectives of the Joint Planning and Development Office's Next Generation Air Transportation System Integrated Plan.

(Pub. L. 109–155, title IV, § 424, Dec. 30, 2005, 119 Stat. 2926.)

§ 16725. Aviation weather research

The Administrator may carry out a program of collaborative research with the National Oce-

anic and Atmospheric Administration on convective weather events, with the goal of significantly improving the reliability of 2-hour to 6-hour aviation weather forecasts.

(Pub. L. 109–155, title IV, § 425, Dec. 30, 2005, 119 Stat. 2926.)

§ 16726. Assessment of wake turbulence research and development program

(a) Assessment

The Administrator shall enter into an arrangement with the National Research Council for an assessment of Federal wake turbulence research and development programs. The assessment shall address at least the following questions:

(1) Are the Federal research and development goals and objectives well defined?

(2) Are there any deficiencies in the Federal research and development goals and objectives?

(3) What roles should be played by each of the relevant Federal agencies, such as NASA, the Federal Aviation Administration, and the National Oceanic and Atmospheric Administration, in wake turbulence research and development?

(b) Report

A report containing the results of the assessment conducted pursuant to subsection (a) shall be provided to Congress not later than 2 years after December 30, 2005.

(Pub. L. 109–155, title IV, § 426, Dec. 30, 2005, 119 Stat. 2926.)

§ 16727. University-based Centers for Research on Aviation Training

(a) In general

The Administrator may award grants to institutions of higher education (or consortia thereof) to establish one or more Centers for Research on Aviation Training under cooperative agreements with appropriate NASA Centers.

(b) Purpose

The purpose of the Centers shall be to investigate the impact of new technologies and procedures, particularly those related to the aircraft flight deck and to the air traffic management functions, on training requirements for pilots and air traffic controllers.

(c) Application

An institution of higher education (or a consortium of such institutions) seeking funding under this section shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require, including, at a minimum, a 5-year research plan.

(d) Award duration

An award made by the Administrator under this section shall be for a period of 5 years and may be renewed on the basis of—

(1) satisfactory performance in meeting the goals of the research plan proposed by the Center in its application under subsection (c); and

(2) other requirements as specified by the Administrator.

(Pub. L. 109–155, title IV, § 427, Dec. 30, 2005, 119 Stat. 2926.)

PART C—SCHOLARSHIPS

§ 16741. NASA aeronautics scholarships

(a) Establishment

The Administrator shall establish a program of scholarships for full-time graduate students who are United States citizens and are enrolled in, or have been accepted by and have indicated their intention to enroll in, accredited Masters degree programs in aeronautical engineering or equivalent programs at institutions of higher education. Each such scholarship shall cover the costs of room, board, tuition, and fees, and may be provided for a maximum of 2 years.

(b) Implementation

Not later than 180 days after December 30, 2005, the Administrator shall publish regulations governing the scholarship program under this section.

(c) Cooperative training opportunities

Students who have been awarded a scholarship under this section shall have the opportunity for paid employment at one of the NASA Centers engaged in aeronautics research and development during the summer prior to the first year of the student's Masters program, and between the first and second year, if applicable.

(Pub. L. 109–155, title IV, § 431, Dec. 30, 2005, 119 Stat. 2927.)

PART D—DATA REQUESTS

§ 16751. Aviation data requests

The Administrator shall make available upon request satellite imagery and aerial photography of remote terrain that NASA owns at the time of the request to the Administrator of the Federal Aviation Administration, or the Director of the Five Star Medallion Program, to assist and train pilots in navigating challenging topographical features of such terrain.

(Pub. L. 109–155, title IV, § 441, Dec. 30, 2005, 119 Stat. 2927.)

SUBCHAPTER V—HUMAN SPACE FLIGHT

§ 16761. Space Shuttle follow-on

(a) Policy statement

It is the policy of the United States to possess the capability for human access to space on a continuous basis.

(b) Progress report

Not later than 180 days after December 30, 2005, and annually thereafter, the Administrator shall transmit a report to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the progress being made toward developing the Crew Exploration Vehicle and the Crew Launch Vehicle and the estimated time before they will demonstrate crewed, orbital spaceflight.

(c) Compliance report

If, 1 year before the final planned flight of the Space Shuttle orbiter, the United States has not demonstrated a replacement human space flight system, and the United States cannot uphold the policy described in subsection (a), the Administrator shall transmit a report to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing—

(1) strategic risks to the United States associated with the failure to uphold the policy described in subsection (a);

(2) the estimated length of time during which the United States will not have its own human access to space;

(3) what steps will be taken to shorten that length of time; and

(4) what other means will be used to allow human access to space during that time.

(Pub. L. 109–155, title V, § 501, Dec. 30, 2005, 119 Stat. 2927.)

§ 16762. Transition

(a) In general

The Administrator shall, to the fullest extent possible consistent with a successful development program, use the personnel, capabilities, assets, and infrastructure of the Space Shuttle program in developing the Crew Exploration Vehicle, Crew Launch Vehicle, and a heavy-lift launch vehicle.

(b) Plan

Not later than 180 days after December 30, 2005, the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan describing how NASA will proceed with its human space flight programs, which, at a minimum, shall describe—

(1) how NASA will deploy personnel from, and use the facilities of, the Space Shuttle program to ensure that the Space Shuttle operates as safely as possible through its final flight and to ensure that personnel and facilities from the Space Shuttle program are used in NASA's exploration programs in accordance with subsection (a);

(2) the planned number of flights the Space Shuttle will make before its retirement;

(3) the means, other than the Space Shuttle and the Crew Exploration Vehicle, including commercial vehicles, that may be used to ferry crew and cargo to and from the ISS;

(4) the intended purpose of lunar missions and the architecture for those missions; and

(5) the extent to which the Crew Exploration Vehicle will allow for the escape of the crew in an emergency.

(c) Personnel

The Administrator shall consult with other appropriate Federal agencies and with NASA contractors and employees to develop a transition plan for any Federal and contractor personnel engaged in the Space Shuttle program who can no longer be retained because of the retirement of the Space Shuttle. The plan shall include actions to assist Federal and contractor personnel in taking advantage of training, retraining, job placement and relocation programs, and any other actions that NASA will take to assist the employees. The plan shall also describe how the Administrator will ensure that NASA and its contractors will have an appropriate complement of employees to allow for the safest possible use of the Space Shuttle through its final flight. The Administrator shall transmit the plan to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than March 31, 2006.

(Pub. L. 109–155, title V, § 502, Dec. 30, 2005, 119 Stat. 2928.)

§ 16763. Requirements

The Administrator shall—

(1) construct an architecture and implementation plan for NASA's human exploration program that is not critically dependent on the achievement of milestones by fixed dates;

(2) implement an exploration technology development program to enable lunar human and robotic operations consistent with section 16611(b)(2) of this title, including surface power to use on the Moon and other locations;

(3) conduct an in-situ resource utilization technology program to develop the capability to use space resources to increase independence from Earth, and sustain exploration beyond low-Earth orbit; and

(4) pursue aggressively automated rendezvous and docking capabilities that can support the ISS and other mission requirements.

(Pub. L. 109–155, title V, § 503, Dec. 30, 2005, 119 Stat. 2929.)

§ 16764. Ground-based analog capabilities

(a) In general

The Administrator may establish a ground-based analog capability in remote United States locations in order to assist in the development of lunar operations, life support, and in-situ resource utilization experience and capabilities.

(b) Environmental characteristics

The Administrator shall select locations for the activities described in subsection (a) that—

(1) are regularly accessible;

(2) have significant temperature extremes and range; and

(3) have access to energy and natural resources (including geothermal, permafrost, volcanic, or other potential resources).

(c) Involvement of local populations; private sector partners

In carrying out this section, the Administrator shall involve local populations, academia, and industrial partners as much as possible to ensure that ground-based benefits and applications are encouraged and developed.

(Pub. L. 109–155, title V, § 504, Dec. 30, 2005, 119 Stat. 2929.)

§ 16765. ISS completion

(a) Policy

It is the policy of the United States to achieve diverse and growing utilization of, and benefits from, the ISS.

(b) Elements, capabilities, and configuration criteria

The Administrator shall ensure that the ISS will—

(1) be assembled and operated in a manner that fulfills international partner agreements, as long as the Administrator determines that the Shuttle can safely enable the United States to do so;

(2) be used for a diverse range of microgravity research, including fundamental, applied, and commercial research, consistent with section 16655 of this title;

(3) have an ability to support a crew size of at least 6 persons, unless the Administrator transmits to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 60 days after December 30, 2005, a report explaining why such a requirement should not be met, the impact of not meeting the requirement on the ISS research agenda and operations and international partner agreements, and what additional funding or other steps would be required to have an ability to support crew size[1] of at least 6 persons;

(4) support Crew Exploration Vehicle docking and automated docking of cargo vehicles or modules launched by either heavy-lift or commercially-developed launch vehicles;

(5) support any diagnostic human research, on-orbit characterization of molecular crystal growth, cellular research, and other research that NASA believes is necessary to conduct, but for which NASA lacks the capacity to return the materials that need to be analyzed to Earth; and

(6) be operated at an appropriate risk level.

(c) Contingencies

(1) Policy

The Administrator shall ensure that the ISS can have available, if needed, sufficient logistics and on-orbit capabilities to support any potential period during which the Space Shuttle or its follow-on crew and cargo systems are unavailable, and can have available, if needed, sufficient surge delivery capability or prepositioning of spares and other supplies needed to accommodate any such hiatus.

(2) Plan

Not later than 60 days after December 30, 2005, and before making any change in the ISS assembly sequence in effect on December 30, 2005, the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan to carry out the policy described in paragraph (1).

(Pub. L. 109–155, title V, § 505, Dec. 30, 2005, 119 Stat. 2929.)

[1] So in original. Probably should be ''a crew size''.

§ 16766. ISS research

The Administrator shall—

(1) carry out a program of microgravity research consistent with section 16655 of this title;

(2) consider the need for a life sciences centrifuge and any associated holding facilities; and

(3) not later than 90 days after December 30, 2005, transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the research plan for NASA utilization of the ISS and the proposed final configuration of the ISS, which shall include an identification of microgravity research that can be performed in ground-based facilities and then validated in space and an assessment of the impact of having or not having a life science centrifuge aboard the ISS.

(Pub. L. 109–155, title V, § 506, Dec. 30, 2005, 119 Stat. 2930.)

§ 16767. National laboratory designation

(a) Designation

To further the policy described in section 16761(a) of this title, the United States segment of the ISS is hereby designated a national laboratory.

(b) Management

(1) Partnerships

The Administrator shall seek to increase the utilization of the ISS by other Federal entities and the private sector through partnerships, cost-sharing agreements, and other arrangements that would supplement NASA funding of the ISS.

(2) Contracting

The Administrator may enter into a contract with a nongovernmental entity to operate the ISS national laboratory, subject to all applicable Federal laws and regulations.

(c) Plan

Not later than 1 year after December 30, 2005, the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan describing how the national laboratory will be operated. At a minimum, the plan shall describe—

(1) any changes in the research plan transmitted under section 16766(3) of this title and any other changes in the operation of the ISS resulting from the designation;

(2) any ground-based NASA operations or buildings that will be considered part of the national laboratory;

(3) the management structure for the laboratory, including the rationale for contracting or not contracting with a nongovernmental entity to operate the ISS national laboratory;

(4) the workforce that will be considered employees of the national laboratory;

(5) how NASA will seek the participation of other parties described in subsection (b)(1); and

(6) a schedule for implementing any changes in ISS operations, utilization, or management described in the plan.

(d) United States segment defined

In this section the term ''United States segment of the ISS'' means those elements of the ISS manufactured—

(1) by the United States; or

(2) for the United States by other nations in exchange for funds or launch services.

(Pub. L. 109–155, title V, § 507, Dec. 30, 2005, 119 Stat. 2930.)

SUBCHAPTER VI—OTHER PROGRAM AREAS

PART A—SPACE AND FLIGHT SUPPORT

§ 16781. Orbital debris

The Administrator, in conjunction with the heads of other Federal agencies, shall take steps to develop or acquire technologies that will enable NASA to decrease the risks associated with orbital debris.

(Pub. L. 109–155, title VI, § 601, Dec. 30, 2005, 119 Stat. 2931.)

§ 16782. Secondary payload capability

(a) In general

In order to provide more routine and affordable access to space for a broad range of scientific payloads, the Administrator is encouraged to provide the capabilities to support secondary payload flight opportunities on United States launch vehicles, or free flyers, for satellites or scientific payloads weighing less than 500 kilograms.

(b) Feasibility study

The Administrator shall initiate a feasibility study for designating a National Free Flyer Launch Coordination Center as a means of coordinating, consolidating, and integrating secondary launch capabilities, launch opportunities, and payloads.

(c) Assessment

The feasibility study required by subsection (b) shall include an assessment of the feasibility of integrating a National Free Flyer Launch Coordination Center within the operations and facilities of an existing nonprofit organization such as the Inland Northwest Space Alliance in Missoula, Montana, or a similar entity, and shall include an assessment of the potential utilization of existing launch and launch support facilities and capabilities, including but not limited to those in the States of Montana and New Mexico and their respective contiguous States, and the State of Alaska, for the integration and launch of secondary payloads, including an assessment of the feasibility of establishing cooperative agreements among such facilities, existing or future commercial launch providers, payload developers, and the designated Coordination Center.

(Pub. L. 109–155, title VI, § 602, Dec. 30, 2005, 119 Stat. 2931.)

PART B—EDUCATION

§ 16791. Program to expand distance learning in rural underserved areas

(a) In general

The Administrator shall develop or expand programs to extend science and space educational outreach to rural communities and schools through video conferencing, interpretive exhibits, teacher education, classroom presentations, and student field trips.

(b) Priorities

In carrying out subsection (a), the Administrator shall give priority to existing programs, including Challenger Learning Centers—

(1) that utilize community-based partnerships in the field;

(2) that build and maintain video conference and exhibit capacity;

(3) that travel directly to rural communities and serve low-income populations; and

(4) with a special emphasis on increasing the number of women and minorities in the science and engineering professions.

(Pub. L. 109–155, title VI, § 612, Dec. 30, 2005, 119 Stat. 2932.)

§ 16792. Charles "Pete" Conrad Astronomy Awards

(a) Short title

This section may be cited as the ''Charles 'Pete' Conrad Astronomy Awards Act''.

(b) Definitions

For the purposes of this section—

(1) the term ''amateur astronomer'' means an individual whose employer does not provide any funding, payment, or compensation to the individual for the observation of asteroids and other celestial bodies, and does not include any individual employed as a professional astronomer;

(2) the term ''Minor Planet Center'' means the Minor Planet Center of the Smithsonian Astrophysical Observatory;

(3) the term ''near-Earth asteroid'' means an asteroid with a perihelion distance of less than 1.3 Astronomical Units from the Sun; and

(4) the term ''Program'' means the Charles ''Pete'' Conrad Astronomy Awards Program established under subsection (c).

(c) Pete Conrad Astronomy Award Program

(1) In general

The Administrator shall establish the Charles ''Pete'' Conrad Astronomy Awards Program.

(2) Awards

The Administrator shall make awards under the Program based on the recommendations of the Minor Planet Center.

(3) Award categories

The Administrator shall make one annual award, unless there are no eligible discoveries or contributions, for each of the following categories:

(A) The amateur astronomer or group of amateur astronomers who in the preceding calendar year discovered the intrinsically brightest near-Earth asteroid among the near-Earth asteroids that were discovered during that year by amateur astronomers or groups of amateur astronomers.

(B) The amateur astronomer or group of amateur astronomers who made the greatest

contribution to the Minor Planet Center's mission of cataloguing near-Earth asteroids during the preceding year.

(4) Award amount

An award under the Program shall be in the amount of $3,000.

(5) Guidelines

(A) No individual who is not a citizen or permanent resident of the United States at the time of his discovery or contribution may receive an award under this section.

(B) The decisions of the Administrator in making awards under this section are final.

(Pub. L. 109–155, title VI, § 613, Dec. 30, 2005, 119 Stat. 2932.)

§ 16793. Review of education programs

(a) In general

The Administrator shall enter into an arrangement with the National Research Council of the National Academy of Sciences to conduct a review and evaluation of NASA's precollege science, technology, and mathematics education program. The review and evaluation shall be documented in a report to the Administrator and shall include such recommendations as the National Research Council determines will improve the effectiveness of the program.

(b) Review

The review and evaluation under subsection (a) shall include—

(1) an evaluation of the effectiveness of the overall program in meeting its defined goals and objectives;

(2) an assessment of the quality and educational effectiveness of the major components of the program, including an evaluation of the adequacy of assessment metrics and data collection requirements available for determining the effectiveness of individual projects;

(3) an evaluation of the funding priorities in the program, including a review of the funding level and funding trend for each major component of the program and an assessment of whether the resources made available are consistent with meeting identified goals and priorities; and

(4) a determination of the extent and the effectiveness of coordination and collaboration between NASA and other Federal agencies that sponsor science, technology, and mathematics education activities.

(c) Report to Congress

Not later than 18 months after December 30, 2005, the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the results of the review and evaluation required under subsection (a).

(Pub. L. 109–155, title VI, § 614, Dec. 30, 2005, 119 Stat. 2933.)

§ 16794. Equal access to NASA's education programs

(a) In general

The Administrator shall strive to ensure equal access for minority and economically disadvantaged students to NASA's education programs.

(b) Report

Not later than 1 year after December 30, 2005, and every 2 years thereafter, the Administrator shall submit a report to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the efforts by the Administrator to ensure equal access for minority and economically disadvantaged students under this section and the results of such efforts. As part of the report, the Administrator shall provide—

(1) data on minority participation in NASA's education programs, at a minimum in the following categories: elementary and secondary education, undergraduate education, and graduate education; and

(2) the total value of grants NASA made to Historically Black Colleges and Universities and to Hispanic Serving Institutions through education programs during the period covered by the report.

(c) Program

The Administrator shall establish the Dr. Mae C. Jemison Grant Program to work with Minority Serving Institutions to bring more women of color into the field of space and aeronautics.

(Pub. L. 109–155, title VI, § 615, Dec. 30, 2005, 119 Stat. 2934.)

§ 16795. Museums

The Administrator may provide grants to, and enter into cooperative agreements with, museums and planetariums to enable them to enhance programs related to space exploration, aeronautics, space science, earth science, or microgravity.

(Pub. L. 109–155, title VI, § 616, Dec. 30, 2005, 119 Stat. 2934.)

§ 16796. Review of MUST program

Not later than 60 days after December 30, 2005, the Administrator shall transmit a report to Congress on the legal status of the Motivating Undergraduates in Science and Technology program. If the report concludes that the program is in compliance with the laws of the United States, NASA shall implement the program, as planned in the July 5, 2005, NASA Research Announcement.

(Pub. L. 109–155, title VI, § 617, Dec. 30, 2005, 119 Stat. 2934.)

§ 16797. Continuation of certain education programs

From amounts appropriated to NASA for education programs, the Administrator shall ensure the continuation of the Space Grant Program, the Experimental Program to Stimulate Competitive Research, and, consistent with the re-

sults of the review under section 16793 of this title, the NASA Explorer School program, to motivate and develop the next generation of explorers.

(Pub. L. 109–155, title VI, § 618, Dec. 30, 2005, 119 Stat. 2934.)

§ 16798. Implementation of previous recommendations

(a) GAO report

Not more than 180 days after December 30, 2005, the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee of[1] Commerce, Science, and Transportation of the Senate a report describing action taken by NASA to implement the recommendations contained in the Government Accountability Office's Report No. 04–639.

(b) Compliance

To comply with title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Administrator shall conduct compliance reviews of at least 2 grantees annually.

(Pub. L. 109–155, title VI, § 619, Dec. 30, 2005, 119 Stat. 2935.)

REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (b), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

PART C—TECHNOLOGY TRANSFER

§ 16811. Commercial technology transfer program

(a) In general

The Administrator shall execute a commercial technology transfer program with the goal of facilitating the exchange of services, products, and intellectual property between NASA and the private sector. This program shall place at least as much emphasis on encouraging the transfer of NASA technology to the private sector (''spinning out'') as on encouraging use of private sector technology by NASA. This program shall be maintained in a manner that provides clear benefits for the agency, the domestic economy, and the research community.

(b) Program structure

In carrying out the program described in subsection (a), the Administrator shall provide program participants with at least 45 days notice of any proposed changes to the structure of NASA's technology transfer and commercialization organizations that is in effect as of December 30, 2005.

(Pub. L. 109–155, title VI, § 621, Dec. 30, 2005, 119 Stat. 2935.)

[1] So in original. Probably should be ''on''.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

PART A—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

§ 16821. Small business contracting

(a) Plan

In consultation with the Small Business Administration, the Administrator shall develop a plan to maximize the number and amount of contracts awarded to small business concerns (within the meaning given that term in section 632 of title 15) and to meet established contracting goals for such concerns.

(b) Priority

The Administrator shall establish as a priority meeting the contracting goals developed in conjunction with the Small Business Administration to maximize the amount of prime contracts, as measured in dollars, awarded in each fiscal year by NASA to small business concerns (within the meaning given that term in section 632 of title 15).

(Pub. L. 109–155, title VII, § 707, Dec. 30, 2005, 119 Stat. 2937.)

§ 16822. NASA healthcare program

The Administrator shall develop a plan to better understand the longitudinal health effects of space flight on humans. In the development of the plan, the Administrator shall consider the need for the establishment of a lifetime healthcare program for NASA astronauts and their families or other methods to obtain needed health data from astronauts and retired astronauts.

(Pub. L. 109–155, title VII, § 708, Dec. 30, 2005, 119 Stat. 2938.)

§ 16823. Offshore performance of contracts for the procurement of goods and services

The Administrator shall submit to Congress, not later than 120 days after the end of each fiscal year beginning with the first fiscal year after December 30, 2005, a report on the contracts and subcontracts performed overseas and the amount of purchases directly or indirectly by NASA from foreign entities in that fiscal year. The report shall separately indicate—

(1) the contracts and subcontracts and their dollar values for which the Administrator determines that essential goods or services under the contract are available only from a source outside the United States; and

(2) the items and their dollar values for which the Buy American Act [41 U.S.C. 10a et seq.] was waived pursuant to obligations of the United States under international agreements.

(Pub. L. 109–155, title VII, § 709, Dec. 30, 2005, 119 Stat. 2938.)

REFERENCES IN TEXT

The Buy American Act, referred to in par. (2), is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which is classified generally to sections 10a, 10b, and 10c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 10a of Title 41 and Tables.

§ 16824. Study on enhanced use leasing

Not later than one year after December 30, 2005, the Comptroller General shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a review of NASA's enhanced use leasing pilot program established by section 2459j[1] of this title. At a minimum the review shall analyze—

(1) the financial impact of the program, taking into account revenue foregone by the United States, whether such revenue would have been realized in the absence of the program, and any revenue that accrued to NASA because of the program;

(2) the use and effectiveness of the program; and

(3) whether the arrangements made under the program would have been made in the absence of the program.

(Pub. L. 109–155, title VII, § 710, Dec. 30, 2005, 119 Stat. 2938.)

REFERENCES IN TEXT

Section 2459j of this title, referred to in text, was in the original ''section 315 of the National Aeronautics and Space Administration Act of 1958'', which was translated as reading ''section 315 of the National Aeronautics and Space Act of 1958'', to reflect the probable intent of Congress.

PART B—NATIONAL SCIENCE FOUNDATION

§ 16831. Data on specific fields of study

The National Science Foundation shall continue to collect statistically reliable data on the field of degree of college-educated individuals to fulfill obligations under section 1863(j)(1) of this title and the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885 et. seq.). If the Director of the Foundation determines that there is a legal impediment to the continued collection of this data, he shall inform the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 180 days after December 30, 2005.

(Pub. L. 109–155, title VII, § 721, Dec. 30, 2005, 119 Stat. 2938.)

REFERENCES IN TEXT

The Science and Engineering Equal Opportunities Act, referred to in text, is Part B of Pub. L. 96–516, Dec. 12, 1980, 94 Stat. 3010, as amended, which enacted sections 1885 to 1885d of this title and provisions set out as notes under sections 1861 and 1885 of this title. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 1861 of this title and Tables.

§ 16832. National Science Foundation major research equipment and facilities

(a) Astronomical sciences senior review

(1) Review

The Director of the National Science Foundation shall charge the Mathematical and Physical Sciences Advisory Committee with conducting a review of the astronomical facilities supported by the Foundation to determine the appropriate balance between supporting the operation of existing facilities and supporting the design, development, and eventual operation of new facilities. The review shall recommend actions that would enable the Foundation to support priorities recommended in the National Academy of Sciences reports ''Astronomy and Astrophysics in the New Millennium'' and ''Connecting Quarks with the Cosmos''.

(2) Transmittal

The Director shall transmit the review, along with a schedule for implementing any recommendations the Director accepts and an explanation for rejecting any recommendations, to the Committee on Science of the House of Representatives and the Committee of[1] Commerce, Science, and Transportation of the Senate no later than June 30, 2006.

(b) Plan for funding design and development for major research equipment and facilities construction projects

(1) In general

The Director of the National Science Foundation shall develop a plan to facilitate more thorough design and development of facilities that can be considered for funding through the Major Research Equipment and Facilities Construction account.

(2) Considerations

In developing the plan, the Director shall consider—

(A) steps to encourage and ease cross-directorate collaboration;

(B) ways to ensure that a Directorate that will eventually support the operation of a facility is fully committed to that facility from the outset;

(C) providing funding for the design and development of facilities from new sources within the Foundation; and

(D) ways to enable and encourage entities proposing facilities projects to receive design and development funding from nongovernmental sources.

(3) Transmittal

No later than June 30, 2006, the Director of the National Science Foundation shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the plan, along with a statement from the Director describing how the plan addresses the considerations described in paragraph (2).

(Pub. L. 109–155, title VII, § 722, Dec. 30, 2005, 119 Stat. 2939.)

SUBCHAPTER VIII—HUMAN SPACE FLIGHT INDEPENDENT INVESTIGATION COMMISSION

§ 16841. Definitions

For purposes of this subchapter—

(1) the term ''Commission'' means a Commission established under this subchapter[1]; and

[1] See References in Text note below.

[1] So in original. Probably should be ''on''.

[1] See References in Text note below.

(2) the term ''incident'' means either an accident or a deliberate act.

(Pub. L. 109–155, title VIII, § 821, Dec. 30, 2005, 119 Stat. 2941.)

REFERENCES IN TEXT

This subchapter, referred to in par. (1), was in the original a reference to title VIII of Pub. L. 109–155, Dec. 30, 2005, 119 Stat. 2941, which was translated as if it was a reference to subtitle B (§§ 821–830) of title VIII of Pub. L. 109–155. Title VIII of Pub. L. 109–155 also contained a subtitle A, establishing the International Space Station Independent Safety Task Force, which is not classified to the Code.

§ 16842. Establishment of Commission

(a) Establishment

The President shall establish an independent, nonpartisan Commission within the executive branch to investigate any incident that results in the loss of—

(1) a Space Shuttle;

(2) the International Space Station or its operational viability;

(3) any other United States space vehicle carrying humans that is owned by the Federal Government or that is being used pursuant to a contract with the Federal Government; or

(4) a crew member or passenger of any space vehicle described in this subsection.

(b) Deadline for establishment

The President shall establish a Commission within 7 days after an incident specified in subsection (a).

(Pub. L. 109–155, title VIII, § 822, Dec. 30, 2005, 119 Stat. 2941.)

§ 16843. Tasks of the Commission

A Commission established pursuant to this subchapter shall, to the extent possible, undertake the following tasks:

(1) Investigate the incident.

(2) Determine the cause of the incident.

(3) Identify all contributing factors to the cause of the incident.

(4) Make recommendations for corrective actions.

(5) Provide any additional findings or recommendations deemed by the Commission to be important, whether or not they are related to the specific incident under investigation.

(6) Prepare a report to Congress, the President, and the public.

(Pub. L. 109–155, title VIII, § 823, Dec. 30, 2005, 119 Stat. 2941.)

§ 16844. Composition of Commission

(a) Number of commissioners

A Commission established pursuant to this subchapter shall consist of 15 members.

(b) Selection

The members of a Commission shall be chosen in the following manner:

(1) The President shall appoint the members, and shall designate the Chairman and Vice Chairman of the Commission from among its members.

(2) The majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives shall each provide to the President a list of candidates for membership on the Commission. The President may select one of the candidates from each of the 4 lists for membership on the Commission.

(3) No officer or employee of the Federal Government or Member of Congress shall serve as a member of the Commission.

(4) No member of the Commission shall have, or have pending, a contractual relationship with NASA.

(5) The President shall not appoint any individual as a member of a Commission under this section who has a current or former relationship with the Administrator that the President determines would constitute a conflict of interest.

(6) To the extent practicable, the President shall ensure that the members of the Commission include some individuals with experience relative to human carrying spacecraft, as well as some individuals with investigative experience and some individuals with legal experience.

(7) To the extent practicable, the President shall seek diversity in the membership of the Commission.

(c) Deadline for appointment

All members of a Commission established under this subchapter shall be appointed no later than 30 days after the incident.

(d) Initial meeting

A Commission shall meet and begin operations as soon as practicable.

(e) Quorum; vacancies

After its initial meeting, a Commission shall meet upon the call of the Chairman or a majority of its members. Eight members of a Commission shall constitute a quorum. Any vacancy in a Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(Pub. L. 109–155, title VIII, § 824, Dec. 30, 2005, 119 Stat. 2942.)

§ 16845. Powers of Commission

(a) Hearings and evidence

A Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this subchapter—

(1) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(2) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents,

as the Commission or such designated subcommittee or designated member may determine advisable.

(b) Contracting

A Commission may, to such extent and in such amounts as are provided in appropriation Acts,

enter into contracts to enable the Commission to discharge its duties under this subchapter.

(c) Information from Federal agencies

(1) In general

A Commission may secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this subchapter. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman, the chairman of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(2) Receipt, handling, storage, and dissemination

Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

(d) Assistance from Federal agencies

(1) General Services Administration

The Administrator of General Services shall provide to a Commission on a reimbursable basis administrative support and other services for the performance of the Commission's tasks.

(2) Other departments and agencies

In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(3) NASA Engineering and Safety Center

The NASA Engineering and Safety Center shall provide data and technical support as requested by the Commission.

(Pub. L. 109–155, title VIII, § 825, Dec. 30, 2005, 119 Stat. 2942.)

§ 16846. Public meetings, information, and hearings

(a) Public meetings and release of public versions of reports

A Commission shall—

(1) hold public hearings and meetings to the extent appropriate; and

(2) release public versions of the reports required under this subchapter.

(b) Public hearings

Any public hearings of a Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

(Pub. L. 109–155, title VIII, § 826, Dec. 30, 2005, 119 Stat. 2943.)

§ 16847. Staff of Commission

(a) Appointment and compensation

The Chairman, in consultation with[1] Vice Chairman, in accordance with rules agreed upon by a Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions.

(b) Detailees

Any Federal Government employee, except for an employee of NASA, may be detailed to a Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) Consultant services

A Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5. Any consultant or expert whose services are procured under this subsection shall disclose any contract or association it has with NASA or any NASA contractor.

(Pub. L. 109–155, title VIII, § 827, Dec. 30, 2005, 119 Stat. 2943.)

§ 16848. Compensation and travel expenses

(a) Compensation

Each member of a Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5 for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) Travel expenses

While away from their homes or regular places of business in the performance of services for the Commission, members of a Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5.[1]

(Pub. L. 109–155, title VIII, § 828, Dec. 30, 2005, 119 Stat. 2944.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (b), was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

§ 16849. Security clearances for Commission members and staff

The appropriate Federal agencies or departments shall cooperate with a Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements. No person shall be provided with access to classified information

[1] So in original. Probably should be followed by "the".

[1] See References in Text note below.

under this subchapter without the appropriate security clearances.

(Pub. L. 109–155, title VIII, § 829, Dec. 30, 2005, 119 Stat. 2944.)

§ 16850. Reporting requirements and termination

(a) Interim reports

A Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective actions as have been agreed to by a majority of Commission members.

(b) Final report

A Commission shall submit to the President and Congress, and make concurrently available to the public, a final report containing such findings, conclusions, and recommendations for corrective actions as have been agreed to by a majority of Commission members. Such report shall include any minority views or opinions not reflected in the majority report.

(c) Termination

(1) In general

A Commission, and all the authorities of this subchapter with respect to that Commission, shall terminate 60 days after the date on which the final report is submitted under subsection (b).

(2) Administrative activities before termination

A Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report.

(Pub. L. 109–155, title VIII, § 830, Dec. 30, 2005, 119 Stat. 2944.)

CHAPTER 151—CHILD PROTECTION AND SAFETY

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SUBCHAPTER I—SEX OFFENDER REGISTRATION AND NOTIFICATION

§ 16901. Declaration of purpose

In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress in this chapter establishes a comprehensive national system for the registration of those offenders:

(1) Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing.

(2) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted, and murdered in 1994, in New Jersey.

(3) Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas.

(4) Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005, in Cedar Rapids, Iowa.

(5) Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota.

(6) Jessica Lunsford, who was 9 years old, was abducted, sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida.

(7) Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida.

(8) Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders.

(9) Christy Ann Fornoff, who was 13 years old, was abducted, sexually assaulted, and murdered in 1984, in Tempe, Arizona.

(10) Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts.

(11) Polly Klaas, who was 12 years old, was abducted, sexually assaulted, and murdered in 1993 by a career offender in California.

(12) Jimmy Ryce, who was 9 years old, was kidnapped and murdered in Florida on September 11, 1995.

(13) Carlie Brucia, who was 11 years old, was abducted and murdered in Florida in February, 2004.

(14) Amanda Brown, who was 7 years old, was abducted and murdered in Florida in 1998.

(15) Elizabeth Smart, who was 14 years old, was abducted in Salt Lake City, Utah in June 2002.

(16) Molly Bish, who was 16 years old, was abducted in 2000 while working as a lifeguard in Warren, Massachusetts, where her remains were found 3 years later.

(17) Samantha Runnion, who was 5 years old, was abducted, sexually assaulted, and murdered in California on July 15, 2002.

(Pub. L. 109–248, title I, § 102, July 27, 2006, 120 Stat. 590.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 109–248, July 27, 2006, 120 Stat. 587, known as the Adam Walsh Child Protection and Safety Act of 2006. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 109–248, § 1(a), July 27, 2006, 120 Stat. 587, provided that: ''This Act [enacting this chapter, sections 3765, 3797ee, and 3797ee–1 of this title, chapter 109B and sections 2252C, 2257A, 2260A, 3299, and 4248 of Title 18, Crimes and Criminal Procedure, amending sections 671, 5772, 5780, 13032, and 14135a of this title, section 1101 of Title 8, Aliens and Nationality, sections 1001, 1153, 1154, 1201, 1227, 1466, 1467, 1591, 2241, 2242, 2243, 2244, 2245, 2251, 2252, 2252A, 2252B, 2253, 2254, 2255, 2257, 2258, 2260, 2422, 2423, 3142, 3509, 3559, 3563, 3583, 3592, 3621, 3771, 4042, 4209, 4241, and 4247 of Title 18, section 841 of Title 21, Food and Drugs, section 534 of Title 28, Judiciary and Judicial Procedure, repealing sections 14071 to 14073 of this title, enacting provisions set out as notes under sections 671, 5611, 13701, and 14071 of this title, sections 2251 and 2257 of Title 18, and provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, and amending provisions set out as notes under section 13751 of this title and section 951 of Title 10, Armed Forces] may be cited as the 'Adam Walsh Child Protection and Safety Act of 2006'.''

Pub. L. 109–248, title I, § 101, July 27, 2006, 120 Stat. 590, provided that: ''This title [enacting this subchapter and chapter 109B of Title 18, Crimes and Criminal Procedure, amending sections 671, 5772, 5780, 13032, and 14135a of this title, sections 1001, 3563, 3583, 4042, and 4209 of Title 18, and section 534 of Title 28, Judiciary and Judicial Procedure, repealing sections 14071 to 14073 of this title, enacting provisions set out as notes under sections 671 and 14071 of this title and provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, and amending provisions set out as a note under section 951 of Title 10, Armed Forces] may be cited as the 'Sex Offender Registration and Notification Act'.''

§ 16902. Establishment of program

This chapter establishes the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program.

(Pub. L. 109–248, title I, § 103, July 27, 2006, 120 Stat. 591.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 109–248, July 27, 2006, 120 Stat. 587, known as the Adam Walsh Child Protection and Safety Act of 2006. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of this title and Tables.

PART A—SEX OFFENDER REGISTRATION AND NOTIFICATION

§ 16911. Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators

In this subchapter the following definitions apply:

(1) Sex offender

The term ''sex offender'' means an individual who was convicted of a sex offense.

(2) Tier I sex offender

The term ''tier I sex offender'' means a sex offender other than a tier II or tier III sex offender.

(3) Tier II sex offender

The term ''tier II sex offender'' means a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and—

(A) is comparable to or more severe than the following offenses, when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor:

(i) sex trafficking (as described in section 1591 of title 18);

(ii) coercion and enticement (as described in section 2422(b) of title 18);

(iii) transportation with intent to engage in criminal sexual activity (as described in section 2423(a))[1] of title 18;

[1] So in original. The second closing parenthesis probably should follow ''18''.

(iv) abusive sexual contact (as described in section 2244 of title 18);

(B) involves—

(i) use of a minor in a sexual performance;

(ii) solicitation of a minor to practice prostitution; or

(iii) production or distribution of child pornography; or

(C) occurs after the offender becomes a tier I sex offender.

(4) Tier III sex offender

The term ''tier III sex offender'' means a sex offender whose offense is punishable by imprisonment for more than 1 year and—

(A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense:

(i) aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18); or

(ii) abusive sexual contact (as described in section 2244 of title 18) against a minor who has not attained the age of 13 years;

(B) involves kidnapping of a minor (unless committed by a parent or guardian); or

(C) occurs after the offender becomes a tier II sex offender.

(5) Amie Zyla expansion of sex offense definition

(A) Generally

Except as limited by subparagraph (B) or (C), the term ''sex offense'' means—

(i) a criminal offense that has an element involving a sexual act or sexual contact with another;

(ii) a criminal offense that is a specified offense against a minor;

(iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of title 18) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of title 18;

(iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105–119 (10 U.S.C. 951 note); or

(v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

(B) Foreign convictions

A foreign conviction is not a sex offense for the purposes of this subchapter if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established under section 16912 of this title.

(C) Offenses involving consensual sexual conduct

An offense involving consensual sexual conduct is not a sex offense for the purposes of this subchapter if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

(6) Criminal offense

The term ''criminal offense'' means a State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105–119 (10 U.S.C. 951 note)) or other criminal offense.

(7) Expansion of definition of "specified offense against a minor" to include all offenses by child predators

The term ''specified offense against a minor'' means an offense against a minor that involves any of the following:

(A) An offense (unless committed by a parent or guardian) involving kidnapping.

(B) An offense (unless committed by a parent or guardian) involving false imprisonment.

(C) Solicitation to engage in sexual conduct.

(D) Use in a sexual performance.

(E) Solicitation to practice prostitution.

(F) Video voyeurism as described in section 1801 of title 18.

(G) Possession, production, or distribution of child pornography.

(H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.

(I) Any conduct that by its nature is a sex offense against a minor.

(8) Convicted as including certain juvenile adjudications

The term ''convicted'' or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18), or was an attempt or conspiracy to commit such an offense.

(9) Sex offender registry

The term ''sex offender registry'' means a registry of sex offenders, and a notification program, maintained by a jurisdiction.

(10) Jurisdiction

The term ''jurisdiction'' means any of the following:

(A) A State.

(B) The District of Columbia.

(C) The Commonwealth of Puerto Rico.

(D) Guam.

(E) American Samoa.

(F) The Northern Mariana Islands.

(G) The United States Virgin Islands.

(H) To the extent provided and subject to the requirements of section 16927 of this title, a federally recognized Indian tribe.

(11) Student

The term ''student'' means an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.

(12) Employee

The term ''employee'' includes an individual who is self-employed or works for any other entity, whether compensated or not.

(13) Resides

The term ''resides'' means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives.

(14) Minor

The term ''minor'' means an individual who has not attained the age of 18 years.

(Pub. L. 109–248, title I, § 111, July 27, 2006, 120 Stat. 591.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, known as the Sex Offender Registration and Notification Act. For complete classification of title I to the Code, see Short Title note set out under section 16901 of this title and Tables.

§ 16912. Registry requirements for jurisdictions

(a) Jurisdiction to maintain a registry

Each jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this subchapter.

(b) Guidelines and regulations

The Attorney General shall issue guidelines and regulations to interpret and implement this subchapter.

(Pub. L. 109–248, title I, § 112, July 27, 2006, 120 Stat. 593.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, known as the Sex Offender Registration and Notification Act. For complete classification of title I to the Code, see Short Title note set out under section 16901 of this title and Tables.

§ 16913. Registry requirements for sex offenders

(a) In general

A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

(b) Initial registration

The sex offender shall initially register—

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

(2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

(c) Keeping the registration current

A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

(d) Initial registration of sex offenders unable to comply with subsection (b)

The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).

(e) State penalty for failure to comply

Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this subchapter.

(Pub. L. 109–248, title I, § 113, July 27, 2006, 120 Stat. 593.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (d) and (e), was in the original ''this title'', meaning title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, known as the Sex Offender Registration and Notification Act. For complete classification of title I to the Code, see Short Title note set out under section 16901 of this title and Tables.

This chapter, referred to in subsec. (d), was in the original ''this Act'', meaning Pub. L. 109–248, July 27, 2006, 120 Stat. 587, known as the Adam Walsh Child Protection and Safety Act of 2006, which was approved July 27, 2006. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of this title and Tables.

§ 16914. Information required in registration

(a) Provided by the offender

The sex offender shall provide the following information to the appropriate official for inclusion in the sex offender registry:

(1) The name of the sex offender (including any alias used by the individual).

(2) The Social Security number of the sex offender.

(3) The address of each residence at which the sex offender resides or will reside.

(4) The name and address of any place where the sex offender is an employee or will be an employee.

(5) The name and address of any place where the sex offender is a student or will be a student.

(6) The license plate number and a description of any vehicle owned or operated by the sex offender.

(7) Any other information required by the Attorney General.

(b) Provided by the jurisdiction

The jurisdiction in which the sex offender registers shall ensure that the following information is included in the registry for that sex offender:

(1) A physical description of the sex offender.

(2) The text of the provision of law defining the criminal offense for which the sex offender is registered.

(3) The criminal history of the sex offender, including the date of all arrests and convic-

tions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender.

(4) A current photograph of the sex offender.

(5) A set of fingerprints and palm prints of the sex offender.

(6) A DNA sample of the sex offender.

(7) A photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.

(8) Any other information required by the Attorney General.

(Pub. L. 109–248, title I, § 114, July 27, 2006, 120 Stat. 594.)

§ 16915. Duration of registration requirement

(a) Full registration period

A sex offender shall keep the registration current for the full registration period (excluding any time the sex offender is in custody or civilly committed) unless the offender is allowed a reduction under subsection (b). The full registration period is—

(1) 15 years, if the offender is a tier I sex offender;

(2) 25 years, if the offender is a tier II sex offender; and

(3) the life of the offender, if the offender is a tier III sex offender.

(b) Reduced period for clean record

(1) Clean record

The full registration period shall be reduced as described in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by—

(A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed;

(B) not being convicted of any sex offense;

(C) successfully completing any periods of supervised release, probation, and parole; and

(D) successfully completing of[1] an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

(2) Period

In the case of—

(A) a tier I sex offender, the period during which the clean record shall be maintained is 10 years; and

(B) a tier III sex offender adjudicated delinquent for the offense which required registration in a sex registry under this title, the period during which the clean record shall be maintained is 25 years.

(3) Reduction

In the case of—

(A) a tier I sex offender, the reduction is 5 years;

(B) a tier III sex offender adjudicated delinquent, the reduction is from life to that period for which the clean record under paragraph (2) is maintained.

[1] So in original. The word ''of'' probably should not appear.

(Pub. L. 109–248, title I, § 115, July 27, 2006, 120 Stat. 595.)

§ 16916. Periodic in person verification

A sex offender shall appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that offender is required to be registered not less frequently than—

(1) each year, if the offender is a tier I sex offender;

(2) every 6 months, if the offender is a tier II sex offender; and

(3) every 3 months, if the offender is a tier III sex offender.

(Pub. L. 109–248, title I, § 116, July 27, 2006, 120 Stat. 595.)

§ 16917. Duty to notify sex offenders of registration requirements and to register

(a) In general

An appropriate official shall, shortly before release of the sex offender from custody, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender, for the offense giving rise to the duty to register—

(1) inform the sex offender of the duties of a sex offender under this subchapter and explain those duties;

(2) require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement; and

(3) ensure that the sex offender is registered.

(b) Notification of sex offenders who cannot comply with subsection (a)

The Attorney General shall prescribe rules for the notification of sex offenders who cannot be registered in accordance with subsection (a).

(Pub. L. 109–248, title I, § 117, July 27, 2006, 120 Stat. 595.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a)(1), was in the original ''this title'', meaning title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, known as the Sex Offender Registration and Notification Act. For complete classification of title I to the Code, see Short Title note set out under section 16901 of this title and Tables.

§ 16918. Public access to sex offender information through the Internet

(a) In general

Except as provided in this section, each jurisdiction shall make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about each sex offender in the registry. The jurisdiction shall maintain the Internet site in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user. The jurisdiction shall also include in the design of its Internet site all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General.

(b) Mandatory exemptions

A jurisdiction shall exempt from disclosure—

(1) the identity of any victim of a sex offense;

(2) the Social Security number of the sex offender;

(3) any reference to arrests of the sex offender that did not result in conviction; and

(4) any other information exempted from disclosure by the Attorney General.

(c) Optional exemptions

A jurisdiction may exempt from disclosure—

(1) any information about a tier I sex offender convicted of an offense other than a specified offense against a minor;

(2) the name of an employer of the sex offender;

(3) the name of an educational institution where the sex offender is a student; and

(4) any other information exempted from disclosure by the Attorney General.

(d) Links

The site shall include, to the extent practicable, links to sex offender safety and education resources.

(e) Correction of errors

The site shall include instructions on how to seek correction of information that an individual contends is erroneous.

(f) Warning

The site shall include a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address. The warning shall note that any such action could result in civil or criminal penalties.

(Pub. L. 109–248, title I, § 118, July 27, 2006, 120 Stat. 596.)

§ 16919. National Sex Offender Registry

(a) Internet

The Attorney General shall maintain a national database at the Federal Bureau of Investigation for each sex offender and any other person required to register in a jurisdiction's sex offender registry. The database shall be known as the National Sex Offender Registry.

(b) Electronic forwarding

The Attorney General shall ensure (through the National Sex Offender Registry or otherwise) that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions.

(Pub. L. 109–248, title I, § 119, July 27, 2006, 120 Stat. 596.)

§ 16920. Dru Sjodin National Sex Offender Public Website

(a) Establishment

There is established the Dru Sjodin National Sex Offender Public Website (hereinafter in this section referred to as the ''Website''), which the Attorney General shall maintain.

(b) Information to be provided

The Website shall include relevant information for each sex offender and other person listed on a jurisdiction's Internet site. The Website shall allow the public to obtain relevant information for each sex offender by a single query for any given zip code or geographical radius set by the user in a form and with such limitations as may be established by the Attorney General and shall have such other field search capabilities as the Attorney General may provide.

(Pub. L. 109–248, title I, § 120, July 27, 2006, 120 Stat. 597.)

§ 16921. Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program

(a) Establishment of Program

There is established the Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program (hereinafter in this section referred to as the ''Program'').

(b) Program notification

Except as provided in subsection (c), immediately after a sex offender registers or updates a registration, an appropriate official in the jurisdiction shall provide the information in the registry (other than information exempted from disclosure by the Attorney General) about that offender to the following:

(1) The Attorney General, who shall include that information in the National Sex Offender Registry or other appropriate databases.

(2) Appropriate law enforcement agencies (including probation agencies, if appropriate), and each school and public housing agency, in each area in which the individual resides, is an employee or is a student.

(3) Each jurisdiction where the sex offender resides, is an employee, or is a student, and each jurisdiction from or to which a change of residence, employment, or student status occurs.

(4) Any agency responsible for conducting employment-related background checks under section 5119a of this title.

(5) Social service entities responsible for protecting minors in the child welfare system.

(6) Volunteer organizations in which contact with minors or other vulnerable individuals might occur.

(7) Any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction.

(c) Frequency

Notwithstanding subsection (b), an organization or individual described in subsection (b)(6) or (b)(7) may opt to receive the notification described in that subsection no less frequently than once every five business days.

(Pub. L. 109–248, title I, § 121, July 27, 2006, 120 Stat. 597.)

§ 16922. Actions to be taken when sex offender fails to comply

An appropriate official shall notify the Attorney General and appropriate law enforcement agencies of any failure by a sex offender to comply with the requirements of a registry and revise the jurisdiction's registry to reflect the nature of that failure. The appropriate official, the Attorney General, and each such law enforce-

ment agency shall take any appropriate action to ensure compliance.

(Pub. L. 109–248, title I, § 122, July 27, 2006, 120 Stat. 597.)

§ 16923. Development and availability of registry management and website software

(a) Duty to develop and support

The Attorney General shall, in consultation with the jurisdictions, develop and support software to enable jurisdictions to establish and operate uniform sex offender registries and Internet sites.

(b) Criteria

The software should facilitate—

(1) immediate exchange of information among jurisdictions;

(2) public access over the Internet to appropriate information, including the number of registered sex offenders in each jurisdiction on a current basis;

(3) full compliance with the requirements of this subchapter; and

(4) communication of information to community notification program participants as required under section 16921 of this title.

(c) Deadline

The Attorney General shall make the first complete edition of this software available to jurisdictions within 2 years of July 27, 2006.

(Pub. L. 109–248, title I, § 123, July 27, 2006, 120 Stat. 598.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(3), was in the original ''this title'', meaning title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, known as the Sex Offender Registration and Notification Act. For complete classification of title I to the Code, see Short Title note set out under section 16901 of this title and Tables.

§ 16924. Period for implementation by jurisdictions

(a) Deadline

Each jurisdiction shall implement this subchapter before the later of—

(1) 3 years after July 27, 2006; and

(2) 1 year after the date on which the software described in section 16923 of this title is available.

(b) Extensions

The Attorney General may authorize up to two 1-year extensions of the deadline.

(Pub. L. 109–248, title I, § 124, July 27, 2006, 120 Stat. 598.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original ''this title'', meaning title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, known as the Sex Offender Registration and Notification Act. For complete classification of title I to the Code, see Short Title note set out under section 16901 of this title and Tables.

§ 16925. Failure of jurisdiction to comply

(a) In general

For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this subchapter shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(b) State constitutionality

(1) In general

When evaluating whether a jurisdiction has substantially implemented this subchapter, the Attorney General shall consider whether the jurisdiction is unable to substantially implement this subchapter because of a demonstrated inability to implement certain provisions that would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction's highest court.

(2) Efforts

If the circumstances arise under paragraph (1), then the Attorney General and the jurisdiction shall make good faith efforts to accomplish substantial implementation of this subchapter and to reconcile any conflicts between this subchapter and the jurisdiction's constitution. In considering whether compliance with the requirements of this subchapter would likely violate the jurisdiction's constitution or an interpretation thereof by the jurisdiction's highest court, the Attorney General shall consult with the chief executive and chief legal officer of the jurisdiction concerning the jurisdiction's interpretation of the jurisdiction's constitution and rulings thereon by the jurisdiction's highest court.

(3) Alternative procedures

If the jurisdiction is unable to substantially implement this subchapter because of a limitation imposed by the jurisdiction's constitution, the Attorney General may determine that the jurisdiction is in compliance with this chapter if the jurisdiction has made, or is in the process of implementing[1] reasonable alternative procedures or accommodations, which are consistent with the purposes of this chapter.

(4) Funding reduction

If a jurisdiction does not comply with paragraph (3), then the jurisdiction shall be subject to a funding reduction as specified in subsection (a).

(c) Reallocation

Amounts not allocated under a program referred to in this section to a jurisdiction for failure to substantially implement this subchapter shall be reallocated under that program to jurisdictions that have not failed to substantially implement this subchapter or may be reallocated to a jurisdiction from which they were withheld to be used solely for the purpose of implementing this subchapter.

(d) Rule of construction

The provisions of this subchapter that are cast as directions to jurisdictions or their officials constitute, in relation to States, only conditions

[1] So in original. Probably should be followed by a comma.

required to avoid the reduction of Federal funding under this section.

(Pub. L. 109–248, title I, § 125, July 27, 2006, 120 Stat. 598.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, known as the Sex Offender Registration and Notification Act. For complete classification of title I to the Code, see Short Title note set out under section 16901 of this title and Tables.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (a), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197. Subpart 1 of part E of title I of the Act is classified generally to part A (§ 3750 et seq.) of subchapter V of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

This chapter, referred to in subsec. (b)(3), was in the original ''this Act'', meaning Pub. L. 109–248, July 27, 2006, 120 Stat. 587, known as the Adam Walsh Child Protection and Safety Act of 2006. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of this title and Tables.

§ 16926. Sex Offender Management Assistance (SOMA) program

(a) In general

The Attorney General shall establish and implement a Sex Offender Management Assistance program (in this subchapter referred to as the ''SOMA program''), under which the Attorney General may award a grant to a jurisdiction to offset the costs of implementing this subchapter.

(b) Application

The chief executive of a jurisdiction desiring a grant under this section shall, on an annual basis, submit to the Attorney General an application in such form and containing such information as the Attorney General may require.

(c) Bonus payments for prompt compliance

A jurisdiction that, as determined by the Attorney General, has substantially implemented this subchapter not later than 2 years after July 27, 2006, is eligible for a bonus payment. The Attorney General may make such a payment under the SOMA program for the first fiscal year beginning after that determination. The amount of the payment shall be—

(1) 10 percent of the total received by the jurisdiction under the SOMA program for the preceding fiscal year, if that implementation is not later than 1 year after July 27, 2006; and

(2) 5 percent of such total, if not later than 2 years after July 27, 2006.

(d) Authorization of appropriations

In addition to any amounts otherwise authorized to be appropriated, there are authorized to be appropriated such sums as may be necessary to the Attorney General, to be available only for the SOMA program, for fiscal years 2007 through 2009.

(Pub. L. 109–248, title I, § 126, July 27, 2006, 120 Stat. 599.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (c), was in the original ''this title'', meaning title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, known as the Sex Offender Registration and Notification Act. For complete classification of title I to the Code, see Short Title note set out under section 16901 of this title and Tables.

§ 16927. Election by Indian tribes

(a) Election

(1) In general

A federally recognized Indian tribe may, by resolution or other enactment of the tribal council or comparable governmental body—

(A) elect to carry out this part as a jurisdiction subject to its provisions; or

(B) elect to delegate its functions under this part to another jurisdiction or jurisdictions within which the territory of the tribe is located and to provide access to its territory and such other cooperation and assistance as may be needed to enable such other jurisdiction or jurisdictions to carry out and enforce the requirements of this part.

(2) Imputed election in certain cases

A tribe shall be treated as if it had made the election described in paragraph (1)(B) if—

(A) it is a tribe subject to the law enforcement jurisdiction of a State under section 1162 of title 18;

(B) the tribe does not make an election under paragraph (1) within 1 year of July 27, 2006 or rescinds an election under paragraph (1)(A); or

(C) the Attorney General determines that the tribe has not substantially implemented the requirements of this part and is not likely to become capable of doing so within a reasonable amount of time.

(b) Cooperation between tribal authorities and other jurisdictions

(1) Nonduplication

A tribe subject to this part is not required to duplicate functions under this part which are fully carried out by another jurisdiction or jurisdictions within which the territory of the tribe is located.

(2) Cooperative agreements

A tribe may, through cooperative agreements with such a jurisdiction or jurisdictions—

(A) arrange for the tribe to carry out any function of such a jurisdiction under this part with respect to sex offenders subject to the tribe's jurisdiction; and

(B) arrange for such a jurisdiction to carry out any function of the tribe under this part with respect to sex offenders subject to the tribe's jurisdiction.

(Pub. L. 109–248, title I, § 127, July 27, 2006, 120 Stat. 599.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle A (§§ 111–131) of title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 591, which is classified principally to this part. For complete classification of subtitle A to the Code, see Tables.

§ 16928. Registration of sex offenders entering the United States

The Attorney General, in consultation with the Secretary of State and the Secretary of

Homeland Security, shall establish and maintain a system for informing the relevant jurisdictions about persons entering the United States who are required to register under this subchapter. The Secretary of State and the Secretary of Homeland Security shall provide such information and carry out such functions as the Attorney General may direct in the operation of the system.

(Pub. L. 109–248, title I, § 128, July 27, 2006, 120 Stat. 600.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, known as the Sex Offender Registration and Notification Act. For complete classification of title I to the Code, see Short Title note set out under section 16901 of this title and Tables.

§ 16929. Immunity for good faith conduct

The Federal Government, jurisdictions, political subdivisions of jurisdictions, and their agencies, officers, employees, and agents shall be immune from liability for good faith conduct under this subchapter.

(Pub. L. 109–248, title I, § 131, July 27, 2006, 120 Stat. 601.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, known as the Sex Offender Registration and Notification Act. For complete classification of title I to the Code, see Short Title note set out under section 16901 of this title and Tables.

PART B—IMPROVING FEDERAL CRIMINAL LAW ENFORCEMENT TO ENSURE SEX OFFENDER COMPLIANCE WITH REGISTRATION AND NOTIFICATION REQUIREMENTS AND PROTECTION OF CHILDREN FROM VIOLENT PREDATORS

§ 16941. Federal assistance with respect to violations of registration requirements

(a) In general

The Attorney General shall use the resources of Federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements. For the purposes of section 566(e)(1)(B) of title 28, a sex offender who violates a sex offender registration requirement shall be deemed a fugitive.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 2007 through 2009 to implement this section.

(Pub. L. 109–248, title I, § 142, July 27, 2006, 120 Stat. 604.)

§ 16942. Project Safe Childhood

(a) Establishment of program

Not later than 6 months after July 27, 2006, the Attorney General shall create and maintain a Project Safe Childhood program in accordance with this section.

(b) Initial implementation

Except as authorized under subsection (c), funds authorized under this section may only be used for the following 5 purposes:

(1) Integrated Federal, State, and local efforts to investigate and prosecute child exploitation cases, including—

(A) the partnership by each United States Attorney with each Internet Crimes Against Children Task Force that is a part of the Internet Crimes Against Children Task Force Program authorized and funded under title IV of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5771 et seq.) (referred to in this section as the ''ICAC Task Force Program'') that exists within the district of such attorney;

(B) the partnership by each United States Attorney with other Federal, State, and local law enforcement partners working in the district of such attorney to implement the program described in subsection (a);

(C) the development by each United States Attorney of a district-specific strategic plan to coordinate the investigation and prosecution of child exploitation crimes;

(D) efforts to identify and rescue victims of child exploitation crimes; and

(E) local training, educational, and awareness programs of such crimes.

(2) Major case coordination by the Department of Justice (or other Federal agencies as appropriate), including specific integration or cooperation, as appropriate, of—

(A) the Child Exploitation and Obscenity Section within the Department of Justice;

(B) the Innocent Images Unit of the Federal Bureau of Investigation;

(C) any task forces established in connection with the Project Safe Childhood program set forth under subsection (a); and

(D) the High Tech Investigative Unit within the Criminal Division of the Department of Justice.

(3) Increased Federal involvement in child pornography and enticement cases by providing additional investigative tools and increased penalties under Federal law.

(4) Training of Federal, State, and local law enforcement through programs facilitated by—

(A) the National Center for Missing and Exploited Children;

(B) the ICAC Task Force Program; and

(C) any other ongoing program regarding the investigation and prosecution of computer-facilitated crimes against children, including training and coordination regarding leads from—

(i) Federal law enforcement operations; and

(ii) the CyberTipline and Child Victim-Identification programs managed and maintained by the National Center for Missing and Exploited Children.

(5) Community awareness and educational programs through partnerships to provide national public awareness and educational programs through—

(A) the National Center for Missing and Exploited Children;

(B) the ICAC Task Force Program; and

(C) any other ongoing programs that—

(i) raises[1] national awareness about the threat of online sexual predators; or

(ii) provides[1] information to parents and children seeking to report possible violations of computer-facilitated crimes against children.

(c) Expansion of project safe childhood

Notwithstanding subsection (b), funds authorized under this section may be also be[1] used for the following purposes:

(1) The addition of not less than 8 Assistant United States Attorneys at the Department of Justice dedicated to the prosecution of cases in connection with the Project Safe Childhood program set forth under subsection (a).

(2) The creation, development, training, and deployment of not less than 10 new Internet Crimes Against Children task forces within the ICAC Task Force Program consisting of Federal, State, and local law enforcement personnel dedicated to the Project Safe Childhood program set forth under subsection (a), and the enhancement of the forensic capacities of existing Internet Crimes Against Children task forces.

(3) The development and enhancement by the Federal Bureau of Investigation of the Innocent Images task forces.

(4) Such other additional and related purposes as the Attorney General determines appropriate.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated—

(1) for the activities described under subsection (b)—

(A) $18,000,000 for fiscal year 2007; and

(B) such sums as may be necessary for each of the 5 succeeding fiscal years; and

(2) for the activities described under subsection (c)—

(A) for fiscal year 2007—

(i) $15,000,000 for the activities under paragraph (1);

(ii) $10,000,000 for activities under paragraph (2); and

(iii) $4,000,000 for activities under paragraph (3); and

(B) such sums as may be necessary for each of the 5 succeeding fiscal years.

(Pub. L. 109–248, title I, § 143, July 27, 2006, 120 Stat. 604.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (b)(1)(A), is Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109. Title IV of the Act is classified generally to subchapter IV (§ 5771 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

[1] So in original.

§ 16943. Federal assistance in identification and location of sex offenders relocated as a result of a major disaster

The Attorney General shall provide assistance to jurisdictions in the identification and location of a sex offender relocated as a result of a major disaster.

(Pub. L. 109–248, title I, § 144, July 27, 2006, 120 Stat. 606.)

§ 16944. Expansion of training and technology efforts

(a) Training

The Attorney General shall—

(1) expand training efforts with Federal, State, and local law enforcement officers and prosecutors to effectively respond to the threat to children and the public posed by sex offenders who use the Internet and technology to solicit or otherwise exploit children;

(2) facilitate meetings involving corporations that sell computer hardware and software or provide services to the general public related to use of the Internet, to identify problems associated with the use of technology for the purpose of exploiting children;

(3) host national conferences to train Federal, State, and local law enforcement officers, probation and parole officers, and prosecutors regarding pro-active approaches to monitoring sex offender activity on the Internet;

(4) develop and distribute, for personnel listed in paragraph (3), information regarding multidisciplinary approaches to holding offenders accountable to the terms of their probation, parole, and sex offender registration laws; and

(5) partner with other agencies to improve the coordination of joint investigations among agencies to effectively combat online solicitation of children by sex offenders.

(b) Technology

The Attorney General shall—

(1) deploy, to all Internet Crimes Against Children Task Forces and their partner agencies, technology modeled after the Canadian Child Exploitation Tracking System; and

(2) conduct training in the use of that technology.

(c) Report

Not later than July 1, 2007, the Attorney General,[1] shall submit to Congress a report on the activities carried out under this section. The report shall include any recommendations that the Attorney General considers appropriate.

(d) Authorization of appropriations

There are authorized to be appropriated to the Attorney General, for fiscal year 2007—

(1) $1,000,000 to carry out subsection (a); and

(2) $2,000,000 to carry out subsection (b).

(Pub. L. 109–248, title I, § 145, July 27, 2006, 120 Stat. 606.)

[1] So in original. The comma probably should not appear.

§ 16945. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking

(a) Establishment

There is established within the Department of Justice, under the general authority of the Attorney General, an Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (hereinafter in this section referred to as the ''SMART Office'').

(b) Director

The SMART Office shall be headed by a Director who shall be appointed by the President. The Director shall report to the Attorney General through the Assistant Attorney General for the Office of Justice Programs and shall have final authority for all grants, cooperative agreements, and contracts awarded by the SMART Office. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other arrangement.

(c) Duties and functions

The SMART Office is authorized to—

(1) administer the standards for the sex offender registration and notification program set forth in this chapter;

(2) administer grant programs relating to sex offender registration and notification authorized by this chapter and other grant programs authorized by this chapter as directed by the Attorney General;

(3) cooperate with and provide technical assistance to States, units of local government, tribal governments, and other public and private entities involved in activities related to sex offender registration or notification or to other measures for the protection of children or other members of the public from sexual abuse or exploitation; and

(4) perform such other functions as the Attorney General may delegate.

(Pub. L. 109–248, title I, § 146, July 27, 2006, 120 Stat. 607.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), (2), was in the original ''this Act'', meaning Pub. L. 109–248, July 27, 2006, 120 Stat. 587, known as the Adam Walsh Child Protection and Safety Act of 2006. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of this title and Tables.

PART C—ACCESS TO INFORMATION AND RESOURCES NEEDED TO ENSURE THAT CHILDREN ARE NOT ATTACKED OR ABUSED

§ 16961. Access to national crime information databases

(a) In general

Notwithstanding any other provision of law, the Attorney General shall ensure access to the national crime information databases (as defined in section 534 of title 28) by—

(1) the National Center for Missing and Exploited Children, to be used only within the scope of the Center's duties and responsibilities under Federal law to assist or support law enforcement agencies in administration of criminal justice functions; and

(2) governmental social service agencies with child protection responsibilities, to be used by such agencies only in investigating or responding to reports of child abuse, neglect, or exploitation.

(b) Conditions of access

The access provided under this section, and associated rules of dissemination, shall be—

(1) defined by the Attorney General; and

(2) limited to personnel of the Center or such agencies that have met all requirements set by the Attorney General, including training, certification, and background screening.

(Pub. L. 109–248, title I, § 151, July 27, 2006, 120 Stat. 608.)

§ 16962. Schools Safe Act

(a) Short title

This section may be cited as the ''Schools Safely Acquiring Faculty Excellence Act of 2006''.

(b) In general

The Attorney General of the United States shall, upon request of the chief executive officer of a State, conduct fingerprint-based checks of the national crime information databases (as defined in section 534(f)(3)(A) of title 28) pursuant to a request submitted by—

(1) a child welfare agency for the purpose of—

(A) conducting a background check required under section 471(a)(20) of the Social Security Act [42 U.S.C. 671(a)(20)] on individuals under consideration as prospective foster or adoptive parents; or

(B) an investigation relating to an incident of abuse or neglect of a minor; or

(2) a private or public elementary school, a private or public secondary school, a local educational agency, or State educational agency in that State, on individuals employed by, under consideration for employment by, or otherwise in a position in which the individual would work with or around children in the school or agency.

(c) Fingerprint-based check

Where possible, the check shall include a fingerprint-based check of State criminal history databases.

(d) Fees

The Attorney General and the States may charge any applicable fees for the checks.

(e) Protection of information

An individual having information derived as a result of a check under subsection (b) may release that information only to appropriate officers of child welfare agencies, public or private elementary or secondary schools, or educational agencies or other persons authorized by law to receive that information.

(f) Criminal penalties

An individual who knowingly exceeds the authority in subsection (b), or knowingly releases

information in violation of subsection (e), shall be imprisoned not more than 10 years or fined under title 18, or both.

(g) Child welfare agency defined

In this section, the term ''child welfare agency'' means—

(1) the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act [42 U.S.C. 620 et seq., 670 et seq.]; and

(2) any other public agency, or any other private agency under contract with the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act, that is responsible for the licensing or approval of foster or adoptive parents.

(h) Definition of education terms

In this section, the terms ''elementary school'', ''local educational agency'', ''secondary school'', and ''State educational agency'' have the meanings given to those terms in section 7801 of title 20.

(Pub. L. 109–248, title I, § 153, July 27, 2006, 120 Stat. 610.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (g), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts B and E of title IV of the Act are classified generally to part B (§ 620 et seq.) and part E (§ 670 et seq.), respectively, of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section is comprised of section 153 of Pub. L. 109–248. Subsec. (i) of section 153 of Pub. L. 109–248 amended section 534 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER II—CIVIL COMMITMENT OF DANGEROUS SEX OFFENDERS

§ 16971. Jimmy Ryce State civil commitment programs for sexually dangerous persons

(a) Grants authorized

Except as provided in subsection (b), the Attorney General shall make grants to jurisdictions for the purpose of establishing, enhancing, or operating effective civil commitment programs for sexually dangerous persons.

(b) Limitation

The Attorney General shall not make any grant under this section for the purpose of establishing, enhancing, or operating any transitional housing for a sexually dangerous person in or near a location where minors or other vulnerable persons are likely to come into contact with that person.

(c) Eligibility

(1) In general

To be eligible to receive a grant under this section, a jurisdiction shall, before the expiration of the compliance period—

(A) have established a civil commitment program for sexually dangerous persons that is consistent with guidelines issued by the Attorney General; or

(B) submit a plan for the establishment of such a program.

(2) Compliance period

The compliance period referred to in paragraph (1) expires on the date that is 2 years after July 27, 2006. However, the Attorney General may, on a case-by-case basis, extend the compliance period that applies to a jurisdiction if the Attorney General considers such an extension to be appropriate.

(3) Release notice

(A) Each civil commitment program for which funding is required under this section shall require the issuance of timely notice to a State official responsible for considering whether to pursue civil commitment proceedings upon the impending release of any person incarcerated by the State who—

(i) has been convicted of a sexually violent offense; or

(ii) has been deemed by the State to be at high risk for recommitting any sexual offense against a minor.

(B) The program shall further require that upon receiving notice under subparagraph (A), the State official shall consider whether or not to pursue a civil commitment proceeding, or any equivalent proceeding required under State law.

(d) Attorney General reports

Not later than January 31 of each year, beginning with 2008, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of jurisdictions in implementing this section and the rate of sexually violent offenses for each jurisdiction.

(e) Definitions

As used in this section:

(1) The term ''civil commitment program'' means a program that involves—

(A) secure civil confinement, including appropriate control, care, and treatment during such confinement; and

(B) appropriate supervision, care, and treatment for individuals released following such confinement.

(2) The term ''sexually dangerous person'' means a person suffering from a serious mental illness, abnormality, or disorder, as a result of which the individual would have serious difficulty in refraining from sexually violent conduct or child molestation.

(3) The term ''jurisdiction'' has the meaning given such term in section 16911 of this title.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 2007 through 2010.

(Pub. L. 109–248, title III, § 301, July 27, 2006, 120 Stat. 617.)

SUBCHAPTER III—GRANTS AND OTHER PROVISIONS

§ 16981. Pilot program for monitoring sexual offenders

(a) Sex offender monitoring program

(1) Grants authorized

(A) In general

The Attorney General is authorized to award grants (referred to as ''Jessica Lunsford and Sarah Lunde Grants'') to States, local governments, and Indian tribal governments to assist in—

(i) carrying out programs to outfit sex offenders with electronic monitoring units; and

(ii) the employment of law enforcement officials necessary to carry out such programs.

(B) Duration

The Attorney General shall award grants under this section for a period not to exceed 3 years.

(C) Minimum standards

The electronic monitoring units used in the pilot program shall at a minimum—

(i) provide a single-unit tracking device for each offender that—

(I) contains a central processing unit with global positioning system and cellular technology in a single unit; and

(II) provides two- and three-way voice communication; and

(ii) permit active, real-time, and continuous monitoring of offenders 24 hours a day.

(2) Application

(A) In general

Each State, local government, or Indian tribal government desiring a grant under this section shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may reasonably require.

(B) Contents

Each application submitted pursuant to subparagraph (A) shall—

(i) describe the activities for which assistance under this section is sought; and

(ii) provide such additional assurances as the Attorney General determines to be essential to ensure compliance with the requirements of this section.

(b) Innovation

In making grants under this section, the Attorney General shall ensure that different approaches to monitoring are funded to allow an assessment of effectiveness.

(c) Authorization of appropriations

(1) In general

There are authorized to be appropriated $5,000,000 for each of the fiscal years 2007 through 2009 to carry out this section.

(2) Report

Not later than September 1, 2010, the Attorney General shall report to Congress—

(A) assessing the effectiveness and value of this section;

(B) comparing the cost effectiveness of the electronic monitoring to reduce sex offenses compared to other alternatives; and

(C) making recommendations for continuing funding and the appropriate levels for such funding.

(Pub. L. 109–248, title VI, § 621, July 27, 2006, 120 Stat. 633.)

§ 16982. Assistance for prosecution of cases cleared through use of DNA backlog clearance funds

(a) In general

The Attorney General may make grants to train and employ personnel to help prosecute cases cleared through use of funds provided for DNA backlog elimination.

(b) Authorization

There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2007 through 2011 to carry out this section.

(Pub. L. 109–248, title VI, § 624, July 27, 2006, 120 Stat. 636.)

§ 16983. Grants to combat sexual abuse of children

(a) In general

The Bureau of Justice Assistance is authorized to make grants under this section—

(1) to any law enforcement agency that serves a jurisdiction with 50,000 or more residents; and

(2) to any law enforcement agency that serves a jurisdiction with fewer than 50,000 residents, upon a showing of need.

(b) Use of grant amounts

Grants under this section may be used by the law enforcement agency to—

(1) hire additional law enforcement personnel or train existing staff to combat the sexual abuse of children through community education and outreach, investigation of complaints, enforcement of laws relating to sex offender registries, and management of released sex offenders;

(2) investigate the use of the Internet to facilitate the sexual abuse of children; and

(3) purchase computer hardware and software necessary to investigate sexual abuse of children over the Internet, access local, State, and Federal databases needed to apprehend sex offenders, and facilitate the creation and enforcement of sex offender registries.

(c) Criteria

The Attorney General shall give priority to law enforcement agencies making a showing of need.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 2007 through 2009 to carry out this section.

(Pub. L. 109–248, title VI, § 625, July 27, 2006, 120 Stat. 636.)

§ 16984. Grants for fingerprinting programs for children

(a) In general

The Attorney General shall establish and implement a program under which the Attorney General may make grants to States, units of local government, and Indian tribal governments in accordance with this section.

(b) Use of grant amounts

A grant made to a State, unit of local government, or Indian tribal government under subsection (a) shall be distributed to law enforcement agencies within the jurisdiction of such State, unit, or tribal government to be used for any of the following activities:

(1) To establish a voluntary fingerprinting program for children, which may include the taking of palm prints of children.

(2) To hire additional law enforcement personnel, or train existing law enforcement personnel, to take fingerprints of children.

(3) To provide information within the community involved about the existence of such a fingerprinting program.

(4) To provide for computer hardware, computer software, or other materials necessary to carry out such a fingerprinting program.

(c) Limitation

Fingerprints of a child derived from a program funded under this section—

(1) may be released only to a parent or guardian of the child; and

(2) may not be copied or retained by any Federal, State, local, or tribal law enforcement officer unless written permission is given by the parent or guardian.

(d) Criminal penalty

Any person who uses the fingerprints of a child derived from a program funded under this section for any purpose other than the purpose described in subsection (c)(1) shall be subject to imprisonment for not more than 1 year, a fine under title 18, or both.

(e) Authorization of appropriations

There is authorized to be appropriated $20,000,000 to carry out this section for the 5-year period beginning on the first day of fiscal year 2007.

(Pub. L. 109–248, title VI, § 627, July 27, 2006, 120 Stat. 637.)

§ 16985. Grants for Rape, Abuse & Incest National Network

(a) Findings

Congress finds as follows:

(1) More than 200,000 Americans each year are victims of sexual assault, according to the Department of Justice.

(2) In 2004, 1 American was sexually assaulted every 2.5 minutes.

(3) One of every 6 women, and 1 of every 133 men, in America has been the victim of a completed or attempted rape, according to the Department of Justice.

(4) The Federal Bureau of Investigation ranks rape second in the hierarchy of violent crimes for its Uniform Crime Reports, trailing only murder.

(5) The Federal Government, through the Victims of Crime Act [42 U.S.C. 10601 et seq.], Violence Against Women Act, and other laws, has long played a role in providing services to sexual assault victims and in seeking policies to increase the number of rapists brought to justice.

(6) Research suggests that sexual assault victims who receive counseling support are more likely to report their attack to the police and to participate in the prosecution of the offender.

(7) Due in part to the combined efforts of law enforcement officials at the local, State, and Federal level, as well as the efforts of the Rape, Abuse & Incest National Network (RAINN) and its affiliated rape crisis centers across the United States, sexual violence in America has fallen by more than half since 1994.

(8) RAINN, a 501(c)(3) nonprofit corporation headquartered in the District of Columbia, has since 1994 provided help to victims of sexual assault and educated the public about sexual assault prevention, prosecution, and recovery.

(9) RAINN established and continues to operate the National Sexual Assault Hotline, a free, confidential telephone hotline that provides help, 24 hours a day, to victims nationally.

(10) More than 1,100 local rape crisis centers in the 50 States and the District of Columbia partner with RAINN and are members of the National Sexual Assault Hotline network (which has helped more than 970,000 people since its inception in 1994).

(11) To better serve victims of sexual assault, 80 percent of whom are under age 30 and 44 percent of whom are under age 18, RAINN will soon launch the National Sexual Assault Online Hotline, the web's first secure hotline service offering live help 24 hours a day.

(12) Congress and the Department of Justice have given RAINN funding to conduct its crucial work.

(13) RAINN is a national model of public/private partnership, raising private sector funds to match congressional appropriations and receiving extensive private in-kind support, including advanced technology provided by the communications and technology industries to launch the National Sexual Assault Hotline and the National Sexual Assault Online Hotline.

(14) Worth magazine selected RAINN as one of ''America's 100 Best Charities'', in recognition of the organization's ''efficiency and effectiveness.''.[1]

(15) In fiscal year 2005, RAINN spent more than 91 cents of every dollar received directly on program services.

(16) The demand for RAINN's services is growing dramatically, as evidenced by the fact that, in 2005, the National Sexual Assault Hotline helped 137,039 people, an all-time record.

(17) The programs sponsored by RAINN and its local affiliates have contributed to the in-

[1] So in original. The second period probably should not appear.

crease in the percentage of victims who report their rape to law enforcement.

(18) According to a recent poll, 92 percent of American women said that fighting sexual and domestic violence should be a top public policy priority (a higher percentage than chose health care, child care, or any other issue).

(19) Authorizing Federal funds for RAINN's national programs would promote continued progress with this interstate problem and would make a significant difference in the prosecution of rapists and the overall incidence of sexual violence.

(b) Duties and functions of the Administrator

(1) Description of activities

The Administrator shall—

(A) issue such rules as the Administrator considers necessary or appropriate to carry out this section;

(B) make such arrangements as may be necessary and appropriate to facilitate effective coordination among all Federally funded programs relating to victims of sexual assault; and

(C) provide adequate staff and agency resources which are necessary to properly carry out the responsibilities pursuant to this section.

(2) Annual grant to Rape, Abuse & Incest National Network

The Administrator shall annually make a grant to RAINN, which shall be used for the performance of the organization's national programs, which may include—

(A) operation of the National Sexual Assault Hotline, a 24-hour toll-free telephone line by which individuals may receive help and information from trained volunteers;

(B) operation of the National Sexual Assault Online Hotline, a 24-hour free online service by which individuals may receive help and information from trained volunteers;

(C) education of the media, the general public, and populations at risk of sexual assault about the incidence of sexual violence and sexual violence prevention, prosecution, and recovery;

(D) dissemination, on a national basis, of information relating to innovative and model programs, services, laws, legislation, and policies that benefit victims of sexual assault; and

(E) provision of technical assistance to law enforcement agencies, State and local governments, the criminal justice system, public and private nonprofit agencies, and individuals in the investigation and prosecution of cases involving victims of sexual assault.

(c) Definitions

For the purposes of this section:

(1) Administrator

The term ''Administrator'' means the Administrator of the Office of Juvenile Justice and Delinquency Prevention.

(2) RAINN

The term ''RAINN'' means the Rape, Abuse & Incest National Network, a 501(c)(3) nonprofit corporation headquartered in the District of Columbia.

(d) Authorization of appropriations

There is authorized to be appropriated to the Administrator to carry out this section, $3,000,000 for each of fiscal years 2007 through 2010.

(Pub. L. 109–248, title VI, § 628, July 27, 2006, 120 Stat. 638.)

REFERENCES IN TEXT

The Victims of Crime Act, referred to in subsec. (a)(5), probably means the Victims of Crime Act of 1984, which is chapter XIV of title II of Pub. L. 98–473, Oct. 12, 1984, 98 Stat. 2170, and which is classified principally to chapter 112 (§ 10601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10601 of this title and Tables.

The Violence Against Women Act, referred to in subsec. (a)(5), probably means the Violence Against Women Act of 1994, which is title IV of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1902. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 16986. Children's safety online awareness campaigns

(a) Awareness campaign for children's safety online

(1) In general

The Attorney General, in consultation with the National Center for Missing and Exploited Children, is authorized to develop and carry out a public awareness campaign to demonstrate, explain, and encourage children, parents, and community leaders to better protect children when such children are on the Internet.

(2) Required components

The public awareness campaign described under paragraph (1) shall include components that compliment[1] and reinforce the campaign message in a variety of media, including the Internet, television, radio, and billboards.

(b) Awareness campaign regarding the accessibility and utilization of sex offender registries

The Attorney General, in consultation with the National Center for Missing and Exploited Children, is authorized to develop and carry out a public awareness campaign to demonstrate, explain, and encourage parents and community leaders to better access and utilize the Federal and State sex offender registries.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as are necessary for fiscal years 2007 through 2011.

(Pub. L. 109–248, title VI, § 629, July 27, 2006, 120 Stat. 640.)

§ 16987. Grants for online child safety programs

(a) In general

The Attorney General shall, subject to the availability of appropriations, make grants to

[1] So in original. Probably should be ''complement''.

States, units of local government, and nonprofit organizations for the purposes of establishing and maintaining programs with respect to improving and educating children and parents in the best ways for children to be safe when on the Internet.

(b) Definition of State

For purposes of this section, the term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as are necessary for fiscal years 2007 through 2011.

(Pub. L. 109–248, title VI, § 630, July 27, 2006, 120 Stat. 640.)

§ 16988. Jessica Lunsford Address Verification Grant Program

(a) Establishment

There is established the Jessica Lunsford Address Verification Grant Program (hereinafter in this section referred to as the ''Program'').

(b) Grants authorized

Under the Program, the Attorney General is authorized to award grants to State,[1] local governments, and Indian tribal governments to assist in carrying out programs requiring an appropriate official to verify, at appropriate intervals, the residence of all or some registered sex offenders.

(c) Application

(1) In general

Each State or local government seeking a grant under this section shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may reasonably require.

(2) Contents

Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities for which assistance under this section is sought; and

(B) provide such additional assurances as the Attorney General determines to be essential to ensure compliance with the requirements of this section.

(d) Innovation

In making grants under this section, the Attorney General shall ensure that different approaches to address verification are funded to allow an assessment of effectiveness.

(e) Authorization of appropriations

(1) In general

There are authorized to be appropriated for each of the fiscal years 2007 through 2009 such sums as may be necessary to carry out this section.

(2) Report

Not later than April 1, 2009, the Attorney General shall report to Congress—

(A) assessing the effectiveness and value of this section;

(B) comparing the cost effectiveness of address verification to reduce sex offenses compared to other alternatives; and

(C) making recommendations for continuing funding and the appropriate levels for such funding.

(Pub. L. 109–248, title VI, § 631, July 27, 2006, 120 Stat. 641.)

§ 16989. Fugitive Safe Surrender

(a) Findings

Congress finds the following:

(1) Fugitive Safe Surrender is a program of the United States Marshals Service, in partnership with public, private, and faith-based organizations, which temporarily transforms a church into a courthouse, so fugitives can turn themselves in, in an atmosphere where they feel more comfortable to do so, and have nonviolent cases adjudicated immediately.

(2) In the 4-day pilot program in Cleveland, Ohio, over 800 fugitives turned themselves in. By contrast, a successful Fugitive Task Force sweep, conducted for 3 days after Fugitive Safe Surrender, resulted in the arrest of 65 individuals.

(3) Fugitive Safe Surrender is safer for defendants, law enforcement, and innocent bystanders than needing to conduct a sweep.

(4) Based upon the success of the pilot program, Fugitive Safe Surrender should be expanded to other cities throughout the United States.

(b) Establishment

The United States Marshals Service shall establish, direct, and coordinate a program (to be known as the ''Fugitive Safe Surrender Program''), under which the United States Marshals Service shall apprehend Federal, State, and local fugitives in a safe, secure, and peaceful manner to be coordinated with law enforcement and community leaders in designated cities throughout the United States.

(c) Authorization of appropriations

There are authorized to be appropriated to the United States Marshals Service to carry out this section—

(1) $3,000,000 for fiscal year 2007;

(2) $5,000,000 for fiscal year 2008; and

(3) $8,000,000 for fiscal year 2009.

(d) Other existing applicable law

Nothing in this section shall be construed to limit any existing authority under any other provision of Federal or State law for law enforcement agencies to locate or apprehend fugitives through task forces or any other means.

(Pub. L. 109–248, title VI, § 632, July 27, 2006, 120 Stat. 641.)

§ 16990. National registry of substantiated cases of child abuse

(a) In general

The Secretary of Health and Human Services, in consultation with the Attorney General, shall create a national registry of substantiated cases of child abuse or neglect.

[1] So in original. Probably should be ''States,''.

(b) Information

(1) Collection

The information in the registry described in subsection (a) shall be supplied by States and Indian tribes, or, at the option of a State, by political subdivisions of such State, to the Secretary of Health and Human Services.

(2) Type of information

The registry described in subsection (a) shall collect in a central electronic registry information on persons reported to a State, Indian tribe, or political subdivision of a State as perpetrators of a substantiated case of child abuse or neglect.

(c) Scope of information

(1) In general

(A) Treatment of reports

The information to be provided to the Secretary of Health and Human Services under this section shall relate to substantiated reports of child abuse or neglect.

(B) Exception

If a State, Indian tribe, or political subdivision of a State has an electronic register of cases of child abuse or neglect equivalent to the registry established under this section that it maintains pursuant to a requirement or authorization under any other provision of law, the information provided to the Secretary of Health and Human Services under this section shall be coextensive with that in such register.

(2) Form

Information provided to the Secretary of Health and Human Services under this section—

(A) shall be in a standardized electronic form determined by the Secretary of Health and Human Services; and

(B) shall contain case-specific identifying information that is limited to the name of the perpetrator and the nature of the substantiated case of child abuse or neglect, and that complies with clauses (viii) and (ix) of section 5106a(b)(2)(A) of this title.

(d) Construction

This section shall not be construed to require a State, Indian tribe, or political subdivision of a State to modify—

(1) an equivalent register of cases of child abuse or neglect that it maintains pursuant to a requirement or authorization under any other provision of law; or

(2) any other record relating to child abuse or neglect, regardless of whether the report of abuse or neglect was substantiated, unsubstantiated, or determined to be unfounded.

(e) Accessibility

Information contained in the national registry shall only be accessible to any Federal, State, Indian tribe, or local government entity, or any agent of such entities, that has a need for such information in order to carry out its responsibilities under law to protect children from child abuse and neglect.

(f) Dissemination

The Secretary of Health and Human Services shall establish standards for the dissemination of information in the national registry of substantiated cases of child abuse or neglect. Such standards shall comply with clauses (viii) and (ix) of section 5106a(b)(2)(A) of this title.

(g) Study

(1) In general

The Secretary of Health and Human Services shall conduct a study on the feasibility of establishing data collection standards for a national child abuse and neglect registry with recommendations and findings concerning—

(A) costs and benefits of such data collection standards;

(B) data collection standards currently employed by each State, Indian tribe, or political subdivision of a State;

(C) data collection standards that should be considered to establish a model of promising practices; and

(D) a due process procedure for a national registry.

(2) Report

Not later than 1 year after July 27, 2006, the Secretary of Homeland Security shall submit to the Committees on the Judiciary in the House of Representatives and the United States Senate and the Senate Committee on Health, Education, Labor and Pensions and the House Committee on Education and the Workforce a report containing the recommendations and findings of the study on data collection standards for a national child abuse registry authorized under this subsection.

(3) Authorization of appropriations

There is authorized to be appropriated $500,000 for the period of fiscal years 2006 and 2007 to carry out the study required by this subsection.

(Pub. L. 109–248, title VI, § 633, July 27, 2006, 120 Stat. 642.)

§ 16991. Annual report on enforcement of registration requirements

Not later than July 1 of each year, the Attorney General shall submit a report to Congress describing—

(1) the use by the Department of Justice of the United States Marshals Service to assist jurisdictions in locating and apprehending sex offenders who fail to comply with sex offender registration requirements, as authorized by this chapter;

(2) the use of section 2250 of title 18 to punish offenders for failure to register;

(3) a detailed explanation of each jurisdiction's compliance with subchapter I of this chapter;

(4) a detailed description of Justice Department efforts to ensure compliance and any funding reductions, the basis for any decision to reduce funding or not to reduce funding under section 16925 of this title; and

(5) the denial or grant of any extensions to comply with subchapter I of this chapter, and the reasons for such denial or grant.

(Pub. L. 109–248, title VI, § 635, July 27, 2006, 120 Stat. 644.)

REFERENCES IN TEXT

This chapter, referred to in par. (1), was in the original ''this Act'', meaning Pub. L. 109–248, July 27, 2006, 120 Stat. 587, known as the Adam Walsh Child Protection and Safety Act of 2006. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of this title and Tables.

Subchapter I of this chapter, referred to in pars. (3) and (5), was in the original ''the Sex Offender Registration and Notification Act'', meaning title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590. For complete classification of title I to the Code, see Short Title note set out under section 16901 of this title and Tables.